UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS
SECOND SESSION

VOLUME 124—PART 26

OCTOBER 7, 1978 TO OCTOBER 11, 1978

(PAGES 34487 TO 35960)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1978

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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United States of America

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PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

SENATE—*Saturday, October 7, 1978*

(Legislative day of Thursday, September 28, 1978)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by Hon. KANEASTER HODGES, JR., a Senator, from the State of Arkansas.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, on this National Day of Prayer, we thank Thee for "one nation under God, indivisible, with liberty and justice for all." We thank Thee for Thy favor shown our fathers, for Thy faithfulness continued unto their children, for the land rich in harvests from the fields and minerals from the Earth, for the great power entrusted to the people, for the peace maintained by righteous laws, for protection from outward dangers, for an honorable place among the nations, and for the opportunity of increasing service to the world.

Give us confidence, strength, and wisdom to strive for a future better than the past. Heal our divisions, consolidate our objectives, rekindle the fires of the spirit, instill in all people an elevated patriotism and guide those who govern according to Thy will. And to Thee shall be the glory and the thanksgiving from generation to generation. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 7, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KANEASTER HODGES, JR., a Senator from the State of Arkansas, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. HODGES thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader, the Senator from West Virginia, is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings to date be approved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

WHITE HOUSE PERSONNEL AUTHORIZATION—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 11003 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11003) to clarify the authority for employment of personnel in the White House Office and the Executive Residence at the White House, to clarify the authority for employment of personnel by the President to meet unanticipated needs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 28, 1978.)

Mr. STEVENS. Mr President, I urge approval of the conference report on H.R. 11003, the White House authorization bill. H.R. 11003 would provide permanent authority for the employment of personnel, including experts and consultants.

This bill would set in statute limits on the numbers of individuals which the President and the Vice President can employ as aides in the White House. Under current law, the President is actually allowed only 14 assistants. Of course, Presidents for decades have required substantially more assistance and the Congress has provided that support through appropriations. Each year for the past several years, however, bills to appropriate funds to the White House have been subject to parliamentary objection in the House of Representatives because of the absence of authorizing legislation.

This bill would correct that defect. It covers, in addition to the White House office, the Office of the Vice President, and the Domestic Policy staff. It also covers the Office of Administration, which was created by Reorganization Plan No. 1 of 1977 to administer support services for other White House offices. Finally, the bill covers employees of the Executive Residence.

In order to prevent abuse of the President's authority to request executive departments to detail workers to the White House and use outside consultants, stringent reporting requirements to Congress are included. The number of detailees who are detailed to the White House in excess of 30 days and their aggregate salaries, and the number of consultants that are utilized and their aggregate fees must be disclosed annually. Additionally, more specific information can always be requested by Congress.

As I said when the Subcommittee on Civil Service and General Services considered this bill:

I think the White House ought to be able to define the authority it needs in order to function and we should not interfere in this. It is something that is totally contrary to the principles that the Congress has, as a whole, established.

● Mr. SASSER. Mr. President, the White House personnel authorization bill as agreed to in conference reflects a constructive approach by Congress to update and clarify the authorization for the staffing and administration expenses of the White House office and other related offices.

The joint explanatory statement of the conference committee explains the manner in which the two differences in the House and Senate bills were resolved. As the statement explains on the first Senate amendment dealing with certain types of information for employees and

the coverage of detailees, the House receded, the conferees recognizing that the House requirement for reporting names, general title, job description, and salary of every individual employed in the White House, is contrary to government-wide rules, developed to conform with both the Freedom of Information Act and the Privacy Act, that are tailored to provide for protection of the privacy of individuals involved. In addition, the conferees have received assurance from the administration that, as in the past, this information will be provided to the Congress upon request.

On the second Senate amendment which would terminate budget authority under the act after September 30, 1983, unless reauthorized, the Senate receded, the conferees pointing out that the detailed reporting requirements (notwithstanding Senate amendment No. 1) contained in both bills, provide an adequate basis for future congressional oversight with respect to this authorization.

The conferees stress that the decision of the conference committee on this issue should not be construed to reflect on the conferees' position with respect to general "sunset" legislation which is currently being considered by the Congress. The conferees do believe, however, that a distinction should be made between general sunset provisions which require reauthorization of programs and the "sunset" provision in this amendment which would require reenactment of budget authority for the President to hire staff.

I wish to express many sincere thanks to the distinguished ranking minority member of the subcommittee (Mr. STEVENS) and of the committee (Mr. PERCY) as well as the chairman of the Governmental Affairs Committee (Mr. RIBICOFF) for their support and assistance.

The conference report is the product of considerable effort on the part of both Houses and I do want to say that Mrs. SCHROEDER, Mr. DERWINSKI, Mr. UDALL, and Mr. NIX were most gracious and cooperative in our joint effort.●

The ACTING PRESIDENT pro tempore. The question is on the adoption of the conference report.

The conference report was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS, 1979—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 12932 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12932) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 29, 1978.)

Mr. ROBERT C. BYRD. Mr. President, H.R. 12932 makes appropriations not only for the Department of the Interior but for certain important activities under the Department of Energy, the Department of Health, Education, and Welfare, the Forest Service, and other related agencies. Resolving the differences of the two Houses this year consumed 2 days, but I believe the conference agreement before us now is a sound one that not only reduces total spending but fairly reflects the major thrusts of the Senate-passed bill.

Under the conference agreement, Mr. President, the bill totals some $11.6 billion. This is $1.2 billion below the budget estimates submitted by the President and $1.1 billion below the House allowance. It is only $12.3 million over the total appropriation approved by the Senate.

Mr. President, I ask unanimous consent that comparative summaries by agency and titles of the fiscal year 1979 appropriations as calculated by the Senate be printed in the RECORD at this point. The full comparative table by appropriation account has already been printed in the House proceedings on pages 33689 through 33693 for Thursday, October 5.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES—H.R. 12932 COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY (DOLLARS IN THOUSANDS)—SUMMARY BY AGENCY

	New budge. authority, fiscal year 1979				Conference compared with—		
	Budget estimates	House bill	Senate bill	Conference agreement	Budget estimates	House bill	Senate bill
TITLE I—DEPARTMENT OF THE INTERIOR							
Bureau of Land Management	488,124	510,146	488,747	500,937	+12,813	−9,209	+12,190
Office of Water Research and Technology	27,154	31,057	26,842	28,357	+1,203	−2,700	+1,515
Heritage Conservation and Recreation Service	790,978	723,715	805,068	811,899	+20,921	+88,184	+6,831
Fish and Wildlife Service	292,030	302,998	301,137	304,135	+12,105	+1,137	+2,998
National Park Service	504,586	513,625	517,555	518,100	+13,514	+4,475	+545
Geological Survey	583,911	635,737	647,125	640,143	+56,232	+4,406	−6,982
Bureau of Mines	121,329	132,667	118,058	147,007	+25,678	+14,340	+28,949
Office of Surface Mining Reclamation and Enforcement	114,522	117,195	127,395	115,395	+873	−1,800	−12,000
Bureau of Indian Affairs	973,481	1,035,367	1,003,344	1,034,559	+61,078	−808	+31,215
Territorial Affairs	156,356	181,701	156,321	179,231	+22,875	−2,470	+22,910
Office of the Secretary	41,607	43,391	42,545	43,200	+1,593	−191	+655
Office of the Solicitor	14,895	14,585	14,394	14,585	−310		+191
Total, title I—Department of the Interior	4,108,973	4,242,184	4,248,531	4,337,548	+228,575	+95,364	+89,017
TITLE II—RELATED AGENCIES							
Forest Service	1,342,208	1,380,526	1,356,871	1,423,195	+80,987	+42,669	+66,324
Department of Energy	6,283,026	5,960,368	4,862,157	4,713,752	−1,569,274	−1,246,616	−148,405
Indian Health	542,807	560,603	558,087	560,789	+17,892	+186	+2,702
Indian Education	75,735	73,735	71,735	71,735	−4,000	−2,000	
Institute of Museum Services	7,752	7,752	8,000	7,852	+100	+100	−148
Indian Claims Commission							
Navaho and Hopi Indian Relocation Commission	13,129	8,752	8,692	8,752	−4,377		+60
Smithsonian	190,800	109,116	107,665	108,577	−1,223	−539	+912
National Gallery of Art	19,305	19,305	18,455	19,041	−264	−264	+586
Woodrow Wilson International Center for Scholars	1,317	1,567	1,567	1,567	+250		
National Endowment for the Arts	149,660	149,660	149,210	149,435	−225	−225	+225
National Endowment for the Humanities	145,600	145,600	144,250	145,046	−554	−554	+796
Commission of Fine Arts	264	263	263	263	−1		
Advisory Council on Historic Preservation	1,553	1,178	1,178	1,178	−375		
National Capital Planning Commission	1,939	1,926	1,991	1,963	+24	+27	−28
Franklin Delano Roosevelt Memorial Commission	20	20	20	20			
Joint Federal-State Land Use Planning Commission for Alaska	594	594	356	594			+238
Pennsylvania Avenue Development Corporation	27,285	27,385	27,385	27,385	+100		
Total title II—Relate agencies	8,721,994	8,448,360	7,317,882	7,241,144	−1,480,850	−1,207,216	−76,738
Grand total	12,830,967	12,690,544	11,566,413	11,578,692	−1,252,275	−1,111,852	+12,279

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES—H.R. 12932: COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY (DOLLARS IN THOUSANDS)
SUMMARY BY TITLE

	New budget authority					Conference compared with—			
	Enacted fiscal year 1978	Estimates fiscal year 1979	House fiscal year 1979	Senate fiscal year 1979	Conference fiscal year 1979	Fiscal year 1978 enacted	Fiscal year 1979 estimates	House bill	Senate bill
Total, title I, new budget (obligational) authority, Department of the Interior	4, 133, 600	4, 108, 973	4, 242, 184	4, 248, 531	4, 337, 548	+203, 948	+228, 575	+95, 364	+89, 017
Consisting of:									
Appropriations	4, 133, 600	4, 108, 973	4, 242, 184	4, 248, 531	4, 337, 548	+203, 948	+228, 575	+95, 364	+89, 017
Definite appropriations	3, 213, 379	3, 257, 272	3, 469, 642	3, 431, 636	3, 473, 822	+260, 443	+216, 550	+4, 180	+42, 186
Indefinite appropriations	920, 221	851, 701	772, 542	816, 895	863, 726	−56, 495	+12, 025	+91, 184	+46, 831
Permanent contract authority	----------	[1] (47, 500)	----------	----------	----------	----------	(−47, 500)	----------	----------
Memoranda:									
Appropriations to liquidate contract authority	(55, 034)	----------	----------	----------	----------	(−55, 034)	----------	----------	----------
Title I, new budget (obligational) authority and appropriations to liquidate contract authority	4, 188, 634	4, 108, 973	4, 242, 184	4, 248, 531	4, 337, 548	+148, 914	+228, 575	+95, 364	+89, 017
Total title II, new budget (obligational) authority related agencies	7, 205, 417	8, 721, 994	8, 448, 360	7, 317, 882	7, 241, 144	+35, 727	−1, 480, 850	−1, 207, 216	−76, 738
Consisting of:									
Appropriations	7, 197, 917	8, 708, 594	8, 434, 960	7, 304, 482	7, 227, 744	+29, 827	−1, 480, 850	−1, 207, 216	−76, 738
Definite appropriations	7, 188, 43	8, 698, 259	8, 425, 347	7, 295, 224	7, 218, 161	+29, 731	−1, 480, 098	−1, 207, 186	−77, 063
Indefinite appropriations	9, 487	10, 335	9, 613	9, 258	9, 583	+96	−752	−30	+325
Borrowing authority	7, 500	13, 400	13, 400	13 400	13, 400	+5, 900	----------	----------	----------
Memoranda:									
Appropriations to liquidate contract authority	(78, 781)	----------	----------	----------	----------	(−78, 781)	----------	----------	----------
Title II, new budget (obligational) authority and appropriations to liquidate contract authority	7, 284, 198	8, 721, 994	8, 448, 360	7, 317, 882	7, 241, 144	−43, 054	−1, 480 850	−1, 207 216	−76, 738
RECAPITULATION									
Total, new budget (obligational) authority, all titles	11, 339, 017	12, 830, 967	12, 690, 544	11, 566, 413	11, 578, 692	+239, 675	−1, 252, 275	−1, 111, 852	+12, 279
Consisting of:									
Appropriations	11, 331, 517	12, 817, 567	12, 677, 144	11, 553, 013	11, 565, 292	+233, 775	−1, 252, 275	−1, 111, 852	+12, 279
Definite appropriations	10, 401, 809	11, 955, 531	11, 894, 989	10, 726, 860	10, 691, 983	+290, 174	−1, 263, 548	−1, 203, 006	−34, 877
Indefinite appropriations	929, 708	862, 036	782, 155	826, 153	873, 309	−56, 399	+11, 273	+91, 154	+47, 156
Borrowing authority	7, 500	13, 400	13, 400	13, 400	13, 400	+5, 900	----------	----------	----------
Permanent contract authority	----------	[1] (47, 500)	----------	----------	----------	----------	(−47, 500)	----------	----------
Memoranda:									
Appropriations to liquidate contract authority	(133, 815)	----------	----------	----------	----------	(−133, 815)	----------	----------	----------
Grand total, new budget (obligational) authority and appropriations to liquidate contract authority	11, 472, 832	12, 830, 967	12, 690, 544	11, 566, 413	11, 578, 692	+105, 860	−1, 252, 275	−1, 111, 852	+12, 279

[1] Permanent contract authority not included in new budget authority totals.

Mr. ROBERT C. BYRD. Mr. President, Senate conferees were, of course, unable to retain intact all provisions that had been approved by the Senate. In the give and take of conference negotiations, however, I believe our agreements on the bill have produced an appropriations measure that fully and fairly addresses the Nation's needs in the areas of natural resources management, energy development, cultural enrichment, and welfare improvement of American and territorial natives.

The largest single funding difference to be settled in conference involved the strategic petroleum reserve, but there was no difficulty in agreeing to the lower Senate allowance of $3 billion. This is mainly because the fill schedule for the reserve has continued to lag, and all the $4.2 billion requested by the President need not be appropriated in the 1979 fiscal year.

Other differences within the funding provided for the Department of Energy's fossil energy, conservation, and related activities were not so easy to resolve. Accordingly, the agreements for these programs reflect adjustments that recognize priorities of both houses.

I am particularly pleased that the conference agreement will start two important demonstrations of solvent refined coal processes and expand demonstrations of high Btu coal gasification as proposed by the Senate.

It is significant to note that, while funding important congressional initiatives, the final $4.7 billion appropriation for the Department of Energy achieves real savings through budget reductions. In addition to decreases in the strategic petroleum reserve, the Department of Energy appropriation agreed to in conference is $168.8 million below the House allowance and $148.4 under the Senate amount—in all, a $325.6 million reduction in the budget request for research and development.

For the Interior Department, the conference agreement of $4.3 billion provides an increase of $228.5 million over the budget estimates, actually increasing the allowances of both Houses. These increases recognize unbudgeted needs in nearly every area of natural resource conservation and management and Indian and territorial programs. A similar situation exists for programs of the Forest Service where the conference agreement provides a budget increase of nearly $81 million.

Mr. President, time does not permit an adequate review of all the agency and program funding adjusted in conference. The total amounts I have been discussing, however, show a remarkably even balance in the Senate and House differences, and this, in turn, reflects a fair and effective conference agreement.

Mr. President, the Senate approved several sensitive amendments of national interest to the bill's general provisions this year, and I should comment on these briefly. All of these amendments were retained in conference, although one was modified.

First, the conferees approved without change the amendment permitting construction to continue on projects with approved environmental impact statements in the Colorado River Basin in the event an additional, basin-wide statement should be required. This was concurred in by the House on a separate roll-call vote.

Next, the conferees agreed to retain without change the language modifying residual fuel entitlements for the State of Michigan and the New England region. You will recall this amendment was discussed at length in the Senate and adopted on a separate roll-call vote.

Next, the conferees accepted with modification the amendment banning the enforcement of steel shot regulations in the hunting of migratory waterfowl. The revision provides for enforcement in any State on approval of the State's appropriate regulatory authority.

In closing, Mr. President, let me again commend the fine work of the ranking minority member of the Interior Appropriations Subcommittee, the Senator from Alaska (Mr. STEVENS), who devoted long hours to this bill and to the final conference agreement, despite his de-

manding duties as assistant minority leader.

Further, Mr. President, I congratulate the Senator from Kentucky (Mr. HUDDLESTON) on his fine work as manager of the Interior appropriations bill this year. While I was not able to devote full time to my duties as chairman of the Interior Subcommittee, the Senator from Kentucky willingly filled the gap not only as floor manager of the bill but as chairman of the Senate conferees and as presiding chairman of many of the subcommittee budget hearings.

My thanks and appreciation, also, to the other subcommittee members who helped chair the many weeks of hearings for Government and outside witnesses and contributed so much to the bill. This is a complex bill, and its quality can be measured by the dedication of the subcommittee members.

Mr. President, I yield to the Senator from Alaska (Mr. STEVENS) for any observations on the conference agreement he might care to make.

Mr. STEVENS. Mr. President, as the ranking minority member of the Interior Subcommittee, I rise in support of the report of the conference on H.R. 12932 and I further wish to commend the efforts of the subcommittee chairman and his very able staff. This year has not been an easy one, and it certainly is not getting any easier.

I think it is significant that we have been able to maintain a conference agreement that is only slightly more than $12 million above the total amount approved by this body on August 9 of this year when we sent this bill to conference. With a total budget of $11.6 billion, we are still $1.2 billion below the President's budget estimate and more than $1.1 billion below the proposed House allowance.

Naturally, we had some disagreements with the House in conference. On the whole, however, I think we have come back with a bill that we can be very proud of. We have tried to be responsive to the requests and needs of all Members and as usual, the subcommittee chairman, our eminently distinguished majority leader from West Virginia (Mr. ROBERT C. BYRD) deserves the highest praise for his efforts on behalf of all Senators who have an interest in this bill.

I really think we can say that we have done our best to deal incisively with the Nation's needs in the vital areas that the Interior Subcommittee appropriations bill encompasses.

This year, especially, we have tried to address several areas of concern to the future energy needs of our Nation. There are many new technologies that hold much potential for future development, and I, for one, am hopeful that we can work much more closely with the Department of Energy in the future in establishing policy and direction in this absolutely crucial area.

Mr. President, there are two items in this conference report of particular importance to the Federal installations and the local residents in the United States' northernmost community—Barrow, Alaska. For years, the residents of Barrow have lived with a dangerous, broken down, temporary gas distribution system. Although the Department of Interior through the Bureau of Indian Affairs agreed in 1975 to replace the system, no effort has been made by the Department to carry out that commitment. The conference report includes $8.8 million which, with $600,000 previously made available to the Department to design a system, will fund replacement of the gas pipeline.

In addition, it is my feeling that the Department should make every effort to find a qualified local construction group to do the work. The hazards of a hastily constructed system should now be obvious to the Department, and, consequently, future construction should utilize the highest quality materials and techniques to install a gas distribution system that will be long lasting and meet all applicable safety requirements. This funding should put us far down the road toward completion of a safe, reliable distribution system which can be transferred to the North Slope borough pursuant to the 1975 agreement. The borough can then assume responsibility for utility service to its citizens in place of the Bureau of Indian Affairs.

The other item in the conference report is the $15 million appropriation to perform additional work associated with wells that have been drilled in the East and South Barrow gas fields. Much work remains to be done in the form of roads and connections to properly integrate and coordinate the producing wells. It is also necessary to work over at least one of the older wells to insure maximum production. The U.S. Geological Survey should move forward with this work, and I would particularly expect the survey to identify activities that will employ the largest number of native workers.

I am disappointed that the conferees did not include additional funds that would have allowed the drilling of three additional wells in this fiscal year. Additional wells will be needed if this field is to be properly administered and the maximum amount of gas recovered. There was a clear understanding, however, that an inquiry into the availability of alternative fuel supplies will be made as soon as possible. We can then consider funds for additional drilling after obtaining assurances that natural gas is the most appropriate fuel for the area.

Mr. President, I would like to pose a question to the floor manager. The Office of Hearings and Appeals in the Economic Regulatory Administration of the Department of Energy is a very important part of the regulatory system of that Department. It is the office which hears cases and renders decisions on applications of the rules and regulations of the Department. It is an enormous task. But it is also a job which must be carried out with efficiency and dispatch. The decisions made by the Office have significant economic impact. They can make millions of dollars' worth of difference to affected parties. The longer the decision process takes, the more severe the effects can be.

A case has recently come to my attention which indicates the office is somewhat lax in rendering decisions. The North Pole Refinery in Fairbanks, Alaska, applied in July 1977 for an exception to the requirement that they file their entitlement reports in combination with those of a refinery operated by a subsidiary of North Pole's owner company. In January they sought a stay to keep the Agency from combining the entitlement reports until the application for exception was decided. In February, North Pole went to Federal court to obtain an order to compel the office to issue a proposed decision and order. The court found that "there has been undue delay" in this matter and issued the order. The office did issue a proposed decision in March and a hearing was held on that proposed decision in May, and supplemental information was provided by North Pole. But since that time no decision has been made. I understand the case presented a complicated issue but there can be no valid reason for this lengthy delay.

Repeated requests for a decision have been met with bureaucratic indifference. I personally have called for a decision on several occasions. The merits of the case are not my concern today, although I do support North Pole Refinery's request. What disturbs me is that this delay is causing serious economic harm to North Pole, a new and much needed refinery, and to the people in Alaska. Indications are the decision will be favorable so the delay is particularly aggravating. However, even if the office's decision is unfavorable at this stage, the delay unfairly postpones North Pole's right to appeal and seek review both within the Department and the courts. But this truly is a case of justice delayed being justice denied. Without a decision, North Pole cannot proceed. My question is: Are these delays common and does this indicate the office either has too much to do or too few people to do it?

Mr. ROBERT C. BYRD. That is a most unfortunate situation. These kinds of matters do deserve prompt consideration and there is no excuse for lengthy delays of this nature. What I can suggest to my colleague is that we explore this problem in depth next year and determine how these problems can be corrected.

Mr. STEVENS. I thank the Senator. In closing, Mr. President, I would again extend my extreme gratitude and appreciation to the distinguished chairman of our subcommittee for his unfailing courtesy and constant good nature toward all members of the subcommittee. It is a great honor to work with a gentleman who deals as fairhandedly as he does with committee affairs.

Mr. President, I would like to clarify the language explaining amendment No. 47 on page 19 of the conference report.

The language of that amendment reads in part:

The managers agree that the Office of Aircraft Services staff involved with the Department's Alaska aircraft operations should be headquartered at Fairbanks, Alaska * * *

The city of Fairbanks was inadvertently substituted for the city of Anchorage. The Alaskan operations of the Office of Aircraft Services is currently headquartered in Anchorage, and it is the intention of the conferees that they continue to be located there and not at Fairbanks as is stated in the report.

Mr. ROBERT C. BYRD. Mr. President, so there will be no question over congressional intent in this case, I concur in the remarks of the Senator from Alaska (Mr. STEVENS). The reference in the statement of the managers to Fairbanks was an inadvertance. There was no intent to shift the present Alaska location of the Office of Aircraft Services headquarters from Anchorage.

Mr. CRANSTON. Mr. President, I am very pleased to see that the conference report on the fiscal year 1979 Interior and related agencies appropriations bill, H.R. 12932, provides $12.5 million from the land and water conservation fund for the Forest Service acquisition of the Jennings and Kahle properties in the Lake Tahoe Basin.

The conferees also agreed to the House language which stipulates that the $12.5 million shall not become available for the purchase of the two sites until the States of California and Nevada have each (a) provided $6.25 million to match the Forest Service grant and (b) established restrictions which will prohibit additional gaming establishments in the Lake Tahoe Basin.

The Governors of the States of California and Nevada have just agreed to a new bi-State compact which would restrict gaming facilities as required in the Appropriation Act. While the agreement must be ratified by the legislatures of both States and consented to by Congress before it becomes official, I am confident this can be accomplished next year. Regarding the language on the States each providing $6.25 million, in my judgment this requirement provides for great flexibility and use of funds other than taxpayers' dollars—such as donated funds. This would comply with the condition in the Appropriation Act. Also, it is possible that the Jennings and Kahle properties can be acquired for something less than $25 million. If that is the case and the Federal share is less than $12.5 million, the States of California and Nevada will of course be permitted to provide less than $6.25 million each as long as the amount provided by the two States matches the Forest Service grant. This is clearly the intention of the appropriations bill language. Finally, the conference report includes language prohibiting the Forest Service from using condemnation outside the national forest boundary. The Jennings and Kahle properties are currently outside of the Toiyabe National Forest, but it is expected that condemnation will not be necessary.

Mr. MAGNUSON. I concur.

VOTE AGAINST INTERIOR APPROPRIATIONS BILL

Mr. PROXMIRE. Mr. President, I regret that I cannot support H.R. 12932, the fiscal year 1979 Interior appropriations conference report.

In many respects, this is a good piece of legislation. It funds many constructive, worthwhile programs. And, I am happy to say, it provides much needed funding for several Wisconsin programs that are very important to the people of my State.

I am also glad to note that the conference report checks in at nearly $1.3 billion under the President's budget request—even though it should be noted that $1 billion of the decrease can be attributed to the Senate's decision to defer until next year the administration s request for fiscal year 1930 funds for strategic petroleum reserves purchases.

I am also pleased that the House has accepted a Senate amendment limiting the amount by which the Department of Energy can increase entitlement subsidies paid to east coast residual oil importers by refiners in the rest of the Nation.

At the same time, I am deeply concerned that the House narrowly approved, by a vote of 206 to 186, a motion to accept the Senate amendment that effectively exempts certain Colorado River Basin projects from compliance with the National Environmental Policy Act's requirements for a basinwide environmental impact statement.

Under the provisions of this amendment, nine Colorado River projects will be allowed to proceed even though the Interior Department has not yet filed a basinwide EIS. Under the National Environmental Policy Act, river basin projects must be reviewed for their environmental impacts on the entire river basin, not just a small local area.

Mr. President, the administration strongly opposed the exemption provided in this year's Interior appropriations bill, and I share that opposition. There are five reasons why I object to the Senate amendment:

First. No hearings have been held on this matter. Neither the Appropriations Committee nor the Merchant Marine Committee have had an opportunity to review this proposal via the hearing process.

Second. The National Environmental Policy Act sets policy for the entire United States. The special exemption granted to Colorado Basin projects in this bill sets a dangerous precedent and opens the door to efforts by other regions to bypass NEPA.

Third. Some of the projects exempted under this provision have not yet even received clearance from a site-specific environmental impact statement. The Senate's amendment gives the green light to these projects without even reviewing their impact on the local environment, much less the ecology of the entire river basin.

Fourth. Supporters of the exemption claim that it will save money by avoiding delay and accompanying cost overruns. Yet even more money could be wasted by ignoring the costly adverse environmental impacts that could result from their construction. I should point out that none of the projects affected by the Senate amendment are yet under construction. There is no reason why the needed EIS cannot be completed before construction begins, thus avoiding the possibility of costly expenditures to rectify serious ecological damages.

Fifth. A basinwide study of the Colorado basin projects could well provide us with cheaper and less damaging alternatives to the proposed water projects. Water conservation, recycling and improved basin management could well accomplish the same purposes as the envisioned projects. But there's no way to know unless the necessary impact statement is completed before construction begins.

Mr. President, I agree with many of the provisions of this year's Interior bill and certainly support many of the programs it funds. However, I feel that this particular provision is so serious in terms of the precedent it sets for undermining the integrity of the National Environmental Policy Act that I must cast my vote in protest against the entire fiscal year 1979 Interior appropriations bill.

● Mr. JOHNSTON. Mr. President, I want to thank the distinguished majority leader and manager of the conference report for his usual effective leadership on this legislation. His unique skill and patience is no secret to those of us who have the opportunity to serve with him. I am particularly pleased that he has been able to retain Senate amendment No. 104 to the conference report, the "products entitlement" provision, which was added on August 9, 1978, during consideration of this legislation by the Senate.

The purpose of amendment No. 104 is to grant short-term assistance to those portions of our Nation which are heavily dependent on imported residual fuel oil while encouraging the development of the additional domestic refinery capacity this Nation needs if we are to avoid heavy reliance on foreign refinery capacity in the future. This provision, which expires on June 30, 1979, increases the entitlement benefits which are presently received by eligible importers of residual fuel oil on the east coast from 30 percent of an entitlement to 50 percent of an entitlement and grants eligible importers in the State of Michigan 50 percent of an entitlement as well. I might add that had this provision been rejected by the Senate or rejected in conference, the Department of Energy could have completed its stated intention of making effective on August 26, 1978, a final rule granting 100-percent entitlement benefits to such importers. Amendment No. 104 also eliminates, through June 30, 1979, the "reverse entitlements penalty" in present Department of Energy regulations. Under the "reverse entitlements penalty," all domestic refiners who wish to market residual fuel oil on the east coast lose 50 percent of their entitlements benefits on every barrel of residual fuel over 5,000 barrels per day which such refiners ship into or market in the east coast. Subsection (c) of amendment No. 104 eliminates this "reverse entitlements" penalty, for the period ending June 30, 1979, if the domestic refiner ships the residual

fuel oil to the east coast in U.S.-flag tankers constructed in the United States. This aspect of the legislation will encourage refiners located in the gulf coast, Virgin Islands and, perhaps, even the west coast to market their residual fuel oil on the east coast, thus decreasing the east coast's reliance on residual fuel oil imported from foreign refiners.

But perhaps most importantly, amendment No. 104 sets the stage for the development of legislation establishing a national refinery policy. Recently, our Nation's refinery problems have become clear. The east coast relies heavily on residual fuel oil, but the east coast must rely on residual fuel oil imported from foreign refineries because the east coast does not possess sufficient domestic refinery capacity to provide their residual fuel oil needs. There is a glut of heavy crude oil on the west coast which is high in sulphur content, or sour, but the west coast does not have sufficient refinery capacity to produce from that crude oil either light products, such as gasoline, middle distillates and jet fuel, or heavy products, such as residual fuel oil, which are sufficiently low in sulfur content to be used domestically. Finally, the world crude oil supply is shifting from light crude oil which is relatively low in sulfur content, or sweet, to heavy, sour crude oils. In order to produce useful residual fuel oil, heavy, sour crude oil must be desulfurized through a costly process or further refined through another costly process to produce lighter petroleum products such as gasoline, home heating fuel and jet fuel. Simply stated, our present national refinery capacity is inadequate to respond efficiently to this shift in the world crude oil supply.

In the last 10 years, only one major, grassroots refinery has been constructed in this country. The ECOL refinery was constructed in Garyville, La., to maximize the production of residual fuel oil, part of which was to be marketed on the east coast. When the Federal Energy Administration adopted the present 50 percent "reverse entitlement" penalty, the ECOL refinery could no longer operate economically as a heavy fuels refinery and was sold to an existing refiner which converted the ECOL facility to maximize the production of gasoline and other light products. Today, several major new refinery projects are being considered, including, on the east coast, the Hampton Roads refinery in Virginia and the Eastport refinery in Maine and, on the west coast, the Alaska Petrochemical Co. or Alpetco refinery/petrochemical complex in Alaska. If these refineries and others are to be developed, we must provide a legislative and regulatory climate which will both encourage the development of appropriate domestic refinery capacity and create the certainty of Federal policy which is necessary if these capital intensive projects are to be financed.

I intend to work for this national refinery legislation during the next Congress. I am pleased that many of my colleagues also recognize the need for a national refinery policy and are committed to its timely development. Recently, many of our colleagues joined me in sending a letter to Secretary of Energy James Schlesinger encouraging the administration to join us in developing a firm national refinery policy. I am including a copy of that letter in the RECORD at this point and would encourage all of my colleagues to begin to focus on this critical, but as yet undeveloped, element of our national energy program.

The material follows:

U.S. SENATE,
COMMITTEE ON NATURAL RESOURCES,
Washington, D.C., August 9, 1978.

Hon. JAMES R. SCHLESINGER,
Secretary, Department of Energy,
Washington, D.C.

DEAR MR. SECRETARY: As you know, a number of Senators representing several regions of the nation have been negotiating at length over a proposed amendment to the FY 1979 Department of Interior appropriations bill, concerning oil import regulations.

In the course of these deliberations we have discovered collectively what we have known individually for some time, that the United States needs a national policy for domestic refineries. We have agreed to the following general principles which we believe should be included in comprehensive legislation regarding this subject.

(a) A policy providing certainty over the long term is required.

(b) When new refinery capacity is constructed to serve the United States market, it should be constructed within the United States.

(c) Government policy should encourage construction of new independent refinery capacity.

(d) A program should be developed to encourage new and existing refineries to refine heavy, high sulphur oil.

(e) State and local governments should be encouraged to develop responsible refinery siting policies consistent with Federal clean air and water standards.

(f) The disadvantage faced by independent refiners in obtaining adequate supplies of crude oil at equitable prices should be taken into account in the policy.

We look forward to working with each other and with you to develop such legislation early in the next Congress.

Sincerely yours,

J. Bennett Johnston, Edward W. Brooke, John A. Durkin, Edward M. Kennedy, Edmund S. Muskie, James B. Pearson, John Melcher, Patrick J. Leahy, Thomas J. McIntyre, Alan Cranston, Henry M. Jackson, Charles H. Percy, Lloyd Bentsen, Floyd K. Haskell, and Howard M. Metzenbaum.

Mike Gravel, Mark O. Hatfield, Wendell H. Ford, Jennings Randolph, Adlai Stevenson, Frank Church, Claiborne Pell, William D. Hathaway, H. John Heinz III, Spark M. Matsunaga, John Tower, Wendell R. Anderson, Abe Ribicoff, Charles McC. Mathias, Jr., Daniel K. Inouye, S. I. Hayakawa, Walter D. Huddleston.●

Mr. MUSKIE. Mr. President, I ask unanimous consent that a statement by the distinguished Senator from Massachusetts (Mr. BROOKE) on the Interior appropriation conference report be printed in the RECORD at an appropriate place before passage.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT OF SENATOR BROOKE

This Conference Report contains language on the residual oil entitlements program. It represents an agreement that I worked on with my distinguished colleague from Louisiana Senator Johnston and many of my colleagues from New England. It provides for an equalization of industrial oil prices between New England and the rest of the country, and thus puts a stop to injustices that were built in to the Energy Policy Conservation Act of 1975. As a result, New England will realize a $50 million price break on residual fuel oil. Half of that will go to Massachusetts. If the $25 million we will save compared to what industrial oil would otherwise have cost, $12.5 will be saved by electric utilities and will thus keep those onerous fuel adjustment charges down. Nothing could be more welcome than this price break as another hard winter approaches.

However, the formula contained in this report is the first part of the package. The second part is Administration action to suspend the 63-cent import license fee scheduled to become effective this year. Secretary Schlesinger personally assured me of his intention to recommend such action to the President upon passage of this Conference Report. Kitty Shirmer of Stuart Eisenstadt's staff personally assured my office that Mr. Eisenstadt would support that recommendation. I would hope that these important steps would be initiated tomorrow morning.

Mr. MUSKIE. The passage of this carefully worked-out package represents a victory for many more Americans than just those in New England. It is a major reconciliation between energy-producing areas and energy-consuming areas showing that each recognizes the special needs and problems of the other. It is going to be on this basis of mutual cooperation and only on this basis, that a long-term national energy program can be built. I ask that the letter my colleagues from New England and Louisiana and I, as well as other Senators, wrote Secretary Schlesinger about our mutual concerns be printed in the RECORD following my remarks.

The letter follows:

WASHINGTON, D.C.,
August 9, 1978.

Hon. JAMES R. SCHLESINGER,
Secretary, Department of Energy,
Washington, D.C.

DEAR MR. SECRETARY: As you know, a number of Senators representing several regions of the nation have been negotiating at length over a proposed amendment to the FY 1979 Department of Interior appropriations bill, concerning oil import regulations.

In the course of these deliberations we have discovered collectively what we have known individually for some time, that the United States needs a national policy for domestic refineries. We have agreed to the following general principles which we believe should be included in comprehensive legislation regarding this subject:

(a) A policy providing certainty over the long term is required.

(b) When new refinery capacity is constructed to serve the United States market, it should be constructed within the United States.

(c) Government policy should encourage construction of new independent refinery capacity.

(d) A program should be developed to encourage new and existing refineries to refine heavy, high sulphur oil.

(e) State and local governments should be encouraged to develop responsible refinery siting policies consistent with Federal clean air and water standards.

(f) The disadvantage faced by independent refiners in obtaining adequate supplies of crude oil at equitable prices should be taken into account in the policy.

We look forward to working with each other and with you to develop such legislation early in the next Congress.

Sincerely yours,

J. Bennett Johnston, Edward W. Brooke, John A. Durkin, Edward M. Kennedy, Edmund S. Muskie, James B. Pearson, John Melcher, Patrick J. Leahy, Thomas J. McIntyre, Alan Cranston, Henry M. Jackson, Charles H. Percy, Lloyd Bentsen, Floyd K. Haskell, and Howard M. Metzenbaum.

Mike Gravel, Mark O. Hatfield, Wendell H. Ford, Jennings Randolph, Adlai Stevenson, Frank Church, Claiborne Pell, William D. Hathaway, H. John Heinz III, Spark M. Matsunaga, John Tower, Wendell R. Anderson, Abe Ribicoff, Charles McC. Mathias, Jr., Daniel K. Inouye, S. I. Hayakawa, and Walter D. Huddleston.

● Mr. GRAVEL. Mr. President, the Interior appropriations conference report contains a provision of real importance to the Nation and to the State of Alaska. I refer to the provision concerning the Department of Energy's residual fuel oil entitlements program.

The Department of Energy had originally proposed that east coast importers of residual fuel oil receive full entitlement treatments. The Senate voted to permit an increase from 30 to 50 percent the entitlements treatment for such imports on the east coast and to eliminate altogether the curious "reverse entitlements" provision. The conferees adopted the Senate provision.

This means that domestic refiners will make lower payments under the entitlements program than under the DOE proposal, and thereby reduces any inflationary impact this program would have on domestically refined products.

It is important to note the manner in which this compromise was reached. This is not solely a question of entitlements on residual fuel oil. This is a question of the adoption of a domestic refinery policy. The compromise on the residual fuel oil entitlements program was found only after many competing interests agreed to the broad outline of a new, domestic refinery policy, which I endorse.

Consequently, the conference report treatment of the residual fuel oil entitlements program takes on a new dimension for the Nation and Alaska. It is important to Alaska as plans unfold for its first, large, grassroots refinery. It is important to the Nation for the simple reason that we still have a shortage of some 3 million barrels in our domestic refining capacity.

THE ENTITLEMENTS PROGRAM

Historically, some refineries had greater access to cheaper, price-controlled, domestic crude oil production, placing them at a distinct advantage over refineries reliant on higher priced imported crude oil. As a result of this inequity, the entitlements program was introduced to equalize crude costs among domestic refineries, employing a series of transfers of payments, or entitlements, between refineries.

However, a few years ago the Federal Energy Administration, the predecessor to DOE, amended its program. Rather than limiting entitlements transfers to refineries, DOE permitted an expansion of the program to east coast importers of residual fuel oil produced by foreign refineries. FEA's concern centered around the high cost of residual fuel oil upon which electric utilities on the east coast had come to rely on as their primary source of supply and the fact that there is very little domestic refinery capacity on the Eastern Seaboard.

Under the amended entitlements program, the purpose of lowering the cost of the residual to importers was to lower the cost of residual fuel oil to consumers. However, while the record of the program is not complete, there is evidence to suggest that foreign refineries simply raised their prices on the advent of the new entitlements. In other words, foreign refineries increased the price for residual in an amount approximately equal to the value of the new entitlement, and absorbed the payment. East coast residual prices were never reduced by the revised program.

The byzantine nature of the entitlements program has resulted in an adverse impact on consumer prices in other parts of the country, including Alaska. This is for the basic reason that the domestic refiners and their customers, the energy consuming public, pay for any expansion in coverage under the entitlements program.

DOMESTIC REFINERY POLICY AND ALASKA

Mr. President, the foundation of the east coast's problem is a lack of available refining capacity. I believe this can be attributed to the failure of our Nation to define a domestic refinery policy which would encourage construction of grassroots refineries.

To exacerbate the problem further, DOE proposed this summer to increase from a 30 percent entitlement to a 100 percent entitlement coverage under the entitlements program for residual fuel oil imported into the east coast. For the people of Alaska, this proposal would have increased the cost of domestically refined products by over $1.5 million a year.

Accordingly I supported the compromise amendment of the Senator from Louisiana, Senator JOHNSTON providing for entitlements for residual fuel oil at 50 percent for 1 year, at which time it will revert back to the present 30 percent level. This amendment was incorporated in the conference report.

In addition to minimizing the cost of the entitlements program to Alaskan consumers, this compromise will hopefully facilitate the construction of a grassroots refinery in Alaska—a project in which every Alaskan has a stake. Let me provide some insight into the proposed refinery project.

The project is headed up by the Alaska Petrochemical Co., or Alpetco. The State of Alaska has chosen Alpetco to process a large volume of the State's royalty oil.

There are a number of benefits to the State of Alaska from this arrangement. The State will generate the same revenue by selling the crude to Alpetco as it would have if it took its royalty oil "in cash." But in addition to that benefit the State will increase its property and income tax revenues, and create thousands of new jobs. One unique aspect of the project is that Alpetco will contribute 5 percent of the project's after-tax profits, beginning the 11th year after the plant begins operation, to the Alaska endowment trust to further the social, educational, cultural, and environmental conditions in Alaska.

For our Nation as a whole, the Alpetco project will provide us with a secure source of refined products, which may help our balance-of-payments deficits.

Mr. President, to me this project represents the best example of how the State of Alaska, the Nation, and private enterprise can work together to achieve common goals. DOE's proposed residual entitlement program struck a note of discord; the compromise corrects this. Not only will the compromise reduce any payments which Alpetco, and Alaskans, would have had to make to residual fuel oil importers, but it also sends a strong signal to the Department of Energy of the need for a grassroots refinery program.

Thirty-one other Senators and I signed a letter to Secretary Schlesinger calling for, among other things, "a Government policy (to) encourage construction of new, independent refinery capacity." I shall submit the full text of the letter for the RECORD.

This letter is signed by 11 members of the Senate Energy Coommittee and many Senators representing east coast States, indicating wide-ranging dissatisfaction with our current refinery policy.

Mr. President, the residual fuel oil entitlements program is a bankrupt policy. I am certainly not alone in advocating a comprehensive domestic refining policy, which will aid the development of grassroots refineries.

The letter follows:

WASHINGTON, D.C., *August 9, 1978.*

HON. JAMES R. SCHLESINGER,
Secretary, Department of Energy,
Washington, D.C.

DEAR MR. SECRETARY: As you know, a number of Senators representing several regions of the nation have been negotiating at length over a proposed amendment to the FY 1979 Department of Interior appropriations bill, concerning oil import regulations.

In the course of these deliberations we have discovered collectively what we have known individually for some time, that the United States needs a national policy for domestic refineries. We have agreed to the following general principles which we believe should be included in comprehensive legislation regarding this subject:

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We look forward to working with each other and with you to develop such legislation early in the next Congress.

Sincerely yours,

J. Bennett Johnston, Edward W. Brooke, John A. Durkin, Edward M. Kennedy, Edmund S. Muskie, James B. Pearson, John Melcher, Patrick J. Leahy, Thomas J. McIntyre, Alan Cranston, Henry M. Jackson, Charles H. Percy, Lloyd Bentsen, Floyd K. Haskell, and Howard M. Metzenbaum.

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The ACTING PRESIDENT pro tempore. The question is on adoption of the conference report.

Mr. MELCHER. Mr. President, is the question on agreeing to the conference report?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. MELCHER. Then, Mr. President, I would like to take time to ask the managers of the bill a couple of questions.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

Mr. MELCHER. Mr. President, I suggest the absence of a quorum.

Mr. STEVENS. Will the Senator withhold that suggestion?

Mr. MELCHER. I will be delighted to withhold. How long?

Mr. STEVENS. For just a couple of minutes.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. Mr. President, I noted a comment in the RECORD by Members of the House and the distinguished chairman of the subcommittee in the House.

I ask unanimous consent to have printed in the RECORD at this point section 305, which was amendment 102 in the conference.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SEC. 305. No funds appropriated by this Act shall be available for use in implementing or otherwise carrying out, in the State of Alaska, the provisions of section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782).

Mr. STEVENS. Mr. President, this section speaks for itself. It is not intended to be a duplicitous section. My State has been studied extensively under the provisions of section 17(d)2 of the Alaska Native Claims Settlement Act of 1971.

This section states that section 603 of the Federal Land Policy Management Act of 1976 shall not be funded by this bill insofar as Alaska is concerned. That is for the period of this appropriations bill.

Mr. President, we seek merely to prevent the duplication of cost to the taxpayers of a redundant study of Alaska's lands. I feel confident that we will work out the problems in section 17(d)(2), and for that reason I offered this amendment.

I also ask unanimous consent to have printed in the RECORD at this point the comments by the Secretary of the Interior when he appeared before the Interior Subcommittee on June 8, 1978, in response to questions concerning section 603.

There being no objection, the comments were ordered to be printed in the RECORD, as follows:

I want to ask you about two other things. When we had our formal hearings, we established in testimony not only from BLM but from Assistant Secretary Martin, that Section 603 of the BLM Organic Act was not meant to apply to Alaska.

Now there appears to be a sudden change in that policy. We are confused.

I am shifting gears on you, Mr. Secretary, but the BLM says that Section 603 does not apply to state-selected lands; but now my constituents are being told that mining on state-selected lands will be prohibited until the lands are transferred to the state.

Has there been a change in the Department with regard to Section 603? And do we need to reopen the testimony concerning Section 603 that was established here when BLM representatives and Assistant Secretary Martin were here?

Secretary ANDRUS. Mr. Chairman, I don't think so. I think I can probably clarify it for you today, and then it would be in your judgment as to whether you would need further clarification from them. But we in the Executive Branch do not have the right to ignore or to violate federal statutes.

Public Law 94-579, which is the BLM Organic Act, is very explicit. It says—and I quote from Section 603: "Within 15 years after the date of approval of this Act, the Secretary shall review"—it doesn't say "may," it says "shall review"—and I think you are familiar with the language.

Then in paragraph (c), it says: "During this term of review, that other matters will continue," but we will not—"in a manner so as not to impair the suitability of such areas for preservation of wilderness."

That is what the law says. I think Alaska—my personal opinion is that Alaska should be exempt. We are supporting the amendment in the legislation before the Congress to exempt Alaska from Section 603.

I think the d-2 selection, and all of the studies up there, should be in lieu of Section 603. That is my personal opinion. That is the position of the Department with reference to the legislation.

But, Senator, if that exemption is not passed either in the legislation that is before Congress or some other way, this is staring me right in the face, which is something I simply cannot ignore, sir.

I might even be considered on thin ice by waiting to see what happens to the legislation before we implement it. I think it would be totally unfair to the State of Alaska to impose the 603 provisions upon them, but the law doesn't give me any latitude.

Senator STEVENS. It is one of those things where the understanding exists, but it was not spelled out. We are still trying to find out. It was stated somewhere in the official proceedings on that bill, on the Organic Act, that because of the pending legislation pertaining to the d-2 issue, that this was not—did not pertain to Alaska.

Mr. STEVENS. Mr. President, this section is not intended to interfere with the management of Alaska's lands.

How is it intended to interfere with the Secretary's authority under the BLM Organic Act. What it is, is an instruction to the Department to comply with the Secretary's own understanding of section 603 as he spelled it out before the Senate subcommittee handling this bill.

The ACTING PRESIDENT pro tempore. Is the distinguished Senator from Montana in a position to proceed?

Mr. MELCHER. Mr. President, if the distinguished majority leader and the chairman of the Subcommittee on Appropriations will yield to me, I should like to direct a question or two toward the report of the managers.

Mr. ROBERT C. BYRD. I shall be glad to have the Senator ask questions.

Mr. MELCHER. On page 23, as far as I know, the only reference to the magnetohydrodynamics program is in the fourth paragraph. It states that the managers are in agreement that within the $7,675,000 added above the House allowance for MHD, emphasis should be given to the superconducting magnet needed to complete the University of Tennessee facility at Tullahoma, Tenn.

We had language in the report on the Senate appropriations bill, when the total was $100 million, emphasizing that the increase of $28 million over fiscal 1978 support is to continue the acceleration of the MHD research and development. Now we find that the conferees have agreed to about $20.3 million less and that the managers have agreed that the remaining $7 million-plus out of the $28 million—instead of being concentrated on accelerating the program, it is going to be concentrated for a superconducting magnet at Tullahoma.

It seems to me that the managers have agreed not to have an accelerated program for the MHD, except for a little bit more money for the superconducting magnet.

Mr. ROBERT C. BYRD. The Tennessee language was also in the Senate report—in the statement of the managers of the conference report:

The managers are in agreement that, within the $7,675,000 added above the House allowance for MHD, emphasis should be given to the superconducting magnet needed to complete the University of Tennessee facility at Tullahoma, Tennessee.

What is the Senator's question?

Mr. MELCHER. I shall rephrase the question. The Senate appropriated $100 million for the MHD program for fiscal 1979. In the report on the bill as it left the Senate was an emphasis that the $28 million increase over fiscal 1978, appropriations for MHD would be to emphasize the speedup in the program in

order to accomplish the rapid completion of the necessary work, research and development for the technology that is involved. I shall cite the exact language. It is in the Senate report:

The total funding, some $28 million above the fiscal year 1978 support, is to continue the acceleration of MHD research and development while maintaining a time frame that allows the gathering of necessary technical data for design of an engineering test facility.

That is a sentence that is in there, in the Senate appropriations bill report, and it is a key sentence, on why we need $28 million extra over fiscal 1978.

Now in this conference report we drop that $28 million down to $7 million, knock out almost $21 million, and the $7 million increase over the House appropriation, which, in effect, is also about $7 million over what was appropriated for fiscal 1978, that the emphasis will be simply on a superconducting magnet at Tullahoma in Tennessee. It seems to me that the Senate conferees have agreed there is not going to be much of an acceleration. I guess that is obvious and that about the only acceleration we are going to have is on the superconducting magnet. Is that correct?

Mr. STEVENS. Will the distinguished leader allow me?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. In the language of the report, some $28 million was included above the fiscal 1978 support for MHD. The report said this was to continue the acceleration of MHD research and development while maintaining a time frame that allows the gathering of necessary technical data for an engineering test facility.

But the Senate report continues, "in particular, emphasis should be given to the superconducting magnet needed to complete the University of Tennessee facility at Tullahoma."

In effect, we said there is $28 million additional for research and development, and emphasis within that increase should be given to the Tennessee facility.

The conference report continues the emphasis and again states that within the conference allowance there is emphasis on the MHD facility at Tullahoma. I never considered it to be inconsistent, and I hope that the Senator from Montana will not.

Mr. MELCHER. Well, I do. The inconsistency is that we had a key sentence in the appropriation bill report when the Senate passed the bill. The key sentence that I read, and the first sentence in regard to what the Senator from Alaska stated reflected the intent of the Senate to accelerate the program—period—to the tune of $28 million. It is true that the Senate did intend also to emphasize the Tullahoma plant and the superconducting magnet. But it seems to me that it is clear now that in giving up $21 million to get an agreement out of the House, about all we salvaged out of this acceleration that we want in the program was an emphasis on the superconducting magnet.

Mr. STEVENS. I do not interpret it that way. I interpret it that we continue the emphasis on gathering necessary technical data, and the House agrees with us that, in particular, emphasis should be given to the superconducting magnet.

Mr. MELCHER. Is that the way the Senator from Alaska interprets this, that we still have an accelerated program?

Mr. STEVENS. I certainly do.

Mr. MELCHER. And the majority leader interprets it that way, too?

Mr. ROBERT C. BYRD. Let me say this, to put this whole thing in context, Mr. President, the Senate conferees held out for several days on this particular item.

The Senate increased the figure. We went to conference, I believe, about $27 million over the House.

The House conferees did not want to yield any figure above the House-passed figure. Then they finally suggested a $5 million increase. The Senate conferees did not meet with the House further for several days.

In the effort to get that figure increased, I talked to the chairman on the House side, Mr. YATES, myself, twice.

The distinguished Senator from Kentucky (Mr. HUDDLESTON), who was handling this bill, and did so very ably, because it was not possible for me to handle the bill due to my floor responsibilities, also did the very best he could to have the House to compromise at a higher figure.

We finally came out with $7.6 million above the House figure, which was the best we could do, and with the fiscal year end already approaching and soon to be passed, and now passed, that figure was agreed upon.

I think the Senate conferees did the very best they could under the circumstances to secure a higher figure than $7.6 million. They failed to do that, but they were successful in getting the House at least to yield from zero to $7.6 million.

I can understand the strong feeling of the distinguished Senator from Montana (Mr. MELCHER), but he knows that the conferees on the Senate side did everything possible to support the Senate, and the $7.6 million was the best that we could obtain.

Now, the language in the statement of the managers is, as I have read, that emphasis within that $7.6 million should be given to the superconducting magnet.

It does not mean the emphasis of the increase, as I read it, would be restricted to that item.

I certainly would support the feeling of the distinguished Senator from Alaska as he has expressed it here. He followed the bill far more closely than did I, may I say to my friend, throughout the hearings, to the markup and throughout the conference.

As a matter of fact, I did not get to attend a single meeting of the conferees.

So I trust the judgment of the Senator from Alaska, and his knowledge, and I am willing to say "yes" in response to the Senator's question.

Mr. MELCHER. Mr. President, I am pleased to at least establish that point, that it is the opinion of the Senator from Alaska and the majority leader that it is the determination of the Senate to accelerate the MHD research and development program.

I want to go on from that and explain to the Senate that in the 8 or 9 years that I have been interested in the MHD program here in Congress, it became clear to all of us both in the House and the Senate that if there is going to be any emphasis on MHD research and development by the United States, it better be led by Congress, because through the series of various offices where this particular program has lodged, while the very fine people working on the R. & D. in the Office of Coal Research, or now in the Department of Energy, were sincere and dedicated workers. But MHD has always been a program that had very low priority.

It has never come up in a Presidential budget recommendation during the past 8 or 9 years where it was given any kind of priority in comparison with other recommendations in the Presidential energy budget.

The same has been true of the last 2 years, and I know not what is in the minds of the people that are drafting the next year's budget. But it may well be the same thing as has been year after year for the past 8 or 9 years that I know of, and the budget will be presented to us without much emphasis on magnetohydrodynamics engineering research.

Mr. SCHMITT. Will the Senator yield?

Mr. MELCHER. Yes, I am delighted to.

Mr. SCHMITT. The Senator is absolutely correct. I can vouch for that, coming from an entirely different perspective. That is, having worked within the administration, the Director of NASA's energy programs, we tried to do the same thing the distinguished Senator has been trying to do for so many years.

He is absolutely correct. It is blocked at every turn to get this MHD research accelerated to the point where, at least, we can make an economic evaluation of its potential.

So I will underscore and italicize everything the distinguished Senator from Montana said. I hope that the managers of this bill and the distinguished chairman and ranking member will realize that we better get serious about this if we are ever going to understand that particular form of energy conversion.

Mr. STEVENS. May I say again——

Mr. ROBERT C. BYRD. If the Senator will yield, while we have enough Senators on the floor, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. STEVENS. Mr. President, we went to conference with a direction to continue the acceleration of MHD research and development, while at the same time

maintaining a time frame that allows getting necessary technical data——

The ACTING PRESIDENT pro tempore. The leadership's time has expired.

Mr STEVENS. I ask unanimous consent we have 10 more minutes on this conference report, if the majority leader would agree.

Mr. ROBERT C. BYRD. I agree.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ROBERT C. BYRD. With the time to be equally divided in accordance with the usual form.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. There will be an additional 10 minutes, equally divided between the minority and the majority, and the Senator from Montana.

The Senator from Alaska.

Mr. STEVENS. Mr. President, again, back to my thought, we had two directions. The idea was to continue the acceleration while at the same time maintaining a time frame that allows getting necessary technical data for the engineering test facility.

In particular, we asked that emphasis within the R. & D. allowance be given the superconducting magnet at Tullahoma.

This continues the emphasis, as far as I am concerned, on R. & D., and particularly, repeating, underscores that the conferees want emphasis to be given the superconducting magnet.

So, if the Senator from Montana understands what I am saying, as far as I am concerned, we are agreeing with him.

I do not think he wants to make a record that we have come out of conference deemphasizing R. & D.; am I mistaken?

Mr. MELCHER. I want to make a record, and I think we have, that it is the Senate's intent that the program be accelerated.

Mr. STEVENS. We have provided that acceleration, $7.6 million more than the current fiscal year. That is more than a 10-percent increase, and within that increase emphasis should be given to R. & D., and particular emphasis should be given on the superconducting magnet in Tullahoma.

Mr. MELCHER. Furthermore, I want to make a record that if this program is really going to go forward that we probably will have to continue the same process we have continued before and have it led by Congress.

Now, the latest scuffle over this, which has probably never been mentioned in the Senate or in the House, is this: "Why doesn't the Department of Energy place more emphasis on this program?"

The top-level answer to that from the Secretary of Energy is—and I am paraphrasing—"Well, it is about time that we really look at this program and see where we are going, and I am assigning a top-level person to do that—Mr. Deutch."

That top-level look, directed by the Secretary and by Mr. Deutch, is supposed to be completed in 60 or 90 days. It might result in the proper emphasis from the Department of Energy on this program.

Why do I emphasize how important this is? Because there is evidence from other sources that the MHD program has advanced more rapidly in other programs; one is in Russia. Admittedly, from our exchange of information with the Russian scientists, their program is ahead of ours in many ways. It is behind ours in one way. They borrowed a super conducting magnet from us to test with the facilities they have. They are behind us in developing the super conducting magnet.

The other example I am aware of, which points toward a rapid understanding and development of this technology, is what Reynolds Aluminum plans to do, in their plant in Corpus Christi. That is to build an MHD facility using coal, and getting the benefit of generating about 300 megawatts of direct current electricity, and enough heat in the process to replace all the natural gas they use in that Corpus Christi plant.

If the Department of Energy will truly assess the work done by AVCO recently—in fact, this year—the breakthrough they have made in their work, plus the confidence that Reynolds Aluminum has in programing for completion in 1985 an MHD facility at the Corpus Christi plant and the obviously successful work in many different parts of the MHD technology that has occurred in Russia, I believe we will have a report from Mr. Deutch that says we had better move much more rapidly with the U.S. work in this technology.

When we talk about whether the program should have $80 million or $100 million for the next fiscal year, it is a very miniscule amount in the total amount of money spent for research and development of our energy programs.

It has been frustrating for many people that we have not moved faster, because on the one hand we have some dedicated workers within the Government who have been working and seeking to move MHD faster; and, on the other hand, we have the frustration of people in the general public—not the least of whom are the people in Montana—with an abundance of coal, seeking to convert that coal into energy in an environmentally acceptable way.

The steam generating plants that have been proposed in Montana have been turned down. The last two that have been in process for 4, 5, or 6 years have been closed down, turned down by EPA, and tied up in courts on a couple of levels, and nothing is happening.

The process of converting the coal into clean energy would be fulfilled with MHD if we had the technology completed and these plants could be designed in that manner. That frustration has led many of us—and I do not mean just those of us in Montana and Wyoming who are looking for full development. I mean people throughout the country who are interested in the technology, an environmentally acceptable technology that avoids air pollution. That is why we look for an MHD.

Mr. President, I would like to have some assurance from the distinguished Senator from Alaska and our distinguished majority leader that, on receipt of the report from Mr. Deutch, this subcommittee—and it is a very diligent subcommittee in appropriations, a very fine one, and one with which I enjoy working—will pay some attention and, in the first supplemental, will give a review of the Deutch report on MHD, to see whether we again can address this problem of accelerating the program with needed funds, if that is the case, which I feel confident will be demonstrated by the Duetch report.

Mr. STEVENS. Mr. President, I say to the Senator from Montana that I have been following MHD now for some 6 years, and I would be one of the most pleased Members of this body if we could get a report which would give us the justification to continue our battle with those in the other body who do not see fit to approve our annual requests for increased funding in this area.

To make a firm commitment to my good friend from Montana that we would persevere in that attempt, which we have been pursuing now for at least the last 5 years, I think would be misleading. I can tell him that we have fought for each one of these increases. My distinguished predecessor and the Senator from Montana, who is addressing us now, have been very persistent in this matter.

However, until we get some evidence of additional breakthroughs, I do not think our colleagues in the House will see fit to approve the level of increases that we have been giving to this program. I hope the Deutch report will do that.

Mr. ROBERT C. BYRD. Mr. President, may I add this to what the distinguished Senator from Alaska has just said: The funding thus far, in considerable measure, has been at the behest of the Senate—the progress and the increased funding. It has been up here all the way.

The President's budget should reflect any justified increase in funding, so that the Senate will not have to bear this whole burden all the time—fighting against the House, trying to get moneys increased for what we think is a deserving project. I would hope that the President's budget also would reflect any need for an increase.

The President has made energy his No. 1 priority, as we in the Senate have made that the No. 1 priority in connection with legislation. I would hope that the President's budget would reflect whatever increases can be justified and that the study that is ongoing would result in a justification for an increase in the President's budget.

All I can say to the distinguished Senator from Montana, with assurance that I can keep my promise, is that I will continue to look at this matter very carefully and, as long as I feel there is justification for it, sympathetically, especially in view of the continuing interest that has been shown and is being shown

by the distinguished Senator from Montana. I knew of his interest in this matter long before he came to the Senate, while he was a Member of the House. But beyond that, I could not add anything to what the distinguished Senator from Alaska has said in response to the question.

Mr. MELCHER. I thank both the Senator from Alaska and the distinguished majority leader.

The PRESIDING OFFICER. All time has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from Montana may have an additional 3 minutes.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. I thank the distinguished majority and the Senator from Alaska.

It indeed is true that the leadership and the most complete attention to the potential for the magnetohydrodynamics program has been in the Senate.

The distinguished majority leader has long recognized the emphasis that we need to place on better technology for coal, and he includes MHD as one of the promising technologies for utilizing coal in our energy program.

I might say that while I mention the Deutch report, I wish to explain again, Mr. President, that I do not want to intimate that it is any more than what I previously described. It is Secretary Schlesinger saying to John Deutch, "Look at the MHD program very carefully and within 60 days tell me whether we are doing as much as we should with this program."

On that basis, I am confident that Mr. Deutch will say to the Secretary that more could be done and should be done and there should be more emphasis and more priority given to the MHD program.

The real effort that we have had in attempting to create a decent energy policy for this country has been very frustrating in the last 2 years or longer.

The President in some areas has simply not seemed to have seen the strength of the United States in a sounder energy policy.

I hope that what we have been recommending in the authorizing committee and the appropriations committee handling energy bills here in the Senate will be given more attention by the President and the whole administration.

The majority leader and others in the Senate, I feel, have done an outstanding job in passing the President's energy "centerpiece," the natural gas deregulation bill. The efforts that the majority leader and many others here in the Senate have given to assist the administration in this regard have been above and beyond the call of duty, outstanding and extremely meritorious. I hope the President, the Department of Energy, and the entire administration will start listening when we give them some advice, and I say that most humbly myself.

But there are areas in which we have been trying to make our point of view known to the administration. There are areas in which particularly the distinguished majority leader and others here in the Senate have worked for a score of years and have some experience to contribute in the expertise and the advice on our national energy policy.

I hope next year will find us moving very rapidly forward with a sound energy policy, and the place to come for some of the good expert advice is right here. I believe Senator ROBERT C. BYRD, our majority leader, should be recognized for his diligence in not only passing the natural gas deregulation bill but also should be recognized for his emphasis for strongly advocating coal research in general, of which MHD is one of the major programs.

I thank the Presiding Officer.

And I thank the Senator.

Mr. MUSKIE. Mr. President, the conference report on the Interior Appropriations Act (H.R. 12932) which the Senate is now considering, includes provisions that are very important to the New England region. These provisions have to do with the residual fuel oil entitlements program.

As many of my colleagues know, the New England region is heavily dependent on expensive imported residual oil. In fact, imported residual oil is the mainstay of electric utilities, hospitals, apartment buildings and industry in the region. A full 93 percent of the residual fuel oil used by New England's utilities is imported.

The residual oil entitlements program is designed to insure that the benefits of price controlled, lower cost domestic crude oil are shared equitably by consumers of all petroleum products—including residual fuel oil—in every region. But, the program has never been fully developed. Consumers of residual oil, particularly in import dependent regions, have never shared fully in the benefits of the entitlements program. In fact, this product has received an entitlement of only about one-third of that enjoyed by all other products.

Earlier this year, the Department of Energy proposed administrative changes to remedy this problem. However, final action was never taken on these changes because of the deep controversy that has historically surrounded this issue.

The conference report on the Interior appropriations bill includes provisions which will settle this controversy and help make sense of this important program. These provisions are the product of a concerted and sincere effort by myself and a number of my Senate colleagues. They were adopted by the Senate during its consideration of this appropriations bill on August 9.

I especially want to thank the Senator from Louisiana (Mr. JOHNSTON) for his assistance and cooperation in this matter. And I want to add that our efforts yielded not only agreement on entitlements but also agreement on a set of general objects for the development of a comprehensive refining policy in our Nation, a matter that should receive even more attention in the next Congress.

Most importantly, the compromise agreement in this legislation provides an increase in the value of the entitlement for residual fuel oil from about 50 cents per barrel to about 80 cents per barrel. Further, it would do away with certain other anomalies that exist in the program.

So, our action here today will provide significant and fair price relief to users of imported residual oil. But, the job will not be finished. Another, and equally important part of this compromise agreement must be implemented by the President: the 63-cents-per-barrel import fee currently imposed on this product must be lifted.

During the development of this compromise agreement, Department of Energy Secretary Schlesinger and members of the White House staff made firm commitments to recommend to the President that he take action to lift these fees. I am confident that these commitments will soon be fulfilled, and I am looking forward to the time when this important compromise is fully consummated.

SPECIAL ORDER

The PRESIDING OFFICER. Under the previous order the Senator from New Mexico is recognized for not to exceed 15 minutes.

Mr. NELSON. Mr. President, I wonder if the Senator from New Mexico will allow me 60 seconds or 2 minutes to call up a noncontroversial wilderness identification within the Nicola Forest that has been cleared by Senator HANSEN on the Republican side and on the Democratic side so I can get it passed.

Mr. SCHMITT. Mr. President, I will yield 2 minutes. However, we have a number of Senators who are interested in making statements in this 15 minute period, and I hope if we need a little extra time the distinguished majority leader will be willing to grant us that time.

Mr. NELSON. I wonder if the majority leader will grant me 2 minutes on my own time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, with the indulgence of the distinguished Senator from New Mexico—this is a conference report, is it? Is this a conference report?

Mr. NELSON. No. It is a bill.

Mr. ROBERT C. BYRD. It is a House message?

Mr. NELSON. Yes.

Mr. ROBERT C. BYRD. It is privileged, but it is not privileged against the two orders that have been entered. Once those two orders have been completed the Senator can call it up and get the Senator from Maine or someone to yield at that time because it is privileged.

Mr. NELSON. All right.

Mr. ROBERT C. BYRD. Once we get on the tax bill there is no time agreement and Mr. Muskie will be recognized and Mr. Muskie will yield.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. SCHMITT. Mr. President, I hope the distinguished Senator will understand, and if there are a couple of minutes remaining in the colloquy I am happy to yield to him. There are a number of Senators who wanted to speak.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that not any of the time that has been used be charged against the Senator from New Mexico.

The PRESIDING OFFICER. Without objection, it is so ordered.

HUD

Mr. SCHMITT. Mr. President, it appears to this Senator and many others that the HUD authorization bill for this year is stalled out in conference. I hope that is an inaccurate assumption. However, I am seriously afraid that it may be true. If the issue is not over with, we must have a continuing resolution for the authorizations of various insurance programs and other programs that are contained in that bill.

I hope that the managers of the conference will accelerate their efforts so that a continuing resolution or a debate on a continuing resolution does not have to occur at some later time.

One of the issues in that bill has to do with the reorganization that HUD has instituted with respect to multifamily housing and community development programs. There is widespread opposition to this reorganization of the Department of Housing and Urban Development. It is a step toward the centralization of multifamily services primarily in rural areas which I think is unfortunate and is not going to add any efficiency whatsoever to the activities of HUD in this area.

New Mexico is not the only State whose citizens and local and Federal officials are vehemently opposed to this reorganization activity and particularly to the moving of multifamily housing services great distances from their point of need. New Hampshire, Michigan, Iowa, Kansas, and South Dakota are only a few of the States that will lose valuable services.

In this regard I, at this point, yield to the distinguished Senator from Iowa (Mr. CULVER) if he wishes to make a statement on this issue at this time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. CULVER. Mr. President, I thank the distinguished Senator from New Mexico for yielding, and I do feel it is my responsibility to join in this important colloquy with him on what I consider to be the ill-starred HUD reorganization plan now before a House-Senate conference committee as part of its consideration of the Housing and Community Development Amendments of 1978.

I will just briefly address my remarks to what I am convinced will be the adverse impact of that proposed reorganization on the two-State area of Iowa and Nebraska.

At the outset, let me say that reorganization in the interests of economy, efficiency, and quality of services is, of course, an eminently worthy objective.

If our State has to take its lumps in the interests of the national interest, I am prepared to face up to it and explain it to my constituents. But if a proposed reorganization would have a detrimental rather than a constructive effect in terms of economy, efficiency and level of services, then I am ready to fight it down the line.

This, Mr. President, is what we have in the HUD reorganization plan for Iowa and Nebraska. It is a paper plan that does not make practical sense. On the basis of experience, it is a move backward, not forward.

The plan is to remove all multifamily insured, section 8, section 202 and public housing programs from the Des Moines insuring office to the Omaha area office. This would leave only the administration of the FHA single family mortgage programs in Iowa.

Some years ago, the multiple housing functions for the two-State area were based in Omaha. Then they were transferred to Des Moines—more closely into the center of action in terms of geography and volume of projects. The record will clearly show that this move resulted in a substantially more productive record.

The population of Iowa is 2,870,000, as compared to Nebraska's 1,546,000, and centrally located Des Moines is the logical center of business for community development and subsidized housing in the two-State area. Operating the programs from Omaha would entail more travel than is required from the Des Moines office, resulting in additional costs in transportation, staff time, and energy usage.

The Des Moines office has one of the most outstanding records in the Nation for efficiency and service. This is not only the past record, Mr. President, but the current reading, as well.

I understand that the ill-considered HUD reorganization would be a step backward for many other States, as well as Iowa. I would therefore urge the Senate conferees to uphold the Senate's position in this matter by refusing to fund the proposed reorganization.

I thank the distinguished Senator from New Mexico for yielding to me for this purpose, and I ask unanimous consent that certain additional documents be printed in the RECORD together with my statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., September 29, 1977.

Mrs. PATRICIA ROBERTS HARRIS,
Secretary of Housing and Urban Development, Washington, D.C.

DEAR MADAME SECRETARY: The purpose of this letter is to express our deep concern over widespread reports that a major part of the Des Moines Insuring Office of HUD is scheduled to be transferred to the Omaha Area Office. Specifically, the report is that all Multifamily Insured, Section 8, Section 202 and Public Housing Programs will be moved from Des Moines to Omaha, leaving only the administration of the FHA Single Family Mortgage programs in Iowa.

Naturally we are concerned that if such a transfer takes place, some 50 out of 80 Iowans in the Des Moines office will either lose their jobs or be moved to Omaha. However, this is by no means the only reason that we believe any plans for such a move should be reconsidered.

The history of the Des Moines office is one of exceptional efficiency and service to the people of our state. When the Low-Rent Public Housing functions were transferred from Omaha to Iowa, the Des Moines office inherited 12 projects totaling 716 units, some of which had been in progress for eight years. All 12 projects have now been carried to completion.

With regard to Section 23 and Section 8 Housing Assistance Payments Program Activities, the Des Moines office has achieved another enviable record. Des Moines led the nation in Section 23 production for FY '74 and its record for Section 8 has been one of the best in the country.

We believe that the efficient operation of the HUD offices in Des Moines over the years strongly justifies continuing the present arrangement. As you know, Iowa's population is greater than that of Nebraska, and Des Moines is the logical center of business for community development and subsidized housing in this area. Operating the programs from Omaha would entail more travel than is required from the Des Moines office, resulting in additional costs in transportation, staff time and energy usage. It is our firm conviction that our elderly and handicapped housing projects would suffer greatly in Iowa by any change in the status of the Des Moines HUD office.

Reorganization is a worthy cause, but we submit that this proposed change would have a detrimental rather than a constructive impact on HUD programs in the two-state area. A comparison of the records of the multiple housing office during the period it was centered in Omaha and the years it has been in Des Moines drives home the point. For all of these reasons, we members of the Iowa congressional delegation strongly urge that the present functions of the Des Moines office be retained substantially as they are.

Sincerely,

JOHN C. CULVER.
BERKLEY BEDELL.
DICK CLARK.
TOM HARKIN.
MIKE BLOUIN.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
Des Moines, September 11, 1978.

Sen. JOHN CULVER,
Dirksen Office Building, Washington, D.C.

DEAR SENATOR CULVER: Recent rumors, several of which have considerable validity, suggest that the relocation of much of the Des Moines Insuring Office to the Omaha Area Office is once again scheduled for implementation. Each of you has vigorously supported retention of the Des Moines HUD Office as is currently structured. We ask you to once again continue your efforts, hopefully for a final appeal for logic at Central Office.

Performance of our office this past summer has been even more outstanding than the superior record we presented to you last winter. The following is a brief summary of facts. Let us remind you that these numbers do not convey the all important fact that while they are impressive, they do not show that this record was amassed with strict attention to detail and sound, careful underwriting procedures. We again raise the doubt that the housing needs of the people of Iowa

would be so carefully and completely served from the Omaha Area Office.

DES MOINES OPERATIONS FISCAL YEAR 1978 THROUGH AUGUST 31, 1978

1. Reservations—Section 8 Existing, 1115 Units, 111 percent of Goal.
2. Completion—Section 8 New Construction, 1149 Units, 111 percent of Goal.
3. Completion—Section 8 Existing, 1500 Units, 124 percent of Goal.
4. Completion—Section 232 (Nursing Care Centers), 370 Beds.
5. Construction Starts—Section 8/202, 214 Units, 109 percent of Goal.
6. Single Family Applications (new and existing), 3871 Homes, 230 percent of Goal.
7. Single Family Acquisitions, 19 Homes, 153 percent of Goal.
8. Conditional Commitment Applications (project processed within 60 days), 34 out of 35.
9. Firm Commitment Applications (project processed within 60 days), 13 out of 13.

PIPELINE—PRELIMINARY PROPOSAL RECEIVED (NOT FINALLY ENDORSED)

	Projects	Units
1. Straight 221(d)(4)	3	268
2. Sec. 232 (beds)	3	444
3. Sec. 8/515	23	616
4. Sec. 8/202	22	1,309
5. Sec. 221(d)(4)/8	53	2,940
6. Sec. 221(d)(3)/8	2	163
7. Straight sec. 8	9	485
8. Conventional—LIPH (public housing)	20	900
Total	135	7,125
9. Sec. 8 proposals (received recent NOFA)	82	4,387
Total	217	11,512

Our Des Moines team is proud of this record and we invite comparison with Omaha. We are convinced that we set the standards and, therefore, should also be the area office.

Sincerely,

ROBERT JEFFERSON,
President.

Mr. SCHMITT. I thank the Senator.

Mr. President, before yielding to the distinguished Senator from Kansas, I ask unanimous consent also to have printed in the RECORD, to underscore the extent and nature of the problem, a remarkable table prepared by the GAO that emphasizes the efficiency of many of the offices being closed, compared to those remaining open.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

AVERAGE APPLICATION PROCESSING TIME COMPARISON OF SELECTED HUD OFFICES

Office	Average days	Over/under HUD national average	Over/under HUD goal
Salt Lake City, Utah	46	−205	−109
Casper, Wyo.	91	−160	−64
Albuquerque, N. Mex.	94	−157	−61
Fargo, N. Dak.	103	−148	−52
Boise, Idaho	106	−145	−49
Spokane, Wash.	145	−106	−10
Portland, Oreg.	154	−97	−1
HUD goal	155		0
Sioux Falls, S. Dak.	196	−55	+41
Helena, Mont.	213	−38	+58
Los Angeles, Calif.	233	−18	+78
Denver, Colo.	239	−12	+84
HUD national average	251	0	
Detroit, Mich.	313	+62	+158
Chicago, Ill.	346	+95	+191

Mr. SCHMITT. In fact, most or all of the offices, I believe, whose services have either been terminated or will be terminated in the multifamily and community development areas, have achieved efficiencies in processing applications that are greater than the HUD national average and the HUD goal. These are the offices that are included in the HUD proposal.

Members of the housing community in the private sector, in both the real estate and construction industries, are protesting this move which would increase the difficulty and cost of providing needed housing and, of course, raise the cost of that housing to the people who need it. Citizens who have benefited from the HUD programs as implemented by local offices have expressed a very deep concern.

In fact, one Sunday afternoon earlier this year, 400 people gathered in Albuquerque to vent their frustration with respect to loss of these particular services. There were people from all walks of life, from all political parties, from business, from labor, from real estate, including the low and middle income people who benefit most directly. In addition, the proposed plan appears to be wracked with dissension in the upper echelons of the Department.

Poverty is a national problem. Some people seem to think it is limited to only some areas of the country, but I want to assure you that the housing needs of the poor in New Mexico are just as intense as elsewhere. When the rain comes through the ceiling in New Mexico, it is just as wet and uncomfortable as it is here in Washington. The opposition to the HUD reorganization is most emphatically not a sunbelt issue, but a national issue. The question is: are services to be available on the local level or not?

Almost a year ago, the distinguished Senator from New Hampshire, Senator MCINTYRE, and a bipartisan group of 21 other Senators, including myself, introduced Senate Resolution 302, which was designed to halt the reorganization of the Department of Housing and Urban Development.

Since that time, many of the cosponsors of this resolution have worked to get some explanations from the Department on the need for this reorganization.

When the housing bill was considered in the Banking Committee, a great deal of attention was given to this issue, and an amendment was added to the bill that would block the reorganization of the Department.

The Senate maintained this provision in the bill, and the House narrowly defeated a similar amendment. This legislation is now in conference.

We expect the Senate conferees to return with that provision intact—or with a reasonable compromise.

If they do not, it could endanger the approval of the conference report.

If the Congress does not pass a housing bill this year, it will be necessary to attempt to reextend FHA mortgage insurance authority which expires on October 31, 1979.

With the busy schedule facing the Senate, it is possible that there may not be time to extend this authority.

We need a housing bill this year. And we need housing services in the rural areas of the country.

For this reason, along with my colleagues, I urge the conferees to support the Senate provision pertaining to the HUD Reorganization and return to the Senate with a conference report as soon as possible.

I yield to the Senator from Kansas.

Mr. DOLE. I thank the Senator for yielding.

Mr. President, over 150 HUD employees in Kansas have been waiting anxiously for the housing conference to come to a decision on section 712 of the Senate's version of the Housing bill. That provision would stop the current HUD reorganization that adversely affects both their jobs and the level of service offered by HUD in Kansas.

Section 712 is an appropriate response based on inadequate information and a complete disregard for various local factors. This ill-founded plan is based on general organizational principles which may or may not be valid in many cases. Certainly, no office-by-office cost/benefit analysis was performed.

No Senator likes to see Federal offices removed from his State. But most of us concur with efforts to streamline the Federal Government and if HUD were able to defend their move, the Senator from Kansas would not be opposing the reorganization so vigorously. However, HUD did not adequately investigate the application of their general organizational principles before announcing a plan to centralize their field structure.

EXTENSIVE INQUIRIES—INADEQUATE ANSWERS

Extensive inquiries from the Senator from Kansas, from the Senator from New Mexico, from other Senators, and from the General Accounting Office failed to uncover any of the cost-benefit information that HUD should have prepared. The GAO study of the Kansas moves indicated a complete lack of consideration for local factors, or for actual analysis of the application of their plan. Another GAO study requested by Senators MAGNUSON and JACKSON concluded that "HUD's projected cost savings resulting from the reorganization are not well supported."

Subsequent correspondence with HUD brought claims that the reorganization was designed not to save money but to improve service. Unfortunately, no one outside HUD seems to feel that service will improve when offices are further away from the people. Likewise, there is nothing to indicate that the centralized office will do it better or quicker than the offices we have now. Indeed, HUD will be losing so many experienced employees by moving offices that the exact opposite is likely.

For example, there are very few offices in the country performing multi-family insurance functions in rural areas that perform those functions as efficiently as the Topeka insuring office. Nevertheless, the general theory requires that this function be removed to Kansas City, Mo. On the other hand, the Topeka office performs its single family housing functions with limited efficiency because of limited volume—but that function is being retained for the Topeka office under the general plan. In short, HUD is removing

the function they perform well, and leaving the function they perform with less efficiency because that is what their overall plan calls for.

WOODEN AND ARBITRARY

The HUD approach to reorganization has been both wooden and arbitrary—and section 712 is an appropriate congressional response to their unresponsiveness.

Mr. President, I join my colleagues in asking that the Senate conferees stand by section 712—or at least attempt to work out a reasonable compromise based on section 712. This is a matter of great importance not only to the States of Kansas, Iowa, New Mexico, Nebraska, and others, but one which I think deserves considerable support.

Another amendment in the housing bill, sponsored by the Senator from Kansas, would require an office-by-office cost/benefit analysis for all future reorganizations. It is unfortunate that such a thing has to be mandated—and that HUD would not perform such an analysis on their own.

Certainly, I continue to urge that this prospective proposal be retained as well, but this Senator's real interest is in keeping our Kansas offices and the excellent service which they are rendering the people of Kansas at a very reasonable cost to the taxpayer. It would be highly ironic to retain my amendment while allowing the reorganization that prompted it to go through. That is locking the barn door after the horse is gone.

Mr. President, this Senator has heard that there may be no housing bill this year because certain elements at HUD would prefer that some of the restrictions in the housing bill go by the boards.

If no bill is completed then, the reorganization will go through and the whole mistake will be labeled a "fait accompli" by HUD next year when we take up this matter again. We should not abdicate our responsibility by failing to send a bill to the President this year.

So I commend the distinguished Senator from New Mexico for taking the initiative, not only with reference to section 712, but for underscoring and emphasizing the need for some restraint. It would seem to me that if there is not any bill, then HUD can just go merrily along without any restraint, and do what they call "reorganization."

I urge the Senate conferees to retain section 712, or some reasonable compromise, and hopefully come to some resolution in the conference.

Mr. SCHMITT. I thank the Senator for his remarks, and I believe the distinguished Senator from South Dakota will want to join with us here in a moment.

I think it is clear from the remarks that have been made and other factual information that members of the housing community in the private sector, both in the real estate and construction industries as well as the tenant organizations and labor organizations affected, are protesting this move, which would increase the difficulty and cost of providing needed housing and, of course, raise the cost of that housing to the people who need it. Citizens who have benefited from the HUD programs have expressed a deep concern in many different ways and on many occasions.

At this point, I yield to the Senator from South Dakota.

Mr. McGOVERN. Mr. President, I would like to join our colleague, Senator SCHMITT, in urging the Senate to stand firm on its reorganization position. The Senate raised legitimate concerns in its discussion of the proposed reorganization—those concerns have not been answered by HUD.

In region VIII, for instance, the northernmost States will be as far from their Denver regional office as Bangor, Maine, is from Washington, D.C. South Dakotans will have to travel from 400 to 500 miles with an overnight stay in Denver to deal directly with the decision-making office. In many cases, small construction firms—the backbone of the housing industry in South Dakota—have indicated that the expense and delays which would likely follow the reduction in the Sioux Falls, S. Dak., office from a staff of 22 to a staff of 7, will result in their not being able to afford to bid projects. Because there are few national construction firms in the area, the result will be that many jobs and housing units will be lost.

Several HUD employees have told me that they foresee a deterioration of HUD's project management capabilities because of increased distances and reduced project monitoring. These concerns were so great that in some States, South Dakota included, legal action was taken against the Department of Housing and Urban Development by HUD employees to stop the reorganization. Inquiries have also been made to U.S. Attorney General Griffin Bell for an interpretation of the Rural Development Act of 1972 and its bearing on the transfer of personnel to regional offices in urban centers.

By HUD's own admission, this reorganization plan will result in the addition of 2,000 employees. Reorganization without a cost saving or without benefit to those who are served cannot be rationalized.

With specific language, the Senate has attempted to see that direct, local service is maintained for Americans in every part of the country. This is a vital function of HUD and it must be maintained.

I thank the Senator for yielding.

Mr. SCHMITT. I thank the distinguished Senator from South Dakota. I believe others of our colleagues may wish to introduce statements on this subject, and I hope they will do so.

I would close by quoting a few paragraphs from the GAO report addressed to the Senator from Washington (Mr. MAGNUSON) in response to his and Senator JACKSON's request that GAO examine the basis for this proposed recommendation. I would just quote briefly from the GAO report:

HUD field officials, project management officials and State housing officials foresee a deterioration of HUD's project management capabilities because of increased distances and reduced project monitoring. HUD central office officials told us that project management would not deteriorate because various techniques, such as increased travel and stationing staff at outlying locations, were available to prevent such deterioration.

Many developers, sponsors and others also fear that consolidations will result in a loss of HUD familiarity with local multifamily housing needs and conditions, poor project selections, and construction inspection delays. HUD central office officials, however, were critical of too much local familiarity, citing the need for greater independence and objectivity.

HUD's projected cost savings resulting from the reorganization are not well supported. HUD officials told us, however, that the reorganization was designed to deal with the problems discussed above and that cost savings were not central to the reorganization. However, HUD has provided cost savings estimates as part of their justification of the reorganization to Members of Congress. Cost savings represent HUD's valuation of the achievement of reorganization goals.

I would just add parenthetically to emphasize that it is the evaluation of the achievement, not of the actual process.

Nationally, multifamily functions are to be consolidated from 77 offices to 46 offices.

Mr. President, that is exactly the opposite of what the President and the administration promised, that is, to bring services closer to the people rather than farther from them.

Another GAO quotation:

In the 17 multifamily consolidations distances between HUD multifamily offices will be increased over 200 miles. Fifteen of these instances are west of the Mississippi where a 54 percent reduction in offices offering multifamily functions is to take place. In five of these consolidations the distances between the offices offering multifamily services will be greater than 500 miles. In one large group of States Idaho, Montana, North Dakota, South Dakota, Wyoming, Colorado, Utah, Nevada, Colorado and New Mexico, the number of HUD offices with multifamily functions will drop 10 to 1.

Mr. President, I ask unanimous consent that the entire GAO report be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

U.S. GENERAL ACCOUNTING OFFICE,
Washington, D.C., April 25, 1978.

Hon. WARREN G. MAGNUSON,
Hon. HENRY M. JACKSON,
U.S. Senate

DEAR SENATORS MAGNUSON AND JACKSON: In your letter of January 16, 1978, you requested that we analyze the impact of Federal agency reorganizations on the State of Washington and other States in Federal region X. You stated that certain reorganizations pointed toward centralization in Washington, D.C., and were concerned about their rationale and interrelationship with presidential plans for executive branch reorganization. You expressed particular concern about the impact these reorganizations would have on intergovernmental working relationships; the delivery of program services to private citizens and public agencies at the State, regional, and local levels; and on Federal employment levels. You asked us to review the reorganization plans and actions of a number of Federal agencies.

During an interim briefing on March 23, 1978, we advised your staff that, of the various reorganizations reviewed, the Department of Housing and Urban Development's (HUD) planned consolidation of multifamily functions seemed to be causing the most concern at the local level. HUD plans to move multifamily insurance functions, responsibilities, and people by July 1,

1978, with some as early as May 15, 1978. Because of your interest in these moves, we agreed to provide this report on the potential impact of HUD's consolidation of multifamily functions and on related cost savings. We will subsequently report to you on the impact of the other Federal agency reorganizations.

The overall HUD reorganization was designed to deal with the following problems.

Unclear assistant secretary authority and accountability.

Lack of clear, consistent, and timely headquarters' statements of policies, objectives, and interpretations to the field.

Processing delays from duplicative regional office participation in housing operations.

Inadequate technical assistance at area offices.

Excessive overhead cost of the field office structure.

A recent GAO report—"Department of Housing and Urban Development Reorganization Plans: Some Accomplishments But More Needed," FPCD-78-33, B-114860, April 10, 1978—explored in considerable detail how the HUD reorganization plan proposed to deal with these problems and whether the planned changes could be expected to correct them. We have provided a copy of this report as Enclosure II.

As you requested, we focused on the potential impact on service delivery of the HUD consolidation of multifamily functions in the western United States and on HUD's projected cost savings to HUD and industry. We did not study the overall HUD reorganization or its impacts on single family and block grant programs. Nor did we study other impacts which HUD identified as benefits of the consolidation. These include:

Improved efficiency, allowing HUD to continue program service delivery with a smaller staffing increase than their work measurement system would call for (valued by HUD at $2.4 million per year in its estimate of cost savings resulting from the reorganization), and

Improved coordination of multifamily housing with community planning and development (CPD) by placing CPD and multifamily housing under a common management (not given a dollar value by HUD in its estimate of cost savings).

We also did not review other aspects of the reorganization discussed in the prior GAO report cited above.

In studying the potential impact of the HUD consolidation of multifamily housing, we talked with HUD officials at the central office in Washington, D.C., and at HUD offices in regions VII, VIII, IX and X. We also met with developers, mortgage companies, nonprofit sponsors, public accountants, architects, and government housing authorities in nine western States. HUD central office officials told us that the testimony of local HUD officials was likely to be biased because of their personal concern over the reorganization. In situations such as this, all parties tend to have strongly held views and may overstate their positions. The views of those affected may be somewhat overstated. We believe, nevertheless, that their concerns merit consideration.

Many of the people we interviewed predicted that consolidation would have an adverse impact on the delivery of services. Some developers told us that added distances between them and HUD offices would increase their costs and could result in their refusing to do business with HUD. HUD central office officials said any added costs would not be significant enough to force most developers out of HUD programs; in fact they expect that the overall reorganization will result in savings to developers.

HUD field officials, project management officials and State housing officials foresee a deterioration of HUD's project management capabilities because of increased distances and reduced project monitoring. HUD central office officials told us that project management would not deteriorate because various techniques, such as increased travel and stationing staff at outlying locations, were available to prevent such deterioration.

Many developers, sponsors and others also fear that consolidations will result in a loss of HUD familiarity with local multifamily housing needs and conditions, poor project selections, and construction inspection delays. HUD central office officials, however, were critical of too much local familiarity, citing the need for greater independence and objectivity.

HUD's projected cost savings resulting from the reorganization are not well supported. HUD officials told us, however, that the reorganization was designed to deal with the problems discussed above and that cost savings were not central to the reorganization. However, HUD has provided cost savings estimates as part of their justification of the reorganization to Members of Congress. Cost savings represent HUD's valuation of the achievement of reorganization goals.

Enclosure I summarizes the concerns of those to whom we talked regarding the potential problems perceived by them to result from the consolidation of HUD's multifamily functions. These concerns cannot be fully validated because the consolidation has not yet occurred. Whether or not the concerns at the local level are as valid and significant as indicated to us could best be judged after actual implementation and a reasonable period of operation under the new organization. While we support the overall goals of HUD's reorganization directed toward streamlining HUD's operations, we believe that as any consolidations take place, HUD should carefully monitor program services in areas no longer served by local multifamily offices and be prepared to take remedial actions should deteriorations in program services occur.

Enclosure I also discusses in detail HUD's estimate of cost savings associated with the reorganization. At your request, we did not solicit written HUD comments. At the conclusion of our work, we held a conference with HUD central office officials, and their comments were considered in preparing the report.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of the report until 10 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

VICTOR L. LOWE,
Director.

Enclosures.

POTENTIAL IMPACTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S CONSOLIDATION OF MULTIFAMILY FUNCTIONS

On October 13, 1977, the Secretary of Housing and Urban Development (HUD) announced a major streamlining of HUD designed to institute a number of management improvements. The plan would reduce the role and staffing of regional offices, enhance the authority of assistant secretaries, upgrade various field offices, downgrade other field offices, and consolidate multifamily housing functions.

HUD expects the reorganization, including the consolidation of multifamily housing, to meet certain internal needs and to improve service delivery. HUD plans to

Reduce the overhead of the Department's field structure;

Eliminate regional offices from day-to-day program operations;

Clarify the authority and responsibilities of assistant secretaries;

Improve the clarity, consistency, and timeliness of central office statements of policy, objectives, and interpretations;

Improve technical assistance at area offices; and

Improve coordination of housing and community planning and development programs.

HUD maintains that greater efficiency will be achieved by consolidating multifamily specialists and that project applications will be processed faster. While maintaining that cost savings were not central to the needs for reorganization, HUD estimated that substantial savings would occur. These estimated savings are discussed on page 13.

HUD personnel levels are to increase at both the central office and field office levels; however, personnel levels in region X are to decrease by 29, and in Washington State by 10.

Nationally, multifamily functions are to be consolidated from 77 offices to 46 offices. Office consolidation decisions were generally based on an analysis of the workload at each location. Retention of the multifamily function at a given office required one of the following: 30 multifamily projects in the pipeline as of March 31, 1977; 300 Community Development Block Grant applications or preapplications as of March 31, 1977; or 90 entitlement or discretionary Community Development Block Grants processed in fiscal year 1976.

HUD did not uniformly apply the criteria to all offices. Some offices did not meet the workload criteria but are to retain multifamily functions. Further discussion of this matter can be found in Enclosure II, page 9.

LOCAL HUD OFFICIALS AND INDUSTRY REPRESENTATIVES SEE POTENTIAL ADVERSE IMPACT ON SERVICE DELIVERY

As a result of the multifamily consolidation, distances between HUD multifamily offices will be significantly increased, particularly in some areas of the western United States. HUD field officials, developers, mortgage bankers, and other interested parties told us that the increased distances would have adverse impact on developers and others involved in HUD multifamily projects as well as on HUD's management capability. In 17 multifamily consolidations, distances between HUD multifamily offices will be increased to over 200 miles. Fifteen of these instances are west of the Mississippi, where a 54 percent reduction in offices offering multifamily functions is to take place. In 5 of these consolidations the distance between offices offering multifamily services will be greater than 500 miles. In one large group of States—Idaho, Montana, North Dakota, Nevada, Arizona, and New Mexico—the number of HUD offices with multifamily functions will drop from 10 to one. In adjacent eastern Washington and eastern Oregon, the only multifamily function (Spokane) is to be transferred to Seattle. The maps on pages 8 and 9 show HUD offices in this western area with multifamily functions both before and after the planned consolidation.

As a result of the consolidations, some developers will have to travel much longer distances to reach the nearest HUD multifamily office. For example, developers and others who now deal with the HUD office in Helena, Montana, or Fargo, North Dakota, will have to travel to Denver, Colorado. The distance from Helena to Denver is 780 miles; from Fargo to Denver, 857 miles. Similarly, those who now deal with the HUD office in Albuquerque, New Mexico, will have to travel to Dallas, Texas, 638 miles from Albuquerque. These distances are equivalent to requiring developers and others in Chicago, Illinois, or Bangor, Maine, to travel to Washington, D.C., to do business with a HUD multifamily office. The 420 mile distance between Boise, Idaho, and Portland, Oregon, although these States are adjacent, is roughly equivalent to that between Cincinnati, Ohio, and Washington,

D.C. The intrastate distance from Spokane, Washington, to Seattle, Washington—287 miles—is roughly equivalent to the distance between Boston, Massachusetts, and Philadelphia, Pennsylvania.

HUD officials told us multifamily functions were retained in Anchorage and Honolulu because of distance. However, HUD central office officials did not consider the impact of distance to be sufficient to retain multifamily functions elsewhere in the country.

SOME DEVELOPERS SAY THEY WILL DROP OUT

Some developers said they will not continue to do business with HUD after the consolidations because of increased distances. HUD field officials estimated that before construction of a multifamily project is started, a developer and others involved in the project (such as the architect, attorney, accountant, and mortgagee) are required to make at least 20 one-person trips to the HUD multifamily office. Using these estimates, a Montana developer, for example, would spend a total of $3,300 for plane transportation between Helena and Denver. A Spokane developer would spend about $2,400 in trips to Seattle. Additional meetings are required during construction (up to three a week according to one developer) and at closing. Transportation costs represent only a portion of the increased costs. The cost to developers of staff time spent in travel (estimated between $130 and $800 daily a person) could be substantial. Professionals, such as architects, attorneys, and public accountants said added distances resulting from the consolidations will increase their fees.

Half of the 44 developers with whom we met told us that, because of added distances and related costs, they either would not continue to do business with HUD or were doubtful of continuing. For example, although currently sponsoring five projects. Farmers Home Administration officials in Albuquerque, New Mexico, told us they would no longer deal with HUD because of increased travel.

Generally, the developers willing to continue dealing with HUD were those already involving with the larger HUD projects. Some said they were willing to continue only if the increased costs were recovered.

Developers, both large and small, HUD field officials and other public officials told us that smaller and minority developers who are normally involved with smaller projects were more likely to discontinue HUD work. They said, as a result, smaller projects may not get built.

One HUD field official went so far as to predict the demise of HUD multifamily programs in rural areas. This potential result would seem to parallel the recommendation of HUD's Task Force on Housing Costs that more emphasis be given to the construction of large scale developments.

Mortgage company officials told us they would stop participating in HUD projects rather than do business with far-off HUD offices, especially for small projects. In Spokane, an official of one mortgage bank said that the movement of the multifamily function to Seattle will all but kill insured multifamily loans east of the Cascade Mountains (in Washington State).

HUD central office officials said, however, that any added costs would not be significant enough to force most developers out of HUD programs, and expect that the overall reorganization will result in savings to developers.

CONCERNS OVER REDUCED QUALITY AND SPEED OF HUD OPERATIONS IN PLANNING AND CONSTRUCTION PHASES

Many developers, sponsors, and others told us the consolidations would reduce HUD familiarity with local conditions and multifamily housing needs. They feared this would reduce the speed and quality of HUD multifamily operations during the planning and construction phases. They said it was essential for appraisers, for example, to be very familiar with local conditions and housing values. They cited numerous examples of distant offices' making serious mistakes in the past because of the lack of sufficient local knowledge. For example, an Albuquerque, New Mexico, housing official noted instances where the Dallas office, because of lack of familiarity with New Mexico conditions, had funded projects in New Mexico for which there was no economic base, had approved designs not compatible with climatic conditions, and had approved sites for which the cost of construction grossly exceeded the improved value.

HUD central office officials, however, were critical of too much local familiarity, citing the need for greater independence and objectivity at local HUD offices.

Developers and others told us they feared delayed progress payments during construction because of the multifamily consolidation. For example, one HUD multifamily employee is to be stationed in Helena, Montana, to perform required monthly site inspections of projects under construction in Montana. Currently this individual would be required to visit 16 construction locations monthly plus other visits to project locations. Developers fear delayed inspection visits could delay progress payments from mortgage companies and result in lost discounts to developers due to delayed payments to suppliers. One Albuquerque developer feared a $2,000 loss in prompt payment discounts during construction of one project due to delays in inspections and mortgage progress payments. HUD central office officials, however, told us staff would travel as needed to meet inspection needs.

CONCERN OVER POSSIBLE DETERIORATION OF HUD MONITORING AND PROJECT MANAGEMENT

HUD field officials and firms which manage HUD projects expressed concerns over the adequacy of multifamily project management activities after the consolidations. An August 1977 HUD task force report on multifamily projects concluded that HUD had already been experiencing irregular and incomplete physical reviews and inadequate on-site project management of tenant screening, rent collection, and maintenance that was attributed in part to the lack of effective HUD oversight. HUD field officials believe the consolidation could cause additional problems in project oversight.

After construction, HUD-insured multifamily projects enter a period—usually 40 years—during which HUD monitors project activity and financial condition and reviews and approves rent increases and tenant eligibility. HUD visits projects for tenant changes, rent increases, major repairs, fire damage, equipment purchases, manager training and tenant complaints, including equal opportunity complaints. HUD regulations also require annual inspections of subsidized projects and inspections of non-subsidized projects every three years.

The following table shows for each location we visited the number of projects under management and the number of residence units represented, as of April 1978.

HUD office	Projects under management	Residence units under management
Albuquerque	205	16,102
Spokane	205	5,960
Sioux Falls	103	4,258
Helena	83	4,835

About 61 percent of these projects are subsidized and thus require visits at least once a year. HUD does not presently plan to station housing officials in region VIII outside of Denver to monitor project management. In region IX, however, the Los Angeles office plans to station six staff members in Phoenix, Arizona, to handle about 150 projects in Arizona. The acting director of the Phoenix office said that the assignment of staff in Phoenix was done to permit effective management. The Dallas office plans to station personnel in Albuquerque to conduct management reviews of insured multifamily housing, but management review of the 116 low-rent projects run by Public Housing Authorities is to be performed by Dallas based personnel.

HUD field officials, project management officials, and State housing officials expressed concerns that housing projects could not be adequately managed at the distances created by the consolidations. A HUD field official in region VIII told us that numerous project defaults could be expected after the consolidation because of inadequate project management.

Specific concerns were voiced with regard to:

Difficulty in submitting tenant complaints and receiving timely HUD response,

Delays in receiving approval of rent increases or equipment modifications,

Slower response to tenant complaints,

Fewer HUD management visits,

Delays in required inspection, with consequent delays in subsidized-tenant occupancy.

HUD central office officials stated that project management would not deteriorate because staff would travel sufficiently to provide needed services and staff might even be assigned to outlying locations.

HUD's estimate of the annual increase in travel costs—$200,000 nationwide—appears low to support the additional travel required by the 31 consolidations. Using 1977 travel and site visit information from files in the Sioux Falls, South Dakota, HUD office, we estimated that providing the same level of service from Denver to South Dakota alone would cost about $33,000 more per year in travel costs than from Sioux Falls. In Helena, Montana, HUD housing officials said required annual management reviews on 67 projects will cost as much as 10 times more for transportation and per diem after the consolidation than at present. And in Albuquerque, New Mexico, HUD officials estimated that required HUD preconstruction visits, construction inspections, and management visits would greatly increase travel costs in that area.

HUD'S COST SAVINGS PROJECTIONS

Although cost savings was not the major purpose for the HUD reorganization, HUD estimates that total annual savings of about $142 million to developers and to HUD will occur. Most of the projected savings are attributed to the multifamily consolidations, as shown on page 14.

Most of HUD's estimated savings would accrue to industry and depend on a projected 96-day decrease in the overall calendar time required to process multifamily applications. HUD officials indicated that the time savings would reduce HUD's present processing time by about 38 percent. HUD officials were not able to substantiate their claim that the reduction in HUD processing time would occur. HUD central office officials said that they believe the decrease in processing time will occur and that a target established by the work measurement system will be achieved. They agreed, however, that this belief was based solely on management judgment. We requested but were not provided documentation supporting the estimated time savings.

HUD field personnel, as well as most developers, did not agree that any processing time savings could be achieved. Of the developers and sponsors with whom we spoke, only two said they could foresee any speedup. Mortgage companies' officers, architects, accountants, and attorneys we interviewed

anticipated no processing speed-up after the consolidation, and many thought it would take longer. In South Dakota, developers compared the HUD reorganization with a past move of Veterans Administration (VA) housing functions into Minneapolis. They said this consolidation caused extended delays and inconvenience, and some said they no longer work with VA.

HUD PROJECTION OF REORGANIZATION'S ANNUAL COST SAVINGS

	Projected annual savings (millions)		
	To industry	To HUD	Total
Attributable directly to multifamily consolidations:			
Faster application processing	$100.5	$3.3	$103.8
More efficient application processing		2.4	2.4
Delays in replacing personnel		2.9	2.9
Personnel grade reductions		1.4	1.4
Reduced computer operations and administrative services		.6	.6
Total	100.5	10.6	111.1
Percent			(78)
Attributable to factors not directly related to the consolidations:			
Faster processing of single family subdivision applications	$12.8		$12.8
Better multifamily project monitoring		$12.6	12.6
Faster funds allocation		5.5	5.5
Total	12.8	18.1	30.9
Percent			(22)
Total projected savings	113.3	28.7	142.0
Percent	(80)	(20)	(100)

HUD central office officials were not able to document that overall time required to reach construction would be reduced even if their claimed reduction in HUD processing time did occur. Non-HUD factors, such as environmental impact statements and local government approvals, could limit the benefit of a HUD speed-up. The Chairman of the HUD Task Force on Housing Costs told us that local government processing was at least as important to the preconstruction time required as was HUD processing time. He said that without a complementary improvement in local government processing times, significant time savings would be impossible.

Finally, we questioned to what extent any HUD speed-up will be due to the consolidations of multifamily functions. The Chairman of the HUD Task Force on Housing Costs and a regional HUD official both told us that the great bulk of any time savings would come from management improvements, not from the consolidations.

HUD used the concept of inflation-avoidance to calculate the dollar value of reducing the time required to process applications. Inflation-avoidance accounts or about 86 percent of HUD's total projected savings. Questions can be raised about the validity of this approach in valuing savings attributable to accelerated processing time. Economists generally do not believe that avoided inflation is a true economic savings because inflated costs would be paid with inflated dollars. Clearly there are benefits from a reduction in application processing time if construction is thereby initiated sooner. These benefits would exist even if prices were stable. Beginning construction sooner would save developers interest costs incurred for expenditures made before the start of project construction. Additionally, most would agree that there are benefits to society in obtaining needed housing at an earlier date.

SAVINGS DUE TO OTHER FACTORS

About $31 million of HUD's total projected savings of about $142 million is not attributable to the multifamily consolidation feature of the reorganization.

About $12.6 million of savings was estimated due to better project monitoring and fewer defaults of insured mortgages after the reorganization. Better monitoring of projects does not appear to be dependent upon the multifamily consolidation, and we were told, could actually be made more difficult by greater distances between HUD's offices and projects.

Moreover, this savings may be difficult to achieve considering losses of personnel with specialty skills, transfer of employees into different skill categories, and reduced employee morale resulting from grade reductions.

Another $5.5 million in savings was attributable to quicker processing of contract authority to field offices by avoiding allocations by regional offices. HUD officials agreed that this savings was not contingent on consolidating multifamily functions.

Similarly, the Deputy Director, of HUD's Office of Technical Support told us he estimates savings of $12.8 million from faster processing of applications for single-family housing subdivisions was not related to multifamily office consolidations but was instead a result of other management improvement actions taken as part of the overall HUD reorganization.

Additionally, HUD projected $2.9 million in savings from delayed hirings to fill vacancies created by those who leave HUD because of the consolidation. These projected savings are not valid because the value of the services is also lost unless, of course, HUD is overstaffed to the extent of the $2.9 million claimed.

Thus, questions exist about all of HUD's projected savings except some which we did not analyze—$1.4 million for grade reductions; $568,000 for ADP savings; and $2.4 million for certain staff time reductions.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

SPECIAL ORDER

The PRESIDING OFFICER. Under the previous order, the Senator from Vermont is recognized for not to exceed 15 minutes.

INTERPARLIAMENTARY UNION

Mr. STAFFORD. Mr. President, I am delivering this speech this morning—I made one last week and I will make one more next week—on the International Parliamentary Union.

The reason I have gone to this trouble has been my realization that few people in the United States, indeed very few people in the U.S. Congress, outside of those few who have participated in meetings of the International Parliamentary Union, know that the organization exists.

The purpose of the three speeches in total has been to provide a ready source of information to Members in both Houses about what it is, what it does, how much it costs us for it to function, when and where it meets, and so on. I hope that Members will assign a member of their staff to examine the text of the three speeches whenever some matter affecting IPU may come to their attention. I hope they will examine them in any event so that Members of both the House and Senate will have a better concept of what the International Parliamentary Union is.

As I said, Mr. President, this is the second in a series of discussions by the Senator from Vermont concerning Interparliamentary Union, an international body of parliamentarians from all over the world.

In the first discussion, I noted that the Union, known internationally as IPU for short, came into being well before the turn of the century (1889). The United States has held membership in IPU from its early years.

This country hosted the fall meeting of IPU in 1904, and has since served as host to fall meetings of the organization on two subsequent occasions, the last time in 1953.

I noted that 25 years have elapsed since the United States last served as host for a conference, a fact which has begun to be a source of some embarrassment to American delegations in attendance at meetings of IPU. We are frequently urged to invite an IPU Conference to Washington.

The most recent meeting took place in Bonn, the West German capital, September 4 to 14, 1978. The meeting at Bonn was attended by well over 700 delegates from 72 nations.

To go back in history a bit, IPU started with nine countries as members at the time of its first meeting in 1889. Since that time membership has increased until currently approximately 80 nations hold membership. The figure varies somewhat from time to time as governmental changes around the globe establish parliamentary forms of government in some countries where such government has not existed heretofore, while at the same time in other areas democratic forms of government occasionally fall victim to coups d' etat and are replaced by dictatorships.

The rise in new membership in IPU since World War II as a result of the independence of large numbers of former colonies has resulted in a particularly rapid swelling of the numbers of countries holding membership in IPU, just as the same phenomenon has vastly increased membership in the United Nations.

Some years ago it became apparent that it was necessary for IPU to create a smaller executive body out of its membership, in effect to serve as a board of directors, to expedite the handling of its affairs. This resulted in the creation of the "council" of IPU which is made up of two members from the interparliamentary groups of each nation. The council normally holds two sessions a year coinciding with the spring and fall meetings of the entire conference.

It also become necessary to create an

executive group within the Council itself for the handling of many matters, in the first instance, before their submission to the Council and the Conference itself for subsequent ratification. This resulted in the creation of the "executive committee" of the Council. It is made up of 11 members presided over by a president and it is the basic executive body of IPU.

Members are nominated by the Council for a 4-year term after receiving recommendations for nomination from the executive committee. Election is by the Conference in plenary session on the final day of the fall Conference. Two members retire from the executive committee each year and in consequence two are elected to fill these vacancies. Since the executive committee is, in effect, the steering committee for IPU with very significant powers over the Union's budget and matters to be considered by the Union, there have usually been sharp contests for election to the executive committee.

A member of the executive committee is barred from succeeding himself at the end of his term. His nation is also barred from having membership on the executive committee for a period of 2 years.

The Senator from Vermont was honored at the fall meeting in Bonn to be elected to the executive committee of IPU, thus becoming the second U.S. member in more recent times to hold such membership.

The executive committee met on Thursday, September 14th in the West German Parliament Building and amongst other decisions adopted the work program for the study committees of IPU for 1979. Study committees and subjects follow:

Committee on Political Questions, International Security and Disarmament:

The implementation of the final document of the 10th Special Session of the General Assembly of the United Nations devoted to disarmament.

Committee on Parliamentary, Juridical and Human Rights Questions:

The legal aspects of space law.

The Economic and Social Committee:

The role of Parliaments in the protection of the family and general care of children and youth.

Educational, Scientific, Cultural and Environmental Committee:

Ways and means to ensure the promotion of international understanding, cooperation and peace in the area of education.

The Committee on Non-Self Governing Territories and Ethnic Questions:

The practical implementation of the recommendations of the United Nations on decolonization.

The Senator from Vermont has noted the committee subjects in detail to illustrate the importance of the executive committee in selecting subjects for the basic work of IPU for each following year.

The United States and the Soviet Union each have 22 votes on any matter subject to rollcall in an IPU Conference. Only one other nation has this many votes, India. A rather complicated formula based upon a basic number of votes to each nation plus additional votes for population, and size of membership in a nation's House corresponding to our House of Representatives, determines a nation's total authorized number of votes. From what I have said it follows that the United States can bring as many as 22 delegates to any spring or fall Conference of IPU.

However, the number of delegates generally has been between 7 and 12. Six is the minimum number needed to handle U.S. interests in committee and during conference sessions.

In a subsequent special order, I shall cover the resolutions adopted at the fall conference at Bonn in addition to that on disarmament which I have previously discussed. For the rest of this discussion, let me talk about the cost of our membership in IPU.

Our annual assessment for our share of the cost of supporting the Secretariat and IPU generally is 325,000 Swiss francs in dollar equivalent or about $200,000 depending on dollar fluctuations. The cost of sending a U.S. delegation to a meeting of IPU obviously depends upon the distance to be traveled, the number of delegates, the length of the conference, and the cost of meals and accommodations in the host country and any intermediate stops. Some of the more advanced Western European countries and Japan have become, for example, extremely expensive localities even in comparison with the United States. In any event, total delegation expenses for members and staff have generally run between $26,000 and $45,000. Specifically, in 1978 attendance at the Lisbon, Portugal, Conference in the spring with a fairly large delegation ran about $45,000, while the Bonn Conference, at which I chaired the delegation, ran to roughly $26,000.

The figures cited do not include the cost of U.S. Government aircraft used for transportation or the expenses of military escorts as these figures are not available to me. But, it should be remembered that military salaries for escorts and air crew must be paid anyway, and the basic cost to the taxpayers for use of Government aircraft for an IPU trip consists of the cost of fuel consumed and landing fees overseas, plus air crew overseas accommodations when the aircraft remains abroad with the delegation as on a very long trip such as Canberra, Australia (spring meeting 1977).

Thus, our membership in IPU and attendance at meetings of the organization costs taxpayers something approaching $290,000 a year, exclusive of the cost of operating aircraft, expenses of the escort group and, in some cases, the living expenses of the air crew overseas.

This is a lot of money, but how does it compare with United Nations membership? During the current fiscal year which began October 1 our basic assessment for support of United Nations is $247,480,000. Quite a lot more than $300,000. Moreover, we will contribute some $282,000,000 to various satellite activities of United Nations and some $6,241,000 to other international organizations.

It is fashionable to picture IPU delegates as "junketers." No doubt over the last several years there may have been expenditures which others might believe unjustifiable, but by and large U.S. delegates at conferences of IPU have put in long hours and hard work on behalf of this country. They have been at some pains to see that the positions of the United States and our allies have been forcibly put forward on questions involving the Mid-East, Disarmament, Education, Russian/Cuban adventurism in Africa, etc. And they have stoutly defended those positions when under attack by delegates from the Communist bloc nations.

If my colleagues will forgive a personal final note, I have been honored to work with our delegations since 1972. And I have worked hard; otherwise the delegates from 72 nations assembled at Bonn would not have elected me to the 11-man executive committee of IPU.

In a final speech on IPU next week, I shall detail the work of our delegation in Bonn and the content of the resolutions we adopted.

Mr. President, I yield back the remainder of my time, if there is any.

REVENUE ACT OF 1978

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will state the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 13511) to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 3681

The PRESIDING OFFICER. The question is on amendment No. 3681 offered by the Senator from Ohio (Mr. GLENN) to amendment No. 3678 as modified, offered by the Senator from Maine.

Mr. MUSKIE. Mr. President, because of the parliamentary maneuvering last evening in connection with this legislation, it was not possible to yield the floor to my distinguished colleague from Delaware, who was an original cosponsor of the sunset legislation. As ranking member of the Subcommittee on Intergovernmental Relations, he has worked closely with me in development of this legislation over the past 3 years. I have deeply appreciated that support, which has been invaluable in developing the bipartisan coalition which I believe represents a majority of the Senators of this body in support of the sunset idea.

I should like at this point, without further delay, to ask unanimous consent that I may have the right to yield to my distinguished colleague from Delaware (Mr. ROTH) without losing my right to the floor so that I may have the floor upon the completion of his remarks. Of course, he should take whatever time he may desire.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. Without objection, the Senator from Delaware is recognized.

Mr. ROTH. Mr. President, I thank the distinguished Senator from Maine for yielding to me. I happen to believe that the sunset legislation is the most important reform that this Congress can take action upon. I think it is important to understand that this has been a joint effort on the part of the senior Senator from Maine and the senior Senator from Delaware and that it is a bipartisan effort to make the legislative process more responsive to the needs of the American people. Frankly, Mr. President, I deeply regret that we find ourselves, at this late hour, considering the sunset legislation as an attachment to the tax legislation, because I think this particular bill is of such great importance.

It needs to be carefully considered by both the Senate and the House and I would have liked to have the opportunity to bring the Muskie-Roth sunset legislation on the floor on its own merits. But the hour is late and I hope that, somehow, it will be possible for Congress to act upon this legislation so that we can get into place the sunset provisions.

I might point out, Mr. President, that it was in my first term in the House that I made a somewhat similar speech. I commented at that time that the hour was late, that the time for action was then, the problems facing the Nation were too great, there was too much restlessness with and disrespect for the Federal establishment. I pointed out in 1968 that people were becoming disenchanted with government, that we need to find ways and means of making orderly and well studied actions on the Federal structure, particularly in the area of the various programs and grants.

Unfortunately, no action was taken at that time and I regret that down through the 12 years since then we see no further action having been taken in the way of orderly reviewing the many Government programs that have been adopted by this Congress.

Mr. President, it was in 1975 that I was speaking out about my concern about the duplication, the fact that no programs ever died, which made it difficult in some cases to expand and strengthen the programs that were working.

It was at this time that my distinguished colleague from Maine was making similar comments. Since we were both on the Intergovernmental Relations, he was chairman and I was ranking member, I suggested that we get together to see if we could not develop legislation that would provide some means of review of Federal programs with the objective of maintaining and strengthening the successful programs and eliminating those that were failing to meet the goals that had been set for them by the Congress.

It was as a result of this effort that our staffs got together and developed the Muskie-Roth sunset legislation which was introduced early in 1976.

Mr. President, a few years ago, in the closing days of that session, we found ourselves in a similar position where legislation was offered on the floor, but not taken to a vote because there was not the opportunity to insure meaningful action at that time.

So, as I say, it is with real concern that we find ourselves in the dying days of this session considering as an amendment to the tax legislation one of the most important critical reforms this Congress faces.

I hope that somehow it will be possible to get this legislation into place this year because the delay has been too long. The American people are weary of promises, and it is about time that Congress does strengthen the control we exercise over spending on our many Federal programs.

The American public deserves and will be satisfied with nothing less than careful scrutiny over every Federal program expenditure. I am convinced that we must adopt——

Mr. LONG. Mr. President, will the Senator yield at this point?

Mr. ROTH. Yes, without losing my right to the floor.

Mr. LONG. Are we under a time limitation at this point, Mr. President, or no limitation?

The PRESIDING OFFICER. There is no limitation on time.

Mr. LONG. Mr. President, I do not claim to be an expert on the sunset amendment. I really do not know enough about it to attempt to impose my judgment. The Senator from Delaware has worked on it and studied the matter for a long time, serving on one of the committees that processed the bill.

I would ask the Senator if he cannot see a difference between one situation where we try to cut spending and another situation where we seek to trigger an automatic tax increase.

In other words, in one situation the amendment says that unless Congress acts, spending for a certain purpose will terminate. In the other situation, the amendment would raise taxes unless the Congress acts.

We have written our tax law to say that we are not going to tax interest on State and local bonds. We have done that historically because we do not think we have a constitutional right to do so. It may be that the present court might uphold the constitutionality of such a tax, but those who believe what little sovereignty there is in State and local government should remain there and who do not want to tax the interest on State and municipal bonds, feel that in the last analysis, since those bonds yield a lower interest rate, the present system is a better deal for the State and local governments. It helps the State and local governments, and the people that pay taxes to us are the same people that pay taxes to those governments.

Now just take that simple example—the difference between triggering something that means an automatic increase in taxes of all citizens throughout the United States, and something that is designed to cut Government spending and lead to a tax cut.

Mr. ROTH. I would point out to the distinguished Senator from Louisiana that I think there is a very significant difference between so-called tax expenditures and other Federal programs.

At this particular stage, I would point out that I am merely addressing the basic sunset legislation without the Glenn amendment. I had expected, as the distinguished Senator from Maine pointed out yesterday, as the ranking member and chief cosponsor of the Republican side of this legislation, to have been able to make my remarks on the basic legislation prior to the offer of the amendment. But because of the parliamentary situation, that situation did not arise.

For that reason, my remarks here are solely directed to the basic sunset legislation which requires the review of Federal programs.

I would point out, however, to the distinguished Senator from Louisiana, that in committee it was primarily Senator DANFORTH and myself who opposed the adding of the tax expenditures because I think it does raise very different fundamental questions from that of grants, and it was my concern that, while on the surface it sounded like there was a parallel, it could have a very destabilizing impact on our economy.

For that reason, I opposed the inclusion of the tax expenditures.

Mr. LONG. Could I ask the Senator, would it not be a great disappointment to a lot of taxpayers who support the sunset approach on the grounds that it would lead to a tax reduction, to find that instead of a tax reduction they received a tax increase from the bill?

Mr. ROTH. As the Senator from Louisiana well knows, my whole complaint about this legislation is that the tax cut does not apply to a sufficient number.

So, I would have to answer the Senator in the affirmative.

Mr. LONG. I would say that if we cannot give somebody a tax cut, we ought at least to do better than giving them a tax increase.

I hope the Senator would not raise taxes; and that is the kind of thing some of us want to try to protect the citizens from, a blind tax increase.

I hope the Senator might give some expression to that in the course of his remarks because I think his views are sound in saying that if we want to pass a sunset bill, that bill should not trigger an automatic tax increase.

Mr. ROTH. At this time I would say to the distinguished Senator, I think the so-called Glenn amendment should be fully debated, for the proponents as well as those of us who oppose it, that we should have the opportunity to state our position.

For the moment, I would like to proceed, if I could, as to why I believe the original Muskie-Roth sunset legislation should be enacted at the earliest possible date.

As I pointed out a few minutes ago, the American public deserves and will be satisfied with nothing less than careful scrutiny over every Federal program expenditure.

I am convinced that we must adopt procedures to assure that the operations of the Federal Government be periodically reviewed and measured against tough standards of performance. The taxpaying citizens of this Nation are demanding stronger controls over our vast national budget and expanding

national debt and I believe that the carefully crafted processes we have set forth in S. 2 will help us to exercise such control.

More than 2 years ago, I authored a proposal with Senator MUSKIE to confront the need for tighter control over our national budget. Our bill—S. 2925—became known as the sunset bill because, under the procedures in the legislation, the "sun" would set on outmoded, inefficient or poorly functioning Government programs. The authorizations for nearly every Government program would automatically terminate after 10 years unless a convincing case was made that the program was satisfying its objectives at reasonable cost. No longer would some Government programs be continued with a wink of the eye and a pat on the head from the gentle congressional father.

The sunset process is meant to insure that Congress exercises its oversight responsibilities in a tough and thorough manner. I consider this sunset legislation the most important reform legislation before Congress, and I think it deserves the careful attention of all Members of the Senate.

Mr. President, Congress must recognize the urgent need to restore fiscal responsibility to Government spending. In a scant 10 years, our Federal budget has increased from $158 billion to nearly $500 billion. Interest alone on the national debt will cost over $54 billion next year. In the Department of Health, Education, and Welfare, over $500 million is spent each day. In fact, the Federal Government has become so complex that it takes more than a scorecard to tell the players apart and to keep a close watch on each one. It takes a well-designed and carefully balanced system, such as that proposed in the Muskie-Roth Sunset legislation, to follow the players in the complex Federal establishment.

The real complexity of the Federal Government can be seen clearly by taking a look at the Federal assistance and grants process, particularly Federal grants to State and local governments. The Federal grants system is one with which I am very familiar, and it is an area in which I have worked for many years.

As of January 1, 1976, there were 441 funded categorical grants, 5 block grants, and the general revenue sharing program, all of which were designed to give Federal assistance to State and local governments for many different purposes. These grants will add up to over $80 billion worth of Federal expenditures this year—a tenfold increase since 1960. As a percentage of the Federal budget, Federal aid has more than doubled—from 7.6 percent in 1960 to an estimated 17.4 percent in fiscal year 1978. Federal aid accounts for about 25 percent of State budgets and an even larger share of local budgets. In short, Federal assistance to State and local governments is a big part of Federal expenditures and is extremely important to the health of our Federal system.

Yet, the system of budgetary checks and balances to administer and control the expenditure of these funds is woefully antiquated. Without a continual and systematic examination of these many grant programs, how can Congress expect to eliminate the waste and overlap which occurs in such areas as pollution control in which there are 23 different grant programs or elementary, secondary, and vocational education where 78 separate grant programs are to be found? How can the Federal assistance system, which affects 2,000 substate regional bodies, over 18,000 school districts, more than 25,000 local governments, 3,000 counties and 50 States, be rationalized and improved without the functional and subfunctional comparisons which sunset provides? Can we continue to rely on the existing haphazard congressional oversight process to deal with a system as complex and crucial to American federalism as this? Only with the procedures provided for in the sunset bill can we ever hope to begin to grapple with the overlap, duplication, and confusion existing in our Federal grants system as well as in other areas of Federal expenditure.

Let me review for a moment more fully the case for comprehensive spending reform. The sunset bill which we are considering today is familiar to most of my colleagues. During the last Congress, 58 Senators endorsed the Government economy and spending reform act of 1976 in principle and agreed to cosponsor the legislation. More than half of my colleagues again cosponsored the successor to that bill, S. 2. It is clear that many in Congress recognize the need for the adoption of a systematic and comprehensive oversight system and have supported sunset legislation as the means of providing such a system.

The reforms contained in the Sunset Act of 1978 follow on the efforts begun by passage of the "sunshine" reforms, and together these reform efforts represent a major breakthrough in the methods by which the Government conducts its business. The basis of these reforms is that all areas of Government business ought to be open to full public scrutiny as a matter of right. The sunshine reform was a first effort to win acceptance of the principle that meetings in the departments, agencies and the Senate itself should be open to the public as a general rule. The taxpayers have a basic right to know how their elected representatives and their agents in the departments take care of the public's business.

The sunset bill before us today carries the reforms made under sunshine still further and establishes the principle that every Government program must be open for review at least once every 10 years and prove its worth before being continued. Not one dollar of Federal spending should be sealed from public scrutiny. There should not be any "sacred cows" when it comes to showing the effectiveness of Federal programs. In short, the sunset bill, when added to the reforms made under the Sunshine Act, makes the Congress more accountable to the citizens for the spending habits of the Federal Government. With a bureaucracy as large as that at the Federal level, real accountability is often lacking.

The sunset bill is also consistent with the reforms in fiscal management and the budget process which we developed with the Budget Reform and Impoundment Control Act of 1974. The budget process establishes a procedure to set national spending totals and to keep outlays for spending functions within that ceiling.

However, the budget process provides no fiscal control over the many separate parts of the budget. Congress cannot maintain adequate discipline over the budget as a whole unless it can exert control over spending among the pieces and segments.

The heart of the sunset process is a careful review of spending for programs grouped together by function and subfunction to assure that effective programs will continue and that ineffective programs are terminated.

The reforms mandated by the Budget Act gave us a better look at total Federal spending. Sunset will give us an improved and systematic evaluation of program effectiveness. It will make us ask the administrators of programs not just "How and where did you spend your money?" but also "How well did you spend your money and in what ways did you achieve the goals your programs were designed to fulfill?"

Sunset legislation would drastically change many of the assumptions made about the way Congress spends the tax dollars of our citizens. It would end the unspoken rule that money spent on a program in one year must be continued or increased in the following year. There would be no permanent budget authority for spending which places Government programs effectively beyond thorough periodic review. A new rule of program spending would be adopted: Only after a program is shown to be cost-effective and achieving its objections will it be renewed.

There is always the risk, of course, that the proposed sunset process will be too rigid. The termination and review cycle in S. 2, however, provides a firm schedule for review, yet retains flexibility for congressional committees in the performance of their oversight role. The sunset process we have devised establishes an action-forcing mechanism that demands periodic review but permits committees to exercise considerable discretion in the manner in which such reviews are carried out.

Another concern raised regarding S. 2 is the increased workload it may thrust upon Congress. While it is true that the sunset bill will force Congress to work harder to fulfill its oversight role, the argument that the procedures mandated by sunset will overburden Congress is a tacit admission that there have been too many conflicting, confusing, and overlapping programs enacted for Congress to keep track of. The concern over workload argues even more forcefully for adoption of a systematic and continual oversight process, such as that contained in this sunset legislation.

Mr. President, it is evident that public confidence in the Federal Government is

very low. Recent polls indicate that Americans believe that the Federal Government is the most wasteful in its spending habits of all the levels of government. With evidence that nearly $50 billion is lost each year in Federal programs through mismanagement and fraud, it is hardly surprising that the taxpayers feel this way.

Public attitude surveys have consistently shown a slowly declining confidence in Government among our citizens. There is widespread concern that Government over-promises, and then fails to deliver. And there is a general perception that Washington mismanages and spends irresponsibly.

Mr. President, Congress must implement changes in its oversight procedures to enable it to meet head-on the problems of a Federal Government which has become incredibly complex and which spends more money each year than any nation in the world, except Russia, produces in gross national product.

Our failure to manage our budget resourcefully to achieve program goals is a serious national failing. Congress must fulfill its responsibility to the American people by confronting this problem and narrowing the gap between Government performance and public expectation. The public has a right to expect its Government to be wise and frugal with its tax dollars.

The unmet promises of Government programs reduce the credibility of Congress and the confidence of our citizens in their Government. I urge my colleagues to adopt the procedures contained in the sunset bill for only when we accept the responsibilities mandated by the Muskie-Roth legislation can we hope to restore the people's trust in their Government and their faith in our Nation's future.

Mr. President, I ask unanimous consent that my name be added to that of Mr. MUSKIE on this amendment as a proponent of this legislation.

The PRESIDING OFFICER (Mr. MELCHER). Without objection, it is so ordered.

Mr. ROTH. Mr. President, the Senator from Illinois has asked me to yield to him. I ask the distinguished Senator from Maine if that is all right.

Mr. MUSKIE. Mr. President, how much time does the Senator from Illinois wish?

Mr. PERCY. Three or four minutes.

Mr. MUSKIE. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Illinois, a longtime supporter of this sunset proposal, without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois.

Mr. PERCY. I thank my distinguished colleague very much indeed.

I shall be offering an amendment later, but at this time I shall only comment on the legislation itself that is before us and the urgency and necessity of doing it.

I think of all the frustrations that people have in this country with Federal Government it is a fact that there seems to be no real way to end Government programs that are not working or even modify those that are in being. These programs somehow develop a life of their own. There is no strong constituency no matter how weak the program is for almost anything. We can always find someone who will be for it.

What we lack is someone who will really speak up effectively against it. There is no real procedure for ending the program.

In the private sector, a profit-and-loss statement is a rigid report card, and you will not expect to see a division of a company or a product line within a company continue in being if it is not working out. There is always an automatic mechanism that brings it to an end. If a division is not operating profitably in a company you find some way to spin it off and probably sell it to some unsuspecting company that may think they can make something out of it. But you get rid of it yourself when you know it is not working.

But there is no way to do that in Government, and the genuis of this concept and idea that is now espoused by Senator MUSKIE is that there must be a way to end programs and periodically and regularly review them.

I wish to point out that this has been a bipartisan effort. There has been solid support from many of us this side of the aisle for this concept.

Back some years ago Senator ROTH, who is the ranking Republican on the Intergovernmental Relations Subcommittee of the Governmental Affairs Committee, indicated that he believed that our system of intergovernmental grants-in-aid has been unsatisfactory. The General Accounting Office cited numerous instances of waste, overlap, and confusion in the Federal assistance area in a report entitled "Fundamental Changes Are Needed in Federal Assistance to State and Local Governments," released in August 1975.

The report served as a basis for the reforms which Senator ROTH proposed in a consolidation bill.

Senator ROTH began thinking about a far more comprehensive effort at that time and discussed it with me and discussed it with the distinguished Senator from Maine. The kind of reform which he had envisioned was a thorough reexamination of the Federal Government that would put an end to the program duplication, mismanagement, and bureaucratic overlap.

He talked frequently about the need for another Hoover-type commission. He pointed out at the time the growth in Federal programs in the last decade that outstripped the ability of Congress to review them and to improve upon them. What we were left with, as he stated, were hundreds of programs often serving similar objectives but each creating added pressure for budget increases.

It was back in 1975 that the distinguished Senator from Maine, Senator MUSKIE, voiced deep criticism about the record of performance on many Federal programs. Senator MUSKIE and Senator ROTH in their respective capacities as chairman and ranking minority member of the Intergovernmental Relations Subcommittee of the Governmental Affairs Committee, then called the Government Operations Committee, agreed in principle that something in the area of intergovernmental structure and coordination must take place, and they both agreed that it was necessary to review the overall performance of the Government programs and to develop a reform proposal that would address the major weaknesses.

The staff of the Intergovernmental Relations Subcommittee worked throughout the fall of 1975 to develop a program which met these basic requirements, and on February 3 they introduced a bill of which I was proud to be an original cosponsor. The subcommittee held 7 days of the most ambitious and exhaustive hearings on the conduct of Government and Government programs. The hearings in which I was privileged to participate were an extensive effort to improve the basic approach and incorporate recommendations made by expert witnesses during the course of these hearings.

Numerous revisions were completed in the subcommittee, and the bill was reported from the subcommittee on May 13. The Government Operations Committee made further improvements in the bill and reported the bill unanimously on August 4.

A long time has intervened in the meantime, and I can well understand the frustration of my distinguished colleague about the lack of action. I, therefore, applaud his effort to in every way he can move this legislation forward.

He has been devoted to it, Senator ROTH has been devoted to it, and those of us who have been privileged to work with them have been devoted to this concept.

It is time we act. Again we are at the end of a congressional session, and if we were to defer this and put it off until next year we start the whole process all over again. No subject has been more thoroughly researched and deeper hearings held on it and problems overcome with it.

Mr. CURTIS. Mr. President, will the Senator yield for a question?

Mr. PERCY. The Senator from Illinois joins with his distinguished colleagues, Senator MUSKIE and Senator ROTH, in believing the time is now here to act, and I intend to do everything I can to see that we do move forward.

I would be very happy to yield to my distinguished colleague. Senator MUSKIE has yielded to the Senator from Illinois, and the Senator from Illinois has completed his comments, and I really prefer to turn it back to the Senator from Maine.

Mr. MUSKIE. Mr. President, may I make sure that the Senator from Illinois may yield to the Senator from Nebraska without my losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Nebraska.

Mr. CURTIS. I thank the distinguished Senator. I support the sunset principle. I would like to see it applied to as many programs as possible. My

question is this: Here we have a proposal that is backed by the most powerful committee in the Senate. Why is not the sunset bill brought in as a separate measure rather than placing it on a tax bill where it will go to conference, if it is enacted, and it will have to be handled by committees that have not worked on it at all, and it will just be one more thing to handle in a very complex and complicated piece of legislation?

Why is it that this sunset bill with so much virtue is not brought in by the committee that fathered it as a piece of legislation for the Senate to consider? That is my question.

Mr. MUSKIE. I would be glad to answer the question.

Mr. PERCY. I would be pleased to answer it, but I think the author of the legislation—perhaps both Senator MUSKIE and Senator ROTH—should answer it.

Mr. MUSKIE. It is a fair and legitimate question. May I say to the Senator that is the course I would prefer. That is the course we have sought for 3 years. The year before last in the previous Congress the Committee on Governmental Affairs, after almost 2 years of consideration, reported the bill to the floor. It was put on the calendar, and then because it involved some changes in the Senate rules, it was referred to the Rules Committee. The Rules Committee was bogged down with other legislation and was not able to act on it until the last week or two of that session, and the bill was squeezed out by the passage of time.

Last year the Governmental Affairs Committee, in a new Congress, began reconsideration of the bill. We refined it to meet objections that had been raised. It was reported from the Governmental Affairs Committee to the floor of the Senate last year early in the session. It was referred to the Rules Committee again. The Rules Committee argued that they did not have the opportunity to consider it fully enough to satisfy its members before time ran out last year.

It was then agreed that the Rules Committee would hold hearings during this Congress and report the bill out before the Lincoln Day recess. Well, in the meantime the chairmanship of the Rules Committee changed. The new chairman had found himself under pressure to get a handle on his new job—he is also running for reelection—so the Rules Committee could not report it out by then, and they did not report it out until July of this year. They reported it out favorably, and we have been looking and searching ever since for a window in the schedule of this Senate which would permit us to take it up on its merits in time to go to the House for action there.

Well, we have not been given that opportunity.

Mr. CURTIS. Who has denied that opportunity?

Mr. MUSKIE. I do not know how you find a scapegoat in this body. Every one of the 100 Members is constantly seeking to pursue his own legislative objectives. I have sought to be the good guy and stand by while other legislative priorities came to the floor.

Well, finally, out of desperation, I sought to put it on the Eximbank legislation last week, as the Senator knows. Because there was a committee amendment pending there which I was not permitted to set aside, even though I was involved in it, we could not deal with it there. We wasted a whole afternoon early this week because of the objections of the chairman of the Finance Committee for setting aside the committee amendment to the Eximbank. We wasted a whole afternoon discussing something else when we might have been discussing this.

So finally time is running out.

May I say with respect to this legislation, the pending tax legislation, that it is not the ideal place from my point of view, but it is certainly relevant. Here I have been listening to talk in connection with the Kemp-Roth tax cut proposal which, if we adopt Kemp-Roth, we in effect will reduce Government spending.

Well, I am very skeptical about that. But tax raising is obviously related to the spending of tax revenues, and if we are considering tax cuts, and if there are those who would like even larger tax cuts, then we ought to be willing to consider a measure attached to the tax bill which would have the effect of reducing Government spending so that the tax cuts would not result in unacceptably large deficits.

So I think there is as much relevance to a program to control Government spending as some of the direct spending proposals that are contained in this bill.

So I think there is a connection, there is a relevance. But I would have preferred, if I could have gotten it, the route suggested by the distinguished Senator from Nebraska. But at this point I have no choice.

Mr. CURTIS. Mr. President, will the Senator yield for one more question?

Mr. MUSKIE. One more question without losing my right to the floor.

Mr. CURTIS. This is very meritorious legislation. It has been favorably acted upon by two committees and ready to go since July.

I do not understand why the leadership did not schedule it as a separate bill a long time ago. The Committee on Finance has to wait on the House of Representatives under the Constitution because we cannot initiate a tax bill. So we have to wait until the bill comes over here.

We have to hurry, and we should not do it. It is very unfair to the professionals on our staff on the speed we require of them. I have known many of them to work 84 hours a week and keep it up. We have to hurry with that tax bill. I am not critical of my colleagues, but we have a field day here. No one wants to miss a chance to vote against every tax in the book or to use his theory to reorganize the Internal Revenue Code.

Well, after all, we have an obligation to the sound running of our economy and the individual taxpayers, and I wish that the distinguished chairman would confer with the leadership running things and schedule this as a separate bill, and withdraw it here. I think he would be doing a favor to everybody concerned, and get a clear shot at it.

Also, you would make it a little more possible to write an understandable tax law that is less confusing. You cannot write tax law by mob action.

I thank the Senator.

Mr. PERCY. Mr. President, will the distinguished Senator yield to the Senator from Illinois for just a brief comment?

Mr. MUSKIE. Yes, without losing my right to the floor.

Mr. PERCY. Mr. President, I would like very much to address myself to this pertinent question that has been asked.

For the reasons the Senator has outlined, the members of the staff of the Governmental Affairs Committee are here, right through the weekend, to work with the staff of the Finance Committee.

Mr. CURTIS. Why do you not write your own bill?

Mr. PERCY. Mr. President, there is no concept better understood by the people of this country than this concept. The Senator from Illinois has tested this all throughout his State, and I have found no one who misunderstands it.

In fact, when talking to people about too many Government programs, I have had people initiate the subject, and say, "What you ought to do is sunset some of them, and let them die."

I repeat, this is not a difficult concept. Furthermore, the Finance Committee should be the ones who would welcome this addition to this tax reduction bill, because there is always a little uncertainly as to whether or not tax reductions will adequately and quickly stimulate the economic recovery of this country, and keep the revenues flowing.

If at the same time that we reduce taxes to stimulate the economy, we give a major shot in the arm to the whole economy by saying "We intend to get this budget under control by ending ineffective, overlapping, duplicative programs that are not really working and which we have no mechanism now to end." This, I think, would couple in very effectively.

But one further thing. This is why the managers of S. 2, the sunset legislation, have worked closely with the Senator from Illinois on a measure that he, Senator BYRD, and Senator RIBICOFF jointly introduced, with the support of our colleagues: S. 600, dealing with regulatory reform.

It couples in perfectly to say, "Let us start to end some of this Government regulation." The distinguished Senator from the Commerce Committee (Mr. MAGNUSON) knows what has happened as we have begun to work, now, on airline deregulation.

It did not take a year or 2, or 3, or 4 years. It took 3 months for that industry to start to say, "We are going to get rid of regulations; we are going to get rid of controls."

And what has happened? Airline passenger service has taken off like a meteor.

You cannot get a reservation on a flight. I could not get out of here last night. You used to be able to go on any flight any time; planes were half empty, and airline profits were half what they should have been.

In this period of time alone, airline profits have gone up 80 percent against last year. Planes are full. The airlines are becoming efficient, and more revenue is developing at the Federal level from that one industry alone.

Let us do it to the rest of American industry, and we are going to see this economy really begin to work again, if we can just get rid of the heavy hand of regulation.

That is why an amendment that will embody the provisions of S. 600 will be coupled in and offered as a package. It is an easily understood bill. With it, we are finally, after a period of 10 years, going to start deregulating and get the heavy hand of Government off the backs of the consumers, because regulation costs the consumers of this country $600 billion a year.

So, Mr. President, I am interested in seeing us move rapidly ahead with this very important bill.

Mr. BENTSEN. Mr. President, will the Senator yield 2 minutes to the Senator from Texas?

Mr. MUSKIE. If I may make one brief comment first.

Mr. HANSEN. Will the distinguished Senator from Maine use his microphone?

Mr. MUSKIE. I thought I had it on. I guess it dropped off. I am sorry. I appreciate the Senator's interest in what I have to say.

The political answer to Senator CURTIS' question is that if we pass a tax reduction, it would be welcomed by the voters as we contemplate going back home this election year to talk to them.

But that welcome will be more than doubled if we can also say to them, "We have passed sunset." I cannot agree more with the Senator from Illinois. People out in the country know what sunset is. They want to see it enacted into law, and they would welcome us with open arms if we are able to tell them we have done so. The two matters go hand in hand, and I would like to see us do them.

I yield 2 minutes to the Senator from Texas, without losing my right to the floor.

Mr. BENTSEN. Mr. President, I would like to say to the distinguished Senator from Illinois that I, too, was trying to get out of here last night, but just to go home to my wife and dinner. That was difficult to accomplish.

I congratulate the Senator from Maine on the excellent job he has done on sunset legislation, which I am pleased to cosponsor with him.

I find that old Government programs never die, they just get renamed. I believe the time has come, that the mood of the country is not for a great number of new programs, but that we try to make more effective those programs that are now in place.

One thing I learned about in business long before coming here was that you can expect what you inspect. That ought to apply to these programs.

I think sunset legislation would make an effective contribution to the efficient use of the taxpayers' money in this country, and I believe that is what they are looking for. I do not believe they are looking for an end to a lot of things that have been done, but they want to be sure what is being done is being done efficiently, and that their money is not wasted in the process. So, Mr. President, I am pleased to speak of my long term support for sunset legislation. After years of congressional consideration, we have produced a workable reform that will allow the sun to set on outmoded and wasteful Government programs. It will end the cycle of self-perpetuating bureaucracies.

This sunset provision will change the focus of congressional activity. Instead of constantly creating new programs, new legislation, larger Government bureaucracies, the Congress will redirect itself to evaluate what it has already produced. We need to assess where we are, what programs are no longer needed, what programs duplicate each other, what programs are wasteful. The best way to insure that Congerss will address these issues is to establish a structure for review. This sunset plan will provide for an orderly, 10-year cycle for the review and evaluation of all programs in general umbrella categories. Thus all health programs will be considered at the same time, all housing programs, all education programs will be reviewed at the same time. Duplications will be easily detected, waste will be uncovered.

But, what makes sunset work is the provision that without the specific act of reauthorization, a program will simply die. The notion that old Government programs never go away, they are just renamed, will be challenged by sunset. The Congress will be forced to consider all the various programs, side by side, assess their usefulness, and then decide which programs should continue.

Through an orderly consideration and reauthorization procedure, the Congress will be able to have the flexibility to adjust to changing national needs and economic conditions. We will be able to terminate outdated programs and thus make budgetary room for new initiatives.

The systematic review will also give structure to the work of the Congress. The committees will organize their agenda around the reauthorization schedule. Staff resources will be used to evaluate existing programs rather than dreaming up new, and possibly unneeded legislation.

The sunset procedures will also focus the President's and the administration's review of executive branch programs. This sunset legislation will require the President to recommend to the Congress programs for indepth review. The President is also required to submit his own evaluation on these programs. Congressional committees may, in addition, request agencies to submit their budget requests and supporting materials following the President's budget recommendation to the Congress in January in each year. Thus, in this way the congressional and the executive branch will be able to work together to evaluate existing programs.

Mr. President, I want to thank Senator MUSKIE for his hard work in bringing this legislation to reality, for his determination to see it through to completion. I also want to thank both the Senate Governmental Affairs and Rules Committees for their excellent cooperation in producing a well crafted piece of legislation.

I have high hopes for sunset. I believe it is an imaginative and workable procedure to help us fulfill our legislative responsibilities. I believe it will invigorate the Congress. It will strengthen the Institution. It will give us a way to clamp down on useless Government programs. As I have said many times in the past, I believe that this approach is the best way I know of to cut Government down to size.

Mr. MUSKIE. I thank my friend from Texas. He has been a strong supporter of this sunset idea for a long time. He has been kind enough to say so, and his willingness to do that has been most reassuring and helpful.

Mr. President, while we are focusing on comments of various Senators, I ask unanimous consent to have printed in the RECORD at this point a statement by my distinguished junior colleague from Maine (Mr. HATHAWAY), who has had an interest in sunset from the beginning, as well as a statement by the Senator from Kentucky (Mr. HUDDLESTON), who has given like support over a long period.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR HATHAWAY

In discussing the Sunset Act of 1978, I must begin by paying tribute to the foresighted and persistent leadership of its sponsor, my good friend and colleague from Maine, Senator Ed Muskie. He has played the leading role in the Senate in the effort to establish reasonable, responsible limits on Federal spending, first through the Budget Act and his chairmanship of the Budget Committee and now through the Sunset Act.

Inflation is our primary national problem. All of us have heard the concerns of our constituents about the inroads that inflation has made on their own budgets. As elected officials in a democratic society, we have a duty to be responsive to the concerns of the people. However, as elected officials, we also have a duty to use our own best judgment and to respond to these concerns in a sound and responsible manner.

The urge to respond to the mood expressed in the vote in California on Proposition 13 has led to a number of simplistic, even irresponsible proposals. We have seen efforts to impose across-the-board indiscriminate funding cuts, which could have the effect of gutting worthwhile programs and permitting wasteful ones to continue. The Roth-Kemp tax cut proposal has been another response to that public mood. However, virtually every respected economist in the country believes that the result of the enactment of this bill would be even higher inflation.

I think that we are all agreed that a tighter, more disciplined Federal budget must be a major component of any program to combat inflation. That goal cannot be

achieved easily. We must commit ourselves to re-examining everything we now spend, to make such that the taxpayers' money is used as efficiently and effectively as possible. This will be a long and difficult process, but the Sunset Act will give us the tools to do the job.

We have begun the process with the Budget Act. We have learned to establish priorities through the budget process, and we have my colleague from Maine constantly ready to remind us of the priorities that we have chosen.

The logical extension of the budget process is the Sunset Act. The core of the Sunset concept is the mandatory periodic and orderly review of Government programs.

Sunset will help us to free ourselves from the priorities and the programs established by past Congresses. And it will free us to respond to further needs without fear that we will be locked in by whatever new programs we may create.

The Sunset Act would establish a procedure for dislodging special interests. One of the first lessons each of us learned in this body is that it is much easier to deal with new legislation that will set up new interest groups. Yet the Sunset Act will give us a mechansim to achieve that end.

We must not forget, however, that the Sunset Act will not achieve its goals automatically. It will be a major improvement in our decisionmaking procedures. We will be forced to make more hard decisions than we have ever had to face.

The requirement of periodic review will compel us to perform the kind of oversight we have always been intended to do. That will be difficult and it will probably cause some difficult adjustments. We will have to guard against the tendency to avoid the hard work and to let Sunset become merely another automatic procedure without real significance. We must not fall into the trap of superficial review and automatic renewal of most programs.

If we do pass the Sunset Act and truly devote ourselves to the work that we shall be imposing on ourselves, then we shall have made major strides in controlling spending and inflation.

STATEMENT OF SENATOR HUDDLESTON

I support Senator MUSKIE's substitute amendment to S. 2. I am pleased to be a cosponsor of this amendment; it has been possible to refine the original concept of sunset legislation in order to produce a practical method of reviewing and evaluating the growing number of Federal programs. With a few necessary exceptions, Federal programs would be automatically terminated under the provisions of this legislation, unless specifically reauthorized by Congress.

Such legislation is long overdue. Congress is hearing these days from more—and angrier—taxpayers who feel that Government is expanding much too fast and is costing far too much. The movement against the growth of Government and the taxes necessary to support it has been growing over the past few years. It seems very unlikely that the people will relent in their demands for lower taxes and reduced Federal spending even with the tax cut legislation planned for this year.

Part of the problem is that new projects become part of the growing bureaucracy almost immediately. The budget is increased by a series of addons, one program at a time, one agency at a time, one commission at a time, often with little relation to other programs. Every Government program or agency develops its own constituency, its own bureaucracy and its own built-in spending increases, making it difficult to eliminate or even alter any program once it gets started. As existing Government becomes larger and more unwieldy, requiring greater and greater allocations of scarce Federal funds. Congress becomes progressively less able to respond to the changing needs of the people.

Larger spending cuts now take the form of across-the-board cuts in authorizations bills. These cuts are essential in order to bring down spending, but because they establish no priorities they do not necessarily do anything at all to reduce waste—that "fat" we have all heard so much about. We have probably all been exposed to our constituents' anger and frustration at high taxes and rising inflation. But taxpayers really feel their trust has been betrayed by the creation of what they perceive as "big government": a complicated, nearly incomprehensible conglomeration of Federal programs which defies rational analysis and whose most significant function is to absorb vast quantities of ax dollars. The people do not want to eliminate government or government services; but they do want—and deserve—efficient, effective, responsive Government.

Congress must begin to exercise the same discipline with respect to individual programs as it now does with respect to the budget as a whole. Legislation providing for periodic review and reauthorization would give Congress the opportunity to consolidate, revise, eliminate or add new programs through a comprehensive and systematic review of related programs in a broad functional area. Congress could also assess overall goals, thus enabling us to see that essential services are maintained without waste, duplication, or overlap. The sheer complexity of a government which has grown by bits and pieces now makes such a review process necessary.

We must develop a balanced and rational approach to the problem of uncontrolled growth in Federal programs. We should not be swayed by extravagant, deceptively "simple" across-the-board tax-cutting or budget-cutting proposals. Government spending reform should favorably affect the efficiency of Government and the size of the budget deficit, while at the same time making larger tax cuts feasible. Procedures established by this amendment will give Congress an excellent opportunity to show that we can bring big government back under control and pass the benefits along to the taxpayers.

Mr. MUSKIE. Mr. President, shortly I am going to yield to the distinguished author of the Glenn amendment, who has not really had a chance to present his case. But before I do, does the Senator from Virginia wish me to yield at this point?

Mr. HARRY F. BYRD, JR. Will the Senator yield briefly?

Mr. MUSKIE. Yes; I ask unanimous consent to yield briefly to the distinguished Senator from Virginia without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARRY F. BYRD, JR. Mr. President, I commend the Senator from Maine for his hard and effective work in regard to the sunset legislation. I am pleased to be a consponsor of this measure. I think it is a very important piece of legislation.

I must say that I had hoped it would come up on its own, rather than as a potential part of the tax legislation; but I support the sunset legislation. I think it is good. I think it is important that steps be taken to get Government programs under control, to periodically review the multitude, some 10,000 or more, of different spending programs of the Government.

Hopefully, the sunset legislation developed by the able Senator from Maine will result in a reduction in Federal spending.

As the Senator from Illinois pointed out, the estimated cost to the American public of the vast amount of Government regulation is somewhere between $60 billion and $100 billion a year. No one knows exactly, but those figures presumably are in the ball park. It is somewhere between $60 billion and $100 billion of additional cost to the taxpayers because of the regulations of the Federal Government.

I think the sunset legislation, as it applies to spending programs and regulatory programs, is a very desirable piece of legislation.

I commend the Senator from Maine for his effective work in this regard.

Mr. MUSKIE. I thank the Senator from Virginia, who has expressed that interest many times over the past 2 or 3 years. I appreciate that support. I must say that support for sunset is coming from every segment, from every philosophical point of view. It just seems to me that this is an idea whose time has come, to use an old cliche.

At this time, Mr. President, I ask unanimous consent that I may yield 10 minutes to the distinguished Senator from Massachusetts without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I join my fellow colleagues in giving strong support to this amendment to apply the sunset procedure to the tax expenditures.

The sunset concept itself is one of the most effective and responsible techniques developed so far to bring Federal spending under control, and I commend Senator MUSKIE and the Governmental Affairs Committee, as well as the members of the Rules Committee, for bringing before the Senate this imaginative and innovative approach to Government reform.

Through application of the sunset rule, Congress will be obliged in future years to consider in a systematic and coordinated way the many different Federal spending programs that are now on the statute books or that may be enacted in the future.

In effect, the sunset rule will require Congress to make a "zero base" review of Federal spending. No longer will Congress be able to operate under the current "watchmaker's theory of the Federal spending universe," by which the House and Senate set new spending programs ticking but fail to exercise effective oversight, control, or coordination as the programs keep on running in the future.

But it would be a serious mistake for the Senate to adopt the sunset rule for direct expenditure programs, yet fail to provide a similar mechanism for tax

expenditure programs. Failure to include tax expenditure programs in sunset legislation would mean that a significant portion—approximately one-quarter—of the total Federal budget would remain outside the process of regular congressional review and evaluation of Federal subsidy programs. If the Sunset Act is to reach its goal, the sunset rule should apply in an evenhanded manner to all forms of Federal spending, including spending through the Internal Revenue Code.

GROWTH OF TAX SPENDING

There is no mystery about tax spending. Once the complexities of the tax code are stripped away, tax subsidies become simply another way of spending Federal dollars.

We now use the Internal Revenue Code to provide over $120 billion a year in tax subsidies to encourage a vast array of economic and social activities. These provisions range from subsidies for homeownership, charitable gifts, or oil production, to incentives for taxpayers to purchase goods on credit, to subscribe to prepaid legal insurance programs, or even to contribute to the political candidates of their choice. All of these tax subsidies—more than 80 in all—are now firmly entrenched in the Internal Revenue Code. And they are all forms of Federal spending.

If we are concerned about runaway Federal spending, we also have to be concerned about runaway tax spending. In fact, we should be even more concerned, because Federal tax spending in recent years has grown even more rapidly than other forms of Federal spending.

Between 1971 and 1978, "direct" Federal spending, as measured by annual budget outlays, grew from $211 billion to $448 billion, an increase of 112 percent. By contrast, Federal tax spending rose from $51 billion to $124 billion, a gain of 141 percent.

In many areas, there may well be more fat and waste—and even outright fraud—to be eliminated by cuts in tax spending than by cuts in other forms of Federal spending. Many of the existing tax subsidies are wasteful and inefficient. Some are little more than windfalls to favored constituents or well endowed special interest groups with the muscle to persuade Congress to enact new tax loopholes at the expense of the hard-pressed average taxpayers who always have to pay the bill.

The last of the big time spenders in Congress are the tax spenders. Tax dollars are not "funny" dollars. They are real dollars that cost real taxpayers real money. It is ironic that so many in Congress who label themselves as fiscal conservatives, who call the loudest for budget restraint, and who consistently vote against increased direct spending for basic Federal programs are so often the biggest spenders when it comes to enacting costly new spending programs through the tax laws.

Especially at this time of acute national concern over the level of Federal spending, it is essential for Congress to do a better job of policing tax spending. Direct Federal spending is already on the griddle. It is time to subject tax spending to the same rigorous scrutiny that direct spending now receives.

TESTS OF TAX SPENDING

The fact that Congress can write any spending program either in the form of a direct outlay or in the form of a tax provision makes it obvious that we should apply the same tests to tax spending programs that we already apply to direct spending programs.

Thus, whether the issue is a tax expenditure or a direct expenditure, Congress may satisfy itself about the following three questions:

First, is there a need for the Federal spending program? In other words, is there a justification for some form of Federal subsidy to encourage the activity in question?

Second, if there is a need for a Federal subsidy, which form of Federal spending program most effectively meets the need? Should the subsidy be provided in the form of direct grants, loans, or loan guarantees on one hand, or tax subsidies on the other hand? Unfortunately, Congress has never developed rational criteria for answering this question. A major cause of the problem here is the structure of the committee system in Congress, which allows the tax-writing committees and the authorizing and appropriating committees to go their separate ways, with virtually no coordination of their separate approaches to achieving common goals.

Third, is the subsidy designed in a way that meets basic standards of both efficiency and equity. In the case of a tax expenditure, for example, are the tax benefits fairly distributed among all income groups? Is the goal of the subsidy achieved with a minimum of inefficiency and waste? Or is it likely to reward taxpayers with a windfall for activities they would already be undertaking?

Once these questions are answered satisfactorily, legislation can then be written using either a direct outlay program or a tax expenditure program that reflects the answers and achieves the goal.

INADEQUATE CONGRESSIONAL OVERSIGHT OVER TAX SPENDING

The current sorry state of congressional control over tax expenditures is more the result of historical accident than logic or intent. The relatively recent recognition of the reality that large numbers of provisions in the Internal Revenue Code are actually spending programs has meant that the basic established congressional review procedures are seldom, if ever, applied to tax expenditure programs.

Normally, when Congress moves by the direct outlay approach, an authorizing committee studies the issue, and recommends a level of funding. Then, the appropriations committee reviews the recommendation and sets a funding level consistent with other goals and needs.

But in tax expenditures, the House Ways and Means Committee and the Senate Finance Committee act as both judge and jury. They authorize a program and appropriate the funds for it in a single step. The disciplines and checks produced by the normal two step authorization appropriation procedure are missing when tax expenditures are enacted.

In addition, under the current Senate rules with respect to jurisdiction of committees, there is little or no coordination between the direct spending programs under the jurisdiction of the authorizing committees and the Appropriations Committee on the one hand, and the tax spending programs under the jurisdiction of the Finance Committee on the other hand. As a result, many Federal spending programs involve serious overlap, duplication, and inconsistencies.

This undesirable state of affairs is a difficult problem for Congress to resolve. But recognition of this fact makes it imperative, as Congress moves step by step to implement effective review procedures, to insure that tax expenditures are subjected to the same controls as direct outlays.

A tax expenditure is nothing more than a permanent appropriation through the Internal Revenue Code.

The similarity is best seen through the earned income credit—the tax subsidy for low-income workers, which gives them a tax credit of 10 percent of their wages. That was a good idea, proposed by the chairman of the Senate Finance Committee.

But many low-income workers are too poor to owe any taxes, which means they do not get the credit.

So, the Finance Committee proposed to make the tax credit refundable, which means that low-income workers will get the credit anyway. Even if they owe no income tax, they will still get the benefit of the credit if they file a pro forma tax return and claim the credit in the form of a tax refund from the Treasury. That is why it is called a "refundable" tax credit.

But the refundable portion of the earned income credit immediately attracted the attention of the Appropriations Committee, because it is so obviously an expenditure of Federal funds. So, after some initial controversy, the Congress under the budget process now calls the refundable portion of the earned income credit an "outlay". That is, it is counted as an outlay of funds on the expenditure side of the budget, rather than as a reduction of revenues on the revenue side of the budget.

The result is that we have a fish and fowl situation on this tax credit. The nonrefundable portion of the credit is treated one way, and the refundable portion is created another way.

Equally important, the Appropriations Committee now has jurisdiction over the refundable portion of the tax credit, which means that the Appropriations Committee will have the opportunity to compare this part of the tax subsidy with other types of Federal spending, and establish a better overall coordination of Federal spending in this respect.

The result is that we have taken a small step forward in coordinating tax spending and direct spending. But the result is to leave a completely illogical split with regard to the budget treatment of the earned income credit. The refundable portion must be coordinated with other Federal spending programs by the Appropriations Committee, while no such coordination is required for the nonrefundable portion, which continues to be under the exclusive jurisdiction of the Finance Committee, even though the nonrefundable part is just as much a spending subsidy as the refundable part. In this case, the Senate has actually called Solomon's bluff, and has actually split the baby.

In my view, the Appropriations Committee ought to have the jurisdiction to consider both parts of the earned income credit. Only in this way can the Senate fulfill its responsibility to exercise real control over all Federal spending.

The same sort of problem exists with respect to overlapping jurisdiction of other committees. As a direct spending program, the earned income credit would be under the jurisdiction of the Human Resources Committee in the Senate, which considers all the other major Federal jobs programs, particularly for low-income groups.

If we are to treat tax expenditures consistently, they ought to be subject not only to the jurisdiction of the Appropriations Committee, but also of the relevant authorizing committee as well. In this way, we could obtain more effective coordination of all the various Federal spending programs.

Now, with the sunset bill, we have the opportunity to take a major step in the right direction. By subjecting tax expenditures to the same sunset rules as direct outlays, we can accomplish the following important goals:

There will be a regular congressional review of tax expenditure programs.

There will be close coordination between the review of tax expenditure programs and the review of direct outlays in the same budget category, since the sunset mechanism will require similar programs to be considered by Congress at the same time.

There will be an opportunity to eliminate outmoded and inefficient tax expenditure programs.

Failure to cover tax expenditures, however, would mean that Congress could keep its favorite spending programs through the back door, simply by having them drafted as tax expenditures, rather than as direct spending programs.

Such efforts would leave gaping holes in the sunset process, through which low priority, unjustifiable and wasteful programs would continue untouched by congressional scrutiny and oversight.

TECHNICAL ASPECTS OF APPLYING SUNSET RULES TO TAX SPENDING

In view of the fact that the basic policies to be achieved by the sunset legislation can be realized only if tax spending is subjected to the same procedures as direct spending, the basic question, therefore, becomes the issue of technical implementation.

The pending amendment adopts the appropriate procedure of instructing the Senate Finance Committee and the House Ways and Means Committee, working with the Joint Committee on Taxation and the Congressional Budget Office, to prepare a schedule in the next Congress for the inclusion of tax spending programs in the sunset procedure applied by the current bill to direct spending programs.

In my view, the same procedures and sanctions that are applied to direct outlay programs in the sunset bill should be applied to tax expenditures. I believe that the "technical problems" raised by some with respect to inclusion of tax expenditures in the sunset process can be easily resolved.

The delayed procedure contemplated by the pending amendment will provide ample time for Congress to decide whether certain tax expenditures should be exempted from the sunset rule—just as a handful of direct spending programs are exempted by the pending legislation. The delay will also provide ample time for Congress to develop whatever transition rules may be desirable with respect to other tax expenditures under the sunset procedure.

In developing the sunset schedule for tax expenditures, Congress should ask two questions with respect to any technical objections that may be raised.

First, is the same technical problem present in dealing with direct outlays? In other words, are there any technical problems present in terminating a tax expenditure program that would not also be present in terminating a direct outlay program, if the tax expenditure were considered as an outlay?

Second, are there any factors unique to tax expenditures that require modification of the sunset principles developed for direct programs?

We should approach any so-called technical problems in applying sunset legislation to tax expenditures with a healthy dose of skepticism. I suspect it will become quickly apparent that virtually all of the "technical" problems involved in terminating tax expenditures are equally applicable to terminating direct expenditure programs.

In an appendix to this statement, I have included a brief summary answering the principal technical objections that are usually raised.

CONCLUSION

With little modification, the sunset procedures adopted in the pending bill for direct expenditures can be applied equally well to tax expenditures. The suggested existence of "technical" problems should not become a smokescreen for continuing the long and unjustifiable immunity of tax expenditures from responsible analysis and oversight in Congress. There is no justification for leaving more than $120 billion of Federal spending—one-fourth of the total Federal budget—outside the control of Congress.

Such a large scale abdication of our responsibility cannot be defended. We now have the chance—through the sunset concept—to provide effective oversight and control over every program in the Federal budget. That oversight and control must also be exercised over each tax expenditure program, if the sunset approach is to be capable of fulfilling its great promise.

Mr. President, I ask unanimous consent that two appendixes to my comments may be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

APPENDIX I: DEVELOPMENT OF THE TAX EXPENDITURE CONCEPT

In the 1960's, work in the Treasury Department demonstrated that the federal tax system is comprised of two separate and quite distinct components.

One component—which is the structure most people have in mind when they think of the tax system—consists of the rules necessary to raise and collect taxes. These rules set forth the standards for defining net income, the rates of tax, the annual time periods within which taxes must be paid, the person and groups required to pay the tax, and the administrative provisions necessary to implement and collect the taxes. These are the basic provisions necessary to establish and maintain any type of income tax system—the so-called "normal" or "structural" part of the system.

But there are vast numbers of other provisions in the Internal Revenue Code that do not play any part in defining this "normal" income tax structure. In contrast, these other provisions are measures added by Congress to the Internal Revenue Code to achieve non-tax goals of the federal government.

These goals are numerous and of obvious concern to government. They include better health care, stimulation of investments in machinery and equipment, encouragement of gifts to charitable organizations, incentives for home ownership, inducements to drill for oil and other natural resources, and many other worthwhile objectives. But these goals are not tax goals of the federal government. They are spending goals, and the funds involved are federal subsidies as surely as any direct outlay program involves a federal subsidy.

Accordingly, in the annual report of the Secretary of the Treasury in late 1968, these non-tax subsidy provisions contained in the Internal Revenue Code were finally identified and quantified by Secretary of the Treasury Joseph Barr, who presented the first tax expenditure budget of the federal government.

In that budget, the numerous spending provisions in the Internal Revenue Code were treated as the equivalent of direct outlay programs. In other words, these special provisions were viewed as a mechanism by which Congress collects, authorizes and appropriates funds for the objectives set forth in the various provisions. Viewed in this way, each tax spending program could be identified and assigned to the same budget category containing the related direct outlay programs in the regular budget.

In each subsequent year since 1968, a tax expenditure budget has been prepared by the staff of the Joint Committee on Taxation, working with the Treasury Department and, in recent years, with the Congressional Budget Office.

The identification of these tax provisions as the equivalent of direct outlay programs has proved to be a crucial turning point in our understanding of the total budget picture and the universe of Federal spending programs. As the tax expenditure budget makes clear, when Congress decides to provide financial incentives or support for a

particular goal, it always has a choice between two methods:

It can provide the needed financial aid through direct outlays, using the traditional authorization and appropriations process.

Or, it can use the tax expenditure route, in which the authorization and appropriations processes are telescoped into a single action within the House Ways and Means Committee and the Senate Finance Committee. In many respects, tax expenditures are analogous to permanent appropriations or entitlement programs, which are especially troublesome aspects of the budget because they too short-circuit the crucial two-step authorization-appropriation process.

The basic understanding that tax expenditure programs can be structured and analyzed in the same manner as direct expenditure programs carries with it important implications for the budget process. For example, the tax expenditure budget makes clear that if Congress does not exercise the same oversight over tax expenditures as it exercises over direct outlays, the budget process is simply out of control. Accordingly, the Budget Reform Act of 1974 required the President to submit a tax expenditure budget along with a direct outlay budget for each fiscal year. In addition, procedures were set forth in the Budget Reform Act to insure that Congress would exercise its oversight responsibility over tax expenditures in a manner similar to its responsibility over direct outlays.

APPENDIX II: SUNSET LEGISLATION AND TAX EXPENDITURES—TECHNICAL IMPLEMENTATION

One or another of the following seven categories of "technical objections" are occasionally suggested by those who question the application of the sunset concept to tax spending programs. The ease with which each of these objectives is answered serves, however, to strengthen the case for the full inclusion of tax expenditures in the sunset review procedure.

1. Defining Tax Expenditures:

The suggestion is sometimes made that there are difficulties in defining tax expenditures in some cases. But, the examples usually given do not suggest that the problems are significant. The concept of tax expenditures is well developed, and the Treasury, the Joint Tax Committee, and the Congressional Budget Office have reached broad agreement on more than eighty specific items now identified as tax expenditures. Any questions raised over the absence of certain items, such as particular fringe benefits not currently taxed, should not impair the application of the sunset procedures to commonly accepted tax expenditures.

2. Method of Terminating Tax Expenditure Programs:

Some have suggested that there may be difficulties in terminating certain tax expenditure programs. Again, this "problem" seems capable of easy resolution.

Terminating tax expenditure programs does not involve problems that are any more difficult to resolve than the problems involved in terminating direct outlay programs. The technique is, however, somewhat different from the technique of enacting direct outlays through the authorization-appropriation process.

To deal with this concern, the termination schedule could require that, six months before the termination date for a particular tax expenditure program, the Joint Tax Committee should submit a report listing the changes in the Internal Revenue Code (or Treasury Department rulings and regulations) that are required in order to terminate the program.

As the Treasury stated in testifying on this legislation in 1977, tax expenditures do "lend themselves to automatic expiration," just as do conventional budget outlays, and the Senate should not hesitate to apply the termination procedure evenhandedly to both types of federal spending.

3. Scope of Tax Expenditure Programs:

It has also been suggested that the broad scope of some tax expenditure programs makes it difficult to apply the sunset concept. An example sometimes given is capital gains. But it is a curious example to select. The tax expenditure budget already divides the total capital gains tax expenditure into several different categories, including capital gains for timber, capital gains for coal and iron ore, capital gains for corporations, capital gains for individuals, and capital gains on property transferred at death. Perhaps further refinements in categories might be desirable. But it is obvious that Congress can divide broad tax expenditures into workable program categories that correspond to direct outlay programs.

The same process currently operates in other expenditure programs. For example, accelerated depreciation in the tax expenditure budget is shown in separate components for programs for rental housing, other buildings, machinery and equipment, corporations, and individuals. Thus the "scope" objection is a matter that is easily resolved.

4. Interrelationship Aspects:

Another objection sometimes raised is that the interrelationship among tax expenditure programs is unique to tax expenditures. As reports by the Congressional Budget Office have pointed out, however, these same interrelationships exist in direct spending programs. That is, if some direct expenditure programs are terminated, there will be a shift to other direct expenditure programs.

Moreover, if Congress terminates some direct expenditure programs, it may well choose to substitute new or improved programs in place of the discarded programs. For example, if the existing welfare programs were to terminate under the sunset legislation, it is obvious that Congress would want to substitute another program in place of the present system. The same is obviously true of tax expenditures. In this regard, terminating tax expenditure programs is no different from terminating direct expenditure programs.

5. Transition Rules:

Yet another question is whether the transition problems may be different for tax expenditure programs than for direct expenditure programs. Again, such problems do not seem to present serious difficulties. Capital recovery programs such as accelerated depreciation—an example sometimes cited—are simply interest free loans provided by the government to business. The transition problems of terminating this loan program are no different from the transition problems of terminating direct loan programs that the government provides, for example, to farmers and small business. The transition techniques developed for terminating those direct programs are equally applicable to the transition techniques needed to terminate programs under the tax system.

6. Relation to Tax Reform:

It has been suggested that automatic termination dates might interfere with the tax reform process. But nothing in the sunset legislation prevents the Treasury and Congress from moving faster than the schedule prescribed in the sunset bill. One might as easily argue that the sunset bill will impede welfare reform legislation or national health insurance. But obviously, the sunset temination of federal welfare programs a few years in the future does not prevent Congress and HEW from moving ahead on welfare reform as quickly as possible now.

7. Estimating Tax Expenditures:

On occasion, it is asserted that it is difficult to estimate tax expenditures. While this may be so, it is important to understand that the difficulties are hardly different from those encountered in advance estimates of any tax reduction or tax increase provision and also of direct outlays. Supplemental appropriations bills are often required when actual outlays exceed estimates. We are also familiar with the fact that in recent fiscal years, outlays in key areas have fallen well short of estimates, with resulting shortfalls of tens of billions of dollars. Budgets are estimates, and the problems of estimating a tax expenditure budget are not significantly different from those involved in formulating a direct outlay budget. Finally, to say that tax expenditures cannot be estimated reliably is to say that we have no reliable revenue because the same people estimate all revenue effects—whether tax expenditures are involved or not—of a tax measure and they use the same estimating techniques.

Mr. KENNEDY. It seems to me that this amendment is an extremely compelling raltionalization of the budget process. It is a legitimate continuation of an effort that was begun in the Budget Committee reaffirmed in the 1975 Budget Resolution, which for the first time added a tax expenditure item to the budget resolution. The Senator from Maine and the Senator from Ohio have been actively working on this idea, and it is very well expressed in today's Washington Post article by the Senator from Ohio.

The budget process can be an extraordinarily important effort to permit Members of the Senate to exercise real responsibility over all Federal spending, and begin to establish some standards from which we can make better judgments on appropriations and expenditures. Too often, the only standard today is, who has the 51 votes to pass a new tax subsidy or direct subsidy?

Mr. MUSKIE. Will the Senator yield for a question?

Mr. KENNEDY. Yes.

Mr. MUSKIE. The Senate Committee on the Budget has produced this document on tax expenditures. In the back of it there is an interesting series of essays on the mix of direct expenditures and tax expenditures that are used to promote various public policies.

For example, there is one on export promotion; there is one on energy supply development; there is one on pollution control; there is one on agriculture. In an amazingly large number of Government functions, we undertake to advance some of the policies, as the Senator from Massachusetts has said, by using both devices. But at no place—at no place—do we consider the mix to see whether, in toto, we are devoting the proper share of national resources to those programs, whether we have the right mix, whether we are using direct expenditures when we ought to be using tax expenditures, or using tax expenditures when we should be using the direct expenditures.

This is the first attempt I have seen to present without argument—there is no argument one way or another—just to present the nature of this problem that the Senator from Massachusetts is speaking of.

Mr. STEVENS. Will the Senator yield without losing his right to the floor?

Mr. KENNEDY. May I just make a brief comment, then I shall yield?

I think this is an extremely commendable report. It is completely consistent

with the thrust of the Senator's amendment and the Glenn amendment. It is an extremely valuable report and I join in commending it to the Members of the Senate.

Just a final point. I ask both the Senator from Maine and the Senator from Ohio if they will agree: it is obvious to me, as one who has tried to follow the various tax programs in the past few years in the Senate, that there is a different climate in the Senate on tax spending as opposed to direct spending. I do not know whether the Senators will agree with me or not, but there seems to be a different climate for spending through the tax laws than there is for spending through appropriations. Some Senators show that they are extremely reluctant to increase appropriations, but they are more than willing to empty the Treasury in terms of tax subsidies.

Mr. MAGNUSON. That is because that is the easier way to do it.

Mr. KENNEDY. The Senator from Washington has, again, put his finger on the answer.

Mr. MAGNUSON. May I ask one question?

Mr. MUSKIE. I yield to the Senator from Washington without losing the floor.

Mr. MAGNUSON. In between, there is another chart: with this constant passing of legislation making appropriations mandatory, the uncontrollables are now taking over any discretion that we might have in expenditures. We just meet down there and we have to do this. So we have another villain in the piece, between both these things.

Mr. MUSKIE. That is right.

Mr. MAGNUSON. I think this is a great discussion to try to put this interreaction between those two and the third one.

Revenue sharing is the best example I know of that.

Mr. MUSKIE. That is right. We have uncontrollables on the revenue side——

Mr. MAGNUSON. On both sides.

Mr. MUSKIE. And uncontrollables on the spending side.

Mr. MAGNUSON. It is easy to say, "Oh, we will give you a tax cut; we do not know what it is going to cost, but it is not going to be added to the budget; therefore, it is not going to be listed as an expenditure." But when you turn it around, as the Senator from Massachusetts suggested, it becomes one and it is a drain on the taxpayers and the so-called Federal budget.

Any move that we can make to get this started, I assure the Senators, will be greatly welcomed by the chairman of the Committee on Appropriations.

Mr. MUSKIE. I thank the chairman of the Committee on Appropriations.

Mr. STEVENS. Will the Senator yield?

Mr. KENNEDY. I want to thank the Senator from Maine and the Senator from Ohio and indicate that I certainly hope the Senate will accept their amendment.

Mr. MUSKIE. Mr. President, I ask unanimous consent at this point to yield, without losing the floor, to the distinguished Senator from Ohio, who has not had an opportunity to make his own case.

Mr. STEVENS. I object.

Mr. MUSKIE. Mr. President, I have been yielding to Members on the Senator's side for this purpose. Apparently, the Senator from Alaska has been willing to grant that courtesy to Members on his side, but not to Members on this side. I have yielded to at least four Senators on the Senator from Alaska's side.

Mr. STEVENS. I do not see how any Member can appoint himself to the Rules Committee for the Senate. If the Senator wishes to engage in a dialog, that is fine. I have some comments to make about this and I just do not see that the Senator from Maine ought to be in the position of controlling the floor for the whole day.

Mr. MUSKIE. In other words, the Senator from Alaska would prefer to have me talk without debate? We have had a good debate this morning. The Senator has not been on the floor most of the time.

Mr. STEVENS. The Senator has been on the floor since 8:30 this morning, with one exception.

Mr. MUSKIE. I still have the floor, in part, because I have been doing this, granting time, asking consent. The reason I do not want to yield the floor is very simple: I do not want a premature or an inopportune motion to table made, by someone else getting the floor. The Senator is not unaware of that kind of protection, I am sure. He has been around a while.

But I have not used my right to the floor to stop debate. I have used it to encourage debate, something I should think the Senator ought to be interested in. But, if the Senator prefers that I do all the talking all day, I am prepared to do that. I am asking at this point that the offeror of the pending amendment be given the right to discuss that amendment without losing my right to the floor; and he objects.

Mr. STEVENS. Reserving the right to object, and I shall object unless people who oppose the Senator's position are heard at the same time, could the Senator tell me when those of us who disagree with the Senator will have an opportunity to challenge some of the statements that are being made?

Mr. MUSKIE. Of course.

Mr. STEVENS. When?

Mr. MUSKIE. Some of them have done so, already. Senator CURTIS has asked questions. Senator LONG was on the floor making observations during his colloquy with Senator ROTH.

Mr. CURTIS. I am not opposed to sunset.

Mr. MUSKIE. We do not want control on debate, I assure the Senator. We want to vote. We can agree on a time to vote before noon if that is what the Senator wants. But it appears that there will be ample opportunity to talk because the opposition to this amendment will not let us vote.

Mr. STEVENS. Reserving the right to object again, I am a cosponsor of the sunset amendment. I am opposed to the Glenn amendment, and I do not know whether we are going to get a chance to talk. I do not want to see them come in with these charts and a whole new concept of the jargon and misleading the public to think that those are expenditures. This is a whole new vocabulary that is being used in the Senate that I disagree with.

Mr. MUSKIE. May I ask unanimous consent that I may yield to the Senator from Alaska without losing my right to the floor so he may make these comments?

The PRESIDING OFFICER. Without objection——

Mr. STEVENS. I object again. I am not seeking the floor now. I want to know when the Senator is going to allow me to do that.

Mr. MUSKIE. The Senator objected to my yielding to him?

Mr. STEVENS. I wanted to ask a question. I do not seek to interfere with the speech of the Senator from Ohio.

The PRESIDING OFFICER. Does the Senator from Maine yield for a question?

Mr. MUSKIE. I do not yield for a question, since I have not been given the courtesy that I have seen the Senator grant to others. I have not had this courtesy. I have had the floor since 10 minutes to 10; an hour and 10 minutes. Most of that time has been used by other Senators. But, still the Senator objects, and says that I have had the floor too long without an opportunity for others to speak. What kind of even-handed evaluation of floor proceedings is that, Mr. President?

I have other speeches. I shall continue, and I shall make my speech. If that is the attitude on which discussion is going to be pitched today by the distinguished minority whip, we are going to have a long day.

Mr. President, obviously, the Senator is not going to consent. He wants me to do all the talking. He likes the sound of my mellifluous voice.

Mr. STEVENS. Again I ask the Senator if he wants to yield for a question.

Mr. MUSKIE. I am not interested in yielding for questions. I am interested in yielding for a meaningful discussion and debate. That is what I have done all morning.

The PRESIDING OFFICER. There is no pending request. The Senator from Maine has the floor.

Mr. MUSKIE. Mr. President, I strongly support the amendment offered by Senator GLENN to provide the mechanism to subject tax expenditures to sunset. The positive effects of sunset on spending programs should apply equally to tax expenditures—a phrase, apparently, that the Senator from Alaska finds unpalatable.

There is widespread agreement that tax expenditures are the functional equivalents of entitlement programs. Both result in benefits provided by the Federal Government to all qualifying persons; and both result in increased Federal deficits. Tax expenditures simply reduce the revenues the Government otherwise would collect, while entitlements result in increased outlays.

Tax expenditures and direct spending programs often have similar or related goals. Since sunset will facilitate retention only of those Federal programs efficiently and effectively accomplishing national policy goals, sunset should apply equally to tax expenditure and direct spending programs.

For example, if the Congress reviews Federal programs implementing national export policies, it is just as important to consider the DISC export tax incentive as it is to review the Export-Import Bank lending programs.

Indeed, without consideration of the DISC provision, the review of export policies would be incomplete.

The Senate Budget Committee has just published a document—a yellow-covered document to which I have just referred—a 358-page staff study that analyzes 84 different tax expenditure provisions and then relates tax expenditures and spending programs in 17 major policy areas, including export promotion, employment growth, housing, higher education and energy.

In many of the 17 areas, tax expenditures constitute a significant component of overall Federal effort. The study makes an impressive case for the need for Congress to consider tax and spending programs together when legislating in areas affected by both types of programs. However, unless tax expenditures are included, the review and reauthorization procedures established under sunset will not reach the full panoply of Federal programs in these areas.

The comparability of tax expenditures and spending programs in the context of sunset is clearest in the case of a "refundable tax credit." This is a credit that qualifying persons may receive whether or not they have any tax liability.

And the opponents of this measure argue that refundable tax credits are different than spending? That, we know, is to play games with the intelligence of the American people.

Refundable tax credits are credits paid out by Government—checks to people who have no tax liability. And, it is argued by the floor manager and by the distinguished Republican minority member of the Finance Committee that such provisions ought not be treated the same as direct spending programs which result in checks to the taxpayer.

Refundable tax credits are the same thing, and I will be interested to hear how they are different, at the appropriate time.

Mr. LONG. Would the Senator like to hear about it now?

Mr. MUSKIE. I will not yield now. I was prepared to yield, and would have been glad to yield now, if I had been given the courtesy. But the distinguished minority whip has denied me that, so I will continue with my remarks.

Mr. LONG. I am not complaining.

Mr. MUSKIE. I cannot yield for that purpose.

Mr. STEVENS. Will the Senator yield for a question?

Mr. MUSKIE. The Senator refused to let me yield——

Mr. STEVENS. Will the Senator yield for a question?

Mr. MUSKIE. Yes.

Mr. STEVENS. I thank the Senator.

Will the Senator tell me how long this is to go on?

Mr. MUSKIE. How long——

Mr. STEVENS. How long is the Senator going to continue?

Mr. MUSKIE. I have used about 15 minutes.

Mr. STEVENS. It is just a simple question. How long is the Senator going to yield time to those he wants to yield time to?

Mr. MUSKIE. This is the first time I can recall Senators trying to control the right of a Senator who has the floor to yield——

Mr. STEVENS. Mr. President, I cannot remember in 10 years any Senator might, himself, yield 10 minutes to a Senator and 10 minutes to a Senator——

Mr. MUSKIE. Mr. President, who has the floor?

The PRESIDING OFFICER (Mr. FORD). The Senator from Maine has the floor.

Mr. STEVENS. How long does the Senator intend to continue?

Mr. MUSKIE. Mr. President, I ask unanimous consent I may yield to the Senator so he may make his argument without losing my right to the floor.

The PRESIDING OFFICER. Is there——

Mr. STEVENS. I do not seek the floor now. I just want to know how we can discuss——

Mr. MUSKIE. Who has the floor?

The PRESIDING OFFICER. The Senator from Maine has the floor.

The Senator may proceed.

Mr. MUSKIE. The Senator wants to be intransigent—I will have to continue to be intransigent.

The Congress treats payments of credits which reduce tax liability as a revenue reduction, that is, as tax expenditures.

I will interrupt one more time for this observation. I take it that those who oppose the Glenn amendment are determined that we shall not have a vote on the Glenn amendment.

It is on that assumption that I am going to do my best to make sure that the tax expenditure amendment of Senator GLENN gets its hearing.

I have heard it and read it in the RECORD, the distortions that were made by the opponents of the Glenn amendment on Saturday afternoon, I think it was a week ago, and on another afternoon this week.

They have made their distortions and there has not yet been made an adequate defense against those distortions.

I am willing to do this, to make sure that defense is made possible, because the opposition. and I assume that includes the distinguished minority whip, are determined we should not have a chance to vote on the Glenn amendment. I am going to try to cooperate with Senator GLENN to make sure the statement on the Glenn amendment is accurately made and sufficiently made, so that if and when we are ridden off the floor in some fashion, the country will know what it is we were trying to do.

I have seen all this support on that side for tax cuts. I challenge you to respond by accommodating the Tax Code as well as the appropriations side of the budget to the deficits that can be risked by indiscriminately large tax cuts, and I urge that upon those who voted for the Kemp-Roth amendment yesterday and the astronomical tax cuts that would project over the next 3 years.

They ought to be as interested in cutting spending and reducing wasteful tax expenditures as anybody on the floor. But no, they who voted for Kemp-Roth are in the ranks of those who do not want to vote on tax expenditures—why? If they were so sure of the merits of their argument, if they were so sure that the Glenn amendment is wrong, why are they not willing to test the Glenn amendment by voting on it after sufficient debate? If we can get agreement on a time for a vote on the Glenn amendment, I would be willing to give them three-quarters of whatever time is made available to debate it. I would be content with one quarter, just enough to make the case and to answer the distortions that have been put in the RECORD over the last week and a half.

But, short of that, I am going to do what I can to protect my parliamentary rights and the rights of the proponent of the Glenn amendment (Mr. GLENN).

Mr. President, returning to my prepared remarks, credit payments in excess of the recipients' liabilities—we are talking about refundable tax credits—are treated as budget authority and outlays in the same way as are direct expenditures.

Thus, as spending, the latter payments would be subject to sunset. However, the payments reducing tax liability, which provide identical benefits, would not be subject to sunset under the reported bill because they would be tax expenditures. This makes no sense whatsoever.

In other words, we pass a tax reduction. We make it available to those with tax liability by making a credit against tax liability. But for those who do not have tax liability, we extend the same benefit in the form of refundable credits.

Now, the refundable credits would be subject to sunset, but not the tax liability, not the tax expenditure which has the same effect for those with the tax liability.

In other words, it hits at the poor and not at the affluent. That is the whole argument which Senator LONG and his colleagues on the Finance Committee, who oppose this amendment, are making.

This year Congress has been debating whether to provide college tuition assistance to middle-income families in the form of either a tuition tax credit or additional direct grants and student loans. These programs are viewed generally as alternative means of meetng the same goal. Nevertheless, under S. 2 as reported a tuition credit program would not be subject to sunset because it is a tax expenditure. But the direct spending tuition assistance alternatives would be subject to sunset. This makes no sense either.

The magnitude of all tax expenditures is very substantial when compared

to Federal spending. The estimated revenue losses associated with the 84 provisions listed in the tax expenditure budget total $136 billion for fiscal year 1979. This is the equivalent of 28 percent of the direct spending total for fiscal year 1979 of almost $490 billion.

Therefore, exclusion of tax expenditures would omit a significant segment of budgetary costs from the scope of the sunset legislation. This omission will become more and more glaring in the future since Congress is now developing more and more major tax expenditures—for example, tuition tax credits, targeted jobs tax credits, and home insulation and other energy conservation tax credits, to name just a few of the major new and expanded tax expenditures currently being considered in Congress.

The usefulness of periodic review of tax expenditures implicitly has been increasingly recognized by Congress, since significant numbers of recently enacted tax expenditures have expiration dates. This is true, for example, for the "new jobs" tax credit enacted last year through 1987, for the ESOP credit enacted in 1976 through 1980, for the exclusion from an employee's income for prepaid legal fees paid by his employer which was enacted in 1976 through 1981, and for tax incentives to preserve historic structures which were enacted in 1976 through mid-1981.

However, almost all tax expenditures enacted prior to 1970 are permanent programs. Therefore, it is particularly important that these indefinite programs be subject to periodic review and reauthorization requirements.

The Glenn amendment provides a format and a schedule to extend sunset to tax expenditures. Specifically, the Glenn amendment would defer the actual extension of sunset to tax expenditures until the enactment of additional legislation in the next Congress that would list all tax expenditures subject to sunset and would provide reauthorization dates for all of these provisions.

Let me repeat that observation, Mr. President, because I have heard and I have read Senator LONG and Senator CURTIS describe the Glenn amendment as an automatic tax increase. Whether or not it is accurate to describe it as a tax increase, which I challenge, there is nothing automatic about it. They know it. And they refuse to recognize the reality of the Glenn amendment. They prefer to distort it to make their argument against it, rather than read it for what it is.

Let me read again: Specifically, the Glenn amendment would defer the actual extension of sunset to tax expenditures until the enactment of additional legislation in the next Congress that would list all tax expenditures subject to sunset and would provide reauthorization dates for all these provisions.

I know that they know what this amendment actually says, because I have seen the chairman of the Finance Committee reading the Glenn amendment from cover to cover.

Thus, the Glenn amendment will provide Congress additional time to resolve any definitional differences concerning which tax provisions constitute tax expenditures, and time to resolve any technical issues that could arise with respect to the inclusion of tax expenditures under sunset. The Glenn amendment appropriately provides the tax writing committees major roles in determining which tax provisions should be subject to sunset and in resolving any technical issues surrounding sunset for tax expenditures.

Opponents of extending sunset to tax expenditures make two basic arguments: First, that it would increase business uncertainty, and, therefore, impede investment; and, second, that it would result in indirect tax increases. Neither of these assertions can withstand careful analysis.

So many major political changes, economic changes, as well as tax and nontax law changes affecting investment have occurred in recent years that, as a practical matter, a relatively constant set of investment factors no longer can be assumed by businessmen and investors. Moreover, the overall strength of the economy and anticipated sales projections are the principal determination of investment decisions, rather than tax considerations. Given these factors, it is unrealistic to believe that enactment of sunset for tax expenditures would have any substantial impact on investment decisions.

Moreover, as I have noted previously, an increasing number of tax expenditures—many of which are investment related—have been enacted by Congress in recent years for limited periods of time. With respect to these tax expenditures, sunset simply would regularize the review and periodic reassessment process they already must undergo.

Furthermore, despite these considerations, if it were still determined to continue certain major tax expenditures indefinitely in order to maximize "business certainty," the Glenn amendment would allow exceptions from the sunset reauthorization rules for such provisions comparable to exceptions in the basic sunset bill for spending programs. The tax exceptions would be developed in the legislation that must be enacted in the next congressional session to make sunset effective for tax expenditures. Thus, the Glenn amendment by itself cannot possibly result in increased business uncertainty.

Recent congressional experience strongly contradicts the validity of the other specter raised by sunset opponents that sunset would be used to raise taxes without requiring Congress to vote affirmatively for these increases. A general tax expenditure sunset mechanism would be no different, in principle, from the recent congressional practice I mentioned previously of enacting individual tax expenditures for limited periods of time. The mechanism also is no different from the enactment in recent years of a number of significant temporary general tax reductions. In all these cases, taxes would rise if the reductions were not extended at the time they were about to terminate. And in all these cases, taxes theoretically would rise without Members of Congress being required to vote for a tax increase. However, in fact, no such increases have resulted under present law.

As a practical matter, a sunset process for tax expenditures would be unlikely to raise taxes on an overall basis. If Congress decided to terminate one or more tax expenditures as a result of the sunset process, it could very well offset any additional tax receipts with equivalent reductions in the general tax rate structure which would benefit all taxpayers.

In summary, I urge the Senate to adopt the Glenn amendment as a significant first step toward integrating tax expenditures into the sunset process. Only if tax expenditures are included under sunset will the full panoply of Federal programs be subject to systematic review and reauthorization requirements.

Mr. President, originally, I had planned at this point to yield to the distinguished Senator from Ohio, so that he could make his case for his amendment; but, given the fact that I will not be permitted to do so at this point, I will continue with other remarks that may or may not be relevant. So, if I may extend my discussion of the Glenn amendment, I would like to summarize the Glenn amendment as a mechanism for subjecting tax expenditures to sunset.

Mr. President, may I put a question to the distinguished minority whip without losing my right to the floor?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HANSEN. Mr. President, reserving the right to object, and I do not mean to be contentious, but the question was raised earlier as to brokering time. I am always interested in what my distinguished friend, the Senator from Maine, has to say. I ask whether he might be able to give us some indication as to how long he would——

Mr. MUSKIE. That is the purpose of my inquiry.

Mr. HANSEN. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator may ask his question.

Mr. MUSKIE. Do I correctly understand, I ask the distinguished minority whip, that if I am prepared to yield to the distinguished Senator from Ohio without asking to retain my right tc the floor, the Senator would have no objection to my yielding to the Senator from Ohio so that he may present his case?

Mr. STEVENS. That is correct, Mr. President. We have an objection here as to time agreement, and the Senator was asking for time agreements, in effect, and that is the basis for my objection.

We think that in time the yielding will include those who will be opponents, and I understand the problem about the tabling motion, but we do believe there should be no time agreements at this time.

Mr. MUSKIE. May I say to the distinguished minority whip as soon as Senator GLENN arrives in the Chamber, I will yield the floor to him and when he

has finished his statement I hope there is general debate on both sides of the issue.

I understand the Senator has been serving his responsibilities as he is required to do so, and I apologize if I have indicated otherwise.

Mr. STEVENS. No apology is required.

Mr. HANSEN. Mr. President, may I ask a further question of the distinguished Senator from Maine?

Mr. MUSKIE. Yes.

Mr. HANSEN. What is the intention? Is the Senator from Ohio to follow the Senator from Maine? Who is to follow?

Mr. MUSKIE. Senator GLENN, who is the author of the pending amendment and has not had a chance.

Mr. HANSEN. Is it his intention to hold the floor also and yield only to those whom he chooses?

Mr. MUSKIE. Let me yield to him and let him answer the Senator's question.

The PRESIDING OFFICER. The Chair will say to the Senator from Maine that he has a unanimous consent agreement that he must yield the floor, and then the Chair will use the prerogative of recognition.

Mr. GLENN. Mr. President, I seek recognition, then, on that basis.

The PRESIDING OFFICER. The Senator from Ohio has the floor in his own right.

Mr. GLENN. I thank the Chair.

Any amendment would extend the sunset review procedure, which the reported bill would apply to most Government authorizations, to cover most Federal tax incentive provisions as well. As with Government grants, loans, and other authorizations, we believe that adequate control of the budgetary consequences of tax incentive provisions can be attained only through a requirement of periodic reauthorization of those provisions. The administration agrees with this assessment and strongly supports the amendment. We believe this amendment is crucial to the attainment of the President's and the Congress budget balancing objectives

In recent years revenue losses from tax incentive provisions have been the fastest growing portion of the Federal budget. In fiscal year 1978, the revenue losses associated with these provisions are estimated at over $124 billion, compared with a revenue loss of $52 billion in fiscal year 1971. According to the Congressional Budget Office, these losses are expected to rise to $187 billion by fiscal year 1983. This growth stems in part from the fact that tax incentives—unlike most authorizations—are often enacted in perpetuity and are not required to run the gauntlet of periodic reauthorization and the annual appropriations process. It is thus in the tax incentive area that sunset review may be most needed.

Our amendment would not terminate the operation of any tax incentive provision. It would simply endorse a concept, leaving the enactment of detailed provisions for the next Congress. Specifically, it would require the tax writing committees to report and the Congress to enact by the end of 1980 a sunset review and reauthorization schedule for tax incentive provisions similar to the schedule for authorized programs contained in the reported bill. Tax specialists both inside and outside the Treasury Department have testified that the eighty-odd provisions in question can be cataloged and included in such a schedule and that the 2-year time period provided is a workable one. The adoption of our amendment would merely start this process rolling.

The proposal to extend sunset to the tax incentive area has been debated extensively by the committees which have considered it during the past two Congresses. Since consideration in committee, the proposal has been modified in two important respects. Unlike the original proposal, which would have subjected all tax incentive provisions to the sunset process, our revised amendment would permit the tax writing committees and the Congress to exempt tax incentives to which they believe the process is ill suited. Second, the committees and the Congress would be authorized expressly to enact transition rules to protect those who rely on tax incentive provisions which the Congress determines should not be reauthorized. It is our hope that these modifications will help to establish some consensus on a matter of substantial importance to all of us.

During last Saturday's session, remarks were made on the Senate floor which can only be said to misrepresent both the provisions and intent of this tax incentive amendment. It was asserted that this was "an enormous tax increase for the American people by a back-door approach." Absolutely not true. That charge is made repeatedly in the remarks and shows a disregard of both the language and intent of the amendment.

It was also alleged that we were in a situation "where the appropriate legislative committee has not been offered the opportunity to conduct hearings or study" the proposal. Absolutely not true. Hearing records substantiate that, despite our efforts since March of 1977, the Senate Finance Committee has chosen not to consider this proposal which was referred to it on the first day of this Congress.

With that kind of misrepresentation occurring on the Senate floor which could mislead some Senators, clarification is in order. The amendment does not terminate or modify in any way any tax incentive provision. It merely requires the tax writing committees to report and the Congress to enact, in the next session a procedure for orderly review and reauthorization of all tax incentives, a procedure to be in place by the end of 1980, with the reauthorization process stretching out over a 10-year period. At the present time there is no such regular review process, and during the last few years the Federal revenue foregone as a result of tax incentives has risen from $52 billion in 1971 to $124 billion this year, and is estimated to be $187 billion by 1983. We must keep watch on this fastest growing part of our Federal deficit, one which receives little or no scrutiny compared to direct Federal expenditures which periodically must go through an authorization and appropriations process.

I want to stress a most important factor. The review is neutral. The tax writing committees, in reviewing tax incentives, may find particular incentives working so well that they should be increased, and would so recommend. In other cases, the incentives would not be changed. In still other cases where the incentive provisions are not doing the job for which they were originally intended, and are siphoning off what would otherwise be tax revenue, the committees could and should recommend termination—"sunsetting" of such incentives. In that case, I would hope and expect that as revenue once forgone became available to the Federal Treasury, a reduction in tax rates for individuals and corporations alike would result. Thus, far from prompting a tax increase, the amendment is designed to produce a tax cut for the average American taxpayer.

The review and reauthorization procedure embraced by the amendment is not an unusual one. Significant numbers of recently enacted tax expenditures have been given expiration dates. For example, the "new jobs" tax credit was enacted last year through 1978. The ESOP tax credit was enacted in 1976 through 1980. The exclusion from an employee's income for prepaid fees paid by his employer was enacted in 1976 through 1981. And I could list many more comparable temporary provisions. This proposal would simply extend the practice of imposing time limitations on tax expenditures to a larger number of these provisions.

I would like to address some other concerns previously raised regarding this amendment.

Concern: Creates too much uncertainty for business.

Answer: The amendment now provides for the "grandfathering" of existing contractual or business relationships established in reliance on a particular incentive. I, too, am concerned that we not take precipitous action that could in some instances wreck a business that made long-term commitments which were prompted by the tax law. Under this amendment, we would not.

Concern: Requires the termination of major tax incentives that underlie vital facets of the American economy.

Answer: Although opponents cite as imminent the termination of the charitable contribution deduction, homeownership tax preference, the tax exemption for interest paid on State and local indebtedness and other tax incentives generally agreed to be desirable, this allegation is simply unfounded. The amendment specifically provides for excluding those tax incentives from sunset that the tax-writing committees and Congress determine should not be subject to periodic reauthorization requirements. Providing exclusions from such requirements for a limited number of tax incentives would be comparable to the exclusion from reauthorization requirements now provided in the principal sunset bill for a limited number of spending programs. If tax incentives such as those just mentioned are made subject to reauthorization requirements it will only be because the tax-writing commit-

tees and Congress as a whole determine that those provisions should be required to undergo periodic reauthorization. Nothing in the amendment requires that those sepcific provisions be reauthorized.

Concern: Provides for a review period which is too short and will exhaust our tax-writing committees.

Answer: The original sunset bill had a 5-year review cycle, which would have created a considerable workload. That has now been lengthened to 10 years, and this amendment would be similarly stretched out. Surely the more than 80 major tax expenditures can be considered and reevaluated over a 10-year period. If not, we are in more serious trouble with running our Federal Government than the sunset bill and this amendment are going to cure.

Concern: Creates a concept of tax expenditures which treats all sources of income as "Federal property," only some of which we decide to give back to the people.

Answer: Some columnists somehow put that interpretation on the term "tax expenditures" when it first came into common usage. Yet the amendment does not embrace that interpretation. It has the goal simply of establishing control of Federal tax and budgetary policy, not of developing some new and perverted economic theory.

I hope this statement will clarify some of the deliberate misrepresentations made concerning this amendment and that my colleagues will support this necessary approach to getting control of our Federal budgetary processes.

Mr. President, the following table should be of interest to my colleagues. It is from the Senate Finance Committee report accompanying the tax bill, H.R. 13511.

It spells out the existing tax expenditures which are modified or extended by the bill and new tax expenditures created by the bill, including 5-year revenue loss projections which will be added to those already in effect.

TABLE 3.—EFFECT OF H.R. 13511 ON THE LEVEL OF TAX EXPENDITURES

[In millions of dollars]

Provision	Fiscal year— 1979	1980	1981	1982	1983
Repeal of gas tax deduction	−409	−1,040	−1,102	−1,158	−1,238
Increase credit for political contributions	(1)	16	26	16	16
Earned income credit	23	294	194	178	161
Credit for the elderly	104	278	279	278	178
Amortization of low income housing	(1)	(1)	11	19	24
Deferred compensation plans	(1)	(1)	(1)	(1)	(1)
Exemption for the disabled	121	248	379	519	546
IRA pension plans	6	18	29	39	49
Contributions to other pension plans	144	352	425	487	536
Employer educational assistance	8	28	31	35	39
Corporate rates on first $100,000 of income	634	1,469	1,608	1,762	1,929
Changes in the investment tax credit:					
10 percent rate made permanent	(1)	(1)	2,071	5,201	6,283
90 percent limitation	129	441	872	1,015	782
Pollution control	10	34	85	156	211
Farm structures	53	33	22	24	26
Cooperatives	46	33	35	37	39
Lessors of railroad cars	(1)	5	(1)	(1)	(1)
Breeding and draft horses	6	16	17	19	21
GSOP investment credit [2]	(1)	(1)	(1)	(1)	(1)
Exchange of personal residence	(1)	(1)	(1)	(1)	(1)
Advance refunding of industrial development bonds	(1)	(1)	9	9	9
Targeted jobs and WIN credit	178	651	882	913	504
Industrial development bonds	(1)	10	43	78	104
Remove IDCs from minimum tax	51	61	73	84	97
Broaden asset depreciation range	231	919	1,723	2,337	2,812
Contributions in aid of construction for gas and electric utilities	(1)	50	100	100	100
TRASOPs	(1)	(1)	178	446	545
Credit for taxable bonds	(1)	30	174	320	467
Capital gains:					
Increase exclusion to 70 percent of gain	168	2,230	2,512	2,897	3,473
Exclusion of portion of gain on certain sales of residences	138	295	325	357	393
Repeal alternative tax	−20	−133	−143	−154	−166
Minimum tax provisions	27	111	126	142	160
Postpone carryover basis	36	93	162	133	110
Alternative minimum tax	(1)	−1,803	−1,763	−1,939	−2,133
Repeal existing minimum tax	(1)	1,566	1,722	1,894	2,083
Total	1,689	6,505	11,104	16,234	18,160

[1] Less than $5,000,000.

[2] While the tax expenditure increase for this provision is estimated at less than $5 million annually, the long-run increase could be much larger.

Note: Negative numbers indicate a reduction of tax expenditures and are revenue gains. Positive numbers are increases in tax expenditures and are revenue losses.

Source: Congressional Budget Office based on estimates made by Treasury Department and the Joint Committee on Taxation.

Mr. President, the September 18, 1978, issue of "Tax Notes" contained an excellent article on this subject by Kathy Schroeher, of Common Cause. It is a most discerning look at the entire subject of tax expenditure, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL OVERSIGHT OF TAX EXPENDITURES

(By Kathy Schroeher)

There's no question that people want government at all levels to work efficiently, effectively, and within its fiscal limitations. The message from California is clear. Especially after Jarvis-Gann, the federal direct spending budget is sure to get closer Congressional attention.

But if the past is any measure, there's another $136 billion of federal spending that will be largely overlooked. That is the tax expenditure budget which in the fiscal year 1979 amounts to a substantial 20 percent of the total the federal government will spend.

Tax expenditures are the functional equivalent of direct spending. Through tax credits, deductions, deferrals, and special rates of tax, the federal government provides incentives for various kinds of private activities and aids taxpayers in specified circumstances. Tax expenditures are the operational equivalent of entitlement programs, because persons and corporations that meet the specified criteria automatically qualify.

Recognizing that Congress has some sensitivity about direct spending—money going out is, after all, easy to see and well understood by constituents—I decided last spring to find out how well Congress scrutinizes the money it spends through the tax expenditure budget. The purpose was not to make judgments on the merits of particular tax expenditures, but rather to examine the thoroughness of Congressional oversight of tax expenditures and to study the process by which new tax expenditures are enacted.

During the study, I examined 193 days of hearings held by the House Ways and Means Committee and the Senate Finance Committee during the years 1971–76. I also examined committee reports and floor debates on tax legislation. The resulting study, entitled *Gimme Shelters*, was published last spring by Common Cause.

TAX BENEFITS ARE BETTER THAN DIRECT MONEY GRANTS

What I found supports the wisdom of the theory on which many of the more sophisticated interest groups have acted for some time: getting a tax benefit is better than getting a grant or loan from the government, because once a tax benefit is enacted, there is little chance of oversight and an even smaller chance that the benefit will be taken away. It is also more "efficient" in that their lobbyists are not required to trek to the Hill every year to make sure that the right amount of money is authorized and then appropriated.

Nearly ninety percent of the items in the tax expenditure budget as of January 1, 1978 are permanent and do not have to be reauthorized periodically, as do most federal programs. As a result, oversight occurs at the whim of the tax committees. If a tax expenditure is by chance targeted for oversight, the bulk of the witnesses who appear to testify are those who benefit from it.

The tax committees generally do not hear from agencies of government which operates direct spending programs in analogous policy areas to see if the conditions which originally prompted the tax expenditure still exist. Nor do the tax committees make any attempt to determine from either the executive agencies or the other substantive committees of Congress whether the tax expenditure complements or conflicts with direct spending programs. Simply because these programs are run through the tax code rather than the appropriations-authorization process, they are able to evade the institutional checks and balances that apply to direct spending programs.

Tax expenditures are also immune from some of the Congressional budgetary procedures that apply to direct spending programs. For example, estimates of tax expenditures are not subject to amendment during Senate floor consideration of the budget resolution, as direct spending programs are.

Equally important, tax expenditures need not be referred to the appropriations committees before floor consideration, as direct spending entitlement programs must be. As a result, the appropriations committees cannot place caps on the total amount of revenues that may be foregone due to tax expenditure legislation, although they may do just that to entitlement programs funded by way of direct spending.

Given the undisciplined process of writing tax laws and the minimal oversight that occurs, it is not surprising that tax expend-

itures are multiplying in number and getting more expensive each year. The tax expenditure budget has grown even faster than the budget for direct outlays over the past decade. Since 1968, direct spending outlays have increased by 180 percent; the tax expenditure budget has increased by 209 percent.

LACK OF CONGRESSIONAL OVERSIGHT

Neither the Senate Finance Committee nor the House Ways and Means Committee carries out a systematic or responsible evaluation of tax expenditures. Items in the tax expenditure budget continue year after year without either committee determining whether the particular tax expenditure is effective, efficient, or wise in light of other government priorities. During the six year period 1971–76, over $161 billion was granted in tax expenditures without a single recorded vote of approval or disapproval in a tax committee or on the House or Senate floor. Thirty-eight of 86 tax expenditures were not addressed by a single witness before the Senate Finance Committee, while the Ways and Means Committee did not hear testimony on 25 tax expenditures during the same period.

In those cases where hearings on tax expenditures were held, other deficiencies are apparent. The bulk of testimony received by the committees came from witnesses with a financial interest in the continuation or expansion of the tax expenditures on which they testified. A disproportionate amount of testimony was given by trade associations and businesses. From 1971 through 1976:

Private commercial interests comprised 65 percent of all witnesses before the Senate Finance Committee and 45 percent of all the witnesses before the Ways and Means Committee;

Citizen groups represented 4 percent of the witnesses before the Senate Finance Committee, and 12 percent before the Ways and Means Committee;

Research organizations, academics, and other experts accounted for 10 percent of the witnesses before the Senate Finance Committee, and 17 percent of the witnesses before the Ways and Means Committee; and

Only 14 witnesses before the Senate Finance Committee and 13 witnesses before the Ways and Means Committee represented federal agencies other than the Treasury Department, although other agencies are likely to have valuable information on the activities which tax expenditures affect.

Although scores of existing tax expenditures were not subject to oversight hearings, Congress and its tax committees did not hesitate to create new ones. Sixteen new tax expenditures were enacted between 1971 and 1976. Only two tax expenditures were repealed, while three more failed to be reauthorized.

FINANCE COMMITTEE IS THE BIG SPENDER

While the Ways and Means Committee record on tax expenditures is hardly admirable, the Senate Finance Committee is far and away the big spender, according to my study. Although 16 new tax expenditures were enacted, many more had been recommended by the Senate Finance Committee. While the Ways and Means Committee proposed 16, the Senate Finance Committee, in addition to approving 10 new tax expenditures previously adopted by Ways and Means, also proposed another 15 new tax expenditures for a total of 25.

Another sharp contrast between the Ways and Means Committee and Senate Finance Committee occurs in the number of times each has proposed increasing or decreasing specific tax expenditures. Between 1971 and 1976, the Senate Finance Committee proposed increasing specific tax expenditures in 39 instances, while it proposed decreasing them in only 12. In contrast, the Ways and Means Committee proposed increasing specific tax expenditures in 27 instances, and decreasing them in 27.

In each of the three major tax bills enacted during the period 1971–76—the Revenue Act of 1971, the Tax Reduction Act of 1975, and the Tax Reform Act of 1976—the Senate Finance Committee version would have increased tax expenditures more than the bill as reported by the Ways and Means Committee. This was especially apparent in the Tax Reform Act of 1976, in which revenues losses for the fiscal years 1977–81 due to increases in tax expenditures would have been $39.7 billion in the Senate Finance Committee version compared with $14.4 billion in the Ways and Means Committee version.

Senate floor amendments tend to follow the "big government spending" lead provided by the Senate Finance Committee. Of 43 amendments offered on the Senate floor in the years 1971–76 to *increase* tax expenditures, 37—or 86 percent—passed. By contrast, of the 45 amendments offered to *decrease* tax expenditures, 33—or 73 percent—failed.

WAYS TO REMEDY CONGRESSIONAL NEGLIGENCE

The low public visibility of the tax expenditure budget is a major reason for Congressional negligence in this area. The tax committees are under less pressure than other Congressional committees to take their oversight responsibilities seriously. The public would never tolerate such blatant neglect of direct spending programs by Congress. But the public is accustomed to Congressional neglect in the case of tax expenditures, which many members of Congress and others view as free, even though tax dollars not collected from some taxpayers because of tax privileges either increase the deficit, reduce the amount of money available for other programs, or must be collected from other taxpayers.

Congress and its tax writing committees have done an irresponsible job of monitoring the tax expenditure budget. Mechanisms must be put in place that will assure oversight and accountability. Currently, almost all of the tax expenditure budget in permanent.

And because of the unique status of tax legislation, if the tax committee does not conduct oversight, there is no other forum in Congress to fill that void. Tax legislation is not subject to the checks and balances inherent in the two-step authorization and appropriation process. Once a tax expenditure is enacted—or authorized—the spending can begin and can increase without control. No further action by anyone but the taxpayer is necessary.

Three key recommendations flow from my examination of the tax writing process:

First, tax expenditures must be subject to a sunset process;

Second, the tax-writing committees of Congress must begin to obtain information about tax expenditures from the federal agencies which operate direct spending programs in analogous policy areas; and

Third, the appropriations committees and the standing committees of the House and Senate with jurisdiction over direct spending programs should review tax expenditures affecting their areas of expertise.

SUBJECTING TAX EXPENDITURES TO THE SUNSET PROCESS

Once enacted, tax expenditures generally become permanent fixtures. Presently, only about 10 percent of the tax expenditures (comprising 3.2 percent of the dollars in the fiscal year 1978 tax expenditure budget) are authorized by tax provisions that are not permanent. That compares to the approximately 50 percent of federal direct spending programs that have limited authorizations.

Sunset is a procedure under which federal programs and tax expenditures would have to be affirmatively reauthorized by Congress on a periodic basis. Programs could not continue indefinitely without Congressional action. S. 2, a sunset bill cosponsored by 59 Senators and reported by the Senate Committee on Governmental Affairs in July of 1977, establishes a six year cycle for reauthorization. It requires programs to be grouped for reauthorization by budget function, so that Congress will be able to look at all direct spending efforts in a given area at the same time, instead of the piecemeal basis on which existing programs are reauthorized. In addition, the bill would require that before a program can be reauthorized, the committees with jurisdiction must review it and provide a justification for its continuation. Coverage of tax expenditures was deleted by the Governmetnal Affairs Committee on a narrow vote before it reported S. 2. The bill presently would apply only to direct spending programs. But the arguments for subjecting tax expenditures to the sunset process are persuasive.

Sunset for tax expenditures would serve three broad purposes. It would, for the first time, force Congress to consider and evaluate total federal spending efforts—direct spending and tax expenditures—within specific policy areas. For example, housing tax subsidies and direct expenditures for housing would not be considered separately, but at the same time. As Treasury Secretary Blumenthal has testified:

"[A] review of government support of housing should focus on whether the benefits distributed through the tax system are consistent with the priorities of the total expenditures in the housing area, and on the best combination of direct outlays and tax expenditures in meeting national housing policy goals. (Sunset hearings, Senate Governmental Affairs Committee, March 22, 1977, p. 109.)"

In addition, a sunset procedure would force Congress to make some evaluation of each existing tax expenditure—an evaluation that is not now made. The notion of evaluating tax programs is not new. The Mills-Mansfield legislation of 1972 proposed that termination dates be placed on existing tax preferences to prevent their continuation year after year without any Congressional oversight or affirmative action.

Finally, sunset would force Congress to go on record when it votes to continue, modify, or repeal existing tax expenditures. No longer could over $161 billion be spent over a six year period without any Congressional accountability at all.

Senators Glenn, Muskie, and Jackson would include tax expenditures in sunset legislation. Their proposal would require the Ways and Means Committee and Senate Finance Committee to propose a timetable for review of existing tax expenditures. The timetable would then have to be adopted by both Houses. It would require every tax expenditure to have a termination date and would mandate review and affirmative action by Congress before a tax expenditure could be continued. The tax expenditure review schedule would be coordinated with the direct spending program schedule to ensure close examinations of tax expenditures and programs with related purposes. Somewhat similar legislation, which has been introduced in the House by Rep. Butler Derrick, D–S.C., would apply the review concept only to new tax expenditures enacted after his bill becomes law.

THE ARGUMENTS AGAINST A SUNSET PROCEDURE

Business groups have raised two major arguments against applying a sunset process to tax expenditures.

First, business groups argue the need for "business certainty." Those advancing this argument state that business must be able to count on a stable tax climate to carry on successfully. But business firms commonly

cope with such risks as the weather, changes in consumer tastes, bull and bear markets, and many others. It is therefore difficult to understand why business feels it should be able to count on the continued availability of tax incentives, especially those that have long since served their purpose.

The past several years have shown that, contrary to any law of certainty and even without sunset, the Internal Revenue Code is hardly carved in stone. Nor should it be. As conditions and circumstances change, tax laws designed to encourage particular kinds of behavior ought to change too. At the very least, those laws ought to be reexamined and evaluated in light of current circumstances.

The second argument business groups make is that sunset would permit automatic tax increases, because tax credits, deductions, and other preferential forms of tax treatment might be permitted to expire. That argument implicitly assumes that if Congress examines business tax breaks, it will generally find they are ineffective or inefficient—and maybe both—and eliminate them. Sunset makes no assumptions about the merits or demerits of particular policies. As applied to tax expenditures, it is revenue neutral. As a result of close examination, Congress may decide to modify a particular tax expenditure, expand or extend it, or permit it to expire.

The automatic tax increase argument also turns traditional notions of taxation on their head. Like individuals, business firms are subject to a general tax rate. Tax preferences are the result of a decision made by Congress to permit a special dispensation from that general rate in return for certain kinds of behavior. The "automatic tax increases" argument turns this traditional view upside down by making the special dispensation appear to be ordinary and the general rate a tax increase.

Major business groups are, in effect, using a double standard when they evaluate tax expenditures and direct expenditures. They strongly support sunset for direct spending programs, much of which represents money not generally directly available to them. They also tend to support sunset for regulatory programs, which they hope to weaken. Yet they strongly oppose applying sunset to the tax expenditure budget.

BETTER TAX EXPENDITURE INFORMATION

The Glenn-Muskie-Jackson amendment requires the tax-writing committees of Congress to improve their sources of information regarding tax expenditure programs. It does this by requiring the appropriate federal agencies to comment upon tax expenditures in their areas of expertise.

Tax expenditures affect a broad spectrum of federal policy objectives: education, health, commerce, and housing, to name but a few. The Treasury Department cannot be expected to speak as knowledgeably about these areas as the Departments of Health, Education, and Welfare, Commerce, and Housing and Urban Development. Yet the tax committees rarely hear from the federal agencies and departments whose primary mission is to implement those objectives.

APPROPRIATIONS COMMITTEE REVIEW

Senator Edward Kennedy recently introduced a resolution (S. Res. 326) which would help make the tax-writing process more rational, and which complements the sunset process. The resolution would require tax expenditure legislation reported from the Senate Finance Committee to be referred to the standing committee in the Senate with jurisdiction over analogous direct spending programs and to the Senate Appropriations Committee. The standing committee and the Appropriations Committee would have 14 days in which to make recommendations on the proposal.

The present lack of analysis and communication by the standing committees regarding tax proposals impedes any effort to coordinate federal efforts in a given area. This is especially unfortunate, given the percentage of the federal budget which is spent through the tax code. Kennedy's resolution would provide a framework in which coordination between direct spending and tax expenditure programs could occur.

Recommendations by the appropriations and standing committees would give the Senate as a whole an opportunity to assess tax proposals in light of direct spending programs, to determine whether efforts in both are complementary or conflicting, and to decide whether, taken together, they exceed the amount that should be devoted to a particular activity.

CONCLUSION

The historic roles of the Ways and Means Committee and Senate Finance Committee have changed. They now write housing programs, health programs, and energy programs, in addition to revenue measures. Their fingers are in nearly every federal policy pie. Their jurisdiction is virtually limitless.

Because these two committees deal with taxes instead of grants, loans, or regulatory programs, they are not subject to the legislative checks and balances that apply to other Congressional committees. They do not deal with the appropriations committees. Nor do they communicate with the other committees of the House and Senate which write spending programs. And for too long, by using the invisible tax expenditure system, they have advertised what must be one of the few "free" lunches in town.

Mr. GLENN. Mr. President, I have followed the debate this morning very, very closely, and I have listened in with particular attention to those parts of the debate that Senators have applied to sunset but do not wish to apply also to the sunset of tax expenditures, tax incentives, and tax credits. In listening very attentively this morning, I think there has not been a single argument made in behalf of the basic sunset bill and the advantages of it that do not also apply and apply in spades to the tax incentive side of the equation.

I fail to see how we can say we are going to ever balance the Federal budget if we say we are only going to look at the authorizations and appropriations side of our ledger which runs through the gauntlet of the appropriating and authorizing committees every single year. Or most of them do. Some of them are multiyear authorizations and appropriations, but not most of them. And we take that side of our budget and then somehow we say that over here on the free money side, as it is looked at here quite often because it does not have to run through that appropriations process, over on the free money side, the monopoly money side, we will say, we will give a big tax incentive or we will give a tax break over here on the other side, as these charts that Senator KENNEDY provided here this morning so amply illustrate. Somehow we will say we are going to forego that amount of revenue and that somehow this does not contribute to balancing the Federal budget or to unbalancing the Federal budget. It simply defies logic. That is the way we look at tax incentives and tax expenditures.

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. GLENN. No, I will not yield until I conclude my statement here. Then I shall be glad to yield to questions.

Mr. President, that is the reason that I, along with Senators HATFIELD of Oregon, MUSKIE, GRIFFIN, JACKSON, CHAFEE, MCCLURE, MORGAN, KENNEDY, HATHAWAY, CLARK, MATHIAS, BROOKE and HART call up this amendment.

The amendment would extend the sunset concept beyond its application to Federal spending programs by also requiring periodic review and reauthorization of tax expenditure provisions. The purpose is to subject tax expenditure provisions to the same type of systematic review, as is required of direct expenditure programs under Senator MUSKIE's sunset amendment. The bulk of the policy decisions involved would be made in the 96th Congress in the establishment of a specific review schedule.

I emphasize this next statement.

The only decision specifically embodied in the amendment is the decision to go ahead with a comprehensive review of tax expenditures.

This amendment does not specifically cut out anything. It does not cut out the interest deduction on home mortgages and it does not cut out charitable contributions. This amendment says that for the first time the Finance Committee, with its expertise in this area, will be required on a regular basis, on a systematic basis, to provide a schedule for review of these tax expenditures to see whether they are doing the job they are supposed to do. The review itself is neutral. We may look at a tax expenditure or a tax incentive and say it is doing such a great job, it could do even better, so we increase that particular incentive to an even higher level. Or the Finance Committee might look at one and say, "Well, it is doing about the job we thought it was going to do, so we will just let it continue," and they will so recommend to the Senate.

I am certain that most of the ones like that we would go along with. But on others we would say, OK, these other ones have become the infamous tax loopholes, the tax breaks, and they are not doing the job; we are wasting too much Federal revenue that is going down this rathole, not providing the benefits intended, not encouraging businessmen into whatever the encouragement was, not accomplishing the beneficial effect that it was supposed to have. For ones like that they should be very properly sunsetted. They should be terminated.

All this amendment does is establish that kind of review process.

The amendment provides that the Director of the Congressional Budget Office, in consultation with the Joint Tax Committee, compile an inventory of tax expenditure provisions and submit that list to the tax writing committees. A revised inventory is subsequently to be submitted to both Houses.

During the 96th Congress, the tax writing committees are directed to report, and Congress is to enact, a bill prescribing a schedule for the review and reauthorization of all tax expenditure provisions.

However, the tax writing committees in Congress are authorized, and this is an important aspect also, to specifically exempt even from this 10-year review, to specifically exempt those tax expenditures which they feel are either generally agreed to be good or are not par-

ticularly well-suited to this sunset process.

Further, the amendment authorizes the tax writing committees and the Congress to provide for transition rules or grandfathering as we have termed it, so as to insure that those who have made investment decisions based upon the expectation that a particular tax expenditure will be available will not be adversely affected if it isn't continued at some future time. In this way any potential business uncertainty can be minimized.

We leave that once again up to the Finance Committee and their expertise to determine which tax expenditures should be exempted and which should have appropriate transition rules and what those rules should be.

The schedule to be enacted is to provide for five review and reauthorization dates comprising the 10-year cycle. That is 10 years in which to just review these tax expenditure provisions. The original sunset legislation that Senator MUSKIE proposed contained a 5-year cycle.

There was concern expressed that a 5-year cycle was going to be a considerable load on the committees that would have to go through the sunsetting process. So we gave somewhat on that and gradually worked this out to where it is a 10-year sunset cycle.

I would submit that if we cannot review the Government programs on a 10-year cycle, whether under sunset for programs or tax incentives as well, then we truly must stand up in the U.S. Senate and say we have, in fact, lost control of the U.S. Government.

The review schedule is to be structured so as to insure that the tax expenditures will be subject to review at the same time as direct Government expenditures having similar objectives. I think that is very logical. This will promote the kind of comprehensive examination of direct spending programs and tax expenditure provisions affecting the same policy areas, which is not now taking place.

Senator MUSKIE pointed out a few moments ago the lack of coordination between the authorizing and appropriating committees and the tax-writing committees, that they are not as coordinated as they should be.

Under this legislation, the tax-writing committees are to conduct a review of those tax expenditures scheduled for review in that particular Congress. If either or both of the committees recommends that a tax expenditure provision be continued, then the report to either body is to include, in the scope and detail at the discretion of the committees, an analysis of the objectives of the provision, the effectiveness in meeting those objectives, and the extent to which other tax expenditures or programs are duplicative.

If the tax-writing committees fail to file this report or the committees and the Congress determine that a tax expenditure provision not continue beyond its reauthorization date, then the provision will cease to apply and the transition rule—if one has been provided—will go into effect.

These procedures are equally applicable to newly enacted tax expenditures as with those in effect when the review schedule is enacted.

Mr. President, the amendment would, in extending the sunset review procedure, which the reported bill would apply to most Government authorizations, cover most Federal tax incentive provisions as well, except those that were exempted.

As with the Government grants, loans, and other authorizations, we believe that adequate control of the budgetary consequences of tax incentive provisions can be attained only through a requirement of periodic reauthorization of those provisions.

The administration agrees with this assessment and strongly supports this amendment. We have a letter from the White House to that effect, and we believe this amendment is crucial to the attainment of the President's and the Congress' budget-balancing objectives.

In recent years revenue losses from tax incentive provisions have been the fastest-growing portion of the Federal budget. In fiscal year 1978 the revenue losses associated with these programs are estimated to be over $124 million this year compared with a revenue loss of $52 billion in fiscal year 1971, just 7 years ago.

According to the Congressional Budget Office, these losses are expected to rise to $187 billion by fiscal year 1983, $187 billion just 5 years from now.

This growth stems in part from the fact that tax incentives, unlike most authorizations, as I indicated earlier, are often enacted in perpetuity and are not required to run the gauntlet of a periodic reauthorization and annual authorization process, and it is thus in the tax incentive area that sunset review may be most needed.

Our amendment would not terminate the operation of any tax incentive provision. It would endorse a concept, as I indicated, leaving the enactment of detailed provisions for the next Congress.

It would again require only that the tax-writing committees report and the Congress enact by the end of 1980 a review and reauthorization schedule. That is all this does. It requires the taxing committees to come up with a schedule of review, and that is all.

Tax specialists, both inside and outside the Treasury Department, have testified that the 80-odd provisions in question can be cataloged and included in such a schedule, and that the 2-year time period provided is a workable one.

The adoption of our amendment would merely start this process rolling.

The proposal to extend sunset to the tax-incentive area has been debated extensively by the committees which have considered it during the past two Congresses. Since this consideration in committee the proposal has been modified in two very important respects: Unlike the original proposal which would have subjected all tax-incentive provisions to the sunset process, the revised amendment would permit the tax-writing committees and the Congress to exempt tax incentives to which they believe the process is either ill suited or ones that are generally agreed upon by everyone to be effective and ones that we should retain.

Second, the committees in Congress would be authorized expressly to enact transitional rules or grandfathering, as I indicated, we have been calling it a little while ago, to protect those who rely on tax-incentive provisions which the Congress determines should not be reauthorized.

It is our hope that these modifications will help to establish some improvement in a matter of substantial importance to all of us.

Mr. President, how often around here have we had the attitude expressed like this, "Well, I don't think we can get it through as an appropriation, so let's make it a tax credit. That way it won't cost anything." Let us make it a tax credit and then it "won't cost anything." That view has prevailed in the Congress all too often in recent years, and that is a major reason why we are having such a difficult time getting the Federal budgetmaking process under control.

Most of these credits and other incentives are enacted in perpetuity, seldom if ever reviewed, and allowed to accumulate one upon another.

Do not get me wrong, I am not against tax incentives. Many of them are excellent.

Mr. LONG. Mr. President, will the Senator yield?

Mr. GLENN. I yield without losing my right to the floor. I would be glad to yield.

Mr. LONG. Does it not make sense that if you permit a taxpayer to keep his money in his own pocket it does not cost him one blessed thing?

Mr. GLENN. What we are doing is we are not letting the taxpayer keep the money in his pocket. The types of things I am trying to sunset are the things that become tax loopholes and tax breaks—wait a minute, let me finish. Everyone else in the country has to pay higher taxes for the siphoning off of the tax revenue. How can you say this takes out the taxpayers' money? It takes it from that individual who is getting a special loophole now he should not have. That is what it does.

Mr. LONG. Senator, let me just illustrate the point. I hold in my hand a cigar——

Mr. GLENN. A big one.

Mr. LONG. The Senator is correct. In my left hand I hold a big cigar, which I borrowed from a friend. It is an object of value.

I hold in my other hand a pencil. The Congress thought about the matter and decided to put a tax on the cigar, so we pay a tax on the cigar, and that results in some revenue for the Government. We once had a tax on pencils, but we took the tax off pencils, so the pencil bears no tax and the cigar does.

To apply the Senator's argument to the cigar and the pencil, pencil users are being provided an unjust advantage because they are not paying the same tax we pay on cigars. Congress thought about what it wanted to tax and it said, "We will tax the cigar." But to use the Sen-

ator's argument, the Government is losing a fantastic amount of money because the tax we have on the cigar does not apply to a pencil.

If I were holding a bottle of whisky in my left hand, we would then be talking about something where the tax can be over 90 percent of what you are paying for. In other words, 90 percent of the cost of the whisky can be the tax you pay on it. The tax exceeds the cost of producing by about 10 for 1.

If you took the same approach, you could say, "Well, gee, look at the tax advantage you are giving everything else because you do not tax it at the same rate you tax whisky." You ought to have a 1,000 percent tax on everything else, and if so, the Government would have no deficit; the Government would own everything.

Look at all the money it is costing the Government because we do not tax other things the way we tax a bottle of whisky.

That is not the way we have written tax laws. We have written the tax laws to define what it is we want to tax.

The Senator wants to take the point of view that the things Congress elected not to tax are enjoying some special advantage. If you want to tax something else, Senator, bring in your amendments; bring in an amendment to tax pencils, if that is what you want to do.

Mr. GLENN. What is the Senator's question?

Mr. LONG. Why don't you bring in your amendemnt to tax whatever it is you want to tax, and we will vote on it?

Mr. GLENN. Let me answer the Senator's question. I asked the Senator last night if he would please read my amendment, so he would know what the amendment provides. I see from the discussion this morning he has apparently not read it yet, because the amendment does not do the things the Senator seems to think it does.

What the amendment says is you and your committee will have to sit down, for the first time, and set up a systematic approach for reviewing these things. If we do that, you may find, on reviewing the matter, that you do not want to continue to tax cigars, or you do not want to continue to tax whisky, or you want to put a tax on pencils, all the things you have mentioned, and the Senate will approve it or disapprove it, and that is fine; but for the first time we will have a systematic method of review.

Mr. LONG. I have read at least a part of the Senator's amendment. I am not sure I understand it. For example, you might explain this language here, on page 6, lines 1 through 5:

> Upon enactment of the bill described in subsection (a), and subject to the exemptions and modifications provided pursuant to subsections (a) and (d), each tax expenditure provision shall cease to be effective on January 1 of the year following the first (or subsequent) reauthorization date * * *

Does that not mean that you increase taxes?

Mr. GLENN. That is up to the Finance Committee. If the Finance Committee, after they have considered the matter, do not take action to reauthorize those things, then there is no tax. That is up to the Senator from Louisiana; if he wants to see that terminated, he can do so by not taking action in this committee. If he does not want to see them terminated, they will not terminate.

Mr. LONG. You have, then, the burden that you have to review every single one of those provisions in order to reduce the taxes.

Mr. GLENN. You have done an admirable job of putting more taxes on, too. I quote from the report of the committee. This year, from what has been added on in tax incentives and expenditures, revenues will go up $1 billion this year, $6.5 billion in 1980, $11 billion in 1981, $16 billion by 1982, and $18 billion by 1983. It just proves my point; I am glad you brought it up.

Mr. LONG. We are taxing some people and untaxing some people. We are doing it both ways. You will find in the bill a provision that we eliminate the deduction that somebody gets when he buys some gasoline and pays a State tax on it.

By your definition, that is a tax expenditure; that motorist is getting away with something when he buys a gallon of gasoline and then deducts the State tax——

Mr. GLENN. Come back to the main issue, Senator. How can you possibly propose that once we enact anything in any type of legislation, including tax incentives, that we take the point of view it should never be reviewed, never touched again?

Mr. LONG. Senator, all I am saying——

Mr. GLENN. That is the question here, because all this amendment does, and I hope everybody is listening, and that every Senator in his office is listening, so that we can get this very clear. All this does is set up a systematic review process. It requires the Finance Committee to do that. I realize this is treading in some sacred pastures that people have not gotten into before, but maybe it is time we do get into those areas, because we find we are losing, in tax expenditures, this year alone $124 billion, and there is no review process.

Mr. LONG. All you are saying is, we are failing to tax $124 billion.

Mr. GLENN. No, it is not——

Mr. LONG. We are failing to tax for more than that. We are failing to tax more than a trillion dollars, because we are permitting the taxpayers——

Mr. GLENN. The Senator deliberately misrepresents what this amendment tries to do. It sets up an orderly review process for the first time. That is all it requires, and it even lets the Finance Committee control that whole process; it just requires them to do something.

Mr. LONG. We are doing something. We have in this bill a tax increase, and I hope you will vote for it. We have an increase that says you can no longer deduct State and local gasoline taxes.

I have looked at these provisions and reviewed them. If you think a taxpayer is getting away with something sneaky, such as the fact that he is able to deduct, on his income tax return, his State and local gasoline taxes, if you think something is wrong with that, get behind the committee; that is what the committee is recommending now.

Mr. GLENN. How can the Senator possibly disagree with setting up and orderly review process, so that the people of the United States and the U.S. Senate can know we are having all these reviews on a regular, systematic basis?

Mr. CURTIS. Mr. President, will the Senator yield for an answer to that question?

Mr. LONG. Let the word go out that I am reviewing those tax provisions all the time. Send over your amendment, and the committee will consider it in the light of the budget and the Budget Committee's requirements.

Mr. GLENN. With all due respect to the Senator from Louisiana, there might be those in the U.S. Senate and those in the United States of America that might not want just one man in the Senate to be the only one reviewing these matters.

Mr. LONG. So why don't you do it, Senator? Why do you want me or somebody else to do something you are not willing to do yourself? Why don't you review it?

Mr. GLENN. If I was on the Finance Committee, you can bet I would be reviewing it. I have more than I can say grace over now on the committees I am on. That is exactly why I would like to see these things reviewed on a regular basis. But how you can disagree with putting anything on a systematic, orderly basis, which is all this amendment does, I cannot understand.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. GLENN. I ask unanimous consent to yield for a question, without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. Put your question.

Mr. CURTIS. There can be no objection to setting up a schedule to review every one of these things. The question is that they stop, and can remain stopped, by inaction of Congress.

Mr. GLENN. Only if the Finance Committee does not report them and Congress does not act on them.

Mr. CURTIS. Yes. But suppose the Finance Committee does report them. A minority, not the majority, but a minority can prevent them from being reinstituted. A Presidential veto can do it. A filibuster can do it.

Mr. GLENN. All that applies to any legislation going through here. It would apply no more to this than an appropriation or an authorization bill, or anything else.

Mr. CURTIS. No, the Senator ought to come and attend every session of the Finance Committee for a year. I am disgusted with what goes on on this floor implying that the Finance Committee are a bunch of crooks lying awake at night trying to find loopholes. As a matter of fact——

Mr. GLENN. No, I cannot let that one pass. If the Senator——

The PRESIDING OFFICER. The Senator from Ohio has the floor, and has yielded to the Senator from Nebraska for a question.

Mr. CURTIS. No, he asked unanimous consent to yield the floor to me, and it was granted.

The PRESIDING OFFICER. The Senator from Ohio has the floor, and you have a unanimous-consent agreement to allow you to ask him a question. Go ahead and ask your question.

Mr. CURTIS. All right, I will ask you a question.

Suppose you were to write your will, and the lawyer asks you certain questions, and he advises you that there are certain exclusions and exemptions in the estate tax, you have no intention of dying for 10 or 15 years, and he asks the status of social security payments, whether they are taxed, he asks the status of, maybe, a Keogh plan or an individual retirement plan; he asks about your property, how long you have held it, if it had to be sold would there be a capital gains tax, and the only answer you could give is, "All these things have expired."

Mr. GLENN. What is the Senator's question?

Mr. CURTIS. I am coming up with your question. All of these things expire unless Congress enacts them again. My question is, How on Earth could you handle your own personal affairs with such uncertainty in the tax law?

Mr. GLENN. Senator, we leave in those provisions, if there are provisions like that, which I would agree with the Senator should be reenacted and reauthorized, we will leave that up to the Finance Committee to make——

Mr. CURTIS. Oh, no, the Finance Committee cannot enact a law, and you know that. It takes this body and the other body and the Presidential signature.

Mr. GLENN. I have the floor, Senator. Let me answer your question.

I repeat, all this amendment does is say there will be a system of review set up by the tax writing committees and the Congress. That is all.

Mr. CURTIS. No.

Mr. GLENN. Let me answer the Senator's question. That is all this amendment does. We even permit the Finance Committee in establishing this schedule, to exempt certain tax expenditure provisions. The situation the Senator propounded might well be one of those areas in which we let them exempt and approve that. We might even say when we review those inheritance laws we want to increase the percentages, once the Finance Committee has reviewed this on its systematic, normal basis once every 10 years, or oftener if they so choose, but not beyond the 10-year limit.

That is all this amendment does. It says you will establish a review process. How anyone can say that inheritance laws or tax laws of any kind should just be enacted and they will be firm in concrete 100 years from now, neither up or down, is incomprehensible to me. We set up this amendment as a specific way to deal with that. That is all this does.

Mr. CURTIS. I suggest the Senator read his own amendment. These provisions can be prevented from being enacted by inaction of the Congress.

Mr. GLENN. Of the Finance Committee first, or the Congress.

Mr. CURTIS. By the entire Congress.

Mr. GLENN. Well, that same thing applies to any appropriations or any authorization going through the Congress. That applies across the board. Businessmen, people all over this country, rely upon us to be responsible in our execution of our duties, responsible in our authorization of programs.

Mr. CURTIS. Do they not also rely upon the Congress to provide a degree of certainty and permanence in the tax law?

Mr. GLENN. On the spending side of our Federal budget, what kind of certainty does a businessman have, what kind of certainty does anyone have, that we are going to continue various programs? They rely upon Congress to be responsible in that area, and we are, generally.

Mr. CURTIS. That is good news. I am glad to hear it. I have been listening to these amendments over there for a couple of days and I was in doubt.

Mr. GLENN. I rely upon this body to be that responsible, and the Finance Committee to be that responsible, in executing their duties under this amendment.

Mr. CURTIS. I commend you on your child-like faith.

Mr. GLENN. I do not think the Senator has to make personal remarks at this stage.

Mr. CURTIS. No, I am very sincere.

Mr. GLENN. The Senator has been around here longer than I have, and if he refers to a child-like faith I still have faith in this country and in the U.S. Senate. If the Senator from Nebraska does not have faith in this Senate that is too bad, because this body of this U.S. Government is essential under our Constitution, the actions we take here are that, and I think maybe we need a little more child-like faith of people in this country——

Mr. CURTIS. I commend you for it.

Mr. GLENN (continuing). For looking at these things, looking at our tax laws in this country, and not letting them run rampant; $124 billion this year and $187 billion by 1983. If I have child-like faith in this country, Senator, I am proud of it. I am proud of it, I repeat.

Mr. CURTIS. I also resent the idea that you have charged that we have let the tax laws run rampant. Weeks and hours and days——

Mr. GLENN. Do you say they are under control, Senator? Look at these charts back here. Is that being under control? Is it under control when the Finance Committee and everyone else in this country does not get around to looking at these things? It has gone since 1971 from $52 billion up to $124 billion now and up to $187 billion by 1983. Is that under control? You say I have a child-like faith that I want to do something about that? I am proud of my child-like faith.

Mr. CURTIS. You have stated that the Finance Committee has never looked at things. I invite you to spend a year.

Mr. GLENN. You said you looked at them and they are in control. I say if they have looked at them, they are still out of control. All we are trying to do with this amendment is to establish a systematic review procedure so that not only the Finance Committee, not only the chairman, and not only the ranking minority member will know they have been looked at, but the U.S. Senate and the Congress and the people of these United States will know they have been looked at. That we do not know right now. That we do not know right now, I submit.

Mr. LONG. Will the Senator yield?

Mr. GLENN. Without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. With regard to any so-called tax expenditure, we are talking about any failure to tax somebody when you are taxing someone else.

Mr. GLENN. No, we are not talking about that in this amendment. I disagree with you. You keep coming back to that, and that is not it. This amendment would set up a review procedure so you then consider this in the Finance Committee and recommend to us what you think should be done in this area. It is a review process, and that is all that is provided. That is all of it.

Mr. LONG. Let me make this point clear to the Senator. The Senator must surely know that every new administration, as far back as I can recall during the last 30 years, has undertaken to look through the entire Internal Revenue Code. The Carter administration has done it, and they are no exception. Mr. Kennedy did it, Mr. Johnson did it, and Mr. Nixon's administration did it. They go through the entire Revenue Code page by page, line by line, and look at everything in there and ask, "What is there in here which we think ought to be changed, and what ought to be retained?" They all do it. That is not done just once every 10 years, but every 4 years when a new President comes in, or at least every 8 years. Every administration does it. They have a way of constantly reviewing the tax law.

Furthermore, the staff of the Joint Committee on Taxation, working for both the Finance Committe and the Ways and Means Committee, a good staff, goes through the tax law, and the Budget Committee and the Congressional Budget Office go through it. They have gone through the whole code, looked at all the things in it, and have undertaken to ask, "Well, what is there in there that we ought to change?"

Here is a pamphlet just recently prepared. It is not out of date; it is dated September 1978. It is published by the Budget Committee, and is called "Tax Expenditures" which is what the Senator is talking about. I do not know whether it includes all tax expenditures. Tax expenditures depend on how you want to define them. I have just given the example that we tax a cigar but not a pencil. You can say that every commodity that is not taxed is the beneficiary of a tax expenditure.

Mr. GLENN. Why not address this amendment instead of all these theories that you are bringing up? These are all

theories on which I have no quarrel with you, and I do not care to debate. I want to debate the wisdom of this amendment which provides a systematic review process. You can bring up all these things about cigars, pencils, and whisky, and all the things we talked about a while ago, but they are not germane to this.

Mr. LONG. You said we ought to read the amendment.

Mr. GLENN. We depend upon the Finance Committee to establish the review process.

Mr. LONG. Look at page 2 of your amendment, lines 1 through 8, "Tax Expenditures":

PART G—TAX EXPENDITURES

SEC. 261. (a) For purposes of this part—

(1) The term "tax expenditure provision" means any provision of Federal law which allows a special exclusion, exemption, or deduction in determining liability for any tax or which provides a special credit against any tax, a preferential rate of tax, or a deferral of tax liability.

The logic of that would suggest that just anything that is not taxed, in the event something else has to be taxed, or any income that is not taxed in the event some other income is to be taxed, is getting an advantage.

Mr. GLENN. No. What that defines is what you will put on your review list. You will then determine how that is to come up, what you would recommend be exempted. Maybe the percentages should be increased on a particular tax expenditure, or left alone, but we leave that up to you. That section just defines what you are to include in setting up a systematic review procedure.

Mr. LONG. It is your amendment, so when you define tax expenditures, you ought to know what you are talking about even if nobody else does. Here is a pamphlet published by the Budget Committee called Tax Expenditures. Your amendment is being supported by the chairman of the Budget Committee, and this is a publication issued by the Committee on the Budget of the Senate. So I would assume that the items called tax expenditures in this pamphlet would be tax expenditures under your amendment. Is that a safe assumption?

Mr. GLENN. I do not know about that book but I know that this definition of "tax expenditures" was derived from the definition in the Congressional Budget Act.

Mr. LONG. Can we assume that the provisions listed inside this pamphlet are the items the Senator is talking about?

Mr. GLENN. I have not read that whole book but I would presume in general probably so.

Mr. LONG. You have it open there on your desk, so you at least read some of it, right?

Mr. GLENN. I am generally familiar with it, yes. I have read some of it.

Mr. LONG. Here are all these items called tax expenditures. I would think that the pamphlet includes most of the controversial items. You can find a few, I am sure, that one might not define as tax expenditures, but I would think it would include most of the big items. We have looked at these matters time and time again. We legislate in these areas every year. We consider amendments that come before us involving things of this sort every year.

To say that we ought to review it once every 10 years is to say far less than what we are doing already.

Mr. GLENN. I think maybe we have stumbled onto something here, then. Let me ask the Senator: Why, then, if this works on the tax incentive side, do we not just enact all of our appropriations and our authorizing legislation on the other side of the ledger for 10, 20, 50 years and never review it on any systematic basis? It would save us a lot of energy if we could do that.

Mr. LONG. That was the wisdom of the ages, starting with our forefathers, that when you put a tax on, it is not just a tax that goes for a year, or 2 years, or 5 or 10 years. It is a tax and it is there until you see fit to discontinue the tax or repeal it. Appropriations, which involve an expenditure of Government money, are different.

That, then, gets down to an additional problem. Most of those who support the Senator's position about tax expenditures proceed on the theory that whatever a taxpayer earns belongs to the Government first——

Mr. GLENN. No, sir. I do not believe that.

What is the Senator's question? I yielded for a question. That is not a question. That is a statement. That does not express my views, nor do I believe it expresses the views of those who support my concept of this issue. This amendment does not get off into some great big economic theory. All this amendment does is provide a regular, orderly review process and that is all. It does not get off into some big economic theory that the Government owns everything and deigns only to give back what it desires to give back.

Mr. BENTSEN. Will the Senator yield for a question?

Mr. GLENN. If I may without losing my right to the floor.

Mr. BENTSEN. Will there be a time for those who feel the contrary to try to give a reasonable response without constant interruption and being told only that they can ask a question?

Mr. GLENN. I shall be happy to yield for that purpose right now if I do not lose my right to the floor if the Senator has a statement to make.

Mr. BENTSEN. I should like to make that statement.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from Texas is recognized and the Senator from Ohio retains the floor.

Mr. BENTSEN. Mr. President, I must rise in opposition to my friend, the distinguished Senator from Ohio, whom I normally agree with. He is a reasonable man, and I am sure he is pursuing a worthwhile purpose here. I do not happen to agree.

I am sure there is a basic philosophical purpose here. I do believe that they have seriously questioned this point on expenditure. The language changes over the years and sometimes for political purposes. The word "steward" as you read it in the Bible has one connotation; nowadays, as you get on an airplane, it has another connotation. I look at the words, "earned" income, and then the words, "unearned" income, and what that now means. Earned income is supposedly something that a person gets in wages, but unearned income, all of a sudden, is the interest on a savings account, but it is called unearned, as if it were something soiled, as if it were not clean, as if it were a loophole, as if it were something we ought to tax out of existence. What a very clever construction of words.

Now we have a new one. Now we call it tax expenditure. I do believe that the connotation to that is that all income belongs to the Government. I just do not happen to believe that. I do not believe that the Government is something omniscient, omnipotent, beneficent, that suddenly lets you keep some of your income and then has made a grant to you, or an expenditure.

I happen to believe that a carpenter who nails a plank on the wall has earned income and that is his. Or the teacher who is teaching children in the schoolroom and helping educate young minds, that she has earned some income, and that is hers. It is not an expenditure of the Government if she is allowed to keep it. That is what concerns me here among the other things I see.

The chairman of the committee has made a good point: Every new Secretary of the Treasury wants his name on a tax reform bill. He wants to reform the tax reform bill of 1976, who wanted to reform the tax bill of 1969, who wanted to reform the tax bill of 1964 and 1958 and whatever the other years were, because he wants his name on it. All of a sudden, he has reformed all of the reforms of the past.

Review? You bet we get review. All members of the Finance Committee are deeply involved in that review. Other committees may meet longer hours—I do not know which ones they are. But I assure you we put in our full quota in that committee.

I strongly support the idea of sunset review on Government spending programs. I believe that old Government programs never die, that they just get renamed. But I think we are getting into another category entirely when we begin to talk about tax incentives.

I think there is a place for tax incentives in this country. There are others who think we should not have any and that we should never use the tax system to try to accomplish some social or economic objective for our country. I do not happen to agree. Frankly, in many instances, I think our purpose is best served by putting a carrot out there for the private sector to try to accomplish certain objectives.

Sometimes, it is better done that way than through a giant subsidy to be doled out by some Government agency. I think in some instances, we get more for our money when we take that kind of approach.

My friend from Ohio says all we are talking about is a review. What is the difference? The difference is they call for termination.

He says, well, the Committee on Finance can make exceptions, can decide which is right and which is wrong. We have been doing that over and over again. But the one thing that really upsets investment in this country when we are talking about trying to modernize the manufacturing capacity of this country is what is going to be the legislation in the future. So you put a 10-year termination possibility in this thing and you put it up front. What are you going to have to do? Footnote your financial statement on your annual report that this provision in the Tax Code is subject to termination at that time unless the Finance Committee and then the Senate and then the Congress and then the President approve it and it goes on again.

That is the sort of thing that brings economic instability in the country. That is the sort of thing that leads to short-term investments rather than the long-term investments this country needs to turn that balance of trade around and to increase productivity in this country.

Review? We are doing those reviews. We are dedicated to doing those reviews. I do not know how we could put more hours in.

(Mr. HOLLINGS assumed the chair.)

Mr. LONG. Will the Senator yield at that point?

Mr. BENTSEN. The time belongs to the distinguished Senator from Ohio. I am through for the moment and I thank him for yielding me time.

Mr. GLENN. Mr. President, I thank the distinguished Senator from Texas. While we disagree on this, I respect his views. I think the arguments that were made this morning are the arguments that belong on the other side of this issue.

I repeat that I do not buy this idea that all of the income of this country belongs to the Government and we somehow only give back that part of it that we see fit to allow the people to retain. I think that is a ridiculous concept and I do not support that.

But the tax expenditure, as we use it in this, means exactly what that says there. It is the same language used in the Congressional Budget Act.

I know the distinguished Senator from New York is interested in making a statement on this. Could he give me some idea of how much time he would require on this?

Mr. MOYNIHAN. I can say what I have to say in about 6 minutes. I would like to clarify the distinction between people who worry about tax expenditures, and those who think the Government owns all their income.

Mr. GLENN. Somehow the term has come to mean that, but tax incentive does not mean that.

I, at one time, swore I would not use tax expenditure arguments because of these misconstructions of what that term means. But we have had to use it because it is generally used now by people who mean it is a combination of tax credit and tax incentives, nothing more than that. Not some great abstruse theory.

I yield to the Senator from New York without losing my right to the floor.

Mr. MOYNIHAN. Mr. President, may I first congratulate the Senator from Ohio, who has changed considerably the tone of this debate.

Anyone who read the front page of the Washington Post this morning would have thought he was reading a report of the Gridiron Club's annual festivities and not that of a serious deliberative body dealing with issues of this consequence.

But the article does illustrate the inevitable tendency of taxation in a democracy to be an auction of wealth, and it will never change.

I would like to make two observations about the American tax system.

First, it is fairly stable. As a proportion of a product taxed, it has a long-run stability that surprises me. Those charts behind us show increases in taxation, but GNP has increased as well. The proportion has crept up a bit, but not much. We incorporate in it about 21 percent of GNP.

We have an inflated economy, but it is also a growing one.

The second thing we could say about our tax system is that it is very progressive.

I was heartened that the persons in this Chamber who are most given to championing the cause of the underdog yesterday raised the cry of the middle-income taxpayer. They have been, for instance, typically concerned for the low-income taxpayer.

The fact is that we are at the point where the lowest 50 percent of our income classes pay only 6.7 percent of Federal income taxes. We cannot give them much more tax relief.

There is a problem in our tax system which seems to me to be of large consequence.

The problem is that we do not seem to be able to bring about a high enough level of capital formation. This is a phenomenon of the entire postwar period, not an episodic one, and not confined simply to the last 5 years.

It seems to me, for example, that we have had a lower rate of capital formation than the British over the last 25 years. We do not know much about why this is so.

Those formations that have been the most stable have also been the least successful. For example, the competitiveness of our steel industry—a stable and long established industry indeed—has fallen behind that of the Japanese. This is more a product of the culture of the Duqesne Club than of the nature of tax schedules.

We cannot do much about the culture of the Duquesne Club. But we can do something about tax credits.

The idea of tax expenditure—first raised by Stanley Surrey, now back teaching at Harvard Law School—is related to a notion called horizontal equality. It meant that when the Federal Government or any government, established a tax for individuals at a particular income level, all persons at that income level should pay that tax, regardless of what their patterns of consumption or activity might be.

There is the problem of tax avoidance—something into which we probably put more energy than we should. It is felt that all the taxes collectible at a particular rate of taxation, or under a particular type of tax, are due the Treasury.

Thence arises the notion of lost tax—expenditures as a loss.

There arises the feeling that Government should not own all your income.

The Senator nods.

Mr. GLENN. I was nodding because the Senator from New York properly points out that this does not apply to some big concept that the Government owns everything in the whole country and only to give back——

Mr. MOYNIHAN. If a 2 percent sales tax is established, then the Government deserves that from everybody—we do not say people who are left handed——

Mr. GLENN. And no one should get out of it.

Mr. MOYNIHAN. Yes.

Finally, very briefly, what we are talking about is real. The reason that the concept of tax credits has achieved such great currency in this Congress is because it is the one way we have found to attain public purposes without Government intervention. It is a way to get markets to do what we would otherwise have bureaucracies attempt to do.

That, for example, is the great argument for tuition tax credits. Education might thereby be obtained through a market system.

There is certainly a great deal to be said for that.

May I also suggest that we feel the persons who are suspicious of our tax credit systems have a hidden agenda, that they really do want Government controls through hierarchical organization, and that if we array these persons against the sponsors and the people who voted for tuition tax credits, we will find an almost perfectly negatve relationship.

We think there is a hidden agenda.

We all know, as a matter of fact, that Madison in Federalist 14 described the implicit, innate hostility and competition between the chairman of the Finance Committee and the chairman of the Judiciary Committee in the U.S. Senate.

Have you not read Federalist 14 wherein Madison says the chairman of the Judiciary Committee and the chairman of the Finance Committee will always be in competition?

Well, it is part of the apocrypha of the Federalist Papers.

We are aware of such realities. We know the chairman of the Judiciary Committee has put in a little resolution that says that as soon as we get the arrangement the Senator from Ohio is talking about, the next time the Finance Committee takes up any tax expenditures, it will, first of all, report them to the Committee on Appropriations where they will be considered, and so on.

Why is this the case? The U.S. Constitution does not fear conflict. As a matter of fact, being good Madisonians, the framers built it in.

However, having a window built into our arrangements, we should recognize it; I say to the Senator, then, with great respect, that this year I shall vote with the Committee on Finance. [Laughter.]

Mr. GLENN. I reply to the Senator

from New York by saying that I realize that in the U.S. Senate those tribal loyalties are very, very strong, and perhaps some of those tribal loyalties are what we are trying to chip away a bit with this amendment.

I repeat, as I have said several times this morning, that all this amendment does is to set up a review process.

I appreciate the Senator from New York pointing out, very properly, the origination of and some aspects regarding the interpretation of "tax expenditure" as the term is used now.

I intended nothing by this amendment that would imply in any way to anyone that I am embracing a concept of overall Government ownership of everything in the country and that we are only giving back what little we think the people should have out of the largesse of Congress. That was not my intention at all, and I am sure the Senator realizes that.

Mr. TALMADGE. Mr. President, will my distinguished friend and seat mate yield for some questions?

Mr. GLENN. I yield, without losing my right to the floor.

Mr. TALMADGE. First, my seat mate knows the great admiration and high affection and esteem I have for him.

Senator MOYNIHAN mentioned the idea that the term "tax expenditures" originated with Stan Surrey, who was tax advisor during the Kennedy administration. Is the distinguished Senator from Ohio aware of the fact that one of Mr. Surrey's first recommendations to the Finance Committee, in a tax reform bill, was that if you owned your own home, you should be taxed a fair rental value of that home?

Mr. GLENN. No, I am not aware of Mr. Surrey's statement on this, nor of what his theory of tax expenditure is. But I fail to see, I say to my distinguished friend and seat mate, how that applies to this particular amendment. All this amendment does is to ask that we set up an orderly review process to consider whatever the tax incentives or tax credits may be, regardless of what Mr. Surrey's view of tax expenditures may or may not be.

Mr. TALMADGE. That is a predicate for further questions I would like to ask the distinguished Senator.

The Senator is aware, of course, that benefits paid to disabled veterans are tax exempt.

Mr. GLENN. I am very much aware of it.

Mr. TALMADGE. Does the Senator think that should be continued?

Mr. GLENN. I do.

Mr. TALMADGE. All revenue raising measures, under the Constitution, as the Senator knows, must originate in the House. So, first, under the Senator's amendment, the Ways and Means Committee would have to report a bill to continue the tax exemption with respect to disabled veterans. Is that correct?

Mr. GLENN. I say that in consideration of that, in establishing a review process, the veterans might very well come out with more benefits than they come out with now, because it might be that in this neutral review it would be determined by the appropriate committees reviewing this that the veterans should have more benefits than now. It would only be in the case that the committees refused even to review this and Congress refused to enact anything that the veterans' benefits would be terminated.

This review process is neutral, but it does set up a 10-year cycle. But if Congress were so irresponsible and the committees involved were so irresponsible that they did nothing in that time period, that would be the only situation in which there would be any termination.

Mr. TALMADGE. The Senator, of course, is aware of the fact that I am the chairman of the Pension Subcommittee of the Veterans' Committee of the Senate; and I offered an increase in veterans' benefits this year. It already has become law, or shortly will become law.

What I am getting at is that the Senator does admit that benefits for disabled veterans would be subject to congressional review, first in the Ways and Means Committee, then in the House of Representatives, then in the Senate Finance Committee, then in the Senate itself, and, finally, subject to approval by the President of the United States. Is that not correct?

Mr. GLENN. It is correct only in that we subject every other appropriation and authorization to the same kind of scrutiny.

I add that, as a protection for veterans and other groups that whom we would all agree are ones we do not want to see adversely affected, we provide in this amendment a procedure for permitting the Finance Committee to provide exempted status to any of those particular tax expenditures which we think are good and should be continued—veterans business, interest on home mortgages; things like that, which could be exempted from even a 10-year review.

Mr. TALMADGE. It would not be limited solely to the Senate Finance Committee. It would be limited, first, to the Ways and Means Committee, then the House of Representatives, then the Senate, and, finally, the signature of the President of the United States. Is that not correct?

Mr. GLENN. That is correct. That would be the process. But I have no problem in my mind with letting things run that gamut. We do that with authorizations and appropriations and with other tax legislation we put in every year. I think that is a normal progression for things. We do it on an annual basis for most things on the spending side of our ledger. I see nothing wrong with doing it on a 10-year basis on the tax incentive side of our ledger.

Mr. TALMADGE. Assume that the Ways and Means Committee and the House of Representatives and the Senate Finance Committee and the U.S. Senate reported a bill that stated that benefits for disabled veterans should continue to be tax exempt; that we sent it to the White House; that the President had a different idea and stamped "veto" on it. It would have to some to us, and it would require two-thirds of the House of Representatives and two-thirds of the U.S. Senate to vote affirmatively to continue the tax benefits of disabled veterans, under the Senator's amendment. Is that not correct?

Mr. GLENN. We have no doubt that we would override a Presidential veto that was that irresponsible. I would not have any doubt about that. We do that on authorizations and appropriations bills. Tax incentives would not be any different in that case. We are subject to Presidential veto on authorization and appropriation bills, and certainly on tax bills which we seek to enact too.

Mr. TALMADGE. I believe it was during the campaign in Florida that the President had a lapse of tongue and suggested that he thought that the exemption extended to interest on home mortgages should be discontinued. Does the Senator recall that incident?

Mr. GLENN. Not specifically, no.

Mr. TALMADGE. Well, I do. He quickly changed his mind, and he did not pursue that matter further during the campaign. As I recall, our colleague Senator JACKSON called his hand very hard on it. Maybe the Senator from Maine did. I do not recall. But I do recall that the distinguished Senator from Washington called his hand very hard on it, and that was the last we heard from the President of the United States about exemption of interest on home mortgages.

Under the Senator's amendment, as I understand it, if we decided that we should continue the exemption of taxes on home mortgages, it first would have to run the gamut of the Ways and Means Committee of the House, then it would have to run the gamut of the House of Representatives itself, then it would have to run the gamut of the Senate Finance Committee, and then it would have to go to the White House for the President's signature—veto or approval. Is that not correct?

Mr. GLENN. That is correct, and I have no problem with seeing it run the same gamut once every 10 years.

Mr. President, we have some other business here. We have some privileged matters coming before the Senate shortly.

Reserving my right to retain the floor, I yield to the Senator from Connecticut in order to consider a conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

ETHICS IN GOVERNMENT ACT OF 1978—CONFERENCE REPORT

Mr. RIBICOFF. Mr. President, I submit a report of the committee of conference on S. 555 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. FORD). The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 555) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes, having met, after full and free conference, have agreed to recom-

mend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the proceedings of the House of Representatives.)

Mr. RIBICOFF. Mr. President, I am pleased to bring the conference report on S. 555, the Ethics in Government Act of 1978, before the Senate.

This legislation establishes, for the first time, a new code of financial disclosure for all three branches of the Federal Government—executive, legislative, and judicial. It enacts new restrictions on post-employment activities by former high-ranking executive branch officials. It sets up a mechanism for the appointment of temporary special prosecutors in cases involving criminal activity by certain executive branch officials where the Justice Department has a conflict of interest. And it creates a new Senate legal counsel, in order to provide the Senate and Senators, with legal representation in cases where the Senate's institutional powers are placed in question.

Mr. President, this legislation has been years in the making. Members of both the Senate and House have advocated public financial disclosure for high ranking Government officials for two decades. The mechanism for the appointment of a special prosecutor in certain appropriate cases originated in the historic efforts of the Ervin Watergate Committee. The strengthened restrictions on post-employment activities address a serious, persistent problem which has troubled the public for years. The Senate passed this legislation in June 1977 by a vote of 74 to 5, and the House added its overwhelming approval on September 27.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. GLENN. Without losing my right to the floor.

Mr. JAVITS. Mr. President, I simply wish to say that there were a great many reservations respecting this matter in terms of the consistency between the work done by the conferees, of whom I am one, but I pay full credit and tribute to Senators RIBICOFF and PERCY who carried the laboring oar, and we all went to pains to be sure that Senators SCHMITT and STEVENSON were satisfied.

Mr. RIBICOFF. That is correct, and we discussed that with Senator SCHMITT and Senator STEVENSON this morning, as a matter of fact.

Mr. JAVITS. I want to be sure the RECORD showed that so the Senate would be cognizant of the fact that we did not proceed summarily without regard to the Senate rules, which we did not do.

Mr. RIBICOFF. That is correct.

Mr. JAVITS. Also, personally, I am pleased to report to the Senate that the measure before us contains a real innovation in the establishment of a Senate counsel to represent us in the many matters in which we have operated ad hoc up to now, and I think this is a very distinct and important reform.

I thank the Senator.

Mr. RIBICOFF. I yield to the distinguished Senator from Illinois who labored so hard and competently. His contributions were so many in passing the legislation and also in the difficult conference.

Mr. PERCY. Mr. President, I merely wish to state that I think the Senate would have been extraordinarily proud of the chairmanship offered by Senator RIBICOFF in this conference. It was done with many items that could have been highly emotional. It was done with harmony, with reason, and I think receding on both sides, and the House conferees are to be complimented for the way they receded to the Senate wishes when we felt very strongly.

This is an issue involving many complexities. It has been debated and discussed over a period of many months.

I congratulate my distinguished colleague for his leadership and Senator JAVITS for providing to us an official legal counsel in the Senate. The House has chosen not to accept this route. But I think it will prove to be extremely valuable in the future.

This legislation, the Ethics in Government Act of 1978, deals with three important issues: Title I provides for the appointment in certain cases of a temporary special prosecutor, title II establishes an Office of Legal Counsel to represent the Senate's institutional interests, and title III sets forth uniform financial disclosure requirements for high level officers and employees of all three branches of Government. Each of these titles represents years of effort and will have a major impact on the quality of our Government.

I am especially pleased by the provisions for a temporary special prosecutor, which make it clear that we intend to avoid another Watergate and to carry out, to the fullest extent, the principle of equality under the law.

Some of you will remember that the Senate bill was known in the 94th Congress as the Watergate Reorganization and Reform Act, a name that clearly indicates its roots. We are several years removed from Watergate. We can more easily cast aside the intense emotional reactions that influenced our thinking at that time. However, we should not forget that certain gaps in our system of administering justice, that were made so painfully clear 5 years ago, nearly brought this country to the brink of a tremendous constitutional crisis. We must also remember that we make decisions today for a public whose confidence in Government and in the administration of justice is still badly bruised, and very much needs to be restored.

When allegations are made against high-ranking Government officials, the Department of Justice faces a fundamental, institutional conflict of interest that cannot be overcome. As former special prosecutor Archibald Cox has said, "The pressures, the divided loyalties are too much for any man and as honorable and conscientious as any individual might be, the public could not feel entirely easy about the vigor and thoroughness with which the investigation was pursued. Some outside person is essential."

Title I provides for judicial appointment of a temporary special prosecutor in instances where the Attorney General receives serious allegations that certain high-level members of the executive branch have violated Federal criminal laws. This judicial appointment will only occur after a preliminary investigation by the Attorney General that determines that the allegations are not frivolous. If the allegations are unsubstantiated, the Attorney General will so notify the special three-judge court that this legislation creates, and no prosecutor will be chosen.

A special prosecutor will be beneficial not only in prosecuting those who have committed criminal acts but also in clearing the name and reputation of those who have not. The public will much more readily accept the decision of an independent special prosecutor, who determines that no wrongdoing was committed by high officials, than that same opinion from an Attorney General who has been called upon to decide the fate of a friend or associate.

After discussing the merits of this title with my distinguished House colleagues in conference this week, I believe that the resulting bill will not only provide the necessary mechanism to do justice, but will assure the public that justice has been done.

Mr. RIBICOFF. I thank the Senator.

I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. TALMADGE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REVENUE ACT OF 1978

The Senate continued with the consideration of H.R. 13511.

Mr. TALMADGE. Mr. President, will my distinguished friend yield to me?

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Mr. GLENN. Mr. President, before we continue the colloquy here, I wish to ask the distinguished Senator from Virginia, the floor manager of the bill, if we could get an agreement for a vote on this amendment within the next 10 minutes?

Mr. HARRY F. BYRD, JR. Mr. President, may I say to the able Senator from Ohio that the amendment which he has presented is perhaps one of the most far-reaching amendments that has come before the Senate in quite a few years.

It would have the effect of changing significantly and substantially the entire congressional procedures in regard to the tax code affecting all of the citizens of our Nation.

First, let me say that I realize how

much work the Senator from Ohio has done on this amendment. It is not new to him.

I remember several years ago discussing this matter with the Senator from Ohio, and I must say that when the Senator from Ohio first broached the subject to the Senator from Virginia I thought it had merit and I thought it should have full consideration.

However, the more one ponders this matter, the more one considers the implications, the ramifications, and what I think would be the turmoil which could be caused by this matter, the more concerned one becomes as to its wisdom. Before this amendment is adopted there should be full consideration as to just what this amendment does, just how far it goes, just how deeply it is going to affect not only the business community but all the citizens of our Nation. There already is great uncertainty throughout the Nation, on the part of both individuals and business, as to the tax code. Senator GLENN'S amendment, I fear, would add greatly to the uncertainty.

So I hope that the Senator from Ohio will not press for a vote on his amendment but give the Senate an opportunity to give full consideration to this important matter. Certainly there is not adequate time before adjournment next week to give appropriate consideration to the far-reaching proposal of the Senator from Ohio.

Mr. HANSEN. Mr. President, will the Senator from Ohio yield to the Senator from Wyoming?

Mr. GLENN. I yield without losing my right to the floor for a question.

Mr. HANSEN. Yes, indeed.

Let me join with the distinguished Senator from Virginia in saying that this Glenn amendment is indeed a very important and serious, in my opinion, departure from what has been the extant in the area of confidence that we have been trying to engender in this country. We had, I say to my friend from Ohio, extensive hearings on the problems of capital formation, and we have heard witnesses who have testified as to what seems to have gone wrong in this country in the last 10 years so as to bring about a sharp decline in productivity to which the Senator from New York earlier referred, to what has forced young companies seeking financing in new undertakings to be forced to go abroad to Japan and to Germany in order to get that kind of risk capital which would make possible an expansion of just a concept that——

Mr. GLENN. Let me respond to that, if I might. The Senator constantly harps on all these dire consequences that might happen if this amendment is enacted. Yet all this amendment does, I repeat, all this does is set up a review process which might well alleviate some of those concerns that the Senator from Wyoming and I both share. So I do not see that all these extraneous factors have really anything to do with this amendment.

All this amendment does is provide a review process. I had hoped we could get a vote on this this morning.

I know we have other privileged business to come before the Senate at 1 p.m., and apparently I am going to be denied an up-and-down vote on this. I would prefer not to be forced to utilize a tabling procedure. I know the Senator from Delaware is waiting to get a statement in the RECORD here, and I will yield to him for that purpose momentarily. But in a few minutes, I will take the rather unusual action of moving to table my own amendment just so we can get a recorded vote in the Chamber.

So, without losing my right to the floor I yield to the Senator from Delaware.

Mr. HANSEN. I assume the Senator from Ohio is not interested in hearing anything further that I may say.

Mr. GLENN. I would be glad to debate this amendment at any length this afternoon, but we have privileged business coming before the Senate. So, if I do not get this tabling motion started before 1 p.m. we would probably not make it on time, and I do not know when we would be able to get the floor again on this amendment.

So to make sure that we at least get Senators recorded on whether they do or do not wish to have an orderly systematic review procedure established on these matters, I will even take a tabling vote made by myself just to get a vote on this. I realize that is a bit unusual.

Mr. HANSEN. I have been here since 8:30 this morning. I was not trying to delay. This is the first time I have spoken. I am sorry if the Senator from Ohio does not want to hear me further.

Mr. GLENN. That is not the case, I say to the Senator from Wyoming. It is not that I do not want to hear him. It is just if we let this go too long here, I will lose my opportunity to offer a tabling motion on my amendment.

I would be happy to debate this for hours if we had more time and if the Senator wishes to try to get those consent orders set back, I will be glad to debate this all afternoon.

Please do not think I am trying to cut off the remarks of the Senator from Wyoming.

I yield to the——

Mr. STEVENS. Mr. President, reserving the right to object, and I may object, we are getting to the point now where I predicted earlier this morning that the proponents of this measure have so monopolized the time through allocation of time that the opponents have not been fairly treated.

Mr. GLENN. I disagree with the Senator. I think there has been a reasonable exchange here today. We have had a good give and take. There has been good debate.

Mr. STEVENS. I was off the floor only 10 minutes.

Mr. GLENN. The Senator has heard good debate back and forth for 3 hours.

Mr. BIDEN. Mr. President, will the Senator yield?

Mr. STEVENS. I do not object to the Senator's transferring time to the Senator from Delaware. I think it is odd procedure.

Mr. GLENN. I think it is odd procedure that we have not been able to get a vote on this issue, I might add.

Mr. BIDEN. Mr. President, I compliment the Senator from Ohio for his amendment and strongly support it.

I would like to ask a question. We have heard in the exchange between the distinguished Senator from Ohio and the distinguished Senator from Georgia all these concerns about veterans who are going to lose their benefits potentially and homeowners and everyone else. Obviously we are all very concerned that they do not lose them.

One thing I find interesting, and I wonder what the Senator from Ohio's feeling is about it. It seems to me we would all be willing to take our chances, to let the veterans' benefits compete with depletion allowances, let homeowners' benefits compete with tax shelters, let all these things that we are so worried about that the Finance Committee keeps bringing up here today, that they are worried may go down. I, for one, am very delighted to let those items compete with all the other tax expenditures, and let the Senate and the American people and the President of the United States and everyone work their will.

I wonder if the Senator is at all afraid to let veterans' benefits compete with tax shelters? Is the Senator worried about the result of that at all?

Mr. GLENN. I am not the least bit worried, and I think the Senator from Delaware does a great service in pointing it out. It should have been pointed out before.

Mr. BIDEN. The other thing I am worried about, and I would like to know whether the Senator from Ohio is worried about it, seems to me to be the reason why the Senator from Ohio has pushed this amendment, and I wonder if he can comment on it. It seems to me the whole mechanism of sunset is designed to deal with human frailty. The human frailty is that this body is like any other legislative body. It is difficult to say "no." If we institute sunset legislation for the taxing mechanism in this Congress a Senator would be able to say to a business group or a labor group or a veterans group or a homeowners group if they came to him and said, "Senator, unless you move we are going to have our tax expenditures sunsetted and we are worried about that," he can stand and say, "Well, I will tell you, I am all for you, but that is going to happen automatically."

It is much easier to take that route than it is when there is an agency in existence or a tax expenditure in existence and they come to you and say, "Senator, you are going to get a chance to vote to abolish my loophole. How are you going to vote?"

This sunset tax expenditure provision, the sunsetting provision, allows frail people the moral courage to do what is right, maybe. Is that not implicit in sunset to give us all a way to do what we know is right?

Many people, I submit to the Senator from Ohio, do not know the difference—well-educated people do not know the difference—between a tax shelter for the movie industry or a depletion allowance or accelerated depreciation. Consequently, I cannot go back home and stir up indignation and get a lobbying group to

come down here and say, "Kill depletion." That is hard to do.

I go around to my folks and say "depletion," and they say, "Yes, but what are you doing about the sewers?"

Now, on the other hand, there is a very organized, enlightened lobby that knows all about depletion and knows all about every tax expenditure in the tax code, and they are able to come down here, marshal their forces—all ethically, I am not implying it is unethical—marshal their forces, their money, and their interests, and somehow a Senator stands here on the floor and is faced with that moral dilemma "Do I do what I think is right, on the one hand, and face the wrath of an organized interest group or, conversely, do I do what is not going to cost me anything politically, will probably benefit me, and maybe I am not right after all?"

Is that not an implicit part of sunset? Is that not the reason why we are sunsetting agencies?

So is it not—after all it is only a question, I might add [laughter] is it not true——

Mr. STEVENS. What is the question?

Mr. GLENN. He is getting to it.

Mr. BIDEN. The question is——

Mr. GLENN. It is true, it is true. [Laughter]. Is it ever true?

Mr. BIDEN. Implicit in this legislation is the idea that maybe we have to provide help to make good decisions, and we need a little bit more of an aid in doing what we think is right. I think that is one of the features of the bill.

Mr. GLENN. I would add to that excellent question by the Senator from Delaware about human frailties that if every committee of Congress was judiciously performing its oversight function every year we would not need sunset. We would not need tax expenditure amendments to sunset. But human frailty is correct. We put these things off, to get tied up with other business and we have other legislation. We tried for 2 Congresses to get sunset considered on the Senate floor, but the press of other business prevented us from doing that. So we are putting it here as an amendment on a tax bill in the waning days of this Congress. My sunset tax expenditure amendment has been before the Finance Committee since January of 1977, and it has not even had hearings yet. So we, in frustration, turned to this procedure of having to amend other legislation.

So far as human frailties are concerned, they are frailties of our organizational structure and we could not get around to those things. So we are forced to resort to sunset legislation in order to do the job on a timely basis, to do the thing we should be doing in order to effectively get control of Federal spending.

Mr. BIDEN. Will the Senator yield 30 seconds for one more question? Is it not true that we are willing to let all the programs go up for grabs, liberals, conservatives, everybody treated the same way, we give them all an equal chance; is that not true?

Mr. GLENN. Yes.

Mr. BIDEN. One more 10-second request. I have a statement that I was about to read, which my colleagues, I know, were waiting with bated breath to hear, which I would like to present at this point.

Mr. President, I rise to support this very important amendment submitted by the distinguished Senator from Ohio. I believe that the periodic review of tax expenditures is a most important element in bringing our tax system back under control. A periodic termination and review should improve the equity of our tax system. It will assure that unwarranted tax breaks are not permanently built in.

One of the many important recent developments in the effort to control Government spending is the congressionally enacted requirement that the President transmit as a part of his budget a tax expenditure budget which "shall set forth the levels of tax expenditures under existing law for such fiscal year" as well as showing any changes in the existing levels based on proposals contained in the budget. Thus, for the first time, the President in his budget is required to take cognizance of the existence of tax expenditures. The importance of this becomes clear when we recognize that the tax expenditure estimate submitted by the President for 1979 is well over $125 billion, or more than 25 percent of the estimated direct budget outlays for that year.

The question now is: What is Congress going to do to control the use of tax expenditures?

The concept of such a thing as a "tax expenditure" or of a "tax expenditure budget" is relatively new. Briefly stated, a tax expenditure is a deviation from the basic tax structure for the purpose of providing a subsidy, a preference or an incentive payment to an individual or a corporation through the tax system, rather than by direct expenditure through the appropriations process. The real point is that tax expenditure questions, although contained in tax law, are now really a part of tax policy. They are the same as spending programs and they have as their objectives the accomplishment of some purpose that the Congress presumably feels to be in the national interest.

A part of the problem is that they can become embedded in our tax law, and unlike direct budget appropriations, do not come up for review every year. Nonetheless, they are a means of carrying out Government policy. There are many direct expenditure programs in the budget each year which provide assistance payments for such programs as housing, agriculture, medical care, and encouragement of exports, to name a few. There are also tax expenditure programs in the tax laws relating to all of these matters. However, in times of fiscal difficulty, such as the present, it is the direct expenditures that tend to receive the scrutiny, while the less visible tax expenditures remain untouched. There is no reason why a subsidy for housing or exports should receive more scrutiny when it is delivered through the appropriations process than when it is delivered through the tax system.

A periodic review of tax expenditures, such as that proposed today, can become an important tool in our efforts to achieve efficiency and economy in the use of Federal funds. Such scrutiny of tax expenditures should help to assure that our tax expenditure programs and our budget expenditure programs are working in harmony. It will make it possible for Congress to review the equity of these tax programs and to consider their effectiveness in achieving national policy goals.

These are very important matters that we are dealing with. In this $125 billion is buried many a program which affects the economy of our Nation and the well-being of our citizens. Some of them work well; others may not. Also hidden in this tax expenditure budget are subsidies to individuals and corporations that might never be granted if direct payments were being made. It is in this budget that many of the well-known tax loopholes reside. The results of many tax expenditures could be in direct contradiction to the results sought through other directly appropriated funds.

Tax expenditures are not necessarily bad. That is the last thing that my remarks are intended to imply. I do believe, however, that the tax laws can become a haven for unwise subsidies and undeserved tax breaks that manage to escape the regular scrutiny and consideration. Approval of this amendment today will go a long way toward meeting these problems.

Mr. STEVENS. Mr. President, will the Senator yield for a couple of questions?

Mr. GLENN. Without losing my right to the floor, I yield for a question, and being mindful of the time.

Mr. STEVENS. I am interested in that provision which speaks about "an identification of the tax against which the tax expenditure provision allows a special exclusion." This is the tax expenditure concept.

If my daughter gets in an accident and goes to a hospital and I pay the bill, is that a tax expenditure?

Mr. GLENN. What we are trying to do, I repeat for the umpteenth time here, is to set up a system of review. Whether those hospital expenses would be deductible or not is not relevant. We leave the identification of tax expenditures to the Committee on Finance and those with expertise in this area.

Mr. STEVENS. Mr. President, will the Senator yield for another question under the same ground rules? Does the Senator realize that much of our opposition to the Senator's amendment does not come from the sunset concept but from the philosophical difference that many of us have? If we spend our money to meet our needs and in so doing have a tax consequence which means we owe less to the Federal Government, we believe that is not an expenditure of the Federal Government at all.

What you are doing is setting up a procedure for reviewing all of the concepts that are embodied in the current relationship between the individual and the Federal Government; and the ultimate consequence would be that we would eliminate the areas providing de-

cisions on an individual basis, and bring the money into Washington so that the direct expenditures would go up and the tax expenditures would go down. What we could do would be hire thousands more Government employees and have many more oversight hearings to determine whether Federal programs are working; but meanwhile John Q. Citizen, who is trying to run his life and make some decisions, is going to be prohibited from utilizing the decisionmaking power.

Does the Senator understand that some of us really do not oppose the concept of sunset, but we oppose what he is doing in terms of philosophy?

Mr. GLENN. We covered that on the floor earlier today. I definitely do not believe in the concept that somehow the Federal Government owns all income earned in this country. I do not believe that any more than the Senator from Alaska does. The Senator from New York elaborated on that somewhat in his remarks, and the background of that concept.

All we are doing is trying to take the most uncontrolled, runaway part of our Federal budgeting system—Federal tax expenditures—that have gone from $52 billion in 1971 to $124 billion today, and which are forecast to be $187 billion in revenue foregone by 1983 and subject them to systematic review similar to that to be required by direct expenditure programs under the sunset legislation.

Mr. HANSEN. Mr. President, will the Senator from Ohio yield for one question?

Mr. GLENN. Without losing the floor, I yield for a question.

Mr. HANSEN. When he spoke just now about the revenues that might have accrued to the Federal Government, that would not be available under this mechanism here, does that statement not imply that basically, when you talk about revenues that could accrue to the Federal Government, do you not have an upper limit, or would there be a finality? Everything that is earned by the citizens?

Mr. GLENN. No, that is absolutely not correct.

Mr. HANSEN. Where do you draw the line?

Mr. GLENN. I am glad to clarify this point. When I say revenues foregone I am referring to revenues which would have been collected through our normal tax system but which were not, due to various credits, deductions, and other tax incentives and benefits known as tax expenditures. Some of these tax expenditures are no longer doing the job for which they were originally intended but, because some are getting these special benefits, the rest of the people of this country have to pay additional taxes in order to maintain revenue collections.

A systematic review would turn up those tax expenditures which are no longer doing the job they are supposed to do. If some of these are not continued, it might provide a further opportunity to reduce the overall tax burden in this country.

Mr. HANSEN. Is there a difference between social security benefits payments and a depletion allowance, in your understanding?

Mr. GLENN. I am not sure I understand the thrust of the Senator's question.

Mr. HANSEN. The thrust is, if you include as a tax expenditure everything that has been listed, or if you do not, can you point out to me if social security payments are not a tax expenditure when a depletion allowance is?

Mr. GLENN. Mr. President, regrettably, I move to table my own amendment, and I ask for the yeas and nays. I am doing this in order to have a vote on my amendment.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator withhold that?

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HARRY F. BYRD, JR. Will the Senator withhold his motion to table?

Mr. GLENN. Mr. President, if there is any privileged motion pending, I would not be willing to wait.

The PRESIDING OFFICER. At 1 o'clock we go to——

Mr. GLENN. Are there any before the Senate now? Because I do not want to be stopped.

The PRESIDING OFFICER. No.

Mr. GLENN. I will yield the Senator from Virginia 1 minute.

Mr. HARRY F. BYRD, JR. I hoped I would be able to make some remarks on this amendment before it was brought to a vote. I regret it is being rushed to a vote with the Senator from Virginia having only 1 minute for decision.

I would hope that the Senator from Ohio would not press for a vote on this vitally important issue just 1 week before the Senate adjourns.

I am convinced that one of the great problems in our economy today is the uncertainty which exists throughout our Nation as to what Washington is doing. I am convinced that if this amendment is passed, this country will be in great turmoil for the next 2 years. Uncertainty will be increased. Neither business nor individual will know as to what they can rely on in regard to the Tax Code. Before creating such uncertainty in regard to the taxes of all Americans, this measure should be set aside until the next session of the Congress.

Mr. GLENN. That will only occur if the Finance Committee and Congress do not do our job. I have enough faith in both institutions to think they will.

I move that my amendment be laid on the table, and I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Louisiana (Mr. JOHNSTON), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Mississippi (Mr. STENNIS), are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. (BROOKE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Virginia (Mr. SCOTT), the Senator from Texas (Mr. TOWER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "yea."

The PRESIDING OFFICER (Mr. CHURCH). Have all Senators in the Chamber voted?

The result was announced—yeas 38, nays 45, as follows:

[Rollcall Vote No. 458 Leg.]

YEAS—38

Allen	Garn	Ribicoff
Bartlett	Goldwater	Roth
Bellmon	Gravel	Schmitt
Bentsen	Hatch	Stafford
Byrd, Harry F., Jr.	Hatfield, Paul G.	Stevens
Byrd, Robert C.	Hayakawa	Stevenson
Cannon	Helms	Stone
Case	Inouye	Talmadge
Cranston	Laxalt	Thurmond
Curtis	Melcher	Wallop
Danforth	Nunn	Williams
Dole	Pearson	Young
Eagleton	Percy	

NAYS—45

Abourezk	Hatfield, Mark O.	McIntyre
Bayh	Heinz	Metzenbaum
Biden	Hodges	Morgan
Bumpers	Hollings	Moynihan
Burdick	Humphrey	Muskie
Chafee	Jackson	Nelson
Chiles	Javits	Packwood
Church	Kennedy	Pell
Clark	Leahy	Proxmire
Culver	Long	Riegle
Durkin	Lugar	Sarbanes
Eastland	Magnuson	Sasser
Ford	Mathias	Sparkman
Glenn	Matsunaga	Zorinsky
Hansen	McGovern	
Hart		

NOT VOTING—17

Anderson	Haskell	Schweiker
Baker	Hathaway	Scott
Brooke	Huddleston	Stennis
DeConcini	Johnston	Tower
Domenici	McClure	Weicker
Griffin	Randolph	

So the motion to lay on the table amendment No. 3681 was rejected.

Mr. HANSEN. Mr. President, I voted nay, not because I favor the amendment, but because I was denied an opportunity here this morning to express my convictions on it. I think it is very important that opponents as well as proponents of the Glenn amendment have an opportunity to express themselves. For almost all morning, it was the impression of the Senator from Wyoming that the time was brokered on that side and only those persons were recognized or at least——

The PRESIDING OFFICER. The Chair apologizes to the Senator, but there is a unanimous-consent order in effect which calls for our proceeding at this time to consideration of the conference report on H.R. 7843.

OMNIBUS JUDGESHIP BILL— CONFERENCE REPORT

Mr. EASTLAND. Mr. President, I submit a report of the committee of conference on H.R. 7843 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. CHURCH). The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7843) to provide for the appointment of additional district and circuit judges, and for other purposes, having met, after full and free conference, have been unable to agree, recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 28, 1978.)

The PRESIDING OFFICER. There is a 45-minute time limitation on this conference report divided among Senators EASTLAND, THURMOND, and LUGAR.

Who yields time?

Mr. EASTLAND. Mr. President, I ask unanimous consent that the privilege of the floor be accorded to William Westphal of the staff of the Committee on the Judiciary during debate and votes on this report.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Mississippi is recognized.

Mr. EASTLAND. Mr. President, I yield myself 10 minutes.

Mr. President, the conference report on H.R. 7843, the omnibus judgeship bill, reports a technical disagreement, together with an agreement to the language and content of a substitute amendment for the Senate amendment to the House bill.

The House, by a 292 to 112 vote has agreed to the substitute amendment and, after explanation of the work of the conference committee, I will move that the Senate agree to the amendment of the House to the Senate amendment to H.R. 7843.

Mr. President, the conferees started work on this legislation on April 11 and reached agreement on September 20. Considering the large number of differences between the 2 bodies, a total of 26 disputes—as well as the complexity of several of the issues, the conferees made good progress in arriving at a fair resolution of the points of difference.

As to the number of new district court judgeships there were a total of 15 judgeship positions at variance, due in part to the difference in court statistics which were available in May 1977, when the Senate passed its bill and in February 1978 when the House acted. Because each body had devised its own numerical standards for assessing the need for an additional judgeship, the conferees on each side felt compelled to uphold their own House's position. The issue was resolved by accepting 13 of the 15 positions. One new judge for Wyoming was deleted and one temporary judgeship for the southern district of Florida was deleted. Thus, the substitute amendment will create 113 new permanent judgeships and 4 new temporary judgeships.

While this is a large number of new judgeships, it must be remembered that the Congress has not created any new judgeships since 1970. During that interval the number of cases filed in the Federal district courts increased by 54,000 cases to a total of 166,500 cases for the court year ending June 30, 1978.

In addition to the new district judgeships there were two courts (Kentucky and Oklahoma) where there was a dispute about allocation of so-called rover judges, but these were compromised as explained in the report of the managers.

As to new circuit court judgeships both Houses were in agreement that 35 new positions were required in order that the courts of appeal could keep pace with an equally large increase in the appellate caseload since 1968 when the Congress last created new judges for the courts of appeal.

While both Houses agreed that our two largest courts of appeals, the fifth and the ninth, required a total of 26 and 23 circuit judgeships, there was, nevertheless, disagreement between the two Houses. The Senate bill had proposed to carve a new 11th Circuit out of the Fifth Circuit in order to create two separate courts of manageable size, 14 judges and 12 judges. As to the ninth circuit the Senate bill would have created a 23-judge court, but would require that court to report back to Congress in 1 year as to structural or procedural changes which would promote efficiency in the operation of a court of such size. The House bill contained no comparable provisions for either the Fifth or Ninth Circuits.

Since the Senate Judiciary Committee had held 13 days of hearings during three separate Congresses on the problems of the large courts of appeals and since the Commission on Revision of the Federal Court Appellate System had made a thorough study of the same problem, the Senate conferees felt justified in opposing the House contention that a court of 23 or 26 judges could operate in the same manner as a court of only 9, 13, or 15 judges. Finally, the issue was resolved by agreeing on the following language contained in section 6 of the substitute amendment:

Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its en banc function by such number of members of its en banc courts as may be prescribed by rule of the court of appeals.

Thus, the conferees agreed that the problems inherent in the management and operation of our two largest courts of appeals could be resolved by the judges themselves under the special rulemaking authority conferred by this language in section 6.

The original House bill contained a section making the creation of the new district court judgeships contingent on the promulgation by the President of "regulations establishing procedures and guidelines" for merit selection of district judges. The Senate bill had no comparable provision. In February 1977, the President had created the so-called merit selection nominating commissions for circuit court judgeship positions. However, the Executive order did not include district court judgeships, but the President had informally encouraged the Senators from individual States to voluntarily create their own nominating commissions for district judgeships. By the time the conferees met on this issue, there were some 20 States in which one or both of the Senators had created commissions of this kind. An analysis of these 20 instances disclosed a great variety in the composition of the members, the number of members, whether meetings are open or confidential, whether three or five choices are recommended, and several other differences. Moreover, the nominating commissions for circuit judges under the Executive order had not had enough experience to determine whether that procedure could be improved by perfecting changes. In short, it seemed that there should be further experience in the use of nominating commissions before regulations and procedures for merit selection would be required. There is also some question about the ability of the Congress to impose binding limitations upon the President's power to nominate for judicial office. As a result, the conferees agreed to the language in section 7 of the substitute amendment which makes the creation of the new district court judgeships effective upon the President's promulgation of "standards and guidelines" for merit selection.

Mr. President, I believe that this explains the major points of the agreement reached by the conferees. There are several other relatively minor items which I have not mentioned but which are described in the conference report, at page 9.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield myself such time as I may need.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I support the conference report on H.R. 7843, the omnibus judgeship bill of 1978.

This legislation has been a long time in coming before the Senate. The Federal judiciary has been seeking new judgeship posts since 1970. There have been a number of bills before the Senate Judiciary Committee in recent years to increase the number of Federal judges. This is, however, the first time such legislation has passed both the House and Senate.

Mr. President, this legislation authorizes 117 new district court judges and 35 new circuit court judgeships. Although the number of judges provided for in this measure is higher than I would have liked, there is a need in certain judicial districts for increased judges.

In addition to the increased number of judgeships, the conference report on H.R. 7843 provides for a compromise on the issue of splitting the fifth and ninth circuits. The Senate bill has recom-

mended that the fifth circuit be split into two separate circuits, thereby creating a new circuit. The House bill did not contain a provision for splitting the fifth circuit, thus a compromise was finally agreed to by the conferees.

As now proposed in the conference report before the Senate today, the fifth circuit would remain as it is with authority provided in the bill to permit the Fifth Circuit Court of Appeals to create such "administrative units" it may deem necessary to meet the various needs of the circuit. This language, although rather general in nature, leaves to the fifth circuit a certain flexibility that was satisfactory to the various conferees on this measure.

Finally, the conference reports spells out that the judicial conference or the judicial councils of the fifth and ninth circuits, respectively, shall submit to Congress within 1 year a status report on the feasibility of splitting the fifth and ninth circuits. It was felt that taking this course of action would allow for an assessment of any new judges appointed under the bill and any new developments within both those circuits during the next year.

Mr. President, I am supporting this conference report, because I believe there are areas of need in the Federal judiciary. I want to point out, however, that in the coming months, President Carter will have the opportunity to send to the Senate more than 150 nominations for Federal district court or appellate court positions. In addition to the normal legal and professional qualifications expected of a judicial nominee, I would also hope that an ethnic, racial, sex, and political balance be sought by the administration in sending its nominations to the Senate.

Mr. WALLOP. Mr. Presdent, will the Senator yield?

Mr. THURMOND. I am pleased to yield to the distinguished Senator from Wyoming, a member of the Judiciary Committee, and a very able member.

Mr. WALLOP. I thank my colleague from South Carolina.

Mr. President, the Senate has before it legislation which is bound to have greater impact on the Federal judiciary than any other legislation taken up by the Congress in recent years. Expanding the Federal judiciary by adding 152 new judgeships will improve access to the courts for people throughout the country. Court congestion will be reduced and justice will be rendered more expeditiously than it is today. To that end, and that end alone, I applaud and support the omnibus judgeship bill. For reasons to be set forth, I strongly oppose this report.

This Senator, along with several other distinguished colleagues, is greatly disappointed by the failure of the bill to provide an adequate procedural mechanism for the selection of Federal judges on the basis of merit. Indpendence of our Federal judges is the essence of the judicial system. Independence depends upon the selection of judges based on their qualifications and credentials, not on their political connections. To add 152 new judgeships to the bench without insuring their independence—which the creation of meaningful merit selection procedures would do—is to invite the partisan administration of justice, a circumstance not to be tolerated in our country.

During the 1976 campaign and after the election, President Carter seduced the American public with his pledge to appoint all Federal judges on the basis of merit. He said:

> All Federal judges . . . should be appointed strictly on the basis of merit without any consideration of political aspect or influence.

The public responded overwhelmingly in favor of removing political patronage from the judicial and prosecutorial selection processes. This has proven to be an empty promise. The President's record on judicial appointments makes a mockery of his pledge: Of the circuit court judges he has appointed, all have been Democrats, as have been all but one of the district court judges he has named.

With this legislation, the Congress is joining the President in a headlong retreat from his goal of extricating politics from the appointment process. Appropriate language could have restored us to the course of merit selection. Instead, the conferees most regretfully receded from the merit selection provision originally adopted by the House and strongly supported by the House conferees. That language would have required the President "to promulgate and publish regulations establishing procedures and guidelines for the selection, on the basis of merit, of nominees for the U.S. District Court judgeships authorized by the act."

In its place, we are being asked to provide this President his "dowry" of political appointments based on his now broken promises of a march toward judicial integrity apparently never intended to be fulfilled.

The language adopted in conference substantially diluted the strength of the original merit selection language and is, in simplest terms, all form, and no substance. It is, indeed, symbolism constructed of mirages. Section 7 of the conference-approved language merely calls upon the President to promulgate "standards and guidelines" for the selection of judges. Effectively, this language does little more than to codify the powers the President has always had in selecting candidates for the bench. This language falls short of the mark by not requiring the establishment of procedures for the selection of judges, such as the creation of State commissions to screen and recommend candidates, without respect to their political persuasion or activities, to the President for his consideration.

Mr. President, I am discouraged and disheartened by the inadequate response in this legislation to the widespread public demand for an independent judiciary, chosen on the basis of merit rather than politics. I disapprove of it to the extent that it provides no meaningful assurance that merit will prevail over politics in the selection of the 152 new judges, so essential to an independent judiciary and the nonpartisan administration of justice.

When a vote is taken on the omnibus judgeship bill, I will be recorded against it, not because it enlarges the Federal judiciary, but in protest of the legislation's failure to squarely address the merit selection question, and the failure to deliver the promises of President Carter.

I ask unanimous consent to have printed in the RECORD several articles concerning merit selection.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

CARTERIZING THE JUDICIARY

Jimmy Carter's impact on the judiciary will be profound and pervasive. The numbers alone demonstrate this.

At present, there are 399 federal district court (trial) judges in the United States, and 97 circuit court (intermediate appellate) judges, along with 109 senior judges who work occasionally and the nine members of the United States Supreme Court. However, there are 24 district court judgeships and 3 circuit court judgeships open.

In addition to these openings, there are inevitable turnovers of federal judges each year. In 1976, 31 active judges left the bench, according to the Administrative Office of the Courts. A comparable number of retirements can be expected each year. And, legislation proposed but not passed last year would have created 45–49 new federal district court judgeships. According to Senate Judiciary staff, a new bill will be proposed this session, and it will be supported by the major judicial organizations in the country.

Thus, by the end of his first year in office, Jimmy Carter will have appointed about 20 per cent of the total federal judiciary, and by the end of his first term he could have appointed a substantial majority of the bench.

Some signs are good. Informed sources feel that it is likely that more judgeships will be added. Indications are that the pay scale of the judiciary will be raised to a fairer level, discouraging resignations, encouraging a high quality of new appointees and ending the current demeaning situation. A recent commission recommended a pay raise from $42,000 to $62,000. And, on the eve of his departure, Gerald Ford proposed a pay hike for federal district court judges to $54,500 and for circuit court judges to $57,500.

Most important is what the new President does with this numercial opportunity. As governor of Georgia, Jimmy Carter reestablished a judicial screening commission for the appointment of state judges; interested observers say he improved the quality of state judges considerably. During the presidential campaign Carter pledged to appoint all federal judges on the basis of merit and not simply political pull. His transition staff endorsed merit selection of judges. However, accomplishing that change would not be easy and now there are indications that the new President is not prepared to fight for this reform.

The President appoints all federal judges, subject to confirmation by the Senate. Yet, traditionally, the judicial appointment process has been politicized by what is known as the "blue slip" system. That system is one under which the senator from the state in which a judicial vacancy occurs (especially if he is from the same party as the President) recommends a candidate or slate of candidates for the post. The Justice Department, usually an assistant deputy attorney general, reviews the candidate's credentials, advised by an American Bar Association Committee, and transmits a recommendation to the President. Of course, the President often has a candidate of his own and negotiates with the interested senators who sometimes are permitted to exercise a veto over the President's choice.

The President's choice is communicated to the appropriate senator a blue slip containing the nominee's name. If the senators from the candidate's state want to blackball the candidate for any reason they simply fail to return a signed blue slip and the candithe Senate Judiciary Committee, which sends date usually becomes a former candidate. If the slip goes through, the confirmation is virtually assured. Great deference is given by the Senate to the preferences of the two senators from the candidate's state. And, their choices may be idiosyncratic, a political payoff, and unrelated to the characteristics of independence, intelligence and integrity, which should be the central considerations for all judicial appointments.

About half the states have varied systems of merit selection of judges. Though Carter and his transition team recommended a merit selection system for all but Supreme Court judges, at his confirmation hearing, Attorney General designate Bell retreated and told the Senate Judiciary Committee that selection commissions would be used to select circuit court judges only, not district court judges (by far the most important in number and the volume of work) nor Supreme Court judges (by far the most influential).

Bell told the senators questioning him at his confirmation that the new administration would leave it to those individual senators who were willing to develop merit selection panels in their own states to recruit district court judges. Such a message could only isolate the few senators who would have preferred to have a reformed system imposed on them while winking at all the others who are quite happy using the judicial selection process for their private political patronage.

The Senate and the President ought to join in upgrading the whole judicial appointment process. The senators should have an important but less decisive role in the selection process, one which would not absorb the President's constitutional obligations nor unduly politicize the choices. The Senate and the President should be aided by the recruitment and screening of a talented pool of potential judges by a broad-based, high-minded, nonpartisan public body that includes with adequate staff non-lawyers and representatives of minority groups.

In any event, the new President could bring about a major reform of government by creating a new and better system for appointing all judges. Confining his reforms to a smattering of intermediate appellate judges indicates either that he does not really believe in merit selection or that he does not have the courage to assume the risks of conflict with the Senate. For Carter to desert such a good cause, to break such an important promise, is to start pulling his punches before the first round.

THE POLITICS OF PICKING FEDERAL JUDGES

(By James Goodman)

Jimmy Carter's recent order creating citizen panels for appointment of federal judges to the 11 U.S. circuit courts of appeals is a first. Never before has a president attempted so boldly to remove federal judge selection from political backrooms. Never before has a presidential candidate's talk about merit selection been backed up by action. But President Carter's order is also a serious retreat from the merit selection he campaigned for last year. Then, Carter was holding up the Georgia merit plan for picking state judges as his model for federal judge selection.

That plan, created by Carter, applies to trial as well as appellate judgeships. Yet Michael J. Egan, a Republican who worked closely with Carter on the Georgia plan before he was appointed to his current position as associate attorney general in the Justice Department, says the president has "no present plans" to set up a merit system for federal district judgeships. The administration's strategy, according to Egan, is to see how the circuit merit plan works out before deciding to push merit selection of district judges on a reluctant U.S. Senate.

Surely, White House Press Secretary Jody Powell's "you-can't-always-do-everything-immediately" defense of the president's backstepping on his campaign promise must have left senators smirking. The old way of handing out the 398 U.S. district judgeships—the heart of senatorial patronage—was unshaken by the president's order. And the "blue-slip" system, which enables one senator to blackball a nominee, seems to have survived intact.

Under the president's order, one of 13 citizens panels is "activated" whenever an opening exists for one of 97 circuit judgeships. (The number of circuit and district judges would increase substantially if a bill currently being considered by Congress passes.) The panels, all appointed by the president, match up with the 11 circuit courts of appeals. The geographically large fifth (deep South) and ninth (far West) circuits each have two panels.

The president notifies the appropriate panel of any vacancy. Within 60 days the panel must recommend to the president, in confidence, the five persons it considers best qualified to fill the vacancy. While not bound to do so, the president makes his nomination from this list and then sends it to the Senate for confirmation.

While Carter's merit plan is new to the federal judiciary, on a state level—where it has been most difficult to separate the courts from politics—merit selection has a much longer history. Beginning with Missouri in 1940, 25 states, the District of Columbia, Guam, Puerto Rico have adopted merit systems for state judge selection, says the American Judicature Society, a leading proponent of merit selection. Generally speaking, these merit systems rely on a commission, drawing from nonlawyers and lawyers alike, to submit a list of nominees to the governor for final selection. After a fixed time, the voters decide whether or not to keep the judge for another term.

Article II Section 2 of the Constitution empowers the president to "nominate, and by and with the advice and consent of the Senate," to "appoint" federal judges. But behind the antiseptic sounding "nominate" and "appoint" is a mire of political push-and-pull. As Attorney General Griffin Bell told the Washington Post, "becoming a federal judge wasn't very difficult." The former fifth circuit court of appeals judge explained: "I managed John F. Kennedy's presidential campaign in Georgia. Two of my oldest and closest friends were the two senators from Georgia. And I was campaign manager and special, unpaid counsel for the governor."

Although the Constitution leaves the impression that presidents choose federal judges, Attorney General Bell was much closer to the truth when he said during his confirmation hearings that "selection" of district judgeships is in the hands of the senators. Joe Dolan, an assistant deputy attorney general (1961–1964) under Presidents Kennedy and Johnson, similiarly told an American Bar Association conference last March that if one or both senators of a state come from the same political party as the president, the Constitution reads backwards. It should say: "the senators shall nominate, and by and with the consent of the president, appoint judges. . . ."

Actually, federal judge selection is more complicated than senators simply deciding who should get the political plum. Presidents also try to take advantage of the political buying power of a judgeship. Throughout the nation's history, about nine of every ten judges appointed by the man in the White House have come from his own political party—a clear indication that presidents are not passive partners.

And the power of appointment has been used—or abused—by presidents of all parties. A disillusioned James Farley, the former postmaster general, quoted President Franklin Delano Roosevelt as saying: "We must hold up judicial appointments in states where the delegation is not going along. We must make appointments promptly where the delegation is with us. Where there is a division we must give posts to those supporting us. . . ."

Federal judgeships were part of Lyndon Johnson's political wheeling and dealing, too. In *Judges*, Donald Dale Jackson tells of the time Johnson, as Senate majority leader in 1959, held up the confirmation of 13 judges until President Dwight Eisenhower okayed Johnson's candidate for a Texas vacancy. As president, Johnson kept federal judgeships close by his side. Unwilling to delegate authority even to his own Justice Department, he had White House staffer John Macy keep voluminous files to be used for presidental appointments, including judgeships.

Not surprisingly, President Richard Nixon had a highly politicized view of federal judgeships. This became most apparent when the Senate rejected his Supreme Court nominations of Clement Haynsworth and Harrold Carswell. As if Haynsworth's conflicts-of-interests and Carswell's segregationist past had nothing to do with it, Nixon lamented that "the real issue" behind the rejections was his nominees' "philosophy of strict construction of the Constitution," a philosophy the president said he shared.

In a subsequent letter to then Ohio Senator William Saxbe, Nixon further implied that the Senate had denied him the chief executive's right to choose Justices of his liking. He ignored the fact that the Senate has rejected almost one of every five Supreme Court nominees since 1789.

California Democratic Senators John Tunney and Alan Cranston found the Nixon Justice Department equally politicized when they approached Deputy Attorney General Richard Kleindienst in 1971 about resubmitting Cecil Poole's name for a California judgeship. Poole had been held in disfavor by conservatives because, as a U.S. attorney in 1967, he had persuaded a federal grand jury to drop charges against five anti-war demonstrators arrested for not having draft cards in their possession; Poole said the arrests were improperly authorized.

When Poole was considered for federal judge in 1968, and again in 1969, California Republican Senator George Murphy was able to stop the nomination. With Murphy gone in 1971 Poole backers thought he might make it through. But this time Kleindienst reportedly told Senator Tunney: "Poole said things about the administration which were unkind to the point where the attorney general [John Mitchell] just would not give a recommendation."

Not until Gerald Ford was in the White House did Cecil Poole finally make it to the federal bench. Yet there is a footnote to this eight-year struggle. On May 5, 1976, less than six weeks before Poole was nominated for a district judgeship and scarcely a month before Tunney's Senate primary against Tom Hayden, Tunney reported receiving a $200 campaign contribution from Poole, who was then a practicing attorney. Tunney, by the way, was a member of the Senate Judiciary Committee, which handles all nominations for the federal bench.

During the Nixon years, even moderate Republican Senator Clifford Case ran into trouble when he sent the name of liberal Charles Clyde Ferguson to the Justice Department for possible nomination to the federal bench. By not acting on the New

Jersey senator's recommendation—Case's office merely received a formal acknowledgment that Ferguson's name was received—the Justice Department made it clear that it did not want the former dean of Howard University Law School to be a federal judge. Senator Case submitted a new name.

President Gerald Ford did not use the Justice Department to block judicial appointments. On the other hand, twice during last year's heated campaign for the Republican nomination, Ford enhanced his political position in a state by making a timely judicial appointment. Hardly two weeks before the May 1 Texas primary, Ford nominated a member of John Connally's law firm, Ross N. Sterling, to the U.S. district court in Houston. At the time of the Sterling appointment, President Ford and challenger Ronald Reagan were vying for Connally's support. And sure enough, Connally thereafter announced he favored Ford.

Then, in July, Ford nominated Donald Brotzman for a district court opening in Colorado. Brotzman had previously been appointed by Ford, his old congressional friend, to be an assistant secretary of the Army following his defeat in Colorado's 1974 Democratic landslide. More significant, among Brotzman's biggest backers for the federal bench was William Armstrong, an uncommitted delegate to the Republican convention.

It seemed that Armstrong was leaning towards Ford. Still, most of Armstrong's conservative colleagues, led by Joseph Coors of Coors beer, were in the Reagan camp. So Ford tapped Brotzman to be a federal judge, and Armstrong finally committed himself to the President. Ford got what he wanted, but another Republican, Colorado Supreme Court Justice William Erickson, was generally considered better qualified than Brotzman for the judgeship. Colorado's Democratic Senators Floyd Haskell and Gary Hart were not receptive to Ford's choice, especially since a Democratic victory in November would increase their say in judge selection. When neither Colorado senator returned his "blue slip," the Brotzman nomination was killed.

While it has no statutory basis, the blue-slip system has managed to institutionalize senatorial patronage. Once the president formally nominates someone, the Senate Judiciary Committee sends each of the senators from the nominee's state a blue sheet of paper asking his "opinion and information concerning the nomination." In fact, the blue slip is asking whether the president's formal choice is the person the senator wanted or, in some cases, agreed to. If the senator approves, he returns his blue slip. If he disapproves, he holds on to the blue slip. Says a former congressional aide who worked close to his process, a withheld blue slip amounts to "a one-person veto," ending the nominee's chances.

If both blue slips are returned, confirmation hearings are scheduled. An informal subcommittee of the Senate Judiciary Committee, which until recently usually consisted of Senators James Eastland, John McClellan, and Roman Hruska (now retired), convenes for 15 or 20 minutes to ask the nominee a handful of perfunctory questions. Recommendation for approval is then sent to the full Senate, where confirmation is almost certain. But if the FBI's report on the nominee is negative, or if a bloc of senators, the ABA, or other outside groups oppose the nomination, it might be bottled up in the Senate Judiciary Committee.

In his studies of the appointment process to the federal bench, University of Minnesota Professor Harold W. Chase tells how conservative opposition nearly stopped liberals George Clinton Edwards and Thurgood Marshall from confirmation to U.S. circuit courts of appeals. Edwards, a former police commissioner of Detroit, had the support of both his Michigan senators and the Republican governor. Nevertheless, he faced stiff opposition because of his activist past and the fact that his father was a socialist. Even a representative from the Tennessee bar testified against the Michigan nominee. Despite that, Edwards still managed to win confirmation.

In Marshall's case, his long association with the NAACP Legal Defense Fund and the civil rights movement led the Judiciary Committee to drag its feet for almost a year. Because of a good deal of outside pressure, Marshall was finally confirmed.

At the other end, author Joseph Goulden (*The Benchwarmers*) found that the quickest confirmation was that of Richard McLaren, President Nixon's assistant attorney general in charge of antitrust. As White House tapes show, Nixon didn't want McLaren in the Justice Department ("Get the son of a bitch out of here"), and a federal judgeship seemed like the most graceful exit. Yet the White House did not want McLaren's confirmation hearings to provide a forum for critics to question administration antitrust policies—especially since the ITT case was beginning to make news. By floating the inaccurate story that Illinois District Judge Julius Hoffman (the Chicago Seven judge) wanted immediate senior status, the White House managed to rush McLaren's name through the Senate Judiciary Committee without confirmation hearings. In record time, on December 2, 1971, McLaren was nominated and confirmed to the Illinois district bench.

Honorable as a federal judgeship might be, it is often difficult to fathom the politics behind a nomination. It has been suggested, for example, that Herbert J. Stern was nominated to the federal bench because as U.S. attorney in New Jersey he was going after corrupt politicians regardless of their political stripe and consequently stepping on too many toes.

Veteran Washington watcher George Reedy, Lyndon Johnson's former press secretary, says that "all the bitter divisions of a state come out during the selection of a federal judge." As Reedy sees it, internally divided states, such as Wisconsin, California, and Pennsylvania, are the most difficult for presidents to deal with.

The home of Robert LaFollette and Joe McCarthy, Wisconsin is a classic case. Twice in the past 15 years the state's conflicting traditions have clashed over federal judgeships. In September 1963, President Kennedy nominated labor lawyer David Rabinovitz to the federal bench in Wisconsin. Aligned with the liberal wing of the Democratic party since 1942, Rabinovitz had political roots going back to LaFollette's Progressive movement. He was instrumental in securing Wisconsin for John Kennedy in his drive for the 1960 Democratic nomination. This work had won Rabinovitz the favor of Attorney General Robert Kennedy, who pushed for his nomination to a Wisconsin district judgeship.

But Rabinovitz's labor background, particularly his representation of striking workers in the United Auto Workers' six-year strike against Kohler Plumbingware of Kohler, Wisconsin, aroused strong local opposition.

Despite added negative comments from the ABA, President Kennedy stood by Rabinovitz ("I'm for David Rabinovitz all the way"). So did President Johnson, who appointed Rabinovitz on an interim basis minutes before the second session of the 88th Congress began in January 1964. Though Wisconsin's Democratic senators, Gaylord Nelson and William Proxmire, did not push the Rabinovitz nomination, both returned their blue slips. Still, the Senate Judiciary Committee stalled in holding confirmation hearings. So Rabinovitz temporarily sat as a district judge in Wisconsin while his name was once again submitted to Congress.

In August 1964, without hearings, the Senate Judiciary Committee finally polled its members. The result: five to one against Rabinovitz. When the Congress adjourned without taking further action on the nomination, Rabinovitz had to step down from the bench—this time for good.

The second Wisconsin controversy surfaced in 1971, when President Nixon nominated Wisconsin Congressman Glenn Davis to a district judgeship. Well-known for his conservatism, Davis is quoted as saying "every redblooded American is for Joe McCarthy," and he once referred to George Wallace as "a socialist." Liberals were not enthused about the choice, and Davis ran into strong opposition from minority groups because of a number of remarks he had made with anti-Semitic overtones. The ABA also came out against him, reportedly because he lacked sufficient trial experience.

The nomination dragged on for almost three years. Finally Senator Nelson revealed that he would oppose Davis, and the congressman withdrew. Interestingly enough, Senator Proxmire, the state's other liberal senator, said he would not stand in Davis' way.

If a senator is on an important congressional committee, his bargaining power with a president increases markedly—and more so if he is chairman. During the Kennedy administration, for instance, Oklahoma Senator Robert Kerr was able to push through Luther Bohanon for the federal bench despite widespread opposition. The reason was simple: As chairman of the Senate Finance Committee, the Oklahoma senator was in a position to block Kennedy's tax legislation.

Similarly, Mississippi Senator James Eastland, longtime chairman of the Senate Judiciary Committee, cleared the way for his law school roommate, W. Harold Cox, to wield a gavel in federal court. Eastland may well have more say than any other senator in judge selection. Besides Cox, four other judges with poor civil liberties records made it to the federal bench in Eastland's fifth circuit during the Kennedy years. While the Carter administration is reportedly about to change all this, Senator Eastland has hardly taken the lead in integrating the federal bench in the South, where not a single black judge sits.

How a senator's political affiliation matches that of the president and the other senator from a state is crucial in determining his influence in federal judge selection. California, for examle, had two Democratic senators under a Republican president for the past six years. An informal arrangement was worked out. One of every three nominations to the federal bench in California would go to Democrats—though the nominee could not be too strongly identified with the Democratic party.

Now, with Republican S. I. Hayakawa having taken John Tunney's senate seat and a Democrat in the White House. the matrix has shifted and Democratic Senator Alan Cranston has the most say in California judge selection. But in an effort, according to a Cranston aide, "to remove politics and cronyism" from the selection process, Cranston has helped set up a nine-member commission to screen choices. Four commissioners are appointed by Cranston, three by the California state bar, and two by Senator Hayakawa.

Chaired by San Diego businessman Richard Silberman, the commission has been in existence only three months, has met only a few times, and has yet to choose anyone. But after screening possibilities, it will submit a list of three to five names to both senators, who will in turn designate their personal preferences. The complete report

then will go to the White House for the final nomination.

Until President Carter's recent order, judges for the 11 U.S. circuit courts of appeals were usually selected by informal arrangements set up by the states in a given circuit. For the nine-judge second circuit, for example, New York was given six seats, Connecticut two, and Vermont one. In other situations, where the arrangements were less defined, the president had a greater say.

The success of different circuit court arrangements varied with the political situation. In *The Federal Courts as a Political System,* Sheldon Goldman and Thomas Jahnige tell of the time, in 1956, when Indiana's two Republican senators, Homer Capehart and William Jenner, could not agree on Indiana's choice for the U.S. court of appeals for the seventh circuit. Meanwhile, Indiana Congressman Charles Halleck, in high standing with the Eisenhower administration, pushed for his own choice. Both Republican senators considered this move an infringement on their patronage. Hallack was also aided by Robert Grant, a former congressman, who lined up eight Indiana Republican congressmen behind Halleck's choice.

The situation stalemated. And Illinois Senator Everett Dirksen was waiting in the wings with his own candidate. But a compromise was worked out.

Senator Capehart, up for re-election, had the chairman of the Citizens Committee for Capehart appointed to the circuit court opening; the next vacancy on that court went to Halleck's choice; and the nominee of Indiana's other senator, as well as Grant, received district-court appointments.

A more recent "package" helped former Connecticut Governor Thomas Meskill to the federal bench. First nominated by President Nixon on the eve of his resignation, Meskill was part of a three-judge deal put together by Connecticut's two senators, Republican Lowell Weicker and Democrat Abraham Ribicoff. Since a Republican was in the White House, Weicker got two choices to Ribicoff's one.

The package fit together as follows: Several years earlier, Ribicoff had supported Weicker's choice of Chief U.S. District Judge William Timbers for a circuit court of appeals appointment. Weicker in turn backed Ribicoff's choice of Jon Newman, a former Ribicoff aide and later U.S. attorney, for Timbers' vacant district court spot. When a circuit-court opening next came up, it was Ribicoff's turn to back Weicker in his choice of Meskill, over the protests of Connecticut liberals and the ABA.

Since 1948, the ABA has consulted the Senate Judiciary Committee on federal judge selection. And beginning with Eisenhower, presidents have established a working relationship with the ABA.

Though it has no statutory authority, the ABA has more say about who will sit on the federal bench than anyone outside government. Its Standing Committee on the Federal Judiciary gives every nominee one of four ratings: "exceptionally well qualified," "well qualified," "qualified," and "not qualified." The standing committee does not like to recommend anyone over 63 and if over 60, the nominee should have a "well qualified" rating. The most common reason for a "not qualified" is lack of trial experience.

Last August, the ABA's governing House of Delegates expanded the standing committee from 12 to 14 members—one from each of the 11 U.S. circuits, a chairman, and the two new members from the large fifth and ninth circuits. All are selected by the ABA president, and no one on the standing committee can serve more than two successive three-year terms.

The standing committee has earned the reputation of representing only the elite of the legal profession. Not until last September was a black appointed to it, and there is not a single woman on it.

The standing committee functions on two levels. On the official level, it rates the nominee based on his or her answers to a lengthy questionnaire and telephone interviews.

But equally important are the informal contacts the president establishes with the ABA. Because it is bad politics to nominate people with low ABA ratings, presidents develop extensive contacts with the standing committee to head off embarrassing nominations. (Joe Dolan recalls that one year, while he was judge-scouting for President Kennedy, he spent 1,600 hours on the telephone with Bernard Segal, then standing committee chairman.)

Contacts between the ABA and the White House can backfire, as *The New Republic's* John Osborne reported in 1970, following the Haynsworth-Carswell fiasco. Attorney General John Mitchell, trying to prevent future public confrontations over Nixon Supreme Court nominations, entered into an agreement with the ABA. All Supreme Court prospects would be reviewed by the standing committee before the attorney general sent them to the president. But when the ABA "pilloried" a list of nominess, Nixon exclaimed, "——— the ABA!" And so went the agreement.

With mixed success, a number of states have tried merit systems of their own for nominating federal judges. Democratic senators Lawton Chiles and Richard Stone of Florida established an independent nine-member judicial nominating commission. Each Senator picks three members, as does the Florida bar. The commission publicizes a vacancy, screens and interviews 15 to 20 candidates, and presents a list of five in alphabetical order to the Florida senators. The senators then designate one candidate as their top choice.

Florida Republicans claimed this merit system was nothing more than a "power grab" by two Democratic senators seeking patronage during a Republican presidency. In any event, the effectiveness of the Florida system has been hampered by political infighting and, before January 20, direct dealings between Florida Republicans and President Ford, who did not feel bound by the recommendation of the Florida Democrats.

Illinois has been more successful in its move toward merit selection. Impetus for reform came from the 1,200-member Chicago Council of Lawyers. The council was formed in the late 60s because the Chicago Bar Association was so entrenched in local politics.

Although his influence will diminish considerably with a Democrat in the White House, Republican Senator Charles Percy, the mainstay of Illinois' merit system, brought the state and local bar associations into the selection process. Basically, Percy began choosing his nominees from a list of a half dozen candidates who had been selected and ranked by the bar associations.

But as the McLaren rush nomination indicates, it would be misleading to say politics has been removed from federal judge selection in Illinois. Since Percy became senior senator in 1969, only three of the 21 judicial appointments he has been involved in have been Democrats, and many of the Republicans Percy appointed, including the last two, had close ties to either the Republican party or Percy himself.

The argument has been made that improvement of the quality of our federal judges will require more than a system of merit selection. Salaries have to be raised, it is suggested, so that the best private lawyers will have an incentive for serving on the federal bench—or at least will not be financially penalized for doing so.

The recent rise of circuit court salaries from $44,600 to $57,500 and district court salaries from $42,000 to $54,500 should be seen in this context—though 44 judges who brought suit a year ago against their "compensation" being "diminished during their continuance in office" argued that the raise was only for cost-of-living.

Certainly, most federal judges could make substantially more as private attorneys. But that in itself raises another set of questions. As ACLU National Staff Counsel Richard Larson remarked in a paper prepared before the recent pay hike, "Judicial salaries, which have not been increased since 1969, have been frequently cited by the ABA and by the Justice Department as a deterrent to attracting qualified judicial candidates. If the marketplace is limited to the private corporate bar and to highly paid United States attorneys, that claim may have some merit. If the marketplace were expanded to include the public bar, however, the claim would be false. Many of the best lawyers in our country, practicing with civil rights and civil liberties organizations or teaching in our law schools, would receive substantial salary increases upon appointment to the federal judiciary."

The relationship between federal judge selection and money is a curious one, since most judges are not really in it for the money. Nor, for that matter, is the federal bench simply an outpost for Wall Street. Although a corporate lawyer is more likely to make it to the federal bench than a poverty lawyer, a study by Professor Sheldon Goldman indicates that a prosecutorial background might well be the outstanding characteristic of federal judges. Nearly half of the judgeships Goldman examined during the Johnson and Nixon presidencies went to onetime prosecutors.

But any attempt to diversify the background of federal judges, or to improve their quality, might become a futile exercise as long as political patronage continues to skew selections. President Carter has pointed in the right direction. But much more must be done, if judge selection is to be made responsive to the democratic process.

JUDICIAL MERIT SYSTEMS: ONLY A PROMISE

(By John M. Goshko)

At his Feb. 23 press conference, President Carter repeated a persistent pledge: "I will do my utmost to keep all the campaign promises that I made to the American people."

But all his reaffirmations haven't shielded Carter from charges that he has retreated from one of the most important of his campaign promises—a merit system for the selection of federal judges and prosecutors.

So far, the efforts made by his administration to redeem that pledge seem to have caused mainly disillusionment among advocates of political and legal reform.

Their unhappiness was summarized recently by David Cohen, president of Common Cause, who told the Senate Judiciary Committee: "President Carter's disappointing action is a far cry from candidate Carter's pledges."

That is disputed by the Carter appointees now at the Justice Department. They contend that the new administration already has done more to reform the selection system than any previous President.

Still, they concede that what has been done falls far short of the position set forth by Carter in the campaign. It said:

"All federal judges and prosecutors should be appointed strictly on the basis of merit without any consideration of political aspects or influence. Independent blue ribbon judicial selection committees should be established to give recommendations to the President of the most qualified person available for positions when vacancies occur."

It was a classic example of campaign rhetoric totally out of step with political reality.

Even before they arrived in Washington, the Carter people knew there was no chance for a wholesale rewriting of the rules by which the game traditionally has been played.

Under the system that has evolved over the years, the senators from the President's party have almost unlimited power to pick, or at least veto, any federal judges named in their states. Without the approval of the senator involved, there is virtually no chance of a judicial nominee gaining the necessary Senate confirmation.

Nor is the Senate likely to relinquish this power at a time when the patronage possibilities in the federal judiciary are about to increase significantly. It seems almost certain that Congress soon will vote to increase the present quota of 398 U.S. district court judges by as many as 106.

When that number is added to existing vacancies, Carter could be in the position of naming up to 122 new district court judges—more at one time than any previous President. Under those circumstances, few senators would be willing to surrender their influence over his choices.

That is why the administration never tried to institute the selection system proposed by Carter in the campaign. As the new Attorney General, Griffin B. Bell, bluntly puts it: "We can't just issue an order and say this is the way it's going to be. We'd get a lot of publicity, but we wouldn't get any judges."

Still, Bell's new Justice Department team insists that the President's pledge hasn't been forgotten. While conceding that there's no chance for overnight reform, officials are working on a program of gradual change and persuasion that they hope will evolve eventually into a full-fledged merit system.

The outlines of this plan have been drawn by Bell and a Georgia Republican named Michael J. Egan, whom Carter has installed at Justice as associate attorney general. Egan, a former minority leader of the Georgia legislature, worked closely with then Gov. Carter to set up a merit system for Georgia state judgeships.

The plan calls for setting up three separate systems—for U.S. circuit court judges, U.S. district court judges and U.S. attorneys—each carefully calibrated to the political considerations attaching to these categories.

The plan covering circuit courts comes closest to Carter's original promise, because these courts have jurisdictions spreading across several states; and it's harder for individual senators to exercise decisive influence over the appointments.

An executive order issued by Carter Feb. 15 has established 13 advisory panels, each covering all or part of the 11 appellate court circuits, to recommend prospective nominees for vacancies. Egan says these panels will be "roughly half lawyers and half non-lawyers" and will give representation to minorities, women and other groups that have complained of being frozen out of the judicial selection process in the past.

When a vacancy occurs, the appropriate panel will give Carter a list of the five persons it considers best qualified for appointment. While these recommendations are not binding Egan says it is "virtually certain" that the President, after further checking with groups like the American Bar Association and the largely black National Bar Association, will choose his nominee from the five-person lists.

However, the "track" for picking district court judges is so solicitous of senatorial prerogatives that Common Cause's Cohen dismisses it as "not even a first step toward merit selection."

Essentially, it leaves intact the power of senators to pick the judges in their states. But it tried to persuade them to make their choices on a merit basis by setting up their own advisory panels or other consultative machinery within their respective states.

So far, the senators from six states—Florida, Kentucky, California, Iowa, Massachusetts and Georgia—have agreed to let local commissions guide their choices for district judgeships. The hope, Egan says, is that the idea will spread and eventually embrace all 50 states.

However, six states are still only a small fraction of 50. And, the critics, recalling that last year Sen. William L. Scott (R-Va.) blocked the nomination of a highly qualified lawyer, William B. Poff, for arbitrary personal reasons, think Egan is being somewhat disingenuous in asserting that the idea is likely to be embraced with speed or enthusiasm by 100 different senators.

A roughly comparable approach is being applied to U.S. attorneys—in many respects the most politically sensitive of the three categories.

For example, the new Republican governor of Illinois, James Thompson, rode into office on the strength of his success in prosecuting members of Chicago's Democratic machine. The task could have been more difficult under a Democratic President—at least while Chicago's late Mayor Richard J. Daley was an important force in his party.

Egan says the Carter administration wants the merit principle applied to U.S. attorneys; and Bell has said that all Republican appointees who want to stay will be considered for retention on that basis. But Bell also has made clear that the opinions of senators and other political leaders in the areas involved will be listened to carefully and that, in cases of close calls, Democrats will have an edge over Republicans.

Some career Justice Department officials predict that the U.S. attorney appointments, even more than the judgeships, will provide the best clue to how hard the Carter administration will fight against political pressures and insist on merit. And, the choices that Carter will have to make won't all be as easy as the free pass he recently got in New York.

That state has three Republican-appointed U.S. attorneys, all with reputations for high-grade job performance. The protest that would have been caused by their ouster was averted when New York's new Democratic senator, Daniel P. Moynihan, unexpectedly announced that he wanted them kept in office.

Carter also will be able to slide past some other potentially tricky situations, such as Chicago where the incumbent Republican appointee, Samuel Skinner, has won high marks from the legal community. Sen. Adlai E. Stevenson (D-Ill.), who wants him replaced, has been careful to come up with a candidate, Thomas P. Sullivan, whose credentials are impeccably nonpartisan.

As a result, Egan shows no apparent discomfiture in saying: "Sam Skinner is a very good man who has the support and trust of the department. He's the kind of incumbent we want to keep. Still, it's hard to say what's going to happen when Stevenson has found a man who seems so highly qualified."

Sooner or later, though, Carter will face a decision that hinges on a choice between merit and political clout. Some Justice Department sources say the potentially most revealing test will come in New Jersey.

There, a succession of Republican-appointed U.S. attorneys have won national prominence for their nonpartisan assaults on the links between politicians and organized crime. For that reason, the present occupant of the office, Jonathan Goldstein, is being strongly supported for retention by the state's legal and law enforcement establishments.

However, there are powerful forces in the New Jersey Democratic Party who want him out. Sen. Harrison A. Williams Jr. (D-N.J.) has hinted that Goldstein should be replaced by someone more to his, and the party's liking.

Egan leaves a loophole: "If the guy's as good as they say he is, it sounds like Williams is going to have to come up with a really good candidate if Goldstein is to be replaced."

The problem is that the Carter administration hasn't yet defined what it considers a "really good candidate" for either a judgeship or a U.S. attorney's post.

Bell, who spent 15 years as a federal appeals judge, says only, "I think I'll know a lawyer when I see one."

JUDGING CARTER'S JUDGES

Why not the best? Nowhere was the theme of Candidate Jimmy Carter's autobiography more explicit than in his campaign promises on the administration of justice. Said he, "All federal judges and prosecutors should be appointed strictly on the basis of merit, without any consideration of political aspects or influence." But, lo and behold, merit has turned up, as it so often does in politics, apportioned according to party lines.

The presidential nominations to date:

U.S. circuit courts—ten Democrats, no Republicans;

U.S. district courts—21 Democrats, no Republicans;

U.S. attorneys—55 Democrats, one Republican.

Faced with political realities, Carter backed away from a plan to have independent citizen panels nominate federal trial judges and prosecutors. One result in New Jersey and Michigan: two superb Republican U.S. attorneys who refused to resign were uncermoniously forced out of office. The choice of U.S. attorneys and district judges has long been controlled by U.S. Senators and state politics. But U.S. circuit courts usually cover several states, and appointments to them have less often been the absolute preserve of a Senator or Representative. So when Carter set up 13 panels around the country to pick appellate judges, the move to reward merit seemed likely to succeed.

The Administration has indeed selected from among each panel's nominees. The ten appellate court judges thus far chosen are all Democratic, liberal or moderate politically, and well qualified for the bench. But in at least four cases, political connections eased the way, and four other appointments promoted district judges previously named under predominantly political sponsorship. For example, Robert Vance, nominee for the Fifth Circuit, is the longtime Alabama Democratic Party chairman. Tennessee's Gilbert Merritt had contributed to Democratic Senator James Sasser's 1976 campaign (as had Merritt's two minor children). Thomas Tang of Arizona has close ties to Democratic Senator Dennis DeConcini. Yet even Republicans acknowledge that the nominees have good credentials, and the four trial court judges being moved up—Damon Keith of Michigan, Henry Bownes of New Hampshire and Alvin Rubin of Louisiana—are men of quality.

But the procedure suffered an embarrassment in September when Carter announced the nomination of Monroe McKay, 49, a Brigham Young University law professor, for a Utah-allotted vacancy on the Tenth Circuit Court. McKay's brother is Representative Gunn McKay, a Democrat close to House Speaker Tip O'Neill, The nominating panel had McKay on its list, but a poll of the Utah State Bar Commission had ranked Salt Lake City Attorney David Watkins at the top. Utah's two Republican Senators even congratulated Watkins. Then Representative McKay approach O'Neill, who approached Carter. This week McKay's nomination for the judgeship was to be confirmed by the Senate. Said a rueful White House adviser: "If politics is going to rule in the end, we're probably mak-

ing more enemies than if we let it rule from the start."

The slip back toward politics as usual has raised no cries of alarm, because even the bad old system managed to produce a federal judiciary of a generally high quality. Many of the U.S.'s most respected jurists, including every Chief Justice but Harlan Stone, were political activists before taking the bench. But the Democratic Congress is now completing action on a bill to expand the federal judiciary by one-third, adding 113 new district and 35 new appellate judgeships. The bill has been delayed for years, awaiting a Democratic President, and legislators are rubbing their hands in anticipation of the patronage to come.

CC Calls for Judicial Selection Commissions To Take Politics Off the Bench

"Appointments to the federal judiciary are being used as chips in a political poker game," says CC President David Cohen.

"Although federal judges are appointed by the President with the 'advice and consent' of the Senate, we all know that political back-scratching results in Senators having virtual power to appoint political cronies to vacancies on the federal bench in their States."

"If the past is any guide," he said, "political log rolling and 'Senatorial courtesy' will continue to dominate the process."

Cohen testified Jan. 11 before the Senate Judiciary Committee. The occasion was confirmation hearings on Attorney General-nominee Griffin Bell. Cohen took the opportunity to call on the Committee to ask Bell how he would recruit qualified persons to serve as federal judges.

"Now is an excellent time to institute merit selection of federal judges," Cohen said, "because a proposed expansion of the judiciary now under consideration by Congress could give President Carter the opportunity to appoint up to 150 additional federal judges—almost a quarter of the federal judiciary."

Common Cause has sent the Carter administration—at its request—a merit selection proposal. During his campaign, Carter pledged to utilize a merit selection system as he had while Governor of Georgia.

The CC proposal calls for a single nonpartisan judicial selection commission which would make a continuing search for qualified candidates and make recommendations to the President from which he would choose his nominee.

The system could be instituted by Executive Order.

By custom, the President now chooses from recommendations of the state's ranking senator, especially if that senator plays a powerful role in handling the Administration's legislation.

"Senatorial courtesy" also permits a Senator to veto a judicial nomination in his state and gives any Senator the right to blackball a Presidential appointee he declares "personally obnoxious" to him.

While a committee of the American Bar Association assesses the professional qualifications of each candidate, even the committee's "not qualified" rating doesn't assure the candidate won't be appointed.

Since judgeships are lifetime posts, appointments to the bench determine the quality of justice handed down for a long time to come, Cohen said.

"Citizens have a right to expect that the third branch of government is more than a game preserve for the other two," he said.

Federal Merit-Selection Drive Gains Momentum

The movement to improve the selection process for federal judges and U.S. attorneys has been gathering steam lately—but still has a long way to go.

The method of picking persons to fill these posts long has been criticized as a seamy political process in which patronage plays too large a part. Some critics argue that politics should play a role but admit that a problem arises in differentiating between "good" and "bad" politics.

The present system has evolved historically to give the senator from the party that controls the White House the power to fill openings in his state. If there is no presidential party senator from a given state, the authority flows to state party leaders or a U.S. representative.

Although the president submits the name of a nominee for confirmation by the Senate, if a home-state senator or a powerful out-of-state senator objects, either the name is withdrawn or the rest of the Senate extends "senatorial courtesy" and rejects the nomination.

This practice has prompted Attorney General Griffin B. Bell to quip, "In practice, the Senate proposes and the president advises and consents."

Bell is not happy with the process, which also is used to pick U.S. attorneys. He recently told members of the American Law Institute that "the critical problem with the political patronage system as it now operates is that many qualified candidates are discouraged from applying or are overlooked because they are not friends or close political supporters of the various senators."

In some states, according to Bell, "We are facing problems in the selection of U.S. attorneys. Some recommended nominees are simply not up to the requirements of the office."

And Bell wonders "how we can say that we are serious about the problem of crime unless we select the best available lawyers as U.S. attorneys and require that their assistants be strictly selected on the merit system."

The drive for merit selection takes on added importance and urgency because of a proposal in Congress to create 148 new judgeships. The Senate has already passed the bill (S.11). It is now awaiting action in the House, where a similar bill (H.R. 3685), which calls for 115 new judgeships, is being considered. Figuring the judgeships to be filled by the new bill and as a result of attrition, it has been estimated that within two years President Jimmy Carter and the Senate will have appointed nearly 50 percent of the federal trial judiciary and 35 percent of the appellate bench.

Recent developments, however, give reformers some encouragement.

In February, President Carter, by executive order, created nominating commissions for vacancies on federal appellate courts. The order did not, however, go as far as Carter promised during his election campaign, when he said he supported merit selection of all federal judges.

In May, Carter followed up with another executive order creating a seven-member Committee on Selection of Federal Judicial Officers to aid in selecting nominees for courts other than district and appellate courts. These include the Court of Claims and the Court of Customs and Patent Appeals. The language in the order is broad enough so that the committee also could be used for Supreme Court nominees. The committee is to report directly to the President and the attorney general.

And although district court judges and U.S. attorneys are not covered by either of the executive orders, some senators, with encouragement from the Department of Justice, are taking up the slack and appointing their own commissions. The number of these state nominating commissions is still small (14), but it is growing rapidly and, since March, has nearly doubled.

Herbert Brownell, attorney general in the Eisenhower administration, at an American Bar Association conference on the selection of federal judges last year, sized up the situation this way: "The day has arrived when the best politics is the best appointment. Most political leaders recognized some time ago that the appointment of good judges works best for the party, but have not always had the mechanism for discovering the best."

It appears the evolution of merit selection of district judges and U.S. attorneys will be through voluntary actions by senators, rather than through legislation or executive order. Says Mayo H. Stiegler of the American Judicature Society, which is closely following the development of the commissions, "I don't think the president is prepared to buck senatorial courtesy."

It is clear that the merit movement is off and running, but how far and how well ultimately depend on the character of the nominating commissions (presidential as well as senatorial) and their continued acceptance by individual senators.

Lawyers Get Some Representation on Nominating Commissions

Lawyers are not without representation in the plans various senators have established to help choose district court judges and U.S. attorneys, according to a survey by the American Judicature Society.

One of the most-common formulas is the "one-third plan," in which the two senators each appoint one-third of a nominating commission and the state bar association taps the other third.

The legal community is represented to varying degrees on the panels. On the whole, however, senators have limited the amount of lawyer participation in the interests of getting nonlegal representation also. In Pennsylvania, for example, while law school deans make some appointments, there is an overall limit on the number of lawyers. In New York, Sen. Daniel P. Moynihan has set up a screening panel of six lawyers and three nonlawyer academicians. Illinois Democratic Sen. Adlai Stevenson uses an informal method, submitting names to five bar associations. Illinois Republican Charles Percy was one of the first senators to establish a screening panel, which he used when a Republican was in the White House.

In some states, steps have been taken to make the commissions bipartisan (Ohio and Pennsylvania, for example) or at least broadly representative (Massachusetts). Nonetheless, political overtones remain. Except in California, senators who have established panels jointly are of the same party, and these joint commissions now exist in nine states. Commissions established by an individual senator exist in five states, bringing to fourteen the number of states presently with screening panels.

Once established, some state commissions have a "hands off" policy, with senators acting merely as a conduit to forward names for presidential appointment. In other states, senators get to choose, but only from a list of recommended candidates. In still others, senators submit names for review, and, according to some setups, they can reject recommended candidates and tell the commission to try again.

Commissions in at least six states are used to nominate U.S. attorneys as well as district court judges. Spokesmen for other senators say their particular commissions probably could be used to screen potential U.S. attorneys, but that authority was not specifically included in the original duties of the commission.

Justice Council Could Tie Three Federal Branches

A new Federal Justice Council of the top leadership from the three branches of government could be the catalyst for a unified political front on matters affecting the courts.

The Department of Justice has drafted a proposal for the council that would not require legislation and thus could be implemented quickly. Work is to start this month on a maiden meeting.

Members would be the president, the attorney general, the chairman of the House and Senate judiciary committees, the chief justice of the United States, and one other judge designated by the Judicial Conference of the United States.

In announcing department planning June 22, Attorney General Griffin B. Bell promoted the council as a means to spur court-administration improvements.

The council's lobbying activities would be on a high plane, through position papers issued to Congress on pending legislation and through policy statements.

At another level, the council would serve as a vehicle for the branches to share information on initiatives they have taken in legislation or new programs and to co-ordinate research and policy analysis. For example, the council could develop statements of the impact of pending legislation on the federal judicial system or on the Department of Justice.

The council would be the "focal point for studies and recommendations on the federal judicial system," says Deputy Assistant Attorney General Paul Nejelski of the department's Office for Improvements in the Administration of Justice.

Mr. THURMOND. Mr. President, I yield 1 minute to the distinguished Senator from New York.

Mr. JAVITS. I thank my colleague very much.

Mr. President, Representative CAPUTO of New York, has offered a bill to authorize the southern district to sit in White Plains, Westchester, in addition to the city of New York. This bill is before the Judiciary Committee, having been passed by the other body.

I ask both the chairman and the ranking minority member to advise me as to the disposition of the committee and whether their disposition is to look into the matter very carefully, with a view toward seeing whether it is suitable to pass this bill.

Mr. EASTLAND. I say to the distinguished Senator from New York that the Judiciary Committee will go into this bill carefully. We will try to do it this session.

Mr. JAVITS. I thank my colleague.

Mr. THURMOND. I see no reason why we cannot go along with that, since it would require no additional expense.

Mr. JAVITS. I thank my colleague very much.

Mr. THURMOND. Mr. President, how much time does the distinguished Senator from Indiana want?

Mr. LUGAR. I believe I am allotted 15 minutes.

The PRESIDING OFFICER. The Senator from Indiana is entitled to 15 minutes.

Mr. ABOUREZK. Mr. President, will the Senator from Indiana yield?

Mr. LUGAR. How much time does the Senator want?

Mr. ABOUREZK. I want to speak for 1 minute on this issue, on the time to be yielded by the chairman.

Mr. THURMOND. Will the Senator from Indiana wait for 1 minute?

Mr. LUGAR. Yes.

Mr. ABOUREZK. Mr. President, I heard the Senator from Wyoming (Mr. WALLOP) talking about the necessity for the independence of Federal judges and to keep their appointment out of the political system somehow. I agree. I think that Federal judges should be picked on the basis of their qualifications and on their merit. But I do not think the fact that they have been active in politics should enter into.

For example, we had a judge a few days ago from Iowa who is a highly qualified and highly competent individual who was speared by the American Bar Association Committee on Judicial Selection and the newspaper out in Iowa, the Des Moines Register—not because he was not qualified, but because he had been active in politics.

The second thing I would like to say on this issue is that, while I appreciate the words of my colleague from Wyoming and my colleague from Indiana—who I understand is about to make the same point—I think their words would carry a great deal more weight about making merit selection of primary importance had they said the same thing when the Republicans were appointing judges.

The only time we get criticism now is when the Democrats are appointing judges. In all fairness, I think they should recognize that. If they want to have a judicial merit system for both parties, that is fine with me. I am all for it. But I do not think we should single out the appointments of one political party as opposed to the other.

I must say that President Carter, to his credit—and the credit of Griffin Bell—has appointed the first merit selection system in circuit judges in the history of this country. I think that should be duly noted.

Mr. THURMOND. I just want to say, in response to the distinguished Senator from South Dakota, that under the Republican administration from 1970 until 1977, the Democratic Congress would not allow any judges to go through. So how does the Senator know what the Republicans would have done? For years and years——

Mr. BAYH. Mr. President, will the Senator yield?

Mr. THURMOND. For years and years, from 1970 to 1976, no judgeship bill could go through. We passed one in the Senate. It went to the House, and it was the policy of the Democratic Party to stop the judges' bill.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. THURMOND. I will not yield until I finish. Then I will yield.

Mr. ROBERT C. BYRD. Mr. President, if the Senator will yield, what year is this?

Mr. THURMOND. From 1970, I believe, to 1976, within which we tried to get a bill through.

Mr. ROBERT C. BYRD. May I say that I assisted in getting Republican judges appointed during that time.

Mr. THURMOND. The bill went through the Senate, and I am not criticizing the Senate, but the point I am making is it did not go through Congress. It was stopped. Why? Because we had a Republican President. He would have appointed the judges.

Now, just as quick as the Democrats get in with the Democratic President, they agree to a bill. And we went along with it because the judges are needed. That is the answer to the question.

Mr. ABOUREZK. Mr. President, will the Senator yield for 1 second?

Mr. THURMOND. I will yield to the distinguished Senator from Wyoming.

Mr. ABOUREZK. This is just for a question.

Mr. THURMOND. All right. Go ahead.

Mr. ABOUREZK. Even though we did not pass a bill creating new vacancies, there were many vacancies that occurred because of death and retirement of Federal judges and there were many of those appointed by Republican Presidents during the time the Senator was talking about. Yet there was no merit selection commission during any of that time. I repeat it was this administration that has put in the merit selection system for circuit judges.

Mr. THURMOND. We will see how it works under this administration. We will look eagerly forward to ascertain if they are going to be selected on the merit system.

There are three in my State. I am anxious to see. And we had only one in the bill under the Republicans, but the Democrats now put three in the bill. We will see just how it is going to work.

Mr. WALLOP. Mr. President, will the Senator yield?

Mr. THURMOND. I yield to the distinguished Senator from Wyoming.

Mr. WALLOP. I shall not take any time. I say before the Senator from South Dakota criticizes either the Senator from Indiana or the Senator from Wyoming that we have not been part of a merit selection system while the Republicans were in, I think the record will show that neither of us have been here except while there has been a Democratic President.

Second, I think the record will show that this Senator has supported from the very beginning the idea of merit selection.

Third, I think the record will show as to the judge that was approved by the Senate for Iowa, this week that the nominee's political activities in the Democratic Party were not the sole grounds upon which the ABA objected to his nomination. Among their concerns was the fact that a man apparently has spent 17 years of his life imprisoned on account of a rather unfortunate circumstance that they believed could have been avoided or mitigated by the nominee.

Mr. ABOUREZK. If the Senator will yield, the Senator sat in on those hearings and he knows very well that the charge, the allegations by the ABA Judicial Selection Committee was that the defendant Triplett's rights were violated because the nominee, Mr. O'Brien, had failed to talk about the drug-induced confession when in fact the ABA Judicial Selection Committee was made to admit

under cross-examination that the issue of a drug-induced confession was a big issue during the trial and then if there were any violation of that defendant's right it was certainly not as a result of this nominee. I think the Senator from Wyoming knows that and it is unfortunate he got up and made that statement just now.

Mr. THURMOND. Mr. President, I yield now to the distinguished Senator from Indiana.

Mr. LUGAR. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. LUGAR. Mr. President, I ask unanimous consent that two articles appearing in the Chicago Tribune and a letter to the Honorable JAMES EASTLAND be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune, Feb. 21, 1978]

SEEKING TO END POLITICAL CRONYISM IN JUDICIAL SELECTIONS

(By Richard Lugar)

By now, most Americans are familiar with David Marston's name, and with his firing as United States attorney in Philadelphia under circumstances which have seriously embarrassed the Carter administration and caught the President himself in some public untruths. The dismissal of this successful corruption-fighter in the midst of a sensitive probe—at the insistence of Democratic congressmen who were known to be under investigation by Marston—has aroused public opinion and sparked demands for appointment of a special prosecutor and a Watergate-style investigation.

Fewer citizens are aware of the archaic process through which U.S. attorneys, along with federal judges and marshals, are selected in this country. Although the Constitution specifically grants to the President the power to appoint federal judicial officials, the practice of permitting senators and congressmen of the President's party to control these selections politically has prevailed for decades.

Past reforms have assured merit selection virtually throughout the federal government, but the most sensitive positions of the judiciary, in which impartiality and nonpartisanship are of maximum importance, are still being filled by backroom maneuvering.

In one of the most exhilarating and oftenmade promises of the 1976 campaign, President Carter proclaimed:

"All federal judges and prosecutors should be appointed strictly on the basis of merit without any consideration of political aspects or influence."

Rhetoric and performance soon parted company. In March, Atty. Gen. Griffin Bell defined the real administration policy, "We had an election last November, and the Democrats won." Accordingly the appointment process regularly centered on closed-door discussions with a state's Democratic senators, or, if both were Republicans—as in Pennsylvania—with Democratic congressmen and state officials. By late 1977, President Carter had nominated 87 federal judges and U.S. attorneys; 86 were avowed Democrats.

The patronage distribution of these vitally important jobs and the President's straight-faced violation of an explicit campaign pledge constitute a continuing national scandal which demands attention and reform. Given the threat to habit and to entrenched authority posed by reform, change in the system may be impossible. Nevertheless, it is critically important to try, and to try in 1978.

The Congress is likely to approve later this year the creation of more than 140 new federal judgeships, 30 per cent of the current total and the largest expansion of the federal judiciary in history. If 140 new judges are suddenly appointed to lifetime tenures on the basis of political partisanship, any hopes for an independent, merit judiciary will be eliminated in effect for the balance of the century.

Despite the President's professed commitment to merit selection, despite the outspoken advocacy of Common Cause, the American Bar Association, the American Judicature Society, and a host of editorial commentators, in only four states have senators created commissions and initiated selection plans which meet what I would term minimum standards for merit selection.

What are these minimum standards? In my judgment, they are:

First, no senator should be permitted to originate the names of candidates, thus limiting the commission's options.

Second, no senator should be able to control, through appointment, the commission decision. For example, no senator should name more than half the commission members.

Third, no senator should have the authority to decide the name or names to be presented to the President. Commission judgment should be final.

While senators have a constitutional role to play in advising the President on judicial nominations, and consenting to his choices, they ought not control the process. Americans who share a commitment to reform should not be misled by so-called "merit systems" which fail to meet these minimum standards and involve committees which merely rubber-stamp senatorial choices.

When it became clear that President Carter did not intend to carry out his campaign pledge, I drafted legislation, which I have introduced as Senate Resolution 353, to require each state's senators to implement a merit selection process which meets the minimum standards above.

Any hopes that the Senate will take this issue seriously depend entirely on the strength of public sentiment against political cronyism in judicial appointments. Ironically, President Carter, in his dismissal of an effective Republican public servant, may have precipitated enough public pressure to bring about the reform he promised but failed to deliver.

[From the Chicago Tribune, Apr. 28, 1978]

SENATOR LUGAR'S FIGHT WITH A PORKBARREL

(By Bob Wiedrich)

Sen. Richard Lugar must feel like a hog caller with weak lungs as he tries to eliminate porkbarrel politics in the selection of federal judges.

Lugar is convinced that President Carter wants to do the right thing and keep his campaign promises to end political patronage on the federal bench.

But he also is persuaded that the Carter White House is scared to ruffle senatorial feathers because of the long-standing tradition that United States senators get their own way in picking the federal judiciary.

So Lugar, Indiana's junior Republican senator, believes President Carter has failed to exert the strong leadership needed to get the Senate to change its ways.

And because of that, Lugar's efforts to convince Congress to take a firm stand favoring merit selection of federal judges, marshals, and prosecutors have virtually come to naught.

Back on April 13, a joint House and Senate conference committee so watered down a merit-selection proposal tied to a bill creating a batch of new federal judgeships that Lugar had to concede defeat. At least for the moment.

However, he swears that unless Congress changes its mind this session he'll be back later for another try. And meanwhile, he intends to press the Justice Department to formulate merit selection procedures that would accomplish the same end.

Specifically, Lugar wants each senator to establish a merit selection commission with a free hand to pick nominees to be presented to the President.

He also wants assurances written into the procedures that will prevent any senator from attempting to control or interfere in the commission's work.

"If a senator can control the commission's work from start to finish, the transparent political domination involved defeats the purpose of merit selection," Lugar declared.

The language of the Lugar plan was gutted when the boys from both sides of Capitol Hill got their heads together to compromise.

The proposed merit plan procedures would not have been binding on the President. But they would have conveyed the sense of Congress on the issue.

They also would have furnished the President with a lever to help him overcome hidebound Senate desires to cling to their prerogatives.

But, with its watered-down language, the Congress will only be calling on Carter to establish qualifying standards for judges instead of asking him to write procedures for their selection.

That probably means that unless Carter takes the initiative himself and flies in the face of senatorial ire, the country will be left with the same old system of selecting its federal judges by clout.

Actually, 20 Republican senators including Charles Percy of Illinois signed a letter drafted by Lugar calling on Sen. James Eastland [D., Miss.] to support merit selection. Eastland is conference committee chairman on the omnibus judgeship bill.

The House had earlier registered a 321 to 19 vote insisting on the merit selection language which was subsequently scuttled in committee. So there is a chance, although highly unlikely, that the bill could later be rejected by the full House.

That, however, would mean sending the bill back to committee. And it is almost unreasonable to expect that to happen.

This is a congressional election year and some on Capitol Hill fear that the legal community might turn on them if they don't act expeditiously on the bill creating 140 new federal district and appellate judgeships.

All this seems quite sad for the country. It indicates that the administration and too many congressmen don't really mean what they say when they publicly declare their support for judicial merit selection.

As Lugar emphasized in introducing a resolution calling for the revised procedures last January:

"It is time to assist the President in keeping his own promise. If 140 new judges are appointed to lifetime tenures on the basis of political partisanship, any hopes for a merit judiciary will be effectively eliminated for the balance of the century."

Lugar is absolutely right. The Senate should be capable of rising above self-interest. And the President should have the guts to lend Congress a helping hand in doing the right thing.

Right or wrong, Carter already has taken the jacket for the appearance of impropriety in the dumping of former U.S. Atty. David Marston in Philadelphia.

And Carter's attorney general, Griffin Bell, put his foot in his mouth by reminding the voters that the Democrats won the election and are entitled to the political spoils of that victory.

Earlier this month, Bell told the Senate Judiciary Committee that he was as concerned as his critics about the "appearance of justice" in the Carter administration.

A good way to end that concern would be for Carter to show the Senate how to clean up its own patronage act.

U.S. SENATE,
Washington, D.C., April 6, 1978.

HON. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Senate-House Conference Committee will soon begin consideration of the Omnibus Judgeship Bill. We take this opportunity to urge your support, in Conference, of Section 6 of the House version of this legislation, as it pertains to the merit selection of newly created district court judges.

The House language conditions the effective date of the bill on the President's establishment of procedures and guidelines for the merit selection of those U.S. District Court judges whose positions are created in the bill. The House provision acknowledges the President's constitutional authority to appoint federal judges, and does not bind the President to the outcome of a merit selection process.

As evidence of the overwhelming public support for the merit selection concept, the House voted 321 to 19 on February 9th, to instruct their conferees to insist on the merit selection provision of the House bill. Support for this provision is bipartisan, under the leadership of Congressmen Rodino, Seiberling, McClory, and Mazzoli. The House provision is also supported by Common Cause, the American Judicature Society, and the American Bar Association.

Even though the House provision fails to address all aspects of the merit selection question, its adoption is an important first step. The House language restricts the use of merit selection in several respects: it covers only those new district judgeships created by the bill, and not the 398 current seats; it covers only district court judges, and not other judicial officers. These and other issues, including the establishment of minimum standards insuring true merit selection, would remain to be considered following the adoption of the House language.

Early in 1977, President Carter acted to institute a merit selection process for the selection of U.S. Circuit Court judges. However, the President did not establish procedures for the merit selection of district court judges, and only a few Senators have implemented genuine systems. Unless the House provision, or language similar to it, is adopted in the Conference, nearly all of the 110 new District Court judges will be selected through political rather than merit processes. Although men and women filling these posts might be well qualified, they will be unable to escape the suspicion that they attained their position due to partisan considerations.

Adoption of the House language would indicate to the President and to the public that the Senate is willing to relinquish the patronage power over the appointment of federal judges. This action furthers the goals of an independent judiciary promised by the Constitution and the maintenance of the public trust in the legislative and judicial branches.

We are convinced of the critical importance of the House provision, and respectfully encourage your support for the inclusion of merit selection language in the judgeship bill.

Sincerely,
Howard H. Baker, John H. Chafee, John C. Danforth, H. John Heinz, III, Richard G. Lugar, Ted Stevens, Malcolm Wallop, Jake Garn, Pete V. Domenici, Robert Dole, Bob Packwood, Robert P. Griffin, S. I. Hayakawa, Jesse Helms, Paul Laxalt, Richard S. Schweiker, Carl T. Curtis, Clifford P. Hansen, Charles H. Percy, and Robert T. Stafford.

Mr. LUGAR. Mr. President, I acknowledge the point made by the distinguished Senator from South Carolina, that clearly there has been partisanship in this area. The remarks that I am going to make today, and I concur with the thoughts of my distinguished colleague from Wyoming, come from the fact that some of us are beginning with a clean slate in this area, enunciating guidelines that we intend to follow, and it is on that basis, Mr. President, that I make these remarks and take this opportunity to voice my opposition to the omnibus judgeship bill conference report.

Ordinarily, I would not be inclined to oppose legislation on which so much time and energy had been expended, and, therefore, I do so reluctantly. Due to the absence of provisions in this bill which seriously address the question of merit selection, I cannot support it.

Mr. President, this legislation has proceeded through Congress as a bill intended to improve significantly the quality of justice in our Nation. It may well be that increasing the number of Federal judges is essential. I will leave this question to other debaters. In any case, I cannot help noting that the need for new judges seemed somewhat less imperative in 1973, 1974, 1975, and 1976, when the partisan concerns of Congress prevented the creation of as few as 40 additional judgeships at that time.

Mr. President, this bill creates 152 new Federal judgeships—35 circuit court judges and 117 district court judges. This is the largest single addition to the Federal judiciary ever, increasing its size by over 30 percent. Commenting on the fact that passage of this bill will give the President the power to name these 152 new Federal judges, the Washington Post reports this legislation as "the largest political patronage plum in the Nation's history".

Few positions in Government carry with them so much honor or so much unilateral discretionary authority over the lives of Americans; yet, it is plain that the majority of these new judges will be selected through a partisan political rather than through a merit process. In the short run, to allow the filling of a substantial number of new judgeships through a partisan selection mechanism will reflect negatively on the statesmanship, credibility, and integrity of both the executive and legislative branches. Of greater long range impact, however, is the irreparable damage that political selection will do to the long-cherished concept of an independent, nonpartisan Federal judiciary.

It is sad indeed, Mr. President, that a bill purported to improve the quality of justice will subject the Federal judiciary, in one fell swoop, to massive politicization.

By the sheer numerical increase in Federal judgeships filled through political patronage, the entire character of the judicial branch will be subject to challenge in the skeptical public eye. Although men and women filling these positions might possess superlative credentials, they may not escape the suggestion that they attained their positions primarily on partisan political considerations.

On January 19, 1978, I introduced Senate Resolution 353, which provided for true merit selection of U.S. district court judges. I proposed that Senators divest themselves of any influence in the selection of judges, and that commissions be established in each judicial district to search for, screen and recommend judgeship candidates to the President. As minimum standards for the creation of merit selection commissions, I proposed that the establishment and operation of these commissions must meet three essential guidelines:

1. No Senator should be permitted to originate the names of judgeship candidates;
2. No Senator should be able to control, through appointment of commission members, the commission decision; and
3. No Senator should have the authority to decide the name or names to be recommended to the President.

As these principles affirm, there is a legitimate place for Senators in the judicial selection process. It is the traditional advise-and-consent role intended by the architects of our Federal judiciary.

Clearly, this legitimate role has been abused by the Senate. The public has recognized the abuse and clamors for reform. The American Judicature Society, Common Cause, the American Bar Association, and a host of editorial commentators have advocated the merit selection of Federal judges. I can assure my colleagues that the public will not long tolerate the protection of illegitimate privileges which Senators now exercise. Only the Senate can reform the selection process of Federal judges, and it is imperative that reform occur now as we prepare to create 152 new Federal judgeships.

Several Senators have acted independently to insure genuine merit selection of U.S. district court judges in their States. As I have done before, let me take a moment to commend them, for they richly deserve the appreciation of the public. The Senators from the States of Iowa, Kentucky, Colorado, Pennsylvania, California, Utah, Oklahoma, and New Mexico have established merit selection procedures which meet, either the minimum standards which I have proposed in Senate Resolution 353, or similar standards proposed by Common Cause, or the American Judicature Society. I am hopeful that the willingness of these Senators to abandon patronage politics

might favorably influence others in this body. It is unfortunate, however, that even with the procedure instituted by these Senators more than 84 percent of the new district court judges will still be appointed through strict patronage mechanisms.

Recognizing the danger of creating 152 new Federal judgeships with lifetime tenures to be appointed by a single President, the House of Representatives included a merit selection provision in its version of the Omnibus Judgeship bill. The language of the House bill was nonbinding on the President, and, therefore, clearly constitutional. The House voted 321 to 19 to insist on this language, and 19 Republican Senators joined me in a letter to the Senate conferees urging the adoption of the House merit selection provision. For myself, Mr. President, the merit selection provision. For myself, Mr. President, the merit selection provision of the original House bill was not nearly as strong a remedy as is needed in this matter, but it was a start. It was, at least, language which raised the procedural questions of judgeship selection.

The conference committee spent several meetings discussing merit selection, and at one point even discussed the essence of my merit selection resolution, which was proposed in conference as an amendment to the bill.

Eventually, under pressure from the Senate conferees, the House conferees by a one-vote margain retreated from their position and, ultimately, compromise language was adopted by the conference which deleted any reference to the procedure used for selecting judges. Consequently, Mr. President, this bill does not address itself to the true question of merit selection.

The proponents of this legislation will undoubtedly argue that this bill contains merit selection language, but let no one be misled; the language contained in this bill makes mockery of true merit selection.

The language of the bill reported from conference requires the President to set "standards and guidelines" for merit selection. It is absolutely clear that the intent of the conference is for this provision to apply to the qualifications which potential judges might possess. This provision completely sidesteps the heart of the merit selection question.

The purposeful deletion of any reference to "procedures" to be used in judgeship selection is an attempt to protect the privilege of patronage politics.

The intent of merit selection is to prevent Federal judges from being beholden to a political system and, therefore, the "procedure" used for merit selection, is the crux of the issue. This is what merit selection is all about—the way in which judges are selected. The importance of merit selection is not that it insures a qualified judiciary, although this is more likely to result from the selection of judges on a merit basis. The importance of merit selection is that it guarantees an independent judiciary, free from the politics of the legislative and executive branches. This legislation, as reported by the conference committee, ignores and subverts this constitutional ideal and insures for the balance of the century the potential for a highly partisan judiciary.

Let me note here also, that the conference language requires something that the President could do now or could have done at any time since taking office. During the 1976 campaign, President Carter assured the American people in unequivocal terms that his election would at long last bring merit selection to the Federal judicial system. This was his promise: "All Federal judges and prosecutors should be appointed strictly on the basis of merit without any consideration of political aspects of influence."

Leaving aside the President's embarrassing breach of this promise with regard to U.S. attorneys, consider his record to date for appointing Federal judges—whose independence is promised not merely by a campaigning governor but by the Constitution: The President has appointed 12 circuit court judges for life terms—all 12 have have been Democrats. The President has appointed 50 new district court judges for life terms—49 have been Democrats.

Mr. President, I oppose this legislation because it lacks the necessary safeguards to protect an independent and nonpartisan judiciary, and I urge those of my colleagues who share my view to record their similar disapproval.

Several Senators addressed the Chair.

Mr. LUGAR. I would be happy to yield to the Senator from New Mexico.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I ask unanimous consent to yield 30 seconds to the distinguished Senator from Nevada (Mr. CANNON).

The PRESIDING OFFICER. Has the Senator from Indiana yielded the floor?

Mr. LUGAR. Yes, I yielded, not the floor, Mr. President, but I yielded to the Senator from New Mexico on my time.

Mr. HEINZ. Mr. President, reserving the right to object, and I shall not object, but for how long does the Senator yield?

Mr. LUGAR. I yield 1 minute to the Senator from New Mexico.

Mr. SCHMITT. Mr. President, I want to associate myself with the excellent statement made by the distinguished junior Senator from Indiana, Senator LUGAR. The absence of the House-passed merit selection provisions in this conference report makes this bill, to again quote from the Washington Post, "the largest political patronage plum in the Nation's history."

Today the Senate of the United States is about to write a very sad chapter in the history of our country. The House conferees should never have yielded on the merit-selection provision. The Senate conferees should never have insisted that the House yield. Most of all, the Carter administration, which once was so bold as to pledge that "All Federal judges and prosecutors should be appointed strictly on the basis of merit selection without any consideration of political aspects of influence" will owe the American people an apology if this bill is signed into law.

Let no one have any doubts as to what we are doing here today. We are creating 152 lifetime, let me repeat that, lifetime members of the Federal judiciary knowing full well that the overwhelming majority, 84 percent of the Federal district judges according to Senator LUGAR, may reach the bench by that same old, tired, political process which has seriously eroded the faith of the American people in our Government institutions.

Mr. President, on September 7 of this year, the Senate passed S. 1423, the Judicial Tenure Act, by a rollcall vote of 43 to 31. I joined with the distinguished senior Senator from Indiana, Senator BAYH, and the distinguished senior Senator from Maryland, Senator MATHIAS, in actively opposing what in our opinion was a very bad piece of legislation which, if enacted, would weaken our independent Federal judiciary. I have not changed my opinion on S. 1423, but quite frankly I wish to state that it is blatant political power grabs such as the creation of 152 new lifetime judges without any safeguard regarding the process used to select those men and women that make legislation such as the Judicial Tenure Act seem desirable. If this conference report is accepted, the American people will have fostered upon them 152 new lifetime judges without any assurance as to their qualifications—without any assurance that the appointments are meritorious, without any assurance that the views and needs of our minority groups have been reflected, without any assurance that there will be fair and equitable consideration of qualified minorities and women for the Federal bench.

Oh, we hear a good deal about sunshine in the Government. Fine speeches are given about the necessity to let sunshine into the Government, "let the people know" is the cry. Well, where will be the sunshine when it comes time to select these 152 lifetime Federal judges? I will tell you where. It will be left outside the smoke-filled back room where the selections will be made.

Oh yes, we also hear a good deal about equal rights for women. We just passed an extension of time in which States can ratify the equal rights amendment. I supported the extension, but without a merit-selection process to recommend individuals to Federal bench many highly qualified women attorneys are going to be ignored when it comes time to appoint individuals. It will be business, and by that I mean politics, as usual.

Now Mr. President, of course there will be exceptions. For example, some Senators have already voted to establish merit-selection procedures. New Mexico has created a Judicial Selection Commission established by Senator DOMENICI, and myself along with the New Mexico State Bar. It is a good process which has already been used to select a U.S. attorney and a Federal district judge. It is a good system, and I ask unanimoes consent that a copy of the charter of the New Mexico Federal Judicial Selection Commission be inserted at this point in the RECORD.

There being no objection, the charter was ordered to be printed in the RECORD, as follows:

NEW MEXICO FEDERAL JUDICIAL SELECTION COMMISSION

PREAMBLE

United States Senator Pete V. Domenici, United States Senator Harrison H. Schmitt, and the State Bar of New Mexico hereby create the New Mexico Federal Judicial Selection Commission, hereafter referred to as the commission, to advise the Senators from New Mexico on selecting qualified nominees to fill vacancies for the United States district courts in New Mexico, the United States attorneys, and United States marshals in New Mexico.

The commission's sole purpose would be to advise the Senators from New Mexico in finding the best qualified individuals to serve in the above-mentioned positions. Such purpose would be of considerable service to the Senators from New Mexico, who share with all Members of the United States Senate the constitutional authority and responsibility of approving the nomination of individuals to be Federal judges, United States attorneys and United States marshals.

The commission is chartered on the basis of the following findings:

1. A strong, independent and competent Federal judiciary is necessary for the protection of the rights and freedoms vested under the United States Constitution. The Federal judiciary must be preserved as a viable coequal branch of the United States Government.

2. The appointment of strong, independent and competent United States attorneys and United States marshals is necessary for the fair and equal administration and enforcement of justice under the laws of the United States.

3. The selection process for such judicial officers must ensure that the nominees have the highest professional and personal qualifications and attributes to serve on the Federal judiciary or as United States attorneys or United States marshals. This selection process can be augmented and improved by the creation of an advisory New Mexico Federal Selection Commission.

SECTION I: PROCESS OF CREATION

1. The Commission will be created by the joint action of the senior and junior United States Senators from New Mexico, and the New Mexico State Bar Association.

A. The senior United States Senator will appoint three members, one of which shall be a Democrat, the second of which shall be a Republican, the third of which is to be either of the party of the President or an independent. At least one appointment will be a nonlawyer.

B. The junior United States Senator will appoint three members, one of which shall be a Democrat, the second of which shall be a Republican, the third of which is to be either of the party of the President or an independent. At least one appointment will be a non-lawyer.

C. The Board of Bar Commissioners of the New Mexico State Bar will appoint three members of the New Mexico State Bar Association, one of which shall be a Democrat, the second of which shall be a Republican, the third of which is to be either of the party of the President or an independent.

D. The Commission shall select its own chairperson from within its nine members, except that the senior Senator may appoint a chairperson *pro tem* for the short term to get the Commission organized. The term of the chairman shall be for two years, and the successor shall be chosen by a runoff election, if necessary, by the two candidates receiving the most votes cast at the first regularly scheduled meeting following the expiration of the chairperson's tenure;

E. The initial terms of each member of the Commission shall be for staggered terms expiring on January 31, 1979, 1980, and 1981, as designated by the appointing authority, thereafter the terms shall be for three years.

F. When a vacancy occurs on the Commission, a successor shall be chosen by the original appointment authority for the unexpired term. *Vacancy* is defined as resignation, disability, death, or failure of the Commission member to attend three successive meetings of the Commission;

G. A member of the Commission may not be a justice or judge, either Federal or State, or hold statewide office in any political party. No more than one member of the Commission may be appointed from the same law firm, corporation, agency, partnership, association, or other entity, either public or private;

In the absence of a unanimous agreement among the original appointment authorities to continue the life of the Commission, the Commission shall terminate on January 31, 1983. If there is agreement to continue the life of the Commission, it shall be renewed under the aforementioned conditions for a period of six years duration.

SECTION II: FUNCTIONS OF THE COMMISSION

II. The Commission will begin functioning immediately to conduct a broad, continuous and systematic search for the most qualified individuals to serve as district judge, United States Attorney, and United States Marshal from New Mexico. Upon notification by the senior Senator that a vacancy exists, the Commission shall:

A. Give public notice of such vacancy, inviting suggestions for potential nominees from as diverse a group of organizations or persons possible, including but not limited to, the United States Senators from New Mexico, the New Mexico Bar Association, judicial associations operating within New Mexico, legal educators, and other legal associations or clubs representing elements of the legal profession with New Mexico. The Commission may seek and receive recommendations from non-legal organizations and other interested citizens and groups where appropriate; each Senator from New Mexico may forward not less than two recommendations to the Commission;

B. Conduct inquiries to identify potential nominees;

C. Establish standards and identify those persons among the potential nominees who are well qualified to serve as a United States District Judge, United States Attorney, or United States Marshal;

D. Report publicly to the United States Senators from New Mexico within sixty days of the vacancy the names of not less than three, nor more than five, persons whom the Commission considers best qualified to fill the vacancy. The United States Senators agree to transmit such names to the President without change, addition, alteration, or review;

E. Establish appropriate guidelines, rules, and standards for the performance of its duties and evaluation of prospective nominees, and copies will be made available for public inspection at the offices of the United States Senators from New Mexico and the State Bar of New Mexico. The Commission may designate such officers, other than the chairperson, as it deems necessary;

F. Publish notice in a paper of statewide circulation not less than five days prior to each meeting. The commission shall keep minutes and make every effort to keep the public informed without jeopardizing the purpose of the selection process or compromising the privacy of the nominees;

G. Identify and evaluate the personal and professional qualities of the nominees in the light of guidelines and rules established by majority vote of the entire commission membership and then published, provided however, that no nominee shall be certified as qualified unless there is an affirmative showing that the nominee possesses:

(1) All the qualifications required by law;

(2) In the case of judicial nominees, the professional qualities of probable judicial temperament, legal experience and ability;

(3) In the case of attorney nominees, legal experience and abilities, and administrative competence;

(4) the personal qualities of integrity, physical health, emotional stability, honesty, fairness and high ethical standards.

SECTION III: AMENDMENTS TO THE COMMISSION CHARTER

III. Upon the unanimous agreement of each United States Senator from New Mexico and the majority vote of the Board of Bar Commissioners of the New Mexico Bar Association, amendments to this commission charter may be adopted.

SECTION IV: INELIGIBILITY OF COMMISSION MEMBERS

IV. No person shall be considered by the commission as a prospective nominee while serving as a commission member or for a period of one year after the termination of such service.

SECTION V: CONSTITUTIONAL AND STATUTORY POWERS

V. Nothing contained herein is intended to impair or delegate the constitutional and statutory powers, duties and prerogatives of the President of the United States, or the members of the United States Senate, in the appointment of judicial officers or in the exercise of any other statutory or constitutional powers of the President or the Senate.

Mr. SCHMITT. I am proud that New Mexico has a judicial selection commission. It tells the people of my State and of the Nation that New Mexico has taken the necessary steps to insure that those men and women who reach the Federal bench are qualified and have been selected on the basis of merit and not on the basis of political deals. Certainly I would not be so vain as to insist that this charter be adopted by the Senators who do not presently have a merit selection system, but something ought to be adopted. Something ought to be done to guarantee that the process of selecting our judges is fair and meritorious. The Senate of the United States owes the American people no less.

In conclusion Mr. President, I hope that the eyes of the Nation are turned towards us today. The time for rhetoric is over. The time for action is at hand. The question is simply, does the Senate continue this practice of selecting Federal judges on the basis of politics or do we lead the way into a new era of open government?

Before voting on this conference report, I hope the Senate reflects upon the words stated by then-Senator John F. Kennedy. Almost 18 years ago in a campaign address at Whittenberg College, Springfield, Ohio on October 17, 1960, he stated,

No government is better that the men who compose it.

I urge my fellow Senators to support merit selection for our Federal judges by voting against this conference report.

Mr. LUGAR. Mr. President, I yield 1 minute to the Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I commend the distinguished Senator from Indiana

for bringing this to our attention. I want to associate myself with his remarks because I think he has made a point that needs to be made again and again in this body because, when it comes to the issue of merit selection of Federal judges, most of the people in this body are not part of the solution, they are part of the problem.

Now, we have found in Pennsylvania that merit selection will work. Last year, for the first time in the history of our State, Senator SCHWEIKER and I set up a bipartisan selection commission. The result has been outstanding appointments to the Federal district courts. We would not have had the variety of good people step forward for consideration without the merit selection process we had. With merit selection, the principle that operates is not who you know, but what you know. As the Senator from Indiana suggests, if what we want is more of the buddy system and more political control over the judiciary, passing this bill this way is the way to get it. I for one do not want that, and this is why I oppose the bill.

Mr. President, there is a better way. I believe the approach we have taken in Pennsylvania sets a good example. For that reason, I ask unanimous consent that the charter of our Merit Selection Commission be printed in the RECORD at this point.

I thank the Senator from Indiana for yielding.

There being no objection, the charter was ordered to be printed in the RECORD, as follows:

FEDERAL JUDICIAL NOMINATING COMMISSION OF PENNSYLVANIA

Consistent with the provisions of the Constitution and the requirements of 28 U.S.C. 133, Richard S. Schweiker and H. John Heinz III, as United States Senators from the Commonwealth of Pennsylvania, do hereby establish the Federal Judicial Nominating Commission of Pennsylvania.

Sec. 1. Purposes. The Federal Judicial Nominating Commission (hereinafter referred to as the "Commission") is established to

(a) assist the United States Senators from the Commonwealth of Pennsylvania in faithfully fulfilling their Constitutional and statutory obligation to provide advice and consent to the President in appointing federal district judges;

(b) help insure that only the most qualified, conscientious and dedicated individuals of those available are appointed to serve the public as judicial officers; and,

(c) protect and preserve the independence and integrity of the judicial branch of government.

SEC. 2. Functions of the Commission. Whenever a vacancy occurs in a judicial office within the jurisdiction of the Commission, the Commission shall

(a) affirmatively seek out highly qualified candidates for appointment to the Federal district courts of Pennsylvania;

(b) consider all applications for appointment to the Federal district courts in Pennsylvania; and,

(c) recommend the nomination of those individuals who are most qualified to serve with intelligence, competence and integrity as a Federal district court judge.

Sec. 3. Appointment of Members. (a) The Commission shall consist of fourteen members—

(1) six of whom shall be appointed by the "Class I" United States Senator from Pennsylvania;

(2) six of whom shall be appointed by the "Class III" United States Senator from Pennsylvania; and,

(3) two of whom shall be appointed collectively by the deans of all accredited schools of law located in the Commonwealth of Pennsylvania.

(b) In making appointments under subparagraphs (1) or (2) of paragraph (a) of this section, a United States Senator—

(1) shall appoint two Commission members from each Federal judicial district specified in 28 U.S.C. 118; and,

(2) shall not appoint more than three members of the legal profession.

(c) An individual with appointive authority under subparagraph (3) of paragraph (a) of this section may be appointed to the Commission under the authority of such subparagraph.

(d) No more than seven members of the Commission shall belong to the same political party.

Sec. 4. Terms of Membership. (a) In making initial appointments to the Commission under subparagraphs (1) and (2) of paragraph (a) of section 3, each United States Senator shall appoint

(1) two members for a term of one year;

(2) two members for a term of two years; and,

(3) two members for a term of three years.

(b) In making initial appointments to the Commission under subparagraph (3) of paragraph (a) of section 3, the appointing authorities shall appoint

(1) one member for a term of two years; and,

(2) one member for a term of three years.

(c) When a vacancy occurs on the Commission due to the resignation, disability or death of a member, a successor shall be appointed by the original appointing authority to serve the duration of the unexpired term.

(d) Vacancies which shall exist by reason of the expiration of the term of any Commission member shall be filled by appointment of the original appointing authority for a term of three years.

Sec. 5. Restrictions on Members. (a) No judge or justice shall be a member of the Commission.

(b) No member shall seek or accept appointment to federal judicial office during a term of service on the Commission or for one year thereafter.

(c) No member shall be an officer of a political party or a political action committee.

(d) No member who has served a full three-year term shall be reappointed to a consecutive term on the Commission.

Sec. 6. Recommendation Process. (a) Within ten days after learning of any vacancy or prospective vacancy on a Federal district court for the Eastern, Middle or Western districts of Pennsylvania, the Commission shall begin seeking nominees and accepting applications to fill such vacancy. Among the steps that the Commission shall initiate to fulfill the requirements of this paragraph are—

(1) notification of the Pennsylvania Bar Association and such other bar and citizens organizations as the Commission deems appropriate of the existence of such vacancy;

(2) requesting the Pennsylvania Bar Association and such other bar and citizens organizations as the Commission deems appropriate to submit the names of individuals believed to be highly qualified to fill such vacancy; and,

(3) establish and release publicly in an appropriate manner a mailing address to which applications for appointment to such vacancy may be sent.

(b) Within 45 days after learning of any vacancy or prospective vacancy, the Commission shall evaluate the qualifications of all candidates for appointment to fill such vacancy and by majority vote, the Commission shall designate not more than five but not fewer than three individuals whom it considers best qualified to serve on the federal district court. No candidate may be designated as qualified for appointment under this paragraph unless the Commission determines that

(1) the candidate possesses all the qualifications provided by law for the judicial office involved; and,

(2) the candidate possesses the personal qualities and attributes of character, experience, judicial temperament, professional competence and other characteristics necessary to fully qualify a person to serve the public as a federal judicial officer.

Sec. 7. Transmittal of Recommendations. (a) Within two days after the Commission has designated not more than five candidates as best qualified to fill a judicial vacancy, the Commission shall transmit by letter the names of such candidates and any appropriate commentary on their qualifications to hold judicial office to the United States Senators from Pennsylvania.

(b) Upon receipt of the Commission's letter of recommendation, the United States Senators from Pennsylvania, without prejudice, shall advise the President of the Commission's conclusions.

Sec. 8. Commission Organization. (a) The members of the Commission shall select a chairman and vice chairman, who will serve in such position for one year.

(b) At least once every year, the Commission shall adopt rules of procedure by which it shall operate. Such rules shall be made available to the public.

Sec. 9. Actions of the United States Senators. (a) In no event shall either United States Senator from Pennsylvania seek to influence or predetermine the outcome of the Commission's substantive deliberations.

(b) By mutual consent, the United States Senators can extend the time in which the Commission must issue its recommendations, but in no event shall such extension exceed 30 days.

Sec. 10. Constitutional Prerogatives. Nothing contained herein is intended in any way to impair or delegate the Constitutional and statutory powers, duties, or prerogatives of the President of the United States or the United States Senate.

Mr. LUGAR. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The time of the Senator from Indiana has expired.

Who yields time?

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator from Utah.

Mr. HATCH. Mr. President, I rise also to associate myself with the remarks of the distinguished Senators who have spoken on this and, specifically, with the distinguished Senator from Indiana (Mr. LUGAR).

As many know, he and I worked together in presenting procedural merit selection provisions during the conference of the Judiciary Committee of both the House and the Senate on this omnibus judgeship bill, and both of us feel very strongly that merit selection is the only way to go.

As one of the Senate conferees on the omnibus judgeship bill, I am pleased to support the conference report. Many provisions of the original Senate bill

S. 11, have been strengthened as a result of the conference.

I personally favor a stronger merit selection commission than we finally accepted as conferees. However, we have had a good experience in Utah this past year in utilizing a truly nonpartisan merit selection commission to provide nominees for a vacancy on the Federal bench.

I favor a selection commission whose members are chosen by the two Senators because confirmation of Federal judges is a Senate prerogative. In conference I proposed language on merit selection which is similar to that advocated by the Senator from Indiana, which would establish procedural standards for selecting Federal judges.

At the time our Utah selection commission was empaneled, an editorial appeared in the Lafayette, Ind., Journal and Courier of April 4, 1978, espousing the Utah approach. I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

MERIT JUDGES

Sen. Richard Lugar, R-Ind., has praised Utah's senators, Jake Garn and Orrin Hatch, for doing something he has been unable to sell his colleague, Sen. Birch Bayh, D-Ind., on, yet.

That is establishment of a merit selection procedure for U.S. District Court judges. Such nominations usually are controlled by a state's senators, and where they are divided politically, by the senator from the President's party.

Lugar is author of a Senate resolution that would require a merit selection procedure established by senators from each state to meet certain minimum standards, including a broader base for nominations. He says it is vital to maintain the independent judiciary promised by the Constitution.

"The people of Utah should know that under standard procedure . . . either senator from Utah could have effectively controlled the appointment of the new judge," Lugar observed. "Admirably they have chosen not to do so . . . They have rejected the most cherished of all political plums in favor of a system to select the most qualified United States District Court judge for Utah."

The Utah judicial selection commission will be comprised of 11 members, eight to be named by the state's Washington delegation, deans of the state's two law schools, and one selected by the congressional delegation from a list of three names submitted by the Utah Bar. The commission is to nominate three to five names to the President. While not eliminating politics entirely—depending as it does upon the makeup of the state's Washington delegation—it does demand the best from it.

Lugar says Utah is the fifth state to meet the criteria of his resolution; others are Kentucky, Iowa, Oklahoma and Colorado. The rest still are using the spoils system. Lugar thinks the judiciary deserves better. We think he is right.

Mr. HATCH. The Senate, just a few weeks ago, confirmed the new Federal judge for Utah whose nomination followed the recommendation of that commission. An editorial comment on the Utah approach appeared in Salt Lake City's Deseret News on September 22, 1978, entitled "How To Pick A U.S. Judge." I ask unanimous consent that this editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

HOW TO PICK A U.S. JUDGE

Four months ago this page made a suggestion about the way federal district judges in Utah are selected, a suggestion that needs to be renewed now.

We suggested that the same kind of machinery used to help fill the vacancy created by the death of Judge Willis Ritter should also be used the next time there's an opening on the federal bench.

Such an occasion is now at hand with congressional authorization of a bill giving Utah a third federal judge next year.

Though there's room for wondering if the caseload really warrants the creation of this new post, that's water under the bridge. The challenge now is to make sure the post is filled strictly on the basis of merit, rather than on the usual basis of putting political considerations first.

In filling the vacancy left by Judge Ritter, Utah broke with past practice and set up a bipartisan judicial selection committee instructed to name three to five candidates for the opening.

Not only was the selection committee balanced and objective, it also followed a specific set of standards based on merit and ability to help it choose the best-qualified candidates. From the list of five candidates winnowed by this process, the White House settled on Bruce Jenkins, who was confirmed this week as Utah's second federal judge.

A similar procedure should be followed in selecting Utah's third federal judge. Because a federal judgeship can be a lifetime job, it's essential that these posts be filled strictly on the basis of who has the best background and judicial temperament. Partisanship and political cronyism should play little or no part.

Now that Utah has devised some sensible judicial selection machinery, let's not allow it to get rusty.

Mr. HATCH. I am anxious to raise the Federal bench to the highest level of quality possible, and establishment of procedures for merit selection will further that goal.

I support the conference report but I also urge my Senate colleagues to adopt stronger language on merit selection.

Mr. President, let me conclude by saying that when we had our circuit court judge picked in Utah, the Merit Selection Commission was utilized in that selection. There were a number of very high quality people who submitted their names for consideration for the 10th Circuit Court of Appeals, one of whom was one of the top constitutional authorities in America today, actually world renowned, one of the top lawyers in America—this one person—world renowned.

He was asked the question by the merit select panel members—two of whom claimed they were feminists, as I recall—they asked him the question whether he believed in abortion—not whether he would sustain the Supreme Court of the United States rulings on abortion, but whether he believed in abortion. They also asked him if he believed in the equal rights amendment.

He was negative on both points, and was consequently not even considered.

Another man that I know, an impeccable law professor who would have made a tremendous 10th Circuit Court of Appeals judge, was also not given consideration because he equally answered those questions in a manner not acceptable to the feminists on that particular "merit selection commission."

What bothers me is that I do not think they really are merit selection commissions. I think they are, in some ways, partisan commissions, injecting their own philosophy and political position into the selection process.

I think it is legitimate to ask questions concerning stare decisis, and whether that particular nominee will sustain the Supreme Court of the United States even though his opinions may be the other way. But to reject people who are otherwise eminently qualified just because they may differ philosophically, I think, is an abomination.

I know of one other situation where a merit selection panel recommended a number of judge nominees. Two of them particularly stood out, and I personally talked with the people at the Justice Department, and they admitted to me—of the two, one was a Republican and the other a Democrat—that the Republican was the superior candidate; but they chose the Democrat.

That is, in my opinion, merit selection. I think we ought to use merit selection, submit the number of nominees nominated, and then pick the best of those nominees, regardless of party, philosophy, or political affiliation. That is the only way, it seems to me, that merit selection will work in a decent, honorable fashion.

I have not seen any evidence, at least in the personal experience I have had thus far, that this administration really intends to live up to the ethical and moral principles of merit selection, even though it has gone through some of the motions in appointing merit selection nominees in the circuit courts of appeals.

I hope all of us will strive to overcome the wrong kind of "merit selection" in our courts.

The PRESIDING OFFICER. Who yields time?

Mr. EASTLAND. Mr. President, I yield the Senator from Indiana (Mr. BAYH) such time as he may require.

Mr. BAYH. Mr. President, I thought a long time before deciding that, just for the matter of putting the record straight, it was incumbent upon me to address the Senate at this time.

My reluctance is based on my strong desire to cooperate with my distinguished colleague, and I desire to maintain the kind of harmonious relationship that I think we have had since he has had the distinction of being the other Senator from Indiana.

I rise, not in direct contradiction to what he has said, but to point out that it is a lot easier to talk about merit than it is to actually implement it in practice. I appreciate the concern that has been expressed by some of our colleagues about merit procedures. This is the first time in the history of the U.S. Senate there has ever been a judge bill that said anything about merit. As to the bill that was referred to earlier by my distinguished colleague from Indiana (S. Res. 353), I think I could make a real argu-

ment about whether there are not serious constitutional questions there, based on the limitations on the President's appointing power under article II, section 2, clause 2, of the Constitution.

I think the argument the junior Senator from Indiana that we ought to get better judges and find a vehicle for doing that is well taken. With that in mind, I intend, as soon as this bill becomes law and the procedures given to the President here to set standards so that the bill can take effect, to appoint two panels, one in the northern district and one in the southern district of Indiana, broadly representative panels to guide in the selection of judges.

I suggest to you that when it comes to appointing a U.S. district judge, who has life and death power over people who come before him, I would like to have something besides cold legal criteria considered by a faceless panel that is not responsible to anybody.

You need someone who knows the Constitution, but I say, in response to my good friend from Utah, that I do not want a judge sitting at the Federal district level, if I can keep him from sitting there, who does not understand the importance of the problems facing women right now, for example. I think that is a legitimate question. Just taking the guy who has the best rating in Martindale-Hubbell does not mean he has the characterisics one would want as far as the enormous compassion and concern that makes a good Federal judge is concerned. I think it is important, after we meet the constitutional criteria and all the proper credentials, then I want to make sure that man understands not only legal problems, but community problems, because that is what this country is all about.

I guess I want the RECORD to show that what I am saying or am about to say I say with a smile, because although there are some of us who come to this body with no previous political experience, there are some who come with a good deal of politcal experience, and my distinguished junior colleague—and it is an honor to serve with him—had an enviable record as the mayor of our largest city over a period of, I think, 8 years. He was chosen as head of the National Municipal League, so he had a great deal of politcal experience. During the period of 8 years of the previous administration, when I was sitting here as a Democrat and the Republicans were doing the appointing, I never heard a word out of him or the Republican hierarchy in Indiana about merit selection of judges.

Nevertheless, they appointed good judges. Wilbur Pell, a Republican; I supported him because I thought he was a good judge. Phil McNagny and Allen Sharp, Republican; I supported both of them as a Democrat. They are making good judges, I think. But I did not hear a peep out of anybody when the appointment was done that we ought to have merit.

I remember sitting in my office with one of the highest ranking members of the Republican Party urging the creation of a new seat in Indiana. We studied the facts, and the Republican Party did indeed create a new seat in Indiana; but I did not hear anybody in the Republican Party then saying its occupant ought to be chosen by a meritorious panel.

Unfortunately, we did not get that judge through the House of Representatives. Now we have two new judges here for Indiana, and frankly I think we need them. In both districts the caseloads have risen in the neighborhood of 30 percent since the last new judgeships were added; the delays to get into court in civil cases have become untenable. I think we are going to get two judges that are of high quality.

We are going to let the people in the State have a chance to look at them.

I hope there is a good deal more consistency in the future than there has been in the past about merit selection, because there has not been very much.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a dialog which took place in the House by my colleague from Indianapolis last Wednesday. He points out that the Republican Party in office there felt so strongly about the chance of getting a new judge to appoint that they reapportioned his congressional district because he would not go along with the judgeship there.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

Six or seven years ago, when this whole, judge thing started, I served on the Committee on the Judiciary. They came to me from the subcommittee that was handling this bill and they said:

Look, we are going to have to delete a request for a district judgeship in Indianapolis. Do you have any objection?

I said, "Let me look at the figures."

I looked at the figures, my friends, and I came to the conclusion that four Federal judges in Indianapolis could do enough damage by themselves. So I said:

No, I do not have any objection. I have more taxpayers than candidates for Federal judge in the 11th District of Indiana, and I will be very happy to go along with you.

Well, all hell broke loose. Newspapers back home reported that I did not want to do anything about the problems of the judiciary, et cetera, et cetera, ad nauseam. But I got a very subtle message that year, just before the 1972 election. It was brought to my attention that the Lugar administration in Indianapolis, the city, had a man they wanted to place in a new district judge job and if I did not relent and back down and get them that job, I would lose my own job. Well, I did not, and I did. I thought it was rather courageous. My mother said I was just stubborn. But the fact is that I was gerrymandered out of Congress in 1972 precisely because of my opposition to adding that political plum at that time.

Mr. BAYH. I hope my colleague will join in giving me his opinion of whoever the panel comes up with, so he can have some voice in this. Although the panel will not be chosen just exactly as he would like it, I think we will have for the first time an opportunity to do more than let the respective national chairmen of our two parties in Indiana, which is pretty well the way it has been done, handle it. Let us let a lot of other people look at it and see if there is a better way to find good candidates.

Let me say once more that I think it is critical, whatever this merit system is, to make sure it has some responsiveness to the people of the State. I do not know how you answer this. I am not completely satisfied with the way I am going to try to do it, though I am doing the best I can, and I am not satisfied with the way my colleague is trying to do it. But in some way, the people of the State who are going to be presided over by this judge have to have some sort of review. That is where I think the Senate has had a role in the past where, if you do not like the kind of judges a Senator is involved with, you can get rid of the Senator. Unfortunately, if you get bad judges, you cannot get rid of them.

I would like to support that one of the things we ought to do here in the Senate is that when these new judges are appointed we all ought to take a harder look at them while they go through the nominating process.

We ended up having a very tough, knockdown, dragged out battle over two Supreme Court judges. I do not want to relive that. But I suggest that if the Senate had fulfilled its responsibility a little better at the time these men were nominated to the district bench and then to the appellate bench, we would not have had that problem later on.

TOO MANY NEW JUDGES

Mr. HARRY F. BYRD, JR. Mr. President, the pending legislation would create an additional 113 permanent Federal district judges, and 4 temporary ones. It would also add 35 circuit court judgeships.

In terms of both district court judges and appeals court judges, this would represent the largest single increase in the size of the Federal judiciary in the history of our country.

As recently as 1976, the Senate passed the omnibus judgeship bill, S. 287. While that legislation died in the House and thus did not become law, it provided for 45 additional district judges. Companion legislation would have authorized 7 additional circuit judges.

To me, it is not realistic to believe that our country needs this year more than twice as many new Federal district judges as it needed 2 years ago and five times as many new circuit judges.

I cannot support the pending legislation—and will vote against it—because I do not believe it reasonable or necessary to create 117 new Federal district judges and 35 new circuit judges.

While some additional judges are undoubtedly necessary, the huge figures contained in this bill are excessive and unreasonable.

Mr. KENNEDY. Mr. President, I rise to support the conference report and this legislation, and to pay tribute to the chairman of the Judiciary Committee and the late Senator McClellan for the work they have done in bringing this legislation to the Senate, and commend the chairman of our conference, JACK BROOKS, for the work he has done, and to urge the Senate to support it.

Mr. President, the Senate's action on this conference report is indeed an historic occasion, as it clears for Presidential approval legislation to provide for

the appointment of 152 new Federal judges. This will increase the Federal judiciary by, approximately 28 percent, enabling litigants to obtain faster and, therefore, more efficient and effective, adjudication of rights in our courts.

I want to commend the outstanding work of both Chairman EASTLAND and Chairman RODINO in bringing this legislation through to final passage this session. The late Senator McClellan's leadership at the beginning of the Congress guided the Senate bill quickly through our committee, providing a momentum which carried the bill forward thereafter. And Congressman BROOKS adeptly moved the legislation through a lengthy conference as acting chairman of the conference committee.

I am especially pleased that the conference committee provided four additional judges for the Federal bench in Massachusetts and one for the First Circuit Court of Appeals, to which appeals from my State are taken. These courts are presently backlogged, although the judges are diligently and energetically attacking their extremely heavy dockets already. I believe that the addition of these new judgeships will be of significant benefit to the people of Massachusetts who find themselves—willingly or not—involved in litigation in the Federal court system.

I am also glad that we could rationalize the jurisdiction of the Federal courts relating to ICC freight damage claims. By virtue of a special quirk in our State law, Massachusetts Federal courts have been deluged by filings involving small monetary sums which belong in the State courts. While those cases do not draw on judicial time to a great extent, they skew the data for our district and present an unnecessary irritant to the Federal bench. These minor damage cases are better handled in State courts, and section 9 of the legislation establishes a $10,000 minimum amount in controversy—which presently governs other categories of cases in the Federal court system—for these ICC freight damage claims to obtain a Federal forum.

It is clear now that within the next year or so, as the confirmation of new judges bring their courts up to full strength, the Federal judiciary will be able to handle much more effectively the immense workload facing it and the overwhelming backlog pending in many districts and circuits. But in addition to the more expeditious handling of its usual and growing workload, the courts will be able to decide many threshold issues of citizens access to the Federal court system without the pressures of an unmanageable caseload. Cases involving such significant issues as abstension, standing, and class certification can and should be addressed without regard to an overworked court system. This will now be possible.

I do want to take a moment to address the conferees' action relating to the fifth and ninth circuits, since that matter was the subject of a lengthy standoff between the House and Senate and some considerable debate. The Senate bill (S. 11) would have divided the present fifth circuit into two courts of appeals, the fifth and a new 11th circuit. Since this was at the heart of the controversy, I would like to focus on the resolution of this matter by the conferees.

During the 94th Congress the Senate passed legislation (S. 2752) dividing the fifth circuit into two autonomous divisions. I dissented from this action, stating my reasons for opposing the bill in separate views in the Judiciary Committee's report (S. Rept. 94–513). The House refused to act on this bill.

Although the House Judiciary Committee held hearings on this issue in the House earlier in this Congress, it declined to include any provision in the House bill comparable to the Senate's. As the conference began last spring, it was clear that the House strongly objected to any split of the fifth circuit.

House conferees argued that the federalizing function of the circuit court system required that members of the three-judge panels which decide most appeals must be drawn from all six States of the circuit. They acknowledged the need to provide some means of utilizing an abbreviated en banc proceeding, to relieve the court of the need to assemble all 26 judges. But they clearly and regularly opposed several proposals to create autonomous divisions within the circuit or otherwise restrict the ability of judges to sit on cases arising throughout the circuit.

Since the House was unwilling to address the en banc situation with any form of division of the circuit, consideration focused on other solutions. Certain conferees proposed an en banc court of nine members chosen on the basis of seniority. This was rejected on the grounds that those who were not members would be second-class judges throughout much, and in some cases all, of their careers on the bench, and that the senior judges as a group might have views at odds with the position of a majority of the circuit judges. Some Members proposed instead to authorize the use of a smaller en banc court, provided all members of the circuit were eligible to sit. While most conferees appeared to agree with this in principle, objection was voiced to the precise size of the smaller en banc proposed and to the suggestion that all three members of the original panel sit en banc. Accordingly the conferees ultimately agreed that determination of the number of members of the en banc courts would be up to the court itself, as would be the method of deciding who would sit on any particular en banc panel.

The second clause of section 6 embodies this final compromise. It refers to en banc "courts" to authorize use of other than a single, permanent abbreviated panel for all cases. The court members may be chosen by rotation or at random or according to any other scheme. But since the circuit is not being split by this provision, it is clearly contemplated that there will remain a unified law of the fifth circuit. This can obviously be accomplished only if there is not any geographic separation for en banc purposes. Further, selection of more than one en banc panel on the basis of geography would, like a selection based on seniority, be a selection process for which not all members of the court would be equally eligible.

In addition to the en banc problem, the conferees discussed the potential efficiency of allowing the administrative functions of such a large court of appeals to be performed in small administrative units. The first clause of section 6 authorizes this. The court might thus choose to create a second clerk's office or library, to reassign its administrative personnel, to set up a dual case screening system, or to perform through such administrative units functions described in 28 U.S.C. section 332(e). Rather than requiring litigants to travel from throughout the first circuit to New Orleans, a panel, chosen from throughout the circuit, might instead travel to Miami or Mobile and there hear several pending appeals from that area; section 6 authorizes any administrative changes necessary to effectuate this. Section 6 does not authorize creation of judicial subdivisions, as was contained in the rejected Senate proposal: Judges throughout the circuit, it seems to me, must continue to be able to sit on cases arising anywhere in the circuit.

The courts of appeals already enjoy broad rulemaking authority under sections 48 and 2071 of 28 U.S.C. It may be that this authority is already sufficient to make many or even most of the administrative changes needed for the efficient functioning of larger courts of appeals. Some uncertainty was expressed on this matter, however, and the conference report provision removes any doubt. However, except insofar as the second clause authorizes an en banc court of less than all active judges, section 6 cannot responsibly be read to repeal any statute or any rule promulgated by the Supreme Court. There must still be a circuitwide judicial council, 28 U.S.C. section 322, and judicial conference, 28 U.S.C. section 333, although additional administrative units may be created. The chief judge of the circuit is to be chosen as provided in 28 U.S.C. section 45, and retains his usual powers, including those enumerated in 28 U.S.C. sections 45, 292–95. Section 46 (b) continues to govern assignment of judges to three-judge panels, and under section 43 all judges are eligible to serve on any panel. Under section 46(c) a majority of the entire court of appeals must still decide whether a case is to be heard en banc. The conferees at no time discussed any of these sections, so any conclusion that there was an intention to repeal or restrict their application cannot be inferred from the conference action.

It was clear throughout the hearings on the fifth circuit issue and during the conference that a majority of the judges in the fifth circuit have already stated their support for splitting the circuit. In light of this—and considering the House's repeated rejection of Senate proposals to divide the circuit—final conference action cannot reasonably be read as bringing about this result indirectly.

The reference in section 6 to "administrative units" rather than "judicial

units" would support this conclusion. The court may well decide to create separate administrative units to deal with civil and criminal cases, or with complex cases; or it may use a geographic allocation of cases for administrative purposes, with any number of units in the circuit. Experimentation would, it seems to me, be highly desirable. And since flexibility would be extremely useful in this context, no permanent fixing of any plan would seem called for under the legislative proposal.

There may in fact be a serious question regarding the constitutionality of any court-initiated split which would effectively preclude judges of any State or States from sitting on cases throughout the circuit. First, the creation of autonomous divisions, even if under a single en banc court, may well be equivalent to the creating of two new inferior courts; article III of the Constitution, however, provides that only Congress may create inferior courts, and it is unlikely that this authority can be delegated to any other body, especially by implication.

Second, and even more seriously, the present 15 active members of the fifth circuit, as well as the nine senior members, were nominated and confirmed by the Senate as appellate judges of the entire fifth circuit with a right and duty to sit on appeals arising in any portion of the circuit. Those 24 judges hold that position, on good behavior, for life, and cannot be removed from that position, other than by impeachment, even if subsequent to that removal they are to be given a different judgeship. To this rule there is, at most, a single exception—that judicial tenure lapses if Congress exercises its exclusive authority to abolish the court involved. Whether even Congress can remove a judge from office by abolishing that office is in serious doubt, and has only been attempted once in the history of the Republic. See *Stuart* v. *Laird,* 1 Cranch. 299 (1803). But certainly a court of appeals cannot under the general authority of section 6 permanently strip a judge of any of the rights and duties of the office for which he was confirmed by the Senate.

Finally, Mr. President, a word about the timing of the court's implementation of its new legislative authority. It is my understanding that already a special committee has been named to propose alternatives or plans to the fifth circuit in responding to this legislation. I believe that this reflects a healthy enthusiasm on the part of the judges in the circuit to move vigorously toward adopting new procedures and approaches toward carrying out its work more expeditiously and efficiently. At the same time, the conference committee, in providing that this new authority become effective when the court's size exceeded "15 active judges"—that is, after new judges are added pursuant to this legislation—clearly intended that no new plan be implemented until additional judges are confirmed for seats on the circuit bench. This, of course, goes for the ninth circuit as well.

I believe that the conferees' final resolution of this knotty issue of unwieldy circuits takes the right approach, giving added authority, flexibility, and encouragement to the courts themselves to deal with their problems, without instituting any inflexible structural changes.

The Congress can be proud of its achievement in enacting this long-awaited and much-needed legislation. It will bring the number of Federal judges up to the level needed to do the job which the Constitution and our laws demand, and which the American public expect.

The PRESIDING OFFICER. Who yields time?

Mr. EASTLAND. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Mississippi has 3 minutes and the Senator from South Carolina 6 minutes.

Mr. EASTLAND. Does the Senator wish to yield back his time?

Mr. THURMOND. I believe so.

Mr. President, I yield back my time.

Mr. EASTLAND. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time has been yielded back.

Without objection, the conference report in disagreement is agreed to.

The clerk will state the House amendment.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate to the bill (H.R. 7843) entitled "An Act to provide for the appointment of additional district and circuit judges, and for other purposes", and concur therein with an amendment as follows:

In lieu of the matter proposed by the said amendment, insert:

That (a) the President shall appoint, by and with the advice and consent of the Senate, three additional district judges for the northern district of Alabama, one additional district judge for the middle district of Alabama, three additional district judges for the district of Arizona, two additional district judges for the eastern district of Arkansas, one additional district judge for the northern district of California, three additional district judges for the eastern district of California, one additional district judge for the central district of California, two additional district judges for the southern district of California, two additional district judges for the district of Colorado, one additional district judge for the district of Connecticut, one additional district judge for the northern district of Florida, three additional district judges for the middle district of Florida, five additional district judges for the southern district of Florida, five additional district judges for the northern district of Georgia, one additional district judge for the southern district of Georgia, three additional district judges for the northern district of Illinois, one additional district judge for the central district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the southern district of Indiana, one additional district judge for the southern district of Iowa, one additional district judge for the district of Kansas, two additional district judges for the eastern district of Kentucky, four additional district judges for the eastern district of Louisiana, one additional district judge for the middle district of Louisiana, one additional district judge for the western district of Louisiana, one additional district judge for the district of Maine, two additional district judges for the district of Maryland, four additional district judges for the district of Massachusetts, three additional district judges for the eastern district of Michigan, two additional district judges for the western district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the eastern district of Missouri, two additional district judges for the western district of Missouri, one additional district judge for the district of Nevada, one additional district judge for the district of New Hampshire, two additional district judges for the district of New Jersey, one additional district judge for the district of New Mexico, one additional district judge for the northern district of New York, one additional district judge for the eastern district of New York, one additional district judge for the eastern district of North Carolina, one additional district judge for the middle district of North Carolina, one additional district judge for the western district of North Carolina, one additional district judge for the northern district of Ohio, one additional district judge for the southern district of Ohio, one additional district judge for the western district of Oklahoma, one additional district judge for the northern district of Oklahoma, two additional district judges for the district of Oregon, two additional district judges for the middle district of Pennsylvania, four additional district judges for the district of Puerto Rico, three additional district judges for the district of South Carolina, one additional district judge for the district of South Dakota, one additional district judge for the middle district of Tennessee, three additional district judges for the northern district of Texas, one additional district judge for the eastern district of Texas, five additional district judges for the southern district of Texas, one additional district judge for the western district of Texas, one additional district judge for the district of Utah, two additional district judges for the eastern district of Virginia, two additional district judges for the western district of Virginia, one additional district judge for the eastern district of Washington, one additional district judge for the western district of Washington, one additional district judge for the southern district of West Virginia, one additional district judge for the eastern district of Wisconsin, and one additional district judge for the western district of Wisconsin.

(b) The existing district judgeship for the eastern and western districts of Washington, heretofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the western district of Washington only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act.

(c) In order that the table contained in section 133 of title 28 of the United States Code will, with respect to each district therein, reflect the changes in the number of judgeships made by this section, such table is amended to read as follows:

"Districts

	Judges
Alabama:	
Northern	7
Middle	3
Southern	2
Alaska	2
Arizona	8
Arkansas:	
Eastern	3
Western	1
Eastern and Western	2
California:	
Northern	12
Eastern	6
Central	17
Southern	7
Colorado	6
Connecticut	5

"Districts	Judges
Delaware	3
District of Columbia	15
Florida:	
Northern	3
Middle	9
Southern	12
Georgia:	
Northern	11
Middle	2
Southern	3
Hawaii	2
Idaho	2
Illinois:	
Northern	16
Central	3
Southern	2
Indiana:	
Northern	4
Southern	5
Iowa:	
Northern	1
Southern	2
Northern and Southern	1
Kansas	5
Kentucky:	
Eastern	4
Western	3
Eastern and Western	1
Louisiana:	
Eastern	13
Middle	2
Western	5
Maine	2
Maryland	9
Massachusetts	10
Michigan:	
Eastern	13
Western	4
Minnesota	5
Mississippi:	
Northern	2
Southern	3
Missouri:	
Eastern	4
Western	5
Eastern and Western	2
Montana	2
Nebraska	3
Nevada	3
New Hampshire	2
New Jersey	11
New Mexico	4
New York:	
Northern	3
Southern	27
Eastern	10
Western	3
North Carolina:	
Eastern	3
Western	3
Middle	3
North Dakota	2
Ohio:	
Northern	9
Southern	6
Oklahoma:	
Northern	2
Eastern	1
Western	3
Northern, Eastern, and Western	2
Oregon	5
Pennsylvania:	
Eastern	19
Middle	5
Western	10
Puerto Rico	7
Rhode Island	2
South Carolina	8
South Dakota	3
Tennessee:	
Eastern	3
Middle	3
Western	3
Texas:	
Northern	9
Southern	13
Eastern	4
Western	6
Utah	3
Vermont	2
Virginia:	
Eastern	8
Western	4
Washington:	
Eastern	2
Western	5
West Virginia:	
Northern	1
Southern	3
Northern and Southern	1
Wisconsin:	
Eastern	4
Western	2
Wyoming	1"

SEC. 2. The President shall appoint, by and with the advice and consent of the Senate, one additional distric judge for the eastern district of Kentucky, one additional district judge for the district of Minnesota, one additional district judge for the northern district of Ohio, and one additional district judge for the southern district of West Virginia. The first vacancy in the office of district judge in the judicial districts named in this section occurring five years or more after the effective date of this Act shall not be filled.

SEC. 3. (a) The President shall appoint, by and with the advice and consent of the Senate, one additional circuit judgeship for the first circuit, two additional circuit judgeships for the second circuit, one additional circuit judgeship for the third circuit, three additional circuit judgeships for the fourth circuit, eleven additional circuit judgeships for the fifth circuit, two additional circuit judgeships for the sixth circuit, one additional circuit judgeship for the seventh circuit, one additional circuit judgeship for the eighth circuit, ten additional circuit judgeships for the ninth circuit, one additional circuit judgeship for the tenth circuit, and two additional circuit judgeships for the District of Columbia.

(b) In order that the table contained in section 44(a) of title 28, United States Code, will, with respect to each circuit, reflect the changes in the number of judgeships made by this Act, such table is amended to read as follows:

"Circuits	Number of judges
District of Columbia	11
First	4
Second	11
Third	10
Fourth	10
Fifth	26
Sixth	11
Seventh	9
Eighth	9
Ninth	23
Tenth	8".

SEC. 4. Section 3 of the Act entitled "An Act to provide that chief judges of circuit courts and chief judges of district courts having three or more judges shall cease to serve as such upon reaching the age of seventy" (Public Law 85-593, approved August 6, 1958 (72 Stat. 497)) is amended by striking out ", except that the amendment made by section 136 shall not be effective with respect to any district having two judges in regular active service so long as the district judge holding the position of chief judge of any such district on such date of enactment continues to hold such position".

SEC. 5. (a) Section 46(c) of title 28 of the United States Code is amended—

(1) in the first sentence, by striking out "division" and inserting "panel" in lieu thereof; and

(2) by striking out the third sentence.

(b) The heading of section 46 of title 28 of the United States Code is amended by striking out "divisions" and inserting "panels" in lieu thereof.

(c) The item relating to section 46 in the table of sections for chapter 3 of title 28 of the United States Code is amended by striking out "divisions" and inserting "panels" in lieu thereof.

SEC. 6. Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its en banc function by such number of members of its en banc courts as may be prescribed by rule of the court of appeals.

SEC. 7. (a) The first section and section 2 of this Act shall take effect immediately upon the President's promulgation and publication of standards and guidelines for the selection, on the basis of merit, of nominees for United States district court judgeships authorized by this Act.

(b) The President may waive such standards and guidelines with respect to any nomination by notifying the Senate of the reasons for such waiver.

(c) Following the promulgation and publication of such standards and guidelines, no nomination or appointment to a United States district court judgeship may be invalidated on the basis of the President's failure to comply with this reaction or with any standards or guidelines promulgated under this section.

(d) This Act, other than the first section and section 2, shall take effect on the date of enactment of this Act.

SEC. 8. The Congress—

(1) takes notice of the fact that only 1 percent of Federal judges are women and only 4 percent are blacks; and

(2) suggests that the President, in selecting individuals for nomination to the Federal judgeships created by this Act, give due consideration to qualified individuals regardless of race, color, sex, religion, or national origin.

SEC. 9. (a) Section 1337 of title 28 of the United States Code is amended to read as follows:

"§ 1337. Commerce and antitrust regulations; amount in controversy, costs

"(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: Provided, however, That the district courts shall have original jurisdiction of an action brought under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319), only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

"(b) Except when express provision therefor is otherwise made in a statute of the United States, where a plaintiff who files the case under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319), originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.".

(b) Subsection (b) of section 1445, of title 28 of the United States Code is amended by striking out "$3,000" and inserting in lieu thereof "$10,000".

(c) The item relating to section 1337 in the table of sections for chapter 85 of title 28 of the United States Code is amended to read as follows:

"1337. Commerce and antitrust regulations; amount in controversy, cost.".

SEC. 10. Section 5108(c)(3) of title 5, United States Code, is amended to read as follows:

"(3) the Director of the Administrative Office of the United States Courts, subject to the standards and procedures prescribed by this chapter, may place a total of 15 positions in GS–16, 17, and 18;".

SEC. 11. Notwithstanding any other provision of this Act, the first section and section 2 shall not take effect before November 1, 1978.

SEC. 12. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Mr. EASTLAND. Mr. President, I move that the Senate concur in the House amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur in the House amendment. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HART), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. HATFIELD), the Senator from Maine (Mr. HATHAWAY), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from West Virginia (Mr. RANDOLPH) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH), the Senator from Minnesota (Mr. ANDERSON), and the Senator from Arizona (Mr. DECONCINI) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Virginia (Mr. SCOTT), the Senator from Texas (Mr. TOWER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER. Have all Senators in the Chamber voted?

The result was announced—yeas 67, nays 15, as follows:

[Rollcall Vote No. 459 Leg.]

YEAS—67

Abourezk	Ford	Mathias
Allen	Garn	Matsunaga
Bartlett	Glenn	McGovern
Bayh	Gravel	McIntyre
Bentsen	Hatch	Melcher
Biden	Hatfield, Mark O.	Metzenbaum
Bumpers	Hayakawa	Morgan
Burdick	Hodges	Moynihan
Byrd, Robert C.	Hollings	Muskie
Cannon	Humphrey	Nelson
Case	Inouye	Nunn
Chiles	Jackson	Packwood
Church	Javits	Pearson
Clark	Kennedy	Pell
Cranston	Laxalt	Percy
Culver	Leahy	Proxmire
Durkin	Long	Ribicoff
Eagleton	Magnuson	Riegle
Eastland	Sarbanes	Sasser
Sparkman	Stevenson	Williams
Stafford	Stone	Young
Stennis	Talmadge	Zorinsky
	Thurmond	

NAYS—15

Bellmon	Dole	Roth
Byrd, Harry F., Jr.	Goldwater	Schmitt
Chafee	Hansen	Stevens
Curtis	Heinz	Wallop
Danforth	Helms	
	Lugar	

NOT VOTING—18

Anderson	Haskell	Randolph
Baker	Hatfield, Paul G.	Schweiker
Brooke	Hathaway	Scott
DeConcini	Huddleston	Tower
Domenici	Johnston	Weicker
Griffin	McClure	
Hart		

So the motion to concur in the House amendment was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. EASTLAND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REVENUE ACT OF 1978

MODIFICATION OF CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, if I may have the attention of Senators, I ask unanimous consent that the cloture motion which was entered yesterday to the bill be applied instead to the committee substitute.

The PRESIDING OFFICER. Is there objection? The Chair hears none.

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I thank all Senators.

The cloture motion, as modified, is as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the committee amendment in the nature of a substitute for H.R. 13511, a bill to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

Robert C. Byrd, Gaylord Nelson, Muriel Humphrey, Harrison A. Williams, Spark M. Matsunaga, Donald W. Riegle, Alan Cranston, Russell Long, Abraham Ribicoff, Robert Dole, Howard H. Baker, Jr., Jacob K. Javits, Clifford P. Hansen, Howard M. Metzenbaum, Barry Goldwater, Carl T. Curtis, James B. Pearson, Lowell P. Weicker, Jr., Richard S. Schweiker, and Paul Laxalt.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS, 1979—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to vote on the question of agreeing to the conference report on H.R. 12932. The yeas and nays have been ordered and the clerk will call the roll.

Mr. HARRY F. BYRD, JR. Will the Senator yield for 30 seconds?

Mr. ROBERT C. BYRD. I do not have the floor. The Senator might just seek recognition.

Mr. GLENN. Reserving the right to object——

Mr. HOLLINGS. The rollcall has been ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from West Virginia (Mr. RANDOLPH), are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. ANDERSON) and the Senator from West Virginia (Mr. RANDOLPH) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Virginia (Mr. SCOTT), the Senator from Texas (Mr. TOWER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER. Have all Senators voted?

The result was announced—yeas 79, nays 5, as follows:

[Rollcall Vote No. 460 Leg.]

YEAS—79

Abourezk	Gravel	Metzenbaum
Allen	Hansen	Morgan
Bartlett	Hart	Moynihan
Bayh	Hatch	Muskie
Bellmon	Hatfield, Mark O.	Nelson
Bentsen	Hatfield, Paul G.	Nunn
Bumpers	Hayakawa	Packwood
Burdick	Heinz	Pearson
Byrd, Robert C.	Hodges	Pell
Cannon	Hollings	Percy
Case	Humphrey	Ribicoff
Chafee	Inouye	Riegle
Chiles	Jackson	Sarbanes
Church	Javits	Sasser
Clark	Kennedy	Schmitt
Cranston	Laxalt	Sparkman
Culver	Leahy	Stafford
Curtis	Long	Stennis
Danforth	Lugar	Stevens
Dole	Magnuson	Stevenson
Durkin	Mathias	Stone
Eagleton	Matsunaga	Talmadge
Eastland	McGovern	Thurmond
Ford	McIntyre	Wallop
Garn	Melcher	Williams
Glenn		Young
Goldwater		Zorinsky

NAYS—5

Biden	Helms
Byrd, Harry F., Jr.	Proxmire
	Roth

NOT VOTING—16

Anderson	Haskell	Schweiker
Baker	Hathaway	Scott
Brooke	Huddleston	Tower
DeConcini	Johnston	Weicker
Domenici	McClure	
Griffin	Randolph	

So the conference report on H.R. 12932 was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will state the amendments in disagreement.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 9 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: "$737,025,000."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 21 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by said amendment, insert:

Provided further, That not to exceed $1,000,000 may be available as a discretionary reserve to be administered by the Secretary for special or innovative preservation programs

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 23 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by said amendment, insert:

Provided further, That $15,721,000 shall be available only upon enactment of legislation reauthorizing section 15 of the Endangered Species Act of 1973

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 24 of the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert "$97,856,000."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 26 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by said amendment, insert:

Provided further, That $90,000 shall be available for the National Park Service to assist the Town of Harpers Ferry, West Virginia, for police force use

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 33 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $147,007,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 34 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $123,282,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 35 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $53,944,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 36 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $61,451,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 40 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $126,554,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 41 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $79,253,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 50 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $682,892,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 51 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $2,025,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 63 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $576,888,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 66 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $169,181,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 67 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert $151,862,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 71 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $707,101,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 73 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: $20,000,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 103 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by said amendment, insert:

SEC. 306. No funds appropriated by this Act shall be available for the implementation or enforcement of any rule or regulation of the United States Fish and Wildlife Service, Department of the Interior, requiring the use of steel shot in connection with the hunting of waterfowl in any State of the United States unless the appropriate State regulatory authority approves such implementation and enforcement.

Mr. SASSER. Mr. President, I ask unanimous consent that the Senate concur en bloc in the amendments of the House to the amendments of the Senate numbered 9, 21, 23, 24, 26, 33, 34, 35, 36, 40, 41, 50, 51, 63, 66, 67, 71, 73, and 103.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SASSER. Mr. President, I move to reconsider the vote by which the amendments were agreed to en bloc.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. Does that dispose of the Interior appropriation bill?

The PRESIDING OFFICER. The Senator is correct.

PUBLIC UTILITY RATES—CONFERENCE REPORT

NATIONAL ENERGY CONSERVATION POLICY ACT—CONFERENCE REPORT

Mr. JACKSON. Mr. President, I submit a report of the committee of conference on H.R. 4018 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 4018) to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

Mr. JACKSON. Mr. President, I submit a report of the committee of conference on H.R. 5037 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment numbered 3 of the Senate to the bill (H.R. 5037) for the relief of Jack R. Misner, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

VOTING PROCEDURE

Mr. JACKSON. Mr. President, I ask unanimous consent that the two conference reports be considered en bloc and that the votes occur sequentially—separate votes—on the two reports; but in the interest of the economy of time, we could consider them and debate them together.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, may we agree on a time for that vote?

Mr. JACKSON. I suggest to the majority leader and to the minority leader that rollcall occur sequentially, after 1 hour of debate, after the vote occurs on the cloture motion on Monday. That will give ample time. I have had no requests for time. That would be 1 hour for both conference reports. We would consider them en bloc.

Mr. ROBERT C. BYRD. One rollcall vote?

Mr. JACKSON. Separate rollcall votes.

Mr. STEVENS. But there would be debate on the matters this afternoon.

Mr. JACKSON. Yes; there will be debate as long as anyone wants to debate this afternoon. I have cleared this with the minority side, and that is agreeable.

Mr. STEVENS. The Senator is correct. We do not object.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I want to be sure to get the tax bill back before the Senate this afternoon. Therefore, before I could agree to that, I would have to have unanimous consent that there be some kind of time limitation on debate on the conference report this afternoon or that, in any event, the tax bill be back before the Senate.

Mr. JACKSON. May I say to the distinguished majority leader I know of no requests for time on my side. If any Senator wishes time I will take for both conference reports about 15 minutes.

Mr. METZENBAUM. I wish 5 minutes.

Mr. JACKSON. And 5 minutes to the Senator from Ohio (Mr. METZENBAUM).

Mr. METZENBAUM. Yes.

Mr. JACKSON. Very well.

There is none on the minority side to my knowledge, I say to the leader.

I suggest, therefore, that we agree that the debate this afternoon not exceed 30 minutes, and we can yield for both sides, equally divided.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I do not intend to object, I just want to make sure that I understand what we are doing here.

Let me ask the Senator if this is his request, that there be 30-minute time limitation for debate not to exceed that, this afternoon.

Mr. JACKSON. Equally divided.

Mr. ROBERT C. BYRD. Equally divided, on the two conference reports, the debate to be on the conference reports en bloc.

Mr. JACKSON. That is right, en bloc.

Mr. ROBERT C. BYRD. And that a vote on which of the conference reports occurs first on Monday.

Mr. JACKSON. It will be on the conference report on utility rate reform. That is the order.

Mr. ROBERT C. BYRD. On Monday, after the vote on the motion to invoke cloture on the committee substitute tax bill, there be 1 hour of debate on the two conference reports en bloc, at the close of which hour a vote would occur on the——

Mr. JACKSON. H.R. 4018 first.

Mr. ROBERT C. BYRD. Yes; and upon the disposition of that conference report——

Mr. JACKSON. Immediately thereafter.

Mr. ROBERT C. BYRD. a vote would immediately occur.

Mr. JACKSON. On H.R. 5037.

Mr. ROBERT C. BYRD. On the other conference report.

Mr. MUSKIE. Mr. President, reserving the right to object, if the first cloture vote is successful, of course then it would vitiate the second cloture motion that is on file. If the first cloture vote failed to invoke cloture, then the second cloture motion would be in order under the rules

Mr. ROBERT C. BYRD. The second cloture motion would occur.

Mr. MUSKIE. Does the unanimous-consent agreement contemplate that?

Mr. ROBERT C. BYRD. Yes. This unanimous-consent agreement would contemplate that.

It would temporarily waive Senate rule XXII as to the second cloture vote until the two votes had occurred on the conference reports on which there would be a time limitation. Upon the disposition of those conference reports under the order if it is entered then, the cloture vote would occur on Mr. GLENN's amendment.

Mr. MUSKIE. With that understanding I will not object.

Mr. STEVENS. Mr. President, reserving the right to object, the majority leader did state that the time, the 1 hour, would be equally divided between the Senator from Washington and the Senator from Wyoming.

Mr. ROBERT C. BYRD. Yes.

Mr. JACKSON. Yes; and 30 minutes today will be equally divided.

Mr. ROBERT C. BYRD. Yes.

Still reserving the right to object, Mr. President, may I ask this question—no. That takes care of it.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, and there has been a request that I object, it is my understanding that the cloture motion vote would occur by the rule after the Senate comes in. Could the Senator from West Virginia give us some indication when we will come in our Monday?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. There are some Senators coming in from the West who would like to see votes occur later in the afternoon. This gives us a problem.

Mr. ROBERT C. BYRD. All right.

Mr. President, I supplement the request by adding the following request: That the vote on the motion to invoke clqture on the committee substitute occur on Monday at 1 p.m.

Mr. JAVITS. Mr. President, reserving the right to object, and I hope not to have to, but Monday is the Columbus Day observance and it is a national holiday. For many of us there are parades in our cities. And if the Senator could make that vote at 2:30 p.m. it would accommodate those who wish to attend some of those. But if the Senator has a good reason for 1 p.m., I will forego it. I have no desire to interrupt the businsss of the Senate.

Mr. ROBERT C. BYRD. I appreciate the Senator's willingness to forego his observances.

May we have order, Mr. President?

Mr. JAVITS. If the Senator has a particular reason now the Senator is persuaded of I will forego it. I have no desire to delay the Senate.

Mr. ROBERT C. BYRD. To begin with, may I say to my friend from New York, I should state something that he perhaps is not aware of, that is, that the Senate under the order entered some days ago will come in at 9 a.m. on Monday. So if this request is not acceded to then the vote would occur at 10:15 a.m., or thereabouts, which would disadvantage a lot of our Members on both sides.

Mr. STEVENS. Mr. President, reserving the right to object again, as the majority leader is absolutely correct, I wonder if there is any chance of moving this series of votes until later in the afternoon.

Mr. ROBERT C. BYRD. We said some days ago we would not move votes into the afternoon on Monday, being this close to the end of the session, because we would hope that other amendments to the tax bill could be taken up and disposed of on Monday morning or perhaps other conference reports, and besides the cloture vote after 1 hour debate, we have backed up the other two conference reports. So, if we move later in the afternoon, we are just shoving everything back with the prospects we will not get much done on the tax bill that day, which we may not anyhow. At least we have an opportunity.

Mr. STEVENS. Mr. President, will the Senator yield once more?

Mr. ROBERT C. BYRD. I yield.

Mr. STEVENS. I know he is trying to move the Senate on, and we appreciate the problems. There is a rule for a period of 1 hour before the cloture vote, and we are asking for another 1 hour here of debate on these two bills.

I wonder if it would be possible to have the 1 hour on the cloture vote run, have 1 hour on the two bills run and then have those votes start commencing at 3 p.m. There would be three votes back to back, the cloture vote, the two votes on the conference report. That would accommodate some Senators and have the same time frame involved.

Mr. ROBERT C. BYRD. Of course, I want to accommodate everyone if possible, and I do not know whether cloture is going to be invoked or not.

Mr. STEVENS. I understand.

Mr. ROBERT C. BYRD. But the reason we are offering the cloture motion is to speed up the process on the tax bill. If cloture is invoked at 1 p.m., we are going to move 2 hours faster. If it is invoked at 3 p.m. we will move 2 hours later.

I would really like to see the rule operate in this case in which we vote on cloture at 10 a.m. and have a full day on the tax bill. But I do not insist on that.

I want to try to accommodate Members by at least going to the halfway mark which would be 1 p.m. I personally would like to see it at 1 p.m. If Senators feel strongly about it, we can stack up the votes at 3 p.m. It is all right with me.

Mr. MUSKIE. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, again I am just trying to protect some Senators who want to get back here on this vote on cloture if they can. Would it be possible to take the energy hour before the two votes on this and then the hour on the

cloture vote? The cloture vote will be later, and I know it takes consent, but it is a matter of convenience on the holiday.

Mr. JACKSON. I would say to my good friend from Alaska that I have no objection. I have no objection. I want to accommodate any way I can. I observe that maybe some Members want to be here, however, on the two conference reports, of course.

Mr. STEVENS. They will be here but be out.

Mr. JACKSON. They will be here.

Mr. STEVENS. We will allow it to run already.

Mr. JACKSON. It is adaptable.

Mr. ROBERT C. BYRD. Mr. President, I wonder if we could settle the time for these votes later, but at least get a unanimous consent to the request of 30 minutes of debate this afternoon on the conference report, 1 hour on Monday, the two votes back-to-back and, at least, get that and then worry about the time later.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JACKSON. Mr. President, could we have the yeas and nays?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays on both conference reports at one time with one show of seconds?

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I so request.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered on both conference reports.

Mr. JACKSON. Mr. President, I yield 3 minutes to the distinguished Senator from Wisconsin without losing my right to the floor.

Mr. NELSON. Mr. President, I send to the desk an amendment to the tax bill and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report—the conference reports are pending at this time.

The Senate will resume consideration of the tax bill.

Mr. JACKSON. Mr. President, I ask that it be temporarily laid aside.

Mr. LONG. I object.

Mr. JACKSON. The conference report is before the Senate and I am yielding to the Senator to present his matter.

Mr. NELSON. Maybe I had better wait until after the rollcall vote in 30 minutes.

Mr. JACKSON. At the end of 30 minutes it will be set aside.

Mr. NELSON. Could I ask that the Senator's conference report be temporarily set aside so that I can call up this amendment?

Mr. LONG. I object. Not knowing what it is I object. If I knew what it was, it might be different.

The PRESIDING OFFICER. Objection is heard.

Mr. STEVENS. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. STEVENS. Are the conference reports before the Senate now under the time agreement of 30 minutes?

The PRESIDING OFFICER. Yes, they are.

Mr. JACKSON. Mr. President, I ask unanimous consent that the time consumed already not be taken out of the time and likewise there is a very important matter that the distinguished Senator from Mississippi will present on the defense bill, and that it not come out of our time.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I will not object, the only thing I want to be sure of is that there is some kind of timeframe on the matter of the Senator from Mississippi.

Mr. STENNIS. I do not think it will take over 2 or 3 minutes.

Mr. ROBERT C. BYRD. Not to exceed 10 minutes.

Mr. STENNIS. All right, 5 minutes.

Mr. JACKSON. Mr. President, I ask unanimous consent that the distinguished Senator from Mississippi have 5 minutes to present this matter, and that it not come out of the 30-minute time allocated.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The Senator from Mississippi.

DEPARTMENT OF DEFENSE AUTHORIZATIONS, 1979

Mr. STENNIS. Mr. President, I thank the Chair and the Senator from Washington.

Mr. President, I ask that the Chair lay before the Senate a message on S. 3486.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 3486) entitled "An Act to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense and for other purposes", do pass with the following amendment:

That this Act may be cited as the "Department of Defense Appropriation Authorization Act, 1979".

TITLE I—PROCUREMENT

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1979 for the use of the Armed Forces of the United States for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, as authorized by law, in amounts as follows:

AIRCRAFT

For aircraft: for the Army, $972,400,000; for the Navy and Marine Corps, $4,381,100,000; for the Air Force, $7,082,200,000.

MISSILES

For missiles: for the Army, $738,100,000; for the Navy, $1,583,700,000; for the Marine Corps, $23,100,000; for the Air Force, $1,626,500,000.

NAVAL VESSELS

For naval vessels: for the Navy, $4,470,500,000.

TRACKED COMBAT VEHICLES

For tracked combat vehicles: for the Army, $1,419,400,000; for the Marine Corps, $24,300,000.

TORPEDOES

For torpedoes and related support equipment: for the Navy, $366,800,000.

OTHER WEAPONS

For other weapons: for the Army, $109,000,000; for the Navy, $102,000,000; for the Marine Corps, $30,200,000; for the Air Force, $300,000.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

SEC. 201. Funds are hereby authorized to be appropriated for fiscal year 1979 for the use of the Armed Forces of the United States for research, development, test, and evaluation, as authorized by law, in amounts as follows:

For the Army, $2,661,701,000.

For the Navy (including the Marine Corps), $4,504,268,000.

For the Air Force, $4,164,500,000, of which $10,000,000 may be obligated and expended only for the North Atlantic Treaty Organization Airborne Warning and Control System (AWACS) program, but such $10,000,000 may not be obligated or expended until at least one member country of the North Atlantic Treaty Organization (other than the United States) enters into a contract to purchase the AWACS aircraft.

For the Defense Agencies, $933,400,000 of which $27,600,000 is authorized for the activities of the Director of Test and Evaluation, Defense.

EXTREMELY LOW FREQUENCY (ELF) COMMUNICATION SYSTEM

SEC. 202. None of the funds authorized to be appropriated by this Act for the development of the Extremely Low Frequency (ELF) communication system may be obligated or expended for the development of such system unless the President certifies to the Congress in writing that the use of funds for such purpose is in the national interest, that a site has been selected for the deployment of such system, and that the President has approved such site for the deployment of such system, and in no event may any of the funds authorized to be appropriated by this Act be used for full scale development or construction of another test-bed facility for an Extremely Low Frequency (ELF) communication system.

REPORT RELATING TO DEVELOPMENT OF SURVIVABLE LAND-BASED INTERCONTINENTAL BALLISTIC MISSILE SYSTEM

SEC. 203. The Secretary of Defense shall, not later than October 31, 1978, report to the Committees on Armed Services of the Senate and the House of Representatives the decision of the executive branch regarding full scale development of a survivable land-based intercontinental ballistic missile system. In the event that no final decision regarding such matter has been reached by the executive branch by such date, the Secretary of Defense shall—

(1) notify such committees on or before such date that no final decision has been reached and the reasons why such decision has not been made;

(2) inform such committees of the technical, political, or other considerations necessitating a delay in making such decision;

(3) indicate the date the Secretary believes a final decision will have been made with respect to such matter; and

(4) submit a report to such committees once every 30 days on the status of the decision on such matter (including in each such report information relating to the matters contained in clauses (2) and (3) of this section) until a final decision by the executive branch has been made and such committees have been informed of such decision.

REPEAL OF FISCAL YEAR 1978 AWACS RESTRICTION

SEC. 204. Section 201 of the Department of Defense Appropriation Authorization Act, 1978 (Public Law 95-79, 91 Stat. 323), is amended by striking out ", but such $15,700,000 may not be obligated or expended until at least one member country of the North Atlantic Treaty Organization (other than the United States) enters into a contract to purchase the AWACS aircraft".

TITLE III—ACTIVE FORCES

SEC. 301. For fiscal year 1979, each component of the Armed Forces is authorized an end strength for active duty personnel as follows:

(1) The Army, 775,800.
(2) The Navy, 523,550.
(3) The Marine Corps, 190,000.
(4) The Air Force, 566,400.

TITLE IV—RESERVE FORCES

SEC. 401 (a) For fiscal year 1979, the Selected Reserve of each Reserve component of the Armed Forces shall be programmed to attain an average strength of not less than the following:

(1) The Army National Guard of the United States, 362,200.
(2) The Army Reserve, 195,750.
(3) The Naval Reserve, 87,000.
(4) The Marine Corps Reserve, 33,000.
(5) The Air National Guard of the United States, 92,150.
(6) The Air Force Reserve, 53,075.
(7) The Coast Guard Reserve, 11,700.

(b) The average strength prescribed by subsection (a) of this section for the Selected Reserve of any Reserve component shall be proportionately reduced by (1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at any time during the fiscal year, and (2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at any time during the fiscal year. Whenever such units or such individual members are released from active duty during any fiscal year, the average strength prescribed for such fiscal year for the Selected Reserve of such Reserve component shall be proportionately increased by the total authorized strength of such units and by the total number of such individual members.

EDUCATIONAL ASSISTANCE PROGRAM FOR ENLISTED RESERVES

SEC. 402. (a) Section 2132(b)(1) of title 10, United States Code, relating to eligibility for educational assistance, is amended—

(1) by striking out "automatically extended by two years" and inserting in lieu thereof "not less than six years"; and

(2) by striking out "eighth anniversary" and inserting in lieu thereof "last day of the term".

(b) Section 2135 of title 10, United States Code, is amended by striking out "1978" and inserting in lieu thereof "1980".

REENLISTMENT BONUS FOR MEMBERS OF SELECTED RESERVE

SEC. 403. (a) Subsection (a) of section 308b of title 37, United States Code, relating to reenlistment bonuses for members of the Selected Reserve, is amended to read as follows:

"(a) An enlisted member of a reserve component who—

"(1) has completed less than ten years of total military services; and

"(2) reenlists or voluntarily extends his enlistment for a period of three years or for a period of six years in a designated military skill, or in a designated unit, as determined by the Secretary concerned, in the Selected Reserve of the Ready Reserve of an armed force;

may be paid a bonus as provided in subsection (b).".

(c) Subsection (g) of such section is amended by inserting "an amount not to exceed" before "$450", before "$900", and before "$150".

(c) Subsection (g) of such section is amended by striking out "1978" and inserting in lieu thereof "1980".

BONUS FOR ENLISTMENTS IN THE SELECTED RESERVE

SEC. 404. (a) Chapter 5 of title 37, United States Code, is amended by inserting after section 308b the following new section:

"§ 308c. Special pay: bonus for enlistment in the Selected Reserve

"(a) Any person who, after September 30, 1978, enlists in the Selected Reserve of the ready Reserve of an armed force for a term of enlistment of not less than six years, is a graduate of a secondary school, and has never previously served in an armed force may be paid a bonus as provided in subsection (b).

"(b) The amount and method of payment of a bonus to be paid under subsection (a) shall be determined in accordance with regulations prescribed under subsection (c), except that the amount of such bonus may not exceed $2,000 and—

"(1) one-half of the bonus shall be paid upon completion of the initial active duty for training of such person; and

"(2) the remainder of the bonus may be paid in periodic installments or in a lump sum, as determined by the Secretary concerned.

"(c) This section shall be administered under regulations prescribed by the Secretary of defense for the armed forces under his jurisdiction and by the Secretary of Transportation for the Coast Guard when it is not operating as a service in the Navy.

"(d) A member who fails to participate satisfactorily in training with his unit during a term of enlistment for which a bonus has been paid to him under this section shall refund an amount which bears the same ratio to the amount of the bonus which has been paid to him as the unexpired part of such term of enlistment bears to the total length of such term of enlistment.

"(e) The Secretary of Defense shall submit a report to the Congress every three months stating the number of members of the Selected Reserve of the Ready Reserve who at the time of such report are serving a term of enlistment for which a bonus has been paid under this section and listing each unit of the Selected Reserve of the Ready Reserve to which any such member is assigned at the time of such report. The first such report shall be made not later than December 31, 1978.

"(f) No bonus may be paid under this section to any enlisted member who, after September 30, 1980, enlists in the Selected Reserve of the Ready Reserve of an armed force.".

(b) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 308b the following new item:

"308c. Special pay: bonus for enlistment in the Selected Reserve.".

RESTRICTION ON TRANSFER FROM READY RESERVE TO STANDBY RESERVE

SEC. 405. (a)(1) Section 269 of title 10, United States Code, relating to transfers from the Ready Reserve, is amended—

(A) by striking out "eligible to transfer" in subsection (a) and inserting in lieu thereof "transferred";

(B) by striking out the colon at the end of the third sentence in subsection (d) and inserting in lieu thereof a period;

(C) by striking out subsection (e) and inserting in lieu thereof the following:

"(e) Subject to subsection (g) and under regulations prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a member in the Ready Reserve may be transferred to the Standby Reserve."; and

(D) by striking out subsection (f) and inserting in lieu thereof the following:

"(f) A Reserve who is qualified and so requests may be transferred to the Retired Reserve under regulations prescribed by the Secretary concerned and, in the case of the Secretary of a military department, approved by the Secretary of Defense.".

(2) The amendments made by paragraph (1) shall not apply with respect to a member of the Ready Reserve of an Armed Force who served on active duty (other than for training) before the date of the enactment of this Act.

(b) Section 271 of such title, relating to continuous screening of the Ready Reserve, is amended—

(1) by inserting "(a)" before "Under regulations";

(2) by striking out "significance" in clause (1) and inserting in lieu thereof "significant"; and

(3) by adding at the end thereof the following new subsection:

"(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, any member of the Ready Reserve who is designated as a member not to be retained in the Ready Reserve as a result of screening under subsection (a) shall, as appropriate, be transferred to the Standby Reserve, discharged, or, if such member is eligible and applies therefor, transferred to the Retired Reserve.".

(c)(1) Section 511(b) of such title, relating to terms of enlistments in Reserve components, is amended—

(A) in the first sentence—

(i) by striking out "the Secretary concerned" and inserting in lieu thereof "the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy"; and

(ii) by striking out "sections 451–473 of title 50, appendix" and inserting in lieu thereof "the Military Selective Service Act (50 U.S.C. App. 451–473)"; and

(B) in the second sentence—

(i) by inserting "not less than" in clause (1) before "two years" and by adding "and" at the end of such clause;

(ii) by striking out clause (2); and

(iii) by redesignating clause (3) as clause (2) and striking out "Standby Reserve" in such clause and inserting in lieu thereof "Ready Reserve".

(2) The amendments made by paragraph (1) shall not apply with respect to a person

who enlisted as a Reserve for service in the Armed Forces under section 511(b) of title 10, United States Code, before the date of the enactment of this Act.

(d)(1) Chapter 37 of such title, relating to general service requirements, is amended by adding after section 651 the following new section:

"§ 652. Ready Reserves: requirement of notification of change of status

"Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, each member of the Ready Reserve who is not a member of the Selective Reserve shall notify the Secretary concerned of any change in such member's address, marital status, number of dependents, or civilian employment and of any change in such member's physical condition which would prevent him from meeting the physical or mental standards prescribed for his armed force.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 651 the following new item:

"652. Ready Reserves: requirement of notification of change of status.".

REPEAL OF REQUIREMENT FOR ANNUAL REPORT ON RESERVE FORCES

SEC. 406. (a) Section 264 of title 10, United States Code, is amended by striking out subsection (c).

(b)(1) Section 279 of such title is repealed.

(2) The table of sections at the beginning of chapter 11 of such title is amended by striking out the item relating to section 279.

TITLE V—CIVILIAN PERSONNEL

SEC. 501. (a) For fiscal year 1979, the Department of Defense is authorized an end strength for civilian personnel of 1,005,500.

(b) The end strength for civilian personnel prescribed in subsection (a) of this section shall be apportioned among the Department of the Army, the Department of the Navy (including the Marine Corps), the Department of the Air Force, and the agencies of the Department of Defense (other than the military departments) in such numbers as the Secretary of Defense shall prescribe. The Secretary of Defense shall report to the Congress within sixty days after the date of the enactment of this Act on the manner in which the initial allocation of civilian personnel is made among the military departments and the agencies of the Department of Defense (other than the military departments) and shall include the rationale for each allocation.

(c) In computing the authorized end strength for civilian personnel there shall be included all direct-hire and indirect-hire civilian personnel employed to perform military functions administered by the Department of Defense (other than those performed by the National Security Agency), whether employed on a full-time, part-time, or intermittent basis, but excluding special employment categories for students and disadvantaged youth such as the stay-in-school campaign, the temporary summer aid program and the Federal junior fellowship program and personnel participating in the worker-trainee opportunity program. Whenever a function, power, or duty, or activity is transferred or assigned to a department or agency of the Department of Defense from a department or agency outside of the Department of Defense, or from another department or agency within the Department of Defense, the civilian personnel end strength authorized for such departments or agencies of the Department of Defense affected shall be adjusted to reflect any increases or decreases in civilian personnel required as a result of such transfer or assignment.

(d) When the Secretary of Defense determines that such action is necessary in the national interest, he may authorize the employment of civilian personnel in excess of the number authorized in subsection (a) of this section, but such additional number may not exceed 1¼ percent of the total number of civilian personnel authorized for the Department of Defense by subsection (a) of this section. The Secretary of Defense shall promptly notify the Congress of any authorization to increase civilian personnel strength under the authority of this subsection.

TITLE VI—MILITARY TRAINING STUDENT LOANS

SEC. 601. (a) For fiscal year 1979, each component of the Armed Forces is authorized an average military training student load as follows:

(1) The Army, 50,738.
(2) The Navy, 57,996.
(3) The Marine Corps, 21,324.
(4) The Air Force, 44,410.
(5) The Army National Guard of the United States, 11,793.
(6) The Army Reserve, 5,959.
(7) The Naval Reserve, 991.
(8) The Marine Corps Reserve, 3,074.
(9) The Air National Guard of the United States, 2,471.
(10) The Air Force Reserve, 1,184.

(b) In addition to the number authorized for the Army in subsection (a), the Army is authorized a military training student load for fiscal year 1979 of not less than 17,205 to be utilized solely for One Station Unit Training.

(c) The average military training student loads for the Army, the Navy, the Marine Corps, and the Air Force and the Reserve components authorized in subsection (a) of this section for fiscal year 1979 shall be adjusted consistent with the manpower strengths authorized in titles III, IV, and V of this Act. Such adjustment shall be apportioned among the Army, the Navy, the Marine Corps, and the Air Force and the Reserve components in such manner as the Secretary of Defense shall prescribe.

REDUCTION OR REALIGNMENT OF THE TRAINING BASE

SEC. 602. (a) Notwithstanding any other provision of law, or action may be taken to effect or implement any substantial reduction of the training base (as defined in subsection (c)) or any substantial force structure realignment of the training base planned as a part of the fiscal year 1979 Defense manpower program unless and until the provisions of subsections (b) are complied with.

(b) No action described in subsection (a) with respect to a substantial reduction or realignment of the training base may be taken unless and until—

(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committees on Armed Services and Appropriations of the Senate and House of Representatives in writing of the specific reduction or realignment proposed;

(2) the Secretary of Defense or the Secretary of the military department concerned certifies that such reduction or realignment is in the best interest of the national security and provides for the most cost effective and efficient management of the training base, both in time of peace and in ability to meet mobilization requirements; and

(3) a period of thirty legislative days expires following the date on which the notification and certification referred to in clauses (1) and (2) have been submitted to such committees, during which period no irrevocable action may be taken to effect or implement such reduction or realignment. For the purpose of clause (3), a legislative day is a day in which either House of Congress is in session.

(c) For the purposes of this section, the term "training base" means the composite of installations, posts, camps, stations, and bases that have as a primary or secondary mission the conduct of formal entry level, advanced individual, or specialty training.

TITLE VII—CIVIL DEFENSE

AUTHORIZATION FOR DEFENSE CIVIL PREPAREDNESS AGENCY

SEC. 701. There is hereby authorized to be appropriated for the programs of the Defense Civil Preparedness Agency for fiscal year 1979 for the purpose of carrying out the provisions of the Federal Civil Defense Act of 1950 the sum of $96,500,000.

CIVIL DEFENSE STUDY

SEC. 702. (a) From the funds authorized to be appropriated pursuant to section 701 of this Act, the sum of $200,000 shall be used for a study of the special defense needs of areas of the United States which contain significant elements of the United States strategic nuclear retaliatory forces or significant defense-related research laboratories or facilities.

(b) The study provided for in subsection (a) shall include the following:

(1) An identification of areas of the United States which, because they contain significant elements of the United States strategic nuclear retaliatory forces or significant defense-related research laboratories or facilities, are prime targets in case of a nuclear attack.

(2) A determination of what civil defense evacuation and shelter plans and warning systems are now available or are proposed to be made available to such areas.

(3) An evaluation of the effectiveness of such existing evacuation and shelter plans and warning systems.

(4) A determination of the feasibility of establishing more effective evacuation and shelter plans and warning systems for such areas and a determination of the potential costs and methods of financing such plans and systems.

(5) A detailed analysis of the specific effects of a nuclear attack on each such area.

(6) A determination of the need for educating, and the most effective methods of educating, the public in such areas on civil defense matters.

(c) The study required by this section shall be completed, and copies shall be filed with the Committees on Armed Services of the Senate and House of Representatives, before April 1, 1979.

TITLE VIII—GENERAL PROVISIONS

EXTENSION OF AUTHORITY FOR SPECIAL PAY FOR HEALTH PROFESSIONALS

SEC. 801. (a) The second sentence of section 2 of the Act entitled "An Act to amend chapter 5 of title 37, United States Code, to revise the special pay structure relating to medical officers of the uniformed services", approved May 6, 1974 (88 Stat. 96; 37 U.S.C. 302 note), is amended to read as follows: "The authority for the special pay provided by the amendments made by the first section of this Act shall expire on September 30, 1980.".

(b) Sections 302a(c) and 303(c) of title 37, United States Code, are each amended by striking out "September 1978" and inserting in lieu thereof "September 1980".

AUTHORITY FOR ENLISTMENT AND REENLISTMENT BONUSES

SEC. 802. (a)(1) Section 308(a) of title 37, United States Code, is amended—

(A) by inserting "(1)" after "(a)" and by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively;

(B) by striking out "designated as having a critical military skill" in paragraph (1) (B) (as redesignated by subparagraph (A))

and inserting in lieu thereof "qualified in a military skill designated as critical"; and

(C) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding paragraph (1)(B) of this subsection, a member who agrees to train and reenlist for service in a military skill which, at the time of that agreement, is designated as critical, may be paid the bonus approved for that skill, at the rate in effect at the time of agreement, upon completion of training and qualification in that skill, if otherwise qualified under this subsection and even if that skill is no longer designated as critical at the time the member becomes eligible for payment of the bonus.".

(2) The amendments made by paragraph (1) shall take effect on October 1, 1978.

(b) Sections 308(f) and 308a(c) of title 37, United States Code, are each amended by striking out "September 30, 1978" and inserting in lieu thereof "September 30, 1980".

EXTENSION OF AUTHORITY FOR SUBSISTENCE ALLOWANCE FOR MARINE CORPS PLATOON LEADER CLASSES

SEC. 803. The Act entitled "An Act to provide subsistence allowances for members of the Marine Corps officer candidate programs", approved November 24, 1971 (85 Stat. 491; 37 U.S.C. 209 note), is amended by striking out "September 30, 1978" and inserting in lieu thereof "September 30, 1980".

CAREER SEA PAY

SEC. 804. (a)(1) Effective October 1, 1978, chapter 5 of title 37, United States Code, relating to special and incentive pays, is amended by inserting after section 305 the following new section:

"§ 305a. Special pay: career sea pay

"(a) Under regulations prescribed by the President, an enlisted member of a uniformed service who is entitled to basic pay and who (1) is in pay grade E–4 or above, and (2) has served more than three years of sea duty, is also entitled, while on sea duty, to special pay at the applicable rate under subsection (b).

"(b)(1) For sea duty performed during fiscal year 1979 or 1980, the monthly rates for special pay under subsection (a) are as follows:

"Years of sea duty:	Monthly rate
Over 3	$25
Over 5	35
Over 12	55

"(2) For sea duty performed during fiscal year 1981, the monthly rates for special pay under subsection (a) are as follows:

"Years of sea duty:	Monthly rate
Over 3	$25
Over 5	35
Over 7	45
Over 12	55".

(2) Effective October 1, 1981, subsection (b) of section 305a of title 37, United States Code (as added by paragraph (1)), is amended to read as follows:

"(b) The monthly rates for special pay under subsection (a) are as follows:

"Years of sea duty:	Monthly rate
Over 3	$25
Over 5	35
Over 7	45
Over 9	55
Over 10	65
Over 11	75
Over 12	100".

(3) In determining the amount of sea duty to be credited to an enlisted member of a uniformed service for purposes of section 305a of title 37, United States Code (as added by paragraph (1)), the Secretary concerned shall credit such member with all periods of service by such member before October 1, 1978, during which such member served in a sea duty status.

(b)(1) Section 305 of such chapter is amended—

(A) by striking out all of subsection (a) that precedes the table therein and inserting in lieu thereof the following:

"(a) Except as provided by subsections (b) and (c) of this section, under regulations prescribed by the President, an enlisted member of a uniformed service who is entitled to basic pay may, while on duty at a designated place outside the 48 contiguous States and the District of Columbia, be paid special pay at the following monthly rates:";

(B) by adding at the end thereof the following new subsection:

"(c) A member receiving special pay under section 305a of this title may not be paid special pay under this section for the same period of service."; and

(C) by striking out "sea duty or" in the section heading.

(2) The table of sections at the beginning of such chapter is amended—

(A) by striking out "sea duty or" in the item relating to section 305; and

(B) by inserting after such item the following new item:

"305a. Special pay: career sea pay."

(3) The amendments made by this subsection shall take effect on October 1, 1978.

(c) Any individual who on September 30, 1978, is an enlisted member of a uniformed service shall be eligible to receive special pay under section 305(a)(1) of title 37, United States Code, as in effect on September 30, 1978, for any period of sea duty performed by such individual during the period beginning on October 1, 1978, and ending on September 30, 1981, for which such individual does not receive special pay under section 305a of such title (as added by subsection (a)).

CHIEF OF ARMY DENTAL CORPS; AIR FORCE ASSISTANT SURGEON GENERAL FOR DENTAL SERVICES

SEC. 805. (a) Section 3040(b) of title 10, United States Code, is amended by inserting after the first sentence thereof the following new sentence: "The Assistant Surgeon General is Chief of the Dental Corps and is responsible for making recommendations to the Surgeon General and through the Surgeon General to the Chief of Staff on all matters concerning dentistry and the dental health of the Army.".

(b)(1) Chapter 307 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 3081. Dental Corps: Chief, functions

"(a) The Chief of the Dental Corps shall be an officer of that corps appointed as prescribed in section 3040 of this title.

"(b) Under such regulation as the Secretary of the Army may prescribe, all dental functions of the Army shall be under the direction of the Chief of the Dental Corps. All matters relating to dentistry shall be referred to the Chief of the Dental Corps.

"(c) The Chief of the Dental Corps shall—

"(1) establish professional standards and policies for dental practice;

"(2) initiate and recommend action pertaining to organization requirements and utilization of the Dental Corps and dental auxiliary strength, appointments, advancement, training assignment, and transfer of dental personnel; and

"(3) serve as the adviser to the Office of the Surgeon General on all matters relating directly to dentistry.

"(d) Under such regulations as the Secretary of the Army may prescribe, dental and dental auxiliary personnel throughout the Army shall be organized into units commanded by a designated Dental Corps officer. Such officer will be directly responsible to the commander of installations, organizations, and activities for all professional and technical matters and such administrative matters as may be prescribed by regulation.".

(2) The table of sections at the beginning of chapter 307 of title 10, United States Code, is amended by adding at the end thereof the following new item:

"3081. Dental Corps: Chief, functions.".

(c)(1) Chapter 807 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 8081. Assistant Surgeon General for Dental Services

"There is an Assistant Surgeon General for Dental Services in the Air Force who is appointed by the Secretary of the Air Force upon the recommendation of the Surgeon General from officers of the Air Force above the grade of major who are designated as dental officers under section 8067(b) of this title. The term of office of the Assistant Surgeon General for Dental Services is four years but may be increased or decreased by the Secretary of the Air Force.".

(2) The table of sections at the beginning of chapter 807 of title 10, United States Code, is amended by adding at the end thereof the following new item:

"8081. Assistant Surgeon General for Dental Services.".

CEILING FOR PAYMENTS TO PHYSICIANS UNDER CHAMPUS

SEC. 806. (a)(1) Section 1079 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) Payment of a charge for physician services for which a claim is submitted under a plan contracted for under subsection (a) may be denied because the charge is in excess of a predetermined charge level based upon customary charges made for similar services in the same locality only to the extent that such charge is in excess of the charge level that, on the basis of statistical data and methodology acceptable to the Secretary of Defense, in consultation with the Secreary of Health, Education, and Welfare, is equivalent to the 90th percentile of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing before the start of the twelve-month period (beginning July 1 of each year) in which the claim for the payment is submitted.".

(2) Section 1086 of such title is amended by adding at the end thereof the following new subsection:

"(f) The provisions of section 1079(h) of this title shall apply to payments for physician services under a plan contracted for under subsection (a).".

(b) The amendments made by subsection (a) shall apply with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after the date of enactment of this Act.

MARINE CORPS COMMANDANT—MEMBER OF JOINT CHIEFS OF STAFF

SEC. 807. Section 141 of title 10, United States Code, is amended by—

(1) striking out "and" at the end of subsection (a)(3);

(2) striking out the period at the end of subsection (a)(4) and inserting in lieu thereof a semicolon and the word "and";

(3) adding after subsection (a)(4) a new clause (5) as follows:

"(5) the Commandant of the Marine Corps.";

(4) striking out subsection (c); and

(5) redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

ASSIGNMENT OF WOMEN TO NAVAL VESSELS

SEC. 808. The last sentence of section 6015 of title 10, United States Code, relating to restrictions on the assignment of women members of the Navy, is amended to read as follows: "However, women may not be as-

signed to duty on vessels or in aircraft that are engaged in combat missions nor may they be assigned to other than temporary duty on vessels of the Navy except hospital ships, transports, and vessels of a similar classification not expected to be assigned combat missions.".

MILITARY TRAINING FOR FEMALE UNDERGRADUATES AT MILITARY COLLEGES

SEC. 809. (a) The Secretary of Defense shall require that any college or university designated by the Secretary of Defense as a military college shall, as a condition of maintaining such designation, provide that qualified female undergraduate students enrolled in such college or university be eligible to participate in military training at such college or university, but, notwithstanding any other provision of law, the Secretary of Defense may not require that, as a condition of maintaining such designation or for any other purpose, such college or university require female undergraduate students enrolled in such college or university to participate in military training.

(b) The Secretary of Defense shall prescribe such regulations as the Secretary determines necessary or appropriate to carry out the provisions of this section.

NAVY SHIPBUILDING POLICY

SEC. 810. (a) It is the policy of the United States to modernize the combatant forces of the United States Navy through the construction of advanced, versatile, survivable, and cost-effective combatant ships in sufficient numbers and having sufficient combat effectiveness to defend the United States against enemy attack and to carry out such other missions as may be assigned to the Navy by law. In order to achieve such policy, the Navy should develop plans and programs for the construction and deployment of weapon systems, including naval aviation platforms, that are more survivable, less costly, and more effective than those presently in the Navy.

(b) In order that the Congress may be kept currently informed regarding compliance with the policy expressed in subsection (a), the President shall include in all requests made to the Congress for the authorization of any ship for the combatant forces, including any aircraft carrier, (1) his conclusions with respect to the survivability, cost effectiveness, and combat effectiveness of such ship, (2) a recommendation whether such ship should be nuclear or conventionally powered, and (3) the reasons for such conclusions and recommendations.

(c) Title VIII of the Department of Defense Appropriation Authorization Act, 1975 (88 Stat. 408), is repealed.

CARRIER SERVICE LIFE EXTENSION PROGRAM AND DDG–2 DESTROYER CONVERSION

SEC. 811. (a) Notwithstanding any other provision of law and except as provided in subsection (b), the Secretary of the Navy may not take any action with respect to the use of either public shipyards or private shipyards for conversion, overhaul, or repair work under the Service Life Extension Program (SLEP) or under the program for the modernization of DDG–2 class guided missile destroyers, or for the employment of additional personnel for, or the transfer of additional personnel to, any public shipyard as a part of the necessary buildup of manpower for carrying out either such program, until—

(1) the Secretary of the Navy conducts a comprehensive least-cost approach study (A) comparing the costs of carrying out such programs at public shipyards with the costs of carrying out such programs at private shipyards, and (B) evaluating such other factors as the Secretary of the Navy considers should be taken into account in assigning work in connection with the conversion, overhaul, repair, or modernization of vessels to public or private shipyards;

(2) a written report containing the results of such study is submitted, after the date of the enactment of this Act, to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives; and

(3) a period of sixty days of continuous session of Congress expires following the date on which such report is submitted to such committees.

(b) Nothing in this section shall prevent the Navy from conducting advanced planning or purchasing long lead items in connection with either program described in subsection (a) so long as such planning or purchasing is not related to the performance of work in connection with either such program at any particular shipyard.

(c) For purposes of subsection (a)(3), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such sixty-day period.

SEA-BASED AIRCRAFT PLATFORM STUDY FINDS

SEC. 812. The unobligated balance of $40,000,000 authorized to be appropriated in section 201 of the Department of Defense Appropriation Authorization Act, 1978 (Public Law 95–79; 91 Stat. 323), for conducting comprehensive evaluation studies of sea-based aircraft platforms shall after the date of the enactment of this Act be available and primarily applied toward performing any design work related to any such sea-based aircraft platform authorized by this Act.

CERTIFICATION OF CLAIMS

SEC. 813. Notwithstanding any other provision of law, none of the funds authorized to be appropriated for the Department of Defense by this or any other Act shall be used for the purpose of paying any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85–804, or other similar request, which exceeds $100,000 unless a senior company official in charge at the plant or location involved has certified at the time of submission of such contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85–804, or other similar request, that such claim or request is made in good faith and that the supporting data are accurate and complete to the best of such official's knowledge and belief. The requirements of this section shall not apply to claims, requests for equitable adjustment to contract terms, requests for relief under Public Law 85–804, or other similar requests submitted before the date of enactment of this Act.

RESTRICTION ON CONTRACTING OUT COMMERCIAL AND INDUSTRIAL TYPE FUNCTIONS

SEC. 814. (a) The Secretary of Defense shall submit a report to the Committees on Armed Services of the Senate and House of Representatives providing the details of any proposed change in policy or regulations, from those in effect before June 30, 1976, regarding the determination of whether commercial or industrial type functions at Department of Defense installations located in any State, the District of Columbia, the Commonwealth of Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors during the period beginning on October 1, 1978, and ending on September 30, 1979.

(b) No commercial or industrial type function at any Department of Defense installation referred to in subsection (a) shall be performed by private contractors unless such contractor performance began before the date of the enactment of this Act or performance would have been allowed by the policy and regulations in effect before June 30, 1976. The prohibition in the preceding sentence shall apply until the end of the sixty-day period beginning on the date the report required by subsection (a) is received by the Committees on Armed Services of the Senate and House of Representatives.

PROHIBITION ON SALE OF CERTAIN DEFENSE ARTICLES FROM DEPARTMENT OF DEFENSE STOCKS

SEC. 815. (a) Chapter 49 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 975. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense

"(a)(1) Except as provided in subsections (b) and (c), the sale outside the Department of Defense of any defense articles designated or otherwise classfied as Prepositioned Material Configured to Unit Sets, as decrement stock, or as Prepositioned War Reserve Stocks for United States Forces is prohibited.

"(2) In this section, 'decrement stock' means such stock as is needed to bring the armed forces from a peacetime level of readiness to a combat level of readiness.

"(b) The President may authorize the sale outside the Department of Defense of a defense article described in subsection (a) if—

"(1) he determines that there is an international crisis affecting the national security of the United States and the sale of such article is in the best interests of the United States; and

"(2) he reports to the Congress not later than 60 days after the transfer of such article a plan for the prompt replenishment of the stocks of such article and the planned budget request to begin implementation of that plan.

"(c)(1) Nothing in this section shall preclude the sale of stocks which have been designated for replacement, substitution, or elimination or which have been designated for sale to provide funds to procure higher priority stocks.

"(2) Nothing in this section shall preclude the transfer or sale of equipment to other members of the North Atlantic Treaty Organization.".

(b) The table of sections at the beginning of chapter 49 of title 10, United States Code, is amended by adding at the end thereof the following new item:

"975. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense.".

ASSISTANCE TO 1980 OLYMPIC WINTER GAMES

SEC. 816. (a) Notwithstanding any other provision of law, the Secretary of Defense is authorized—

(1) to provide logistical support and personnel services to the XIII Olympic winter games;

(2) to lend and provide equipment to officials of the Lake Placid Olympic Organizing Committee; and

(3) to provide such other services as the Lake Placid Olympic Organizing Committee may consider necessary and the Secretary may consider advisable.

(b) There is authorized to be appropriated to the Secretary of Defense for fiscal year 1979 an amount not to exceed $2,000,000 for the purpose of carrying out subsection (a). No funds may be obligated or expanded for such purpose unless specifically appropriated for such purpose.

REALIGNMENT OF MILITARY INSTALLATIONS IN THE CANAL ZONE

SEC. 817. None of the funds authorized to be appropriated by this Act shall be used for the realignment of any military installation in the Canal Zone unless such use is consistent with the responsibility of, and necessity for, the United States to defend the Panama Canal or with legislation which

may be enacted to implement the Panama Canal Treaties of 1977.

TECHNICAL AMENDMENT RELATING TO THE LIMITATION ON NUMBER OF ADMIRALS AND VICE ADMIRALS IN THE NAVY AND GENERALS AND LIEUTENANT GENERALS IN THE MARINE CORPS

SEC. 818. (a) The first sentence of section 5231(b) of title 10, United States Code, is amended by striking out "the active list of the Navy" and inserting in lieu thereof "active duty".

(b) Section 5232(b) of such title is amended by striking out "the active list of the Marine Corps" and inserting in lieu thereof "active duty".

COMMISSARY BAGGERS

SEC. 819. Notwithstanding any other provision of law, an individual who performs bagger or carryout service for patrons of a commissary of a military department may not be considered to be an employee for purposes of the Fair Labor Standards Act of 1938 by virtue of such service if the sole compensation of such individual for such service is derived from tips.

ABOLISHMENT OF WOMEN'S ARMY CORPS

SEC. 820. (a) Section 505 of title 10, United States Code, is amended by striking out subsection (d) and by redesignating subsection (e) as subsection (d).

(b) Chapter 307 of such title is amended by striking out section 3071 and by striking out of the table of sections at the beginning of such chapter the item relating to section 3071.

(c) Chapter 331 of such title is amended—

(1) by striking out "; Women's Army Corps" in the catchline of section 3209;

(2) by striking out the subsection designation "(a)" at the beginning of subsection (a) of section 3209 and striking out subsection (b) of such section;

(3) by striking out section 3215;

(4) by striking out "and the Women's Army Corps" in clause (1) of the third sentence of section 3220; and

(5) by striking out in the table of sections at the beginning of such chapter "; Women's Army Corps" in the item relating to section 3209 and by striking out the item relating to section 3215.

(d) Chapter 335 of such title is amended—

(1) by striking out ", in the Women's Army Corps," in subsection (a) of section 3283 and by striking out "and the Women's Army Corps" in subsection (b) of such section;

(2) by striking out clause (2) of section 3296(b) and redesignating clause (3) as clause (2);

(3) by striking out in the third sentence of section 3297(a) "a selection board considering promotion-list officers of the Women's Army Corps under section 3300(a) or (b) of this title may include officers of the Regular Army in that corps whose regular or temporary grades are above major, and";

(4) by striking out section 3311; and

(5) by striking out in the table of sections at the beginning of such chapter the item relating to section 3311.

(e) Chapter 337 of such title is amended—

(1) by striking out "and the Women's Army Corps" and "or corps, as the case may be" in the first sentence of section 3363(g) and by striking out "or the Women's Army Corps" in the second sentence of such section;

(2) by striking out "and to the Women's Army Corps" in section 3364(a);

(3) by striking out "or the Women's Army Corps" and "or corps" in section 3364(b);

(4) by striking out "or the Women's Army Corps" in section 3364(c); and

(5) by striking out the second sentence of section 3383(b).

(f) Chapter 345 of such title is amended by striking out section 3580 and by striking out in the table of sections at the beginning of such chapter the item relating to section 3580.

(g) Section 3818 of such title is amended—

(1) by striking out clause (2) of subsection (a) and inserting in lieu thereof the following:

"(2) the appointment of a female warrant officer, or the enlistment of a female member, of the Regular Army."; and

(2) by striking out "of the Women's Army Corps" in subsection (c).

(h) Section 3848(d) of such title is amended by inserting "or" before "the Army Medical Specialist Corps" and by striking out "or the Women's Army Corps,".

(i) Section 3916(b) of such title is amended—

(1) by inserting "and" at the end of clause (1);

(2) by striking out "Women's Army Corps," in clause (2);

(3) by striking out the semicolon and the word "and" at the end of clause (2) and inserting in lieu thereof a period; and

(4) by striking out clause (3).

AUDIT AND REVIEW OF CERTAIN FUNDS

SEC. 821. (a) Any funds authorized by this or any other Act to provide relief to contractors under authority of the first section of the Act entitled "An Act to authorize the making, amendment, and modification of contracts to facilitate the national defense", approved August 28, 1958 (72 Stat. 972; 50 U.S.C. 1431), in connection with contracts numbered N00024–69–C–0283, N00024–70–C–0275, N00024–71–C–0268, and N00024–74–C–0206 for the procurement for the United States of landing helicopter assault vessels (LHA), DD–963 vessels, and SSN 688 nuclear attack submarines, and paid by the United States to such contractors, shall be subject to such audits and reviews by the Comptroller General of the United States as the Comptroller General shall determine necessary to insure that such funds are used only in connection with such contracts and to insure that the prime contractors concerned do not realize any total combined profit on such contracts.

(b) No funds described in subsection (a) may be used to provide relief to any contractor described in subsection (a), in connection with contracts described in such subsection, to the extent that the use of such funds would result in any total combined profit on such contracts, as determined by the Comptroller General of the United States.

(c) The Comptroller General of the United States shall keep the appropriate committees of the Congress currently informed regarding the expenditure of funds referred to in subsection (a) and shall submit to the Congress annually, until the completion of the contracts referred to in subsection (a), a written report on the status of the contracts referred to in subsection (a), on the expenditure of the funds referred to in such subsection, and on the results of the audits and reviews conducted by the Comptroller General under authority of this section.

The Senate proceeded to consider the bill.

Mr. STENNIS. This concerns a very simple matter of agreeing to an amendment to the authorization bill, the procurement bill, for the Department of Defense. It passed the Senate here about 2 weeks ago with a rollcall vote. I think there were only three votes or not over five votes against it.

The only change of any kind is that the House modified the language some of one amendment that we had put on that authorization bill offered by the Senator from Wisconsin. So I will state the substance of that first.

The amendment related to a requirement for an audit, and that language is continued. The other point involved about future ship claims, if they had made a profit, they would be allowed to have that. There was a little difference of opinion about the language, but that has been cleared up to the satisfaction of the Senator from Wisconsin, and he authorized me to say so. He is on the floor now. It has been cleared up to the entire satisfaction of the membership of the committee.

I have conferred with the minority here. Senator TOWER could not be here today, but he fully understands the substance of this, and I am sure he is in full agreement.

I have conferred with the minority, the deputy minority leader, the Senator from Alaska.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. STENNIS. Yes, I yield.

Mr. STEVENS. It is my understanding that this is the House amendment to the Senate-passed bill which has been discussed by your committee and there is no objection raised.

Mr. STENNIS. Oh, yes, not a committee meeting, no.

Mr. STEVENS. I understand.

Mr. STENNIS. But by various Senators.

Mr. STEVENS. Various members of the Senator's committee, and there has been no objection raised, to my knowledge.

Mr. STENNIS. That is correct.

Mr. President, I move the adoption of the amendment. In this way there is no necessity for a conference. This will be the basis for the appropriation bill which we hope to bring in very early next week and thereby avoid a continuing resolution under which the Department of Defense will have to operate otherwise.

Mr. President, I move that the Senate concur in the House amendment.

The motion was agreed to.

Mr. STENNIS. As I understand now, that would finish, complete, consideration of this bill.

The PRESIDING OFFICER. That completes action on the bill.

Mr. STENNIS. And it now goes to the White House.

I move to reconsider the vote by which the motion was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

Mr. JACKSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STENNIS. I thank the Senator.

PUBLIC UTILITY RATES—CONFERENCE REPORT

NATIONAL ENERGY CONSERVATION POLICY ACT—CONFERENCE REPORT

The PRESIDING OFFICER. The Senator from Washington.

Mr. JACKSON. Mr. President, the conference report on the Public Utilities Regulatory Policies Act, H.R. 4018, is the

third major portion of the President's energy program to be brought to the Senate in final form. This bill addresses the potential for energy conservation in the utility sector of our economy. Electricity generation in 1977 consumed 30 percent of the energy used in the United States, the energy equivalent of 10.6 million barrels of oil per day. This bill aims at promoting conservation of electric energy by consumers, efficient use of facilities and resources by the utility industry, conservation of capital by more effective use of existing plants and equity in ratemaking.

Many Members of Congress have contributed to the shaping of this legislation. It is clear, however, that the greatest share of the credit must go to Senator J. BENNETT JOHNSTON, chairman of the Subcommittee on Energy Conservation and Regulation who has provided the leadership on this bill for the majority from the time it was introduced to the final drafting of the conference report. Throughout this process, and especially during the conference with the House, able and consistent support for the Senate position has come from Senator MCCLURE and Senator DOMENICI. In the fashioning of this bill, the Senate, I must say, has functioned in a bipartisan manner.

The draft conference report was delivered to the members of the conference committee and made available to the public more than a week ago on September 28. This procedure is without precedent, and it has prompted extensive review of the draft. It is a procedure which has been followed with all four portions of the President's energy bill completed so far.

The conference agreement is a compromise between two very different House and Senate bills. As my colleagues may recall, the utility rate reform bill passed by the House of Representatives was a bill with enormously far-reaching, mandatory provisions imposing Federal law on a utility ratemaking process which has been traditionally wholly within the province of the States. The Senate bill, on the other hand provided voluntary Federal guidelines for utility ratemaking and authorized the Secretary of Energy to intervene in proceedings at the State level to encourage the adoption of rate structures consistent with these guidelines.

The conference bill leaves intact the authority and discretion of the State commissions and nonregulated municipal and cooperative utilities with respect to ratemaking. These entities would be required to examine a series of federally recognized ratemaking standards in hearings with opportunity for input from affected utilities and consumers. This examination would determine the relationship between each of these standards and the purposes of the act: conservation, efficiency in the use of facilities, and equitable rates. Following such examination each State commission or nonregulated utility would be free to choose whether or not the standard would be put into effect.

Title II of the bill establishes new authorities for the Federal Energy Regulatory Commission to issue orders for interconnection of transmission facilities and the transmission of electric energy to further energy conservation efficient use of facilities or to improve reliability. The essential feature of the conference agreement is the limited nature of the authority granted to the FERC. The agreement sanctions Federal action where the energy conservation and management purposes of the act are furthered, but does not permit the Federal Government to involve itself, under authority of this act, on one side or the other of economic contests among utilities for customers. This is a bill whose aim is energy conservation and improved reliability of service.

The conference agreement contains provisions dealing with retail rate policies of natural gas utilities and a strong program developed by Senator DURKIN to encourage small hydroelectric projects. Expedited procedures for approval of west-to-east crude oil pipelines from California and along the northern tier of the United States are established by this bill. The bill also contains provisions sponsored respectively by Senators GRIFFIN, JOHNSTON, GLENN, and FORD, dealing with natural gas policy. These provisions are consistent with the recently passed Natural Gas Policy Act and have my full support.

Mr. President, this bill is a valuable part of the President's energy plan. It will inaugurate a much needed review of policies affecting our utilities. I urge the adoption by the Senate of the conference report on H.R. 4018.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a summary of the provisions of the Public Utility Energy Policies Act conference agreement.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF CONFERENCE AGREEMENT ON THE PUBLIC UTILITY ENERGY POLICIES ACT H.R. 4018

The conference on H.R. 4018, relating to Public Utility Regulatory Policies, completed action on December 1, 1977. The following summary of the conference agreement discusses only the major provisions of that agreement and is not intended to be either a comprehensive or an official document.

RETAIL RATE PROVISIONS

Procedural requirements

The conferees agreed to legislation which contains three federal purposes for the retail rates of utilities. These purposes are the encouragement of:

(1) conservation of energy and capital;

(2) optimization of efficiency of use of facilities and resources; and

(3) equitable rates to consumers.

The legislation enumerates eleven ratemaking standards which must be considered in relation to these purposes by State regulatory authorities and nonregulated utilities.

Specifically, each regulatory authority and nonregulated utility must consider the applicability of the following standards to utility rates:

(1) time-of-day rates;

(2) seasonal rates;

(3) cost-of-service pricing;

(4) interruptible rates and load management techniques;

(5) prohibition of declining block rates which are not cost justified; and

(6) lifeline rates.

The requirement of consideration includes taking evidence with respect to and making findings on each standard in a ratemaking proceeding within 3 years of enactment. There is no requirement that the standards be adopted.

Within two years of enactment each regulatory authority and nonregulated utility shall consider and adopt, if appropriate, rules on:

(1) master metering;

(2) review of automatic adjustment clauses;

(3) information to consumers;

(4) advertising; and

(5) termination of service.

The provisions of the Act apply to any electric utility with annual sales in excess of 500 million kilowatt hours.

Each regulatory authority and nonregulated utility must report annually to the Secretary on the actions taken pursuant to these provisions, and must gather and make available on request, information on costs of service.

The right of intervention is granted to the Secretary of the Department of Energy or any ratepayer of the affected utility. The intervenors may participate in the proceeding to raise the issue of the consideration of one or more of the enumerated federal standards, or of other concepts which contribute to the achievement of the purposes of the Act.

Intervenors may seek review of the determination made under the Act by a regulatory authority or a nonregulated utility in State court pursuant to applicable State appellate procedures. If the Secretary participated in the original proceeding he may appeal the decision.

The conference agreement also establishes procedures for providing attorney's and witness fees to certain consumers whose participation in a proceeding "substantially contributed to the approval in whole or in part of the position advocated by such ratepayer relating to the standards set out in this Act."

COGENERATION

The conference agreement provides that the Federal Energy Regulatory Commission (FERC) shall prescribe rules requiring electric utilities to offer to sell power to or buy power from qualifying cogenerators or small power producers. A small power producer is someone not primarily engaged in generating or selling electric power who produces less than 80 megawatts of electricity from solid waste or renewable resources. A qualifying cogenerator is the owner of a cogenerating facility that meets certain minimum size, fuel use and fuel efficiency requirements prescribed, by rule, by FERC.

FERC will prescribe by rule procedures to ensure that the rates set by State regulatory commissions for such sales will be subject to specified limits and will not discriminate against the cogenerators, small power producers or customers of the utility.

FERC shall also prescribe rules exempting qualifying cogenerators and small power producers of up to 30 megawatts from State utility regulations, the Federal Power Act, and/or the Public Utility Holding Company Act, if the Secretary of Energy determines such exemption is necessary to carry out the purposes of the Act. Biomass facilities producing no more than 80 megawatts may be exempted from the Public Utility Holding Company Act.

WHOLESALE PROVISIONS

Interconnection

The conferees agreed to amend the Federal Power Act to provide authority for the Federal Energy Regulatory Commission to order interconnections on its own motion or upon application.

The interconnection order may require only the physical connection of transmission facilities, and a sale or exchange of energy across the interconnection necessary to carry out the purposes of the order.

The order may be issued only if FERC finds that—

(a) it is in the public interest, and

(b) (1) it encourages overall conservation of energy or capital or

(2) optimizes the efficiency of use of facilities and resources or

(3) it improves the reliability of the system subject to the order without damaging the reliability of other systems.

In addition, FERC must determine that the interconnection order would not—

(A) result in an uncompensated economic loss;

(B) place an undue burden on a utility affected by the order;

(C) impair the reliability of the system of any utility;

(D) impair the ability of any utility to render adequate service to its customers, or

(E) compel the enlargement of generating facilities.

Any order applied for by a utility may not be issued unless the applicant utility demonstrates that it is ready, willing, and able to reimburse the utility subject to the order.

No electric utility shall become subject to the jurisdiction of the Federal Power Act by reason of any action or transmission required by an interconnection order under this provision, or a wheeling order described below.

Wheeling

The legislation provides new authority under the Federal Power Act for FERC to order wheeling upon the application of an electric utility under the following circumstances.

FERC may order an electric utility to provide transmission services to another electric utility if it finds that such an action would:

(1) conserve a significant amount of energy; or

(2) significantly promote the efficient use of electric generation and transmission facilities; or

(3) improve the reliability of utility systems without damaging the reliability of other systems.

No order may be issued unless FERC determines that such order would not—

(a) place an undue burden on a utility affected by the order;

(b) impair the reliability of the system or any utility; or

(c) compel the enlargement of generating facilities.

FERC may compel the enlargement of transmission facilities if the utility seeking the order will pay the costs for such enlargement.

In addition, the following constraints would apply:

Any order applied for by an electric utility may not be issued unless the applicant demonstrates that it is ready, willing and ble to pay reasonable wheeling charges to the utility subject to the order.

In any case, no such order may be issued if it is likely to result in an uncompensated loss by any utility affected by the order.

No electric utility may be required under the authority granted in the National Energy Act of 1977 to wheel power for or for sale to any of its own wholesale or retail customers if the power wheeled would replace the amount of power currently provided for or contracted for by such utility to such customer.

No order may be issued unless the Commission finds that such order will preserve existing competitive relationships.

Pooling

The conference agreement provides no federal authority to order utilities to enter into pooling arrangements. However, no State law may prohibit electric utilities from entering into an agreement for central dispatch designed to obtain economic use of facilities in an area.

The Secretary, in consultation with FERC, shall conduct a one-year review of the opportunities for energy conservation, optimized facility use or increased reliability through pooling and make recommendations to utilities on such pooling opportunities.

Automatic adjustment clauses

FERC, within 2 years and every 4 years thereafter, shall make a thorough review of automatic adjustment clauses in public utility rate schedules to examine whether or not they effectively provide incentives for economical purchase and use of fuel. The review can take place in a generic proceeding or in individual rate cases.

In each rate application FERC may, on its own motion or upon complaint, after opportunity for an evidentiary hearing, order a utility to cease or modify an adjustment clause which does not result in the economical purchase and use of fuel.

Continuance of service

FERC shall require each public utility under its jurisdiction to report promptly any anticipated shortage of electric energy or capacity which would affect such utility's capability of serving its wholesale customers. Each public utility shall also be required to submit contingency plans respecting anticipated shortages and accommodate such shortages in a manner which considers the public health and safety and treats all persons served without undue prejudice or disadvantage.

Consideration of proposed rate increases (anti-pancaking)

60 days notice must be provided between the time a wholesale rate change request is filed under the Federal Power Act and the time that such rate change would take effect (present law provides for 30 days notice.)

The chairman of the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, is directed to conduct a study of the legal requirements and administrative procedures involved in the consideration and resolution of proposed wholesale electric rate increases under the Federal Power Act and within nine months, to report to Congress.

Interlocking directorates

One year after enactment a person who is an officer or director of a utility under FERC jurisdiction and of:

(1) a company covered by existing law;

(2) a financial institution;

(3) a supplier of fuel to a utility; or

(4) one of the 20 largest customers of the utility must file with FERC a statement concerning these positions held by the officer or director.

Antitrust laws

Nothing in the bill affects the applicability of the antitrust laws or restricts the authority of the Federal Energy Regulatory Commission to regulate unfair competition.

AID TO THE STATES AND CONSUMER REPRESENTATION

Aid to States

The legislation authorizes $5 million in FY 78 and $10 million in FY 79 and FY 80 for grants to State offices of consumer services pursuant to section 205 of ECPA.

In addition, the Secretary is authorized to make grants to State public utility commissions to assist them in carrying out their responsibilities for consideration of Federal standards and other Federal hearings mandated under this bill. $40 million is authorized annually in Fiscal Years 1979 and 1980. Each State is to receive an equal amount, subject to Department of Energy requirements assuring that the monies are spent pursuant to State law and pursuant to the purposes of this Act.

Department of Energy responsibilities

The Secretary of Energy is granted authority to:

(1) publish a list identifying the State regulatory authorities and nonregulated utilities affected by this Act.

(2) inform State regulatory authorities and affected nonregulated utilities concerning:

(A) identification of and experiments concerning load management techniques;

(B) developments and innovations in utility ratemaking, including data concerning rate reform experiments;

(C) methods for determining cost of service; and

(D) other data and information which would be of assistance to State regulatory authorities and affected nonregulated utilities, and

(3) provide appropriate technical assistance if requested by State regulatory authorities, electric utilities, or nonregulated utilities.

Authorization for this authority will be $1 million for FY 78, $1 million for FY 79, and $1 million for FY 80.

CONSUMER REPRESENTATION BEFORE FERC

The conferees agreed to establish an Office of Public Participation within FERC, headed by a Director appointed by the Chairman and approved by the Commission. The Office would be charged with coordinating Commission staff assistance to the public. In addition, the Office would administer intervenor funding provisions.

GAS UTILITIES

Retail rate provisions

The Secretary is authorized to intervene in ratemaking proceedings for gas utilities to argue on behalf of rates which would achieve the Act's purposes of encouraging conservation of energy and capital, the optimization of the efficient use of facilities and resources, and equitable rates.

In addition the policy on advertising and termination of service adopted by the conferees for electric utilities was extended to gas utilities.

Study

The conference agreement also includes a rate design study provision for gas utilities which was identical in both bills. The Secretary in consultation with FERC, the States and affected parties, shall conduct the study and transmit the results to the Congress within 12 months.

SMALL HYDROELECTRIC FACILITIES

Small Hydroelectric Power Projects

The conferees authorized a Department of Energy loan program to encourage the development of small hydroelectric facilities in existing dams.

Loans of up to 90% of the cost of feasibility studies for hydroprojects may be made to the owner of a dam. The balance of any loan shall be forgiven if the Secretary determines that the project is not technically or economically feasible.

Loans for up to 75% of the cost of a project may be made with the following restrictions:

(1) preference shall be given to applicants who do not have access to alternative financing;

(2) the maximum term of a loan shall be 30 years; and

(3) the proper licenses must have been approved.

A three-year authorization of $10 million each year for feasibility studies and $100 million each year for loans is provided.

Amounts repaid under the loans are deposited into the Treasury.

Conduit Hydroelectric facilities

The Federal Energy Regulatory Commission shall have discretionary authority to grant an exemption to Part I of the Federal Power Act to any facility of less than 15 megawatts which is located on non-federal lands and uses the hydroelectric potential of manmade conduits not built primarily for the generation of electricity.

Other hydro provisions

The conferees rejected a provision exempting federally funded hydro demonstration projects from the license requirements of the Federal Power Act, as well as a provision fixing license charges for a government dam.

MISCELLANEOUS PROVISIONS

National Regulatory Research Institute

The Secretary is authorized to provide no more than $2 million in FY 1979 and 1980 to an institute established by the National Association of Regulatory Utility Commissioners to provide State regulatory authorities with independent expertise on regulatory policy issues and improved data retrieval systems. Funding for the institute shall be at least 20% non-federal in 1979 and 40% in 1980. All information and data shall be available to the DOE, FERC, Congress and the public.

Seasonal diversity electricity exchange

The Secretary is authorized at his discretion to acquire rights of way by eminent domain in furtherance of the construction of facilities for the transmission of power from Canada through North Dakota, South Dakota and Nebraska (Mandan project). The authority of the Secretary is subject to the procedures and other conditions set forth in the conference agreement.

Natural gas transportation policies

FERC is authorized to issue a certificate of public convenience and necessity for the interstate transportation of natural gas which is used for high priority needs, as defined by FERC and owned or developed by an end user.

Conversion of natural gas users to heavy fuel oil use

The conference agreement directes FERC to provide rules to facilitate the voluntary conversion of natural gas users to heavy fuel oils. An existing facility users would be authorized to transfer its entitlement to receive natural gas under an existing contract to an interstate pipeline or a distribution company or high priority end-user served by a pipeline.

Compensation would be prescribed by FERC following the guidelines set forth in the statute.

Emergency conversions of utilities and other facilities

The Secretary is granted authority to prohibit, during a natural gas emergency, any electric utility powerplant or major fuel burning installation from burning natural gas. The Secretary must make the findings set forth in the statute, and determine compensation in the same manner as in the prepreceding section.

University coal research laboratories

The Surface Mining Control and Reclamation Act of 1977 is amended to provide three additional university coal research laboratories. $6 million is authorized for start-up costs for the laboratories. All three labs need not be designated in one year.

Transportation of crude oil

The legislation provides an expedited process for approving the construction of crude oil transportation systems from the U.S. West Coast.

Applications for systems to serve the Northern Tier States shall be received by the Secretary of the Interior within 30 days of enactment. The final EIS's on accepted applications shall be completed by December 1, 1978. Thereafter, the President shall have 45 days to approve an application.

Interior is directed to expedite to the maximum extent practicable all actions to provide rights of way across Federal lands and issue Federal permits.

The federal permits relating to the Long Beach/Midland (Sohio) pipeline shall be approved within 30 days of enactment. The President has the authority to extend this deadline to 90 days if it is in the national interest to do so.

Conserved natural gas (savers-keepers)

The conference substitute would provide that if the Federal Energy Regulatory Commission updates the base period for a natural gas curtailment plan, it must adjust the distribution system's entitlement under the curtailment plan to reflect any volumes of natural gas saved through implementation of energy conservation measures.

● Mr. BUMPERS. Mr. President, in 1976, the electric utility industry provided 12 percent of end-use energy while consuming 29 percent of primary energy supplies, including 16 percent of the natural gas and 10 percent of the petroleum.

The electric utility industry is now confronted with a variety of significant, interrelated problems which require changes in regulatory policy. The most dramatic sign of this new set of problems is the rapid increase in the cost of electricity. From 1970 to 1976 the average utility bill increased 70 percent. The forces behind this rapid increase fall into four broad categories: One, escalating costs of new facilities (the construction cost index for electric light and power rose 60 percent compared with an overall rise in the consumer price index of 47 percent); two, rising cost of fuels (between 1970 and 1975 the cost of oil used by utilities increased 403 percent); three, the slackening pace of improvements in the efficiency of conventional electric generating equipment; and four, peakload demand is growing faster than baseload demand.

Costs no longer decline with increases in production in either the electric or the gas industry. The energy and economic environment has changed, and it is necessary that the antiquated pricing structure by which gas and electricity are sold should be modernized to encourage conservation rather than to promote consumption.

This portion of the energy bill as agreed to by the conferees has been criticized because it does not mandate adoption of specific standards by each State utility commission. However, the legislation does require each State utility regulatory agency, within 2 years, to consider specific ratemaking revisions for each major utility under its jurisdiction.

Specifically the State agencies would have to look into the feasibility of ordering such changes as lower rates for off-peak hours; seasonal rates; a ban on declining, volume-discount rates for large power users; and special low rates for customers able to use interruptable service in times of high demand.

I am confident that this type of review by State utility commissions will be as successful as the mandated form originally proposed by the administration. If utility commissions can experiment with different types of rate reform techniques, States can take into consideration their unique demands and climatic conditions. The Arkansas Public Service Commission has successfully conducted a demand management study using time-of-day pricing in selected communities in Arkansas. Preliminary conclusions indicate that residential consumers will efficiently use scarce energy supplies under the time-of-day rate experiment in Arkansas. This type of experiment may not reach the same conclusion in other States. However, State utility commissioners have an opportunity to experiment with the type of rate revisions that will offer the most relief for residential consumers in their States.●

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). The Senate will be in order.

NATIONAL ENERGY CONSERVATION POLICY ACT

Mr. JACKSON. Mr. President, I now turn to the fourth and last of the conference reports to be presented to the Senate for its consideration, the conference report on H.R. 5037, the National Energy Conservation Policy Act.

Mr. President, I am pleased to present to my colleagues for their consideration the conference report on the National Energy Conservation Policy Act. This bill is the portion of the President's proposed national energy policy program, which he presented to Congress on April 20 of last year, dedicated to the conservation of energy through a comprehensive array of measures that span the spectrum of energy use in this country.

Mr. President, I want to express my thanks to the members of the Committee on Energy and Natural Resources who served as conferees on H.R. 5037. The conferees were Senators JOHNSTON, DURKIN, METCALF, HASKELL, BUMPERS, METZENBAUM, HATFIELD, MCCLURE, WEICKER, DOMENICI, and myself. They labored for many days on this bill and they have fashioned a compromise bill that will conserve millions of barrels of oil in the years to come without placing any undue burdens on the American people.

This is a comprehensive energy conservation package. This bill provides a number of measures to encourage people to insulate and weatherize their homes and to install solar energy devices. It offers Federal assistance for public and nonprofit schools and hospitals to retrofit their facilities so as to conserve energy. The transportation sector is also addressed with provisions relating to automobile fuel economy. This bill requires the establishment of minimum efficiency standards for 13 categories of home appliances. Various kinds of industrial equipment will be tested for energy efficiency and the equipment will be labeled accordingly. The bill also encourages the recycling of materials in four industries. Finally, several sections are devoted to designing new buildings and retrofitting old buildings that are used by the Federal Government, so as to conserve energy and to demonstrate the use of solar energy in buildings.

Title I of the bill relates to general provisions, containing the findings and statement of purposes.

Title II authorizes a utility conservation program for residential buildings of four dwelling units or less. Under the program the utilities are required to inform their consumers of suggested energy conservation measures, projected savings in energy costs, and the availability of arrangements for loans and installations. The utility must offer to inspect the building and to arrange to have conservation measures installed and for a lender to make a loan, if a customer so desires. In connection with these "project manager" activities the utility must make available to the customer, lists of lenders, suppliers and contractors and must offer billing arrangements on the monthly utility bills.

Utilities are generally prohibited from supplying or installing energy conservation measures themselves, other than furnace efficiency modifications, clock thermostats and load management equipment. However, utilities may make loans of no more than $300 per customer.

Utilities may be exempt from these prohibitions in three instances. First, conservation programs existing on or before the date of enactment are exempt. Second, programs which were broadly advertised or for which substantial preparations had been made, are exempt. Finally, programs which State law specifically permitted or required, or programs for which the Secretary has granted a waiver under provisions of the bill relating to alternative programs, are also exempt from these prohibitions.

Each State is expected to have its own energy conservation plan which is to be submitted by the Governor to the Secretary of Energy. The Governor can include nonregulated utilities as well as regulated utilities in the plan. Suppliers of home heating fuels such as fuel oil and propane may participate in the program.

This title also provides for procedures to assure that each utility will charge fair and reasonable prices and rates of interest in connection with its conservation program. The lists of approved suppliers, contractors and lenders will be prepared in a fair, open and nondiscriminatory manner, and any unfair, deceptive or anticompetitive acts or practices are to be prevented.

As for the costs incurred in these programs, the conference report provides specific requirements as to the way utilities will handle these costs. For example the cost of any materials and the cost of installation of energy conserving measures will be charged to the customer whose house is weatherized. No costs incurred under this program may be ratebased by the utility.

Part 2 of title III provides for weatherization grants for the benefit of low-income families. A separate grant program under the Farmers Home Administration is created to finance the weatherization of dwelling units located in rural areas and occupied by low-income families. The weatherization program established under the Energy Conservation in Existing Buildings Act of 1976 is continued through 1980.

This title also provides for loan insurance for energy conserving improvements and solar energy systems. Included is a 5-year $100 million revolving Government National Mortgage Association fund for the purchase of solar energy loans.

Finally this title encourages secondary financing for energy conserving improvements and solar energy systems. Two separate Ginny Mae programs are established with a total purchase authority of $5 billion.

Title III provides energy conservation programs for schools and hospitals and buildings owned by units of local government and public care institutions. $900 million will be allocated over 3 years for energy audits and renovation of schools and hospitals, and $65 million over 2 years for energy audits in public buildings. Grant applications must be approved by the appropriate State agencies before being sent to the Secretary of Energy.

Title IV addresses the energy efficiency of automobiles, home appliances and industrial equipment. With respect to automobiles the Secretary of Energy is authorized to raise the civil penalties for violation of the current energy efficiency standards for automobiles, if the Secretary makes certain findings. Another provision in this title will require the disclosure to the consumer of any gas guzzler tax applicable to an automobile.

The provision takes effect, of course, only if the gas guzzler tax is enacted. Another provision extends coverage of the fuel economy labeling requirements in current law to include light trucks and vans and any automobiles weighing up to 8,500 pounds. Finally the conference report, if enacted, will require the EPA to report to Congress on how well the current EPA automobile fuel economy estimates compare with the fuel economy actually obtained by the driving public.

Title IV also requires the Secretary of Energy to establish energy efficiency standards for 13 categories of covered products, such as refrigerators, furnaces, air conditioners, and dishwashers. The Secretary cannot promulgate a standard if a test procedure has not been prescribed, if he determines that such a standard would not result in significant energy conservation, or if he determines that the standard is not technologically feasible or not economically justified.

The conference report would create a 30-month period during which any State standard prescribed during that period would be automatically preempted. At the end of that period the States could once again prescribe new standards. This arrangement is intended to encourage the manufacturers to assist DOE in establishing the Federal standards before the period of automatic preemption runs out.

As a result of this program the American consumer will be assured that the major home appliances he purchases will be reasonably energy efficient.

The energy efficiency of equipment used in the industrial sector is also addressed in this title. Although no authority is provided for DOE to establish mandatory standards on the energy efficiency of industrial equipment, the Secretary of Energy is authorized in the appropriate circumstances to establish test procedures and labeling requirements that will disclose to the purchaser the relative energy efficiency of the industrial product he is purchasing.

Finally, this title contains a provision that will encourage recycling of energy-intensive materials in four major industries.

The fifth title of this bill is devoted to Federal initiatives to save energy in Federal buildings. One provision authorizes the expenditure of $100 million for the demonstration of solar heating and cooling technology by installing solar energy equipment in selected Federal buildings to heat or cool them. Another part of this title requires the development of methods to analyze the life cycle cost effectiveness of various energy conserving techniques in buildings. These principles will be applied to existing and future Federal buildings to save as much energy over the life of these buildings as can be economically justified.

Finally, this title contains a provision that will encourage the development of a commercially viable photovoltaic industry in the United States by accelerating the procurement and use of solar cells by Federal agencies; $98 million is authorized for this purpose.

Title VI contains miscellaneous energy-related provisions regarding industrial efficiency reporting, State energy conservation plan funding, the establishment of an Office of Minority Economic Research and Development within DOE, and several energy-related studies.

This is an important bill that will lead to significant energy conservation in the years to come. I urge my colleagues to adopt this conference report on the National Energy Conservation Policy Act.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of the provisions, including conference action, of H.R. 5037.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY: CONFERENCE ACTION ON H.R. 5037

BOOK I: UTILITY CONSERVATION PROGRAM FOR RESIDENTIAL BUILDINGS

The conferees agreed on language authoring a utility conservation program for residential buildings of four units or less. Under the program the utilities are required to inform their consumers of suggested conservation measures, projected savings in energy costs and the availability of arrangements for loans and installations. The utility must offer to inspect the building and to arrange to have conservation measures installed and for a lender to make a loan, if a customer so desires. In connection with these "project manager" activities the utility must send the customer lists of lenders, suppliers and contractors and must offer billing arrangements on the monthly utility bills.

Utilities are generally prohibited from installing energy conservation measures, other than furnace efficiency modifications, clock thermostats and load management equipment. Utilities may make loans of no more

than $300 per customer. This limit can be increased to encompass the cost of the above furnace-related items if this cost exceeds $300.

Utilities may be exempt from these prohibitions if they had conservation programs existing on or before the date of enactment, programs which were broadly advertised or for which substantial preparations had been made, programs which State law specifically permitted or required, or programs for which the Administration has granted a waiver under provisions of the bill relating to alternative programs.

Residential energy conservation plans

Rules on the content and implementation of State residential energy conservation plans are to be promulgated at least 225 days after enactment. Thereafter, the Governor or a State office designated by State law shall submit a plan for the regulated utilities in the State. Nonregulated utilities must submit their own plans.

The rules must include standards for procedures to assure that each utility will charge fair and reasonable prices and rates of interest in connection with its conservation program.

The plan must contain procedures for the preparation of lists of approved suppliers, contractors and lenders, as well as disapproval procedures. Lists are to be prepared in a fair, open and nondiscriminatory manner and unfair, deceptive or anticompetitive acts or practices are to be prevented. The proposed plan must also provide a procedure for adjusting complaints against suppliers and contractors.

If a State plan is not approved or adequately implemented the Administrator shall promulgate a plan.

A sum of $5 million for each of the first three fiscal years following enactment is authorized to be appropriated to the Administration for these programs.

Assessment of utility program costs

Utilities are prohibited from including the costs of installing energy conservation measures in general utility rates and must charge only those customers for which these services are provided. Advertising or information costs may, at the option of the State Public Utility Commission, be included in the rate base upon which the utility makes a profit. The cost of the inspection and the incidental project manager costs incurred by the utility may, at the option of the State PUC, be expensed by the utility, but may not be ratebased.

Alternative programs

Any Governor or utility may apply to the Department of Energy for an exemption from the requirements of the utility conservation program. The application of a regulated utility must be supported by the Governor. An exemption may last no more than 3 years, except in the case of exemptions from the prohibitions on utility lending or supplying and installing energy conservation measures. These exemptions would not have a fixed term.

At all times, utilities operating programs, whether under provisions of an exemption or otherwise, would be subject to review by DOE and could be prohibited from lending, supplying or installing if the DOE determines that anticompetitive practices exist. The FTC is directed to make a comprehensive report to the Congress within 18 months on the competitive impact of utility conservation activities.

Assessment of civil penalties

The conferees agreed to a three-track procedure for the assessment of civil penalties against utilities which violate provisions of the Act. Under these procedures the Administrator issues a notice of a proposed penalty and the alleged violator elects one of the following courses of action within 30 days:

Pay the proposed penalty;

Request a hearing with an administrative law judge who makes an initial decision. If the Administrator determines that a violation has occurred he assesses the penalty, and the violator may seek judicial review of the assessment on the basis of the DOE hearing record; or

The Administrator issues a penalty order on the basis of the evidence before him without a hearing and files a petition in district court seeking a judgment assessing the civil penalty based on a de novo determination on the merits by the court.

BOOK II: PRESIDENTIAL ENERGY CONSERVATION FINANCING MEASURES

A. Weatherization grants for the benefit of low-income families

The Energy Conservation in Existing Buildings Act of 1976 established a FEA weatherization grant program for low income families. The conference extended this program through 1980. The same weatherization standards are to be used in the FEA and the Community Services Administration (CSA) weatherization programs. The maximum grant amount for any dwelling unit is $800. Appropriations of $130 million for FY 1978 and $200 million for FY 1979 and 1980 are authorized.

A separate grant program under the Farmers Home Administration is created to finance the weatherization of dwelling units located in rural areas and occupied by low-income families. The eligibility criteria, weatherization materials and standards are the same as those found in the FEA program except that the maximum grant amount may increase from $800 to $1,500 to cover labor costs where there is an insufficient number of volunteers and CETA workers.

B. Loans and loan insurance for energy conservating improvements and solar energy systems

The conferees agreed to amend the National Housing Act, which defines "energy conserving improvements" eligible for Title I home improvement loan insurance to conform to the definition of weatherization materials found in the FEA weatherization grant program. Solar energy systems eligible for Title I insurance are defined to mean any addition, alteration or improvement designed to use solar energy through active or passive methods in order to reduce the structure's requirements for other sources of energy.

Federal loan insurance is made available to cover the purchase and installation of energy-conserving improvements and solar energy systems for multifamily structures.

In order to cover the cost of purchasing and installing solar energy systems, the limits on Federal mortgage insurance are increased by 20 percent where a building has solar equipment installed.

The conferees also agreed to a 5-year, $100 million revolving fund, Government National Mortgage Association (GNMA) purchase program for solar energy loans. The program would have the following characteristics:

Loans are insured under Title I of the Housing Act;

Interest must be greater than the Treasury borrowing rate (about 7 percent) and below the 12 percent statutory ceiling for Title I loans. If the Secretary of HUD finds that the interest rate is a cause of non-action in the program, she is to lower the interest rate;

All families are eligible borrowers;

Term of repayment is not to exceed 15 years. No penalty for prepayment;

The principal obligation of the loan shall not exceed $8,000. No borrower may receive a subsidy under the loan program and a tax credit for the same improvements. Any tax credit would be reduced by the amount of the Federal subsidy involved in the loan program;

Both active and passive solar energy systems could be financed provided they meet HUD minimum property standards.

C. Secondary financing for energy conserving improvements and solar energy systems

The conferees adopted provisions directing the GNMA to purchase and sell Title I insured home improvement loans for energy-conserving measures. Loans must be made with priority given to elderly and moderate income families. Moderate income is defined as 100 percent or less of the median income for the area. A loan cannot exceed $2,500.

Two separate GNMA programs were established with a total purchase authority of $5 billion. A $3 billion revolving fund authorization is provided for subsidized loans with eligibility limited to moderate income borrowers. A person may benefit from both this program and the tax credit. A $2 billion revolving fund is provided for non-subsidized loans.

The Secretary of HUD is required to make a finding that the non-subsidized loan program is necessary for the success of the national energy conservation effort. Interest rates required in connection with these loan transactions are exempt from State or local usury laws.

In addition, the conferees authorized the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association to purchase uninsured and Title I insured loans for energy conserving improvements and solar energy systems for residential dwellings.

D. Weatherization grants for multifamily housing

The provision adopted by the conferees authorizes HUD to make grants to finance energy conservation improvements to multifamily projects financed with Section 202 loans (for elderly and handicapped) or insured under sections 221(d)(3) or 236 (for low- or moderate-income families). Priority shall be given to projects in financial difficulty because of high energy costs. HUD is to establish minimum standards for energy conservation in multifamily dwellings and is authorized $25 million for the program.

E. Energy conservation standards for new residential buildings assisted by the FHA and insured by FHA

The Federal Housing Administration (FHA) is required to develop minimum property standards which establish energy performance requirements that will increase the energy efficiency of new construction.

The Secretary of Agriculture is directed to promote through the Farmer's Home Administration the use of energy-saving techniques through minimum property standards. These standards should be consistent with the interim energy performance standards established by FHA as part of the Federal Housing Act minimum property standards.

F. Studies

The conferees agreed to a study on energy efficiency standards for existing residential buildings with HUD as the lead agency, in coordination with Agriculture, Treasury, FEA and the Veterans' Administration. FEA has a specific responsibility to identify the energy cost savings that would result from mandatory standards and the total cost per BTU in obtaining the energy savings. The study shall also comment on the macroeconomic and national security impacts versus the energy savings of mandatory standards and the possible disruption of credit and housing standards.

BOOK III: SCHOOLS, HEALTH CARE FACILITIES AND PUBLIC BUILDINGS

Grant program

The conferees agreed to language authorizing grants to schools and health care facilities for energy conservation measures, technical assistance and preliminary energy audits and to public buildings for audits and technical assistance.

FEA, or its successor agency, will allocate program funds (900 million over 3 years for energy audits and renovation of schools and hospitals and $65 million over 2 years for energy audits in public buildings) among the States, taking into consideration such factors as population, climate, availability and cost of fuel, emergency conditions and special hardship cases. No State may receive more than 10 percent of the available funds or less than 0.5 percent.

The provisions require all grant applications to be approved through State education and health care facilities agencies prior to approval by the State energy agency. Applications of State and local governments for public building grants are also made through the State energy agency to the Administrator. Approval is based on conformance to a State plan.

The State plan is to be submitted and approved or disapproved within 180 days of enactment. Each plan must include the results of a statistical survey of the energy needs of potential grantees. This collection of information (preliminary energy audits) would continue for all potential grantees after the submission of a plan, in order to establish priorities among facilities. A certain percentage of the grant authorization to the States is allotted for the conduct of surveys. The Administrator must approve a State plan within 60 days after it is received.

Similarly a certain percentage of the grants may be used for technical assistance for the design and planning of major renovations and for the installation of major conservation measures. The remainder of the authorization is for grants for energy conservation measures.

An applicant under the schools and hospitals program may apply for either or both types of assistance in the same application. An applicant under the public building program is eligible for technical assistance only. All three types of facilities are to receive energy audits from the State.

The conferees extended the definition of "building" in the public building program (which funds energy audits only) to include nursing homes, community health centers, neighborhood health centers, orphanages and such facilities operated by civic and fraternal organizations. These facilities were excluded from the coverage provisions of the schools and hospitals program.

BOOK IV: A. APPLIANCE EFFICIENCY STANDARDS

Coverage of mandatory standards

FEA must set appliance efficiency standards for all 14 categories of covered products listed below:

Refrigerators and refrigerators-freezers,
Freezers,
Dishwashers,
Clothes dryers,
Water heaters,
Room air conditioners,
Home heating equipment, not including furnaces,
Television sets,
Kitchen ranges and ovens,
Clothes washers,
Humidifiers and dehumidifiers,
Central air conditioners, and
Furnaces.

Coverage of discretionary standards

The FEA is granted discretionary authority to set efficiency standards for products other than those 13 specifically named above. However, certain criteria must be met regarding (a) the potential improvement in the energy efficiency of the product (b) whether a label alone can provide sufficient information to induce wider use of . . . .

FEA must publish within two years of enactment a list of types of covered products which it considers may be subject to standards under this discretionary authority.

Prohibition on promulgation of efficiency standards

An efficiency standard may not be promulgated if:

A test procedure has not been promulgated;

The FEA determines that such a standard would not result in significant energy conservation; and

The FEA determines that such a standard is not technologically feasible or not economically justified.

Priority in establishing standards

The FEA must give priority to the establishment of standards for the following types of covered products:

Refrigerators and refrigerator-freezers;
Freezers;
Water heaters;
Room air conditioners;
Kitchen ranges and ovens;
Central air conditioners;
Furnaces;
Clothes dryers; and
Home-heating equipment other than furnaces.

Preemption

Date at which automatic Federal preemption begins: State appliance efficiency standards prescribed after January 1, 1978, would be automatically preempted.

Length of the period of automatic preemption: The period of automatic preemption of new State appliance efficiency standards will last for 30 months for all 13 categories of covered products.

Coverage of "other" State standards with respect to energy efficiency: Preemption of State standards includes not only energy efficiency performance standards of the State but also any "other" design regulations relating to the energy efficiency of that same product. For example, the bill would preempt any State energy efficiency performance standards prescribed after January 1, 1978 for gas-fired ovens and any pilot-light prohibitions for such products.

Preemption of State standards for products not listed in EPCA:

Any State appliance efficiency standards for products not listed among the 13 categories of covered products will be preempted if prescribed after January 1, 1978. There is no time limit to the period of preemption for these products.

PROCEDURES FOR CIVIL PENALTY ASSESSMENT

Existing law (EPCA) provides for the assessment of civil penalties by the FEA and the FTC for violations of appliance labeling rules and efficiency standards.

The conferees adopted an administrative procedure for such assessments. Under this procedure the FEA Administrator issues a notice of proposed penalty and the alleged violator has 30 days to elect one of the three courses of action:

Pay the proposed penalty;

Request a hearing before an administrative law judge who makes an initial determination. If the Administrator then determines that a violation has occurred, he may assess a penalty based on the hearing record. Any court review of the assessment will be based on the hearing record before the administrative law judge; or

The Administrator issues a penalty order on the basis of the evidence before him without a hearing and files a petition in district court seeking a judgment assessing the civil penalty. The FEA shall consult with only the Attorney General concerning the civil suit. The court will consider the violation and the amount of the assessment as a de novo proceeding, applying all normal federal rules of procedure and evidence.

CITIZEN SUITS

EPCA is amended to permit citizen suits against a manufacturer or private labeler for violation of any energy efficiency standards. Citizen suits are also permitted against FEA for failure to perform any nondiscretionary duty concerning the establishment or enforcement of energy efficiency standards.

Change of effective date relating to efficiency representations

Existing law states that, effective 90 days after a test procedure applicable to a covered product is prescribed, no manufacturer, distributor, retailer, or private labeler may make any representation either in writing or in any broadcast advertisement respecting energy consumption of the product unless that product has been tested in accordance with the prescribed test procedure and the representation made fairly discloses the results of the test.

The conferees agreed to extend the 90 day period to 180 days and to give the Administrator discretion to grant an additional 180 days in hardship situations.

Date for test procedures

FEA must prescribe test procedures for all 13 categories of covered products no later than January 31, 1978.

Reevaluation of test procedures

Within 3 years after a test procedure is established, and from time to time thereafter, FEA must conduct a reevaluation of the test procedure and publish the results thereof in the Federal Register. In conducting the reevaluation, the FEA must take into account such information as technological developments that have occurred since the promulgation. The comment period must be at least 45 days.

Criteria for economic justification of standards

An appliance efficiency standard must be "economically justified". In determining whether a standard is economically justified the Administrator must determine whether the benefits of the standard exceed its burdens based on a weighing of the following criteria:

(a) the economic impact of the standard on manufacturers and consumers;

(b) the savings in operating costs compared to any increase in price or in initial cost, or maintenance expenses which are likely to result from imposition of the standard;

(c) total projected energy savings;

(d) any lessening of utility or performance of the product;

(e) the need of the Nation to conserve energy;

(f) the impacts of lessening any competition, to be determined by the Attorney General in writing, which may result from the standard; and

(g) any other factors the Administrator considers relevant.

The Attorney General may provide an analysis of the nature and extent of the competitive impact. Such determination must be published in the Federal Register.

Small business exemption

The FEA is authorized to exempt a manufacturer from any rule establishing an efficiency standard for a period not to exceed 24 months if the FEA finds that the annual gross revenue to the manufacturer for the preceding 12-month period from all operations, including but not limited to, the manufacture and sale of covered products, does not exceed $8 million.

Reevaluation of standards

Within 5 years after prescribing an energy efficiency standard, the FEA must reevaluate the standard and publish the results of that reevaluation. If the FEA finds that the standard should be amended, it must promptly publish the finding, revise the standard, and obtain written views. The comment period must be at least 45 days.

Advance notice of proposed rulemaking

The FEA must publish an advance notice of proposed rulemaking for each of the 13 covered products and request written comments within 45 days after the date of such publication.

In the case of—
Refrigerators and refrigerator-freezers,
Freezers,
Clothes dryers,
Water heaters,
Room air conditioners,
Home heating equipment not including furnaces,
Kitchen ranges and ovens,
Central air conditioners, and
Furnaces,

advance notice must be published within 30 days after test procedures are prescribed or 45 days after enactment of this provision, whichever is later.

In the case of—
Dishwashers,
Television sets,
Clothes washers, and
Humidifiers and dehumidifiers,

the notice must be published not later than 30 days after test procedures have been prescribed or one year after enactment of this paragraph, whichever is later.

Authorization of appropriations

The FEA authorization for appropriations for FY 1978 is increased by $3.3 million.

The authorization for appropriations for FY 1979 is $10 million.

B. AUTOMOBILE FUEL STANDARDS

Fuel efficiency disclosure

Tax Disclosure

The conferees agreed to accept the House provisions requiring disclosure of any gas guzzler tax on automobile labels and in advertising. However, if the gas guzzler tax is not adopted by the conference, then these provisions will be deleted.

Extension of labeling to larger vehicles

The conferees agreed to adopt a provision that extends coverage of fuel economy labeling requirements in current law to include motor vehicles, beginning in model year 1979, with gross vehicle weights of 6,000 to 8,500 pounds.

Civil fine for violation of auto fuel economy standards

The conferees agreed to defer consideration of this matter until the gas guzzler tax can also be considered.

Minimum automobile mileage standards

The conferees agreed to defer consideration of this matter until the gas guzzler tax also can be considered.

EPA study of fuel economy measurement

The conferees agreed to require EPA to report to Congress on how current EPA automobile fuel economy estimates compare with the fuel economy actually obtained by the driving public.

C. ENERGY CONSERVATION PLANS

Funding of State energy conservation plans

The conferees agreed to extend the authorization for Federal assistance to States in support of EPCA State energy conservation programs at $50 million per year for fiscal year 1979.

Funding of supplemental State energy conservation programs

The conferees agreed to amend the authorization for Federal assistance in support of EPCA supplemental State energy conservation programs. The amendment increases the authorization for fiscal year 1979 from $40 million to $50 million.

Report on coordination of Federal energy programs

Within 6 months of enactment, FEA shall report to Congress on the coordination of Federal energy conservation programs involving State and local government.

D. USE OF RECOVERED MATERIALS

The House and Senate provisions are identical.

E. INDUSTRIAL ENERGY CONSERVATION

I. Energy efficiency standards for industrial equipment

The conference agreed to the following:

No authority is given to FEA to set mandatory standards on industrial equipment;

FEA is required within 2 years to conduct a detailed evaluation of pumps and motors to determine standard classifications with respect to size, function, type of energy consumed, method of manufacture, and other appropriate factors, including significant factors that determine energy efficiency, such as hours of operation per year. The FEA must consult with the affected industry manufacturers and users.

FEA will submit a report to Congress within 18 months of enactment on the results of the study recommending whether additional legislation, if any, is needed;

FEA may also identify other equipment for study and conduct such a study on them with a similar report to Congress;

If the evaluation shows that labeling and test procedures are appropriate for pumps and motors and other equipment, FEA would be authorized to prescribe such tests and require such labeling using procedures similar to those applied in the appliance program;

Appropriations of $2 million for FY 1978 and $3 million for FY 1979 are authorized.

II. Industrial conservation reporting

The conference agreed to the following:

Existing law with respect to reporting of information by third parties (trade associations) is not amended;

Coverage is expanded to all corporations which consume more than 1 trillion BTU's per year in major energy-consuming industries;

Use of different SIC classifications is permitted where FEA finds appropriate; FEA may not require covered corporations to report under 3 or 4 digit classifications;

Plant reporting to the corporation on FEA established forms is provided; plant forms shall be available to FEA, but shall be held confidential and not available to the public;

A study of the relevance of the second law efficiency to energy conservation programs is required.

F. CONSERVATION OF COAL RESOURCES

Section 125 of the Clean Air Act provides that in order to minimize local unemployment or economic disruption a Governor (with consent of the President) or the President (or his designee) may prohibit a major fuel burning stationary source from using fuels other than local coal. Furthermore, the Governor of the EPA Administrator may order that facility to enter into long-term contracts to buy locally or regionally available coal.

The conferees agreed to repeal in effect the authorities granted to the Governor under Section 125. However, a Governor may petition the President to exercise the President's authorities under Section 125. The petition must include documentation showing that significant local or regional economic disruption or unemployment would result from use of fuels other than local or regional coal.

Before issuing a rule or order the President must find that it would:

Be consistent with section 125;

Result in no significant increase in energy consumption;

Not subject consumers to significantly higher energy costs;

Not violate any contractual relationship.

G. WOOL PRODUCTS LABELING

The conferees did not adopt the provision of the Senate bill which would have amended the Wool Products Labeling Act to permit substitution of the term "recycled wool" for the terms "reprocessed wool" or "reused wool" when required to be included on a product label.

H. MINORITY ECONOMIC RESEARCH AND DEVELOPMENT

The conferees agreed to require FEA to establish, within 60 days after enactment, an Office of Minority Economic Research and Development to:

Study the impact of national energy programs and policies on the quality of life in minority communities; and

Develop ways to promote the optimum use of energy in minority economic development programs.

The Office may contract with groups to help minorities to participate in research and development programs. $2 million in funds are authorized for a three-year period. Private sector minority institutions are eligible to receive funds from the Office.

I. OFF-HIGHWAY MOTOR VEHICLES

The conferees agreed to require a one-year study by DOT on the energy conservation potential of recreational vehicles, including boats and airplanes, and to report to the Congress and the President. The conferees deleted the sentence in the House provision that required "recommendations respecting the desirability and practicability of applying fuel efficiency standards or taxes on fuel use (or both) to such vehicles".

J. BICYCLE STUDY

The provisions in the House and Senate bill are identical.

K. EXECUTIVE AGENCY CONSERVATION PLAN

The conferees agreed to authorize an appropriation to the President of $25 million in Fiscal Year 1978 and $50 million in FY 1979 for implementation of the President's 10-year energy conservation plan for Federal buildings as prescribed by Section 381 (a)(2) of EPCA.

L. DEMONSTRATION OF SOLAR HEATING AND COOLING IN FEDERAL BUILDINGS

This provision in both House and Senate bills provides for a $100 million authorization of appropriations for a three-year period to demonstrate solar heating and cooling in Federal buildings. The conferees agreed to require a life cycle cost analysis for buildings covered by the program. Where the installation of solar equipment is not the minimum cost alternative, agencies must explicitly state the excess cost involved. Also, projected maintenance costs must be included in the initial proposals.

M. ENERGY CONSERVATION AND SOLAR ENERGY IN FEDERAL BUILDINGS

The purpose of this provision is to promote the use of life cycle cost methods in Federal buildings.

The FEA is to establish methods for estimating and comparing life cycle costs.

In design and construction of new Federal buildings, cost considerations shall to the maximum extent practicable be determined on the basis of life cycle costs.

FEA will develop energy performance targets, which will be compatible with HUD standards.

Each Federal agency will conduct a preliminary energy audit of all existing buildings over which it has jurisdiction.

The reports based on these audits would be submitted to Congress by August 15, 1978 for buildings over 30,000 square feet and by August 15, 1979 for buildings between 1,000 and 30,000 square feet.

Each Federal agency must retrofit selected buildings under this jurisdiction so that during the first year of the program at least 1% of the total square footage in Federal buildings will be retrofitted with energy conserving measures. In the second year 2% must be retrofitted and in the third year 3%

of the total square footage must be retrofitted.

By January 1, 1990 all Federal buildings will be retrofitted to assure their maximum possible life cycle cost-effectiveness.

$2 million is authorized to FEA.

Agencies requesting funding to carry out retrofits must line-item those requests in their budgets.

N. PHOTOVOLTAIC ENERGY DEVICES IN FEDERAL FACILITIES

The Conferees agreed on an authorization of appropriations of $98 million for the three year period ending September 30, 1981 for the procurement of photovoltaic systems for use by Federal agencies. The Administration must purchase no more than 30 megawatts total during FY 1979, 1980 and 1981. The Administrator of FEA, in consultation with the Administrator of ERDA will ensure that the systems procured reflect the most advanced technology and they will schedule purchases so as to stimulate the early development of a permanent low-cost private photovoltaic production capability in the United States.

O. FEDERAL VAN POOLING PROGRAM

The Conferees agreed not to adopt the provisions creating a van pooling program for Federal employees.

P. FEDERAL VEHICLES EQUIPPED WITH PASSIVE RESTRAINT DEVICES

The Conferees agreed not be adopt the provisions in the Senate bill requiring all Federal vehicles purchased after fiscal year 1978 to be equipped with passive restraint devices.

Mr. JACKSON. Mr. President, I reserve the remainder of my time. I yield now to the distinguished Senator from Oklahoma (Mr. BARTLETT).

Mr. BARTLETT. I thank the distinguished chairman.

Mr. President, this bill is a perfect example of the bad results reached by the application of the principle that it is good simply to pass a law, no matter what is in it. In this respect it is even worse than the natural gas bill. In that bill at least there was agreement that it might do something, though there was disagreement as to whether that something was good or bad. This bill, it is almost universally agreed, will do nothing, but we are asked to pass it so that the President can have another part of some "energy package."

The utility "rate" reform bill as originally proposed by the President would at least have done something. It would have essentially created a Federal takeover of State utility ratemaking, and as amended by the House, it would have created vast new powers for the Federal Energy Regulatory Commission to restructure at its own whim the American electric industry.

As a result of the conference between the House and the Senate, the bill as proposed by the Senate and passed by the House was essentially gutted, and I commend the Senate conferees for their efforts in that regard. As intended by the conferees, and as we are told the bill is now drafted, States are required to consider certain ratemaking methods, but are in no way required to adopt them.

Now, the relationship between that bill as now gutted and energy is extremely tenuous. There is no estimator who now indicates that this bill will save any oil. It is not intended to save any oil. It is rather simply another item intended to make it look as though we are addressing the energy problem. In fact, this bill will produce no energy whatsoever, though it may produce a great many energy lawyers and "energy experts." Because what the bill does do is to enact a complicated set of procedures and laws whose avowed intention is to have almost no mandatory effect. I certainly hope that those assurances are correct. As I must point out that in the drafting process enumerable land mines have been intentionally scattered throughout the bill, in the hopes that States or utilities will fall afoul of them, and that one word or another can force them to do something that we are in general being assurred that the law is not intended to do.

I would also note that this bill is certainly counter to any trend against increasing paperwork and bureaucracy. New information gathering is mandated under section 133. The bill also will mandate a vast number of new and longer hearings throughout the United States, which will certainly be a boon to energy lawyers and stenographic reporters, but I am not sure who else will be helped. I particularly note that any utility, even an unregulated municipal utility that sells over 500 million kilowatt hours per year, which is not an enormous amount in today's economy, will be required to have full dress hearings on many, many issues even if they were never required to have any hearings in the past.

Finally, I would note that although this bill is essentially purposeless, it is not costless. The Federal Government will expend some $58 million a year simply to help carry out the procedures and hearings required under this bill. In addition, a little-noticed section will mandate the expenditure of $110 million per year to advance the construction of small hydroelectric powerplants. While such plants are undoubtedly a worthy cause, amongst hundreds of other things that might be within the desire of some institution or another, I believe that there has been almost no consideration of the efficacy of such Federal grants versus other uses of such money including leaving it in the hands of the citizens. In short, by this bill we mandate the expenditure of almost a half billion dollars over the next 3 years, for very little purpose other than to say that we have an additional part of an energy bill. It appears to me that such a rationale for legislation is one of the things tending to bring our Government and the Congress into growing disrepute. Mr. President, I shall not vote for such a bill.

Mr. JACKSON. Mr. President, I now yield 5 minutes to the distinguished Senator from Oregon (Mr. MARK O. HATFIELD).

Mr. MARK O. HATFIELD. Mr. President, I thank the distinguished chairman of our Energy Committee for yielding. I wonder if the chairman will yield for a bit of colloquy to make a legislative record at this point.

Mr. JACKSON. Yes.

Mr. MARK O. HATFIELD. As the Senator knows, prior to the consideration of this particular bill, there was established by the Pacific Power & Light Co., in the city of Portland, Oreg., a plan to develop incentives for weatherization of homes, in order to create a conservation program.

The Senator recalls during our field hearings in Portland this was presented to the committee, and it had been approved by the State of Oregon Public Utilities Commission, the concept being that the Pacific Power & Light Co., and other companies have since duplicated this program in some form or another, would provide the financial capital for a private homeowner to weatherize his home. That would be repayable to the company only at the time of sale of the home, without interest. Therefore, that would encourage many people to undertake the project of weatherizing, but particularly for those who might not have ready capital it would provide them with that immediate benefit and a postponement for the repayment until the time of sale.

There was a question raised during our conference with the House particularly as to whether or not utility companies should be in the weatherization business, but because this had already been established, and because there was a great deal of public support for the idea of moving ahead expeditiously with weatherization and conservation, the conference committee did discuss this. Finally, as I understand the report and the final decision of the conference committee, it was more or less grandfathered in, more or less meaning simply the term I am using if more or less applicable.

The idea that was set forth in that program by Pacific Power & Light Co. was grandfathered in to the extent that it was validated rather than invalidated by the action of the conference committee.

This is my understanding of the final report. I wanted to engage in this colloquy with the chairman as a matter of legislative reference.

Mr. JACKSON. Mr. President, I first of all commend the distinguished senior Senator from Oregon for his proposal which was presented during the course of this legislation. Oregon has pioneered with regard to conservation. It was one of the first States in the Union, if not the first State, to establish support efforts to bring about home insulation.

In recognition of that effort on the part of the State of Oregon and its utilities, the committee in the conference report on page 13, section 216(d)(3), which I now read, provided an exemption for this type of program as follows. The exemption was extended to:

(3) Supply, insulation, or finance activity by a public utility with respect to energy conservation measures where a law or regulation in effect on or before the date of enactment of this act either requires or explicitly permits the public utility to carry out such activity.

The Senator was responsible for that particular section in the legislation, and it does apply as the Senator has suggested here on the floor.

Mr. MARK O. HATFIELD. I thank the chairman for responding. I do know that

there was a great deal of discussion on this particular question.

I also want to say that, without the chairman's wholehearted support for this clause we would probably not have been able to achieve it. I am also aware of the many hours the staff put in between the two Chambers in working this out. So I am grateful not only to the chairman for his leadership on this but to the staff as well for implementing it. I thank the chairman for providing this colloquy so that we can again reiterate and underscore this through such legislative record.

The clear intent of the conference committee report is to provide this grandfather clause for this particular program financing which was established by the Pacific Power & Light Co. in Portland.

Mr. JACKSON. Might I just add, Mr. President, that this problem is also taken care of prospectively in section 215(c)(2)(a). It specifically covers the situation as it applies to the future after the enactment of this legislation. So it is covered on a retrospective basis and it is also covered prospectively.

I again thank the Senator from Oregon.

Mr. MARK O. HATFIELD. I thank the Senator.

Mr. JACKSON. Mr. President, I yield 2 minutes to the distinguished Senator from New Hampshire, who has been extremely active in connection with the pending matter.

Mr. DURKIN. I thank the chairman.

The PRESIDING OFFICER. The Senator yields 2 of his remaining 3 minutes to the Senator from New Hampshire.

Mr. JACKSON. Yes, I yield.

Mr. DURKIN. I thank the chairman. It has been a long struggle. I believe the bill that has been produced, while not everything that everyone wanted, I think, makes clear that the Federal Government is not taking over the regulation of retail electric rates in various States. In saying that, I do not make any excuse for any of the State regulatory commissions. Many of them do not know how to say "no" to rate requests. But it is the intent of this legislation to preserve the traditional dual system of electric rate regulation in the belief that these retail ratemaking problems are probably better handled at the State level.

I would like to emphasize—and I hope Mr. Bardin in the Department of Energy Economic Regulatory Administration is listening—the point that this law does not give Mr. Bardin the opportunity to push the State utility commissioners around and regulate retail rates. We will be looking over his shoulder to make sure he does not do that.

In the bill also is a $330 million program for small-scale hydropower development which is very important to my area of the country. I would urge the Department of Energy to move ahead and implement this program just as soon as possible if they are really serious about cutting dependence on high cost imported oil.

Mr. JACKSON. Mr. President, I do not have any requests on this side for more time. I believe Senator METZENBAUM indicated that he would prefer to use his 5 minutes that he requested earlier for the debate on Monday. If the other side will yield back, we are all through on this.

Mr. HANSEN. I yield back my time, Mr. President, if I have any remaining.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, now that the time is yielded back, what is the pending question?

REVENUE ACT OF 1978

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The pending question is the amendment to the tax bill offered by the Senator from Ohio to the amendment of the Senator from Maine to the committee substitute.

Mr. STEVENS. Mr. President, it will be my intention to discuss this amendment for a little while because I think it is a matter which ought to be reviewed very carefully. I would hope we might be able to have some of the dialog with the Senator from Ohio and maybe the Senator from Maine which we sought this morning.

May I inquire, does the Chair have a copy of the Glenn amendment? I note there is no copy on the desk.

The PRESIDING OFFICER. There is a desk copy.

Mr. STEVENS. There are no other copies available?

The PRESIDING OFFICER. The amendment has been printed and it is numbered 3681. It has been modified to fit this bill.

Mr. STEVENS. Mr. President, without losing my right to the floor, I yield, if I may, to the Senator from Illinois for the purpose of a unanimous-consent request.

The PRESIDING OFFICER. Without objection, the Senator from Illinois is recognized.

ORDER OF PROCEDURE ON MONDAY OCTOBER 9, 1978

Mr. PERCY. Mr. President, I ask my distinguished colleague, the acting minority leader of the Senate, with regards to the unsettled issues, when conference reports are voted on on Monday, there are some of us who are absolutely required to participate in activities in connection with Columbus Day in our States and cannot get back—in my case, until 5:30. Would it be possible to hold such reports up until 5:30 as long as there is no necessity for voting on them in the morning?

They are not going to delay the work of the Senate. Can the acting minority leader protect the interests of Senators who will be traveling during the day on Monday and can get back here in the late afternoon on Monday?

Mr. STEVENS. I might say to the Senator from Illinois that we our doing our best to set the time so it will accommodate the traveling Senators. The cloture petition will come before the Senate an hour after we come into session on Monday morning. We are trying to accommodate those who want to leave and those who want to come back in time to be around for the votes, not only on that cloture petition; there is a second cloture petition and two votes on the energy bill. It appears the best we shall be able to do, if we can get an agreement to do that, would be to commence voting sometime around 3 o'clock. That would be the latest in the day that could occur.

Mr. PERCY. As this Senator understands, there is no agreement yet, is there?

Mr. STEVENS. The cloture petitions will be voted on an hour after we come back in. Unless there is an agreement making a time later that day, those two votes will occur an hour after we come back in then an hour later, assuming the first one is not voted on. So we can expect a vote, I would say, sometime around 9:30 and another one around quarter to 11, unless we can get an agreement to vote later.

So far, the negotiations are centering on sometime around 3 o'clock, but there is no agreement yet.

Mr. PERCY. If it is possible to move that back 2 hours, the Senator from Illinois—and I know of other Senators—will be participating in activities in my own State about midday and can get back in the late afternoon. If it will not delay the Senate's work otherwise——

Mr. STEVENS. I say to the Senator, there are other Senators leaving. There is a mining congress meeting in Las Vegas. Other Senators are leaving. We are trying to accommodate both groups. The best estimate is that votes will occur around 3 o'clock. That is the best we can do. If we do not get such agreement, the votes will take place in the morning, I think around 9:30 or 10:45. I think the Senator from Alaska will have to say that we will do the best we can.

Again I say, I anticipate votes sometime around 3 o'clock, unless there is a change in time by the people leaving to go West. So I urge the Senator to discuss the matter with the other Senators involved.

AMENDMENT NO. 3681

Mr. President, I am one who originally looked at the Glenn amendment from a less critical point of view. When I first read the amendment of my good friend from Ohio, I agreed it makes some sense to periodically review certain tax code provisions such as exclusions, deductions, special credits, preferential tax rates, and deferral of tax liablity.

Then I started analyzing the amendment and what it would do to areas such as my State of Alaska, where people are trying to make some fairly long-range plans. As I went back over the bill, I was intrigued by some of its language. I think the Senate ought to pay particular attention to this, because of some of the bill's definitions. As I said previously today, I do not particularly approve of the new vocabulary that is being used. I am not being critical of my good friend, the Senator from Ohio, because I know that he has taken, in part, the definition of "tax expenditure" from the Budget Act, there are, however, some differences.

In the first place, the tax expenditure provision that is defined in the Glenn

amendment leaves out a reference to the income tax law. This amendment will refer to any tax, including not only income taxes, but all taxes. I assume that includes all estate taxes, all income taxes, all franchise taxes, all excise taxes, and all export taxes. This amendment is so comprehensive that it is difficult to analyze what it means.

In addition, the bill does not refer to general exclusion or exemption or deduction or credit; it refers to a special exclusion, a special exemption, and a special deduction.

Again, I tell my good friend, and we worked very closely together in our committee, when I first saw this, I actually told my staff, "It looks all right, why not?" Then I took it home and looked at it again. Then I said, why should it be a special exclusion? When I talk about exclusions for my income tax, are they special exclusions or are they only special when they are your exclusions? In terms of a deduction, when I ran my law office and hired a new secretary, it was considered a business expense, and I was allowed a deduction from my income tax. Is that a special deduction? I do not know. As I understand it, this bill leaves it up to the Congressional Budget Office and the Joint Tax Committee to prepare an inventory of what tax provisions will be reviewed. That seems to be a strange way to legislate, when we seek to review not all exclusions, exemptions, deduction, credits, preferential tax rates of deferrals of tax liability but just that that are special.

Being from a resource State that is trying to get going, I started looking at some of those so-called tax expenditures that the Senator might consider special; then I looked at some of those from Ohio and I wondered whether or not they would be special. Alaska does not have any massive manufacturing companies and we do not have any existing industrial empire like Ohio does. I should think some of those things that are just in Ohio would be special as far as Alaskans are concerned.

Yet I guess the Senator from Ohio thinks that the depletion allowance that applies to removal of ore is special. Maybe the special considerations that one gets for the computation of taxes that you pay as a producer of oil or gas are special to people from other parts of the country. I wonder, and I should be pleased to discuss this with the Senator from Ohio, as long as I do not lose my right to the floor—I wonder, why do we have to deal just with special exclusions? I wonder why it is necessary to put the burden upon those who are from the States that are now trying to develop, now trying to build an economy, such as Alaska. Why should we now be put in the position of trying to justify what has gone on in Oklahoma or Texas or Louisiana or California or Pennsylvania. Just because we are coming on the market with oil and gas and minerals, why should the burden be on us to establish that the exclusions, the deductions, the credits, and the deferrals of tax liability that apply to the development of industry in what we call the south 48 should continue?

Why should there be a change? If we go out on the Outer Continental Shelf off my State, and 70 percent of the continental shelf is off the State of Alaska, why should we have to justify that the tax provisions that apply to Louisiana, or to California or Texas, should apply to the State of Alaska's Outer Continental Shelf?

As I looked at the Senator from Ohio's amendment, I said, "I'm getting tired of bearing some of these burdens. We'd like to develop our economy under the same rules that apply to the rest of the country."

Yet, it seems to me this provision, in paritcular, is one that says, "No, no, no, we're going to change the rules of the game again and you'll have to justify having the same provisions in Alaska which apply to the development of business and the economy in our society," and this is basically due to a lot of considerations related to oil and gas development and due to the influx of money that has come in on the Alaskan Native Land Claims Settlement Act, and due to the acceleration of the prices related to our timber and other resources, and, if nothing else, due to the influx of people that come up to see the State.

But why is it we have to go through this? Every one of these things looks as if anything someone else has is special.

I wonder what is the difference between a special credit, a special exclusion, a special exemption, a special deduction, and a loophole. We used to talk about loopholes. Someone told me once that a loophole is somebody else's tax incentive. But there is no reference here to incentive.

Mr. MUSKIE. Will the Senator yield for an answer to that question?

Mr. STEVENS. I am happy to yield without losing my right to the floor, as I indicated to the Senator this morning. We will have the same ground rules if he wants to have a dialog. Therefore, on the basis that I maintain my right to the floor, I will be happy to have a discussion with the Senator.

Mr. METZENBAUM. Mr. President, I am not going to object to the Senator from Alaska's yielding to the Senator from Maine nor the Senator from Maine yielding to the Senator from Alaska, but I think we have developed a procedure that is rather new around here, and that is that we can hold the floor, and release it to someone else and still retain it. I would just indicate, without attempting to affect this particular matter at all, that I will object in the future, because I think otherwise we will not be able to get the business of the Senate done.

Mr. STEVENS. I might say I had the same opinion this morning. I am not, however, going into the business of yielding for any particular time because I do think that should not happen.

I did suggest another concept of yielding for a particular period of time, but I will be happy to yield to my friend for a series of questions, as long as I do not lose my right to the floor.

I think there should be some discussion about this because I am one who supported the Senator's sunset amendment.

The PRESIDING OFFICER. The Senator has the right to yield for a question without losing his right to the floor.

Mr. MUSKIE. I will put my response in the form of a question, then we can avoid the problem.

I understand the problem. Occasionally it is useful, depending on the eye of the beholder.

We ought to use the technique used this morning. But that is all right. We will all have to figure out our own ways of taking advantage of parliamentary situations.

But the Senator may not be aware of this information which is on page 4 of this yellow document on tax expenditures under the heading of "Major Types of Tax Expenditures" which reads as follows:

> Tax expenditures may take any of the following forms: (1) exclusions, exemptions, and deductions, which reduce taxable income; (2) preferential tax rates, which reduce taxes by applying lower rates to part or all of a taxpayer's income; (3) credits, which are subtracted from taxes as ordinarily computed; and (4) deferrals of tax, which result from delayed recognition of income or from allowing in the current year deductions that are properly attributable to a future year.

So, in response to the Senator's question, the word "credits" means what it means in this definition for the purposes of at least understanding the analysis of this document.

I simply provide that as an answer to the Senator's question and hope it may be useful.

Mr. STEVENS. I thank the Senator from Maine.

I know we have a little problem here in my asking questions and trying to hold onto the floor but I hope I can.

I did look at page 4 and I looked at the Budget Act.

Why does this amendment apply to special exclusions, special exemptions, and special deductions?

The reference the Senator just read referred to exclusions, exemptions, or deductions.

Now, why is this language——

Mr. MUSKIE. What is the content of the words in which special——

Mr. STEVENS. That is in the Glenn amendment.

Mr. MUSKIE. The Glenn amendment?

Mr. STEVENS. The Glenn amendment says:

> (1) The term "tax expenditure provision means any provision of Federal law which allows a special exclusion, exemption, or deduction in determining liability for any tax or which provides a special credit against any tax, a preferential rate of tax, or a deferral of tax liability.

Mr. GLENN. Will the Senator yield?

Mr. STEVENS. Again, with the same ground rules, if I may have a continuing request that I do not lose my right to the floor. I would like to see if we can clear it up.

Mr. GLENN. Special just means a summary of all those things the Senator from Maine just mentioned. There is nothing magical about it. It does not just affect the States of Alaska, Wyoming, or anyplace else.

The Senator from Maine just read several different types of tax expenditures. These were special credits. We define them rather than identify them individually. We lease their identification to the CBO and the tax writing committees in the 96th Congress.

Mr. STEVENS. In other words, there are general exclusions, general deductions, and general provisions for deferrals and credits, but some are special and they refer to special circumstances, like the provincial areas of the country, like mine out there where we have special circumstances, and where we have had special treatment under the tax laws.

I admit we have had it and that we needed it. Am I wrong? Does the term "special" refer to something else?

I would like to know, what is the difference between a special exclusion or exemption or deduction and those we have on the resource industries, particularly the West and Northwest?

Mr. GLENN. If the Senator will permit me to reply on the same basis as before, with his retaining his right to the floor, I do not put any special connotation on that at all. It was not intended in our drafting of this amendment that it apply specifically to Alaska or any place else.

The amendment applies in general to those different categories of tax expenditures the Senator from Maine just referred to.

Rather than specifically identifying them individually, we just termed them special credits.

Nothing in the amendment was intended to apply solely to a certain area of the country or State.

Mr. STEVENS. I thank the Senator.

I take it then that what we are really talking about are all of the exclusions, exemptions, and deductions that are referred to in this Budget Committee's explanation of tax expenditures.

Unfortunately, Mr. President, we have the difficulty of time agreements.

I agree with the Senator from Ohio that it would be good if we could have a time agreement on this, because I think some of us feel strongly—again, from a a philosophical point of view.

I have a difficult time believing that the judgments which are made by individuals as to how they conduct their own lives should end up being listed as tax expenditures.

When I decide to buy a home that is worth a little more than the one I have, and thereby increase the interest deduction that I get as a homeowner, it shows up on that chart as an increase in a tax expenditure. It is not an increase in tax expenditure.

As a matter of fact, by purchasing the new home, I have stimulated the economy a little more, put more people to work, and there is more tax revenue coming in. I thought that is the way the whole system worked. Strangely, I find out that every time such a decision is made, some people think I am spending the Government's money. I do not understand that.

That is why I have a great deal of concern, when I compare what the Glenn amendment does to what the sunset bill originally did.

I really believe in the sunset legislation; in looking to the authorization for expenditures of moneys that already were in the Treasury and saying, "Let's review those authorizations and make certain that the programs are working and make certain that the money we take from the taxpayers is properly spent." That, to me, is sunset, and I always have supported the sunset concept.

Then I look at the Glenn amendment, and it says that anything that has provided an incentive to an individual to make a decision which we believe is necessary in order to keep the economy going, whether it is a tax credit, a deduction, an exclusion, a medical deduction, a deduction from taxes for those who are over 65, blind, or disabled—is special tax expenditure.

Then, as I said, I went into the resource area and looked at those provisions in the tax laws that have brought about the development of the oil and gas and mineral industry in the south 48, and I wondered how we, from a developing area of the country, are going to be able to justify their extension, when people look and suddenly discover that 40 percent of the oil and gas in the United States is coming from Alaska.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. STEVENS. I yield, under the same guidelines.

Mr. GLENN. The Senator is bringing all these things up, about veterans and widows, and orphans and things that are not part of this amendment.

This amendment provides one simple thing: It provides for a review process of all our tax incentives and credits—a review process. That is all it does.

When the distinguished Senator from Alaska, with whom I have worked very closely on the Governmental Affairs Committee, wants to vote to increase these benefits, I probably will vote with him. But at least we know that all these incentives and all these credits are coming under scrutiny on a regular basis, so that they can be considered in order to determine whether they should be increased, left at the same level, or sunsetted, if they are not doing the job. That is all this amendment does.

Mr. STEVENS. I beg the Senator's pardon.

Mr. GLENN. I repeat: This amendment does not do all the things that have been alleged by people on the floor here today. It does not cut out the home interest deduction. What it does is to set up, very simply, the requirement for a procedure by which all our tax credits and tax incentives will be considered on a regular 10-year basis, and that is all it does.

All these other issues—whether we increase or decrease veterans' benefits, whether we increase or decrease other tax incentives and credits, which we all agree are very good—will be up to the recommendation of the tax-writing committees and the Congress.

This amendment just requires that those assessments, those analyses, be done on a regular basis, so that we know we can have a clearer idea of what the relationships are between tax expenditures and direct expenditures and what their impact is on the Federal budget.

That is all this amendment does. It does not deal with percentages. It does not deal with any specifics with regard to particular legislation. It just says that we will set up a process by which these things will be reviewed regularly. So it will be up to the Finance Committee and the other committees as to what happens to raise or lower these percentages. This just sets up the process.

Mr. HANSEN. Mr. President, will the Senator yield for a question?

Mr. STEVENS. If I may do so without losing my right to the floor.

The PRESIDING OFFICER. The Senator has that right.

Mr. HANSEN. Mr. President, I regret that it is necessary to go through this sort of procedure in order to ask a question.

I have listened attentively this morning to the debate. I share the frustration of many in what seems to me a perversion of the rules of the Senate in the way that the time on the floor was managed this morning.

In order that my question might be understood, I should like to quote from the report of the Committee on the Budget, U.S. Senate, dated September 1978, entitled "Tax Expenditures, Relationships to the Spending Program and Background Material on Individual Provisions."

On page 4 of that report is contained this language:

> Tax expenditures may take any of the following forms: (1) exclusions, exemptions, and deductions, which reduce taxable income; (2) preferential tax rates, which reduce taxes by applying lower rates to part or all of a taxpayer's income; (3) credits, which are subtracted from taxes as ordinarily computed; and (4) deferrals of tax, which result from delayed recognition of income or from allowing in the current year deductions that are properly attributable to a future year.
>
> The numerous tax expenditures that take the form of exclusions, deductions, and exemptions are relatively more valuable to upper than to lower or middle income individuals. However, this fact should be viewed in the context of recent substantial increases in the standard deduction, which provide more tax saving for certain low-middle income taxpayers than itemized deductions, thus reducing the number of them who itemize.
>
> Moreover, even though some tax expenditures may provide most of their tax relief to those with high taxable incomes, this may be the consequence of overriding economic considerations. For example, tax expenditures directed toward capital formation may deliberately benefit savers who are primarily higher income taxpayers.
>
> The amount of tax relief per dollar of each exclusion, exemption, and deduction increases with the taxpayer's marginal tax rate. Thus, the exclusion from tax of interest income from State and local bonds saves $50 for every $100 of interest for the taxpayer in the 50 percent tax bracket, whereas the savings for the taxpayer in the 25 percent bracket is only $25. Similarly, the extra exemption for persons age 65 or over and any itemized deduction is worth twice as much in tax saving to a taxpayer in the 50 percent bracket as to one in the 25 percent bracket.
>
> A tax credit is subtracted directly from the

tax liability that would otherwise be due; thus the amount of tax reduction is the amount of the credit—which does not depend on the marginal tax rate.

Now, it seems to me, Mr. President, that this language presupposes that anything in the tax code which may require an individual decision by a taxpayer which might lower his tax liability would be considered a tax expenditure.

I ask my friend from Alaska if he agrees.

Mr. STEVENS. I say to my good friend from Wyoming, and I thank him for his courtesy, that that is the problem. I hope that the dialog we have had with the Senator from Ohio straightens that out. But it is my understanding that anything that would lead to a reduction in taxes based upon income—and the Glenn amendment does not apply just to income taxes; it applies to all taxes—anything that would lead to a reduction in taxes would be considered under this amendment.

If the Senator from Ohio wants to correct me, I would be happy to be corrected, but as I understand everything the Senator from Wyoming read every provision leading to a reduction in taxes is an expenditure and the theory is that money should come to the Federal Government and the Federal Government should be able to spend it, not the individual.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. HANSEN. That is the conclusion that I reached. I had a question for the Senator from Ohio, but he has not entertained it as yet today.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. HANSEN. No, I will not yield.

Mr. ROBERT C. BYRD. Mr. President, will the Senator ask me a question?

Mr. HANSEN. I am asking the Senator from Alaska a question.

Mr. STEVENS. I hope I still have the floor. That was the understanding.

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. HANSEN. So far my assumption squares with the Senator from Alaska's understanding of this report from the Budget Committee. Am I right about that?

Mr. STEVENS. I agree with the Senator from Wyoming, that we are talking about anything that would lead to a reduction of taxes from any source, whether it is estates, imports, exports, income franchise taxes, excise taxes, or any kind of taxes.

Mr. HANSEN. Then would it also follow that if an individual taxpayer were to make a decision that would result in a lower tax liability, it could be construed under the Glenn amendment to be a tax expenditure. Am I right about that?

Mr. STEVENS. That is my understanding, unfortunately, and that is the thing that I am disturbed about. I can understand it if these people want to call a refundable tax credit or a refundable exclusion, that takes money from a taxpayer and pays it back to someone else a tax expenditure.

Mr. ROBERT C. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. LEAHY). The Senator from Alaska will suspend just for a moment while we have order in the Chamber.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. STEVENS. Let me finish the thought. It is beyond my understanding that credits or exclusions be considered Federal tax expenditures if, as a taxpayer, it is my money to begin with.

With the same understanding I yield to my friend.

Mr. ROBERT C. BYRD. Mr. President, we are getting nowhere not even fast.

Mr. STEVENS. We are getting nowhere slowly.

Mr. CURTIS. Vote!

Mr. ROBERT C. BYRD. I wonder if the Senator will allow the Senator from Wisconsin to go ahead and offer his amendment and get unanimous consent to set all those amendments aside the remainder of the day and let some Senators call up some other amendments, and get some votes. Senator KENNEDY has an amendment or two. Senators have waited around. They want to vote. We are not going to vote like this. We will just spend the rest of the day talking and getting nowhere. I wonder if we could do that.

Mr. STEVENS. I assume I still have the floor.

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. STEVENS. I say to the majority leader, I understand the Senator from Wisconsin has an amendment and we do have the Muskie amendment with the Glenn amendment pending. It would have been our hope that we would have gotten to considering some of these amendments that individual Senators have been waiting around all day to consider. The difficulty is that we anticipate a rather long discussion if Senator NELSON's amendment is offered NOW. That would be counterproductive as far as those who waited for their amendments are concerned. So we hope that during the discussion on the Glenn amendment, we might have resolved some of the problems. If we could get an understanding that Senator MUSKIE's amendment and the Glenn amendment would be put off until after Monday's vote on the cloture motion and the Nelson amendment would be put off until after the cloture vote on Monday, we could take up some of these amendments that may be controversial but which are germane to the tax bill. Individual Senators could raise their amendments, discuss them with the distinguished Senator from Louisiana and either vote them or not vote them. Many Senators have been hoping to get to other amendments, but it looked like this particular amendment was going to become all-encompassing.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. HANSEN. Mr. President, I do not mean to be rude, but was asking questions, because I could not get a chance before noon. I just hope that Senators might be given an opportunity to understand a little better what is implicit in the Glenn amendment.

Mr. STEVENS. If I may say to my friend from Wyoming, it is my understanding that what I am seeking is that a vote would occur on the cloture motion on the substitute, the committee substitute on Monday. If that is carried, then the Glenn amendment and the Muskie amendment and the Nelson amendment are——

Mr. ROBERT C. BYRD. Nongermane.

Mr. STEVENS. Nongermane and not involved. If we could take up other amendments in the meantime then if that cloture motion fails we could go on and discuss the Glenn amendment prior to the cloture motion on the Glenn amendment and if that fails, we could go on to discuss the Nelson amendment before the cloture motion on the Nelson amendment.

Mr. HANSEN. If I could ask my friend from Alaska one further question, I will not delay the Senate. I seek only to clarify the Glenn amendment before we vote on it. Will the procedure suggested and outlined by the distinguished majority leader afford all Senators an opportunity to understand better the impact of the Glenn amendment?

Mr. STEVENS. I will say to the Senator from Wyoming, it is my hope that the distinguished majority leader will agree to give us a little more time to consider these on Monday and perhaps we might get to that time agreement so that the Senator from Wyoming and others would be assured as to when we will vote on the cloture motion on the committee substitute. If that were, say, about 4 o'clock in the afternoon on Monday I think you would have time to study both the Nelson and the Glenn amendments, which will be filed, printed, and back by that time.

If the cloture motion on the committee substitute is adopted, as I understand it, these other amendments are not germane and would not be considered .

Mr. HANSEN. Mr. President, one further question of my friend from Alaska. Would he look with favor upon a study that might be prepared by the staff of the Committee on Finance that would explain another side of this issue that I think is now inadequately understood? I know there has been some material prepared already. But it seems to me, as I reflect upon what took place here this morning, that we got pretty much a one-sided view of things.

I hope we might have a little better balance on which to make a judgment before we take an action that could have such serious and far-reaching effects upon all Americans.

If there is one thing the average American would ask for and, hopefully, demand, it is that the Government of the United States and its word be ascribed some credibility.

I have a friend in Wyoming who, with her husband, operated a little farm. He developed diabetes. Their children were grown. Faced with an amputation, she went to her accountant and to her tax attorney and got the very best advice

she was able then to get based upon the law.

They examined the possibility of leasing their place, getting a cash rental on it or selling it or paying whatever——

The tax would be on the sale of the place, figuring capital gains as the tax was then in the law.

This fine older lady had taken every reasonable action that anyone could have expected her to take to make the kind of considered judgment that would be the best for this dear old couple. They concluded, after examining all of the possibilities, that they would sell their place.

Do you know what happened? Do you know what we had done? When we passed the Tax Reform of 1976, we included several retroactive provisions. After this couple had made their decision and sold their land, based upon the best judgment that was then available to them, after examining the tax laws of this country, they found out that they were subject to an additional payment of $31,000 over what the law was at the time they made the deal.

Now, Senators may consider that any way they want to, but the point I am making is that when we start overhauling the tax laws, we run the risk of hurting Americans who are relying on and obeying the tax laws as they know them. The people of America need to understand the implications of the Glenn amendment.

I hope that before we come to a vote on the Glenn amendment that this Senator, at least, would have an opportunity to inform the people of the State of Wyoming what we are talking about. If, after they understand the proposal, they think it is a good thing to incorporate in the laws of the United States a provision whereby we can wipe out all their careful planning, then if they say that is the way they want to operate, that is all well and good.

I happen to support the Muskie amendment. I think it is sound. I think we do need to review a lot of these old programs because I think they may have either accomplished the purpose they were set up to accomplish or the need for them has since vanished.

I support the Muskie amendment. For almost diametrically opposed reasons I do not support the Glenn amendment. I just want to see that the people of this country understand what is going on and how much mischief we are engaged in here today before we pass something in haste.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. HANSEN. I will not yield.

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. HANSEN. If I can be assured my concerns will be met and addressed and given due consideration, I will not object.

Mr. STEVENS. I am trying, Mr. President, to accommodate my good friend from Wyoming and others who want to make sure we understand the time situation.

It is my understanding that the Senator from West Virginia wished me to yield concerning a request, and I do so with the same understanding.

Mr. ROBERT C. BYRD. Mr. President, if the Senator would yield to me, here is the situation we are up against.

The PRESIDING OFFICER. If the Senator will suspend for a moment, I suspect we would like to hear what the majority leader wants to say. The Chair would ask for order in the Chamber from the Senators and the staff people.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I voted "aye" on the tabling motion today, so I demonstrated by my vote I wanted to get rid of the Glenn amendment, with all due respect to the Senator from Ohio.

But my side did not prevail. Now we are not going to vote on that Glenn amendment tonight, everybody knows that, and as long as the Glenn amendment is pending we are not going to vote on any amendment. Another motion to table is not in order today, so I hope we would be able to let the Senator from Wisconsin offer his amendment. There is no way we can keep him from doing it. If he does not offer it today he will offer it Monday.

Mr. CURTIS. Mr. President, will the Senator yield for a 1-minute observation in that regard?

Mr. ROBERT C. BYRD. Will the Senator let me finish first and then I will be glad to yield.

Let him offer his amendment, and then let us get consent to put all three of them aside, the Nelson amendment, the Muskie amendment, and the Glenn amendment. They are all agreeable to doing that. Then let us take up some other amendments. Mr. KENNEDY has an amendment; other Senators have some amendments and let them offer them so we can get some votes here. There are Senators waiting to vote. We are not going to vote on those amendments today.

Mr. STEVENS. Mr. President, will the Senator from West Virginia yield? Is the Senator from Maine and is the Senator from Ohio prepared to yield if we take up these other amendments?

Mr. MUSKIE. Yes. I have only one suggestion.

Mr. STEVENS. I yield to the Senator without losing my right to the floor.

Mr. MUSKIE. I am perfectly willing to do that, but I would like to have a minimum amount of time on Monday before the cloture vote in order to remind Senators what is at stake, so that when they make their choice on the cloture motion they can do so with understanding. It will not take much time. That is all I ask. Other than that I am perfectly willing to set my amendment aside, and I think Senator GLENN is, too.

Mr. ROBERT C. BYRD. If the Senator sets his amendment aside that automatically sets Mr. GLENN's amendment aside.

Mr. STEVENS. Does the distinguished majority leader intend to file another cloture motion on the substitute today?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. If the substitute cloture motion fails on Monday there would be a vote Tuesday on the substitute——

Mr. ROBERT C. BYRD. Yes. I would also ask unanimous consent that the debate on the conference reports on the energy conference reports, begin at 2 o'clock in the afternoon; that the 1 hour on the cloture motion begin at 3 o'clock, and that at 4 o'clock the two votes occur on the energy conference reports, followed by the vote on cloture, which puts the cloture vote at around 4:30 in the afternoon.

Mr. STEVENS. I will not object. Reserving the right to object, it is my understanding that the cloture motion would be voted upon last. If that cloture motion happened to fail, would the majority leader tell us where we go from there?

Mr. ROBERT C. BYRD. Yes. The vote would then occur on the cloture motion offered by Mr. GLENN. If that carries, that cloture motion only applies, as I understand it, to the Glenn amendment.

Mr. MUSKIE. It applies to the Muskie amendment and the Glenn amendment.

Mr. ROBERT C. BYRD. Well, if it applies to the Muskie amendment and it carries, the Glenn amendment is probably not germane. If it is germane——

Mr. LONG. Mr. President, if the Senator will yield, I believe he will find that once cloture has been agreed on, the germaneness rule under cloture is very strict.

Mr. ROBERT C. BYRD. Right, and the Glenn amendment may not be.

Mr. LONG. I believe if you will check with the Parliamentarian, he will tell you that under cloture the Glenn amendment would not be germane to the Muskie amendment.

Mr. GLENN. We have checked with the Parliamentarian.

Mr. LONG. I have checked before on things like that, and they have not been.

Mr. GLENN. We have checked with the Parliamentarian within the last hour, and he advises it will be germane.

Several Senators addressed the Chair.

Mr. STEVENS. Mr. President, I still have the floor. Are we seeking a unanimous-consent agreement on that time frame now? There are some Senators who are waiting to leave and would like to know the schedule for Monday.

PROGRAM FOR MONDAY

Mr. ROBERT C. BYRD. Here is the scenario for Monday: The Senate is coming in at 10. After the two leaders have been recognized under the standing order, and after any special orders for the recognition of Senators have been consummated, the Senate will return to the consideration of the tax bill. At that time, any Senator could debate any part of it that he wanted to, but if anyone wanted to call up an amendment, the amendment by the Senator from Wisconsin (Mr. NELSON) would be pending at that point.

Mr. HANSEN. Mr. President, will the majority leader yield for a question?

Mr. ROBERT C. BYRD. Well, would—yes, I yield.

Mr. HANSEN. When you say anyone can debate anything he wants to, I got 90 seconds this morning. Can I get a little more than that Monday, if I want it?

Mr. ROBERT C. BYRD. I yielded, Mr. President, thinking the Senator from Wyoming had a serious question. I ask unanimous consent that the Senator from Wyoming have 30 minutes under his own control on Monday, to discuss anything he wants to on the subject.

Mr. HANSEN. I may not need nearly that much time.

Mr. ROBERT C. BYRD. All right.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. I think I know what the Senator from Oregon has in mind. After the Muskie and Glenn amendments are disposed of, Mr. PACKWOOD's amendment is in order.

Mr. PACKWOOD. Good.

Mr. ROBERT C. BYRD. We forgot about that.

Mr. STEVENSON. I do not know how the majority leader got the Nelson amendment to be the pending amendment. If cloture fails on the Glenn amendment, how does the Nelson amendment become the pending business?

Mr. ROBERT C. BYRD. Because the Nelson amendment is on the bill.

Mr. STEVENS. Can we have the assurance that the debate on the Nelson amendment will not commence until after the two cloture motions are voted on?

Mr. ROBERT C. BYRD. It is perfectly all right with me.

Mr. STEVENS. Is that agreeable with the Senator from Wisconsin?

Mr. NELSON. Are you talking about the two clotures on Monday?

Mr. STEVENS. First, we have a cloture motion filed on the substitute to the tax bill. If that carries, we would then go to the cloture motion on the Senator's amendment to the bill. I assume you have a cloture petition in your hand, too.

Mr. ROBERT C. BYRD. But it could not be voted on, on Monday.

Mr. STEVENS. It could not be voted on until second day of session after today.

Mr. NELSON. Until Tuesday.

Mr. STEVENS. Tuesday, right. But the debate on your amendment would not commence until these other matters are out of the way. Some of our people wanting, to leave want to discuss the Muskie and Glenn amendments before the votes. Will the Senator agree to that?

Mr. NELSON. No, I was supposed to be able to call up the amendment or file a cloture motion now, and then set it aside.

Mr. ROBERT C. BYRD. The Senator cannot file it now; he will have to wait until this is decided.

Mr. STEVENS. The debate will not start on the Nelson amendment until after the two cloture votes are concluded.

Mr. NELSON. I may want to put a statement in the RECORD.

Mr. STEVENS. I am just talking about closing out debate on these other matters.

Mr. MUSKIE. Mr. President, as far as I am concerned, I would like a little time before the vote on the first cloture motion. With respect to the second cloture motion, it may not survive the first cloture vote; if the first cloture is agreed to, the second one is out. So it is the first cloture vote that is critical to me, and if I could get some part of that hour, 15 or 20 minutes,——

Mr. STEVENS. The time is equally divided under the rules, is it not?

Mr. MUSKIE. Well, I just wanted to be sure. That is all the time I am interested in.

Mr. ROBERT C. BYRD. Mr. President, if the Chair will allow me, I think I can get all of this out of the way.

The PRESIDING OFFICER. Does the Senator from Alaska yield?

Mr. STEVENS. I yield, under the same agreement.

Mr. ROBERT C. BYRD. I ask unanimous consent that after the two leaders have been recognized on Monday, and any orders for recognition of Senators have been consummated, and any conference reports, the Senate resume its consideration of this tax bill, and that the time between that moment and 12:00 be equally divided between Mr. LONG and Mr. MUSKIE, with the understanding that Mr. HANSEN would have at least 30 minutes of the time; and then, at 12:00, the Senate proceed to 1 hour of debate on the conference report on energy, at 2:00, proceed to the 1 hour of debate on cloture, and at 3:00, begin those two rollcall votes on conference reports, immediately thereafter have the vote on cloture on my motion, and that is it.

Mr. STEVENS. Reserving the right to object——

Mr. ROBERT C. BYRD. Instead of starting the one hour on the energy conference report at 12:00, make it 1:00. Then the 1 hour on cloture to begin at 2:00, and votes on the conference reports to begin at 3:00, followed by the vote on cloture.

Thes PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, as I understand it, we will start the 1 hour of debate between 1:00 and 2:00, and we would have between 2:00 and 3:00—I thought previously we had an understanding that we would start those votes at 4:00. I do not know how we got to 3:00.

Mr. ROBERT C. BYRD. Just a second. At 2:00 the time begins running on the conference report. At 3:00, the 1 hour on the cloture motion begins running. At 4:00, the first vote on the energy conference report. Immediately thereafter, the vote on the second energy conference report occurs. Immediately thereafter, the vote on cloture, which would make it around 4:30.

Mr. STEVENS. Could we tie down that part of it now?

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. And that the automatic quorum call be waived.

Mr. MUSKIE. Mr. President, I have the reservation that if the first cloture motion is adopted, the vote would fall on the second cloture motion, and there would automatically be an hour in between.

Mr. STEVENS. We would like there to be an hour in between, so we will know what we are talking about in terms of the Muskie-Glenn cloture votes. Is that agreeable?

Mr. GLENN. Reserving the right to object——

Mr. ROBERT C. BYRD. I add that, Mr. President: Following the vote on the first cloture motion, if that cloture motion is not adopted, that there be one hour for debate on the second cloture motion.

Mr. JAVITS. Mr. President, reserving the right to object, amendments have to qualify, even if there be a cloture motion at the desk and read. So will the Senator take that into account?

Mr. ROBERT C. BYRD. They must be there, in writing.

Mr. JAVITS. In writing; will the Senator include that?

Mr. ROBERT C. BYRD. That is automatic.

Mr. JAVITS. I am not sure it is automatic. I ask the Chair to rule. Are the amendments that are at the desk in writing on the first cloture vote considered qualified under the rule, not as to germaneness, but qualified before the motion?

The PRESIDING OFFICER. Any amendment presented to the clerk prior to the announcement of a successful vote on cloture does qualify.

Mr. JAVITS. I thank the Chair.

The PRESIDING OFFICER. But it still must be germane.

Several Senators addressed the Chair.

Mr. STEVENS. Mr. President, again may I inquire of the majority leader? We do not have an agreement yet that there will be no rollcall votes until 4, but is it our understanding, subject to what might develop on the bill itself in the way of amendments, that there will be no rollcall votes pertaining to these matters we are discussing before 4 o'clock?

Mr. ROBERT C. BYRD. Not on these matters. We should leave open the policy with regard to rollcall votes, if someone thinks about it over the weekend and wants to——

Mr. STEVENS. I am referring to the tax bill. We might have a vote on an amendment to the tax bill that is not contemplated now, but other than those in respect to the amendments of Senators MUSKIE, GLENN and NELSON, we have been talking, the voting will not occur before 4.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. GLENN. Reserving the right to object, will the distinguished majority leader yield for a question?

Mr. ROBERT C. BYRD. Yes.

Mr. GLENN. When the tax bill comes up as the first order of business on Monday, I wish to clarify the parliamentary situation. My amendment would be the pending order of business on that tax bill. Is that correct?

The PRESIDING OFFICER. The Chair's understanding is that if the Nel-

son amendment were to be offered today——

Mr. STEVENS. Mr. President, there is a previous understanding.

Mr. GLENN. I would like to say——

The PRESIDING OFFICER. Can the Senators help the Chair by speaking one at a time?

Mr. STEVENS. The Senator can continue his statement.

Mr. GLENN. My amendment is to the substitute, and as I understand it the Nelson amendment will be to the bill itself. We are taking up the tax bill. Are we taking up the tax bill itself now or the substitute? Can we clarify that?

Mr. ROBERT C. BYRD. Let me answer the question. When we go back on the tax bill the pending question would be on the adoption of the amendment by Mr. NELSON, because under the understanding once he offers his amendment, he is going to allow us to go to other amendments. We were not even going to discuss his amendment the rest of the day.

Mr. GLENN. That would mean we were going on the bill and not the substitute when we come back on Monday morning. It would further mean that we would not discuss the Glenn amendment further today, is that correct?

Mr. ROBERT C. BYRD. We would not discuss it further today.

Mr. STEVENS. And we would not discuss the Nelson amendment until we had disposed of the cloture petitions. We could be discussing other amendments to the tax bill. We have not mentioned the Packwood amendment but it comes after the Muskie amendment to the substitute. The Nelson amendment takes precedence because it is to the bill.

Mr. GLENN. I just wanted to be certain we were not returning to my amendment today.

The PRESIDING OFFICER. Is there objection?

Mr. CURTIS. Reserving the right to object, do I understand that we are entering an order that we are not to discuss the Glenn amendment?

Mr. STEVENS. No.

Mr. ROBERT C. BYRD. No. We wanted to set all three aside to let other Senators call up their amendments and get them voted upon today.

Mr. CURTIS. I agree with the distinguished Senator from Virginia, that the Glenn amendment is probably the most far-reaching amendment relating to our tax laws that this Senate has ever entertained. There should be considerable debate, I believe, and the country should find out about it. There are some of us who have not had a chance to speak on it at all yet.

Mr. STEVENS. May I say to the Senator that the petition is already filed. There is nothing I can do to control that. We do have an hour before the petition will be voted upon on Monday, assuming the petition for cloture on the substitute is not adopted. We also have an hour after that to discuss the Glenn and Muskie amendments.

Mr. CURTIS. My concern was this: I understood the majority leader to say there would be no debate on the Glenn amendment. I was shocked this morning when the debate was controlled. I was not going to sit by and have an order entered that an amendment of this nature cannot be debated.

Mr. ROBERT C. BYRD. Mr. President, if Senators would listen, if they would only listen, my request provided for going back to the tax bill immediately after any orders for the recognition of Senators were completed on Monday, and from that time up until 2 o'clock they can talk about the Glenn amendment; they can talk about the Muskie amendment; they can talk about the Nelson amendment. They can talk about any amendments they want to. They can spend all that time talking about the Glenn amendment if they want to. Then during the 1 hour before cloture they can again talk about the Glenn amendment. If Senators voted with me the Glenn amendment would not be talked about at all because I voted to table it. But the Senate worked its will.

Mr. President, it is just that simple. They will have plenty of time to talk on the amendments.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Mr. MOYNIHAN. Reserving the right to object, and I will not object, but I have to make this clear. Will there be time at the end of this day to take up the New York City pension bill?

Mr. STEVENS. Today or Monday?

Mr. MOYNIHAN. Today.

Mr. ROBERT C. BYRD. If the Senate will agree to the procedure I mentioned, the floor will be open to any amendments that the Senator wants to bring up.

Mr. MOYNIHAN. This is not an amendment. It is a bill in its own right.

Mr. STEVENS. It is not to be offered as an amendment to the tax bill?

Mr. MOYNIHAN. No.

Mr. ROBERT C. BYRD. I have to find out if it is cleared on both sides. That is all.

Mr. STEVENS. I might say we have not had a chance to consider it. If we can settle this first, we can get to another bill.

Mr. ROBERT C. BYRD. If we do not settle this, we will not get to the bill.

The PRESIDING OFFICER. Is there objection?

Mr. GLENN. Reserving the right to object, Mr. President——

Mr. MOYNIHAN. I do withdraw, Mr. Leader, but for 2 days I have patiently pursued this matter.

Mr. ROBERT C. BYRD. I know, and I have been supporting the Senator, but if we do not get this matter settled, we will not get to the bill.

The PRESIDING OFFICER. Can we have order in the Chamber?

Mr. GLENN. Mr. President, there are a number of people in the Chamber who had travel plans today, myself included. All I was trying to do with the request of making certain we would not discuss my amendment further today was so that we would not have to stay here today and cancel our travel plans because there would be ample time on Monday, as the distinguished majority leader indicated. I would hope that would be agreed to by everyone. I will be happy to discuss it on Monday.

Mr. STEVENS. That was my understanding, that we would get through these other amendments that Members have been waiting all day to call up.

Mr. GLENN. That is my understanding. I withdraw my objection.

Mr. BELLMON. Will the majority leader again state the nature of his unanimous-consent request without interruption?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday following the recognition of any Senators for whom previous orders for recognition have been entered, or in the alternative, following the recognition of the two leaders or their designees under the standing order, that the Senate resume consideration of the tax bill; that at the hour of 2 p.m. the Senate proceed to the consideration of the conference reports under the order previously entered, providing for 1 hour of debate; that at 3 p.m. the vote on those conference reports not occur but instead the 1 hour under the cloture rule begin running on the motion which I introduced yesterday; that at 4 p.m. the first of two votes on the conference reports occur; immediately thereafter, the second of two votes occur; immediately thereafter, the vote on the motion to invoke cloture occur; provided further, that the time for debate on the Glenn amendment, if the first cloture motion fails, be 1 hour, and that it be equally divided between Mr. LONG and Mr. MUSKIE; provided further, that the time during the morning and up until 2 p.m. be equally divided between Mr. LONG and the minority leader or his designee, with the understanding that Mr. HANSEN can get 30 minutes out of that time.

Mr. NELSON. Mr. President, I have no objection.

Mr. ROBERT C. BYRD. I am going to quit trying in a moment.

Mr. NELSON. I have no objection. Is the leader including in that unanimous-consent request that my amendment be laid aside immediately and not——

Mr. ROBERT C. BYRD. Yes; I include in that request that the Senator from Wisconsin immediately be able to offer his amendment, call it up—I understand he wants to call up a cloture motion; let him offer that—and that those amendments be set aside, all three of them, and that other Senators be allowed to call up their amendments and perhaps let them get voted on yet today, half of which we have wasted in going in circles.

Mr. GLENN. Reserving the right to object, as I understand the unanimous-consent request by the majority leader, this would put all the time on Monday morning as divided between Senator LONG and Senator STEVENS. Is that correct?

Mr. ROBERT C. BYRD. Yes.

Mr. GLENN. That would hardly seem a fair distribution of time if we are going to be extending all that time to the——

Mr. ROBERT C. BYRD. All right, I

make it half of that time to Senator LONG and half to Senator MUSKIE.

Mr. STEVENS. Wait, did I just lose half the time?

Mr. ROBERT C. BYRD. You never had it.

Mr. STEVENS. We do have the Hansen half-hour in there?

Mr. ROBERT C. BYRD. Yes.

Mr. PACKWOOD. Reserving the right to object, Mr. President. I thought the unanimous-consent yesterday concerning the amendment of Senator KENNEDY and myself was that when we disposed of or turned to other business than the Muskie-Glenn amendment, that would be the pending business.

The PRESIDING OFFICER. The Senator is correct.

Mr. PACKWOOD. And that was any other pending business. How does the Nelson amendment get in ahead of that?

Mr. ROBERT C. BYRD. Because the Muskie amendment has not been disposed of.

Mr. PACKWOOD. I understand the Muskie amendment has not been finished.

What did the Chair say?

The PRESIDING OFFICER. The Chair, in answer to the question of the Senator from Oregon, said that the Nelson amendment would get in as a result of the unanimous-consent request that has been propounded by the majority leader. Assuming that it is accepted, we would then proceed to any other unanimous-consent request in the same area.

Mr. PACKWOOD. Without that unanimous-consent request, would the amendment of Senator KENNEDY and myself then be the pending business if we turned aside from the amendment of the Senator from Maine?

The PRESIDING OFFICER. The Senator from Oregon is correct.

Mr. PACKWOOD. Then I shall object.

Mr. ROBERT C. BYRD. Mr. President, I want to protect the Senator from Oregon. All I am asking is that the Senator from Wisconsin be allowed to call up his amendment. He has to do that sooner or later, anyhow. I want to protect the Senator from Oregon. After the Senator from Wisconsin calls up his amendment, let us vote on the amendment by Senator PACKWOOD now, but let us go ahead with the order, with the understanding that we vote on his amendment.

Mr. PACKWOOD. And we can set a time limit on it right now.

Mr. ROBERT C. BYRD. All right, 10 minutes on a side?

Mr. PACKWOOD. Yes.

Mr. STEVENS. Mr. President, I am very concerned about this agreement. I just want to make sure that the vote will start at 4, with a vote on the first cloture motion, we then have an hour of debate to be followed by a vote on the other cloture motion, after which we go back to the Nelson amendment. Is that the sequence?

The PRESIDING OFFICER. The Chair reminds the Senator that the initial request of the majority leader was objected to earlier. Does the Senator from Oregon withdraw his objection?

Mr. PACKWOOD. So long as the agreement includes the vote on our amendment this afternoon, with 10 minutes on each side.

Mr. STEVENS. I ask unanimous consent that the agreement be amended accordingly so that the Senator from Oregon will withdraw his objection.

The PRESIDING OFFICER. Without objection, the unanimous-consent request is agreed to.

Mr. STEVENS. Do I still have the floor, Mr. President?

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. STEVENS. Does the Senator from West Virginia seek any more time?

Mr. ROBERT C. BYRD. I should like to have the Senator from Wisconsin call up his amendment, then get to the cloture motion.

Mr. STEVENS. I was going to make certain that the Senator from Wisconsin be protected to offer his cloture motion, then proceed to the amendment of the Senator from Oregon.

The PRESIDING OFFICER. The Chair is a little confused on one point. The Packwood amendment——

Mr. ROBERT C. BYRD. After the Nelson amendment is set aside.

UP AMENDMENT 2019
(SUBSEQUENTLY NUMBERED AMENDMENT 4049)

Mr. STEVENS. I am going to yield to the Senator from Wisconsin now for that purpose.

Mr. NELSON, Mr. President, I send to the desk in behalf of myself and Mrs. HUMPHREY, Mr. WILLIAMS, Mr. CRANSTON, and Mr. KENNEDY an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON) for himself, Mrs. HUMPHREY, Mr. WILLIAMS, Mr. CRANSTON, and Mr. KENNEDY, proposes unprinted amendment No. 2019.

Mr. NELSON. Mr. President, I ask unanimous consent that further reading be dispensed with.

Mr. HATCH. Reserving the right to object, if I can get a copy of that amendment now that it is filed, I shall withdraw my objection to not having it read if we can get it within the next half-hour.

Mr. STEVENS. I ask unanimous consent that the clerk be directed to give the Senator from Utah a copy of the amendment as soon as possible.

Mr. ROBERT C. BYRD. Mr. President, I do not think that will be necessary. The Senator from Wisconsin has a copy. It is on its way over right now.

The PRESIDING OFFICER. The Chair understands that a copy is being delivered to the Senator from Utah at this moment.

Mr. HATCH. As long as I have a copy of the actual amendment, I have no objection.

The PRESIDING OFFICER. Is there objection to the reading being dispensed with? Without objection, it is so ordered.

The amendment is as follows:

Add at the end of the bill the following new title:

TITLE __—FULL EMPLOYMENT AND BALANCED GROWTH

SECTION __00. This title and the following table of contents may be cited as the "Full Employment and Balanced Growth Act of 1978".

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GENERAL FINDINGS

SEC. __00A. (a) The Congress finds that the Nation has suffered substantial unemployment and underemployment, idleness of other productive resources, high rates of inflation, and inadequate productivity growth, over prolonged periods of time, imposing numerous economic and social costs on the Nation. Such costs include the following:

(1) The Nation is deprived of the full supply of goods and services, the full utilization of labor and capital resources, and the related increases in economic well-being that would occur under conidtions of genuine full employment, production, and real income, balanced growth, a balanced Federal budget, and the effective control of inflation.

(2) The output of goods and services is insufficient to meet pressing national priorities.

(3) Workers are deprived of the job security, income, skill development, and productivity necessary to maintain and advance their standards of living.

(4) Business and industry are deprived of the production, sales, capital flow and productivity necessary to maintain adequate profits, undertake new investment, create jobs, compete internationally, and contribute to meeting society's economic needs. These problems are especially acute for smaller businesses. Variations in the business cycle and low-level operations of the economy are

far more damaging to smaller businesses than to larger business concerns because smaller businesses have fewer available resources, and less access to resources, to withstand nationwide economic adversity. A decline in small business enterprises contributes to unemployment by reducing employment opportunities and contributes to inflation by reducing competition.

(5) Unemployment exposes many families to social, psychological, and physiological costs, including disruption of family life, loss of individual dignity and self-respect, and the aggravation of physical and psychological illnesses, alcoholism and drug abuse, crime, and social conflicts.

(6) Federal, State, and local government budgets are undermined by deficits due to shortfalls in tax revenues and in increases in expenditures for unemployment compensation, public assistance, and other recession-related services in the areas of criminal justice, alcoholism and drug abuse, and physical and mental health.

(b) The Congress further finds that:

(1) High unemployment may contribute to inflation by diminishing labor training and skills, underutilizing capital resources, reducing the rate of productivity advance, increasing unit labor costs, and reducing the general supply of goods and services.

(2) Aggregate monetary and fiscal policies alone have been unable to achieve full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance, and reasonable price stability, and therefore must be supplemented by other measures designed to serve these ends.

(3) Attainment of these objectives should be facilitated by setting explicit short-term and medium-term economic goals, and by improved coordination among the President, the Congress, and the Board of Governors of the Federal Reserve System.

(4) Increasing job opportunities and full employment would greatly contribute to the elimination of discrimination based upon sex, age, race, color, religion, national origin, handicap, or other improper factors.

(c) The Congress further finds that an effective policy to promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance, and reasonable price stability should (1) be based on the development of explicit economic goals and policies involving the President, the Congress, and the Board of Governors of the Federal Reserve System, with maximum reliance on the resources and ingenuity of the private sector of the economy, (2) include programs specifically designed to reduce high unemployment due to recessions, and to reduce structural unemployment within regional areas and among particular labor force groups, and (3) give proper attention to the role of increased exports and improvement in the international competitiveness of agriculture, business, and industry in providing productive employment opportunities and achieving an improved trade balance.

(d) The Congress further finds that full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability are important national requirements and will promote the economic security and well-being of all citizens of the Nation.

(e) The Congress further finds that the United States is part of an interdependent world trading and monetary system and that attainment of the requirements specified in subsection (d) is dependent upon policies promoting a free and fair international trading system and a sound and stable international monetary system.

PART A—ESTABLISHMENT OF GOALS AND GENERAL ECONOMIC POLICIES

STATEMENT OF PURPOSE

SEC. _01. It is the purpose of this title—

(1) to declare the general policies of this title;

(2) to provide an open process under which economic goals and policies are proposed, reviewed, and established;

(3) to provide for yearly review of national economic policies to ensure their consistency with these goals to the maximum extent possible; and

(4) to strengthen and supplement the purposes and policies of the Employment Act of 1946.

DECLARATION OF POLICY

SEC. _02. Section 2 of the Employment Act of 1946 is amended to read as follows:

"SEC. 2. (a) The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means, consistent with its needs and obligations and other essential national policies, and with the assistance and cooperation of both small and larger businesses, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions which promote useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability as provided in section _5(b) of this title.

"(b) The Congress further declares and establishes as a national goal the fulfillment of the right to full opportunities for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work.

"(c) The Congress further declares that inflation is a major national problem requiring improved government policies relating to food, energy, improved and coordinated fiscal and monetary management, the reform of outmoded rules and regulations of the Federal Government, the correction of structural defects in the economy that prevent or seriously impede competition in private markets, and other measures to reduce the rate of inflation.

"(d) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to improve the coordination and integration of the policies and programs of the Federal Government toward achievement of the objectives of such Act through better management, increased efficiency, and attention to long-range as well as short-range problems and to balancing the Federal budget.

"(e) The Congress further declares that, although it is the purpose under the Full Employment and Balanced Growth Act of 1978 to seek diligently and to encourage the voluntary cooperation of the private sector in helping to achieve the objectives of such Act, no provisions of such Act or this Act shall be used, with respect to any portion of the private sector of the economy, to provide for Federal Government control of production, employment, allocation of resources, or wages and prices, except to the extent authorized under other Federal laws.

"(f) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to maximize and place primary emphasis upon the expansion of private employment, and all programs and policies under such Act shall be in accord with such purpose. Toward this end, the effort to expand jobs to the full employment level shall be in this order of priority to the extent consistent with balanced growth—

"(1) expansion of conventional private jobs through improved use of general economic and structural policies, including measures to encourage private sector investment and capital formation;

"(2) expansion of private employment through Federal assistance in connection with the priority programs in such Act;

"(3) expansion of public employment other than through the provisions of section 2–06 of this title; and

"(4) when recommended by the President under section 2–06 of this title and subject to the limitations in such section, the creation of employment through the methods set forth in such section.

"(g) The Congress further declares that trade deficits are a major national problem requiring a strong national export policy including improved Government policies relating to the promotion, facilitation, and financing of commercial and agricultural exports, Government policies designed to reduce foreign barriers to exports through international negotiation and agreement, Federal support for research, development, and diffusion of new technologies to promote innovation in agriculture, business, and industry, the elimination or modification of Government rules or regulations that burden or disadvantage exports and the national and international competitiveness of agriculture, business, and industry, the reexamination of antitrust laws and policies when necessary to enable agriculture, business, and industry to meet foreign competition in the United States and abroad, and the achievement of a free and fair international trading system and a sound and stable international monetary order.

"(h) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to achieve a balanced Federal budget as is consistent with the achievement of the medium-term goals specified in section 4.

ECONOMIC REPORT OF THE PRESIDENT AND SHORT-TERM ECONOMIC GOALS AND POLICIES

SEC. _03. (a) The heading preceding section 3 and section 3(a) of the Employment Act of 1946 are amended to read as follows:

"ECONOMIC REPORT OF THE PRESIDENT AND SHORT-TERM ECONOMIC GOALS AND POLICIES

"SEC. 3. (a) The President shall transmit to the Congress during the first twenty days of each regular session, with copies transmitted to the Governor of each State and to other appropriate State and local officials, an economic report (hereinafter in this Act referred to as the 'Economic Report') together with the annual report of the Council of Economic Advisers submitted in accord with section 11(c) of this Act, setting forth—

"(1) the current and foreseeable trends in the levels of employment, unemployment, production, capital formation, real income, Federal budget outlays and receipts, productivity, international trade and payments, and prices, and a review and analysis of recent domestic and international developments affecting economic trends in the Nation.

"(2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, and prices for the calendar year in which the Economic Report is transmitted and for the following calen-

dar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, price stability, achievement of an improved trade balance, and proper attention to national priorities; and

"(B) annual numerical goals as specified in subparagraph (A) for the three successive calendar years, designated as medium term goals;

"(3) employment objectives for certain significant subgroups of the labor force, including youth, women, minorities, handicapped persons, veterans, and middle-aged and older persons; and

"(4) a program for carrying out the policy declared in section 2, together with such recommendations for legislation as he may deem necessary or desirable.

(b) Section 3 of the Employment Act of 1946 is amended by adding the following:

"(d) For the purposes of the Full Employment and Balanced Growth Act of 1978, the percentage rate of unemployment at any given time shall be the rate of unemployment as a percentage of the civilian labor force as set forth by the Bureau of Labor Statistics in the Department of Labor as computed under the procedures in effect as of the date of enactment of this Act.

"(e) For the purpose of the Full Employment and Balanced Growth Act of 1978, the terms 'inflation', 'prices', and 'reasonable price stability' refer to the rate of change or level of the consumer price index as set forth by the Bureau of Labor Statistics, United States Department of Labor.".

FULL EMPLOYMENT AND BALANCED GROWTH: MEDIUM-TERM ECONOMIC GOALS AND POLICIES

SEC. _04. The Employment Act of 1946 is amended by redesignating sections 4 and 5 as sections 11 and 12, respectively, and by inserting a new section 4 as follows:

"FULL EMPLOYMENT AND BALANCED GROWTH: MEDIUM-TERM ECONOMIC GOALS AND POLICIES

"SEC. 4. (a) In each Economic Report after enactment of the Full Employment and Balanced Growth Act of 1978, the President shall incorporate (as part of the five-year numerical goals in each Economic Report) medium-term annual numerical goals specified in section 3(a)(2)(B), and in each President's Budget submitted immediately prior thereto, the President shall incorporate the programs and policies the President deems necessary to achieve such medium-term goals and a balanced Federal budget and to achieve reasonable price stability as rapidly as feasible as provided for in section 5(b) of this Act.

"(b) The medium-term goals in the first three Economic Reports after enactment of the Full Employment and Balanced Growth Act of 1978 shall include (as part of the five-year goals in each Economic Report) the interim numerical goal of reducing unemployment among Americans aged twenty and over in the civilian labor force to not more than 3 per centum and to reduce unemployment among the entire civilian labor force aged sixteen and over to not more than 4 per centum within a period not extending beyond the fifth calendar year after the first such Economic Report, counting as the first calendar year the year in which such Economic Report is issued. Upon achievement of the 3 and 4 per centum goals as specified above, each succeeding Economic Report shall have the goal of achieving full employment and a balanced Federal budget as soon as practicable and maintaining full employment and a balanced budget after it has been reached.

"(c) In the second and any succeeding Economic Report after enactment of the Full Employment and Balanced Growth Act of 1978, the President shall review the numerical goals and timetables for the reduction of unemployment and the goal of balancing the Federal budget, and report to the Congress on the degree of progress being made, and, in the President's Budget submitted immediately prior thereto in such year, the President shall report on the programs and policies being used, and any obstacles to their achievement, and if necessary propose corrective economic measures toward achievement of such goals and timetables: *Provided*, That beginning with the second report and in any subsequent reports, if the President finds it necessary, the President may recommend modification of (1) the timetable provided for in subsection (b) for the reduction of unemployment to the interim 3 and 4 per centum goals specified in such subsection by setting forth the year in which, in the opinion of the President, the 3 and 4 per centum goals should be achieved and (2) the annual numerical unemployment goals to make them consistent with the modified timetable, and the Congress may take appropriate action.

"(d)(1) In taking action to reduce unemployment in accord with the numerical goals and timetable established under section (b), every effort shall be made to reduce those differences between the rates of unemployment among youth, women minorities, handicapped persons, veterans, middle-aged and older persons and other labor force groups and the overall rate of unemployment which are caused by any improper factors with the ultimate objective of removing such differentials to the extent possible.

* * * * *

ing paragraph are due to lack of training and skills, occupational practices, and other relevant factors, the Secretary of Labor shall—

"(A) take such action as practicable to achieve the objectives of this subsection;

"(B) make studies, develop information, and make recommendations toward remedying these differences in rates of unemployment, and include these in the annual Employment and Training Report of the President required under section 705(a) of the Comprehensive Employment and Training Act of 1973 (hereinafter in this Act referred to as 'CETA'); and

"(C) make recommendations, as deemed necessary, to the Congress related to the objectives of this paragraph.

"(e)(1) The term 'middle-aged and older persons' as used in this section includes any individual forty-five years of age or older.

"(2) For purposes of this subsection, the term 'veteran' shall mean the same as defined in section 2011 (1) or (2)(A) of title 38, United States Code.

PROVISIONS APPLICABLE TO SHORT-TERM AND MEDIUM-TERM GOALS

SEC. _05. The Employment Act of 1946 is amended by adding a new section 5 as follows:

PROVISIONS APPLICABLE TO SHORT-TERM AND MEDIUM-TERM GOALS

"SEC. 5. (a) To aid in determining the short-term and medium-term goals for employment, production, real income, and prices, analysis shall be presented in the Economic Report with respect to major aspects of the appropriate composition or structure of each goal, and as to the appropriate apportionment of total national production among its major components (private investment, consumer expenditures, and public outlays) as affected by relative income flows and other factors, in order to promote balanced growth and a balanced Federal budget, reduce cyclical disturbances, and achieve the other purposes of this Act and the Full Employment and Balanced Growth Act of 1978.

"(b) In choosing means to achieve the goal for the reduction of unemployment and choosing means to achieve the goal of reasonable price stability, those means which are mutually reinforcing shall be used to the extent practicable."

NATIONAL PRIORITY POLICIES AND PROGRAMS REQUIRED FOR FULL EMPLOYMENT AND BALANCED GROWTH

SEC. _06. The Employment Act of 1946 is amended by adding a new section 6 as follows:

"NATIONAL PRIORITY POLICIES AND PROGRAMS REQUIRED FOR FULL EMPLOYMENT AND BALANCED GROWTH

"SEC. 6. (a) To contribute to the achievement of the goals under the Full Employment and Balanced Growth Act of 1978, the President's Budget for each fiscal year beginning after the date of enactment of the Full Employment and Balanced Growth Act of 1978 shall include priority policies and programs, which shall be set forth in sufficient detail to furnish an integrated perspective of the needs and capabilities of the Nation and as a long-run guide to relevant national economic policies and programs.

"(b) The national priority policies and programs included in each President's Budget as provided for in subsection (a) of this section shall include to the extent the President deems appropriate—

"(A) development of energy sources and supplies, transportation, and environmental improvement;

"(B) proper attention to the problems and needs of smaller businesses including (i) the availability of investment capital, management and technical expertise, and technology and labor needs, (ii) analysis of economic and social trends which may affect smaller businesses, (iii) government policies and programs (includ-

* * * * *

quirements) that may create undue hardship for or reduce the competitiveness of smaller business, and (iv) other policies and programs to remove barriers to competition and to strengthen and promote the creation and growth of smaller businesses;

"(C) development of a comprehensive national agricultural policy that assures—

"(i) production levels adequate to meet the nutritional needs of all Americans and respond to rising food requirements throughout the world;

"(ii) farm and ranch income at levels that will improve opportunities for farm families, encourage production, and provide for essential capital investment in farming;

"(iii) renewed commitment to the protection and conservation of rural land and water through support for improved conservation practices and research, and attention to agricultural land use in the formulation of plans for energy, water and mineral resources, transportation, and commercial, industrial, and residential development; and

"(iv) support for programs and public services designed to respond to the unique economic and social conditions of rural communities;

"(D) proper attention to the relationship between Federal programs and policies and the problems and needs of urban areas, including inner cities and the employment problems of their residents, especially youths;

"(E) proper attention to the quality and quantity of health care, education and training programs, child care and other human services, and housing, essential to a full employment economy and to moving toward their availability for all individuals at costs within their means;

"(F) policies concerning Federal aid to State and local governments, especially for public investment and unemployment related costs;

"(G) national defense and other needed international programs;

"(H) proper attention to the relationship between Federal grants, contracts, and procurement, and the closure of military bases and other Federal facilities and the distribution of jobs and income among different regions of the Nation, and among urban, suburban, and rural areas;

(I) Proper attention to balancing the Federal budget;

(J) proper attention to the dislocation of jobs caused by Federal laws, regulations, and policies;

(K) policies and programs designed to increase exports and improve the international competitive position of agriculture, business, and industry, including measures to promote a free and fair international trading system, a sound and stable international monetary system and innovation in agriculture, business, and industry; and

(L) such other priority policies and programs as the President deems appropriate.".

THE PRESIDENT'S BUDGET

SEC. --07. The Employment Act of 1946 is amended by inserting a new section 7 as follows:

"THE PRESIDENT'S BUDGET

"SEC. 7. (a) The President's Budget shall recommend levels of outlays and receipts which shall be consistent with the short-term economic goals of section 3(a)(2)(A) and the medium-term goals of section 4(b) and the program and policies which the President deems necessary to achieve the goals and objectives of paragraphs (2) and (3) of this subsection, and to achieve reasonable price stability as rapidly as feasible as provided for in section 5(b) of this Act.

"(b) The President's Budget shall provide five-year projections of outlays and receipts consistent with the medium-term goals of section 4(b).

"(c) The basic elements in the President's Budget shall be set forth briefly in each Economic Report, toward the end of making clear the relationship between the President's Budget and the goals and policies set forth in such Economic Report. Both the expenditure and revenue elements of the President's Budget, as set forth briefly in the Economic Report, shall be developed to promote the purposes, policies, and goals of the Full Employment and Balanced Growth Act of 1978. The size of the President's expenditure and revenue proposals, and the relationships between such proposals, shall be determined in a manner which gives consideration to the needs of the economy and the people in the priority areas set forth in section 6, and the relationship between the President's expenditure and revenue proposals shall be guided accordingly.".

MONETARY POLICY

SEC. --08. (a) Section 2A of the Federal Reserve Act is amended by striking out the second and third sentences and inserting in lieu thereof the following: "In furtherance of the purpcses of the Full Employment and Balanced Growth Act of 1978, the Board of Governors of the Federal Reserve System shall transmit to the Congress, not later than February 20 and July 20 of each year, independent written reports setting forth (1) a review and analysis of recent developments affecting economic trends in the Nation; (2) the objectives and plans of the Board of Governors and the Federal Open Market Committee with respect to the ranges of growth or diminution of the monetary and credit aggregates for the calendar year during which the report is transmitted, taking account of past and prospective developments in employment, unemployment, production, investment, real income, productivity, international trade and payments, and prices; and (3) the relationship of the aforesaid objectives and plans to the short-term goals set forth in the most recent Economic Report of the President pursuant to section 3(a)(2)(A) of the Employment Act of 1946 and to any short-term goals approved by the Congress pursuant to title III of the Full Employment and Balanced Growth Act of 1978. In addition, as a part of its report on July 20 of each year, the Board of Governors shall include a statement of its objectives and plans with respect to the ranges of growth or diminution of the monetary and credit aggregates for the calendar year following the year in which the report is submitted. The reports required under the two preceding sentences shall be transmitted to the Congress and shall be referred in the Senate to the Committee on Banking, Housing, and Urban Affairs, and in the House of Representatives to the Committee on Banking, Finance and Urban Affairs. The Board shall consult with each such Committee on the reports and, thereafter, each such Committee shall submit to its respective body a report containing its views and recommendations with respect to the Federal Reserve's intended policies. Nothing in this Act shall be interpreted to require that the objectives and plans with respect to the ranges of growth or diminution of the monetary and credit aggregates disclosed in the reports submitted under this section be achieved if the Board of Governors and the Federal Open Market Committee determine that they cannot or should not be achieved because of changing conditions: *Provided*, That in the subsequent consultations with the aforesaid Committees of the Congress pursuant to this section, the Board of Governors shall include an explanation of the reasons for any revisions to or deviations from such objectives and plans.".

(b) The amendment made by subsection (a) takes effect on January 1, 1979.

OVERCOMING INFLATION

SEC. --09. The Employment Act of 1946 is amended by inserting a new section 9 as follows:

"OVERCOMING INFLATION

"SEC. 9. (a) The Congress hereby determines that the objective of achieving reasonable price stability as soon as feasible, as set forth in section 3(a)(3) and section 4(a), shall be pursued by the methods and subject to the requirements of section 5(b).

"(b) The Congress finds that sole dependence upon fiscal or monetary policies or both to combat inflation can exacerbate both inflation and unemployment. The Congress finds that the coordinated use of fiscal and monetary policies in conjunction with specific targeted policies are necessary to combat inflation.

"(c) The President shall initiate specific policies to reduce the rate of inflation, including recommendations to the Congress where necessary, and include recommendations within the Economic Report to the extent practicable. Structural policies to reduce the rate of inflation may include—

"(1) an effective information system to monitor and analyze inflationary trends in individual economic sectors, so that the President and Congress can be alerted to developing inflation problems especially those caused by bottlenecks inhibiting the flow of goods and services;

"(2) programs and policies for alleviating shortages of goods, services, labor, and capital, with particular emphasis on food, energy, and critical industrial materials to aid in stabilizing prices;

"(3) the establishment of stockpiles of agricultural commodities and other critical materials to help stabilize prices, meet emergency needs, and promote adequate income to producers;

"(4) encouragement to labor and management to increase productivity within the national framework of full employment through voluntary arrangements in industries and economic sectors;

[5](4) recommendations to increase competition in the private sector and to improve the economic climate for the creation and growth of smaller businesses, including recommendations to strengthen and enforce the antitrust laws, the patent laws, and the internal revenue laws and regulations;

[6](5) removal or proper modification of such Government restrictions and regulations as add unnecessarily to inflational costs; and

"(6) such other administrative actions and recommendations for legislation as the President deems desirable to promote reasonable price stability.".

COUNCIL OF ECONOMIC ADVISERS

SEC. --10. (a) Section 11 of the Employment Act of 1946 (as redesignated by section 104 of this Act) is amended—

(1) in the second sentence of subsection (a), by inserting "full" immediately after "promote";

(2) in subsection (c)(4), by inserting "including small and larger business" immediately after "enterprise" and by inserting "full" immediately after "maintain";

(3) in subsection (e)(1), by inserting immediately before the semicolon a comma and the following: "and shall consult with the board or boards established under section 10"; and

(4) in subsection (e), by inserting after paragraph (2) the following:

"In its work under this Act and the Full Employment and Balanced Growth Act of 1978, the Council is authorized and directed to seek and obtain the cooperation of the various executive and independent agencies in the development of specialized studies essential to its responsibilities.".

ADVISORY BOARD OR BOARDS

SEC. -- 11. (a) The Employment Act of 1946 is amended by inserting a new section 10 as follows:

"ADVISORY BOARD OR BOARDS

"SEC. 10 (a) An advisory board or boards (including regional advisory boards) may be established as the President deems appropriate, to advise and consult periodically with one or more of the following: The President, the Council of Economic Advisers, and such other departments and agencies of the executive branch of the Federal Government as the President shall determine.

"(b) Such advisory board or boards shall include appropriate representation of labor, small and larger businesses and industries, agriculture, consumers, State and local officials, and the public at large, and shall advise and consult with respect to matters related to this Act, the Full Employment and Balanced Growth Act of 1978, and other appropriate matters related to national economic programs and policies. The President shall, in accordance with applicable processions of law, take the steps necessary to appropriate compensation to the members of such advisory board or boards.".

PART B—STRUCTURAL ECONOMIC POLICIES AND PROGRAMS, INCLUDING TREATMENT OF RESOURCE RESTRAINTS

STATEMENT OF PURPOSE

SEC. --01. The Congress recognizes that general economic policies alone have been unable to achieve the goals set forth in this Act related to full employment, production, and real income, balanced growth, adequate growth in productivity, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and achievement of reasonable price stability as provided for in section 5(b) of the Employment Act of 1946. It is, therefore, the purpose of this title to require the President to initiate, as the President deems appropriate, with recommendations to the

Congress where necessary, supplementary programs and policies to the extent that the President finds such action necessary to help achieve these goals, including the goals and timetable for the reduction of unemployment. Insofar as feasible without undue delay, any policies and programs so recommended shall be included in the Economic Report.

COUNTERCYCLICAL EMPLOYMENT POLICIES

SEC. _02. (a) Any countercyclical efforts undertaken to aid in achieving the purposes of section 201 shall consider for inclusion the following programmatic entities:

(1) accelerated public works, including the development of standby public works projects;

(2) public service employment;

(3) State and local grant programs;

(4) the levels and duration of unemployment insurance;

(5) skill training in both the private and public sectors, both as a general remedy and as a supplement to unemployment insurance;

(6) youth employment programs as specified in section 205;

(7) community development programs to provide employment in activities of value to the States, local communities (including rural areas), and the Nation;

(8) Federal procurement programs which are targeted on labor surplus areas; and

(9) augmentation of other employment and training programs which would help to reduce high levels of unemployment arising from cyclical causes.

(b) In any countercyclical efforts undertaken, the President shall consider a triggering mechanism which will implement the program during a period of rising unemployment and phase out the program when unemployment is appropriately reduced, and incorporate effective means to facilitate individuals assisted under programs developed pursuant to this section to return promptly to regular private and public employment as the economy recovers.

COORDINATION WITH STATE AND LOCAL GOVERNMENT AND PRIVATE SECTOR ECONOMIC ACTIVITY

SEC. _03. (a) As an integral part of any countercyclical employment policies undertaken in accord with section _02, the President shall, to the extent the President deems necessary, set forth programs and policies, including recommended legislation where needed, to coordinate economic action among the Federal Government, regions, States and localities, and the private sector to promote achievement of the purposes of this Act and the Employment Act of 1946 and an economic environment in which State and local governments and private sector economic activity and employment will prosper. In considering programs and policies related to the private sector, full consideration shall be given to promoting the growth and well-being of small businesses.

(b) In any efforts under this section, the President shall endeavor to meet criteria that establish programs which are funded to take account of the fiscal needs and budget conditions of the respective States and localities and their own efforts, with special attention to the rates of unemployment in such States and localities.

REGIONAL AND STRUCTURAL EMPLOYMENT POLICIES

SEC. _04. (a) To the extent deemed appropriate by the President in fulfillment of the purposes of section 201, the President shall initiate, and recommend legislation to the Congress if necessary, regional and structural employment policies and programs.

(b) In formulating the regional components of any such programs, the President shall encourage to the extent the President deems necessary, new private sector production and employment to locate within depressed localities and regions with substantial unemployment and to aid in stabilizing their economic base. To the extent feasible, such policies and programs shall foster the establishment and growth of smaller businesses in such localities and regions. Any regional employment proposal of the President shall also include an analysis of the extent to which Federal tax, expenditure (including procurement of goods and services), defense, transportation, energy, natural resources and employment policies have influenced the movement of people, jobs, and small and larger business and industries from chronic high unemployment regions and areas, and proposals designed to correct Federal policies that have an adverse economic impact upon such regions and areas.

YOUTH EMPLOYMENT POLICIES

SEC. _05. (a) The Congress finds and declares—

(1) That serious unemployment and economic disadvantage of a unique nature exist among youths even under generally favorable economic conditions;

(2) that this group constitutes a substantial portion of the Nation's unemployment, and that this significantly contributes to crime, alcoholism and drug abuse, and other social and economic problems; and

(3) that many youths have special employment needs and problems which, if not promptly addressed, will substantially contribute to more severe unemployment problems in the long run.

(b) To the extent deemed necessary in fulfillment of the purposes of this Act, the President shall improve and expand existing youth employment programs, recommending legislation where required. In formulating any such program, the President shall—

(1) include provisions designed to fully coordinate youth employment activities with other employment and training programs;

(2) develop a smoother transition from school to work;

(3) prepare disadvantaged and other youths with employability handicaps for regular self-sustaining employment; and

(4) develop realistic methods for combining training with work.

JOB TRAINING, COUNSELING AND RESERVOIRS OF EMPLOYMENT PROJECTS

SEC. _06. (a) Further to promote achievement of full employment under this Act and the Employment Act of 1946, the President, through the Secretary of Labor, shall develop policies and procedures and, as necessary, recommend programs for providing employment opportunities to individuals aged 16 and over in the civilian labor force who are able, willing, and seeking to work but who, despite serious efforts to obtain employment, remain unemployed.

(b) In meeting the responsibilities under subsection (a), the Secretary of Labor shall, as appropriate, fully utilize the authority provided under CETA and other relevant provisions of law to—

(1) assure the availability of counseling, training, and other support activities necessary to prepare persons willing and seeking work for employment (including use of section 110 of CETA when necessary);

(2) refer persons able, willing, and seeking to work to job opportunities in the private and public sectors through the existing public employment placement facilities and through the United States Employment Service of the Department of Labor, including job opportunities in any positions created under programs established pursuant to sections _02, _04, and _05 of this Act; and

(3) encourage flexi-time and part-time jobs for persons who are able, willing, and seeking employment but who are unable to work a standard workweek.

(c)(1) To the extent that individuals aged sixteen and over and able, willing, and seeking to work are not and in the judgment of the President cannot be provided with private job opportunities or job opportunities under other programs and actions in existence, in accord with the goals and timetables set forth in the Employment Act of 1946, the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of CETA and other existing employment and training projects or through such new programs as are determined necessary by the President or through both such projects and such programs.

(2) New programs as may be authorized by law after the date of enactment of this Act referred to in paragraph (c)(1)—

(A) shall not be put into operation earlier than two years after the enactment of this Act, nor without a finding by the President, transmitted to the Congress, that other means of employment are not yielding enough jobs to be consistent with attainment of the goals and timetables for the reduction of unemployment set forth in the Employment Act of 1946;

(B) shall be designed so that no workers from private employment are drawn into the reservoir projects thereunder;

(C) shall be useful and productive jobs;

(D) shall be mainly in the lower ranges of skills and pay, and toward this end the number of reservoir jobs under such new programs shall, to the extent practicable, be maximized in relationship to the appropriations provided for such jobs;

(E) shall be targeted on areas of high unemployment and on individuals who are structurally unemployed;

(F) shall be phased in by the President as necessary, in conjunction with the employment goals under sections 3(a)(2) and 4(b) of the Employment Act of 1946.

(d) The Secretary in carrying out the provisions of this section, shall establish regulations providing for—

(1) an initial determination of the job seeker's ability to be employed at certain types and duration of work, so that such individual may be appropriately referred to jobs, training, counseling, and other supportive services;

(2) Compliance with the nondiscrimination provisions of this Act in accordance with section 401;

(3) appropriate eligibility criteria to determine the order of priority of access of any person to any new programs under subsection (c) as may be authorized by law including but not necessarily limited to (A) household income, duration of unemployment (not less than five weeks), and the number of people economically dependent upon such person; and (B) denial of access to any person refusing to accept or hold a job except for good cause, as determined by the Secretary of Labor, including refusal to accept or hold a job subject to reference under subsection (b) paragraph (2), in order to seek a reservoir project job under subsection (c); and

(4) such administrative appeal procedures as may be appropriate to review the initial determination of the abilities of persons willing, able, and seeking to work under paragraph (1) of this subsection and the employment need and eligibility under paragraph (3) of this subsection.

CAPITAL FORMATION—PRIVATE AND PUBLIC

SEC. _07. (a) The Congress finds that—

(1) promotion of full employment and balanced growth is in itself a principal avenue to high and sustained rates of capital formation;

(2) high rates of capital formation are necessary to ensure adequate rates of capacity expansion and productivity growth;

(3) an important goal of national policy shall be to remove obstacles to the free flow

of resources into new investment, particularly those obstacles that hinder the creation and growth of smaller businesses because general national programs and policies to aid and stimulate private enterprise are not sufficient to deal with the special problems and needs of smaller businesses; and

(4) while private business firms are, and should continue to be, the major source of investment, the investment activities of the Federal, State, and local governments play an important role in affecting the level of output, employment, and productivity and in achieving other national purposes.

(b) The Economic Report, shall, as appropriate, review and assess existing Federal Government programs and policies which affect business investment decisions, including, but not necessarily limited to, the relevant aspects of the tax code, Federal expenditure policy, Federal regulatory policy, international trade policy, and Federal support for research, development, and diffusion of new technologies. In addition, the Economic Report shall assess the effect of the overall economic policy environment and the rate of inflation on business investment. The President shall recommend, as appropriate, new programs or modifications to improve existing programs concerned with private capital formation.

(c) The Economic Report referred to in subsection (b) shall review and assess Federal policies and programs which directly, or through grants-in-aid to State and local governments, or indirectly through other means, affect the adequacy, composition and effectiveness of public investments, as a means of achieving the goals of this Act and the Employment Act of 1946. The President shall recommend, as appropriate, new programs and policies or modifications to improve existing Federal programs affecting public investment.

PART C—POLICIES AND PROCEDURES FOR CONGRESSIONAL REVIEW

STATEMENT OF PURPOSE

SEC. _01. (a) The purposes of this title are to establish procedures for congressional review and action with respect to the Economic Report of the President (hereinafter in this title referred to as the "Economic Report"), the report of the Board of Governors of the Federal Reserve System, and the other policies and provisions of this Act and the Employment Act of 1946.

(b) To provide for comprehensive national policies to meet the objectives of this Act and the Employment Act of 1946, and to provide the Congress with guidance on these matters, the appropriate committees of the Congress shall review and, to the extent deemed desirable, recommend revision of the economic goals, priorities, policies, and programs proposed under such Act by the President and the Board of Governors of the Federal Reserve System, and the Congress shall consider the implications of the short-term goals and related policies so proposed and so revised.

(c) The Congress shall initiate or develop such legislation as it deems necessary to implement proposals and objectives pursuant to this Act and the Employment Act of 1946 after such modification in such proposals as it deems desirable. Nothing in this title shall be construed to prevent the Congress or any of its committees from considering or initiating at any time legislative action in furtherance of the goals and purposes of this Act.

COMMITTEE REVIEW

SEC. _02. (a) In conjunction with its review of the Economic Report, and the holding of hearings on the Economic Report under the Employment Act of 1946, the Joint Economic Committee shall review and analyze and the short-term and medium-term goals set forth in the Economic Report pursuant to sections 3(a)(2) and 4(b) of the Employment Act of 1946 (as amended by sections _03 and _04 of this Act).

(b) The Joint Economic Committee shall hold hearings on the Economic Report for the purpose of receiving testimony from Members of the Congress, and such appropriate representatives of Federal departments and agencies, the general public, and interested groups as the joint committee deems advisable. The joint committee shall also consider the comments and views on the Economic Report which are received from State and local officials.

(c) Within thirty days after receipt by the Congress of the Economic Report, each standing committee of the Senate and the House of Representatives, each other committee of the Senate and the House of Representatives which has legislative jurisdiction, and each joint committee of the Congress may submit to the Joint Economic Committee, for use by the Joint Economic Committee in conducting its review and analysis under subsection (a), a report containing the views and recommendations of the submitting committee with respect to aspects of the Economic Report which relates to its jurisdiction.

(d) On or before March 15 of each year, a majority of the members of the Joint Economic committee shall submit a report to the Committees on the Budget of the Senate and the House of Representatives. Such report shall include findings, recommendations, and any appropriate analyses with respect and in direct comparison to each of the short-term and medium-term goals set forth in the Economic Report.

REVIEW OF ECONOMIC REPORT AS PART OF CONGRESSIONAL BUDGET PROCESS

SEC. _03. (a) Section 301(c) of the Congressional Budget Act of 1974 is amended—

(1) by inserting after the first sentence the following new sentences: "Each of the recommendations as to short-term and medium-term goals set forth in the report submitted by the members of the Joint Economic Committee under subsection (c) may be considered by the Committee on the Budget of each House as part of its consideration of such concurrent resolution, and its report may reflect its views thereon and on how the estimates of revenues and levels of budget authority and outlays set forth in such concurrent resolution are designed to achieve any goals it is recommending."; and

(2) by inserting "also" after "shall" in the last sentence.

(b) Section 305(a) of such Act is amended—

(1) by inserting before the period at the end of the first sentence of paragraph (2) a comma and "plus such additional hours of debate as are consumed pursuant to paragraph (3)";

(2) by redesignating paragraphs (3) through (6) as paragraphs (6) through (9) respectively; and

(3) by inserting after paragraph (2) the following new paragraphs:

"(3) Following the presentation of opening statements on the first concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the House, there shall be a period of not more than four hours for general debate on the economic goals and policies recommended in the Economic Report of the President, the report of the Joint Economic Committee (as provided for in section –02(d) of the Full Employment and Balanced Growth Act of 1978, and the report of the Committee on the Budget of the House on such resolution (as provided for in section –01(d)). The time shall be equally divided between, and controlled by, the chairman and ranking minority member of the Committee on the Budget of the House.

(4) Only if a concurrent resolution on the budget reported by the Committee on the Budget of the House sets forth the economic goals (as described in sections 3(a)(2) and 4(b) of the Full Employment Act of 1946) which the estimates, amounts, and levels (as described in section _01(a)) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.".

(c) Section 305(b) of such Act is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (6) and (7), respectively; and

(2) by inserting after paragraph (2) the following new paragraphs:

"(3) Following the presentation of opening statements on the first concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, here shall be a period of not more than four hours for debate on the economic goals and policies recommended in the Economic Report of the President, the report of the Joint Economic Committee (as provided for in section, _2(d) of the Full Employment and Balanced Growth Act of 1978 and the report of the Committee on the Budget of the Senate on such resolution (as provided for in section _01(d)). The time shall be equally divided between, and controlled by, the chairman and ranking minority member of the Committee on the Budget of the Senate:

"(4) Only if a concurrent resolution on the budget reported by the Committee on the Budget of the Senate sets forth the economic goals (as described in sections 3(a)(2) and 4(b) of the Employment Act of 1946), which the estimates, amounts, and levels (as described in section _01(a)) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.".

MODIFICATION OF TIMETABLE FOR ACHIEVING UNEMPLOYMENT GOALS

SEC. _04. (a) Section 301 (a) of the Congressional Budget Act of 1974 is amended—

(1) by striking out "and" at the end of paragraph (5); and

(2) by renumbering paragraph (6) as (7) and inserting after paragraph (5) the following new paragraph:

"(6) if required by subsection (e), the calendar year in which, in the opinion of the Congress, the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946 should be achieved; and".

(b) Section 301 of such Act is amended by adding at the end thereof the following new subsection:

"(e) Achievement of Goals for Reducing Unemployment.—

"(1) If, pursuant to section 4(c) of the Employment Act of 1946, the President recommends in the Economic Report that the goals for reducing unemployment set forth in subsection (b) of section 4 of such Act be achieved in a year after the close of the five-year period prescribed by such subsection, the first concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress shall set forth the year in which, in the opinion of the Congress, such goals can be achieved.

"(2) After the Congress has expressed its opinion pursuant to paragraph (1) as to the year in which the goals for reducing unemployment set forth in section 4(b) of the Em-

ployment Act of 1946, as amended, can be achieved, if, pursuant to section 4(c) of such Act, the President recommends in the Economic Report that such goals be achieved in a year which is different from the year in which the Congress has expressed its opinion that such goals should be achieved, either in its action pursuant to paragraph (1) or its most recent action pursuant to this paragraph, the first concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress shall set forth the year in which, in the opinion of the Congress, such goals can be achieved.

"(3) It shall be in order to amend the provision of such resolution setting forth such year only if the amendment thereto also proposes to alter the estimates, amounts, and levels (as described in section -01(a)) set forth in such resolution in germane fashion in order to be consistent with the economic goals (as described in sections 3(a)(2) and 4(b) of the Employment Act of 1946) which such amendment proposes can be achieved by the year specified in such amendment.".

EXERCISE OF RULEMAKING POWERS

SEC. -05. (a) The provisions of this title and the amendments made by such provisions are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House), at any time, in the same manner and to the same extent as in the case of any other rule of such House.

NONDISCRIMINATION

SEC. -01. (a) No person in the United States shall on the ground of sex, age, race, color, religion, national origin or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded pursuant to the implementation of this Act, including membership in any structure created by this Act.

(b) Whenever the Secretary of Labor determines that a recipient of funds made available pursuant to this Act has failed to comply with subsection (a), or an applicable regulation, the Secretary shall notify the recipient of the noncompliance and shall request such recipient to secure compliance. If within a reasonable period of time, not to exceed sixty days, the recipient fails or refuses to secure compliance, the Secretary of Labor may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); or

(3) take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever the Attorney General has reason to believe that a recipient is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in the appropriate United States district court for any and all appropriate relief.

(d) To assist and evaluate the enforcement of this section, and the broader equal employment opportunity policies of this Act, the Secretary of Labor shall include, in the annual Employment and Training Report of the President provided under section 705 (a) of CETA, a detailed analysis of the extent to which the enforcement of this section achieves positive results in both the quantity and quality of jobs, and for employment opportunities generally.

LABOR STANDARDS

SEC. -02. (a) Any new program enacted and funded pursuant to the implementation of this Act shall, subject to any limitations on maximum annual compensation as may be provided in the law authorizing such programs, provide that persons employed are paid equal wages for equal work, and that such policies and programs create a net increase in employment through work that would not otherwise be done or are essential to fulfill national priority purposes.

(b) Any person employed in any reservoir project enacted and funded pursuant to the implementation of section 206(c)(1), or in any other job created pursuant to implementation of this Act, shall, subject to the limitations on maximum annual compensation as may be provided in the law authorizing such programs, be paid not less than the pay received by others performing the same type of work for the same employer, and in no case less than the minimum wage under the Fair Labor Standards Act of 1938. No person employed in any reservoir project enacted and funded pursuant to implementation of section 206(c)(1) shall perform work of the type to which the Davis-Bacon Act (40 U.S.C. 276a—276a-5) applies, except as otherwise may be specifically authorized by law.

(c) Any recommendation by the President for legislation to implement any program enacted pursuant to the provisions of this Act, requiring the use of funds under this Act, and submitted pursuant to the requirements of this Act, shall contain appropriate wage provisions based upon existing wage standard legislation.

REPORT

SEC. -03. Not later than one year after the date of enactment of this Act, the Committee on Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives each shall conduct a study and submit a report, including findings and recommendations, to the Committee on Rules and Administration of the Senate and the Committee on Rules of the House, respectively, on the subject of establishing a full employment goal in connection with the provisions of this Act.

Mr. KENNEDY. Mr. President, I am pleased to see the Full Employment and Balanced Growth Act—the Humphrey-Hawkins Act—come to the floor, as an amendment to the Revenue Act of 1978. I strongly support this amendment and urge my colleagues to adopt it.

This amendment provides a framework within which this country can provide jobs to those who need them, lower the deficit, and hold the line against inflation. The amendment puts some direction in our economic policy. It takes account of the fact that the Federal Government today is a major actor in the economic arena. And it has the responsibility to direct its policies to meeting the need for a strong economy, one which keeps our people at work. This must be the aim of the President, it must be the aim of the Federal Reserve Board, it must be the aim of the Congress.

Mr. President, the No. 1 issue in the land—the first priority on the agenda of economic justice—is providing jobs for American workers. We are a great nation and much of that greatness has been due to the sacrifices, the struggles, and the courage of our working men and women. If we are to turn this Nation back on its historic path, we must provide every American with the will to work, an opportunity to work.

For, full employment is the key to achieving so many of our goals. It is, of course, an end in itself, for it is the luck and genius of this country that people want to work and would prefer working to getting a dole. Full employment is the key to a better economy; for we then reap the bounty of productive hands and minds. And full employment saves us the billions of dollars that we otherwise disgorge on welfare and unemployment compensation and gain for us the billions which otherwise never materialize because of lowered tax revenues.

The amendment offered today sets a goal of a 4-percent unemployment rate within 5 years after enactment. It also sets a goal for controlling inflation. It requires the President to submit an annual economic report to show how Federal policies are being set to meet these goals, it requires a report on the plans of the Federal Reserve Board, and it requires congressional review aimed at meeting these goals.

I believe that we can meet the goal of full employment while reducing and controlling inflation. Both the unemployment and inflation problems can be conquered. We need not ravage the worker to keep down the inflation rate. We can have an unemployment rate which is lower than our current rate and we can have an inflation rate which is lower than our current inflation rate.

In the sixties, the economic policies of Presidents Kennedy and Johnson brought the unemployment rate down from 6.7 percent to 3.6 percent, while the Consumer Price Index averaged just 2.4 percent a year, dropping as low as 1.2 percent.

I believe that we can meet the goal of full employment without incurring huge deficits. There is a great fear of large deficits, and people are afraid to see Federal outlays to meet the unemployment problem. But in the long run it is unemployment itself which leads to the deficit—the combination of support dispersements, lower productivity and lower contributions to the Federal Treasury. A stable economy with low unemployment is the surest way to move us away from huge deficits.

So, I think that there is little question but that the mechanisms and goals in the Humphrey-Hawkins amendment should be enacted into law. For many years, we in Congress have tried to provide the tools to combat unemployment. In the last few years several of my colleagues and I have sponsored major pieces of legislation aimed at reducing the shamefully high unemployment rate. We have passed and expanded CETA job programs, youth employment programs and public works projects. We have proposed tax reform and tax reductions. But the unemployment rate remains too high. We need to undertake a full scale attack on this problem.

Mr. President, a strong, full employment economy is the greatest social program America has ever had. Only with a strong economy can we provide better

education for our children, decent housing for our families, dignity for our elderly and quality health care for all Americans.

The Senate must pass this amendment. It is time for this country to coordinate its policies in the service of a strong, full employment economy.

CLOTURE MOTION

Mr. NELSON. Mr. President, I send to the desk a cloture motion.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate hereby move to bring to a close debate on the pending amendment to H.R. 13511, a bill to amend the Internal Revenue Code of 1954 to reduce income taxes and for other purposes.

Muriel Humphrey, Paul S. Sarbanes, Gaylord Nelson, Thomas J. McIntyre, James Abourezk, Birch Bayh, Dale Bumpers, Richard (Dick) Stone, Paul G. Hatfield, Kaneaster Hodges, Jr., Edward M. Kennedy, Henry M. Jackson, Howard M. Metzenbaum, Daniel K. Inouye, George McGovern, Donald W. Riegle, Jr., John C. Culver.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator from Wisconsin.

Mr. President, I ask unanimous consent that the distinguished Senator from Utah (Mr. HATCH) may call up an amendment after Mr. PACKWOOD's amendment is disposed of.

Mr. KENNEDY. That is all right.

Mr. METZENBAUM. Reserving the right to object, what was the request?

Mr. ROBERT C. BYRD. I ask unanimous consent that the Senator from Utah (Mr. HATCH) may be recognized to call up his amendment after Mr. PACKWOOD's amendment.

Mr. METZENBAUM. Reserving the right to object, is that on a tax bill or is that extraneous matter?

Mr. ROBERT C. BYRD. It is either on the bill or the committee substitute.

Mr. HATCH. It is on the committee substitute.

Mr. METZENBAUM. Mr. President, a number of us have been waiting and asking the Chair for recognition for that very purpose. Is there some reason why the Senator from Utah, who is my good friend and for whom I have great respect, should be accorded priority consideration?

Mr. ROBERT C. BYRD. As far as I am concerned, the Senator from Ohio may go next. The Senator from Utah said he had an amendment he would like to call up and would like to call it up after the amendment of the Senator from Oregon is disposed of. I have been trying to line up amendments so the Senators will know how we are going.

Will the Senator from Utah go behind Mr. METZENBAUM?

Mr. HATCH. I am happy to do that. However, I have worked diligently to try to get this amendment ready for today. I have five or six amendments, but that is the only one I want to call up today.

Mr. METZENBAUM. I should just like to be recognized some time today to call up this amendment.

Mr. HATCH. If he wants to have precedence, he may go ahead.

Mr. HEINZ. Reserving the right to object.

Mr. ROBERT C. BYRD. Mr. President, I withdraw my request.

AMENDMENT NO. 4012

Mr. STEVENS. Mr. President, what is the time agreement now?

The PRESIDING OFFICER. The pending time agreement is 20 minutes of debate, evenly divided, on the pending amendment by the Senator from Oregon.

Mr. STEVENS. Have the yeas and nays been requested on that amendment? I think the Senator is going to modify the amendment first.

Mr. PACKWOOD. We do not need to modify it.

Mr. STEVENS. Will there be a vote on that?

Mr. ROBERT C. BYRD. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is the Senator requesting the yeas and nays?

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. May I ask the distinguished majority leader a question?

It is my understanding that Senator METZENBAUM will then call up an amendment after that, and then I will call up mine after his.

Mr. ROBERT C. BYRD. I withdrew the request.

Mr. HATCH. Then I ask unanimous consent—I will wait a vote. I will ask unanimous consent I be able to call up my amendment immediately following——

Mr. HEINZ. Reserving the right to object——

Mr. KENNEDY. I object.

The PRESIDING OFFICER. If the Senators will wait for a moment, the pending question is on the amendment by the Senator from Oregon on which there is a time limitation.

CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Committee amendment in the nature of a substitute for H.R. 13511, a bill to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

Robert C. Byrd, Robert T. Stafford, Alan Cranston, Wendell H. Ford, Gaylord Nelson, Harrison A. Williams, Jr., Russell B. Long, Birch Bayh, Paul G. Hatfield, Lloyd Bentsen, Muriel Humphrey, Adlai E. Stevenson, John A. Durkin, James B. Pearson, Richard (Dick) Stone, Claiborne Pell, Spark S. Matsunaga.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, the amendment that I offered on behalf of Mr. KENNEDY and myself is identical to the tuition tax credit amendment passed yesterday, accompanied by the Kennedy-Bumpers amendment. The only change that has been made is that the effective dates of the Kennedy-Bumpers amendment has been moved forward 1 month from July 1 to August 1 so that the revenue estimates in it are within the——

The PRESIDING OFFICER. If the Senator will suspend for a moment, there is not order in the Chamber.

The Chair reminds the galleries that they are required to maintain order, also.

Mr. PACKWOOD. So that the revenue will fit within the budget projections for next year, this amendment is being offered to the committee substitute rather than the bill.

The amendment offered yesterday was to the bill and Senator KENNEDY and I wanted to make sure we were not squeezed out in the process of shifting from the House bill to the committee amendment.

I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, I yield myself 1 minute.

The Senator has correctly stated what the situation is.

We want to insure that the committee substitute includes the amendment which was adopted yesterday, the Bumpers-Kennedy amendment, as well as the tuition tax credit. As the Senator described it, the only difference is to conform it with the budget resolution, which we have done. That is the only change.

For the reasons that were debated yesterday, and which have the support of the Members of the Senate, I think, they are equally applicable today, and I hope the Senate will accept it.

Mr. McGOVERN. If the Senator will yield, I am not clear on this. Are we combining the tuition tax credit with the Bumpers-Kennedy tax reduction measure?

Mr. KENNEDY. Yesterday, the Bumpers-Kennedy amendment was an amendment to the Packwood amendment on the tuition tax credit, which was technically an amendment to the House bill. Therefore, it was an amendment in the second degree.

That amendment was accepted, and became part of the tuition tax credit. We had the vote on the Bumpers-Kennedy amendment, and then the vote on the Packwood amendment, as amended, and both were approved.

The purpose of this amendment now is to add the combined package to the committee substitute.

The only change is a conforming amendment, to be sure it complies with the budget resolution. There has been some change in the available revenues, based upon other amendments which have been accepted. So we have extended the relevant date by 1 month.

Mr. McGOVERN. Mr. President, it was not my understanding yesterday that we voted on a package agreement. I thought we voted on the tuition tax credit principle as a separate vote and then voted

on the Kennedy-Bumpers tax reduction proposal as another.

What does one do if one favors one and opposes the other under the circumstances of it being offered here now?

If he voted on both those items, first on the Bumpers-Kennedy, and second the Packwood, as amended by Bumpers-Kennedy, it was the feeling of those of us, Senator BUMPERS and ourselves, that if we offered that just as an individual amendment in the first degree, it would be subject to a variety of alterations and changes of the schedule.

The only way we could insure the protections were going to be guaranteed to the middle-income group, was being put in the second degree. I considered that to be an unfortunate set of circumstances, but, nonetheless, the way we had to conform our particular amendments.

I have my own concerns about the tuition tax credit. But it was the only means we saw from a parliamentary point of view to insure we were going to get the objectives we wanted.

Now, at this time, we are offering this amendment on to the substitute.

Mr. PACKWOOD. Mr. President, I have nothing more to say on this. I would be willing, if the Senator from Louisiana is willing, to yield back the time, and I would make a motion to vacate the yeas and nays that passed 66-to-27 yesterday.

I do not want to bother the Senate with a vote, if nobody wants to insist on one. So I ask unanimous consent to vacate the yeas and nays.

Mr. HANSEN. Reserving the right to object, Mr. President, I do not intend to, but I am not certain the Senator from Louisiana heard that.

Mr. PACKWOOD. I asked him earlier. He said it was fine.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. I am prepared, if the Senator from Louisiana is prepared, to yield back the time.

The PRESIDING OFFICER. The Chair hears none, and the yeas and nays are vacated.

Mr. PACKWOOD. Vote.

The PRESIDING OFFICER. Does the Senator from Louisiana yield back his time?

Mr. LONG. First, let me just ask a question.

Does this include the rate cut for individuals, the rate cut for tuition credit and the rate cut for corporations?

Mr. PACKWOOD. Not corporations.

Mr. LONG. It does not include it.

I thank the Senator.

I yield back the remainder of my time.

Mr. PACKWOOD. Voice vote, Mr. President.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from Oregon.

So the amendment (No. 4012) was agreed to.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I call up an amendment at the desk that is cosponsored——

Mr. STEVENS. Without losing his right to the floor, will the Senator yield to see if we can work some things out here?

Mr. METZENBAUM. I would like to say to the Senator, I said 10 minutes on the side. Senators CHAFEE, HEINZ, and LEAHY may want to be heard. I think 15 minutes on a side will be fine.

Mr. STEVENS. The Senator from Ohio would agree to a time limit of 15 minutes on a side, does that meet with approval?

Mr. President, I ask unanimous consent that following the Senator from Ohio, the Senator from Pennsylvania (Mr. HEINZ) be recognized to present an amendment, that there be 1 hour time limit on that; that the Senator from Utah (Mr. HATCH) be recognized on Monday morning following the recognition of the two leaders to call up his amendment, and that the time limit be 1½ hours, equally divided, on his amendment.

Mr. JAVITS. Mr. President, reserving the right to object, this is really carving——

The PRESIDING OFFICER. The Senate is not in order.

The Senator from New York.

Mr. JAVITS. Mr. President, these priorities take no account of the fact that many of us have amendments and have been standing around here for hours, and it appears that it is going to be days, putting these things back to back.

We have had a unanimous-consent request for the Senator from Ohio and the Senator from Utah. For the moment, I would respectfully suggest that the Senator from Alaska withhold his request until some of the rest of us can put their amendments before him, before we get blacked out. That blocks Monday morning.

Mr. PROXMIRE. Mr. President, reserving the right to object, I join the Senator from New York.

Mr. STEVENS. Mr. President, I withdraw the request.

Mr. PROXMIRE. Before we agree to a unanimous-consent request limiting time, we should know what we are agreeing to, what the amendment is, some notion of whom it affects, and so forth. That is going to be the position taken by the Senator from Wisconsin from now on.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Mr. HATCH. Mr. President, will the Senator yield to me?

Mr. METZENBAUM. Without losing my right to the floor, I yield.

Mr. HATCH. Mr. President, I do not care when I bring up my amendment, except that I want it to be before cloture.

I have tried to cooperate all the way down the line. I have allowed the Senator from Ohio to get ahead of me. I had an understanding that I would be able to go first.

My amendment will take a lot of time, if I give it the due time I think it is worth, but I will cut the time down. I am willing to be cooperative with everybody, but apparently I have caused a little furor here.

If the Senator wants me to go ahead this evening, I will go immediately following Senator METZENBAUM. All I want to do is to get some order. It is late this evening. It normally would take an hour and a half on both sides, equally divided. I will cut that down to an hour.

Mr. JAVITS. An hour is all right.

Mr. HATCH. Mr. President, I ask unanimous consent that I follow immediately the Senator from Ohio and that I have a time limitation of 1 hour, divided equally.

The PRESIDING OFFICER. Is there objection to the request?

Mr. McGOVERN. Mr. President, I do not understand this procedure, as to why one Senator is given preference and recognition. A lot of us have been here all day. We are just as eager as the Senator from Utah to be recognized. I object.

The PRESIDING OFFICER. Objection is heard.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Mr. MUSKIE. Mr. President, will the Senator yield 30 seconds?

Mr. METZENBAUM. I yield, without losing my right to the floor.

Mr. MUSKIE. Mr. President, I have been so involved in my own——

The PRESIDING OFFICER. May we have order, so that the Senator from Maine can be heard?

Mr. MUSKIE. Mr. President, I want to make this point, because the point is important. It has to do with a procedure under the Budget Act which we never have had occasion to use before, and I want Senators to be aware of it.

Under the Budget Act, I am required to keep score on both the House bill and the Finance Committee substitute, as both bills remain open to amendment until either is adopted. I am required to file at the desk every morning the price of everything we have agreed to up to now. Up to now, we have only $16 million remaining room for additional revenue losses related to amendments.

It is my responsibility, under the Budget Act, to raise points of order as to any amendments which would exceed that amount. I have not had an opportunity to evaluate the revenue cost implications of all the amendments that may be offered or that conceivably may be offered.

I just give Senators this word, because I do not want them to be surprised when I invoke this procedure. I am required to do so; and if I fail to do so with respect to any amendment, I might well be charged with favoritism.

So I will have to do that, and I will try to do it as fairly and as closely as possible. If my staff approaches any Senator who is offering an amendment, to find out what the cost implications are, that will be the purpose; and if it reaches the numbers, I will have to raise a point of order.

Mr. LONG. Mr. President, will the Senator yield?

Mr. MUSKIE. On the time of the Senator from Ohio.

Mr. LONG. If the Senator from Ohio will permit.

If the Senator, by chance, should fail to do so, I will backstop him; because I also will object if it exceeds the budget.

Mr. MUSKIE. I thank the Senator.

UP AMENDMENT NO. 2020

Mr. METZENBAUM. Mr. President, is there a limitation on time? I do not believe one was agreed to on my presentation.

The PRESIDING OFFICER (Mr. MATSUNAGA). There is no time limitation at this time on the amendment of the Senator from Ohio.

Mr. METZENBAUM. I will be brief.

Mr. President, Senators CHAFEE, GLENN, HEINZ, LEAHY, PELL, STAFFORD, ANDERSON, and JAVITS have joined me today in offering an amendment that expands the investment tax credit to cover expenses incurred in rehabilitating existing structures. This amendment goes to the question of the older properties of this country.

The PRESIDING OFFICER. The Chair reminds the Senator from Ohio that we do not have a copy of his amendment at the desk.

Mr. METZENBAUM. The amendment was filed yesterday. Apparently, it has not been printed as yet. I send an additional copy to the desk; and if any other Member of the Senate cares for a copy, I have a few extra copies.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM), for himself and others, proposes an unprinted amendment numbered 2020.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the committee substitute bill, insert the following new section:

SEC. . Investment Credit Allowed For Certain Rehabilitated Buildings.

(a) IN GENERAL. Paragraph (1) of section 48(a) (defining section 38 property is amended by striking out the period at the end of subparagraph (C) and by inserting in lieu thereof "; or" and the following new subparagraph:

"(D) in the case of a qualified rehabilitated building, that portion of the basis which is attributable to qualified rehabilitation expenditures (within the meaning of subsection (g))."

(b) Qualified rehabilitated buildings defined. Section 48 is amended by inserting after subsection (f) the following new subsection:

"(g) Special Rules for Qualified Rehabilitated Buildings. For purposes of this subpart

"(1) Qualified Rehabilitated Building Defined.

"(A) IN GENERAL. The term 'qualified rehabilitated building' means any building (and its structural components)

"(i) which has been rehabilitated,

"(ii) which was placed in service before the beginning of the rehabilitation, and

"(iii) 75 percent or more of the existing external walls of which are retained in place as external walls in the rehabilitation process.

"(B) 20 years must have elapsed since construction or prior rehabilitation. A building shall not be a qualified rehabilitated building unless there is a period of at least 20 years between

"(i) the date the physical work on this rehabilitation of the building began, and

"(ii) the later of

"(I) the date such building was first placed in service, or

"(II) the date such building was placed in service in connection with a prior rehabilitation with respect to which a credit was allowed by reason of subsection (a)(1)(D).

"(C) Major portion treated as separate building in certain cases. Where there is a separate rehabilitation of a major portion of a building, such major portion shall be treated as a separate building.

"(D) Rehabilitation includes reconstruction. Rehabilitation includes reconstruction.

"(2) Qualified rehabilitation expenditure defined.

"(A) IN GENERAL. The term 'qualified rehabilitation expenditure' means any amount properly chargeable to capital account which is incurred after July 26, 1978.

"(i) for property (or additions or improvements to property) with a useful life of 5 years or more, and

"(ii) in connection with the rehabilitation of a qualified rehabilitated building.

"(B) Certain expenditures not included. The term 'qualified rehabilitation expenditure' does not include.

"(i) Property otherwise section 38 property. Any expenditure for property which constitutes section 38 property (determined without regard to subsection (a)(1)(D)).

"(ii) Cost of acquisition. The cost of acquiring any building or any interest therein.

"(iii) Enlargements. Any expenditure attributable to the enlargement of the existing building.

"(3) Property treated as new section 38 property. Property which is treated as section 38 property by reason of subsection (a)(1)(D) shall be treated as new section 38 property."

(c) Technical Amendment. Paragraph (8) of section 48(a) (relating to amortized property) is amended by striking out "or 188" and inserting in lieu thereof "188, or 191".

The PRESIDING OFFICER. The Senator from Ohio is recognized in support of his amendment.

Mr. METZENBAUM. Mr. President, this amendment has one purpose, and one purpose alone. It is to meet the problem of the older, decaying areas of our downtown communities as well as those that are in the outskirts. It pertains to small cities and large cities.

Very simply, the amendment provides that a 10-percent investment credit shall be available with respect to older properties; and, by definition, it provides that the properties must be at least 20 years old.

I point out to the Members of the Senate that the House has this provision in its bill, except that the House provision would provide for the investment credit to be applicable for properties that are 5 years old or more. That, to me, seems to be an unreasonable figure.

I do not believe the problems to which I want to address myself have to do with properties that are almost new. A property that is 6 years old, 7 years old, or 8 years old is an almost new property. But a property that is more than 20 years old, that you find in the downtown areas of Cleveland, in Youngstown, in New Jersey, in New York, in the States across the country, whether they are in the Northwest or the Southwest or the Southeast or the Midwest or the north Atlantic—we are talking about these old properties.

In the past, we have made it possible to provide the investment tax credit for machinery and equipment, and I have had some reservations about that matter; but that is not the subject to which we address ourselves today.

We talk about pouring billions of dollars—not millions of dollars, billions of dollars—into the old areas of our country, trying to save the cities of America. But the fact is that this amendment—which will have an impact upon the Federal Treasury, and the impact is not that significant—Mr. President, may I have order?

The PRESIDING OFFICER. The point of order is well taken. The Senate will be in order. Senators will cease conversation on the floor. Authorized staff will retire to the rear of the Chamber.

Mr. METZENBAUM. Mr. President, we think nothing of a program for billions of dollars to help urban America, to help rural America, to help the farmlands of this country. This is not that kind of amendment. This amendment does not provide for any subsidy. It merely says that a company that owns an old department store in a downtown area, or an old factory, or an old hotel, or an old theater, has an opportunity to rehabilitate that property.

The amendment requires that it is not applicable to a new building. At least 75 percent of the walls must remain standing. The amendment is not applicable to expansion. The amendment is applicable to taking the decay and the blight that we have grown up with in our cities and trying to provide some assistance to those companies and those individuals who are willing to go in and rehabilitate those old properties.

There will be a minor impact upon the Treasury, yes—$60 million—but it is a pittance as compared to what it costs the people of America in trying to bring back our downtown communities.

I hope the Senate will see fit to accept this amendment. I hope the chairman of the Finance Committee will see fit to accept it. I believe it has merit, and I think the fact that we have gone to 20 years instead of the 5 years the House has in its bill makes it that much more meritorious.

Mr. LONG. Mr. President, the item for which the Senator speaks would be in conference, in any event. The House bill has such a provision relating to buildings that have been in existence for more than 5 years.

And so the matter will be discussed in conference.

To agree to this amendment would be to insure that this item would take precedence over all the other things in the bill. For example, the Senate voted for the rate cut for all individuals, middle income people and all those with lower income. The Senate voted for a number of other things here, the tuition credit for example, that are generally available to all people.

If this amendment were agreed to, we already have told the Senate we are already breaking the bank. Even if we do

not have an energy bill, we still would be right up against the budget already, and this amendment would put us over it. This would mean that we are going to place a higher priority on this item than the other things, such as tax relief for middle income people, tax relief for the poor, and tax relief for people sending their children to school. They would not have the same opportunity to have their problems considered in conference as those who would otherwise benefit from this provision. The matter would be in conference anyway and should be left at that.

Mr. President, on the merits, there is a legitimate question of whether it serves any purpose to encourage someone to spend his money rehabilitating an old structure inside a city rather than build a new shopping center, for example, or a new office building on the outskirts of the city where there might be a lot more people.

To give a tax credit to one building and not to give a tax credit to another building tends to discriminate. In many cases, it is a better thing for a community to build a new shopping center or a new office building somewhere else rather than rehabilitate an old building in a part of town from which the population is going to move away no matter what they do with the old building.

Incidentally, Mr. President, we have heard all this conversation for days now about tax expenditures. This is a tax expenditure that only benefits certain people. It discriminates in favor of one kind of investment and against another kind of investment. It discriminates in favor of the old parts of the country against the new parts of the country.

Mr. President, the committee thought about all this and concluded that as of the many things we could do to help taxpayers, this claimed the lower priority than the other things we had in the bill.

I submit that it claims the lower priority than the things that have been voted on here in the Chamber. In other words, as between a tax credit for tuition or a tax cut for lower or middle income people and a tax credit to rehabilitate an old building—we are not talking about a historic structure, just talking about any nonresidential building 20 years old—it just does not claim that high priority.

Mr. President, I hope the amendment will not be agreed to.

Mr. THURMOND. Vote.

Mr. MUSKIE addressed the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Ohio.

Mr. MUSKIE addressed the Chair.

The PRESIDING OFFICER. Is someone seeking recognition?

Mr. MUSKIE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, we are in the process of having a discussion with the distinguished Senator from Ohio, and I do not want to prematurely state a conclusion with respect to its costs. I wonder if we might have a brief quorum call until we have discussed some options that the Senator from Ohio wishes to consider to modify his amendment to avoid any budgetary implications.

Mr. METZENBAUM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I wish to amend the amendment that is at the desk by changing the effective date to September 1, 1979.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

The amendment shall be so modified.

The amendment, as modified, is as follows:

At the appropriate place in the committee substitute bill, insert the following new section:

Sec. . Investment Credit Allowed For Certain Rehabilitated Buildings.

(a) IN GENERAL. Paragraph (1) of section 48(a) (defining section 38 property is amended by striking out the period at the end of subparagraph (C) and by inserting in lieu thereof "; or" and the following new subparagraph:

"(D) in the case of a qualified rehabilitated building, that portion of the basis which is attributable to qualified rehabilitation expenditures (within the meaning of subsection (g))."

(b) Qualified rehabilitated buildings defined. Section 48 is amended by inserting after subsection (f) the following new subsection:

"(g) Special Rules for Qualified Rehabilitated Buildings. For purposes of this subpart.

"(1) Qualified Rehabilitation Building Defined.

"(A) IN GENERAL. The term 'qualified rehabilitated building' means any building (and its structural components)

"(i) which has been rehabilitated,

"(ii) which was placed in service before the beginning of the rehabilitation, and

"(iii) 75 percent or more of the existing external walls of which are retained in place as external walls in the rehabilitation process.

"(B) 20 years must have elapsed since construction or prior rehabilitation. A building shall not be a qualified rehabilitated building unless there is a period of at least 20 years between

"(i) the date the physical work on this rehabilitation of the building began, and

"(ii) the later of

"(I) the date such building was first placed in service, or

"(II) the date such building was placed in service in connection with a prior rehabilitation with respect to which a credit was allowed by reason of subsection (a)(1)(D)

"(C) Major portion treated as separate building in certain cases. Where there is a separate rehabilitation of a major portion of a building, such major portion shall be treated as a separate building.

"(D) Rehabilitation includes reconstruction.

"(2) Qualified rehabilitation expenditure defined.

"(A) IN GENERAL. The term 'qualified rehabilitation expenditure' means any amount properly chargeable to capital account which is incurred after July 26, 1978 September 1, 1979.

"(i) for property (or additions or improvements to property) with a useful life of 5 years or more, and

"(ii) in connection with the rehabilitation of a qualified rehabilitated building.

"(B) Certain expenditures not included. The term 'qualified rehabilitation expenditure' does not include

"(i) Property otherwise section 38 property. Any expenditure for property which constitutes section 38 property (determined without regard to subsection (a)(1)(D)).

"(ii) Cost of acquisition. The cost of acquiring any building or any interest therein.

"(iii) Enlargements. Any expenditure attributable to the enlargement of the existing building.

"(3) Property treated as new section 38 property. Property which is treated as section 38 property by reason of subsection (a)(1)(D) shall be treated as new section 38 property."

(c) TECHNICAL AMENDMENT.—Paragraph (8) of section 48(a) (relating to amortized property) is amended by striking out "or 188" and inserting in lieu thereof "188, or 191".

(d) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after September 1, 1979.

Mr. STEVENS. Mr. President, what is the impact of that amendment then may I ask the Senator from Ohio?

The PRESIDING OFFICER. The Senator from Ohio will explain his modified amendment.

Mr. METZENBAUM. It does not then violate——

Mr. JAVITS. Will the Senator use his microphone? We cannot hear him.

Mr. METZENBAUM. The question is what is the impact of changing the effective date to September 1, 1979. It was done because I have been advised by the chairman of the Budget Committee otherwise there would be a violation of the constraints with respect to the budget authority in the Senate, and that is the reason the change is being made.

Mr. STEVENS. May I ask the Senator from Ohio what is the cost in 1980?

Mr. METZENBAUM. The cost in 1980 will be, as best I am informed, approximately $60 million. The cost on an annual basis is $60 million according to the advice that I have.

Mr. STEVENS. I thank the Senator.

EXTENDING THE INVESTMENT TAX CREDIT TO THE REHABILITATION OF EXISTING STRUCTURES

Mr. CHAFEE. Mr. President, I am honored to be the principal cosponsor of this amendment with my colleague from Ohio (Mr. METZENBAUM). It is nearly identical to provisions included in the President's tax proposal and in the House-passed bill which extend the 10 percent investment tax credit to cover rehabilitation expenses for existing commercial structures.

Far too often recently debates in the Senate have taken on a North against South, East against West, sunbelt against snowbelt kind of character where the legislation we have considered appears to have a regional bias. I am happy to say that this is not the case with our amendment. There are billions of dollars invested in existing older buildings throughout the country. And, likewise, every year we have a substantial amount of renovation and rehabili-

tation of these structures. In fact, Mr. President, 16.4 percent of a total $17.9 billion in the national construction activity during 1976 was attributable to renovation of existing buildings.

I have distributed a chart to my colleagues which shows State-by-State the total construction activity for 1976 and the percent of the total which went to rehab. The chart is derived from Department of Commerce information, and without objection, I shall submit it for the RECORD.

If my colleagues will look at the chart, they will see the importance of the renovation of older commercial buildings in their states. In Rhode Island, for instance, we have 18.2 percent renovation. It is 18.5 percent in California, 18.2 percent in Louisiana, 19.4 percent in North Carolina, 21 percent in Oregon, 15.9 percent in Mississippi, 15.1 percent in Nebraska. The point is, of course, that the effort to make productive use of older buildings is a national concern.

Yet, Mr. President, investment in most of our older towns and cities in this country has been on the decline for a generation. The amendment which we offer today will encourage the modernization and repair of structures in such cases through an investment tax credit, giving businesses the ability to remain in their present locations and increase their productivity. All types of business and commercial structures would be eligible, including factories, warehouses, office buildings, hotels and retail stores. As we all know, these are the kinds of businesses which provide our towns and cities with a stable tax base and growing employment opportunities.

The employment factor is central to this issue, Mr. President. Encouraging reinvestment in our existing capital stock is the strongest possible remedy to the economic and social decline besetting many localities throughout the Nation. Not only can businesses preserve and create new jobs through plant improvements, but the process of renovation and rehabilitation itself is considerably more labor-intensive than is new construction.

Mr. President, I am compelled to point out to my colleagues that not only is this amendment a provision of the House-passed tax bill, but it is an important aspect of the administration's urban policy program as well. President Carter's analysis of the Senate tax bill now before us states in part the following:

(The) House provision should be restored. "Government policy should promote the revitalization of urban areas. One means of encouraging urban development is to provide an investment credit for rehabilitating existing structures. Since the credit is not available with respect to new construction of structures, businesses would be encouraged to rebuild in inner-city areas."

Therefore, if the Senate will adopt our amendment, it will have the President's blessing, and it will make the job of our conferees with the House a slight bit easier. I am sure the Chairman can appreciate that.

The table follows:

Metzenbaum-Chaffee amendment to the Revenue Act—1978

State	Total construction activity—1976 ($ millions)	Portion attributable to rehabilitation—1976 (percentage of total)	State	Total construction activity—1976 ($ millions)	Portion attributable to rehabilitation—1976 (percentage of total)
Alabama	278.8	13.8	Nebraska	108.1	15.1
Alaska	128.7	13.8	Nevada	140.7	11.8
Arizona	585.3	4.7	New Hampshire	60.8	12.8
Arkansas	110.4	13.3	New Jersey	467.5	14.2
California	2,736.1	18.5	New Mexico	116.2	16.1
Colorado	300.8	14.1	New York	636.9	16.7
Connecticut	191.6	25.4	North Carolina	312.7	19.4
Delaware	29.5	12.9	North Dakota	54.1	13.1
Florida	879.5	19.0	Ohio	916.1	13.9
Georgia	346.0	13.3	Oklahoma	282.0	22.5
Hawaii	117.5	15.8	Oregon	210.9	21.0
Idaho	80.8	16.8	Pennsylvania	564.4	11.6
Illinois	874.5	22.8	Rhode Island	50.6	18.2
Indiana	346.1	17.4	South Carolina	128.4	11.5
Iowa	268.2	11.3	South Dakota	51.3	16.0
Kansas	192.1	14.8	Tennessee	347.5	11.7
Kentucky	186.8	8.6	Texas	1,482.1	17.9
Louisiana	294.0	18.2	Utah	154.0	5.9
Maine	46.1	22.6	Vermont	14.4	18.1
Maryland	365.5	15.7	Virginia	473.6	16.7
Massachusetts	354.4	36.1	Washington	431.0	13.2
Michigan	599.3	15.6	West Virginia	65.6	16.0
Minnesota	303.6	15.4	Wisconsin	394.7	11.2
Mississippi	105.7	15.9	Wyoming	38.2	15.7
Missouri	334.5	21.6			
Montana	74.9	25.6	U.S. Total	17,908.2	16.4

Source: Department of Commerce, Bureau of Census, Construction Division: Unpublished Data on Annual Building Permits (3014 places by State) 1967, 1976.

Mr. LEAHY. Mr. President, I welcome the opportunity to join with my colleague from Ohio in cosponsoring this amendment.

The tragic tale of the demise of our oldest and grandest urban centers is by now all too familiar. Just yesterday, the distinguished Senator from New York was most elequent in his description of the desperate economic circumstances faced by many who live in his State's largest city. The health of smaller downtown areas in the Nation's rural States, though less widely publicized, is failing in a similar way.

Today we have an opportunity to take a major new initiative in the drive to revitalize and preserve these distressed areas. The extension of the investment tax credit to the rehabilitation and revitalization of existing structures will provide a much needed incentive for businesses to modernize these structures, and to continue to operate in their present locations.

There is a tremendous capital investment in existing older buildings. Renovation of these would, in addition to stimulating jobs and tax revenues in distressed downtown areas, conserve both raw materials, and valuable energy supplies.

Mr. President, I would urge that my colleagues vote to adopt this amendment.

Mr. HEINZ. Mr. President, I rise in support of this amendment. The present 10 percent investment tax credit is generally limited to purchases of machinery and equipment. Our amendment would extend this credit to expenditures incurred in connection with the rehabilitation of industrial and commercial structures.

I am sponsoring this amendment for several reasons. First, it would allow us to protect and increase the tremendous capital investment already existing in older buildings throughout the country. Second, an investment tax credit for the renovation and modernization of existing structures would increase the productivity of the firms located in these buildings. Third, our amendment will stimulate employment in manufacturing and commercial firms and provide badly needed new jobs. Fourth, an investment tax credit for renovation will aid small

business and insure that this crucial sector of our economy remains strong. Finally, a tax credit for renovation, working in concert with the existing credit for machinery and equipment, will stimulate the business activity, capital investment and growth that our economy desperately needs.

Before elaborating on the benefits to be gained by extending a credit, let me address a concern that has been raised regarding this amendment. Some Senators have questioned whether this is a purely regional amendment designed to help only those cities, towns, and rural communities in the Northeast and Midwest. To be sure, these regions would benefit from the amendment. We do have factories, retail stores, and warehouses that are housed in older structures that are in need of renovation and modernization. However, a close reading of our amendment shows that we are proposing the tax credit for industrial and commercial structures that are 20 years old or more. Every city, town, or State in the country has buildings that were built before 1958. All regions can benefit from this amendment and all regions will if we extend tax credit to exsting structures.

Now, let me comment briefly on some of the benefits I see resulting from a tax credit for rehabilitation.

This country has an enormous capital investment in existing older buildings. Advances in architectural and engineering designs make it economically feasible and practical to renovate these structures and restore them to productive uses. Rehabilitation can save energy and help preserve our natural resources. In many cases restoration and rehabilitation makes far more sense than abandoning existing capital stock to build anew. Why should we waste the energy, the ingenuity, and the craftsmanship that has gone into these buildings. Many of these structures have tremendous historical value and are unique parts of our architectural heritage. They are not obsolete. They simply need to be modernized and improved. A tax credit for expenditures to renovate existing structures will give the owners of these buildings a fair opportunity to weigh the alternatives. Each case will be different, but our amendment will at least help balance the present tax policy which favors the new construction option.

Like many of my distinguished colleague, I am concerned over the decline in productivity growth in this country. Up until the late 1960's, 3 percent was considered normal growth for productivity. Since then, productivity increases have averaged only 1.5 percent. Two-thirds of the 67 industries measured by our Government have reported productivity declines. In contrast, productivity has been gaining in Europe and Japan. Since 1967, productivity in Japan has increased by 105 percent, in Italy by 54 percent, in France by 54 percent, in Canada by 39 percent, in Great Britain by 25 percent, and in the United States by only 24 percent.

To reverse these trends will necessitate a wide variety of actions which need not be discussed here. However, I believe our amendment represents one step to help alleviate the problem. To many firms, modernization and renovation may be crucial to increasing output and providing a healthier more productive work environment for their employees.

An investment tax credit for renovation will also help to reduce unemployment through both the rehabilitation process itself and through the new job opportunities available after modernization is completed. Rehabilitation is more labor intensive than capital intensive. Rehabilitation of a building or plant creates more jobs than building a new structure. The Department of Commerce reports that $1 million spent on rehabilitation creates an average of 109 jobs compared to new construction which would only create 69 jobs. I would also stress that by making commercial structures eligible for the credit, service job opportunities will be increased in department stores, restaurants, drug stores, and numerous other concerns. Many of these jobs will be available to those groups presently suffering high unemployment rates such as the young, the black, and the unskilled. I would emphasize these are private sector jobs not public employment. These individuals will have the opportunity to learn how business operates and to acquire marketable skills. By providing private sector jobs opportunities, we can also reduce our welfare costs and cut back on Government spending.

An investment tax credit for renovation of existing structures would also benefit small business across the Nation. Many small independent firms simply do not have the resources to relocate and build new structures. In addition, they have developed a local clientele which can easily be lost through a move. In many instances, they must either find ways to promote themselves within their existing market areas or go out of business. In order to compete successfully with new chain store operations, they must modernize their buildings and become more economically efficient. Many are located in older downtown commercial districts and neighborhoods and play an important role in insuring the viability of these areas. Often these businesses are more easily accessible to large numbers of people that may not have the necessary transportation to shop at outlying malls and shopping centers. In sum, small business plays a crucial role in our society and the investment tax credit for existing structures will help them to continue to prosper and grow.

Finally, I urge my colleagues to support this amendment, because it encourages badly needed capital investment and will stabilize the tax bases of towns and cities across the country. Statistics show that additions and alterations of old structures account for approximately 15 percent of the total nonresidential investments in this country. By providing an incentive for firms to renovate their buildings, we are thus stimulating growth and strengthening the economy. This business activity will, in turn, provide resources for our towns and cities to pay for necessary municipal services and help relieve the growing tax burden on homeowners.

I urge my colleagues to support this amendment. It is not a subsidy. It is not a give away. It is an investment in the future.

The PRESIDING OFFICER. Is there further debate on the amendment offered by the Senator from Ohio?

If not, the question is on agreeing to the amendment offered by the Senator from Ohio.

Mr. LONG. Yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Texas (Mr. BENTSEN), the Senator from Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CLARK), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Rhode Island (Mr. PELL), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Florida (Mr. STONE) are necessarily absent.

I further announce that, if present and voting, the Senator from West Virginia (Mr. RANDOLPH) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Kansas (Mr. PEARSON), the Senator from Illinois (Mr. PERCY), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Virginia (Mr. SCOTT), the Senator from Texas (Mr. TOWER), the Senator from Connecticut (Mr. WEICKER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The PRESIDING OFFICER. Are there any Senators who have not yet voted?

The result was announced—yeas 38, nays 31, as follows:

[Rollcall Vote No. 461 Leg.]

YEAS—38

Bayh	Heinz	Metzenbaum
Bumpers	Helms	Moynihan
Case	Hodges	Nelson
Chiles	Humphrey	Nunn
Cranston	Jackson	Proxmire
Durkin	Javits	Riegle
Ford	Kennedy	Sarbanes
Garn	Leahy	Sasser
Glenn	Lugar	Sparkman
Goldwater	Mathias	Stafford
Hart	Matsunaga	Stevenson
Hatfield, Mark O.	McIntyre	Williams
	Melcher	Zorinsky

NAYS—31

Allen	Eagleton	McGovern
Bartlett	Eastland	Morgan
Bellmon	Gravel	Muskie
Burdick	Hansen	Packwood
Byrd, Harry F., Jr.	Hatch	Roth
Byrd, Robert C.	Hatfield, Paul G.	Schmitt
Cannon	Hayakawa	Stennis
Curtis	Inouye	Stevens
Danforth	Long	Talmadge
Dole	Magnuson	Thurmond
		Wallop

NOT VOTING—31

Abourezk	Domenici	Percy
Anderson	Griffin	Randolph
Baker	Haskell	Ribicoff
Bentsen	Hathaway	Schweiker
Biden	Hollings	Scott
Brooke	Huddleston	Stone
Chafee	Johnston	Tower
Church	Laxalt	Weicker
Clark	McClure	Young
Culver	Pearson	
DeConcini	Pell	

So the amendment (No. 2020), as modified, was agreed to.

Mr. METZENBAUM. I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3689

(Purpose: To provide tax-exempt status for certain organizations established in 1968 to provide reserve funds for, and to insure share or deposits in, credit unions and building and loan associations)

Mr. MORGAN. Mr. President, I call up my amendment No. 3689.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. MORGAN), for himself, Mr. HELMS, Mr. MATHIAS, and Mr. SARBANES, proposes an amendment numbered 3689.

At an appropriate place in the committee substitute—

Mr. MORGAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. . TAX-EXEMPT STATUS OF CERTAIN RESERVE FUND AND SHARE DEPOSIT INSURANCE ORGANIZATIONS.

(a) IN GENERAL.—Paragraph (14) of section 501(c) (relating to lists of exempt organizations) is amended—

(1) by striking out "September 1, 1957," in subparagraph (B) and inserting in lieu thereof "January 1, 1969";

(2) by striking out "or" at the end of clause (ii) of subparagraph (B);

(3) by striking out the period at the end of clause (iii) of subparagraph (B) and inserting in lieu thereof a comma and "or"; and

(4) by adding at the end of subparagraph (B) the following:

"(iv) both credit unions described in subparagraph (A) and domestic building and loan associations described in clause (i).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall apply to taxable years ending after December 3, 1967, and the other amendments made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

Mr. MORGAN. Mr. President, this is the amendment we discussed briefly last night.

At the present time, savings and loan nonprofit guaranteed trust funds which insure State savings and loans—that is, basically the smaller ones—are exempt from income taxes if they were chartered prior to September 1957.

Two States, my own State of North Carolina and the State of Maryland, each have one fund that was established after the cutoff date. This amendment would grant to those two funds the same treatment that is afforded to those that were chartered prior to September 1957.

The savings in taxes will not inure to anyone's benefit except that of the trust fund, which is used to guarantee the savings in the State savings and loans. Based upon this year's taxes, the cost would be about $425,000. I believe that the committee chairman can speak for himself, but he has indicated his willingness to accept the amendment.

Mr. LONG. Mr. President, the Senator has provided us with a record, which I believe is available to all Senators, and which I believe correctly states the fact that this amendment has been agreed to by the Senate on a previous occasion. The Treasury does not favor the amendment. It was taken to conference on a previous occasion, and we discussed it. The House was unwilling to agree.

If the Senate should see fit to agree to the amendment, we would be willing to discuss it with the House again, and perhaps the House might be more constrained to agree to it this time. According to the statement I have before me, and I have no reason to doubt it, it is estimated that the revenue cost of the measure is less than half a million dollars a year.

I personally, Mr. President, expect to vote for the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. MATHIAS. Mr. President, if the Senator will yield, we seek merely to amend the Internal Revenue Code to extend tax exemptions to the Maryland and North Carolina corporations that insure savings accounts in member corporations. The analogous corporations in Massachusetts and Ohio already enjoy this exemption.

The Cooperative Central Bank and the mutual savings central fund in Massachusetts obtained tax-exempt status as a result of the fact that they were in existence when the Revenue Act of 1951 was enacted. The act was amended in 1960 to extend tax-exempt status to corporations organized before September 1, 1957, as a means of providing the Ohio deposit guarantee fund with the same status as that enjoyed by Massachusetts.

Our amendment would extend tax-exempt status to those corporations organized before January 1, 1969, thereby bringing the Maryland Savings-Share Insurance Corp. and the North Carolina Savings & Loan Guaranty Corp. within the ambit of the exemption.

The Federal Home Loan Bank Board has agreed that both the Maryland and North Carolina funds are similar to the Massachusetts and Ohio funds with respect to supervision and procedural requirements. Both insure savings accounts on deposit in member associations through a central insurance fund and guarantee the liquidity of all of their member associations through a central reserve fund. Their earnings must be accumulated, and no part of the earnings may be returned to any member savings and loan association. In addition, both corporations require each association to file stringent fiscal reports, follow liquidity and reserve fund requirements, report delinquent accounts, restrict its payment of dividends, follow strict business conduct rules, maintain fixed bonding coverage, and adhere to mortgage loan restrictions and other sound business practices.

As far as the Maryland corporation is concerned, member associations must constantly maintain a general reserve account of not less than 6 percent of the aggregate withdrawal value of deposits. No member association may in the ordinary course of business borrow an account exceeding 20 percent of its outstanding deposits. Member associations may not engage in consumer lending; they may only lend money for real estate purposes. Finally, no member association may make any loan secured by a mortgage or other evidence of indebtedness which exceeds 90 percent of the appraised value of the property involved.

In all these respects, the organization of the Maryland corporation is similar to those corporations in Massachusetts and Ohio already enjoying tax-exempt status. The fiscal soundness generated by the above requirements is virtually identical in all four States.

I can testify from personal experience that MSSIC has earned the confidence of Maryland's savings and loan associations and credit unions. Since its inception in 1963, MSSIC has insured over 150 associations—primarily small- and medium-size neighborhood organizations—without a single loss. The amount of deposits increased from $108 million in 1962 to $1.27 billion in 1976.

The tax exemption for MSSIC and other State guaranty funds is vitally necessary to enable such funds to accumulate reserves so that if a member defaults, the fund will have sufficient capital to cover the loss and still protect other insured accounts. MSSIC has demonstrated its ability to protect depositors under normal circumstances. At the same time, depositors in savings and loan associations are entitled to maximum protection on their accounts and to the highest possible rate of return on their investments. Both of these objectives are accomplished by the accumulation of capital in State guaranty funds, and tax exemption would promote such accumulation.

Mr. President, compeling reasons exist for extending tax-exempt status to MSSIC and the North Carolina Guaranty Corp. I strongly urge my distinguished colleagues to support passage of this much-needed amendment.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. MATHIAS. I yield to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I am concerned about this amendment of my good friend from North Carolina. As I understand it, the amendment goes to a

provision of the law that was established first in 1957—September 1, 1957—and this amendment would move the date forward 12 years, in order to permit two States to take advantage of a law that was established at that time.

I understand that Treasury is opposed to this because they say we should not be encouraging the establishment of separate deposit insurance systems, at least without adequate control to prevent failures. They say the failure of insurance coverage would have repercussions for the banking system as a whole. They further say that, "On the other hand, we understand these organizations have substantial assets and have had little or no claims. Exemptions could permit sheltering of income which would become taxable by the savings institution itself."

I have a letter from the General Counsel of the Home Loan Bank Board, dated June 14 of this year, opposing the legislation. It is a short letter. I will read it.

It has come to our attention that your subcommittee will soon be considering H.R. 6989, a bill to amend the Internal Revenue Code of 1954 to exempt from taxation certain associations providing reserve funds for and insuring deposits of savings and loan associations and credit unions. The Bank Board has commented on legislation of this type in the past. I have enclosed a copy of a letter expressing our view to Senator Long on such a proposal which I hope you will consider in your review of this bill.

It will take a little time to read that letter. It says:

The Federal Home Loan Bank Board would like to invite your attention to Amendment No. 2170 to the Tax Reform Act of 1976, adopted on the Senate floor on August 6, 1976.[1] This amendment would amend Section 501(c)(14)(3) of the Internal Revenue Code of 1954 ("IRC") to exempt from Federal income taxation any corporation or association without capital stock organized before January 1, 1969, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in, among other financial thrift institutions, savings and loan associations. The IRC currently requires such organizations to be organized before September 1, 1957, to be eligible for exemption from Federal income taxation. We understand that the Joint Conference of the Tax Reform Act of 1976, will consider this amendment in the near future.

The intended beneficiaries of Amendment No. 2170 are the Maryland Savings-Share Insurance Corporation ("MSSIC"), which was created by special act of the Maryland General Assembly in 1962 (Chapter 131 of the Acts of the General Assembly of Maryland of 1962 Article 23, sections 161 MN—161 AAA of the Annotated Code of the Public General Laws of Maryland (1957)), and the North Carolina Savings Guaranty Corporation ("NCSGC") which was similarly created by statute (Chapter 109 of the Acts of the General Assembly of North Carolina of 1962 Section 54–44.1–.13 of the General Statutes of North Carolina.

While the Board takes no position as to the desirability of this amendment, there are certain policy questions which we think it important for the Conferees to consider in their deliberations. In this connection, it may be helpful, as an initial matter, to bring certain background information to the attention of members of the conference.

Prior to 1951, all savings and loan associations were exempt from taxation of income derived from their operations. Also exempt were nonprofit corporations that insured such institutions Section 313(b) of the Revenue Act of 1951 (Public Law 82–183, 65 Stat. 490, October 20, 1951) discontinued the exemption for savings and loan associations, but the exemption for insurers was continued provided they were already in existence as of September 1, 1951. As of that date, insurers qualifying for tax exemption existed in Massachusetts, Connecticut and New Hampshire. While the Co-operative Central Bank continues to insure shares in co-operative banks established under the laws of the Commonwealth of Massachusetts, the organizations in Connecticut and New Hampshire are no longer in existence. Section 501(c)(14) of the Internal Revenue Code of 1954, continued the tax exemption for qualifying insurers. In 1956, an insurer was organized pursuant to Ohio legislation (Deposit Guaranty Associations, Title II, Ohio Revised Code, sections 1161.60–.99), and four years later the cutoff date in section 501(c)(14) was moved forward to September 1, 1957 (Public Law 85–428, 74 Stat. 54, April 22, 1960). See, Senate Report No. 1034, 1960 United States Code Congressional and Administrative News, pp. 1873–1875; see also, United States v. Maryland Savings—Share Insurance Corporation, 400 U.S. 4, 5 (1970). In a previous opinion and order, the Board has taken the position that the insurance coverage provided by "private insurance companies" differs from the coverage provided by State-sponsored insuring organizations, and has recognized the Co-operative Central Bank of Massachusetts, the Ohio Deposit Guaranty Fund and the MSSIC as being generally similar in character and purpose.[2] Available information indicates that, while differences exist, those three, as well as the NCSGC, were established by special act of their respective State legislatures, have duties and powers set forth by the laws of their States, and are answerable, to some degree, to public officials and supervisory authorities.

The Board believes that the enactment of Amendment No. 2170 and extension of tax exemption to MSSIC and NCSGC may encourage the formation of other State sponsored insurance organizations which would reasonably expect similar income tax treatment and seek further amendment to section 501(c)(14)(B) of the IRC. Therefore, one of the primary policy considerations which the Board urges the Conferees to focus upon is whether the Congress wishes to encourage the proliferation of such State-sponsored insurance funds.

Then they go on to say:

We believe that financial institutions in the nation's economy have a broad interdependence. Thus, the failure of any member institution and the inability of a State-sponsored insurance fund to promptly meet its insurance obligations might have adverse repercussions on the public's confidence in savings and loan associations generally, including those insured by the Federal Savings and Loan Insurance Corporation (of which the Board is the operating head).

Thus, prior to any favorable action on Amendment No. 2170, the Conferees may wish to refer the legislation to the Committees of their respective chambers which have jurisdiction over financial institutions to thoroughly examine the financial condition and insuring schemes of MSSIC and NCSGC in order to establish to Congressional satisfaction that the funds are strong enough to survive the failure of one or more of their member institutions.

May I ask the distinguished Senator from Louisiana, the manager of the bill, if this has been done by the Finance Committee? Could I ask the distinguished chairman whether the committee has had an opportunity to follow the recommendations of the Home Loan Bank Board, which said they want to refer the legislation to the committee, meaning the Finance Committee, which has jurisdiction to thoroughly examine the financial condition and insuring schemes of MSSIC in order to establish to congressional satisfaction that the funds are strong enough to survive the failure of one or more of their lesser institutions?

Mr. LONG. We have not held hearings on this.

Mr. PROXMIRE. The Senator has not? I thank the Senator.

Mr. SARBANES. Will the Senator from Wisconsin yield?

Mr. MATHIAS. Will the Senator yield?

Mr. PROXMIRE. I yield to the junior Senator from Maryland.

Mr. SARBANES. In response to the response that the Home Loan Bank Board makes with respect to the question of proliferation, that is a question which I believe could be addressed after the inclusion of these two State organizations. These have both been in existence for more than a decade. They obviously have a different rationale. If you intend not to carry the policy any further, it ought to come down after these two organizations are encompassed within the same tax arrangements that are available for Massachusetts and Ohio.

Mr. PROXMIRE. Once we have acted, as I understand it, both the Maryland institution and the North Carolina institution would be covered by the law.

Mr. SARBANES. That is right, and they ought to be.

Mr. PROXMIRE. Maybe they should be covered by the law and maybe they should not be, but to me it would be good sense to know what we are doing before, as the Home Loan Bank Board has recommended, we provide that coverage.

Mr. SARBANES. No, I think the Home Loan Bank Board's point runs more directly to the question of whether other States would then seek to establish such organizations on the basis of this policy, but ought not to run to the two States which for every good policy reason have had such organizations now for more than a decade. Maryland has had its——

Mr. PROXMIRE. I only answered the point that he raised, the point being that if we cover Maryland and North Carolina, that other States would have an incentive to say, "Look, you took care of Maryland and North Carolina. Should we not get equal consideration?"

Mr. SARBANES. Other States do not have such organizations. Then you face the policy question of whether they should establish them in order to take care of this arrangement. But these States already have them, and they set them up for very good reasons. They are

[1] See p. 26147 of the CONGRESSIONAL RECORD for August 1976.

[2] The date of the opinion precedes that of the organization of the North Carolina Savings Guaranty Corporation.

denied this tax treatment which Ohio and Massachusetts give to their organizations.

Mr. PROXMIRE. But Maryland and North Carolina did not have these institutions when this was first given, either. They set up the institutions after the fact.

Mr. SARBANES. Not for this purpose.

Mr. PROXMIRE. After the tax bill was changed.

Mr. SARBANES. Not for this purpose. At least in Maryland, we set them up for extremely important reasons that ran to scandals in the savings and loan industry in Maryland. If there was ever a purpose that runs to the point the Home Loan Bank Board made in that letter with respect to the importance of maintaining the soundness and integrity of these institutions, it is the Maryland situation. We established this situation in the light of sweeping scandals in the savings and loan industry in our State. This organization, the MSSIC, has been extremely important in enabling Maryland to recoup public confidence in the savings and loan institutions.

Mr. PROXMIRE. I understand what the Senator s argument is, but it still seems clear to me that if you adopt this legislation without having the appropriate committees do as the Home Loan Bank Board suggested, determine the facts——

Mr. MATHIAS. Will the Senator yield to me for a moment on that point?

Mr. PROXMIRE. Yes.

Mr. MATHIAS. Will the Senator advise the Senate as to what the date of the letter from the Home Loan Bank Board is?

Mr. PROXMIRE. It is a letter from Anne Jones, General Counsel of the Federal Home Loan Bank Board, the first letter I read, dated June 14, 1978. In other words, it was 3 to 4 months ago.

However, the second letter they sent was dated August 25, 1976.

Mr. MATHIAS. Was it addressed to the Senator?

Mr. PROXMIRE. Oh, no, the first letter was addressed to the Honorable JOE WAGGONNER, of the Committee on Ways and Means. The accompanying letter was addressed to the chairman of the Senate Committee on Finance (Mr. LONG).

Mr. MATHIAS. I find this a rather curious circumstance. For example, the distinguished Senator from North Carolina and my colleague from Maryland and I have been on record for several years as being interested in this matter. We have not hidden our light under a bushel. We have introduced amendments, we have made speeches, we have been very visible in seeking equity with the Massachusetts and the Ohio institutions. We have been open to any input which could come from any source within the Federal Government.

Yet, here, at nearly 6 o'clock on Saturday evening, we are advised of these objections from the Federal Home Loan Bank Board. I think for an objection, the hour is late. The record does not sustain the objections.

Mr. PROXMIRE. I have not finished reading the record. May I say to my friend from Maryland, the distinguished Senator from North Carolina has every right to bring up his amendment any time he wishes. In fact, this is about the only time he can bring it up. He is within his rights to do so.

Mr. MATHIAS. Of course he is.

Mr. PROXMIRE. As one who is curious about this amendment, I have a right to stand up here and ask questions about it.

Mr. MATHIAS. The Senator surely does. I should like to answer some of those questions.

Mr. PROXMIRE. If this had been brought up earlier in the day, I would have made the objections earlier. If it had been brought up last June, I would have made the objections then. This is the only time I can make the objection.

Mr. MATHIAS. The Senator from Wisconsin is absolutely right. My criticism is not aimed at him, it is aimed at the Home Loan Bank Board.

Here we have been on record as being interested in this matter. If they had addressed some of these inquiries to us months ago, we would have had all the answers on the record before tonight.

Mr. PROXMIRE. Let me just complete this. I am about three-quarters of the way through this letter, or more.

Mr. KENNEDY. Will the Senator yield?

Mr. PROXMIRE. I am happy to yield to my friend from Massachusetts.

Mr. KENNEDY. The amendment came up last evening. The Senator from North Carolina brought it up. I asked what the Treasury position was. Then the Senator from Ohio entered into a dialog with the Senator from North Carolina on this amendment. I asked that there not be a call for a vote at that time. The Senator from North Carolina withdrew the amendment, reserving his rights. But something was made of the fact that Ohio and Massachusetts were, in some way, covered and that perhaps the Senator from Ohio and the Senator from Massachusetts were doing this because it was going to give us an advantage if the States of North Carolina and Maryland were not permitted to make this adjustment. I was unfamiliar with the fact that my State and Ohio had been grandfathered, as the Senator pointed out, 20 years ago, when the law was changed. As I understand it, at that time, the States that had been doing this sort of business were exempted.

Am I correct, that it is 20 years ago that action was taken to change the law?

Mr. PROXMIRE. The Senator is correct.

Mr. KENNEDY. Subsequent to that, both Maryland and North Carolina have adopted their corporations, but it was after the tax benefit had been revoked. Even after the law was changed, North Carolina and Maryland actually set up similar corporations, which have been operating on that basis for some 10 years? Now this request for a tax exemption is being made, to go back and reopen the old law and make this tax exemption available again.

Is that the understanding of the Senator from Wisconsin?

Mr. PROXMIRE. I think the Senator is correct. That is my understanding.

Mr. MORGAN. Will the Senator yield?

Mr. PROXMIRE. If the Senator wants to engage in colloquy on that point, fine. I have not finished the letter yet.

Mr. MORGAN. It is my understanding that there was revocation in 1951 and it was extended in 1957 to include Ohio. That is my recollection of it.

Mr. KENNEDY. How many years ago was the change made?

Mr. PROXMIRE. It is my understanding that it was 1957, which, as the Senator said, was about 20 years ago.

Mr. KENNEDY. The change would apply to all corporations in all 50 States, except those that were grandfathered.

Mr. PROXMIRE. That is right.

Mr. KENNEDY. The purpose of this amendment is that it would apply to only a few entities which are in either North Carolina or Maryland. Is that correct?

Mr. PROXMIRE. That is right.

Let me complete this letter, then I have some questions I would like to ask the distinguished author of the amendment.

The letter from Chairman Marston goes on to say:

> As part of its consideration of Amendment No. 2170, the Congress might also desire to re-examine the standards for eligibility embodied in section 501(c)(14)(B) of the IRC. Consistent with the foregoing paragraphs, the Congress might wish to incorporate into the statute such requirements as it deems necessary to assure (1) sufficient State oversight of State-sponsored insurance funds, (2) the integrity of, and public confidence in, these insurance funds, and (3) the financial solvency of the institutions insured.

I ask my good friend from North Carolina if his legislation incorporates those recommendations?

Mr. MORGAN. I am sorry, would the Senator repeat the question?

Mr. PROXMIRE. The Home Loan Bank Board recommended that we might wish to require, in any legislation adopted or in any amendment adopted, to incorporate such requirements as are deemed necessary to insure, first, sufficient State oversight of State-sponsored insurance funds.

Mr. MORGAN. I say to the distinguished Senator that I know I speak for North Carolina and I think the Senators from Maryland can speak for Maryland, but as to the one in North Carolina, the State has oversight over it. The State of North Carolina has oversight over the savings and loans. It has a special division; it has an audit division. The guarantee fund has their own auditors. They work hand in hand with the commissioner of savings and loans.

Mr. PROXMIRE. I think all I am saying is that the statute itself ought to have incorporated in it that provision, although I am sure that the Senator from North Carolina understands the situation in his State well and is undoubtedly speaking the facts. Why can we not put it in the statute to make sure?

Mr. MORGAN. Let me say to the chairman that Congressman WAGGONNER held hearings on this. He heard Secretary Marston. The same suggestions were made. I do not think we ought to do it unless we take it and look at the whole picture. What we are trying to do is get equitable treatment for the two in North Carolina that the other two have.

Mr. PROXMIRE. As I understand, the

House has not acted favorably on it. Have they?

Mr. MORGAN. They have had hearings. I understand the markup is Tuesday, so that by the time this gets to conference they will have had committee action, pro or con. I do not know which way, but if it is con, this will be a futile action here.

Mr. PROXMIRE. Why not, in view of the fact they have had hearings and we have not acted, the orderly thing would be to let them proceed and the conferees decide to take it on their record and their hearings and consideration.

Mr. MORGAN. I say to the Senator that sometime I would like to bring this to a conclusion. The Home Loan Bank has known all this year that this amendment was pending. I am on the Senator's committee that has oversight over the Home Loan Bank Board, and not one time have they shown me the courtesy to communicate with me.

It is about time we in the Senate were to say to abandon it and give it up to the agencies.

If they had shown me the courtesy of communicating their interest in this to me, then I would have been glad to talk with them. But normally speaking, when the Home Loan Bank Board deals with those savings and loan insurance boards, this has nothing to do with the Home Loan Bank Board, it deals with savings and loans supervised by the various States. Nothing by the Federal Government.

I must say to the Senator, this strikes me something like the Comptroller of the Currency. I think he is making a concerted effort to distinguish between State and national banking systems.

But it appears the Board says that we want to have one national system of savings and loans.

The State of North Carolina, by legislative act, created this guarantee fund in order to provide insurance for the State savings and loans that did not want to get involved with the bank board, and it is supervised by the State of North Carolina. The fund is solvent. Never had a loss. All we ask for is the same treatment the other States have had.

Mr. PROXMIRE. As I understand it, the issue is whether they will be tax-free.

Mr. MORGAN. That is right, and the other two in existence, Ohio and Massachusetts. are tax-free.

This tax money that is going to be saved will not be handed out to some stockholders. It is going to be turned back over to the trust fund which is there for the purpose of protecting the savers in these States.

Mr. PROXMIRE. Let me complete this letter with respect to certain language to be included in the legislation, which apparently it does not include at the present time. The Senator from North Carolina says that is not necessary. He may be correct. But apparently it is not in the legislation that he is offering.

Second, that the legislation include the language, at least, in the statute, to secure integrity and business confidence in these insurance funds, and the natural solvency of the institutions insured.

They go on to say:

Included in the first mentioned category, the Congress might wish to establish minimum criteria for membership approval in such State-sponsored insurance funds to be administered by State savings and loan supervisors, appointment of public interest directors to the governing boards of State-sponsored insurance funds, and mandatory periodic audits by State authorities of these insurance funds.

As I understand it, most of that would be required.

Mr. MATHIAS. Will the Senator yield on that point?

Mr. PROXMIRE. I am happy to.

Mr. MATHIAS. I do not find anything fundamentally wrong with these suggestions. Perhaps they should apply in Massachusetts and Ohio, as well as in Maryland and North Carolina, and in any further States that may be covered under this particular section of the law.

But they are made in a vacuum, without any reference to the conditions which gave rise—for example, in Maryland—to the establishment of this particular system of security for the depositors in the savings and loan institutions.

Now, some have been here a while, and, the Senator from Wisconsin being one, he will remember reading of some problems in which depositors, the little depositors in the savings and loans, the housewives who took down $1 a week and deposited it, lost money and there was a scandal, and the State of Maryland wanted to eliminate this kind of loss to little depositors, the people who typically go to these savings and loans.

I assume it would have been possible to bring the whole problem here to Washington and say, "Let the Federal Government handle it." But here was a State initiative to secure the small depositors of the State.

So, 15 years ago, the State system was established. Now, 150 separate savings and loans have been insured and, to my knowledge, not one single penny has been lost since the system has been established.

Now, it is all very well for a national board, such as the Home Loan Bank Board, to make these recommendations. They are healthy; they are desirable. I wish they had been made in a more timely way, as far as I am concerned, because this is the first time I have heard from them, and I appreciate the Senator from Wisconsin calling their views to my attention.

But it is made without any reference to very real, human conditions which existed and which the State acted to remedy. I think it is good the States still have the vitality and the vigor to deal with personal problems of this sort. But I do not think we ought to postpone establishing equity between Maryland and Massachusetts, and Massachusetts and Ohio, for these matters which would require a legislative committee to work on them.

That can be done in January. Maybe it should be done in January. I would be glad to——

Mr. PROXMIRE. Then what is the rush on this legislation? Why can this not be acted on in January, the same time as the Board recommends? Is it not more orderly to see——

Mr. MATHIAS. Not at all.

Mr. PROXMIRE. On the basis of that suggestion?

Mr. MATHIAS. Not at all, because we are talking here about helping the reserve in the fund to be augmented in the same way the Massachusetts and Ohio funds have been able to augment their reserves.

Mr. PROXMIRE. Fine.

All we are saying is that this ought to be done on the basis of appropriate hearings in the Senate as well as the House, and what we are doing is acting on legislation which may not pass the House, which has had hearings, but not in the Senate.

We go to conference and it is possible the House might turn it down. Then we have a situation in which the Senate has in the bill an amendment which we have had no hearings on—have we?

Mr. LONG. We have not, but the House held hearings on the matter, and it has been discussed before. If we go to conference, the representatives of Treasury, who oppose the bill, will be there in the room and they will have their opportunity to debate the matter and explain why they think the bill should not be passed, just as those of us who vote for the bill can explain the reasons why the Senate did vote for it.

Mr. PROXMIRE. May I ask the Senator from Louisiana, why can we not go to conference without this new bill? It would be in conference anyway. We would have an opportunity, if the House acts favorably, we would have an opportunity to take it and consider it.

This would just button it up and take it out of conference and the Treasury would not have an opportunity to make their protestations unless if the House puts it in. That is the end of it.

Mr. LONG. It is not in the House bill.

Mr. PROXMIRE. Well, if it is not, since they held hearings, they have the record.

I think almost all of us would agree, including the Senator from Louisiana, it should not be in the law.

Mr. LONG. Well, as far as I am concerned——

Mr. PROXMIRE. And then we will have the opportunity at that time to consider it, give it consideration.

Mr. LONG. As far as this Senator is concerned, we can vote on it, or we can not. We can vote it up or down.

Now, we do in the committee, with measures that are brought to us, hold hearings before we make a recommendation. But the Senator is familiar with the fact that anybody can offer a floor amendment, and they do; and when they offer an amendment, they have a right to have a vote in the Senate one way or the other.

Mr. PROXMIRE. All I am trying to do is to get all the information before us before we act on it.

Let me complete this. I have 1 minute to finish this letter.

They go on to say:

In the second category, the Conference may wish to consider minimum capital contributions by member institutions to the insurance fund to guarantee adequate reserves, and statutory limitations on the

authorized investment of such contributions. Finally, in the third category, the Congress may wish to consider statutory provisions to establish minimum net worth and reserve requirements for member institutions and mandatory periodic examination of member institutions by State supervisory authorities.

Maybe all that is not justified; maybe very little of it is; but it is hard for me to believe that the Home Loan Bank Board is wrong in every one of these counts. We have legislation passed before us now that does not include that.

They say:

In closing, we wish to emphasize that the answers to the policy considerations outlined in this letter may be especially important at a time when adverse publicity on the safety and soundness of our nation's financial institutions has heightened public awareness of the importance of soundly managed and carefully supervised financial institutions. The Board also would recommend that the Congress closely examine the legislation and further solicit the views and comments of the State supervisors of savings and loan associations in Massachusetts, Ohio, Maryland, North Carolina and other interested States.

Maybe Representative WAGGONNER, who is a very fine Congressman, has done this; perhaps not. But it seems to me that that also is a reasonable suggestion of the Board, that we should have before us the opinions of the State supervisors and the savings and loan associations that would be affected.

Let me conclude by asking the Senator from North Carolina, and perhaps the Senators from Maryland would like to respond. Can the Senator from North Carolina or the Senators from Maryland tell us how much money is in the funds in North Carolina and Maryland?

Mr. MORGAN. North Carolina has about $13 million, to my recollection, and we never had a claim. Ours is relatively new, within the last decade.

Mr. PROXMIRE. About 10 years?

Mr. MORGAN. Yes.

Mr. PROXMIRE. I ask the Senator from Maryland if he has any information—either Senator—as to how much money is in the funds in Maryland and how many claims have been paid on the average, annually.

Mr. MATHIAS. I am advised that we never had a loss up to this time. I have sent for the file, in order to give the Senator the capital now held in reserve in the fund.

The annual tax is now around $400,000, paid by the Maryland fund, which is the shareholders' equity that we would like to hold and accumulate, as is done in Massachusetts.

Mr. PROXMIRE. I would appreciate getting the information in a few minutes.

I ask the Senator from North Carolina how much has been paid out.

Mr. MORGAN. We never have paid any out, because we never had a loss. We never had a loss in the State of North Carolina.

Mr. SARBANES. I say to the Senator that in the 14 years since the creation of the Maryland SSIC, no losses have been experienced.

It is very important to understand, as my colleague from Maryland said to the Senator from Wisconsin, that this fund was established by our State legislatures in the wake of widespread scandals in the industry, for which some people went to jail. This organization was essential in restoring public confidence in the savings and loan industry, and it has done an absolutely first-class job since that time.

With all due respect to the chairman of the Home Loan Bank Board, whose letter the Senator from Wisconsin has read—who was the former chairman, as I understand it. Is that correct?

Mr. PROXMIRE. That is correct. The present chairman is Mr. McKinney. This is Mr. Marston.

Mr. SARBANES. Mr. Marston, who is——

Mr. PROXMIRE. He was the acting chairman. He was never appointed chairman.

Mr. SARBANES. It is the stewardship of the board I would raise some question about, and I think the chairman has done as much in hearings before the Banking Committee, on more than one occasion.

If Marston had any reason to question the various substantive provisions governing these organizations, that is what he should have done, instead of the generalized letter the Senator from Wisconsin read to us. The fact is that at least in Maryland, and I think it is true in North Carolina, all the points he has talked about have been covered fully. There is no direct or specific criticism in that letter about deficiencies.

Mr. PROXMIRE. I could not agree more with the Senator from Maryland, because I believe that when you make laws, you have to make laws not based on the fact that you have a good institution.

You are talking about one, two, three, or four, as in this case; but you have to provide, I would think, the coverage for all institutions that may at some time come under it, rather than simply considering institutions we know about that have the integrity we would like to have. You should incorporate into the law the provisions which would protect us in the future.

Mr. SARBANES. Except that this provision is not a blanket opening. It deals with these two organizations; therefore, it is relative to the arrangements those States have established and how effectively they have worked.

Mr. PROXMIRE. Is one of the recommendations that there be public members on these boards in the Maryland savings and loan?

SEVERAL SENATORS. Vote! Vote!

Mr. PROXMIRE. Can either Senator from Maryland tell me whether there are public members of the board in Maryland?

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. PROXMIRE. I ask the Senator from North Carolina whether he can tell me whether the North Carolina and Maryland institutions are in sound financial condition.

Mr. MORGAN. Yes, Mr. Chairman, they surely are. I am advised by my staff member that the Maryland board has public members. They both are in excellent financial condition. Both are supervised by the respective States.

Mr. PROXMIRE. Let me ask the Senator, finally, why these institutions should be tax free.

Mr. MORGAN. Because, in the first place, it is to put them on an equitable basis with like institutions which are tax free under the Federal law.

Second, they were created by the State legislatures for the purpose of protecting the savings in State institutions.

Third, because the taxes that would be saved would be plowed back into the trust funds, to add additional protection for these people.

Mr. PROXMIRE. Mr. President, I yield the floor.

Mr. MORGAN. Mr. President, I believe we have discussed the matter adequately. I think the explanation is clear. The House has had hearings.

The PRESIDING OFFICER. Is all time yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MORGAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 3890

(Purpose: To disallow 50 percent of the deduction for business meals, with the change to be phased in over a three-year period)

Mr. KENNEDY. Mr. President, I call up my amendment numbered 3890.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes an amendment numbered 3890.

The amendment is as follows:

On page 314, after line 22, insert the following:

SEC. . DISALLOWANCE OF DEDUCTION FOR CERTAIN BUSINESS MEAL COSTS.

(a) GENERAL RULE.—Section 274(a)(2) (relating to entertainment, amusement, or recreation) is amended to read as follows:

"(2) SPECIAL RULES.—Paragraph (1) shall not apply to—

"(A) BUSINESS MEALS.—

"(i) One-half of the expenses for food and beverages furnished to any individual under circumstances which (taking into account the surroundings in which furnished, the taxpayer's trade, business, or income-producing activity and the relationship to such trade, business, or activity of the persons to whom the food and beverages are furnished) are of a type generally considered to be conducive to a business discussion.

"(ii) One-half of the portion of expenses for food and beverages that the taxpayer establishes to be directly related to, or, in the case of the furnishing of food and beverages directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), to be associated with, the active conduct of the taxpayer's trade, business, or activity described in section 212.

"(iii) If the taxpayer is an employer, the expenses for meals furnished to his employees for his convenience and on his business

premises, but only if the value of the meals is excludable from the gross income of the employees under section 119.

"(B) BUSINESS MEAL FACILITIES.—

"(i) One-half of the expenses with respect to a facility on the business premises of an employer which is used primarily in connection with furnishing food and beverages under circumstances described in subparagraph (A)(i) or (A)(ii).

"(ii) One-half of any dues or fees to any club or organization operated solely to provide meals under circumstances described in subparagraph (A)(i).

"(iii) The expenses with respect to a facility used primarily in connection with an activity referred to in subparagraph (A)(iii).

"(C) TRAVEL AWAY FROM HOME.—Traveling expenses while away from home in the pursuit of a trade or business or in pursuit of an activity described in section 212. For purposes of this subparagraph, traveling expenses include transportation and subsistence expenses (as defined in subsection (e)(4)(C)) of an individual in travel status.

For purposes of paragraph (1) and this paragraph, the furnishing of food or beverages shall be treated as an activity described in paragraph (1)(A).".

(b) CONFORMING AMENDMENTS.—

(1) Section 274(d) (relating to substantiation required) is amended by—

(A) striking out "an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity" and inserting in lieu thereof "business meals or business meal facilities",

(B) striking out "entertainment, amusement, recreation" and inserting in lieu thereof "meal", and

(C) striking out "entertained, using the facility, or receiving the gift." and inserting in lieu thereof "using the facility or receiving the meal or gift."

(2) Section 274(g) (relating to treatment of entertainment, etc., type facility) is amended by—

(A) striking out "portion of a facility" and inserting in lieu thereof "facility (or a portion thereof)", and

(B) striking out "such portion" and inserting in lieu thereof "such facility (or such portion)".

(c) EFFECTIVE DATE.—

(1) The amendments made by this section shall, except as provided in subparagraph (2), apply to taxable years beginning after December 31, 1978.

(2) For taxable years beginning in 1979, the phrase "one-sixth" shall be substituted for the phrase "one-half" wherever it appears in section 274(a)(2); for taxable years beginning in 1980, the phrase "one-third" shall be substituted for the phrase "one-half" wherever it appears in section 274(a)(2).

Mr. McGOVERN. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield, without losing my right to the floor.

Mr. McGOVERN. Mr. President, I ask unanimous consent that, without prejudice to the right of the Senator from Massachusetts to the floor, his amendment be laid aside momentarily and that an amendment I have at the desk, on behalf of myself, Senator DOLE, Senator HODGES, Senator ANDERSON, Senator ABOUREZK, and Senator HATCH, be considered at this time.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. KENNEDY. Mr. President, I yield to the Senator from South Dakota, without losing my right to the floor.

UP AMENDMENT NO. 2021

(Purpose: To exempt farm trucks and soil and water conservation trucks from the highway use tax)

Mr. McGOVERN. Mr. President, without the Senator from Massachusetts losing his right to the floor, I ask that my amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. McGOVERN) for himself and Mr. DOLE, Mr. HODGES, Mr. ANDERSON, Mr. ABOUREZK, and Mr. HATCH proposes an unprinted amendment numbered 2021.

Mr. McGOVERN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 383, between lines 8 and 9, insert the following new section:

SEC. 510. EXEMPTION OF FARM AND SOIL AND WATER CONSERVATION TRUCKS FROM CERTAIN TAX.

(a) EXEMPTION.—Section 4483 (relating to exemptions from tax on use of certain vehicles) is amended by adding at the end thereof the following new subsection:

"(d) FARM AND SOIL AND WATER CONSERVATION TRUCKS.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the tax imposed by section 4481 on the use of a highway motor vehicle shall not apply to a vehicle which is—

"(A) owned by an individual who is the owner, tenant, or operator of a farm; and

"(B) used primarily for farming purposes (within the meaning of section 6420(c)(3)(A)); or

"(C) used for transporting agricultural or horticultural commodities, livestock, bees, poultry, or fur-bearing animals or wildlife, or supplies and equipment used in connection with such farming purposes, between his farm and other places; or

"(D) used in soil and water conservation practices or in the transport of equipment used for soil and water conservation.

"(2) EXCEPTION.—This subsection does not apply to a vehicle registered in the name of a corporation the gross receipts of which for the last taxable year exceeded $950,000, or which derived more than 50 percent of its gross receipts for such taxable year from activities other than a farming or soil and water conservation.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to uses after the first day of the first month beginning more than 30 days after the date of enactment of this Act.

On page 129, in the table of contents after the item relating to section 509, add the following new item:

"SEC. 510. EXEMPTION OF FARM AND SOIL AND WATER CONSERVATION TRUCKS FROM CERTAIN TAX.".

Mr. McGOVERN. Mr. President, during the 94th Congress, Senator DOLE and I introduced bills designed to correct inequities in the manner in which the highway use tax currently applies to vehicles used for agricultural and closely related purposes. During consideration of the tax reform act last session, we combined our proposals and offered an amendment to correct these inequities. At the request of our colleague Senator LONG, we withdrew our proposal on the condition that the Finance Committee would carefully study our proposal during their consideration of the tax bill we have before us today. Unfortunately, due to the time constraints during committee markups of this legislation, our proposal was overlooked. Today we again ask the Senate to take action to correct this inequity.

Since its inception, the highway trust fund has proved an excellent and successful means of generating essential revenues to offset increased road construction and maintenance costs. The highway use tax, which is imposed on most heavy road vehicles, is the source of trust fund revenues. The overwhelming majority of those who pay the use tax are commercial truckers. As regular users of the road system, it is entirely appropriate to expect commercial truckers to contribute toward public expenses which are necessary to sustain their own industry.

Unfortunately, for the purposes of tax liability, the internal revenue code fails to distinguish between commercial trucking firms, which use the Federal highway system on a regular basis, and those farmers or ranchers who own heavy vehicles but seldom use them on Federal highways, and only for agricultural purposes.

Consequently, thousands of family farmers are subject to the same use tax burden that applies to large interstate trucking firms.

I am particularly familiar with one case in which the Internal Revenue Service found a farmer fully liable for the use tax on his truck despite the fact that he operated it 90 percent of the time on township roads or on his own farm. To make matters worse, this individual, as well as several others from whom I have heard, had no idea that he might be liable for the tax until he was billed by the IRS some months after he registered the truck. My earlier bill, S. 2897, in the 94th Congress, was intended to exempt farm vehicles from the use tax.

In addition to farm trucks, the IRS has also determined that vehicles used exclusively for soil and water conservation activities are liable for this tax. Even though a survey conducted in 1976 indicated that the average conservation vehicle travels only 3,000 miles per year—and 80 percent of that is traveled on State and county roads—soil and water conservation vehicles continue to be subject to an annual Federal tax of $175. Correction of these inequities is long overdue.

Mr. President, in recent years revenues generated by the highway trust fund have become increasingly important. While our Nation's interstate highway system is nearing completion, our interstates and Federal aid highways are rapidly deteriorating. Repair and maintenance costs for this vast transportation system are rapidly rising.

Ordinarily, I would not propose any further exemptions from the highway use tax. However, I contend, and many of my colleagues agree, that it was never the intent of the Congress to impose a tax on a limited category of vehicles seldom operated on our Federal aid highways, and

on the family farmer whose operations bear no resemblance to those of commercial truckers.

It makes no sense to treat farm trucks and conservation vehicles in the same way we treat commercial trucks for highway tax purposes. I cannot believe it was the intent of the Congress in the development of the highway trust fund and highway use taxes to equate the farmer transporting his own supplies or the small businessman engaged in soil and water conservation activities with long-distance truckers moving the Nation's freight.

Our amendment would correct this situation by adding heavy trucks used for farm and soil and water conservation purposes to the list of exemptions from the highway use tax. In order to insure that the exemption is limited to family farmers and small soil and water conservation concerns, the amendment specifically excludes vehicles registered in the name of any corporation with gross receipts for the last taxable year in excess of $950,000 or which derived more than 50 percent of its gross profits in that taxable year from activities other than farming or soil and water conservation activities.

If enacted, this measure will have a minimal effect on highway trust fund revenues. Revenue from farm trucks, for example, is so small that the IRS does not bother to segregate income from this source in compiling its own internal data. Regarding soil and water conservation vehicles, Senator DOLE has estimated that an exemption would cost the Treasury approximately $7 million per year. It can be argued that the cost of collecting the tax probably comes to a high percentage of the total revenue generated by this means.

I submit that this tax is little more than a nuisance. It penalizes farmers and small businessmen unfairly, produces minimal revenue, and absorbs IRS time and energy which could better be expended elsewhere. More importantly, it is discriminatory and I cannot believe that Congress intended to enact such an unfair and discriminatory tax.

I urge the adoption of my amendment to exempt farm trucks and conservation vehicles from the highway use tax.

Mr. President, this amendment is noncontroversial. It is an amendment that Senator DOLE and I have jointly offered with cosponsorship of other Senators mentioned.

It is designed to correct an inequity in the highway user tax which was intended to cover vehicles that used the Federal highways.

I think inadvertently that measure has been applied even to farm vehicles that are used on the farm that are charged the highway user tax without regard to the fact that those vehicles are for use on farms and township roads.

This amendment would simply exempt such farm vehicles from the highway user tax.

The impact on the Treasury is minimal. It is not even separated out by the Treasury for valuation. But I checked the matter with the distinguished chairman of the committee, Senator LONG, and the distinguished ranking minority member, Senator CURTIS, who said they have no objection to it.

I hope the amendment will be adopted.

I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I am very pleased to have the Senator from South Dakota (Mr. MCGOVERN) join in submitting this amendment to exempt farm trucks, and soil and water conservation trucks from the highway use tax.

This bill has been carefully drawn to limit the exemption to bona fide farm-owned, not for hire, farm use trucks. The exemption would not apply to vehicles owned or registered in the name of a corporation whose gross receipts for the last taxable year exceeded $950,000 or which derive more than 50 percent of their gross from activities other than farming.

Under current law, the highway use tax is levied on all single unit trucks of 13,000 pounds unloaded weight; on all three-, four-, or more-axled truck/tractors; on two-axled truck/tractors if the unloaded weight is 5,500 pounds or more; and on all combination-type trucks with two axles or more if the unloaded weight is 9,000 pounds or more. Each owner is required to file annually and pay the tax. The current tax ranges between $81 and $240 annually.

The highway use tax was originally legislated to cause owners of heavy commercial vehicles to pay their fair share of the highway construction costs. However, most farm-owned or farm-use trucks are not for hire and are only on the highways a few days of the year. The Senator from Kansas believes that because of this, these trucks should be exempt. I believe this amendment is not controversial and conforms with other provisions of the use tax which exempt derrick-drilling trucks, some logging trucks and other oversize vehicles.

Mr. President, I would point out that the revenue loss for this amendment is small and I hope that the Senate will see its way to agree to it.

Mr. KENNEDY. Mr. President, has the Treasury taken a position on this?

Mr. MCGOVERN. Yes. The Treasury is opposed to the amendment, I say to the Senator.

Mr. KENNEDY. Mr. President, then I think we want to get into at least some discussion. I think we talked about this. Is this not the issue we talked about last evening in terms of Trailways?

Mr. LONG. No; I do not think it is. It is not the same thing.

What the Senator is seeking to do is—he can explain it—it is to exempt these particular farm trucks from the highway user tax. In other words, that is a tax on the highway use. It is not the fuel tax. It is the tax on the trucks themselves.

Mr. KENNEDY. It is an excise tax.

Mr. LONG. It is a tax of $3 for each 1,000 pounds of gross weight or fraction thereof.

So there is a tax on the truck, and it is not the matter we discussed previously.

Mr. MCGOVERN. If I can say to the Senator from Massachusetts, it has nothing to do with the gasoline tax. But under the terms of the way the law has been applied, which is intended to cover commercial trucks, it is applied to those trucks that are used on the farm as well. It has little or no impact on the Federal highway system and is really designed to correct inequity.

Mr. LONG. Mr. President, the Treasury opposes the amendment and the reason they do is because generally speaking they do not want to eliminate these various excise taxes which the Government collects because they feel the Government needs the money. Of course, they have a point. On the other hand, the Senator has a good argument, and I think the Senate should hear it. Basically his argument is that these taxes are taxes on trucks that were put on there because the trucks do a lot of damage to the highways. We do not put it on passenger automobiles because they do very little damage to the highways. They put it on the trucks.

His argument is that farm trucks are for farm use and they do not use the interstate highways, and I will let the Senator explain it himself, but he has an argument that I think is certainly deserving consideration by the Senate.

Mr. MCGOVERN. Mr. President, I move the adoption of the amendment.

Mr. MUSKIE. Mr. President, I have been trying to get the figures.

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. KENNEDY. Mr. President, if we are prepared to dispose of this amendment, then I am glad to yield further. Otherwise, I would like to continue in my own right.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. MUSKIE. There is budget cost here. In terms of the overall budget I do not suppose it is very big, but the figures we get at this point, without really having an opportunity to examine them closely, indicate that this breaches the ceiling as it now stands with the legislation we have approved up to this point.

Mr. MCGOVERN. Could the Senator give me the figures?

Mr. MUSKIE. Yes; we will give the Senator the figures.

Mr. MCGOVERN. Where did the Senator get the figures? The reason I ask the Senator where he got the figures, I was unable to get figures from the Treasury Department. They said they did not separate it out.

Mr. MUSKIE. We are still searching, I say to the Senator. I say we will be glad to make sure of the figures. The amendment is about to be passed. The figure we have is an annual cost of about $15 million. There is $6 million left in the bill. So this is $9 million in excess of what is available under the substitute bill. That seems to be the most current figures we can get.

Mr. MCGOVERN. I again say I am puzzled. I am not questioning it. I just say it puzzles me why the Department of the Treasury is unable to give any estimate on this. We have tried repeatedly to get it and they say they do not separate it out.

Mr. MUSKIE. We do not get our figures from the Department of the Treasury. We get them from the Joint Committee on Taxation which is constantly

monitoring these amendments, and we ask them for information and they were doing it on their own in any case. They have had considerable experience on it, and we have to depend on them for our estimates.

Mr. McGOVERN. I say, while waiting for the figures, whatever they are, it simply underscores the inequity. There is no reason why the trucks that are not using the interstate highway system should be assessed a highway user tax.

Mr. MUSKIE. I would not quarrel with the Senator on the motivation or the justification for his amendment. But if we are up at the ceiling permitted by the budget resolution, we cannot adjust the ceiling for all the inequities that might be found.

Mr. KENNEDY. Mr. President, will the Senator then set it aside so we can move along while the figures are worked out?

The Senator can modify the amendment.

Mr. McGOVERN. Mr. President, I modify the amendment so that it becomes effective on June 1, and I think that will take care of the Senator's objection.

Mr. MUSKIE. The effect of that modification will be to use all the amount that remains so we will be at zero in the bank account at this point.

Mr. McGOVERN. I move the adoption of the amendment.

The PRESIDING OFFICER. Will the Senator send the modification to the desk first?

Mr. McGOVERN. The modification simply is changing the effective date to June 1.

The PRESIDING OFFICER. The modification has been furnished to the clerk.

The amendment, as modified, is as follows:

On page 383, between lines 8 and 9, insert the following new section:

SEC. 518. EXEMPTION OF FARM AND SOIL AND WATER CONSERVATION TRUCKS FROM CERTAIN TAX.

(a) EXEMPTION.—Section 4483 (relating to exemptions from tax on use of certain vehicles) is amended by adding at the end thereof the following new subsection:

"(d) Farm and Soil and Water Conservation Trucks.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the tax imposed by section 4481 on the use of a highway motor vehicle shall not apply to a vehicle which is—

"(A) owned by an individual who is the owner, tenant, or operator of a farm; and

"(B) used primarily for farming purposes (within the meaning of section 6420(c)(3)(A)); or

"(C) used for transporting agricultural or horticultural commodities, livestock, bees, poultry, or fur-bearing animals or wildlife, or supplies and equipment used in connection with such farming purposes, between his farm and other places; or

"(D) used in soil and water conservation practices or in the transport of equipment used for soil and water conservation.

"(2) EXCEPTION.—This subsection does not apply to a vehicle registered in the name of a corporation the gross receipts of which for the last taxable year exceeded $950,000, or which derived more than 50 percent of its gross receipts for such taxable year from activities other than a farming or soil and water conservation.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to uses after June 1, 1979.

On page 129, in the table of contents after the item relating to section 509, add the following new item:

"Sec. 510. Exemption of farm and soil and water conservation trucks from certain tax.".

The PRESIDING OFFICER. The question is on agreeing to the amendment as modified.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Alaska?

Mr. KENNEDY. Mr. President, I wish to get consideration of my amendment.

Mr. STEVENS. I thought we were voting on the amendment of the Senator from South Dakota.

Mr. KENNEDY. I thought we disposed of that.

Mr. STEVENS. I do not think we have disposed of that. I do not think we have.

The PRESIDING OFFICER. No; we have not. The Chair was about to put the question on the amendment.

Mr. KENNEDY. If the Chair is going to put the question, I am glad to yield. Otherwise——

Mr. STEVENS. Is there a time agreement, Mr. President?

Mr. KENNEDY. No. I yielded to the Senator because I thought he had an amendment that could be disposed of quickly.

The PRESIDING OFFICER. The Senator from Massachusetts has the floor and under unanimous consent he yielded to the Senator from South Dakota for the purposes of bringing up an amendment.

Mr. STEVENS. Yes. Time is available then.

I would like to be heard on this amendment or else suggest the absence of a quorum on the other.

Mr. McGOVERN. Mr. President, the Senator from Massachusetts has been kind enough to yield to me on what I thought was a noncontroversial amendment that was cleared on both sides of the aisle. But I do not want to tie him up any longer here.

Mr. STEVENS. Mr. President, will the Senator just give me 2 minutes to comment?

Mr. KENNEDY. I would be glad to give him 2 minutes.

Mr. STEVENS. This is the third time today in order to avoid the budgetary impact of an amendment that the amendment has been changed so that it goes into the next year.

Some of us, and I hope the Senator from Maine is listening, because some of us, have supported the Budget Committee on the whole concept of trying to bring about a balanced budget here soon.

If the way around the Budget Act is to present amendments that do not take effect for a year but become permanent law before we get around to considering the budget resolution again the next time, then I, for one, am going to reconsider my support of the Senator from Maine in his objective in trying to balance the budget. I do not think this is the way to run a railroad or the Senate or anything else, to have an amendment like this.

It is contrary to the budget resolution to adopt this amendment. But we take a modification amendment and put the whole burden into 1979 and how do we balance the budget in 1980, and 1981 or 1982 that way?

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. STEVENS. I only have 2 minutes. I apparently do not have any way to object. It is awfully late on Saturday night to get a rollcall vote on the Senator's amendment. I understand it is a very laudatory amendment anyway. But the procedure is bad, and here we go. This is the way to the destruction of the discipline the Senate has learned in the Budget Act. If we keep it up we are going to destroy the goal we have already voted on in the Senator from Virginia's motion, and that is that we should try to bring about a balanced budget by 1981 or 1982 at the latest.

Mr. MUSKIE. Mr. President, I am glad to hear——

The PRESIDING OFFICER (Mr. FORD). The Senator from Maine has 2 minutes. The Senator from Massachusetts has the floor.

Mr. MUSKIE. It is not exactly to the point, but it is related to the point the Senate decided just the other night on a point of order which I raised.

I mean, if you make it possible, too possible—it was possible before the other night to shift dates in order to make revenue measures conform to the current budget resolution. But now that we have opened up 1980 as well as a result of the point of order that the Senate decided against the budget process the other night, it is now possible to do more of this flexing.

I am keeping track of these, may I say to the Senator from Alaska, and I hope when we are through with this bill we can have a picture of how much hanky-panky this sort of treatment of amendments makes possible. I hope we will have a picture that will prompt the Senate to adopt remedial measures. But at the moment if Senators want to move their effective dates around the calendar, they are free to do so, and the budget process gives us no way, no effective way, to prevent it except exhortation, and I have not found exhortation to work very well.

Mr. LONG. Mr. President, I believe the Senator——

The PRESIDING OFFICER. The Senator from Louisiana has 1 minute.

Mr. LONG. I believe the Senator must realize that this was not the point we were debating the other night.

Mr. MUSKIE. I said it was not precisely.

Mr. LONG. This amendment starts a tax reduction this year and continues it forward. This is totally irrelevant to what happened the other night. The same thing would be true about the Metzenbaum amendment. Both of those could be offered even if you took the view of the Senator from Maine.

What we are talking about, and we will run into that later, I am sure, but what we are arguing about is the ability to make a rate cut that falls in a succeeding year, not that starts in this year and merely continues next year.

Obviously, this amendment would be in order in any event whether you took the position of the Senator from Maine or the Senator from Louisiana.

Mr. MUSKIE. I agree with that. But the whole point is that 1980, now opened to increases in tax measures, you can do the same sort of thing that this does, postpone the full fiscal impact of new revenue measures into a period that is not disciplined by the budget. In this case we are postponing the effective date in the budget year in order to minimize the impact. The whole point is the foot-in-the-door technique.

Mr. KENNEDY. Put the question, Mr. President.

Mr. McGOVERN. Mr. President, I thank the Senator from Massachusetts for yielding.

I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from South Dakota.

The amendment was agreed to.

Mr. McGOVERN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CANNON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3890

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I yield to the Senator from Nevada.

Mr. CANNON. Mr. President, I stand in firm opposition to any move to make further changes in the deductibility of entertainment business expenses. If adopted, this proposal would, in my opinion, severely impact the highly labor-intensive hotel, restaurant, and resort industries.

Over the years, there has been a great deal of discussion over this type of proposal. It has been recently estimated that as many as 500,000 people could lose their jobs in the hotel, restaurant, and related industries if this change in our tax laws were to take place. I might add the hardest hit would be the Nation's urban cities, where much of our business and commerce is centered. The first to be displaced may be those who can least afford it.

Restaurants are the source of livelihood for an extremely large segment of the population of the United States. It is my understanding that in 1976, there were 3.5 million people working in the industry, representing 4 percent of total employment in the United States.

Moreover, a significant proportion of food service workers are women and members of minority groups, particularly minority youth. Many of these employees would find it difficult to find work in other industries.

A proposal of this sort impacts our society in other ways. For instance, a large number of Government job training programs are currently geared toward the occupations which would be hardest hit by this tax proposal. An adverse impact would also be felt by a number of other support industries which are in large part dependent on sales to restaurants for their revenues.

Additionally, let me remind my colleagues that State sales tax revenues could also be greatly affected by this change.

The American people are voicing many complaints about the unfairness in the current tax law, but complaints about legitimate deductions for business meals does not seem to be one, compared to say, tax rates and tax simplicity.

I have no doubt but that there are abuses of the law. However, the solution to that problem is to detect those abuses and to enforce existing regulations. The "ordinary and necessary" test of what constitutes a legitimate business expense should, of course, be adequately enforced.

Let me conclude by saying that I firmly believe that the potential good from this proposal is definitely outweighed by the potential harm to society. This is clearly a situation where any additional tax revenue to the Federal Government would be soon offset.

I urge defeat of this amendment.

Mr. KENNEDY. Mr. President, I call up my amendment 3890.

The PRESIDING OFFICER. I will say to the Senator that his amendment is pending.

Mr. KENNEDY. Fine. May we have order, Mr. President?

Mr. STEVENS. Mr. President, will the Senator yield for a unanimous-consent request on a time agreement?

Mr. KENNEDY. There is no time agreement. This is our 3-martini luncheon or breakfast, and we have come to a martini and a half, and I would be glad to enter into a time agreement so that the Members would at least—I would be glad to enter into a time-limit agreement of 20 minutes on either side.

Mr. LONG. Mr. President, I would be willing to enter into a limitation provided if either side wants to reconsider the vote on the motion to reconsider that it occur Monday morning. The reason I say that is because there are a lot of absentees now.

Mr. CURTIS. Mr. President, will my chairman yield at that point?

Mr. LONG. In other words, if by the time we look at the result, if it appears that either side, regardless of which way the vote goes, if you would have the full attendance, they would have prevailed on the amendment, that this motion to reconsider be available to them when we come in Monday so that we can see then how the vote will be if the full Senate were voting on it.

Mr. KENNEDY. That would be agreeable.

Mr. LONG. With that understanding I would be willing to agree.

Mr. CURTIS. Mr. President, reserving the right to object——

The PRESIDING OFFICER. There is no motion pending.

Mr. CURTIS. If I may be heard.

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. KENNEDY. I would then like to explain my amendment. I will just go ahead and explain it and we can move on.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Now, Mr. President, this amendment disallows 50 percent of the business deduction for meals. The change is phased in over 3 years. At the end of 3 years, it will still be possible to deduct 50 percent of the meal as a business deduction.

The amount of revenues to be returned to the Federal Treasury is $600 million on a current full year basis. We have heard the concern of the floor manager, that we were emptying the Treasury with the actions being taken in the past day and a half. Here we have a chance to add $600 million back into the Treasury of the United States. Mr. President, this amendment would do so:

Now, Mr. President, if there ever was a symbol of the inequity and unfairness in our tax system it is the three-martini lunch, the tax deduction which is available to a very small group of the elite in our society. If there is any symbol in our society of a two-class system it is, on the one hand, the working people who pay for their breakfast, lunch, and dinner and, on the other hand, those who have the opportunity to write off their breakfast, lunch, and dinner on their expense accounts, which are subsidized by the taxpayer.

Thousands of Americans are maintaining a luxury status of living by deducting the costs of meals as business expenses. In 1978, these taxpayers will eat $4 billion of meals subsidized by the rest of their fellow citizens.

Meal costs are personal expenses. Everyone has to eat. It is unfair that millions of American workers must pay for their meals out of their own pockets, while the privileged few have 40, 50, and even 70 percent of the costs of their meals subsidized by the Treasury.

Present law is too subjective, the standards are too vague, and the problems of auditing are too great. Let me cite a few examples:

One taxpayer cited by the Treasury claimed deductible business lunches for 363 out of 365 days for the year. He did not have a business lunch on Thanksgiving. Lunches were always at top restaurants at an average cost of over $20 per meal. The tax subsidy for each meal for this taxpayer was more than most workers can afford to spend on their lunches.

A salesman cited by the Treasury, arranged his calls so that he ate breakfast, lunch, and dinner with a client 5 days a week; as a result, the vast majority of his food costs and those of his clients was subsidized by the U.S. Treasury.

A lawyer who has lunch with a partner at their private club can deduct the cost of the lunch; a construction worker who eats lunch with his fellow worker on the job site cannot deduct the cost of his lunch.

The owner of a business agency claimed that every meal he ate for 2 years—except for 1 day—was a business meal; the American taxpayers were stuck with a total of $63,000 in deductions as a result.

Present rules cause an enormous waste of time and money in terms of recordkeeping, audit and litigation.

The proper question that should be asked is whether Congress would vote a direct appropriation for a jobs program that consists of $1.2 billion in subsidies for the cost of meals for upper income individuals, in the hope that luxury restaurants will hire additional waiters and waitresses. The answer to this question is an obvious "No."

Mr. President, under this amendment, no deductions will be allowed for half the cost of any meals, whether business-related or not, except for business meals of a person who is on business travel status. The amendment will be phased in over a 3-year period.

As a result, all Americans will be treated more alike—the amendment will reduce the abuse by which one small class of citizens eat Treasury-subsidized meals, while the vast majority eat non-subsidized meals. A highly visible and irritating symbol of tax inequity will be removed from the Internal Revenue Code.

It is sometimes asked, are not business meals a cost of doing business, just like advertising? The answer is no. Unlike the vast majority of business costs, meals provide a large direct personal benefit to the individual. It is inappropriate for the Treasury to subsidize expenses heavily dominated by such personal consumption.

It is also suggested that the limitation on meals deduction will upset established business practices. But if it is economically sound for a business to pay for employee or client meals, it will continue to do so. But that economic decision will not be artificially influenced by the presence of a Government subsidy.

Nor can the desired results be obtained by better enforcement of our present laws. Present rules are so vague and IRS audits so rare—less than 3 percent of individual returns—that the law is an open invitation to taxpayers to claim a deduction for every meal that has even a slight "business" connotation.

Also, Mr. President, denial of the deductions for meals will not cause large-scale unemployment among restaurant workers.

The 3-year phase-in will avoid any significant dislocation. And, an impartial recent study by the Library of Congress refutes the claim that reducing the tax deduction will cause layoffs among restaurant workers. Using standard economic techniques, the study estimated that if the deduction is limited to 50 percent, expenditures for meals will decline by only about 1 percent. At the same time, the general economic stimulus from the tax cuts for individuals and corporations will produce an increase of a similar magnitude in restaurant meals. In other words, the tax cut will offset the impact of the tax reform, and the overall effect on jobs in the industry will be negligible.

In addition, employment figures for food services workers in recent years show an average rate of growth of 5 percent in jobs, with a low of 2.9 percent in the recession year of 1975 and a high of 7.7 percent in the recovery year of 1976. By contrast, total employment growth in the Nation averaged only 1.2 percent, with an actual drop of 1.3 percent in 1975 and a gain of only 3.2 percent in 1976.

The study concluded that "the restaurant industry has experienced a much faster growth rate than the aggregate economy in the past few years, reflecting in part increased tastes for dining out."

If the tax proposals had been in effect in 1976, jobs in the restaurant industry would have grown at the 7.7 percent rate, or 280,000 jobs. However, jobs in the economy as a whole would have grown at a rate of 4 percent, or somewhat higher than before, because of the general tax stimulus. At most, therefore, the effect of the tax reform in the area of business meals would have narrowed by about 1 percent the gap in growth rates between the fast-growing restaurant industry and the slower-growing economy as a whole.

Recently, the Employment and Training Administration of the Department of Labor reported that waiters and waitresses continue to be the workers most in demand across the country. The report announced that there were 18,700 full-time jobs available for waiters and waitresses in the month of September.

The deduction is reduced only to 50 percent, instead of being disallowed completely. The limitation is phased-in over a 3-year period, instead of being made effective at once. The reason for this procedure is that the Carter administration proposed the 50 percent limitation as a reasonable and workable method of limiting the serious abuses of the current deduction. And at its annual meeting in Bal Harbour, Fla., in February 1978, the AFL–CIO executive council voted 32 to 1 to support the Carter administration proposal, but with a proviso that the business meals reform should be phased in over a 3-year period to prevent job loss and hardship to workers.

Mr. President, earlier today we were talking about tax expenditures and we were talking about appropriations. The business meals deduction is the same as taking $600 million of Treasury money, taxpayers' money, and paying it out to a small group of people in our society so that they can enjoy meals in the most expensive restaurants in the Nation.

If the highly paid executives of this Nation were to come here to Congress and ask for $600 million in order to do that, they would be laughed out of Congress. But make no mistake about it, that is what we are doing with the business deduction.

It seems to me, Mr. President, that we ought to make at least this modest down payment on the elimination of this extraordinary symbol of expense account living.

One of the chairman's favorite stories is about three businessmen arguing about the check in a fancy restaurant.

The first said, "Let me pay for it; I am in the 70 percent tax bracket; it will only cost me 30 cents on the dollar."

The second said, "Let me pay for it; I am on an expense account. It does not cost me anything."

And the third said, "Let me pay for it; I am on a cost-plus Government contract and I can make money on it."

We laugh about that, Mr. President, but make no mistake about it, the average taxpayer understands it very clearly. This amendment is a down payment in trying to deal with one of the most extraordinary abuses in the tax system: expense account living.

Mr. CURTIS. Mr. President, we have been here since 8:30 this morning. I understand that at least 38 Members have already gone. This is a controversial piece of legislation. It involves not only meals but club dues. There are Members, hard-working Members, who have been involved in this issue, who are not here now.

I do not rise to defend any abuse of business meal deductions. I do suggest that the Treasury and the IRS have all the law they need. They have no business allowing any deduction that is not a necessary and ordinary expense of doing business. I do not think we could write a better definition, and if there are abuses going on, if someone is charging off expensive lunches day after day not connected with business, they have got the law now. The deduction must be necessary and ordinary to doing business.

Oh, it makes a good speech for the President of the United States to talk about three-martini lunches and all that sort of thing. This amendment deals with club dues. Dues are one way of paying part of the cost of the meal.

It can well be argued that they do not need any further laws. If there are abuses, Congress has given the IRS the weapon they need. In fact, they have no right to allow a deduction that is not a necessary and ordinary expense of doing business.

Mr. President, it is not my purpose to speak on the merits of this amendment. It is my understanding that what we have here is a controversial amendment, but was not designed in exact terms. I feel that in fairness to those people who are involved in this controversy, who are not here now, we should not allow this matter to come to a vote tonight.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. LONG. Mr. President——

The PRESIDING OFFICER. The Senator from Kansas has been recognized.

Mr. DOLE. Mr. President, I am amused to hear the distinguished Senator from Massachusetts talk about the average American taxpayer. I am not sure I understand what he means.

But I would point out to my friend from Massachusetts that we did address some of the problems in subtitle H of the committee bill. That section disallows certain deductions in areas where there might be tax abuses. The committee tried to address the problem of tax abuse in other ways too.

We are all concerned about the "three-martini lunch." Maybe more people are drinking three-martini lunches now than a couple of years ago. I do not know. There are arguments on both sides of this issue.

We had testimony on business deduc-

tions in the Finance Committee. I have here the testimony of Robert E. Juliano, of the Hotel and Restaurant Employees and Bartenders International Union. The committee also had before it analysis which in part refutes the Congressional Research Service paper on the proposed curtailment of deductions for business expenses. This was prepared for the Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO.

I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE PROPOSED CURTAILMENT OF THE DEDUCTION FOR BUSINESS EXPENSES: GENERAL ISSUES AND THE EMPLOYMENT IMPACT IN THE RESTAURANT INDUSTRY

AN OVERVIEW AND ANALYSIS

BACKGROUND AND PURPOSE

On February 27, 1978 Senator Edward M. Kennedy (D–Mass.) released a study that had been prepared by the Congressional Research Service of the Library of Congress. It was titled, The Proposed Curtailment of the Deduction for Business Expenses: General Issues and the Employment Impact in the Restaurant Industry. The paper is an analysis of proposed changes in the current tax treatment of deduction for certain business-related expenses.

One objective of the CRS study was a general examination of a wide range of items for which businesses can deduct all or a part of the expenses from their tax liabilities. The second was an analysis of the impact on employment in the restaurant industry resulting from the proposal to reduce the allowance for business meals to 50% from 100%.

The purpose of this paper is to explore the premise, analysis, and conclusions of the CRS study.

The remainder of this paper is divided into two major sections, in keeping with the construction of the CRS study. Part I reviews the first half of the CRS work, General Issues. Part II deals with the Employment Impact section of the CRS work.

I. Review of the General Issues section of the CRS paper:

The General Issues section of the CRS paper is a cursory review of the broad issues contained in the tax proposals. Those proposals would alter the way in which many business-related entertainment expenses are deducted.

The General Issues section is divided into the following three parts:

Present Treatment of Entertainment Expenses

Problems with Current Treatment

Previous Attempts to Deal with the Problem

Each of these parts is treated individually below. We have provided an overview of its presentation, followed by a summary analysis of that treatment.

A. Present treatment of entertainment expenses

This part of the CRS paper outlines existing methods of taxation of business-related entertainment, including items such as yachts, club dues, theatre and sports tickets.

The proliferation of such expenditures is attributed to a long-standing liberal allowance of deductions. The study explains that as being the result of subjective, rather than objective determination of whether the amounts are "ordinary and necessary" as required by the law; or are "lavish and extravagant" which are prohibited by the law.

Summary Analysis—

This section serves merely to present basic conditions under which certain business deductions are treated under current conditions. It is non-evaluative and does not attempt to reach any conclusion as to whether current allowances are economically costly.

B. Problems with current treatment

This part of the CRS study examines two actual or potential abuses of the current system. One deals with the benefits an individual can enjoy and the other cites a number of actual cases of abuse.

An individual employee, according to the study, personally enjoys the benefits of entertaining a client while accruing no tax liability. For example, an employee of an organization entertains a client at dinner and a play, and simultaneously derives personal benefits from those activities. This is considered, by the author, as a form of compensation on which the employee pays no tax.

The CRS study then portrays a number of specific historic instances of proven abuse of the system. These are examples of individuals who have used entertainment-related expense accounts for solely personal purposes over extended periods of time.

Summary Analysis:

There appears to be little practical value to this part of the paper. To say that employees pay no tax on the value they accrue from entertaining clients provides the obverse example of those employees who find such entertaining a negative aspect of their jobs.

Then, to cite examples of abuses is analogous to providing examples of welfare abuses as symptomatic of the failure of the entire system. There is no reason to imply that the system should be changed to correct abuse.

C. Previous attempts to deal with the problem

The legislative history of earlier attempts to change the tax system is explained in this part of the CRS paper. The last significant effort occurred in 1961 and failed.

Summary Analysis—

A review of the legislative history from 1961 to the present would have been more useful if the causes for failure were provided. It would have added some value to an otherwise meaningless section.

MAJOR CONCLUSIONS

Two basic conclusions can be drawn regarding the first part of the CRS study. One is that it establishes very little that is relevant or of value to the present debate. It dwells on the petty and meaningless. It arrives at no conclusions and provides nothing of the past that will assist in the present.

The second, and most important, conclusion is viewing the first part in perspective; it is not relevant to the second, or succeeding section. The following characteristics indicate the differences:

1. The subject matter of the two parts is totally disparate.

2. There is no apparent or subtle connection between part 1 and part 2 of that paper.

There are, in effect, two CRS papers.

II. Review of the employment impact section of the CRS paper:

The Employment Impact section of the CRS paper is the most relevant to the present situation because of its special focus on an issue of importance.

This part of the paper employs a highly theoretical supply-demand model. It assumes that changes in demand for labor are predictable from changes in the demand for restaurant meals as they are affected by alterations in the tax law, absent any other influencing factors.

This part of the CRS study is divided into four separate sections, according to subject matter. Parts one and two, because of their nature, are more closely connected, as are parts three and four. The first two parts are designed to analyze the impact on prices and income resulting from the changes in the tax law. The last two parts are designed to anticipate the impact of those changes on the restaurant industry and its work force.

A. Measurement of the relative price effect

This section of the CRS paper attempts to quantify the potential impact of tax law changes. First it assumes that a lower deduction for business-related meals will raise the price of those meals. In 1976 just over $55.2 billion was spent for meals consumed on the premise and that 5.8 percent of that total was expended for business related purposes.

It is possible, according to the CRS, to predict the level of change in that amount by one of two different processes, as follows:

Price Elasticity, or

Postulation of a Curved Demand Function

The price elasticity model in the CRS paper results in a decline of 28 percent in demand for entertainment, or a 1.6 percent decline in total quantity demanded.

Since that amount might be excessive, the study proceeds to the Curved Demand Function. That model produces a reduction of 1.3 percent in total quantity demanded.

Finally, in apparent frustration, the paper concludes that a 1 percent change might be the most suitable answer.

B. Aggregate income effect

This part of the CRS paper is designed to reflect changes in aggregate income produced by the total tax package, including that which will reduce personal taxes.

In citing an earlier study the conclusion is reached that aggregate income will rise, generating in turn an increase in personal consumption expenditures of 1 percent.

The CRS paper draws one conclusion from the two analyses: that is, if demand declines by 1 percent because of rising restaurant prices, and an increase in ability to purchase restaurant meals rises by 1 percent, the effect will be a "wash-out".

C. Normal growth rate in the restaurant industry

In recent years employment in the food sector of the economy has been rising more rapidly than that of total employment.

That growth rate, the study states, reflects "in part increasing tastes for dining out".

D. Combined effects on employment

The final section of the CRS paper is an attempt to reconcile earlier projects and the impact on the total labor force of the food-service industry.

It concludes, because of the wash effect noted above, that total restaurant industry employment, will continue rising, although perhaps at a less rapid rate than anticipated.

MAJOR CONCLUSIONS

1. The Employment-Impact section of the CRS study is based on the most theoretical approach possible. It has little practical value because, for example, it omits many related influencing factors.

2. The study admits to so many qualifications that one automatically questions the results.

3. The study treats the restaurant industry (while neglecting the hotel industry) as a homogenous unit. A serious analysis would reflect variations in types of establishments, e.g. between sit-down and fast food, and geographic concentrations, such as between urban and suburban areas.

4. The shift in spending from one sector to another resulting from the proposed change is mentioned only briefly in the CRS study. However, the resulting alterations are very significant. Three that will cause the greatest disruptions are:

(a) Existing jobs in sit-down restaurants will be abolished. That is, there will be a permanent loss of jobs, per se, in those establishments.

(b) There will be a shift from permanent

jobs to part-time jobs, which are less productive.

(c) The individuals formerly occupying jobs in sitdown restaurants can anticipate extended periods of unemployment because of an inability to fill other jobs.

5. The CRS study totally neglects related aspects of impacted areas, especially on the labor force and the urban economies.

Mr. DOLE. The Senator from Kansas is not always a supporter of the AFL–CIO. However, I am pleased to address this very legitimate interest by those who work and those who are concerned about jobs.

I do not quarrel with the rhetoric in the Chamber. I think perhaps whether the three-martini lunch or a gas guzzler tax is cited, there are ways to incite the passions of the American people by making it appear that certain Americans are given special treatment and tax privileges. Perhaps in some cases there is special treatment.

I believe the Senate Finance Committee addressed what some considered to be tax abuse. Some tax deductions are hard to justify. Perhaps they should be ended. Some are ended in this legislation.

As I understand the amendment, it is 15 percent per year and it would take 3 years to reach one-half. Is that correct?

Mr. KENNEDY. The Senator is correct.

Mr. DOLE. However, if we disallow one-half of the deduction, would it result in total elimination of entertaining clients? Perhaps it would. Maybe that job loss which is estimated to be great is not enough to justify the tax expenditure of some $60 million, but there are those who believe that the disallowance even up to the percentage recommended by the Senator from Massachusetts might mean as much of a loss as 300,000 jobs.

Further, on the impact of the jobs, most of those jobs are held by minorities. Many of the people other provisions of this bill are designed to help.

Whether we talk about the jobs on the one hand or whether or not it is unfair on the other, I think the distinguished Senator from Nebraska has made a point that perhaps with 38 absentees, or possibly more at this moment, it is a matter which should be discussed in greater detail next week.

I would hope that there would be some agreement not to pursue the matter this evening. The Senator from Kansas plans to be here all evening but others may prefer not to stay the rest of the evening. I assume we can discuss it at some length.

SEVERAL SENATORS. Will the Senator yield?

Mr. DOLE. I yield to the Senator from New York.

The PRESIDING OFFICER. The Senator cannot yield to the Senator from New York. He must yield the floor and the Senator from New York must get it in his own right.

Mr. JAVITS. I want to ask a question, Mr. President. He yielded for that purpose.

The PRESIDING OFFICER. The Senator may proceed.

Mr. JAVITS. I would like to ask this question: Is it not a fact that the genius of the American economic system has been that we have stimulated people to work for new things which they feel will make their lives fuller and more satisfactory?

Mr. DOLE. That is certainly an accurate statement.

Mr. JAVITS. Is it not a fact, too, that a great deal is done which could not be done otherwise when people break bread, even at the level of the working man, whom Senator KENNEDY is talking about. Would the Senator agree with that?

Mr. DOLE. I agree with that.

Mr. JAVITS. Is it not a fact, therefore, that with the strict rules which the Treasury can enforce, this whole effort which is put forward as a great aid to the working man is just the reverse. I will yield to nobody, including the Senator who makes this amendment, as a friend of the working man, as I have demonstrated over many years . . . Is it not a fact that this has a very direct relation to the business that is done, to the way it is promoted, to the ideas which are developed, to the initiative which people take, and to the whole dynamism of the American economic system?

Mr. DOLE. There is no question about it.

Mr. JAVITS. It just seems to me we are talking about $600 million. Six-hundred million dollars is all they are seeking. That is in a $2 trillion economy. That is $2,000 billion of production, sales, and distribution every year. And that is supposed to be the big case, the big issue, the big thing we are going to prove, that we are friends of the working man. How credulous can we be asked to be?

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

Mr. DOLE. I thank the distinguished Senator from New York.

The PRESIDING OFFICER. The Senator from Kansas has the floor.

Mr. DOLE. There is no doubt about it, it seems to me we have to make decisions. We have to define if, in fact, there are abuses. If there are, they should be addressed. We also have to decide that if there are not abuses, what are the consequences an amendment from anyone in this body might, without justification, involve the employment, the economy, whatever; then I think we have an obligation to address it objectively.

I thank the distinguished Senator from New York for his statement.

Mr. President, I might suggest that the American taxpayer also understands the need for business and the need for business contacts. Certainly, no one on this floor suggests we ought to give an advantage to any taxpayer, any business, or any corporation. Neither should we put someone out of business without some justification.

Mr. President, I suggest the absence of a quorum.

Mr. LONG. Will the Senator withhold that?

Mr. DOLE. Yes.

The PRESIDING OFFICER. The Senator from Hawaii (Mr. INOUYE) is seeking recognition.

Mr. INOUYE. Does the Senator wish to proceed?

Mr. LONG. No, I will wait.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I rise to speak in opposition to this amendment. I believe all of us will agree that if one is to do a job properly, he must be given the proper tools. We often refer to these as tools of the trade. I would like to suggest that entertainment is one such tool, not only in business but also in international relations among nations.

The President of the United States has suggested that entertainment in the business community, for some reason, is not a cost of doing business. If so, are we then to suggest that the President of the United States should not entertain visiting heads of state at formal White House dinners, or have weekends at Camp David, or send Air Force 1 to pick up some visiting head of state?

Just as important, I believe that visiting dignitaries expect to be accorded such treatment. If we did not, they would be insulted, and, as a result of this insult, we might not have some of the great successes that we brag about.

I would like to suggest that for the business community, business meals are one of the tools of the trade. In this very highly competitive free enterprise system these tools are essential, Mr. President.

If this amendment should become law, just imagine the following situation: In this Nation of ours, we are not only doing business among ourselves. We have convincing men and women who represent Japan, the Japanese interests, Mitsubishi, Mitsui. Then you have the Germans, the Italians, the French, Scandinavians, the Chinese.

They will take their U.S. clients to the Four Seasons or to Lutece. But the American businessman, because he will be denied that privilege, will have to take his clients to McDonald's.

I have been listening to debates on this subject very faithfully. I somehow get the impression that some of us take special glee in building obstacles to American business, just making it excessively difficult for our businessmen to compete with others on an equal basis.

It has been suggested that the average American workingman has to take his lunch in a tin box and he is not able to deduct that.

Mr. President, I would like to suggest that if we had this amendment in the law, that average American worker may not be able to take that tin lunch box to work because he might be unemployed.

I think the following statistics should be noted by all of us:

If this amendment should pass, it would have an almost certain devastating effect on domestic conventions, Federal, State and local tax revenues, and employment. Indeed, the National Restaurant Association estimates its members would lose $1.2 billion in revenues; the American Hotel and Motel Association estimates a $1.9 billion loss for its members; and the Hotel and Restaurant Employees and Bartenders International Union conservatively projects a loss of 135,000 jobs.

The Secretary of the Treasury has said that those who lose their jobs would not really suffer, because they would be ab-

sorbed elsewhere in our economy. "Don't worry, if you are fired as a dishwasher, there is another job waiting for you. And if you are a fancy French chef and you get fired, there is a job waiting for you."

I submit, Mr. President, that this analysis does not stand up. Who is going to absorb that dishwasher? Who is going to absorb that waiter? Transferability of this type of work just does not work out. How do you expect a waiter to be a first-class construction worker?

I find the threat of unemployment especially disturbing because those who will suffer most are the restaurant employees who in many cases are the unskilled or members of a minority where unemployment now far exceeds the unacceptable national average of over 6 percent.

In the restaurant industry, for example, 2.8 million or 68 percent of the employees in food service occupations are women, accounting for 7.6 percent of total employed women; 1.3 million or 31.3 percent of the employees are teenagers, accounting for 17 percent of total teenage employment. And 565,000 or 13.8 percent of the employees are black or other minority groups.

(Mr. MELCHER assumed the chair.)

Are we to tell them, as Secretary Blumenthal has suggested, "Don't worry, you will be absorbed elsewhere. Don't worry, welfare will pick up the tab. Don't worry, unemployment compensation will pick up the tab."

Mr. President, on one hand, we may be saving by denying American businessmen these privileges, saving $600 million. But how much do you think we will be paying in welfare payments, in unemployment compensation payments? How much will we be paying in crime? But the Secretary of the Treasury says, "Don't worry, those who are displaced will be absorbed."

Mr. President, I could go on and give other horrendous statistics, but I hope that we will keep in mind that this is not just a little old amendment of $600 million. It has the potential of wrecking what I consider to be the most promising industry in the United States; that is the tourism industry. This administration has not seemed concerned about it. But here is an industry that brings in about $115 billion, employs 5 million people, and we put that on the back burner.

Mr. President, this is a very dangerous amendment. It has been suggested that the AFL–CIO is for this amendment, but I have a list here of unions who join the Hotel and Restaurant Employees and Bartenders International Union, in opposing the amendment—and they are large unions. The list follows:

International Brotherhood of Teamsters.
Brotherhood of Railway and Airline Clerks.
International Union of Operating Engineers.
Laborers International Union.
United Transportation Union.
Bakery and Confectionery Workers Union.
Airline Pilots Association.
Grain Millers Union.
Barbers and Beauticians.
Glass Bottle Blowers.
American Flint Glass Workers Union.
International Brotherhood of Operative Potters.

In addition, Mr. President, the amendment is opposed by the Discover America Travel Organization's task force on proposed Federal tax revisions. That task force consists of the following travel industry components and representatives:

ACCOMMODATIONS

Hilton Hotels Corporation.
National Innkeeping Association.

AUTOMOBILE TRAVEL

American Automobile Assn.

CAR RENTAL

Avis Rent-A-Car System, Inc.

CONVENTION AND VISITORS BUREAU

New York Convention and Visitors Bureau.
National Council of Urban Tourism.
International Association of the Convention and Visitors Bureau.

NATIONAL PARK CONCESSIONS

Conference of National Park Concessions.

OUTDOOR RECREATION

National Ski Areas Association.

RAIL PASSENGER SERVICE

National Railroad Passenger Corporation.

REGIONAL TRAVEL ORGANIZATIONS

National Council on Regional Travel Organizations.

SCHEDULED AIRLINES

Air Transport Association of America.

SPECIAL RESORT AREAS

Nevada Resort Association and Gaming Industry Association of Nevada.

STATE TRAVEL OFFICES

National Council of State Travel Directors.

SUPPLEMENTAL AIR CARRIERS

National Air Carrier Association.

TRAVEL AGENTS

American Society of Travel Agents.

TRAVEL ATTRACTIONS

National Council of Travel Attractions.

TRAVEL BROKERS

National Tour Brokers Associations.

TRAVEL RESEARCH

United States Travel Data Center.

Mr. President, I hope that the Senate will come to its senses and stop this movement that we seem to be caught up in, gutting the free enterprise system.

Several Senators addressed the Chair.

Mr. MATSUNAGA. Mr. President, the Senator has yielded to the junior Senator from Hawaii.

The PRESIDING OFFICER. Does the senior Senator from Hawaii yield to his colleague for a question?

Mr. INOUYE. I am very happy to yield, sir.

Mr. MATSUNAGA. I thank the Senator for yielding. Before I ask my question, I should like to preface it with this observation: Although we are working on a tax cut bill, the proponents of this amendment gloat over the fact that this will bring in $600 million more in revenues. This revenue increase will be made at the expense of those businesses who now benefit from the tax deduction.

As was stated by my senior colleague from Hawaii, and I join in his excellent statement, Hawaii's economy is extremely dependent upon business entertainment expenditures that were this amendment to be adopted by the Senate, an estimated 1,000 jobs would be lost.

Without the deduction, businesses would not make such expenditures. One businessman said that although his employees fall within the $30,000 to $40,000 salary range, and they are not millionaires, if the luncheon expenses were not deductible, "You can be guaranteed that the money will not be spent." "And," he said, "I can see downtown restaurants, like O'Toole's, Matteo's, et cetera, going out of business. I can guarantee you that."

The cumulative loss for the Hawaiian economy would be a thousand jobs.

Mr. DANFORTH. Mr. President, is the Senator going to ask a question?

Mr. MATSUNAGA. Yes; I am going to ask a question.

The PRESIDING OFFICER. The Senator from Hawaii must pose a question.

Mr. MATSUNAGA. Is it not true, I put the question to my colleague, the senior Senator from Hawaii, that in a recent article from U.S. News & World Report of February 7, 1978, it was noted that as many as 200,000 jobs would be lost if the proposal now offered by the Senator from Massachusetts were to be adopted?

Mr. INOUYE. The Senator is correct.

Mr. MATSUNAGA. Is it not true also that Hawaii will suffer irreparable damages to its economy?

Mr. INOUYE. As always, the Senator is correct.

Mr. MATSUNAGA. I thank the senior Senator from Hawaii.

Mr. DANFORTH and Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, we have been here since 8:30 this morning. It is now 10 minutes after 7. It is a Saturday. We hoped to get some work done. That was the whole reason, as I understand it, for showing up on a Saturday in the Senate. Tonight is my fourth daughter's 10th birthday. I hope to spend some time with her. I do not mind being on the floor of the Senate if it is doing the work of the people. I do mind being on the floor of the Senate if it is just wasting my time and everybody else's time.

Therefore, Mr. President, I move to lay the amendment on the table and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Massachusetts. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. HODGES (after having voted in the negative). On this vote I have a pair with the distinguished Senator from Nevada (Mr. CANNON). If he were present and voting, he would vote "yea." I have previously voted "no." I withdraw my vote.

Mr. PAUL G. HATFIELD (after having voted in the negative). On this vote I have a pair with the distinguished Senator from West Virginia (Mr. RANDOLPH). If he were present and voting, he would vote "yea." I have voted "no." I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CLARK), the Senator from Iowa (Mr. CULVER), the Senator from Arizona (Mr. DECONCINI), the Senator from Mississippi (Mr. EASTLAND), the Senator from Ohio (Mr. GLENN), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Rhode Island (Mr. PELL), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Maryland (Mr. SARBANES), the Senator from Mississippi (Mr. STENNIS), the Senator from Florida (Mr. STONE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Rhode Island (Mr. CHAFEE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), the Senator from Kansas (Mr. PEARSON), the Senator from Illinois (Mr. PERCY), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Virginia (Mr. SCOTT), the Senator from Texas (Mr. TOWER), the Senator from Connecticut (Mr. WEICKER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "yea."

The PRESIDING OFFICER. Has every Senator in the Chamber voted?

The result was announced—yeas 49, nays 9, as follows:

[Rollcall Vote No. 462 Leg.]

YEAS—49

Bartlett	Gravel	McIntyre
Bellmon	Hansen	Melcher
Bentsen	Hatch	Morgan
Byrd, Harry F., Jr.	Hatfield, Mark O.	Moynihan
Byrd, Robert C.	Hayakawa	Nunn
Case	Heinz	Packwood
Chiles	Helms	Roth
Cranston	Inouye	Sasser
Curtis	Jackson	Schmitt
Danforth	Javits	Sparkman
Dole	Leahy	Stafford
Durkin	Long	Stevens
Eagleton	Lugar	Stevenson
Ford	Magnuson	Thurmond
Garn	Mathias	Wallop
Goldwater	Matsunaga	Williams
		Zorinsky

NAYS—9

Burdick	McGovern	Nelson
Hart	Metzenbaum	Proxmire
Kennedy	Muskie	Riegle

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Hodges, against.
Paul G. Hatfield, against.

NOT VOTING—40

Abourezk	Domenici	Percy
Allen	Eastland	Randolph
Anderson	Glenn	Ribicoff
Baker	Griffin	Sarbanes
Bayh	Haskell	Schweiker
Biden	Hathaway	Scott
Brooke	Hollings	Stennis
Bumpers	Huddleston	Stone
Cannon	Humphrey	Talmadge
Chafee	Johnston	Tower
Church	Laxalt	Weicker
Clark	McClure	Young
Culver	Pearson	
DeConcini	Pell	

So the motion to lay on the table amendment No. 3890 was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 2022

Mr. MATSUNAGA. Mr. President, I have at the desk a noncontroversial unprinted amendment, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Hawaii (Mr. MATSUNAGA) proposes an unprinted amendment numbered 2022.

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the committee substitute bill, add the following new section:

SEC. ——.(a) That subpart C of part II of subpart E of chapter 1 of the Internal Revenue Code (relating to taxable year for which deductions are taken) is amended by adding:

SEC. 466. QUALIFIED DISCOUNT COUPONS REDEEMED AFTER CLOSE OF TAXABLE YEAR.

(a) ALLOWANCE OF DEDUCTION.—At the election of a taxpayer whose taxable income is computed under an accrual method of accounting, the deduction allowance under this chapter for the redemption costs of qualified discount coupons shall be an amount equal to the sum of—

(1) such costs incurred by the taxpayer with respect to coupons—

"(A) which were outstanding at the close of the taxable year, and

"(B) which were received by the taxpayer before the close of the redemption period for the taxable year, plus

(2) such costs (other than costs properly taken into account under paragraph (1) for a prior taxable year) incurred by the taxpayer during the taxable year.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a 10-minute time limit on the amendment, divided between Mr. MATSUNAGA and Mr. LONG.

Mr. PROXMIRE. Mr. President, let us hear about the amendment first, before we agree to a time limitation.

Mr. MATSUNAGA. I would be happy to agree to the time limitation.

Mr. PROXMIRE. I want to hear what it is.

The PRESIDING OFFICER. The Senator from Wisconsin reserves the right to object.

Mr. PROXMIRE. I withdraw the request.

Mr. MATSUNAGA. Mr. President, the amendment which I am offering is supported by the Treasury and has no effect one way or the other on the budget in fiscal year 1979. The amendment was also approved by the Committee on Finance in its action on a separate House passed bill—H.R. 3050. Moreover, the amendment is identical to the provisions of H.R. 13047 recently reported out by the House Committee on Ways and Means.

My amendment is noncontroversial. It is a necessary clarification of accrual accounting rules which needs to be enacted this year in order to avoid severe administrative and reporting difficulties for both the Treasury and taxpayers.

The amendment clarifies the proper tax accounting method applicable to manufacturers who issue redeemable coupons allowing consumers discounts on a purchase—at a retail store—of one of the manufacturer's products. About 950 manufacturers of food and household products issue such coupons, and two out of every three families use coupons as an integral part of their shopping.

I should point out, Mr. President, that these coupons provide genuine discounts to consumers. If there are two packages of a particular product on the grocer's shelf, a consumer who does not bother to save and use coupons will pay the full price. Most pay the full price. But a consumer who saves and uses the coupons will pay a reduced price.

Since 1918, the provisions of section 1.451–4 of the income tax regulations have been applied to manufacturers who issue coupons which they must redeem. Under procedures established by the IRS, the manufacturer would estimate the number of coupons outstanding at the end of the year which he would have to redeem in the future. The manufacturer would then accrue that liability as of the end of the year. Recently, a ruling by the Internal Revenue Service reinterpreted those regulations and said they do not apply to discount coupons. If the IRS were to maintain that position and the courts did not overrule it, the manufacturer would not be permitted to accrue his liability for coupons outstanding at the end of the year. From the standpoint of an accrual basis taxpayer, the result would be an overstatement of his taxable income for that year.

That being an inappropriate result, the Treasury and the staff have worked out an alternative solution embodied in my amendment. Under my amendment, an accrual basis manufacturer would be able to accrue as of the end of the year, those coupons outstanding as of the end of the year which are presented for redemption within 6 months after the end of the year. Although this amendment reduces significantly the amount of the accrual which manufacturers have been able to take under the regulations, it is acceptable to the industry and the Treasury believes that it is a reasonable solution which appropriately reflects the manufacturer's income for tax purposes. My amendment, as worked out by the Treasury, would in appropriate circum-

stances also validate the use of the regulations for years prior to application of the new rule which would take effect in 1979.

It is only because of the time element that I am now offering this as an amendment to the pending tax bill.

Both the majority and the minority, as I understand it, will accept the amendment. It is a noncontroversial amendment.

For the benefit of the Senator from Wisconsin, I say this: This is merely to clarify the accrual method of accounting which 950 manufacturers enjoyed prior to an adverse ruling by the Internal Revenue Service relative to coupons.

If the Senator from Wisconsin has gone marketing, I am sure he has found these discount coupons—5 cents, 10 cents, sometimes as much as 25 cents off. The manufacturers were allowed one accounting treatment and suddenly they were forced to implement another treatment for discount coupons.

My amendment will provide a suitable accounting treatment for the 950 manufacturers of household goods and food items, especially food items. The Treasury and industry have reached a satisfactory solution embodied in my amendment. This amendment will definitely simplify accounting not only for the 950 manufacturers but for the Treasury as well.

Mr. PROXMIRE. Mr. President, will the Senator yield briefly?

Mr. MATSUNAGA. I am happy to yield.

Mr. PROXMIRE. The Senator assures us that it is approved by the Treasury, No. 1; is that correct?

Mr. MATSUNAGA. That is correct.

Mr. PROXMIRE. No. 2, there is no revenue loss at all?

Mr. MATSUNAGA. There is no revenue loss at all in fiscal year 1979.

Mr. PROXMIRE. No. 3, it has already passed the Senate on another bill?

Mr. MATSUNAGA. It has.

Mr. PROXMIRE. I thank the Senator, and I support the amendment.

Mr. MATSUNAGA. Let me correct my earlier response. No, the proposal has not been previously considered by the Senate.

Mr. PROXMIRE. It has passed the House of Representatives?

Mr. MATSUNAGA. It has been reported to the House by the Ways and Means Committee. It was also reported out of the Finance Committee on a bill now pending before the Senate.

Mr. PROXMIRE. The Senator said it had no impact on fiscal year 1979.

Mr. MATSUNAGA. No effect at all.

Mr. PROXMIRE. Does it have any future effect on revenues after 1979?

Mr. MATSUNAGA. I am uncertain. This is merely a case of timing—when an item can be deducted.

Mr. PROXMIRE. I thank the Senator.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. MATSUNAGA. I am happy to yield.

Mr. JAVITS. I ask for the Senator to put my name on the amendment as it is of interest to other lines of business, including the recording industry.

Mr. MATSUNAGA. I am happy to have the Senator cosponsor the amendment. I ask unanimous consent that the name of the distinguished Senator from New York be added to the amendment.

The PRESIDING OFFICER. Without objection, the Senator from New York will be added as a cosponsor.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, Senators would want to know and I am sure the Senator from Wisconsin would like to know that this amendment does have, not in this fiscal year but in the following next fiscal year, a onetime revenue loss of about $100 million because it means a deferral. When you change from the cash method over to the accrual method there is a deferral. It is a change of accounting methods and by doing so when you change from cash to the accrual obviously you shift the liability forward or backward—in this case I assume you shift it forward. It is a one-time revenue loss when people change an accounting method.

Mr. PROXMIRE. Does it even out in the future?

Mr. LONG. It evens out in the future.

Mr. PROXMIRE. It evens out in the future so in the long run there is no loss. Over the long run there is no loss.

Mr. LONG. That is correct.

Mr. MATSUNAGA. That is correct.

UP AMENDMENT NO. 2023

(Purpose: To prevent certain exclusions, from income of magazines, paperbacks and records returned after the close of the taxable year)

Mr. CRANSTON. Mr. President, I send to the desk an amendment to the amendment by Senator MATSUNAGA and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an unprinted amendment numbered 2023 to 1-UP Amendment No. 2022 of the Senator from Hawaii.

The amendment is as follows:

At the end of the amendment add the following new section:

"SEC. 457. MAGAZINES, PAPERBACKS, AND RECORDS RETURNED AFTER THE CLOSE OF THE TAXABLE YEAR.

"(a) EXCLUSION FROM GROSS INCOME.—A taxpayer who is on an accrual method of accounting may elect not to include in gross income for the taxable year the income attributable to the qualified sale of any magazine, paperback, or record which is returned to the taxpayer before the close of the merchandise return period.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) MAGAZINE.—The term 'magazine' includes any other periodical.

"(2) PAPERBACK.—The term 'paperback' means any book which has a flexible outer cover and the pages of which are affixed directly to such outer cover. Such term does not include a magazine.

"(3) RECORD.—The term 'record' means a disc, tape, or similar object on which musical, spoken, or other sounds are recorded.

"(4) SEPARATE APPLICATION WITH RESPECT TO MAGAZINES, PAPERBACKS, AND RECORDS.—If a taxpayer makes qualified sales of more than one category of merchandise in connection with the same trade or business, this section shall be applied as if the qualified sales of each such category were made in connection with a separate trade or business. For purposes of the preceding sentence, magazines, paperbacks, and records shall each be treated as a separate category of merchandise.

"(5) QUALIFIED SALE.—A sale of a magazine, paperback, or record is a qualified sale if—

"(A) at the time of sale, the taxpayer has a legal obligation to adjust the sales price of such magazine, paperback, or record if it is not resold, and

"(B) the sales price of such magazine, paperback, or record is adjusted by the taxpayer because of a failure to resell it.

"(6) AMOUNT EXCLUDED.—The amount excluded under this section with respect to any qualified sale shall be the lesser of—

"(A) the amount covered by the legal obligation described in paragraph (5)(A), or

"(B) the amount of the adjustment agreed to by the taxpayer before the close of the merchandise return period.

"(7) MERCHANDISE RETURN PERIOD.—

"(A) Except as provided in subparagraph (B), the term 'merchandise return period' means, with respect to any taxable year—

"(i) in the case of magazines, the period of 2 months and 15 days first occurring after the close of taxable year, or

"(ii) in the case of paperbacks and records, the period of 4 months and 15 days first occurring after the close of the taxable year.

"(B) Under regulations prescribed by the Secretary, the taxpayer may select a shorter period than the applicable period set forth in subparagraph (A).

"(C) Any change in the merchandise return period shall be treated as a change in the method of accounting.

"(8) CERTAIN EVIDENCE MAY BE SUBSTITUTED FOR PHYSICAL RETURN OF MERCHANDISE.—Under regulations prescribed by the Secretary, the taxpayer may substitute, for the physical return of magazines, paperbacks, or records required by subsection (a), certification or other evidence that the magazine, paperback, or record has not been resold and will not be resold if such evidence—

"(A) is in the possession of the taxpayer at the close of the merchandise return period, and

"(B) is satisfactory to the Secretary.

"(9) REPURCHASE BY THE TAXPAYER NOT TREATED AS RESALE.—A repurchase by the taxpayer shall be treated as an adjustment of the sales price rather than as a resale.

"(c) QUALIFIED SALES TO WHICH SECTION APPLIES.—

"(1) ELECTION OF BENEFITS.—This section shall apply to qualified sales of magazines, paperbacks, or records, as the case may be, if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such sales are made. An election under this section may be made without the consent of the Secretary. The election shall be made in such manner as the Secretary may by regulations prescribe and shall be made for any taxable year not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

"(2) SCOPE OF ELECTION.—An election made under this section shall apply to all qualified sales of magazines, paperbacks, or records, as the case may be, made in connection with the trade or business with respect to which the taxpayer has made the election.

"(3) PERIOD TO WHICH ELECTION APPLIES.—An election under this section shall be effective for the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

"(4) TREATMENT AS METHOD OF ACCOUNT-

ING.—Except to the extent inconsistent with the provisions of this section, for purposes of this subtitle, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

"(d) 5-YEAR SPREAD OF TRANSITIONAL ADJUSTMENTS FOR MAGAZINES.—In applying section 481(c) with respect to any election under this section which applies to magazines, the period for taking into account any decrease in taxable income resulting from the application of section 481(a)(2) shall be the taxable year for which the election is made and the 4 succeeeding taxable years.

"(e) SUSPENSE ACCOUNT FOR PAPERBACKS AND RECORDS.—

"(1) IN GENERAL.—In the case of any election under this section which applies to paperbacks or records, in lieu of applying section 481, the taxpayer shall establish a suspense account for the trade or business for the taxable year for which the election is made.

"(2) INITIAL OPENING BALANCE.—The opening balance of the account described in paragraph (1) for the first taxable year to which the election applies shall be the largest dollar amount of returned merchandise which would have been taken into account under this section for any of the 3 immediately preceding taxable years if this section had applied to such preceding 3 taxable years. This paragraph and paragraph (3) shall be applied by taking into account only amounts attributable to the trade or business for which such account is established.

"(3) ADJUSTMENTS IN SUSPENSE ACCOUNT.—At the close of each taxable year the suspense account shall be—

"(A) reduced by the excess (if any) of—

"(i) the opening balance of the suspense account for the taxable year, over

"(ii) the amount excluded from gross income for the taxable year under subsection (a), or

"(B) increased (but not in excess of the initial opening balance) by the excess (if any) of—

"(i) the amount excluded from gross income for the taxable year under subsection (a), over

"(ii) the opening balance of the account for the taxable year.

"(4) GROSS INCOME ADJUSTMENTS.—

"(A) REDUCTIONS EXCLUDED FROM GROSS INCOME.—In the case of any reduction under paragraph (3)(A) in the account for the taxable year, an amount equal to such reduction shall be excluded from gross income for such taxable year.

"(B) INCREASES ADDED TO GROSS INCOME.—In the case of any increase under paragraph (3)(B) in the account for the taxable year, an amount equal to such increase shall be included in gross income for such taxable year.

If the initial opening balance exceeds the dollar amount of returned merchandise which would have been taken into account under subsection (a) for the taxable year preceding the first taxable year for which the election is effective if this section had applied to such preceding taxable year, then an amount equal to the amount of such excess shall be included in gross income for such first taxable year.

"(5) SUBCHAPTER C TRANSACTIONS.—The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party to the transaction by reason of subchapter C shall be determined under regulations prescribed by the Secretary."

(b) The table of sections for such subpart B is amended by adding at the end thereof the following:

"SEC. 457. Magazines, paperbacks, and records returned after the close of the taxable year."

SEC. 2. The amendments made by the first section of this Amendment shall apply to taxable years beginning after September, 1979. The time for making an election under section 457 of the Internal Revenue Code of 1954 (as added by the first section of this Amendment) for any taxable year beginning before the date of the enactment of this Act shall not expire before the date which is one year after such date of enactment.

Mr. CRANSTON. Mr. President, under existing Federal tax law, taxpayers in the magazine, paperback book, and record industries are required to include all shipments of their products in income, even though it is known that a high percentage of the copies "sold" will, in fact, be returned. When these returns occur after the close of the taxable year, the reduction in income falls in the wrong tax period, resulting in an overstatement of income in the year of shipment. By contrast, under generally accepted accounting principles, these taxpayers are required to establish a reserve for returns so as to avoid overstating income for financial purposes.

The attached amendment seeks to avoid the overstatement of income, but without permitting the estimation of a reserve for tax purposes. It accomplishes this result by permitting the taxpayer to reduce his income for the year of shipment by returns received within a specified period after the close of the year—2½ months for magazines and 4½ months for paperback books and records.

There is general agreement that this change in accounting method is equitable and will result in a more accurate reflection of income for the industries included in the bill. The amendment is noncontroversial. It is identical to H.R. 3050 as originally approved by the House and the Senate Finance Committee, and it has been endorsed by the Treasury Department.

The effective date of September 30, 1979, assures no budget impact in the fiscal year. The cost of the provision, I understand, is around $12 million in future years.

Mr. President, I can say much of what Senator MATSUNAGA said when he introduced his amendment. My amendment has been endorsed by the Treasury Department. It is identical to H.R. 3050 as originally approved by the House of Representatives and Senate Finance Committee. It has no budget impact in this fiscal year. It would cost in future years about $12 million.

In a nutshell, this is what this amendment does.

It expands the amendment of the Senator from Hawaii to cover the tax treatment of returned magazines, paperback books, and sound recordings. It is a very fair approach to a problem these people face when they send out on consignment, in effect, books, magazines, and recordings. They are returned in a later year, but they are charged for them as if sold in the year when they were sent out. When they come back it turns out they have not been sold. It is simply an accounting adjustment to cover that situation.

Mr. MATSUNAGA. If the Senator from California will yield, I am happy to accept the Senator's amendment. I think it is a good amendment. It is a fair one. It has the acceptance of the Treasury Department. And I think it is one which provides equity to those in the publishing and recording industries.

The PRESIDING OFFICER. The Senator's amendment is so modified.

Mr. JAVITS. Mr. President, if the Senator will yield to me just to say that is what I had in mind in approving the Matsunaga amendment.

Mr. CRANSTON. I thank the Senator.

The PRESIDING OFFICER. The question occurs on agreeing to the amendment, as modified, of the Senator from Hawaii.

The amendment, as modified, was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SPARKMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 2024

(Purpose: To permit certain public state power authorities to sell power financed by industrial development bonds to private utilities)

Mr. MOYNIHAN. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. METZENBAUM). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes an unprinted amendment numbered 2024.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 300, between lines 21 and 22, insert the following:

"SEC. 339. TO AMEND SECTION 103(b)(4)(E) OF THE INTERNAL REVENUE CODE.

Section 1. Insert "(i)" before "sewage" and add at the end of subparagraph (E) the following:

"Or, (ii) pumped storage, other hydroelectric facilities or electrical transmission facilities construction of which is completed after October 1, 1977, for the production or transmission of energy by an agency of the government of a State which agency was in existence prior to January 1, 1935, the governing body of which agency is appointed by the governor of said State, and which was duly authorized prior to October 1, 1977, to develop such power projects: *Provided,* That the energy from such facilities is sold to one or more regulated public utilities having customer service areas within the territory no greater than a city and one contiguous county. (And energy from such facility is sold only within such area).

"Or, (iii) any other facilities for the furnishing of electric energy for which a Federal or State agency license or certification to authorize construction was issued or first applied for prior to October 1, 1977 by an agency of the government of a State, which agency was in existence prior to January 1, 1935, the governing body of which agency is appointed by the governor of said State, and which was duly authorized prior to October 1, 1977 to develop power projects, *Provided,* That the energy from such facilities is sold to a regulated electric utility having a customer service territory no greater than a city and one

contiguous county and/or to public bodies therein. (And energy from such facility is sold only within such area).

Sec. 2. If the issuer so elects, this amendment may apply with respect to obligations issued prior to the date of enactment to finance any facility referred to in section 1."

Mr. MOYNIHAN. Mr. President, this is a matter that has been before the Senate on at least two previous occasions and has been approved by the Senate. It is a simple measure which would enable the city of New York to be treated as a single government unit under the provisions of the Internal Revenue Code; this measure will permit public State power authorities to sell power financed by industrial development bonds to private utilities.

It has the approval of the Treasury. The revenue loss is negligible. It will be years before the generating facilities anticipated will be built. If these facilities are built, we stand to save 5 percent of the imported residual oil of the United States—approximately 20,000 barrels a day.

It is a tightly drawn measure that applies only to New York City and only to three power-generated sites which have been approved—two for coal and one for nuclear. The primary purpose of this measure is to save the import of fuel. The amounts saved would be considerable—5 percent of the Nation's present imports.

This matter was approved last year by the Senate and put on what we referred to as the energy tax bill. In conference, however, the House conferees requested that we bring it back to the Senate and put it on this tax bill as it is technically a tax matter. They expect it to go to conference in this form, and will approve it at that time.

(Mr. MELCHER assumed the chair.)

Mr. METZENBAUM. Mr. President, will the Senator from New York yield for a question?

Mr. MOYNIHAN. I am happy to yield.

Mr. METZENBAUM. Last night the Senator offered an amendment along the same lines but as I understand it that amendment has now been amended in conjunction with the discussion with the Treasury Department; am I correct?

Mr. MOYNIHAN. The Senator is correct.

Mr. METZENBAUM. So this now reflects the Treasury's approved position.

Mr. MOYNIHAN. The Senator is correct.

Secretary Lubick has sent a letter stating the Department of the Treasury's approval.

Mr. METZENBAUM. I objected to this amendment last night. It is my understanding the amendment is entirely satisfactory. Now I have no further objection.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. MOYNIHAN. I would be happy to yield.

Mr. JAVITS. I join the Senator from New York in this amendment. He has explained the situation. New York is a single city with five counties. So I hope very much the Senate will adopt this amendment.

Mr. LONG. I ask unanimous consent that a letter by the Treasury Department in support of the amendment be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,
Washington, D.C.

Hon. DANIEL P. MOYNIHAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MOYNIHAN: You have proposed an amendment to clarify the definition of "local furnishing of electric energy or gas" for purposes of the industrial development bond exemption under section 103(b)(4)(E) of the Internal Revenue Code. Currently, "local furnishing" is limited to two contiguous counties.

Your amendment would provide that one city and a contiguous county is the equivalent of two contiguous counties. Since a city is a single governmental unit, even if it embraces more than one county, the requisite local character of the furnishing is as much met by the standard you propose as by the current two county standard. For reasons of consistency in the treatment of local jurisdictions for purposes of the "local furnishing" test we therefore support your amendment.

Sincerely,

DONALD C. LUBICK,
Assistant Secretary (Tax Policy).

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 2025

Mr. GRAVEL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. GRAVEL) proposes an unprinted amendment numbered 2025.

Mr. GRAVEL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the committee substitute to H.R. 13511 add the following new section:

"SEC. . TAXATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT CORPORATIONS.

Section 21 of the Alaska Native Claims Settlement Act (43 U.S.C. 1620) is amended by adding three new subsections at the end thereof, as follows:

"(g) In the case of any Native Corporation established pursuant to this Act, income for purposes of any form of Federal, State, or local taxation shall not be deemed to include the value of—

"(2) the promise or performance by any resource information or analysis (including the receipt of any right of access to such information or analysis) relating to lands or interests therein conveyed, selected but not conveyed, or available for selection pursuant to this Act;

"(2) the promise or performance by any person or by any Federal, State, or local government agency of any professional or technical services relating to the resources of lands or interests therein conveyed, selected but not conveyed, or available for selection pursuant to this Act, including, but not limited to, services in connection with exploration on such lands for oil, gas or other minerals; and

"(3) the expenditure of funds, incurring of costs, or the use of any equipment or supplies by any person or any Federal, State, or local government agency, or any promise, agreement, or other arrangement by such person or agency to expend funds or use any equipment or supplies for the purpose of creating, developing, or acquiring the resource information or analysis described in paragraph (1) or for the purpose of performing or otherwise furnishing the services described in paragraph (2): *Provided,* That this paragraph shall not apply to any funds paid to a Native Corporation established pursuant to this Act or to any subsidiary thereof.

This amendment shall be effective as of December 18, 1971, and, with respect to each Native Corporation, shall remain in full force and effect for a period of twenty years thereafter or until the Corporation has received conveyance of its

* * * * *

forth in this subsection and in subsection (d) hereof, all rents, royalties, profits, and other revenues or proceeds derived from real property interests selected and conveyed pursuant to sections 12 and 14 shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

"(h)(1) Notwithstanding any other provision of law, each Native Corporation established pursuant to this Act shall be deemed to have become engaged in carrying on a trade or business as of the date it was incorporated for purposes of any form of Federal, State, or local taxation.

"(2) All expenses heretofore or hereafter paid or incurred by a Native Corporation established pursuant to this Act in connection with the selection or conveyance of lands pursuant to this Act, or in assisting another Native Corporation within or for the same region in the selection or conveyance of lands under this Act, shall be deemed to be or to have been ordinary and necessary expenses of such Corporation, paid or incurred in carrying on a trade or business for purposes of any form of Federal, State, or local taxation.".

"(i) PERSONAL HOLDING COMPANY ACT EXEMPTION.—No Corporation created pursuant to the Alaska Native Claims Settlement Act shall be considered to be a personal holding company within the meaning of section 542(a) of the Internal Revenue Code of 1954 prior to January 1, 1992."

Mr. GRAVEL. In the years 1973 and 1974 the IRS has assessed the Alaska Native corporations deficiencies and penalties totaling almost $70 million resulting in additional tax liabilities of $29 million for the first 2 years of their operations. This will amount to an additional tax liability of about $400 per stockholder. Many of the stockholders of these corporations have not even earned $400 in those 2 years. Of course, this liability will not fall on the stockholders directly, but the money will still come out of their pockets.

I would not be offering these amendments if the additional tax liability were justified. But, the service has taken an extremely hard line with respect to these corporations, to the extent that it has even imputed income to these corporations in a precedent-setting manner. The amendments which I offer are consistent

with the intent of the Alaska Native claims settlement and without them the IRS will drive the Native corporations into bankruptcy.

NATIVE CORPORATIONS: TAX AMENDMENTS

The Alaska Native corporations have three tax problems which will be resolved by this amendment:

Imputed income from explorations of land claims.

Nondeducitbility of startup expenses.

Basis of lands selected under the act.

IMPUTED INCOME FROM EXPLORATIONS

IRS is imputing income to the Native corporations from oil company geological work on potential selections even though they may not even have selected the land.

Arguments:

Natives are land poor and to determine their selections they contracted for research with the companies who would then have rights on selected lands, but the Natives received only data (some of it useful) from the companies.

IRS is taking the most narrow interpretation of the Code, failing to follow Supreme Court rule that Native legislation must be favorably construed.

Assessed taxes could be paid only out of moneys which these corporations received under congressional legislation.

Solution: The amendment provides that receipt of information or analysis and the expenditure of funds by third parties to generate such information used for land selections shall not be treated as income to the Native corporations.

DEDUCTIBILITY OF STARTUP COSTS

Normally to deduct a business expense a corporation must be engaged in a trade or business. IRS is taking the position that the Native corporations were not "in business" at the time they were established by Congress so that their startup costs are not deductible.

Argument:

The business of the Native corporations was the implementation of the Native Claims Act and thus they were engaged in a trade or business from the date of ANCSA passage.

An example of the problem is Arctic Slope which hired an investment advisor to handle its first payment from the claims fund. IRS says that while the act of Congress under ANCSA are deemed to have become engaged in earnings on the invested claims fund payments is taxable the investment advisors fee is not deductible.

Solution: The amendment provides that Native corporations established by carrying on a trade or business as of the date of incorporation.

Mr. President, this is a modified amendment No. 3884. I have modified it to conform to the request of the Department of Treasury, and I have a letter that now finds this amendment acceptable.

The IRS 1973 and 1974 assessed the 12 Alaska Native corporations that were created by legislation that passed the Congress in 1971. The IRS has assessed them penalties totaling $70 million, resulting in a tax liability of $29 million. This amounts to about $400 per stockholder.

The IRS hit them on imputed income for exploration that was done on Native lands by various oil companies. The information was given to the Native corporations so they could help decide what land they wanted to select within the area of Alaska. The IRS is calling this income and then charging the people a tax for it, although they received nothing, not a penny. Of course, this is not the way they treat private concerns in this country.

Similarly, the costs of the startup expenses of these Native corporations are not being permitted as expenses. The IRS is insisting that they be capitalized.

What this will do is require the Natives to take the money appropriated by Congress and give it back to the Government, to the IRS.

This same amendment has passed the Energy and Natural Resources Committee. It has been approved by that committee which was the committee of origin. This IRS position is not the intent of Congress and I seek to correct it.

Mr. PROXMIRE. Mr. President, will the Senator yield?

Mr. GRAVEL. I would be happy to yield.

Mr. PROXMIRE. What letter is the Senator talking about? What is the date of the letter?

Mr. GRAVEL. October 7, 1978, from Donald C. Lubick. It says:

If the objectionable provisions described above are deleted from amendment No. 3884 the Treasury Department would have no objection to the adoption of the amendment by the Senate.

Mr. PROXMIRE. I have a copy.

Mr. GRAVEL. The letter the Senator has may be the one sent to the Energy and Natural Resources Committee earlier this year. Could I see the letter a moment?

My letter also makes reference to that earlier letter:

As you are aware, the Treasury Department submitted a report dated August 9, 1978, to the Senate Committee on Energy and Natural Resources commenting on S. 3016, which contained some of the same provisions contained in amendment No. 3884. Our report stated Treasury's objections to the provisions which would index gains resulting from the sale or disposition of properties acquired by the corporations or individuals and to the special tax treatment of depletion.

If the objectionable provisions described above are deleted from amendment No. 3884 the Treasury Department would have no objection to the adoption of the amendment by the Senate.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.,
October 7, 1978.

Hon. MIKE GRAVEL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GRAVEL: This is in response to your request for the views of the Treasury Department on your amendment No. 3884 to H.R. 13511.

Your amendment generally would provide special tax treatment for properties received by corporations and individuals under the Alaska Native Claims Settlement Act. It would index any gain resulting from the sale or other disposition of such property according to the consumer price index. It would apply special tax treatment for depletion deductions on such property. The amendment also would exclude from income the value of services performed, funds expended or costs incurred on behalf of such corporations or individuals by any other person or government agency.

The amendment also would preclude any native corporation from being treated as a personal holding company under the Internal Revenue Code until January 1, 1992.

As you are aware, the Treasury Department submitted a report dated August 9, 1978, to the Senate Committee on Energy and Natural Resources commenting on S. 3016, which contained some of the same provisions contained in amendment no. 3884. Our report stated Treasury's objections to the provisions which would index gains resulting from the sale or disposition of properties acquired by the corporations or individuals and to the special tax treatment of depletion.

If the objectionable provisions described above are deleted from amendment no. 3884 the Treasury Department would have no objection to the adoption of the amendment by the Senate.

Sincerely,

DONALD C. LUBICK,
Assistant Secretary (Tax Policy).

Mr. PROXMIRE. May I ask the chairman of the Finance Committee, the manager of the bill, whether or not the staff has had an opportunity to review the amendment and whether they find it does comply with the letter from Treasury and does, in fact, remove the objection to sections initially that is "index gains resulting from the sale or disposition of properties acquired by the corporations or individuals and to the special tax treatment of depletion"?

Mr. LONG. Just one moment, Senator.

Mr. GRAVEL. Mr. President, if the Senator will permit me, I can add additional information to the situation. If the IRS is permitted to prevail they will bankrupt the corporations that this Congress set up to give the Natives money and land to get started on.

Mr. LONG. A copy of the amendment at the desk shown to us does carry out the request of the Treasury.

Mr. PROXMIRE. It does meet the Treasury objections?

Mr. LONG. Yes.

Mr. PROXMIRE. Can the Senator inform the Senate that this does not have a revenue effect?

Mr. GRAVEL. It will only have a revenue effect if the IRS wins its case. If this case is won in litigation and if the IRS can bludgeon these poor natives and rip from their bosoms $29 million, yes. It will take the money these corporations got from the Congress and it will increase the revenues. The IRS will make some money taken from these poor people, but the IRS will have to go out and win the case. In my judgment, they will not win.

Mr. LONG. Mr. President, let me just state for the benefit of the Senator that this amendment has been amended to delete section 2 starting at line 3, amended on page 2 under section "Taxation of Alaskan Native Plains Settlement Act Corporation," and at line 3 on page 2, to strike all of line 3, and the rest of the page, and strike all of page 3. On

page 4, line 3, where the word "two" appears, strike that and insert "three."

It is my understanding that the officials of the Treasury are listening to the debate and if I am not correct they will let me know.

Mr. PROXMIRE. My question is whether or not that one sentence:

Our report stated Treasury's objections to the provisions which would index gains resulting from the sale or disposition of properties acquired by the corporations or individuals and to the special tax treatment of depletion.

Whether or not by deleting pages 2 and 3 that would meet the objections stated in that letter.

Mr. LONG. Senator, that is the language on page 2 which refers to the indexing and that has been crossed out. I would suggest——

Mr. PROXMIRE. Also the special tax treatment of depletion?

The PRESIDING OFFICER (Mr. ZORINSKY). The Senator from Alaska has the floor.

Mr. LONG. Yes.

Mr. METZENBAUM. Mr. President, I think this amendment has major significance. I am perfectly satisfied to go along with it provided the opinion of the Treasury Department is in conformity with the amendment we have before us.

Mr. GRAVEL. I will stand here and wait until the Senator gets a chance to read the amendment.

Mr. METZENBAUM. I would like to suggest, if the Senator from Alaska would not mind, and I gather we are going to be here for a while, if he could put this aside for just 15 or 20 minutes so that at least we could take the matter up with Mr. Lubick.

Mr. LONG. Mr. President, I might suggest that we just go ahead and vote on the amendment on the assumption that the Senator is telling the truth, which he is.

Mr. METZENBAUM. I do not mean to suggest he is not, of course.

Mr. LONG. In the event there is a misunderstanding, we can move to reconsider. We will agree without moving to reconsider, and if the Senator on checking it has any doubt, we will reconsider.

Mr. METZENBAUM. Will the Senator from Louisiana, the chairman of the Finance Committee, join me in that?

Mr. GRAVEL. I think the Senator can move to reconsider himself.

Mr. METZENBAUM. It will have a lot more strength.

Mr. GRAVEL. I do not care about the strength.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alaska.

The amendment was agreed to.

Mr. LONG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3988

Mr. WALLOP. Mr. President, I call up my amendment 3988.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. WALLOP), for himself and others, proposes an amendment numbered 3988.

Mr. WALLOP. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . TAXATION OF NONRESIDENT ALIENS ON GAINS FROM THE SALE OF FARMLAND AND OTHER RURAL LAND IN THE UNITED STATES.

(a) Gain From Sale of Farmland Treated As Effectively Connected Income.—Paragraph (2) of section 871(b) (relating to determination of gross income of nonresident alien individuals which is connected with United States business) and paragraph (2) of section 882(a) (relating to determination of taxable income of foreign corporations which is connected with United States business) are each amended to read as follows:

"(2) Determination of taxable income.—In determining taxable income for purposes of paragraph (1)—

"(A) gross income includes only gross income which is effectively connected with the conduct of the trade or business within the United States, and

"(B) gain from the sale or exchange of—

"(i) real property located in the United States which is—

"(I) land used in farming (as defined in section 180(b)),

"(II) land suitable for use in farming (as defined in section 182(c)(2)), or

"(III) land in a rural area (within the meaning of paragraph (7) of section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(7)), or

"(ii) stock in a corporation, or interest in a partnership, determined by the Secretary to have been formed or availed of for the purpose of acquiring, holding, or selling such lands.

shall be treated as gross income which is effectively connected with the conduct of a trade or business within the United States if such gain exceeds $1,000 for the taxable year.".

(b) Nonrecognition Rule for 12-Month Liquidations Not to Apply.—Paragraph (1) of section 337(b) (relating to definition of property for gain or loss on sales or exchanges in connection with certain liquidations) is amended—

(1) by striking out "and" at the end of subparagraph (B),

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma and the word "and", and

(3) by adding at the end thereof the following new subparagraph:

"(D) property described in section 822(a)(2)(B)(i).".

(c) Lien for Payment of Taxes.—Section 6321 (relating to lien for taxes) is amended by adding at the end thereof the following new sentence: "For the purpose of applying this section with respect to liability for tax arising under sections 871(b)(2) and 882(a)(2), the lien shall apply to each property described in section 871(a)(2)(B)(i) or 882(b)(2)(B)(i) without regard to whether the person liable to pay the tax neglects or refuses to pay after demand unless he furnishes such assurances of payment of the liability to the Secretary as the Secretary may require.".

(d) Tax Treaty Provisions to the Contrary Not to Apply.—Section 7852(d) shall not apply to the application of sections 871(b)(2)(B) and 882(a)(2)(B).

(e) Effective Date.—The amendments made by this section shall apply with respect to sales and exchanges in taxable years beginning after December 31, 1978.

Mr. WALLOP. Mr. President, I ask unanimous consent that the following Senators be named as cosponsors of this amendment: Senators YOUNG, CHAFEE, EASTLAND, CULVER, SCOTT, HODGES, FORD, ANDERSON, MORGAN, CURTIS, HATCH, DOLE, CRANSTON, STEVENS, SCHMITT, HAYAKAWA, CHILE, HASKELL, DECONCINI, CHURCH, GARN, MCGOVERN, MELCHER, TOWER, BAKER, THURMOND, ALLEN, BAYH, BELLMON, ZORINSKY, STONE, GOLDWATER, BARTLETT, ROTH, HATFIELD of Oregon, BYRD of Virginia, HELMS, DANFORTH, HATFIELD of Montana, HEINZ, METZENBAUM, HART, CANNON, BURDICK, SASSER, STAFFORD, NELSON, and NUNN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I make the same request for Senator HANSEN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, will the Senator agree to a 10-minute limitation?

Mr. WALLOP. I would be happy to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to that effect.

Mr. PROXMIRE. I object.

The PRESIDING OFFICER (Mr. ZORINSKY). Objection is heard.

Mr. WALLOP. Mr. President, this amendment now has 52 cosponsors—53 including myself as the original sponsor.

The amendment would change the capital gains tax treatment of agricultural lands owned by nonresident aliens. This legislation would add gains from the sale or exchange of agricultural or timber lands to the list of items on which a nonresident alien must pay capital gains. At present, nonresident aliens can avoid paying capital gains tax on the sale or exchange of agricultural property.

The original legislation, S. 3414, has the support of over 30 Senators. Mr. President, it is not my claim that all foreign investments in U.S. agriculture either benefit or harm farmers and consumers. I argue, however, that the present favored capital gains tax treatment for foreign investors in U.S. agricultural lands provides an incentive for land investment and speculation that is neither necessary nor desirable. There can be no reason to provide foreign investors with the added incentive of a decided tax favor which is unavailable for our American farmers and their families.

There is a strong economic case to make against providing such an incentive to foreign investors. The unequal application capital gains tax on the sale of property only encourages speculation. Foreign investors who seek a quick profit from escalating land prices face no tax deterrent. Indeed it results in a built-in foreign advantage on initial investment. As such purchases and sales increase in number, there is a ratchet effect of escalating land prices.

The avoidance of capital gains tax can make a significant difference in the amount a foreign investor is willing to pay for land. The size of the incentive depends upon the average rate of appre-

ciation of land and the amount of time the land is held.

For example, if farmland appreciates at 8 percent a year, a foreign investor would be willing to pay up to 15 percent more for farmland property because of the exemption for capital gains. If land appreciates at 10 percent, a foreign investor would be willing to pay up to 24 percent more than a domestic farmer because of the capital gains exemption. It is interesting to note that last year prime Iowa farmland appreciated over 30 percent.

The tax incentive given to foreign investors places domestic farmers at a competitive disadvantage when land purchases are required to expand a farm operation. Many American farmers have already been priced out of further land investment. There is no reason why the U.S. Government should retain a tax law which encourages foreign investment and conflicts with the best interests of the American farmer and consumer.

It is safe to conclude that this amendment will do little to discourage foreign investment in the United States. There are numerous other incentives for foreigners to bring their capital here. A list of those incentives, by no means exhaustive, might include the following:

Investment in farmland provides a hedge against inflation. Even with our recent inflation rates, inflation in the United States is generally lower, and more easily controlled than in most other countries.

The political and social climate in the United States offers a haven to wealthy foreigners who fear the possibility of nationalization of their assets at home.

The investment performance of agricultural lands is superior to other forms of investment. Agricultural land has historically performed much better than conventional investment vehicles. For example, between 1968 and 1975 the Dow Jones industrial average went from an index of 100 to 111, Kansas farmland went from 100 to 182 during the same time period.

The U.S. trade imbalance with the OPEC countries and our industrial trading partners has put billions of dollars in the hands of Arab, Japanese, and German investors. At the same time, the U.S. trade deficit has weakened the dollar in relation to other major currencies. A devalued dollar permits foreign investors to buy U.S. products, securities, and farmlands at a discount. In other words, Mr. President, there has never been a time in our Nation's history in which farmlands could be purchased by foreign investors at such bargain rates as they are today.

The fact that the prevailing rate of inflation in the United States has been well below the inflation rate of many other industrial countries creates another incentive to invest in the United States.

What better place is there to invest money than in U.S. food-producing lands? In 1975 agricultural land values rose by 14 percent. In 1976 land values rose again by 14 percent. Last year, the average price increase in U.S. agricultural lands was 17 percent. We can be certain that agricultural land investments will remain a superior hedge against inflation.

In view of the wide range of incentives for foreign investment in agricultural land, it is amazing that the U.S. Government has felt the need to create yet another incentive, and one that is not available to U.S. farmers and investors. Mr. President, perhaps the best argument for this bill revolves around the question of equity. Why should foreigners have a tax advantage, and a substantial one at that, that is unavailable to U.S. citizens? To understand the magnitude of that tax advantage, let us look for a moment at a study done by the economic research service of the USDA (working paper 47, appendix 2).

In this study researchers tried to calculate the value of the capital gains exemption, and they expressed it in terms of how much more a foreigner would be willing to pay for a given piece of land than if he did not receive the exemption. Assuming a 30 percent rate of taxation of capital gain, a discount rate of 10 percent, and a plan to hold the land for 15 years, a foreigner would be willing to pay 9 to 21 percent more for land than a resident investor, depending on the average annual rate of appreciation in land values. The American farmer is in a difficult business as it is: There is no conceivable reason why the Government should subsidize his competitors in this manner.

Mr. PROXMIRE. Mr. President, will the Senator from Wyoming yield?

Mr. WALLOP. I am happy to yield for a question, without losing my right to the floor.

Mr. PROXMIRE. Yes, that is all I have, is a question.

May I ask the Senator if his amendment is approved by the Treasury?

Mr. WALLOP. Mr. President, the amendment is not approved by the Treasury, though I understand the Treasury's concerns regarding the amendment since—I propose to offer an amendment which would satisfy their immediate concerns.

Mr. LONG. Mr. President, I can answer the question.

As I understand, the Treasury approves of the amendment. The amendment raises money for the Treasury, and the Treasury approves of the amendment, provided the amendment is amended to give them 5 years to renegotiate a treaty where there is a conflict between the treaty and the amendment.

There is a treaty with a foreign nation in which we committed ourselves not to collect such a tax against their nationals. But we have the right to renegotiate it after a 5-year period. So if it is provided that the Treasury can protect the bona fides of the treaty for the 5-year period to fulfill the United States commitment on the treaty, they would be prepared to accept the amendment.

Mr. PROXMIRE. I appreciate that very much. But is there any possibility that this kind of provision, which has great appeal from the standpoint of equity and from the standpoint of the feeling that many have that there is too much foreign investment in our farms, that this may result in a very perverse reciprocity, in which some countries may retaliate against American investment abroad, which, after all, is much bigger than foreign investment in this country?

Mr. WALLOP. Mr. President, in a document by Marshall Langer called "The Need for Tax Reform in the Tax Treaty Area," which was produced by Florida State University, in covering the question of how to deal with foreign tax havens, Mr. Langer says, in this connection:

> Other countries have developed rules which make it virtually impossible for anyone to escape taxation of income and gains from local real estate, no matter how title to the property is held.

So, while it may be possible that the amendment which I intend to offer would certainly give the Treasury the kind of time to come back and renegotiate, Treasury may say that reciprocity is going to do more harm than good to this country, but it also will allow the IRS and the affected treaty countries to renegotiate these treaties. That would be an achievement that is in no way dangerous to the people of the Senator's State or the people of this country.

Mr. PROXMIRE. May I say to my friend that the only reason I have a question about this is because here is a measure which, above all, should have had hearings, should have had a record, and we should have had the opportunity for the State Department and the Treasury Department to express their views on something that will affect our foreign policy and affect the responsibility of investors investing abroad, and so forth.

Perhaps I am wrong. Perhaps the Senator can help me on this. There apparently has been no study on this, no hearing, no record, in the House or Senate, and no opportunity for experts to testify or to be cross-examined, and yet the effect does seem to be rather substantial. Could the Senator help us on this? Is there a record of any kind that we can rely upon? After all, it is 8 o'clock at night on Saturday night with almost half of the Senate gone. This will be about a 10- or 15-minute debate affecting foreign investment in this country and American investment abroad.

Mr. WALLOP. May I say to my friend from Wisconsin, it will not affect foreign investment in this country in general. It will affect foreign investment in American farmland and agricultural land. The October 4 RECORD cites numerous studies, some by the Department of Agriculture in cooperation with Treasury, which have been done on this very issue. It is not something that is coming squarely off the wall. Let me assure my friend I understand the concerns he is expressing.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a statement by Senator CHURCH, which he had intended to deliver when participating in this debate. But he is unable to do so. All I can say is, in this statement Senator CHURCH, who is certainly a very high ranking member of the Foreign Relations Committee, soon to be chairman of that committee, supports this amendment in its entirety.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR CHURCH

I rise in support of the amendment introduced by my esteemed colleague from Wyoming, Mr. Wallop. This amendment would close a loophole in our tax code which at present allows foreigners who buy up American farmland to escape paying capital gains tax on profits earned from the sale or exchange of such land. This tax loophole gives foreign investors a special advantage in the purchase of U.S. land by enabling them to pay higher prices than can any U.S. investor or farmer, who must take into consideration that he will have to pay the full capital gains tax in the event he should sell or transfer the land.

America's fertile farmland is, under almost any circumstance, an attractive target for foreigners wishing to invest in the United States. With the added incentives provided by the capital gains loophole and the now dramatically devalued dollar, U.S. land is one of the best bargains around for wealthy Germans and Japanese, and the oil rich sheiks of the Middle East. It is hardly surprising that foreign investors are flocking to take advantage of this situation. While precise data is hard to come by, the Multi-State Tax Commission estimates that fully one-third, or some $800 million, of all foreign investment in the U.S. in 1977, went into buying farms. So long as the favorable capital gains tax treatment for foreigners continues, this trend is likely to accelerate. In the process, the price of farmland in this country will be inflated to the point where our own hard-pressed farmers—who do not get such privileged tax treatment from the Internal Revenue Service—will simply be pushed out of the bidding.

One vehicle for bestowing this special tax break to foreign investors is a series of bilateral tax treaties which the U.S. Treasury has negotiated with many foreign nations. The U.S. has tax treaties with at least 16 countries, including Germany, Japan, the Netherlands and Canada, from which much of the foreign capital pouring into the U.S. is emanating, which serve this purpose. These treaties contain provisions which allow foreigners to escape paying U.S. capital gains taxes on profits from the sale or transfer of stock in any corporation, including any foreign holding company established to acquire or hold real estate in the U.S. Such tax-sheltered holding companies are a favorite device used by foreign interests to acquire agricultural land in the U.S.

This is yet another example of tax treaties being used to formulate fundamental U.S. tax policies which have profound consequences for both the U.S. Treasury and for individual Americans. The same was true of the recently negotiated United Kingdom tax treaty. The Senate attached a reservation to that treaty on a provision which would have superseded the individual states' right to tax foreign investors in their jurisdiction as they see fit. In that instance, as in this, the tax treaty mechanism was being used to bypass full and careful consideration of important tax issues by the appropriate tax-writing committees of the Congress. I think it is time that this practice cease, and that major tax policy issues such as that now facing us, be determined first and foremost by the Congress, not by a handful of Treasury Department negotiators working out an accommodation with the representatives of foreign governments.

Passage of this amendment will go a long way toward reasserting the primacy of Congress in the tax writing area. Equally important, it will restore a measure of equity to the tax treatment of domestic and foreign purchasers of American farm land.

I urge my colleagues to vote for this amendment.

Mr. DOLE. Mr. President, I support the amendment of the Senator from Wyoming.

PRESENT LAW—TAX TREATMENT OF FOREIGN INVESTORS

Under present law, the capital gains tax treatment of a foreign investment depends on whether the foreign investor is acting as a passive investor or is engaged in a trade or business. Income which is effectively connected with a U.S. trade or business is taxed according to the standard U.S. tax rates, regardless of the nationality of the income recipient. Income is taxed on a net income basis and the foreign investor must pay capital gains tax upon the sale of the property.

If the foreign investment is considered by the IRS to be a passive investment, the IRS requires a withholding tax of 30 percent on certain items of gross income with no deduction allowed for interest expenses or depreciation. However, as a passive investment, there is no tax upon any gain from the sale or other disposition of the property, as long as the foreign investor is in the United States for less than 183 days of the taxable year.

Special real property election.—The nonresident foreign investor who is deemed to be a passive investor can elect to have income from the real estate investment taxed on a net basis, thus avoiding the 30-percent withholding tax on income. Theoretically the investor must also pay capital gains. In fact, the investor can enjoy the tax benefits of the special election, but drop the election in the year he wishes to sell the real estate. His tax status reverts back to that of a passive investor permitting a tax-free capital gain.

CHANGES MADE BY S. 3414

First. The bill amends the Internal Revenue Service Code to broaden the definition of taxable income of a nonresident alien individual and broadens the definition of taxable income of foreign corporations. Under the bill, taxable income would include three categories:

Gross income effectively connected with the conduct of a trade or business in the United States.

Gain from the sale or exchange of land used in farming, suitable for use in farming, undeveloped land or timberland.

Gain from the sale or exchange of a corporate stock or a partnership if the partnership was formed for the purpose of buying, selling or holding farmland, undeveloped land or land suitable for the use in farming.

Second. If property is distributed upon the liquidation of a corporation, the corporation will have to recognize and be taxed on any gain or losses resulting from the sale or distribution of that property. To prevent the use of corporate liquidation as a vehicle for the tax-free distribution of farmland to shareholders of a foreign corporation.

Third. To avoid confusion in interpreting the law, the amendment stipulates that it will override existing treaties. Sixteen treaties provide for the tax-free sale of corporate stock by nonresident aliens. In the absence of a treaty override, stocks in a land holding corporation may be sold or exchanged, and capital gains tax can be avoided.

ECONOMIC AGREEMENTS

The size of the incentive depends upon the average rate of appreciation of land and the amount of time the land is held. For example, if farmland appreciates at 8 percent a year, a foreign investor would be willing to pay 4 to 15 percent more for farmland property because of the exemption for capital gains. If land appreciates at 10 percent, a foreign investor would be willing to pay 5.6 to 24 percent more than a domestic farmer because of the capital gains exemption. It is interesting to note that last year prime Iowa farmland appreciated over 30 percent.

The capital gains tax loophole invites the worst kind of foreign investment; those who wish to profit from speculation in land prices. With no capital gains tax, there is no deterrent to land speculation.

Increased foreign investment and price speculation pulls land out of reach of the average American farm family that is trying to become more efficient by expanding their farm.

There is sufficient incentive for foreigners to invest in U.S. lands: the desire to diversify investments, rapidly appreciating farmland prices, the favorable currency exchange rate for most foreign investors allowing the purchase of U.S. land at a discount, the favorable price of U.S. land compared to farmland in Western Europe and Japan, the stability of the U.S. investment climate. Therefore, this amendment will do little to deter foreign investment in U.S. lands.

The amendment will generate revenue—Senate agriculture has not yet received the requested reports indicating the extent of foreign investment in U.S. agriculture. The European Investment Research Center estimated that foreigners invested $800 million in U.S. farmland last year, which indicates the extent of investment and possible capital gains tax revenue involved.

Senate Agriculture Committee has already expressed concern over the issue of foreign investment in U.S. agriculture lands by requesting a report on the extent of such investment. Although this report has not been finished, it is clear that the amendment has merit regardless of the report's findings. The amendment does not argue for or against foreign investment in farmlands, but addresses itself to a needless and harmful tax incentive for such investment.

Mr. LONG. Mr. President, might I say that the committee decided that this matter should be the subject of a 6-months study, and that Treasury should have 6 months to report back. Senator DOLE informed his colleagues on the committee and reserved the right to bring this matter up on the floor, which right he does have. Of course, every Senator has that right.

Apparently since that time, the Treasury has taken the view that the amendment is all right as far as Treasury is concerned. The Treasury favors the amendment, with the change with reference to what I said earlier.

Mr. PROXMIRE. Mr. President, I would be much happier if we could have a study. I do not see any rush or hurry on this until we know what we are doing. The Senator has a very large number of cosponsors. Obviously, it does have an appeal. It does raise money. There is an equity argument here.

AMENDMENT NO. 3988, AS MODIFIED

Mr. WALLOP. Mr. President, I send a modification to the amendment to the desk. I ask if it is in order. This will take care of the Treasury concern. I ask unanimous consent to modify my amendment.

The PRESIDING OFFICER. The Senator has the right to modify his amendment. The modification will be stated.

The legislative clerk read as follows:

The Senator from Wyoming (Mr. WALLOP) proposes a modification to amendment No. 3988.

Mr. WALLOP. Mr. President, I ask unanimous consent that further reading of the modification be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be so modified.

The amendment, as modified, is as follows:

At the appropriate place, insert the following new section:

SEC. . TAXATION OF NONRESIDENT ALIENS ON GAINS FROM THE SALE OF FARM LAND AND OTHER RURAL LAND IN THE UNITED STATES.

(a) Gain From Sale of Farmland Treated As Effectively Connected Income.—Paragraph (2) of section 871 (b) (relating to determination of gross income of nonresident alien individuals which is connected with United States business) and paragraph (2) of section 882 (a) (relating to determination of taxable income of foreign corporations which is connected with United States business) are each amended to read as follows:

"(2) Determination of taxable income.—In determining taxable income for purposes of paragraph (1)—

"(A) gross income includes only gross income which is effectively connected with the conduct of the trade or business within the United States, and

"(B) gain from the sale or exchange of—

"(i) real property located in the United States which is—

"(I) land used in farming (as defined in section 180 (b)),

"(II) land suitable for use in farming (as defined in section 182 (c) (2)), or

"(III) land in a rural area (within the meaning of paragraph (7) of section 306 (a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a) (7)), or

"(ii) stock in a corporation, or interest in a partnership, determined by the Secretary to have been formed or availed of for the purpose of acquiring, holding, or selling such land,

shall be treated as gross income which is effectively connected with the conduct of a trade or business within the United States if such gain exceeds $1,000 for the taxable year.".

(b) Nonrecognition Rule for 12-month Liquidations Not to Apply.—Paragraph (1) of section 337(b) (relating to definition of property for gain or loss on sales or exchanges in connection with certain liquidations) is amended—

(1) by striking out "and" at the end of subparagraph (B),

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma and the word "and", and

(3) by adding at the end thereof the following new subparagraph:

"(D) property described in section 882(a)(2)(B)(i).".

(c) Lien for Payment of Taxes.—Section 6321 (relating to lien for taxes) is amended by adding at the end thereof the following new sentences: "For the purpose of applying this section with respect to liability for tax arising under sections 871(b)(2) and 882(a)(2), the lien shall apply to each property described in section 871(a)(2)(B)(i) or 882(b)(2)(B)(i) without regard to whether the person liable to pay the tax neglects or refuses to pay after demand unless he furnishes such assurances of payment of the liability to the Secretary as the Secretary may require.".

(d) Tax Treaty Provisions to the Contrary Not to Apply.—Section 7852(d) shall not apply to the application of sections 871(b)(2)(B) and 882(a)(2)(B).

(e) Effective Date.—The amendments made by this section shall, in general, apply with respect to sales and exchanges in taxable years beginning after December 31, 1978. "However, in any case involving property acquired prior to the date of enactment of this section, the amendments made by this section shall not apply with respect to sales and exchanges in taxable years beginning before December 31, 1983, to the extent that the application of these amendments would be contrary to any treaty obligation of the United States in effect on the date of enactment."

Mr. WALLOP. Mr. President, this does what Treasury has asked. I believe it meets the further requirements of the Senator from Louisiana.

Mr. President, I would like to refer to an article entitled "Tax Haven for Foreigners Buying U.S. Farmland," written by David Gersch, which states in part:

To most Americans, the Netherlands Antilles probably conjure up images of sunny beaches and happy tourists cultivating high-priced Caribbean tans. For wealthy Europeans, however, the Antilles offer much more. "With the Antilles as an offshore base," Antillean promotional literature proclaims, "foreigners can avail themselves of a sunny climate in U.S. realty."

Thanks largely to the U.S. Treasury Department, the Antilles are a tax haven where foreign investors can enjoy, along with the sun and surf, substantial U.S. tax breaks to shelter their investments in American land.

Mr. President, I ask unanimous consent to add the Senator from Washington (Mr. MAGNUSON) as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. WALLOP. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. HANSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 2026

Mr. BARTLETT. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma (Mr. BARTLETT), for himself, Mr. BELLMON, and Mr. DURKIN, proposes an unprinted amendment numbered 2026.

Mr. BARTLETT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 383, after line 8, insert the following new section: Section 510.

(a) Section 509(a) of the Internal Revenue Code of 1954 is amended by adding at the beginning thereof the following: "except as provided in Subsection (f)."

(b) That there be added to Section 509 of Internal Revenue Code of 1954 a new subsection (f) as follows:

"(f) for the purpose of Section 4942 the term private foundation shall not include any organization which on or before May 26, 1969, and continuously thereafter to the close of the taxable year, operated and maintained as its principal functional purpose facilities for the long-term care, comfort, maintenance, or education of permanently and totally disabled persons; elderly persons; needy widows; or children."

Mr. HANSEN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. BARTLETT. Mr. President, on August 23 of this year, the Senate Finance Committee reported an amendment to H.R. 7312 which was originally my bill S. 2825. Because of certain questions raised at that time by the distinguished Senator from Wisconsin (Mr. PROXMIRE) action on the amendment was withheld. The amendment I am proposing today is essentially the same amendment, and it is designed to add to the list of organizations exempt from private foundation rules, the institutions that operate or maintain facilities for the principal function of providing long-term care, comfort, maintenance, or education to indigent widows, elderly persons, children, and the permanent and totally disabled.

These long-term care facilities do not exhibit the same problems that Congress tried to correct in the 1969 Tax Reform Act.

These institutions were and are not established by large contributors who are seeking to only protect personal desires and assets with total disregard for public interest.

The Sand Springs Home in Sand Springs, Okla., is an excellent example of one of the few long-term care facilities not currently exempted. It was founded in 1908 by Mr. Charles Page, a pioneer Oklahoma oilman, and incorporated in 1912 with the primary function of operating as an orphange. The home later expanded into a widows colony, and in 1925, came under the auspices of the Free and Accepted Masons of the State of Oklahoma. It has since provided assistance to hundreds of orphans and thousands of widows without Federal, State, or local assistance.

Mr. Page was an extremely wise and far-sighted individual, he provided the home assets which would insure the home's operation almost indefinitely. The home's present assests consist of its own physical facilities and adjacent

lands, as well as vacant tracts which are appreciating in value, stock in several small wholly owned companies, oil property, certificates of deposit and investments in Government obligations.

The two Internal Revenue Code provisions which have the greatest impact on the home are selections 4940 and 4942. It appears that either through the previously considered H.R. 112 or through the present legislation, H.R. 13511, that the problems with section 4940 will be corrected. As my colleagues will recall, this section provides for a 4-percent excise tax on foundations, and the amendment provided by H.R. 112 or the present legislation reduces that contribution to 2 percent.

Section 4942 requires private foundations to distribute a fixed percentage of their assests in each year that they are carrying out exempt functions. This requirement completely disregards income from other assests.

Grant-making organizations have no problem with this section in that they may adjust the amount of their grants from year to year. Institutions such as the home must be mindful of their long-term obligations. Therefore, tax requirements which cause them to engage in wasteful and needless spending affect their future financial stability.

My amendment solves this problem. It provides long-term care facilities, formed before May 26, 1969, will not be classified as private foundations. Instead, they will be treated in the same fashion as universities, schools, medical research facilities, and hospitals. These organizations are considered public charities, not private foundations. These organizations have been designated without regard to the source and amount of their income. Operations such as the Sand Springs Home should also be classified in a similar category. The fact that this home or any other of similar nature is endowed by one individual should not prevent it from being classified as a public charity.

Mr. President, because of the debate on August 23, 1978, I have made changes to the legislation in response to a request by Senator PROXMIRE. This change will insure that any operation such as the Sand Springs Home will be prevented from what is commonly called "self dealing." None of the operating foundations which I have been in contact with feel that this provision would be of any detriment to their operation, and in fact, most States, including Oklahoma, already have statutory provisions against "self dealing."

Mr. President, I would like to thank the committee for its previous efforts on my legislation, and I hope that they will take a strong position on this matter in the conference committee.

It is my understanding, Mr. President, that this is acceptable to the floor manager and Treasury.

I know the distinguished Senator from Wisconsin has a question he would like to ask.

Mr. PROXMIRE. I thank the Senator from Oklahoma.

Under this amendment would the foundation pay the 2 percent excise tax?

Mr. BARTLETT. Yes. That is correct.

Mr. PROXMIRE. Would they be allowed to make loans or have business dealings with the officers of the charity of the businesses supporting them?

Mr. BARTLETT. No, they would not.

Mr. PROXMIRE. Would the "Excess Business Holdings" section of the Code apply?

Mr. BARTLETT. Yes, it would.

Mr. PROXMIRE. Would they be allowed to self-deal?

Mr. BARTLETT. No, they would not.

Mr. PROXMIRE. The point is that charities and foundations, if they are to be tax exempt, are supposed to be in the business of supporting charities. The law requires them, therefore, to use their moneys and income for charitable purposes up to a certain percentage of their corpus.

This charity says it cannot do that without selling of its corpus and wants an exemption. What I want to make certain is that if that exception is given, they will have to use all their income for the charity, will not self deal, and will not essentially use the income for business purposes instead of the charity.

Mr. BARTLETT. The amendment I am asking for would in the opinion of experts accomplish that.

Mr. PROXMIRE. I compliment my good friend. I believe he has done an excellent job in meeting the objections which we had. I think it is a good amendment.

Mr. METZENBAUM. Will the Senator from Oklahoma yield for a question?

Mr. BARTLETT. Yes.

Mr. METZENBAUM. I do not have the amendment in front of me. I have seen a copy of it. As I read the amendment, it refers to private corporations becoming tax-exempt. It is my understanding that a private corporation that is operated for profit and that treats the aged in nursing homes would be come tax-exempt under this provision? I did not see the language of nonprofit. I saw only the words of private corporations. I do not have the amendment. I am waiting for a copy of it.

The amendment states:

> The term private foundation shall not include any organization which on or before May 26, 1969, and continuously thereafter to the close of the taxable year, operated and maintained as its principal functional purpose facilities for the long-term care, comfort, maintenance, or education of permanently and totally disabled persons; elderly persons; needy widows; or children.

The thing that concerns me is this: Are we providing that a private foundation that is operated for profit for the purposes as indicated in this amendment shall be exempt from taxation? Is that the thrust of the amendment of the Senator from Oklahoma?

Mr. BARTLETT. The Senator read it correctly when he said the term "private foundation." When he originally asked the question, he said, "corporation."

It is a foundation not for profit, and where there is profit and business transactions, there will be taxes paid.

Mr. METZENBAUM. Would the Senator from Oklahoma be good enough to clarify for me what we are talking about? We are talking about private foundations as distinguished from public foundations. The thrust of his amendment, as I understand it, then, is to be certain to include within the tax-exempt status private foundations that are operating not for profit for the purposes as described in the amendment. Is that correct?

Mr. BARTLETT. That is absolutely correct.

Mr. METZENBAUM. Has the Treasury indicated that they have no objection to these amendments?

Mr. BARTLETT. It is my understanding that they have.

Mr. METZENBAUM. Pardon?

Mr. BARTLETT. Yes, they have.

Mr. METZENBAUM. They have objections?

Mr. BARTLETT. As I understand it, the committee says the Treasury finds this amendment acceptable.

Mr. LONG. It is my understanding that the Treasury has no objection and I have no objection.

Mr. METZENBAUM. The question I have is, has the Treasury indicated they have no objection?

Mr. BARTLETT. That is what the floor manager indicated.

Mr. METZENBAUM. The floor manager indicated that if they have none, he has none.

Mr. BARTLETT. I think the floor manager just said that he and the Treasury have no objection.

Mr. METZENBAUM. Is the floor manager saying the Treasury has indicated that they have no objection?

Mr. LONG. We are checking with the Treasury, but when the matter was discussed with the Treasury, they referred to as it appeared to have no objection. That is to an amendment much broader than this.

Mr. METZENBAUM. Is the Senator from Wisconsin aware of the Treasury's feeling?

Mr. PROXMIRE. Yes, it is my understanding that the Treasury has no objection the way it was drafted. It was changed, modified. All the income must go to charity and they have no objection to it.

Mr. METZENBAUM. If the Senator from Wisconsin is satisfied to that effect, I have no objection.

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER (Mr. HATFIELD). The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. BARTLETT. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBERT C. BYRD. I move to lay that on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business for not to exceed 30 minutes with statements limited therein to 5 minutes each.

Mr. GRAVEL. Reserving the right to object, I should like to move to have my amendment reconsidered.

Mr. METZENBAUM. No, Mr. President, I object to bringing that up at the moment. I cannot reach anybody at Treasury this evening. They have gone home,

we have not. I am perfectly willing to hold the matter over until Monday until we can get a satisfactory answer.

Mr. GRAVEL. Point of information, Mr. President: Does a Senator have the right to move for reconsideration?

Mr. METZENBAUM. I ask the chairman of the Finance Committee——

Mr. LONG. Mr. President, we had an understanding, I must say to the Senator from Alaska, that there would be no motion to reconsider until that matter had been cleared up to the satisfaction of the Senator from Ohio. To move to reconsider prior to that time would violate that understanding.

Mr. GRAVEL. The understanding I had was that we would give him a proper period of time to check with Treasury. If he thinks for a minute that I am fabricating letters from the Treasury, he can read the English language.

Mr. LONG. I ask the Senator, please not to do that. We can discuss that matter tomorrow and I think that we would have no problem over it.

Mr. GRAVEL. I am happy to discuss it tomorrow or the next day.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished manager wishes to proceed a little longer, I shall not press the morning business right now.

Mr. LONG. Mr. President, I am willing to consider one more amendment.

UP AMENDMENT NO. 2027

(Subsequently amendment No. 4078)

(Purpose: To provide for an energy credit for the elderly)

Mr. HEINZ. Mr. President, I send an unprinted amendment to the desk for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment numbered 2027.

Mr. HEINZ. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 161, between lines 11 and 12, insert the following new section:

SEC. 123. ENERGY CREDIT FOR THE ELDERLY.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 (relating to credits against tax), as amended by sections 141 and 336 of this Act, is amended by adding immediately before section 45 the following new section:

"SEC. 44E. ENERGY COST CREDIT FOR THE ELDERLY.

"(a) GENERAL RULE.—In the case of an individual who has attained the age of 65 years before the close of the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year a credit of $75.

"(b) Limitation Based on Income.—The amount of the credit allowed by subsection (A) shall be reduced by 1.5 percent of the amount by which the adjusted gross income of such individual who maintains a household (within the meaning of section 44A (f)(1)) and exceeds $7,500 for the taxable year.".

(b) Refund of Excess Credit.—

(1) Section 6401(b) (relating to excessive credits) is amended—

(A) by striking out "and" before "43"; and

(B) by inserting "44E (relating to energy cost credit for the elderly)," before "exceeds".

(2) Section 6201(a)(4) (relating to assessment authority) is amended—

(A) by striking out "or" before "section 43" and insert in lieu thereof a comma; and

(B) by inserting "or section 44E (relating to energy cost credit for the elderly)," before "the amount so overstated".

(c) Clerical Amendment.—The table of sections for subpart A of Part IV is amended by inserting immediately after the item relating to section 44D, the following new item:

"SEC. 44E. Energy cost credit for the elderly."

On page 126, after the item relating to section 122, add the following new section:

SEC. 123. Energy credit for the elderly.

Mr. HEINZ. Mr. President, this amendment will provide relief against energy costs which are a growing burden on our less fortunate elderly. It is an amendment that we voted on in this Chamber last year during the consideration of the energy bill and it passed in this Chamber by a vote of 88 to 2. The purpose of the amendment is to provide relief against energy costs, which, as we all know, are a tremendously growing burden on our less fortunate elderly.

The amendment would allow for a $75 refundable credit which would be fully applicable for elderly households which have an adjusted gross income of $7,500 or less. Families with an adjusted gross income between $7,500 and $12,500 would receive a reduced credit.

This amendment would provide senior citizens with a way to meet some of their energy-related costs. Mr. President, I do not believe that anyone in this Chamber is unaware of the increased cost of utilities over the past 10 years. I am concerned today, because the cost of fuel oil alone has risen more than threefold since 1967.

Mr. President, I am the first to recognize that this credit does not begin to meet the problems that our elderly on fixed incomes are having. It does not begin to meet the tremendously increased cost of utilities over the past years. In the last 10 years, the cost of utilities has increased threefold.

I am sure that every Member of the Senate is familiar with what not only energy costs, but what the rate of inflation has taken in the way of a heavy toll on our Nation's elderly poor. For those living on fixed incomes, the cost of weatherizing their homes has been absorbed by the Federal Government's conservation program. But the monthly cost of utilities has been abated only occasionally during the winter months, and then only at the last moment.

I have felt for some time that the program administered by the Community Services Administration, to assist low-income families pay their unpaid utility bills, has fallen far short of providing the kind of relief we had hoped for at the time we enacted this legislation. I have just received from the Senate of Pennsylvania a resolution which I would like to have printed in the RECORD in its entirety. In part, this resolution reads:

Whereas, The Federal Government, through its Community Services Administration, has established a one-time grant program to help low income families meet their unpaid energy and utility bills.

Whereas, this program is limited to moneys being available only for unpaid bills; and

Whereas, such a policy and program discriminates against the low income family who may have experienced undue hardship in order to pay its current bills, being ineligible under this program for reimbursement.

The resolution calls on the President, the Congress, and others to "issue proper regulations" in order to avoid the "discriminatory effects" of the program.

I ask unanimous consent to have the resolution printed.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION

Whereas, The Federal Government, through its Community Services Administration, has established a one-time grant program to help low income families meet their unpaid energy and utility bills, including expenses for warm clothing, blankets, emergency house repairs, temporary shelter and health services needed because of the energy emergency; and

Whereas, This program is limited to moneys being available only for unpaid bills; and

Whereas, Such a policy could deter an individual or family from making payments with respect to reimbursable areas in order to comply with a future program; and

Whereas, Such a policy and program discriminates against the low income family who may have experienced undue hardship in order to pay its current bills, being ineligible under this program for reimbursement; therefore be it

Resolved, The Senate of Pennsylvania memorializes the President of the United States, Congress, the Department of Health, Education and Welfare and the Community Services Administration to issue proper regulations in order to avoid the possibility of such a program's discriminatory effects; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, and to the presiding officer of each House of Congress of the United States and to each Senator and Representative from Pennsylvania in the Congress of the United States and to the Department of Health, Education and Welfare and the Community Services Administration.

Mr. HEINZ. Mr. President, this resolution simply confirms my earlier suspicions. In addition to providing too little too late, the CSA program has other flaws which also serve to cut down on its ability to aid those in need.

Mr. President, I believe there is a better way to provide relief for the elderly from the high cost of utilities. Many older Americans have utility costs ranging between one-fourth and one-third their disposable incomes. They should not have to suffer the anxiety and fear of interrupted service or of reduced grocery moneys, because this body allowed an inefficient program to stand in the way of our enacting an efficient tax credit measure.

I believe the amendment before us today will provide the efficient, rational, effective relief we all want to this problem.

The cost of energy is still rising and the number of elderly citizens is expected to double in the next 50 years. I believe we must try now to fashion some long-term relief for those who are no longer able, because of fixed incomes, to keep pace with the monster of runaway fuel costs.

Mr. President, I urge my colleagues to accept this much-needed amendment.

Mr. LONG. Mr. President, the estimated cost of this amendment is $1.2 billion a year. That is a great deal of money. I hope the Senator will not insist on voting on this amendment tonight. I fear that we might not be able to produce a quorum, for one thing. For another, I should dislike having it said that we voted on an amendment involving this much revenue just on the spur of the moment without more consideration.

Mr. HEINZ. I say to the chairman that I am perfectly willing to carry it over until Monday.

Mr. LONG. If the Senator would be kind enough to do that, it will accommodate all of us. At that point, we can debate it briefly and vote on it.

Mr. HEINZ. I wonder if we can have a unanimous-consent agreement where we can have 10 minutes on a side?

Mr. JAVITS. Mr. President, reserving the right to object, we have put amendments over for Members who have problems to Monday for RECORD votes. This is an amendment that not just I but many others would like to vote on. I am going to vote for it; so will many others. I hope the Senator will not make us vote at a time when many of us will be absent and that we may put this vote in toward the end of the day when we will all be here.

In other words, it can be debated all right and just set the vote down for after 4 o'clock when we will be here.

Mr. LONG. It creates something of a problem in this respect, though. If cloture is voted, the amendment might not be germane.

Mr. JAVITS. I realize that.

Mr. LONG. I hope that we would vote on it before cloture, because I certainly would want the Senator to have the right——

Mr. JAVITS. What time would that be, 3:30? I understand the first cloture vote is at 4.

Mr. LONG. It would be all right for me to vote on it at 3:45 on Monday.

Mr. HEINZ. Would it be possible to have 10 minutes on a side to tell people what the amendment is about?

Mr. ROBERT C. BYRD. Yes.

Mr. President, I ask unanimous consent that the vote in relation to this amendment occur at 3:45 p.m. on Monday, with 20 minutes equally divided?

Mr. HEINZ. Yes.

Mr. ROBERT C. BYRD. Twenty minutes equally divided, but that 20 minutes will have to be used during the hour under the cloture vote, if that is agreeable.

Mr. HEINZ. That is to say during what time? What time, I ask the majority leader, does that 1 hour on cloture run?

Mr. ROBERT C. BYRD. Three o'clock.

Mr. HEINZ. Three o'clock.

Mr. ROBERT C. BYRD. Yes.

Mr. HEINZ. I certainly would have no objection to that unanimous-consent proposal.

Mr. METZENBAUM addressed the Chair.

Mr. ROBERT C. BYRD. The Senator's 15 minutes equally divided—it can start running at 3:30.

Mr. HEINZ. That is fine with this Senator.

Mr. METZENBAUM. Reserving the right to object, and I will not object, although I have no interest in it, I am advised Senator MUSKIE has a concern about it and would like to be heard in connection with it. Would the leader be certain to accord him 5 minutes?

Mr. LONG. If the majority leader would be so kind as to provide at least 10 minutes between the vote on this amendment and cloture, then both sides, at least, would have someone here to hear the explanation as to why cloture should be voted or why it should not.

Mr. ROBERT C. BYRD. Yes. Very well.

Would the distinguished manager be agreeable to taking this amendment up at 3 and debating it, then voting at 3:45 on it?

That would mean just 10 or 15 minutes for debate—let us take it up at 3, after 15 minutes on it, and then 20 minutes, of which 5 minutes would be under the control of Senator MUSKIE, and then vote at 3:20.

Mr. LONG. Fine.

That would be equally divided.

Mr. ROBERT C. BYRD. Exactly.

Mr. President, I ask unanimous consent that at 3 o'clock p.m. on Monday the Senate resume consideration of the amendment by Mr. HEINZ, with a 20-minute time limit thereon, 15 minutes equally divided between Mr. HEINZ and Mr. LONG, 5 minutes under the control of Mr. MUSKIE, and that the Senate then vote on the amendment, and that following the disposition of that amendment the time remaining between that point and 4 o'clock be equally divided between Mr. LONG and Mr. MUSKIE on the cloture motion.

The PRESIDING OFFICER. Without objection, it is so ordered.

Several Senators addressed the Chair.

Mr. METZENBAUM. Can the Senator from California yield me 1 minute?

Mr. CRANSTON. Certainly.

Mr. METZENBAUM. Mr. President, if I may have the attention of the chairman of the Finance Committee, I would like to acknowledge my appreciation of the attitude of the chairman of the Finance Committee in protecting my position with respect to the Gravel amendment.

In the interim, I have been advised by the Treasury Department that they have no objection to the Gravel amendment.

I appreciate the consideration accorded me and, if the Senator from Alaska cares to make his motion to reconsider, I have no objection.

Mr. CRANSTON. Mr. President, with the indulgence of the chairman and other Senators, I will send an amendment to the desk and ask for its immediate consideration. The chairman said there could be one more, and this would be it.

UP AMENDMENT NO. 2028

(Purpose: to amend section 6166 of the Internal Revenue Code with respect to treatment of certain interests held by decedent's family for purposes of the extension of time for payment of estate tax provided by Section 6166)

Mr. CRANSTON. Mr. President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an unprinted amendment numbered 2028.

The amendment is as follows:

At the appropriate place in the committee substitute bill insert the following new section:

SEC. TREATMENT OF CERTAIN INTERESTS HELD BY DECEDENT'S FAMILY FOR PURPOSES OF THE EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX PROVIDED BY SECTION 6166.

(a) INTEREST HELD BY MEMBER OF DECEDENT'S FAMILY TREATED AS HELD BY DECEDENT.—Paragraph (2) of section 6166(b) (relating to definitions and special rules) is amended by adding at the end thereof the following new subparagraph:

"(D) CERTAIN INTERESTS HELD BY MEMBERS OF DECEDENT'S FAMILY.—All stock and all partnership interests held by the decedent or by any member of his family (within the meaning of section 267(c)(4)) shall be treated as owned by the decedent."

(b) ELECTION FOR PURPOSES OF THE 20-PERCENT REQUIREMENTS WITH RESPECT TO PARTNERSHIP INTERESTS AND STOCK WHICH IS NOT READILY TRADABLE.—Subsection (b) of section 6166 (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(7) PARTNERSHIP INTERESTS AND STOCK WHICH IS NOT READILY TRADABLE.—

"(A) IN GENERAL.—If the executor elects the benefits of this paragraph (at such time and in such manner as the Secretary shall by regulations prescribe), then—

"(i) for purposes of paragraph (1)(B)(i) or (1)(C)(i) (whichever is appropriate) and for purposes of subsection (c), any capital interest in a partnership and any non-readily-tradable stock which (after the application of paragraph (2)) is treated as owned by the decedent shall be treated as included in determining the value of the decedent's gross estate,

"(ii) the executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a), and

"(iii) section 6601(j) (relating to 4-percent rate of interest) shall not apply.

"(B) NON-READILY-TRADABLE STOCK DEFINED.—For purposes of this paragraph, the term 'non-readily-tradable stock' means stock for which, at the time of the decedent's death, there was no market on a stock exchange or in an over-the-counter market."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the estates of decedents dying after the date of the enactment of this Act.

Mr. CRANSTON. Mr. President, the amendment accomplishes two changes in current estate tax law relating to the extended period allowed for payment of estate taxes as provided in section 6166 of the Internal Revenue Code.

First, it lifts the current limit on the number of members of a family owning stock in the family corporation to permit large families to obtain the benefits of section 6166 currently allowed small families numbering under 15.

This would permit a larger family to qualify for exactly the same thing. Nothing more, nothing less.

Second, it allows immediate members of a decedent's family to count their shares as belonging to the decedent for the purpose of meeting the 20 percent ownership test.

Under the proposal, Treasury loses no

money. The taxes are paid with interest charged at the regular Treasury rate.

The Treasury has informed us it has no objection to the provision.

The amendment passed the House on September 12 as section 7 of H.R. 12578. The Finance Committee voted its approval of this amendment subsequent to reporting the tax reduction bill. Treasury has informed my staff that the Department has no objection to the provision.

The proposal is endorsed by the American Retail Federation, the American Bankers Association, the California Farm Bureau, and a number of other organizations representing independent business owners.

The kind of family involved consist of a brother and sister, each the parent of 4 and 6 children respectively, and the grandparents of 20 grandchildren. The amendment permits such a family to obtain benefits of section 6166 of the code. Present law would make it difficult for the grandparents to pass on direct operating expenses to their children and grandchildren through ownership interests in the business.

The whole purpose is to permit families to continue to operate farms or corporations if families are not to be compelled to break up or sell off to huge corporations in order to pay their inheritance taxes at some instant moment. Of equal importance is whether the family entity in the day-to-day operation of the business can reinvest earnings back into the business—where the money is needed—instead of placing it in a nonproductive reserve account to pay estate taxes at some future unknown time. Obviously, a division of capital for such a purpose from the family business is a disadvantage compared to each of such a requirement on the part of a public corporation in competition with the family-owned enterprise.

Mr. PROXMIRE. Does the Senator say that this is approved by the Treasury?

Mr. CRANSTON. The Treasury Department has no objection to it.

Mr. PROXMIRE. And the Treasury agrees that there is no revenue loss?

Mr. CRANSTON. That is correct.

Mr. PROXMIRE. I do not understand. How can there be a benefit to the large families if there is no revenue loss to the Treasury?

Mr. CRANSTON. The basic benefit is that they are able to adjust and have a longer time to pay their inheritance taxes. They still will pay their inheritance taxes, and the Treasury will not lose. It does not get all the money now.

Mr. PROXMIRE. It does not reduce inheritance taxes? It just gives them more time?

Mr. CRANSTON. That is correct.

Mr. LONG. Mr. President, as I understand this amendment, the interest that will be paid will be every bit as much as the Treasury is paying to borrow money.

Mr. CRANSTON. Exactly.

Mr. LONG. So there is no loss to the Treasury.

Mr. CRANSTON. That is right.

Mr. LONG. Mr. President, the bill passed the House of Representatives. As I understand it, the Treasury has no objection to it. It was discussed, and no one in the committee had any objection to it.

Mr. DOLE. It is my understanding that it has been discussed with Senator Curtis. I know of no objection on the Republican side.

This has been referred to as the Gallo Wine amendment, which we supported. It was discussed in the committee.

Mr. CRANSTON. That is right. It benefits all large, multigenerational families. There was no objection in the committee.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

● Mr. PELL. Mr. President, I strongly support the middle-income personal income tax reductions as provided in the amendment offered by the distinguished Senator from Arkansas (Mr. BUMPERS), and I voted in favor of that amendment.

With the approval of Senator BUMPERS' amendment, the middle-income tax cuts became a part of the amendment offered by the Senator from Oregon (Mr. PACKWOOD) providing for education tuition tax credits.

As chairman of the Senate Subcommittee on Education I have consistently opposed tuition tax credits for reasons I have stated here in the Senate on several occasions. I believe very strongly that the alternative to tuition tax credits which I have proposed, and which has been passed by the Senate, for direct Federal grants, is far preferable to tuition tax credits. That alternative proposal is very much alive and will be considered in the near future by the House of Representatives.

Consequently, Mr. President, on the amendment which included both the middle-income tax cuts and the tuition tax credits, I have voted against the amendment to indicate my continued opposition to tuition tax credits. I felt free to do so particularly in view of the wide margin by which the combined amendment was approved. For the record, I wish to indicate again my support for the middle-income tax cuts in the Bumpers amendment.●

H.R. 12051—AN ACT RELATING TO THE APPLICATION OF CERTAIN PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the committee be discharged from further consideration of H.R. 12051, and that the Senate proceed to its immediate consideration, for not more than 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

H.R. 12051, an act relating to the application of certain provisions of the Internal Revenue Code of 1954 to specified transactions by certain public employee retirement systems created by the State of New York or any of its political subdivisions.

The Senate proceeded to consider the bill.

Mr. MOYNIHAN. Mr. President, this is the legislation which will permit the New York City Union Pension Funds to purchase bonds guaranteed by the U.S. Government, the U.S. Treasury, in accordance with the provisions worked out over the past year.

This measure has passed the Senate. A version has come to us, an exact identical version has come to us, from the House.

If we adopt it tonight, it can go to the President in order that it can be in effect early next week when, in point of fact, the city of New York needs it.

I will say one last thing, this concludes the business of the city of New York with the U.S. Congress, hopefully, permanently, as the Senator from Wisconsin has said.

But I would like to say that when I came to this Senate, the first day, a week after my election, I met with the now majority leader and I spoke to him about the problems of our city. He said,

You may be sure that New York will have three Senators in the Congress to come.

He has been as meticulously faithful to his word in that regard as in every other commitment I have heard him make.

I detain him only 5 seconds further to say that we are in his debt. We never say our thanks very well, but I would hope he would hear them tonight.

Mr. ROBERT C. BYRD. Mr. President, the Senator has expressed his thanks overly well. He is overly charitable. I am, indeed, glad to be helpful.

Mr. JAVITS. Mr. President, I shall be equally brief.

I would like to express our thanks. I would like to tell the Senator that the best thanks we can give him is a successful city, and if Pat and I can contrive it, that is what we will have.

I express my gratitude to the Senate, to Senator PROXMIRE who was against us, but did the greatest things in the world for us in making us come through with what we really are going to do and how we are going to do it.

He can count himself as one of the great friends of this greatest city, probably, in the world.

I would like to thank the majority leader, Senator LONG, and all those who cooperated with us, and on the Republican side, Senator CURTIS, and Senator DOLE, and others for allowing us to bring this measure up.

The bill was ordered to be read a third time, was read the third time, and passed.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, for not to exceed 30 minutes, with statements therein limited to 5 minutes each.

I thank the distinguished manager of the bill, Mr. LONG, and the distinguished ranking minority member for their patience and diligence. I thank all Senators for a good day's work.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination, which was referred to the Committee on Governmental Affairs.

(The nomination received today is printed at the end of the Senate proceedings.)

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. 3578. An original bill to transfer to the Superintendent of Documents the function of distributing Government publications to certain foreign governments (Rept. No. 95–1295).

S. Con. Res. 108. An original concurrent resolution authorizing the printing of the prayers of the Chaplain of the Senate during the 95th Congress as a Senate document (Rept. No. 95–1296).

S. Res. 559. A resolution authorizing the printing of the report entitled "Highway Needs To Solve Energy Problems" as a Senate document (Rept. No. 95–1297).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, with amendments:

S. 2774. A bill to extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes (Rept. No. 95–1298).

By Mr. LONG, from the Committee on Finance, with amendments and an amendment to the title:

H.R. 11409. An act to extend indefinitely the period during which certain dyeing and tanning materials may be imported free of duty (Rept. No. 95–1299).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. HATCH:

S. 3562. A bill to amend the Internal Revenue Code of 1954 with respect to the application of the income tax to small businesses; to the Committee on Finance.

S. 3563. A bill to amend the securities laws to increase small business investment opportunities; to the Committee on Banking, Housing, and Urban Affairs.

S. 3564. A bill to amend the Small Business Act to require Federal agencies to reimburse small business for certain paperwork costs; to the Select Committee on Small Business.

S. 3565. A bill to amend the Walsh-Healey Public Contracts Act with respect to the application of the Act to certain small businesses; to the Committee on Human Resources.

S. 3566. A bill to amend the Davis-Bacon Act with respect to the application of the act to certain small businesses; to the Committee on Human Resources.

S. 3567. A bill to amend Public Law 95–151 subsection (a) by excepting therefrom employers which employ 10 or fewer employees; to the Committee on Human Resources.

S. 3568. A bill to maximize employment opportunities for all Americans in rural and urban poverty areas; and to alleviate structural employment among young people through bonus incentives to small business sponsors; and to achieve more efficient, productive and cost-effective economic policymaking within the Federal Government; to the Committee on Human Resources.

By Mr. DURKIN:

S. 3569. A bill to improve the clarity and effectiveness of internal revenue tax forms; to the Committee on Finance.

By Mr. STAFFORD (for himself, Mr. RANDOLPH, and Mr. GRAVEL):

S. 3570. A bill to amend the Public Buildings Act of 1959, as amended, to authorize the financing of the acquisition and construction of public buildings, and for other purposes; to the Committee on Environment and Public Works.

By Mr. STAFFORD (for himself and Mr. RANDOLPH):

S. 3571. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

S. 3572. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

S. 3573. A bill to amend the Public Building Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

By Mr. STAFFORD (for himself, Mr. RANDOLPH, and Mr. GRAVEL):

S. 3574. A bill to amend the Public Buildings Act of 1949, as amended, and for other purposes; to the Committee on Environment and Public Works.

By Mr. STAFFORD:

S. 3575. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

S. 3576. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

By Mr. STAFFORD (for himself and Mr. RANDOLPH):

S. 3577. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

By Mr. PELL (from the Committee on Rules and Administration):

S. 3578. A bill to transfer to the Superintendent of Documents the function of distributing Government publications to certain foreign governments. Original bill reported and placed on the calendar.

By Mr. MOYNIHAN:

S. 3579. A bill to amend the definition of employee for certain purposes of the Internal Revenue Code; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH:

S. 3562. A bill to amend the Internal Revenue Code of 1954 with respect to the application of the income tax to small businesses; to the Committee on Finance.

S. 3563. A bill to amend the securities laws to increase small business investment opportunities; to the Committee on Banking, Housing, and Urban Affairs.

S. 3564. A bill to amend the Small Business Act to require Federal agencies to reimburse small business for certain paperwork costs; to the Select Committee on Small Business.

S. 3565. A bill to amend the Walsh-Healey Public Contracts Act with respect to the application of the act to certain small businesses; to the Committee on Human Resources.

S. 3566. A bill to amend the Davis-Bacon Act with respect to the application of the act to certain small businesses; to the Committee on Human Resources.

S. 3567. A bill to amend Public Law 95–151 subsection (a) by expecting therefrom employers which employ 10 or fewer employees; to the Committee on Human Resources.

S. 3568. A bill to maximize employment opportunities for all Americans in rural and urban poverty areas; and to alleviate structural unemployment among young people through bonus incentives to small business sponsors; and to achieve more efficient, productive and cost-effective economic policymaking within the Federal Government; to the Committee on Human Resources.

SMALL BUSINESS ASSISTANCE

Mr. HATCH. Mr. President, the economic greatness of the United States has been built on the foundation of small business. The importance of small business to the economy of this country cannot be overstated It is the backbone, the life blood, the linchpin of our system of free competitive enterprise. Individual small firms may be very small, but in aggregate they make up an inordinately important part of our economy. Consider these facts:

Small business accounts for nearly 97 percent of all firms in the United States;

Small business generates about 45 percent of our gross national product, and 48 percent of our gross business product;

Small business provides over 50 percent of the private employment in the United States;

Small business provides the livelihood of over 100 million Americans;

Small business is labor intensive and populist, and any growth in sales translates immediately into jobs—real, private sector jobs which contribute to the gross national product and do not add to the burden of the taxpayer; and

Small business firms are flexible and innovative, producing over half of all the important industrial inventions and innovations in the United States.

This impressive array of statistics, however, is misleading. Notwithstanding its large and important role in our economy, small business is experiencing a constantly dwindling share of the country's economic activity and wealth. In 1960, small- and medium-sized manu-

facturing firms accounted for 50 percent of the industry's assets and 41 percent of its profits. By 1972, these figures dropped to 33 percent of the assets and 38 percent of the profits. If the small business share of total manufacturing assets continues to decline at the same rate as it has over the last 11 years, it will be reduced to 11.5 percent by 1985.

Similarly, small firms find themselves disadvantaged and losing ground in terms of capital acquisition. In 1953, gross private domestic investment was $34.6 billion of which 15 percent $5.1 billion, was invested in small, nonfarm, noncorporate businesses. Over the next 20 years these figures increased to $182.1 billion and $11.4 billion, respectively, but the percentage was down to 7.5 percent. In short, while total investment has increased, the relative share of small business in those investments declined by 50 percent.

Furthermore, small business firms are heavily in debt and many are in danger of going under. Balance sheet positions of small business have deteriorated from having more assets than liabilities to a position in 1971 where liabilities exceeded assets by about 50 percent. In 1974, small business failures reached a 3-year high, and in 1975, small business bankruptcies jumped by 45 percent—almost twice the level experienced annually between 1966 and 1970.

Aside from economic conditions, the availability of labor and increasing inroads of big business, the small business person today must grapple with the problems big Government imposes for their firms. Government mandated paperwork is proliferating beyond reason and out of control. Federal regulations impose a burden estimated at $130 billion annually on our economy, half of which is estimated to be born by small business. Federal regulators are suffocating the small entrepreneur in an avalanche of restrictive, repressive, and counterproductive regulations. These regulations sap the time, funds, and productive energy of small business and inflict unintended penalties on its firms and employees.

Our tax system also disadvantages the small- and medium-sized firm. The largest corporations pay effective Federal tax rates of between 25 and 30 percent, and sometimes considerably less, while the smaller firms pay effective tax rates in excess of 50 percent.

It is obvious that while operating a small business may be a personally rewarding challenge, it is surely no undertaking for the faint-hearted. The Senate Small Business Committee estimates that in the current economic climate, a new small business has less than a 25-percent chance of surviving. Three out of every four new small businesses will ultimately fail. In consequence, the incorporation of new businesses has dropped to a new low.

Historically, small business has not been without attention or without friends in our executive branch and our Congress. Indeed, in the Small Business Act, it is declared that the public policy of the country is to "aid, assist, and encourage small business." Yet, Government policies over the past decade have done little to aid, assist, or encourage small business. These policies have in fact, hampered and discouraged small business.

The thousands of small business persons I have met throughout the country are not looking for special treatment nor are they asking for a handout. But they would like to see present roadblocks to a freer, more competitive marketplace removed. They do not shy away from competition—rather, they feel that competition is the very essence of small business, but they importune that the competition must be fair competition.

As Members of this body know, I am no exponent of inflicting unnecessary additional Federal legislation on the American public, and I do not suggest that all the problems of small business have legislative solutions, but I am persuaded that problems created by legislation must be solved by modifying that legislation. The time has come for the Government to turn its earnest attention to the problems of small business. If a cure is not found, our economy will suffer irreparable damage, and the United States will be forced to further relinquish its position of economic preeminence.

To effect these legislative changes, I have developed, and offer for consideration today, the Hatch small business assistance bills of 1978. These bills address a number of the most pressing problems of small business, and I shall describe each of them briefly.

The Small Business Tax Reform Act of 1978 has these features:

First, it simplifies corporate income structure, and reduces rates. Currently, corporate income tax structure has three different rates at three different income plateaus: 20 percent on income up to $25,000; 22 percent on income between $25,000 and $50,000; and 48 percent on incomes in excess of $50,000. In these times of high inflation, this structure makes no sense either as a revenue producing or a tax bracket measure. Even the smaller corporations have passed through the current maximum rate threshold and are subject to the same taxable rates as the corporate giants. Thus the lower rates, intended to advantage the small companies, no longer provide that advantage and the higher rate of 48 percent, setting in as it does at the relatively modest income of $50,000 is a deterrent to expansion and investment by most small firms. Accordingly, my bill proposes to simplify and reduce taxes by introducing a flat tax rate at 18 percent to apply to all corporate income, and a surtax of 26 percent to apply to income in excess of $150,000. Thus the tax rate tops out at 44 percent and the sanctuary of the lower rates extends to the $150,000 threshold. The reduction of 2 percent on the first $25,000; 4 percent on the second $25,000; and 4 percent on incomes in excess of $50,000 will greatly assist capital formation and retention and allow businesses to step up their activities increasing overall tax revenues resulting from an expanded tax base.

Second, it provides an exemption from capital gains taxation on the sale of a qualified small business interest if the proceeds are reinvested in another small business within 2 years of the date of the sale. Small business has an extremely difficult time attracting and recovering capital and this provision is badly needed as a means for retaining equity capital and encouraging the startup of new firms. Essentially, this change will equalize capital gains taxation by treating the sale and reinvestment of a small business interest in the same way as the reinvestment of the profits from the sale of a house.

Third, it provides a realistic and simple method for writing off the cost of certain items of capital investment. Under the present system, depreciation of capital items is computed on the probable useful life of the asset as indicated in the Internal Revenue Code. The complexities and inequities of this system render it virtually impossible for small business to utilize its provisions. For example, 63 percent of firms with $1 million or more in assets utilized ADR—Asset Depreciation Range—in contrast to only 2 percent of those firms with assets between $500,000 and $1 million. Internal Revenue Service statistics for 1972 indicate, furthermore, that 70 percent of the dollars recovered through the investment tax credit were accumulated by less than two-tenths of 1 percent of the corporations of the United States. From these statistics, we must conclude that the method of recovering the cost of depreciable items is of no use to most small businesses. My bill provides a solution to this problem by establishing an election to use a 2-year depreciation schedule for highway transport equipment, tool and dies; a 5-year schedule for machinery, rail, air and water transport equipment, office furniture and fixtures, and leasehold improvements. Deductions would be limited to $200,000—$100,000 for a married person filing a separate return. In the case of a subsection S corporation, the $200,000 limitation would be allocated among the owning members under such regulations as the Internal Revenue Service may prescribe.

Fourth, the bill addresses the problem of the tax treatment of losses on the sale of stock in small business concerns. Individuals who experience losses on the sale of small business stock should be able to treat $50,000 per taxable year of such losses as ordinary losses which can be used to offset ordinary income rather than as offsets only to capital losses. Under present law the maximum amount permitted for such offset is $25,000 per year. This bill will increase the amount to $50,000 and increase the equity capital limitation of small business corporation under section 1255 of the Code from $1 million to $2 million, and the permissible amount such corporation can receive for the stock from $500,000 to $1 million.

Fifth, it will increase the permissible number of shareholders in a subsection S corporation from the present limit of 10 to a limit of 20 and will allow such shareholders, in addition to natural persons, to be certain types of thrusts, and small business investment companies licensed under the Small Business Investment Act

of 1958. This change will provide more latitude in attracting venture capital and diversifying ownership of corporations using subsection S tax options. The extension will facilitate the raising of venture capital by increasing the number of investors a corporation can legally accommodate.

Sixth, it will expand the provisions of the Code relating to accounting methods. The modification significantly simplifies tax related accounting procedures by allowing firms whose annual gross receipts do not exceed $1 million to employ a cash method of accounting. This change benefits smaller firms, but more important, it will prevent the taxation of paper profits and encourage the flow of cash so badly needed by small concerns, particularly those new in business.

Seventh, the bill includes a provision for optional current expensing of the cost of the equipment purchased to comply with Environmental Protection Agency or Occupational Safety and Health Agency requirements. Present law provides for depreciation of such items in accordance with existing code schedules and total cost recovery can take many years. Since the nature of such equipment is in no way associated with the success of the concern and earns it not a penny of income, it follows that the owner should be able to write off its cost in the shortest possible time. This bill provides for the expensing of such items in the same year as purchased, at the option of the owner.

Finally, the bill provides a permanent increase in the investment credit rate from its present limit of 10 percent per year to a rate of 12 percent per year. The modification will make possible, and encourage larger and more frequent capital outlays by small business.

The Small Business Capital Formation Act of 1978 which is a part of my comprehensive proposal addresses the problem of capital formation in the small business community. Of all the elements requisite to the growth and success of small business, availability of risk capital at reasonable cost, is the most important. Historically the major source of risk capital in our country has been public financing—an entrepreneur selling an equity in his business in exchange for the capital needed to operate it. Generation of capital by such means is governed by the Securities Act of 1933 and the Securities Exchange Act of 1934 acts, as amended over the years, coupled with changes in the economy have thrown a number of roadblocks in the way of capital formation causing equity financing to become all but extinct as a source of small business capital. The roadblocks are evident in recent business history which indicate a strong trend away from equity financing. Let me briefly review some statistics:

While the number of broker/dealer firms has decreased 35 percent since 1962, banks, pension funds, and savings and loan organizations supplying debt financing have increased in size and significance. Its equity capital market foreclosed, small business which pays the same tax rates, is subject to the same bureaucratic harassment and experiences the same cyclical economic changes that confront larger firms and is now forced to compete with them in the debt capital market. These figures further demonstrate the deterioration of small business's position in the capital market. From 1972 to 1975, new money raised by all classes of corporations increased nearly 50 percent, from $28 billion to $41 billion. But despite the increase the dollar total and the number of offerings of companies with net worth under $5 million decreased drastically. In 1972 there were 418 underwritings initiated by such companies, and those underwritings generated a total of $918.2 million. In 1973 there were 69 such offerings generating $137.5 million. In 1975 there were only 8 such offerings generating only $16.2 million. And to exacerbate the situation, it must be considered that a much greater percentage of the gross amount raised on a small offering is required to float the issue than the percentage required for larger offerings. For example, the cost of a $500,000 offering is about $92,000 or 18.5 percent, 7 times the 2.6 percent cost of floating an issue of $350 million.

This information points out the magnitude of the difficulties facing small business in the equity capital market. Such are the difficulties that small businesses are driven to seek debt financing from commercial banks in competition with large borrowers. Because of the nature of the risk, the banks must charge higher interest rates, placing small business at a severe disadvantage when compared to large competitors.

The need for risk and operating capital, and hence the thrust of this bill, is to roll back the debarments of small business from capital market. The bill will accomplish this objective in these ways:

First, the amount of an exempt from registration A offering under the Securities Act of 1933 is increased from its present limit of $500,000 to a limit of $3,000,000. The increase is needed to keep pace with the inflationary proclivities of the economy and will, of course, decrease the percentage cost of the offerings by increasing the amount raised, while the cost will remain relatively constant.

Second, the bill will remove much of the current suspicion surrounding the civil and criminal liability prospects attending the preparation and marketing of a public offering. As the act currently stands, there is almost no way for persons involved in the preparation or sale of a public offering to avoid civil or criminal penalties if the offering turns out to be unsuccessful or even less successful than the investor would desire. Irrespective of how meticulously a circular is drawn, the individuals and firms drawing it are exposed to civil and criminal liability almost at the whim of the investor and his attorneys. The bill will reduce the problem by requiring proof of common law fraud—deceit with scienter—before such penalties can be imposed, where the circular relates to securities duly registered with the Securities Commission or other appropriate authority of any State of the United States.

In order to restrict the use of such a circular to small business, the bill limits its application to firms with less than $10 million in assets.

Finally, the bill eases restrictions on private placement offerings by expanding the exemptions under which they can be sold and resold.

The effects of the burgeoning expansion of Federal Government regulation of business have been particularly severe on the small concerns. The Small Business Bureaucratic Paperwork Cost Participation Act of 1978 can help solve these problems. Small business, unlike large firms, is unable to pass the costs of Federal regulation along to its customers. What may represent merely an uneconomic application of resources for a large firm, may be literally a matter of life or death to a small business. While surely there has been no deliberate attempt on the part of the regulation writers to bring about the demise of small business, there has been little consideration given to the economic impact of regulation upon it. Bureaucratic paperwork requirements command increasingly large segments of the entrepreneurs' time and energy. One respectable source estimates the cost to American business for filling out Federal forms to be $40 billion annually. Eli Lilly Co., for example, estimates that it fills out 27,000 Federal forms each year. Goodyear Rubber Co. estimates that its cost of complying with bureaucratic paperwork requirements exceeds $38 million annually. These companies can hire skilled, efficient experts to do this work. Consider the cost to the small businessman or woman who must grapple with this workload along with the other myriad of problems he must face every day. The cost impact is much greater. In addition, they cannot pass these costs on to customers to the extent that the larger businesses can. Small business is reeling under the impact of these costs which consume as much as 25 percent of the total time worked in the business and command an increasing share of the entrepreneurs' time and energy. Each year the percentage of failures among small businesses increases and small business people blame the cost of bureaucratic paperwork for a substantial portion of the failures.

If we are to assume that Federal regulatory paperwork is for the benefit of the public, then we must conclude that the public should participate in the cost of preparing and filing the paperwork.

My bill requires the Government to reimburse the submitting company for the actual cost of completing and filing the forms and data as approved by the Small Business Administration. It also authorizes a suit against the responsible agency to recover these costs plus attorneys' fees where a reasonable reimbursement is not made on a timely basis.

Coming as they must out of the regularly appropriated funds of the agency requiring them, the reimbursement payments will be a source of valid current information concerning the cost of Federal paperwork to the American economy. The payments will also provide an additional source of capital needed to finance productive pursuits of small businesses.

The Small Business NLRA Exemption Act of 1978 addresses the problem of the damaging effects of Federal labor law on small business.

Because it is labor intensive and lacks large fiscal resources, small businesses are unduly and adversely affected by complicated labor-management legislation.

Only 6 percent of small concerns are organized. We may conclude from this that either labor unions have nothing worthwhile to offer small business, or that it is uneconomical for organized labor to attempt to organize the small fish.

The National Labor Relations Act was written at the behest of big labor to govern the relationship between big labor and big business. Small business has "no business" in this protracted tug of war. It must be treated separately to protect it from the ravages of concentrated power. It is not equipped to do battle in the arena with the giant adversaries of American industry. Involvement under the NLRA—collective bargaining, strikes, boycotts, organizing campaigns, and the rest, puts small concerns in the middle of this conflict and squeezes them hard.

Why then continue to harass small business with this law?

Unlike big business, small business is unable to pass along to its customers all the costs of doing business—such as costs brought about by the NLRA. If Congress had been able to foresee the negative effects of the NLRA on small concerns, it probably would have written them out of the act initially.

The Small Business Administration warns that further unionization of small business could very well tip the delicate balance between labor and business in favor of labor. The plight of small business demands positive and immediate steps and keeping the big labor fox out of the small business chicken coop is the first of the steps.

My Small Business NLRA Exemption Act will remove from coverage under the act, the smallest of small businesses—those having fewer than 10 employees. The exemption will stabilize the future of these enterprises, give them a new confidence, and optimism, and provide a climate where they can prosper and expand.

The benefits to the economy will be enormous.

Modification of the Walsh-Healey and Davis-Bacon Acts to give small business a better chance to participate in Government contracts is the purpose of the next two bills in my small business assistance package.

The only advantage small business possesses is its ability to perform certain tasks more economically and more efficiently than big business.

Small business tends to be rural based, independently or family owned, nonunion, and labor intensive. Requiring Federal work to be done at prevailing union rates and prices, Walsh-Healey and Davis-Bacon deny small business and the public the advantages derived from these qualities. Under existing law, small contractors wishing to bid on Government work must pay at least prevailing union wage rates and prices. The laws thus discourage competitive bidding, driving up the cost of Government construction, repairs, supplies, and materials.

My bill will modify Walsh-Healey and Davis-Bacon, limiting their applications to contracts exceeding $50,000 in amount. The modifications create an enclave where small business can utilize its economy and efficiencies of size and operation to compete on a more fair and equitable basis for Governmnet contracts.

In addition to aiding small business, the bills will help significantly in the battle against inflation by reducing the cost of Government work.

No law in this country discourages employment of the youth, the elderly, the handicapped, and the structurally unemployed more than the minimum-wage provisions of the Fair Labor Standards Act. Literally millions of jobs go begging or are filled by undocumented aliens because employers cannot afford to pay the minimum wage. Removal of the Nation's smallest employers from Federal wage rate constraints would create hundreds of thousands of new jobs.

Millions of Americans cannot find jobs because they are too young, too old, lack skills, are handicapped, or have substandard ability. These people want jobs but are unable to command even the minimum wage for their time, and therefore must rely on public jobs, public assistance, or must go without income entirely.

To relegate these individuals permanently to Government handouts for a livelihood is to perpetuate high inflation, low productivity, and unemployment, and to institutionalize poverty.

Small business could find jobs for virtually all of these hardcore unemployed, even the substandard workers, if it could pay them at wage rates consistent with their productivity. The vast potential for employing the off-standard employee is clearly and dramatically exemplified by the armies of illegal aliens employed in this country. These aliens are here because there is a job for them. The reason there is a job is that the aliens want to work and are willing to work at less than the minimum wage. As they do not report income, they are able to escape the constraints of Federal wage laws. In view of the illegal alien situation, does it make any sense to deny our citizens the right to work in similar jobs under similar circumstances? Does it make any sense to continue restricting these jobs to illegal aliens who report no income, pay no taxes or other expense of government, and send a good portion of their earnings back home.

Many such jobs could be taken by our structurally unemployed, adding to the tax base and the GNP. And by enabling more small businesses to operate competitively and profitably, the bill will provide an excellent hedge against inflation. Family businesses could provide subminimum wage jobs for family member employees and new growth possibilities will open up for family businesses.

Finally, by restricting application of the exemption to the smallest businesses, those with fewer than 10 employees, there is no danger that employment or wages in other sectors of our economy will be affected.

The last of these small business assistance bills is aimed at full employment as much as small business assistance. The Small Business Jobs for the Structurally Unemployed Act of 1978 initiates a program to reduce unemployment by providing jobs for structurally unemployed Americans. This is done by furnishing incentives for approved small business sponsors in certain rural and urban high unemployment areas to provide job opportunities for the hardcore unemployed.

Unlike CETA and Humphrey-Hawkins, which create inflationary income transfer jobs, this bill creates real, private sector jobs which add to the tax base and increase the gross national product.

Under the bill, the Secretary of Labor will pay an eligible small business sponsor a social bonus up to $4,000 for each year's employment of an eligible employee. The bill makes it possible for small businesses to hire the hardcore unemployed and provide them with a paycheck and new marketable skills. The social bonus project adds jobs where they are needed most—in high unemployment areas and among the economically disadvantaged.

May I also point out that the program makes the private sector, not the Government, the employer of last resort. More important, the bonus costs the taxpayer little or nothing because the bonus money substitutes for public assistance the employee is, in all probability, already receiving.

I am convinced that the bill offers a real and workable alternative to any employment program the Government is now offering, and is worthy of the Senate's earnest consideration.

Mr. President, I urge every Member of this body to join our effort to give small business the help it needs so much by supporting passage of these bills. Small business is crying out for help and their cry must not fall on deaf ears. I hope my colleagues will act next year to approve this series of comprehensive proposals.

Mr. President, I ask unanimous consent that the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 3562

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

That this Act may be cited as the "Small Business Tax Reform Act of 1978,"

SEC. 2. REDUCTION IN CORPORATE INCOME RATES.

(a) REDUCTION IN NORMAL TAX RATE.—Subsection (b) of section 11 of the Internal Revenue Code of 1954 (relating to normal tax) is amended to read as follows:

"(b) NORMAL TAX.—The normal tax is equal to 18 percent of the taxable income.".

(b) $150,000 SURTAX EXEMPTION.—

(1) IN GENERAL.—Subsection (d) of section 11 of such Code (relating to surtax exemption) is amended to read as follows:

"(d) SURTAX EXEMPTION.—For purposes of this subtitle, the surtax exemption for any taxable year is $150,000, except that, with

respect to a corporation to which section 1561 (relating to certain multiple tax benefits in case of certain controlled corporations) applies for such taxable year, the surtax exemption for the taxable year is the amount determined under such section.".

(2) CONFORMING AMENDMENT.—Paragraph (7) of section 12 of such Code (relating to cross references relating to tax on corporations) is amended by striking out "$50,000" and inserting in lieu thereof "$150,000".

SEC. 3. SALES OF INTEREST IN SMALL CONCERNS.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 of the Internal Revenue Code of 1954 (relating to nontaxable exchanges) is amended by adding at the end thereof the following new section:

"SEC. 1041. SALES OF INTERESTS IN SMALL CONCERNS.

"(a) NONRECOGNITION OF GAIN.—If an equity or proprietary interest in a small concern is sold, gain (if any) from such sale shall, at the election of the taxpayer, be recognized only to the extent that the taxpayer's sale price exceeds the cost of replacement property purchased by the taxpayer within 2 years from the date of such sale.

"(b) DEFINITIONS.—For purposes of this section—

"(1) The term 'small concern' means a small business as defined in the Small Business Act and in the regulations promulgated thereunder by the Small Business Administration.

"(2) The term 'replacement property' means an equity or proprietary interest in a small concern.

"(c) LIMITATIONS.—

"(1) Subsection (a) shall apply only to the gain attributable to the sale of an interest which was in a small concern as defined at the time of the acquisition of such interest and as to which interest the taxpayer's holding period is more than 6 months.

"(2) Where the interest sold is evidenced by stock of a small concern, subsection (a) shall apply only to a sale of stock which, if such stock had been purchased by the issuing corporation, would have been treated as a redemption within the meaning of paragraphs (1), (2), and (3) of section 302(b).

"(d) BASIS OF REPLACEMENT PROPERTY.—The basis of replacement property shall be reduced by the amount of gain not recognized solely by reason of the application of subsection (a). If more than one item of replacement property is purchased, such reduction in the basis of the replacement property shall be applied to each such property in chronological order of purchase. The amount of the reduction applicable to each item of property shall be determined by multiplying the maximum gain not to be recognized pursuant to subsection (a) by a fraction the numerator of which is the cost of each replacement property and the denominator of which is the total cost of all replacement properties.

"(e) STATUTE OF LIMITATIONS.—If during a taxable year a taxpayer sells an interest in a small concern at a gain, then—

"(1) the statutory period for the assessment of any deficiency attributable to any part of such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

"(A) the taxpayer's cost of purchasing replacement property which the taxpayer claims results in nonrecognition of any part of such gain,

"(B) the taxpayer's intention not to purchase property within the period specified in paragraph (2), or

"(C) a failure to make such purchase within such period; and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(b) HOLDING PERIOD.—Section 1223 of such Code is amended by redesignating paragraph (12) as paragraph (13) and by inserting a new paragraph (12) as follows:

"(12) In determining the period for which the taxpayer has held replacement property, the acquisition of which resulted under section 1041 in the nonrecognition of any part of the gain realized on the sale or exchange of an interest in a small concern, there shall be included the period for which such interest had been held, the period the replaced property was held as of the date of such sale or exchange.".

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter 0 of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 1041. Sales of interests in small concerns.".

SEC. 4. USE OF PRACTICAL COST RECOVERY METHOD FOR COMPUTING DEPRECIATION.

(a) AVAILABILITY OF METHOD.—Subsection (b) of section 167 of the Internal Revenue Code of 1954 (relating to use of certain methods and rates) is amended by striking out "and" at the end of paragraph (3), redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) the practical cost recovery method (as defined in subsection (m)(3)), and".

(b) REDUCTION IN MINIMUM LIFE.—Subsection (c) of section 167 of such Code (relating to limitations on use of certain methods and rates) is amended—

(1) by striking out "(2), (3), and (4)" and inserting in lieu thereof "(2), (3), (4), and (5)", and

(2) by striking out "3 years" and inserting in lieu thereof "2 years".

(c) ELIGIBLE PROPERTY.—Subsection (m) of section 167 of such Code (relating to class lives) is amended by redesignating paragraph (3) as (4) and by inserting after paragraph (2) the following new paragraph:

"(3) SPECIAL RULES FOR PRACTICAL COST RECOVERY METHOD.—

"(A) IN GENERAL.—If the taxpayer elects under this subsection to use the practical cost recovery method referred to in subsection (b)(4), the taxpayer may treat—

"(i) highway transportation equipment, tools, and dies as having a class life of 2 years, and

"(ii) machinery, rail, water, and air transportation equipment, office furniture, equipment, and fixtures, and leasehold improvements as having a class life of 5 years.

"(E) LIMITATIONS ON MAXIMUM DEDUCTION.—The amount of the deduction allowed by subsection (a) for any taxable year shall, to the extent it is determined by use of the practical cost recovery method referred to in subsection (b)(4), not exceed $200,000 ($100,000 in the case of a married individual filing a separate return). In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 1563(a)), the $200,000 limitation of the preceding sentence shall be allocated among the members of such group under regulations prescribed by the Secretary.".

SEC. 5. INCREASE IN LIMIT ON SMALL BUSINESS STOCK LOSS.

Section 1244 of the Internal Revenue Code of 1954 (relating to losses on small business stock) is amended—

(1) by striking out "$25,000" in subsection (b)(1) and inserting in lieu thereof "$50,000",

(2) by striking out "$50,000" in subsection (b)(2) and inserting in lieu thereof "$100,000",

(3) by striking out "$500,000" in subsection (c)(2) and inserting in lieu thereof "$1,000,000", and

(4) by striking out "$1,000,000" in subsection (c)(2) and inserting in lieu thereof "$2,000,000".

SEC. . SUBCHAPTER S AMENDMENTS.

(a) INCREASE IN NUMBER OF SHAREHOLDERS.—Paragraphs (1) and (2) of section 1371(a) of the Internal Revenue Code of 1954 (relating to small business corporations) are amended to read as follows:

"(1) have more than 25 shareholders;

"(2) have as a shareholder a person (other than an estate, a small business investment company licensed under the Small Business Investment Act of 1958, or a trust described in subsection (e)) who is not an individual;".

(b) CONFORMING AMENDMENT.—Section 1371 of such Code is amended by striking out subsection (e) (relating to special shareholders rules) and by redesignating subsection (f) as subsection (e).

(c) PASSIVE INVESTMENT INCOME.—Section 1372(e) of such Code (relating to termination) is amended by striking out paragraph (5).

SEC. 7. SMALL BUSINESS INVESTMENT COMPANIES.

Section 851 (defining regulated investment company) is amended by inserting after subsection (f) the following new subsection:

"(g) SPECIAL RULES FOR SMALL BUSINESS INVESTMENT COMPANIES.—Notwithstanding the provisions of subsection (a)(1) of this section, the provisions of this section shall apply to a small business investment company which is licensed by the Small Business Administration under the Small Business Investment Act of 1958 as amended.".

SEC. 8. INCREASE IN ACCUMULATION AMOUNT TO MEET BUSINESS NEEDS.

Section 537(b) of the Internal Revenue Code of 1954 (relating to special rules for determining the reasonable needs of the business) is amended by adding at the end thereof the following new paragraph:

"(5) MINIMUM RESERVE.—An accumulation of earnings and profits in an amount not in excess of $1,000,000 shall not be considered in excess of the reasonably anticipated needs of a business which is a small concern (as defined by the Administrator of the Small Business Administration).".

SEC. 9. OPTIONAL CASH METHOD OF ACCOUNTING FOR TAXPAYERS OPERATING AS A SOLE PROPRIETOR.

(a) GENERAL RULE.—Section 446 (relating to general rule for methods of accounting) is amended by adding at the end thereof the following new subsection:

"(f) OPTIONAL CASH METHOD.—

"(1) IN GENERAL.—An individual who owns the entire interest in an unincorporated trade or business may elect to compute taxable income from such trade or business—

"(A) under the cash receipts and disbursements method, and

"(B) without any requirement to use inventories under section 471.

"(2) GROSS RECEIPTS LIMITATION.—Paragraph (1) shall not apply for any taxable year with respect to any unincorporated trade or business if for any prior taxable year the gross receipts from such trade or business exceeded $1,000,000.

"(3) ELECTION.—An election under paragraph (1) may be made by the taxpayer with respect to any trade or business without the consent of the Secretary—

"(A) for the taxpayer's first taxable year

which begins after the date of the enactment of the Small Business Tax Relief Act of 1978, or

"(B) for the first taxable year during which the taxpayer owns the entire interest in such trade or business.

"(4) SPECIAL RULE FOR MARRIED INDIVIDUALS.—For purposes of this subsection, any interest in an unincorporated trade or business owned by a husband and wife as joint tenants, tenants by the entirety, or community property shall be treated as owned by one individual.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 10. CURRENT EXPENSING OF EPA AND OSHA EXPENDITURES.

(a) DEDUCTION ALLOWED.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 192. EQUIPMENT EXPENSES REQUIRED UNDER THE ENVIRONMENTAL PROTECTION ACT OR THE OCCUPATIONAL SAFETY AND HEALTH ACT.

"(a) ALLOWANCE OF DEDUCTIONS.—There shall be allowed as a deduction qualified EPA and OSHA expenses paid or incurred by the taxpayer during the taxable year which the taxpayer elects to treat as expenses which are not chargeable to capital account. The election shall be made at such time and in such manner as the Secretary prescribes by regulation.

"(b) APPLICATION WITH SECTION 167 AND 169.—A taxpayer may not elect to have the provisions of subsection (a) apply with respect to any property with respect to which he claims the deduction allowable under section 167 or 169.

"(c) DEFINITION OF QUALIFIED EXPENSES.—For purposes of this section—

"(1) QUALIFIED EPA EXPENSES.—The term 'qualified EPA expenses' means an amount paid or incurred in connection with the acquisition, construction, or erection of property installed in connection with a plant or other property to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, waste, or heat with respect to which a certification under subsection (d) is in effect.

"(2) QUALIFIED OSHA EXPENSE.—The term 'qualified OSHA expense' means an amount paid or incurred in connection with the acquisition, construction, or erection of property in connection with a plant or other property to comply with requirements imposed under the Occupational Safety and Health Act.

"(d) CERTIFICATION.—

"(1) CERTIFICATION OF EPA EXPENSES.—No deduction shall be allowed under subsection (a) with respect to a qualified EPA expense unless—

"(A) the State certifying authority having jurisdiction with respect to the equipment or facility has certified to the Federal certifying authority that such equipment or facility has been constructed, reconstructed, corrected, or acquired in connection with the State program or requirements for abatement or control of water or atmospheric pollution or contamination, and

"(B) the Federal certifying authority has certified to the Secretary that such equipment or facility is in compliance with the applicable regulations of Federal agencies, and as in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act (33 U.S.C. 466 et seq.), or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act (42 U.S.C. 1857 et seq.).

"(2) CERTIFICATION OF OSHA EXPENSES.—No deduction shall be allowed under subsection (a) with respect to any qualified OSHA expense, unless the Administrator of the Occupational Safety and Health Administration certifies to the Secretary that the equipment or facility is in compliance with applicable regulations and requirements of the Agency.

"(3) STATE CERTIFYING AUTHORITY.—The term 'State certifying authority' means, in the case of water pollution, the State water pollution control agencies as defined in section 113(a) of the Federal Water Pollution Control Act, and in the case of air pollution, the Air Pollution Control Agency as defined in section 302(b) of the Clean Air Act. The term 'State certifying authority' includes any interstate agency authorized to act in place of a certifying authority of the State.

"(4) FEDERAL CERTIFYING AUTHORITY.—The term 'Federal certifying authority' means, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health, Education, and Welfare.".

(b) CLERICAL AMENDMENT.—The table of sections for such part is amended by adding at the end thereof the following new item:

"Sec. 192. Equipment expenses required under the Environmental Protection Act or the Occupational Safety and Health Act.

SEC. 11. PERMANENT INCREASE IN INVESTMENT TAX CREDIT RATE TO 12 PERCENT.

(a) INCREASE IN CREDIT RATE.—Paragraph (2) of section 46(a) of the Internal Revenue Code of 1954 (relating to amount of credit for current taxable year) is amended—

(1) by striking out "10 percent credit" in the caption of subparagraph (A) and inserting in lieu thereof "12 percent credit",

(2) by striking out "subparagrph (D)" in the text of subparagraph (A) and inserting in lieu thereof "subparagraph (C)",

(3) by striking out "10 percent" in the text of subparagraph (A) and inserting in lieu thereof "12 percent",

(4) by striking out "11 percent" in clause (i) of subparagraph (B) and inserting in lieu thereof "13 percent",

(5) by striking out subparagraph (C) and redesignating subparagraph (D) as (C),

(6) by striking out "and before January 1, 1981" in clause (i), (i), and (iii) of Subparagraph (C) (as redesignated), and

(7) by striking out "before January 1, 1981" the second time it appears in clause (ii) of subparagraph (C) (as so redesignated).

S. 3563

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Capital Formation Act of 1978."

SEC. 2. (a) Section 2 of the Securities Act of 1933 is amended by adding at the end thereof the following:

"(15) The term 'limited offering' is one in which (A) the initial buyers of the securities are institutional investors or not more than thirty-five other persons or both; and (B) resales of any of the securites to persons other than institutional investors within three years after the last sale to any of the initial buyers other than institutional investors do not result in more than thirty-five owners of those securities (apart from any institutional investors and persons who become owners otherwise than by purchase) at any one time, unless the resales are pursuant to an offering statement, a distribution statement, or an exemption.

"(16) The term 'institutional investor' means (A) a bank, insurance company, small business investment company, or a parent of any such person, or (B) any other person of a class that the Commission designated by rule on the basis of such factors as financial sophistication, net worth, and the amount of assets under investment management.".

(b) Section 3(a) of the Securities Act of 1933 is amended by adding the following new paragraph:

"(12) Any security acquired pursuant to a limited offering.".

SEC. 3. Section 4 of the Securities Act of 1933 is amended by adding at the end thereof the following new subsection:

"(5) transactions involving the sale of any security exempt from registration under section 5, if (A) the issuer of the security is registered pursuant to the Securities Exchange Act of 1934, (B) the transaction does not involve the sale of more than one percent of the outstanding securities of the same class in any three-month period, and (C) the security has been held by the seller following full payment therefore for a period of at least two years. The limitation on the amount of sales hereunder shall expire where the seller has held such securities for at least five years.".

SEC. 4. Section 3(b) of the Securities Act of 1933 is amended by striking "$1,500,000" and inserting in lieu thereof "$3,000,000".

SEC. 5. Section 10(b) of the Securities Exchange Act of 1934 is amended by inserting at the end thereof a comma and the following: "except that with respect to any security of an issuer having less than $10,000,000 in assets having been duly and properly registered under the Securities Act or other Act governing the registration of such securities of any state of the United States, it shall be unlawful to use or employ such device or contrivance only if it is used with the intent to deceive, manipulate, or defraud: *Provided, however,* that such issuer shall make available to the Commission, at the time of making application for an exemption under this subsection, proper evidence of the prior registration of such security with the appropriate authority of one of the states of the United States."

SEC. 6. Section 3(c) of the Investment Company Act of 1940 is amended by adding the following new paragraph at the end thereof:

"(14) Any Small Business Investment Company licensed under the Small Business Investment Company Act of 1958.".

S. 3564

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Bureaucratic Paperwork Cost Participation Act of 1978".

SEC. 2. The Small Business Act is amended by adding at the end thereof the following:

"SEC. 22. (a) The reasonable cost of preparing, furnishing, and submitting any form, report, data, or information, incurred by any small business concern in complying with the requirement of any department, bureau, or agency of the Federal government shall be reimbursed to such concern by such agency from its currently appropriated and budgeted funds as herein provided.

(b) Reimbursement hereunder will be made promptly upon receipt of an invoice by the agency stating the costs of providing the required material.

(c) Where the agency finds the invoice to be less than the reasonable cost of preparing and filing the material, the agency may pay such additional amount as it deems necessary to cover such costs. Where the agency finds the invoice to exceed the reasonable cost of preparing and filing the material, the agency will obtain a determination of such cost from the Administrator, and promptly pay the amount determined. Where the

amount paid pursuant to the Administrator's determination is less than the invoiced amount, the submitting concern may bring an action at law pursuant to this section to recover the difference in the amounts, and where the petitioner in such action is awarded judgment of any sum, the court may also include interest, court costs, and attorney fees in such judgment.

(d) Claims for any number of unpaid or partially paid invoices may be included in a single action, but no action may be brought on an invoice remaining unpaid for longer than two years after submittal.

(f) This section shall not apply to any filing required for tax purposes by the Internal Revenue Service.

S. 3565

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

That this Act may be cited as the "Small Business Public Contracts for Materials Equal Opportunity Act of 1978."

SEC. 2. RAISING CONTRACT AMOUNT SUBJECT TO WALSH-HEALEY ACT.

Title 41, United States Code, section 35 is amended by deleting from the initial paragraph the amount "$10,000" and inserting in lieu thereof the amount "$50,000".

S. 3566

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

That this Act may be cited as the "Small Business Public Contracts for Labor Equal Opportunity Act of 1978."

SEC. 2. RAISING CONTRACT AMOUNT SUBJECT TO DAVIS-BACON ACT.

Title 41, United States Code Section 276a, paragraph "(a)" is amended by deleting the amount "$2,000" and inserting in lieu thereof the amount "$50,000".

S. 3567

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

That this Act may be cited as the "Small Business Employment Expansion Act of 1978."

SEC. 2. EXCEPTING CERTAIN SMALL EMPLOYERS

Public Law 95–151 subsection (a) is amended by inserting after "Every employer", the words, "except those employing fewer than 10 employees,".

S. 3568

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Bonus Employment Act of 1978."

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act to institute a program to reduce structural unemployment among our Nation's citizens by providing incentives for sponsors among our small business community to establish additional employment opportunities in rural and poverty areas.

DEFINITIONS

SEC. 3. For the purpose of this bill, the term—

(1) "small business sponsor" means any type of business having less than $10 million in assets and fewer than 250 employees, providing employment opportunities under this Act;

(2) "Secretary" means the Secretary of Labor;

(3) "State" means each of the several States and the District of Columbia;

(4) "urban poverty area" means any area of sufficient size and scope to comply with the provisions of this Act which the Secretary determines—

(A) has a rate of unemployment equal to or in excess of 15 per centum for twelve consecutive months prior to the selection of that area under this Act, and

(B) is located within a standard metropolitan statistical area having a population of at least two hundred and fifty thousand individuals;

(5) "rural poverty area" means any area located outside of the zoned jurisdiction of a metropolitan area and having a population of less than two hundred and fifty thousand individuals; and which has a rate of unemployment equal to or in excess of 15 per centum for twelve consecutive months prior to the selection of that area under this Act; and which complies with the provisions of this Act as so determined by the Secretary.

PROGRAM AUTHORIZED

SEC. 4. (a) The Secretary, in accordance with the provisions of this Act, is authorized from funds appropriated under section 9 of this Act to make the payment of a social bonus to business and independent sector sponsors as an employment incentive to encourage such sponsors to employ those eligible as defined in this Act in jobs located in such urban and rural poverty areas.

(b) In selecting the urban and rural poverty areas under subsection (a) of this section the Secretary shall give special consideration to urban and rural poverty areas located within States or, located within or containing municipalities, which show evidence of fully cooperating with any project assisted under this Act by providing beneficial tax treatment to an independent sector or business enterprise for any industrial or commercial facility to be located or expanded within the area as designated by this Act.

SOCIAL BONUS PAYMENT

SEC. 5. (a) The Secretary is authorized, in accordance with the provisions of this Act, to conduct in each urban or rural poverty area selected under section 3 of this Act a program for the payment of a social bonus to any small business sponsor if such enterprise establishes—

(1) that such sponsor will employ individuals in compliance with the provisions of this Act, and that they be employed for not less than one year;

(2) that such sponsor has a manpower services or other similar education program in the case of an independent sector enterprise; and that such program include on-the-job training which will upgrade skills and enhance the productivity of those employed in it;

(3) such sponsor will not discriminate on account of race, color, religion, sex or national origin in the employment of those eligible under the provisions of this Act; and

(4) that such sponsor will report to the Secretary such information and data as may be necessary to enable the Secretary to carry out his functions under this Act.

(b) The amount of the social bonus to be paid for each individual eligible under this Act shall not be less than $2,500 nor more than $4,000 for each year of employment of any applicant by a small business sponsor as determined by the Secretary.

(c) In determining priority for the payment of the social bonus authorized by this Act the Secretary may give preference to any small business sponsor establishing any new industrial or commercial facility or program, respectively, in a designated urban or rural poverty area.

(d) The Secretary may by regulation provide for a waiver of the provisions of clause (2) of subsection (a) upon a showing by the appropriate sponsor that the employment of the eligible applicant for a period of less than one year, but more than nine months, is warranted under special circumstances.

RESTRICTIONS

SEC. 6. (a) No payment of a social bonus on behalf of an eligible person may be paid to a small business sponsor under this Act unless the employment of the eligible person.

(1) will result in an increase in employment opportunities over opportunities which would otherwise be available;

(2) will not result in the displacement of currently employed workers (including partial displacement such as the reduction in the hours of non-overtime work or wages or employee benefits) in any industrial or commercial facility or enterprise;

(3) will not impair existing contracts for services or result in the substitution of such employees in connection with work that would be performed; or

(4) will not result in hiring such person to fill a job opening created by the action of the enterprise in laying off or terminating the employment of any regular employee in anticipation of filling the vacancy so created by hiring an employee to receive the social bonus under this Act.

(b) No payment may be made for a social bonus on behalf of any eligible employee for a period in excess of three years.

SOCIAL BONUS PAYMENTS

SEC. 7. (a) The Secretary is authorized to make a social bonus payment by this Act not less than or more often than once in each calender year for those so eligible as defined by this Act.

(b) No payment may be made to a small business sponsor unless an application is made at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(c) Payments made for the social bonus may be made in installments, or by way of reimbursement, with necessary adjustments on account of overpayment or underpayments, as the Secretary may determine.

ADMINISTRATION

SEC. 8. Except as otherwise specifically provided in this Act, the Secretary, in carrying out his functions under this Act, shall have the same powers and authority that he has under the Comprehensive Employment and Training Act, of 1973 to carry out his functions under this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. (a) There are authorized to be appropriated for the fiscal year 1979 for each of the two succeeding fiscal years such sums as may be necessary to carry out the provisions of this Act.

(b) Notwithstanding any other provision of law, unless enacted in specific limitation to the provisions of this subsection, any funds appropriated to carry out this Act which are not obligated prior to the end of the fiscal year for which such funds were appropriated shall remain available for obligation during the succeeding fiscal year. Any such funds obligated in any fiscal year may be expended during a period of two years from the date of obligation.

By Mr. DURKIN:

S. 3569. A bill to improve the clarity and effectiveness of internal revenue tax forms; to the Committee on Finance.

TAX FORM SIMPLIFICATION ACT OF 1978

● Mr. DURKIN. Mr. President, I rise today to offer legislation which, although modest in scope, can have a significant impact on the effectiveness and fairness of our tax system.

This legislation, the Tax Form Simplification Act of 1978, would require the Treasury to develop and submit to the Congress more understandable 1040 and 1040A forms.

Specifically, this legislation would require the Secretary to report to the Congress, within 24 months after the date of enactment, on his plans and recommendations for simplifying the individual tax return forms and instructions.

The legislation also requires the Treasury to establish a full-time task force to report to the Secretary in order to staff this task force expeditiously, the bill also gives the Treasury excepted authority to hire up to 10 outside employees for up to 2 years. It also separately authorizes $500,000 to prepare the reports and carry out any pilot surveys and tests.

It seems safe to say that few things contribute more to the alienation of the average American from Government than the intricacies of the tax process. Many of these intricacies are built into the code. But the sense of bewilderment, bemusement, bafflement and despair that most of us feel when we attempt to file our income tax is surely heightened by plain bad drafting in the forms and instructions.

Additionally, a confusing and complex form can lead to errors costing taxpayers money, and it can intimidate taxpayers into not taking advantage of all the tax-saving deductions to which they are entitled.

Mr. President, it may be no one's fault that the instructions for the 1040 forms often seem to take on a certain mystical quality. These things often seem to happen when lawyers and bureaucrats try to clarify things. But it is certainly our fault if we allow this situation to continue.

Fortunately, there is increasing evidence that an improvement in this deplorable situation is possible.

For instance, the General Accounting Office recently released a report indicating that further simplification of the tax forms are, to quote, "both needed and possible." The GAO commissioned a group of outside experts in communications and graphics to redesign the forms and instructions. Their work, which is included in the report, shows that the forms can be made more useful and attractive without any significant loss in accuracy. Unquestionably much more can be done in this direction.

Mr. President, improving the forms and instructions offer important benefits, at least to those of us who are not tax lawyers. Clearer forms would increase public confidence in the fairness of the tax system. They would reduce involuntary errors. They would help the taxpayer get all of the benefits for which he or she is eligible. And, not least, they might make April 15 somewhat less difficult for all of us.

I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3569

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Tax Form Simplification Act of 1978".

PURPOSE

SEC. 2. It is the purpose of this Act to reduce involuntary errors in the computation of Federal internal revenue taxes and to better inform individual taxpayers of provisions of the internal revenue laws which affect the amount of Federal income taxes which they owe by improving the clarity and effectiveness of the tax forms and instructions used by individual taxpayers.

SEC. 3. TASK FORCE.—(1) The Secretary of the Treasury Department shall establish a task force which shall conduct a study and investigation with respect to methods of simplifying Federal individual income tax return forms and instructions accompanying such forms.

(2) The task force shall report from time to time on its progress directly to the Secretary and shall submit a final report to the Secretary which includes its findings with respect to simplification of such tax forms and instructions and any recommendations with respect thereto. Such final report shall be submitted by such time as is necessary to enable the Secretary to file the report called for in subsection (4) of this Section.

(3) The Secretary is authorized to appoint such employees, not in excess of 10, as may be necessary to carry out the functions of the task force without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, except that such employees shall not be paid at a rate in excess of the annual rate of pay under grade GS–18 of the General Schedule under section 5332 of such title 5.

(4) The Secretary, after studying the report and recommendations of the task force, shall, not later than two years after the date of enactment of this Act, submit a report to the Congress on the findings of the task force, together with his recommendations, including such recommendations for legislation as he finds necessary for simplifying Federal individual income tax return forms and instructions accompanying such forms."

By Mr. STAFFORD (for himself, Mr. RANDOLPH, and Mr. GRAVEL):

S. 3570. A bill to amend the Public Buildings Act of 1959, as amended, to authorize the financing of the acquisition and construction of public buildings, and for other purposes; to the Committee on Environment and Public Works.

By Mr. STAFFORD (for himself and Mr. RANDOLPH):

S. 3571. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

S. 3572. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

S. 3573. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

By Mr. STAFFORD (for himself, Mr. RANDOLPH, and Mr. GRAVEL):

S. 3574. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

By Mr. STAFFORD:

S. 3575. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

S. 3576. A bill to amend the Public Buildings Act of 1949, as amended, and for other purposes; to the Committee on Environment and Public Works.

By Mr. STAFFORD (for himself and Mr. RANDOLPH):

S. 3577. A bill to amend the Public Buildings Act of 1959, as amended, and for other purposes; to the Committee on Environment and Public Works.

OVERSIGHT OF PUBLIC BUILDINGS

Mr. STAFFORD. Mr. President, during my service on the Committee on Environment and Public Works as the ranking Republican member, I have become increasingly convinced that the committee should carefully examine its jurisdiction over the Public Building Act and conduct thorough oversight of the Public Buildings Service of the General Services Administration. Recent disclosures of monetary waste, gross mismanagement, and graft and corruption as alleged in the indictments handed up last week, strongly reinforce my conviction that congressional oversight is urgently demanded.

The problems of GSA go beyond the jurisdiction of the Committee on Environment and Public Works, and I applaud the work of its Committee on Governmental Affairs and of the subcommittee led by Senator CHILES.

The recent disclosures of improprieties illustrate the need to overhaul the agency and to assure safeguards and proper procedures. Those who have broken the law must be sought out and dealt with. But in the long run, only competent management, a coherent policy, clearly defined programs, and firm execution of those decisions backed by consistent authority, will fill the vacuum which otherwise attracts confusion, if not exorbitant waste and scandal.

Mr. President, earlier this year the Committee on Environment and Public Works adopted new procedures to follow in handling building prospectuses. I believe these procedures—initiated by Senator MOYNIHAN and myself—are a constructive beginning by the committee, and I believe and expect the committee will pursue its concerns in these areas.

To this end, I am today introducing eight bills to amend the Public Buildings Act of 1959. I do so at this time in order to make them available for discussion and comment by all interested parties. I hope they will also serve as a point of departure for full oversight of the Public Buildings Act, the agency's building program, its management, controls and procedures, and the Nation's building policy early in the next Congress.

One bill I introduce today would provide a new mechanism for financing federally constructed buildings. It would in effect reinstate the authority for the so-called purchase contract method of ac-

quisition which expired in 1975. Under that old authority GSA constructed 63 Federal buildings valued at about $2 billion. I am pleased that Senator GRAVEL—who was chairman of the Subcommittee on Buildings and Grounds when the previous authority for purchase contract was adopted and during the period of 3 years when it appears to have been successful—is a cosponsor of this bill.

Since expiration of that authority, construction of Federal buildings has declined to a minimum while leasing and "lease-construction" have steadily increased. For example, in the past 10 years, Federal office space under lease has increased 122 percent, while Government-owned space under GSA management declined. Currently, the Government is spending over $500 million annually to lease privately owned office space. Given the current trend, within the next several years over half the Government-occupied general-purpose space will be under lease.

With construction declining to a very small base we are inviting much greater lease costs in the years immediately ahead. When leasing, the Government has no protection from rapidly escalating rental costs during inflation and it builds no equity in leased buildings. Additionally, federally constructed buildings are generally built to a higher standard than entrepreneurial projects built for speculative gain. As important, I am concerned that the lease construction procedure could provide a climate conducive to the exercise of pressure, influence, favoritism, and improper inducement because of the high financial stakes to a private investor in securing a Government guarantee to lease a building to be constructed.

While I believe the advantages of Federal construction and ownership are persuasive, I also recognize its disadvantage—the budgetary impact. While leasing spreads the housing costs over many years, Federal construction places all the costs in 1 fiscal year. The bill I introduce today would enable GSA to spread the cost of construction over the life of the facility, and thus, reduce the budgetary impact in any 1 year. While alleviating a major disadvantage of construction versus leasing, it would, I believe, retain the advantages to the Government of construction. The Government would build equity and would be protected from inflated rental rates.

Mr. President, three of the other bills would each amend section 7 of the Public Buildings Act of 1959 in order to strengthen congressional control over GSA's activities in construction, alteration, and repair of Federal buildings and of alterations to privately owned buildings leased by the Government.

One bill would add a new section to the Public Buildings Act in order to establish criteria by which the Administrator shall be guided for the construction, acquisition, assignment, reassignment, and utilization of office buildings and space under his jurisdiction.

Another bill would direct GSA to file with the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation two studies which are being undertaken annually by the General Services Administration, but which were not sent to the Congress.

Finally, one bill would repeal the authority contained in the Public Buildings Act of 1949 that enables the Administrator to name or to rename any building under his custody, regardless of whether it was previously named by statute.

I am delighted that Senator RANDOLPH, the chairman of the Committee on Environment and Public Works, and Senator GRAVEL, another committee colleague who has long had an interest in these matters, have joined with me in several of these initiatives.

Mr. President, I ask unanimous consent that the text of the eight bills be printed at this point in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 3570

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Public Buildings Act of 1959, as amended, is further amended by adding at the end thereof the following:

"SEC. 19(a). Whenever the Administrator of General Services determines that the best interests of the United States will be served by taking action hereunder, the Administrator is authorized to borrow from the Secretary of the Treasury to the extent authorized in annual appropriation acts, amounts necessary to finance the acquisition or construction of any public building. The repayment of such loans shall be upon such terms up to thirty years and conditions as may be prescribed by the Secretary of Treasury taking into account that repayment should not begin until the facility is ready for occupancy and the useful life of the facility for which funds are to be borrowed. Such loans shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities.

(b) No authorization to borrow from the Treasury shall be made to acquire or construct any public building, if such acquisition or construction has not been approved by resolution adopted by the Committee on Public Works of the Senate and House of Representatives, respectively pursuant to section 7 of this Act.

(c) The principal and interest on such obligations shall be payable from the fund established pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended. There is hereby authorized to be appropriated from the fund such amounts as may be necessary to carry out the purposes of this section."

S. 3571

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 7(a) of the Public Buildings Act of 1959, as amended (40 U.S.C. 606(a)), is further amended by deleting the word "made" in the first and second sentences and inserting in lieu thereof the words "available for obligation or expenditure".

S. 3572

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 7(a) of the Public Buildings Act of 1959, as amended (40 U.S.C. 606(a)), is hereby further amended by adding at the end of the second sentence the following new sentence:

"No appropriation shall be available for obligation or expenditure to alter any building leased for use as a public building whenever the total estimated cumulative cost of such alterations exceed $500,000, unless such alterations have previously been approved by the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation, respectively."

S. 3573

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 7(a) of the Public Buildings Act of 1959, as amended (40 U.S.C. 606(a)) is hereby further amended by adding at the end of the second sentence the following sentence:

"Notwithstanding any other provision of law, no exchange of property authorized under this Title shall be agreed to whenever the current, independently appraised total value of the property exchanged exceeds $500,000 unless the exchange has been approved by resolutions adopted by the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation, respectively."

S. 3574

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 7 of the Public Buildings Act of 1959, as amended (40 U.S.C. 606), is hereby further amended by deleting subsection (b) and inserting in lieu thereof the following:

"(b) When the cost of a project exceeds the estimated maximum cost as set forth in the prospectus approved under this section, the Administrator is authorized to either (1) increase expenditures by an amount equal to the percentage increases, but in no event shall the increase authorized by this subsection exceed 10 per centum of such maximum cost, or (2) decrease the number of gross square feet to be constructed, but in no event by more than 10 per centum of the gross square feet stated on the approved prospectus."

S. 3575

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Public Buildings Act of 1959, as amended (40 U.S.C. 601–616) is further amended by adding a new section 3 as follows at the end of section 2 and appropriately renumbering subsequent sections:

"SEC. 3(a). The Administrator shall be guided by the following criteria for the construction, acquisition, assignment, reassignment, and utilization of office buildings and space under his jurisdiction:

(1) Primary consideration shall be given the economical provision of space needs and the efficient performance of the missions and programs of the executive agencies;

(2) Maximum use shall be made of existing Government-owned permanent buildings which are adequate or economically adaptable to the space needs of executive agencies;

(3) Consideration shall be given the use of buildings of historic, architectural, or cultural significance within the meaning of section 105 of the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 612a);

(4) Suitable privately owned space shall be leased only when satisfactory Government-owned space is not available or cannot be economically acquired, and then only at rental charges which are consistent with prevailing rates in the community for comparable facilities.

"(b) Given that the above mentioned criteria are met, the Administrator shall give maximum consideration to meeting space needs in a manner that will encourage the development and redevelopment of cites or

communities, conserve existing urban resources, and improve the social, economic, environmental, cultural conditions of cities and communities."

S. 3576

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 410 of the Public Buildings Act of 1949 (40 U.S.C. 298d) is hereby repealed.

S. 3577

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 11 of the Public Buildings Act of 1959, as amended (40 U.S.C. 610) is hereby amended by adding the following subsections after subsection (a) and redesignating subsection (b) as subsection "(d)":

"(b) The Administrator annually shall submit to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation long-range plans and programs for the acquisition, modernization, and use of space.

"(c) The Administrator annually shall submit to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation a report showing the inventory of real property owned by and leased to the United States."

ADDITIONAL COSPONSORS

S. 3359

At the request of Mr. HOLLINGS, his name was added as a cosponsor of S. 3359, a bill to amend the act commonly known as the Miller Act to raise the dollar amount of contracts to which such act applies from $2,000 to $25,000.

AMENDMENT NO. 2176

At the request of Mr. DURKIN, the Senator from Delaware (Mr. ROTH) was added as a cosponsor of amendment No. 2176, proposed to S. 1500, a bill to designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, National Wild and Scenic Rivers, and National Wilderness Preservation System, and for other purposes.

AMENDMENT NO. 3658 (AS MODIFIED)

At the request of Mr. MUSKIE, the Senator from West Virginia (Mr. ROBERT C. BYRD), the Senator from California (Mr. CRANSTON), the Senator from Delaware (Mr. ROTH), the Senator from Ohio (Mr. GLENN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Illinois (Mr. PERCY), the Senator from Delaware (Mr. BIDEN), the Senator from Rhode Island (Mr. PELL), the Senator from Minnesota (Mr. ANDERSON), the Senator from Oklahoma (Mr. BELLMON), the Senator from Texas (Mr. BENTSEN), the Senator from North Dakota (Mr. BURDICK), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Florida (Mr. CHILES), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CLARK), the Senator from Iowa (Mr. CULVER), the Senator from Kansas (Mr. DOLE), the Senator from New Mexico (Mr. DOMENICI), the Senator from New Hampshire (Mr. DURKIN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Kentucky (Mr. FORD), the Senator from Michigan (Mr. GRIFFIN), the Senator from Colorado (Mr. HART), the Senator from Colorado (Mr. HASKELL), the Senator from Utah (Mr. HATCH), the Senator from Oregon (Mr. MARK O. HATFIELD), the Senator from Montana (Mr. PAUL G. HATFIELD), the Senator from Maine (Mr. HATHAWAY), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Vermont (Mr. LEAHY), the Senator from Indiana (Mr. LUGAR), the Senator from Maryland (Mr. MATHIAS), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from New York (Mr. MOYNIHAN), the Senator from Georgia (Mr. NUNN), the Senator from Michigan (Mr. RIEGLE), the Senator from Tennessee (Mr. SASSER), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Vermont (Mr. STAFFORD), the Senator from Florida (Mr. STONE), the Senator from Texas (Mr. TOWER), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Kentucky (Mr. HUDDLESTON), and the Senator from Indiana (Mr. BAYH) were added as cosponsors of amendment No. 3658 (as modified) proposed to H.R. 13511, the Revenue Act of 1978.

AMENDMENT NO. 3882

At the request of Mr. STONE, the Senator from Idaho (Mr. CHURCH), the Senator from Missouri (Mr. EAGLETON), and the Senator from New Jersey (Mr. WILLIAMS) were added as cosponsors of amendment No. 3882 intended to be proposed to H.R. 13511, the Revenue Act of 1978.

SENATE CONCURRENT RESOLUTION 108—ORIGINAL CONCURRENT RESOLUTION REPORTED AUTHORIZING PRINTING

Mr. PELL, from the Committee on Rules and Administration, reported the following original concurrent resolution, which was placed on the Calendar:

S. CON. RES. 108

Resolved by the Senate (the House of Representatives concurring), That there be printed with an appropriate illustration as a Senate document, the prayer by the Reverend Edward L. R. Elson, S.T.D., the Chaplain of the Senate, at the opening of the daily sessions of the Senate during the Ninety-fifth Congress, together with any other prayers offered by him during that period in his official capacity as Chaplain of the Senate; and that there be printed and bound two thousand additional copies of such document, of which one thousand and thirty shall be for the use of the Senate and nine hundred and seventy shall be for the use of the Joint Committee on Printing.

SEC. 2. The copy for the document authorized in section 1 shall be prepared under the direction of the Joint Committee on Printing.

AMENDMENTS SUBMITTED FOR PRINTING

ACT OF 1978—H.R. 13511

AMENDMENT NO. 4020

(Ordered to be printed and to lie on the table.)

Mr. STONE submitted an amendment intended to be proposed by him to H.R. 13511, an act to amend the Internal Revenue Code of 1954 to reduce taxes, and for other purposes.

AMENDMENTS NOS. 4021 AND 4022

(Ordered to be printed and to lie on the table.)

Mr. DURKIN submitted two amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENTS NOS. 4023 AND 4024

(Ordered to be printed and to lie on the table.)

Mr. BENTSEN submitted two amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENTS NOS. 4025 AND 4026

(Ordered to be printed and to lie on the table.)

Mr. DANFORTH (for himself and Mr. JAVITS) submitted two amendments intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4027

(Ordered to be printed and to lie on the table.)

Mr. CHILES submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4028

(Ordered to be printed and to lie on the table.)

Mr. BENTSEN submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4029

(Ordered to be printed and to lie on the table.)

Mr. BELLMON (for himself, Mr. KENNEDY, and Mr. BAKER) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4030

(Ordered to be printed and to lie on the table.)

Mr. TALMADGE submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4031

(Ordered to be printed and to lie on the table.)

Mr. CHURCH (for himself, Mr. PACKWOOD, and Mr. NELSON) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENTS NOS. 4032 AND 4033

(Ordered to be printed and to lie on the table.)

Mr. JAVITS submitted two amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4034

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4035

(Ordered to be printed and to lie on the table.)

Mr. JAVITS (on behalf of himself and Mr. HATHAWAY) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4036

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY (for Mr. MORGAN (for himself and Mr. KENNEDY)) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4037

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY (for Mr. MORGAN (for himself, Mr. KENNEDY, Mr. BAYH, Mr. DECONCINI, Mr. ABOUREZK, Mr. BIDEN, Mr. STAFFORD, Mr. LEAHY, Mr. HATHAWAY, Mr. SARBANES, Mrs. HUMPHREY, Mr. MCINTYRE, and Mr. DURKIN)) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4038

(Ordered to be printed and to lie on the table.)

Mr. PERCY submitted an amendment intended to be proposed by him to the perfecting amendment intended to be proposed by Mr. MUSKIE to H.R. 13511, supra.

AMENDMENT NO. 4039

(Ordered to be printed and to lie on the table.)

Mr. PERCY submitted an amendment intended to be proposed by him to amendment No. 3678 intended to be proposed to H.R. 13511, supra.

Mr. PERCY. Mr. President, I submit an amendment to S. 2, the Sunset Act of 1978, to require a comprehensive evaluation of the Federal regulatory agencies within the framework of that legislation. As an original cosponsor of S. 2, I strongly support its purpose. I introduce this amendment only to strengthen the bill and extend its applicability in the fullest sense to an area in great need of our attention—the bulk of Federal regulation.

At the start of the 95th Congress, together with my colleagues, Majority Leader ROBERT BYRD and Senator RIBICOFF, chairman of the Committee on Governmental Affairs, I introduced S. 600, the Regulatory Reform Act of 1977. That sunset legislation came in response to the justifiable and highly vocal concerns of an unusual coalition of people in and out of Government—Republicans and Democrats, businesspeople, consumers and organized labor alike—for responsible reform of Federal regulation. Now, it only seems appropriate to consider regulatory reform along with this historic measure. By enacting S. 2, we can get a handle on big government. And concentrated, disciplined attention on regulatory agencies is an essential part of this vital reform.

There is nothing inherently wrong with regulation if it is soundly based and responsibly exercised. However, it is no secret to any of us that the process of regulation is frequently undemocratic, insulated, and mysterious to all but a few bureaucrats and lawyers.

Every American today finds Federal regulation pervades nearly every aspect of his or her daily life. Those who study the regulatory system cannot even agree on the number of Federal agencies empowered to issue regulations. Generally, though, it is thought to be over 100, and none seems especially shy about asserting itself.

By combining technical expertise with commonsense, some agencies do a fine job, but too many such agencies lose sight of their purposes and mandates and become preoccupied with nit-picking and hair-splitting. Does the plant owner, workingman, or consumer really need OSHA to set standards for the size of partitions between stalls in factory bathrooms? Do youngsters really need the CPSC to require a warning atop swimming pool slides to exercise caution? But then why is Congress still spending tax dollars, estimated by GAO at $60 billion a year and by the Ford administration at $2,000 per family per year, to pay people to issue such ridiculous or burdensome regulations? We can do without regulation that is time-worn or arbitrary; that is excessive or anticompetitive; that merely procrastinates or delays; that serves no useful purpose.

This, then, is the dilemma of government regulation. We need some of it—who would argue against stringent safety standards for airplanes and nuclear power plants?—but not all of it. We need less of it generally, yet recognize the need for more in a few areas. But most of all we need to redirect regulation to make it better, to make it work. We need to understand when and where it makes sense, under what circumstances, and to what extent. And, we need to know how best to do what it should and to avoid what it should avoid.

Only through careful review of an agency's specific circumstances can we see if, and to what extent, regulation is really needed, Then, and only then, should be begin to consider appropriate agency functions. And lest we be destined to repeat past mistakes, even after reassessing the nature and scope of regulation, there must be periodic update and review to make sure that regulation continually adapts to changed circumstances.

Mr. President, it is exactly this sort of review procedure that we attempt to establish with this amendment. In so doing, we will preserve the necessary aspects of regulation while eliminating the policies that have fueled inflation; stifled competition; hurt the consumer; fostered red tape, waste and confusion; disregarded congressional mandates; and have poorly served the public interest they purport to protect.

Like S. 2, this amendment establishes a 10-year review cycle. During this time, 16 major regulatory agencies, divided into 5 subgroups according to the industries over which they exercise control, are to be systematically and comprehensively reviewed and modified, or terminated if necessary.

The agencies involved and the groups to which they belong are: First, agencies regulating securities, trade practices, banking, finance, and communications matters—the Securities and Exchange Commission, Federal Trade Commission, Office of Comptroller of the Currency, Federal Deposit Insurance Corporation, and the Federal Communications Commission; second, agencies regulating surface transportation and highway safety matters—the National Highway Traffic Safety Administration and the Interstate Commerce Commission; third, agencies regulating environmental, occupational, food, health and safety matters—the Food and Drug Administration, the Consumer Product Safety Commission, the Environmental Protection Agency, and the Occupational Safety and Health Administration; fourth, agencies regulating air transportation—the Civil Aeronautics Board and the Federal Aviation Administration; and fifth, agencies regulating energy and maritime transportation—the Federal Maritime Commission, the Federal Energy Regulatory Administration and the Nuclear Regulatory Commission.

Although this amendment is similar in purpose to the sunset legislation we consider today, it does contain some significant differences from S. 2. These variances are necessitated by the very nature of the monumental problem area with which we are dealing, the regulatory agencies. Nonetheless, these variances, worked out with Senator MUSKIE to insure that they complement his legislation, fit in precisely with the general framework of S. 2. I believe that they warrant inclusion in this measure.

Perhaps the biggest difference centers around procedure. This amendment begins with action on the part of the President. It would require the President to submit, by February 1st of the first session of each Congress in question, an anlysis of the designated agencies—their functions and performances—to be reviewed in that Congress. This analysis should address the agencies' purposes when started; the changes in their regulatory functions; the impact of each agency and the extent to which it has accomplished its purposes; the timeliness of agency decisionmaking; the cost-effectiveness and efficiency of agency operations; the contributions of agency actions to inflation; and practical, alternative approaches to achieving present regulatory needs.

What this amounts to is a zero-based analysis of the purposes and performance of regulation. By taking this course, Congress can see how regulation pursues its desired goals, and can review for continued relevance the reasons for which an agency was established. This amendment assumes no preconceptions: The basic question to be considered in this review should be centered around whether or not regulation is necessary in each particular case. I believe this to be an essential component of the review process. For not only have many regulatory agencies lost sight of their original purposes, but many have lost sight of who and what they are supposed to be regulating. And in some cases, the regulation may no longer be warranted.

The next step in the process will occur 2 months after the President's initial action. On April 1 of the first session of each Congress in question, the President would submit, in the form of a legislative plan, his recommendations for the agency under consideration. The President, on the basis of the earlier analysis, may choose to merely recommend reauthorization. But should he recommend reform, the need for which would appear in the earlier analysis, the President would submit his recommendations for consolidating the agency, reforming its procedures, and improving the effectiveness and efficiency of its operations. In

either case, these recommendations are to be the final step of the President's comprehensive review, and would serve as the President's input in the review process. The President's analysis and recommendations are vital to the successful functioning of this process, and help to insure that the contemplated reviews are intensive, timely, and complete.

The amendment requires that the first cluster of agencies be considered when the review cycle commences in 1981. The pattern of review will then proceed according to the schedule set out in the amendment. Thus, all concerned parties—the agencies themselves, the oversight committees, and the executive branch—will be well aware of the order of agencies to be studied and of the timing of the reviews far in advance. This will guarantee that these parties will have adequate time to make the appropriate preparations for the reviews, and will help to insure that the studies undertaken are exhaustive and thorough.

Another key element of the review process is the active involvement of the General Accounting Office (GAO) and the Congressional Budget Office (CBO). By April 1 of the first session of each Congress in question, the date by which the President must submit his review, the GAO and CBO must submit analyses of the agencies to be studied that session. These analyses will be more rigorous than the audit and the review called for by S. 2. The reports of these two legislative agencies are to be comprehensive, in-depth reviews intended to complement the President's report. At the same time, by adding another dimension and perspective to the review, they, too, will help to insure that the sunset process is as complete and impartial as possible.

And, as additional input in this process, the GAO and CBO must present to the Congress by June 1 of the first session of each Congress in question, a critique of the President's specific legislative recommendations, which will have been submitted 2 months earlier. Together with the GAO-CBO analysis submitted earlier, this critique will greatly aid these congressional committees in conducting a full review and in carrying out successful reform.

In keeping with S. 2, this amendment provides that each new Congress will deal with a separate plan known prior to the time of consideration. Special attention was paid in the drawing up of this plan to the number of agencies to be considered in each session. The final schedule, which reflects the workloads of the affected committees, insures that these committees occupied with regulatory reform legislation will not be so swamped as to preclude consideration of other important legislative and oversight matters.

This change from the original formulation of S. 600, which included nearly 40 agencies to be reviewed every 8 years, was made after careful deliberations concerning the workloads of the Congress and of the particular committees involved in the regulatory reform plans. The change reflects the good judgment and deliberations of the American Bar Association which, in endorsing a sunset concept for regulatory agency evaluation, emphasized the need for not taking on too much during any single Congress, lest the whole concept collapse under its own weight.

After the submission to the oversight committees of the President's reports and those of the GAO and CBO, the process for review of regulatory agencies becomes essentially the same as that prescribed for Government programs covered by S. 2. The oversight committees for regulatory agencies are to review the agencies' performances and records for themselves, with the difference that they will be able to use the considerable information from these reports as either a supplement to, or a starting point for their own review.

While drafting the reauthorization report to the Congress described by section 102(a) of S. 2, the oversight committees dealing with regulatory agencies will be required, by the terms of this amendment, to include a fifth section in addition to the four items already required by that section. The committee must set forth and explain any difference between the recommendations contained in its report and those found in the legislative plan submitted by the President. This additional requirement will serve as yet another means to insure that the most comprehensive review possible takes place, and that the full Congress will have the benefit of such exacting discussion and debate.

It may now be helpful, after having examined the procedure of the review, to look at just how the process outlined in S. 2 and in this amendment will work for a regulatory agency. Take the example of the Federal Communications Commission, one of the agencies to be reviewed in the first 2-year cycle scheduled to start in 1981. By June 1, 1981, the committees with legislative jurisdiction over the area of communications—the Senate Committee on Commerce, Science, and Transportation and the House Committee on Interstate and Foreign Commerce—will have amassed the following items: the President's analysis of the of the FCC, and that of GAO/CBO, due February 1; the President's recommendations and legislative plan, due April 1; and the GAO/CBO critique of the President's plan, due June 1. All of these reports will be most useful to the committees when reviewing the agency, when formulating their final report, and when drafting any sort of reauthorization and reform legislation. This legislation, under the terms of S. 2, is to be for no longer than 10 years.

The committees' final reports are due and legislation is to be enacted by the end of that Congress specified for the review. Under the terms of S. 2, the passage of any authorization legislation by both Houses would constitute a "valid authorization" for the FCC, which must be in effect before any funds can be appropriated. If, however, a "valid authorization" measure is not enacted before the end of Congress—for example, if the bill is vetoed, and the veto sustained, or if the bill is filibustered—S. 2 provides for a "valid authorization waiver resolution" which would permit a 1-year emergency appropriation for existing FCC programs. The agency review—incorporating such reforms as are deemed necessary in the regulatory mandate, organization, and procedures of the agency—would then have to be reconsidered by the next Congress.

I believe that this legislation is much needed, and is well warranted by the current situation in which the pervasive strong arm of Government has put a hammerlock on our economy and our society. And I also believe that the benefits brought about by regulatory reform will be many, and visible in all aspects of American life.

As unbelievable as it may seem, there has been no systematic review and reform of the regulatory bureaucracy in Washington since the first Federal regulatory agency was stated in 1887.

An inkling of what is to come of this measure can be gleaned from the example of airline deregulation. We are experiencing a period of incredible booms in airline service, brought about by a gradual loosening of the restrictions heretofore imposed by the Civil Aeronautics Board (CAB). The benefits are enormous: consumers are flocking to airports in record numbers to take advantage of lower fares and increased service; the airlines have reported record profits; and tourist industries across the country are experiencing an upsurge in business as a result of the greater number of air travelers. It is time to continue what was started with the CAB, and do the same with other agencies.

Regulatory delay is a fundamental impediment to the timely and effective functioning of this Government. It hurts consumers by denying them the protection and redress they seek and deserve. It hurts businessmen by putting a monkey wrench into their investments and sales plans for the future. It hurts the regulators themselves by making them appear unresponsive and callous. And, it hurts government in general by eroding public confidence in its ability to govern our society.

This legislation marks an important step in putting a halt to unnecessary delay in the regulatory process. We all will be the beneficiaries of regulatory reform. I urge my colleagues to adopt this important amendment.

AMENDMENT NO. 4040

(Ordered to be printed and to lie on the table.)

Mr. BENTSEN submitted an amendment intended to be proposed by him to amendment No. 3678 (as modified) proposed to H.R. 13511, supra.

● Mr. BENTSEN. Mr. President, I am submitting today an amendment based upon S. 3263 which I intorduced on June 29, 1978, and which has five cosponsors, Senators HUMPHREY, GARN, HAYAKAWA, INOUYE, and PAUL HATFIELD. This legislation is the result of extensive hearings which my Subcommittee on Economic Growth and Stabilization of the Joint Economic Committee held in April to investigate the impact of the explosion of Federal rules and regulations on American business, consumers, and taxpayers.

The hearings uncovered numerous outrageous examples of businessmen, particularly small businessmen, who con-

front the impossible situation where complying with one regulation requires violating another. This problem serves to diminish entirely what little credibility the Federal Government has left in our country.

My amendment is designed to help eliminate the irrationality of conflicting or overlapping regulatory policies.

Under the legislation, the President is required to prepare and submit a regulatory duplication and conflicts report to Congress for each program at the time it is subject to congressional review and reauthorization under S. 2.

The report shall—

First, identify regulatory policies which result in duplicative or conflicting rules or regulations within the same or other programs;

Second, identify Federal regulatory policies which result in rules or regulations which duplicate or conflict with those of State and local governments;

Third, identify the provisions of Federal law which authorize or require such duplicative or conflicting regulatory policies;

Fourth, make recommendations to resolve conflicts between regulatory policies;

Fifth, make recommendations to resolve or eliminate duplication between those policies; and

Sixth, the President's recommendations are scheduled to be available to congressional committees when they are subjecting Federal agencies and programs to reauthorization as provided in S. 2.

My amendment would help to insure that the congressional committees which are charged with the responsibility of reauthorizing Federal programs will focus on the regulatory implications of those programs to eliminate overlapping or conflicting regulatory policies in the process of renewing them. Certainly, one index of the value of a Government program is whether it has produced Federal rules or regulations which run head on into or overlap with other rules or regulations of other Federal or State and local programs.

My amendment is carefully crafted to complement the process established by the historic legislation drafted by the very able Senator from Maine and his distinguished colleagues. It is intended to put an end to absurd situations like that described by the president of a small food processing firm who testified during our hearings that: "The United States Department of Agriculture requires that our kitchen floors be washed repeatedly for sanitary purposes, yet the Occupational Safety and Health Administration rules require that floors must always be dry. What is a man to do?" he asked.

That is the kind of issue which the Congress should be forced to address as it decides the litmus tests a program must pass in order to be continued—my amendment is designed to see to it that Congress does indeed address the issue of conflicting and overlapping regulatory policies as an integral part of the process of deciding whether or not to give a Federal program a new lease on life.●

AMENDMENT NO. 4041

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself, Mr. WEICKER, Mr. HATHAWAY, Mr. PACKWOOD, Mr. MCINTYRE, Mr. HEINZ, and Mr. LEAHY) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

DEPRECIATION REFORM

● Mr. NELSON. Mr. President, today I am submitting an amendment to the Revenue Act of 1978, H.R. 13511. I ask that the text of this amendment be printed in the RECORD following my remarks.

DESCRIPTION OF AMENDMENT

This amendment is similar to amendment 3846 which I submitted earlier this week. The major difference is that this amendment prohibits the election of section 179 on the first $25,000 of property placed in service during any one taxable year. However, the election of section 179 can be used for any portion of property in excess of $25,000. For example, on equipment with a cost basis of $50,000, the first $25,000 would be excluded from any bonus depreciation allowed under section 179. The remaining $25,000 would be eligible for bonus depreciation under section 179 of present law. The Joint Committee on Taxation estimates the cost of this amendment to be only $37 million in fiscal year 1979.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

At the appropriate place in the bill insert the following new section:

DEPRECIATION REFORM

SEC. (a) Section 167 of the Internal Revenue Code of 1954 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(q) THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—

"(1) GENERAL RULE.—In the case of a taxpayer who has made an election under this subsection for the taxable year, the term 'reasonable allowance' as used in subsection (a) means (with respect to property which has a useful life of 36 months or more) an allowance based on a useful life of 36 months computed under the straight-line method (within the meaning of subsection (b)(1)).

"(2) $25,000 BASIS LIMITATION.—For purposes of this subsection, the basis (as determined under subsection (g)) of property placed in service during the taxable year shall, to the extent that such basis exceeds $25,000 for the taxable year, not be taken into account.

"(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time, in such manner, and subject to such conditions as may be prescribed by the Secretary by regulations.".

"(4) LIMITATION.—

"(A) GENERAL RULE—subject to the exception provided by subparagraph (B), the provisions of this section shall not apply to property to which an election under section 179 applies.

"(B) EXCEPTION—the provisions of subparagraph (A) shall not apply to that portion of the basis of property placed in service during the taxable year which exceeds $25,000 for the taxable year."

(b) Subsection (c) of section 46 is amended by adding at the end thereof the following new paragraph:

"(6) APPLICABLE PERCENTAGE IN THE CASE OF THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—Notwithstanding subsection (c)(2), in the case of property with respect to which an election under section 167(q) applies, the useful life of any such property for purposes of this subpart shall be the useful life determined without regard to section 167(q).".

EFFECTIVE DATE

(c) The amendments made by this section shall apply in the case of property acquired and placed in service in taxable years beginning after December 31, 1978.●

AMENDMENT NO. 4042

(Ordered to be printed and to lie on the table.)

Mr. BENTSEN submitted an amendment intended to be proposed by him to H.R. 13511, supra.

INDIVIDUAL RETIREMENT ACCOUNTS

● Mr. BENTSEN. Mr. President, the amendment which I am offering consists of a series of technical corrections to the provisions of the tax law affecting individual retirement accounts. These provisions, in general, are designed to make the IRA provisions more workable for the average person.

The amendments which I am offering would make it easier to correct unintended excess contributions to an IRA, facilitate the use of rollovers to and from IRA's, and permit the waiver of certain penalty provisions imposed in connection with IRA's where the violation of the IRA rules was due to inadvertent errors. Also my amendment would simplify the reporting requirements with respect to IRA's.

Mr. President, this amendment has broad support and the revenue involved is very modest. It is estimated that these provisions would result in a revenue loss of only about $25 million for fiscal year 1979, and $12 million per year thereafter. The amendment which I offer is essentially the same as the provisions of H.R. 13619 which was unanimously ordered reported by the House Committee on Ways and Means on September 27, 1978. The Treasury Department supports this amendment.

Mr. President, I have additional material which I ask unanimous consent to have printed in the RECORD which describes in more detail the specific provisions of this amendment.

I urge the adoption of this amendment.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE AMENDMENT

A. PART I OF THE AMENDMENT RELATING TO IRA CONTRIBUTIONS

1. Extension of period for making individual retirement plan contributions

Under present law, a deduction is allowed for a contribution to an IRA (an individual retirement account, an individual retirement annuity, or a retirement bond) for a year only if it is made within 45 days after the close of the year.

The amendment would permit an individual to make a deductible contribution to an IRA (establish an IRA) for a year up to the time of filing the individual's tax return for the year (including extensions).

2. Deduction of contributions in subsequent year for which there is an unused limitation

Under present law, if an individual does not make the maximum deductible contribution to an IRA for a year, the additional amount which the individual could have contributed and deducted is applied to reduce any accumulated excess contributions to the IRA as of the close of the year. However, no deduction is allowed with respect to the reduction of excess contributions.

Under the amendment, a deduction would be allowed to the extent that an unused IRA deduction limitation for a year is applied to reduce excess contributions to the IRA, but only to the extent that the excess contributions were not previously deducted. The amendment also allows make-up deductions for corrections made in taxable years beginning after December 31, 1975.

3. Additional period to rectify certain excess contribution

Under present law, an excess contribution by an individual to an IRA for a year may be corrected without penalty only if the excess and any earnings thereon are withdrawn by the time for filing the individual's tax return for the year (including extensions) and only if the amount withdrawn does not exceed the excess of $1,500 ($1,750 for a spousal IRA) over the amount allowable as a deduction for an IRA contribution for the year.

The amendment would allow an individual who (1) makes a total contribution that does not exceed $1,750 to an IRA for a year (all or part of which is an excess contribution), and (2) fails to correct the excess contribution by the date for filing the individual's tax return for the year (including extensions), later to withdraw the excess contribution without incurring a penalty for the year of withdrawal, but only to the extent that a fieduction was not previously allowed with respect to the excess contribution. Also, the amendment would allow an excess rollover contribution, regardless of the amount, to be corrected where it resulted from reasonable reliance on certain erroneous information. The amendment allows corrections for taxable years beginning after December 31, 1975.

4. Addition of requirement that premiums on individual retirement annuity contracts must be flexible

Under present law, an individual retirement annuity contract may require the payment of fixed premiums, irrespective of whether the premiums are deductible under the IRA provisions.

Under the amendment, individual retirement annuity contracts issued after the date of enactment of the bill would be required to provide for the flexible payment of premiums. In addition, the amendment would permit tax-free exchange of previously issued fixed premium individual retirement annuity contracts for flexible premium individual retirement annuity contracts.

5. Clarification of dollar limitation in the case of individual retirement annuities and retirement bonds

Under present law, the maximum deductible contribution to a spousal individual retirement account is $1,750.

The amendment would correct a technical oversight in connection with individual retirement annuities and retirement bonds to make it clear that contributions of up to $1,750 may be permitted in the case of all spousal IRAs.

B. PART II OF THE AMENDMENT RELATING TO ROLLOVERS

1. Rollover of proceeds from sale of property

Under present law, an individual who receives property as part of a distribution from a qualified plan eligible for rollover treatment is accorded a tax-free rollover treatment only if the actual property distributed from the qualified plan is contributed to an IRA or to another qualified plan.

Under the amendment, an individual who receives property as part of a distribution from a qualified plan eligible for rollover treatment would be permitted to engage in a tax-free rollover of the proceeds from the sale of the property distributed rather than of the property itself.

2. Rollover contribution to individual retirement plan of distribution to spouse from qualified plan or annuity

Under present law, a participant in a qualified plan is eligible to make a tax-free rollover contribution to an IRA of a lump sum distribution from the plan, but if the spouse of a deceased participant receives a lump sum distribution asa death benefit under the plan, the spouse is not eligible to make a rollover contribution.

Under the amendment, the spouse of a deceased participant who receives a lump sum distribution as a death benefit from a qualified plan would be eligible to make a rollover contribution to an IRA.

3. Removal of certain restrictions on rollovers

Under present law, an individual must have been a participant in a qualified plan for five years in order to receive a lump sum distribution from the plan which is eligible for tax-free rollover treatment.

Also, under present law, rollovers between IRAs are permitted only once every three years.

Under the amendment, an individual who has participated in a qualified plan for less than five years would be eligible to receive a lump sum distribution from the plan which is eligible for tax-free rollover treatment.

Also under the amendment, rollovers between IRAs would be permitted once a year.

C. PART III OF THE AMENDMENT RELATING TO CHANGES IN PENALTY PROVISIONS

1. Waiver of excise tax on certain accumulations in individual retirement accounts or annuities

Present law imposes a 50-percent excise tax on an individual who fails to make certain minimum distributions from an IRA beginning at age 70½.

Under the amendment, the Internal Revenue Service would have authority to waive the 50-percent excise tax where the failure to make a required minimum distribution from an IRA is due to reasonable error and reasonable steps are being taken to correct the error.

2. Removal of certain limitations on provisions allowing correction of excess contributions

Under the present law, an excess contribution to an IRA for a year may be corrected without penalty if the contribution and earnings thereon are withdrawn from the IRA by the date for filing the tax return for the year (including extensions) and if the amount withdrawn does not exceed the excess of $1,500 ($1,750 for a spousal IRA) over the amount allowable as a deduction for an IRA contribution for the year.

Under the amendment, the dollar limitations would be withdrawn and an excess contribution to an IRA for a year could be corrected without penalty if the excess contribution and the earnings thereon are withdrawn on or before the date for filing the tax return for the year (including extensions).

D. PART IV OF THE AMENDMENT RELATING TO SIMPLIFICATION OF RETURN REQUIREMENTS WITH RESPECT TO INDIVIDUAL RETIREMENT PLANS

Under present law, an individual maintaining an IRA is required to file a tax return with respect to the IRA each year.

Under the amendment, IRA tax returns would not be required for a year in which no IRA penalty taxes are imposed and no activity occurs with respect to the IRA other than the making of deductible contributions and permissible distributions.●

AMENDMENT NO. 4043

(Ordered to be printed and to lie on the table.)

Mr. PERCY submitted an amendment intended to be proposed by him to H.R. 13511, supra.

Mr. PERCY. Mr. President, I submit an amendment which I hope can be accepted by the distinguished floor managers of the tax bill.

The purpose of my amendment is to correct an inequity created by the Employment Retirement Income Security Act of 1974 (ERISA), as it relates to profit-sharing plans. This inequity penalizes lower paid employees of profit-sharing plans of certain companies, which is clearly contrary to the intent of Congress in passing ERISA.

The substance of my amendment has been discussed with the staff of the Joint Committee on Taxation and it is my understanding that the staff agrees with the concept of the amendment. The revenue impact of my amendment would be negligible.

The passage of ERISA resulted in an unintended restriction on the benefits accruing to the members of a profit-sharing plan of a company based in my State. The plan involved is the employees' savings and profit-sharing fund of DeKalb AgResearch, Inc. I should point out that while my amendment is specifically aimed at correcting the inequity at DeKalb, it will be beneficial to employees of all companies with similar profit-sharing plans.

The plan DeKalb employs was created to foster savings among the employees and to provide incentive to those employees by requiring contributions to the plan based on DeKalb's profits. There are now approximately 1,500 members participating in the plan. Each employee contributes $150 annually and the company contributes 10 percent of its profits, equally allocated to the members regardless of the members' income.

Enactment of ERISA resulted in the requirement that 1,000 hours of service must be met for plan participants in a qualified profit-sharing plan. Section 415 (c) of the Internal Revenue Code also limits the amount of employer contributions, certain employee contributions and forfeitures which may be allocated to plan participants to the lesser of $25,000 (adjusted for cost of living) or 25 percent of the participant's compensation. With passage of ERISA, DeKalb modified its plan to comply with the hours of service requirement. The problem which has arisen with the 25-percent income limitation in DeKalb's plan is that while each employee contributes an equal share to the profit-sharing plan, benefits are not equally allocated. What has resulted is that lower paid employees do not receive a fair share of benefits, which is clearly not within the spirit and purpose of DeKalb's plan.

For example, an employee earning $10 per hour working 2,000 hours per year is eligible to receive up to $5,000 in benefits, whereas a person earning $4 per hour

is eligible to receive only up to $2,000 in benefits. This consequence will continue in the future as long as this law remains in effect.

I do not believe that Congress intended or anticipated such a result. In fact, the legislative history of ERISA makes it clear that the primary purpose of section 415 is that the tax system should not be used to finance large benefits for highly paid employees. Certainly the restriction of section 415(c) as applied in this case causes an unreasonable result since the high paid employees will benefit from the amounts which cannot be allocated to low paid employees.

The amendment I am offering eliminates the 25 percent of income limitation of annual benefits for participants if annual benefits are equally allocated to participants on a dollar basis or are allocated to each participant based on hours of service. The amendment specifically does not exempt shareholders, officers, or highly compensated employees from the existing 25-percent limit.

In summary, I believe this is a worthwhile and fully justifiable proposal. It corrects an inequity created unintentionally under ERISA. It is in keeping with the intent of Congress. Although the revenue cost would be negligible to the Government, the equal allocation of benefits that would be allowed for lower income employees means a great deal to them.

AMENDMENT NO. 4044

(Ordered to be printed and to lie on the table.)

Mr. DOLE submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENTS NOS. 4045 AND 4046

(Ordered to be printed and to lie on the table.)

Mr. HATCH (for himself and Mr. HAYAKAWA) submitted two amendments intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4047

(Ordered to be printed and to lie on the table.)

Mr. HATCH (for himself, Mr. SCHWEIKER, and Mr. TOWER) submitted an amendment intended to be proposed by them to H.R. 13511, supra.

AMENDMENT NO. 4048

(Ordered to be printed and to lie on the table.)

Mr. HATCH (for himself, Mr. STEVENS, Mr. CURTIS, Mr. EASTLAND, Mr. TOWER, Mr. YOUNG, Mr. DOMENICI, Mr. SCHMITT, Mr. HELMS, Mr. GARN, Mr. GOLDWATER, and Mr. HAYAKAWA) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4049

(Ordered to be printed.)

Mr. NELSON (for himself, Mrs. HUMPHREY, Mr. WILLIAMS, Mr. CRANSTON, and Mr. KENNEDY) proposed an amendment to H.R. 13511, supra.

AMENDMENT NO. 4050

(Ordered to be printed and to lie on the table.)

Mr. PACKWOOD (for himself, Mr. CHURCH, and Mr. NELSON) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

HELPING THE ELDERLY WHEN THEY SELL THEIR HOMES

● Mr. PACKWOOD. Mr. President, Senators CHURCH, NELSON, and I have offered amendment No. 4031 to the Revenue Act of 1978, to ease capital gains taxes imposed on the sales of homes by senior citizens. This amendment provides that persons over age 55 will be tax free on capital gains when they sell a personal residence for up to $100,000. This tax relief would be prorated for sales of homes over $100,000.

To help alleviate hardship, this provision would also be available to disabled persons.

This amendment is a liberalization of the now familiar rules which help alleviate burdensome capital gains taxes on senior citizens who sell their homes, Internal Revenue Code, section 121. That section was enacted in 1964. It provides tax relief when elderly persons sell their home and do not replace it with an equally expensive home. This is a common situation for our Nation's seniors who, because of lower incomes, and advancing age, must move to a smaller house or apartment, or give up their home altogether. Their problems are multiplied because they are compelled to pay inequitable and rapidly increasing property taxes. The elderly deserve our help at this stage of their life. Sending the tax collector is not a good way to show this sympathy.

This amendment liberalizes the existing section 121 in several important ways. First, it raises the dollar limit which may be taken into account from $35,000 to $100,000. This number is high enough to give meaningful tax relief to middle income Americans living everywhere, including both in the city and on the farm. It is low enough to avoid giving tax relief where none is needed.

Also, the amendment reduces the age required to use section 121 from 65 to 55. This is because many persons retire or find it necessary to sell their homes before they reach age 65.

In addition, the amendment liberalizes current law by making this tax relief available to disabled persons.

This amendment also shortens the holding period required for qualification for this credit from 5 out of 8 years to 2 out of 3 years immediately preceding the sale. It also provides that the holding period for condemned or involuntarily converted residence may be taxed for purposes of having gain on the sale qualify for the exclusion.

Mr. President, I am also introducing an amendment for myself and Senator NELSON identical to the Church-Packwood-Nelson amendment, except providing an age limit of age 60. I am offering this second amendment in case budget restraints prevent consideration of the amendment reducing the age limit to 55.

Mr. President, I ask unanimous consent that this amendment be printed in the RECORD following my remarks.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 4050

On page 348, beginning with line 6, strike out all through page 352, line 5, and insert the following:

SEC. 404. ONE-TIME EXCLUSION OF GAIN FROM SALE OR EXCHANGE OF PRINCIPAL RESIDENCE OF INDIVIDUAL WHO HAS ATTAINED AGE 60 OR IS DISABLED.

(a) GENERAL RULE.—The section heading and subsection (a) of section 121 (relating to gain from sale or exchange of residence of individual who has attained age 65) are amended to read as follows:

"SEC. 121. ONE-TIME EXCLUSION OF GAIN FROM SALE OR EXCHANGE OF PRINCIPAL RESIDENCE OF INDIVIDUAL WHO HAS ATAINED AGE 60 OR IS DISABLED.

"(a) GENERAL RULE.—At the election of the taxpayer, gross income does not include gain from the sale or exchange of property if—

"(1) the taxpayer—

"(A) has attained the age of 60 before the date of such sale or exchange, or

"(B) is permanently and totally disabled (within the meaning of sections 105(d)(4)) on the date of such sale or exchange, and

"(2) during the 3-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as his principal residence for periods aggregating 2 years or more.".

(b) INCREASE IN EXCLUSION.—The heading and text of paragraph (1) of section 121(b) are each amended by striking out $35,000" each place it appears and inserting in lieu thereof "100,000".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 121 (b) is amended by adding at the end thereof the following new paragraph:

"(3) ADDITIONAL ELECTION IF PRIOR SALE WAS MADE ON OR BEFORE JULY 26, 1978.—In the case of any sale or exchange after July 26, 1978, this section shall be applied by not taking into account any election made with respect to a sale or exchange on or before such date.".

(2) Paragraph (2) of section 121(d) is amended by striking out "8-year period" and inserting in lieu thereof "3-year period".

(3) Paragraph (5) of section 121(c) is amended—

(A) by striking out "8-year period" and inserting in lieu thereof "3-year period", and

(B) by striking out "5 years" and inserting in lieu thereof "2 years".

(4) Paragraph (7) of section 121(d) is amended to read as follows:

"(7) SECTIONS 1033 AND 1034 NOT TO APPLY TO SALES TO WHICH THIS SECTION APPLIES.—Sections 1033 (relating to involuntary conversions) and 1034 (relating to rollover of gain on sale of principal residence) shall not apply to any sale or exchange of a residence with respect to which an election under this section applies.".

(5) Subsection (d) of section 121 is amended by adding at the end thereof the following new paragraph:

"(8) PROPERTY ACQUIRED AFTER INVOLUNTARY CONVERSION.—If the property sold or exchanged had its basis determined, in whole or in part, by reference to subsection (a) of section 1033 (relating to basis of property acquired through involuntary conversion), then the holding and use of the converted property shall be treated as holding and use of the property sold or exchanged.".

(6) The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 121 and inserting in lieu thereof the following:

"SEC. 121. ONE-TIME EXCLUSION OF GAIN FROM SALE OR EXCHANGE OF PRINCIPAL RESIDENCE OF INDIVIDUAL WHO HAS ATTAINED AGE 60 OR IS DISABLED.".

(7) Paragraph (3) of section 1033(g) (relating to cross references) is amended to read as follows:

"(3) For one-time exclusion from gross in-

come of gain from involuntary conversion of principal residence of individual who has attained age 60 or is disabled, see section 121."

(8) Subsection (k) of section 1034 (relating to cross references) is amended to read as follows:

"(k) CROSS REFERENCE.—

"For one-time exclusion from gross income of gain from sale or exchange of principal residence of individual who has attained age 60 or is disabled, see section 121."

(9) Sections 1038(e)(1)(A), 1250(d)(7)(B), and 6012(c) are each amended by striking out "age 65" and inserting in lieu thereof "age 60 or is disabled".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after July 26, 1978, in taxable years ending after such date.

(d) TRANSITIONAL RULE.—In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to substitute both "8-year period" for "3-year period" and "5 years" for "2 years" in applying subsection (a) of section 121 of the Internal Revenue Code of 1954 as amended by this section.●

● Mr. NELSON. Mr. President, today I am pleased to join Senators CHURCH and PACKWOOD in cosponsoring an amendment to the Revenue Act of 1978, H.R. 13511.

DESCRIPTION OF AMENDMENT

This amendment would permit an individual who is either disabled or age 55 or older to exclude from gross income, on a one-time basis, the entire gain realized on the sale of his or her principal residence if the adjusted sales price is $100,000 or less. If the adjusted sales price exceeds $100,000, the amount excludable is determined by the following ratio formula:

$100,000 (amount of sales price) times amount of gain equals amount of gain excluded.

Thus, if a qualified taxpayer sells a principal residence for $100,000 which he purchased for $75,000, the entire gain would be excluded. If the sales price is $150,000, $50,000 of the total $75,000 gain would be excluded.

REASONS FOR THE CHANGE

The taxes imposed upon individuals with respect to gains realized on the sale or exchange of a principal residence may be unduly high, especially, in light of rising inflation levels and the increasing cost of housing. Under current provisions of the law, an individual who bought a home for $25,000 in 1965 and sells it today for $75,000 would realize a capital gain of $50,000. However, when inflation is taken into account the real gain is significantly less than $50,000.

For many middle income families, the only real investment they have is their home. Many of these individuals rely on the proceeds of the sale of their home to provide financial security in future years thus making retirement more comfortable than burdensome. If we unfairly tax the nominal gain rather than real gain, these individuals are forced to depend upon social security or other Federal subsidies for the remainder of their lives. This neither serves the interest of the individual or the interest of the Government.●

AMENDMENT NO. 4051

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself and Mr. BELLMON) submitted an amendment intended to be proposed by him to amendment No. 4049 proposed by Mr. NELSON to H.R. 13511, supra.

AMENDMENT NO. 4052

(Ordered to be printed and to lie on the table.)

Mr. PACKWOOD submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4053

(Ordered to be printed and to lie on the table.)

Mr. PACKWOOD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NOS. 4054 THROUGH 4056

(Ordered to be printed and to lie on the table.)

Mr. DANFORTH (for himself and Mr. JAVITS) submitted three amendments intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4057

(Ordered to be printed and to lie on the table.)

Mr. NUNN (for himself, Mr. CHILES, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, and Mr. DOMENICI) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4058

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself, Mr. WEICKER, Mr. HATHAWAY, Mr. PACKWOOD, Mr. MCINTYRE, Mr. HEINZ, and Mr. LEAHY) submitted an amendment intended to be proposed by them, jointly, to the committee amendment to H.R. 13511, supra.

DEPRECIATION REFORM

● Mr. NELSON. Mr. President, today I am submitting this amendment to the committee amendment to the Revenue Act of 1978, H.R. 13511. I ask that the text of this amendment be printed in the RECORD following my remarks.

DESCRIPTION OF AMENDMENT

This amendment is similar to amendment 3846 which I submitted earlier this week. The major difference is that this amendment prohibits the election of section 179 on the first $25,000 of property placed in service during any one taxable year. However, the election of section 179 can be used for any portion of property in excess of $25,000. For example, on equipment with a cost basis of $50,000, the first $25,000 would be excluded from any bonus depreciation allowed under section 179. The remaining $25,000 would be eligible for bonus depreciation under section 179 of present law. The Joint Committee on Taxation estimates the cost of this amendment to be only $37 million in fiscal year 1979.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 4058

On page 314, between lines 3 and 4, insert the following new section:

DEPRECIATION REFORM

SEC. 363. (a) Section 167 of the Internal Revenue Code of 1954 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(q) THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—

"(1) GENERAL RULE.—In the case of a taxpayer who has made an election under this subsection for the taxable year, the term 'reasonable allowance' as used in subsection (a) means (with respect to property which has a useful life of 36 months or more) an allowance based on a useful life of 36 months computed under the straight-line method (within the meaning of subsection (b)(1)).

"(2) $25,000 BASIS LIMITATION.—For purposes of this subsection, the basis (as determined under subsection (g)) of property placed in service during the taxable year shall, to the extent that such basis exceeds $25,000 for the taxable year, not to be taken into account.

"(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time, in such manner, and subject to such conditions as may be prescribed by the Secretary by regulations.

"(4) LIMITATION—

(A) General Rule—subject to the exception provided by subparagraph (B), the provisions of this section shall not apply to property to which an election under section 179 applies.

(B) Exception—the provisions of subparagraph (A) shall not apply to that portion of the basis of property placed in service during the taxable year which exceeds $25,000.

(b) Subsection (c) of section 46 is amended by adding at the end thereof the following new paragraph:

"(6) APPLICABLE PERCENTAGE IN THE CASE OF THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—Notwithstanding subsection (c)(2), in the case of property with respect to which an election under section 167(q) applies, the useful life of any such property for purposes of this subpart shall be the useful life determined without regard to section 167(q).".

EFFECTIVE DATE

(c) the amendments made by this section shall apply in the case of property acquired and placed in service in taxable years beginning after December 31, 1978.●

AMENDMENT NO. 4059

(Ordered to be printed and to lie on the table.)

Mr. HART submitted an amendment intended to be proposed by him to the committee amendment to H.R. 13511, supra.

AMENDMENTS NOS. 4060 THROUGH 4062

(Ordered to be printed and to lie on the table.)

Mr. HART submitted three amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4063

(Ordered to be printed and to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to the committee amendment to H.R. 13511, supra.

AMENDMENT NO. 4064

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4065

(Ordered to be printed and to lie on the table.)

Mr. ANDERSON submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4066

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENTS NOS. 4067 THROUGH 4077

(Ordered to be printed and to lie on the table.)

Mr. GARN submitted 11 amendments intended to be proposed by him to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENT NO. 4078

(Ordered to be printed.)

Mr. HEINZ proposed an amendment to H.R. 13511, supra.

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978—H.R. 50

AMENDMENTS NOS. 4079 THROUGH 4082

(Ordered to be printed and to lie on the table.)

(Mr. GARN submitted four amendments intended to be proposed by him to H.R. 50, the Full Employment and Balanced Growth Act of 1978.

ADDITIONAL STATEMENTS

"NORDY" HOFFMANN

● Mr. BAYH. Mr. President, I know that my colleagues are very much aware of the outstanding qualities of the able Sergeant at Arms Nordy Hoffmann. Much has been said and written about his athletic ability, especially on the playing fields of Notre Dame, and of his ability to keep order in the U.S. Senate.

I am concerned, however, that my colleagues do not know the full story of how Frank "Nordy" Hoffmann got to play football at Notre Dame and consequently develop into the wonderful human being we know and love.

An article describing Nordy Hoffmann during his college days appeared in the football program for the Notre Dame-Purdue game where Nordy was honored during a special half-time presentation for his nomination to the National Football Foundation College Football Hall of Fame.

I ask that the article be printed in the RECORD.

The story follows:

"NORDY" HOFFMANN

(By Frank LaGrotta)

It's a great story . . . a little unbelievable perhaps, but still a great story.

In 1928, two college sophomores were walking on campus when they encountered the head football coach. One of the students happened to be a football player, so he stopped to chat. He introduced his friend to the coach and the two shook hands.

"You out for football?" inquired the coach. The lad assured him that he was not.

"Well, you oughta be with a pair of hands like those. Why don't you come out for the team?"

"Well, I've never played football before," the bewildered sophomore explained.

"Good," the coach smiled, "then no one's ever taught you wrong."

If you haven't guessed by now, the crafty coach with the eagle eye for talent was Knute Rockne. His on-the-spot recruit was Francis "Nordy" Hoffmann. And of course it happened at Notre Dame.

But it almost didn't happen at all.

"I was registered at Stanford," remembers Hoffmann, who insists that everyone call him Nordy (his middle name is Nordhoff). "My cousin suggested that I look into some Eastern and Midwestern schools. Notre Dame was a highly rated commerce school which was the field I wanted to go into, so my grandfather contacted a friend of his, Judge Wooten, and thanks to him I came to Notre Dame."

Nordy wasn't being modest when he told Rockne that he had never before played football. The son of a prominent Seattle hotel owner, he attended an exclusive prep school that didn't have a football team. However, under Rockne's tutelage, Nordy learned the game—and learned it well. Well enough, in fact, to be named All-American in 1931, the year after Rockne's death. He attributes his success on the football field and in later life to his legendary coach.

"Rock was one of the finest men I ever knew," Hoffmann emphasizes. "A great teacher, coach and example. He could teach a lesson better than anybody. If you did something wrong he might sting you with sarcasm, but then he'd take away the sting and you would realize that you learned something.

"He was a kind man. Everything he did was with his players' best interests at heart."

Nordy speaks warmly about an incident that occurred at a convention in Seattle.

Rockne was speaking at a Studebaker convention that my father attended. After his speech, my father greeted him like they were old friends. He gave my father the key to his room and told him to go upstairs and relax and he'd join him in a few minutes.

"Well, when Rock got up to the room he and my father started talking. My father told him that he thought I was getting a little conceited. Rockne just stared at him and said:

" 'Conceited? Oh, no. Your son is proud. Proud of his team, proud of his school and proud of the fine job he's doing. That's not conceit . . . that's justifiable pride.'

"When I heard that, I felt 10 feet tall. Of course, praise from Rockne could do that to you. A finer man never put on a pair of shoes."

Nordy, however, had his share of run-ins with Rockne.

"There was a place in South Bend called Bob Culp's," Nordy recalls, "and one Sunday a bunch of us went down to have a few beers. We caught the 5:50 streetcar, which ran right by the place, and got back to campus in time for dinner.

"I was there with Tim Connelly, Marty Brill, Bucky O'Connor and a few other guys on the team. We walked out the door at ten 'til six and who do you think we saw sitting across the street in a big Studebaker? Right. Knute Kenneth Rockne. He didn't say anything then and we prayed that he hadn't seen us.

"The next day after practice he made it quite clear that he had seen us. Oh, he didn't say anything about it; he just read a list of players who were to stay for extra practice and every fellow on that list had been at Bob Culp's the day before. He kept us every day that week for about an hour extra and he really worked us. On Thursday, after our extra practice, he called us together.

" 'Well, fellas,' he asked, 'do you think I worked all the beer out of you?' "

Upon graduation from Notre Dame law school in 1933, Nordy stayed on as an assistant coach under Hunk Anderson. He left Notre Dame in the depths of the depression to take a job with the Curtiss-Wright Corporation in Pittsburgh. With a strong interest in the labor movement, he became president of the local union of the United Steelworkers.

His union career was interrupted in 1942 by World War II service as a Navy lieutenant.

In 1945, Hoffmann went to work in the Steelworkers' international union headquarters in Pittsburgh. In 1948, he was selected by International President Phillip Murray to organize a lobbying office in Washington.

Nordy also became active in the Democratic Party and was chosen to serve as assistant sergeant at arms at the 1960 and 1964 Democratic national conventions. In 1965 he was selected by Sen. Edmund S. Muskie to serve as the director of the Senate Democratic Campaign Committee. He became the United States Senate's Sergeant at Arms in 1976. Still, with all the responsibility that accompanies his prestigious position, Nordy finds time for frequent visits to his alma mater.

"Not as frequent as I'd like," jokes Hoffmann, who insists that the great thing about Notre Dame is the spirit of the student body. "That's what Notre Dame's all about—spirit! It's a collage of everything on campus; the Grotto, the church, the Golden Dome, football . . . everything.

"Being an ex-football player I can appreciate even more the closeness of the student body. No one was treated any differently because he was a football player or a basketball player. We were all part of the student body—part of the Notre Dame family.

"I remember when Moon Mullins and I got stopped the week before a football game for leading a parade of students up and down the aisles at the old Palace Theater. We were cheering and yelling until they broke it up. But that's what it's like at Notre Dame. Heck, Father O'Hara (later Cardinal O'Hara) would make sure we woke up for Mass, but he'd also make sure we cheered as loud as we could at pep rallies

"It's a spiritual commitment you make to Notre Dame and to yourself."

It's that commitment, Nordy believes, that led to his success.

"There's no question about it, Notre Dame was the big contributor to any success I've enjoyed. I can honestly say that I would not be where I am today if it weren't for my parents, Knute Rockne and Notre Dame."

He cites the recent induction ceremony at the National Football Foundation Hall of Fame as an example of Notre Dame's lasting influence on her graduates.

"I looked around and saw Leon Hart, Ziggy Czarobski, George Connor, Creighton Miller, Don Miller, Jim Crowley. Out of 50 inductees, seven or eight of them were from Notre Dame. I was very, very proud. Proud for myself and proud of my school, because it means something to Notre Dame when one of her sons does well."

Nordy didn't know it at the time, but before he was named to the Hall of Fame, the 100 members of the Senate as well as President Carter, Vice President Mondale and former President Ford wrote letters of recommendation in his behalf. He now has those letters in a large album which he calls "the greatest tribute of my life."

With a reputation among his colleagues as someone who gets the job done, Nordy has a basic philosophy on life.

"Help other people," he says. "If I help someone and he comes back to me and asks how he can repay me I just tell him to help someone else. That is the greatest payment I could ask for.

"Of course, Rockne taught you that . . . to help other people and not to be selfish. It's all a part of the spirit of Notre Dame."

When talking to Nordy Hoffman, one gets the impression that he is extremely proud of his association with Notre Dame.

You can be sure the feeling is mutual.●

INTERPRETATIVE RULINGS OF THE SELECT COMMITTEE ON ETHICS

● Mr. STEVENSON. Mr. President on behalf of the Select Committee on Ethics, I submit for the information of the Senate a number of the committee's interpretative rulings on the Senate Code of Ethics made pursuant to section 206 of Senate Resolution 110, 95th Congress.

These 103 rulings answer questions of general interest raised by or on behalf of Members, officers, and employees of the Senate. The queries are with reference to Senate Rules 42–50, old rule 44 on financial disclosure, the franked mail statute and regulations, and other matters. They are presented chronologically by ruling number with clear reference to subject.

These rulings reflect committee action between April 1977 and March 1978, and include those previously published in the CONGRESSIONAL RECORD dated October 7, 1977. It should be noted that the ruling numbers herein supersede the original numerical designations.

A second group of rulings is being prepared in this form to include rulings rendered through this Congress. They will be published at the start of the next Congress. Thereafter, the Select Committee on Ethics will publish its actions monthly or as necessary.

The committee also responded by letter to 134 inquiries not herein submitted for publication. In a few instances these requests were too specialized to be of general assistance. In most cases, responses to these inquiries substantially duplicated the interpretations presented here. These committee actions number 38 with respect to foreign travel, 16 on gifts, 18 on conflict of interest, 25 on franking and letterhead, and 37 on miscellaneous topics.

The committee is planning a looseleaf, indexed manual for distribution during the next Congress. The manual will contain interpretative rulings rendered since the committee was created. The manual will provide each Senate office with a ready reference to the rules, statutes and regulations within its jurisdiction and the committee's interpretations thereof.

Interpretative rulings by the committee may be relied upon by any individual involved in a transaction or activity which is indistinguishable in all its material aspects from the facts on which a ruling has been rendered. The committee encouraged written requests for rulings on situations not clearly covered by the code of conduct.

The committee will continue to respond to written requests for interpretations, treat such requests confidentially, and publish its rulings with appropriate deletions to protect the privacy of individuals who seek committee guidance.

Mr. President, I ask to have printed in the RECORD certain rulings of the Select Committee on Ethics.

The material follows:

RULINGS

INTERPRETATIVE RULING NO. 1

Date issued: April 22, 1977.

Applicable Rules: 43 & 42/Old Rule 44.*

Question considered:

May a staff member designated by the supervising Senator to represent him at a meeting in Ottawa, Canada, sponsored by a nonprofit civic organization from the Senator's state and Canadian officials, to discuss matters within the purview of the Senator's official duties, accept from the state group travel and other necessary expenses?

Ruling:

NOTE.—This ruling is under review and should not be relied on.

The Rule 43, paragraph 2(a), definition of "gifts" includes only reimbursement for "other than necessary expenses." The $100 limit upon gifts from certain sources referred to in paragraph 1(a) of Rule 43 applies, in this context, only to gifts over and above necessary expenses of such a meeting.

The facts presented raise no questions of conflict of interest under Rule 45.

The amount and a brief description of the item accepted in excess of $50 should be reported under old Rule 44.*

INTERPRETATIVE RULING NO. 2

Date issued: May 2, 1977.

Applicable Rule: 43.

Question considered:

May a Senator accept a ticket, valued at $50, to a local fundraising dinner and entertainment sponsored by an organization which has a direct interest in legislation before the Congress?

Ruling:

Paragraph 2(a)(6) of Rule 43(a) excludes from the definition of "Gift" for purposes of the $100 limit imposed under that rule:

"Meals, beverages, or entertainment consumed or enjoyed, provided the meals, beverages, or entertainment are not consumed or enjoyed in connection with a gift of overnight lodging."

This exclusion does not extend to the disclosure and reporting requirements imposed under Rule 42(2)(b), requiring the reporting of gifts of food or entertainment of an aggregate value of $250, or under Rule 42(3)(c)(1), requiring the reporting of the source only in connection with such a gift to a spouse if the value exceeds $250. However, since the value of the ticket is $50 per individual, there would be no reporting problem under Rule 42 or old Rule 44.

INTERPRETATIVE RULING NO. 3

Date issued: May 5, 1977.

Applicable Rule: 49.

Question considered:

May Senate staff attend and participate as hostesses, while on leave, in a fundraising event to be held in behalf of a Senator in his state?

Ruling:

No provision of the Code of Official Conduct prohibits staff from attending a campaign fundraising event outside office hours or while on recorded vacation leave. Under Rule 49, paragraph (1), however, a Senate staff member may not receive, solicit, be the custodian of or distribute campaign funds unless he or she is one of the two assistants specifically designated for those purposes. In order to stay well within the spirit and letter of the Rule, staff who are not so designated and who attend such an event should not collect funds or sell tickets or otherwise participate in the fundraising aspects of the event.

Since 18 U.S.C. 602 prohibits staff from making a monetary campaign contribution to a Member of Congress, the participating staff should not attend as paying guests.

The Committee on Rules and Administration and this Committee will provide guidelines in due course with respect to campaign participation by staff after hours or while on annual leave. The interim position of this Committee is that Senators should encourage staff to remove themselves from the payroll for periods during which they expect to be heavily involved in campaign activities. Routine participation after hours or on annual leave time is not now prohibited by the Code of Conduct.

INTERPRETATIVE RULING NO. 4

Date issued: May 10, 1977.

Applicable Rule: 43.

Question considered:

May two Senate employees who plan to wed accept a gift of $125 worth (less than $100 each) of shrimp, for use at their wedding reception from a close personal friend of both who is employed by an instrumentality of a State which, from time to time, has an interest in legislation before the Congress, and has, on occasion, communicated its views to the Senator who employs the groom?

Ruling:

This gift is not subject to the $100 limitation in paragraph 1(a) of Rule 43 because the donor is not within the defined class of persons and organizations deemed under subparagraph 1(b) to have a direct interest in legislation before the Congress.

INTERPRETATIVE RULING NO. 5

Date issued: May 11, 1977.

Applicable Rule: 49.

Question considered:

To what extent may Senate employees volunteer time after office hours or while on annual leave to assist in political fund raising events for Members and candidates for election to the Senate?

Ruling:

Sections 307 and 308 of S. Res. 110 direct the Committee on Rules and Administration to consider matters closely related to this question and report to the Senate by October, 1977. In the interim Members should remove staff from the Senate payroll to participate for any extended period in such activities. The Code of Official Conduct, however, was not intended to prohibit routine matters performed outside of working hours such as preparing for mailing (e.g. typing, addressing, and stuffing envelopes) invitations and letters signed by others; making follow-up telephone calls on behalf of the sponsoring organization to determine projected attendance at the event; helping the sponsoring organization make arrangements for flowers, food, and entertainment; and serving on a committee of hosts or hostesses at the time of the event, not as a sponsor but simply to mingle with the guests on behalf of the sponsoring group.

Unless the employee is one of the two assistants specifically so designated, he or she may not receive, solicit, be the custodian of, or distribute any campaign funds. Accordingly, care must be taken to avoid involvement in those functions.

INTERPRETATIVE RULING NO. 6

Date issued: May 11, 1977.

Applicable Rule: 49.

Question considered:

Under the Code of Official Conduct, to what extent may staff engage in campagin activities?

Ruling:

Sections 307 and 309 of S. Res. 110 direct the Committee on Rules and Administration to consider and report back within 180 days on this question.

In the interim, Members must use their best judgment in taking staff off the Senate

*New Rule 42 superseded old Rule 44 on January 1, 1978, and the necessary expenses of travel are no longer reportable.

payroll to devote substantial portions of their time or to participate for any extended period in such activities. The Committee on Ethics recognizes staff frequently will be reinstated after campaign activities.

INTERPRETATIVE RULING NO. 7

Date issued: May 11, 1977.
Applicable Rules: 43 and 42.
Question considered:
Does Rule 43 prohibit acceptance of a gift of two $1,000 tickets to a fundraiser from a lobbyist?
Ruling:
Paragraph 2(a)(6) of Rule 43 excepts such gifts from the definition of a gift for purposes of the $100 limitation found in paragraph 1(a), and consequently, there is no prohibition against the acceptance for oneself and a guest.

For disclosure in 1978 (for calendar year 1877) under old Rule 44, this item is reported only if the value of the dinner, etc., portion of the ticket exceeds $50. Under the new Rule 42(3)(b), only items in excess of $35 aggregating $250 of more from the same source in the same calendar year need be reported.

The value of the gift to the donee is not the purchase price of the ticket paid by the donor. It is only the actual value of benefits, i.e., food. The value of such a dinner is often stated separately, as that portion of the cost of the ticket may not be deducted by the purchaser for federal income tax purposes.

INTERPRETATIVE RULING NO. 8

Date issued: May 11, 1977.
Applicable Rules: 43 and 46.
Question considered:
Is acceptance of hotel accommodations by six representatives of various local organizations convened for the purpose of selecting two senior citizens for a Senator's summer intern program permissible under the Code of Official Conduct? The Senator's office is not directly involved in the selection of the panelists or the interns, but is making the arrangements and payments for the panelists' travel expenses, not from public funds.
Ruling:
The persons referred to as the selection panel are not covered by the Code inasmuch as they are not and would not be deemed Senate employees under any of the provisions of S. Res. 110. In light of the facts stated and assurances the Senator did not solicit or accept the complimentary accomodations, such accomodations are direct gifts to the individuals, not to the Senator. Hence, they are neither prohibited nor reportable under the Senate Code of Official Conduct.

INTERPRETATIVE RULING NO. 9

Date issued: May 11, 1977.
Applicable Rule: 44*.
Question considered:
May a Senator accept honoraria in excess of $25,000 in a calendar year, so long as the excess is donated to charity?
Ruling:
Acceptance of honoraria in excess of $25,000 in any calendar year is prohibited by Sec. 441(i) of the Federal Election Campaign Act. That section, entitled "Acceptance of Excessive Honorariums" provides that:

No person while an elected or appointed officer or employee of any branch of the Federal Government shall accept—

(1) any honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and his spouse or an aide to such person, and excluding amounts paid or incurred for any agents' fees or commissions) for any appearance, speech, or article; or

(2) honoraria (not prohibited by paragraph (1) of this section) aggregating more than $25,000 in any calendar year.

*Rule 44 becomes effective January 1, 1979.

Regulation 110.12(b)(5), issued pursuant to the Federal Election Campaign Act, provides:

(5) Accepted.—"Accepted" means that there has been actual or constructive receipt of the honorarium and the Federal officeholder or employee exercises dominion or control over it. A Federal officeholder or employee is considered to have accepted an honorarium (i) if he or she actually receives it and determines its subsequent use, or (ii) he or she directs that the organization offering the honorarium give the honorarium to a charity or other beneficiary which he or she names, but (iii) an honorarium is not accepted if he or she makes a suggestion that the honorarium be given to a charity or other like beneficiary of the organization's own choosing. Nothing in this paragraph shall be construed as an interpretation of relevant provisions of the Internal Revenue Code.

With respect to (i) and (ii) above, these honoraria are includable in gross income for federal (and most state) income tax purposes in the taxable year payment is received, and are also deductible from gross income under section 170 of the Internal Revenue Code in the taxable year during which the charitable contribution is paid, provided the donee organization is one described in section 501(c)(3) of the Internal Revenue Code as being exempt under section 501(a). If the above procedure is followed, there is no tax benefit; it is a wash transaction. If the receipt and the gift did not both fall within the same taxable year, tax planning with respect to the timing of income and deductions could result in tax benefits, perfectly proper when so arranged by private citizens.

INTERPRETATIVE RULING NO. 10

Date issued: May 11, 1977.
Applicable Rules: 42 and Old Rule 44*.
Question considered:
Is a reemployed annuitant required to add the amount of the annuity to his Senate salary in order to determine whether he is required to file a financial disclosure statement?
Ruling:
Under the rules in effect prior to October 1, 1977, reemployed annuitants are not required to add the amount of the annuity to their Senate salary. A reemployed annuitant who is a Senate employee for more than 90 days in 1977 and whose combined annuity and Senate salary exceeds $15,000 must file a disclosure statement between January 1 and May 14, 1978 under old Rule 44. If the combined compensation exceeds $25,000, the reemployed annuitant also must file a financial disclosure statement under Rule 42 for the last quarter of 1977.

INTERPRETATIVE RULING NO. 11

Date issued: May 11, 1977.
Applicable Rule: 45.
Question considered:
May a Senate employee participate in an outside business venture during non-Senate hours. His participation would consist of assisting in arranging financing, which possibly would be guaranteed by a federal agency, for a newly formed corporation to manufacture "hobby aircraft."
Ruling:
Such an activity may fall within the scope of the prohibition in paragraph 2 of Rule 45 concerning activities "inconsistent or in conflict with the conscientious performance of office duties" since the risk of the appearance of impropriety is such that the public may question why conventional financing was unavailable and why a Senate employee was selected to perform this service.

Paragraph 3 of Rule 45 requires an employee to report to his supervisor the details of an outside business activity for compensation. The supervisor, in turn, has the responsibility for taking "such action as he or she considers necessary for the avoidance of conflict of interest or interference with duties to the Senate."

Thus, the Committee can not approve or disapprove the proposal. The Committee would be pleased however, to review the recommendations of the Senate employee's supervisor.

*Rule 42 superseded old Rule 44 January 1, 1978.

INTERPRETATIVE RULING NO. 12

Date issued: May 11, 1977
Applicable Rules: 42/Old Rule 44*.
Question considered:
Is a Senator appointed less than 90 days before the end of the year to fill the unexpired term of a Senator who resigned required under old Senate Rule 44 to file financial disclosure statements or statements of contributions and honoraria for the calendar year in which he was appointed?
Ruling:
Under old Rule 44, an appointed Senator who did not declare or seek nomination or election, or file as a candidate under state law, there being no election contest, is not required to file disclosure statements for the year in which he was appointed.

Under Rule 42, effective October 1, 1977,** an appointed Senator who serves in excess of 90 days in the year he is appointed will be required to file a report containing a full and complete financial statement for that calendar year.

INTERPRETATIVE RULING NO. 13

Date issued: May 16, 1977.
Applicable Rule: 46.
Question considered:
May a Member continue to use contributions from private sources to defray official expenses?
Ruling:
Rule 46 prohibits the receipt of contributions to an unofficial office account for the purpose, at least in part, of defraying otherwise unreimbursed expenses allowable in connection with the operation of a Member's office. Expenditures from unofficial office accounts must terminate by the end of 1977.

Accounts may be maintained for personal funds and for funds received as reasonable reimbursements for expenses incurred by a Member, in connection with personal services provided by a Member to the reimbursing organization, and those funds may be used to defray otherwise unreimbursed expenses of official duties. Funds derived from a political committee may also be used for those purposes. Those funds should not be commingled with other funds, and the political committee should pay directly those official expenses it chooses to defray.

The Committee expresses no opinion as to the tax consequences of using political committee funds to defray official expenses.

INTERPRETATIVE RULING NO. 14

Date issued: May 20, 1977.
Applicable Rule: 43.
Question considered:
May staff accept the gift of a ticket to a sporting event from a lobbyist under the entertainment exception to the definition of gifts found in paragraph 2(a)(6) of Rule 43?
Ruling:
That paragraph states that the term gift does not include: meals, beverages, or entertainment consumed or enjoyed, provided the meals, beverages, or entertainment are not consumed or enjoyed in connection with a gift of overnight lodging.

Legislative history indicates the provision was intended to be a narrow exception de-

*New Rule 42 superseded on old Rule 44 on January 1, 1978.

**Changed to January 1, 1978 by S. Res. 265.

signed to avoid the awkwardness of a Member (or staff) having to keep track of the cost of each item such as cocktails, dinner, wine, a cigar and entertainment during the course of an evening at a hotel, motel or restaurant in order to determine whether the $100 limitation had been exceeded.

It would be an unwise enlargement of this provision to construe it to be applicable to sporting events as entertainment.

INTERPRETATIVE RULING NO. 15

Date issued: May 23, 1977.
Applicable Area: Franking.
Question considered:

May a new committee chairman's frank be pasted over that of the retired chairman upon a mailing list correction card used in the past to update and purge the committee's mailing list?

Ruling:

Chapter 1, Paragraph 3 (on page 1), of Regulations Governing the Use of the Mailing Frank promulgated May 13, 1974 by the Select Committee on Standards and Conduct, the predecessor to this Committee, states that:

Mail matter of any committee of the Senate, or of any joint committee of the Congress whose chairman is a Senator, which if frankable under section 3210 of Title 39, U.S. Code, may be sent under the frank of the chairman.

Paragraph 4 of the same chapter of the regulations, page 2, states that:

A Senate committee which maintains a mailing list for its official reports may use a franked return-address postal card for addresses to indicate their continued desire to receive reports.

Chapter 2 of the Regulations, paragraph 16 (on page 8), states with respect to "correction of mailing lists":

Postal Service Regulation 122.5 states that mailing lists submitted by Members of Congress will be corrected as frequently as requested and that payment for correction of lists submitted by Members of Congress is made under the official mail reimbursement program.

The frank shall not be used for any other means of correcting the mailing list of a Senator.

The chairman of a committee or subcommittee of the Senate may use his frank to bring up to date the mailing list of his committee or subcommittee, if the mailing list is compiled from specific requests and is used only to mail official publications, such as hearings, reports, news releases and announcements. The chairman may use his frank for this purpose by sending return-address cards to addressees on the list.

Accordingly, the return card may be sent to various persons to determine which publications they wish to receive and to bring up to date the mailing list of a committee. The current chairman's frank may be used for this purpose. It is irrelevant that the frank of the new chairman has been pasted over the frank of the retired chairman.

INTERPRETATIVE RULING NO. 16

Date issued: May 23, 1977.
Applicable Rule: 46.
Question considered:

May a Senator accept the contribution of free use of space in a private law firm, including a volunteer worker and other office facilities, as an intake center for federal casework?

Ruling:

Rule 46 provides that no Member may maintain or have maintained for his use an unofficial office account and that contributions may be used to defray otherwise unreimbursed expenses allowable in connection with the operation of a Member's office only if they are funds spent directly for such purposes by a political committee reported under the FECA. Section 313(e) of Title III of S. Res. 110 provides that no contribution to an unofficial office account may be received after April 2, 1977.

This would be tantamount to an in-kind contribution by an individual to defray an unreimbursed expense of a federal officeholder, in violation of Rule 46.

INTERPRETATIVE RULING NO. 17

Date issued: May 23, 1977.
Applicable Rules: 43 and 46.
Question considered:

Does an arrangement between a Senator and various artists, under the aegis of the Department of Cultural Resources of his state, for the loan, use and exhibition of their products in his Senate office violate the Code of Conduct?

Ruling:

The Committee report on S. Res. 110, (#95–49, 95th Congress, 1st Session, p. 35), states that:

The Committee took notice of the historical practice followed in some offices of making home state products, of minimal value, available to constituents and others who visited the office. Such products are most often in the form of food and beverages, such as apples, peanuts, coffee and orange juice. Obviously, these products are provided by business back in the Senator's home state, and some of the individuals or organizations involved in providing them may fall within the definition of those with a "direct interest in legislation." Nevertheless, the Committee felt that this time-honored tradition did not involve any conflict of interest and provision of home state products, for this type of distribution, should not be regarded as a gift to the Senator or the office since it is passed on to those visiting the office.

The loans in question fall within the time-honored tradition of the Senate referred to above. Further, since the Senate furnishes all offices adequately, this arrangement appears to be an accommodation to young artists. The value to the Senator is de minimus, and, consequently, the arrangement is not a gift and raises no question of conflict of interest.

INTERPRETATIVE RULING NO. 18

Date issued: May 23, 1977.
Applicable Rule: Franking.
Question considered:

Do regulations permit mailing under the frank of a return mail, address correction, IBM punch card, in an envelope bearing instructions to the postmaster, in order to secure corrections of a Senator's official mailing list, if the return card is not franked and is mailed along with a newsletter or other material?

Ruling:

The regulations published by the Select Committee on Standards and Conduct governing the use of the mailing frank state, on page 8, that mailing lists may be corrected under Postal Service Regulation 122.5 by postmasters on request from a Member of Congress, but that "the frank shall not be used for any other means of correcting the mailing list of a Senator."

The use of the frank on an envelope with instructions to the postmaster or the mailing of an address correction IBM card in a franked envelope are permissible uses only if incidental to the mailing of other frankable matter. The regulations prohibit mailing the IBM card alone under the frank, using the franked envelope with the postmaster instructions solely for the purpose of correcting the mailing list, or using the frank on the return IBM card.

INTERPRETATIVE RULING NO. 19

Date issued: May 24, 1977.
Applicable Rules: 43 and 42.
Question considered:

May a Senate employee accept the invitation of a private corporation to speak on data communications at a series of seminars in five cities during June and July of this year when he is willing to take annual leave sufficient to remove any question of activities unrelated to his official duties during Senate working hours, and the corporation will pay all the necessary expenses of travel, food and lodging, and in addition, will pay an honorarium in the amount of $100 for each appearance?

Ruling:

Under Rule 43 with respect to gifts, paragraph 2(a) excludes from the definition of a gift the "necessary expenses" of travel, food and lodging for purposes of the prohibition upon acceptance of gifts from certain sources in excess of a value of $100. Thus, payment of those items by the corporation is permissible. Acceptance of the $100 honoraria presents no problem.

INTERPRETATIVE RULING NO. 20

Date issued: May 24, 1977.
Applicable Rule: 43.
Question considered:

May a Senate employee accept an invitation from an organization having an interest in legislation before the Congress to play in a golf tournament sponsored by a memorial fund to which the organization has made a contribution entitling the organization to invite one player per each $150 of its contribution?

Ruling:

The acceptance of the $150 entrance fee would constitute a gift in excess of the $100 limit imposed by Rule 43(1)(a). Furthermore, reimbursing the donor $50 to conform to the Rule 43 limitation of $100 with respect to such gifts is inconsistent with the purpose of the Rule.

INTERPRETATIVE RULING NO. 21

Date issued: May 25, 1977.
Applicable Rule: 43.
Question considered:

With respect to the meeting of the 18th Canada-United States Interparliamentary Group established in 1959 pursuant to 22 U.S.C. 276(d) and (g) May 27-31, 1977 in Victoria, British Columbia, does Rule 43 preclude attendance by the Senate delegation at official functions such as dinners given by the Canadian hosts?

Ruling:

The Committee recognizes that such a departure from tradition would cause confusion and embarrassment of enormous proportions.

The proceedings of this group are a part of the official duties of the Senate and its delegation. The expenses of participation are covered by an annual appropriation of funds by the Congress, and therefore are not within the scope of Rule 43 of the Code which prohibits payment of the expenses of foreign travel by foreign governments or organizations.

Embassy functions are intended to be exempt from the rule. Rule 43 does not preclude acceptance of official hospitality of a de minimus nature, merely incidental to the deliberations of an official delegation to an international conference abroad.

INTERPRETATIVE RULING NO. 22

Date issued: May 26, 1977.
Applicable Rule: 49.
Question considered:

May Senate staff persons solicit, receive or distribute funds for a campaign organization, and during off hours, participate in party activities which may include fundraising efforts?

Ruling:

Rule 49 provides that two staff persons may be designated by a Senator to be the custodians of or to distribute funds in connection with a campaign, but no officer or employee of the Senate may solicit funds, (or solicit others to solicit funds in behalf of a Senator) while on the Senate payroll. Staff may be removed temporarily from the Senate

payroll to engage in such campaign type activities.

It is not intended that Senate employees be barred completely from all participation in political activity. Outside of Senate office hours staff may assist in planning and making arrangements for fund raisers so long as they do not become involved with solicitation of funds.

The difficulties in drawing the line between these two types of activity led to the mandate in Title II section 206 of S. Res. 110 which directs the Committee on Rules and Administration to study and report within 180 days on the misuse of staff by incumbents in reelection campaigns.

Note: On June 13, 1977, the Senate agreed to S. Res. 188 which amended Rule 49 to remove the prohibition on solicitation applying to employees designated for political fund activity.

INTERPRETATIVE RULING NO. 23

Date issued: May 26, 1977.
Applicable Rule: 45.
Question considered:

May the staff director of a Senate Committee accept appointment to the advisory board of a college interested in establishing a center which may be eligible for partial federal funding, pursuant to legislation now under consideration by the Committee of which he is staff director?

Ruling:

The appointment in question creates the appearance of conflict with the subject's responsibilities as staff director of the committee despite the fact that Rule 45 appears to permit Members, officers and employees to serve in such appointments if they do not receive compensation therefor.

The Committee therefore recommends that the appointment not be accepted.

INTERPRETATIVE RULING NO. 24

Date issued: May 26, 1977.
Applicable Area: Franking.
Question considered:

May a Senator store political documents, such as records and financial statements of past campaigns, in his Washington office and in federal space provided in his state?

Ruling:

The Committee is not aware of any Senate rule or law on these points. Counsel for GSA advises that he knows of no law or regulation with respect to what may be stored in space under its jurisdiction.

Storage of substantial quantities of such personal and political materials, i.e., bulk storage of materials unrelated to one's official duties, would be an improper use of public property. Members are, however, entitled to some latitude with respect to documents needed for reference purposes or public disclosure. Campaign materials used by Members for gifts and all such materials that are incidental to the normal business of a Senate office and require no substantial storage space may be maintained in a Senator's offices.

INTERPRETATIVE RULING NO. 25

Date issued: June 2, 1977.
Applicable Rule: 49.
Question considered:

Under Rule 49 may an assistant designated by a Senator to be a custodian of campaign funds, but specifically prohibited from soliciting same, solicit others to solicit campaign funds in the Senator's behalf?

Ruling:

Note: The Committee on Rules and Administration was introduced by S. Res. 110 (Title III, sec. 308) to study the misuse of Senate staff in campaigns and to report to the Senate thereon by September 1, 1977. In action the week of May 23, moreover, the Committee on Rules and Administration agreed to report a resolution to amend Rule 49 to authorize designated Senate staff assistants to solicit campaign funds. This, therefore, is an interim interpretation of the Code. (The Senate approved the resolution, S. Res. 188, on June 13.)

Solicitation of others to solicit funds would be inconsistent with the purpose of the rule which is to prohibit Senate employees from soliciting funds or otherwise becoming involved to any substantial degree in political fund activity. To permit solicitation indirectly would be tantamount to permitting that which cannot be done directly.

INTERPRETATIVE RULING NO. 26

Date issued: June 3, 1977.
Applicable Area: Franking.
Question considered:

Do the regulations on the use of the mailinging frank permit placing the words "address correction requested" on addressed envelopes containing a newsletter or a questionnaire mailed to constitutents?

Ruling:

The regulations of the Select Committee on Standards and Conduct governing the use of the mailing frank state on page 8 that mailing lists may be corrected under Postal Service Regulation 122.5 by Postmasters on request from a Member of Congress, but that "the frank shall not be used for any other means of correcting the mailing list of a Senator."

The use of a frank on an envelope bearing the instructions regarding address corrections is a permissible use only if it is incidental to the mailing of other frankable matter.

INTERPRETATIVE RULING NO. 27

Date issued: June 7, 1977.
Applicable Rule: 45.
Question considered:

Would a Senate employees' service in a U.S. Army Reserve Unit as a Chief Warrant Officer (CW2) be inconsistent with the Senate Code of Official Conduct?

Service normally entails one weekend each month and two weeks active duty each year, with compensation for each year being approximately $1,170. The employee is a Legislative Aide to a Senator and receives the annual salary of $17,869. His official duties do not involve him in the activities of the Armed Services Committee or in any aspect of military reserve affairs legislation or casework. The employee's supervising Senator is of the opinion there is no potential conflict.

Ruling:

The outside employment, as described above, would not constitute a conflict of interest under Rule 45 or violate any other provision of the Code. Paragraph 3 of Rule 45 requires an employee to report in writing such outside employment to his supervisor when it commences and on May 15 of each year that it continues. The restrictions on outside earned income in Rule 44, which becomes effective January 1, 1979, does not apply to an employee whose Senate salary does not exceed $35,000.

INTERPRETATIVE RULING NO. 28

Date issued: June 7, 1977.
Applicable Rule: 44*.
Question considered:

Under Senate rules and FECA provisions limiting the amount of honoraria a Senator may accept, may a Senator provide an organization sponsoring his appearance with a list of exempt organizations he particularly supports, allowing the organization to make a direct contribution to an exempt organization?

Ruling:

The Federal Election Campaign Act prohibits acceptance of honoraria in excess of $25,000 in any calendar year. Regulations issued pursuant to that Act provide that an honorarium is not accepted if the Senator makes a suggestion that the honorarium be given to a charity or other like beneficiary of the organization's own choosing. The organization in lieu of paying the honoraria must make a direct contribution to an exempt organization selected by it. The Ethics Committee has been advised by the Federal Elections Commission that the selection of no fewer than five organizations of interest to a Member, from which the donor organization makes its own selection, would be a reasonable procedure in conformity with the intent and purpose of their regulation.

This question is not now within the jurisdiction of this Committee. It is advisable therefore, to seek guidance from the Federal Elections Commission.

*Rule 44 becomes effective January 1, 1979.

INTERPRETATIVE RULING NO. 29

Date issued: June 9, 1977.
Applicable Rule: 43.
Question considered:

May a Member or Senate employee participate on all expenses paid basis in a one-day charitable golf-tennis tournament, the purpose of which is to raise funds for the Vince Lombardi Memorial Cancer Center?

Ruling:

The foundation issues invitations to "celebrities" in order to promote contributions to the foundation for the privilege of playing with certain well known persons in the tournament.

This participation is a contribution by the invited Member rather than a gift from the foundation, and, accordingly, it does not violate any provision of the Code of Official Conduct.

INTERPRETATIVE RULING NO. 30

Date issued: June 13, 1977.
Applicable Rule: 45.
Question considered:

Must a member of an advisory council to an executive agency, appointed by the President, resign his position on the council when he becomes a Senate employee? If not, may he accept the $100 per diem paid by the agency for the time spent serving on the council?

Ruling:

Paragraph 2 of Rule 45 on conflicts of interest prohibits an employee from engaging in outside professional employment for compensation which conflicts with the performance of official duties. Without knowing either what the prospective employee's duties will be, or whether the outside activity would present a conflict, the Committee cannot advise as to whether a conflict of interest would be presented by the outside employment. Under Paragraph 3 of Rule 45 the supervisor of an employee who engages in outside professional activity for compensation is required to "take such action as he considers necessary for the avoidance of conflict of interest or interference with duties to the Senate."

The Committee finds nothing in the Rules which would prohibit a Senate employee from serving on such a council. Moreover, the restrictions on outside earned income imposed by Rule 44 do not become effective until January 1, 1979, which is after the prospective employee's term on the council expires. The Committee points out, however, that the Dual Compensation Act, 4 U.S.C. 5533(c), would appear to prohibit anyone who is paid a salary by the Secretary of the Senate from being paid for another U.S. government position, even if part-time. The Committee does not have responsibility for the enforcement of this Act; it would be advisable therefore, to refer to the statute and consult with the Disbursing Office on the question.

INTERPRETATIVE RULING NO. 31

Date issued: June 16, 1977.
Applicable Rules: 42 and 43.
Question considered:

What is the value of a season pass for sporting events for purposes of Rule 43, prohibiting acceptance of gifts from persons with a direct interest in legislation aggregating more than $100 in a calendar year, and Rule 42, regarding financial disclosure?

Ruling:

The value of a season pass is the full market value at the time it is accepted and is undiminished by failure to use it or a portion of it. The ticket itself is a gift, if accepted, whether or not it is later exchanged for goods, services, entertainment or cash.

Thus, if the actual cost of a season ticket is $175 at the time it is given as a gift, then its value for the purpose of applying the gift and disclosure rules is $175 and may not be calculated on the basis of events actually attended.

INTERPRETATIVE RULING NO. 32

Date issued: June 17, 1977.

Applicable Rule: 49.

Question considered:

May an employee on the personal office staff of a Senator also serve as the chief administrative officer of an organization which is a political committee within the meaning of 2 U.S.C.A. 431(d), the Federal Election Campaign Act, and which has as its principal purpose the raising of campaign funds for candidates other than the Senator?

Ruling:

Ruling 49 prohibits employees generally from soliciting funds for any candidate for any federal office, unless designated to do so by the Senator in his behalf. The language of the rule is broader than the legislative history indicates its purpose to be, but there is no ambiguity in the language of the Rule. We believe that it is a violation of Rule 49 for a Senate employee to serve as the chief administrative officer of an organization whose primary purpose is to solicit campaign contributions.

NOTE: The Senate's agreement to S. Res. 188 (on June 13, 1977) which removed from Rule 49 the prohibition against solicitation of campaign funds by two assistants designated for political fund activity does not change this ruling. A designated employee may engage in limited solicitation on behalf of the employing Senator, but not on behalf of others, and may serve as treasurer of a political committee which in part is used to pay a Senator's official expenses not otherwise reimbursed, but may not spend substantial time thereon. If such work engages a substantial portion of the individual's time, that person should go off the Senate payroll.

INTERPRETATIVE RULING NO. 33

Date issued: June 27, 1977.

Applicable Rule: 45.

Question considered:

What provisions of the Code of Official Conduct must a full-time S. Res. 60 aide to a Senator with a salary between $15,000 and $25,000 consider in determining whether or not outside employment is proper?

Ruling:

An employee compensated at an annual rate of $25,000 or less is not subject to the financial disclosure requirements of new Rule 42. But an employee compensated at an annual rate of $15,000 or more must file on May 15, 1978 or upon leaving the Senate a sealed financial statement with the Comptroller General and a statement of contributions and honoraria with the Secretary of the Senate under old Rules 42 and 44.

The propriety of outside employment is governed by Rule 45. No employee, regardless of salary level, may receive compensation by virtue of influence improperly exerted. Nor may any employee engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. Any outside employment for compensation must be reported in writing to the supervising Senator when the employment commences and thereafter on May 15 of each year. That report must describe the nature of the employment. The supervising Senator must then take whatever action is appropriate for the avoidance of conflict of interest or interference with duties to the Senate. That action could, of course, be a denial of permission to undertake or continue the outside employment.

After April 1, 1978, employees compensated at more than $25,000 per year will also be subject to restrictions on providing professional services for compensation and on serving as officers or on boards of publicly held or regulated corporations, financial institutions or business entities.

INTERPRETATIVE RULING NO. 34

Date issued: June 27, 1977.

Applicable Rule: 46.

Question considered:

It is permissible under Rule 46 to transfer excess political funds from a campaign committee account to an existing office account for otherwise unreimbursed expenses of public office after April 2, 1977?

Ruling:

Rule 46 prohibited the receipt of contributions to an unofficial office account after April 2, 1977 and requires the termination of all existing unofficial office accounts on or before December 31, 1977. No deposits from any source, including political committees, may now be made to unofficial office accounts, although a Senator may until December 31, 1977 defray unreimbursed expenses from funds in such an account on April 1.

Paragraph 1(c) of Rule 46 permits the use of political committee funds to defray expenses of public office subject to the rules and regulations of the Federal Election Campaign Act. Such disbursements should be paid directly by the political committee and not commingled with personal funds or reimbursements referred to in paragraph 1(a) of Rule 46.

INTERPRETATIVE RULING NO. 35

Date issued: June 28, 1977.

Applicable Rule: 43.

Question considered:

May a Senator on an official business inspection tour organized by a Senator of the State to be visited accept travel on private aircraft and other travel expenses (lodging and food) from a corporation with a direct interest in the legislation when the corporation's installation or property is the principal subject of the inspection tour and the corporation is, at least in part, sponsoring the tour?

Ruling:

A colloquy with Senator Ribicoff as well as other discussions during the debate on S. Res. 110, established guidelines for this kind of travel insofar as Rule 43 pertaining to gifts is concerned. The Committee hopes to issue an advisory opinion on this area in the near future.

As long as the sponsoring organization provides the transportation and the trip is for an official purpose, the acceptance of the travel is allowable under Rule 43 since it is considered to be reimbursement for or provision of a necessary expense.

INTERPRETATIVE RULING NO. 36

Date issued: June 28, 1977.

Applicable Rule: 45.

Question considered:

Is it a violation of the Code of Official Conduct for a Senate employee, who is an S. Res. 60 staff person compensated at more than $25,000 but less than $35,000 per annum and who serves as a legislative assistant for agricultural affairs, to be involved in agriculture related business? The employee owns a company bearing his name which operates a dairy business and leases land to a corporation operating in a diversified form in which the employee is the major shareholder and serves (without compensation) as Chairman and President. The employee's sons receive salaries for running the company and the corporation and the employee receives rental income in connection with the lease of land to the corporation and may receive dividend income as the principal shareholder of the corporation.

Ruling:

There is no provision of the Code of Official Conduct which would prohibit the employee from remaining on the Senate payroll. Paragraph 4 of Rule 45 prohibits an employee from aiding the passage of legislation which would further his pecuniary interest, that of his family or of a limited class of persons or enterprises. The report accompanying S. Res. 110 (S. Rept. 95–49) states at page 42:

". . . Legislation may have a significant financial effect on a Senator because his holdings are involved, but if the legislation also has a broad, general impact on his state or the nation, the prohibitions (of paragraph 4) would not apply."

The Report cites the example of a dairy farmer representing a dairy farming state who introduces, works for and votes for legislation raising or maintaining dairy price supports. Because there would be a strong presumption that the Member was working on behalf of the public interest and the needs of his constituents and that his own financial interest was incidental, the Member would be part of a class affected by the legislation but would not be a member of a "limited clas" for the purposes of paragraph 4 and thus would not fall under the strictures of the Rule.

With respect to paragraph 6 of Rule 45, which deals with affiliation with a firm, partnership or corporation and the use of an employee's name by such an entity, the Report further states that paragraph 6 "reaches the major professions in addition to law, such as medicine, engineering, architecture and similar type of activities." These professions, unlike farming, involve a fiduciary relationship between the practitioner and clients which often would create a conflict with Senate duties. Accordingly, the Committee finds no violation of Rule 45.

INTERPRETATIVE RULING NO. 37

Date issued: June 28, 1977.

Applicable Area: Franking.

Question considered:

May a newspaper reporter have access to the files, records and opinions of the former Select Committee on Standards and Conduct now in the custody of the Select Committee on Ethics?

Ruling:

This Committee will fully respect the public's right to know. It is required to, and will, make available to complainants, as well as to persons charged, its findings in investigations involving violations of the franking privilege and the Code of Official Conduct. If it decides not to investigate complaints, the complainant will be advised with an explanation. Furthermore, the Committee has kept nearly all its proceedings open to the public and will continue to do so to the extent individual rights and national security permit. It will make public all of its interpretations of the Code.

The files of this Committee and its predecessor, not unlike those of a grand jury, from time to time receive unsupported complaints, highly personal information and information affecting the national security which would harm individual rights or national interests if revealed. Disclosure of such information would contravene law and time-honored standards of Anglo-Saxon justice, as well as severely handicap the Committee in its educational, investigative and judgemental duties. The Committee cannot, therefore, open all its files in response to such requests. It will make its opinions and advisory rulings public in due course.

INTERPRETATIVE RULING NO. 38

Date issued: June 29, 1977.

Applicable rule: 46.

Question considered:

May a Senator or employee use borrowed automobiles or automobiles leased at less than the commercial rate for official travel in the Senator's home state?

Ruling:

The Committee previously has ruled (see IR No. 16) that acceptance of a donation of space and facilities in a private law firm for casework is an in-kind contribution to defray official expenses in violation of Rule 46. That rule provides that no Member may maintain or have maintained for his use an unofficial office account or otherwise use contributions (other than funds of a political committee reported under FECA regulations) to defray expenses incurred in connection with his official duties. The loan of an automobile for official use by an individual would likewise be prohibited, as would the leasing of an automobile at less than the commercial rate.

INTERPRETATIVE RULING NO. 39

Date issued: June 29, 1977.
Applicable Rule: 45.
Question considered:

May a Senate employee undertake outside employment for compensation as a consultant to a university on a project funded in part by the Federal government and by two states and as executive secretary to a state advisory committee, where such employment could require as much as 84 days of the employee's time per year?

Ruling:

These activities raise questions as to whether outside demands will interfere with the employee's "conscientious performance of Senate duties" as provided in Paragraph 2 of Rule 45, or cause an actual or apparent conflict of interest. Rule 45 imposes upon the Member responsibility for the avoidance of conflicts by his staff. However, since the Member has expressed the opinion that the outside activities will not interfere with the employee's Senate employment, the Committee can point out the relevant considerations but in these circumstances it is not in a position to substitute its judgment for that of the Member.

INTERPRETATIVE RULING NO. 40

Date issued: July 1, 1977.
Applicable Area: Franking.
Question considered:

Does the regulation phohibiting use of the mailing frank for the mass mailing of a newsletter in which personally phrased references to a Senator appear more than five times per page also apply to reprints of speechse and other materials from the CONGRESSIONAL RECORD?

Ruling:

Title 39 U.S.C.A. 3212 states that reprints from the CONGRESSIONAL RECORD may be mailed under the frank provided such material would otherwise be frankable under section 3210. Section 3210 prohibits use of the frank to mail "personal and political" matters. Paragraphs 13 and 14 of the regulations define the personal and political matters which are not frankable, but do not mention overuse of personal pronouns.

Paragraph 4 of the franked mail regulations refers to newsletter and news releases. The number of personal references which occur on a page has no bearing on the use of the frank for the mailing of frankable material reprinted from the CONGRESSIONAL RECORD.

INTERPRETATIVE RULING NO. 41

Date issued: July 1, 1977.
Applicable Rules: 42 and 43.
Question considered:

May a Senator accept from a person with an interest in legislation private air transportation with a value in excess of $100 to a location where the Senator is to give an address, when the donor is a member of the group sponsoring the address?

Ruling:

Travel may be accepted from an entity with a direct interest in legislation if: (1) it is the sponsor of the appearance; or (2) the sponsor of the appearance reimburses the entity for the value of the transportation; or (3) the Senator reimburses the entity for the value of the transportation.

The travel would not be made acceptable solely because the individual providing it is a member of the group sponsoring the address or has been asked by an officer of the sponsoring group to provide the transportation without reimbursement for the cost if he has a direct interest in legislation.

Necessary expenses of travel incident to making a speech or an appearance do not have to be reported as a gift under old Rule 44 or under Rule 42.

No rule prohibits acceptance of transportation from a person or organization not having a direct interest in legislation, but such travel would be reportable as a gift under old Rule 44 if it is accepted in 1977 and its value exceeds $50, or under Rule 42 if it is accepted during 1978 and the aggregate value of gifts of transportation, lodging, food or entertainment from the same source in the calendar year (excepting those of $35 or less) exceeds $250.

INTERPRETATIVE RULING NO. 42

Date issued: July 1, 1977.
Applicable Rule: 48.
Question considered:

May a Senator use the frank to mail a booklet containing matter relating to the Senator's background and personal and professional achievements and accomplishments for the state he represents and its people?

Ruling:

Such a booklet constitutes biographical matter within the meaning of chapter 2, paragraph 11 of the Regulations Governing the Use of the Mailing Frank. The frank may be used to mail the booklet in response to specific requests for a copy, requests for biographical material about the Senator, and requests for information about federal projects and other benefits obtained by the Senator on behalf of the state and his constituents. The frank may not be used for a mass mailing of the booklet for any potential political use or during a campaign.

INTERPRETATIVE RULING NO. 43

Date issued: July 13, 1977.
Applicable Rules: 43 and 46.
Question considered:

Whether a Senator may receive, without charge, a research product, the retail value of which is in excess of $200 per year, of a company whose business is the publication of public affairs research, without violating Rule 43's limitations on gifts.

Ruling:

For purposes of the gift rule, if the donating organization has a direct interest in legislation, as we believe is the case here, anything of value in excess of $100 may not be accepted. The value is the retail value of the benefit received unless a lower value is established to the Committee's satisfaction.

Further, the Committee has ruled in similar cases that in-kind donations to Senators for official purposes fall under the Rule 46 prohibition on unofficial office accounts. Donation of the subscription service for official use would likewise be prohibited.

INTERPRETATIVE RULING NO. 44

Date issued: July 18, 1977.
Applicable Rule: 46.
Question considered:

Whether a Senator may incorporate computerized address records of voters secured from county election boards in the Senate's computerized mailing system for use in producing franked mass mail, such records being acquired by one of three methods: (1) purchase using funds from the political party of the Senator's state contributed to an F.E.C. account; (2) acceptance as a contribution from a state political party which purchases or prepares them using funds in an F.E.C. account; or (3) purchase using personal funds of the Senator?

Ruling:

Under regulations of the Committee on Rules and Administration and Rule 48, paragraph 5, effective January 1, 1978, the incorporation of computerized voter address records in the Senate's computer-maintained mailing lists is permissible, but only if such lists bear no identification of individuals as campaign workers, contributors, or as members of a political party, and the lists do not contain any other partisan political information.

The Select Committee on Ethics concludes such records may not be acquired selectively or sorted with the intent of targeting mailings to likely election supporters. The acquisition and incorporation only of lists selected on the basis of high incidence of partisan behavior, for example, is not acceptable.

The use of a Senator's official consolidated allowance to purchase or prepare such records is a matter under the responsibility in the first instance of committees other than the Select Committee on Ethics. On July 13, 1977, the Committee on Appropriations reported H.R. 7932, the Legislative Branch Appropriations Act, Senate committee amendments thereto, if enacted, will answer this question.

The purchase and contribution of such records for incorporation in the Senate's computer-maintained system by a party organization would violate Rule 46 which prohibits in-kind contributions to defray office expenses. However, Rule 46 permits such records to be purchased for insertion in the Senate's computer-maintained system with funds from a Senator's unofficial office account prior to December 13, 1977, and from funds of a Senator's political committee (as defined in section 301(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)).

Personal funds of a Senator may be used to purchase such lists as an official office expense insofar as the rules of the Senate are concerned. It is not within the jurisdiction of the Ethics Committee to determine whether such expenditures are deductible for tax purposes.

INTERPRETATIVE RULING NO. 45

Date issued: July 20, 1977.
Applicable Rule: 49.
Question considered:

The Committee was asked to reconsider its letter ruling of June 17, 1977 (Interpretative Ruling No. 32), as to whether Senate Rule 49 prohibits an employee on a Senator's personal staff, compensated at an annual rate below $10,000, from serving as the principal administrative officer of a political campaign committee whose chief purpose is raising and distributing contributions for Senate candidates other than the sponsoring Senator.

Ruling:

There is no provision of appeal as a matter of right from an interpretative ruling. However, the Committee has reviewed the merits of its ruling and, with five members present, has voted unanimously to reaffirm the original ruling.

The employee is prohibited from serving as the principal administrative officer of a political campaign committee because he is not eligible to be designated, and is not designated, by a Senator for limited political fund activity under Rule 49. Were he a designated employee, he still would be prohibited from so serving because the committee's fund raising activity is primarily for the campaigns of Senators other than his Senate supervisor.

The initial letter also requested a waiver for the employee in the event the Committee ruled he is prohibited from serving in the described capacity. Senate rules do not permit the granting of a waiver of the prohibition contained in Rule 49, paragraph 1.

INTERPRETATIVE RULING NO. 46

Date issued: July 20, 1977.
Applicable Rules: 42 and 43.
Question considered:

For a Senator to accept transporation in a private aircraft to address a State Party fundraiser outside his home state, must the provider of the aircraft bill the sponsor for use of the aircraft and under what conditions must the Senator report such transportation as a gift?

Ruling:

If the provider of the private aircraft has a direct interest in the legislation as defined in Rule 43.1(b), or is a foreign national, he must be reimbursed by the sponsor of the Senator for the Senator's travel, or the Senator's acceptance is prohibited. If the provider has been reimbursed, the necessary expenses incident to an appearance by the Senator do not need to be reported as a gift. Although an organization is a prohibited source when it maintains a separate segregated fund for political purposes (commonly called a P.A.C.), reimbursement for travel expenses does not create a gift when one is making an appearance at the fundraiser or activity sponsored by the organization.

If the provider does not have a direct interest in legislation, and is not a foreign national, reimbursement of the provider is not necessary to permit a Senator's acceptance of the travel, but when the provider of the travel is not the sponsor of the appearance and is not reimbursed, the travel must be reported as gift pursuant to paragraph 2(b) of Rule 42.

INTERPRETATIVE RULING NO. 47

Date issued: August 3, 1977.
Applicable Rule: 46.
Question considered:

May a Senator's office use postage purchased and supplied by his campaign committee for its mailings to the campaign committee?

Ruling:

The authorized use of political committee funds for this purpose, a campaign purpose rather than an official expense, is not within the jurisdiction of this Committee. However, no Senate rule prohibits a Senator or his office from accepting and using for correspondence with the Senator's campaign committee postage purchased with funds of the campaign committee. Rule 46 does not prohibit the use for this purpose of an existing unofficial office account (until December 13, 1977), political committee funds, or personal funds. It does prohibit the conversion of funds of a political committee to personal use of a Member.

INTERPRETATIVE RULING NO. 48

Date issued: August 5, 1977.
Applicable Rule: 45.
Question considered:

Whether a subcommittee may employ as consultant to it, and later its chief counsel, an attorney who plans later in the year temporarily to leave the Senate payroll to return to association with his former law firm, and to argue a case pending before an appellate court on a subject which is a direct and principal concern of the subcommittee, and then sever his ties with the firm following the appeal proceedings.

Ruling:

The employee's continuing association with the firm for purposes of preparing the appeal while also acting as consultant to the subcommittee (even though he would terminate that association when he becomes chief counsel), and his continuing obligations to the firm's client in connection with the appeal, create both the appearance of a conflict of interest and too great a potential for an actual conflict.

Accordingly, the subcommittee should not employ the person in question in either capacity until his association with the firm is terminated and his obligations to the firm's client have been discharged.

INTERPRETATIVE RULING NO. 49

Date issued: August 5, 1977.
Applicable Rule: 49.
Question considered:

In what fund raising activities may Senate employees who are not designated for political fund activity under Rule 49 participate?

Ruling:

Interpretative Ruling No. 3, No. 5, No. 6, and No. 25 are relevant. Until the Committee on Rules and Administration makes its report, a Member must use his best judgment in taking staff off the payroll to perform prohibited tasks. An employee must exercise care to perform only routine political fund activities in which he does not directly "receive, solicit, be the custodian of, or distribute" campaign funds, and to perform these only in off-duty hours.

The Rule 49 prohibition of political fund activity by other than designated staff applies to duty hours, off duty hours and vacation leave.

INTERPRETIVE RULING NO. 50

Date issued: August 5, 1977.
Applicable Area: Franking.
Question considered:

Whether a Senator may enclose in his newsletter two cards to be given by the recipient of the newsletter to friends or relatives who also may be interested in being put on the Senator's mailing list for purposes of receiving the newsletter, when the return cards do not bear the frank and clearly indicate that the person who puts his or her name and address thereon (indicating a wish to be on the mailing list) must also affix thereto a stamp for purposes of mailing the card to the Senator's office?

Ruling: The Committee is unaware of any provision of the franking statute or regulations which prohibits this procedure.

INTERPRETIVE RULING NO. 51

Date issued: August 5, 1977.
Applicable Rules: 42 and 43.
Question considered:

May a Senator traveling on official business in a state from which he is not elected accept from a private source (which has no direct interest in legislation before the Congress as defined in Rule 43 and is not a foreign national) travel in that state for himself and members of his family who accompany him?

Ruling:

Here the private individual is not a prohibited source of travel and is not an organization sponsoring the Member's appearance in connection with his official business. Travel (the services or expenses of transportation, lodging, food and associated entertainment) may be accepted by a Senator and members of his family if not from a prohibited source. Such travel must be reported as a gift under old Rule 44 and Rule 42 whether it is or is not incidential to official business.

INTERPRETATIVE RULING NO. 52

Date issued: August 23, 1977.
Applicable Area: Franking.
Question considered:

Is it a proper use of a Member's franking privilege to mass mail to his constituents a selected list of pamphlets (prepared by executive agencies) which are available upon order from the Consumer Information Center in Colorado?

Ruling:

Title 39 U.S.C. section 3210(a)(2) indicates with respect to the use of the frank by Members of Congress that it was intended to be confined to assisting them in the performance of official duties of the legislative branch.

We are aware that paragraph (a) of Chapter Two of the Regulations Governing the Use of the Mailing Frank provides that the franking of federal publications containing items of general information is authorized. However, the pamphlets referred to in this request are not publications printed by order of Congress nor do the pamphlets themselves bear more than an accidental relationship to the legislative process.

For the foregoing reasons, the above described use of the franking privilege is not within the intent of the statute or the purpose of the privilege.

INTERPRETATIVE RULING NO. 53

Date issued: August 25, 1977.
Applicable Rule: 43.
Question considered:

Rule 43, Gifts, defines a gift to include almost anything of value. However, the Rule provides certain exceptions to that definition, including, among others,

"(5) a reception at which the Member, officer, or employee is to be honored, provided such individual receives no other gifts that exceed the restrictions in this rule, other than a suitable memento;" and

"(6) meals, beverages, or entertainment consumed or enjoyed, provided the meals, beverages, or entertainment are not consumed or enjoyed in connection with a gift of overnight lodging."

When an entertainment with food and beverages is provided for a general collection of persons including Senate Members, officers, employees, and spouses, is the amount chargeable as a gift determined by dividing the cost of the food, beverages and entertainment by the number of persons present?

Is the answer to the foregoing question any different if an individual or organization pays for the entire cost of food, beverages and entertainment when the occasion is confined either entirely or primarily to the staff and dependents of a particular Member?

How should Exception #5 to the definition of gifts relating to a reception honoring Members, officers, or employees be construed generally and in terms of the foregoing questions insofar as who will be considered to have received a gift and in determining the amount thereof?

How should Exception #6 to the definition of a gift relating to food, beverages and entertainment "consumed or enjoyed" be construed generally and in relation to the foregoing questions insofar as who will be deemed to have received a gift and in what amount?

Ruling:

The first two questions concern the amount chargeable as a gift when entertainment with food and beverages is provided. Under exclusion number 6, quoted above, such entertainment is not considered a gift under Rule 43, since apparently no overnight lodging is involved. The Committee has construed this exclusion to apply only where the food, beverages and entertainment are consumed or enjoyed in one location as part of one event.

The disclosure requirements of Rule 42 nevertheless must be observed. The value of the gift is determined by the per-person fee charged by a hotel or restaurant for the meals, beverages and entertainment, or, if not available, by computing such a per-person fee based on the total cost divided by the number of persons entertained. The value of the gift in such cases is not affected by the composition of the guest list.

Exclusion number 5 to Rule 43 quoted above should be read to apply only to gifts to the individual being honored by a reception. In other words, the value of the entire reception is not considered a gift to the Member or Senate employee who may be the guest of honor. This exclusion does not in any way apply to individuals who may be invited to attend such a function as part of the general audience.

Exclusion number 6 to Rule 43 would apply to any gifts of food, beverages or entertainment as long as no overnight lodging is involved. Each person who attends such a function receives a gift and the value of the gift would be computed on a per-person basis, as described previously.

INTERPRETATIVE RULING NO. 54

Date issued: August 30, 1977.
Applicable Rule: 45.
Question considered:

May a professional staff member accept a position as a consumer representative on a local government council which has an interest in legislation under the jurisdiction of the Committee on which he serves?

Ruling:

In the present case the local government council had an active interest in legislation pending before the committee that employed the staff member. The council was also active in attempting to have its views on pending legislation considered.

Rule 45.2 states that no Member, officer or employee, may engage in any outside business or professional activity, or employment for compensation which is inconsistent or in conflict with the conscientious performance of Senate duties. Although the service here is without compensation and thus not explicitly prohibited by the Rule, the committee is of the opinion that service on the council by this committee staff member would create the appearance of a conflict with his committee staff responsibilities. Consequently, the committee advised that the staff member not serve on the council.

INTERPRETATIVE RULING NO. 55

Date issued: September 7, 1977.
Applicable Rule: 45.
Question considered:

Can a full-time Senate employee (Senator's press relations coordinator), who is employed in a Member's state office, also serve as a City Council member at a salary of less than $200 per month?

Ruling:

Under Rule 45.2, no Member, officer or employee of the Senate may engage in any outside business, professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. Paragraph 3 of Rule 45, places the burden of ensuring that no conflict arises on the employee's supervisor. Under the facts of this case, the Committee found the supervisor had properly evaluated the situation. The Committee noted that City Council service by this employee was unlikely to present any conflicts with his full-time position as a Senator's press relations coordinator.

INTERPRETATIVE RULING NO. 56

Date issued: September 7, 1977.
Applicable Rules: 44 and 45.
Question considered:

Can a Member and a staff person receive compensation for collaboration on a book, which concerns the subject matter of hearings held before the Member's committee and was jointly written after regular Senate office hours?

Ruling:

Senate Rule 44 (effective January 1, 1979) will limit the amount of outside earned income that may be earned by Senators and staff who are compensated at a rate in excess of $35,000 annually. However, the definition of outside earned income (paragraph 2(b)) specifically excludes royalties from books and advances on books from an established trade publisher under usual contract terms.

Rule 45 is the only other Rule potentially applicable. It prohibits Members and employees from engaging in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with performance of official duties. The Committee found this activity permissible because it was conducted in off-duty hours and the book draws largely on committee hearings and reports all of which are readily available to the public.

Of course, the income received would be reported pursuant to Rule 42 (Financial Disclosure).

INTERPRETATIVE RULING NO. 57

Dated issued: September 8, 1977.
Applicable Rules: 42, 43 and old 44*.
Question considered:

May a Senator accept a constituent's offer to be flown to the Senator's home state from Washinton in an aircraft owned by a corporation which is neither a lobbyist nor maintains a separate, segregated political fund within the meaning of Rule 43?

Ruling:

The Rule 43 prohibitions on the acceptance of gifts apply only to gifts offered by persons or organizations which have a direct interest in legislation pending before Congress. In this instance, the offer of air transportation to the Senator's home state may be accepted. However, this travel will be reportable as a gift under old Senate Rule 44 if it is accepted prior to January 1, 1978 and its value exceeds $50, or it will be reportable as a gift under new Senate Rule 42 if it is accepted after January 1, 1978 and the aggregate value of gifts of transportation, lodging, food or entertainment from the same source in the calendar year (excepting those of $35 or less) exceeds $250.

INTERPRETATIVE RULING NO. 58

Date issued: September 12, 1977.
Applicable Rule: 43.
Question considered:

May a Senator, officer or employee accept the invitation of a major air carrier to fly on its inaugural flight over a new route?

Ruling:

If the airline is not a "prohibited source," the offer may be accepted. It should be reported as a gift under Rule 42 if the value of all gifts of transportation from the airline in a calendar year totalled $250 or more.

The offer from the airline may also be accepted if the appropirate commercial fare is paid.

INTERPRETATIVE RULING NO. 59

Date issued: September 13, 1977.
Applicable Rule: 49.
Questions considered:

May a Senate employee or staff member engage in substantial campaign activity including receiving, soliciting, maintaining custody of or distributing campaign funds while the staff member is off the Senate payroll, even though it is contemplated the employee will be rehired in his old position when the campaign terminates? Is a staff member considered off the payroll when he is on "terminal vacation leave?"

Ruling:

Sections 307 and 308 of S. Res. 110 direct the Committee on Rules and Administration to consider matters closely related to this question and report to the Senate. The first half of their report was published as Report no. 95–500 (Oct. 17, 1977) and reviews the status of the law in this area as it was prior to April 1, 1977 (effective date of S. Res. 110). Their final recommendations in this area are expected during the 2nd session, 95th Congress. In the interim, Members can and should remove staff from the Senate payroll when they are to participate for an extended period in substantial campaign activities. One is not removed from the payroll by being placed in a "terminal vacation leave" status.

INTERPRETATIVE RULING NO. 60

Date issued: September 13, 1977.
Applicable Rules: 42 and 44.
Question considered:

Is it permissible for members of a Senator's personal staff to be assigned to assist in the recordkeeping and administrative details necessary to the Senator's compliance with the financial disclosure and limitation on earnings provisions of the Senate rules?

Ruling:

The Code of Official Conduct does not prohibit the assignment of such functions to staff members of a Senator. Compliance with the rules regarding financial disclosure and earning limitations is a Senate duty, and therefore staff members may assist in this task to whatever extent is reasonably necessary to assure compliance.

INTERPRETATIVE RULING NO. 61

Date issued: September 13, 1977.
Applicable Rules: 42, 44, and 45.
Question considered:

What provisions of the Senate Code of Official Conduct are applicable to a consultant hired by a Senate committee?

Ruling:

For purposes of the Code of Conduct, an employee of the Senate is defined to include "any employee whose salary is disbursed by the Secretary of the Senate." This definition encompasses consultants and other part-time employees; hence they must adhere to the Code.

If the annual salary rate of a consultant exceeds $25,000 and the consultant works more than 90 days in a calendar year, he or she is required to file a financial disclosure statement under Rule 42, (due generally May 15th of the following year). If the consultant's salary exceeds $35,000 per year and the period of Senate service is more than 90 days in a calendar year, the consultant would be subject to the limitation on outside earned income contained in Rule 44 (effective January 1, 1979).

Two other provisions of the Code apply to a consultant, regardless of the salary level and period of employment. The first is Rule 43, which restricts certain gifts to all Senate employees.

The second rule applicable to all Senate employees is the conflict of interest provisions of Rule 45, which among other things require an employee to report in writing to his supervising Senator before engaging in any outside employment. The Senator is then responsible for taking any necessary action to avoid conflict of interest or interference with Senate duties.

Because the Code places the responsibility for avoidance of conflict of interest on the supervising Senators, this Committee does not ordinarily accept that responsibility in the first instance. For this reason, it is reluctant to review the resume of a consultant and declare that there is or is not a real or apparent conflict of interest Such judgments require a continuing attention to the individual's Senate work assignments and outside activities which the Committee cannot offer.

INTERPRETATIVE RULING NO. 62

Date issued: September 14, 1977.
Applicable Rule: 43.
Question considered:

May a Senator accept the invitation of the local Chamber of Commerce and other public officials to accompany them, at their expense, to appear before a political party's site selection committee in order to make a presentation urging the committee to hold a party convention within the Senator's home state?

Ruling:

Rule 43 on Gifts excludes from the definition of a gift the payment of necessary expenses of the Senator's performance for an organization of services incident to the official duties of his office, including travel, food, lodging, if those expenses are paid by the organization for which the services are performed. Accordingly, the Committee believes that acceptance of an invitation from the Chamber in furtherance of its interests would not be in violation of Rule 43.

*New rule 42 superseded old Rule 44 January 1, 1978.

INTERPRETATIVE RULING NO. 63

Date issued: September 15, 1977.
Applicable Rule: 45.
Question considered:

Are Senators, who are retired military reservists, in violation of paragraph 4 of Senate Rule 45 (which prohibits one from aiding the progress of legislation intended to benefit a limited class of persons—including a Senator or his immediate family) when they vote for a bill which would affect their pensions by eliminating the limit upon the amount they could receive while they are Members of the Senate?

Ruling:

The bill referred to affects all present and future retired officers who hold or seek Federal employment. Paragraph 4 of Senate Rule 45 provides that a Member shall not aid the passage of legislation, a principal purpose of which, is to further his pecuniary interest or that of a limited class of persons.

The legislative history of paragraph 4 states at page 45 of Senate Report No. 95–49 that:

"Legislation may have a significant financial effect on a Senator because his holdings are involved, but if the legislation also has a broad impact on his state or the nation, the prohibitions of the paragraph would not apply."

The report adds that dairy farmers, shoemakers and disabled veterans are examples of groups that do not constitute a limited class. A limited class would resemble the class of persons affected by a private bill. Thus the Senators did not violate this provision by voting for the bill in question since all present and future retired military officers who hold or seek Federal employment do not constitute a limited class.

INTERPRETATIVE RULING NO. 64

Date issued: September 21, 1977.
Applicable Rule: 43.
Question considered:

May a Senator who is travelling on official business accept a check for $250 from an airline company in compensation for the difference between the airline's commercial fare and that of the charter he was obliged to take when the airline's equipment broke down? The Senator had intended to claim official reimbursement for the commercial air fare.

Ruling:

The legislative history of Rule 43 on Gifts indicates that the Senate did not intend that travel furnished by a source other than the organization for which a Member performed services incident to official duties should constitute a gift if the Member reimbursed that source in an amount equivalent to the commercial air fare for the flight.

Accordingly, it is proper for the Senator to endorse the airline check over to the charter corporation, and to claim official reimbursement for the difference.

INTERPRETATIVE RULING NO. 65

Date issued: September 26, 1977.
Applicable Rule: 43.
Question considered:

Has a Senator violated the Code of Official Conduct by reimbursing a corporation in the amount of a commercial air fare after returning to Washington (with family members) via a corporate plane?

Ruling:

The legislative history (CONGRESSIONAL RECORD, March 31, 1977, p. 5264) of Rule 43 indicates that:

"It is the intent of the sponsors of S. Res. 110 that if a Senator travels on a private airplane owned by a corporation, that transportation is not a gift if the Senator reimburses the owner of the plane for the cost of the equivalent commercial air transportation."

The reimbursement in this case takes the matter outside of the reach of Rule 43 and is in accord with the above statement.

INTERPRETATIVE RULING NO. 66*

Date issued: September 26, 1977.
Applicable Area: Franking.
Question considered:

A non-Senate organization has offered its membership mailing list to a Senator for use in an otherwise frankable mass mailing. The non-Senate group refuses to give its list to the Senator but has agreed to place mailing labels derived from the list on pre-sealed envelopes to be supplied by the Senator. Does the statute regulating the use of the mailing frank authorize the Senator to utilize the mailing list under these conditions?

Ruling:

The U.S. Code, Title 39, paragraph 3215 states that "a person entitled to use a frank may not lend it or permit its use by any committee, organization, or association, or permit its use by any person for the benefit or use of any committee, organization, or association . . . " In the view of the Committee, a transfer of franked envelopes, though previously stuffed and sealed by the Service Department, would be precluded by the statute. In this instance, the opportunity for alteration of the material, identification of the organization on the Senate envelopes, deliver to unintended addresses and diversion of the franked envelopes to unintended purposes is so great that the practice would be tantamount to a loan of the frank.

However, there are ways in which an outside organization's mailing list may be used by a Senator. For example, the organization could supply the list to the Senator for preparation and mailing within the Senate. Another method would involve providing blank mailing labels to the non-Senate organization in order that they could fill in the labels and return them to the Senator for mailing.

In both of these cases, care must be taken so that the mailing in no way identifies the non-Senate organization as the sponsor, in whole or in part, of the mailing. Similarly, if the organization normally charges a fee for its mailing list, the customary fee must be paid since the Committee has construed Rule 46 as prohibiting in-kind contributions to defray an expense of holding office. If, on the other hand, the organization does not ordinarily charge a fee, a Senator may accept the list, provided that reimbursement is made to the organization for any costs it incurs in preparing the list to be turned over to the Senator.

INTERPRETATIVE RULING NO. 67

Date issued: September 27, 1977.
Applicable Rule: 46.
Question considered:

Is it permissible under the Senate Code of Official Conduct and the Federal Election Campaign Act for a Senator to use campaign committee funds to pay for his wife's attending a cultural event to represent the Senator in the Senator's home state?

Ruling:

The Act and Senate Rule 46 allow a Member to defray from his excess campaign funds any expenses incurred in connection with his official duties which are not otherwise reimbursed. If the attendance of the event by the Senator's wife is for a predominantly political or official purpose, the Senator may use his campaign funds to defray her expenses.

INTERPRETATIVE RULING NO. 68

Date issued: September 27, 1977.
Applicable Rule: 48.
Question considered:

Does paragraph 2 of Rule 48, which requires that only official Senate funds be used to "prepare" franked mailings, prevent the use of a voters list paid for from non-official funds for franked mailings?

Ruling:

Rule 48, paragraph 2, states as follows:

A Senator shall use only official funds of the Senate, including his official Senate allowances, to purchase paper, to print, or to prepare any mass mailing material which is to be sent out under the frank.

As used in the Rule, the term "prepare" does not extend to the acquisition of mailing lists, but instead encompasses the mechanical aspects of a mass mailing, such as computer processing, addressing, stamping, folding, sorting, bundling.

INTERPRETATIVE RULING NO. 69

Date issued: September 27, 1977.
Applicable Rule: 43.
Question considered:

May a staff member designated by the supervising Senator accept from a privately funded, domestic lobbying group the necessary travel expenses for a trip to Canada to research matters within the purview of the Senator's official duties? The sponsoring group has a clear interest in the matter to be researched by the staff member.

Ruling:

Fact finding in connection with matters of direct interest to a Member, his constituents, and the sponsoring organization is a service of public office, the necessary travel expenses for which are excluded from the definition of a gift under Rule 43.

Therefore, acceptance of such necessary travel expenses from what would otherwise be a prohibited source is permissible in this situation.

INTERPRETATIVE RULING NO. 70

Date issued: September 29, 1977.
Applicable Rule: 45.
Question considered:

May a Senate staff member engage in the private practice of law in minor transaction and receive compensation therefor?

Ruling:

Paragraph 6 of Rule 45 on conflicts of interest was intended to severely restrict the practice of any profession (for compensation) by Senate employees. That paragraph states in pertinent part that no Member or (full-time) employee compensated at a rate in excess of $25,000 per annum shall a) affiliate with a firm or partnership, b) permit his or her name to be used by such, or c) "practice a profession for compensation to any extent during regular office hours of the Senate office in which employed." This provision restricts, but also contemplates, some practice outside office hours or an annual leave time. Whether the limited practice proposed in this instance is permissible depends upon the facts of each case. They include the nature of your Senate duties and the amount of other such activities. Consequently the Code, under paragraph 3 of Rule 45, places the initial responsibility upon your supervisor to determine whether there is a potential for conflict of interest or its appearance and to take such action as is necessary to avoid same.

INTERPRETATIVE RULING NO. 71

Date issued: September 29, 1977.
Applicable Rules: 43 and old Rule 44*.
Question considered:

May a Senator and his or her spouse accept air travel on a charter flight, arranged by a Member of the House, in order to accompany the Representative to a function at which both the Senator and Representative (Congressman) are to appear?

Ruling:

The travel on the charter flight does not constitute a prohibited gift under Rule 43 on gifts and may be accepted. If the value of the gift exceeds $50, it should be reported under old Rule 44.

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*This ruling responds to three separate requests for Committee rulings on this subject.

*New Rule 42 superseded old Rule 44 January 1, 1978.

INTERPRETATIVE RULING NO. 72

Date issued: September 29, 1977.

Applicable Rule and Area: 46 and Franking.

Question considered:

A Senator is planning a statewide conference on small business in his home state as a constituent service, which will include participation by several Federal agencies and the assistance of a state university. The university customarily prints brochures for such conferences without charge. May the Senator accept these brochures without charge and mail them under the frank?

Ruling:

Rule 46 governs accepting services from private sources. The Committee has construed that the rule as prohibiting in-kind contributions to defray official expenses. Generally, a Senator would have to reimburse an organization for any services it provides unless such services are customarily provided by the organization to others without charge. Since the University customarily prints brochures for such conferences without charge, the Senator may accept this service without reimbursing the costs involved. The franking laws and regulations do not prohibit the printing of the brochure by the university nor do they preclude the Senator from having the Senate Service Department fold the brochures and mail them under the frank.

In-kind services provided by Federal government agencies do not fall into the same category as contributions from private sources and are not prohibited by Rule 46.

INTERPRETATIVE RULING NO. 73

Date isued: September 29, 1977.

Applicable Rule: 43.

Question considered:

Whether the definition of a "prohibited source" found at paragraph 1(b) of Rule 43 includes an organization such as a college or university which, although it does not maintain a separate segregated fund for political purposes or employ a registered lobbyist, does belong to one or more associations that do have such segregated funds or employ such registered lobbyists, such as the National Association of Independent Colleges and Universities, the American Council on Education, or the Association of American Colleges?

Ruling:

Paragraph (1)(b) of Rule 43 defines a prohibited source to include persons, organizations or corporations registered under the Federal Regulation of Lobbying Act of 1946 or corporations, labor organizations or other organizations which maintain a separate segregated fund for political purposes, as defined by section 321 of the Federal Election Campaign Act of 1971.

The definition contemplates an organization that directly maintains a separate segregated fund for political purposes. The definition does not contemplate an organization indirectly involved in lobbying activity only by virtue of its membership in one or more associations. The organization does not become a prohibited source because of its associations.

INTERPRETATIVE RULING NO. 74

Date issued: October 3, 1977.

Applicable Rules: 46, 48 and 49.

Questions considered:

A Senator plans to telephone homes and businesses on a random basis to ask whether the individual or firm is aware of, or has need for, any of the traditional casework or informational services available through a Senate office. A franked form letter is then to be sent to follow up with the person called. Does this proposed activity conform to the Code of Official Conduct and other applicable laws or regulations?

Ruling:

The proposed telephone survey is not prohibited. However, the proposed follow-up form letter would constitute a mass mailing subject to the restrictions on such mailings, including the requirement of Rule 48(2) that only official funds may be used to prepare the mass mailing. In our opinion, this follow-up form letter is not in "response to a direct inquiry" as that term is used in the exception to a mass mailing. On the other hand, any letter sent to respond to a specific question with information would fall within the response to a direct inquiry exception to the definition of a mass mailing and thus would be frankable. There is no objection to including a reference to a "hot-line." If a questionnaire is used rather than a telephone survey, it may be franked; however, since presumably more than 500 pieces would be involved, this would constitute a mass mailing.

Volunteer workers may be used in this endeavor. While the Committee has construed Rule 46 as prohibiting in-kind contributions of goods and services to defray official expenses, at its meeting of September 29 the Committee determined that this prohibition does not extend to the services of individual volunteers, such as students, Congressional and science fellows, homemakers, senior citizens, and the like, who traditionally have worked in Senate offices both in Washington and in the home state. The Committee noted that paragraph 6 of Rule 49 recognizes that such volunteers are utilized in performing Senate business by subjecting them to the Code of Official Conduct if they perform services full time for more than 90 days in a calendar year.

INTERPRETATIVE RULING NO. 75*

Date issued: October 3, 1977.

Applicable Rules: 42, 43 and 44.

Question considered:

May a staff member accompanying a Senator to an appearance accept the necessary expenses of travel, offered by the sponsor of the appearance, where the aide's attendance has been requested by the sponsor? The aide will assist the Senator with his preparation for the appearance. Are such expenses of the staff assistant counted as part of the honorarium of the Senator?

Ruling:

Rule 42, Public Financial Disclosure, excepts from the reporting requirements of the Rule the necessary expense of travel, food, lodging, and entertainment, whether reimbursed or provided directly, incident to an appearance before the group which sponsors the appearance and provides the expenses.

Rule 43, gifts, excepts from the definition of a "gift" the providing of or reimbursement for necessary expenses of travel, etc. incident to an appearance before the sponsoring group. This exception applies not only to Members but also to officers and employees who may be accompanying the Senator in an official capacity.

Rule 44, Outside Earned Income, effective January 1, 1979, applies only to net honoraria, thus excluding reimbursements for travel expenses, agents' fees, and excluding the necessary expenses of travel, etc. of an aide who might accompany the Senator in an official, Senate related capacity.

INTERPRETATIVE RULING NO. 76

Date issued: October 5, 1977.

Applicable Rule: 43.

Question considered:

May a Member, officer or employee of the Senate accept the invitation of a long-time personal friend, who is an officer of a corporation which is a prohibited source (as defined in paragraph 1(b) of Rule 43), to visit a hunting lodge for a vacation of several days when the value is assumed to be in excess of $100 under *any* of the following circumstances:

A. If the host leases the lodge from the corporation for this particular hunt?

B. If the Member or employee makes a reasonable reimbursement of the expenses incurred, either to the corporation or the host (if the latter leased the lodge)?

C. In determining whether the aggregate value of the gift exceeds $100, the value of similar entertainment furnished by the Member or employee may be deducted, and

D. The above questions would be answered differently if the host were owner or lessee of the lodge rather than the corporation, and

E. If the gift can be accepted, must the gift be disclosed?

Ruling:

Rule 43 prohibits the acceptance of such an invitation if the corporation owns or leases the premises.

The Member of employee cannot accept the invitation if the host leases the facilities from the corporation for this hunt because the legislative history of Rule 43 (Report No. 95-49, page 35 to accompany S. Res. 110) indicates that "personal hospitality" consists of food, lodging and entertainment while a guest in the host's personal residence.

The Member or employee may accept the invitation under (b) if he reimburses the proper party (whoever is paying the expenses) for his share of the expenses. No gift would then be involved.

Under Rule 43 the "personal hospitality" reciprocated by a Member or employee may not be deducted by the Member or employee in determining whether gifts exceed $100 or have been received during a calendar year from a prohibited source.

With respect to (d) if the host is the owner, or lessee of the premises under a lease unrelated to his employment, acceptance of such an invitation can qualify as "personal hospitality."

With respect to (e) those invitations which would qualify as personal hospitality need not be reported under Rule 42.

INTERPRETATIVE RULING NO. 77

Date issued: October 10, 1977.

Applicable Rule: 45.

Question considered:

May a Senate staff member write a paper for a White House Conference for a fee without violating any Senate Rule?

Ruling:

Writing a paper for a fee in and of itself does not violate paragraph 3 of Senate Rule 45. The employee's supervisor must approve the outside activity. The facts presented suggested no apparent reason why approval should not be granted. The receipt of such a fee does not violate the Dual Compensation Act which excludes "pay consisting of fees paid on other than a time basis."

INTERPRETATIVE RULING NO. 78

Date issued: October 11, 1977.

Applicable Area: Franking.

Question considered:

May an otherwise frankable newsletter contain a photograph from a newspaper (which conforms with Chapter two, paragraph 12, page 7 of the franking regulations) permission for the use of which was conditioned upon a credit to the photographer and identification of the newspaper?

Ruling:

No provision of 39 U.S.C. 3210 et seq., as amended, of the Regulations Governing the Use of the Mailing Frank by Members and officers of the United States Senate promulgated May 13, 1974 by the former Senate Select Committee on Standards and Conduct prohibits the use of a newspaper photograph or the credit line referred to above.

*This ruling is identical to two subsequent requests for rulings on this subject which were rendered on November 14, 1977 and December 5, 1977.

Provided that the Senator has received the necessary permission of the newspaper, there is no violation of the Code of Conduct for including such a photograph in a newsletter to be mailed out using the frank.

INTERPRETATIVE RULING NO. 79

Date issued: October 11, 1977.
Applicable Rule: 43.
Question considered:
Whether Senate staff employees may accept travel expenses from a potential employer for the purpose of a job interview?
Ruling:
NOTE.—This ruling is under review and should not be relied on.
Paragraph 2(a) of Rule 43 excludes from the definition of a gift the "necessary expenses" of travel, food, and lodging for purposes of the prohibition upon accepting gifts in excess of $100 from prohibited sources. The Select Committee has determined that the necessary expenses for the purpose of a job interview, if paid by the prospective employer, may be accepted under this exclusion to the definition of a gift. If the staff employees are required to file annual financial disclosure statements, the acceptance of these expenses need not be reported as a gift.

INTERPRETATIVE RULING NO. 80

Date issued: October 12, 1977.
Applicable Rule: 43.
Question considered:
Whether a Senator and his wife may accept private round trip air transportation between his home state and the site of a speaking engagement and commercial transportation back to Washington when the sponsoring corporation has a registered lobbyist and a political action committee and is, therefore, a prohibited source of gifts under Rule 43? Private air transportation is necessary because of the remoteness of the site of the speaking engagement.
Ruling:
The Rule 43 prohibition on accepting gifts from sources with an interest in legislation does not apply to accepting necessary expenses in connection with speaking engagements where the sponsor is providing the expenses. Under these circumstances, it is appropriate for the Senator to accept the travel.
Where the Senator's wife accompanies the Senator to the speaking engagement, and the predominant purpose of her attendance is not for social or personal purposes, then accepting travel for her would also be appropriate. Otherwise, accepting her travel expenses would constitute a gift subject to the restrictions of Rule 43.

INTERPRETATIVE RULING NO. 81

Date issued: October 19, 1977.
Applicable Rule: 43.
Question considered:
May a Senator accept a gift from the county committee of a political party?
Ruling:
Rule 43 prohibits accepting gifts aggregating more than $100 in a calendar year from a source with a "direct interest in legislation before the Congress", as defined in the Rule. The Committee ruled at its meeting of October 13, 1977 that a county committee of a political party is not such a prohibited source. Hence, a Senator may accept gifts from such an organization, regardless of the amount of value. However, any such gifts received aggregating more than $50 a year must be disclosed under old Rule 44 (after January 1, 1978, disclosed under new Rule 42).
For purposes of determining the value of a gift, both for the Rule 43 restrictions and for disclosure purpose, the Committee also ruled that the individual receiving a gift must make a good faith effort to determine its fair market value, which may not necessarily be the retail or actual cost.

INTERPRETATIVE RULING NO. 82

Date issued: October 28, 1977.
Applicable Rule: 43.
Question considered:
May a Senate employee who has been selected by a domestic firm to participate in an overseas lecture tour, sponsored by a political subdivision of the foreign government and administered by a public university, accept payment from the domestic firm and honoraria totalling $500 in connection with the lecture tour?
Ruling:
Assuming that the domestic firm is not acting as an agent for a foreign government, the acceptance of such payment would violate neither Senate Rule 43 on Gifts nor the Foreign Gifts and Decorations Act (5 U.S.C. 7342).

INTERPRETATIVE RULING NO. 83

Date issued: November 1, 1977.
Applicable Rule: 45.
Question considered:
A professional staff member has applied to a university for a position as the principal investigator under a research grant. The university is applying to the National Science Foundation for the grant.
May the staff person allow the university to name him as the principal investigator in its application for the grant?
Ruling:
The staff member's employing committee has no jurisdiction over the National Science Foundation. The staff member would not receive a fee for the use of his name in the application and he would have no part in the award of the contract. He would resign from the committee staff prior to the effective date of the grant.
The Code of Official Conduct does not prohibit the use of the Senate employee's name under these conditions. Under paragraph 1 of Rule 45, the staff member should take care not to exert or appear to exert improper influence in connection with the application. The employee is not required by paragraph 3 of Rule 45 to report the application to his supervising Senator because the employment is prospective and predicated on the employee's resignation. For the same reason the supervising Senator has no responsibility to review or approve the application.

INTERPRETATIVE RULING NO. 84

Date issued: November 3, 1977.
Applicable Area: Nepotism Statute.
Question considered:
May a Senator's re-election campaign staff hire a relative of the Senator?
Ruling:
No violation of the Senate Code of Official Conduct would occur. We note that the U.S. Code provision on nepotism (5 U.S.C. 3110) would preclude a Senator from hiring a relative to be paid by the Senate, but does not prevent hiring a relative for a campaign staff.

INTERPRETATIVE RULING NO. 85

Date issued: November 8, 1977.
Applicable Rule: 43.
Question considered:
May a Senator provide, out of his personal funds, a paid vacation to an employee in recognition of that employee's long service?
Ruling:
Such a gift may be made by a Senator and accepted by an employee without conflict of any of the rules of the Code of Conduct. However, if the employee is compensated at a rate in excess of $25,000 a year and employed for a period of 90 days, the source and value of such gift must be disclosed in the employee's financial disclosure statement filed under Rule 42.

INTERPRETATIVE RULING NO. 86

Date issued: November 8, 1977.
Applicable Rule: 49.
Question considered:
Can a staff member designated under Senate Rule 49 to solicit contributions be employed as a consultant by a state party organization for the purpose of assisting with developing and implementing its fund raising activities?
Ruling:
Under Rule 45, paragraph 3 in Conflict of Interest, the initial responsibility for determining that this activity does not conflict with the employee's conscientious performance of his Senate duties rests with his supervisor (i.e., his employing Senator). The Committee suggested that perhaps he could render his consulting services after Senate office hours, over week-ends or while on annual leave.

INTERPRETATIVE RULING NO. 87

Date issued: November 14, 1977.
Applicable Area: Dual Compensation Act.
Question considered:
An individual will work as an academic intern for a Senate subcommittee and receive a salary of $500 per month. At the same time the individual will receive a fellowship stipend of $350 per month from the Health Policy Program of a medical school. The stipend will be from an account derived from private sources and not appropriated funds of the Federal government. The individual will have no obligations to the program, which provides individuals with opportunities to gain health policy experience.
Ruling:
Under these circumstances there is no conflict with the Senate Code of Official Conduct. Committee staff discussed the dual compensation implications of such an arrangement with the Senate Disbursing Office and were informed that there is no violation of the Dual Compensation Act (5 U.S.C. 5533) as long as the stipend is not derived from money provided by the Federal government.

INTERPRETATIVE RULING NO. 88

Date issued: November 16, 1977.
Applicable Rule: 49.
Question considered:
May a staff member attend (on his own time) a fundraiser to benefit his employing Member's campaign while the staff member is in an official travel status? Extra travel expenses incident to attending the fundraiser will be paid by the Member's political campaign committee.
Ruling:
Although the staff member cannot make a direct contribution to a Member of Congress (and thus cannot attend as a paying guest), nothing in the Code of Official Conduct prohibits the staff member from attending the fundraiser on his own time provided he does not engage in the solicitation or handling of campaign funds prohibited by Rule 49 (unless properly designated). The fact that the staff member is in an official travel status has no ramifications. It is appropriate for a campaign committee to bear the expense of the additional travel expense incident to attending the fundraiser.

INTERPRETATIVE RULING NO. 89

Date issued: November 21, 1977.
Applicable Rule: 43.
Questions considered:
A Senator's necessary travel expenses are to be paid by the organization's sponsoring his appearance. May the organization also pay for expenses related to another appearance to be paid by the organization sponsoring organizations in the same area offer to pay necessary travel expenses for the Senator's trip to that area, may the Senator accept both offers so a staff member may accompany him?
Ruling:
A Member, officer or employee may accept necessary travel expenses from the organiza-

tion sponsoring his or her appearance. These expenses are not considered a gift for purposes of the Rule 42 reporting requirements and the Rule 43 limitations on gifts.

When a second appearance requires additional expense, such as an extra night's lodging, it may not be paid by the sponsor of the first appearance, since it is not an expense necessary for that appearance. An extra expense of this kind should be paid by the sponsor of the second appearance.

The second question assumes that two different sponsoring organizations offer to pay travel expenses for two separate appearances in the same area. The question is whether the Senator may accept both offers of travel expenses so a Senator's staff member can also attend for official purposes. There is no objection to this under the Code of Official Conduct if it is done with the knowledge and agreement of the sponsors. The Senator may not accept double payment for the same expense, but may accept payment from the two sources for expenses of himself and a staff member as long as the expenses are necessary and the attendance of the staff member at one of the events is for official purposes.

INTERPRETATIVE RULING NO. 90

Date issued: December 1, 1977.
Applicable Rule: 45.
Question considered:

Can a committee staff person serve on a state citizen's advisory board, if its activities do not involve matters with which the subcommittee is concerned?

Ruling:

Under paragraph 3 of Rule 45 on conflict of interest, employees of the Senate may engage in limited business and professional activity provided that prior to the commencement of any such activity his or her supervisor determines that there is no conflict of interest and that the activity will not interfere with Senate duties. On each May 15, as long as the activity continues, the employee must report that fact in writing to his or her supervisor.

In this case, although the procedure set forth was followed, apparently there remained some doubt in the supervisor's mind as to whether the Code of Official Conduct would permit such service. The Committee noted that the responsibility for ensuring no conflict arises rests initially with the supervisor. Since the supervisor had requested guidance, the Committee reviewed the situation and determined that on the facts presented no conflict was apparent since the state board was not involved with matters to concern to the supervising Senator's subcommittee.

INTERPRETATIVE RULING NO. 91

Date issued: December 2, 1977.
Applicable Rules and Areas: 42, 43 and old Rule 44* and Foreign Gifts and Decorations Act.
Question considered:

A staff member inquires as to whether he and his wife may accept gifts with a value in excess of $50 from a former client who is also a foreign national.

Ruling:

Under Rule 43 on Gifts, paragraph 1(c)(4), it is provided that the prohibition on accepting gifts with a value in excess of $100 from a foreign national (individually) would not apply unless the foreign national were making the gift as a representative or an agent of a foreign business of other organization referred to therein.

If the donor is an agent of a foreign government, then the gift is subject to the provisions of the Foreign Gifts and Decorations Act, which in effect says Congress has consented to acceptance of gifts of minimal value (not over $50) by Federal employees. The threshold increases to not over $100 on January 1, 1978.

If the staff member and his wife accept these gifts, they should be reported under old Rule 44, which covers 1977. After January 1, 1978 new Rule 42 requires reporting all gifts aggregating $100 or more from any one source other than a relative during a calendar year.

*New Rule 42 superseded old Rule 44 January 1, 1978.

INTERPRETATIVE RULING NO. 92

Date issued: December 22, 1977.
Applicable Rule: 45.
Question considered:

Is a staff member who works for a Member and is certified to a committee prohibited from lobbying committee members and staff as well as the Senator and personal staff?

Ruling: Paragraph 10 of Rule 45 (effective April 1, 1978) restricts Senate employees from engaging in certain lobbying activity for one (1) year after termination of Senate employment. Personal staff and committee staff are restricted from lobbying committee members and staff.

In order to comply with the purpose of the Rule, this employee (and others in a like situation) must be considered both an employee of the Member and of the committee. Thus he would be prohibited from lobbying both the Member and his staff as well as the committee and its staff.

Lobbying is explained in the Rule as becoming a registered lobbyist under the Federal Regulation of Lobbying Act of 1946 or being retained by such a registered lobbyist for the purpose of influencing legislation.

INTERPRETATIVE RULING NO. 93

Date issued: January 4, 1978.
Applicable Rule: 45.
Question considered:

May the Expert Transcribers who are on the staff of the Official Reporters of Debates perform transcribing services for commercial reporters in non-federal cases while the Senate is in recess or after Senate hours?

Ruling:

Paragraph 6 of the Senate Rule 45 states that no employee compensated at an annual rate in excess of $25,000 shall "affiliate with a firm, partnership, association, or corporation for the purpose of providing professional services for compensation."

For the purposes of this paragraph, "professional services" shall include but not be limited to those which involve fiduciary responsibilities.

While the transcribers in question have expertise in Senate procedure and have exceptional background in grammar, English usage and punctuation, the extent of their fiduciary duty is to transcribe a true and accurate statement. The Committee is of the opinion that the transcribers are not prohibited from offering their professional services for compensation in their off-duty hours, as this rule is primarily designed to limit the practice of law, medicine, architecture, and other traditional professions.

INTERPRETATIVE RULING NO. 94

Date issued: January 24, 1978.
Applicable Rule: 43.
Question considered:

May a group of staff persons which meets weekly to exchange views on legislative matters accept coffee and doughnuts paid for regularly by an organization engaged in lobbying the Congress?

Ruling:

While it is probable that no Senate Rule would be violated, the Committee is concerned that such an arrangement between a committee staff and an interest within its jurisdiction could reflect discredit upon the Senate.

The possibility suggests that the more prudent course would be to discontinue the arrangement.

INTERPRETATIVE RULING NO. 95

Dated issued: January 30, 1978.
Applicable Area: Franking.
Question considered:

May a Senator use the frank to return a gift which he or she is prohibited from accepting under the Code of Conduct?

Ruling:

The frank may be used to return such gifts since the frank is, by the intent of Congress, available to assist and expedite the conduct of official business of the Senate, including implementation of the Code of Conduct.

INTERPRETATIVE RULING NO. 96

Dated issued: January 30, 1978.
Applicable Rule: 48.
Question considered:

May the Secretary of the Senate charge a reasonable copying fee under Rule 48 for copying mass mailing material registered with the Secretary of the Senate?

Ruling:

The Committee interprets Rule 48 to have granted the Secretary the implied power to charge a reasonable copying fee not to exceed those fees charged for copying materials on file pursuant to Rule 42.

INTERPRETATIVE RULING NO. 97

Date issued: February 8, 1978.
Applicable Rule: 45.
Question considered:

Should a staff lawyer assigned to a subcommittee be allowed to join a local bar association subcommittee which intends to lobby the staff member's subcommittee with respect to pending legislation?

Ruling:

The primary responsibility for preventing any conflict of interest or the interference of outside activities with Senate duties rests with the staff member's supervisor pursuant to Rule 45.3. While there is nothing in the Code of Official Conduct which would preclude his membership in the bar association subcommittee, the Ethics Committee believes that such membership could result in an appearance of a conflict of interest and that the more prudent choice would be to refrain from such membership.

INTERPRETATIVE RULING NO. 98

Dated issued: February 13, 1978.
Applicable Rules: 42 and 43.
Question considered:

May a Senator accept a flight on an airplane operated by his State from Washington to the State for the purpose of introducing an administration official to a non-profit organization of local officials and private engineers?

Ruling:

As the state is not a prohibited source under Rule 43, the Senator may accept the transportation in question. It must be reported as a gift under Rule 42 unless the organization reimburses the State for the value of the trip, or the value of this trip and all other gifts accepted by the Senator from the State during the calendar year in the aggregate are less than $100.

INTERPRETATIVE RULING NO. 99

Dated issued: February 16, 1978.
Applicable Rule: 45.
Question considered:

May a professional staff member serve on an advisory panel of an institute with an area of interest that is within that of the Committee on which the staff member serves?

Ruling:

The Committee was of the opinion that the staff member should not serve on the panel so long as the institute retained a registered lobbyist and intended to engage in lobbying concerning pending legislation. The institute later advised the Committee that they had terminated all lobbying activities and intended only to monitor the progress of pending legislation. Therefore, the

Committee has determined that the Code will not be violated. Paragraph 3 of Rule 45 requires the supervisor to ensure that no conflict arises in the future.

INTERPRETATIVE RULING NO. 100

Date issued: February 23, 1978.
Applicable Rule: 48.
Question considered:

Whether the restriction on the use of the frank for mass mailings and use of the Senate Recording Studio for 60 days prior to "any primary or general election" is applicable to a State party convention which has authority to nominate a candidate for the Senate.

Ruling:

The Committee has concluded that the definition of a "primary or general election (whether regular, special, or runoff)" does include a party convention. This decision is in accord with the definition of an "election," previously adopted by the Congress in the Federal Election Campaign Act Amendments of 1976 (PL 94–283), which defines an election to include "a convention or caucus of a political party which has authority to nominate a candidate. . ." (Title 2, Chapter 14, paragraph 431 of the Federal Election Campaign Laws). Under the law of the State in question, the convention does have such authority.

As it was originally enacted, the Federal Election Campaign Act of 1971 defined an "election" as including "a convention or caucus of a political party held to nominate a candidate." Thus, the Congress, through the FECA amendments of 1976, acted to expand the definition to include not only party conventions and caucuses which *act* to nominate a candidate, but also conventions and caucuses which have the *authority* to make such nominations.

Thus, the restrictions of Rule 48, as they apply to mass mailings under the frank and use of the Senate Recording Studio 60 days prior to "any primary or general election . . ." are applicable to this situation, including a subsequent primary, if any, and the general election.

INTERPRETATIVE RULING NO. 101

Date issued: February 23, 1978.
Applicable Rules: 42 and 43.
Question considered:

May a Senator use several passes which were given to him by local entertainment establishments?

Ruling:

Rule 43 of the Senate Code of Official Conduct prohibits accepting gifts that have an aggregate value of $100 or more from, among others, persons or organizations which have a "direct interest in legislation before the Congress," which is defined in subparagraph 1(b) as persons, organizations or corporations which are registered under the Federal Regulation of Lobbying Act or which maintain a separate segregated fund for political purposes as defined in the Federal Election Campaign Act, 2 U.S.C. 441(b).

A Senator may use these passes, regardless of their value, if they were given by a "non-prohibited source," i.e. not one of the persons or organizations defined above. If these passes were provided by a "prohibited source," they may not be used if the value of all gifts accepted from the prohibited source is greater than $100 in a calendar year. In determining the $100 limitation, a recipient need not aggregate gifts of less than $35 from such a source. As to gifts from non-prohibited sources, they must be reported under Rule 42 if the gifts aggregate more than $100 in value from the same source in a calendar year, excluding gifts valued at less than $35.

INTERPRETATIVE RULING NO. 102

Date issued: March 3, 1978.
Applicable Rule: 49.
Question considered:

What reports, if any, are required when a consultant is hired by a Senator to study office operations, payment being out of personal funds?

Ruling:

Paragraph 6 of Rule 49 requires the supervising Senator to report to the Ethics Committee the utilization of the services of an individual (if the services were rendered to any Member, committee or office of the Senate for a period in excess of 4 weeks) when the individual providing the services is compensated by a source other than the United States Government. The reports are required:

(1) when such individual begins performing the services;

(2) at the close of each calendar quarter while such individual is performing such services; and

(3) when such individual ceases to perform such services.

Each report shall include the identity of the source of the compensation received by such individual and the amount or rate of compensation paid by such source. The Committee has a form available for these reports

INTERPRETATIVE RULING NO. 103

Date issued: March 6, 1978.
Applicable Rule: 45.
Question considered:

May a Senate employee join the board of a tax-exempt corporation which has as its principal purpose the publication of a newsletter summarizing state and federal election campaigns?

Ruling:

Paragraph 7(a) of Rule 45 permits board service of this type so long as the service does not conflict or interfere with the conscientious performance of Senate duties. In this case the Committee was informed that the time involved would be minimal (quarterly board meetings). Rule 49 prohibits the employee from engaging in fundraising for this organization. The responsibility to ensure that no conflicts arise in the future rests with the employee's supervising Senator, who must be informed of this outside activity.

In cases where the business of the tax-exempt corporation is similar to that of the employee's committee assignment or area of responsibility, the Ethics Committee has advised against the employee accepting such a position. No such conflict exists in the present case.●

PARTIAL TEST BAN TREATY

● Mr. HATCH. Mr. President, since the Senate ratified the Partial Test Ban Treaty (which limited atmospheric nuclear explosions as well as those under water and in space) in 1963, the goal of further reductions in nuclear weapon testing has been an objective of American foreign policy. To this end, the United States negotiated the Threshold Test Ban (TTB) Treaty in 1976 which limited the explosive yield of nuclear weapons detonations to a maximum of 150 kilotons. As advances have been made in verification technology, the possibility of further reductions in the nuclear weapons test "ceiling" have been explored in considerable detail by knowledgeable individuals in the Federal Government and at several nuclear weapon design facilities in the United States. A more fundamental set of issues has been raised, however, in the context of a proposed Comprehensive Test Ban Treaty (CTBT).

While there is considerable technical detail surrounding the controversy over the wisdom of entering into a CTBT with the Soviet Union and perhaps other nations as well, the essential political-military issue is simple and straightforward. An environment where nuclear testing is prohibited, while both the United States and the Soviet Union maintain inventories of deployed nuclear weapons, means an inevitable degradation in the confidence both the United States and the Soviet political leadership can have in the reliability of their nuclear weapons over time. The undecided dimension of this controversy is to what extent such degradation is likely to be asymmetrical. It is believed by some that the Soviet Union has large, unsophisticated weapons that will be little affected by an inability to continue to test components of their nuclear weapons, while the sophisticated weapons deployed by the United States have a much smaller margin for degradation, and therefore would be subject to a more rapid loss of confidence than would their Soviet counterparts. The central impact such a development would have on the character of nuclear deterrence makes the resolution of this issue crucial.

Representative JACK F. KEMP, a Member of the Congressional Delegation to the Strategic Arms Limitation Talks and the Comprehensive Test Ban negotiations, initiated correspondence with five of the Nation's leading nuclear weapon designers as a step towards improving the understanding of these issues in the Congress. His interest was stimulated by a letter signed by three scientists formerly engaged in the U.S. nuclear weapons program—but now engaged in other pursuits—to President Carter on the subject of the reliability of the U.S. nuclear weapon stockpile under circumstances where the United States (and the Soviet Union) would be prohibited from testing their nuclear weapons when a defect was discovered. The text of the letter in question signed by Drs. Richard Garwin, Noris Bradbury, and J. Carson Mark is printed on page 3684 of the August 17, 1978 RECORD.

The scientists with whom Congressman KEMP has corresponded are among the leading figures in the U.S. nuclear weapons program today, and are thus in a unique position to comment authoritatively on the issue of the reliability of U.S. nuclear weapons under a Comprehensive Test Ban Treaty or test moratorium. I ask that the content of Representative KEMP's correspondence with Dr. Harold Agnew, Director, Los Alamos Scientific Laboratory; Dr. Roger Batzel, director, Lawrence Livermore Laboratory; Dr. Michael May, former director, Lawrence Livermore Laboratory and now a senior official of the laboratory; Dr. John Hopkins, head of the division of the Los Alamos Scientific Laboratory concerned with the nuclear test program; and Dr. Charles MacDonald, vice president of Research and Development Associates be printed in the RECORD.

The letters follow:

SEPTEMBER 14, 1978.

DR. HAROLD AGNEW,
Director, Los Alamos Scientific Laboratory, Los Alamos, N.M.

DR. JOHN C. HOPKINS,
J Division Leader, Los Alamos Scientific Laboratory, Los Alamos, N.M.

Dr. ROGER BATZEL,
Director, Lawrence Livermore Laboratory, Livermore, Calif.
Dr. MICHAEL M. MAY,
Lawrence Livermore Laboratory, Livermore, Calif.
Dr. CHARLES A. MACDONALD, Jr.
Vice President, R&D Associates, Marina del Rey, Calif.

On August 17th, Senator Edward M. Kennedy placed a copy of a letter in the Congressional Record (page S. 13684) by three leading scientists who have been associated in various capacities with the nuclear weapons program in the past.

The content of the Garwin *et al* letter raises concerns about the degree to which the United States might be accepting a serious reliability risk when participating in an agreement to prohibit all nuclear testing for a protracted period of time. I have devoted considerable attention to the evaluation of the costs and benefits of American participation in a Comprehensive Test Ban agreement in my capacity as a member of the subcommittee on Defense of the House Committee on Appropriations and as a member of the Congressional delegation to the SALT and CTB negotiations. One of the potential costs of a CTB to U.S. security has been a concern that there may be a degradation in the reliability of the U.S. stockpile of nuclear weapons if some limited low-yield testing is not permitted. As an individual closely associated with the current nuclear weapons program, I would appreciate your evaluation of the Garwin *et al.* letter, particularly with reference to the current and projected U.S. nuclear weapons inventory.

Sincerely,

JACK F. KEMP,
Member of Congress.

UNIVERSITY OF CALIFORNIA,
LOS ALAMOS SCIENTIFIC LABORATORY
Los Alamos, N.M., September 21, 1978.

Hon. JACK KEMP,
Congress of the United States, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN KEMP: Reference to your letter of September 14, 1978. I appreciate the opportunity to comment on the Garwin *et al. letter*. In my opinion our present nuclear weapon stockpile can be maintained for an indefinite period with adequate certainty of its reliability only if we are allowed to test up to a few kt. If we are not allowed to test to this level, I can foresee problems arising which may seriously affect our strategic deterrent. In addition, without a test program we will certainly lose the knowledgeable experienced individuals who are able to recognize or cope with those problems.

Coupled with the need to test up to a few kt is the indisputable fact that we will not be able to determine if any other nation is honoring a zero-threshold treaty. I believe that eventually, if the Soviets make their land mass accessible to us, we may be able to monitor a treaty down to about 5 kt, but I question our ability to do so now. Any CTB will be in effect a threshold treaty. I don't believe we should set the threshold below a level which we can have reasonable assurance of monitoring, particularly when that level would be sufficient for essential U.S. tests.

In theory, we should be able to rebuild, given enough resources, anything which has been built in the past. This is the basis of the Garwin letter Unfortunately, theory and actual practice are not always compatible. Recent events have confirmed my opinion that if problems do occur in the stockpile, we will not be able to rebuild exactly certain vital components, and without nuclear testing serious questions will arise for which we may no longer have the expertise to answer. In my opinion, the implications are too serious to trust to wishful thinking. Present strategic systems and those about to enter the stockpile are quite different from those in which Bradbury and Mark were actually involved, and Garwin, competent as he is has never been directly involved in putting any nuclear weapon into the stockpile.

I presume the objective of a CTB is to encourage other nations to sign the NPT. It would appear to me that if the major powers were to point out that over the years we have gone from unlimited testing in the atmosphere, to complete containment, to a 150-kt limitation, and now we are prepared to lower the threshold to a few kt it should indicate progressive restraint on our part. It could be especially effective if it were pointed out that a 5-kt threshold would preclude the introduction of any new strategic warheads but would insure the reliability of existing stockpiles Maintaining the credibility of the strategic nuclear deterrent of both the East and West should be of concern to all nations. If any asymmetry should develop, it could be extremely destabilizing to world order.

In the meantime, I would hope that we would continue our efforts to bring into being a meaningful SALT agreement and a reduction in conventional arms. Until progress is made in these areas I would not support any type of CTB. Thanks again for contacting me on this vital matter.

Sincerely,

H. M. AGNEW,
Director.

UNIVERSITY OF CALIFORNIA,
LOS ALAMOS SCIENTIFIC LABORATORY,
Los Alamos, N.M., September 27, 1978.

Hon. JACK KEMP,
Congress of the United States, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN KEMP: Thank you for the opportunity to comment on the letter by Mark, Bradbury and Garwin. I, and those of my colleagues who are directly responsible for nuclear weapons, disagree with their conclusion.

There are several specific points that should be addressed. The first is that weapons currently entering or about to enter the stockpile have been optimized for weight, yield, minimum use of fissionable material, and safety. These are very effective weapons from a military viewpoint because, for example, many more warheads can be carried on a missile than could be accommodated with old technology. While these very sophisticated weapons are entirely reliable now, they are more sensitive to seemingly minor changes and variations than were those developed in earlier days. Stated simply, it is difficult to make sophisticated nuclear weapons work, and they are not as forgiving as were earlier weapons. Since we do not completely understand all of the factors affecting weapon performance, the changes that inevitably creep into the stockpile during modification or rebuilding could be expected to have cumulative and unpredictable effects.

Second, Mark, Bradbury and Garwin imply that in the past aging has been the major cause of stockpile problems. This is not correct. The major stockpile problems have involved design deficiencies, and have been discovered as a result of the continuing test program.

A third consideration is that the authors only speculate on what might be possible under a CTBT. It should be pointed out that we have never tried to rebuild old weapons a decade or more after production ceased. I really doubt that it is possible without making some changes, but we have never tried it and can't do much more than guess. The British may have attempted this and could be consulted on their experience. I understand however, from Dr. Kerr's August 14, 1978 testimony, that the British are in technical agreement with us. Mark, et al., dismiss the problems associated with the procurement and use of the very special nuclear weapons materials in a rather casual fashion. Again I disagree with Mark, Bradbury and Garwin's estimation of the difficulties to be encountered.

Much is made of the point that we do not do many stockpile tests now. In response there are three considerations.

First, we have in the past replaced old weapons with new modern weapons. We have not been faced with the requirement to replace aged weapons with identical copies.

Second, many of these tests, whose stated programmatic purpose is something else, actually do address stockpile questions.

Third, continued testing provides the designers with the experience necessary to answer stockpile questions as they arise.

The last point is particularly important. Mark, et al., mention the necessity of a "review by experienced and knowledgeable individuals." Where do we expect to find such individuals five, ten or fifteen years after a CTBT? The only way to retain the expertise is to retain the nuclear explosives program, and that requires testing at some level.

Most of us have no doubt that it is only a matter of time after a CTBT until we have a serious loss of confidence in the stockpile. Regardless of whether that is one year or twenty, the ultimate effect is the same. The appropriate question is not whether the stockpile would deteriorate but whether the value of a CTBT is worth the risk.

Sincerely,

JOHN C. HOPKINS,
J-Division Leader.

LAWRENCE LIVERMORE LABORATORY,
September 25, 1978.

Hon. JACK KEMP,
House of Representatives,
House Office Bldg.,
Washington, D.C.

DEAR CONGRESSMAN KEMP: I would like to comment on the question of the reliability of the United States nuclear weapon stockpile under a comprehensive ban on nuclear weapon testing. As you are aware, a letter from Drs. Garwin, Bradbury, and Mark, dated August 15, 1978, claimed that the operability of the nuclear weapon stockpile can be maintained for as long as may be desired. In this letter I wish to summarize the reasons why I cannot subscribe to this view.

First, the nuclear weapon stockpile is not static. Changes have been made, are being made, and will be made. We expect all nuclear weapons will need to be replaced or remanufactured within a few decades of their original manufacture. More and more of our stockpiled weapons are approaching this retirement age. No amount of good intentions or executive decisions will prevent chemical corrosion, the unavailability of exact replacement materials, or new perceptions of the safety of manufacturing processes. Additionally, budgetary considerations and probable new safety or systems requirements will provide an irresistible motivation for future changes in our weapons or their replacements, even under a CTBT.

Second, recognition of stockpile problems and their fixes can be made reliably only by experienced scientists and engineers. Experienced personnel will not be long available under a CTBT because some will leave weapons work for other fields, or some will leave because of the absence of the experimental confirmation necessary for scientific professionalism, or others will stay and lose their expertise through lack of the hard reality of experimental verification. Drs. Bradbury and Mark must certainly recall our experience with the test moratorium of 1958–61. During that time some of the best people left weapons work.

Also during that period, a number of new weapons were put into stockpile, owing to new system requirements such as Minuteman and Polaris. There were some design

errors which were discovered, some by nuclear testing, some by non-nuclear testing. Some of these errors required nuclear tests for correction. The Garwin letter claims, as an example, that a change in surface treatment would have allowed remanufacture of a class of malfunctioning warheads. Being closer to the problems than they were, I can assure you that after a concerted study no solution to the problem was known to us other than the major design change we made, which necessitated and received nuclear test verification.

Third, the fact that nuclear testing of stockpile weapons has only infrequently shown problems in the stockpile does not mean that nuclear testing is unimportant for maintenance of stockpile reliability. Testing of other than stockpile weapons has led us to recognition and fixes of stockpile problems. The whole body of nuclear testing provides us with the expertise required to recognize, prevent, and fix stockpile problems and to assert with confidence that the current stockpile is highly reliable.

Although not discussed by Garwin et. al., it is essential to bear in mind that we cannot assume that stockpile degradation will be symmetrical in respect to US and Soviet weapons. We just do not know how Soviet weapons are made, by what means they can maintain their weapon scientists, or what their remanufacturing problems are.

It is for these reasons that I believe the continued credibility of the US nuclear weapon deterrent cannot be assured for long without nuclear testing.

Sincerely,

ROGER E. BATZEL,
Director.

LAWRENCE LIVERMORE LABORATORY,
September 26, 1978.

Hon. JACK F. KEMP,
House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN KEMP: Thank you for your letter of September 14, 1978, concerning the letter by Dr. Norris Bradbury and others to the President, which Senator Kennedy placed in the Congressional Record for August 17, 1978.

Reviewing the arguments and counter-arguments in the matter, it seems to me that the essential differences are only in part matters of technical opinion. They also involve judgments about how the job of maintaining deterrent nuclear forces can be carried out today, in practice rather than theory.

As the letter writers recognize, deployed U.S. nuclear weapons have been and are now in a process of change. The reasons for the changes range from something as major as the development of a new missile system and the consequent need for changes in dimensions and yields, to something as apparently minor as the deterioration of some material on the outside of the weapon. The changes are sometimes verified with a nuclear test, sometimes not. The judgment as to whether a test is needed or not is informed by the ongoing nuclear test series.

I do not believe that these changes can stop if and when a Comprehensive Test Ban is signed. New systems will continue to be required, materials will continue to deteriorate. There are now in the process of development weapons aimed at fulfilling requirements that may arise after a CTB is in force. These weapons are not in final form, nor can they be. Certain changes will have to be made as the requirements become more clearly defined. The process cannot be frozen at a time of our choosing. Nuclear weapons are not isolated items, but part of the hardware of deterrent systems. Neither natural processes, nor the strategic situations, with all the technological and political factors that contribute to it, can remain static out of deference to the CTB.

To contemplate relying on "remanufacture", "remanufacture with minor modifications", or "replac(ing) the nuclear explosive by one which has previously been tested" under these circumstances, seems to me risky in the extreme. It involves a misjudgment of the human and technical processes by which we arrive at new or modified nuclear weapons systems, and a misunderstanding of our capabilities and limitations.

Modifications will occur. Some are minor, some not so minor. There are differences of opinion about which modifications need to be tested and which do not. Resolving these differences through boards of experts, informed only by calculations and non-nuclear testing, is an unreliable procedure. One need not be a "nuclear testing buff" as Senator Kennedy puts it, to realize that, in every technical field, experiments have been needed to check on even what seemed to be most conservative assumptions—and, often enough, the assumptions have been found wrong. There are several instances in the nuclear weapon field and countless ones in other fields.

In sum, it is unrealistic, both from the strategic and the technological point of view, to assume that we can proceed with no change whatsoever in deployed weapons. Given that there will be some changes, it is equally unrealistic to assume that we will be able infallibly to draw the line between those that do and those that do not need to be verified by nuclear tests in the future, when we have not been able to do so in the past. The situation envisaged by Dr. Bradbury and others thus does not represent the real situation in which we find ourselves today.

I hope this letter is of help in your evaluation. I have sent these comments also to Senator Bartlett in answer to his request.

Sincerely yours,

MICHAEL M. DAY.

R & D ASSOCIATES,
Marina del Ray, Calif.,
September 22, 1978.

Hon. JACK KEMP,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN KEMP: In response to your letter of 14 September 1978—regarding the letter to President Carter from Norris Bradbury et al. on the subject of confidence in the U.S. nuclear stockpile during a Comprehensive Test Ban (CTB)—I have the following comments and observations:

There can be little argument that under a CTB changes in the nuclear stockpile will continue to be required since a CTB cannot prevent changes in:

1. The military/political environment.
2. The physical/chemical changes in the stockpiled items.
3. Our understanding of certain phenomena, e.g., 1-point safety.

It is true that the changes required in most of these cases can be satisfied by "Chinese copies" or adapting an old weapon to the new environment.

Unfortunately, neither copying nor adapting is a simple matter. The fidelity of the "copy" or the adequacy of the adaptation are delicate matters of judgment about which even the experts will have serious disagreements and misgivings.

Furthermore, pressures will always exist to keep costs for the required changes to a minimum.

The combination of cost pressures and disagreement amongst the experts will certainly lead to compromises that will eventually erode our confidence in the stockpile. Even now, with nuclear testing possible, the DOE Laboratories, caught in this same pattern of disagreement amongst experts and a sincere desire to save resources, tend to stockpile items which, in the view of some experts, are inadequately tested or are too marginal, especially if one expects the item to remain in the inventory for some prolonged period.

So far we have considered those cases for which a "Chinese copy" or adaptation might appear adequate. We must also anticipate cases in which stockpiled weapons will undergo an unacceptable physical or chemical change or which will not pass a test of some better-understood phenomenon and for which the experts generally agree that a "copy" or a reasonable adaptation is not possible.

Moreover, we cannot rule out the possibility that a major U.S. technological advance or a major shift in the Soviet threat will occur such that a weapon system of vital importance to U.S. security cannot be developed by copying or adapting a weapon in the current stockpile. For either an old system needing a major change or a new system based on a technological breakthrough, we will require nuclear testing. Alternatively, we would have to abandon a current weapon system or forgo the deployment of a new system which could have a major impact on the military balance.

Attempting to deal with these cases where nuclear testing is essential by means of Treaty Clauses which permit withdrawal where vital national interests are at stake may be desirable. However, it is to be recognized that there will be enormous political resistance to the resumption of nuclear testing by the United States once we have entered into such an agreement. In 1961, the U.S. was reprimanded by other nations when it resumed testing after a self-imposed moratorium of three years even though the Soviets had previously abrogated their own self-imposed moratorium with a massive nuclear test program. There will be strong political arguments to accept a further erosion in confidence in our stockpile rather than to defend testing on the grounds of vital national security interests.

Lack of confidence in the U.S. nuclear stockpile would not be so bad if the Soviets were similarly losing confidence in their stockpile, i.e., if the situation were truly symmetrical, but:

1. The U.S. will strictly obey the rule of no testing.

2. It is generally accepted that the Soviets could test without fear of detection at the yields of most interest (~10 kT).

3. The Soviets could rapidly abrogate a CTB for reasons of national security (e.g., 1961) while the U.S. would not. We should keep in mind the poignant statement of President John F. Kennedy* when he announced the resumption of atmospheric testing by the United States. He said, "We know now enough about broken negotiations, secret preparations, and the advantages gained from a long test series never to offer again an uninspected moratorium."

The advocates of a CTB point to the success of the standard surveillance program which is conducted without the use of nuclear tests, implying nuclear testing is not needed. While this surveillance program is vital, one must realize that it merely identifies the extent to which deviations from the original design have taken place, e.g., aging problems. The interpretation of the importance of these deviations requires the expertise of the nuclear designer. In turn, his competence is largely based on nuclear testing which may have already been performed or, when inadequate, he will perform. In the future, other deviations will occur, some of which are outside the prior knowledge or data. In fact, they may not involve a deviation in the weapon itself at all but, rather, could be a new understanding of some important phenomena in the somewhat inexact science of nuclear weapons, e.g., 1-point safety. This new understanding is often de-

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*Radio and Television Address to the American People: 'Nuclear Testing and Disarmament,'" *Public Papers of the Presidents,* [71], pp. 186–192, March 2, 1962.

rived from the on-going nuclear weapons development program and their nuclear testing. Without nuclear testing, we would be denied both types of knowledge and experience and, thus, our nuclear weapons expert will be less expert and less capable to interpret the results of the nonnuclear surveillance program.

In our judgment, nuclear testing is essential to maintain confidence in the U.S. nuclear stockpile.

Thank you for this opportunity to express my views on the CTB. If I can be of further service, please do not hesitate to call on me.

Sincerely,

CHARLES A. MCDONALD, Jr.,
Vice President.●

THE DEATH OF SIGNORA CECILE FONTANA DE HEBER

● Mr. KENNEDY. Mr. President, on Wednesday, September 6, an anonymous present of several bottles of wine arrived at the home of prominent Uruguayan opposition leader Senator Mario Heber, a leading member of the National (Blanco) Party. Upon tasting the wine, Signora Cecile Fontana de Heber died instantaneously. The wine was later found to contain a strong poison.

While Mr. Heber is known as a long-standing proponent of basic human rights and democracy in Chile, in recent weeks he has been especially visible in his opposition to the military regime. His presence at the Fourth of July reception at the U.S. Embassy in Montevideo prompted the absence of several prominent government officials. On August 12, the Montevideo press published a letter signed by Mr. Heber that defended the National Party's leader Senator Wilson Ferreira Aldunate, at that time under attack by the military—to which the government responded by cutting off Mr. Heber's pension as a former Member of Parliament. Most notably, on August 25, Senator Heber signed a strongly worded document that demanded the return of democratic rule in Uruguay.

Two days later, he and two cosigners of the letter each received shipments of bottles of wine—a customary gift of thanks among Uruguayans—accompanied by a note congratulating them on the August 25 letter. It was this wine that killed Cecile Heber on September 6. Immediately after Mrs. Heber's death, the Uruguayan Government released a communique accusing the "international campaign to discredit the government" of the crime. The Uruguayan Government has announced that a full investigation will be conducted. As yet no suspects have been found.

Such a crime, directed at so prominent a democratic leader as Senator Heber, cannot go unexplained. I call upon the administration to urge the Uruguayan Government to conduct a complete and thorough investigation of this affair. I urge the Uruguayan authorities to pursue the investigation vigorously, no matter who may be involved. Finally, I urge that the United States be prepared to reexamine its relations with Uruguay in light of the conduct and fruits of the Uruguayan Government's investigation.●

LAKE-IN-THE-HILLS

● Mr. PERCY. Mr. President, as we briefly consider the Water Resources Authorization Act, recently amended by the House, I would like to bring an important provision of that bill to the attention of my colleagues.

There is a dam at Lake-in-the-Hills, Ill., that has been identified by the Corps of Engineers as hazardous and in need of repair. The Home Owners Association, which owns the lake and dam, does not have the means to do the necessary phase II study, that would determine the actual extent of damage to the dam and the potential of danger to the community. The cost is estimated to be between $20,000 and $35,000.

Contact with the Corps of Engineers by Congressman ROBERT MCCLORY, 13th District, Illinois, and myself, for such a phase II study brought no results. Therefore, Congressman MCCLORY introduced an amendment to H.R. 13059 to immediately authorize the corps to perform this study for Lake-in-the-Hills. This provision is now part of H.R. 8309. I am very pleased that the Senate managers of this bill have assured me that this section will be retained in the final measure to be reported from the House and Senate conference committee on H.R. 8309.

This will give the residents of Lake-in-the-Hills, Ill., the ability to determine the extent of the damage to their dam so that they can have it repaired and be able to once again enjoy the full benefits that this beautiful lake can offer.●

THE CAMP DAVID SUMMIT

● Mr. DURKIN. Mr. President, it is with relief, respect, and hope that I rise to extend my sincere congratulations to Prime Minister Begin, President Sadat, and President Carter, for their admirable efforts culminating in agreement on a framework for settlement of the decades-long unrest in the Middle East. Today, as a result of their efforts, we can say with conviction that no troublespot in the world offers a greater chance for lasting peace.

Although this framework is only a step toward peace, and not total peace in itself, its importance cannot be diminished. For the first time in 30 years of internecine disruptions and battles, Egypt and Israel have reached agreement on a way to approach the major problems involved, and on a method for resolving these difficult issues. For the first time in 30 years of distrust and discord, Egypt and Israel have reached an understanding on which a comprehensive and lasting peace solution can be built. This is thus one of the most significant accomplishments in this troubled region in recent memory.

Mr. President. the first major step is often not only the most important but the most difficult as well. Such is the case here. And it is clear that this framework has set the principals involved on a long and difficult course in which success is not insured and failure is a real possibility. Even with this agreement in hand, both Mideast leaders will encounter opposition from within and without when they return to their countries. There is no question that a final peace settlement will require all the determination and skill which Egyptian and Israeli officials have to give, just as it will require the support of the other nations in the Mideast and the continued cooperation of the United States.

Despite these difficulties, I am optimistic. I am optimistic because I believe that Prime Minister Begin, President Sadat, and President Carter have demonstrated that they have the commitment, courage, and capacity to meet these obstacles head-on, and succeed. I have been particularly impressed by the extraordinary political courage these three men have displayed. In the face of enormous personal and political risk and in the face of tremendous odds against success, they dared to try. And their courage was rewarded.

Mr. President, I would also like to say a special word about President Carter's role in this agreement. I am sure that everyone in this Chamber must have tremendous respect for President Carter's leadership on this crucial problem. He displayed boldness, imagination, courage, patience, and persistence. qualities which mark his leadership efforts as some of the most remarkable we have witnessed in international diplomacy. President Carter has earned the respect and admiration of the world community for his imaginative leadership, and I am confident that he will continue to play an instrumental role in the delicate search for a lasting peace. For that, he has our respect, admiration, and gratitude.●

A COMPREHENSIVE TEST BAN TREATY

● Mr. HATCH. Mr. President, the United States is presently engaged in many different forms of negotiations with the Soviet Union. At this time the SALT negotiations appear to be dominating the publicity. I would like to call to the attention of the American people as well as my colleagues the status of the comprehensive test ban treaty negotiations. This treaty has almost as much significance as the SALT treaty itself.

In the August issue of Air Force magazine Edgar Ulsamer discussed the problems surrounding the completion of a CTBT. Citing the administration's "zero yield" policy as being unrealistic, Mr. Ulsamer goes on to explain a meeting between Energy Secretary James R. Schlesinger and the President that brought new information to the attention of the President.

> Billed as a fifteen minute meeting, it went to an hour and a half and reportedly caused the President to comment, "You gave me a lot to think about."
>
> Highly placed sources told this column that several participants reached the conclusion that essential information concerning the effects of halting all nuclear testing had not reached the President, even though that information had been briefed to congressional committees . . .
>
> Specifically, the President did not appear read in on why DOE and the JCS consider a "zero yield" test ban or moratorium unverifiable.

While this information is startling in itself, further information is provided in the October issue of Air Force magazine.

Lt. Gen. W. D. Johnson, USAF (ret.) answered Mr. Ulsamer's column with additional information. It should be pointed out that General Johnson was Director of the Defense Nuclear Agency from 1973 to 1977. General Johnson states that he was disturbed by the statement that essential information was withheld from the President. He goes on to state:

I can attest to the fact that this information had been thoroughly briefed to congressional committees, and had been furnished to several elements in the governmental hierarchy whose job it is to assure that the facts do reach the President. Frankly, I believe those facts were deliberately screened. Probably one of two things happened:

(A) Some overzealous individual figured he had some information the President did not want to hear and simply decided to make it more palatable, or;

(B) Someone figured he was smarter than the experts and simply discounted those facts with which he did not agree. This is not uncommon in Washington, as we know.

General Johnson goes on to illustrate the problems that we will face should we go to a CTBT without the capability to monitor the Soviet testing program. He gives us a brief history of previous test bans and the disastrous experience we had with the bilateral agreement which the Soviet abrogated in 1961. The General sums up his arguments with four hardhitting facts:

I do recommend we do not sign a treaty banning all nuclear testing in today's circumstances!

First, the Soviets have much more to gain than we. They depend on high yields and heavy throw-weights, with less concern for accuracy and the more advanced technology that is so dependent on testing.

Their weapons and supporting systems are much less vulnerable to nuclear effects such as electro-magnetic pulse and communications blackout.

We know we would not launch a first strike. While I do not believe the Soviets presently contemplate or would plan a nuclear strike against the U.S. as circumstances exist today, I do believe they would launch a first strike, if they perceived the necessity and if they perceived they have a sufficient advantage. Perception is the key: It wouldn't matter whether their perception was correct. Our systems, subjected to a first strike, would clearly be highly vulnerable to nuclear effects. Their systems need not be hardened against a first strike. Our need for testing is thus far more acute.

Finally, assuming the Soviets would be tempted to cheat, and knowing we cannot accurately monitor low-yield tests, they could accumulate significantly important nuclear weapons development data and data on nuclear effects, while we sit idly by.

Mr. President, both Mr. Ulsamer and General Johnson have brought a very important subject into light. They have shared a knowledge of events that may well be essential to our national security. For this reason I ask that both of the articles be printed in the RECORD.

The articles follow:

THE TEST BAN TREATY

The Administration's policy on a "zero yield" Comprehensive Test Ban Treaty (CTBT), ostensibly cast in concrete when President Carter signed PDM-38 on May 20, 1978, without concurrence by either the Joint Chiefs of Staff or the Department of Energy (DOE), is undergoing an agonizing reappraisal.

Catalyst for reopening the case was a high-powered White House meeting in mid-June requested by Energy Secretary James R. Schlesinger. Billed as a fifteen-minute meeting, it went to an hour and a half and reportedly caused the President to comment, "You gave me a lot to think about".

Highly placed sources told this column that several participants reached the conclusion that essential information concerning the effects of halting all nuclear testing had not reached the President, even though that information had been briefed to congressional committees by Defense Department and DOE witnesses, including the then-acting Chairman of the Joint Chiefs of Staff, Gen. David C. Jones.

Specifically, the President did not appear read in on why DOE and the JCS consider a "zero-yield" test ban on moratorium unverifiable. Neither did he seem to be aware of the fact that the Soviet negotiators had rejected a central safeguard requested by the US as unacceptably intrusive. This would involve placing some thirty teleseismic arrays on Russian territory. The only monitoring scheme acceptable to the Soviets is sharing data from some five or six Soviet-built seismic detectors, an arrangement deemed wholly inadequate by most US experts. (Even the full complement of arrays coupled with on-site inspections could not detect low-yield Soviet testing in the view of congressional experts, and would have served mainly to dilute political opposition to a cessation of testing.)

The persuasiveness of the evidence presented by Dr. Schlesinger and two DOE laboratory directors appears to have caused changes in the Administration's position on this issue of pervasive importance to national defense. The White House—at a Special Coordinating Committee (SCC) meeting late in June—decided to limit any Comprehensive Test Ban Treaty to three rather than five years, and decreed that renewal thereafter would require the approval of both the Executive Branch and the Senate. The same cabinet-level meeting also decided to insist on the need of continued low-yield "controlled" testing—at the level of a few hundred pounds—even though Paul Warnke, Director of the Arms Control and Disarmament Agency, reportedly had threatened to resign if the Administration reneged on "zero yield."

Other proposed safeguards, viewed by congressional experts as of a more cosmetic than curative nature, include firm provisions for maintaining US R&D and production capabilities, and constant readiness to resume testing. The latter safeguard is important; it took the US more than a year to resume full-scale testing after the Soviets renounced the bilateral test moratorium in 1961.

Congressional opposition to a CTBT appears formidable and growing, a fact that the Administration seems to recognize. During recent congressional testimony, Defense Secretary Harold Brown disclosed that CTBT would not be concluded until after SALT II. In addition to questioning the wisdom of entering into an essentially unverifiable accord (see p. 9, April '78 issue), relevant committees of the House and Senate have urged that the Threshold Test Ban Treaty and the Peaceful Nuclear Explosion Treaty that went into effect more than two years ago should be ratified before the Senate considers CTBT, and that weapon systems allowed under SALT II should be tested adequately before a CTBT goes into effect.

The Senate Armed Services Committee, at the behest of Sen. Henry M. Jackson (D-Wash.), plans to hold hearings on the historic and technical aspects of test bans and nuclear weapons reliability and safety. The purpose is to compile an authoritative public record of the grave consequences of plunging headlong into a halt of nuclear testing. There is widespread concern that the Administration may bypass the Senate's seemingly strong opposition to a "zero-yield" test ban treaty by seeking a trilateral moratorium with the Soviets and the British. England's Prime Minister James Callaghan, during a US visit in June 1978, reportedly made clear that his politically hard-pressed labor government was keenly interested in going before the British voters at the coming elections in the role of a "peacemaker."—EDGAR ULSAMER

THE TEST BAN TREATY

(By Lt. Gen. W. D. Johnson, USAF (Ret.)

DEERFIELD, ILL.—Edgar Ulsamer's column "In Focus" in the August 1978 issue of Air Force Magazine was written with his inevitable excellence. I was particularly interested in that portion dealing with the Test Ban Treaty, having served as the Director of the Defense Nuclear Agency from October 1973 until my retirement in June 1977.

I was disturbed by the statement "that essential information concerning the effects of halting all nuclear testing had not reached the President. . . ." I can attest to the fact that this information had been thoroughly briefed to congressional committees, and had been furnished in detail to several elements in the governmental hierarchy whose job it is to assure that the facts do reach the President. Frankly, I believe those facts were deliberately screened. Probably one of two things happened:

(A) Some overzealous individual figured he had some information the President did not want to hear and simply decided to make it more palatable, or;

(B) Someone figured he was smarter than the experts and simply discounted those facts with which he did not agree. This is not uncommon in Washington, as we know.

Apparently the Weapons Lab Directors (Dr. Harold Agnew and Dr. Roger Batzel) presented the technical side in Dr. Schlesinger's session with the President. Both are highly dedicated, competent, and articulate. However, I wonder whether they made it sufficiently clear that our capability to respond to a Soviet abrogation of a Test Ban Treaty has seriously, drastically, eroded over the years, and that we would be placed at tremendous disadvantage if such a treaty is ratified.

As Mr. Ulsamer stated: "It took the US more than a year to resume full-scale testing after the Soviets renounced the bilateral test moratorium in 1961. . . ." At that time, we still had most of the equipment at hand. We had a fleet of instrumented aircraft, extensive facilities in the Pacific, and a large force of people who had recent and intimate knowledge of nuclear weapons and how to test them. Today we have no aircraft, no equipment, and very few people who know anything about testing nuclear weapons in the atmosphere. While facilities for *underground* testing still exist at the Nevada Test Center, we have no facilities for testing in the atmosphere.

Moreover, we have an army of environmentalists who would launch a major "war" to prevent testing in the atmosphere even if the Soviets were blatantly doing so. Our will to counter any Soviet abrogation of a Test Ban Treaty would be undermined by those environmentalists.

The national will to counter Soviet abrogation would also be severely tested by the enormous costs to rebuild the capability for US tests. In fact, several years ago I recommended that we stop kidding ourselves that we were maintaining a capability to return rapidly to testing in the environments prohibited under the original Test Ban Treaty, and that the funds then being spent on a fictitious capability would best be spent elsewhere.

As a condition to the ratification of the original treaty, the Senate had insisted on

the so-called "Third Safeguard," which provided that the US would maintain such a capability. That task was assigned primarily to the Defense Nuclear Agency (at that time the Armed Forces Special Weapons Project).

DNA (AFSWP) was to work closely with the Atomic Energy Commission. Originally, we had a Joint Task Force that was exercised periodically. The equipment, the aircraft, the instrumentation (and the people) were taken out of mothballs and sent to the Pacific. Soon, however, costs and apathy caused cancellation of such exercises. Equipment deteriorated, facilities were dismantled, and people scattered.

Still, we maintained some capability. Periodically, we managed to assemble a joint team for other reasons, e.g., monitoring the French nuclear tests at Muruora in the South Pacific. With underground testing, we still had the nucleus of a scientific force (the most important element in the capability to resume testing in the prohibited environments). With the cessation of underground testing, even that small remaining nucleus will be lost.

The point should be clear. When the original Test Ban Treaty was ratified in 1963, the US firmly promised itself that (having been made a fool by the Soviet) we would establish and maintain a capability to return promptly to testing in the environments prohibited by that Treaty. Correctly, the Congress and the President assumed that such a capability would deter the Soviets from a second abrogation. We did not keep our promise to ourselves and inevitably any such safeguard under a new Treaty would similarly erode. Such safeguards would indeed be only cosmetic, hiding the fact we would not maintain them.

It should be remembered that in 1961 Russia resumed testing in deliberate disregard of the bilateral agreement then in existence. They had planned their perfidy well and secretly. They conducted a series of very successful and very high yield tests. They gained valuable data that I do not believe we have attained even to this day.

Our Intelligence Community had failed us. Even if it had been more perceptive, I doubt anyone would have reacted. We did not want to believe the Soviets would "cheat." We still do not want to believe that today. Of course, there are many who are seriously concerned. But considering that the facts are not relayed to the President, one wonders whether those who do care can make themselves heard.

In your column, the strong evidence was cited that we cannot adequately monitor low-yield underground tests using seismology—the only known method available today: "Even the full complement of arrays coupled with on-site inspections could not detect low-yield Soviet testing in the view of congressional experts. . . ." Some would say: "But the Russians are honorable, decent people. They wouldn't cheat." I say nonsense; They have cheated and they will cheat. Their morality compels them to cheat!

In fact, I am convinced they deliberately did so as recently as 1976 after having agreed to limit yields to 150 KT on underground tests pending ratification of the Limited Test Ban Treaty. In response, we meekly admitted that our seismological data was so subject to interpretation that we really couldn't challenge the Soviets. I believe they were actually testing to see how accurately we could measure and to determine whether we had the guts to complain. I am sure the Kremlin was delighted with our futile response.

We have a different morality. Immediately after signing the Limited Test Ban Treaty, we became over-cautious in our effort to assure no possibility of an inadvertent violation. Our open society would preclude cheating and would correctly react violently to anyone who attempted to do so.

I do not recommend we unilaterally return to testing in the atmosphere. I do not even recommend we attempt to rebuild a standby capability to do so. I do not recommend we renounce the Limited Test Ban Treaty, limiting testing to 150 KT (though I had serious personal reservations about that treaty, too).

I do recommend we do not sign a treaty banning all nuclear testing in today's circumstances!

First, the Soviets have much more to gain than we. They depend on high yields and heavy throw-weights, with less concern for accuracy and the more advanced technology that is so dependent on testing.

Their weapons and supporting systems are much less vulnerable to nuclear effects such as electromagnetic pulse and communications blackout.

We know we would not launch a first strike. While I do not believe the Soviets presently contemplate or would plan a nuclear strike against the US as circumstances exist today, I do believe they would launch a first strike, if they perceived the necessity and if they perceived they have a sufficient advantage. Perception is the key: It wouldn't matter whether their perception was correct. Our systems, subjected to a first strike, would clearly be highly vulnerable to nuclear effects. Their systems need not be hardened against a first strike. Our need for testing is thus far more acute.

Finally, assuming the Soviets would be tempted to cheat, and knowing we cannot accurately monitor low-yield tests, they could accumulate significantly important nuclear weapons development data and data on nuclear weapons effects, while we sat idly by.

I sincerely hope Dr. Schlesinger did convince the President. However, I realize the last expert to see Mr. Carter may well leave the more lasting impression—especially since he obviously wants and is committed to a total Test Ban Treaty.

Thus, I hope others will make the facts clear to the President. If he will listen to the facts, we will not sign a Test Ban Treaty!

(NOTE.—Warren D. Johnson was Director of the Defense Nuclear Agency from 1973 to 1977, before retiring as an Air Force lieutenant general. A one-time B-47 commander, Johnson had a long association with SAC, and became Chief of Staff at Hq. SAC. He was commissioned in 1942 through OCS and graduated from flight school the following year. Since 1977, General Johnson has been a vice president for Baxter Travenol Laboratories, Inc., Deerfield, Ill.)

OLDER AMERICANS ACT CONFERENCE

● Mr. CHILES. Mr. President, the passage of the Comprehensive Older Americans Act Amendments of 1978 represents another step forward for this Nation's elderly. The legislation builds on the success of programs already developed under the Older Americans Act. Significant new initiatives are authorized for legal services for the elderly, home delivered meals, senior centers, and older worker employment opportunities.

I want to note that the conference report includes legislation which I introduced (S. 2967) to provide support for special demonstration programs in noninstitutional long-term care alternatives for older Americans. This proposal was developed after a series of hearings which I chaired for the Senate Special Committee on Aging on "Health Care for Older Americans: the 'Alternatives' Issue." These hearings explored alternative systems of health care for long-term, chronically disabled elderly; pointing to the lack of any real progress in this direction since the 1971 White House Conference on Aging which called for a comprehensive system of alternative community health and support services for the elderly. What does exist in the way of services is characterized by fragmented funding, widely varying eligibility requirements, and a great deal of confusion.

Under this approach the Administration on Aging will be authorized to make grants to State and local public and private, nonprofit agencies to support the development of comprehensive, coordinated systems of community long-term case. The bill also provides for increased involvement by the Administration on Aging in all Federal long-term care policy initiatives and encourages coordinated planning between State and area agencies on aging and local health systems agencies.

The conspicuous absence of a Federal long-term care policy now means that States and communities have to deal with a number of fragmented funding sources to build a comprehensive community program of home health and other in-home services as well as often-needed supported housing and ambulatory health care services.

This has made it difficult for States and communities to develop flexible programs. Nevertheless, in our hearings we have witnessed innovative program development at the State and local level. This bill will now make it easier for States to initiate new programs and continue this development.

I am very pleased that this new direction for the Administration on Aging has been included in the 1978 Older Americans Act amendments. I think it will prove a valuable step forward in providing noninstitutional long-term care for the elderly.●

SOUTH CAROLINA EDUCATIONAL TELEVISION NETWORK

● Mr. HOLLINGS. Mr. President, 20 years ago this month, we embarked upon a most ambitious experiment in South Carolina. Out of an improvised studio in a Columbia high school, daily closed circuit lessons in French and geometry were beamed to 300 students. The South Carolina Educational Television Network was on its way.

As Governor of the State of South Carolina, I realized we had to improve the educational level of our citizens in order to attract new industry and raise the income level. We needed to make quality instruction available to both the urban and rural students. And once we got that concept off the ground, we had to expand the network to reach adults. By 1960, our infant was ready to walk on its own and the South Carolina Educational Television Commission was created to oversee a system that now reached 31 schools in 11 counties.

Today the South Carolina Educational Television Network has no equal, nationally or internationally. Public

school enrollment exceeds a million and a half. Higher education courses are offered on both the college and graduate level. College credit at home was initiated 4 years ago and continuing professional education and enrichment courses are offered our State's teachers, attorneys, law enforcement personnel, and doctors, to mention but a few. A radio network has been added, giving the system another valuable facet.

Never content to sit back and enjoy past accomplishments, SCETV has constantly sought to add new dimensions to its performance record. Several nationally recognized programs are originated and produced in Columbia. William F. Buckley's "Firing Line," "Lowell Thomas Remembers," "Studio See," "Cinematic Eye." And the magnitude of the special productions is overwhelming. On Christmas Eve 1977, SCETV broadcast live "Christmas Around the World." Linked to three satellites, the show brought scenes from the Holy Land and other worldwide celebrations into our homes.

We have assembled in the Columbia headquarters some of the best and the brightest. Creativity knows no bounds in the world of SCETV. Judging from the past 20 years, we have a lot yet to come.

Three excellent tributes to SCETV have appeared in recent days and I ask that the following editorial from the State newspaper of September 17 and the articles from the South Carolina Scene and Sandlapper magazines be printed in the RECORD.

The articles follow:

[From the State, Sept. 17, 1978]

ETV LEADS THE FIELD

Despite its gratifying progress in recent years, South Carolina seldom has been in the forefront of public education. But in one particular field, educational television, the Palmetto State holds a top ranking not only in the United States but throughout the world.

This month is an appropriate time for all South Carolinians to join in a bit of horn-tooting for their ETV establishment. September marks the 20th anniversary of that 1958 occasion when the state's first televised program was transmitted (by direct wire) from rudimentary studios into special classrooms at Columbia's Dreher High School.

Today, public school enrollment for ETV instruction, measured in terms of overlappoing student attendance for various courses, exceeds 1,500,000. But this new dimension to teaching is only one aspect of the total ETV performance. In recent years, through cooperation with the University of South Carolina, ETV has moved effectively into the field of higher education, serving not only college and university students but members of the general public who seek to extend their educational horizons.

Furthermore, S.C. ETV provides a continuing and convenient mechanism for the dissemination of specialized training and updating in such varied fields as law enforcement, medicine, business, and industry—not only through closed-circuit lines into schools, police headquarters and other installations but through open-circuit telecasts from the various ETV stations about the state.

South Carolinians can take particular pride in realization that a number of nationally recognized programs are produced and originated here at ETV headquarters in Columbia. Among them are such bellringers as William F. Buckley's "Firing Line," "Lowell Thomas Remembers" and that favorite of the youngsters, "Studio See."

But rather than reciting the impressive array of state, regional, and national credentials won by S.C. ETV, we render our editorial salute on this 20th anniversary by quoting from a 1975 New York Times article which puts the picture in proper perspective:

"It will come as a surprise to a great many northerners to learn that South Carolina enjoys probably the most outstanding educational television network in the entire country."

Anyone who doubts the accuracy of that assessment need only observe the constant flow of domestic and foreign visitors who flock here to see educational television at its best.

[From the South Carolina Scene, September, 1978]

HOW WE GOT FROM THERE TO HERE

In 1975, an article in *The New York Times* declared, "It will come as a surprise to a great many northerners to learn that South Carolina enjoys probably the most outstanding educational television network in the entire country." It will come as an equal surprise to some South Carolinians that just 20 years ago, that network was little more than an idea.

In 1978, the South Carolina Educational Television Network is highly visible as a multi-faceted communications system, offering services to virtually all South Carolinians—from kindergarteners to senior citizens, high school dropouts to graduate students, farmers to surgeons. Twenty years ago, this technological marvel had just come into existence, as a unique experiment to test the effectiveness of television as a teaching tool.

Authorized by the state Legislature, the experiment began in September 1958 at Columbia's Dreher High School. The project consisted of daily closed circuit lessons in French and geometry, produced live in a rudimentary studio and transmitted to 300 Dreher students. That first ETV production team involved a technical director, two teachers, two faculty members and 21 student assistants.

From such simple beginnings the ETV idea grew rapidly. By 1960 the experiment had proved its effectiveness, and the S.C. Educational Television Commission was created, with R. M. Jefferies, Jr., serving as chairman. By now ETV services had expanded to 31 schools in 11 counties, with four courses offered and a public school enrollment totaling 3,300. R. Lynn Kalmbach, who evaluated the Dreher experiment, became ETV's first general manager; and the Network moved into permanent headquarters—an abandoned supermarket on Millwood Avenue.

A year later, ETV began its pioneering work in continuing professional education for adults, with a post-graduate medical program and courses for the state's teachers.

In 1963, the Network's first open circuit television station, WNTV in Greenville, signed on—to be followed in the next five years by stations in Charleston, Columbia, Florence and Barnwell, with a translator in Rock Hill. By now the closed circuit system had been extended to all counties; thus while instructional television for public school students and professional education for adults continued their rapid growth on the closed circuit, open circuit broadcasts brought the new perspective of public television to a general audience throughout the state.

During this same period, ETV began its specialized training for business and industry, which was to become an important factor in the state's commercial development. In 1965, Henry J. Cauthen, who had served as technical director for the Dreher project, was named Executive Director of the ETV Network, succeeding the late R. Lynn Kalmbach.

The second decade of ETV's development was an era of expansion and diversification, thrusting the Network into national production and such technological advances as satellite transmission. Despite such innovations, however, ETV continued its primary emphasis on instructional courses for the state's public schools. So effective was that instructional programming, in fact, that public school enrollment in ETV courses grew from 194,000 in 1968 to a total of well over a million and a half in the 1977–78 school year.

Early in the decade, ETV played an important role in the development of public broadcasting both regionally and nationally. In 1968, the Southern Educational Communications Association (SECA), a regional network of ETV stations, was organized and headquartered in Columbia. Since SECA's beginning, S.C. ETV has served as the flagship station for the organization, supplying programs and production facilities for SECA and its members. The SECA–ETV connection has, over the years, given rise to such important national series as Firing Line and Lowell Thomas remembers.

Also in 1968, the Public Broadcasting Service (PBS) was established, interconnecting all the nation's public television stations. At this time, S.C. ETV became the feeder point for all PBS stations in the Southern section of the country.

Until recently, satellite transmission of television programming was considered the "wave of the future"; yet as early as 1970, S.C. ETV organized the nation's first live domestic satellite transmission, from Columbia to Los Angeles. Today the Network is linked to three satellites, with reception and transmission capabilities on regional, national and international levels.

The year 1970 saw a great advance in the field of higher education, with a program of graduate study begun through joint cooperation between the University of South Carolina and S.C. ETV. Developments in the field of higher education continued throughout the decade, culminating in the "college credit at home" concept, which began in 1974. This year's open circuit college credit offerings total four, including Cinematic Eye, which debuts this month on nationwide television. Closed circuit courses for graduate and undergraduate credit now total 65, including complete programs leading to Master's degrees in business administration and engineering and science.

In 1972, the network entered still another field of service, with the inauguration of its first educational radio station in Greenville, S.C. ERN stations now total five, including day-long programming for the blind on a radio subchannel and full-day instructional radio courses for the public schools.

In 1975, the Network expanded its concept of public television service with the debut of WRJA–TV in Sumter and WJWJ–TV in Beaufort. These stations, now joined by WNSC–TV in Rock Hill, were the first in the Network to have local production facilities, through which they could provide programming specifically designed to meet the needs of their local coverage areas. The regional production centers also brought dramatic increases in instructional television usage, by extending the ETV signal into many fringe reception areas.

Although S.C. ETV had produced a variety of specials and short series for PBS broadcast, the Network became a front-line producer of national programming with the introduction of STUDIO SEE, which has been broadcast by over 200 PBS stations since its national debut in early 1977. That same year saw the introduction of S.C. ERN's first national series, American Popular Song With Alec Wilder & Friends, on National Public Radio (NPR). A critical favorite, American Popular Song walked away with a Peabody Award, the

only public radio program to be so honored that year.

In late 1976, South Carolina became the second state in the nation to have a statewide weather information service, a joint project of the National Weather Service and ETV. The year 1977 saw the beginning of a new cultural tradition in South Carolina, with the inauguration of the first American Spoleto Festival in Charleston. ETV began its own Spoleto tradition, providing viewers statewide with a nightly view of the festival and taping Gian Carlo Menotti's opera, *The Consul*, for nationwide broadcast.

1958–1978: For S.C. ETV, the two decades have been a period of learning and achievement, consolidating and expanding on the educational concepts first dreamed of in that now-remote experiment at Dreher High School. The success of the experiment is verified by the visible evidence, as well as by the opinions of such national figures as Alan Pifer, president of the Carnegie Corporation, who declared recently that "South Carolina is the model for what educational technology should and can do in meeting educational needs of our changing society."

For the future, ETV's first priority will continue to be those same educational needs, as they relate to South Carolina and beyond. The promise of 1958 still holds, although its fulfillment in the next 20 years may astound even the people closest to it. Stay tuned.

[From the Sandlapper, Sept. 1978]

ETV SHOWS OFF

(By Beth Littlejohn)

September 1958: There's something new in the air, a television studio at Columbia's Dreher High School. Still in its infancy, television has begun its invasion of American homes. But classrooms?

The studio, newly installed beside the school library, is home base for an innovative two-year project, authorized by the General Assembly to determine if television is an effective teaching tool.

Spearheaded by two faculty members and a technical director, the experiment will also involve, in its first year, two teachers and 21 students. The students are fresh out of a summer workshop on television production; they will run cameras and audio, help direct programs, carry props, create simple animation, do odd jobs—and get course credit for their efforts. The teachers will perform live on camera 180 days a year (since videotape is not yet available, all productions are live).

The experiment is primitive by 1978 standards: Video equipment consists of three immovable cameras, mounted on tripods (compared to today's color giants, valued at about the price of a Rolls Royce, heavy but highly mobile). Studios are on the second floor, TV classrooms on the first; if the production crew wants to see how a program is being received, they have to run downstairs and look. Cameras have a zoom lens, but they're in the wrong place—so an enterprising student runs home for his Erector set, and a makeshift lever corrects the problem. And all this for 300 students.

September 1978: The experiment is long over, the results are in: Students can and do learn from television. At last count, close to 300,000 students in South Carolina were making multiple use of instructional television courses for a total enrollment of well over a million.

From primitive beginnings at Dreher, the experiment progressed in 1960 to state agency status and an abandoned supermarket became its permanent home. And while its operations center has become a sprawling complex centered around that original supermarket-turned-studio, its reach has spread throughout the state and taken a variety of forms. Twenty years later, the Dreher experiment has become the South Carolina Educational Television Network.

Today S. C. ETV offers instructional television and radio courses for the state's public schools; continuing professional education for teachers, doctors, lawyers, police officers, business and industry; higher education courses, including two complete master's degree programs and college credit at home; educational radio for the blind; a continuous-broadcast weather radio service; public television and radio programming, ranging from locally oriented shows to such national favorities as Sesame Street and Masterpiece Theatre; production of specials and series for the Public Broadcasting Service (PBS) and National Public Radio (NPR).

The success story has a personal dimension as well: The educator in charge of evaluating the Dreher experiment, the late R. Lynn Kalmbach became the network's first general manager; Columbia station WRLK is named in his honor. The experiment's technical director, Henry Cauthen, is now president and general manager of S. C. ETV. The kid with the Erector set, Tom Stepp, has progressed from apprentice cameraman to deputy manager of the network.

Scanning the 20 years of ETV's existence, Stepp admits that the original Dreher team had little idea where the experiment would lead them. "Except Henry Cauthen—I think even then he had a kind of broad vision of where we were going. But it was an exciting time; we were learning, experimenting, having fun. And there was a kind of group spirit among us."

The learning process continues. The experiments are more complicated, more far-reaching. The excitement is still there, in a more sophisticated form. The group spirit is still apparent whenever an ETV team begins a new project, be it a national television series or a local elections special.

Take a series like *Studio See*, S. C. ETV's current star on the national programming scene. Designed for kids from ten to 15, this action-packed video magazine has culled its share of honors, including a National Education Association endorsement and an Action for Children's Television (ACT) award. On screen, *Studio See* may offer anything from wind-surfing in California to innercity gardening in New York, to a visit with the make-up artist from *Star Wars*.

Back home in Columbia producer Jayne Adair and her crews will spend innumerable hours researching and arranging for future production, sleepless nights editing segments into a finished product. On the side, they may be called upon to answer kid questions on every subject from boomerangs to orangutans or to audition star-struck kids on the telephone.

"Television is really more of an opportunity for the people who do it than the people who see it," says Adair. "In three years, I've experienced directly what other people see vicariously. I don't want it to sound too glamorous. It is hard work. But it has been three years that I will never forget."

Even with projects that seem routine or are destined for a small audience, the trials of television production can be many. One of ETV's major responsibilities is service to other state agencies. This may involve a variety of projects, from video and film pieces to slide-tape presentations to printed materials. Last year, an ETV film crew embarked on what seemd a routine assignment: a stay in the South Carolina Sea Islands to produce a film on alcoholism for the S. C. Commission on Alcohol and Drug Abuse. In the midst of a filming session on Johns Island, a native lady suddenly leaped from the bushes, dancing about the production site and waving a long cane. She was putting a "root" on the ETVers.

The production went haywire from there. A camera lens disappeared; a mike was left attached to a tree; a production assistant developed twitches; and a routine scene became a madhouse, with shattered glass flying everywhere and a cinematographer and a writer almost making the casualty list.

Despite the spell, the bugs and the heat, a beleaguered ETV crew finally finished their film (aptly titled *The Long Road Home*), which went on to win local, regional and national awards from the American Advertising Federation.

On the surface, where the long hours and hard work don't show, S. C. ETV has amassed awards and commendations with seeming ease. *American Popular Song with Alec Wilder and Friends*, the first series ever produced by the S. C. Educational Radio Network for national broadcast on NPR, won a Peabody Award for its first season; it was the only public radio program to be so honored that year. At ETV's Columbia headquarters, wall space is becoming severely limited as plaques and certificates take their place: regional Emmys, Ohio State Awards, Chicago Film Festival and Freedoms Foundation awards. Among the most numerous are SECA (Southern Educational Communications Association) awards. From this regional association of public broadcasters, commendations come frequently; in the judgment of its peers, S. C. ETV is often deserving of special recognition.

Audience recognition, on local and national levels, is also quickly forthcoming. *Lowell Thomas Remembers*, a series presented nationally by SECA, is produced by an ETV crew in the network's Columbia studios. In its first year of broadcast, *Lowell Thomas Remembers* was one of the top-ranked prime time shows on PBS. Viewer response to a pair of ETV painting courses, *Ilona's Palette* and *Journey Into Art*, has been enormous. The former, with instruction by Impressionist painter Ilona Royce-Smithkin, has drawn hundreds of letters whenever it was aired, both in South Carolina and through the Southeast. The latter, featuring commercial illustrator/painter Ben Stahl, drew over 2,000 letters in its first broadcast run. Since that time, *Journey Into Art* has been marketed to more than 25 television stations across the country.

Despite S. C. ETV's varied success, public television audiences remain small (though ever-growing) by Nielsen rating standards. Sometimes local audiences are baffled by a commercial television personality's switch to ETV. One such personality, Assistant Director of Programming Jim Welch, has his own explanation for the switch. "There's no limit to ETV," he says. "It can go to the ends of the world. When I left a commercial station to come here, they said, 'You'll never have any exposure there.' Within a month I was doing a program on King Hussein's visit which was sent by satellite around the world."

At times, Welch still suffers a minor "identity crisis" with well-meaning fans, who come up to him and say, "I watch you every night at eleven" (referring to the news program he did on commercial TV four years ago.) Currently he is working on a pet project—developing a proposed PBS series which will focus on the stars from the heyday of Western movies—Roy Rogers, Lash Larue, Gene Autry and others. The series idea developed from an interview Welch did with Sunset Carson.

In his 16 years at ETV, Art Director Pat Dilley has landed a variety of roles, from Joseph in a Christmas special to a singing patriot in a Bicentennial special for PBS. "The variety of projects and the involvement at ETV are strong selling points for the people who work here," Dilley says. "The work load may get heavy, but it's never monotonous."

The latest S. C. ETV series to go national is Benjamin Dunlap's Cinematic Eye, a series

highlighting international classic films. The series began in January, 1977 with "The British Collection." In addition to showing films usually reserved for film revival theatres in New York or Los Angeles, Cinematic Eye is televised for credit with the University of South Carolina.

Dunlap, as writer, producer and commentator, puts the series together with Ditsie Weynand, associate producer, Sidney Palmer, director, and Peter Anderson, production department director. "One of the interesting things about Cinematic Eye, as opposed to the other shows like Studio See and Lowell Thomas Remembers, is that they either went out or brought in people. Cinematic Eye is done completely from within.

"The interesting thing was moving out of academia, where even in teaching a film course the communication is more verbal. Television is more than verbal, it's visual, it's a different mode of expression.

"I found out I was relying too much on the verbal, I was crowding it in. People would say, 'It's a great show; I just can't understand what you're saying.' That was the universal reaction, so I just trimmed my sails and let the visual work."

Dunlap is comparatively new to S. C. ETV, although his series is much like his popular "Film Experience" course he taught at the University of South Carolina. He is full of praise for the S.C. ETV operation.

"Commercial stations produce news programs and commercials. They don't do a lot of production. ETV is almost the only place in the area to do productions, and they produce a lot of shows."●

ANOTHER JERSEY FOR MR. KRONHEIM

Mr. RIBICOFF. Mr. President, Milton Kronheim has just celebrated his 90th birthday. Loved by all, Milton is an old and good friend. For these past 90 years he has been a man of character—a fine gentleman.

The Washington Post, in an editorial on October 7, 1978, expressed so well the meaning of Milton Kronheim. I ask that this editorial be printed in the RECORD.

The editorial follows:

ANOTHER JERSEY FOR MR. KRONHEIM

Each year at this time—in what has become sort of a community rite—some of the countless devoted friends of Milton S. Kronheim Sr. present him with a numbered jersey or shirt to mark his age. And for his birthday last Monday, hundreds of well-wishers from all walks of Washington life gathered at a weekend party to watch him don a "90." They came not merely out of respect for the man's age, but out of respect for the man—a living legend in this town who has always spent his long life helping people.

By trade, Mr. Kronheim was a wholesale liquor dealer, but by his deeds he is far better known today as a humanitarian. One can win that title, of course, by being a big contributor to worthy causes; and that Mr. Kronheim certainly is. But his financial and personal assistance in civic, philanthropic, social welfare and patriotic interests over the decades has been accompanied with a genuine, exuberant interest in people of all races and creeds. Milton Kronheim's success is attributable to "his policy toward human beings * * * doing the right thing for the big guy and the small guy."

The "big guys" who have known him by his first name include the presidents since Roosevelt, justices of the Supreme Court and government and business leaders. But many others are proud to count him as a friend for his vigorous opposition to racial and religious bigotry when it meant a lot in this his native city. "I'm feeling pretty good," the honoree said after two solid hours of greeting people at his party. "This is exhilarating." We're glad to hear it, and to join in wishing him many more exhilarating times—and new shirts.

MILLER ACT AMENDMENTS

● Mr. HOLLINGS. Mr. President, on October 3 the Committee on Governmental Affairs reported S. 3359 which raises the threshold to $25,000 for Federal construction contracts for which bonds are required. During a special hearing that the State, Justice, Commerce Appropriations Subcommittee held in Columbia, S.C., earlier this year on the 8(a) program of the Small Business Administration, I heard considerable testimony that the present $2,000 minimum level prevented minority contractors from taking advantage of the Federal projects that were set aside for them. At our subsequent joint hearing with the Small Business Committee on SBA's budget, the Administrator, Vernon Weaver, supported the increase to $25,000.

We found that the present situation is a classic example of catch-22. The Government sets the contract aside and encourages the new minority small business firms to bid for the work. The catch comes when they try to obtain the required bond and are denied because they lack the experience that the 8(a) program was designed to provide minority firms.

The $2,000 threshold level of the Miller Act has been in effect since 1935. While that may have been a valid amount during the Depression and the day of the 75-cent-an-hour minimum wage, it is not a valid amount in this day and time. As the excellent committee report states:

The raising of the threshold to $25,000 will exclude over 40 percent of construction contracts from the Miller Act requirements but, these contracts represent less than 7 percent of the total Federal construction dollars.

Mr. President, I ask to be added as a cosponsor of S. 3359. I strongly urge that this bill be promptly approved by the Senate so that this much needed change can be enacted before the Congress adjourns. This is one of the quickest and most effective ways we can provide real minority business enterprise.●

SENATOR MOYNIHAN'S ESSAY: "WHY ADOPT OUR ADVERSARIES' WORDS IN FOREIGN POLICY?"

● Mr. HAYAKAWA. Mr. President, our distinguished colleague from New York, Senator DANIEL PATRICK MOYNIHAN, writes with great erudition as well as with clarity and originality. His experience as Ambassador to the United Nations has sensitized him to the abuses of language to a degree unmatched in the experience of those of us who have dealt mostly with domestic political controversy. I like to think, too, that Senator MOYNIHAN's sensitivity to language was at least reinforced by his study as an undergraduate student of my own writings on semantics.

I was delighted this evening to find in the Washington Star another of Senator MOYNIHAN's perceptive short essays, entitled, "Why Adopt Our Adversaries' Words in Foreign Policy?" As our colleague from New York points out. We subvert our own democratic purposes when we adopt for our own use the propagandistic and deceptive terminology employed by totalitarian tyrannies.

I am happy to submit Senator MOYNIHAN's essay for printing in the RECORD.

The essay follows:

WHY ADOPT OUR ADVERSARIES' WORDS IN FOREIGN POLICY?

(By DANIEL PATRICK MOYNIHAN)

Years ago Disraeli, in one of his novels, remarked that "Few ideas are correct ones, and none can ascertain which they are. But it is with words we govern men."

There can be no doubt that words are important in government and they are especially so in the delicate arena of foreign policy negotiations. It is for this reason that I have recently been troubled by what appears to me to be the undisciplined use of language with which American spokesmen and principal officers of the government have addressed themselves to certain foreign policy problems.

In particular, I am concerned about the phenomenon dealt with so brilliantly by George Orwell in his classic essay, "Politics and the English Language." More specifically I should like to briefly call to the attention of our diplomats a more recent and I think important point made by Dr. Fred Charles Ikle (formerly a professor of political science at MIT and lately director of the Arms Control and Disarmament Agency).

Some years ago, in a paper on American difficulties in negotiating with communist countries (published by the Rand Corp.), he pointed to the process whereby we come to adopt the language of our adversaries in describing political reality. He gave to this process the intriguing term "semantic infiltration."

I quote a passage from the paper he wrote on the matter. He said:

"Paradoxically, despite the fact that the State Department and other government agencies bestow so much care on the vast verbal output of Communist governments, we have been careless in adopting the language of our opponents and their definitions of conflict issues in many cases where this was clearly to our disadvantage. Or perhaps this is not so paradoxical. It might be precisely because our officials spend so much time on the opponent's rhetoric that they eventually use his words—first in quotation marks, later without."

These are concepts which are at the heart of today's major political conflicts. For years now, the most brutal totalitarian regimes in the world have called themselves "people's democracies" or "democratic republic."

The term "people's democracies," according to Djilas, was coined by Stalin himself and given as part of the title of the new publication that attended the formation of the Cominform in 1947. Stalin wanted us constantly repeating the fact that the Cominform journal for "A People's Democracy" said such and such. Similarly, organizations in various parts of the world which seek to emulate and institute that manner of regime have taken to calling themselves "liberation movements."

Now here is the problem we face today.

For some time, the secretary of state, who is a distinguished and capable American statesman, in referring to the parties to the dispute in Rhodesia, has spoken of "the Patriotic Front" on the one hand, and "the Salisbury group" on the other. Now, "the Patriotic Front" is made up of forces supplied by and backed by the totalitarian

powers, the Soviet Union and China. The self-styled "Patriotic Front" represents the armed component of totalitarianism, a philosophy which they openly espouse.

However, who would not wish to be with "the Patriotic Front"? Is there a man whose heart is not stirred by the prospect of joining with the Patriots? Who, by contrast, would wish to be with "the Salisbury group"? It sounds like a mining concession put together by investment bankers in London.

Let me cite another example. On July 17, in a State Department briefing, the spokesman for the Department of State made the following statement:

"There cannot be a peaceful settlement unless the liberation forces and the Salisbury parties are satisfied. What we are seeking is an agreement by all parties to fair elections under neutral transition arrangements."

By using the words "liberation forces" the Department of State spokesman is referring to the guerrillas who are armed by the Soviet Union and China and which certainly espouse a totalitarian doctrine. The Department of State spokesman went on to say that we want "fair elections under neutral transition arrangements."

I would argue that the use of those terms, the choice of those words, is fatal to the object of neutrality. When you have described one side as the liberation forces and the other side as a group in the capital, you have summoned all the imagery of political legitimacy of the 20th Century and put it on the one side and denied it to another. That is not only fatal to neutrality but I suggest, it is fatal to clear thinking about this phenomenon.

I do not believe this is a trivial matter. For some years, I have been arguing that the West's political culture is endangered by the fact that the vocabulary and the symbols of political progress are being expropriated by the opponents of our values.

Democracy, as we understand it, is under assault from totalitarians masquerading as democrats—just as democratic socialism is under assault from totalitarians masquerading as socialists in Eastern Europe. Nonetheless, we persist in dignifying these enemies of freedom with the terminology of freedom—so that we persistently misdescribe the political forces arrayed against us.

It is thus important that we convey the impression to the world that we understand the difference between national liberation on one hand, and the progressive brutalization of politics which is being carried on by the Soviets in the name of national liberation.

If I could use a term of nautical imagery, I would like to suggest that at the very least the Department of State's acceptance of this language is unseamanlike. It is prejudicial to good order and to semantic discipline. It reveals a carelessness that verges on negligence or, alternatively, it reveals a private agenda that needs to be further explored in public.

In summation, I believe we need not be ashamed to express our proprietary interest in the notions of self-determination and representative government. And it is essential to our own well-being in the world that other nations not be permitted to distort these concepts into a shape which would exclude our own democracy from the proper definition.●

SOVIET AND AMERICAN CIVIL DEFENSE

● Mr. BARTLETT. Mr. President, the Defense Civil Preparedness Agency, with its 600-man staff and $100 million budget, is responsible for developing policies and programs designed to protect the American public in case of nuclear war and to provide for the reconstruction of our civilization out of any such disaster. These are great responsibilities which that Agency shares with the Federal Disaster Assistance Administration in the Department of Housing and Urban Development, the Office of Industrial Mobilization in the Department of Commerce, and the Federal Preparedness Agency, the Stockpile Storage Division, and other groups in the General Services Administration. In short, responsibility for the rather small American civil defense effort is divided and diluted. However, in recent years, there has been a renewed interest in the long-neglected area of civil defense.

In the Soviet Union, the counterpart to the Director of the Civil Defense Preparedness Agency is the chief of the Soviet civil defense program, who is also Deputy Minister of Defense. And, in Russia, the civil defense organization ranks on a level equal to that of the other services of the Soviet armed forces. The permanent staff of the Soviet civil defense organization numbers an estimated 100,000 with a general officer in command of the civil defense activities in each of the Soviet Union's 15 republics. Active duty military officers command the civil defense structures in the approximately 120 oblasts, or districts, in Russia. This full time staff is augmented by the Soviet police force of about 500,000 people. The size and status of the Soviet civil defense effort reflects a commitment to the protection of population and industry far greater than that implemented in the United States.

While the United States experienced a renewed interest in civil defense after the Berlin crisis of 1961 and saw expenditures peak at over $250 million just prior to the Cuban missile crisis, the American program has never represented more than a small fraction of the estimated $1 billion which the Soviet Union may spend each year on civil defense. In real terms, the $80 to $90 million spent by the United States in each of the last few years is about the same as was spent on the program during the early fifties when a formal civil defense program was initiated for Americans.

Obviously there exists a tremendous disparity in the civil defense commitments made by our Government and that of the Soviet Union, which spends 20 times as much. This disparity merits a concerted review, for contained in this issue are considerable strategic implications, which could well effect the outcome of future arms negotiations, or nuclear conflict.

Soviet civil defense preparations are diverse as they are extensive. The main purpose of Soviet civil defense is to protect essential segments of the population from radiological, chemical, and bacteriological warfare and to insure the reconstitution of Russian industry as quickly after an attack as is possible. To achieve this goal, the permanent civil defense cadre have mobilized an estimated 70 percent of the Soviet Union's industrial workers into civil defense formations and are said to have over 30 million civilians trained in civil defense to assist the military. In addition, the mass media and the education system are used to instruct all citizens in the means to survive a nuclear attack. The population is even prepared for the shock of a nuclear war through indoctrination and psychological conditioning.

At the heart of the Soviet system of civil defense is the notion that the individual must take upon himself the responsibility for his own protection. Protective clothing, gas masks, medication for radiation exposure, and decontamination kits are made available to both children and adults and training in their use is conducted. Instruction is also given in the construction of makeshift protective clothing.

Although there are indications that the Soviet Union has increased its emphasis on urban fallout and blast shelters during the last year or two, preattack evacuation and dispersal of the Russian population are still viewed as the best means for reducing casualties in a nuclear exchange.

Complex evacuation plans have been prepared and practiced using military and civilian transportation to move urban dwellers to the small towns and the countryside. Recently, however, factory workers have been organized into groups to practice evacuating cities on foot together in order to increase the speed with which the cities can be emptied. Soviet civil defense manuals suggest that evacuation would be initiated during times of increased tension and could be completed even in large cities in less than 72 hours.

Hardened blast shelters for industrial workers and key individuals were begun in Soviet factories and government buildings in the late 1950's, but about 10 years later, shelters for the entire population were rejected as too expensive. Since 1974, however, the Russian leadership has again stressed a blast shelter program for its population. Mines, caves, subways, basements, and tunnels have been turned into shelters and several standard shelters have been designed and given official approval for use with new buildings and factories. Many of these shelters include double blast doors, filter systems, communications, food and water, and emergency electrical power generators. Typical standard shelters accept between 100 and 300 occupants and the Moscow subway is reported to be able to protect over 1 million people.

While protection of the population, or some part of the population, is the primary purpose of any civil defense program, the Soviet system differs markedly from the American system in its stress on protecting the industrial base. Many Western commentators have noted that the Soviet effort to disperse industry through the creation of new industrial towns in Siberia and other less populated areas serves to reduce the vulnerability of the Soviet economy to nuclear attack. Such large scale dispersal of industry undoubtedly aids the Soviet civil defense program, but its effectiveness is frequently exaggerated. The creation of new cities does not greatly increase the number of targets which the United States must be able to destroy in order to inflict unac-

ceptable damage to the Soviet industrial base. Relocation of Russian industry has been motivated as much by economic reasons as by national security considerations.

On the other hand, the dispersal of industrial equipment within a given city or factory complex, especially when combined with protective measures such as underground shops, shelters, or sandbags, is of great concern. Industrial machinery is extremely difficult to destroy even with a nuclear blast. Relatively minor improvements in the dispersal and hardening of industrial machinery results in vast improvements in the survivability of Soviet industry. Such developments if continued will tax the ability of our present strategic offensive forces to guarantee unacceptable damage to the Russian economy and thus undermine our nuclear deterrent.

The great improvements in economic survivability made possible by small scale dispersal and minor hardening is enhanced by related measures such as the stockpiling of food and raw materials, the duplication of necessary industries within self-sufficient regions, the use of wide streets, greenbelts, and improved materials to reduce the effects of firestorms, the hardening of power supplies and fuel storage tanks, and the construction of protected water reservoirs. Furthermore, civil defense personnel are trained to move quickly to limit damage to industry by putting out fires, rescuing workers trapped in shelters, and decontaminating factories and machinery.

Soviet emphasis on civil defense is in part motivated by concern over an accidental war or a Chinese attack, but primarily it is motivated by a "war survival" doctrine. While the Soviet leadership does not believe that nuclear war is inevitable or desirable, they do believe it is possible. Furthermore, they believe that preparation for a nuclear war can result in the ability to fight and win a "broken back" war. If the postnuclear strike circumstances strongly favor the Soviet Union, this could constitute a "victory," no matter how empty that victory may appear to Western minds.

In the West, obtaining support for a sensible civil defense program is made more difficult by the belief widely held in the United States that nuclear war is impossible.

A more significant aspect of the development of a Soviet war fighting capability is the possibility that a combination of Soviet offensive forces, strategic defensive forces, and civil defense could subject the United States to nuclear blackmail, because of a relative disadvantage in the strategic balance made possible by the disparity in Soviet and American war survival capabilities.

One example, usually set in the early eighties, when the U.S. strategic forces may be at their weakest relative to the Soviet Union, postulates a Soviet attack which disarms our ICBM's while avoiding our population. In theory, the United States, which may have lost some 10 million people during a disarming Soviet first strike would be reluctant to launch a second strike at a civil defense protected Russian population. A second strike might inflict some 7 to 12 million Russian casualties yet the consequences of a Soviet second strike might well be the deaths of over 100 million Americans. In this instance, the disparity in effective civil defense between the United States and the Soviet Union undermines the credibility of our nuclear deterrent because it increases doubts that the United States would retaliate if attacked. The recognition of this scenario, no matter how unlikely its execution, calls to task some of our fundamental assumptions about our acquisition of nuclear weapons systems and their intended use.

For the United States, an effective Soviet civil defense system may require an increase in the number, yield, or MIRVing of strategic offensive vehicles necessary to insure that unacceptable damage can be inflicted on Soviet industry, leadership, military targets, and population. Such a requirement would have grave implications for strategic arms limitations agreements, let alone our willingness as a country to accommodate such increased spending for strategic weaponry.

The Soviet civil defense system tells us something about our own civil defense. Clearly, the United States has not made much progress in teaching individual Americans the basic techniques which increase the chances of survival in a nuclear war. Recent surveys show that the average citizen has little knowledge of individual or organized civil defense. This is through no fault of the American citizenry, for civil defense has been effectively dormant in this country since the last year of the Kennedy administration.

Relative to the Soviet civil defense program, our own program lapses in recent years appear to be of startling magnitude. I will mention a number of the more significant points:

First. All former education and training contracts have been eliminated with our universities;

Second. All contracts with State public instruction departments, which coordinated public school activities have been terminated;

Third. All funding for emergency operating center building starts has been eliminated, at least for fiscal year 1978;

Fourth. The public information program was stopped some years back and only now is being restarted on a very small scale;

Fifth. There is no truly operational radiological defense program;

Sixth. The fallout shelter system is in very poor condition. The facilities still exist and are maintained in the private sector, but Government stocks such as food, water, medical supplies, and instructional materials are in a disarray or have been abandoned. Further, no Federal or local plans have ever been adopted for the resupply of the lifesaving supplies in the shelter systems;

Seventh. The rural civil defense was ended years ago. The Agriculture Department currently has a fine collection of informational brochures, but people in rural communities do not know of them;

Eighth. The medical self-help program, our only first aid training program is long gone;

Ninth. Training courses at the Civil Defense Staff College have been severely reduced;

Tenth. The public information program and the emergency broadcast system are only now beginning to institute badly needed programs for revitalization.

At present the advantage that the United States might enjoy over the Soviets, in the event of an attack on our population centers, is the independent mobility of the American populus. Evacuation of population centers remains a major factor in the saving of lives in the event of attack. However, large scale evacuation works well only when there is an organized program and sufficient warning time. There is no guarantee that there will ever be adequate warning time for Americans to evacuate cities.

The other half of our survivability is the protection of our industrial capability. Unlike the Soviets, we have not engaged in any programs of this character. Hardening of critical industries has not occurred. Large and small scale dispersal of industry proves difficult to achieve. Because private manufacturing firms choose their locations for economic reasons, numerous plants and commercial facilities are crowded around limited land, fuel, or water resources. In a nation which values its freedom, but has not yet been inclined to protect its people from the effects of a nuclear exchange, it is unlikely that successful programs can be developed which will protect industry.

Public support is lacking, because Americans believe that no nation whose leaders were in their right mind would initiate a nuclear exchange.

The United States must, to a large degree, accept the fact that it will not be able to match the Soviet civil defense capability in the short run, no matter how much that capability underscores Soviet developments in other strategic fields. The United States must come to understand that civil defense, Soviet or American, must be added in to any strategic equation. When the United States determines its force structure requirements, it should take into account the Soviet civil defense system and its considerable contribution to their standing as a nuclear superpower.

I am encouraged by the recent movements within our administration to consolidate the American civil defense effort and restore to this important element of our national security the status it necessarily deserves. We should proceed reasonably and rationally with the strengthening of civil defense, remembering that while disaster relief will be incorporated as a major element, the original intent and primary objective of civil defense should be the protection of the American people from the horrors of a nuclear war.●

THE CONTINUING FAILURE OF THE STEEL TRIGGER PRICE MECHANISM

Mr. HEINZ. Mr. President, an editorial in this morning's Washington Post sheds some light on the continuing problems of the trigger price system the Treasury Department developed for steel imports

and reveals one development that the administration apparently had not anticipated.

After an initial 2-month reduction in imports in May and June when the TPM belatedly took hold, imports surged again in July and August. Those imports, combined with continuing good domestic production figures, appear to add up to more steel than is being consumed. This means inventories are building up. As the Post points out, eventually these inventories will be sold off, which will have a drastic effect on domestic production. The conclusion is clear: The trigger price system has been far less successful than anticipated and has inherent in it some serious dangers for the future.

The editorial goes on to correctly point out that the real answer is international agreement on outlawing the kind of subsidies that allow foreign nations to dump their steel in the United States. What the Post fails to note, of course, is the apparent lack of progress we have been making in that direction as well as the current proposal of the administration to throw away some of our best leverage in reaching such an agreement—by extending the President's authority to waive countervailing duties. I intend to oppose that effort and encourage the administration to redouble its efforts at Geneva to reach agreement on a strong subsidies code. At the same time, the President should also be moving more aggressively in the United States to enforce our trade laws, particularly the Antidumping Law of 1921, to keep subsidized steel and other products out of the country. The trigger price system is clearly producing unintended and potentially dangerous side effects. It is past time for the President to honor his commitment of last October to fully enforce our trade laws.

Mr. President, I ask that the Post editorial be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE STEEL TRIGGER

In an attempt to control steel imports, the Carter administration last spring imposed a system known as trigger pricing. As usual, the remedy turns out to have unexpected effects. Since steel remains the largest and most difficult of the import issues, it's worth keeping an eye on the way things seem to be working out.

The American steel companies' central complaint has been that foreign producers are subsidized by governments that, to avoid unemployment, are prepared to sell at heavy losses. When several American mills closed down a year ago, the Carter administration reluctantly decided that it had to do something about the scale of foreign imports. The trick was to protect the American companies from cut-throat pricing, without protecting them from the salutary pressure of legitimate competition from abroad. The solution, rather elegant in concept, was the trigger pricing system. The Treasury was to calculate the true production costs of steel made by the most efficient producers—that is, the Japanese—and publish the figures. Any foreign source offering steel below those prices would be deemed to be selling at a loss and would invite Treasury prosecution for dumping.

When the trigger prices went into effect last May, steel imports dropped. But then in midsummer they started rising again. That's the reason for the current rising volume of protest from the American industry. But the odd thing is that nobody seems to know where all of this steel is going. Despite the higher imports, the production and sales from American mills are holding up very nicely. Imports plus domestic production add up to much more steel than the country is using. Evidently a tremendous buildup of inventories is taking place. What's going on?

A hint: Since the beginning of the year, the value of the yen has been rising rapidly. Since the trigger prices are based on Japanese costs, they follow the yen upward. That means, first of all, that the trigger price schedules haven't been as much of a restraint on inflation in American steel prices as the administration had hoped. But there's more to it. The trigger prices are recalculated every three months. Each revision raises the value of steel in inventory. Buying and holding steel has become, it seems, a safe and easy way to speculate on the decline of the dollar.

Eventually, of course, the speculators will sell these inventories. If it happens suddenly, it will have a drastic effect on American production. The prospect makes the American companies deeply apprehensive. Trigger pricing is providing far less assurance of stability in the steel markets than its authors had hoped.

A better answer—although much more difficult to achieve—is international agreement on the types and sizes of subsidies that will not be allowed in world trade. That subject is prominent on the agenda of the trade talks that have been grinding along in Geneva since 1973 and that will presumably come to a conclusion next year. But the negotiations on steel are particularly difficult because the worldwide pattern of trade is rapidly changing. Most of the imports into the United States are from Japan and Western Europe. Because the Japanese are currently exercising restraint in steel shipments, the volumes from Europe are sharply up. But more important for the future, there has been an astonishing increase in imports from countries outside the traditional industrial world—from South Korea, for example, and from Latin America.

Trigger pricing is at best a temporary expedient. For steel, there's no real alternative to the process of negotiation that is centered on Geneva. The issue is not merely a transient surge of imports into one nation's markets. The world now has the capacity to produce much more steel than it needs, and governments are entering into an increasingly anxious competition to dispose of the surpluses.

SAFETY IS THE ISSUE

Mr. CANNON. Mr. President, soon the Senate will be asked to consider a vital piece of legislation, S. 3279, the Aircraft and Airport Noise Reduction Act of 1978. The aircraft part is important, but the airport portion is critical. The heart of the bill is contained in titles I and II.

Title I creates an incentive and a means of achieving meaningful noise abatement at our Nation's airports. It consists of three parts. The first portion will require the Secretary of Transportation to establish a single system of measuring aircraft noise and a single system for determining the impact of aircraft noise upon individuals. Currently, there is a plethora of noise measuring systems, some which measure frequency and intensity but not duration. Some measure only objective criteria while others give weight to subjective factors. Some weigh nighttime activity while others do not. Because many of these systems cannot be interchanged, attempts to identify the extent of the noise problem at our airports and come up with a national program of noise abatement have been frustrated.

The second part of the title I program will allow airport operators to submit for approval of the Secretary, a noise impact map which will set forth the noncompatible land uses surrounding the airport and how projected aircraft operations will affect those uses. The map will help the airport operator to achieve compatible land use planning and to thereby reduce the impact of noise on those who live near the airport.

The final portion of the title I program will provide grants from the aviation trust fund for the purchase of land and interests in land to effectuate the noise planning of the airport operator. It will also allow the operator to implement preferential runway systems, to implement restrictions on the use of the airport by any type of aircraft based on its noise characteristics, to provide for the construction of acoustical shielding and the soundproofing of public buildings, and to develop flight procedures to control the operation of aircraft to reduce the impact of noise in the area surrounding the airport. This part of the title I program is achieved through direct authorization of $35 million from the aviation trust fund and through the establishment of a $300 million real property revolving loan fund. This revolving fund will help provide maximum use of limited funds for meaningful noise abatement.

But the most significant part of this legislation is in title II which will increase the authorization for spending by general aviation and air carrier airports from the Airport and Airway Development Act fund.

The Department of Transportation has identified over $600 million in high priority requests for ADAP funds which cannot be met by the present restraints on authorization levels which exist in the current law. The name of these high priority items is safety. Through these modest but significant increases in ADAP funding, essential safety items can be installed and maintained at both large commercial airport hubs and at the smaller, yet heavily trafficked general aviation airports.

The tragic crash which occurred in San Diego involving the PSA 727 and a general aviation aircraft might not have been prevented if more moneys had been available to spend from the trust fund, but it is almost certain that with these increased funds, the risk of similar tragedies occurring would be reduced. More funds would mean that more general aviation runways at air carrier airports could be constructed to keep a separation of the commercial from the general aviation traffic. When the trust fund contains a surplus of nearly $3 billion it is beyond my comprehension why a backlog of priority safety requests should be tolerated by the American people and by us as their congressional representatives.

Titles III and IV of the bill will provide a reduction in ticket and freight

taxes and a corresponding noise abatement charge to be used by aircraft operators in making their fleets compliant with the FAA fleet quieting regulations.

The Finance Committee has reported an amendment to this bill which would strike the mandatory surcharge provided for the airlines. In other words, this amendment strikes out the controversial feature of this bill by eliminating the airline moneys.

While I support the Commerce Committee version of title III, I will accept the Finance Committee amendment because I believe the essential needs addressed in titles I and II are too important to wait another year.

I urge my colleagues to support this bill not only for the sake of a quieter airport environment but for a safer one as well.

TOWER AMENDMENT TO THE EXPORT-IMPORT BANK BILL

Mr. PERCY. Mr. President, I strongly support further expansion of the U.S. agricultural export effort, as represented by my cosponsorship of the Tower amendment to S. 3077, the Export-Import Bank bill. I am concerned that tariff and nontariff barriers to the foreign importation of agricultural products are severely and unfairly limiting our access to foreign markets. The United States is presently engaged in a long and complex negotiation to reduce such barriers, not only for agricultural products but for a wide range of other American exports. Those negotiations, conducted within the framework of the General Agreement on Tariffs and Trade, are of vital importance to the future of the international trading network and to the further expansion of American exports. Taken as a whole, the United States stands to gain enormously, both in export earnings and in increased employment, from the general effort to reduce the barriers of national protectionism, so long as that effort is conducted fairly and equally among the major trading nations of the world.

Mr. President, recently the Senate voted to exempt textiles from the coverage of the international trade negotiations, an action which could seriously undermine our efforts to reduce the barriers to international trade worldwide. The measure was passed by voice vote after the defeat by a very wide margin of a motion to table the amendment offered by my distinguished colleague from Connecticut (Mr. RIBICOFF).

Mr. President, despite my vote against the tabling amendment, which was inadvertently cast because of my opposition to the amendment as a whole, I want to go on record as strongly opposing the amendment of the distinguished Senator from South Carolina. Unless that provision is dropped from the final version of the Eximbank bill, it would be a serious and possibly fatal blow to our larger interests in the successful conclusion of the trade negotiations. Mr. President, such action, growing out of our justifiable concern for our own textile industry, is self defeating at this stage. I urge the Congress to reconsider this action.

COLUMBUS DAY—OCTOBER 12

Mr. DOLE. Mr. President, this Columbus Day we honor the man who discovered America, the great Italian seaman and navigator, Christopher Columbus.

Columbus is rightly honored. No single venture has had as vast a consequence on the history of the world as that of Columbus. His adventure drew this land into the mainstream of world history and gave a tremendous impetus to the rise of capitalism, by opening new trade opportunities and increasing resources. In time, the discovery of America led to a vast westward movement of European populations and to the founding of new communities whose social and political experiments are rich in significance for the history of mankind.

The success and growth of our country is attributable to the qualities we, as a people, share with Christopher Columbus. Mr. President, Columbus personifies what I feel to be our greatest strength. We are a nation of individuals. Columbus symbolizes that individuality. His discovery was not the result of accepting conventional wisdom. Rather, his great accomplishment was brought about by rejecting unfounded fears and daring to search for a new and greater wisdom. Columbus' unswerving dedication, his firm commitment to a dream and the willingness to risk his life and personal means for this dream brought Columbus to the shores of this great land and earned him a unique spot in the annals of history.

The same characteristics that shaped Columbus' mettle abound in our great land. This country, from the start, was an experiment, a rejection of conventional government and an argument for freedom. The tremendous success of that experiment cannot be denied.

With his first step onto the sands of San Salvadore, Christopher Columbus became the first Italian American. Since that time, many thousands of Italians have followed Columbus to America. It is readily apparent that much of the success of our country can be credited to other Italian Americans, who have shown the same qualities of vision, perseverance, and faith demonstrated in 1492 by Christopher Columbus.

In every field of human endeavor from art and education, to politics, industry, or sports, Italian Americans have contributed in great measure to our national character and heritage. Names like LaGuardia, Toscanini, Sirica, Caruso, Fermi, Andretti, DiMaggio—names that are as familiar to most Americans as their own—carry with them the theme of excellence and achievement. All of these have enjoyed the same traits embodied by Christopher Columbus—hard work, perseverance, vision, dedication, and courage. As Americans, we have all benefited from the achievements of these men, and we all share in their much deserved triumphs.

All Americans, regardless of ethnic background, should take time today to ponder the accomplishments of not only Columbus, but all Italian Americans. May we be as steadfast in overcoming obstacles in the pursuit of our dreams and goals as was the founder of the New World. Let us be proud today and throughout the year of the accomplishments not only of Columbus, but of all Italian Americans who have played so large a part in the unprecedented development of our great Nation.

UKRAINIAN HUMAN RIGHTS DAY

Mr. DOLE. Mr. President, Thursday I enjoyed the privilege of hosting a reception with the Ukrainian community of the United States. This reception, cohosted by my distinguished colleague from New York, Mr. MOYNIHAN, and sponsored in cooperation with the Ukrainian National Association and the Ukrainian Congress Committee, was to honor those Ukrainians in the Soviet Union making great sacrifices in demanding Soviet observance of human rights and adherence to the great principles of the Helsinki accords. The dedication and anguish of these Ukrainians in the Soviet Union, and of their countrymen here in the United States deserves only the greatest admiration and support. This gathering on Thursday commemorating Ukrainian Human Rights Day, gave us a chance to express this admiration and to pledge our continued support.

UKRAINE: A GLOBAL POWER IN CHAINS

If one pauses for a moment to consider, the position of Ukraine takes on appalling proportions. Ukraine is the second largest nation in Europe, only behind Russia. Its population ranks sixth among European nations. Ukraine has its own government, in theory an independent member Republic of the Union of Soviet Socialist Republics. Ukraine has its own foreign ministry, and its own representative at the United Nations. All the form and structure of a strong, independent nation exists. Yet all domestic and foreign policy is dictated from Moscow. These forms and principles of democracy and freedom are but a facade for tyranny. Ukraine has been called the largest un-nation in the world. A potential global power bound in Soviet chains.

ASSAULT ON AN ANCIENT CULTURE

Ukraine, a nation a thousand years old, has been pressured and persecuted as a culture and a people for hundreds of years. Suppression of Ukrainian national consciousness, begun under the czars of Russia, reached its peak under Soviet domination. Under Stalin, an entire generation of Ukrainian intellectuals and creative talent were destroyed. Russification reached its zenith under Stalin's iron fist. While conditions improved under Khrushchev, Ukrainian literature and thought remained locked up in the chains of Russification, and Ukrainian figures such as Vyacheslav Chornovil and Valentyn Moroz were cast into the "Beria preserve," the archipelago of camps and prisons that Alexandr Solzhenitsyn has exposed to the world. This policy of Russification, now institutionalized after many years of practice, still threatens to overwhelm the Ukrainian people. Slowly but surely, the Soviet state is smothering Ukrainian culture.

NATIONAL SELF-DETERMINATION

National self-determination has been the cause and inspiration for many who

have joined the ranks of Ukrainian dissent. While sharing the same thirst for freedom of expression, movement, and a voice in the determination of their future with Russian dissidents, this issue holds a special significance for the Ukrainians. For them, it is a goal of preserving their thousand-year-old heritage and culture. National self-determination is a goal for all of the suppressed nationalities of the Soviet Union, the peoples of the Baltic Republics, of the Caucasian Republics, of the peoples of Soviet Middle Asia and Siberia. The Ukrainians are outstanding advocates of this principle, and an inspiration to all. And for this, sentences against Ukrainian dissidents have been especially severe.

THE HELSINKI MONITORS

In August of 1975, the Helsinki Final Act, with its three baskets of principles, was signed by the attendants of the Conference of Security and Cooperation in Europe, including the Soviet Union, the humanitarian principles of basket three became a rallying symbol for all of those in the Soviet Union and East Europe struggling for their basic human rights. Monitor groups were formed in various parts and among various groups in the Soviet Union. Among these, the Ukrainians have been the largest and most active group, and, they have contributed the largest number of martyrs into the clutches of Soviet justice. Rudenko, Tykhy Marynovych, Matusevych, Vins, Stus, Lukyanenko—each of these names has become a symbol of this struggle for human rights, figures larger than life, men of enormous courage and outstanding principle. Last night, we had the great honor of meeting another of these figures, delivered to the United States, cast out of the fray by the Soviet authorities. This is Gen. Petro Grigorenko. His testimony has brought the cruelty of Soviet injustice and prisons to harsh, sobering reality here in the United States. Individuals such as General Grigorenko deserve the praise and high respect of everyone.

UKRAINIAN HELSINKI PARTICIPATION

We can only applaud the actions of citizens who have offered to help their government implement its own international agreements. Thus far, Ukraine has been relatively isolated from international life despite the great achievements of her citizens in athletic, cultural, and economic life. By actively working to implement the provisions of the Helsinki agreement within her own borders, Ukraine could also begin to enter the international political arena. Greater Ukrainian participation in proceedings such as the Helsinki agreement would certainly be a major contribution to world peace and international harmony. The actions of these people should be rewarded, not harshly punished.

WESTERN SUPPORT OF THEIR CAUSE

The diplomatic efforts of the United States and the rest of the western world should be directed toward the release of all imprisoned Helsinki monitors by the time of the Helsinki followup conference in Madrid in 1980. Basket III provides a sound basis for this requirement. In addition, the governments of all those Soviet Republics where Helsinki monitoring groups were formed should be invited to attend the next followup conference so that they can be included in discussions of how the provisions of the Helsinki agreement can best be implemented in their countries. Such an invitation would be in keeping with the letter and the spirit of the Helsinki agreements of 1975, while at the same time making a genuine gesture to implement the Basket I, principle 8 provisions calling for national self-determination. Since Ukraine and Byelorussia are already members of the United Nations, such an invitation could not be construed as encouraging separatism.

While it would be unrealistic to expect Soviet acceptance of these proposals, these can be goals toward which the United States can work, which may lead to much private discussion in the Soviet Union that will have beneficial long-term influences on the humanization and decentralization process which the Helsinki agreement calls for.

UKRAINE A LEADING FORCE

The Ukraine is a leading force in this struggle for the implementation of the principles of the Helsinki agreement. Their dedication to law and principle is exemplary. It must be remembered by all of us, that while they are struggling for adherence to principles of human rights that are now internationally accepted, they are also struggling for the survival of their culture and national heritage. The work of the Ukrainian National Association and the Ukrainian Congress Committee must be applauded and supported by all of us. I give my own pledge to these people, and my hope that this pledge is joined by all Americans.

NAVY ATTORNEY OPENS LAW OFFICE

Mr. PROXMIRE. Mr. President, the Senate approved a massive bailout for two large Navy shipbuilders 1 week ago. The shipbuilders had filed about $1.6 billion in claims against the Navy.

The Navy paid nearly $1 billion for the claims of which $541 million was a bailout under Public Law 85–804 over and above the value of the claims placed by the Navy's own claims examiners. Yesterday, the Navy announced a third shipbuilding claims settlement—this one with Tenneco. The Tenneco settlement appears to involve a somewhat smaller bailout than the other settlements.

But those who think the Navy has solved its contractor claims problems had better think again. The bailouts will encourage new claims and contractors now have a precedent for inflating their claims and demanding settlements without regard to their merits.

A sign of the times is a help wanted ad that appeared in yesterday's Wall Street Journal. This ad was put in the Journal by one Frederick Crowley who announces his resignation as a senior attorney in the Navy's Office of General Counsel and says that he is reentering the private practice and seeks clients with claims against the Government.

Mr. Crowley says in his help wanted ad that he has worked on Litton's shipbuilding claims as a Navy lawyer during the past 4 years. He says that his job was to analyze and prepare for trial or settlement Litton's claims based on the LHA and DD–963 contracts.

The former Navy lawyer says in his help wanted ad that the Litton claims "were the largest claims ever filed against the United States under a Government contract, exceeding $1 billion.

Mr. Crowley informs the reader in his ad that—

He was engaged in every aspect of them including the Congressional action under Public Law 85–804, whereby they were successfully concluded.

It will be recalled that Public Law 85–804 is the law invoked by the Navy to provide the bailout financial relief for Litton.

The ad continues:

Mr. Crowley has reopened his law office in Wash., D.C., where he previously practiced for more than 25 years and he has opened offices on the Gulf Coast to service Clients in that area.

Of course, Litton and other shipyards that do other work for the Navy are located on the gulf coast.

Mr. Crowley's ad concludes:

He seeks association with law firms and representation of contractors and others w/claims against any agencies of the U.S. Government.

This is the most blatant example of the revolving door used by the legal profession that I have seen. A lawyer leaves private practice to work in the Navy's Office of General Counsel. He serves 4 years during which he is responsible for a major shipbuilding claim against the Navy.

The resolution of the claim is not a settlement on the claim's merits, but a large bailout at the taxpayer's expense.

Within days after the bailout is approved by Congress, the lawyer leaves the Navy and brags in a classified ad about his involvement with the claim and solicits business for his new private practice from contractors with claims against the Government.

I leave it to the legal profession to determine whether such conduct is ethical. Commonsense tells me this is wrong and it may help to explain why the Navy got such bad legal advice during the shipbuilding claims disputes and why contractors are filing so many claims against the Government.

This classified ad also suggests that claims against the Government have become a bonanza for the claims attorneys as well as the contractors.

I ask unanimous consent that the classified ad from the Wall Street Journal, October 4, 1978, appearing in the "Positions Wanted" section of the newspaper, be printed in the RECORD.

There being no objection, the classified ad was ordered to be printed in the RECORD, as follows:

FREDERICK CROWLEY ANNOUNCES HIS RESIGNATION AS SENIOR TRIAL ATTORNEY, OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF THE NAVY

He has been engaged for the last 4 yrs., on behalf of the Navy, upon the analysis & preparation for trial and/or settlement of the claims of the Ingalls Shipbuilding Div. of Litton Systems, Inc. arising under the contracts for 5 LHA, Helicopter Assault Ships & 30 DD–963 Destroyers. These were the largest claims ever filed against the U.S. under a Gov't contract, exceeding $1 billion. He per-

formed in-depth factual & legal analysis of these claims which were divided into about 250 separate claims encompassing nearly every ship system plus program delay & disruption. He was engaged in every aspect of them including the Congressional action under Public Law 85–804, whereby they were successfully concluded.

Mr. Crowley has reopened his law offices in Wash., DC, where he previously practiced for more than 25 yrs. & he has opened offices on the Gulf Coast to service Clients in that area.

He seeks association with law firms & representation of contractors & others w/claims against any agencies of the U.S. Government.

Suite 201, 810 18th St., Wash., D.C. 20006 (202) 638–5497.

CAMBODIA AND THE NOOSE OF GENOCIDE

Mr. PROXMIRE. Mr. President, as the Senate begins another business day, the Government of Cambodia is just concluding its day's work.

On an average day in Cambodia includes the murder of 1,577 men, women, and children. Since April 17, 1975, when the Khmer Rouge took control we have witnessed one of the world's worst cases of genocide. According to Time magazine, 2 million Cambodian peasants have been murdered.

To fully realize the extreme horror and magnitude of the death of 2 million people, let me bring these figures home to you. The destruction of 2 million Cambodians is the numerical equivalent of murdering every man, woman, and child in the entire State of Colorado. Every human being in Boston, Mass. Every person in Washington, D.C.—and that includes you and me.

Mr. President, we must take a stand against these atrocities. We must turn to the one document that clearly defines genocide. The Genocide Convention was passed by the United Nations in 1948 to define genocide, and to focus worldwide attention on those nations that commit genocide.

Mr. President, if we can establish international sanctions against the killing of seals, certainly we are capable of ratifying a treaty which condemns the wholesale killing of people.

Currently, 82 nations have ratified the treaty and 82 nations now wait for the United States to fulfill its moral obligation.

Mr. President, the world calls us to act. Our conscience forces us to act. And the silent voices of 2 million dead Cambodians plead with us to act.

As we leave the Senate tonight, the Khmer Rouge will be awakening for another bloody day's business. The noose of genocide will tighten with a jerk around the necks of another 1,577 Cambodian peasants.

WAIVER OF SECTION 402(a) OF CONGRESSIONAL BUDGET ACT—CONSIDERATION OF S. 3309

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 1208.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 572) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3309.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to, as follows:

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 3309. Such waiver is necessary to allow the authorization of $36,000,000 in funds to assist in the resettlement of Indochinese refugees.

Compliance with section 402(a) of the Congressional Budget Act of 1974 was not possible by the May 15, 1978, deadline because the continuing and unexpectedly large influx of Indochinese refugees precluded computation of exact costs and depleted funds already authorized for smaller numbers of refugees. Thus, the administration did not send S. 3309 to the Congress until July 17, 1978. Further, in light of the swollen numbers arriving in 1978 and likely to continue into the future, a new formula was necessary to enable States to effectively organize their programs. This formula was not agreed to by the administration until late August 1978.

The effect of defeating consideration of this authorization will be to severely curtail support services from the States to Indochinese refugees and exacerbate domestic welfare services. Refugees are likely to remain on welfare rolls given their inability to obtain language and skill training as provided by the various State programs.

The desired authorization will not delay the appropriation process and could be accommodated in a supplemental appropriation.

This authorization is sufficiently small that it will not significantly affect the congressional budget.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATE RESOLUTION 567 INDEFINITELY POSTPONED

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar No. 1207, Senate Resolution 567, a resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of H.R. 10587 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

PUEBLO OF ZIA TRUST LANDS

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2358.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2358) entitled "An Act to declare that the United States holds in trust for the Pueblo of Zia certain public domain lands", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That all right, title, and interest of the United States in the following lands situated within Sandoval County in the State of New Mexico are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Zia:

NEW MEXICO PRINCIPAL MERIDIAN

Township 14 North, Range 1 East

Section 3:
Lots 2, 3, 4,
Southwest quarter northeast quarter,
West half southeast quarter,
Southwest quarter,
Southeast quarter southeast quarter,
South half northwest quarter,

Township 15 North, Range 1 East

Section 10: Lot 4,
Section 11: South half south half,
Section 13:
Southeast quarter,
West half,
Section 14: All,
Section 15:
Lots 1, 2, 3, 4,
Southwest quarter,
West half southeast quarter,
Section 22: All,
Section 23:
West half northeast quarter,
Northeast quarter northeast quarter,
Southeast quarter,
West half,
Section 24: North half north half,
Section 26: North half northwest quarter,
Section 27: All,
Section 34:
Sothwest quarter,
Northwest quarter,
Northeast quarter,
Containing 4,848.13 acres, more or less.

SEC. 2. The Secretary of the Interior shall publish in the Federal Register the boundaries and descriptions of the lands declared to be held in trust by this Act.

SEC. 3. All of the right, title, and interest of the United States in all minerals, including gas and oil, underlying the lands hereby declared to be held in trust for the Pueblo of Zia, are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Zia.

SEC. 4. (a) Nothing in this Act shall deprive any person of any valid existing right of use, possession, contract right, interest, or title which that person may have in any of the trust lands within the purview of this Act, or of any existing right of access to public domain lands over and across such trust lands, as determined by the Secretary of the Interior. All existing mineral leases involving lands declared to be held in trust by this Act, including oil and gas leases, which may have been issued or approved pursuant to Federal law, prior to enactment of this Act, shall remain in force and effect in accordance with the provisions thereof. Notwithstanding any other provision of law, all applications for mineral leases involving such lands, including oil and gas leases, pending on the date of of enactment of this Act shall be rejected and the advance rental payments returned to the applicants.

(b) Subject to the provisions of subsection (a) of this section, the property declared to be held in trust by this Act for the benefit and use of the Pueblo of Zia shall hereafter be administered in accordance with the laws and regulations applicable to other property held in trust by the United States for the Indian tribe of such pueblo.

SEC. 5. All gross receipts (including, but not limited to, bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit, or lease which relates to the property declared to be in trust by this Act received subsequent to the enactment of this Act shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. All property declared to be held in trust for the benefit and use of the Pueblo of Zia pursuant to this Act, and all the receipts

therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

SEC. 7. (a) The Secretary may execute any title documents necessary to effect conveyances authorized by this Act.

(b) Title to all lands acquired under the provisions of the Act shall be taken in the name of the United States in trust for the Pueblo of Zia.

SEC. 8. The transfer and conveyance of title shall be subject to the following roadway right-of-way to be for the use and benefit of adjacent private landowners, the Bureau of Land Management, its permittees, lessees, successors, and assigns:

(1) Access road through Zia Allotment: A road right-of-way 50 feet wide over that portion in southeast quarter section 13, north half of section 24, southeast quarter section 23, north half section 26, and north half section 27, all in township 15 north, range 1 east, New Mexico principal meridian.

Beginning at intersection of State Road 44 thence southwesterly 1,600 feet to a point of curve, thence westerly 2,100 feet to a point of curve, thence southerly 1,100 feet to a point of curve, thence southwesterly 2,400 feet to a point of curve, thence southerly 2,640 feet to a point of curve, thence southerly 8,500 feet to a point of curve near the west section line of section 27, road being 3.5 miles long (approx.). Distances to a curve are scaled distances (approx.) from U.S.G.S. Quadrangle Sheet, Sky Village N.E. Quadrangle, and San Ysidro Quadrangle.

The description was complied from U.S.G.S. Quadrangle maps dated November 1960, and this is only a paper survey.

(2) Gypsum Mine Access Road: A road right-of-way 50 feet wide, over that portion in southeast quarter of section 13, northeast quarter section 24, west half section 13, and northeast quarter section 14, all in township 15 north, range 1 east, New Mexico principal meridian.

Beginning at the interesection of Gypusm mine access road and access road through lands known as Zia Allotment being 500 feet southwesterly from State Road 44, thence northwesterly 6,500 feet near the east line of section 14. Distances to the termination of road are scaled distances (approx.) from U.S.G.S. Quadrangle Sheet, San Ysidro Quadrangle.

This description was compiled from U.S.G.S. Quadrangle map dated November 1960, and this is only a paper survey.

SEC. 9. (a) Notwithstanding any other provision of this Act, during the 3 years following enactment of this Act, the Secretary may, after giving the tribe 30 days written notice and after consulting with the tribe, enter on the lands described in the first section of this Act to identify, investigate, examine, and remove any paleontological resources from such lands: *Provided*, That no explorations, surveys, or excavations shall be authorized within a 200-yard radius of the following shrines or religious sites:

(1) Tiam (Eagle Peak, Eagle Rock, Eagle Point);

(2) Hu-nah-'kah-'kah-Warish (Cherry Spring);

(3) Pah-Pah (Grandma);

(4) Ku-Mah-Yah-Wish (Mudhead);

(5) Punaya;

(6) Grash-Yeh-Tey-Sham (White Points).

Such resources so removed are the property of the United States and shall be administered under laws applicable to federally owned resources. Paleontological resources on such lands that are not removed from the lands pursuant to this section shall be managed in a manner that will permit the greatest possible public benefit, use, and study of the resources, consistent with tribal law and practices.

(b) Any lands excavated pursuant to this section shall be reclaimed and restored to their original condition by the Secretary, as nearly as he determines may be practicable.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate concur in the House amendments en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

PUEBLO OF SANTA ANA TRUST LANDS

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2588.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2588) entitled "An Act to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That all right, title, and interest of the United States in the following lands situated within Sandoval County in the State of New Mexico are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Santa Ana:

NEW MEXICO PRINCIPAL MERIDIAN

Township 13 North, Range 3 East
Section 1:
Lots 1, 8, 9, 10,
South half north half,
South half,
Section 3:
Lots 9, 10, 11, 12,
South half north half,
South half,
Section 4:
Lots 9, 10, 11, 12,
South half north half,
South half,
Section 5: All of that portion lying east of the west boundary of the right-of-way of New Mexico Highway 44,
Section 9:
East half west half,
East half,
Section 10: All,
Section 11: All,
Section 12: All,
Section 13: All,
Section 14: All,

Section 15: North half northwest quarter, southeast quarter northwest quarter, northeast quarter southwest quarter northwest quarter, north half northwest quarter southwest quarter northwest quarter, southeast quarter northwest quarter southwest quarter northwest quarter, north half northwest quarter southeast quarter southwest quarter northwest quarter, northeast quarter southeast quarter southwest quarter northwest quarter, northeast quarter, north half northeast quarter northwest quarter northeast quarter southwest quarter, north half northeast quarter northeast quarter southwest quarter, north half southwest quarter northeast quarter northeast quarter southwest quarter, southeast quarter northeast quarter northeast quarter southwest quarter, northeast quarter southeast quarter, north half northwest quarter southeast quarter, southeast quarter northwest quarter southeast quarter northwest quarter, northeast quarter southeast quarter northwest quarter southeast quarter southwest quarter northwest quarter southeast quarter southwest quarter northwest quarter southeast quarter southwest

east quarter, southeast quarter southeast quarter northwest quarter northeast quarter,

Township 13 North, Range 4 East

Section 3:
Lots 4, 5, 6,
West half northeast quarter,
Northwest quarter,
Section 4: All; including bed of Jemez River,
Section 5:
Lots 1, 2, 3, 4, 5
Northwest quarter northwest quarter,
South half northwest quarter,
South half,
and bed of Jemez River,
Section 6:
Lots 1, 2, 3, 4,
East half west half,
East half,
and bed of Jemez River,
Section 7: All,
Section 8:
Lots 3, 4, 5,
North half,
Southwest quarter,
Northwest quarter southeast quarter,
Section 9:
Lots 5, 6, 7, 8 and bed of Jemez River lying north of the
North boundary of the Angostura Grant,
Section 17:
Lots 10, 11, 12, 13,
Northwest quarter,
Section 18:
Lots 2, 3,
East half northwest quarter,
Northeast quarter,

Township 14 North, Range 3 East

Section 6: Bed of the Jemez River,

Township 14, North, Range 4 East

Section 17: All,
Section 18: East half east half,
Section 19: East half east half,
Section 20: All,
Section 21: West half,
Section 27: Southwest quarter southwest quarter,
Section 28:
Northwest quarter,
South half,
Section 29: All,
Section 30: East half east half,
Section 31:
East half northeast quarter,
Southwest quarter northeast quarter,
Northwest quarter northwest quarter,
South half northwest quarter,
South half,
and bed of Jemez River,
Section 33: All,
Section 34:
South half northeast quarter,
Northwest quarter,
South half,
Section 35:
Lot 9,
West half southwest quarter,

containing 16,249 acres more or less.

(b)(1) The lands described in paragraph (2) of this subsection consisting of approximately 2240.14 acres shall continue to be subject to Public Land Order 873, entitled "An Order Withdrawing Public Lands for Use of the Department of the Army in Connection with the Jemez Canyon Dam and Reservoir Project", issued by the Secretary of the Interior on November 14, 1952, until such lands, or any portion thereof, are determined by the Secretary of the Army to be no longer needed for the purpose for which the lands were reserved under such order. The Secretary of the Army shall publish notice of any such determination in the Federal Register.

(2) The lands described in subsection (a) of this section which are subject to Public Land Order 873 are the following lands:

NEW MEXICO PRINCIPAL MERIDIAN

Township 13 North, Range 3 East

Section 1:
Lots 1, 8, 9, 10,
South half northeast quarter,
Southeast quarter northwest quarter,
Northeast quarter southwest quarter,
Section 5:
Lots 1, 2, 3, 4,
Northwest quarter northwest quarter,
South half northwest quarter,
Southwest quarter,
Lot 5, that part lying north of the east-west quarter section line,
Section 6:
Lots 1, 2, 3,
Northeast quarter,
East half northwest quarter,
Northeast quarter southwest quarter,
North half southeast quarter,
Southeast quarter southeast quarter,
Section 8:
Lots 3, 4, 5,
West half northeast quarter,
Northwest quarter,
North half southwest quarter,
Northwest quarter southeast quarter,
Section 17:
Lots 10 and 11,
Lots 12, that part lying east of the north-south quarter section line,

Township 14 North, Range 4 East

Section 31:
Southwest quarter northeast quarter,
Northwest quarter northwest quarter,
South half northwest quarter,
South half.

SEC. 2. The Secretary of the Interior shall publish in the Federal Register the boundaries and descriptions of the lands declared to be held in trust by this Act.

SEC. 3. All of the right, title, and interest of the United States in all minerals, including gas and oil, underlying the lands hereby declared to be held in trust for the Pueblo of Santa Ana, are hereby declared to be held by the United States in trust for the benefit and use of the Pueblo of Santa Ana.

SEC. 4. (a) Nothing in this Act shall deprive any person of any valid existing right of use, possession, contract right, interest, or title which that person may have in any of the trust lands within the purview of this Act, or of any existing right of access to public domain lands over and across such trust lands, as determined by the Secretary of the Interior. All existing mineral leases involving lands declared to be held in trust by this Act, including oil and gas leases, which may have been issued or approved pursuant to Federal law, prior to enactment of this Act, shall remain in force and effect in accordance with the provisions thereof. Notwithstanding any other provisions of law, all applications for mineral leases involving such lands, including oil and gas leases, pending on the date of enactment of this Act shall be rejected and the advance rental payments returned to the applicants.

(b) Those persons holding grazing permits from the United States Bureau of Land Management in the grazing unit known as the Bernalillo Community Allotment (Number 551), Sandoval County, New Mexico, as of the date of enactment of this Act are hereby granted the right to continue those grazing rights, subject to all otherwise applicable terms, conditions, rules, and regulations of the Bureau of Land Management governing such grazing rights, for a period of not to exceed ten years. Such grazing rights shall be administered by the Bureau of Land Management in accordance with applicable rules and regulations governing such rights on the Federal public domain, and may be canceled by the Bureau of Land Management in accordance with its regulations for failure to meet the terms and conditions of the existing permits, or failure to abide by applicable rules and regulations. Grazing fees shall be payable by the permittees to the Bureau of Land Management at prevailing rates, which fees shall be remitted by said Bureau to the Pueblo of Santa Ana within 30 days of receipt. Such grazing rights shall be nontransferable, except that they may be relinquished at any time to the Pueblo of Santa Ana. In the event of cancellation or relinquishment of said grazing rights as provided above, such rights shall not be renewed, nor shall any new permits be issued: *Provided, however,* That no grazing fees shall be payable by the said existing permittees for the first five years following enactment of this Act.

(c) Subject to subsections (a) and (b) of this section, any property held in trust under this Act for the Pueblo of Santa Ana shall be administered in accordance with the laws and regulations applicable to other property held in trust by the United States for the Indian tribe of such pueblo.

SEC. 5. (a) Any and all gross receipts derived from, or which relate to, the property declared to be held in trust by this Act which were received by the United States subsequent to the acquisition by the United States of such property and prior to the date of the enactment of this Act (including State school lands referred to in section 7), from whatever source and for whatever purpose, shall, as of the date of enactment of this Act, be deposited to the credit of the Pueblo of Santa Ana and may be expended by such tribe for such beneficial programs as the tribal governing body may determine.

(b) All gross receipts (including, but not limited to, bonuses, rents, and royalties) hereafter derived by the United States from any contract, permit, or lease referred to in section 4(a) of this Act, shall be administered in accordance with the laws and regulations applicable to receipts from property held in trust by the United States for Indian tribes.

SEC. 6. All property declared to be held in trust for the benefit and use of the Pueblo of Santa Ana pursuant to this Act, and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

SEC. 7. (a) For the purpose of improving the land tenure pattern and consolidating Santa Ana Pueblo lands, the Secretary of the Interior is authorized and directed to acquire, by purchase or exchange, under such regulations as he may prescribe, all State school lands in township 13 north, range 3 east, sections 2 and 16; township 14 north, range 3 east, section 36; and township 14 north, range 4 east, section 32, State of New Mexico, containing 2004.05 acres, more or less; and interests therein, including improvements, mineral rights, and water rights. In exercising his authority to acquire such lands by exchange, the Secretary is authorized to utilize unappropriated public lands in the State of New Mexico. The properties so exchanged shall be of approximately equal value, and the Secretary may accept cash from or pay cash to the State of New Mexico in such an exchange in order to equalize the values of the properties exchanged.

(b) The Secretary may execute any title documents necessary to effect the exchanges authorized by this section.

(c) Title to all lands acquired under the provisions of this section shall be taken in the name of the United States in trust for Santa Ana Pueblo.

SEC. 8. (a) Notwithstanding any other provision of this Act, during the 3 years following enactment of this Act, the Secretary may, after giving the tribe 30 days written notice and after consulting with the tribe, enter on the lands described in the first section of this Act to identify, investigate,

examine, and remove any paleontological resources from such lands: *Provided*, That no explorations, surveys, or excavations shall be authorized within a 200-yard radius of the following shrines or religious sites:

(1) Santiyaku 'Ke Kura (Santiago's Corral);

(2) Santiyaku Ka' me (Santiago's Home);

(3) Santiyaku 'Kaisru (Santiago's Field);

(4) 'Tsitsi Sruwii (Water Snake Head);

(5) Tuyuuna (Snake Head Shrine-Canjilon Hill);

(6) Shayeka Kauwatsesruma (Hunter Shrine);

(7) 'Kuyau 'Kapesru (Old Lady Sits Shrine);

(8) Huchaniitse (White House Shrine);

(9) Dyadyu Tsinautani (Bobcat Point);

(10) 'Kasreri 'Kumiyeisruma (Clown Point);

(11) Chapiyu 'Ka 'kuyanisru (Chapiyu's Trail);

(12) Shawiti 'tsuyu (Parrot Point);

(13) Hane 'Kai (Sacred Clown Society Shrine);

(14) Yusrkuma (Corn Cob Shrine);

Such resources so removed are the property of the United States and shall be administered under laws applicable to federally owned resources. Paleontological resources on such lands that are not removed from the lands pursuant to this section shall be managed in a manner that will permit the greatest possible public benefits, use, and study of the resources, consist with tribal law and practices.

(b) Any lands excavated pursuant to this section shall be reclaimed and restored to their original conditions by the Secretary, as nearly as he determines may be practicable.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate concur in the House amendments en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

OSAGE TRIBE IN OKLAHOMA

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1081.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1081) entitled "An Act to amend the laws relating to the Osage Tribe in Oklahoma", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That section 9 of the Act of June 28, 1906 (34 Stat. 539, 545), as amended, is further amended to read as follows: "There shall be a quadrennial election of the officers of the Osage Tribe as follows: A principal chief, an assistant principal chief, and eight members of the Osage Tribal Council shall be elected to succeed the officers elected in the year 1974 at a general election to be held in town of Pawhuska, Oklahoma, on the first Monday in June 1978, and on the first Monday in June of each fourth year thereafter, in a manner to be prescribed by the Secretary of the Interior, and said officers shall be elected for a period of four years commencing on the first day of July following the election. In case of vacancy in the office of principal chief or other officer by death, resignation, or otherwise, the vacancy shall be filled in a manner to be prescribed by the Osage Tribal Council. In the event of a common disaster and a quorum of five of the Osage Tribal Council does not survive, the Secretary shall appoint a principal chief and/or the number of councilmen necessary to complete a total of eight, to serve until the next quadrennial election. The Secretary is hereby authorized to remove from the council any member or members for good cause, to be by him determined, after the party involved has had due notice and opportunity to appear and defend himself. The tribal government so constituted shall continue in full force and effect until January 1, 1948, and thereafter until otherwise provided by Act of Congress.".

SEC. 2. (a) The first paragraph of section 3 of the Act of June 24, 1938 (52 Stat. 1034, 1035), as amended, extending the mineral estate reserved to the Osage Tribe by the Act of June 26, 1906 (34 Stat. 539), is further amended by striking the phrase "until the eighth day of April 1983, and thereafter until otherwise provided by Act of Congress" and substituting in lieu thereof, the phrase "in perpetuity".

(b) The second paragraph of section 3 of the Act of June 24, 1938 (52 Stat. 1034, 1035), as amended, is amended by striking the phrase "unless otherwise provided by Act of Congress" and inserting, in lieu thereof, the phrase "and thereafter until otherwise provided by Congress".

(c) The fourth paragraph of section 3 of the Act of June 24, 1938 (52 Stat. 1034, 1036) is amended by striking the phrase "January 1, 1984" and inserting, in lieu thereof, the phrase "January 1, 1984 and thereafter until otherwise provided by Congress".

SEC. 3. (a) The Act of February 5, 1948 (62 Stat. 18) is hereby repealed.

(b) Any Osage Indian having received a certificate of competency under paragraph 7 of section 2 of the Act of June 28, 1906 (34 Stat. 539, 542); section 3 of the Act of March 2, 1929 (45 Stat. 1478, 1480); or the Act of February 5, 1948 (62 Stat. 18), may make application to the Secretary of the Interior to revoke such certificate and the Secretary shall revoke such certificate: *Provided*, That revocation of any certificate shall not affect the legality of any transactions heretofore made by reason of the issuance of any such certificate. Restrictions against alienation of lands heretofore removed are not reimposed.

(c) Sections 3 and 4 of the Act of February 27, 1925 (43 Stat. 1008, 1010–11); and section 4 of the Act of March 2, 1929 (45 Stat. 1478, 1480); and sections 1 and 3 of the Act of June 24, 1938 (52 Stat. 1034) are hereby amended by striking, wherever they occur, the phrases "of one-half or more Indian blood", "of more than one-half Indian blood", "of one-half or more Osage Indian blood", and "or who is one-half or more Osage Indian blood".

SEC. 4. In order to conserve natural resources and provide for the greatest ultimate recovery of oil and gas underlying the Osage mineral estate, the Secretary of the Interior is authorized to establish rules and regulations under which oil and gas leases producing from a common source of supply may be unitized.

SEC. 5. (a) Section 8 of the Act of April 18, 1912 (37 Stat. 86, 88), is hereby amended to read as follows: "Any person of Osage Indian blood, eighteen years of age or older, may dispose of his Osage headright or mineral interest and the remainder of his estate (real, person, and mixed, including trust funds) from which restrictions against alienation have not been removed by will executed in accordance with the laws of the State of Oklahoma: *Provided*, That the will of any Osage Indian shall not be admitted to probate or have any validity unless approved after the death of the testator by the Secretary of the Interior. The Secretary shall conduct a hearing as to the validity of such will at the Osage Indian Agency in Pawhuska, Oklahoma. Notice of such hearing shall be given by publication at least ten days before the hearing in a newspaper of general circulation in Osage County, Oklahoma, and by mailing notice of such hearing to the last known address of all known heirs, legatees, and devisees. The cost of publication shall be borne by the estate. The rules of evidence of the State of Oklahoma shall govern the admissibility of evidence at such hearing. All evidence relative to the validity of the will of an Osage Indian shall be submitted to the Secretary within one hundred and twenty days after the date of the petition for approval of such will is filed with the Secretary, unless for good cause shown the Secretary extends the time: *Provided*, That such time shall not be extended beyond six months from the date of the first hearing. For purposes of determining the validity of any will, the Secretary is hereby granted the same subpena power as is vested in the courts. All costs of obtaining witnesses and evidence before the Secretary shall be borne by the party producing such witnesses or evidence, subject to such costs being taxed to the estate in the event that the District Court of the State of Oklahoma having jurisdiction should determine such costs beneficial to the whole estate. Notwithstanding any appeal from the decision of the Secretary, approval of such will by the Secretary shall entitle it to be admitted to probate without further evidence as to its validity or, upon disapproval thereof, the heirs may immediately petition for letters of administration in the district court. No appeal from the order of the Secretary approving or disapproving any will shall stay the issuance of letters testamentary or of administration: *Provided*, That such letters shall not confer power to sell any restricted assets by virtue of any provision in such will, pay or satisfy legacies, or distribute property of the decedent to the heirs or beneficiaries until the final determination of the appeal, but all other action taken by the district court pending said appeal shall be valid and binding. No court except a Federal court shall have jurisdiction to hear a contest of a probate of a will that has been approved by the Secretary. Such appeals shall be on the record made before the Secretary and his decisions shall be binding and shall not be reversed unless the same is against the clear weight of the evidence or erroneous in law.".

(b) Section 3 of the Act of April 18, 1912 (37 Stat. 86), is hereby amended to read as follows: "That the property of deceased and of orphan minor, insane, or other incompetent Osage Indians, such incompetency being determined by the laws of the State of Oklahoma which are hereby extended for such purpose to all Osage Indians, shall, in probate matters, be subject to the District Court of Oklahoma having jurisdiction. A copy of all papers filed in the district court shall be served on the Superintendent of the Osage Agency at the time of filing, and said Superintendent is authorized, whenever the protection of the interest of the Osage Indian requires, to appear in the district court. The Superintendent of the Osage Agency or the Secretary of the Interior, whenever he deems the same necessary, may investigate the conduct of executors, administrators, guardians, or other persons having charge of the estate of any minor, incompetent, or deceased Osage Indian. Whenever he shall be of the opinion that the estate is in any manner being dissipated, wasted, or permitted to deteriorate in value by reason of the negligence, carelessness, or incompetency of the executor, administrator, guardian, or other person in charge of the estate, the Superintendent of the Osage Agency or the Secretary is authorized, and it shall be his duty, to report said matter to the district court, take the necessary steps to have such case fully investigated, and prosecute any remedy, either civil or criminal, as the exigencies of the case may require. The costs and expenses of any civil proceedings shall be a charge upon the estate of the Osage Indian or upon the executor, administrator, guardian, or other person in charge of the estate of the Osage Indian and his surety, as the district court shall deter-

mine. Every bond of the executor, administrator, guardian, or other person in charge of the estate of any Osage Indian shall be subject to the provisions of this section and shall contain therein a reference hereto: *Provided,* That no guardian shall be appointed for a minor whose parents are living unless the estate of said minor is being wasted or misused by such parents: *Provided further,* That no land shall be sold or alienated under the provisions of this section without approval of the Secretary.".

(7) Section 7 of the Act of February 27, 1925 (43 Stat. 1008, 1011), as amended, is hereby further amended to read as follows: "Hereafter none but heirs of Indian blood and children legally adopted by a court of competent jurisdiction and parents, Indian or non-Indian, shall inherit from Osage Indians any right, title, or interest to any restricted land, moneys, or Osage headright or mineral interest.".

(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, disposition of any Osgae headright or mineral interest shall be subject to the provisions of section 7 of this Act.

SEC. 6. (a) With the approval of the Secretary of the Interior, any person of Osage Indian blood, eighteen years of age or older, may establish an inter vivos trust covering his headright or mineral interest except as provided in section 8 hereof; surplus funds; invested surplus funds; segregated trust funds; and allotted or inherited land, naming the Secretary of the Interior as trustee. An Osage Indian having a certificate of competency may designate a banking or trust institution as trustee. Said trust shall be revocable and shall make provision for the payment of funeral expenses, expenses of last illness, debts, and an allowance to members of the family dependent on the settlor.

(b) Property placed in trust as provided by this section shall be subject to the same restrictions against alienation that presently apply to lands and property of members of the Osage Tribe, and the execution of such instrument shall not in any way affect the tax-exempt status of said property.

SEC. 7. After passage of this Act, a person not of Osage Indian blood, except a child legally adopted by an Osage Indian in any court of competent jurisdiction and the lineal descendants of such adopted child, subject to the stipulation that such adopted child or his lineal descendants cannot alienate his Osage headright or mineral interest and the devolution thereof is limited to intestacy, will, or inter vivos trust the same as if he were of Osage Indian blood, is prohibited from receiving more than a life estate in an Osage headright interest owned by an Osage Indian, such adopted child or his lineal descendants, whether such interest is received by will, inter vivos trust, or Oklahoma law of intestate succession. Upon the death of such recipient, the Osage headright or mineral interest shall vest in the remaindermen thereof who are of Osage Indian blood, adopted children, and/or lineal descendents of such adopted children designated by the will or into vivos trust of the deceased Osage Indian, his adopted child, or the lineal descendants of such adopted child. If such instrument does not designate remaindermen thereof who are of Osage Indian blood, adopted children, and/or lineal descendants of such adopted children, or if the deceased died intestate, the Osage headright or mineral interest shall vest in his heirs pursuant to the Oklahoma law of intestate succession, subject to the above limitations. On the death of the non-Osage beneficiary or heir, except in the case of adopted children or lineal descendants of such adopted children, such Osage headright or mineral interest shall vest in the Osage Tribe and the Tribe shall pay the estate of the non-Osage beneficiary or heir the market value of such Osage headright or mineral interest. Payments under this section shall be made from Osage tribal mineral funds authorized to be expended by sectin 8(b) hereof.

SEC. 8. (a) Any individual right to share in the Osage mineral estate (commonly referred to as "headright") owned by a person not of Indian blood may not, without the approval of the Secretary of the Interior, be sold, assigned, or transferred. Sale of any such interest shall be subject to the right of the Osage Tribe to purchase it within forty-five days at the highest legitimate price offered the owner thereof.

(b) Prior to the time and tribal mineral income is segregated for distribution to individual headright owners, the Secretary of the Interior, at the request of the Osage Tribal Council, may direct the use of any such income for the purchase of Osage headright interests offered for sale to the Osage Tribe pursuant to this section or vested in the Osage Tribe pursuant to section 7 of this Act.

SEC. 9. Under such regulations as the Secretary of the Interior may prescribe, the heirs and legatees of any deceased owner of an Osage headright or mineral interest, real estate on which restrictions against alienation have not been removed, and funds on deposit at the Osage Agency may be determined by the Secretary if such aggregate interests do not exceed $10,000: *Provided,* That no court of competent jurisdiction has undertaken the probate of the deceased's estate and a request for such administrative determination has been made to the Secretary by one or more of the heirs or legatees.

Amend the title so as to read: "An Act to amend certain laws relating to the Osage Tribe of Oklahoma, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate concur in the House amendments en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

MAGISTRATES ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1613.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1613) entitled "An Act to improve access to the Federal courts by enlarging the civil and criminal jurisdiction of United States magistrates, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Magistrate Act of 1978".

SEC. 2. Section 636 of title 28, United States Code, is amended—

(1) by redesignating subsections (c) through (f) thereof as subsections (d) through (g), respectively; and

(2) by inserting immediately after subsection (b) thereof the following new subsection:

"(c) Notwithstanding any provision of law to the contrary—

"(1) Upon the consent of the parties, a full-time United States magistrate may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. When there is more than one judge of a district court, the designation shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

"(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall notify the parties of their right to consent. The decision of the parties shall be communicated to the clerk of court. No district judge shall be informed of the parties' response to this notice, nor shall he attempt to persuade or induce any party to consent to reference of any civil matter to a magistrate.

"(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal on the record to the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules promulgated by the conference shall endeavor to make such appeal expeditious and inexpensive. The district court may affirm, reverse, modify, or remand the magistrate's judgment.

"(4) Cases in the district courts under paragraph (3) of this subsection may be reviewed by the appropriate United States court of appeals by writ of certiorari granted upon the petition of any party to any civil case, before or after rendition of judgment or decree. Nothing in this paragraph shall be construed to be a limitation on any party's right to seek review by the Supreme Court of the United States pursuant to section 1254 of this title.

(5) Notwithstanding the provisions of paragraph (3) and (4) of this subsection, at the time of reference to a magistrate by the clerk of court under paragraph (2) of this subsection, the parties may further consent to appeal directly to the appropriate United States court of appeals in the same manner as an appeal from any other judgment of a district court. In this circumstance, the consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation on any party's right to seek review by the Supreme Court of the United States pursuant to section 1254 of this title.

"(6) Any proceeding conducted by a United States magistrate under this subsection shall be taken down by a court reporter appointed pursuant to section 753 of this title, if a district judge in such a proceeding would have been provided a court reporter under section 753, unless the parties with the approval of the judge or magistrate agree specifically to the contrary. Reporters referred to in the preceding sentence may be transferred for temporary services in any district court of the judicial circuit for reporting proceedings under this subsection, or for other reporting duties in such district court.".

SEC. 3. (a) Section 631(a) of title 28, United States Code, is amended by adding immediately after the first sentence thereof the following: "All magistrates shall be appointed pursuant to standards and procedures established by law.".

(b) The first sentence of section 631(b) of title 28, United States Code, is amended (1) by inserting "reappointed to" immediately after "appointed or"; and (2) by striking out the colon after "unless" and inserting in lieu thereof "he has been a member of a bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States for at least five years: Provided also:".

(c) Paragraph (1) of section 631(b) of title 28, United States Code, is amended by striking after the word "requirement" the words "of the first sentence of this para-

graph" and inserting in lieu thereof the words "of this subsection".

(d) Section 631(b)(2) of title 28, United States Code, is amended to read as follows:

"(2) He is selected pursuant to the recommendation of a Magistrate Selection Panel (hereinafter referred to as the 'Panel') established in each district by the district court:

"(A) The Panel shall be selected by the judges of the district court when a magistrate position is created or at a reasonable time before the term of such a position expires or an existing position becomes vacant. The Panel shall be composed of no fewer than five members, and its size shall be determined by the chief judge of the district court. A majority of the Panel shall be members of the bar, and at least one of the remaining members shall be a nonlawyer. Each member of the Panel shall be a resident of the district for which the appointment is to be made. In selecting members of the Panel, the judges of the district court shall insure that a cross section of the legal profession and the community is represented. The Chairman of the Panel shall be chosen by a majority vote of its members.

"(B) The Panel shall (i) give public notice in a manner designed to inform the widest possible segment of the legal profession of the vacancy throughout the district, inviting suggestions as to potential nominees; (ii) conduct inquiries to identify potential nominees; (iii) conduct inquiries to identify those persons among the potential nominees who are well qualified to serve as magistrates; and (iv) report to the district court within ninety days after the Panel's creation the results of its activities and recommend at least three, and not more than five, persons whom the Panel considers best qualified to fill the vacancies, using the criteria established by this chapter and any such criteria as the conference may from time to time promulgate: *Provided,* however, a Panel may recommend, with the concurrence of the district judges, one individual who is a sitting magistrate up for reappointment. All decisions of the Panel shall be by majority vote of the members.

"(C) The district court shall select from the list provided by the Panel. However, a district court may, by majority vote, reject the first list submitted by the Panel. If such list is rejected, however, the Panel shall submit a second list in accordance with this section from which the district court shall select its magistrate.

"(D) No person shall be considered by a Panel as a potential nominee while serving as a Panel member or during a period of one year after termination of such service.

"(E) All information made available to the members of the Panel in the performance of their duties and all recommendations made to the district court shall be kept confidential.

"(F) Congress (i) takes notice of the fact that women and minorities are underrepresented in the Federal judiciary relative to the population at large; and (ii) recommends that the Panel, in recommending persons to the district court, shall give due consideration to qualified women, blacks, hispanics, and other minority individuals.

A district court which cannot meet the procedural requirements of this paragraph, for good cause shown, may appoint a part-time magistrate pursuant to its own publicized procedure, after having filed with the conference the reasons for not being able to comply with the requirements of this paragraph.".

(e) The amendments made by this section shall take effect on January 1, 1979.

SEC. 4. Section 633(c) of title 28, United States Code, is amended by striking the final sentence.

SEC. 5. (a) Section 633 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) REPORTS BY THE DIRECTOR.—The Director shall, within two years immediately following the date of enactment of the Magistrate Act of 1978, conduct a study and report to the Congress with respect to (1) the professional qualifications of individuals appointed under section 631 of this chapter to serve as magistrates, (2) the number of matters in which the parties consented to the exercise of jurisdiction by a magistrate pursuant to section 636(c) of this chapter, and (3) the number of appeals taken pursuant to paragraphs (3), (4), and (5) of such section 636(c), and the disposition of each such appeal. Thereafter, the Director shall conduct a study and report to each Congress with respect to the matters set forth in this subsection.".

(b) The heading for section 633 of title 28, United States Code, is amended by inserting "; Reports by the Director" immediately after "magistrates".

(c) The item relating to section 633 in the table of chapters of chapter 43 of title 28, United States Code, is amended by inserting "; Reports by the Director", immediately after "magistrates".

SEC 6. Section 1915(b) of title 28, United States Code, is amended to read as follows:

"(b) Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is printed by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.".

SEC. 7. Section 3401 of title 18, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

"(a) When specially designated to exercise such jurisdiction by the district court or courts he serves, any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district.";

(2) in subsection (b)—

(A) by striking out "minor offense" and inserting in lieu thereof "misdemeanor";

(B) by striking out "such judge" and inserting in lieu thereof "a district judge or magistrate";

(C) by striking out "both"; and

(D) by striking out "and any right to trial by jury that he may have";

(3) by adding at the beginning of subsection (d) the following: "A magistrate may impose sentence and exercise all powers under chapter 402 of this title: *Provided, however,* That no such sentence shall include a commitment for a period in excess of one year for conviction of a misdemeanor or six months in other cases."; and

(4) by amending subsection (f) to read as follows:

"(f) For good cause shown the attorney for the Government may petition the district court to have proceedings in any misdemeanor case conducted before a district judge rather than a United States magistrate. Such petition should note the novelty, importance, or complexity of the case, or other pertinent factors, and be filed in accordance with regulations promulgated by the Attorney General. Nothing in this subsection shall be deemed to limit the discretion of the court to have any misdemeanor case tried by a district judge rather than a magistrate.".

SEC. 8. (a) The heading for section 3401 of title 18, United States Code, is amended by striking the words "Minor offenses" and inserting in lieu thereof "Misdemeanors".

(b) The item relating to section 3401 in the table of sections of chapter 219 of title 18, United States Code, is amended by striking the words "Minor offenses" and inserting in lieu thereof "Misdemeanors".

SEC. 9. (a)(1) Subsections (a) and (b) of section 1332 of title 28, United States Code, are amended by striking out "$10,000" and inserting in lieu thereof "$25,000".

(2) Section 1332(a) of title 28, United States Code, is amended by striking out paragraph (1) and by redesignating paragraphs (2) through (4), and all references thereto, as paragraphs (1) through (3), respectively.

(3) The section heading for section 1332 of title 28, United States Code, is amended by striking out "Diversity of citizenship" and inserting in lieu thereof "Alienage".

(4) The item relating to section 1332 in the table of sections for chapter 85 of title 28, United States Code, is amended by striking out "Diversity of citizenship" and inserting in lieu thereof "Alienage".

(b)(1) Section 1331 of title 28, United States Code, is amended to read as follows:

"§ 1331. Federal question

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.".

(2) The item relating to section 1331 in the table of sections for chapter 85 of title 28, United States Code, is amended by striking out "; amount in controversy; costs".

(c)(1) Section 1332(c) of title 28, United States Code, is amended by striking out "section 1441" and inserting in lieu thereof "section 1335".

(2) Section 1332(d) of title 28, United States Code, is amended by inserting immediately after "section" the following: "and section 1335 of this title".

(3) Section 1335(a)(1) of title 28, United States Code, is amended by striking out ", of diverse citizenship as defined in section 1332 of this title," and inserting in lieu thereof "of diverse citizenship".

(4) Section 1335 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) For purposes of this section, the term 'claimants of diverse citizenship' means claimants who are—

"(1) citizens of different States;

"(2) citizens of a State and citizens or subjects of a foreign state;

"(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; or

"(4) a foreign state, as defined in section 1603(a) of this title, and citizens of a State or of different States.".

(5) Section 1342(1) of title 28, United States Code, is amended by striking out "diversity of citizenship" and inserting in lieu thereof "alienage".

(6) Section 1391(a) of title 28, United States Code, is amended—

(A) by striking out "wherein jurisdiction is founded only on diversity of citizenship"; and

(B) by striking out "in which the claim arose" and inserting in lieu thereof "in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated".

(7) Subsection (b) of section 1391 of title

28, United States Code, is repealed, and subsections (c) through (f) of such section, and all references thereto, are redesignated as subsections (b) through (e), respectively.

(8) Subsection (b) of section 1441 of title 28, United States Code, is repealed, and subsections (c) and (d) of such section, and all references thereto, are redesignated as subsections (b) and (c), respectively.

(9)(A) Section 23(a) of the Consumer Product Safety Act (15 U.S.C. 2072(a)) is amended—

(i) by striking out "subject to the provisions of section 1331 of title 28, United States Code as to the amount in controversy,"; and

(ii) by striking out the period at the end thereof and by inserting in lieu thereof ": *Provided*, That the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.".

(B) Section 23 of the Consumer Product Safety Act (15 U.S.C. 2072) is amended by redesignating subsection (b) as subsection (c) and by inserting immediately after subsection (a) the following new subsection:

"(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.".

(d) The amendments made by this section shall apply to any civil action commenced on or after the date of enactment of this Act.

SEC. 10. No additional funds are authorized to be appropriated to implement the provisions of this Act for expenditure prior to October 1, 1979.

SEC. 11. Such sums as may be necessary to carry out the purposes of this Act are hereby authorized to be appropriated for expenditure on or after October 1, 1979.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the House amendments, request a conference with the House of Representatives and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. EASTLAND, Mr. KENNEDY, Mr. ABOUREZK, Mr. METZENBAUM, Mr. DECONCINI, Mr. ROBERT C. BYRD, Mr. THURMOND, Mr. WALLOP and Mr. SCOTT conferees on the part of the Senate.

NATIVE LATEX COMMERCIALIZATION ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1816.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1816) entitled "An Act to amend the Public Works and Economic Development Act of 1965 to authorize a program of research, development, and demonstration of guayule rubber production and manufacture as an economic development opportunity for the Southwestern States", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Native Latex Commercialization Act of 1978".

SEC. 2. Congress recognizes that natural latex rubber is a commodity of vital importance to the economy, defense, and general well-being of the Nation. The United States is totally dependent upon foreign sources for its supplies of natural (Hevea) latex, which total about one million tons per year. Synthetic rubber, which is manufactured from petroleum feedstocks, cannot be substituted for natural rubber. The Congress further recognizes that certain plant species of the genus Parthenium, native to Texas and Mexico, as well as other plants, are known to contain commercial quantities of extractable latex. During World War II, through research carried out in the emergency rubber project, the United States demonstrated that Parthenium latex is a promising and realistic substitute to Hevea latex. Further research and development are needed, especially into methods for increasing latex yields, before commercialization of native Parthenium latex by private industry is feasible. Such commercialization would not only relieve the Nation's dependence upon foreign latex sources, but it would also provide a valuable cash crop for arid and semiarid regions of the United States and additional industry and employment opportunities for people of the United States. It is the policy of Congress, therefore, to provide for the development and demonstration of economically feasible means of culturing Parthenium, and other hydrocarbon-containing plant species, for the extraction of commercial latex and other products.

SEC. 3. As used in this Act—

(a) The term "Secretary" means the Secretary of Agriculture.

(b) The term "State" means each of the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) The term "commercialization" refers to the stage in the development or advancement of a technology at which point private enterprise is willing to invest in a full scale production facility.

(d) The term "native" refers to hydrocarbon-containing plants which may be cultured in North America, especially members of the genus Parthenium known as Guayule).

SEC. 4. The Secretary is authorized and directed to coordinate and carry out research leading to and culminating in the commercialization of latex from Parthenium or other hydrocarbon-containing plants.

SEC. 5. There is hereby established a National Advisory Committee to assist the Secretary in carrying out the purposes and activities of this Act. (1) The Advisory Committee shall assist the Secretary in—

(a) developing a plan established goals, timetables, and tasks to be undertaken in carrying out the purposes of the section;

(b) establishing broad policy for implementing the plan carrying out the purposes of the section;

(c) establishing criteria for evaluating and awarding contracts for research, development, and demonstration projects; and

(d) reviewing and advising the Secretary with respect to grants, contracts, and project expenditures above $250,000.

(2) The Advisory Committee shall consist of one representative each of the Departments of Agriculture and Commerce, the Bureau of Indian Affairs of the Department of the Interior, the National Science Foundation, the National Academy of Sciences, and the private sector.

SEC, 6. The Secretary shall conduct, promote, and sponsor basic and applied research, technology development, and technology transfer leading to effective and economical methods for large scale culturing of plantations and the extraction and production of latex from such crops. Such research will include, but not be limited to—

(a) carrying out extensive seed collections from wild plants in Texas, Mexico, and other areas and borrowing or purchasing seeds from other resources;

(b) developing a stockpile of Parthenium seeds, such stockpile to be appropriately classified and stored at a suitable facility;

(c) carrying out breeding and selection programs for the purpose of improving latex yields, expanding of drought and cold tolerance of the Parthenium plant;

(d) establishing a system of experimental plantings in arid and semiarid regions of the United States having suitable climatic and soil conditions for the culture of Parthenium;

(e) carrying out specific studies on the effects of irrigation on plant growth and latex yield and survival potential;

(f) developing equipment needed to carry out nursery operations, planting, cultivating, harvesting, transporting the crop, and other necessary agricultural activities;

(g) further refining present extraction and manufacturing technologies and future extraction and manufacturing technologies, including technologies which utilize solar energy, and

(h) analyzing the economic feasibility of private production and manufacture of native Parthenium latex.

SEC. 7. The Secretary shall establish and maintain a bank of all pertinent research data on native latex including extant United States Government publications and records from the emergency rubber project. Such data shall be made available to other Federal and State agencies and private persons who are interested or involved in native latex research, development, or manufacture.

SEC. 8. The Secretary, in consultation with the Secretary of State, is authorized and encouraged to enter into cooperative projects with the Government of Mexico in order to accomplish appropriate aspects of the research and development provided for in this Act. Such cooperative projects should include, but not be limited to, projects to determine the economic feasibility of later extraction and processing.

SEC. 9. The Secretary is authorized to accept financial or other assistance from any State or public agency to aid in carrying out the provisions of sections 5, 6, and 7 of this Act and to enter into contracts with respect to such assistance and to enter into agreements with any State or public agency for the purpose of demonstrating, transferring, or applying results of research relating to native latex.

SEC. 10. In carrying out the provisions of this Act, the Secretary is authorized to—

(a) make grants to States, education institutions, scientific organizations, and Indian tribes as defined in the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 25 U.S.C. 450), and enter into contracts with such institutions and organizations and with industrial or engineering firms;

(b) acquire the services of biologists, agronomists, foresters, geneticists, chemists, engineers, economists, and other personnel by contract or otherwise;

(c) utilize the facilities of Federal and State scientific laboratories;

(d) establish and operate necessary facilities, pilot plants, and plantations to carry out the continuous research, testing, development, and programing necessary to effectuate the purposes of this Act;

(e) acquire secret processes, technical data, inventions, patent applications, patents, licenses, land and interest in land (including water rights), plants and facilities, and other property or rights by purchase, license, lease, or donation;

(f) assemble and maintain pertinent and current literature and publications, patents and licenses, land and interests in land;

(g) cause onsite inspections to be made of promising projects, domestic or foreign, and, in the case of projects located in the United States, cooperate and participate in their development when the Secretary determines that the purposes of this Act will be served thereby;

(h) foster and participate in regional, national, and international conferences relating to native latex culture or manufacture;

(i) coordinate, correlate, and publish information with a view to advancing the development of native latex technology; and

(j) cooperate with other Federal departments and agencies, with State and local departments, agencies, and instrumentalities, and with interested persons, firms, institutions, and organizations.

SEC. 11. In carrying out the provisions of this Act, the Secretary shall insure that his activities are closely coordinated with the activities of other Federal agencies such as the Department of the Interior, National Science Foundation, Department of Commerce, Bureau of Indian Affairs, Federal Energy Administration, Energy Research and Development Administration, Economic Development Administration, Department of Defense, Treasury Department, Federal Preparedness Agency, and others in order to prevent duplication of effort, insure compatibility with ongoing programs and policies, and to fully exploit the opportunities inherent in the culture and manufacture of native latex.

SEC. 12. Relative to the definitions of, title to, and licensing of inventions made or conceived in the course of or under any contract or grant pursuant to this Act, and notwithstanding any other provisions of law, the provisions of sections 9 and 10 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908–9) shall govern.

SEC. 13. The Secretary may dispose of any latex, resin, wax, pulp, and any other by-products resulting from operations under this Act. All moneys received from dispositions under this section shall be paid into the Treasury as miscellaneous receipts.

SEC. 14. The Secretary may issue rules and regulations necessary to effectuate the purposes of this Act.

SEC. 15. The Secretary shall submit to the President and the Congress, no later than December 31, 1980, and each year thereafter through 1982, a report on the status of the research, development, and other work underway under sections 4, 5, 6, 7, and 8 of this Act. Such report shall (1) recommend specific directions for further research, development and other work, and (2) recommend funding levels for various elements of the overall project.

SEC. 16. (a) There is authorized to be appropriated for the fiscal year beginning October 1, 1979, the sum of $5,000,000, for the fiscal year beginning October 1, 1980 the sum of $10,000,000, for the fiscal years beginning October 1, 1981 and beginning October 1, 1982 the sums of $20,000,000 each, to carry out the purposes of this Act, such sums to remain available until expended.

(b) Notwithstanding any other provision of this Act the authority to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

UP AMENDMENT NO. 2029

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate concur in the House amendments with an amendment by Mr. DECONCINI and Mr. BENTSEN, which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) for Mr. DECONCINI and Mr. BENTSEN proposes an unprinted amendment numbered 2029.

The amendment is as follows:

In lieu of the amendment of the House, insert the following:

This Act may be cited as the "Native Latex Commercialization and Economic Development Act of 1978".

SEC. 2. (a) Congress recognizes that natural latex rubber is a commodity of vital importance to the economy, the defense, and the general well-being of the Nation. The United States is totally dependent upon foreign sources for its supplies of natural (Hevea) latex, which total about one million tons per year. Synthetic rubber, manufactured from petroleum feedstocks, cannot be substituted for natural rubber.

(b) Congress further recognizes that certain plant species of the genus Parthenium (Guayule), native to Texas and the Republic of Mexico, as well as other plants, are known to contain commercial quantities of extractable rubber. During World War II, through research carried out by the Secretary of Agriculture in the Emergency Rubber Project, the United States demonstrated that Parthenium latex is a promising and realistic substitute for Hevea latex.

(c) Congress further recognizes that additional research and development are needed, especially into methods for increasing latex yields, before commercialization of native Parthenium latex or other hydrocarbon-containing plants by private industry is feasible.

(d) Congress further recognizes that the development of a domestic natural rubber industry, based on Parthenium and other hydrocarbon-containing plants, would not only relieve the Nation's dependence upon foreign latex sources but also convey substantial economic benefits to peoples living in arid and semiarid regions of the United States. Such an industry would comprise the agricultural production of the hydrocarbon-containing plants and the development of commercial processing and manufacturing facilities to extract the latex and other products.

(e) Congress further recognizes that ongoing research into the commercialization of native latex has been conducted by the Department of Agriculture and by the Department of Commerce through the regional commissions and that these research efforts should be continued and expanded.

(f) It is the policy of the Congress, therefore, to provide for the development and demonstration of economically feasible means of culturing and manufacturing Parthenium and other hydrocarbon-containing plants for the extraction of natural rubber and other products to benefit the Nation and promote economic development.

SEC. 3. As used in this Act—

(a) The term "State" means each of the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) The term "Secretaries" means the Secretary of Agriculture and/or the Secretary of Commerce acting each separately or jointly.

(c) The term "commercialization" means the stage in the development or advancement of a technology at which point private enterprise is willing to invest in a full-scale production facility.

(d) The term "native" means hydrocarbon-containing plants which may be cultured in North America, especially members of the genus Parthenium known as Guayule.

(e) "Regional Commissions" means the Regional Action Planning Commissions established pursuant to title V of the Public Works and Economic Development Act of 1965.

SEC. 4. (a) There is hereby established a Joint Commission on Guayule Research and Commercialization, hereinafter referred to as the Joint Commission. The function of the Joint Commission shall be to assist the Secretaries in carrying out the purposes of this Act.

(b) The Joint Commission shall consist of the following members: Three individuals designated by the Secretary of Agriculture from among the staff of his Department; three individuals designated by the Secretary of Commerce at least two of whom shall be Federal Cochairmen of Regional Commissions engaged in the support of native latex research, development, demonstration, or commercialization activities and one of whom shall be selected from among the members of his Department; a representative of the Bureau of Indian Affairs of the Department of the Interior; and a representative of the National Science Foundation.

(c) The Joint Commission shall be headed by a Chairman. The Secretary of Agriculture shall designate one of the two members from his Department to serve as Joint Commission Chairman during the first two-year period following the enactment of this Act, and the Secretary of Commerce shall designate one of the two members from his Department as Joint Commission Chairman during the second two-year period following the enactment of this Act. And the same process of designating Joint Commission Chairmen shall be followed in ensuing years.

(d) The Secretaries may delegate to the Joint Commission one or more of their responsibilities under this Act and transfer to the Joint Commission funds appropriated to carry out the purposes of this Act as they deem appropriate to achieve the purposes of this Act, and the Joint Commission is authorized to carry out such functions and expend such funds to achieve the purposes of the Act.

(e) The Joint Commission shall—

(1) develop a plan establishing goals, timetables, and tasks to be undertaken in carrying out the purposes of this Act;

(2) establish broad policy for implementing the plan carrying out the purposes of this Act;

(3) establish criteria for evaluating and awarding contracts for research, development, and demonstration projects; and

(4) review and advise the Secretaries with respect to grants, contracts, and other project expenditures.

(f) The Secretaries are authorized to provide without reimbursement such administrative support services, including the detail of staff personnel not to exceed a total of five persons from each Department, as the Joint Commission may need to carry out its functions.

(g) One year after the enactment of this Act, and each year thereafter, the Joint Commission shall provide to the Congress a report on the implementation of the Act. Such report shall (1) recommend specific directions for further research, development, and other work, and (2) recommend funding levels for various elements of the overall project.

(h) To the maximum extent possible, the Secretaries and the Joint Commission shall seek the advice of the scientific, engineering and business communities with respect to the activities carried out under this Act. The Secretaries and the Commission shall specifically seek the advice of persons with expertise in appropriate fields of agricultural research in land grant colleges and other universities, in State agricultural experiment stations, and in other appropriate organizations; and, persons with expertise in rubber manufacturing and commerce in private enterprise and other appropriate organizations.

SEC. 5. The Secretary of Agriculture shall conduct, sponsor, promote, and coordinate basic and applied research, technology development, and technology transfer leading to effective and economical methods for large-scale culturing of plantations and the

extraction of latex from Parthenium or other hydrocarbon-containing plants. Such research shall include, but not be limited to—

(a) carrying out extensive seed collections from wild plants in Texas, Mexico, and other areas and borrowing or purchasing seeds from other sources;

(b) developing a stockpile of Parthenium seeds, such stockpile to be appropriately classified and stored at a suitable facility;

(c) carrying out breeding and selection programs for the purpose of improving latex yields, expanding insect and disease resistance, and broadening the ranges of drought and cold tolerance of the Parthenium plant;

(d) establishing a system of experimental plantings in arid and semiarid regions of the United States having suitable climatic and soil conditions for the culture of Parthenium;

(e) carrying out specific studies on the effects of irrigation on plant growth and latex yield and survival potential;

(f) developing equipment needed to carry out nursery operations, planting, cultivating, harvesting, transporting the crop, and other necessary agricultural activities;

(g) further refining present extraction technologies and future extraction technologies, including technologies which utilize solar energy; and

(h) establishing and maintaining a bank of all pertinent research data on native latex including extant United States Government publications and records from the emergency rubber project. Such data shall be made available to other Federal and State agencies and private persons who are interested or involved in native latex research, development, or manufacture.

SEC. 6. The Secretary of Commerce is authorized and directed to initiate and carry out research, technology development, technology transfer, and demonstration projects to test and demonstrate the economic feasibility of the manufacture and commercialization of natural rubber from Parthenium or other hydrocarbon-containing plants. Such research may be carried out through the Regional Commissions or otherwise and shall include but not be limited to—

(a) conducting research and development on extraction and processing techniques;

(b) economic analysis of the production of native latex, including usable byproducts;

(c) studying the environmental, social, and economic impacts of the commercial development of native latex;

(d) evaluating the commercial marketability of Parthenium and rubber derived from other hydrocarbon-containing plants;

(e) further refining present extraction and manufacturing technologies and future extraction and manufacturing technologies, including technologies which utilize solar energy, and

(f) developing pertinent material and records on manufacturing of natural rubber which shall be available to other Federal and State agencies and private persons who are interested in or involved in natural rubber development, or manufacture.

SEC. 7. The Secretaries, in consultation with the Secretary of State, are authorized and encouraged to enter into cooperative projects with the Government of Mexico in order to accomplish appropriate aspects of the research and development provided for in this Act. Such cooperative projects should include, but not be limited to, projects to determine the economic feasibility of latex extraction and processing.

SEC. 8. The Secretaries are authorized to accept financial or other assistance from any State or public agency to aid in carrying out the provisions of this Act and to enter into contracts with respect to such assistance and to enter into agreements with any State or public agency for the purpose of demonstrating, transferring, or applying results of research or methods of economic development relating to native latex.

SEC. 9. In carrying out the provisions of this Act, the Secretary of Agriculture is authorized to—

(a) make grants to States, education institutions, scientific organizations, and Indian tribes as defined in the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 25 U.S.C. 450), and enter into contracts with such institutions and organizations and with industrial or engineering firms;

(b) acquire the services of biologists, agronomists, foresters, geneticists, chemists, engineers, economists, and other personnel by contract or otherwise;

(c) utilize the facilities of Federal and State scientific laboratories;

(d) establish and operate necessary facilities and plantations to carry out the continuous research, testing, development, and programing necessary to effectuate the purposes of this Act;

(e) acquire secret processes, technical data, inventions, patent applications, patents, licenses, land and interest in land (including water rights), facilities, and other property or rights by purchase, license, lease, or donation;

(f) assemble and maintain pertinent and current literature and publications, patents and licenses, land and interests in land;

(g) cause onsite inspections to be made of promising projects, domestic or foreign, and, in the case of projects located in the United States, cooperate and participate in their development when the Secretary determines that the purpose of this Act will be served thereby;

(h) foster and participate in regional, national, and international conferences relating to native latex culture;

(i) coordinate, correlate, and publish information with a view to advancing the development of native latex technology; and

(j) cooperate with other Federal departments and agencies, with State and local departments, agencies, and instrumentalities, and with interested persons, firms, institutions, and organizations.

SEC. 10. In carrying out the provisions of this section, the Secretary of Commerce, acting through the Regional Commissions, or otherwise is authorized to—

(a) make grants to States, education institutions, scientific organizations, and Indian tribes as defined in the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 25 U.S.C. 450), and enter into contracts with such institutions and organizations and with industrial or engineering firms;

(b) acquire the services of biologists, agronomists, forests, geneticists, engineers, economists, and other personnel by contract or otherwise;

(c) utilize the facilities of Federal and State institutions and other scientific laboratories;

(d) establish and operate necessary facilities and pilot plants to carry out the continuous research, testing, development, and programing necessary to effectuate the purposes of this section;

(e) acquire secret processes, technical data, invention, patent applications, patents, licenses, land and interests in land (including water rights), plants and facilities, and other property or rights by purchase, license, lease, or donation; and

(f) foster and participate in regional, national, and international conferences relating to natural rubber manufacture.

SEC. 11. In carrying out the provisions of this Act, the Secretaries and the Joint Commission shall insure that their activities are closely coordinated with the activities of other Federal agencies such as the Department of the Interior, National Science Foundation, Bureau of Indian Affairs, Department of Energy, Department of Defense, Treasury Department, Federal Preparedness Agency, and others in order to prevent duplication of effort, insure compatibility with ongoing programs and policies, and to fully exploit the opportunities inherent in the culture and manufacture of native latex.

SEC. 12. Relative to the definitions of, title to, and licensing of inventions made or conceived in the course of or under any contract or grant pursuant to this Act, and notwithstanding any other provisions of law, the provisions of sections 9 and 10 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908-9) shall govern.

SEC. 13. The Secretary of Agriculture and the Secretary of Commerce may dispose of any latex, resin, wax, pulp, and any other byproducts resulting from operations under this Act. All moneys received from dispositions under this section shall be paid into the Treasury as miscellaneous receipts.

SEC. 14. The Secretary of Agriculture and the Secretary of Commerce may issue rules and regulations necessary to effectuate the purposes of this Act.

SEC. 15. The Secretary of Agriculture and the Secretary of Commerce shall submit to the President and the Congress, no later than December 31, 1980, and each year thereafter through 1982, a report on the status of the research development, and other work underway under this Act. Such report shall (1) recommend specific directions for further research, development, and other work, and (2) recommend funding levels for various elements of the overall project.

SEC. 16. (a) There is authorized to be appropriated to the Secretary of Agriculture $2,500,000 for each of the fiscal years ending September 30, 1980, and September 30, 1981, and $5,000,000 for each of the fiscal years ending September 30, 1982, and September 30, 1983, to carry out the purposes of this Act. Funds appropriated under this paragraph shall be available for obligation until the last day of the fiscal year after the year for which such funds are authorized.

(b) There is authorized to be appropriated to the Secretary of Commerce $2,500,000 for each of the fiscal years ending September 30, 1980, and September 30, 1981, and $5,000,000 for each of the fiscal years ending September 30, 1982, and September 30, 1983, to carry out the purposes of this Act. Funds appropriated under this paragraph shall be available for obligation until the last day of the fiscal year after the year for which such funds are authorized.

(c) No more than 3 per centum of funds authorized under subsections (a) and (b) shall be available for administration and management of the program.

(d) Notwithstanding any other provision of this Act the authority to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

● Mr. DOMENICI. Mr. President, I would like to very briefly explain what Senator BENTSEN and I propose concerning S. 1816 and why.

S. 1816 originated in the Senate Committee on Environment and Public Works, with Senator BENTSEN and myself as its principal sponsors. As reported by that committee and passed by the Senate, S. 1816 was principally designed as an economic development measure. It would have established a program for the commercialization of latex extraction and production from guayule, a plant native to and prolific in the arid Southwest. Guayule offers a real hope of free-

ing our country from dependence on foreign sources of rubber.

When bill S. 1816 arrived in the House, it was referred to the Committee on Agriculture as well as the Committee on Science and Technology. Understandably, the Agriculture Committee was more concerned with those aspects of the bill dealing with research in the culture and cultivation of guayule, rather than the economic development aspects. Therefore, they proposed a modification of S. 1816 which assigned all of the bill's responsibilities to the Secretary of Agriculture. Subsequently, the House took up S. 1816, inserting its provisions in lieu of the Senate language and returning the bill to the Senate, where it has been held at the desk.

For the past several weeks, the staff members of all the committees involved in this legislation have attempted to arrive at a middle ground which is acceptable to all of the parties. Frankly, Senator BENTSEN and I, as well as the Senate Committee on Environment and Public Works, are unwilling to permit the assignment of this entire program to the Secretary of Agriculture. I have the highest regard for the Department of Agriculture, but I do not believe it is competent to manage the economic development aspects of this legislation. We envision, and our bill provides for, the construction of a pilot plant and a wide variety of other commercial, manufacturing, and economic development activities which in all other areas are assigned to the Department of Commerce. Equally important—in my mind it is of probably greater importance—is the role which the title V regional commissions would play in a guayule program.

The title V Commissions in the Southwest are the only Federal entities which have evinced an active, aggressive interest in developing guayule as an economic resource for the Southwest. Most of the money and time which has been invested in such an effort during the past several years has originated from the title V commissions, which are closely tied to the Department of Commerce.

None of this is to say that I object to research regarding the culture and cultivation of guayule being assigned to the Department of Agriculture. That is not merely an understandable position, but a sensible one. I, for one, have no quarrel with it. Just as the Secretary of Agriculture should have no jurisdiction over the economic development aspects of a guayule program, the Secretary of Commerce should have none over the cultivation research program. But regardless of which agency has jurisdiction over what aspects of a program, however, it is crystal clear that the two must not only talk to each other, but cooperate. One compromise draft has been submitted which, I believe, achieves all of the goals I have mentioned and others besides.

I know that some parties still have reservations concerning this draft, even though most of the principals find it an acceptable middle ground. Normally, I would expect us to continue negotiations until a complete agreement had been reached. But the closing days of a Congress are not normal times. We are very close to complete agreement on a single version. I believe that if the parties are unable to agree on this version or something very close to it, the legislation is dead for this year. Indeed, it may already be too late in the Congress for any changes at all to be made in the compromise.

In any event, Senator BENTSEN and I are asking the Senate to adopt this compromise version of S. 1816 in lieu of the House language. Since we are in agreement on this side, we are the body logically to act. The bill then goes to the House where the Members there may work their will on it. I am hopeful that they will be able to simply hold our bill at the desk and pass it because it serves the interests of all parties, but disserves none.

Rather than assigning all of the bill's responsibilities to one Secretary and denying them to another, the compromise version does just the opposite. It permits either Secretary to perform most of the bill's authorities, but with two principal exceptions: The Secretary of Agriculture has exclusive authority for the research in plant culture and cultivation, as well as related aspects of the program; and, the Secretary of Commerce has exclusive authority over technology development and projects to demonstrate the economic feasibility of manufacture and commercialization of natural rubber from guayule and similar plants.

In addition, the bill creates a Joint Commission on Guayule. Of its eight members, three are appointed by the Secretary of Agriculture and three by the Secretary of Commerce, with the remaining members from the National Science Foundation and the Bureau of Indian Affairs. The chairmanship of the Commission rotates between the Agriculture and Commerce designees. Since the Joint Commission is charged with setting the timetable and goals for implementing the act, neither of the Secretaries can kill the program through delay, but each has a substantial voice in the decisionmaking process. Title V Commissions have a voice since at least two of the Commerce appointees must be Federal cochairmen of a Title V Commission.

To further assure equality, the authorizations for the 4-year life of the program are divided equally between the Secretaries of Agriculture and Commerce. The authorization levels are $5 million for each of the first 2 years and $10 million for each of the last 2 years.●

● Mr. BENTSEN. Mr. President, I would like to associate myself with the remarks of the Senator from New Mexico, Mr. DOMENICI. I know he has worked long and hard on this legislation and would very much like to see it become law this year. I also know, however, that he would rather see no law at all than a bad one.

I have reviewed the compromise version and believe it should be acceptable to all of the parties involved. I agree with Senator DOMENICI that if there were more time remaining we should convene a formal conference and persist until there was a complete meeting of the minds. But there is simply not enough time for that. The situation that we find ourselves in is that the Senate agrees on a compromise version, which is also acceptable to many of the interested parties on the House side. If we pass a bill now, there is some hope that the principals in that body can resolve their differences in time for a bill to become law.●

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

PSYCHOTROPIC SUBSTANCES ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2399.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2399) entitled "An Act to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other laws to meet obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation of psychotropic substances, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Psychotropic Substances Act of 1978".

SEC. 2. The Congress makes the following findings and declarations:

(1) The Congress has long recognized the danger involved in the manufacture, distribution, and use of certain psychotropic substances for nonscientific and nonmedical purposes, and has provided strong and effective legislation to control illicit trafficking and to regulate legitimate uses of psychotropic substances in this country. Abuse of psychotropic substances has become a phenomenon common to many countries, however, and is not confined to national borders. It is, therefore, essential that the United States cooperate with other nations in establishing effective controls over international traffic in such substances.

(2) The United States has joined with other countries in executing an international treaty, entitled the Convention on Psychotropic Substances and signed at Vienna, Austria, on February 21, 1971, which is designed to establish suitable controls over the manufacture, distribution, transfer, and use of certain psychotropic substances. The Convention is not self-executing, and the obligations of the United States thereunder may only be performed pursuant to appropriate legislation. It is the intent of the Congress that the amendments made by this Act, together with existing law, will enable the United States to meet all of its obligations under the Convention and that no further legislation will be necesssary for that purpose.

(3) In implementing the Convention in Psychotropic Substances, the Congress intends that, consistent with the obligations of the United States under the Convention, control of psychotropic substances in the United States should be accomplished within the framework of the procedures and criteria for classification of substances provided in the Comprehensive Drug Abuse Prevention and Control Act of 1970. This will insure that (A) the availability of psychotropic substances to manufacturers, distributors, dispensers, and researchers for useful and legitimate medical and scientific purposes will not be unduly restricted; (B) nothing in the Convention will interfere with bona fide re-

search activities; and (C) nothing in the Convention will interfere with ethical medical practice in this country as determined by the Secretary of Health, Education, and Welfare on the basis of a consensus of the views of the American medical and scientific community.

SEC. 3. (a) Subsection (d) of section 201 of the Controlled Substance Act (21 U.S.C. 811(d)) is amended by inserting "(1)" after "(d)" and by adding the following new paragraphs at the end thereof:

"(2)(A) Whenever the Secretary of State receives notification from the Secretary-General of the United Nations that information has been transmitted by or to the World Health Organization, pursuant to article 2 of the Convention on Psychotropic Substances, which may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State shall immediately transmit the notice to the Secretary of Health, Education, and Welfare who shall publish it in the Federal Register and provide opportunity to interested persons to submit to him comments respecting the scientific and medical evaluations which he is to prepare respecting such drug or substance. The Secretary of Health, Education, and Welfare shall prepare for transmission through the Secretary of State to the World Health Organization such medical and scientific evaluations as may be appropriate regarding the possible action that could be proposed by the World Health Organization respecting the drug or substance with respect to which a notice was transmitted under this subparagraph.

"(B) Whenever the Secretary of State receives information that the Commission on Narcotic Drugs of the United Nations proposes to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State shall transmit timely notice to the Secretary of Health, Education, and Welfare of such information who shall publish a summary of such information in the Federal Register and provide opportunity to interested persons to submit to him comments resecting the recommendation which he is to furnish, pursuant to this subparagraph, respecting such proposal. The Secretary of Health, Education, and Welfare shall evaluate the proposal and furnish a recommendation to the Secretary of State which shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

"(3) When the United States receives notification of a scheduling decision pursuant to article 2 of the Convention on Psychotropic Substances that a drug or other substance has been added or transferred to a schedule specified in the notification or receives notification (referred to in this subsection as a 'schedule notice') that existing legal controls applicable under this title to a drug or substance and the controls required by the Federal Food, Drug, and Cosmetic Act do not meet the requirements of the schedule of the Convention in which such drug or substance has been placed, the Secretary of Health, Education, and Welfare, after consultation with the Attorney General, shall first determine whether existing legal controls under this title applicable to the drug or substance and the controls required by the Federal Food, Drug, and Cosmetic Act, meet the requirements of the schedule specified in the notification or schedule notice and shall take the following action:

"(A) If such requirements are met by such existing controls but the Secretary of Health, Education, and Welfare nonetheless believes that more stringent controls should be applied to the drug or substance, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance, pursuant to subsections (a) and (b) of this section, to apply to such controls.

"(B) If such requirements are not met by such existing controls and the Secretary of Health, Education, and Welfare concurs in the scheduling decision or schedule notice transmitted by the notification, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance under the appropriate schedule pursuant to subsections (a) and (b) of this section.

"(C) If such requirements are not met by such existing controls and the Secretary of Health, Education, and Welfare does not concur in the scheduling decision or schedule notice transmitted by the notification, the Secretary shall—

"(i) if he deems that additional controls are necessary to protect the public health and safety, recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance pursuant to subsections (a) and (b) of this section, to apply such additional controls;

"(ii) request the Secretary of State to transmit a notice of qualified acceptance, within the period specified in the Convention, pursuant to paragraph 7 of article 2 of the Convention, to the Secretary General of the United Nations;

"(iii) request the Secretary of State to transmit a notice of qualified acceptance as prescribed in clause (ii) and request the Secretary of State to ask for a review by the Economic and Social Council of the United Nations, in accordance with paragraph 8 of article 2 of the Convention, of the scheduling decision; or

"(iv) in the case of a schedule notice, request the Secretary of State to take appropriate action under the Convention to initiate proceedings to remove the drug or substance from the schedules under the Convention or to transfer the drug or substance to a schedule under the Convention different from the one specified in the schedule notice.

"(4)(A) If the Attorney General determines, after consultation with the Secretary of Health, Education, and Welfare, that proceedings initiated under recommendations made under paragraph (B) or (C)(i) of paragraph (3) will not be completed within the time period required by paragraph 7 of article 2 of the Convention, the Attorney General, after consultation with the Secretary and after providing interested persons opportunity to submit comments respecting the requirements of the temporary order to be issued under this sentence, shall issue a temporary order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention. As a part of such order, the Attorney General shall, after consultation with the Secretary, except such drug or substance from the application of any provision of part C of this title which he finds is not required to carry out the United States obligations under paragraph 7 of article 2 of the Convention. In the case of proceedings initiated under subparagraph (B) of paragraph (3), the Attorney General, concurrently with the issuance of such order, shall request the Secretary of State to transmit a notice of qualified acceptance to the Secretary-General of the United Nations pursuant to paragraph 7 of article 2 of the Convention. A temporary order issued under this subparagraph controlling a drug or other substance subject to proceedings initiated under subsections (a) and (b) of this section shall expire upon the effective date of the application to the drug or substance of the controls resulting from such proceedings.

"(B) After a notice of qualified acceptance of a scheduling decision with respect to a drug or other substance is transmitted to the Secretary-General of the United Nations in accordance with clause (ii) or (iii) of paragraph (3)(C) or after a request has been made under clause (iv) of such paragraph with respect to a drug or substance described in a schedule notice, the Attorney General, after consultation with the Secretary of Health, Education, and Welfare and after providing interested persons opportunity to submit comments respecting the requirements of the order to be issued under this sentence, shall issue an order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention in the case of a drug or substance for which a notice of qualified acceptance was transmitted or whichever the Attorney General determines is appropriate in the case of a drug or substance described in a schedule notice. As a part of such order, the Attorney General shall, after consultation with the Secretary, except such drug or substance from the application of any provision of part C of this title which he finds is not required to carry out the United States obligations under paragraph 7 of article 2 of the Convention. If, as a result of a review under paragraph 8 of article 2 of the Convention of the scheduling decision with respect to which a notice of qualified acceptance was transmitted in accordance with clause (ii) or (iii) of paragraph (3)(C)—

"(i) the decision is reversed, and

"(ii) the drug or substance subject to such decision is not required to be controlled under schedule IV or V to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention,

the order issued under this subparagraph with respect to such drug or substance shall expire upon receipt by the United States of the review decision. If, as a result of action taken pursuant to action initiated under a request transmitted under clause (iv) of paragraph (3)(C), the drug or substance with respect to which such condition was taken is not required to be controlled under schedule IV or V, the order issued under this paragraph with respect to such drug or substance shall expire upon receipt by the United States of a notice of the action taken with respect to such drug or substance under the Convention.

"(C) An order issued under subparagraph (A) or (B) may be issued without regard to the findings required by subsection (a) of this section or by section 202(b) and without regard to the procedures prescribed by subsection (a) or (b) of this section.

"(5) Nothing in the amendments made by the Psychotropic Substances Act of 1978 or the regulations or orders promulgated thereunder shall be construed to preclude requests by the Secretary of Health, Education, and Welfare or the Attorney General through the Secretary of State, pursuant to article 2 or other applicable provisions of the Convention, for review of scheduling decisions under such Convention, based on new or additional information.".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end the following:

"(29) The term 'Covention on Psychotropic Substances' means the Convention on Psychotropic Substances signed at Vienna, Austria, on February 21, 1971; and the term 'Single Convention on Narcotic Drugs' means the Single Convention on Narcotic Drugs signed at New York, New York, on March 30, 1961.".

(c) For the purpose of carrying out the minimum United States obligations under paragraph 7 of article 2 of the Convention on Psychotropic Substances, signed at Vi-

enna, Austria, on February 21, 1971, with respect to pipradrol and SPA (also known as (-)-1-dimethylylamino-1,2-diphenlyethane), the Attorney General shall by order, made without regard to sections 201 and 202 of the Controlled Substance Act, place such drugs in schedule IV of such Act.

SEC. 4. Subsection (d) of section 202 of the Controlled Substances Act (21 U.S.C. 812 (d)) is amended by striking out "and" before "(2)" and by adding the following before the period at the end thereof: ", and (3) such exception does not conflict with United States obligations under the Convention on Psychotropic Substances".

SEC. 5. Section 307 of the Controlled Substances Act (21 U.S.C. 827) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) In addition to the reporting and recordkeeping requirements under any other provision of this title, each manufacturer registered under section 303 shall, with respect to narcotic and nonnarcotic controlled substances manufactured by it, make such reports to the Attorney General, and maintain such records, as the Attorney General may require to enable the United States to meet its obligations under articles 19 and 20 of the Single Convention on Narcotic Drugs and article 16 of the Convention on Psychotropic Substances. The Attorney General shall administer the requirements of this subsection in such a manner as to avoid the unnecessary imposition of duplicative requirements under this title on manufacturers subject to the requirements of this subsection.".

SEC. 6. Section 1002(b) of the Controlled Substances Import and Export Act (21 U.S.C. 952(b)) is amended by inserting immediately before the period at the end of paragraph (2) the following: ", except that if a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention".

SEC. 7. Subsection (e) of section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953(e)) is amended—

(1) by striking out ", and" at the end of paragraph (2) and inserting in lieu thereof a semicolon;

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding after paragraph (3) the following new paragraph:

"(4) in any case when a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention, instead of the invoice required by paragraphs (2) and (3) of this subsection.".

SEC. 8. (a) Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end thereof the following new section:

"APPLICATION OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS

"SEC. 412. Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit the provision of treatment, education, or rehabilitation as alternatives to conviction or criminal penalty for offenses involving any drug or other substance subject to control under any such treaty or agreement.".

(b) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting—

"Sec. 412. Application of treaties and other international agreements."

immediately after

"Sec. 411. Proceedings to establish previous convictions.".

SEC. 9. (a) Section 502 of the Controlled Substances Act (21 U.S.C. 872) is amended by redesignating subsection (d) as subsection (e), and by adding after subsection (c) the following new subsection:

"(d) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local law or regulation.".

(b) Section 303 of the Public Health Service Act (42 U.S.C. 242a) is amended by redesignating subsection (b) as subsection (c), and by adding after subsection (a) the following new subsection:

"(b) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local law or regulation.".

SEC. 10. Subsection (f) of section 303 of the Controlled Substances Act (21 U.S.C. 823 (f)) is amended by adding at the end the following sentence: "Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this title.".

SEC. 11. Subsection (c) of section 307 of the Controlled Substances Act (21 U.S.C. 827(c)) is amended by adding the following after and below paragraph (3): "Nothing in the Convention on Psychotropic Substances shall be construed as superseding or otherwise affecting the provisions of paragraph (1)(B), (2), or (3) of this subsection.".

SEC. 12. Subsection (n) of section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(n)) is amended by adding the following new sentence at the end thereof: "Nothing in the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, shall be construed to prevent drug price communications to consumers.".

SEC. 13. This Act and the amendments made by this Act shall take effect on the date the Convention on Psychotropic Substances, signed at Vienna, Austria on February 21, 1971, enters into force in respect to the United States.

● Mr. CULVER. Mr. President, I am pleased to submit this amendment on behalf of Senators BENTSEN, HATHAWAY, NUNN, and myself.

As you know, the Psychotropic Substances Act was unanimously approved by the Senate Committee on the Judiciary on June 21. The committee bill made a number of adjustments in U.S. drug laws so that the United States could implement the Vienna Convention on Psychotropic Substances. Under this international agreement 49 countries have agreed to cooperate in controlling the manufacture and distribution of such drugs as PCP, LSD, mescaline, amphetamines, barbiturates, and certain tranquilizers.

On July 27 the Senate unanimously adopted the bill, along with two important amendments. The first amendment, offered by Senator BENTSEN, sought to stem the rapid increase in the use of phencyclidine, or PCP, among our young people. The second amendment, offered by Senator NUNN, authorized U.S. authorities to seize any moneys or property furnished in exchange for illegal drugs as well as the proceeds of such drug transactions.

The House of Representatives subsequently adopted, on September 18, legislation implementing the Convention on Psychotropic Substances and substituted that language for the provisions of S. 2399. Due to certain procedural restrictions, however, the House of Representatives was not able to consider the Bentsen and Nunn amendments. Therefore, S. 2399 as passed by the House contains only the provisions implementing the Psychotropic Convention.

Mr. President, during the last few days I have consulted with the members of the House Committee on Interstate and Foreign Commerce. They have informed me that they favor the Bentsen and Nunn amendments with some minor alterations. Senators BENTSEN, NUNN, and myself have agreed that these proposals should be reoffered in slightly modified form.

The language that was adopted by the House of Representatives to implement the Convention on Psychotropic Substances is virtually identical to the language that was adopted earlier by the Senate. Therefore, the amendment that I am offering today agrees with the provisions of the House language and makes only those technical amendments that are necessary to redesignate the House language as title I of the overall bill. The amendment would then add modified versions of the Bentsen and Nunn proposals as titles II and III of the bill.

Under the amendment, title I of the bill would enable the United States to participate in the Convention on Psychotropic Substances. Under this international agreement some 49 nations have agreed to cooperate in controlling the manufacture and distribution of such nonnarcotic drugs as LSD, PCP, mescaline, amphetamines, barbiturates, and certain tranquilizers.

The United States already has strong controls to prevent such diversion on the domestic level. The effectiveness of these domestic controls is undermined, however, because drug traffickers are often able to obtain these substances in foreign countries and then smuggle them into the United States.

The United States has signed the Psychotropic Convention, but to date the Senate has not ratified the agreement. The convention is currently before the Senate Foreign Relations Committee which has deferred action until the enabling legislation that we are considering today has been enacted.

Substantively, the requirements of the convention are already largely satisfied by current U.S. drug laws. However, these laws do not authorize administrative action to conform U.S. drug controls to those under international agreements ratified by the United States after the date of their enactment. Existing statutes only authorize action to conform

domestic controls with controls under earlier international agreements such as the 1961 Single Convention on Narcotics. New legislation is, therefore, necessary to provide the administrative mechanism to permit U.S. implementation of the provisions of the Psychotropic Convention.

The convention is similar to both the Single Convention on Narcotic Substances, ratified by the United States in 1967, and the Comprehensive Drug Abuse Prevention and Control Act. The convention lists substances in schedules depending on the extent of their abuse, their potential for abuse, and their therapeutic usefulness. It contains procedures for adding new substances to schedules, moving them among schedules and deleting them from the schedules. It provides gradations of control, with the most stringent controls applied to schedule I substances, such as LSD, and less forceful restrictions on substances in schedules II, III, and IV.

Mr. President, the second title of this amendment is based upon language offered by Senator BENTSEN and adopted by the Senate as an amendment to S. 2399 this summer.

I wish to thank Senator BENTSEN for his distinguished efforts in seeking to deal with the growing problem of PCP. I also wish to thank Senator HATHAWAY, who, along with the Subcommittee on Alcoholism and Drug Abuse, has played a major role in formulating this amendment.

The legislation upon which the amendment is based was the subject of 2 days of joint hearings by the Senate Subcommittee on Juvenile Delinquency, which I chair, and the Senate Subcommittee on Alcoholism and Drug Abuse, chaired by Senator HATHAWAY. These hearings established that the abuse of PCP is a serious and growing problem in this country, especially among our young people. In fact, the National Institute on Drug Abuse estimated that some 7 million young people have used PCP during the past 5 years.

Unfortunately, this use frequently results in tragedy. PCP is an extremely unpredictable drug that causes reactions that vary from feelings of weightlessness and a loss of coordination to extreme paranoia and aggressiveness. In the most severe cases, the disorienting effects of PCP have caused a number of self-mutilations, accidental deaths, and unprovoked violent attacks.

The amendment seeks to combat the threat of this drug by increasing the penalties for the illegal manufacture and distribution of PCP from a maximum of 5 years and/or a $15,000 fine to 10 years and/or a $25,000 fine. It will also make it much more difficult to manufacture this dangerous drug by requiring anyone who purchases piperidine, a relatively rare chemical used in making PCP, to present proper identification at the time of the purchase and to report such a purchase to the Federal Drug Enforcement Administration.

Mr. President, I believe these increased penalties and reporting requirements will be very effective in reducing the availability of PCP. I should point out, however, that we have taken great care to assure that this amendment does not place significant burdens on the legitimate chemical uses of piperidine. For example, the amendment authorizes the Attorney General to exempt certain legitimate sales of piperidine from all or any part of the reporting requirements. It also allows the Attorney General to extend the time period for certain legitimate users to file necessary reports, and specifically states that the information from such reports will remain confidential. Finally, the amendment requires the Attorney General to submit a report to Congress concerning any burdens the amendment may place on legitimate sales or uses of piperidine.

Mr. President, the third title of the amendment which I am offering would authorize U.S. officers to seize any moneys or other property that was furnished or intended to be furnished in exchange for illegal drugs. It is similar to the amendment which Senator NUNN offered to S. 2399 on July 27.

The purpose of this amendment is to strike at the profits of drug trafficking. The Drug Enforcement Administration estimates that the value of the illicit drugs sold in the United States each year ranges between $18 to $20 billion. Often illegal transactions in such drugs involve transfers of several hundred thousands of dollars. Under current law, however, Federal officers are required to return such moneys to individuals arrested on drug charges even though these funds were used in illegal drug transactions. In fact, in many cases these returned funds are used by defendants to replenish their stock of drugs.

This amendment would authorize Federal officers to seize such moneys much as they now seize illicit drugs and vehicles that are used to transport or conceal these substances. In certain cases, they would also be able to seize property that is traceable to such illegal transactions. Finally the provision would allow authorities to seize certain moneys, negotiable instruments and securities if they are used or intended to be used to facilitate such an illegal exchange. In all cases, however, the rights of any innocent party who had acquired whole or partial ownership of the property would be protected.

Any property seized under this amendment would be disposed of through either administrative or judicial forfeiture proceedings. In most cases, the proceeds would be deposited in the general fund of the U.S. Treasury.

I wish to thank Senator NUNN for his efforts in developing this proposal. I also wish to thank Representatives ROGERS, CARTER, STAGGERS, DEVINE, WOLFF, and GILMAN for the leadership and cooperation they have shown in formulating this amendment.

In summary, Mr. President, the amendment that I am offering today would provide the United States with strong new weapons to combat the diversion of psychotropic drugs into illicit channels, to stem the alarming increase in the use of PCP, and to strike at the profits of illegal drug trafficking. It has the full support of the White House and the Drug Enforcement Administration. It also has been cleared by the minority.

Our adoption of this legislation is long overdue. I urge the Senate to take this important step toward greater control over these drugs.●

● Mr. BENTSEN. Mr. President, the Senate unanimously approved my PCP Control Act of 1978, S. 2778, on July 27, 1978, as title II of the Psychotropic Substances Act, S. 2399. I now propose a perfected version of S. 2778 for myself and my distinguished colleagues, Senators CULVER and HATHAWAY.

Under provisions of the revised PCP Control Act, the Attorney General is granted some flexibility in determining the frequency with which piperidine transactions will be reported. The Attorney General is also empowered to exempt legitimate piperidine transfers from all or any part of the reporting requirements of the act.

Penalties for possessing piperidine with the intent of manufacturing PCP are strengthened; elements of the measure that proscribe certain piperidine transactions are tightened. Additional safeguards now more completely protect the confidentiality of records required under the act. An adequate comment period that precedes promulgation of implementing regulations is insured.

The Attorney General's report to Congress concerning any burdens this proposal may place on licit sales and uses of piperidine is scheduled for issuance at a more convenient time. The act's sunset provision is shortened from 3 to 2 years. Finally, the measure now more closely conforms with the Controlled Substances Act.

I first introduced S. 2778 on March 22, 1978, in an effort to help deter the illicit manufacture and distribution of PCP, a particularly dangerous street drug that is presently being abused with abandon by many young people throughout this country.

In June, the PCP Control Act of 1978 was the subject of 2 days of public hearings. These sessions were cochaired by my colleagues, Senator CULVER, chairman of the Juvenile Delinquency Subcommittee, and Senator HATHAWAY, chairman of the Human Resources Subcommittee on Alcoholism and Drug Abuse. I highly commend both Senator CULVER and Senator HATHAWAY for their interest, dedication, and diligence.

Mr. President, S. 2778 received the enthusiastic, unanimous approval of the Judiciary Committee's Juvenile Delinquency Subcommittee on July 13. As I previously mentioned, the measure passed the Senate on July 27.

Mr. President, I have been deeply concerned about PCP abuse for several reasons. I think PCP could be the harbinger of a whole new generation of entirely synthetic drugs, drugs that can be manufactured from readily available, licit chemicals. Drugs that can be produced cheaply, by amateurs, from materials that do not have to be grown abroad and smuggled into this country.

The problems of control inherent in the very nature of synthetic drug abuse are staggering. They open a whole new vista to our drug enforcement efforts.

I am concerned when a drug as viru-

lent as PCP can be manufactured and peddled by dealers in dementia for a dollar a dose, the price of a school lunch.

I am concerned when any casual entrepreneur with perverted instincts and $600 to spend can walk into a chemical supply house, buy all the necessary ingredients for PCP with no questions asked and brew up in vats in the back of a van a batch of this cursed compound with a street value of $100,000.

And finally, Mr. President, I am profoundly disturbed when 7 million Americans have used, and many continue to abuse, one of the most dangerous and insidious drugs known to mankind.

In 1977, over 100 deaths were attributed to the use of PCP, with most of the victims succumbing to the strange disassociation-disorientation effects exerted by the drug. People die from PCP not so much from overdose, but by jumping off buildings, bluffs, bridges, down elevator shafts, or by drowning.

A typical case would be the case of a young man in Los Angeles who leaped from a second story window while under the influence of PCP, crashed through a wooden fence, got up, undressed, went back in the building, and dove to his death from an upstairs balcony.

While it is possible to develop relatively reliable figures on the number of deaths, it is more difficult to determine the number of young minds that have been warped beyond repair, the number of young lives that have been ruined by this easily manufactured, readily available animal tranquilizer.

The precise numbers may be in doubt, Mr. President, existence of the widespread, ongoing tragedy of PCP abuse cannot be questioned. Clearly, we have an urgent national requirement to devote our best efforts to the control of PCP and other synthetics.

The PCP Control Act of 1978 is designed to attack the Achilles heel of the PCP manufacturing process.

I stated earlier that any enterprising criminal with $600 to spend could buy everything he or she needed to make PCP—and with no questions asked. With the ingredients in hand, the manufacture is no problem. Making PCP is as simple as following a cookbook recipe. Mr. President, if you can bake brownies you can prepare PCP.

The chain of events that leads finally to a young person buying PCP for a dollar at the playground has one vulnerable link, and that is access to piperidine. You do not make illicit PCP without piperidine, and piperidine is not good for much except making PCP. As a matter of fact, about the only legitimate use for this chemical is curing rubber.

S. 2778 is based on a simple premise, Mr. President: That the individual who walks into chemical supply house to make a cash purchase of piperidine—assuming he is not in the business of curing rubber—is probably bent on the illegal manufacture of PCP. There is essentially no other reason to purchase the chemical.

The legislation I have proposed would require anyone who purchases piperidine to present positive identification at the time of purchase, with the transaction registered with DEA.

I am not suggesting a licensing procedure. I do not envision interfering with the normal flow of chemicals throughout our economy. I have no intention of creating cumbersome bureaucratic procedures and, indeed, we do not.

We are simply proposing that anyone who buys piperidine in person or by mail present positive identification. This should not provide a problem for legitimate purchasers; it should, however, be a significant deterrent for the casual criminal who can currently acquire the raw materials for PCP with no questions asked, with no requirement for identification.

Mr. President, there is broad agreement that most of the street PCP inundating this country is manufactured and distributed by the small-time criminals who are the target of this legislation. I would like to help put them out of business.

I do not pretend that S. 2778, if enacted into law, will necessarily eliminate the epidemic of PCP abuse among our young people. It should, however, make the drug harder to obtain, drive up prices, and reduce demand accordingly. It should halt the proliferation of illegal PCP laboratories that are currently so widespread and so lucrative.

The legislation would have three primary benefits. It would give law enforcement authorities urgently needed information on purchasers of piperidine—people who are either curing rubber legally or destroying young minds illegally.

The requirement for registration upon purchase of piperidine would deter weekend profiteers from obtaining an essential raw material used in the PCP manufacturing process.

And finally, by providing legal procedures for the purchase of piperidine, we would give drug enforcement officials an added weapon to use in prosecuting illegal PCP producers.

In addition to making it more difficult for drug dealers to purchase piperidine, S. 2778 also increases criminal sanctions for trafficking in PCP from a maximum first offense penalty of 5 years in prison and/or a $15,000 fine to 10 years in prison and/or a $25,000 fine.

The PCP Control Act is a step in the right direction, its logic is irrefutable. The legislation attracted 34 cosponsors in the Senate and now enjoys endorsement by the International Association of Police Chiefs, the International Narcotics Enforcement Officers Association, 14 State narcotic agencies, the International Association of Coroners and Medical Examiners, and the College of American Pathologists. The Federal Drug Enforcement Administration, the Department of Justice, and the entire administration embrace the measure.

I think this broad measure of support in the Senate and among the Federal and State jurisdictions suggests that the time has indeed come to move against the potent poison PCP.

Mr. President, I developed this compromise PCP control measure in collaboration with the distinguished chairmen of the Senate Judiciary Subcommittee on Juvenile Delinquency, Senator CULVER, and the House Commerce Subcommittee on Health and the Environment, Congressman PAUL ROGERS.

I urge my colleagues to support this measure. In my opinion, this country cannot afford to wait any longer before acting to control "the most dangerous drug to ever hit the streets." ●

● Mr. HATHAWAY. Mr. President, I am pleased to support the pending measure which includes much needed provisions to increase penalties for trafficking in PCP. It has been my pleasure to work with the Senator from Texas (Mr. BENTSEN) and the Senator from Iowa (Mr. CULVER) on these provisions, and I urge that the Senate adopt these proposals in order that the House might concur, and the final version be cleared for the President on a timely basis. The majority of these provisions were approved by the Senate on July 27, and the differences between that legislation and the legislation now before us have been fully explained by my colleagues.

In June, the Subcommittee on Alcoholism and Drug Abuse held two joint hearings with the Subcommittee on Juvenile Delinquency to explore a relatively new phenomenon in drug abuse; namely, the illicit use of legitimate chemicals. Our specific focus was on phencyclidine, commonly known as PCP, angel dust, killer weed, crystal, cadillac, cyclone, hog, and many other descriptive terms. It is even called DOA by some—this is police shorthand for "dead on arrival."

Regardless of what it is called, PCP is said to be a deadly and devastating drug, worse than anything else on the street. A glance at a magazine stand reveals numerous articles on PCP in a variety of magazines from Women's Day to Newsweek to Human Behavior. Newspapers and television programs have been drawing attention to PCP as well. Just 2 weeks ago, the Washington Post ran a front page story on the destructive effects of PCP on the family, friends, and neighbors of the PCP user. Clearly, the problem extends far beyond the user alone.

That PCP has become a national problem, as reflected by the media, is also supported by what little statistical information we have available. Use of PCP is growing in alarming proportions, especially among our Nation's youth. Federal officials estimate that nearly 7 million people, most of them 12 to 25 years old, have tried this dangerous drug. Recent news reports indicate that last year alone, PCP sent at least 4,000 users to hospital emergency rooms, took 100 lives, and was responsible for an untold number of strange, suicidal, or homicidal acts. Reported incidents include drowning in a shower, self-inflicted gunshot wounds, and other bizarre behavior.

PCP is a nonnarcotic, nonbarbiturate chemical agent. It is apparently easy to make from readily available legal chemicals. This drug is extremely toxic and can cause severe reactions with a single dose.

Because of its widespread abuse and potential for devastating effects, PCP warrants national attention and Federal controls. This became increasingly clear at the hearings. Three former PCP users testified about the dangers of PCP and how easily one can obtain the drug. A

convicted PCP manufacturer who is currently serving time in Federal prison, described the ease with which PCP is made and the enormous profit that can be realized with a small investment.

Researchers, treatment professionals, and law enforcement personnel testified about the widespread and growing use of PCP, especially among our Nation's youth, and cited examples of the bizarre and violent behavior which can be attributed to its use. We also heard from the administration about current efforts with respect to prevention and education, treatment and rehabilitation, and Federal law enforcement activity related to PCP. Finally, we were pleased to have the benefit of testimony from Mr. BENTSEN, the author of S. 2778, the PCP Criminal Law and Procedures Act of 1978.

This bill would increase the penalties for PCP trafficking and require reporting of the sale or transfer of piperidine, an essential ingredient of PCP. I am pleased to be a cosponsor of this bill, and commend Senator BENTSEN for his fine efforts.

Based in large part on the testimony received during the hearings, Senator CULVER and I offered an amendment to S. 2778 to strengthen that bill. Entitled the "Drug Abuse Control Act of 1978," it revised the penalty structure for the unauthorized manufacture or distribution of PCP contained in S. 2778, so that it is in conformity with the Controlled Substances Act. It also revised the provision in S. 2778 requiring reporting of transfers or sales of piperidine to require reporting within 7 days instead of 30 days. This would make it easier for law enforcement personnel to track down the substance should there be suspicion of improper use.

Controlling PCP is more difficult than controlling most abused drugs because it is composed of readily available licit chemicals which are used for legitimate industrial purposes. However, if we can get a handle on piperidine, an essential ingredient of PCP, then we should be able to get PCP under control. The Drug Abuse Control Act of 1978 attempts to do just that.●

UP AMENDMENT NO. 2030

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate agree to the amendment of the House to the bill with the following amendment by Mr. CULVER, which I send to the desk and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) for Mr. CULVER proposes unprinted amendment numbered 2030.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, insert after line 3 the following:

TITLE I—ENABLING PROVISIONS FOR THE CONVENTION ON PSYCHOTROPIC SUBSTANCES

Redesignate sections 2 through 13 as sections 101 through 112, respectively.

On page 16, lines 4 and 5, strike out "Act" and insert in lieu thereof "title" each place it appears.

On page 16, insert after line 7 the following new titles:

TITLE II—PCP CRIMINAL PENALTIES AND PIPERIDINE REPORTING

SEC. 201. Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) by inserting ", except as provided in paragraphs (4) and (5) of this subsection," after "such person shall" in the first sentence of subsection (b)(1)(B);

(2) by adding after paragraph (4) of subsection (b) the following new paragraph:

"(5) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, except as authorized by this title, phencyclidine (as defined in section 310(c)(2)) shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under paragraph (1) or this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment."; and

(3) by adding after subsection (c) the following new subsection:

"(d) Any person who knowingly or intentionally—

"(1) possesses any piperidine with intent to manufacture phencyclidine except as authorized by this title, or

"(2) possesses any piperidine knowing, or having reasonable cause to believe, that the piperidine will be used to manufacture phencyclidine except as authorized by this title,

shall be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $15,000, or both.".

SEC. 202. (a) Part C of the Controlled Substances Act is amended (1) by inserting "; PIPERDINE REPORTING" at the end of its heading, and (2) by adding after section 309 (21 U.S.C. 829) the following new section:

"PIPERIDINE REPORTING

"SEC. 310. (a)(1) Except as provided under paragraph (3), any person who distributes, sells, or imports any piperidine shall report to the Attorney General such information, in such form and manner, and within such time period or periods (of not less than seven days), concerning the distribution, sale, or importation as the Attorney General may require by regulation, and the person shall preserve a copy of each such report for 2 years. The Attorney General may include in the information required to be reported the following:

"(A) The quantity, form, and manner in which, and date on which, the piperidine was distributed, sold, or imported.

"(B)(i) In the case of the distribution or sale of piperidine to an individual, the name, address, and age of the individual and the type of identification presented to confirm the identity of the individual.

"(ii) In the case of the distribution or sale of piperidine to an entity other than an individual, the name and address of the entity and the name, address, and title of the individual ordering or receiving the piperidine and the type of identification presented to confirm the identity of the individual and of the entity.

"(2) Except as provided under paragraph (3), no person may distribute or sell piperidine unless the recipient or purchaser presents to the distributor or seller identification of such type, to confirm the identity of the recipient or purchaser (and any entity which the recipient or purchaser represents), as the Attorney General establishes by regulation.

"(3) Under such conditions and to such extent as the Attorney General establishes, paragraphs (1) and (2) shall not apply to—

"(A) the distribution of piperidine between agents or employees within a single facility (as defined by the Attorney General), if such agents or employees are acting in the lawful and usual course of their business or employment;

"(B) the delivery of piperidine to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business; but where such carriage or storage is in connection with the distribution, sale, or importation of the piperidine to a third person, this paragraph shall not relieve the distributor, seller, or importer from compliance with paragraph (1) or (2); or

"(C) any distribution, sale, or importation of piperidine with respect to which the Attorney General determines that the report required by paragraph (1) or the presentation of identification required by paragraph (2) is not necessary for the enforcement of this title.

"(b) Any information which is reported to or otherwise obtained by the Department of Justice under this section and which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) thereof shall be considered confidential and shall not be disclosed, except that such information may be disclosed to officers or employees of the United States concerned with carrying out this title or title III or when relevant in any proceeding for the enforcement of this title or title III.

"(c) For purposes of this section, section 401(d), and section 402(a)(9):

"(1) The term 'import' has the meaning given such term in section 1001(a)(1).

"(2) The term 'phencyclidine' means 1-(1-phenylcyclohexyl) piperidine, its salts, or any immediate precursor, homolog, analog, or derivative (or salt thereof) of 1-(1-phenylcyclohexyl) piperidine that is included in schedule I or II of part B of this title.

"(3) The term 'piperidine' includes its salts and acyl derivatives.".

(b)(1) Section 402(a) of such Act (21 U.S.C. 842(a)) is amended—

(A) by striking out "or" at the end of paragraph (7);

(B) by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; or"; and

(C) by adding after paragraph (8) the following new paragraph:

"(9) to distribute or sell piperidine in violation of regulations established under section 310(a)(2), respecting presentation of identification.".

(2) Section 402(c)(2) of such Act (21 U.S.C. 842(c)(2)) is amended by adding after subparagraph (B) the following new subparagraph:

"(C) Subparagraphs (A) and (B) shall not apply to a violation of subsection (a)(5) with respect to a refusal or failure to make a report required under section 310(a) (relating to piperidine reporting).".

(3) Section 403(a)(4) of such Act (21 U.S.C. 843(a)(4)) is amended—

(A) by inserting "(A)" after "(4)", and

(B) by inserting before "; the following: ", or (B) to present false or fraudulent identification where the person is receiving or purchasing piperidine and the person is required to present identification under section 310(a)".

(A) by striking out "or" at the end of paragraph (7);

(B) by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; or"; and

(C) by adding after paragraph (8) the following new paragraph:

"(9) to distribute or sell piperidine in violation of regulations established under section 310(a)(2), respecting presentation of identification.".

(2) Section 402(c)(2) of such Act (21 U.S.C. 842(c)(2)) is amended by adding after subparagraph (B) the following new subparagraph:

"(C) Subparagraphs (A) and (B) shall not apply to a violation of subsection (a)(5) with respect to a refusal or failure to make a report required under section 310(a) (relating to piperidine reporting).".

(3) Section 403(a)(4) of such Act (21 U.S.C. 843(a)(4)) is amended—

(A) by inserting "(A)" after "(4)", and

(B) by inserting before "; or" the following: ", or (B) to present false or fraudulent identification where the person is receiving or purchasing piperidine and the person is required to present identification under section 310(a)".

(c) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended—

(1) by inserting "; PIPERIDINE REPORTING" at the end of the item relating to part C, and

(2) by adding immediately after the item relating to section 309 the following new item:

"SEC. 310. PIPERIDINE REPORTING.".

SEC. 203. (a)(1) Except as provided under paragraph (2), the amendments made by this title shall take effect on the date of the enactment of this Act.

(2) Any person required to submit a report under section 310(a)(1) of the Controlled Substances Act respecting a distribution, sale, or importation of piperidine during the 90 days after the date of the enactment of this Act may submit such report any time up to 97 days after such date of enactment.

(3) Until otherwise provided by the Attorney General by regulation, the information required to be reported by a person under section 310(a)(1) of the Controlled Substances Act (as added by section 202(a)(2) of this title) with respect to the person's distribution, sale, or importation of piperidine shall—

(A) be the information described in subparagraphs (A) and (B) of such section, and

(B) except as provided in paragraph (2) of this subsection, be reported not later than seven days after the date of such distribution, sale, or importation.

(b) The Attorney General shall—

(1) first publish proposed interim regulations to carry out the requirements of section 310(a) of the Controlled Substances Act (as added by section 202(a)(2) of this title) not later than 30 days after the date of the enactment of this Act, and

(2) first promulgate final interim regulations to carry out such requirements not later than 75 days after the date of the enactment of this Act, such final interim regulations to be effective with respect to distributions, sales, and importations of piperidine on and after the ninety-first day after the date of the enactment of this Act.

(c) The Attorney General, after consultation with the Secretary of Health, Education, and Welfare, shall analyze and evaluate the impact and effectiveness of the amendments made by this title, including the impact on the illicit manufacture and use of phencyclidine and the impact of the requirements imposed by such amendments on legitimate distributions and uses of piperidine. Not later than March 1, 1980, the Attorney General shall report to the President and the Congress on such analysis and evaluation and shall include in such report such recommendations as the Attorney General deems appropriate.

(d) On January 1, 1981, section 310, subsection (d) of section 401, paragraph (9) of section 402(a), subparagraph (C) of section 402(c)(2), and clause (B) of section 403(a)(4) of the Controlled Substances Act (as added by this title) are repealed.

TITLE III—FORFEITURE OF PROCEEDS OF ILLEGAL DRUG TRANSACTIONS

SEC. 301. (a) Section 511 of the Comprehensive Drug Abuse Prevention and Control Act (21 U.S.C. 881) is amended—

(1) by adding at the end of subsection (a) the following new paragraph:

"(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this title, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this title, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.";

(2) in subsection (e)(2) by striking out ", but the proceeds" and all that follows through "court costs"; and

(3) by adding at the end of subsection (e) the following new sentence:

"The proceeds from any sale under paragraph (2) and any moneys forfeited under this title shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expense of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in the general fund of the United States Treasury any amounts of such moneys and proceeds remaining after payment of such expenses.".

(b) The second sentence of section 1015 of such Act (21 U.S.C. 965) is amended by inserting "or 511" after "510" each place it appears.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the explanation of the Senate amendment be printed in the RECORD.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

JOINT HOUSE-SENATE EXPLANATION OF SENATE AMENDMENT

TITLE II—PCP CRIMINAL PENALTIES AND PIPERIDINE REPORTING

Section 201 of the Senate amendment amends section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) to increase the penalties for unlawfully manufacturing, distributing, or dispensing phencyclidine (PCP) and the penalties for possessing phencyclidine with the intent to unlawfully manufacture, distribute or dispense it. Specifically, it increases the current maximum penalty of five years imprisonment and/or a $15,000 fine to a maximum penalty of ten years imprisonment and/or a fine of $25,000. Similarly, it increases the current penalty for any person who has previously been convicted of a felony offense under Federal drug laws from a maximum of ten years imprisonment and/or a $30,000 fine to a maximum of twenty years imprisonment and/or a $50,000 fine.

The increases in the penalties for offenses involving the unlawful distribution of PCP are intended to respond to the alarming increase in the illicit availability and abuse of this harmful substance. Although legislating penalties on a substance-by-substance basis presents some practical difficulties particularly as once-popular abusable drugs become obsolete as the drug of choice of abusers and new "fad drugs" appear on the scene, penalties for illicit distribution of PCP warrant special attention because it can be extremely harmful to humans and because it can be easily manufactured. It is recognized that ultimately the penalties for offenses involving the illicit distribution of all non-narcotic drugs in Schedules I and II of the Controlled Substances Act should be increased to make them comparable to those for narcotic drugs in Schedules I and II of the Act. It is well recognized that some psychotropic drugs can be as harmful and as subject to abuse as narcotic drugs.

Section 201 also imposes a special parole term of at least two years on any person sentenced to a term of imprisonment under section 401(b) of the Act for unlawfully manufacturing, distributing, dispensing or possessing phencyclidine. In the case of any person who has previously been convicted of a felony offense under Federal drug laws, it increases the special parole term to a minimum of four years.

For the purpose of section 401(b) of the Controlled Substances Act the term "phencyclidine" includes any salt, immediate precursor, homolog, analog or derivative (or salt thereof) of phencyclidine that is included by legislation or regulation in Schedule I or II of the Act.

Section 201 of the Senate amendment provides that it is unlawful for any person to knowingly or intentionally (1) possess piperidine (a chemical used in making phencyclidine) with intent to unlawfully manufacture phencyclidine or (2) possess piperidine, knowing or having reasonable cause to believe that the piperidine will be used to unlawfully manufacture phencyclidine. It provides a penality for these violations of a term of imprisonment of up to five years and/or a fine of up to $15,000.

Section 202 of the Senate amendment adds a new section 310 to the Controlled Substances Act. This new section establishes the requirement that anyone who distributes, sells or imports piperidine (a chemical used in making phencyclidine) must report such transactions to the Attorney General. It should be emphasized, however, that this new section is solely intended to establish a reporting system for piperidine transactions. It is not intended as a new regulatory system or as an expansion of the Controlled Substances Act to cover precursor substances beyond those now covered. It is rather intended to be implemented as a pilot program to study and determine whether it can be effective in reducing the illicit manufacture, distribution, and use of PCP.

Specifically, proposed new subsection 310(a)(1) of the Act requires any person who distributes, sells or imports piperidine to report information respecting these transactions to the Attorney General in such form and manner as the Attorney General may require. It specifies that this information may include:

The quantity, form, date, and manner in which the piperidine was distributed, sold, or imported; and

The name, address, age, title and identification presented by the individuals and/or entities involved in the transactions.

It is the intent of these provisions to reach only that information that is necessary to prevent the illicit diversion of piperidine and to enforce other provisions of the Act. Since this information will vary greatly depending on the transaction, the Attorney General is authorized to add or subtract from this list.

Proposed new subsection 310(a)(1) of the Act also permits the Attorney General to vary the time period or periods in which these transactions are required to be reported. Thus, the Attorney General may set one time period for reporting transactions that are not likely to result in illicit diversion and a shorter time period for other transactions. In no event, however, is the Attorney General authorized to require reports under subsection 310(a)(1) to be submitted within a period of less than seven days. Of course, the parties to these transactions may voluntarily file their reports in less than seven days, and in fact they are encouraged to do so.

Proposed new subsection 310(a)(2) of the Act prohibits any person from distributing or selling piperidine to another unless the recipient or purchaser presents to the distributor or seller such identification as the Attorney General may require. Once again, the Attorney General is authorized to require different types of identification for different transactions depending upon the parties and entities involved, the form of the transaction, and the likelihood of any illicit diversion of piperidine.

Since this legislation is not intended to place any undue burden on legitimate uses of piperidine, proposed new subsection 310(a)(3) of the Act requires the Attorney General to exempt certain transactions in piperidine from all or part of the reporting requirements in subsection 310(a)(1) and the identification requirements in subsection 310(a)(2). Specifically, it requires the Attorney General to exempt, under such conditions and to such extent as he may require—

(1) transactions in piperidine which he determines do not need to be reported for the enforcement of section 310.

(2) distributions of piperidine between agents or employees within a single facility if the agents or employees are acting in the lawful and usual course of their business or employment; and

(3) deliveries of piperidine to or by common or contract carriers or warehousemen in the lawful and usual course of their business or employment.

Proposed new subsection 310(b) of the Act places certain restrictions on the disclosure of information that is reported to or otherwise obtained by the Department of Justice under that section to assure its confidentiality. Specifically, the new subsection provides that any trade secrets or confidential commercial or financial information that is exempt from disclosure under 5 U.S.C. 552(a)(b)(4) shall be considered confidential and shall not be disclosed. The only exceptions to this rule are disclosure of this information—

(1) to officers and employees of the United States concerned with carrying out the Controlled Substances Act and the Controlled Substances Import and Export Act; and

(2) when relevant in any enforcement proceedings under the Controlled Substances Act or the Controlled Substances Import and Export Act.

Under section 1905 of Title 18 of the United States Code any disclosure of trade secrets or certain confidential commercial or financial data by an officer or employee of the United States that is not authorized by law is punishable by a maximum fine of $1,000 and/or a maximum term of imprisonment of one year and loss of his office and employment.

In implementing this section it should be remembered that there are relatively few manufacturers, distributors and users of piperidine in the United States. Therefore the Attorney General is instructed to take particular care not to reveal proprietary commercial information which individually or cumulatively, would cause substantial harm to the competitive position of such parties. Such proprietary information would include, inter alia, customer lists, price lists, and respective market shares.

Proposed new subsection 310 (c) of the Act defines several terms. First, it defines "piperidine" to include any salts or acyl derivatives of piperidine. It also defines "phencyclidine" to include any salts, immediate precursors, homologs, analogs, or derivatives (or salts thereof) of phencyclidine that are included (by legislation or regulation) in Schedule I or II of the Controlled Substances Act.

Subsection 202 (b)(1) of the Senate amendment amends section 402 of the Controlled Substances Act (21 U.S.C. 842) to provide penalties for violations of reporting and identification requirements in proposed new section 310 (a) of the Act. Specifically it provides that anyone who distributes, sells or imports piperidine in violation of section 310 (a) is subject to a maximum civil penalty of $25,000.

Subsection 202 (b)(2) of the Senate amendment amends section 403 to provide criminal penalties for the knowing and intentional presentation of false or fraudulent identification by any person receiving or purchasing piperidine. It provides a penalty for such violations of a maximum term of imprisonment of four years and/or a maximum fine of $30,000. It should also be noted that the existing language is section 403(a)(4) would apply similar penalties to anyone who knowingly and intentionally furnished false or fraudulent material information in/or omits such information from, any application, report, record, or sales document required to be made, kept, or filed under proposed section 310.

Section 203 of the Senate amendment establishes a mechanism for implementing the piperidine reporting requirement prior to the promulgation of final regulations by the Attorney General. Specifically section 203(a)(1) provides that the amendments made by Title II of the Senate amendment shall take effect on the date of enactment. Under the provisions of section 203 (a)(2), however, anyone required to submit a report on a piperidine transaction during the first 90 days after enactment is not required to submit these reports until 97 days after enactment. Of course, these transactions could be reported at an earlier date on a voluntary basis. Under subsection 203 (a)(3), all reports are required to contain the quantity, form, date and manner in which the piperidine was distributed, sold, or exported and the type of identification used to confirm the identity of any person and entities that purchase or receive the piperidine.

In order to assure that the Attorney General has promulgated regulations to govern transactions in piperidine at the end of this ninety day period, subsection 203 (b) of the Senate amendment requires him to promulgate proposed interim regulations not later than 30 days after the date of enactment. After a suitable comment period, it requires him to promulgate final interim regulations not later than 75 days after the date of enactment, and provides that these final interim regulations shall take effect on the ninety-first day after enactment.

It is intended that the Attorney General will proceed to promulgate final regulations to govern transactions in piperidine in accordance with all of the requirements of the Administrative Procedures Act and applicable Executive Orders. Whenever these final regulations take effect, they would supersede the final interim regulations promulgated under subsection 203(b)(2).

Subsection 203(c) of the Senate amendment requires the Attorney General, after consulting with the Secretary of Health, Education and Welfare, to analyze and evaluate the impact and the effectiveness of the amendments made by Title II of the Senate amendment. This analysis and evaluation specifically includes the impact of the reporting requirements on the illicit manufacture and use of phencyclidine and on legitimate use of piperidine. It requires the Attorney General, not later than March 1, 1980, to submit a report to the President and the Congress containing this analysis and evaluation and any recommendations he deems appropriate.

Subsection 203(d) of the Senate amendment contains a two-year "sunset" provision which provides that all of Title II except for the provisions respecting increased criminal penalties for the illicit manufacture, distribution, dispensing or possession of phencyclidine, shall be repealed on January 1, 1981, unless Congress enacts legislation to continue such provisions before that date. This provision reflects the view that Title II of the Senate amendment is intended to be implemented as a pilot program to study and determine whether the reporting of chemical precursors of a controlled substance can be effective in reducing the illicit manufacture, distribution and use of that controlled substance.

TITLE III—FORFEITURE OF PROCEEDS OF ILLEGAL DRUG TRANSACTIONS

Section 301 of the Senate amendment amends section 511 of the Controlled Substances Act (21 U.S.C. 1881), which currently provides for the forfeiture of certain types of property if such property is used, or intended for use, in the manufacture or distribution of illegal drugs or used or intended to be used to facilitate certain violations of the Act. The types of property covered under the current law includes illicit abusable drugs, raw materials and equipment used in manufacturing such drugs, property used to contain or conceal such drugs, vehicles used to facilitate the transportation of such drugs, and any records, books, or formulas used in violation of Federal illicit drug laws.

The Senate amendment expands section 511 of the Act to provide for the forfeiture of the following additional types of property:

(1) All monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for illicit controlled substances.

(2) All proceeds traceable to such an exchange for illicit controlled substances, and

(3) All moneys, negotiable instruments, and securities used or intended to be used to facilitate any controlled substance law violations.

Due to the penal nature of forfeiture statutes, it is the intent of these provisions that property would be forfeited only if there is a substantial connection between the property and the underlying criminal activity which the statute seeks to prevent. Specifically, the Senate amendment provides for the forfeiture of property exchanged or intended to be exchanged in an illegal drug transaction. In addition it provides for forfeiture of property which is the proceeds of an illegal drug transaction only if there is a traceable connection between such property and the illegal exchange of controlled substances. Thus if such proceeds were, for example, commingled with other assets, involved in intervening legitimate transactions, or otherwise changed in form; they would still be subject to forfeiture, but only to the extent that it could be shown that a traceable connection to an illegal transaction in controlled substances existed. Similarly, any moneys, negotiable instruments, or securities that were used or intended to be used to facilitate any violation

of the Controlled Substances Act would be forfeitable only if they had some substantial connection to, or were instrumental in, the commission of the underlying criminal activity which the statute seeks to prevent.

Finally it should be pointed out that no property would be forfeited under the Senate amendment to the extent of the interest of any innocent owner of such property. The term "owner" should be broadly interpreted to include any person with a recognizable legal or equitable interest in the property seized. Specifically the property would not be subject to forfeiture unless the owner of such property knew or consented to the fact that:

1. the property was furnished or intended to be furnished in exchange for a controlled substance in violation of law,
2. the property was proceeds traceable to such an illegal exchange, or
3. the property was used or intended to be used to facilitate any violation of Federal illicit drug laws.

The Senate amendment also provides that any moneys forfeited under the Controlled Substances laws and the proceeds from any sale of property forfeited under these laws shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs in the same manner as currently required for proceeds from the sale of other forfeited property under section 511 of the Act. Any amounts of such moneys or proceeds remaining after the payment of such expenses are required to be forwarded to the Treasurer of the United States for deposit in the general fund of the United States Treasury.

Subsection 301(b) of the Senate amendment amends section 1015 of the Controlled Substance Import and Export Act (21 U.S.C. 905) to provide further clarification that section 511 of the Controlled Substances Act is applicable to forfeitures for violations of the Controlled Substances Import and Export Act.

Mr. STEVENS. Mr. President, I say it is my understanding Senator MATHIAS has approved this amendment and it is agreeable with the minority.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, is it necessary to ask that any technical and clerical corrections be corrected in the engrossment?

The PRESIDING OFFICER. It should not be necessary.

Mr. ROBERT C. BYRD. I thank the Chair. I did not think so.

UNANIMOUS-CONSENT AGREEMENT—ENERGY CONFERENCE REPORTS

Mr. ROBERT C. BYRD. Mr. President, I should like to have the attention of the Republican leadership.

At the present time, under the order entered, at 4 p.m. on Monday the first two votes on the energy conference reports will begin. At 4:15 the second vote will occur. At 4:30 the vote on cloture will occur.

In order that the debate on the cloture motion may immediately precede the vote on the cloture motion, I ask unanimous consent that the vote on the cloture motion occur at 4 p.m.; that immediately thereafter, the Senate then proceed to the votes on the two energy conference reports.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. There is no objection. That is consistent with our desire to have the votes start at 4.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR STAFFORD AND SENATOR PROXMIRE ON MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday, after the two leaders or their designees have been recognized under the standing order, Mr. STAFFORD be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. PROXMIRE then be recognized for not to exceed 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL MONDAY, OCTOBER 9, 1978, AT 8:45 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:45 a.m. on Monday morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 9:45 A.M. MONDAY, OCTOBER 9, 1978

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 9:45 a.m. on Monday.

The motion was agreed to; and, at 8:50 p.m. the Senate recessed until Monday, October 9, 1978, at 9:45 a.m.

NOMINATION

Executive nomination received by the Senate October 7, 1978:

OFFICE OF MANAGEMENT AND BUDGET

John Patrick White, of California, to be Deputy Director of the Office of Management and Budget, vice James T. McIntyre, Jr.

EXTENSIONS OF REMARKS

THE PUBLIC WORKS APPROPRIATIONS BILL

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. FISHER. Mr. Speaker, the House has voted to sustain the President's veto of the public works appropriations bill. I voted to sustain. This is consistent with my votes against the House version of the bill and against the conference agreement.

The basic problem with this bill is that it funds too many water projects. Over the years, a great number of worthwhile water projects have provided considerable benefits in terms of irrigation, flood control, recreation, electric power, water supply, and others. But we are fast approaching the time when there will be no major irrigation damsites left, yet the funding for water projects continues virtually unabated. Past accomplishments should not hide the flaws with many of the projects that would be funded under this bill—environmental problems, questionable cost/benefit analyses, and general overconstruction.

Current concerns about inflation make the case against further funding for some of these water projects even stronger. With the economy going along reasonably well, and with inflation at such a high rate, it is simply inappropriate to increase the funding for water projects at this time. The growth in all Government spending must be restrained, and reductions in public works must be part of the bargain.

There are, of course, a great many projects in this bill which merit Government support, including a wide range of energy-related research projects. These worthwhile projects will surely be contained in the revised bill which the Congress must now prepare promptly. The revised bill will also include a number of water projects, those which clearly provide more benefits than costs. This is as it should be.

The vote to sustain the veto also reflects the changing nature of the Congress. Newer Members do not seem to respond to traditional arguments and exhortations for any and all projects including water. Nor are they as attracted to the pork barrel.

All is not rosy, however, when it comes to water projects. Recently the House had another opportunity to assess water policies when it voted on the Water Resources Development Act of 1978. This bill provides a start for a number of new water projects that are to be funded in future years after further planning. I voted against this bill also while the majority of my colleagues voted in its favor. My view is that many of these projects, like many of those in the public works appropriations bill, simply should not be funded because they cannot be justified economically.

In addition, the water resources bill runs counter to the development of a reasonable long-term water policy. The bill waives local funding requirements in a number of cases, it overestimates the

benefits of many projects and underestimates the costs, and it skirts the planning process for still others. This country needs a responsible process for determining whether a water project should be undertaken, one that accurately measures the costs including environmental considerations against a realistic set of benefits. I hope that the spirit which supported the President's veto is strong enough to lead to sounder decisions on water projects and a better water policy for this Nation.●

SENATOR McCLURE DEDICATES MONUMENT TO IDAHO AT VALLEY FORGE

HON. STEVEN D. SYMMS

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. SYMMS. Mr. Speaker, I wish to commend and thank my close colleague in the Senate, Hon. JAMES A. MCCLURE for his remarks at the dedication ceremony of Idaho's monument in Valley Forge National Historical Park honoring Idaho's Congressional Medal of Honor recipients.

As part of the Idaho delegation, I am very pleased that Idaho will now have a portion of Valley Forge's Medal of Honor Grove dedicated to our native son Medal of Honor recipients. I am also pleased that JIM MCCLURE, truly a great patriot, was selected to make the dedicatory address.

I am submitting Senator MCCLURE's remarks to the RECORD to remind all of us of the precious freedoms that many have fought to preserve:

DEDICATORY ADDRESS, IDAHO STATE AREA DEDICATION, SEPTEMBER 20, 1978, VALLEY FORGE, PA.—JAMES A. MCCLURE, U.S. SENATOR, IDAHO

Thank you very much. Dr. Miller, Col. Hanson, distinguished guests, Reverend, clergy and especially the men who so proudly wear the Medal of Honor: It is my privilege to represent the people of the great State of Idaho at this dedication today. "The world will little note nor long remember what we say here." Those words were spoken at another battlefield of another war in this State. But they apply to all the brave men and brave women who have struggled throughout the centuries to give us a legacy of freedom, the opportunity to earn it and protect it for ourselves.

Throughout the whole history of mankind it has been punctuated by the acts of tyrants who would deprive us of our freedom and by the occasional aspirations of men and women towards individual freedom. And sadly, throughout most of history, freedom has been denied to the greatest number of people. It is only to a few of human kind, in a few places, during brief periods of human history that we have been privileged to live as free men and women. We are among the most favored of all peoples having recently celebrated the bicentennial of the birth of this country, dedicated to freedom, we're met here today to honor some of the men and women who have given us the opportunity and particularly those Medal of Honor winners from our State who fought to preserve the opportunity for freedom for themselves and their children and to give their children the opportunity to pass that torch to the next succeeding generation. Not every land has this opportunity. There are those who live in oppression, there are those who, without and within our country, would deprive us of freedom. There are those who don't cherish individual freedom as we do. Freedom cannot be simply passed from one generation to another, but the opportunity for that freedom can be enhanced and burnished and the torch passed on by people who are willing to pay the price and make the sacrifice that is necessary for that opportunity.

Driving up from Washington, DC today I was reminded that my great grandfather landed in the Port of Baltimore as a young immigrant boy from Ireland, 16 years old—he had to lie about his age to get into the country. He in turn moved into this State in the northwestern portion of the State, and was in the service of the Northern troops during the Civil War and died in a hospital in Washington, DC. I have alway known that he was buried in the National Cemetery, and one of the first things I did when I got to Washington, DC was to go to Arlington to find his grave. And they told me there was no record of his being buried there. I was very puzzled by that because we have the letters that he had written to my great grandmother (because my grandfather was born after he had left and he never saw my grandfather).

And so I asked them to check again—I had his name and I had the unit number in which he served and they looked through the records and said, "Well, it's very simple. He was buried in the National Cemetery—the National Cemetery is in Baltimore." And that was the first time I had known that. So I went to Baltimore and drove by the National Cemetery. For you see he gave his life in the service of his new country so that that young son of his, whom he had never seen, might have the opportunity to live in freedom.

None of us want to see our sons or daughters have to fight in another war. Each of us prays that it will not be necessary. But whether it be Patrick Henry's cry at the time of the founding of this Republic, or those who cherish freedom in more recent years, we all know that we may be, at some time, called upon to defend our freedoms. If there is one challenge facing this country today, it is not only to remain strong militarily, but even more importantly, to remain with that strength of spirit that says we will use that strength if necessary in order to preserve our freedom. In recent years we have been tested and young people today are questioning perhaps more than ever before in our history the value of freedom and the worth of sacrifice.

Ladies and gentlemen, in honor of those who have received our nation's highest honor, we can do no better than to call upon our young people for the same dedication that was evidenced by others that we might be here today, making this presentation, commemorating those sacrifices, pointing out those particular honors.

May I close by a quotation by John Stuart Mill, a British philosopher who lived in the last century who in writing an essay entitled, "The Contest in America" (and he was then referring to the Civil War), penned these words in February of 1862, "War is an ugly thing, but not the ugliest of things. The decayed and degraded state of moral and patriotic feeling which thinks nothing worth a war is worse. A war to protect other human beings against tyrannical injustice, a war to give victory to their own ideas of right and good and which is their own war carried on for an honest purpose by their free choice is often the means of their regeneration. A man who has nothing which he is willing to fight for which he cares more about that his personal safety is a miserable creature who has no chance of being free unless made and kept so by the exertions of better men than himself." It's in honor of those better men that we are gathered here today.

Thank you.●

MINNESOTA'S PUBLIC FINANCING GIVES DEMOCRATS HUGE ADVANTAGE

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. FRENZEL Mr. Speaker, one of the most important arguments against public financing is that it always is weighted toward the incumbents. Incumbents control the taxpayer's funds and write the rules of the ball game.

During numerous appearances this year, I have cited the Minnesota public financing law as one of my most egregarious examples of the incumbent protection device because it gave the Democrats almost twice as much money as it gave the Republican candidates. Well, I was wrong. It's much worse than I believed.

Last week, the State ethical practices board certified the allocation of public moneys. The Democrats received $3.50 for every $1 the Republicans received.

This should give pause for thought to my colleagues on my side of the aisle. Following is an article that appeared in the September 29 issue of the St. Paul Pioneer Press outlining the damage:

DOLLAR CHECKOFF GIVES DFL AMPLE RETURNS

(By Bill Salisbury)

Democratic Farmer-Labor candidates got more than $3.50 for every dollar that went to Independent-Republicans in the first distribution of public campaign funds by the state this year.

The state Ethical Practices Board this week certified the allocation of $510,698 in public funds to winning candidates from the Sept. 12 primary election.

DFLers will get $397,233 of that sum, compared with $108,626 for I-R candidates. The remaining $4,829 will go to minor party candidates.

DFL Gov. Rudy Perpich will get the largest sum, $128,670. That money is from taxpayers who marked the DFL box on the "dollar checkoff" on their state income tax returns.

Perpich's I-R opponent, U.S. Rep. Albert Quie, has rejected the use of public funds to avoid being bound by the $600,000 spending limit in the governor's race. Quie could have gotten about $97,000 from the state this year.

Attorney General Warren Spannaus, a DFLer, will get $45,326 or nearly half of the $100,000 he is allowed to spend on his campaign. His I-R challenger, state Sen. Howard Knutson, will get $21,779.

DFL candidates for state auditor, secretary of state and treasurer each will get $22,662 or nearly half of their $50,000 spending limit.

The I-R secretary of state and auditor candidates will receive $10,889. The I-R treasurer candidate rejected public funds.

The amounts are based on the number of DFLers and Republicans who marked their party boxes on tax returns.

Another $358,714 in public funds will be distributed to candidates after the Nov. 7 general election.

Taxpayers checked off $998,437 for public funding of campaigns. Some $132,554 was turned down by candidates. That money goes back into the state's general fund, leav-

ing $865,882 to be given to candidates this year.

Legislative candidates get varying amounts, depending on the DFL vs. I-R checkoff ratio and the vote comparison in their districts.

Some 125 DFL and 92 I-R candidates for Minnesota House seats accepted public funds. The DFLers will get a total of $155,250, while Republicans will get $65,069.

That averages $1,242 per DFL legislative candidate and $707 a Republican. Those accepting public funds are limited to spending $7,500 on their campaigns.

The largest amount to a DFL legislative candidate is $2,374 to Rep. Tad Jude Mound, and to a Republican, $2,461 to Rep. Ray Pleasant, Bloomington.

The smallest amount for a DFLer is $369 to Terry Morrison, Belle Plaine, and for a Republican, $242 to Samuel Faulk, Minneapolis.

The lowest amount for any candidate is $17 for Charles Boyum, American Party legislative candidate from Minneapolis.●

BE KIND TO KOCH AMENDMENT

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. SOLARZ. Mr. Speaker, when Ed Koch was a member of this esteemed body he was recognized as one of our most accomplished newsletter writers and certainly one of the best at peddling his most recent edition on the floor. Now that he has taken a big step up the ladder of political office by becoming the chief executive of the city of New York, which at least one other mayor proudly described as the "second toughest job in America," I think we have all discovered a remarkable fact about Mr. Koch.

You can take Ed Koch out of Congress, but you can't take Congress out of Ed Koch. For even though Mr. Koch has now forfeited the franking and recording privilege of our high office, he still finds it necessary to keep in touch with his constituents via the printed page. But no longer having the privileges of the CONGRESSIONAL RECORD and a congressional newsletter, Ed Koch has gone and developed a mayor's newsletter. As usual he has come up with an imaginative, inexpensive, and innovative way of communicating with his employees. He even discovered a foolproof distribution system by putting it in with every municipal paycheck. And that is one envelope which never goes unopened.

But if you remember Ed Koch, you know he was not only a newsletter writer and terrific legislator, but also a member who availed himself frequently of our privilege of speaking during the 1-minute period on a myriad of issues and subjects. He frequently inserted remarks in the RECORD on every conceivable topic under the Sun, and probably including the Sun.

I have often wondered, now that he has left these hallowed halls, if he experiences a significant sense of frustration that he can no longer avail himself of these instant means of historic communication. This has led me to the conclusion that we should permit former members of Congress not only to go on the floor, but also to insert special comments (duly notated of course to indicate that they are by members emeritus) three times a year in the CONGRESSIONAL RECORD. My amendment would be called "the be kind to Koch amendment" and would obviously be for the benefit of both past and future members' mental health.

Seriously, though, Members of Congress who read the RECORD might benefit from the collected wisdom and experiences of our former members and, who knows, it might even increase the readership of that weighty journal.

But for now, Mr. Speaker, let me insert, for the benefit of all of us who read his other newsletters, what an ex-colleague now writes about in a mayor's newsletter.

THE CITY OF NEW YORK,
OFFICE OF THE MAYOR,
New York, N.Y., August, 1978.

MAYOR'S NEWSLETTER

DEAR FELLOW CITY EMPLOYEE: The City's successful campaign for federal assistance came to a stirring climax last week when President Jimmy Carter standing on the steps of the City Hall, signed into law the New York City Loan Guarantee Act. It was an exciting moment for all New Yorkers and vindication for those of us who believe in our City and the justice of our cause. Welcoming the President on August 8, at City Hall, I said:

"We were successful because every sector of this City and State came together in a common cause. Government, labor, industry, the financial institutions, all New Yorkers agreed that we would put aside our daily differences and unite behind this vital legislation. And unite we did."

Beyond the festivities and the excitement of the day, however, was the realization that we have much hard work to do to keep this City on its proper course to fiscal recovery. So I added:

"We must use our assistance wisely, and restore our City finances to full and vigorous health. The challenge of securing federal aid has been met, but there remains the challenge of getting back on our feet. This will mean more sacrifices in the year ahead. The struggle for a sound City is not over. It is just beginning. It's not going to be easy, but New Yorkers have never turned their backs on a tough fight."

Following the ceremony, the President and Mrs. Carter remained in New York as guests of the City, spending the night at Gracie Mansion. They saw the Broadway hit show, "Ain't Misbehavin" and then enjoyed dinner at the U.S. Steakhouse.

As we drove through the City the President said to me, "the welcome I have received in New York is the warmest I have ever had in the United States and is equaled only by the welcome I received in West Berlin."

At breakfast Wednesday morning, he remarked to me, "you know, you are the only Mayor I have ever met who obviously enjoys being Mayor."

He is right. I do.

As Mayor, I have been heartened by the positive responses I have received to many of our initiatives. Some of the decisions and actions have met with varying degrees of opposition. However, I would like to take this occasion to discuss a few of these more controversial issues. May I preface my comments by saying that while I believe that governing often requires a degree of accommodation, I also believe that too much accommodation can lead to an abandonment of principles. I did not become Mayor to abandon those principles in which I believe.

I have opposed preferential quotas or other treatment for a particular group based on race, religion or sex. Equality, in my view, means just that. This does not mean that I do not support programs to help poor people, or disadvantaged people. On the contrary, I support programs which truly help the needy, whoever they are and wherever they live. Available funds should go to the needy, without regard to race or any other factor. It is true that an overwhelming percentage of the needy in this City happen to be non-white, and, therefore, the same large percentage of anti-poverty funds will be used to benefit non-whites. This is reasonable and equitable.

What I am saying is that people are people, and should be treated equally and in accordance with their needs. I do not believe that preferential (and, therefore, discriminatory) quotas and other like treatment, contribute to these goals, nor do they represent the best use of available funds.

I am distressed deeply when some segments of the black community assert that this basically non-discriminatory policy is somehow discriminatory. It is not and is in accordance with my deeply held principle of dealing with all people equitably.

Recently, I was disturbed to hear a television reporter say the following:

"Six months into his administration, Ed Koch, deserved or not, is the focus of anger, frustration and disenchantment in segments of the black population. Some of the bitterness can be laid to previous administrations, too high expectations soured by broken promises.

"And some of the hostility is of the Mayor's own making, the result not only of action he has taken, but of his rhetoric, his repeated use, for instance, of words like 'qualified' and 'competent' which translate to many people as code words for 'anti-black'."

I have repeated the reporter's remarks because fairness requires that you know what the criticisms are. However, I cannot believe that reasonable people, black or white, would find such language discriminatory or representative of code words.

In May, the special deployment of police cars on a fixed post basis at the Lubavitcher Center on Eastern Parkway and at the home of the Lubavitcher Rebbe was brought to my attention. This special police protection had been instituted in the Lindsay Administration and continued by Mayor Abraham Beame. I advised Police Commissioner Robert McGuire I did not want police vehicles or officers deployed on the basis of political considerations. I asked him to assess the situation and make a determination whether rational, professional police considerations required the continuation of the special protection. The Commissioner found no other religious person or institution received special police protection. He recommended that the fixed assignments for the Lubavitcher be terminated and that the two cars circulate through the entire community. I supported him in this decision.

This provoked resentment in some parts of the community I regret this, but the policy of my Administration is that politics not dictate police assignments.

Another area of disagreement—and, I think, misunderstanding—is closer to home. It involves the expansion of the Inspectors General program.

Let me say that I know that the overwhelming majority of our City's employees are honest and are doing a full day's work. There are some, however, who are not doing their jobs responsibly. This makes everyone else's work more difficult and impedes the City's ability to deliver services efficiently.

The Inspectors General have been appointed to deal with employees who are incompetent, who do not do an honest day's work, or, in the worst case, who betray their public trust by corruption. The Inspectors General also will monitor business relationships with City agencies and employees. The Inspectors General exist because the possibility of incompetence and corruption, unfortunately,

are with us and cannot be ignored. This is not a pejorative reflection on our workforce, as a whole, only an acknowledgment of a reality, an unfortunate reality, to be sure.

It is the bad apple that we want to separate from the Big Apple.

Another subject—less controversial, but no less troublesome—is the damage wrought by the heavy rains and flooding of the last week, particularly on Staten Island. I visited the areas over the weekend. As a result of water damage, homeowners lost their cars, furniture, finished basements and other property. As this is being written, we are in contact with federal and state officials to obtain aid, such as low interest loans from the Small Business Administration. I also have directed Environmental Protection Commissioner Francis X. McArdle to expedite City projects to bring relief from these conditions.

And, finally, most personally difficult for me was the loss of the six firemen in the Brooklyn conflagration. It was a shattering experience to have attended last week's funerals. All I can say is that those who fight fires are heroic men, and sadly, on occasion, martyrs. The people of the City of New York are deeply indebted to them and to their families.

In closing, I want you to know how much I appreciate the letters and suggestions that have been sent to me after the first newsletter came out. I hope you will treat these newsletters as a form of personal correpondence and feel free to respond to them.

Sincerely,

EDWARD I. KOCH, *Mayor.*●

MAJ. GEN. JAMES M. LEE DEPARTS

HON. ANTONIO BORJA WON PAT

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. WON PAT. Mr. Speaker, I would like to bring to the attention of our colleagues that we recently lost the services of one of our most able and dedicated liaison personnel, Army Maj. Gen. James M. Lee.

After more than 4 years as the Army's chief of legislative liaison, General Lee departed Washington September 27 to assume greater duties in Naples, Italy, as the Chief of Staff of Allied Forces, Southern Europe.

As a member of the House Armed Services Committee, I for one will sorely miss the assistance and counsel of General Lee. During his tenure with Army liaison, he has worked unstintingly to provide all of us with the best support possible for the better performance of our responsibilities.

During his more than 28 years of Army service, Major General Lee has compiled an outstanding record during two wars. An Army parachutist and aviator, his awards include the Silver Star, Legion of Merit with two oak leaf clusters, Distinguished Flying Cross, Bronze Star with cluster, air medals, and the Purple Heart.

Major General Lee's performance as head of Army congressional liaison has been equally dedicated and exemplary. I believe I speak for all our colleagues in thanking him for his fine support and wishing him every success with his new responsibilities and challenges.

Thank you.●

SHOULD THE UNITED STATES RECOGNIZE COMMUNIST CHINA?

HON. JAMES R. MANN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. MANN. Mr. Speaker, this past June the Harris organization took a poll on the subject of our relations with mainland China and Taiwan. In response to the question, "Should the United States recognize Communist China?", 66 percent of the respondents supported recognition and 25 percent opposed it. However, when asked, "Should we break relations with Taiwan if this is necessary to establish relations with Peking?", 66 percent were opposed and only 19 percent were in favor.

I think that in this case, the American people have instinctively understood something that has eluded many of our foreign policy experts; namely, the need for establishing a more flexible, nuanced China policy which would eventually lead to diplomatic relations with the People's Republic, but not under the terms which the Communist Chinese are now demanding. The American people understand that acceptance of these terms would be both morally wrong and politically unwise.

The mainland Chinese have suggested that we follow the so-called "Japanese model" in our relations with Taipei. They insist upon the termination of our diplomatic relations with Taiwan, with the resulting abrogation of the mutual defense treaty which we signed with the Republic of China in 1954. Peking says, however, that we could follow the Japanese example and maintain strong commercial ties with Taipei even though diplomatic ties have been broken.

It is my contention that to follow such a policy would not only fly in the face of long-standing moral commitments to a faithful ally, but would be against the best interests of the United States. I strongly oppose those who think that we must accept Peking's conditions and recognize the People's Republic as soon as possible, regardless of the consequences. The United States has very little to gain from such a precipitous move. To the contrary, what all parties to the issue should have is time, for the United States to formulate and implement policies which would lead to better relations with the mainland without renouncing our long-standing responsibilities to the Republic of China, time for the Republic of China and the People's Republic to develop policies which would lead to mutual recognition of the right of each to exist independently, and time for the other nations of East Asia to recognize that the United States is a reliable and long-term friend and advocate of peace, friendship, and independence in their part of the world.

There are those who argue that if we don't move forward to full "normalization" now, our relations with Peking will deteriorate. This argument ignores the fact that the People's Republic has very strong reasons for wanting to maintain and improve United States-China relations. China's delicate relationship with the Soviet Union and her pressing need for Western technology to carry on her modernization drive are far more important to Peking than her desire to isolate Taiwan.

There are also those who say that we should go ahead with normalization as soon as possible because of the enormous trade benefits that would accrue from acquiring a new market of 900 million potential customers. Here again, those who make this claim are not taking a close look at mainland China's real needs and goals. Chinese desire is, and always has been, to be as self-sufficient as possible. The Communist Chinese are now interested in trade with the United States because of their modernization drive and their subsequent interest in American technology and American training. They are also interested in purchasing American grain only at those times when their crop yield is insufficient to meet their needs.

The mainlanders are not interested, however, in the large-scale importation of consumer goods, and it is in this area that substantial American interests lie. Here a comparison with Taiwan might be instructive. In 1977 the Republic of China's two-way trade with the United States totaled $5.7 billion—about 16 times the People's Republic's trade with the United States. Taiwan's free enterprise, consumer oriented economy provides us with far more trade of the kind that we are most interested in than the People's Republic is likely to do in the foreseeable future.

It is clear that some degree of increased mutual cooperation is in the best interest of both the United States and China. But we must not allow ourselves to think in "either/or" terms. The choice is not between either accepting People's Republic terms and breaking with Taiwan on the one hand, or going back to a cold war situation with mainland China on the other. What we must do is take a realistic look at the situation and evolve a flexible policy which would best promote the interests of both the United States and East Asia as a whole.

The United States cannot afford to move without considering the effect of its actions on Taiwan and on the entire region. During the past few years, Taiwan has been in difficult circumstances as one country after another has suspended diplomatic relations. So far, neither its strong growth rate nor its political stability have been substantially affected. But it would be difficult to predict the long-term effect of a suspension of relations by the United States and especially of an abrogation of the mutual defense treaty. It seem unreasonable to say that the withdrawal of what has until now been regarded as Taiwan's greatest prop will have no long-run effect on world opinion. It is important to realize that the political situation in the People's Republic is very fluid. Although, as things now stand, it is unlikely that Peking's leaders will apply any great pressure on Taiwan after a possible U.S. withdrawal, it is impossible to predict what changes time will bring to the po-

litical structure on the mainland and what effect such changes will have on the People's Republic of China's Taiwan policy.

More than anything else, Mr. Speaker, we must ask ourselves what message we could be giving to the Taiwanese, to our allies, and to the world by unilaterally breaking off relations and withdrawing our pledge to defend a state which since its creation has been one of our closest allies. Power is based on symbols, on intangibles such as trust and respect, as much as on missiles and steel mills. Even if a U.S. withdrawal has no immediate negative effect on Taiwan, its symbolic meaning would be clear.

In a February 14 column in the New York Times, Prof. Peter Berger of Rutgers University discussed this very point and linked the Vietnamese "boat people" with the question of Taiwan. He said:

> These boats bring a message. It is a simple and ugly message. Here is what happens to those who put their trust in the United States of America. All of this is terrible enough in itself. But it now appears that the abandonment of those who trust us is becoming a habit. We are getting ready to do it again—this time in Taiwan . . . If there is one maxim in which morality coincides with politics it is that a nation that breaks its solemn word twice will never be trusted again.

Whatever one's views on Vietnam, it is clear that any U.S. retreat from Taiwan would be occurring in an unfortunate context. The Communist takeover in Indochina and the reduction of our ground troops in South Korea is still fresh in the minds of our Asian allies. A withdrawal from Taiwan at this time would most certainly diminish United States credibility in South Korea and Japan and weaken our posture in the whole area.

Still, there is much that can be done short of recognition to improve our relations with the P.R.C. The "Japanese model" of active contacts without official diplomatic relations, which Peking suggested for our relations with Taipei, could easily be used as a model for United States-P.R.C. relations. Trade could be greatly expanded by providing China with certain trade advantages, providing that the P.R.C. cooperates with the United States in establishing mutually advantageous trading policies. Much could be done to provide China with the new technologies it wants, and steps could be taken to settle such long-standing issues as the question of frozen assets.

In our relations with Taipei, we should use our influence to persuade the Nationalists to adjust to the realities of the situation. The R.O.C. should be urged to end its claim to the mainland and proclaim an independent Taiwanese republic. Over time, Peking might also adjust to the point of agreeing to maintain diplomatic relations with countries which also recognize Taipei.

If diplomatic relations with China can only be brought at the cost of our relations with Taiwan, then the price is too high. But there are alternatives, as I have discussed. Our long-run goal should be a two-China policy with full diplomatic relations with both sides. In the meantime, Mr. Speaker, we can work toward this goal by increasing our contacts with the mainland and working for greater flexibility on both sides.●

CALIFORNIA INSTITUTE OF TECHNOLOGY INAUGURATES DR. MARVIN L. GOLDBERGER

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. MOORHEAD of California. Mr. Speaker, Dr. Marvin L. Goldberger will be inaugurated as president of the California Institute of Technology on October 27 in Pasadena.

This notable occasion will mark the ceremonial joining of a new leader to a venerable and prestigious institution. It is an association where the man and the institution are mutually enhanced because both have impeccable credentials, both possess impressive backgrounds and both have experienced abundant success.

The inauguration of Dr. Goldberger continues a long and valued tradition where the indisputable class of the institution is matched by the unquestioned quality of the head man. It is an occasion which melds merit to merit, excellence to excellence.

It is the beginning of another chapter in the grand and remarkable history of the California Institute of Technology. I can state without equivocation that under the stewardship of Dr. Goldberger, the next chapter will be equally as distinctive.

As an esteemed scientist and academician, he supports the philosophy which has been the key to the successful development of Caltech as the preeminent institution for higher education in our land.

During the years of its maturation, the leaders of Caltech had the wisdom and perception to moderate the immutability of science and engineering with humanism of the liberal arts.

They insisted on three parts hard fact and one part empirical knowledge. They successfully sought to educate the young scientist in things outside science. They infused shades of grays into a black and white world.

Because of this sage and insightful guideline, the California Institute of Technology has an alumni, which is esteemed throughout the worldwide scientific community; it has a faculty, which is brilliant, capable, and universally respected; and it has a student body which possesses exciting and unlimited potential for growth and good.

It is, therefore, easy to comprehend why the California Institute of Technology enjoys such an admirable reputation. Under the influence and direction of Dr. Goldberger, that reputation will remain secure and the productive excellence of the institution will continue.●

NATIONAL ENERGY POLICY

HON. LEO J. RYAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. RYAN. Mr. Speaker, we are constantly being reminded that the nations of the world are depleting fossil energy supplies, especially petroleum and natural gas.

The location of producers and large reserves of oil and gas in the Middle East has dictated a certain foreign policy posture toward petroleum producing nations, which has affected our relations with other nations and the development of our national energy policy. The assumption most of us operated under was that building this special relationship in the Middle East with Saudi Arabia and other OPEC nations was both prudent and wise since we need their petroleum and there was no other place to obtain the amount of petroleum we need. We were assumed this was a valid assumption by the administration, and the petroleum companies, many of which have large investments in the Middle East, and make large profits on such holdings and the shipment of petroleum from there to the United States.

Recently we were surprised to learn from an article in the New Republic entitled "Oil of Olé!" that our good neighbor to the south, Mexico, has petroleum reserves that probably exceed those of Saudi Arabia. What is more, we discovered that two administrations have known about these tremendous fields and have kept the news secret since 1976.

I know we have a glut of oil in California, but to learn that the known world supply has suddenly gone from decreasing stocks to abundance leads me to question the credibility of our existing energy policy, such as it is. Why the switch to coal? Why high prices for natural gas and other petroleum supplies? These are some of the questions to which I intend to obtain answers. Since our petroleum corporations are not involved in the Mexican petroleum business, I wonder if they have been directing our attention to the Middle East producers for their own gain? Certainly the consumer would benefit from a direct pipeline from Mexico to the United States without supertankers and worry about the Arabs cutting off our supplies. Strategically, it would make a lot of sense to cut a deal with Mexico. Greater cooperation would benefit both nations.

The article from the New Republic follows:

OIL OF OLÉ!

The US government has been keeping a secret with enormous implications, but now it's out: Mexico apparently has petroleum reserves of 150 billion to 200 billion barrels, making it an oil power potentially greater than Saudi Arabia. The CIA has known about Mexico's vast potential reserves since 1976, but two administrations have concealed this information from the American people and from Congress, apparently to avoid undermining energy policies premised on scarcity

and foreign policies based on nuzzling the Arabs.

High officials in the departments of Energy, State and Treasury now confirm that Mexican potential reserves are huge, and some of them even admit the deception. But they claim that the Carter administration took Mexico's resources fully into account when fashioning its "moral equivalent of war" energy policy, which anticipates a world oil shortage by the mid-1980's or 1990. Carter's foreign policy is designed to insure that Saudi Arabia will produce enough oil to overcome the shortages. But these high-level assurances are disputed by subordinate officials, who assert that Mexican reserves never were factored into Department of Energy computer studies of world oil supplies and prices until last month.

Apparently, the people who make policy in the Carter administration did "take account" of Mexican reserves—but quickly dismissed Mexico's potential production as being of minor importance to the world's energy outlook. The administration seems to believe that Mexico and its state-owned oil company, PEMEX, lack the equipment, the technical ability and the political will to produce more than four or five million barrels of oil per day by 1985. Saudi Arabia, by comparison, is pumping 7.5 million barrels a day now and has the capacity to produce 11.5 million. The administration is counting on the Saudis to increase their production capacity to at least 12 million or 14 million barrels a day. Some experts contend it will take 18 to 23 million barrels a day of Saudi oil to save the industrialized world from collapse in the mid-1980s or early 1990s.

We do not think that Mexico's reserves mean the administration can drop its conservationist energy policy or tell Saudi Arabia to go jump in the Persian Gulf. But there is evidence that Mexico's potential production in the next decade has been underrated. Conservative reserve-to-production ratios used in the oil industry suggest that Mexico might be able to produce 10 million barrels a day by 1985 or 1990. Some Mexican government officials anticipate that production will indeed rise to these levels. If it does, Mexican petroleum could be an important factor in holding down world energy prices and in reducing the West's dependence on Saudi Arabia and other OPEC sources.

Right now there is an oil glut. If we play our cards right, there need never be a shortage. This means the special hold the Saudis have had over us can be broken. The United States should be doing what it can to encourage Mexican production. It has been doing so in some ways. But in other ways it has done just the opposite. The Department of Energy's veto of a major US-Mexican natural gas deal this year is a notable example. The administration seems not to have thought very hard, at any very high level, about the opportunities that Mexican oil presents and about the implications for US-Mexican relations. Besides lowering oil prices and diversifying our sources of oil, development of Mexico's oil riches could help to alleviate the poverty in that country and reduce the flow of illegal immigration into the United States. The opportunities, along with Mexico's proximity, suggest that Mexico and the US should develop something better than the "special relationship" that exists between the US and Saudi Arabia—an "extra-special relationship," perhaps. There are plenty of problems in the way. The most serious is a climate of suspicion in Mexico fostered by years of US exploitation, discrimination and aggression. So far President Carter has not even ordered a "Presidential Review Memorandum" on US-Mexican relations, as he has done on other important foreign relations issues. We think the subject is worth at least that.

Critics of the Carter energy policy (including some within the government) contend that concealment of CIA data on Mexican reserves is part of some nefarious grand design. Some accuse the administration of being so obsessed with "neo-Malthusian" scarcity theories that it is driven to suppress evidence suggesting that the world really has abundant supplies of oil—not only in Mexico, but in Iraq (which also may possess reserves as big as the Saudis') and elsewhere in the third world. Others charge that the administration is so intimidated by Saudi Arabia that it is afraid to explore rival energy possibilities. Still others see evidence of collusion with the major oil companies, which have no access to Mexico. The Mexican revolution nationalized oil production in 1938 and kicked foreign companies out. Still other critics say the administration is unwisely committed to a policy of higher, not lower, energy prices—possibly to encourage domestic production and bring on alternative sources like coal gas.

Without proof, we are not inclined to accept conspiracy theories, but it did nothing for our faith in the administration's credibility or its motives to be told by a high-ranking DOE official that CIA data on Mexican reserves were concealed from the public and the Congress because "these are areas where people can lose their lives." Getting energy data—even for the CIA—is not a high-risk occupation.

We sympathize up to a point with administration contentions that it would have been undiplomatic for the US government to publish figures on Mexican oil that would have been wildly different from the Mexican government's own figures, especially on a topic as uncertain as potential oil and gas reserves. Ever since it got caught making oil claims in the 1960s that didn't pan out, Mexico has been extremely cautious, even secretive, about its estimates. Even now, PEMEX's official statement of wealth includes "proved" reserves of 16 billion barrels (expected to be revised to 18 billion or 20 billion barrels within a few months), plus "probable" reserves of 31 billion, for a total of only about 50 billion. By comparison the CIA puts Saudi Arabia's oil reserves—proved, probable and potential—at 150 billion barrels.

Officials at Treasury, DOE and State confirmed last week that the latest US estimates of potential Mexican reserves are in the range of Saudi Arabia's proved reserves. One Treasury oil expert said it is commonly believed in the oil industry that Mexico's potential may run as high as 200 billion barrels, and some estimates go as high as 280 billion barrels. A top official in DOE said he has seen upper-limit estimates for Mexico that run as high as 300 to 325 billion barrels, but that he considers estimates of 100 to 160 billion barrels as reliable. He said that figures like these have appeared in secret government reports for at least two years. "There's no news in these numbers," he said. A former national security aide to President Ford confirmed that the CIA began reporting "enormous" Mexican reserves in 1975 or 1976.

The Mexican government has been speedily upgrading even its own cautious estimates. Before 1972, when PEMEX began exploring its Southeast oil fields, Mexico set its reserves at only 3.5 billion barrels. In the six years since then, the certified figures have risen by more than 360 percent. Alvaro Franco, an expert on PEMEX at the International Association of Drilling Contractors in Houston, says that all the Mexican figures are "extremely cautious and ultraconservative." He explained that there are about 350 known oilbearing geological structures in two of Mexico's newly discovered petroleum areas in the Southeast. They are waiting to be drilled and tested. In the Bay of Campeche alone, there are 200 identified structures. Ten of these have been drilled and eight have turned out to be producers. He said the oil is being found in geologic pockets so thick that each one contains large quantities. If the "tremendous success" the Mexicans have had in drilling since 1972 continues, he said, then the country has "way, way more" than the 100 billion to 120 billion barrels of petroleum that some Mexican officials privately acknowledge as their estimate of potential reserves.

Even if Mexico turned out to have only 60 billion barrels of oil, it could have a major impact on the world energy market. The oil industry considers it conservative to plan on producing one barrel of oil a year for every 20 barrels of estimated reserve. By that measure, Mexico could easily pump out eight million barrels a day—half a million more than Saudi Arabia produces right now. Mexico actually produces 1.3 million barrels a day, and is working to increase output to 2.2 million by 1980.

In spite of Mexico's potential, both the Ford and Carter administrations seem to have made deliberate decisions to discount Mexican oil in charting US energy and foreign policy. Having made this decision, these planners seem to have decided to keep quiet about the Mexican reserves in order to avoid having the figures available to refute their judgment. Why did the energy planners decide to ignore Mexico?

A former Ford administration official said that the CIA information came in too late for the Republicans to do much with it. He said the policies of former Mexican president Luis Echeverria did not give much hope for expanded Mexican production or cooperation with the United States. President Carter has developed much warmer relations with Mexico's current president, José Lopez Portillo, who is regarded as a businesslike planner and administrator. But administration policymakers still seem convinced that Mexico can't or won't produce up to its potential.

The "Mexico can't" school prevails at high levels of DOE, where some officials believe that only a US-style integrated oil company can move quickly to develop oil fields like those in Mexico. One DOE executive bluntly disparaged PEMEX's ability to manage the job. He spoke of the "Mexican theology of not allowing oil companies to meddle with the national patrimony." He said, "Given the limitations of PEMEX, to put it kindly . . . you're just not going to see the kind of dramatic impact that those reserves figures would indicate." PEMEX does not have the managerial know-how, the "systems approach" and the new technology that the major companies have. The Chinese, this official said, are going about things more sensibly by inviting in Western companies as partners. The Mexicans, because of their stubborn hostility toward oil companies, probably will be able to produce no more than four or five million barrels a day by 1985. Needless to say, the major US oil companies see things the same way.

Other US officials belong to the "Mexico won't" school. They say there are powerful political pressures in Mexico to develop oil production slowly, even though 51 percent of Mexico's workers are unemployed at least some of the time and it takes 800,000 new jobs a year to keep the unemployment rate from rising. The Mexican elite, which enjoys, a share of national wealth as disproportionate as any in the world, is not interested in rapid, inflationary and socially dislocating growth. Leftists want to keep Mexico's oil riches in the ground, where they think it will increase in value over time. The leftists especially do not want Mexico to produce its oil to satisfy the appetite of the United States.

There is still another school in the administration, which holds that Mexico inevitably will produce up to its capacity—provided that the United States' actions do not create a Mexican political backlash. "It's like a

fruit tree," said a State Department official. "If you don't shake it too hard or too fast, pretty soon you'll get nice fruit. There is a natural symbiosis here. We are Mexico's natural market for oil. They are our natural supplier. If we play it cool, a nice relationship could develop naturally. But we could mess it up if we are too eager to tell them what to do."

Since it is obviously in the US national interest for Mexico to produce as much as possible, what should the United States do? We already are offering capital and such technical expertise as Mexican pride will permit it to accept. We also ought to avoid botches like last year's natural gas fiasco. PEMEX and a group of American companies thought they had concluded a deal to build a pipeline across the Texas border and move Mexican natural gas into the US, only to have it aborted by the US Department of Energy. Administration officials acknowledge that domestic US considerations forced the action. The American companies and PEMEX agreed on a price of $2.60 per thousand cubic feet, which is more than domestic US gas producers are paid and more than Canadian exporters get. If the deal had gone through, Congress certainly would have rejected President Carter's energy plan, which calls for US gas producers to get $1.90 per thousand cubic feet. American officials claim that negotiations with Mexico will resume when—and if—Congress enacts an energy bill. But meanwhile, Mexico is offended and has decided to use its natural gas for domestic utilities, industries and even city buses.

If the United States wants more energy production from Mexico, there are things that Mexico wants from the United States. These include free immigration across the Rio Grande and lower trade barriers against Mexican agricultural commodities. There are obvious opportunities here for tradeoffs, but the negotiations will have to be conducted delicately and at a high level in both governments. President Carter should consider appointing an experienced and prestigious official to a special office for US-Mexican relations. But, first the administration should decide how it wants relations between the countries to proceed. One thing that US-Mexican relations surely could use is a change in people's attitudes on both sides of the border. The United States cannot treat a rich Mexico with contempt. And Mexicans need no longer remain paranoid about the "colossus of the north." US public attitudes toward Mexico are less likely to change, however, if the US government persists in keeping Mexican oil wealth an official secret.●

THE VANGUARD DRUM AND BUGLE CORPS

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. MINETA. Mr. Speaker, 9 years ago a group of young men and women from Santa Clara County, Calif., assembled to create the Vanguard Drum and Bugle Corps. Together with my colleague and friend from California's 12th Congressional District, Representative PAUL N. "PETE" MCCLOSKEY, I would like to congratulate the young men and women of the Vanguard Drum and Bugle Corps for winning the recent drum corps competition in Denver, Colo.

The Vanguard Drum and Bugle Corps is composed of 128 men and women between the ages of 13 and 21. Their philosphy is one of hard work, self-motivation, discipline, pride, and enthusiasm.

The need for these characteristics is clear because of the tremendous amount of training required to maintain their position as one of the best drum and bugle corps in the world.

Every year beginning in January, field practice begins for the Vanguard. Until June the corps must practice during evenings and weekends to develop their drill and music skills. After months of practice they are put to the test in competition against other equally determined young men and women who make up the more than 200 drum and bugle corps throughout the United States and Canada.

Within the first 5 years of their creation they had gained great recognition for their talents by placing third in international competition with other groups throughout the United States and Canada.

Today, I rise to honor this talented organization for their most recent triumph. On Friday, August 18, the Vanguard won for their third time in the past 5 years, the drums corps championship in Mile High Stadium, Denver, Colo. Their fine performance is a tribute to the drum corps director, Gale Royer. Now, with their championship behind them, they are preparing for an international tour next summer.

Mr. Speaker, I ask you and my fellow colleagues in the House of Representatives to congratulate these fine young men and women for their great accomplishments.●

SENIOR CITIZEN INTERN PROGRAM

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. SISK. Mr. Speaker, today my colleague, BUD HILLIS, and I, along with 29 other Members are reintroducing House Concurrent Resolution 718, a measure which would create the official Claude Pepper congressional senior citizen intern program with the House of Representatives.

For the past 4 years, I have been proud to work with BUD HILLIS in coordinating this very fine and very unique congressional intern program which has operated as a voluntary effort. Through this internship, the elderly citizens from our districts across the country have become familiar with the workings of their Congress and their Federal Government, and the channels of communication between community leaders and us, their Representatives in Washington, have been greatly strengthened.

I am retiring from Congress at the end of this term, of course, and I will not be privileged to participate in the 1979 intern program. My support and enthusiasm for this endeavor will remain, however, and I wish to take this opportunity to encourage those of you who will be here in the next Congress to participate in the 1979 internship and to press for enactment of this resolution to establish the program on a permanent basis.●

MR. SAM

HON. W. R. POAGE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. POAGE. Mr. Speaker, Speaker Rayburn never sat down and deliberately wrote an autobiography. He never had the time. However, over the years he either wrote or spoke about most aspects of his life. He did establish the finest legislative library in existence. Here are gathered most of his writings and comments. Over the past several years his friends, H. C. Dulaney and Edward H. Phillips, have worked through this source of material and have developed a magnificent 500-page book entitled "Speak Mr. Speaker." The book tells the story of Sam Rayburn's life in his own words. I have found it fascinating. I believe many of our colleagues would.

The book is available from the Sam Rayburn Foundation, Bonham, Tex., for $12.50, postage paid. I trust that all of those who served with Mr. Rayburn, and many of those who knew him only by reputation, will want the book.

Mr. Speaker, I include in the RECORD two editorial comments on this remarkable book:

[From the Waco Tribune-Herald, Sept. 21, 1978]

BOOK ABOUT RAYBURN STIRS OLD MEMORIES

(By Dub Brown)

"Speak Mr. Speaker" By H.G. Dulaney, Edward Hake Phillips and MacPhelan Reese, 489 pages. Sponsored by Sam Rayburn Foundation, Sam Rayburn Library, Box 309, Bonham, Tex. 75418, Price $12.50.

Sam Rayburn—Mr. Sam to friend and foe alike—first went to the U.S. Congress in 1913.

He came home permanently to Bonham 48 years later. His funeral Nov. 18, 1961, in that North Texas town was attended by four men who had been, were or would be President of the United States—Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, and Lyndon B. Johnson.

That, in itself, documents the stature of Mr. Sam.

He spent 17 of his years in Congress as Speaker of the House of Representatives, a record tenure in that post.

He was a master politician, a doer, a mover and a shaker. He was a man who had immense power and influence and could apply them as gently as a caress or as brutally as a bullwhip—and knew which to use and when.

He was a legend in his lifetime and the 17 years since his death have only enhanced the image. In his 48 years in Congress, Mr. Sam frequently was approached by authors wanting to do a biography. He declined due to lack of time.

Now, H. G. Dulaney, Edward Hake Phillips and MacPhelan Reese have rectified that with what they term an "auto-biography." Dulaney is compiler and Phillips editor of "Speak Mr. Speaker" and Reese is author of chapter introductions.

Dulaney is director of the Sam Rayburn Library in Bonham, Reese is a member of the library staff and Phillips is a history professor at Austin College in Sherman.

During his career, Rayburn wrote thousands of letters and hundreds of speeches and was the subject of many interviews and

editorials in newspapers and magazines and on radio and television.

Dulaney and Phillips gleaned this mass of material and in essence let Mr. Sam tell his own story, beginning with a chapter on his childhood in the 1882–1900 span and ending with an epilogue of Nov. 16, 1961.

In between is a chronicle of American political history as viewed by Rayburn. The book offers an intimate insight into the man and how he viewed the events and people who now dot the pages of history books.

Through his letters, speeches and interviews, Rayburn provided his perspective of those times. Letters and comments to Mr. Sam—from constituent farmers to world leaders—show how he was viewed by his contemporaries.

On occasions, the format is jerky and the copious footnotes tend to slow the reading. But the word portrait of Sam Rayburn comes through clear and crisp and the book is surprisingly vivid and animated considering the format.

MR. SAM

(By Robert E. Hollingsworth)

The words by Sam Rayburn were spoken relatively early in life, but they were prophetic of many similar words that could have been written about him many decades later.

". . . when I reach out my hand to the man who gave me life, I will look my God in the face and say that every ounce of energy, and every particle of intelligence that you gave me, has been dedicated to the service of mankind. If you had wanted me to do more, you would have had to endow me with more."

To the under-30 generation, the name Sam Rayburn is little more than a name in a history book, perhaps a legend. To an older generation, and especially to those who had the good fortune to know him, Mr. Sam was a living legend.

A political titan for more than three decades, the bare bones of Rayburn's contribution to American history are well known. Elected to Congress in 1912, he served through the administrations of Presidents Wilson to Kennedy. He was a man who served in Congress for 48 years and who served as Speaker of his beloved House of Representatives longer than any man in history, more than twice as long as Henry Clay. For many of those years, he was one of the most powerful men in the nation.

The distance between Rayburn's home town of Bonham in the black flatlands of Northeast Texas and the marble halls of government power in Washington, D.C., is about 1,400 miles, but Mr. Sam spanned the two like a colosus. Bonham was home and its townfolk his friends. The House of Representatives was his life. The gulf between the two was bridged by him love of his country and its people.

Biographies of Rayburn are minimal (one is in existence) because he never found time to write an autobiography in the vogue of modern political leaders nor did he find time to spend with authors who would portray his life in words. That void in American history is now filled—by Speaker Rayburn's own words, painstakingly and lovingly compiled by the staff of the Rayburn Library in Bonham which houses the Speaker's papers. Captioned "Speak, Mr. Speaker", the volume portrays the powerful Texan's life in his own words—his letters, his speeches, his comments.

To read "Speak, Mr. Speaker" is to look into Sam Rayburn's heart and mind. A political power unmatched in the halls of Congress, how did Rayburn look upon that power? Let the Speaker answer:

"When you see a man get stuffy or arrogant because he holds a big job, it means he was not big enough for the job when he got it."

"Speak, Mr. Speaker" is the story of Mr. Sam's life told in his own words, from his early youth to his death in November, 1961.

The literary minded who would like a flowing narrative biography may occassionally be jolted by what appears to be an extraneous statement (a comment on farm prices in the midst of correspondence concerning fateful international events). But the reader should not be jolted. For that was Sam Rayburn. No matter how immense or serious the crisis, he always found time to respond to the letters from the common people, to whom the most serious crisis might be the price of cotton or corn.

Rayburn's own words tell the story of his life, his thoughts, his ideals, his moods, his ambitions, his dreams for the nation and its people as no biography could. Pieced together in a fascinating book is Rayburn's story as no one other than the Speaker could even tell it.●

FINANCIAL STATEMENT OF PHILIP R. SHARP

HON. PHILIP R. SHARP

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. SHARP. Mr. Speaker, as a matter of personal policy, my wife and I annually disclose our financial assets and liabilities, and our income and tax payments. To make our current disclosure available for public scrutiny, I ask that it be included at this point in the CONGRESSIONAL RECORD.

Philip R. and Marilyn A. Sharp, statement of assets and liabilities as of August 1, 1978

Assets:	
Cash (checking and savings accounts)	$13,319.60
Deposit in Indiana teachers retirement fund	1,626.31
Deposit in teachers insurance annuity fund	
Deposit in civil service retirement fund	14,102.41
Investments:	
U.S. savings bonds	200.00
Residence in Muncie (at cost)	19,500.00
Muncie business building (at cost)	25,000.00
Real estate mortgage	3,750.00
Residence in Arlington, Va. (at cost)	111,500.00
Total	159,950.00
Automobiles (1970 and 1974 Chevrolets)	2,840.00
Total assets	192,493.84
Liabilities:	
Mortgage on Muncie residence	14,152.20
Mortgage on Arlington home	88,157.00
Personal loan	12,000.00
Total liabilities	114,309.20
Total assets	192,493.84
Less total liabilities	114,309.20
Net assets	78,184.64
Statement of income and taxes paid for 1977	
Total income for 1977	$60,703.45
Federal income taxes paid for 1977	12,282.58
Indiana income taxes paid for 1977	1,244.44
Property taxes paid in 1977:	
Delaware County, Ind	549.06
Arlington County, Va	1,476.59
Total taxes paid for 1977	15,552.67

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BALANCE(S) OF POWER SERIES—PSYCHOLOGICAL WARFARE AND PROPAGANDA

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, the strategic position of the Soviet Union in its relation to the United States and the rest of the world cannot be considered in isolation from perceptions worldwide of that position. The Soviet Union devotes an impressive amount of attention to influencing international opinion in such a way as to receive maximum strategic benefit from the concrete gains it is also making.

This pattern is attested to by Kenneth Adelman in "Fear, Seduction and Growing Soviet Strength," which first appeared in Orbis, Winter 1978.

Soviet international propaganda is a crucial part of the strategic equation, since its goal is to create a wider range of accepted, if not acceptable, Soviet behavior around the world, usually at the expense of U.S. influence and leverage in foreign countries.

This dramatic and comprehensive study powerfully suggests the need in this country to recognize the significance of Soviet propaganda and to counteract it.

The first part of Mr. Adelman's article follows:

FEAR, SEDUCTION AND GROWING SOVIET STRENGTH

(By Kenneth L. Adelman)

Recent discussions of Soviet efforts to achieve strategic superiority, of NATO's vulnerabilities, and of the Third World's flirtation with Marxist-Leninist rhetoric often seems specious. The initial sense of alarm is quickly lost. Few Americans expect Moscow suddenly to ignite a nuclear holocaust, the Warsaw Pact to spring a surprise attack, or the developing world to march obediently into the Soviet camp.

Nevertheless, contemporary world developments do portend some danger. These developments, however, are of concern as trends to be monitored, rather than as present-day threats. The trends signify growing Soviet influence around the world, owing both to *fear*—i.e., acquiescence in a more powerful and threatening force—and *seduction*—i.e., willing surrender to an enticing force. An examination of recent events within an overall framework—one which aims more at synthesis than at scientific proof and one which focuses more on the psychological than on the logical—will underscore the importance of these trends.

Fear—particularly fear related to physical proximity and unequal military, economic and political power—has long been a powerful factor in relations between states. It operates quite independently of any feelings of respect, admiration or friendship. The phenomenon is best illustrated by "Finlandization," the most obvious example of Soviet influence outside the Warsaw Pact and COMECON. Since the Soviet-Finnish Treaty of 1948, relations between these unequal neighbors have been exemplary. During the 1975 Communist moves in Portugal, the Soviet press offered Finland as a shining example of friendship "between governments with different social systems."[1] It is easy to see why. Under the shadow of a determined

Footnotes at end of article.

and powerful state, Finland has all but surrendered its independence of action abroad and its freedom of choice at home.

In 1958, President Urho Kekkonen broadcasted that "the overriding question" of Finland's foreign policy was warm relations with Moscow. After meeting Khrushchev in 1961, Kekkonen addressed the Finnish nation and advised disagreeable opposition leaders (those antagonizing the Kremlin) to leave politics. When the Finnish president's term legally ended in 1974, Secretary Brezhnev publicly urged that he be retained in office. Nationwide elections were then suspended, and Kekkonen's term was extended for four years by an exceptional act of Parliament, a move which required a five-sixth majority to amend the Constitution.[2] To restore the appearance of democracy, the president agreed to resume legal elections in 1978; however, all major parties, including the Conservatives, have already announced that Kekkonen alone will be their candidate. In late March 1977, Premier Kosygin visited Helsinki to hold up Soviet-Finnish relations as a model and thus deny charges of a "Soviet threat" to Europe. The Soviet press regularly states that the 1948 treaty makes Finland an ally of the same type as the East European states.

Such developments have not taken place because of the internal strength of the Finnish Communist Party, which never receives more than 25 per cent of the vote; nor because of the sentiment of the Finns, who remain staunchly democratic and anticommunist; nor because of any wish to adopt the Soviet system—with its cumbersome bureaucracy, agricultural failures, industrial constraints and human repression. The Soviet dissident Alexander Zinoviev has written in The Age of Man that "to think, to be talented, to act decently, to work hard have always been the achievements of a small minority. In making that effort impossible or useless, Soviet society allows spontaneous degradation."

Rather, such developments have occurred in Finland because of external Soviet pressure, whether expressed bluntly by word or conveyed silently by deed. While this "neighborly" relationship is admittedly a unique one—formed by historical power relations and the characters of the leaders involved—it illuustrates the possibility of outside interference without troop presence, economic domination or other formal agents of power. It stands as a symbol and a warning to other nations, in Europe and beyond, of the nature of Soviet control. The uniqueness of pure Finlandization, therefore, does not negate its possible reoccurrence elsewhere in lesser degrees or other forms.

The Soviet Union has been able to exert considerable influence abroad since it attained superpower status and a global reach. This is a recent and dramatic development. Before World War II, the USSR mattered little—even in European affairs. In 1938, no one considered inviting the Soviets to Munich to help determine the fate of Czechoslokavia, although they would control that country within a decade. Russia has been expanding its territory since the Treaty of San Stefano (1878) and seems to have been spurred on by (a) its multinational character, which can incorporate yet more nationalities without great political strain; (b) its messianic complex, which predates and is reinforced by Marxism; and (c) its desire for substantial buffer zones to ensure security and prevent freedom from infecting the Soviet populace. The Soviet Union was the only belligerent to emerge from World War II larger than when it entered. Today, it sprawls over eleven time zones: the United States and half of Canada could easily fit into Siberia alone, and Leningrad is much closer to New York than to Vladivostok.

More important than sheer size is a sense of growing strength that the Soviets seek to convey. People act not only on the basis of what is, but on what will be. The Soviets play on this fact by claiming that the net "correlation of forces" is moving in their favor. By their definition, such "forces" run the entire gamut of military, economic, political, social and ideological factors—including technological progress, internal cohesion, external clout, relations with allies and national will.

Of all these factors, the Soviets have emphasized military power, surely their strongest suit and the one historically vital to their success. Through military force, the Bolsheviks seized power in 1917, established authority over a vast empire, defeated Hitler, and gained control over half of Europe. Since World War II, the U.S.S.R. has sacrificed much for military growth, now estimated to be 4 or 5 per cent annually in real terms.[3] This growth has been steady, despite rising consumer demand and falling supplies. Poor harvests in the early 1960s coinc'ded with the Soviets' first major strategic build-up; a weak harvest in 1972 coincided with the development of several new missile systems; and the five-year plan adopted on the heels of the disappointing 1975 harvest actually switched funds from agricultural to military machinery. Today, defense absorbs about one-third of the entire Soviet machinery output and one-fifth of the total industrial output.[4] Over the past decade, Soviet military manpower has grown twice as fast as the labor force in general. Moreover, the military has increased its share of highly skilled labor: more than half the 830,000 Soviet R&D scientists and engineers are now thought to be working on military projects.[5]

The expansion of Soviet power is recognized in the United States. According to a recent public-opinion survey, Americans believe the Soviets have made a quantum leap in power and importance over the past decade. This appraisal must chiefly reflect increased awareness, since Soviet expansion has actually been rather steady. The American public, however, is not alone in this regard: in May 1976 the CIA admitted that the Soviets' military effort (i.e., the percentage of their GNP devoted to defense) was twice what the agency had previously estimated. In any case, Americans have reversed their opinion since 1974 and now consider the Soviet Union equal in strength to the United States. They no longer believe that the United States is—or will be ten years hence—the world's premier power.[6]

The Soviet Union has indeed become militarily equal to the United States in an overall force comparison.[7] While the United States is superior in many categories, the Soviets have twice as many men under arms,[8] one-fifth more major surface combatants[9] (though ours are larger and have more staying power), and half again as many ICBMs[10] (though our missile accuracy, number of warheads and bomber force remain superior). The trends of the military balance are clearly in the Soviet Union's favor. Since 1964, Soviet defense-spending has increased more than 40 per cent in real terms, while our current defense-spending is 12 per cent lower than in 1964.[11] Over the past four years, the Soviets have outproduced us in tanks by more than seven to one, in artillery by five to one, and in tactical aircraft by half again as many; the United States outproduced the Soviets only in the number of helicopters.[12] Since 1965, the USSR has developed seven new ICBM types to our one,[13] and according to recent remarks by Defense Secretary Harold Brown, Moscow has four ICBM systems—a new generation of missiles—now under development.[14] More important over the long run is the Soviets' expanded infrastructure for continual military build-up Moscow currently spends (in a dollar comparison) double what we spent on military investment—i.e., construction facilities and other installations for future weapons procurement—and more than half again as much on military research and development.[15]

Such an expansion in military infrastructure and capabilities does not necessarily mean an expanded intention to use the weapons. Indeed, the Soviets give the impression of being more cautious than when they were militarily weaker. Neither, however, can the build-up be dismissed lightly. There is always the danger that availability will prompt some type of use. As Robert Tucker wrote, "The Soviet Union cannot be expected passively to sit on their arms. Having acquired them, they will be put to political use." One must assume a rationale behind the USSR's enormous allocation of resources to the military at the expense of other basic human needs. Leaders in the Soviet Union (or in any nation, for that matter) do not lightly place such an onerous burden on their economies and people.

Increased capabilities provide expanded options for military involvement. In 1975, for example, the Soviets could airlift vast supplies and troops to Angola, whereas no such option existed in the Congo in 1960. Their present defense resources will provide even greater options in the future.

Expanded power also enhances international prestige. At the Twenty-fourth Congress of the CPSU, Foreign Minister Gromyko brazenly asserted: "There is not a single question of any importance in the international arena that would at present be solved without the Soviet Union or against its will." Military strength helps avoid the humiliation of having to back down in a crisis. When they were weaker, the Soviets threatened and then backed down in Iran, Greece and Turkey, the Berlin blockade, Lebanon, and the Cuban missile crisis. Today, the Soviets consider that period a lower historical stage, which was transcended when they achieved strategic parity in the early 1970s, increased their conventional superiority, and made political gains in such areas as Indochina and Africa. Finally, the Marxist-Leninist ideology legitimizes overwhelming military strength as essential to protect the world "vanguard" when capitalism, with its last gasp of life, lashes out in a desperate attack.

Soviet actions are designed to demonstrate how the net "correlation of forces" in Moscow's favor and to nudge those "forces" along their "inevitable" path. While signing some fifty agreements with the United States between 1970 and 1975—well over half the total number of U.S.-Soviet agreements since diplomatic relations were opened in 1933—the Soviets have vigorously pressed their interests. After the 1972 summit agreement to "exercise restraint" and negotiate issues "in a spirit of receptivity, mutual accommodation and mutual benefit," the Soviets (1) actively supplied North Vietnam, shattering what remained of the Paris accords and finishing the war; (2) rearmed the Arabs in the October 1973 war, encouraged the oil embargo and threatened to intervene directly; and (3) financed and armed the Cubans in order to install a Marxist-Leninist regime in Angola. Moscow justifies such moves by maintaining that detente does not apply to wars of national liberation. In fact, Premier Kosygin and others have repeatedly stated that detente provides "more favorable conditions" for the success of those wars.

Soviet rhetoric about world "forces" certainly must be discounted to some degree. The Kremlin never mentions the most crucial development of the postwar era—Moscow's split with Peking. This rift shattered the image of the Soviet Union as an expanding, global political force, ended the international communist movement as the exclusive tool of Soviet foreign policy, and

Footnotes at end of article.

presented Soviet strategists with the necessity of a two-front military posture. The Soviets have also ignored reversals in the Middle East (particularly in Egypt), their lack of success in Portugal and the break of close ties with Somalia. Soviet emphasis on the utility of military force overlooks the fact that Tito, as head of a small and undeveloped nation, defied Stalin, as did Mao Tsetung when China was militarily impotent and economically backward.

Nonetheless, defiance of powerful force has been the exception in history, possible primarily when a country is united behind a charismatic and resolved leader. Small nations, more often than not, accommodate powerful ones. Hence, the image of power that the Soviet Union conveys and its claim that history is moving in its favor *are* important. They enhance the element of fear, particularly where Soviet power is greatest and where the weaker states' domestic problems lead to apprehension and self-doubt.

This is the situation in Western Europe today. An atmosphere of lethargy, airlessness and even pessimism has enveloped the region. *Economically*, the Europeans face high inflation, rising unemployment and mounting debt. The OECD predicts an annual European growth rate of only 2.25 percent for the second half of 1977 and fears a recession for 1978. A sense of economic vulnerability has persisted since the 1973 oil embargo, and the economic recession have aggravated a spiritual depression. Highly skilled and professional workers are emigrating, particularly from Britain where the inflation rate is about 15 percent and unemployment is nearly 1.5 million. Industrial investment is desperately low; private envestment (other than housing) in Britain, France and Italy is down anywhere from 20 to 30 percent from previous postwar-recession recovery rates. In a nutshell, overall confidence is not vibrant enough to encourage local savings and long-term investments—the very type of confidence which Hitler, ignorant of economic laws but still an economic miracle worker, realized was the basis for rapid recovery in the early 1930s.[16]

Politically, Europe is undergoing an increase in the fragmentation of states and a decrease in cooperation among states. The political leadership has been most uninspiring, and ruling governments in key countries—Britain, France, West Germany, Italy, Belguim and the Netherlands—are facing mounting opposition. To the west, Spain and Portugal are planting the seeds of democracy after decades of dictatorship; to the east, Greece and Turkey are eyeball-to-eyeball over Cyprus and seabed mineral rights. Most other European leaders are struggling to fend off domestic opposition rather than creatively addressing deep-seated problems. Indeed, the very future of democracy is being questioned, with Willy Brandt predicting that Western Europe "has only twenty or thirty more years of democracy left in it; after that, it will slide, engineless and rudderless under the surrounding sea of dictatorship." [17] At present, only Peking's diplomats are (frantically) trying to cheer the West Europeans, emphasizing Europe's considerable wealth and its ability to preserve its independence against Soviet "hegemony," if only the Europeans could muster vitality and resolve. The interests of the new Chinese regime go far beyond Western Europe, as seen by the regal reception accorded President Tito in August 1977.

Militarily, many Europeans feel more vulnerable now than they did in 1949, when NATO began. The USSR gives first priority to Europe, and Soviet military doctrine stresses an offensive, blitzkrieg-type conflict. Soviet capabilities are beginning to favor tactical surprise: since the mid-1960s, Moscow has deployed an additional 140,000 troops against NATO, introduced four new types of aircraft and modernized its ground forces with a new generation of weapons in virtually every category.[18] The Soviets are now improving their tactical nuclear weapons aimed at Europe by deploying some 3,600 MIRVs on mobile SS–20 IRBMs—considerably more effective and survivable than the SS–4s and SS–5s being replaced.

In northern and central Europe, the Soviets maintain forty divisions at the highest state of readiness, and today they have twice as many soldiers in central Europe as the United States has. (The number used to be roughly equal.) Overall, the Warsaw Pact has sixty-seven divisions (thirty-one armored) in northern and central Europe, while NATO has twenty-nine (eleven armored). Total troop strength is more balanced: 910,000 for the pact and 635,000 for NATO. The Warsaw Pact has nearly three times as many main battle tanks, although NATO is superior in heavy antitank weapons.[19] Generally, the Warsaw Pact has inferior equipment and considerable logistical problems, and the reliability of its members, particularly in an offensive operation, is questionable. NATO, however, lacks the standardization found in the pact. For example, NATO's Ace Mobile Force, a unit of some 5,000 soldiers to be deployed in time of crisis, operates with seven different types of combat aircraft, six types of recoilless rifles, four types of antitank weapons and three types each of mortars, rifles and machine guns. NATO units like these cannot count on ammunition or maintenance support from each other or from host nations as comparable Warsaw Pact units can.

The substantial Soviet build-up in Europe has continued despite a similar build-up in Asia. Over the past decade, the USSR has tripled the number of divisions facing China, but less than a third of these are combat ready. Two-thirds of the total increase in Soviet manpower has been assigned to Europe and only one-third to Asia. Moreover, the Soviet Union's European divisions are the first to receive the newest equipment, and they get it in the greatest quantities.[20]

Soviet diplomatic proposals for an agreement on "no first use" of nuclear weapons and for a nuclear-free zone would place Western Europe at the mercy of the Warsaw Pact's superior conventional might. Moscow's public expressions of doubt over the credibility of the U.S. strategic guarantee are designed to undermine that key element of NATO deterrence. Soviet military and diplomatic postures are fashioned to separate Western Europe from the United States, to give an impression of such overwhelming superiority as to render NATO pointless.

While the rhetoric can be discounted somewhat, the reality of a military build-up cannot. The secretary-general of NATO and its top military officer both consider today's threat greater than at any time in the alliance's history. The Soviet fleet has been bold of late, particularly in the seas off northern Norway (one Soviet submarine recently entered the Narvik Fjord): this does little to alleviate the concern of NATO's leaders. Though most Europeans are confident of NATO's deterrent effect, an increasing number are not so sure. Over the past seven years, those doubting NATO's effectiveness have tripled in Italy (from 10 percent to 230 percent) and have nearly doubled in West Germany (from 17 percent to 31 percent) and France (from 15 percent to 26 percent). These conclusions were reached in a U.S. government study completed in August 1976—before all the publicity on NATO vulnerabilities begun by Senators Nunn and Bartlett.[21] What the *Frankfurter Allgemeine* called a "garrison mentality" in the Western world is aggravated by the extravagant language of Western defense ministers at budget time each year.

Western Europe's economic stagnation, political aimlessness and sense of vulnerability tend to reinforce one another. In a crisis of political and economic confidence, the Europeans are unlikely to bolster their security efforts; indeed, defense-spending (in real terms) by major NATO European allies dropped 5.3 percent in 1976 and .7 percent in 1977. Such an environment does not encourage stout resolve in the face of a powerful and growing force. In fact, Michel Gordey, of the liberal French weekly *L'Express*, considers that the prevailing climate has led to "a sort of moral disarmament in most of the West European allies, with the probable exception of the Federal German Republic. This is very disturbing even to France, which, despite all the government declarations, cannot go it alone." The threat from the East cannot but discourage the long-term economic measures and local investments needed to relieve Europe's economic plight.

While the sprouting of Eurocommunism is largely the result of domestic problems, the international environment has provided most fertile ground. Fear of rising Warsaw Pact strength and seduction by a mild Soviet attitude—Helsinki accords and MBFR with Western Europe, on the one hand; detente and SALT with the United States, on the other—have fostered, if not sympathy for communist leaders, then at least less hostility toward them and their views. The image of young, idealistic European Communist parties breaking away from their stodgy Kremlin elders enhances electoral prospects.

FOOTNOTES

[1] *Pravda*, April 5, 1975.

[2] "It is believed that [Kekkonen's] continuation in office was at least one of the guarantees that the Soviet Union required" for increased Finnish involvement with the EEC, noted *Financial Times* (London), January 10, 1973. The *Washington Post* reported that "the law was passed despite the heated opposition of many prominent Finns and a general feeling in the country . . . that it represents a gesture of appeasement toward the Soviet Union." (January 18, 1973.)

[3] *U.S. Defense Perspectives, FY 1978* (Washington: GPO, 1977), p. 7.

[4] CIA, *Estimated Soviet Defense Spending in Rubles, 1970–1975*, May 1976, p. 16.

[5] Department of Defense, *Program of Research, Development, Test and Evaluation, FY 1978*, January 1977, pp. 11–25.

[6] *The Pursuit of National Security* (Washington: Potomac Associates, 1976), p. 29.

[7] Statistics on military forces and armaments, of course, describe only part of the strategic equation. Since these figures omit considerations of differing missions, deployments, technologies, alliances and interests, leadership, morale and a host of other factors, they cannot themselves constitute a definitive measure of comparative strength. They do, however, reveal levels of efforts by each side—the willingness to sacrifice for military might—and they do have political importance with respect to global perceptions of power. Hence, they should be taken neither as gospel nor nonsense.

[8] *Annual Defense Report to the Congress, FY 1978*, by Donald H. Rumsfeld (Washington: GPO, 1977), p. 24.

[9] *Ibid.*, p.110.

[10] *Ibid.*, p. 60.

[11] *U.S. Defense Perspectives, FY 1978*, p. 6.

[12] *Annual Defense Report . . .*, p. 114.

[13] *Ibid.*

[14] *Washington Post*, September 16, 1977.

[15] *U.S. Defense Perspectives, Fy 1978*, p. 9.

[16] See John Lukacs, *The Last European War* (New York: Anchor, 1976), pp. 228–229.

[17] Quoted in Michel Crozier et al., *Crisis of Democracy* (New York: NYU Press, 1976), Introduction.

[18] *U.S. Defense Perspectives, FY 1978*, p. 18.

[19] *The Military Balance, 1976–77* (London: International Institute for Strategic Studies, 1976), pp. 97–103.

[20] *Ibid.*

[2] U.S. Information Agency, *European Views of NATO*, Report R–22–76, November 1976. The report concludes (p. 2) that "doubts about NATO's military effectiveness have increased appreciably (Britain excepted) since last measured in 1969. As a result, confidence exceeds expressions of a lack of confidence only by very narrow margins in France and Italy. . . . In 1969, on the other hand, confidence outweighed pessimistic impressions much more decisively."●

RHODESIA

HON. RICHARD H. ICHORD

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. ICHORD. Mr. Speaker, we have spent many long hours in this Chamber debating the issue of American policy toward Rhodesia. In 1977 we took action to repeal the Byrd amendment which permitted the import of Rhodesian chrome. On August 2 of this year, 229 Members of the House evidenced support for a reassessment of our Rhodesian policy with their vote for my amendment to the International Security Assistance Act calling for a lifting of sanctions against Rhodesia effective January 1, 1979, upon the transition to majority rule.

Despite considerable rhetoric, few Members have visited Rhodesia or have benefit of first-hand information on the situation that exists. A July 30 article in the Cincinnati Enquirer titled, "A Traveling Black Cincinnatian Takes a Closer Look at Rhodesia," provides an excellent assessment and is worthy of each Members consideration.

Mr. Speaker, I would ask that this article by Major W. Cox be inserted at this point in the RECORD.

A TRAVELING BLACK CINCINNATIAN TAKES A CLOSER LOOK AT RHODESIA

(By Major W. Cox)

(The author is director of Confidential Service, a private detective agency headquartered at 3333 Vine St., and a member of the World Association of Detectives.)

During a recent visit to Southern Africa, I spent seven of 22 days in Rhodesia. I found a number of conditions existing there that were a complete surprise to me.

First, Rhodesia does not have the racial problems that South Africa does. I spent several days at Victoria Falls and Salisbury where I did not experience one unpleasant moment with respect to my race. While there I saw black and white people working together in all aspects of the economy. I saw black and white tourists staying in the same hotels, eating in the same restaurants and playing in the same casinos. I must admit that this aspect of Rhodesian life was a complete surprise to me. I had envisioned social life in Rhodesia as completely different.

While in Salisbury I was taken on a tour of numerous residential neighborhoods. I saw how the bulk of Rhodesians live in Salisbury. There are many homes owned by black people that would cost upwards of $100,000 in this country. Having visited Bishop Muzorewa's home I am certain that it would fall into this category. I saw multiracial neighborhoods in Salisbury.

I also saw the poor—but the poor of Salisbury are in a little different situation than the poor of this country. They own their own homes. There are programs of home ownership that permit anyone who wants to buy a home to do so. It works like this: For $500 one can buy a "core" consisting of four rooms on a lot with water, electricity and sewage connected to the building. Approved plans come with the core for future expansion of the structure. The cost may be financed over a 30-year period. The housing is open to anyone with a job.

The vast majority of Rhodesian blacks live on the tribal trust lands. This is land that is owned by the tribal people who have always lived on it. It is protected by the government in that it may not be sold to private owners. The tribal chiefs are the authority on this land. It is noteworthy that there is no request that anyone live in these areas. They do so by choice. Upwards to 3.5 million Rhodesians choose to live with families on the tribal trust lands.

The Rhodesian transitional government is a stable one. The transition is orderly. I attended a session of Parliament while in Salisbury. There I saw genuine debates on the matters that were discussed by both white and black members of Parliament. On the day that I attended Parliament, I would estimate over 50% of the house members were black. This was a surprise to me. I was also surprised to see that they still carry on the tradition of certain members wearing white wigs as is done in British Parliament.

I met several leaders of the interim government. I was permitted to ask questions, any question that I chose to ask without prior approval on the subject that I selected.

Prime Minister Ian Smith was willing to answer all of my questions to my satisfaction. We discussed the historical image of Rhodesia, the war, the sanctions and a number of other topics, including his favorite—flying (he is a pilot).

Bishop Muzorewa told me why he thought the United States and Great Britain had not recognized the settlement agreement. According to Muzorewa, that is because one of the terrorist leaders outside of the country (Joshua Nkomo, based in Zambia) is a very good friend of the Zambian head of state who is an influential member of the Organization of African Unity (OAU) whose members collectively have a large vote in the United Nations.

Chief Jeremiah Chirau I found to be a sincere and compassionate man when I met him. He also fails to understand why the United States and Great Britain don't recognize the interim government of Rhodesia. By his estimates this government represents upwards of 80% of the people of the country.

The Rev. Ndabaningi Sithole is a very articulate man who states exactly what is on his mind. He told me that the elections would be held this fall.

He feels that the reason that Nkomo would not come back to Rhodesia, as he has been invited to do on several occasions, is that he does not have the support of the people in Rhodesia. With respect to Robert Mugabe, he said that he would never be accepted in Rhodesia because he is a Marxist, a fact that Mugabe has repeatedly admitted.

Based on my talks with these men as well as numerous other individuals high in the government and private sector, I can clearly see that the black people represented in the interim government are not puppets. These men are long-established, influential leaders of their people. Each one represents a significant number of the black population of Rhodesia.

I spoke with numerous white Rhodesians from a wide range of occupations and professions. I can truthfully say that I did not talk to one white person in Rhodesia who was against majority rule. As a matter of fact, the majority said it should have happened long ago. The majority of the whites are committed to supporting the interim government as well as the new government that will be, for the most part, black when seated on December 31, 1978.

There will be certain white safeguards—for example, the public service, the military, pensions and reserved seats in Parliament are considered white safeguards.

Why the need for these safeguards? One only needs to look to the north of Africa at the independent black countries for the answer. If the whites leave Rhodesia the economy would take a beating as it did in so many of the other countries where the whites were run out. No intelligent Rhodesian wants this to happen. The Rhodesian economy is the second most stable economy in Southern Africa. Mr. Bulie, the black cominister of finance, said to me, "We need the whites, their expertise and economic contacts."

Terrorists are raiding villages daily, killing hundreds of people, most of them black. It is the opinion of all the people with whom I spoke that the United States could stop this killing and should. These people fail to understand why the United States continues to support this terrorist activity. The war is costing $750,000 per day and that is a big drain on the country. Money is being spent on the war that could be used to build schools, hospitals, roads or a number of other worthwhile people-oriented projects.

Yet, our government, especially Ambassadors Young and Low, fail to see this tragedy. By not pressing for recognition of Rhodesia in the UN, the suffering of 6.5 million people will continue. Schoolchildren will continue to be kidnaped by Nkomo's and Mugabe's terrorists and taken to Zambia where they are forced to undergo terrorist training against their will. Then, they are forced to return to Rhodesia and commit some of the most inhuman acts in the history of mankind. For example, I was shown a picture of a man who had had both ears and his lips cut off. It was said that his wife was forced to cook and eat the severed parts. If these trained children do not obey they are killed.

The United States can stop this war. I believe we have a responsibility to stop these hideous atrocities. The United States told Prime Minister Smith (former Secretary of State Kissinger) what this country would support. The Rhodesian government has met those requirements. Majority rule is coming to Rhodesia in 1978. Why must the U.S. government continue to support the Communist-backed terrorists against this country?

I believe that UN Ambassador Andrew Young is misinformed or deliberately overlooking the facts. In either case, he should not be permitted to represent this country in such a manner that we are supporting Communist leaders in Africa, along with our Cuban neighbors. Ambassador Young has long enjoyed my blind support.

Prior to visiting Southern Africa, I stood ready to defend Mr. Young against anyone—and offered my defense for many of his verbal blunders that came under criticism in the media. I can no longer defend his ignorance or naivete.

If President Carter continues to act upon and offer presidential support to Young's statements and activities, the Western world will surely lose Southern Africa to the Communists. I attended a military briefing while in Salisbury. I had the opportunity to view an album full of photographs of Robert Mugabe. Those pictures were taken in China where he was photographed with Chinese military leaders. These photographs picture Mugabe among his terrorists with Chinese instructors training them in the use of Chinese weapons that can be clearly identified.

With respect to the claim that the Rhodesian security forces are committing the terrorist activities, this claim is completely untrue. There is sufficient hard evidence available for anyone willing to look, to prove this lie. It is the apex of diplomatic irresponsibility for the U.S. and British governments acting through their ambassadors not to condemn Nkomo and Mugabe for those acts. The claim that the Executive Council is not

representative of the people of Rhodesia is visibly contradicted each day as thousands of black Rhodesians turn out for political rallies throughout the country.

The future of Rhodesia depends on the co-operation of all the leaders, Mugabe and Nkomo outside the country, and Muzorewa, Sithole and Chirau within. Clearly Bishop Muzorewa enjoys the widest support. Sithole has good support among the young.

Let's not forget that Sithole commanded an army of guerrillas. He told me that he is in daily contact with the guerrillas and most are ready to return to the country so that the elections can be held. Mugabe and Nkomo are refusing the settlement because they don't have the support to win power in a free election. Furthermore, the so-called Patriotic Front which gives the illusion of a union between Mugabe and Nkomo is nonexistent. In fact Mugabe and Nkomo have basic differences that would prevent them from ever sitting down together and agreeing on anything. Nkomo owes his allegiance to Russia, East Germany and Zambia, and Mugabe owes his to Communist China and Mozambique. Both of these men have great debts to their respective hosts that would be paid out of the spoils of Rhodesia if the internal government was defeated. This gives rise to the possibility of war between Zambia and Mozambique should Rhodesia be defeated by the "Patriotic Front."

With the continued moral support of the United States, Britain, the OAU and the UN and the logistical support of Russia, China and Cuba, one can clearly see that Mugabe and Nkomo, who at this moment control less than 7,000 men together, are perpetrating a horrible terrorist war and setting the stage for a major confrontation in Africa between the East and West. Ambassador Young is incapable of believing that the white people of Rhodesia will give the African a fair shake in the new government. He ascribes to the philosophy of the terrorist leaders that "freedom must be won through the barrel of a gun." What happened to the concept of nonviolent protest?

If Young would devote his efforts, his energy, his personal contacts, his influence with the President to making the internal settlement work in Rhodesia instead of getting swept up in the blind hate and personal ambitions of Nkomo and Mugabe, all of Africa would be better served.●

NEWSPAPER CHAINS—THE GROWTH TREND

HON. LARRY PRESSLER

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. PRESSLER. Mr. Speaker, as a member of the Small Business Committee, I have been alarmed at the spread of monopolies and conglomerates. Many Members have correctly spoken out on oil and gas monopolies; food chains; and other visible monopolies. But few political figures have had the courage to question media monopolies.

Four years ago, I raised questions about Dow Jones control of financial news outlets in the United States. This excellent article by David Shaw should be read by anyone interested in journalism:

PROFIT MOTIVE: NEWSPAPER CHAINS—THE GROWTH TREND

(By David Shaw)

The St. Petersburg Times, on the west coast of Florida, is generally regarded as one of the dozen or so best daily newspapers in the United States.

It is a classic example of how an editor and publisher genuinely committed to editorial excellence can produce a fine newspaper despite the limited resources generated by a daily circulation of only 250,000 (compared to, say, 1 million for the Los Angeles Times).

But Allen H. Neuharth, president of Gannett Newspapers, says the St. Petersburg Times is "an excellent paper if you read it sitting in a men's room in Columbus, Ohio"—not if you read it in St. Petersburg."

In sheer numbers, Gannett is the largest—and one of the most profitable—newspaper publishers in the United States, with far more daily papers in far more states than any other chain. Though published primarily in small-to-medium-size cities, the 77 Gannett dailies have a total circulation of 3.4 million—more than that of the New York Times, Los Angeles Times, Washington Post and Chicago Tribune combined.

But Neuharth's attitude toward an independent, nonchain paper like the St. Petersburg Times helps explain why the Gannett papers—and most other papers owned by large chains—do not comand the influence or the respect that their large numbers could otherwise earn them. The publishers of most of these papers are, in fact, largely scorned for looking on their papers as "cash registers"—for sacrificing quality to profit, for producing newspapers that are too often timid, parochial and mediocre.

Because more and more newspapers are being gobbled up by large chains—almost 1,100 of the nation's 1,759 dailies are now chain-owned and independent papers are being acquired by chains at the rate of 50 or 60 a year—the philosophy of men like Neuharth worries many in the newspaper business. * * *

"Gene Patterson (editor of the St. Petersburg Times) deliberately rejects the basic nature and philosophy of his audience," Neuharth says. "He's trying to put out the same paper in St. Petersburg he did when he was an editor in Washington and Atlanta. His paper is far out of touch with its readers—too liberal, too intellectual." * * *

The trend toward centralization of ownership is not unique to newspapers, of course. The entire communications industry is becoming a series of massive conglomerates. CBS, RCA, Time, Inc., Times Mirror, the New York Times and the Washington Post all own radio and television stations, all publish books, all but one (RCA) publish magazines and all but two (CBS and RCA) publish newspapers. These six companies generate more than $10 billion a year in sales revenue. * * *

Critics object, in principle, to the loss of diversity, autonomy, hometown identification and independence it represents, and they fear, in practice, the homogenization of the journalistic process—and the distortion and corruption of the political process—that they say large newspaper chains could ultimately bring about.

Even the perpetrators of conglomeratization are concerned about this.

"What happens," asks Otis Chandler, publisher of the Los Angeles Times, "if a giant oil company buys a giant newspaper chain?" And what happens, other critics ask, if two or three big newspaper chains send word to all their papers to back a single candidate for president?

Neuharth insists this couldn't happen. "The public is too sophisticated to accept that now," he says. "It would be bad journalism and bad business. We believe completely in the concept of local automony—letting our individual editors and publishers decide their own news play and endorsements and everything else." * * *

But many critics are unwilling to assume that these conditions will always prevail—at Gannett or anywhere else. Last year, Panax Corp.—publisher of eight daily papers and 40 weeklies—told its papers to publish two critical articles about President Carter on their front pages. When two editors in Michigan refused, Panax President John McGoff fired them.

"Who's to say there's not a McGoff or a Hearst coming up in the ranks of Gannett or Knight-Ridder?" asks Congressman Morris Udall (D-Ariz.) "We can't depend on the goodwill of men like Al Neuharth to protect us."

Thus, last year, Udall introduced legislation in Congress to discourage further newspaper mergers. Since many mergers take place because families are virtually forced to sell their papers simply to pay estate taxes, Udall drafted a bill that would spread the payment of those taxes over 15 years, rather than the six months now required.

"I'm hoping that will enable small publishers to resist these takeovers," Udall says, "but if that doesn't work, I'm prepared to introduce a bill that would actually limit the number of papers any company can own."

More than 70% of the nation's daily newspaper circulation is now controlled by 167 chains. Four chains now control 21% of the nation's total daily circulation. The number of cities with two competing dailies has been cut in half since 1947.

Gannett alone acquired 20 new papers last year, and early this year the company bought four more, then consummated its largest acquisition yet—Combined Communications Corp., owner of two daily papers (the Oakland Tribune and Cincinnati Enquirer), seven television stations, 13 radio stations and a sprawling billboard empire in 11 states and Canada.

But bigness is not necessarily bad—it may even be good at times—and for all the criticism of chain newspapers, it is only fair to acknowledge that there are some very good chain newspapers in this country.

Gannett's Camden (N.J.) Courier-Post, for example, is an aggressive newspaper that covers politics and local government thoroughly and last year spent seven months examining the inadequacies of the local judiciary.

Gil Spencer, editor of the nearby Philadelphia Daily News, says the previous owners of the Courier-Post "just let the town physically deteriorate around them. They were part of the establishment, and they didn't do a damn thing. I don't think the Gannett people would let that happen. That paper keeps an eye on things now."

In the last three years, the editorial budget of the Courier-Post has increased 43%, and more increases are planned.

One reason for this may be competition. With the three Philadelphia daily papers just across town—and with a vast network of suburban dailies and weeklies on all sides—the Courier-Post is one of the few Gannett papers with any real competition for readers and advertisers. It must do a good job to survive.

But Gannett newspapers in non-competitive markets have won several Pulitzer prizes through the years, and most knowledgeable journalists say the company improved virtually every paper it has taken over.

But even Neuharth admits that Gannett still publishes several papers he is "really ashamed of," and one former Gannett executive says he quit because that condition was tolerated.

Gannett owns nine newspapers in Westchester county (New York), and they're a sorry, spavined bunch of papers," says Jim Head, formerly an editor with Gannett and now editor of Parade magazine.

"I was a trouble shooter for Al for several years," Head says. "Gannett sent me around to their new acquisitions to change their format and redesign a few things cosmetically. It was easier—cheaper—to have me do that than to hire a bunch of good people on a permanent basis and pay them good salaries to put out a good paper."

"Wall Street didn't give a damn if we put out a good paper in Niagara Falls. They just

wanted to know if our profits would be in the 15–20 percent range. Now they know. Now we can start improving the papers themselves."

Gannett papers won 422 various awards during the first seven months of 1978 (compared to 236 in the same period last year), and Neuharth now seems as hungry for this recognition as he has been for stock splits and new acquisitions. * * *

The biggest increases in editorial expenditures at Gannett have involved the company's wire service and Washington bureau. Ten years ago, Gannett News Service (GNS) spent $250,000. In 1975, GNS spent $1.4 million. This year, it expected to spend $2.4 million.

In the last three years, Gannett has increased its Washington bureau from 16 to 26 people and its total national staff—bureaus in 10 state capitals (including Sacramento)—from 27 to 46 people.

New acquisitions in different parts of the country—especially the West and Midwest—made this expansion both possible and necessary, but Gannett is also conducting exhaustive readership studies in five cities, promoting more editors to publishers and passing the word: Improve the papers and let the world know they're being improved. * * *

If Neuharth is both sincere and successful in this mission, he will not be able to claim full credit for himself, for the financial success of Gannett was assured (albeit on a much smaller scale) long before he joined the company.

Paul Miller, who will retire in December as chairman of the board of Gannett (yielding that title to Neuharth), was also chairman and president of the Associated Press from 1963 to 1973, and during that time he came to know virtually every newspaper publisher in the United States.

Miller is a modest, pleasant man—almost the direct opposite of Neuharth in appearance, temperament and demeanor—and when rising production costs and confiscatory inheritance tax laws forced many small publishers to begin thinking of selling their papers in the 1960s and early 1970s, Miller was often the first man many of them thought to entrust their life's work to.

Gannett, which began publishing in upstate New York in 1906, had only 28 papers in five states when Miller took over from founder Frank Gannett in 1957. By 1971, Gannett had 47 papers in 14 states.

Miller was among the first newspaper executives to realize that small independent newspapers were a dying breed and that as their number dwindled, each remaining paper became that much more valuable.

Almost every major publishing company in America has come to realize the value of these smaller dailies in recent years. Times Mirror, which owns the Los Angeles Times and newspapers in Dallas, Costa Mesa and suburban New York, last year bought the Stamford (Conn.) Advocate and Greenwich (Conn.) Times. The Washington Post this year bought the Everett (Wash.) Herald (to go with its earlier purchase of the Trenton Times). The New York Times now owns nine small dailies in Florida and North Carolina.

Some large chains are even buying other chains: Knight merged with Ridder Publications in 1974. Newhouse bought Booth Newspapers in 1977. Gannett has bought Speidel Newspapers and McClure Newspapers and Federated Publications, and is now awaiting government approval of its merger with Combined Communications, Inc.

As a rough rule of thumb, financial experts think the purchase price of a newspaper property these days generally should not exceed 20 to 25 times what the company earned the previous year. Gannett has paid 30, 40, 50 times earnings. In 1976, Gannett paid 55 times earnings for two small papers in New Mexico. Critics laughed. But Gannett sold one of the papers at a profit last year, and more than doubled the earnings of the other one, and now it's Neuharth who's laughing. Again.

"A lot of these small family papers have artificially low earnings that are very misleading," says one securities analyst. "The families aren't interested in profits—they have to pay taxes on that. So they take as much money out as they can in other ways. They buy 'company cars' for everyone in the family and they charge the company for every dinner they eat out and every vacation they take and they give themselves huge expense accounts and they put all their relatives and friends on the payroll."

Moreover, family papers tend to operate in 1978 the same way they operated in 1958—and the same way their fathers and grandfathers operated in 1938 or 1908. Gannett—like many modern, sophisticated companies—can take over and immediately effect enormous savings just by eliminating the built-in waste and by using new, labor-saving, computerized technology and streamlined management procedures.

Newsprint and other materials can be purchased in volume for an entire chain, at further savings, and by selecting acquisitions carefully—monopoly newspapers in smaller towns—the costs of competition can be avoided as well.

With no significant competition to worry about, a company like Gannett can—and does—jack up its circulation and advertising prices almost at will, a practice Gannett boasts of openly when speaking to security analysts about what a good, safe investment Gannett stock represents.

Gannett further minimizes its risk—and its investors' risk—by selecting markets that are as problem-free as contemporary realities permit.

"No big cities with ghettos for Gannett," says a former Gannett editor. "No worry about urban flight or decay or heavy traffic delaying distribution of the paper or long negotiations and strikes by powerful unions."

Only 4,000 of Gannett's 17,000 employees nationwide are unionized, and the company's 77 papers have suffered only three strikes—each at just one paper—since World War II. By contrast, the Knight-Ridder chain has suffered eight strikes in the last five years at just one paper—the Philadelphia Inquirer.

In many ways, in fact, the Inquirer is a classic example of how Knight-Ridder does business—and of why many people call Knight-Ridder a "good" chain and Gannett a "bad" chain.

When the Knights first acquired the Inquirer in 1970, it was a dismal paper—editorially and financially—trailing the afternoon daily, the Bulletin, by 160,000 daily sales.

But the Knights pumped money and talent into the Inquirer, did not demand an immediate profit and the paper is now regarded as one of the half-dozen or so best papers in the country. In the last four years, the Inquirer has won four Pulitzer Prizes and more than 20 other major national awards for editorial excellence.

Simultaneously, the Inquirer has cut steadily into the Bulletin's circulation lead, and is now within 63,000 copies of parity. This year will be the Inquirer's most profitable year to date.

Knight has achieved similar success in Detroit, where its Free Press trailed the News by 175,000 daily circulation in 1965 and now trails by only 25,000.

Both John Knight and the current chairman of the Knight board, Lee Hills, were reporters and editors before they were publishers, and while neither has been indifferent to profits, both have long made clear to their individual editors and publishers that they are willing—eager—to sacrifice some profits to produce quality newspapers.

Hills' heir apparent as Knight chairman, Knight President Alvah Chapman, does not have that editorial background, however, and many people both inside and outside the organization are worried that he may not continue this policy. Although nothing Chapman has actually said or done yet justifies this concern, jounalists are congenitally suspicious of businessmen in their midst.

Among the larger chains, Thomson Newspapers (63 dailies, 1.1 million combined circulation) and Newhouse Newspapers (29 dailies, including papers in Cleveland, St. Louis, New Orleans and Portland, with a total circulation of 3.2 million) are generally perceived as having the least concern for editorial qulaity.

"I've never heard the old man (S. I. Newhouse, president of Newhouse Newspapers) or either of his sons mention a single editorial idea," says one publisher. "With them, it's just a business."

But it's a successful business—probably the most profitable newspaper company in the country. Gannett is not far behind, though, and it, too, is widely regarded as having lacked the commitment to quality exemplified by Knight-Ridder (32 dailies, combined circulation 3.5 million) or even a smaller group like Dow-Jones (publisher of the Wall Street Journal and 19 small dailies with a combined circulation of almost 2 million).

Every business—every company—has its own unique lexicon, and the words that make up that lexicon often reveal a great deal about the company's priorities. At Gannett, for example, newspapers are often referred to as "products" or "units," and budgets are called "profit plans." Each paper—each department—has a "profit plan," and each is expected to meet that plan, to produce the annual profit that Gannett desires.

In fact, if more chain newspapers were as concerned with improving their product as with improving their profit, criticism of the chain phenomenon might diminish considerably among journalists and politicians alike.●

PUBLIC WORKS BILL

HON. BUTLER DERRICK

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 1978

● Mr. DERRICK. Mr. Speaker, I would like to insert into the RECORD, the following letter which I believe should be read by everyone. It is an excellent explanation of why the President's veto on the public works bill was sustained by the House yesterday:

[From the Denver Post, Sept. 26, 1978]

REPRESENTATIVE SCHROEDER EXPLAINS STAND ON FEDERAL PUBLIC WORKS BILL

To the Denver Post:

During the past few weeks, I have been chastised by many for not joining in the water project chorus and singing the praises of the $10.1 billion Public Works Appropriations bill. On September 22, The Denver Post jumped into the fray.

The Post's holier-than-thou attitude is hard for me to fathom. The last time I looked, inflation was the country's No. 1 problem. For The Post to blast me for voting against wasteful spending which fuels inflation is short-sighted and irresponsible.

First of all, I think the Post is a little confused. I am lectured for not taking an interest in the problems of the state, region, and nation and am scolded for being "parochial" and only looking out for Denver. I am looking out for Denver, true. To do otherwise would be unworthy of the Congress person who represents it.

But I am looking out for the state, the region, and the nation, as well by voting against uneconomic water projects which spur inflation, needlessly increase taxes, provide relatively few jobs for Denverites or anyone else, and result in marginal increases in agricultural productivity. Apparently the Post thinks I should vote for a $10.1 billion obligation of the taxpayers' money just to get $1.7 million for three water projects in Colorado. Now that's parochial!

Second, I have always supported a sound federal water policy. But the Public Works bill takes that policy another step backwards. The bill shreds any attempt to develop a consistent and cost-conscious water policy in the name of re-electing incumbent members of Congress. Its passage will produce more votes than water!

Third, only one-third of the bill is for water projects. Everything from experimental nuclear submarines to the controversial Clinch River Breeder Reactor have been wrapped in this election-year package to make up the other two-thirds.

Of the 479 water projects included in the bill, 120 are brand new and have no final cost estimates. The price tag is officially put at $1.25 billion but will probably end up closer to $4 billion. And, even loaded down with all the new projects, the dollar amount of the bill was cut! How could that happen? It happened by fully funding only 3 percent of the projects and barely funding the rest of them. This commits future Congresses to yearly infusions of tax dollars in greater and greater amounts or the alternative of abandoning projects in mid-stream.

And that's only part of the damage. The bill also reduces the share of water project costs paid by state and local government users and increases the federal share. It loosens the rules for cost/benefit studies by which projects are economically justified and even waives negative cost/benefit ratios in some cases. Finally, the bill calls for the hiring of 2,300 new bureaucrats to oversee the construction of the additional projects.

There were 27 Colorado water projects in the bill and I support 24 of them. Let's talk about the three I do not—Fruitland Mesa, Savery-Pothook, and the Narrows. The estimated cost of the three projects is $331 million and the bill earmarks $1.7 million for these projects in 1979—less than ½ of 1 percent of the total estimated final cost. Dribbling the money into projects at that rate, it will take nearly 200 years to complete them!

And, even if the cost estimates hold and aren't doubled by inflation, the taxpayers are going to end up with projects whose costs outweigh their benefits by as much as 3:1. In fact, as far as the cost/benefit ratios of all the projects on Carter's "hit-list" go, Fruitland Mesa has the dubious honor of bringing up the rear of the pack, and Savery-Pothook isn't far ahead.

Fruitland Mesa and Savery-Pothook will benefit 69 landowners in one case and 106 in another to the tune of up to $1.2 million each Imagine a bill that benefited every landowner in Denver to the strains of $1.2 million each! In addition, these same projects will irrigate lands at elevations between 6,000 and 8,000 feet where the growing season will be short and agricultural productivity low. As for the Narrows, some estimates of the difference between crops lost in the dam take area and crops gained in the project service area are as low as $2.1 million—and a project that will cost at least $160 million! I doubt if most taxpayers, urban or rural, in Denver, Fort Morgan, or on the Western Slope, would consider these to be good investments.

Moreover, the Pot asserts that reclamation projects repay 84 percent of their cost. The assertion is void for vagueness—who gets repaid and how? Also, the 84 percent figure is an average of all reclamation projects in general. We are not discussing averages or reclamation projects in general. We are discussing three specific projects in Colorado—three projects which are pork-barrel giveaways in the truest sense of the word.

Perhaps if times were flusher, if we were more innocent of inflation, if the budget ran in the black, if the cost/benefit ratios of the three Colorado projects weren't so meager, if these projects had more to do with water and less to do with pork, if the citizens of Denver weren't asked to pay for their own water projects and then taxed to pay for everyone else's, if Denverites weren't made to ration water while other parts of the state are beating the drums for massive water projects which are heavily subsidized and encouraged inefficient water use, or if sacred cows were on my protected species list, I might have voted differently.

But things being as they are, we have to do away with wasteful spending wherever we find it if we truly want less inflation and lower taxes. Often the hardest place to begin is in our own backyards. But unless we do, all budget-cutting efforts will become a charade.

PATRICIA SCHROEDER
Member of Congress, 1st District, Denver.●

SENATE—*Monday, October 9, 1978*

(Legislative day of Thursday, September 28, 1978)

The Senate met at 9:45 a.m., on the expiration of the recess, and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Grant, O Lord, that this new day which Thou hast given us may be returned unto Thee in faithful service. As Thou hast guarded us in hours of rest so wilt Thou guide us through the shifting scenes and changing concerns of this working day. May no burden be heavier than we can bear, no problem beyond our solution. In nothing may we displease Thee and in no way injure one another. Be with everyone in the work of this Government, in places conspicuous or obscure, that we may be a servant people setting forward Thy kingdom of peace and justice, making this land a beacon of hope and freedom to all mankind.

In the name of the Master we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 9, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. ROBERT C. BYRD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The PRESIDING OFFICER (Mr. PROXMIRE). The Senator from Alaska.

THE JOURNAL

Mr. STEVENS. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from West Virginia.

PRAYER FOR THE WEEK

Mr. ROBERT C. BYRD. Mr. President, I am hoping that a time agreement can be achieved on the Humphrey-Hawkins bill, and hopefully also on hospital cost containment. If such agreements could be reached, this would perhaps free the tax bill from many nongermane amendments, and hopefully allow cloture to be voted on the tax bill.

If that can be done, I think that the Saturday of this week adjournment is very much achievable. But unless there is a time agreement on Humphrey-Hawkins and hospital cost containment, I am afraid that cloture is going to be difficult to get on the tax bill, thus dragging out the time in which nongermane amendments can hold up the action of the Senate on this vitally important tax bill.

So I simply start the week off and the day off with the expression of this hope, because I believe if these time agreements can be obtained, we can get cloture on the tax bill and it can be sent to conference fairly quickly, and the Senate and the House could, I think, achieve the October 14 hoped-for adjournment date.

Mr. STEVENS. Mr. President, I would call that the majority leader's prayer for the week. I hope that Senators are listening.

I would like to reserve our time on the minority side in case the Senator from Vermont needs it.

(Mr. RIEGLE assumed the chair.)

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Wisconsin if he needs some time.

Mr. PROXMIRE. I thank the majority leader.

CLOTURE

Mr. PROXMIRE. Mr. President, later today, unless things are changed, which of course they may be, we probably will have an opportunity to vote on cloture on several things: First on the tax bill, then on the sunset amendment, and then on the Humphrey-Hawkins amendment. I want very much to have an opportunity to vote both on sunset and Humphrey-Hawkins. Neither would be germane, as I understand it, if cloture is invoked on the tax bill. I have given my word to the leader that I am going to vote for cloture on everything from now on because I think we ought to be able to proceed in an orderly way. However, I find myself in the position where I favor both the sunset provision and the Humphrey-Hawkins bill.

Therefore, I will have to ask to be relieved of that commitment because I do not see any way that we could vote for Humphrey-Hawkins this year, in any practical likelihood this year, if we invoke cloture.

I would like to have the majority leader relieve me of that commitment so that I am free to vote against cloture on the tax bill.

Mr. ROBERT C. BYRD. I thank the Senator. Of course, I understand his position. He is very considerate in mentioning the commitment, and he will not be held to it. The vote on cloture on Humphrey-Hawkins, however, will not occur until tomorrow.

Mr. PROXMIRE. I understand that. I misstated it. However, the principle would still be true, that if we invoke cloture on the tax bill, that knocks out the Humphrey-Hawkins.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. STEVENS. Will the Senator yield on that?

Mr. PROXMIRE. Yes.

Mr. STEVENS. I am glad the Senator mentioned it because I had stated that I would vote against cloture on the tax bill due to my feelings about cloture generally, and not wanting to vote on cloture the first time on any cloture motion. In view of the Senators shifting of gears, I think I should state that that statement of mine is modified so that I can help my good friend from Wisconsin and not change the tally.

Mr. PROXMIRE. Well, that does not help the Senator's good friend from Wisconsin very much. I wish the Senator would vote against cloture so we could pass Humphrey-Hawkins.

MORALITY AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the need for the Senate to ratify the Genocide Convention is not based solely on its importance as a legal document. This treaty is also a profoundly affirmative moral statement.

The moral dimension of our foreign policy has long been recognized and traditionally confirmed by our practices. In the United Nations, for example, we have led the crusade for human rights. We were instrumental in drafting the United Nations Universal Declaration of Human Rights and many of the specific human rights treaties that followed.

In recent years, President Carter, by attempting to give human rights the priority it deserves in our foreign policy, has strengthened this moral dimension. He has spoken out clearly against specific violations of human rights in many different parts of the world.

We thus find in our past and present practices implicit affirmation of human rights.

Mr. President, is it not high time we made this explicit to the world?

Peace and freedom are the fundamental objectives of this country's policies. Human rights and peace are intimately related. When the human rights of people are threatened peace itself is threatened.

Mr. President, let us never forget that the free world depends on us, not only as an arsenal and as a supplier of food, but as a society committed to the promotion of the dignity of man. This country was built on a foundation of moral and ethical values. We betray our heritage if we fail to stand for moral uprightness.

Mr. President, have we betrayed our heritage?

Have we been hypocrites in the eyes of the world?

Mr. President, until we ratify the Genocide Convention, we can legitimately be questioned on this matter.

Mr. President, I yield the floor.

SPECIAL ORDER

The PRESIDING OFFICER. Under the previous order the Senator from Vermont (Mr. STAFFORD) is recognized for not to exceed 15 minutes.

Mr. PROXMIRE. Mr. President, with the time that was yielded to me by the majority leader, I will not need the time that was allotted to me under the special order.

The PRESIDING OFFICER. The special order for the recognition of the Senator from Wisconsin is vitiated.

The Senator from Vermont may proceed.

INTERPARLIAMENTARY UNION

Mr. STAFFORD. Mr. President, this is the third and last speech in a discussion of the Interparliamentary Union by the Senator from Vermont. I have also discussed in approximate figures the cost to the United States in maintaining membership in the International Parliamentary Union. I have made these three speeches over the last 2 weeks because I realize that not many Members of the Senate, the House, or the American public know what the International Parliamentary Union is.

While it is impossible to describe the functions in detail, either as to the mechanics of the operation of the organization or as to what it does, or why we have been a member, I have tried in three 15-minute speeches to outline generally what it does, how much it costs, who belongs, how long it has existed, and whether or not it is worthwhile to the United States to continue to send delegations to the International Parliamentary Union and to pay the annual assessment against the United States for membership in IPU.

I have done this so that any Member of the Congress or any member of the public who is sufficiently interested can gain some basic concepts of what this organization is. It is treated as a very important organization by most of the nations of the world. Indeed, most of the nations of the world, about 80 of them, belong, including all of our Western allies and the Communist bloc nations, which treat the International Parliamentary Union as a very important organization to which they send leading members of their governments and their parliaments.

As I said earlier, IPU is an international organization based in Geneva, Switzerland. It is made up of parliamentarians from approximately 80 nations. It meets in Conference twice a year—spring and fall. The spring meeting usually coincides with the Easter recess in the American Congress, and the fall meeting usually occurs in September. Meetings are hosted by member nations at their national capitals. Invitations from prospective national hosts for future meetings are generally extended about 3 years in advance of a proposed meeting.

The most recent meeting of IPU was hosted at Bonn, West Germany, September 4 to 14, 1978. In an earlier special order I discussed the resolution the Conference adopted on disarmament. Today, I shall comment briefly on the other resolutions the Conference considered and adopted.

Since the fall of 1973 and the Yom Kippur war between certain Arab nations and Israel, the Mideast has been a particular danger point for all the world. Consequently, the Conference after extended debate, adopted a resolution on the "Middle-East Question."

Indeed, I must say parenthetically that the Conference has adopted a Mideast resolution of some kind each year since 1973.

Congressman WILLIAM LEHMAN, the vice chairman of our delegation, represented the interests of the United States on the drafting subcommittee which handled this matter. Since the Camp David meetings were in progress it was a very difficult and delicate assignment. Although Mr. LEHMAN acted with diligence and skill, it proved to be very difficult to develop a resolution that could be supported by the Arab States, Israel, and the Western nations as well as Communist and Third World countries. A last minute agreement on resolution language was subsequently torpedoed by a surprising Egyptian tactic which caused the U.S. delegation to cast 5 votes against the resolution and 15 abstentions. The Western nations generally abstained.

Mr. President, I ask unanimous consent that the resolution on the Mideast question be printed in the RECORD at this point.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

THE MIDDLE EAST QUESTION

Draft resolution adopted by the Committee on Political Questions, International Security and Disarmament, by 36 votes to 1, with 15 abstentions.

Rapporteur: Mr. A. Chandernagor (France).

The 65th Inter-Parliamentary Conference,

Recalling the previous resolutions of the Inter-Parliamentary Union, particularly those of the 64th Inter-Parliamentary Conference in Sofia and the 122nd session of the Inter-Parliamentary Council in Lisbon, which refer to the appropriate resolutions of the United Nations on the Middle East.

Considering that the establishment of peace in the Middle East is essential for all the peoples of that area, for the security of the Mediterranean basin and the maintenance of world peace,

Believing that all efforts to achieve that objective through negotiations should be encouraged, and that any action to impede it and likely to increase tension in the Middle East should be avoided,

1. Expresses the wish that any endeavour to create the conditions for a comprehensive settlement and for an early convening of the Geneva Conference will be successful, thus helping to establish a just and lasting peace in the Middle East;

2. Reaffirms that the effective implementation of the United Nations resolution 242 in its entirety remains the fundamental condition for the settlement of the conflict in the Middle East and that all acts contravening the spirit and letter of that resolution must therefore be reproved;

3. Declares itself in favour of a peaceful solution of the conflict in the Middle East realizing the complete withdrawal of Israeli forces from the occupied Arab territories and guaranteeing the security and territorial integrity of all States in the area within secure, stable and recognized boundaries free from threats or acts of force, and enabling the establishment of normal relations between those States, and which, while safeguarding human rights against all forms of persecution, respects the inalienable rights of all peoples of the area, including the right to self-determination of the Palestine people;

Profoundly moved by the thousands of victims among the Lebanese civilian population and by the wide-scale destruction of property,

Urgently calls the attention of all member countries to the tragic situation in Lebanon;

Recalling the provisions of UN Security Council resolution 425 and the need for its full application in all its parts,

Reaffirms the urgent need for measures capable of putting an end to the present situation by fully re-establishing the authority of the Lebanese State against all external interference and guaranteeing its sovereignty, independence, territorial integrity and the unity of its people with respect for the rights of all communities, whatever the political choice or religion of their members.

Mr. STAFFORD. Mr. ANTONIO WON PAT represented our delegation on the drafting subcommittee of the Committee on Non-Self Governing Territories and Ethnic Questions which prepared the resolution adopted 772 yes; zero no; 30 abstentions on the subject, "The continuation of most strenuous efforts toward the complete elimination of colonialism in the world." Mr. WON PAT, as the delegate from Guam to Congress, was particularly qualified to handle this assignment which he carried out with distinction.

The votes of the U.S. delegation were cast for the resolution although Mr. WON PAT, for our delegation, made a most effective explanation of the U.S. reservation on the resolution in a brief speech at the final plenary session.

Mr. President, I ask unanimous consent that the resolution on colonialism be printed at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

THE CONTINUATION OF MOST STRENUOUS EFFORTS TOWARD THE COMPLETE ELIMINATION OF COLONIALISM IN THE WORLD

Draft resolution adopted unanimously by the Committee on Non-Self-Governing Territories and Ethnic Questions.

Rapporteur: Mr. J. Page (United Kingdom).

The 65th Inter-Parliamentary Conference.

Recalling UN resolution 1514 (XV) of December 14, 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, UN resolution 2621 (XXV) of October 12, 1970, containing the Programme of Action for the full implementation of the Declaration, as well as other relevant resolutions and decisions of the UN Security Council and General Assembly.

Recalling also resolutions 2072 of December 16, 1955, 2229 (XXI) of December 20, 1966, 2354 (XXII) of December 19, 1967, 2428 (XXIII) of December 18, 1968, 2591 (XXIV) of December 16, 1969, 2711 (XXV) of December 14, 1970, 3162 (XXVIII) of December 14, 1973, 3292 (XXIX) of December 13, 1974, 3458 (A and B) (XXX) of December 10, 1975, and 32/22 of November 28, 1977, on the question of Western Sahara.

Reaffirming its commitment to the principle of self-determination of peoples in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples.

Taking into account that the present international situation, characterized by the further deepening of the process of détente and the successes of the national liberation struggle, creates favourable conditions for the final elimination of all vestiges of colonialism, racism and apartheid.

Reaffirming that any racialist and colonialist policy, and particularly those in southern Africa, is contrary to the purposes and principles of the UN Charter, threaten international peace and security and constitute a crime against humanity.

Recognizing that the growing militarization of South Africa and its plans for the development of nuclear weapons aggravate the threat to international peace and security.

Reaffirming the legitimate right of the colonially and racially oppressed peoples of South Africa, Namibia and Zimbabwe to struggle by all means at their disposal, including armed forces, for the exercise of their inalienable rights to self-determination and to independence, as well as the right to choose a path of development according to their interests.

Taking into consideration the decisions of the Ninth Special Session of the United Nations General Assembly devoted to Namibia;

Reaffirming the inalienable rights of all peoples to self-determination and to independence as embodied in the UN Charter, and stressing the importance of free and fair elections.

Stressing the necessity for the full implementation of UN Security Council resolution 418 (1977) and for the enforcement of further measures in the political, economic and military spheres in order to isolate the South African apartheid régime more effectively,

Condemning those States which, in violation of the UN decisions and resolutions, continue to collaborate with the racist régimes in southern Africa,

Stressing also the urgent need for the implementation of all relevant UN resolutions affecting all other parts of the world,

Recalling all resolutions of the Inter-Parliamentary Union concerning the achievement of independence by the colonial peoples still oppressed:

1. Stresses the responsibility of the international community for the final elimination of all vestiges of colonialism, racism and apartheid, and calls upon all States and international organizations to intensify their support and assistance to the oppressed peoples in southern Africa and to render moral, material and diplomatic assistance to the struggle of the national liberation organizations;

2. Welcomes the proclamation of International Anti-Apartheid Year contained in UN General Assembly resolution 32/105 B and calls upon all Governments and Parliaments to intensify their efforts to contribute effectively to the elimination of apartheid and to promote the implementation of the right of the people of South Africa to self-determination.

3. Calls upon all national liberation organizations to strengthen their unity in order to achieve a speedy victory in their just struggle, and requests all States to refrain from any action which could promote the weakening of the national liberation organizations struggling for their rights;

4. Calls on all States to ensure full and speedy implementation of UN resolutions and decisions concerning economic and other relations with the present régime in Rhodesia (Zimbabwe);

I

Urges all Governments, Parliaments and financial institutions to withhold, in pursuance of UN resolutions, any assistance from the racist régimes in southern Africa, and to enact legislation or implement other policies in the commercial field which will help bring about rapid progress towards self-determination and independence;

II

1. Notes with deep concern the use of force, violence, kidnapping of civilians, taking of hostages and torture, and, in particular, the increasing and expanding interference by foreign military forces on the African continent;

2. Calls on all Governments and Parliaments to ensure strict observance of the principle of non-violation of State borders, settlement of disputes by peaceful means and cessation of the use of military and any other kind of force against the territorial integrity of States;

III

Calls upon all Governments and Parliaments:

A. Concerning South Africa:

(a) To condemn the South African apartheid régime for its policies and practices of racial discrimination, its denial of elementary human rights and the brutal oppression of the South African people;

(b) To take measures for the termination of all forms of collaboration in the nuclear, military and security fields with the South African apartheid régime, and not to allow it access to nuclear weapons and to technology leading to the acquisition of such weapons;

Recalling the previous resolutions of the Inter-Parliamentary Union on the establishment of a new international economic order.

Deeply attached to the achievement of objectives, assigned to the Integrated Programme for Commodities by resolution 93

(IV) of the United Nations Conference on Trade and Development (UNCTAD).

Very concerned at the inadequate progress achieved in more than one year at the UNCTAD negotiations on individual commodity agreements and on a common fund within the framework of the Integrated Programme for Commodities and on official development assistance.

Noting furthermore with regret that the Negotiating Conference on the Common Fund held last November in Geneva was suspended without an understanding as to the resumption of the negotiations and that no real progress has been attained since then.

Gravely concerned that the multilateral trade negotiations currently underway in Geneva may result in the developing countries emerging with an adverse balance.

Convinced of the relevance, for the 53 countries of Africa, the Caribbean and the Pacific, of the STABEX system of stabilization of export earnings applied within the framework of the Rome Convention.

Stressing the role of Parliaments and parliamentarians and the importance of the public opinion of all countries, and particularly that of the developed countries, for the achievement of the objectives of a new international economic order.

Convinced of the importance, for the development of the economies of the developing countries, of the creation of a common fund which would be capable not only of governing commodity buffer stocks but also, within the limits to be set by the parties concerned, of taking and financing measures for market promotion research and diversification and improvement in general regarding certain commodities.

Concerned at the disproportionate burden which the external debt servicing of the developing countries, particularly of the poorest among them, currently places on their economies.

Aware of the need to increase and to diversify the amount of official development assistance and to relax its terms.

IV

On a different level, concerning Western Sahara:

(a) On a different level, supports as a whole the resolution on the question of Western Sahara adopted at the OAU Summit and, with a view to ending the tension in the region, expresses the profound hope that the adhoc Committee established by the OAU Summit in Khartoum will find a just and peaceful solution to the question of Western Sahara, consistent with the principles of the Charter of the United Nations, the recommendations of the Non-Aligned Movement, as well as with the Charter and resolutions of the Organization of African Unity;

(b) Calls on the States in the region to observe strictly the principle of non-violation of borders and to cease all forms of use of military force to interfere with the territorial integrity of the States in the region.

Mr. STAFFORD. The resolution adopted by the Economic and Social Committee was prepared by a drafting subcommittee on which the U.S. delegation was represented by Congressman DEL CLAWSON. It was a particularly difficult assignment which Congressman CLAWSON, one of the hardest working of our delegation, carried out with tenacity and determination. The resolution contained some paragraphs that were not acceptable to our delegation, but it was adopted by voice vote in any event.

I ask unanimous consent that the resolution of the Economic and Social Committee be printed at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

THE FIXING OF FAIR PRICES FOR PRIMARY COMMODITIES SUPPLIED MAINLY BY DEVELOPING NATIONS, THE MAINTENANCE OF THE PURCHASING POWER PROVIDED BY THEIR EXPORTS, AND THE ALLEVIATION OF THEIR EXTERNAL DEBTS

Draft resolution adopted by the Economic and Social Committee by 41 votes to 0, with 1 abstention.

The 65th Inter-Parliamentary Conference.

Concerned at the adverse evolution of the economic situation of the developing countries.

Noting that the trade and monetary system currently governing international economic relations contributes to increasing the inequalities between developed and developing countries, thus constituting a serious threat to world peace and security.

Recalling that the prices of the products imported by developing countries have risen considerably while their income from the export of primary commodities have dropped, resulting in an excessive increase in the foreign debt of developing countries, which, together with the rate of the interest, which is often very high, represents a very costly, crushing economic burden for each of these nations, and introduces dangerous elements of instability and crisis into the international credit and financial system.

Deeply disturbed at the increasing recourse to protectionism policies which adversely affect the healthy growth of international trade in general and the prospects of developing countries in particular.

Considering that the economies of the developing countries are themselves very diverse, and aware of the fact that developing countries have been making significant efforts to diversify their economic activities and their traditional trading patterns.

(c) To consider immediatly the effectiveness of terminating all loans to South Africa, all investment in that country and all trade promotion, and of applying a total embargo on oil, petroleum products and other strategic facilities;

(d) To manifest their effective support for the just struggle waged by the people of South Africa by contributing to the successful implementation of International Anti-Apartheid Year by all measures within their power;

(e) To apply the embargo on the sale and delivery of arms to South Africa, in accordance with Security Council resolution 418/1977;

B. *Concerning Namibia:*

(a) To contribute actively to the immediate implementation of the rights of the Namibian people to self-determination and independence, bearing in mind the decisions of the 9th Special Session of the UN General Assembly devoted to Namibia, the relevant resolutions of the UN Security Council recommending the independence of Namibia, and of the "Proposal for a settlement of the Namibian situation" (UN doc. S/12636) transmitted by the Governments of Canada, Federal Republic of Germany, France, United Kingdom and United States of America;

(b) To recognize SWAPO, bearing in mind the decisions of the United Nations and of the Organization of African Unity as well as the Five Power Plan, as legitimate and authentic representatives of the Namibian people;

(c) To support all appropriate measures agreed in the United Nations and other diplomatic fora for the rapid removal of South African military and paramilitary forces from the whole of the Namibian territory, including the port of Walvis Bay;

(d) To condemn the South African apartheid régime for its illegal occupation of Namibia which constitutes an act of aggression against the Namibian people and the United Nations;

C. *Concerning Rhodesia:*

(a) To promote the achievement of majority rule in Rhodesia;

(b) To condemn the continued war of repression against the people of Zimbabwe and to encourage all the parties to negotiate with the objective of securing a cease-fire and a settlement which is acceptable to the people of Zimbabwe as a whole;

(c) To comply strictly with the mandatory sanctions of the United Nations against Rhodesia and to promote their expansion, including all measures envisaged under Article 41 of the UN Charter;

Convinced that the objectives of equitable prices for commodities supplied essentially by the developing countries, maintenance of the purchasing power derived from their exports and reduction of their external debt are closely linked to the reform of the international monetary system.

Convinced of the importance, for the developing countries, of a preferential and non-reciprocal treatment to correct the inequalities between the developed and developing countries in international trade, which are the cause of the profound disparities between their respective levels of development:

1. Reaffirms forcefully the need for the rapid conclusion of international commodity agreements, an increase in official development assistance and more advantageous terms for the granting of such assistance, in order to provide adequate reliable and regular resources for the economies of the developing countries;

2. Notes the commitments undertaken within the framework of the Conference on International Economic Co-operation held at Paris in June 1977 and of the Ministerial Session of the UNCTAD Trade and Development Board at Geneva in March 1978, with regard both to the establishment of a common fund—the key instrument for the achievement of the objectives of the Integrated Programme for Commodities—and certain aspects of official development assistance, and, particular, official external debt relief of developing countries;

3. Notes further the points of agreement stated by the Chairman of the Negotiating Conference on a Common Fund at Geneva in November 1977;

4. Urges Parliaments to put pressure on their Governments to resume the negotiations as early as possible and no later than the end of this year, in accordance with the decisions taken by the July meeting of the UNCTAD ad hoc Committee on the Integrated Programme for Commodities;

5. Emphasizes the need to promote forward-looking policies in order to permit the finished and self-finished manufactures to have freer access to markets;

6. Calls on the members of the National Groups to take action in their respective Parliaments in order to encourage their Governments:

(a) To participate in the largest possible number of negotiations concerning agreements on the commodities covered by the UNCTAD Integrated Programme;

(b) To promote, within the framework of the UNCTAD negotiations, the establishment, as soon as possible, of a common fund capable of acting with the maximum effectiveness without however prejudicing the legitimate interests of the consumer nations;

(c) To take measures for establishing an equitable relationship between the prices of commodities on the international market and those of products imported by developing countries;

(d) To promote within the framework of GATT negotiations, the tariff and non-tariff measures leading to the legal and standing non-reciprocal and preferential treatment of the products of the developing countries;

(e) To decrease and eliminate protectionist measures, which affect in the first place the exports of developing countries;

(f) To adopt measures to reduce the bur-

den of the external debt of the developing countries and, in particular, of the poorest developing countries to achieve cancellation by the industrialized countries of the debt of the world's least developed of the developing countries, to increase and to diversify the actual amount of official development assistance and to relax its terms, in conformity with the decisions of the Ministerial Session of the UNCTAD Trade and Development Board held in March 1978;

(g) To make all necessary efforts for an equitable reform of the international monetary system favouring the development of the developing countries;

(h) To encourage, within the framework of bilateral or multilateral aid projects, the industrial processing of commodities in the commodity-producing countries;

7. Recommends that parliamentaries inform public opinion in their countries of the urgent need for effective solidarity, in particular in the financial and technological spheres, between the industrialized and the developing countries, and that co-operation, not confrontation, is required to achieve the agreements and establish the mechanism for a fair and orderly marketing of commodities aiming at a full, complete and rapid integration of the developing countries in the world economy.

Mr. STAFFORD. The Committee on Parliamentary, Juridical and Human Rights Questions proposed a resolution prepared by a drafting subcommittee upon which we were represented by Congressmen CHARLES WIGGINS and GUY VANDER JAGT. The resolution was supported by the U.S. delegation.

Mr. President, I ask unanimous consent that this resolution be printed in the RECORD at this point.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

THE ROLE OF PARLIAMENTS IN THE STUDY AND ELABORATION OF MEANS TO COMBAT INTERNATIONAL TERRORISM

Draft resolution unanimously adopted by the Committee on Parliamentary, Juridicial and Human Rights Questions.

THE 65TH INTER-PARLIAMENTARY CONFERENCE

Disturbed by the growing number of international terrorist acts and their effects upon innocent victims around the world.

Emphasizing that the commitment of the entire international community, including the establishment of co-operation among States in this field, is necessary to combat terrorism.

Recalling the resolutions adopted on this subject by the UN General Assembly and Security Council and by the Inter-Parliamentary Union.

Noting the entry into force of international legally binding instruments to combat certain forms of terrorism and the adoption of relevant regional conventions.

Concerned at the inadequacy of the measures that have been taken so far and at the lack of progress in the elaboration by the United Nations of a comprehensive convention relating to international terrorism.

Asserting that acts of international terrorism involving hijacking of various means of transport or other threats to such carriers or to the safety of travellers, and the taking of hostages, are directed at innocent victims and violate established norms of international behaviour.

Confirming the inalienable right to self-determination and independence of all peoples under colonial and racist regimes or other forms of alien domination, as well as the inalienable right of every people to combat aggression and foreign occupation, a right which must always be exercised in accordance with the principles of the Charter of the United Nations and the relevant resolutions of the latter's organs, and in conformity also with the rules of international law, particularly with regard to respect for human rights in armed conflicts:

1. Affirms its indignation at and condemnation of all forms of international terrorism wherever they occur, whether they originate from States or individuals;

2. Emphasizes the importance of international co-operation, through treaties and other measures, including regional and bilateral conventions, in the effective prevention of such terrorism;

3. Calls on the National Groups to take action so that their respective Parliaments:

(a) Undertake examination of the root causes of terrorism and contribute to the study and elaboration of legal standards appropriate to the prevention and punishment of acts of terrorism;

(b) Continue their efforts to seek and adopt, in accordance with international law, just and peaceful solutions, for the purpose of eliminating the roots and causes that provoke acts of international terrorism;

(c) Make every effort to ensure the adoption of adequate laws punishing such acts, and, with a common accord, outlaw terrorism;

4. Urges all Parliaments and Governments to use their influence to bring about prompt accession to or ratification of the Tokyo (1963), The Hague (1970) and Montreal (1971) Conventions on the safety of international aviation, and the New York (1973) Convention relating to internationally protected persons;

5. Calls on all Governments of the world not to permit the existence and activity on their territories of terrorist organizations and groups directed against other States, to refuse the right of asylum to perpetrators of and those proven to be responsible for acts of terrorism, and either to prosecute or extradite such persons;

6. Calls upon all Parliaments and Governments of the world:

(a) To condemn all acts of violence by any regime;

(b) To condemn the continuation of repressive and terrorist acts by authoritarian colonial, racist and alien occupying regimes in denying peoples their legitimate right to self-determination and independence and individuals their human rights and fundamental freedoms;

(c) To observe strictly their obligations to abstain from directly or indirectly supporting terrorist activities or subversive or other similar actions directed against other States;

(d) To uphold the legitimacy of the struggle of national liberation movements, which must always be expressed in conformity with the purposes and principles of the Charter of the United Nations and the relevant resolutions of the latter's organs, as well as in accordance with the rules of international law;

(e) To refrain from supporting directly or indirectly the taking of hostages for political or other purposes;

7. *Supports* the efforts of the entire international community to acquire effective juridical means of preventing and punishing terrorist acts;

8. *Urges* all Governments and Parliaments to introduce and adopt all measures within their power and enact necessary legislation to prohibit and severely punish financing of all terrorist acts and actions tending to subvert legally established Governments, from whatever sources such financing may emanate.

Mr. STAFFORD. Mr. President, the resolution proposed by the Committee on Educational, Scientific, Cultural and Environmental Matters was on the subject, "The role of Parliaments in combating illiteracy nationally and internationally." We were represented on the drafting subcommittee which prepared the resolution by GUY VANDER JAGT with assistance from ROBERT DUNCAN who did excellent work. The resolution was adopted by the conference on voice vote.

Mr. President, I ask unanimous consent that the resolution from the Committee on Educational, Scientific, Cultural and Environmental matter may appear at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

THE ROLE OF PARLIAMENTS IN COMBATING ILLITERACY NATIONALLY AND INTERNATIONALLY

Draft resolution unanimously adopted by the Educational, Scientific, Cultural and Environmental Committee.

The 65th Inter-Parliamentary Conference.

Convinced that illiteracy jeopardizes and considerably retards economic and social development, constituting an infringement on human dignity.

Emphasizing that more than 800 million people in the world—essentially women and rural dwellers—are illiterate, most of them in Asia, Africa and Latin America, a fact which creates gross inequalities and tensions in the world.

Confirming that the developing countries are faced with tremendous difficulties in eliminating the causes as well as the phenomenon of illiteracy because they lack the means and resources needed to organize massive educational programmes to reduce illiteracy.

Reaffirming that education is a basic human right and a factor in the social and cultural fulfilment of man, and that it can contribute to the reduction of inequalities between individuals and countries.

Convinced that the eradication of illiteracy requires intensive governmental involvement, national planning and international support and that it is the responsibility of Parliaments to formulate the appropriate policy and promote its efficient implementation.

Noting that the scourge of illiteracy may become worse in the coming years and that, consequently, there is an urgent need to intensify forthwith the national and international efforts to combat it.

Recognizing that the eradication of illiteracy is primarily the responsibility of the developing countries and that this task can be facilitated by assistance from developed countries.

Aware that the problems of illiteracy are not confined to the developing countries alone and that industrialized countries have to solve the problems of illiteracy caused by rejection of schooling, the speed of technological progress in industry and changing social attitudes.

Convinced that the spreading of literacy requires at the world level extensive mobilization of energies, financial and human resources and freedom of access to education.

Recognizing that the United Nations and UNESCO in particular make an effective contribution to the reduction of illiteracy at the world level, despite the inadequacy of means.

1. Calls upon Parliaments:

(a) To bring about within their own countries an awareness of:

(i) The importance of literacy as a basic requirement for the elimination of poverty, hunger and human misery, particularly in the developing countries;

(ii) The need to mobilize the human, material and technical resources available to all countries;

(b) To exercise maximum pressure upon Governments to give highest priority to this sector of education in their countries, to en-

sure legislatively and in practice the right of citizens to education and to include specific programmes to eradicate illiteracy in national education systems, especially in the developing countries;

(c) To formulate and implement programmes for eradicating illiteracy not only through enrollment in the formal educational system but also through non-formal programmes of adult literacy and vocational and job-oriented training;

(d) To provide for the training of teachers especially for this purpose and to draw volunteers from all parts of society to serve as tutors and assistants;

(e) To give greater importance to education and the role of women in society, taking into account that women constitute a decisive factor in child literacy and represent a vast potential in combating under-development;

(f) To reaffirm that the firm determination of the developing countries to recover the control of their human and natural resources in order to provide their peoples with the means necessary to join in the scientific-technical world constitutes one way to alleviate the scourge of illiteracy, and to establish a new world cultural and economic order;

(g) To mark in their respective countries International Literacy Day on September 8 by organizing appropriate ceremonies and activities to call public attention to the worldwide problem of illiteracy and to promote understanding of and support for national and international literacy programmes;

(h) To provide, in national programmes to combat illiteracy, for appropriate actions in connection with the proclamation of the International Year of the Child in 1979;

2. Call upon the United Nations to include literacy as an integral element of the Third Development Decade, particularly through the preparation of plans for combating illiteracy and for the development of teaching programmes, under the direction of States and with the aid of UNESCO;

3. Calls upon the member States to increase the rate of their participation in the UNESCO budget, with a view to achieving the above-mentioned objectives;

4. Calls upon UNESCO to continue and intensify its efforts to promote international solidarity in combating illiteracy and to obtain increasingly more substantial support from the international funding bodies, as well as to promote bilateral aid from member States and private agencies;

5. Invites the Governments of the industrialized countries to intensify their efforts to attain the scheduled volume of official assistance to the developing countries so that the budgetary resources allocated to the combating of illiteracy in those countries can be increased;

6. Recommends that the Inter-Parliamentary Union continue close liaison with UNESCO in combating illiteracy;

7. Reaffirms that the most profitable investment which States can make is to devote themselves to the struggle against illiteracy and to the education of the peoples;

8. Leaves it to the 20th Session of the General Conference of UNESCO to decide on the advisability of establishing an international fund to combat illiteracy in the least developed countries.

Mr. STAFFORD. Finally, without dissent, the conference adopted a second resolution from the Economic and Social Committee on "The International Year of the Child."

Mr. President, I ask unanimous consent that that resolution may appear at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

INTERNATIONAL YEAR OF THE CHILD

Draft resolution adopted unanimously by the Economic and Social Committee.

The 65th Inter-Parliamentary Conference.

Bearing in mind that the General Assembly of the United Nations proclaimed 1979 the International Year of the Child (Resolution 31/169).

Deeply concerned that in spite of all efforts, millions of children in developing countries are undernourished, are without access to adequate health services, are missing the basic educational prepartion for their future and are deprived of the elementary amenities of life.

Aware of the fact that in developed countries certain categories of children require additional protection and care, in particular those who are physically and mentally handicapped, or socially disadvantaged;

1. *Calls upon* Parliaments of all countries to seize the opportunity of the Year to take measures to meet the manifold needs and rights of the child and to draw public attention to them;

2. *Appeals* to national Parliaments to support the expansion of basic services for children in developing countries, as part of development plans, which will take place during the Year and therafter;

3. *Urges* the national Groups to promote support by their Parliaments for the work of the national committees for UNICEF and of the national commissions for the Year, where these have been set up in their respective countries.

Mr. STAFFORD. Now, Mr. President, I shall, with a few final observations, bring these discussions of IPU to an end. Within available time I have attempted to describe IPU, the role of U.S. delegations to meetings of IPU and the approximate annual cost of our memberships in IPU.

Necessarily, the reader may find information sketchy and questions unanswered. I shall be pleased, Mr. President, on inquiry of any of my colleagues in either body of Congress, to supply further details to anyone sufficiently interested. In one of my earlier discussions of IPU, I pointed out to my colleagues that IPU came ino existence in 1889, thus far predating both the League of Nations and the United Nations. The United States, on three occasions, has served as the host country for the Interparliamentary Union: once back before the turn of the century, once about 1904, and the last time in 1953. So 25 years have passed since this country has extended an invitation to the International Parliamentary Union to come to the United States and hold a conference in Washington, D.C. I noted, in an earlier discussion, that it has become, over the last 2 or 3 years, a matter of some embarrassment to U.S. delegates to meetings of the International Parliamentary Union that so long a period of time has run since this country has hosted an IPU conference. We are now being urged, particularly by our closest friends among the Western nations, to extend an invitation to the International Parliamentary Union to come to Washington for one of its meetings.

The Senator from Vermont has undertaken to deliver these speeches to provide information on a subject which is little known in the United States despite the fact it is well known and IPU is considered important in the rest of the world, particularly by friendly nations of NATO and the industrialized Western World.

Possibly some of the resolutions are more important for what they did not say than for their content. I am referring here to the resolutions now in the RECORD which were adopted in the Bonn, West Germany, meeting this fall. For example, the "Mid-East" resolution did not condemn "Camp David"; the "Disarmament" resolution did not single out the United States for condemnation while the U.S.S.R. deployed a major new weapon (the SS–20) as might have occurred if the U.S. delegation had not been present.

U.S. leadership in the area of "Human Rights" was emphasized before a world audience.

Work of the staff members—Arthur Kuhl, Executive Secretary of the U.S. Group; Norvill Jones, Chief of Staff, Senate Foreign Relations Committee; Vance Hyndman, House International Relations Committee; Mrs. Mary McLaughlin, Senate Foreign Relations Committee; and John Ward, Department of State adviser, was outstanding throughout the Conference.

Over the years the Senator from Vermont has been a member of the U.S. delegation, there have no doubt been some unnecessary stops en route to and from conferences. There probably have been some unnecessary expenses incurred in attendance at conferences. It is fashionable in consequence to refer to IPU as a "junket," especially by those who do not bother to learn anything about the organization or our role in it.

Attendance at meetings of IPU is not a "junket."

U.S. delegates face a week to 10 days of difficult meetings at each conference. The cost, while appreciable, about $300,000 a year, is miniscule compared to the cost of United Nations and its satellite organizations to the United States, about $529,480,000, and even small compared to the total spent on other international organizations, about $6,241,000.

I consider IPU an important international organization of parliamentarians from nearly 80 nations.

The experience of attending an IPU Conference has been broadening for U.S. delegates. Following is an excerpt from a letter to me from the Honorable ANTONIO B. WON PAT, delegate to the House of Representatives from the Territory of Guam:

I also believe that other members of the American delegation like I, benefited from the broadening experience of attending the conference. This is an important aspect often overlooked by those who would criticize officials for attending such meetings. I are sure that each of us who attended came back with a better perspective of our role and influence in the conference.

Following is an excerpt of a statement by the Honorable JOE SKUBITZ, Member of the House of Representatives, from Kansas, in the CONGRESSIONAL RECORD of May 18, 1978:

As many of my colleagues know, I have not been enthusiastic about attending international meetings. In fact, during more than 16 years in Congress, I never attended any until this month. Several weeks ago, some

colleagues whom I respect highly persuaded me to represent the U.S. Congress at the Interparliamentary Union meeting in Vienna.

This one experience has taught me that we must be willing to make some reasonable sacrifices to attend these IPU meetings. I learned that congressional representation is both necessary and beneficial for U.S. interests. To a large degree, the willingness of the United States to perform a responsible role in international affairs is measured by the attendance and full participation of Members of this body at such sessions as the one in Vienna . . .

Whether we in the United States like it or not, we continue to be the free world's leading nation.

We cannot say, "Stop the World, I want to get off."

The free world continues to look to us for leadership amongst the representatives of the world's parliaments.

Should we depart IPU, our abdication of a free world leadership position would leave an enormous vacuum and Western nation disarray. In my judgment the U.S.S.R. could then dominate future conferences and procure the adoption of resolutions highly embarrassing to this country and our allies.

I hope we will not permit that to happen.

Mr. President, I yield the floor.

REVENUE ACT OF 1978

The PRESIDING OFFICER. The Senate will now resume consideration of H.R. 13511, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 13511) to amend the Internal Revenue Code to reduce income taxes, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. PROXMIRE. What is the pending business before the Senate on the bill? Is there a pending amendment? If so, what is it?

The PRESIDING OFFICER. The Chair advises that there are three pending amendments, but they have all been set aside until after the cloture vote today.

Mr. PROXMIRE. Does that mean that another amendment would be in order at this point?

The PRESIDING OFFICER. The time is controlled by Senators LONG and HANSEN. As the Chair understands it, if they were to yield time to someone for that purpose, then an amendment would be in order.

Mr. PROXMIRE. But the time has to be yielded by Senator HANSEN, Senator MUSKIE, or Senator LONG?

The PRESIDING OFICER. That is correct.

Mr. GLENN. Will the Senator yield for a question?

Mr. ROBERT C. BYRD. Senator HANSEN has only 30 minutes, I believe.

The PRESIDING OFFICER. That is right. Senator HANSEN has 30 minutes under a unanimous-consent agreement.

Mr. GLENN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GLENN. Mr. President, what are the three amendments that are pending that the Chair referred to?

The PRESIDING OFFICER. The three amendments pending, the Chair would advise, are the amendments of the Senator from Maine (Mr. MUSKIE), the Senator from Ohio (Mr. GLENN), and the Senator from Wisconsin (Mr. NELSON).

Mr. GLENN. I thank the Chair.

Mr. HART addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, on behalf of Senator LONG——

Mr. PROXMIRE. Mr. President, will the Senator yield before he yields time?

Mr. ROBERT C. BYRD. I am going to put in a quorum call.

Mr. HATCH. Mr. President, a parliamentary inquiry.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator for the purpose of his making a parliamentary inquiry.

Mr. HATCH. Mr. President, it is my understanding the Nelson amendment has been found to be to the original bill itself and not to the committee substitute.

The PRESIDING OFFICER. The Senator is correct.

Mr. HATCH. That is all I have.

Mr. ROBERT C. BYRD. I yield to the Senator from Wisconsin before I put in a quorum.

Mr. PROXMIRE. May I ask the distinguished majority leader, my concern is that some amendments may come up and we may feel it necessary to talk at some length on those amendments.

We do not want to stand in the way of Senators who would like to debate these three very important amendments pending before the Senate at the present time.

So it is kind of a dilemma. But I want to serve notice, for instance, on the Senator from Utah's amendment, which he very graciously let me look over to examine carefully, I think it is a bad amendment and I want to discuss it at considerable length.

For that reason, we stand in the way of a discussion by Senator MUSKIE, or Senator GLENN, or other Senators, who want to discuss their amendments that are pending.

Mr. ROBERT C. BYRD. The purpose of setting aside their amendments was so other amendments could be called up, hopefully.

Mr. STEVENS. Will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. The agreement was that debate on Senator NELSON's amendment would not start until after the cloture votes today.

Mr. PROXMIRE. I understand. But if time is yielded to Senator HATCH to call up his amendment, that does not mean there would be a time limitation at the end of which time there would have to be a vote.

Mr. STEVENS. There is no time agreement on the Hatch amendment.

Mr. PROXMIRE. All right.

I thank the Senator.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

Mr. GLENN. Will the Senator yield, before that?

Mr. ROBERT C. BYRD. I yield to the Senator.

Mr. GLENN. I wish to note——

Mr. ROBERT C. BYRD. I ask that the time thus far be equally charged against both sides.

Mr. STEVENS. I have not used the leader's time. I suppose I should dispose of that.

Mr. ROBERT C. BYRD. Well, the measure has been put down so that the time of the leader——

Mr. STEVENS. I yield back the leader's time.

Mr. GLENN. I thank the distinguished majority leader.

I would like to note that when cloture comes up this time, in all likelihood I will vote against it, for the first time since I have been in the U.S. Senate.

I will vote against cloture because I look at the delaying tactics that have gone on on the other side of this discussion regarding my amendment.

I tried my level best to get a time agreement on this amendment and to vote on it.

The chairman of the Finance Committee refused to work out that type of agreement and indicated at one point there would be extended discussion of this amendment if I persisted with it.

I did persist with it.

So when I look at my vote this time as being my first vote against cloture, I do not look at is in the light that it might appear to someone who would not know the background of this debate over the last few days.

Now, the second point to be made is that last week a great issue was made of the fact that because of that parliamentary situation, the only way we could get this on the floor and discuss it, have a debate on this issue we have tried to get to the floor for the last 2 years, was to hold the floor, control the debate, and Senator MUSKIE and I on Saturday had a very good debate going back and forth.

But objection was raised on the other side that insufficient time was granted to the other side and that we were being grossly unfair in our control of time.

I would note, Mr. President, that it is now 10:15 a.m. and we had time reserved for the opposition to make their points. We have been here since 9:45 this morning to debate this subject.

So I think the complaints of the other side that we were not giving them sufficient time, and the fact that we do have time set for votes this afternoon, and they are not making use of their time, indicates that perhaps that was rather hollow rhetoric here on last Saturday.

We are here, and Senator MUSKIE is here, willing to have this debate. If we are to go on this, we are ready to go.

So, to those who say there was not sufficient time given them to debate, I say, let us get on with it.

I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

Mr. STEVENS. Will the Senator withhold that?

Mr. ROBERT C. BYRD. Yes.

I believe the Senator from Utah would be prepared to call up his amendment.

Mr. STEVENS. I understand, if he does, Senator PROXMIRE will talk at great length.

I was wondering if we could get other amendments up which we could dispose of.

Mr. LONG. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. LONG. Were we not supposed to go, in the first order of business, to the amendment offered on behalf of Senator DOMENICI that was being offered by the Senator from Pennsylvania? Did we not have an agreement that would be the first amendment we would go to this morning?

Mr. STEVENS. That comes up under the 20-minute agreement does it not, and vote on it at 3 o'clock?

Mr. ROBERT C. BYRD. That begins at 3 o'clock.

Mr. LONG. Three o'clock?

Mr. ROBERT C. BYRD. Yes.

Mr. LONG. The Senator from California (Mr. CRANSTON), has an amendment he wants to offer. Perhaps we can consider that one.

Mr. MUSKIE. Will the Senator yield?

Several Senators addressed the Chair.

Mr. HATCH. I have five amendments, I would be happy to bring up one not as controversial——

Mr. ROBERT C. BYRD. Will the Senator——

Mr. HATCH. I would suggest I bring that up right now.

Mr. ROBERT C. BYRD. Of course, the Senator has the right to call up any amendment he wishes to call up when he gets recognition. I just express the hope, and I do so again, that the Senate could utilize most of this day, up until the hour of 2 o'clock, in disposing of other amendments to the tax bill so as to make as much progress as possible.

I yield the floor to the manager of the bill.

Mr. LONG. Let me just say to those Senators who have amendments——

Mr. MUSKIE. Will the Senator yield?

Mr. LONG (continuing). That are not germane, keep in mind that the germaneness rule is a very strict rule, far stricter than most people realize, unless they are familiar with it from Senate practice.

Those who have amendments which are not germane ought to be bringing them to us before we vote on cloture.

But I would hope they would not bring up amendments that will result in an extended debate because that would foreclose any other Senator from having his amendment considered.

Mr. HATCH. Will the Senator yield to me for one moment?

Mr. LONG. Yes.

Mr. HATCH. Is it the intention of the distinguished Senator from Wisconsin to have extended debate on my amendment?

Mr. PROXMIRE. I do not intend to filibuster. I want a certain notice that I intend to explain why. That might take 45 minutes, an hour, an hour and a half.

In view of the fact that we do have limited time, three major amendments Senators want to discuss, as the manager of the bill has pointed out, every nongermane amendment has only a chance now, perhaps, we do not know, maybe it will later, but, if we invoke cloture, they are dead.

Mr. HATCH. I believe this amendment is germane.

Mr. PROXMIRE. Then the Senator ought to lay it aside until we have a cloture vote.

Mr. HATCH. The reason——

Mr. LONG. If the Senator's amendment is germane——

Mr. HATCH. It is.

Mr. LONG (continuing). And if it is one of those things that might result in extended debate, it is to the Senator's advantage to wait, and after cloture is voted to bring it up, because then there will be a limitation, only 1 hour for every Senator.

Mr. HATCH. I do not believe it will result in extended debate. But it is a complex amendment and difficult to understand.

If cloture is invoked, I may not have the time that I need to explain the amendment.

Mr. LONG. Every Senator has an hour. Obviously, they cannot yield their hour, but the Senator can give somebody something in writing and they can look at it and see what it is all about. Most Senators do not stay and listen to a whole hour of conversation about someone's amendment anyhow. If the Senator hopes to get the Senators to stay here while he talks for an hour, he is doing pretty well.

Mr. HATCH. I will do this. I have a number of other, I think, less controversial amendments. I will be happy to call those up. That will take less time, and I will cooperate with the distinguished manager of the bill.

I call up an amendment at this time.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. LONG. Mr. President, I hope that the present occupant of the Chair will try to pass the matter around and give Senators a chance to get to their amendments before the Senate prior to the nongermane amendments, before we vote on cloture; because those who have the nongermane amendments really should have their amendments before us before we vote on cloture.

The PRESIDING OFFICER. The time this morning is under the control of the Senator from Louisiana and the Senator from Maine; the Senator from Wyoming (Mr. HANSEN) has 30 minutes. No one can bring up anything unless time is yielded by one of the three Senators named.

Mr. HATCH. Mr. President, will the Senator from Wyoming yield to me?

The PRESIDING OFFICER. Does the Senator from Louisiana yield to the Senator from Maine at this point?

Mr. LONG. I will yield the floor at this time.

Mr. MUSKIE. I do not need to use the Senator's time. I would like a couple of minutes of my own time.

The PRESIDING OFFICER. The Senator from Maine is recognized on his own time.

Mr. MUSKIE. Mr. President, I should like to make the point that the first cloture vote will determine whether or not issues such as sunset, the Humphrey-Hawkins bill, and other nongermane amendments—I do not know what others there are—can be considered and voted on later. So this morning this time should be used to the extent that the proponents and opponents of those amendments desire to use it, to fully expose that issue.

If cloture is voted on the first cloture motion, those nongermane amendments are out. The Glenn amendment is out. The sunset amendment is out. The Humphrey-Hawkins bill is out.

It seems to me that we have a right to make our case this morning, to the extent we need the time to do so; and I certainly have no desire to use a great deal of time, but I think that should be the first order of business this morning.

If we do not wish to debate those nongermane amendments, then I, for one, would be willing to yield to sponsors of other amendments, for their consideration. But I think it is understood that we gave up time on Saturday afternoon and evening so that germane amendments could be called up and disposed of, and we now should consider these nongermane amendments.

The opponents of sunset complained all morning Saturday that they were not given time to debate sunset. The Senator from Wyoming was given a special order of 30 minutes to debate it. I would like to see that debate go forward. I do not know how much of that 30 minutes he plans to use, but he certainly is entitled to use all of it, and probably more than that, to discuss his view of the Glenn amendment or the sunset amendment. I have no objection to that. I came here this morning to listen. That is what he wanted me to do on Saturday, so I am here to listen.

I assume that then there will be some response to the arguments he makes, and there should be. But the issue to decide with respect to the first cloture motion is whether or not these nongermane amendments should be driven off the floor, in effect, so that we can discuss the tax bill and the germane amendments. That is a legitimate issue.

I am not going to use any more time now. I just wanted to make that clear. That is why I am here this morning. If those interested in these amendments wish to use time I control for germane amendments, I will be happy to consider those, especially if they do not take too much time. That is my view of what we should be doing this morning.

I reserve the remainder of my time.

Mr. NELSON addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Maine has 96 minutes remaining. The Senator from Louisiana has 89 minutes remaining. The Senator from Wyoming has 30 minutes remaining.

Mr. LONG. Mr. President, I think it would be appropriate that the Senator from Louisiana should make an opening statement, and it need not be lengthy, to explain my view. I would want to say

it again when there are more Senators in the Chamber, but I at least could make my position clear for the record. Then, when we come near the conclusion and have Senators here, I would like the same thing again, perhaps in some different words.

Senator "Bert" Wheeler used to say that any Senator had to expect to make the same speech twice if he wanted most Senators to hear it, and that was when they had better attendance than today.

I will be glad to state my position briefly about this matter.

Mr. NELSON. Mr President, I should like to propound a question to the distinguished Senator from Louisiana.

I would like to propound a unanimous-consent request that I be given 2 minutes, not out of the time of either side, to dispose of a matter that passed the House, involving two wilderness areas in Wisconsin, which I withheld talking up on Friday night because there were germane amendments by a dozen Senators who wanted to take them up.

This matter is unobjected to by either side. Senator HANSEN is here, and we could dispose of it in 2 minutes if I could have the time.

Mr. MUSKIE. Mr. President, I yield 2 minutes to the Senator, if Senator LONG is willing to yield the floor.

Mr. LONG. I will speak for a few minutes, and then I will yield the floor.

Mr. President, it does not help in passing any bill and to add more controversy to a bill that already has a lot of controversy. There is a tremendous amount of controversy in the bill we have right now.

We are confronted with the possibility of a Presidential veto. We know that is being discussed. It has been discussed on television, on the talk shows, with the Vice President. Cabinet officers are talking about it.

We know that we have issues that could result in a deadlock between the Senate and the House of Representatives, but we are optimistic that we can get a bill as far as the President's desk. However, whether we can get a bill there that he will sign is an entirely different matter.

In addition, amendments are being proposed that would have some strenuous opposition. There are people so strongly opposed to some of them that even though they would vote for the bill the way it is now, if you add those controversial amendments, they will vote against it.

If you are going to pass a bill that has a lot of controversy already, you should leave out matters that are not germane to the bill, which bring in still more controversy.

With all the controversy that is in this bill, one could say, "Here is our chance to pass the sunset bill, so let's pass the sunset bill." From the Muskie standpoint, I think a majority of Senators would vote for it, but some may be strongly opposed. So that would lose some votes.

Also, I doubt whether the Glenn amendment could get a majority of votes. If we learn more about it and have a chance to study this matter, and when the business community gets to understand it better, and when the people in the charitable organizations and the State and local governments understand what the Glenn amendment means a lot better than they understand it now, there will be much more opposition to the Glenn amendment.

So, frankly, if that amendment were to be added to the bill, that would reduce further the possibility that this bill could be passed.

Then, let us take the Humphrey-Hawkins bill. That has a lot of appeal in labor circles and in liberal circles. In conservative circles, it is anathema. They are violently opposed to the Humphrey-Hawkins bill. Many of us are generally for the concept but have not had an opportunity to study the details, so we will not be ready to vote on it for awhile.

If Humphrey-Hawkins is added, I assume it could get a majority vote by people who are in favor of the idea, but some people are violently opposed to it, and they would be against the bill. They would vote against the whole bill if Humphrey-Hawkins is added to it.

Then comes the textile quota matter. I suppose the only reason we do not have the textile quota hanging here as an amendment is that it is already blocked out by sunset and Humphrey-Hawkins.

One is added as an amendment to the committee bill; the other, an amendment to the House bill. So they are blocked out on both sides. That being the case, the textile quota cannot be added right now.

So, as in the case of the threat of the Presidential veto, this is a threat in its own right by very dedicated opposition of people who pursue the free trade concept.

All right. Then add the hospital cost containment bill. Once again that has some strong support, and it has some strong opposition, depending upon whether you take the administration approach, the Kennedy approach, or the Talmadge approach. But in any event, whichever approach you take, there will be opposition to that. So if you add that on top of it, it is just like hitting a ship, that is already fully loaded, with four torpedoes.

We had that type situation happen to the Export-Import Bank. It got hit in the bow, you might say, by the textile amendment. Then it got hit in the stern by another torpedo which was the waterway amendment. It was set up ready to be hit amidship by the Glenn amendment, but unfortunately it went to the bottom before the Glenn amendment could reach the target. The Glenn amendment was turned around and now it is being offered on the tax bill.

Mr. President, if all the Senators want to do is just torpedo this bill, that is easy enough to do. All they have to do is just insist that everything around here that someone wishes to pass between now and the time Congress adjourns should be added.

I have a nominee myself, Mr. President, if we are going to add all these irrelevant bills, knowing the bill will not go anywhere, but knowing we can tell the people back home that we did our damndest to do something. I want my Sugar Act on here. It has been reported out of the Finance Committee. And we are outraged that the administration does not understand the plight of the sugar farmer.

I want someone to go get that Sugar Act right now and make it available to me, so if it is going to be torpedoed with everything else we will torpedo it with the Sugar Act, which we will let go when all the other acts hit the target.

Mr. GLENN. Mr. President, will the Senator yield for a comment on all the torpedoes that are coming around this morning?

Mr. LONG. The Senator may comment on his torpedo, the Glenn amendment.

Mr. GLENN. I am glad to.

With regard to the torpedo that I am alleged to have fired into this particular tax bill, I will say that I would have been happy to have fought this battle on another sea or another ocean and at another time.

I remind the distinguished chairman of the Finance Committee that we had this pending amendment before his committee since March 1977, but have been unable to get any action on it. So, I indicate that we would have been glad to have had this as a little skirmish in a harbor someplace rather than in the full range naval battle terms in which the distinguished Senator frames the discussion this morning.

Mr. LONG. I would have been delighted to have had unanimous consent that the Glenn amendment be the third torpedo on the Export-Import Bank bill, had I known we could have settled for that, that the Senator would be willing to fire his torpedo into that ship and let the ship go down to the bottom of the ocean with it and get on to other matters. Unfortunately, it looked at that point that although his torepdo might hit the ship, the ship might continue to sail to some harbor, and that being the case, we could not afford to take that chance.

If we are going to pass this bill, Mr. President, we are going to have to have a rule of germaneness both to reduce the number of amendments that can be offered and to limit the scope of the bill and to reduce the amount of time Senators can spend speaking on these matters. If we cannot get cloture invoked today, we will have to come back and try again because we cannot permit this tax bill to be held hostage for everything that has a possibility of mustering a majority vote here in the Senate, everything that someone has left that he wants to get done before Congress goes home.

Furthermore, Mr. President, there is one other possibility that we have not covered as to why we should invoke cloture, and that is an approach that used to be used by my own father when he was a Member of this body back in 1932 and 1933. A single Senator can have an amendment that cannot even command a majority vote and that Senator could stand up here and filibuster, and take the view that he is not going to let the bill be passed and let that bill go by unless the Senate puts on there something he thinks important to a lot of people in the country.

Mr. HART. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. LONG. I yield.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Mr. President, is the Senator from Colorado correct that vote will occur at 2 p.m. on cloture?

The PRESIDING OFFICER. The Chair will advise the Senator is not correct, that the vote on cloture will occur at 3 p.m. and what will occur at 2 p.m. is an hour of debate on the conference report that will commence at that time.

Mr. STEVENS. That is not correct.

The PRESIDING OFFICER. The Chair has been readvised and, therefore, must change what he said a moment ago. The vote on cloture will occur at 4 p.m. and not before that and prior to that there are votes scheduled at 3:20 p.m. on the Heinz amendment.

Mr. HART. A further parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. The Senator from Colorado has a major amendment upon which he has worked for a considerable number of months that is germane to the tax bill. The inquiry is that if cloture is invoked at 4 p.m., will it be the case that the germane amendment offerred by the Senator from Colorado will be limited to 1 hour of debate?

The PRESIDING OFFICER. The Chair is advised that if the cloture vote should succeed, if cloture should be invoked, all Senators from that point on will have 1 hour of time for all amendments that they might offer, or use on one amendment, or any other remarks they wish to make after that 1 hour.

Mr. HART. Therefore, if cloture is invoked at 4 p.m., any Senator having a germane amendment or a series of germane amendments, or who wishes to debate on any elements of the pending legislation; namely the tax bill, the total time for any of those purposes will be limited to 1 hour; is that correct?

The PRESIDING OFFICER. That is the understanding of the Chair.

Mr. HART. I thank the Chair.

Mr. STEVENS. Mr. President, will the Senator yield to me on one question about this bill?

Mr. LONG. I yield.

Mr. STEVENS. My understanding is that we now face the problem of nongermane amendments. We have the Muskie sunset bill, of which I am a cosponsor, incidentally. We have the Humphrey-Hawkins bill coming from the Senator from Wisconsin. We have the Glenn version of the tax expenditure sunset coming along. Just how can those survive a tax conference? What is the expertise and the ways and means in those areas? Why should we not find some way to limit this bill so it is not going to be a Christmas tree on the broad spectrum of any legislation at this time? Why should this bill be held hostage? This, I understood, was the key bill toward our adjournment on October 14. These other issues can stand or fall on their own.

I support the bill of the Senator from Maine. But it could be offered to another bill. There are other bills that are going to pass here, I might say, that are not so controversial and do not in and of themselves have to have cloture.

I wish to know: Is there anything the Senator knows we can do to get this tax bill to the point where we might be able to vote on tax issues and bring the American people the tax relief that we think they need?

Mr. LONG. What you have to do when you have a lot of major controversial bills left at the end of a Congress, what you have to do, is pass one and then pass the other one, and then pass the other one instead of having controversy on top of controversy on top of controversy.

I neglected to mention one of the other items. I thought we had finally worked out this thing about user charges on the waterways. I thought we had so far as Mr. DOMENICI was concerned, and I thought we had as far as I was concerned. But an additional problem arose that has to do with environmental matters in the courts, how long the judge might take and decide the environmental aspect of it. That has caused the Senator from Missouri to want to take another look at it and to review all that.

The point about all this is, the Senator will recall how long we took debating the waterway legislation, the tolls on the waterways, and locks and Dam 26. Well, now that should be resolved. But I do not think we would try to resolve it on this bill. We ought to put that on some other bill, and we will. But the idea of piling it all on top of this one bill makes one suspect that those who are doing it are not really interested in passing the tax cut bill at all because if you really wanted to pass it, it seems to me, you ought to keep the tax cut bill directed toward the controversies involved in taxes.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. LONG. Yes.

Mr. NELSON. Two of the nongermane amendments on the bill the Senator from Wisconsin did offer, one of them on Saturday and another one the day before, I believe.

I agree with the distinguished Senator from Louisiana and the distinguished Senator from Alaska. The only reason I offered these two nongermane amendments was that there is no other way to get them considered. The Humphrey-Hawkins bill had been reported from the Human Resources Committee months ago. Hospital cost containments have been having hearings, consideration, for a year and a half. I would be prepared to vote cloture with an understanding that there be a bill on the floor or two bills on which we can offer Humphrey-Hawkins, another one hospital cost containments, agree to a time limitation, take them off this bill and get a vote on it. I would be very happy to do that.

But if we are foreclosed from getting them before the Senate under any other circumstances, there is no alternative, and I regret that very much. But I want it understood that this Senator stands ready to pull down these two amendments and agree to a time limitation on any two other bills that anybody can bring up.

There are some bills from the Finance Committee, small ones, and I want the Senator to know that I am prepared to do it any minute and, in fact, if there cannot be a time limitation on Humphrey-Hawkins, I would still be prepared to pull it down to give us a chance to debate and vote on the question of cloture.

Mr. STEVENS. Mr. President, will the Senator yield to me for just 1 more second?

Mr. LONG. Yes.

Mr. STEVENS. Let me again say—it is asking my good friend from Wisconsin a question through the Senator from Louisiana. Why should not some of us who have some legislation we would like to get off the books start doing it? I would like to get that Gun Control Act off the books. It has been an impediment to the people in my State for a long time. If you want to take up this Senate for a long time, we will start doing it. There is no place to do it. The people of the United States deserve this tax cut, and you are going to get us in position where all of the people who are opposed to some of the things the Senator is suggesting are going to join together and defeat this tax bill. That should not happen.

I ask the Senator is it not true that there are other bills coming through here that have equal priority? There is no reason why Humphrey-Hawkins, and sunset, and all the rest of them, have to be on this bill. There are other bills going to be called up this week that have equal priority and are going to be debated, and they are not subject to any germaneness rule either until there is a time agreement.

I think to say that only the tax bill can take nongermane riders and nothing else at this stage of the Senate is wrong. Does not the Senator agree with that? There are bills coming after this one. We could get this one to the President in clean shape, as I understand it. There will be a tough time getting it signed just as it is.

Mr. LONG. Well, Mr. President, I would hope I can vote for the Humphrey-Hawkins bill. I must confess there is a lot in the bill I just do not understand. I have not had a chance to study it and do justice to it. I do not know whether I can vote for it right now. Maybe I will have to vote for some amendments first.

But as I understand, I know I am for the purpose of the Humphrey-Hawkins bill. All right. I would like to vote for something to advance that purpose. So knowing all the details I would like to vote for something like that.

But on the principle of whether we are going to take the view that we are going to hold this bill hostage for the Humphrey-Hawkins bill or for the textile quota bill or for the waterway user bill, which I am strongly for, or for the Sugar Act or a dozen other worthwhile legislative proposals that have merit in varying degrees, whether you are going to hold this bill up for all these things is a decision the Senate wants to make.

If that is what you want to do, the leadership ought to just come to the committee chairman and ask that he lay this bill aside. And we will just lay it aside and then we will just go and consider these other measures, and then I will come back to the tax bill.

Mr. MUSKIE. Will the Senator yield?

Mr. LONG. I yield.

Mr. MUSKIE. Mr. President, I understand the Senator's argument fully. I do not think there is a Senator on this floor who would push for this orderly procedure harder than I. I have spoken in large measure for the budget process. I tried to protect its orderly procedure. I tried to push it for sunset, and sunset is designed to bring this orderly procedure about.

I tried the nice-guy route, may I say to the Senator. I waited for 3 years to get a vote on sunset, 3 years, and in bringing sunset to the floor on this bill this is the first time I have gotten close to getting Senate consideration of sunset during that entire period.

Now, that is orderly procedure. I do not like to be offering it to the tax bill. I tried earlier, within the last 2 weeks, to get it on the Export-Import Bank bill. I tried to get a time agreement, to vote on it. But nobody would agree, so we sank the bill.

I am all for the Senator and his argument for orderly procedure. But the suggestion that nongermane items are more controversial than germane items to the tax bill is a thesis that I thoroughly reject. This tax bill came out out of the committee with roughly $1.4 billion of room left in it for the energy tax bill, another high tax bill. There have been over 14 amendments adopted that have completely used up that $1.4 billion; germane amendments that have completely used up that $1.4 billion.

These amendments have been put into the bill with minimal first year costs, but when you look at future year costs there is a great deal of controversy with the germane items that have been added to this bill. And, the Senator knows this.

When the Senator from Alaska suggests that it is only nongermane amendments that make tax bills Christmas trees, I cannot believe he has been around here for the last 10 years. Tax bills have been Christmas trees because of germane amendments, not because of nongermane amendments.

To suggest that some of these germane amendments we have adopted, that have chewed up that $1.4 billion of room, are more important than sunset or Humphrey-Hawkins is a laughable argument. It is not that everybody will support Humphrey-Hawkins or sunset. I have a list of the other amendments here. There is none that is as important as these two nongermane items.

I understand the Senator from Louisiana's frustration, and I sympathize with him fully, and he knows that. As a matter of fact, we have sort of a strange partnership going on with respect to this tax bill; we are going to try to keep it fiscally responsible. I enjoy working in harness with him on it. But the real issue on the first cloture amendment—and the Senator has stated it—is whether or not the Senate wants to consider these nongermane amendments. The Senator from Louisiana, the chairman of the Finance Committee, has made the only argument which, as floor manager of this bill, he ought to make, because he is protecting his legislative vehicle.

But, on the other hand, while we will not persuade the Senator from Louisiana those of us who believe strongly in some of these other issues are going to make another argument to the Senate as a whole; let us have a chance to vote on these other important matters, because really there is not any practical other route available to us.

I have searched for another route on sunset for 3 years, and never have been able to find one, being a nice guy, and now I am going to try to make this one an effective route. The Senator understands that is my purpose, and that we are in disagreement about it, but that is the issue on the first cloture vote.

I hope that Senators are sufficiently interested in the high priority nature of sunset so that they will say, "Let us at least vote on it one way or the other."

If we vote on it and the Senate adopts it, I have such confidence in the conference capability of the Senator from Louisiana that if the Senate supports sunset strongly enough, he will defend the Senate's position; urge the House, perhaps to take the issue to the House floor for a vote up or down, but we will get rid of it, either adopt it or get rid of it. That is all I ask, that kind of assurance.

Mr. GLENN. Mr. President, will the Senator yield further?

Mr. LONG. Mr. President, I ask that the Senator's statement be charged against his time.

Mr. MUSKIE. Yes, take it out of my time.

Mr. NELSON. Mr. President, the Senate is not in order. I cannot hear the Senator from Louisiana.

The PRESIDING OFFICER. The Senate will be in order.

Mr. GLENN. Will the Senator yield?

Mr. MUSKIE. I yield to the Senator from Ohio.

Mr. GLENN. Yes, just a couple of minutes.

I think all this concern about time this morning, and how pressed we are, is very touching. It touches my heart, because the Senator will recall that almost 2 days ago I sat with him and offered, on my amendment, to have only 15 minutes of discussion, and vote, and let the Senate work its will on the matter, and he refused to do that.

So, to make our point, we held the floor and discussed it, and the opposition received time this morning to do the same, but I would say the delay has not been of my making. I tried to get the distinguished chairman to agree to a time limit and a vote, and I offered at one time to agree to 15 minutes, and we would have been done with it.

We have gone on for a day and a half now on this, and as I say, the delay touches me deeply. But I cannot be too sympathetic, because we could have had this matter debated, voted on, and completed a long time ago.

Mr. LONG. Yes, but the Senator should have had more introduction. Let me ask the Senator from Ohio a question, because it is not fully clear to me. Let me ask the Senator a question that I hope will clarify a point about his amendment.

Mr. GLENN. On your time, now. I was on Senator MUSKIE's time.

Mr. LONG. All right, on my time. Let me ask the Senator this question: Let us assume we are just talking about the charitable contribution. As I understand, it was——

Mr. GLENN. Senator, my amendment does not address the charitable contribution. My amendment sets up a procedure by which these tax incentives and credits will be reviewed, and nothing more.

Mr. LONG. But I have this book here—I know, this Senator understands that, but let me get this straight. This book is entitled "Tax Expenditures," and charitable contributions are referred to as a tax expenditure.

If we pass this bill, and we go through all the procedures the Senator is talking about, at some time we hope to pass some bill.

Now, suppose we pass a bill and it says that the—as I understand it, a procedure was clearly contemplated, as I read it, that the congressional budget office and the Finance Committee and the Senate ought to review this as falling, in fact, within the definition of a tax expenditure. So at some point, we pass a resolution——

Mr. GLENN. Those groups would set up a list of things that fall into those categories, tax incentives and tax expenditures, and that would be subject to recommendation by the Finance Committee.

Mr. LONG. I would take it that charitable contributions would be either on the resolution or not on the resolution.

Mr. GLENN. It would be listed as either a tax expenditure or a tax incentive.

Mr. LONG. All right. May we assume it would be listed as a tax expenditure?

Mr. GLENN. Under the totality of that, yes.

Mr. LONG. All right. If it is listed as a tax expenditure, and it goes on down to the White House, and the President signs the bill——

Mr. GLENN. Wait; there are a couple of steps in between there, if the Senator does not mind.

The Finance Committee, when the list is submitted, can choose particularly good tax incentives that they know people would agree on, and put them in an exempted list, that would not even come under the procedure. Home mortgage interest, the veterans benefits Senator TALMADGE mentioned, and things like that could go on an exempted list, that we would just agree to continue as they are. The rest of them could go through the scrutiny in a neutral process, to see whether they should be raised, left the way they are, or "sunsetted." The Senate would pass on it, it would go to the House, and if they passed on it, after that, the reauthorization then would go to the President.

I just wanted to get these interim steps before we got this thing clear down Pennsylvania Avenue.

Mr. LONG. All right. Just so I will understand it better, then, the Senate has a right to instruct the Finance Committee?

Mr. GLENN. The Senate would have the right to approve or disapprove the position the Finance Committee took, as on all other legislation—as on this tax bill we have before us right now, for example.

Mr. LONG. All right. So the Senator is not talking about the right of the Fi-

nance Committee to put something on or take it off; you are talking about the Senate.

Mr. GLENN. I do not think the Senate would ever give carte blanche to the chairman of the Finance Committee. I do not think anybody would agree to that.

Mr. LONG. Well, some may and some may not. If some Senators bought that——

Mr. GLENN. Would the Senator repeat that, please? I am not sure I heard him correctly.

Mr. LONG. Assuming there might be somebody in this country who might have more confidence in the Finance Committee than in the Senate as a whole, assuming that might be the case. I think we should keep in mind that it is the Senate that makes the decision, not the committee. A committee can recommend something to the Senate, but the Senate makes the decision, is that not correct?

Mr. GLENN. Certainly.

Mr. LONG. And that would be true on the Senator's amendment?

Mr. GLENN. Certainly. I thought the Senator said something else a minute ago. Go ahead.

Mr. LONG. All right. Now, just let us assume that this matter of charitable contributions, then, is on the list of tax expenditures as it goes down to the President, and the President signs the bill. Then I would take it that this, then, would be one of the items that would expire after 10 years unless reenacted; would that be correct?

Mr. GLENN. I would say if something is not included for reauthorization after the Senate Finance Committee has scrutinized it and made their recommendation to the Senate, the Senate has worked its will on it, and said whether it will or will not be reauthorized; if the committee brought one out that the Senate decides is a tax loophole, or not accomplishing what it is supposed to, or it is draining off tax dollars, and everyone else is paying higher taxes because of that, if they in their wisdom decide not to go along with it, and to terminate that exemption, it would be terminated.

That is just like any other law, appropriation. authorization, or whatever.

Mr. LONG. Yes. I think I understand. So now those items that would be on the list, assuming it would go to the President—I can assume that, is that correct?

Mr. GLENN. After having run through all this other process I outlined, yes.

Mr. LONG. Like any other law.

Mr. GLENN. Pardon?

Mr. LONG. Like any other law; they all go down to the President to be signed.

Mr. GLENN. Yes.

Mr. LONG. Then after the President signed it, assuming that would be the charitable contribution, it would then be terminated every 10 years, is that the——

Mr. GLENN. It would run through the same process of review and reauthorization every 10 years, and I might add that charitable contributions, instead of being deductible, might well not be reauthorized by the Senate and the House of Representatives, or they could be raised to an even higher deduction than they are now, because the review process is neutral. The amendment says that every 10 years tax incentives and credits will be reviewed to see whether they are accomplishing the purpose for which they were originally intended.

Mr. LONG. What I am getting at is, if that is one of the items of tax expenditures and incentives, it goes down to the President and is signed into law, then it has to go through this review process every 10 years?

Mr. GLENN. It has to go through and either be retained or terminated, that is correct.

Mr. LONG. All right. Let us assume for the sake of argument that this is an item that the majority of the Senate does not see fit to list as a tax expenditure; what happens to it then?

Mr. GLENN. You mean on the original list made up by the Congressional Budget Office, the Senate Finance Committee, and their counterparts in the House, if it is not on the list of tax incentives and tax credits now? You mean if it is not included on that?

Mr. LONG. Let us just assume that Congress believes that an item is not a good tax incentive, but the President, there might be one of those he regards as a good tax incentive, and therefore, if this occurred, it would have been left off the list, and therefore it would——

Mr. GLENN. And it went to the President for signature?

Mr. LONG. And, therefore, that this so-called good tax expenditure would be left off by the Senate, left off by the House, and, therefore, would never go to the White House to be signed.

Mr. GLENN. I would say if the bill arrived on the President's desk without that included, I would have to logically assume, and I am certain the Senator would agree with me, it would have first had to be turned down by the Senate Finance Committee, or if they approved it would have had to be turned down by a vote in the Senate, with the same procedure in the House. If it had been turned down by the Senate, only then would it go to the President once it had worked out with the House, of course, for the President's signature. I cannot envision that the particular tax incentive or credit the Senator mentions would go through without being included. In the original instance where we considered those things the Finance Committee could even recommend the Senate's setting that off to one side so it is not even considered on the subsequent year review periods. There are all sorts of protections in here for the good tax incentives and good tax credits that I am sure the Senator and I both would agree should be continued.

Mr. LONG. Assuming that the charitable contribution, then, was not in the bill that went down to the President, that it was left out, and that it was taken out because the Senate thought the charitable contribution should continue and should not be made subject to the 10-year process, if they thought that to be the case and they left it out over here, and if the House left it out on the House side, so that the bill the President signed did not include that in the bill, what would then be the case?

Mr. GLENN. What the Senator is saying is that the Congress, both Houses, will have jointly decided and had a record rollcall vote on it, probably, in both Houses, that that particular tax incentive or tax credit was not in the best interests of the people of this country and the whole Congress had turned it down. Then it would not be on the list going to the President, that is correct. I would say if the Congress debates that particular issue and decides it should not go to the President, I cannot see how it would not have been adequately considered at that point. This would not have been left off anybody's list. It would have been duly considered at that point and decided positively it would not go on the list. But it would be a positive action one way or the other on that particular issue by the Congress. That would be the only way it would not go on the list. If the Finance Committee had originally set it aside or had made other recommendations to the Senate, it would be a congressional action going to the President.

Mr. LONG. It seems to me it is only confusing the matter to talk about what the Ways and Means Committee does in a case like that. We are talking about what the House does and what the Senate does. If the House and Senate send a resolution without charitable contributions in it, I am asking the Senator if that would then mean that for the purposes of the Senator's bill the charitable contribution would remain the same as it is now, that it is in the law and that it proceeds to remain a part of the law, quite apart from the automatic termination or automatic renewal features of the bill?

Mr. GLENN. The only way that would not be included would be if the Finance Committee considered this and made their recommendation here that charitable contributions be cut out completely, and if the Senate concurred in that and if the House concurred in that, or if the Finance Committee said we should keep them in and the Senate and House overrode that and said, "No, they are doing such a lousy job, we will not keep them in."

It will take a positive act of Congress before that would not be in the bill going to the President.

Mr. LONG. Suppose the resolution got bogged down in so much controversy, somewhat like the bill we have here now, that it did not pass at all. What would happen then?

Mr. GLENN. I would say that the first thing that could happen when this was considered, if we had one that is as good as the one the Senator is using as an example this morning, is that it would probably be exempted and put on the exempt list in the first place. So it probably would not come up for this 10-year review.

But if in 10 years, if sometime during that cycle, this is not reauthorized, only then would it terminate. It seems to me that if our duties here are to be taken so frivolously that we do not pass this and do not make any continuing resolution if we got into a time bind, and we do not take the action required as Congress has required itself to do in many other tax areas—all we are doing is ex-

panding what is already done in many instances in the Finance Committee and the Senate by previous law anyway—only in that instance would any of these terminate if not on the exempt list and if we fail to take action. I have faith enough in the Senate and this Government to think we will take action on those as we do every year on authorizing and appropriating bills.

Mr. LONG. Mr. President, the Senator's answer is so lengthy that I do not understand it.

Let me try to get it down to something where we can have a categorical answer. Let us assume that when we talk about charitable contributions, somebody says, "Well, if a person is going to make the contribution to his own private foundation, that part of it should not be continued." That would be a lower priority, I would take it, than where someone gives to the church and fully separates himself from the money forever.

Then suppose with regard to the capital gains, they would say, "But not capital gains on timber."

And suppose because of controversial items like that which did not have as much support as some of the others in the tax expenditure area it got the Senate so completely bogged down in controversy that the resolution never did get down to the President, the Senate just could not agree on it. Some were willing to vote for one thing and some willing to vote for another, but by the time they got through the resolution never did get to the President and never was signed. Would that mean that the tax expenditures would terminate or not terminate?

Mr. GLENN. The Senator's question is longer than the answer I gave previously that he criticized me for.

Mr. LONG. Previously, the Senator's answer was so long I could not understand it. This time the answer can be shorter.

Mr. GLENN. The only way this would terminate would be if it had failed in running the gauntlet at any one of those steps I outlined a few moments ago. If it failed in the Finance Committee and the Senate backed up the Finance Committee, if the Senate on its own perhaps disregarded the Finance Committee recommendation and voted to terminate something like this, or just chose to take no action on it at all, then the Senator is right, it would terminate. But I would submit—the Senator wants my answer. Does he want it or not?

Mr. LONG. The Senator has answered.

Mr. GLENN. We do the same thing on appropriations every year and we act responsibly in this area. What do we do with defense? We come down to the wire on defense.

Mr. LONG. You finally answered it. That is what I am trying to get.

Mr. GLENN. The Senator is trying to lead this whole discussion as he has in the last couple of days, into areas which do not deal with this amendment he brings up, if we do not do things. I would say what if we do not appropriate money for defense next year? We are responsible enough that we do appropriate funds. This Government and this Congress are responsible enough to take action on this, too.

(Mrs. HUMPHREY assumed the chair.)

Mr. LONG. Madam President, if the Senator wants to say other things, I suggest he say them on the time for the Glenn amendment and not on the time against it.

Mr. GLENN. I will charge that 2 minutes against Senator MUSKIE's amendment.

Mr. LONG. It seems to me that the Senator has spent all of his time talking about the part of the bait that conceals the hook. We have heard no conversation about the hook that is inside the bait. That is what the fish are interested in, the hook, not the bait. He has spent all the time talking about the bait. If all he was looking at was the bait on the hook, he would not touch the bait. He would stay away from the bait because of the hook inside of it.

There is the hook. The Senator finally got around to telling us about the hook hidden inside the bait. The hook is that with regard to any one of these controversial items in the area of tax expenditures, unless we pass a bill by a majority vote through the Senate and the House and the President signs it into law, they all expire. That is the point. So if one wants to prevent—that is, if one wants the charitable contribution, the whole thing, to expire, all he wants to do is prevent us from sending a bill down to be signed by the President that would permit it to continue. Even if it does get down there and the President vetoes it, at that point, it would not take anything more than one-third of either House, plus one Senator or plus one House Member, and that would be the end of that particular deduction or credit until it is renewed by law.

The Senator ought to be able to answer that one categorically, yes or no.

Is that right or not?

Mr. GLENN. Will the Senator repeat his question?

Mr. LONG. It is very simple: Assuming that we were not able to pass a bill that said anything about a charitable contribution, that said anything about capital gains or these other controversial items, assuming that we were not able to pass it and that we were not able to enact it, would they all expire?

Mr. GLENN. If we fail to pass it, of course, they would expire. And if we fail to pass a defense appropriations bill, we do not have a Defense Department. If we fail to pass an appropriations bill for the civil service employees in Government, they fail also. But this Senate and this Congress and this Government are not going to be that irresponsible.

Mr. LONG. Well, Madam President, the Senator has answered the question. The point is that the people of this country are not worried about the procedure, they are worried about the tax. I do not know why we have had all this talk about the procedure when the fact is after we get through all this, if we do not pass an act of Congress, to be signed by the President, then the charitable contribution expires, the capital gains expires, a tax then goes on the interest on State and local bonds and all these other so-called tax expenditures. That is the hook that is hidden inside the bait. That is why, when people understand the hook is there, they are not going to touch the bait.

The bait sounds good, yes, until you find out about the hook. The hook is that——

Mr. GLENN. Will the Senator yield for a question?

Mr. LONG. Not at this point. The hook in all this is that if the Glenn amendment becomes law with regard to any controversial item or, for that matter, any good item that is in the tax expenditure area, they all expire. $140 billion worth of taxes goes on the American people unless we can pass a bill through Congress, signed by the President, that would permit these tax expenditures to continue. Now, that is why it should not be passed, that is why it ought to be studied at great length.

I yield the floor.

Mr. GLENN. Will the Senator yield for a question?

Mr. LONG. I am glad to yield the floor, but I yield time.

Mr. MUSKIE. I yield such time as the Senator requires.

Mr. GLENN. Is it not true that if the present tax bill we have on the floor does not pass, the investment tax credit goes back to 7 percent instead of its current temporary 10 percent?

Mr. LONG. After 1980.

Mr. GLENN. But it would revert, it would go back.

Mr. LONG. After 1980.

Mr. GLENN. If we do not do anything on this bill.

Mr. LONG. The 7 percent would not expire.

Mr. GLENN. Is it not also true that tax rates on individuals in this country would not be the same if we do not pass this tax bill? They would change?

Mr. LONG. There was a temporary extension that would require, yes.

Mr. GLENN. All right, then. The Senate is going to be responsible enough one way or the other to get this through and the Senate is going to be responsible enough to see that a review process on which taxes in this country would be changed will be passed. Right now, they are not reviewed. We lost, in 1971, $52 billion in Federal revenue to tax incentives and tax credits. I would probably support most of those tax incentives and tax credits, but right now, there is no process for reviewing them. They have gone up until, this year, we lose $124 billion. The figures from the Congressional Budget Office are that by 1983, 5 years from now, it will be $187 billion.

All this bill does, the only thing it does, is say we set up an orderly review process under the sunset bill to review these things, things that now are just not reviewed on any systematic, orderly basis.

Over on the expenditure side, on the appropriations side, we reviewed these, most items, on an annual two-track system, the authorization system of the committees and the appropriations system that we have here. So they are reviewed yearly. Yet we somehow enact a tax incentive and a tax credit and the

argument of the Senator is that it just goes on in perpetuity, forever, should never be disturbed, should never be reconsidered on any systematic basis. That just defies rationality.

All of these things that were brought up in the last couple of days about what this will do to veterans, what this will do to poor old women and things like that. I would not vote to do away with those tax credits but I think they certainly should fall under some review process. Perhaps in that review process, they would be increased instead of decreased because they are doing such a good job. Right now, there is no review process in existence. That is all this amendment does, try to set up a review process on a systematic basis. That is all it does.

Mr. LONG. When the Senator says that is all it does, he is talking about the bait that conceals the hook. Let us talk about something else it does that he did not mention when he said that.

In the event he is not able to pass a bill and have it signed by the President to say that any one of these so-called tax expenditures, be it the consideration that exists for disabled veterans, the consideration for the aged people, the consideration of a couple with regard to the interest on their home—any one of those things—they all expire. They all come to an end. You trigger about a $150 billion tax increase that has never existed before. That is a point he has not talked about. That is the hook inside the bait.

Mr. GLENN. Since we are on my time——

Mr. LONG. The Senator has spent less time talking about the hook inside the bait than talking about the bait, for some reason.

Mr. GLENN. Since the Senator is on my time——

Mr. LONG. Senator, I am not going to yield.

Mr. GLENN. We are on my time, Madam President.

Mr. LONG. Who has the floor, Madam President?

The PRESIDING OFFICER. The Senator from Maine has yielded to the Senator from Ohio.

Mr. LONG. I am sorry, I did not think I was talking on his time.

Mr. GLENN. I thought my reply was on his time a moment ago. That is why I want to find out what the time is now.

The PRESIDING OFFICER. The Senator from Maine has 86 minutes. The Senator from Louisiana has 57 minutes, and the Senator from Wyoming has 30.

Who yields time?

Mr. BAYH. Will the Senator from Louisiana yield me 1 minute to ask a question about procedure?

Mr. MELCHER. Will the Senator yield to me 2 minutes after that?

Mr. LONG. My side is short on time.

Mr. BAYH. I want to ask the chairman a question, as well as the Senator from Ohio and the Senator from Maine. I understand the time structure as far as the vote on the bigger issue before us is that it is likely that some of us who have amendments which are not nearly so consequential as those being debated here might have the opportunity, in a matter of 5 or 6 minutes, to present one of those issues for consideration of the Senate. I do not want to interfere if that is going to be contrary to the desires of those who are pursuing the more significant amendments.

Mr. MUSKIE. If I may reply to the Senator for myself, I do not plan to take very much time except later on, because some things have been said that I ought to respond to. The Senator from Ohio needs a couple of minutes right now.

As I understand the opposition to the Senate amendments, the Senator from Wyoming has 30 minutes and he argued very strongly for it on Saturday so he could make his case against the sunset amendments. When that is concluded, it would seem to me there is ample time to discuss some other amendments. But I think we will have to wait.

Mr. LONG. I should think we ought to yield some of our time to consider other amendments. I think that is proper.

Mr. MUSKIE. I would agree with that. I just want to be sure the Senator from Wyoming uses his time, because he argued so vigorously he felt we cut him off on Saturday that I told him I would be here to listen to him. He was given 30 minutes to do that. I hope also that, when he is finished, we would have not too much time, but a reasonable amount of time to respond to the arguments he makes. Aside from that, I think there ought to be some time for other amendments, germane amendments, if something comes up.

Mr. HANSEN. Madam President, if I may be permitted to speak, let me yield myself 1 minute to say that I have listened to the arguments by the Senator from Maine and the Senator from Ohio for some time.

I have 30 minutes that has been yielded to me and, if the Senator from Maine anticipates the compelling logic of my arguments to be sufficiently persuasive as to warrant his responding to them, he better save a little time on his own.

Mr. MUSKIE. That is all I am saying. I have always found the Senator's arguments so persuasive that we have not always agreed.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Madam President, I have been yielded 2 minutes to respond to the last comments by the Senator from Louisiana. He was making the point that we were taking the chance of decreasing veterans' benefits, homeowners' benefits, benefits for the elderly, on this.

While I do not agree with the likelihood of those things happening, our present means of operation, our present method of operation in the U.S. Senate and in the Congress, by not reviewing these things, that veterans and the elderly and the homeowners also run the more likelihood of their benefits not being increased, also because they rarely, if ever, get reviewed.

I would submit that a regular review process designed as a review, if we find those particular benefits are good and working well and doing the job for which they were intended, they, in fact, should be increased, and I would probably support that. Where they were at the proper level, they should probably remain there. Where they are not doing the job, they are terminated, sunsetted, in that respect they get back whatever that reduction in overall revenue was from that particular item that benefited a small group of people in this country for a particular purpose.

As a result of returning that to the Treasury, we wind up with all the people of this country having to pay less taxes than they do right now.

So this is not a tax increase bill, it is a tax decrease bill by making our tax system more efficient.

I yield back to the Senator from Maine.

Mr. MUSKIE. Madam President, I think, if the Senator from Wyoming is going to take his time——

Mr. HANSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. HANSEN. Madam President, I would like to yield 5 minlutes to the distinguished junior Senator from Utah.

UP AMENDMENT NO. 2031

(Purpose: To reinstate the tax treatment with respect to annuity contracts with reserves based on a segregated account as they existed prior to the issuance of Revenue Ruling 77–85. To reaffirm existing law as upheld by U.S. District Court against illegal IRS ruling 77–85, an IRS ruling which unilaterally overturned 70 consistent IRS rulings over a decade and remade tax law without the consent of Congress and in the fact of opposition of the Congress)

Mr. HATCH. Madam President, I have waited, I have yielded to other colleagues, and I have granted the floor. Frankly, my amendment is not all that profound. It is just very important because it rights a tremendous injustice.

So, with the 5 minutes of the distinguished Senator from Wyoming which was yielded to me, I call up my unprinted amendment which is at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH), for himself, Mr. SCHWEIKER, and Mr. TOWER, proposes an unprinted amendment numbered 2031.

The amendment is as follows:

At the end of the bill add the following new section:

SEC. .That in the case of annuity contracts which have related amounts based on a segregated asset account, the tax treatment of such contracts under section 61 of the Internal Revenue Code of 1954 (defining gross income) and section 801(g)(1)(B) of such Code (relating to contracts with reserves based on a segregated asset account) shall be determined—

(1) without regard to Revenue Ruling 77–85 (and without regard to any other regulation, ruling, or decision reaching the same result as, or a result similar to, the result set forth in such Revenue ruling); and

(2) with full regard to the rules in effect before Revenue Ruling 77–85.

Mr. HATCH. Madam President, I do not intend to fully debate this amendment at this time. I am just calling it up.

I ask for the yeas and nays on my amendment at this time.

Mr. LONG. On whose time does that come?

Mr. HATCH. Senator HANSEN's time.

Mr. HANSEN addressed the Chair.

The PRESIDING OFFICER. The vote cannot come unless time is yielded for it.

Mr. HANSEN. Well, I am happy for the Senator to be able to bring up his amendment, Madam President. I do not know how many demands there may be upon me for time, for those who may share my convictions, but I wanted to yield 5 minutes to the Senator from Utah and then, after another 15 minutes for a rollcall, that is two-thirds of it, and I do not want to do that right now.

Mr. HATCH. Let me withdraw my request for the yeas and nays at this point, but let me say that——

Mr. NELSON. Would the Senator from Utah allow me to make a request?

Last Friday, now, and then about an hour ago, I asked if I could have 2 minutes on a nongermane matter, cleared on both sides. Senator MUSKIE said he would give me 2 minutes. I wonder if the Senator from Utah would permit me to make a unanimous-consent request respecting two areas in the national forest in my State that has been cleared by Senator HANSEN and both sides?

Mr. HATCH. If Senator HANSEN has no objection.

Mr. HANSEN. On whose time?

Mr. NELSON. Senator MUSKIE—I ask unanimous consent that 2 minutes not be taken out of anybody's time.

Mr. HANSEN. Fine.

The PRESIDING OFFICER. The time has to come——

Mr. HANSEN. I yield 1, if Senator MUSKIE yields 1.

Mr. MUSKIE. All right.

Mr. NELSON. I thank the Senator from Utah.

WILDERNESS LANDS, WISCONSIN

Mr. NELSON. Madam President, I ask unanimous consent that the Energy and Natural Resources Committee be discharged from further consideration of H.R. 12264, a bill to designate Blackjack Springs and Whisker Lake, two areas of the Nicolet National Forest as wilderness, and that the bill be placed before the Senate.

Let me say, the committee, Senator HANSEN and Senator JACKSON, approved. It has passed the House of Representatives.

Mr. METZENBAUM. Madam President, reserving th right to object, and I do not intend to object, if the Senator from Wisconsin will allow me, is there anything else in that bill, by amendment or otherwise, other than a matter of designating the two areas in Wisconsin?

Mr. NELSON. That is all. Two areas that have been heard on both sides, and by the House, embody just that national forest.

Mr. METZENBAUM. No amendments.

Mr. HANSEN. With the understanding that there is no amendment to it, it has been cleared on this side. I have no objection.

I reserve the remainder of my time.

Mr. NELSON. The Parliamentarian advises me he does not have a copy of the bill at hand. I guess I will just withhold until they get it.

Mr. HANSEN. Let it be noted it has been cleared on both sides.

Mr. NELSON. But we would still have to act on it and the Parliamentarian does not have a copy of the bill at hand. That is my fault.

Could I just yield back and get 15 seconds later on?

Mr. HANSEN. Yes.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATCH. Has my amendment been read?

The PRESIDING OFFICER. The amendment has been reported.

Mr. HATCH. It has been reported.

Madam President, this amendment would stop the IRS from what I consider to be officious conduct.

After giving 70 rulings in the investment annuity area and having whole industries rely upon what has been done, they turn right around admitting they do not understand the implications of all they are doing and disrupt the whole industry.

This amendment stops them from doing that without the consent of Congress.

I think, from that standpoint, it is a very important amendment.

I will not ask for the yeas and nays at this time; I do not intend to ask for the yeas and nays. But I want this amendment up, to have it on the record if cloture is not invoked, then I want to be able to debate it, which probably is not germane, before the next cloture vote occurs.

HATCH AMENDMENT TO FINANCE COMMITTEE TAX BILL (INVESTMENT ANNUITY)

Madam President, I wish to present a specific matter that is important to the authority and integrity of the United States Senate and to the laws of this country. It is a matter of tax law, but, more importantly, also a matter of who makes the law. The Internal Revenue Service has in a specific instance usurped that authority in the face of opposition of the United States Senate, a United States District Court decision and the expressed will of the House Committee on Ways and Means.

Last year the United States Senate clearly indicated by a vote of 57–26 that it did not intend for the IRS to change tax policy in this specific matter without consultation with the Congress. The IRS has demonstrated its contempt for the Senate by proceeding to remake tax laws without consulting with us and in the face of our opposition. They have called our bluff and are betting that Senators are too preoccupied with numerous narrow constituency interests to defend the authority and integrity of the Senate itself.

The specific matter at hand is one that pertains to the issuance of revenue ruling 77–85 by the IRS on March 9, 1977. This ruling reversed over 70 consistent public and private rulings that cover a timespan of more than a decade. These rulings pertain to an innovative form of variable annuity called the investment annuity.

On April 29, 1977, the United States Senate expressed its will that "this ruling be delayed for a period of 1 year to give Congress—which should make the change if a change is to be made—an opportunity to check into this matter and see what's involved."

When the expression of the Senate's will proved insufficient to deter the IRS' immediate effectuation of Revenue Ruling 77–85, the Treasury and IRS were sued for arbitrary, capricious, and illegal acts. On November 9, 1977, the United States District Court, District of Columbia, declared the IRS action in issuing Revenue Ruling 77–85 to be illegal, unreasonable, ignorant of the law, and that the IRS had usurped the powers of Congress.

When this very strong expression of the court's will also proved insufficient to deter the IRS and Treasury from continuing their illegal acts, the House Committee on Ways and Means expressed its will on April 17, 1978, that the tax treatment of the investment annuity must be reinstated to that which had existed prior to the IRS issuance of its illegal Revenue Ruling 77–85.

All these expressions of the will of Congress and the court have been, and continue to be, ignored by the Treasury and the IRS simply because Congress generally, and the Senate specifically, are so lax in insisting that it is Congress that writes the laws and not an unelected and unaccountable bureaucracy.

I will retrace some of the factual steps of this sordid affair—an affair that shows the arrogance with which bureaucrats remade the law. I retrace these steps because they reveal the way Congress laws are twisted, broken, and remade by bureaucrats who are apparently accountable to no one.

Such acts in this case have not only strangled an innovative industry to the detriment of our Nation's citizens' well-being. They also constitute a documentable case showing the impunity with which bureaucrats thumb their noses at Congress and the courts, and provide misleading, unfair, and incomplete information to the Congress. We have here a case in which the Treasury either attempted to deliberately mislead the Congress or acted in ignorance of the law—neither of which can be acceptable nor tolerable to the Senate.

Congress must certainly insist upon competence, completeness, and fairness in the dealings of the IRS and the Treasury before Congress, as well as in their administering the laws of our land on behalf of our citizens.

In 1962 Congress revised the Internal Revenue Code to provide for the "segregated accounts" of life insurers in the underwriting of variable annuities. The law is clear, it has not been changed in any relevant way to this very date.

In 1963 following several years of extensive study, a new life insurer was formed to underwrite variable annuities

that delegated (within prescribed limits set by the insurer) the investment management of its segregated accounts to each policyowner. This was an appropriate, legal, and reasonable step to provide a better annuity for the American public. For brand and corporate identification purposes this innovative variable annuity later became known as the investment annuity and is often referred to in trade jargon as the "wrap-around annuity."

In 1963 appropriate tax rulings for the policyowner and the taxpayer were requested of the National Office of the Internal Revenue Service. The Internal Revenue Service recognized from the start that this innovative variable annuity involved the delegation of broadly limited investment management to the policyholder.

In 1965, after 2 years of intensive study by all relevant departments of the IRS, including the Chief Counsel's office, the IRS insisted that the variable annuity was fully in conformity with the law and issued clear rulings to that effect. From that point forward until 1976, over a full decade, the IRS consistently reaffirmed its original, basic decision over 70 times in both public and private rulings that covered a wide variety of applications of this variable annuity in different markets and for different groups and individuals.

In 1976 the IRS stopped issuing favorable rulings and the following events ensued:

1976: Naturally, being concerned by the stoppage of favorable rulings to individuals and other insurers who were attracted to this mode of annuity underwriting, the industry started making inquiries of the IRS in the late spring of 1976. The IRS responded that they were reviewing their position but would not state why or how; nor would they meet with members of the industry to discuss their considerations. Finally, due to external pressure, including inquiries from Members of Congress, the IRS called for a meeting of interested parties in late September of 1976 in order that these invitees might listen to the IRS articulate its position as it was then being formulated over the past several months.

At a standing-room-only meeting at the IRS offices the IRS spokesman proceeded to describe their views. After only perhaps 3 to 5 minutes, the assembled industry professionals thought they might be in the wrong room because the spokesman made no sense at all. Finally, an industry representative interrupted the spokesman and pointed out that, after all, the so-called investment annuity was only a variable annuity and that the IRS had insisted upon this fact in 1965 after 2 years of very thorough study and had issued over 70 rulings to that effect since 1965. The IRS spokesman's response was: "What's a variable annuity? I'm not familiar with variable annuities!" The assembled industry professionals almost fell off their chairs from such a shocking display of IRS unconscionable ignorance of the subject matter.

The IRS senior officials recovered their composure and asked the industry attorneys to prepare a "statement of the facts" albeit the IRS had had full facts on the so-called investment annuity from 1963, and had issued over 70 public and private rulings thereafter. During that 13-year period (1963–1976) neither the facts nor the relevant law had changed one iota.

The "statement of facts" was prepared in a few days and delivered to the IRS. Such facts were summarily ignored as reflected by the following events:

In late October 1976 (just a relatively few days after the 1976 Revenue Act had been completed), the IRS issued a news release stating that they were reconsidering their position on investment annuities and requested interested parties to supply responses to three questions that the IRS considered to be significantly relevant to their reconsideration.

All insurers then offering the investment annuity combined forces to furnish one complete and thorough brief to save the Government and the industry both time and money. Every question posed by the IRS was fully answered and clearly showed the legal, actuarial and industry practice correctness and appropriateness of the IRS historic position established in 1965 and reaffirmed over 70 times by subsequent IRS public and private rulings. Even the former Chief Actuary of the Internal Revenue Service certified to the correctness of relevant portions of the industry brief.

The IRS never permitted any discussions with the industry as to its position on the substance and correctness of the industry brief.

The industry was informed in early March 1977 that the IRS was prepared to issue a revenue ruling that reversed their consistent position since 1965.

At about this time the chairman of one of the insurers involved received in the mail from an anonymous source a copy of an internal Treasury Department memorandum addressed to the Secretary of the Treasury stating that the Treasury was drafting a ruling reversal on the investment annuity. This memorandum was subsequently established as being authentic.

Included in the memorandum that was seeking the Secretary's approval was a brief description of the investment annuity upon which the Secretary must rely. This description was grossly at variance with the facts and omitted well-known, key elements.

The Treasury memorandum also stated that the description of the investment annuity (as included in the said memorandum), had been confirmed by the insurer of which this individual was the chairman. This individual has stated that such confirmation is a complete lie. The insurer immediately disclosed to the Treasury that it had received this memorandum and protested its gross distortion of relevant information in the most forceful manner. The insurer's very legitimate complaint was shrugged off by the Treasury. I ask unanimous consent to include these relevant documents in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HATCH. Mr. President, concurrently with these bizarre events many Congressmen were informed by concerned insurers, agents, and policyholders of the irrational and highly questionable acts of the Internal Revenue Service.

As a result of this broad-based protest many Congressmen contacted the IRS and Treasury and asked for an explanation because after over a decade and over 70 IRS rulings, the investment annuity had become imbued with the force of law. Members of Congress expressed the view that Congress should be consulted before the IRS unilaterally changed tax law.

Two of these letters were introduced into the CONGRESSIONAL RECORD last year when the Senate voted to overturn the IRS ruling by a vote of 57 to 26. Shortly before the IRS issuance of revenue ruling 77–85, Senators CURTIS and TOWER wrote a strong letter to Secretary Blumenthal "registering" their "strong opposition" to the possible reversal of the IRS' long-standing ruling based upon their "further strong position that when such rulings are reaffirmed over such a lengthy period of time as in excess of a decade they become imbued with the force of law and must not be changed except for the expressed direction of Congress pursuant to the legislative process." This strong and wise counsel was ignored by the Treasury.

Again, shortly after Revenue Ruling 77–85 was issued but before it was published, Chairman LONG of the Senate Finance Committee together with Senators RIBICOFF, CURTIS, HANSEN, and BENTSEN of that committee expressed their "urgent request" of the Treasury, that the "IRS defer publication and application of Revenue Ruling 77–85 for 90 days or until Congress could consider a proposal to postpone application of such ruling pending the IRS's completion of its studies of annuities and Congress has had the opportunity to consider this area." This strong letter also points out that "sound tax administration should avoid the result of causing irreparable harm to the investment annuity industry, unless the law is clear and then certainly not prior to the time that the Revenue Service has a firm position on the law governing alternative areas that offer the affected taxpayers some chance of surviving this administrative change of longstanding IRS rulings." This strong, wise, and prophetic letter was ignored by the Treasury.

As another clear indication of Senators' recognition of the IRS's gross abuse of its unfettered, big government power against helpless citizens, Senators GRAVEL, THURMOND, and MATSUNAGA introduced S. 1939 on July 27, 1977, that was designed to remedy a problem in the administration of our tax laws which has vexed taxpayers for many years—the periodic revision of longstanding interpretations of the tax law that can produce drastic consequences.

The CONGRESSIONAL RECORD statement accompanying that bill includes a description of the investment annuity matter as the classic "chamber of horrors"

example of IRS acts. The statement properly points out also that * * * "rulings of longstanding are relied on by taxpayers and the Service alike, and by virtue of their age take on the color of law."

These Senators clearly and properly stated that what was needed was "a much needed correction in the balance between the power of the Government and the protection of the people" and that "such correction would well help reconfirm that there is justice in America."

When informed in early March 1977 that the Treasury had approved the IRS' reversal of tax policy, one insurer, the one that had developed this form of annuity, was able to get an agreement that the IRS meet with them to discuss other forms of the variable annuity to which they could convert.

At the subsequent meeting with the IRS the insurer was shocked to learn that not only was the so-called investment annuity form of variable annuity under attack, but the IRS was also considering similar action against most other forms of variable annuities—accounting in total for upward of 70 percent of all variable annuities being sold in the United States.

Pursuant to the full disclosure requirements to its shareholders, the insurer prepared a news release reflecting these incredulous events. The news release was first shown to the IRS to be certain that the facts stated therein were accurate. While the IRS was not pleased with such a pronouncement, it did find the news release to be an accurate reflection of its statements.

When the news release was subsequently presented to the Treasury for its clearance of the facts, the Treasury violently objected by stating that the IRS views on these variable annuities were confidential and that a public disclosure of this information would result in the denial to the insurer of the good offices of the Treasury in this matter. A revised news release acceptable to the Treasury and acceptable to the insurer was then issued.

It is appropriate to observe that virtually every other variable annuity being offered to the public by any other insurer has been offered without any IRS rulings whatsoever in view of the fact that the law was so clear. The investment annuity is the only one that had IRS rulings—and over 70 of them stretched out over more than a decade—and it was the so-called investment annuity that was being killed, and no disclosure was permitted concerning the IRS' views on the others.

During the meetings with the IRS that led to the insurer's news release, the insurer inquired of the IRS specialists dealing with this specific annuity matter as to just how the annuity benefits would be taxed to the policyowner—after benefits commenced—under the ruling reversal procedures the IRS was imposing. The IRS' presumed expert, after some hestitation and profound silence, responded with a counter question—"tell me again, how do these things work?" Here we would seem to have a case of the IRS destroying a product and an industry on the basis of subject-matter ignorance plus nothing but some vague notions about "tax reform."

The next subject on the IRS agenda at those meetings was the so-called "grandfathering" of existing policyowners. The IRS was insisting that "grandfathering" would not be permitted. Here, in this instance, tens of thousands of policyholders had purchased investment annuities based upon the cumulative power of over 70 consistent IRS public and private rulings, and the IRS wanted to deny these policyowners their rights under the contracts they had purchased. This would have been a legal nightmare that was totally inappropriate.

The IRS kept insisting that the insurer force existing policyholders to convert their investment annuities to some other form of variable annuity that was "acceptable" to them. And, when it was pointed out to the IRS by the insurer that the IRS could not assure the insurer as to what other form of viable variable annuities would be acceptable to them—the IRS told the insurer that that was their problem, not the IRS'. What arrogance! Obviously, the IRS thinks that it is unaccountable to anyone. We seem to have here the case of another rogue agency out of control.

Finally, in desperation for the rights of the policyholders, the insurer wound up in a table-thumping Saturday morning session in the Treasury with IRS representatives present, where it was finally agreed by the Assistant Secretary for Tax Policy that the "grandfathering" of existing policyholders would be permitted. To this day the Treasury and the IRS keep telling people that they did the insurer and the industry a great favor by their magnanimous act in "grandfathering." But the IRS has not been deterred by the U.S. Senate or, according to the U.S. District Court, by tax law itself from illegally wiping out an innovative industry created in the public's interest.

Soon after the Saturday morning session with the Treasury, the insurer's attorneys had another meeting with the Treasury to pursue another relevant position relating to a recently issued Supreme Court decision that should persuade the Treasury to hold off on issuing a ruling reversal. This proper request was equally unsuccessful, but the Treasury indicated that the investment annuity was but the first of the variable annuities slated to be wiped out, with others following in a year or so. Obviously, all of this arrogant action was expected to take place via bureaucratic fiat and salami-slicing tactics without consulting Congress.

On March 9, 1977, the Internal Revenue Service issued revenue rule 77–85 that wiped out the investment annuity industry.

Shortly after the issuance of revenue ruling 77–85, the 1977 Tax Reduction and Simplification Act was debated by the Senate. The late Senator Jim Allen of Alabama, a member of the Judiciary Committee, upon becoming aware of this grave injustice perpetrated by the IRS and the Treasury, introduced an amendment to the tax bill that would defer the effective date of the revenue ruling for 1 year in order to give Congress the opportunity to consider the matter. An entirely reasonable proposition. Many Senators supported Mr. Allen on the floor of the Senate and some of the letters by Senators to the Treasury protesting its actions, such as those cited above from Senators LONG, CURTIS, and others were inserted into the CONGRESSIONAL RECORD.

The Senate vote was a very strong vote of 57 to 26 against the IRS on the investment annuity matter. Naturally, the matter was then included in the items for consideration by the conference committee. There, as the result of Treasury lobbying and misstatements of fact—such as claiming that the Service had reversed its ruling on the prior October 20, 1976, and that the insurers had continued selling without notifying purchasers, and that the Senate's entirely fair "one-year deferral" was a "fire sale arrangement"—the investment annuity amendment was "traded away." In actuality, the only "fire sale" was the disastrous effect on investment annuity employees, agents, policyowners, and shareholders.

After being traded away in conference committee, one insurer thereupon sued the Treasury and the Internal Revenue Service for arbitrary, capricious, and illegal acts. The resulting U.S. District Court, District of Columbia, decision issued on November 9, 1977, after many months of thorough court deliberation, is as set forth below. The court did not just rule against the IRS, it denounced the IRS.

The U.S. District Court, District of Columbia, declared in its memorandum opinion on this matter as follows:

Revenue ruling 77–85 is an erroneous and unreasonable interpretation of the Internal Revenue Code, and, in view of this fact that substantial deference to the Agency's expertise is not warranted by the facts of the case, the court will declare the ruling to be unlawful and beyond the Service's statutory authority.

Revenue ruling 77–85 is unlawful and beyond the service's statutory authority in that its determination that the policyowner, rather than the issuing life insurance company, is the owner of the investment annuity custodial account assets is erroneous and unreasonable.

The service's decision in revenue ruling 77–85 was not contemporaneous with the enactment of section 801(g)(1)(B), does not reflect a long-standing agency position, and is inconsistent with earlier pronouncements and even one subsequent announcement, of the agency. Accordingly, substantial deference to the service's expertise is unwarranted in the instant case.

Substantial deference to the service's expertise is also unwarranted because the service was improperly motivated by considerations of tax reform when it issued revenue ruling 77–85.

These court declarations are remarkable indeed. In plain language, the court's strong decision not only declared the Treasury and the IRS' acts as being illegal, unreasonable, and beyond their statutory authority; it has also declared that such actions were improperly motivated by considerations of tax reform which is Congress business, and that substantial deference to the Service's expertise is unwarranted. In plain lan-

guage, the court declared that the IRS and the Treasury circumvented the tax law deliberately and that their claimed perspective of the tax law is absurd. The court is referring to the actions of the regulatory authorities charged with the responsibility of administering the tax laws of Congress.

Permit me now to comment upon certain relevant and revealing events that took place during the court proceedings.

Every conceivable and inconceivable argument was presented to the court by the IRS and Treasury to defend its position. These arguments ranged from trying to cite "alleged abuses" of the law by the insurer by citing newspaper advertisements that stressed the investment annuities' tax deferral aspects—which is true of all annuities and cash value life insurance, and theories of "grantor trusts" that they claimed supported the IRS position, but which the judge actually found to support the insurer's position. The judge even inquired of the defendants to tell him more about alleged abuses because he was interested, and the defendants backed off.

In the middle of the arguments on the merits of the IRS' position the insurer discovered that the IRS had just issued a ruling to a competing insurer that permitted said competitor to enter the very same investment annuity business that the IRS had shut all other insurers out of. Upon being informed of this incredulous IRS action, the judge sent a U.S. Marshal to the Commissioner of Internal Revenue to immediately present his demand for a full explanation. The explanation provided was that the IRS had made a "procedural error" and of course, the judge did not buy that.

On two different occasions the judge requested two different Justice Department attorneys arguing this case for their IRS and Treasury client to "take off their hats" as advocates for their client and to stand before the judge as an officer of the court and to state their views as to the merits of their clients' positions. Both attorneys could not respond. The judge repeatedly stated to the defendants' lawyers that as an administrative body the IRS and Treasury had the duty to be fair, to be fair, to be fair. Fairness to the law-abiding victim in this matter was never in evidence.

With the issuance of the court's clear and unequivocal decision, the court also stated that it was its "confident assumption that the defendants will proceed appropriately, in good faith, and in a manner fully consistent with the declaratory relief granted herein without the coercion of a court order." The IRS and Treasury flatly rejected such a "confident assumption" and stated that they would "appeal", and if they should win their appeal they would tax retroactively any interim investment annuity purchaser. This "appeal" killed any possibility of renewing sales in spite of the strong court victory.

As a direct result of this bureaucratic "dragging out" process that enjoys no bounds upon time and money since both come from the public trough, the English majority owners of the suing insurer ran up the white flag, accepted a liquidation value bid for the insurance company "shell" and headed back to England shaking their heads at the way the IRS and Treasury run roughshod over the American people, the courts, and the U.S. Senate itself.

As a result of this gross travesty of justice, over 4,500 agents and employees of just one insurer lost their ability to make a living from the company and had to start over elsewhere. The insurer's shareholders took a staggering loss of over $20 million directly attributed to these court-adjudged ignorant, illegal, and unreasonable actions of the IRS and Treasury. Other insurers, of course, suffered comparable tragedies.

It can be stated in all fairness that following the court's decision the Justice Department utilized its good offices to set up meetings with the IRS to see if any accommodation could be worked out with the IRS to permit the insurer who won the suit to weather the appeal hiatus. These meetings failed because the IRS and Treasury would have none of it. They knew full well that the insurer would be forced to its knees and liquidated if no accommodation was reached. And they thus achieved their goal by the brutal exercise of power unconstrained by law.

With that concluding travesty of regulatory fairness, the insurance company was sold. And the shareholders thereof suffered over a $20 million loss directly attributable to the illegal, unreasonable, unfair acts of the IRS and Treasury. But these irregularities of the IRS and Treasury do not stop there. Permit me to continue.

In its acts to protect the interests of their policyholders, the innovative insurer arranged that the bulk of its $380,-900,000 of variable annuity reserves would be reinsured with another insurer. Again, an irriational, unaccountable act of the IRS transpired that cost the insurer $2 million.

This arose because the reinsurance treaty that was consummated between the insurer and another company was subject to a separate IRS ruling on that specific matter. There was nothing unusual about the structure of the reinsurance arrangement. It was similar to many others on many occasions by many other insurers over many years. However, in this instance the IRS refused to provide the relevant favorable ruling, because it stated that it was reconsidering its historic position. Thus, the expiration date between the insurers for the required IRS clearance passed without the favorable ruling at a cost to the insurer of $2 million. The IRS has not yet made its decision on these matters, and apparently this delay is the result of internal disagreements over its new position within both the IRS and Treasury. And yet, this bureaucratic refusal to honor old rules while they rethink possible new positions has cost this victimized insurer $2 million.

Following the strong court victory in late 1977 that was frustrated by IRS and Treasury intrasigence, the matter was taken to the House of Representatives where the Ways and Means Committee was considering the administration's proposals in regards to the 1978 tax bill. Included in the Treasury proposals was a section entitled "tax shelter annuities" that, in short, proposed to Congress that the laws should be revised to treat all annuities sold to the general public in the same way that the IRS had ruled on the investment annuity. In other words, change the law such that it would support the IRS' illegal position.

Competent authorities from throughout the annuity industry testified before the Ways and Means Committee that the Treasury proposal was irrational, uninformed, and that the Treasury's descriptions were misleading. Some of the Treasury's errors, half-truths, or misrepresentations are as follows:

In no way can any annuity fit the defined term of "tax shelter" and the term was used by the treasury solely for obvious pejorative purposes.

The treasury's proposals make it seem like huge revenues are lost to the Government via annuities when, in fact, the Treasury's own revenue estimates show that only a $12 million revenue gain from their proposed taxation would accrue to the Government from the entire annuity industry in 1979, gradually increasing to $80 million in 1983. The investment annuity segment of that total can be but a small fraction thereof. It can be stated also that even the $12 million entire annuity industry figure is obviously specious, because taxes are merely deferred under annuities and are recaptured with interest when benefits are ultimately paid out. Common sense tells us that counting as a loss today that which will be repaid is hardly a reasonable measurement of the loss to the Government, particularly when the repayment includes an interest element.

In regards to the Treasury's use of the pejorative term "tax shelter" and the relative cost to the Government of tax deferral under annuities, including the investment annuity, the respected accounting firm of Coopers & Lybrand was requested to provide their professional analysis of the subject. In that regard the accounting firm was supplied with a relevant segment of Professor Stanley Surrey's book entitled, Pathways To Tax Reform, wherein he stipulates that an appropriate way to compensate the Government for tax deferral would be to charge interest thereon. I ask unanimous consent to include in the record a report from the respected accounting firm of Coopers & Lybrand that deals with this particular question.

In the Cooper & Lybrand report appropriate tables clearly show that annuity taxes when deferred are recaptured by the Government with interest. This report refers to Professor Stanley Surrey. Harvard law professor and former Assistant Secretary for Tax Policy during the Kennedy and Johnson administrations. Much of the so-called "tax expenditures" theories now practiced by our Government reflect his personal thinking. Mr. Surrey's book entitled "Pathways to Tax Reform" included a chapter on how the Government could be appropriately paid for granting tax deferral. The reference in the Coopers & Lybrand report are to Mr. Surrey's recommendations along that line. I cite the brief conclusions of the Coopers & Lybrand report.

"In conclusion it is evident that:

"1. Deferred annuities (including the investment annuity) lack a 'prime ingredient of tax shelters' namely, 'an interest-free loan from the Government in the amount of tax deferred.'

"2. The existing mode of interest annuity taxation results in an interest element being charged to that taxpayer as proposed by Mr. Surrey;

"3. In fact, under most circumstances the existing mode of annuity taxation provides more tax dollars for the Government than Mr. Surrey's proposals;

"4. The existing mode of deferred annuity taxation is similar to the Governments own 'seres E' bond (unless an election is made to be taxed currently);

"5. Because of the foregoing it is quite inappropriate to lump deferred annuities (including the investment annuity) in with so-called 'tax shelters.'"

Since Professor Stanley's "corrective measure" has always existed under all annuities, including the investment annuity, how can it possibly be claimed that an annuity is a tax shelter in the first place? It certainly cannot.

The Treasury's presentations also attempted to convince the Congress that an annuity is little more than a fund that the policyholder has free access to. Competent authorities have always repected that notion, as has Congress, over the entire history of the Internal Revenue Code. Many court cases have universally shot down the erroneous "access to fund theory" including the very suit cited on page 137 of the Treasury's report. This was a case that the Treasury lost on this very point. It is truly incredible that the Treasury report would have Congress believe that the "access to fund theory" is part of the present law when (A) the Treasury must know full well that it is not and (B) the courts have stated vigorously and repeatedly that this theory is foreign to law. Such a failure to communicate accurately and fully to Congress appears as a very serious disregard of responsibility and fairness. It shows utter contempt for the U.S. Congress on the part of bureaucrats who have no outside check imposed on their power.

The Treasury's stated "reasons for change" of annuity taxation are bottomed on totally erroneous perceptions plus an illogical and erroneous attack on the value of annuities. For example:

It is factually incorrect for the Treasury to state that "traditionally, most annuity contracts purchased were immediate annuities" (i.e. those starting benefits immediately as contrasted with those annuities that defer benefits until some future date). Clear facts easily gleaned from the life insurance fact book show this to be erroneous. The Treasury's statements are obviously meant to infer that deferred annuities are a new phenomenon hardly contemplated under the law. Such a perspective is totally at variance with the facts.

They also stated that annuities were O.K. when interest rates were low and insurance company expense charges high, but now when interest rates are high and insurers have lowered their expense charges, the annuity demon is to be exorcised. Such convoluted, myopic reasoning, leaves much to be desired and appears contrary to the public interest.

The Treasury's report is filled with excerpts from advertising and literature that the Treasury claims prove deferred annuities are "tax shelters" marketed by "promoters." First, "advertising puffery" does not make the law. Second, their frequent use of perjorative terms make the Treasury itself the "promoter" of its unsound, half-baked proposals. Clearly, the Treasury should spend more time learning and understanding existing law rather than clipping advertisements and literature. What the Treasury's academics do not comprehend in their ivory tower is that in selling a product in a competitive market, the marketing thrust is to emphasize differences and advantages. General Motors does not waste a lot of money advertising that its cars provide transportation. Nor do insurance companies and their agencies waste their time and money advertising what the prospect already knows, namely, that annuities provide benefits in life's later years. You advertise and market legitimate features that the prospect would want to know about, and you attempt to show him why he needs your product now. What's wrong with that? Obviously, too, you create advertising to support and mortivate the salesman and make the product attractive to the buyer. After all, annuity sales must not only compete among insurance companies, but against other forms of savings, and even more importantly, against other ways the prospect could use his money.

It is particularly revealing of the Treasury's lack of candor and fairness with Congress to note that the portion of the Treasury's report to Congress dealing with the investment annuity contains no mention that the court, after thorough consideration, declared the Treasury and the IRS actions in issuing revenue ruling 77–85 unreasonable, beyond their statutory authority and that deference to the Treasury's and IRS's expertise on this matter is unwarranted. The Treasury's sole reference to the court decision stated that, if sustained, it would permit taxpayers active control over their investment portfolios as though the annuity never had been purchased. This incredulous statement is exactly what the court had just stated was not the case, what clear law shows is not the case, and what the IRS had insisted over 70 times during an 11-year period was not the case. Clearly, such deliberate misrepresentation to Congress of the documentable facts is absolutely intolerabe.

Nor did the Treaury's report provide any mention that the IRS had consistently reaffirmed their previous position on the investment annuity as being merely a variable annuity for well over a decade and over 70 rulings. Clearly, the Treasury report wanted the Congress to perceive the investment annuity as some "device promoted for use by high income taxpayers." The investment annuity is but a more useful, flexible annuity to the advantage of the entire American public, and its tax treatment is no better nor worse than any other annuity. The total omission in the report of the prior, substantive, affirmative history of the investment annuity is clearly designed to withhold relevant facts from Congress and again reflects the lack of completeness and fairness in the Treasury's report and a contempt for Congress. The crux of the Treasury's report seems to be not the law but the "tax reform" argument that "deferred annuities" should be taxed because "they are now virtually the only remaining, widely availabe investment vehice that enables investors to defer taxes on regular recurring investment income." The report also argues that since no changes have been made in the way investment income is taxed under annuities for years, it's therefore deemed to be outmoded law and in need of change. In other words, anything sound and workable has to be changed.

Following the Treasury's presentation of its proposals to Congress and in contemplation of Ways and Means Committee consideration of the Treasury's proposals on "annuities," the ranking Republican on the Ways and Means Committee and the ranking Democrat on that committee after the chairman, together with others, cosponsored H.R. 12173 to correct the IRS' grave abuse of justice. H.R. 12173 merely reinstated the IRS rulings on these variable annuities as said rulings existed prior to the IRS' issuance of the illegal revenue ruling 77–85. The CONGRESSIONAL RECORD remarks relating to H.R. 12173 stated that this matter has "resulted in severe inequities and injustice, and the Government should not deal with its citizens in such a high-handed manner."

When the Ways and Means Committee proceeded with its "markup" on the annuity proposals of the Treasury, the Treasury's proposals were completely rejected by that committee. Additionally, the committee voted, by the strong vote of 22 to 14, to restore the investment annuity to its proper place under the law as it existed prior to the issuance of the IRS illegal revenue ruling 77–85. I ask unanimous consent that a copy of H.R. 12173 be included in the RECORD, as it is this amendment that I am proposing the Senate adopt.

I believe the Senate should also know that during the debate on annuities within the House Ways and Means Committee "markup", the Treasury representatives again displayed gross ignorance of the subject matter by making the following factual errors:

The Treasury stated that annuities can be compared with certificates of deposit because annuities have no mortality risk. This statement is absolutely incorrect. Annuities involve very serious mortality risks that exist from the moment the annuity is purchased. And, the younger the purchaser, the greater can be the risk. Anyone, who knows anything about annuities, knows that this is so. The Treasury's statement is not only wrong it is totally misleading, because it incorrectly compares apples and oranges (annuities and certificates)—they are not the same. To claim that they are the same misleads Congressmen who are not experts on this subject.

The Treasury stated that the investment annuity is more like a "grantor trust." Such a "grantor trust" likeness is totally incorrect, and its use by the Treasury in the markup session is grossly misleading. The IRS attempted to proceed on that erroneous theory early in the convoluted reconsideration of investment annuity taxation. As a matter of fact, in reaching its conclusions, the court was guided by the seminal case of Helvering against Clifford and concluded that "in contrast to the respondent in Clifford, investment annuity policyholders have manifestly effected a 'substantial change' in their economic positions." Thus, the court concluded that the very "grantor trust" theory put forth by the Treasury and the IRS does in fact support the conclusion that the investment annuity is not a grantor trust, and is in fact a variable annuity just as the IRS had insisted upon for over a decade and for over 70 rulings prior to its unreasonable, illegal act in issuing revenue ruling 77–85. Clearly, such obvious stupidity of the IRS is unconsicionable, but when the Treasury tries to force on Congress as fact that which the court has so clearly just shot down in a suit over that very matter, the Treasury's actions become intolerable and an insult to the integrity of the U.S. Congress.

Due to procedural constraints that arose within the Ways and Means Committee in its resolution of the impasse over proposed capital gains taxation, and which was unrelated to the investment annuity matter, the investment annuity amendment was not included in H.R. 13511 as reported out of the committee to the House of Representatives.

Although Senate Finance Committee members strongly supported the investment annuity in last year's Senate action, this time representatives of the investment annuity industry were denied opportunity to present oral testimony

because of the crush of other items. Thus, written testimony has been filed by the Investment Annuities Institute, with copies supplied to all other Senate Finance Committee members.

During the Senate Finance Committee markup the investment annuity subject was brought up for consideration, but it was felt that since the originating insurer had been sold and its parent liquidated—as a direct result of illegal, unreasonable, and ignorant IRS acts—the IRS had already triumphed over the law and the Senate. Due to the administration's opposition to its bill, the committee apparently felt that it should avoid an issue that the administration would try and demagog as "narrow."

The U.S. District Court decision and the Coopers & Lybrand report show that the IRS ruling on the investment annuity is illegal, unreasonable, ignorant, and beyond their statutory authority.

The whole challenge to the investment annuity shows what happens when a small group of "reformers" gets hold of a major Government agency and believes that they have the moral right to overturn tax law and to remake it in the image of their personal views.

What is at stake here is not just a matter of tax law. What is at stake is the authority and integrity of the Finance Committee and the U.S. Senate. If we allow the IRS bureaucrats to ride roughshod over us and over the American people just because we are too busy with constituency interests to stand up for general principles, we will continue to allow the power of the people as represented in the Congress to be usurped by unelected, arrogant bureaucrats. Whoever comes along who believes he has a divine right to remake the Nation to reflect his personal view of a reformed society will have a free hand. This is regulatory anarchy.

As stated by the Ways and Means Committee sponsors of the amendment I propose to the Senate, such precipitous action by the IRS in this matter has resulted in severe inequities and injustice, and the Government should not deal with its citizens in such a high-handed manner. I urge each Senator to vote favorably on this amendment.

I also request and urge that the Senate condemn these documented acts perpetrated by the Treasury and IRS and to provide for an appropriate oversight investigation, with subpena powers to all parties concerned, to assess the means by which such acts are tolerated and pursued. Such acts are not just inconsistent with certainty in the law. They are also inconsistent with a free society.

Before concluding my comments permit me to state emphatically that this matter is certainly not a "narrow" one in any sense of that word. The authority and integrity of the Senate is at stake—a most important matter that commands our immediate and resolute action.

Further, the true victims of these arrogant, unreasonable, and ignorant IRS and Treasury actions are our Nation's citizens who are being illegally denied one of the most innovative and useful annuities ever devised in the public interest—and certainly, that is no narrow matter.

It is tragically true that the company that had the foresightedness, ability, and guts to pioneer from scratch, and to dare create a better free enterprise means for our citizens to save and invest for financial independence in life's later years, has been strangled to death before our own eyes by outrageous bureaucratic lawlessness.

Its annuity did not die, however, because other life insurers can offer it; and many want to, and will, upon the restoration of the investment annuity to its rightful place under the law.

EXHIBIT 1

LEE, TOOMEY & KENT,
Washington, D.C., February 8, 1977.

Dr. LAURENCE N. WOODWORTH,
Assistant Secretary for Tax Policy,
Treasury Department,
Main Treasury,
Washington, D.C.

DEAR DR. WOODWORTH: My clients and I appreciate your invitation to confer with you on the status of the review of the investment annuity being conducted by your Office.

A purported memorandum from Charles M. Walker to Secretary Simon on the investment annuity ruling recently came into the hands of one of my clients through an anonymous source. Because of the nature of the document, I thought it important that you know before the meeting that it was in our possession. Therefore, I have enclosed a copy. You should also be aware that we are greatly disturbed by the manner in which this very important issue has been presented and the erroneous implications thereof. While there are a great number of points which require comment, there are three points of paramount concern which should be brought to your attention before the meeting.

(1) The description of the investment annuity in the memorandum on which the proposed decision is based does not accurately state the situation and is inadequate. Moreover. First Investment Annuity Company (FIAC) did not agree to those facts. The investment annuity contains all the elements of an annuity contract and an annuity is, in fact, purchased either in a deferred form or an immediate form at the time the contract is entered into. The memorandum conceded that FIAC, in 1965, decided to restructure its policy to accommodate to the position then taken by the Internal Revenue Service that the contract constitutes the purchase of an annuity and that the assets are those of the insurance comany. FIAC further modified its contract in 1968, at the insistence of the Internal Revenue Service in order to conform the contract to the requirements of a deferred annuity contract. This led to the issuance of Rev. Rul. 68-488 in which the Internal Revenue Service definitely concluded that an annuity was purchased at the time the contract was issued. This ruling was not even mentioned in the Walker memorandum. The Insurance Commissioner of Pennsylvania has confirmed that the Pennsylvania insurance laws under which the investment annuities are authorized are the same as those for variable annuities and that their status is consistent with the present Federal tax treatment of investment annuities. Investment annuities have been approved for sale in over 38 states under the applicable laws of those states.

(2) The FIAC investment annuities are simply not structured to hold such assets generally referred to as "tax shelters". The memorandum asserts that the investment annuity could develop into a substantial tax shelter industry and that the promoters are "already exploring ways to shelter the income from oil ventures through the use of an investment annuity". This assertion apparently is a ground for the policy decision to recommend reversal of the IRS rulings. If the reference to "promoters" is intended to identify FIAC, I want to emphasize that FIAC has not and does not contemplate the inclusion of oil ventures and other such tax shelters within the custodian account as acceptable investments.

The investment annuity is merely a form of variable annuity and, as such, shares the same tax treatment as other annuities. It does not involve any of the write-offs, leverage, or speculative investment devices which result in a real cost to the government of permanently lost taxes as those involved with devices attacked by the Tax Reform Act.

(3) No meaningful dialogue has yet been established between the IRS and industry representatives despite repeated requests for such dialogue. The reference in the memorandum to the meeting on September 30, 1976 leaves an impression that the fundamental issues of the investment annuity have been discussed with the industry. Before the meeting, we were told that its purpose was to allow the Internal Revenue Service to describe its proposed position and give industry representatives an opportunity to ask questions. This did not happen. The Internal Revenue Service merely informed us that the prior rulings were under reconsideration, and that no final decision had been made. Because it was apparent that the reconsideration had been initiated with very little knowledge of the facts, it was suggested by the Service that a meeting be held to ascertain the facts. Discussion on the facts was subsequently held but the objections of the Internal Revenue Service to the investment annuity were never detailed. In spite of the length of time that this matter has been under review, and the detailed memorandum which we filed at the Service's request, we have never been informed of any specific objections to the investment annuity contract which require either modification of existing contracts or a reversal of the rulings issued by the Internal Revenue Service over the last eleven years.

I hope that the meeting on February 9 will lead to a better understanding of our respective positions and that an agreement can be reached for resolving the issues as expeditiously as possible in a manner satisfactory to the Treasury, the Internal Revenue Service, the insurance companies involved, and the tens of thousands of individuals who hold investment annuity contracts.

Respectfully,

JOHN A. CARDON.

INVESTMENT ANNUITY RULING

We are in the process of drafting a revenue ruling which we propose to publish, reversing the prior favorable revenue rulings on the investment annuity arrangements developed by the First Investment Annuity Company of America (FIAC) and other insurance companies.

Over the past several months, both Treasury and the IRS have been reviewing the tax status of investment annuities. On September 30, 1976, we met with industry representatives in order to obtain a better understanding of the investment annuity product. On October 20, 1976, we solicited public comment on the three technical problems under consideration, and, as a result, we received several submissions, including a lengthy brief submitted on behalf of FIAC and nine other insurance companies. Based upon our analysis of the investment

annuity product and applicable law, we have concluded that the position previously taken by the Service in certain private letter rulings is incorrect as a matter of law.

THE INVESTMENT ANNUITY DESCRIBED

Basically, the purchaser of an investment annuity will deposit cash or securities with a custodian. An annuity is not purchased at the time these deposits are made; instead, the purchase is deferred until the depositor reaches retirement age, at which time one-year term annuity contracts are acquired with the funds held by the custodian. In the interim, the assets held by the custodian are invested at the direction of the depositor, even after he reaches retirement age, as though, in effect, these assets were held in his own personal brokerage account or trust.

PROPOSED RULINGS POSITION

Given these facts (which have been confirmed by FIAC), we have concluded that these brokerage, or custodial, accounts do not represent assets of the insurance company which will ultimately provide the annuity. Unlike the traditional variable annuity, where the insurance company invests the assets but the policyholder bears the investment risk (as in a mutual fund), the holder of an investment annuity retains full investment control.

Under the proposed ruling, dividends and interest earned on assets held in a custodial account will be taxed directly to the policyholder, unlike the result under current law, where these earnings have been accumulating on a tax-free basis as life insurance company assets. Capital gains will also be taxed to the policyholder, although here, the change will not be as significant, because, under existing law, capital gains are currently subject to tax at insurance company rates.

IMPLICATIONS OF THE RULING

Apart from our legal analysis of the problems raised by investment annuities, there are important policy considerations. In our view, investment annuities, while presently in their infant stage, could develop into a substantial tax shelter industry if the present rulings posture remains unchanged. Although all of the various uses of these products are not yet known, we have been advised informally that promoters are already exploring ways to shelter the income from oil ventures through the use of an investment annuity.

In reversing the outstanding rulings position, both Treasury and IRS recognize the problems faced by those companies which have entered into the investment annuity market in reliance upon the rulings which have been issued to private taxpayers over the past 10 years. The problem is particularly accute for FIAC. In 1963, it sought a ruling which would have reached the result which we are now proposing, but the Rulings Division of the Service concluded that the insurance company should be regarded as the owner of assets in a custodial account, for reasons that are no entirely clear. After lengthy negotiations, FIAC, in 1965, decided to restructure its policy to accommodate the Service's view. FIAC is understandably concerned about the possibility that the rules are about to be changed on it again. Thomas Kelly, the Chairman of the Board of FIAC, has made his concerns known to a number of Congressmen and to a number of people here at Treasury. Questions about the continuing financial viability of FIAC have also been raised by a British company. Save & Prosper, which loaned approximately $7 million to FIAC between 1973 and 1975 when it was on the verge of bankruptcy. The British Embassy in Washington has inquired about the matter, although they have taken no position on behalf of FIAC.

While we recognize FIAC's problems, we understand that many conservative attorneys have been advising their clients not to purchase investment annuities, because of the concern about the validity of the Service's old rulings positions—a position which we think is invalid and should be changed, as the Service proposes to do. We also understand that, within the life insurance industry itself, there has been a growing concern that unless the tax treatment of investment annuities is changed soon, they will become such a widespread tax shelter that Congress will end up reevaluating the favorable tax treatment given to all annuities and life insurance. We have already been contacted by the Joint Committee staff, which apparently favors a reversal of the present rulings position.

To allow sufficient time for FIAC and similarly situated insurance companies to adapt to the proposed new rules and develop annuity contracts in accordance with them, and to allow Congress time to consider whether or not to change the new rules legislatively, we propose to make them effective only after January 1, 1978. In that case the new rules would apply to all investment annuity contracts entered into before or after that date, but we would propose to allow policyholders to convert tax-free from such contracts to annuity contracts under which the assets held in a separate account are clearly insurance company assets.

We understand, however, that the Service's tentative conclusion is not to allow the old tax treatment to apply to "new" contracts, i.e., those entered into after October 20, 1976, the date of the News Release announcing the Service's reconsideration of the old rules. The Service would allow the old rules to continue to apply to "old" contracts (those entered into before October 20, 1976) until January 1, 1978. This will allow policyholders of the "old" contracts time to convert tax-free to contracts that will meet the new rules. But the Service is apparently opposed to extending the favorable tax treatment of the old rules to any new policyholders for any period of time.

We propose to allow the old rules to continue to apply to "new", as well as "old", contracts until January 1, 1978, because this will afford some time for FIAC and the other insurance companies to adjust, after having built up their business in reliance on the old Service rulings policy. We do not think the potential loss of revenue from new policies for just one year will be significant enough to warrant the potential harm to these insurance companies, particularly when we consider the fact that it was the Service who insisted on imposing the old rules on these companies in the first place.

Recommendation: We recommend publication of the proposed ruling containing the new rules described above, with an effective date of January 1, 1978 for "new" as well as "old" contracts, after advising industry representatives of the positions set forth herein.

ATTENDANCE LIST OF CONFERENCE ON THE INVESTMENT ANNUITY

First Investment Annuity Company: Anthony H. Doggart, President, W. Thomas Kelly, Chairman of the Board, H. William Brown, Sr. Vice President, Arthur P. Hartel, Secretary.

E. Wayne Thevenot.

Lee, Toomey & Kent: John A. Cardon, John M. Skilling, Jr., David A. Hildebrandt.

COOPERS & LYBRAND,
Philadelphia, Pa., June 2, 1978.

Mr. W. THOMAS KELLY,
Malvern, Pa.

DEAR MR. KELLY: As you requested, we comment, hereinafter, upon whether the existing federal income taxation of deferred annuities allows the annuitant benefits similar to those contained in "tax shelters" or whether annuity taxation meets certain criteria set forth by Stanley S. Surrey in his book "Pathways to Tax Reform".

In Chapter VII of the book entitled "Corrective Reform Measures to Moderate Tax Expenditures Abuses" Mr. Surrey proposes that one corrective measure would be a payment for the deferral ingredient as follows:

"A prime ingredient of tax shelters is the deferral of tax on current income, achieved through the acceleration of deductions provided by the shelter. This deferral, as described earlier, is an interest-free loan from the government in the amount of the tax deferred. Here, also, the ingredient suggests an appropriate restraint—eliminate the interest-free character of the deferral loan by charging interest on the deferred tax."

We have prepared and attach as Exhibit I a simple illustration of Mr. Surrey's corrective measure using as a model the accelerated depreciation deferral. Here a taxpayer obtains an interest free loan from the Government equal to the difference between accelerated and straight line depreciation tax-effected at 50 percent. The loan increases each year that the accelerated depreciation exceeds the hypothetical straight-line depreciation and then decreases when the hypothetical straight-line depreciation exceeds that claimed whether it be accelerated or straight-line. The taxpayer would pay interest to the Government each year on the deferral loan and be entitled to a deduction for the interest paid as it would for interest on any other loan. The net result would be a payment of $232 to the Government on the deferral loan.

Extending Surrey's theory to a deferred annuity we have prepared Exhibit II which compares the taxation of a certificate of deposit with the taxation of a deferred annuity to arrive at the deferral loan. Since no interest is paid currently on the deferral loan, we have added the unpaid interest to the deferral loan. The interest rate used is an after tax rate of four percent assuming the market rate of interest is eight percent and the annuitant is in the 50 percent tax bracket.

The conclusion one can draw from Exhibit II is that when the annuitant withdraws his funds the payment made to the Government ($5,794) contains an element of interest on the deferral loan since the actual taxes paid on the certificate of deposit total $4,804 and the compound interest on the deferral loan is $891 or a total of $5,695. The additional $99 paid by the annuitant results from the fact that an amount derived from compounding at eight percent and then halved is more than the amount derived from compounding at four percent.

If a period different than 10 years was used, the spread between the annuitant's payment and the deferral loan would be greater if the period was longer and less if the period was shorter, but the annuitant would always pay more to the Government than he would under Mr. Surrey's proposal. If the tax bracket of the taxpayer was greater than 50 percent the spread would also be greater since the interest rate compounding on the deferral loan is a function of the tax bracket and would decrease in proportion to the rise in tax bracket while the interest rate on the deferred annuity would remain constant. Conversely, if the tax bracket of the taxpayer was less than 50 percent, the spread would narrow and eventually the amount paid as the withdrawal of the deferred annuity would be less than that on the deferral loan.

In conclusion, it is evident that:

1. Deferred annuities (including the investment annuity) lack of "prime ingredient of tax shelters" namely, "an interest-free loan from the Government in the amount of the tax deferred;"

2. The existing mode of deferred annuity taxation results in an interest element being charged to the taxpayer as proposed by Mr. Surrey;

3. In fact, under most circumstances the existing mode of annuity taxation provides more tax dollars for the Government than Mr. Surrey's proposals;

4. The existing mode of deferred annuity taxation is similar to the Government's own "Series E" bond (unless an election is made to be taxed currently); and

5. Because of the foregoing it is quite inappropriate to lump deferred annuities (including the investment annuity) in with so-called "tax shelters."

Very truly yours,

COOPERS & LYBRAND.

W. THOMAS KELLY

EXHIBIT I.—COMPUTATION OF INTEREST ON THE "DEFERRAL LOAN": ACCELERATED DEPRECIATION

[Cost of asset, $10,000]

Year	Depreciation [1] DDB/SL (1)	Depreciation [1] SL (2)	Excess (1) minus (2) (3)	Tax deferral (3) t.mes 0.50 (4)	Deferral loan	Interest on deferred loan at 4 percent
1	$2,000	$1,000	$1,000	$500	$500	
2	1,600	1,000	600	300	800	$20
3	1,280	1,000	280	140	940	32
4	1,024	1,000	24	12	952	38
5	819	1,000	(181)	(90)	862	38
6	655	1,000	(345)	(173)	689	34
7	655	1,000	(345)	(172)	517	28
8	655	1,000	(345)	(173)	344	21
9	656	1,000	(344)	(172)	172	14
10	656	1,000	(344)	(172)		7
Total	10,000	10,000				232

[1] A useful life of 10 yr and no salvage value was used in computing depreciation.

[2] Interest rate of 8 percent tax-effected at 50 percent.

EXHIBIT II.—COMPUTATION OF INTEREST ON THE "DEFERRAL LOAN" OF A DEFERRED ANNUITY

	Year	Certificate of deposit, at 8 percent	Payment to Government	Deferred annuity, at 8 percent	Deferral loan
1	Principal invested	$10,000		$10,000	
	Interest	800		800	
	Tax [1]	−400	$400		$400
2	Balance	10,400		10,800	400
	Interest	832		864	[2] 16
	Tax	−416	416		416
3	Balance	10,816		11,664	832
	Interest	865		933	33
	Tax	−433	433		433
4	Balance	11,248		12,597	1,298
	Interest	900		1,008	52
	Tax	−450	450		450
5	Balance	11,698		13,605	1,800
	Interest	936		1,088	72
	Tax	−468	468		468
6	Balance	12,166		14,693	2,340
	Interest	973		1,175	94
	Tax	−487	487		487
7	Balance	$12,652		$15,868	$2,921
	Interest	1,012		1,269	117
	Tax	−506	$506		506
8	Balance	13,159		17,137	3,544
	Interest	1,053		1,371	142
	Tax	−527	527		527
9	Balance	13,685		18,508	4,213
	Interest	1,095		1,481	168
	Tax	−548	548		548
10	Balance	14,232		19,989	4,929
	Interest	1,139		1,599	197
	Tax	−569	569		569
	Total	$14,802	4,804	21,588	5,695
	Tax ($21,588 minus $10,000 times 0.50)			[3] 5,794	

[1] All tax computations at 50 percent.

[2] Hypothetical interest to Government computed at after-tax rate as per exhibit 1.

[3] Assumes complete withdrawal of funds at end of 10th year.

H.R. 11182

A bill to reinstate the tax treatment with respect to annuity contracts with reserves based on a segregated asset account as they existed prior to issuance of Revenue Ruling 77–85

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the case of annuity contracts which have related amounts based on a segregated asset account, the tax treatment of such contracts under section 61 of the Internal Revenue Code of 1954 (defining gross income) and section 801(g)(1)(B) of such Code (relating to contracts with reserves based on a segregated asset account) shall be determined—

(1) without regard to Revenue Ruling 77–85 (and without regard to any other regulation, ruling, or decision reaching the same result as, or a result similar to, the result set forth in such Revenue Ruling); and

(2) with full regard to the rules in effect before Revenue Ruling 77–85.

Mr. HATCH. This amendment was brought up last year and received 57 votes on the floor of the Senate. Frankly, I think a majority of Senators would support this amendment at this time. That is the reason I have brought it up.

I intend to ask for the yeas and nays at the appropriate time.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Indiana has no time.

Mr. LONG. Madam President, I yield 2 minutes to the Senator from New York.

Mr. MOYNIHAN. I thank the Senator from Louisiana.

Madam President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. As long as the amendment of the Senator from Utah is pending, further amendments are not in order.

Mr. HATCH. Madam President, I would be happy to allow a unanimous-consent request to set my amendment aside, so long as it comes back in order after the cloture vote today.

The PRESIDING OFFICER. It would not come back, under the cloture rule, after the cloture vote, in any case. The amendments that will come back after the cloture vote are the Muskie, Glenn, and Nelson amendments.

Mr. HATCH. After those amendments.

The PRESIDING OFFICER. The amendment of the Senator from Utah will not come up until those amendments have been disposed of.

Mr. HATCH. I ask unanimous consent that my amendment come up after that.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Madam President, reserving the right to object, will the Senator from Maine yield me 2 minutes?

Mr. MUSKIE. I yield 2 minutes.

Mr. PROXMIRE. I make a parliamentary inquiry on the pending amendment.

The PRESIDING OFFICER. The Senator will state it.

Mr. PROXMIRE. I ask if the pending amendment is in order on the bill, in view of the fact that it would reach the ceiling under the Budget Act. It would cost $12 million in 1979, $80 million by the year 1983.

I understand that, under the present circumstances, the bill is now at a stage where any additional revenue loss would breach the Budget Act. I ask for a ruling of the Chair as to whether this amendment is in order, under those circumstances.

Mr. HATCH. Madam President, a further parliamentary inquiry.

The PRESIDING OFFICER. A point of order has been made, and the Chair will entertain debate on it.

Who yields time?

Mr. HATCH. Madam President, will the Senator from Wyoming yield me 1 minute?

Mr. MUSKIE. I yield 1 minute.

Mr. HATCH. I thank the distinguished Senator from Maine.

Actually, I point out that this does not change present law. The IRS is attempting to change present law. Therefore, this adds nothing that would violate the present Budgetary Act. Therefore, the point of order should not lie.

Mr. PROXMIRE. In response, let me say that, as I understand it, the IRS is not letting them do this at the present time. It is clear that if the Hatch amendment prevails, they would have to change their procedures, and the loss to the Treasury would be $12 million.

Mr. HATCH. Madam President, will the Senator yield me 30 seconds?

Mr. MUSKIE. I yield.

(Mr. HODGES assumed the chair.)

Mr. HATCH. A district court has held the IRS to be in violation. The IRS is appealing that ruling. So, presently, the law is still in existence. So I do not believe the point of order should lie.

Mr. PROXMIRE. I press for a ruling by the Chair on my parliamentary inquiry.

The PRESIDING OFFICER. The Chair is studying the amendment.

Who yields time?

Mr. PROXMIRE. Mr. President, if the Chair is studying the amendment, I hope the Senator from Utah will agree with me that we should set this aside so that the Parliamentarian can study the amendment and come to a conclusion, and meanwhile let the Senator from New York continue.

Mr. HATCH. I would be willing to do that, so long as it is stipulated that if the point of order is ruled out of order and is not sustained, my amendment will take its place behind the other amendments, in regular order.

Mr. PROXMIRE. I have no objection to that.

The PRESIDING OFFICER. Is the Senator propounding that as a unanimous-consent request?

Mr. HATCH. Yes.

Mr. METZENBAUM. What is the unanimous-consent request—that the amendment of the Senator from Utah come up after?

Mr. HATCH. Come up in the regular order, after the amendments preceding it, following the cloture vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New York.

UP AMENDMENT NO. 2032

(Purpose: To provide for a program of adoption assistance, to make needed changes in the AFDC foster care program and child welfare services, and for other purposes)

Mr. MOYNIHAN. Mr. President, has the amendment been read?

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN), for himself and others, proposes an unprinted amendment numbered 2032.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendment is as follows:

On page 408, immediately below line 19, insert the following new section:

ADOPTION AND FOSTER CARE, AND CHILD WELFARE SERVICES

SEC. 610. Title IV of the Social Security Act is amended as follows:

(a)(1) Add at the end thereof the following new part:

"PART E—FEDERAL PAYMENTS FOR ADOPTION ASSISTANCE AND FOSTER CARE

"STATE PLAN FOR ADOPTION ASSISTANCE AND FOSTER CARE

"SEC. 470. (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which provides—

"(1) that the State agency responsible for administering the program authorized by part B of this title shall administer the program authorized by this part;

"(2) that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

"(3) that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this title, under title XX of this Act, or under any other appropriate provision of Federal law;

"(4) that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

"(5) that the State agency referred to in paragraph (1) (hereinafter in this part referred to as the 'State agency') will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

"(6) that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

"(7) safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, C, or D of this title or under title I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or a legislative body (other than the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and any agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosure to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

"(8) that where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this title is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency;

"(9) that the standards referred to in section 2003(d)(1)(F) shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this title;

"(10) for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance payments to assure their continuing appropriateness;

"(11) that any individual who is denied a request for benefits available pursuant to this part or part B of this title (or whose request for benefits is not acted upon within a reasonable time) will be informed of the reasons for the denial or delay and, if he so requests, will be offered an opportunity to meet with a representative of the agency administering the plan to discuss the reasons for the denial or delay; and

"(12) that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this title, which shall be conducted no less frequently than once every three years.

"(b) The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section. However, in any case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a State plan which has been approved by the Secretary no longer complies with the provisions of subsection (a), or that in the administration of the plan there is a substantial failure to comply with the provisions of the plan, the Secretary shall notify the State that further payments will not be made to the State under this part, or that such payments will be made to the State but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so

satisfied he shall make no further payments to the State, or shall reduce such payments by the amount specified in his notification to the State.

"FOSTER CARE MAINTENANCE PAYMENTS PROGRAM

"SEC. 471. (a) Each State with a plan approved under this part may make foster care maintenance payments (as defined in section 475(4)) under this part only with respect to a child who would meet the requirements of section 406(a) or of section 407 of this Act but for his removal from the home of a relative (specified in section 406(a)) if—

"(1) the removal from the home was (A) the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child;

"(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 470, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 470 has made an agreement which is still in effect;

"(3) such child has been placed in a foster family home or child-care institution as a result of such determination;

"(4) such child—

"(A) received aid under the State plan approved under section 402 in or for the month in which court proceedings leading to the removal of such child from the home was initiated, or

"(B) (i) would have received such aid in or for such month if application had been made therefor, or (ii) had been living with a relative specified in section 406(a) within six months prior to the month in which such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made; and

"(5) there is a case plan (as defined in section 475(1) of this part) for such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution).

"(b) Foster care maintenance payments may be made under this part only in behalf of a child described in subsection (a) of this section—

"(1) in the foster family home of any individual, whether the payments therefor are made to such individual or to a public or nonprofit private child-placement or child-care agency, or

"(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or nonprofit private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term 'foster care maintenance payment' (as defined in section 475(4)).

"(c) For the purposes of this part and part B of this title, (1) the term 'foster family home' means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term 'child-care institution' means a nonprofit private child-care institution, or (subject to the succeeding sentence) a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing; but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent. A public institution which on the effective date of this part accommodates children and which, except for the provisions of this sentence would be a child-care institution (as defined in the preceding sentence), shall not, for purposes of this part, be considered to be a child-care institution (as so defined) with respect to any child who was in such institution on the date of enactment of this part.

"(d) For purposes of title XIX of this Act, any child with respect to whom foster care maintenance payments are made under this section shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of this title.

"ADOPTION ASSISTANCE PROGRAM

"SEC. 472. (a)(1) Each State with a plan approved under this part may, directly or through another public or nonprofit private agency, make adoption assistance payments pursuant to an adoption assistance agreement in amounts determined under paragraph (3) of this subsection to parents who are eligible for such payments pursuant to paragraph (2) of this subsection and who, after the effective date of this section, adopt a child who—

"(A) would meet the requirements of section 406(a) or section 407 of this Act except for his removal from the home of a relative (specified in section 406(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child,

"(B)(i) received aid under the State plan approved under section 402 in or for the month in which court proceedings leading to the removal of such child from the home were initiated, or

"(ii)(I) would have received such aid in or for such month if application had been made therefor, or (II) had been living with a relative specified in section 406(a) within six months prior to the month in which such proceedings were initated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, and

"(C) the State has determined, pursuant to subsection (c) of this section, is a child with special needs.

"(2) Parents may be eligible for adoption assistance payments under this part only if their income at the time of the adoption does not exceed 115 per centum of the median income of a family of four in the State, adjusted in accordance with regulations of the Secretary to take into account the size of the family after adoption. Notwithstanding the preceding sentence, parents whose income is above the limit specified therein may be eligible for assistance payments under this part if the State or local agency administering the program under this section determines that there are special circumstances (as defined in regulations of the Secretary) in the family which warrant adoption assistance payments.

"(3) The amount of the adoption assistance payments shall be determined through agreement between the adoptive parent (or parents) and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

"(4) Notwithstanding the preceding two paragraphs, (A) no payment may be made to parents pursuant to this section with respect to any month in a calendar year following a calendar year in which the income of such parents exceeds the limits specific in paragraph (2), unless the State or local agency administering the program under this section has determined, pursuant to paragraph (2), that there are special circumstances in the family which warrant adoption assistance payments, (B) no payment may be made to parents with respect to any child who has attained the age of eighteen, and (C) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

"(5) For the purposes of this part, individuals with whom a child (who the State determines, pursuant to subsection (c), is a child with special needs) is placed for adoption, pursuant to an interlocutory decree, shall be eligible for adoption assistance payments under this subsection, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

"(b) Any child—

"(1) who the State determines meets the requirements of subsection (a); and

"(2) who is placed for adoption or adopted following such determination shall, with respect to any medical condition which was in existence at the time the child was adopted, retain eligibility under title XIX until the age of eighteen under such plan. However, a State may provide to such a child full eligibility for medical assistance under the State's plan approved under title XIX.

"(c) For purposes of this section, a child shall not be considered a child with special needs unless—

"(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

"(2) the State has first determined (A) that there exists with respect to the child a specific factor or condition because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance, and (B) that, except, where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoptive assistance under this section.

"(d) Notwithstanding any other provision of this part, no adoption assistance payment under a State plan approved under this part shall be made pursuant to any adoption assistance agreement entered into after September 30, 1983.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 473. For the purpose of carrying out this part, other than section 476, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1978) such sums as may be necessary.

"PAYMENTS TO STATES; ALLOTMENTS TO STATES

"SEC. 474. (a) For each quarter beginning after September 30, 1978, each State which has a plan approved under this part (subject to the limitations imposed by subsection

(b)) shall be entitled to a payment equal to the sum of—

"(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as foster care maintenance payments under section 471 for children in foster family homes or child-care institutions; plus

"(2) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as adoption assistance payments under section 472 pursuant to adoption assistance agreements entered into prior to October 1, 1983; plus

"(3) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan—

"(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision, and

"(B) one-half of the remainder of such expenditures.

"(b)(1) Notwithstanding the provisions of subsection (a)(1) and (a)(3), with respect to expenditures relating to foster care, the aggregate of the sums payable to any State thereunder, with respect to expenditures relating to foster care, for the calendar quarters in any fiscal year shall not exceed the State's allotment for such year.

"(2) For purposes of this subsection, a State's allotment for the fiscal year ending September 30, 1978, shall be equal to the amount of the Federal funds payable to such State under section 403 on account of expenditures for aid with respect to which Federal financial participation is authorized pursuant to section 408 (including administrative expenditures attributable to the provision of such aid). In the event that there is a dispute between any State and the Secretary as to the amount of such expenditures for such fiscal year, then, until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved, the amount of the States' allotment for such fiscal year shall be deemed to be the amount of Federal funds which would have been payable under such section 403 if the amount of such expenditures were equal to the amount thereof claimed by the State.

"(3)(A) For the fiscal year 1979, the allotment of each State shall be equal to 120 per centum of its allotment for the preceding year or (if greater) the amount provided under subparagraph (B). For the fiscal years 1980, 1981, 1982, and 1983 the allotment of each State shall be equal to 110 per centum of the amount of its allotment for the preceding fiscal year, or (if greater) the amount provided under subparagraph (B). For the fiscal year 1984 and each fiscal year thereafter, the allotment of each State shall be equal to its allotment for the fiscal year 1983, or (if greater) the amount provided under subparagraph (B).

"(B) The amount of any State's allotment, for any fiscal year referred to in subparagraph (A), shall be the amount determined under such paragraph or (if greater) an amount which bears the same ratio to $100,000,000 as the under age twenty-one population of such State bears to the under age twenty-one population of the fifty States and the District of Columbia. The Secretary shall promulgate the amount of each State's allotment, for the fiscal year 1979, not later than thirty days after the date of enactment of this part, and for any succeeding fiscal year, prior to the first day of the third month of the preceding fiscal year, on the basis of the most recent satisfactory data available from the Department of Commerce.

"(C) For the fiscal year 1979, and each fiscal year thereafter, sums available to a State from its allotment under subsection (b) for carrying out this part, which the State does not claim as reimbursement for expenditures in such year pursuant to subsection (a) of this section, may be claimed by the State as reimbursement for expenditures in such year pursuant to part B of this title, in addition to such sums available pursuant to section 420 for carrying out that part.

"DEFINITIONS

"SEC. 475. As used in this part or part B of this title:

"(1) The term 'case plan' means a written document which includes at least the following information: a description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the judicial determination made with respect to the child in accordance with section 471(a)(1); a plan of services that will be provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

"(2) The term 'parents' means biological or adoptive parents or legal guardians, as determined by applicable State law.

"(3) The term 'adoption assistance agreement' means a written and consensual agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adopting parents of a minor which specifies, at a minimum, the amounts of the adoption assistance payments and any additional services and assistance which are to be provided as part of such agreement.

"(4) The term 'foster care maintenance payments' means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

"TECHNICAL ASSISTANCE; DATA COLLECTION AND EVALUATION

"SEC. 476. (a) The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this title and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

"(b) Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.".

(2)(A) Effective with respect to expenditures made after September 30, 1978, section 408 of the Social Security Act is, subject to subparagraph (B), repealed.

(2)(B) The repeal made by subparagraph (A) shall not be applicable in the case of any State for any quarter prior to the first quarter, which begins after September 30, 1978, in which such State has in effect a State plan approved under part E of the Social Security Act, or (if earlier), such repeal shall be effective with respect to expenditures made after September 30, 1979. During any period with respect to which the repeal made by paragraph (1) is not applicable in the case of a State, the aggregate of the sums payable to the State, under the State's plan approved under part A of title IV of the Social Security Act, with respect to expenditures (including administrative expenditures) authorized or incurred by reason of the provisions of section 408 of such Act shall not exceed the amount of the allotment which such State would have had for such period under section 474(b) if such State had had an approved plan under part E of such title IV.

(3) For the first fiscal year with respect to which there is appropriated under section 420 of the Social Security Act a sum which is subject to the restriction authorized under section 428(a) of such Act, any administrative expenses incurred by a State, under its State plan approved under part E of such Act, for any of the purposes described in section 428(b)(1) of such Act shall be subject to Federal financial participation under such part E without regard to whether the inclusion of such expenditures could cause the total of such State's expenditures under such plan (insofar as it relates to foster care) to exceed the amount of the State's allotment, imposed by section 474(b) of such Act, for such fiscal year.

(4) Unless otherwise specified, the amendments made by this section shall be effective on and after October 1, 1978.

(b)(1) Section 423 (including the caption thereto) is amended to read as follows:

"FEDERAL SHARE

"SEC. 423. The 'Federal share' for any State shall, effective on and after October 1, 1978, be 75 per centum.".

(2) Section 425 is amended by adding at the end thereof the following new sentence: "Expenditures made by a State for any calendar quarter which begins after September 30, 1978, for foster care services which do not constitute child welfare services shall be treated, for purposes of making Federal payments under this part with respect to expenditures for child welfare services, as if such foster care services did constitute child welfare services; except that, the amount payable to the State with respect to expenditures made for child welfare services and for foster care services during any such quarter shall not exceed 100 per centum of the amount of the expenditures made for child welfare services as determined without regard to this sentence.".

(3) Part B is further amended by adding at the end thereof the following new section:

"LIMITATION ON PAYMENTS WITH RESPECT TO FOSTER CARE

"SEC. 427. Notwithstanding any other provision of this part, if for any fiscal year which begins after September 30, 1978, there is appropriated under section 420 an amount in excess of the amount appropriated for the fiscal year ending on September 30, 1978, the amount payable to any State for expenditures made to provide child welfare services in the form of foster care maintenance payments in foster family homes or other foster care facilities, shall not exceed the amount of its allotment (before application of the provisions of section 424) under this part for the fiscal year ending September 30, 1978. Funds made available to any State pursuant to section 474(c) shall be subject to the limitation imposed by the preceding sentence.".

(4) Section 425 of such Act is amended by inserting "(a)" immediately after "SEC. 425."

and by adding at the end thereof the following new subsection:

"(b) Funds expended by a State for any calendar quarter to comply with the statistical report required by section 476(b), and funds expended with respect to nonrecurring costs of adoption proceedings in the case of children placed for adoption with respect to whom assistance is provided under a State plan for adoption assistance approved under part E of this title, shall be deemed to have been expended for child welfare services.".

CASE REVIEW AND OTHER SERVICES FOR CHILDREN IN FOSTER CARE

(c) Part B is amended by adding after section 427 (as added by subsection (b)(3) of this section) the following new sections:

"PORTIONS OF INCREASED ALLOTMENTS TO BE USED FOR CERTAIN SERVICES

"SEC. 428. (a)(1) If, for any fiscal year after 1978 there is appropriated under section 420 a sum in excess of the sum appropriated thereunder for the fiscal year 1978, the appropriation Act by which such sum is appropriated may set aside the amount of such excess necessary for the carrying out of the activities and programs described in subsections (b) and (c).

"(2) Whenever a specified amount of the sum appropriated under section 420 for any fiscal year is set aside pursuant to paragraph (1), the allotment of each State for such fiscal year shall be adjusted accordingly so as to restrict the availability of funds to the carrying out of the activities and programs described in subsections (b) and (c).

"(b) For the first year that any amount of a State's allotment is restricted under subsection (a)(2), the amount so restricted may, except as provided in subsection (c), be expended only for the following purposes (and amounts so expended shall be conclusively presumed to be expended for child welfare services):

"(1) for the purpose of conducting an inventory of all children who have been in foster care under the responsibility of the State for a period of six months preceding the inventory; for the purpose of determining the appropriateness of, and necessity for, the current foster placement, whether the child can be or should be returned to his parents or should be freed for adoption, and the services necessary to facilitate either the return of the child or the placement of the child for adoption or legal guardianship;

"(2) for the purpose of designing and developing to the satisfaction of the Secretary—

"(A) a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child in foster care or who has been in such care within the preceding twelve months can readily be determined;

"(B) a case review system for each child receiving foster care under the supervision of the State; and

"(C) a service program designed to help children remain with their families and, where appropriate, help children return to families from which they have been removed or be placed for adoption or legal guardianship.

"(c) For any fiscal year (after the first fiscal year) that any amount of a State's allotment is restricted under subsection (a)(2), the amount so restricted may be expended only for the implementation and operation of the systems and programs described in subsection (b)(2) (and amounts for such purposes shall be conclusively presumed to be expended for child welfare services). In the case of any State which has completed an inventory of the type specified in subsection (b)(1) and the design and development of the program and systems referred to in subsection (b)(2) prior to the first fiscal year referred to in subsection (b), or at any time prior to the end of such fiscal year, the amount of such State's allotment which is restricted under subsection (a)(2) may thereafter be used for the purposes specified in the first sentence of this subsection.

"(d)(1) As used in subsection (b)(2)(B), the term 'case review system' means a procedure for assuring that—

"(A) each child has a case plan designed to achieve placement in the least restrictive (most family-like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child,

"(B) the status of each child is reviewed periodically but no less frequently than once every twelve months by either a court or by administrative review (as defined in paragraph (2)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship, and

"(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed by the court, no later than twenty-four months after the original placement, which hearing shall determine the future status of the child; and procedural safeguards shall also be applied with respect to parental rights, to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.

"(2) As used in paragraph (1)(B), the term 'administrative review' means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

"PAYMENTS TO INDIAN TRIBAL ORGANIZATIONS

"SEC. 429. (a) The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this part directly to an Indian tribal organization within any State which has a plan for child-welfare services approved under this part. Such payments shall be made in such manner and in such amounts as the Secretary determines to be appropriate.

"(b) Amounts paid under subsection (a) shall be deemed to be a part of the allotment (as determined under section 421) for the State in which such Indian tribal organization is located.

"(c) For purposes of this section—

"(1) the term 'tribal organization' means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body; and

"(2) the term 'Indian tribe' means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92-203; 85 Stat. 688)) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.".

EARNED INCOME DISREGARD

(d)(1) Section 402(a)(7) of the Social Security Act is amended by striking out "any expenses" and inserting in lieu thereof "any child care expenses".

(2) Section 402(a)(8)(A)(ii) of the Social Security Act is amended to read as follows:

"(i) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, (I) the first $60 of earned income for individuals who are employed at least forty hours per week, or at least thirty-five hours per week and are earning at least $92 per week, and (II) the first $30 of earned income for individuals not meeting the criteria of subclause (I), plus (III) in each case, one-third of up to $300 of additional earnings, and one-fifth of such additional earnings in excess of $300, except that in each case an amount equal to the reasonable child care expenses incurred (subject to such limitations as the Secretary may prescribe in regulations) shall first be deducted before computing such individual's earned income (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 432(b)(2) and (3)); and".

On page 130, insert "Sec. 610. Adoption and Foster Care, and Child Welfare Services." immediately below "Sec. 609. Northern Mariana Islands."

(3)(A) The amendments made by this subsection shall become effective on January 1, 1979.

(B) A State plan for aid and services to needy families with children shall not be regarded as failing to comply with the requirements imposed with respect to approved State plans under part A of title IV of the Social Security Act, and the amount payable to any State under such part shall not be decreased, solely because such State plan fails to comply with the requirements of paragraph (7) or (8) of section 402(a) of the Social Security Act as in effect after the date of enactment of this Act and prior to January 1, 1979, if such State plan complies with the requirements of such paragraphs as amended by this section.

Mr. MOYNIHAN. Mr. President, I submit this amendment on behalf of myself and Senators CRANSTON, RIEGLE, WILLIAMS, PELL, ANDERSON, BROOKE, DURKIN, and INOUYE, although it may be that not each of those Senators will wish to support every item in the amendment. In particular, Senator CRANSTON and I did not have an adequate opportunity over the weekend to consult all of our colleagues about the portion of the amendment dealing with the earned income disregard; hence cosponsorship of the entire amendment does not necessarily imply agreement with that particular provision.

Mr. President, this amendment would take the essential adoption assistance and child welfare provisions of title I of H.R. 7200, as reported by the Finance Committee a year ago, and put them in this tax bill.

We would also put in this tax bill changes in the income disregard provisions of the AFDC program. This provision has the support of both sides of the aisle.

I recall it having been reported unanimously from the Committee on Finance. It is of particular importance to the senior Senator from California, who, for

a decade, has sought this one central change. I can describe it in 30 seconds.

At this time, the U.S. Government provides payments to families who provide foster homes for children. By contrast, no payments are provided by the Federal Government for families which adopt children. This means that a fairly considerable range of families, for financial reasons, is precluded from receiving the benefits of the act. I think it is generally agreed that it is much more desirable that children be adopted than that they be boarded in foster homes. Many foster homes are wonderful institutions; but not all are.

In any event, foster homes can never be a substitute for becoming part of a family, which occurs through adoption.

There is an income limit of 115 percent of the median income which is a cutoff point for all title XX services.

This is a humane measure, and it is a measure which is overdue. It is something we will be pleased to have done. Because of the condition of our calendar. It cannot be done under H.R. 7200.

The provisions of the earned income disregard seem to me to be reasonable. The committee has approved that. They will balance the cost of the child adoption arrangements such that we can anticipate no net cost from this measure, and possibly even some marginal savings.

I regret the necessary absence of Senator CURTIS on this occasion. He has shown great interest in and support for these matters. Senator CURTIS has been singularly concerned with child adoption and child welfare, and were he not necessarily away from the Senate, I know that he would speak with great knowledge and passion with respect to this matter.

I have no further remarks, Mr. President, and I move the adoption of the amendment.

Mr. MUSKIE. Mr. President, will the Senator yield on my time?

Mr. MOYNIHAN. I yield.

Mr. MUSKIE. We are trying to determine whatever revenue implications there are. I do not have the answer at this point. I wonder whether the Senator from Louisiana has an answer to that question.

Mr. CRANSTON. There is a reduction in the cost.

Mr. MOYNIHAN. There is, in any event, no revenue reduction.

Mr. MUSKIE. That is what I understood.

Mr. LONG. In the long run, there would be a net saving of about $50 million a year.

Mr. MUSKIE. I use this occasion to remind Senators that we have no money left in the bank for any further revenue reductions, and that is why these questions are arising on the Hatch amendment on this one.

I hope Senators will understand that it takes a little time to run this down.

Mr. MOYNIHAN. And the law requires that the Senator from Maine make inquiries.

Mr. MUSKIE. I thank the Senator.

Mr. MOYNIHAN. But I remind the Senator that he wrote the law. [Laughter.]

Mr. MUSKIE. I have no objection to it.

Mr. METZENBAUM. Mr. President, will the Senator from New York yield for a question?

Mr. MOYNIHAN. I yield.

Mr. METZENBAUM. I have difficulty in reading the entire amendment, but in the heading, it talks about "to amend the Internal Revenue Code of 1954, to reduce taxes, and for other purposes."

Is there a reduction of income taxes? The Senator mentioned something about the earned income credit in this measure that I have not been able to pick up. In simply skimming it, is there any reduction of income taxes?

Mr. MOYNIHAN. No.

Mr. METZENBAUM. No.

Mr. MOYNIHAN. Of income taxes, no.

Mr. METZENBAUM. Yes. the title is——

Mr. MOYNIHAN. That has to do with the nature of the amendment.

Mr. METZENBAUM. With the present bill. All right.

This only has to do with the adoption issue and the aid to dependent children payments that the Senator is talking about.

Mr. MOYNIHAN. And the earned income disregard is moved around in the way the Senate did last year. These provisions are unchanged. The one change we made is 1977 to 1978. Otherwise, there is no change.

Mr. METZENBAUM. All right.

Mr. CRANSTON. Mr. President, the adoption and foster care provisions contained in our amendment constitute significant and important steps forward in an area which is vital to the interests of hundreds of thousands of unfortunate children in this country. As my colleagues know, I have been working for the past 7 years toward enactment of adoption reform measures. On April 24 of this year, President Carter signed into law the first part of this endeavor—Public Law 95–266—which establishes the first national adoption provisions to facilitate the permanent placement of adoptable children with special needs.

But, Mr. President, Public Law 95–266 provides merely the mechanism to facilitate this process. The really vital provisions for assisting families who want to adopt children with special needs are contained in this amendment in the provisions of title I of H.R. 7200.

Mr. President, I share with my colleagues some background on the development of these provisions. Last year—on July 26, 1977—I introduced in the Senate, on behalf of the administration, the proposed "Child Welfare Amendments of 1977," S. 1928. This bill incorporated many of the provisions of my original proposed "Opportunities for Adoption Act of 1977." In addition to the adoption reform provisions, S. 1928 provided a major new initiative into the troubled area of federally funded foster care and child welfare programs. S. 1928 was referred to the Senate Finance Committee, which incorporated virtually all of the adoption assistance provisions of S. 1928 into H.R. 7200. After many months of discussions with Finance Committee members and their staffs, a number of the foster care and child welfare provisions of S. 1928 were also incorporated into H.R. 7200.

Although H.R. 7200 as finally reported by the Finance Committee did not address each of the foster care and child welfare issues contained in the administration's proposal, it did contain many significant and important steps forward in this area.

Mr. President, I would like to briefly outline the basic child welfare, foster care, and adoption provisions from H.R. 7200, as reported, which are also embodied in the amendment.

ADOPTION ASSISTANCE PROVISIONS

Mr. President, I would like first to describe the adoption assistance provisions in the amendment, and to express to the committee chairman (Mr. LONG) and members of the committee my very deep gratitude to them for their action on H.R. 7200 in not only retaining nearly intact the adoption assistance provisions contained in S. 1928, but also for going one step further by correcting certain problem areas from S. 1928 relating to adoption which I had identified in my introductory remarks on that legislation. Those problems were: First, provisions which would have put a financial ceiling on the new title IV–E funds available for adoption assistance payments, and second, provisions which did not take account of significant emotional ties which a child might develop with the foster family with whom the child has resided.

As I indicated at the time I introduced S. 1928 on behalf of the administration, I had a very serious reservation regarding the appropriateness of a ceiling on the proposed new title IV–E program with respect to adoption.

Under the IV–E program proposed by the administration, foster-care maintenance payments and adopiton assistance payments would have been funded out of the same entitlement and subjected to the same ceiling. While legitimate policy arguments could be made to support a ceiling on foster-care maintenance as a means to discourage unnecessary foster-care placements, no such policy argument supports placing a ceiling on adoption assistance payments.

Unlike foster-care placements, there is no policy reason to discourage adoption placements. Similarly, unlike foster-care placements, there is no expectation or desire for the child to be moved out of the placement, thereby freeing up funds for new children. Adoption placements are permanent and are intended to be so. Moreover, unless the circumstances of the family change, these payments would normally continue until the age of majority.

Mr. President, at the time of introduction of S. 1928, I expressed my belief that placing a ceiling on adoption assistance payments under the proposed new part E was not productive and not in the best interests of the children involved.

Mr. President, I was most pleased that the Finance Committee seriously considered this problem and in its reported bill placed no restrictive ceiling on payments for adoption assistance. I applaud this action.

The committee dealt with the second problem, Mr. President—the need to recognize and support the special relationships developed between long-term foster parents and their prospective adopted child—by acting in an equally responsible and compassionate manner. The committee added new language in new section 472(c)(2)(B) to exempt cases where there are significant emotional ties between foster children newly eligible for adoption and their parents, from the requirement that reasonable efforts be made to locate adoptive placements for special needs children where it is not necessary to provide an adoption assistance payment.

RELATIONSHIP TO PUBLIC LAW 95–266

Mr. President, I would like to discuss the adoption assistance provisions of this amendment and H.R. 7200 as reported in the context of my work in the area of adoption reform and enactment of Public Law 95–266. These adoption provisions build on and provide financing for legislative concepts which I have been working to develop over the past few years and which I introduced in this Congress as S. 961, the proposed "Opportunities for Adoption Act of 1977."

I introduced S. 961 on March 9, 1977. It represented the culmination of more than 5 years of research, drafting, counseling with experts in the adoption field, redrafting, and introduction into the legislative process—first, in the 93d Congress, and again in the 94th. The first hearing on the measure were held during the summer of 1975 by the former chairman of the Senate Subcommittee on Children and Youth, now Vice President MONDALE, who was so pivotal in convincing the administration to move in the direction embodied in S. 1928, the adoption provisions of which are generally a part of the amendment we are proposing today. When we were unsuccessful because of time pressures last Congress in securing Senate passage of the Opportunities for Adoption Act. I reintroduced the new version—S. 961—in the 95th Congress.

I called hearings on S. 961 as one of my first actions as chairman of the newly designated Subcommittee on Child and Human Development of the Human Resources Committee. The hearings dramatically demonstrated the disincentives to adoption inherent in our present foster-care system, and demonstrated as well that there are many compassionate adults who are eager to shower love and affection on children with special needs, if only they could be freed from the limbo of foster care. The hearings increased my own enthusiasm about the prospect of providing more meaningful and stable lives for many of these youngsters who in the present system have no hope of ever returning to their homes of birth, and for making a real difference in the otherwise uncertain, too often hopeless, lives of thousands of children.

On April 12, the provisions of S. 961 were passed by the Senate, and were signed into law by President Carter as Public Law 95–266.

The purpose of Public Law 95–266 is to facilitate the removal of barriers to interstate adoptions, to facilitate the placement of children with special needs in permanent adoptive homes, and to pave the way for financial assistance for the medical care and other necessities required for these children. Although Public Law 95–266 provides for overall reform in the adoption process, the amendment before us would today provide the necessary funding mechanism for the financial assistance which is so crucial to children with special needs—both by granting them medicaid eligibility, under title XIX of the Social Security Act, and providing maintenance assistance through the use of the Social Security Act's title IV–A—proposed to become IV–E—entitlement provisions.

DEFINITION OF "SPECIAL NEEDS CHILDREN"

Mr. President, it is important at the outset of our discussion of the adoption assistance provisions to state exactly which children this amendment is attempting to assist. We are not talking about the adoption of healthy infants. We are talking about assisting parents who want to adopt "special needs children" who would be unable to be placed in adoption without the benefit of assistance.

They are the children like those we heard about during our work on Public Law 95–266—Jenny, who was adopted at age 3 after having been mistakenly diagnosed as mentally retarded, who was legally blind and had deformed hands—she is now a top student in her third grade class; Barbara, adopted at age 6 after having lived her life in a convalescent home for crippled children because of a variety of birth defects; John and William, teenage brothers emotionally scarred by years in and out of foster care.

Mr. President, as I indicated earlier, H.R. 7200 as reported from the Finance Committee provided the necessary funding mechanism for the financial assistance which is so crucial to these children with special needs.

The financing of adoption assistance through title IV and XIX of the Social Security Act is truly a giant step forward for children who would benefit by adoption.

I want to point out, too, Mr. President, that such financing not only will be of enormous benefit to children with special needs, but should even save taxpayers money in the long run, since the high proportion of the adopted children who these provisions will benefit in many instances will require less assistance in adoptive placements than they would had they been relegated to spend the rest of their childhood in foster care.

ADOPTION ASSISTANCE PAYMENT

Mr. President, this amendment and H.R. 7200 reported would provide for Federal participation in adoption assistance payments through the proposed new Part E of title IV of the Social Security Act. It would authorize federally supported maintenance payments for adoption assistance, when a child with special needs who had been eligible for foster care is adopted by parents whose income at the time of the adoption does not exceed 115 percent of the State median income for a family of four—adjusted for family size, including the size of the family after adoption—in accordance with regulations of the Secretary which take into account special circumstances. Although philosophically I have difficulty with the notion of including a means test in any adoption reform policy, I feel that the overall merits of this proposal far outweigh the demerits of including a means test for adoption assistance.

It has always been my view that adoption assistance should be tied to the needs of the child, and not to the income level of the adoptive parents. Studies have shown that 80 percent of the families who adopt children with special needs have biological children of their own, and often opt to have children in need of adoption join their families rather than to bring more children into the world.

The hearings on S. 961 dramatically demonstrated that there are many families willing to adopt so-called hard-to-place children and who do so at great sacrifices. In determining how much of themselves and their families they can contribute to an adopted special-needs child, they must consider their commitments to other members of their family. I do not believe that these extraordinary people should be required to lower the standard of living for their other children in order to take on the burden, albeit a living one, of adopting a special-needs child.

SPECIAL CIRCUMSTANCES

I do feel, however, that the committee's inclusion—provided in the amendment as well—of the all important "special circumstances" provision would provide for sufficient flexibility for dealing with this issue. For purposes of legislative history, I would like to provide examples of the kinds of circumstances which I feel can be taken into consideration under this provision. They include the following:

A child with special needs who has been living with and has developed emotional ties to a foster family whose income is above the means test level, and which family would have to lower its own standard of living to continue having that child live with them in an adoptive situation. Such special circumstances might also include the need for extraordinary dental assistance that might not otherwise be covered by medicaid; it might include special costs associated with an incontinent child whose family needed to buy new mattresses every few months; it might include special costs for new glasses for a child who constantly breaks the glasses provided for him. It should include too the factors of seasonal employment and fluctuating incomes. These are the kinds of special problems that are related to adopting children with special needs that might not readily come to mind for those of us who have not experienced such problems.

I would like to also add, Mr. President that although the income limitation in the reported bill and the amendment provides that prospective adoptive par-

ents not have an income exceeding 115 percent of the median income, in my view, States certainly should not institute any lower standard than that set forth in the Federal legislation.

Mr. President, another aspect to be considered when discussing the means test is this—we must keep in mind that the higher the income of the adopting family, the less likely it is that the family will require an adoption assistance payment to help care for their special-needs child. Conversely, the lower the income of the adopting family, the more likely it is that they will need greater assistance. So not only will it be more costly to follow a policy of placing a special-needs child with the lower income family, but such a policy will also create an incentive to place the children most in need with the families that have the least resources of time and income to care for them. I certainly do not believe the Federal Government wants to pursue or encourage that kind of a course.

TERMS OF ADOPTION ASSISTANCE

Mr. President, the amendment and the reported bill would also provide that the amount of the adoption assistance may not exceed the foster-care maintenance payment which would have been paid during the period if the child had been in a foster family home. I believe that this provision is most reasonable. It demonstrates, too, the cost effectiveness of the adoption assistance concept, in that the financial costs will never be greater than those associated with retaining a child in the least expensive setting in the foster-care system.

New section 475 of the new part E sets forth the definition of adoption assistance agreements as meaning a binding, written, and consensual agreement between the State agency and other relevant agencies and with the prospective adoptive parents of a child with special needs, which specifies the amounts of the adoption assistance and any social or other services and assistance which will be provided for the child pursuant to the adoption assistance agreement—such as assistance with certain legal costs and referrals and linkages to necessary social services and the agencies responsible for providing them. New section 472(a)(5) of the new part E would make it clear that the assistance may be provided before an adoption becomes final while the child is residing in the home of the prospective adoptive parents.

These provisions are derived from section 103 of S. 961 which sets forth conditions for adoption assistance agreements to be negotiated by the prospective adoptive parents. Under the amendment now being offered, the adoptive parents should have the right to reopen negotiations regarding the amount of the adoption assistance agreements when changes in circumstances, or an emergency, or an increase in the cost of care, necessitates a change.

The adoptive assistance agreement provided for under the amendment and the reported bill would be entered into by the adoptive parents, the State agency involved in the adoption placement and other relevant agencies dealing with the needs of the child and the adoptive family. The agreement would spell out not only the terms, conditions, duration, and cost-of-living considerations surrounding the adoption assistance payment, but would also include a description of the services and assistance to be provided by the various agencies interested in the child's welfare. These other services might include services provided under title IV–B or other Federal or local programs.

These provisions in the amendment and the reported bill are derived from the provisions of section 103(b)(2) of S. 961 as reported, which provided that adoption assistance agreements should involve, to the maximum extent feasible, all parties and agencies which may be or have been providing assistance or services to the child. This provision was designed to provide the maximum coordination, continuity, and unification in the provision of the necessary services and assistance by various agencies. Section 103(a)(3)(B) of S. 961 as reported specifically provided that funds may be utilized both to assist parents in locating, and where alternative supports is not reasonably available, defraying the cost of, postplacement and postadoption special services for children as a result of conditions which existed prior to their placement or adoption. Under the provisions of the amendment and the reported bill, these services, if not available under other programs, could—and, I believe, should—be provided through child welfare services funds under title IV–B.

SPECIFICATION OF INTERSTATE RIGHTS UNDER ADOPTION ASSISTANCE AGREEMENTS

An additional—and sometimes very important—factor which should be spelled out in any adoption assistance agreement is the obligations of the parties if the adopting family moves from one State to another. Testimony in the hearings on S. 761 indicate that this is sometimes a crucial problem. In some cases, families which have moved from one State to another unexpectedly found that their adoption assistance had been terminated because of their move.

Although the amendment and the reported bill do not provide that the adoption assistance payments must follow a family moving from one State to another, this is obviously a highly desirable requirement to insure stability and continuity. In any event, the adoption assistance agreement should certainly indicate under what conditions such assistance might be terminated and specifically whether it would continue if the family moved out of the State. Clearly, however, if the child was eligible for medical assistance under the medicaid provisions of this proposal, such assistance would not be in any way affected by the family moving into another State. Even if the receiving State had opted to limit medicaid coverage whereas the originating State had not, it would be the obligation of that State and the Federal Government to make good the promise of full medicaid eligibility for that child in a situation where the adopting family moves.

Mr. President, let me give an example of why I view this matter of interstate obligations as being so important. During our hearings on S. 961, the parents of little Jenny, about whom I spoke earlier in my remarks, testified to their first-hand experience of what happens when the obligations of two States involved in an interstate placement are not established at the outset. Jenny's mother testified as follows:

Let me give you a vivid example of a roadblock we had that scared both Allen and myself tremendously.

Jenny came down here from New York to Virginia; one of her hands was deformed badly, and we had been told that she needed a series of operations, starting right away. This was about 2 months after we had Jenny.

So we found a doctor, a very capable doctor. He said that he was willing to perform the operations. We told him about our financial situation. He said that did not really matter, that he would go ahead with it anyway.

We wrote to New York State, saying is there any money you could give us to help with Jenny's handicaps, and they wrote back saying no, that we were unfortunately ineligible, because she was no longer a ward of New York State.

So then, I started in at Richmond, saying, "Now we are going to live here in Richmond. Could you help us out?" And they said no, that she was the responsibility of New York.

It came down to the morning of Jenny's operation, and the nurse came up to Allen and myself and said, "Would you like to sign the papers?" for the release of Jenny's operation, and we said, "No. She is not ours."

Now, when a child is placed in your home, that is exactly what it is; she is placed. She is not ours. We could not adopt Jenny for a good year after we got her. It took 1 year by the time we adopted her. So we had no legal right to sign any papers for an operation.

But yet, New York State was not going to help us, and Virginia claimed that it was not their responsibility. So we signed the papers, knowing full well that if anything happened to Jenny in that operation, we could be in a lot of trouble.

CONTINUATION OF ADOPTION ASSISTANCE

The committee reported bill and our amendment would also provide for continuation of the assistance payments through the age—18—at which an unemancipated handicapped child would be eligible in his own right for other Federal assistance, such as SSI, or eligible in his own right for medicaid as a disabled recipient of SSI.

Mr. President, I believe this continuity-of-support aspect is most important, especially regarding handicapped children. During hearings on the proposed Opportunities for Adoption Act in 1975, we received strong testimony which cogently demonstrated the case for not arbitrarily cutting off assistance for children with the most severe needs. Here is what we were told by Mark and Patricia Kravik:

* * * the term children with special needs * * * is satisfactory when we are discussing 99 percent of the children for whom adoption subsidies were designed: the older child, sibling groups, or children with mild or correctible handicapping conditions. All these needs can be met by a short-term subsidy or one time payment to meet a specific need. For a very minute number of children, however, the nature of their handi-

capping condition is so severe that they will always remain in a state of financial, legal, and physical dependency. As one foster parent of a Down's syndrome child candidly stated: "It won't mean a damn thing when Lisa turns 18." Similarly, a chronological age of 18 years is of no consequence to the child with cystic fibrosis, spina bifida, or cerebral palsy. These conditions do not terminate on a child's 18th birthday as this legislation implies. To tell a prospective adoptive parent that any assistance for this child's special need will totally disappear at age 18 is definitely a deterrent for adoption. In the case of the child with cystic fibrosis or spina bifida the parents will still be confronted annually by thousands of dollars of medical and hospital bills—bills for which no insurance company will accept coverage since these are preexisting conditions.

As adoptive parents in this same position we have personally contacted over 50 insurance companies both locally and nationally in an attempt to obtain medical-hospitalization insurance coverage for our little boy who is brain damaged. The response was consistently negative. For any chronic, noncorrectable, major medical or handicapping conditioning of a preexisting nature they could not provide coverage either prior to or after age 18. Our little boy has already undergone massive seizures requiring medication, two operations involving major brain surgery, 3 months of hospitalization, and extensive physical and speech therapy. Doctors have informed us that it is not only possible but quite likely that he will undergo future seizures requiring further brain surgery and hospitalization. This can as easily occur after his 18th birthday as before. If it happens after 18, however, we will be faced with insurmountable medical costs. This is a real fear, a real deterrent to adoption for the parent of a child with a severe handicapping condition or permanent medical problem. Our child has an IQ in the range of 35–40, he will always require the care and shelter of our home and family. We fully understand what this challenge of parenting on a permanent basis involves. What we cannot accept are the insurmountable costs that medical treatment, hospitalization, therapy programs, or rehabilitative services will require for the moderately to severely handicapped child such as ours after age 18.

In a recent survey conducted by the Montgomery County Association for Retarded Citizens in Maryland the greatest problem articulated by biological families of handicapped children was the ultimate concern, not for the immediate needs of the handicapped child, but for his or her future as a handicapped adult. The greatest obstacle to biological families is likewise the greatest obstacle to adoptive families. The "foreverness" of a burden is something no one can accept. As adoptive parents we are willing to accept part of that burden—the aspect of parenting for a lifetime. What we cannot carry, in these times of diminishing resources and economic inflation, is the insurmountable financial burden of extensive medical and therapeutic services that our child will continue to require after 18 years.

We personally know a number of foster families who would be ready tomorrow to adopt if they had these reassurances for extended support services after age 18: Kathy, a 2-year-old spina bifida child in Virginia; Timmy, a deaf and retarded baby in Virginia; Larry, an autistic 4-year-old with severe behavioral problems in Virginia; Lisa, a 3-year-old with Down's Syndrome in Maryland; Brian, a blind and retarded 4-year-old in Washington, D.C., and Laurie, a developmentally disabled 2-year-old permanently paralyzed from the waist down in Washington, D.C.

These are precisely the children that this legislation should be facilitating the adoption of. In the past because of their double burden of homelessness combined with a severe handicapping or medical condition they were for the most part shunted into State institutions, warehouses for human beings. Instead, we have today foster families coming forth saying they want to adopt these children right now if they are given the necessary extended support services. Not to give them the long term services that would make this legislation truly effective in terms of facilitating adoption is condemning these children to lifetime foster care and/or institutionalization instead of the permanent adoptive families which they deserve.

VOLUNTARY REPORTING

Mr. President, in conjunction with the means test, included in new section 472 (a) (2) of new part E, for adoption assistance agreements, provisions are included in section 472(a) (4) which would require voluntary reporting by the adoptive parents to keep the State or local agency administering the adoption assistance program informed of circumstances which would make them ineligible for such assistance—for instance, if their income was substantially increased. Mr. President, in S. 961 we included a provision that parents make periodic declarations of the need for continuing adoption assistance, and the Human Resources Committee report called for protecting the privacy of the parents with respect to any investigations into these declarations.

It was my understanding in introducing S. 1928 that those protections were applicable to the voluntary reporting provisions of that bill as well, and are also applicable to this amendment. There should be the least possible intervention in the life of the adoptive family by the State or the local agency—it is certainly not our intention that adoptive parents have monitors come into their homes to carry out this provision.

Another concern arising out of this section might be that it might lead to an automatic disqualification of prospective adoptive families whose incomes are just below, or have the potential to be raised just above, the income cutoff for adoption assistance eligibility. This in turn could provide a disincentive to adoption—exactly the situation we are trying to correct by this legislation—unless the family understands that the assistance payment can continue, even if reduced on a sliding phase-out scale, until such time as the family's income reaches generally about 125 percent of the adjusted median income.

I would expect that such an arrangement could be considered one of the "special circumstances" to be taken into account when establishing a family's eligibility, in accordance with the second sentence of new section 472(a) (2) of the new part E. Otherwise, when foster parents find themselves just at the cutoff level, they might be forced to choose whether to adopt a child in their care and forego a promotion or new job that would benefit their other children, or keep the child in a foster-care arrangement so they can be assured of the continuation of the foster-care maintenance assistance. Again, I think this is an intolerable alternative with which to confront these families.

On the other hand, Mr. President, where an adoptive parent's income is significantly higher, the amount of the actual assistance payment necessarily should become sufficiently small so that the impact of the eventual complete cutoff of the adoption assistance payment will be minimal in comparison to the expected income gain from a promotion, new job, or renewed seasonal work, and should not act as a disincentive to those parents to working for their own and their family's advancement.

SINGLE-PARENT ADOPTIONS

Mr. President, the Finance Committee bill and this amendment also would include single parents as eligible for assistance under this legislation on behalf of their adopted child. This is an important addition to the adoption provisions of the reported bill, since it gives Federal recognition and approval to the practice of allowing individuals, as well as couples, to adopt children.

In my remarks today, in describing just who are the children this legislation seeks to assist, I gave the example of the 6-year-old child who had lived all her life in a convalescent home for crippled children because of a variety of birth defects. I think it is fitting to point out, Mr. President, that this child was adopted by a single parent who is a pediatric nurse practitioner. I would hope that the inclusion of this provision in the new part E will serve as a model to those jurisdictions in our country which now overlook the possibilities of single-parent adoptions. I applaud and am grateful to the Finance Committee for its foresight and sensitivity in agreeing to this addition which I proposed last year.

MEDICAID ELIGIBILITY FOR SPECIAL NEEDS CHILDREN: A LANDMARK PROVISION

MEDICAL ELIGIBILITY

Mr. President, one of the major benefits affecting adoption reform included in H.R. 7200 as reported and in this amendment is to vest medicaid coverage in a child who was eligible for foster care and is later adopted, for medical conditions existing prior to adoption—or all medical conditions at the option of a State. I cannot overemphasize the importance of this provision. Right now, children in foster care receive Federal

medicaid insurance to pay for serious medical and emotional problems. If these children are adopted, however, they automatically lose this medicaid assistance, and adopting parents often find that their own insurance carriers will not cover these prexisting costs for an adopted child. This certainly is a "catch-22" situation.

Our amendment and H.R. 7200, as reported, would amend the law to permit medicaid benefits to follow the child into an adoption placement—limited, if the State so elects, to care for those medical conditions existing prior to adoption. Such a change will eliminate one of the worst disincentives to adoption, which one of the witnesses at our hearing on the proposed Opportunities for Adoption Act characterized as "a situation too bizarre to be believed." I want to point out, too, Mr. President how important it is that there is no means test associated with these medicaid eligibility provisions and that the medicaid assistance would extend to the age—18—at which a disabled child can be eligible for medicaid and maintenance support through SSI eligibility. Mr. President, the Finance Committee last week ordered reported—in H.R. 9434—provisions in the proposed child health assessment program (CHAP) which also deals with medicaid coverage of adopted children with special needs. I see no inconsistency in affirmative action on both of these two measures. The CHAP provisions cover non-AFDC children, as well as the AFDC children covered by this amendment.

COVERAGE OF NONRECURRING EXPENSES

Another important feature of the amendment and H.R. 7200 is the provision authorizing States to cover the costs of nonrecurring expenses associated with the adoption proceeding for a special needs child, such as legal and other expenses. Again, it is significant that there is no means test connected to this provision. This provision derives from section 13(a)(1) of S. 961 as reported.

FUNDING OF IMPLEMENTATION OF PUBLIC LAW 95-266

Mr. President, Senate action on these provisions—delayed for over a year now since their approval by the Finance Committee—is most timely in terms of action we have taken last September 27 to add $5 million to the Labor-HEW appropriations bill, H.R. 12929, to fund the implementation of the adoption reform provisions of Public Law 95-266. Today's action and approval by the other body in conference will mark the final chapter in this 7-year congressional process.

FOSTER CARE REFORMS

Mr. President, in addition to the significant and important provisions in this amendment dealing with adoption, I am encouraged and delighted by the progress we have made in working with the Finance Committee and the Administration to focus on the needs of children caught in the tangle of the foster care system. This has been a problem on which great leadership has been provided by my friend and colleague from California in the other body, GEORGE MILLER, and he deserves much credit for the early work he has done in this much-neglected area.

Mr. President, this tragic problem was created unwillingly. Perhaps placing it in its historical perspective will shed more light on where we have been and how far we have come today, and why the legislation before us is so very significant.

HISTORICAL PERSPECTIVE ON FOSTER CARE

Robert H. Mnookin, professor of law at the University of California/Berkeley, provided an excellent historial perspective of the Federal role in foster care in his testimony of September 8, 1976, during joint hearings called by the House Education and Labor Committee and the former Senate Committee on Labor and Public Welfare to explore the problems and issues of foster care. The following is an excerpt from Professor Mnookin's testimony:

The limits of the current federal role—to provide funds for foster care but not to make or influence policy—can be partially explained by the history of federally supported foster care within the AFDC program of the Social Security Act of 1935. Before passage of the Social Security Act, care of poor, neglected and dependent children was a state, local and private responsibility. Although the federal Children's Bureau was concerned with children separated from parents and relatives, the federal government provided meager financial support for children who were orphaned, abandoned or removed from their families because of neglect or abuse.

The federal AFDC program did not initially include foster care. In fact, the program emphasized the importance of supporting poor children within their own homes or in the homes of relatives, and not resorting to out-of-home placement. Giving federal aid to children not living with their families was seen as undermining the Social Security Act's central policy of encouraging family unity and responsibility. During the 1940's and 50's, state AFDC plans included provisions for discontinuing support payments if a home were found to be "unsuitable." However, at the same time, the prohibitive costs of caring for a child outside his or her home discouraged states from using juvenile courts to remove children from parental custody, unless a relative or other person offered to care for or support the child. Consequently, a welfare department was likely to find a home "unsuitable", and discontinue AFDC payments but leave a child to live in that "unsuitable" home.

The 1962 amendments to the Social Security Act changed the situation significantly. Children who had been receiving AFDC payments within their own homes became eligible for an even higher federal reimbursement if they were removed from their homes as "a result of a judicial determination to the effect the continuation therein would be contrary to the welfare of such child" [42 U.S.C. § 608(a)(1)]. The requirement of a court decision was a compromise. It provided a means for the federal government to share in state and local foster care, but only in those cases where a court of law as an independent decisionmaker had found that the interests of the child and the duty of the state to protect its children outweighted the interests of family privacy and necessitated removal from parental custody for the child's welfare.

The availability of federal funds for out-of-home care did not significantly affect the states' behavior, since states were not obligated to include foster care as a regular part of their AFDC program. Most states did not immediately apply for federal funds because the Act required certain changes in the administration of foster care for states to be eligible. Moreover, only a fraction of the children in foster care at that time would have become eligible anyway since many were not removed by courts, and those who had come before the court were not always AFDC recipients at the time they were removed. By June 1965, only 23 states had accepted the AFDC foster care program and were using it to care for 5,779 children.

In 1967, after continuing controversy between HEW and several states over their foster care programs, the AFDC foster care program was made mandatory for all states to begin in 1969. Eligibility for federal reimbursement was extended to children who were not actually AFDC recipients but who would have been if application had been made when the court removed them from parental custody [(42 U.S.C. § 608(a)(4)]. These amendments expanded the AFDC foster care program dramatically.

Today, the federal government pays a portion of the maintenance costs of foster children from families eligible for AFDC who are removed from their homes after a judicial determination that removal is necessary for the child's welfare. In other words, the federal government does not contribute to the maintenance costs of children who are placed in foster homes after a juvenile court has found them to be delinquents or children who are voluntarily placed by their parents without any judicial involvement. In addition, the federal government provides money for foster care services as part of the $2.5 billion national appropriation for services of the Social Security Act. For the year 1975, federal financial involvement in AFDC foster care under Title IV-A amounted to $137,822,000. In May of 1976 the federal government contributed to the support of approximately 116,000 children in foster care.

LACK OF RESOURCES DESIGNED TO PREVENT FOSTER CARE PLACEMENTS

Mr. President, there has been virtually unanimous agreement between the public officials who administer the foster care system and child welfare advocates that there has been too little emphasis in the past placed upon preventing children from entering the foster care system, or, in attempting to return them to their natural families at the earliest possible time. S. 1928 attempted to shift the Federal priorities away from merely maintaining children in foster care situations, and to move those priorities toward the development of preventive and rehabilitative techniques designed to keep children with their families and out of the foster care system. Although the bill reported by the Finance Committee—and this amendment—does not incorporate all of the provisions of S. 1928 in this area, it does encompass several important—and necessary—provisions.

NEW CHILD WELFARE PROGRAMS

The major foster care reforms arising out of H.R. 7200 are in the area of child welfare programs authorized under title IV-B of the Social Security Act. The amendment and the reported bill incorporate much of the programmatic components of S. 1928 in this area. These provisions include provision for the following:

First. An inventory of all children who have been in foster care under the responsibility of the State for a period of 6 months preceding the inventory, including a determination of the appropriateness of, and necessity for, the current foster placement, whether the child can be or should be returned to his parents

or should be freed for adoption, and the services necessary to facilitate either the return of the child or the placement of the child for adoption or legal guardianship.

Second. The design and development to the satisfaction of the Secretary of a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child in foster care or who has been in such care within the preceding 12 months can readily be determined, a case review system for each child receiving foster care under the supervision of the State, and a service program designed to help children remain with their families and, where appropriate, help children return to families from which they have been removed or be placed for adoption or legal guardianship.

Mr. President, if a State wishes to accept new IV–B funds to carry out new section 428 (b) and (c), it must provide all of the services outlined above. These services—taken from S. 1928—will provide important, needed emphasis on programs designed to locate children in foster care and assess their needs and attempt to reunite them with their families, as well as prevent their initial removal.

CASE REVIEW SYSTEM

Mr. President, I would like to comment further on the definition of a case review system contained in new section 428(d)(1) of new part E. The case review system means a procedure for assuring that each child has first, a case plan designed to achieve placement in the least restrictive—most family-like—setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, second, periodic review no less frequently than once every 12 months by either a court or administrative review in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care as well as a projection of a likely date by which the child may be returned to the home or placed for adoption or legal guardianship, and finally, third, the application of procedural safeguards with respect to each child to insure that a dispositional hearing is held no later than 24 months after the original placement to determine the future status of the child.

This dispositional hearing to determine the future status of the child should provide for such determinations as whether the child should be returned to the parent, requires continued placement for a specified period of time; should be freed and placed for adoption; or requires a permanent long-term foster care placement because of the child's special needs or circumstances. This dispositional hearing should, of course, provide for subsequent reviews to insure that the disposition rendered has been carried out. The procedural safeguards are also applicable with respect to such issues as removal of a child from his home, visitation rights and other such matters which may arise.

These provisions are particularly important in assuring that each child in foster care is provided with appropriate placement and systematic reviews to ascertain the appropriateness of his or her continuing foster placement.

DIRECT GRANTS TO INDIAN ORGANIZATIONS

Mr. President, I would like to comment briefly on one specific provision of the amendment and the reported bill which I believe to be of special significance. New section 429(a) provides that the Secretary may make payments under title IV–B directly to an Indian tribal organization where appropriate. A similar provision was contained in S. 961 as reported in terms of the adoption program, and I believe that this provision with respect to child welfare services is both necessary and appropriate to authorize Indian tribal organizations to develop and operate their own child welfare programs.

Recognition of Indian sovereignty is also contained in new section 428(d)(1)(D), which would recognize the decrees of Indian tribal courts in dispositional hearings. These two provisions, taken together, represent an important recognition of the unique role of Indian tribal organizations in child welfare matters. I had urged the Finance Committee to add these provisions to H.R. 7200, and I was very pleased that they were incorporated into the reported bill.

There is also pending in the House at the present time an Indian child welfare bill, S. 1214, which was passed by the Senate last year. That legislation, sponsored by the chairman of the Special Committee on Indian Affairs, the Senator from South Dakota (Mr. ABOUREZK), provides much more extensive programs dealing with the special needs of Indian children and the complex jurisdictional problems relating to these children. I am hopeful that action on this measure will also be completed this Congress.

FISCAL DISINCENTIVES FOR FOSTER CARE PLACEMENTS

Mr. President, the bill as reported and the amendment are also designed to create fiscal disincentives concerning the long-term or unnecessary placement of children in foster care situations. H.R. 7200 as reported would thus place a ceiling on a State's reimbursement for foster care maintenance costs under title IV–A of the Social Security Act. Under existing law, there are no fiscal limitations upon the amount of Federal reimbursent a State may receive for making IV–A foster care maintenance payments. The reported bill provide in section 474 (b) of the new part E for a ceiling on foster care maintenance payments, based upon a 20-percent increase over a State's fiscal 1977 payments, and a 10-percent increase thereafter until 1983. Our amendment would advance those effective dates 1 year, to reflect the passage of time since H.R. 7200 was reported by the Finance Committee last year.

The reported bill and the amendment also would provide for an alternative payment to States based upon a State's share of $100 million based upon its population under the age of 18. A State is entitled to elect which method of payment it wishes to receive.

Mr. President, although I appreciate the concern expressed by many that a ceiling on foster care payments poses some risks, I also recognize that the present funding system may actually encourage unnecessary use of foster care because of its totally unrestricted, open-ended nature. The original proposal considered by the Finance Committee would have limited the States to payments of 10 percent over the previous fiscal year payments for a 5-year period.

I felt that this ceiling was too restrictive and worked with the Finance Committee to develop an alternative and higher increase—20 percent—for the first year. This, of course, provides a higher base against which the subsequent 10-percent increases are thereafter measured. I believe that this approach—while perhaps not ideal—does move in the direction of discouraging foster care placements for children. Hopefully, these provisions, combined with an increase in funding for child welfare services programs under title IV–B, will provide the necessary incentives to keep children out of the foster care system and in their own families wherever possible.

Mr. President, our amendment and the bill as reported also would provide that any moneys a State receives for its foster care maintenance program which it does not need for foster care, can be utilized for the child welfare services under title IV–B. I believe that this is an important provision to provide an added incentive for States not to leave children in foster care unnecessarily merely to keep the size of their program at a certain level to insure future levels of support.

Mr. President, I think that it is incumbent upon Congress to watch carefully the effects and results of this ceiling. If in the future it appears to be unrealistically too low to accommodate rising costs or unforeseen elements in caseloads, then we would obviously want to develop necessary adjustments to the law.

COST IMPACTS

Mr. President, I want to clarify one issue that has appeared to cause some confusion. Although the Finance Committee's report includes—on page 116 of report No. 95–573—an estimated cost impact under the title IV–B program, this estimate—as the footnote in the report indicates on page 119—is in anticipation of increased appropriations under the existing authorization. The amendment, as did the reported bill, makes no changes in the current authorizations of appropriations of $266 million annually. The Finance Committee's report anticipates—and I concur—that the changes we are making in the programs and services authorized under title IV–B will make it more likely that the administration will seek increased funding for title IV–B, which will be favorably considered by Congress.

Mr. President, let me also point out that the Congressional Budget Office cost-estimate—set forth on page 125 of the committee report—projects that the adoption assistance program established

by this amendment will actually result in savings since moving these children out of foster care into permanent adoptive homes is far less costly than continuing them in foster care.

MODIFICATIONS OF THE FINANCE COMMITTEE REPORTED BILL

Mr. President, in the interest of seeing this legislation enacted before the end of the 95th Congress, I am offering it as an amendment to the pending bill basically in the form approved by the Senate Finance Committee in H.R. 7200. I personally had hoped to see enacted a more extensive measure deriving from the accommodations between this region and the House version of H.R. 7200 which would have very likely resulted in conference. This is no longer possible given the legislative situation.

But I continue to feel strongly that the measures contained in the bill as reported—particularly as they related to adoption assistance for children with special needs—represent important and necessary steps forward in our treatment of needy children.

Because of the conference situation, I have made two adjustments in the text of H.R. 7200 reported provisions. The first is to advance the effective dates of each of the provisions 1 year to reflect the time that has passed since H.R. 7200 was reported last year. The second change would eliminate the restriction on the amount of funds the Appropriations Committee may appropriate for the new child welfare services provided for in new section 428 (b) and (c) of the new part E. The bill as reported restricted the amount of funds that the Appropriations Committee could designate for carrying out the new programs. This provision—unwisely I think—would constitute a ceiling—not merely a permissible earmark—on funds appropriated for new programs under title IV–B. The administration has indicated its support for increased funding for the protective services spelled out in the legislation, but not for continuing to pour funds into the IV–B program which might be expended upon services unrelated to the prevention of unnecessary foster care. The adjustment in the amendment would merely permit the Congress the flexibility to appropriate whatever amount is necessary to carry out the activities and programs provided for in subsections (b) and (c) of section 428 of the new part E.

NONCHILD WELFARE AMENDMENT FROM H.R. 7200

Mr. President, in order to secure agreement from the ranking minority member of the Finance Committee (Mr. CURTIS), we have included in this amendment another provision from H.R. 7200—section 524—which relates to earned income disregards for AFDC recipients. Although many—including the administration—believe that some revisions are necessary to the existing law on earned income disregards for working welfare recipients, many also believe the provisions of H.R. 7200 are far too restrictive and may actually result in discouraging welfare recipients from working. The peculiar floor situation we are now facing, however, necessitates our accepting this provision in order to obtain consideration of the important adoption and child welfare provisions of this amendment.

CONCLUSION

Mr. President, as chairman of the Subcommittee on Child and Human Development of the Human Resources Committee, I believe that the adoption assistance and child welfare provisions of the amendment I am offering today—derived from the Finance Committee's reported bill—represent important steps forward in our necessary efforts to meet the needs of the hundreds of thousands of children who are now locked into a dismal and depressing system. I believe that these provisions begin to make the type of changes that will give these children a real future—an opportunity to grow and develop into productive and healthy citizens.

Mr. President, I want to express my appreciation for the cooperation of the chairman and floor manager (Mr. LONG) and the chairman of the Public Assistance Subcommittee (Mr. MOYNIHAN). I am also very indebted to Michael Stern and Joe Humphreys of the Finance Committee staff for their very able assistance and contributions to our efforts on behalf of this legislation for the past 18 months. Without their wise counsel then and today, we would never have been able to reach the point of successful action on these very important provisions.

I thank the Senator from New York for his very effective assistance on this matter today. It is a pleasure to work with him. I applaud the move we are about to make.

Mr. MOYNIHAN. I thank the Senator.

● Mr. RIEGLE. Mr. President, I wish to express my support for the amendment offered by the Senator from New York (Mr. MOYNIHAN) embodying the provisions of title I of H.R. 7200 as reported from the Finance Committeee. As a member of the Human Resources Committee's Subcommittee on Child and Human Development, I am pleased that this essential reform of Federal adoption policy will finally be acted upon by the full Senate.

As many of my colleagues are aware, the adoption subsidy provisions of this title have been included in legislation introduced by Vice President MONDALE, when he was chairman of the Subcommittee on Children and Youth, and by Senator CRANSTON in this Congress. These provisions will encourage the adoption of handicapped children and others with special needs by preventing the arbitrary cutoff of Federal assistance to these children when they are placed with a family of their own. Too many children with special needs have been cut off from the possibility of adoption, because parents who wanted to adopt them could not afford the additional costs that would have resulted from the arbitrary cutoff of Government assistance.

I would like to point out, however, that the amendment we are considering today includes a provision stating that expenditures under the foster care assistance program will remain constant after 1982. This provision seems to me to be premature at this time, as well as a questionable judgment in view of our uncertainty about what the needs of such children will be in the future. Since this provision has not received adequate consideration by the full Senate, I would hope that the Senate conferees on this bill will be receptive to the arguments that may be offered by the House conferees concerning the inappropriateness of such a provision.

Having cosponsored two bills containing adoption subsidy provisions (S. 961 and S. 1928) and having participated in hearings on this subject, I can urge my colleagues to support the amendment of the Senator from New York, as I believe it can provide an extremely cost-effective means of encouraging the adoption of children with special needs, so that they will have a fair chance at growing up in a loving family of their own.●

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. NELSON addressed the Chair.

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Utah.

The point of order is not well taken.

Mr. HANSEN. What?

The PRESIDING OFFICER. The point of order is not well taken.

Mr. HANSEN. May I suggest the absence of a quorum on my time until the Senator from Utah arrives?

Mr. NELSON. I wonder if the Senator will withhold that so that I may make a unanimous-consent request?

Mr. HANSEN. No. I want to protect the Senator from Utah who is not in the Chamber.

Mr. NELSON. I will do that.

I ask unanimous consent that his amendment be temporarily laid aside.

Mr. HANSEN. With the understanding that the unanimous-consent agreement reserves the right to object, I yield to the Senator from Wisconsin in order that he may make the point I think he has in mind.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. Mr. President, I ask unanimous consent that the amendment of the Senator from Utah be temporarily laid aside solely for the purpose of finishing action on my unanimous-consent request of about 30 minutes ago, on action on the bill involving the two wilderness areas in the State of Wisconsin.

The PRESIDING OFFICER. Without objection, it is so ordered.

WILDERNESS LANDS, WISCONSIN

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 12264) to designate certain

lands in the State of Wisconsin as wilderness.

The Senate continued the consideration of H.R. 12264.

Mr. NELSON. Mr. President, this bill has been approved by the minority and the majority, Senator HANSEN and Senator JACKSON, and it was passed by the House of Representatives.

I move the adoption of the bill.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill (H.R. 12264) was read the third time and passed.

Mr. HANSEN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. NELSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. NELSON. I thank the Senator from Wyoming.

REVENUE ACT OF 1978

The Senate continued with the consideration of H.R. 13511.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, will the Senator from Wyoming yield 30 seconds to me?

Mr. HANSEN. I yield 1 minute to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 1 minute.

UP AMENDMDENT NO. 2033

(Purpose: To prohibit the issuance of fringe benefit regulations)

Mr. HATCH. Mr. President, I call up my unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the Senator's previous amendment is set aside per the previous agreement.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) for himself and Mr. STEVENS, Mr. CURTIS, Mr. EASTLAND, Mr. TOWER, Mr. YOUNG, Mr. DOMENICI, Mr. SCHMITT, Mr. HELMS, Mr. GARN, Mr. GOLDWATER, and Mr. HAYAKAWA, proposes unprinted amendment numbered 2033.

Mr. HATCH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following section:

SEC. . FRINGE BENEFIT REGULATIONS.

No regulation shall be issued in final form providing for the inclusion of any fringe benefit as part of gross income by reason of Section 61 of the Internal Revenue Code of 1954.

Mr. HATCH. Mr. President, this amendment prohibits the Treasury Department from issuing final regulations that would include employee fringe benefits as part of gross income. It is designed to remedy a very serious problem, a problem that would not have arisen were it not for the overzealous reinterpretation of the Tax Code by the Internal Revenue Service.

Present law forbids the IRS from instituting any new taxes on fringe benefits until 1980. I believe this ban on IRS regulations should be made permanent. It is the responsibility of Congress to determine tax policy, not the IRS.

It has been the traditional role of the Internal Revenue Service to exclude fringe benefits from taxation unless expressly instructed otherwise by the House and Senate. Only in recent years has the bureaucracy taken such a keen interest in these benefits. This issue digs deeply into the pocketbocks of the American public. According to the Bureau of Economic Analysis, if fringe benefits were taxed today, it would mean an increase of $240 to the average tax payer.

IRS Commissioner Jerome Kurtz and his agency have exhibited an unusual persistence in trying to include fringe benefits as part of taxable income. In an interview last year with U.S. News & World Report, the Commissioner was asked: "Why do you not assume that if Congress wanted to tax employee fringe benefits, it would have told you? The Commissioner responded and I quote:

We really don't have the option simply to stand still for practices that have been followed in the past. Our revenue agents in the field are bright and inventive.

The Commissioner adds that he is looking at employee fringe benefits "with considerable intensity." He says he takes "a very broad approach." He adds, "I believe they're basically taxable."

Mr. President, my fellow Senators, I did not know that the tax laws of this Nation were decided by "bright and inventive revenue agents." I did not know that the IRS Commissioner could pass judgment on the tax practices established by the Congress. And I do not believe this Congress will tolerate that kind of action.

What kind of benefits will be taxed by these regulations? The IRS has already indicated, if allowed, it will include the following as taxable income: Discounts for store clerks; free parking spaces; free trips for airline, bus, and railroad employees; company picnics; company Christmas parties; education in the form of free on-the-job training; free tuition for children of university faculty; meals provided to an employee at a discount rate; and a score of other items now considered to be tax-free. The imaginative powers of the IRS seem to be unlimited with regard to this matter. When will it stop? If a parking space becomes taxable income, because it is a benefit, will the IRS eventually conclude that the benefits of a housewife are also taxable income?

And who will be hurt most by these regulations? Not high salaried executives who can more easily absorb an increase in taxes. The people most affected will be the low- and middle-income wage earners, the men and women who already have trouble making ends meet. A tax on fringe benefits will require a much higher percentage of their wages, without any additional take-home-pay to offset an additional tax. Mr. President, I do not believe that the budget of the average taxpayer has any slack in it. The average taxpayer does not have the spare cash on hand to pay taxes on the discounts that his employer gives him or to pay taxes for his use of company-owned recreational facilities.

The taxpaying public is clamoring for a reduction in taxes, not an increase. And rightly so. According to the economic unit of U.S. News & World Report, the combined taxes levied by Federal, State, and local governments amounted to $521 billion in 1977, an increase of 62 percent since 1972, a period of only 5 years. And now the IRS wants more. Can the Senate justify such actions at a time when America's savings and investment rates are already among the lowest in the industrialized world? At a time when the Senate has promised the American people a substantial tax cut?

Mr. President, the law that now restricts the IRS from taking immediate action will expire in less than 15 months. During that period, many long-term labor contracts will be negotiated by companies and labor unions. As a member of the Human Resources Committee, I am concerned about the failure of the Congress to provide a clear indication as to what portion of fringe benefits will someday be taxable. How can business and labor negotiate with any certainty when the Government cannot agree on a definition of gross income? If IRS regulations are reinstated at some future date, any gains achieved by labor unions during contract negotiations may suddenly be wiped out. Woe to the labor leader who must explain such an unfortunate situation to the rank-and-file. But greater tragedy will befall the workers and their families. Business and industry leaders are also facing a dilemma. Long-term planning is seriously curtailed by the unpredictability of future wage and benefit commitments. Is not contract bargaining tough enough without adding this variable of uncertainty?

Mr. President, this amendment may be the only one introduced to the tax bill that will have no impact on the current budget or any projected budget. By adding this measure to the bill, the Senate will not cut taxes. It will simply give Congress more control over future taxation.

To date, we in the Congress have not been willing to face this issue headon. On August 2 of this year, the Senate passed H.R. 12841, a bill which restricts the IRS from issuing regulations on fringe benefits until 1980. This bill extended an earlier bill, H.R. 9251, which prohibited the issuance of regulations until July 1 of this year. Instead of providing the IRS with proper instructions to leave tax legislation to the Congress, we have twice put off considering the matter until "a review of these issues" can be undertaken. The manner in which this problem has been handled has only increased the uncertainty about the future taxation of these benefits. The

House Ways and Means Committee should be credited, however, for its action to create a task force that has already begun hearings. I look forward with great interest to learn the details of their findings. But in general, what will the task force tell us? They will tell us what fringe benefits, if any, should be taxed. When we receive that information, we should act, and act decisively. The decision to impose a new tax on any fringe benefits should be made here in Congress. Unless the law is changed, that will not occur. It is senseless to allow the IRS the prerogative to act first, which then forces Congress to repeal its regulations. It is time to put an end to this game of "cat and mouse." Let the task force make its suggestions and let Congress impose the tax.

Commissioner Kurtz has taken his stand on this issue. His persistence in raising additional revenues appears unrelenting. Edward E. Scharff, writing in this month's issue of Money magazine made the following observation about the most recent viewpoint espoused by the Commissioner:

The issue has become so volatile that Kurtz and other administration officials now refuse to be interviewed on fringe benefits. But Kurtz' aides make it plain that if Congress fails to act decisively, Kurtz will be ready to take tough measures in 1980. Moreover, they note, the present Congressional ban merely precludes IRS officials from issuing new guidelines on the subject. It does not prevent IRS agents from taking matters into their own hands. Most agents are well aware of their boss' sentiments regarding fringe benefits. It is unlikely they will wait for Kurtz to announce a formal policy before taking action.

The time has come to put an end to these unsolicited efforts by the Internal Revenue Service to heap a heavier tax burden on the shoulders of millions of American taxpayers. Congress must act now to prevent future abuse by the IRS. I do not believe the American people will tolerate an additional and burdensome tax that is harshly imposed by our unelected bureaucracy.

Mr. President, I intend to ask for the yeas and nays on this amendment.

And I ask unanimous consent that this be placed in the order following other amendments preceding it.

Mr. PROXMIRE. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Wisconsin reserves the right to object.

Mr. PROXMIRE. What was that request?

Mr. HATCH. That this amendment be also placed in the order behind the other preceding amendments.

Mr. PROXMIRE. I thank the Senator.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. There is objection.

The PRESIDING OFFICER. The Senator from Ohio objects.

Mr. METZENBAUM. I have no objection with respect of bringing up one of the Senator's amendments, but I think there is a question of whether we should stack them all up. There are other Members who have amendments to bring up. I object.

The PRESIDING OFFICER. Objection is noted.

Mr. HATCH. All right.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, will the Senator yield?

Mr. HANSEN. Mr. President, I yield 2 minutes to the Senator from Montana.

Mr. MELCHER. I thank the Senator from Wyoming.

UP AMENDMENT NO. 2034

(Purpose: To provide that both the dependent's and spouse's services are given adequate consideration in determining estate tax basis for jointly owned farm or business interests)

Mr. MELCHER. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. As long as the amendment of the Senator from Utah is pending, no further amendments are in order.

Mr. MELCHER. I ask unanimous consent that the Senator's amendment be set aside and my amendment be called up.

Mr. HATCH. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. I am happy to have unanimous consent to set my amendment aside and put in order, and I will even allow this Senator's amendment to go ahead of mine, otherwise we are going to hear mine.

Mr. MELCHER. Mr. President, I reserve the remainder of my 2 minutes.

Mr. ROBERT C. BYRD. Mr. President, I hope that we will not have objections to setting amendments aside so that the Senate can make some progress.

I hope the Senator from Utah could have his amendment up, and I understood he had one amendment up and one set aside for a second one. I hope that Senators would not object, because in due time the Senate will work its will on the first amendment in any event.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. HATCH. Mr. President, I asked that my amendment be set aside in the regular order and then called up. I asked for the yeas and nays at that time. It was objected to. If they want to object to that, I will allow my amendment to be pending.

Mr. ROBERT C. BYRD. I understand that. I am trying to defend the Senator.

Mr. HATCH. I understand that, and I appreciate it.

Mr. ROBERT C. BYRD. I hope objection will not be made to his calling up another amendment and there will not be objection to the Senator from Montana, so the Senate can be getting some work done. Otherwise, it is just wrangling and getting nothing done and eventually we are still going to have to dispose of both of those amendments one way or another.

So, Mr. President, I ask unanimous consent that the Senator have one amendment pending.

Mr. HATCH. I have one set aside, and this is my present amendment which is the pending amendment. I ask unanimous consent that it be set aside and placed in the order behind the other amendments that presently exist following the cloture vote.

Mr. ROBERT C. BYRD. And then let the Senator from Montana be permitted to go ahead.

Mr. HATCH. Fine.

Mr. ROBERT C. BYRD. I hope that will not be objected to.

Mr. METZENBAUM. Mr. President, reserving my right to object, will the agreement to accept the amendment at that point preclude the raising of a parliamentary inquiry as to whether or not it is a germane amendment at that point?

Mr. ROBERT C. BYRD. No; it will not.

Mr. HATCH. I will not ask that.

Mr. ROBERT C. BYRD. We waive no points of order in getting the unanimous consent.

Mr. METZENBAUM. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Montana.

Mr. MELCHER. I thank the Senator.

And I ask that my amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes unprinted amendment numbered 2034.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 374, line 18, strike out "spouse of the decedent" and insert in lieu thereof "decedent and the spouse of the decedent".

On page 374, lines 22 and 23, strike out "acquisition indebtedness" and insert in lieu thereof "value"

On page 375, lines 7 and 8, strike out "acquisition indebtedness" and insert in lieu thereof "value"

On page 376, strike out lines 8 through 15 and insert in lieu thereof the following new subparagraphs:

"(C) Inherited property.—For purposes of applying this subsection and subsection (a) in the case of any property which had been acquired as separate property either by the decedent or surviving spouse by gift, bequest, devise, or inheritance, the value of such property (at the time acquired by the decedent or surviving spouse) shall be taken into account under this subsection as additional consideration furnished by the decedent or spouse who acquired such property by gift, bequest, devise, or

"(D) COORDINATION WITH SUBSECTION (a).—If elected by the executor, the amount of consideration furnished shall be determined solely under this subsection for purposes of applying subsection (a). The election shall be made in such manner as prescribed by the Secretary."

Mr. MELCHER. Mr. President, this amendment is easy to understand. It corrects the situation where the wife,

when her husband dies, for purposes of inheritance tax, cannot count the appreciated value of the property that they have worked on on their farms and ranches across all of America. This is totally unfair, but yet that is the way our tax law now exists.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. MELCHER. I yield.

Mr. MUSKIE. Does the Senator have a copy of his amendment so we can evaluate its budgetary implications?

Mr. MELCHER. Yes.

The widow survives the husband. There was a debt on the farm or ranch at the time that she became the wife. Even though it was 30 or 40 years ago, the value of the farm or ranch that was inherited at the time of marriage, when it comes to the time of figuring out how much of that inheritance or the surviving widow will be counted as contributing to the value she is entitled to have she has to go clear back to the time of acquirement.

It is totally unfair. The woman on the farm or ranch contributes just as much to the success of that operation as does the husband, and to not allow the woman, when she becomes a widow, to have the value of the appreciation of the land is totally unfair.

While part of the bill before us corrects some of this, this merely adds to it and makes it totally fair. If we believe in ERA, if we believe that women have an equal right to property, then by all means the Senate should accept this unanimously.

Mr. METZENBAUM. Mr. President, will the Senator yield for a question?

Mr. MELCHER. Yes.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. METZENBAUM. It is controlled time.

Mr. HANSEN. Maybe the Senator from Maine would yield to the Senator from Ohio.

Mr. MUSKIE. Yes, I yield a minute. I might say again we are undertaking to get the budgetary implications, and there is a possibility that it has budgetary implications.

I yield to the Senator from Ohio.

Mr. METZENBAUM. I appreciate the Senator from Maine yielding.

Will the Senator from Montana indicate why there should be this discrimination? Will the Senator indicate why women who live on farms, on ranches, as against city dwellers who also pay tax, and where the women are oftentimes involved in a little family-owned business, where they pay a tax on a business similar to a ranch, I wonder why we are standing here suggesting a special kind of preferential treatment for those women who live on farms and ranches in contradistinction to those who live in the cities?

Mr. MELCHER. I am happy to tell my friend from Ohio that we do not make any distinction at all. If it is a small business the same applies. If it is a large business the same applies. It is just between the surviving spouse, and it will not apply just to land, but that is the point I am particularly addressing myself to.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. PROXMIRE. Mr. President, will the Senator yield me 1 minute?

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, will the Senator from Maine (Mr. MUSKIE) yield me 1 minute?

Mr. MUSKIE. Yes, I yield 1 minute.

Mr. PROXMIRE. Mr. President, may I ask the distinguished Senator from Montana under the present law, as I understand it, you pass an estate from a husband to a wife tax-free at $106,000. This amendment can only help estates above that amount; is that correct?

Mr. MELCHER. It would help an estate of $500,000, $300,000, $200,000.

Mr. PROXMIRE. Under the present law, it is up to $106,000, so unless you have an estate higher than that it would not have an effect.

Mr. MELCHER. That is not our understanding at all, that it is exempted up to that amount. The exemption is much smaller.

Mr. PROXMIRE. Our information is that it is exempt up to that point where it is passing from husband to wife only.

What is the revenue effect of the Senator's amendment? How much is involved?

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. MELCHER. I ask for an additional 1 minute from somebody to respond.

Mr. MUSKIE. I yield 1 minute.

Mr. MELCHER. Under existing Federal estate tax law the exemption is $134,000 plus $250,000, so we are not talking about a passage from husband to wife. We are talking about a case of a widow on inheritance. In answer to the question on how much it would cost, we are advised by the Joint Committee on Taxation that the cost is negligible over and above what is already in the bill.

Mr. MUSKIE. May I say on that, I still do not know what the first full year's cost of this amendment would be. There would be no cost in fiscal 1979 for a very simple reason. It would not be effective until after December 31 of this year and there is a period of 9 months, I believe, to file for a benefit. So the revenue implications for fiscal year 1979 will, indeed, be zero as far as we can estimate. But we also conclude that there will be a full year's cost thereafter, and we do not know what that will be.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. PROXMIRE. As I understand this amendment will come up later and we can discuss it then. There is no time limit.

Mr. STONE. Mr. President, I ask for 3 minutes.

The PRESIDING OFFICER (Mr. FORD). Who yields time?

Mr. STONE. I ask the Senator from New York whether he will yield to me for a colloquy.

Mr. MOYNIHAN. The Senator is happy to yield 3 minutes.

Mr. STONE. Mr. President, I intend to offer as an amendment to the tax bill a bill I introduced, S. 3464, which is printed amendment No. 3853, which would provide for a nonrefundable tax credit against Federal income tax liability of up to $200 for the amount of the upcoming increases for the social security required contributions for employees, employers, and self-employed.

While the social security tax rate was increased by only 1.55 percent in the last 3 years, the taxable wage base was increased by a tremendous 227 percent in the same period.

In effect, what this bill and this amendment would do would be for the next 3 years to prevent the social security contributors from suffering these tremendous increases all at once.

I wonder whether the Senator from New York, acting as floor manager of the bill, could respond to the tremendous necessity that this Senator sees with regard to protecting our middle-income taxpayers against the impact of such a social security hike coming in the next several years?

Mr. MOYNIHAN. Mr. President, may I first say that the Senator from Florida addresses himself to a very fundamental issue of this tax bill, and he does so with authority and informed concern that one can only admire and congratulate him for.

I would have to say that the Senate Finance Committee has designed this tax reduction bill to meet precisely the concerns of the Senator from Florida, which is to say that the tax reduction will more than cover the scheduled social security tax increases which concern him.

He is absolutely right to raise the question. But what I would hope is that he might judge that the committee has responded to his concern and, in the circumstances, I would hope he might agree that it is not necessary at this time to offer his amendment.

Mr. STONE. I thank the distinguished floor manager of the bill, the Senator from New York.

I think it is vitally important that the middle- and lower-income taxpayer who is about to pay increased contributions to social security, recognizes the fact that this Senate, acting on the recommendation of the Senate Finance Committee, is indeed, making offset protection available, lessening the burden on those social security taxpayers by at least as much.

Mr. MOYNIHAN. Mr. President, can we have order? The Senator from Florida is making an important point which the Senators will wish to hear.

Mr. STONE. I thank the Senator from New York.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. MOYNIHAN. I yield 1 more minute.

Mr. STONE. I think it is vitally important that the message arrive in the minds of the social security taxpaying contributors in the next several years that this Senate, responding to the Senate Finance Committee's bill, is making offset protection.

My bill and my amendment were going to directly do that. What the committee

has done and what the Senate presumably will do is to do in a variety of provisions what the Senator from Florida would like to haye done, and which would take care of this increased burden.

Mr. MOYNIHAN. The Senator is correct. May I say it was the Senator's concern which in no small measure animated and guided the committee's action during the drafting process.

Mr. STONE. I thank the Senator.

In light of this response I will not call up my amendment 3853. I thank the Senator.

Mr. MOYNIHAN. May I say it is for us to thank him for having been so active in the matter in the first instance. I appreciate his courtesy of withdrawing the amendment.

Mr. STONE. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. HODGES. Mr. President, will the Senator yield 1 minute?

Mr. MOYNIHAN. I would be happy to yield 1 minute.

UP AMENDMENT NO. 2035

Mr. HODGES. Mr. President, Friday night, October 6, an amendment was agreed to of the Senator from Arkansas (Mr. BUMPERS), and which was accepted by the Senator from Louisiana.

Unfortunately, that amendment was drawn to amend the bill itself, when in fact it needed to be drawn to amend the committee amendment.

So at this time I ask unanimous consent that the committee amendment be deemed to be amended in just the same way as the bill was amended by amendment No. 3589 on October 6, 1978. There are no Treasury problems or other difficulties, and I ask unanimous consent that that be done.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HODGES. I thank the Senator from Oklahoma, and I thank the Chair.

Mr. HANSEN. Mr. President, I yield 1 minute——

The PRESIDING OFFICER. Will the Senator withhold just a moment, please?

Will the Senator from Arkansas send his correction to the desk?

Mr. HODGES. Would I send the unanimous-consent request?

The PRESIDING OFFICER. The amendment with the correction.

Mr. HODGES. Yes. Is the amendment in order?

The PRESIDING OFFICER. The amendment is in order.

The amendment, as modified, is as follows:

At the appropriate place in the bill add the following new section:

"SEC. . AMENDMENT OF GOVERNING INSTRUMENTS TO MEET REQUIREMENTS FOR GIFTS OF SPLIT INTEREST TO CHARITY

(a) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF ESTATE TAX.—The first sentence of paragraph (3) of section 2055(e) is amended to read as follows: "In the case of a will executed before December 31, 1977, or a trust created before such date, if a deduction is not allowable at the time of the decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a), to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1978, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1978 (which are required to amend or conform the governing instrument), become final, so that interest is in a trust which meets the requirements of such subparagraph (a) or (B) (as the case may be), a deduction shall nevertheless be allowed."

(b) CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN THE CASE OF INCOME AND GIFT TAXES.—Under regulations prescribed by the Secretary of the Treasury or his delegate, in the case of trusts created before December 31, 1977, provisions comparable to section 2055(e)(3) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall be deemed to be included in sections 170 and 2522 of the Internal Revenue Code of 1954.

UP AMENDMENT NO. 2034

The PRESIDING OFFICER. The question recurs on agreeing to the amendment of the Senator from Montana. Who yields time?

Mr. HATCH. Mr. President, will the distinguished Senator from Wyoming yield me 1 minute?

Mr. HANSEN. I yield 1 minute to the Senator from Utah.

Mr. HATCH. I call up an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair is advised that until the amendment of the Senator from Montana is disposed of, no other amendment can be considered.

The question now recurs on agreeing to the amendment of the Senator from Montana. Who yields time?

Mr. METZENBAUM. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I——

The PRESIDING OFFICER. Who yields time to the Senator from Ohio?

Mr. PROXMIRE. Mr. President, will the Senator from New York yield me 1 minute on the amendment?

Mr. MOYNIHAN. I would be happy to.

Mr. PROXMIRE. Mr. President, we are in an impossible situation here. I do not think anyone intended to have a limitation of debate on these amendments; but if we cannot debate them we are going to have to vote without an opportunity to hear what they are. The Senator from Montana probably has a good amendment, but we have had no opportunity to debate it or consult the Treasury about it. I do not think there was any limitation intended, so I hope the Chair will find a way whereby we will not be in a position that we cannot have a chance to consider amendments before we have to vote on them.

Mr. ROBERT C. BYRD. Mr. President, the Chair cannot control this. The Senator will have to obtain time from someone that has control of time. The Chair cannot yield it.

The PRESIDING OFFICER. The question recurs——

Mr. MOYNIHAN. Mr. President——

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. MOYNIHAN. I yield myself 1 minute.

I am advised that the Treasury Department, while generally supportive of the amendment of the Senator from Montana, would wish that a modification be made in it, and I wonder if it would be possible for his amendment to be set aside for a moment while the Senator confers with representatives of the Treasury Department, so that he might bring us back an amendment we would all happily support, as I think it is our disposition to do.

I yield 30 seconds to the Senator from Montana to respond.

The PRESIDING OFFICER. The Senator from Montana has 30 seconds.

Mr. MELCHER. Mr. President, I would be happy to do that, and would be delighted to agree with the request, if we can have a vote, if it is necessary, at 1:30.

Mr. MOYNIHAN. That would be agreeable to me.

Mr. METZENBAUM. Mr. President, I may want to make a motion to lay it on the table, and I do not wish to have my rights precluded on that subject.

Mr. MOYNIHAN. That is a vote.

Mr. HANSEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HANSEN. If a motion is made to table, and the yeas and nays are called for, out of whose time does that come?

The PRESIDING OFFICER. It would be divided equally between the three Senators controlling the time.

Mr. METZENBAUM. Mr. President——

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Will the Senator from New York yield me 3 minutes?

Mr. MOYNIHAN. The Senator from New York will yield 2 minutes.

The PRESIDING OFFICER. The Senator from Ohio has 2 minutes.

Mr. METZENBAUM. I thank the Senator.

Mr. President, I am not sure whether I am for or against this amendment, and frankly, without having adequate time to debate an amendment of this nature on the floor, to learn exactly what it does, I think it is impossible for the Members of the Senate to proceed with any diligence in the exercise of their responsibilities.

I think this amendment overlooks a matter that is of great significance at the moment, relative to the value of stocks of a corporation owned by a decedent, and the question of whether or not that value is related to the time that the decedent passes away or goes back to the original value of the stock when the decedent acquired it.

That is a major issue that is pending at the moment. Congress acted on that subject, and then has delayed implementation of it.

I would like to know what this amendment is all about. I think there is a lot of money involved in it; but frankly, without adequate time for debate, I frankly want to make it clear that I will object to any other amendments being brought up—or any special orders with respect to them; I cannot object to amendments being brought up—at least until such time as I am assured there

will be adequate time to debate in full such amendments.

Mr. MOYNIHAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. METZENBAUM. May I have 10 more seconds, before the Senator does that?

Mr. MOYNIHAN. I withdraw the quorum call request, and yield 10 seconds to the Senator from Ohio.

Mr. METZENBAUM. I have just been advised that the Melcher amendment would cost between $40 million and $80 million, starting in 1980. If that be the case——

Mr. MOYNIHAN. It would not be the case in fiscal 1979.

Mr. METZENBAUM. That is correct, starting in 1980; $40 million to $80 million, according to the Joint Committee on Internal Revenue Taxation.

Mr. President, that is not an insignificant amount.

The PRESIDING OFFICER. Who yields time?

Mr. HANSEN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 15 minutes.

Mr. HANSEN. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator may proceed.

SUNSET AMENDMENT

Mr. HANSEN. Mr. President, I hope the distinguished Senator from Ohio (Mr. GLENN) is here. He has been waiting most patiently to hear me, and I know he will be tremendously interested in what I have to say.

Mr. President, I rise to oppose the amendment of the distinguished Senator from Ohio which has the purpose of adding so-called "tax expenditures" to the sunset bill.

Mr. President, I am not a philosopher but I disagree with the underlying rationale of tax expenditures. Implicit in any argument on tax expenditures is the underlying assumption that the Government has a prior right to all of the taxpayer's income and it is only through a combination of Government generosity and tax expenditures that we the taxpayers are allowed to keep anything.

Now, my view of taxes is that they are the obligation of the citizens to pay for the ordinary and necessary functions of Government. No more. The Government is not entitled to one dime more than it needs to carry out those functions.

Now, I have told you I am no philosopher and I do not think there are too many philosophers in my State, but I will tell you this: The people in Wyoming have no trouble understanding the idea that the Government has a right to all the wealth in the country; they just think it is crazy.

Mr. President, we have seen some very pretty charts prepared by the Senator from Massachusetts on these tax expenditures. They seem to show hundreds of billions of dollars being lost to the Government through insidious, offensive, special interest "loopholes." Let us take a look at some of these loopholes:

Exclusion of sick pay—that is when an employee gets sick and the employer continues his wages—there is a very limited exclusion of income.

Exclusion of unemployment benefits.

Exclusion of workmen's compensation benefits.

Exclusion of special benefits for disabled coal miners.

Exclusion of capital gain on the sale of their home for those over age 65—this is so a retired couple who sells their home and moves to an apartment (probably on a fixed income) do not get hit with a huge capital gain. But do not worry, Mr. Kennedy, under present law we still get them under the minimum tax provisions.

Here are some more "tax expenditure loopholes":

The additional exemption for those over age 65.

The retirement income credit for the elderly.

Exclusion of veterans disability compensation.

Exclusion of veterans pensions.

Exclusion of benefits from the GI bill.

And how about this loophole:

The additional exemption for the blind.

One of the largest and in fact fastest growing item of the so-called tax expenditure is the personal deduction for State and local income and sales taxes. In other words, the provision that prevents double taxation is listed here as a tax expenditure.

And every time a State raises its taxes, the deduction gets larger and Mr. Kennedy gets to put another one-half inch on his red and blue columns of tax expenditures.

Let me turn now to the estimates of these tax expenditures. Much has been made of the fact that the Joint Committee on Taxation and the Treasury compiled this list of tax expenditures. This somehow attests to their authenticity. What has not been pointed out is that the Joint Committee was very careful to warn us about the indiscriminate use of these figures.

First, each of these figures for each tax expenditure is based on the assumption that only the tax provision in question is deleted and all other features of the tax system, including the structure of rates, remain unchanged.

Second, each tax expenditure is measured in isolation. That is, it is assumed that economic considerations remain unchanged in response to the deletion of each item. In other words, if the capital gains exclusion were repealed, these estimates assume no change in investment pattern, consumption or any other aspect of economic activity.

This is what the Joint Committee on Taxation said about its estimates:

> A tax expenditure is, however, only the revenue gain directly associated with a hypothetical repeal of the provision in question and does not reflect any revenue loss due to a decline in economic activity which might result from repeal of that tax provision.

The third assumption is that taxpayer behavior remains unchanged in response to the hypothetical repeal of a tax expenditure provision. The Joint Committee says of this "In many cases this assumption is unrealistic." Finally, we have heard numbers exceeding $100 billion in tax expenditures. How is this arrived at? Senator KENNEDY has simply added up all the individual numbers and tells us we are "losing" $100 billion in tax expenditures. This is what the Joint Committee says about that:

> Tax expenditure estimates cannot be simply added together to form totals for * * * a grand total.

Repeal of multiple provisions is simply not the total of the individual estimates.

Let me summarize my position:

First. I disagree with the concept of the government claiming a right to all wealth.

Second. Tax expenditures of the kind listed by the Budget Committee are falacious and misleading.

Third. The definition of tax expenditures by the Budget Committee goes to gross income only, yet the amendment by Senator Glenn includes estate taxes, gift taxes, and excise taxes. These items have never been considered by the Joint Committee or the Congressional Budget Office.

Fourth. The estimates of the so-called tax expenditures are totally invalid when considered in toto and even individually since it is based on a static economy which simply is not true.

Fifth. The Glenn amendment is not simply a review process. It runs the very real danger of having tax laws that are beneficial to the citizen of every class expire through inaction or error of the Congress: two possibilities that I would not bet against.

The PRESIDING OFFICER. Will the Senator suspend?

The Senator is entitled to be heard. Will Senators who wish to have discussions please retire to the cloakrooms?

Mr. HANSEN. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. STONE. Mr. President, I ask for 3 minutes to bring up an amendment, which I will then ask to have set aside.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. How much time have I remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 29 minutes.

Mr. LONG. Mr. President, I yield 2 minutes to the Senator.

Mr. STONE. Mr. President, I call up amendment No. 3882.

The PRESIDING OFFICER. The amendment of the Senator from Montana is pending.

Mr. STONE. Mr. President, I ask unanimous consent that it be in order to call up amendment No. 3882 for a period of 2 minutes, following which it will be set aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 3882

(Purpose: Relating to charging of excess earnings under social security program)

Mr. STONE. Mr. President, I call up my amendment No. 3882 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Florida (Mr. STONE) for himself and Mr. CHILES, proposes amendment No. 3882.

Mr. STONE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title VI of the bill, add the following new section:

CHARGING OF EXCESS EARNINGS UNDER SOCIAL SECURITY PROGRAM

SEC. . (a) Section 203(f)(1) of the Social Security Act is amended—

(1) in clause (E) of the last sentence thereof—

(A) by inserting "(with respect to which an election made under the succeeding sentence is effective)" immediately after "the taxable year", and

(B) by striking out "the first month" and inserting in lieu thereof "the first month after December 1977", and

(2) by adding at the end thereof the following new sentence: "The provisions of clause (E) of the preceding sentence shall be applicable to the excess earnings of an individual for the one (and only one) taxable year of such individual with respect to which such individual has elected (in such form and manner and within such period as the Secretary shall by regulations prescribe) to have such provisions apply to such excess earnings.".

(b) The amendments made by this section shall apply with respect to monthly benefits payable for months after December 1977, as though such amendments had been a part of the amendment made by section 303(a) of the Social Security Amendments of 1977.

Mr. STONE. Mr. President, I ask unanimous consent that the Senator from Idaho (Mr. CHURCH), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Michigan (Mr. RIEGLE) be added as cosponsors to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STONE. Mr. President, my distinguished colleague from Florida (Mr. CHILES) and I offer this amendment to the Revenue Act of 1978.

Our amendment would alleviate the financial hardships caused by the retrospective application of recent changes in the social security earnings test.

Mr. President, as you know, the Social Security Act Amendments of 1977 eliminated the monthly earnings test in favor of an annual test for the purpose of determining eligibility. An exception was provided to allow retirees to use the monthly test in the first year of retirement in order to prevent any loss in benefits for those who worked part of a year before retiring. The effective date of this change was January 1, 1978.

Unfortunately, the Social Security Administration's interpretation will prevent many persons, particularly retired teachers, from taking advantage of the "first year of retirement" exception contained in the legislation. Under the interpretation, the first year in which a nonservice month is used constitutes the first year of retirement, even though the nonservice month used was in a year prior to 1978, when the new law went into effect.

Mr. President, there were three groups of people who were adversely affected by our change in the earnings test: retired insurance agents, retirees engaged in agricultural businesses, and retired teachers. The Senate has already passed legislation, H.R. 12380, which would alleviate the problem encountered by the retired insurance agents. This legislation is now in conference. Those retirees engaged in farming were given relief through an administrative ruling of the Social Security Administration. This leaves the retired teachers as the only group which has not been afforded the relief they deserve. It is the intent of this amendment to provide such relief to this worthy group of individuals who have been unfairly penalized.

Mr. President, an active teacher who was eligible for social security benefits in July and August of 1977 but did not retire until June 1978, would receive no benefits until January 1979. Such a person would be denied the "first year of retirement" exception in 1978 because of the retrospective application of the new test, a provision which would have not been foreseen in the summer of 1977.

I do not believe that Congress intended its legislation to be retroactively applied on those unsuspecting senior citizens who planned their retirement under the old laws. Mr. President, our amendment would clarify our intent and eliminate the retrospective effect of the SSA ruling. It would allow all social security beneficiaries to use the monthly earnings test in any 1-year period after 1977.

The number of persons adversely affected by the retrospective application of the law is estimated by the SSA to be 250,000. Mr. President, I feel that it is incumbent upon the Congress to adopt this measure in fairness to those recent retirees.

Mr. President, another problem our amendment addresses is that some people, who have reached the age of 65 but still plan to continue working, apply for social security solely to qualify for medicare. These beneficiaries would not be covered because they would incur nonservice months in more than 1 year after 1977. Our amendment includes the proper technical changes to allow a qualified individual to receive medicare protection without jeopardizing his/her retirement status for the determination of social security benefits.

Mr. President, I strongly urge the adoption of our amendment so that Congress will have dealt fairly with the problems encountered by our senior citizens due to the misinterpretation of legislation passed by us in 1977.

Mr. President, I ask unanimous consent that the article, "A Booby Trap for Social Security Retirees," which appeared in the September 18 issue of U.S. News and World Report be printed in the RECORD. I feel that this article outlines in great detail the problems which have been encountered by retirees as they try to grapple with the new retirement tests.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A BOOBY TRAP FOR SOCIAL SECURITY RETIREES

An obscure change in the retirement test for Social Security benefits, it turns out, is going to have a shattering impact on millions of unsuspecting people, many of them already retired. Some examples—

Thousands of retired business and professional people who are drawing benefits in 1978 suddenly have been disqualified for those benefits and, sooner or later, are going to be required to pay back most or all of the checks received in 1978 or later.

Many who retire will learn, perhaps too late, that they will not be entitled to any benefits in their retirement year. As a result, they may be in for some lean months.

Thousands who are working just enough hours to pick up $50 in wages in each calendar quarter in order to qualify for a future Social Security benefit are really not earning or getting any pension credits for this work and for the payroll taxes taken out of their small stipends.

For countless others, the change in ground rules makes careful planning a matter of crucial importance as retirement time approaches.

To help you avoid the traps laid down by the rule change that Congress wrote into law last December, here, in question-and-answer form, is a look at the old and new rules.

Just what is the change in the retirement test?

Basically, it is a shift from a monthly to an annual basis for determining if an individual is retired and, thus, eligible for benefits.

Under the old law, a person was counted as retired in any month in which he or she did not earn more in wages than one twelfth of the annual maximum amount allowed and did not perform any "substantial services in self-employment."

Under that rule, many retired people—as well as their spouses, widows or widowers and even surviving children—have made it a practice to work part of each year. If they worked for, say, four months and earned $10,000, or any substantial amount, they lost benefits for only those four months. They drew their regular benefit check for the other eight months.

Now, as a general rule, that monthly test is eliminated. Any wages or self-employment income in excess of the maximum amounts allowed, shown in the table, will cause a loss of benefits, no matter when the money is earned during a year. For each $2 above the limit, the individual will lose $1 in benefits.

How, then, can a person draw any benefits in the year of retirement?

Obviously, someone retiring at mid-year after earning, as an example, $12,000, could get few, if any, benefit checks for six months under the new rule. His earnings in the months prior to retirement would eliminate benefit checks for the rest of the year. So Congress provided an exception. In the year of retirement, and only in that year, the retiree still can make use of the monthly test. If a worker retires at midyear, and in each of the last six months of the year neither earns more than a twelfth of the maximum annual amount nor works very much in self-employment, he or she will be eligible for benefits in those six months.

This makes it extremely important to select the retirement year with care. What is the definition of the retirement year?

The retirement year is the one in which the individual first satisfies this test: He or she applies for benefits, is old enough and otherwise eligible, and has at least one month in which he or she neither earns more than the exempted wage amount nor performs substantial self-employment services.

To illustrate, suppose you will reach age 65 in November and you plan to retire and start drawing benefits at that time. If you do, you will make 1978 your retirement year. But this means that you will be able to

make use of the monthly retirement test for only two months, November and December. It might be wise to wait until January, 1979, to apply and establish your entitlement to benefits. Then, in 1979, you could earn unlimited amounts and lose benefits only for months in which you work.

How, with that exception, can people lose first-year benefits?

By unknowingly setting their retirement year prematurely and, thus, wasting their one-year privilege of applying the monthly retirement test. Example: A schoolteacher who reached age 65 last spring applied for benefits immediately, though she planned to continue teaching through June, 1979. Under the monthly retirement test, she was able to draw full benefits for the school-vacation months of July and August.

Now it turns out that the teacher's move last spring to qualify for benefits made 1978 her retirement year. So, if she retires next summer, she will get few or no Social Security benefits for six months. Under the annual retirement test, her salary for the first half of next year, before she actually retires, will bar most or all of the benefit checks she anticipates for the last half of 1979.

What if one applies at age 65 just to qualify for medical benefits?

That can still be done, but care is needed. Let's suppose, as an illustration, that you—a self-employed person—did just that in June, 1977. Then you spent the month of December lolling on the beach in the Bahamas. Or let's say that, after applying for benefits, you quit one job and found another and, thus, earned very little in wages in December.

In either case, you applied and qualified for benefits and had one nonworking month. That, unfortunately, made 1977 your retirement year. Now, when you actually retire, you will not be able to make use of the monthly retirement test. Therefore, if your total earnings in your year of actual retirement exceed the maximum allowance, no matter when you earn the money during the year, you will lose at least some, perhaps all, of your benefits that year.

Note this fact: It makes no difference that you did not draw any retirement benefit for December. You were, in all respects, entitled to draw and did not work. It is the mere existence of entitlement for one month that counts in determining your retirement year under the new annual-earnings rule.

What should an individual do to avoid trouble with the new rule?

Plan carefully. For people in various situations, here are some moves to be considered—

An individual who has not yet established a month of entitlement: If you apply simply to qualify for hospitalization insurance, be careful to avoid any nonworking months until you are ready to retire. Or wait to apply for hospital protection until you need it—that's soon enough. Note that you can apply strictly for supplemental medical insurance, and start paying premiums, without becoming entitled to retirement benefits and wasting your one year's use of the monthly rule.

Someone who, without intending to, has already established a month of entitlement and, so, has already lost out on the monthly rule: You should be careful to plan your retirement starting early in a year. Otherwise, you are likely to lose some or all of your benefits for that year, even if you do not do any work for money after you actually retiree.

An individual who, despite these warnings, retires in, say, September, only to find that no benefits can be paid for September through December. Inquire at your Social Security office about special arrangements to draw some of your 1979 benefits in advance, with the amounts to be deducted from 1979 checks. This arrangement can save you from a sudden loss of income. In 1980, your Social Security payment will go back up to the normal level.

Note: For self-employed individuals whose accounting or fiscal periods are not calendar years, the regulations are more complex and require even more careful planning. Check with the nearest Social Security Administration office to find out what you should do.

Can this new rule hurt people who already have retired?

Yes, indeed. They must meet the annual retirement test if they expect to go on drawing benefits. And many will find it impossible or impractical to do that.

Example: For many thousands of retired people with high earning capacity, the funds they have been taking home by working just a small part of each year will be too great to warrant cutting their earnings back to the maximum annual amount allowed in retirement. These individuals will do better to give up some or all of their benefits instead.

Retired people who were self-employed in business, the professions or farming are likely to be hit hardest. Until 1978, they could draw benefits for any month in which they did not work more than 50 hours or, for a key person in an organization, perhaps 25 hours. They may have been, and still may be, earning many thousands of dollars while drawing most or all of their Social Security benefits. However, they will not be permitted to do that anymore.

For some classes of formerly self-employed people, little can be done to avoid losing benefits entirely. An example: a partner in a law firm who became partly retired and entitled to benefits in 1976. His self-employment income since then—that is, his share of the partnership earnings—is $30,000 a year. Nevertheless, he is drawing full Social Security benefits, because he does not "perform substantial services" for the firm in any month. In time, he will learn that under the new rule he has not been eligible for any benefits since last December.

And that goes for such self-employed people as life-insurance salesmen who continue to draw commissions and farmers who sell carry-over wheat. Regardless of their continuing self-employment income in retirement, they could be paid full benefits under the old monthly test. Now, even if they do no work, they lost some or all of their Social Security checks.

Here is why: For Social Security, self-employment income is counted in the year in which it is received, no matter when it was earned. Now, without the old rule to protect benefits in nonworking months, it is simply an individual's annual earnings that are the deciding factor.

For many, some or all of the benefits they are drawing or have drawn in 1978 will have to be paid back. If neither the individual nor the government learns of their nonqualified retirement checks until, say, next year, that could be painful.

Will an executive's deferred compensation received i . retirement knock out Social Security benefits?

Each such case is on its own. In general, deferred compensation is counted when earned. If you earned it in 1976 and are drawing it in 1978, it probably will not be counted as 1978 earnings under the retirement test, although paradoxically, you may have to pay Social Security taxes on it.

Are there no other exceptions to the new annual retirement test?

There is one. If an individual loses his benefit entitlement for one month or more and then becomes entitled to a different type of Social Security benefit, he or she will get a second year in which to use the monthly retirement test.

Example: A widow under age 62 loses her "mother's" benefit when her youngest child reaches age 18. At age 62, she will become eligible for a widow's, rather than a mother's benefit. In the year she decides to start drawing a widow's benefit, she can use the monthly retirement test.

What about people working to qualify for the minimum benefit?

They come under another new rule. In switching to the anual retirement test, Congress also shifted employers from a quarterly to an annual reporting system. In the process, Congress scrapped the provision under which workers have gotten one quarter of credit for each calendar quarter in which they earned and paid tax on $50 or more.

Under the new rule, effective this year, only the total annual earnings count. Earn $250 in wages of self-employment income anytime in a year and you get one quarter of credit. You get two quarters for earning $500 in a calendar year, three for $750 and four for $1,000.

The word of that new rule is going to come as a shock to many people who have been, and are, working just enough to earn $50 each quarter.

Mr. STONE. Mr. President, I yield 30 seconds to the Senator from Florida.

Mr. CHILES. Mr. President, I just want to associate myself with the remarks of the distinguished Senator from Florida. I think the situation without the amendment to make a correction really would be totally unfair. I think that is what we are seeking—equity.

Here is a group of people who have certainly labored long and hard in the vineyards. To not give them this benefit would be totally unfair.

I wholeheartedly support the remarks of the Senator and the thrust of the amendment, which I am delighted to cosponsor.

Mr. STONE. I thank my distinguished colleague.

Mr. President, I ask unanimous consent that the amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STONE. Mr. President, I thank the distinguished Senator from Louisiana for yielding.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, I yield 5 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, I would like to reply to the remarks of the senior Senator from Wyoming (Mr. HANSEN). I do not know where he comes up with this definition of tax expenditures but it certainly is not out of this amendment.

If there is some great wild economic theory abroad in the land that in our system of free enterprise somehow the Government automatically owns all of the output of this country and that we only deign to give back to the people of this country what we out of our Federal largess decide they are likely to need, then that is some wild economic theory well beyond me and not incorporated in this amendment. Yet it keeps coming up and up and up repeatedly, as though I had subscribed to some great Communist or socialist theory of some kind,

which is certainly not in this amendment.

That would be No. 1.

I do not know where these definitions come from but they are not part of this amendment and no one can show me any part of this amendment that so defines tax expenditures. Our definition of it comes directly from the Congressional Budget Act.

So when the Senator talks about his people in Wyoming thinking this series is crazy, I join with his people in Wyoming. I highly admire the people in Wyoming and their discerning that anything like this would be complete nonsense. I support their judgment in this case.

I suppose that by not including anything for review once it has been enacted here, we would take all those items that the distinguished Senator from Wyoming listed and also say we are not going to consider increasing those. I would say, go to the sick and say, "You have what you have now, but do not ever expect the Federal Government to raise that, do not ever expect us to help you out more, because we are not going to commit to ever reviewing this, up or down or termination."

I would say go to the unemployed and say, "What you have right now, you are going to live with, Mister. If you are unemployed, do not ever expect the Government to raise that, because we are not going to consider it."

The same thing with workmen's compensation. To those coal miners in West Virginia and Wyoming, we say those benefits will never be increased because we are never going to get around to any review process that permits those things to be increased, or go up or down or be sunsetted or whatever to see if they are correct.

On capital gains for those over 65 that the Senator mentioned are moving from their homes or apartments, to give them a break on this, we say, "Never expect any more, do not expect us to increase that, because we are never going to get around to taking it up. We are not even going to consider it here, it will be this way 100 years from now, because we have no systematic procedure for ever looking at it again."

That is the only thing this bill provides to those who retire, veterans that are disabled, to veterans benefits payments, to the GI bill that we mentioned. Those things will not be considered on any regular basis. This amendment would provide a rational procedure for doing that.

Next, the Senator said in his remarks that this is not a review process. I believe that is a direct quote, "Not a review process." If this does not establish a review process, then I submit to the Senator from Wyoming that we have completely missed the mark, because that is all this amendment does. All it does is establish a systematic review process. All the rest of this talk about some wild economic theory that we have subscribed to, some Socialist or Communist doctrine that I am now supposed to be subscribing to is false. The fact that we do not take on all these different categories to the sick, unemployed, workmen's compensation, special benefits for coal miners, capital gains, retirement benefits, veterans' disability, veterans' payments, GI bill—means all of these items will not be terminated under this bill because the Senate Finance Committee refuses to review them, refuses the recommendation of the Senate, the Senate refuses to consider them, the House refuses to consider them.

I cannot, in my wildest imagination, think that we would refuse to consider those things. I am for a process that will permit those things even to be increased after due consideration. Yet we do not have that procedure now. We do not have a system for that now. That is what this amendment would establish, a very straightforward, simple review process.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. GLENN. I thank the distinguished Senator from Maine for yielding me 5 minutes.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, will the Senator from Maine yield me 3 or 4 minutes to see if it is possible to get an amendment considered and accepted?

Mr. MUSKIE. I yield the Senator 4 minutes.

Mr. BAYH. I appreciate the courtesy of the Senator from Maine.

AMENDMENT 3992

(Purpose: Relating to industrial development bonds for facilities involving urban development action grants)

Mr. BAYH. I want to call the Senates attention to an amendment I offered on Friday No. 3992 which deals with the combination of funding available under the UDAG program with industrial development bonds. The law now has a $1 and $5 million limitation. The $5 million is not applicable if the total investment goes over $5 million. In the wisdom of the committee, this funding level was raised from $1 and $5 million to $2 and $12 million. In other words, you can invest at least $2 million in industrial development bonds and up to $12 million as long as the investment is not more than $12 million. The Senator from Indiana would not increase the size of the industrial development bonds that were permitted; it would be maintained at $12 million, but would permit the total size of the investment to be up to $20 million.

What this would mean is that we would get more private investment capital into the UDAG program. I do not know what my colleagues' experience has been, but I have found UDAG, in my judgment, has been very successful, because we have provided seed money. Some has been as high as $1 to $30—$1 of seed money from UDAG, $30 of private outside capital. I think the average is about 1 to 5, not to misrepresent the program. It is directed at redeveloping our urban areas and that is a very important need.

I wonder if the Senator from Louisiana and the Senator from Wisconsin might consider this.

Mr. PROXMIRE. If the Senator will yield, I am very concerned about this. As the Senator knows, the Committee on Banking, Housing, and Urban Development has jurisdiction in this area.

I appreciate the Senator's proposal, but it is my strong feeling that too much of this money has been going downtown. It is another extension of the urban renewal program. Not enough has been going to the neighborhoods, the inner city, the places where poor people live. It seems this might add to that.

What concerns me is a technical but very important technical difference. As I understand that amendment, because it would open it up to projects which, as the Senator says, go up to $20 million, would provide $12 million eligibility for UDAG programs, it would cost something—not much, but something. The revenue effect in the first year would be what, $1 million?

Mr. BAYH. $1 million minus 3 months' worth of expenditure which, in a full calendar year, would be $1 million. But since we are not going to have this take effect until the first of January, it will only be for three quarters of the year, so it will be about $750,000.

Mr. PROXMIRE. Will the chairman permit a parliamentary inquiry? Would the Senator from Maine yield me 1 minute?

Mr. BAYH. Anybody can make a parliamentary inquiry.

Mr. PROXMIRE. Mr. President, I ask if the amendment of the Senator from Indiana would be in order?

Mr. GLENN. Mr. President, I am controlling the time for the Senator from Maine. I yield him 2 minutes.

Mr. PROXMIRE. Under the Budget Act, in view of the fact that the bill is now at the limit in revenue loss and this additional revenue loss, small as it is, nevertheless is specific and definite, I ask if this would be a violation of the Budget Act?

The PRESIDING OFFICER. Until the amendment is sent up and the Chair has an opportunity to see it, it cannot answer the parliamentary inquiry.

Mr. BAYH. I ask unanimous consent that it be appropriate to consider this, that the amendment of the Senator from Montana be temporarily set aside. I send my amendment to the desk. It has not been submitted but has been printed.

The PRESIDING OFFICER. Did the Chair understand the Senator from Indiana to ask unanimous consent that the amendment by the Senator from Montana be set aside and his amendment be considered?

Mr. BAYH. The way I understand it, that is the only way it can be done.

The PRESIDING OFFICER. The Senator is correct. Is there objection?

Without objection, it is so ordered.

The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Indiana (Mr. BAYH) proposes an amendment numbered 3992.

Mr. BAYH. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 300, between lines 21 and 22, insert the following new section:

SEC. 339. INCREASE IN CAPITAL EXPENDITURE ALLOWANCE WITH RESPECT TO WHICH $12,000,000 SHALL ISSUE RULE APPLIES IN CASE OF URBAN DEVELOPMENT ACTION GRANT FACILITIES.

(a) INCREASE IN AMOUNT OF CAPITAL EXPENDITURES.—Paragraph (6) of section 103 (c) (relating to exemption for certain small issues) is amended by adding at the end thereof the following new subparagraph:

"(I) URBAN DEVELOPMENT ACTION GRANTS.—

"(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (D), and except as provided in clause (ii), in the case of any issue—

"(I) the aggregate face amount of which (as determined under subparagraph (D) (ii)) is in excess of $12,000,000 and not greater than $20,000,000, and

"(II) substantially all of the proceeds of which are to be used to provide facilities with respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974,

the issuer may elect to have the provisions of subparagraph (D) apply.

"(ii) LIMITATION.—The provisions of clause (i) shall not apply if the amount described in subparagraph (B) which is taken into account in determining the aggregate face amount of the issue under subparagraph (D) (ii) exceeds $12,000,000.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after December 31, 1978, in taxable years ending after such date.

The PRESIDING OFFICER. Who yields time?

The Senator from Wisconsin has 1 minute remaining.

Mr. PROXMIRE. I make my parliamentary inquiry whether this amendment will violate section 11 of the Budget Act, in view of the fact that it will result in a roughly $1 million budget loss in 1979?

The PRESIDING OFFICER. The Chair will ask the Senator's indulgence. We do not have a calculator at the roster to determine whether we are up or under or over.

Mr. BAYH. If the Chair will allow a Member of the body to think out loud for the Parliamentarian, my staff was advised when we started out this morning that we had about $2 million leeway.

Now, we have not spent any money, but presumably rounded off some corners, and this point is being raised by the Senator from Wisconsin and he is perfectly within his right. But it seems to me with all the money we have been dealing with here, then quibbling about $750,000 denied in this very important development program, I think is sort of picking at things that are not as important as some things we have not picked at.

The PRESIDING OFFICER. The Chair is ready to rule on this, the Chair has been advised that this hits the ceiling of the budget resolution, this has monetary effect, therefore, the amendment would be subject to a point of order.

Mr. BAYH. I will revise my amendment and change the effective date to October 1, 1979.

The PRESIDING OFFICER. The amendment is so modified.

Mr. GLENN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Who yields time?

Mr. GLENN. A parliamentary inquiry, allotted 2 minutes to the Senator from Wisconsin, has that been exceeded?

Mr. LONG. I yield myself 1 minute.

Mr. President, I would suggest to the Senator he have his amendment at the desk drafted both ways because at some point we may vote for an amendment that would gain us some revenues. At that point, his amendment would be in order.

So I suggest he have it both ways, to go into effect for this fiscal year and next.

I know that is an amendment I will support. If agreed to, it would pick up some revenue, and if that is the case it would be relevant to this fiscal year and then be in order.

Mr. BAYH. Would it be appropriate for us to adopt the amendment with the date as it is now?

Mr. LONG. The Senator cannot do it right now. He has to wait until we agree to some amendment to pick up some revenue and then the amendment would be no longer in violation of the budget process.

Mr. BAYH. As revised, I say to the distinguished chairman, who has a lot of things on his mind, but as revised, there would be no revenue loss in this, but make it effective next fiscal year, would that change the problem any?

Mr. LONG. The point is that it may be that the Senate picks up some revenue. If that is the case——

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. LONG. I yield another 30 seconds.

When this will be voted on after cloture, if we get cloture, it is no longer subject to the budgetary objection, and I think it is germane.

The PRESIDING OFFICER. Who yields time?

Mr. HANSEN. I yield 2 minutes to the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I call up an amendment I have at the desk dealing with the closure of certain Internal Revenue offices and I ask unanimous consent we might consider this amendment now.

The PRESIDING OFFICER. The Chair would advise all Senators that no amendment is in order as long as there is a pending amendment at the desk.

We have the Senator from Montana and the Senator from Indiana, and only by unanimous consent can an amendment be considered. We have two pending at the desk.

Mr. BAYH. Mr. President, I ask unanimous consent mine be put aside.

Mr. PROXMIRE. Reserving the right to object, Mr. President, I ask if the Senator from Ohio will yield me 1 minute.

Mr. GLENN. One minute.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. May I ask the Senator from Rhode Island if this is the New England Patriots football team amendment?

Mr. CHAFEE. It is not.

Mr. PROXMIRE. I thank the Senator.

Mr. CHAFEE. I ask unanimous consent I might bring up this amendment. If I can explain it briefly, it just postpones the closure of certain IRS offices in a series of small States until July 1, 1979. Meanwhile, the GAO is to produce a study to ascertain whether, indeed, the closure of these offices would save money and provide the services.

Mr. METZENBAUM. I ask the Senator from Ohio to yield me 1 minute.

The PRESIDING OFFICER. Will the Senator withhold for just a moment?

The question before the Senate now is the unanimous-consent agreement by the Senator from Indiana to set aside his amendment temporarily.

Is there objection? Without objection, it is so ordered.

Mr. CHAFEE. I make a request that I might bring up this amendment, even though the Melcher amendment is pending.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object, and I may object——

The PRESIDING OFFICER. On whose time?

Mr. METZENBAUM. Will the Senator from Ohio give me 1 minute?

Mr. GLENN. Yes.

The PRESIDING OFFICER. The Senator may proceed.

Mr. METZENBAUM. I want to make it clear, I will object to any amendments coming up, I will suggest the absence of a quorum, and until such time as it is made possible for those of us who have a concern with respect to pending amendments to obtain time, adequate time, in order to provide debate on the measures.

Therefore, I serve notice I expect to be able to stand on the floor and read an amendment and debate it, and argue against it, but not to go on bended knee to try to get 2 or 3 minutes from somebody.

Therefore, I will object to the Senator from Rhode Island having unanimous consent, unless somebody can provide a procedure that the Senator from Wisconsin and the Senator from Ohio can at least have 30 minutes of the remaining time available for the purpose of adequate debate.

The PRESIDING OFFICER. Objection is heard.

The Senator has some time left.

Who yields time?

Mr. HANSEN. Mr. President, I yield 1 minute to the Senator from Rhode Island—I withdraw that.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, would the Senator repeat his offer? I may be able to accommodate him, if I understand his request.

Mr. METZENBAUM. I am requesting that the Senator from Wisconsin and the Senator from Ohio, who have indicated a concern about some of the amendments, be accorded 30 minutes of time on

our own so that we not go on bended knee regularly to try to get 2 or 3 minutes.

If the Senator from Maine can allot 30 minutes of his time to us, or the Senator from Louisiana can, then I have no objection to proceeding forward. But I do think the procedure is an incongruous one at this time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine has the floor.

Mr. MUSKIE I yield——

Mr. PROXMIRE. I do not think it is necessary for the Senator to yield time, if we can have an understanding these amendments can be called up, as they have been all morning, and discussed, but not voted on. That is what concerns us, having a vote without an opportunity to cross-examine and discuss and debate, as we should, so we understand what we will vote on on these amendments. That is what we are really concerned about.

So, if the Senator from Maine yields to the Senators to discuss them, that is fine, as long as we do not have a vote and are not precluded from discussing in the future before there is a vote on the amendment.

Mr. MUSKIE. I yield to the Senator from Idaho.

Mr. CHURCH. I would like to concur in what the distinguished Senator from Wisconsin has said.

I have an amendment relating to the present tax deferral on foreign-earned profits. I would like an opportunity to lay down the case for that amendment, even though I am quite willing to vote on it later today. But I think the procedure should accommodate all Senators who would like to take this opportunity to make their arguments for or against amendments to be voted on later.

Mr. MUSKIE. May I say to the Senator that, however, so far as the nongermane amendments, which are the principal subject of the discussion this morning, are concerned, I have no further need for time at the moment. I may have, however, as the parliamentary situation unfolds.

I want the Senators to understand that I would like to have the floor, but I would be willing—how much time do I have left, Mr. President?

The PRESIDING OFFICER. The Senator from Maine has 62 minutes.

Mr. MUSKIE. I would be willing to make half of that time available for the purposes that we have all been discussing here, provided it is understood just amongst us, as Senators, in the spirit of comity, that if I needed to get access to the floor, or as the parliamentary situation unfolds, that I may be able to make that attempt.

Mr. LONG. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator from Louisiana has 24 minutes left.

Mr. LONG. Some of that time—say, 8 of the 24 minutes—I will make available for that purpose, too.

The parliamentary situation that exists at this moment is that any Senator can prevent any amendment that is offered from coming to a vote. All he has to do is to insist on his rights. He can suggest the absence of a quorum, if he wishes, or he can make the point that he is not willing for the Senate to vote on it, and it will not come to a vote. So no amendment can be agreed to, under the existing parliamentary situation, if any Senator does not want us to vote on it.

In a sense, we are acting by unanimous consent, to the extent that any Senator here has it completely within his power to say that there will not be a vote on any amendment that comes up. But it would be well if we could dispose of some of the nongermane amendments during this period; because once cloture is voted, they will not be in order, unless by unanimous consent.

Mr. METZENBAUM. The Senator from Louisiana and the Senator from Maine indicate that there will be adequate time for debate, and they are indicating in connection with the Melcher amendment that it should go to a vote. I was thinking about moving to lay it on the table, which I had no desire to do. I did not want to suggest the absence of a quorum. In view of the statements by the Senator from Maine and the Senator from Louisiana, if the Senator from Rhode Island cares to offer his amendment now, I will not object.

Mr. HANSEN. I yield 1 minute to the Senator from Rhode Island.

UP AMENDMENT NO. 2036

(Purpose: To prohibit the implementation of a reorganization of 12 small IRS district offices until a study can be conducted by the General Accounting Office with respect to the effect of such reorganization on taxpayer services)

Mr. CHAFEE. Mr. President, I call up my amendment which is at the desk, which deals with certain IRS offices, and I ask unanimous consent that it may be considered and disposed of even though the Melcher amendment is pending.

The PRESIDING OFFICER. Is there objection?

Mr. PROXMIRE. Mr. President, reserving the right to object, I do not want to say "disposed of." We can debate it. We have heard a brief explanation, but I think we should know more about it.

Mr. LONG. Only that it be considered.

Mr. CHAFEE. Considered.

The PRESIDING OFFICER. Senators will please give the Chair an opportunity to do what it is supposed to do.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. CHAFEE) proposes an unprinted amendment numbered 2036.

Mr. CHAFEE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the committee substitute bill, add the following new section:

SEC. . INTERNAL REVENUE SERVICE REORGANIZATION.

(a) IN GENERAL.—The Secretary of the Treasury shall not implement the proposed reorganization of selected Internal Revenue Service district offices in Delaware, Idaho, Maine, Montana, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, and Wyoming through the elimination of levels of management and the transfer of administrative and support services recommended by the Internal Revenue Service organizational review study group.

(b) GENERAL ACCOUNTING OFFICE STUDY.—The Comptroller General shall conduct a study and evaluation of the proposed Internal Revenue Service reorganization plan described in subsection (a) and report to the Congress not later than July 1, 1979, as to how the implementation of the proposed reorganization plan would affect taxpayer services and whether implementation of the plan would reduce Federal outlays for the administration of the Internal Revenue Code of 1954.

The PRESIDING OFFICER. The Chair asks the Senator from Rhode Island, is this an amendment to the committee substitute or to the bill?

Mr. CHAFEE. I guess it is to the bill.

The PRESIDING OFFICER. To the House bill?

Mr. CHAFEE. The committee substitute.

The PRESIDING OFFICER. The Senator may proceed.

Mr. CHAFEE. Mr. President, on behalf of myself, Mr. GARN, Mr. HANSEN, Mr. PAUL G. HATFIELD, Mr. BIDEN, Mr. DOMENICI, Mr. ABOUREZK, Mr. DURKIN, Mr. PELL, Mr. SCHMITT, Mr. STAFFORD, Mr. YOUNG, Mr. MELCHER, Mr. MCINTYRE, and Mr. MCGOVERN, I offer this amendment. I ask unanimous consent that the name of Mr. WALLOP be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, the IRS has plans to close certain offices in small States, and they are going to consolidate them. They are not going to close the complete offices but close some important functions and consolidate them in some major cities. This amendment would require that those plans not be proceeded with until July 1, 1979.

Meanwhile, the GAO would conduct a study and report to Congress on whether the closure of those offices would save any money and whether the services could be maintained.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. CHAFEE. I hope the committee will accept this amendment.

Mr. LONG. I yield myself 1 minute.

Mr. President, the Senate Finance committee discussed the matter; and, on motion of the Senator from Delaware (Mr. ROTH), we recommended a committee resolution expressing the sense of the Senate that these offices should not be closed until the matter has been studied further.

The Senator's amendment, I think, prohibits the closing of the offices for a certain period of time—until June 30 of next year. In that respect, he goes further than the Finance Committee resolution. Of course, the Treasury would be opposed to this, because in their view, these offices should be closed.

So far as this Senator is concerned, it would be all right with him to abide by the wishes of the Senate, and I have no objection to it personally.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. LONG. I am willing to leave it up to the Senate, if that be the will of the Senate, but someone may object; and if so, it will have to go over.

Mr. PROXMIRE. Mr. President, will the Senator yield me 1 minute?

Mr. LONG. I yield.

Mr. PROXMIRE. Mr. President, we have some serious problem with respect to HUD. Whenever an agency tries to close an office anywhere, the Senator in the State where the offices are to be closed, for obvious and understandable reasons, tends to object. But it makes it extremely difficult for the executive branch to operate in an efficient way.

It seems to me that this kind of amendment may be meritorious. But for us to act on it with a very brief debate, without having an understanding of what the plan is, without knowing what the IRS argument is, without having it laid out before us, would be premature.

As to the arguments on the HUD matter, I am convinced that HUD was right. Other Senators are convinced that they were wrong.

We had an extensive debate and long discussion in the committee, and we will have to thrash it out in conference.

I am concerned that if this amendment came in, a great deal of opportunity to deliberate and debate, to determine whether or not we can have a more efficient IRS, would be abbreviated, and we would be deciding on a political basis, rather on the basis of how we can have the most efficient Internal Revenue Service.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. CHAFEE. Mr. President, will the Senator from Wyoming yield me 1 minute?

Mr. HANSEN. I yield.

Mr. CHAFEE. Obviously, there is objection. I wonder whether we could go back to the committee report on this bill, following the resolution of the committee, urging them not to close the offices on the States mentioned until they have better substantiation than they currently have.

Mr. PROXMIRE. I have no objection to that. That sounds fine.

Mr. LONG. The sense of the Senate resolution.

Mr. CHAFEE. That is satisfactory.

The PRESIDING OFFICER. Does the Senator withdraw his amendment?

Mr. CHAFEE. I do.

The PRESIDING OFFICER. The amendment is withdrawn.

UP AMENDMENT NO. 2037

(Purpose: To express the sense of the Senate relating to the future revenue loss under the bill)

Mr. LONG. Mr. President, I send to the desk an amendment and ask unanimous consent that it be in order to consider it at this time.

The PRESIDING OFFICER. Without objection, it is so ordered. The other amendments are set aside, and this amendment can be considered.

How much time does the Senator yield?

Mr. LONG. I yield myself 2 minutes.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment numbered 2037:

At the end of the committee amendment, add the following new section:

SEC. . It is the sense of the Senate that the conferees on the part of the Senate shall limit the revenue loss from this bill for the fiscal years following 1979 to an extent that is practical and responsible.

Mr. LONG. Mr. President, I should like to refer to a specific figure of revenue loss in the years after 1979, but it is not possible to do that at this point. The bill already has revenue losses in years after 1979 that, in my judgment, are irresponsible and that must be pared down. This would be true of fiscal years 1980, 1981, 1982, 1983, 1984, 1985, and so forth.

So there are many things in the bill already that will have to be pared down, if this bill is going to be fiscally responsible.

This amendment would be an instruction to the conferees that they should understand that this bill will have to be pared down in conference, because that will be necessary.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. MUSKIE. Mr. President, this is similar to an amendment which the Senator offered and which was adopted by the Senate last year. I regard is as a commitment by the Senator, which I think he has anyway, independent of this amendment, to bring this bill within the constraints of the budget resolution, and I applaud that.

I urge him, also, to look at the costs, because we have no control over those. We are dependent upon him to handle that. I am perfectly willing to do that. This is the way, perhaps to get other Senators committed to the same objective, and for that reason I think the amendment is appropriate.

Mr. LONG. I thank the Senator.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HANSEN. Mr. President, I yield 1 minute to my colleague from Wyoming.

Mr. LONG. Could we vote on the amendment?

The PRESIDING OFFICER. The Senator's amendment is pending.

Without objection, the amendment is agreed to.

The Senator from Wyoming has 1 minute.

AMENDMENT NO. 3990

(Purpose: To provide for the exclusion, from gross income, of certain cost-sharing payments)

Mr. WALLOP. Mr. President, I ask unanimous consent that the Melcher amendment be temporarily laid aside and that it be in order to call up amendment No. 3990.

The PRESIDING OFFICER. Without objection, all amendments are set aside, and the clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Wyoming (Mr. WALLOP) proposes an amendment numbered 3990.

Mr. WALLOP. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . CERTAIN PAYMENTS NOT INCLUDED IN GROSS INCOME.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income), as amended by section 134 of this Act, is amended by redesignating section 125 as 126 and by inserting immediately after section 124 the following new section:

"SEC. 125. CERTAIN COST-SHARING PAYMENTS.

"(a) GENERAL RULE.—Gross income does not include payments received under—

"(1) the Rural Clean Water Program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288 (j)), or

"(2) the Rural Abandoned Mine Program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236).

"(b) APPLICATION WITH OTHER SECTIONS.—No deduction or credit allowable under any other provision of this chapter shall be allowed with respect to any expenditure made with the use of payments described in subsection (a) or with respect to any property acquired with any payment described in subsection (a) (to the extent that the basis is allocable to the use of such payments). Notwithstanding any provision of section 1016 to the contrary, no adjustment to basis shall be made for expenditures chargeable to capital account with respect to property acbuired through the use of such payments, to the extent that such adjustment would reflect the amount of such payment.".

(b) CLERICAL AMENDMENT.—The table of sections for such part is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 125. Certain cost-sharing payments.

"Sec. 126. Cross references to other Acts.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years beginning after the date of enactment of this Act.

Mr. WALLOP. Mr. President, I am offering an amendment that will clarify the tax treatment of cost-share payments in two important environmental programs. The amendment was originally introduced in the Senate as S. 3388. This amendment will change the tax treatment of cost-share payments given to landowners under the Clean Water Act of 1977 and the rural abandoned mines program. The Internal Revenue Service has notified the Soil Conservation Service that cost-share payments will be treated as taxable income. Participation in the voluntary programs will be severely restricted if the tax treatment intended for these payments is not clarified by Congress. This bill will exclude from gross income, payments made under the rural clean water program of the Federal Water Pollution Control Act and payments received under the rural abandoned mines program, which was authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977.

Mr. President, to demonstrate the need for this amendment, it would be useful to explain the intent of Congress in authorizing the cost-share pro-

gram for the Rural Clean Water Act and the rural abandoned mines program.

The Senate Committee on Environment and Public Works recently passed the Clean Water Act of 1977, Public Law 95–217. This bill paid attention not only to water pollution in our urban areas, but also to the growing problem of water pollution in rural and agricultural regions of the country. In an effort to reduce water pollution in rural areas, Congress approved a program to assist farmers and ranchers in implementing long-term soil conservation practices that will reduce nonpoint source pollution. Voluntary participation in this water pollution control program is encouraged by the Soil Conservation Service, which would provide cost-share payments to farmers and ranchers. The SCS will provide payments of up to 50 percent of the cost of installing water control mechanisms, but only to farmers in areas with approved water management plans.

Clearly, the cost-share arrangements were intended to ease the financial burden of farm operators and owners in implementing soil conservation practices, specifically designed to improve water quality.

Revenue Service has indicated that cost-share payments under the Clean Water Act of 1977 will be treated as taxable income. This tax treatment will push participating farmers and ranchers into higher income brackets, increase their tax liability, and create a penalty for participation.

The successful implementation of the rural abandoned mines program is threatened by the same tax problem concerning cost-share payments. The rural abandoned mines program (RAMP) came into being as a part of the Public Law 95–87, the Surface Mine Control and Reclamation Act of 1977.

The RAMP program is a long overdue effort to reclaim 1.1 million acres of abandoned coal mined lands in 29 States. Under the RAMP program, landowners are encouraged to reclaim abandoned surface mined lands through cost-share payments provided by the Soil Conservation Service. Cost-share payments are provided to participating owners of land and water rights for reclamation of up to 320 acres of surface mined lands. The Secretary of Agriculture determines what percentage of the total cost of reclaiming these lands will be covered. If the Secretary determines that the main benefits derived under the program are related to improving offsite water quality, esthetic values, or other offsite benefits, then the Soil Conservation Service can cover a larger proportion of the reclamation cost.

If the matching share requirement would burden the landowner financially to such an extent that participation would be withdrawn, the Secretary of Agriculture can authorize larger cost-share payments. Under these administrative guidelines, RAMP reclamation projects receiving cost-share payments are scrutinized as to the extent of the public benefit from the reclamation efforts.

I have discussed the tax problem facing the rural abandoned mines program with the distinguished chairman of the Senate Energy Committee, under whose leadership this program came into being. Senator JACKSON has endorsed this amendment as it pertains to the taxation of cost shares in the RAMP program. I would like to take a moment to quote from Senator JACKSON's letter relating to the taxation of cost-share payments in the rural abandoned mines program.

When we developed this program in committee in 1973, it was our intention that the full amount of Federal funding would be spent on rehabilitation of the land. Requiring a portion of the Federal funds to simply be returned to the Treasury would be totally inconsistent with achievement of the objectives of the program.

The amendment has the support of a broad-based coalition of environmental, agricultural, and mining organizations. Some of the environmental organizations supporting the amendment are the Sierra Club, the Environmental Policy Center, the Clean Water Action Group, the National Wildlife Federation, the Illinois south project, and the Appalachian Coalition. The amendment is also supported by the American Mining Congress, reflecting their hopes that it will help the Soil Conservation Service meet its rural land reclamation objectives. Organizations interested in water law, such as the National Water Resources Association and the Metropolitan Water District of Southern California also support this amendment as a means to assist the implementation of the Rural Clean Water Act.

Mr. President, I ask unanimous consent that a statement by Mr. DOMENICI, in connection with this amendment, be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY MR. DOMENICI

I am pleased to be a co-sponsor of the Wallop amendment and I would like to take a moment to explain why this amendment should be enacted into law.

As indicated by the distinguished list of co-sponsors on this amendment, and the diverse range of organizations that endorse its passage, the measure has achieved recognition as an important initiative in the tax treatment of environmental programs. By excluding the cost share payments in these two programs from taxation, the Senate will allow the Rural Clean Water Program and the Rural Abandoned Mines Program to operate as the Congress originally intended . . . positive environmental initiatives based on incentive and cooperation between the government and private land holders.

There seems to be two approaches Congress has taken to cleaning up the environment. One is the carrot and the other is the stick. It seems like all too often Congress or E.P.A. is willing to take the latter approach, imposing restrictions or regulations to improve the environment. But our people are getting tired of the barrage of laws and regulations coming from Washington. On the other hand, today we are considering two environmental programs that are based on incentives and cooperation between individuals and a government agency. It seems to me that these are the kind of programs that should be encouraged, instead of taxed. If Congress established programs with the intent that they be based on incentive, it makes no sense to see that incentive taxed away by the arbitrary interpretation of the I.R.S. The present tax treatment afforded cost shares would virtually destroy a positive environmental initiative like the Rural Clean Water program. I had the opportunity of working with Senator Wallop on the Clean Water Act of 1978, in the Committee on Environment and Public Works. The Committee, under exemplary leadership of Senator Randolph, put together a bill which reflects great interest in the problems of water pollution in rural areas. The programs in that bill will help farmers, ranches and other rural land owners to implement long-term soil conservation practices that will reduce nonpoint water pollution. Under the cost share program in the bill, the Soil Conservation Service would provide payments of up to 50 percent of the cost of installing water control mechanisms to farmers in areas with approved water management plans. The maximum cost share payment under the program is $50,000. These cost share arrangements were intended to ease the financial burden of farm operators and owners in implementing modern soil conservation practices to reduce water pollution in the rural areas of our nation.

The Wallop amendment will allow the Rural Clean Water Cost Share Program to operate effectively in New Mexico and across the country. I support the Wallop amendment and encourage the Senate to pass this measure so that two useful and innovative environmental programs can operate in a manner desired by Congress.

Mr. WALLOP. I ask unanimous consent that these studies and letters discussing the RAM program and the merits of this amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FINAL IMPACT STATEMENT RURAL ABANDONED MINE PROGRAM

1. Title: Development of rules and regulations to implement a Rural Abandoned Mine Program (RAMP) as authorized by Section 406 of Public Law 95–87.

2. *Actions and Groups Impacted.*

Program objectives: To protect people and the environment from the adverse effects of past coal-mining practices and to promote resource development on unreclaimed coal-mine lands.

Program operations: Under 5- to 10-year contracts, provides technical and financial assistance on a voluntary basis, and through the Soil Conservation Service (SCS) existing delivery system, to develop and apply reclamation plans for the restoration, conservation, and development of eligible abandoned or inadequately reclaimed coal-mine lands and water up to 320 acres per owner.

Lands users make application for assistance through the SCS field office. SCS district conservationists verify information on the applications and assign a tentative priority. The local conservation district or the local reclamation committee recommend the final priority asignment. According to the priority assigned, SCS would assist the participant in assessing, analyzing, and evaluating acceptable reclamation alternatives and the environmental impacts. The land user then selects the feasible and practical land use and treatment alternatives that best meet his reclamation objectives for inclusion in the reclamation plan. The reclamation plan approved by SCS would serve as the basis for the program contract. Reclamation, land use, and conservation treatment would then be applied according to the contract. SCS makes an annual status review to assure compliance with the contract.

Federal cost-share rates: Rates may range from 0 to 100 percent depending upon the

number of acres reclaimed, the potential for income production from the land after reclamation, and whether or not the main benefits are offset or accrue to the land user. The basic rate shall be up to 80 percent of the cost of carrying out land use and conservation treatment specified in the contract. The basic rate may be reduced to offset the increased potential for income production or increased as high as 100 percent if there is land user financial burden *and* the main benefits of reclamation are offsite (accrue to the public). If more than 120 acres up to 320 acres are reclaimed, the rate is to be reduced by up to 0.5 percent per acre. The SCS Administrator will establish and issue specific cost-share rates within this criteria.

Main benefits are defined as the principal values or benefits that can be identified and/or quantified as a result of reclamation. Main offsite benefits are those values that accrue to the public as a result of the reclamation. Main onsite benefits are those that accrue to the participant. Examples of principal values or benefits include human lives or property protected, reduction of erosion or sediment damage, elimination of public safety or health hazards, improvement of water quality or improved visual quality of rural communities, etc.

Financial burden applies if the main benefits of reclamation accrue to the public and the land user's cost of reclamation cannot be expected to be recovered within the contract period and would probably prevent participation in the program.

The order of priorities for funding reclamation work are: (1) Protection of public health, safety, general welfare, and property from extreme danger of adverse effects of past coal-mining practices; (2) protection of public health, safety, and general welfare from adverse effects of coal mining; and (3) restoration of the environment and land and water resources where previously degraded by the adverse effects of past coal-mining practices. Subpriorities for funding reclamation work within each priority will give first preference to individual persons who did not consent to the mining and owned the land prior to May 2, 1977. Last preference is given to corporations and absentee owners who will not actively use the area for agricultural or silvacultural purposes.

Groups impacted: (a) The program will impact directly on:

(1) Land users that are eligible for and choose to participate in the program. Eligible land users include landowners, owners of water rights, residents, tenants or their agents operating as individuals, partnerships, corporations, associations, or estates controlling lands or water mined for coal or affected by coal-mining processes and abandoned or inadequately reclaimed before August 3, 1977.

(2) Owners and residents of adjacent or neighboring lands through reduced sediment damages, improved water quality, improved visual quality of the landscape, and reduced health and safety hazards.

(b) The program will indirectly impact on:

(1) Consumers and producers of agricultural, forestry, and recreational outputs through improved beneficial use of the land or increased productive capacity.

(2) Citizens and visitors to the United States will be positively affected by the improvement in environmental quality and reduction of health or safety hazards.

3. Purpose and Need for Action.

According to the 1977 SCS inventory of abandoned mine lands, approximately 1.1 million acres of coal-mine lands need reclamation. Of this total, 753,000 acres are in the East (Appalachia), 316,000 acres are in the Midwest, and 24,000 acres are in the West. This inventory does not identify problems but does identify areas eligible for program participation. An estimated 70 percent of these lands are owned by large corporations. This program proposes to treat as much as 8 to 10 percent of this total. Other reclamation programs authorized by Public Law 95–87 and administered by the Office of Surface Mining would treat a portion of the balance.

Generally, the following adverse problems are associated with abandoned coal-mine lands: landslides, fire, subsidence, flooding, acid drainage, erosion, sediment, dust, insects, and vermin. Also, the useful function and visual quality of this land is greatly impaired.

Three other State and Federal programs authorized by Public Law 95–87 are designed to reclaim abandoned coal-mine lands in conjunction with this program.

4. Options Considered.

(a) Operate program in specific coal regions and cost share for reclaiming all eligible land uses in accordance with program priorities:

	East	Midwest	West
Cost per acre to reclaim dollars	7,600	5,600	2,700
Reclaimed annually (minimum) (acres)	5,200	7,200	14,800
Net income annually[1] (dollars)	66,000	213,200	119,000
Erosion reduction annually (tons)	480,000	540,000	900,000
Runoff reduction annually (percent)	40	44	46
Capitalized value of net income (dollars per acre)	130–260	300–600	80–160

[1] Exclusive of reclamation costs.

RAMP INVENTORY DATA[1]

Rank and State	Coal lands needing reclamation (acres)	Counties: Total	More than 5,000	1,000–4,999	100–999	Less than 100
1. Pennsylvania	240,000	35	15	12	8	0
2. Ohio	196,709	27	13	10	2	2
3. Illinois	118,711	31	5	8	11	7
4. Kentucky	101,637	44	8	11	21	4
5. West Virginia	84,868	28	4	13	8	3
6. Alabama	72,292	17	4	5	6	2
7. Missouri	70,688	30	6	6	5	13
8. Kansas	41,256	9	2	3	2	2
9. Oklahoma	36,118	15	2	7	6	0
10. Tennessee	29,583	15	1	7	7	0
11. Indiana	25,882	14	2	5	4	3
12. Virginia	23,724	7	1	5	0	1
13. Iowa	13,997	13	1	2	7	3
14. Wyoming	9,657	13	1	0	4	8
15. Colorado	7,089	14	0	2	4	8
16. Arkansas	5,623	9	0	3	3	3
17. Texas	3,310	8	0	1	4	3
18. Maryland	2,804	2	0	1	1	0
19. Alaska	2,700	2	0	2	0	0
20. Montana	1,955	18	0	0	5	13
21. Georgia	1,680	2	0	1	1	0
22. North Dakota	1,050	3	0	0	3	0
23. South Dakota	890	3	0	0	3	0
24. Utah	635	7	0	0	3	4
25. Arizona	400	1	0	0	1	0
26. Michigan	142	4	0	0	1	3
27. Washington	42	3	0	0	0	3
28. New Mexico	22	2	0	0	0	2
29. California	10	1	0	0	0	1
Total	1,093,520	377	65	104	121	88

[1] SCS 1977 Inventory. Status of land disturbed by surface mining in the United States.

EXAMPLE OF INCOME TAX PAYMENTS IN OHIO RESULTING FROM PARTICIPATION IN THE RURAL ABANDONED MINE PROGRAM

(Authorized by Section 406 of PL 95–87)

Ohio has approximately 196,700 acres of abandoned lands disturbed by coal mining. The hypothetical tax impacts expressed herein are based on our limited knowledge of the existing tax structure.

Average acres to be reclaimed per contract, 40.

Estimated cost per acre, $7,600.

Cost-share rate: Maximum 100 percent—If main benefits are offsite (accure to the public) and financial burden is declared. Cost sharing would be less if over 120 acres, main benefits are onsite or no financial burden is declared.

40 acres × $7,600 per acre = $304,000.

Amount of cost-share payment at 100 percent = $304,000.

Amount taxable as income before deductions = $304,000.

Amount of deductions in this case (100 percent cost share) = $0.

Tax situation:

Tax rate (based on cost-share payment alone), 70 percent.

Total tax, $212,800.

Tax cost per acre, $5,320.

This could be spread over 1–7 years depending on type and length of contract.

Estimated land value before reclamation, $150 per acre.

Estimated land value after reclamation, $300 per acre.

Increase in land value, $150 per acre.

Average increase in net income per year, $13 per acre.

SEPTEMBER 19, 1978.

HON. MALCOLM WALLOP,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: This letter is in regard to S. 3388—A Bill to Exclude From Gross Income Payments Made Under the Rural Abandoned Mines Program, introduced by you on August 9.

The American Mining Congress supports this legislation. We are pleased that you have expeditiously acted to remedy an unforeseen problem that clearly was not intended by the authors of the Abandoned Mine Reclamation Program contained in Title IV of the Surface Mining Control and Reclamation Act of 1977.

On April 11, 1978, the Soil Conservation Service proposed regulations implementing the Rural Abandoned Mine Program authorized by Section 406 of the Surface Mining Act. As of this date the SCS regulations have not been promulgated, largely because of the question of how cost sharing payments to participating land owners will be treated for income tax purposes.

By letter of June 5, 1978, the Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations commented on the proposed

regulations, and a copy of that letter is enclosed for your information. Your attention is respectfully directed to the comments on page two of the letter which expresses the Joint Committee's concern that cost-share payments may be taxed as ordinary income by the Internal Revenue Service. The Joint Committee stated that:

". . . such an interpretation would seriously affect the viability of the entire RAMP program and should be vigorously opposed".

When you introduced S. 3388, you stated:

". . . IRS has determined that cost sharing under the Rural Abandoned Mines Program will be treated as taxable income. The result of this action is an increase in the tax burden of participating land owners, and inevitably it will deter participation in the voluntary RAMP program."

Clearly, the Internal Revenue Service's determination thwarts the intent of the authors of Section 406 of the Surface Mining Act. The coal industry fully supports the Act's rural land reclamation objectives, and we are hopeful that your bill, if enacted, will be of great assistance to the Soil Conservation Service in administering this important program.

With warmest regards, I am

Sincerely,

J. ALLEN OVERTON, Jr.,
President.

WATER RESOURCES ASSOCIATION,
Washington, D.C., October 2, 1978.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WALLOP: We have studied your bill, S. 3388, and are pleased to report that we not only endorse its provisions, we urge its enactment.

Further we commend you for identifying this legislative need, and thank you for the initiative to correct a deficiency that undoubtedly would make the program inoperative.

The positive effect that this legislation will have to encourage participation in programs under the Clean Water Act cannot be understated, and we strongly support your efforts in this important area to enhance our most precious natural resource.

Sincerely yours,

J. W. O'MEARA,
Executive Vice President.

UP AMENDMENT NO. 2038

(Purpose: To broaden the class of programs for which payments are excluded and to provide for the recapture of excluded amounts in the case of early dispositions)

Mr. CULVER. Mr. President, I call up my substitute amendment No. 1 at the desk, as a substitute for the pending amendment of the Senator from Wyoming.

Mr. HANSEN. Can the Senator get time on that side?

Mr. CULVER. Will the Senator yield?

Mr. MUSKIE. I yield 2 minutes.

The PRESIDING OFFICER. The Senator from Iowa has 2 minutes.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa (Mr. CULVER) proposes an amendment numbered UP 2038, as a substitute to amendment No. 3990.

Mr. CULVER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted as a new section 125 insert the following:

"SEC. 125. CERTAIN COST-SHARING PAYMENTS.

"(a) General Rule.—Gross income does not include the excludible portion of payments received under—

"(1) the Rural Clean Water Program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288(j)),

"(2) the Rural Abandoned Mine Program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236),

"(3) the Water Bank Program authorized by the Water Bank Act (16 U.S.C. 1301 et seq.),

"(4) the Emergency Conservation Measures program authorized by title IV of the Agricultural Credit Act of 1978,

"(5) the Agricultural Conservation Program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a),

"(5) the Great Plains Conservation Program authorized by section 16 of the Soil Conservation and Domestic Policy Act (16 U.S.C. 590p(b)),

"(7) the Resource Conservation and Development Program authorized by the Bankhead-Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. 1010; 16 U.S.C. 590a et seq.),

"(8) the Forestry Incentives Program authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103),

"(9) the Small Watershed Program, authorized by Public Law 89-566,

"(10) any State program under which payments are made to individuals primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

"(b) Excludible Portion.—For purposes of this section, the term 'excludible portion' means that portion (or all) of a payment made to any person under any program described in subsection (a) which is determined by the Secretary of Agriculture to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the envionment, improving forests, or providing a habitat for wildlife, and which is determined by the Secretary of the Treasury as not increasing substantially the annual income of such person.

"(c) Application with Other Sections.—No deduction or credit allowable under any other provision of this chapter shall be allowed with respect to any expenditure made with the use of payments described in subsection (a) or with respect to any property acquired with any payment described in subsection (a) (to the extent that the basis is allocable to the use of such payments). Notwithstanding any provision of section 1016 to the contrary, no adjustment to basis shall be made with respect to property acquired through the use of such payments, to the extent that such adjustment would reflect the amount of such payment.".

(b) Clerical Amendment.—The table of sections for such part is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 125. Certain cost-sharing payments.

"Sec. 126. Cross references to other Acts.".

(c) Recapture of Gain From Disposition of Property.—

(1) Part IV of subchapter P of chapter 1 (relating to special rules for determining capital gains and losses) is amended by adding at the end thereof the following:

"SEC. 1255. GAIN FROM DISPOSITION OF SECTION 125 PROPERTY.

"(a) General Rule.—

"(1) Ordinary income.—Except as otherwise provided in this section, if section 125 property is disposed of, the lower of—

"(A) the applicable percentage of the aggregate payments, with respect to such property, excluded from gross income under section 125, or

"(B) the excess of—

"(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such section 125 property (in the case of any other disposition), over

"(ii) the adjusted basis of such property, shall be treated as ordinary income.

"(2) Section 125 property.—For purposes of this section, 'section 125 property' means any property acquired, improved, or otherwise modified by the application of payments excluded from gross income under section 125.

"(3) Applicable percentage.—For purposes of this section, if section 125 property is disposed of less than 10 years after the date of receipt of payments excluded from gross income under section 125, the applicable percentage is 100 percent. If section 125 property is disposed of more than 10 years after such date, the applicable percentage is 100 percent reduced (but not below zero) by 10 percent for each year or part thereof in excess of 10 years such property was held after the date of receipt of the payments.

"(b) Special Rules.—Under regulations prescribed by the Secretary rules similar to the rules applicable under section 1245 shall be applied for purposes of this section.".

(2) The table of sections for such part is amended by adding at the end thereof the following new item:

"Sec. 1255. Gain from disposition of section 125 property.".

(d) Effective Date.—The amendments made by this section shall apply with respect to grants made under the programs after September 30, 1979.

Mr. CULVER. Mr. President, my amendment includes all the provisions of the pending Wallop amendment but would add to the amendment a number of other cost-sharing programs administered by the Department of Agriculture and State cost-sharing programs for soil conservation and environmental protection purposes. A few weeks ago both the Senator from Wyoming and I introduced legislation which would exclude from gross income cost-sharing payments under these conservation programs. I believe the language I am now offering, which includes the provisions of both our bills, is consistent with the Senator's objectives.

The purpose of both our amendments is to remove a serious disincentive to farmers and other rural landowners to make the best use of our cost-sharing programs for soil conservation and environmental protection. Under current law, certain cost-sharing payments result in an increased tax liability for the farmer while others do not. The different tax treatment is not based on the purpose or cost-effectiveness of the conservation measures on which the money is spent, but on the type of material used, for instance, in building a conservation structure. The pending amendments would remove this potential disincentive to use these public cost-sharing funds in the most effective manner.

The U.S. Department of Agriculture currently administers a variety of pro-

grams under which it pays part of the cost of implementing measures to enhance natural resource and wildlife protection. Several States, including my own State of Iowa, provide funds for similar purposes. The basis of public support for these programs is that they yield broad societal benefits beyond those which accrue to individual landowners.

It is clearly in our economic and environmental interest that cropland be adequately protected from soil erosion. This soil is the foundation of our food production capacity. Without it, food costs would soar and our very ability to provide food for ourselves would be jeopardized. In addition, soil erosion contributes to severe water pollution. Yet, soil conserving measures are often too expensive for the individual landowners, and the return on investment is usually delayed for many years. In the highly competitive world of food production, farmers rarely can make these investments in conservation with any hope of recovering their costs through the prices received for their products. Our cost-sharing programs are designed to overcome these financial barriers to good conservation and environmental protection by having the public pay directly part of the cost.

Under current tax law, however, Federal and State cost-sharing payments for these purposes are considered as gross income to the farmer and subsequently, for tax purposes, are treated as earnings. On the expense side of the ledger, the Internal Revenue Service (IRS) defines expenditures on certain conservation measures as "deductible expenditures." Others are classified as expenditures on "depreciable assets."

In the case of "deductible expenditures," the increase in gross income a farmer experiences from having cost-sharing payments included in his gross income is offset by an equivalent deduction in the same tax year with no increase in his tax liability. In the case of payments which are spent on "depreciable assets," however, only a portion of the increased gross income may be deducted in that tax year. The farmer receiving assistance from the Government for building these structures must include in his gross income for that year the total amount of money received but can deduct only the depreciable portion of the payment. If he can recover, in the first year, through annual allowances for depreciation, only 10 percent of that public assistance, he will have to pay taxes on the other 90 percent and wait until future years to recover those taxes.

Mr. President, this is a clear case of diametrically opposed public policies. We attempt, on the one hand, to encourage farmers to voluntarily allow public funds to be used on their lands to protect our soil and the environment for future generations. On the other hand, we discourage them from using these funds to carry out conservation measures that may be the most appropriate means of achieving the desired erosion control or environmental protection by placing a tax liability of these expenditures.

These cost-sharing payments are not income supplements. Though the farmer will likely benefit from the public's investment in his conservation practices, the public will benefit from the funds which the farmer spends out of his own pocket on the project. The relative shares paid by the farmer and by the Government are based largely on the distribution of benefits from the work performed. This cannot be determined with total precision, of course, but reasonable estimates can be negotiated by local program representatives and the farmers themselves as is provided under these programs.

In selecting conservation measures, farmers are understandably influenced by financial consideration. Naturally, they should select the most cost-effective methods of using their resources to achieve good conservation. The possibility of having to pay income taxes on the Government's share of the cost of certain conservation measures destroys the kind of balanced consideration of alternatives that is necessary if we are to get the most for our money.

The amendment by the distinguished Senator from Wyoming would exclude from gross payments made under the Rural Clean Water Program and the Rural Abandoned Mine Program. My amendment, which was first introduced as S. 3419, includes these two programs and extends the same income exclusion to several other U.S. Department of Agriculture programs which make payments for soil conservation and environmental enhancement efforts. These include the Agricultural Conservation Program (ACP), the Resource Conservation and Development Program (RC&D), the Water Bank Program, the Emergency Conservation Measures Program, the Great Plains Conservation Program, the Small Watershed Program and the Forestry Incentives Program. In addition, my amendment would exclude from gross income payments made under State funded cost-sharing programs.

In light of the fact that all of these programs are aimed at achieving essentially the same objectives often through the use of the same measures I am offering my amendment to the amendment of the Senator from Wyoming to add these seven other Federal cost-sharing programs and such State programs as qualify. In order to assure that this exclusion applies to only those payments made for sound conservation and environmenal measures, my amendment also requires the Secretary of Agriculture to determine which projects funded under these programs are primarily for conservation or environmental protection purposes. The exclusion from taxation then would apply only to those measures identified by the Secretary.

The payments made under these programs represent a national investment to secure a better future for the entire Nation, farmers, and consumers alike. This amendment will take us one step closer to even more effective soil conservation and environmental protection. At a time when we are losing over 2 billion tons of valuable topsoil to soil erosion, we should not have a tax policy which discourages sound conservation practices.

I believe it is time to resolve this contradiction in policies by eliminating a tax which is both inequitable and self-defeating. I hope the Senator from Wyoming will endorse my amendment. and I hope the distinguished floor manager will accept these amendments.

There would be no revenue loss in this program in fiscal year 1979.

Mr. WALLOP. Mr. President, if the Senator will yield to me for a comment, I will say that the Treasury now supports this, and it is our understanding that the managers of the bill will find it an acceptable amendment.

Mr. PROXMIRE. Mr. President, will the Senator yield me 1 minute?

Mr. MUSKIE. I yield.

The PRESIDING OFFICER. The Senator is yielded 1 minute.

Mr. PROXMIRE. May I ask the Senator from Iowa if he could give us an estimate of what the revenue loss is in the out years after 1979?

Mr. CULVER. I am told it is minimal.

Mr. PROXMIRE. Minimal?

Mr. CULVER. Yes.

Mr. PROXMIRE. Did the Senator say that the Treasury supports this amendment?

Mr. CULVER. I am not aware of any objection by the Treasury, and they support it.

Mr. PROXMIRE. Were there hearings on the amendment?

Mr. CULVER. It is my understanding that there were not formal hearings on the amendment, but this has been discussed and negotiated with Treasury over a protracted period of time.

As the Senator from Wisconsin knows, when we have a soil conservation program, for example, in Wisconsin, or under the clean water act, at the present time an individual landowner makes application for some form of cost-sharing project to stem soil erosion. Under current tax law certain forms of erosion control which are classified as capital investments must be depreciated rather than expensed out in 1 year.

In those situations there would not be any immediate expenses sufficient to offset the initial capital investment and the landowner is forced then to pay income tax on the undepreciated portion of that asset in that year. This serves as a disincentive for the most cost effective forms of using these cost sharing programs.

On the one hand, we are saying let us have the programs——

The PRESIDING OFFICER. The time has expired.

Mr. PROXMIRE. Mr. President, will the Senator from Maine yield an additional minute?

Mr. MUSKIE. I yield 1 additional minute.

The PRESIDING OFFICER. The Senator has an additional minute from the Senator from Maine.

Mr. CULVER. On the one hand we are saying to the farmers of Iowa and Wisconsin, "Let us do something to stop soil erosion and runoff which at the present time is depleting our soil with enormous consequences every year." At the same time we are saying, "Once you participate in these programs we are going to also impose a disincentive in the form of a tax obligation in the same year."

Mr. PROXMIRE. I say to the Senator from Iowa that this amendment seems to have a great deal of appeal, so that we will not have to have a vote on it.

Mr. CULVER. The Treasury supports it.

Mr. PROXMIRE. Let us not vote on it until after we act this afternoon on the cloture motions, and so forth, so that we have some opportunity to study it. It is a complicated amendment. There is $48 million loss. As I say, I think I can support the amendment, but I would appreciate it if the Senator would not press final action on the amendment until a little later.

The PRESIDING OFFICER (Mr. DECONCINI). The Senator's 1 minute has expired.

Mr. CULVER. I wonder if we could inquire of the managers of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. WALLOP. We inquire of the managers of the bill: Inasmuch as the Treasury does support this, is the amendment acceptable?

The PRESIDING OFFICER. Who yields time?

Mr. WALLOP. I am simply asking inasmuch as the Treasury finds it acceptable and has so stated, if the managers will accept the amendment?

Mr. PROXMIRE. May I say is this a nongermane amendment?

Mr. CULVER. Yes, it could be so ruled.

Mr. PROXMIRE. In that event, I will withdraw any objection.

Mr. CULVER. I thank the Senator.

Mr. PROXMIRE. We must do it right now, or you could not get it. That is the problem with this amendment.

Mr. CULVER. I thank the Senator from Wisconsin.

Mr. President, I ask for a vote.

Mr. HANSEN. I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment was agreed to.

Mr. HANSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended, of the Senator from Wyoming.

The amendment, as amended, was agreed to.

Mr. HANSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, I yield 3 minutes to the Senator from Iowa.

Mr. CULVER. I thank the distinguished Senator from Maine for yielding.

UP AMENDMENT NO. 2039

(Purpose: To allow an additional carryback of 7 years for excessive net operating losses attributable to product liability losses)

Mr. CULVER. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa (Mr. CULVER) for himself and Mr. EAGLETON, Mr. NELSON, Mr. PEARSON, Mr. ROTH, Mr. GRIFFIN, Mr. HELMS, and Mr. HEINZ proposes an unprinted amendment numbered 2039.

The amendment is as follows:

On page 341, between lines 17 and 18, insert the following new section:

SEC. 380. NET OPERATING LOSSES ATTRIBUTABLE TO PRODUCT LIABILITY LOSSES.

(a) IN GENERAL.—Section 172 of the Internal Revenue Code of 1954 (relating to net operating losses) is amended—

(1) by striking out "and (G)" in clause (i) of section (b)(1)(A) and inserting in lieu thereof "(G), (H), and (I),",

(2) by inserting at the end of subsection (b)(1) the following new subparagraphs:

"(H) In the case of a taxpayer who incurs a product liability loss (as defined in subsection (i)) for any taxable year beginning after December 31, 1977, the smaller of—

"(i) the excess of the net operating loss for such year (determined without regard to any portion thereof attributable to a foreign expropriation loss) over the sum of the taxable income (as determined under paragraph (2)) for each of the 3 prior taxable years to which such loss may be carried under subparagraph (A)(i), or

"(ii) the product liability loss for such taxable year,

shall be a net operating loss carryback to each of the 7 taxable years preceding the earliest of such 3 prior taxable years.

"(I) In the case of a taxpayer who incurs a net operating loss for a taxable year beginning after September 30, 1979 (referred to in this subparagraph as the 'loss year') and who had both a net operating loss and a product liability loss (as defined in subsection (i)) for a prior taxable year beginning after that date (referred to in this subparagraph as the 'prior year'), if the amount of the net operating loss for the loss year which may be carried over under this subsection would be reduced by doing so, then the smaller of—

"(i) the net operating loss (determined without regard to any portion thereof attributable to a foreign expropriation loss) for the prior year, or

"(ii) the product liability loss for the prior year,

shall be considered to be a separate net operating loss for the prior year and shall be a net operating loss carryback to each of the 10 taxable years preceding the prior year.",

(3) by adding at he end of paragraph (2) of subsection (b) the following new sentence: "In the case of a taxable year to which paragraph (1)(H) applies, this paragraph shall be applied by treating the entire net operating loss as a net operating loss carryback to each of the 3 taxable years preceding the loss year and by treating that portion of the loss described in paragraph (1)(H) as a separate net operating loss carryback to each of the 7 taxable years preceding the earliest of such 3 taxable years.", and

(44) by redesignating subsection (i) as (j), and by inserting after subsection (h) the following new subsection:

"(i) PRODUCT LIABILITY LOSS DEFINED; SPECIAL RULE.—For purposes of subsection (b)—

"(1) PRODUCT LIABILITY LOSS.—The term 'product liability loss' means, for any taxable year, the amount of the deductions under sections 162 and 165 attributable to product liability (as defined in paragraph (2)) and to expenses incurred in the investigation, settlement, and opposition to claims against the taxpayer on account of product liability.

"(2) PRODUCT LIABILITY.—The term 'product liability' means liability for damages on account of physical injury or emotional harm to individuals, or damage to or loss of use of property, on account of the manufacture, importation, distribution, lease, or sale by the taxpayer of any product if such liability arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

"(3) SPECIAL RULE.—For purposes of applying sections 6501 and 6511 to a net operating loss to which subsection (b)(1)(I) applies, the net operating loss for the prior year (as defined in such subsection) shall be considered to be a net operating loss for the loss year (as defined in such subsection).".

(b) ACCUMULATED EARNINGS TAX.—Section 537 (b) of the Internal Revenue Code of 1954 (relating to the accumulated earnings tax) is amended by redesignating paragraph (4) as (5) and by inserting after paragraph (3) the following new paragraph:

"(4) PRODUCT LIABILITY LOSS RESERVES OR INSURANCE.—According to regulations prescribed by the Secretary of the Treasury, reasonable amounts accumulated by a taxpayer for the payment of product liability losses shall be treated as amounts accumulated for the reasonably anticipated needs of the business of the taxpayer.

On page 128, after the item relating to Sec. 379 in the bill, add a new item relating to Sec. 380 as follows:

"Sec. 380. Net operating losses attributable to product liability losses."

The PRESIDING OFFICER. Without objection, all pending amendments are set aside and the Senate will proceed to the consideration of this amendment.

Mr. CULVER. Mr. President, this amendment was drawn by the Department of the Treasury and recommended to the President as the best short-term approach to problems faced by businesses and consumers as a result of the rising costs and declining availability of product liability. The administration supports its inclusion in this tax bill.

The amendment would allow businesses to "carry back" product liability losses and apply them against taxable income for the 10 preceding years. This is an extension specifically for product liability losses 7 years beyond the 3-year period permitted for most business losses. By allowing businesses to use previous taxable income as at least a partial reserve against major product liability losses, the amendment would help assure that a business which suffered a major product liability loss would have the funds both to stay in business and provide reasonable compensation to injured consumers. The cost of this amendment is estimated to be approximately $10

million annually beginning in fiscal year 1980.

Second, this amendment makes clear that prudent businesses which set aside funds after taxes have been paid on them to serve as a reserve against product liability losses shall not have those funds subject to the accumulated earnings tax. Under current law, this approach, which is in the interest both of consumers and of businesses, is actually discouraged by the fact that there is a disincentive to create such a reserve. Regulations to protect such a reserve would be prescribed by the Secretary of the Treasury to prevent abuses and to provide for reasonable controls. The Treasury has told me that it has no objection to such a provision.

Mr. President, I ask unanimous consent that a letter from the Department of the Treasury to that effect be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,
Washington, D.C., September 15, 1978.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to the question that Senator Nelson intended to pose to Secretary Blumenthal at the hearing on August 17, 1978, concerning product liability as set forth in his letter to you dated August 24, 1978. The Administration proposal to which Senator Nelson refers is to allow a special 10-year carryback for net operating losses attributable to product liability. We believe the proposal is the appropriate relief for the problem referred to by Senator Nelson.

The Administration would have no objection to the inclusion of its proposal in the tax bill presently before the Senate Finance Committee.

Please let me know if there is any further information I can furnish to you.

Sincerely,

DONALD C. LUBICK,
Assistant Secretary (Tax Policy).

Mr. CULVER. Finally, Mr. President, we have had extensive hearings by the Small Business Committee on this subject, and at the suggestion of Senator NELSON hearings were held by a subcommittee of the Finance Committee on this matter.

The PRESIDING OFFICER. Who yields time?

Mr. LONG and Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I have a letter. As I understand it the Treasury favors the amendment, and I see no reason why anyone should object to it. It will be all right with me, Mr. President, to accept the amendment and take it to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment was agreed to.

Mr. PROXMIRE. Mr. President, did the Senator say it was approved by the Treasury and there was no revenue loss?

Mr. CULVER. It was approved by the Treasury. There is no revenue loss in fiscal year 1979. There is an estimated reenue loss in 1980 of $10 million. The Department of the Treasury has submitted correspondence to us in which they state in their September letter following the extensive hearings by the Small Business Committee:

We believe the proposal is the appropriate relief for the problem referred to by Senator Nelson.

The administration would have no objection to the inclusion of its proposal in the tax bill presently before the Senate Finance Committee.

And that is signed by the Assistant Secretary on Tax Policy, Mr. Lubick.

Mr. PROXMIRE. Did the Small Business Committee vote on the amendment?

Mr. CULVER. Not on this particular amendment, no, because this was drafted subsequent to our hearings. It was not the same kind of amendment we had pending before our hearings.

We had extensive hearings on this general subject.

There has also been a Presidential interagency task force for more than a year on this subject. We consulted with Treasury as recently as 2 hours ago, and they once again reaffirmed their desire that this measure be included in this tax bill as the most appropriate relief for product liability problems.

Frankly, in my judgment, I would say to the Senator from Wisconsin, it does not go nearly far enough. It is not viewed as adequate relief——

The PRESIDING OFFICER. The time has expired.

Mr. CULVER. In the judgment of many. But in the absence of anything else it is a minimum we can do.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, will the Senator inform the Senate when the effective date of the amendment would be?

Mr. CULVER. Fiscal year 1980.

Mr. PROXMIRE. 1980.

I agree with the Senator. I think it is an excellent amendment, and I agree it does not go far enough. The Treasury supports it. There is no revenue loss this year, and a revenue loss in 1980 of $10 million or after 1980.

Mr. CULVER. Ten million dollars after 1980.

Mr. President, I move the amendment. I ask for a vote on this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment was agreed to.

Mr. CULVER. I thank the Chair.

Mr. CHURCH. Mr. President, I ask the Senator from Maine if he would yield 15 minutes.

Mr. MUSKIE. I yield 15 minutes to the distinguished Senator from Idaho.

AMENDMENT NO. 3901

(Purpose: To provide for the taxation of the earnings and profits of controlled foreign corporations)

Mr. CHURCH. Mr. President, I call up for consideration at this time amendment No. 3901.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report the amendment of the Senator from Idaho.

Mr. CHURCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with, and I will explain it.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 341, between lines 17 and 18, insert the following:

SEC. 378. TAXATION OF EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS.

(a) GENERAL.—Part III of subchapter N of chapter 1 (relating to income from sources without the United States) is amended by inserting after subpart II thereof the following:

"Subpart I—Controlled Foreign Corporations

"Sec. 983. Amounts included in gross income of United States shareholders.
"Sec. 984. Definitions.
"Sec. 985. Rules for determining stock ownership.
"Sec. 986. Exclusion from gross income of previously taxed earnings and profits.
"Sec. 987. Adjustments to basis of stock in controlled foreign corporations and of other property.
"Sec. 988. Records and accounts of United States shareholders.
"Sec. 989. Election by individuals to be subject to tax at corporate rates.
"Sec. 990. Records and accounts of United States shareholders.
"Sec. 990A. Transition rules for period before subpart I is completely phased in.

"SEC. 983. AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS.

"(a) AMOUNT INCLUDED.—

"(1) IN GENERAL.—If a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more during any taxable year, every United States shareholder of such corporation which owns (within the meaning of section 985(a)) stock in such corporation on the last day in such year on which such corporation is a controlled foreign corporation shall include in its gross income, for its taxable year in which or with which such taxable year of the corporation ends, a percentage (determined under paragraph (3)) of its pro rata share of the corporation's earnings and profits for such year.

"(2) PRO RATA SHARE OF EARNINGS AND PROFITS.—A United States shareholder's pro rata share referred to in paragraph (1) is the amount—

"(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 985(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its earnings and profits for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

"(B) an amount (i) which bears the same ratio to the earnings and profits of such corporation for the taxable year, as (ii) the part of such year described in subparagraph (A)(ii) during which such shareholder did not own (within the meaning of section 985(a)) such stock bears to the entire year.

"(3) DETERMINATION OF PERCENTAGE.—The

percentage referred to in paragraph (1) shall be determined in accordance with the following table:

"For taxable years of foreign corporations beginning in calendar year—	*The percentage is—*
1979	50
1980	60
1981	78
1982	80
1983	90
1984 or later	100

"(b) EARNINGS AND PROFITS.—For purposes of this subpart, under regulations prescribed by the Secretary, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year—

"(1) except as provided in section 312(m)(3), shall be determined according to rules appropriate to carry out the rules of this subpart,

"(2) shall be reduced by the amount, if any, by which the sum of the deficits in earnings and profits of such corporation for any prior taxable years beginning after December 31, 1978, exceed the sum of the earnings and profits of such corporation of such prior taxable years,

"(3) shall not include any item of income which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States, and

"(4) shall not include any amount of earnings and profits which could not have been distributed by such corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country but any such amounts shall be included in earnings and profits for the first taxable year in which such restrictions or limitations are terminated or modified to permit distribution of such amounts.

"(c) COORDINATION WITH ELECTION OF A FOREIGN INVESTMENT COMPANY TO DISTRIBUTE INCOME.—A United States shareholder who, for his taxable year, is a qualified shareholder (within the meaning of section 1247(c)) of a foreign investment company with respect to which an election under section 1247 is in effect shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company.

"(d) COORDINATION WITH FOREIGN PERSONAL HOLDING COMPANY PROVISIONS.—In the case of a United States shareholder who, for his taxable year, is subject to tax under section 551(d) (relating to foreign personal holding company income included in gross income of United States shareholders) on income of a controlled foreign corporation, the amount required to be included in gross income by such shareholder under subsection (a) with respect to such company shall be reduced by the amount included in gross income by such shareholder under section 551(b).

"(e) CONSOLIDATION OF EARNINGS AND PROFITS FROM MULTIPLE FOREIGN CORPORATIONS.—(1) Subsection (a) shall be applied to a United States shareholder who owns stock in more than one controlled foreign corporation, or who owns stock in other foreign corporations (whether controlled foreign corporations or not) through stock owned by a controlled foreign corporation, by taking into account the aggregate earnings and profits of all such foreign corporations.

"(2) The Secretary shall prescribe Regulations to carry out the purposes of subparagraph (1).

"SEC. 984. DEFINITIONS.

"(a) UNITED STATES SHAREHOLDER DEFINED.—For purposes of this subpart, the term 'United States shareholder' means, with respect to any foreign corporation, a United States person (as defined in section 957(d)) who owns (within the meaning of section 985(a)), or is considered as owning by applying the rules of ownership of section 985(b), 1 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

"(b) CONTROLLED FOREIGN CORPORATION DEFINED.—For purposes of this subpart, the term 'controlled foreign corporation' means any foreign corporation—

"(1) of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 985(a)), or is considered as owned by applying the rules of ownership of section 985(b), by United States shareholders on any day during the taxable year of such foreign corporation, or

"(2) over which United States shareholders exercise actual control, as determined by the Secretary, from all facts and circumstances in the case.

"(c) LIMITATION ON ACTUAL CONTROL DETERMINATION.—In the case of a foreign corporation of which not more than 25 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 985(a)), or is considered as owned by applying the rules of ownership of section 985(b), by one or more United States shareholders on any day during the taxable year of such foreign corporation, the burden of proof in respect of the issue, for purposes of subsection (b)(2), as to whether such United States shareholders exercise actual control shall be upon the Secretary.

"SEC. 985. RULES FOR DETERMINING STOCK OWNERSHIP.

"(a) DIRECT AND INDIRECT OWNERSHIP.—

"(1) GENERAL RULE.—For purposes of this subpart, stock owned means—

"(A) stock owned directly, and

"(B) stock owned with the application of paragraph (2).

"(2) STOCK OWNERSHIP THROUGH FOREIGN ENTITIES.—For purposes of subparagraph (B) of paragraph (1), stock owned, directly or indirectly, by or for a foreign corporation of foreign estate (within the meaning of section 7701(a)(31)) or by or for a partnership or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(b) CONSTRUCTIVE OWNERSHIP.—For purposes of section 984, section 318(a) (relating to constructive ownership of stock) shall apply to the extent that the effect is to treat any domestic corporation as a United States shareholder within the meaning of section 984(a), or to treat a foreign corporation as a controlled foreign corporation under section 984(b), except that—

"(1) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all of the stock entitled to vote.

"(2) In applying subparagraph (C) of section 318(a)(2), the phrase '10 percent' shall be substituted for the phrase '50 percent' used in subparagraph (C).

"SEC. 986. EXCLUSION FROM GROSS INCOME OF PREVIOUSLY TAXED EARNINGS AND PROFITS

"(a) EXCLUSION FROM GROSS INCOME.—For purposes of this chapter, the earnings and profits for a taxable year of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 983(a) shall not, when such amounts are distributed directly, or indirectly through a chain of ownership described under section 985(a), to—

"(1) such shareholder (or any person which acquires from any other person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary may by regulations prescribe), or

"(2) a trust (other than a foreign trust) of which such shareholder is a beneficiary, be again included in the gross income of such United States shareholder (or of such domestic corporation or of such trust).

"(b) EXCLUSION FROM EARNINGS AND PROFITS OF CERTAIN FOREIGN SUBSIDIARIES.— For purposes of section 983(a), the earnings and profits for a taxable year of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 983(a), shall not, when distributed through a chain of ownership described under section 985(a), be also included in the earnings and profits of another controlled foreign corporation in such chain for purposes of the application of section 983(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).

"(c) ALLOCATION OF DISTRIBUTIONS.—For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

"(1) first, to earnings and profits attributable to amounts included in gross income under section 983(a), and

"(2) then to other earnings and profits.

"(d) DISTRIBUTIONS EXCLUDED FROM GROSS INCOME NOT TO BE TREATED AS DIVIDENDS.—Any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend.

"SEC. 987. ADJUSTMENTS TO BASIS OF STOCK IN CONTROLLED FOREIGN CORPORATIONS AND OF OTHER PROPERTY.

"(a) INCREASE IN BASIS.—Under regulations prescribed by the Secretary, the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which it is considered under section 985(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in its gross income under section 983(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder.

"(b) REDUCTION IN BASIS.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the adjusted basis of stock or other property with respect to

which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 986(a) shall be reduced by the amount so excluded.

"(2) AMOUNT IN EXCESS OF BASIS.—To the extent that an amount excluded from gross income under section 986(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

"SEC. 988. SPECIAL RULES FOR FOREIGN TAX CREDIT.

(a) TAXES PAID BY FOREIGN CORPORATION.—

"(1) FIRST TIER FOREIGN SUBSIDIARY.—For purposes of subpart A of this part, if there is included, under section 983(a), in the gross income of a domestic corporation any amount attributable to earnings and profits of a foreign corporation at least 1 percent of the voting stock of which is owned by such domestic corporation then, under regulations prescribed by the Secretary, such domestic corporation shall be deemed to have paid the same proportion of the total income, war profits, and excess profits taxes paid (or deemed paid) by such foreign corporation to a foreign country or possession of the United States for the taxable year on or with respect to the earnings and profits of such foreign corporation which the amount of earnings and profits of such foreign corporation so included in the gross income of the domestic corporation bears to the entire amount of the earnings and profits of such foreign corporation for such taxable year.

"(2) SECOND TIER FOREIGN SUBSIDIARY.—If the foreign corporation described in paragraph (1) (hereinafter in this subsection referred to as the 'first foreign corporation') in the gross income of which there would be included (under section 983(a) applied as if the first foreign corporation were a domestic corporation) any amount attributable to the earnings and profits of a second foreign corporation in which it owns 10 percent or more of the voting stock the first foreign corporation shall be deemed to have paid the same proportion of any income war profits, or excess profits taxes paid or deemed to be paid by the second foreign corporation to any foreign country or to any possession of the United States for the taxable year on or with respect to the earnings and profits of the second foreign corporation as the amount of earnings and profits of the second foreign corporation included (under rules similar to the rules prescribed under paragraph (1)) in the gross income of the first foreign corporation bears to the entire amount of the earnings and profits of the second foreign corporation for such taxable year.

"(3) THIRD TIER FOREIGN SUBSIDIARY.—If the first foreign corporation owns 10 percent or more of the voting stock of a second foreign corporation in the gross income of which there would be included (under section 983(a) applied as if the second foreign corporation were a domestic corporation) any amount attributable to the earnings and profits of a third foreign corporation in which it owns 10 percent or more of the voting stock, the second foreign corporation shall be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid by such third foreign corporation to any foreign country or to any possession of the United States for the taxable year on or with respect to the earnings and profits of the third foreign corporation as the amount of earnings and profits of the third foreign corporation included (under rules similar to the rules prescribed under paragraph (2)) in the gross income of the second foreign corporation bears to the entire amount of the earnings and profits of the third foreign corporation for the taxable year.

"(b) TAXES DEEMED PAID.—

"(1) TAXES PREVIOUSLY DEEMED PAID BY DOMESTIC CORPORATION.—If a domestic corporation receives a distribution from a foreign corporation, any portion of which is excluded from gross income under section 986, the income, war profits, and excess profits taxes paid or deemed paid by such foreign corporation to any foreign country or to any possession of the United States in connection with the earnings and profits of such foreign corporation from which such a distribution is made shall not be taken into account for purposes of section 902, to the extent such taxes were deemed paid by a domestic corporation under subsection (a) for any prior taxable year.

"(2) TAXES PAID BY FOREIGN CORPORATION AND NOT PREVIOUSLY DEEMED PAID BY DOMESTIC CORPORATION.—Any portion of a distribution from a foreign corporation received by a domestic corporation which is excluded from gross income under section 986(a) shall be treated by the domestic corporation as a dividend solely for the purposes of taking into account under section 902 any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States, on or with respect to the accumulated profits of such foreign corporation from which such distribution is made, which were not deemed paid by the domestic corporation under subsection (a) for any prior taxable year.

"(c) SPECIAL RULES FOR FOREIGN TAX CREDIT IN YEAR OF RECEIPT OF PREVIOUSLY TAXED EARNINGS AND PROFITS.—

"(1) INCREASE IN SECTION 904 LIMITATION.—In the case of any taxpayer who—

"(A) either (i) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 983 (a) to include in his gross income an amount in respect of a controlled foreign corporation, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits to any foreign country or to any possession of the United States, and

"(B) chooses to have the benefits of subpart A of this part for the taxable year in which he receives a distribtuion or amount which is excluded from gross income under section 986(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A), and

"(C) for the taxable year in which such distribution or amount is received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distribution or amount,

the applicable limitation under section 904 for the taxable year in which such distribution or amount is received shall be increased as provided in paragraph (2), but such increase shall not exceed the amount of such taxes paid, or deemed paid, or accrued with respect to such distribution or amount.

"(2) AMOUNT OF INCREASE.—The amount of increase of the applicable limitation under section 904(a) for the taxable year in which the distribution or amount referred to in paragraph (1)(B) is received shall be an amount equal to—

"(A) the amount by which the applicable limitation under section 904(a) for the taxable year referred to in paragraph (1)(A) was increased by reason of the inclusion in gross income section 983(a) of the amount in respect of the controlled foreign corporation, reduced by

"(B) the amount of income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for the taxable year referred to in paragraph (1)(A) and which would not have been allowable but for the inclusion in gross income of the amount described in subparagraph (A).

"(3) CASES OF WHICH TAXES NOT TO BE ALLOWED AS DEDUCTION.—In the case of any taxpayer who—

"(A) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 983(a) to include in his gross income an amount in respect of a controlled foreign corporation, and

"(B) does not choose to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 986(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A),

no deduction shall be allowed under section 164 for the taxable year in which such distribution or amount is received for any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States on or with respect to such distribution or amount.

"(4) INSUFFICIENT TAXABLE INCOME.—If an increase in the limitation under this subsection exceeds the tax imposed by this chapter for such year, the amount of such excess shall be deemed an overpayment of tax for such year.

"SEC. 989. ELECTION BY INDIVIDUALS TO BE SUBJECT TO TAX AT CORPORATE RATES.

"(a) GENERAL RULE.—Under regulations prescribed by the Secretary or his delegate, in the case of a United States shareholder who is an individual and who elects to have the provisions of this section apply for the taxable year—

"(1) the tax imposed under this chapter on amounts which are included in the gross income under section 983(a) shall (in lieu of the tax determined under section 1) be an amount equal to the tax which would be imposed under section 11 if such amounts were received by a domestic corporation, and

"(2) for purposes of applying the provisions of section 988 (relating to foreign tax credit) such amounts shall be treated as if they were received by a domestic corporation.

"(b) ELECTION.—An election to have the provisions of this section apply for any taxable year shall be made by a United States shareholder at such time and in such manner as the Secretary or his delegate shall prescribe by regulations. An election made for any taxable year may not be revoked except with the consent of the Secretary or his delegate.

"(c) SURTAX EXEMPTION.—For purposes of applying subsection (a)(1), the surtax exemption provided by section 11(c) shall not exceed, in the case of any United States shareholder, an amount which bears the same ratio to the surtax exemption as the amounts included in his gross income under section 983(a) for the taxable year bears to his pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such United States shareholder includes any amount in gross income under section 983(a).

"(d) SPECIAL RULE FOR ACTUAL DISTRIBUTIONS.—The earnings and profits of a foreign corporation attributable to amounts which were included in the gross income of a United States shareholder under section 983(a) and with respect to which an election under this section applied shall, when such earnings and

profits are distributed, notwithstanding the provisions of section 986(a)(1), be included in gross income to the extent that such earnings and profits so distributed exceed the amount of tax paid under this chapter on the amounts to which such election applied.

"SEC. 990. RECORDS AND ACCOUNTS OF UNITED STATES SHAREHOLDERS.

"(a) RECORDS AND ACCOUNTS TO BE MAINTAINED.—The Secretary may by regulations require each person who is, or has been, a United States shareholder of a controlled foreign corporation to maintain such records and accounts as may be prescribed by such regulations as necessary to carry out the provisions of this subpart.

"(b) TWO OR MORE PERSONS REQUIRED TO MAINTAIN OR FURNISH THE SAME RECORDS AND ACCOUNTS WITH RESPECT TO THE SAME FOREIGN CORPORATION.—Where, but for this subsection, two or more persons would be required to maintain or furnish the same records and accounts as may by regulations be required under subsection (a) with respect to the same controlled foreign corporation for the same period, the Secretary may by regulations provide that the maintainance or furnishing of such records and accounts by only one person shall satisfy the requirements of subsection (a) for such other persons.

"SEC. 990A. TRANSITION RULES FOR PERIOD BEFORE SUBPART I IS COMPLETELY PHASED IN.

"In the case of a United States shareholder whose taxable year ends within or with the taxable year of a foreign corporation which begins after December 31, 1978, and before January 1, 1984, the amount which such shareholder shall include in his gross income under this part (to the extent such inclusion is determined under this subpart) shall, notwithstanding any other provision of this subpart or subpart F, be an amount equal to the greater of—

"(1) the amount such shareholder would be required to include in his gross income for the taxable year under subpart F (as such subpart was in effect on the day after the date of enactment of the Revenue Act of 1978), or

"(2) the amount such shareholder would be required to include in his gross income under this subpart (determined without regard to this section).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 864(c)(4)(D) is amended to read as follows:

"(D) No income from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it consists of dividends, interest, or royalties paid by a foreign corporation in which the taxpayer owns (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), more than 50 percent of the total combined voting power of all classes of stock entitled to vote.".

(2) Section 951 is amended by adding at the end thereof the following:

"(c) TAXABLE YEARS BEGINNING ON ENACTMENT OF THIS ACT.—No amount shall be required to be included in the gross income of a United States shareholder under subsection (a) (other than paragraph (1) of such subsection) with respect to a taxable year of a controlled foreign corporation beginning after December 31, 1978, to the extent that such amount is required to be included in the gross income of a United States shareholder under section 983(a).".

(3) Section 1016(a)(19) is amended by striking out "section 961" and inserting in lieu thereof "sections 961 and 987".

(4) Section 1246(a)(2)(B) is amended by inserting "or 983" after "section 951" and by inserting "or 986" after "section 959".

(5) Section 1248 is amended by amending subsection (d)(1) to read as follows:

"(1) AMOUNTS INCLUDED IN GROSS INCOME UNDER SECTION 951 OR 953.—Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 951 or 983, with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount from gross income under section 959 or 986."

(6) Section 78 (relating to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit) is amended by striking out "or under section 960(a)(1) (relating to taxes paid by foreign corporation)" and inserting in lieu thereof the following: ", under section 960(a)(1) (relating to taxes paid by foreign corporation), or under section 988(b) (relating to taxes deemed paid by corporations)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years of foreign corporations beginning after December 31, 1978, and to taxable years of United States shareholders which end within or with such taxable years of such foreign corporations.

Mr. CHURCH. Mr. President, I am happy to cosponsor this amendment. The tax deferral provision, which encourages corporations to invest in foreign countries instead of in the United States, has cost America jobs, tax revenues, and has increased the size of the already swollen U.S. trade deficit.

Currently, the earnings of foreign subsidiaries of U.S. based corporations are taxed by the United States only when they are brought home. Until those earning are repatriated, "deferral" acts like an "interest-free cash loan" from the U.S. Government. If a corporation never repatriates these earnings, deferral becomes tantamount to an exemption from U.S. taxation. Generally, less than half of the earnings from the foreign operations of American multinationals are repatriated—and deferral allows those earnings to be brought back whenever the corporation deems it most favorable for its overall tax situation. Solely domestic corporations do not have the luxury of deferring U.S. taxes until that year when tax payments will be most advantageous to the cooperation.

The cost to the American taxpayer in revenue foregone because of deferral is estimated at between $300 million and $1 billion per year. This revenue loss to the United States would be serious enough were that the only cost of the deferral provision; but far more serious is the fact that by encouraging the exportation of capital and the formation of plants and equipment abroad, deferral causes a loss of jobs for American workers. In a study done for the Subcommittee on Multinational Corporations of the Senate Foreign Relations Committee by a distinguished economists, Professor Peggy Musgrave, it was revealed that "foreign investment as it were, establishes an alliance between U.S. capital and foreign labor, both of whom stand to gain, while it is not surprising that U.S. labor and foreign capital should be less than enthusiastic."

Several years ago the State Department hired two economists to study the effects of deferral, confident that they would once again bolster the position that large foreign investments benefit the U.S. economy. However, Messrs. Freeman and Frank found that from 1969 to 1973, 1 million U.S. jobs were lost because of investment abroad instead of at home. Approximately 150,000 jobs are being exported annually.

Finally, it is somewhat ironic that at a time when the U.S. Congress is most concerned with the historically large $30 billion U.S. trade deficit, there should be any question of retaining a provision in the law which in effect subsidizes the operations of foreign subsidiaries of U.S. based corporations, bestowing upon them an extra edge, when they in turn compete with our own domestic companies. The "interest free loan" that the U.S. Government is, in effect, providing through the deferral provision is coming home to roost when U.S. exporters are unable to compete with their foreign counterparts.

Last week, this Congress sent to the President a bill which would require the U.S. Government to attain and maintain a balanced budget beginning in 1981, yet is the Senate at the same time willing to retain deferral—a provision which is estimated to result in a tax revenue loss of between $300 million and $1 billion per year?

I concur totally with economist Professor Musgrave's conclusion that " deferral clearly introduces a non-neutral incentive to invest abroad that is difficult to defend on both equity and efficiency grounds." Deferral offers tremendous advantages to U.S. corporations which invest abroad, nothing to those which invest at home, and costs the U.S. economy in terms of jobs and lost revenues and a larger trade deficit. Therefore, I strongly support this amendment and hope the Senate will vote in favor of an expeditious repeal of deferral.

Mr. President, it should be emphasized that this amendment will not cost the U.S. taxpayer anything. In fact, it will save money. That statement cannot be made about most amendments offered during the past few days.

Mr. KENNEDY. Would the Senator like to ask for the yeas and nays while we have the Members here?

Mr. LONG. I cannot yield for that because I do not have the time. I do not think anybody has.

Mr. CHURCH. I have 15 minutes, and I would hope we can get a vote on this amendment. It is nongermane, and now is the time to vote on it if we can.

Mr. KENNEDY. Can we ask that it be in order to ask for the yeas and nays?

Mr. LONG. Somebody will have to yield the time for the yeas and nays.

Mr. CHURCH. Mr. President, will the Senator yield for that time?

Mr. MUSKIE. I have yielded 15 minutes, and we have only about 45 minutes left.

Mr. CHURCH. I assure the Senator that I can take less time to argue the case.

Mr. KENNEDY. Can we ask for 7 minutes?

Mr. CHURCH. Very well.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CHURCH. This amendment, it is estimated, will save the U.S. Treasury anywhere from $300 million to $1 billion. It is a big saver. This amendment has been considered by Congress in previous years. It relates to American corporations doing business abroad, and the way that their earnings abroad are treated for tax purposes. Today these earnings are subject to U.S. income tax, but the tax need not be paid as long as the profits are left abroad.

This amendment has nothing to do with the right of American corporations to credit foreign taxes against any tax they might otherwise owe the United States on profits earned abroad. All that this amendment does is to treat American-owned foreign subsidiaries, doing business in other lands, in the same manner that solely based U.S. corporations currently are treated; namely, that they pay income tax in the year that the earnings are realized.

Under current law it is possible to defer the tax payable on foreign earnings, that would otherwise be owed to the United States, if and until such time that the profits are repatriated. This means, in effect, that an advantage is given to those American-owned businesses that operate overseas as compared to businesses operating at home. The Foreign-based businesses can defer the payment of income taxes on their profits until such time as they decide to bring those profits home. That may be 1 year, 10 years, 20 years, or never. As long as they leave the profits abroad, they need not pay any U.S. income tax on those earnings.

This amounts, in effect, to an interest-free loan from the U.S. Government for the period that corporations choose not to repatriate profits. However, we do not give interest-free loans to businesses operating here at home, least of all for tax purposes.

If the corporation chooses to leave those profits abroad indefinitely, then it can indefinitely avoid any payments of income tax on those profits.

For these reasons, I think it would be strongly in the interest of U.S. taxpayers for the Senate to enact this amendment. I am joined by the distinguished Senator from Massachusetts as a cosponsor of the amendment.

I yield the balance of my time to him.

Mr. KENNEDY. Mr. President, I believe there are 2 minutes left on the Church amendment.

Mr. President, this issue, as the Senator from Idaho has pointed out, has been debated time and again on the Senate floor. Senators have expressed their will.

Just very briefly three points. In order to take advantage of the tax expenditure, you have to move overseas in order to receive it, and, therefore, there is the distinction between the overseas corporations and the corporations that are here at home.

Second, at a time when this body is going to be considering billions of dollars of additional tax expenditure for new capital formation, the incentive in this particular amendment is to keep the capital from going overseas. That is what the real incentive is without this amendment, to keep the capital overseas, at a time when we are trying to bring capital home, and this keeps capital overseas; at a time when we are trying to bring capital home for job expansion, this keeps capital overseas when we have our unemployment at the rate it is.

The final point I want to make is it is discriminatory between corporations overseas and whether they are subsidiaries or whether they are branches. It points that kind of discrimination to corporations which are overseas, moving jobs overseas, supporting capital that remains overseas and discriminating against these companies that are not overseas, which justifies the acceptance of the amendment.

Mr. HANSEN. The tax "deferral" or "tax when repatriated" provision should remain as is because; first, taxing earnings before repatriation would place subsidiaries of U.S. parents at a competitive disadvantage with foreign subsidiaries owned by foreign parents and all foreign parent corporations; two, no other trading nation taxes domestic corporations on their foreign earnings until these earnings are repatriated; and three, the elimination of the deferral provision is an invitation to foreign countries to increase their tax rates. Ultimately, this could mean fewer dollars being repatriated and a lesser tax take for the United States.

The present law does not cause "U.S. jobs to be exported." In our judgment, the net effect of the present deferral provision results in increasing the number of jobs available in this country.

We point out that the "tax deferral" provision is only operative when the foreign tax does not equal or exceed the U.S. tax. When the foreign tax rate equals the U.S. rate, there is nothing to defer.

Mr. BENTSEN. Mr. President, I believe that the pending amendment would place American-based firms at a serious competitive disadvantage. No other country taxes such income until it is repatriated. Some countries go even further and do not tax earnings of foreign subsidiaries at all.

Under present law, American parent companies do not pay taxes on their share of profits earned by foreign subsidiaries until those profits are received as a dividend. This undistributed income, which is taxed by the host foreign governments as it is earned, is often needed for expansion or debt service abroad and may not be available to the parent company.

Decisions of American firms do not involve a choice between exporting from the United States or manufacturing abroad. Differences in customer product requirements and preferences, trade barriers—both tariff and nontariff—reflecting deep-rooted national policies, and logistics have generally foreclosed the export opportunity.

Overseas investments have been dictated by market opportunity, not by the availability of hourly labor costs lower than those in the United States.

There is no question that if U.S. firms were to turn their backs on market participation through overseas facilities, multinational firms based in other countries would be alert and quick to fill the need.

The tax code has many provisions to prevent abuse of the deferral provisions.

Under the so-called subpart F provisions of the Internal Revenue Code, which were added to the Code over 15 years ago by the Revenue Act of 1962 and strengthened and expanded by the Tax Reduction Act of 1975 and the Tax Reform Act of 1976, certain types of sales, service, investment, insurance, and shipping income earned by foreign corporations controlled by U.S. persons are "constructively" included in the incomes of such U.S. persons whether or not such amounts are actually distributed to such persons. Moreover, the subpart F provisions include in the incomes of the U.S. persons certain other profits of controlled foreign corporations invested in U.S. property in a manner that has the effect of repatriation to or for the benefit of such persons. These provisions, already part of our domestic tax law, effectively eliminate deferral in abusive situations.

In addition to the subpart F provisions the Commissioner of Internal Revenue has a number of statutory and judicial methods with which to attack abusive situations of tax deferral; and all multinational corporations know that the Commissioner is zealous, as he should be, in his use of these weapons where he finds improper deferral.

The opportunities for tax deferral under present tax law are quite limited and exist, for the most part, only where deferral is appropriate such as foreign subsidiaries engaged in manufacturing and other local operations in order to effectively penetrate foreign markets for their goods and services.

Foreign subsidiaries of U.S. corporations located in any foreign country are in competition with other business operating in that particular country. To be able to compete effectively, foreign subsidiaries must be subject to no heavier taxes on their income than are their competitors. This amendment would subject those subsidiaries to a heavier rate of taxation in many cases, severely impairing their ability to compete.

In high tax countries, the current taxation of undistributed earnings, while producing little revenue gain to the United States, could seriously impair the ability of American business to compete. Favorable tax provisions in such countries might be of little or no use to the subsidiary of a U.S. corporation. The U.S. tax would constitute an effective "floor" below which the foreign subsidiary could not benefit from such local tax provisions. Additionally, timing differences—accelerated versus normal depreciation—

could subject the subsidiary to high effective taxes.

The current taxation of undistributed earnings also would affect American business operating in developing countries, which typically, have lower tax rates. These countries have relied on the presence of American business to supply needed goods and services and aid in the development of the local economy. Under the amendment, American business operating in developing countries would be effectively taxed at high U.S. rates while their foreign competitors would be taxed at the lower local rates.

CURRENT LAW INSURES TAX EQUALITY

Mr. CHAFEE. Mr. President, under the present U.S. law, and the laws of almost every country in the world, earnings by foreign subsidiaries of U.S. companies are not subject to U.S. tax until these earnings are remitted to the corporate parent in the United States. In a particular country, the subsidiary pays the same taxes as all other corporations located in the country. Thus, until profits are actually paid to shareholders outside the foreign country, all businesses competing in the same foreign country are taxed the same. This "separate entity" treatment results in equality of tax treatment.

What the Church amendment proposes is that the United States—breaking away from the other major industrial powers—disown this concept of equality of tax treatment. It would do this by saying that it does not matter whether all or any part of the earnings of the foreign subsidiary are actually paid out in dividends to its American owners but that the United States will compute taxes each year as if all such earnings were paid out. This, in effect, is the imposition of an "anticipatory tax" and is a bad idea for the following reasons:

DEFERRAL HELPS U.S. ECONOMY

First, it is a bad idea because it will hurt the U.S. economy and cost many American workers their jobs. Proponents of ending deferral contend that it costs the United States jobs by transferring them overseas. This is not the case.

Business operations abroad are vital to the U.S. economy and our workers. These operations produce jobs here at home, increase exports and promote a positive trade balance. Exports of many manufactured goods are impossible without sales and service organizations abroad. Potential foreign buyers no longer will buy sophisticated equipment if they do not have service and repair facilities close at hand. Even when the final product is assembled abroad, components are purchased elsewhere. If the foreign operation is owned by an American firm that makes the components, who is most likely to get the component export sales business? A 1973 U.S. Tariff Commission study showed that shipments from U.S. corporations owning foreign affiliates accounted for 62 percent of all U.S. exports.

Foreign construction projects, such as a major building project in Saudi Arabia, require large numbers of support people in the home office to plan and design the project, order materials and handle a wide range of administrative tasks not to mention supervisory people on site.

Foreign sales and production frequently involve use of patents, trademarks, and technical services requiring payment of royalties and fees. If the foreign operation is owned by a U.S. firm, U.S. know-how is most likely to be used and royalties subsequently will flow to the United States.

Royalties and fees paid to the U.S. parent foster additional research and development in the United States which results in better, more efficient products. The U.S. consumer is the beneficiary. As the foreign affiliate grows, it also innovates and the parent company can apply these innovations at home. This "reverse" transfer of technology applied in the U.S. creates jobs for Americans. Often raw materials or components produced abroad by the subsidiary of an American parent are vital to the parent company's own production in the United States. It would be discriminatory to force these subsidiaries to sell in a world market where the costs of raw materials or essential components are higher than those paid by its foreign competitors.

As much as 50 percent of all U.S. exports are made to foreign companies controlled by U.S. shareholders, and the jobs of millions of U.S. workers are dependent upon these exports. Such exports greatly enhance our merchandise trade balance at a time when the overall U.S. balance of trade sorely needs such support.

Thus, foreign subsidiaries of U.S. companies actually produce jobs, generate tax revenue, and have other favorable effects on the U.S. economy.

ENDING DEFERRAL PUTS SUBSIDIARIES OF U.S. COMPANIES AT COMPETITIVE DISADVANTAGE

Although foreign subsidiaries of American companies are still strong competitors in many parts of the world, competition abroad is growing more difficult. Common Market countries and Japan have caught up with us, and indeed are passing us, in a growing number of industries, both on their own turf and in other markets. The technological edge of the United States has been dulled in all but a relative handful of products and even these are in jeopardy. As the number of foreign-controlled companies dominating important industries has increased, it is unwise for the U.S. Government to put U.S. subsidiaries abroad at a further competitive disadvantage.

Suppose two parent companies, one in the United States and one in Germany, are considering an operation in a country which taxes profits at 25 percent. Under the proposal to end deferral, the American multinational would pay upward of 48 percent on the profits of the proposed operation, regardless of whether or not, there is a need to reinvest all the profits remaining after the 25 percent tax imposed by the local government. The German parent can reinvest all its profits over 25 percent because the German Government does not impose the additional tax that would be imposed by the United States by this amendment. Who can make the more attractive bid for the concession? Who can charge the lower price for the product, either for sale back home (to be built into an end product by U.S. workers) or in the foreign market?

We hear the argument that ending deferral closes a tax loophole but this is not a good argument. The decision to form a foreign corporation is made for overall business reasons, not for tax avoidance purposes. Changes in U.S. tax laws over the years now largely prevent any taxes from being avoided. And businesses choose subsidiaries over branches (which are taxed currently) largely depending on local foreign investment laws and not for U.S. tax purposes.

Even if the deferral were ended it is highly unlikely that there would be substantial increase in U.S. investment. In fact, we believe the effect will be strongly negative for the following reasons:

U.S. companies do not decide to establish foreign operations because taxes are lower in foreign countries. In fact as much as 75 percent of U.S. investment abroad may be made in countries with tax rates equal to or higher than those in the United States. U.S. businesses invest abroad, as well as at home, because they must to survive and grow. Tariff and nontariff barriers can make it impossible to compete in foreign markets by exporting from the United States. Or the raw materials cannot be found domestically. Or local sales and service operations are vital to exports from here. Or costs here make it impossible to compete with foreign firms for sales in other parts of the world.

The argument that deferral creates "runaway" plants and jobs is a weak one. Very few U.S.-controlled foreign subsidiaries are "runaways"—that is, they rarely displace production in the United States for the home market. The labor cost differential between the United States and the major industrial countries of Western Europe has narrowed markedly. For this reason, a growing number of foreign multinationals are establishing plants in the United States. The available data indicates that something less than 7 percent of the products made abroad by U.S.-controlled companies are exported back to the U.S. market. The Department of Commerce, "Survey of Current Business," reported that only 6.7 percent of the sales of U.S. owned affiliates abroad were to the United States, and this included sales to the United States under the free trade permitted by the United States-Canadian Automobile Pact. When this specific automobile trade was excluded, only 3.5 percent of all sales from U.S.-owned foreign affiliates were made back to the United States. Thus, 96.5 percent of all sales were made abroad.

Suppose, due to the discouragement caused by ending deferral, less U.S. money is invested in countries that presently have lower tax rates than those in the United States. That does not mean that the money will be invested in the United States. If the profit potential is greater elsewhere, that is where the money will go. Thus, investment could be diverted to other high-tax countries instead. A Ways and Means Task Force

on Taxation of Foreign Source Income agrees.

Even with the enactment of the proposed ending of deferral, the reaction of those countries which have lower rates could end up totally negating the intention of the change. For example, in order to maintain advantages designed to attract U.S. investment, such countries might simply raise their own tax rates to match the U.S. rates, making up the difference in the form of subsidies.

ENDING DEFERRAL WOULD HAVE NEGATIVE FOREIGN POLICY IMPLICATIONS

Ending deferral also would have negative foreign policy implications. For many years the United States has recognized the desirability of assisting developing nations. The U.S. subsidiary, in many developing countries, plays an important role in transferring technology to that society. This technology transfer aids development and contributes to a positive foreign investment climate in a country. Many countries actively seek U.S. foreign investment to help spur their economies.

Of the 37 countries with total effective corporate tax rates below the U.S. statutory rate, 27 of these are developing countries which use lower tax rates to stimulate internal economic development. The effect of ending deferral would be to make investment in such countries less profitable to American firms, and would weaken private sector efforts in these countries.

Ending deferral also abandons the principles used around the world in the taxation of international transactions. These principles are either embodied or assumed in all U.S. tax treaties. There is little doubt that ending deferral will be viewed as an act of bad faith by much of the world, since the United States would be violating the spirit of its own treaties.

ENDING DEFERRAL COULD ACTUALLY REDUCE U.S. TAX REVENUES

A 1976 Treasury study done by Hufbauer and Foster conceded that, if all profits earned by U.S.-controlled foreign affiliates were repatriated to the United States (forced repatriation of foreign earned profits is one of the primary purposes of the proposal) the United States could suffer a net loss in tax revenue. The Treasury also conceded, in option papers presented to the White House before the administration's proposal was formulated, that ending deferral could result in a long-term loss in U.S. tax revenues. Because almost all countries, including the United States, impose a tax on dividends sent to other countries, if the United States forced dividends to be repatriated, they would be subject to the withholding tax of the country in which they were earned. Since the sum of the foreign corporate income tax paid and the foreign withholding tax could equal or exceed the U.S. tax rate, if the proposal is aimed only at profits taxed at rates below the U.S. rates, no U.S. tax revenue would result.

Although Treasury states that it cannot predict the reaction of foreign nations affected by the ending of deferral, the net effect of the administration's proposal could well be an increase in taxes paid to foreign nations, not to the United States. Countries interested in revenue to spur development will not sit by idly while the U.S. taxes away this revenue. The country's answer will be additional taxes on the subsidiary.

ENDING DEFERRAL WILL MEAN COMPLEX ENFORCEMENT PROCEDURES

The elimination of deferral will mean complex enforcement procedures and the addition of an enforcement/auditing staff. The proposal will require foreign financial books of U.S.-controlled foreign subsidiaries to be completely restated in terms of U.S. accounting and tax principles. This restatement must be made on an item-for-item basis, requiring adjustments—in each country—in the depreciation rates, credits, deductions and other technical items called for under the laws of such country. This task is made even more difficult by currency fluctuations, blocked currencies, and other problems Treasury has mentionel only in passing. The Treasury has admitted that massive new regulations will be required to govern this worldwide restatement of income.

TAX AVOIDANCE IS NO LONGER A MAJOR ISSUE

Some 15 years ago, when the ending of deferral was first proposed, Congress focused on the opportunity for tax avoidance in foreign transactions, and enacted specific legislation designed to impose a full tax burden on tax haven income. As recently as 1976, in the Tax Reform Act, Congress tightened these provisions, further reducing the possibility of tax avoidance through investments in tax havens. Thus, foreign personal holding companies, foreign base companies, and other foreign operations lending themselves to tax avoidance are strictly regulated.

The current law and regulations in this area are detailed and specific, and leave little room for tax avoidance. In fact, the Treasury makes no "full scale" tax avoidance arguments based on tax havens. Current U.S. law prohibits such manipulation and permits the IRS to adjust profits, prices, and other items where it suspects manipulation.

On September 2, 1977, the Treasury Department, after considering a number of options, recommended to the White House that deferral not be repealed, and no new arguments have been advanced suggesting that Treasury's own analysis was deficient. The State and Commerce Departments also have criticized proposals to end deferral.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho. The yeas and nays have been ordered.

Mr. LONG. Mr. President, how much time remains?

The PRESIDING OFFICER. There are 16 minutes remaining.

Mr. LONG. I yield 3 minutes to the Senator from Oregon.

Mr. PACKWOOD. I really only needed 3 minutes, Mr. President, but I asked for 5 minutes.

Mr. President, we have debated this extensively in the past, and if we want to debate this later tonight we will.

Let me talk about the key document to point out in perspective what deferral really means, as to what the professionals who deal with it really understand it to mean.

This is a document leaked to me by the White House. It was the Treasury's recommendations to the President when he was considering this. At the bottom there are three lines for "agree," "disagree," and "want to discuss further." Here is what it says:

Proposal. Treasury does not recommend deferral be eliminated.

1. Few companies invest in less developed countries merely because of tax considerations. There is little evidence to suggest that the net impact of foreign investment on domestic employment is large. Other policy instruments are more effective in stimulating domestic employment.

2. Removing deferral is an incentive to a foreign country to raise its taxes on funds withdrawn from the country to the American level of taxation. This is likely to mean that we will obtain little in revenue from removing tax deferral (even less would be received if the corporate rate is reduced.) In fact, this proposal in the long run may result in a loss in revenue to us, since it will encourage foreign countries to impose higher taxes on income withdrawn from their countries than they would if deferral were retained.

3. The balance of tax incentives now generally favors domestic investment over foreign investment. Although foreign investment benefits from deferral, it is denied the investment tax credit and accelerated depreciation (ADR). In the aggregate, these domestic incentives more than offset the effect of deferral. As a result repealing deferral would represent a step away from taxing domestic and foreign investment at the same effective rates.

4. To deny tax deferral means that income from U.S. investments overseas will be discriminated against relative to other investments in the same foreign countries. The income on these other investments pays only the tax of the foreign country (and usually will not pay any tax to the country from which the investment originated).

DEPARTMENT OF STATE COMMENT

This is still from the Treasury recommendation to the President.

The State Department urges tax deferral be retained. It believes that the elimination of tax deferral would make it more difficult for U.S. corporations to compete internationally.

DEPARTMENT OF COMMERCE COMMENT

Commerce supports the Treasury position to continue deferral of taxes on undistributed earnings of controlled foreign corporations. The present practice of not taxing foreign source income until returned to U.S. shareholders should be continued because: (1) other countries do not tax earnings of their overseas corporate holdings until such income is repatriated, (2) it would tend to discourage U.S. investment in low tax countries (often LDCs), (3) it may induce foreign governments to place a withholding tax on the constructive dividends implicit in ending tax deferral, and (4) A past Treasury study has indicated that under certain conditions the removal of the deferral may actually lose revenue.

TREASURY RECOMMENDATION

The Treasury recommends that deferral be retained.

That is the attitude of Commerce,

Treasury, and State, the three principal departments concerned.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BENTSEN. Mr. President, will the Senator yield another minute on the bill?

Mr. LONG. I yield 1 more minute.

Mr. BENTSEN. Does the Senator know of any other country in the world that taxes profits overseas?

Mr. PACKWOOD. There is not any other country in the world that taxes profits overseas, and a number of major countries do not even tax them when they are brought home. We are the only country that does.

Mr. BENTSEN. Is it not true that in many of these countries you run into local laws on stock ownership, where it is held, and where the domicile must be, which would preclude our companies from operating in those areas?

Mr. PACKWOOD. Yes; and the Department of State estimates that if we wiped out our overseas investments, we would be lucky to serve one-fourth of the markets we now serve by overseas investments.

Mr. KENNEDY. Mr. President, will the manager of the bill yield for a question?

Mr. LONG. Yes.

Mr. KENNEDY. What is the position of the Treasury Department? I understand the administration supports the Church amendment.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. LONG. I personally favor the amendment. The Treasury opposes it; the committee does favor it.

Mr. PACKWOOD. Mr. President, I did not say the current Treasury position was in favor. Of course, the Treasury supports what the President tells them to do. All I am saying is that in making the recommendation, Treasury, Commerce, and State recommended to the President that deferral be retained. But when the President comes out on the other side, those departments having nothing to do but do what the President tells them.

Mr. LONG. Mr. President, the only way we could vote on this amendment, I would think, at this point, would be if a motion to table were made. I would be willing to make a motion to table if the Senator from Idaho will permit the time for the vote to be on a motion to table.

Mr. CHURCH. That would be fine with me. I thank the Senator for his cooperation.

Mr. LONG. Mr. President, with the understanding that the time for the vote will be used for the vote on the motion to lay on the table, I move that the amendment of the Senator from Idaho be laid on the table.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MUSKIE. Mr. President, against whose time is the rollcall vote? I yielded time for a vote on the amendment. I did not yield time for a motion to lay on the table, Mr. President.

Mr. LONG. Mr. President, the only way we can vote on this amendment at this point would be on a motion to lay on the table, because otherwise the amendment would drag out and take a lot more time. The only way we can get the Senate position on this issue at this time would be to vote on a motion to lay on the table.

Mr. MUSKIE. I understand. No objection.

● Mr. STEVENSON. Mr. President, I oppose the amendment offered by the Senator from Idaho to eliminate foreign tax deferral.

Mr. President, the principal beneficiaries of this amendment will be foreign governments and our foreign competitors—not the U.S. taxpayer or U.S. worker.

U.S. exports in 1977 were $120 billion. From one-fourth to nearly one-half of total U.S. exports are to overseas affiliates of U.S. firms. Accordingly, between $30 to $60 billion of 1977 exports from the United States were shipped to these affiliates. And it is these overseas subsidiaries—the best customers for U.S. goods—who would be economically harmed by subjecting their income to current U.S. taxation. Their profits would be taxed at rates higher than those of their competitors who would be paying on a current basis only the tax of the host country.

In general, no country taxes unremitted earnings from operations of foreign affiliates of their corporations. If the United States decided to do so, we can be certain that, in view of current fierce competition for world markets, no country would follow our lead.

Secretary Vance noted in a recent speech to the Governors that nearly 10 million American jobs depend on U.S. exports. Using the estimates of U.S. exports earlier referred to, there are between 2.5 to 5 million American workers producing exports for the overseas subsidiaries of U.S. firms. If "deferral" were eliminated, many of these jobs would be in jeopardy since the major overseas customers of American exports would be economically damaged.

A first-of-its-kind study recently completed by Arthur Andersen & Co. based on financial data from the overseas subsidiaries of 88 American companies demonstrates that the proposal to eliminate "deferral" under the most likely circumstances would result in additional foreign tax payments of $294 million, a U.S. Treasury revenue loss of $88 million, and an overall net tax increase of $206 million to the 88 companies.

This would result from the interaction between foreign "withholding" taxes and the U.S. foreign tax credit. Overseas subsidiaries would change their distribution policies so as to minimize tax costs. Most companies would increase their profit repatriation patterns from the historic level of about 50 percent to a new level of about 75 percent.

"Deferral" is a universal system. For the United States unilaterally to eliminate it for U.S. firms would damage their overseas subsidiaries with consequent harm to the U.S. economy and U.S. workers.●

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Vermont (Mr. LEAHY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. MELCHER), the Senator from Rhode Island (Mr. PELL), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY), the Senator from Minnesota (Mrs. HUMPHREY) and the Senator from Rhode Island (Mr. PELL) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Nebraska (Mr. CURTIS), the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from New York (Mr. JAVITS), the Senator from Maryland (Mr. MATHIAS), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY) and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that if present and voting the Senator from New York (Mr. JAVITS) would vote "yea."

The PRESIDING OFFICER. Is there any Senator who has not answered the rollcall?

The result was announced—yeas 61, nays 17, as follows:

[Rollcall Vote No. 463 Leg.]

YEAS—61

Allen	Gravel	Packwood
Baker	Hansen	Pearson
Bartlett	Hatch	Randolph
Bellmon	Hatfield, Mark O.	Ribicoff
Bentsen	Hatfield, Paul G.	Riegle
Brooke	Hayakawa	Roth
Byrd, Harry F., Jr.	Heinz	Sasser
Byrd, Robert C.	Helms	Schmitt
Case	Hollings	Schweiker
Chafee	Huddleston	Scott
Chiles	Inouye	Stafford
Danforth	Laxalt	Stevens
DeConcini	Long	Stevenson
Dole	Lugar	Stone
Durkin	Magnuson	Thurmond
Eagleton	Matsunaga	Wallop
Eastland	McIntyre	Weicker
Ford	Morgan	Williams
Garn	Moynihan	Young
Glenn	Nunn	Zorinsky
Goldwater		

NAYS—17

Bayh	Hart	Nelson
Burdick	Hodges	Proxmire
Church	Jackson	Sarbanes
Clark	Kennedy	Sparkman
Cranston	Metzenbaum	Talmadge
Culver	Muskie	

NOT VOTING—22

Abourezk	Haskell	McGovern
Anderson	Hathaway	Melcher
Biden	Humphrey	Pell
Bumpers	Javits	Percy
Cannon	Johnston	Stennis
Curtis	Leahy	Tower
Domenici	Mathias	
Griffin	McClure	

So the motion to lay on the table amendment No. 3701 was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CLARK and Mr. MUSKIE addressed the Chair.

Mr. HELMS. Mr. President, will the Senator from Kansas yield to me?

Mr. DOLE. Yes, I yield to the Senator from North Carolina.

Mr. HELMS. Mr. President, I send to the desk three amendments, unprinted. I ask unanimous consent that they be considered stated, and laid aside for future discussion.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the amendment.

Who yields time?

Mr. HELMS. I reserve the remainder of my time.

Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. Just now, I received unanimous consent from the Chair to send forward three unprinted amendments. I asked unanimous consent that they be considered stated and laid aside for discussion at a later time.

Mr. PROXMIRE. Will the Senator use his microphone? I cannot hear what he is requesting.

I thought he was going to abolish Wisconsin as a State.

Mr. HELMS. No.

The PRESIDING OFFICER. Is there objection to having the amendments of the Senator from North Carolina read en bloc and have them lie on the table until they are called up?

Without objection——

Mr. LONG. Mr. President, there is no request that they be considered en bloc.

Mr. HELMS. That is correct. I want them considered separately.

The PRESIDING OFFICER. Without objection, is is so ordered.

UP AMENDMENT 2040

(Purpose: To require that certain procedures be followed with respect to the IRS "Proposed Revenue Procedure on Private Tax-exempt Schools")

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes unprinted amendment numbered 2040.

At the appropriate place in the bill, add the following:

"That the 'proposed Revenue Procedure on Private Tax-Exempt Schools' proposed by the Internal Revenue Service and published on page 37296 of the Federal Register of August 22, 1978, and any other procedure or regulation proposed by the Internal Revenue Service relating to the same subject shall not take effect unless such Service complies with all procedures applicable to significant regulations of the Department of the Treasury (within the meaning of the proposed Directive of such Department relating to the preparation, review, and approval of regulations; published on page 22319 of the Federal Register of May 24, 1978).

UP AMENDMENT 2041

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes unprinted amendment numbered 2041.

At the end of the bill, add the following new section:

"Section . (a) This section may be cited as the "James B. Allen Taxpayer's Attorney Fee Award Act of 1978".

(b) In any action wherein the United States, or the Internal Revenue Service, or any person acting as an agent or employee of either the United States or the Internal Revenue Service or of both, is a party and in which tax liability to the United States on the part of any person is at issue or in which a declaration, refund, payment, or any other matter pertaining to a tax of the United States is in dispute, the court may in its discretion award reasonable attorney's fees and costs or reasonable practitioner's fees and costs to any prevailing party other than the United States, the Internal Revenue Service, or any person acting as agent or employee of either the United States or the Internal Revenue Service or of both.

(c) As used in this section, the term "prevailing party" means any person the court may in its discretion determine to have before that court prevailed substantially on the merits, notwithstanding the pendency of any appeal.

UP AMENDMENT 2042

(Purpose: To prohibit the withdrawal of 501 (c)(3) status from a private elementary or secondary school on the grounds of racial discrimination absent a judicial determination of such discrimination)

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 2042.

At the appropriate place in the bill, insert the following new section:

SEC. . ADMINISTRATION OF SECTION 501(c)(3) IN PRIVATE SCHOOLS

In the administration of section 501(c)(3) of the Internal Revenue Code of 1954, private elementary and secondary schools which, on the date of enactment of this Act, are recognized as tax exempt shall be presumed to have racially nondiscriminatory policies unless found to be discriminatory by a final decision of a Federal or State court of competent jurisdiction.

Mr. MUSKIE. Mr. President, I yield 4 minutes to the distinguished Senator from Iowa.

UP AMENDMENT 2043

Mr. CLARK. Mr. President, I send an amendment to the desk and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. CLARK) proposes an unprinted amendment numbered 2043.

Mr. CLARK. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Title V of the committee substitute to the bill (regarding other tax provisions) is amended by adding the following new section:

SEC. . SUBORDINATION OF SPECIAL LIENS FOR ADDITIONAL ESTATE TAX ATTRIBUTABLE TO FARM, ETC., VALUATION.

(a) Section 6325 (relating to release of lien) is amended by striking subsection (d) and by inserting a new subsection (d) to read as follows:

"(d) SUBORDINATION OF LIEN.—Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of subordination—

"(1) of any lien imposed by this chapter upon any part of the property subject to such lien if—

"(i) there is paid over to the Secretary an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

"(ii) the Secretary believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

"(2) notwithstanding paragraph (1), of any lien imposed by section 6324B upon any part of the property subject to such lien, if the Secretary determines that the United States will be adequately secured after such subordination.".

(b) The amendments made by this section shall be effective with respect to decedents who have died after December 31, 1976.

Mr. CLARK. Mr. President, this amendment expands the authority of the Internal Revenue Service, under section 6325 of the Internal Revenue Code, to subordinate tax liens arising as a result of a special estate tax valuation election under section 2032A, provided that the United States remains adequately secured following the subordination.

Congress, in 1976, recognized the potentially disabling burden imposed by estate taxes on many estates comprised largely of family farms when these farm properties are valued under normal estate tax valuation rules. In adding section 2032A to the Internal Revenue Code, we affirmed our commitment to permitting family members to continue operation of their farms from generation to generation by providing for special use valuation in situations where the family members actually continue operation of the farm.

Section 2032A requires that the family members inheriting specially valued farm property continue the farming use for a period of 15 years following the death of the farmer in order to qualify for the lower special use valuation. Should these heirs cease to use the property as a farm, or dispose of it outside of the family, within that period, an additional estate tax is imposed. Normally, this additional tax is an amount equal to the tax originally saved by the farmer's estate.

The United States is secured during this 15-year period by a first lien on the farm property in an amount equal to the potential additional tax liability. Generally, the farm family has equity in their land far exceeding the amount of additional estate tax potentially due. Further, the farm property subject to this tax lien is often the only asset owned by the family which has a value sufficient to be used as security for their credit needs. However, code section 6324B which imposes the lien, and section 6325 which provides for subordination of all tax liens in certain cases, do not allow release or subordination of this special lien in many cases in which farm families legitimately need credit.

As a result, many farm families are experiencing difficulty obtaining much needed credit where the need is not related to the operation of the farm itself. This is particularly true since the Federal land bank system provides a large majority of the credit extended to farmers, and the land banks are required by the Farm Credit Act of 1971 to make only loans secured by a first lien on interests in real property.

Without my amendment to section 6325, many farm families will be forced unnecessarily either to forego the relief intended for them by our passage of section 2032A or to be eliminated from the credit market.

Mr. President, the amendment has the support of the Treasury. The Committee on Joint Taxation says there is no revenue effect. I have cleared the amendment with both managers of the bill and others and I ask for its immediate consideration.

I move the adoption of the amendment.

Mr. PROXMIRE. Mr. President, did the Senator say there is no revenue loss at all, or there is no revenue loss in 1979?

Mr. CLARK. There is no revenue loss. The only circumstance under which, according to the joint committee, there would be any loss would be if the joint committee made any misassumption of the subordinate lien.

Mr. PROXMIRE. Is there a specific beneficiary, one firm or a number of firms?

Mr. CLARK. There is not.

Mr. PROXMIRE. One industry?

Mr. CLARK. There is not.

Mr. PROXMIRE. And no revenue loss?

Mr. CLARK. That is correct.

Mr. METZENBAUM. Will the Senator yield for a question?

Mr. CLARK. Yes.

Mr. METZENBAUM. Let us assume there is a mistake that involves $5 million. Do I understand that under this amendment, the Treasury could be put in a subordinate position if the executor wanted to make a loan of $2.5 million?

Mr. CLARK. No, what would happen is that, under the law passed 2 years ago, we said that in order to keep people farming, we would allow those who farmed that land for a period of 15 years to be taxed at the use rate rather than the commercial rate, which would be higher. In order to be sure that the Government would be secure in its position under the law, they would have first lien on that property. The problem with that is that if the farmer wants to go out and borrow money, let us say, from a land bank, the land bank is forbidden from lending them money, because they cannot have the first lien. IRS advised us that as long as they can be certain of their security on the entire difference as to taxes, they are willing to take a subordinate position so that that farmer can make regular commercial loans. In fact, Treasury suggested that we offer the amendment.

I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 3844

Mr. CLARK. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. CLARK) proposes an amendment numbered 3844.

Mr. CLARK. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 383, between lines 8 and 9, insert the following new section:

SEC. 510. EXTENSION OF OPTIONAL SMALL TAX CASE PROCEDURES AND EXPANSION OF AUTHORITY OF COMMISSIONERS OF THE TAX COURT.

(a) IN GENERAL.—Subsection (a) of section 7463 of the Internal Revenue Code of 1954 (relating to small tax cases) is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) $5,000 for any one taxable year, in the case of the taxes imposed by subtitle A,

"(2) $5,000, in the case of the tax imposed by chapter 11, or

"(3) $5,000 for any one calendar year, in the case of the tax imposed by chapter 12,".

(b) CONFORMING AMENDMENTS.—

(1) The heading of section 7463 of such Code is amended by striking out "$1,500" and inserting in lieu thereof "$5,000".

(2) The table of sections for part II of subchapter C of chapter 76 of such Code is amended by striking out "$1,500" in the item relating to section 7463 and inserting in lieu thereof $5,000".

(c) Section 7463 of the Internal Revenue Code of 1954 (relating to small tax cases) is amended by adding at the end thereof the following new subsection:

"(g) COMMISSIONERS.—The chief judge of the Tax Court may assign proceedings conducted under this section to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to any such proceeding, subject to such conditions and review as the court may by rule provide.".

(d) Subsection (a) of section 7456 of the Internal Revenue Code of 1954 (relating to the administration of oaths and testimony) is amended—

(1) by striking out "any judge of the Tax Court" each place it appears and inserting in lieu thereof "any judge or commissioner of the Tax Court"; and

(2) by striking out "by the judge" and inserting in lieu thereof "by the judge or commissioner".

(e) The amendments made by section 510 (a) of this Act shall take effect on the first day of the first calendar month beginning more than 180 days after the date of the enactment of this Act.

(f) The amendments made by section 510 (c) and (d) of this Act shall take effect on the date of the enactment of this Act.

Mr. CLARK. Mr. President, this amendment would expand the present small tax case procedure of the Tax Court involving income, estate or gift tax deficiencies of less than $1,500. These cases are, at the taxpayers' option, conducted informally and neither the taxpayer nor the IRS may appeal the decision. Typically these small tax cases are tried by Commissioners appointed by the chief judge of the Tax Court, who file written reports of their findings and conclusions of law which serve as the basis of the decision, which is made by the chief judge.

This amendment would extend these optional small tax case procedures to additional taxpayers by increasing the jurisdictional amount from $1,500 to $5,000. It would, in addition, make certain changes relating to the authority of Commissioners, specifically authorizing them to administer oaths, issue subpenas, examine witnesses, prepare reports and make decisions in such cases. Increasing the jurisdictional amount would permit more taxpayers to take advantage of this expeditious and simplified procedure for handling tax disputes. In addition, it would provide a means of relieving the regular judges of part of an extremely heavy workload. Providing specific authority to Commissioners to conduct proceedings in small tax cases and to file reports and make decisions with respect to such proceedings will clarify current law and improve the administration of small tax cases.

The small tax case procedures have worked well, and if expanded, can provide even greater advantages to the litigation of small tax cases.

In addition, it would provide a means for relieving the regular judges of part of an extremely heavy load.

I move the adoption of the amendment.

Mr. PROXMIRE. Did the Senator say the administration favors this?

Mr. CLARK. They do, and the Tax Court does.

Mr. PROXMIRE. There is no loss?

Mr. CLARK. No loss.

I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment (No. 3844) was agreed to.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I yield myself 2 minutes.

UP AMENDMENT NO. 2044

(Purpose: To make technical, clarifying, and correcting amendments to the Tax Reform Act of 1976)

Mr. LONG. Mr. President, I am going to send to the desk the same amendment the Senator from Maine (Mr. HATHAWAY) sent to the desk. It is to add the language of the technical corrections to this bill.

Now, the Senator put his amendment, it has already been agreed to as an amendment to the bill. It should be added to the committee substitute.

I ask that this amendment be considered as an amendment to the committee substitute.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment numbered 2044.

The amendment is as follows:

At the appropriate place in the committee amendment add the following new title:

TITLE . TECHNICAL CORRECTIONS OF THE TAX REFORM ACT OF 1976

SEC. . TECHNICAL AMENDMENTS TO INCOME TAX PROVISIONS AND ADMINISTRATIVE PROVISIONS.

(a) AMENDMENTS RELATING TO RETENTION OF PRIOR LAW FOR RETIREMENT INCOME CREDIT UNDER SECTION 37(e).—

(1) CLARIFICATION THAT SPOUSE UNDER AGE 65 MUST HAVE PUBLIC RETIREMENT SYSTEM INCOME.—Paragraph (2) of section 37(e) (relating to election of prior law with respect to public retirement system income) is amended by striking out "who has not attained age 65 before the close of the taxable year" and inserting in lieu thereof "who has not attained age 65 before the close of the taxable year (and whose gross income includes income described in paragraph (4)(B))".

(2) CLARIFICATION THAT QUALIFYING SERVICES MUST HAVE BEEN PERFORMED BY TAXPAYER OR SPOUSE.—Subparagraph (B) of section 37(e)(4) (defining retirement income) is amended by inserting "and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services)" after "before the close of the taxable year".

(3) DISREGARD OF COMMUNITY PROPERTY LAWS.—Subsection (e) of section 37 (relating to election of prior law with respect to public retirement system income) is amended—

(A) by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) COMMUNITY PROPERTY LAWS NOT APPLICABLE.—In the case of a joint return, this subsection shall be applied without regard to community property laws.",

(B) by striking out "paragraph (8)(A)" in paragraph (4)(B) and inserting in lieu thereof "paragraph (9)(A)"; and

(C) by striking out "paragraph (8)(B)" in paragraph (5)(B) and inserting in lieu thereof "paragraph (9)(B)".

(4) EFFECTIVE DATES.—

(A) The amendments made by paragraphs (1) and (2) shall apply to taxable years beginning after December 31, 1975.

(B) The amendments made by paragraph (3) shall apply to taxable years beginning after December 31, 1977.

(b) AMENDMENTS RELATING TO THE MINIMUM TAX.—

(1) SPECIAL RULES FOR MINIMUM TAX IN THE CASE OF SUBCHAPTERS CORPORATIONS AND PERSONAL HOLDING COMPANIES.—

(A) Paragraph (1) of section 57(a) (relating to adjusted itemized deductions) is amended by striking out "An amount" and inserting in lieu thereof "In the case of an individual, an amount".

(B) The last sentence of section 57(a) (relating to items of tax preference) is amended by striking out "Paragraphs (1), (3), and" and inserting in lieu thereof "Paragraphs (3) and".

(C) Subsection (i) of section 58 (defining corporation) is amended by striking out "Except as provided in subsection (d)(2), for purposes of this part" and inserting in lieu thereof "For purposes of this part (other than section 57(a)(9))".

(2) DIVISION OF $10,000 AMOUNT AMONG MEMBERS OF CONTROLLED GROUPS.—Subsection (b) of section 58 (relating to members of controlled groups) is amended to read as follows:

"(b) MEMBERS OF CONTROLLED GROUPS.—In the case of a controlled group of corporations (as defined in section 1563(a)), the $10,000 amount specified in section 56 shall be divided among the component members of such group in proportion to their respective regular tax deductions (within the meaning of section 56(c)) for the taxable year."

(3) COMPUTATION OF ADJUSTED ITEMIZED DEDUCTIONS IN THE CASE OF ESTATES AND TRUSTS.—Paragraph (2) of section 57(b) (relating to computation of adjusted itemized deductions in the case of estates and trusts) is amended to read as follows:

"(2) SPECIAL RULES FOR ESTATES AND TRUSTS.—

"(A) IN GENERAL.—In the case of an estate or trust, for purposes of paragraph (1) of subsection (a), the amount of the adjusted itemized deductions for any taxable year is the amount by which the sum of the deductions for the taxable year other than—

"(i) the deductions allowable in arriving at adjusted gross income,

"(ii) the deduction for personal exemption provided by section 642(b),

"(iii) the deduction for casualty losses described in section 165(c)(3),

"(iv) the deductions allowable under section 651(a), 661(a), or 691(c), and

"(v) the deductions allowable to a trust under section 642(c) to the extent that a corresponding amount is included in the gross income of the beneficiary under section 652(a)(1) for the taxable year of the beneficiary with which or within which the taxable year of the trust ends,

exceeds 60 percent (but does not exceed 100 percent) of the adjusted gross income of the estate or trust for the taxable year.

"(B) DETERMINATION OF ADJUSTED GROSS INCOME.—For purposes of this paragraph, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

"(i) the deductions for costs paid or incurred in connection with the administration of the estate or trust, and

"(ii) to the extent provided in subparagraph (C), the deductions under section 642(c),

shall be treated as allowable in arriving at adjusted gross income.

"(C) TREATMENT OF CERTAIN CHARITABLE CONTRIBUTIONS.—For purposes of this paragraph, the following deductions under section 642(c) (relating to deductions for amounts paid or permanently set aside for charitable purposes) shall be treated as deductions allowable in arriving at adjusted gross income:

"(i) deductions allowable to an estate,

"(ii) deductions allowable to a trust all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B),

"(iii) deductions allowable to a trust which is a pooled income fund within the meaning of section 642(c)(5),

"(iv) deductions allowable to a trust which are attributable to transfers to the trust before January 1, 1977, and

"(v) deductions allowable to a trust, all of the income interest of which is devoted solely to one or more of the purposes described in section 170(c)(2)(B), which are attributable to transfers pursuant to a will or pursuant to an inter vivos trust in which the grantor had the power to revoke at the date of his death."

(4) SECTION 691(c) DEDUCTION NOT TAKEN INTO ACCOUNT FOR DETERMINING ADJUSTED ITEMIZED DEDUCTIONS.—Paragraph (1) of section 57(b) is amended by striking out "and" at the end of subparagraph (C), by inserting "and" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) the deduction allowable under section 691(c),".

(5) ALLOCATION OF ITEMS OF TAX PREFERENCE IN THE CASE OF ESTATES AND TRUSTS.—Paragraph (1) of section 58(c) (relating to estates and trusts) is amended by striking out "on the basis of the income of the estate or trust allocable to each" and inserting in lieu thereof "in accordance with regulations prescribed by the Secretary".

(6) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the amendments made by section 301 of the Tax Reform Act of 1976.

(c) SICK PAY.—

(1) IN GENERAL.—Section 105(d) is amended by striking out paragraphs (4) and (6), by redesignating paragraph (5) as paragraph (4) and paragraph (7) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

"(5) SPECIAL RULES FOR MARRIED COUPLES.—

"(A) MARRIED COUPLE MUST FILE JOINT RETURN.—Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the exclusion provided by this subsection shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

"(B) APPLICATION OF PARAGRAPHS (2) AND (3).—In the case of a joint return—

"(i) paragraph (2) shall be applied separately with respect to each spouse, but

"(ii) paragraph (3) shall be applied with respect to their combined adjusted gross income.

"(C) DETERMINATION OF MARITAL STATUS.—For the purposes of this subsection, marital status shall be determined under section 143(a).

"(D) JOINT RETURN DEFINED.—For purposes of this subsection, the term 'joint return' means the joint return of a husband and wife made under section 6013."

(2) CONFORMING AMENDMENTS.—

(A) Subsection (c)(3) of section 505 of the Tax Reform Act of 1976 (relating to disability retirement) is amended by striking out "section 105(d)(5)" and inserting in lieu thereof "section 105(d)(4)".

(B) Subsection (c) and (e)(1) of section 301 of the Tax Reduction and Simplification Act of 1977 (relating to effective date of changes in the exclusion for sick pay) are each amended by striking out "section 105(d)(7)" and inserting in lieu thereof "section 105(d)(6)".

(3) EFFECTIVE DATE.—

(A) The amendments made by paragraphs (1) and (2)(A) shall take effect as if included in section 105(d) of the Internal Revenue Code of 1954 as such section was amended by section 505(a) of the Tax Reform Act of 1976.

(B) The amendments made by paragraph (2)(B) shall take effect as if included in section 301 of the Tax Reduction and Simplification Act of 1977.

(d) NET OPERATING LOSSES.—

(1) AMENDMENT OF SECTION 172(b)(1)(B).—The second sentence of subparagraph (B) of section 172(b)(1) (relating to years to which net operating losses may be carried) is amended by striking out "and (F)" and inserting in lieu thereof "(F), and (G)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to losses incurred in taxable year ending after December 31, 1975.

(e) EFFECTIVE DATE FOR FISCAL YEAR TAXPAYER FOR CONSTRUCTION PERIOD INTEREST AND TAXES.—Paragraph (1) of section 201(c) of the Tax Reform Act of 1976 is amended to read as follows:

"(1) in the case of nonresidential real property if the construction period begins on or after the first day of the first taxable year beginning after December 31, 1975.".

(f) CLARIFICATION OF PROVISIONS PROVIDING TAX INCENTIVES TO ENCOURAGE THE PRESERVATION OF HISTORIC STRUCTURES.—

(1) DEFINITION OF CERTIFIED HISTORIC STRUCTURES.—Subsection (d) of section 191 (relating to amortization of certain rehabilitation expenditures for certified historic structures) is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by striking out paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(1) CERTIFIED HISTORIC STRUCTURE.—The term 'certified historic structure' means a building or structure which is of a character subject to the allowance for depreciation provided in section 167 and which—

"(A) is listed in the National Register, or

"(B) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

"(2) REGISTERED HISTORIC DISTRICT.—The term 'registered historic district' means—

"(A) any district listed in the National Register, and

"(B) any district—

"(i) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

"(ii) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register."

(2) AMENDMENT OF CROSS REFERENCES.—Subsection (g) of section 191 (relating to cross references) is amended to read as follows:

"(g) CROSS REFERENCES.—

"(1) For rules relating to the listing of buildings, structures, and historic districts in the National Register, see the Act entitled 'An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes', approved October 15, 1966 (16 U.S.C. 470 et seq.).

"(2) For special rules with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see sections 1245 and 1250."

(3) SPECIAL RULES FOR RECAPTURE OF AMORTIZATION DEDUCTION.—

(A) Paragraph (2) of section 1245(a) (relating to gain from dispositions of certain depreciable property) is amended—

(i) by striking out "190, or 191" the first place it appears and inserting in lieu thereof "or 190" and

(ii) by striking out "190, or 191" the second and third place it appears and inserting in lieu thereof "190, or (in the case of property described in paragraph (3)(C)) 191".

(B) Subparagraph (D) of section 1245(a)(3) (relating to gain from dispositions of certain depreciable property) is amended by striking out "190, or 191" and inserting in lieu thereof "or 190".

(C) Paragraph (3) of section 1250(b) (relating to depreciation adjustments) is amended by striking out "190 or 191" and inserting in lieu thereof "or 190".

(D) Paragraph (2) of section 57(a) (relating to items of tax preference) is amended by inserting "or 191" after "167(k)".

(E) Paragraph (4) of section 1250(b) (relating to definition of additional depreciation) is amended—

(i) by inserting "or amortization" after "depreciation" the second and third places it appears, and

(ii) by inserting "or 191" after "167(k)" each place it appears.

(4) STRAIGHT LINE METHOD IN CERTAIN CASES.—Subsection (n) of section 167 is amended to read as follows:

"(n) STRAIGHT LINE METHOD IN CERTAIN CASES.—

"(1) IN GENERAL.—In the case of any property in whole or in part constructed, reconstructed, erected, or used on a site which was, on or after June 30, 1976, occupied by a certified historic structure (or by any structure in a registered historic district) which is demolished or substantially altered after such date—

"(A) subsections (b), (j), (k), and (l) shall not apply, and

"(B) the term 'reasonable allowance' as used in subsection (a) means only an allowance computed under the straight line method.

The preceding sentence shall not apply if the last substantial alteration of the structure is a certified rehabilitation.

"(2) EXCEPTIONS.—The limitations imposed by this subsection shall not apply—

"(A) to personal property, and

"(B) in the case of demolition or substantial alteration of a structure located in a registered historic district, if the Secretary of the Interior certified to the Secretary—

"(i) before the beginning of the demolition or substantial alteration of such structure that such structure—

"(I) is not a certified historic structure, and

"(II) is not of historic significance to the district; or

"(ii) after the beginning of the demolition or substantial alteration of such structure, that—

"(I) such structure was not a certified historic structure,

"(II) such structure was not of historic significance to the district, and

"(III) the taxpayer has certified to the Secretary that, at the time of such demolition or substantial alteration, he in good faith was not aware of any certification requirement under this subparagraph.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'certified historic structure', 'registered historic district', and 'certified rehabilitation' have the respective meanings given such terms by section 191(d)."

(5) DEMOLITION OF CERTAIN HISTORIC STRUCTURES.—Subsection (b) of section 280B (relating to special rule for registered historic districts) is amended to read as follows:

"(b) SPECIAL RULE FOR REGISTERED HISTORIC DISTRICTS.—For purposes of this section, any building or other structure located in a registered historic district (as defined in section 191(d)(2)) shall be treated as a certified historic structure unless the Secretary of the Interior has certified—

"(1) before the beginning of the demolition or substantial alteration of such structure that such structure—

"(A) is not a certified historic structure, and

"(B) is not of historic significance to the district; or

"(2) after the beginning of the demolition or substantial alteration of such structure, that—

"(A) such structure was not a certified historic structure,

"(B) such structure was not of historic significance to the district, and

"(C) the taxpayer has certified to the Secretary that, at the time of such demolition or substantial alteration, he in good faith was not aware of the certification requirement under this subparagraph.".

(6) SUBSTANTIALLY REHABILITATED HISTORIC PROPERTY.—

(A) Paragraph (1) of section 167(o) (relating to substantially rehabilitated historic property) is amended by inserting "(other than property with respect to which an amortization deduction has been allowed to the taxpayer under section 191)" after "substantially rehabilitated historic property".

(B) Paragraph (2) of section 167(o) is amended by striking out "section 191(d)(3)" and inserting in lieu thereof "section 191(d)(4)".

(7) AMORTIZATION ALLOWABLE TO PERSONS WITH CERTAIN LEASE INTERESTS.—Section 191(f) (relating to treatment of life tenants and remaindermen) is amended to read as follows:

"(f) SPECIAL RULES FOR CERTAIN INTERESTS.—

"(1) LIFE TENANT AND REMAINDERMAN.—In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

"(2) CERTAIN LESSEES.—

"(A) IN GENERAL.—In the case of a lessee of a certified historic structure who has expended amounts in connection with the certified rehabilitation of such structure which are properly chargeable to capital account, the deduction under this section shall be allowable to such lessee with respect to such amounts.

"(B) AMORTIZABLE BASIS.—For purposes of subsection (a), the amortizable basis of such lessee shall not exceed the sum of the amounts described in subparagraph (A).

"(C) LIMITATION.—Subparagraph (A) shall apply only if on the date of the certified rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) extends—

"(i) beyond the last day of the useful life (determined without regard to this section) of the improvements for which the amounts described in subparagraph (A) were expended, and

"(ii) for not less than 30 years.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the respective provisions of the Internal Revenue Code of 1954 to which such amendments relate, as such provision were added to such Code, or amended, by section 2124 of the Tax Reform Act of 1976.

(g) FOREIGN CONVENTIONS.—

(1) DEDUCTIONS NOT DISALLOWED TO EMPLOYER WHERE EMPLOYEE INCLUDES AMOUNTS IN GROSS INCOME.—Subparagraph (D) of section 274(h)(6) (relating to application of subsection to employer as well as to traveler) is amended to read as follows:

"(D) SUBSECTION TO APPLY TO EMPLOYER AS WELL AS TO TRAVELER.—

"(i) Except as provided in clause (ii), this subsection shall apply to deductions otherwise allowable under section 162 or 212 to any person, whether or not such person is the individual attending the foreign convention. For the purposes of the preceeding sen-

tence such person shall be treated, with respect to each individual, as having selected the same 2 foreign conventions as were selected by such individual.

"(ii) This subsection shall not deny a deduction to any person other than the individual attending the foreign convention with respect to any amount paid by such person to or on behalf of another person if includible in the gross income of such other person. The preceding sentence shall not apply if such amount is required to be included in any information return filed by such person under part III of subchapter A of chapter 61 and is not so included.".

(2) INDIVIDUALS RESIDING IN FOREIGN COUNTRIES.—Section 274(h)(6) is amended by adding at the end thereof the following new subparagraph:

"(E) Individuals Residing in Foreign Countries.—For purposes of this subsection, in the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary that he was a bona fide resident of a foreign country at the time that he attended a convention in such foreign country, such individual's attendance at such convention shall not be considered as attendance at a foreign convention.".

(3) TECHNICAL AMENDMENT.—The first sentence of section 274(h)(3) is amended by striking out "more than one-half" and inserting in lieu thereof "at least one-half".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to conventions beginning after December 31, 1976.

(h) RENTAL OF FORMER PRINCIPAL RESIDENCE.—

(1) IN GENERAL.—Subsection (d) of section 280A (relating to use of residence for personal purposes) is amended by adding at the end thereof the following new paragraph:

"(3) RENTAL OF PRINCIPAL RESIDENCE.—

"(A) IN GENERAL.—For purposes of applying subsection (c)(5) to deductions allocable to a qualified rental period, a taxpayer shall not be considered to have used a dwelling unit for personal purposes for any day during the taxable year which occurs before or after a qualified rental period described in subparagraph (B)(i), or before a qualified rental period described in subparagraph (B)(ii), if with respect to such day such unit constitutes the principal residence (within the meaning of section 1034) of the taxpayer.

"(B) QUALIFIED RENTAL PERIOD.—For purposes of subparagraph (A), the term 'qualified rental period' means a consecutive period of—

"(i) 12 or more months which begins or ends in such taxable year, or

"(ii) less than 12 months which begins in such taxable year and at the end of which such dwelling unit is sold or exchanged, and for which such unit is rented to a person other than a member of the family (as defined in section 267(c)(4)) of the taxpayer, or is held for rental, at a fair rental."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in section 280A of the Internal Revenue Code of 1954, as such provision was added to such Code by section 601(a) of the Tax Reform Act of 1976.

(i) CLARIFICATION OF LAST SENTENCE OF SECTION 337(c)(2).—

(1) IN GENERAL.—Subsection (c) of section 337 (relating to limitations on application of section 337) is amended by striking out the last sentence of paragraph (2) and by adding at the end of such subsection the following new paragraph:

"(3) SPECIAL RULE FOR AFFILIATED GROUP.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to a sale or exchange by a corporation (hereinafter in this paragraph referred to as the 'selling corporation') if—

"(i) within the 12-month period beginning on the date of the adoption of a plan of complete liquidation by the selling corporation, the selling corporation and each distributee corporation is completely liquidated, and

"(ii) none of the complete liquidations referred to in clause (i) is a liquidation with respect to which section 333 applies.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) The term 'distributee corporation' means a corporation in the chain of includible corporations to which the selling corporation or a corporation above the selling corporation in such chain makes a distribution in complete liquidation within the 12-month period referred to in subparagraph (A)(i).

"(ii) The term 'chain of includible corporations' includes, in the case of any distribution, any corporation which (at the time of such distribution) is in a chain of includible corporations for purposes of section 1504(a) (determined without regard to the exceptions contained in section 1504(b)). Such term includes, where appropriate, the common parent corporation."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales or exchanges made pursuant to a plan of complete liquidation adopted after December 31, 1975.

(j) CERTAIN TRANSACTIONS INVOLVING TWO OR MORE INVESTMENT COMPANIES.—

(1) AMENDMENTS OF SECTION 368(a)(2)(F).—

(A) The first sentence of clause (iii) of section 368(a)(2)(F) is amended—

(i) by striking out "more than 50 percent" and inserting in lieu thereof "50 percent or more"; and

(ii) by striking out "more than 80 percent" and inserting in lieu thereof "80 percent or more."

(B) The first sentence of clause (vi) of section 368(a)(2)(F) is amended by striking out "is not diversified within the meaning" and inserting in lieu thereof "does not meet the requirements".

(C) The second sentence of such clause (vi) is amended to read as follows: "If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (1) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange."

(D) Subparagraph (F) of section 368(a)(2) is amended by adding at the end thereof the following new clauses:

"(vii) For purposes of clauses (ii) and (iii), the term 'securities' includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a-2(36)).

"(viii) In applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the reference to a personal holding company in such paragraph (3) shall be treated as including a reference to an investment company and the determination of whether a corporation is an investment company shall be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3):"

(2) EFFECTIVE DATES.—

(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1954 as added by section 2131(a) of the Tax Reform Act of 1976.

(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1954 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1954 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977.

(k) AT RISK PROVISIONS.—

(1) CLERICAL AMENDMENT TO EFFECTIVE DATE.—Subparagraph (A) of section 204(c)(3) of the Tax Reform Act of 1976 is amended by striking out "section 465(c)(1)(B)" and inserting in lieu thereof "section 465(c)(1)(C)".

* * * * *

(2) CLARIFICATION OF SECTION 465(d).—Subsection (d) of section 465 (defining loss for purposes of the at risk provisions) is amended by striking out "(determined without regard to this section)" and inserting in lieu thereof "(determined without regard to the first sentence of subsection (a))".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 4, 1976.

(l) AMENDMENTS RELATING TO USE OF ACCRUAL ACCOUNTING FOR FARMING.—

(1) AUTOMATIC 10-YEAR ADJUSTMENT PERIOD FOR FARMING CORPORATIONS REQUIRED TO USE ACCRUAL ACCOUNTING.—Paragraph (3) of section 447(f) (relating to coordination with section 481) is amended—

(A) by striking out "(except as otherwise provided in such regulations)", and

(B) by inserting "(or the remaining taxable years where there is a stated future life of less than 10 taxable years)" after "10 taxable years".

(2) AUTOMATIC 10-YEAR ADJUSTMENT FOR FARMING SYNDICATES CHANGING TO ACCRUAL ACCOUNTING.—If—

(A) a farming syndicate (within the meaning of section 464(c) of the Internal Revenue Code of 1954) was in existence on December 31, 1975, and

(B) such syndicate elects an accrual method of accounting (including the capitalization of preproductive period expenses described in section 447(b) of such Code) for a taxable year beginning before January 1, 1979. then such election shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate and, under regulations prescribed by the Secretary of the Treasury or his delegate, the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income shall be taken into account in each of the 10 taxable years (or the remaining taxable years where there is a stated future life of less than 10 taxable years) beginning with the year of change.

(3) EXTENDING FAMILY ATTRIBUTION TO SPOUSE IN THE FARMING SYNDICATE RULES.—

(A) Subparagraph (E) of section 464(c)(2) (defining farming syndicate) is amended by striking out "(within the meaning of section 267(c)(4))" and inserting in lieu thereof "(or a spouse of any such member)".

(B) Paragraph (2) of section 464(c) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (E), the term 'family' has the meaning given to such term by section 267(c)(4)."

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (3) shall take effect as if included in section 447 or 464 (as the case may be) of the Internal Revenue Code of 1954 at the time of the enactment of such sections.

(m) EXTENSION OF CERTAIN PROVISIONS TO FOREIGN PERSONAL HOLDING COMPANIES.—

(1) SECTION 465.—Subsection (a) of section 465 (relating to deductions limited to amount at risk in case of certain activities) is amended—

(A) by striking out "In the case of a taxpayer (other than a corporation which is neither an electing small business corporation (as defined in section 1371(b)) nor a personal holding company (as defined in section 542)) engaged" and inserting in lieu

thereof "In the case of an individual engaged"; and

(B) by adding at the end thereof the following new sentence: "For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual."

(2) SECTION 189.—Subsection (a) of section 189 (relating to amortization of real property construction period interest and taxes) is amended—

(A) by striking out "an electing small business corporation (within the meaning of section 1371(b)), or personal holding company (within the meaning of section 542),"; and

(B) by adding at the end thereof the following new sentence: "For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual."

(3) SECTION 280.—Subsection (a) of section 280 (relating to certain expenditures incurred in production of films, books, records, or similar property) is amended—

(A) by striking out "Except in the case of a corporation (other than an electing small business corporation (as defined in section 1371(b)) or a personal holding company (as defined in section 542)) and except" and inserting in lieu thereof "In the case of an individual, except"; and

(B) by adding at the end thereof the following new sentence: "For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual."

(4) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall take effect as if included in the amendment made by section 204(a) of the Tax Reform Act of 1976.

(B) The amendments made by paragraph (2) shall take effect as if included in the amendment made by section 201(a) of the Tax Reform Act of 1976.

(C) The amendments made by paragraph (3) shall take effect as if included in the the amendment made by section 210(a) of the Tax Reform Act of 1976.

(n) DEFINITION OF CONDOMINIUM MANAGEMENT ASSOCIATION.—

(1) IN GENERAL.—Paragraph (2) of section 528(c) (defining condominium management association) is amended by striking out "as residences" and inserting in lieu thereof "by individuals for residences".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1973.

(o) DEFINITION OF PERSONAL HOLDING COMPANY.—

(1) IN GENERAL.—The last sentence of section 542(a)(2) of the Internal Revenue Code of 1954 (relating to stock ownership requirement) shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(2) EFFECTIVE DATE.—The provisions of paragraph (1) shall apply with respect to taxable years beginning after December 31, 1976.

(p) SPECIAL RULE FOR GAIN ON PROPERTY TRANSFERRED TO TRUST AT LESS THAN FAIR MARKET VALUE.

(1) ADDITIONAL TAX TO APPLY ONLY TO RECOGNIZED GAINS.—

(A) IN GENERAL.—Subsections (a)(1), (a)(2), and (b)(1) of section 644 (relating to special rule for gain on property transferred to trust at less than fair market value) are each amended by striking out "gain realized" each place it appears and inserting in lieu thereof "gain recognized".

(B) SPECIAL RULE FOR SUBSTITUTED BASIS PROPERTY.—Subsection (d) of section 644 (relating to special rule for short sales) is amended to read as follows:

"(d) SPECIAL RULES.—

"(1) SHORT SALES.—If the trust sells the property referred to in subsection (a) in a short sale within the 2-year period referred to in such subsection, and 2-year period shall be extended to the date of the closing of such short sale.

"(2) SUBSTITUTED BASIS PROPERTY.—For purposes of this section, in the case of any property held by the trust which has a basis determined in whole or in part by reference to the basis of any other property which was transferred to the trust—

"(A) the initial transfer of such property in trust by the transferor shall be treated as having occurred on the date of the initial transfer in trust of such other property,

"(B) subsections (a)(1)(B) and (b)(2) shall be applied by taking into account the fair market value and the adjusted basis of such other property, and

"(C) the amount determined under subsection (b)(2) with respect to such other property shall be allocated (under regulations prescribed by the Secretary) among such other property and all properties held by the trust which have a basis determined in whole or in part by reference to the basis of such other property."

(2) TREATMENT OF NET OPERATING LOSSES, CAPITAL LOSSES, ETC., WHICH MAY AFFECT TRANSFEROR'S TAX IN OTHER YEARS.—Section 644(a)(2) (relating to additional tax on gain on property transferred to trust at less than fair market value) is amended by adding at the end thereof the following new sentence: "The determination of tax under clause (i) of subparagraph (A) shall be made by not taking into account any carryback, and by not taking into account any loss or deduction to the extent that such loss or deduction may be carried by the transferor to any other taxable year."

(3) TECHNICAL AMENDMENT.—Paragraph (1) of section 644(f) is amended by striking out "subsection (a)" and inserting in lieu thereof "subsection (a) (other than the 2-year requirement of paragraph (1)(A) thereof)".

(4) CONFORMING AMENDMENT TO REVISION OF SECTION 644.—Section 1402(b)(1) of the Tax Reform Act of 1976 (relating to holding period for long-term capital gains treatment) is amended by striking out subparagraph (K) thereof.

(5) EFFECTIVE DATES.—

(A) Except as provided in subparagraph (B), the amendment made by this subsection shall apply to transfers in trust made after May 21, 1976.

(B) The amendment made by paragraph (4) shall take effect on October 4, 1976.

(q) ALLOWANCE OF FOREIGN TAX CREDIT FOR ACCUMULATION DISTRIBUTIONS.—

(1) SPECIAL RULES FOR FOREIGN TRUST.—

(A) Subsection (d) of section 665 is amended to read as follows:

"(d) TAXES IMPOSED ON THE TRUST.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxes imposed on the trust' means the amount of the taxes which are imposed for any taxable year of the trust under this chapter (without regard to this subpart or subpart A of part IV of subchapter A) and which, under regulations prescribed by the Secretary, are properly allocable to the undistributed portions of distributable net income and gains in excess of losses from sales or exchanges of capital assets. The amount determined in the preceding sentence shall be reduced by any amount of such taxes deemed distributed under section 666 (b) and (c) or 669 (d) and (e) to any beneficiary.

"(2) FOREIGN TRUSTS.—In the case of any foreign trust, the term 'taxes imposed on the trust' includes the amount, reduced as provided in the last sentence of paragraph (1), of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on such foreign trust which, as determined under paragraph (1), are so properly allocable."

(B) Section 667 is amended by adding at the end thereof the following new subsection:

"(d) SPECIAL RULES FOR FOREIGN TRUST.—

"(1) FOREIGN TAX DEEMED PAID BY BENEFICIARY.—

"(A) IN GENERAL.—In determining the increase in tax under subsection (b)(1)(D) for any computation year, the taxes described in section 665 (d) (2) which are deemed distributed under section 666 (b) or (c) and added under subsection (b)(1)(C) to the taxable income of the beneficiary for any computation year shall, except as provided in subparagraphs (B) and (C), be treated as a credit against the increase in tax for such computation year under subsection (b)(1)(D).

"(B) DEDUCTION IN LIEU OF CREDIT.—If the beneficiary did not choose the benefits of subpart A of part III of subchapter N with respect to the computation year, the beneficiary may in lieu of treating the amounts described in subparagraph (A) (without regard to subparagraph (C)) as a credit may treat such amounts as a deduction in computing the beneficiary's taxable income under subsection (b)(1)(C) for the computation year.

"(C) LIMITATION ON CREDIT; RETENTION OF CHARACTER.—

"(i) LIMITATION ON CREDIT.—For purposes of determining under subparagraph (A) the amount treated as a credit for any computation year, the limitations under subpart A of part III of subchapter N shall be applied separately with respect to amounts added under subsection (b)(1)(C) to the taxable income of the beneficiary for such computation year. For purposes of computing the increase in tax under subsection (b)(1)(D) for any computation year for which the beneficiary did not choose the benefits of subpart A of part III of subchapter N, the beneficiary shall be treated as having chosen such benefits for such computation year.

"(ii) RETENTION OF CHARACTER.—The items of income, deduction, and credit of the Trust shall retain their character (subject to the application of section 904(f)(5)) to the extent necessary to apply this paragraph.

"(D) COMPUTATION YEAR.—For purposes of this paragraph, the term 'computation year' means any of the three taxable years remaining after application of subsection (b)(1)(B).".

(C) The last sentence of section 667(b)(1) is amended by inserting "(other than the amount of taxes described in section 665(d)(2))" after "taxes".

(2) RECAPTURE OF OVERALL FOREIGN LOSS.—Section 904(f) is amended by adding at the end thereof the following new paragraph:

"(5) ACCUMULATION DISTRIBUTIONS OF FOREIGN TRUST.—For purposes of this chapter, in the case of amounts of income from sources without the United States which are treated under section 666 (without regard to subsections (b) and (c) thereof if the taxpayer choose to take a deduction with respect to the amounts described in such subsections under section 667(d)(1)(B)) as having been distributed by a foreign trust in a preceding taxable year, that portion of such amounts equal to the amount of any overall foreign loss sustained by the beneficiary in a year prior to the taxable year of the beneficiary in which such distribution is received from the trust shall be treated as income from sources within the United States (and not income

from sources without the United States) to the extent that such loss was not used under this subsection in prior taxable years, or in current taxable year, against other income of the beneficiary.".

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply to distributions made in taxable years beginning after December 31, 1975.

(B) The amendments made by paragraph (2) shall take effect as if included in section 904(f) of the Internal Revenue Code of 1954, as such provision was added to such Code by section 1032(a) of the Tax Reform Act of 1976.

(r) RETENTION OF CHARACTER OF AMOUNTS DISTRIBUTED FROM ACCUMULATION TRUST TO NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.—

(1) IN GENERAL.—Section 667 (relating to treatment of amounts deemed distributed by trust in preceding years) is amended by adding at the end thereof the following new subsection:

"(e) RETENTION OF CHARACTER OF AMOUNTS DISTRIBUTED FROM ACCUMULATION TRUST TO NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.—In the case of a distribution from a trust to a nonresident alien individual or to a foreign corporation, the first sentence of subsection (a) shall be applied as if the reference to the determination of character under section 662(b) applied to all amounts instead of just to tax-exempted interest."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to distributions made in taxable years beginning after December 31, 1975.

(s) LIMITATION ON ALLOWANCE OF PARTNERSHIP IN THE CASE OF NONRECOURSE LOANS.—

(1) IN GENERAL.—Section 704(d) (relating to limitation on allowance of partnership losses) is amended by striking out the last sentence and by adding the following at the end thereof: "The preceding sentence shall not apply with respect to any activity to the extent that section 465 (relating to limiting deductions to amounts at risk in case of certain activities) applies, nor shall it apply to an activity involving the holding of real property (other than mineral property). For purposes of the preceding sentence, the holding of real property shall be treated as a separate activity and personal property and services which are incidental to making real property available as living accommodations shall be treated as part of the activity of holding such real property.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to liabilities incurred after December 31, 1976.

(t) EXEMPT INTEREST DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

(1) TREATMENT OF TAX-EXEMPT INTEREST FOR PURPOSES OF THE 90-PERCENT AND 30-PERCENT TESTS.—Subsection (b) of section 851 (relating to limitations on the definition of regulated investment company) is amended by adding at the end thereof the following new sentence: "For purposes of paragraphs (2) and (3), amounts excludable from gross income under section 103(a)(1) shall be treated as included in gross income."

(2) LOSSES ATTRIBUTABLE TO TAX-EXEMPT INTEREST WHERE STOCK IS HELD LESS THAN 31 DAYS.—Paragraph (4) of section 852(b) (relating to loss on sale or exchange of stock held less than 31 days) is amended to read as follows:

"(4) LOSS ON SALE OR EXCHANGE OF STOCK HELD LESS THAN 31 DAYS.—

"(A) LOSS ATTRIBUTABLE TO CAPITAL GAIN DIVIDEND.—If—

"(i) under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain, and

"(ii) such share is held by the taxpayer for less than 31 days,

then any loss (to the extent not disallowed under subparagraph (B)) on the sale or exchange of such share shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

"(B) LOSS ATTRIBUTABLE TO EXEMPT-INTEREST DIVIDEND.—If—

"(i) a shareholder of a regulated investment company receives an exempt-interest dividend with respect to any share, and

"(ii) such share is held by the taxpayer for less than 31 days,

then any loss on the sale or exchange of such share shall, to the extent of the amount of such exempt-interest dividend, be disallowed.

"(C) DETERMINATION OF HOLDING PERIODS.—For purposes of this paragraph, the rules of section 246(c)(3) shall apply in determining whether any share of stock has been held for less than 31 days; except that '30 days' shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3)."

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1975.

(u) AMENDMENTS RELATING TO REAL ESTATE INVESTMENT TRUSTS.—

(1) ANNUAL ACCOUNTING PERIOD.—Section 859 (relating to adoption of annual accounting period), as redesignated by section 372(d)(6) of the Act, is further amended to read as follows:

"SEC. 859. ADOPTION OF ANNUAL ACCOUNTING PERIOD.

"For purposes of this subtitle—

"(1) a real estate investment trust shall not change to any accounting period other than the calendar year, and

"(2) a corporation, trust, or association may not elect to be a real estate investment trust for any taxable year beginning after October 4, 1976, unless its accounting period is the calendar year.

Paragraph (2) shall not apply to a corporation, trust, or association which was considered to be a real estate investment trust for any taxable year beginning on or before October 4, 1976."

(2) AMENDMENT OF SECTION 856(c)(3).—Subparagraph (D) of section 856(c)(3) is amended by inserting "(other than gain from prohibited transactions)" after "and gain".

(3) EXCISE TAX ON REIT UNDISTRIBUTED INCOME.—

(A) Paragraph (3) of section 6501(e) (relating to limitations on assessment and collection) is amended by striking out "or 43" and inserting in lieu thereof "43, or 44".

(B) Subsection (b) of section 1605 of the Tax Reform Act of 1976 (relating to technical amendments) is amended by striking out paragraph (1) thereof.

(C) Subparagraph (D) of section 1605(b)(5) of the Tax Reform Act of 1976 is amended to read as follows:

"(D) by striking out 'of chapter 43 tax for the same taxable years,' in subsection (c)(1) and inserting in lieu thereof 'of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year,'."

(4) CORRECTION OF CROSS REFERENCE.—Subparagraph (B) of section 859(b)(2) is amended by striking out "section 6601(c)" and inserting in lieu thereof "section 6601(b)".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 4, 1976.

(v) AMENDMENTS RELATING TO TREATMENT OF FOREIGN INCOME.—

(1) FOREIGN TAX CREDITS NOT DISALLOWED ON CERTAIN DISTRIBUTIONS MADE BY POSSESSIONS CORPORATIONS.—

(A) IN GENERAL.—Paragraph (1) of section 901(g) (relating to certain taxes paid with respect to distributions from possessions corporations) is amended to read as follows:

"(1) IN GENERAL.—For purposes of this chapter, any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation—

"(A) to the extent that such distribution is attributable to periods during which such corporation is a possessions corporation, and

"(B)(i) if a dividends received deduction is allowable with respect to such distribution under part VIII of subchapter B, or

"(ii) to the extent that such distribution is received in connection with a liquidation or other transaction with respect to which gain or loss is not recognized,

shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amount so paid or accrued."

(B) DEFINITION OF POSSESSIONS CORPORATION.—Paragraph (2) of section 901(g) (defining possessions corporation) is amended—

(i) by striking out "or during which section 931" and inserting in lieu thereof ", during which section 931", and

(ii) by inserting before the period at the end thereof the following: ", or during which section 957(c) applied to such corporation".

(C) EFFECTIVE DATES.—The amendment made by subparagraph (A) shall apply as if included in section 901(g) of the Internal Revenue Code of 1954 as added by section 1051(d)(2) of the Tax Reform Act of 1976. The amendments made by subparagraph (B) shall apply to distributions made after the date of the enactment of this Act in taxable years ending after such date.

(2) FOREIGN TAX CREDIT ADJUSTMENTS FOR CAPITAL GAINS.—

(A) IN GENERAL.—Paragraph (2) of section 904(b) (relating to treatment of capital gains for purposes of the foreign tax credit limitation) is amended by striking out "For purposes of subsection (a)—" and inserting in lieu thereof "For purposes of this section—".

(B) SOURCE RULE.—Subparagraph (C) of section 904(b)(3) is amended by striking out "For purposes of this paragraph, there" and inserting in lieu thereof "There".

(C) SOURCE RULE FOR LIQUIDATIONS OF CERTAIN FOREIGN CORPORATIONS.—Paragraph (3) of section 904(b) (relating to source rules for gain from the sale of certain personal property) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) GAIN FROM LIQUIDATION OF CERTAIN FOREIGN CORPORATIONS.—Subparagraph (C) shall not apply with respect to a distribution in liquidation of a foreign corporation to which part II of subchapter C applies if such corporation derived less than 50 percent of its gross income from sources within the United States for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year during which the distribution occurred."

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years beginning after December 31, 1975.

(3) TREATMENT OF CERTAIN CAPITAL LOSS CARRYOVERS AND CARRYBACKS FOR PURPOSES OF THE LIMITATION ON CREDIT FOR FOREIGN TAXES.—

(A) IN GENERAL.—Clause (iii) of section 904(2)(2)(A) (relating to treatment of capital gains of corporations for purposes of the foreign tax credit limitation) is amended by striking out "any net capital loss" and inserting in lieu thereof "for purposes of determining taxable income from sources without the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a))".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to

taxable years beginning after December 31, 1975.

(4) TREATMENT OF CAPITAL LOSS CARRYOVERS FOR PURPOSES OF FOREIGN LOSS RECAPTURE.—

(A) IN GENERAL.—Subparagraph (A) of section 904(f)(2) (defining overall foreign loss) is amended by striking out "or any capital loss carrybacks and carryovers to such year under section 1212".

(B) FOREIGN OIL RELATED LOSSES.—Subparagraph (A) of section 904(f)(4) (relating to determination of foreign oil related loss where section 907 applies) is amended by striking out "or any capital loss carrybacks and carryovers to such year under section 1212".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply—

(i) to overall foreign losses sustained in taxable years beginning after December 31, 1975. and

(ii) to foreign oil related losses sustained in taxable years ending after December 31, 1975.

(5) EFFECTIVE DATE FOR RECAPTURE OF FOREIGN OIL RELATED LOSSES.—

(A) IN GENERAL.—Paragraph (1) of section 1032(c) of the Tax Reform Act of 1976 is amended to read as follows:

"(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (5), the amendment made by subsection (a) shall apply to losses sustained in taxable years beginning after December 31, 1975. The amendment made by subsection (b)(1) shall apply to taxable years beginning after December 31, 1975. The amendment made by subsection (b)(2) shall apply to losses sustained in taxable years ending after December 31, 1975."

(B) FOREIGN OIL RELATED LOSSES.—Subsection (c) of section 1032 of the Tax Reform Act of 1976 is amended by adding at the end thereof the following new paragraph:

"(5) FOREIGN OIL RELATED LOSSES.—The amendment made by subsection (a) shall apply to foreign oil related losses sustained in taxable years ending after December 31, 1975."

(6) TRANSITIONAL RULES FOR CERTAIN MINING OPERATIONS.—The second sentence of paragraph (2) of section 1031(c) of the Tax Reform Act of 1976 is amended to read as follows: "In the case of a loss sustained in a taxable year beginning before January 1, 1979, by any corporation to which this paragraph applies, if section 904(a)(1) of such Code (as in effect before the enactment of this Act) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to such loss under the principles of such section 904(a)(1)."

(7) TRANSITIONAL RULES FOR RECAPTURE OF CERTAIN FOREIGN LOSSES.—

(A) COMPUTATION OF DEFICIT IN EARNINGS AND PROFITS FOR PURPOSES OF THE RECAPTURE OF CERTAIN FOREIGN LOSSES.—Paragraph (4) of section 1032(c) of the Tax Reform Act of 1976 (relating to limitation based on deficit in earnings and profits for purposes of the recapture of foreign losses) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, there shall be taken into account only earnings and profits of the corporation which (A) were accumulated in taxable years of the corporation beginning after December 31, 1962, and during the period in which the stock of such corporation from which the loss arose was held by the taxpayer and (B) are attributable to such stock."

(B) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

(i) Subsection (c) of section 1032 of the Tax Reform Act of 1976 (relating to effective dates for recapture of foreign losses) is amended by adding at the end thereof the following new paragraph:

"(6) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply if—

"(i) the taxpayer sustained a loss in a possession of the United States in a taxable year beginning after December 31, 1975, and before January 1, 1979,

"(ii) such loss is attributable to a trade or business engaged in by the taxpayer in such possession on January 1, 1976, and

"(iii) the taxpayer chooses to have the benefits of subpart A of part III of subchapter N apply for such taxable year and section 904(a)(1) of the Internal Revenue Code of 1954 (as in effect before the enactment of this Act) applies with respect to such taxable year.

"(B) NO RECAPTURE DURING TRANSITION PERIOD.—In any case to which this paragraph applies, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, section 904(f) of the Internal Revenue Code of 1954 shall not apply with respect to the loss described in subparagraph (A)(i).

"(C) RECAPTURE OF LOSS AFTER THE TRANSITION PERIOD.—In any case to which this paragraph applies—

"(i) for purposes of determining the liability for tax of the taxpayer for taxable years beginning after December 31, 1978, section 904(f) of the Internal Revenue Code of 1954 shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of section 904(a)(1) of such Code (as in effect before the enactment of this Act); but

"(ii) in the case of any taxpayer and any possession, the aggregate amount to which such section 904(f) applies by reason of clause (i) shall not exceed the sum of the net incomes of all affiliated corporations from such possession for taxable years of such affiliated corporations beginning after December 31, 1975, and before January 1, 1979.

"(D) TAXPAYERS NOT ENGAGED IN TRADE OR BUSINESS ON JANUARY 1, 1976.—In any case to which this paragraph applies but for the fact that the taxpayer was not engaged in a trade or business in such possession on January 1, 1976, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, if section 904(a)(1) of such Code (as in effect before the enactment of this Act) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of such section 904(a)(1).

"(E) AFFILIATED CORPORATION DEFINED.—For purposes of subparagraph (C)(ii), the term 'affiliated corporation' means a corporation which, for the taxable year for which the net income is being determined was not a member of the same affiliated group (within the meaning of section 1504 of the Internal Revenue Code of 1954) as the taxpayer but would have been a member of such group but for the application of subsection (b) of such section 1504."

(ii) Paragraph (3) of section 1031(c) of the Tax Reform Act of 1976 is amended by striking out the last sentence.

(8) LIMITATIONS ON FOREIGN TAX CREDIT WHERE INDIVIDUAL HAS FOREIGN OIL AND GAS EXTRACTION INCOME.—

(A) REDUCTION IN FOREIGN TAX CREDIT FOR CERTAIN INDIVIDUALS HAVING FOREIGN OIL AND GAS EXTRACTION INCOME.—Subsection (a) (as amended by section 301(b)(14) of this Act) of section 907 (relating to special rules in case of foreign oil and gas income) is further amended to read as follows:

"(a) REDUCTION IN AMOUNT ALLOWED AS FOREIGN TAX UNDER SECTION 901.—In applying section 901, the amount of any oil and gas extraction taxes paid or accrued (or deemed to have been paid) during the taxable year which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

"(1) the amount of the foreign oil and gas extraction income for the taxable year,

"(2) multiplied by—

"(A) in the case of a corporation, the percentage which is equal to the highest rate of tax under section 11, or

"(B) in the case of an individual, a fraction the numerator of which is the tax against which the credit under section 901(a) is taken and the denominator of which is the taxpayer's entire taxable income."

(B) APPLICATION OF SECTION 904 SEPARATELY TO FOREIGN OIL RELATED INCOME OF INDIVIDUALS.—Subsection (b) of section 907 (relating to application of section 904 limitation) is amended to read as follows:

"(b) APPLICATION OF SECTION 904 LIMITATION.—The provisions of section 904 shall be applied separately with respect to—

"(1) foreign oil related income, and

"(2) other taxable income."

(C) TECHNICAL AMENDMENT.—Paragraph (4) of section 904(f) (relating to recapture of overall foreign loss) is amended by striking out "In the case of a corporation to which section 907(b)(1) applies" and inserting in lieu thereof "In making the separate computation under this subsection with respect to foreign oil related income which is required by section 907(b)".

(D) EFFECTIVE DATES.—

(i) The amendments made by this paragraph shall apply, in the case of individuals, to taxable years ending after December 31, 1974, and, in the case of corporations, to taxable years ending after December 31, 1976.

(ii) In the case of any taxable year ending after December 31. 1975, with respect to foreign oil related income (within the meaning of section 907(c) of the Internal Revenue Code of 1954), the overall limitation provided by section 904(a)(2) of such Code shall apply and the per-country limitation provided by section 904(a)(1) of such Code shall not apply.

(9) EFFECTIVE DATE FOR DISALLOWANCE OF FOREIGN TAX CREDIT FOR CERTAIN PRODUCTION-SHARING CONTRACTS.—The second sentence of paragraph (3) of section 1035(c) of the Tax Reform Act of 1976 (relating to tax credit for production-sharing contracts) is amended to read as follows: "A contract described in the preceding sentence shall be taken into account under paragraph (1) only with respect to amounts (A) paid or accrued to the foreign government before January 1, 1978, and (B) attributable to income earned before such date."

(10) FOREIGN TAXES ATTRIBUTABLE TO SECTION 911 EXCLUSION.—

(A) IN GENERAL.—The last sentence of section 911(a) (relating to earned income from sources without the United States) is amended to read as follows:

"An individual shall not be allowed as a deduction from his gross income any deductions (other than those allowed by section 151, relating to personal exemptions), to the extent that such deductions are properly allocable to or chargeable against amounts excluded from gross income under this subsection. For purposes of this title, the amount of the income, war profits, and excess profits taxes paid or accrued by any individual to a foreign country or possession of the United States for any taxable year shall be reduced by an amount determined by multiplying the amount of such taxes by a fraction—

"(A) the numerator of which is the tax determined under subsection (d)(1)(B), and

"(B) the denominator of which is the sum of the amount referred to in subparagraph

(A), plus the limitation imposed for the taxable year by section 904(a).".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1976.

(11) SALE OF ASSETS BY A POSSESSIONS CORPORATION.—

(A) IN GENERAL.—Subsection (a) of section 936 (relating to Puerto Rico and possession tax credit) is amended by redesignating paragraph (2) as paragraph (3) and by amending so much of paragraph (1) as precedes subparagraph (A) thereof to read as follows:

"(1) IN GENERAL.—Except as provided in paragraph (3), if a domestic corporation elects the application of this section and if the conditions of both subparagraph (A) and subparagraph (B) of paragraph (2) are satisfied, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the sum of—

"(A) the taxable income, from sources without the United States, from—

"(i) the active conduct of a trade or business within a possession of the United States, or

"(ii) the sale or exchange of substantially all of the assets used by the taxpayer in the active conduct of such trade or business, and

"(B) the qualified possession source investment income.

"(2) CONDITIONS WHICH MUST BE SATISFIED.—The conditions referred to in paragraph (1) are:".

(B) INCOME FROM SALE OF CARRYOVER BASIS PROPERTY NOT TAKEN INTO ACCOUNT.—

(i) Subsection (d) of section 936 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(3) CARRYOVER BASIS PROPERTY.—

"(A) IN GENERAL.—Income from the sale or exchange of any asset the basis of which is determined in whole or in part by reference to its basis in the hands of another person shall not be treated as income described in subparagraph (A) or (B) of subsection (a)(1).

"(B) EXCEPTION FOR POSSESSIONS CORPORATIONS, ETC.—For purposes of subparagraph (A), the holding of any asset by another person shall not be taken into account if throughout the period for which such asset was held by such person section 931, this section, or section 957(c) applied to such person.".

(ii) The heading of such subsection (d) is amended to read as follows:

"(d) DEFINITIONS AND SPECIAL RULES.—".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply as if included in section 936 of the Internal Revenue Code of 1954 at the time of its addition by section 1051(b) of the Tax Reform Act of 1976.

(12) GAIN ON DISPOSITION OF STOCK IN A DISC.—

(A) DELAY IN EFFECTIVE DATE.—Paragraph (4) of section 1101(g) of the Tax Reform Act of 1976 (relating to effective date for amendment relating to gain or disposition of DISC stock) is amended by striking out "December 31, 1975" and inserting in lieu thereof "December 31, 1976".

(B) TECHNICAL AMENDMENT.—Paragraph (1) of section 995(c) (relating to gain on disposition of stock in a DISC) is amended by adding at the end thereof the following new sentence:

"Subparagraph (C) shall not apply if the person receiving the stock in the disposition has a holding period for the stock which includes the period for which the stock was held by the shareholder disposing of such stock."

(C) EFFECTIVE DATE.—The amendment made by subparagraph (B) shall apply to dispositions made after December 31, 1976, in taxable years ending after such date.

(13) LIMITATION ON PARTNER'S TAX WHERE PARTNER RECEIVES AMOUNT TREATED AS SALE OF SECTION 1248 STOCK.—

(A) IN GENERAL.—Section 751 (relating to unrealized receivables and inventory items) is amended by adding at the end thereof the following new subsection:

"(e) LIMITATION ON TAX ATTRIBUTABLE TO DEEMED SALES OF SECTION 1248 STOCK.—For purposes of applying this section and sections 731, 736, and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations)."

(B) CROSS REFERENCE.—Section 736 (relating to payments to a retiring partner or a deceased partner's successor in interest) is amended by adding at the end thereof the following new subsection:

"(c) CROSS REFERENCE.—

"For limitation on the tax attributable to certain gain connected with section 1248 stock, see section 751(e)."

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date.

(14 EXCISE TAX ON TRANSFERS OF PROPERTY TO FOREIGN PERSONS TO AVOID FEDERAL INCOME TAX.—

(A) TRANSFERS INVOLVING ESTATES.—Section 1491 (relating to tax on transfer to avoid income tax) is amended by striking out "trust" each place it appears therein and inserting in lieu thereof "estate or trust".

(B) CLARIFICATION OF PARAGRAPH (3) OF SECTION 1492.—Paragraph (3) of section 1492 (relating to nontaxable transfers) is amended to read as follows:

"(3) To a transfer described in section 367; or".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to transfers after October 2, 1975.

(15) ELECTION TO TREAT NONRESIDENT ALIEN INDIVIDUAL AS RESIDENT OF THE UNITED STATES.—

(A) PROVISIONS AFFECTED BY ELECTION.—Paragraph (1) of section 6013(g) (relating to election to treat nonresident alien individual as resident of the United States) is amended to read as follows:

"(1) IN GENERAL.—A nonresident alien individual with respect to whom this subsection is in effect for the taxable year shall be treated as a resident of the United States—

"(A) for purposes of chapters 1 and 5 for all of such taxable year, and

"(B) for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year."

(B) CONFORMING AMENDMENT.—Paragraph (5) of section 6013(g) (relating to termination of election by Secretary) is amended by striking out "chapter 1" and inserting in lieu thereof "chapters 1 and 5".

(C) YEAR OF RESIDENCY.—Paragraph (1) of section 6013(h) (relating to return for year nonresident alien becomes resident) is amended—

(i) by striking out "chapter 1" and inserting in lieu thereof "chapters 1 and 5", and

(ii) by inserting before the period at the end thereof the following: ", and for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year."

(D) CERTAIN AMOUNTS WITHHELD UNDER CHAPTER 3 TREATED AS OVERPAYMENTS OF TAX.—Subsection (b) of section 6401 (relating to excessive credits) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, any credit allowed under paragraph (1) of section 32 (relating to withholding of tax on nonresident aliens and on foreign corporations) to a nonresident alien individual for a taxable year with respect to which an election under section 6013(g) or (h) is in effect shall be treated as an amount allowable as a credit under section 31."

(E) EFFECTIVE DATES.—The amendments made by this paragraph—

(i) to the extent that they relate to chapter 1 or 5 of the Internal Revenue Code of 1954, shall apply to taxable years ending on or after December 31, 1975, and

(ii) to the extent that they relate to wage withholding under chapter 24 of such Code, shall apply to remuneration paid on or after the first day of the first month which begins more than 90 days after the date of the enactment of this Act.

(16) NONRESIDENT ALIEN INDIVIDUAL ALLOWED TO BE TREATED AS RESIDENT OF THE UNITED STATES.—

(A) IN GENERAL.—Paragraph (2) of section 6013(g) (relating to election to treat nonresident alien individual as resident of the United States) is amended by striking out "who, at the time an election was made under this subsection," and inserting in lieu thereof "who, at the close of the taxable year for which an election under this subsection was made,".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1975.

(w) AMENDMENT OF SECTION 1239(a).—

(1) IN GENERAL.—Subsection (a) of section 1239 (relating to gain from sale of depreciable property between certain related taxpayers) is amended by striking out "subject to the allowance for depreciation provided in section 167" and inserting in lieu thereof "of a character which is subject to the allowance for depreciation provided in section 167".

(2) EFFECTIVE DATE.—The amendment made of paragraph (1) shall apply as if included in the amendment made to section 1239 of the Internal Revenue Code of 1954 by section 2129(a) of the Tax Reform Act of 1976.

(x) RECAPTURE OF DEPRECIATION ON PLAYER CONTRACTS.—

(1) IN GENERAL.—Subparagraph (C) of section 1245(a)(4) (defining previously unrecaptured depreciation with respect to contracts transferred) is amended to read as follows:

"(C) PREVIOUSLY UNRECAPTURED DEPRECIATION WITH RESPECT TO CONTRACTS TRANSFERRED.—For purposes of subparagraph (A)(ii), the term 'previously unrecaptured depreciation' means the amount of any deduction allowed or allowable to the taxpayer transferor for the depreciation of any contracts involved in such transfer."

(2) RECAPTURE OF DEPRECIATION WITH RESPECT TO INITIAL CONTRACTS.—Subparagraph (B) of section 1245(a)(4) (defining previously unrecaptured depreciation with respect to initial contracts) is amended—

(A) by inserting "attributable to periods after December 31, 1975," after "depreciation" in clause (i),

(B) by inserting "incurred after December 31, 1975," after "losses" in clause (i), and

(C) by inserting "described in clause (i)" after "amounts" in clause (ii).

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975.

(y) TREATMENT OF PENSIONS AND ANNUITIES

FOR 50-PERCENT MAXIMUM RATE ON PERSONAL SERVICE INCOME.—

(1) IN GENERAL.—Subparagraph (A) of section 1348(b)(1) (defining personal service income) is amended by striking out "pension or annuity" and inserting in lieu thereof "pension or annuity which arises from an employer-employee relationship or from tax-deductible contributions to a retirement plan".

(2) TECHNICAL AMENDMENT.—The last sentence of section 1348(b) is amended by striking out "earned income" and inserting in lieu thereof "personal service income".

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) this section shall apply to taxable years beginning after December 31, 1976.

(z) CHANGES IN THE SUBCHAPTER S PROVISIONS.—

(1) GRANTOR TRUST MAY BE TREATED AS PERMITTED SHAREHOLDER AFTER DECEDENT'S DEATH; GRANTOR OR GRANTOR TRUST MUST BE INDIVIDUAL.—Paragraph (1) of subsection (e) of section 1371 (as redesignated by section 341(b)(2) of this Act) is amended to read as follows:

"(1)(A) A trust all of which is treated as owned by the grantor (who is an individual who is a citizen or resident of the United States) under subpart E of part I of subchapter J of this chapter.

"(B) A trust which was described in subparagraph (A) immediately before the death of the grantor and which continues in existence after such death, but only for the 60-day period beginning on the day of the grantor's death. If a trust is described in the preceding sentence and if the entire corpus of the trust is includible in the gross estate of the grantor, the preceding sentence shall be applied by substituting '2-year period' for '60-day period'."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1976.

(aa) WITHHOLDING OF FEDERAL TAXES ON CERTAIN INDIVIDUALS ENGAGED IN FISHING—

(1) IN GENERAL.—Section 1207(f)(4) of the Tax Reform Act of 1976 (relating to effective date of provisions relating to withholding on certain individuals engaged in fishing) is amended by striking out "December 31, 1971" each place it appears and inserting in lieu thereof "December 31, 1954".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on October 4, 1976.

(bb) WITHDRAWALS FROM INDIVIDUALS RETIREMENT ACCOUNTS, ETC.—

(1) IN GENERAL.—The last sentence of section 4973(b) (relating to excess contributions to individual retirement accounts, etc.) is amended by striking out "solely because of employer contributions to a plan or contract described in section 219(b)(2)" and inserting in lieu thereof "solely because of ineligibility under section 219(b)(2) or section 220(b)(3)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in section 1501 of the Tax Reform Act of 1976 at the time of the enactment of such Act.

(cc) AMENDMENTS RELATING TO DISCLOSURE OF TAX RETURNS.—

(1) DISCLOSURE OF MAILING ADDRESS FOR PURPOSES OF COLLECTING CERTAIN STUDENT LOANS.—

(A) Subsection (m) of section 6103 (relating to disclosure of taxpayer identity information) is amended to read as follows:

"(m) DISCLOSURE OF TAXPAYER IDENTITY INFORMATION.—

"(1) TAX REFUNDS.—The Secretary may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

"(2) FEDERAL CLAIMS.—Upon written request, the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in, and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the collection or compromise of a Federal claim against such taxpayer in accordance with the provisions of section 3 of the Federal Claims Collection Act of 1966.

"(3) NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH.—Upon written request, the Secretary may disclose the mailing address of taxpayers to officers and employees of the National Institute for Occupational Safety and Health solely for the purpose of locating individuals who are, or may have been, exposed to occupational hazards in order to determine the status of their health or to inform them of the possible need for medical care and treatment.

"(4) INDIVIDUALS WHO HAVE DEFAULTED ON STUDENT LOANS.—

"(A) IN GENERAL.—Upon written request by the Commissioner of Education, the Secretary may disclose the mailing address of any taxpayer who has defaulted on a loan made from the student loan fund established under part E of title IV of the Higher Education Act of 1965 for use only for purposes of locating such taxpayer for purposes of collecting such loan.

"(B) DISCLOSURE TO INSTITUTIONS.—Any mailing address disclosed under subparagraph (A) may be disclosed by the Commissioner of Education to any educational institution with which he has an agreement under part E of title IV of the Higher Education Act of 1965 only for use by officers, employees or agents of such institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made by such institution pursuant to such agreement for purposes of collecting such loans."

(B) Paragraph (3) of section 6103(a) is amended by inserting ", subsection (m)(4)(B)," after "subsection (e)(1)(D)(iii)".

(C) Paragraph (2) of section 7213(a) (relating to penalties for unauthorized disclosure of information) is amended—

(i) by striking out "or any local" and inserting in lieu thereof ", any local";

(ii) by inserting ", or any educational institution" after "enforcement agency"; and

(iii) by striking out "section 6103(d) or (l)(6)" and inserting in lieu thereof "subsection (d), (l)(6), or (m)(4)(B) of section 6103".

(2) DISCLOSURE OF TAX RETURN INFORMATION REGARDING SPECIAL FUEL EXCISE TAXES.—Subsection (d) of section 6103 (relating to disclosure to State tax officials) is amended by inserting "31," after "24,".

(3) RETURN INFORMATION OTHER THAN TAXPAYER RETURN INFORMATION.—Paragraph (2) of section 6103(i) (relating to return information other than taxpayer return information) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, the name and address of the taxpayer shall not be treated as taxpayer return information."

(4) DISCLOSURE OF RETURN INFORMATION CONCERNING POSSIBLE CRIMINAL ACTIVITIES.—Paragraph (3) of section 6103(i) (relating to disclosure of return information concerning possible criminal activities) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the name and address of the taxpayer shall not be treated as taxpayer return information if there is return information (other than taxpayer return information) which may constitute evidence of a violation of Federal criminal law."

(5) DISCLOSURE UNDER TAX CONVENTIONS.—Section 6103(k)(4) (relating to disclosure of return information under income tax conventions) is amended—

(A) by striking out "income" in the caption thereof,

(B) by inserting "or gift and estate tax" after "income tax", and

(C) by inserting ", or other convention relating to the exchange of tax information," after "convention" the first place it appears.

(6) CRIMINAL PENALTY FOR UNAUTHORIZED DISCLOSURE OF INFORMATION.—Section 7213(a) (relating to unauthorized disclosure of information) is amended—

(A) by striking out "to disclose" in paragraphs (1), (2), and (5) and inserting in lieu thereof "willfully to disclose",

(B) by striking out "to thereafter print or publish" in paragraph (3) and inserting in lieu thereof 'thereafter willfully to print or publish", and

(C) by striking out "to offer" in paragraph (4) and inserting in lieu thereof "willfully to offer".

(7) NO CIVIL LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION OF DISCLOSURE REQUIREMENTS.—Section 7217 (relating to civil damages for unauthorized disclosure of return and return information) is amended—

(A) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(B) by inserting after subsection (a) the following new subsection:

"(b) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.—No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103."; and

(C) by striking out "An action" in subsection (d) (as so redesignated) and inserting in lieu thereof "PERIOD FOR BRINGING ACTION.—An action".

(8) EFFECTIVE DATES.—

(A) Except as provided in subparagraph (B), the amendments made by this subsection shall take effect January 1, 1977.

(B) The amendments made by paragraph (6) (7) shall apply with respect to disclosures made after the date of the enactment of this Act.

(dd) AMENDMENTS RELATING TO INCOME TAX RETURN PREPARERS.—

(1) NEGOTIATIONS OF CHECKS BY STATE.—Subsection (f) of section 6695 (relating to negotiations of check) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply with respect to the deposit by a bank (within the meaning of section 581) of the full amount of the check in the taxpayer's account in such bank for the benefit of the taxpayer."

(2) DEFINITION.—Clause (iii) of section 7701(a)(36)(B) (relating to exceptions from the definition of income tax return preparer) is amended to read as follows:

"(iii) prepares as a fiduciary a return or claim for refund for any person, or".

(3) DEFINITION OF RULE.—Section 6694(a) (relating to negligent or intentional disregard of rules and regulations by income tax return papers) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the term 'rule' shall not include any revenue ruling, or written determination (as defined in section 6110(b)(1)) unless such written determination directly applies to the return or claim prepared.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to documents prepared after December 31, 1976.

(ee) CLARIFICATION OF DECLARATION JUDGMENT PROVISIONS WITH RESPECT TO REVOCATIONS OF OR OTHER CHANGES IN THE QUALIFICATIONS OF CERTAIN ORGANIZATIONS.—

(1) QUALIFICATION OF CERTAIN RETIREMENT PLANS.—Subsection (a) of section 7476 (relating to declaratory judgments relating to

qualification of certain retirement plans) is amended by adding at the end thereof the following new sentence: "For purposes of this section, a determination with respect to a continuing qualification includes any revocation of or other change in a qualification."

(2) CLASSIFICATION OF ORGANIZATIONS UNDER SECTION 501(c)(3), ETC.—Subsection (a) of section 7428 (relating to declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.) is amended by adding at the end thereof the following new sentence: "For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification."

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall take effect as if included in section 7476 or 7428 of the Internal Revenue Code of 1954 (as the case may be) at the respective times such sections were added to such Code.

(ff) CONTRIBUTIONS OF CERTAIN GOVERNMENT PUBLICATIONS.—

(1) IN GENERAL.—Paragraph (1) of section 1231(b) (relating to definition of property used in trade or business) is amended—

(A) by striking out "or" at the end of subparagraph (B),

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma and "or", and

(C) by adding at the end thereof the following new subparagraph:

"(D) a publication of the United States Government (including the Congressional Record) which is received from the United States Government, or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by a taxpayer described in paragraph (6) of section 1221.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to sales, exchanges, and contributions made after October 4, 1976.

(gg) EXEMPTION FOR LIGHT-DUTY TRUCK PARTS.—

(1) IN GENERAL.—Section 4063 (relating to exemption of motor vehicles and parts) is amended by adding at the end thereof the following new subsection:

"(e) PARTS FOR LIGHT-DUTY TRUCKS.—The tax imposed by section 4061(b) shall not apply to the sale by the manufacturer, producer, or importer of any article which is to be resold by the purchaser or in connection with the first retail sale of a light-duty truck, as described in section 4061(a)(2), or which is to be resold by the purchaser to a second purchaser for resale by such second purchaser on or in connection with the first retail sale of a light-duty truck."

(2) CONFORMING AMENDMENTS.—

(A) Section 4221(c) (relating to manufacturer relieved from liability in certain cases) is amended by inserting "4063(e)," after "4063(b),".

(B) Section 4222(d) (relating to registration in the case of tax-free sales) is amended by inserting "4063(e)," after "4063(b),".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the first calendar month beginning more than 20 days after the date of the enactment of this Act.

SEC . TECHNICAL, CLERICAL, AND CONFORMING AMENDMENTS TO ESTATE AND GIFT TAX PROVISIONS.

(a) AMENDMENTS RELATING TO TREATMENT OF SECTION 306 STOCK.—

(1) APPLICATION OF "FRESH START" TO SECTION 306 STOCK.—Subsection (a) of section 306 (relating to dispositions of certain stock) is amended by adding at the end thereof the following new paragraph:

"(3) ORDINARY INCOME FROM SALE OR REDEMPTION OF SECTION 306 STOCK WHICH IS CARRYOVER BASIS PROPERTY ADJUSTED FOR 1976 VALUE.—

"(A) IN GENERAL.—If any section 306 stock was distributed before January 1, 1977, and if the adjusted basis of such stock in the hands of the person disposing of it is determined under section 1023 (relating to carryover basis), then the amount treated as ordinary income under paragraph (1)(A) of this subsection (or the amount treated as a dividend under section 301(c)(1)) shall not exceed the excess of the amount realized over the sum of that—

"(i) the adjusted basis of such stock on December 31, 1976, and

"(ii) any increase in basis under section 1023(h).

"(B) REDEMPTION MUST BE DESCRIBED IN SECTION 302(b).—Subparagraph (A) shall apply to a redemption only if such redemption is described in paragraph (1), (2), or (4) of section 302(b)."

(2) CLARIFICATION THAT SECTION 303 OVERRIDES SECTION 306.—Subsection (b) of section 306 (relating to exceptions) is amended by adding at the end thereof the following new paragraph:

"(5) SECTION 303 REDEMPTIONS.—To the extent that section 303 applies to a distribution in redemption of section 306 stock.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1979.

(b) COORDINATION OF DEDUCTION FOR ESTATE TAXES ATTRIBUTABLE TO INCOME IN RESPECT OF A DECEDENT WITH THE CAPITAL GAIN DEDUCTION, ETC.—

(1) IN GENERAL.—Subsection (c) of section 691 (relating to deduction for estate taxes in the case of income in respect of decedents) is amended by adding at the end thereof the following new paragraph:

"(4) COORDINATION WITH CAPITAL GAIN DEDUCTION, ETC.—For purposes of section 1201, 1202, and 1211, and for purposes of section 57(a)(9), the amount of any gain taken into account with respect to any item described in subsection (a)(1) shall be reduced (but not below zero) by the amount of the deduction allowable under paragraph (1) of this subsection with respect to such item."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to decedents dying after the date of the enactment of this Act.

(c) AMENDMENTS RELATING TO CARRYOVER BASIS.—

(1) Amendments relating to the postponement of the effective date of carryover basis provisions.—

(A) FAIR MARKET VALUE WHERE FARM VALUATION ELECTED.—Subsection (a) of section 1014 (relating to basis of property acquired from a decedent) is amended to read as follows:

"(a) IN GENERAL.—Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be—

"(1) the fair market value of the property at the date of the decedent's death, or

"(2) in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections, or

"(3) in the case of an election under section 2032A, its value determined under such section."

(B) The second sentence of section 2614(a) (relating to basis adjustments in connection with generation-skipping transfers) is amended to read as follows: "If property is transferred in a generation-skipping transfer subject to tax under this chapter which occurs at the same time as, or after, the death of the deemed transferor, the basis of such property shall be adjusted—

"(1) in the case of such a transfer occurring after June 11, 1976, and before January 1, 1980, in a manner similar to the manner provided under section 1014(a), and

"(2) in the case of such a transfer occurring after December 31, 1979, in a manner similar to the manner provided by section 1023 without regard to subsection (d) thereof (relating to basis of property passing from a decedent dying after December 31, 1979)."

(2) MINIMUM CARRYOVER BASIS FOR TANGIBLE PERSONAL PROPERTY.—

(A) IN GENERAL.—Subsection (h) of section 1023 (relating to adjustment to basis for December 31, 1976, fair market value) is amended by adding at the end thereof the following new paragraph:

"(3) MINIMUM BASIS FOR TANGIBLE PERSONAL PROPERTY.—

"(A) IN GENERAL.—If the holding period for any carryover basis property which is tangible personal property includes December 31, 1976, then, for purposes of determining gain and applying this section, the adjusted basis of such property immediately before the death of the decedent shall be treated as being not less than the amount determined under subparagraph (B).

"(B) AMOUNT.—The amount determined under this subparagraph for any property is—

"(i) the value of such property (as determined with respect to the estate of the decedent without regard to section 2032), divided by

"(ii) 1.0066 to the nth power where n equals the number of full calendar months which have elapsed between December 31, 1976, and the date of the decedent's death."

(B) CONFORMING AMENDMENT.—Paragraph (3) of section 1023(g) (relating to decedent's basis unknown) is amended by striking out "to the person acquiring such property from the decedent" and inserting in lieu thereof "and cannot be reasonably ascertained".

(3) TREATMENT OF INDEBTEDNESS.—

(A) IN GENERAL.—Paragraph (1) of section 1023(g) (defining fair market value) is amended by inserting "(without regard to whether there is a mortgage on, or indebtedness in respect of, the property)" after "chapter 11".

(B) TECHNICAL AMENDMENT.—Subsection (g) of section 1023 (relating to other special rules and definitions) is amended by striking out paragraph (4).

(4) ONLY ONE FRESH START WITH RESPECT TO CARRYOVER BASIS PROPERTY HELD ON DECEMBER 31, 1976.—Subsection (h) of section 1023 (relating to adjustment to basis for December 31, 1976, fair market value) is amended by adding at the end thereof the following new paragraph:

"(4) ONLY ONE FRESH START.—There shall be no increase in basis under this subsection by reason of the death of any decedent if the adjusted basis of the property in the hands of such decedent reflects the adjusted basis of property which was carryover basis property with respect to a prior decedent."

(5) AUTOMATIC LONG-TERM STATUS FOR GAINS AND LOSSES ON CARRYOVER BASIS PROPERTY.—Subparagraph (A) of section 1223(11) is amended by inserting "or 1023" after "section 1014".

(6) CLARIFICATION THAT ADJUSTED BASIS IS INCREASED FOR STATE ESTATE TAXES.—

(A) Subsection (c) of section 1023 (relating to increase in basis for Federal and State estate taxes attributable to appreciation) is amended to read as follows:

"(c) INCREASE IN BASIS FOR FEDERAL AND STATE ESTATE TAXES ATTRIBUTABLE TO APPRECIATION.—

"(1) FEDERAL ESTATE TAXES.—The basis of appreciated carryover basis property (determined after any adjustment under subsection (h)) which is subject to the tax imposed by section 2001 or 2101 in the hands

of the person acquiring it from the decedent shall be increased by an amount which bears the same ratio to the Federal estate taxes as—

"(A) the net appreciation in value of such property, bears to

"(B) the fair market value of all property which is subject to the tax imposed by section 2001 or 2101.

"(2) STATE ESTATE TAXES.—The basis of appreciated carryover basis property (determined after any adjustment under subsection (h)) which is subject to State estate taxes in the hands of the person acquiring it from the decedent shall be increased by an amount which bears the same ratio to the State estate taxes as—

"(A) the net appreciation in value of such property, bears to

"(B) the fair market value of all property which is subject to the State estate taxes."

(B) The second sentence of paragraph (2) of section 1023(f) (defining net appreciation) is amended by striking out "For purposes of subsection (d)," and inserting in lieu thereof "For purposes of paragraph (2) of subsection (c), such adjusted basis shall be increased by the amount of any adjustment under paragraph (1) of subsection (c), for purposes of subsection (d),".

(C) Paragraph (3) of section 1023(f) (defining Federal and State estate taxes) is amended to read as follows:

"(3) FEDERAL AND STATE ESTATE TAXES.—For purposes of subsection (c)—

"(A) FEDERAL ESTATE TAXES.—The term 'Federal estate taxes' means the tax imposed by section 2001 or 2101, reduced by the credits against such tax.

"(B) STATE ESTATE TAXES.—The term 'State estate taxes' means any estate, inheritance, legacy, or succession taxes, for which the estate is liable, actually paid by the estate to any State or the District of Columbia."

(7) CLARIFICATION OF INCREASE IN BASIS FOR CERTAIN STATE SUCCESSION TAXES.—Paragraph (2) of section 1023(e) (relating to further increase in basis for certain State succession tax paid by transferee of property) is amended by striking out "for which the estate is not liable".

(8) CLARIFICATION OF APPLICATION OF FRESH START.—Paragraphs (1) and (2)(A) of section 1023(h) (relating to adjustment to basis for December 31, 1976, fair market value) are each amended by striking out "for purposes of determining gain" and inserting in lieu thereof "for purposes of determining gain and applying this section".

(9) TECHNICAL AMENDMENT WITH RESPECT TO CERTAIN TERM INTERESTS.—Paragraph (1) of section 1001(e) (relating to certain term interests) is amended by striking out "section 1014 or 1015" and inserting in lieu thereof "section 1014, 1015, or 1023".

(10) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the amendments and additions made by, and the provisions of, section 2005 of the Tax Reform Act of 1976.

(d) AMENDMENTS RELATING TO VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.—

(1) CLARIFICATION THAT SPECIAL VALUATION APPLIES ONLY TO INTERESTS PASSING TO QUALIFIED HEIRS.—Paragraph (1) of section 2032A (b) (defining qualified real property) is amended by striking out "real property located in the United States" and inserting in lieu thereof "real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and".

(2) PROPERTY RECEIVED IN SATISFACTION OF PECUNIARY BEQUEST.—Subsection (e) of section 2032A (relating to definitions and special rules for farm valuation property) is amended by adding at the end thereof the following new paragraph:

"(9) PROPERTY ACQUIRED FROM DECEDENT.—Property shall be considered to have been acquired from or to have passed from the decedent if—

"(A) such property is so considered under section 1014(b) (relating to basis of property acquired from a decedent),

"(B) such property is acquired by any person from the estate in satisfaction of the right of such person to a pecuniary bequest, or

"(C) such property is acquired by any person from a trust in satisfaction of a right (which such person has by reason of the death of the decedent) to receive from the trust a specific dollar amount which is the equivalent of a pecuniary bequest."

(3) USE OF FARM VALUATION PROPERTY TO SATISFY PECUNIARY BEQUEST.—Section (a) of section 1040 (relating to use of certain appreciated carryover basis property to satisfy pecuniary bequest) is amended by inserting "(determined without regard to section 2032A)" after "chapter 11".

(4) TREATMENT OF CERTAIN COMMUNITY PROPERTY.—Subsection (e) of section 2032A is amended by adding at the end thereof the following new paragraph:

"(10) COMMUNITY PROPERTY.—If the decedent and his surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property."

(5) SUBSTITUTION OF BOND FOR PERSONAL LIABILITY OF QUALIFIED HEIR FOR THE RECAPTURE TAX WITH RESPECT TO FARM VALUATION PROPERTY.—

(A) IN GENERAL.—Paragraph (6) of section 2032A (c) is amended to read as follows:

"(6) LIABILITY FOR TAX; FURNISHING OF BOND.—The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest unless the heir has furnished bond which meets the requirements of subsection (e)(11)."

(B) BOND REQUIREMENTS.—Subsection (e) of section 2032A is amended by adding at the end thereof the following new paragraph:

"(1) BOND IN LIEU OF PERSONAL LIABILITY.—If the qualified heir makes written application to the Secretary for determining of the maximum amount of the additional tax which may be imposed by subsection (c) with respect to the qualified heir's interest, the Secretary (as soon as possible, and in any event within 1 year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subsection (c) and shall be entitled to a receipt or writing showing such discharge."

(6) EFFECTIVE DATE.—

The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(e) AMOUNT OF SECURITY FOR EXTENDED PAYMENT PROVISIONS FOR CLOSELY HELD BUSINESSES.—

(1) IN GENERAL.—

(A) Paragraph (2) of section 6324A(e) (defining aggregate interest amount) is amended to read as follows:

"(2) REQUIRED INTEREST AMOUNT.—The term 'required interest amount' means the aggregate amount of interest which will be payable over the first 4 years of the deferral period with respect to the deferred amount (determined as of the date prescribed by section 6151(a) for the payment of the tax imposed by chapter 11)."

(B) Subparagraph (B) of section 6324A (b)(2) (relating to maximum value of required property) is amended by striking out "aggregate interest amount" and inserting in lieu thereof "required interest amounts".

(C) Paragraph (5) of section 6324A(d) (relating to special rules) is amended by striking out "aggregate interest amount" and inserting in lieu thereof "required interest amount".

(D) Paragraph (4) of section 6324A(e) (relating to application of definitions in case of deficiencies) is amended by striking out "aggregate interest amount" and inserting in lieu thereof "required interest amount".

(2) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after December 31, 1976.

(f) CLARIFICATION OF THE $3,000 ANNUAL EXCLUSION FROM THE RULE INCLUDING IN GROSS ESTATE TRANSFERS WITHIN 3 YEARS OF DEATH.—

(1) AMENDMENT OF SECTION 2035(b).—Subsection (b) of section 2035 (relating to adjustments for gifts made within 3 years of decedent's death) is amended to read as follows:

"(b) EXCEPTIONS.—Subsection (a) shall not apply—

"(1) to any bona fide sale for an adequate and full consideration in money or money's worth, and

"(2) to any gift to a donee made during a calendar year if the decedent was not required by section 6019 to file any gift tax return for such year with respect to gifts to such donee.

Paragraph (2) shall not apply to any transfer with respect to a life insurance policy."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to the estates of decedents dying after December 31, 1976, except that it shall not apply to transfers made before January 1, 1977.

(g) AMENDMENTS RELATING TO ESTATE TAX MARITAL DEDUCTION.—

(1) DEDUCTION NOT REDUCED FOR GIFT TO SPOUSE WHICH IS INCLUDED IN DONOR'S ESTATE BY REASON OF SECTION 2035.—Subparagraph (B) of section 2056(c)(1) (relating to adjustment to estate tax marital deduction for certain gifts to spouse) is amended by adding at the end thereof the following new sentence:

"For purposes of this subparagraph, a gift which is includible in the gross estate of the donor by reason of section 2035 shall not be taken into account."

(2) REDUCTION FOR GIFT TAX MARITAL DEDUCTION IN EXCESS OF 50 PERCENT OF THE VALUE OF GIFTS TO A SPOUSE.—Clause (ii) of section 2056 (c)(1)(B) (relating to adjustment to estate tax marital deduction for certain gifts to spouse) is amended by inserting "required to be included in a gift tax return" after "with respect to any gift".

(3) EFFECTIVE DATE.—The amendment made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(h) COORDINATION OF SECTIONS 2513 AND 2035.—

(1) IN GENERAL.—Section 2001 (relating to imposition and rate of estate tax) is amended by adding at the end thereof the following new subsection:

"(e) COORDINATION OF SECTIONS 2513 AND 2035.—If—

"(1) the decedent's spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and

"(2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift."

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 2602(a)(1) (relating to amount of tax on generation-skipping transfers) is amended by striking out "section 2001(b))" and inserting in lieu thereof "section 2001(b), as modified by section 2001(e))".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to the estate of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977.

(i) INCLUSION IN GROSS ESTATE OF STOCK TRANSFERRED BY THE DECEDENT WHERE THE DECEDENT RETAINS OR ACQUIRES VOTING RIGHTS.—

(1) IN GENERAL.—Section 2036 (relating to transfers with retained life estate) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) VOTING RIGHTS.—

"(1) IN GENERAL.—For purposes of subsection (a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property.

"(2) CONTROLLED CORPORATION.—For purposes of paragraph (1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of section 318), or had the right, (either alone or in conjunction with any person) to vote, stock possessing at least 20 percent of the total combined voting power of all classes of stock.

"(3) COORDINATION WITH SECTION 2035.—For purposes of applying section 2035 with respect to paragraph (1), the relinquishment or cessation of voting rights shall be treated as a transfer of property made by the decedent."

(2) CONFORMING AMENDMENT.—Subsection (t) of section 2036 is amended by striking out the last sentence thereof.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transfer made after June 22, 1976.

(j) AMENDMENTS RELATING TO INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE.—

(1) APPLICATION OF ESTATE TAX EXCLUSION TO INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE.—Subsection (e) of section 2039 (relating to exclusion of individual retirement accounts, etc.) is amended by striking out "section 219" each place it appears and inserting in lieu thereof "section 219 or 220".

(2) TRANSFERS TO INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE TREATED AS TRANSFERS OF PRESENT INTEREST.—Section 2503 (relating to taxable gifts) is amended by adding at the end thereof the following new subsection:

"(d) INDIVIDUAL RETIREMENT ACCOUNTS, ETC., FOR SPOUSE.—For purposes of subsection (b), any payment made by an individual for the benefit of his spouse—

"(1) to an individual retirement account described in section 408(a),

"(2) for an individual retirement annuity described in section 408(b), or

"(3) for a retirement bond described in section 409, shall not be considered a gift of a future interest in property to the extent that such payment is allowable as a deduction under section 220".

(3) EFFECTIVE DATES.—

"(A) The amendment made by paragraph (1) shall apply to the estate of decedents dying after December 31, 1976.

(B) The amendment made by paragraph (2) shall apply to transfers made after December 31, 1976.

(k) PROVISIONS RELATING TO TREATMENT OF JOINT INTERESTS.—

(1) REMOVAL OF REQUIREMENT OF ACTUARIAL COMPUTATIONS FOR JOINT INTERESTS IN PERSONAL PROPERTY.—

(A) IN GENERAL.—Subchapter (B) of chapter 12 (relating to transfers for purposes of the gift tax) is amended by inserting after section 2515 the following new section:

"SEC. 2515A. TENANCIES BY THE ENTIRETY IN PERSONAL PROPERTY.

"(a) CERTAIN ACTUARIAL COMPUTATIONS NOT REQUIRED.—In the case of—

"(1) the creation (either by one spouse alone or by both spouses) of a joint interest of a husband and wife in personal property with right of survivorship, or

"(2) additions to the value thereof in the form of improvements, reductions in the indebtedness thereof, or otherwise,

the retained interest of each spouse shall be treated as one-half of the value of their joint interest.

"(b) EXCEPTION.—Subsection (a) shall not apply with respect to any joint interest in property if the fair market value of the interest or of the property (determined as if each spouse had a right to sever) cannot reasonably be ascertained except by reference to the life expectancy of one or both spouses."

(B) CHANGING IN SECTION 2515 HEADING.—The heading for section 2515 is amended to read as follows:

"SEC. 2515. TENANCIES BY THE ENTIRETY IN REAL PROPERTY."

(C) CLERICAL AMENDMENTS.—The table of sections for subchapter 8 of chapter 12 is amended by striking out the item relating to section 2515 and inserting in lieu thereof the following:

"Sec. 2515. Tenancies by the entirety in real property."
"Sec. 2515A. Tenancies by the entirety in personal property."

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to joint interests created after December 31, 1976.

(2) EXTENSION OF FRACTIONAL INTEREST RULE TO CERTAIN JOINT INTERESTS IN REAL OR PERSONAL PROPERTY CREATED BEFORE 1977.—Section 2040 (relating to joint interests) as amended by section 504 of this Act, is further amended by adding at the end thereof the following new subsections:

"(d) JOINT INTERESTS OF HUSBAND AND WIFE CREATED BEFORE 1977.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—In the case of any joint interest created before January 1, 1977, which (if created after December 31, 1976) would have constituted a qualified joint interest under subsection (b)(2) (determined without regard to clause (ii) of subsection (b)(2)(B)), the donor may make an election under this subsection to have paragraph (1) of subsection (b) apply with respect to such joint interest.

"(2) TIME FOR MAKING ELECTION.—An election under this subsection with respect to any property shall be made for the calendar quarter in 1977, 1978, or 1979 selected by the donor in a gift tax return filed within the time prescribed by law for filing a gift tax return for such quarter. Such an election may be made irrespective of whether or not the amount involved exceeds the exclusion provided by section 2503(b); but no election may be made under this subsection after the death of the donor.

"(3) TAX EFFECTS OF ELECTION.—In the case of any property with respect to which an election has been made under this subsection, for purposes of this title—

"(A) the donor shall be treated as having made a gift at the close of the calendar quarter selected under paragraph (2), and

"(B) the amount of the gift shall be determined under paragraph (4).

"(4) AMOUNT OF GIFT.—For purposes of paragraph (3)(B), the amount of any gift is one-half of the amount—

"(A) which bears the same ratio to the excess of (i) the value of the property on the date of the deemed making of the gift under paragraph (3)(A), over (ii) the value of such property on the date of the creation of the joint interest, as

"(B) the excess of (i) the consideration furnished by the donor at the time of the creation of the joint interest, over (ii) the consideration furnished at such time by the donor's spouse, bears to the total consideration furnished by both spouses at such time.

"(5) SPECIAL RULE FOR PARAGRAPH (4)(A).—For purposes of paragraph (4)(A)—

"(A) in the case of real property, if the creation was not treated as a gift at the time of the creation, or

"(B) in the case of personal property, if the gift was required to be included on a gift tax return but was not so included, and the period of limitations on assessment under section 6501 has expired with respect to the tax (if any) on such gift,

then the value of the property on the date of the creation of the joint interest shall be treated as zero.

"(6) SUBSTANTIAL IMPROVEMENTS.—For purposes of this subsection, a substantial improvement of any property shall be treated as the creation of a separate joint interest.

"(e) TREATMENT OF CERTAIN POST-1976 TERMINATIONS.—

"(1) IN GENERAL.—If—

(A) before January 1, 1977, a husband and wife had a joint interest in property with right of survivorship,

"(B) after December 31, 1976, a joint interest of such husband and wife in such property (or in property the basis of which in whole or in part reflects the basis of such property) was created,

then paragraph (1) of subsection (b) shall apply to the joint interest described in subparagraph (C) only if an election is made under subsection (d).

"(2) SPECIAL RULES.—For purposes of applying subsection (d) to property described in paragraph (1) of this subsection—

"(A) if the creation described in paragraph (1)(C) occurs after December 31, 1979, the election may be made only with respect to the calendar quarter in which such creation occurs, and

"(B) the creation of the joint interest described in paragraphs (4) and (5) of subsection (d) is the creation of the joint interest described in paragraph (1)(A) of this subsection."

(l) AMENDMENTS RELATING TO ORPHANS' EXCLUSION.—

(1) ORPHANS' EXCLUSION WHERE THERE IS A TRUST FOR MINOR CHILDREN.—Section 2057 (relating to bequests, etc., to certain minor children) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED MINORS' TRUST.—

"(1) IN GENERAL.—For purposes of subsection (a), the interest of a minor child in a qualified minors' trust shall be treated as an interest in property which passes or has passed from the decedent to such child.

"(2) QUALIFIED MINORS' TRUST.—For purposes of paragraph (1), the term 'qualified minors' trust' means a trust—

"(A) except as provided in subparagraph (D), all of the beneficiaries of which are minor children of the decedent,

"(B) the corpus of which is property which passes or has passed from the decedent to such trust,

"(C) except as provided in paragraph (3), all distributions from which to the beneficiaries of the trust before the termination of their interests will be pro rata,

"(D) on the death of any beneficiary of which before the termination of the trust, the beneficiary's pro rata share of the corpus and accumulated income remains in the trust for the benefit of the minor children of the decedent who survive the beneficiary or vests in any person, and

"(E) on the termination of which, each beneficiary will receive a pro rata share of the corpus and accumulated income.

"(3) CERTAIN DISPROPORTIONATE DISTRIBUTIONS PERMITTED.—A trust shall not be treated as failing to meet the requirements of paragraph (2)(C) solely by reason of the fact that the governing instrument of the trust permits the making of disproportionate distributions which are limited by an ascertainable standard relating to the health, education, support, or maintenance of the beneficiaries.

"(4) TRUSTEE MAY ACCUMULATE INCOME.—A trust which otherwise qualifies as a qualified minors' trust shall not be disqualified solely by reason of the fact that the trustee has power to accumulate income.

"(5) COORDINATION WITH SUBSECTION (c).—In applying subsection (c) to a qualified minors' trust, those provisions of section 256(b) which are inconsistent with paragraph (3) or (4) of this subsection shall not apply.

"(6) DEATH OF BENEFICIARY BEFORE YOUNGEST CHILD REACHES AGE 23.—Nothing in this subsection shall be treated as disqualifying an interest of a minor child in a trust solely because such interest will pass to another person if the child dies before the youngest child of the decendent attains age 23."

(2) AGE 23 FOR TERMINABLE INTEREST RULE IN THE CASE OF ORPHANS' EXCLUSION.—The second sentence of subsection (c) of section 2057 (relating to limitation in the case of life estate or other terminable interest) is amended by striking out "21" and inserting in lieu thereof "23".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(m) DISCLAIMER BY SURVIVING SPOUSE WHERE INTEREST PASSES TO SUCH SPOUSE.—

(1) IN GENERAL.—Paragraph (4) of section 2518 (b) (defining qualified disclaimer) is amended to read as follows:

"(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either—

"(A) to the spouse of the decedent, or

"(B) to a person other than the person making the disclaimer."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to transfers creating an interest in the person disclaiming made after December 31, 1976.

(n) AMENDMENTS RELATING TO TAX ON GENERATION-SKIPPING TRANSFERS.—

(1) EFFECTIVE DATE OF GENERATION-SKIPPING TRANSFER PROVISIONS.—Section 2006(c) of the Tax Reform Act of 1976 (relating to effective date of generation-skipping transfer provisions) is amended by striking out "April 30, 1976" each place it appears and inserting in lieu thereof "June 11, 1976".

(2) CERTAIN POWERS OF INDEPENDENT TRUSTEES NOT TREATED AS POWERS.—Subsection (e) of section 2613 (relating to definitions for purposes of the tax on generation-skipping transfers) is amended to read as follows:

"(e) CERTAIN POWERS NOT TAKEN INTO ACCOUNT.—

"(1) LIMITED POWER TO APPOINT AMONG LINEAL DESCENDANTS OF THE GRANTOR.—For purposes of this chapter, an individual shall be treated as not having any power in a trust if such individual does not have any present or future power in the trust other than a power to dispose of the corpus of the trust or the income therefrom to a beneficiary or a class of beneficiaries who are lineal descendants of the grantor assigned to a generation younger than the generation assignment of such individual.

"(2) POWERS OF INDEPENDENT TRUSTEES.—

"(A) IN GENERAL.—For purposes of this chapter, an individual shall be treated as not having any power in a trust if such individual—

"(i) is a trustee who has no interest in the trust,

"(ii) is not a related or subordinate trustee, and

"(iii) does not have any present or future power in the trust other than a power to dispose of the corpus of the trust or the income therefrom to a beneficiary or a class of beneficiaries designated in the trust instrument.

"(B) RELATED OR SUBORDINATE TRUSTEE DEFINED.—For purposes of subparagraph (A), the term 'related or subordinate, trustee' means any trustee who is assigned to a younger generation that the grantor's generation and who is—

"(i) the spouse of the grantor or of any beneficiary,

"(ii) the father, mother, lineal descendant, brother, or sister of the grantor of any beneficiary,

"(iii) an employee of a corporation in which the stockholdings of the grantor, the trust, and the beneficiaries of the trust are significant from the viewpoint of voting control,

"(iv) an employee of a corporation in which the grantor or any beneficiary of the trust is an executive."

"(iv) a partner of a partnership in which the interest of the grantor, the trust, and the beneficiaries of the trust are significant from the viewpoint of operating control or distinctive share of partnership income,".

"(v) an employee of a corporation in which the grantor or any beneficiary of the trust is an executive, or

"(vi) an employee of a partnership in which the grantor or any beneficiary of the trust is a partner.".

(3) CLARIFICATION OF SECTION 2613(b)(2)(B).—Subparagraph (B) of section 2613(b)(2) defining taxable termination for purposes of the tax on generation-skipping transfer) is amended—

(A) by striking out "an interest and a power" and inserting in lieu thereof "a present interest and a present power", and

(B) by striking out "interest or power" and inserting in lieu thereof "present interest or present power".

(4) ALTERNATE VALUATION IN CERTAIN CASES WHERE THERE IS A TAXABLE TERMINATION AT DEATH OF OLDER GENERATION BENEFICIARY.—

(A) IN GENERAL.—Subparagraph (A) of section 2602(d)(1) (relating to alternate valuation) is amended by inserting "(or at the same time as the death of a beneficiary of the trust assigned to a higher generation than such deemed transferor)" after "such deemed transferor".

(B) SPECIAL RULES.—Subparagraph (A) of section 2602(d)(2) (relating to special rules for alternate valuation) is amended by inserting "(or beneficiary)" after "the deemed transferor".

(5) EFFECTIVE DATE.—

(A) Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if included in chapter 13 of the Internal Revenue Code of 1954 as added by section 2006 of the Tax Reform Act of 1976.

(B) The amendment made by paragraph (1) shall take effect on October 4, 1976.

(o) ADJUSTMENT IN INCOME TAX ON ACCUMULATION DISTRIBUTIONS FOR PORTION OF ESTATE AND GENERATION-SKIPPING TRANSFER TAXES.—

(1) IN GENERAL.—Subsection (b) of section 667 (relating to tax on accumulation distribution) is amended by adding at the end thereof the following new paragraph:

"(6) ADJUSTMENT IN PARTIAL TAX FOR ESTATE AND GENERATION-SKIPPING TRANSFER TAXES ATTRIBUTABLE TO PARTIAL TAX.—

"(A) IN GENERAL.—The partial tax shall be reduced by an amount which is equal to the predeath portion of the partial tax multiplied by a fraction—

"(i) the numerator of which is that portion of the tax imposed by chapter 11 or 13, as the case may be, which is attributable (on a proportionate basis) to amounts included in the accumulation distribution, and

"(ii) the denominator of which is the amount of the accumulation distribution which is subject to the tax imposed by chapter 11 or 13, as the case may be.

"(B) PARTIAL TAX DETERMINED WITHOUT REGARD TO THIS PARAGRAPH.—For purposes of this paragraph, the term 'partial tax' means the partial tax imposed by subsection (a)(2) determined under this subsection without regard to this paragraph.

"(C) PRE-DEATH PORTION.—For purposes of this paragraph, the pre-death portion of the partial tax shall be an amount which bears the same ratio to the partial tax as the portion of the accumulation distribution which is attributable to the period before the date of the death of the decedent or the date of the generation-skipping transfer bears to the total accumulation distribution."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply—

(A) in the case of the tax imposed by chapter 11 of the Internal Revenue Code of 1954, to the estates of decedents dying after December 31, 1979, and

(B) in the case of the tax imposed by chapter 13, to any generation-skipping transfer (within the meaning of section 2611(a) of such Code) made after June 11, 1976.

(p) RELIEF OF EXECUTOR FROM PERSONAL LIABILITY IN THE CASE OF RELIANCE ON GIFT TAX RETURNS.—

(1) IN GENERAL.—Section 2204 (relating to discharge of fiduciary from personal liability) is amended by adding at the end thereof the following new subsection:

"(d) GOOD FAITH RELIANCE ON GIFT TAX RETURNS.—If the executor in good faith relies on gift tax returns furnished under section 6103(e)(3) for determining the decedent's adjusted taxable gifts, the executor shall be discharged from personal liability with respect to any deficiency of the tax imposed by this chapter which is attributable to adjusted taxable gifts which—

"(1) are made more than 3 years before the date of the decedent's death, and

"(2) are not shown on such returns.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to the estates of decedents dying after December 31, 1976.

(q) AMENDMENT OF GOVERNING INSTRUMENTS TO MEET REQUIREMENTS FOR GIFTS OF SPLIT INTEREST TO CHARITY.—In the case of deductions under sections 170, 2055, and 2522 of the Internal Revenue Code of 1954 to which the limitations of sections 170(f)(2), 2055(e)(2)(B), and 2522(c)(2) of such Code apply, provisions comparable to section 2055(e)(3) of such Code shall apply except that the date "1978" shall be substituted for "1977" wherever it appears in section 2055(e)(3) of such Code.

(r) INDEXING OF FEDERAL TAX LIENS.—

(1) IN GENERAL.—Paragraph (4) of section 6323(f) (relating to indexing of tax liens) is amended to read as follows:

"(4) INDEXING REQUIRED WITH RESPECT TO CERTAIN REAL PROPERTY.—In the case of real property, if—

"(A) under the laws of the State in which the real property is located, a deed is not valid as against a purchaser of the property who (at the time of purchase) does not have actual notice or knowledge of the existence of such deed unless the fact of filing of such deed has been entered and recorded in a public index at the place of filing in such a

manner that a reasonable inspection of the index will reveal the existence of the deed, and

"(B) there is maintained (at the applicable office under paragraph (1)) an adequate system for the public indexing of Federal tax liens,

then the notice of lien referred to in subsection (a) shall not be treated as meeting the filing requirements under paragraph (1) unless the fact of filing is entered and recorded in the index referred to in subparagraph (B) in such a manner that a reasonable inspection of the index will reveal the existence of the lien.".

(2) REFILING OF NOTICE OF LIEN.—Section 6323(g)(2)(A) (relating to refiling of notice of lien) is amended to read as follows:

"(A) if—

"(i) such notice of lien is refiled in the office in which the prior notice of lien was filed, and

"(ii) in the case of real property, the fact of refiling is entered and recorded in an index to the extent required by subsection (f)(4); and".

(3) EFFECTIVE DATE.—

(A) The amendments made by this subsection shall apply with respect to liens, other security interests, and other interests in real property acquired after the date of the enactment of this Act.

(B) If, after the date of the enactment of this Act, there is a change in the application (or nonapplication) of section 6323(f)(4) of the Internal Revenue Code of 1954 (as amended by paragraph (1)) with respect to any filing jurisdiction, such change shall apply only with respect to liens, other security interests, and other interests in real property acquired after the date of such change.

(s) CLERICAL AMENDMENTS.—

(1) CLERICAL AMENDMENTS WITH RESPECT TO SECTION 6694.—

(A) IN GENERAL.—Section 6694 (relating to failure to file information with respect to carryover basis property) which was added by section 2005(d)(2) of the Tax Reform Act of 1976 is redesignated as section 6698.

(B) DEFICIENCY PROCEDURES NOT TO APPLY.—Section 6698 (as redesignated by subparagraph (A)) is amended by adding at the end thereof the following new subsection:

"(c) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a)."

(C) TABLE OF SECTIONS.—The table of sections for subchapter B of chapter 68 is amended by striking out

"Sec. 6694. Failure to file information with respect to carryover basis property."

and inserting in lieu thereof the following:

"Sec. 6698. Failure to file information with respect to carryover basis property."

(2) CLERICAL AMENDMENT TO SECTION 2051.—Section 2051 (defining taxable estate) is amended by striking out "exemption and".

(3) CLERICAL AMENDMENT TO SECTION 1016(a).—Subsection (a) of section 1016 (relating to adjustments to basis) is amended by redesignating paragraph (23) as paragraph (21).

(4) CLERICAL AMENDMENT TO SECTION 6324B(b).—Subsection (b) of section 6324B (relating to period of lien for additional estate tax attributable to farm, etc., valuation) is amended by striking out "qualified farm real property" and inserting in lieu thereof "qualified real property".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to estates of decedents dying after December 31, 1976.

SEC. . CORRETIONS OF PUNCTUATION, SPELLING, INCORRECT CROSS REFERENCES, ETC.

(a) ERRONEOUS CROSS REFERENCE IN INVESTMENT CREDIT.—

(1) AMENDMENT OF SECTION 46(f)(8).—The first sentence of paragraph (8) of section 46(f) is amended by striking out "subsection (a)(6)(D)" and inserting in lieu thereof "subsection (a)(7)(D)".

(2) AMENDMENT OF SECTION 46(g)(5).—Paragraph (5) of section 46(g) (relating to definitions) is amended by striking out "Merchant Marine Act, 1970" and inserting in lieu thereof "Merchant Marine Act, 1936".

(3) AMENDMENT OF SECTION 48(d)(1)(B).—Subparagraph (B) of section 48(d)(1) is amended by striking out "section 46(a)(5)" and inserting in lieu thereof "section 46(a)(6)".

(4) AMENDMENT OF SECTION 84(d)(4)(D).—Subparagraph (D) of section 48(d)(4) is amended by striking out "section 57(c)(2)" and inserting in lieu thereof "section 57(c)(1)(B)".

(b) PREPAID LEGAL SERVICES.—

(1) Paragraph (2) of section 2134(e) of the Tax Reform Act of 1976 is amended by striking out "section 120(d)(6)" and inserting in lieu thereof "section 120(d)(7)".

(2) Paragraph (20) of section 501(c) is amended by striking out "section 501(c)(20)" and inserting in lieu thereof "this paragraph".

(c) AMENDMENTS RELATING TO SECTIONS 219 AND 220.—

(1) AMENDMENT OF SECTION 219(c)(4).—Paragraph (4) of section 219(c) (relating to participation in governmental plans by certain individuals) is amended by striking out "subsection (b)(3)(A)(iv)" each place it appears and inserting in lieu thereof "subsection (b)(2)(A)(iv)".

(2) AMENDMENT OF SECTION 220(b)(1)(A).—Subparagraph (A) of section 220(b)(1) (relating to retirement savings for certain married individuals) is amended by striking out "amount paid to the account or annuity, or for the bond" and inserting in lieu thereof "amount paid to the account, for the annuity, or for the bond".

(3) AMENDMENT OF SECTION 220(b)(4).—Paragraph (4) of section 220(b) is amended by inserting "described in subsection (a)" after "any payment".

(4) AMENDMENT OF SECTION 408(d)(4).—Subparagraph (A) of section 1501(b)(5) of the Tax Reform Act of 1976 is amended to read as follows:

"(A) by inserting 'or 220' after '219' each place it appears, and".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1976.

(d) ACCRUAL ACCOUNTING FOR FARM CORPORATIONS.—Subsections (a) and (g)(2) of section 447 are each amended by striking out "preproductive expenses" and inserting in lieu thereof "preproductive period expenses."

(e) AMENDMENT OF SECTION 911.—Subsection (c) of section 911 is amended by redesignating paragraph (8) as paragraph (7).

(f) TRANSITION RULE FOR PRIVATE FOUNDATIONS.—Subparagraph (F) of section 101(1)(2) of the Tax Reform Act of 1969 (relating to private foundations savings provisions) is amended by striking out the period at the end of clause (i) and inserting in lieu thereof a comma.

(g) LOBBYING BY PUBLIC CHARITIES.—

(1) LOBBYING NONTAXABLE AMOUNT.—Paragraph (2) of section 4911(c) (defining lobbying nontaxable amount) is amended by striking out "proposed expenditures" in the heading of the table contained in such paragraph and inserting in lieu thereof "exempt purpose expenditures".

(2) TECHNICAL AMENDMENTS RELATING TO SECTION 501.—

(A) Section 2(a) of Public Law 94–568 is amended by striking out "subsection (h) as subsection (i) and by inserting after subsection (g)" and inserting in lieu thereof "subsection (i) as subsection (j) and by inserting after subsection (h)".

(B) Subsection (g) of section 501 of the Internal Revenue Code of 1954 (as inserted by section 2(a) of Public Law 94–568) is redesignated as subsection (i).

(C) The amendments made by this paragraph shall take effect on October 20, 1976, as if included in Public Law 94–568.

(h) AMENDMENTS TO FOREIGN TAX PROVISIONS.—

(1) Paragraph (2) of section 1035(c) of the Tax Reform Act of 1976 (relating to tax credit for production-sharing contracts) is amended—

(A) by inserting "(as defined in section 907(c) of such Code)" after "gas extraction income" in subparagraph (A), and

(B) by striking out "(as defined in section 907(c)(1) of such Code)" in subparagraph (B) and inserting in lieu thereof "(as so defined)".

(2) Paragraph (1) of section 999(c) (relating to international boycott factor) is amended by striking out "995(b)(3)" and inserting in lieu thereof "995(b)(1)(F)(ii)".

(3) Paragraph (2) of section 999(c) is amended by striking out "995(b)(1)(D)(ii)" and inserting in lieu thereof "995(b)(1)(F)(ii)".

(i) AMENDMENTS TO DISC PROVISIONS.—

(1) The last two sentences of section 995(b)(1) (relating to deemed distributions to shareholders of a DISC) are amended—

(A) by striking out "gross income (taxable income in the case of subparagraph (D))" and inserting in lieu thereof "income"; and

(B) by striking out "subparagraph (E)" and inserting in lieu thereof "subparagraph (G)".

(2) Subparagraph (G) of section 995(b)(1) is amended by striking out "subsection (D)" and inserting in lieu thereof "subsection (d)".

(3) Paragraph (2) of section 996(a) (relating to qualifying distributions) is amended by striking out "section 995(b)(1)(E)" and inserting in lieu thereof "section 995(b)(1)(G)".

(4) Paragraph (5) of section 1101(g) of the Tax Reform Act of 1976 is amended by striking out "section 993(e)(3)" and inserting in lieu thereof "section 995(e)(3)".

(j) AMENDMENTS RELATING TO DEADWOOD PROVISIONS.—

(1) TAX EXEMPT GOVERNMENTAL OBLIGATIONS.—

(A) The heading of paragraph (1) of section 103(b) is amended to read as follows:

"(1) SUBSECTION (a)(1) OR (2) NOT TO APPLY.—".

(B) Paragraph (1) of section 103(c) is amended by striking out "(a)(1) or (4)" each place it appears (including in the paragraph heading) and inserting in lieu thereof "(a)(1) or (2)".

(C) Subparagraph (A) of section 103(c)(2) is amended by striking out "subsection (a)(1) or (2) or (4)" and inserting in lieu thereof "subsection (a)(1) or (2)".

(D) Paragraph (5) of section 103(c) is amended by striking out "subsection (d)(2)(A)" and inserting in lieu thereof "paragraph (2)(A)".

(E) Subsection (d) of section 103 is amended by striking out "subsection (c)(4)(G)" and inserting in lieu thereof "subsection (b)(4)(G)".

(2) AMENDMENTS RELATING TO SECTION 311(d)(2).—

(A) Subsection (b) of section 2 of the Bank Holding Company Tax Act of 1976 is amended—

(i) by striking out "subparagraph (F)" and inserting in lieu thereof "subparagraph (E)", and

(ii) by striking out "subparagraph (G)" and inserting in lieu thereof "subparagraph (F)".

(B) Subparagraph (H) of section 311(d)(2) is redesignated as subparagraph (G).

(C) The amendments made by this paragraph shall take effect as if included in section 2(b) of the Bank Holding Company Tax Act of 1976.

(3) AMENDMENT TO SECTION 453(c).—Paragraph (3) of section 453(c) is amended—

(A) by striking out "(or by the corresponding provisions of prior revenue laws)" in the first sentence, and

(B) by striking out the last sentence.

(4) AMENDMENT OF SECTION 801(g).—Paragraphs (1)(B)(ii) and (7) of section 801(g) are each amended by striking out "subparagraph (A) (B), (C), (D), or (E) of section 805(d)(1)" and inserting in lieu thereof "any paragraph of section 805(d)".

(5) AMENDMENT OF SECTION 1033(a)(2).—Clause (ii) of section 103(a)(2)(A) is amended by striking out "subsection (c)" and inserting in lieu thereof "subsection (b)".

(6) AMENDMENT OF SECTION 1375(a).—Paragraph (2) of section 1375(a) is amended by striking out "such excess" each place it appears and inserting in lieu thereof "such gain".

(7) AMENDMENT OF SECTION 1561(b)(3).—Paragraph (3) of section 1561(b) is amended by striking out "804(a)(4)" and inserting in lieu thereof "804(a)(3)".

(8) AMENDMENTS OF SECTION 1402.—

(A) The last paragraph of section 1402(a) of the Internal Revenue Code of 1954 (definition of net earnings from self-employment) is amended by striking out "subsection (i)" each place it appears and inserting in lieu thereof "subsection (h)".

(B) Section 1402(c)(6) of such Code (definition of trade or business) is amended by striking out "subsection (h)" and inserting in lieu thereof "subsection (g)".

(9) AMENDMENT TO SECTION 46(a).—Subparagraph (C) of section 1901(b)(1) of the Tax Reform Act of 1976 is amended by striking out "Section 46(a)(3)" and inserting in lieu thereof "Section 46(a)(4)".

(10) AMENDMENT RELATING TO SECTION 6504.—Subparagraph (D) of section 1901(b)(37) of the Tax Reform Act of 1976 is amended by striking out "6515" and inserting in lieu thereof "6504."

(11) TERRITORIES.—Subsection (c) of section 1901 of the Tax Reform Act of 1976 (relating to Territories) is amended by striking out paragraph (1) thereof.

(12) ESTATE AND GIFT TAXES EFFECTIVE DATE.—Subsection (c) of section 1902 of the Tax Reform Act of 1976 is amended to read as follows:

"(c) EFFECTIVE DATES.—

"(1) ESTATE TAX AMENDMENTS.—The amendments made by paragraphs (1) through (8), and paragraphs (12) (A), (B), and (C), of subsection (a) and by subsection (b) shall apply in the case of estates of decedents dying after the date of the enactment of this Act, and the amendment made by paragraph (9) of subsection (a) shall apply in the case of estates of decedents dying after December 31, 1970.

"(2) GIFT TAX AMENDMENTS.—The amendments made by paragraphs (10), (11), and (12) (D) and (E) of subsection (a) shall apply with respect to gifts made after December 31, 1976."

(13) EFFECTIVE DATE FOR AMENDMENT MADE BY SECTION 190(a)(22)(A).—Notwithstanding section 1904 (d) of the Tax Reform Act of 1976, the amendment made by section 1904(a)(22)(A) of such Act shall take effect on the date of the enactment of such Act.

(14) AMENDMENTS TO SOCIAL SECURITY ACT.—

(A) Section 202(v) of the Social Security Act is amended by striking out "section 1402(h)" each place it appears and inserting in lieu thereof "section 1402(g)".

(B) Section 205(p)(3) of such Act is amended by striking out "Secretary of the Treasury" and inserting in lieu thereof "Secretary of Transportation".

(C) Section 210(a)(6)(B)(v) of such Act is amended by striking out "Secretary of the Treasury" and inserting in lieu thereof "Secretary of Transportation".

(D) Section 211(a)(2) of such Act is amended by striking out "(other than interest described in section 35 of the Internal Revenue Code of 1954)".

(E) Section 211(c)(6) of such Act is amended by striking out "section 1402(h)" and inserting in lieu thereof "section 1402(g)".

(k) CAPITAL LOSS CARRYOVERS.—Clause (ii) of section 1212(a)(1)(C) (relating to capital loss carryovers for foreign expropriation losses) is amended by striking out "exceeding the loss year" and inserting in lieu thereof "succeeding the loss year".

(l) AMENDMENTS RELATING TO CERTAIN AIRCRAFT MUSEUMS.—

(1) Paragraph (2) of section 4041(h) (defining aircraft museum) is amended by striking out "term 'aircraft' means" and inserting in lieu thereof "term 'aircraft museum' means".

(2) Subsection (i) of section 4041 (as added by section 1904(a)(1)(C) of the Tax Reform Act of 1976) is redesignated as subsection (j).

(3) Subsection (d) of section 6427 (relating to repayment of tax on fuels used by certain aircraft museums) is amended by striking out "Secretary or his delegate" and inserting in lieu thereof "Security".

(4) Paragraph (1) of section 7609(c) (defining summons to which section applies) is amended by striking out "6427(e)(2)" and inserting in lieu thereof "6427(f)(2)".

(m) INSPECTION BY COMMITTEE OF CONGRESS.—Paragraph (2) of section 6104(a) (relating to inspection by committee of Congress) is amended by striking out "Section 6103(d)" and inserting in lieu thereof "Section 6103(f)".

(n) AMENDMENT OF SECTION 6501.—Subsections (h), (j), and (o) of section 6501 are each amended by striking out "section 6213(b)(2)" and inserting in lieu thereof "section 6213(b)(3)".

(o) CONFORMING AMENDMENTS TO NEW DEFINITION OF TAXABLE INCOME.—

(1) Subparagraph (A) of section 443(b)(2) (relating to computation based on 12-month period) is amended—

(A) by striking out "taxable income" the second and third places it appears in clause (i) and inserting in lieu thereof "modified taxable income", and

(B) by amending clause (ii) to read as follows:

"(ii) the tax computed on the sum of the modified taxable income for the short period plus the zero bracket amount."

(2) Paragraph (1) of section 443(b) is amended by striking out "gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions)" and inserting in lieu thereof "modified taxable income for such short period".

(3) Subsection (b) of section 443 is amended by adding at the end thereof the following new paragraph:

"(3) MODIFIED TAXABLE INCOME DEFINED.—For purposes of this subsection the term 'modified taxable income' means, with respect to any period, the gross income for such period minus the deductions allowed by this chapter for such period (but, in the case of a short period, only the adjusted amount of the deductions for personal exemptions)."

(4) The amendments made by this subsection shall apply to taxable years beginning after December 31, 1976.

(p) CONFORMING AMENDMENTS TO REPEAL OF SECTION 317 OF TRADE EXPANSION ACT OF 1962.—

(1) AMENDMENTS OF SECTION 172.—

(A) Subparagraph (A) of section 172(b)(1) (relating to years to which loss may be carried) is amended to read as follows:

"(A) Except as provided in subparagraphs (D), (E), (F), and (G), a net operating loss for any taxable year shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss."

(B) Paragraph (3) of section 172(b) (relating to special rules) is amended by striking out subparagraphs (A) and (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (A), (B), and (C) respectively

(C) Subparagraph (B) of section 172(b)(3) (as redesignated by subparagraph (B)) is amended by striking out "subparagraph (C)(iii)" each place it appears and inserting in lieu thereof "subparagraph (A)(iii)".

(2) AMENDMENT OF SECTION 6501(h).—Subsection (h) of section 6501 (relating to net operating loss or capital loss carryback) is amended by striking out the last sentence.

(3) AMENDMENT OF SECTION 6511(d)(2).—The first sentence of section 6511(d)(2)(A) (relating to special period of limitation for net operating loss or capital loss carrybacks) is amended by striking out "except that—" and all that follows down through the period at the end of such sentence and inserting in lieu thereof the following: "except that with respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A), the period shall not expire before the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to losses sustained in taxable years ending after the date of the enactment of this Act.

(q) CONFORMING AMENDMENT TO REPEAL OF SECTION 2 OF THE EMERGENCY INSURED STUDENT LOAN ACT OF 1969.—

(1) IN GENERAL.—Paragraph (5) of section 103(d) (relating to arbitrage bonds) is amended by striking out "section 2 of the Emergency Insured Student Loan Act of 1969" and inserting in lieu thereof "section 438 of the Higher Education Act of 1965".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to payments made by the Commissioner of Education after December 31, 1976.

(r) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall take effect on October 4, 1976.

Mr. LONG. Mr. President, as I understand it, this amendment was agreed to unanimously as an amendment to the bill. I ask it be added to the committee substitute.

Mr. PROXMIRE. Before we act on that, will the Senator inform us whether 911 is included in there, the overseas matter?

Mr. LONG. It is included.

Mr. PROXMIRE. It is included, and this would have no revenue effect whatsoever, simply a technical modification?

Mr. LONG. It is minor revenue effect which is taken into consideration. This is already on the bill itself. This has been taken into account. The bill passed by the House, before they passed the bill we are presently considering, and it had been added to the bill. It simply

is a matter of being added to the committee amendment.

Mr. PROXMIRE. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment (UP No. 2044) was agreed to.

Mr. MUSKIE. Mr. President, I do not know whether there are other Senators who wish time between now and 2 o'clock. I understand I have 12½ minutes left. I yield myself 30 seconds so that I may make one observation about the mounting costs of this bill.

Now, Members who have been following the debate noted that many amendments have been adopted which have escaped the discipline of the 1979 concurrent resolution, because the date has been slipped toward the end of this fiscal year with the full year costs of the amendments not apparent until fiscal year 1980 and beyond.

I simply want to say, as a rough estimate at this point, certainly, we have added $10 billion in full year tax reductions that will have full effect subsequent to fiscal year 1979.

I am going to do my best, and I am sure the distinguished floor manager will cooperate fully in this, in describing the full year costs of amendments which have been added at dates which minimize the full year's costs in fiscal year 1979.

I thought Members ought to understand that has taken place and that we have to take it into account before we ask Members to vote finally on this bill. But the total cost of that bill on a full year basis now is at least $50 billion, including the amendments which do not take effect fully in fiscal year 1979.

So Members ought to understand that, that it is the sort of thing we do on the floor with tax bills, as my good friend, Senator LONG, understands all too well, and we hope to have a complete analysis at that time.

Mr. President, as I understand the parliamentary situation, Senator LONG and I share the time until 2 o'clock. At that time, we begin debate on the conference reports. At 3 o'clock, we begin debate on the Heinz amendment for 20 minutes, which will then go to a vote about 3:20, and then after that vote, there will be, hopefully, 20 minutes of time left to debate the first cloture motion, and at 4 o'clock, we will have back to back votes on the conference reports, to be followed by a vote on the first cloture motion, and if that one fails, that we then have an hour of debate on the second cloture motion.

That is as I understand the time situation this afternoon. May I ask the Presiding Officer whether or not I have accurately described the scenario for the afternoon up until about 5 to 5:30?

The PRESIDING OFFICER. Let me say that the time from now until 2 o'clock is under the control of the Senator from Louisiana, the Senator from Wyoming, and the Senator from Maine.

I say that from 2 to 3, the time is not under control, but will be used up in debating the conference reports, two different conference reports on the energy legislation.

At 3 o'clock the Heinz amendment will be laid down.

Mr. MUSKIE. How much time do I have remaining between now and 2 o'clock?

The PRESIDING OFFICER. Twelve and a half minutes.

Mr. MUSKIE. I am happy to yield.

Mr. PROXMIRE. If the Senator could yield me 10 minutes, I would appreciate it. If not, I would be happy to take only part of it.

Mr. MUSKIE. Let me have 2 minutes.

Mr. PROXMIRE. All right.

Mr. MUSKIE. The Senator can have the rest of my time if no others wish it.

Mr. President, I would simply like to make this point about the first cloture motion which will be voted on sometime around 4:30 this afternoon.

The effect of that motion, if approved by the Senate, will be to set aside all nongermane amendments, including the sunset amendment, the Glenn amendment to the sunset amendment. I am not sure what the status of Humphrey-Hawkins is with respect to that motion, but I suspect it may affect that as well.

If that cloture motion prevails, all nongermane amendments are ruled out for the balance of the consideration of the tax bill.

So I would like to make the point to those who are interested in the sunset amendment, particularly, because that is of primary concern to me, that a vote for cloture at that time is a vote against the consideration of the sunset bill, in connection with this legislation, and, in my judgment, it will be the last effective chance we will have, however, effective that may be, it will be the last effective chance that we will have to vote for sunset.

I will repeat this theme at, roughly, quarter of 4, or thereabouts, if there is time left after the vote on the Heinz amendment. But I wanted to make that point, and only that point, at this moment.

Now I yield to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I thank the distinguished Senator from Maine.

Mr. President, what I would like to explain to the Senate is the posture, and I think I speak for the Senator from Ohio, too, on this. He has been doing the kind of job I think we should do with respect to this bill.

Mr. President, once again we have a tax bill before us, and once again we are faced with the prospect of having a series of tax amendments, some already in the bill and some in the pockets of various Senators, which would give tax relief for very narrow purposes and for the benefit of one or a very few taxpayers.

They are the "bearded, one-eyed man, with a limp," amendments, mostly couched in general terms but with specific dates and provisions which limit their application to one or a few individuals or companies.

That is why I say a one-eyed man, with a limp, because they have to be very special to qualify.

What is wrong with that? Here is the answer.

First, we set up the Tax Court to take care of the cases where an individual believes that the law has been misinterpreted or the IRS or the Government has been arbitrary. The purpose of the Tax Court is to take care of the special relief provisions through the judicial process and not by seeing who can hire the highest priced Washington, D.C. lawyer with the biggest political clout.

Second, where there is still a grievance or an inequity, the proper legislative procedures should be followed. Under the Constitution tax bills should start in the House. There should be a hearing, a report, a Treasury position, and a vote in the committee followed by passage or rejection by the House of Representatives.

On the Senate side, the same procedures should be followed—hearings markup, approval, a committee report, placed on the calendar, and scheduling for passage.

So far as this Senator is concerned, if those procedures are followed I believe the Senate should have a chance to vote a bill up or down, no matter how good or how bad an amendment or provision is. And I have no objections to the Senate acting on amendments to tax bills which have general application.

But instead, time after time, we are confronted at the last minute with an amendment drawn up to benefit some specific person or company, often without a hearing or a report, with no bill from the House. Time and time again, we are asked to accept what is little more than a private relief bill as an amendment to a bill establishing the general corporate tax rate, the level of taxes for individuals, and policy with respect to broad public tax issues.

It was just such an amendment which provided one of the biggest loopholes ever placed in a tax bill, the so-called unlimited charitable deduction provision which was added to a general tax bill to help a nun in Philadelphia. It looked like a fine provision on behalf of a worthy person, but it turned out to be one of a handful of major causes why some persons with millions of dollars in income paid no taxes.

I want to say, in fairness to the chairman of the Finance Committee and his staff, that there has been a general improvement in the procedures, although I believe much is left to be done.

He and his staff now generally provide us with the facts of the amendments, the Treasury position, who benefits, and the cost to the taxpayers. As a result the "Christmas Tree" provisions have been somewhat less bad recently, and because of the information provided, some of us have been able to draw attention to them and to stop them. But, for all the improvement, much still needs to be done.

Now let me be specific.

In this bill, we already have some "bearded, one-eyed man, with a limp" amendments.

First, there is the E. F. Hutton amendment. When E. F. Hutton talks, the Senate Finance Committee listens. The revenue loss for the next 2 calendar years under the amendment is between $7 and $9 million a year. The provision benefits one security firm and only a very small

number of industrial corporations. It provides no benefit at all to State and local governments.

Second, there is a Texas International Airways amendment worth several million dollars.

Airlines have received very generous tax provisions in recent years. They have been able to take the 3-year carryback and 7-year carry forward provisions for investment credits which greatly helped them when their earnings were low.

In addition, in 1976, this industry was given the option of taking a 10-year carry forward in lieu of the 3-year carryback and 7-year carry forward provision.

Further, the law that limited the investment credit to offset no more than 50 percent of tax liability was increased to allow the airlines to write off 100 percent, thus using their unused tax credits.

Now one airline primarily, which, even with all these favorable general provisions, has been unable to use all of its back credits, has come forward with a tax provision to allow them 1 more year or 11 years.

It is possible that one or more other airlines will get some minor tax breaks from this provision, but essentially it is the Texas International Airways provision—a relief bill for one company.

The Treasury is opposed, but the amendment is in the bill.

There are other provisions in the bill as well. Generally, the investment tax credit has been denied for investments in structures as opposed to machinery and capital equipment. But the committee bill provides it for pigpens, chicken coops, and greenhouses.

The bill also provides an investment tax credit for breed and draft horses, although there is apparently no shortage of them demanding a tax incentive.

There is an amendment benefiting two poultry producers, one in Maine and one in Arkansas, by exempting them from the 1976 reforms requiring large farm corporations to use the accrual method of accounting. Similar provisions were provided for large sod farms.

Not only are these amendments in the bill, but also, others are lurking in the cloakrooms and corridors, ready to be proposed at the appropriate time.

One amendment would mean about $3 million to the New England Patriots football team.

Yet another would allow an independent local newspaper to make tax deductible transfers to a tax exempt trust for the purpose of paying an owner's estate tax.

When these amendments are proposed, I intend to ask certain specific questions about them.

Is there a House-passed bill?

Has there been a hearing on them?

What is the Treasury position?

What specific person or company will benefit from the provision?

How much is the revenue loss?

Have they sought a judgment in the Tax Court?

The answers to these questions may be so embarrassing that they will be withdrawn or not pressed to a vote. They may help the managers of the bill reject them. In some cases the objections can be met. In any case, I will certainly want to know the answers to these questions before I give any unanimous agreement for time to vote on them or not object to their passage.

I think we should pass a general tax bill with general tax provisions. I am willing to vote general provisions up or down. But this bill should not be a vehicle for the private relief of every taxpayer with an alleged problem or who is seeking a special favor, or who has received bad advice, or who did not meet the provisions of the general law and wants a special exemption.

Those problems should first go to the tax court. Second, individual bills should be taken up in proper sequence in the House and Senate, and judged separately on their merits. They should generally meet the approval of the Treasury or at least not be objected to.

I hope very much, Mr. President, that that kind of procedure can be followed with respect to the debate on this bill and in the future.

The PRESIDING OFFICER (Mr. CHILES). All time of the Senator from Maine has expired.

The Senator from Louisiana has 4 minutes remaining, and the Senator from Wyoming has a minute and a half.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. I yield 2 minutes to the Senator from New York.

AMENDMENT NO. 3976

(Purpose: To amend the Internal Revenue Code of 1954 to allow the tax-free rollovers of certain amounts received under section 403(b) annuities)

Mr. MOYNIHAN. Mr. President, I call up amendment No. 3976.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposed an amendment numbered 3976.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 182, between lines 16 and 17, insert the following:

SEC. 136. ROLLOVER OF DISTRIBUTION UNDER SECTION 403(b) ANNUITY CONTRACT.

(a) GENERAL RULE.—Subsection (b) of section 403 (relating to annuities purchased by certain exempt organizations and public schools) is amended by adding the following new paragraph:

"(8) ROLLOVER AMOUNTS.—In the case of an annuity contract described in paragraph (1), if—

"(A) the balance to the credit of an employee is paid to him in one or more distributions which would constitute a lump sum distribution within the meaning of section 402(e)(4)(A) (determined without reference to section 402(e)(4)(B)) if such annuity contract was described in section 403(a),

"(B)(i) the employee transfers all the property he receives in such distribution to an individual account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), or

"(ii) the employee transfers all the property he receives in such distribution to an annuity contract described in paragraph (1) on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), and

"(C) the amount so transferred consists of the property distributed to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distribution is not includible in gross income for the year in which paid. For purposes of this paragraph, all annuity contracts described in paragraph (1) purchased by an employer shall be treated as a single contract, and section 402(e)(4)(C) shall not apply. For purposes of applying subparagraph (A), section 402(e)(4)(H) (relating to minimum periods of service) shall be considered to be satisfied with respect to an employee if amounts were contributed by his employer for an annuity contract described in paragraph (1) for 5 or more taxable years before the taxable year in which such amounts are distributed. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution described in section 408(d)(3)."

(b) ROLLOVER CONTRIBUTION.—

(1) Subparagraph (A) of section 408(d)(3) (relating to rollover contributions) is amended by striking out clause (ii) and inserting in lieu thereof the following:

"(ii)(I) the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity,

"(II) no amount in the account and no part of the value of the annuity is attributable to any source other than qualified rollovers and any earnings on such rollovers, and

"(III) the entire amount thereof is paid to another trust (for the benefit of such individual), annuity plan, or contract, referred to in the last sentence of this subparagraph not later than 60th day after the day on which he receives the payment or distribution.

For purposes of clause (ii), the term 'qualified rollover, means any rollover contribution from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a) (other than an annuity plan or trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan) or from an annuity contract described in section 403(b)."

(2) Subparagraph (C) of section 409(b)(3) is amended—

(A) by striking out "or an annuity plan described in section 403(a)" and inserting in lieu thereof "an annuity plan described in section 403(a), or an annuity contract described in section 403(b)", and

(B) by striking out "annuity plan" each place it appears in the last sentence and inserting in lieu thereof "annuity plan or contract".

(c) TREATMENT OF ROLLOVER CONTRIBUTIONS.—Section 403(b)(1) (relating to annuities purchased by certain exempt organizations and public schools) is amended by adding at the end thereof the following sentence: "For purposes of applying the rules of this subsection to amounts con-

tributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8)(B)(ii) of this subsection or section 408(d)(3)(A)(ii) or 409(d)(3)(C) shall not be considered contributed by such employer."

(d) Conforming Amendment.—

(1) Sections 219(b)(4), 220(b)(5), 408(a)(1), 409(a)(4), and 4973(b)(1)(A) are each amended by inserting "403(b)(8)," after "403(a)(4)," each place it appears.

(2) Section 2039(e) is amended by inserting after "403(a)(4)," the following: "section 403(b)(8) (but only to the extent such contribution is attributable to a distribution from a contract described in subsection (c)(3)),".

(3) Section 4973(c)(1) is amended by inserting after "account" the following: "(other than a rollover, contribution described in section 403(b)(8), 408(d)(3)(A)(ii), or 409(d)(3)(C))".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions or transfers made after December 31, 1977, in taxable years beginning after that date.

Mr. MOYNIHAN. Mr. President, this is a simple matter. It has no revenue effect. It is agreed to on both sides of the aisle. It is supported by the Department of the Treasury.

This amendment simply would allow teachers and other employees of nonprofit organizations to take the assets of their retirement plans and, when they leave one employment, reinvest them in the retirement plans of the new employers or in individual retirement accounts. In this respect, they would be treated like their private sector counterparts.

This seems to me a sensible arrangement, particularly at a time when teachers increasingly find they have to move from one school system to another.

I ask the Senate to accept this amendment.

Mr. LONG. Mr. President, I understand that the Treasury has no objection to the amendment and, so far as I know, there is no objection to it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MOYNIHAN. I thank the distinguished chairman. I have one other matter.

AMENDMENT 3978

Mr. President, I call up printed amendment No. 3978.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes an amendment numbered 3978.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. LONG. I yield 1 additional minute to the Senator.

Mr. MOYNIHAN. I thank the chairman.

Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following new section:

SEC. . CERTAIN ORIGINAL STOCKHOLDERS OF COOPERATIVE HOUSING CORPORATIONS

(a) IN GENERAL.—Subsection (b) of section 216 (relating to deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder) is amended by adding at the end thereof the following new paragraph:

"(6) STOCK OWNED BY PERSON FROM WHOM THE CORPORATION ACQUIRED ITS PROPERTY.—

"(A) IN GENERAL.—If the original seller acquires any stock of the corporation—

"(i) from the corporation by purchase, or

"(ii) by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest in such stock held by the original seller,

the original seller shall be treated as a tenant-stockholder for a period not to exceed three years from the date of acquisition.

"(B) ORIGINAL SELLER MUST HAVE RIGHT TO OCCUPY APARTMENT OR HOUSE.—Subparagraph (A) shall apply with respect to any acquisition of stock only if, together with such acquisition, the original seller acquires the right to occupy an apartment or house to which such stock is appurtenant. For purposes of the preceding sentence, there shall not be taken into account the fact that, by agreement with the corporation, the original seller or its nominee may not occupy the house or apartment without the prior approval of the corporation.

"(C) ORIGINAL SELLER DEFINED.—For purposes of this paragraph, the term 'original seller' means the person from whom the corporation has acquired the apartments or houses (or leaseholds therein)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock acquired after the date of the enactment of this Act.

Mr. MOYNIHAN. Mr. President, this is a simple amendment. It has no revenue effect, and it is supported by the Treasury.

It has to do with facilitating the development of cooperative housing. The present tax law requires that 80 percent of the income of a housing corporation be from tenant stockholders and that only individuals may be tenant stockholders.

The problem is that when there is a somewhat high vacancy rate or when there are foreclosures, this 80 percent figure is sometimes not net. In consequence, the deductibility of interest and taxes for the individual tenant holder is in jeopardy.

In 1976, an amendment was adopted which allowed the banks to be treated as tenant stockholders for a period of 3 years, which covered the instances in which foreclosures occurred.

This amendment would extend the same rules to sponsors of the project as well. It is important for new units under construction.

I believe it has support on both sides. It has no revenue effects. It only facilitates this kind of development.

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. LONG. Mr. President, as the amendment has been modified, the Treasury supports the amendment, and I have no objection.

The PRESIDING OFFICER. Will the Senator send a copy of his amendment to the desk?

Mr. MOYNIHAN. The amendment is at the desk.

The PRESIDING OFFICER. The amendment has not been printed as yet.

Mr. MOYNIHAN. The amendment was filed Thursday.

The PRESIDING OFFICER. Because of problems at the Printing Office—there is a tremendous backlog there—we do not have a copy.

Mr. MOYNIHAN. We are searching for one now, Mr. President.

Mr. HANSEN. Mr. President, whatever time remains, I yield to the Senator from Louisiana.

Mr. LONG. I suggest that we vote on the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. PROXMIRE. What was the amendment? It has no revenue effect?

Mr. MOYNIHAN. No revenue effect. It has been approved by the Treasury and agreed to on both sides.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. LONG. Mr. President, how much time remains?

The PRESIDING OFFICER. There are 2 minutes remaining.

Mr. LONG. How much time do I have?

The PRESIDING OFFICER. Two minutes—all of it.

Mr. LONG. Mr. President, I just want to respond to what was said by the Senator from Maine with regard to the cloture matter.

There are some important measures that Senators would like to see passed. Some have a majority vote to recommend them, but they are controversial. To attempt to add those nongermane matters to this bill will mean that the tax bill will not pass or that they will have to be taken off before the tax bill can pass.

One of them is the sunset amendment—not very controversial in the proposal the Senator from Maine initiated, but the part by Mr. GLENN is controversial. If that is added to the bill, I do not think it could muster cloture, and I believe it would result in a very lengthy, dragged-out debate, and the House might not take it. But those of us opposed to it do not feel that we want to let it go that far.

And there is the Humphrey-Hawkins bill. I think most of us would like to vote for it, but that is going to require a considerable amount of consideration, and it cannot be passed on this bill.

The textile quota amendment has a majority vote to recommend it. It is strenuously opposed by the President. It would add more controversy to the bill than this bill could stand, if the bill is going to become law.

There is a proposal for hospital cost containment waiting in the wings, and that is to be used as a hostage with respect to the passage of this bill.

Then there is the matter of lock and dam 26 and the user charges. If that cannot be resolved, that might be used.

Then, the Sugar Act might be used as something to be added to this bill, to try to bring about the enactment of something that many Senators want, which might not be able to pass otherwise.

● Mr. CLARK. Mr. President, I rise in support of the Muskie substitute amendment for S. 2. I believe it would provide

an effective mechanism to assure that Federal programs and regulations are subjected to rigorous scrutiny on a regular basis—for most programs, a rotating 10-year basis. It would force Congress to eliminate deadwood in these programs, and it would hold the bureaucrats who administer the programs accountable for what they do—or do not do.

The amendent requires that all of the programs relating to a particular subject would be reviewed at the same time, in order that duplication and overlap would be eliminated.

It would, in effect, force the Congress to systematically face up to how well Federal programs are working—and it would require such an appraisal be made of almost all Federal programs before they could be reauthorized. Reauthorization would be required at least once every 10 years in accordance with a strict schedule.

Mr. President, a mechanism like this makes so much sense that it is hard to believe that we do not already have one—but we do not. Many—perhaps most government programs have no time limit on them.

For many reasons, Congress has focused on passing new laws, to a great extent. The result is that most programs go on and on, without any real review at all.

I think that is wrong, and I think it is one of the main causes for many of the Government's current problems.

It has made possible the gradual development of a maze of Government programs that often overlap and even work at cross purposes to each other. It has allowed waste and inefficiency to flourish. And it has given Government officials license to be unresponsive and at times, even arrogant.

Some individuals and committees in Congress have tried to chip away at this situation by doggedly reviewing the programs under their jurisdiction.

But isolated efforts are not enough. The Congress as a whole needs to be forced into taking on these kinds of tasks. A good sunset mechanism can do that.

I believe Congress must face up to this task. It is obvious from many, many Government actions that something has gone wrong with our Government. It is obvious when the Government proposes to require Iowa farmers to put toilet facilities in their fields. Or when public housing projects built only a few years ago have to be torn down. And it is obvious that something's gone wrong when hundreds of employees at the Government's procurement agency are being investigated for taking kickbacks to influence government contracts.

The Government often seems to care more about itself than the people it is supposed to serve. And it does not seem to be working well.

It is not that we in Congress have been doing nothing about these problems. We have. We try to deal with these specific problems, one at a time, as they occur. And, we use our committees to oversee the programs, one at a time, or even one part of a program at a time.

These are band-aid approaches. They do not do anything about the causes of the problems; and, they do not prevent them from happening again and again. My office, like all congressional offices spends thousands of hours a year mediating between constituents and the Federal Government, trying to make agencies provide the kinds of services they are supposed to provide, and trying to make them stop doing things they are not supposed to do.

Congress has a choice, I believe. It can develop and implement a system of procedures that will require effective oversight and control of the Government. It can systematically eliminate duplication, overlap, and deadwood. Or, it will almost certainly face meat axe cuts—cuts that will go deep into the muscle and vital organs of our Government in efforts to cut off the fat.

I believe sunset is the most rational way I have come across to deal with the huge problems our Government faces today.

I can see no reason why a government that is active in its efforts to help people who need help should be wasteful, inefficient, or muddleheaded. It does not have to be, and it should not be.

I still have enough faith in society and Government to think that we can still make this Government work and work well.

As I mentioned, the sunset approach makes so much sense, it is hard to believe that we are not doing it already. But we are not, and I hope we will begin. I believe this sunset bill is a strong beginning and I hope my colleagues will join me in its support.●

● Mr. WALLOP. Mr. President, I wish to commend the chairman and the members of the Senate Finance Committee who have worked diligently on the Tax Revenue Act. Their efforts toward the passage of this bill will help relieve some of the unintended tax burdens imposed by the Tax Reform Act of 1976. Clearly, were it not for the committee's efforts to address these problems, and the willingness of the Senate to pass this bill, millions of Americans would face tax treatment with harmful and in many cases, disastrous economic consequences which were not intended by Congress.

There are several important tax problems addressed in this legislation, but it is clear that the provisions in this bill pertaining to the carryover basis are among those most crucial to the well-being of the country.

The committee's bill provides a delay in the carryover basis provisions until January 1, 1980. Conservations with Wyoming ranchers and tax consultants have demonstrated that the carryover basis provisions of the 1976 act must be repealed or dramatically altered. The delay in the implementation of the carryover basis provisions will allow Congress the time and opportunity to reexamine the effects of the carryover basis and draft a responsible alternative to the existing law. I wish to make it clear, Mr. President, that I would rather repeal the carryover basis and rid tax planners and small businessmen of this burden. Delaying the enactment of this provision with no clear indication of how the carryover basis will be changed does a disservice to those who are charged with the responsibility of interpreting estate tax laws. Adding further uncertainty to the estate tax laws makes estate planning an impossible task, requiring a planner to assume the worst case scenario for the tax treatment of his client's estate. Creating this uncertainty is a regrettable move, acceptable only because it prevents the enactment of carryover basis provision.

The best remedy to this situation is to address the carryover basis question early in the next session of Congress, by holding hearings on its projected effects and draft a repeal or acceptable compromise. I urge the Senate Finance Committee to follow through on the excellent job that they have done in the Tax Revenue Act Corrections Act by working on a permanent alternative to the present carryover basis provision as soon as possible in the next session.

Mr. President, it is essential to understand the effects of the carryover provision. I would like to take a moment to illustrate why the carryover basis provision troubles me and the people of my State so greatly, and why I continue to press for its repeal. The State of Wyoming is filled with small family-owned businesses and ranches. The lifeblood of our economy is tied to small, private enterprises.

My concern is that the carryover basis will make it impossible for small businesses and ranches to survive in Wyoming, and across the Nation. Prior to the 1976 act, when a person died, his estate or his heirs received a new income cost basis for his assets—their Federal estate tax value. Under the carryover basis, the original acquisition cost of an asset will be carried over from a decedent to his heirs. In many instances ranches or farms in Wyoming have been held for a long period of time, and have a low cost basis. When the estate or heirs sell the ranch or a small family business, they will pay the tax based upon the difference between the original costs and the cost at the time of the sale.

The carryover basis reverses the trend toward making the tax laws more simple and more understandable. Complexity has increased in estate planning, requiring increased professional counsel and administrative costs. The cost basis of many articles in an estate are nearly impossible to determine, and even where the cost is known, four different sets of calculations are necessary to arrive at the appropriate carryover basis. It has been suggested that a computer provides the best means of handling even a modest estate. Mr. President, ranchers and small businessmen in Wyoming cannot afford to have calculations programed and reviewed by a computer. Computer services are readily available to major corporations, but this is an added financial burden that will only force more and more small businessmen and farmers into bankruptcy.

There is another, more direct way in which the carryover basis provision damages the future of small business and paves the way for large corporate takeovers.

In many cases a widow may wish to turn over the operation of a small business to another individual or even a family member. The carryover basis would impose a large capital gains tax on the sale of the business, even though much of the capital gains tax arises from inflation-induced appreciation, the sale of the family business can only be accomplished at great loss to the widow, and considerable administrative and tax counseling cost to all concerned. One alternative to this scenario is to merge the family business with a larger publicly held corporation. This action would allow the widow to receive income producing stock from the company, tax free, but it also hastens the process of large corporations dominating the economic scene. Can we in Congress not see, and see plainly, the tragedy of this course?

The small businessman is penalized in another way by the carryover basis provision. The fresh start rule of the carryover basis provision (small businesses with unlisted securities) is determined by arbitrarily prorating the value of the business from the time it began until the value at the date of death of its owner. Once again, the owner of a small business is encouraged, by the carryover basis, to effect a tax-free merger with a larger company. Instead of encouraging the continuation and growth of small businesses, the 1976 act accelerates the trend toward concentration of business activity in large corporations, as a rancher, I am particularly disturbed by the effects the carryover basis will have on estate planning for ranchers and farmers. Valuation rules which value the ranch or farm as an agricultural operation rather than its highest and best use could benefit many farmers. Unfortunately the 1976 law restricts these rules so that many deserving parties fail to qualify.

Mr. President, it is particularly important to point out how estate tax planning for ranches and farms is becoming more complex in Wyoming even without the complications created by the carryover basis. As Wyoming, Colorado, Montana, and other Western States provide the Nation with coal and uranium, the farmer and rancher in these areas is faced with a unique burden. There are few ranchers who would willingly sell their land to a coal company and abandon a way of life that is unique to the Western States. Selling one's land outright to the coal company would force the rancher to pay enormous capital gains tax. Coal companies and ranchers have met an accord by agreeing to a tax-free exchange of one ranch for a comparable piece of property. In this way, the rancher can continue with his way of life, and the energy company can get on with its business of recovering the minerals and providing energy to the Nation.

However, one step has been left out of this exchange. If this process is repeated a number of times, we see an artificial inflation of land prices. The Internal Revenue Service is entirely disinterested in the peculiarities of land valuation in energy producing States: it only wishes to look at "comparable sales data in order to determine the estate tax value of agricultural land." The income tax laws as to capital gains tax and tax free exchanges cause a type of activity that further inflates the apparent value of ranch land. This increases the estate tax value of ranch land, and in turn increases the estate tax problems for ranchers, whether or not they receive any benefits from the energy development activities. Under these circumstances it is evident that the Western States will be hit even harder by the 1976 act than other agricultural regions of country.

In conclusion, I support the measures in this bill which provide for a delay in the carry-over basis provision.●

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that Roger LeMaster, of my staff, be permitted the privileges of the floor during the debate and voting on the tax legislation before the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

PUBLIC UTILITY RATES—CONFERENCE REPORT

NATIONAL ENERGY CONSERVATION POLICY ACT—CONFERENCE REPORT

The PRESIDING OFFICER. The hour of 2 p.m. has arrived. Under the previous order, the hour having arrived, the Senate will now proceed to consider en bloc the conference reports on H.R. 4018 and H.R. 5037, the time for debate to be limited to 1 hour to be equally divided and controlled by the Senator from Washington (Mr. JACKSON) and the Senator from Wyoming (Mr. HANSEN).

The Senate proceeded to the consideration of the conference reports on H.R. 4018 and H.R. 5037.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, assuming that the Senator from Washington will be agreeable thereto, I ask unanimous consent to yield myself 10 minutes on his time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, before us now are the National Energy Conservation Act and the Public Utility Regulatory Policies Act—two of the five components of the national energy plan.

May we have order in the Senate, Mr. President?

The PRESIDING OFFICER. The Chair points out that the staff who are in the Chamber are in here at the courtesy of the Senate and when they leave they should leave quietly so we may have order in the Senate.

Mr. METZENBAUM. I thank the Chair.

These bills reach us none too soon.

In spite of the President's call to arms in April 1977, Americans are today using more energy than ever before.

Our dependence on foreign oil has deepened.

And the Nation's urgent need for a coherent energy plan is even more clear and obvious now than it was a year and a half ago.

Both of the conference reports before us are the end result of countless hours of deliberation.

Both represent extraordinary efforts by the Committee on Energy and Natural Resources and the House conferees to deal with issues of truly staggering complexity.

I want to commend the conferees for their long, hard work on this legislation. I believe that the Senate and the Nation as a whole is in their debt.

But, Mr. President, I must state that I have conflicting feelings about these conference reports.

I believe that these two bills are first steps and small ones at that.

They are good as far as they go, but they do not go nearly far enough.

Mr. President, I believe that the Congress had the opportunity to enact the kind of tough conservation and utility rate reform legislation that this country is going to need in the long run.

But because the lobbyists for the utilities did their work well and because the administration decided not to support mandatory conservation measures, we wound up with legislation that is a mere shadow of what it could have been.

We did not, in other words, finish the job. And because we did not, I know and the Senate knows that in the future, these issues will come before this body time and time again. They will come before us as long as our people use more energy than the Nation can afford.

But, Mr. President, to say that these conference reports represent only a first step is not to say that they do not represent a positive step.

They do.

I say to the chairman of the Energy Committee, Senator JACKSON, with his indulgence, I assumed it would be permissible for me to take 10 minutes of the time. Is that all right with Senator JACKSON?

Mr. JACKSON. Mr. President, I yield to the Senator retroactively whatever time he has used and prospectively so it comes up to 10 minutes.

Mr. METZENBAUM. I appreciate the consideration of the chairman of the Energy Committee.

Both bills include sound provisions that will achieve energy savings and begin to reduce our need for foreign oil.

And both bills show the Nation and the world that we have begun to address problems that we have for far too long ignored.

The National Energy Conservation Policy Act is an important piece of legislation.

For the first time, it requires utilities to offer assistance to customers in assessing the energy efficiency of their homes. This program will save energy. It will make people more aware of the possibilities of conservation. And it will permit homeowners to save money.

In addition, the bill makes Federal funds available to weatherize the homes of our low-income citizens. It also provides financing and loan insurance for energy-conserving home improvements and for installation of solar energy systems. It encourages schools, hospitals, and buildings owned by units of local

governments to become more energy efficient. And it will bring about a reduction in the energy needed to run industrial equipment, home appliances and motor vehicles. Once again, this is a good beginning.

But it is also important to consider what this legislation fails to do. The conservation bill originally contained a measure that would have said to the car makers of America "The time has come when you can no longer make an oversized gas-guzzling automobile. In the national interest, cars must be more energy efficient."

But although we are said to face the moral equivalent of war, the minimum mileage standards which I proposed, and which were overwhelmingly adopted by the Senate did not survive the conference. The administration refused to support the Senate position.

And, Mr. President, another section of the original bill would have said to the manufacturers of industrial motors "The time has come for you to make motors that are as energy efficient as possible, not as inexpensive as possible." The potential energy savings here was the equivalent of over 200,000 barrels of oil per day.

But this, too, was unpalatable—unpalatable not only to a majority of the conferees but also unacceptable to the same administration that had brought the energy situation to our attention in the first place.

In August of 1977, I conducted hearings on several mandatory measures that included minimum mileage standards, minimum efficiency standards for industrial motors, and retrofit for home heating units. Together, these initiatives would have produced savings of close to three-quarters of a million barrels of oil equivalent per day. Yet at those hearings a spokesperson for the administration, while acknowledging the soundness of these proposals, indicated that the administration could not support them.

Turning briefly to the Public Utility Regulatory Policies Act, I would like to point out that there is probably no issue in my State of Ohio, and I suspect, in the country as a whole, that has stirred as much public protest as the budget-busting rise in utility bills over the last few years. In 1977, alone, utility bills rose $13.4 billion and totaled over $60 billion.

As proposed by the President and passed by the House, the Public Utility Regulatory Policies Act was an attempt to get a handle on these tremendous increases. The bill sent to the Senate would have mandated that certain energy conservation standards be applied in State regulatory proceedings for retail rates. The Senate, in its wisdom, decided that it was best to leave the responsibility for setting retail electric rates with the States. Thus, the conference report before us today requires only that the States give full consideration during an open hearing process to a number of standards which have the potential for conserving energy.

It is this hearing process that contains the most promising aspect of this bill. For the first time, the Congress has assured the electric consumers of this country that their voice will be heard. And Mr. President, I should point out that not only will the consumer's voice be heard, but the conference report provides that if the individual or individuals who "substantially contribute" to the ultimate determinations of the hearings may be compensated for their efforts. This is a great victory for the consumer, who will finally be able to compete on an even footing with the utility industry of this Nation. I would like to commend my colleagues on the Conference Committee for preserving this provision.

The conference report on the Public Utility Regulatory Policies Act also requires the Federal Energy Regulatory Commission to make a thorough review of the fuel adjustment clause within individual States.

Mr. President, no single item has done more to undermine the rate setting procedure than the fuel adjustment clause. As a recent congressional study underscored, 80 percent of the increase in the last year in utility bills resulted from the fuel adjustment clause. In my own State of Ohio alone, more than $1 billion was passed on to the consumers by reason of the fuel adjustment clause, almost eight times as much as all the increases permitted through normal rate proceedings. I personally believe the fuel adjustment clause has outlived its usefulness.

I hope that FERC will review these clauses promptly, and that this review will result in their termination, or at the very least, greater protection for the consumer.

Mr. President, I also want to point out to my colleagues that the conference report retains a Senate provision authorizing up to $2 million for the National Regulatory Research Institute located at Ohio State University. In keeping with the philosophy of the conference report, which retains ultimate control in the States, the National Regulatory Research Institute will provide State regulatory authorities with independent expertise on regulatory policy issues and with improved data retrieval systems. As the author of this provision, I am pleased that the conference report affirms our support for this important institution, and seen fit to include it.

In closing Mr. President, let me reiterate my mixed feelings about these two bills before us. Both bills take a step forward in conserving energy, and it is for that reason that I support them. Nonetheless, it is equally clear that both bills fall far short of what is needed. We cannot, and should not, continue to rely almost exclusively upon increasing the price of energy as the sole method of saving energy. Mandatory conservation measures have the potential to save an enormous amount of energy. We should move with dispatch in that direction.

And one further word about this legislation. The chairman of our committee, as well as the ranking minority member have shown great tenacity, patience, perseverance, and personal consideration for all of the members of the committee over a long and difficult period.

The PRESIDING OFFICER (Mr. CHILES). The Senator's 10 minutes have expired.

Mr. METZENBAUM. I ask for 2 more minutes.

Mr. JACKSON. I yield 2 additional minutes to the Senator from Ohio.

Mr. METZENBAUM. I appreciate the consideration of the Senator from Washington.

I am personally grateful to both of them for their leadership and the many accommodations accorded me. And the staff, Dr. Dan Dreyfus, Dr. Ben Cooper, and Jim Bruce has been totally helpful, understanding, and responsible. We owe them a great debt of gratitude. They were most helpful and I thank them much. I am proud that our committee has such able personnel. We could not do our job without them.

I appreciate the consideration that has been accorded me personally by Senator JACKSON and by Senator HANSEN as well. Their leadership in the many endeavors in which they were involved and the staff is also to be commended.

WHEELING AND INTERCONNECTION PROVISION OF PURPA

Mr. President, during consideration of the Public Utilities Regulatory Policies Act, we considered some changes in the Federal Power Act which would give the Federal Energy Regulatory Commission authority to order interconnection and wheeling services among utilities. Such authorities would allow for a more reliable and efficient electric system in this Nation. Many of the original proposals were not adopted and a more limited authority for FERC to issue interconnection and wheeling orders was adopted.

In granting FERC authority to issue wheeling orders under section 203 of the act, the conferees provided that the Commission may act only when it finds that the order is in the public interest and that the order would: First, conserve significant amounts of energy; second, significantly promote the efficient use of facilities and resources; or third, improve the reliability of any electric utility system to which the order applies. There are, to say the least, good reasons for granting the FERC such authority.

Individual electric utility systems need to have adequate reserves in the event some of its generating facilities or transmission lines become inoperable. Unfortunately, to provide for such situations, many utilities have overbuilt. They have made large capital investments in generating facilities which stand idle most of the time. And which add considerably to consumer costs.

A better solution would have been one that has been proposed in legislation by several of my colleagues, but most prominently by the late Senator Lee Metcalf. His proposal would create a national grid. The concept behind this legislation is to provide a reliable national network of transmission facilities so that when one area is power short, energy could be moved across transmission lines to prevent blackouts like we have seen in New York and New England in recent years, and the threat of blackouts which we in Ohio faced this past winter. The bill

pending before us would certainly not create a national grid. However, it would grant to FERC some authority so that we could prevent wasteful overconstruction of new generating and transmission facilities and make better use of existing facilities.

There are terms and conditions other than the three which I have mentioned which must be met before FERC can issue a wheeling order.

One central element or thread tying together the other conditions and restrictions on FERC's authority reflected the desire of the conferees that the legislation be neutral with respect to all affected. Section 4 provides that "nothing in this act or any amendment made by this act affects: First, the applicability of the antitrust laws to any electric or gas utility; or second, any authority of the Secretary or of the Commission under any other provision of law (including the Federal Power Act and the Natural Gas Act) respecting unfair methods of competition or anticompetitive acts or practices." The concept of neutrality is specifically mentioned in the statement of the managers.

Under the language of section 203 adopted by the conferees, FERC is prohibited from issuing a wheeling order unless the Commission determines that the order "would reasonably preserve existing competitive relationships." As noted in the statement of the managers, the FERC is not "required to maintain or protect in any manner any relationship between utilities which is unlawful under the antitrust laws."

There has been, in the last few years, a trend among municipal electric utilities, rural electric cooperatives, and smaller investor-owner utilities to join together and construct generating facilities to serve their own loads as opposed to purchasing power at wholesale from large investor-owned utilities. In some instances, the transmission of the electricity from the generating station to the municipal systems or others owning and operating that facility may not be possible in the absence of wheeling arrangements with an intervening utility. An order to require wheeling of such electricity under those circumstances, or to permit the more efficient plants in a cooperative fashion, would not, of course, be regarded as an action which would disrupt existing competitive relationships.

Mr. President, I would like to emphasize that all this language about competition in section 203 is not intended to prohibit wheeling merely because there is any change in the competitive relationships between utilities; rather, the change must be "substantial." Let me take an example where two utilities are in competition for the same customer in a service area not otherwise protected by State law. If one of those utilities would need wheeling services from the other in order to serve the new customer, there is no absolute ban on such an order from FERC if all other necessary tests can be met. The legislation says that such an order to serve the new customer would have to significantly alter" the competitive relationships between the two utilities. FERC may determine that it would not significantly alter" such relationships and could thus issue a wheeling order.

I am also concerned about the amount a utility must pay for an interconnection or for wheeling services. The language of section 204 requires that such costs include any "reasonably ascertainable uncompensated economic loss." The costs include those ascertainable at the time of the order or any time thereafter. Both present and future costs should, of course, be those associated with the services provided pursuant to the interconnection or wheeling order. Otherwise, there would be endless speculation on "what-if" costs.

It was not the intent of the conferees to modify in any way the rights of parties in presenting a prosecuting allegations of anticompetitive conduct before the Federal and State courts, or before administrative agencies, including the FERC and the Nuclear Regulatory Commission. Both have legal obligations to consider antitrust issues. Where any of these agencies presently have the authority to order transmission, coordination or other relief pursuant to a finding of anticompetitive conduct, undue discrimination or unjust and unreasonable rates, terms, conditions or the like, this authority would not be disturbed. The act does not limit the present authority of these agencies in this regard.

Thus, a party which has been denied wheeling services for anticompetitive reasons will not be hindered by this legislation from proceeding in the Federal courts or elsewhere. Likewise, the authority of the NRS in conducting an antitrust review under the provisions of the Atomic Energy Act of 1954, as amended, would not be affected by this extremely limited wheeling authority granted to FERC under this new legislation. These two agencies are charged with different responsibilities with respect to wheeling. FERC's new authority is conditioned on conservation, efficiency, reliability, and public interest. NRC's authority relates to correcting or preventing a situation inconsistent with the antitrust laws.

Mr. President, let me again state that, while I might like to have seen some other things in this legislation, I am pleased with many aspects of it. We have granted many important rights to the electric consumers and we have granted to the Federal Energy Regulatory Commission some authority to make our nationwide electric system more reliable and efficient. This is, of course, in the best interest of all consumers. I believe this legislation is a step in the right direction and should be adopted.

I thank the Senator from Washington.

The PRESIDING OFFICER. Who yields time? The Senator from Wyoming.

Mr. HANSEN. Mr. President, I yield myself such time as I may require.

I am concerned with clarifying the interpretation of a particular part of this conference report. It was my understanding that the agreement that was reached indicated that this law would not override State procedural law except in very limited circumstances. The paragraph which concerns me is 111(b)(1) which specifies that certain determinations which the State must make shall be (A) in writing, and (C) available to the public. There is no problem with those items. However, subparagraph (B) indicates that the determination must be "based upon findings included in such determination and upon the evidence presented in the hearing."

The statement of managers indicates that if State law conflicted, this section would "override State procedural law to the extent of such conflict."

Looked at very narrowly, I think those words have the potential for some mischief, and should be clarified. The statement of managers is helpful in that it does go on to say that:

> The procedural features of the process of consideration and determination, including such concepts as the nature of evidence and the relationship, if any, between findings and the record of a proceeding, shall be governed by State law. State law governs on such matters as burden of proof, standard for review in State courts, and in any other matters not inconsistent with the requirement of this title.

There are two questions I would like to ask the manager of the bill to further amplify this statement of the managers. To begin with, I note that all of paragraph 111(b)(1) applies to the "determination referred to in subsection (a)." That determination, as I understand it, is the determination of whether or not the Federal standards are "appropriate to carry out the purposes of this title." After the determination has been made as to whether a standard is appropriate to carry out the purposes of the title, subsection 111(c) then allows the State the further discretion of whether or not to implement the standard even if it has determined that such standard would be appropriate to carry out the purposes of the title.

Now, my understanding is that the requirement that the determination be based upon findings and upon evidence refers to the determination of whether the standard would carry out the purposes of the title, and not to the State's discretion to implement or not implement the standard. I ask my friend from Washington, is that correct?

Mr. JACKSON. That is my understanding.

Mr. HANSEN. My second question relates to the process of judicial review of any Commission decision. My concern is that the word "based" in the requirement that the determination be based upon findings and upon evidence could be construed to create new Federal procedural law or import Federal law into State proceedings.

It is rather my understanding of the intent of this section is only that there must be some connection between the determination as to appropriateness to carry out the purposes of the title and the findings or evidence.

However, the nature and quality of the connection required is strictly a matter for State law, as indicated in the statement of managers when it stated that burden of proof, standard for review and other matters were up to State procedure in State courts. Thus, if the

State standard of review is the "arbitrary and capricious standard," then all that is required by this section is that it not be arbitrary and capricious to have made the indicated determination upon the findings contained within it. If the State standard is "scintilla of evidence," then that is the standard for the connection required. Is that an accurate understanding of the intent of the language in 111(b)(1)(B)?

Mr. JACKSON. That is my understanding.

Mr. HANSEN. I thank the Senator for those answers. They confirm my understanding that the States are not required to conform their ratemaking to these Federal precepts. I am happy to see this outcome, because I do not think that our State utility commissions are too stupid to adopt good ideas and reject bad ones.

I am puzzled at just what we think this bill will now accomplish. State commissions already have this same power, and are now using it. I do not believe that having to listen to David Bardin's lawyers will help them very much.

Similarly, the wholesale rate provisions are now properly hedged about with so many restrictions that it is unlikely that this section will cause much change other than more work for lawyers. Senator JACKSON stated on Saturday that this bill was not intended to get the Federal Government into economic contests between utilities. Without this so-called economic wheeling, there is unlikely to be much wheeling at all.

Furthermore, interconnection and wheeling do not produce any additional energy, just as almost all of the President's energy package does not produce any new energy.

Mr. President, if this bill is properly interpreted by the courts, I do not believe it does very much harm. But I believe our standards for legislation should be higher than that. I believe that America will be better off without the complication and regulation introduced by this bill. We need substance, not symbolism, and this bill now provides little but symbolism.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Washington.

Mr. JACKSON. Mr. President, the purpose of section 505(e) of title V "Crude Oil Transportation Systems" is to make clear that this title does not repeal, supplant, or replace the provisions of existing Federal law governing permits, rights-of-way and other authorizations for construction and operation of crude oil pipelines or other crude oil transportation systems.

Section 505(e) of title V provides that, notwithstanding the other provisions of this title, any application for a Federal permit, right-of-way or other authorization under other provisions of law for a crude oil transportation system eligible for consideration under this title shall be accepted and reviewed by the appropriate Federal agency under the provisions of existing law. Section 505(e) also provides that any determination with respect to such an application shall be in accordance with the provisions of section 509(a) of this title.

Section 509(a) of Title V provides that all Federal officers and agencies must insure expedited processing, to the maximum extent practicable, of all actions necessary to determine whether to issue, administer or enforce rights-of-way across Federal lands and to issue Federal permits in connection with, or otherwise authorize, construction and operation of any crude oil transportation system. Section 509(a) provides that such expedited processing shall be afforded "(a)fter issuance of a decision by the President approving any crude oil transportation system."

It should be noted, however, that, in many instances, determinations on applications for Federal permits, rights-of-way or other authorizations submitted pursuant to the provisions of existing law as provided for in section 505(e) will be made, in accordance with the provisions of existing law, directly by the agency head or his designee rather than by the President. For example, if no applications are made under title V and the Presidential decisionmaking procedure in title V is not initiated, applications under existing law would be acted upon by the appropriate Federal officers and agencies without regard to the provisions of section 507(a) or the other provisions of this title. In this and other cases in which a formal determination on such an application is made by a Federal official other than the President, in accordance with existing law, the provisions of section 509(a) are intended to be applicable at that point in the administrative process without need for consideration of decisionmaking directly by the President, to any future actions which that agency may be required to undertake to implement that decision. Thus, for example, if an agency head grants an application for a right-of-way across Federal lands submitted pursuant to the provisions of section 505(e) and existing law on behalf of a crude oil transportation system, thereafter the provisions of section 509(a) requiring expedited procedures for approved systems shall apply with regard to all actions necessary to implement that determination.

Finally, under title V an applicant for permits, rights-of-way, and other authorizations for a crude oil pipeline or transportation system may choose to apply under title V of this act, under the Mineral Leasing Act of 1920 and other appropriate provisions of existing law, or under both title V of this act and the provisions of existing law. The conference committee does not intend that applicants who have previously applied for permits under existing law and made substantial expenditures and commitments processing such applications would be required to elect the new procedure exclusively. Rather, it is intended that an application under both procedures may be maintained. Thus, an applicant for permits submitted in accordance with the provisions of existing law may have the appropriate Federal agency continue to process its applications under existing law even if the applicant chooses to also submit an application under the provisions of section 504 of title V. In addition, the submission of applications for Federal permits, rights-of-way or other authorities filed on behalf of a competing crude oil transportation system pursuant to the provisions of section 504 shall likewise have no effect on the continued processing of applications for permits, rights-of-way or other authorizations submitted pursuant to existing law.

Mr. MARK O. HATFIELD. Mr. President, when the Senate was considering the energy conservation conference report on Saturday, October 7, I engaged in a colloquy with the distinguished chairman of the Energy and Natural Resources Committee regarding the utility conservation programs required by this legislation. I have one further question I would like to address to the Senator about these programs.

Section 216(d)(3) exempts utilities from the prohibition on supply, installation, or financing of conservation measures "where a law or regulation in effect on or before the date of enactment of this Act either requires, or explicitly permits, the public utility to carry out such activities." My question of the chairman involves the word "regulation." Is my assumption that an order or ruling of a State public utility commission or similar body constiutes a regulation for the purposes of this exemption?

Mr. JACKSON. The Senator is correct. An order or ruling of a State public utility commission requiring or explicitly permitting a utility to supply, install, or finance conservation measures would qualify that utility for the exemption under section 216(d)(3) of this bill, if that order or ruling is in effect prior to the date of enactment of this act.

Mr. MARK O. HATFIELD. I thank the Senator for his clarification.

Mr. JACKSON. Mr. President, I suggest the absence of a quorum at this time, and ask that it come out of the time on both sides equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, is the time controlled at his point?

The PRESIDING OFFICER. The time is under the control of the Senator from Washington (Mr. JACKSON) and the Senator from Wyoming (Mr. HANSEN).

Mr. ROBERT C. BYRD. Will the Senator from Washington yield me 5 minutes?

Mr. JACKSON. Mr. President, I yield 5 minutes to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, the conference report on the National Energy Conservation Policy Act (H.R. 5037) is a bill for people. It would set in motion a national effort to insulate and weatherize residential and public buildings. Energy savings realized by facilitating retrofitting and other conservation improvements would be significant. The bill also would help to increase the use of

solar energy as a substitute for nonrenewable energy resources.

In addition to conserving energy, the National Energy Conservation Policy Act should help consumers cope with energy inflation. The bill provides for better information about energy savings associated with residential conservation measures, access to private or public financing, and energy efficiency standards for major household appliances.

Direct assistance to owners of houses or multifamily structures is both informational and financial. Information is provided pursuant to a residential energy conservation program. Under this program, a utility is required to provide energy conservation information to owners of residential buildings with four units or less, if requested.

A utility would serve as project manager to inspect the building; suggest conservation measures and project their energy cost savings; supply lists of lenders, suppliers, and contractors; offer to arrange to have conservation measures installed; and offer billing and repayment arrangements as a part of monthly utility bills.

A utility would be prohibited from lending more than $300 per customer and could not supply or install energy conservation measures. A State residential energy conservation plan must include standards and procedures to assure that each utility will charge fair and reasonable prices and interest rates in connection with its conservation program.

Financial assistance is provided in the form of grants, Federal home improvement loan insurance, loans at market interest rates, and subsidized loans. Grants for making energy conservation improvements for low-income homeowners are available through 1980. Grants are also available to multifamily structures financed or insured by the Department of Urban Development for elderly, handicapped, low- or moderate-income families. Among eligible multifamily projects, priority is given to those in financial difficulty because of high energy costs.

Eligibility for loans and insured loans is restricted to low- and moderate-income applicants, except for solar energy loans. They are available to all families during the next 5 years. A taxpayer, however, could not receive a solar loan and also take advantage of the solar energy tax credit.

Promoting the use of solar energy is another policy designed to conserve oil and gas. To show the merits and reliability of solar energy, the National Energy Conservation Policy Act provides for demonstration of solar heating and cooling in Federal buildings.

In addition, the bill directs the Federal Government to procure photovoltaic systems for its own use. Purchases are to be made over a 3-year period. The intent is to stimulate early development of photovoltaic production capability in the private sector.

Energy conservation in the public sector also would be enhanced by another requirement. All Federal buildings must be retrofitted by January 1, 1990 in order to assure maximum life-cycle cost-effectiveness. Each Federal department or agency is directed to conduct a preliminary energy audit to determine the best way to make each building more energy efficient. New Federal buildings would have to be designed and constructed so that cost considerations would be determined on the basis of life-cycle costs to the maximum extent practicable.

The conference report also seeks to make progress on the industrial conservation front. The primary focus is on pumps and motors. The Department of Energy is directed to evaluate them in order to determine standard classifications according to energy efficiency. If the evaluation shows that procedures for testing and labeling the energy efficiency of pumps and motors are appropriate, DOE may prescribe test procedures and require labeling.

The conference report is a significant part of the President's comprehensive energy policy. It not only contributes to the energy conservation objective, but also it plays a role in the import control strategy. I compliment Chairman JACKSON and the Senate energy conferees for the well thought-out energy conservation programs set forth in this document.

Mr. President, the fanfare and drama surrounding the natural gas debate may dwarf Senate Consideration of the conference report on the Public Utility Regulatory Policies Act of 1978 (H.R. 4018). It would be short-sighted, however, to overlook the potential contribution gas and electric utilities can make toward achieving our national energy goals.

This economy is a voracious consumer of electricity and natural gas. We use both throughout our residences and at work. Almost 30 percent of the total amount of energy we consume is used to generate electricity. As a source of energy, natural gas accounts for about 30 percent of all energy used.

After the 1973–74 oil embargo and sharp increases in energy prices, the need to re-examine electric and gas utility regulatory policies became increasingly more apparent. The emphasis of the utility conference report on conservation, cost control, and retail rate reform is intended to help consumers cope with higher energy prices.

This is particularly important in light of the emerging natural gas policy pertaining to wellhead pricing. The utility conference report is no less important for the contribution it could make to achieving our energy conservation and import control goals.

This conference report provides the public, both directly as intervenors and indirectly through Federal and State regulatory authorities, with a framework for conducting a national examination of utility policy. The report establishes Federal standards which a State regulatory authority or unregulated utility must consider in setting or designing rates.

In determining whether to adopt any of these standards, a State regulatory agency must evaluate how the standard, such as time of day rates or seasonal rates, relates to the act's purposes of which there are three: energy conservation by the ultimate end user; efficient use of generating and related facilities, including conservation of imported energy, and equity for ratepayers.

The conservation and rate reform standards must be considered formally on a utility-by-utility basis and within 2 years after the date of enactment. Reasons for rejecting any standard must be put in writing, based on evidence established during a hearing, and made part of the public record of the proceedings.

After considering the Federal standard, the conferees expect that a State regulatory agency or unregulated utility will adopt those which seem likely to accomplish the purposes of the act. As a result, gas and electricity would be used more efficiently, greater quantities of energy would be conserved, and consumers would have service rate options in order to hold down their utility bills. This should help to stretch domestic energy supplies and reduce imports without endangering economic growth or fueling inflation.

The framework for reviewing utility policy and adjusting it to the new energy environment offers advantages which go beyond greater conservation, energy efficiency, and rate equity. It preserves existing regulatory relationships. This means that local conditions will continue to dictate local policies. At the same time, it encourages flexibility and innovation. Indeed, the beauty of the conference report is that it is a national policy which is responsive to each State's needs without penalizing a State which does not fit the norm.

In addition to reviewing electric and gas retail rates, the conference report provides for three other policies to help conserve energy and contain costs. The Federal Energy Regulatory Commission is required to promulgate regulatory policies which favor industrial cogeneration facilities. This includes a provision to insure that a utility buys or sells cogeneration power at fair rates.

Stretching power supplies and reducing long-run costs are expected to result from a national, interconnected powergrid. To this end, the FERC is authorized to require physical interconnections of electric power transmission facilities. To promote even greater reliability, conservation, and efficiency, the FERC is authorized to order utilities to provide transmission services between two noncontiguous utilities.

The bill promotes diversification of sources of power to generate electricity. One source that has been underutilized is water power, particularly small hydroelectric projects. Hydroelectric power contributes only about 5 percent of the energy we consume, but in certain areas its contribution could be expanded significantly by developing small projects. This would ease demand for fossil fuels. For example, New England imports large quantities of fossil fuels, yet the region is crisscrossed by the kind of fast flowing rivers necessary for small hydroelectric projects.

The conference report provides loans for feasibility studies and construction. Preference is given to applicants who do not have access to alternative financing.

This short substantive summary of the

utility conference report highlights those policies which make it an essential component of President Carter's comprehensive energy plan. The modifications made by the conferees in the Senate and House versions are significant improvements and refinements of the original proposal.

I think this is an excellent example of the Congress and the administration working together to tackle our energy problems in a way which preserves the role of the State and keeps decisionmaking flexible and responsive to local needs. I commend Senator JACKSON and the other conferees for their success.

Mr. JACKSON. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The second assistant legislative clerk proceeded to call the roll.

Mr. JACKSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. Mr. President I yield 5 minutes to the distinguished Senator from Kansas.

The PRESIDING OFFICER. The Senator from Washington has 1 minute remaining.

Mr. JACKSON. In behalf of Senator HANSEN, I yield 5 minutes to the Senator from Kansas. There is no problem on it.

The PRESIDING OFFICER. Without objection, the Senator from Kansas is recognized.

Mr. DOLE. Mr. President, the Senate is considering two of the energy conference reports. Some of us are concerned about the so-called gas guzzler tax and the provisions in this bill concerning EPCA standards and penalties on large automobiles. As I understand it, the EPCA penalties are going to be doubled. I should like to make a brief statement, then yield to the distinguished Senator from Michigan.

I am a conferee in the energy tax conference where we are discussing so-called gas guzzlers. The issue is should Congress require the consumer who buys the big car to pay an extra tax on the car. That may sound good on the surface, and to some it does. However, in effect, Congress is telling people what kind of car they can drive.

The guzzler tax is bad policy. Studies have shown it will probably put thousands of people out of work. In addition, the tax discriminates against a certain class of people who cannot afford to pay the added tax. Those with large families and those with small bank accounts will be denied the right to have a car that might fall in this category. Some of us feel that there will be every effort by the auto companies to follow the EPCA standards by the automobile industry. They have all told me the standards will be met. The guzzler tax is a tax on automobiles based on miles per gallon. However, in a letter from the Joint Committee on Taxation, a letter given to me last December, that states if the EPCA penalties are doubled, the imposition of the gas guzzler tax would have no energy impact. The tax saves no energy.

It seems to me the passage of this conference report would make the so-called gas guzzler tax an unnecessary and punitive symbol of what I consider to be a very deficient, defunct energy program. What I am suggesting to the distinguished Senator from Michigan is that there are provisions in this bill concerning EPCA standards and penalties on automobiles. There is a discussion in the so-called tax conference about the very same issue. If, in fact, we are going to double the penalties, it seems to this Senator that we have said to the industry, "Comply with the standards and meet the standards, or you are going to have a very substantial penalty to pay."

That should be enough. I do not know any reason for overkill in this area.

Much of the discussion on the so-called gas guzzler is much like the three-martini lunch. It makes good political speeches. A lot of people felt there should be additional taxes on a larger car until they realized that people who make those cars will be out of work and people with large families could not afford by pay the extra tax. It is a discriminatory tax and I hope with this bill, there will be no further need for the tax.

I shall appreciate any comments from the Senator from Michigan.

(Mr. HODGES assumed the chair.)

Mr. RIEGLE. I thank the Senator for yielding. I think he has made a very important point on this issue. We recognize that by establishing the fleetwide averages as we have under the law, requiring that car manufacturers will get 27.5 miles per gallon from the average car in 1985, really gives us what we need to see that we are getting the mileage from our automobiles that we need to have from the point of view of energy consumption and other international goals. I think the move that has been made here in this particular conference report to solve this issue is a very constructive one. I hope, as has been suggested, that the other conference committee will take a careful look at the ground that has been plowed here, with a very substantial part having been played by my friend from Kansas.

I might just say something with respect to what are often called the larger vehicles, named gas guzzlers. When we are speaking of a situation where a family perhaps has a need for a vehicle to transport six passengers or, in some cases, eight or even more passengers, the idea that somehow we are better off with smaller vehicles, maybe forcing them to have two cars and driving two cars to get from one point to another, rather than one larger vehicle that can handle a family of a larger size, would be false economy of the most extreme kind. I think the proposal that has been put forward here to hold the gas guzzler tax in abeyance and to have that go into effect only if the industry should fail to meet the industrywide standards is an excellent proposal. We forego nothing in terms of assurance that we shall meet the goals that we want. Failing that—which no one anticipates, I might say. All the evidence is to the contrary, that we are on track in making the kinds of mileage improvements that will bring us out in terms of those standards. Should that fail to happen, we can have the gas guzzler tax in abeyance and that can be considered at that time. That would be the time to consider using it, of course, and not beforehand.

Mr. President, I congratulate the energy conferees on presenting to the Senate a valuable and important piece of legislation. I am confident that this bill will make a dramatic contribution to our long-range energy conservation efforts.

When this bill was before the Senate last year, I offered an amendment to delete a provision that was included in the legislation at that time. That version would have imposed an outright ban on the sale of automobiles that did not meet certain minimum miles-per-gallon standards. I opposed that provision because I felt that it imposed unnecessary constraints on consumer freedom of choice, because it would have prevented those who needed large and relatively inefficient cars—such as families with station wagons—from purchasing them, and because it would have contributed almost no additional energy savings to those already achieved by the fleetwide standards passed by the Congress.

Mr. President, I am very happy to note that, after carefully considering this issue, the conferees have decided to adopt my position, and have deleted the minimum mileage standards from the conference report they have now placed before us. I commend them for the wisdom of their judgment in this regard, and for the alternative which they have recommended, namely, an authorization that the Secretary of Transportation, at his discretion, be permitted to raise the civil penalties for violation of the current energy efficiency standards. This would apply to the penalties now specified for falure to meet the fleetwide averages which the Congress first adopted in the Energy Policy and Conservation Act of 1975. The Secretary could raise those penalties if he determined that it would result in energy savings, and would not result in adverse economic impact.

I believe that the Congress took a very sound step when it adopted the fleetwide average mileage standards. They will lead to very large energy savings, particularly with the very tough standards mandated by the Secretary of Transportation. And I have every reason to believe that the automobile manufacturers are making, and will continue to make, a good faith effort to meet those standards. I believe that they will be successful in so doing, and I hope that those of us in the Congress will not prejudge their efforts.

I raise this point, Mr. President, because I understand that the conferees on another portion of the energy bill, that dealing with energy taxes, are considering the matter of imposing a gas guzzler tax, which consumers would be required to pay when purchasing energy-inefficient automobiles. I hope that the conferees on that portion of the bill will display the same wisdom as the conser-

vation conferees have with respect to auto fuel economy, and will not impose a stiff, regressive tax on the American public on the faulty assumption that the automakers are not going to meet the current requirements in the law.

There is widespread agreement that if the fleetwide mileage standards are met, then an additional gas guzzler tax on top of those standards will not significantly improve energy conservation. The Department of Energy, in a report on this subject states:

If manufacturers meet the EPCA standards, as they have stated they will, it appears that the gas guzzler tax would have insignificant results.

That fact was reiterated by Bernard Shapiro, chief of staff of the Joint Committee on Taxation, with respect to staff estimates of energy savings accruing from the gas guzzler tax.

I cannot imagine why anyone would want to impose an onerous tax on automobile purchasers if that tax would result only in minimal energy savings. I can, therefore, only conclude that the tax is still under consideration because some of us do not believe that the automakers will meet the fleetwide averages, and do not even want to give them the opportunity to prove that they can. If that is indeed the problem, then there is a very simple solution, and one which has been proposed by my colleague from Kansas, Senator DOLE: Hold the gas guzzler tax in abeyance until it is established that the industry has failed to meet the standards. If, and only if, the standards are not met, does it begin to make sense to impose a gas guzzler tax. But let us not saddle the American consumer with a hefty tax increase, ranging from $200 up to $3,850, if that measure would not help us to make any significant progress toward our national goal of reducing energy consumption. And let us not, in effect, declare the automakers guilty of the crime of failing to meet the fuel economy standards that the Congress and the Department of Transportation have established, before they have had the opportunity to demonstrate that they can or cannot meet those standards.

The energy conservation conferees have acted wisely in deleting the minimum mileage standards and in leaving open the possibility of increasing penalties for failing to meet the fleetwide averages. The increased penalties will, I am sure, provide a sufficient incentive for the industry to put forth every effort to meet the standards. I hope the energy tax conferees will see the logic of this decision, and will impose a gas guzzler tax only as a contingency measure.

I commend the Senator from Kansas, also, and hope that other energy conferees will take a look at what has been done here. I think it marks a way in the future that is fair. It meets our energy requirements; at the same time, we see to it that we do not impose by Government mandate things that will be counterproductive in terms of the very goals we want to meet.

Mr. DOLE. I thank my colleague from Michigan. I appreciate his remarks and I concur with his statement.

I might add that a distinguished Member of the House, Representative JOHN DINGELL, has been very active in this area. There is some hope that we can reach some accord on the contingency plan that has been mentioned by my friend from Michigan. Perhaps a modification that would indicate a guzzler tax in 1980 at 1979 tax rates, make the tax rates permanent at the 1984 levels in 1985 and eliminate the first-line tax for the years 1983, 1984, and 1985. That is a compromise that, at least, has been circulated. At least, it has been presented to some of the House conferees and it will be presented some time soon to those of us who are Senate conferees to see if some agreement can be reached.

I think a better plan would be to adopt the contingency plan discussed by the distinguished Senator from Michigan. In other words, the EPCA standards are met the tax will not go into effect. Why punish the consumer? If the standards are met, why punish the manufacturer? I did not know this was a revenue-raising measure. With this provision it would be an outright punitive measure that I do not think should be adopted. If we cannot do what the Senator from Michigan suggests, I hope we will do better than we are doing now, with some compromise.

GEOTHERMAL RESOURCES IN "RENEWABLE RESOURCES"

Mr. DURKIN. The definition of "small power production facility" as contained in title II, section 201, includes a facility which produces electric energy solely by the use of, among other things, "renewable resources." Recent Department of Energy research indicates that substantial geothermal hot dry rock resources may exist in New Hampshire in addition to the large steam and geopressurized brine reserves known to exist across the Nation. Is it intended that, for the purposes of this act, all types of geothermal resources are included within the term "renewable resources"?

Mr. JACKSON. Yes.

RETAIL RATES—STATE DISCRETION SECTIONS 111 THROUGH 124

Mr. DURKIN. Am I correct in understanding that the principal purpose of the standards provisions of sections 111 and 113 is to require the States to give full and fair consideration to each of those standards, but they are to have a broad discretion as to whether or not to actually implement or adopt the standards?

Mr. JACKSON. The Senator is correct.

Mr. DURKIN. And we are not trying to displace other legitimate concerns of the States over other regulatory objectives or purposes?

Mr. JACKSON. No; we are not.

Mr. DURKIN. If a State should decide that one or more of these standards under section 111 would tend to encourage conservation or efficient use of facilities and resources or more equitable rates but might well result in other adverse consequences which the State PUC has authority, pursuant to State law, to take into account, such as the hardship to consumers or utilities, then the State could use these other factors as a basis for refusing to implement or adopt such standards?

Mr. JACKSON. The Senator is quite correct.

Mr. DURKIN. As I read it, the statement of managers makes it quite clear that the State regulatory authority has to consider the standards of section 113 within 2 years and does not have to undertake their consideration whenever an intervenor or a participant raises them in a rate proceeding. While no similar statement is made concerning the section 111 standards, section 112(a) provides that the State may give strong weight to its previous determinations on such standards. Am I correct in my interpretation that such prior determination may, in appropriate circumstances, govern the outcome?

Mr. JACKSON. The Senator's interpretation of these provisions is absolutely correct.

Mr. DURKIN. Where the words "to the maximum extent practicable" appear in the bill, as they do in various places in sections 111 and 113 is it the intent of the legislation that the State regulatory agency will to determine what is the maximum extent practicable?

Mr. JACKSON. Yes.

CLARIFICATION SECTIONS 210, 211, 212 REGARDING SERVICE AREA OF THE TENNESSEE VALLEY AUTHORITY—ENERGY

Mr. RANDOLPH. Sections 210 and 211 of the energy conference report on public utilities provide authority for the Federal Energy Regulatory Commission to issue orders to the Tennessee Valley Authority which might in some instances be in potential conflict with section 15(d) of the Tennessee Valley Authority Act as amended in 1959.

Section 212(f) of the conference report specifically deals with this potential conflict. I wonder if the managers of the conference report would clarify two points for future reference with regard to these provisions:

First, it is my understanding that this legislation does not purport to amend the Tennessee Valley Authority Act and, specifically, that it is the intention of the conferees none of the prohibitions against service outside the established Tennessee Valley Authority service area stated in section 15(d) of that act, are reduced or modified—is that correct?

Second, section 212(f)(2)(B) indicates that Congress may authorize Tennessee Valley Authority service in accordance with a Federal Energy Regulatory Commission order even where such service might be in conflict with the prohibitions of section 15(d) of the Tennessee Valley Authority Act. It would be my understanding that this subparagraph is a restatement of similar language in section 15(d) of the Tennessee Valley Authority Act and that Committee jurisdiction for such action would remain with the Senate Environment and Public Works Committee—is that correct?

Mr. JACKSON. The Senator is correct on both points.

Mr. CRANSTON. Mr. President, I was

cosponsor of the conduit hydroelectric facilities provision of this bill, which is now section 213, and I would appreciate a clarification of the explanation of section 213 that appears in the conference report. It is my understanding that, in conference, the House agreed to state in the conference report a congressional intent that expedited licensing procedures applied when an applicant for an exemption under this provision is denied such an exemption by the Federal Energy Regulatory Commission. Such a statement is contained in the report. However, the explanation of section 213 does not reflect what I believe was a further matter of agreement among the conferees; namely, that applications for exemptions for hydroelectric plants meeting the conditions specified in the amendment will be expeditiously processed by the Commission. Although it is not necessary to state that in the conference report, it would be helpful if the chairman could verify for the RECORD that such an expedited exemption review process is intended by this amendment.

Mr. JACKSON. Senator CRANSTON'S understanding of the conference agreement is correct. It was agreed that applications for exemptions be processed expeditiously, and that in such instances as the Commission determines that a conduit hydroelectric facility does not qualify for an exemption, an expedited licensing procedure would be adopted.

Mr. JACKSON. Mr. President, how much time is left altogether on both sides?

The PRESIDING OFFICER. The Senator from Washington had 1 minute, the Senator from Wyoming has 10 minutes.

Mr. SCOTT. Mr. President, I am glad to yield 3 minutes to the distinguished Senator from Montana.

Mr. MELCHER. I thank the Senator for yielding the time. I shall only speak briefly on a problem that we endure with the Alaska oil flowing through the Alaska pipeline to Valdez at about 1.2 million barrels per day, and then having a glut of Alaska crude oil on the west coast.

Part of the bill dealing with regulatory rate reform and present in the conference report before us deals with a speedup in the time frame of arriving at a Federal decision on whether or not building permits will be issued for a pipeline to serve the Northern Tier States and the Midwest by construction of such a pipeline.

The time frame that was called for as the bill passed the House approximately a year ago was an environmental impact statement being completed by December 1 of this year, and that is the agreement of the conferees and is a portion of the conference report before us.

The reason to hasten the Federal decision was to make sure construction of an approved pipeline could start, could move forward. The requirement does not require a Federal decision in the affirmative. It just says, "Reach that decision quickly."

There is no requirement that State law would be pre-empted by this Federal law. Indeed, the decision on a seaport for the only applicant, the Northern Tier Pipeline Co., would use as its Pacific coast terminus, Port Angeles in the State of Washington.

The Washingon State Legislature in 1977 approved by wide margins the location of such a terminal at Port Angeles. However, the decision is up to the State Siting Council of the State of Washington.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. SCOTT. Mr. President, I yield the remainder of the time on this side to the distinguished Senator from Washington.

Mr. JACKSON. I thank my colleague from Virginia.

I yield 2 minutes to the Senator.

Mr. MELCHER. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator is recognized for an additional 2 minutes.

Mr. MELCHER. The application by Northern Tier is before the Washington State Siting Council and the critical point, as an environmental issue, is definitely whether or not an oil port at Port Angeles is accepable. The Governor of the State of Washington, and I suspect members of the State siting council in the State of Washington, have asked, "Where is the Federal position on this, and if it is important, what is the Federal Government doing?"

I think this is the answer to that question. We are in the process of passing legislation that would expedite the environmental impact statement and the decision by the President whether or not to grant permits to a pipeline company, such as Northern Tier Pipeline.

It is important that the time frame for reaching that decision will be early in 1979 because it is important that construction can start during the late spring months or early summer months of next year. This bill expedites the Federal decision process and if that is an affirmative decision and the Washington State Siting Council also reaches a favorable decision on the Northern Tier pipeline construction could start promptly.

It is for that reason, Mr. President, that this portion of the conference report deals directly with the method to reach a decision, to see whether or not the Federal permits will be granted, and, if so, then the State of Washington can see the importance that both the Congress and the executive branch of the Federal Government place on that pipeline, to help serve the Nation, remove the oil glut from the west coast that is caused by the Alaskan production.

Again, I thank the distinguished Senator for yielding me the time.

The PRESIDING OFFICER. The Senator from Washington.

Mr. JACKSON. Mr President we are now in the process of completing the President's legislative program which was submitted to the Congress on April 20 of last year.

The program consisted of five parts. The first, coal conversion; the second, utility rate reform; the third, energy conservation; the fourth, natural gas pricing; and the fifth, the taxing provisions.

When the Senate votes today, it will have completed four of the five parts of this package.

Mr. President, this has been a very difficult period for all of us who had the responsibility of trying to put together the beginning—and I emphasize and underline "the beginning"—of a national energy policy.

We will be debating for a long time as to how much energy we can save in terms of barrels-of-oil equivalent. I would give a rough estimate of about 3 million barrels of oil a day by 1985, give or take a few hundred thousand barrels.

Mr. President, this estimate does not include the taxing features, but I would be the first to remind my colleagues that we have a long way to go.

I would hope that when we have completed our work this week by final action in the House, that we will use this as the foundation to really get underway in the next Congress a program that can bring about more effective energy conservation, better discipline, may I say, in the utilization of our energy resources, and to truly move in developing not only the conventional resources available to us, such as coal, oil, and gas, but also synthetic fuels. We want to find some answers to the problems plaguing the nuclear power industry, especially the issue of standardization of reactors and the elimination of the problems that now beset us in waste disposal. At the same time we want to push the other sources of energy that offer such promise, sources such as solar energy, fusion, biomass, and a long list of others that are in the research and development stage.

So our effort today is a beginning, nothing more than that. But I think it is a good beginning. I think it is a good signal to our friends abroad that we can invoke a certain discipline in the United States in connection with the development of a meaningful energy policy.

Mr. President, as I conclude my remarks, I want to say how much all of us appreciate the help and support from our staff on both sides of the aisle.

I want to, especially in connection with the energy conservation bill, single out the following people: Ben Cooper, Jim Bruce, Debby Merrick, and Pete Smith from the majority staff, and Tom Imeson from the minority staff.

In connection with the utility rate reform bill, again, Jim Bruce, Dan Dreyfus, Ben Cooper from the majority staff, and Dan Boggs from the minority staff.

Mr. President, I believe that concludes the time allotted to us.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold that?

Mr. JACKSON. Yes.

Mr. RANDOLPH. Mr. President, I commend my colleagues in the Senate for their constructive deliberations on the energy conservation policy and electric rate reform sections of national energy legislation. This represents the final step, in the Senate, of formulating a policy which will become the Nation's first comprehensive energy plan, a plan I have been calling for since 1959. The

19-month debate on the energy issue has clearly demonstrated that the Senate and the energy conference committee felt major modifications were necessary to the President's energy program before it could be presented to the American people as a blueprint which will be used to direct our energy efforts in the long term.

Many people, including some in the administration and the Senate, have held that the modifications made in the conference compromise defeat the purpose of national energy legislation. I am convinced the compromise on policy issues debated today will conserve energy and reform energy use patterns on a large-scale basis.

The conservation portion of the national energy plan will offer a variety of incentives to middle-class homeowners and low-income renters to install such fuel-saving measures as insulation and solar heating equipment. Federally backed loans and grants are included, as well as doubling fines on automobile manufacturers who fail to meet fleetwide mileage standards under existing law.

Electric and gas utilties will perform a major role in informing ratepayers about their individual conservation needs. Utilities will offer to arrange for installation of insulation in their customer's homes to be paid for through utility bills. Schools, hospitals, and local governmnts would receive Federal grants to carry on conservation programs.

Electric rate reform will require State utility commissions to consider a variety of energy-saving rate reforms. The bill would give broad rights to consumers and the Federal Government to intervene in State utility proceedings and to fight for reforms. The Federal Government would gain the power to order various types of power-sharing arrangements among utility systems.

Important reforms that each State commission would consider are time-of-day or seasonal rates that are highest during the times of peak use for the system. Commissions would consider prohibiting discriminatory rates against solar, wind and other small power systems, procedures to protect ratepayers against abrupt termination of service, and prohibitions against charging ratepayers for promotional or political advertising.

To take advantage of energy conservation opportunities will require changes with respect to land use, technology, utilization of the labor force, and consumer behavior. The most important contribution can take place by having the cooperation of individual citizens. We should not wait to act until we are forced to do so. The energy conservation and utility rate reform provisions of the energy bill will enable a more gradual increase in production levels required. while successfully lowering costs to the consumer through their own initiatives.

I am confident this final energy plan emerging from Congress will be an excellent starting point for resolving all complex energy issues.

I emphasize "starting point," because this legislation will continue to be adjusted and refined to fit the changing energy needs of the country.

Decisions made in the 95th Congress, together with the Carter administration, private industry, and our total citizenry will do much to guarantee energy use policies which will strengthen America.

Mr. President, I commend the able chairman, Senator JACKSON of Washington, and the other members of the Energy and Natural Resources Committee. They deserve our thanks as energy conferees for the time and careful attention they have given to each section of this energy legislation. By working together at a well-reasoned pace Americans can comprehend and solve their energy problems. Passage of this legislation gives a clear signal to the American people that Congress does not intend to create another uncertainty accompanying the natural scarcity of oil and gas by being unclear and indecisive on Government policy concerning energy.

Mr. BARTLETT. Mr. President, despite my opposition to the conference report on the Public Utility Regulatory Policies Act of 1978, it may be useful to point out that the legislation at least accomplishes one positive thing in sections 201 through 204, pertaining to interconnection and wheeling for electric utilities.

The history of these provisions, in both the House Committee on Interstate and Foreign Commerce and the Senate Committee on Energy and Natural Resources, shows that one of the problems these provisions are designed to meet is the apparent lack of an appropriate forum in which to resolve the so-called Texas problem. The Electric Reliability Council of Texas, know as ERCOT, contains the major portion of the electric utilities in Texas and has apparently operated in electrical isolation from the rest of the United States for a number of years, except during periods when this area was specially exempted from Federal jurisdiction. In this respect Texas is unique, since the rest of the country is entirely interconnected and, by reason of its interconnections, is subject to the jurisdiction of the Federal Energy Regulatory Commission.

A number of public utilities operating both within and outside the State of Texas have sought to achieve electrical interconnection between ERCOT and the Southwest power pool, but they have been strongly opposed by several of the major utilities in ERCOT. The old Federal Power Commission, which has become the Federal Energy Regulatory Commission, has felt that it had no jurisdiction over the Texas utilities because of their isolation, and hence was powerless to decide whether or not it was in the public interest that they be interconnected with the Southwest power pool. Whatever the merits of this controversy may be, practically everyone who has seriously addressed the question agrees that there should be full authority in the Federal Energy Regulatory Commission, either on its own motion or on the motion of any of the utilities involved, to hold hearings and decide whether it is in the national interest that the isolation of ERCOT be terminated by any adequate system of interconnection and the necessary coordination to accompany, it, or whether the status quo should be maintained.

Of course, the provisions of this legislation to which I refer have, in various respects, application to matters other than the Texas problem, but it is reassuring that these provisions are designed to adjudicate the Texas problem fully and comprehensively based on the standards set forth in the law, so that whatever solution may best serve the public interest may be reached. The interest of a large population served by many utilities is involved here, as is the interest of the entire United States in a reliable electrical energy supply.

Mr. HUDDLESTON. I would like to have a clear understanding of the situation as to Tennessee Valley Authority under the interconnection and wheeling provisions in sections 202, 203, and 204 of the conference report.

In 1959, the TVA Act was amended to give TVA authority to issue a large amount of bonds to finance TVA's power program. The same statute imposed restraints or prohibitions against TVA's expanding its power supply area beyond the area supplied by TVA on July 1, 1957 (16 U.S.C. 831 n–4). The conference report will give to FERC authority to order TVA to interconnect with other utilities or to participate in wheeling arrangements under certain conditions; however, these new provisions of law do not provide authority for TVA to take any action which TVA would be prohibited from taking under the 1959 TVA Act.

Mr JACKSON. That is correct. Section 204 of the conference report specifically provides for a procedure to insure that any FERC order related to interconnection or wheeling which involves TVA is subject to review to determine if such a violation would occur. If such review is requested by any aggrieved person, the order is stayed. If it is determined after an evidentiary hearing and any judicial review thereof that such a violation would occur, the order is further stayed. This stay could then only be lifted by specific congressional authorization. In short, this provision makes it clear that the status quo with respect to limitations on TVA as set out in the TVA Bond Act is to be maintained.

Mr. HUDDLESTON. In various provisions of sections 210, 211, and 212 of the Federal Power Act, as it would be amended by section 202, 203, and 204 of the conference report, which relate to interconnection and wheeling, I find the phrase "electric utility affected by the order" or "affected electric utility" or similar phrases.

In order to avoid confusion as to what these phrases mean, it is specified in the Statement of Managers under section 204 that the utilities involved in an interconnection arrangement; the utility ordered to wheel; or the buyer and seller in an arrangement for the sale or exchange of power; or any utility whose systems, operations, or costs or revenues would be affected by a requested order and the related arrangements; and the

customers of such utilities have an opportunity to participate in the proceeding and hearing. As I understand it, a utility having such right to intervene and participate will be considered a "utility affected by the order." This should not be confused with the explanation in the statement of managers under section 203, which relates to wheeling, that for the purpose of providing notice of the filing of an application for wheeling with FERC, "affected electric utility" includes, as a minimum, the two electric utilities which have made the arrangements for the sale of power as well as the utility being requested to wheel power.

Mr. JACKSON. The Senator's interpretation of our intent is correct.

Mr. MAGNUSON. I want to congratulate my colleague and good friend on the many months of hard work that he and the other conferees have put in on this important legislation. I know it has at times been a trying experience, and the very fact that the Senate is able to vote on an energy package is a testament to his hard work and determination. I believe that there is going to be a number of beneficial effects that will flow from this legislation, not the least of which is an increased confidence abroad in the ability of the United States to get its energy situation under control. While I am pleased that this package of legislation is now finally moving toward final enactment, I do believe that there are a few small items that still need to be clarified. I have discussed them already with the distinguished chairman of the Energy Committee, and he has suggested a colloquy to put to rest, once and for all, the fact that several legislative provisions in this package could be subject to unintended interpretations.

Mr. JACKSON. The distinguished chairman of the Appropriations Committee is correct. While I do not believe that any of these provisions will lead to unintended interpretations, I share his desire to create sufficient legislative history to put this matter to rest.

Mr. MAGNUSON. My concern really relates to matters affecting our home State of Washington and other coastal States as well. As you know, title V, entitled "Crude Oil Transportation Systems," could affect the location of a crude oil transshipment port on the west coast to serve northern tier and inland States. One of the potential sites for such a system is in the State of Washington. Therefore, it is important that there be no confusion about the exact intent of this legislation.

Mr. JACKSON. I fully understand your concerns. One section that might be misread to affect coastal States like Washington is section 505(b)(2)(B). This section says that applications for the expedited siting procedures provided for in the bill must comply with statutes such as the Federal Land Policy and Management Act. The statutes listed are obviously not exclusive; the application must comply with all applicable laws. For example, application for a system in Washington would have to comply with the federally approved State coastal management plans in the State of Washington under the Coastal Zone Management Act of 1972, or any other relevant Federal law.

Mr. MAGNUSON. I thank the Senator for that clarification. I assume that the criteria for approval of a system listed in section 507(b)(1)(A), which mentions environmental impacts has as its intent the minimization of environmental risks, and that an application could seek to reduce both risks imposed by the proposed project itself and existing risks as well.

Mr. JACKSON. That is correct. For example, the State of California is now considering the reduction of existing pollution sources in conjunction with the consideration of approval of the proposed Sohio pipeline from Los Angeles to Midland, Tex.

Mr. MAGNUSON. I think that this is a worthy goal. In Puget Sound, for example, we have experienced a tremendous increase in tanker traffic over the last several years as the Canadian pipeline delivery of oil has diminished. I would assume that any proposed project which would reduce the very real risks imposed by this existing tanker traffic would be a positive factor in the Secretary's consideration of a possible application for a siting decision in our area. It could mean that there would be a proposal, for example, to hook up the existing refineries to any new pipeline in an effort to reduce the risk associated with tanker traffic serving Washington refineries. While I am no supporter of new pipelines in the State of Washington, if there is going to be one, it should consider ways to reduce all environmental risks, including those that exist today.

Mr. JACKSON. That is correct. As you know, this issue is addressed in the joint explanatory statement of the committee of conference on page 102.

Mr. MAGNUSON. I thank the distinguished Chairman of the Committee on Energy and Natural Resources. There is one further matter that concerns me because it has the potential for misunderstanding. In section 508(a), there is a procedure by which the President could propose to Congress the waiver of certain laws if he finds that such a waiver would facilitate the construction or operation of either the so-called Sohio project or one of the projects approved under the criteria we have already referred to. While Congress would have the opportunity to consider such a proposal by either passing or failing to pass a joint resolution, it nonetheless raises the question of congressional intent in allowing for such a procedure to exist in the first place. What is the intent with respect to this waiver procedure?

Mr. JACKSON. This legislation is intended to be expediting legislation. While I cannot foresee at this moment exactly what Federal law might be proposed to be waived, the waiver would be used to facilitate construction or operation of any system approved under section 507. In other words, this provision is designed to speed things up once a decision has been made.

Mr. MAGNUSON. I thank my distinguished colleague for this explanation. Since it is meant only to expedite implementation of a decision to approve a potential project, I think it is fair to say that it is not intended to modify those laws that would affect that decision in the first place. For example, in the case of our State of Washington, Public Law 95-136 prohibits the construction of any new major crude oil transshipment facility east of Port Angeles, Wash. Obviously, waiver of that law would not be an expediting matter; it would fundamentally affect whether or not a possible project could move forward at all. This procedure cannot be used to waive laws that govern whether or not a siting decision is made; it applies only to expediting legislation. Existing laws prohibiting siting of oil port facilities are not eligible to be waived under this procedure.

Mr. JACKSON. That is correct.

Mr. MAGNUSON. I appreciate the efforts of my colleague to clarify these matters, and again wish to congratulate him on the extraordinary effort he has invested in trying to help this Nation formulate a sensible energy policy.

ORDER OF BUSINESS

(The following proceedings occurred earlier and are printed at this point by unanimous consent:)

Mr. JACKSON. Mr. President, I ask unanimous consent that my remarks that I am about to make, and the action that the Senate may take, occur immediately after the completion of the discussion on the two pending conference reports.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE 1978 AMERICAN K2 EXPEDITION

Mr. JACKSON. Mr. President, in June 1978, the 1978 American K2 Expedition set out to climb K2, the second highest mountain in the world. On September 6 and 7, 1978, four members of the expedition achieved this goal, thereby becoming the first Americans ever to stand atop the summit of this treacherous mountain.

K2, a mountain in the Karakoram Range of the Himalayas on the border between Pakistan and China, reaches a height of 28,250 feet above sea level, making its summit the second highest point in the world, only 750 feet lower than the peak of Mount Everest. K2 is one of the most difficult and challenging mountains to climb in the world.

Indeed, in the world of mountaineering, the summit of K2 is one of the least accessible places on Earth. Although many attempts have been made to scale its heights, K2 has been ascended just twice, by an Italian team in 1954 and by a Japanese team in 1977. Five previous American expeditions have been unsuccessful in their attempts to reach the summit.

The 1978 American K2 Expedition was organized by James W. Whittaker of Seattle, Wash. The expedition's goal was to attempt to climb K2 during the summer of 1978 by the hazardous, virgin northwest ridge. The expedition consisted of 13 team members, in-

cluding 8 residents of the State of Washington.

Upon reaching the mountain to begin the assault, the 1978 American K2 Expedition encountered and overcame continuing adversity. Severe snowstorms and the threat of avalanche greatly impeded their progress. Equipment failures plagued the expedition. Nevertheless, in the face, of these adversities, the climbers persevered. Through great determination, strength, and willpower and the valiant teamwork of all of the members of the 1978 American K2 Expedition, the expedition succeeded by having four members reach the summit of K2.

On September 6, 1978, two members of the expedition, James Wickwire and Louis Reichardt, successfully ascended to the summit of K2, becoming the first Americans to reach the virtually inaccessible summit. In reaching the summit late in the day, these men risked their lives in order to achieve the goal which they had set. Indeed, after reaching the summit, Jim Wickwire, a personal friend of mine and a former member of my Senate staff, did not make it back to the safety of the camp that evening and was forced to spend the entire night at 27,000 feet above sea level with an empty oxygen tank in temperatures reaching 25 degrees below zero and facing gale force winds. Miraculously, he survived this ordeal and, the next morning, made his way down to the camp.

On September 7, two more members of the expedition made their way to the summit. These men, Rick Ridgeway and John Roskelley, climbed to the summit and returned safely to the camp.

In view of the great achievement not only of the four members of the expedition who successfully reached the summit of K2 but also of all of the members of the 1978 American K2 Expedition and all those Americans who supported this expedition, I am sending to the desk a Senate resolution, cosponsored by Senator MAGNUSON and myself, to commend these Americans on their unparalled accomplishments. This resolution recognizes the mountaineering success of the 1978 American K2 Expedition and expresses the appreciation of the U.S. Senate to these outstanding Americans for their service in representing themselves, their communities, and their country, with such great distinction.

Mr. President, the resolution is at the desk. I ask for its immediate consideration. The resolution has been cleared by the majority and the minority leaders.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 581) relating to 1978 American K2 Expedition.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 581) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, read as follows:

S. RES. 581

Whereas, K2, a mountain in the Karakoram range of the Himalayas in Pakistan, reaches to a height of 28,250 feet above sea level, making its summit the second highest point in the world, and

Whereas, the summit of K2 is one of the least accessible places on Earth, many attempts having been made to scale its rocky heights, including five unsuccessful American expeditions, and

Whereas, notwithstanding these many attempts, K2 has only been climbed successfully twice in the past, and

Whereas, the 1978 American K2 Expedition was established to attempt to climb K2 during the summer of 1978 by the hazardous, virgin northwest ridge, and

Whereas, the 1978 American K2 Expedition team members included:

James W. Whittaker, Seattle, Washington, team leader;

Craig P. Anderson, St. Paul, Minnesota;

Terrence Bech, Bloomington, Indiana;

Cherie Bech, Bloomington, Indiana;

Albert W. (Skip) Edmonds, Seattle, Washington;

Chris Chandler, Vashon, Washington;

Louis Reichardt, San Francisco, California;

Rick Ridgeway, Malibu, California;

John Roskelley, Spokane, Washington;

William Q. Sumner, Index, Washington;

Robert T. Schaller, Jr., Seattle, Washington;

James Wickwire, Seattle, Washington; and

Dianne Roberts, Seattle, Washington, and

Whereas, the members of the 1978 American K2 Expedition demonstrated exceptional qualities of determination, strength and will power, as well as outstanding mountaineering skills, in the face of great adversity, and

Whereas, through the valiant teamwork of all of the members of the 1978 American K2 Expedition and with the support of the American Alpine Club and many others, the members of the Expedition achieved the goal which they had set, and

Whereas, four members of the 1978 American K2 Expedition, James Wickwire, Louis Reichardt, Rick Ridgeway, and John Roskelley, successfully ascended to the top of K2 on September 6 and 7, 1978, and

Whereas, these four members of the 1978 American K2 Expedition thereby became the first Americans to climb to the top of K2, now, therefore be it

Resolved, That the United States Senate commends the unparalleled accomplishments of the members of the 1978 American K2 Expedition; recognizes their mountaineering success in climbing K2, the second highest mountain in the world, by a route never previously traversed; and expresses its appreciation to these fine Americans for their service in representing themselves, their communities and their country, with such distinction.

(Conclusion of earlier proceedings.)

REVENUE ACT OF 1978

The PRESIDING OFFICER. Under the previous order, the hour of 3 p.m. having arrived, the Senate will now resume consideration of H.R. 13511.

The pending question is on the amendment of the Senator from Pennsylvania (Mr. HEINZ), on which there will be 20 minutes of debate—7½ minutes for the Senator from Pennsylvania, 7½ for the Senator from Louisiana (Mr. LONG), and 5 minutes for the Senator from Maine (Mr. MUSKIE), with the vote thereon to follow.

The amendment will be stated.

AMENDMENT NO. 4078

(Purpose: To provide an energy credit for the elderly)

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an amendment numbered 4078:

Mr. HEINZ. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 161, between lines 11 and 12, insert the following new section:

"SEC. 123. ENERGY CREDIT FOR THE ELDERLY.

"(a) IN GENERAL.—Part IV of subchapter A of chapter 1 (relating to credits against tax), as amended by sections 141 and 336 of this Act, is amended by adding immediately before section 45 the following new section:

" 'SEC. 44E. ENERGY COST CREDIT FOR THE ELDERLY.

" '(a) GENERAL RULE.—In the case of an individual who has attained the age of 65 years before the close of the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year a credit of $75.

" '(b) LIMITATION BASED ON INCOME.—The amount of the credit allowed by subsection (A) shall be reduced by 1.5 percent of the amount by which the adjusted gross income of such individual who maintains a household (within the meaning of section 44A(f)(1) and exceeds $7,500 for the taxable year.'.

"(b) REFUND OF EXCESS CREDIT.—

"(1) Section 6401(b) (relating to excessive credits) is amended—

"(A) by striking out 'and' before '43'; and

"(B) by inserting '44E (relating to energy cost credit for the elderly),' before 'exceeds'.

"(2) Section 6201(a)(4) (relating to assessment authority) is amended—

"(A) by striking out 'or' before 'section 43' and insert in lieu thereof a comma; and

"(B) by inserting 'or section 44E (relating to energy cost credit for the elderly),' before 'the amount so overstated'.

"(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV is amended by inserting immediately after the item relating to section 44D, the following new item:

" 'Sec. 44E. Energy cost credit for the elderly.' ".

On page 126, after the item relating to section 122, add the following new section:

"Sec. 123. Energy credit for the elderly.".

Mr. HEINZ. Mr. President, I shall not take my 7½ minutes at this point.

This is the amendment I offered on Saturday night as we were about to close our business. It is an amendment that I offer on behalf of Senator DOMENICI, together with Senator BROOKE, Senator CASE, and Senator HASKELL. All of us sponsor this amendment. It is an amendment that originally was drafted by Senator DOMENICI and which I offered during consideration of the energy tax bill last year.

The reason why we are offering it at this time is that, in spite of the fact that this amendment was adopted by the Senate by a vote of 88 to 2 last year, we understand that the conferees on the energy tax bill have dropped this amendment, notwithstanding the vote of 88 to 2 in favor of it, from the energy tax bill. Therefore, we want to be consistent with the will of the Senate in including the

amendment in this tax bill, the Revenue Act of 1978.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, may I ask the distinguished Senator from Pennsylvania a question?

What is the effective date? The amendment I have seen has no effective date.

Mr. HEINZ. The Senator is correct. My understanding would be that this would be effective upon enactment.

Mr. MUSKIE. In that case, Mr. President, I do have some comments to make. In a moment, I will make a point of order against the amendment. I will do so, because the tax losses from that amendment will violate the revenue floor set in the budget resolution which we adopted last month.

Mr. President, the enactment of this amendment when added to the other tax reductions already agreed to and included in H.R. 13511, would cause revenues to be less than the revenue floor set forth in the second concurrent resolution for fiscal year 1979.

The Heinz amendment would provide a $75 refundable tax credit for the elderly for energy-related expenses and would result in a revenue loss of $1.2 billion in the first full year. In fiscal year 1979 revenue loss associated with this amendment is approximately $212 million.

The estimates upon which this point of order is based have been confirmed by the Congressional Budget Office and the Joint Committee on Taxation. I have discussed them with the distinguished floor manager of the bill, Senator LONG, and there is no disagreement about these estimates.

I am not suggesting the Senate cannot consider it in some form which would not violate the budget resolution. For example, if other tax losses in the bill or in amendments already agreed to are reduced, there will be room for this amendment.

But the tax losses from this amendment, when added to the tax reduction already in H.R. 13511 and in amendments which have been added to it so far, will break the congressional budget.

The second budget resolution that passed this body by a 47-to-7 vote provided a revenue floor of $448.7 billion. That floor allowed room for $21.9 billion in tax reductions during the fiscal year.

The amendments to the Finance Committee bill accepted thus far have used up every inch of room provided in the resolution—down to the last $1 million.

Moreover, amendments passed up to this point have bloated the fiscal year 1980 impact of this bill to approximately $50 billion.

When the Budget Committee sits down several months from now to begin work on the first budget resolution it will face an extremely difficult task. We would all like to see further, substantial progress toward a balanced budget in fiscal year 1980, but amendments such as the Heinz amendment, on top of an already overloaded bill, may deny us the opportunity to make much progress in that direction.

Mr. President, the Budget Act provides that we must make a point of order against the consideration of such budget breaking amendments.

Let us be clear about the meaning of this point of order. The other night, when I made a point of order under section 303 of the Budget Act, we were talking about the proper procedures to be followed under the Budget Act.

But in the case of the point of order against this amendment, we are talking about the budget itself.

We will either live within the budget we adopted last month, or the budget process is repealed for all practical purposes.

Fortunately, we have never faced this question before. We have always managed to live within our budgets.

So, I do not relish the need to press this point of order now.

I wish every Senator could have every amendment considered and adopted, if it has merit.

But we have a budget for 1979. And the Budget Act forbids considering or adopting legislation which would cause the revenue floor in that budget to be breached.

This is such an amendment.

This amendment will violate the budget.

We are not talking about the target budget of the first budget resolution.

We are talking about the second and binding congressional budget resolution for fiscal year 1979.

That budget resolution contemplates a deficit of $38.8 billion. This amendment will increase that deficit dollar for dollar, because it cuts beneath the revenue floor specified in the budget resolution.

This amendment and further amendments are simply not in order until other amendments are made in the legislation to make room for this amendment and any others that may be offered.

While the Heinz amendment on its face appears to reduce revenues and increase outlays for a worthy cause, I would like to submit for the RECORD several reasons why I believe that the amendment is unnecessary, aside from its budget-busting impact.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

ARGUMENTS AGAINST HEINZ AMENDMENT

First, sponsors of the amendment argue that the refundable tax credit is designed to ease the burden of rapidly rising utility bills, but in fact the amendment does not relate the tax credit in any way to energy use, energy payments, or energy conservation. Low-income elderly persons in warm, Southern climates would receive as large a tax credit as a poor elderly person in my own State of Maine.

This leads me to my second point, which is that the tax bill before us already provides substantial tax reductions for low income persons and the elderly. The bill provides an increase in the existing tax credit for the elderly, an increase worth $100 million in FY 1979 and nearly $300 million in FY 1980.

The bill as reported by the Finance Committee provides substantial tax reduction to low income groups. Moreover, the Kennedy amendment adopted by the Senate last week reduced taxes for low and middle income households even further. That amendment lowered taxes by an additional $600 million in FY 1979 and nearly $7 billion in FY 1980.

Third, sponsors may point out that this credit passed the Senate a year ago by a lopsided vote, but I must remind my colleagues that at that time the Senate was also expecting further rapid increases in the price of energy in response to other portions of the energy program. At that time the House had passed the crude oil equalization tax. The crude oil equalization tax is now almost certainly a dead issue.

Finally, alternative federal programs are available to provide direct aid to elderly with low incomes who are hit particularly hard by rising energy prices. The Interior Appropriations Conference Report approved by the Senate on Saturday included approximately $200 million for FY 1979 for weatherization of low income housing. This funding will continue the weatherization program, a program which has already helped thousands of low income households adjust to higher energy prices.

In addition, the conference agreement on H.R. 5037, the National Energy Conservation Policy Act, which the Senate will vote on today, provides several hundred million dollars in FY 1979 alone to assist energy consumers in coping with rising energy prices.

The need for tax relief to offset higher energy prices is clearly less than it appeared to be a year ago.

So we must make the point of order, and I do so now.

● Mr. BELLMON. Mr. President, the amendment number 2027, which would provide energy tax credits for the elderly, is a popular initiative. In fact, when proposed last year during the tax debate, it passed this body by a vote of 88 to 2. The dissenting votes were cast by the Senator from Wisconsin (Mr. PROXMIRE) and this Senator from Oklahoma.

Mr. President, neither Senator PROXMIRE nor myself are ignorant of the problem, nor do we lack sympathy for the implications which rising utility costs have on the elderly, especially those whose income is fixed. The amendment, however, was a budget buster last year, and it is a budget buster this year. If such relief is to be provided, Mr. President, then the tax reductions available to others must be reduced. I would not argue with that approach, I do, however, resist this attempt to provide additional benefits without compensatory benefit reductions elsewhere since, if successful, the sponsors will increase the deficit by as much as $1 billion.

Such a result, Mr. President, will not provide tax relief to the needy elderly, but will increase the tax of inflation which they must bear.

In addition, it should be noted that affirmative action on this amendment will break the revenue floor established in the second concurrent resolution. Thus, the amendment is subject to a point of order under section 311(a) of the Budget Act.

Mr. HEINZ and the other sponsors of this amendment may seek to avoid the discipline of the Budget Act by manipulating the effective date of the amendment, making it first applicable in fiscal year 1980. I hope that they will not, but if they do, it should be noted that this loophole has been created by the Senate 2 days ago when the Senate chose to overturn the ruling of the Chair with respect to the interpretation of section 303 of the Budget Act. Prior to that event, fiscal year 1980 would have been

protected from such maneuvers which permit us to "fly now and pay later."

Mr. President, I call upon my colleagues to reaffirm their commitment to the Budget Act and the second concurrent resolution by upholding the point of order which lies against this amendment.●

The PRESIDING OFFICER. The Senator's 5 minutes have expired. Who yields time?

Mr. HEINZ. Mr. President, will the Senator from Maine yield for a question?

The PRESIDING OFFICER. The Senator from Maine has no more time.

Mr. HEINZ. On my time.

Mr. MUSKIE. Yes.

Mr. HEINZ. For calendar 1979, what does the Senator from Maine estimate that the cost of this would be?

Mr. MUSKIE. It would be $1.2 billion.

Mr. HEINZ. I have to disagree strongly with that number, because we called the Joint Committee on Taxation this morning; and for the period of January 1, 1979, through December 31, 1979, they gave us a figure—unless I am misinformed—of $440 million.

Second, they used as the basis for their calculation all elderly people over age 65. In fact, the amendment does not go to all elderly people over age 65. It goes only to elderly heads of households over 65, and not to all of them, because those who would be eligible under this are only those who would be fully eligible at $7,500 a year income or less, and those would be partially eligible between $7,500 and $12,500.

So I say to my good friend from Maine that I am afraid the number he has received does not relate, in fact, to the facts of the amendment. We checked this out ourselves, and I am concerned that the Senator has been given a funny number.

Mr. MUSKIE. The estimates we have as to the cost of the Senator's amendment, as we understand it, were confirmed by the Congressional Budget Office, the Joint Committee on Taxation, and Senator LONG.

Mr. HEINZ. That does not make them right.

Mr. MUSKIE. Whether the figures of the Senator from Pennsylvania are correct or ours are correct, there is not a single dollar in the 1979 fiscal year bank for this amendment. I said that this morning, and I have said it several times in the course of the day—that the amendments already approved have eaten up all the room in the budget resolution.

So whether it is $440 million or $1.2 billion, that the Senator's amendment would cost on a calendar basis, the fact is that there is not room for either figure.

Mr. HEINZ. I appreciate the Senator's response.

Let me just say, Mr. President, that we all know how much money is involved in this bill. In fact the Senate passed a $3.7 billion corporate tax cut just a few days ago and regardless of whether the figure is $1.1 billion or $400 million or $200 million, the fact is it is that ludicrous to say that we are going to give $3.7 billion to the big corporations and not put one cent into this bill explicitly for our elderly who are hard-pressed by utility bills. And that makes the purpose of this Senator's amendment, regardless of any of the legal points that the Senator from Maine may make.

Mr. President, I reserve the remainder of my time.

Mr. MUSKIE. I have no time remaining, I take it, Mr. President, to respond.

Mr. HODGES. The Senator is correct.

Mr. MUSKIE. Mr. President, how is the remainder of the time divided?

The PRESIDING OFFICER. The remainder of time is allocated to the Senator from Louisiana (Mr. LONG). It is the only time that remains on the amendment.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. METZENBAUM. There is no other time remaining, is there?

The PRESIDING OFFICER. A quorum call is not in order until all time is yielded back unless the Senator has time himself. I do apologize. The Senator from Pennsylvania does have 1½ minutes.

If no one is yielding time, it will be charged equally against both sides who have time remaining.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally to both sides.

Mr. HEINZ. Mr. President, I object.

The PRESIDING OFFICER. There is not sufficient time to have a quorum call. There are only about 7 minutes remaining.

Mr. CURTIS. Very well.

The PRESIDING OFFICER. The time is being charged equally now.

Mr. HEINZ. I only have 1½ minutes. Senator LONG has 7 minutes remaining.

Mr. CURTIS. How much time does the Senator want?

Mr. HEINZ. I am controlling the time. I want a minute and a half to respond to whatever Senator LONG says.

Mr. CURTIS. All right. We will give the Senator 2 minutes.

The PRESIDING OFFICER. The Senator does not have a minute and a half. It is being charged against both sides equally at the present time.

Mr. MUSKIE. Mr. President, if I may have the attention of the Senator from Nebraska, unexpectedly I found myself in possession of 5 minutes to oppose the amendment of which I was unaware until I came to the Chamber. I understood that 3½ minutes had been assigned to Senator LONG to oppose the amendment. He is not here. Before I could finish my argument I was cut off, because I had run out of time. The Senator from Pennsylvania is waiting for some debate on the other side to which he might respond.

The PRESIDING OFFICER. Does the Senator from New York, sitting now for Senator LONG, wish to yield time to the Senator from Maine?

Mr. MOYNIHAN. I am happy to yield as much time as we have to the Senator from Maine.

Mr. MUSKIE. I thank my good friend from New York.

I never encountered this situation before, I must say.

But in any case, the Senator from Pennsylvania made the point that I was merely raising legal issues. Believe me, I say to the Senator, with respect to the argument that he has just made, there is more equity in providing this relief than some of the relief provided to others under amendments or provisions already adopted. I could not agree with him more.

But if I were to take that attitude with respect to amendments, favor the new ones that come along that I like, we would now be far above the $38.8 billion deficit that we have already adopted for fiscal year 1979. I have to be neutral or as neutral as human nature makes it possible for me to be to try to apply the rules. And the fact is that we do not have a nickel remaining in the budget resolution bank for any amendment, however worthy, including this one. I wish that some of the provisions already approved could be washed out so we could make room. But I do not have that power. Only the Senate has that power. If the Senator can figure out some way to substitute this one for some less worthy ones in his estimate or mine that are already approved by the Senate, I would be willing to consider it.

The point of order is the only discipline that we have to try to hold some kind of a ceiling on what we do here, and it is my duty to raise it, and I will at 3:20 p.m. for those reasons, even though the equities of his amendment have a great deal of appeal.

Mr. HEINZ. I am delighted the Senator from Maine supports the amendment but just cannot vote for it.

Mr. MUSKIE. No, I do not support it for the reasons that I stated.

Mr. HEINZ. Let me say to the Senator from Maine, first of all the order in which the amendments are voted on appears decided by the Chair, by the President of the Senate. Now on Friday, I was No. 4 on the list to be recognized to offer this amendment when there was plenty of money remaining in the budget resolution. Saturday morning there appeared up there a list with 12 names on it, the first 10 of whom were Democrats. So if there is anyone who is somehow managing to make sure there is no money remaining for the elderly in this bill it is on the Senator's side of the aisle.

This appears to be something called first come, first served, and if the Democratic side of the aisle gets recognized by the Democratic presiding Member, then the Democratic side gets the goodies and the people get shafted.

That is not at all my idea of what is good for this country.

The Senator asks how can we wash this amendment out, and I will tell the Senator how it will be washed out with something else if the Senator and the Finance Committee truly believe it has merit when they take it to conference, and I hope they do.

Mr. MUSKIE. I do not go to the tax conference.

Mr. HEINZ. And I hope when they go back to the House of Representatives

they will find a way to accommodate this amendment.

I do thank the Senator for yielding.

Mr. MUSKIE. Mr. President, is there any time remaining?

The PRESIDING OFFICER. There are 2 minutes remaining.

Mr. MUSKIE. I make this additional point. I am not for all these amendments that have been adopted. But let me give the Senator the consequence of what has occurred. When the bill came out of the Finance Committee there was $1.4 billion remaining in the budget resolution to accommodate the energy tax bill and some other relatively minor tax legislation that was under consideration.

All of that $1.4 billion has been used up and it has been used up in a very interesting way. It has been used up by putting a small wedge in fiscal year 1979, and that small wedge totals $1.4 billion. But the first full-year cost of those amendments is $10 billion.

This is somewhat like the issue discussed the first day. We have put in wedges which in 1979 cost $1.4 billion but in the first full year will cost $10 billion. That is the sort of tax-writing habit we have gotten into here. I do not approve of that at all. I do not know what list the Presiding Officer had on Saturday. I had nothing whatsoever to do with it. But, I was against any increases that would eat up what remained in the budget resolution to take care of these other requirements.

Up to the ceiling, the Finance Committee chairman presumably will clean up the tax bill when he goes back to conference. But for those things that now go above the ceiling in 1979, I have a responsibility to try to take care of them in the Chamber. That is what I am trying to do.

Mr. President, if there is no further——

Mr. HEINZ. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has no time remaining.

Mr. MUSKIE. Mr. President, I make the point of order.

Mr. HEINZ. Mr. President, is there any time remaining?

The PRESIDING OFFICER. There is not.

The Chair is advised that the point of order is well taken. Under section 311 of the Budget Act, legislation is subject to a point of order if it would reduce revenue for fiscal year 1979 below the revenue floor of the second budget resolution.

The Congress has established a revenue floor of $448.7 billion in the second budget resolution for fiscal year 1979. According to the Congressional Budget Office, legislation which has been enacted in prior years or enacted this session and sent to the President for signature, together with the Finance Committee substitute for the 1978 tax bill and floor amendments to that bill adopted to date, leave no room for additional revenue reductions in fiscal year 1979.

Since adoption and enactment of the pending amendment would cause revenues to be less than the appropriate level of revenues set forth in the second budget resolution, the amendment is out of order and cannot be considered.

Mr. HEINZ. Mr. President, is there any time remaining?

The PRESIDING OFFICER. There is none.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The point of order has been made and sustained.

Mr. HEINZ. Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not at this time a sufficient second.

Mr. HEINZ. Mr. President, I object on the ground a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

Mr. HEINZ. Mr. President, I ask that the Chair once again ascertain whether or not there is a sufficient second.

The PRESIDING OFFICER. The Chair determines there is not a sufficient second.

Mr. HEINZ. Mr. President, I ask unanimous consent to withdraw the call for a quorum.

The PRESIDING OFFICER. It had never started.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair stand as the judgment of the Senate? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mrs. HUMPHREY), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The result was announced—yeas 65, nays 22, as follows:

[Rollcall Vote No. 464 Leg.]

YEAS—65

Allen	Dole	Huddleston
Bartlett	Durkin	Inouye
Bayh	Eastland	Jackson
Bellmon	Ford	Johnston
Bentsen	Garn	Kennedy
Burdick	Glenn	Leahy
Byrd, Harry F., Jr.	Goldwater	Long
Byrd, Robert C.	Gravel	Magnuson
Chafee	Hansen	Mathias
Chiles	Hart	McGovern
Cranston	Hatch	Melcher
Culver	Hatfield, Paul G.	Metzenbaum
Curtis	Hayakawa	Morgan
Danforth	Hodges	Moynihan
DeConcini	Hollings	Muskie
Nelson	Sarbanes	Talmadge
Nunn	Sasser	Weicker
Packwood	Sparkman	Williams
Pearson	Stafford	Young
Pell	Stennis	Zorinsky
Proxmire	Stevens	
Ribicoff	Stone	
Roth		

NAYS—22

Baker	Heinz	Schmitt
Biden	Helms	Schweiker
Brooke	Javits	Scott
Case	Laxalt	Thurmond
Church	Lugar	Wallop
Clark	Matsunaga	
Eagleton	McIntyre	
Hatfield, Mark O.	Randolph	
	Riegle	

NOT VOTING—13

Abourezk	Griffin	Percy
Anderson	Haskell	Stevenson
Bumpers	Hathaway	Tower
Cannon	Humphrey	
Domenici	McClure	

So the ruling of the Chair was sustained as the judgment of the Senate.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the decision of the Chair was sustained.

Mr. LONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the time between now and 4 p.m. will be equally divided and controlled by the Senator from Maine (Mr. MUSKIE) and the Senator from Louisiana (Mr. LONG).

The Senator from Louisiana.

Mr. LONG. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order. The Senator is correct, the Senate is not in order. Senators will take their conversations to the cloakroom.

The staff will please take their seats.

The Senate is not in order. The Senator from Louisiana is entitled to be heard.

Mr. LONG. Mr. President, if we are going to conclude this session on Saturday, as we have said we were going to try to do, then we are going to have to vote cloture on this bill. We need cloture on this bill today if we are going to hope to get out of here by Saturday. Assuming we vote cloture today, today being Monday, that gives us today and tomorrow in order to complete action on the bill. The staff will need some time to do all the technical work that is necessary to put all this together. We will need Thursday and Friday for a conference and hopefully on Saturday we could get all the papers together and if the House is willing to waive their 3-day rule over there on the conference report, we could vote on the conference report Saturday and get out of here.

If we do not vote cloture today, it is extremely doubtful that we will be able to get out Saturday no matter how hard we work, how late we work, or in how much of a rush we try to do business.

Mr. President, in order to get out of here we are going to have to agree to leave off these nongermane amendments, like the sunset bill, the Glenn amendment on tax expenditures, the Humphrey-Hawkins bill, textile quotas, hospital cost containment, locks and dam 26, the user charges, and every-

thing else that might muster a majority vote. If the leadership of the Senate is going to insist on acting on all these other things before we act on the tax bill, or as a condition of acting on the tax bill, we might just as well put this tax bill back on the calendar or put it back in the committee and take up these other things, Humphrey-Hawkins, textile quotas, hospital containment, locks and dam 26, all the rest of it, and come back to the tax bill after we have disposed of those issues.

But if the Senate really feels it wants to keep its commitment to conclude this session on the 14th, it should vote cloture so we can limit debate to germane amendments.

Incidentally, Mr. President, if we limit this bill to germane amendments, with all the things that have been put out there, including the amendments I just sent up there, which is a technical correction to the bill to correct all the technical errors in the 1976 Tax Reform Act, which is over 100 pages of technical amendments—and mind you, that will correct all the technical errors in a 2,000-page bill—if we have all that, Mr. President, one would have almost the entire revenue code to look over in offering possible germane amendments.

Furthermore, under the germaneness rule a lot of welfare amendments may be offered because we have a lot of welfare amendments in the bill. But we do not have social security, we do not have public works, we do not have the trade program, and we do not have appropriations provisions. So at least there are a lot of areas that we would not be involved in if we can limit this to germane amendments, and also limit the amount of time available to each Senator so each Senator only has an hour to speak. I have managed bills of this magnitude under cloture before, Mr. President. I know I can live within my 1 hour. As manager of the bill, I can get by with 1 hour. I would think everybody else can get by with 1 hour. I hope the Senate will vote for cloture.

Mr. CURTIS. Will the Senator yield?

Mr. LONG. I yield.

The PRESIDING OFFICER (Mr. ZORINSKY). The Senator from Nebraska.

Mr. CURTIS. Mr. President, I would remind the Senator that the need for cloture is not to protect the domain of the Finance Committee. I think the issue is whether or not we want a tax bill at all and particularly if we want to adjourn in the near future. The reason I say this is no effort to protect the domain of the Finance Committee as I believe the actions taken by the Finance Committee were well-founded, well thought out. There are many people who disagree. After we vote cloture any amendment to strike what the Finance Committee has done is in order. Is that correct?

Mr. LONG. That is correct.

Mr. CURTIS. So those who feel that they disagree with any particular action of the Finance Committee will have full right to strike out any section under the rules. This is merely to protect orderly procedure so that everything else is not added to cause the bill to either fail or delay adjournment.

Mr. LONG. Mr. President, this should be clear. If they want to strike something out of the bill, they should have the amendment at the desk before we are through voting on cloture.

Mr. CURTIS. I thank my distinguished chairman. It was not my thought to convey the idea that they would not have to otherwise qualify. But so far as the rule of germaneness, so far as the narrow issue of germaneness, a motion to strike is in order. I am not urging it to be done. I expect to resist most of them. But the amendments will have to otherwise qualify.

This is a need for cloture to preserve orderly procedure and to make it possible for some sort of tax bill after the Senate and the conference have worked their will. And it has a very direct relationship to any adjournment in the foreseeable future. I thank the Senator.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, I yield myself 3 minutes.

Mr. President, I ask unanimous consent to include in the RECORD at this point a statement by my distinguished colleague, Senator HATHAWAY.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR HATHAWAY

SUNSET LEGISLATION AND TAX EXPENDITURES

I support an amendment to extend the provisions of sunset legislation to Federal tax expenditures through a detailed review process by the Senate Finance and House Ways and Means Committees.

I believe sunset legislation is one of the most effective tools that the Congress has to review and control Federal spending. With the adoption of a comprehensive sunset and the Congressional Budget, we will have the tools to effectively control Federal programs.

To include only direct spending programs in sunset will omit the fastest growing portion of the Federal budget—tax expenditures. In Fiscal Year 1978, the revenue losses associated with these provisions are estimated at over $124 billion, compared with a revenue loss of $52 billion in Fiscal Year 1971. According to the Congressional Budget Office, these losses are expected to rise to $199 billion by Fiscal Year 1983. This growth stems in part from the fact that tax incentives—unlike most authorizations—are often enacted in perpetuity and are not required to run the gauntlet of periodic reauthorization and the annual appropriations process.

For example, a study on tax expenditures by the Senate Budget Committee discusses "Higher Education" as follows:

TAX EXPENDITURES

Tax expenditures account for a large portion of total Federal assistance for higher education. The major tax expenditures providing benefits directly to students and their families are the exemption for student dependents, the deduction for interest paid on student loans, and the exclusion from taxable income of scholarships, grants, fellowships, GI bill education benefits, and social security student benefits.

The major tax expenditures that aid educational institutions are the tax deduction for charitable contributions, the exclusion from taxable income of unrealized capital gains on gifts and bequests to higher education institutions, the deduction of State and local taxes used to support higher education, and the exclusion from taxable income of interest on State and local borrowing for higher education purposes.

Higher education tax expenditures will result in revenue losses of approximately $4.8 billion in fiscal year 1979, compared to outlays for higher education spending programs of approximately $8.7 billion.

SPENDING PROGRAMS

Federal higher education policy has three primary objectives: providing equal access to higher education regardless of family background; maintaining the financial stability of colleges and universities; and relieving the financial burden on families caused by education costs. Outlays for the major Federal spending programs for higher education are listed in the following table:

Estimated Outlays for higher education

[In millions of dollars]

Program	1978	1979	1980
Federal grants to students:			
Basic education opportunity grants	1,592	1,837	1,982
Supplemental education opportunity grants	231	301	325
Work study program	411	482	520
State student incentive grants	51	60	65
GI bill education benefits	3,384	3,094	2,801
Social security student benefits	1,800	2,000	2,200
Student loan programs:			
National direct student loans [1]	282	311	357
Guaranteed student loans [1]	619	534	760
Aid to institutions: [2]			
Strengthening developing institutions	107	120	148
Total	8,477	8,739	9,158

[1] Annual loan volume is in many ways a better measure than outlays of program activity in any given year for higher education direct and guaranteed student loan programs. Annual loan volume reflects the sum of all loans obligated during a fiscal year under direct loan programs and the value of all commercial loans insured under loan guarantee programs. Outlays, on the other hand, reflect only administrative costs and net lending activity—interest subsidies, loan defaults, new loans, and repayments on prior-year loans. As such, outlay figures tend to underestimate the full effect of these programs. The total amount of loan funds available under the national direct student loan program, according to the HEW Office of Education, will be approximately $605,000,000 annually in fiscal years 1978–80. The amount of loans guaranteed under the guaranteed student loan program is expected to be $1,648,000,000 in fiscal year 1978, $2,673,000,000 in fiscal year 1979, and $2,949,000,000 in fiscal year 1980.

[2] There are a number of minor programs that provide aid to institutions that render certain student services. Also, a substantial amount of Federal funds go to institutions for research purposes. These latter programs have not been included in this table since they primarily involve the purchase of services by the Federal Government, and do not have as their major purpose the dispersing of aid to institutions. To some extent, however, these research grants help defray institutional costs of instruction.

RELATIONSHIPS BETWEEN THE TAX EXPENDITURES AND SPENDING PROGRAMS

Distribution of benefits; individual beneficiaries

Except for guaranteed student loans and GI bill education benefits—over two-thirds of all student aid spending program benefits are concentrated among students with family income below $10,000. This distribution results primarily because all of these programs, except for social security student benefits, make financial need a major consideration in distributing benefits. Guaranteed student loans are not needs-tested, but loan recipients qualify for the in-school subsidy only if their family's income is less than $31,000. GI education benefits and social security student benefits are provided to persons in all income classes without regard to need. However, social security benefits are distributed progressively across income classes since recipients come from families whose incomes are generally low because the primary worker is dead, disabled, or retired. The table below indicates the distribution of spending program outlays for higher education by income class.

In contrast to the spending programs, higher education tax expenditures provide benefits regardless of family need, but provide no educational support to those low-income families without tax liability. Moreover, since the size of tax expenditure benefits depends upon the recipient's marginal tax bracket, taxpayers in relatively higher brackets receive proportionally greater benefits than those in lower brackets.

Higher education tax expenditures, in the aggregate, are more concentrated among middle and upper income taxpayers than spending program benefits. For example, while 27 percent of the benefits of the parental exemption for students—the largest tax expenditure aiding individuals—accrued to families with expanded gross income over $20,000 in fiscal year 1977, the table below indicates that, in the same year, only 1 percent of all basic and supplemental education opportunity grants and work study benefits went to those with family adjusted gross income above $20,000.

Distribution of higher education outlays to individuals by income class, fiscal year 1977 [1]

[In millions of dollars]

Program	Adjusted gross parental income for dependent students [2]		
	$0 to $10,000	$10,000 to $20,000	$10,000 and over
Federal grants to students:			
Basic education opportunity grants	1,166	273	([3])
Supplemental education opportunity grants	189	57	2
Work study program	233	104	21
GI bill education benefits	1,304	1,463	413
Student social security benefits	694	398	193
Student loan programs:			
National direct student loans [4]	151	114	30
Guaranteed student loans [4]	188	238	22
Total	3,925	2,647	681

[1] Distribution of State student incentive grants unavailable.

[2] Most self-supporting students have incomes below $10,000. The benefits received by self-supported students are reflected in the amounts shown for dependent students, with 90 percent going to the $10,000 and less income class and the remainder to the $10,000 to $20,000 income group.

[3] Amount insignificant.

[4] Numbers reflect only the value of interest subsidies associated with these programs, and not the total value of loans made under these programs in fiscal year 1977.

Source: Congressional Budget Office, *Federal Aid to Postsecondary Students: Tax Allowances and Alternative Subsidies*, February 1978.

INSTITUTIONAL BENEFICIARIES

Tax expenditures and spending programs directly assisting colleges and universities benefit very different types of institutions. The strengthening developing institutions program primarily assists colleges and vocational schools that need funds to compete with other public and private schools that are relatively secure financially. In contrast, the deduction for charitable contributions and the exclusion of unrealized capital gains on gifts and bequests to educational institutions benefit mainly those institutions that most effectively attract these forms of charitable giving. These latter institutions are very often long established and relatively secure financially; few would qualify as developing institutions.

The exemption of interest income from State and local bonds makes it easier for State and local governments to raise funds to support higher education. The benefits of this tax expenditure go to public rather than private institutions.

Empirical studies have not yet reached a consensus as to the effectiveness of the charitable contribution deduction in encouraging giving. Some studies conclude that the deduction increases charitable giving by more than the foregone Treasury revenue and that educational institutions gain more from the deduction than they would from a tax credit or matching grant program. The deduction for charitable contributions is, however, not likely to provide much assistance to developing institutions. Thus, direct Federal spending to strengthen developing institutions complements tax expenditures in this area.

EXPANDING ACCESS TO HIGHER EDUCATION

Education benefits distributed according to need expand access to higher education more efficiently than benefits distributed across all income classes. Programs distributing benefits on a needs basis provide aid to families with only marginal resources who otherwise might not be able to finance the costs of higher education. In contrast, tax expenditures and outlays distributed without regard to need often provide benefits to students from middle and upper income families who are more likely to have the resources to finance higher education without additional Government aid. For many of these students, the provision of aid has little or no effect on their ability to attend an institution of higher education.

The relative size of Federal educational benefit payments also has an important effect on expanding student access to higher education. Educational aid "packages," make up of varying amounts of direct grants, student loans, and work study wages, often finance a substantial percentage of total educational expenses, significantly affecting a student's abiilty to attend an educational institution.

Tax expenditures, on the other hand, provide low levels of financial aid relative to total college costs. The parental exemption for dependent students is worth only $150 per student for families taxed at the median marginal rate of 20 percent. The tax expenditures that arise from the exclusion of scholarship, fellowship, GI bill, and student social security benefits are only a small percentage of the value of these direct payments for most recipients. Moreover, since tax expenditure benefits are increased in value for recipients in higher marginal tax brackets, low-income persons with the least ability to afford a college education receive the smallest tax expenditure benefits. Present tax expenditure provisions provide, at most, only marginal assistance in financing the costs of higher education.

EFFECT ON TUITION COSTS

Both tax and direct spending programs that provide student aid may allow institutions to raise tuitions, capturing some or all of the benefits meant for students. It is difficult to determine the extent to which institutions engage in this practice. Several theories have been offered, but none has been empirically tested. In general, institutions experience conflicting pressures to remain both financially. viable and price competitive.

Spending and tax programs that distribute benefits to a narrowly defined group of students may be less likely to result in tuition increases compared to more widely available tax or spending programs. Subsidy-induced tuition increases may drive away a significant number of unaided students as well as the students whose education assistance benefits are captured by the institution. Schools that raise tuitions may also find themselves in a weaker competitive position if other institutions do not adopt similar pricing policies.

ADMINISTRATION

Compared to the current tax expenditures for higher education, which distribute funds with few eligibility restrictions, the higher education spending programs target benefits to those with financial need and, therefore, involve more administrative costs and require more effort on the part of applicants to obtain funds. Under the grant and loan programs, student applicants must document need by submitting personal financial statements which require screening and evaluation by the administering agency or institution. Also, administrative judgments are often necessary regarding the distribution of limited appropriations among qualified applicants. The inevitable existence of fraud and abuse increases the administrative burdens in these programs. In the loan programs, high default rates are a problem because student loan recipients are often difficult to find for billing purposes after their graduation.

In contrast, the distribution of higher education assistance through current tax expenditures involves relatively little paperwork for taxpayers or the Internal Revenue Service. Since recipients are not required to document financial need, benefits can be obtained by merely claiming the relevant deductions, exclusions, or exemptions on annual tax forms. The validity of these claims is checked by the Internal Revenue Service through the auditing of tax returns. This procedure is less burdensome and costly than the screening of grant and loan applications because audits are limited to a small fraction of tax returns each year. However, the amount of revenue lost each year as a result of incorrect or fraudulent higher education tax expenditures claims that go unaudited is not known and could be substantial.

The administration of existing tax expenditures is also simpler than of the spending programs because there are no statutory limits on the amount of aid that can be distributed among beneficiaries, and default problems do not arise because the tax expenditures need not be repaid.

OVERLAP OF BENEFITS

All Federal spending programs for higher education, except for the work study and strengthening developing institutions programs, give rise to tax expenditures for re-

cipients with tax liability, producing an overlap between tax and spending program assistance for such recipients. In the case of grant programs, tax expenditures result from the exclusion of grant benefits from taxable income. In the case of loan programs, tax expenditures arise from the deductibility of nonbusiness and noninvestment related interest payments. Because these education spending programs are largely needs tested, their benefits are concentrated among families in the low tax brackets. Consequently, the tax expenditures associated with these direct spending programs are smaller, on average, than they would be if direct spending benefits were distributed without regard to need to those in higher marginal tax brackets.

LEGISLATIVE INITIATIVES

Both the Senate and the House of Representatives recently have passed college tuition tax credits as a form of higher education financial aid for middle-income families not usually eligible for direct Federal assistance. The conference bill would allow full-time undergraduate and post-secondary vocational students or their parents a credit against tax liability of either 35 percent of eligible education expenses. The maximum annual credit would be limited to no more than $250 per taxpayer. The original House and Senate provisions would be phased in either over 2- or 3-year periods and would result in annual revenue losses when fully effective of $1.1 billion under the House bill and $2.8 billion under the Senate version. The conference committee to reconcile the two versions recommended a version with an estimated revenue impact of $.95 billion.

Moreover, benefits to low- and middle-income students from a tax credit would be limited if the credit were reduced or eliminated for students receiving direct Federal student grants or other tax-exempt educational assistance. Only low- and middle-income students currently receive such assistance. The bills approved by each House include rules that would reduce or eliminate tuition tax credits for students who receive such direct assistance.

The distribution of benefits of a tuition tax credit with an offset provision would be concentrated among taxpayers with family income between $15,000 and $40,000. Although a larger percentage of benefits under this type of provision would accrue to low-income persons than under existing tax expenditure provisions, benefits for low-income persons would be reduced significantly by the offset requirement.

As an alternative to the tuition tax credit, the Carter Administration proposed a sizable expansion of the present direct loan, work study, and grant programs, with particular emphasis on expanding the basic education opportunity grant program, in order to funnel aid to middle-income families that presently receive few benefits or are ineligible for program support. This proposal would aid middle-income families in financing higher education costs without necessarily funding those in higher income brackets. It would also provide larger grants to fewer students than the tuition tax credit proposals. The Carter proposal, however, would involve somewhat higher administrative costs.

The Senate has passed and the House is considering modified versions of the Carter proposal as additions rather than as alternatives to tuition tax credit legislation.

CONTINUATION OF STATEMENT

Thus, present tax expenditures are half as large as direct Federal expenditures in higher education and I believe both should be reviewed in the sunset legislation.

As Senator Glenn pointed out on September 30, 1978; this bill does not sunset tax expenditures, it merely provides an initial review process. The amendment does not terminate or modify in any way any tax incentive provision. It merely requires the tax writing committees to report and the Congress to enact, in the next session a procedure for orderly review and reauthorization of all tax incentives, a procedure to be in place by the end of 1980, with the reauthorization process stretching out over a 10-year period. At the present time there is no such regular review process, and during the last few years the Federal revenue foregone as a result of tax incentives has risen from $52 billion in 1971 to $124 billion this year, and is estimated to be $187 billion by 1983. We must keep watch on this fastest growing part of our Federal deficit, one which receives little or no scrutiny compared to direct Federal expenditures which periodically must go through an authorization and appropriations process.

I want to stress a most important factor. The review is neutral. The tax writing committees, in reviewing tax incentives, may find particular incentives working so well that they should be increased, and I would probably support that.

In other cases, the incentives would not be changed. In still other cases, where the incentive provisions are not doing the job for which they were originally intended, and were siphoning off what would otherwise be tax revenue, the committees could and should recommend termination—"sunsetting" of such incentives. In that case, I would hope and expect that as revenue once foregone became available to the Federal Treasury, a reduction in tax rates for individuals and corporations alike would result. Thus, far from prompting a tax increase, the amendment is designed to produce a tax cut for the average American taxpayer.

It is important to this country that sunset legislation be enacted this year—and that it include a tax expenditure provision.

Mr. MUSKIE. Mr. President, I hear the argument to have orderly procedure and to eliminate nongermane amendments.

Mr. President, we did set aside these amendments, the sunset amendment, the Glenn amendment, the Humphrey-Hawkins amendment, for what purpose? So that nongermane amendments could be considered, taken up, and enacted.

We approved a lot of nongermane amendments. Apparently, what we are really talking about are two classes of nongermane amendments; nongermane amendments that the floor managers of the bill approve, and nongermane amendments that they do not approve. That seems to be the argument.

Mr. President, for many years I have thought we ought to have a rule of germaneness to deal with this kind of situation, as a safeguard against this kind of chaos. But we do not. The reason we do not is that the Senate wishes to reserve to itself the flexibility to take up important matters at any time that may not necessarily be germane to the pending business. Those of us who have been around here all understand that.

For 2 days I have agreed to put my amendment aside so that nongermane amendments of lesser importance, even amendments that might not be consistent with the public interest, might be considered and acted upon.

The reason I offered sunset to this bill is that with a week or less left, this is the only chance I can see to get this high priority issue before the Senate and, hopefully, eventually before the House; the last chance. It is an idea we have been trying to implement for 3 years. So I have offered it to this bill.

In a parliamentary sense, it is not germane, but in a real sense it is germane. Because what we are talking about is enacting tax measures that reduce revenues, as this one does at this point, by $50 billion on an annual basis. We ought to be considering an effective policy and program to reduce spending so that deficits will not go through the roof. So in a practical policy sense, sunset is as relevant to this bill as anything else one could consider.

It is not the ideal place to have it. I would rather have it considered separately. I would rather have the House consider it separately. But if this cloture petition prevails you can kiss sunset goodbye for the rest of this session. There is no other vehicle that will permit us to act on it, and at the same time get the issue to the House in a way that will permit the House to act on it.

I am only speaking about sunset. There are other important issues, which are important to other Senators, that have been offered to this bill. This is a legitimate way to consider them.

As a matter of fact, the Senate really wants to consider them and if we are able to get time agreements, this could be the most expeditious way in which to dispose of them, rather than going through this parliamentary maneuver on every new legislative vehicle that comes along.

I urge my colleagues to vote "no" on this first cloture motion and give us an opportunity to dispose of these other issues on an up or down basis.

I yield, at this point, 3 minutes to my good friend from Wisconsin.

Mr. NELSON. Mr. President, let me say for purposes of economy of time that I endorse everything that the distinguished Senator from Maine has just said in the past 3 minutes.

Let me add to that that I agree and I would support and will support a rule next year—and we will find out how many are prepared to do so—that there be nongermane amendments offered to any tax bill when it comes before the Senate. All of those who are now arguing for a rule of germaneness, I think we will find a good many of them refusing to do that.

I offered the hospital cost containment bill, which has been a proposal of the administration running on now to 2 years, almost 2 years. I offered the Humphrey-Hawkins amendment on Saturday, which has been a proposal that has been around for 4 years. I have said to the leadership and to the minority that I will accept a time limitation, either on this bill or, if they do not want it on this bill, just guarantee that we will have a bill before us. I shall agree to a 1-hour time limitation on hospital cost containment so far as I am concerned, 30 minutes to the side.

I would agree, although there are others who are involved here who may not, but so far as I am concerned, to a 1-hour time limitation on Humphrey-Hawkins, with 30 minutes to a side, and

take it off this bill. Just guarantee us a right to vote.

Is that too much to ask? These are two major programs, supported by the President. They had hearings. Humphrey-Hawkins came out of the Human Resources Committee on May 4, 5 months ago. The hospital cost containment proposal was made by the administration more than a year-and-a-half ago. Those who say we ought to keep the amendments to this bill germane but who, at the same time, will not agree to a time limitation force those of us who think these are important enough measures to put them on this bill because that is the only way we can get it before the Senate for a vote. After all, the public is entitled to see where we stand on these issues and we ought to have a vote.

Hospital cost containment, the administration proposal, would save $59 billion through 1981. The compromise I offer would save $30 billion. We hear all this rhetoric on the floor of the Senate about holding down inflation, cutting back on Federal expenditures. Hospital cost containment would save the Federal Government $11 billion between now and 1982. Is that not important enough to vote on? Is there anything in this pending legislation that is going to save $11 billion except possibly Senator MUSKIE's proposal, which is not a tax billion itself?

So the moment the leadership, the minority and the majority, will say, "We will give you 1 hour on Humphrey-Hawkins, and 1 hour of debate on hospital cost containment," I shall be happy to pull down the amendments, set them aside, and take them up. We waste more than an hour. We waste more time on every little unanimous-consent request than anybody can think of around here.

That is the offer. I am happy to go with it. If you want to pass this bill by Saturday, give us an hour on each; I will pull it down. Give us another little tax bill, customs bill or something, and we will settle the issue very quickly.

Now let us find out who it is that wants to vote on these issues and who really does not.

Mr. LONG. Mr. President, the Senate is going to have to decide that it wants to pass this bill; if it wants to pass this bill any time between now and November, the Senate is going to have to give us cloture on this bill. Otherwise, Mr. President, we shall be hearing all sorts of amendments that are not germane to the bill and that are extremely controversial that, if they are added to the bill, will mean that the bill probably will not become law, anyhow. It probably will not even pass the Senate, because that will involve other issues where we could not get a limitation; people just would not agree to it.

Here are the Muskie and the Glenn amendments. I doubt very much that one can get a limitation of debate on that. I do not believe it could be done.

The Humphrey-Hawkins amendment, they cannot get a limitation on that. Both of those two are pending.

Mr. President, just look at all the other amendments that are here. Yes; I have been willing to accept some amendments that are not germane to the bill, but they were tax amendments or they were welfare amendments, and we have some tax and welfare amendments in the bill. But here is all the printed amendments we have to vote on already, Mr. President. Senators have up until the decision on cloture has been announced to file additional amendments. They can, if they want to, file hundreds of additional amendments between now and the time the announcement is finally made. For example, if there is anything in the bill they do not like, they can put an amendment out there to strike it between now and the time the decision on cloture has been announced.

If we do not limit the bill on some reasonable basis, as has been proposed, but instead permit this bill to be the horse, you might say, for more riders—for the Humphrey-Hawkins bill and the sunset bill, for hospital costs containment and the textile quota proposal—all that means is that the horse just cannot carry that much burden.

I have said many times that these enormous bills, if they are going to have a rider, should not have a rider so big that the horse cannot carry it. Mr. President, if you load all these amendments on the bill in addition to what is on there already, then to think that the bill is going to become law is just to deceive ourselves. We have all we can handle here in the area on which we will be voting. Senators are going to have to decide that they will not let this bill be held hostage for the other controversial measures that are yet to be voted on if this bill is to become law.

Otherwise, Mr. President, the October 14 adjournment date is out; just forget about it. We are not going to be able to adjourn on October 14. That is a commitment that has been made, but only the Senate can keep that commitment. Only the Senate can decide that we are going to take care of the crucial matters that must be voted on. But we are going to have to say we will vote on this bill, but this will have to stand alone, we will limit it to germane amendments. Then if you want to take up Humphrey-Hawkins, see if we can get cloture on that; if you want to take up sunset, see if we can get cloture on that. Either this bill will not pass or we will be here in November and December arguing about it.

In addition to all this yet to be voted on, there are 60 unprinted amendments out there that also may have to be voted on, in addition to all those that will come to the desk between now and the time we announce the result of the cloture vote.

Mr. BIDEN. Will the Senator yield for a question?

Mr. LONG. I yield.

Mr. BIDEN. Did I understand the Senator to say he would agree, he would like to see a time agreement on the Muskie and Glenn amendments?

Mr. LONG. I am not in favor of the Glenn amendment, I say to the Senator. As far as I am concerned, I am not ready to agree to an amendment of that sort.

As far as I am concerned, I do not think the Senate understands that amendment. I am not sure I fully understood it myself. So I am not ready to agree to that.

As a matter of fact, that is not germane to this bill and I do not think it is even germane to the Muskie amendment.

Mr. MUSKIE. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. MUSKIE. I yield 2 minutes to the Senator from Ohio.

Mr. GLENN. Mr. President, I think the last statement by the manager of the bill places the blame exactly where it should be. The hesitancy about permitting a vote on these very important matters lies strictly with the floor manager of the bill. I was willing to settle the other night for 15 minutes, evenly divided, 7½ minutes to a side, if we could get a vote. That could not be agreed to.

To say that the amendment I have offered is one that is hard to understand just flies in the face of reason. It is very simple. It says that we will place a review process—nothing more—a review process on tax incentives and tax amendments.

All the other items, any of these things that have been brought up on about what we do to veterans, widows and children, and all the other things, are just not correct.

So I want to correct that impression. The blame lies not with us for being unwilling to accept a vote. We would have accepted a vote at any time, and all in a very short time limit.

So we have not been delaying things.

Mr. President, I am extremely glad the Senate has had an opportunity to consider this proposal, after 3 years of working with Senator MUSKIE on this.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GLENN. I thank the Chair and I thank Senator MUSKIE.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the time for debate having expired, the clerk will state the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION (AS MODIFIED)

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the committee amendment in the nature of a substitute for H.R. 13511, a bill to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

Robert C. Byrd, Gaylord Nelson, Muriel Humphrey, Harrison A. Williams, Jr., Spark M. Matsunaga, Donald W. Riegle, Jr., Alan Cranston, Russell B. Long, Abraham Ribicoff, Robert Dole, Howard H. Baker, Jr., Jacob K. Javits, Clifford P. Hansen, Howard M. Metzenbaum, Barry Goldwater, Carl T. Curtis, James B. Pearson, Lowell P. Weicker, Jr., Richard S. Schweiker, Paul Laxalt.

VOTE

The PRESIDING OFFICER. The question is, is it the sense of the Senate that debate be brought to a close?

The yeas and nays are automatic. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HASKELL), and the Senator from Maine (Mr. HATHAWAY) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. ANDERSON) would vote "nay."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "yea."

The PRESIDING OFFICER. Have all Senators voted?

The result was announced—yeas 62, nays 28, as follows:

[Rollcall Vote No. 465 Leg.]

YEAS—62

Allen	Hansen	Pell
Baker	Hatch	Randolph
Bartlett	Hatfield,	Ribicoff
Bellmon	Mark O.	Roth
Bentsen	Hayakawa	Sasser
Burdick	Heinz	Schmitt
Byrd,	Helms	Schweiker
Harry F., Jr.	Hollings	Scott
Byrd, Robert C.	Huddleston	Sparkman
Chafee	Jackson	Stafford
Church	Johnston	Stennis
Curtis	Laxalt	Stevens
Danforth	Leahy	Stevenson
DeConcini	Long	Stone
Dole	Lugar	Talmadge
Durkin	Magnuson	Thurmond
Eagleton	Mathias	Wallop
Eastland	Melcher	Weicker
Ford	Moynihan	Young
Garn	Nunn	Zorinsky
Goldwater	Packwood	
Gravel	Pearson	

NAYS—28

Abourezk	Hart	McIntyre
Bayh	Hatfield,	Metzenbaum
Biden	Paul G.	Morgan
Brooke	Hodges	Muskie
Case	Humphrey	Nelson
Chiles	Inouye	Proxmire
Clark	Javits	Riegle
Cranston	Kennedy	Sarbanes
Culver	Matsunaga	Williams
Glenn	McGovern	

NOT VOTING—10

Anderson	Griffin	Percy
Bumpers	Haskell	Tower
Cannon	Hathaway	
Domenici	McClure	

The PRESIDING OFFICER. On this vote, the yeas are 62, the nays are 28. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Each Senator now has 1 hour for debate.

Who yields time?

PUBLIC UTILITY RATES—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senate will now proceed to vote on the conference report on H.R. 4018. On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. JACKSON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JACKSON. Mr. President, I ask unanimous consent that the clerk indicate which conference we are now about to vote on. Is it the utility rate reform conference report or the conservation bill?

The PRESIDING OFFICER. It is the utility rate reform conference report.

The Clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. PACKWOOD (after having voted in the affirmative). Mr. President, on this vote I have a pair with the distinguished Senator from Texas (Mr. TOWER). If he were present and voting, he would vote "nay." I have previously voted "yea." I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HASKELL), and the Senator from Maine (Mr. HATHAWAY) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. ANDERSON) would vote "yea."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. DOMENICI) and the Senator from Illinois (Mr. PERCY) would each vote "yea."

The PRESIDING OFFICER. Have all Members in the Chamber voted?

The result was announced—yeas 76, nays 13, as follows:

[Rollcall Vote No. 466 Leg.]

YEAS—76

Abourezk	Hatfield,	Muskie
Allen	Mark O.	Nelson
Baker	Hatfield,	Nunn
Bayh	Paul G.	Pearson
Bentsen	Hayakawa	Pell
Biden	Heinz	Proxmire
Brooke	Helms	Randolph
Burdick	Hodges	Ribicoff
Byrd,	Hollings	Riegle
Harry F., Jr.	Huddleston	Roth
Byrd, Robert C.	Humphrey	Sarbanes
Case	Inouye	Sasser
Chafee	Jackson	Schweiker
Chiles	Javits	Sparkman
Church	Johnston	Stafford
Clark	Kennedy	Stevens
Cranston	Leahy	Stevenson
Culver	Long	Stone
Danforth	Magnuson	Talmadge
DeConcini	Mathias	Thurmond
Dole	Matsunaga	Wallop
Durkin	McGovern	Weicker
Eagleton	McIntyre	Williams
Ford	Melcher	Young
Glenn	Metzenbaum	Zorinsky
Gravel	Morgan	
Hart	Moynihan	

NAYS—13

Bartlett	Goldwater	Lugar
Bellmon	Hansen	Schmitt
Curtis	Hatch	Scott
Garn	Laxalt	Stennis

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Packwood, for.

NOT VOTING—11

Anderson	Griffin	Percy
Bumpers	Haskell	Tower
Cannon	Hathaway	
Domenici	McClure	

So the conference report on H.R. 4018 was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. RANDOLPH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL ENERGY CONSERVATION POLICY ACT—CONFERENCE REPORT

The PRESIDING OFFICER (Mr. METZENBAUM). The question is on agreeing to the conference report on H.R. 5037, the conference report on conservation.

Mr. JACKSON. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JACKSON. Is that not the conference report on conservation?

The PRESIDING OFFICER. The Senator from Washington is correct.

The yeas and nays have been ordered, and the clerk will call he roll.

The legislative clerk called the roll.

Mr. STAFFORD (when his name was called). Mr. President, on this vote I have a pair with the Senator from Texas (Mr. TOWER). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Nevada (Mr. CANNON), the Senator from Colorado (Mr. HASKELL), and the Senator from Maine (Mr. HATHAWAY) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. DOMENICI) and the Senator from Illinois (Mr. PERCY), would each vote "yea."

The PRESIDING OFFICER (Mr. METZENBAUM). Have all Senators voted?

The result was announced—yeas 86, nays 3, as follows:

[Rollcall Vote No. 467 Leg.]

YEAS—86

Abourezk	Burdick	Cranston
Allen	Byrd,	Culver
Baker	Harry F., Jr.	Curtis
Bartlett	Byrd, Robert C.	Danforth
Bayh	Case	DeConcini
Bellmon	Chafee	Dole
Bentsen	Chiles	Durkin
Biden	Church	Eastland
Brooke	Clark	Ford

Glenn	Leahy	Riegle
Goldwater	Long	Roth
Gravel	Lugar	Sarbanes
Hansen	Magnuson	Sasser
Hart	Mathias	Schmitt
Hatfield, Mark O.	Matsunaga	Schweiker
	McGovern	Scott
Hatfield, Paul G.	McIntyre	Sparkman
	Melcher	Stennis
Hayakawa	Metzenbaum	Stevens
Heinz	Morgan	Stevenson
Helms	Moynihan	Stone
Hodges	Muskie	Talmadge
Hollings	Nelson	Thurmond
Huddleston	Nunn	Wallop
Humphrey	Packwood	Weicker
Inouye	Pearson	Williams
Jackson	Pell	Young
Javits	Proxmire	Zorinsky
Johnston	Randolph	
Kennedy	Ribicoff	

NAYS—3

Garn	Hatch	Laxalt

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stafford, for.

NOT VOTING—10

Anderson	Griffin	Percy
Bumpers	Haskell	Tower
Cannon	Hathaway	
Domenici	McClure	

So the conference report (H.R. 5037) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLARIFICATION OF CLOTURE VOTE

● Mr. ROTH. Mr. President, earlier this afternoon I voted for the motion to invoke cloture filed by the distinguished majority leader on H.R. 13511, the Revenue Act of 1978. I would like to take just a moment to clarify why I voted as I did.

Mr. President, although the Sunset legislation itself has been through extensive hearings over the past 3 years, I am not satisfied that the Senate has had ample time to consider the tax expenditure review amendment proposed by Senator GLENN. Unlike the Muskie-Roth Sunset bill, which has received broad bipartisan support, the amendment proposed by Senator GLENN has stirred controversy and raised serious concerns among Members on both sides of the aisle. The serious economic effects of the amendment are unknown and we can ill-afford to adopt proposals with such far-reaching effects without a very clear idea of the possible economic repercussions.

Because of my serious reservations and deep concern with respect to the Glenn amendment and my desire that the Senate have the opportunity to fully debate the proposal, I supported cloture. I did so with the full realization that the passage of cloture on the tax bill would spell doom for not only the tax expenditure review amendment but also for the Muskie-Roth Sunset bill for which I have fought hard and the passage of which I have set as one of my major goals. I hope the issue can be debated at length during the next Congress and a more precise understanding of its effects can be obtained.●

REVENUE ACT OF 1978

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, I call up my printed amendment No. 4029 and ask for its immediate consideration.

Mr. President, a parliamentary inquiry. What is the pending business?

AMENDMENT NO. 4049

The PRESIDING OFFICER. Is that an amendment to the Nelson amendment? The pending question is the Nelson amendment.

Mr. HART. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. At what time does the Senate go back to the consideration of the tax bill?

Mr. LONG. Mr. President, a point of order. The announced amendment is not germane.

The PRESIDING OFFICER. The Senate continued with the consideration of the bill which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (H.R. 13511) to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

The PRESIDING OFFICER. The pending business is the Nelson amendment.

Mr. LONG. My point of order is that it is not germane, Mr. President.

The PRESIDING OFFICER. The point of order having been made, cloture having been invoked which requires germaneness of amendments, the Chair holds that the point of order——

Mr. NELSON. Mr. President, I ask unanimous consent that my pending amendment be temporarily laid aside.

Mr. HATCH. Reserving the right to object——

Mr. CURTIS. Reserving the right to object, may I inquire what the request was?

Mr. NELSON. To temporarily lay aside the pending amendment.

The PRESIDING OFFICER. The Chair has not finished ruling on the point of order. The Chair rules that the point of order is well taken.

Does the Senator from Wisconsin desire recognition?

Mr. NELSON. Mr. President, I call attention to the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON. Mr. President, I ask unanimous consent that the order for——

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, there has been some inclination on the part of several Senators to appeal the ruling of the Chair. I have implored those Senators not to appeal the ruling of the Chair. The Humphrey-Hawkins amendment obviously is not germane. Therefore, I want to say again that I hope the ruling will not be appealed. I do not believe it will be appealed. I suggest we proceed.

Mr. NELSON. Mr. President, I would just like to say——

Mr. ROBERT C. BYRD. Let me say this, too, Mr. President, on the part of other Senators who may disagree with me. I take the whole burden of urging that there be no appeal of the ruling of the Chair. I make that appeal myself to all Senators, not to appeal this ruling because the appeal is wrong, the amendment obviously is not germane. I do not believe that the appeal would carry, and if the appeal were made and failed I think the chances then of being successful in getting the Humphrey-Hawkins measure up and getting cloture on it would be nil.

Mr. NELSON. Mr. President, I do not intend to appeal the ruling of the Chair on this measure, but I hope that when we complete the tax bill, which we may be able now to do by tomorrow evening, we shall have an opportunity to vote on or to get a chance to take up Humphrey-Hawkins. I, along with a number of others, shall make every effort to see that that is done.

AMENDMENT NO. 3681, AS MODIFIED

The PRESIDING OFFICER. The question now recurs on agreeing to the amendment of the Senator from Maine.

Mr. LONG. I make the point of order, Mr. President, that the amendment is not germane.

The PRESIDING OFFICER. The point of order is well taken.

Mr. MUSKIE. Mr. President, what was the item?

The PRESIDING OFFICER. The amendment of the Senator from Ohio to the amendment of the Senator from Maine.

AMENDMENT NO. 3678, AS MODIFIED

The question now is on agreeing to the amendment of the Senator from Maine.

Mr. LONG. I make the point of order, Mr. President, that that amendment is not germane.

Mr. MUSKIE. Is this the sunset amendment?

The PRESIDENT OFFICER. The Senator is correct.

Mr. MUSKIE. Mr. President, I appeal the ruling of the Chair.

The PRESIDING OFFICER. The point of order is well taken. Does the Senator from Maine desire to appeal the decision of the Chair?

Mr. MUSKIE. In light of the fact that I shall have no other opportunity to get a vote on this issue on its own merits, which I have not yet had——

Mr. GLENN. Mr. President, is this——

The PRESIDING OFFICER. There was a ruling on the amendment of the Senator from Ohio that the amendment is not germane. The Chair has now ruled that the amendment of the Senator from Maine is not germane.

Mr. MUSKIE. That is the ruling that I should like to appeal, because I see no other chance to give the Senators a chance to vote on sunset on its merits in this session. After 3 years, I should at least like to have that satisfaction.

Mr. LONG. Mr. President, will the Senator withhold his appeal for just a moment, long enough for me to make a brief statement?

The PRESIDING OFFICER. Does the Senator from Maine withhold his appeal long enough for the Senator from Louisiana to make a brief statement?

Mr. MUSKIE. Of course.

Mr. LONG. Mr. President, the whole idea of cloture is that the Senate agrees that it is going to limit itself to germane amendments. To do anything other than that is to ask the Senate to stultify itself after having voted to limit itself to germaneness.

The Senator from Maine himself stood there and asked the Senate to vote against cloture earlier, because his amendment would not be in order for the simple reason that it would not be germane. At this point, to ask the Senate to rule that it is germane after the Senator himself said it is not germane is to ask this Senate to stultify itself. If we are going to do that, we might as well not have a cloture rule, because anyone can get up and offer amendments to anything, an appropriation bill or anything else, and ask the Senate to vote on its merits when it is clearly out of order.

The Senator from Maine has kept amendments from being offered as much as anyone, under the budget rule. We have not asked anyone to say what means, but when the Senate agrees in advance that an amendment is not germane, and the Senator himself said it is not, he should not then proceed to appeal the ruling of the Chair and ask that it be germane.

Mr. CHILES. Will the Senator yield?

Mr. LONG. Yes.

Mr. CHILES. If my memory serves me right, the Senator who is the distinguished chairman of the Finance Committee has appealed a ruling on a point of order and had overruled a point of order that was given by the Chair, has he not, on a point raised by the chairman of the Budget Committee. That is all right, I guess: that does not violate anything, if the distinguished chairman of the Finance Committee wants to appeal something.

Mr. LONG. We were talking about an interpretation of the Budget Act and what it means. We were not talking about an amendment that everybody agreed in advance was not germane.

Mr. CHILES. I thought we were talking about rules of the Senate and I thought we were talking about what we passed in here and rules of the Senate and whether they are going to be followed, whether we are going to follow the Parliamentarian and the rules or not. It seems to me the sauce is just the same on the goose as it is on the gander if we are talking about that.

Mr. LONG. Those who vote against cloture can very well contend that they did not vote for cloture and they are not going to abide by the cloture rule. When one votes for cloture, that is a gentlemen's compact at a minimum that you are going to limit this to germaneness.

Mr. CHILES. This gentleman here has a contract and that contract should be just as binding that I am going to follow the Parliamentarian in all matters or not follow him, period; that I am going to follow my own persuasion when I want to, or I am going to follow the rules. It seems to me that that is the kind of contract we are talking about here. It seems to me the distinguished chairman of the Finance Committee is saying, "No, I want to overrule the Chair when it affects my domain or something I am interested in, but don't overrule that Chair if you are affecting something that I am on the other side of."

Mr. LONG. Any Senator has the right to appeal the ruling of the Chair. Every Senator has a right to do so. But I implore the Senate, having agreed that it is going to limit itself to germaneness, to be true to what it, itself, just agreed to when it voted the cloture rule, that all amendments must be germane. It was agreed to in advance that this amendment was not germane and the sponsors of it asked us to vote against cloture for that reason. Therefore, Mr. President, I hope the appeal will not be made.

Mr. MUSKIE. Mr. President, if I may have a couple of minutes to respond to the distinguished chairman of the Finance Committee.

The PRESIDING OFFICER (Mr. ABOUREZK). Will the Senator suspend for just a minute until we get order in the Chamber?

The Senator from Maine is recognized on his own time. The Chair will ask for order in the Chamber so we can hear what is being said.

Mr. MUSKIE. Mr. President, first of all, I think the distinguished Senator from Florida is right on target. The chairman of the Committee on Finance appealed the ruling of the Chair on a point of order that I raised—that I still think was valid—that I think was overruled by the Senate as a whole, because the Senate was more interested in the substantive issue before it than in the point of order. Regardless, if it is the prerogative of the chairman of the Committee on Finance to appeal the ruling of the Chair, it seems to me I have at least the same prerogative.

Second, I did not initiate the cloture motion rule. That was initiated by the majority leader and the chairman of the Committee on Finance in order to cut me off, with a nongermane amendment, because they wanted to proceed to the business of the Senate, which was the tax bill, which is their prerogative.

I was then left with no option but to file a cloture motion to try to protect my rights. I wanted to vote. I was not seeking to delay, I was not filibustering.

Those who offered the first cloture motion, which has now been approved by the Senate, now seek to sustain that motion on the idea that I was filibustering. They are the people who are killing time, and are the people who are trying to kill sunset. So, I have no choice.

I make my argument not in terms of the parliamentary situation, but in broad terms. If we are considering, as we are, a tax reduction bill that would cut revenues by $50 billion in the first full year—if we are talking about that, then it is relevant, in the broad sense if not the parliamentary sense, to be doing everything we can to insure that spending is cut as well. That is what sunset is all about.

This sunset provision does not have the Glenn amendment on it, it does not have anything else on it. It is just the pure mechanism to control spending that a majority of this Senate has indicated support for; even if we cannot control revenues, to control spending. Even in that broad sense, I expect I shall lose, given the vote on cloture that was taken awhile ago. But at least, on the question of germaneness, I shall have the only vote, apparently, that I am going to get in this session, the only vote I am going to get, after 3 years of effort, on sunset. So, I say to the Senator, I am going to appeal in order to get that vote even if I do not get any vote except my own.

Mr. LONG. Will the Senator yield for a question?

Mr. MUSKIE. Yes, I yield.

Mr. LONG. Does the Senator from Maine really contend, does he seriously contend that under the precedents on cloture, his amendment is germane?

Mr. MUSKIE. I have said, if the Senator had been listening instead of working up his indignation against me, that in terms of the parliamentary situation, I may not be germane. But in the broad, practical, policymaking sense, if you try to tell me that cutting spending is not related to cutting taxes, then all you believe in is escalating deficits. I say they are related in the broad policy-related sense and I am going to ask for a vote on germaneness, because it is the only kind of vote I can get in this session after 3 years of effort. If I lose it, and if I am the only Senator voting for it, I am going to get a vote. I do not know of any way to deny me that vote.

Mr. LONG addressed the Chair.

Mr. MUSKIE. So I appeal the ruling of the Chair.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The appeal is not debatable. The question is——

Mr. MUSKIE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to speak for 1 minute on my own time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Maine, in referring to the cloture motion that had been offered, said that the Senator from Louisiana and the majority leader had offered the cloture motion in order to "try to cut me off."

Of course, I did not have the Senator's amendment in mind when I offered the cloture motion. I offered it in order to cut off all nongermane amendments. I did not do so with any intent to direct it to the Senator.

Mr. MUSKIE. I understand that. I made that statement in the context of my sitting here all this morning and

Saturday afternoon, listening to nongermane amendment after nongermane amendment, of much less consequence than this one, be considered, accepted by the floor managers, and adopted by the Senate.

But now I am told that this nongermane amendment ought not be considered. The effect of the cloture motion was to cut off nongermane amendments, and it has done that. I accept that, but it forces me into the corner where there is only one way I can get a vote. This is it.

But I did not mean, and I apologize if I implied, that the majority leader was zeroing in on my situation, because I know he was not.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. President, may I now have 2 minutes, and I ask unanimous consent.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I have urged those Senators who were very interested in the Humphrey-Hawkins amendment not to appeal the ruling of the Chair, and they acceded to my request.

I cannot, in good conscience, then support this appeal.

I would hope the distinguished Senator from Maine would not press his appeal. The amendment is obviously not germane.

I support the sunset amendment. I voted with the distinguished Senator from Maine the other day in the fracas over the budget matter. I voted against the Senator from Louisiana's position that day. I voted with the Senator from Maine, and having urged Senators who are very supportive of the Humphrey-Hawkins not to appeal the ruling of the Chair, I would hope the Senator would not appeal the ruling.

If he does, I will have to vote against the appeal and uphold the Chair because the amendment is obviously not germane.

If cloture is going to mean anything, it means that nongermane amendments are not in order, no matter how appealing they may be on the surface.

I would hope, I say with all due respect to my friend from Maine, I would hope if he presses the appeal that the Senate will uphold the Chair.

I support his amendment, but I do not think this is the way to go about it.

Mr. MUSKIE. Mr. President, if I may say this, I have a sneaking idea—I will not say anything more—that Humphrey-Hawkins is going to get another chance at a vote.

There is nothing to indicate I will get another chance at a vote on sunset in this session.

The distinguished majority leader knows I cooperate with him in every way I can at any time. I think he has done a tremendous job in the last 2 years leading this Senate, dealing with some of the most difficult issues that I have ever seen the Senate have to face, and I have great respect and affection for him. But I just cannot let a third year in a row go by without some indication of whether this idea, which I think the people in the country support, is a sensible idea that deserves consideration.

Mr. RIBICOFF. Will the Senator yield?

Mr. MUSKIE. Yes.

Mr. RIBICOFF. May I ask the majority leader whether he cannot give the Senator from Maine the assurance that he will have a vote before the session is over on sunset?

I followed my chairman of the Finance Committee, but I am in complete agreement with the Senator from Maine that there is not a more important piece of legislation that this Congress, or any succeeding Congress, can adopt than sunset legislation if we really are for economy in Government.

I agree with the Senator from Maine that it does have an impact on the tax bill because if there ever is a way of cutting unnecessary expenditures and having program evaluation, it is the sunset proposal of the Senator from Maine.

I am wondering if the Senator cannot give him the assurance. It would seem to me that in a day or so we will be finished with the tax bill. It is going to take at least 3 more days to go through conference. The Senate will have business until Saturday. I think for this body and the country we should go on record that we are for the Senator from Maine's sunset proposal.

Can the Senator not give the Senator from Maine that assurance?

Mr. ROBERT C. BYRD. I can give him assurance that I will try.

The PRESIDING OFFICER. The 2 minutes of the Senator from West Virginia have expired.

Mr. ROBERT C. BYRD. I ask unanimous consent I may proceed for 1 minute.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I will try. First, I promised Senators who are supporting Humphrey-Hawkins I would try to get that up, and, second to that, I will try to help the Senator get a vote on sunset.

Mr. MUSKIE. On that promise, Mr. President, because I know the majority leader is a man of his word, because I, personally, instinctively recoil against stretching the precedents of the Senate too far, I will withhold my appeal and work with the Senator to try to get a vehicle that will enable us an up-or-down, yes-or-no vote on sunset. I would like to get a vote this week on sunset.

The PRESIDING OFFICER. The Chair would state that it requires unanimous consent to withdraw the appeal since the yeas and nays were ordered.

Mr. MUSKIE. Mr. President, I ask unanimous consent I may withdraw the appeal under the circumstances we discussed.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Would the Chair state what the pending business is now before the Senate?

The PRESIDING OFFICER. Yes.

There is no amendment pending, but the order for the Senate is to proceed to the Hatch unprinted amendment No. 2031.

Several Senators addressed the Chair.

Mr. HART. Will the Senator yield for a unanimous-consent request?

Mr. HATCH. Yes, on the Senator's time.

Mr. HART. Mr. President, I ask unanimous consent it be in order to call up my amendment No. 4059 at the conclusion of the pending amendment.

Mr. NUNN. Mr. President, reserving the right to object, and I hope not to object, but we have an amendment that is very similar to the Senator from Colorado's amendment. I would ask that he would amend his unanimous-consent request and ask amendment No. 4084, which is on the same subject and really has some similarities, that he would amend the unanimous-consent request so that amendment No. 4084 would be called up immediately subsequent to the disposal of the Senator from Colorado's amendment.

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. SARBANES). The Senator will state it.

Mr. CURTIS. If an amendment is called up by unanimous consent, under the cloture procedure, does that waive the germaneness?

The PRESIDING OFFICER. The Chair would inform the Senator from Nebraska that it does not waive the germaneness requirement postcloture.

Mr. CURTIS. I thank the Senator.

Several Senators addressed the Chair.

Mr. HATCH. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Utah, under the previously entered unanimous-consent request, it is in order to call up the Senator's amendment.

Mr. HATCH. Mr. President, I ask unanimous consent that the amendment of Senator NUNN be permitted to be called up at this time and mine immediately thereafter.

Mr. DANFORTH. Reserving the right to object——

Several Senators addressed the Chair.

Mr. DANFORTH. Would the Senator restate his request?

Mr. GLENN. Mr. President, we could not hear the proposal of the Senator from Utah.

The PRESIDING OFFICER. The point of the Senator from Ohio is well taken. The Senate will suspend proceedings momentarily, while we clear the aisles. Members will take their seats. Members who wish to converse will please withdraw to the cloakroom.

The Senator from Utah, under the previous unanimous-consent request, has been directed to call up an amendment, and he has asked unanimous consent that the Senator from Georgia be allowed to proceed to call up his amendment. Is there objection?

Mr. HART. Mr. President, reserving the right to object, I just want to point out that the Senator from Utah is now calling up his amendment by unanimous consent. I made the same request of the Senate. The Senator from Utah has

objected and has now interposed another objection, which is not even in keeping with what the Senator from Georgia wants. I am curious as to why he would make that request, but under the circumstances I have to object.

The PRESIDING OFFICER. Objection is heard.

UP AMENDMENT NO. 2031

(Purpose: To reinstate the tax treatment with respect to annuity contracts with reserves based on a segregated account as they existed prior to the issuance of Revenue Ruling 77-85. To reaffirm existing law as upheld by U.S. District Court against illegal IRS ruling 77-85, an IRS ruling which unilaterally overturned 70 consistent IRS rulings over a decade and remade tax law without the consent of Congress and in the face of the opposition of the Congress)

Mr. HATCH. Let us proceed with the Hatch amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an unprinted amendment numbered 2031, for himself, Mr. SCHWEIKER, and Mr. TOWER.

The amendment is as follows:

At the end of the bill add the following new section:

SEC. . That in the case of annuity contracts which have related amounts based on a segregated asset account, the tax treatment of such contracts under section 61 of the Internal Revenue Code of 1954 (defining gross income) and section 801(g)(1)(B) of such Code (relating to contracts with reserves based on a segregated asset account) shall be determined—

(1) without regard to Revenue Ruling 77-85 (and without regard to any other regulation, ruling, or decision reaching the same result as, or a result similar to, the result set forth in such Revenue ruling); and

(2) with full regard to the rules in effect before Revenue Ruling 77-85.

Mr. HATCH. Mr. President, this amendment would correct the Internal Revenue Service, which has issued more than 70 rulings on investment annuities and now is going to revoke all those rulings, while admitting that they do not know what they are doing. The amendment requires that they not be able to do this unless Congress approves.

With that, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, I ask the Chair if this amendment is in order, if it is germane.

The PRESIDING OFFICER. If the Senator will extend the Chair a degree of patience, the Chair will examine the amendment.

The Chair advises the Senator from Wisconsin that if he wishes to lodge a point of order against the amendment on the ground of germaneness, the Chair will be prepared to rule on that point of order; but the Chair does not feel that it can counsel the Senator in response to a parliamentary inquiry as to whether or not the amendment is germane.

Mr. PROXMIRE. I ask the Senator from Utah whether this is the investment annuity amendment.

Mr. HATCH. Yes.

Mr. PROXMIRE. Mr. President, I make the point of order that this amendment is not germane.

The PRESIDING OFFICER. There being nothing in the bill dealing with investment annuity contracts, the Chair sustains the point of order raised by the Senator from Wisconsin.

UP AMENDMENT NO. 2033

(Purpose: To prohibit the issuance of fringe benefit regulations)

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an unprinted amendment numbered 2033, for himself, Mr. STEVENS, Mr. CURTIS, Mr. EASTLAND, Mr. TOWER, Mr. YOUNG, Mr. DOMENICI, Mr. SCHMITT, Mr. HELMS, Mr. GARN, Mr. GOLDWATER, and Mr. HAYAKAWA.

The amendment is as follows:

At the end of the bill add the following section:

SEC. . FRINGE BENEFIT REGULATIONS.

No regulation shall be issued in final form providing for the inclusion of any fringe benefit as part of gross income by reason of Section 61 of the Internal Reveue Code of 1954.

Mr. HATCH. Mr. President, this amendment would prevent the IRS from issuing regulations with regard to fringe benefits without the consent of Congress.

With that, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. METZENBAUM. Mr. President, I raise the point of order with respect to this amendment that it is not germane.

The PRESIDING OFFICER. A point of order against the amendment on the ground of germaneness has been raised.

Although this bill does deal with the subject of fringe benefits in another regard, this amendment would add new subject matter and therefore is not germane, and the point of order is sustained.

Under the previous order, the Senator from Florida (Mr. STONE) is recognized to call up an amendment numbered 3882.

Mr. MELCHER. Mr. President, I wonder if the proper order is not that my amendment is to be called up at this time.

The PRESIDING OFFICER. Will the Senator repeat that?

UP AMENDMENT NO. 2034

(Purpose: To provide that both the decedent's and spouse's services are given adequate consideration in determining estate tax basis for jointly owned farm or business interests)

Mr. MELCHER. Mr. President, a parliamentary inquiry. I wonder whether a review of the order of amendments will show that mine is the next up.

The PRESIDING OFFICER. The Chair informs the Senator from Montana that it is the Chair's understanding that the Senator's amendment is to follow that of the Senator from Florida. Since the Senator from Florida is not present to call up the amendment, the Chair recognizes the Senator from Montana to call up amendment No. 2034.

The amendment will be stated.

Mr. MELCHER. Mr. President, I yield to the Senator from Colorado for a unanimous-consent request.

The assistant legislative clerk read as follows:

The Senator from Montana (Mr. MELCHER) proposes an unprinted amendment numbered 2034.

The amendment is as follows:

On page 374, line 18, strike out "spouse of the decedent" and insert in lieu thereof "decedent and the spouse of the decedent".

On page 374, lines 22 and 23, strike out "acquisition indebtedness" and insert in lieu thereof "value"

On page 375, lines 7 and 8, strike out "acquisition indebtedness" and insert in lieu thereof "value"

On page 376, strike out lines 8 through 15 and insert in lieu thereof the following new subparagraphs:

"(C) Inherited property.—For purposes of applying this subsection and subsection (a) in the case of any property which had been acquired as separate property either by the decedent or surviving spouse by gift, bequest, devise, or inheritance, the value of such property (at the time acquired by the decedent or surviving spouse) shall be taken into account under this subsection as additional consideration furnished by the decedent or spouse who acquired such property by gift, bequest, devise, or

"(D) COORDINATION WITH SUBSECTION (a).—If elected by the executor, the amount of consideration furnished shall be determined solely under this subsection for purposes of applying subsection (a). The election shall be made in such manner as prescribed by the Secretary."

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, I ask unanimous consent that it be in order, following the disposition of the amendments that are pending and which have been set aside, to take up the following amendments in the following order, by number:

My amendment No. 4059; the amendment by the Senator from Georgia (Mr. NUNN), No. 4084; the amendment by the Senator from Missouri (Mr. DANFORTH), No. 4055; the amendment by the Senator from New York (Mr. JAVITS), No. 4076.

Mr. President, this unanimous-consent request is put forward because all four of these measures have to do with the tax rates and in almost all cases with conditional tax cuts. So there is similarity among these measures, and it makes eminent sense to the sponsors to take them up serially.

Mr. HEINZ. Mr. President, reserving the right to object, I have been trying to get recognition to offer an amendment for quite some time—one which happens to deal with the question of corporate rates for small businesses. I would like to go ahead of Mr. DANFORTH and Mr. JAVITS, and I would like to dispose of my amendment first. I would appreciate it if the Senator from Colorado would

modify his unanimous-consent request accordingly.

Mr. HART. Mr. President, I modify the unanimous-consent request as follows: to insert the amendment by Mr. HEINZ following the amendment by the Senator from Georgia (Mr. NUNN) and prior to the amendment by the Senator from Missouri (Mr. DANFORTH).

Mr. HEINZ. Mr. President, reserving the right to object, I thank the Senator from Colorado and all the Senators involved.

Mr. NUNN. Mr. President, reserving the right to object the order would be the amendment by the Senator from Colorado, followed by the Nunn amendment, followed by the Heinz amendment, followed by the Danforth amendment, followed by the Javits amendment.

The PRESIDING OFFICER. Is there objection?

Mr. NELSON. Mr. President, are we going to proceed here with unanimous consent? I would like to get an order in, too. I have been waiting for 2 days.

I am just wondering what is the procedure.

The PRESIDING OFFICER. The Chair will inform the Senate that under previous unanimous-consent orders that were agreed to, the Chair was following the sequence. There is now pending the amendment of the Senator from Montana (Mr. MELCHER). Under those previous orders, that will be followed by Senator BAYH and Senator HELMS. Beyond that there is not at the moment pending a request for sequence.

We now have pending, however, the request which is now being submitted to the Chair which at this point embraces amendments offered on the part of five Members of the Senate.

Mr. HART. Mr. President, let me state to the Senator from Wisconsin one of the reasons for propounding this. I think all of us have also waited a couple of days. But they are related amendments. They make sense back to back with each other. I think the debate will flow by having them back to back because they are all going to relate to each other.

Mr. NUNN. Mr. President, also I might say, if the Senator will yield, it will save the Senate a considerable amount of time to take the amendments in order. Some amendments are interrelated. If some amendments are agreed to, some other amendments will be withdrawn. If we take them out of order, it will take a lot more time. I think it makes sense to everyone to proceed in this general direction.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. LONG. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Reservation is heard.

Mr. LONG. I will be willing to agree to the first two amendments in the order requested, but I wish to reserve judgment on the remainder of them until I know about it. I am willing to agree to the first two, if the Senator will modify it.

Mr. HART. Mr. President, I repeat the request.

Mr. MELCHER. Here it is.

Mr. HART. I ask unanimous consent that it be in order following the disposition of the three Helms amendments to hold up my amendment No. 2059 and the amendment by the Senator from Georgia (Mr. NUNN), No. 4084.

Mr. DANFORTH. Mr. President, reserving the right to object, I wonder if the Senator from Louisiana will not reconsider his concerns about the last three?

Mr. LONG. I might be willing to. I do not know that much. I am willing to agree to the first part of it. We will worry about the remainder of it later on. Let us get the first two up and then talk about the others.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. I thank the Senator from Montana.

The PRESIDING OFFICER. Will the Senator suspend momentarily? If we could clear the aisles we would have order in the Senate. Could Members clear the aisles, please, and take their seats?

The Chair will observe there is a great number of staff people in the Chamber. It will help contribute to the decorum if the staff would also take their seats.

The Senator from Montana.

UP AMENDMENT NO. 2045

Mr. MELCHER. Mr. President, earlier today I offered an amendment to more equitably arrange for the inheritance tax for the surviving spouse in the case of the death of her husband for property that was owned originally by the husband and then later on after marriage was shared jointly by the couple.

The situation is that even with the bill that is before us and with the very fine corrections that Senator NELSON incorporated in the bill the surviving spouse is discriminated against. Generally a case is that of a husband who has inherited some property and then during the marriage they work side by side and the property increases in value during their joint ownership, say, for 25 years or longer, and then the husband dies.

Under my amendment the value of the property at the time that the husband acquired or inherited it would then be deducted in determining the most advantageous tax position for the spouse.

As I had it originally drafted, the Treasury Department had some objections to my amendment.

For that reason, I have consulted with the Treasury Department, and I believe we have worked out a satisfactory solution to that. I have a modification of my amendment at the desk.

I ask unanimous consent that the amendment be so modified and stated by the clerk.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request for the modification of the Senator's amendment?

Mr. RIBICOFF. Mr. President, the amendment of the Senator from Montana has been worked out with the Treasury Department, as brought up earlier. As modified, it is acceptable to the manager of this bill.

The PRESIDING OFFICER. There being no objection to the request, the amendment is modified.

The amendment, as modified, is as follows:

On page 374, line 18, of the Committee Amendment strike out "spouse of the decedent" and insert in lieu thereof "decedent and the spouse of the decedent".

On page 374, lines 22 and 23, strike out "acquisition indebtedness" and insert in lieu thereof "value".

On page 374, line 23, following the comma insert the following:

"less the portion attributable to the actual consideration of each spouse including a reasonable return on such consideration; provided that the total value attributable to the deemed consideration is not greater than $500,000,"

Mr. MELCHER. Mr. President, there is a question on what should be considered as a reasonable return on such actual consideration attributable to either spouse, and for that purpose I intend that the reasonable return on such consideration will be the prime rate of interest less the amount of the property taxes paid each year and computed for each year. I draw that to the attention of the manager of the bill. I hope that meets with his approval also.

Mr. RIBICOFF. With that interpretation, it is agreeable to the manager of the bill.

Finally, Mr. President, I call attention to all Members of the Senate that there is a cap on this and that the amount attributable to be deemed consideration would not be greater than $500,000.

I hope all Members of the Senate can accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from Montana.

The amendment, as modified, was agreed to.

Mr. MELCHER. Mr. President, I ask unanimous consent that Senator PAUL G. HATFIELD be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CURTIS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Indiana is recognized to call up his amendment numbered 3992, as modified.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that that amendment be temporarily laid aside. The Senator from Indiana obviously is not in the Chamber.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Under the previous order, the Senator

from North Carolina (Mr. HELMS) is recognized to call up the first of three amendments.

UP AMENDMENT NO. 2040

(Purpose: To require that certain procedures be followed with respect to the IRS "Proposed Revenue Procedure on Private Tax-exempt Schools")

Mr. HELMS. Mr. President, I call up my amendment 2040.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS, for himself, Mr. HATCH, Mr. HAYAKAWA, and Mr. MORGAN) proposes an unprinted amendment numbered 2040:

At the appropriate place in the bill, add the following:

"That the 'Proposed Revenue Procedure on Private Tax-Exempt Schools' proposed by the Internal Revenue Service and published on page 37296 of the *Federal Register* of August 22, 1978, and any other procedure or regulation proposed by the Internal Revenue Service relating to the same subject shall not take effect unless such Service complies with all procedures applicable to significant regulations of the Department of the Treasury (within the meaning of the proposed Directive of such Department relating to the preparation, review, and approval of regulations, published on page 22319 of the Federal Register of May 24, 1978).

Mr. RIBICOFF. Mr. President, I raise a point of order. The amendment is not germane. There is nothing in this bill relating to it.

The PRESIDING OFFICER. The Senator from Connecticut made the point of order on the ground of germaneness of the amendment of the Senator from North Carolina.

The Chair sustains the point of order of the Senator from Connecticut on the ground of germaneness.

UP AMENDMENT NO. 2041

Mr. HELMS. Mr. President, the next amendment is 2041 which I call up.

The PRESIDING OFFICER. The clerk will report the next amendment of the Senator from North Carolina.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) for himself and Mr. HATCH proposes an unprinted amendment numbered 2041.

At the end of the bill, add the following new section:

"Section . (a) This section may be cited as the "James B. Allen Taxpayer's Attorney Fee Award Act of 1978".

(b) In any action wherein the United States, or the Internal Revenue Service, or any person acting as an agent or employee of either the United States, or the Internal Revenue Service or of both, is a party and in which tax liability to the United States on the part of any person is at issue or in which a declaration, refund, payment, or any other matter pertaining to a tax of the United States is in dispute, the court may in its discretion award reasonable attorney's fees and costs or reasonable practitioner's fees and costs to any prevailing party other than the United States, the Internal Revenue Service, or any person acting as agent or employee of either the United States or the Internal Revenue Service or of both.

(c) As used in this section, the term "prevailing party" means any person the court may in its discretion determine to have before that court prevailed substantially on the merits, notwithstanding the pendency of any appeal.

Mr. RIBICOFF. Mr. President, I make a point of order that the amendment is not germane. There is nothing in the bill relating to it.

Mr. HELMS. Mr. President, will the Senator withhold that and let me make a few comments? Otherwise I am going to appeal the ruling of the Chair and get a rollcall vote.

Mr. RIBICOFF. I do not mind the Senator making a few comments, but I do not think the Senator should be threatened by a rollcall vote. I have no objection to his making a few comments.

The PRESIDING OFFICER. As I understand, the Senator from Connecticut has withheld momentarily the point of order. Does the Senator from North Carolina wish to make comments?

Mr. HELMS. Will the Chair hold up for just a moment?

Mr. HATCH. Mr. President, will the Senator yield to me? I move to modify the amendment, with the permission of the distinguished Senator from North Carolina, and I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. There is. I do not know what the Senator said.

The PRESIDING OFFICER. The Senator from Utah seeks to modify the amendment offered by the Senator from North Carolina. Is there objection to the request?

Mr. PROXMIRE. Mr. President, were the yeas and nays ordered,

The PRESIDING OFFICER. The yeas and nays have not been requested. The reason the unanimous consent is necessary is that post-cloture an amendment cannot be modified except by unanimous-consent request.

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HELMS. Mr. President, I believe an amendment can be amended.

The PRESIDING OFFICER. By an amendment at the desk.

Mr. HATCH. Well, this amendment is at the desk. We filed it before cloture was invoked.

The PRESIDING OFFICER. If the Senator has an amendment at the desk he can call up the amendment.

Mr. HATCH. I call up that amendment and ask that it amend the amendment of the distinguished Senator from North Carolina.

Mr. HELMS. To make it parliamentarily correct, I call up the Senator's amendment.

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. The Chair would inform the Senator from Utah that the amendment which he had called up is not an amendment to the amendment offered by the Senator from North Carolina, not drafted as such, but is an amendment to the committee substitute.

Mr. HELMS. Mr. President, I suggest the absence of a quorum on my time.

The PRESIDING OFFICER. It is not necessary for the Senator to do that on his own time. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, the distinguished assistant majority leader and I have conferred, and I think we are going to be able to work out something that is satisfactory to all sides. For that reason, I ask unanimous consent that I be permitted to lay aside this amendment temporarily, and to call up amendment No. 3850 instead, the third amendment that I had hoped to call up.

The PRESIDING OFFICER. Without objection, the pending amendment will be temporarily laid aside, and the Senator from North Carolina is recognized to call up his third amendment.

AMENDMENT NO. 3850

(Purpose: To delete the repeal of the nonbusiness deduction of State and local gasoline taxes)

Mr. HELMS. Mr. President, I call up my amendment No. 3850.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (for himself, Mr. RIEGLE, Mr. HATCH, and Mr. TOWER,) proposes an amendment numbered 3850:

Beginning with line 16 on page 159, strike out through line 6 on page 160.

On page 160, line 7, strike out "Subtitle C" and insert in lieu thereof

Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning with line 16 on page 159, strike out through line 6 on page 160.

On page 160, line 7, strike out "Subtitle C" and insert in lieu thereof "Subtitle B".

On page 161, line 12, strike out "Subtitle D" and insert in lieu thereof "Subtitle C".

On page 201, line 18, strike out "Subtitle E" and insert in lieu thereof "Subtitle D".

On page 211, line 13, strike out "Subtitle F" and insert in lieu thereof "Subtitle E".

On page 224, line 1, strike out "Subtitle G" and insert in lieu thereof "Subtitle F".

On pages 126 and 127, strike out the item relating to subtitle B of title I of the bill and the item relating to section 111, and redesignate the items relating to subtitles B, C, D, E, F, and G of title I of the bill as relating to subtitles A, B, C, D, E, and F.

Mr. HELMS. I yield myself such time as I may require.

Mr. President, in what has become almost an annual event, Congress is again attempting to eliminate State and local gasoline taxes as a legitimate deduction on Federal income tax returns.

I have the greatest respect for the distinguished chairman of the Senate Finance Committee and for the outstanding role he and members of his committee have played in formulating a bill that—in my opinion—attempts to provide meaningful tax reduction.

At the same time, Mr. President, I take

strong exception to the proposed deletion of the gas tax deduction. At the very moment when we are trying to provide some long overdue relief for the American taxpayer, there is no reason to increase taxes by disallowing the deduction. Repeal of the gas tax deduction is simply inconsistent with the general thrust of this bill.

Contrary to a sort of myth that some have attempted to build up, this deduction is not a rich man's deduction. For the very wealthy, the dollar value of this deduction is insignificant. Rather, this is a modest tax break for the average citizen.

Mr. President, the distinguished Senator from Michigan (Mr. RIEGLE) is a cosponsor of this amendment, and I hope that he will be able to come to the floor before a vote is conducted on it, because he agrees that citizens receiving the greatest benefit from the gasoline tax deduction are those who must drive their automobiles to work or who live in rural areas, and who are forced to travel great distances for medical care, groceries, farm supplies, and other necessities. These are primarily middle-income people who are already overburdened with taxes and who benefit by the few extra dollars the deduction affords them. Repeal of the deduction is nothing more than another tax increase, and it cannot and should not be viewed in any other light.

The Finance Committee has listed a number of reasons for repeal of the deduction. Basically, the committee makes four arguments: First, the State gas tax is a user-charge; second, that the deduction invites tax fraud because it is based on miles driven, a figure hard to prove and easy to manipulate; third, that repeal of the deduction will help achieve tax simplification for taxpayers; and fourth, that repeal of the deduction will—at least symbolically—promote the country's efforts to conserve energy.

Under close examination, these arguments simply do not hold up.

The Nation's road system benefits everyone, not just the motorist. Without our modern highway system most essential goods could never be transported to consumers. The fact that State highway taxes are used to provide the principal funding for State and county roads actually highlights the tremendous contribution to the national welfare made by the motorists. The deduction of the gasoline tax does shift part of the cost from the highway user to the general taxpayer. But all taxpayers benefit in many ways from the highway system.

The tax-cheating argument is a false issue. Virtually all tax deductions are subject to some abuse, including the gas tax deduction. But this is certainly not a good reason to eliminate a valid deduction. Our tax system in this country is based upon voluntary filing and compliance with the law. The deduction may indeed present audit difficulties for the Internal Revenue Service but since the amount of tax savings to itemizers resulting from the deduction is relatively small, I seriously doubt that there is more tax avoidance associated with this deduction than others.

In response to the committee's argument that repeal would promote simplification, there is no evidence that the American people favor tax "reform" or simplification at the expense of provisions which benefit the middle-income taxpayer, and that is what we are talking about with this amendment. The vast majority of the American people see the gas tax deduction as perfectly reasonable. The committee report admits that virtually every itemizer claims the deduction. That is proof—so it seems to me—that the deduction is easily understood and simple enough for the taxpayer. It is just not reasonable to argue that one less deduction—out of many—will simplify the return of the itemizers.

The energy argument is also highly questionable, almost to the point of being absurd. A virtual doubling of the cost of gasoline over the past 4 years caused by skyrocketing oil prices has not noticeably altered gasoline consumption in this country because the demand for gasoline is inelastic. Most Americans work for a living, with the vast majority not having access to alternate means of transportation. If enormous increases in the price of gasoline will not deter driving, elimination of a mere tax deduction will have no impact at all. So there goes that argument, Mr. President.

The only impact in disallowing the deduction is a tax increase on the American people. Over 70 percent of the revenue that will be raised from the repeal of this deduction will come from taxpayers making less than $30,000 a year. In 1983 alone, the elimination of this deduction will take an additional $2.2 billion from the pockets of the American taxpayer who will also be facing spiraling fuel prices. In the wake of proposition 13, it is hardly the time for Congress to burden the American people through such a "backdoor" tax increase as this if we allow the removal and elimination of the gasoline tax deduction.

Mr. President, I ask unanimous consent that an editorial published in the Durham Morning Herald on September 4, 1978 entitled "Tax Break Should Be Kept," be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

TAX BREAK SHOULD BE KEPT

The Carolina Motor Club, along with its parent organization, the American Automobile Association, should be commended by taxpayers for a last-ditch effort to try to influence members of the Senate Finance Committee to turn back a bill that would disallow the federal income tax deduction for gasoline taxes paid by motorists at the state level.

Unfortunately, the House of Representatives already has voted to repeal the tax deduction and the bill is scheduled to go before the Senate during the week of Sept. 19.

To date, the repeal provision has not received the notice it deserves because it was only a small part of the omnibus tax package, another case of burying important legislation within a complex congressional proposal.

Some proponents of the rescinding action contend erroneously that the deduction favors the rich because it can be used by only those taxpayers.

That argument is ridiculously invalid. The middle class in this country certainly cannot be considered wealthy—not at today's monstrously inflated prices—but it is upon that group that the heaviest of tax burdens are heaped. Repeal of the tax deduction for gas taxes would deprive the middle-class breadwinners who itemize deductions of a sizable return.

Elimination of the tax deduction also would place a discriminatory budren on those who must use their cars for transportation to and from work. It would be especially hurtful to rural residents who must drive long distances just for the simple necessities of life.

The 178,000-member Carolina Motor Club fears that the repeal is not only possible but very probable—unless some minds in Washington are changed quickly.

Mr. HELMS. Mr. President, I yield to the distinguished Senator from Michigan.

Mr. RIEGLE. Mr. President, I thank the distinguished Senator from North Carolina for yielding. I am delighted to join my friend in cosponsoring this amendment, because it goes basically right to the issue of what I think we are trying to accomplish this year in terms of our entire tax effort, and that is to try to provide some intelligent tax relief, particularly for low and middle income people; and we have a number of provisions in this proposed legislation aimed at doing that.

One of the most important things we have done in the past is to have the gasoline tax deductions for that very same purpose.

So we find ourselves at the moment with a paradox where, on the one hand, we are going to offer some tax relief to low and middle income people, and on the other hand we are in the process of taking away a part of the tax code that has been there for several years and which, as has been pointed out, has worked very well.

In terms of basic philosophy, the gasoline tax deduction is very simple. The question is, should somebody have to pay a tax on income that has already been taxed away in another form?

I would submit that they ought not to. This approach to this particular tax has worked very well over a period of time. As has been pointed out, some 87 percent of the dollar value of these deductions has been taken by people who fall in the $10,000 to $50,000-a-year income bracket. So this is not a deduction which benefits a handful of people in the country but it has very broad application. It has broad application across the whole range of what could be legitimately termed the middle income taxpayers.

If anybody wants to advance the argument that somehow or another eliminating this deduction will produce energy savings, there is not anything that supports that contention. As a matter of fact, what studies have been done suggests the reverse, that to eliminate this deduction will be inconsequential in terms of an effect on energy consumption.

I think it is also important to note that a lot of people think driving automobiles is a luxury in today's society. I think that is a myth that any careful appraisal will dispel. In most instances,

people drive cars to get to work, to go shopping, to visit their families, on the weekends, or what have you. It is for essential use. The notion that somehow or another by various tax mechanisms to try to bite into the normal activities that people have to engage in is really a step in the wrong direction.

It would be quite different if today we had mass transportation systems in place all over the country for people to use as an alternative, but they do not exist. As a matter of fact, even as we found here in the District of Columbia to try to provide them is a multibillion dollar operation, as the subway has proven to be here in Washington, D.C.

I think another point that has to be considered is that people, I believe, are beginning to realize that so often in these tax changes we give something with one hand and we take it away with another. We are running into that right now with the social security tax increase for next year. A large part of the effect of this tax decrease in the legislation before us has already been dissipated because of the social security tax increase of next year. So if in addition to that we are going to eliminate the gasoline tax deduction for really no sound reason, a deduction that has been there for many years, if we are going to take that away, I think this just adds to not only the confusion that people have but even in part the cynicism because on the one hand we propose to be giving people tax relief and on the other hand we are taking it away.

I think this particular deduction has proven itself over a period of time to be a sound one. If there is anybody here who wants to really seriously argue that it makes sense to tax income that has already been taxed away, I would like to hear the argument. That is really where I think the case has to be made in terms of preserving this deduction that has been in the Tax Code and which has worked very well.

I say to my colleague, if we had been able to offer this amendment at a different time we would not have found ourselves in quite the same straits as we do now when other amendments have been offered which provide for very large increases in tax benefits of various sorts.

I know the modification my friend is going to offer shortly to try to deal with that problem.

I would hope if we get a chance to vote seriously on the merits of the issue the vote will be to retain the gas tax deduction because it is sound, it is justified, and it accomplishes the very purposes that this bill is held out to accomplish. I thank my friend for yielding.

Mr. HELMS. I thank my friend.

Mr. President, already today this position has been established because the gasoline tax deduction is in the present law. I believe there was a ruling this morning, and I consider it to be a correct one, that maintaining the present law cannot be considered a revenue loss under the Budget Act.

I ask for the yeas and nays on the amendment, Mr. President.

The PRESIDING OFFICER (Mr. STEVENSON). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, the Senator from North Carolina anticipated what I was going to do. I do make the point of order that this is a violation of 311 of the Budget Act. It would knock $400 million of revenue out of the bill and as a result it would put us $400 million over the budget resolution.

I make that point of order and I ask for a ruling.

The PRESIDING OFFICER. The Chair sustains the point of order.

Mr. HELMS. I did not understand the Chair.

The PRESIDING OFFICER. The Chair sustains the point of order.

Mr. HELMS. I appeal the ruling of the Chair and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. RIEGLE. I do not know that the request of the Senator was heard. I wonder if it can be stated again.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays.

Mr. STEVENS. Will the Senator withhold that?

The PRESIDING OFFICER. Is there a sufficient second?

Mr. STEVENS. Mr. President, I ask the Senator to withhold his appeal for just a moment. I feel very strongly about this and I would like take time out of my hour under cloture to explain my position.

As one who has supported the Budget Act in both general and specific terms, I have difficulty with the assumption that where the report of the committee recommends a repeal of the existing law which, if sustained by the Senate, would——

The PRESIDING OFFICER. An appeal is not debatable. Does the Senator from North Carolina withhold his appeal?

Mr. HELMS. I did withhold, Mr. President. I am sorry the Chair did not hear.

Mr. STEVENS. Where the committee recommends a repeal of existing law, the net effect of which would be to increase revenues, the committee then draws the conclusion that based on its recommendation to repeal existing law, a further decrease in revenues in terms of a tax cut cannot be justified nor ruled in order.

Based upon that presumption, the bill is presented to us as a balanced proposition under the Budget Act. Having voted to sustain the budget position, I understand their proposition, but I do not believe the ruling of the Chair is proper when it deals with existing law. The net effect of this ruling would be that, if there are some people in this body who feel that existing tax incentives or special exclusions should be changed, all they have to do is tie it to a tax cut and come bring it before the Senate. It is not even subject to a vote, but is subject to a point or order on an amendment denying the committee the right to change existing law. I do not see how we should be prevented from voting up or down on the committee's recommendation to change existing law by virtue of a point or order.

That is the net result of what is happening. The committee's recommendation is to change the existing law with regard to deducations for State gasoline taxes. I think we ought to have a right to vote on that recommendation and not be prevented from challenging the committee provision and deleting from the committee provision the repeal of existing law on the deductibility of State gasoline taxes.

Mr. HELMS. The Senator is absolutely correct.

Mr. STEVENS. The point of order prevents us from challenging the committee's recommendations to change existing law. That is not fair. It is not a proper interpretation of the Budget Act. With due respect to the Budget Committee chairman, I hope he will agree with me that the time to handle budgetary impacts is when the bill comes to final consideration here on the Senate floor. What will need to be changed to prevent the point of order from being valid, is the total amount of tax reductions.

If the amendment of the Senator from North Carolina carries, there would be $400 million less to cut in taxes because we have denied the committee's recommendation to change existing law. We are being denied a chance to vote on the specific issue of whether or not we want gasoline taxes to be deductible on a nonbusiness, individual basis. For those people who itemize their tax returns, this is a personal deduction for State taxes. If we follow this procedure, I think a dangerous precedent will be set. The next thing we know, the committee would recommend that individuals could not deduct State income taxes based on the fact that a reduction in Federal taxes has been provided. Each time, we would be denied the right to vote on these specific issues.

I urge the Chair to look at this again. I do not believe that the Budget Act can deny a specific vote on a repeal of existing law based on the Chair's ruling sustaining the point of order of the Budget Committee. I may not have articulated my position as well as I could, but I am disturbed about this because there are too many provisions in the tax code that could be eliminated this way. Sustaining this point of order would go even farther than the Glenn amendment in eliminating nonbusiness deductions for individuals.

I thank the Senator from North Carolina for his courtesy.

Mr. MUSKIE. Mr. President, will the Senator withhold further?

Mr. HELMS. Yes.

Mr. MUSKIE. The Senator from Alaska seems to argue that I am somehow denying Senators' rights. My only role is to uphold the Budget Act. The

budget provides for $21.9 billion in tax reductions. That is the gross figure. It is the Finance Committee's prerogative to make up that figure by a combination of proposals to change the revenue code, some of which will pick up revenues and some of which will lose revenues.

The Budget Committee does not second-guess the Finance Committee directly on particular provisions.

Mr. STEVENS. Will the Senator allow me to apologize? He took umbrage. I want to apologize. I did not mean to imply that the Senate Budget Committee had second-guessed the Finance Committee. I do imply, however, that a majority of the Finance Committee, in a substitute reported by the Finance Committee, could wipe out the depletion allowance, or any other single incentive in the Tax Code, as long as it was coupled with a sufficient reduction in taxes. All it would take would be a majority of the Finance Committee to get us in this posture. The Senate is faced with a vote to sustain the ruling of the Chair that the Finance Committee's recommendation to repeal existing law is correct.

It is not a proper ruling. I do not imply in any way that the Budget Committee's chairman has brought this about.

Mr. MUSKIE. I have to try, at least, to supply the Senate with the information which will enable the Senate to properly enforce the Budget Act.

In this case, the provision in the pending bill would increase revenues and offset some of the very attractive revenue reductions that are contained in the bill. The bill is, of necessity, a tradeoff between revenue increases and revenue reductions. What the budget resolution states is that the net reduction cannot exceed $21.9 billion.

The bill that the Finance Committee reported to the Senate was $1.4 billion below that ceiling. In other words, the Finance Committee brought to the Senate a bill that would have permitted the Helms amendment, if the Senate chose, without violating the ceilings. The Finance Committee left the Senate with $1.4 billion under the revenue floor of the second budget resolution for fiscal year 1979.

But the Senate has used up that $1.4 billion.

Mr. STEVENS. Will the Senator yield?

Mr. MUSKIE. Let me finish.

But the Senate has used up that $1.4 billion by using wedge-type amendments that have produced a $10 billion additional reduction on an annual basis.

We have done that as a Senate—the Finance Committee did not do it—the Budget Committee did not do it but the Senate has done it. In other words, in order to get $10 billion in annual reductions into this bill, we have slipped effective dates; we have played with the calendar; and we have gotten a total additional cut for fiscal 1979 of $1.4 billion. But on an annual basis, thereafter, the revenue loss will be $10 billion.

Surely, we have the right to raise a point of order based on the $21.9 billion revenue reduction that the budget permits to raise the point of order.

With enactment of this amendment, we would add $400 million to the deficit in the budget.

Mr. LONG. Will the Senator yield at that point?

Mr. MUSKIE. Yes.

Mr. LONG. The Senator's argument is clearly correct. The Senate Finance Committee brought in a bill where the Helms amendment could have been passed and we could have still cut taxes another $1 billion.

But the Senate used all that tax cut up. The Senator from Maine did not vote to use it up. The Senator from Louisiana did not vote to use it up. But those who voted for the Kennedy amendment, the Packwood amendment, and the various other goodies here, voted to use it all up.

Now, if we now adopt the Helms amendment, the committee amendment—I ask the Senator from Maine to hear this—if we now adopt the Helms amendment, which is subject to a point of order, once that is in effect, then the whole committee amendment will be subject to a point of order and the whole thing will go down the drain.

So we will have wasted completely the time that we spent working on this bill, because the whole committee amendment will be subject to a point of order.

Mr. MUSKIE. May I make one other point? Senator HELMS' amendment, which would cut $400 million in fiscal 1979, would cut $1.2 billion in fiscal 1980. So that we would add that $1.2 billion to the $10 billion we have already put in this bill as additional out year revenue losses.

Now, if the Senate wants to support the Helms amendment on that basis, the Budget Act leaves that prerogative to the Senate, do not let me disabuse anyone on that score. But these are the facts of which every Senator should be aware.

Mr. HELMS. If the Senator will yield, on the Senator's figures of 1 year's time, I think that should be a matter of great concern to the voting public. Gasoline prices increase that much, gasoline taxes increase that much; where does the Senator get his figures?

Mr. MUSKIE. These are from the Joint Taxation Committee.

Mr. HELMS. He says it will cost $400 million this year and——

Mr. MUSKIE. Losses this year. Now the Senator is talking about fiscal year.

Mr. HELMS. Yes.

Mr. MUSKIE. Fiscal.

Mr. HELMS. Yes.

Mr. MUSKIE. The loss this year would be $471 million, and for fiscal year 1980, it is $1.2 billion.

The basic point is the $475 million for fiscal year 1979.

Several Senators addressed the Chair.

Mr. STEVENS. Will the Senator now yield for my question?

The PRESIDING OFFICER (Mr. STONE). The Senators will kindly suspend. The Senate will be in order now.

Mr. STEVENS. Will the Senator now——

The PRESIDING OFFICER. If the Senator will suspend, the Senate will be in order.

The Senator may proceed.

Mr. STEVENS. I wish to direct a question to the Senator from Maine.

Let us assume, and I do not imply any bad faith to my good friend from Louisiana, everybody knows my great respect for him, but assume we have a majority of the Finance Committee who wants to do away with the personal exemption, or any one of the existing provisions in the law, and they tie along with it an idea we can reduce taxes significantly if it were approved.

We have here a bill, a committee substitute, and it is supposed to be subject to amendment. But someone else ties on just a little bit of an amendment, that is another reduction in taxes, that makes any further amendment, any further change, financially, in that bill subject to a point of order.

Say that we find ourselves in the position that we cannot have a vote on the recommendation of a majority of the Finance Committee to change existing law because of what might happen under the budget resolution.

Mr. MUSKIE. If a committee—if the tax committee—were that irresponsible, the Budget Act does not prevent the Senate from overturning that result.

Mr. STEVENS. Just have that situation right here.

Mr. MUSKIE. If the Senator can lay out such a case, any time——

Mr. STEVENS. Just happened right now. This amendment would change existing law in a committee substitute. Existing law permits this deduction, this is a tax——

Mr. MUSKIE. Wait a minute. The Senator is putting a different question to me than he had a moment ago.

Mr. STEVENS. I am saying, how do we get to do it under the Senator's position?

Mr. MUSKIE. The Senate addresses——

Mr. STEVENS. All we have to do is come out with a bill that is absolutely balanced, completely, the tax reductions and the revenue increases are balanced, totally balanced. The first time anyone wants to make a change in that bill, he is subject to a point of order which would change the budget resolution.

That is exactly what has happened here. We had the tax increase to the tax reduction first, and we have had no chance at all to challenge the assumptions in the change of the existing law as far as the revenue——

Mr. MUSKIE. That is not true.

Mr. STEVENS. It is. That is what the Chair just ruled.

Mr. MUSKIE. What the Senator is telling me is that I, as chairman of the Budget Committee, am telling the Senate it cannot vote for the Helms amendment. But I am telling the Senator that the fact——

Mr. STEVENS. Cannot vote on it, period. It is subject to a point of order.

We will vote on overruling the Chair's sustaining the point of order that violates the budget resolution.

Mr. MUSKIE. So the Senator does not want the restraint of a point of order, he is saying.

Mr. STEVENS. I am saying——

Mr. MUSKIE. If I may continue——

Mr. STEVENS. The Senator would not accept my postulate. I will state it again.

If the chairman had brought out a bill perfectly balanced under the budget resolution, changes in income and changes in taxes, as far as the Federal Government is concerned, and those changes were postulated, on changes in existing benefits under the tax laws, we would get more revenue because we took away—I said the individual deduction, exclusion from tax, and, therefore, could reduce them generally across the board, and that was, under the budget waiver, completely balanced.

Now, if someone wanted to challenge that and say, "No, we do not accept the proposition that existing law, as far as these individual deductions are concerned, should be changed," we would be in exactly the same position, subject to the point of order.

Mr. MUSKIE. No. I heard the Senator's postulate three times. Now, may I answer it?

Mr. STEVENS. Yes.

Mr. MUSKIE. I understand the postulate. The Senator is postulating the possibility of a perfectly horrendous tax matter, which wipes out long established preferences, like the personal exemption, or like interest on home mortgages. If a committee were that irresponsible, if it ran that far against the grain of the Senate and the grain of the country, somebody would raise that issue on the Senate floor.

A Senator is going to make that case then, and the point of order is going to be made by whomever is chairman of the Budget Committee at that point. The Senate will then consider those changes in the law that should be retained, and the Senate will do what is right.

The purpose of this point of order is not to handcuff the Senate. The Budget Act says that when the point of order is raised—this is a different point of order from the one raised by Senator LONG earlier this week—it is raised for the purpose of alerting the Senate to the fact that the floors and ceilings set in the budget resolution would be breached by this proposal.

All I am saying to the Senator is that this proposal would breach the revenue floor. But the Senator does not even want me to raise the question and provide the information.

Mr. SARBANES. Mr. President, will the Senator yield for a question?

Mr. MUSKIE. I yield.

Mr. SARBANES. If the Helms amendment, in addition to seeking to restore the deduction—which would cost the $400 million, or whatever the figure is—had also carried with it some proposal to raise revenues, since you are now at the ceiling or close to the ceiling, under the budget resolution, and to that extent it would have been balanced within itself, would it have been subject to a point of order? Would the Senator make a point of order?

Mr. MUSKIE. I would not make a point of order.

Mr. SARBANES. There are two ways to deal with the question. One is by the point of order being made. If the Senate wants to overrule the point of order, it can do that on a vote and take the consequences of adding another $400 million to the cost of this bill.

Second, if the Senator from North Carolina wanted to preclude the point of order from even being offered, he could have come in to restore these deductions, which he considers important, and at the same time have found the revenue through some other combination to balance it.

The budget process is supposed to induce that kind of responsible fiscal action on the part of the Senate.

The whole purpose of the budget process on spending and taxing is to get away from the idea that either you can come in here and just add spending through appropriations, without regard to what it adds up to, or, in this instance, add on the loss of tax revenues, without any regard to what it adds up to.

Therefore, the discipline which the process seeks to impose is at work here. The discipline does not run so far that we cannot even overrule it by majority vote. There are ways to deal with this problem, one of which, if the Senator from North Carolina chose, would not have brought a point of order, and the second is that we can overrule the point of order.

Mr. LONG. Mr. President, let me make this point, also.

Let us assume that as of right now, the bill before us has been passed and has gone to the President to be signed. So all the budget authority has been used.

Then let us take the case of the Senator from Alaska. If the Finance Committee still could bring in a bill with a tax cut of $5 billion, we would have to bring in $5 billion of a tax increase. At that point, if anybody struck out any part of the $5 billion tax increase, our bill would be subject to a point of order. We would have to violate the budget process to handle it. You can recommit the bill to the Finance Committee with instructions.

Suppose half of our tax increases were knocked out. You could recommit the bill to the committee with instructions to take that out and to reduce the tax cut, since you had lost half your revenues, and you would still be within the budget.

However, the Finance Committee did not prevent the Helms amendment. The Senate has prevented the Helms amendment when it voted for the other tax cuts, which I opposed and the chairman of the Budget Committee opposed; but the Senate did not see it our way. So it all has been used up.

On the issue of this particular item, Senators should understand that on the energy bill, the House conferees were insisting on this item anyway—the repeal of the deduction for gasoline taxes—on the energy bill. So it is likely to come back in a conference report, anyway. Even if we knock this out on the tax bill, the probability is that it will come back in a conference report between the Senate and the House, because the House Ways and Means Committee has passed it twice and probably will insist on it.

The Senate is not denied these alternatives and does not have to violate the budget process in order to have whatever recourse the Senate wants. In other words, it can vote the whole bill down; it can recommit the bill with instructions. The Senate has other alternatives available to it, if it wants to do them, and does not have to violate the budget process.

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. The Senator from Delaware has suggested that an amendment could be submitted to raise revenues to offset the amendment of the Senator from North Carolina should it be adopted. Would it be in order, under the cloture procedure, to file such an amendment at this time?

The PRESIDING OFFICER. It would take unanimous consent.

Mr. STEVENS. Mr. President, a second parliamentary inquiry.

Under the Budget Act, there is a provision that says that any provision in title 3 or 4 may be waived or suspended in the Senate by a majority vote of Members voting, a quorum being present, or by unanimous consent of the Senate. Is it in order at this time to file such a waiver for the amendment of the Senator from North Carolina?

The PRESIDING OFFICER. The Senator could move at this time, under section 904 of the Budget Act, to waive section 311 of the Budget Act.

Mr. STEVENS. It would take a majority vote to do that?

The PRESIDING OFFICER. That is correct.

Mr. STEVENS. And the effect of that would be to permit a vote up or down on the amendment of the Senator from North Carolina, if it were done?

The PRESIDING OFFICER. That is correct.

Mr. STEVENS. I am learning a little bit myself about this.

I would not like to see the Senate get into the position in which we were unable to get a vote on a recommendation of a committee, with due respect to the Senator's Finance Committee, on an issue of this type, where we would be in such a position that we would be forced to accept recommendations of change in existing law without having the right to challenge those assumptions of the committee, as to what is right in terms of changing existing law, because of the budgetary impact of the cut.

Again, this is perhaps a small item, but it does affect a lot of people who deduct State incomes taxes today. I, for one, want a chance to vote on that. I do not want to see it happen. If that means we reduce the income tax cut a little later on, fine.

I always have taken the position that we should assess the Budget Committee's position as to whether we are in balance after we see what happens to the basic recommendations to change existing law. It seems to me we should find out whether we agree with the Finance Committee as to what portion of existing law should be changed, before we make up our minds as to how much we should cut

taxes. I do not think we can make up our minds as to how much we should cut taxes until we know what we are going to do with the basic recommendations about changing existing law which would bring about increased revenues, which means decreasing the tax incentives and increasing the taxes to some taxpayers.

I hope the Senator from North Carolina understands that he has the right to file and ask for a waiver and would seek the waiver, so that we will have a chance to vote on the committee's recommendation of deduction of State gas taxes.

Mr. ROBERT C. BYRD. The motion would come too late, in view of the fact that the Chair already has ruled and sustained the point of order.

The PRESIDING OFFICER. The Senator is correct.

● Mr. HATCH. Mr. President, I am pleased to be a cosponsor of this amendment along with my very able colleageus, Mr. HELMS and Mr. REIGLE. I rise with them in opposing the deletion of the itemized deduction for State and local nonbusiness gasoline and motor fuel taxes. I do so for the following reasons:

First. It will have an adverse effect on a large portion of middle-income taxpayers.

Second. It will help undermine the incentive for taxpayers to make use of itemized deductions.

Third. It will not bring about a substantial gain in energy savings.

Present law allows individuals who itemize to deduct State and local excise taxes imposed on gasoline, diesel, and other motor fuels if the fuels are not used for business purposes. If the Senate agrees to repeal this deduction, the middle-income taxpayers will suffer the most from the added tax burden. As a time when the Government is promising tax relief, it is using a "backdoor approach" to impose another new tax on a large segment of American society. According to the U.S. Treasury Department figures, over 70 percent of the revenue that will be raised from the repeal of this deduction will come from taxpayers making less than $30,000 a year. In 1983 alone, the elimination of this deduction will, according to the Treasury, take an additional $2.2 billion from the pockets of the American taxpayer who must also face spiraling fuel prices. Can the Senate justify such an increase during a period when taxpayers are saying "no" to more taxes?

Mr. President, the repeal of this deduction is part of a much larger scenario of tax reform, a scenario that represents a changing attitude within the Treasury with regard to tax legislation. Administration's decision to end the gasoline tax deduction is a disguised attack on the class of itemized deductions. By eliminating a deduction every year, the value of itemized deductions to all taxpayers is gradually eroded.

Contrary to popular belief, those who benfit most from itemizing are not just a few "fat cats." According to the Treasury Department's own figures, taxpayers with an income under $25,000 accounted for over 65 percent of the itemized returns in 1975. These are middle-income people who work hard for their take-home pay.

It is my opinion that Congress should view itemized deductions as a class when making revisions in tax law. As each deduction is eliminated, fewer taxpayers are provided the incentive to itemize. I suggest that Congress avoid the piecemeal approach and consider the total effect that is created by the repeal of itemized deductions. We should not allow the Treasury to sneak tax reform past in piecemeal.

Unfortunately, tax reformers have tricked both Houses of Congress into dealing with deductions by following an item-to-item approach. When it comes time to change the Tax Code, all attention is focused on the merits of one narrow issue. This year it happens to be the gasoline tax. Will the itemized deduction for State income taxes be next? Followed by elimination of the itemized deduction for interest on home mortgages?

Mr. President, if we continue to chop down trees one by one, the forest will soon be gone. Do we want that? I believe we need more information before we go any further. We need to look at the broader picture. American taxpayers deserve that much.

In its report on the tax bill, the Finance Committee mentions its concern about conservation of energy and the reduction of oil imports. In my opinion, however, the repeal of the gasoline deduction will not assist our Nation to achieve its energy goals. Instead, it will create an unfair tax burden for many taxpayers in western and rural States. People who live in these areas must drive greater distances. Should we penalize them when they must drive their family automobiles to seek medical care or travel into town to purchase groceries or farm supplies? And what about commuters? Will the elimination of the gasoline deduction suddenly force them to flee to mass transit? I think not. We promise our constituents a tax cut and then turn right around and pull out a meaningful deduction. We disguise our actions by claiming that it will somehow help cure our energy crisis.

If this measure is designed to save fuel, how can the committee allow business to maintain its fuel deductions? Or will business be next?

Mr. President, this matter was passed by the committee as a sop to the administration during its final hours of markup. I believe it deserves more discussion than it received at that time. I hope that my colleagues will understand the seriousness of this issue and support this amendment to the tax bill.●

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. RIEGLE. Mr. President, I thank the Chair for recognizing me.

I ask, from the parliamentary point of view, whether we are free to use our 1 hour to discuss this issue, pending a decision by the Senator from North Carolina to move for a vote on this.

The PRESIDING OFFICER. The Senator is correct.

Mr. RIEGLE. I will make a point or two about the merits of this issue, because that has been lost along the way.

I have not heard a syllable of argument as to why this deduction, which we have had for many years, should be done away with. I am not aware of any lengthy committee record—there may be one, but it has not come to my attention—in which a strong case has been made to do away with this deduction suddenly. Frankly, I know of no reason to do that.

If somebody is paying the tax to a State authority, I wonder whether we want to put ourselves in the position of applying a Federal tax on income that already has disappeared, because it has been taxed away by the State authority. It seems to me that we should allow a deduction in that case.

The Senate voted on this issue in 1974, and we voted to retain this deduction. We voted on it in 1976 and voted to retain this deduction. We voted on it in 1977 and voted to retain this deduction. I have not heard any argument as to why, suddenly, in 1978, we should go the other way.

I think the Senator from Alaska makes a very good point. I am not sure we want to say that the rule is a blanket rule and locks everything into the same treatment. That is a point that should be raised.

But when we are talking about eliminating an aspect of current law and we are denied an up-and-down vote on that, that to me is very troubling. There happens to be in this particular tax provision such an item. And Senators know there is no fairness as to where an amendment comes up in the order of consideration. We have had other amendments come along that have increased the loss of revenue substantially, increased the tax cut and, in effect, the amount of money not coming into the Government, and I voted for some of those amendments.

But I must say that they were not matched with corresponding revenue-producing items. They were not considered on that basis. So for someone to suggest on this particular item, which deals with an existing deduction, that we should be in a position to have to match that with a revenue-producing item would impose a different test than anyone else had had to meet up until this time.

I hope we can get a clear up-and-down vote on this.

If the Senate wants to do away with the gasoline tax deduction, if there are reasons to do that, and frankly I see none, then let us vote to do it. But let us not have it done by a committee and then deny the full Senate the opportunity to participate. That runs against every decision we have made in the past on this issue.

Mr. DOLE and Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, one should keep in mind that almost 70 percent of the people do take the standard deduction, so it is only the 30 percent who itemize who get the benefit of this.

If this deduction is repealed, it makes for simplification, on the one hand, because it is one thing less to worry about itemizing on your tax return and it also tends to make people use the simple form rather than the long form, but, in addition to that, it means that we can have—I wish the Senator from Michigan to hear this—it means that we can have a bigger reduction in the rates of all individuals, and the Senator voted for that, because we have to have revenue to pay for the reduction.

Otherwise, we just cannot have as much tax cut as the Senate voted for.

The Senator can decide what he wants to do about the matter. But the point of it all is that if we do not have the revenue, we cannot vote as much tax cut as we have in the bill, including the rate cuts.

Mr. DOLE and Mr. MUSKIE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. Mr. President, just a couple of brief comments.

No. 1, section 904 was not intended to serve as a casual routine sidestepping of the Budget Act.

For the life of me, I cannot see why, when there is a provision of the Budget Act itself which permits the Senator from Alaska and the Senator from North Carolina to get a vote on the issue which they have raised, we should suspend the Budget Act or seek to suspend it in order to do the same thing. But let me put a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MUSKIE. Mr. President, if the Senate should vote to suspend the Budget Act what would be the status of the point of order which has been raised on the Helms amendment?

The PRESIDING OFFICER. Section 904 could not timely be invoked at this point, because the Chair had already ruled on the point of order; therefore, the Senator's only recourse would be to appeal the ruling of the Chair.

Mr. STEVENS. Mr. President, I have discussed this with the Senator from Wisconsin, who raised the point of order, and in order that the procedure for waiver might work, would it be possible now to set aside the proceedings which led to the sustaining of the point of order in order that the Senator from North Carolina might use the waiver proceedings; in other words, is it possible for me now to ask unanimous consent that the point of order of the Chair's ruling be set aside?

The PRESIDING OFFICER. The Senator could ask unanimous consent to invoke section 904 and that would have the effect the Senator seeks if he got unanimous consent.

Mr. MUSKIE. I would object, I say to the Senator.

Mr. STEVENS. I am trying to preserve the Budget Act.

Mr. MUSKIE. I just do not understand, when there is a procedure in the Budget Act, which was created for the purpose of letting Senators put the kind of question the Senator wants to put, when there is a procedure available deliberately written into the Budget Act, why the Senator wants to crucify the Budget Act and waive it to get it done his way. All the Senator has to do is pursue the appeal that the Senator from North Carolina said he would pursue. If the Senate accepts the Senator's argument, the argument of the Senator from North Carolina and the argument of the Senator from Michigan, a majority of the Senate can put in place the policy the Senator wishes. Why in heaven's name does the Senator not use that procedure? That is what it was created for. That is why it is there. Now if what the Senator is trying to do is to write the Budget Act in such a way that the chairman of the Budget Committee cannot perform that unpleasant duty of presenting unpleasant facts, then the thing the Senate ought to do is get a new chairman of the Budget Committee. But if what the Senator wants to do is a vote on his question, then pursue his appeal. That is why it was provided in the Budget Act and the Senator can get his answer.

Mr. STEVENS. I might say some of us are not that knowledgeable, Mr. President, about the rulings of the Budget Committee and the impact of what we have done. I have already said I learned a lot here. I did not know we were foreclosed from any further challenge of any recommendation to change existing law in this substitute, and there are many, unless we had the foresight to ask for a waiver under the Budget Act before a point of order was made. Now it seems to me——

Mr. MUSKIE. There is no provision for such a ruling.

Mr. STEVENS. I am trying to assist the chairman of the Budget Committee and at the same time to assist the Senator from North Carolina to get a vote on the merits of whether we want to do away with the existing law deduction of State income taxes on gasoline. That seems to me to be a very worthwhile argument to get a vote on that rather than have the ruling of the Chair be the issue.

The Budget Committee chairman wants us to have the role of constantly upsetting the ruling of the Chair. I do not want to have to vote to upset the ruling of the Chair in order to test a recommendation that has come from the Finance Committee to change existing law which is the basis of the committee's assumptions of the change of the revenues of the United States in order to determine whether we have gone too far in reducing taxes.

Again I just want to state this clearly. I understand the chairman is prepared to object to a unanimous-consent request which would take us back to the position where the Senator from North Carolina could get a vote on the waiver, not on his amendment, but whether the budget should be waived in order to get that provision of the Finance Committee's substitute bill, which would change existing law and take away this deduction. Is that the Chair's position? Am I wrong?

Mr. MUSKIE. Mr. President, I really do not think that the Senator from Alaska understands my position at all. But, Mr. President, before I proceed, how much time do I have remaining out of my hour? I do not want to use it all on this issue. I suspect there are going to be other amendments that are going to require that I speak to.

The PRESIDING OFFICER. The Senator has 45 minutes remaining.

Mr. MUSKIE. I will just say though to the Senator from Alaska, there are provisions of the Budget Act to which the Budget Committee can recommend or refuse to recommend waivers. Waivers can be sought by individual Senators and by committees. Section 402 is such a section. Section 303 is such a section.

But section 904 is nothing more nor less than a statement of what was an obvious fact, if it did not exist, namely, that is, that the Senate as a whole can set aside the Budget Act if it wished to at any time. There is no waiver procedure for us to set aside the Budget Act as a whole, none whatsoever. I cannot give you a waiver under the Budget Act. The Budget Committee cannot give you a waiver under the Budget Act. Only the Senate as a whole can set aside the Budget Act, just as by unanimous consent it can set aside the Senate rules, including rule XXII.

I mean the Senator expresses so much concern about changing a law by this method, but has no compunction about setting aside the whole Budget Act.

Mr. STEVENS. It is too late.

Is the Senator going to object? It is too late to do that.

Mr. MUSKIE. I object to a unanimous consent that would set aside the Budget Act, yes. That is my job.

Mr. RIEGLE. Mr. President, will the Senator from Alaska yield on my time?

Mr. STEVENS. I would be happy to yield on the Senator's time because I have used up my time, and then I am going to do something else.

Mr. RIEGLE. Mr. President, will the Senator from Alaska yield the floor?

Mr. STEVENS. I yield.

Mr. RIEGLE. I thank the Senator for yielding, because I do not think this amendment——

The PRESIDING OFFICER. The Senator from Alaska has not had the floor. The Senator from Maine has the floor, and the Senator from Louisiana has the recognition of the Chair for the moment.

Mr. LONG. Mr. President, I would hope that we could work out a way—I would like the Senator from North Carolina to listen—I would hope we could work out a way that the Senator from North Carolina's amendment can be considered. At this moment I just do not know how we can do it. I do not know how to accommodate all the people with all their problems with the Budget Act. But I do not want to embarrass the Chair by overruling the Chair when the Chair is doing his duty as is required by the rules of the Senate.

I do not want to embarrass the chairman of the Budget Committee for doing his duty. I do not want to embarrass anybody, but I would hope we could just leave this matter in abeyance for awhile; if we cannot pass a bill here tonight, that by the time we come in tomorrow morning, we can figure out a way that the Senator

can offer his amendment. It may take unanimous consent or it may not, but I would hope that by the time we come back tomorrow, we can figure out a way in which to accommodate all men of good will—and they are men of good will at this moment—so we can try to work out some way. I do not know at the moment how to do it.

I ask unanimous consent that when the Senator from North Carolina desires to do so, he can bring the matter back up and the parliamentary situation will be just exactly the way it is now.

Mr. DOLE. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. I thank the Chair.

I do not plan to object, but I want the RECORD to show that this matter was raised by the Senator from Kansas in the Finance Committee. We took action at the very last moment to make up some revenue balances, and it was only done for that reason.

I notified my chairman that Senator HELMS had a real interest in this. So it does not come as any surprise. But I can understand what we have. We have here in effect a selective sunset about to take place or maybe a total eclipse. I think it is good to see my chairman of the Finance Committee arguing for sunset legislation because the sun is about to set on gasoline tax deductions, the very thing I understood this morning my chairman opposed, and that he opposed on Saturday, but today it is all right for the sun to set on gasoline tax deductions that affect middle class Americans.

If we want to do this and impose and increase the taxes, on incomes from $5,000 to $10,000, it increases their taxes $26 million next year; $10,000 to $15,000, an increase in their taxes of $90 million next year; $15,000 to $20,000, will increase their taxes $151 million next year; $20,000 to $30,000, increase their taxes $328 million next year. We can do that. We can do that by having the sun set on this legislation. Perhaps that is what we want. If we want selective sunset this is a good way to start it.

I also point out that 32 percent of all taxpayers use these deductions. The Senator from Michigan pointed out that we voted on this as recently as last year, and I think the margin was almost what, 2 or 3 to 1, against removing that tax deduction.

It does seem to me, as the Senator from Alaska has pointed out, that if we do it on this particular situation we can do it by removing personal exemptions or any other thing. So if we are for sunset legislation, then I guess we vote against the Helms amendment.

Mr. STEVENS. Mr. President, will the Senator yield for a question? This is just for a question, now. The Senator is a member of the committee. Can he tell the Senate are there any other changes in existing law similar to this in order to pick up revenue, existing provisions of the tax law that give specific deductions to individuals, such as this gasoline tax deduction, are there others in here?

I have got to tell you that until this rhubarb started, I did not know that this was in here again.

Mr. DOLE. I am not certain, but I am certain of the—I might say to the Senator from Alaska that the Senator from Kansas has an amendment to add revenue. If that were done it might offset it, because I would change the earned income tax credits, so it would be an exclusion toward the poor and not toward those with $10,000 and $11,000 of income. That might offset any loss we might have from the amendment of the Senator from North Carolina. But I do not know of any other provision.

Mr. STEVENS. I am told the alternative tax on capital gains on individuals has been repealed by this. That would have or could have a substantial impact on individual income taxes.

Mr. DOLE. That is right.

Mr. STEVENS. On an individual basis.

Mr. DOLE. A revenue loss.

Mr. STEVENS. If this point of order is sustained on this one, as I understand it we will have no chance at all to consider that one either because the committee's assumptions must now be taken en bloc. They are subject to a point of order. If any one of us wants to challenge the committee's assumptions of where to "pick up revenue"—

Mr. DOLE. That is more of the selective sunset.

Mr. STEVENS. I do not have the floor.

Mr. RIEGLE. Mr. President, will the Senator from Kansas yield?

Mr. DOLE. I yield.

Mr. RIEGLE. I would say to the Senator from Kansas that the vote last year on this item by the Senate was 65 to 12. We went on record to preserve this particular tax deduction.

I do not know how, stemming from that vote and the previous votes of the same sort, the Finance Committee would take and turn this thing right upside down and come back with a recommendation to eliminate this deduction and, in effect, to increase taxes by so doing.

Let me just point out something else that has not been taken into account in this discussion yet. The increased tax burden to taxpayers that will result if we eliminate this gas tax deduction will actually be greater than the revenue increase to the Federal Treasury. That is because there are 33 States and the District of Columbia that model their income tax returns after the Federal return with respect to the gas tax deduction.

Thus taxpayers in those States would lose both the Federal and State deduction, and in some cases a local deduction as well.

I am just going to list what States those are because they ought to be included in the debate here, too, especially if this is going to be done without any kind of extensive hearing record or testimony to really see what the impact of this is going to be. It includes the States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Ohio—I should say Iowa—Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

If anybody is interested in knowing how much revenue this is going to pull out of these States—because it is going to damage the economies of these States, since it is taking money away from people, and it is, in effect, a tax increase—I would be happy to show him or her what it is going to mean State by State as well as in terms of average taxpayers.

But the thing that is so distressing is this being done without any kind of attention or care to this issue. It troubles me very much that this particular amendment coming up, by the luck of the draw, late in the amendment process is, in effect, ruled out of order where other amendments that propose new tax benefits were in order just because they happen to come first.

Perhaps what we need to do is to revise the procedure. If we are going to have 20 or 30 or 40 or 50 amendments of this sort, they ought perhaps to be put into a hat so that we could draw them out in random order to decide who gets the chance to offer an amendment before there is a point of order that lies. Or perhaps amendments pertaining to a provision of existing law should have priority.

But I think the distinction the Senator from Alaska has made is an important one. We are not dealing with additions here of new tax deductions. We are dealing with the question of attempting to do away with what has been a long-standing tax deduction.

That is different. That crosses a line. Just as the Senator says, I am troubled. I am troubled to see us in a situation where we cannot even have an up or down vote on an issue. In effect we are acceding to the Finance Committee the power to take items out of the tax code that have been there for many years, and as to which the Senate, as recently as last year, by a margin of 5 to 1 said it favored this deduction.

If someone wants to argue about procedure, it seems to me this proposal is a pretty good example of what we are right in the middle of now.

Mr. DOLE. Mr. President, reserving the right to object, let me say to the Senator from Michigan that I totally agree. We have been pointing out how we want to help the middle income taxpayer. We are certainly not going to do it if this is our approach.

Having said that, I withdraw my reservation.

Mr. HELMS. Mr. President, reserving the right to object, I have no objection whatsoever to the suggestion by the chairman, provided that it be in order for me, at an appropriate time, to modify my amendment according to whatever we may be able to work out.

Mr. METZENBAUM. Mr. President, the modification of an amendment is not permissible under cloture, and, since I do not want my friend from North Carolina to be taken by surprise, I wish to state in advance that if such a procedure were undertaken I would object.

Mr. LONG. Mr. President, I simply suggested that we bring the matter back up, and that the parliamentary situation be exactly as it is now, and by that time I had hoped we could work the thing out.

Maybe we could modify the amendment, and perhaps talk to the Senator from Ohio about it.

Mr. HELMS. Mr. President, I have no objection to the unanimous-consent agreement.

Mr. RIEGLE. Mr. President, reserving the right to object, I want to be sure we are preserving the parliamentary situation exactly as it is right now with all Senators retaining their rights. I would ask the Chair for an affirmative answer on that point.

The PRESIDING OFFICER. The Senator is correct. If the unanimous-consent request that the matter lie over and the parliamentary situation be exactly the same tomorrow as it is today is granted, then the parliamentary situation tomorrow will be exactly as it is today.

Mr. RIEGLE. I thank the Chair.

Mr. HELMS. Mr. President, I ask unanimous consent that my amendment be temporarily laid aside.

The PRESIDING OFFICER. Without objection as to the unanimous-consent request of the Senator from Louisiana, and without objection as to the unanimous-consent request of the Senator from North Carolina, it is so ordered.

UP AMENDMENT NO. 2041

The PRESIDING OFFICER. The question recurs on agreeing to unprinted amendment No. 2041 of the Senator from North Carolina, which the clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS), for himself and Mr. Hatch, proposes an unprinted amendment numbered 2041.

Mr. LONG. Mr. President, let me say this: This amendment is not germane, but I would ask unanimous consent that it be in order to offer the amendment.

Mr. PROXMIRE. Mr. President, reserving the right to object, what is the amendment?

Mr. METZENBAUM. Reserving the right to object, what was the unanimous-consent request? That it be in order?

Mr. PROXMIRE. As I understand, the manager of the bill has asked unanimous consent that although this is not germane, a unanimous-consent request that it be considered germane be in order.

Mr. LONG. Yes.

Mr. PROXMIRE. I would hope the Senator from North Carolina would be given an opportunity to explain his amendment before the Chair rules.

Mr. LONG. Explain it.

Mr. HELMS. Mr. President, I think I will ask the clerk to read the amendment in full. It is self-explanatory. Then I will elaborate.

That will clarify it.

The PRESIDING OFFICER. The clerk will totally state the amendment.

The assistant legislative clerk read as follows:

At the end of the bill, add the following new section:

"SEC. . (a) This section may be cited as the "James B. Allen Taxpayer's Attorney Fee Award Act of 1978".

(b) In any action wherein the United States, or the Internal Revenue Service, or any person acting as an agent or employee of either the United States or the Internal Revenue Service or of both, is a party and in which tax liability to the United States on the part of any person is at issue or in which a declaration, refund, payment, or any other matter pertaining to a tax of the United States is in dispute, the court may in its discretion award reasonable attorney's fees and costs or reasonable practitioner's fees and costs to any prevailing party other than the United States, the Internal Revenue Service, or any person acting as agent or employee of either the United States or the Internal Revenue Service or of both.

(c) As used in this section, the term "prevailing party" means any person the court may in its discretion determine to have before that court prevailed substantially on the merits, notwithstanding the pendency of any appeal.

The PRESIDING OFFICER (Mr. MATSUNAGA). The Senator from North Carolina.

Mr. HELMS. Mr. President, one of the best friends I ever had was the remarkably able and completely dedicated statesman, Jim Allen, who sat over in that chair so many hours. I miss him, and our country suffered a great loss when he passed away this year.

On countless occasions, Jim Allen and I talked about the terrible inequity that is placed upon the taxpayers in any dispute with the Internal Revenue Service. Here is a taxpayer, required to pay taxes to support an entire phalanx of lawyers for the Internal Revenue Service, all of whom get their brownie points based on how much money they bleed from the taxpayers by intimidation or harassment. On the other hand, the taxpayer has to hire his own attorney, and if the taxpayer wins his suit in the courts, the IRS bureaucrats laugh and say, "Sorry about that."

I think it is high time that we put the bridle on these harassing bureaucrats and lawyers of the Internal Revenue Service who willy-nilly bring actions against taxpayers who refuse to knuckle under. It is only fair play for this Congress to offer some relief to the taxpayers in cases where they have been harassed and intimidated unjustifiably by the Internal Revenue Service.

That is the purpose of this amendment which I have offered in honor of the late Jim Allen, who was appalled by episodes that occurred in his State and other States, and as I am appalled by episodes which have occurred in North Carolina.

I offer this amendment for the purpose of paying tribute to my late friend Jim Allen. I know he must be looking down on the Senate and saying, "Boys, pass this one."

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. HELMS. Yes, I am glad to yield to my friend.

Mr. LONG. I believe we will have an opportunity to pass other revenue bills before the Senate adjourns, and if consent should not be given, perhaps we can add it on some other bill. I sympathize with what the Senator is trying to do.

Mr. METZENBAUM. Mr. President, it is with great reluctance that I rise to oppose anything that memorializes Jim Allen, a Senator for whom I had tremendously great respect; but I cannot accept an amendment that is not germane, even though I frankly believe it is a good amendment. Therefore, I raise a point of order against it.

The PRESIDING OFFICER. The point of order is sustained. It introduces new subject matter.

Mr. HELMS. Mr. President, I am not going to appeal the ruling of the Chair, but I must say that I sincerely regret that the Senator from Ohio has raised his point of order. This is something that needs to be done for the taxpayers. Every Senator in this Chamber knows that in simple equity corrections are long overdue in terms of the well-documented conduct of the IRS bureaucrats and lawyers.

Were it not for my apprehension that the Chair would be sustained—and I acknowledge that this is a nongermane amendment—and the fact that the distinguished Senator from Louisiana has said that he will assist in trying to find another vehicle for this proposal sometime before the Senate adjourns sine die, I would be inclined to appeal. We will be remiss in our responsibility to the taxpayers of the United States if we do not do something to put a bridle on the arrogance of some officials of the IRS.

I thank the Chair.

Mr. METZENBAUM. Mr. President, I would like to recommend to both my good friend from North Carolina and my good friend from Louisiana that they try to put this amendment on one of those consumer protection acts, where we provide for consumers' attorneys fees to be paid. I would be glad to join both Senators in offering to undertake that.

I think that would be fair and equitable and I would be pleased to join with both Senators in such an undertaking. But at this time I think this amendment would not be appropriate.

● Mr. HATCH. Mr. President, on September 26, 1976, in the last days of the 94th Congress, our late and very respected colleague, Senator James B. Allen of Alabama, offered an amendment to the Civil Rights Attorney's Fees Awards Act of 1976.

The Allen amendment, adopted by an overwhelming vote of 72–0, provided for payment of attorney fees to taxpayers who prevailed in litigation with the IRS. This provision was approved in the House of Representatives and became law as part of Public Law 94–559. The provision has been codified in the United States Code at 42 U.S.C. 1988.

We are all familiar with the rapacious attitude of the Internal Revenue Service in its dealings with small taxpayers, and we are all familiar with the excessive legal fees which burden taxpayers in protracted litigation with the IRS. In short, Mr. President, it is a recognized fact that the IRS uses the threat of protracted litigation to extort tax payment often in cases where the merits of the controversy are heavily against the position of the Government. Thousands of taxpayers have simply coughed up the money rather than face armies of attorneys from the IRS bent on embarrassing and frustrating the taxpayer regardless of the likely ultimate outcome of a trial on the merits.

Time and again, we have seen the spectacle of the IRS embroiled in litigation involving matters already decided con-

trary to the position of the IRS by a multitude of courts. Repeatedly, we see the IRS needlessly appealing trial court decisions for the sole purpose of keeping in litigation a disputed tax in the hope that the taxpayer will eventually pay up rather than face more attorney fees and more costs.

So, Mr. President, the Allen amendment adopted by the Senate and ultimately by the Congress in the 94th Congress was intended to cure these problems. Regrettably, the courts have given a highly technical and almost ludicrously narrow interpretation of the language of the Allen amendment. Thus, in spite of the clear intent of the 94th Congress, the Tax Court, on May 16, 1977 in the case of Key Buick Co. against Commissioner rendered the Allen provision virtually meaningless by holding that the law's provision for payment of attorney fees would apply only when the taxpayer was a named party defendant in an action brought by the United States as a party plaintiff. I am advised that in roughly 99 percent of all tax cases, because of a procedural anomaly, the United States or the Internal Revenue Service is not the plaintiff but is rather the technical party defendant, this notwithstanding the fact that in actuality the Government is in the traditional plaintiff role in seeking to impose a tax liability on the taxpayer who defends by asserting that the tax is not due. Because of this procedural anomaly, the Allen provision adopted in the last Congress has been effectively vitiated by the Tax Court, and in my judgment, action is therefore now required by Congress to insure that the purpose of the original provision is carried into effect without further delay.

On the other hand, Mr. President, and for completeness, I must state that a few other courts have given an interpretation to the Allen provision which more closely accords with the true intent of Congress. For example, in United States against Garrison Construction Co., the District Court for the Northern District of Alabama on September 13, 1977, held that vexatious conduct by the Government in filing its action against Garrison was sufficient to support an award of attorney fees to the taxpayer, even though there was no showing that the Government had acted in bad faith.

But, Mr. President, the problem still remains. The Garrison holding is of only slight benefit because in that case the Government was in the unusual position of being the actual party plaintiff. The courts have, thus, in practical effect, made the Allen provision available only to a very few taxpayers who are involved in litigation with the Government when the Government acts as the technical as well as actual plaintiff.

The amendment I am offering today would correct the deficiency of the original Allen provision, at least as that deficiency has been determined to exist by the various courts. And I might state parenthetically, Mr. President, that I do not believe the Allen amendment was, in fact, deficient but that only an unusual and strained black-letter interpretation of the provision resulted in its effective emasculation. I find some irony in our liberal courts giving this statute a strict interpretation when the same courts are always ready to stretch the law to the limits in favor of violent criminals and always ready to paint with a broad brush the novel claims of various activist groups who deluge our court system with frivolous causes. But, irony aside, the courts have virtually destroyed this innovative Allen provision.

Now, Mr. President, I believe that taxpayers are fed up with being abused by the IRS. I believe taxpayers are fed up with being taken for the goat in virtually every litigated tax dispute with the Government. And taxpayers have a right to be, Mr. President. The individual taxpayer or the small businessman is no match for the IRS or for the vast resources of the Tax Division of the Department of Justice. Using taxpayer funds, the Department of Justice is willing to support IRS intransigence and stubbornness by the expenditure of vast amounts for legal costs with the sole, true purpose of forcing settlement of disputed tax claims. Against this backdrop, Mr. President, the Congress ought again to adopt a provision, drafted so there can be no doubt about its intent, designed to help taxpayers facing the vast array of resources available to the Government.

But, Mr. President, this provision should apply, and the amendment I am offering would apply, only if the taxpayer's position were proven correct. The chief object of permitting the courts to make a discretionary award of fees and costs in tax cases to prevailing taxpayers is to encourage taxpayers to seek a vindication of their position when they are certain they are right and to discourage the Government from wasting millions in needlessly litigated disputes for the sole purpose or primary purpose of forcing settlement, notwithstanding the actual merits of the controversy.

Senator Allen recognized the needs to undo the damage done by the courts in their interpretation of his provision. On May 26, 1977, he joined with Senator CRANSTON in introducing S. 1610, a bill designed to broaden the scope, or rather to correct the interpretation, of the original Allen provision. This bill itself has been the subject of much study and comment. Many changes in it have been recommended to guarantee that the courts do not again weasel out of application of a statute expressing congressional will. The Department of the Treasury has proposed various "compromises" during discussion and study of S. 1610. These so-called compromises have been studied by leading tax attorneys who, in all instances, have advised that the Treasury proposals are devoid of true meaning and represent a retreat from the gains already made for taxpayers in the adoption of the original Allen provision. The amendment I am offering has been drafted in light of public comment on S. 1610, and it is broadly drawn, Mr. President, to guarantee that taxpayers get the relief intended. I have no doubt but that the Department of the Treasury, various under secretaries of this and under secretaries of that, are going to be beating their breasts against this amendment, asserting dire consequences, gnashing their teeth, and generally firing the heavy artillery to work against its enactment. But the issue boils down simply to this: Is the Congress willing to give some small measure of relief to prevailing taxpayers in litigation with the Government? Or are we going to side with the bureaucrats, side with the lawyers at the Tax Division who fear the embarrassment of costing the Government an attorney fee in a case they lost? Let us make the lawyers and bureaucrats at Justice and Treasury face that possible embarrassment. Let us make them consider in any dispute with a taxpayer the possibility they may be responsible for the Government paying the taxpayer's costs and attorney fees. That prospect, Mr. President, will cause a needed rebirth of sobriety at the IRS and will be guaranteed to reduce the arrogance of its agents.

I thank Senators for their attention, and I welcome any questions which may be posed regarding the amendment.●

The PRESIDING OFFICER. The Senator from North Carolina is recognized to call up his unprinted amendment No. 2042, under the previous order.

Mr. HELMS. Mr. President, in view of the ruling of the Chair on an earlier amendment, I withdraw that amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The Senator from Colorado, under the previous order, is recognized to call up an amendment.

AMENDMENT NO. 4059, AS MODIFIED

(Purpose: To provide for a reduction in individual tax rates for taxable years beginning in calendar years 1980 through 1982 and thereafter conditioned upon Federal spending and the Federal deficit being held within certain maximum limits)

Mr. HART. Mr. President, I call up my printed amendment No. 4059.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. HART) proposes an amendment numbered 4059.

Mr. HART. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. I also ask unanimous consent that it be in order to send a modification of this amendment to the desk which would not change the substance of an amendment but which incorporates more recent calculations with regard to deficits relating to this measure.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving my right to object, would the Senator tell us a little bit more about it?

Mr. HART. Yes.

Mr. President, I will describe the amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HART. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Colorado.

Mr. HART. Mr. President, was the unanimous consent——

The PRESIDING OFFICER. The unanimous-consent request was objected to. The Senator from Ohio objected and asked for the explanation.

Mr. HART. The changes in the amendment which has been sent to the desk are as a result of calculations with computer assistance in the last few hours. They do not go to the substance of the amendment which was filed and which has been at the desk for several days.

Mr. LONG. Mr. President, I would like to just see the amendment so I will know what the modifications are.

Mr. ROTH. Could I ask the Senator, are these the same rates that are in the so-called Nunn-Roth-Chiles-Bellmon?

Mr. HART. Mr. President, these are changes in calculations having to do with deficits.

Mr. ROTH. I see.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Mr. President, would a quorum call——

Mr. LONG. Mr. President, I do not object.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

Insert at the appropriate place in the bill the following:

"SEC. . Conditional Cuts in Individual Tax Rates.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, the tables in subsections (a), (b), (c), and (d) of Section 1 (relating to tax imposed) shall be adjusted for taxable years beginning after December 31, 1979, by striking such tables in such subsections and inserting in lieu thereof rate tables determined under the applicable taxes for the taxable year, as provided in subsection (b) of this section.

"(b) DETERMINATION OF TABLES.—The Joint Committee on Taxation shall

(1) determine the adjusted 1978 income tax level,

(2) establish taxable income brackets which are the same as the taxable income brackets in effect for calendar 1979, and

(3) establish rate tables and (A) which impose on each taxable income bracket for the calendar year the same proportion of the tax burden borne by such bracket under the taxable income brackets and tax rates in effect for calendar year 1979, and (B) which are estimated to result in total tax revenues from all taxable income brackets summed together in each of the tables under subsections (a), (b), (c), and (d) of Section 1 the same amount of total tax revenue estimated as resulting in calendar 1978, as adjustments provided in subparagraph (A).

(4) Definition of adjusted 1978 income tax level for Calendar Year 1980.

(A) For calendar year 1980, the adjusted income tax level shall be total tax imposed under the 1978 rate tables reduced by 15 percent.

(B) For Calendar Year 1981—For calendar year 1981, the adjusted 1978 income tax level shall be the total tax imposed under the 1978 rate tables reduced by 22 percent.

(C) For Calendar Year 1982 (and subsequent calendar years).—For calendar year 1982 (and subsequent calendar years), the adjusted 1978 income tax level shall be the total tax imposed under the 1978 rate tables reduced by 29 percent.

All estimates of total tax burden and determinations of adjusted 1978 income tax level shall be made separately for each table, as printed in subsections (a), (b), (c), and (d) of Section 1 (1) Determination of Limitations—For purposes of determining the changes in the rate tables provided under subsection (a) for each calendar year after 1979, the Secretary of Treasury shall make the following determinations in paragraphs (A), (B), (C) and (1) of this subsection after the adoption of the Second Budget Resolution by the Congress during the preceding calendar year and before the beginning of the next calendar year.

The Secretary Shall—

"(A) establish the amount of the outlay limit the deficit limit in paragraph 1 to correspond to the levels set forth below:

	Outlay limit	Deficit limit billion
Fiscal year:		
1980	$531 billion	$50
1981	562 billion	21
1982	595 billion	8
1983	628 billion	0

"(B) increase each year the amount of the outlay limits and deficit limits set forth in subparagraph (A) by the annual rate of change of the price index for the preceding fiscal year, minus six percentage points.

"(C) compare the amount of the outlays provided for by the budget resolution for the fiscal year ending on the next September 30 with the amount of the outlay established under subparagraph (A). AMD

"(D) if the amount of outlays authorized by the budget resolution for a fiscal year exceeds the amount of the outlays as established under subparagraph (A), suspend the application of the tables set forth in subsection (b) for the next calendar year.

"(2) Effect of suspension—If the Secretary suspends the application of tables for a calendar year, the tables in effect for the preceding calendar year shall apply, and the remainder of the schedules (including the suspended table) shall be applied one year later than shown in subsection (b) (subject to suspension under paragraph (2)) so long as the deficit does not exceed the deficit limit set forth in subparagraphs (A) and (B) of paragraph (2) above.

"(B) Corresponding adjustments.—For each calendar year for which a schedule under subsection (b) is in effect, the Secretary shall change the zero bracket amount under section 63 for the calendar year, the tax tables prescribed under section 3, the withholding tables prescribed under section 3402, the dollar amounts set forth in section 3402 (m)(1) (relating to percentage method withholding), and the dollar amounts set forth in 6012(a) (relating to filing requirements) necessary to reflect in such tables and amounts the tables in effect for the calendar year. The amounts adjusted by the Secretary under this paragraph for any calendar year shall be the amounts in effect for taxable years beginning in that calendar year.

"(4) Definition of price index.—For purposes of this subsection, the term 'price index' means the average over a 12-month period of the Consumer Price Index for All Urban Consumers.".

Mr. MUSKIE. Will the Senator yield?

Mr. HART. I yield.

Mr. MUSKIE. Mr. President, there will be, I gather, two or three amendments of this kind presented to the Senate. Under my interpretation of section 303(b), which we discussed the other night, a waiver resolution would be in order and, in fact, Senator HART submitted a waiver resolution to the Budget Committee.

In light of the action taken by the Senate the other night, I have not tried to report those waiver resolutions to the floor. They might just complicate the parliamentary situation at the present time.

Mr. President, I still think that issue is a problem which must be addressed in due course. However, I do not think the time for doing so is in the consideration of this tax bill. Consequently, I simply wanted to explain to Senator HART why the waiver resolution has not been acted upon. There are two others. We have not acted upon them because of the action taken by the Senate in overruling the Parliamentarian the other night.

Mr. HART. I thank the Senator from Maine.

Mr. President, I ask unanimous consent that the Senator from Idaho (Mr. CHURCH), the Senator from Wisconsin (Mr. PROXMIRE), and the Senator from Arkansas (Mr. BUMPERS) be added as cosponsors to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, this amendment does one simple but very important thing.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Colorado.

Mr. HART. Mr. President, this amendment does one simple but I think very important thing. It links tax cuts in the years 1980, 1981, and 1982 to the Congress and the Government meeting limits on the growth of Federal spending.

The first question to ask is, Why are tax cuts needed in those years? The second question is, Why are controls on Government spending needed?

The third question is whether we can have both at the same time.

Mr. President, we have been doing the Nation's economic business pretty much the same way for the last 30 or 40 years. We have approached the problems of inflation and recession, of tax policy, of fiscal policy, as if nothing ever changed. But things have been changing. Five years ago this week OPEC embargoed petroleum exports into this country and energy prices quadrupled overnight. The value of a dollar continues to deteriorate. The balance of trade declines, unemployment is not rampant but it is structural. Budgets are chronically imbalanced.

We continue in this Congress, nevertheless, in spite of these changing circumstances, to try to stimulate the economy through fiscal means that have been used for the last 20, perhaps 30 or more years.

(Mr. STEVENSON assumed the chair.)

Mr. HART. The problem is those fiscal stimulation methods are not producing the same results they once did. The fact of the matter is, Mr. President, in spite

of our efforts to try the old remedies, they just are not working. We have had tax cuts every 4 or 5 years for the last two decades. Those cuts have operated pretty much as political rewards for Members of Congress to offer their constituents, and those cuts have been offered almost totally separately from budget discipline or from any attempt to control the rate of Government spending.

That is one of the reasons why they have become less effective and perhaps even totally ineffective in terms of producing the desired economic result.

Of course, there has been much attention in the last few months to a variety of kinds of tax proposals. Those proposals have to do primarily with very large increases in tax cuts.

The theory is, of course, that it will stimulate demand; that will stimulate investment and production; and that will stimulate growth of the economy. The fact of the matter is, Mr. President, that the historic example offered for that is almost 18 years old. Circumstances have changed. There are different causes for the recession of our economy, and there is certainly a much greater and higher degree of inflation.

Mr. President, this amendment is offered for one very simple reason. That is, for the first time in anyone's memory, we have a continuously sluggish economy combined with inflation. It is because we have these dual economic problems that they have to be counteracted and counterattacked simultaneously.

Briefly, Mr. President, what this plan would do is provide for tax cuts in the years 1980 through 1982 amounting to 23 percent over and above that enacted this year. The size of those cuts is projected in this amendment in 1980 at 9 percent, in 1981 at 7 percent, in 1982 at 7 percent.

Mr. President, at the same time those tax cuts are offered, this amendment would require a degree of budget discipline that we have not attached to tax cuts in the past. That discipline would say that the growth of Federal spending has to be controlled at a certain level. That level amounts, in this amendment, to the range of 6.7 percent increase per year. That figure, Mr. President, is the combination of the assumed 6 percent inflation plus a factor of about three-quarters of a percent net growth over that.

How was that figure arrived at? It was arrived at as the tax cut figures themselves were arrived at, very carefully. We have used some of the best economic advice and expertise that we think is available in this country. The numbers are not derived accidentally or in the abstract. This amendment, Mr. President, is the result of months of work, and weeks of consultation with some of the best experts in the future of economic planning that we were able to locate. Very simply, what this amendment provides is that if we are to have the tax cuts that this Senator believes are needed to stimulate growth, to increase production, to increase expansion in the private sector, then we have to limit the expansion of Federal spending and we have to provide those levels of tax cuts.

What would be the result if this amendment were adopted and implemented, Mr. President? According to the calculations we have done, and given very conservative estimates about the degree of investment and the degree of expansion in private development, we would arrive at something like a $15 billion to $18 billion deficit by 1983. But given the most optimistic calculations, those that incorporate what business is most likely to do with this degree of economic stimulation and increase in demand, it is our calculation that by 1983—we can have a balanced budget. The most optimistic predictions are that we can have a surplus budget in 1983.

Mr. President, I do not think we should make policy only on those most optimistic projections. I think we should take the most conservative projections. That leaves us with a growing economy as a result of that stimulated private investment. It gives us controls on Federal spending at predictable levels that permit us to serve the real needs of the people of this country, but eliminate the waste and the fat and the fraud that is in the budget, and exercise additional discipline to that which we already have in the budget process. It also permits those who have to make very difficult investment decisions to have some predictability about where the Government is going and what its policies are.

Mr. President, even if we take those most pessimistic assumptions, we shall have that growing economy, we shall have the controls on Government spending that I think taxpayers of this country are insisting on. We shall also have a budget that is approaching balance, even under the most pessimistic calculation.

This proposal does not represent absolute limits on what the Government can do in terms of spending. All it says is that if we are to have those tax cuts, which I believe we should have and must have to stimulate increased productivity and investment, we can only do so when the Federal Government exercises the restraint on itself that it has not been doing up to now, with the exception of the effort of the Congressional Budget Committee.

Mr. President, this amendment will permit Congress to exceed the spending limits which it contains. It does not contain any absolute prohibition on that. All it says is that if those spending limits are exceeded, there will be no tax cut. That is in this amendment, and I think it should be part of the law, because the people of this country understand that that is what is necessary. We cannot continue to offer tax cuts every year or every 2 years, or every 3 years or every 4 years, and run the budget deficits that we have been running, not controlling our own expenditures and keeping our own house in order, and expect the American people and the private sector to have any confidence in governmental fiscal policy.

Mr. President, if this amendment were adopted, it would exand and increase and build the constituency for the budget process. It would set preconditions for tax cuts in the next 3 years after fiscal 1979. It would use the second concurrent budget resolution as a point of departure.

I think most importantly, Mr. President—and I want to reserve the remainder of my time to respond to comments by the committee—it would offer a departure in governmental policy that I do not think has ever been attempted before. This approach is unique and novel, but it is reasonable. It is thoughtful, it is carefully calculated. We have had much consideration in the last few months and weeks in this country, at the State and Federal levels, of a variety of kinds of economic proposals. Some are massive tax cuts, as proposed by the Finance Committee in the pending legislation. So are tax cuts as proposed by the administration. There have also been a variety of ways of attempting to control Government spending, particularly at the State level. Mr. President, what this amendment does that my cosponsors and I are attempting is link those proposals in a thoughtful and reasonable manner. We have comprehensive data, the best that the expertise available offers, to justify and support the calculations we have made, and the specific limits in spending and tax cuts proposed in our amendment.

Mr. President, I ask unanimous consent that that data be printed in the RECORD. It is a Congressional Research Service analysis using the Chase Econometrics economic model.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The tables are printed in the RECORD beginning on page 35392 of the Senate proceedings of October 10, 1978.)

Mr. HART. Mr. President, in summary, this amendment makes tax cuts in the 3 years beyond fiscal year 1979 contingent upon Federal restraints. It cuts personal taxes only. It takes effect in 1980. It predicates those tax cuts on calculations based on 1978 tax tables. It looks to the second concurrent budget resolution for its spending ceilings. It uses budget ceilings as targets and not as mandatory handcuffs or restraints. It does not change 1979 law, and it would put constraints on the deficits through 1981 and into the 1980's.

Mr. President, I reserve the remainder of my time.

Mr. PROXMIRE. Will the Senator yield for a question?

Mr. HART. I yield to the Senator from Wisconsin.

Mr. PROXMIRE. This amendment, as I understand it, would provide for a reduction in taxes matched by the limit on the increase in spending, is that correct?

Mr. HART. That is correct.

Mr. PROXMIRE. The principal limit on spending would be 1 percent in real terms, with an estimate that there be about 6 percent inflation, is that right?

Mr. HART. Yes, my amendment would set spending limits targets which represent a growth of Federal spending at 1 percent below current projections by the Senate Budget Committee. This would reduce expenditures $40 billion from projected levels in 1983.

Mr. PROXMIRE. Now, what happens in the event of a recession and a deep recession, when the tax revenues are eroded sharply and it may be necessary

to spend more money and the deficit increases?

Mr. HART. Congress, of course, under this amendment, preserves its prerogatives that it is exercising right now, that is, amending tax laws in any year.

It also provides that if the deficits increase beyond the suggested levels as a result of recession, or any other factor, that the tax cut or the calculations set forward in this amendment are set aside. Congress is, of course, free to increase the tax cut or take any other step it may wish.

Mr. PROXMIRE. The same provisions would be in place in the event of a military emergency where we had to spend a great deal of money because of the military situation?

Mr. HART. The Senator is absolutely correct. Obviously, we should not tie the hands of the Congress or the administration.

Even if this amendment passes the administration, the congressional budget process, Finance Committee, the Ways and Means Committee, and, of course, both Houses can still do anything they wish in any given year. My amendment will simply cause a tax cut to take effect in any year that spending is below certain limits. If Congress wishes, of course, it can increase or decrease the tax cut in any year and I would recommend such a change if the economy turns into a recession, for example.

All this says is that under normal circumstances, if projected controls on the growth of Government spending are not met, there will be no tax cut, barring those extraordinary circumstances.

Mr. PROXMIRE. If the Senator will yield very briefly, let me congratulate the Senator on what I think is precisely what we need.

This would provide a tax cut, but a responsible tax cut, a tax cut keyed to holding down spending, which would not be inflationary under the circumstances because spending would have to be reduced, too.

It seems to me the principal objection to Kemp-Roth was it might be, under some circumstances, inflationary.

I happened to vote for it, but that was the view of many Members of the Senate.

The Hart amendment meets that objection. It provides not only for very substantial tax reduction. but a tax reduction keyed to holding down spending increases so that the deficit would be reduced and eliminated in 1983—is that correct?

Mr. HART. The Senator is absolutely correct.

I want to emphasize that the purpose of this amendment is not to provide an election year, or any other year, gimmick for Members of the Senate or Congress to go home and say, "We voted for tax cuts this year and in the next 3 or 4 years."

But it is to address a real and I think growing problem in this country, and that is probably recession.

I think many people on both sides of the political fence, both sides of the political aisle, agree it can only be addressed by some thoughtful and calculated and projected fiscal stimulation that will not only encourage the consumer side, but also give the business sector confidence that if they make investment in increased plant capacity, increased productivity, that there will be some demand there to meet that.

But it also permits an increased demand and increased productivity and growth in the private sector without the even greater problem, and that is inflation. The way that is counteracted is the controls on the growth of Federal spending. As a result this budget deficit is decreased, rather than increased, as with some other proposals.

There may be better ideas as to how to do this, but the Senator from Colorado has not heard them, frankly. I think combining these two for the first time, and I know of no other time this has been done, is the only solution available to us to counteract the simultaneous problems of inflation and recession.

Mr. PROXMIRE. I congratulate the Senator from Colorado. I support the amendment.

Mr. NUNN. I would just like to say a few things about the Hart amendment.

First of all, I agree with the overall concept of the Hart amendment. It has several things in common with what I would call the coalition amendment, which has been cosponsored by Senator CHILES, Senator BELLMON, Senator ROTH, and myself, as well as others—22 different cosponsors, I believe—23 now.

I would like to just point out very briefly the similarities, because the concept is similar.

First of all, both of these amendments make tax cuts contingent on Federal spending restraints. Second, both cut personal taxes only. Third, both begin in 1980. Fourth, both look to the second concurrent budget resolution for spending ceilings. Fifth, both use budget ceilings as targets. Sixth, neither changes the 1979 law, proposed by the committee, as I understand it, neither have deficit constraints through 1981.

But there are some fundamental differences everybody should understand, because I do agree with the general concept the Senator is proposing, and our coalition concept is very similar.

We also have inflation plus a percentage of real growth as a contingency. We have a 1 percent real growth limit in the Nunn coalition amendment, which will follow the Hart amendment.

But we have another contingency, too, because limiting spending to inflation plus a percent of real growth is not sufficient. We also need a measure of how that spending relates to overall GNP, otherwise we could have 15 percent inflation, one year and the next year a 16 percent Federal spending increase.

We also in our amendment, and this is the distinction between the Hart amendment and our amendment, we have a second condition precedent, which is that the percent of Federal spending related to GNP has to start declining and we have a specific schedule that would take us down by 1983 to 19.5 percent of GNP.

This means we are mandating a shift from governmental expenditures to the private sector expenditures.

There is one other important limitation we have in the Nunn coalition proposal. We have a required balanced budget by 1982.

We do not pull this figure out of the air. It is based on economic projections and the amount of our tax cut is geared to balancing the budget in 1982.

We stretch out the overall tax cut over 5 years, including 1979, and we, reluctantly, but, nevertheless, we do reduce the amount of the tax cut to a lesser figure than is proposed by the Senator from Colorado because we felt it was essential to balance the budget in 1982 and to avoid continued deficit spending.

So, without taking a lot of time, I say in summary that there is nothing in the Hart proposal that makes us get to a balanced budget.

The Senate is going to have a chance to vote on such a proposal in the form of the Nunn proposal in just a few minutes. But I would reluctantly have to oppose the Hart proposal because it does not have the restraints I would like to see it have before we implement tax cuts.

Mr. LONG. Will the Senator yield for a question?

Mr. NUNN. I am glad to yield to the Senator from Louisiana or to the Senator from Delaware.

Mr. LONG. As I understand, the Hart amendment would permit a budget deficit of $50 billion next year and still have a tax cut, is that correct?

Mr. NUNN. That is theoretically possible. I do not think that would really happen, in fairness, but I think it is theoretically possible.

Mr. LONG. How much deficit would the Senator's amendment permit next year and still have a tax cut?

Mr. NUNN. In 1980, we have a similarity, neither bill uses a deficit contingency in 1980, but we do use two other criteria. Frst of all, a 1-percent limit in real growth. Second, we would require the percentage of the Federal spending related to GNP be reduced.

This does not directly regulate the deficit, but it does indirectly regulate it. Therefore, we reduce the growth in spending.

We did not put in a deficit constraint in 1980, but we do put a figure on it in 1982.

Mr. LONG. That has the effect of limiting the deficit to a lower figure than the $50 billion or not?

Mr. NUNN. It definitely would, because spending measured against the gross national product would go down, and it has to go down every year. Unless those two conditions are met, you would have no tax cut.

Mr. HART. Mr. President, will the Senator yield to respond to a question?

Mr. NUNN. I yield.

Mr. HART. The calculation of the deficit does not mandate a tax cut. Congress is free to do anything it wishes. The deficit figure does not mandate a tax cut.

The Senator from Georgia has indicated his approach with respect to Federal spending as compared to GNP would be 19.5 percent, from about 21 percent now, by 1983.

The Hart amendment would restrain Federal spending so that spending would decline from 21 percent of GNP today to 19.1 percent in 1983.

Mr. NUNN. The difference is that the Senator does not have anything in his amendment that guarantees that. That is based on a lot of assumptions. We have in our amendment that that percentage of GNP must go down. Otherwise, there is no tax cut. We write it into law, and the Senator merely has it on his wish list. That is a difference we have to address.

Mr. ROTH. Mr. President, I congratulate the Senator from Florida for supporting the concept of a phased-in tax cut, which I think is very important both from the standpoint of the American people and from the standpoint of trying to secure some buoyancy in the economy.

However, for the reasons outlined by the distinguished Senator from Georgia, I think it is important that it be recognized that there is a second coalition, if we want to call it that, a bipartisan amendment, that would achieve the same goals but is much more specific.

One of my concerns about the Hart amendment is the point just dwelled upon, that it does permit next year a $50 billion deficit, which I think is much too high. I do not think the Senate should put itself on record as permitting a deficit that high.

Second, it concerns me that the so-called Hart amendment does not spell out with particularity what the tax cuts would be, in contrast to the coalition amendment, which has the charts spelled out specifically as to what cuts individuals with different incomes would enjoy.

Under the earlier amendment, it is my understanding that the Secretary of the Treasury was the one who is going to spell out or work out the tax rates.

Is my understanding of Senator HART'S amendment correct, that this is a Joint Committee on Taxation? That was not a change that was mentioned when we got the unanimous consent.

Mr. HART. The Senator is correct, and I apologize for that. It did not seem to me that that was a material change in the amendement.

Mr. ROTH. I think it is a significant change as to who has that authority; because, while there are some restraints put upon what it can do, there is still a certain amount of flexibility as to how they would be spelled out.

For example, can the Senator from Colorado tell me what would be the tax cut of a family of four if we meet the deficit requirement?

Mr. HART. At what income level?

Mr. ROTH. $20,000 a family of four.

Mr. HART. In which year?

Mr. ROTH. For each year that the tax cut could take effect.

Mr. HART. In 1983, for a family with an income of $25,000, it would be $578. The 1979 figure is about $148, and we can calculate the rates in between.

I must say that I do not think that is a material difference between the two amendments.

Mr. ROTH. I, for one, am not willing to delegate that authority either to the Secretary of the Treasury or to the Joint Committee.

It seems to me that one of the advantages of the coalition amendment is that we spell out with particularity exactly what would happen in tax-rate reductions. I think that gives certainty to the picture that is not found in the Hart amendment.

I also agree with the distinguished Senator from Georgia that it is particularly important not only that we require the meeting of a GNP standard, but also the 1982 requirement that the budget be balanced.

For that reason, I urge my colleagues to oppose the Hart amendment and to support the coalition amendment which will be brought up subsequently.

Mr. HART. Mr. President, I hope that the Senate, in considering these two proposals, does not lose sight of the forest for the trees.

The fact is that in the case of the Sentor from Colorado and his cosponsors, after a period of months of a lot of hard work, we have come up with what we think is a very good proposal.

In addition, the so-called coalition has come up with a similar proposal over a period of time; and now what we have is the individual sponsors of those two approaches trying to point out how different they are and urging the Senate to reject one and support the other. Frankly, I am not sure it makes that much difference, when you consider the importance and, if you will, the uniqueness of this approach. That is what is important about these proposals.

For my part, as a principal sponsor, the Senator from Georgia knows that I am perfectly willing to accept the factors in the Nunn proposal which he has pointed out as different in ours.

The GNP provision is acceptable, and we will make whatever changes are necessary in the deficit calculations. We will incorporate the rate schedule that the sponsors wish to make. I am perfectly willing to accept what the sponsors seem to think are substantial differences and incorporate those into my amendment. It seems to me that that would make the measure agreeable to everyone. If the sponsors wish to make that offer of amendment by unanimous consent, I am perfectly willing to accept it.

Mr. NUNN. I say to the Senator that I agree with him that we have more similarities than differences. There is no question about that. We have been over it very carefully. I agree with the Senator's concept. I believe we have a stronger proposal. I think it has more restraint on Federal spending and does give us a balanced budget position by law. It mandates a balanced budget.

Also, we have a broad coalition in sponsoring this amendment. I do not feel that I have the authority on behalf of 23 or 24 people to agree to provide any kind of substitute.

As the Senator knows, we would have liked the Senator to join us on our proposal. We invited him to join us on our proposal, but that did not work out. I have great respect for the Senator. I say, in all frankness, that if there were not a better alternative going to be voted on right after his, I would be in favor of his, as opposed to the current law.

However, I do believe it is much better to provide in this amendment precisely some limits on Federal spending compared to gross national product. I think it is much preferable to have an overall requirement of a balanced budget in 1982.

I also believe it is preferable to have tax cuts that are based on achieving economic stability. We did not pull our tax cuts out of the air and feed them to a computer—I know the Senator did not, either—and say this is what we want. What we did was to feed some basic assumptions—that is, getting a balanced budget and limiting expenditures to 1 percent real growth—we fed that in and said we want tax cuts which would allow us to have economic stability and real growth. The tax tables that came out were a result of that kind of process.

So I would not be able to speak for the other 22 or 23 Senators on this, but I would hope we could debate both proposals as we are now doing, and then have a back-to-back vote on it.

Mr. BELLMON. Mr. President, the Hart amendment and the coalition amendment set forth a concept relating to tax cuts tied to restraints on spending that I believe embrace an idea whose time has come.

The problem has been in the past that there is always pressure on the Senate to increase spending. Yet, the taxpayers never seem to be heard; so we do not have the same pressures to hold the line on increasing taxes. Both these amendments intend to tie a reduction in taxes to a requirement that Congress hold the line on spending. One amendment would hold the line at 1 percent in real terms and one at three-fourths of 1 percent.

When you compare the two proposals, I am convinced that, while I agree with the intent, the coalition approach, one which I have cosponsored, is superior in many ways to the one that has been offered by the Senator from Colorado.

First, the amendment of the Senator from Colorado would authorize, as has been said, the joint tax committee to exercise some discretion in establishing rate tables. Distributing the tax burden to me is a matter that the entire membership of Congress and not just one committee should undertake. Our amendment sets specific rates that are part of the amendment and reserves this responsibility to Congress.

Second, the Hart amendment proposes a 3-year rate cut beyond 1979. The coalition amendment proposes 4 years. To me this just gives us a longer period of certainty and I believe would serve as a very considerable incentive for the private sector to make greater investments and to help us have a stronger economy.

The size of the third year tax cut reduces the deficit in 1982 down to $18 billion, but to me this is still a very large deficit, and I believe it is unnecessary since the coalition amendment gets us to a balanced budget by 1982, and I think that is one of the major points of difference and it is one that I stress.

Mr. President, there are many very

specific differences, and I shall recite those in some detail for the Senate.

The first, as I have said, the coalition amendment has a balanced budget by 1982. The Hart amendment has no constraints on deficits.

The coalition amendment specifies spending restraint as a percentage of GNP, and the Hart amendment has no such provision.

The coalition constrains outlays to 1 percent above inflation. Hart sets specific levels which rise with inflation plus three-fourth percent. There is not that much difference in that one area.

The coalition specifies a table of reduced rates which produce revenue levels which fit spending constraints. The Hart amendment has the joint committee compute the reduced tax rates and this way takes this responsibility out of the hands of Congress.

The coalition subsumes the Kennedy amendment's redistribution of tax burden but distributes his amendment's tax cuts roughly according to individual tax rates in the Finance Committee bill before amendments. The same provision of redistributing the tax burden is in the Hart amendment, but the Hart amendment distributes those tax cuts according to the bill as finally amended, which is something none of us will know about for some days.

The coalition proposal cuts taxes $8 billion in 1980; $25 billion in 1981; $43 billion in 1982; $66 billion in 1983 below the bill that is before us as amended. The Hart amendment cuts are in percentages and it is to achieve reduced revenue by 15 percent in 1980, 22 percent in 1981, and 29 percent in 1982.

So, Mr. President, I think the main difference between these bills is that the coalition approach is one that is set forth specifically so the Senate will know exactly what we are voting on, and the Hart proposal leaves many things up in the air that will have to be decided and worked out later.

So, I strongly urge my colleagues to vote against the Hart proposal and to be in position to support the coalition amendment when it is brought before the Senate immediately afterwards.

Mr. HART. Mr. President, it is a rather minor point, but I think it should be made. On behalf of the coalition amendment, by calling it that, I do not want us to get into this business that we have with the Senator from Colorado, and then we have a gang of other people. I could call my amendment a coalition amendment also if I chose to. I have several other Senators on it. So I think we should keep that point in mind.

Second, I think what we are doing here is spending a lot of time trying to point out differences, as I have already stated. What I said to the sponsors of the Nunn amendment is that many of these features, if not all of them, are acceptable to me. We are straining at the last 5 percent and on 95 percent of this we are together. I do not know why we have to spend a lot of the Senate's time telling our colleagues or at least the RECORD the differences between them when the vast majority of these proposals are the same.

If the Senator proposing this amendment wishes to offer those changes, I have already indicated that they will be acceptable to me.

Mr. NUNN. Will the Senator be willing to just withdraw his amendment and then we could vote on ours right after that? It would accomplish exactly that purpose.

Mr. HART. Mr. President, I am afraid the Senate is getting itself down to a struggle over pride of authorship.

Mr. NUNN. We could cure that very quickly if the Senator would withdraw his amendment.

Mr. HART. The Senator from Colorado made the first offer. It has not been responded to yet. I have offered to accept the changes which the sponsors of the Nunn amendment have indicated they want.

Mr. LONG. Mr. President, both pending amendments, the Hart amendment and the Nunn amendment, bring in a whole new concept in taxation, and it relates that to spending.

The idea has some merit and perhaps the Senate wishes to vote for one or the other, or both, but I think that one precludes the other.

I gain the impression that the Hart amendment leaves it up to the joint committee to work out what the rates will be, and the Nunn amendment will provide what the rates actually are. It has a schedule for which we will vote. Is that correct?

Mr. NUNN. The Senator is correct.

Mr. HART. To answer the Senator, the Joint Tax Committee woud be performing not a discretionary function but a mechanical function. It would be implementing formula which is already in the law.

Mr. LONG. I gain the impression, Mr. President, that the Nunn amendment is somewhat more sophisticated and it has been more thoroughly worked out. As between the two, I think I would favor the Nunn amendment. I am not sure at this point I would recommend either one of them, but my impression would be the Nunn amendment is somewhat more thoroughly worked out to meet the problem.

Both of them, I believe, seek to move us toward an ultimately balance of the budget; is that correct?

Mr. NUNN. In fairness I think the Senator has that intention in his, but it does not provide that. There is no requirement in his amendment that that be done. In our amendment it is a requirement that before the 1982 tax cuts go into effect there has to be a balanced budget. Of course, we also have in our amendment two conditions. One is limiting the amount of Federal spending to the GNP deflator, meaning the inflation rate plus 1 percent. The Senator has a condition similar to that in his but really his is three-quarters of 1 percent, as I understand it. We add one more dimension in ours that has a very important effect. That other condition precedent is the tax cut going in effect in 1980, 1981, 1982, and 1983 is a measure of the Federal spending level, the outlay level compared to the gross national product.

This has the effect of putting on a safety valve if we have runaway inflation so that we cannot come up here and have 20 percent inflation and have 21 percent increase in Federal spending under the Hart amendment and still have a tax cut, which would be ludicrous, but I am not saying that is what the Senator intends.

Mr. HART. Mr. President, if the Senator will yield, what was that about a 21-percent increase?

Mr. NUNN. The Senator has no condition precedent to trigger the tax cut except the last year's spending level plus three-quarters of a percent as in his amendment.

You could have an inflation rate of 20 percent and you could have an increase in Federal spending next year of 20.75 percent, and you could still have a tax cut automatically.

Mr. LONG. Mr. President, I would like to ask that the time consumed by the Senator from Georgia be charged to his time.

Mr. NUNN. I join the Senator in that request.

Mr. ROTH. Mr. President, I think it is worthwhile to reemphasize that the so-called Hart amendment would still permit a tax cut next year, but a $50 billion deficit.

I must say it disturbs me that the Senate goes on record for a deficit of that size when the Budget Committee in the second budget resolution has predicted or anticipated a $40 billion deficit. That is bad enough. But I do not think we want to go on record today as even approving a larger deficit of an additional $10 billion.

In the coalition amendment we have lowered that goal to $36 billion. I must confess that is pretty horrendous in and of itself, but it does represent a substantial improvement over the second budget resolution.

So I urge the Members of the Senate to support the coalition amendment which has tougher standards and will not permit deficit of the size anticipated in the Hart amendment.

Mr. HART. Mr. President, will the Senator from Delaware be willing to offer that as a change by adding more constraints from his amenment to my amendment?

If he does, it is acceptable. I find the two proposals so similar that I could accept this sort of change.

Mr. ROTH. As the distinguished Senator from Georgia pointed out we would be very happy if the Senator from Colorado would withdraw his amendment and become a sponsor of the coalition amendment.

Mr. HART. I am afraid my cosponsors would not agree to that.

Mr. CURTIS. Mr. President, I yield myself 3 minutes of my hour.

I rise in opposition to the Hart amendment. It will be possible to have a $50 billion deficit and still get a tax cut.

I think also we should keep in mind in all of these proposals, including the one offered by the distinguished Senator from Georgia and others, that we really cannot bind a future Congress. I do not make that statement with any idea of opposing the amendment. I think it has considerable merit.

But I do say we are never going to permanently set our financial house in order until we get an authority in the Constitution. Someone may come up with a better idea than anyone has ever thought of, but as long as we do this by statute another statute can take its place. There is just no way we can tell Congress 2 and 3 years from now what they must do, and do it by statute.

Here is another reason: Even if this is successful, the time will come—maybe you will have 20 years, I hope it would be more than that—when a very conscientious and careful Congress that held down spending, but without a constitutional amendment, you could have an election that swept in a group of spenders and they could set in motion a great many programs that would just go on and on and on, and it would add to the budget deficit.

Most of our budget troubles this year were not caused this year. They were authorizations going back a good many years.

I will not delay the Senate with further discussion at this time. But I do point out that until we have a constitutional restraint on deficit spending, with a mounting national debt, there will be no control.

Mr. BIDEN. Mr. President, will the Senator yield?

Mr. CURTIS. Just a second.

I particularly oppose the Hart amendment because you can have a $50 billion deficit and still have a tax cut.

We have long since given up paying the interest on the national debt, but now we do not even pay the interest. If you will look at the deficit over a period of years there is quite a parallel between the deficit and the amount of interest on the national debt. We have got to come to a time where we can actually reduce the debt.

Might I also express the hope that Congress quit running away from the idea of cutting expenditures and hoping we can do a little adjusting here and there in the tax law and bring about a balanced budget. It cannot be done, Mr. President. I yield the floor.

Mr. HART. Mr. President, while we are pointing out differences, let me point out that the Nunn amendment has a higher rate of expenditure than is allowed in the Hart amendment. Please note that the Hart amendment has tighter controls on Federal spending than the Nunn amendment.

The PRESIDING OFFICER. The Senate will be in order.

Mr. HART. Mr. President, the requirements of the Nunn amendment that there be a balanced budget theoretically could lead to a situation where the budget was $1,000 out of balance and there could be no tax cut in 1982 or 1983. Should we allow a multibillion dollar tax cut to be put aside, because of an arbitrary estimate of a Federal deficit?

The flexibility which the Senator from Wisconsin rightly said was needed was permitted in the Hart proposal.

If the majority of my colleagues feel strongly about concrete, absolute, ironclad, copper-riveted balanced budgets, however, I will accept that, for the fourth time. But what we would like to see—I had set out or it has been pointed out—some permissible deficit levels in the next 3 or 4 years, and I would like the sponsors of the Nunn amendment to point out what the deficits are in their proposal.

Mr. President, there are a lot of people here saying that you cannot vote for the Hart amendment, because it is going to have budget deficits. A lot of the same people voted for the Roth-Kemp proposal which would have monumental deficits, and nobody denied it. All of a sudden we are hearing that we cannot vote for the Hart amendment, because we might have some deficits next year or in 1980. Well, a lot of those same people a couple of days ago voted for Roth-Kemp; they have been out talking about it. Everybody indicated, everybody who had looked at it at all had indicated, that there were going to be substantial deficits of at least the level of the Hart amendment. I just want to point that out.

My proposal would methodically reduce deficits—to about zero in 1982, if economic growth is rapid.

Once again, Mr. President, all I can say is if these differences, which I think are minor, could be put forward in the form of an amendment I would be more than happy to accept them.

Mr. NUNN. Mr. President, just a brief response to the Senator from Colorado. The Senator basically said the Nunn amendment compared to the Hart amendment allowed a higher level of expenditures. That is a mixed bag. The Senator's amendment allows three-quarters of 1 percent above inflation—the Nunn amendment allows 1 percent above—the rate of inflation. So the Senator has noted that there is a very close relation there of one-quarter of 1 percent. But, and this is a big but, the Senator's amendment, if you had a high rate of inflation, has no way of regulating Government spending except that it must be three-quarters of 1 percent above the rate of inflation. That is a tremendous difference between our amendment and the Senator's amendment, because we have two checks. One is the real growth of 1 percent. But the second check is the percent of Government spending measured against the gross national product has to be declining. That means in simple terms that the deficit has to be declining.

If you had a high rate of inflation and even stayed within the 1 percent, you could have a high level of Federal spending and qualify for a tax cut under the Hart bill and Federal spending as measuser against GNP would not be going down. Therefore, the second condition precedent of the Nunn coalition amendment would not be met and, under our bill, you would not have a tax cut.

So, for the Senator to say ours permits higher spending, I would say that is only accurate if you have a low rate of inflation. If you have a high rate of inflation, it would be just the opposite. We have a doublecheck on this and the Senator has only one.

Mr. HART. Mr. President, will the Senator yield for a question?

Mr. NUNN. I would be glad to yield.

Mr. HART. Will the Senator tell me what the projected levels of the deficit are?

Mr. NUNN. Yes. We have a projection here as compared to the second budget resolution which the Senate has approved this year. This is a comparison of the deficits and the balanced budget position under the Nunn-Chiles-Bellmon-Roth amendment as compared to the second budget resolution, that is to say, current policy.

The second budget resolution predicts a deficit of $40 billion in 1980. The Nunn-Chiles-Roth-Bellmon amendment cuts that by $4 billion. It would be $36 billion, even with the tax cut.

In 1981, the current policy calls for a $30 billion deficit. What we are proposing is a $25 billion tax cut, but a $18 billion deficit in 1981. This is a reduction of $12 billion from current policy.

In 1982, the budget resolution shows a $13 billion deficit. The Nunn-Chiles-Roth-Bellmon amendment shows a balanced budget plus one; that means a surplus of $1 billion.

In 1983, our coalition amendment shows a surplus of $11 billion, compared to the second budget resolution surplus of $3 billion.

So what we have done is reduce the deficit each and every year, and at the same time given over $140 billion worth of tax cuts, which means that we have basically reduced spending very substantially from current policy.

Mr. PROXMIRE. Mr. President, will the Senator from Georgia yield?

Mr. NUNN. Yes.

Mr. PROXMIRE. The Senator has two conditions in the Nunn amendment which would restrain spending. The second recommendation is that it would have to be a limited percentage of the gross national product.

Can the Senator give us 1 single year out of the last 25 in which we have had inflation that has been substantial, and the gross national product has been declining?

Mr. NUNN. The Senator has missed the point entirely. What the Senator from Georgia said was that the second condition was that the percentage of Federal spending as measured against the gross national product was declining. I did not say the gross national product was declining. I said the percentage of Federal spending as measured against the GNP was declining.

Mr. PROXMIRE. Exactly right; but if you had a substantial rise in gross national product which you could have under exceptional circumstances, if the GNP is going up, therefore, there would be a substantial increase in the Federal spending.

Mr. NUNN. The Senator is aware that the GNP has been going up, but the percentage of expenditures measured against the GNP has also been going up. In addition to that, we have a second condition, which is that the percentage of the gross national product must be declining, which means the deficits have to be declining.

Mr. PROXMIRE. I understand; but

an increase in the gross national product would be one condition in which the Senator from Colorado's amendment is more restrictive than that of the Senator from Georgia.

Mr. NUNN. The Senator is wrong on that, unless we have high inflation. If we have high inflation, the Senator from Colorado's amendment is more restrictive.

Mr. PROXMIRE. If you have inflation, you have a rapidly rising GNP, and if you have a rapidly rising GNP, the percentage of GNP to Federal spending would have to be declining.

Mr. NUNN. When is the last time the percentage of Federal spending as compared to the gross national product went down?

Mr. PROXMIRE. Well, it would go down under the Hart amendment.

Mr. CHILES. No, there is no requirement that it goes down under the Hart amendment. Only under our amendment does it go down. It would go down whenever the gross national product rises at more than 1 percent in real terms.

Mr. PROXMIRE. That has been true in every year, with one or two exceptions, for the last 20 years.

Mr. CHILES. It has not been true for the last 5 or 6 years.

Mr. PROXMIRE. It was true last year, the year before, 1975, 1976, and 1977, and it will be true in 1978.

Mr. CHILES. No. it is not.

Mr. PROXMIRE. Yes, it did. The gross national product went up every one of those years.

Mr. CHILES. Yes, but Federal spending also went up every one of those years.

Mr. PROXMIRE. That is what the Hart amendment would control. The Hart amendment would not let it go up more than 1 percent.

Mr. CHILES. No, it says Federal spending cannot go up more than 1 percent over the inflation.

Mr. PROXMIRE. That is right.

Mr. CHILES. Prior to the recession in 1970, we were spending about 20 percent of the GNP for Federal expenditures. Last year we spent 22 percent. During that time, we had some of the highest inflation we have ever had. So we had high inflation and took in more money, as the Senator is pointing out. But we still, on top of that, were spending more than 20 percent of our GNP for Federal expenditures. So it is a double whopper.

Mr. PROXMIRE. Let me interrupt the Senator. You say every one of those years you were increasing spending more rapidly than three-quarters of 1 percent above the inflation rate?

Mr. CHILES. Yes, sir. We were.

Mr. PROXMIRE. And that would be restricted by the Hart amendment.

Mr. CHILES. But in any one of those years, if we had had an amendment that said, "You cannot increase Federal spending as a percentage of GNP, but you must decrease it," then your Government spending would have had to go down. But it did not. So what we did in the past was increase the deficit.

Mr. PROXMIRE. But the fact is that if the Hart amendment had been in effect for the last 15 years, you would have had a sharp reduction in the spending we had.

Mr. CHILES. And the fact is that had the Nunn-Chiles-Bellmon-Roth amendment been in effect, you would have had a sharper decline.

Mr. PROXMIRE. I would like to see the tables that prove that. I am sure the Senator believes that is true, but I think it is probably wrong.

In any event, you would have had a sharp reduction with the Hart amendment in effect.

Mr. CHILES. I agree.

Mr. PROXMIRE. You agree? Thank you.

Mr. CHILES. And the Senator from Georgia is right when he says any time inflation was leveling off, then certainly holding spending to three-quarters of a percent over real growth means you would get more restraint in the Hart amendment. But any time inflation is running rapidly, as it happens to be now, you would not, because you could have a higher percentage of the GNP go for Federal expenditures. It depends on how you want to buy your insurance. Our set of three constraints together in a way that no one constraint can do.

Mr. PROXMIRE. I would like to ask the Senator when, in the last 10 years, it would have been realistically effective.

Mr. CHILES. It would have been realistically effective in 1970, 1971, 1972, 1973, 1974, 1975, in 1976, and in 1977.

Mr. PROXMIRE. I think the Senator is wrong in every year except 1974.

The PRESIDING OFFICER (Mr. MATSUNAGA). The Chair will remind the Senator from Georgia that this is all out of his time.

Mr. NUNN. The Chair is very considerate of the Senator from Georgia in giving him that reminder. How much time do I have left?

The PRESIDING OFFICER. The Senator has 44 minutes remaining.

Mr. NUNN. I would just like to say to the Senator from Wisconsin that basically the GNP, if you look at the percentage of GNP in 1969, it was—well, if you look at it in 1966, the percent of Federal spending compared to gross national product was 18.7 percent. If you look at it now, it is 22.5 percent. Over that period of time it has steadily come up. There have been years when it went down, about 3 or 4 years in a 12-year period when it went down; in the other years it went up. The trend is straight up.

Mr. PROXMIRE. But in every one of those years, if the Hart amendment had been in effect, you would not have had that rise; spending would have been at that 18 percent level or below it.

Mr. NUNN. I have already said that if we did not have a better alternative I would be in favor of the Hart amendment.

Mr. HART. You can have them both.

Mr. NUNN. I know the Senator from Wisconsin is aiming at a balanced budget in 1982. There is nothing in the Hart amendment that requires a balanced budget. The Hart amendment does provide greater tax cuts, but there is no concern for a balanced budget, that is why I favor this amendment, and I would think the Senator from Wisconsin would want a balanced budget also.

Mr. HART. Mr. President, may I respond to the question of the Senator from Wisconsin?

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. The Hart-Church-Proxmire-Bumpers amendment requires——

Mr. NUNN. We are both claiming the Senator from Wisconsin as a cosponsor. I am glad to have him on mine also.

Mr. HART. My amendment has a greater reduction in the ratio of Federal spending to GNP than does the Nunn amendment, year by year.

Mr. NUNN. That is in the Senator's economic projection, not a part of his amendment.

Mr. HART. This change will result result mathematically by lower spending. It is the same result as in the Senator's amendment, is it not?

Mr. NUNN. We have it written into our amendment.

Mr. HART. The fact of the matter is that the result of passing the Hart amendment would reduce the percent of GNP which Federal spending occupies at a faster rate. That is a fact.

Mr. NUNN. We have an analysis from both the CBO and Chase Econometrics Survey. I would disagree with the Senator, but I do not have his analysis. If he has that analysis, I would like to have it. If he does not have it, there is no way I can argue with it as a claim; I do not believe he has an analysis to back it up.

Mr. HART. It is already in the RECORD. I submitted it for the RECORD previously.

Mr. NUNN. If it is in the CONGRESSIONAL RECORD, an econometrics analysis——

Mr. HART. It is the computer printout from the econometric analysis that is in the RECORD.

Mr. BIDEN. Mr. President, this debate is a somewhat unusual debate, I think. We have the proponents of the so-called coalition amendment, of which I am one, and the proponents of the Hart amendment essentially agreeing that both amendments are substantially better than anything that the Senate is likely to have an opportunity to vote on between now and the end of the session. The Senator from Colorado and the Senator from Georgia mentioned that one of the dilemmas here appears to be the question of pride of authorship. It seems to me that the only essential thing is that we get an amendment of this consequence passed, and that we do it as rapidly as we can before we find ourselves in a box that may be produced before the evening is over.

I would like to suggest that the opponents and proponents of the Hart amendment yield back their time and we vote on it, vote up or down. If that fails, then we would move to the so-called coalition amendment.

All the people who have spoken so far here tonight are all saying that essentially what we must do is we must tie the growth of Government to the tax cuts or the lack of growth of Government to the tax cuts and we need substantial tax cuts.

I have the greatest regard for the Senator from Maine, who is not in the

Chamber right now, and I also have tremendous regard for the parliamentary and intellectual capabilities of the magician from Louisiana, the chairman of the full committee.

While we are all here and we all essentially seem to agree to get on with the vote in the interest of both the proponents of the Hart amendment and the proponents of the coalition amendment, I suggest maybe we do that and move on rapidly before we are foreclosed somehow.

Mr. NUNN. I agree with the Senator from Delaware.

Mr. MUSKIE. Mr. President, although I appreciate the effort that Senator HART has put into this amendment I must rise in opposition to it.

Mr. President, the Hart amendment was written in a manner consistent with the Senate Budget Committee's 5-year projections. The Hart amendment would provide future tax reductions only if Federal spending in future years is tightly controlled. For this reason the Hart amendment would not fuel inflation and would not add substantially to the budget deficit.

In this respect the Hart amendment represents a far more responsible approach to multiyear tax cuts than the Roth-Kemp proposal.

The Hart amendment does, however, have several flaws. First, the amendment would unnecessarily complicate the process of putting the budget together each year.

Second, the amendment could force tax cuts in a future year when tax reduction might not be appropriate.

Third, the amendment fails to affect the basic source of high spending and large budget deficits—congressional decisions on individual spending and revenue bills.

Mr. President, the Hart amendment would complicate the work of the Budget Committee and the Congress because revenue reductions could be triggered automatically by outlay changes. That would mean that each time the Budget Committee or the Congress considered a spending program the revenue effect of that spending provision would have to be considered, because each spending program effects the aggregate level of outlays, and the aggregate level of outlays influences the tax reduction under the Hart amendment.

In fact, under the Hart amendment we might not know what the revenue floor would be until early or mid-September when the House-Senate conferees agree on the level of outlays provided in the second budget resolution. The full consideration of tax legislation would therefore be blocked until only a few weeks before the new fiscal year was to begin.

My second concern with the Hart amendment is that it may result in a significant tax cut in a year when a tax cut would not be desirable. For example, if it appeared next year that the pace of the current economic expansion was going to pick up rapidly in 1980, then an appropriate fiscal and budgetary policy for that year might be to increase outlays only as rapidly as the projected inflation rate but not to reduce taxes. The Hart amendment, however, might require a tax reduction in 1980 if outlays, adjusted for inflation, are held constant.

The Hart amendment therefore might result in increasing inflationary pressures precisely when a budget surplus is required.

My final concern with the Hart amendment is that it addresses the symptoms of a budget problem, that is, taxes and budget deficits, but it fails to address the underlying problem—the need for congressional discipline in decisions on specific spending bills. Congress must have the fortitude to vote responsibly on each spending bill if we hope to achieve the goals of budgetary balance and a lighter burden.

Mr. CHILES. Mr. President, I am pleased to be one of the original cosponsors of the coalition amendment to reduce Federal taxes and spending and achieve a balanced budget by 1982. This amendment follows in general the plan I offered as an amendment to the Second Budget Resolution.

ECONOMIC NEED FOR TAX AND SPENDING REDUCTION

Mr. President, we are out of the recession, we have come down from over 9 percent unemployment to less than 6 percent, so we no longer need big deficits to create employment; what we need now is to cut back the "temporary" anti-recession spending and move as quickly as possible to a balanced budget.

To reduce 1 to 2 percent of excess unemployment, we need business investment and consumer confidence.

This means we need a firm commitment to balance the budget, reduce inflation and cut taxes. Our amendment provides that commitment.

Inflation is our biggest problem now—inflation impedes economic growth by driving up interest rates and discouraging investment. Greater certainty and stable economic conditions would provide the kind of encouragement people need at this point in time. Our amendment sets forth a plan for that kind of stability.

ECONOMIC FEASIBILITY OF AMENDMENT

We asked the Congressional Budget Office to run our numbers through their economic models, and they told us that if we put both spending and taxes by the amounts we propose, we will get a balanced budget in 1982 without hurting either unemployment or inflation.

To quote a letter from Dr. Alice Rivlin, Director of the Congressional Budget Office:

> In particular, this analysis shows that the revenues you propose would be consistent with a balanced Federal budget by 1982 and a continuation of the real economic growth assumed for the 1979 second budget resolution.

Chase Econometrics goes even further and says that by stimulating investment we will create an extra 1 million jobs by 1983.

In either case, it is clear that we have worked out a responsible, feasible combination of tax and spending reductions.

Mr. President, I ask unanimous consent that a table showing the effect of our amendment on Federal spending, taxes and deficit appear in the RECORD at this point in my remarks.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TAX AND SPENDING REDUCTION AMENDMENT

	1980	1981	1982	1983
Individual income tax cuts:				
Below Finance Committee bill	−8	−25	−43	−66
Finance bill revenues	496	567	638	706
Reduced revenues (amendment)	488	542	597	640
Federal outlay reductions:				
1 percent growth over inflation	524	560	596	634
Second Budget Resolution	536	575	623	669
Spending cuts (amendment)	−12	−15	−27	−30
Federal deficit (−) or surplus (+):				
Tax & Spending Reduction Amendment	−36	−18	+1	+11
Second Budget Resolution	−40	−30	−13	+3
Federal outlays as percent of gross national product:				
Tax & Spending Reduction Amendment	21.0	20.5	20.0	19.5
Second Budget Resolution	21.2	20.7	20.2	19.7

Mr. CHILES. Mr. President, this table shows that in addition to balancing the budget by 1982, we decrease Federal spending from 21.5 percent of gross national product in 1979 to 19.5 percent in 1983. That is the lowest level since 1966. That is a clear response to the public demand for smaller Government: we take less from the private sector and people pay $66 billion less in taxes.

INFLATION AND CONFIDENCE

Mr. President, the latest polls and studies show that there is now more public concern with inflation than with employment.

A study commissioned and released by the Department of Labor shows that—

> The dominant hope the American people have for the future of the United States is that inflation will be brought under control.

Inflation is the No. 1 item in that study, mentioned by 34 percent of the people interviewed, compared to 24 percent for employment concerns.

University of Michigan surveys also show, and I quote:

> Fears of inflation are undermining consumer confidence.

It also shows only 9 percent of the people think Government is doing a good job

on economic policy. The relationship is clear. People see Congress still increasing spending and running big deficits, and they see inflation going way up. We have got to turn that around.

BUDGETARY FEASIBILITY OF THE AMENDMENT

Our amendment sets a responsible level of restraint. We allow spending to increase realistically at 1 percent a year above the amount needed to compensate for inflation.

This is less than the rapid growth experienced during the recession, but does not require massive cutting of major programs.

One percent real growth is necessary to cover items like the increasing number of social security recipients and the growth built into long-term development programs like defense and energy. However, since the private economy will experience about 3.5 percent real growth in these years, Government will shrink relative to the total economy.

SPENDING CUTS AND CHOICES REQUIRED

This level of spending does require real restraint by Congress. It would mean cutting outlays by $30 billion in 1980 from the levels projected in the 1979 budget resolution. This is tight, but it is achievable.

While 75 percent of Federal outlays are "uncontrollable" in any one year. They can mostly be controlled on a 5-year basis. So-called uncontrollability means that expenditures are locked in by contracts signed in a previous year or by entitlement legislation.

If we begin reforming existing programs and avoiding new entitlements, we can achieve these goals.

EXAMPLES OF SPENDING RESTRAINTS

We need to choose between programs—the Senate Budget Committee successfully killed a $6 billion "soft" public works bill a few weeks ago, because it duplicated the CETA program and continued a "temporary" antirecession program.

I also offered an amendment to the antirecession fiscal assistance bill 2 weeks ago to cut off $.5 billion a year for times when the unemployment rate is below 6 percent. That would have saved over $2 billion in the years we are discussing here. This amendment failed on a close vote, but made it possible to pass another amendment to save $200 million a year.

Mr. President, let me give another example of how duplicative spending can be avoided. Last Friday, in the space of 2 hours, the Senate first passed an amendment to put the tuition tax credit into the tax cut bill. This will cost $300 million in 1979 and $1 billion in 1982.

The HEW appropriations conference next agreed to appropriate $500 million to pay for the President's alternative to the tax credit, and by two votes rejected language I offered that would have prevented the increased grants only if the tax credit becomes law. That program will also grow to cost $1 billion.

It is that kind of duplication and unwillingness to choose between programs that has the American taxpayer fed up with Federal spending. I referred the grant alternative, but we should not have started on both programs at the same time.

Our amendment would put the pressure on Congress to make harder choices in the future or have to forgo the automatic tax cuts we promise.

A successful example of spending restraint was an amendment I offered with several other Senators to the Housing and Community Development Act.

First, my amendment reduced the authorization for housing assistance by $8 billion, back down to the level of the President's budget and the congressional budget resolution.

Second, it eliminated a new cash entitlement program that would have duplicated welfare and food stamps, and grown to cost several billion dollars in future years.

Fortunately, the Senate voted in favor of our amendment and avoided those extra costs. We will have to keep up that kind of pressure to meet the goals of this amendment.

FEDERAL AID TO STATE AND LOCAL GOVERNMENTS

Mr. President, aid to State and local governments is one of the biggest pressures on the Federal Government—mayors and governors come to Washington looking for funds to pay for services, while their local residents are unwilling to raise taxes.

Federal aid to State and local governments will be over $82 billion in 1979—that is over 25 percent of State and local spending.

This aid has grown by $33 billion, or 66 percent, since the 1975 prerecession level of $50 billion. It will increase by $6 billion or 7.7 percent from 1978 to 1979.

State and local governments are running a $30 billion surplus, while we have a $39 billion Federal deficit. The States are buying Treasury bills—they are lending the Federal Government money so it can give them more fiscal assistance. That just doesn't make any sense to me. The only person who loses is the taxpayer. No wonder there is a tax revolt going on.

Mr. President, all these programs have fine goals, but they all cost money. What I hear the taxpayers saying is that we should limit. And that limit should be lower than the share of money going for taxes right now. Let us have Federal programs for important purposes, both defense and domestic programs. But let us pick and choose. Let us pare down the programs to what will really work. Let us stop the waste and stop having 2, or 3 or 10 programs all trying to do the same thing.

Our amendment does not tie the hands of congressional committees to decide what to spend for different programs. But it will set a counter pressure against spending. It will say you cannot have big spending without giving up scheduled tax cuts. We are talking about $66 billion of tax cuts by 1983. That amounts to $1,000 per taxpayers. I hope my colleagues will sign on and join this effort to reduce both Federal spending and Federal taxes.

Mr. NUNN. Mr. President, I am convinced that substantial reduction in the level of Federal taxation is necessary, not only because the people of this Nation have reached the breaking point in paying taxes to every level of government, but also because we must restore a larger share of the decisionmaking authority regarding expenditures to the private sector. Our Nation was built on private initiative and private financial decisions, and its economic health is being eroded by the increasing assumption of these responsibilities by the Federal Government.

The term "tax cut" is somewhat of a misnomer because, absent further action by the Congress, American taxpayers will experience a large tax increase due to the scheduled rise in social security taxes and energy taxes combined with the effect of inflation on individual income taxes. Without tax relief, I fear that these impending increases could cause a significant economic downturn. In other words, a continuation of current policy, even with the 1979 tax cuts, in my view, will carry a grave risk that the reduced purchasing power brought about by increased taxes and rampant inflation will produce a severe recession in the next few years.

There is little doubt that a tax cut is in order for fiscal year 1979 and in future years. Almost all economists and tax experts agree that stimulus in the form of tax reduction is necessary if we are to continue balanced economic recovery.

For these reasons, I supported the Roth amendment embodying the provisions of the so-called "Roth-Kemp bill." While it would have accomplished the laudable goal of phasing in the kind of tax cuts which the people of this country are demanding and which our economy needs, it was gambling on the hope that the Federal Government would correspondingly restrain spending so as to avoid increased inflationary pressures.

I believe that if Roth-Kempt passed, the Carter administration and Congress would have reduced the growth in Federal spending to prevent large increases in the deficit, but there was no certainty in this respect.

In summary, I am concerned that the positive aspects of a phased-in tax reduction could be transformed into inflationary influences if the Congress and the executive branch failed to achieve meaningful restraint in the growth of Federal spending. This concern has led to the development of the amendment which we are offering today.

The bill which the Finance Committee has reported to the floor contains tax cuts for 1979 and this amendment would not alter the work done by the committee. This amendment would, however, go further than the committee bill by incorporating the positive aspects of the Roth proposal, which have so eloquently been stated by the Senator from Delaware, while making constructive alterations in that concept in order to address the reservations which have been expressed by leading economists.

Long-term reduction of individual tax rates is, in my view, critical to the economic and social health of this Nation. There has been a change in the attitude of the American citizen as combined taxes have approached confiscatory levels. American citizens see an increasing percentage of their labors being siphoned off to support government at every level.

Enactment of a long-term phased-in tax reduction would directly address this

condition by informing the taxpayers of this Nation that if the growth in Federal spending is restrained they will have an assured tax cut in each one of a period of years. Advanced notice of this kind would not only change the economic atmosphere in this country by reinstituting incentives for individuals to save, invest, and work, but it would also enable the businessmen of this Nation to plan their investments with some degree of confidence that the Federal Government is committed to spending and tax restraint.

We are all aware of the sluggish economy which is projected by most forecasters over the next few years. There can be little doubt that the economic benefits of a multiyear tax cut enacted now would far exceed those derived from our traditional year-by-year piecemeal approach.

The overwhelming majority of economists who have expressed reservations regarding the so-called Roth-Kemp proposal have mentioned two primary concerns: First, the small number of years called for in Roth-Kemp for the tax cuts, and second, the absence of a firm requirement for reductions in Federal spending.

In drafting this amendment, we have phased in total tax reductions over a 5-year period rather than 3 years. The advantages of the phased-in approach are retained while reducing the potential for overheating the economy.

This amendment provides specific tax tables which would go into effect in each of the 5 years addressed by the amendment. The significant difference between this amendment and the other phased-in tax reduction proposals which have been discussed is the application of a condition precedent to the implementation of each year's proposed tax reduction. The tax reduction scheduled to be implemented in each year covered by this amendment would go into effect if Federal spending, as set by the second concurrent resolution on the budget does not exceed the rate of inflation plus 1 percent.

In practical terms, this means that a tax reduction of defined proportions would be implemented each year if the Federal Government restrained the growth in Federal spending below the specified level.

It would not legally mandate a reduction in Federal spending, nor would it literally restrict the flexibility of Congress to determine spending levels.

What it would do is say to Congress and the executive branch, "If we want to provide a tax reduction to the people of this country over the next 5 years, we must be fiscally responsible in the way we spend."

For the first time in our history, the taxpayers of this country would have a specific, direct, and measurable interest in Federal fiscal responsibility. No spending restraint would mean no tax cut. In my judgment, this proposal puts the horse before the cart—if we are to improve the health of America's economy in a responsible fashion, we must be assured that the growth in Federal spending will be restrained before a tax cut can go into effect. The people of this country want tax relief—there can be little question about that fact. However, I do not believe that they would welcome tax reductions at the expense of increased inflation, continued deficits, and profligate Government spending.

In my view, one of the most important aspects of this amendment would be its psychological effect throughout this Nation if it becomes law. Employees and employers understandably pay very little attention to pleas from Washington to restrain prices and wages when Washington continues to demonstrate an unwillingness to restrain itself.

Mr. President, if this proposal becomes the law of the land, for the first time in many years the President and the Congress will be able to say to the American people:

> We are leaders in the fight against inflation. We are reducing federal taxes and the growth in federal spending. You will keep more of your own money each year for the next five years. Let's all work together as Americans in the fight against inflation while providing at the same time a healthy economy with reduced unemployment.

Mr. President, I urge my colleagues to adopt this amendment and thereby send a clear signal to our Nation that for the first time Congress is willing to plan its spending and its taxing on a long-term basis.

Mr. ROTH. Mr. President, the Nunn-Chiles-Bellmon-Roth amendment will give the Senate the opportunity to vote for what the American people want—lower taxes, less Government spending, and a balanced Federal budget.

This amendment uses the carrot-and-stick approach, holding out the prospects of tax cuts if Federal spending is reduced.

The amendment establishes the principle of across-the-board tax rate reductions, phased in over a number of years, that I have been fighting for.

While the amendment does not go as far as I would like, its adoption would be a major step in the right direction.

This amendment will provide substantial tax cuts for all Americans over the next few years.

It will provide a powerful incentive for Congress to reduce the growth of Federal spending.

The amendment will give those who voted against Roth-Kemp the opportunity to vote for lower taxes and lower Federal spending.

Roth-Kemp would have put pressure on Congress to hold down Federal spending.

Mr. BIDEN. Mr. President, I rise to support the amendment of the distinguished Senator from Georgia which I am cosponsoring with him. This amendment represents a new and imaginative approach to our fiscal and economic problems.

The amendment proposes to add 4 more years of tax cuts to those for 1979 already in this tax bill. However, in each year the tax cut is contingent upon holding the real growth in the Federal budget to 1 percent or less. In addition, Federal spending must decline each year from 21.5 percent of the gross national product to 19.5 percent if the tax reductions are to take place. Finally in 1982 the reduction will not occur unless the Federal budget is balanced.

The bill calls for tax rate reductions of 5 percent a year through 1983. By 1983 this would mean reduction in taxes of $66 billion below those proposed in the Finance Comittee bill.

I have supported and voted for a large, multiyear tax cut. In so doing, I have stated my conviction that such a large tax cut must be accompanied by large spending cuts. This bill accomplishes that. If spending is restricted to 1 percent real growth, spending in 1983 will be about $30 billion less than it might otherwise be.

In the report of the Budget Committee on the second budget resolution I stated my skepticism that a tax cut would automatically result in spending reductions. A tax cut may put some pressure on spending. But it will not automatically lower it. The provision in this amendment suspending tax cuts will not automatically cut spending. But it will increase the pressure tremendously.

My other concern about a large tax cut is that it might be inflationary. Because spending will be cut also, this tax cut will have no perceptible effect on inflation. Chase Econometric Associates has tested this program of tax and spending cuts and has confirmed the lack of inflationary effect. What is more, as a bonus, Chase estimates the stimulative effect of the proposal will result in a gain of one million workers by 1983.

Mr. President, this is a most worthwhile amendment. It can help us to put our economic house in order.

Mr. BELLMON. I am in wholehearted support of this amendment. The multiyear tax cut it is capable of achieving and the downward pressure it places on Federal spending are both welcome prospects to the American taxpayer.

This amendment would accept the tax cuts already proposed by the Finance Committee's bill as amended for fiscal year 1979. That is a sizable and well designed cut and I congratulate the Finance Committee for proposing it. Our amendment would provide for 4 succeeding years of tax relief—totaling a 26 percent across-the-board rate reduction by 1983, an average of 5 percent per year. This tax relief to the American taxpayer would be forthcoming only if Congress and its relevant spending jurisdictions exercised fiscal restraint over that time period, however. Congress must:

First. Hold outlays to no more than a 1 percentage point rate of growth above the Nation's rate of inflation,

Second. Reduce the relative size of the Federal sector to 19.5 percent in successive steps by 1983 from its present 21.5 percent level, and,

Third. Provide a balanced budget by fiscal year 1982.

Mr. President, we all know that every program has a constituency—some beneficiaries. But it is often difficult to hear the voice of the taxpayer above the shouts of the special interests. This amendment would necessarily solidify a new constituency and make the urgency of a balanced budget, a reduced Federal sector and tax relief more immediate to us all.

When I was Governor of Oklahoma we, like many other States passed a law requiring our budget (except for capital improvement items) to be balanced each year. It worked. I came to Washington 10 years ago hopeful that we could do the same here. I was, and still am, convinced that constant yearly deficits erode fiscal discipline and promote inefficient and inflationary Government activities. Similarly they force the Federal Reserve System into the dilemma of having to expand the Nation's money supply with its inflationary consequences.

The budget has been balanced only twice in the last 20 years (1960 and 1969). Cumulative deficits total $311.7 billion over that time period while surpluses amount to only $3.5 billion. Whether or not the deficit was needed on a yearly basis at the time, it is inflationary for the Treasury and Federal Reserve to have to refinance such staggering amounts of debt.

Mr. President, the difficulty of the task of budget balancing has been made very clear in my 4-year tenure on the Budget Committee. There are many upside pressures on the Federal Budget—programs develop constituencies and though everyone talks as if they want a balanced budget no one is willing to sacrifice the programs in which they have a special interest.

This amendment brings forth a new constituency. It provides a carrot and a stick—unless budgetary restraint and fiscal discipline are forthcoming on everyone's part a tax cut will not be in order.

I am convinced that this device does no damage to the budget process and our ability to plan. In fact, it imposes a 5-year planning horizon on the revenue side as upon Congress and the budget process has already attempted to do on the spending side. The program is bold but, by no means, radical. It is similar to many already on the books:

Social security tax increases are scheduled for the next few years—a multiyear tax increase.

Increases in minimum wage are scheduled in a multiyear nature.

Countercyclical revenue sharing and other programs are triggered by unemployment rates just as this tax cut is triggered by reductions in the rate of growth of spending—and that, Mr. President, is something the Congress has much more control over than unemployment.

I would stress that it is not the Budget Committee that must find appropriate places to make reductions in the rate of growth of spending, but Congress as a whole. Appropriate committees with spending jurisdiction are the ones who must exercise restraint if the American public is to receive their taxpayer's dividend—that is annual tax cuts over the next 5 years and a balanced Federal Budget by 1982.

I can also list many reasons as to why I favor a tax cut of this multiyear type:

First, the economic recovery may be slowing. Recent economic data such as leading economic indicators, manufacturing orders, and balance-of-trade deficit support this prospect. While the Budget Committee projects a growth rate of real GNP of 4 percent in 1979, the consensus forecast is for a growth rate around 3.1 percent—not fast enough to reduce the unemployment rate below its present level.

In the absence of a tax cut, there are likely to be increasing pressures on the financial side of our economy which make the chances of significant economic weakness and rising unemployment much greater. If that economic weakness and rising unemployment occur next year, then the recent fiscal restraint which we have seen will likely dissolve and some form of new short-term spending stimulus will be adopted by Congress. If that occurs, we will reduce the probability of achieving a balanced budget.

Second, without additional tax cuts, real after-tax income will fall over the next few years due to inflation and other actions. Inflation rates estimated at 6.7 percent for the next 3 years will cause real tax increases of $13–$14 billion per year because of the progressivity of the individual income tax. Charles Schultze has indicated that the administration now believes the rate of inflation may be closer to 8 percent in 1979 in which case the drain on income would be even greater.

Increases in social security contributions due to increases in the benefit base will amount to $9.8 billion in 1979 and increased payment due to tax rate increases will amount to $3 billion in 1979. The increased burden of corporate taxes due to the overstatement of corporate profits under historic cost depreciation methods will amount to about $4 billion. Economic growth and capital formation are further encumbered by new environmental and safety restrictions, minimum wage laws and other forms of regulation. Large tax cuts will be required to get the taxpayer back toward the average tax burden of the last two decades. The average personal income tax rate in 1964, for example, was 10.5 percent. That burden has risen to an estimated 11 percent in 1978, and will grow under current law to about 15 percent by 1983 unless tax relief is granted.

Third, this tax cut and reduced Federal borrowing will help capital formation and thus reduce future inflationary pressure. One of the major problems, facing the economy is the lack of a level of capital formation which will provide for future capacity and expand job opportunities. The 5-year tax reduction put into place now and which taxpayers can count upon would stimulate capital formation in the United States. Over the last 10 years new capital formation in the United States have averaged 2.7 percent annually—the lowest of all industrialized countries. Even Great Britain added new capital at an average annual rate of 3.6 percent over the same period. It is obvious that a large and predictable tax reduction would increase the rate of return on capital.

Fourth, the tax cut coupled with spending restraint is not inflationary. If one maintains that the current policy level of expenditures shown in the 5-year projections during the budget markup will or should occur, that is, allowing a $200 billion growth in spending over the next 5 years, then and only then, are tax cuts in combination with that level of spending, inflationary.

This amendment would have us approach fiscal policy decisions in a different way. At present, there is a tendency to set expenditures levels first, and then to look at the possibility of reducing taxes only after those spending decisions have been made. This amendment would reverse that procedure. We would start by deciding how much of our national income should be allocated to the Government sector and then expenditure levels would be adjusted to conform to that revenue.

Mr. NUNN. I will speak on my time. I will ask the Senator from Louisiana if he is prepared to vote on this amendment. I will ask the Senator from Oklahoma and the senior Senator from Delaware if they are prepared to vote on this amendment.

Mr. BELLMON. To vote on the amendment of the Senator from Colorado?

Mr. NUNN. Yes.

Mr. BELLMON. We have no objection to proceeding.

Mr. HART. Mr. President, I would like to suggest to the Senator from Georgia that I take 2 minutes and summarize my proposal and he take 2 minutes to summarize his and then we have back-to-back votes on the amendments. I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. NUNN. Mr. President, I also ask unanimous consent that it would be in order to get the yeas and nays on the Nunn amendment to follow right after that.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. NUNN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LONG. Mr. President, I suspect the Senate would want us to take one of these two amendments to conference. Between the two it sounds to me as though the coalition amendment sponsored by Mr. NUNN has been more thoroughly worked out and would give us a better promise of a balanced budget, which means more cuts in spending, and assure us a balanced budget in the text of the bill itself. That being the case, Mr. President, between the two I would hope that the Senate would not agree to the Hart amendment. I personally would certainly be willing to go along with the Nunn amendment and see what we can work out in conference.

Mr. BIDEN. Mr. President, I suspect we are about to agree to back-to-back votes. I was saving my would-be eloquence for the debate on the Nunn amendment.

Mr. NUNN. Mr. President, I ask unanimous consent that we have back-to-back votes on both amendments, unless someone objects.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, it is so ordered.

Does the Senator from Colorado seek recognition?

Mr. HART. Yes. I yield to the Senator from Missouri.

Mr. DANFORTH. Mr. President, after disposing of the Nunn amendment, I ask unanimous consent that it be in order to call up my amendment No. 4055.

Mr. HEINZ. Mr. President, reserving the right to object——

The PRESIDING OFFICER. There is a previous order for Senator BAYH to be recognized. Does the Senator seek recognition before Senator BAYH?

Mr. DANFORTH. I ask unanimous consent that I be recognized immediately after Senator BAYH.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Objection, Mr. President. If the Chair will look on the list, I am prepared to play whatever are the rules of the game, but I am on the list after Senator BAYH.

The PRESIDING OFFICER. Is there objection?

Mr. GOLDWATER. Reserving the right to object——

Mr. KENNEDY. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. LONG. Mr. President, in view of the fact that we are going to have back-to-back votes, I ask unanimous consent that the second vote be a 10-minute rollcall vote.

The PRESIDING OFFICER. Is there objection?

Mr. NUNN. I did not hear the request.

Mr. LONG. In view of the fact that they will be back-to-back votes, that the second one be a 10-minute rollcall vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that I be added as a cosponsor to the Nunn amendment and that my remarks be printed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the Nunn amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President. I ask unanimous consent that the Senator from Idaho (Mr. CHURCH) and the Senator from Louisiana (Mr. JOHNSTON) be added as a cosponsor to the Nunn amendment, as well as the Senator from Utah (Mr. HATCH).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I ask unanimous consent that I be added as a cosponsor to the Nunn amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Colorado.

Mr. HART. Mr. President, I would like to take a few minutes to summarize my amendment. It is the first time that the Senate will have the opportunity to vote on a proposal which attempts to condition tax cuts on meeting levels or controls on Government spending. That will be the first vote that the Senators cast. The difference between that first amendment and the second are very minor. As the sponsor of the first amendment I have offered to accommodate those changes. Unfortunately, that offer was not accepted. I am hopeful that Senators realize in casting their first vote they are voting essentially on about 90 percent of the amendment which they will be voting upon second.

The principle is the same; the means of accomplishing it are different only in minor degree. I urge Senators to support the Hart amendments as the first opportunity to register their support for controls on Government spending and fiscal stimulation simultaneously.

Mr. NUNN. Mr. President, I shall take just a brief moment. Again, the difference between the Nunn-Chiles-Bellmon-Roth coalition here, and I refer to it as the coalition amendment, and the Hart amendment is basically that the coalition amendment has a balanced budget constraint in fiscal year 1982; the Hart amendment has no such constraint.

The coalition amendment also specifies a spending restraint as a percentage of the gross national product. The coalition constrains also overall expenditures to 1 percent above inflation.

Mr. President, I think everyone who has heard this debate realizes that there is a very strong consensus in the U.S. Senate to move in a direction of restraining spending and also cutting taxes. I believe that if the coalition amendment passes, it will be a very important psychological breakthrough. It will be a change of direction. It will be the first time that I know of that the American public will have a direct measurable stake in restraint of Government spending.

It will also be, I think, a breakthrough in trying to do something about inflation. We do not claim that our amendment will control inflation. What it will do is provide for continued growth, more money in the private sector, as opposed to the Government sector. It will provide a very large tax cut over a period of years; and it will do so without increasing inflation. I do believe it will also have an effect on inflation, although it will not be measured through an economic model. It will have a psychological effect.

Employers and employees throughout the country today are understandably reluctant to take the lead from Washington in controlling voluntarily wages and prices. But if, for the first time, the Federal Government shows that it can restrain taxes and restrain spending, we shall then be in a position of moral leadership to ask the rest of the country—the private sector employers and employees—to restrain prices and wages. I believe everyone should vote for this long-term approach in terms of a long-range plan for restraining spending and restraining taxes.

I also want to remind everyone that to get to a vote on the coalition amendment, the Hart amendment will have to be defeated. So the coalition vote will be "nay" to the Hart amendment and "aye" on the second vote, which will follow immediately thereafter.

Mr. NELSON. Will the Senator yield for a question?

Mr. NUNN. I am not sure I have more time.

AMENDMENT 4084

The PRESIDING OFFICER. The Chair reminds the Senator from Georgia that, although debate has continued to take place on his amendment, he has not yet called it up. The Chair suggests that he now call his amendment No. 4084 up, because it will be voted on back to back with Senator HART's amendment.

Mr. NUNN. Mr. President, I do call up my amendment to be voted on immediately after the Hart amendment. I ask unanimous consent that it be voted on after the Hart amendment.

The PRESIDING OFFICER. The order has been entered. It merely has not been reported.

Mr. NUNN. I ask that the clerk state the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Georgia (Mr. NUNN), for himself and others, proposes an amendment numbered 4084;

On page 130, between lines 21 and 22 insert the following:

PART 1—1979 REDUCTIONS AND EXTENSIONS

On page 159, between lines 15 and 16, insert the following:

PART 2—ADDITIONAL REDUCTIONS

SEC. 109 ADDITIONAL REDUCTIONS IN RATES.

(a) IN GENERAL.—Section 1 (relating to tax imposed) is amended by striking out subsections (a), (b), (c), and (d) and inserting in lieu thereof the following:

"(a) GENERAL RULE.—There is hereby imposed on the taxable income, for the taxable years beginning in the calendar years specified in subsection (b)(2), of every—

"(1) married individual (as defined in section 143) who makes a single return jointly with his spouse under section 6013, and every surviving spouse (as defined in section 2(a)), a tax determined under the applicable schedule for the taxable year,

"(2) head of a household (as defined in section 2(b)), a tax determined under the applicable schedule for the taxable year,

"(3) every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 143) a tax determined under the applicable schedule for the taxable year, and

"(4) a married individual (as defined in section 143) who does not make a single return jointly with his spouse under section 6013 a tax equal to one-half the tax which would be determined for an individual described in paragraph (1) with the same taxable income.

"(b) APPLICABLE SCHEDULES.—

"(1) APPLICATION OF SCHEDULES TO INDIVIDUALS.—For purposes of subsection (a) the applicable schedule for—

"(A) individuals described in subsection (a)(1) is schedule 2,

"(B) individuals described in subsection (a)(2) is schedule 3, and

"(C) individuals described in subsection (a)(3) is schedule 1.

"(2) APPLICATION OF SCHEDULES TO TAXABLE YEARS.—

"(A) CALENDAR YEAR 1980.—The schedules in effect for taxable years beginning in 1980 are as follows:

"Schedule 1

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:		The tax is the amount in the left-hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
$2,300	$3,400	$0+12.3%	$2,300
$3,400	$4,400	$136+13.3%	$3,400
$4,400	$6,500	$269+15.2%	$4,400
$6,500	$8,500	$588+19.0%	$6,500
$8,500	$10,800	$968+20.9%	$8,500
$10,800	$12,900	$1,449+22.8%	$10,800
$12,900	$15,000	$1,928+24.7%	$12,900
$15,000	$18,200	$2,446+28.5%	$15,000
$18,200	$23,500	$3,358+32.3%	$18,200
$23,500	$28,800	$5,070+37.0%	$23,500
$28,800	$34,100	$7,034+41.8%	$28,800
$34,100	$41,500	$9,249+46.5%	$34,100
$41,500	$55,300	$12,694+52.2%	$41,500
$55,300	$81,800	$19,904+59.8%	$55,300
$81,800	$108,300	$35,765+64.6%	$81,800
$108,300		$52,884+66.5%	$108,300

"Schedule 2

$3,400	$5,500	$0+12.3%	$3,400
$5,500	$7,600	$259+13.3%	$5,500
$7,600	$11,900	$539+15.2%	$7,600
$11,900	$16,000	$1,192+19.9%	$11,900
$16,000	$20,200	$2,010+23.7%	$16,000
$20,200	$24,600	$3,008+27.5%	$20,200
$24,600	$29,900	$4,220+30.4%	$24,600
$29,900	$35,200	$5,831+36.1%	$29,900
$35,200	$45,800	$7,744+40.8%	$35,200
$45,800	$60,000	$12,074+46.5%	$45,800
$60,000	$85,600	$18,685+51.3%	$60,000
$85,600	$109,400	$31,817+56.0%	$85,600
$109,400	$162,400	$45,157+60.8%	$109,400
$162,400	$215,400	$77,381+64.6%	$162,400
$215,400		$111,619+66.5%	$215,400

"Schedule 3

$3,000	$5,100	$0+12.3%	$3,000
$5,100	$7,200	$259+13.3%	$5,100
$7,200	$9,400	$539+15.2%	$7,200
$9,400	$12,500	$873+20.9%	$9,400
$12,500	$15,700	$1,521+22.8%	$12,500
$15,700	$18,900	$2,251+25.6%	$15,700
$18,900	$24,200	$3,071+29.4%	$18,900
$24,200	$29,500	$4,632+34.2%	$24,200
$29,500	$34,800	$6,445+39.9%	$29,500
$34,800	$45,400	$8,559+43.7%	$34,800
$45,400	$61,300	$13,192+51.3%	$45,400
$61,300	$82,500	$21,348+56.0%	$61,300
$82,500	$109,000	$33,231+59.8%	$82,500
$109,000	$162,000	$49,091+64.6%	$109,000
$162,000		$83,329+66.5%	$162,000

"(B) CALENDAR YEAR 1981.—The schedules in effect for taxable years beginning in 1981 are as follows:

"Schedule 1

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:		The tax is the amount in the left-hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
$2,300	$3,400	$0+11.6%	$2,300
$3,400	$4,400	$127+12.5%	$3,400
$4,400	$6,500	$252+14.2%	$4,400
$6,500	$8,500	$551+17.8%	$6,500
$8,500	$10,800	$907+19.6%	$8,500
$10,800	$12,900	$1,357+21.4%	$10,800
$12,900	$15,000	$1,806+23.1%	$12,900
$15,000	$18,200	$2,292+26.7%	$15,000
$18,200	$23,500	$3,146+30.3%	$18,200
$23,500	$28,800	$4,750+34.7%	$23,500
$28,800	$34,100	$6,590+39.2%	$28,800
$34,100	$41,500	$8,665+43.6%	$34,100
$41,500	$55,300	$11,892+48.9%	$41,500
$55,300	$81,800	$18,647+56.1%	$55,300
$81,800	$108,300	$33,506+60.5%	$81,800
$108,300		$49,544+62.3%	$108,300

"Schedule 2

$3,400	$5,500	$0+11.6%	$3,400
$5,500	$7,600	$243+12.5%	$5,500
$7,600	$11,900	$505+14.2%	$7,600
$11,900	$16,000	$1,117+18.7%	$11,900
$16,000	$20,200	$1,883+22.2%	$16,000
$20,200	$24,600	$2,818+25.8%	$20,200
$24,600	$29,900	$3,953+28.5%	$24,600
$29,900	$35,200	$5,463+33.8%	$29,900
$35,200	$45,800	$7,255+38.3%	$35,200
$45,800	$60,000	$11,312+43.6%	$45,800
$60,000	$85,600	$17,505+48.1%	$60,000
$85,600	$109,400	$29,808+52.5%	$85,600
$109,400	$162,400	$42,305+57.0%	$109,400
$162,400	$215,400	$72,494+60.5%	$162,400
$215,400		$104,570+62.3%	$215,400

"Schedule 3

$3,000	$5,100	$0+11.6%	$3,000
$5,100	$7,200	$243+12.5%	$5,100
$7,200	$9,400	$505+14.2%	$7,200
$9,400	$12,500	$818+19.6%	$9,400
$12,500	$15,700	$1,425+21.4%	$12,500
$15,700	$18,900	$2,108+24.0%	$15,700
$18,900	$24,200	$2,877+27.6%	$18,900
$24,200	$29,500	$4,340+32.0%	$24,200
$29,500	$34,800	$6,038+37.4%	$29,500
$34,800	$45,400	$8,019+40.9%	$34,800
$45,400	$61,300	$12,359+48.1%	$45,400
$61,300	$82,500	$20,000+52.5%	$61,300
$82,500	$109,000	$31,132+56.1%	$82,500
$109,000	$162,000	$45,991+60.5%	$109,000
$162,000		$78,066+62.3%	$162,000

"(C) CALENDAR YEAR 1982.—The schedules in effect for taxable years beginning in 1982 are as follows:

"Schedule 1

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:		The tax is the amount in the left-hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
$2,300	$3,400	$0+11.2%	$2,300
$3,400	$4,400	$123+12.0%	$3,400
$4,400	$6,500	$243+13.8%	$4,400
$6,500	$8,500	$532+17.2%	$6,500
$8,500	$10,800	$876+18.9%	$8,500
$10,800	$12,900	$1,311+20.6%	$10,800
$12,900	$15,000	$1,745+22.4%	$12,900
$15,000	$18,200	$2,214+25.8%	$15,000
$18,200	$23,500	$30,40+29.2%	$18,200
$23,500	$28,800	$4,590+33.5%	$23,500
$28,800	$34,100	$6,367+37.8%	$28,800
$34,100	$41,500	$8,373+42.1%	$34,100
$41,500	$55,300	$11,491+47.3%	$41,500
$55,300	$81,800	$180,19+54.2%	$55,300
$81,800	$108,300	$32,376+58.5%	$81,800
$108,300		$47,874+60.2%	$108,300

"Schedule 2

$3,400	$5,500	$0+11.2%	$3,400
$5,500	$7,600	$235+12.0%	$5,500
$7,600	$11,900	$488+13.8%	$7,600
$11,900	$16,000	$1,079+18.1%	$11,900
$16,000	$20,200	$1,820+21.5%	$16,000
$20,200	$24,600	$2,723+24.0%	$20,200
$24,600	$29,900	$3,820+27.5%	$24,600
$29,900	$35,200	$5,279+32.7%	$29,900
$35,200	$45,800	$7,011+37.0%	$35,200
$45,800	$60,000	$10,931+42.1%	$45,800
$60,000	$85,600	$16,914+46.4%	$60,000
$85,600	$109,400	$28,803+50.7%	$85,600
$109,400	$162,400	$40,879+55.0%	$109,400
$162,400	$215,400	$70,050+58.5%	$162,400
$215,400		$101,045+60.2%	$215,400

"Schedule 3

$3,000	$5,100	$0+11.2%	$3,000
$5,100	$7,200	$235+12.0%	$5,100
$7,200	$9,400	$488+13.8%	$7,200
$9,400	$12,500	$790+18.9%	$9,400
$12,500	$15,700	$1,377+20.6%	$12,500
$15,700	$18,900	$2,037+23.2%	$15,700
$18,900	$24,200	$2,780+26.7%	$18,900
$24,200	$29,500	$4,193+31.0%	$24,200
$29,500	$34,800	$5,834+36.1%	$29,500
$34,800	$45,400	$7,749+39.6%	$34,800
$45,400	$61,300	$11,942+46.4%	$45,400
$61,300	$82,500	$19,326+50.7%	$61,300
$82,500	$109,000	$30,083+54.2%	$82,500
$109,000	$162,000	$44,440+58.5%	$109,000
$162,000		$75,435+60.2%	$162,000

"(D) CALENDAR YEAR 1983.—The schedules in effect for taxable years beginning in 1983 are as follows:

"Schedule 1

"If the taxable income is over the amount in the left-hand column but not over the amount in the right-hand column:		The tax is the amount in the left-hand column plus a percentage (as shown) over the amount of the taxable income shown in the right-hand column:	
$2,300	$3,400	$0+10.7%	$2,300
$3,400	$4,400	$117+11.5%	$3,400
$4,400	$6,500	$232+13.1%	$4,400
$6,500	$8,500	$508+16.4%	$6,500
$8,500	$10,800	$836+18.0%	$8,500
$10,800	$12,900	$1,250+19.7%	$10,800
$12,900	$15,000	$1,664+21.3%	$12,900
$15,000	$18,200	$2,111+24.6%	$15,000
$18,200	$23,500	$2,899+27.9%	$18,200
$23,500	$28,800	$4,376+32.0%	$23,500
$28,800	$34,100	$6,071+36.1%	$28,800
$34,100	$41,500	$7,984+40.2%	$34,100
$41,500	$55,300	$10,957+45.1%	$41,500
$55,300	$81,800	$17,181+51.7%	$55,300
$81,800	$108,300	$30,871+55.8%	$81,800
$108,300		$45,647+57.4%	$108,300

"Schedule 2

$3,400	$5,500	$0+10.7%	$3,400
$5,500	$7,600	$224+11.5%	$5,500
$7,600	$11,900	$465+13.1%	$7,600
$11,900	$16,000	$1,029+17.2%	$11,900
$16,000	$20,200	$1,735+20.5%	$16,000
$20,200	$24,600	$2,596+23.8%	$20,200
$24,600	$29,900	$3,642+26.2%	$24,600
$29,900	$35,200	$5,033+31.2%	$29,900
$35,200	$45,800	$6,685+35.3%	$35,200
$45,800	$60,000	$10,422+40.2%	$45,800
$60,000	$85,600	$16,128+44.3%	$60,000
$85,600	$109,400	$27,463+48.4%	$85,600
$109,400	$162,400	$38,978+52.5%	$109,400
$162,400	$215,400	$66,792+55.8%	$162,400
$215,400		$96,345+57.4%	$215,400

"Schedule 3

$3,000	$5,100	$0+10.7%	$3,000
$5,100	$7,200	$224+11.5%	$5,100
$7,200	$9,400	$465+13.1%	$7,200
$9,400	$12,500	$754+18.0%	$9,400
$12,500	$15,700	$1,313+19.7%	$12,500
$15,700	$18,900	$1,943+22.1%	$15,700
$18,900	$24,200	$2,651+25.4%	$18,900
$24,200	$29,500	$3,998+29.5%	$24,200
$29,500	$34,800	$5,563+34.4%	$29,500
$34,800	$45,400	$7,388+37.7%	$34,800
$45,400	$61,300	$11,387+44.3%	$45,400
$61,300	$82,500	$18,427+48.4%	$61,300
$82,500	$109,000	$28,684+51.7%	$82,500
$109,000	$162,000	$42,373+55.8%	$109,000
$162,000		$71,926+57.4%	$162,000

"(c) SCHEDULE REDUCTION NOT TO TAKE EFFECT WHEN FEDERAL SPENDING EXCEEDS LIMITATIONS.—

"(1) NOTIFICATION OF CONGRESS.—In calendar years 1979 through 1982, after the adoption by the Congress of the second concurrent resolution on the Budget or any further concurrent resolution on the Budget adopted by the Congress under section 310 of the Congressional Budget Act of 1974 (referred to elsewhere in this subsection as the 'budget resolution') and before the beginning of the next calendar year, the Secretary shall notify the Congress if—

"(A) the total amount of Federal outlays agreed to in the budget resolution for the fiscal year which ends within such next calendar year exceed the following percent of the projected gross national product pro-

jected by the Congressional Budget Office for that fiscal year on the basis of the budget resolution for the fiscal year: 21 percent in fiscal year 1980; 20.5 percent in fiscal year 1981; 20.0 percent in fiscal year 1982; and 19.5 percent in fiscal year 1983.

"(B) only for fiscal year 1982 if the total amount of federal outlays specified in the Second Concurrent Budget Resolution for fiscal year 1982 exceed the total revenues specified in that resolution.

"(C) the increase in total Federal outlays specified in the budget resolution for that fiscal year exceeds the amount of Federal outlays estimated by the Congressional Budget Office to have actually occurred during the preceding fiscal year by a percent greater than—

"(i) the percent increase in the year to year implicit gross national product deflator (as projected by the Congressional Budget Office) for the 4 calendar quarter period ending on September 30 of the year following the one in which the Secretary is to make the notification, plus

"(ii) one percent.

"(2) SCHEDULED REDUCTION NOT TO TAKE EFFECT.—If any event described in subparagraph (A), (B), or (C) of paragraph (1) occurs, then—

"(A) the schedules which, under subsection (b), would be in effect for the next calendar year, shall not take effect for such next calendar year, and

"(B) the schedule which, under subsection (b), is in effect for the calendar year in which the event occurs shall remain in effect for the next calendar year.

"(3) APPLICATION OF PARAGRAPH (2) ON A CUMULATIVE BASIS.—If any scheduled tax reduction under subsection (b) does not go into effect during the calendar year for which it is scheduled (because of the application of paragraph (2)), then the reductions scheduled to go into effect in subsequent calendar years, shall take effect for the scheduled calendar year under subsection (b) unless precluded by the application of paragraph (2) in that year.

"(4) CORRESPONDING ADJUSTMENTS.—For each calendar year for which a schedule under subsection (b) is in effect, the Secretary shall change the zero bracket amount under section 63 for the calendar year, the tax tables prescribed under section 3, the withholding tables prescribed under section 3402, the dollar amounts set forth in section 3402(m)(1) (relating to percentage method withholding), and the dollar amounts set forth in 6012(a) (relating to filing requirements) necessary to reflect in such tables and amounts the schedules in effect for the calendar year. The amounts adjusted by the Secretary under this paragraph for any calendar year shall be the amounts in effect for taxable years beginning in that calendar year.".

The PRESIDING OFFICER. Does the Senator from Wisconsin seek recognition?

Mr. NUNN. Mr. President, I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. NUNN. We have already had a unanimous-consent agreement making it possible to call up my amendment immediately after the Hart amendment and calling for a rollcall vote on that amendment, is that correct?

The PRESIDING OFFICER. The Senator is correct. It is merely that his amendment had not been stated.

Mr. NUNN. Is there anything that would not allow us to vote on the Nunn coalition amendment immediately after the Hart amendment with the yeas and nays being ordered?

The PRESIDING OFFICER. No, everything is in order now.

Mr. NUNN. I thank the Chair.

Mr. NELSON. Mr. President, I ask unanimous consent that Mr. Herbert Spira of the staff of the Senate Small Business Committee be granted the privilege of the floor during the course of debate and rollcalls on the pending legislation.

Mr. MAGNUSON. Will the Senator yield? We have a new rule. Just put his name in.

Mr. NELSON. I understood that if they were from a committee, the request had to be from the floor. Am I correct on that?

The PRESIDING OFFICER. The Chair reminds the Senator from Wisconsin that there is a standing Magnuson order which permits a Senator to have two members of his staff on the floor by submission of their names to the Clerk.

Mr. NELSON. Does that include members of committee staffs?

The PRESIDING OFFICER. That includes members of the committee staffs.

Mr. NELSON. Then I withdraw my request, because the last thing I want to do is violate a Magnuson order.

The PRESIDING OFFICER. Unless, of course, the Senator from Wisconsin has requests for staff in excess of two.

Mr. NELSON. I do not know whether I do or not, but I do not want to get into a confrontation with the chairman of the Committee on Appropriations under any circumstances. If I have more than two, I shall submit this to the desk.

I want to commend the Senator from Colorado and the Senator from Georgia.

The PRESIDING OFFICER. The Chair stands corrected. The Parliamentarian informs me that it does not apply to committee staff, only to individual Senators staffs. So, without objection, it is so ordered.

Mr. NELSON. I thank the Chair.

Mr. President, I do wish to commend the Senator from Colorado and the Senator from Georgia for their thoughtful and creative proposals that are now the pending business. I ask unanimous consent to be a cosponsor of each of the proposals.

The PRESIDING OFFICER. Without objection, the commendation will be noted.

Mr. BELLMON. Mr. President, I ask unanimous consent that the distinguished Senators GRIFFIN, SCHMITT, and SCOTT be listed as a cosponsor of the coalition amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, the pending amendment, a multiyear tax cut offered by Senators BELLMON, NUNN, CHILES, and others, raises some serious questions for the budget process. While I appreciate the concerns of these Senators for advance planning on the revenue side of the budget, I believe this approach will tie the hands of future Congresses and reduce the flexibility of the budget process in establishing a revenue floor.

The pending amendment would provide across-the-board tax rate reductions of approximately 6 percent for each of the 5 years beginning in fiscal year 1979 and extending through fiscal year 1983. The estimated revenue loss of the amendment would be $21.9 billion in fiscal year 1979 and would rise to $127.8 billion by fiscal year 1983. The tax reductions in the amendment are, however, contingent on the achievement of certain outlay restraints. Specifically, the proposed tax reduction would become effective only if:

The rate of growth in outlays did not exceed 1 percent in real terms;

The rate of growth in outlays was consistent to the achievement of a balanced budget by the end of fiscal year 1982 and;

The rate of growth in outlays was such that the ratio of Federal spending for GNP was reduced to 19 percent by fiscal year 1983.

Because this amendment provides for an additional 6-percent tax reduction first effective in fiscal year 1980, a year for which no first budget resolution is in effect, it violates the Budget Act in exactly the same fashion as the Roth and Packwood amendments. Unlike the amendments offered by Senators ROTH and PACKWOOD, the amendment offered by Senator BELLMON has also been the subject of a waiver resolution which was referred to the Budget Committee.

The Budget Committee is extremely reluctant to recommend the adoption of resolutions waiving section 303(a) of the Budget Act. One of the major purposes of the Congressional Budget Act was to bring the Federal budget under better control. Through the adoption each year of the first and second concurrent resolutions on the budget, Congress sets fiscal policies and national priorities for the fiscal year. To the extent that Congress enacts legislation affecting spending or revenues for a future fiscal year it loses control of the spending and priority decision for that year prior to the adoption of a congressional budget for that year.

The objective of a balanced budget by 1982 and a reduction in the rate of Federal spending in GNP are laudable goals. However, to tie these goals to tax reductions prior to any examination of the economy and other spending and revenue demands, reduces the effectiveness of the budget process to establish national priorities and to respond to national needs. Such formula approaches to tax reductions for example, raise the possibility that taxes may well be automatically reduced as a result under circumstances where the economy might be overstimulated and inflation fueled by such action.

I am also concerned that by establishing a fixed goal for the share of Federal spending in GNP we might encourage an expanded use of off-budget spending, loan guarantees, regulatory policies, and tax expenditures. These mechanisms can be used to provide benefits to some groups in ways which evade the regular authorization and appropriation process. In many cases the costs of these programs can be hidden almost completely from the budget.

Until the Congress has established procedures to control the use of these mechanisms we should be wary of

amendments such as this one which create new incentives to hide the cost of programs.

Mr. President, the Budget Committee has this year pioneered procedures for establishing 5-year revenue and spending targets. The Budget Committee already provides 5-year projections for each spending function in the report on the first budget resolution. The committee has also initiated 5-year projections for the tax side of the budget as well. The report on the first budget resolution for fiscal year 1979 details the fiscal margin which is available for revenue and spending changes between fiscal year 1979 and fiscal year 1983 on the assumption that the economy experiences moderate growth and a balanced budget can be achieved by the end of 1983.

The 5-year budget projections are used by the Budget Committee to evaluate the impact of current tax and spending decisions on future budgets. The projections demonstrate the committee's concern that the Congress move toward a balanced budget at a moderate pace.

I am convinced that the Bellmon-Nunn-Chiles amendment would not aid the Congress in the effort to control Federal spending and move toward budgetary balance. In fact, the amendment may hinder the efforts of future Congresses to make budgets which conform to the changing needs of the economy as well as to the basic goals of budgetary balance and a moderate tax burden.

For these reasons, Mr. President, I oppose the amendment.

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that my name be added as a cosponsor to Senator NUNN's amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, may I have a brief colloquy with the Senator from Georgia?

If we were to face a serious recession in this country, would the requirements under the Nunn amendment preclude us from adopting a substantial tax reduction as a stimulus for the economy? If we were in a serious recession or even a depression, could we take the kind of measures that would be necessary on the spending side and the revenue side in order to bring about a restoration of the health of our economy? This is the concern I have about the amendment.

Mr. NUNN. No, I say to the Senator that Congress would have the absolute right of spending above the 1 percent in any kind of circumstances. It would not even require an emergency. What we do say is if the taxes are going to be cut, there are at last two conditions precedent and for fiscal 1982, there are three conditions precedent to the cut in taxes. If any of those conditions do not come about, then the taxes would not be cut. So Congress would have the right in the future to exceed the spending limits, in which case, the American public would not get a tax cut.

Mr. KENNEDY. Well, as we have seen in 1975 and also at the current time, there is a series of different mechanisms which different administrations have used to deal with recessions in our economy, such as increased spending for jobs programs or public works, and substantial tax cuts. There is a variety of different mixes of fiscal policy which different administrations have used in recent years.

I wonder what kind of restriction this puts on a recommendation of an administration that believes a tax stimulus would be an important measure to increase consumer spending in order to get us out of a recession.

Mr. NUNN. First of all, there is nothing to preclude a larger tax cut. Second, there would not be anything to preclude an expenditure level that exceeds the level recommended here.

What would happen in that case would be that there would be no automatic tax cuts under this proposal.

So there is nothing here to prohibit the Government from responding to any kind of emergency it might want to, whether within, or foreign policy.

I would say to the Senator in fairness, though, it is the intention of the sponsors of this amendment that there be a vested interest in the American public to see for the first time that we begin to restrain expenditures here.

So this does create a degree of political interest on the part of the public to see there is a restraint in spending.

If Congress responds to that kind of political opinion, which I think will exist in normal times, we will, indeed, restrain spending.

Mr. KENNEDY. I understand the sentiment of the sponsors of the amendment. I am concerned that in hard times, such as the dramatic increase in energy costs, or the energy boycott, that a number of steps needed to be taken in order to bring the economy back into balance might be impeded.

Mr. NUNN. There are no restrictions that would preclude Congress going above the levels here.

The sanction would be if Congress goes above these levels, and this is similar to the Hart amendment, if we go above there would be no automatic tax cut.

Mr. KENNEDY. But if there is a recession, and there is a reduction of GNP, it violates the trigger in terms of Federal spending as a percentage of GNP. As I understand it, there is no actual restriction here in terms of the administration's attempting to provide additional spending with a tax reduction as one of the mechanisms in order to stimulate the economy. It seems a little odd to say that the country can not have the automatic tax cut proposed by the amendment, but it will have to have a nonautomatic tax cut to avoid a recession or stop a recession. At least, there is no restraint on a tax cut that might be required by sound fiscal policy.

Mr. NUNN. No such restraint. Only the restraint of public opinion at that time, whatever that might be.

Mr. HART. Will the Senator yield?

Mr. KENNEDY. I am glad to yield.

Mr. HART. I just want to say, on the first vote we are going to cast, which is the amendment offered by the Senator from Colorado, the same answers prevail as the Senator from Georgia gave.

It is my opinion as the principal sponsor, the fact of flexibility for the administration is somewhat greater in the Hart amendment than in the Nunn amendment.

But I think both amendments philosophically accommodate the problem of the Senator from Massachusetts.

Mr. KENNEDY. Fine.

Since the chairman of the Joint Economic Committee, I guess, is a cosponsor of both of those, I would be interested if he has any reaction to this exchange.

Mr. PROXMIRE. I am not chairman, as the Senator knows. I am chairman of the Senate Banking Committee. That is DICK BOLLING. Next year it will be LLOYD BENTSEN.

I appreciate it, though.

Mr. KENNEDY. He is a former chairman.

Mr. PROXMIRE. Well, I think I support both amendments. I think they are wise.

I questioned the Senator from Colorado earlier on this flexibility, in the event of either a deep recession or a war. In that event, of course, we might want to follow policies which might otherwise be restrained.

I think the case by the Senator from Colorado and the Senator from Georgia satisfies me, that there still is a considerable amount of flexibility left here, and I think they recognize the problem, especially in the event of a recession.

I feel I can support them because they are responsible and do work in the direction the supporters and I both want to work, to wit, to hold down Government spending and the size of Government, while at the same time permitting an appropriate response in the event of a recession.

Mr. BIDEN. Mr. President, I do not want to delay this. It seems we are arriving at a consensus on the floor to support one of these two amendments.

I realize it may be a little out of order, but I would like to pay a bit of respect to my senior colleague who, I believe, started this rolling a while ago, and, if he had not, we would not be at this point, in the first instance.

I know that is somewhat parochial, since I am a Delawarian. But I sincerely wish to compliment him because I believe we would not be at this point, which I think we are appropriately at, if not for his endeavors in moving this along.

I would like to compliment him.

SEVERAL SENATORS. Vote!

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I would just like to address to the Senator one question, if I might.

Is it correct, if I understand the difference between the Nunn coalition amendment and the Senator from Colorado's amendment with respect to the cut in individual income taxes, when two amendments are fully effective, recognizing they become effective at different time periods, does the Senator from Colorado's amendment state 29 percent cut versus present law, and the Senator from Georgia's cut is for a 26 percent from current law; is that correct?

Mr. HART. Yes, the Senator is correct.

The tax cut, the Hart proposal, cumulative 29 percent over 4 years, including, roughly, 6 percent cut this year, thereafter 9 percent, 7 percent, and 7 percent.

Mr. HEINZ. Now, the Senator from Colorado's amendment will have what effect vis-a-vis the tax cuts we have put into the Finance Committee bill at this point for individuals? Will it increase or reduce the tax cuts this year?

Mr. HART. It does not affect the tax cut at all, as does not the Senator from Georgia's amendment, also.

Mr. HEINZ. And the Senator's amendment would become fully effective during 1982, assuming this conditional constraint does not exceed——

Mr. HART. The Senator is correct.

Mr. HEINZ. And, further, that the Nunn coalition amendment would become fully effective in 1983?

Mr. HART. The Senator is correct.

Mr. HEINZ. I thank the Senator.

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment—

Is the Senator from Washington seeking recognition?

Mr. MAGNUSON. The Senator from Colorado is suggesting a broad number of general programs we should cut.

Shall we cut defense? Shall we cut HEW? I have been cutting all of them and we are going to end up in the Appropriations Committee with a big cut. But which one does the Senator think we should zero in on to accomplish what he is talking about?

Mr. HART. The proposal contained in the amendment which we are about to vote on reduces the controls, the growth of Federal spending. It is not net reduction, as the amendment of the Senator from Georgia is not. Either amendment has a net reduction. These are controls on the degree of growth.

Mr. MAGNUSON. May I suggest something to the Senator from Colorado, and other Senators? Our problem in Appropriations is uncontrollable items that we cannot cut, which the Senator voted for, I voted for, the Senator from Massachusetts has voted for. I would like to know, within about a 40 percent, uncontrollable items, which one are we going to cut? Are we going to cut cancer research? Are we going to cut defense? Are we going to cut mental health?

It is a little bit difficult for us. We are trying to do a great job down there, and we are doing a good job. We are cutting everything. But I would like a little guidance, when somebody reaches up in the air and suggests that we cut something. Just which one do you want? Do you want to cut public works?

Mr. HART. I think the Senator——

Mr. MAGNUSON. Wait a minute. I asked you a question. I do not want to cut it. Everybody is talking about these things. We have to get down to the nitty-gritty about what we appropriate.

If the legislative committees would quit giving entitlements and give us a chance to take a look at it—or the Budget Committee—we could cut a lot of this. In the Federal budget is almost 60 percent of entitlements that we cannot touch. So you are talking about 40 percent, and that includes a lot of human beings.

Mr. HART. I agree with the Senator.

Mr. KENNEDY. Mr. President, I understand that some econometric tables have been introduced. I have one brief area that I would like to explore, either with the Senator from Georgia or the Senator from Colorado.

In the econometric studies has there been a projection as to what this amendment is going to mean in terms of employment and unemployment during the period when this amendment takes effect?

Mr. MAGNUSON. I want to talk about health items, which you and I are concerned about.

It is easy to say all these things, but let us find out what we are going to do. Do you want to cut some health items?

Mr. KENNEDY. No, I do not.

Mr. HART. Mr. President, I introduced on our amendment the latest tables we were able to provide. As to the employment rates if the amendment were adopted, we are presently at a 6.12 rate of unemployment nationally. By 1983, that would be reduced to 4.09—just over 4 percent—based on econometric models, with the stimulation and the growth in productivity and investment which occur as a result of the tax cut.

Mr. CHILES. I can give the figures.

The Chase Econometric models show the gain in employment in 1983 would be a million workers, and the unemployment rate would be reduced. This is under their model for current spending, and they project 6.1, and with this they project 5.3.

Mr. KENNEDY. Has the Budget Committee any different figures on this? Aren't the Chase figures very controversial in some of their projections?

Mr. MUSKIE. I do not know that I can say——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Maine?

Mr. MUSKIE. I yield on my own time.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. The numbers I have are CBO numbers that we have received at the last moment. The difference over a 5-year period——

Mr. KENNEDY. May we have order, Mr. President?

The PRESIDING OFFICER. The point is well taken. The Senate is not in order. Senators will cease conversations on the floor. Senators will please take their seats and cease conversation.

Mr. MUSKIE. The Senate Budget Committee report on the second concurrent resolution is a green document which all Members have received. On page 27 are the 5-year economic objectives which are assumed by the committee with respect to the budget this year and the projections for the next 5 years.

The assumptions are that in 1983, the yearly average unemployment rate would be 4.6 percent. In the fourth quarter of 1983, the unemployment rate would be 4.5 percent, and the Consumer Price Index would increase at a 5.9-percent rate. Those are the 1983 figures.

The Bellmon amendment, according to the CBO, averages 5.6 percent unemployment over the fiscal year 1980 to 1983 period.

The second budget resolution plan averages unemployment at 5 percent over the same period. So that is a difference of 0.6 percent in unemployment over that period, or 600,000 jobs per year for 4 years.

The spread widens in the later years, so that in fiscal year 1983, the difference is 1 million jobs.

The Bellmon amendment averages 5.7 percent inflation over the 1980–83 period. The second budget resolution plan averages 5.9 percent inflation—in other words, more inflation. In 1983, the difference is .6 percent.

In addition, the difference over 5 years between the two is $33 billion in deficit. In other words, the Bellmon amendment would have that much less deficit over the period.

So the tradeoffs are .6 percent more unemployment, .6 percent higher inflation, and $33 billion more in deficit.

So the tradeoff is the classic one between inflation and unemployment over that period, according to CBO's figures.

Mr. CHILES. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. CHILES. Is it not correct that in the 5-year economic objectives, which were set as objectives—where the committee hoped we would go in the Senate report on the second concurrent resolution—would require an additional $33 billion in spending stimulus? So that $33 billion was not part of the budget resolution for 1979, and it is not a part of the Coalition amendment we are talking about here. So, the Senator from Maine is talking about an additional $33 billion in spending stimulus to get to a lower unemployment rate.

Mr. MUSKIE. That is what I just said, yes.

Mr. KENNEDY. As I understand, it is a million more jobs lost to unemployment, five-tenths of a point on the inflation rate, and $33 billion of additional spending.

Mr. MUSKIE. It would be a six-tenths of 1 percent difference in inflation in 1983, in that 1 year. Over the 1980–83 period it averages two-tenths of 1 percent.

Mr. KENNEDY. And a million more jobs.

Mr. MUSKIE. And a million more jobs.

But the Senator is correct about the increased spending over that period.

Mr. KENNEDY. I should like to ask the Senator from Georgia this question: In the rate schedule, which is included in the Hart proposal or the Nunn proposal—how will that be different from what we have already accepted in the Bumpers-Kennedy amendment? Do you change the rates? How will that alter the actions we already have accepted in this debate?

Mr. NUNN. We accept the Finance Committee bill as amended by the Kennedy amendment. Our tables have no effect on that. In the future, on additional or incremental cuts, we take across-the-board cuts from the Kennedy-Bumpers schedule.

Mr. HART. Mr. President, will the Senator yield?

Mr. KENNEDY. So, the future rate cuts will be based on the rate schedule as amended by our proposal?

Mr. NUNN. We made no change in the Kennedy amendment at all. We do not change the rate structure.

Mr. HART. Mr. President, will the Senator yield on that?

Mr. KENNEDY. I yield, on the Senator's time.

Mr. HART. On my time.

I think there is a difference there. One of the criticisms of my amendment was that we left some—not administrative discretion in the Joint Committee on Taxation, but we left flexibility. We also tried to accommodate the distribution schedule of the Senator from Massachusetts in the out years. I think that is a difference between our amendment and the Nunn amendment. As I understand the Nunn amendment, after 1979 the Kennedy-Bumpers distribution formula would not necessarily have to be followed.

Mr. KENNEDY. May I ask the Senator whether that is so?

The PRESIDING OFFICER. Does the Senator from Colorado yield?

Mr. HART. Not on my time. I yield the floor.

Mr. KENNEDY. Mr. President, I do not want to delay the Senate from taking action, but I would like to find out more about the impact of the Nunn amendment on the rate structure which the Senate recently adopted in the Bumpers-Kennedy amendment.

Mr. CHILES. We accepted the Kennedy-Bumpers figures on the first year. We then took across-the-board cuts from all brackets in the years 1980 to 1983 to get our reductions. The prime reason for the amendment offered by the Senator from Massachusetts and the Senator from Arkansas, as I understood it, was to offset the thrust of the total Finance Committee bill, which gave large benefits to low income groups through the earned income case credit, and large benefits to the upper income groups through capital gains provisions. We preserved the balanced package for middle income groups as well.

So we accepted that and took those figures from the Kennedy-Bumpers amendment. Then we used basically across-the-board cuts in the out years. I think the Senator will find that our cuts would yield the current law distribution in the last year, so everyone would end up getting more of a tax cut in the out years.

Mr. KENNEDY. I am not sure I understand completely what that is going to mean to the $10,000-a-year taxpayer. I am not completely relieved of my concern over the fact that we have made a major change in the rate structure to shift a significant benefit into the middle-income groups and into the working-class people of this country with the Bumpers-Kennedy amendment. The change was extremely important for the middle-income taxpayer.

Mr. CHILES. I will be happy to answer that.

Mr. KENNEDY. OK.

Mr. CHILES. I say to the distinguished Senator that by 1983 we would give an average taxpayer in the $15,000–$20,000 bracket a $337 tax cut. This would be in the 1978 dollars on top of the cut that the Senator has. In 1978 dollars the $15,000 to $20,000 would get $337. That would more than double in 1983 dollars. They would be getting almost $700 in 1983. If they were in the $20,000 to $30,000 tax bracket they would be getting a cut of $576 in 1978 and that again would double by 1983. So they would be getting over a $1,000 reduction in 1983.

Mr. KENNEDY. The point that I would make here is the Senator is not indicating what the comparison would have been if we used the Bumpers-Kennedy formula. We cannot tell whether middle-income people are going to be as favorably benefited under the Senator's program, or are going to be taxed more under the Senator's program. If the Finance Committee rate structure is used, middle-income groups will be at a disadvantage. If the Bumpers-Kennedy rate structure is used, they will receive the greater benefits they deserve.

Mr. CHILES. I just told the Senator they are going to be taxed less. In the from $20,000 to $30,000 bracket, they will be taxed $1,000 less. So they are certainly not going to be taxed higher, and at the same time they are going to be enjoying a balanced budget at the time. So they are going to have a lower rate of inflation, they are going to be enjoying a balanced budget, and they are going to be taxed $1,000 less.

Mr. KENNEDY. The Senator has still not answered what the difference would have been between using the Bumpers-Kennedy rate schedule and using the Finance Committee rate schedule.

Mr. CHILES. I say to the distinguished Senator from Massachusetts we are not adding anything to give an additional benefit in capital gains in our amendment. We are not adding anything in our amendment.

Mr. KENNEDY. Neither was our amendment.

Mr. CHILES. So the Senator said are we throwing it out of whack? We are not giving anything extra in capital gains. We are not giving any extra benefit in corporate tax reduction.

Mr. KENNEDY. The Senator did not understand. If he would just compare what was done under the Senator's amendment in outyears, whether the Senator's amendment has grafted on the Bumpers-Kennedy rate structure or the Finance Committee rate structure. If I can get the answer to that and if the Senator's answer is yes, affirmative, I will be satisfied.

Mr. CHILES. We grafted it in the initial year but he did not provide schedules for the future years the way he did.

Mr. KENNEDY. Then I want the Senate to understand this if we can.

May I have order, Mr. President?

The PRESIDING OFFICER (Mr. ABOUREZK). The Senator will suspend until we get order in the Chamber.

The Senator will not continue until we get order.

Mr. MAGNUSON. Who has the floor, Mr. President?

The PRESIDING OFFICER. I ask the Senator to withhold just a minute until we get order.

The Senator from Massachusetts has the floor, but he will withhold until we get order in the Chamber.

Mr. KENNEDY. Not on my time, Mr. President.

The PRESIDING OFFICER. No, we are not counting this against the Senator's time.

The Senator will continue.

Mr. KENNEDY. The question that I asked members of the coalition was with regard to these long-range projections. The figures that were used in the rate structure that the Senate addressed just last week brought a rebalance to the rate structure to tip it more into the middle-income people. That was carried by a substantial degree here in the Senate, and has been accepted in the language of the measure that we are debating here. Were those rate figures used over the out-year projections of the coalition amendment? They were permanent changes in the rate structure which is going to tip and bring a reduction in terms of middle-income people. As I gather the response from the Senator from Florida is that they used those figures in the first year but then they used the Finance Committee rate structure for the out years. That is really the basis for my question. If we were to find out that the projections were based upon the changes in the rate structure which the Senate accepted for all of the out years, then my question is answered.

Mr. HART. Mr. President, will the Senator yield?

Mr. KENNEDY. I ask the Senator from Florida if there is anything more he wants to add.

Mr. CHILES. Yes. I wish to add——

Mr. KENNEDY. OK, if he could do it on his time.

Mr. CHILES. Certainly, on my time.

The rationale, as I understood it, on the Kennedy-Bumpers amendment was that we should change the permanent rate structure. That was the change that was made on the basis that in the bill there was a tremendous advantage given for capital gains, a high advantage given for capital gains and there was a high advantage given for reducing the corporate tax structure, and on that basis we should change the permanent rates. Those were changed. This in no way affects that change. Now what we are coming along and what we are attempting to do in this amendment—Mr. President, may we have order?

The PRESIDING OFFICER. The Senator will suspend until we get order. Will the Senator wait just a minute, please? I ask all Senators and all staff people who are buzzing around the Chamber to kindly stop buzzing because it is just going to delay the proceedings for that much longer. I do not know about the rest of you but I would like to get out of here sometime tonight. The Chair will be very grateful for everyone to be quiet.

Mr. CHILES. What we were attempting to do here, in addition to what the distinguished Senator from Massachusetts has done, is work equity for the middle-income taxpayers, and I think

that was a good amendment. But in addition to that, what we were saying is we were going to come along now with a conditional tax cut that would attempt to hold a carrot in front of Congress to help us restrain spending and by saying if we only increased growth of our real programs by 1 percent over inflation, if we had a declining balance on the percentage of GNP that the Government was using from 21.5 percent down to 19.5 percent, under projections we would achieve a balanced budget by the year 1982. Then when we started working on our amendment, we were using the existing rate structure because that is what we had to work with.

Then, when the Senator had his amendment passed, we changed and picked up his amendment. The first year we could not pick up the tax tables at that time to go out to the outyears. But our feeling was that we do not change what the Senator did in his amendment. The permanent tax rates will continue. They will work the equity that the Senator worked in them. We are, in effect, picking up that rate in the first year and then we are using the existing tax structure and taking across-the-board cuts and nothing in our tax cuts in any way changes the income distribution. It does not change that at all. So we are not playing the game of trying to relate one equity against the other. We are trying to say that everybody is going to be able to enjoy tax cuts, and depending on what rate they start in at, and primarily those in the lower tax brackets and through the middle, will enjoy substantial cuts.

They will also enjoy, if the economy stays the same and if Congress is able to restrain itself, a balanced budget in the year 1982. They will enjoy a government that is only taking 19.5 percent of the GNP into its coffers every year.

Mr. HART. Mr. President, will the Senator yield?

Mr. CHILES. They will enjoy spending——

Mr. HART. Will the Senator yield?

Mr. CHILES. This is on my time. I have an hour under cloture just as the Senator from Colorado has.

Mr. HART. I understand. I am sorry. I just wanted to try to answer the Senator's question.

Mr. CHILES. I am trying to answer it first myself and then I will be delighted to let the Senator from Colorado use all of his time he would like to use under that.

But I think that is what I am trying to explain to the Senator as to what we are trying to do here.

Mr. KENNEDY. I appreciate the response. Of course, in the Bumpers-Kennedy amendment, we did not try to change the capital gains or earned income credit provisions. Those are complex issues.

All we are dealing with is the rate structure. We brought about a significant change and alteration in the rate structure with our amendment.

The question is, although the Senator has accepted our rate schedule in the first year, he has used a different schedule—the Finance Committee schedule—as the basis for tax cuts for future years, and that is a matter of some concern.

If I could ask the Senator from Colorado to answer whether his amendment does so?

Mr. HART. The answer, as I understand, on my time, of the proponents of the Nunn amendment to the Senator is, no. His rate structure is not protected.

The answer from the Senator from Colorado is, yes. If I read the language of the amendment correctly "establish rate tables which impose on each taxable income bracket the same proportion," which is what the Senator's question is, "the same proportion of the tax burden borne by such bracket under the taxable income brackets and attach rates in effect for fiscal year 1979."

The Kennedy-Bumpers proportions are maintained into the eighties.

Mr. KENNEDY. I just have one final——

Mr. NUNN. Just on that point. What the Senator from Colorado is saying is partially correct. What he is basically saying is whatever the conference committee comes back with and whatever is signed into law is what his amendment applies to. That could be the Kennedy formula. If we had another formula it could be that formula or it could be any formula. It could be the formula that came back out of the conference. His amendment does not protect the Kennedy formula, but whatever formula the conference committee comes out with.

I say we have protected the Kennedy formula to all the tax cuts that take place in 1979. That is not changed. It is locked into permanent law. But there is nothing in the Kennedy-Bumpers amendment that basically says all future tax cuts hereafter and forever shall be governed by the Kennedy formula. We do not go to the Finance Committee for the incremental tax cuts. We have protected all of the Kennedy application.

Mr. KENNEDY. The Bumpers-Kennedy amendment changed the rates, and those new rates should be the basis for future charges.

Mr. NUNN. For the tax structure.

Mr. KENNEDY. Yes, it should use them as the basis for tax cut in future years. The question is a serious one, because it relates to whether middle-income groups get their fair share of the future tax reductions promised in the Senator's amendment. They would get their fair share under the Bumper-Kennedy schedule, but not under the Finance Committee schedule.

Mr. CHILES. Mr. President, will the Senator yield?

Mr. KENNEDY. Yes.

Mr. CHILES. I understand. But the Senator——

Mr. KENNEDY. Just on the Senator's time.

Mr. CHILES. Yes, on my time.

The Senator does understand that his tax amendment put in one tax table and that rate will not change under the way the Senator now has it in. So by the year 1982 the Senator is going to have $100 million to $200 million more in taxes collected by virtue of inflation under the Kennedy-Bumpers amendment. So the taxes really are going to go up because of inflation, because there is nothing in there to say that we are reducing any taxes.

Mr. KENNEDY. It seems to me that the effect of these amendments is similar in some respects to the indexing amendments offered here earlier. They promise future tax reductions keyed to spending cuts, rather than inflation.

The challenge is to control spending. The Budget Committee has made a start, and the deficit is down this year to $33 billion, from the $60 billion forecast last January. If we can decide where to cut spending, we can have tax cuts, without making them automatic, without surrendering our prerogatives and discretion to cut taxes as conditions warrant, without a carrot that will prove just as illusory as all the other devices used in lieu of facing the hard decisions over which spending to cut. Automatic tax cuts keyed to spending are subject to many of the same objections as automatic tax cuts keyed to inflation.

Mr. HARRY F. BYRD, JR. The indexing presents a very significant——

Mr. KENNEDY. Mr. President, will the Senator be good enough to use his own time.

Mr. HARRY F. BYRD, JR. Yes, on the Senator's time. Indexing would provide very significant tax cuts. But that is entirely different from this proposal, as I understand it.

Mr. NUNN. The Senator is correct.

Mr. HARRY F. BYRD, JR. This proposal ties tax cuts to control of spending which the indexing did not do, so it makes it entirely different.

Mr. McGOVERN. Will the Senator from Florida yield for a question on my time, very briefly? Do I understand the Senator from Florida to say that under the proposal that he supports, the average middle-income taxpayers will get an additional $1,000 beyond what they are supposed to get? [Laughter.] Could the Senator answer that question?

Mr. CHILES. I said they would pay $1,000 less than they would have paid.

Mr. McGOVERN. Does not the Senator think that is an awfully radical amendment?

Mr. CHILES. It is very radical. [Laughter.]

The PRESIDING OFFICER. The Senator from Washington.

Mr. MAGNUSON. I still persist—maybe I have become redundant, but all you people here, the Senator from Georgia, he is on the Armed Services Committee. The Senator authorizes more money, does he not, did he not, way up? The Senator from Massachusetts and I are concerned with health problems. He authorized all kinds of money. You are all around here. The Senator from Colorado wants more money for different projects out there, and I am for it. But when you get all through with this then you all come around here and you want to cut down the revenue, is that correct? I am not concerned with the rate structure. I think you are right. I vote with you, but you are cutting down the revenue, and you cannot have both.

Mr. NUNN. Mr. President, will the Senator yield on that?

Mr. MAGNUSON. Let me finish.

Mr. NUNN. All right.

Mr. MAGNUSON. Because I am responsible. What counts when you have a deficit is how much you appropriate, correct? Do you know who gets the blame? I do. You all come around—we had 294 requests from Senators to up HEW $6 billion, different Senators.

We turned them all down. You cannot have both. So I want to know, when you people talk about all this—I agree with the Senator from Massachusetts about the structures; I think we have to change that. But I want you to come down, then, and ask me to take some money out of some appropriation. Will you do that? Will you take something out of defense?

Mr. NUNN. We did this year, as the Senator knows.

Mr. MAGNUSON. You will?

Mr. NUNN. As the Senator knows, we did this year. Let me respond briefly——

Mr. MAGNUSON. We have to get this in perspective.

Mr. NUNN. The Senator is absolutely correct there. Absolutely correct.

Mr. MAGNUSON. Listen: Now, we can do a job with more efficiency, and save money. That is something we are talking about, too. We can save money with Government regulations, and we are doing that. But, by golly, you people just cannot stand around here and keep talking about reducing all this. We can have the formula; sure, that is all right. But you better come around, then, and ask us to reduce some place. I will be glad to do it, but I do not feel that atmosphere. Everybody wants more appropriations for this or that.

Mr. NUNN. The Senator is absolutely correct. Will the Senator yield?

Mr. MAGNUSON. And everyone has his own constituency. I am going to vote for all of this sort of thing, but I just want to suggest, do not come downstairs to room 128 and ask us for more appropriations, because if I vote with you, you are not going to get it.

Mr. NUNN. Will the Senator yield?

Mr. BENTSEN. Mr. President——

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I think that the gentlemen who have offered these amendments have rendered a service.

The PRESIDING OFFICER. Will the Senator suspend until we can get order in the Chamber? The Senator will please suspend until the Chamber is quiet.

The Senator may proceed.

Mr. BENTSEN. Mr. President, I think that in suggesting these amendments the coalition and Senator HART have rendered a real service. I think what they have proposed is an intriguing idea.

I am for reducing the budget, and I am for trying to put some limits on the percentage of expenditures of GNP by the Government. I am for reducing the taxes as far down as we can go. But I have heard so many questions concerning what the Senators are trying to accomplish; I hear the Senator from Massachusetts trying to decide, if the Bumpers-Kennedy correlation of taxes up and down that rate structure is carried through, whether it is permanent legislation.

What we are having proposed tonight is one of the most profound things that has been done in the tax structure in a long time, and one I do not know how many economists have been involved in. I do not know how many hearings have been held on it. I am not sure whether labor has made its contribution to this discussion, or whether business has, or whosoever has had a part in this decision.

For that reason, since I think there are so many questions still left unanswered in spite of some rather laudatory objectives, I am going to have to vote against it, and frankly, I think if it is passed in this body I do not see how it can possibly survive the conference.

But again, in spite of my opposition, I think those gentlemen have made a fine contribution.

Mr. NUNN. Mr. President, I can understand the Senator's feelings in this matter. Let me say I have such confidence in the vast ability of the Finance Committee, in conference, to achieve any kind of oversight or change or additional goal, that I have the greatest confidence in their ability to carry out our instructions.

Mr. BENTSEN. Mr. President, I am glad for that, but my confidence in the Finance Committee is so meager I cannot support the amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Just a minute. The Senator from Maine has asked for recognition. The Chair recognizes the Senator from Maine.

Mr. MUSKIE. Mr. President, first of all I would like to compliment the Senator from Colorado and my colleagues on the Budget Committee, Mr. BELLMON and Mr. CHILES, and Mr. NUNN, who has been a member of the Budget Committee, for their efforts.

But, you know, I have lived with these 5-year projections for a long time. We have those projections in the Senate report on the second budget resolution this year.

But these projections, on which so much discussion has been based, were based upon moderate assumptions of what is going to happen to the economy in the next 5 years; and they anticipate a continuation of the current economic expansion for the next 5 years.

If we were to get that kind of real world for the next 5 years, it would be without precedent in the country's history. So when we talk about these projections, about what unemployment will be in 1983, what the inflation rate will be in 1983, and what spending will be in 1983, we are making very unreal projections in terms of what the real world is likely to produce. So to gear tax reductions and spending levels on any such 5-year projection, I happen to think, is a very unwise thing to do.

Now, with respect to the Budget Committee's projections, we, for example, anticipate assuming a moderate expansion for that 5-year period on top of the expansion we have had, so that we would have a total cumulative $128 billion available for additional spending or tax cuts in that period.

Now, the Hart amendment and the Bellmon-Chiles-Nunn amendment use that $128 billion in different ways. In the case of the Hart amendment, he would use it totally for mandated tax reductions, that is, mandated under the formula of this bill, tax reductions leaving no room for additional spending beyond current policy.

BELLMON, CHILES, and NUNN would use that $128 billion in a different way. They would advance the year for achieving a balanced budget by 1 year, and so they would not use it all for a tax reduction.

That is an oversimplified comparison of the two. What I do not like about either of them is that each is an attempt to reach conclusions about revenue aggregates and spending aggregates 5 years in advance.

The goals that they talk about are goals that are consistent with those that the Budget Committee has established for its own policies for this budget resolution, and I think our record demonstrates that we have worked persistently and effectively to reduce spending, to reduce deficits, and to try to stimulate moderate and wise changes in the revenue code.

I think that has to be done on a flexible basis as we move through this period. The reason we have 5-year projections in this document is so that we can hold them up to the Senate year by year as the plan to which we are committed as we adopt each budget resolution.

To freeze ourselves into mandated tax cuts or mandated spending levels without being able to really anticipate economic conditions, I think, is to tighten up our budget process to the point of inflexibility, and that is what troubles me about either of these proposals.

If we have to have one or the other, I know which one I would choose, although I would not say. I might choose one of these. But I do not really choose any of them, from the Kemp-Roth amendment to Hart to Bellmon-Chiles-Nunn, and I am very fond of all these gentlemen and have worked with them in one way or the other on matters affecting the budget.

But I really think we are taking a bill like this, or others produced by other econometric models, and undertaking to predict in advance what we can prudently produce in revenues and what we can prudently produce for outlays, and undertaking to budget 5 years in advance, with those constraints with which the Budget Committees and Congress will have to live.

For that reason, Mr. President, I am inclined, with all due respect and appreciation for the very intelligent efforts which have been made, to vote against both of these proposals.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I share the views of the Senator from Texas and the Senator from Maine. No GNP forecaster would, for a moment, in appearing before a congressional committee to testify, assert that his forecasts, pro-

jected out over a 5-year period, constitutes an adequate basis for the formulation of policy in the sense being proposed in these amendments.

The question being put by the amendments is, of course, a basic question, and one which we have to answer. But we have to answer within the context of the best facts we can have and a time frame which is as good as we can get in terms of making projections. The budget process, coupled with the work of the Appropriations and Finance Committees, now gives us a chance to do that. In the use of that process in this year alone we have gone from a $60 billion deficit which the President had projected in the budget he submitted to the Congress at the beginning of the year, to a $38 billion deficit projected in the second concurrent resolution. But we are able to make those judgments in the light of where the economy is and how it is moving.

To move into this situation, leaving aside some of the questions about 1-percent increase in spending and what you do with the defense budget—which, it is my understanding, increased by more than 1 percent this year in real terms, and if that is the case in one area of spending what happens in other areas of spending—leaving aside those questions, the model of the Chase econometrics people is resting on certain assumptions about where the economy is going to go. Those are assumptions not only about Government spending and taxing, but assumptions about business investment, assumptions about consumer spending, assumptions about consumer saving, assumptions about the actions of the Federal Reserve Board with respect to the money supply and the interest rate.

You cannot make these kinds of projections without building certain assumptions into that econometric model which covers all of those variable factors in terms of how this very complex economy works.

To come on the floor at this point and to, in effect, legislate as these two amendments propose to do—I grant there is a little movement in there—really into a fairly rigid spending revenue connection out over a 3- to 5-year period, in my view is not the way to make policy. I think we would be better advised, having benefited from the thrust of this discussion, from a very basic question which has been put, not to accept these amendments and then to go on and pursue the issues they raise in a more orderly fashion over time in which we can develop the sort of backup information which these proposals require.

I would support the Senator from Maine and the Senator from Texas.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I would like to join with my colleagues from Maine, Texas, and Maryland. I will make five points.

First, these proposals would constitute the single most important change in the American political economy since the introduction of the unified Federal budget under President Harding. It would be ary arrangements of political democracy. One might find it ineptly pursued in the centrally planned economies of the Soviet bloc, but no democracy has tried it. And it would certainly be a profound and significant change that merits more than a single evening's debate.

Second, the fundamental proposal sets fixed limits with respect to the growth of expenditures. It is important to recognize that we would be setting these limits at a time when the future is less than certain. For example, we are now in the 14th quarter of consecutive economic growth.

It is probable, based on normal business cycle conditions, that we will begin to experience a downturn in economic performance. Hence, it would become difficult to project with any degree of certainty.

Third, the President has just brought forward one of the truly great diplomatic triumphs, and opportunities, in the post war world—peace in the Middle East.

If this condition is to be consolidated it will almost certainly require great American expenditures. What that expenditure will be we do not know, but certainly we ought not to limit that possibility.

Fourth, the President is about to come forward with a strategic arms limitation treaty. We can not yet know exactly what that will entail either. But, it is almost certain that it will involve some changes in our conventional forces, it could involve greater expenditure. And, if a trade between strategic weapons and conventional ones is necessary, then our negotiators ought to have the flexibility to accomplish it.

Mr. NUNN. Will the Senator yield for a brief comment? I think the Senator missed the earlier part of the debate.

Mr. MOYNIHAN. I am happy to yield.

The PRESIDING OFFICER. The Chair will remind Members of the Senate that under the rules of cloture one Senator cannot yield to another.

Mr. NUNN. If the Senator will yield on my time——

Mr. MOYNIHAN. My final point is that there is something fundamentally fearful about this effort to bind ourselves to future limitations. We have been governing this Nation for almost two centuries on the basis of the free choices of successive Congresses. I see nothing in our past record to make us fearful of our future performance.

The President, in his economic report this last January raised an important concept—that of our expenditures as a proportion of our GNP. He suggested that it be reduced to 21 percent. This is a basic idea, and a good one. But it is one that would be carried out by future Congresses. We need not fear an inability to accomplish this, we have performed well in the past, and will continue to do so in the future. I thank the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. HART. Mr. President, let me just say to the Senator from New York that the only thing we are binding ourselves to is a commitment to the American people that we will offer the tax cuts necessary to get us out of this recession only if we meet certain controls on spending.

That is the only thing we are binding ourselves to. There iss nothing else that is binding.

Mr. President, my staff and I started working on this project and this proposal almost a year ago. I feel that that proposal received a great deal of hearing here, on the floor of the Senate, for the first time here tonight. I am gratified by that.

I am also gratified by the fact that my colleagues have come 90 or 95 percent of the way toward adopting that proposal. I compliment them for that.

Mr. President, having achieved most of what I set out to do, I ask unanimous consent that the order for the yeas and nays be vitiated and that the amendment be voted on by voice vote.

Mr. MAGNUSON. Will the Senator yield now for a question?

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.

Mr. HART. I yield.

Mr. MAGNUSON. Did the Senator not appear before the Committee on Appropriations just about 3 hours ago? Is that correct?

Mr. HART. The Senator is correct.

Mr. MAGNUSON. And he asked for further appropriations?

Mr. HART. Within the authorization limits.

Mr. MAGNUSON. All right, within the authorization limits. That is what I am talking about.

Mr. HART. May I answer the Senator?

Mr. MAGNUSON. Yes. I agree with him. I am going to vote with him. The trouble is, we make these speeches about all this and all the authorizations come down this high and we have to cut them down. When you talk about the deficit, it is controlled by what we expend, is that correct?

Mr. HART. The Senator is correct.

Mr. MAGNUSON. Appropriations, expenditures. My point is that if we want all these things, and the Senator himself—his proposition was good. I think we need it. That is why, maybe, we should have the flexibility that the Senator from New York talks about. This is something we need. He made a good case. We are going to agree with him. But it added, did it not? It added to the appropriation.

Mr. HART. It was less than the administration requested.

Mr. MAGNUSON. Well, all right. I do not think any of you get my point, that you keep coming down there wanting more.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado.

The amendment was rejected.

Mr. NUNN. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. NUNN. Under the previous unanimous-consent order, was it not agreed to unanimously that there would be a rollcall vote on the Nunn coalition amendment immediately following the disposition of the Hart amendment?

The PRESIDING OFFICER. That is correct.

Mr. HARRY F. BYRD, JR. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HARRY F. BYRD, JR. Will this be 15-minute rollcall or a 10-minute one?

The PRESIDING OFFICER. This is to be a 10-minute rollcall under the order previously entered.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that this be a 15-minute rollcall under the circumstances, because there is no preliminary vote now.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Georgia. The yeas and nays have been ordered.

The assistant legislative clerk called the roll.

Mr. PAUL G. HATFIELD (after having voted in the negative). On this vote, I have a pair with the distinguished Senator from Montana (Mr. MELCHER). If he were present and voting he would vote "aye." I voted "nay." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Montana (Mr. MELCHER), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Jersey (Mr. CASE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona Mr. GOLDWATER), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. DOMENICI) would vote "yea."

The PRESIDING OFFICER (Mr. GRAVEL). Have all Senators voted?

The result was announced—yeas 65, nays 20, as follows:

[Rollcall Vote No. 468 Leg.]

YEAS—65

Baker	Hansen	Nunn
Bartlett	Hart	Packwood
Bayh	Hatch	Pearson
Bellmon	Hatfield, Mark O.	Pell
Biden	Hayakawa	Percy
Brooke	Heinz	Proxmire
Burdick	Helms	Randolph
Byrd, Harry F., Jr.	Hodges	Roth
Byrd, Robert C.	Huddleston	Sasser
Cannon	Inouye	Schmitt
Chafee	Jackson	Schweiker
Chiles	Johnston	Scott
Church	Laxalt	Stafford
Cranston	Leahy	Stennis
Danforth	Long	Stevens
DeConcini	Lugar	Stone
Dole	Magnuson	Talmadge
Eagleton	Matsunaga	Thurmond
Ford	McGovern	Williams
Garn	McIntyre	Young
Gravel	Morgan	Zorinsky
Griffin	Nelson	

NAYS—20

Abourezk	Hathaway	Muskie
Bentsen	Hollings	Ribicoff
Clark	Javits	Riegle
Culver	Kennedy	Sarbanes
Curtis	Mathias	Stevenson
Durkin	Metzenbaum	Weicker
Glenn	Moynihan	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Paul G. Hatfield, against.

NOT VOTING—14

Allen	Eastland	Melcher
Anderson	Goldwater	Sparkman
Bumpers	Haskell	Tower
Case	Humphrey	Wallop
Domenici	McClure	

So the amendment (No. 4084) was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. May I be recognized, Mr. President? Who is to be recognized?

The PRESIDING OFFICER. The Senator from Indiana.

Mr. ROBERT C. BYRD. Will the Senator from Indiana yield to me?

Mr. BAYH. I yield.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate;

The PRESIDING OFFICER. Will the majority leader suspend? The Chair intends to wait until we have order. We will be patient, and we are prepared to wait until there is order in the Chamber. Will the majority leader withhold until we have order?

The majority leader may proceed.

Mr. ROBERT C. BYRD. I thank the Chair.

THANKS TO ROTH-KEMP

● Mr. HATCH. Mr. President, this evening was a historic one, and the long efforts of Mr. ROTH and Mr. KEMP and others of us to provide a real tax cut has come closer to fruition with the passage this evening of the Nunn amendment of which I am a cosponsor. Now if the Budget Committee finally establishes control over spending in keeping with the Nunn amendment, the American people will finally get a tax cut.

I submit for the RECORD an editorial from today's Wall Street Journal, which chronicles this struggle to provide a tax cut. Tonight we showed that this cut might be closer than the Wall Street Journal thought this morning.

The editorial follows:

UNMORTGAGE THE FUTURE

When the dust finally settles on the tax bill currently before the Senate, a considerable change in philosophy will be apparent. Both houses have moved away from closing "loopholes" toward promoting growth. Corporate tax reduction has become noncontroversial, if not almost a liberal position. The capital gains tax will not be raised but cut. But there is one element of the growth formula that Congress still refuses. Despite growing support for the idea, it will not commit itself to a systematic program of tax reduction in future years.

The House and Senate rejected the Roth-Kemp bill, various indexing proposals and most other efforts to get us off the curent tax treadmill. The Senate Finance Committee did postpone some of its tax cuts to reduce the impact on the next year's deficit, but even this was opposed by the Budget Committee and the administration. They warned that voting tax reductions for future years would "mortgage the future."

To put this matter in some perspective, it's only necessary to look at the long-range projections in, say, the administration's own mid-session budget review. They show that between 1978 and 1983, government receipts are expected to grow to $720.5 billion from $401.2 billion, an increase of $319.3 billion, or 79%. This is an average annual growth of 12.4%, even though the numbers include the projected impact of the administration proposals for "tax reform and relief." In other words, even after the administration's alleged tax cuts, tax receipts are going up 12% a year. It somehow seems to us that stopping this would not be mortgaging the future but unmortgaging the future.

The current tax system, with inflation pushing everyone up through progressive rate brackets, is guaranteed to increase taxes faster than the growth in gross national product. It is especially important to keep this in mind in assessing claims by the Democratic leadership that the Kemp-Roth bill, a 33% tax cut phased in over three years, would be an engine of inflation. The Democrats fully intend to "cut" taxes in those three years, and given the current Senate festivities are in no position to quibble over amounts. Their position is essentially that one three-year tax cut is wildly inflationary but three one-year tax cuts are not.

In fact, declaring rate reductions in advance has two important advantages. First, it gives tax cuts an even break with expenditure increases. Spending programs have long been voted in advance, often—indeed typically—designed to start small in early years and escalate thereafter. For that matter, tax increases, such as the Social Security boosts taxpayers now face, are often voted in advance. Faced with "uncontrollable" expenses from past programs, Congress then decides whether it can "afford" to reduce taxes in any particular year. Scheduling tax reductions in advance would stop this no-win game.

Secondly, the prospect of lower tax rates in future years has economic effects now. It is being more widely recognized that tax cuts do have incentive effects, at least where marginal rates are unusually high, and do produce revenue feedbacks. The knowledge that taxes are going down in future years will affect current decisions, particularly long lead-time investment, and thus help the economy even before the lower rates take effect.

The Kemp-Roth bill, the clearest embodiment of these principles was defeated in the Senate Friday by a 60–36 vote in which Democrats, not surprisingly, dominated the majority. But the notion of cutting taxes in future years has spread across party lines. Sen. Gary Hart of Colorado joined Republicans Griffin, Dole and Brooke in proposing to index personal income tax brackets and exemptions, a good way to reduce the tax take in future years. And the Senate will vote today on a proposal by Sen. Sam Nunn (D. Ga.), which essentially would phase the Kemp-Roth bill in over five years with a proviso to delay the scheduled cuts unless spending limits are met, thus finessing the usual objection to Kemp-Roth and laying bare the issue of whether to get off the treadmill.

As the year's debate progressed, Congressman Kemp, Sen. Roth and their allies sometimes seemed to suggest incentive effects were so sure and so powerful that any level of expenditure could be financed by cutting taxes fast enough. While this rhetorical ex-

aggeration hurt their case, their bill has nonetheless been a moving force in the changes in tax philosophy we are witnessing. With the successful effort for capital gains tax cuts by Congressman Steiger and Sen. Hansen, it helped educate the Congress about incentives and revenue feedbacks. Even if this year's bill does not include a systematic multi-year program of tax rate reduction, the idea of offsetting the present automatic increases has taken root. The foundation has been laid for some future Congress to unmortgage the future.●

Mr. ROBERT C. BYRD. Mr. President, a religious holiday begins tomorrow evening at 6 o'clock and extends until 6 o'clock on Wednesday evening. This means that after 6 o'clock tomorrow evening, we will not have any rollcall votes until 6 o'clock on Wednesday. Business will be transacted. There can be voice votes; rollcall votes can be ordered. But out of deference to those Senators who would be observing the holiday, we have given them our word that there will be no rollcall votes, other than a procedural vote necessary to establish a quorum, and so on.

That being the case, and in view of the fact that the Senate conferees on the tax bill need to be in conference on Wednesday and Thursday, possibly Friday and Saturday, in order to complete action on this bill Saturday—and hopefully adjourn sine die at the close of business Saturday—I ask unanimous consent that a final vote on the committee substitute and the bill occur no later than 6 p.m. tomorrow, with the understanding that there be a time limitation of not to exceed 1 hour on any amendment.

Mr. BAKER. Mr. President, reserving the right to object, I just say to the majority leader that I only just now—meaning the last few minutes—learned of this proposed request. I have tried to confer with as many Members on this side of the aisle as possible in the brief time we have had.

I notice that we have good attendance on this side, and I hope that Members who are agreeable to this or have concern about it will express their own views.

My own concern, Mr. President, is whether or not there will be time between now and 6 o'clock tomorrow night to dispose of the several amendments. I wonder how many amendments we have to deal with and if the distinguished managers of the bill can give me some idea of how many amendments—that is, serious amendments—would be dealt with between now and 6 o'clock tomorrow night.

Mr. LONG. Mr. President, I am advised that there are about 25 amendments at the desk that are germane and about 10 of them we regard as serious amendments, in that it will be important to the committee as to whether they are agreed to or not. As to the others, I think we could live with them, if the Senate saw fit to agree to them.

Mr. BAKER. Mr. President, further reserving the right to object, if there are 25 at the desk and 10 are serious, that is 10 hours. To do 10 hours of careful deliberation by 6 o'clock tomorrow night would be extremely difficult. But if the managers of the bill think that is possible, I will withhold any objection at this point.

However, I must say at this point that I am very concerned about that.

Mr. LONG. If Senators would not be offended if the manager of the bill would move to table when he thinks their side has been heard adequately, with the understanding that when the other side rises to present their amendment, they make their presentation in chief, and if we think we have the votes, after a brief statement of ours, we would propose to table, so that the debate would not drag on, we think we probably would make it.

Mr. BAKER. Is the Senator talking about a tabling motion before the expiration of the hour provided for in the majority leader's request?

Mr. LONG. Yes.

Mr. HEINZ. Mr. President, reserving the right to object, it would be helpful to try to establish, at least for a few of us who I am sure have been trying to obtain recognition all afternoon and all evening, whether we might have the opportunity to have our amendments called up at a reasonable time, at a time certain.

Mr. KENNEDY has an amendment. Mr. BAYH has an order to be recognized following the conclusion of this discussion. I know that Senator DANFORTH has an amendment, as has Senator JAVITS, and there probably are others.

Mr. LONG. Let us put it this way: Some of these are very important and significant amendments. From the point of view of those who are very much interested in a particular amendment, unless they win, they are not going to think we spent adequate time debating it.

Mr. HEINZ. The Senator misunderstands. I am not talking about adequate time. I want to be sure we have some orderly method of procedure.

Mr. LONG. It is all right with me. It is just that today we have withheld making motions to table, out of deference to Senators.

For example, on the previous amendment, it was the judgment of the Senator from Louisiana, after we heard that debate for the first hour, that the Senate was likely not to agree to the Hart amendment and would agree to the Nunn amendment; and I would agree to table the Hart amendment, just to get on with the business, except that I did not want to offend the Senator, to make him feel that we cut him short on the time we took on his amendment.

If the Senate wants to move, so that the amendments of other Senators could be considered, we could move to table rather than spend as much time in answering as the other side spends in debating.

Keep in mind that any time I say something that the sponsor does not agree with, ordinarily he wants to respond. If we could make our statements and move to table, we would be inclined to do that.

Mr. HEINZ. My concern is that we have some orderly procedure for recognition now.

Yesterday, there were either 8 or 10 straight recognitions on the Democratic side of the aisle—not yesterday, Saturday—because a list was being kept up there. It was not an order; it was a list. In spite of the fact that it was not an order, you could not get recognized, because the Chair had a list.

If there were some agreement whereby the Chair would alternate recognition, as long as somone was seeking recognition between the majority and the minority sides, this Senator would not object. Some other may object.

Mr. LEAHY. Mr. President, I recall being in the chair during part of that time. The name of the Senator from Pennsylvania was added about 3 seconds after he requested it. The Senator was perhaps somewhat delinquent in getting his name up there. That might have been the reason for it. I do not think there was an attempt on the part of anybody in the chair——

Mr. HEINZ. I can solve the Senator's problem. My name was the fourth name and the last name on the list from the night before, and that list was thrown away. Now, as Exhibit C, there was a list——

The PRESIDING OFFICER. The Chair would observe——

Mr. HEINZ. Mr. President, reserving the right to object, there was a list at the desk a few minutes ago when one of the Senators was in the chair. I asked that my name be put on the list. It was. I went back up to the desk and found a new list, and I found the list with my name on it crumpled up and put in the wastebasket. I will be happy to go up there and get it out of the wastebasket.

The PRESIDING OFFICER. The Chair observes that there is a list here, and there are three Democrats and three Republicans on the list.

Mr. SARBANES. Mr. President, reserving the right to object. I would like to make the point right here, having presided in the chair, that there is nothing in the Senate rules that sanctions those lists.

Mr. ROBERT C. BYRD. Right.

Mr. SARBANES. I suggest to this body in the circumstance—and we are almost through with this session—that in the next session, those lists should be abandoned. They have no official status. They make it extremely difficult on the Presiding Officer.

If a unanimous-consent order is obtained by Members which gives everyone the opportunity to object and insist that they be included, or if some other planning be done, or some other sequence, that is a different proposition. But to be sitting in the chair and have Members come up and say, "Is there a list? If so, put my name on it," and someone else comes up and says, "Put my name on it"—there is no sanction in the rules to do that.

It places the Presiding Officer in an extremely difficult position. I frankly think it makes difficult to conduct the business of the Senate and it creates problems. I have a lot of sympathy in

what the Senator from Pennsylvania is saying. Simply on the basis of what he has asserted I suggest to the Members that those lists probably should be scrapped altogether.

Mr. ROBERT C. BYRD and Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Maryland has stated it preeminently, accurately, and articulately. No lists are recognized in the rules. The Chair is supposed to recognize the Senator who first seeks recognition but it is in the discretion of the Chair to recognize whomever he wishes to recognize. But lists have no place. They do make it burdensome on the Presiding Officer and they are unfair to other Senators who do not even know there is a list at the desk. Sometimes it can make it impossible for a Senator to get his amendment in at all because, depending on what degree his amendment is, he may have to offer it as a second degree amendment or he may have to offer it as a first degree amendment. It puts him at a disadvantage in many instances.

So I hope we will get away from the lists. I think the Senator raised a valid point.

Mr. GLENN. Mr. President, reserving the right to object, I checked at the desk a few moments ago and was told there were probably somewhere over 200 amendments still pending. I have no concept of how many of these are likely to be called up. But I am sure that some of us will not be willing to give up our right to call up amendments, just assuming that our amendment would be one of the 10 that the floor manager says he feels are important to this bill.

We have excellent attendance in the Chamber here tonight. I ask the majority leader if it might be possible to poll the Members here and see how many are serious about bringing up amendments tomorrow. Perhaps we could ascertain whether that limit of 10 is valid as to what is important to the Senate. This is extremely important legislation. Some of us feel very strongly about amendments that we have put in and perhaps we could ascertain from the Members in the Chamber now a better count of how many would be expected to be brought up tomorrow because I am sure many Members would join me in not wanting to be iced out by any 6 p.m. limit tomorrow night. As to a bill of this importance and magnitude and importance to the American people we should not be rushed into this with some amendments that we might wish to propose.

Mr. LONG. Mr. President, once Senators start objecting to amendments because they are not germane, because the amendments violate the budget, or because they are drafted in such a fashion that it is not in order to present them now, no one had a right to complain about any other Senator doing something that he had every right to do. Every Senator has a right to make a point of order that an amendment is not germane. So every Senator should talk to the Parliamentarian if he wants to call his amendment up and find out whether that amendment is germane. He should not waste the time of the Senate by bringing up an amendment that the Parliamentarian is going to have to rule is nongermane. We consult the Parliamentarian and we know what amendments we think are germane. Also if they are subject to the Budget Act he can find out. So he does not need to waste the time of the Senate calling something up only to find that it violates the Budget Act and therefore is not in order or that it is not germane or that the way it has been drafted is in such a fashion that the amendment cannot be considered except by unanimous consent because the probabilities are it is not going to be agreed to. If he is going to require unanimous consent, he better start clearing it on both sides of the aisle before he asks for it; otherwise, it will not be agreed to.

I have been notified with regard to various amendments that there will be no waiver, that the consent will not be given. Oftentimes it is because the Senator opposes the amendment. That being the case, if he does not agree to waive the defect, whatever it may be, that is the end of it.

Now, if we will proceed in that fashion rather than make the leader, manager of the bill, or chairman of the Budget Committee, stand here and make the objection, then we are only talking about 25 amendments and we will save a huge amount of time if the sponsors of the other amendments will find out what the objection to that amendment might be. Then we can get down to real serious issues which are 25 amendments that should not be too much to do in 8 hours.

Mr. ROBERT C. BYRD. Ten hours. We will come in at 8 a.m. That will give us 10 hours.

Mr. LONG. As far as I am concerned we can come in at 7 a.m.

Mr. CANNON. Why not stay today and all night?

Mr. JAVITS. Mr. President, reserving the right to object, in view of the fact the reason for this procedure is laid at the door of the Jewish holiday, if necessary I will object. I am not afraid to raise it at all.

Mr. President, it is very serious business. I know we want to get home. But we cannot cheat America because we want to get home. So I for one will do my praying off the Chamber tomorrow night and will stay as long as it is necessary, if it is all night, to give every Member a chance to argue and debate his amendment. If he has only 10 minutes, he has that right. I will not keep the majority leader to his promise that we have to finish by 6 p.m. tomorrow night. So if necessary—I hope it will not be; I think it would be very embarrassing to me—I will object myself.

Mr. RIBICOFF. Mr. President, I express my appreciation and gratitude to the majority and minority leaders for the thoughtfulness and consideration of the religious convictions and sensibilities of five Members of this body.

Unfortunately, the distinguished Senator from Florida is not here.

When I was aware of the dilemma that the leadership faced in this body, I consulted with the distinguished Senator from New York, the Senator from Ohio, and the Senator from Nebraska. We are members of the Jewish faith. We have been sent here by our constituents to do our duty. Under our religion when it is our obligation to perform our duty in the national interest it is permissible, I believe, for us to be here in the performance of our obligations to the people of our country and our respective States.

Under the circumstances—and I regret that I do not see, and I tried to find the distinguished Senator from Florida—we have consulted together, the four of us who are here. This is a matter of such basic importance to all the people of our Nation, and we realize what this means for the entire schedule of the Senate and every Member here, we would not put that restriction—I regret that I cannot speak for the Senator from Florida. I tried to find him, but I cannot find him here.

The Senator from New York, the Senator from Nebraska, and the Senator from Ohio, and I will make arrangements somewhere in this building to perform our religious obligation, and if there is a basic vote we will be able to vote accordingly. But we do not feel under these circumstances we have the right to expect our other colleagues to give up what is absolutely essential in the performance of their duties and for us, and I do want to say we are deeply appreciative of the commitment made by the leadership and we respect them for it. But we will not hold the leadership under these circumstances. It would be our hope, however, that we would stay as late as possible tomorrow night to finish this bill, and as I understand the colloquy between the manager of this bill and the majority leader, there is no reason why we cannot finish tomorrow night.

I hope that those Senators who have an amendment that is not germane or would be ruled out in accordance with the budget procedure, would not call up that amendment and maybe we can finish by 6 p.m. If we cannot, I am sure that we will all be willing to stay as late as possible.

I know the obligations and I know the burden also to members of the staff, and I pay tribute to the hard-working members of the staff who carry this burden also and happen to be of the same religious faith.

I am sorry to impose upon them the breach of what they consider proper. But again it is their duty to perform for the interests of our country and the interests of the Senate.

So under those circumstances I regret that I cannot speak for the Senator from Florida, and if he disagrees, all of us will have to apologize to him for our making that decision, but we could not find him.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. RIBICOFF. I would be glad to yield.

Mr. JAVITS. I would like to adopt what Senator RIBICOFF has said. I also feel that way.

May I make a suggestion, if the Sena-

tors would allow me. I think this is the kind of a situation in which the two leaders or their attachés can call in the very Senators whom Senator LONG has identified and work it out with them so that everybody does get an opportunity and so that we finish some time tomorrow night. With this situation you now have ample time.

I have, for example, a dozen amendments. We winnowed them down to three, and one that I share with Senator DANFORTH, because I went and did exactly what RUSSELL LONG suggested, found out what was in order, what was not, and will simply eliminate those that are not.

We are not helpless, Mr. Leader. There are other Finance Committee bills, and we can always find a place to put what we want to do there. So I really believe, sir, that you can work it out, and I hope, as Senator RIBICOFF had said, that you will not press this upon the Senate under the circumstances he has so properly described.

Mr. BAKER. Mr. President, will the Senator yield to me for a moment?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. Mr. President, in view of this colloquy—and I express my personal thanks and appreciation to the distinguished Senators from New York and from Connecticut for their remarks in this respect—in this view I think there is nothing I can add except to say that I think it would be far preferable to simply resolve tonight that we will try our best to finish tomorrow night. I will pledge to the majority leader that I will cooperate in that respect. I think it will eliminate a lot of problems on this side of the aisle, and I suspect on the other, not to put a rigid 6 o'clock time but rather represent that all of us will try to complete this bill as rapidly as we can and, hopefully, tomorrow night.

Mr. STEVENS. Mr. President, reserving the right to object, I think the comments made by the Senator from New York and the Senator from Connecticut lead to the conclusion that we should do everything we can to accord them the privilege of offering any amendments they might have to this bill before 6 o'clock, if that should be worked out.

Second, I have just been given a "Dear Colleague" letter that indicates that the Glenn amendment will come up in another form and that there has been indication that the amendment is germane.

I have no indication whether the amendment was filed by the time cloture was voted, but I hope that the majority leader will not insist on a 1-hour limitation on these amendments until we see what amendments are going to be called up. I would be perfectly willing to go to a 1-hour limitation——

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. RIBICOFF. I hope that one of the controversial amendments that will take a considerable amount of time can be laid down tonight, and that the Senate will come in early tomorrow morning so that we can feel that by 9 o'clock we will have the first vote on a controversial one.

I also hope we can finish tomorrow night so that we will not have to go into Wednesday and finish the bill, not only for the religious problems, but knowing what is involved in the conference, to get this together in a matter of such complexity and the time it will take to get the papers ready to go to conference mean it will be absolutely essential, in my opinion, to definitely finish this by tomorrow night or we will be unable to adjourn sine die by Saturday. This is what I would request.

Mr. ROBERT C. BYRD. I thank the Senator. I will not press the request.

The Senators who have spoken and for whom I had agreed that there would be no rollcall votes after 6 o'clock tomorrow night, made a very, very reasonable request. We have observed that request before, and I wanted to observe it on this occasion.

I appreciate the reasoning with which they have spoken tonight. I had hoped we could finish the bill tomorrow night because, as Mr. RIBICOFF has stated, if we adjourn sine die Saturday it is going to be absolutely necessary to finish this bill tomorrow at some point.

So, Mr. President, I hope that Senators will all keep this in mind tomorrow.

I hope the Parliamentarian can arrange to have a listing of amendments that are not germane, of amendments that are out of order, because they go to different places in the bill or are out of order for other reasons, and let us have that list by tomorrow morning, if it is not already available. This may be helpful as we proceed tomorrow.

So, with that understanding, Mr. President, that we try to complete action on the bill tomorrow night, I withdraw the request.

Mr. BAYH. Mr. President, I regret that the amendment of the Senator from Indiana now that I will ask the clerk to report, 3992, has been kicking around since this morning, and I will explain why in just a moment.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. BAYH. I yield to the majority leader.

ORDER FOR THE CONSIDERATION OF S. 2566 WITH A TIME LIMITATION THEREON

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its work on the tax bill today that it proceed to the consideration of S. 2566, the Pennsylvania Avenue Corporation bill, with a 20-minute time limit, this to be divided equally; with a time limitation on any amendment of 5 minutes.

ORDER FOR THE CONSIDERATION OF S. 791, WITH A TIME LIMITATION AGREEMENT THEREON

Therafter, the Senate will proceed to the consideration of S. 791, the omnibus parks bill, with a 30-minute time limitation, with the time to be equally divided, and a time limitation on any amendment thereto of 5 minutes.

Mr. BAKER. Mr. President, reserving the right to object, and I have no intention of objecting at this moment, but if the majority leader will withhold for just a moment, I have not been able to clear the first request on our calendar, and I wonder if the majority leader would give me just a moment?

Mr. STEVENS. Mr. President, reserving the right to object, and I shall not object, it is my understanding that S. 791 is the omnibus parks bill. I have no objection to considering S. 2566 which, I understand, has a slight amendment, as long as we are not going to incorporate the provisions of the second bill in the first one. We are working on some changes to that bill and we are not prepared yet to——

Mr. ROBERT C. BYRD. Mr. President, does the Senator object to either or both of the requests?

Mr. STEVENS. I have no objection to S. 2566 which, I understand, is the Pennsylvania Avenue Corporation bill, which has an amendment to be offered by the Senator from Arizona. There is no problem about that as long as it is not an amendment that goes to the subject matter of S. 791. I would have no objection.

Mr. MAGNUSON. Mr. President, reserving the right to object, the Senator from Alaska and I are concerned about an Executive Calendar bill which amends the International Convention for the High Seas Fisheries of the North Pacific Ocean. I was wondering can we have an Executive Calendar—the Senator from Alaska and I are concerned, and we have to get this done before we quit, about a protocol amending the International Convention for the High Seas Fisheries of the North Pacific Ocean.

Mr. ROBERT C. BYRD. Mr. President, could we have the attention of the Senator from Alaska?

The PRESIDING OFFICER. Will the Senator suspend?

Mr. ROBERT C. BYRD. Can we have the attention of the Senator from Alaska?

Mr. MAGNUSON. I told the majority leader and asked him, we are very concerned, the Senator and I, about this North Pacific Fisheries Treaty which is on the Executive Calendar. There is no objection to it, and I do not know why it is being held up. Can we pass it right now? There is no objection whatsoever.

Mr. STEVENS. I am deeply interested, and I think all of us from the Pacific Northwest are, because that meeting is scheduled to take place almost imminently, and we would like to see that cleared. But I do know that there is an objection to it.

Mr. BAKER. Mr. President, I think the matter can be disposed of tomorrow. I am not in a position to agree to it tonight.

Mr. MAGNUSON. If we can get agreement it will not take 2 minutes.

Mr. BAKER. I am sorry. I would like to accommodate the distinguished chairman of the Appropriations Committee, and I think I will be able to do this tomorrow, but I cannot do that tonight.

Mr. MAGNUSON. I thank the Senator.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, can the majority leader identify for me again the items he referred to in his request?

Mr. ROBERT C. BYRD. S. 2566, the

Pennsylvania Avenue Corporation bill, and S. 791, the Omnibus Park bill. They are both House messages.

Mr. JAVITS. Mr. President, will the Senator withhold that for just a few minutes? I am trying to check.

The PRESIDING OFFICER. Will the Senator suspend? I cannot even hear from the chair, much less the Members of the Senate. Will Senators suspend until we can get order, and hear what business is being transacted?

Mr. STEVENS. Has the Chair registered my objection?

The PRESIDING OFFICER. The Chair will not permit the transaction of business until there is order.

Mr. BAKER. Mr. President, Mr. President, Mr. President——

The PRESIDING OFFICER. The Chair does not propose to permit any transaction until there is order in the Chamber.

Mr. ROBERT C. BYRD. Will the Chair let the minority leader object?

The PRESIDING OFFICER. The Chair now recognizes the majority leader.

Mr. ROBERT C. BYRD. I respect the Chair for trying to get order. That is the duty of the Chair, to get order, and to maintain order if it can be done.

The PRESIDING OFFICER. Attachés will please take their seats, so that business can be transacted.

The Chair recognizes the minority leader.

Mr. BAKER. I thank the Chair.

Mr. President, I reluctantly must say that neither item, S. 2566 or S. 791, is cleared on this side. I hope we can clear them later, but it is necessary for me to object tonight, and I do object.

The PRESIDING OFFICER. Objection is heard. The Senator from Indiana has the floor.

Mr. BAKER. Mr. President, I wonder if the majority leader could indicate to me whether there will be any more rollcall votes this evening.

Mr. ROBERT C. BYRD. Mr. President, if I might have the attention of the manager of the bill (Mr. LONG), is it anticipated that there will be further rollcall votes today?

Mr. LONG. Well, Senator, I would hope that before we conclude today Mr. BAYH'S amendment could be laid down, and if no one insists on a rollcall vote, we could vote on it, or if someone insists on it, if the Senate does not want to vote on it this evening, or someone objects, we can vote on it tomorrow when Senators come in.

Then I would hope that after we conclude that, we could call up H.R. 8533, a House-passed bill to which I understand there is no objection in the Senate, and add to that the waterway user measure; I think that issue has been compromised to where all sides are willing to go along, so far as I can determine, and we can send both the waterway tax and locks and dam 26 over to the House on that bill.

That is all I contemplate doing this evening, and then we can come back tomorrow and resume work.

Mr. ROBERT C. BYRD. Very well. I thank the chairman.

Mr. LONG. If that runs into a snag, we will have to continue on that tomorrow.

ORDER FOR RESUMPTION OF THE UNFINISHED BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow morning at 8 o'clock the Senate resume consideration of the tax bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 7:30 A.M.

Mr. ROBERT C. BYRD. I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 7:30 tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

REVENUE ACT OF 1978

The Senate continued with the consideration of H.R. 13511.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

AMENDMENT NO. 3992

Mr. BAYH. Mr. President, for the information of my colleagues, I have no desire to ask for a rollcall vote on this amendment. Any Member, of course, would be within his rights to do so.

The PRESIDING OFFICER. Will the Senate please be in order? The Senator is entitled to explain his amendment, and I think he should be given an opportunity to do so.

Mr. MAGNUSON. Mr. President, will the Senator yield for a unanimous-consent request?

The PRESIDING OFFICER. The Chair will not entertain the transaction of business until we have order. Will Senators who choose to transact personal business accommodate the remainder of the body by doing it in the cloakrooms?

Will Senators show the courtesy to their colleagues of permitting the Senate to go forward in its transaction of business?

The Senator from Indiana may proceed.

Mr. BAYH. Mr. President, the amendment I present to the Senate now is one which was brought——

Mr. PROXMIRE. Mr. President, will the Senator use his microphone, please?

Mr. BAYH. I am using my microphone, I would say to my colleagues. I do not know why they are not hearing.

The amendment was brought up earlier this morning——

Mr. DOLE. Mr. President, may we have order?

Mr. HANSEN. Mr. President, may we have order?

Mr. BAYH. And was subject to a point of order, since we had reached the revenue floor for purposes of the budget resolution.

So the Senator from Indiana revised his amendment, so that it would not take effect until the beginning of the next fiscal year, and thus there would be no revenue loss. As originally presented, the revenue loss would have been $1 million for calendar year 1979, and since that would have left only 9 months in the fiscal year, the amendment would only have cost about $750,000; but that is moot, because as it is revised there would be no revenue loss this year.

I delayed in presenting the amendment, because I hoped there would be amendments passed which raised revenue and provided room for my proposal under the budget resolution. Unfortunately this has not occurred. I would hope, however, that in conference the distinguished chairman of the Finance Committee would consider making the amendment effective on January 1, 1979, if further amendments or action in conference make this possible under our budget procedures.

This amendment would make financing through industrial development bonds more available to communities participating in the urban development action grant (UDAG) program.

My amendment, Mr. President, would not increase the small issue exemption beyond the $12 million provided for in the Finance Committee bill. It would, however, permit IDB financing for facilities involved in a UDAG program which will be worth more than $12 million and up to $20 million. Under the committee's bill, eligibility for the small issue exemption is lost if the total expenditures for the facilities exceed the $12 million limit. More simply put, if my amendment were enacted there could be up to $12 million in IDB financing for a UDAG facility worth up to $20 million.

I believe, Mr. President, that the change I propose will be extremely helpful to the 181 communities presently participating in the UDAG program and the scores more which will participate in the future. That program has not been a total Federal subsidy. On the contrary, UDAG money has acted as seed money to attract many times more private dollars into projects to revitalize and reclaim severely distressed urban areas and neighborhoods. On an average, each UDAG dollar has attracted $5 from private sources. In some instances the ratio has been as low as one Federal dollar to 30 private dollars.

The UDAG program is an integral part of President Carter's urban policy, and it has had broad support in this body. It makes such good sense to stimulate private investment in our urban areas to help reverse the economic deterioration, high unemployment, outward migration, and housing abandonment which have plagued so many of our cities.

And it is because I believe so strongly in addressing the problems of distressed urban areas that I propose this amendment. As interest rates grow higher, the cost of financing facilities in UDAG programs will become increasingly burdensome. In some instances, high financing costs for private capital will limit the scope of the project. In others, parties with much to offer will be discouraged from taking part in the UDAG program.

To insure maximum participation and projects of the highest quality I believe it is important that we provide at least some low cost financing to the private investors who are willing to address our great urban problems. This could be accomplished through industrial develop-

ment bonds if we were to provide tax exemption for IDB's even though the facilities they financed cost more than $12 million, which they do in many instances where UDAG grants have been extended.

My amendment would give such an exemption, Mr. President, and I believe that for a very small loss in tax revenues it will provide a strong impetus to our urban program and bring much needed help to our distressed urban areas. I hope my colleagues will agree and that the amendment will be accepted by the Senate.

Mr. NELSON. Mr. President, may we have order in the Senate so we can hear the Senator?

The PRESIDING OFFICER. The Senator is quite correct. I will ask the Senator from Indiana to withhold until there is order in the Chamber. We are prepared to sit here until there is order. It is only 20 minutes to 11. We have a lot of time.

Mr. BAYH. The Senator from Indiana can be finished in just 1 minute, I will say to my colleagues.

The PRESIDING OFFICER. But I would like the Senator from Indiana to have the attention of the Senate for that 1 minute. If it takes 5 minutes to do that, the Chair is prepared to do that.

Mr. NELSON. Mr. President, there are still Members conversing on the floor. The Senate is not in order.

The PRESIDING OFFICER. I thought it was quiet for a moment, but the Senator is correct. Will the staff members please take their seats? Will Senators please take their private conversations to the cloakrooms?

Does the Senator from Wisconsin think the order is proper at this point?

If so, the Senator from Indiana may proceed.

Mr. BAYH. Mr. President, I find the silence deafening. I have three points to make.

First, the combination of urban development grants and industrial development bonds brings private capital into the development of our cities; second, this helps to prevent the blight of our major metropolitan areas; and, third, this provides jobs for those who participate in the building projects.

(Mr. SARBANES assumed the chair.)

Mr. PROXMIRE. Will the Senator from Indiana yield, Mr. President?

Mr. BAYH. I yield to my distinguished colleague.

Mr. PROXMIRE. Is this amendment opposed by the Treasury Department or approved by the Treasury Department?

Mr. BAYH. Well, in all candor, I have to say it has luke warm opposition. Let me say to my friend from Wisconsin what the exact facts are. The administration, President Carter, proposed that the limit for IDB's be raised to $20 million, but that these bonds be limited to distressed areas.

I ask unanimous consent that a letter I have received from Donald C. Lubick, Department of the Treasury, dated September 29, 1978, be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.
September 29, 1978.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: This is in reply to your letter of September 25, 1978. You propose an amendment to relax the capital expenditure test to $20,000,000 for facilities that have received UDAG grants. You correctly point out that your proposal would not go beyond what would be permitted under the President's urban program.

The urban program, of course, was conditioned upon a reduction in the volume of tax-exempt industrial development bonds under the small issue exemption, by a repeal of the general exemption save for distressed area financing.

Since neither the House bill nor the Senate Finance bill adopted the reduction recommendation, we would be reluctant to accept an addition to the level of small issue industrial financing by an add-on provision. Recognizing that total repeal of the exemption is not likely, we would, however, accept and support your amendment if combined with a maintenance of the small issue exemption at present law $1 million and $5 million levels.

Sincerely,

DONALD C. LUBICK.

Mr. BAYH. The administration says it does not oppose the $20 million capital expenditure level proposal but it opposes the raising of the 1 and 5 figures to 2 and 12. Because my amendment does not address the 2 and 12 figures, the administration thus opposes my proposal.

Mr. PROXMIRE. I can understand their opposition to the committee position, which I share. I think that was a mistake. After all, industrial revenue bonds are something that can be very easily abused. What happens, of course, is that industry goes into a city and is able to borrow money at a subsidized rate well below market. Right now, that is particularly advantageous because interest rates are so high. In this case, the Senator would permit it to go to $12 and $20 million on the overall structure.

Mr. President, as I understand it, and I have talked to the Senator from Indiana about this several times, we discussed it this morning, under the circumstances, with the support of the committee, I simply want to be recorded as opposing the amendment. I will not ask for a rollcall.

I think this is a mistake. It is not the way to spend $20 million. It should be spent in neighborhoods where the poor live rather than the downtown areas, which every mayor wants to spend the money in to make his city attractive.

I understand the Senator's views, but I do oppose the amendment.

Mr. BAYH. I appreciate the thoughtfulness of the Senator from Wisconsin. I share his concern that we have investment in the neighborhoods. He is absolutely right. That is where a lot of that abject poverty is located. I feel a little different from him in thinking that if we can refurbish the downtown areas, we are really providing job opportunities for those who live in the neighborhoods. I appreciate his courtesy at this hour of the night.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. BAYH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DURKIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SEVERAL SENATORS. Mr. President?

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I was planning to ask for unanimous consent to discharge the committee from considering H.R. 8533 and to offer a compromise on the inland waterways, which was approved by Mr. DOMENICI and which is approved by the administration, so far as I can determine, and which is also agreeable, in the spirit of compromise, by the waterway users. We thought we had worked the matter out in a way that there would be no objection to it and that it could pass almost by unanimous consent.

Apparently, the Senator from Wisconsin (Mr. PROXMIRE) has some objection to it. He is rather concerned about the matter and does not want the bill to be voted tonight. I would hope we would have the opportunity to discuss that matter with the Senator between now and sometime tomorrow when perhaps we might consider the matter. That being the case, I will not seek to bring the matter before the Senate at this time.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 4021

(Purpose: To simplify Federal income tax forms and instructions)

Mr. DURKIN. Mr. President, I call up amendment No. 4021 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. DURKIN) proposes an amendment numbered 4021.

Mr. DURKIN. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 223, line 24, insert the following:

"(c) TASK FORCE.—(1) The Secretary of the Treasury Department shall establish a task force which shall conduct a study and investigation with respect to methods of simplifying Federal individual income tax return forms and instructions accompanying such forms.

(2) The task force shall report from time to time on its progress directly to the Secretary and shall submit a final report to the Secretary which includes its findings with respect to simplification of such tax forms and instructions and any recommendations with respect thereto. Such final report shall be submitted by such time as is necessary to enable the Secretary to file the report called for in subsection (4) of this Section.

(3) The Secretary is authorized to appoint such employees, not in excess of 10, as may be necessary to carry out the functions of the task force without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, ex-

cept that such employees shall not be paid at a rate in excess of the annual rate of pay under grade GS–18 of the General Schedule under section 5332 of such title 5.

(4) The Secretary, after studying the report and recommendations of the task force, shall, not later than two years after the date of enactment of this Act, submit a report to the Congress on the findings of the task force, together with his recommendations, including such recommendations for legislation as he finds necessary for simplifying Federal individual income tax return forms and instructions accompanying such forms."

Mr. DURKIN. This amendment provides that the Secretary of the Treasury will establish a task force which shall report back to the Secretary, and the Secretary will report to the Congress within 2 years, on ways in which to simplify the individual tax forms. I have given up hope trying to simplify the tax code at present.

The GAO study indicated that the tax form itself could be made such simpler with the result that the great majority of Americans would be able to fill out their own tax returns, at least those taking the standard deduction.

Mr. President, as I said the other day when I introduced this amendment as a separate bill, this provision is modest in scope, but it can have a significant impact on the effectiveness and fairness of our tax system.

This amendment would require the Treasury to submit to the Congress, within 2 years, recommendations on how to simplify the 1040 and 1040A forms and instructions.

The amendment would not change a single substantive provision in the Internal Revenue Code. But it would, I hope, make that code more understandable and make April less of a traumatic month for all of us.

The amendment differs from the separate legislation I introduced last week by deleting the separate authorization which the earlier bill provided to develop these recommendations. I believe that the Treasury can find the salary and expense funds needed to meet the requirements of this provision. In addition, the amendment provides for excepted authority so that the Treasury can employ up to 10 outside experts to develop these recommendations. I expect that the Treasury would use this provision to employ outside graphics and communications people to complement their own resources.

Mr. President, improving the forms and instructions that the vast majority of Americans use to meet their obligation to support the general Government through the income tax offers a number of important benefits to the Government and to all individual taxpayers. Clearer forms and instructions would increase public confidence and understanding about the tax code. They would reduce involuntary errors such as simple arithmetic mistakes. They would help the taxpayer get all of the benefits that he or she is entitled to receive. And they would help remove some of the murkiness that now seems to engulf the governmental process.

The General Accounting Office has recently reported to the Congress that further simplification of the tax forms and instructions are, to quote from the report, "both needed and possible." The GAO report showed how these reforms can be carried out. I believe that any Senator who looked at their report would agree that the results are, indeed, infinitely superior to the current exercise in clutter and confusion.

Mr. President, I understand that this amendment is acceptable to the floor managers of the bill.

I understand that the Treasury supports my amendment.

For the benefit of every American who must face the complex and befuddling 1040 and 1040A tax forms, I urge the adoption of my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. DURKIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIEGLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DURKIN. I thank the distinguished manager and the distinguished ranking Member.

Mr. NELSON. Mr. President, I wonder if I might make an inquiry of the manager of the bill, the Senator from Louisiana.

Did I understand that the Senator did bring up or was bringing up locks and dam 26 at some stage?

Mr. LONG. I had intended to, but I was informed by the Senator's colleague, the senior Senator from Wisconsin, that he was opposed to it and he has very serious objections.

Mr. NELSON. I did not understand that.

I had mentioned last night, and earlier, that I would like to lay down an amendment tonight if we could agree upon a time. I have two amendments to the bill, both of them major, both of them dealt with in the Committee on Finance. One of them is on the capital gains tax and one of them involves accelerated depreciation, for which I shall be offering a substitute amendment for a 3-year depreciation.

I do not know what the schedule is, but I have talked to Senator BENTSEN. He is agreeable to a time limitation. He is available between 9:30 and 10:30. If that time is not occupied, I should like to call up the amendment, and agree to a vote at 10:30 tomorrow morning, with a 1-hour time limit—I do not think we shall use it all—then lay it aside for any amendments.

Mr. LONG. We talked about coming in at 8 tomorrow. I think we will take up this bill, I think the Senator said before 8. It is all right with me for the Senator to lay the amendment down now, and then, of course, to take it up as the first order of business when we come in tomorrow.

Mr. NELSON. I believe Senator BENTSEN is not available at that time.

Mr. LONG. I do not know about that. I do not know about anybody's plans.

Mr. NELSON. Could we take it up at 9:30 and vote at not later than 10?

Mr. LONG. The only thought that occurred to me is that I hoped we would not lose the time from the time we come in until that point. It is all right with me to give up unanimous consent that, as soon as the Senate has completed whatever it is working on at 9:30, the Senator be recognized to call up his amendment at that point.

AMENDMENT NO. 4482

Mr. NELSON. I ask unanimous consent on this amendment, which I shall identify—it does not have a number—as an amendment to the tax law to provide for accelerated depreciation for small business—and to identify the amendment for the desk, it reads, "Beginning with line 24, on page 312, strike through line 12 on page 313 and insert in lieu thereof." That is the amendment I introduced earlier today.

I ask unanimous consent that at the conclusion of—what is it that the manager is willing to do?

Mr. LONG. That as soon as the Senate has acted on whatever amendment may be before the Senate at that time, the Senator from Wisconsin be recognized to call up his amendment. In other words, if we are considering some other amendment at 9:30, as soon thereafter as that has been disposed of, that the Senator from Wisconsin be recognized to call up the amendment to which he has made reference.

Mr. NELSON. I ask unanimous consent for a 1-hour time limitation, with the time equally divided with the Senator from Texas.

Mr. LONG. I believe the Senator is under the impression that the Senator from Texas would not object to that 1-hour limitation.

Mr. NELSON. He would not.

Mr. HANSEN. Reserving the right to object, Mr. President, I just happened to note that a number of Senators have amendments that they hope might be considered tomorrow. I am a little reluctant to enter into an agreement to vote at a time certain or not later than a time certain tomorrow morning. It is not my intention to delay a vote on this, but I shall have to object to the specific unanimous-consent request that the Senator made.

The PRESIDING OFFICER. The Chair will observe that no time certain was set, either for considering the amendment or voting upon it, other than that it would follow upon the disposition of whatever amendment was pending at 9:30.

Mr. HANSEN. Maybe I misunderstood the distinguished Senator from Wisconsin. I thought his request included the proviso that it be brought up at 9:30, with the vote to occur not later than 1 hour.

Mr. NELSON. That had been my request, but the manager of the bill made the later suggestion just repeated by the Chair.

Mr. HANSEN. I have no objection to its being called up at a certain time. It may very well be that it can be disposed of quicker, but I would not want to get into a posture where we agree to vote at not later than a time certain.

Mr. NELSON. That is not the request.

The PRESIDING OFFICER. Without objection, the unanimous-consent request is granted.

Mr. STEVENS. There was no time limit on that, was there?

Mr. HANSEN. That is right.

The PRESIDING OFFICER. The unanimous-consent request, as stated by the manager of the bill, as the Chair understood it, was that it would be in order for the Senator from Wisconsin to lay down the identified amendment upon the disposition of whatever amendment would be pending at 9:30, whatever time that might be, and that there would be a 1-hour time limit on the amendment, to be equally divided.

Mr. STEVENS. Reserving the right to object, if I may, does that waive any point of order of germaneness?

The PRESIDING OFFICER. No, it does not.

Mr. STEVENS. It amounts to a 1-hour time limit on the amendment of the Senator from Wisconsin?

The PRESIDING OFFICER. To be 1 hour limited to considering the amendment of the Senator from Wisconsin.

Mr. HANSEN. Does it follow, Mr. President, that we would vote at the expiration of that 1 hour's time?

The PRESIDING OFFICER. That is correct.

Mr. HANSEN. I would like the RECORD read back, because that is precisely the point that the Senator from Wyoming attempted to make. I thought he was assured that we are not getting into a situation or a posture where we will vote at a time not later than a time certain. That is exactly what I tried to ask about.

Mr. LONG. Mr. President, the way the Chair stated the unanimous-consent agreement just before it was agreed to, the Senator from Wyoming was correct in assuming that there would be no 1-hour limitation. I ask unanimous consent that there be no limitation on the debate prior to the vote on that amendment.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request as modified, just modified by the manager of the bill?

Mr. HANSEN. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3996

(Purpose: To eliminate the WIN credit and include WIN recipients under the targeted jobs credit)

Mr. BELLMON. Mr. President, I call up amendment 3996 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma (Mr. BELLMON) proposes amendment numbered 3996.

Mr. BELLMON. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendent is as follows:

On page 264, strike out lines 6 through 10.

On page 264, line 20, strike out "or".

On page 264, line 21, strike out the period and insert in lieu thereof ", or".

On page 264, between lines 21 and 22, insert the following:

"(G) a WIN registrant.".

On page 269, between lines 12 and 13, insert the following:

"(12) WIN REGISTRANT.—The term 'WIN registrant' means any individual who—

"(A) is certified by the Secretary of Labor as having been placed in employment under a work incentive program established under section 432(b)(1) of the Social Security Act; or

"(B) is eligible for financial assistance under a State plan approved under part A of title IV of the Social Security Act and has continually received such assistance during the 90-day period which immediately precedes the date on which such individual is hired by the employer.".

Beginning on page 275, line 12, strike out all through page 284, line 7, and insert in lieu thereof the following:

"SEC. 322. WORK INCENTIVE PROGRAM CREDIT TERMINATION.

"Subsection (a) of section 50B (relating to definitions; special rules for WIN credit) is amended by adding at the end thereof the following new paragraph:

"'(4) TERMINATION.—For purposes of this subpart, the term "work incentive program expenses" shall not include any amount paid or incurred by the taxpayer in a taxable year beginning after December 31, 1978.'".

Mr. BELLMON. Mr. President, it is my understanding the distinguished Senator from Georgia (Mr. TALMADGE) wants to be on the floor when amendment No. 3996 is considered, and he is not presently on the floor. So I ask unanimous consent that the amendment may be withdrawn until a later time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is withdrawn until a later time.

Mr. LONG. Mr. President, I believe we have done all we can do on this bill for today. I hope we can stand in recess, unless the leadership wants us to bring another matter up.

EXPLANATION OF THE RIBICOFF AMENDMENT RELATING TO HISTORIC STRUCTURES

● Mr. RIBICOFF. Mr. President, on Friday the Senate agreed to an amendment to the tax bill sponsored by Senator HATHAWAY which essentially added most of the Technical Corrections Act (H.R. 6715) to the Revenue Act of 1978 (H.R. 13511). At my request, Senator HATHAWAY included in his amendment two important improvements in our tax laws with respect to historic structures. I would like to take this opportunity to explain those two provisions.

Under present law, there are certain tax disincentives imposed on those who demolish a historic structure. The law also has a procedure for a property owner to have his building "decertified." He could then demolish his building without suffering the tax disincentives. A building can only be decertified if it is not a certified historic structure, is not of historic significance to the district, and if the building is decertified before it is demolished.

There are, however, exceptional cases where an owner did not get the building decertified because he did not know of the requirements of the tax laws with respect to historic structures. For example, an owner of a rundown gas station in a historic district might tear down his station and then realize that any replacement structure is limited to straight line depreciation. This result is unjust if the building torn down was not of historic significance to the district.

My amendment allows decertification of a building in a historic district in the limited situation where the owner certifies that he did not know of the requirements that his building be decertified prior to demolition, and the Secretary of the Interior certifies that the building was not a certified historic structure and was not of historic significance to the district. I intend for the burden to be on the taxpayer to show that it is appropriate to permit retroactive decertification in his particular situation.

The second part of my amendment deals with the aspects of the Tax Code providing incentives to aid in the preservation of historic structures. The eligibility of lessees for the tax incentives is presently in doubt. H.R. 6715 as approved by the Finance Committee clarified this question by stating that lessees of historic properties could qualify for the advantages provided by section 191 only if the lease was for a term of at least 30 years, if the owner of the structure was a Federal, State or local government or a nonprofit organization and if the structure was listed in the National Register or located in a district listed in the National Register.

After extensive discussions with interested outside groups and the Department of Treasury and Interior, all agreed that two of the restrictions in the bill as reported from committee are inappropriate. My amendment would remove those restrictions leaving only the requirement that there be a lease of at least 30 years. Under this amendment, leases from private owners would qualify as would leases of building located in State or local historic districts. This will make the provisions with respect to lessees consistent with the rest of the tax incentives to encourage preservation of historic structures.

Both these amendments are supported by the Treasury Department, the Interior Department, the Advisory Council on Historic Preservation, the National Trust for Historic Preservation and Preservation Action.

Mr. President, I submit for the RECORD letters from the Department of Interior and the Department of Treasury.

The letters follow:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 5, 1978.

Hon. ABRAHAM RIBICOFF,
U.S. Senate,
Washington, D.C.

DEAR SENATOR RIBICOFF: I am writing to express support for your proposed amendments to Section 2(f) of the proposed Technical Corrections Act (H.R. 6715). The Department of the Interior is responsible for making historic preservation certifications under Section 2124 of the Tax Reform Act of 1976. Our experience with this Section of the Tax Reform Act has shown the necessity for the corrective amendments contained in Section 2(f) as reported by the Senate Finance Committee, and we feel strongly that the amendments you propose with regard to lessees and retroactive decertification will make the provisions more equitable and effective. As currently enacted, the historic preservation provisions of the Tax Reform Act create some uncertainties that have, in part, limited the planning for and investment in the rehabilitation of our neglected historic resources. Because Section 2124 of the Tax Reform Act expires in 1981, corrective action now is even more urgent.

Our experience thus far indicates tremendous interest in the rehabilitation of historic resources by owners, lessees and other investors. Over 350 rehabilitation projects in 40 States have been approved by the Department of the Interior, representing a private investment of approximately $295 million. We believe this investment will be further stimulated by enactment of the corrections and clarifications contained in Section 2(f) of the Technical Corrections Bill as reported by the Senate Finance Committee. However, the two provisions contained in your proposed amendment would, we believe, increase the impact of the historic preservation incentives and more successfully meet the objectives of the 1976 Tax Refcrm Act.

Therefore, we support:

1. extending the tax incentives to all long-term lessees of certified historic structures (currently the Senate version of H.R. 6715 would restrict use of the incentives to nonprofit organization and governmentally owned buildings); and

2. expanding the Secretary of the Interior's authority to certify after demolition or substantial alteration those buildings in historic districts which are not of historic signficance and thereby exempting them from the tax penalties (retroactive decertification). This certification of no significance provision would substantially lessen the existing hardship for taxpayers who demolish or substantially alter nonsignificant structures before securing necessary certifications. Taxpayers who are unaware of the tax penalties and tear down a nonsignificant building in a historic district without getting a certification of nonsignificance are now being penalized by not being permitted to deduct the demolition costs and by never being allowed to take accelerated depreciation on improvements on that land. These penalties now apply even if the building was not actually significant but was only located in a historic district.

Thank you for this opportunity to comment on your proposed amendments. We are hopeful that they will be expeditiously enacted into law.

Sincerely,

———— ————,
Assistant Secretary.

DEPARTMENT OF THE TREASURY,
Washington, D.C., July 21, 1978.

Mr. ROBERT M. UTLEY,
Deputy Executive Director, Advisory Council on Historic Preservation, Washington, D.C.

DEAR MR. UTLEY: This is in response to your letter of May 11, 1978, regarding proposed amendments to section 191 of the Internal Revenue Code of 1954 (the "Code"), as added by section 2124(a) of the Tax Reform Act of 1976. Section 191 permits owners of certified historic structures to elect to amortize the costs of certain rehabilitations of such structures over a 60-month period in lieu of depreciating the costs over the actual useful lives of the improvements. Section 2(f) of the Technical Corrections Act of 1978, as reported by the Senate Finance Committee (the "Act"), would extend the availability of 5-year amortization to certain long-term lessees from tax exempt or governmental owners of certified historic structures located in Federally-registered historic districts. You propose amending section 2(f) of the Act to permit (1) certain renewal options to be included in determining the term of a lease, (2) otherwise qualified lessees to utilize 5-year amortization without regard to the identity of the lessor, and (3) lessees of certified historic structures located in approved state and local historic districts to elect 5-year amortization.

Proposed section 191(f)(2)(C)(i) (section 2(f)(7) of the Act) would permit lessees to amortize expenses incurred in a certified rehabilitation only if the remaining term of their lease is 30-years, or actual asset life if greater, as of completion of the rehabilitation. The Act would require this 30-year term to be determined without regard to any renewal period. The amendment you propose would permit renewal periods to be taken into account if they would be taken into account for purposes of depreciation generally. In support of this suggestion you rely on section 178 of the Code. Your argument appears to be that this change would accord lessees of certified historic structures the same treatment as other lessees.

First, I note that lessees of historic structures already enjoy the same benefits as other lessees. Section 191 merely provides a preferential timing rule for the allowance of certain depreciation or amortization deductions.

Second, section 178 was enacted to remedy a specific abuse that is unrelated to section 191. Normally a lessee is permitted to depreciate leasehold improvements over their useful life if that life is shorter than the remaining term of the lease. If the asset life is greater than the remaining lease term, the costs may be amortized over the remaining term. Before enactment of section 178, judicial decisions had permitted lessees to amortize the costs of long-lived improvements over a short initial lease term even though the actual asset life, coupled with the presence of renewal options, made it more probable than not that the lease would be renewed. Such lessees were thereby permitted to secure unduly rapid write-offs of depreciable improvements.

Section 178 requires the inclusion of renewal periods in determining the period over which asset costs may be recovered unless the lessee establishes that it is more probable than not that the lease will not be renewed. Thus, it controls depreciation abuse by requiring a lessee to depreciate leasehold improvements over a period that reflects actual recovery of the cost of those improvements.

In contrast, the period over which the costs of rehabilitating historic structures may be recovered is prescribed by statute. In the case of lessees, the prescription of a minimum lease term is designed to ensure that a lessee permitted to elect the benefits of section 191 has a long-term interest in the rehabilitated property similar to that of a true owner. Without a substantial minimum initial lease term requirement the section invites abuse. For example, one could expect developer-lessees to execute leases with relatively short initial terms (e.g., 5 to 10 years) and a series of renewal options. At the end of the initial term the developer-lessee would fail to exercise the first renewal option. If the renewal options were counted in determining initial section 191 qualification, the lessee would have received all of the tax benefits of section 191 and none of those benefits would be subject to recapture upon the failure to renew the lease. Consequently, this office will oppose any amendment that would either shorten the requirement of a 30-year minimum lease term or include renewal periods in determining whether the 30-year requirement has been met.

In your letter, you also urge our support for a proposal to extend the benefits of section 191 to lessees of buildings whose owners are other than governmental bodies or organizations exempt from tax under section 501(a). In the case of exempt or governmental lessors, the exemption from tax eliminates the incentive to historic rehabilitation provided by section 191. These incentives are not frustrated where the owner is taxable. However, you have advised us that there may be situations where rehabilitation by the owners is not feasible, and your letter cites several examples of structures whose owners will not sell their properties and who are unable or unwilling to rehabilitate the buildings themselves. While these examples do not convince us of the need for extending section 191 to lessees from taxable lessors, we would not object to permitting otherwise qualified lessees from taxable lessors to utilize section 191 if, in turn, you assure us of your willingness to assist in securing remedial legislation should any unanticipated abuses develop.

The final proposed amendment for which you urge our support would permit lessees of certified historic structures located in approved state and local historic districts to elect the benefits of section 191. The proposed amendment would conform treatment of lessees of structures in approved state and local historic districts to that of lessees of structures listed in the National Register. Since, under the amendments to the designation procedures that would be effected by the Act, the Department of the Interior would be required to approve the state or local enabling legislation, the criteria for the district, and the rehabilitation of structures in these districts, we would have no objection to this change.

Should you have other questions or comments concerning the matters discussed in this letter, please do not hesitate to contact this office.

Sincerely,

DONALD C. LUBICK,
Assistant Secretary, (Tax Policy).

TAX REFORM ISSUES IN THE REVENUE ACT OF 1978

● Mr. KENNEDY. Mr. President, I have had prepared, for the use of Senators in the debate on the Revenue Act of 1978, a set of papers discussing selected tax reform issues. I submit these papers for the RECORD so that they may be considered by those outside the Senate who are interested in tax reform.

The material follows.

TAX REFORM ISSUES

DELETE FINANCE COMMITTEE REDUCTION OF TAX ON CAPITAL GAINS

Present law

A deduction is allowed equal to 50% of an individual's realized long term gains. In effect, therefore, the basic tax rates on capital gains range from 7% to 35%, one-half the rates on ordinary income such as wages, interest on savings accounts, etc.

A special alternative 25% maximum rate is provided for the first $50,000 of an individual's gains each year.

For corporations, an alternative 30% rate on capital gains is provided (as compared to the normal 48% corporate tax rate).

House bill

Retains 50% exclusion for capital gains in present law.

Repeals the 25% alternative tax in present law.

Retains the 30% alternative tax for capital gains of corporations in present law. (The major tax relief for capital gains in the House bill was provided by eliminating capital gains from the list of tax preferences subject to the minimum tax. This minimum tax aspect of the capital gains issue is discussed in the separate analysis of the minimum tax.)

Senate finance committee action

Increases the present 50% exclusion for capital gains to 70%. As a result, the basic rates on capital gains will range from 4.2% to 21%.

Reduces the corporate alternative capital gains rate from 30% to 28%.

Proposed amendment

Delete the SFC provision that provides for an exclusion from income of 70% of the gain on long-term capital gains.

Delete the reduction of the corporate capital gain rate from 30% to 28%.

Reasons for rejecting SFC capital gains changes

1. The Finance Committee action would drastically undermine the fairness of the federal income tax system and reverse the efforts of several Congresses to provide tax equity between capital gain income and ordinary income such as wages and interest from savings:

Under the SFC bill, the $250,000 a year corporate executive will pay a top marginal rate of only 21 percent on his capital gains; a factory worker with $12,000 of taxable income is in the 22-percent bracket.

1.4 percent of the taxpayers in the country have incomes in excess of $50,000, per year. But these individuals receive 69 percent of the SFC capital gain tax reduction, a total tax cut of over $2.3 billion.

The SFC action provides a $1.1 billion tax cut to individuals with $200,000 and over; this group consists only of about 50,000 taxpayers in the country, the richest 6/100 of 1 percent of the people in the United States. The average tax reduction for each of these highest income individuals is over $20,000. The SFC capital gains provisions give a tax reduction to the over $200,000 group that is larger than the annual income earned by 83.6 percent of all Americans.

By contrast, there are over 16 million taxpayers in the $10–15,000 income class; this group received total tax reductions under the SFC bill of $941 million—$70 million less for the entire group of 16 million than the bill gives to the group of 50,000 in the richest category through the capital gains cut.

The average tax reduction for those in the $10–15,000 income class is 56 cents per return.

2. By widening the gap between the top rates on capital gains and ordinary income—21% versus 50% or 70%—high income individuals such as doctors, lawyers, corporate executives, investment bankers and entertainers will once again instruct their high-priced tax lawyers and accountants to develop artificial and intricate schemes to convert every income transaction into a "capital gain" deal. This wasteful expenditure of time, effort and brain power was significantly curtailed by the 1969 and 1976 Acts.

3. Reductions in capital rates are an inefficient and ineffective method of stimulating capital investment. Only 29% of capital assets consist of corporate stock. Yet the needed capital stimulus is in corporate investment. As Federal Reserve Board Chairman Miller has demonstrated, only 15% of the capital gain cut will ever find its way into increased funds for corporations. An improved investment credit and corporate rate reductions would represent a far more efficient stimulus for increased capital investment.

4. The $3–4 billion cuts in capital gains taxes would help our economy far more if placed in the hands of average workers who can use the funds to meet rising housing and education costs, or increase savings for future needs.

The capital gains tax cut will provide a large windfall to investors in tax shelters that specialize in converting ordinary income into capital gains—notably real estate. Using such tax shelters, high income investors take large deductions from their ordinary income, then sell the property for large profits taxed at the favorable capital gains rates (21% maximum rate under the committee bill).

Questions on capital gains tax cuts

1. Q: Won't the cut in capital gains rates encourage realization of built-in gains and thus free locked-in capital

A: At best, there might be a short term increase in realizations. But once the investors for whom a 10–15 percentage point rate differential is the crucial factor between selling and holding have in fact sold, the rate of realized capital gains will return to historic levels. In short, the rate cuts may produce a surge in fees for stock brokers for the next few months, but there can be no realistic basis for believing that a permanent increased level of buying and selling activity will be produced.

Moreover, the SFC bill actually makes worse one aspect of the "lock-in" effect. It proposes to return to the old law allowing a step-up in basis for assets transferred at death. A person faced with a choice of selling an asset and having 30% of the gain taxed or holding it until death so that none of the gain is taxed will obviously hold and not sell.

2. Q: Won't the capital gains tax cuts encourage entrepreneurial activity and therefore aid small business?

A: Out of the $3.3 billion in capital gains cuts provided by the SFC bill, only a small amount will go to small business and high risk enterprises. Most of the tax benefits will go to stocks in large publicly held companies, buildings, real estate, and residences. Therefore, if the objective is to provide assistance to enterpreneurs and small business, the capital gains cuts are an extraordinarily wasteful way to achieve the objective.

A federal tax or direct program targeted directly to entrepreneurs and small business may well be desirable. As one example, the pending 1978 amendments to the Small Business Administration Act provide for funds to be directly targeted to provide venture capital for small business. But the Senate cannot responsibly waste billions of dollars in other areas to get a relatively small amount of funds to these deserving groups.

3. Q. Won't a cut in the capital gains rate provide a needed boost to the stock market?

A. No. There is no demonstrable correlation between capital gains rates and stock prices. After the 1969 tax *increase* on capital gains, the stock market *rose* by over 40%. The reduction in stock prices that occurred subsequently was obviously related to the huge oil price increases, the recession and other adverse economic developments totally unrelated to the capital gains tax rate. Indeed, the latest stock market recovery has come after the 1976 Act changes that again increased the tax rate on capital gains.

More likely, the rush of sales by investors now waiting for the lower rates to take effect will *depress* the stock market.

4. Q. Isn't a lower capital gains tax rate justified because a portion of a taxpayer's gain represents inflation gain, rather than an increase in real value?

A. In the first place, even if it were desirable to protect only gains from capital assets from the effect of inflation, an increase in the exclusion factor is an irrational and arbitrary way to achieve the objective. Inflation has different effects on every element in the economy. The possibility that an exclusion of 70% of the gain will offset inflation for any given asset is extremely unlikely.

Moreover, many kinds of assets are affected by inflation—individuals with savings accounts, holders of U.S. savings bonds, any holders of corporate bonds all suffer losses due to inflation. But they do not get preferential tax treatment to offset inflation. There is no reason why holders of capital assets—primarily the highest income persons, who are least adversely affected by inflation—should be given first priority in being protected from inflation-induced tax consequences.

5. Q. Isn't it true that many other countries do not even tax capital gains?

A. No. All industrialized countries tax some of the gains that we call "capital gains"—in some cases even more heavily than the U.S. taxes them. For example, countries like Germany and The Netherlands are frequently said to have no capital gains tax. But in those countries, a person who owns more than 30% of the stock of a corporation is taxed at ordinary income rates on gains realized from the sale of the stock. It is true that these countries have no "capital gains" taxes as such. But for many persons in these countries, the current U.S. capital gain tax rate would constitute tax relief. This simply illustrates that it is very dangerous to use other countries' tax systems as models for particular U.S. tax policy issues.

6. Q. Won't reduction of the capital gains rates provide funds for needed research and development to spur productivity?

A. If the members of Congress assembled to throw $3 billion off the Capitol steps, some of it undoubtedly would go into more research and development. A $3 billion cut in capital gains taxes has about the same relationship to expanding R. & D. activities.

We should remember that we already provide a powerful tax incentive for R & D by allowing an immediate deduction for all R & D costs. If even more federal aid is justified, it should be provided in a form directly targeted to R & D. Reducing the rate of tax on the sale of land by an individual surely must be one of the most bizarre incentives every conceived to promote R & D.

7. Q. The Kennedy Administration in 1963 proposed an increase in the exclusion factor for capital gain from 50% to 70%. Why isn't this a good idea now?

A. The proposal was one part of a package of major recommendations concerning capital gains. In addition, the 1963 proposals included:

Full taxation of gains on property transferred by gift or at death.

Recapture of depletion on the sale of oil and gas properties.

Recapture of all depreciation on buildings sold at a gain (not just the excess of accelerated over straight-line depreciation as under present law).

Taxation of timber income as ordinary income.

Taxation of all coal sales as ordinary income.

Treatment as ordinary income of gain on long-term deferred sales.

If the SFC bill included all these measures, it might be seriously considered as a responsible piece of legislation. But in their absence, the 1963 Kennedy proposal provides no support whatever for the SFC bill.

It should also be remembered that when Congress decided in 1963–64 *not* to adopt the above proposals, it also decided that it would *not* cut the tax rate on capital gains. That is a persuasive precedent for the Congress to follow now, by rejecting the SFC capital gains proposal.

8. Q. Won't the capital gain tax cut actually increase revenues, through the so-called "feedback" effect?

A. No. The Treasury, even after allowing for an overly generous "feedback" effect, estimates that the SFC proposal will cost the average taxpayer $3 billion in fiscal 1979.

A September 1978 Staff Paper by the senior economist of the Council of Economic Advisers is sharply critical of the economic study relied upon by feedback proponents. As the CEA Staff Paper states:

"The [Feldstein] study contains several theoretical and econometric flaws, the results of the study have been misinterpreted, and a replication of their approach . . . yields exactly the opposite results: it implies that a capital gains tax cut would actually decrease realizations."

The Staff Paper goes on to state that all results in this area are dubious, and more research is needed.

Moreover, the econometric models embraced by proponents of capital gains tax cuts to support their feedback argument have been thoroughly debunked by other responsible economists in the private sector. The estimates rest on unrealistic assumptions that provide no proper basis for sound tax policy decisions. For Congress to accept

the "feedback" argument on the basis of current economic knowledge would be irresponsible.

In essence, the "feedback" argument is just the old "trickle down" theory dressed up in computer print-outs. The increased revenues—if there are any—will not come from the sellers of capital assets. The increased taxes are supposed to come from people who have been put to work by the invested tax savings. In effect, the SFC bill is saying: "Take the rich off the tax rolls and trust them to use the funds to create jobs and investment, so that other people can pay the taxes needed for government." This argument has been wisely rejected by Congress in the past, and should be rejected now. It is no easier to find a "free lunch" in the tax laws than in any other area of life.

STRENGTHEN THE MINIMUM TAX

Present law

For individuals, a 15% minimum tax is applied to tax preference income, to the extent it exceeds the greater of (1) one-half the individual's regular tax liability or (2) $10,000.

There are ten tax preference items, including such items as: 50% of long-term capital gains that are excluded from income; accelerated depreciation on real and personal property in excess of straight line depreciation; five-year rapid amortization allowed for various facilities in excess of normal depreciation; percentage depletion in excess of cost depletion; qualified stock options; certain intangible drilling and development costs; and itemized deductions in excess of 60% of adjusted gross income.

In addition, these same tax preferences affect the maximum tax, by reducing dollar-for-dollar the amount of earned income that otherwise would qualify for the 50% maximum tax rate.

The minimum tax is an "add on" tax; it must be paid in addition to the regular tax.

House bill

The House bill eliminates the excluded one-half of capital gains from the *minimum* tax.

The House bill also eliminates the excluded one-half of capital gains from the *maximum* tax. Thus, an individual's earned income qualifying for the maximum 50 percent rate would not be reduced by his untaxed portion of capital gains.

These changes in the House bill were intended to provide substantial tax relief for capital gains.

Senate Finance Committee bill

The SFC bill chose a different approach to providing tax relief for capital gains. In addition, it completely restructures the minimum tax to make it an "alternative" tax rather than an "add on" tax. Under the SFC approach, the taxpayer would add his tax preference items to his regular taxable income, and then apply a set of rates ranging from 10 percent to 25 percent (above a $20,000 exemption). If the minimum tax computed in this way exceeds the tax as regularly computed, the taxpayer would pay the higher minimum tax.

In general, the tax preferences are similar to those under present law. However, gain from the sale of a principal residence would not be a tax preference.

Impact on capital gains

The major debate over the present minimum and maximum tax rules has centered on their impact on capital gains. The following table shows the top marginal tax rate on capital gains that can be achieved under present law, the House bill and the SFC bill:

[In percent]

	Present law	House bill	SFC bill
Basic rate	35.0	35.0	21
Minimum tax	4.875	0	21
Maximum tax	9.25	0	0
Highest possible rate	49.125	35.0	25

Proposed amendment

Revise the SFC alternative tax rate structure to increase the top minimum tax rate from 25% to 35%.

Reasons for proposed amendment

1. The 35% top minimum tax rate will insure that individuals with large amounts of preference income will pay at least some significant amount of federal income taxes. In effect, the amendment insures that a person cannot shelter more than one-half of his total income without incurring some minimum tax obligation. Under the SFC bill, an individual can have ⅔ of his total economic income in tax preferences and still pay not a penny of minimum tax.

2. The SFC bill proposes to cut the top marginal rate on capital gains in half—from the present near-50% to 25%. There is no justification for taking the top rate down below the 35% proposed in the House bill.

3. A weak minimum tax is also unjustified in light of the separate relief provided by the SFC bill for capital gains, by means of the increase from 50% to 70% in the amount of such gains that may be excluded from income.

REPEAL OF TAX DEFERRAL FOR U.S. CONTROLLED FOREIGN SUBSIDIARIES

Present law

U.S. multinational corporations are generally not taxed on a current basis on the earnings of their foreign subsidiaries, since U.S. tax is imposed only when dividends are in fact paid by the subsidiary to the U.S. parent.

The only exceptions to this rule are for subsidiaries located in "tax haven" countries, whose earnings are taxed to the U.S. parent on a current basis.

The current revenue loss from deferral is estimated at $665 million for FY 1979.

Proposed amendment

Earnings of controlled foreign subsidiaries will eventually be taxed to the U.S. parent on a current basis. Deferral will be phased out over five years; 50% of earnings will be taxed in 1979; 60% in 1980; and so on until 100% of foreign earnings will be subject to U.S. tax in 1984.

A foreign tax credit will continue to be allowed for foreign taxes paid on foreign earnings.

The U.S. parent will be entitled to consolidate profits and losses of all foreign subsidiaries, and pay tax only on the net earnings.

The result will be to make the U.S. international tax laws more neutral with respect to foreign investment, neither encouraging it (by deferral), nor discouraging it (by restricting the foreign tax credit).

The problem

Deferral creates a "runaway plant, runaway jobs" loophole. It operates as an incentive for U.S. firms to build plants overseas and hire foreign workers, draining capital from the U.S. and costing U.S. jobs.

So long as earnings of foreign subsidiaries are retained abroad, the U.S. tax is deferred. In many cases, the deferral is for such long periods of time that it is tantamount to a total exemption from U.S. tax.

Deferral is a strong incentive for U.S. companies to locate plants abroad, and to invest and re-invest capital there. Deferral makes it more profitable for U.S. corporations to invest abroad than in the U.S. To benefit from the tax advantage, a corporation cannot invest at home. It must invest abroad. As a result, deferral causes a loss of U.S. jobs, U.S. capital and U.S. tax revenues.

These problems are caused by the low tax rates sometimes offered by foreign nations to attract investment. Often, corporations get a double tax break—a tax subsidy from the U.S. to export capital, and a tax subsidy from a foreign nation for investing the capital there.

Ford received a five-year tax holiday to locate a Philco car-radio plant in Taiwan costing 1,600 jobs in Philadelphia.

Motorola received a three year tax holiday for an investment in Korea.

RCA abandoned a two-year-old color TV plant in Memphis and moved to Taiwan.

Often, deferral subsidizes U.S. foreign operations in competition with U.S. facilities. Thus, U.S. auto manufacturers now import more cars into the United States from their foreign affiliates than they export from the United States.

Although foreign investment induces growth in some domestic U.S. industries, an independent study commissioned by the State, Labor and Treasury Departments in 1975 found that the net employment effect was a loss of at least 150,000 jobs a year in the United States. The study also found that between 1966 and 1973, the United States could have had one million more jobs if U.S. multinationals had attempted to serve foreign markets from U.S. production sites instead of foreign subsidiaries.

The same study estimated the following job losses in U.S. manufacturing in 1972 because of foreign investment.

[In billions]

Industry	Direct foreign investment	U.S. jobs lost
Food Products	0.26	6,800
Paper & Allied Products	0.32	7,200
Chemicals & Allied Products	0.88	14,900
Rubber & Plastic	0.12	5,000
Metals	0.33	8,800
Non-Electrical Machinery	1.24	46,900
Electrical Machinery	0.36	17,600
Transportation	0.78	2,700
Other Manufacturing	0.36	4,400
Total	4.68	114,600

A Business International survey of 111 U.S. multinational corporations shows that for the period of 1970–73, the firms expanded their U.S. employment by only 90,000 jobs (3.3 percent), while expanding foreign jobs by 360,000 (31.5 percent).

Frequently, the shift to investment abroad by U.S. firms has involved highly labor-intensive production, such as electronic products, electrical appliances, textiles, and footwear. In such industries, U.S. workers displaced by investment abroad cannot readily be absorbed elsewhere in the U.S. economy. Often, low cost foreign labor in "offshore" or "runaway" plants is used in assembly operations for products which are then shipped back to the U.S. market, thereby displacing competitive U.S. goods and jobs.

Continued export of investment raises serious long-run problems for U.S. capital formation, threatening a decline in the nation's productive capacity and productivity, and contributing to a decline of U.S. domestic investment opportunities.

Reasons for phase-out of deferral

Jobs: With a 6 percent U.S. unemployment rate, a U.S. tax incentive to build plants and create jobs overseas makes no sense.

Capital: Deferral causes a U.S. capital outflow, since the only way a company can get the benefit of deferral is by investing overseas. At a time when the U.S. needs additional capital at home, deferral is counterproductive, since it encourages new investment abroad and retention of earnings abroad, in spite of the obvious need for capital funds at home.

Tax Equity: Deferral is inequitable in three ways: it discriminates among U.S. corporations, since earnings of U.S. subsidiaries are taxed currently. It discriminates among U.S. multinational corporations, since a firm that operates abroad through a branch (rather than a subsidiary) is taxed currently on the earnings of the branch. Also, U.S. multinationals are among the wealthiest and strongest U.S. taxpayers, and are not entitled on grounds of hardship or necessity to pay lower taxes than other U.S. taxpayers

Efficiency: Deferral is a waste of $665 million in revenues. U.S. companies locate subsidiaries overseas because of competitive conditions, access to markets or sources of supply. and they will continue to do so to keep their markets. Repeal of deferral eliminates the tax windfall element from such decisions. If it makes business sense to create a foreign subsidiary, then a company will do so; but the tax system should be neutral in that decision.

Smokescreen: To a large extent, the multinational lobbying campaign against repeal of deferral is a smokescreen to prevent any change in the foreign tax credit rules. The amendment assures proper and full availability for the foreign tax credit.

Questions and answers on deferral

Q. Don't other countries grant deferral for foreign operations?

A. No. The argument is factually incorrect; several industrialized countries tax the profits of all foreign operations that are managed or controlled from the home country. Countries such as Germany, Japan, and Canada have adopted rules similar to the U.S. to begin to end their versions of tax deferral. Regardless of what other countries do, the U.S. should adopt tax rules that are fair and consistent with its own economic objectives.

Q. It is argued that ending deferral will actually cost U.S. jobs; is this so?

A. No number of economists have examined the issue and found that deferral is costing a net losss of U.S. jobs—elimination of deferral will increase U.S. jobs, which is why the AFL–CIO favors complete repeal.

Q. Won't repeal of deferral invite retaliation by foreign governments, who will raise their tax rates and thereby deprive the U.S. of the tax revenues (because of the foreign tax credit)?

A. No. In order to do this, a foreign country would have to raise rates on all corporations operating within its borders. It is highly unlikely that a country would be willing to raise taxes on all corporations, just because the U.S. has ended tax deferral. Tax treaties generally prevent foreign countries from raising tax rates only on U.S. corporations. Such action would constitute the kind of discriminatory treatment that is forbidden by the treaties. Countries with which the U.S. does not have treaties are generally developing countries and it is highly unlikely that they would raise taxes and thereby discourage U.S. investment given their policies to encourage U.S. investment.

Q. Won't ending deferral impair the ability of U.S. corporations to compete with multinationals based in other countries?

A. No. Factors such as U.S. technological, managerial, and research superiority are much more critical to competitiveness than tax deferral. If deferral does help U.S. multinationals to compete—and the data here are less than convincing—the net cost in loss of U.S. jobs, capital and tax equity far outweighs the marginal benefit of the tax advantage. Moreover, the reduction in the corporate tax rate from 48% to 46% more than offsets the tax increase from repeal of deferral and the corporate rate reduction is a much more effective device to give U.S. corporations an increased after tax return on their activities abroad.

Q. Don't other industrial nations give similar advantages to their multinational corporations?

A. No. In many cases, other nations impose strict controls on foreign capital investment. Japan, France, Sweden, West Germany, and the United Kingdom all have procedures to regulate the flow of capital overseas.

Q. How are U.S. jobs lost from foreign investment?

A. Jobs are lost by U.S. workers who lose their jobs when U.S. plants go overseas; by U.S. workers who would have been hired if plants had been built at home; by U.S. construction workers who would have built the plants now going overseas; by U.S. workers in supply industries for domestic producers; by workers in service industries serving American workers.

Q. How are U.S. jobs gained by foreign investment?

A. Jobs are gained by domestic suppliers servicing overseas plants, by extra white collar employment in multinational home offices, and by increased U.S. exports in response to increased foreign demand. But these factors offset to only a small extent the principal job losses caused by deferral and overseas investment.

Q. Hasn't a recent Arthur Andersen study concluded that ending deferral would actually decrease U.S. tax revenues while increasing U.S. companies' overall tax costs?

A. The Arthur Andersen study reached this unlikely conclusion by a series of improbable assumptions and technical errors. Briefly, the reasons why the study is unpersuasive include:

The study's assumptions about behavioral responses by U.S. corporations to terminating deferral are incomplete in some instances and counter to common sense in others. First, the study considered behavioral responses that would decrease U.S. revenues, but failed to take into account likely behavioral responses that would increase revenues. A key omission is the fact that ending deferral would encourage U.S. multinationals to locate more plants in the U.S., an action that would increase U.S. tax revenues. Moreover, ending deferral would reduce the present incentive for corporations to make artificial allocations shifting their income to low tax countries and their deductions to the U.S. Second, the study assumes that in response to ending deferral, U.S. controller subsidiaries will take steps deliberately to increase their total U.S. and foreign tax costs above what they would be if these companies did nothing in response to deferral. This is such an absurd assumption that it taints the entire study.

The Arthur Andersen conclusion is based on serious statistical errors. It assumed that its relatively small sample was representative of all multinational companies. In fact, Treasury analyses indicate the sample was not representative and therefore the study's conclusions cannot be relief upon. Moreover, the study apparently failed to take into account the 1976 changes in the tax treatment of foreign income that would significantly affect revenue estimates.

Recent action

In action on the Tax Reduction Act on the Senate floor in March, 1975, the Senate voted 73–24 to repeal deferral immediately for all firms, and voted 75–20 to convert the foreign tax credit to a deduction for oil companies.

In action on the Tax Reform Act of 1976, the Senate defeated by only one vote (in the crucial vote on the issue) an amendment to terminate deferral over a five-year period. The amendment was strongly opposed by the Ford Treasury.

In 1978, President Carter recommended repeal of deferral.

REPEAL OF TAX SUBSIDY FOR DOMESTIC INTERNATIONAL SALES CORPORATIONS (DISC)

Present law

A parent corporation is permitted to form a "paper" DISC subsidiary to obtain tax benefits for export sales.

Federal income tax is deferred on one-half of DISC income in excess of its base level export income. The base level is 67% of the DISC's average export income over a 4-year period.

The effect of DISC for those corporations that are unaffected by the incentive rule is to reduce the corporate tax rate on export income from 48% to 36% (or even 24% in some cases).

The estimated revenue loss from DISC is over $1.3 billion in FY 1979 and over $1.5 billion in FY 1980.

Proposed amendment

Repeal DISC over a 3-year period.

Principal arguments against DISC

DISC was designed to promote U.S. exports in a world of fixed exchange rates; that world no longer exists. DISC now involves a significant waste of money ($1.3 billion in FY 1979).

According to the most recent Treasury study, DISC is cost inefficient, generating only between $1-3 billion in additional exports for a $1.3 billion revenue cost.

U.S. export growth since 1971 has been generated by the two devaluations of the dollar (December 1971 and February 1973), the shift to the international system of floating exchange rates in March 1973, inflation of export prices and the increase in the real volume of world trade, not DISC.

Since the export industry is capital intensive, DISC is an inefficient and perhaps counter-productive subsidy if jobs are the goal. Dollars for DISC are one of the least efficient job-creating incentives, ranking well behind almost all other incentives. For example, Labor Department data show that, per dollar of expenditure, 50% more jobs are created by a general tax cut, compared to spending on exports. According to a 1975 study of the House Budget Committee, a $1.4 billion DISC tax expenditure might create at most, 16,000 jobs. As a direct Federal expenditure, the same $1.4 billion would create 112,000 jobs in defense, 120,000 jobs in health, 150,000 jobs in education, and 240,000 public service jobs. The 1977 Treasury DISC study concluded that DISC may actually produce a decline in U.S. jobs.

Under floating exchange rates, DISC may actually cause a net U.S. job loss. Increased exports strengthen the dollar, leading to increased imports. Since U.S. imports are historically labor-intensive (shoes, textiles, automobiles, etc.), a net job loss may result. Thus, increases in exports are not the same as increases in net exports or improvements in the overall U.S. trade balance.

DISC is a windfall for large multinational U.S. exporters who would be exporting anyway; 22.5% of DISC benefits went to only 10 corporations; 66% went to 316 corporations with assets over $250 million. U.S. corporations don't even use DISC benefits to make export sales more competitive; in a recent study, 76% of corporations surveyed reported that DISC had no effect on their export prices.

Export profits are extremely high. The Treasury Report shows DISC companies earned about 15% on export sales, over dou-

ble the 6.5% profit margin on domestic sales. A tax subsidy like DISC is hardly needed when export sales are already so profitable.

DISCs are just paper corporations that exist only in file drawers and on accountants' balance sheets. They have no real economic substance.

DISC is a subsidy for foreign consumers. Because of DISC, goods produced for American consumption are taxed more heavily than goods produced for foreign consumption. Some large U.S. corporations use DISC simply to offer more favorable long-term payment conditions for foreign purchasers.

DISC was enacted in 1971 as an antidote to deferral. Yet the deferral subsidy costs $665 million, whereas DISC costs $1.3 billion.

In July 1975, President Lee Morgan of Caterpillar Tractor testified before the House Ways and Means Committee that, although Caterpillar had received $9 million in DISC tax benefits,

"I am not really sure that we did anything extra in order to generate additional exports. Not much has happened, at least at our company, in order to earn the tax deferral that has come from DISC."

A recent study, based on a survey of 142 large corporations, found that of 110 DISC-electing firms, 35% said that DISC had *no* impact on export sales, 1% said it decreased sales and 64% said it increased export sales.

DISC has been one of the most notorious tax overruns in the history of the Internal Revenue Code. When originally enacted in 1971, the estimated Treasury cost was $100 million for 1972 and $170 million for 1973. Actual costs were $350 million and $620 million, respectively, or four times the original estimate, and the cost has continued to climb.

DISC is a violation of our international trade commitments; a GATT panel held it to be a prohibited export subsidy under GATT.

More than one hundred bipartisan independent economists and tax experts in 1976 called for repeal of DISC as a wasteful and inefficient tax subsidy that distorts the free market system.

President Carter urged repeal of DISC as part of his 1978 Tax Program.

DENIAL OF TAX DEDUCTIONS FOR FIRST CLASS AIR TRAVEL

Purpose

Disallow as a deductible business expense the excess of commercial first class air travel fare over coach fare; coach fare would remain deductible.

Prohibit the use of appropriated funds for first class air travel by Members of Congress and Federal officers and employees.

Revenue effect

Based on Treasury estimates, the amendment will produce a revenue gain of $281 million in calendar 1979 and $311 million in calendar 1980.

Explanation

1. The Internal Revenue Code allows a tax deduction for "ordinary and necessary" business expenses. Over the years, the deduction has been abused in some cases as a subsidy for "expense account living." Travel and entertainment expenses have been a particular and continuing source of controversy, confusion, and injustice in this aspect of the tax law.

2. The amendment deals with only a small part of the issue—first class versus coach class commercial air travel. It does not affect travel by rail, ship or private aircraft and it does not affect meals, hotels, entertainment, etc., all of which raise separate issues.

3. With a corporate tax rate of 48% (or 46% under the pending bill) each dollar of deductible expenses saves the corporation 48 cents (or 46 cents) in tax. In the case of first class travel, the Treasury (and therefore the average taxpayer) pays half the cost of the first class ticket. For high bracket individuals, the saving is even greater—the Treasury may pay up to 70 cents of each dollar of expenses.

4. It is a legitimate business decision to travel by air instead of by car or train or bus or ship. But once the decision is made to travel by air, the business objective is achieved by traveling in coach class. The executive travels on the same flight, and arrives at the same time and in the same place. This is all that is required to implement the valid business decision, and it is all that should be allowed as a deductible business expense. The additional cost of first class travel is primarily a luxury item and should not be deductible.

5. There are many precedents for the legislation. The Internal Revenue Code and Regulations contain detailed rules limiting deductions for foreign travel and for luxury items like yachts, hunting lodges, gifts and entertainment. These areas of existing law denying business deductions are far more complex than the present proposal. In addition, in the Tax Reform Act of 1976, Congress enacted specific limits on the deduction for foreign conventions.

6. Since the bill is likely to increase the demand for coach class seats, the airline industry will meet the demand and the traveling public will benefit. A first class seat now takes up the space of one and one-half coach seats. As airlines modify their cabin space, the total number of available seats per plane will increase, thereby relieving the crowded conditions and waiting lists that coach passengers now endure during peak travel periods, and producing a more rational allocation of space throughout the entire airplane.

7. The bill may accelerate the trend to lower air fares. We have had dramatic evidence in the last few months that low cost air transportation will be eagerly availed of by travelers. Airline revenues may actually increase. To the extent the bill facilitates this development, citizens will benefit as both taxpayers and travelers.

8. Thus, the legislation is justified on grounds of both tax equity and airline efficiency. The large annual Treasury subsidy for first class air travel should be ended.

Prior action in this Congress

A similar amendment sponsored by Senators Kennedy and Thurmond was defeated by a vote of 45–43 on April 28, 1977, during the debate on H.R. 3477, the Tax Reduction and Simplification Act of 1977.

DENIAL OF DEDUCTION FOR ENTERTAINMENT

Purpose of amendment

Disallow as a deductible expense all costs of entertainment activities and facilities.

The Senate Finance Committee approved a provision denying a deduction for the cost of acquiring or maintaining entertainment facilities such as yachts, hunting lodges, etc., and for fees paid to athletic, sporting, country or social clubs.

Substantial areas of tax deductible entertainment are not covered by the Finance Committee bill, including tickets for athletic and theatrical events and entertainment of "business" friends at parties and other social events.

Full disallowance of deductions for entertainment costs will increase revenues by $114 million.

The problem

1. Entertainment costs are the purest form of personal consumption; the vast majority of Americans pay for their entertainment out of every tax dollar. But for a privileged few—high income individuals and executives of large corporations—as much as 70 percent of entertainment costs are subsidized by the U.S. Treasury.

2. One result is that the best seats at baseball, basketball, football and other sporting events are always occupied by the subsidized spectators. The average fan, paying for his own ticket, sits in the farthest reaches of the stadium or arena.

3. Present law is too vague, too subjective and too open to abuse.

Examples

A segment of a recent "60 Minutes" broadcast revealed corporate jets flying corporate executives and their friends into New Orleans for the Super Bowl. It also featured lavish parties thrown for their favored few—all at the expense of the average taxpayer.

Luxury "Superboxes" in football stadiums, baseball parks, and basketball arenas are occupied by the largest corporations. The annual cost of one of these plush facilities—used only by the executives and their "business" friends can be $15,000 a year or more—all subsidized by the U.S. Treasury.

A dental surgeon deducted $17,000 for costs of entertaining other dentists and their wives—all personal friends of the dentist—at his home, at athletic events, at a country club and at a vacation cottage. Obviously, it is important to be more than just a "friend" to a high income individual; it is crucial to be a "business" friend.

The controlling shareholder of a corporation deducted $26,000 for entertainment expenses at a cottage on a Caribbean island. (What is truly remarkable is that the individual drew a salary of only $19,000 from the corporation.)

Having "business friends" allows some individuals to "double their pleasure" in attending sporting events. Suppose a 50% bracket taxpayer wants a season ticket to his favorite team's home games. The ticket costs $100. If the individual has some "business friends" he can buy two season tickets for the same $100 out of pocket cost, since $100 of the total $200 cost is deductible. The average fan, who only has "friends," not "business friends" would have to pay the full $200 himself.

Effect of the amendment

1. No deduction will be allowed for the cost of entertainment. In addition to the items covered in the Finance Committee bill (entertainment facilities and club dues), deductions will also be disallowed for other entertainment costs, such as tickets to sporting events and theatrical performances, as well as other types of entertainment.

2. As a result, the entertainment costs of all taxpayers will be treated alike—there will no longer be a privileged small group whose entertainment is subsidized by other taxpayers, who must budget for their entertainment in after-tax dollars.

Questions about the amendment

1. Q. Aren't entertainment costs like other deductible business costs (such as advertising to promote good will)?

A. No. Paying entertainment costs provides a personal benefit to the recipient, unlike other business costs such as advertising. Where the entertainment consists heavily of personal consumption, it is inappropriate for the Treasury to be subsidizing the entertainment because of a presumed "business" relationship.

2. Q. Won't the amendment have an adverse effect on business practices?

A. If entertainment makes good economic sense, business will continue to entertain. The present deduction distorts business decisions in the other direction, by favoring the usage of entertainment as opposed to other business promotion methods.

3. Won't the amendment hurt professional athletic teams that rely on corporations to buy blocks of season tickets and luxury boxes?

A. No. If it is good business to buy the tickets, corporations will do so, but not with a federal tax subsidy. There is no chance that

Congress, in order to aid professional athletic teams, would appropriate federal dollars for corporations to defray part of the cost of season tickets to athletic events. Congress should not allow a similar subsidy through the back door of the tax laws.

4. Q. Wouldn't more vigorous enforcement of present law take care of the abuses in this area?

A. No. Present law is too vague and it is too easy to hide abuses in such innocuous categories as "business promotion," "advertising," etc. The present rule is an invitation to taxpayers to label all entertainment as "business" and hope that the item is not picked up in audit.

5. Q. Isn't entertainment for business persons the same as fertilizer for farmers? Doesn't it increase the yield?

A. No. Fertilizer has its own built-in disincentive that keeps it from becoming a popular item for personal, as opposed to business, consumption.

DENIAL OF DEDUCTION FOR "BUSINESS" MEALS

Purpose

Disallow as a deductible expense 50 percent of the cost of meals, other than the cost of meals incurred by a person on business travel status. Phase-in the amendment over a three-year period.

Prohibit the use of appropriated funds for the cost of meals by Members of Congress and Federal officers and employees.

Revenue effect

The current revenue loss from allowing deductions for meals is $1.2 billion. The revenue gain from the amendment would be $600 million when fully phased in.

The problem

1. Thousands of Americans are maintaining a luxury status of living by deducting the costs of meals on "business" expenses; in 1978 these taxpayers will eat $4 billion of meals subsidized by the rest of their fellow citizens.

2. Meal costs are personal expenses. Everyone has to eat. It is unfair that millions of American workers must pay for their meals out of their own pockets, while the privileged few have 40%, 50% and even 70% of the costs of their meals subsidized by the Treasury.

3. Present law is too subjective, the standards are too vague, and the problems of auditing are too great:

Examples

One taxpayer claimed deductible business lunches for 363 out of 365 days for the year (he didn't have a business lunch on Thanksgiving); lunches were always at top restaurants at an average cost of over $20 per meal. The tax subsidy for each meal for this taxpayer was more than most workers can afford to spend on their lunches.

A salesman arranged his calls so that he ate breakfast, lunch and dinner with a client five days a week; as a result, the vast majority of his food costs (and those of his clients) was subsidized by the U.S. Treasury.

A lawyer who has lunch with a partner at their private club can deduct the cost of the lunch; a construction worker who eats lunch with his fellow worker on the job site cannot deduct the cost of his lunch.

The owner of a business agency claimed that every meal he ate for 2 years (except for 1 day) was a business meal; the American taxpayers were stuck with a total of $63,000 in deductions as a result.

4. Present rules cause an enormous waste of time and money in terms of record keeping, audit and litigation.

5. The proper question that should be asked is whether Congress would vote a direct appropriation for a jobs program that consists of $1.2 billion in subsidies for the cost of meals for upper income individuals, in the hope that luxury restaurants will hire additional waiters and waitresses. The answer to this question is an obvious "No."

Effect of the amendment

1. No deductions will be allowed for half the cost of any meals (whether "business" related or not) except for business meals of a person who is on business travel status. The amendment will be phased in over a three-year period.

2. As a result, all Americans will be treated more alike—the amendment will reduce the abuse by which one small class of citizens eat Treasury-subsidized meals, while the vast majority eat non-subsidized meals.

3. A highly visible and irritating symbol of tax inequity will be removed from the Internal Revenue Code.

Questions about the amendment

1. Q: Aren't business meals a cost of doing business, just like advertising:

A: No. Unlike the vast majority of business costs, meals provide a large direct personal benefit to the individual. It is inappropriate for the Treasury to subsidize expenses heavily dominated by such personal consumption.

2. Q: Won't the limitation on the meals deduction upset established business practices?

A: No. If it is economically sound for a business to pay for employee or client meals, it will continue to do so. But that economic decision will not be artificially influenced by the presence of a government subsidy.

3. Q: Can't the desired results be obtained by better enforcement of our present laws?

A: No. Present rules are so vague and IRS audits so rare (less than 3% of individual returns) that the law is an open invitation to taxpayers to claim a deduction for every meal that has even a slight "business" connotation.

4. Q: Won't denial of the deductions for meals cause large-scale unemployment among restaurant workers?

A: No. The three-year phase-in will avoid any significant dislocation.

An impartial recent study by the Library of Congress refutes the claim that reducing the tax deduction will cause layoffs among restaurant workers. Using standard economic techniques, the study estimated that if the deduction is limited to 50 percent, expenditures for meals will decline by only about one percent. At the same time, the general economic stimulus from the tax cuts for individuals and corporations will produce an increase of a similar magnitude in restaurant meals. In other words, the tax cut will offset the impact of the tax reform, and the overall effect on jobs in the industry will be negligible.

In addition, employment figures for food service workers in recent years show an average rate of growth of 5% in jobs, with a low of 2.9% in the recession year of 1975 and a high of 7.7% in the recovery year of 1976. By contrast, total employment growth in the nation averaged only 1.2%, with an actual drop of 1.3% in 1975 and a gain of only 3.2% in 1976.

The study concluded that "the restaurant industry has experienced a much faster growth rate than the aggregate economy in the past few years, reflecting in part increased tastes for dining out."

If the tax proposals had been in effect in 1976, jobs in the restaurant industry would have grown at the 7.7% rate, or 280,000 jobs. However, jobs in the economy as a whole would have grown at a rate of 4%, or somewhat higher than before, because of the general tax stimulus. At most, therefore, the effect of the tax reform in the area of business meals would have narrowed by about 1% the gap in growth rates between the fast-growing restaurant industry and the slower-growing economy as a whole.

Recently, the Employment and Training Administration of the Department of Labor reported that waiters and waitresses continue to be the workers most in demand across the country. The report announced that there were 18,700 full-time jobs available for waiters and waitresses in the month of September.

5. Q: Why is the deduction reduced only to 50 percent, instead of being disallowed completely? Why is the limitation phased-in over a three-year period, instead of being made effective at once?

A: The Carter Administration proposed the 50 percent limitation as a reasonable and workable method of limiting the serious abuses of the current deduction.

At its annual meeting in Bal Harbour, Florida, in February 1978, the AFL–CIO Executive Council voted 32–1 to support the Carter Administration proposal, but with a proviso that the business meals reform should be phased in over a three year period "to prevent job loss and hardship to workers".

MAKE THE INVESTMENT CREDIT REFUNDABLE

Present law

A tax credit is allowed equal to 10% of the cost of new machinery and equipment.

The maximum amount of the investment credit that a taxpayer can use in a year cannot exceed the first $25,000 of tax liability plus 50% of tax liability in excess of $25,000 (excess credits can be carried back three years and forward seven).

House and Senate Finance Committee actions

The present 50% limit would be increased to 90% over a four-year period: 60% in 1979, 70% in 1980, 80% in 1981, and 90% in 1982 and subsequent years.

Proposed amendment

The limit on the investment credit would be increased to 100% of tax liability in 1983 and the credit would be fully refundable for 1984 and subsequent years.

Questions on the effect of a refundable investment credit

1. Q. What organizations does the refundable investment credit help that the SFC bill does not?

The refundable investment credit helps new firms, firms suffering business losses from adverse economic conditions, firms making large current capital investments compared to tax liability, and tax exempt organizations that purchase capital equipment.

New firms frequently do not incur any tax liability for the first several years they are in business since their large start-up costs often exceed their income. Nonetheless, these firms must make significant investments in machinery and equipment. It is no help to these firms to tell them that they will get an investment credit seven years later. They need financial assistance on a current basis to help pay for the costly machinery and equipment that they require in order to get started in their operations. The current investment credit does not provide that assistance. Increasing the limit to 90% does not help these businesses either. But a refundable credit can give new firms immediate cash to help offset costs of vital plant machinery and equipment.

Other firms may suffer losses due to recessions or slow down in the economy. These losses can result, not from mismanagement, but from poor economic conditions over which they had no control. However, for tax purposes, the losses eliminate their tax liability during the year machinery is purchased and in succeeding years. A 90% limit on the investment credit is of no help to these firms. A refundable investment credit will provide needed current assistance for these firms to make capital investments.

Tax exempt organizations such as colleges and universities and hospitals have substan-

tial needs for machinery and equipment. They need to replace obsolete items. At the present time, they receive no incentive or benefit from the investment tax credit to make the acquisitions. Office equipment and computers acquired by a tax exempt organization do just as much for the economy as when purchased by a taxable organization.

2. Q. Why should the investment credit be made refundable?

A. The investment credit is the major program by which the federal government provides financial assistance to industry. Because of its present limitations, however, the program is inequitable. Two firms can make identical investments, yet one of them may receive the investment credit currently and one may not.

Assume Corporation A, a profitable company, buys a $100,000 machine. It pays only $90,000 because of the investment credit. Corporation B, its competitor, buys the same machine, but B has a tax loss for the current year. It makes no sense to say that A's purchase should be currently subsidized but B's should not. Yet this is precisely the discrimination caused by present law—and it will remain so even if the limit is increased to 90%—which favors wealthy firms at the expense of less affluent and struggling firms.

It is safe to say that if the investment credit program were run as a direct subsidy program through the Commerce Department, no one would try to condition the subsidy for capital investment on the amount of a taxpayer's income tax liability to the Treasury. Instead, those taxpayers who made a $100 investment would receive a $10 Commerce Department check, regardless of their tax situation. The refundable amendment moves us in the direction of this more rational system.

3. Q. Doesn't a refundable investment credit subsidize poorly managed and inefficient companies?

A. Some economists think that a portion of a refundable credit might go to such firms. The refundability feature is not scheduled to take effect until 1984. Between now and then the Treasury can study the matter to see if there really is a problem in this regard and, if so, the scope of the problem. If refining legislation proves to be appropriate, Congress can adopt legislative techniques to insure that the refundable credit does not subsidize inefficient firms.

4. Q. Is there any precedent for a refundable tax credit?

A. Yes. There are a number of precedents:

In 1975, under Senator Long's leadership, Congress enacted the first refundable credit—the earned income credit for low income workers.

In 1976 and 1977, the Senate adopted refundable energy tax credits to encourage the goal of energy conservation.

In 1976, the Senate also voted to make the child care credit refundable, but the refundable feature was dropped in the conference with the House.

In 1974, the Treasury, under Secretary Simon, proposed that the then existing 7% investment tax credit be made refundable.

On April 7, 1977, Senator Long introduced S. 1270, a bill to make the investment credit refundable on a permanent basis.

6. Q. What is the revenue cost of the refundable feature?

A. At 1978 levels, a fully refundable credit would cost $3.6 billion.

EXTEND THE EARNED INCOME CREDIT TO MARRIED COUPLES AND SINGLE PERSONS WITHOUT DEPENDENTS

Present law

A worker with $4,000 of earned income or less is entitled to a tax credit equal to 10% of that income (the maximum tax credit is $400). If the tax credit exceeds tax liability, the excess is refunded.

The credit phases out between $4,000 and $8,000 of income.

Only individuals who maintain a household with one or more minor or disabled dependents are eligible for the credit.

House bill

The House bill maintained the present level of the earned income credit. (It also made a number of changes to make the credit more simple and more widely available to eligible workers.)

Senate Finance Committee bill

The SFC bill increases the earned income credit to 12% of the first $5,000 of earned income (for a maximum credit of $600).

The credit is phased out between $6,000 and $11,000 of income.

Simplifying and clarifying amendments were adopted, but no changes were made in the eligibility standards.

Proposed amendment

Retain the present 10 percent credit and the $400 maximum credit. Use the revenues saved to extend the present $400 credit to married couples and single workers who have no dependents. (Students would not be eligible for the credit.)

The revenue cost of the proposed amendment is about the same as the changes proposed by the Finance Committee.

Reasons for amendment

1. The earned income credit has proved to be an imaginative and valuable incentive to encourage low income persons to work to lift themselves out of poverty. However, millions of low income workers have been excluded from its benefits because of the requirement that the workers must have dependents to qualify.

2. Married couples without children and single persons who are working to get out of the poverty cycle also deserve encouragement and support. Before the amount of the credit is increased, these deserving workers should be made eligible for the existing credit. To prevent possible abuse, students would not be eligible for the credit.

3. The SFC increase in the credit takes its benefits well above established poverty levels. This may be a desirable step in the future. But before the credit is extended to those above the poverty level, we should first cover all workers whose incomes are still below poverty levels.

4. In 1976 the child care tax credit was extended to assist above-poverty level working parents. To a considerable extent, the SFC provision duplicates this coverage.

5. The revenue cost of the SFC provision is $1.7 billion for 1979. The cost of extending the amendment to persons without dependents who currently do not qualify for the credit is:

Married couples, $500 million.
Heads of households, $100 million.
Single persons, $1,100 million.*
Total, $1.7 billion.

EXTEND TAX SHELTER "AT RISK" RULE

Present law

1. In 1976, Congress adopted an "at risk" rule to deal with what were then the most flagrant types of tax shelter activities: farms, oil and gas, equipment leasing and motion pictures. In addition, the at-risk rule was applied to all limited partnerships (except partnerships engaged in real estate activities)—the legal form then most commonly used for tax shelter deals.

2. The "at-risk" rule provides that an investor is not entitled to deductions from a particular activity except to the extent he has actually invested his own funds in the project or is personally liable on any loans incurred to finance the project. If the activity is financed with non-recourse borrowing—so that the investor has no personal liability to repay the loan—the investor cannot claim deductions that result from use of those borrowed funds in the project.

The problem

Since the "at-risk" rule adopted in 1976 applies only to four specific activities and one form of legal entity, many tax shelter enterpreneurs easily evade it by shifting tax shelter deals into other areas and other forms.

In the hands of tax shelter experts, almost any activity can be converted to a tax shelter if it is not covered by the "at-risk" rules. Some of the more exotic examples of tax shelters that have appeared on the scene in the past two years include:

For example, suppose an individual invests $20,000 in an equipment tax shelter deal, and the manager of the shelter uses the $20,000 to borrow an additional $80,000 and finance a $100,000 share in a machine. If the loan is on a non-recourse basis, the investor is not personally liable for payment of the loan. Thus, he has $10,000 "at risk," and $90,000 not "at risk." Without an "at risk" rule, the investor can claim deductions (accelerated depreciation and interest) based on the full $100,000, not his actual investment of $20,000. The "at risk" rule would limit his deduction to his actual investment.

The Pierre Cardin Cadillac Tax Shelter: Pierre Cardin has designed custom interiors for Cadillacs. A tax shelter has now been constructed to market these luxury items. The entire U.S. has been divided into regions, and each investor purchases a "distributorship" for a region (all the work is actually done for each distributorship by a management company).

For his distributorship the investor pays a small amount in cash; for the balance, he gives his own non-recourse note, payable only out of proceeds from the sale of the interiors. The "fee" (including the face amount of the non-recourse note) is claimed as a deduction in the first year of the ten-year distributorship. The value of the tax deductions promised in the first year is designed to exceed the investor's out-of-pocket cash payment. The at risk rules do not apply because the activity is not one covered by present rules, and it is claimed that the nationwide network of investor-distributors is not a partnership.

The Gold Mine Tax Shelter: The tax shelter dealer takes a gold mine and breaks it up into separate plots, each one "purchased" by an individual investor. The purchase price is financed in large part by a non-recourse loan. The investor then claims deductions for the costs of mining the gold from his particular plot. Gold mining is not covered by the at risk rules, and it is asserted that the separate mine owners do not constitute a partnership.

The CATV Tax Shelter: The holder of a CATV license for a particular city divides it into sections. Each investor pays to acquire the rights for an individual section, using non-recourse financing for a large part of the purchase price. All the investors use the same manager for the system. The investors claim depreciation and other deductions are not affected by the at risk rules because they are not a partnership, and because cable TV is not covered by the at risk rules.

The Book Tax Shelter: An individual investor approaches an author who has written a book. In a typical deal, the investor offers to purchase the foreign distribution rights and movie and TV rights for (1) $20,000 cash; and (2) a $400,000 note payable only out of the profits realized from any use of the rights by the investor. The author has only $20,000 of income, but the investor

*The maximum credit for single persons will be reduced if the full $400 credit exceeds $1.1 billion, so that the cost of the amendment will not exceed $1.7 billion in revenues available.

claims that he is entitled to $420,000 of deductions for the "purchase" price of the rights. The present "at risk" rules do not apply because books are not one of the covered activities, and the investor is a single individual, not a partnership.

The Art Tax Shelter: An artist creates a wood or metal plate from which prints can be run. The plate is "sold" to an investor for $20,000 cash plus a $220,000 non-recourse note payable only out of a portion of the proceeds realized by the investor from the sale of prints. The investor claims an investment tax credit of $24,000 (10% of $240,000) and uses ADR and accelerated depreciation to claim additional tax deductions against his other income. Assuming a ten-year life, the claimed first year depreciation deduction is $60,000 (ADR reduces the life to eight years; accelerated depreciation allows a 200% deduction in the first year; 2 times $30,000 equals $60,000). Thus, for a 50% bracket taxpayer, the first year tax benefits total $54,000 ($24,000 from the investment credit plus $30,000 from depreciation (50% times $60,000 equals $30,000). The tax benefits are almost triple the amount actually paid to the artist. Again, the present "at risk" rules do not cover the transaction, since art works are not listed and the investor is not a partnership.

The House Bill

The House bill extended the "at risk" rules to all activities (except real estate) and to all taxpayers (except widely held corporations).

Senate Finance Committee action

The SFC deleted the "at risk" provision in the House bill.

Proposed amendment

Restore the House bill "at risk" provision.

Effect of amendment

1. It would put an end to the maneuvering that goes on under present law in efforts to avoid the "at risk" rules. Congress cannot legislate a separate rule to deal with every new type tax shelter that is created.

2. The new types of tax shelters are pure tax gimmicks and ought to be permanently eliminated. It is extremely wasteful to force the IRS to try to discover every new tax shelter that circulates in the large "underground" tax shelter world.

3. The amendment would provide uniform rules for all taxpayers and all activities (other than real estate). The present situation—where some taxpayers are under the "at risk" rules and others are not—is unfair and needlessly complex.

4. The rule would not apply to real estate, where non-recourse financing is less likely to create the abuses it does in other areas. Nor does it apply to widely held corporations (more than five shareholders), which are not likely to be vehicles for tax shelter operations.

REPEAL TAX DEDUCTION AND MODIFY TAX CREDIT FOR POLITICAL CONTRIBUTIONS

Present law

A tax credit for political contributions is given to all taxpayers, equal to 50% of contributions, up to a maximum credit of $25 for single persons and $50 for married couples filing a joint return.

Taxpayers who itemize their deductions may, as an alternative, take a deduction for political contributions up to a maximum $100 for single persons or $200 for joint returns.

House bill

Repeals the tax reduction but retains the existing credit.

Senate Finance Committee bill

Doubles the maximum amount of the tax credit to $50 for single persons and $100 for married couples.

Retains the existing alternative deduction for itemizers.

Proposed amendment

Repeal the deduction for political contributions.

All taxpayers would be eligible for a credit equal to 75% (rather than 50%) of political contributions up to the existing maximum limits of $25 for a single person and $50 for married couples filing joint returns.

Reasons for amendment

1. The present alternative itemized deduction is only available to the 20% of upper-income taxpayers who itemize their deductions. This means that the amount of the benefit increases as the individual's tax bracket increases—the higher the bracket, the bigger the tax break. For example, a 70% bracket married couple gets a $140 tax reduction for a $200 contribution, but a standard deduction married couple can only get a tax reduction of $50 for the same $200 contribution. This is manifestly unfair. A tax credit for everyone insures that all donors, regardless of their income tax brackets, are given equal incentives to make political contributions.

2. Repeal of the alternative deduction will also be a significant tax simplification measure. Under persent law and the SFC bill, taxpayers must make two computations, one under the credit and one under the deduction, to determine which provides the greater tax benefits. The double computation involves needless complexity as well as unjustifiable inequity.

3. The SFC proposes to increase the maximum credit to $50 for single persons and $100 for married persons. Such an action would only help higher income donors who can well afford to give larger amounts to political campaigns without federal support.

By contrast, increasing the percentage limitation from 50% to 75% of a donation provides a greater incentive to lower income persons who cannot afford large out-of-pocket donations.

As the following example shows, the proposed amendment will effectively encourage political participation by middle-income persons:

Example

Under present law a $15,000 per year married couple who makes a political contribution of $50 is entitled to a $25 tax credit (one-half the contribution). The net out-of-pocket cost is $25. The SFC bill does not change this result.

Under the proposed amendment this middle income family can make a contribution of $75, obtain a tax credit of $50 (75% of $75=$56.28, so the $50 limit applies), and still be out of pocket the same $25.

This middle income family's financial investment in the political process has been increased by one-third; under the SFC bill they have no incentive for increased participation at all.

4. On the other hand, the SFC bill will simply give a tax reduction to many high income donors who do not increase their political contributions at all.

Example

A $40,000 per year married couple gives $200 to a political campaign. They claim a deduction and under present law receive $90 tax benefit (45% of $200). Under the SFC bill, this couple will get a $100 tax credit for the same $200 contribution. Though the couple has not increased participation in the political process at all, they get an additional $10 tax reduction.

5. President Carter recommended repeal of the political contribution deduction as part of his 1978 tax program.

REQUIRE ACCRUAL ACCOUNTING FOR LARGE FARM CORPORATIONS

Present law

The Tax Reform Act of 1976 established the general rule that farm corporations must use the accrual method of accounting and must capitalize pre-productive period costs. This change brought farm tax accounting rules into conformity with those applicable to other types of businesses.

Important exceptions, however, have been provided for:

(1) Nurseries and farms engaged in the raising or harvesting of trees (other than fruit and nut trees);

(2) Corporations with annual gross income of $1 million or less;

(3) Subchapter S corporations;

(4) Certain farm corporations controlled by one, two or three families (the exception for certain two and three family-owned corporations is effective only until 1978 and is intended to benefit two large poultry farms).

Certain tax shelter "farming syndicates" are also subject to the accrual accounting requirements.

House bill

The exception provided for two and three family-owned corporations is made permanent.

Senate Finance Committee bill

Same as House bill for family corporations. An exception for sod farms is also added.

Proposed amendment

Require accrual accounting (and capitalization of pre-productive period costs) for (1) all farm corporations (and partnerships with a corporate partner) with annual gross income of $1 million or more; and (2) for all farm syndicates (as defined under present law) regardless of size.

The present exceptions will be continued for Subchapter S corporations and for nurseries and other farming corporations that raise or harvest trees (other than fruit and nut trees).

Reasons for proposed amendments

1. The cash method of accounting was originally introduced in the 1920's to relieve the small family farmer of the complexities of accrual accounting. But the large farm corporations of today are "big business" and can employ the necessary accounting expertise to use the accrual method for tax purposes. For these "agri-giants" the cash method of accounting is an unjustified subsidy.

2. Congress in the 1976 Act basically adopted the proposition that large farm operations—those with annual sales over $1 million—should be required to use the accrual method of accounting for tax purposes. However, the exceptions adopted by the Congress have allowed continued use of the cash method by farm corporations that are not small farm operations.

3. Under the proposed amendment, only the largest farm corporations will be required to shift to accrual accounting. Retention of the exception for farm corporations that have less than $1 million in gross income means that 94% of all farm corporations will continue to be able to use the cash method for tax purposes.

4. The present exception for family-owned corporations is not justifiable. The relevant fact is the size of the corporation, not the relationship among its shareholders. A family-owned corporation with gross sales in excess of $1 million is just as sophisticated and can employ accountants just as easily as a large corporation with unrelated shareholders. In short, family ownership has no relevance to the desire to provide simple accounting methods for small corporations.

5. The exclusion for family corporations creates unfair competition between farm corporations that are not family owned and farm corporations that are. There is no reason why Farm Corporation A with $10 million of gross income should get more favorable tax treatment than its competitor. From Corporation B, also with $10 million of income, just because A is owned by 1, 2, or 3 families and B is not. It is illogical to argue that a corporation with $65 million in annual sales

cannot cope with the allged complexities of accrual accounting just because it is family-owned.

6. Accrual accounting should be required of all farm "syndicates," because these are the entities used for sophisticated tax shelter deals; most of them use the accrual method for financial reporting purposes.

7. The proposed amendment was recommended by President Carter in his 1978 Tax Program.

DELETE INCREASE IN ADR METHOD OF DEPRECIATION

Present law

Under the ADR (Asset Depreciation Range) system of depreciation, a taxpayer is given the option to reduce by 20% the useful life of qualifying property for depreciation purposes. Thus, for example, if a company acquires a machine with a useful life of ten years, the ADR system allows the company to reduce the life to eight years and then take depreciation deductions based on the shorter period.

The ADR system was introduced in 1971 to provide an investment stimulus in the form of accelerated depreciation, and to reduce disputes between taxpayers and the IRS concerning useful lives.

House bill

No Provision.

Senate Finance Committee bill

Changes the allowable range for ADR purposes from 20% to 30%. Thus, a company that acquires a machine with a ten-year useful life could reduce that life under ADR to seven years for depreciation purposes, instead of eight years under present law.

The revenue cost of the Finance Committee provision is $513 million for calendar year 1979 and rises to over $2.6 billion by 1982.

Proposed amendment

Delete the Finance Committee provision increasing the ADR range from 20% to 30%. (The present law ADR range of 20% would be retained).

Reasons for proposed amendment

1. Increasing the ADR range is a discriminatory method to provide business tax reductions. It provides the greatest relief for capital intensive companies and, within capital intensive companies, the greatest relief goes to those companies that buy assets with the longest useful lives. Labor intensive industries get little or no benefit from increased or more rapid depreciation methods such as ADR.

A general corporate rate reduction, as provided in the bill, is a far more neutral method of providing tax relief to the corporate sector. Rate reductions provide tax benefits to labor intensive as well as capital intensive businesses. Moreover, general rate cuts provide needed funds for working capital and for research and development expenditures, neither of which are assisted by increasing the ADR range.

2. Increasing the ADR range provides no benefits to newly formed businesses that typically experience large start-up losses. Increasing ADR simply adds to the net operating loss carryover of these firms and provides no immediate assistance. Similarly, increasing ADR is of no assistance to firms experiencing current net operating losses. The only method for aiding these types of businesses that are most in need of financial benefits is by the refundable investment credit.

3. Accelerated depreciation is a key element in equipment leasing tax shelters. Increasing the ADR range will provide an added stimulus to the formation of tax shelters in the equipment leasing area. This development would produce an undesirable waste of tax benefits needed for capital investment.

4. The ADR changes proposed by the Finance Committee involve unacceptable revenue losses. The revenue cost to the Treasury for the years 1979 through 1982 is almost $7 billion.

5. The increase in the ADR range is opposed by the Administration.●

ORDER FOR CONSIDERATION OF DANFORTH-JAVITS AMENDMENT TOMORROW

Mr. HANSEN. Mr. President, I ask unanimous consent that after the consideration of the Nelson amendment tomorrow morning, the Danforth-Javits amendment may be next considered.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Wyoming?

Without objection, it is so ordered.

SPECIAL ORDERS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow morning, after the two leaders are recognized, Senator PROXMIRE be recognized for not to exceed 5 minutes, and Mr. GOLDWATER for not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with statements therein limited to 3 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment and an amendment to the title:

H.R. 39. An act to designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes (together with minority and supplemental views) (Rept. No. 95–1300).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with amendments:

S. 1403. A bill to provide for conveyance of certain lands near Dixon, New Mexico, to the University of New Mexico (Rept. No. 95–1301).

By Mr. JACKSON, from the Committee on Energy and Natural Resources:

Special Report Pursuant to Section 302(b) of the Congressional Budget Act (Rept. 95–1302).

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

H.R. 9937. An act to amend the Bank Holding Company Act Amendments of 1970 (Rept. No. 95–1303).

S. 3581. An original bill to extend the authorization for the striking of bicentennial medals (Rept. No. 95–1304).

By MR. HANSEN, from the Committee on Energy and Natural Resources, with amendments:

H.R. 12349. An Act to provide for the Du-Noir Basin Addition to the Washakie Wilderness (Rept. No. 95–1305).

By Mr. LONG, from the Committee on Finance, with an amendment and an amendment to the title:

H.R. 12973. An act to amend title XX of the Social Security Act to increase the entitlement ceiling and otherwise provide for an expanded social services program, to promote consultation and cooperative efforts among States, localities, and other local public and private agencies to coordinate services, to extend certain provisions of Public Law 94–401, and for other purposes (Rept. No. 95–1306).

By MR. LONG, from the Committee on Finance, with amendments and an amendment to the title:

H.R. 5551. An act to suspend until the close of June 30, 1980, the duty on 2-Methyl, 4-chlorophenol (Rept. No. 95–1307).

By MR. LONG, from the Committee on Finance, without amendment, but with a preamble:

S. Res. 475. A resolution disapproving Internal Revenue Service reorganization (Rept. No. 95–1308).

By Mr. MUSKIE, from the Committee on the Budget without amendment:

S. Res. 576. A resolution waiving section 303(a) of the Congressional Budget Act of 1974 with respect to consideration of an amendment intended to be proposed by Mr. Kennedy (for himself and other Senators) to H.R. 13511 (Rept. No. 95–1309).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WILLIAMS, from the Committee on Human Resources:

Charles William Benton, of Illinois, to be a Member of the National Commission on Libraries and Information Science.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. DURKIN:

S. 3580. A bill to amend the Internal Revenue Code of 1954 to increase the amount of the dividend exclusion; to the Committee on Finance.

By Mr. PROXMIRE (from the Committee on Banking, Housing, and Urban Affairs):

S. 3581. A bill to provide for the authorization for the striking of bicentennial medals. Original bill reported and placed on the calendar.

By Mr. HATCH:

S. 3582. A bill to amend the Small Business Act by adding at the appropriate place an Employee Protection Program; to the Select Committee on Small Business.

By Mr. BARTLETT:

S. 3583. A bill to prohibit the use of any name, official title, photograph, or other communication of any individual, public official, business association, or nonprofit organization without obtaining prior written consent; to the Committee on the Judiciary.

S. 3584. A bill to amend the "Joint Owners" provision of the Patent Act, Title 35,

U.S.C., Sec. 262; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURKIN:

S. 3580. A bill to amend the Internal Revenue Code of 1954 to increase the amount of the dividend exclusion; to the Committee on Finance.

THE DIVIDEND EXCLUSION

● Mr. DURKIN. Mr. President, I am today introducing legislation to reduce taxes for the average citizen who invests in stocks, by increasing from $100 to $250 the amount of dividends a taxpayer may deduct from taxable income. This will not only benefit the modest stockholder but it will also benefit business by increasing investment. Increased investment means increased business growth, and this means more jobs and less unemployment.

There is no question that the time has come to increase this exclusion. This exclusion was last increased in 1963, and in the intervening 15 years the Consumer Price Index has more than doubled, increasing by 113 percent. It is time to bring the dividend exclusion in line with this reality.

Many of us in the Senate and elsewhere have become increasingly concerned over the precipitous decline in capital investments and the sluggish performance of the equity markets.

In good part, at least, this record of poor performance reflects the growing difference between the potential returns on common stocks and the alternatives available in a high-inflation economy. But we should bear in mind that equity market is critical to stimulating a healthy innovation in the country.

The increase that I am proposing will not make anybody rich. It will not help the Rockefellers and the Mellons. But it will increase the attractiveness of equity investments for millions of small investors.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 116 of the Internal Revenue Code of 1954 (relating to partial exclusion of dividends received by individuals) is amended by striking out "$100" each place it appears and inserting in lieu thereof "$250."

(b) The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1978.●

By Mr. HATCH:

S. 3582. A bill to amend the Small Business Act by adding at the appropriate place an employee protection program; to the Select Committee on Small Business.

SMALL BUSINESS EMPLOYEE PROTECTION EQUALIZATION ACT OF 1978

● Mr. HATCH. Mr. President, the airline industry, ConRail, Amtrak, and the steel industry have prevailed on the Congress to enact "Employee Protection, and Trade Readjustment Assistance" programs which provide generous compensation from the U.S. Treasury for employees in those industries which lose their jobs or must relocate due to regulatory actions or economic policies of the Federal Government.

These programs discriminate against other American workers, not employed in these favored industries, who are equally disadvantaged by our regulatory actions and trade policies.

Accordingly, I am introducing today, the Small Business Employee Protection Equalization Act of 1978 to correct this glaring inequity and blatant discrimination in our laws. This bill, which comports identically with section 22 of the airline deregulation bill recently passed by the Senate, authorizes monthly payments for up to 36 months, from the U.S. Treasury to all employees, except corporate officers and directors, having 4 years or more service in small businesses who lose their jobs or suffer "qualifying dislocation" due to regulatory action, trade or economic policy of the Federal Government.

Like the airline deregulation bill, this measure provides: First, that the monthly assistance or reimbursement payments shall be sufficient to maintain the displaced employee in the same financial and fringe benefit status he or she enjoyed in their job; second, that payments will also be made to cover the relocation expenses of such employee and his family when he or she must relocate because of Government action to accept other employment, and third, that the Treasury will also cover any loss such employee incurs because of selling his home, canceling or forfeiting his lease or purchase contract because of the relocations.

While this bill would not benefit a small business worker nearly to the extent of the $100,000 a year plus that the Treasury will pay some airline pilots under their employee protection plan, nor will the American taxpayer be obliged to pay the high compensation of Amtrak, ConRail and steelworkers are entitled to, it will go a long way toward removing the outrageous discrimination against the Nation's "little people" under existing law.

Why should we continue to "squeeze the little guys" in our economy by relegating them to the meager unemployment compensation handouts, while paying these enormous benefits to some of the most privileged and highest paid workers in the country?

It does not make any sense to me and I am confident it does not make any sense to most Members of the U.S. Senate.

I therefore urge this body to remove this affront to the 100 million Americans who rely on small business for a livelihood by acting speedily and favorably on this measure.●

By Mr. BARTLETT:

S. 3583. A bill to prohibit the use of any name, official title, photograph, or other communication of any individual, public official, business association, or nonprofit organization without obtaining prior written consent; to the Committee on the Judiciary.

S. 3584. A bill to amend the "Joint Owners" provision of the Patent Act, title 35, U.S.C., section 262; to the Committee on the Judiciary.

UNAUTHORIZED USE OF ENDORSEMENT ACT

● Mr. BARTLETT. Mr. President, the legislation that I am introducing today is a serious proposal which should be considered during the 96th Congress, and after hearings, it should be inacted in some form designed to protect the unsuspecting consumer.

The legislation arises from the use of names and statements of both public figures and other citizens to promote products and or services. This use was done completely without the authorization of the individual whose name and statement was used, and this practice proved to have significant misleading effect on the general public. In fact, the majority cases showed a detrimental impact on the unsuspecting consumer.

It is a fact of life that people of various occupations and social strata often enjoy having their name used in some public format, but this use is usually done with the person's permission, particularly when the use relates to the promotion of a product or a service.

Most political figures seek publicity in many shapes and forms, but when it comes to the promotion of a product or service, I believe that most politicians have a policy of requiring notice of the use and some form of granting official permission.

My policy has always been to require a complete written request and accurate explanation of the proposed use of my name or statements. I have followed this rule whether it was a product, service, or another person for which the support is requested. Notwithstanding my policy, I have rarely allowed my name to be used for the promotion of a product or service. I believe this is the general rule followed by my colleagues, and is what the general public expects has occurred when they see such endorsement.

The legislation I am introducing codifies this accepted practice. The need is based on the fact that some businesses have and probably still are not following the procedure, and it has proven, in the discovered cases, to be very detrimental to the general public.

Mr. President, I have a second piece of legislation which is indirectly related to the matter I have just discussed. The legislation arises out of testimony that occurred during the investigation of complaints pertaining to the deception to consumers where names and statements were used without authorization to promote a patent service.

My amendment merely provides that where there is joint ownership of a patent, the joint owners must be informed in writing that any of them may use or sell the patented invention without the consent of the other joint owners, or an accounting to the other joint owners.

Title 35 U.S.C. section 262 provides that any joint owner:

. . . may make, use or sell the patented invention without the consent of and without accounting to the other owners.

My amendment requires that at the outset of the joint ownership, all parties must be informed in writing of the provisions contained in section 262.

This is particularly important to the person who has never been involved with patent procedures and must seek the promotion of an invention through the sale of a joint ownership interest.

Again, I would hope for hearing and action on these matters during the 96th Congress.

Mr. President, the development of these two pieces of legislation has taken a good deal of time and careful consideration. I would like to particularly thank Harriet Guber Mulhern, senior staff attorney, Federal Trade Commission, New York regional office, for her thoughts and advice while my staff was preparing this legislation. Mrs. Mulhern has a good deal of experience in this area, because of her involvement in the prosecution of such cases.

Mr. President, I ask unanimous consent that my two bills be printed at this point in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 3583

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Unauthorized Use and Endorsement Act".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the names, official titles, photographs, and other communications of persons, public officials, business associations, or nonprofit organizations have been used to promote and endorse certain products and services without their permission;

(2) there is reason to believe that the general public has been and will continue to be mislead and rely upon the unauthorized use of names, official titles, photographs, and other communications of individuals, public officials, business associations, or nonprofit organizations in the purcase of products or services;

(3) there is a reasonable possibility of loss of reputation or detriment to individuals, public officials, business associations, or nonprofit organizations, whose name, official title, photograph, or other communication is used, without prior knowledge and written consent, to promote a product or service;

(4) there is a reasonable possibility of loss to consumers who have erroneously relied upon unauthorized endorsements of products or services by individuals, public officials, business associations, or nonprofit organizations whose name, official title, photograph, or other communication has been used for commercial purposes without prior knowledge and written consent. (b) The purposes of this Act are—

(1) to prohibit the unauthorized use of the name, official title, photograph, or other oral or written communication of an individual, public official, business association, or nonprofit organzation to promote the sale of products or services; and

(2) to provide a remedy for individuals, public officials, business associations, or nonprofit organizations, who are misled by or rely upon such unauthorized use, and to provide a remedy for the individual, public official, business association, or nonprofit organization whose name, official title, photograph, or other communication is used without prior knowledge and written consent.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(1) "business association" means a corporation, partnership, joint venture, or other association whose purpose is the sale for profit of a product or service;

(2) "electronic communication" means any communication made in whole or in part through the use of radio, television, telephone, telegraph, or any other electronic or mechanical means;

(3) "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(4) "nonprofit organization" means an organization described in section 501(c)(3) of the Internal Revenue Code of 1954;

(5) "person" includes an individual, public official, business association, and nonprofit organization as defined by this Act;

(6) "printed material" means a brochure, pamphlet, flyer, book, magazine, advertisement, letter, circular, or notice of any kind; and

(7) "public official" means an individual elected or appointed to an office in Federal, State, or local government, whether or not reimbursed for his or her services, or an individual employed by a Federal, State, or local unit of government.

PROHIBITIONS

SEC. 4. (a) Any person who uses, in any printed material or any electronic communication, the name, official title, photograph, or other oral or written communication of any other person, without that person's prior written consent and knowledge, or if such person is a minor, the consent of such person's parent or guardian, for—

(1) promoting or advertising the sale of products or services;

(2) solicitation of patronage; or

(3) solicitation of contributions;

shall for each violation be fined not more than $10,000, imprisoned for not more than thirty days, or both.

(b) Any person who represents, directly or indirectly, orally, in writing, or by other manner or means, that another person has endorsed, used, or has been satisfied with the products or services of the first person, and such representation is made without the prior written consent and knowledge of such person, or if such person is a minor, the consent of that person's parent or guardian, shall for each violation be fined not more than $10,000, imprisoned for not more than 30 days, or both.

(c) Prior written consent for to the use of any person's name, official title, photograph, or other oral or written communication required in subsections (a) and (b) of this section shall be voluntarily given and may be limited to a particular purpose or time period, and revoked by written notice at any time after such consent is given.

REMEDIES

SEC. 5. (a) The Federal Trade Commission may bring an action for injunctive relief in a United States district court in any district in which a violation of subsection (a) or (b) of section 4 is alleged to have occurred, or in any district in which the alleged violator is found or transacts business.

(b) The Federal Trade Commission may bring a civil action in a United States district court in any district in which a violation of section 4 (a) or (b) is alleged to have occurred to recover a civil penalty of or in any district in which the alleged violator is found or transacts business.

(c) Any person whose name, official title, photograph, or other oral or written communication is used in violation of section 4 (a), or who is the subject of a representation of endorsement, use, or satisfaction with a product or service in violation of section 4 (b), may bring an action for damages sustained as the result of such violation in any United States district court in the district in which a violation is alleged to have occurred or in which the complainant resides, without regard to the amount in controversy, within two years from the date on which the cause of action arises. In any case in which the violation was committed knowingly, the complainant may be awarded exemplary damages.

(d) Any person who relies to their detriment on the unauthorized use of a person's name, official title, photograph, or other oral or written communication in violation of section 4 (a), or the unauthorized representation of a person's endorsement, use, or satisfaction with a product or service in violation of section 4 (b), may bring an action to recover damages sustained as the result of such reliance in any United States district court in the district in which a violation is alleged to have occurred or in which the complainant resides, without regard to the amount in controversy, within two years from the date on which the cause of action arises. In any case in which the violation was committed knowingly, the complainant may be awarded exemplary damages.

S. 3584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 262 of title 35, United States Code is amended by adding the following new subsection:

(b) Any assignment of a part interest in a patent is voidable at the instance of any party if it does not set forth in writing the provisions of the proceeding subsection.●

ADDITIONAL COSPONSORS

S. 2725

At the request of Mr. MATSUNAGA, the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2725, to grant early retirement benefits to air traffic control specialists employed at flight service stations.

S. 3392

At the request of Mr. MATSUNAGA, the Senator from Colorado (Mr. HART) was added as a cosponsor of S. 3392, to accelerate solar photovoltaic energy research, development, and demonstration.

SENATE RESOLUTION 571

At the request of Mr. DOLE, the Senator from New York (Mr. JAVITS) was added as a cosponsor of Senate Resolution 571, a resolution regarding the situation in Lebanon.

AMENDMENT NO. 4058

At the request of Mr. NELSON, the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Alabama (Mr. SPARKMAN) were added as cosponsors of amendment No. 4058 intended to be proposed to the committee amendment to H.R. 13511, the Revenue Act of 1978.

AMENDMENTS SUBMITTED FOR PRINTING

REVENUE ACT OF 1978—H.R. 13511

AMENDMENT NO. 4083

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself, Mrs. HUMPHREY, Mr. WILLIAMS, Mr. CRANSTON, and

Mr. KENNEDY) submitted an amendment intended to be proposed by them, jointly, to the committee amendment in the nature of a substitute to H.R. 13511, an act to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

AMENDMENT NO. 4084

(Ordered to be printed and to lie on the table.)

Mr. NUNN (for himself, Mr. CHILES, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4085

(Ordered to be printed and to lie on the table.)

Mr. CULVER (for himself, Mr. EAGLETON, Mr. NELSON, Mr. PEARSON, Mr. ROTH, Mr. GRIFFIN, Mr. HELMS, and Mr. HEINZ) submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4086

(Ordered to be printed and to lie on the table.)

Mr. DECONCINI submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4087

(Ordered to be printed and to lie on the table.)

Mr. BAYH submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4088

(Ordered to be printed and to lie on the table.)

Mr. BARTLETT (for himself, Mr. BELLMON, Mr. BENTSEN, Mr. CURTIS, Mr. DOLE, Mr. DOMENICI, Mr. GOLDWATER, Mr. GRAVEL, Mr. GRIFFIN, Mr. HANSEN, Mr. HATCH, Mr. MARK O. HATFIELD, Mr. HELMS, Mr. LAXALT, Mr. LUGAR, Mr. MCCLURE, Mr. MELCHER, Mr. SCHMITT, Mr. SCOTT, Mr. STEVENS, Mr. TOWER, and Mr. WALLOP) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENTS NOS. 4089 THROUGH 4115

(Ordered to be printed and to lie on the table.)

Mr. LONG submitted 27 amendments intended to be proposed by him to amendment No. 3678 (as modified) proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4116 AND 4117

(Ordered to be printed and to lie on the table.)

Mr. PROXMIRE submitted two amendments intended to be proposed by him to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENT NO. 4118

(Ordered to be printed and to lie on the table.)

Mr. DOLE submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4119

(Ordered to be printed and to lie on the table.)

Mr. JAVITS submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4120

(Ordered to be printed and to lie on the table.)

Mr. DOLE submittted an amendment intended to be proposed by him to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4121 AND 4122

(Ordered to be printed and to lie on the table.)

Mr. GRAVEL submitted two amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENTS NOS. 4123 AND 4124

(Ordered to be printed and to lie on the table.)

Mr. JAVITS submitted two amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4125

(Ordered to be printed and to lie on the table.)

Mr. JAVITS (on behalf of Mr. HATHAWAY and himself) submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4126

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENTS NOS. 4127 THROUGH 4129

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted three amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENTS NOS. 4130 AND 4131

(Ordered to be printed and to lie on the table.)

Mr. PROXMIRE submitted two amendments intended to be proposed by him to Amendment No. 3678 (as modified) proposed to H.R. 13511, supra.

AMENDMENT NO. 4132

(Ordered to be printed and to lie on the table.)

Mr. HUDDLESTON submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4133

(Ordered to be printed and to lie on the table.)

Mr. MATHIAS submitted an amendment intended to be proposed by him to an amendment intended to be proposed by Mr. CULVER to H.R. 13511, supra.

AMENDMENTS NOS. 4134 THROUGH 4136

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted three amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4137

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to Amendment No. 4036 intended to be proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4138 AND 4139

(Ordered to be printed and to lie on the table.)

Mr. PROXMIRE submitted two amendments intended to be proposed by him to Amendment No. 4083 intended to be proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4140 AND 4141

(Ordered to be printed and to lie on the table.)

Mr. PACKWOOD submitted two amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511. supra.

AMENDMENTS NOS. 4142 AND 4143

(Ordered to be printed and to lie on the table.)

Mr. PACKWOOD submitted two amendments intended to be proposed by him to a pending amendment intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 4144

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4145

(Ordered to be printed and to lie on the table.)

Mr. CULVER (for himself, Mr. EAGLETON, Mr. NELSON, Mr. PEARSON, Mr. ROTH, Mr. GRIFFIN, Mr. HELMS, and Mr. HEINZ) submitted an amendment intended to be proposed by them, jointly. to H.R. 13511, supra.

AMENDMENTS NOS. 4146 THROUGH 4148

(Ordered to be printed and to lie on the table.)

Mr. JAVITS submitted three amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NOS. 4149 AND 4150

(Ordered to be printed and to lie on the table.)

Mr. HELMS sumitted two amendments intended to be proposed by him to Amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4151 AND 4152

(Ordered to be printed and to lie on the table.)

Mr. BAKER (for Mr. GRIFFIN) submitted two amendments intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4153

(Ordered to be printed and to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENTS NOS. 4154 AND 4155

(Ordered to be printed and to lie on the table.)

Mr. GLENN submitted two amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4156

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted an amendment

intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4157

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted an amendment intended to be proposed by him to Amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4158 AND 4159

(Ordered to be printed and to lie on the table.)

Mr. HEINZ (for himself, Mr. DOMENICI, Mr. BROOKE, Mr. CASE, Mr. HASKELL, and Mr. DURKIN) submitted two amendments intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENTS NOS. 4160 AND 4161

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself and Mr. BELLMON) submitted two amendments intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4162

(Ordered to be printed and to lie on the table.)

Mr. BELLMON submitted an amendment intended to be proposed by him to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4163 THROUGH 4167

(Ordered to be printed and to lie on the table.)

Mr. BELLMON (for himself and Mr. CHILES) submitted five amendments intended to be proposed by them, jointly, to the bill or an amendment proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4168 THROUGH 4172

(Ordered to be printed and to lie on the table.)

Mr. BELLMON (for himself and Mr. CHILES) submitted five amendments intended to be proposed by them, jointly, to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4173 THROUGH 4175

(Ordered to be printed and to lie on the table.)

Mr. HEINZ submitted three amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4176

(Ordered to be printed and to lie on the table.)

Mr. BELLMON, on behalf of Mr. CHILES and himself, submitted an amendment intended to be proposed by them, jointly to amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENT NO. 4177

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to amendment No. 4061 intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 4178

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to amendment No. 4062 intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 4179

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to the committee amendment in the nature of a substitute.

AMENDMENT NO. 4180

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to Amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENT NO. 4181

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to Amendment No. 4060 intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 4182

(Ordered to be printed and to lie on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to Amendment No. 4059 intended to be proposed to H.R. 13511, supra.

AMENDMENT NO. 4183

(Ordered to be printed and to lie on on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4184

(Ordered to be printed and to lie on on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4185

(Ordered to be printed and to lie on on the table.)

Mr. CHILES (for himself, Mr. NUNN, Mr. BELLMON, Mr. ROTH, Mr. DANFORTH, Mr. BIDEN, Mr. STONE, Mr. MORGAN, Mr. MARK O. HATFIELD, Mr. SASSER, Mr. STAFFORD, Mr. LUGAR, Mr. WALLOP, Mr. ZORINSKY, Mr. HELMS, Mr. THURMOND, Mr. PROXMIRE, Mr. STEVENS, Mr. HODGES, Mr. MELCHER, Mr. DOMENICI, and Mr. HATCH) submitted an amendment intended to be proposed by them to the pending amendment proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4186 THROUGH 4464

(Ordered to be printed and to lie on on the table.)

Mr. HATCH submitted 279 amendments intended to be proposed by him to Amendment No. 4049 proposed to H.R. 13511, supra.

AMENDMENTS NOS. 4465 THROUGH 4469

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted five amendments intended to be proposed by him to H.R. 13511, supra.

AMENDMENTS NOS. 4407 THROUGH 4481

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted 12 amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4482

(Ordered to be printed and to lie on the table.)

Mr. NELSON submitted an amendment intended to be proposed by him to the committee amendment to H.R. 13511, supra.

Mr. NELSON. Mr. President, today I am submitting this amendment to the Revenue Act of 1978, H.R. 13511. I ask that the text of this amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

On page 313, line 2, strike "30 percent" and insert in lieu thereof "25 percent".

On page 314, between lines 3 and 4, insert the following new section:

DEPRECIATION REFORM

SEC. 363(a) Section 167 of the Internal Revenue Code of 1954 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(q) THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—

"(1) GENERAL RULE.—In the case of a taxpayer who has made an election under this subsection for the taxable year, the term 'reasonable allowance' as used in subsection (a) means (with respect to property which has a useful life of 36 months or more) an allowance based on a useful life of 36 months computed under the straight-line method (within the meaning of subsection (b)(1)).

"(2) $25,000 BASIS LIMITATION.—For purposes of this subsection, the basis (as determined under subsection (g)) of property placed in service during the taxable year shall, to the extent that such basis exceeds $25,000 for the taxable year, not be taken into account.

"(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time, in such manner, and subject to such conditions as may be prescribed by the Secretary by regulations.

"(4) LIMITATION.—

"(A) GENERAL RULE.—Subject to the exception provided by subparagraph (B), the provisions of this section shall not apply to property to which an election under section 179 applies.

"(B) EXCEPTION.—The provisions of subparagraph (A) shall not apply to that portion of the basis of property placed in service during the taxable year which exceeds $25,000 for the taxable year."

(b) Subsection (c) of section 46 is amended by adding at the end thereof the following new paragraph:

"(6) APPLICABLE PERCENTAGE IN THE CASE OF THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—Notwithstanding subsection (c)(2), in the case of property with respect to which an election under section 167(q) applies, the useful life of any such property for purposes of this subpart shall be the useful life determined without regard to section 167(q).".

EFFECTIVE DATE

(c) the amendments made by this section shall apply in the case of property acquired and placed in service in taxable years beginning after December 31, 1978.

AMENDMENT NO. 4483

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself and Mr. DURKIN) submitted an amendment intended to be proposed by them, jointly, to the committee amendment to H.R. 13511, supra.

Mr. NELSON. Mr. President, today I am submitting this amendment to the committee amendment to the Revenue Act of 1978, H.R. 13511. I ask that the text of this amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

Beginning with line 24, on page 312, strike through line 12, on page 313, and insert in lieu thereof the following:

DEPRECIATION REFORM

SEC. 361(a). Section 167 of the Internal Revenue Code of 1954 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(q) THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—

"(1) GENERAL RULE.—In the case of a taxpayer who has made an election under this subsection for the taxable year, the term 'reasonable allowance' as used in subsection (a) means (with respect to property which has a useful life of 36 months or more) an allowance based on a useful life of 36 months computed under the straight-line method (within the meaning of subsection (b)(1)).

"(2) $25,000 BASIS LIMITATION.—For purposes of this subsection, the basis (as determined under subsection (g)) of property placed in service during the taxable year shall, to the extent that such basis exceeds $25,000 for the taxable year, not be taken into account.

"(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time, in such manner, and subject to such conditions as may be prescribed by the Secretary by regulations.

"(4) LIMITATION.—

"(A) GENERAL RULE.—Subject to the exception provided by subparagraph (B), the provisions of this section shall not apply to property to which an election under section 179 applies.

"(B) EXCEPTION.—The provisions of subparagraph (A) shall not apply to that portion of the basis of property placed in service during the taxable year which exceeds $25,000 for the taxable year.

(b) Subsection (c) of section 46 is amended by adding at the end thereof the following new paragraph:

"(6) APPLICABLE PERCENTAGE IN THE CASE OF THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—Notwithstanding subsection (c)(2), in the case of property with respect to which an election under section 167(q) applies, the useful life of any such property for purposes of this subpart shall be the useful life determined without regard to section 167(q).".

EFFECTIVE DATE

(c) the amendments made by this section shall apply in the case of property acquired and placed in service in taxable years beginning after December 31, 1978.

AMENDMENT NO. 4484

(Ordered to be printed and to lie on the table.)

Mr. DECONCINI submitted an amendment intended to be proposed by him to H.R. 13511, supra.

AMENDMENT NO. 4485

(Ordered to be printed and to lie on the table.)

Mr. INOUYE (for himself and Mr. MATSUNAGA) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4486

(Ordered to be printed and to lie on the table.)

Mr. DECONCINI submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENTS NOS. 4487 AND 4488

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS submitted two amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4489

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS (for himself and Mr. HODGES) submitted an amendment intended to be proposed by them, jointly, to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4490

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS (for himself and Mr. HODGES) submitted an amendment intended to be proposed by them, jointly, to H.R. 13511, supra.

AMENDMENT NO. 4491

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS (for himself, Mr. SPARKMAN, Mr. BROOKE, Mr. BENTSEN, Mr. TOWER, Mr. MATHIAS, Mr. STONE, Mr. FORD, Mr. SARBANES, Mr. HODGES, Mrs. ALLEN, Mr. HUDDLESTON, Mr. ANDERSON, Mr. HODGES, Mr. RANDOLPH, Mr. MAGNUSON, Mr. CHILES, Mr. LUGAR, Mr. CURTIS, Mr. SCHWEIKER, Mr. HAYAKAWA, Mr. MOYNIHAN, Mr. MORGAN, and Mr. SCHMITT) submitted an amendment intended to be proposed by them, jointly, to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENT NO. 4492

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

AMENDMENTS NOS. 4493 AND 4494

(Ordered to be printed and to lie on the table.)

Mr. LONG submitted two amendments intended to be proposed by him to the committee amendment in the nature of a substitute to H.R. 13511, supra.

SAWTOOTH NATIONAL RECREATION AREA—S. 791

AMENDMENT NO. 4495

(Ordered to be printed and referred to the Committee on Finance)

Mr. MELCHER submitted an amendment intended to be proposed by him to S. 791, a bill to authorize additional appropriations for the acquisition of lands and interests in lands within the Sawtooth National Recreation Area in Idaho.

TAX RATE OF MARRIED INDIVIDUALS—S. 2941

AMENDMENT NO. 4496

(Ordered to be printed and to lie on the table.)

Mr. MATHIAS submitted an amendment intended to be proposed by him to S. 2941, a bill to amend the Internal Revenue Code of 1954 to provide that a married individual who files a separate return may be taxed at the same rate as an unmarried individual.

SOLAR PHOTOVOLTAIC ENERGY RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1978—S. 3392

AMENDMENTS NOS. 4497 AND 4498

(Ordered to be printed and to lie on the table.)

Mr. BARTLETT (for himself, Mr. BELLMON, Mr. BENTSEN, Mr. CURTIS, Mr.

DOLE, Mr. DOMENICI, Mr. GOLDWATER, Mr. GRAVEL, Mr. GRIFFIN, Mr. HANSEN, Mr. HATCH, Mr. MARK O. HATFIELD, Mr. HELMS, Mr. LAXALT, Mr. LUGAR, Mr. MCCLURE, Mr. MELCHER, Mr. SCHMITT, Mr. SCOTT, Mr. STEVENS, Mr. TOWER, and Mr. WALLOP) submitted an amendment intended to be proposed by them to S. 3392, a bill to provide for an accelerated program of research, development, and demonstration of solar photovoltaic energy technologies.

CONSTITUTIONAL RIGHTS OF INSTITUTIONALIZED PERSONS—S. 1393

AMENDMENTS NOS. 4499 THROUGH 4508

(Ordered to be printed and to lie on the table.)

Mr. DANFORTH submitted 10 amendments intended to be proposed by him to S. 1393, a bill to authorize actions by the Attorney General to redress deprivations of constitutional and other federally protected rights of institutionalized persons.

DUTY ON YANKEE DRYER CYLINDERS—H.R. 7108

AMENDMENTS NOS. 4509 AND 4510

Mr. HOLLINGS submitted two amendments intended to be proposed by him to H.R. 7108, an act to amend the Tariff Schedules of the United States in order to suspend the duty on Yankee dryer cylinders until the close of December 31, 1981.

CONSTITUTIONAL RIGHTS OF INSTITUTIONALIZED PERSONS—H.R. 9400

AMENDMENTS NOS. 4511 THROUGH 4519

(Ordered to be printed and to lie on the table.)

Mr. DANFORTH submitted nine amendments intended to be proposed by him to H.R. 9400, an act to authorize actions for redress in cases involving deprivations of rights of institutionalized persons secured or protected by the Constitution or laws of the United States.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be given permission to meet on October 10 and 11 at 10 o'clock a.m., to conduct hearings on export policy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, October 10, to hear remarks of Ambassador Warnke relative to SALT and to consider nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

BANKING COMMITTEE ACTS ON GOLD MEDALLION LEGISLATION

● Mr. HELMS. Mr. President, the Senate Committee on Banking, Housing, and Urban Affairs has approved an amendment which would require the Treasury to offer for sale to the public gold pieces of not more than one ounce if they choose to sell gold at all. This was added to the regulation Q bill, S. 3499.

The distinguished Senator from Indiana (Mr. LUGAR) spoke very capably on this topic when the Banking Committee held hearings on S. 2843, the Gold Medallion Act of 1978 on August 25. He also is a cosponsor of this legislation which I first offered in April of this year. Senator LUGAR offered a slightly modified version of the Gold Medallion Act as an amendment to the regulation Q bill, and the committee chairman, Senator PROXMIRE, offered as a substitute, an abbreviated version of the bill which reads as follows:

Sec. X. (a) Whenever the Secretary of the Treasury authorizes the sale of gold to the public, not less than ten percent by weight of the gold offered for sale each fiscal year pursuant to such authorization shall be offered in units containing not more than one troy ounce of gold.

(b) Notwithstanding any other provision of this Act the number of units to be produced and sold in units of one ounce or less in fiscal years after fiscal year 1979 shall be adjusted to meet anticipated demand.

The meat of the legislation is in that substitute: that if the Treasury sells some of the vital U.S. gold stocks, then it should do so in the form U.S. citizens are demanding. The committee also acted to approve language to be included in the committee report on the bill which reads:

In approving this section, the Committee recognizes the sizeable market for gold pieces in the United States and anticipates that the items produced pursuant to this section would be manufactured to compete in this market and would bear appropriate design, and weight and fineness markings so as to enhance their marketability. The Committee further recognizes that demand for such items may change and anticipates that production and sales in any year such units are produced, would be expanded or reduced to meet such demand, but in the first year, would not be reduced below 10% of total gold sales.

In other words, the committee intends these "units" or "pieces" to compete in the same market with Krugerrands—one ounce gold pieces from South Africa—with Mexican gold pesos, Austrian gold kronen, and the new Canadian gold $100 coin.

Senator PROXMIRE noted that the Treasury Department is concerned about the use of the term "medallion" in that it might have a monetary connotation which would give the impression Treasury is relenting in its efforts to "demonetize" gold.

The staff "explanation" of the amendment reads as follows:

The Secretary of Treasury would be required, in the first fiscal year after date of enactment of this Act in which he authorizes gold sales to the public, to offer not less than ten percent of the gold offered for sale in that fiscal year in the form of units containing not more than one troy ounce of gold. The provision would give the public an opportunity to buy Treasury gold in small quantities, but would not require issuance of "medallions" which could be mistaken for coins or legal tender and create an erroneous impression that the United States Government believes gold should have a monetary role.

Mr. President, the monetization fear is trivial. The dollar has no connection with gold; if it did there would not be vast numbers of people in the world trying to get into gold and out of dollars. Let it be clear that I do not advocate investment in gold or any other inflation hedge. I advocate getting rid of inflation.

No "hedge" can provide real protection from a depreciating and corrupting monetary system that no longer serves some of the prime functions of money: The dollar is no longer a store of value or a standard of value. It serves as a medium of exchange almost exclusively.

Well, if the Treasury wants to call a gold piece a "unit" or a "wafer" or a "thingamabob," it makes no difference. The important thing is that it be designed, produced, and marketed in the manner that the American market wants. The Banking Committee has in effect, acted to give the Treasury authority to make that determination. I know that many in the Congress and in the public sector will watch carefully to see that the intent of Congress is carried out if, in fact, this is the language finally enacted.

I support the committee's action. Although I would have preferred that the bill contain more specific language as to the design and other details, I am satisfied that decisions on these issues will not be made in a vacuum. Obviously, if the Treasury Department puzzles over a gold piece that would be most unmoney like, it might consider offering for sale a gold toothpick. But, if Treasury officials ask any person in this country who either sells or buys 1 of the 3 million ounces of gold being sold in this country this year in small units what he wants, I think they will come up with something better.

The General Services Administration has sent to the Banking Committee a proposed set of marketing plans which offer a number of alternatives. I think that a plan can be adopted which would provide maximum opportunities to individuals to participate in the sales and maximize revenues to the Federal Government.

There are basically two alternative forms of sale. One would be an over-the-counter method wherein the gold pieces would be sold at a daily changing price equal to the world price of gold bullion plus a premium to cover production, distribution, and some profit for the retailers. The General Services Administration draft proposal for marketing the gold medallions my initial bill would have authorized, stated that the gold medallions could be produced, distributed, and advertised for approximately $4.40 each, plus some profit margin for banks or other institutions who would handle them. This might make the retail price $6 to $10 above the bullion price. That

is equivalent to 3 to 5 percent above the bullion price. It would be highly competitive to the most popular gold item: the Krugerrand which is sold wholesale at 3 percent above the bullion price.

The difficulty that this method of sale poses with the bill I initially offered is that in the first year after enactment, at most, 1.5 million ounces of medallions would be produced. In other words, the supply would be finite. If supply is limited, then the over-the-counter method has the obvious disadvantage of potential shortages if the marketplace determines that at the "fixed" price, the demand is greater than the available supply.

Under the legislation approved by the Banking Committee, however, the production could be expanded during the course of the year to meet demand if gold sales continued. This may cause some production problems, of course, for changing production levels may increase unit costs somewhat. There is a great deal of time, however, between now and October 1979 to work out these details and a great deal that must first be accomplished—including getting the legislation to the President's desk.

The second marketing alternative is to offer the pieces via monthly, common-price auctions. This provides the advantage of maximum revenues to the Federal Government and assuring that the marketplace will determine the price.

In other words. if it was known that a specific number of gold pieces were to be sold in the month of October 1979, bids could be solicited, and then the price would be the price at or above which there were sufficient bids to sell all pieces offered for sale on that day. If half a million pieces were offered and half a million pieces were bid for at or above $225, then all pieces would be sold at $225. This is sometimes known as a common-price or "Dutch" auction system. It has the advantage of providing some protection to individual bidders who may be less sophisticated than big dealers in that they will pay the same price all other successful bidders pay. Since the price at which the pieces are sold is the lowest price proposed by enough bidders to purchase all items sold, it encourages those who have a great desire to own the pieces to bid higher. Some experts say that by providing these two aspects—protection for the unsophisticated and one price for all—the "Dutch' auction system encourages more bidders and thus tends to increase the average price at which the pieces are sold. This increases the revenues to the Government.

The disadvantages to this is that it costs more to manage. GSA has estimated that such a system of marketing might result in a cost of up to $11.70 apiece to deliver gold pieces into the hands of the successful bidders. This would be equal to about 6-percent premium above the bullion price.

I believe that the Treasury Department will be able to produce the kind of item that the American people want and in the quantities they want. I predict that demand for a U.S. gold piece will be far greater than 10 percent of gold sales. Sales of the new gold pieces could come to $500 million per year and that would soak up $500 million out of the grossly inflated U.S. money supply.

It is time to put gold back into the hands of the American people. The legislation approved by the Senate Banking Committee could do it. It is flexible enough to provide for gold pieces that would appeal to various markets. It is specific enough to make it clear to the Treasury Department that the desires of the American people should be met.

I know there is considerable support in the House of Representatives for some legislation which would authorize the production of gold pieces. Certainly, speedy action in that body will help insure enactment of a gold piece law this year.

For whatever success we may be able to achieve this year, much credit goes to the other Members of Congress in the House and Senate who have worked on various pieces of legislation which would result in the production of a U.S. gold piece. In particular, I owe much to my friend, the distinguished chairman of the Senate Banking Committee, BILL PROXMIRE, who scheduled hearings on S. 2943, the Gold Medallion Act, and who offered many good words of encouragement.

In addition, I will take this time to compliment the work done by a little-known public policy research organization: The Institute on Money and Inflation. This organization is dedicated to providing information on monetary policy and related matters to Members of Congress and it gave me and others vital assistance on the issues related to the gold piece legislation and its policy implications.

PUBLIC WORKS FLOOD CONTROL PROJECTS OF CRITICAL IMPORTANCE IN MINNESOTA

● Mrs. HUMPHREY. Mr. President, while I am supportive of some of the criteria applied by the President regarding his decision to veto the public works appropriation bill as approved by the Senate and the House of Representatives, I have some very real concerns in regard to my own State of Minnesota. This bill, as passed, was the product of a great deal of consideration and deliberation this year.

Last year, despite considerable concern over a number of vitally needed flood control and energy projects, the Senate agreed to a compromise with the President and supported his policy of no new construction starts until completion of the formulation of a comprehensive water policy. I know that in my State of Minnesota, this meant the temporary termination of a number of much needed flood control measures, of relatively low cost, which would save millions of dollars in Federal, State, and local disaster relief efforts.

Senator Hubert Humphrey was sympathetic to the committee's recommendation for no new construction starts and concurrence with the administration's budget request. At the same time, he remained sympathetic to the residents of Minnesota who live in constant fear of spring flooding, the extent of which depends entirely on winter and spring precipitation and the rate at which the snow and ice melts in the upstream areas of my State. The initiation of several projects authorized by the Army Corps of Engineers and the Soil Conservation Service would have put an end to this uncertainty and would prevent the high cost of fighting floods that are cutting deeply into the capital improvement projects of the urban and rural communities of Minnesota.

Let me address the question of whether $20 million appropriated under this bill for construction and planning funding to alleviate this annual problem is a justifiable cost. The answer lies in the fact that in the summer of 1978 alone Minnesota experienced over $230 million in personal, industrial and agricultural damages resulting from flooding which could have been prevented. In all these projects, the Army Corps of Engineers indicated the capability of performing the necessary improvement and preventive measures.

I agree with and share the administration's commitment to the alleviation of wasteful Government spending. However, the expenditure of close to $700 million in fiscal 1978 nationally, over $200 million of which came from the President's disaster authorizations alone, is proof that the relatively small appropriations, in comparison to the total Federal budget, will do a great deal in the alleviation of the wasteful spending than the veto of H.R. 12928.

I wholeheartedly support the views of the distinguished majority leader. I share the administration's concern, but believe that the benefits inherent in the previously authorized public works projects—specifically, the relief of disaster potential, long-term capital improvement projects, and job preservation and creation—far outweigh the administration's expressed purpose in vetoing these appropriations.

In July, I participated in a tour of several flood ravaged areas of Minnesota. Most notable was the city of Rochester, which suffered damages amounting to millions of dollars in applications to the Federal Disaster Assistance Administration, the Small Business Administration, Farmers Home Administration, and the Federal Highway Administration, in addition to other Federal assistance programs. H.R. 12928 includes the modest amount of $700,000 in Federal assistance in my State, which would eventually eliminate similar flood relief disasters in the Minnesota River Valley. I wish to point out that the State of Minnesota has already committed over $500,000 and the SCS a total of about $700,000 to supplement the Federal projects. Neither of these projects is supported by the administration despite the request of the Army Corps of Engineers and the Soil Conservation Service, but both were funded by H.R. 12928. The same is true of a $500,000 project on the Roseau River in northern Minnesota which would prevent millions of dollars damage to personal

property as well as commercial, industrial, and agricultural interests.

Mr. President, on the basis of my personal observation of these disaster struck areas, the funds required for the administration of many Federal agencies charged with the responsibility of responding to these disasters, and careful analysis and consideration of the pleas and experiences of many of my colleagues in the Senate, I must express my strong support for a number of projects not on the administration's list, dedication to the support of efforts to realize my objectives.

It is my opinion that the administration's justification for the action taken on October 5, does not justify neglecting the personal and economic disasters experienced by the people of Minnesota and of the entire Nation.

I strongly urge that every effort be made to enact legislation which will enable critically important public works projects, such as I have discussed, to go forward.●

NUCLEAR WASTE DISPOSAL: CAN THE GEOLOGIST GUARANTEE ISOLATION?

● Mr. MARK O. HATFIELD. Mr. President, since the National Academy of Sciences issued its report in 1956 recommending the burial of high-level radioactive wastes in deep salt beds, it has been taken for granted that the solution of the radioactive waste problem was merely a question of the application of the appropriate technology. Although geologic isolation still appears to be the most promising approach to this problem, the past year has seen the publication of numerous articles outlining some of the as of yet unanswered technical questions involved in geologic disposal. These articles have generally disputed the claim that: "The problem is as good as solved," and pointed to the need for a long-term carefully researched approach to waste disposal and indepth investigation of sites ultimately chosen as locations for high-level waste repositories. The present schedule of the Department of Energy appears to be predicated on the assumption that getting the wastes into the ground as quickly as possible is the proper approach. This and subsequent reviews of the aforementioned articles are intended to show that DOE's approach may ultimately cause more problems than they solve.

In an article published in Science last year—G. deMarsily, E. Ledoux, A. Barbreau and J. Margat, "Nuclear Waste Disposal: Can the Geologist Guarantee Isolation?" Science, 197, page 519, August 5, 1977, four French geologists discussed their investigations into the efficacy of deep geologic isolation. They considered the behavior of three major radioactive elements with half-lives equal to or greater than 20,000 years: iodine-129—16 million years, neptunium-237—2.13 million years, and plutonium-239—24,400 years. The geologists assumed that high-level liquid wastes from spent fuel reprocessing would be disposed of in five geologic formations with different hydraulic parameters. It should be noted here that the United States is currently leaning toward disposal of unreprocessed spent fuel. The formations considered corresponded to no actual types of rock, although rock formations with some of the characteristics certainly do exist. The results of their investigation are discussed below; some of their cautionary statements need to be mentioned.

Heat production by the wastes poses one of the critical problems for safe geologic disposal. The geologists state that:

> The heat flux of the waste is too high to permit large-scale underground disposal in usual formations until at least 50 years after extraction from the reactor, if the liquefaction of the glass is to be avoided or if the repository is not to be artificially cooled. It is therefore necessary to store the waste for a relatively long period in a transient storage facility on the ground surface.

In particular, if the wastes are to be emplaced in bedded salt, certain unique problems could arise. They point out that:

> [T]he plastic behavior of the saline formation may create diapirism if stable conditions are not ensured, and the heat produced by the waste might modify these conditions; the waste blocks might also migrate inside the formations.

In discussing the different mechanisms which might lead to the release of radionuclides to the environment—groundwater flow, faulting, diapirism, erosion, meteorite fall, magma intrusion, or changes in the level of the water table—the geologists state:

> An approach to geologic confinement is often sought by trying to quantify the probability of occurrence of any of these events and their nuisance value to man. Then, by combining these probabilities and nuisance values, one tries to assess the safety coefficient of the repository and to compare it to the accepted safety coefficient for present risks. This approach does not seem realistic to us because basically, the earth's development has not been a random process (possibly apart from the fall of meteorites), and no geologist can seriously give reasonable figures for these probabilities.

As an example, faulting is discussed. In a so-called "earthquake-free" zone neither a record of past faulting nor evidence of present faulting exists. Information on faulting in the rest of the world is irrelevant, since only the risk of faulting at the repository location is of importance. Faulting is not caused by random mechanisms but rather by deterministic ones, and although any repository will be located in a historically stable area, the past stability of an area is not enough to calculate the probability of the future stability of the same area.

Ultimately, water will provide the means of transport of radioactive waste to the environment; the investigations of these geologists were intended to assess how different ground-water regimes might affect this transport. They found that the capacity of the rock to chemically attract the radioactive species was of great importance: a radionuclide which is not attracted to the surrounding rock could, under appropriate conditions, reach the environment in less than ten years. Even if some chemical attraction does exist, the extremely long half-lives of some radioactive atoms means that inevitably some wastes will reach the environment.

The geologists point out that "neither the thickness of the geologic formation nor its low permeability are major factors in the confining of radionuclides with very long half-lives over periods of time on the geological scale." They recommend that escape of the waste into the ground water system of the repository be delayed by encapsulating the wastes; with sufficient delay, the radioactivity of the escaping radionuclides could be reduced sufficiently so as to pose minimal hazards.

The geologists conclude that the specific ground water characteristics of a site are of the greatest importance in disposing of radioactive wastes. No one site will have all favorable characteristics, and although some rock types may be more favorable than others, no site of a particular rock type is likely to have all the required characteristics. Finally, a site cannot be chosen before these favorable characteristics are well known, whereas current DOE policy seems to be based upon choosing the site first and then determining what, if any, favorable characteristics are present in the site.●

ANNOUNCEMENT OF POSITION ON VOTES

● Mr. CLARK. Mr. President, had I been here for votes Nos. 461 and 462 on Saturday, October 7, 1978, I would have voted in the following manner:

Vote No. 461: "Yea."

Vote No. 462: "Nay."●

SPEECH BEFORE ASSOCIATION OF COMMUNITY COLLEGE TRUSTEES

Mr. PERCY. Mr. President, last week I was the guest speaker at the ninth annual convention of the Association of Community College Trustees.

I spoke about the Federal Government's role in education. And I covered the new proposed Department of Education, the tuition tax credit bill and the financial problems education at all levels face because of spiraling inflation.

This convention brought approximately 2,000 governing board members and chief executive officers of our Nation's community and junior colleges, to Washington, D.C. They come from all walks of life, represent varied perspectives but have in common a dedication to helping every high school graduate obtain a quality higher education at reasonable cost.

The concept for community colleges was developed in my home State of Illinois by William Rainey Harper, president of the University of Chicago—my alma mater. Today, there are 39 public community college districts with 51 campuses in Illinois.

Raymond Hartstein, president of the Illinois Community College Trustees As-

sociation, has done a tremendous job in promoting community colleges and junior colleges in Illinois. He was the speaker at the Illinois congressional breakfast this morning and at this time I ask that his remarks be printed in the RECORD.

The statement follows:

REMARKS MADE AT ILLINOIS CONGRESSIONAL BREAKFAST

Honored guests, presidents and administrators, trustees, spouses: good morning, everyone. I am Ray Hartstein of Oakton Community College and Skokie, Illinois, and president of the Illinois Community College Trustees Association.

The Illinois Community College Trustees Association is a federation of the 39 public community college districts in the State of Illinois. It exists as a continuing education and lobbying organization speaking for the needs of the colleges and Illinois' Community College students.

Each of our members is a locally-elected trustee serving a three-year term on the board of one of the community college districts. Some have been on their boards for 9 to 12 years.

One of the great strengths of community colleges nationally, and certainly in Illinois, is their closeness to the people of the local communities. This closeness is enhanced through the governing structure of locally-elected trustees and is encouraged so that we can meet the educational needs of the people we serve.

Last year one out of every 33 who live in Illinois was enrolled at an Illinois public community college. That totaled 335,000 students in the fall of 1977.

Thus, the community colleges in Illinois last year served over half of all students in public higher education and 49% of all students in all forms of higher education in the State.

Sixty-five percent of our students are day students; 35% are night students.

Community colleges in Illinois enroll a greater proportion of minorities than the percentage of minorities in the total state population.

Twenty-eight percent of our students attend classes full time; 71% are part-time students, many of whom are continuing other responsibilities such as jobs or homemaking while working to upgrade their educational background, seek new careers, etc.

More than one-third of our students are enrolled in occupational programs.

(The Illinois community colleges, as you know, endorse the philosophy of a "comprehensive" community college which includes instruction both in transfer curricula, which lead to four-year universities and baccalaureate degrees, and vocational curricula, which prepare students for immediate entry into the world of work.)

A major study recently completed by the Illinois Community College Board shows that there is greater employability and earning power in the community colleges than in other institutions of Illinois. Better job opportunities and higher salaries are two of the benefits of community college education. Students who go into the job market following graduation from a community college show only a 3% unemployment rate after six months and receive annual salaries averaging $1,100 a year more than those without community college experience. Students transferring to senior universities maintain very satisfactory progress as measured by grades received. In addition, they are highly successful in earning college degrees from the four-year universities and do excellent at senior universities and on the job.

Three main sources of revenue support the Illinois Community Colleges: (1) tuition and fees make up one-fifth of the revenue; (2) local property taxes make up two-fifths of the revenue; and (3) State and Federal monies supply the remainder.

Last year the total operating expenses of the Illinois Community College system were $285 million. Federal revenue directly contributed $1.2 million to that total. Other Federal monies received in the State through such programs as CETA, Federal Work Study, and Federal grants and loans benefited the community college system.

The total Federal Government revenue which came to Illinois to benefit community college students last year was $36 million. Sheets showing the breakdown of money by college district are available here today.

Illinois community colleges employ 16,000 full time and part time faculty members.

The idea of community colleges was developed in Illinois by William Rainey Harper, president of the University of Chicago. The oldest continuing junior college in the world, Joliet Junior College, was founded in our State in 1901. Today there are 39 public community college districts with 51 campuses in Illinois and over 1,100 community colleges nationwide.

We are a strong and growing part of higher education in the United States.

WORLD BANK LIVES HIGH AT THE EXPENSE OF THE AMERICAN TAXPAYERS

● Mr. HATCH. Mr. President, astute observers have known for a long time that the real beneficiaries of foreign aid are the international organizations, those who control political power in the recipient countries, those who staff the foreign aid agencies of the giving countries, and the Western professors who advise on economic development schemes. Although the World Bank operates behind a moral guise of helping the poor, there is a saying that the World Bank takes tax money from poor people in rich nations to give to rich people in poor nations.

Salaries of U.S. Senators are slim pickings when compared to employees of the World Bank, but the real telltale fact is that the new Washington social season opened recently with a round of parties for the delegates of 130-odd countries assembled here for the annual meeting of the International Monetary Fund and the World Bank. They were flown in and booked at luxurious hostelries at the expense of the World Bank and IMF, which is substantially at the expense of the American taxpayers, all in the name of relieving global poverty. An article by Shirley Scheibla in the September 25 issue of Barron's explains how the World Bank actually provides little help for the poor and is accountable to no one. Congressmen CLARENCE LONG and BILL YOUNG of the House Appropriations Subcommittee on Foreign Operations have been unsuccessful in their attempts to improve various aspects of the Bank's operation.

Currently the World Bank, thanks to money the U.S. Congress provides, is able to lend millions to Vietnam to finance the forced resettlement of millions of people and to replace private agriculture with socialist agriculture.

Mr. President, the October 16 issue of Forbes points out that the total tax take in the United States has grown at an astonishing rate. In fiscal year 1977 the combined rake-off of Federal, State, and local governments amounted to $521 billion. That figures out to over $2,400 for every man, woman, and child, and it is a whopping 62 percent increase in the tax burden in just 5 years. It seems to me that we have more responsibility to cut the taxes of the people who put us here than we do to provide millions to Communist tyrants, who we recently fought in a long and bloody war, to finance more oppression of the people of South Vietnam.

Until we greatly reduce the tax burden on our own people, we have no justification for financing the unaccountable and unacceptable schemes of the World Bank. I ask that the article from Barron's be printed in the RECORD.

[From Barron's, Sept. 25, 1978]

DOWN A RATHOLE? THE WORLD BANK IS LENDING MONEY TO LAOS, VIETNAM

(By Shirley Hobbs Scheibla)

WASHINGTON.—The new social season will open today with a round of parties for the delegates of 130-odd countries assembled here for the annual meeting of the International Monetary Fund and the World Bank. They've been flow in and booked at luxurious hostelries at the two organizations' expense, all in the name of relieving global poverty.

In between the parties and speeches, they'll take up the most serious piece of business confronting the Bank: to double its callable capital, now at $30 billion, with $7 billion promised by the U.S. This week, moreover, Congress is expected to take final action on an appropriation for the World Bank. In response to a request for $2.2 billion, the House approved $1.5 billion voted last year (as we went to press, measure was pending in the Senate). The total includes $1.2 billion for the Bank's soft loan window, the International Development Association. Rep. Clarence Long (D., Md.), chairman of the Appropriations Subcommittee on Foreign Operations & Related Agencies, tried unsuccessfully to reduce that figure to $900 million.

IDA loans, which are virtual giveaways, are burgeoning. They run for 50 years, with a 10-year grace period, and, except for an administrative charge of three-quarters of 1%, are interest-free. These loans go directly to governments, which sometimes then relend the money at rates as high as 17%.

LITTLE HELP FOR THE POOR

Friends of the World Bank, notably the Carter Administration, claim that it's good public policy to emphasize multilateral over bilateral foreign aid. In this way, or so runs the argument, lenders may achieve reforms that would be politically impossible otherwise. But Congress is having second thoughts about what the World Bank is trying to achieve. For one thing, the Congressional Research Service has found that the Bank is doing relatively little to help the poor and that reform projects may not generate the foreign exchange needed to repay the amounts of money borrowed. In short, "The Bank is seen as presiding over the build-up of debts which will ultimately be defaulted." (On June 30, loans on the books totaled $47.8 billion.) To make matters worse, many of the social reforms that the Bank is funding involve fostering the spread of socialism and communism.

The U.S. no longer has an effective veto

over which governments get these subsidies or any other Bank money. Though it has contributed 37 percent of IDA's funds and 25 percent of the Bank's, the U.S. controls only 23 percent of the voting power.

FULL ACCOUNTING LACKING

Loans to such countries as Laos and Vietnam have gone forward despite negative U.S. votes, which, by the way, will not be obligatory for four other loans to Vietnam and two to Laos currently pending at the Bank. To gain Congressional approval of a multimillion-dollar appropriation for the World Bank last year, President Carter promised negative votes only during fiscal 1978, and the projects won't be ready to go before the directors by then.

By the same token, the White House found an escape clause in its pledge to Congress that the U.S. director of the Bank would vote against loans for the production of such surplus commodities as citrus fruits, palm oil and sugar. As a result, a negative vote was cast for only two out of nine such loans, all of which won approval.

The U.S. can't even effectively keep track of what happens to the money it contributes. According to the U.S. Comptroller General, the Secretary of the Treasury has failed to carry out the directive of the Foreign Assistance Act of 1973 to work through the U.S. director of the Bank to obtain a full accounting of what is done with World Bank money. Although the Bank has flooded the lawmakers with material, it sheds little light on what they want to know.

Rep. Long, for example, complains that they've been unable to determine what money went to whom for individual projects. While the Bank boasts that contracts are awarded under international competitive bidding, it adds that awards are made on the basis of the lowest *evaluated* bid. We asked John King, a Bank procurement expert, what there is to evaluate if the bidders are qualified and their proposals meet specifications. He said that some might meet them better than others.

CITIZEN OF THE WORLD

In return for its huge contributions, the U.S. has insisted upon an American president. The theory is that he will look out for U.S. interests. But those who have talked with Robert S. McNamara (he wouldn't see us) say he views himself as a citizen of the world; Rep. C. W. (Bill) Young (R., Fla.), ranking minority member of the Appropriations Subcommittee, calls him a supersovereign, responsible to no one.

On this score, the Congressional Research Service study has noted: "Robert McNamara's presidency, 1968-present, has been characterized as a period in which development has come to be seen as social change." He's now embarking on a third five-year term, reportedly with a likely salary boost from $116,000 to $150,000. Under McNamara's tenure, the Bank's lending has zoomed from less than $1 billion per year to $8.7 billion.

As such events suggest, the World Bank has changed a great deal since it opened for business in 1947. At that time, its mission was to help the free world recover from World War II; hence its formal name, the International Bank for Reconstruction & Development. In 1962, it added the soft loan window, and IDA's virtual giveaways are moving in an ominous direction.

IDA's recent $60 million loan to Vietnam is a case in point. The southern part of Vietnam is the agricultural heartland of the nation, and most of the land is privately owned. *Barron's* has obtained two confidential World Bank reports which show that one of the main purposes of the loan is to finance a scheme for the Communist government to seize land from farmers in the south and force them into cooperatives (communes) of about 75 families each.

BORROWER AUDITS ITSELF

The project involves a dam on the Saigon River and irrigation and drainage ditches. The money would go directly to the Vietnamese government, which then would levy user charges on the newly formed cooperatives. According to the Bank report, the project also is linked to the forced resettlement of four-five million people by the end of 1980 in New Economic Zones in the south.

According to the report, the co-op development will have three phases. At first there will be loose forms of work teams for work exchange or mutual aid. With the establishment of co-ops, part of a member's compensation will be related to the amount of land he contributes. When the government owns all the land, a member's pay will hinge solely on the amount of work he does. The government will tell the co-op members how much they can produce and what they can charge.

Both reports warn that because of the possibility of rebellion among farmers, the loan is very risky.

There is another risk which the reports fail to mention. Recent newspaper reports indicate that Vietnam is either at war or on the verge of it. *Barron's* asked John Merriam, the Bank's director of information and public affairs, about the institution's longstanding policy of not lending to a country at war. He said that Vietnam appears to be involved only in border skirmishes, but that, in any event, the Bank will lend to a country engaged in hostilities so long as they won't interfere with a project.

While the Bank asserts that it requires independent audits for its projects, such a policy is impossible in a Communist country. But the Bank staff claims that the auditing procedures of the Vietnamese government are completely satisfactory. In other words, it is okay if the government audits itself.

The $60 million loan is designed to increase the production of rice. When an IDA mission visited Vietnam a year ago, it found that an irrigation scheme for sugar cane would cost about $150 million and that another $300 million would be needed for factories, power transmission lines, roads and housing. The mission found that this scheme was not as well prepared as the one for rice, and the government agreed to postpone development. Despite opposition of the U.S. Congress to any loans encouraging sugar production, the Bank is keeping this on the back burner.

NEW POWER PLANTS CONSIDERED

According to the report, the institution plans future discussions with Vietnam over arrangements for transforming southern agriculture along the lines of what it calls the successful Socialist model in the north. (Overall, the Bank is eyeing $10 billion worth of worldwide agricultural projects for possible financing. That could mean a lot of transformation.)

To bolster its program for cooperatives, Vietnam is placing new emphasis on rural electrification. The World Bank expects to send a mission there in November or December to discuss a loan for that purpose. The idea is to build two hydro-electric power plants of 70 megawatts each as an addition to the Da Nhim project near Da Lat, built by the South Vietnamese government.

Nicholas Gibbs, the Bank's chief expert on Vietnam, says he's already been there for a preliminary look. While in Hanoi, he visited the Australian, British and Japanese embassies to discuss the possibly of co-financing. The Japanese appeared the most interested, perhaps because Japan helped finance the existing plant.

Gibbs reveals that the Bank is encouraging energy development in Vietnam, with the aim of self-sufficiency within 10 to 15 years. Accordingly, IDA is weighing a coal project estimated to cost between $50 and $60 million. A Bank mission is scheduled to go to Vietnam in November to determine foreign exchange costs and the amount and sources of equipment for development of a mine in Quang Ninh Province, near Hai Phong.

Gibbs says that Vietnam appears to have offshore oil and gas potential, but he asked the Bank to hold off on proposed financing for an exploration project estimated to cost $10 million. The country now is working directly with a number of oil companies, and also is negotiating with France, Germany, Italy and Norway.

At the annual meeting here, World Bank officials expect to discuss with representatives of Hanoi the financing of industrial rehabilitation. A Bank "identification mission" already has visited the country and completed its report, which is unavailable either to the U.S. director of the Bank or to members of Congress.

When we talked with Gibbs, a representative of the United Nations Development Program was in Hanoi, expecting to sign an agreement to put up $2 million to study a proposed Bank project for rehabilitation and expansion of the Di An Railways Workshop near Ho Chi Minh City. The cost is tentatively estimated at $80 million.

Meantime, Vietnam has obtained $33 million for reconstruction from India, the largest single recipient of World Bank (IDA) funds; India plans to give Vietnam another $50 million for the same purpose.

HUMAN RIGHTS STANDARD

As word of the World Bank's financing for Vietnam spreads, Rep. Young says that opposition from veterans' groups, mindful that 50,000 young Americans gave their lives to prevent the spread of Communism to South Vietnam, is mounting. His amendment to the appropriation bill passed by the House says that the President shall instruct the U.S. director to seek a change in the Bank's Articles of Agreement to establish human rights standards to be considered in connection with all loans.

Over the negative vote of the U.S. director, Edward R. Fried, the Bank approved an IDA loan of $8.2 million last year to Laos (Lao People's Democratic Republic) for small irrigation schemes, breeding pigs and improving the quality of seeds. In contrast to his simple negative vote for the Vietnam loan, Fried explained to the Board that the U.S. objected on grounds of violations of human rights by Laos. The Bank now is mulling two more IDA loans for Laos.

OVERRULED BY WASHINGTON

There's a saying that the Bank takes tax money from poor people in rich nations to give to rich people in poor nations, and what happened to a tubewell for irrigation in Bangladesh furnishes a case in point. Rep. Long cited a report by the Center for International Policy which says that Dacca Fibers won a $12 million contract to supply pumpsets for the tubewell, although another company had reportedly offered to provide them at the World Bank's original cost estimate of $9 million. At this point, the Dacca staff of the Bank urged that the project be postponed or cancelled, but it was overruled by Washington. According to the Center, Dacca Fibers is owned by Jahural Islam, reputed to be Bangladesh's richest citizen.

Such activities are one reason why Congress is insisting upon obtaining more information from the Bank. In response to growing criticism of its disclosure policy, the Bank has started to make public a quarterly summary of proposed loans. The first issue, published in July, gave only sketchy data.

As noted earlier, the Foreign Assistance Act of 1973 said that the President, acting through the U.S. representative to the Bank, should seek establishment of an independent review and evaluation system. It also di-

rected the U.S. Comptroller General to prepare auditing and reporting standards to help in formulating the terms of reference for a review and evaluation group, and periodically review audit report and related information and report to Congress and the President.

LACK OF TRAINING

In a report issued in early June, Comptroller General Elmer Staats found that the Operations Evaluations Department formed by the Bank conforms with neither the Foreign Assistance Act nor the standards he stressed. The staff is recruited from within the Bank, he declared, and "is not provided with guidance or training in basic evaluation techniques."

The Department has been reviewing projects completed since 1972, but no current ones. "The Director-General [who heads the Department] informed us that the reviews focus on completed projects which were approved five to seven years earlier and that Bank practices followed at that time may not be relevant to current practices. . . ."

The Department's Annual Review of Project Performance Audit Results, dated February 1978, states that it is based on findings regarding loans totaling $1.3 billion for 70 projects. It explains that it doesn't identify the projects because the Bank is accountable only to its "shareholders," its member governments. But U.S. Congressmen have been unable to learn the identity of the projects cited. Although the U.S. director of the Bank got a report which identified the projects, he is precluded by Presidential Executive Order 11652, issued by President Nixon in March 1972, from making it available to members of Congress.

The dearth of useful information makes it virtually impossible to tell what the Bank is doing. It is known, however, that the U.S. has contributed $5.6 billion, not counting the sum voted recently by the House. And that, as Rep. Young points out, "doesn't even include the $7 billion in callable capital which the Congress has appropriated for the World Bank. It is this 'callable capital,' i.e., the full faith and credit of the United States, which gives the World Bank so much financial stability."

Without doubt, however, the Bank's staff has been highly successful in eliminating poverty at home. When Congress complained that Bank salaries for U.S. employes were tax-free, the latter started paying taxes; the Bank simply raised their pay by the amount of taxes paid. McNamara's salary has been mentioned. The senior vice president now grosses $106,950. The U.S. executive director gets $83,830. That compares with $66,000 for U.S. cabinet members and $57,000 for members of Congress. The Bank also makes loans to its staff members at below-market rates.●

FLOODS RAVAGE SOUTHEAST ASIA

● Mr. KENNEDY. Mr. President, over the past few days confirmed reports have come from Southeast Asia telling of massive flooding caused by typhoons and heavy rain, endangering the lives of millions of people throughout the region. Officials in Thailand have launched an emergency flood relief program, and both Laos and Vietnam have appealed for international disaster assistance.

According to reports from the field, confirmed by our Government and United Nations agencies, heavy rains and typhoon Lola have combined to produce the worst flooding in 35 years in part of Thailand, in vast areas of Vietnam, and in the lowland areas of Laos. The American Embassy in Bangkok has cabled that serious crop damage has been reported in Thailand, and other reports describe some 2½ million acres of cropland are under water in Vietnam, with a loss of perhaps 2.8 million tons or rice.

Mr. President, this natural calamity comes to an area of the world devastated by years of war, and still suffering from its dislocations and the movement of refugees. Food shortages were already critical in both Laos and Vietnam before this latest tragedy struck. And Thailand has been faced with the serious humanitarian burden of Indochinese refugees, only now to confront relief needs among its own people.

Although Thailand has not yet requested international assistance, both the governments of Vietnam and Laos have appealed to United States agencies for assistance.

Mr. President, I would hope that the administration would study their request, and respond expeditiously and generously to any United Nations appeal—especially an appeal from the United Nations Office for Disaster Relief (UNDRO)—for emergency assistance to Vietnam, Laos, or Thailand. The need is obviously there, and once reports are confirmed as to specific relief needs, I hope our response will be forthcoming.

Clearly, the law provides for such assistance to meet natural disasters whereever they occur, "notwithstanding any other provision of law." Once the international disaster assistance account of the Foreign Assistance Act is funded when the appropriations bill is signed by the President, hopefully in the next few days, no legal obstacle should remain in our ability to respond to an international appeal for disaster assistance in Vietnam or Laos.

Mr. President, I ask that the text of two press reports from the field, be printed in the RECORD.

The report follows:

[From the Washington Post, Oct. 5, 1978]

FLOODS RAVAGE SOUTHEAST ASIA; VIETNAM AND LAOS APPEAL FOR AID

BANGKOK.—Heavy floods have ravaged wide areas of Thailand, Laos, Cambodia and Vietnam, submerging millions of acres of rice paddy and driving millions of families from their homes, according to reports here yesterday.

Officials in Vietnam and Laos have appealed for help from abroad to meet needs for rice and other food grains as well as canned goods, fish, clothing and medicine.

"Heavy losses will affect both production and the (Vietnamese) people's life for a long time," said a Vietnamese Foreign Ministry spokesman at a news conference Tuesday broadcast by the official Vietnam News Agency.

Unseasonally heavy rains generated by Typhoon Lola produced the worst flooding in 35 years in Vietnam, the spokesman reported, adding that 2.3 million acres of crops were submerged in North and South with a loss of 2.8 million tons of rice.

The flood waters affected 4.5 million Vietnamese and about 3 million require emergency relief in the form of makeshift housing and food handouts, he said.

In Thailand, Prime Minister Kriangsak Chamanan allocated $2.5 million for immediate flood relief and set aside more money to assist in recovery once the swollen rivers subside.

More than 200,000 villagers have abandoned their homes to escape flooding in Thailand's northern, northeastern and central provinces and the official death count stands at 34, officials in Bangkok said. More than 300,000 acres of farmland were under water and some low-lying areas around Bangkok also were flooded.

The government flew vaccine and other medicine to flood-stricken areas in the northeastern province of Udorn after reports that cholera had broken out. Two deaths were attributed to cholera and nine other cases were confirmed, public health officials reported.

In addition to the flooding, the Vietnamese Foreign Ministry official said, nearly 900,000 acres of ricelands were destroyed by insects. An international official in Bangkok said the insects constituted a long-term problem in Vietnam because of a scarcity of pesticides and working spray equipment.

Flooding was particularly devastating in the Mekong Delta, Vietnam's main food-growing region. More heavy rains in Thailand, Laos and Cambodia have raised the threat of still higher waters in the Mekong River, the ministry spokesman said.

The New China News Agency, meanwhile, reported that eastern China's major provinces, hundreds of miles northeast of the flood area, are fighting the longest drought in more than 120 years.

[From the Wall Street Journal, Oct. 4, 1978]

VIETNAM ASKS FOR FOREIGN AID AFTER LOSS OF ONE-FIFTH OF RICE CROP TO HEAVY RAINS

(By Barry Kramer)

HONG KONG.—Vietnam appealed for emergency international aid following six weeks of torrential rains that it says wiped out about 2.9 million tons of rice, or more than one-fifth of the Communist nation's estimated 1978 output.

The disastrous crop failure, the worst of three due to natural calamities in as many years, could curtail severely Vietnam's plans for economic recovery and may force its 50 million people, already on food rationing, to tighten their belts another notch.

The latest economic setback comes when hundreds of thousands of soldiers have been removed from agricultural and civil reconstruction projects to fight a border war with Vietnam's western neighbor, Cambodia, and to face an increasingly hostile northern neighbor, China. The crop shortage could force Vietnam into further reliance on the Soviet Union. Hanoi's main source of previous emergency food aid. The relationship with the U.S.S.R. already is the root cause of Vietnam's falling out with its Communist neighbors.

Diplomatic observers in Asia have been predicting that Vietnam would launch a military offensive in a few months against the anti-Vietnamese regime in Cambodia and attempt to replace it with one more friendly to Hanoi. It isn't clear if or how Vietnam's food crisis might affect that expected confrontation.

FERTILIZER SHORTAGE

Vietnam's grain shortage can't be blamed entirely on the weather. The country still suffers from a chronic shortage of fertilizer and insecticides, spare parts for water pumps and fuel to run them. Furthermore, refugees fleeing Vietnam report that the elimination of the free market for rice last March in what was South Vietnam has reduced the incentive to grow rice for sale. Collectivization of southern farms, which is proceeding gradually, could further slow production, some observers predict.

Some riceland along the Cambodian border is lying fallow because of the fighting, while most military units that had been farming or improving farmlands have been called away from border duties. Instead of producing food, they must be fed. Fuel, which could have been used for water pumps and tractors, has been diverted for military use.

Vietnam announced its dire situation Monday when it took diplomats and repre-

sentatives of international organizations on a tour of some flooded areas. Foreign Ministry officials then told foreign newsmen in Hanoi that the floods, plus insect infestation, had destroyed about 2.9 million tons of rice since Aug. 20, when the first of several typhoons and tropical storms hit the North and the South.

TARGET OUTPUT

The Vietnamese previously targeted output for the year at about 14.9 million tons. But before the floods, Western experts had estimated the crop at about 12.9 million tons. If the estimated loss is correct, then actual production could be only 10 million metric tons—22 percent below the earlier Western estimate and several million tons less than is needed to feed Vietnam's population.

Last year, when Vietnam harvested an estimated 12.4 million tons of rice, it still had to import about 1.7 million tons of rice and other grains to help bridge the gap between production and consumption. Even so, rice rations were cut, and other starchy foods such as manioc were substituted for rice, Vietnam's staple food.

The country isn't likely to get all 2.9 million tons of grain as gifts or loans from other countries, nor is it likely to purchase any but a small part of that amount. It is likely that the Soviet Union will supply a large portion of whatever relief grain is obtained.

Meanwhile, Thailand, a would-be supplier of rice to Vietnam, has been hit by the same heavy rains, and large areas of its rice paddies are damaged. Laos and Cambodia also will suffer.●

VISIT OF RHODESIA'S PRIME MINISTER IAN SMITH

● Mr. GARN. Mr. President, I would like to take this opportunity to welcome to the United States Prime Minister Ian Smith and the Reverend Ndabaningi Sithole of Rhodesia's transitional government. It is of utmost significance that the American people have this chance to hear directly from these leaders of Rhodesia's internal settlement regarding the conditions in their country and their efforts to bring about majority rule.

The State Department's delay in granting visas to Prime Minister Smith and Reverend Sithole was more than simply another manifestation of this administration's misguided and ill-convicted policy in southern Africa—it was an unconscionable obstruction to the earnest attempts of these leaders to bring about black majority rule in Rhodesia through peaceful means.

This administration has consistently pursued a policy that is weighted heavily in favor of the pro-Marxist guerrilla forces of Joshua Nkomo and Robert Mugabe. Our Government's insistence that these leaders of the Patriotic Front must be part of any overall settlement has provided them with a de facto veto over the efforts of Rhodesia's internal leaders to resolve the issue peacefully. The obstinate refusal of the Carter administration to support the brave initiatives of Rhodesia's biracial interim government is nothing less than scandalous.

Should this administration maintain its opposition to the Rhodesian internal settlement it will severely reduce the prospects for a peaceful transition to democratic rule, and will make a black-against-black civil war all but unavoidable—with the potential that such a conflict has for further Soviet-Cuban armed intervention in the affairs of Africa.

Mr. President, I sincerely hope that this visit by Prime Minister Smith and Reverend Sithole will help the American people gain a greater appreciation for the tremendous difficulties which these leaders face in combating anarchy while working to fundamentally transform the nature of their country's political system. Their endeavors deserve our wholehearted support and I once again welcome their arrival here in Washington.

Mr. President, in today's Washington Post, Evans and Novak have spelled out the moral bankruptcy of the Carter administration's African policy, and I ask that their article be printed in the RECORD.

RHODESIA POLICY: THE SENATE FILLS A VACUUM

(By Rowland Evans and Robert Novak)

Contortions in the State Department to delay a visa for Rhodesian Prime Minister Ian Smith and Executive Council member Ndabaningi Sithole symbolized the bankruptcy of Carter administration Rhodesia policy, a failure that has created a vacuum now being filled by the Senate.

Implicit bankruptcy was declared by the Senate more than three months ago when a resolution to remove economic sanctions from Rhodesia barely failed, 42 to 48. That was followed Sept. 14 by a letter to Smith, signed by 27 senators, inviting him and Sithole to Washington. Moderates such as Republican Sens. John Heinz (Pa.) and Bob Packwood (Ore.) and Democratic Sens. Jennings Randolph (W. Va.) and Ernest Hollings (S.C.) were among the signers.

But even such clear warnings from senators determined to arrest the move toward all-out racial war failed to awaken the makers of African policy in the State Department. Trapped in a policy that in effect gives veto power over the United States to feuding black states bordering Rhodesia and to feuding guerrilla forces armed and trained by Soviet and Cuban officers, State's African specialists shied from making any gesture to the outlawed Smith.

So when Smith's request for a visa arrived, the State Department blocked it. At work was the same detachment from reality that has dogged the administration's Rhodesian policy ever since former secretary of state Henry Kissinger's basic plan for ending white domination of black Rhodesia was adopted by Smith last March.

The pretext for the department's preliminary decision Sept. 30 denying the visa was the U.N. resolution imposing sanctions against the onetime British colony. Smith being a government official in an outlawed nation, his passport has no international standing, but the United States can waive that U.N. ban anytime it wants.

For example, both Sithole and Bishop Abel Muzorewa, another member of Rhodesia's Executive Council, got U.S. visas for previous visits here despite U.N. sanctions. The State Department was singling out Smith for special treatment.

But the true hypocrisy of the department's preliminary decision to bar Smith on spurious legalistic grounds is exposed by the fact that Zambia, one of the "front-line" black states bordering Rhodesia, itself waived the U.N. ban and admitted Smith just two months ago.

Smith was invited by Zambian President Kenneth Kaunda for secret negotiations with Joshua Nkomo. The purpose: to find common ground between the two so that Nkomo, a principal leader of guerrilla forces now attacking Rhodesia, could be brought into the Rhodesian government. U.N. sanctions counted for nothing against Zambia's desperate need for a solution to racial war in southern Africa and economic disaster for Zambia and other frontline states.

The political rationale behind the invitation for Smith to come here and talk to senators and other American leaders was grounded on precisely the same hopes that motivated Kaunda: press Smith to find some formula to entice Nkomo into a "share of power" in the Rhodesian government.

The leading Senate player in this game is conservative Sen. Jesse Helms (R-N.C.) who is now working through private channels to soften both Smith and Nkomo in the hope of continuing the August contacts started in Zambia—a meeting that lasted several hours and achieved limited objectives.

But State Department specialists shrank from exposing the shrewd and wily Smith to the U.S. public or risking the political anger of Third World activists in the United Nations and blacks at home. Despite Helms's pleading, Smiths' request for a visa languished.

Helms then served notice that he would enter formal objections, under the rule of senatorial courtesy, to the State Department's entire list of foreign-service promotions, and hold up three ambassadorial confirmations. There were other well-founded threats.

Helms, however, is small potatoes in Jimmy Carter's State Department. What broke the visa barricade was not Helms or his Senate colleagues but a compelling editorial in the Washington Post on Oct. 4. By no stretch could The Post be charged with harboring bias toward Smith. Accusing the State Department of playing a "shabby game," the Post asked: "Must the United States be 'purer' than Zambia?" Within hours of that Oct. 4 editorial, the State Department granted the visa, making a mockery of its sanctimonious pretexts for delay.

Having breached the visa barricade, the Senate intends to play out its activist role and fill the policy vacuum that has been spreading since last March, when Smith launched his "internal solution" pointing toward black majority rule. As perceived by Senators, the United States for too long has bartered away its prestige and power in the Rhodesian tragedy in a vain search for a solution satisfying black and other interests, many of which are clearly irreconcilable.●

FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978—CONFERENCE REPORT

Mr. KENNEDY. Mr. President, I submit a report of the committee of conference on S. 1566 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1566) to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1978).

Mr. KENNEDY. Mr. President, today, the U.S. Senate writes a final chapter in the ongoing 10-year debate to regulate foreign intelligence electronic surveillance. In accepting the conference report on S. 1566, "The Foreign Intelligence Surveillance Act of 1978," the Senate will at long last place foreign intelligence electronic surveillance under the rule of law. The abuses of recent history sanctioned in the name of national security highlighted the need for this legislation. Working closely with our House colleagues we have fashioned a final product which strikes a careful balance between the needs of national security and the civil liberties and rights of the American people.

This legislation benefits from broad bipartisan support. It passed the Senate 95 to 1. My distinguished colleagues, Senator BAYH, Senator THURMOND, and Senator GARN have been particularly instrumental in the development of this legislation. Senator BAYH in particular proved to be a valuable ally, processing the bill through the Senate Select Committee on Intelligence with skill and dedication.

The bill has been endorsed and supported not only by this administration, but by the Ford administration as well. Both Attorney General Bell and Attorney General Levi have been most cooperative and helpful in its drafting and processing. The legislation constitutes a major step forward in bringing needed safeguards to the unregulated area of foreign intelligence surveillance. It is a recognition, long overdue, that the Congress does have a role to play in this area.

This legislation would, for the first time, substitute carefully prescribed accountability and oversight for the arbitrariness of the past. The bill would require that most foreign intelligence electronic surveillance in the United States be subject to a judicial warrant requirement based on probable cause. For an American citizen to be surveilled, there must be probable cause that he is an agent of a foreign power, engaging in sabotage, terrorism or clandestine intelligence activities. It is the courts, not the Executive, that would ultimately rule on whether the surveillance should occur. The bill would require that, before such surveillance could occur, a named executive branch official—such as the Secretary of Defense—certify in writing and under oath that such surveillance is necessary to obtain foreign intelligence information.

Mr. President, these statutory provisions are the very heart of the legislation. It is true that we have acceded to the House and eliminated the formal warrant requirement when certain foreign powers are the target of the surveillance. I have reluctantly accepted this modification because of the need to retain a bipartisan consensus concerning the legislation. Although the modification exempts certain targets from the warrant requirement, it will, nevertheless, prevent the National Security Agency from wiretapping any American citizen without first securing a warrant.

The legislation also provides the type of accountability which has heretofore not existed. It would for the first time expressly limit whatever inherent power the Executive may have to engage in electronic surveillance in the United States. In so doing, the bill ends a decade of debate over the meaning and scope of the "inherent power" disclaimer clause currently found in title III.

The bill also provides civil and criminal sanctions to those who violate its provisions. It requires that all extraneous information—unrelated to the purposes of the surveillance—be minimized. And it mandates that before any information obtained can be used at a subsequent criminal trial, the trial court must again find that all statutory wiretap procedures have been met.

Most of the concerns expressed by some about various provisions of the bill have been satisfactorily resolved in conference. Thus, the Senate provision creating a special court to process the warrant applications has been retained by the conferees; a section has been added from the House bill suspending the warrant procedures for a period of up to 15 days in times of declared war; and new definitions of terrorism have been worked out.

Mr. President, some might argue that this legislation is regressive and does not provide sufficient protection for civil liberties: Others might maintain that it goes too far and will inhibit the functioning of our intelligence agencies. I disagree on both counts. The bill places strict statutory controls on foreign intelligence electronic surveillance. The judicial warrant and executive certification procedures guarantee the type of external and internal controls which I and others have long advocated. To those who maintain that the bill does not go far enough, I would remind them that today there is no statute at all.

On the other hand, the legislation will not undercut the effectiveness of our intelligence agencies. Two Attorneys General, two directors of the FBI and two heads of the CIA have testified in support of this legislation. They made convincing arguments that without this bill, their agents will continue to operate in a "twilight zone", unsure of what constitutes legal surveillance techniques.

The needs of our intelligence agencies in protecting the national security have also been carefully taken into account by the Congress, the conferees, the administration and, perhaps most importantly, the intelligence community itself. The legislation has built-in safeguards to preserve the flexibility and secrecy of our intelligence effort. For not only did the conferees agree to exempt from the warrant requirement certain foreign powers, we also agreed to limit the notice requirements of what detail must go into the warrant application.

Finally, the conferees agreed that the legislation must differ substantially from the provisions of current law authorizing wiretaps in domestic criminal investigations. The bill requires evidence of criminal activity before a warrant may be issued in foreign intelligence cases but established a less stringent "probable cause" standard of criminality, thus making it easier for the Government to secure a warrant for these limited purposes. Other provisions dealing with length of surveillance, minimization of the surveillance and congressional oversight are carefully drafted with national security interests paramount.

Mr. President, I believe the time has at last arrived when Congress and the Executive together can fill one of the last remaining loopholes in the laws governing wiretapping and other electronic surveillance in the United States. One should view this bill for what it is, a major effort by the Congress, long overdue, to place foreign intelligence electronic surveillance under the rule of law. I urge the adoption of the conference report.

Mr. BAYH. Mr. President, I would like to say a word of deep appreciation to the Senator from Massachusetts for the tremendous effort that he and the other members of the conference expended in working out this very important piece of legislation.

This is really the first time we have had this kind of joint effort between the Judiciary Committee and the Senate Select Committee on Intelligence. The Senator from Indiana, as the chairman of that latter committee, is indeed grateful for the kind of cooperation that has been exhibited.

This bill, for the first time in history, protects the rights of individuals from government activities in the foreign intelligence area.

It is to President Carter's credit that he is the first President in history willing to waive the implied rights of inherent powers which other Presidents have demanded.

I think we have drawn a very careful balance. On one side we have protected the rights of individual citizens from spying and prying. On the other, we have done it in such a way it does not weaken the capacity of our intelligence agencies to provide the kind of information our country needs to protect the Nation from those who would do us harm.

Mr. THURMOND. Mr. President, although I rise in support of the conference report on S. 1566, the Foreign Intelligence Surveillance Act of 1978, I must indicate that I signed the conference report with some reluctance.

The need for certain safeguards in the use of electronic surveillance by the Government is accepted by this Senator. I do not, however, support procedures that would unduly restrict the ability of the President, under his inherent power, to engage in intelligence-gathering activities against foreign powers or their agents.

Mr. President, the procedures under this legislation are designed to permit the President to continue his power to engage in foreign intelligence surveillance, but with judicial safeguards in the form of a warrant procedure. Although I am agreeable to such procedures at this time, I would expect that if these procedures were to become cumbersome and an obstacle to the ability of our Nation to engage in necessary foreign intelligence gathering, the Congress would immediately reconsider this legislation and make changes in order to

avoid such barriers to effective foreign intelligence-gathering activities.

Finally, I am supporting this legislation because, without a clear expression from Congress in this area, especially when the case law is somewhat divided, there may be a chilling effect on the executive branch to engage in foreign intelligence gathering activities. I would not want to see that happen, Mr. President, so with the reservations that I have expressed, I shall agree to the adoption of the conference report on S. 1566 now before the Senate.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. KENNEDY. I move to reconsider the vote by which the conference report was agreed to.

Mr. CURTIS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders Nos. 1190, 1194, 1210, 1211, 1212, and 1213.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMPTROLLER GENERAL ANNUITY ADJUSTMENT ACT OF 1978

The Senate proceeded to consider the bill (S. 3412) to provide for cost-of-living adjustments in the annuity of a retired Comptroller General, and for other purposes, which had been reported from the Committee on Governmental Affairs with an amendment on page 6, beginning with line 6, strike through and including line 8, so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comptroller General Annuity Adjustment Act of 1978".

SEC. 2. Section 319 of the Budget and Accounting Act, 1921 (31 U.S.C. 43b) is amended—

(1) by striking out "3" wherever it appears in subsections (b) and (c) and inserting "4½";

(2) by striking out in subsection (e)(2) beginning with "one-half" through the word "lesser" and inserting the following: "(A) $1,548, or (B) $4,644 divided by the number of children, whichever is lesser";

(3) by inserting "(A)" immediately after "equal to" in subsection (e)(3) and by striking out in such subsection beginning with "survived," through the word "year" and inserting "survived, divided by the number of children, or (B) $1,860, or (C) $5,580, divided by the number of children, whichever is the lesser"; and

(4) by striking out "the last five years of such service" in subsection (n) and inserting "the three years of service in which his annual salary was greatest", and by striking out "37½" in such subsection and inserting "40".

SEC. 3. The Budget and Accounting Act, 1921, is amended by adding after section 319 the following new section:

"SEC. 320. (a) Except as provided in subsection (b), the annuities authorized by sections 303 and 319 of this Act shall be increased as follows:

"(1) The Comptroller General shall—

"(A) on January 1 of each year, or within a reasonable time thereafter, determine the per centum change in the Consumer Price Index published for December of the preceding year over the Consumer Price Index published for June of the preceding year, and

"(B) on July 1 of each year, or within a reasonable time thereafter, determine the per centum change in the Consumer Price Index published for June of such year over the Consumer Price Index published for December of the preceding year.

"(2) If in any year the per centum change determined under either paragraph (1)(A) or (1)(B) indicates a rise in the Consumer Price Index, then—

"(A) effective March 1 of such year, in the case of an increase under paragraph (1)(A), each annuity payable under sections 303 and 319 of this Act commencing not later than such March 1 shall be increased by the per centum change computed under such paragraph, adjusted to the nearest one-tenth of 1 per centum, or

"(B) effective September 1 of such year, in the case of an increase under paragraph (1)(B), each annuity payable under sections 303 and 319 of this Act commencing not later than such September 1 shall be increased by the per centum change computed under such paragraph, adjusted to the nearest one-tenth of 1 per centum.

"(3) The per centum increase authorized by the Comptroller General under this section shall not exceed the per centum increase as authorized from time to time by the Civil Service Commission under section 8340(b) of title 5, United States Code.

"(b) The annuity authorized by section 303 of this Act shall not, by reason of the application of subsection (a), exceed the annual rate of compensation of the Comptroller General.".

SEC. 4. (a) The second paragraph of section 303 of the Budget and Accounting Act, 1921 (31 U.S.C. 43) is amended by inserting between the third and fourth sentences the following new sentence: "There shall be deducted from the salary of any person appointed to the Office of the Comptroller General after the date of enactment of this sentence as a contribution to the annuity authorized by this paragraph (1) a sum equal to 3½ per centum of his salary, in the case of a Comptroller General who has elected survivor benefits under section 319, or (2) a sum equal to 8 per centum of his salary, in the case of a Comptroller General who has not elected such survivor benefits.".

(b) The third paragraph of such section is amended by—

(1) inserting after "that Act," in the first sentence "and no deduction from his salary shall be made under the preceding paragraph,"; and

(2) adding at the end thereof the following new sentence: "Any person who is appointed to the Office of Comptroller General after the date of enactment of this sentence and who makes such an election under this paragraph shall deposit with the General Accounting Office for covering into the general fund of the Treasury as miscellaneous receipts as a contribution to the annuity authorized under the preceding paragraph (1) a sum equal to 3½ per centum, in the case of a Comptroller General who has elected survivor benefits under section 319, or (2) 8 per centum, in the case of a Comptroller General who has not elected such benefits, of the salary received by him as Comptroller General prior to the date current deductions begin from his salary, plus interest thereon at the rate of 3 per centum per annum compounded on December 31 of each year.".

(c) Such section is amended by adding at the end thereof the following new paragraph:

"Any Comptroller General who is separated from office prior to becoming eligible to receive an annuity under the second paragraph shall be entitled to a lump-sum refund of the total amount deducted from his salary in accordance with the provisions of such paragraph or deposited by him as a contribution to his annuity in accordance with the provisions of the preceding paragraph, plus interest thereon at the rate of 3 per centum per annum compounded on December 31 of each year. The lump-sum refund authorized by this paragraph shall be paid to the Comptroller General or to his survivors in the order of precedence of such survivors established in section 319(j) for survivor benefits.".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1267), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

SUMMARY AND PURPOSE

S. 3412 amends the law providing for retirement of the Comptroller General of the United States to enable retired Comptrollers General and their survivors to obtain cost-of-living adjustments to their annuities.

BACKGROUND AND LEGISLATIVE HISTORY

The Budget and Accounting Act of 1921, as amended in 1953, authorizes a retirement annuity for the Comptroller General. He is entitled to the salary payable for his office at the time of retirement (1) upon completion of his single 15-year term, (2) upon retirement on permanent disability after 10 years of service, or (3) after 10 years of service if he has attained the mandatory retirement age of 70. He can retire at half pay if permanently disabled after less than 10 years of service.

Benefits for survivors of retired Comptrollers General were enacted in 1959. These benefits generally followed those provided in 1956 for survivors of Federal judges. Surviving spouses of retired judges and Comptrollers General received a maximum of 37½ percent of the average salary for the last 5 years of creditable service. Benefits for dependent children were also provided.

The 94th Congress updated benefits for survivors of Federal judges (Public Law 94–554). Cost-of-living allowances were provided. The ceiling on a spouse's annuity was increased to 40 percent of a deceased judge's highest 3-year average salary. The annuity for dependent children of deceased judges was increased. Judges' contributions toward survivor benefits were increased from 3 to 4½ percent of their salaries. With passage of Public Law 94–554 it appears that all Federal employees, except for the Comptroller General, have retirement and survivor benefits adjusted by cost-of-living increases.

Legislation providing cost-of-living increases for retired Comptrollers General and their survivors was transmitted this year by the General Accounting Office to the Senate Committee on Governmental Affairs and the House Committee on Government Opera-

tions. The bill was introduced in the House as H.R. 12196. A hearing was conducted on May 17, with Comptroller General Elmer Staats testifying. The bill was reported on June 1 (H. Rept. 95–1241) and passed the House on July 25.

S. 3412 provides twice-a-year cost-of-living increases for retired Comptrollers General and their survivors. The bill also increases benefits for widows and dependent children of retired Comptrollers General, along the lines provided for survivors of Federal judges in Public Law 94–554.

S. 3412 differs from the House-approved bill proposed by GAO in two respects. First, S. 3412 provides that the annuity of a retired Comptroller General not exceed the salary of the incumbent Comptroller General. Because a Comptroller General retires at full pay—except under conditions noted above—the biannual cost-of-living increases could raise his annuity appreciably higher than the salary of his successor, whose salary increases only when statutory increases are authorized generally for high-level Federal executives. Only three such increases have been approved and funded in the past 11 years.

At the hearing on S. 3412 on August 21, conducted by the Subcommittee on Energy, Nuclear Proliferation and Federal Services, Comptroller General Staats stated his agreement with this provision of the Senate bill.

Secondly, S. 3412 requires future Comptrollers General to contribute 8 percent of their salaries toward their retirement and survivor benefits, as Members of Congress do. At present the Comptroller General is not required to contribute toward his own retirement. However, if he elects to provide survivor benefits, 3 percent of his salary is deducted for that purpose. The House bill would increase the 3-percent deduction to 4½ percent, in line with the higher deduction to provide increased benefits for survivors of Federal judges in the Judicial Survivors' Annuities Reform Act (Public Law 94–554). The Senate bill requires, in the case of a Comptroller General who elects survivor benefits, 4½ percent of his salary be deducted for survivor benefits, and 3½ percent be deducted for retirement benefits.

The committee believes that the principle of individual contributions to retirement systems should be followed. The only major category of Federal civilian employees from which contributions toward their own retirement is not required is the judiciary. Judges and Comptrollers General can retire at full pay. Unlike the Comptroller General and other Federal civilians, judges are on call for Federal service during their entire lifetime. Judges do, as noted above, contribute 4½ percent of their salaries toward survivor benefits, if they so elect, as the Comptroller General would under the House-approved bill (an increase from the present 3 percent).

The requirement of contributions by future Comptrollers General will not affect the incumbent. Nor should it, because he assumed office under the provision of previous legislation that his contribution be covered by appropriated funds.

BOUNDARY WATERS CANOE AREA WILDERNESS

The Senate proceeded to consider the bill (H.R. 12250) to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Area, and for other purposes, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

FINDINGS

SECTION 1. The Congress finds that it is necessary and desirable to provide for the protection, enhancement, and preservation of the natural values of the lakes, waterways, and associated forested areas known (before the date of enactment of this Act) as the Boundary Waters Canoe Area, and for the orderly management of public use and enjoyment of that area as wilderness, and of certain contiguous lands and waters, while at the same time protecting the special qualities of the area as a natural forest-lake-land wilderness ecosystem of major esthetic, cultural, scientific, recreational, and educational value to the Nation.

PURPOSES

SEC. 2. It is the purpose of this Act to provide for such measures respecting the areas designated by this Act as the Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area as will—

(1) provide for the protection and management of the fish and wildlife of the wilderness so as to enhance public enjoyment and appreciation of the unique biotic resources of the region,

(2) protect and enchance the natural values and environmental quality of the lakes, streams, shorelines, and associated forest areas of the wilderness,

(3) maintain high water quality in such areas,

(4) minimize to the maximum extent possible, the environmental impacts associated with mineral development affecting such areas,

(5) prevent further road and commercial development and restore natural conditions to existing temporary roads in the wilderness, and

(6) provide for the orderly and equitable transition from motorized recreational uses to nonmotorized recreational uses on those lakes, streams, and portages in the wilderness where such mechanized uses are to be phased out under the provisions of this Act.

BOUNDARY WATERS CANOE AREA WILDERNESS DESIGNATION AND MAP

SEC. 3. The areas generally depicted as wilderness on the map entitled "Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area" dated September 1978, comprising approximately one million and seventy-five thousand five hundred acres, are hereby designated as the Boundary Waters Canoe Area Wilderness (hereinafter referred to as the "wilderness"). Such designation shall supersede the designation of the Boundary Waters Canoe Area under section 3(a) of the Wilderness Act (78 Stat. 890) and such map shall supersede the map on file pursuant to such section. The map of the wilderness shall be on file and available for public inspection in the offices of the Supervisor of the Superior National Forest and the Chief, United States Forest Service. The Secretary of Agriculture (hereinafter, referred to as the "secretary") shall, as soon as practicable but in no event later than one year after the date of enactment of this Act, publish a detailed legal description and map showing the boundaries of the wilderness in the Federal Register. Such map and description shall be filed with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this Act. Correct of clerical and typographical errors in such legal description and map may be made.

ADMINISTRATION

SEC. 4.(a) The Secretary shall administer the wilderness under the provisions of this Act, the Act of January 3, 1975 (88 Stat. 2096; 16 U.S.C. 1132 note), the Wilderness Act of 1964 (78 Stat. 890; 16 U.S.C. 1131–1136), and in accordance with other laws, rules, and regulations generally applicable to areas designated as wilderness.

(b) Paragraph (5) of section 4(d) of the Wilderness Act of 1964 is hereby repealed and paragraphs (6), (7), and (8) of such section 4(d) are hereby redesignated as paragraphs (5), (6), and (7).

(c) Effective on January 1, 1979, the use of motorboats is prohibited within the wilderness designated by this Act, and that portion within the wilderness of all lakes which are partly within the wilderness, except for the following:

(1) On the following lakes, motorboats with motors of no greater than twenty-five horsepower shall be permitted:

Fall, Lake County,
Newton, Lake County,
Moose, Lake County,
Newfound, Lake County,
Sucker, Lake County,
Snowbank, Lake County,
East Bearskin, Cook County,
South Farm, Lake County,
Trout, Saint Louis County,
Basswood, except that portion generally north of the narrows at the north end of Jackfish Bay and north of a point on the international boundary between Ottawa Island and Washington Island,
Saganaga, Cook County, except for that portion west of American Point: *Provided*, That, on the following lakes, until January 1, 1984, the horsepower limitations described in this paragraph shall not apply to towboats registered with the Secretary:
Moose, Lake County,
Newfound, Lake County,
Sucker, Lake County,
Saganaga, Cook County, as limited in this paragraph.

(2) On the following lakes and rivers, motorboats with motors no greater than ten horsepower shall be permitted:

Clearwater, Cook County,
North Fowl, Cook County,
South Fowl, Cook County,
Island River east of Lake Isabella, Lake County,
Sea Gull, that portion generally east of Threemile Island, Cook County,
Alder, Cook County,
Canoe, Cook County.

(3) On the following lakes, or specified portions of lakes, motorboats with motors of no greater than ten horsepower shall be permitted until the dates specified:

Basswood River to and including Crooked Lake, Saint Louis and Lake Counties, until January 1, 1984,
Carp Lake, the Knife River, and Knife Lake, Lake County, until January 1, 1984,
Sea Gull, Cook County, that portion generally west of Threemile Island, until January 1, 1999,
Brule, Cook County, until January 1, 1994, or until the termination of operation of any resort adjacent to Brule Lake in operation as of 1977, whichever occurs first.

(4) On the following lakes, or specified portions of lakes, motorboats with motors of no greater than twenty-five horsepower shall be permitted until January 1, 1984:

Birch, Lake County,
Basswood, Lake County, that portion generally north of the narrows at the north end of Jackfish Bay and north of a point on the international boundary between Ottawa Island and Washington Island.

(d) The detailed legal description and map to be published pursuant to section 3 of this Act shall contain a description of the various areas where the motorized uses permitted by this section are located. No provision of this section shall be construed to limit mechanical portages or the horsepower of motors used on motorboats in the following areas within the wilderness:

Little Vermilion Lake, Saint Louis County,
Loon River, Saint Louis County,
Loon Lake, Saint Louis County, that por-

tion of the Lac La Croix, Saint Louis County, south of Snow Bay and east of Wilkins Bay.

(e) For the purposes of this Act, a snowmobile is defined as any motorized vehicle which is designed to operate on snow or ice. The use of snowmobiles in the wilderness designated by this Act is not permitted except that the Secretary may permit snowmobiles, not exceeding forty inches in width, on (1) the overland portages from Crane Lake to Little Vermilion Lake in Canada, and from Sea Gull River along the eastern portion of Saganaga Lake to Canada, and (2) on the following routes until January 1, 1984:

Vermilion Lake portage to and including Trout Lake,

Moose Lake to and including Saganaga Lake via Ensign, Vera and Knife Lakes East Bearskin Lake to and including Pine Lake via Alder Lake and Canoe Lake.

In addition to the routes listed above, the Secretary may issue special use permits for the grooming by snowmobiles of specified cross-country ski trails for day use near existing resorts.

(f) The Secretary is directed to develop and implement, as soon as practical, entry point quotas for use of motorboats within the wilderness portions of the lakes listed in subsection c, the quota levels to be based on such criteria as the size and configuration of each lake, and the amount of use on that lake: *Provided,* That the quota established for any one year shall not exceed the average actual annual motorboat use of the calendar years 1976, 1977, and 1978 for each lake, and shall take into account the fluctuation in use during different times of the year: *Provided further,* That on each lake homeowners and their guests and resort owners and their guests on that particular lake shall have access to that particular lake and their entry shall not be counted in determining such use.

(g) Nothing in this Act shall be deemed to require the termination of the exisitng operation of motor vehicles to assist in the transport of boats across the portages from Sucker Lake to Basswood Lake, from Fall Lake to Basswood Lake, and from Lake Vermilion to Trout Lake, during the period ending January 1, 1984. Following said date, unless the Secretary determines that there is no feasible nonmotorized means of transporting boats across the portages to reach the lakes previously served by the portages listed above, he shall terminate all such motorized use of each portage listed above.

(h) The motorized uses authorized by this section shall be confined to those types of snowmobiles, motorboats, and vehicles which have been in regular use in the Boundary Waters Canoe Area prior to the date of enactment of this Act. The Secretary may set forth additional standards and criteria to further define the type of motorized craft which may be permitted.

(i) Except for motorboats, snowmobiles, and mechanized portaging, as authorized and defined herein, no other motorized use of the wilderness shall be permitted. Nothing in this Act shall prohibit the use of aircraft, motorboats, snowmobiles, or other mechanized uses in emergencies, or for the administration of the wilderness area by Federal, State, and local governmental officials or their deputies, only where the Secretary finds that such use is essential.

RESORTS

SEC. 5. (a) The owner of a resort in commercial operation during 1975, 1976, or 1977 and located on land riparian to any of the lakes listed below may require purchase of that resort, including land and buildings appurtenant thereto, by written notice to the Secretary prior to September 30, 1985. The value of such resort for purposes of such sale shall be based upon its fair market value as of July 1, 1978, or as of the date of said written notice, whichever is greater, without regard to restrictions imposed by this Act:

Fall, Lake County, Moose, Lake County, Snowbank, Lake County, Lake One, Lake County, Sawbill, Cook County, Brule, Cook County, East Bearskin, Cook County, Clearwater, Cook County, Saganaga, Cook County, Sea Gull, Cook County, McFarland, Cook County, North Fowl, Cook County, South Fowl, Cook County, Jasper Lake, Lake County, Ojibway, Lake County.

(b) An owner requiring purchase of a resort under this provision may elect to retain one or more appropriate buildings and lands not exceeding three acres, for personal use as a residence: *Provided,* That the purchase price to the Government for a resort shall be reduced by the fair market value of such buildings and lands, with the same valuation procedures outlined above.

(c) With respect to any privately owned lands and interests in lands riparian to the lakes listed above, and if the Federal Government has been required to purchase a resort on said lake, said lands shall not be sold without first being offered for sale to the Secretary who shall be given a period of one hundred days after the date of each such offer within which to purchase such lands. No such lands shall be sold at a price below the price at which they have been offered for sale to the Secretary, and if such lands are reoffered for sale they shall first be reoffered to the Secretary: *Provided,* That, this right of first refusal shall not apply to a change in ownership of a property within an immediate family.

(d) There are authorized to be appropriated such sums therein as provided by this section.

TIMBER SALE CONTRACTS

SEC. 6. (a) The Secretary is directed to terminate within a period of one year after the date of passage of this Act, all timber sale contracts in the Boundary Waters Canoe Area Wilderness. There shall be no further logging of the virgin forest areas formerly enjoined from logging by the United States district court on said contract areas during the termination period. The purpose of said termination period is only to permit completion of the harvesting of timber within existing areas under contract that are not within the areas described above and permit the taking of ameliorative measures, including land and cover restoration that will, at the earliest feasible date, make the imprint of man's work substantially unnoticeable on the lands included as wilderness in this Act.

(b)(1) In the event that termination of timber sale contracts in subsection (a) reduces the total national forest volume which a purchaser has under contract on the Superior National Forest to less than two years cut based on the average volume of Superior National Forest timber harvested by the purchaser in the last three years, the Secretary may, with the consent of the purchaser, substitute, to the extent practicable, timber on other national forest lands approximately equal in species and volume to the timber sale contract affected. In offering substitute timber, the Secretary shall negotiate the substitution at a price that is mutually equitable considering such factors as species, volume, logging accessibility, and other terms of the agreement.

(2) The United States will pay just compensation for any timber contracts terminated or modified by this Act, consistent with amendment V to the Constitution of the United States. Losses due to costs incurred in directly fulfilling the terms of such contracts shall be paid by the United States. Any action for the recovery from the United States of costs as provided above shall be brought in a court of competent jurisdiction. Any such judgments shall be paid from the claims and judgments fund (31 U.S.C. 724a).

(c) Within the limits of applicable laws and prudent forest management—

(1) the Secretary shall, in furtherance of the purposes of subsection (a) of this section and of section 4 of the National Forest Management Act of 1976 (90 Stat. 2949), expedite the intensification of resource management including emphasis on softwood timber production and hardwood utilization on the national forest lands in Minnesota outside the wilderness to offset, to the extent feasible, the reduction in the programed allowable timber harvest resulting from reclassification of the Boundary Waters Area, and the Secretary shall make a review of progress to date in 1983, and a forecast of planned achievements by 1985 and shall submit, as a part of the 1985 program under the schedule called for in the Resources Planning Act of 1974, a Plan and recommendations for 1985–1990. In administering the Superior National Forest, the Secretary is authorized and directed to engage in artificial and natural regeneration, release, site preparation, and other forms of timber production enhancment.

(2) The Secretary, in carrying out the requirements in section (c)(1), is authorized and directed to cooperate with the State of Minnesota and its political subdivisions to develop and implement a system of grants, for the development of renewable resources on State, county, and private lands. He may also seek the cooperation of other Federal departments and agencies to assure a coordinated approach to renewable resources development.

(d) There is authorized to be appropriated, in addition to such sums as may otherwise be appropriated for the Superior National Forest from existing authorities established by law, the following additional sums for the fiscal years 1980 through 1990 inclusive:

(1) to carry out the purposes of subsection 6(c)(1) an additional $8,000,000 annually; and

(2) to carry out the purposes of subsection 6(c)(2) an additional $3,000,000 annually: *Provided, however,* That the Federal share of any grant made pursuant to subsection 6(c)(2) shall not exceed 80 per centum of the total cost of said grant.

(e) Funds appropriated pursuant to this section shall remain available until expended. Authorizations in excess of funds appropriated in a given fiscal year shall remain available for appropriation in subsequent fiscal years.

(f) In addition to those personnel who would otherwise be available, the Secretary is authorized to appoint and fix the compensation not to exceed that of grade 15 on the General Schedule for Federal employees of additional full-time personnel for the Superior National Forest to carry out the purposes of this Act.

LAWS APPLICABLE TO CERTAIN LANDS AND WATERS IN THE SUPERIOR NATIONAL FOREST

SEC. 7. (a) The provisions of the Acts listed in paragraph (b) of this section shall continue to apply to lands and waters specified in such Acts notwithstanding the inclusion of any such lands and waters in the wilderness or mining protection area designated under this Act. For lands and waters to which such Acts listed in paragraph (b) apply which are also within the wilderness or mining protection area designated under this Act, any withdrawal, prohibition, or restriction contained in such Acts listed in paragraph (b) shall be in addition to any withdrawal, prohibition, or restriction otherwise applicable to such wilderness or mining protection area under any other law.

(b) The Acts referred to in paragraph (a) are as follows:

(1) The Act of July 10, 1930 (46 Stat. 1020; 16 U.S.C. 577a, 577b), herein referred to as the "Shipstead-Nolan Act".

(2) The Act of June 22, 1948 (62 Stat. 568, as amended; 16 U.S.C. 577c-577b), herein referred to as the "Thye-Blatnik Act".

(c) The provisions of the Shipstead-Nolan Act are hereby extended and made applicable to all lands and waters not otherwise subject to such Act which are within the wilderness designated under this Act.

(d)(1) The authorities contained in the Thye-Blatnik are hereby extended and made applicable to all lands and waters not otherwise subject to such Act which are within the wilderness designated under this Act.

(2) In applying the second proviso of section 5 of such Thye-Blatnik Act to the areas to which such Act is extended and made applicable under this subsection, the phrase "fiscal year 1980" shall be substituted for the phrase "the first full fiscal year after the approval of this Act" in such proviso.

(3) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of the Thye-Blatnik Act with respect to the lands and waters within the wilderness designated under this Act. Such sums may be used for the payment of court judgments in condemnation actions brought under the terms of the Thye-Blatnik Act without regard to the date such condemnation actions were initially instituted. Funds appropriated from the Land and Water Conservation Fund may be used for the acquisition of any lands and waters, or interests therein within such wilderness.

EXISTING AIRSPACE RESERVATION

SEC. 8. The provisions of Executive Order 10092 as made applicable to the Boundary Waters Canoe Area established by the Wilderness Act of 1964 shall be deemed incorporated into this Act.

MINING PROTECTION AREA ESTABLISHMENT

SEC. 9. In order to protect existing natural values and high standards of environmental quality from the adverse impacts associated with mineral development, there is hereby established the Boundary Waters Canoe Area Mining Protection Area (hereinafter in this Act referred to as the "mining protection area"), comprising approximately two hundred and twenty-two thousand acres.

MAP AND BOUNDARIES

SEC. 10. The mining protection area shall comprise the area generally depicted as a mining protection area on the map entitled "Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area" dated September 1978, which shall be on file and available for public inspection in the offices of the Supervisor of the Superior National Forest and of the Chief, United States Forest Service. As soon as practicable after this Act takes effect, the Secretary shall file a map and a legal description of the mining protection area with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in such description may be made.

MINING AND MINERAL LEASING IN THE WILDERNESS AND MINING PROTECTION AREA

SEC. 11. (a) In addition to any other applicable prohibition or withdrawal from entry or appropriation under any provision of the Wilderness Act or under any other provision of law, no permit, lease, or other authorization may be issued by any agency or authority of the United States for—

(1) exploration for, or mining of, minerals owned by the United States within the Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area; or

(2) exploration for, or mining of minerals within such areas if such activities may affect navigable waters; or

(3) the use of property owned by the United States in relation to any mining of or exploration for minerals in such areas which may materially impair the wilderness qualities of the wilderness area or which may materially impair the natural values and environmental quality of the mining protection area.

The prohibitions contained in this subsection and any withdrawal from entry or appropriation for mining of or exploration for minerals applicable to the Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area shall not apply to the extent specifically provided in legislation enacted by the United States after the date of enactment of this Act pursuant to a national emergency declared by the President.

(b)(1) Consistent with the prohibitions and other requirements in subsection (a) of this section, no permit, lease, or other authorization shall be issued unless and until—

(A) the Secretary shall have approved a plan that details how mining will be conducted consistent with this Act and with other Federal, State, and local requirements, and that details how the area will be restored to its original condition or to a substantially equivalent condition, including the estimated cost thereof:

(B) the applicant has posted a bond for performance payable to the United States in an amount determined by the Secretary to be sufficient to assure completion of the reclamation plan if the work had to be performed by the United States;

(C) the applicant shall have obtained all permits, licenses, certifications, and approvals required by Federal, State, or local law; and

(D) the Secretary has determined that no permanent facility will be constructed nor alteration will occur that could render the area incapable of reverting to its original condition or to a substantially equivalent condition.

(2) The provisions of paragraphs (2) and (3) of section 4(d) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1133(d)(2) and 16 U.S.C. 1133(d)(3)) shall not apply to the area designated herein as the Boundary Waters Canoe Area Wilderness.

(c) The Secretary is authorized to acquire any minerals or mineral rights within the wilderness and mining protection area alleged to be owned by persons other than the Federal or State governments in the following manner:

(1) The Secretary first may seek to acquire these minerals or mineral rights by donation. In seeking a donation, the Secretary shall inform the person alleging the ownership interest of the procedures and limitations to be followed in acquisition by purchase as set forth in paragraph (2) below.

(2) If the person alleging the ownership interest does not donate his minerals or mineral rights to either the Federal or State governments, the Secretary is authorized to acquire the rights by purchase, within the limits of funds appropriated for property acquisition in the Superior National Forest, and in an amount appropriately discounted for the following factors if existent in relation to the particular mineral interest:

(A) The original patenting from the Federal public domain was fraudulent. The patenting of lands in the Boundary Waters Canoe Area Wilderness and Boundary Waters Canoe Area Mining Protection Area is prima facie fraudulent if (1) the Act under which the patent was issued was one of the Acts intended to put settlers on the land, such as, but without limitation, the Cash Purchase Act of 1820 (chapter LI, Act of April 24, 1820, 3 U.S. Stat. 566,567, as amended); the Preemption Act of 1830 (chapter CCVIII, Act of May 29, 1830, 4 U.S. Stat. 420, 421, as amended); the Homestead Act of 1862 (chapter LXXV, Act of May 20, 1862, 12 U.S. Stat. 392-394, as amended); and the Timber and Stone Act (chapter 150, Act of June 3, 1878, 20 U.S. Stat. 88, 89, as amended, particularly by chapter 375, Act of August 4, 1892, 27 U.S. Stat. 348); and (2) the land was patented after 1875 and before the establishment of the Superior National Forest by proclamation on February 13, 1909. The Secretary also shall consider any other evidence of fraud when determining the value of the minerals such as (1) the transfer by the entryman or patentee of whole or partial interests in the property during the patenting process or soon thereafter, (2) the appearance in the chain of title of persons known to have participated in land speculation as land brokers, entrymen, or in other capacities.

(B) The date of separation of the mineral or mineral rights from the surface interest, if the separation occurred after 1927, the year when the courts have determined that the roadless policy was established by the Secretary for the area.

(C) Any other factor, such as restrictions on mining within the area imposed by State or local government, or by operation of treaty.

(d) In the event any legal action or proceeding is instituted by or against the United States in relation to minerals or mineral rights where the patenting is prima facie fraudulent as described in subsection (c) of this section, the Attorney General of the United States shall assert the public's equitable right to constructive or public trusts, or to recover or offset damages including but not limited to those based on the value of land fraudulently acquired plus interest at 6 per centum per annum.

(e) Notwithstanding any requirement of this section, the Secretary shall have authority to acquire within the wilderness or mining protection area designated by this Act, existing mineral interests by donation, purchase, exchange, or through exercise of the power of eminent domain.

(f) There is authorized to be appropriated to the Secretary such sums as may be required to carry out the purposes of this section, to be available until expended.

SEVERABILITY

SEC. 12. If any provision of this Act is declared to be invalid, such declaration shall not affect the validity of any other provision hereof.

EXISTING STRUCTURES

SEC. 13. Nothing in this Act or the Wilderness Act shall be construed to prohibit the maintenance of the Prairie Portage Dam (on the international boundary chain between Birch and Basswood Lakes), and the Secretary is authorized to perform such maintenance work as may be required to keep that dam functional at its present height and width. The Secretary is authorized to maintain other existing water control structures only where such structures are necessary to protect wilderness values or public safety.

JURISDICTION OVER FISH AND WILDLIFE

SEC. 14. Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State with respect to fish and wildlife in the wilderness and the mining protection area.

JURISDICTION OVER WATERS

SEC. 15. The Secretary is authorized to promulgate and enforce regulations that limit or prohibit the use of motorized equipment on or relating to waters located within the wilderness in accordance with the provi-

sions of this Act: *Provided*, That nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State with respect to such waters except to the extent that the exercise of such jurisdiction is less stringent that the Secretary's regulations promulgated pursuant to this section: *Provided further*, That any regulations adopted pursuant to the Act shall be complementary to, and not in derogation of regulations issued by the United States Coast Guard. The Secretary is authorized to enter into cooperative agreements with the State of Minnesota with respect to enforcement of Federal and State regulations affecting the wilderness and the mining protection area.

COOPERATION WITH STATE

SEC. 16. (a) The Secretary shall cooperate with the State of Minnesota and any political subdivisions thereof in the administration of the mining protection area and in the administration and protection of lands within or adjacent to the mining protection area owned or controlled by the State or any political subdivision thereof. Nothing in this title shall deprive the State of Minnesota or any political subdivision thereof of its right to exercise civil and criminal jurisdiction within the wilderness and the mining protection area and impose land use controls and environmental health standards on non-Federal areas within the wilderness and the mining protection area, or of its right to tax persons, corporations, franchises, or other non-Federal property, including mineral or other interests, in or on lands or waters within the wilderness and the mining protection area.

(b) The Secretary is authorized to enter into cooperative agreements with the State of Minnesota with respect to enforcement of Federal and State regulations affecting the wilderness and the mining protection and shall consult with the State of Minnesota in an effort to enhance the multiple-use benefits to be derived from both State and national forest lands.

SEC. 17. Nothing in this Act shall affect the provisions of any treaty now applicable to lands and waters which are included in the mining protection area and the wilderness.

EXPANSION OF RECREATION PROGRAMS

SEC. 18. (a) The Secretary is authorized and directed to expedite and intensify the program of dispersed outdoor recreation development on the Superior National Forest outside the Boundary Waters Canoe Area Wilderness, as designated by this Act. The Secretary shall consider in such new program developments the need for the following: additional snowmobile trails, particularly those now planned or under construction; remote campsites on lightly developed lakes; and lake access sites and parking facilities to provide motorized recreation experiences similar to those previously available in the Boundary Waters Canoe Area.

(b) The Secretary, consistent with the Wilderness Act of 1964 and with this Act, is authorized to construct a system of new hiking, backpacking, and cross-country ski trails within the Boundary Waters Canoe Area Wilderness as designated by this Act, and on appropriate adjacent Federal lands outside the wilderness. In constructing such a trial system, consideration should be given to locating portions of the system near existing resorts on the perimeter of the wilderness to provide additional outdoor recreation opportunities for resort guests.

(c) The Secretary is authorized and directed to develop an educational program for the recreational users of the wilderness which will assist them to understand the purpose, value, and appropriate use of wilderness lands and the functioning of natural ecosystems in wilderness.

(d) The Secretary in cooperation with the State of Minnesota and other appropriate groups, consistent with the purposes of this Act, is authorized and directed to develop a program providing opportunities for a wide range of outdoor experiences for disabled persons.

(e) There are authorized to be appropriated such sums as may be necessary for the Secretary to carry out the purposes of this section.

SEC. 19. (a) The Secretary, in cooperation with other appropriate executive agencies, is authorized and directed to develop a cooperative program of technical and financial assistance to resorts in commercial operation in 1975, 1976, and 1977; and outfitters in commercial operation in 1977 which are located within the mining protection area or which are located on land adjacent to any of the lakes listed in section 5 of this Act. There are authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

(b) There are authorized to be appropriated to the Secretary funds to be made available as grants to the Agricultural Extension Service, University of Minnesota, to provide over a three-year period educational and technical assistance to businesses and communities adjacent to the Boundary Waters Canoe Area Wilderness in order to improve economic opportunities for tourism and recreation-related businesses in a manner which is complementary to the management of the wilderness.

MANAGEMENT STUDY

SEC. 20. The Secretary, acting through the Chief, United States Forest Service, shall, not later than October 1, 1981, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive management plan setting forth the specific management procedures to implement the objectives of this Act. An interim report setting forth public involvement procedures, management alternatives, and a timetable for the remaining study actions, shall be submitted within one year from the date of enactment of this Act.

LIMITATION OF AUTHORIZATIONS

SEC. 21. All authorizations for any funds to be appropriated under the terms of this Act shall not be effective until October 1, 1979. Notwithstanding any other provision of this Act, authority to enter into agreements, or to make payments under this Act shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-1274), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of H.R. 12250, as reported by the Committee on Energy and Natural Resources, is to establish the Boundary Waters Canoe Area Wilderness, consisting of some 1,075,500 acres in the State of Minnesota. A Mining Protection Area of some 222,000 acres is also established to link the three units of the wilderness together. The continuation of motorized watercraft use, under the control of the Secretary of Agriculture, is authorized in portions of the wilderness. Funds are authorized for the intensive management of the Superior National Forest in northern Minnesota. Various provisions are made for the administration and protection of the Boundary Waters Area.

BACKGROUND

The presently designated Boundary Waters Canoe Area runs for 110 miles along the Minnesota-Canada border. At 1,030,000 acres, it is the largest unit of the National Wilderness Preservation System east of the Rock Mountains. It is the nation's only lakeland canoe wilderness—a network of more than 1,000 lakes linked by hundreds of miles of streams and short portages which served as the highway of fur traders who followed water routes pioneered by Sioux and Chippewa Indians. It is the most heavily visited unit of the entire wilderness system, drawing people from throughout the country.

Despite extensive logging, the BWCA still contains 540,000 acres of virgin forests, by far the largest such area in the eastern United States. It is the home of a remarkable variety of wildlife, including moose, deer, beaver, snowshoe hare, porcupine, eastern timber wolf, pine marten, fisher, lynx, and bald eagle. The area is a valuable educational and scientific resource; it has been the focal point of research in wildlife behavior, forest ecology, nutrient cycles, lake systems, and vegetation history.

For almost three-quarters of a century, battles have been fought to protect the wilderness qualities of this environment. The history of Federal involvement began with the setting aside of approximately 1 million acres of land as a Federal "forest reservation" in 1902, 1905, and 1908. Several subsequent actions stand out:

First, in 1909 Teddy Roosevelt established by proclamation the Superior National Forest; second, in 1930 Congress passed the Shipstead-Newton-Nolan Act which prohibits logging within 400 feet of lakeshores and forbids dam building; third, in 1948 Congress passed the Thye-Blatnik Act which created the authority for the Forest Service to remove private inholdings scattered throughout the BWCA. Congress has appropriated $9 million for the implementation of this Act.

Fourth, in 1949, President Truman established a 4,000 foot airspace reservation over the area to prevent floatplanes from landing on wilderness lakes; fifth, in 1964 Congress passed the Wilderness Act including the BWCA in the new Wilderness Preservation System. The Act contained a paragraph that has permitted logging and motorboating to continue in the BWCA; paragraph 4(d)(5) says:

Other provisions of this Act to the contrary notwithstanding, the management of the Boundary Waters Canoe Area shall be in accordance with the general purpose of maintaining, without unnecessary restrictions of other uses, including that of timber the primitive character of the area, particularly in the vicinity of lakes, streams, and portages; *Provided*, That nothing in this Act shall preclude the continuance within the area of any already established use of motorboats.

Sixth, in 1965, Secretary of Agriculture Freeman promulgated a management plan for the BWCA. The Secretary designated 19 routes, including well over 100 lakes, and covering 60 percent of the area's water surface for motorboat and snowmobile use. He also divided the BWCA into a 600,000 acre Interior Zone closed to logging and a 400,000 acre Portal Zone open to logging.

In recent years, numerous legal and administrative battles have been waged regarding what use and activities should be allowed in the BWCA. This interest has inten-

sified in recent years with the introduction of several major bills in both the House and Senate.

LEGISLATIVE HISTORY

Legislation to give the Boundary Waters Canoe Area complete wilderness protection was first introduced in the 94th Congress. The legislation was designed to end the controversy and court suits that had surrounded this area and to provide for the protection of this wilderness.

The Subcommittee on National Parks and Insular Affairs of the U.S. House of Representatives held 5 days of hearings on this issue. On July 7 and 8, 1977, hearings were held in St. Paul and Ely, Minnesota, and in August and September 1977, further hearings were held in Washington, D.C.

The Subcommittee reported H.R. 2820 and H.R. 5968 as amended on March 14, 1978, and following full Committee mark-up, H.R. 12250 was introduced as a clean bill. H.R. 12250 was reported with amendments from the full Committee on Interior and Insular Affairs on April 26, 1978.

The House companion bill, H.R. 12250, passed the House on June 5, 1978, by a vote of 324–29. S. 3242 was introduced by Senators Anderson and Humphrey on June 23, 1978.

The Senate Subcommittee on Parks and Recreation conducted a field inspection of the BWCA in July 1978. Hearings in Washington, D.C. were held by the Parks Subcommittee on August 17, 1978.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. ANDERSON be permitted to have printed in the RECORD a statement in support of H.R. 12250, together with attachments.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR ANDERSON

BOUNDARY WATERS CANOE AREA

I strongly support H.R. 12250 as amended by the Senate Energy and Natural Resources Committee. A similar measure passed the House of Representatives on June 5, 1978 by a vote of 324–29. This measure before the Senate today differs from the House passed bill on one significant section, the management provisions over future motorized use in the Boundary Waters Canoe Area Wilderness.

The BWCA has been given protection by the Federal government as early as 1930. In 1964, when Congress enacted the Wilderness Act, the Boundary Waters was distinguished as the only area designated immediately as wilderness by its specific inclusion in the Act. This provision, however, also contained two important exceptions allowing for the continuation of logging and motorboat use in this unique area. These exceptions have given rise to years of controversy and lengthy court battles.

In 1975, legislation was introduced in the House of Representatives as at attempt to settle once and for all, the management plan for this unique area. Two measures were considered by the House of Representatives in this Congress. One to give full wilderness protection to the entire 1,030,000 acres which make up the present BWCA and one to divide the area into a National Recreation Area of 400,000 acres and a Wilderness Area of 600,000 acres.

The bill passed by the House attempted to give wilderness protection to this unique area while still providing for continuation of limited motorized use. This area is a prized area for sports enthusiasts and fishermen of all kinds. Many small resorts have flourished surrounding these beautiful lakes. In order to protect these businesses and to continue to allow sport fishermen to fish these prize trout and walleye lakes. I have worked to amend the House version of this bill to provide motorized use on a greater number of lakes. In almost every case lakes necessary for a resort to maintain its business have been kept open for the use of small motors. In the event that a resort owner finds that the new management plan precludes him from maintaining his business, the bill allows the resort owner to sell his property to the Federal government. Clearly, no acquisitions can take place under this bill without an appropriation from Congress.

After the Senate Energy and Natural Resources Committee conducted a two day investigative tour of the area, the Chairman of the Parks and Recreation Subcommittee, Senator Abourezk, asked the two concerned citizen groups involved in the dispute over the BWCA to sit down and try to mediate their differences. After three long and difficult days, Ron Walls, representing the Boundary Waters Conservation Alliance and Charles Dayton, representing the Friends of the Boundary Waters Wilderness drafted a management plan. It is a proposal which attempts to provide a balance between the competing interests, motorized and nonmotorized, in the area. While no plan is perfect, this is a sincere effort to protect local business and protect the unique, scenic lakeland quality of the area which makes the BWCA an ideal canoe area.

It is this compromise plan which has been included in the bill before the Senate. It is not entirely acceptable to those favoring substantial restrictions on the present use of the area or those favoring the continuation of the long-accepted uses of the area. But I believe the provisions in this bill are as reasonable and sensible a solution to the future management of the BWCA as is possible, given the competing positions of those interested in this legislation and the necessity, in my judgment, of resolving this issue now.

Since the Committee report more than adequately describes the provisions of H.R. 12250, as amended, and the legislative history of this legislation, I will not deal with those issues in this statement.

I do expect that the Secretary of Agriculture will fully utilize all the authority provided under this Act. Snowmobile use on the three designated routes will be allowed for five years. Winter snowmobile access routes into Canada should remain open indefinitely. Grooming of cross-country ski trails by special permit should be allowed. The Secretary is expected to develop a cooperative program of technical and financial assistance in conjunction with the Economic Development Administration, the Small Business Administration and other executive agencies, to assist local business in adjusting to the new management plan for the area. In addition, the Secretary should give serious consideration to issuing special permits to allow for the storage of canoes by resorts which presently store boats along Wood Lake and the North Kawiskiwi River.

This legislation will hopefully end the continuing dispute over the management of the BWCA. Senator Humphrey and I recognize that many people are not completely supportive of all of the provisions of this bill but I believe the economic health of Northeastern Minnesota will be enhanced by enacting H.R. 12250 now.

FRIENDS OF THE
BOUNDARY WATERS WILDERNESS,
September 26, 1978.

Hon. WENDELL ANDERSON
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR ANDERSON: The Friends of the Boundary Waters Wilderness is pleased to learn that you are moving forward with a bill that will implement the substance of the so-called Dayton-Walls compromise on the BWCA. As I understand it, the proposed bill largely follows the House Bill's language on other issues, but will incorporate the list of lakes and the motorboat-snowmobile regulations worked out in negotiations between the Friends of the Boundary Waters Wilderness and the Boundary Waters Conservation Alliance in Washington last July.

As you know the FRIENDS Coalition has worked for legislation that would increase the areas dedicated to non-mechanized recreation more than will your bill, and that also included several other measures not implemented by this proposal. But we recognize the intensity of citizen concerns in northeastern Minnesota, and support your effort to strike a balance that everyone can live with under these most difficult present circumstances. Your proposal would end the threats of logging and mining within the wilderness, and those are major goals on which there is already a consensus.

Given these facts, the FRIENDS Coalition supports your proposed legislation, and I offer my personal help in moving the bill quickly in the Senate. Your commitment to pass the compromise bill this year is a courageous move that will help put the divisive BWCA issue to rest in our home state. But the Boundary Waters Wilderness is also a precious national resource that we Minnesotans are fortunate to share with our neighbors near and far. And we have a responsibility to pass it on unspoiled to future generations of Americans. If you can achieve passage of this legislation, I firmly believe we will have taken a long step toward that goal.

Sincerely,

MIRON L. HEINSELMAN,
Chairman.

SEPTEMBER 26, 1978.

Hon. WENDELL ANDERSON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR ANDERSON: We understand that you are about to introduce and work for passage of legislation on the Boundary Waters Canoe Area which embraces in nearly every detail what has come to be known as the "Dayton-Walls Compromise."

As you know, the Dayton-Walls Compromise does not in our opinion represent the optimum solution for future management of the famous Boundary Waters country, and for that reason, we have supported other legislation in the past. However, representatives of the Minnesota conservation community did participate in the drafting of the compromise, and we now believe that it represents the best available legislative option under the present circumstances.

Therefore, we are pleased to advise you of our support for the compromise legislation you will introduce and work for in the Senate. We want to thank you for your long efforts to secure adequate protection for the Boundary Waters Canoe Area, and stand by to assist you in any way possible to accomplish this goal.

Sincerely,

CATHERINE SMITH,
Friends of the Earth.
MICHAEL D. ZATAGA,
National Audubon Society.
PAT GOGGIN,
National Wildlife Federation.
CELIA HUNTER,
The Wilderness Society.
JACK LORENZ,
Izaak Walton League.
DESTRY JARVIS,
National Parks & Conservation Assn.
BROCK EVANS,
Sierra Club.

BWCA COMPARISON

PRESENT LAW	HOUSE BILL	SENATE BILL
	Issue: Motorboat use	
124 to 1060 lakes or 60 percent of water surface area open to motorboats.	11 of 124 lakes remain open permanently or 5 percent of water surface area; 11 lakes represent 25 percent of present motorboat use.	23 of 124 lakes remain open permanently or 24 percent of water surface area; 23 lakes represent 52 percent of present motorboat use.
	5 additional lakes open to motorboats until 2010.	7 additional lakes open to motorboats until 2000.
	16 lakes represent 17 percent of water surface area and 41 percent of present motorboat use.	30 lakes represent 33 percent of water surface area and 64 percent of present motorboat use.
	Any international border lake closed on the Canadian side, would be automatically closed on the U.S. side.	No comparable provision.
	Secretary has discretion to close any lake for reason of public safety, wildlife management or to alleviate resource damage.	No comparable provision.
Some motorboat lakes have horsepower limitations.	All motorboat lakes have 10 or 25 horsepower limitations.	All motorboat lakes have 10 or 25 horsepower limitations.
	Motorboat use limitation effective Jan. 1, 1979.	Same.
	None of 5 largest lakes (Lac La Croix, Basswood, Trout, Saganaga & Seagull) open to motorboats on a permanent basis.	Basswood (90 percent of water surface area) Trout & Saganaga open to motorboats permanently.
	Issue: Lakes partially in BWCA	20 year use on ⅔ of Seagull, remainder of lake open permanently.
		Permanent access to Canadian side of Lac La Croix; part of Lac La Croix open on U.S. side.
No horsepower restrictions on portion outside of BWCA.	Horsepower limit extended to entire lake.	No horsepower restriction on portion outside of BWCA.
	Issue: Towboats	
Allowed.	Prohibited.	Permitted for 5 years on Moose Lake, Newfound, Sucker and Saganaga.
	Issue: Overnight motorboat camping	
Allowed.	Prohibited.	Allowed.
	Issue: Day use entry quotas	
Permits are required for anyone crossing federal land. No limit on the number of permits issued.	Day use entry quotas to be established on a rolling basis according to the average use for the 3 preceding years.	Day use entry quotas to be established based on motorboat use during calendar years 1976, 1977 and 1978.
	In addition, the Secretary could establish further restrictions on motorboat use based on noise emission levels, ratio of motor horsepower to watercraft weight and ratio of horsepower to watercraft length.	Private property owners and guests and resort owners and guests exempted from the quota for lakes upon which the resort or private property is located.
	Mechanized portages	
Allowed.	Prohibited.	Permitted for 5 years; if no feasible non-mechanized method of portaging is developed, mechanized portages will continue indefinitely.
	Issue: Snowmobiles	
Prior to 1976 permitted on 21 routes; banned since 1976 by USDA.	Two access corridors to Canada—Crane Lake to Little Vermillion Lake & Seagull River along the eastern portion of Saganaga Lake to Canada.	Secretary may allow for: Two access corridors (same as House bill). 3 routes for 5 years: 1. Vermillion Lake to Trout Lake. 2. Moose Lake to Saganaga Lake. 3. East Bearskin to Pine Lake. Special use permits for grooming snowmobile trails.
	Issue: Resorts	
No special provision.	Until 1983 resorts on 13 lakes listed in Sec. 5 can require purchase by the federal government.	Until 1985 any resort on 15 lakes listed in Sec. 5 can require purchase by the federal government.
	Issue: Purchase of private property	
No special authority for the purchase of property outside wilderness boundaries.	Fed government has "right of first refusal" on sale of all private property on lakes listed in Sec. 5.	"Right of first refusal" limited to property on 15 lakes and *only* if a resort is purchased by the federal government before 1985 on that lake.
	Government must act within 100 days of offer.	Same.
	Issue: Size of BWCA	
1,030,000 acres.	1,077,000 acres; addition of 47,000 acres.	1,075,500 acres; addition of 45,500 acres.
	Issue: Timber harvesting	
An acceptable practice under the terms of the 1964 Wilderness Act.	All timber contracts in BWCA terminated within 1 year of enactment.	Same.

6 valid timber contracts exist for logging of 2,683 acres in the BWCA.	Substitute timber can be made available to affected contractors or just compensation paid.	Same.
	Authorizes a 5 year $55 million intensified forest management program for the Superior National Forest and with the State of Minnesota on state and county land.	Authorizes a 10 year $110 million program for intensified forest management and wood utilization. Funds will be available to the Forest Service and the State of Minnesota for use on state, county and private lands.
	Issue: Mining protection area	
Does not exist.	Establishes a 220,000 acre area bordering the BWCA where mining or mining exploration is prohibited for any minerals in federal ownership.	Same.
	Issue: Mining	
Federal law does not clearly prohibit mining in the BWCA.	Mining or mining exploration is prohibited for any minerals in federal ownership in the BWCA.	Same.
	USDA must acquire private mineral rights by donation or purchase in the wilderness and Mining Protection Area.	USDA may acquire private mineral rights by donation or purchase in wilderness and Mining Protection Area.
	Issue: Existing structures	
Several small dams exist within the BWCA which have served for many years to control the water level in many lakes.	Except for Prarie Portage Dam, all water control structures would have to be removed.	In addition to Prairie Portage Dam, USDA authorized to maintain any existing water control structure for the purposes of protecting wilderness values or public safety.
	Issue: Jurisdiction over waters	
State of Minnesota has jurisdiction over surface water use.	No provision to affect the jurisdiction of the State of Minnesota over the waters of the BWCA.	Same.
No special provisions.	Federal government will enforce regulations on the use of motorboats on the waters in the BWCA.	
	Issue: Recreational programs	
	USDA authorized to expand recreational programs outside the BWCA for new snowmobile routes and remote campsites.	Same.
	Within the BWCA new hiking trails are to be constructed near existing resorts.	Within the BWCA, new hiking and cross-country ski trails are to be constructed near existing resorts.
	Issue: Economic assistance programs	
None.	Secretary of Agriculture in conjunction with SBA, EDA, Dept. of Labor and others is to develop a program of technical and financial assistance to local businesses to assist in the adjustment to the new management plan.	Same.
	Grants are authorized to the Ag. Extension Service at the University of Minnesota for educational & technical assistance to local businesses to improve opportunities for recreational related businesses.	Same.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate insist on its amendments to H.R. 12250, that a conference be requested with the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. JACKSON, Mr. ABOUREZK, Mr. METZENBAUM, Mr. CHURCH, Mr. JOHNSTON, Mr. BUMPERS, Mr. ANDERSON, Mr. MATSUNAGA, Mr. HANSEN, Mr. HATFIELD (Oregon), Mr. MCCLURE and Mr. WEICKER conferees on the part of the Senate.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the Senate amendments to H.R. 12250.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISTRIBUTION OF PUBLICATIONS TO FOREIGN GOVERNMENTS

The bill (S. 3578) to transfer to the Superintendent of Documents the function of distributing Government publications to certain foreign governments, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1719 of title 44, United States Code, is amended by striking out "Smithsonian Institution" and inserting in lieu thereof "Superintendent of Documents".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1295), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The bill would amend section 1719 of title 44, United States Code, to provide that the function of distributing Government publications to certain foreign governments be transferred from the Smithsonian Institution to the Superintendent of Documents.

Section 1719 of title 44 provides:

"For the purpose of more fully carrying into effect the convention concluded at Brussels on March 15, 1886, and proclaimed by the President of the United States on January 15, 1889, there shall be supplied to the Library of Congress not to exceed one hundred and twenty-five copies each of all Government publications, including the daily and bound copies of the Congressional Record, for distribution, through the Smithsonian Institution, to foreign governments which agree to send to the United States similar publications of their governments for delivery to the Library of Congress."

EXPLANATION FOR THE PROPOSAL

An explanation for the proposal is expressed in an excerpt from a letter by the Librarian of Congress, which excerpt is as follows:

"The preparation and dispatch of these exchange publications has for many years

been assigned within the Smithsonian Institution to the International Exchange Service, the duties of which also include the transmittal of exchange materials from a large number of institutions in the United States to their exchange partners overseas, as well as the receipt and transshipment of materials from these overseas sources to their American counterparts. In the late 1800's Congress originally requested the Smithsonian Institution to handle shipments of official documents sent on international exchange because the Smithsonian had taken the lead in the international exchange of scientific publications and thus established favorable working relationships with shipping companies in many areas. The arrangement worked well for over 80 years.

"It has become evident to both the Library of Congress and the Smithsonian Institution that this arrangement is no longer satisfactory. At the same time, the advances achieved by the Government Printing Office in the efficient distribution of documents have made the U.S. depository library program the most efficient operation of its kind in this country. The Superintendent of Documents has indicated that his agency could, with little additional effort, undertake the shipment of official publications for international exchange. He believes that his agency is the logical choice to perform this service for the Library because of its unique and centralized facilities. The Smithsonian Institution could not comparably modernize the facilities of the International Exchange Service without a great increase in its operating budget for personnel and equipment. Since the Superintendent of Documents is willing to undertake the responsibility for distribution of these documents and the Smithsonian Institution has no other direct interest in the Library's document exchanges, there seems no good reason why the International Exchange Service should continue to send documents on behalf of the Library when the Superintendent of Documents could do this work so much more efficiently and without extensive modification of work routines and facilities."

COST ESTIMATE

Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office reviewed the bill and concluded that "it appears that no additional cost to the Government would be incurred as a result of enactment of this bill."

PRAYERS OF THE SENATE CHAPLAIN

The concurrent resolution (S. Con. Res. 108) authorizing the printing of the prayers of the Chaplain of the Senate during the 95th Congress as a Senate document, was considered and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That there be printed with an appropriate illustration as a Senate document, the prayers by the Reverend Edward L. R. Elson, S.T.D., the Chaplain of the Senate, at the opening of the daily sessions of the Senate during the Ninety-fifth Congress, together with any other prayers offered by him during that period in his official capacity as Chaplain of the Senate; and that there be printed and bound two thousand additional copies of such document, of which one thousand and thirty shall be for the use of the Senate and nine hundred and seventy shall be for the use of the Joint Committee on Printing.

SEC. 2. The copy for the document authorized in section 1 shall be prepared under the direction of the Joint Committee on Printing.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HIGHWAY NEEDS TO SOLVE ENERGY PROBLEMS

The resolution (S. Res. 559) authorizing the printing of the report entitled "Highway Needs To Solve Energy Problems" as a Senate document, was considered and agreed to, as follows:

Resolved, That the report of the Secretary of Transportation to the Congress of the United States (in compliance with section 153 of the Federal-Aid Highway Act of 1976, Public Law 94-280) entitled, "Highway Needs To Solve Energy Problems" be printed with illustrations as a Senate document.

SEC. 2. There shall be printed one thousand additional copies of such document for the use of the Committee on Environment and Public Works.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TOIYABE NATIONAL FOREST, NEV.

The Senate proceeded to consider the bill (S. 2774) to extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes, which had been reported from the Committee on Energy and Natural Resources with amendments as follows:

On page 2, beginning in line 5, strike out all of section 2 and insert in lieu thereof the following:

SEC. 2. This Act shall be applicable to the following lands:

(a) a tract of land, referred to as the "Whittell property," situated in section 10, lot 2, township 13 north, range 18 east, Mount Diablo Meridian, Nevada, containing 34.4 acres more or less.

On page 3, line 18, strike "6" and insert "7".

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read a third time and passed, as follows:

S. 2774

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to aid in the protection and management of the various resources of the lands, including the protection, improvement, and maintenance of the watershed, wildlife, recreation, and natural environment values thereof, situated in the Lake Tahoe Basin, and to promote the management and protection of such lands under principles of multiple use and sustained yield, the boundaries of the Toiyabe National Forest are hereby extended to include the area described in section 2 hereof. Subject to any valid claims now existing and hereafter maintained, any lands of the United States within such area are hereby added to such National Forest and shall be subject to laws and regulations applicable to the National Forests.

SEC. 2. This Act shall be applicable to the following lands:

(a) a tract of land referred to as the "Whittell property", situated in section 10, lot 2, township 13 north, range 18 east, Mount Diablo, Meridian, Nevada, containing 34.4 acres more or less.

SEC. 3. Funds appropriated and available for acquisition of lands, water, and interests therein, in the National Forest System pursuant to section 7 of the Act of September 3, 1964 (78 Stat. 903), shall be available for the acquisition of any lands, waters, and interests therein, within the area described in section 2 of this Act. In addition, the Act of August 5, 1970 (Public Law 91-372) is hereby amended to remove the limitation on expenditures of $12,500,000 as it applies to the area described in the Act of August 5, 1970 (84 Stat. 694).

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-1298), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

I. PURPOSE

As recommended by the committee, the purpose of S. 2774 is to provide legislative authority to add one site, referred to as the Whittell Estate, to the Toiyabe National Forest in Nevada.

II. BACKGROUND AND NEED

The entire Whittell Estate consists of over 400 acres and all but 35 acres are within the Toiyabe National Forest. The administration recommends extending the boundary to include the remaining 35 acres within the forest boundary.

Lake Tahoe is one of the largest and oldest pure alpine lakes in the world. It covers 193 square miles of land in Nevada and California to a maximum depth of 1,645 feet. Unfortunately, the beauty of the lake and surrounding area are endangered by increased sewage due to development, and automobile congestion has significantly increased air pollution.

In 1969 a bi-State commission was established to regulate growth in the area, but changes in the commission are necessary in order for it to function adequately. Officials for California, Nevada, and the Federal Government have been negotiating such changes, and an agreement is imminent. It is expected to be approved by the California and Nevada State legislature and by the Congress early next year.

Section 4 of S. 2774 amends an August 5, 1970 act, which extended the Toiyabe National Forest boundary, by removing the appropriations ceiling. This provision is supported by the administration, and with the removal of this limitation, acquisition priorities could be considered along with other areas which are funded through the Land and Water Conservation Fund Act.

The committee amended S. 2774 by reducing the acreage from 5,649.38 to approximately 34.4 acres. With the amendment, the boundary includes only one specific site, and alleviates the concern of the administration that the bill potentially could result in unwarranted appropriations at a future time.

HEALTH MAINTENANCE ORGANIZATION AMENDMENTS OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Sen-

ate a message from the House of Representatives on S. 2534.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2534) entitled "An Act to revise and extend the provisions of title XIII of the Public Health Service Act relating to health maintenance organizations", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SHORT TITLE, REFERENCE TO ACT

SECTION 1. (a) This Act may be cited as the "Health Maintenance Organization Amendments of 1978".

(b) Whenever in this Act (other than in section 13) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

EXTENSION OF PROGRAM

SEC. 2. (a) Section 1304(j) is amended (1) by striking out "may be made through September 30, 1978;", and (2) by striking out "1979" and inserting in lieu thereof "1981".

(b) Section 1305(d) is amended by striking out "1980" and inserting in lieu thereof "1981".

(c) Section 1309(a) is amended (1) by striking out "and" after "1977" and (2) by striking out the semicolon and all that follows in that section and inserting in lieu thereof the following: "$63,000,000 for the fiscal year ending September 30, 1980, and $63,000,000 for the fiscal year ending September 30, 1981.".

REQUIREMENTS FOR THE PROVISION OF SERVICES

SEC. 3. (a) Section 1301(b)(1) is amended by adding at the end the following: "The requirements of this paragraph respecting the basic health services payment shall not apply to the provision of basic health services to a member for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or an insurance policy but only to the extent such benefits apply to such services. For the provision of such services for an illness or injury for which a member is entitled to benefits under such a law, the health maintenance organization may, if authorized by such law, charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law, the insurance carrier, employer, or other entity which under such law is to pay for the provision of such services or, to the extent that such member has been paid under such law for such services, such member. For the provision of such services for an illness or injury for which a member is entitled to benefits under an insurance policy, a health maintenance organization may charge or authorize the provider of such services to charge the insurance carrier under such policy or, to the extent that such member has been paid under such policy for such services, such member.".

(b)(1) The second sentence of section 1301(b)(3) is amended by striking out "thirty-six month" and inserting in lieu thereof "forty-eight month".

(2) Section 1301(b)(3) is amended by striking out the fourth sentence and inserting in lieu thereof the following: "A health maintenance organization may not enter into contracts with physicians (other than physicians who are members of the staff organization) or with entities other than medical groups or individual practice associations for services of physicians if the amounts to be paid under such contracts for the provision of basic and supplemental health services—

"(A) in the first four fiscal years of the organization beginning after the month in which the organization becomes a qualified health maintenance organization (within the meaning of section 1310(d)) exceed 50 per centum of the total amount to be paid by the organization in such fiscal year for the provision of basic and supplemental health services by physicians, and

"(B) in the fifth and succeeding fiscal years of the organization beginning after such month exceed (i) 15 per centum of the total amount to be paid by the organization in such fiscal year for the provision of such services by physicians, or (ii) in the case of a health maintenance organization which principally serves a rural area, 30 per centum of such total amount.

The limitations prescribed by the preceding sentence do not apply to contracts for the provision of basic and supplemental health services through an entity which but for the requirements of section 1302(4)(C)(i) would be a medical group for purposes of this title.".

(3) The first sentence of section 1301(b)(3) is amended by striking out "(A)" and "(B)".

(c) The last sentence of section 1301(b)(4) is amended by inserting before the period a comma and the following: "except that a member shall not be reimbursed for any service provided other than through the organization because the member intentionally left the area served by the organization for the purpose of securing such service".

(d) Section 1301(b) is amended by adding at the end the following new paragraph:

"(5) To the extent that a major disaster, war, riot, civil insurrection, or any other event not reasonably within the control of a health maintenance organization (as determined under regulations of the Secretary) results in the facilities, personnel, or financial resources of a health maintenance organization not being available to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of paragraphs (1) through (4) of this subsection, such requirements only require the organization to make a good-faith effort to provide or arrange for the provision of such service within such limitation on its facilities, personnel, or resources."

(e) Section 1302(1) is amended by inserting before the second sentence the following: "Such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for the protection of individual health. The Secretary shall publish in the Federal Register each determination made by him under the preceding sentence."

ORGANIZATION REQUIREMENTS

SEC. 4. (a) Section 1301(b) is amended (1) by inserting "except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education," after "(C)" in paragraph (1), and (2) by inserting "unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education," after "community rating system" in the second sentence of paragraph (2).

(b) Section 1301(c)(1) is amended (1) by inserting "(A)" after "(1)", and (2) by inserting before the semicolon a comma and the following: "and (B) have administrative and managerial arrangements and capabilities satisfactory to the Secretary".

(c) Section 1301(c)(3) is amended (1) by inserting "(A)" after "(3)", and (2) by inserting before the semicolon a comma and the following: "and (B) carry out enrollment of members who are entitled to medical assistance under a State plan approved under title XIX of the Social Security Act in accordance with procedures approved under regulations promulgated by the Secretary".

(d) Section 1301(c)(6) is amended (1) by striking out "(6)" and inserting in lieu thereof "(6)(A) in the case of a private health maintenance organization,", (2) by redesignating clauses (A) and (B) as subclauses (i) and (ii), respectively, and (3) by inserting before the semicolon a comma and the following: "and (B) in the case of a public health maintenance organization have an advisory board to the policymaking body of the public entity which operates the organization which board meets the requirements of clause (A) of this paragraph and to which may be delegated policymaking authority for the organization".

FEASIBILITY SURVEYS AND INITIAL DEVELOPMENT

SEC. 5. (a) Section 1306(b)(2) is amended by inserting "in the case of an application for assistance under section 1304, 1305, or 1305A," before "he determines".

(b)(1) The first sentence of section 1304(b)(3) is amended by striking out "in the one-year period beginning on" and inserting in lieu thereof "incurred in a period not to exceed three years from".

(2) The second sentence of such section is repealed.

(c)(1) Subparagraph (A) of section 1304(f)(2) is amended to read as follows:

"(A) $1,000,000 in the case of a project for the establishment of a health maintenance organization or $600,000 in the case of a project for the significant expansion of the membership of or areas served by a health maintenance organization, or".

(2) The first sentence of section 1304(b)(2) is amended by striking out "includes" and inserting in lieu thereof "means the establishment of a health maintenance organization or the".

(d) The amendments made by this section shall only be effective for fiscal years beginning on or after October 1, 1978.

COSTS OF OPERATION

SEC. 6. (a) Section 1305(a) is amended by striking out "operating costs" each place it occurs and inserting in lieu thereof "costs of operation".

(b) The second sentence of section 1305(b)(1) is amended by striking out "any fiscal year" and inserting in lieu thereof "any twelve-month period".

(c) Section 1305(b)(1) is amended (1) by striking out "$2,500,000" and inserting in lieu thereof "$4,000,000", and (2) by striking out "$1,000,000" and inserting in lieu thereof "$2,000,000".

(d) The title of section 1305 is amended by striking out "OPERATION COSTS" and inserting in lieu thereof "COSTS OF OPERATION".

(e) The amendments made by this section shall only be effective for fiscal years beginning on or after October 1, 1978.

PAYROLL DEDUCTION FOR HEALTH BENEFITS

SEC. 7. Section 1310(c) is amended by adding at the end the following: "Each employer which provides payroll deductions as a means of paying employees contributions for health benefits or which provides a health benefits

plan to which an employee contribution is not required and which is required by subsection (a) to offer his employees the option of membership in a qualified health maintenance organization shall, upon request of an employee who exercises such option, arrange for the employee's contribution for such membership to be paid through payroll deductions.".

FUNDING UNDER OTHER AUTHORITIES FOR THE PROVISION OF HEALTH SERVICES ON A PREPAID BASIS

SEC. 8. Section 1313 is amended by adding after and below paragraph (4) the following:

"The preceding sentence does not prohibit the use of funds appropriated under section 319 or 330 of this Act for grants to an entity, other than a health maintenance organization, for the planning and development of health services to be provided on a prepaid basis or for the provision of health services on a prepaid basis.".

LOANS AND LOAN GUARANTEES FOR ACQUISITION AND CONSTRUCTION OF AMBULATORY HEALTH CARE FACILITIES

SEC. 9. (a) Title XIII is amended by inserting after section 1305 the following new section:

"LOANS AND LOAN GUARANTEES FOR ACQUISITION AND CONSTRUCTION OF AMBULATORY HEALTH CARE FACILITIES

"SEC. 1305A. (a) The Secretary may—

"(1) make loans, from the fund established under section 1308(e), to public and nonprofit private health maintenance organizations for projects for the acquisition or construction of ambulatory health care facilities and for the acquisition of equipment for facilities acquired or constructed under a loan made under this paragraph; and

"(2) guarantee to—

"(A) non-Federal lenders for their loans to nonprofit private health maintenance organizations for projects described in paragraph (1) and to private health maintenance organizations for such projects which will serve medically underserved populations, and

"(B) the Federal Financing Bank for its loans to nonprofit private health maintenance organizations for projects described in paragraph (1) and to private health maintenance organizations for such projects which will serve medically underserved populations, the payment of principal and interest on such loans.

"(b)(1) Except as provided in paragraph (2), the aggregate amount of principal of loans made or guaranteed, or both, under subsection (a) for a health maintenance organization may not exceed $2,500,000.

"(2) The cumulative total of the principal of the loans outstanding at any time which have been directly made or with respect to which guarantees have been issued under subsection (a) may not exceed such limitations as may be specified in appropriation Acts.

"(3) The authority of the Secretary to make loans under subsection (a) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

"(c) For purposes of this section—

"(1) the term 'ambulatory health care facility' means a health care facility for the provision of diagnostic, treatment, and prevention services to ambulatory patients; and

"(2) the term 'construction' means the (A) construction of new facilities, (B) alteration, expansion, remodeling, replacement, and renovation of existing facilities, (C) cost of offsite improvements in connection with an activity described in clause (A) or (B), and (D) cost of the acquisition of land in connection with an activity described in clause (A), (B), or (C).".

(b)(1) Section 1308 is amended by adding at the end the following new subsection:

"(f) The Secretary may take such action as he deems appropriate to protect the interest of the United States in the event of a default on a loan made or guaranteed under this title, including taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee.".

(2)(A) Subsection (d) of section 1308 is amended (i) by inserting before the period in the first sentence of paragraph (1) the following: "and to take the action authorized by subsection (f)", and (ii) by inserting after "under this title" in the first sentence of paragraph (2) the following: "and to take the action authorized by subsection (f)".

(B) The first sentence of subsection (e) of section 1308 is amended by inserting before the period the following: "and to take the action authorized by subsection (f)".

TRAINING AND TECHNICAL ASSISTANCE

SEC. 10. (a) Title XIII is amended by adding at the end thereof the following new section:

"TRAINING AND TECHNICAL ASSISTANCE

"SEC. 1317. (a)(1) The Secretary shall establish a National Health Maintenance Organization Intern Program (hereinafter in this subsection referred to as the 'Program') for the purpose of providing training to individuals to become administrators and medical directors of health maintenance organizations or to assume other managerial positions with health maintenance organizations. Under the Program the Secretary may directly provide internships for such training and may make grants to or enter into contracts with health maintenance organizations and other entities to provide such internships.

"(2) No internship may be provided by the Secretary and no grant may be made or contract entered into by the Secretary for the provision of internships unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be in such form and contain such information, and be submitted to the Secretary in such manner, as the Secretary shall prescribe. Section 1306 does not apply to an application submitted under this section.

"(3) Internships under the Program shall provide for such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the recipients of the internships as the Secretary deems necessary. An internship made to an individual for training at a health maintenance organization or any other entity shall also provide for payments to be made to the organization or other entity for the cost of support services (including the cost of salaries, supplies, equipment, and related items) provided such individual by such organization or other entity. The amount of any such payments to any organization or other entity shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the organization or other entity for establishing and maintaining its training programs.

"(4) Payments grants under the Program may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

"(b) The Secretary shall provide (directly, through contracts, or both) technical assistance to (1) entities engaged in surveys or other activities to determine the feasibility of developing and operating or expanding the operation of a health maintenance organization, (2) entities engaged in the planning for the initial development of health maintenance organizations, (3) entities engaged in the initial development of health maintenance organizations, and (4) health maintenance organizations in connection with their operation.

"(c) The authority of the Secretary to enter into contracts under subsections (a) and (b) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.".

(b) Section 1309(a) is amended by striking out "and 1304(b)" and inserting in lieu thereof "1304(b), and 1317".

(c) The amendments made by this section shall only be effective for fiscal years beginning on or after October 1, 1979.

ADMINISTRATION OF PROGRAM

SEC. 11. (a) Subsection (h) of section 1310 is amended to read as follows:

"(h) The administration of the duties and functions of the Secretary, insofar as they involve making determinations as to whether an organization is a qualified health maintenance organization within the meaning of subsection (d), shall be integrated with the administration of section 1312.".

(b) Section 1312(c) is repealed.

DISCLOSURE OF OWNERSHIP AND RELATED INFORMATION

SEC. 12. (a) Section 1310(d) is amended (1) by inserting "(1) after "(d)", (2) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively, (3) by inserting before the comma at the end of clause (A) (as so redesignated) the following: "and will meet the requirements of paragraphs (2), (3), and (4) of this subsection", (4) by inserting before the period at the end the following: "and will meet the requirements of paragraphs (2), (3), and (4) of this subsection", and (5) by adding at the end the following:

"(2) Each health maintenance organization shall, in accordance with regulations promulgated by the Secretary—

"(A) provide the information required to be reported under section 1124 of the Social Security Act by disclosing entities, and

"(B) supply the information required to be supplied under section 1902(a)(38) of such Act.

"(3)(A) Each health maintenance organization shall file with the Secretary, at such times as the Secretary shall prescribe, such information as the Secretary may require—

"(i) to demonstrate that the health maintenance organization has a fiscally sound operation, and

"(ii) respecting—

"(I) any sale, exchange, or leasing of any property between the organization and a party in interest,

"(II) any furnishing by the organization of services to a party in interest and any furnishing of services to the organization by a party in interest, and

"(III) any lending of money or other extension of credit between the organization and a party in interest.

"(B) Each health maintenance organization shall provide the Secretary with assurances satisfactory to the Secretary that the terms of each transaction between the health maintenance organization and a party in interest will be at least as favorable to the health maintenance organization as if the transaction was between the health maintenance organization and a person who is not a party in interest.

"(C) For purposes of subparagraphs (A) and (B), the term 'party in interest' means with respect to a health maintenance organization providing information under such subparagraph—

"(i) a person with an ownership or control interest (as defined in section 1124(a)(3) of the Social Security Act) in the health maintenance organization.

"(ii) a managing employee (as defined in section 1126(b) of such Act) of the organization,

"(iii) any entity with respect to which an individual described in clause (i) or (ii) is a

person with an ownership or control interest, (as so defined) or a managing employee (as so defined), and

"(iv) any member of the immediate family of an individual who is a person described in clause (i) or (ii).

"(4) Each health maintenance organization shall make available to its members the information reported by the organization pursuant to paragraphs (2) and (3).

"(5) The Secretary shall include in the annual report required by section 1315 a summary of evaluations made by the Secretary of information provided under paragraphs (2) and (3) and a description of any action taken as a result of such evaluations.".

(b) Paragraph (5) of section 1306(b) is amended to read as follows:

"(5) in the case of an application which is made for a health maintenance organization, contains or is supported by assurances satisfactory to the Secretary that the organization will comply with the requirements of paragraphs (2), (3), and (4) of section 1310(d);".

(c) Section 1312(a) is amended (1) by striking out "or" at the end of paragraph (2), (2) by inserting "or" at the end of paragraph (3), and (3) by adding after paragraph (3) the following:

"(4) fails to meet the requirements of paragraph (2), (3), or (4) of section 1310(d) or to act in accordance with assurances provided under paragraph (3)(B) of such section,".

AMENDMENTS TO THE SOCIAL SECURITY ACT

SEC. 13. (a)(1) Section 1902(a)(4) of the Social Security Act is amended (A) by striking out "and" at the end of clause (A), and (B) by inserting before the semicolon a comma and the following: "and (C) that each State or local officer or employee who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer or employee, and each partner of such an officer or employee shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code".

(2)(A) Except as provided in subparagraph (B), the amendments made by paragraph (1) shall take effect one hundred and eighty days after the date of the enactment of this Act.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the requirement added by the amendments made by paragraph (1), such amendments shall not apply with respect to such State plan before ninety days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(b) Section 1122 of the Social Security Act is amended—

(1) by striking out "or health maintenance organizations" each place it occurs, and

(2) by striking out "or health maintenance organizations" each place it occurs, and

(3) by striking out "or organization, or of any facility of such organization," in subsection (d)(2).

(c) Section 1903(m)(1)(B) of the Social Security Act is amended by striking out "shall be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions".

EMPLOYEE HEALTH BENEFITS PLANS

SEC. 14. (a) Section 1310(d)(1) (as amended by section 12) is amended by (1) striking out "and" at the end of clause (A), and (2) by inserting before the period at the end a comma and the following: "and (C) an entity described in paragraph (6)(B) of this subsection which has (i) received a waiver under such paragraph from the requirements of paragraph (6) of section 1301(c), and (ii) has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 1301(b), that it is operated in the manner prescribed by section 1301(c), that, except with respect to the requirements of paragraph (6) of section 1301(c), it is organized in the manner prescribed by section 1301(c), and that it will meet the requirements of paragraphs (2), (3), and (4) of this subsection".

(b) Section 1310(d) (as amended by section 12) is amended by adding after paragraph (5) the following new paragraph:

"(6)(A) For purposes of paragraph (1) of this subsection, the Secretary may, upon application, grant a waiver to an entity described in subparagraph (B) from the requirements of section 1301(c)(6) upon such terms and conditions as the Secretary may determine are appropriate if the entity (i) provided, before the expiration of one hundred and eighty days after the date of the enactment of this paragraph, notice to the Secretary of its intent to apply to be a qualified health maintenance organization, and (ii) made such an application before the expiration of eighteen months after such date of enactment. A waiver granted to an entity under this subparagraph shall be granted on the condition that if, after the date the waiver is granted, the entity expands its service area, the waiver shall terminate upon the date the entity so expands such area. If a waiver granted an entity is terminated because of the expansion of its service area, the entity may apply to the Secretary for another waiver under this subparagraph for the entity with its service area as so expanded. No grant, contract, loan, or loan guarantee may be made under this title for an entity granted a waiver under this subparagraph.

"(B) An entity eligible to apply for a waiver under subparagraph (A) is a health maintenance organization (as defined in regulations promulgated under section 1122 of the Social Security Act as in effect on the day before the date of enactment of this paragraph) (i) which is operated (but not as a separate legal entity) either by a commercial insurance carrier or a nonprofit carrier which provides hospital service benefits or medical or surgical benefits, or both, (ii) which has an advisory board to the policymaking body of such carrier which board meets the requirements of section 1301(c)(6)(A) and to which may be delegated policymaking authority for the organization, (iii) with respect to which Federal financial assistance has not been provided under this Act, and (iv) which on January 1, 1974, was engaged in providing basic health care services (as defined in regulations promulgated under such section 1122 as so in effect) to the organization's members."

(c) Section 1310(b) is amended by adding at the end the following: "The Secretary, as a condition to approving as a qualified health maintenance organization for an area for purposes of this section an entity which is described in subsection (d)(1)(C) and which provides basic and supplemental health services in a manner described in paragraph (1) or (2) of this subsection, may require the health benefits plan of each employer subject to subsection (a) which has at least 25 employees residing in such area to include in such plan at least two qualified health maintenance organizations which provide such services in such area in such manner when at least two such organizations are willing to be included in such plan.".

ONE-YEAR EXTENSION

SEC. 15. (a) Section 1304(1) is amended by striking out "1978" and inserting in lieu thereof "1979".

(b) Section 1309(a) is amended (1) by striking out "ending September 30, 1979" and inserting in lieu thereof "ending September 30, 1980", (2) by striking out "and" after "1977,", and (3) by inserting ", and $25,000,000 for the fiscal year ending September 30, 1979" after "1978".

Amend the title so as to read: "An Act to amend the Public Health Service Act to revise and extend the program of assistance under that Act for health maintenance organizations.".

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendments of the House to the Senate bill; that the Senate ask for a conference; and that the Chair be authorized to appoint conferees.

The motion was agreed to, and the Presiding Officer appointed Mr. KENNEDY, Mr. NELSON, Mr. PELL, Mr. HATHAWAY, Mr. WILLIAMS, Mr. SCHWEIKER, Mr. JAVITS, and Mr. CHAFEE conferees on the part of the Senate.

HEALTH SERVICES RESEARCH, HEALTH STATISTICS, AND HEALTH CARE TECHNOLOGY ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2466.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2466) entitled "An Act to amend the Public Health Service Act to extend and revise the assistance programs for health services research and health statistics; to establish the Office of Health Technology, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SHORT TITLE, REFERENCE TO ACT

SECTION 1. (a) This Act may be cited as the "Health Services Research, Health Statistics, and Health Care Technology Act of 1978".

(b) Whenever in this Act (other than in sections 11 and 12) and amendment or repeal is expressed in terms of an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

EXTENSION OF AUTHORIZATIONS

SEC. 2. (a) Section 308(i)(1) is amended—

(1) in the first sentence (A) by striking out "and" after "1976,", and (B) by inserting before the period a comma and the following: $36,000,000 for the fiscal year ending September 30, 1979, $44,000,000 for the fiscal year ending September 30, 1980, and $49,000,000 for the fiscal year ending September 30, 1981"; and

(2) by striking out the second sentence and inserting in lieu thereof the following: "At least 20 per centum of the amount appropriated under the preceding sentence for any fiscal year or $6,000,000, whichever is less, shall be available only for health services research evaluation and demonstration activities directy undertaken by the Center. There are authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1979, $4,000,000 for the fiscal year ending September 30, 1980, and $4,000,000 for the fiscal year ending September 30, 1981, for heath services research training under section 304(b)(1)(B).".

(b) Section 308(i)(2) is amended (1) by striking out "and" after "1976,", (2) by inserting before the period a comma and the

following: "$60,000,000 for the fiscal year ending September 30, 1979, $75,000,000 for the fiscal year ending September 30, 1980, and $80,000,000 for the fiscal year ending September 30, 1981", (3) by adding at the end the following: "Of the amount appropriated under the preceding sentence for any fiscal year, at least $1,000,000 in the fiscal year ending September 30, 1979, $2,000,000 in the fiscal year ending September 30, 1980, and $2,000,000 in the fiscal year ending September 30, 1981, shall be available only for health statistics training in epidemiology and biostatistics under section 304(b)(1)(B).".

(c) Section 308(i) is amended by adding after paragraph (2) the following new paragraph:

"(3) The authority of the Secretary to enter into contracts under sections 304, 305, and 306 shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.".

GENERAL AUTHORITY

"SEC. 3. (a) Subsection (a)(2) of section 304 is amended (1) by striking out "and" at the end of subparagraph (C), (2) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and", and (3) by adding at the end the following new subparagraph:

"(E) health care costs, increases in such costs, and the reasons for such increases".

(b) Subsection (b)(1)(B) of such section is amended by inserting after "training" the following: "through the National Center for Health Services Research and the National Center for Health Statistics".

(c) The second sentence of subsection (c) of such section is amended to read as follows: "Coordination of the health services research, evaluation, demonstration, and health statistical activities authorized by this Act shall be carried out through the National Center for Health Services Research and the National Center for Health Statistics.".

NATIONAL CENTER FOR HEALTH SERVICES RESEARCH

SEC. 4. (a) Subsection (b) of section 305 is amended—

(1) by striking out "may undertake and support" and inserting in lieu thereof "shall undertake and support"; and

(2) by striking out "construction," in paragraph (3).

(b) Subsection (e) of section 305 is redesignated as subsection (f) and the following new subsection is inserted after subsection (d):

"(e) No application for a grant or contract for health services research under a law administered by the Secretary may be approved before the Center and the Health Care Financing Administration (or its successor) have been given a reasonable opportunity to review the application for technical competence.".

NATIONAL CENTER FOR HEALTH STATISTICS

SEC. 5. (a) Subsection (b) of section 306 is amended (1) by striking out "may", (2) by inserting "shall" after "(1)" after "(2)", (3) by striking out "and" at the end of paragraph (1), (4) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and", and (5) by adding after paragraph (2) the following:

"(3) may collect, furnish, tabulate, and analyze statistics, and prepare studies, on matters referred to in paragraph (1) upon request of public and nonprofit private entities under arrangements under which the entities will pay the cost of the service provided.

Amounts appropriated to the Secretary from payments made under arrangements made under paragraph (3) shall be available to the Secretary for obligation until expended.".

(b)(1) Subsection (e) of section 306 is amended to read as follows:

"(e)(1) The Secretary shall by regulation establish standardized means for the collection of health information and statistics under laws administered by the Secretary.

"(2) For the purpose of producing comparable and uniform health information and statistics, there is established the Cooperative Health Statistics System. The Secretary, acting through the Center, shall—

"(A) coordinate the activities of Federal agencies involved in the design and implementation of the System;

"(B) undertake and support (by grant or contract) research, development, demonstrations, and evaluations respecting the System;

"(C) make grants to and enter into contracts with State and local health agencies to assist them in meeting the costs of data collection carried out under the System; and

"(D) review the statistical activities of the Department of Health, Education, and Welfare to assure that they are consistent with the System.

States participating in the System shall designate a State agency to administer or be responsible for the administration of the statistical activities within the State under the System. The Secretary, acting through the Center, shall prescribe the types of organizaton systems (including consortia of entities which use health information and statistics and entities which produce health information and statistics) for statistical activities which may be used by States participating in the System.".

(2) Paragraph (4)(D) of subsection (i) of section 306 is amended by inserting before the semicolon the following: ", with respect to the Cooperative Health Statistics System established under subsection (e)(2), and with respect to the standardized means for the collection of health information and statistics to be established by the Secretary under subsection (e)(1)".

(c) The first sentence of subsection (f) of section 306 is amended by inserting ", acting through the Center," after "the Secretary".

(d) Paragraph (2)(A) of subsection (i) of section 306 is amended by inserting "health planning," after "health statistics,".

(e) Section 306 is amended by redesignating subsection (i) as subsection (k) and by inserting after subsection (h) the following new subsection:

"(i) The Center may provide to public and nonprofit private entities engaged in health planning activities technical assistance in the effective use in such activities of statistics collected or compiled by the Center.".

(f) Section 306 is amended by adding after subsection (i) (added by subsection (e) of this section) the following:

"(j)(1)(A) The Secretary, acting through the Center, shall by regulation establish, not later than two years after the date of the enactment of this subsection, guidelines for the collection, compilation, analysis, publication, and distribution of statistics and information necessary for determining the effects of conditions of employment and indoor and outdoor environmental conditions on the public health. Guidelines established under this subsection shall not (i) authorize or require the disclosure of any matter described in section 552(b)(6) of title 5, United States Code, and (ii) authorize or require the disclosure of any statistics or other information which is exempt from disclosure pursuant to subsection (a) of section 552 or title 5, United States Code, by reason of subsection (b)(4) of such section. The guidelines shall be reviewed and, if appropriate, revised at least every three years after the date they are initially established. Guidelines shall take effect on the date of the promulgation of the regulation establishing or revising the guidelines or such later date as may be specified in the guidelines.

"(B) The guidelines shall be designed—

"(i) to improve coordination of environmental and health studies, statistics, and information, and to prevent overlap and unnecessary duplication with respect to such studies, statistics, and information;

"(ii) to assure that such studies, statistics, and information will be available to executive departments responsible for the administration of laws relating to the protection of the public health and safety or the environment;

"(iii) to encourage the more effective use by executive departments of such studies, statistics, and information;

"(iv) to improve the statistical validity and reliability of such studies, statistics, and information; and

"(v) to assure greater responsiveness by the Department of Health, Education, and Welfare and other executive departments in meeting informational and analytical needs for determining the effects of employment and indoor and outdoor environmental conditions on public health.

"(C) In establishing and revising guidelines under subparagraph (A) the Secretary shall consult with and take into consideration any recommendations of the Task Force on Environmental Cancer and Heart and Lung Disease, the Administrator of the Environmental Protection Agency, the Secretary of Labor, the Consumer Product Safety Commission, the United States National Committee on Vital and Health Statistics, and the National Academy of Sciences through its Institute of Medicine.

"(D) For purposes of this subsection, the term 'guidelines' means the guidelines, either as initially established or as thereafter revised, in effect under this subsection.

"(2) The Center shall serve as a clearinghouse for statistics and information with respect to which guidelines have been established under paragraph (1) and shall assist executive departments in obtaining such statistics and information for purposes of administering laws under their jurisdiction relating to environmental health protection or the safety and health of employees.

"(3)(A) Each executive department shall comply with the substantive and procedural requirements of the guidelines.

"(B) The President shall by Executive order require each executive department to comply with requests, made in accordance with the guidelines, by the Secretary, the Administrator of the Environmental Protection Agency, the Consumer Product Safety Commission, or the Secretary of Labor for statistics and information.

"(C) The President may by Executive order exempt any executive department from compliance with a requirement of the guidelines respecting specific statistics or other information if the President determines that the exemption is necessary in the interest of national security.

"(4) In carrying out his duties under this subsection, the Secretary, acting through the Center, shall, insofar as practicable, provide for coordination of his activities with those of other Federal agencies and interagency task forces relating to the collection, analysis, publication, or distribution of statistics and information necessary for determining the effects of conditions of employment and indoor and outdoor environmental conditions on the public health."

(g) The first sentence of subsection (d) of section 308 is amended by inserting after "unless authorized" the following: "by guidelines in effect under section 306(j) or".

STUDY OF COSTS OF DISEASES AND ADVERSE EFFECTS WHICH ARE ENVIRONMENTALLY RELATED

SEC. 6. (a) Section 304 is amended by adding at the end the following:

"(d)(1) The Secretary and the National Academy of Sciences (hereinafter in this subsection referred to as the 'Academy') shall, jointly and in cooperation with the Administrator of the Environmental Protection Agency, the Secretary of Labor, the Consumer Product Safety Commission, the Council of Economic Advisers, the Council on Wage and Price Stability, the Council on Environmental Quality, and other entities of the Federal Government which the Secretary determines have the expertise in the subject of the study prescribed by this paragraph, conduct, with funds appropriated under section 308(i)(1), an ongoing study of the present and projected future health costs of pollution and other environmental conditions resulting from human activity (including human activity in any place in the indoor or outdoor environment, including places of employment and residence). In conducting the study, the Secretary and the Academy shall, to the extent feasible—

"(A) identify the pollution (and the pollutants responsible for the pollution) and other environmental conditions which are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating human diseases and adverse effects on humans;

"(B) identify each such disease and adverse human effect and specifically determine whether cancer, birth defects, genetic damage, emphysema, asthma, bronchitis, and other respiratory diseases, heart disease, stroke, and mental illness and impairment are such a disease or effect;

"(C) identify (on a national, regional, or other geographic basis) the source or sources of such pollutants and conditions and estimate the portion of each pollutant and the extent of each condition which can be traced to a specific type of source;

"(D) ascertain (i) the extent to which the pollutants and conditions identified under subparagraph (A) are, or may reasonably be anticipated to be, responsible, individually or collectively, for causing, contributing to, increasing susceptibility to, or aggravating the diseases and effects identified under subparagraph (B), and (ii) the effect upon the incidence or severity of specific diseases and effects of individual or collective, as appropriate, incremental reductions in the pollutants and changes in such conditions; and

"(E) quantify (i) the present and projected future health costs of the diseases and effects identified under subparagraph (B), and (ii) the reduction in health costs which would result from each incremental reduction and change referred to in subparagraph (D)(ii).

"(2) The Secretary shall enter into appropriate arrangements with the Academy under which the Secretary shall be responsible for expenses incurred by the Academy in connection with the study prescribed by paragraph (1).

"(3) The first report on the study prescribed by paragraph (1) shall be made to the Congress by the Secretary and the Academy not later than eighteen months after the date of the enactment of this subsection. Subsequent reports on the study shall be made by the Secretary and the Academy every two years after the date the first report is submitted. Each report shall include (A) such recommendations for legislation as the Secretary determines appropriate, and (B) a description of any administrative action proposed to be taken by the Secretary, the Administrator of the Environmental Protection Agency, the Secretary of Labor, and the Consumer Product Safety Commission to reduce the costs which have been quantified under paragraph (1)(E)(i). In conducting the study, the Secretary and the Academy shall seek assistance from public and private health financing entities in securing the data needed for the study.

"(4) For purposes of paragraph (1), the term 'health costs of pollution and other environmental conditions' means the costs of human diseases and other adverse effects on humans which pollution and other environmental conditions are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating, including the costs of preventing such diseases and effects, the costs of the treatment, cure, convalescence, and rehabilitation of persons afflicted by such diseases, costs reasonably attributable to pain and suffering from such diseases and effects, loss of income and future earnings resulting from such disease and effects, adverse effects on productivity (and thus increases in production costs and consumer prices) resulting from such diseases and effects, loss of tax revenues resulting from such decreases in earnings and productivity, costs to the welfare and unemployment compensation systems and the programs of health benefits under titles XVIII and XIX of the Social Security Act resulting from such diseases and effects, the overall increases in costs throughout the economy resulting from such diseases and effects, and other related direct and indirect costs."

TASK FORCE ON ENVIRONMENTAL CANCER AND HEART AND LUNG DISEASE

SEC. 7. (a) The Directors of the National Center for Health Statistics and the Center for Disease Control (or the successor to such entity) shall serve as members of the Task Force on Environmental Cancer and Heart and Lung Disease established under section 402 of Public Law 95-95.

(b) The Task Force referred to in subsection (a) shall, effective October 1, 1978, conduct a study to identify the need for and recommend guidelines for the collection, compilation, analysis, publication, and distribution of statistics and information necessary for determining (1) the extent to which conditions of employment and indoor and outdoor environmental conditions may reasonably be anticipated to cause, contribute to, aggregate, or increase susceptibility to cancer or heart or lung diseases, and (2) the other effects on the public health which may reasonably be anticipated to result from such conditions. Within eighteen months of the date of the enactment of this subsection, the Task Force shall complete the study prescribed by this subsection and report the results of the study to the Congress, the Administrator of the Environmental Protection Agency, the Secretary of Health, Education, and Welfare, the Secretary of Labor, and the Consumer Product Safety Commission.

NATIONAL CENTER FOR HEALTH CARE TECHNOLOGY; HEALTH CARE TECHNOLOGY ADVISORY COMMITTEE

SEC. 8. (a) Section 309 is amended—

(1) by amending the section heading to read as follows:

"HEALTH CONFERENCES AND HEALTH EDUCATION INFORMATION";

(2) by inserting "(a)" before "A conference"; and

(3) by striking out "309" and inserting in lieu thereof "310".

(b) Section 310 is amended—

(1) by striking out the section heading; and

(2) by striking out "SEC. 310." and inserting in lieu thereof "(b)".

(c) Part A of title III is amended by adding after section 308 the following new section:

"NATIONAL CENTER FOR HEALTH CARE TECHNOLOGY; HEALTH CARE TECHNOLOGY ADVISORY COMMITTEE

"SEC. 309. (a) There is established in the Department of Health, Education, and Welfare the National Center for Health Care Technology (hereinafter in this section referred to as the 'Center') which shall be under the direction of a Director who shall be appointed by the Secretary and supervised by the Assistant Secretary for Health (or such other officer of the Department as may be designated by the Secretary as the principal adviser to him for health programs).

"(b)(1)(A) The Secretary, acting through the Center, shall undertake and support (by grant or contract) comprehensive assessments of health care technology. Such assessments shall take into account the safety, effectiveness, and cost effectiveness of, and the social, ethical, and economic impact of health care technologies. In determining if the assessment of a particular health care technology should be given priority, emphasis shall be placed on—

"(i) the actual or potential risks and the actual or potential benefits to patients associated with the use of the technology,

"(ii) the actual or potential cost of the technology,

"(iii) the actual or potential rate of its use, and

"(iv) the stage of development of the technology.

"(B) The Secretary may by grant or contract assist public and private nonprofit entities in meeting the costs of planning, establishing, and operating centers to assess health care technology.

"(C) Any grant or contract under this paragraph, the direct cost of which will exceed $35,000, may be made or entered into only after appropriate review for scientific merit by peer review groups composed of experts in the relevant fields and only after the Health Care Technology Advisory Committee has had an opportunity to review the project with respect to which the grant or contract is to be made.

"(2) The Secretary, acting through the Center, shall undertake and support (by grant or contract) research in, and demonstrations and evaluations of—

"(A) the factors that affect the use of health care technologies in the United States; and

"(B) methods for disseminating information on health care technologies to health professionals.

"(3) The Center shall make recommendations to the Secretary respecting health care technology issues in the administration of the laws under the Secretary's jurisdiction, including recommendations with respect to reimbursements under titles XVIII and XIX of the Social Security Act.

"(c)(1) Not later than December 1, 1979, and December 1 of each succeeding year, the Secretary shall report to Congress, a comprehensive description of the activities of the Center under subsection (b) during the preceding fiscal year.

"(2) Not later than two years after the date of the enactment of the Health Services Research, Health Statistics, and Health Care Technology Act of 1978, the Secretary shall submit a report to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Human Resources of the Senate—

"(A) describing the various types of activities undertaken and supported under subsection (b)(1) for the assessment of health care technology.

"(B) describing the recommendations made under subsection (b)(3) and the action taken with respect to such recommendations, and

"(C) describing any additional authority or organizational changes which the Secretary determines are required to more effectively carry out the functions prescribed by subsection (b).

The Office of Management and Budget may review the report required by this paragraph before its submission to the Committee on

Interstate and Foreign Commerce and the Committee on Human Resources, but the Office may not revise such report or delay its submission beyond the date prescribed for its submission and may submit to Congress its comment repecting the report.

"(d)(1) No grant or contract may be made under this section unless an application therefor has been submitted to the Secretary in such manner, and containing such information, as the Secretary may by regulation prescribe.

"(2) Payments of any grant or under any contract under this section may be made in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may prescribe.

"(e)(1) There is established the Health Care Technology Advisory Committee (hereinafter in this subsection referred to as the 'Committee') to advise the Secretary and the Director of the Center with respect to the performance of the functions prescribed by subsection (b), including the establishment of priorities for the assessments to be undertaken or supported under paragraph (1) of such subsection.

"(2) The Committee shall consist of—

"(A) the Director of the National Institutes of Health, the Chief Medical Officer of the Veterans' Administration, the Assistant Secretary for Health and Environment of the Department of Defense, the Chairman of the National Professional Standards Review Council, the Chairman of the National Council on Health Planning and Development (established under section 1503), the Director of the Office of Science and Technology Policy, the Commissioner of the Food and Drug Administration (or the successor to such entity), the Director of the Center for Disease Control (or the successor to such entity), and the head of the Health Care Financing Administration (or the successor to such entity) who (or their designees) shall be ex officio members, and

"(B) sixteen members appointed by the Secretary.

The Secretary shall make his initial appointments to the Committee within one hundred and twenty days of the date of the enactment of this section. Seven of the appointed members shall be selected from individuals who are distinguished in the fields of medicine, engineering, or science (including social science). Of such seven members, at least two shall be physicians and two shall be selected from representatives of business entities engaged in the development or production of health care technology. Two of the appointed members shall be selected from individuals who are hospital administrators, two of the appointed members shall be selected from individuals who are distinguished in the field of economics, two of the appointed members shall be selected from individuals who are distinguished in the field of law, one of the appointed members shall be selected from individuals who are distinguished in the field of ethics, and two of the appointed members shall be selected from members of the general public who represent the interests of consumers of health care.

"(3)(A) Each appointed member of the Committee shall be appointed for a term of four years, except that—

"(i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed for the remainder of such term; and

"(ii) of the members first appointed after the date of the enactment of this section, four shall be appointed for a term of four years, four shall be appointed for a term of three years, four shall be appointed for a term of two years, and four shall be appointed for a term of one year, as designated by the Secretary at the time of appointment.

Appointed members may serve after the expiration of their terms until their successors have taken office.

"(B) Members of the Committee who are not officers or employees of the United States shall receive for each day they are engaged in the performance of the functions of the Committee compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(4) The Committee shall annually elect one of its appointed members to serve as Chairman until the next election.

"(5) The Committee shall meet at the call of the Chairman, but not less often than four times a year.

"(6) Section 14 of the Federal Advisory Act shall not apply with respect to the duration of the Committee.

"(e) There are authorized to be appropriated to carry out this section $15,000,000 for the fiscal year ending September 30, 1979, $25,000,000 for the fiscal year ending September 30, 1980, and $35,000,000 for the fiscal year ending September 30, 1981. Not less than 20 per centum of the amount appropriated for the fiscal year ending September 30, 1981, shall be obligated for assessments directly undertaken by the Secretary under subsection (b)(1). The authority of the Secretary to enter into contracts under subsection (b) shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.".

STUDY

SEC. 9. (a) The United States Committee on Vital and Health Statistics (established by section 306 of the Public Health Service Act) shall, effective October 1, 1978, conduct a study of the issues respecting and the recommendations for establishing a Federal system—

(1) to facilitate studies of the effects of hazardous substances on humans, and

(2) to assist, in a manner designed to avoid invasion of personal privacy, Federal, State, and other entities in locating individuals who have been or may have been exposed to hazardous substances to determine the effect on their health of such exposure and to assist them in obtaining appropriate medical care and treatment.

In conducting such study, the Committee shall consult with the Administrator of the Environmental Protection Agency, the Director of the National Cancer Institute, the Council on Environmental Quality, the Director of the National Institute on Environmental Health Sciences, the Director of the National Institute for Occupational Safety and Health, the Secretary of Labor, and the head of the Occupational Safety and Health Administration, and the Committee may consult with any other public and private entity which it determines has expertise in any matter to be considered in the study.

(b) Not later than one year after the date of enactment of this Act, the Committe shall complete the study required by subsection (a) and report to the Congress the results of the study and any recommendations for legislation or administrative action.

SEC. 10. (a) Subsection (g) of section 208 is amended (1) by striking out "one hundred and fifty-five" and inserting in lieu thereof "one hundred and seventy-nine", (2) by striking out "and not less than" and inserting in lieu thereof ", not less than", and (3) by inserting after "alcoholism," the following: "not less than ten shall be for the National Center for Health Services Research, not less than twelve shall be for the National Center for Health Statistics, and not less than seven shall be for the National Center for Health Care Technology,".

(b) Section 453 is amended by adding at the end the following: "The Secretary, through the Institute, may, effective October 1, 1978, and without regard to section 405, carry out a program of grants for public and nonprofit private vision research facilities.".

(c)(1) The second sentence of subsection (a) of section 705 is amended to read as follows: "Such records shall include records which fully disclose (A) the amount and disposition by such entity of the funds paid to it under such grant, loan, loan guarantee, interest subsidy, or contract, (B) the total cost of the project or undertaking for which such grant, loan, loan guarantee, interest subsidy, or contract is made, (C) the amount of that portion of the cost of the project or undertaking received by or allocated to such entity from other sources, and (D) such other records as will facilitate an audit conducted in accordance with generally accepted auditing standards.".

(2) Subsection (b) of section 705 is amended to read as follows:

"(b) Each entity which received a grant or entered into a contract under this title shall provide for a biennial financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant or contract and such other funds received by or allocated to the project or undertaking for which such grant or contract was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with such requirements concerning the individual or agency which conducts the audit, and such standards applicable to the performance of the audit, as the Secretary may by regulation provide. A report of each such audit shall be filed with the Secretary at such time and in such manner as he may require.".

(d) Section 771(d) is amended by adding at the end the following:

"(5) The Secretary may waive (in whole or in part) application to a school of dentistry of the requirement of any paragraph of this subsection if the Secretary determines, after receiving the written recommendation of the appropriate accreditation body or bodies (approved for such purpose by the Commissioner of Education) that compliance by such school with such requirement will prevent it from maintaining its accreditation.".

HEALTH PROFESSIONS REPORTS AND PROGRAMS

SEC. 11. (a) Section 708(d) is amended (1) by striking out "not later than September 1 of each year", and (2) by inserting at the end the following: "Such report shall be submitted biennially, and the first such report shall be due not later than October 1, 1979.".

(b) Section 709(b) is amended by striking out "January 1, 1979" and inserting in lieu thereof "February 1, 1980".

(c) Section 751(i) is amended by striking out "December" and inserting is lieu thereof "March".

(d) Section 771(b)(2)(B) is amended by striking out "45 days after the date for which the determination is made" and inserting in lieu thereof "the first December 31 occurring after the date for which the determination is made".

(e) Section 782(c) is amended by striking out "September 30, 1979" and inserting in lieu thereof "March 1, 1980".

(f) Section 788(b)(6) is amended by striking out "September 30, 1978" and inserting in lieu thereof "October 1, 1979".

(g) Section 793(c) is amended (1) by

striking out "annually" and inserting in lieu thereof "biennially", and (2) by striking out "December 1, 1978" and inserting in lieu thereof "October 1, 1979".

(h) Section 951(b) of the Nurse Training Act of 1975 is amended by striking out "Not later than February 1, 1977, and February 1 of each succeeding year" and inserting in lieu thereof "Not later than October 1, 1979, and October 1 of each odd-numbered year thereafter".

(i)(1) Section 702(d) of the Health Professions Educational Assistance Act of 1976 is amended by striking out "not later than two years after the date of enactment of this Act" and inserting in lieu thereof "not later than October 1, 1979".

(2) Section 903(a)(2) of the Health Professions Educational Assistance Act of 1976 is amended by striking out "January 1, 1979" and inserting in lieu thereof "April 1, 1979".

(j) Section 772(e) of the Public Health Service Act is amended by inserting before the period a comma and the following: "except that a student who, for other than academic reasons, withdraws from a year class before the end of an academic year or does not complete an academic year shall not be considered as having been enrolled in a year class in that academic year".

MISCELLANEOUS

SEC. 12. (a)(1) Section 111(h) (42 U.S.C. 7411) of the Act of July 14, 1955, as amended by Public Law 95-95, is amended by adding the following at the end thereof:

"(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this Act (other than the provisions of subsection (a) and of such section are each amended by strik- this subsection).".

(2) Subsections (d)(1)(A) and (g)(4)(B) ing out "under subsection (b)" and inserting in lieu thereof "under this section".

(3) Subsection (j) of such section is amended by striking out "subsection (b) of" in paragraphs (1)(A) and (2)(A) thereof.

(b) Section 112(e) of such Act (42 U.S.C. 7412) is amended by adding the following at the end thereof:

"(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as an emission standard for purposes of the provisions of this Act (other than the provisions of this subsection)."

(c) Section 117(c)(3) of such act (42 U.S.C. 7417) is amended by striking out "(b)(1)(B)" in each place it appears.

(d) Section 317(a)(1) of such Act (42 U.S.C. 7617) is amended by striking out "(b)".

Amend the title so as to read: "An Act to amend the Public Health Service Act to revise and extend the authorities under that Act relating to health services research and health statistics and to establish a National Center for Health Care Technology, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendments of the House, request a conference with the House, and that the Chair be authorized to appoint the Senate conferees.

The motion was agreed to; and the Presiding Officer appointed Mr. KENNEDY, Mr. NELSON, Mr. PELL, Mr. HATHAWAY, Mr. WILLIAMS, Mr. SCHWEIKER, Mr. JAVITS, and Mr. CHAFEE conferees on the part of the Senate.

NURSE TRAINING AMENDMENTS OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2416.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2416) entitled "An Act to amend title VIII of the Public Health Service Act to extend for two fiscal years the program of assistance for nurse training", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

TITLE I—NURSE TRAINING

SEC. 101. (a) This Act may be cited as the "Nurse Training Amendments of 1978".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 102. Section 801 (relating to authorizations for construction grants) is amended by inserting after "for fiscal year 1978" the following: "and for each of the next two fiscal years".

SEC. 103. (a) Subsections (a) and (b) of section 805 (relating to loan guarantees and interest subsidies) are each amended by striking out "1978" and inserting in lieu thereof "1980".

(b) Subsection (e) of such section is amended by inserting after "in fiscal year 1978" the following: "and in each of the next two fiscal years".

SEC. 104. Subsection (f) of section 810 (relating to capitation grants) is amended by inserting after "fiscal year 1978" the following: "and for each of the next two fiscal years.".

SEC. 105. The first sentence of subsection (d) of section 820 (relating to special project grants and contracts) is amended by striking out "and" after "1977," and by inserting before the period the following: ", $20,000,000 for the fiscal year ending September 30, 1979, and $20,000,000 for the fiscal year ending September 30, 1980".

SEC. 106. Subsection (b) of section 821 (relating to advanced nurse training programs) is amended by inserting after "for fiscal year 1978" the following: "and for each of the next two fiscal years".

SEC. 107. Subsection (e) of section 822 (relating to nurse practitioner programs) is amended by striking out "for fiscal year 1978" and inserting in lieu thereof "for the fiscal year ending September 30, 1978, and for each of the next two fiscal years".

SEC. 108. Subsection (b) of section 830 (relating to traineeships) is amended by inserting before the period "and for each of the next two fiscal years".

SEC. 109. (a) Subsection (b)(4) of section 835 (relating to loan agreements) is amended by striking out "1978" and inserting in lieu thereof "1980".

(b) Section 837 (relating to authorizations for student loan funds) is amended (1) by inserting before the period in the first sentence "and for each of the next two fiscal years", (2) by striking out "fiscal year 1979" and inserting in lieu thereof "the fiscal year ending September 30, 1981", and (3) by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1980".

(c)(1) Subsection (a) of section 839 (relating to distribution of assets) is amended by striking out "September 30, 1980, and not later than September 30, 1977" and inserting in lieu thereof "September 30, 1981, and not later than December 30, 1983".

(2) Paragraph (1) of such subsection is amended by striking out "1980" and inserting in lieu thereof "1983".

(3) Subsection (b) of such section is amended by striking out "1980" each place it occurs and inserting in lieu thereof "1983".

SEC. 110. (a) Subsection (b) of section 845 (relating to scholarship grants) is amended (1) by striking out "next two fiscal years" in the first sentence and inserting in lieu thereof "next four fiscal years", (2) by striking out "1979" and inserting in lieu thereof "1981", and (3) by striking out "1978" and inserting in lieu thereof "1980".

(b) Subsection (c)(1) of such section is amended (1) by striking out "next two fiscal years" in subparagraph (A) and inserting in lieu thereof "next four fiscal years", (2) by striking out "1978" in subparagraph (B) and inserting in lieu thereof "1980", and (3) by striking out "1979" in such subparagraph and inserting in lieu thereof "1981".

SEC. 111. Subpart I of part B of title VIII (relating to traineeships) is amended by adding after section 830 the following new section:

"TRAINEESHIPS FOR TRAINING OF NURSE ANESTHETISTS

"SEC. 831. (a)(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeship for the training, in programs which meet such requirements as the Secretary shall by regulation prescribe and which are accredited by an entity or entities designated by the Commissioner of Education, of licensed, registered nurses to be nurse anesthetists.

"(2) Payments to institutions under this subsection may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. Such payments may be used only for traineeships and shall be limited to such amounts as the Secretary finds necessary to cover the costs of tuition and fees, and a stipend and allowances (including travel and subsistence expenses) for the trainees.

"(b) For the purpose of making grants under subsection (a), there are authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1979, and $3,000,000 for the fiscal year ending September 30, 1980.".

SEC. 112. Section 836(b)(3) (relating to student loans) is amended (1) by inserting after "(3)" the following: "in the case of a student who received such a loan before the date of enactment of the Nurse Training Amendments of 1978,", and (2) by striking out "any such loan" and inserting in lieu thereof "any such loan made before such date".

SEC. 113. (a) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") shall arrange, in accordance with subsection (b), for the conduct of a study to determine the need to continue a specific program of Federal financial support for nursing education, taking into account—

(1) the need for nurses under the present health care delivery system and under that system as it may be changed by the enactment of legislation for national health insurance,

(2) the cost of nursing education, and

(3) the availability of other sources of support for nursing education, including support under general programs of Federal financial support for post secondary education, under State and other public programs, and from private sources.

(b)(1) The Secretary shall first request the National Academy of Sciences (hereinafter in this section referred to as the "Academy"), acting through the Institute of Medicine, to conduct the study, required by subsection (a), under an arrangement whereby the actual expenses incurred by the Academy directly related to the conduct of such study will be paid by the Secretary. If the Academy agrees to such request, the Secretary shall enter into such an agreement with the Academy.

(2) If the Academy declines the Secretary's request to conduct such study under such an arrangement, then the Secretary shall

enter into a similar arrangement with another appropriate public or nonprofit private entity to conduct such study.

(3) Any arrangement entered into under paragraph (1) or (2) of this subsection for the conduct of a study shall require that such study be completed and reports thereon be submitted within such period as the Secretary may require to meet the requirements of subsection (c).

(c) Not later than October 1, 1979, the Secretary shall report to the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives the results of the study conducted pursuant to subsection (a) together with such recommendations for legislation as the Secretary determines are appropriate.

(d) The authority of the Secretary to enter into any contract for the conduct of the study under this section shall be effective (1) only on and after October 1, 1978, and (2) for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

TITLE II—OTHER HEALTH PROFESSIONS PROGRAMS

SEC. 201. Section 338(a) (relating to authorizations for the National Health Service Corps) is amended by striking out "$57,000,000" and inserting in lieu thereof "$63,000,000".

SEC. 202. Section 729(a) relating to limits on Federal loan insurance and insured loans) is amended—

(1) by inserting before the period in the first sentence a comma and the following: "except that in the case of loans to students in schools of medicine, osteopathy, and dentistry, the Secretary may increase the total of such loans which may be covered by Federal loan insurance to $15,000 if he determines that the costs of education at such schools requires such increase"; and

(2) by inserting before the period in the second sentence a comma and the following: "except that the Secretary may increase such amount for borrowers who are or were students in schools of medicine, osteopathy, and dentistry to $60,000 if he determines that the costs of education at such schools requires such increase".

SEC. 203. Section 739(b)(2) (relating to eligibility of institutions to participate in the guaranteed student loan program) is amended by striking out "in each class in the institution" and inserting in lieu thereof "enrolled in the institution".

SEC. 204. Section 752(b)(5)(A) (relating to service requirements for National Health Service Corps scholarships) is amended by striking out "(not to exceed three years)" and inserting in lieu thereof "(not to exceed three years or such greater period as the Secretary may authorize)".

SEC. 205. Section 781(c) (relating to requirements for participation of schools in area health education center programs) is amended by adding at the end thereof the following:

"The requirement of paragraph (3) shall not apply to a medical or osteopathic school participating in an area health education center program if another such school participating in the same program meets the requirement of that paragraph.".

SEC. 206. Section 802(a) of the Health Professions Educational Assistance Act of 1976 (relating to transitional provisions on area health education centers) is amended—

(1) by striking out "for the next fiscal year" and inserting in lieu thereof "for the next three fiscal years";

(2) by striking out "no payment shall be made to an entity under such a contract" and inserting in lieu thereof "no payment under such a contract shall be made to an entity which had not first entered into such a contract before October 12, 1976, (1)"; and

(3) by inserting before the period at the end thereof the following: ", or (2) for any fiscal year beginning after September 30, 1979".

SEC. 207. For the purpose of awarding grants under section 748 of the Public Health Service Act for the fiscal year ending September 30, 1978, the Secretary of Health, Education, and Welfare shall consider an individual who received a traineeship under section 312 of such Act (as in effect on September 30, 1977) for the school year 1977–78 to be an individual described in subsection (b)(3) of such section.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendments of the House, request a conference with the House, and that the Chair be authorized to appoint the Senate conferees.

The motion was agreed to; and the Chair appointed Mr. KENNEDY, Mr. NELSON, Mr. PELL, Mr. HATHAWAY, Mr. WILLIAMS, Mr. SCHWEIKER, Mr. JAVITS, and Mr. CHAFEE, conferees on the part of the Senate.

TRAFFICKING IN CONTRABAND CIGARETTES

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1487.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1487) entitled "An Act to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That title 18, United States Code, is amended by inserting after chapter 113 the following new chapter:

"CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES

"Sec.
"2341. Definitions.
"2342. Unlawful acts.
"2343. Recordkeeping, reporting, and inspection.
"2344. Penalties.
"2345. Effect on State law.
"2346. Enforcement and regulations.

"§ 2341. Definitions

"As used in this chapter—

"(1) the term 'cigarette' means—

"(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

"(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

"(2) the term 'contraband cigarettes' means a quantity in excess of 30,000 cigarettes, which bear no evidence of the payment of applicable State cigarette taxes in the State where such cigarettes are found, if such State requires a stamp, impression, or other indication to be placed on package or other containers of cigarettes to evidence payment of cigarette taxes, and which are in the possession of any person other than—

"(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1954 as a manufacturer of tobacco products or as an export warehouse proprietor, or a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555) or an agent of such person;

"(B) a common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of such cigarettes;

"(C) a dealer—

"(i) Who is licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by such State; and

"(ii) who has complied with the accounting and payment requirements relating to such license or authorization with respect to the cigarettes involved; or

"(D) an officer, employee, or other agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State) having possession of such cigarettes in connection with the performance of official duties;

"(3) the term 'common or contract carrier' means a carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under the Interstate Commerce Act, or under equivalent operating authority from a regulatory agency of the United States or of any State;

"(4) the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands;

"(5) the term 'dealer' means any person who sells or distributes in any manner any quantity of cigarettes in excess of 30,000 in a single transaction; and

"(6) the term 'Secretary' means the Secretary of the Treasury.

"§ 2342. Unlawful acts

"(a) It shall be unlawful knowingly to ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes.

"(b) It shall be unlawful knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records of a dealer.

"§ 2343. Recordkeeping, reporting, and inspection

"Each dealer shall—

"(1) maintain such records of shipment, receipt, sale, and other distribution of cigarettes; and

"(2) submit to the Secretary such reports and information with respect to such records;

in such form and manner as the Secretary shall by regulation prescribe. Upon the consent of any dealer, or pursuant to a duly issued search warrant, the Secretary may enter the premises (including places of storage) of such dealer for the purpose of inspecting any records or documents required to be maintained by such dealer under this chapter, and any cigarettes kept or stored by such dealer at such premises.

"§ 2344. Penalties

"(a) Whoever violates any provision of this chapter or regulations promulgated thereunder shall be fined not more than $10,000, or imprisoned not more than two years, or both.

"(b) Any contraband cigarettes involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of such Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

"§ 2345. Effect on State law

"Nothing in this chapter shall be construed to affect the concurrent jurisdiction of a State to enact and enforce cigarette tax laws,

to provide for the confiscation of cigarettes and other property seized for violation of such laws, and to provide for penalties for the violation of such laws.

"§ 2346. Enforcement and regulations

"The Secretary shall enforce the provisions of this chapter and may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.".

SEC. 2. The table of chapters of part I of title 18, United States Code, is amended by inserting immediately below the item relating to chapter 113 the following:

"114. Trafficking in Contraband Cigarettes ---------- 2341".

SEC. 3. (a) Section 1(b) of the Act of August 9, 1939 (ch. 618, 53 Stat. 1291 (49 U.S.C. 781(b)), is amended—

(1) by striking out "or" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) Any cigarette, with respect to which there has been committed any violation of chapter 114 of title 18, United States Code, or any regulation issued pursuant thereto.".

(b) Section 7 of the Act of August 9, 1939 (ch. 618, 53 Stat. 1291 (49 U.S.C. 787)), is amended—

(1) by striking out "and" at the end of subsection (e);

(2) by striking out the period at the end of subsection (f) and inserting in lieu there "; and"; and

(3) by inserting after subsection (f) the following new subsection:

"(g) The term 'cigarettes' means 'contraband cigarettes' as now or hereafter defined in section 2341 of title 18, United States Code.".

(c) Section 1961(1)(B) of title 18, United States Code, is amended by inserting after "sections 2314 and 2315 (relating to interstate transportation of stolen property)," the following: "sections 2341–2346 (relating to trafficking in contraband cigarettes),".

SEC. 4. (a) Except as provided in subsection (b), this Act shall take effect on the date of its enactment.

(b) Sections 2342(b) and 2343 of title 18, United States Code, as enacted by the first section of this Act, shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act.

Amend the title so as to read: "An Act to amend title 18 of the United States Code to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendment of the House, agree to the conference requested by the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Mr. EASTLAND, Mr. KENNEDY, Mr. BIDEN, Mr. THURMOND, and Mr. HATCH conferees on the part of the Senate.

ORDER OF BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, how many orders are there for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. The Chair informs the majority leader that there are two orders, one for the Senator from Wisconsin (Mr. PROXMIRE) for 5 minutes, and one for the Senator from Arizona (Mr. GOLDWATER) for 10 minutes.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, the motion to invoke cloture on the committee substitute is vitiated, is it not?

The PRESIDING OFFICER. That motion was negated by the action which the Senator took earlier today.

Mr. ROBERT C. BYRD. What about the motion to invoke cloture on the Humphrey-Hawkins amendment?

The PRESIDING OFFICER. That, likewise, was negated.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, that amendment went to the bill and not to the committee substitute.

The PRESIDING OFFICER. The Senator is correct. That amendment fell on a point of order. Cloture having been invoked on the substitute, amendments to the bill also were required to be germane.

Mr. ROBERT C. BYRD. I thank the Chair.

RECESS UNTIL 7:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered—with the understanding that the Senate will resume consideration of the tax bill at 8 o'clock tomorrow morning and that rollcall votes will occur throughout the day and may occur as early as 9 a.m.—that the Senate stand in recess until 7:30 a.m. tomorrow.

The motion was agreed to; and at 11:13 p.m., the Senate recessed until tomorrow, Tuesday, October 10, 1978, at 7:30 a.m.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of all meetings when scheduled, and any cancellations or changes in meetings as they occur.

As an interim procedure until the computerization of this information becomes operational the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, October 10, 1978, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

OCTOBER 11

10:00 a.m.

Banking, Housing, and Urban Affairs
To continue oversight hearings on the use of export controls and export credits for foreign policy purposes.
5302 Dirksen Building

Rules and Administration
To consider S. Res. 575, authorizing funds for additional expenses of the Select Committee on Indian Affairs.
301 Russell Building

Conferees
On S. 1487, to eliminate racketeering in the sale and distribution of cigarettes.
S–146, Capitol

OCTOBER 12

8:00 a.m.

Appropriations
District of Columbia Subcommittee
To resume hearings on a proposed second campus for the University of the District of Columbia, and on the proposed Convention Center in the District of Columbia.
1114 Dirksen Building

9:00 a.m.

Armed Services
Manpower and Personnel Subcommittee
To continue hearings on alleged abuses in U.S. Marine Corps recruiting practices.

9:30 a.m.

Human Resources
Labor Subcommittee
To resume joint hearings with House Committee on Education and Labor Subcommittee on Labor Management Relations on the administration of the Service Contract Act (P.L. 89–286).
2175 Rayburn Building

10:00 a.m.

Governmental Affairs
Federal Spending Practices and Open Government Subcommittee
To resume hearings on the quality of care in nursing homes participating in Medicaid and Medicare programs.
3302 Dirksen Building

OCTOBER 13

9:30 a.m.

Human Resources
Health and Scientific Research Subcommittee
To resume hearings on national health insurance programs.
4232 Dirksen Building

CANCELLATIONS

OCTOBER 12

10:00 a.m.

Foreign Relations
African Affairs Subcommittee
To receive testimony from Assistant Secretary of State for African Affairs Richard Moose on U.S. policy in Southern Africa.
4221 Dirksen Building

Statements or insertions which are not spoken by the Member on the floor will be identified by the use of a "bullet" symbol, i.e., ●

HOUSE OF REPRESENTATIVES—*Tuesday, October 10, 1978*

The House met at 10 a.m.

Rev. Karl B. Justus, executive director, the Military Chaplains Association of the United States of America, offered the following prayer:

Almighty and everlasting God, we thank Thee for America's heritage of freedom.

With unceasing determination, with firm dedication and dynamic spirit, lead us to seek peace "and pursue it" among men and nations—always with a sense of justice and from a position of strength.

Help us to understand how fragile is the earthly—how brief the temporal—how permanent is the eternal—and how great is Thy saving power.

Send Thy rich blessing upon these Congressmen who serve our Nation from this hallowed and historic House.

May patriotic devotion, strength, and courage attend us all our days.

In Thy holy name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 11658. An act to amend title XI of the Merchant Marine Act, 1936, to permit the guarantee of obligations for financing Great Lakes vessels in an amount not exceeding 87½ per centum of the actual or depreciated actual cost of each vessel;

H.R. 12051. An act relating to the application of certain provisions of the Internal Revenue Code of 1954 to specified transactions by certain public employee retirement systems created by the State of New York or any of its political subdivisions;

H.R. 12264. An act to designate certain lands in the State of Wisconsin as wilderness;

H.R. 12556. An act for relief of Batavia Turf Farms, Inc.;

H.R. 13803. An act to terminate the authorization of the navigation project on the Columbia Slough, Oreg.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4018) entitled "An act to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5037) entitled "An act for the relief of Jack R. Misner."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6536) entitled "An act to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7843) entitled "An act to provide for the appointment of additional district and circuit judges, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11003) entitled "An act to clarify the authority for employment of personnel in the White House Office and the Executive Residence at the White House, to clarify the authority for employment of personnel by the President to meet unanticipated needs, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12255) entitled "An act to amend the Older Americans Act of 1965 to provide for improved programs for older persons, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12932) entitled "An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1979, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 555) entitled "An act to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1566) entitled "An act to amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information."

The message also announced that the Senate agrees to the amendments of the House to bills of the Senate of the following titles:

S. 1081. An act to amend the laws relating to the Osage Tribe in Oklahoma;

S. 2358. An act to declare that the United States holds in trust for the Pueblo of Zia certain public domain lands;

S. 2588. An act to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands; and

S. 3486. An act to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loans, to authorize appropriations for civil defense, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 9518. An act to amend the Shipping Act 1916, to strengthen the provisions prohibiting rebating practices in the U.S. foreign trades;

H.R. 12250. An act to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Act, and for other purposes;

H.R. 13372. An act to increase the price of migratory-bird hunting and conservation stamps and to provide for consultation by the Secretary of the Interior with State and local authorities before migratory bird areas are recommended for purchase or rental, and for other purposes; and

H.R. 13972. An act to designate the Great Bear Wilderness, Flathead National Forest and enlarge the Bob Marshall Wilderness, Flathead and Lewis and Clark National Forests, State of Montana.

The message also announced that the Senate agrees to the amendments of the House with amendments to bills of the Senate of the following titles:

S. 1816. An act to amend the Public Works and Economic Development Act of 1965 to authorize a program of research, development, and demonstration of guayule rubber production and manufacture as an economic development opportunity for the Southwestern States; and

S. 2399. An act to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other laws to meet obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation of psychotropic substances, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 12250) entitled "An act to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Area, and for other purposes," asks for a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. JACKSON, Mr.

ABOUREZK, Mr. METZENBAUM, Mr. CHURCH, Mr. JOHNSTON, Mr. BUMPERS, Mr. ANDERSON, Mr. MATSUNAGA, Mr. HANSEN, Mr. MARK O. HATFIELD, Mr. MCCLURE, and Mr. WEICKER to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendment of the House to the bill (S. 1487) entitled "An act to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes," agrees to a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. EASTLAND, Mr. KENNEDY, Mr. BIDEN, Mr. THURMOND, and Mr. HATCH to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 1613) entitled "An act to improve access to the Federal courts by enlarging the civil and criminal jurisdiction of United States magistrates, and for other purposes," agrees to a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. EASTLAND, Mr. KENNEDY, Mr. ABOUREZK, Mr. METZENBAUM, Mr. DECONCINI, Mr. ROBERT C. BYRD, Mr. THURMOND, Mr. WALLOP, and Mr. SCOTT to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendment of the House to the bill (S. 2416) entitled "An act to amend title VIII of the Public Health Service Act to extend for two fiscal years the program of assistance for nurse training," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. KENNEDY, Mr. NELSON, Mr. PELL, Mr. HATHAWAY, Mr. WILLIAMS, Mr. SCHWEIKER, Mr. JAVITS, and Mr. CHAFEE to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 2466) entitled "An act to amend the Public Health Service Act to extend and revise the assistance programs for health services research and health statistics; to establish the Office of Health Technology, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. KENNEDY, Mr. NELSON, Mr. PELL, Mr. HATHAWAY, Mr. WILLIAMS, Mr. SCHWEIKER, Mr. JAVITS, and Mr. CHAFEE to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 2534) entitled "An act to revise and extend the provisions of title XIII of the Public Health Service Act relating to health maintenance organizations," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. KENNEDY, Mr. NELSON, Mr. PELL, Mr. HATHAWAY, Mr. WILLIAMS, Mr. SCHWEIKER, Mr. JAVITS, and Mr. CHAFEE to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 2502. An act to authorize the States and the Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country;

S. 3412. An act to provide for cost-of-living adjustments in the annuity of a retired Comptroller General, and for other purposes;

S. 3578. An act to transfer to the Superintendent of Documents the function of distributing Government publications to certain foreign governments; and

S. Con. Res. 108. Concurrent resolution authorizing the printing of the prayers of the Chaplain of the Senate during the 95th Congress as a Senate document.

The message also announced that Mr. HOLLINGS, Mr. MCCLURE, and Mr. DOMENICI were appointed to the North Atlantic Assembly.

REV. KARL B. JUSTUS

(Mr. STEERS asked and was given permission to address the House for 1 minute).

Mr. STEERS. Mr. Speaker, Rev. Karl B. Justus is an ordained minister of the Methodist Church. He served his country for 4 years as a Navy chaplain and has been the executive director of the National Chaplains Association of the United States of America for the past 17 years. I am very pleased to have him here today as the guest of the House of Representatives.

CONSENT CALENDAR

The SPEAKER. Pursuant to the order of the House of October 6, 1978, this is the day for the call of the Consent Calendar. The Clerk will call the first bill on the Consent Calendar.

CONSENTING TO A NEW MEXICO CONSTITUTIONAL AMENDMENT PROVIDING METHOD FOR EXECUTING LEASES AND CONTRACTS FOR DEVELOPMENT AND OPERATION OF GEOTHERMAL STEAM AND WATERS ON CERTAIN LANDS

The Clerk called the joint resolution (H.J. Res. 747) to consent to an amendment of the constitution of the State of New Mexico to provide a method for executing leases and other contracts for the development and operation of geothermal steam and waters on lands granted or confirmed to such State.

There being no objection, the Clerk read the joint resolution as follows:

H.J. RES. 747

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That consent is given to the State of New Mexico to adopt the amendment to the constitution of such State proposed by the legislature in H. J. R. No. 17, section 1, New Mexico Laws 1618 (1967), and approved by the qualified electors of such State at the special election of November 7, 1967, and to amend article XXIV, section 1, of such constitution to read as follows:

"Leases and other contracts, reserving a royalty to the state, for the development and production of any and all minerals or for the development and operation of geothermal steam and waters on lands granted or confirmed to the state of New Mexico by the act of congress of June 20, 1910, entitled "An Act to enable the people of New Mexico to form a constitution and state government and be admitted into the union on an equal footing with the original states", may be made under such provisions relating to the necessity or requirement for or the mode and manner of appraisement, advertisement and competitive bidding, and containing such terms and provisions, as may be provided by act of the legislature; the rentals, royalties and other proceeds therefrom to be applied and conserved in accordance with the provisions of said act of congress for the support or in aid of the common schools, or for the attainment of the respective purposes for which the several grants were made.".

SEC. 2. Consent is given to the State of New Mexico to enact laws and establish regulations necessary to carry out the provisions of the amendment to the constitution of such State described in the first section of this Act.

With the following committee amendment:

Page 3, following line 22 on page 1, insert the following new section:

SEC. 3. Nothing in this Act shall be interpreted to limit, modify, supersede, amend, or otherwise affect any provision of Federal law other than section 10 of the Act of June 20, 1910, as amended (36 Stat. 557) or indicate that geothermal steam and associated geothermal resources are not minerals.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMENDING MILLER ACT TO RAISE DOLLAR AMOUNT OF CONTRACTS

The Clerk called the bill (H.R. 3185) to amend the act commonly known as the Miller Act to raise the dollar amount of contracts to which such act applies from $2,000 to $50,000.

There being no objection, the Clerk read the bill as follows:

H.R. 3185

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of the first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work", approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a (a)), is amended by striking out "$2,000" and inserting in lieu thereof "$50,000".

With the following committee amendment:

Page 2, line 5: Strike "$50,000" and insert "$25,000".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to amend the act commonly known as the Miller Act to raise the dollar amount of contracts to which such act applies from $2,000 to $25,000.".

A motion to reconsider was laid on the table.

U.S. ATTORNEYS AND U.S. MARSHALS FOR THE NORTHERN MARIANA ISLANDS

The Clerk called the bill (H.R. 13892) to amend title 28 of the United States Code to provide that the requirement that each U.S. attorney and U.S. marshal reside in the district for which he is appointed shall not apply to an individual appointed to such a position for the Northern Mariana Islands if such individual is at the same time serving in the same capacity in another district.

There being no objection, the Clerk read the bill as follows:

H.R. 13892

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 545(a) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "The provisions of this subsection shall not apply to any United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.

SEC. 2. Section 561(c) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any United States marshal appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.".

With the following committee amendment:

Page 2, line 1, after "attorney" insert "or assistant United States Attorney".

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

WITNESS FEES

The Clerk called the Senate bill (S. 2049) to establish fees and allow per diem and mileage expenses for witnesses before U.S. courts.

The SPEAKER. Is there objection to the present consideration of the Senate bill?

Mr. SCHULZE. Mr. Speaker, I ask unanimous consent that the Senate bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania.

There was no objection.

JURY SYSTEM IMPROVEMENTS ACT OF 1978

The Clerk called the Senate bill (S. 2075) to amend the Jury Selection and Service Act of 1968, as amended, by revising the section on fees of jurors and by providing for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's Federal jury service.

The SPEAKER. Is there objection to the present consideration of the Senate bill?

Mr. SCHULZE. Mr. Speaker, I ask unanimous consent that the Senate bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

U.S. MARSHALS' TRANSPORTATION EXPENSES ACT

The Clerk called the Senate bill (S. 2411) to amend chapter 315 of title 18, United States Code, to authorize payment of transportation expenses for persons released from custody pending their appearance to face criminal charges before the court, any division of that court, or any court of the United States in another Federal judicial district.

There being no objection, the Clerk read the Senate bill, as follows:

S. 2411

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 315 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 4285. Persons released pending further judicial proceedings

"Any judge or magistrate of the United States, when ordering a person released under chapter 207 on a condition of his subsequent appearance before that court, any division of that court, or any court of the United States in another judicial district in which criminal proceedings are pending, may, when the interests of justice would be served thereby and the United States judge or magistrate is satisfied, after appropriate inquiry, that the defendant is financially unable to provide the necessary transportation to appear before the required court on his own, direct the United States marshal to arrange for that person's means of noncustodial transportation or furnish the fare for such transportation to the place where his appearance is required, and in addition may direct the United States marshal to furnish that person with an amount of money for subsistence expenses to his destination, not to exceed the amount authorized as a per diem allowance for travel under section 5702 (a) of title 5, United States Code. When so ordered, such expenses shall be paid by the marshal out of funds authorized by the Attorney General for such expenses.".

SEC. 2. The section analysis of chapter 315 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"4285. Persons released pending further judicial proceedings.".

SEC. 3. The amendments made by this Act shall take effect on October 1, 1978.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SERVICE BY MEMBER OF BOARD OF REGENTS OF UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES UNTIL SUCCESSOR IS APPOINTED

The Clerk called the bill (H.R. 13903) to amend title 10, United States Code, to provide that a member of the Board of Regents of the Uniformed Services University of the Health Sciences whose term of office has expired shall continue to serve until a successor is appointed.

There being no objection, the Clerk read the bill, as follows:

H.R. 13903

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2113(b) of title 10, United States Code, relating to the Board of Regents of the Uniformed Services University of the Health Sciences, is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) any member whose term of office has expired shall continue to serve until his successor is appointed.".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMENDING SUBSECTION (a) OF SECTION 2737 OF TITLE 10, UNITED STATES CODE

The Clerk called the bill (H.R. 7201) to amend subsection (a) of section 2737 of title 10, United States Code, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

H.R. 7201

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 2737 of title 10, United States Code, is amended by striking "$1,000" and inserting "$2,500".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

The SPEAKER. This concludes the call of the Consent Calendar.

VIETNAM VETERANS WEEK

Mr. LEHMAN. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 1147) authorizing and requesting the President to designate the 7-day period beginning on May 28, 1979, as "Vietnam Veterans Week," and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 1147

Whereas members of the Armed Forces of the United States who served in Southeast Asia during the Vietnam conflict performed such service under the most trying conditions because of the lack of domestic support for the conflict and because of the nature of the conflict itself;

Whereas the battlefield performance of America's soldiers, sailors, marines, and airmen during the Vietnam conflict was by all measures the equal of that of their counterparts in previous conflicts;

Whereas an adverse image has often been unfairly attached to the Vietnam veteran as an individual because of the controversial nature of the Vietnam conflict; and

Whereas the Nation has never fully expressed its gratitude to those who gave a substantial portion of their lives at their Government's request and in the name of the people of the United States to serve in such conflict: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested (1) to issue a proclamation designating the seven-day period beginning on May 28, 1979, as "Vietnam Veterans Week" and calling upon the people of the United States and interested groups and organizations to observe such period with appropriate ceremonies and activities, and (2) to initiate and coordinate appropriate ceremonies and activities within the executive branch for the observance of such period.

The SPEAKER. The gentleman from Florida (Mr. LEHMAN) is recognized for 1 hour.

Mr. LEHMAN. Mr. Speaker, House Joint Resolution 1147 was introduced by the gentleman from Michigan (Mr. BONIOR) and has received over 218 cosponsors. The resolution seeks to recognize the service of these Americans who served in an unpopular war. It provides the Nation with the opportunity to acknowledge these individuals for their valor and heroism.

I have no further request for time.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RECOGNIZING CONTRIBUTION OF BERNARDO DE GALVEZ TO THE INDEPENDENCE OF UNITED STATES

Mr. LEHMAN. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the resolution (H. Res. 1375) to recognize the contribution of Bernardo de Galvez to the independence of the United States, and ask for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, does this resolution have the requisite number of cosponsors, as required by the gentleman's committee?

Mr. LEHMAN. If the gentleman will yield, Mr. Speaker, the gentleman's question is well put.

House Resolution 1375 was introduced by the gentleman from Texas (Mr. GONZALEZ) and has obtained over the requisite 218 cosponsors. The resolution recognizes the important contributions of Bernardo de Galvez as captain-general of Louisiana and the Floridas during the American Revolutionary period.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman for his explanation, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 1375

Whereas Bernardo de Galvez (1746–1786) was captain-general of Louisiana and the Floridas;

Whereas he belonged to a family that was one of the most distinguished in the colonial service of Spain;

Whereas he did all that he could do to weaken the British in this quarter of the world in the two years of his administration preceding Spain's entry into the American Revolutionary War;

Whereas he supplied American soldiers with arms and seized British ships that had been carrying on a profitable contraband trade with Louisiana;

Whereas in three campaigns he reduced every British post in West Florida;

Whereas his name is associated with several important measures and episodes in the history of Louisiana and the Floridas;

Whereas in 1785 he received the gratitude of Congress for releasing several American merchants imprisoned at Havana;

Whereas the city of Galveston, Texas, was named in honor of Bernardo de Galvez: Now, therefore, be it

Resolved, That the House of Representatives recognizes the great contribution of Bernardo de Galvez to the independence of the United States.

● Mr. GONZALEZ. Mr. Speaker, the resolution under consideration recognizes Bernardo de Galvez, captain-general of Louisiana and the Floridas, for his great contribution to the independence of the United States.

We are all aware of the great contributions of Lafayette of France, and Kosciusko of Poland, but Bernardo de Galvez, for whom the town of Galveston, Tex., is named is not mentioned in our studies on American history. He was not formally recruited as a foreign officer, which probably explains why his name is not included in our history texts, but his actions contributed a great deal to the winning of our independence from England.

Bernardo de Galvez Gallardo y Ortego was born in Spain in 1746. As a young man he demonstrated his ability as an expert strategist, as well as a very competent diplomat and at the age of 30 was named Governor of Louisiana.

Prior to Spain's entry into the War of Independence, de Galvez did all that he could to weaken the British in that quarter of the world, supplying the American soldiers with arms and seizing British ships that had been carrying on a profitable contraband trade with Louisiana.

Because of his efforts, every major British post in West Florida was destroyed and his control of the lower Mississippi basin made it impossible for the English to use this waterway to attack the colonies from the Northwest.

The most famous episode of his career is his conquest of Pensacola which was a British fort. The fort had a formidable defense and de Galvez needed reinforcements from Havana. However, on his first atttempt to reach Pensacola his fleet was crippled by a storm. Undaunted he returned to Havana, reorganized his fleet and made his second attempt to take the fort. The admiral of the fleet, who was independent of de Galvez refused to cross the bar under the guns of the British fort alleging that to do so would be to court certain destruction. De Galvez resorted to shaming him into compliance and the British were finally forced to surrender. His conquest of Pensacola was commemorated when he was made Count de Galvez and Viscount of Galveztown, and on his coat of arms was emblazoned the ship Galveztown with the proud inscription "you solo," (I alone).

From records available there is an indication that de Galvez had excellent relations with the American commanders during the war years, especially George Washington.

He was appointed interim successor as Viceroy of Mexico after his father's death in 1784 and served in this capacity until his death in Mexico City in November 1786.

I want to thank all of my colleagues who supported me in my efforts to have this resolution brought to the House floor, a resolution that honors a great and noble Spaniard who made an outstanding contribution to our War of Independence.●

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEHMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Joint Resolution 1147 and House Resolution 1375, just considered.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

IRC AMENDMENTS FOR RECIPIENTS OF RETROACTIVE VA BENEFITS

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 8696) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of an individual who receives a retroactive determination of eligibility for disability compensation from the Veterans' Administration.

The Clerk read the title of the bill.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. For those Members who are not aware, by mutual agreement we are taking the first two bills on the Suspension Calendar by unanimous consent instead of suspension.

Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object—and I will not object—I do so for the purpose of having some discussion about this bill, on which I believe there is comparatively modest controversy.

Mr. ULLMAN. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Oregon.

Mr. ULLMAN. Mr. Speaker, H.R. 8696 deals with the tax treatment of payments received by retired military persons where the Veterans' Administration retroactively determines the veterans to be entitled to disability pay. Previously the Internal Revenue Service had ruled that the veteran was not entitled to treat his retired military pay as nontaxable disability compensation for the retroactive

period. However, the IRS recently reversed its position and now allows an exclusion. This bill codifies the new IRS ruling policy.

This bill will not affect revenues.

Mr. Speaker, I urge the adoption of H.R. 8696.

Mr. CONABLE. Mr. Speaker, I rise in support of H.R. 8696, a bill addressing the issue of retroactive treatment of veterans' disability compensation.

This bill is a legislative response to past IRS practice with respect to the treatment of retroactive disability compensation. Veterans' disability compensation is exempt from Federal income tax, whereas regular military pensions are taxable. The situation frequently occurs that a veteran retires and begins to receive his pension while at the same time pursuing a claim of partial or total disability. When the VA finally rules on the person's disability claim it is retroactive to the date the disability claim was filed.

However, for tax purposes the IRS only treated amounts received after the date of the VA's action as attributable to disability and therefore tax free. Consequently the person was taxed on his disability income received during the interval between the filing of the disability claim and the VA's approval of the claim.

On March 31, 1978, the IRS reversed its position on this issue. It now treats disability payments as exempt from Federal income tax from the date the disability claim was filed. H.R. 8696 ratifies the new IRS position and underscores our concern with the proper tax treatment of veteran disability payments.

Mr. Speaker, I support the passage of H.R. 8696.

Mr. CONABLE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The Clerk read the bill as follows:

H.R. 8696

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 104 of the Internal Revenue Code of 1954 (relating to compensation for injuries or sickness) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) RETROACTIVE DETERMINATIONS OF ELIGIBILITY FOR VETERANS' DISABILITY COMPENSATION.

"(1) IN GENERAL.—If—

"(A) an individual is determined to be eligible for disability compensation from the Veterans' Administration for a retroactive period,

"(B) such individual received military retirement pay during the retroactive period, and

"(C) within 60 days after the date on which such determination is made, such individual files a waiver under section 3105 of title 38 of the United States Code of so much of his military retirement pay as does not exceed the disability compensation,

then so much of any military retirement pay received by such individual during the retroactive period as does not exceed the disability compensation for which such individual would have been eligible but for the receipt of such pay shall be excluded from gross income under subsection (a)(4).

"(2) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax which is for a taxable year ending before the date on which the determination referred to in paragraph (1)(A) is made and which is attributable to the application of paragraph (1) is prevented on such date, or at any time within 1 year after such date, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within 1 year after such date.

"(3) INTEREST.—No interest shall be allowed with respect to any overpayment of tax which is attributable to the application of paragraph (1) for any period before the date on which the determination refered to in paragraph (1)(A) is made.

"(4) DEFINITIONS.—For pruposes of paragraph (1)—

"(A) RETROACTIVE PERIOD.—The term 'retroactive period' means, with respect to any determination of eligibility for disability compensation, the period—

"(i) which begins with the effective date of such determination prescribed pursuant to section 3010 of title 38 of the United States Code, and

"(ii) which ends on the first day of the first month which ends after the date on which such determination is made and to which the waiver described in paragraph (1)(C) applies.

"(B) MILITARY RETIREMENT PAY.—The term 'military retirement pay' means any pension, annuity, or similar allowance based on service in the Armed Forces of the United States.".

(b)(1) The amendment made by subsection (a) shall apply with respect to determinations made by the Veterans' Administration after August 31, 1975.

(2) In the case of any determination which was made by the Veterans' Administration before the date of the enactment of this Act, paragraphs (2) and (3) of section 104(c) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall be applied by substituting the date of the enactment of this Act for the date on which such determination was made.

COMMITTEE AMENDMENT

The SPEAKER. The Clerk will report the committee amendment.

The Clerk read as follows:

Committee amendment: Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. RETROACTIVE DETERMINATIONS OF ELIGIBILITY FOR VETERANS' DISABILITY COMPENSATION.

(a) IN GENERAL.—If—

(1) an individual is determined to be eligible for disability compensation from the Veterans' Administration for a retroactive period,

(2) such individual received military retirement pay for part or all of the retroactive period, and

(3) within 60 days after the date on which such determination is made, such individual files a waiver under section 3105 of title 38 of the United States Code of so much of his military retirement pay as does not exceed the disability compensation,

then so much of any military retirement pay received by such individual for such period as does not exceed the disability compensation for which such individual would have been eligible but for the receipt of such pay shall be excluded from gross income under section 104(a)(4) of the Internal Revenue Code of 1954 (relating to compensation for injuries or sickness).

(b) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax—

(1) which is for a taxable year ending before the date on which the determination referred to in subsection (a)(1) is made, and

(2) which is attributable to the application of subsection (a), is prevented on such date, or at any time within 1 year after such date, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within 1 year after such date.

(c) INTEREST.—No interest shall be allowed with respect to any overpayment of tax which is attributable to the application of subsection (a) for any period before the date on which the determination referred to in subsection (a)(1) is made.

(d) DEFINITIONS.—For purposes of subsection (a)—

(1) RETROACTIVE PERIOD.—The term "retroactive period" means, with respect to any determination of eligibility for disability compensation, the period—

(A) which begins with the effective date of such determination prescribed pursuant to section 3010 of title 38 of the United States Code, and

(B) which ends on the day before the first day of the first month—

(i) which ends after the date on which such determination is made, and

(ii) to which the waiver described in subsection (a)(3) applies.

(2) MILITARY RETIREMENT PAY.—The term "military retirement pay" means any pension, annuity, or similar allowance based on service in the Armed Forces of the United States.

SEC. 2. EFFECTIVE DATE.

(a) IN GENERAL.—Section 1(a) shall apply with respect to determinations made by the Veterans' Administration after August 31, 1975.

(b) DETERMINATIONS MADE BEFORE DATE OF ENACTMENT.—In the case of any determination which was made by the Veterans' Administration before the date of the enactment of this Act, subsections (b) and (c) of section 1 shall be applied by substituting the date of the enactment of this Act for the date on which such determination was made.

The committee amendment was agreed to.

● Mr. PICKLE. Mr. Speaker, I introduced H.R. 8696, tax treatment of veterans' disability compensation, to correct an Internal Revenue Service ruling that affected disabled veterans. Since I introduced my bill, on March 18, 1978, the Internal Revenue Service published a ruling which would interpret existing law in a manner substantially similar to the provisions of this bill (Revenue Ruling 78–161). Although I am very pleased by these developments, I think it is still important that we pass this legislation to insure that the IRS will not change its mind again and defy Congressional intent.

The problem was brought to my attention by one of my constituents in Austin, Mr. Alejandro Guerrero, who retired from the Air Force and began drawing his regular retirement pay—which is taxable income. Soon after his retirement, he became sick and he filed a request with the Veterans' Administration to rule that his medical problems be considered as service connected. It took the VA 16 months to finally rule that Mr. Guerrero's illness was service connected and the VA awarded him disability pay retroactive for 16 months.

Disability pay is not taxable income, and therefore for the 16 months during which the determination was made retroactive he should not be taxed. It seems clear to me that Congress intended for disability payments to be nontaxable at all times whether or not they were made retroactively.

But this was not clear to the IRS. They demanded that Mr. Guerrero and many other disabled veterans pay income taxes on their retroactive disability payments. Even after the U.S. Fourth Circuit Court of Appeals ruled against the IRS in the case of Zebulon Strickland against Commissioner of Internal Revenue on March 15, 1976, the IRS still refused to exclude retroactive disability payments from taxable income. It was not until 2 full years after the court decision, the IRS finally announced that it would follow the Strickland decision. Also, on June 28, 1978, the House suspended the rules and passed H.R. 11886, a bill from the House Veterans Affairs Committee which clarified the intent of Congress that such disability income should be nontaxable.

I believe this needs to be a permanent part of the Tax Code to insure that disabled veterans will be protected from the whims of the IRS. I urge passage of this bill.●

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill relating to the income tax treatment of an individual who receives a retroactive determination of eligibility for disability compensation from the Veteran's Administration."

A motion to reconsider was laid on the table.

SMALL TAX CASE PROCEDURES IN TAX COURT

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 13092) to amend the Internal Revenue Code of 1954 to extend the optional small tax case procedures to additional taxpayers, and to make certain changes relating to the authority of commissioners of the Tax Court.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, and I shall not object, I rise in support of H.R. 13092 which expands certain Tax Court procedures.

Currently taxpayers may elect to have their disputes before the Tax Court heard by a Commissioner under rules that relax the usual rules of evidence and do not require the filing of a brief. This special procedure is only available for cases that are approved by the Tax Court and do not involve disputed amounts in excess of $1,500.

The bill would allow the special procedure to be used in cases involving disputed amounts up to $5,000 and could clarify the authority of the Commissioners in these cases, to perform a number of functions including administering oaths, issuing subpenas and examining witnesses.

H.R. 13092 expands the availability of a program that benefits taxpayers and the Government and I urge its immediate passage.

Mr. ULLMAN. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Oregon.

Mr. ULLMAN. Mr. Speaker, H.R. 13092 amends the Internal Revenue Code to allow more taxpayers to elect to have their cases heard under the Tax Court's small case procedure. The bill also clarifies present law with regard to the powers and duties of the Tax Court's Commissioners who typically hear these small tax cases.

Under present law, a taxpayer may elect to have his or her tax dispute tried as a small tax case. These cases are tried under an expedited and simplified procedure and the trials are usually conducted by the Tax Court's Commissioners. Typically, the taxpayers who make this election are not represented by an attorney. However, under present law the election is available only where the amount in dispute does not exceed $1,500. The bill would increase this amount to $5,000 and thus permit more taxpayers to take advantage of this procedure for handling tax disputes.

The bill also specifically authorizes the Tax Court's Commissioners to hear these cases and to administer oaths, issue subpenas and examine witnesses. Under present law, these powers are expressed only in general terms.

Finally, the bill also authorizes the Tax Court's Commissioners to enter decisions in these cases. Decisions are computational determinations of the tax liability and are based on the reports which under present law are prepared by the Tax Court's Commissioners.

Mr. Speaker, the bill will permit more taxpayers to have their tax disputes tried under the Tax Court's small case procedure. The Treasury Department supports the enactment of the bill. I urge the House to approve H.R. 13092.

Mr. CONABLE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENDING THE OPTIONAL SMALL TAX CASE PROCEDURES TO ADDITIONAL TAXPAYERS.

(a) IN GENERAL.—Subsection (a) of section 7463 of the Internal Revenue Code of 1954 (relating to small tax cases) is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) $5,000 for any one taxable year, in the case of the taxes imposed by subtitle A,

"(2) $5,000, in the case of the tax imposed by chapter 11, or

"(3) $5,000 for any one calendar year, in the case of the tax imposed by chapter 12,".

(b) CONFORMING AMENDMENTS.—

(1) The heading of section 7463 of such Code is amended by striking out "$1,500" and inserting in lieu thereof "$5,000".

(2) The table of sections for part II of subchapter C of chapter 76 of such Code is amended by striking out "$1,500" in the item relating to section 7463 and inserting in lieu thereof "$5,000".

SEC. 2. AUTHORITY TO ASSIGN SMALL TAX CASES TO COMMISSIONERS.

Section 7463 of the Internal Revenue Code of 1954 (relating to small tax cases) is amended by adding at the end thereof the following new subsection:

"(g) COMMISSIONERS. The chief judge of the Tax Court may assign proceedings conducted unler this section to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to any such proceeding, subject to such conditions and review as the court may by rule provide.".

SEC. 3. AUTHORITY OF TAX COURT COMMISSIONERS TO ADMINISTER OATHS, PROCURE TESTIMONY, ETC.

Subsection (a) of section 7456 of the Internal Revenue Code of 1954 (relating to the administration of oaths and testimony) is amended—

(1) by striking out "any judge of the Tax Court" each place it appears and inserting in lieu thereof "any judge or commissioner of the Tax Court"; and

(2) by striking out "by the judge" and inserting in lieu thereof "by the judge or commissioner".

SEC. 4. EFFECTIVE DATES.

(a) SECTION 1.—The amendments made by section 1 of this Act shall take effect on the first day of the first calendar month beginning more than 180 days after the date of the enactment of this Act.

(b) SECTIONS 2 AND 3.—The amendments made by sections 2 and 3 of this Act shall take effect on the date of the enactment of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

IRC AMENDMENTS RE INCOME AVERAGING

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 12532) to amend the Internal Revenue Code of 1954 to amend the Internal Revenue Code of 1954 to provide that the use of the zero bracket amount will not reduce the benefits of income averaging.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, I ask the gentleman from Oregon if he will explain this measure.

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield, H.R. 12532 amends the Internal Revenue Code to correct an unintended result of a conforming amendment made in the Tax Reduction and Simplification Act of 1977. Under that act, the tax code was amended to incorporate the standard deduction into the tax rate schedules and tables. This change, known as the zero bracket amount, was intended to simplify the law and have no, or only minimal, effect on taxpayers' tax liabilities.

The zero bracket amount change required conforming amendments so that other code provisions would continue to operate in the manner they are intended. A conforming amendment to the income averaging provisions, necessitated by the 1977 act's adoption of the zero bracket amount, unintentionally resulted in a decrease in the benefits of income averaging to some taxpayers. this bill corrects that result and allows taxpayers

who choose the benefits of income averaging to receive the same benefits after the Tax Reduction and Simplification Act of 1977 as before the act.

Mr. Speaker, the bill corrects an unintended result of prior legislation from the Committee on Ways and Means. I urge the House to approve H.R. 12532.

Mr. CONABLE. Mr. Speaker, I rise in support of H.R. 12532, a bill to correct the income tax averaging provisions for the zero bracket amount.

The Tax Reduction and Simplification Act of 1977 introduced a new concept into the tax law. This new concept was the zero bracket amount which replaced the standard deduction. The purpose of the change in terminology was to accommodate a change intended to simplify tax returns. Under old law it was necessary for taxpayers to separately list their standard deduction and then deduct it from their gross income. The 1977 changes consolidated the standard deduction into the tax tables, thereby simplifying the preparation of a person's 1040 form. The consolidated standard deduction is known as the zero bracket amount.

The consolidation of the standard deduction into the tax tables required that conforming changes are made elsewhere in the tax law. One area which required a conforming change was Schedule G, Income Averaging. The change was suppose to affect the proper adjustment for the standard deduction—now zero bracket amount—for the income of the base period years. The base period income is the reference point which determines a person's eligibility to use income averaging and also determines the amount of tax benefit which averaging will produce.

Because of an oversight in the language in the Tax Reduction and Simplification Act the zero bracket amount is inserted in the computation sequence in a way which leads to an unintended overstatement of the base period income. This is because the zero bracket amount is inadvertently factored up to 120 percent. This in turn reduces the benefits of income averaging or perhaps prevents a person from meeting the $3,000 threshold test to qualify for income averaging.

H.R. 12532 will correct this anomaly in the computation sequence of income averaging. The bill provides that only the true zero bracket amount adjustment will be made to income of the base period years. That is, the zero bracket amount will not be factored up by 120 percent.

In recognition of the unintended nature of the current computation sequence, the bill provides relief retroactive to January 1, 1977. Accordingly persons who were adversely effected by the 1977 changes will be able to gain the full benefit of income averaging by filing amended returns.

Mr. Speaker, H.R. 12532 is a bill designed to correct a small drafting error which has led to a large tax inequity for numerous taxpayers. I urge passage of H.R. 12532.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The Clerk read the bill, as follows:

H.R. 12532

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsections (a) and (b)(2) of section 1302 of the Internal Revenue Code of 1954 (defining averageable income and related terms) are each amended by striking out "taxable income" each place it appears and inserting in lieu thereof "modified taxable income".

(b) Section 1301 of such Code (relating to limitation on tax) is amended by striking out "120 percent of average base period income" and inserting in lieu thereof "the sum of (1) 120 percent of average base period income, plus (2) the taxpayer's zero bracket amount for the computation year".

(c) Subsection (c) of section 1302 of such Code (defining other related terms) is amended by adding at the end thereof the following new paragraph:

"(5) MODIFIED TAXABLE INCOME.—The term 'modified taxable income' means—

"(A) in the case of a taxable year beginning before January 1, 1977, the taxable income for such year, or

"(B) in the case of a taxable year beginning after December 31, 1976, the taxable income for such year reduced (but not below zero) by the taxpayer's zero bracket amount for such year."

(d) Subsection (b) of section 1302 of such Code (defining average base period income) is amended by striking out paragraph (3).

SEC. 2. The amendments made by the first section of this Act shall apply to taxable years beginning after December 31, 1976.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

IRC AMENDMENTS RE TAX COUNSELING FOR THE ELDERLY

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 3553) to amend the Internal Revenue Code of 1954 to provide tax counseling for the elderly, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Reserving the right to object, Mr. Speaker, will the distinguished chairman explain this bill?

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield, I urge the adoption of H.R. 3553, a bill to establish a tax counseling service for the elderly.

Preparation of a tax return is frequently a difficult task for the elderly. Upon reaching retirement age, taxpayers are often confronted with new provisions and complex forms to contend with. They often must complete a retirement income credit schedule, determine the taxable portion of their annuities, or compute the taxable gain when they sell their residences. For an untrained elderly individual, who has perhaps had no experience with the preparation of tax returns other than the short form 1040A, this change in circumstances may result in overpayment of tax.

The bill, H.R. 3553, authorizes the Internal Revenue Service to enter into training and technical assistance agreements with private or public nonprofit agencies and organizations to prepare volunteers to provide tax counseling assistance for elderly individuals age 60 and older. It permits the Service to provide reimbursement to volunteers for transportation, meals, and other expenses incurred by them in training or providing counseling assistance. These reimbursements received by the volunteer are to be exempt from income and social security taxes, except to the extent that a charitable contribution or other deduction is claimed for these expenses. The Secretary is authorized to provide the volunteers with preferential access to Internal Revenue Service taxpayer service representatives and make available technical information and material needed for their use.

Additionally, the bill provides that, from time to time, the IRS is to direct the attention of elderly individuals concerning tax measures of particular interest to the elderly, such as the tax credit for the elderly.

Mr. Speaker, Treasury has no objection to the enactment of this legislation. It would involve no revenue loss and the appropriations neccssary to implement the program are estimated at only about $2 or $3 million per year.

I urge the adoption of H.R. 3553.

Mr. CONABLE. Mr. Speaker, H.R. 3553 will permit the IRS to establish a program to provide tax counseling for the elderly. It authorizes the IRS to enter into agreements with nonprofit agencies to prepare volunteers to provide tax counseling to persons aged 60 or older. The IRS is authorized to reimburse the transportation, meal, and other necessary expenses of the volunteers. The volunteers will be accorded preferential access to IRS taxpayer service and information facilities.

The preparation of tax returns can be complicated for many elderly persons. Elderly persons must cope with the normal 1040 form as well as the forms for the elderly tax credit. In addition these persons may be selling their residences to move into other retirement accommodations. This requires a knowledge of capital gains and the rollover provision. And finally these persons often are receiving pensions and annuities which require detailed calculations to determine the proper "exclusion ratio" for determining which portion of the annuity or pension is taxable and which portion is tax free.

Mr. Speaker, the preparation of tax returns is often more complex for elderly persons than for other persons. H.R. 3553 recognizes this extra burden and makes an effort to lend a helping hand to the elderly.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The Clerk read the bill, as follows:

H.R. 3553

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That the

Internal Revenue Code of 1954 is amended to read as follows:

"SEC. . TAX COUNSELING FOR THE ELDERLY.

"(a) TRAINING AND TECHNICAL ASSISTANCE.—

"(1) The Secretary, through the Internal Revenue Service, is authorized to enter into agreements with private or public nonprofit agencies or organizations for the purpose of providing training and technical assistance to prepare volunteers to provide tax counseling assistance for elderly individuals in the preparation of their Federal income tax returns.

"(2) In addition to any other forms of technical assistance provided under this section, the Secretary may provide—

"(A) preferential access to Internal Revenue Service taxpayer service representatives for the purpose of making available technical information needed during the course of the volunteer's work;

"(B) material to be used in making elderly persons aware of the availability of assistance under volunteer taxpayer assistance programs under this section; and

"(C) technical materials and publications to be used by such volunteers.

"(b) POWERS OF THE SECRETARY.—In carrying out his responsibilities under this section, the Secretary is authorized—

"(1) to provide assistance to organizations which demonstrate, to the satisfaction of the Secretary, that their volunteers are adequately trained and competent to render effective tax counseling to the elderly;

"(2) to provide for the training of such volunteers, and to assist in such training, to insure that such volunteers are qualified to provide tax counseling assistance to elderly individuals;

"(3) to provide reimbursement to volunteers through such organizations for transportation, meals, and other expenses incurred by them in training or providing tax counseling assistance under this section, and such other support and assistance as he determines to be appropriate in carrying out the provisions of this section;

"(4) to provide for the use of services, personnel, and facilities of Federal executive agencies and of State and local public agencies with their consent, with or without reimbursement therefor; and

"(5) to prescribe such rules and regulations as he deems necessary to carry out the provisions of this section.

"(c) EMPLOYMENT OF VOLUNTEERS.—

"(1) Service as a volunteer in any program carried out under this section shall not be considered service as an employee of the United States. Volunteers under such a program shall not be considered employees of the United States and shall not be subject to the provisions of law relating to Federal employment, except that the provisions of section 1905 of title 18, United States Code, shall apply to volunteers as if they were employees of the United States.

"(2) Section 7803(a) (relating to appointment and supervision of Internal Revenue Service personnel) is amended by adding at the end thereof the following: 'In order to provide tax assistance services, and to provide for the administration and enforcement of this title, the Secretary may appoint and fix the compensation of former Internal Revenue Service employees who are receiving annuities from the civil service retirement fund under subchapter III of chapter 83 of title 5, without regard to the provisions of section 8344 (a) of such title. An individual appointed under the preceding sentence may not be appointed to serve for more than 720 hours during any calendar year.'.

"(3) Amounts received by volunteers serving in any program carried out under this section as reimbursement for expenses (for which expenses a deduction is not claimed) are exempt from taxation under chapters 1 and 21 of the Internal Revenue Code of 1954.

"(d) PUBLICITY RELATING TO INCOME TAX PROVISIONS PARTICULARLY IMPORTANT TO THE ELDERLY.—The Secretary shall, from time to time, undertake to direct the attention of elderly individuals to those provisions of the Internal Revenue Code of 1954 which are particularly important to taxpayers who are elderly individuals, such as the provisions of section 37 (relating to credit against tax for retirement income) and section 121 (relating to gain from the sale or exchange of residence of individual who has attained age sixty-five).

"(e) DEFINITIONS.—For purposes of this section, the term—

"(1) 'Secretary' means the Secretary of the Treasury;

"(2) 'elderly individual' means an individual who has attained the age of sixty yeas as of the close of his taxable year; and

"(3) 'Federal income tax return' means any return required under chapter 61 of the Internal Revenue Code of 1954 with respect to the tax imposed on an individual under chapter 1 of such Code.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for the purpose of carrying out the provisions of this section $2,000,000 for the fiscal year ending September 30, 1978, and $3,000,000 for the fiscal year ending September 30, 1979.".

With the following committee amendments:

On the first page, strike out lines 3 through 5 and insert:

That (a) chapter 77 of the Internal Revenue Code of 1954 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7518. TAX COUNSELING FOR THE ELDERLY.

Page 4, strike out lines 7 through 19.

Page 4, line 20, strike out "(3)" and insert in lieu thereof "(2)".

Page 4, line 24, strike out "of the Internal Revenue Code of 1954".

Page 5, line 4, strike out "the Internal Revenue Code of 1954" and insert in lieu thereof "this title".

Page 5, beginning in line 7, strike out "against tax for retirement income" and insert in lieu thereof "for the elderly".

Page 5, strike out line 10 and all that follows down through line 25 and insert:

"(e) DEFINITIONS.—For purposes of this section—

"(1) ELDERLY INDIVIDUAL.—The term 'elderly individual' means an individual who has attained the age of 60 years as of the close of his taxable year.

"(2) FEDERAL INCOME TAX RETURN.—The term 'Federal income tax return' means any return required under chapter 61 with respect to the tax imposed on the income of an individual under chapter 1.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the provisions of this section."

(b) The table of sections for chapter 77 of such Code is amended by adding at the end thereof the following new item:

"Sec. 7518. Tax counseling for the elderly."

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

IRC AMENDMENTS TO SECTION 4941

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 12592) to amend section 4941 of the Internal Revenue Code of 1954.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, I ask the distinguished chairman if he would care to discuss the substance of this measure.

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield, H.R. 12592 provides an additional 10-year period during which the Hormel Foundation of Minneapolis, Minn., may continue to serve as trustee of certain trusts of which it is a beneficiary.

Pursuant to section 4941 of the Internal Revenue Code, added by the Tax Reform Act of 1969, an excise tax generally will be imposed if a private foundation furnishes services to contributors or certain other "disqualified persons," even if the foundation receives reasonable compensation for its services. However, the 1969 act also included a transitional rule permitting continuation of pre-1969 arrangements for shared services between private foundations and disqualified persons. This present law transitional rule expires in 1979.

As permitted under State law, the Hormel Foundation has served, since prior to 1969, as trustee of trusts in which the foundation has beneficial interests. Because members of the Hormel family also have interests in these trusts during their lifetimes, the trusts are treated as "disqualified persons." Thus after expiration of the current 10-year transitional rule, the Hormel Foundation would not be able to continue as trustee—even though it is a beneficiary of these trusts—unless this bill is adopted.

The Ways and Means Committee has concluded that in light of the particular circumstances involving the Hormel Foundation, it is appropriate to provide an additional 10-year transitional period during which the foundation may continue to serve as trustee under the existing pre-1969 trust arrangements, if certain conditions are met. These conditions include a requirement that the foundation must be paid reasonable compensation for its trustee services.

The circumstances involving the Hormel Foundation which make it appropriate to adopt an additional 10-year transitional period are: First, that the Hormel Foundation itself is a beneficiary of the trusts; second, that State law permits a foundation to serve as trustee of such trusts; third, that State law bars the Hormel Foundation from offering trustee services to other trusts, thereby precluding the foundation from possibly qualifying for an exception in the law which would permit indefinite continuation of the trustee services; and fourth, that the Hormal Foundation will receive, as required under the bill, reasonable compensation for its services.

Mr. Speaker, I urge the adoption of H.R. 12592, to permit the Hormel Foundation to continue for another 10 years its services as trustee of certain trusts of which it is a beneficiary.

Mr. CONABLE. Mr. Speaker, I rise in support of H.R. 12592 which allows a trustee, in very limited situations, to perform services for a private foundation.

The Tax Reform Act of 1969 imposed various excise taxes on specified transactions between a private foundation and certain parties. Because of the severity of these taxes, foundations were given 10 years to comply with the 1960 act's rules.

Unfortunately, State and local laws are such that in certain circumstances a foundation cannot comply with the 1969 act's provisions within that 10-year period. The bill grants foundations, that have not been able to comply with the 1969 act's rules within the specified 10-year period because of State or local laws, an additional 10-year period in which to comply provided specific requirements are satisfied, including the requirement that trustee services are rendered for an irrevocable trust established prior to October 9, 1969—the general effective date of the 1969 act's private foundation rules.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

H.R. 12592

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 4941(b)(2) of the Internal Revenue Code of 1954 is amended as follows:

(1) by striking out "and" at the end of subparagraph (G);

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; and" and

(3) by adding at the end of such paragraph the following new subparagraph:

"(I) The furnishing of services by a private foundation to a disqualified person shall not be an act of self dealing if (i) such services are furnished in the capacity of trustee for an irrevocable trust established prior to October 9, 1969, designating the private foundation as trustee; (ii) such foundation may not under the laws of the State of incorporation act as trustee of a trust other than one in which it possesses a beneficial interest; (iii) such private foundation receives compensation from the trust for such services performed as trustee as are reasonable in light of the facts and circumstances, whether or not such private foundation provides such services to the general public; and (iv) the disqualified person became such solely because of the operation of a trust instrument which was irrevocable prior to October 9, 1969."

The Clerk read the bill, as follows:

With the following committee amendment:

Strike out all after the enacting clause and insert:

H.R. 12592

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That (a) section 4941 of the Internal Revenue Code of 1954 (relating to taxes on self-dealing in the case of private foundations) shall not apply to the furnishing of services by a private foundation to a disqualified person if—

(1) such services are furnished in the capacity of trustee for an irrevocable trust established before October 9, 1969, designating the private foundation as trustee,

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The title was amended so as to read: "A bill to extend for an additional period the existing tax treatment of certain activities of certain private foundations."

A motion to reconsider was laid on the table.

PAYMENTS TO CERTAIN POSSESSIONS TO OFFSET CERTAIN FEDERAL TAX REDUCTIONS

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 13719) to offset the loss in tax revenues incurred by Guam and the Virgin Islands by reason of certain Federal tax reductions.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, and I shall not object, I do so for the purpose of asking the distinguished chairman of the Committee on Ways and Means, the gentleman from Oregon (Mr. ULLMAN), if he would care to discuss the substance of this bill.

Mr. ULLMAN. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I will be happy to yield to the gentleman from Oregon.

Mr. ULLMAN. Mr. Speaker, the bill, H.R. 13719, would compensate Guam and the Virgin Islands for revenue reductions in 1978 through 1982 caused by certain recent amendments to the Internal Revenue Code of 1954.

Federal laws which authorize Guam and the Virgin Islands to impose income taxes generally require that these U.S. possessions use as their tax laws the same rules as are contained in the Internal Renvenue Code. However, the taxes which they collect are paid into their own treasuries rather than the U.S. Treasury. Thus, whenever U.S. income taxes are cut, Guam and Virgin Islands taxes are also cut automatically. This, in interaction with restrictions placed upon their governments to issue indebtedness, causes a financial hardship for the possessions. Separate legislation has authorized appropriations to compensate Guam and the Virgin Islands for certain lost revenues in 1975, 1976, and 1977 resulting from U.S. tax legislation.

The bill would authorize the Secretary of the Treasury to make separate payments for each of the calendar years 1978 through 1982 to Guam and the Virgin Islands in an amount equal to the loss to those possessions for those years by reason of the Tax Reduction Act of 1975, the Revenue Adjustment Act of 1975, the Tax Reform Act of 1976, the Tax Reduction and Simplification Act of 1977, and the Revenue Act of 1978.

The Committee on Ways and Means estimates that H.R. 13719 will not result in any budget cost for fiscal year 1979, and will result in budget costs of $20 million for fiscal year 1980 and $40 million annually for fiscal years 1981, 1982, and 1983. The bill does not affect budget receipts.

Mr. Speaker, I urge the adoption of H.R. 13719.

Mr. CONABLE. Mr. Speaker, I thank the gentleman for his explanation.

Mr. Speaker, I support H.R. 13719, a bill to offset the loss in tax revenues of Guam and the Virgin Islands.

Guam and the Virgin Islands have a tax law which is the same as the U.S. Internal Revenue Code, except for conforming changes to insert the names of the respective possessions in place of the "United States." This system is nicknamed the "mirror theory" because their tax law is the mirror image of our tax law. This simplifies the operation of their tax law by adopting verbatim U.S. tax law and practice as their own.

The unfortunate side effect of this system is that every time we alter the U.S. tax law we alter the tax law of Guam and the Virgin Islands. In particular, when we reduce U.S. taxes it results in a corresponding reduction in the revenue of Guam and the Virgin Islands.

H.R. 13719 would authorize payment to Guam and the Virgin Islands of amounts designed to restore the revenue loss attributable to U.S. tax reductions in 1975, 1976, 1977, and 1978. The bill authorizes such payments for years 1978 through 1982.

Mr. Speaker, H.R. 13719 will permit Guam and the Virgin Islands to continue to model their tax laws on our tax laws without being penalized because of domestic tax reductions. I support its passage.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The Clerk read the bill as follows:

H.R. 13719

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of the Treasury is authorized to make separate payments for each of the calendar years 1978, 1979, 1980, 1981, and 1982 to the government of Guam and the government of the Virgin Islands. The payment to the government of a particular possession for any calendar year shall be in an amount equal to the loss to that possession with respect to tax returns for taxable years beginning in such calendar year by reason of the Tax Reduction Act of 1975, the Revenue Adjustment Act of 1975, the Tax Reform Act of 1976, the Tax Reduction and Simplification Act of 1977, and the Revenue Act of 1978. Such amount shall be determined by the Secretary of the Treasury upon certification to the Secretary by the United States Government Comptrollers for Guam and the Virgin Islands.

(b) There are hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this section.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. ULLMAN. Mr. Speaker, that completes the unanimous-consent requests.

GENERAL LEAVE

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the measures just passed.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Pursuant to the provisions of clause 3(b) of rule XXVII, and the order of the House of October 4, 1978, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV, until Thursday, October 12, 1978.

IRC AMENDMENTS RE INCOME TAX LIMITATIONS FOR THE ELDERLY

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 9893) to amend the Internal Revenue Code of 1954 to increase the adjusted gross income limitation on the credit for the elderly, to increase the amount of such credit, and for other purposes, as amended.

The Clerk read as follows:

H.R. 9893

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (1) of section 37(c) of the Internal Revenue Code of 1954 (relating to limitations on credit for the elderly) is amended—

(1) by striking out "$7,500" each place it appears and inserting in lieu thereof "$15,000",

(2) by striking out "$10,000" each place it appears and inserting in lieu thereof "$17,500", and

(3) by striking out "$5,000" each place it appears and inserting in lieu thereof "8,750".

(b) Paragraph (2) of section 37(b) of such Code (defining initial amount) is amended—

(1) by striking out "$2,500" each place it appears and inserting in lieu thereof "$3,000",

(2) by striking out "$3,750" and inserting in lieu thereof "$4,500", and

(3) by striking out "$1,875" an inserting in lieu thereof "$2,250".

(c) The amendments made by this section shall apply to taxable years beginning after December 31, 1978.

The SPEAKER. Is a second demanded?

Mr. CONABLE. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentleman from Oregon (Mr. ULLMAN) and the gentleman from New York (Mr. CONABLE) will be recognized for 20 minutes each.

The Chair recognizes the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill, H.R. 9893, would amend the credit for the elderly by increasing the amount of the credit and also increasing the phaseout level which occurs because of the adjusted gross income limitation.

Under present law, the maximum tax credit for the elderly for a single individual is $375. The committee bill would increase this to $450 for individuals age 65 or older. The committee bill would increase the credit for a married couple, both of whom are eligible, from the current level of $562.50 to $675. For a married individual filing a separate return, the credit would be increased from $281.25 to $337.50. Mr. Speaker, the committee believes that these increases are appropriate because of the recent increases which have occurred in the cost of living.

Under present law, the taxpayer's credit is phased out under an adjusted gross income limitation. Under present law, for a single individual, the phaseout begins at $7,500 of adjusted gross income and the individual is completely phased out of the credit at an income level of $12,500. The committee bill would provide that the phaseout does not begin unless the individual has at least $15,000 of adjusted gross income and the individual is not completely phased out of the credit unless he has at least $21,000 of adjusted gross income. For a married couple filing a joint return, the phaseout presently begins at $10,000 and is complete if the couple has income of $17,500 or more. Under the committee bill, the phaseout does not begin unless the couple has at least $17,500 of income, and a couple would receive at least a partial credit unless their adjusted gross income exceeded $26,500. The committee believes that these increases in the level of the phaseout are also justified by the inflation which has recently occurred.

Mr. Speaker, I would like to point out that almost 94 percent of the tax benefits under this bill will go to people who have $20,000 or less of income. This bill should help to reduce the impact of inflation, which hits particularly hard on the elderly, many of whom are on fixed incomes.

Mr. Speaker, I urge the adoption of H.R. 9893.

Mr. CONABLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 9893, a bill to increase and improve the tax credit for the elderly.

H.R. 9893 addresses the tax credit for the elderly in two ways. First, it increases the credit by increasing the credit base upon which the credit is calculated. Under present law the credit is 15 percent times a maximum credit base of $2,500 for single persons and $3,750 for married persons filing joint returns. The credit base is total income reduced by tax-free receipts such as social security or railroad retirement pensions.

Under H.R. 9893 the credit base for single persons will be increased to $3,000 and to $4,500 for married persons filing a joint return.

The second feature of this legislation is the adjustments it makes in the income levels at which the credit begins to phaseout. Under present law single persons whose total income exceeds $7,500 receive a reduced credit. The credit phases out over the interval between $7,500 and $12,500. A single person with gross income of $12,500 receives no elderly tax credit. For a married couple filing a joint return the credit begins to phaseout at $10,000 of gross income and is lost entirely at $17,500 of gross income.

Under H.R. 9893 the phaseout for a single person will begin at $15,000 and completely offset the credit when gross income reaches $21,000. For married couples filing a joint return the phaseout will begin at $17,500 and completely offset the credit at $26,500 of gross income.

Both the increase in the credit base and income phaseout levels are necessary to maintain meaningful tax relief for the elderly. Since the elderly tax credit was last addressed in 1976, the elderly have experienced 2 years of significant inflation. H.R. 9893 addresses the point by increasing the credit base.

Also, many persons have expressed displeasure with the low level at which the credit phases out. The phaseout concept was added by the 1976 Tax Reform Act. It sought to channel the credit to low- and middle-income groups who were believed to be more in need of tax relief. Those income phaseout levels have not kept up with inflation. Our concept of "middle income" has been changing because of inflation. The new, higher income phaseout levels are merely a recognition of this reality. It will permit elderly persons to receive income more in keeping with the amounts necessary to maintain a decent standard of living without jeopardizing their eligibility for the elderly tax credit.

Mr. Speaker, H.R. 9893 is a bill which adjusts the tax credit for the elderly to make it more responsive to their needs.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank the gentleman for yielding.

Could the gentleman give us an example? For example, what would an elderly person with an income of $10,000 pay?

Mr. CONABLE. A single person under the present law would begin to receive a reduced credit at $7,500.

Mrs. FENWICK. I know. I have that. I know, yes. But what I am trying to find out is how does this work out practically if one is single?

Mr. CONABLE. I will tell the gentlewoman practically how it works out.

Mrs. FENWICK. Yes.

Mr. CONABLE. This gives people who do not have social security benefits, which, as the gentlewoman knows, are

tax exempt, an equivalent benefit to having social security if they have substantial income that would be otherwise subject to tax. In other words, it protects people who have not been involved in social security and, therefore, do not qualify for a substantial amount of tax-exempt income. Savings are accumulated after taxes.

Mrs. FENWICK. Yes.

Mr. CONABLE. Just as social security payments, the withholding, are paid after income taxes. So this puts these people in a comparable position to what they would be in if they had contributed to the social security system.

Mrs. FENWICK. This is not a deduction which, as I understand it, we raised from $750 to $1,000; is it?

Mr. CONABLE. No; it is a credit.

Mrs. FENWICK. This is a direct credit on the tax that would be due on the remaining income after the deductibles have been taken?

Mr. CONABLE. That is correct. It is an old-age credit.

Mrs. FENWICK. I thank the gentleman.

Mr. CONABLE. The effect is to create equity for people who have, instead of having contributed through a public system like social security taken care of their old age through personal savings of one sort or another.

Mrs. FENWICK. I thank the gentleman.

● Mr. PICKLE. Mr. Speaker, I rise in opposition to this bill. I would prefer to amend the bill to provide the same phaseout for those under age 65 as the bill provides for those over 65, but since this bill is on the Suspension Calendar that is not possible. Therefore it seems wise to me to vote against the bill so that this can be changed. How can we justify a law that allows a larger credit for the elderly for those who are under 65 years of age than for those who are over 65 years of age? That is what H.R. 9893 has done. I am sympathetic to the problem of those eligible for the credit and had introduced a bill H.R. 6037 to increase the phaseout.

I am sure that many of you have received letters from your constituents, as I have, about the present inequity in the in the tax credit for the elderly that happened in 1976 because there was a phaseout of the credit for those 65 and over, but no phaseout for those under 65. The Internal Revenue Service had retired persons over 65 complete form R, and form RP for retired persons under age 65. These two forms are printed back to back on the same sheet of paper. A person over age 65 will frequently compute his credit under both forms and discover, to his great dismay, that he would be substantially better off if the credit available to public retirees under age 65 were available to him. My bill would have the same rules for those under 65 as those over 65.

The committee bill actually accents the discrimination by raising the amount of the credit. While those over age 65 will have the phaseout raised to $17,500 for a joint return still those under age 65 will benefit more since the credit base was also increased, and they have no phaseout. This is simply not fair to our over age 65 retirees and I urge you to defeat this bill.●

● Mr. FISHER. Mr. Speaker, I rise to urge passage of H.R. 9893, a bill I offered that passed the Ways and Means Committee which expands and modifies the tax credit for the elderly.

The Tax Reform Act of 1976 substantially revised what used to be called the retirement income credit. While the act took the positive step of increasing the amount of retirement income eligible for the credit, it imposed restrictions on availability of the credit for the elderly that prevented a large number of taxpayers 65 and over from claiming the credit at all. First, an income ceiling was established to prevent taxpayers 65 and over from claiming if their adjusted gross income exceeded $12,500 for single taxpayers and $17,500 for married couples filing joint returns. Under the rules, married couples 65 and over must file a joint return in order to claim the credit. Strangely enough, neither requirement applied to taxpayers under 65 years of age. This quirk in the law can cause elderly taxpayers to pay a substantially higher tax bill when they turn 65. Obviously, this should be changed.

I offered a proposal to make these changes.

H.R. 9893 increases the amount of retirement income eligible for the credit for those 65 and over from $2,500 to $3,000 for single taxpayers and from $3,750 to $4,500 for married couples filing jointly. Thus, a single taxpayer 65 and over would receive a maximum credit of $450 as opposed to the $375 under current law, while a married couple filing jointly could obtain a maximum credit of $650 under H.R. 9893 compared to a maximum credit of $562.50 under present law.

Of greater importance for residents of high cost-of-living areas, such as Northern Virginia, is a provision in my bill that would raise the income ceiling for those 65 and older to a more realistic level. Under present law, a single taxpayer 65 and older begins to lose a portion of the credit as his adjusted gross income exceeds $7,500 while the credit is phased out for married couples when adjusted gross income reaches $10,000. H.R. 9893 would raise the point at which the credit begins to be phased out to $15,000 for single taxpayers and to $17,500 for a married couple filing a joint return. Hence, a single taxpayer 65 and over can have adjusted gross income of up to $21,000 without losing all of the credit while a married couple can have a combined adjusted gross income of $26,500 and still be eligible for a portion of the credit. While I would prefer an outright repeal of the income ceiling limitation, I believe that H.R. 9893 will enable a larger number of elderly taxpayers 65 and over to claim a more generous tax benefit, which is especially valuable to individuals living on a fixed income. Moreover, my proposal targets tax relief on those most in need of assistance; that is, 94 percent of the tax relief goes to taxpayers with adjusted gross income of under $20,000.

For these reasons, I urge my colleagues to support H.R. 9893 when a vote occurs under suspension of the rules.●

Mr. CONABLE. Mr. Speaker, I have no further requests for time, and I yield back the remainder of my time.

Mr. ULLMAN. Mr. Speaker, I have no further requests for time, and I yield back the remainder of my time.

The SPEAKER pro tempore (Mr. WHITTEN). The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) that the House suspend the rules and pass the bill, H.R. 9893, as amended.

The question was taken.

Mr. ROUSSELOT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

DUTY-FREE TREATMENT FOR ITEMS PRODUCED IN U.S. POSSESSIONS

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8222) to apply duty-free treatment under certain circumstances to articles produced in the insular possessions of the United States, and for other purposes, as amended.

The Clerk read as follows:

H.R. 8222

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That general headnote 3(a) of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended—

(1) by redesignating clauses (ii) and (iii) of such headnote as clauses (iii) and (iv), respectively;

(2) by amending clause (i) of such headnote to read as follows:

"(i) Except as provided in subdivision (a) (ii) of this headnote; headnote 6 of schedule 7, part (2), subpart E; and headnote 4 of schedule 7, part 7, subpart A; articles imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules.";

(3) by inserting immediately after clause (i) of such headnote the following new clause:

"(ii) (A) Any article which is the growth or product of any insular possession referred to in subdivision (a) (i) of the headnote, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, coming to the customs territory of the United States directly from any such possession shall—

"(I) if such article is other than a watch or watch movement, and contains foreign materials to a value of not more than 50 percent of its total value, be exempt from duty; and

"(II) if such article is a watch or watch movement, and contains foreign material to a value of not more than 70 percent of its total value, be exempt from duty; except that any watch or watch movement containing any material which is the product of any country with respect to column 2 rates of duty apply shall be subject to the rates of duty set forth in column numbered 2 of the schedules.

"(B) All articles previously imported into

the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty."; and

(4) by striking out "value of more than 50 percent," in clause (iii) of such headnote (as redesignated by paragraph (1) of this Act) and inserting in lieu thereof "appropriate value specified in (ii)(A) (I) and (II),".

SEC. 2. Subpart A of part I of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended to read as follows:

"Subpart A—Temporary Tariff Treatment of Certain Products of the Insular Possessions

"Subpart A Headnotes:

"1. For purposes of this subpart, the term 'temporary period' means the period beginning January 1, 1979, and ending at the close of December 31, 1981.

"2. In applying general headnote 3(a) during the temporary period, any article which is the growth or product of any insular possession referred to in such general headnote, or manufactured or produced in any such possession from materials, the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, coming to the customs territory of the United States directly from any such possession shall, if such article—

"(a) is other than a watch or movement;

"(b) contains foreign materials to a value of more than 50 percent but not more than 70 percent of its total value; and

"(c) is not designated as import-sensitive under headnote 4 of this subpart;

be exempt from duty if entered at any time during any calendar year within the temporary period and before there is entered during such year from the insular possessions a quantity of such articles having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the immediately preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974.

"3. In determining whether any article produced or manufactured in any insular possession contains foreign materials to a value of more than 50 percent but not more than 70 percent, no material shall be considered foreign which, at the time such material is entered, may be imported into the customs territory from a foreign country, other than Cuba and the Philippine Republic, and entered free of duty.

"4. (a) If the President determines that any article described in headnote 2 (a) and (b) of the subpart is import-sensitive, such article shall, regardless of the insular possession of which it is a product, be dutiable at the rate of duty set forth in column 1 of the schedules until the close of December 31, 1981, or, if earlier, the date on which the President publishes his determination that such article is no longer import-sensitive.

"(b) In making determinations under subdivision (a), the President shall take into account the recommendations of the Office of the Special Representative for Trade Negotiations (hereinafter in this subdivision referred to as the 'Office').

"(c) Any interested party may submit a request to the Office that any article described in headnote 2 (a) and (b) of this subpart be designated as import-sensitive or that such designation be withdrawn with respect to any article.

"(d) The Office shall establish such procedures as may be necessary and appropriate regarding the submission of requests under subdivision (c) and the consideration of such requests by the Office, including, but not limited to, procedures requiring that all pending requests be reviewed by the Office at least once during each 6-month period.".

SEC. 3. Before January 1, 1981, the President shall prepare, with the assistance of the Secretary of the Treasury, the Secretary of Commerce, and the Secretary of the Interior, and submit to the Congress a full and complete report on the effect of the amendments made by the first section and section 2 of this Act, particularly with regard to their effect on encouraging the development of light industry in the insular possessions and lessening their dependence on the Federal Government, as well as on generating increased employment, wages, tax revenues, and broadening the economic base of the insular possessions.

SEC. 4. This Act shall take effect on January 1, 1979, and the amendments made by the first section and section 2 shall apply with respect to articles entered, or withdrawn from warehouse, on or after such date.

The SPEAKER pro tempore. Is a second demanded?

Mr. FRENZEL. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Oregon (Mr. ULLMAN) will be recognized for 20 minutes, and the gentleman from Minnesota (Mr. FRENZEL) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of H.R. 8222, as reported, is to maintain some of the light industrial operations in the insular possessions which make use of the duty-free treatment accorded shipments to the United States from the insular possessions under general headnote 3(a) of the tariff schedules of the United States. As Members may recall, the U.S. insular possessions of Guam, American Samoa, and the Virgin Islands are not part of the customs territory of the United States. General headnote 3(a) of the tariff schedules currently provides that articles containing foreign dutiable materials—except watches and watch movements—shipped to the United States from these insular possessions may enter free of duty if the value of the foreign dutiable materials contained in such articles is not more than 50 percent of their total value.

Headnote 3(a) operations in the insular possessions have provided a modicum of light industrial operations in the insular possessions, upgrading skills and improving a very unsatisfactory level of unemployment in the insular possessions. Over the past several years reductions in U.S. rates of duty, the more recent decline in the value of the dollar, and subsequent increases in the price of foreign parts and components have eroded the viability of the assembly operations in the insular possessions. Thus, it has become necessary to increase the limitation on the proportion of foreign dutiable value contained in articles processed in the insular possessions and shipped into the customs territory of the United States free of duty.

H.R. 8222, would temporarily—from January 1, 1979 to December 31, 1981—increase the foreign dutiable content limitation on articles other than watches and watch movements entering under headnote 3(a) from 50 percent to 70 percent of total value. Merchandise entering under this temporary provision would be limited to articles which are not "import sensitive" and also by a quantitative value limitation. Furthermore, the bill directs the executive branch to submit to the Congress a complete report on the effects of the amendment to headnote 3(a), particularly with respect to the economic development of the insular possessions.

There is a great need to restore an operating margin to headnote 3(a) operations other than watch assembly—which was provided a 70-percent foreign value limit in 1975.

The temporary and limited changes in headnote 3(a) provisions are consistent with the original congressional intent of providing encouragement to light industry in the insular possessions. The Treasury Department informed the Subcommittee on Trade that H.R. 8222 could make it possible that refined petroleum products containing foreign crude oil could benefit from duty-free treatment under headnote 3(a). Given the total value limitation on shipments qualifying for headnote 3(a) treatment under the new foreign value limit of H.R. 8222, the committee did not consider amending headnote 3(a) to exempt from such duty-free treatment, refined petroleum products derived wholly or in part from foreign crude. Clearly, the purpose of the committee in passing H.R. 8222 is to encourage light industry only. Should a problem arise concerning the treatment of refinery products from the insular possessions, it should be addressed in separate legislation.

The bill also would prohibit duty-free entry under headnote 3(a) of any watches or watch movements containing any material which is the product of a country subject to column 2 rates of duty—applicable to most Communist countries. Such watches or watch movements would be subject to the applicable column 2 rates of duty provided in the tariff schedules of the United States. Thus, there would be no difference in the tariff treatment accorded to such articles when imported through the insular possessions or directly from the non-MFN country.

Testimony was received by the committee to the effect that the watches containing Soviet movements and components sell at very low prices and under circumstances where the purchasers are not aware of their true origin.

Current Customs practice permits a very minor assembly operation in the possession to qualify as a "substantial transformation" of the articles into a watch considered to be a product of the insular possessions. Moreover, the committee felt that the minimal assembly operations performed in the insular possessions on these watch components

from Soviet sources do not generate any significant benefit to the economies of the possessions.

Mr. Speaker, I urge that the House suspend the rules and approve H.R. 8222.

Mr. FRENZEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 8222. I concur in the descriptive remarks and need for the bill which were made by the distinguished chairman of the Committee on Ways and Means. This bill was brought to us by our colleague, the delegate from the Virgin Islands (Mr. DE LUGO) and pushed by him through our Trade Subcommittee. It will, we hope, protect the very few hundred manufacturing jobs that now exist in the Islands.

We believe in the case of the one difficulty, that of watches, that we have resolved it in a way that is satisfactory.

The chairman has already discussed the special treatment of watches under this bill.

● Mr. STEIGER. Mr. Speaker, as my colleague, the distinguished chairman of the Trade Subcommittee, has suggested this bill is designed to further the incentives for light industrial development in the U.S. possessions which is already provided for under headnote 3(a) of the Tariff Schedules of the United States. In particular this bill would increase the foreign content limitation on articles, other than watches and watch movements, entering the U.S. under headnote 3(a), from 50 to 70 percent.

This bill contains adequate safeguard measures to protect against so-called passthrough operations, that is operations done in the possessions that are perfunctory in nature and do not really amount to substantial transformation, and to avoid adversely affecting mainland industries which are import sensitive.

In making the changes in headnote 3 (a), both the subcommittee and the full committee found it necessary to address, in report language, the problem of the Treasury Department's loose interpretation of what constitutes "substantial transformation". Some cases were brought to the subcommittee's attention in which the Treasury Department's regulations and rulings permitted headnote 3(a) treatment where such treatment was plainly improper. The language emphasizes the importance of assuring that headnote 3(a) activities result in substantial transformation and that such activities be consistent with the purpose of the headnote which is to encourage light industrial development in the insular possessions.

In response to recent concern from the Treasury Department that this bill will permit a windfall profit for oil refiners in the Virgin Islands, note should be taken of the committee's clear intent that the "substantial transformation" test be applied strictly and that headnote 3(a) treatment is to be accorded only to light industries. Consequently, precluding oil refiners from enjoying headnote 3(a) treatment should be well within the administrative authority of the Treasury Department.

With regard to the requirement in the bill that watches containing parts from our non-MFN trading partners receive column 2 duty treatment, I must register my strong opposition. This provision was hastily considered by the committee, and it could well have repercussions that go beyond the area of trade. I include here the views my colleague, Mr. GRADISON, and I added to the committee report on H.R. 8222:

DISSENTING VIEWS

The Committee's vote approving the Tucker Amendment is a cause of serious concern to us as it reflects impulsive decisionmaking by this Committee on a matter having serious national and international implications.

Under the Tucker Amendment, all watches produced in the United States possessions which contain "any material" that is the product of a country not receiving most-favored-nation (MFN) status from the United States will not only be excluded from the special duty free treatment otherwise expanded in this legislation, but also are precluded from the special duty free treatment which has been historically available to United States possessions under Customs law. The underlying reason for this special Customs treatment has been to advance the economic and social welfare of the possessions by creating incentives for industrial development. The purpose of this legislation is merely to adjust the existing incentives in view of changed economic circumstances. Care was taken to assure that under this adjustment sensitive United States economic interests are not compromised. In contrast, the explicit and specific purpose for the Tucker Amendment is to preclude watches produced in the Virgin Islands from receiving duty free treatment if so much as one component of a watch was manufactured in the Soviet Union.

Without reaching the larger and volatile question of whether the United States should or should not undertake MFN trade with respect to Soviet products, it is without question that the responsible formulation of trade policy, indeed of sound public policy, dictates substantially more rigorous reflection and investigation than the cursory attention this Amendment was given by the full Committee. In voting support of the Tucker Amendment, the Committee acted without benefit of the Trade Subcommittee's appraisal of the various problems the Amendment raises. And, indeed, the Amendment raises not only serious trade policy problems, but also substantially implicates a very delicate area of United States foreign policy.

With respect to trade policy, the support of the Tucker Amendment was won without any onsideration of the possible ripple effects it might have in the U.S. economy. That is, there was no undertaking to assess the impact these cheaper watches may have on pricing strategies of mainland produced watches and the associated impact on inflation. No consideration was given to the inconsistency it will introduce in the administration of the United States trade laws especially with regard to rules of origin and rules of duty assessment. The Committee action was taken without sufficient exploration of whether the Amendment is likely to improve or impair the economic interests of the possessions. Nor was there any consideration of the extent to which this Amendment might benefit those other than the possessions and the United States.

Moreover, to the extent the concern addressed by the Tucker Amendment is one arising from the pricing advantages enjoyed by nonmarket countries because of their different cost accounting principles, there was no attempt to explore ways other than the Tucker approach that could address this problem as it applies not only to our non-MFN trading partners, but to our MFN trading partners as well. To be sure, price competition in this market between domestic products and imports from both nonmarket countries and from countries which afford substantial subsidies to their industrial sector is a serious and growing problem. It warrants considered attention and deserves measured resolution. The matter received neither of these in Full Committee.

With regard to foreign trade policy, the Tucker Amendment is designed specifically to disadvantage the Soviet Union. The Committee embraced this objective without the slightest reflection on the implications it might have on the conduct of our very sensitive relations with the Soviets. Again, without addressing the substance of the question of trade with the Soviet Union, we feel that an issue of this importance requires that some consideration be made of the proper role of Congress in such a matter, the historic discretion of the Executive here, and the underlying wisdom of taking the action. In fact, it would seem to be a minimum requirement of sound legislative decisionmaking to undertake such considerations before recommending that the measure become law. Neither the Committee nor the Subcommittee gave more than a passing glance to the question.

This process of legislation by evocation, in contrast to legislation by deliberation and analysis, not only precludes the sound resolution of difficult issues, but substantially detracts from the integrity of the legislative process. The great misfortune is that the Committee defined good judgment by not referring the matter back to subcommittee. In subcommittee, it is possible that safeguards could have been formulated that would satisfy the legitimate concerns underlying the Tucker Amendment while avoiding the serious side effects the Amendment poses for our trade policy and foreign policy.

Yet, in a sincere but nevertheless misguided desire to be responsive to a legitimate problem, the Committee adopted an amendment which, to us, is defective in concept and dangerous as precedent. Consequently we are compelled to oppose the Committee's amendment of the Subcommittee bill.

Mr. FRENZEL. Mr. Speaker, I have no further requests for time. I know of no objection to the bill.

I yield back the balance of my time.

Mr. ULLMAN. Mr. Speaker, I have no requests for time.

The SPEAKER pro tempore. The question is on the motion of the gentleman from Oregon (Mr. ULLMAN) that the House suspend the rules and pass the bill H.R. 8222, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

PROVIDING TRANSPORTATION TO GIRL SCOUTS OF THE UNITED STATES OF AMERICA

Mr. MONTGOMERY. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 3373) to amend title 10, United States Code, to authorize the Secretary of Defense to provide transportation to the Girl Scouts of the United States of America in connection with International World Friendship Events or Troops on Foreign Soil meetings, and for other purposes.

The Clerk read as follows:

S. 3373

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 151 of title 10, United States Code, is amended by adding after section 2544 the following new section:

§ 2545. Transportation services: international Girl Scout events

"(a) The Secretary of Defense is authorized, under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Military Airlift Command for (1) those Girl Scouts and officials certified by the Girl Scouts of the United States of America as representing the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States, (2) United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and (3) the equipment and property of such Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations.

"(b) Before furnishing any transportation under subsection (a), the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl Scouts of the United States of America, of the actual costs of transportation furnished under subsection (a).

"(c) Amounts paid to the United States to reimburse it for the actual costs of transportation furnished under subsection (a) shall be credited to the current applicable appropriation or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.".

SEC. 2. The table of sections at the beginning of chapter 151 of title 10, United States Code, is amended by adding after the item relating to section 2544 the following new item:

"2545. Transportation services: international Girl Scout events.".

The SPEAKER pro tempore. Is a second demanded?

Mrs. HOLT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Mississippi (Mr. MONTGOMERY) will be recognized for 20 minutes, and the gentlewoman from Maryland (Mrs. HOLT) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. MONTGOMERY).

Mr. MONTGOMERY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 3373 will give the Secretary of Defense the authority to provide transportation on military aircraft to Girl Scouts, and officials of the Girl Scouts, to attend their international events.

In more concrete terms, the bill simply says that less than 200 Girl Scouts per year will be able to attend international functions of the Girl Scout organization by traveling on Department of Defense aircraft.

The authority in this bill is identical to that now provided to Boy Scouts and would be at no cost to the Government since all assistance is expressly conditioned upon reimbursement for the services provided by the Girl Scouts.

Assistance is limited to international travel, and is available only to Girl Scouts who are U.S. citizens. It should also be noted that transportation may be provided only to the extent that it does not interfere with the requirements of military operations.

The administration is in support of this legislation.

Mr. Speaker, the authority contained in this legislation simply extends the same transportation assistance to Girl Scouts as is now provided the Boy Scouts—no more, no less. This is not legislation of broad impact but it will help the Girl Scout program and I urge the Members to support it.

Mrs. HOLT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of S. 3373.

On seven separate occasions in the past prior to 1972, the Congress had authorized the Secretary of Defense to provide transportation to Boy Scouts in connection with Boy Scout jamborees. Finally, in 1972, permanent authority was enacted.

In the case of the Girl Scouts, however, although the Congress has passed specific legislation twice in the past for certain events, no permanent grant of authority has been enacted.

S. 3373 does this.

It would be inequitable to continue to provide assistance, limited though it is, to the Boy Scout program but not the Girl Scouts.

There will be no cost to the Government by this action since the provision of transportation is predicated upon full reimbursement by the Girl Scouts for this assistance.

If this bill is enacted, no more than 200 Girl Scouts a year would seek transportation assistance to attend certain important international meetings, such as International World Friendship Events.

This legislation passed the Senate unanimously and was reported favorably by the Committee on Armed Services by a vote of 28 to 1.

I hope the Members will support this legislation.

● Mr. CARR. Mr. Speaker, I rise in opposition to the bill S. 3373. This bill was rammed through the House Armed Services Committee without hearings. It was brought to the full committee by unanimous consent. Had I known that this bill would be brought to the House floor under suspension of the rules, I would have objected to the full committee consideration of the bill without hearings. During the full committee proceedings I offered an amendment in the nature of a substitute to the bill. Consideration of this bill now on the Suspension Calendar now prevents me from offering my amendment on the House floor. This bill seeks to redress an inequity between the Boy and Girl Scouts in their eligibility to travel on military flights on a space available basis. At the same time this bill fails to address the inequity between the Scouts and other worthy and congressionally chartered youth organizations such as 4–H, Big Brothers, and Big Sisters.

Girl Scouts should not be added by name to the statute. Boy Scouts should be dropped from the statute by name. In its place an omnibus provision should be enacted to allow all nonprofit, educational youth organizations to apply to the Secretary of State for transportation from the DOD on foreign flights. The Secretary would be charged with making the determination as to whether the transportation was in the interests of the United States.

Mr. Speaker, I urge the defeat of this bill until the committee can hold hearings and address the complete area of youth organization military travel in a comprehensive way. I understand that the chairman of the committee, Mr. White, also has some questions about the liability coverage for accidents occurring on such flights.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. MONTGOMERY) that the House suspend the rules and pass the Senate bill, S. 3373.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

INTERPRETERS IN U.S. COURTS

Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 14030) to provide more effectively for the use of interpreters in courts of the United States, and for other purposes, as amended.

H.R. 14030

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Court Interpreters Act".

SEC. 2. (a) Chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1827. Interpreters in courts of the United States

"(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in courts of the United States.

"(b) Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech

impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.

"(c) Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.

"(d) The presiding officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, in any criminal or civil action initiated by a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator), if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such action—

"(1) speaks only or primarily a language other than the English language; or

"(2) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

"(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

"(2) In any criminal or civil action in a United States district court, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

"(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

"(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter many utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

"(g)(1) Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary.

"(2) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses shall, unless direction is made under paragraph (3) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.

"(3) The presiding judicial officer may in such officer's discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action.

"(4) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

"(h) In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.

"(i) The term 'presiding judicial officer' as used in this section and section 1828 of this title includes a judge of a United States district court, a United States magistrate, and a referee in bankruptcy.

"(j) The term 'United States district court' as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title.

"(k) The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer's motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

"§ 1828. Special interpretation services.

"(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

"(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 501 of the Act of August 31, 1951 (ch. 376, title 5, 65 Stat. 290; 31 U.S.C. 483a), but the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.

"(c) Except as otherwise provided in this subsection, the expenses incident to providing services under subsection (a) of this section shall be paid by the Director from sums appropriated to the Federal judiciary. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action, and any moneys collected as a result of such order may be used to reimburse the appropriations obligated and disbursed in payment for such services.

"(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section, and moneys collected by the Director under that subsection may be used to reimburse the appropriations charged for such services. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.".

(b) The table of sections for chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following:

"1827. Interpreters in courts of the United States.

"1828. Special interpretation services.".

SEC. 3. Section 604(a) of title 28, United States Code, is amended—

(a) by striking out paragraph (10) and inserting in lieu thereof:

"(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services for pretrial services agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5);";

(b) by redesignating paragraph (13) as paragraph (17); and

(c) by inserting after paragraph (12) the following new paragraphs:

"(13) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

"(14) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

"(15)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services

in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees, and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

"(16) In the Director's discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102 of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;".

SEC. 4. Section 604 of title 28, United States Code, is amended further by inserting after subsection (e) the following new subsections:

"(f) The Director may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necesary to carry out the Director's functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government which as the Director determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

"(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance of proceeds of sale in such cases in whole or in part payment for the property acquired, but any transaction carried out under the authority of this subsection shall be evidenced in writing.

"(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods exceeding ten years.".

SEC. 5. Section 602 of title 28, United States Code, is amended to read as follows:

§ 602. Employees

"(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates.

"(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(15)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

"(c) The Director may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

"(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.".

SEC. 6. Section 603 of title 28, United States Code, is amended by striking out the second paragraph thereof.

SEC. 7. Section 1920 of title 28, United States Code, is amended by striking out the period at the end of paragraph (5) and inserting a semicolon in lieu thereof and by inserting after paragraph (5) the following new paragraph:

"(6) Compensation of court appointed experts, ompensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.".

SEC. 8. Section 5(b) of the Act of September 23, 1959 (Public Law 86-370, 73 Stat. 652), is repealed.

SEC. 9. There are authorized to be appropriated to the judicial branch of Government such sums as may be necessary to carry out the amendments made by this Act.

SEC. 10. (a) Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) Section 2 of this Act shall take effect ninety days after the date of the enactment of this Act.

SEC. 11. Any contracts entered into under this Act or any of the amendments made by this Act shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.

The SPEAKER pro tempore. Is a second demanded?

Mr. LIVINGSTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. EDWARDS) will be recognized for 20 minutes, and the gentleman from Louisiana (Mr. LIVINGSTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. EDWARDS).

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 14030, which creates the Court Interpreters Act, is designed to insure that all individuals in Federal proceedings are provided with a certified interpreter if their communication or comprehension capabilities are inhibited because of a language barrier or hearing impairment.

Under this bill, the Director of the Administrative Office of the U.S. Courts is charged with the responsibility of establishing and certifying the qualifications of persons who may serve as interpreters in Federal district courts. When a presiding judicial officer determines, in a civil or criminal proceeding initiated by the United States, that the services of an interpreter are required under this act, such officer shall then give preference in appointment to the most available certified interpreter. If no such interpreter is available then an otherwise, competent interpreter may be appointed. Waiver of the right to appointment of a certified interpreter is permitted, with the court's approval, in limited situations. In such cases, the individual may then utilize the services of a noncertified interpreter of such individual's choice.

Lastly, H.R. 14030 provides that payment of interpreter's services, in cases initiated by the United States, be made by the Director of the Administrative Office of the U.S. Courts from funds appropriated to the Federal judiciary or by the U.S. Attorney General from funds appropriated to the Department of Justice. In such civil actions, the costs incident to providing the services of an interpreter shall be apportioned among the parties or taxed as costs unless the court, in its discretion, orders that the costs be borne by the Government.

The Congressional Budget Office estimates that, assuming funds for fiscal year 1979 are appropriate half way through the fiscal year, the first year cost of this bill will be approximately $1.4 million. The second year cost is estimated at $2.1 million, with additional, minor increases over the following 3 years to allow for inflationary factors which the Budget Office has projected. The Congressional Budget Office figures are based on a "guessestimate" submitted by the Administrative Office of the U.S. Court. These figures appear to be inflated and it is anticipated that, upon enactment of this bill, the Administrative Office will revise its estimate downward based on the limiting language set forth in the committee report.

The Senate has passed similar legislation this Congress and I have been informed that the Senate sponsor of that bill (Senator DECONCINI) will accept the House amendments as reflected in H.R. 14030. I urge my colleagues to join me in voting for this legislation so that due process will finally become a reality, in Federal district courts, for individuals with language barriers or hearing impairments.

The sponsor of this bill, the Honorable FRED RICHMOND, is unable to be here this morning. Congressman RICHMOND has worked very vigorously or behalf of this legislation. He has particularly championed the cause of the hearing impaired which have been neglected by the judicial system.

● Mr. MOORHEAD of California. Mr. Speaker. H.R. 14030 accomplishes two related and long overdue purposes. First, the bill directs the director of the administrative office of the U.S. Courts to certify the qualifications of persons who may serve as interpreters in Federal courts. This includes interpreters for persons whose primary language is not English and persons with hearing impairments. This applies to all parties in a criminal action or a civil action initiated by the United States.

The Subcommittee on Civil and Constitutional Rights heard 3 days of testimony citing incidents where judges have refused to provide interpreters for those with speech and hearing impairments constituting a serious denial of due process of the law. Under current law, the

Federal rules provide that the court may appoint an interpreter of its own selection and may fix the reasonable compensation for the interpreter. This bill would simply make in order at any point during the proceedings a motion by the court or by one of the parties for the services of an interpreter.

Only if counsel disagrees on the party's ability to speak and comprehend English would there be a need for a formal proceeding to make an initial determination of the need for an interpreter. Thus, the judge still has the authority and the responsibility to make the determination, but he must select an interpreter, if one is available, from the certified list maintained by the Director of the Administrative Office of the U.S. Courts. The subcommittee has urged strongly that interpretation be conducted in the consecutive rather than by simultaneous mode. A simultaneous mode uses a U.N.-type machine at a very high cost.

While the Administrative Office of the U.S. Courts estimates that they will have to add a few full-time interpreters to their present small staff of 11, most of the interpreters will work on a contract basis when their services are needed. Thus, the Budget Office estimates this legislation will cost less than $2 million.

Finally, parties may waive this new right to interpretation but such waiver can only be made after the presiding judicial officer has explained the waiver to the party.

We have departed from current law by asking the Government to pay for these services. Previously, Government supply and pay for the interpreter was only in the case of an indigent criminal defendant. However, it seems to me that the role played by the interpreter is so basic to the fundamental principles of justice that it should be a service offered as a cost of court maintenance, not a cost of litigation.●

● Mr. RICHMOND. Mr. Speaker, as author of H.R. 14030 I would like to take this opportunity to briefly explain why all my colleagues should support this legislation that is needed to rectify a current injustice in our Federal court system.

The "Court Interpreters Act," which I introduced in December 1977, attempts to remedy a grave inequity. This bill would insure that a qualified interpreter be present whenever a person who does not communicate in English is involved in a Federal court proceeding.

Deaf and non-English speaking Americans have been denied the fundamental right to a fair trial due to their inability to understand the court proceedings.

The Constitution guarantees every American access to the Federal courts through the fifth and sixth amendments. If language-handicapped Americans are not given the constitutionally established access to understand and participate in their own defense, then we have failed to carry out a fundamental American premise: fairness and due process for all.

At my request, the Congressional Research Service compiled information regarding the number of men, women, and children in the United States whose primary language is other than English. The total number of individuals whose primary language is not English is over 25,347,000. With the addition of the deaf community, the figure reaches 40 million.

Among these 40 million individuals, there are thousands, who, potentially, could benefit from this legislation.

Spanish speaking and deaf Americans comprise by far the largest numbers of people whose primary language is not English.

Of the more than 9.9 million Spanish-speaking Americans, over 2 million are Puerto Rican.

It is important to note that Puerto Rican Americans are not confined to New York. There are large numbers of Puerto Rican families in cities all across the Nation—as far away as Hawaii—with large communities in New Jersey, Pennsylvania, Massachusetts, Ohio, Illinois, California, and Florida.

Hispanic families are not the only ones who may suffer disadvantages as a result of court-related language disabilities.

Representatives of all nationalities contribute to American culture and economy. Yet, if they do not speak English they are at a gross disadvantage in court proceedings.

I am referring to millions of men and women whose primary language is not English:

15 million deaf people who use sign language or need oral interpretation.
9.9 million who speak Spanish.
2.8 million who speak Italian.
2.2 million who speak French.
2.2 million who speak German.
Half a million who speak Chinese.
Half a million who speak Japanese.
Almost half a million who speak Greek.
Almost 400,000 who speak Philippino.
Almost 350,000 who speak Portuguese.
And over 5½ million more speak "other" languages; including many thousands of native Americans.

The district which I represent—the 14th Congressional District of New York—is the most multi-ethnic district in the United States. Every country represented in the United Nations is represented in the 14th District.

Close to 20 percent of my constituents are Hispanic, the vast majority of whom are Puerto Rican. There is also a large number of families—at least 10 percent of my constituents—whose primary language is Hebrew or Yiddish.

In addition, in this highly diverse district, there are many families whose primary language is Italian, Greek, Polish, Hungarian, various Arabic languages, and dozens of other languages from every corner of the world.

Many of these people would benefit from this legislation.

Nationwide, even in courts where interpreters are available for individuals who need help with translation and interpretation, there is no uniform procedure for utilization of interpreters.

On July 13, 1978, a deaf man came before a U.S. Federal Magistrate in Greenbelt, Md., on criminal charges. This man, who can neither speak nor lip read, was denied the use of an interpreter.

In Boston, a deaf man was denied the use of an interpreter in Federal Tax Court. He could not afford to pay for the interpreter himself and his trial was postponed. The man moved to St. Paul where the trial was resumed and an interpreter finally appointed.

Last year, in Kansas a deaf man was denied the use of an interpreter during his Federal bankruptcy trial.

There have been a number of misinterpretations or no interpretations in cases involving Spanish-speaking defendants.

In the Negron case, the defendant, a 23-year-old Puerto Rican American with a sixth grade education, was provided with an interpreter who merely gave the defendant a purported summary in Spanish of what had previously transpired in English. No continuous interpretation was provided. Consequently, Mr. Negron was convicted of murder and incarcerated. He petitioned the Federal court for a writ of habeas corpus which was granted on the grounds that the interpreting at his trial was so inadequate as to deprive him of due process. He was thus released and given a new trial. (434 F. 2d 386 (2d cir. 1970)).

U.S. v. *Carrion*, 488 F. 2d 12 (1973), a case similar to Negron, reaffirmed the proposition that qualified interpreters as well as continuous interpretation should be provided when language barriers are obvious and the defendant is indigent.

Several Federal convictions were reversed on due process grounds where no interpreter had been appointed and where the accused's knowledge of English was minimal or nonexistent. (*U.S. ex rel Navarro* v. *Johnson*, 365 F. Supp. 676 (1973); 192 Cal. App. 2d 604; *Parra* v. *Page*, 430 P.2d 834 (1967)).

These are only a few of the cases which indicate the need for Federal legislation to set mandatory standards for the appointment of professional interpreters in our Federal courts.

The Administrative Office of the Courts estimates the cost of this legislation at less than $2 million annually. This seems to be a very small price to pay to insure equal justice for all.

I believe that this legislation will encourage State legislatures to enact similar legislation for the State and local courts where a considerable number of flagrant miscarriages of justice have occurred due to poorly qualified interpreters being used or no interpreters at all.

Consider for a moment that the 40 million people living in the United States today, whose primary language is not English, represent close to 20 percent of our population. Put together, over 80 Members of Congress would represent them alone. This is obviously a significant number of people who are asking, not an unreasonable thing: that if they are ever involved in a Federal trial, they will be guaranteed the right to understand all the proceedings. In this great country of ours, the fact that they must even make such a request is a disgrace, I urge my colleagues to approve this legislation and bring an end to this grotesque judicial oversight.●

GENERAL LEAVE

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 14030.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. LIVINGSTON. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. EDWARDS) that the House suspend the rules and pass the bill, H. R.14030, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. EDWARDS of California. Mr. Speaker, on behalf of the Committee on the Judiciary, I ask unanimous consent that the Committee on the Judiciary be discharged from the further consideration of the Senate bill (S. 1315) to provide more effectively for the use of interpreters in courts of the United States, and for other purposes, and ask for immediate consideration of the Senate bill.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1315

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bilingual, Hearing, and Speech Impaired Court Interpreter Act".

SEC. 2. (a) Chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1827. Interpreters in courts of the United States

"(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in courts of the United States.

"(b) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing or speech impaired, and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by him and he shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.

"(c) Each district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters (including bilingual interpreters and oral or manual interpreters for the hearing impaired and speech impaired) by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.

"(d) In any criminal action or civil action initiated by the United States where the presiding judicial officer determines on his own motion or on the motion of a party that (i) a criminal defendant or a party speaks only a language other than the English language, suffers from a hearing impairment, or suffers from a speech impairment which will inhibit comprehension of the proceedings or communication with counsel and the presiding judicial officer, or (ii) in the course of such proceedings, testimony may be presented by any person who speaks only a language other than the English language, suffers from a hearing impairment, or suffers from a speech impairment which will inhibit comprehension of questions and presentation of testimony, the presiding judicial officer shall order that the necessary interpretation be provided and shall obtain the services of a certified interpreter for that party or person in accordance with subsection (e) of this section.

"(e)(1) In any action in a court of the United States where the services of an interpreter are to be utilized by the presiding judicial officer, the defendant, a party or non-Government witness, pursuant to a finding of need for interpreter services under subsection (d), the presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interperter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter.

"(2) In any action in a court of the United States where the services of an interpreter are to be utilized by the United States attorney for a Government witness, the United States attorney, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter.

"(3) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, the defendant, a party, or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with the provisions of this subsection.

"(4) In all actions not covered by paragraph (1) of this subsection, the person requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

"(f)(1) The defendant in any criminal action in a court of the United States, or a party in any civil action in a court of the United States, who is entitled to an interpretation pursuant to a finding of need for interpreter services under subsection (d) may waive the interpretation in whole or in part. Such a waiver must be (i) made expressly by the defendant or party upon the record after the opportunity to consult with counsel and after the presiding judicial officer has explained to the defendant or party, utilizing the services of an interpreter obtained in accordance with subsection (e) of this section, the nature and effect of the waiver, and (ii) approved by the presiding judicial officer.

"(2) A defendant or party who waives his right to an interpreter provided pursuant to subsection (d) may utilize the services of noncertified interpreter of the person's choice at personal expense.

"(g)(1) In criminal actions and civil actions initiated by the United States, the salaries, fees, expenses, and costs incident to providing the services of an interpreter pursuant to subsection (e)(1) of this section shall be paid by the Director from funds appropriated to the Federal judiciary: *Provided,* That a presiding judicial officer, in his discretion, may direct that all or part of the expenses shall be appropriated between or among the parties or shall be taxed as costs in a civil action.

"(2) In criminal actions and civil actions initiated by the United States, the salaries, fees, expenses, and costs incident to providing the services of an interpreter pursuant to subsection (e)(2) of this section shall be paid by the Attorney General from funds appropriated to the Department of Justice: *Provided,* That a presiding judicial officer, in his discretion, may direct that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action.

"(3) Any moneys collected pursuant to this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

"(h) In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.

"(i) The term 'presiding judicial officer' as used in this section includes a judge of the United States, a United States magistrate, a referee in bankruptcy, and a judge in any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

"(j) The term 'court of the United States' as used in this section includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

"(k) The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a summary interpretation when he determines that a summary interpretation will be adequate for the material to be interpreted.

"§ 1828. Special interpretation services

"(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States, when the provision of such services will aid in the efficient administration of justice. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions, and shall include necessary services for persons who speak only a language other than the English language, hearing impaired persons, and speech impaired persons. The presiding judicial officer on his motion or on the motion of a party may order the special interpretation services be provided.

"(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 501 of the Act of August 31, 1951 (ch. 376, titlfe 5, 65 Stat. 290; 31 U.S.C. 483a): *Provided,* That the Director may require the prepayment of the

estimated expenses of providing the services by the person requesting them.

"(c) The expenses incident to providing services pursuant to subsection (a) of this section shall be paid by the Director from funds appropriated to the Federal judiciary: *Provided*, That a presiding judicial officer, in his discretion, may direct that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action: *Provided further*, That any moneys collected pursuant to the first proviso of this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

"(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section: *Provided*, That moneys collected by the Director pursuant to that subsection may be used to reimburse the appropriations charged for such services: *Provided further*, That a presiding judicial officer, in his discretion, may direct that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.

"(e) The term 'presiding judicial officer' as used in this section includes a judge of the United States, a United States magistrate, a referee in bankruptcy, and a judge in any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.".

(b) The analysis of chapter 119 of title 28, United States Code, is amended by adding at the end thereof the following:

"1827. Interpreters in courts of the United States.
"1828. Special interpretation services.".

SEC. 3. Section 42 of the Puerto Rico Federal Relations Act (48 U.S.C. 864) is amended by striking out the last sentence of such section and inserting the following new sentences: "Initial pleadings in the United States District Court for the District of Puerto Rico may be filed in either the Spanish or English language and all further pleadings and proceedings shall be in the English language, unless upon application of a party or upon its own option, the court, in the interest of justice, orders that the further pleadings or proceedings, or any part thereof, shall be conducted in the Spanish language. The written orders and decisions of the court shall be in both the Spanish and English languages. If an appeal is taken of a trial or proceeding conducted in whole or part in the Spanish language, the record or necessary portions of it, shall be translated into the English language. The cost of the translation shall be paid by the district court or by the parties, as the judge may direct. All appellate documents shall be in the English language.

SEC. 4. (a) Chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1869a. Language requirements in Commonwealth of Puerto Rico

"No person shall be disqualified for service on a grand or petit jury summoned in the Commonwealth of Puerto Rico solely because such person is unable to speak, read, write, and understand the English language if such person is able to speak, read, write and understand the Spanish language.".

(b)(1) Section 1865(b) of such title is amended by striking out "In making" and inserting in lieu thereof "Except as provided in section 1869a of this title, in making".

(2) Section 1869(h) of such title is amended by inserting after "English language" the following: "(except as provided in section 1869a of this title)".

(c) The analysis of such chapter 121 is amended by adding at the end thereof the following new item:

"1869a. Language requirements in Commonwealth of Puerto Rico.".

SEC. 5. Section 604(a) of title 28, United States Code, is amended—

(a) by striking out paragraph (10) and inserting in lieu thereof:

"(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as he may deem appropriate as may be necessary to conduct the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (16)): *Provided*, That contracts for nonpersonal services for pretrial services agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 3709 of the Revised Statutes of the United States, as amended (41 U.S.C. 5);";

(b) by redesignating paragraph (13) as paragraph (17); and

(c) by inserting after paragraph (12) the following new paragraphs:

"(13) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

"(14) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

"(15)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorized the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

"(16) In his discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102 of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government: *Provided*, That gifts or bequests of money shall be covered into the Treasury;".

SEC. 6. Section 604 of title 28, United States Code, is amended further by inserting after subsection (e) the following new subsections:

"(f) The Director may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out his functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government which he determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

"(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired: *Provided*, That any transaction carried out under the authority of this subsection shall be evidenced in writing.

"(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods not exceeding ten years.".

SEC. 7. Section 602 of title 28, United States Code, is amended by striking out the present section and inserting in lieu thereof the following:

"§ 602. Employees

"(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.

"(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(15)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

"(c) The Director may obtain personal services as authorized by section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the highest rate payable under the General Schedule pay rates, section 5332 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided, however*, That the compensation of any person appointed under this subsection shall not exceed the annual rate of basic pay payable under the general schedule, section 5332 of title 5, United States Code.

"(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of his functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as he may designate, and subject to such terms and conditions as he may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as he may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.".

SEC. 8. Section 603 of title 28, United States Code, is amended by striking the second paragraph thereof.

SEC. 9. Section 1920 of title 28, United States Code, is amended by inserting after paragraph (5) the following new paragraph:

"(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.".

SEC. 10. Section 5(b) of the Act of September 23, 1959 (Public Law 86-370, 73 Stat. 652), is repealed.

SEC. 11. There are authorized to be appropriated to the judicial branch of Government such sums as may be necessary to carry out the amendments made by this Act.

SEC. 12. The amendments made by this Act shall take effect on October 1, 1978.

MOTION OFFERED BY MR. EDWARDS OF CALIFORNIA

Mr. EDWARDS of California. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. EDWARDS of California moves to strike out all after the enacting clause of S. 1315,

and to insert in lieu thereof the text of H.R. 14030, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to provide more effectively for the use of interpreters in courts of the United States, and for other purposes."

A motion to reconsider was laid on the table.

EASTERN TELEPHONE SUPPLY & MANUFACTURING, INC.

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 1417) making in order consideration of Senate amendments to the bill (H.R. 10161) for the relief of Eastern Telephone Supply & Manufacturing, Inc.

The Clerk read the resolution as follows:

H. RES. 1417

Resolved, That immediately upon the adoption of this resolution the bill, H.R. 10161, for the relief of Eastern Telephone Supply and Manufacturing, Inc., together with the Senate amendments thereto be, and the same is hereby, taken from the Speaker's table to the end that (1) Senate amendment numbered 1 and the Senate amendment to the title of the bill are agreed to; and (2) Senate amendment numbered 2 is disagreed to.

The SPEAKER pro tempore. Is a second demanded?

Mr. CONABLE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from New York (Mr. CONABLE).

Mr. CONABLE. Mr. Speaker, we concur with the chairman in accepting the Senate amendment to this House passed bill which would extend the existing duty suspension on imports of natural graphite. This Senate amendment was passed by the House as H.R. 10625. We also concur with the chairman in refusing to accept the Senate amendment on freight cars.

Mr. ULLMAN. Mr. Speaker, H.R. 10161 passed the House on August 1, 1978, and the Senate made no amendment to its provision, as approved by the House. However, the Senate added two substantive amendments as follows:

Amendment No. 1 includes the provisions of H.R. 10625, a bill to continue the duty suspension of natural graphite. This bill is noncontroversial and was passed by the House on September 18, 1978, by unanimous consent. Therefore, I recommend that the House concur in Senate amendment No. 1.

Mr. Speaker, there is controversy on Senate amendment No. 2—a proposal to temporarily suspend the duty on freight cars. The Subcommittee on Trade of the Committee on Ways and Means held a hearing on this proposal on September 29. Objections to this legislation have been received from the Railcar Manufacturers Association, a domestic producer, as well as a Member of Congress. Therefore, I recommend that Senate amendment No. 2 not be agreed to at this time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) to suspend the rules and agree to the resolution, House Resolution 1417.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CONABLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation (H. Res. 1417) just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

DISPUTE RESOLUTION ACT

Mr. ECKHARDT. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 957) to promote commerce by establishing a national goal for the development and maintenance of effective, fair, inexpensive, and expeditious mechanisms for the resolution of consumer controversies, and for other purposes, as amended.

The Clerk read as follows:

S. 957

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Dispute Resolution Act".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that—

(1) for the majority of Americans, mechanisms for the resolution of disputes involving consumer goods and services, as well as numerous other types of minor civil disputes, are largely unavailable, inaccessible, ineffective, expensive, or unfair;

(2) the inadequacies of dispute resolution mechanisms in the United States have resulted in dissatisfaction and many types of inadequately resolved grievances and disputes;

(3) each individual dispute, such as that between neighbors, a consumer and seller, and a landlord and tenant, for which adequate resolution mechanisms do not exist may be of relatively small social or economic magnitude, but taken collectively such disputes are of enormous social and economic consequence;

(4) there is a lack of necessary resources or expertise in many areas of the United States to develop new or improved consumer dispute resolution mechanisms, neighborhood dispute resolution centers, and other necessary dispute resolution mechanisms;

(5) the inadequacy of dispute resolution mechanisms throughout the United States is contrary to the general welfare of the people; and

(6) neighborhood, local, or community based dispute resolution mechanisms can provide and promote expeditious, inexpensive, equitable, and voluntary resolution of disputes, as well as serve as models for other dispute resolution mechanisms.

(b) It is the purpose of this Act to assist the States and other interested parties in providing to all persons convenient access to dispute resolution mechanisms which are effective, fair, inexpensive, and expeditious.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "Advisory Board" means the Dispute Resolution Advisory Board established under section 7(a);

(2) the term "Attorney General" means the Attorney General of the United States;

(3) the term "Center" means the Dispute Resolution Resource Center established under section 6(a);

(4) the term "dispute resolution mechanism" means any court with jurisdiction over minor consumer disputes and other minor civil disputes, and any forum which provides for arbitration, mediation, conciliation, or any similar procedure, which is available to adjudicate, settle, or otherwise resolve any minor consumer disputes and any other minor civil disputes;

(5) the term "grant recipient" means any State or local government, any State or local governmental agency, and any nonprofit organization which receives a grant under section 8;

(6) the term "local" means of or pertaining to any political subdivision of a State; and

(7) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

CRITERIA FOR DISPUTE RESOLUTION MECHANISMS

SEC. 4. Any grant recipient which desires to use any financial assistance received under this Act in connection with establishing or maintaining a dispute resolution mechanism shall provide satisfactory assurances to the Attorney General that the dispute resolution mechanism will provide for—

(1) assistance to persons using the dispute resolution mechanism;

(2) the adjudication or resolution of disputes at times and locations which are convenient to persons the dispute resolution mechanism is intended to serve;

(3) adequate arrangements to facilitate use by persons who have difficulties communicating in English or who have physical disabilities;

(4) reasonable, fair, and readily understandable forms, rules, and procedures, which shall include those which—

(A) ensure that all parties to a dispute are directly involved in the resolution of the dispute, and that the resolution is adequately implemented;

(B) provide any easy way for any person to determine the proper name in which, and the proper procedure by which, any person may be made a party to a dispute resolution proceeding; and

(C) permit the use of dispute resolution mechanisms by the business community;

(5) the dissemination of information relating to the availability, location, and use of other redress mechanisms in the event that dispute resolution efforts fail or the dispute involved does not come within the jurisdiction of the dispute resolution mechanism;

(6) consultation and cooperation with the community and with governmental agencies; and

(7) a public information program which effectively and economically communicates to potential users the availability and location of the dispute resolution mechanism.

DEVELOPMENT OF DISPUTE RESOLUTION MECHANISMS BY STATES

SEC. 5. Each State is hereby encouraged to develop—

(1) sufficient numbers and types of readily available dispute resolution mechanisms which meet the criteria established in section 4; and

(2) a public information program which effectively communicates to potential users the availability and location of such dispute resolution mechanisms.

ESTABLISHMENT OF PROGRAM; DISPUTE RESOLUTION RESOURCE CENTER

SEC. 6. (a) The Attorney General shall establish a program in the Department of Justice, to be known as the "Dispute Resolution Program", to carry out the provisions of this Act. Such program shall include establishment of the Dispute Resolution Resource Center and the Dispute Resolution Advisory Board, and the provision of financial assistance under section 8.

(b) The Center—

(1) shall serve as a national clearinghouse for the exchange of information concerning the improvement of existing dispute resolution mechanisms and the establishment of new dispute resolution mechanisms;

(2) shall provide technical assistance to State and local governments and to grant recipients to improve existing dispute resolution mechanisms and to establish new dispute resolution mechanisms;

(3) shall conduct research relating to the improvement of existing dispute resolution mechanisms and to the establishment of new dispute resolution mechanisms, and shall encourage the development of new dispute resolution mechanisms;

(4) shall undertake comprehensive surveys of various State and local governmental dispute resolution mechanisms and major privately operated dispute resolution mechanisms in the States, which shall determine—

(A) the nature, number, and location of dispute resolution mechanisms in each State;

(B) the annual expenditure and operating authority for each such mechanism;

(C) the existence of any program for informing the potential users of the availability of each such mechanism;

(D) an assessment of the present use of, and projected demand for, the services offered by each such mechanism; and

(E) other relevant data relating to the types of disputes addressed by each such mechanism;

(5) shall identify, after consultation with the Advisory Board, those dispute resolution mechanisms or aspects thereof which—

(A) are most effective and fair to all parties in the resolution of disputes; and

(B) are suitable for general adoption;

(6) shall make recommendations, after consultation with the Advisory Board, regarding the need for new or improved dispute resolution mechanisms and similar mechanisms;

(7) shall identify, after consultation with the Advisory Board, the types of minor civil disputes which are most amenable to resolution through mediation and other informal methods, in order to assist the Attorney General in determining the types of projects which should receive financial assistance under section 8;

(8) shall, as soon as practicable after the date of the enactment of this Act, undertake an information program to advise potential grant recipients, and the chief executive officer, attorney general, and chief judicial officer of each State, of the availability of funds and eligibility requirements, under this Act; and

(9) may make grants to, or enter into contracts with, to the extent provided in appropriation Acts, public agencies, institutions of higher education, and qualified persons to conduct research, demonstrations, or special projects designed to carry out the provisions of paragraph (1) through paragraph (7).

DISPUTE RESOLUTION ADVISORY BOARD

SEC. 7. (a) The Attorney General shall establish a Dispute Resolution Advisory Board in the Department of Justice.

(b) The Advisory Board shall—

(1) advise the Attorney General with respect to the administration of the Center under section 6 and the administration of the financial assistance program under section 8;

(2) consult with the Center in accordance with the provisions of section 6(b)(5), section 6(b)(6), and section 6(b)(7); and

(3) consult with the Attorney General in accordance with the provisions of section 8(b)(4) and section 9(d).

(c)(1) The Advisory Board shall consist of 9 members appointed by the Attorney General and shall be composed of persons from State and local governments, business organizations, the academic and research community, neighborhood organizations, community organizations, consumer organizations, the legal profession, and State courts.

(2) A vacancy in the Advisory Board shall be filled in the same manner as the original appointment.

(3)(A) Except as provided in subparagraph (B), members of the Advisory Board shall be appointed for terms which expire at the end of September 30, 1984.

(B) Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of the term.

(d) While away from their homes or regular places of business in the performance of services for the Advisory Board, members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Federal Government service are allowed expenses under section 5703 of title 5, United States Code. The members of the Advisory Board shall receive no compensation for their services except as provided in this subsection.

(e) The Chairman of the Federal Trade Commission shall have authority to advise and consult with the Attorney General, and consult with the Center, in the same manner as the Advisory Board under subsection (b). The responsibilities of the Attorney General and the Center with respect to consultations with the Chairman of the Federal Trade Commission shall be the same as the responsibilities of the Attorney General and the Center with respect to consultations with the Advisory Board.

FINANCIAL ASSISTANCE

SEC. 8. (a) The Attorney General may provide financial assistance in the form of grants to applicants who have submitted, in accordance with subsection (c), applications for the purpose of improving existing dispute resolution mechanisms or establishing new dispute resolution mechanisms.

(b) As soon as practicable after the date of the enactment of this Act, the Attorney General shall prescribe—

(1) the form and content of applications for financial assistance to be submitted in accordance with subsection (c);

(2) the time schedule for submission of such applications;

(3) the procedures for approval of such applications, and for notification to each State of financial assistance awarded to applicants in the State for any fiscal year;

(4) after consultation with the Advisory Board, the specific criteria, terms, and conditions for awarding grants to applicants under this section, which shall—

(A) be consistent with the criteria established in section 4; and

(B) take into account—

(i) the population and population density of the States in which applicants for financial assistance available under this section are located;

(ii) the financial need of States and localities in which such applicants are located;

(iii) the need in the State or locality involved for the type of dispute resolution mechanism proposed;

(iv) the national need for experience with the type of dispute resolution mechanism proposed; and

(v) the need for obtaining experience throughout the United States with dispute resolution mechanisms in a diversity of situations, including rural, suburban, and urban situations;

(5)(A) the form and content of such reports to be filed under this section as may be reasonably necessary to monitor compliance with the requirements of this Act and to evaluate the effectiveness of projects funded under this Act; and

(B) the procedures to be followed by the Attorney General in reviewing such reports;

(6) the manner in which financial assistance received under this section may be used, consistent with the purposes specified in subsection (f); and

(7) procedures for publishing in the Federal Register a notice and summary of approved applications.

(c) Any State or local government, State or local governmental agency, or nonprofit organization shall be eligible to receive a grant for financial assistance under this section. Any such entity which desires to receive a grant under this section may submit an application to the Attorney General in accordance with criteria, terms, and conditions established by the Attorney General under subsection (b)(4). Such application shall—

(1) set forth a proposed plan demonstrating the manner in which the financial assistance will be used—

(A) to establish a new dispute resolution mechanism which satisfies the criteria specified in section 4; or

(B) to improve an existing dispute resolution mechanism in order to bring such mechanism into compliance with such criteria;

(2) set forth the type of disputes to be resolved by the dispute resolution mechanism;

(3) identify the person responsible for administering the project set forth in the application;

(4) include an estimate of the cost of the proposed project;

(5) provide for the establishment of fiscal controls and fund accounting of Federal financial assistance received under this Act;

(6) provide for the submission of reports in such form and containing such information as the Attorney General may require under subsection (b)(5)(A);

(7) set forth the nature and extent of participation of interested parties, including consumers, in the development of the application; and

(8) provide for the qualifications, tenure, and duties of persons, other than judicial officers, who will be charged with resolving or assisting in the resolution of disputes.

(d) The Attorney General, in determining whether to approve any application for financial assistance to carry out a project under this section, shall give special consideration to projects which are likely to continue in operation after expiration of the grant made by the Attorney General.

(e)(1) Financial assistance available under this section may be used only for the following purposes—

(A) compensation of personnel engaged in the administration, adjudication, conciliation, or settlement of minor disputes, including personnel whose function is to

assist in the preparation and resolution of claims and the collection of judgments;

(B) recruiting, organizing, training, and educating personnel described in subparagraph (A);

(C) improvement or leasing of buildings, rooms, and other facilities and equipment and leasing or purchase of vehicles needed to improve the settlement of minor disputes;

(D) continuing monitoring and study of the mechanisms and settlement procedures employed in the resolution of minor disputes in a State;

(E) research and development of effective, fair, inexpensive, and expeditious mechanisms and procedures for the resolution of minor disputes;

(F) sponsoring programs of nonprofit organizations to carry out any of the provisions of this paragraph; and

(G) other necessary expenditures directly related to the operation of new or improved dispute resolution mechanisms.

(2) Financial assistance available under this section may not be used for the compensation of attorneys for the representation of disputants or claimants or for otherwise providing assistance in any adversary capacity.

(f) In the case of an application for financial assistance under this section submitted by a local government or governmental agency, or a nonprofit organization, the Attorney General shall furnish notice of such application to the chief executive officer, attorney general, and chief judicial officer of the State in which such applicant is located at least 30 days before the approval of such application. The chief executive officer, attorney general, and chief judicial officer of the State shall be given an opportunity to submit written comments to the Attorney General regarding such application and the Attorney General shall take such comments into consideration in determining whether to approve such application.

(g) If there is a local dispute resolution mechanism in existence supported substantially by State or local public funds, and the Attorney General has received an application under this section for the funding of a new dispute resolution mechanism in the locality served by such existing mechanism, then priority consideration for funding shall ordinarily be given by the Attorney General to such existing mechanism if such mechanism is in compliance with the criteria established in section 4. To the maximum extent feasible, funds made available under this Act shall not be used to duplicate dispute resolution mechanisms supported substantially by State or local public funds.

(h)(1) Upon the approval of an application by the Attorney General under this section, the Attorney General shall disburse to the grant recipient involved such portion of the estimated cost of the approved project as the Attorney General considers appropriate, except that the amount of such disbursements shall be subject to the provisions of paragraph (2).

(2) The Federal share of an approved project may not exceed—

(A) 100 percent of the estimated cost of the project, for the first and second fiscal years for which funds are available for grants under this section;

(B) 75 percent of the estimated cost of the project, for the third fiscal year for which funds are available for such grants; and

(C) 60 percent of the estimated cost of the project, for the fourth fiscal year for which funds are available for such grants.

(3) Payments made under this subsection may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of underpayment or overpayment. Such payments shall not be used to compensate for any administrative expense incurred in submitting an application for a grant under this section.

(4) In the case of any State or local government, or State or local governmental agency, which desires to receive financial assistance under this section, such government or agency may not receive any such financial assistance for any fiscal year if its expenditure of non-Federal funds for other than nonrecurrent expenditures for the establishment and administration of dispute resolution mechanisms will be less than its expenditure for such purposes in the preceding fiscal year, unless the Attorney General determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs administered by the State or local government or by the State or local governmental agency involved.

(i) Whenever the Attorney General, after giving reasonable notice and opportunity for hearing to any grant recipient, finds that the project for which such grant was received no longer complies with the provisions of this Act, or with the relevant application as approved by the Attorney General, the Attorney General shall notify such grant recipient of such findings and no further payments may be made to such grant recipient by the Attorney General until the Attorney General is satisfied that such noncompliance has been, or promptly will be, corrected. The Attorney General may authorize the continuance of payments with respect to any program pursuant to this Act which is being carried out by such grant recipient and which is not involved in the noncompliance.

(j) The Attorney General, to the extent provided in appropriation Acts, shall enter into a contract for an independent study of the Dispute Resolution Program. The study shall evaluate the performance of such program and determine its effectiveness in carrying out the purpose of this Act.

The study shall contain such recommendations for additional legislation as may be appropriate, and shall include recommendations concerning the continuation or termination of the Dispute Resolution Program. Not later than April 1, 1984, the Attorney General shall make public and submit to each House of the Congress a report of the results of the study.

(k) No funds for assistance available under this section shall be expended until 1 year after the date of the enactment of this Act.

RECORDS; AUDIT; ANNUAL REPORT

SEC. 9. (a) Each grant recipient shall keep such records as the Attorney General shall require, including records which fully disclose the amount and disposition by such grant recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the project or undertaking supplied by other sources, and such other records as will assist in effective financial and performance audits.

(b) The Attorney General shall have access for purposes of audit and examination to any relevant books, documents, papers, and records of grant recipients.

(c) The Comptroller General of the United States, or any duly authorized representatives of the Comptroller General, shall have access to any relevant books, documents, papers, and records of grant recipients until the expiration of 3 years after the final year of the receipt of any financial assistance under this Act, for the purpose of financial and performance audits and examination.

(d) The Attorney General, in consultation with the Advisory Board, shall submit to the President and the Congress not later than 1 year after the date of the enactment of this Act, and on or before February 1 of each succeeding year, a report relating to the administration of this Act during the preceding fiscal year. Such report shall include—

(1) a list of all grants awarded;

(2) a summary of any actions undertaken in accordance with section 8(i);

(3) a listing of the projects undertaken during such fiscal year and the types of other dispute resolution mechanisms which are being created, and, to the extent possible, a statement as to the success of all mechanisms in achieving the purpose of this Act;

(4) the results of financial and performance audits conducted under this section; and

(5) an evaluation of the effectiveness of the Dispute Resolution Program in implementing this Act, including a detailed analysis of the extent to which the purpose of this Act has been achieved, together with any recommendations for additional legislative or other action, including recommendations concerning the continuation or termination of the Dispute Resolution Program.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10. (a) To carry out the provisions of section 6 and section 7, there is authorized to be appropriated to the Attorney General $3,000,000 for each of the fiscal years 1979, 1980, 1981, 1982, and 1983.

(b) To carry out the provisions of section 8, there is authorized to be appropriated to the Attorney General $20,000,000 for each of the fiscal years 1980, 1981, 1982, and 1983.

(c) Sums appropriated under this section shall remain available until expended.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD of California. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas (Mr. ECKHARDT) will be recognized for 20 minutes, and the gentleman from California (Mr. MOORHEAD) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Speaker, I yield myself such time as I may consume. I rise to urge my colleagues to support S. 957. One of the few things I think most of the people in the Chamber today can agree upon is that the costs of asserting a claim through the courts is so high, both in terms of time and money, that the ordinary citizen is effectively denied the chance to obtain redress when involved in a minor civil dispute.

The consumer whose $100 auto repair job leaves the car in no better shape than when it was taken to the shop cannot afford the costs of hiring a lawyer to recover his money. Similarly, the small businessman who has not been paid for his goods or services knows that the costs of going to court to collect will exceed the profits on the transaction. Or the individual whose neighbor's loud stereo keeps him awake night after night cannot afford the time and expense to obtain an injunction to halt the nuisance.

Yet all of these individuals have rights which the State supposedly protects. Unfortunately, our judicial system is so complicated and expensive to use that these rights have become empty prom-

ises. In effect, the consumer and the ordinary citizen with a minor civil dispute have few rights because the value of their claim is consumed by the expense of asserting it.

The bill before us today does something to correct this situation. It establishes a grant program to encourage States and local governments to improve their small claims courts and to develop conciliation, mediation, arbitration, and other programs so that minor civil disputes can be resolved fairly, inexpensively, and quickly.

The bill is similar to one introduced by Congressman JIM BROYHILL earlier in this Congress, and I want to commend Mr. BROYHILL for his leadership in this area. I also want to commend Congressman KASTENMEIER and his Subcommittee on Courts, Civil Liberties, and the Administration of Justice for their outstanding work on the bill.

Under the program, States, localities, and private nonprofit organizations are eligible for grants so long as they show that the dispute resolution mechanism they intend to develop will comply with criteria set out in the bill. The criteria are designed to insure that the mechanisms will be inexpensive, easy to use, and readily accessible to consumers and other ordinary citizens with minor civil disputes.

The criteria in the bill assures us that Federal dollars will not be spent for ineffective programs. At the same time, the bill gives the State and local governments sufficient flexibility to develop mechanisms which best serve their needs. To protect the State and local priorities in this area, the bill requires that State officials be consulted before the Attorney General awards a grant within a State. The bill also contains provisions to make certain there is fair geographic distribution of the grant money by requiring experimentation in urban, suburban, and rural areas throughout the country.

Because the program is designed to stimulate the State and local actions, the money required for the program is modest. The first year, only $3 million is authorized. It will be used to establish a resource center within the Department of Justice to aid and advise States and localities. The following 4 years, $20 million is authorized for grants. This is only about $400,000 per State. And after the first 2 years, the Federal share going to any project must be reduced and within 4 years, the Federal money must be replaced entirely with State and local funding.

The need for this bill is well established. As a result, the bill has widespread support. The U.S. Chamber of Commerce, Ralph Nader's Congress Watch, the American Bar Association, Ford Motor Co., Consumer's Union, and the National Association of Automobile Dealers are just a few of the organizations who support the bill.

Unresolved disputes lead to frustration, tension, and hostilities. Cycnicism about the effectiveness of Government develops. The program established in S. 957 will be a major step toward alleviating these problems. I urge my colleagues to approve the legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin, Mr. KASTENMEIER.

Mr. KASTENMEIER. Mr. Speaker, I rise in support of S. 957, the Dispute Resolution Act. As the chairman of the Judiciary Subcommittee of Courts, Civil Liberties, and the Administration of Justice, I am well aware of the difficulties encountered by persons seeking access to justice. Overloaded court dockets create delays in the scheduling and adjudication of cases. The high costs of litigation, including legal fees, make litigation an expensive route to justice, and in many cases such expenses are prohibitive, even if a party has a 100 percent chance of success. The frustrations and tensions which unresolved disputes create may even lead to criminal actions. When a monetary controversy is involved, a seemingly small sum to one person may be a substantial amount to another person who needs the money for his subsistence. So justice cannot be rationed according to the matter or sum at issue. Access to justice must be improved so that those with legitimate claims may be heard and receive appropriate action.

There is a growing recognition that not every conflict requires for its resolution the formality of the traditional judicial system. In many cases there should be alternatives to lengthy and costly litigation—alternatives which can ensure the parties a fair, speedy, and inexpensive resolution of disputes. One alternative is a somewhat formal one—small claims court—where a person may appear with or without an attorney and plead his case without the usual restrictions of a higher court. However, many such courts are in need of improvement, since they are not always known by potential parties nor are they as accessible as they could be in terms of times and locations. However, experiments are on going to improve them in these and other ways.

Another alternative to dispute resolution is through informal procedures—for example, mediation, arbitration, conciliation, and negotiation. Such informal alternatives have been used more widely in many European countries; for example, Great Britain, Sweden, and Poland, than in the United States. Only recently have persons in the United States begun using informal mechanisms, and preliminary studies are encouraging. These mechanisms are sponsored by a wide range of sources: State and local agencies—including courts—bar associations—including the American Bar Association—nonprofit organizations: for example, YMCA, business and consumer organizations, neighborhood and community groups. Recently the Justice Department through LEAA has begun funding three neighborhood justice centers in Atlanta, Los Angeles, and Kansas City. The LEAA grants, however, are limited to criminal-related cases. The scope of S. 957 is primarily related to civil cases, though a criminal case with a civil aspect which may be amenable to informal dispute resolution could be covered by this legislation.

The purpose of S. 957 is to create a dispute resolution program within the Department of Justice which will study alternative—primarily informal—dispute resolution mechanisms, compile data on the existing mechanisms, assess their value and their important characteristics, and make recommendations for improvements in existing mechanisms and for the creation of new forums for the resolution of disputes in a fair, speedy, inexpensive, and effective way. In addition to the above functions, which will receive input from an Advisory Board and the Federal Trade Commission, and which will be performed by the Dispute Resolution Resource Center, the Attorney General may provide financial assistance to applicants for the purpose of improving existing resolution mechanisms or establishing new ones.

SUPPORTERS OF S. 957

The support for this legislation has been widespread and overwhelming. The administration has indicated its endorsement through the Justice Department, ACTION, and the Commerce Department. The American Bar Association has listed this legislation among its highest priorities. The organizations which have testified or written their approval of this legislation are numerous and include:

American Bar Association.
American Express.
Center for Community Justice.
Chamber of Commerce.
Conference of Mayors.
Conference of State Chief Justices.
Congress Watch (Public Citizens).
Consumers Federation of America.
Consumers Union.
International City Management Association.
League of Cities.
National Association of Automobile Dealers.
National Association of Counties.
National Center for State Courts.
National Consumers League.
National Retail Merchants Association.
Pound Conference Followup Task Force.
Sears.
Small Claims Study Group.

This widespread endorsement of the Dispute Resolution Act has been reflected in the bipartisan support for the bill as it has proceeded through Congress. The other body passed S. 957 unanimously on June 29. The Commerce Subcommittee on Consumer Protection and Finance, after 2 days of hearings (July 20 and 21), reported the bill favorably on August 17, with its chairman, the gentleman from Texas (Mr. ECHKARDT) and the ranking minority member, the gentleman from North Carolina (Mr. BROYHILL) as its chief cosponsors. The Committee on Interstate and Foreign Commerce reported the bill favorably by voice vote (September 26). The subcommittee which I chair held 2 days of hearings (July 27 and August 2) on the bill and heard from a variety of witnesses,[1] all of which supported the legislation and in some cases offered

[1] The witnesses before the subcommittee were: Senator Edward M. Kennedy; Prof. Frank Sander and Ronald Olson (representing the ABA); Assistant Attorney General (OIAJ) Daniel Meador; Mark Green (Public Citizen's Congress Watch); Raymond Shonholtz, Esq. (director of the community board program, San Francisco, Calif.); and Mark Schultz (Chamber of Commerce).

constructive suggestions. We have incorporated some of these suggestions in the bill—for example, having input from a variety of sources through an advisory board, giving advance notice to State officials and other potential grant applicants on the availability of funds, and insuring that Federal funds are not used to supplant or diminish other existing sources of funds. Our subcommittee reported the amended bill favorably on September 19, but due to the heavy calendar of the Committee on the Judiciary, was unable to have it scheduled. However, I will note for the record that our subcommittee members met several times with the Consumer Subcommittee both prior to and after their subcommittee and committee markups, and that the amended version of S. 957 is substantially the same and the version which our subcommittee reported favorably on September 19.

There are two points which I would like to stress at this time. One is that the Committee on the Judiciary would have primary jurisdiction over this dispute resolution program by virtue of its oversight of the Department of Justice. We recognize that the Committee on Interstate and Foreign Commerce will also exercise oversight of this program as it relates to consumer controversies and to the role of the Federal Trade Commission. My second point is that the scope of this bill is intended to cover a wide range of disputes which may be amenable to resolution by informal means. Such disputes, though primarily civil in nature, could include disputes which involve some criminal conduct. For example, a neighborhood assault could be handled as a civil action (tort) and as a criminal action, as well. The civil aspect—for example, medical expenses and the issue which precipitated the assault, if any—could be handled by a dispute resolution mechanism, while the criminal action, if any, would be handled by the prosecutor and court. The purpose of the mechanism would be to restore peace and order to that neighborhood. In some cases, though probably relatively few, domestic disputes could be resolved through these mechanisms. Our subcommittee supports such a broadly scoped bill. We recognize that the Commerce Committee is probably more concerned with consumer controversies, and understand that the resolution of such disputes will be a focus of the Center's study and some of the grants. We will not understate the value of that direction, but want to emphasize and encourage the study and development of a wide range of resolution mechanisms, especially neighborhood based ones.

I thank you for the time and delegate back the balance of my time.

Mr. ECKHARDT. Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in opposition to this legislation.

I think the major problem is that this legislation has been rushed through in the final days of the session. Members who would like to speak against the legislation are not here today. The gentleman from Virginia (Mr. BUTLER) is an outstanding example. He would like to have a vote on this particular measure. He sent a "Dear Colleague" letter around to the Members of Congress, and I will explain to the Members here some of his opposition to the bill.

The bill sets up another 4-year $95 billion grant program under the Department of Justice to fund minor dispute resolution panels throughout the United States. This would come in the form of a $3 million expenditure in the first year, but would jump to $23 million for the succeeding years after that.

Mr. Speaker, the money would be used to set up experimental resolution problems to decide neighborhood disputes, the so-called barking-dog problems. The panels would also consider landlord-tenant, domestic, employer-employee and consumer disputes. These are matters which have been traditionally reserved to the States.

Mr. Speaker, $95 million is a lot of money to play around with. Legislation creating a new Federal program at a cost to the taxpayers of $95 million should not be brought up on the Suspension Calendar, which limits debate and precludes Members of the House from offering constructive amendments.

Courts and alternatives to courts are a matter over which the House Committee on the Judiciary has jurisdiction, but its consideration has been limited through time constraints to one subcommittee.

Mr. Speaker, the bill requires that the Attorney General, with the Federal Trade Commission, be given authority over this legislation. The Federal Trade Commission was made a part of the bill so that the Committee on Interstate and Foreign Commerce would have jurisdiction to have oversight. I imagine the Committee on Interstate and Foreign Commerce will maintain this oversight over the parts which deal with the Department of Justice.

Mr. Speaker, this legislation is an entirely new procedure. The new program is duplicative. Presently, LEAA, which is a part of the Department of Justice, is funding neighborhood justice centers, which are designed to be low-cost, fast-action alternatives to the courts for settlement of minor disputes. This, too, is an experimental program.

Mr. Speaker, we should wait to see how these relatively new existing programs work out before we try something additional such as that which this legislation sets up. I think there is no hurry about this legislation. We should at least have a vote on it here this morning; but I hope that we can put it over to the new Congress so that we will have time to go into greater detail on many of these things which go into new, uncultivated ground and which, in some instances, are repetitive of the programs which already exist.

Mr. Speaker, I ask for a "no" vote on this legislation.

Mr. ECKHARDT. Mr. Speaker, I have no further requests for time, and reserve the balance of my time.

Mr. MOORHEAD of California. Mr. Speaker, I yield 5 minutes to the gentleman from North Carolina (Mr. BROYHILL).

Mr. BROYHILL. Mr. Speaker, I rise in strong support of this bill. The chairman of the subcommittee has already explained how it will work. It is an experimental program. It will provide States and localities, and also nonprofit organizations, to qualify for financial assistance in order to develop an inexpensive, fair, and easy mechanism for resolving consumer disputes. I see a real need for mechanisms like this.

We recently passed, for example, a bill that would provide for a substantial increase in the number of judges in the Federal Court. A number of our States, I know, have been faced with this problem of clogged court calendars and the need to add more judges at the local and State level. Yet at the same time we hear criticisms that our judicial system may not be providing effective relief for consumers who have complaints against a merchant or against a manufacturer. In the first place, it is too expensive to try to get into court, and in the second place, because of the clogged court calendars they do not get timely hearings on their complaints.

So what this means is that the ordinary citizen with a minor dispute with another individual has very little chance of getting that dispute settled.

What this program does or what the bill provides for is a 4-year experimental program, with funding to the States to assist the States as well as localities and, as I pointed out, nonprofit organizations in certain circumstances, to qualify, for the purpose of assisting them to develop information and ideas in the area of conciliation, mediation, arbitration, and so forth, as well as ways to improve the existing Small Claims Court.

I point out that this bill is basically experimental. We are not setting up a permanent program. I had originally introduced a bill that would have set up a permanent program, but I have been persuaded by the arguments of those who came before the committee, as well as the counsel of my colleagues, that it would be best in this instance to set up an experimental program rather than set up a permanent program at this time.

I would also like to point out that it requires that the business community be permitted to use these mechanisms, in other words, consumers and businesses, particularly small businesses, who both need the informal and less costly forums where these disputes can be resolved quickly and easily.

Mr. ECKHARDT. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Texas.

Mr. ECKHARDT. I thank the gentleman for yielding.

The gentleman in the well knows that he and I have both been extremely concerned about the costliness of going to the ordinary courts, and I know the gentleman in the well and I do not agree altogether on the remedy to this because

I have offered from time to time bills that have to do with class actions which are actually very, very large suits taking care of a great number of people. The gentleman in the well has always approached it, I think, in the opposite direction, that is, to provide a number of small actions not with the formal trappings of a lawsuit, which would afford the same kind of relief, and the gentleman in the well feels it would give better and more direct relief than the class action approach.

I may say that whatever may be ultimately resolved in this area, the gentleman and I certainly do agree on the process involved in this bill. It seems to be a very practical process.

I think the gentleman from North Carolina would not support this legislation if it imposed a Federal discipline on the Federal court.

The SPEAKER pro tempore (Mr. BROWN of California). The time of the gentleman from North Carolina (Mr. BROYHILL) has expired.

Mr. ECKHARDT. Mr. Speaker, I yield 2 additional minutes to the gentleman from North Carolina.

Mr. Speaker, if it imposed a Federal presence in the method of dispute settlement through a mechanism which was of Federal origin, I am sure the gentleman would not support it.

Mr. BROYHILL. Mr. Speaker, if the gentleman will yield further, I might point out, the bill does not do that, as the gentleman knows.

This is an approach, in my judgment, which is far better than the class action approach that the gentleman had proposed last year. It is also a far better approach than adding to agency powers, Federal agency powers, to try to resolve individual claims.

Mr. DRINAN. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Speaker, I want to commend the gentleman in the well and associate myself with his remarks.

I want to commend the gentleman from North Carolina and the gentleman from Texas (Mr. ECKHARDT), as well as the gentleman from Wisconsin (Mr. KASTENMEIER). I think this is a very exciting experiment. I endorse it and I hope it becomes law.

I thank the gentleman for yielding.

Mr. ECKHARDT. Mr. Speaker, following the previous discussion, if this bill did entrench upon State jurisdiction, would the gentleman in the well think the State Association of Chief Justices would endorse the bill?

Mr. BROYHILL. Well, absolutely not. I think we have a provision in this bill that the chief executive of every State, as well as the attorneys-general must be consulted before the final approval is given to any grant, to a State program or any nonprofit organization program, so that there is a maximum of participation by elected State officials in the development of this experimental program in their States.

Mr. ECKHARDT. I think this is undoubtedly why the association has supported the bill.

I want to thank the gentleman in the well for recognizing that this is a very, very serious problem.

The SPEAKER pro tempore. The time of the gentleman from North Carolina has again expired.

Mr. ECKHARDT. Mr. Speaker, I yield 1 additional minute to the gentleman from North Carolina.

Mr. Speaker, it is an extremely serious problem that must be met in some way and I complimnent the gentleman on supporting a process in which this problem can be resolved.

Mr. BROYHILL. Mr. Speaker, there are several arguments in favor of S. 957 of which I would like to inform the House.

First. Our courts are too clogged and too costly for many disputes, particularly those cases where the amount in controversy is relatively low.

Second. Consumers and businesses, particularly small businesses, both need more informal and less costly forums where disputes can be resolved quickly and easily.

Third. S. 957 responds to this need for alternative dispute resolution mechanisms by providing funds to States, localities, and noprofit organizations to develop such alternatives.

Fourth. This bill is basically an experiment which will allow States and localities to develop their own mechanisms or improve existing ones with the help of this funding.

Fifth. This bill establishes a Dispute Resolution Resource Center which will assist States and localities with information, technical advice, and the results of various experiments as new or improved mechanisms are developed. The States are not in a position to provide this themselves, but they can obviously benefit from such an exchange of information.

Sixth. This approach is far better than a patchwork of remedial provisions in different statutes or a broadening of various agencies' powers with respect to the pursuit of individuals' rights.

Seventh. This bill provides for access by the business community, assuring that both business and consumers will be able to resolve their disputes in forums which are less expensive and easy to use.

Eighth. The Attorney General, in administering this bill, will have the advice of an advisory board representing a balanced range of interests, including State and local government and business and consumer organizations.

Ninth. This bill will allow for experimentation of dispute resolution mechanisms across a range of minor civil disputes, thus providing a more economical and efficient approach to a determination of what kinds of mechanisms will work best. Ultimately, we can come up with a number of good alternatives to our congested and costly court system.

Tenth. This is a 4-year grant program which will allow for a reasonable test period as well as a good opportunity for evaluation of the programs' effectiveness.

Eleventh. This bill authorizes $20 million per year for 4 years which breaks down to less than $400,000 per State (the District of Columbia and U.S. territories and possessions are eligible for funding).

Twelfth. The maximum percentage of Federal funding will occur during the first 2 years of the program; this funding will decrease to levels of 75 percent to 60 percent before ending, when local funding will have to take its place.

Mr. Speaker, I yield back the balance of my time.

Mr. MOORHEAD of California. Mr. Speaker, I yield 3 minutes to the gentlewoman from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. Mr. Speaker, I thank my colleague.

Mr. Speaker, I administered a program like this for over 1 year as director of the Division of Consumer Affairs of the Department of Law and Public Safety in New Jersey. I hope that some attention will be paid to States which have started such programs. In New Jersey we had in the division employees of the State who were special mediators and investigators, trained in the mediation process, working with the consumer and the supplier of goods or services said to be deficient in supplying those goods or services.

We also had volunteers all over the State at the county level, so that local disputes could be resolved. The disputes that were not resolved at the local level were brought to the attention of the State where we could, indeed, move with lawyers as necessary. Sixteen lawyers were attached to my division.

I do not know how I am going to vote on this bill because, of course, it is commonsense that these disputes should be resolved without unnecessary litigation. But we must do something about the small claims courts in which time after time a man or a company is brought into the small claims court and ordered to pay. But I've known of cases where every single profit from that business or enterprise went into the wife's account; in one court we had 17 cases in which one supplier was ordered to pay the consumer under these conditions. The prosecutor should be notified, automatically, to ask for contempt of court when these things happen. They make the small claims court a mockery.

But what I fear here—and I say this to the proponents of this bill on both sides of the aisle—is another expansion of Federal activity and another expenditure of Federal funds.

We all know what happens. People get used to not doing things at the State and local level and on a volunteer basis. With an infusion of Federal funds, we start a whole new network of Federal funding in an entirely new area. That is what I fear. It is hard to stop these things once they get started. People get used to being on the Federal payroll, and the State budget is set up on the basis of that funding.

I do not know how I will vote on this bill. It is not experimental, and there is no pilot program involved here, except that it is "pilot" in the sense of the Federal involvement.

There is a proven system of operating, and it is very satisfactory. It does not have to be Federal; it can be State and local. It can be run by employees and volunteers on the local level, and

it is an extremely satisfactory arrangement. We train the volunteers at the State level for the county programs. There is nothing new about it. It is a good system.

Mr. Speaker, the question I have is: Should Federal money be put in this?

Mr. ECKHARDT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I should like to address the question the gentlewoman from New Jersey (Mrs. FENWICK) raises here, because I would very much like to have her support and would be glad to yield to her freely to discuss the matter.

I think the important thing that answers the question the gentlewoman raises is the language on page 8 of the report. There it is pointed out that part of the initiative for this bill results from the National Institute for Consumer Justice study on small claims courts. The study pointed out problems with small claims courts, ultimately agreeing with Mrs. FENWICK that small claims courts can be made to work. The study recommended that Federal funds be made available to stimulate State and local governments to establish and improve their small claims courts. That is precisely what S. 957 does. It will help improve the existing small claims court system.

In addition, however, S. 957 recognizes that procedures less formal and less expensive than litigation through small claims courts may be a desirable alternative.

There has been much progress made in informal settlement processes already in operation in a few States. We had testimony before the subcommittee, for instance, of programs put on by the Better Business Bureau in which merchants were called on in advance to voluntarily agree to arbitration where consumers had been allegedly cheated or had allegedly received shoddy goods.

It struck me that this is an excellent way to approach the question. The point is that there are a number of approaches which can be taken to resolve minor civil disputes. We do not have the answers as to what works best. What is needed is experimentation and innovation to find out what does work best. And that is what S. 957 does. It provides some grant money to get such programs started. But I want to make it very clear that other than simply setting some parameters for receiving funds from the Federal Government, the Federal Government has no presence in the process. The State and local governments set up their own programs.

The gentleman from Virginia (Mr. BUTLER) ultimately appears to be opposed to this bill, but one of the reasons why we come here with virtually an uncontested bill is because of his contribution on the Subcommittee of the Committee on the Judiciary.

He came in. He first wanted a sunset provision, and he wanted to look at the matter and study it and see whether it should be continued. But since it is only for 5 years, it has its own automatic sunset provision.

In addition to that, we put in a provision that does call for the study, looking toward the very problems that the gentlewoman from New Jersey has pointed out here.

We have not attempted to write into the legislation a fixed formulation for the kinds of mechanisms to be established, and for that reason I think this is properly on suspension. We are not crossing those bridges in advance, but we do think that this ought to be started immediately. This is, of course, the only way we could start it; this is the only process by which the bill could be enacted here. Feeling that the bill was generally noncontroversial, supported by the ranking minority member and the chairman of the Consumer Protection Subcommittee, and without opposition, as I recall, on the Commerce Committee, and with a majority support on the subcommittee of the Judiciary, we thought this was the epitome of the kind of bill that should be placed on suspension.

For those reasons, we feel that the bill should be passed.

● Mr. STAGGERS. Mr. Speaker, I rise in support of S. 957, the Dispute Resolution Act. This bill has received strong support from every member of the sub-Committee which reported the measure to our committee. In addition, wide bipartisan endorsement was given by members of the Commerce Committee and also of the Judiciary Subcommittee on Courts, Civil Liberties, and Administration of Justice, which had joint referral of this bill.

This legislation will assist States, local communities, and nonprofit organizations to develop inexpensive and easy-to-use mechanisms for settling minor disputes, and will accomplish it in a manner which will be fair to both parties. The need for this legislation arises from the fact that our overburdened courts and traditional complex legal procedures frequently do not provide an opportunity for a satisfactory settlement of minor disputes. While these disputes may involve only small amounts of money or disagreement over relatively insignificant matters, yet they can be very important to the parties who are engaged in them.

The bill will be administered by the Department of Justice which already has a staff experienced in these matters. The objective of the Department will be to encourage both the improvement of worthwhile existing minor dispute resolution mechanisms and the establishment of new and better programs, at the local level.

This is an experimental program which authorizes grants of $20 million per year and it is limited to a 4-year life. I think it is important to note that Federal funding of any particular project must give way to funds from other sources once the project is underway. For example, Federal dollars could pay for no more than 75 percent of the cost of any program for the third year or 60 percent for the fourth year. After the fourth year, Federal funding will be ended.

This bill has very wide support. Just to give you an example of the kind of support—the Chamber of Commerce, the Consumer Federation of America, the American Bar Association, the National Retail Merchants Association, and Congress Watch, along with many other groups, have endorsed this legislation.

This is an important bill. It will have a good as well as a long-range effect upon a very broad segment of the population of this country. I urge passage.●

● Mr. ANNUNZIO. Mr. Speaker, as the 95th Congress comes to a close, the mad rush to complete action on major legislation has gone into full swing. In the biannual scramble to close up shop, very valuable legislation is often abandoned, doomed to repeat the whole legislative process in the next session. One bill which has already suffered this fate, and which may do so again, is S. 957, the Dispute Resolution Act.

S. 957 is designed to counter the dismaying, but not too surprising figures of a Louis Harris survey which shows that 79 percent of the public feels it is a waste of time to complain about consumer problems because they are confident that nothing will be achieved by doing so. One of the prime causes of this feeling of frustration and helplessness, which allows merchants to continue to abuse their customers, is the adversary court process consumers must deal with in order to enforce their statutory rights. Small claims courts have inconvenient hours, are often inaccessible, and provide little assistance to consumers unfamiliar with the court process. It is estimated that there are presently 41 million individuals without reasonable access to a small claims court. Such a system gives a decided advantage to those who violate the law.

It is imperative that we respond to the ineffectiveness of formal court procedures. We need to explore alternatives to the court system which will offer people an outlet to air their grievances without having budensome costs and demands placed on them. Experiments throughout the country with innovative mediation, negotiation, and conciliation programs have shown the value of settling disputes outside of the traditional channels. S. 957 is designed to provide Federal support both for improving the traditional small claims court system, and for establishing new mechanisms for resolving disputes. This bill provides for the creation of a dispute resolution program within the Department of Justice. This program would, through grants to States, localities, and nonprofit organizations, assist in the development of inexpensive, fair and easy to use forums for resolving consumer disputes. Applicants for the grants under this program would be required to meet criteria set out in the bill geared to overcome the problems consumers currently face. These include assistance in how to use the dispute resolution mechanism, the establishment of centers in convenient locations and with reasonable hours, and the use of forms, rules, and procedures which are fair and easy to understand. The bill would also require that there is ample assurance that any settlement which is reached will be implemented. This last provision is especially important, because currently consumers have a difficult time collecting damages even if a court has ruled in their favor.

Passage of this bill would prove to Americans that this Congress should be remembered not for freely spending taxpayers' money on worthless projects, but for prudently investing in programs which will benefit all citizens facing the everyday problems which Congress sometimes ignores in its efforts to deal with larger issues.●

Mr. ECKHARDT. Mr. Speaker, I yield back the balance of my time.

Mr. MOORHEAD of California. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. ECKHARDT) that the House suspend the rules and pass the Senate bill S. 957, as amended.

The question was taken.

Mr. MOORHEAD of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3 of rule XXVII and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. ECKHARDT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill S. 957, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

FEDERAL GOVERNMENT PENSION PLAN REPORTING

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 9701) to amend the Budget and Accounting Procedures Act of 1950 to require that the Comptroller General provide for a financial audit with respect to pension plans for officers and employees of the Federal Government and its agencies and instrumentalities, to require that an annual report, including a financial statement and an actuarial statement, be furnished to the Congress and the Comptroller General with respect to such plans, and for other purposes, as amended.

The Clerk read as follows:

H.R. 9701

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Part II of title I of the Budget and Accounting Procedures Act of 1950 (64 Stat. 832) is amended by adding at the end thereof the following new matter:

"Subpart C

"FEDERAL GOVERNMENT PENSION PLANS

"SEC. 120. It is the purpose of this subpart to protect the interests of the Nation and of the participants and their beneficiaries in Federal Government pension plans and certain other pension plans by requiring full disclosure of the financial condition of such plans.

"SEC. 121. (a) Notwithstanding any other provision of law or any administrative determination to the contrary, each Federal Government pension plan and each plan described in section 123(b), except as specified in subsection (b) of this section, shall be deemed to be subject to the provisions of section 103 of the Employee Retirement Income Security Act of 1974 in the same manner as an employee pension benefit plan to which such section applies, except that, with respect to such a Federal Government pension plan or a plan described in section 123(b)—

"(1) the annual report required by such section shall be in such form, and shall include such information and data, as the President, in consultation with the Comptroller General (or in the case of a plan described in section 123(a)(9) or 123(b), the Comptroller General) may prescribe;

"(2) the annual report required by such section shall be furnished to the Congress and to the Comptroller General, not later than the end of the two hundred and tenday period beginning on the day after the last day of the plan year involved;

"(3) unless specifically authorized by the Comptroller General, no provision of such section which provides for waiver of, relief from, or exception to any requirement otherwise applicable to an employee pension benefit plan shall be deemed to apply to such Federal Government pension plan or such plan described in section 123(b);

"(4) the provisions of section 104(b) of such Act shall not apply;

"(5) the report required by this subpart shall be in addition to and shall not supersede other reports or projections required by law; and

"(6) other than in the case of a plan described in section 123(b), the Comptroller General shall perform such audits as the Comptroller General deems appropriate in lieu of the requirements for the independent qualified public accountant under section 103 of the Employee Retirement Income Security Act of 1974.

"(b) Nothing in this subpart shall be construed as imposing any requirement with respect to a Federal Government pension plan for officers or employees of the Central Intelligence Agency, unless the imposition of such requirement is specifically approved in writing by the President.

"(c) Nothing in this Act shall preclude the use by a plan of the services of an enrolled actuary employed by the agency or agencies administering the plan.

"SEC. 122. If requested by either House of Congress (or any committee thereof) or if deemed necessary by the Comptroller General, the General Accounting Office shall—

"(1) review financial and actuarial statements furnished pursuant to section 121 for the purpose of determining whether the reporting requirements of such section are adequate to carry out the purpose of this subpart; and

"(2) submit to the Congress such recommendations for legislative action as it may deem necessary to carry out the purposes of this subpart.

"SEC. 123. (a) For purposes of this subpart, the term 'Federal Government pension plan' means a pension, annuity, retirement, or similar plan (other than a plan covered under the Employee Retirement Income Security Act of 1974, or any plan or program which is financed by contributions required under chapter 21 of the Internal Revenue Code of 1954 (the Federal Insurance Contributions Act) or chapter 22 of the Internal Revenue Code of 1954 (the Railroad Retirement Tax Act)), whether or not such plan is an employee pension benefit plan within the meaning of section 3(2) of the Employee Retirement Income Security Act of 1974, established or maintained by the Government of the United States, or any agency or instrumentality thereof, for any of its officers or employees, without regard to the number of participants covered by such plan, and such term includes but is not limited to the following plans:

"(1) Civil Service Retirement System;

"(2) Foreign Service Retirement and Disability System;

"(3) Military Retirement System;

"(4) Coast Guard Retirement System;

"(5) Commissioned Corps of the Public Health Service Retirement System;

"(6) National Oceanic and Atmospheric Administration Retirement System;

"(7) Tennessee Valley Authority Retirement System;

"(8) nonappropriated fund plans; and

"(9) judicial plans.

"(b) For purposes of this subpart, the plans described in section 123(b) are the following (other than any of the following which are covered under the Employee Retirement Income Security Act of 1974):

"(1) Federal Reserve Employees Retirement Plans;

"(2) Federal Home Loan Bank Board Retirement Systems;

"(3) Federal Home Loan Mortgage Corporation Plan; and

"(4) Farm Credit District Retirement Plans.

"SEC. 124. The requirement imposed by section 121(a) shall apply with respect to plan years beginning after September 30, 1978. For purposes of this section, the term 'plan year' means with respect to a plan, the calendar, policy, or fiscal year chosen by the plan on which the records of the plan are kept.".

SEC. 2. Part II of title I of the Budget and Accounting Procedures Act of 1950 (64 Stat. 832) is further amended—

(1) by inserting after "PART II—ACCOUNTING AND AUDITING" the following new center heading:

"Subpart A";

and

(2) by inserting after section 111 the following new center heading:

"Subpart B".

The SPEAKER pro tempore. Is a second demanded?

Mr. HORTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas (Mr. BROOKS) will be recognized for 20 minutes, and the gentleman from New York (Mr. HORTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

H.R. 9701 will provide for disclosure of the financial condition of pension plans maintained by various agencies of the Federal Government for its officers and employees. This will be done by extending to those plans many of the annual financial and actuarial requirements of the Employee Retirement Income Security Act of 1974 (ERISA). We intend that the financial and actuarial status of these plans be made clear and kept clear by requiring them to be operated in accordance with generally accepted accounting principles and to report their funding status in a uniform manner in accordance with certain actuarial standards.

Federal pension plans are not immune from the effects of inflation, inadequate calculations of future funding needs, nor the possibility of mismanagement. The General Accounting Office has reported

that the three major Federal retirement systems (military, civil service, and Foreign Service) had an unfunded liability in 1976 of $280 billion. This sum will not fall due at any one time but the figure demonstrates the magnitude of the moneys involved and the necessity for their most careful administration.

Under the bill, each plan will prepare and publish an annual report to the Congress and the Comptroller General. The General Accounting Office is required to review financial and actuarial statements if requested by either House of Congress (or any committee thereof) or if the Comptroller General deems it necessary.

In my opinion this is a long overdue step we are taking in making information about these plans available to Congress and the public. It will help insure us against the shock that sudden disclosures about other plans have given us and make us feel more secure about the future.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to commend my colleague, JOHN ERLENBORN, for his work on this legislation. He presented us with a good bill, and he has worked closely with OMB and GAO to perfect amendments which preserve the basic thrust of the bill while eliminating those agencies' opposition to the measure.

Four years ago, the Congress attempted to bring some order to private pension plans. At the time, we failed to address pension plans for employees of the Federal Government. I congratulate Mr. ERLENBORN for calling our attention to the idea that it is time we put the Federal Government's house in order.

To do away with the abuses and inconsistencies in Federal employee pension plans, we first need to compile the data with which intelligent comparisons and decisions can be made. This bill performs an important service by setting up a framework for gathering and evaluating that data.

I am happy to add my support to H.R. 9701.

Mr. ERLENBORN. Mr. Speaker, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Speaker, I thank the gentleman for yielding.

There was no objection.

Mr. Speaker, I rise in support of H.R. 9701 as coauthor of this bill with the gentleman from Pennsylvania (Mr. DENT). We are pleased that the bill is now supported by OMB and the Comptroller General. We worked, as the gentleman from New York said, in eliminating some questions and objections that they might have to the bill, and we now have an agreed bill which I understand can be brought up in the other body expeditiously and passed this year.

Mr. Speaker, it has been true in the past that some have complained that though the Congress took action to enact ERISA affecting private pension plans, we have done nothing relative to the public pension plans, particularly the Federal plans. This legislation, as the gentleman from New York has stated, will require ERISA-type reporting by the Federal plans, and will at least give us the basic information to know where we stand.

Mr. Speaker, I would like to engage in a colloquy with the chairman of our committee, the gentleman from Texas (Mr. BROOKS) if I might, to clarify one issue.

Mr. Speaker, I would like to call specific attention to section 121(a)(1) of the legislation which specifies that the annual report required to be filed by the pension plans covered under the legislation

shall be in such form, and shall include such information and data, as the President in consultation with the Comptroller General (or in the case of a plan described in section 123(a)(9) or 123(b), the Comptroller General) may prescribe.

Under this provision it is intended that the President and the Comptroller General work closely in cooperation with one another in order to arrive at annual reporting requirements which are uniform in format using consistent actuarial assumptions and methods for the pension plans described under both section 123(a) and 123(b) of the legislation. Mr. Speaker, I would like to ask my colleague from Texas (Mr. BROOKS) whether this is also his understanding of the intent of section 121(a)(1) of the legislation?

Mr. BROOKS. Mr. Speaker, if the gentleman will yield.

I agree with my colleague that he has correctly described the intent of section 121(a)(1) of the legislation. In this regard the legislation presents a unique opportunity for the Federal Government to provide full and meaningful disclosure regarding the public pension plans operating within its jurisdiction.

Mr. ERLENBORN. I thank the gentleman.

Mr. Speaker, at this time I ask unanimous consent that the material entitled "Description of H.R. 9701, As Amended," be inserted in the RECORD. This is a statement that reflects the intention of Mr. DENT of Pennsylvania and myself as coauthors of this legislation.

The SPEAKER pro tempore (Mr. BROWN of California). Is there objection to the request of the gentleman from Illinois?

The document is as follows:

DESCRIPTION OF H.R. 9701, AS AMENDED

SECTION 1

This section amends Part II of title I of the Budget and Accounting Procedures Act of 1950 (64 Stat. 832) by adding a new Subpart C containing sections 120 through 124 as follows:

SECTION 120

Section 120 states that the purpose of Subpart C is to protect the interests of the Nation and of the participants and their beneficiaries in Federal Government and certain other pension plans by requiring full disclosure of the financial condition of such plans.

SECTION 121

For the pension plans subject to the legislation, Section 121 provides that such plans shall be deemed to be subject to the provisions of section 103 of the Employee Retirement Income Security Act of 1974 (ERISA). Certain exceptions to this general rule apply to the plans subject to the legislation.

The first exception contained in paragraph (1) of subsection 121(a) provides that the annual report required under section 103 of ERISA shall be in such form, and shall include such information and data, as the President in consultation with the Comptroller General (or in the case of a plan described in section 123(a)(9) or 123(b), the Comptroller General) may prescribe. It is expected that the report format required under this provision shall be uniform, thus enabling a comparison of the financial and actuarial condition of all plans covered under the legislation. It is noted that the Congress is currently considering legislation which would extend ERISA-like annual reporting and disclosure standards to the public pension plans of state and local governments. One bill in particular, H.R. 14138, modifies the ERISA requirements to take into account the special nature of public as opposed to private pension plans. It is intended that the form of the information to be included in the annual report for the plans covered under this legislation also takes into account the special nature of public plans along the lines presented in section 103 of H.R. 14138.

The second exception to the application of section 103 of ERISA is contained in paragraph (2) of subsection 121(a). This provision requires that each covered plan furnish the completed annual report to the Congress and to the Comptroller General not later than 210 days after the end of the plan year. It is expected that the Comptroller General will make such reports available for public inspection.

The third exception to the application of section 103 of ERISA is contained in paragraph (3) of subsection 121(a). Except as otherwise provided in the legislation, this provision makes inapplicable to the plans covered under this legislation any waiver of, relief from, or exception to any requirement under section 103 of ERISA which may have been granted private pension plans, unless after careful and thorough consideration the Comptroller General specifically authorizes such waiver or exception.

The fourth exception to the application of section 103 of ERISA is contained in paragraph (4) of subsection 121(a). This provision makes ERISA's summary annual reporting requirements to participants (ERISA section 104(b)) inapplicable to the plans covered under this legislation.

Paragraph (5) of section 121(a) intends to make clear the fact that the annual reporting requirements under this legislation are in addition to and are not intended to conflict with or supersede other laws which are applicable to the covered plans.

The sixth exception contained in paragraph (6) of section 121(a) provides that other than in the case of a plan described in section 123(b), the Comptroller General shall perform such audits as the Comptroller General deems appropriate in lieu of the requirements for the independent qualified public accountant under section 103 of ERISA. It is understood that at least one plan, the Tennessee Valley Authority Retirement System, currently provides for an audit by an independent qualified public accountant. It is intended that under paragraph (6) the Comptroller General may for any plan continue to rely on such existing audit arrangements and perform such additional audits as he deems appropriate.

Subsection 121(b) provides that nothing in the legislation shall be construed as imposing any requirement with respect to a Federal Government pension plan for officers or employees of the Central Intelligence Agency, unless the imposition of such requirement is specifically approved in writing by the President.

Subsection 121(c) merely clarifies the application of seciton 103(a)(4) of ERISA in connection with the plans covered under this

legislation. Each defined benefit pension plan is to engage, on behalf of all plan participants, an enrolled actuary who is to be responsible for the preparation of the actuarial portion of the annual report. The enrolled actuary so engaged by a plan may be chosen from among enrolled actuaries employed by the Federal government or the agency or instrumentality administering the plan. It might be noted that the enrolled actuary is to utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the actuarial report (i) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and (ii) represent his best estimate of anticipated experience under the plan. It is expected that the actuary will use "explicit" assumptions in calculating the actuarial present value of benefits and the actuarial value of plan assets which is required solely for purposes of the annual report. It is understood that other actuarial values and assumptions that may be included in the report may not meet the above standards because of statutory funding or other requirements.

To facilitate the usefulness and comparability of the matters contained in the actuarial reports, it is recommended that the President establish a means whereby consultation can take place with enrolled actuaries of the Federal Government pension plans in order to arrive at "best estimate" actuarial assumptions which are consistent for all plans. To enhance public understanding of all Federal pension and retirement income programs, consideration should be given to including actuaries and other experts from the Social Security Administration, the Railroad Retirement Board, and the Health Care Financing Administration within the above mentioned means of coordination. Ideally the cost estimates for all Federal pension and retirement programs, including Social Security and Railroad Retirement, should be constructed using internally consistent actuarial assumptions.

SECTION 122

In addition to the audit function assigned to the Comptroller General under section 121, this section provides that the General Accounting Office, upon request, shall review the annual reports filed with the GAO in order to determine the accuracy and adequacy of the information contained therein. The GAO shall submit to the Congress such recommendations for legislative action as it may deem necessary after having reviewed the results of this reporting requirement. With respect to the annual reports first filed after the enactment of the legislation, it is expected that the GAO will analyze and summarize such information in a report to be published and transmitted to the Congress.

SECTION 123

Section 123(a) defines the plans to be considered "Federal Government pension plans" under the legislation. This term includes any defined benefit or defined contribution pension, annuity, retirement or similar plan established or maintained by the Government of the United States, or any agency or instrumentality thereof, for any of its officers or employees, without regard to the number of participants covered by such plan. The term includes, but is not limited to, the following plans:

(1) Civil Service Retirement System;

(2) Foreign Service Retirement and Disability System;

(3) Military Retirement System;

(4) Coast Guard Retirement System;

(5) Commissioned Corps of the Public Health Service Retirement System;

(6) National Oceanic and Atmospheric Administration Retirement System;

(7) Tennessee Valley Authority Retirement System;

(8) nonappropriated fund plans; and

(9) judicial plans.

Various other plans meeting the definition also exist, some of which are described in the March 15, 1978 Committee on Education and Labor Print "Pension Task Force Report on Public Employee Retirement Systems". The Social Security and Railroad Retirement programs are not covered under the legislation.

Section 123(b) describes certain other plans which are covered under the legislation. They include the defined benefit and defined contribution plans established or maintained for the employees of the Federal Reserve Board, the Federal Reserve Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, and the Farm Credit Districts.

The legislation makes it clear that any plans described in either subsection 123(a) or 123(b) which are presently or subsequently covered under ERISA are to be excluded from coverage under this legislation.

SECTION 124

The effective date of the annual reporting requirements provides for such reports to be filed not later than 210 days after the end of the plan year which begins after September 30, 1978. A plan may choose the 12 month "plan year" on which to report. For sake of consistency the plans meeting the definition of "Federal Government pension plan" may wish to use the October 1 to September 30 Federal government fiscal year for reporting purposes.

SECTION 2

This section merely adds new center headings reading "Subpart A" and "Subpart B" to Part II of title I of the Budget and Accounting Procedures Act of 1950.

Mr. HORTON. Mr. Speaker, I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. BROOKS) that the House suspend the rules and pass the bill H.R. 9701, as amended.

The question was taken and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

PRESIDENTIAL RECORDS ACT OF 1978

Mr. BROOKS. Mr. Speaker, I move that the House suspend the rules and pass the bill (H.R. 13500) to amend title 44 to insure the preservation of and public access to the official records of the President, and for other purposes, as amended.

The Clerk read as follows:

H.R. 13500

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Presidential, Records Act of 1978".

RECORDS MANAGEMENT, PRESERVATION, AND PUBLIC AVAILABILITY

SEC. 2. (a) Title 44 of the United States Code is amended by adding immediately after chapter 21 the following new chapter:

"Chapter 22.—PRESIDENTIAL RECORDS

"Sec.
"2201. Definitions.
"2202. Ownership of Presidential Records.
"2203. Management and custody of Presidential records.
"2204. Restrictions on access to Presidential records.
"2205. Exceptions to restriction on access.
"2206. Regulations.
"2207. Vice-Presidential records.

"§ 2201. Definitions

"As used in this chapter—

"(1) The term 'documentary material' means all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio, audiovisual, or other electronic or mechanical recordations.

"(2) The term 'Presidential records' means documentary materials, or any reasonably segregable portion thereof, created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

"(A) includes any documentary materials relating to the political activities of the President or members of his staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

"(B) does not include any documentary materials that are (i) official records of an agency (as defined in section 552(e) of title 5, United States Code); (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

"(3) The term 'personal records' means all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term includes—

"(A) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business;

"(B) materials relating to private political associations, and having no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; and

"(C) materials relating to the President's own election to the office of the Presidency; and materials directly relating to the election of a particular individual or individuals to Federal, State, or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.

"(4) The term 'Archivist' means the Archivist of the United States.

"(5) The term 'former President', when used with respect to Presidential records, means the former President during whose term or terms of office such Presidential records were created.

"§ 2202. Ownership of Presidential records.

"The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter.

"§ 2203. Management and custody of Presidential records

"(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and poli-

cies that reflect the performance of his constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are maintained as Presidential records pursuant to the requirements of this section and other provisions of law.

"(b) Documentary materials produced or received by the President, his staff, or units or individuals in the Executive Office of the President the function of which is to advise and assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

"(c) During his term of office, the President may dispose of those of his Presidential records that no longer have administrative, historical, informational, or evidentiary value if—

"(1) the President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records; and

"(2) the Archivist states that he does not intend to take any action under subsection (e) of this section.

"(d) In the event the Archivist notifies the President under subsection (c) that he does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purposes of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

"(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Administration and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever he considers that—

"(1) these particular records may be of special interest to the Congress; or

"(2) consultation with the Congress regarding the disposal of these particular records is in the public interest.

"(f)(1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President.

"(2) The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States. The Archivist is authorized to designate, after consultation with the former President, a director at each depository or facility, who shall be responsible for the care and preservation of such records.

"(3) The Archivist is authorized to dispose of such Presidential records which he has appraised and determined to have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

"§ 2204. Restrictions on access to Presidential records

"(a) Prior to the conclusion of his term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

"(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

"(2) relating to appointments to Federal office;

"(3) specifically exempted from disclosure by statute (other than sections 552 and 552b of title 5, United States Code), provided that such statute (A) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of material to be withheld;

"(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) confidential communications requesting or submitting advice, between the President and his advisers, or between such advisers; or

"(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

"(b)(1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

"(A)(i) the date on which the former President waives the restriction on disclosure of such record, or

"(ii) the expiration of the duration specified under subsection (a) for the category of information on the basis of which access to such record has been restricted; or

"(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President, or his agents.

"(2) Any such record which does not contain information within a category restricted by the President under subsection (a), or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (c) until the earlier of—

"(A) the date which is 5 years after the date on which the Archivist obtains custody of such record pursuant to section 2203(d)(1); or

"(B) the date on which the Archivist completes the processing and organization of such records or integral file segment thereof.

"(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in his discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or his designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

"(c) Subject to the limitations on access imposed pursuant to subsections (a) and (b), Presidential records shall be administered in accordance with section 552 of title 5, United States Code, and for the purposes of such section such records shall be deemed to be records of the National Archives and Records Service of the General Services Administration. Access to such records shall be granted on nondiscriminatory terms.

"(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter shall be exercised by the Archivist unless otherwise previously provided by the President or former President in a written notice to the Archivist.

"(e) The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the Archivist violates the former President's rights or privileges.

"§ 2205. Exceptions to restricted access

"Notwithstanding any restrictions on access imposed pursuant to section 2204—

"(1) the Archivist and persons employed by the National Archives and Records Service of the General Services Administration who are engaged in the performance of normal archival work shall be permitted access to Presidential records in the custody of the Archivist;

"(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

"(A) pursuant to subpena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

"(B) to an incumbent President if such records contain information that is needed for the conduct of current business of his office and that is not otherwise available; and

"(C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

"(3) the Presidential records of a former President shall be available to such former President or his designated representative.

"§ 2206. Regulations

"The Archivist shall promulgate in accordance with section 553 of title 5, United States Code, regulations necessary to carry out the provisions of this chapter. Such regulations shall include—

"(1) provisions for advance public notice and description of any Presidential records scheduled for disposal pursuant to section 2203(f)(3);

"(2) provisions for providing notice to the former President when materials to which access would otherwise be restricted pursuant to section 2204(a) are to be made available in accordance with section 2205(2);

"(3) provisions for notice by the Archivist to the former President when the disclosure of particular documents may adversely affect any rights and privileges which the former President may have; and

"(4) provisions for establishing procedures for consultation between the Archivist and appropriate Federal agencies regarding materials which may be subject to section 552(b)(7) of title 5, United States Code.

"§ 2207. Vice-Presidential records

"Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records,

shall be the same as the duties and responsibilities of the President under this chapter with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.".

(b)(1) The table of chapters for title 44, United States Code, is amended by inserting immediately after the item relating to chapter 21 the following new item:

"22. Presidential Records---------- 2201".

(2) Section 2107 of title 44, United States Code, is amended by adding at the end thereof the following new sentence: "This section shall not apply in the case of any Presidential records which are subject to the provisions of chapter 22 of this title.".

(3) Section 2108(c) of title 44 is amended by adding at the end thereof the following: "Only the first two sentences of this subsection shall apply to Presidential records as defined in section 2201(2) of this title.".

EFFECTIVE DATE

SEC. 3. The amendments made by this Act shall be effective with respect to any Presidential records (as defined in section 2201(2) of title 44, as amended by section 2 of this Act) created during a term of office of the President beginning on or after January 20, 1981.

SEPARABILITY

SEC. 4. If any provision of this Act is held invalid for any reason by any court, the validity and legal effect of the remaining provisions shall not be affected thereby.

The SPEAKER pro tempore (Mr. BROWN of California). Is a second demanded?

Mr. ERLENBORN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas (Mr. BROOKS) will be recognized for 20 minutes and the gentleman from Illinois (Mr. ERLENBORN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. BROOKS).

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

The amendment which is in the nature of a substitute changes only slightly the bill reported by the Government Operations Committee. The changes reflect the views of the Committee on House Administration and the President.

The bill, H.R. 13500, deals with the ownership and disposition of Presidential papers. It clarifies that official records generated by the Executive Office of the President are Government records, not the personal property of the individual who occupies the Office of Chief Executive. It will insure that a full historical record of an administration's efforts are preserved. It continues the present structure of the Presidential library system, which on the whole has worked quite well. It is a very conservative measure. The act's safeguards will permit the free flow of candid advice to the President to continue without the fear of premature public disclosure. It does not change the ground rules as to what is publicly available while a President is still in office. When the President leaves office, he can control public access to the sensitive records of his administration for up to 12 years. After that, the withholding provisions of the Freedom of Information Act come into play, charging the Archivist with an affirmative duty to make any records which had not been previously opened, available to the public as rapidly and completely as possible.

The bill represents the culmination of months of effort by the Government Operations Committee, the House Administration Committee, the White House, and others, including Representatives PREYER, THOMPSON, and BRADEMAS. It has the full support of the administration.

Mr. Speaker, I yield to my distinguished friend, the gentleman from Indiana (Mr. BRADEMAS).

Mr. BRADEMAS. Mr. Speaker, I thank the gentleman from Texas for yielding.

Mr. Speaker, I rise in support of H.R. 13500, "The Presidential Records Act of 1978."

This bill, as you have heard, was—after extensive hearings—approved in a slightly different form by an overwhelming bipartisan majority of the Government Operations Committee.

This bill also enjoys the full support of President Carter.

Finally, I am pleased to tell you that enactment of this bill will, according to the Congressional Budget Office, result in no additional cost to the Government.

This is a bill we can all support without reservation.

Mr. Speaker, as one of the cosponsors of H.R. 13500, I should like here to pay tribute to a number of colleagues who contributed to the creation and development of this bill, including the gentleman from Texas, the distinguished chairman of the Committee on Government Operations (Mr. BROOKS); the gentleman from North Carolina, the distinguished chairman of that committee's Information Subcommittee (Mr. PREYER); the gentleman from New Jersey, the distinguished chairman of the Committee on House Administration (Mr. THOMPSON); the gentleman from Pennsylvania (Mr. ERTEL); the gentleman from Illinois (Mr. ERLENBORN); and the gentleman from California (Mr. MCCLOSKEY).

Mr. Speaker, the past may not be the surest guide to the future, but neither can we in Government afford to ignore its lessons altogether. And essential to understanding the past is access to the historical record, to the documents and other materials that are produced in the course of governing and shed light on the decisions and decisionmaking processes of earlier years.

"The Presidential Records Act of 1978" is designed to insure that this historical record will be preserved, and will be made available to scholars, journalists, researchers and citizens of our own and future generations.

Allow me, Mr. Speaker, to speak about some of the considerations that gave rise to this legislation.

We need to return for a moment to 1974 and to the immediate aftermath of the Watergate tragedy. Just 1 month after the resignation of President Nixon, he was granted, as you know, a full pardon for any crimes he may have committed during his term in office. In addition, Mr. Speaker, and particularly significant for our discussion today, we soon learned that the then Administrator of General Services, Arthur Sampson, had entered into a private agreement with Mr. Nixon concerning the disposition of the materials of the Nixon presidency.

This agreement gave the former President unrestricted control over these materials, permitted him to destroy any of his papers after 3 years, any of his tapes after 5 years, and, in the event of Mr. Nixon's death within that time, required that the tapes be destroyed.

Had this agreement been permitted to stand, our ultimate knowledge and understanding of an extraordinary period in our history would have been forever handicapped.

It was to prevent this result, Mr. Speaker, that in the fall of 1974 I introduced in the House, together with Congressman Orval Hansen of Idaho, "The Presidential Recordings and Materials Preservation Act."

Senators Sam Ervin of North Carolina and GAYLORD NELSON of Wisconsin were the principal sponsors of this measure in the other body.

That 1974 act overturned the GSA agreement with Mr. Nixon and directed the Administrator of General Services to take the following steps:

To take custody of Mr. Nixon's Presidential tapes and papers;

To promulgate regulations for archival processing of these materials so that personal materials could be returned; and

To determine conditions for eventual public access to the materials which remain in the Government's possession.

As you know, Mr. Speaker, the "Presidential Recordings and Materials Act" was approved overwhelmingly by both Houses of Congress and became law in 1974.

In upholding the 1974 act against constitutional challenge, the U.S. Supreme Court stated that "Congress can legitimately act to rectify the hit-or-miss approach that has characterized past attempts to protect interests" of the Government and the public in these records.

The bill we present today goes the necessary distance to eliminate that hit-or-miss approach once and for all.

The drafters of this bill have been motivated by three principal concerns, Mr. Speaker:

First, the need to promote the creation of the fullest possible documentary record;

Second, the need to insure the preservation of that record;

Third, the need to provide for all possible access to these materials at the

earliest possible time, consistent with the requirements of national security, personal privacy, and the like.

This bill responds effectively to all three of these concerns.

Mr. Speaker, it has for some time made no sense to consider the work product of literally thousands of people, working in Government service and at taxpayer expense, to be the personal property of any individual—and this bill recognizes that conclusion.

This bill also recognizes that the Presidency does have a private side which, while it might be of interest to historians, should be protected. It is our hope that, in protecting materials such as purely personal diaries from mandatory disclosure, we will encourage their creation in the first place and keep alive the possibility of a voluntary gift of these materials.

Finally, Mr. Speaker, we have sought to encourage the free flow of ideas within the executive branch by allowing the President to restrict access to his Presidential material for a period of not longer than 12 years. It was our view that the threat of immediate disclosure of Presidential material upon the end of a President's term in office could well have a chilling effect on the willingness of his staff to express potentially controversial views, a process vital to the President for the proper conduct of his office. In our view, the best way to insure that the ideas would be expressed, and also that they would be set down in writing and be available to later researchers, was to permit the institution of a "buffer period," so to speak, during which time these materials could be protected.

I might add that this was the approach favored by 15 of the 17 members of the Public Documents Commission, which was established as part of the 1974 act to examine the question of management of official records.

At the same time the bill provides that even restricted records are to be made available to Congress if we need these for the conduct of our business and they are not otherwise available.

Mr. Speaker, this bill is a valuable one, and not simply because it costs so little to implement.

It deals with a subject which has been in need of further congressional attention for some time.

It gives encouragement to the creation of a full historical record of the Presidency.

And it provides for the release of the vast majority of Presidential materials within a comparatively short time.

Yet it strikes a reasonable balance between the public's right to have access to the work product of the Government on the one hand and the need to provide for a free flow of ideas within the executive branch on the other.

Mr. Speaker, this bill is supported by President Carter, by Republicans and Democrats on the relevant congressional committees, by law, and by logic. I urge all my colleagues in the House to support it as well.

Now, Mr. Speaker, I have several questions that I should like to put to the gentleman from North Carolina (Mr. PREYER), chairman of the Government Information Subcommittee, who worked very hard on this legislation, as did the gentleman from Pennsylvania (Mr. ERTEL) and the gentleman from New Jersey (Mr. THOMPSSON) and the gentleman from Illinois (Mr. ERLENBORN) and the gentleman from California (Mr. MCCLOSKEY).

If the gentleman from North Carolina will respond to these questions, I shall appreciate it.

The Government Operations committee report states that during the period of administration under the Freedom of Information Act Presidential records could not be withheld by the Archivist pursuant to the (b)(5) exemption for internal deliberative documents. Would the elimination of this exemption foreclose the former or incumbent President from asserting the Presidential privilege in confidential communications with regard to such documents in order to bar disclosure?

Mr. PREYER. If the gentleman will yield, the answer is no. The bill is intended neither to limit nor to expand any constitutionally based privilege. Although the Archivist could not, on his own authority, withhold deliberative documents for which Presidential privilege might be claimed, he would continue to act under the supervision of the incumbent President and would, if so directed, exercise any assertion of privilege on the incumbent President's behalf. The bill also provides that, prior to release of such documents, the Archivist will provide notice to the former President pursuant to regulations promulgated under the act and the former President could then, insofar as constitutionally permitted, assert any privilege in the judicial forum provided by the bill to challenge the intended disclosure. The Archivist would then withhold the documents in question, subject, however, to an order of court that they be released in the event that the assertion of privilege is deemed not to control. Related issues involving the manner of assertion of the constitutional privilege, its delegation and scope, will doubtless be resolved by the courts in particular cases and nothing in this bill is designed to prejudge the matter.

Mr. BRADEMAS. Section 2204(b)(1)(B) provides that a restriction on access imposed by a President prior to his leaving office would terminate if the Archivist determined that restricted information had been placed in the public domain though a publication of the former President or one of his agents. Could you explain how you envision this provision working? Specifically, would any document mentioned in a publication be automatically available to the public? Also, what is meant by the term "agent"?

Mr. PREYER. If the gentleman will yield further, let me begin my response by clarifying the objective of this provision: The intent is to insure the prospects for an objective assessment by independent researchers and historians of any historically significant events that are laid before the American public through a publication by a former President or someone operating at his behest.

Here is how the section would work: A President or his agent publishes a memoir or gives an extensive television interview. A researcher requests a document from the Presidential collection which has been either quoted from or described with some precision in the mass publication. The Archivist determines that the document, or a specific portion of it, though under a presidentially imposed restriction has been made public by the President or his agent. Having decided that, the Archivist would then apply the Freedom of Information Act to the record. If it falls within one of the exemptions, the Archivist exercises discretion to determine whether to release the document. For example, he would not release a properly classified document or one which, if released, would result in an unwarranted invasion of someone's personal privacy. In this context, an agent is one who is operating on behalf, or with the approval, of the former President. It would include an individual who has been given special permission to examine and use otherwise restricted materials.

Aides and associates who may have acted on the President's behalf during his term of office are not encompassed by the term "agent" except to the extent that they may in this way have subsequently served as agents for purposes of making previously restricted Presidential records public.

Mr. BRADEMAS. New subsection 2204(e) provides that:

> The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the former President asserting that a determination made by the archivist violates the former President's right or privileges.

Does the new subsection require a former President to file such a suit only in Washington, D.C.?

Mr. PREYER. The answer to the gentleman's question is "No, not necessarily." The new subsection is not intended to increase, decrease or otherwise modify any rights or privileges which a former President may have. The language is intended to provide statutory assurances that there will be a forum for determination of questions which might arise under the statute. Once access to the court has been provided it is intended that normal venue provisions would apply.

In addition to this statutory assurance of access to a forum, if there is any other basis for jurisdiction such as a constitutional or other right, which any district court might take cognizance of, a suit could be brought in such a court.

Mr. BRADEMAS. The Government Operations Committee report states that while the need to protect the President's first amendment right of freedom of political association is clear, an examination of the nature of the political activities in which he becomes involved shows that few are truly private and unrelated to the performance of his official duties. The report then concludes that of the records of all the various types of political activities in which he becomes in-

volved only those pertainiing to the exercise, as a private citizen, of his political preferences by voting or making campaign contributions would be considered personal rather than Presidential records. The compromise bill, however, also includes certain of political activity records within the ambit of personal records. What is the exact nature of this change and why was it made?

Mr. PREYER. The definition of what constitutes a personal record has been modified to include those materials which relate to the President's own election or reelection, or directly relate to the election of other individuals to public office and having no relationship or direct effect on the President's official activities. This change observes more closely the Court's view in Nixon against the Administrator of General Services that some of the President's involvement in partisan politics may be protected by the first amendment, and that compelled disclosure through a general assertion of Government interest in papers pertaining to such activities could infringe on those protected rights. The Government's direct interest in campaign records is best served, it was felt by the bill drafters, through enactment of special additional legislation dealing specifically with campaign and election practices.

Mr. BRADEMAS. I thank the gentleman for his replies.

Mr. ERLENBORN. Mr. Speaker, I yield myself such time as I may consume.

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Illinois.

(By unanimous consent, Mr. YATES was allowed to speak out of order.)

ANNOUNCEMENT OF THE PASSING OF HON. RALPH H. METCALFE

Mr. YATES. Mr. Speaker, it is with a sense of profound shock and deep regret that I announce to the House the death this morning of our good friend and colleague, the gentleman from Illinois, Mr. RALPH H. METCALFE.

Mr. Speaker, I have no details of the death. Those details, I am sure, will be known shortly. I want at this time only to advise the House of this most untimely passing of our beloved friend and distinguished colleague. His loss will be deeply felt not only in our home community of Chicago, but throughout the Nation, because his contributions were significant and substantial.

Mr. Speaker, I will not yield for encomiums or eulogies at this time. Those will take place later. I take this time only to make the announcement to the House.

Mr. ERLENBORN. Mr. Speaker, I am saddened to hear the announcement by our colleague, the gentleman from Illinois (Mr. YATES), as to the untimely death of RALPH METCALFE, a valued friend and a very fine Representative and statesman.

Mr. Speaker, I join with my colleagues from the other side of the aisle in support of the amendment in the nature of a substitute to the Presidential Papers Act of 1978, H.R. 13500. This legislation will establish the records generated during a President's term in office as the official property of the U.S. Government, not the personal property of the individual who is President. Certain discretionary authority is given to the President regarding the restricting of access for up to 12 years, after his leaving office, to records as outlined in the legislation. This bill insures the maintenance of records of historical value created during the President's term in office.

The bill before us today is the result of an agreement between the Committees on Government Operations and House Administration, the White House and the Department of Justice.

I urge the passage of this legislation which favors public ownership of the records generated by the President while he is in office.

Mr. Speaker, I yield such time as he may consume to the ranking member of our committee, the gentleman from New York (Mr. HORTON).

Mr. HORTON. I thank the gentleman for yielding.

Mr. Speaker, this legislation, H.R. 13500 as amended, establishes the precedent that the records created by the Executive Office of the President are the official property of the U.S. Government, not the personal property of the individual who is President.

The President is authorized to restrict access to sensitive records generated during his term of office for a period up to 12 years.

This bill insures preservation of and access to documents of historical value.

I join with the chairman in recommending passage of this bill as amended.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill under consideration, H.R. 13500, Presidential Records Act of 1978, and the preceding bill, H.R. 9701, Federal Government pension plan reporting.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina (Mr. PREYER).

Mr. PREYER. Mr. Speaker, we are considering questions that haven't been adequately answered for over 200 years: When a President leaves office, who owns the papers created during his administration? And under what conditions should they be made available to the public?

When George Washington left office, he took his papers with him. Presidents since then have generally continued this tradition and removed the papers of their administrations, though the records were produced at public cost and for public purpose.

The Presidential Libraries Act of 1955 authorized the Administrator of General Services Administration to accept Presidential papers for deposit—but subject to restrictions imposed by the donor.

The issue of Presidential papers is one of many that rose to public consciousness as a result of Watergate. The agreement between then General Services Administrator Arthur Sampson and former President Nixon provided for the destruction of the White House tapes and placed severe limitations on public access to the documents of the Nixon administration. In 1974, Congress reacted and passed legislation to preserve the materials and to increase their availability.

That legislation, which was upheld last year by the Supreme Court after a challenge from President Nixon, applies however only to the papers of the Nixon administration.

The Court's decision in the Nixon case bolstered the conclusion of the National Study Commission, also set up under the 1974 act, which recommended that there be legislation to settle in favor of the public the ownership and disposition questions surrounding the papers.

The Government Operations Subcommittee on Government Information and Individual Rights held 4 days of hearings earlier this year, and examined in depth the various proposals put forward by the National Study Commission. Out of that grew a consensus bill presented today, H.R. 13500, which gathered the support of the various professional societies representing journalists, historians, and archivists. Representatives of the Government Operations Committee and House Administration Committee have worked closely with the White House and Justice Department to come to agreement over the final wording of the legislation.

I believe the time has come for Congress to establish a general policy which would apply to the official papers of all Presidents assuring that they will be properly preserved and made readily available to the American public. The bill which is offered today would establish such a policy.

Mr. Speaker, I wish to thank the members of the committee for their hard work on this bill. We did start from positions pretty far apart and were able to get together. I wish to thank the members of the minority, especially the gentleman from New York (Mr. HORTON), the gentleman from Illinois (Mr. ERLENBORN), and the gentleman from California (Mr. MCCLOSKEY) for their contributions and their cooperation in developing this bill.

Mr. Speaker, I yield back the remainder of my time.

Mr. ERLENBORN. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. I thank my colleague for yielding.

I am not aware of the exact provisions of the Freedom of Information Act as it now stands and how this bill will change it. Are all Presidential papers now immediately available to the public, to whom I agree they belong?

Mr. ERLENBORN. The answer to the gentlewoman's inquiry is at the present time Presidential papers are not subject to the Freedom of Information Act. Under the passage of this legislation, when it is effective, the papers of the President will be by law deemed to be public property rather than private

property of the incumbent President. At that time the provisions of this act will apply to the access of the public and historians, and so forth, to those papers, until those papers restricted by the President under the authority of this act no longer are subject to such restrictions. Then in the possession of the Archivist, the papers will be subject to the Freedom of Information Act. So prior to the application of the Freedom of Information Act, some papers identified by the President to be withheld for a longer period of time will be so withheld, and when that time expires, then the Freedom of Information Act will apply.

Mrs. FENWICK. I thank the gentleman very much.

Mr. BROOKS. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. I thank the chairman for yielding. I want to compliment the chairman of the full committee and the chairman of the subcommittee for producing an excellent bill. I would like to address one question to the chairman, if I might. This bill deals only with Presidential papers. No reference is made to congressional papers. Can the gentleman tell us whether any consideration has been given to the handling of congressional papers?

Mr. BROOKS. I want to say that the Select Committee on Congressional Operations has substantially completed its study of the preservation and disposition of the records of the House and the papers of Congress. An interim report is being studied.

The possibility of holding hearings on this subject early next year is being actively considered.

During the course of the study, the select committee has—

Prepared background studies;

Analyzed the state of the law regarding the records of Congress and the papers of Members;

Distributed questionnaires and interviewed personnel of the Clerk's Office and the Archives;

Inspected a representative sample of the records of Congress both at the Archives and in the Clerk's storage area;

Performed a detailed survey of the individual practices and policies of House committees;

Reviewed arrangements currently in use in the Senate; and

Interviewed professional historians, librarians and archivists.

Throughout the study, the select committee has received generous cooperatiion from the Office of the Clerk, the National Archives and Records Service, the Congressional Research Service, the various House committees, and numerous professionals in the field.

We should be able to present to the House some very significant findings and recommendations in this area.

Mr. WAXMAN. I want to thank the gentleman.

● Mr. THOMPSON. Mr. Speaker, I rise in strong support of this legislation and trust that it will be enacted before final adjournment.

As amendment to title 44 of the United States Code, the Presidential Records Act of 1978 falls within the jurisdiction of both the House Government Operations Committee and the Committee on House Administration. I am pleased to be a cosponsor of the amendment in the nature of a substitute that is being offered today to H.R. 13500. It represents considerable joint efforts to sharpen and clarify certain portions of the original measure reported by the Government Operations Committee in August.

This is a good bill and one that is long overdue. The broad, bipartisan support it enjoys is an indication that the case for public ownership of Presidential and Vice Presidential records is an overwhelming one and clearly in the public interest. The bill also has the full support of President Carter, who would be the first President to whom it would be applicable.

As has been explained by others, the legislation is a careful balance between the public's right to know, with its vast implications to historians and other academic interests, and the rights of privacy and confidentiality of certain sensitive records generated by the President and his staff during the course of their White House activities. It also preserves the important provisions of the Freedom of Information Act, applying that law to such records after a specified time when an outgoing President may designate restricted access to certain categories of documents.

Mr. Speaker, I congratulate the gentleman from Texas (Mr. BROOKS), chairman of the Government Operations Committee, the gentleman from North Carolina (Mr. PREYER), who chairs the Subcommittee on Government Information and Individual Rights that did the hard work in producing this measure, the gentleman from Indiana (Mr. BRADEMAS) of the House Administration Committee and the architect of the 1974 law which preserved records of of the Nixon White House, and the others who sponsored and worked so diligently to draft and perfect this legislation.●

Mr. BROOKS. Mr. Speaker, I have no further requests for time.

Mr. ERLENBORN. Mr. Speaker, I have no further requests for time. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. BROOKS) that the House suspend the rules and pass the bill H.R. 13500, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

INTERSTATE HORSERACING ACT

Mr. ROONEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 14089) to regulate interstate commerce with respect to parimutuel wagering on horseracing, to maintain the stability of the horseracing industry, and for other purposes.

The Clerk read as follows:

H.R. 14089

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, This Act may be cited as the "Interstate Horseracing Act of 1978."

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds that—

(1) the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders;

(2) the Federal Government should prevent interference by one State with the gambling policies of another, and should act to protect identifiable national interests; and

(3) in the limited area of interstate off-track wagering on horseraces, there is a need for Federal action to insure States will continue to cooperate with one another in the acceptance of legal interstate wagers.

(b) It is the policy of the Congress in this Act to regulate interstate commerce with respect to wagering on horseracing, in order to further the horseracing and legal off-track betting industries in the United States.

DEFINITIONS

SEC. 3. For the purposes of this Act the term—

(1) "person" means any individual, association, partnership, joint venture, corporation, State or political subdivision thereof, department, agency, or instrumentality of a State or political subdivision thereof, or any other organization or entity;

(2) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(3) "interstate off-track wager" means a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State;

(4) "on-track wager" means a wager with respect to the outcome of a horserace which is placed at the racetrack at which such horserace takes place;

(5) "host State" means the State in which the horserace subject to the interstate wager takes place;

(6) "off-track State" means the State in which an interstate off-track wager is accepted;

(7) "off-track betting system" means any group which is in the business of accepting wagers on horseraces at locations other than the place where the horserace is run, which business is conducted by the State or licensed or otherwise permitted by State law;

(8) "off-track betting office" means any location within an off-track State at which off-track wagers are accepted;

(9) "host racing association" means any person who, pursuant to a license or other permission granted by the host State, conducts the horserace subject to the interstate wager;

(10) "host racing commission" means that person designated by State statute or, in the absence of statute, by regulation, with jurisdiction to regulate the conduct of racing within the host State;

(11) "off-track racing commission" means that person designated by State statute or, in the absence of statute, by regulation, with jurisdiction to regulate off-track betting in that State;

(12) "horsemen's group" means, with reference to the applicable host racing association, the group which represents the majority of owners and trainers racing there, for the races subject to the interstate off-track wager on any racing day;

(13) "parimutuel" means any system whereby wagers with respect to the outcome of a horserace are placed with, or in, a wager-

ing pool conducted by a person licensed or otherwise permitted to do so under State law, and in which the participants are wagering with each other and not against the operator;

(14) "currently operating tracks" means racing associations conducting parimutuel horseracing at the same time of day (afternoon against afternoon; nighttime against nighttime) as the racing association conducing the horseracing which is the subject of the interstate off-track wager;

(15) "race meeting" means those scheduled days during the year a racing association is granted permission by the appropriate State racing commission to conduct horseracing;

(16) "racing day" means a full program of races at a specified racing association on a specified day;

(17) "special event" means the specific individual horserace which is deemed by the off-track betting system to be of sufficient national significance and interest to warrant interstate off-track wagering on that event or events;

(18) "dark days" means those days when racing of the same type does not occur in an off-track State within sixty miles of an off-track betting office during a race meeting, including, but not limited to, a dark weekday when such racing association or associations run on Sunday, and days when a racing program is scheduled but does not take place, or cannot be completed due to weather, strikes and other factors not within the control of the off-track betting system;

(19) "year" means calendar year;

(20) "takeout" means that portion of a wager which is deducted from or not included in the parimutuel pool, and which is distributed to persons other than those placing wagers;

(21) "regular contractual process" means those negotiations by which the applicable horsemen's group and host racing association reach agreements on issues regarding the conduct of horseracing by the horsemen's group at that racing association;

(22) "terms and conditions" includes, but is not limited to, the percentage which is paid by the off-track betting system to the host racing association, the percentage which is paid by the host racing association to the horsemen's group, as well as any arrangements as to the exclusivity between the host racing association and the off-track betting system.

PROHIBITION

SEC. 4. No person may accept an interstate off-track wager except as provided in this Act.

REGULATION

SEC. 5. (a) An interstate off-track wager may be accepted by an off-track betting system only if consent is obtained from—

(1) the host racing association, except that—

(A) as a condition precedent to such consent, said racing association (except a not-for-profit racing association in a State where the distribution of off-track betting revenues in that State is set forth by law) must have a written agreement with the horsemen's group, under which said racing association may give such consent, setting forth the terms and conditions relating thereto; provided,

(B) that where the host racing association has a contract with a horsemen's group at the time of enactment of this Act which contains no provisions referring to interstate off-track betting, the terms and conditions of said then-existing contract shall be deemed to apply to the interstate off-track wagers and no additional written agreement need be entered into unless the parties to such then-existing contract agree otherwise. Where such provisions exist in such existing contract, such contract shall govern. Where written consents exist at the time of enactment of this Act between an off-track betting system and the host racing association providing for interstate off-track wagers, or such written consents are executed by these parties prior to the expiration of such then-existing contract, upon the expiration of such then-existing contract the written agreement of such horsemen's group shall thereafter be required as such condition precedent and as a part of the regular contractual process, and may not be withdrawn or varied except in the regular contractual process. Where no such written consents exist, and where such written agreement occurs at a racing association which has a regular contractual process with such horsemen's group, said agreement by the horsemen's group may not be withdrawn or varied except in the regular contractual process;

(2) the host racing commission;

(3) the off-track racing commission.

(b)(1) In addition to the requirement of subsection (a), any off-track betting office shall obtain the approval of—

(A) all currently operating tracks within sixty miles of such off-track betting office; and

(B) if there are no currently operating tracks within sixty miles then the closest currently operating track in an adjoining State.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, any off-track betting office in a State with at least two hundred fifty days of on-track parimutuel horseracing a year, may accept interstate off-track wagers for a total of sixty racing days and twenty-five special events a year without the approval required by paragraph (1), if with respect to such sixty racing days, there is no racing of the same type at the same time of day being conducted within the off-track betting State within sixty miles of the off-track betting office accepting the wager, or such racing program cannot be completed. Excluded from such sixty days and from the consent required by subsection (b)(1) may be dark days which occur during a regularly scheduled race meeting in said off-track betting State. In order to accept any interstate off-track wager under the terms of the preceding sentence the off-track betting office shall make identical offers to any racing association described in subparagraph (A) of subsection (b)(1). Nothing in this subparagraph shall be construed to reduce or eliminate the necessity of obtaining all the approvals required by subsection (a).

(c) No parimutuel off-track betting system may employ a takeout for an interstate wager which is greater than the takeout for corresponding wagering pools of off-track wagers on races run within the off-track State except where such greater takeout is authorized by State law in the off-track State.

LIABILITY AND DAMAGES

SEC. 6. Any person accepting any interstate off-track wager in violation of this Act shall be civilly liable for damages to the host State, the host racing association, and the horsemen's group. Damages for each violation shall be based on the total of off-track wagers as follows:

(1) If the interstate off-track wager was of a type accepted at the host racing association, damages shall be in an amount equal to that portion of the takeout which would have been distributed to the host State, host racing association, and the horsemen's group, as if each such interstate off-track wager had been placed at the host racing association.

(2) If such interstate off-track wager was of a type not accepted at the host racing association, the amount of damages shall be determined at the rate of takeout prevailing at the off-track betting system for that type of wager and shall be distributed according to the same formulas as in paragraph (1) above.

CIVIL ACTION

SEC. 7. (a) The host State, the host racing association, or the horsemen's group may commence a civil action against any person alleged to be in violation of this Act, for injunctive relief to restrain violations and for damages in accordance with section 6.

(b) In any civil action under this section, the host State, the host racing association, and horsemen's group, if not a party, shall be permitted to intervene as a matter of right.

(c) A civil action may not be commenced pursuant to this section more than three years after the discovery of the alleged violation upon which such civil action is based.

(d) Nothing in this Act shall be construed to permit a State to be sued under this section other than in accordance with its applicable laws.

JURISDICTION AND VENUE

SEC. 8. (a) Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any civil action under this Act, without regard to the citizenship of the parties or the amount in controversy.

(b) A civil action under this Act may be brought in any district court of the United States for a district located in the host State or the off-track State, and all process in any such civil action may be served in any judicial district of the United States.

(c) The jurisdiction of the district courts of the United States pursuant to this section shall be concurrent with that of any State court of competent jurisdiction located in the host State or the off-track State.

EFFECTIVE DATE; APPLICABILITY

SEC. 9. (a) The provisions of this Act shall take effect on the date of enactment of this Act, and, except as provided in subsection (b) of this section, shall apply to any interstate off-track wager accepted on or after such date of enactment.

(b)(1) The provisions of this Act shall not apply to any interstate off-track wager which is accepted pursuant to a contract existing on May 1, 1978.

(2) The provisions of this Act shall not apply to any form of legal nonparimutuel off-track betting existing in a State on May 1, 1978.

(3) The provisions of subsection (b) of section 5 of this Act shall not apply to any parimutuel off-track betting system existing on May 1, 1978, in a State which does not conduct parimutuel horseracing on the date of enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD of California. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania (Mr. ROONEY) will be recognized for 20 minutes, and the gentleman from California (Mr. MOORHEAD) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. ROONEY).

Mr. ROONEY. Mr. Speaker, I yield such time as he may consume to the distinguished chairman of the full committee, the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Speaker, this bill was passed in the other body by voice

vote on September 26. An identical bill was ordered reported by the Committee on Interstate and Foreign Commerce the same day.

This bill provides a simple framework for the regulation of the acceptance of legal wagers in one State with respect to the outcome of a horserace taking place in another State. The bill does not authorize any money for this purpose, nor does it involve regulatory activity by any Federal agency.

The bill regulates legal interstate parimutual wagering on horseracing to protect and further the horseracing industry and the legal off-track betting industry through State cooperation. It recognizes that the States should have the primary responsibility to determine what forms of gambling may legally take place within their borders.

Basically, the bill provides that an interstate wager on a horserace taking place in one State may not be placed with an off-track betting office in another State without the consent of certain parties with an interest in the race. Specifically, consents must be obtained from the racetrack where the race is to be run and the racing commissions of the two States involved. Consent cannot be given by the host racetrack in disregard of the interests of its horsemen and horsewomen. The bill also contains provisions designed to protect natural market areas within an off-track betting State.

I urge passage of the bill.

Mr. ROONEY. Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD of California. Mr. Speaker, I yield 5 minutes to the gentleman from Kentucky (Mr. CARTER).

Mr. CARTER. Mr. Speaker, I rise in support of this legislation.

The industry has gotten together with the off-track betting people and they have reached a compromise which is supported by all segments of the racing industry. I strongly support this legislation. I believe that it will be helpful to many of the States where off-track betting is the custom. For instance, in New York City, I believe that particular city will gain by taxation, some $69 million per year. The State of Connecticut will gain about $31 million, and other States stand to obtain similar sums. We know, Mr. Speaker, that the city of New York desperately needs the funds.

I support this bill for this reason and because horseracing is a fact in this country. It occurs in almost every State in the Union, and most of the horses, I am pleased to say, the thoroughbreds, at least, are bred in our State. I am just right proud of the stamina, beauty, and strength of those horses.

Mr. STANTON. Mr. Speaker, will the gentleman yield?

Mr. CARTER. I am pleased to yield to the distinguished gentleman from Ohio.

Mr. STANTON. Mr. Speaker, I am happy that the gentleman has yielded.

Mr. Speaker, I would like to add that not only is the gentleman's State the leader of thoroughbred horses in the world, but also in harness racing horses, they rank No. 1 in the world.

Mr. Speaker, if the gentleman will yield further, I would like to add my support to this legislation. It is strongly backed by the State of Ohio, which I have the privilege of representing, and I look forward to passage of this legislation.

Mr. CARTER. Mr. Speaker, I thank my good friend, the gentleman from Ohio (Mr. STANTON), for his statement.

I wish to say, Mr. Speaker, that I know of no organized effort in any State of the United States, and particularly in those which permit parimutuel betting or off-track betting, to oppose to this bill.

Mr. Speaker, I support this legislation, and I reserve the balance of my time.

Mr. MOORHEAD of California. Mr. Speaker, I yield 5 minutes to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, I rise in support of H.R. 14089.

I must say that there is abroad in this country, and there has been for some years, a misconception that certain States lead in the horseracing and horse-breeding industry. We just heard a repetition of that mistaken attitude in this debate.

As anyone knows who is wise in horseracing or involved in the breeding and raising of horses, which is a most important industry in my district, Maryland is the premier State in these matters, breeding such racing favorites as Kelso and conducting such magnificent racing spectacles as the Preakness at Pimlico. Only yesterday I was passing by the rolling pastures of Cecil County, which is indeed where this great champion Kelso still resides. As the trees change to their autumn color, you can drive by and see many of these thoroughbred herds that undoubtedly will produce even greater winners in the future.

Because of its importance to the State of Maryland and to the people of Maryland, I want to support very strongly this legislation, despite the fact that I may disagree on the minor matter that the gentleman from Kentucky (Mr. CARTER) raised concerning which State is the most important as far as horses are concerned.

Mr. Speaker, I support this bill because it satisfies a need to regulate interstate off-track betting within the horseracing industry. As many of my colleagues know, the horseracing industry has become a major source of revenue for those States, such as Maryland, where it has been legalized. In Maryland, and in the district I represent in Maryland, the importance of the horseracing industry extends beyond the revenues generated by racetracks. As I said, throughout the First District of Maryland, there are rolling pastures on many farms reserved for grazing by and breeding of the champion thoroughbreds who compete against one another at racetracks in Maryland, and throughout this country and the world. So I have a particular interest in this legislation and a greater than usual concern that it be passed into law.

The bill is designed to allow for the greater enjoyment of horseracing by those who cannot attend the actual race, while insuring that the off-track betting will not undermine the flow of financial resources that brings vitality to the industry.

It is in the interests of the entire industry that it prosper through the sound regulation this bill will provide. It is also in the interests of the industry, of the State and local governments that derive revenues from their operation, and of the spectators who enjoy the experience of horseracing that this bill be passed and as a Marylander I urge my colleagues to give this bill favorable consideration.

Mr. MOORHEAD of California. Mr. Speaker, I rise in opposition to the legislation.

Mr. Speaker, during the 94th Congress the House passed H.R. 14071 on September 21, 1976, to prohibit off-track betting. This legislation did not pass the Senate and did not become law, but it has been considered off and on since that time.

I know that there is a general debate which says that unless we encourage off-track betting all over the country, we are going to have bookies who are operating uncontrolled by government. Well, I think those bookies are going to continue to operate whether there is legalized off-track betting or not. We have off-track betting, because many of the States and cities want the tax revenue and because many of the people in the racing industry want to make more money. I do not think that the activities of illegal bookies with off-track betting are going to subside one tiny bit. We are just going to have an ever-increasing amount of gambling in this country. We are encouraging a "gambling culture."

As far as the legislation is concerned, I have no intent to create a hopeless fight over the bill, but I do want to point out that there was a voice vote in the Senate and in the House Committee on Interstate and Foreign Commerce there were just nine of us present at the time the vote was called—hardly a quorum.

Mr. ROONEY. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD of California. Mr. Speaker, I would like to finish my statement.

I would also point out that now on the floor of the House of Representatives where we are considering this bill, there are certainly not over 25 or 30 Members present listening to the debate. If this is such an important piece of legislation that it cannot be held over until next year, I think that there should have been more of an opportunity for a real debate in full committee or on the House floor.

I am very much concerned when we take up something like this at the last minute, when no one wants to fully debate it and no one wants the bill examined to any great extent.

For that reason, Mr. Speaker, I ask for a no vote.

Mr. ROONEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 14089 regulates the interstate commerce in off-track parimutuel wagering of horse races. This bill does not require any Federal money. There is not an additional agency. It does not legalize off-track betting. The States legalize off-track betting. This is

going to preserve the thoroughbred horse racing industry in this country, an industry that has about 3 million employees, and this bill is desperately needed to save that thoroughbred horseracing in this country. It is endorsed by the thoroughbred horse industry and by every race horse council in every State in this Nation. I urge its adoption.

Mr. CARTER. Mr. Speaker, I have some time remaining which I will use at this time.

Mr. Speaker, my distinguished friend from Maryland questioned the supremacy in horsebreeding of our State of Kentucky. Of course, that is within his right and his privilege.

We find that horseracing started in Kentucky when Kentucky was first founded, and that the Kentucky Derby started in 1875. Since that time there may have been 1 or 2 Maryland horses to win the Kentucky Derby, but not more than 1 or 2 out of 104 horses which have won that most famous race not only in Kentucky, but in the United States and in the entire world.

I would say to my good friend, on behalf of my State of Kentucky:

The moonlight falls the softest in Kentucky;
The summer days come oftest in Kentucky;
Friendship is the strongest,
Love's light glows the longest,
Yet, wrong is always wrongest in Kentucky.
The song birds are the sweetest in Kentucky;
The thoroughbreds are the fleetest in Kentucky!

Mr. Speaker, I want to invite my good friend down to our State to see some of the racing, and when he is there perhaps he will bet on the bobtail nag, and I will bet on the bay.

● Mr. SKUBITZ. Mr. Speaker, I support H.R. 14089. As my colleague from Pennsylvania has pointed out, it is in the interest of the Nation to permit interstate off-track wagers under strictly controlled circumstances and at the same time to insure the continuing stability of the horseracing industry.

Based on the hearings we held in our subcommittee, I am satisfied that unregulated interstate off-track betting could act to the detriment of the States and the industry.

I am also satisfied that this bill will increase cooperation between the various interests involved in off-track wagering but will not, and this is critical, involve the creation of a new bureaucracy to regulate interstate wagering on horseracing. There is no provision for Federal Government enforcement of this law. Persons violating the provisions of the Act will be civilly liable in private action for damages.

Finally, Mr. Speaker, I am satisfied that this bill is an acceptable compromise to meet the needs of the racing legal off-track betting industries. It provides limited interstate off-track betting and the proper consent of the parties involved.

Thank you, Mr. Speaker.●

● Mr. SANTINI. Mr. Speaker, I rise in opposition to the Interstate Horse Racing Act, for two important reasons. First, it represents yet another incursion on State sovereignty. Second, although the bill represents no immediate danger to Nevada's gaming industry, it does show the potential for Federal intervention in an industry that is the lifehood of my State. And I might add, an industry that is well regulated by efficient and responsive Government within the State.

I cannot support this bill, because it represents a dangerous precedent of expanding the Federal role in a State controlled industry. All too often we allow States' rights to be shuffled aside or deleted altogether, in favor of burgeoning Federal control. Have we so little faith in the power of wisdom of the individual States to conduct their own affairs of this nature, that we must assume the role of overseer and taskmaster? I think not. The people are perfectly capable, through their State legislatures, of handling this type of commerce. For who knows their problems, their concerns, and their needs better than they do?

Also of great importance is the specter of the possible long-range effect that such legislation would have on Nevada. I recognize that Nevada's gaming interests are exempt from the provisions of this bill. It is true that there is no present threat. However, a potential danger exists. Remember, when we create the Federal authority to sanction, we also create the Federal authority to restrict.

Vote to defeat this legislation.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. ROONEY) that the House suspend the rules and pass the bill, H.R. 14089.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

Mr. ROONEY. Mr. Speaker, I ask unanimous consent that the Committee on Interstate and Foreign Commerce be discharged from the further consideration of the Senate bill (S. 1185) to regulate interstate commerce with respect to parimutuel wagering on horseracing, to maintain the stability of the horseracing industry, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1185

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, This Act may be cited as the "Interstate Horseracing Act of 1978".

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds that—

(1) the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders;

(2) the Federal Government should prevent interference by one State with the gambling policies of another, and should act to protect identifiable national interests; and

(3) in the limited area of interstate off-track wagering on horseraces, there is a need for Federal action to ensure States will continue to cooperate with one another in the acceptance of legal interstate wagers.

(b) It is the policy of the Congress in this Act to regulate interstate commerce with respect to wagering on horseracing, in order to further the horseracing and legal off-track betting industries in the United States.

DEFINITIONS

SEC. 3. For the purpose of this Act the term—

(1) "person" means any individual, association, partnership, joint venture, corporation, State or political subdivision thereof, department, agency, or instrumentality of a State or political subdivision thereof, or any other organization or entity;

(2) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(3) "interstate off-track wager" means a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State;

(4) "on-track wager" means a wager with respect to the outcome of a horserace which is placed at the racetrack at which such horserace takes place;

(5) "host State" means the State in which the horserace subject to the interstate wager takes place;

(6) "off-track State" means the State in which an interstate off-track wager is accepted;

(7) "off-track betting system" means any group which is in the business of accepting wagers on horseraces at locations other than the place where the horserace is run, which business is conducted by the State or licensed or otherwise permitted by State law;

(8) "off-track betting office" means any location within an off-track State at which off-track wagers are accepted;

(9) "host racing association" means any person who, pursuant to a license or other permission granted by the host State, conducts the horserace subject to the interstate wager;

(10) "host racing commission" means that person designated by State statute or, in the absence of statute, by regulation, with jurisdiction to regulate the conduct of racing within the host State;

(11) "off-track racing commission" means that person designated by State statute or, in the absence of statute, by regulation, with jurisdicion to regulate off-track betting in that State;

(12) "horsemen's group" means, with reference to the applicable host racing association, the group which represents the majority of owners and trainers racing there, for the races subject to the interstate off-track wager on any racing day;

(13) "parimutuel" means any system whereby wagers with respect to the outcome of a horserace are placed with, or in, a wagering pool conducted by a person licensed or otherwise permitted to do so under State law, and in which the participants are wagering with each other and not against the operator;

(14) "currently operating tracks" means racing associations conducting parimutuel horseracing at the same time of day (afternoon against afternoon; nighttime against nighttime) as the racing association conducting the horseracing which is the subject of the interstate off-track wager;

(15) "race meeting" means those scheduled days during the year a racing association is granted permission by the appropriate State racing commission to conduct horseracing;

(16) "racing day" means a full program of races at a specified racing association on a specified day;

(17) "special event" means the specific individual horserace which is deemed by the

off-track betting system to be of sufficient national significance and interest to warrant interstate off-track wagering on that event or events;

(18) "dark days" means those days when racing of the same type does not occur in an off-track State within 60 miles of an off-track betting office during a race meeting, including, but not limited to, a dark weekday when such racing association or associations run on Sunday, and days when a racing program is scheduled but does not take place, or cannot be completed due to weather, strikes and other factors not within the control of the off-track betting system;

(19) "year" means calendar year;

(20) "takeout" means that portion of a wager which is deducted from or not included in the parimutuel pool, and which is distributed to persons other than those placing wagers;

(21) "regular contractual process" means those negotiations by which the applicable horsemen's group and host racing association reach agreements on issues regarding the conduct of horseracing by the horsemen's group at that racing association;

(22) "terms and conditions" includes, but is not limited to, the percentage which is paid by the off-track betting system to the host racing association, the percentage which is paid by the host racing association to the horsemen's group, as well as any arrangements as to the exclusivity between the host racing association and the off-track betting system.

PROHIBITION

SEC. 4. No person may accept an interstate off-track wager except as provided in this Act.

REGULATION

SEC. 5. (a) An interstate off-track wager may be accepted by an off-track betting system only if consent is obtained from—

(1) the host racing association, except that—

(A) as a condition precedent to such consent, said racing association (except a not-for-profit racing association in a State where the distribution of off-track betting revenues in that State is set forth by law) must have a written agreement with the horsemen's group, under which said racing association may give such consent, setting forth the terms and conditions relating thereto; provided,

(B) that where the host racing association has a contract with a horsemen's group at the time of enactment of this Act which contains no provisions referring to interstate off-track betting, the terms and conditions of said then-existing contract shall be deemed to apply to the interstate off-track wagers and no additional written agreement need be entered into unless the parties to such then-existing contract agree otherwise. Where such provisions exist in such existing contract, such contract shall govern. Where written consents exist at the time of enactment of this Act between an off-track betting system and the host racing association providing for interstate off-track wagers, or such such written consents are executed by these parties prior to the expiration of such then-existing contract, upon the expiration of such then-existing contract the written agreement of such horsemen's group shall thereafter be required as such condition precedent and as a part of the regular contractual process, and may not be withdrawn or varied except in the regular contractual process. Where no such written consents exist, and where such written agreement occurs at a racing association which has a regular contractual process with such horsemen's group, said agreement by the horsemen's group may not be withdrawn or varied except in the regular contractual process;

(2) the host racing commission;

(3) the off-track racing commission.

(b) (1) In addition to the requirement of subsection (a), any off-track betting office shall obtain the approval of—

(A) all currently operating tracks within 60 miles of such off-track betting office; and

(B) if there are no currently operating tracks within 60 miles then the closely currently operating track in an adjoining State.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, any off-track betting office in a State with at least 250 days of on-track parimutuel horseracing a year, may accept interstate off-track wagers for a total of 60 racing days and 25 special events a year without the approval required by paragraph (1), if with respect to such 60 racing days, there is no racing of the same type at the same time of day being conducted within the off-track betting State within 60 miles of the off-track betting office accepting the wager, or such racing program cannot be completed. Excluded from such 60 days and from the consent required by subsection (b) (1) may be dark days which occur during a regularly scheduled race meeting in said off-track betting State. In order to accept any interstate off-track wager under the terms of the preceding sentence the off-track betting office shall make identical offers to any racing association described in subparagraph (A) of subsection (b) (1). Nothing in this subparagraph shall be construed to reduce or eliminate the necessity of obtaining all the approvals required by subsection (a).

(c) No parimutuel off-track betting system may employ a takeout for an interstate wager which is greater than the takeout for corresponding wagering pools of off-track wagers on races run within the off-track State except where such greater takeout is authorized by State law in the off-track State.

LIABILITIES AND DAMAGES

SEC. 6. Any person accepting any interstate off-track wager in violation of this Act shall be civilly liable for damages to the host State, the host racing association and the horsemen's group. Damages for each violation shall be based on the total of off-track wagers as follows:

(1) If the interstate off-track wager was of a type accepted at the host racing association, damages shall be in an amount equal to that portion of the takeout which would have been distributed to the host State, host racing association and the horsemen's group, as if each such interstate off-track wager had been placed at the host racing association.

(2) If such interstate off-track wager was of a type not accepted at the host racing association, the amount of damages shall be determined at the rate of takeout prevailing at the off-track betting system for that type of wager and shall be distributed according to the same formulas as in paragraph (1) above.

CIVIL ACTION

SEC. 7. (a) The host State, the host racing association, or the horsemen's group may commence a civil action against any person alleged to be in violation of this Act, for injunctive relief to restrain violations and for damages in accordance with section 6.

(b) In any civil action under this section, the host State, the host racing association and horsemen's group, if not a party, shall be permitted to intervene as a matter of right.

(c) A civil action may not be commenced pursuant to this section more than 3 years after the discovery of the alleged violation upon which such civil action is based.

(d) Nothing in this Act shall be construed to permit a State to be sued under this section other than in accordance with its applicable laws.

JURISDICTION AND VENUE

SEC. 8. (a) Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any action under this Act, wtihout regard to the citizenship of the parties or the amount in controversy.

(b) A civil action under this Act may be brought in any district court of the United States for a district located in the host State or the off-track State, and all process in any such civil action may be observed in any judicial district of the United States.

(c) The jurisdiction of the district courts of the United States pursuant to this section shall be concurrent with that of any State court of competent jurisdiction located in the host State or the off-track State.

EFFECTIVE DATE APPLICABILITY

SEC. 9. (a) The provisions of this Act shall take effect on the date of enactment of this Act, and, except as provided in subsection (b) of this section, shall apply to any interstate off-track wager accepted on or after such date of enactment.

(b) (1) The provisions of this Act shall not apply to any interstate off-track wager which is accepted pursuant to a contract existing on May 1, 1978.

(2) The provisions of this Act shall not apply to any form of legal non-parimutuel off-track betting existing in a State on May 1, 1978.

(3) The provisions of subsection (b) of section 5 of this Act shall not apply to any parimutuel off-track betting system existing on May 1, 1978, in a State which does not conduct parimutuel horseracing on the date of enactment of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill H.R. 14089, was laid on the table.

QUIET COMMUNITIES ACT OF 1978

Mr. ROONEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 12647) to extend provisions of the Noise Control Act of 1972 for 1 year, and for other purposes, as amended.

The Clerk read as follows:

H.R. 12647

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Quiet Communities Act of 1978".

SEC. 2. Section 14 of the Noise Control Act of 1972 is amended to read as follows:

"QUIET COMMUNITIES, RESEARCH, PUBLIC INFORMATION

"SEC. 14. To promote the development of effective State and local noise control programs, to provide an adequate Federal noise control research program designed to meet the objectives of this Act, and to otherwise carry out the policy of this Act, the Administrator shall, in cooperation with other Federal agencies and through the use of grants, contracts, and direct Federal actions—

"(a) develop and disseminate information and educational materials to all segments of the public on the public health and other effects of noise and the most effective means for noise control, through the use of materials for school curricula, volunteer organizations, radio and television programs, publication, and other means;

"(b) conduct or finance research directly or with any public or private organization or any person on the effects, measurements, and control of noise, including but not limited to—

"(1) investigation of the psychological and physiological effects of noise on humans and

the effects of noise on domestic animals, wildlife, and property, and the determination of dose/response relationships suitable for use in decisionmaking, with special emphasis on the nonauditory effects of noise;

"(2) investigation, development, and demonstration of noise control technology for products subject to possible regulation under sections 6, 7, and 8 of this Act;

"(3) investigation, development, and demonstration of monitoring equipment and other technologiy especially suited for use by State and local noise control programs;

"(4) investigation of the economic impact of noise on property and human activities; and

"(5) investigation and demonstration of the use of economic incentives (including emission charges) in the control of noise;

"(c) administer a nationwide Quiet Communities Program which shall include, but not be limited to—

"(1) grants to States, local governments, and authorized regional planning agencies for the purpose of—

"(A) identifying and determining the nature and extent of the noise problem within the subject jurisdiction;

"(B) planning, developing, and establishing a noise control capacity in such jurisdiction, including purchasing initial equipment;

"(C) developing abatement plans for areas around major transportation facilities (including airports, highways, and rail yards) and other major stationary sources of noise, and, where appropriate, for the facility or source itself; and,

"(D) evaluating techniques for controlling noise (including institutional arrangements) and demonstrating the best available techniques in such jurisdiction;

"(2) purchase of monitoring and other equipment for loan to State and local noise control programs to meet special needs or assist in the beginning implementation of a noise control program or project;

"(3) development and implementation of a quality assurance program for equipment and monitoring procedures of State and local noise control programs to help communities assure that their data collection activities are accurate;

"(4) conduct of studies and demonstrations to determine the resource and personnel needs of States and local governments required for the establishment and implementation of effective noise abatement and control programs; and

"(5) development of educational and training materials and programs, including national and regional workshops, to support State and local noise abatement and control programs;

except that no actions, plans or programs hereunder shall be inconsistent with existing Federal authority under this Act to regulate sources of noise in interstate commerce;

"(d) develop and implement a national noise environmental assessment program to identify trends in noise exposure and response, ambient levels, and compliance data and to determine otherwise the effectiveness of noise abatement actions through the collection of physical, social, and human response data;

"(e) establish regional technical assistance centers which use the capabilities of university and private organizations to assist State and local noise control programs;

"(f) provide technical assistance to State and local governments to facilitate their development and enforcement of noise control, including direct onsite assistance of agency or other personnel with technical expertise, and preparation of model State or local legislation for noise control; and

"(g) provide for the maximum use in programs assisted under this section of senior citizens and persons eligible for participation in programs under the Older Americans Act.".

SEC. 3. The fourth sentence of section 611 (c)(1) of the Federal Aviation Act, as amended by section 7 of the Noise Control Act of 1972, is amended by striking "a reasonable time" and inserting in lieu thereof "ninety days", and by adding before the period "and a detailed analysis of and response to all documentation or other information submitted by the Environmental Protection Agency with such proposed regulations".

SEC. 4. Section 11(a) of the Noise Control Act of 1972 is amended by inserting "(1)" after "(a)" and by adding the following new paragraph:

"(2) Any person who violates paragraph (1), (3), (5), or (6) of subsection (a) of section 10 of this Act shall be subject to a civil penalty not to exceed $10,000 per day of such violation".

SEC. 5. Section 6 of the Noise Control Act of 1972 is amended by adding the following subsection:

"(f) At any time after the promulgation of regulations respecting a product under this section, a State or political subdivision thereof may petition the Administrator to revise such standard on the grounds that a more stringent standard under subsection (c) of this section is necessary to protect the public health and welfare. The Administration shall publish notice of receipt of such petition in the Federal Register and shall within ninety days of receipt of such petition respond by (1) publication of proposed revised regulations in accordance with subsection (c)(3) of this section, or (2) publication in the Federal Register of a decision not to publish such proposed revised regulations at that time, together with a detailed explanation for such decision.".

SEC. 6. Section 19 of the Noise Control Act of 1972 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 19. There are authorized to be appropriated to carry out this Act (other than for research and development) $15,000,000 for the fiscal year ending September 30, 1979.".

SEC. 7. (a) Section 1002(a)(4) of the Solid Waste Disposal Act is amended by deleting the hyphen between the words "solid" and "waste" in the last line.

(b) Section 1004 of the Solid Waste Disposal Act is amended by—

(1) revising paragraph (8) by striking out everything after "improvement of land";

(2) revising paragraph (10) by striking out "disposal" and inserting in lieu thereof "management";

(3) by revising paragraph (29) to read as follows:

"(29) The term 'solid waste management facility' includes—

(A) any resource recovery system or component thereof,

(B) any system, program, or facility for resource conservation, and

(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.".

(c) Section 1008(a)(3) of the Solid Waste Disposal Act is amended by striking out "title IV" and inserting in lieu thereof "subtitle D".

(d) Section 1008(b) of the Solid Waste Disposal Act is amended by striking ", pursuant to this section" and by inserting after "suggested guidelines" each time it appears the phrase "or proposed regulations under this Act".

(e) Section 2003 of the Solid Waste Disposal Act is amended by inserting "Federal agencies," after "to provide".

(f) Section 3002 of the Solid Waste Disposal Act is amended by—

(1) revising paragraph (5) by striking out the semicolon after "subtitle" and substituting a comma, and by striking out "and" and inserting in lieu thereof "or pursuant to Title I of the Marine Protection, Research and Sanctuaries Act (86 Stat. 1052); and"; and

(2) revising paragraph (6) by adding a close parenthesis after "subtitle" the first time it appears.

(g) Section 3003 of the Solid Waste Disposal Act is amended by—

(1) revising subsection (a)(4) by striking out the period after "subtitle" and substituting a comma, and by adding at the end thereof "or pursuant to Title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052)."; and

(2) revising subsection (b) by striking out "subtitle" after "the regulations promulgated by the Administrator under this" and inserting in lieu thereof "section".

(h) Section 3005(a) of the Solid Waste Disposal Act is amended by inserting "treatment, storage, or" after "and upon and after such date the".

(i) Section 3006(c) of the Solid Waste Disposal Act is amended by—

(1) striking out "required for" wherever it appears in the subsection and inserting in lieu thereof "of"; and

(2) inserting the word "may" immediately after "3005," and before "submit".

(j) Section 3007(a)(1) of the Solid Waste Disposal Act is amended by striking out "or disposed of" and inserting in lieu thereof "disposed of, or transported from".

(k) Section 3008 of the Solid Waste Disposal Act is amended by—

(1) revising subsection (d)(1) to read as follows:

"(1) transports any hazardous waste identified or listed under this subtitle to a facility which does not have a permit under Section 3005 (or 3006 in the case of a State program), or pursuant to Title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052),"; and

(2) revising subsection (d)(2) to read as follows:

"(2) treats, stores, or disposes of any hazardous waste identified or listed under this subtitle without having obtained a permit under Section 3005 (or 3006 in the case of a State program) or pursuant to Title I of the Marine Protection, Research and Sanctuaries Act (86 Stat. 1052)."

(l) Section 4007(C) of the Solid Waste Disposal Act is amended by redesignating subsection "(C)" as "(c)".

(m) Section 6001 of the Solid Waste Disposal Act is amended by inserting "or management" between "disposal" and "of solid waste".

(n) Section 6002 of the Solid Waste Disposal Act is amended by—

(1) deleting "(A)" after "(1)" in subsection (c) and changing "(B)" and "(C)" to "(2)" and "(3)", respectively; and changing "(i)", "(ii)", and "(iii)" to "(A)", "(B)", and "(C)", respectively;

(2) in subsection (c)(3) as redesignated, striking "Contracting" and inserting in lieu thereof "After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting"; and

(3) inserting in the second sentence of subsection (e) after "containing such materials" the phrase "and with respect to certification by vendors of the percentage of recovered materials used,".

(o) Section 6004 of the Solid Waste Disposal Act is amended by—

(1) revising subsection (a)(1)(A) by striking out "disposal" and inserting in lieu thereof "management";

(2) revising subsection (a)(1)(B) by strik-

ing out "disposal" and inserting in lieu thereof "management"; and

(3) revising subsection (b) by striking out "Secretary" and inserting in lieu thereof "Administrator".

(p) Section 7002 of the Solid Waste Disposal Act is amended by—

(1) revising subsection (c) by striking out "section 212" and inserting in lieu thereof "subtitle C"; and

(2) revising subsection (e) by striking out "requiring" and inserting in lieu thereof "require".

(q) Section 7003 of the Solid Waste Disposal Act is amended by striking out "for" before "contributing to the alleged disposal".

(r) Section 7007 of the Solid Waste Disposal Act is amended by—

(1) revising subsection (b)(1)(A) by striking out "disposal" and inserting "management"; and by striking out "resources" and inserting "resource";

(2) revising subsection (b)(1)(B) by striking out "disposal" and inserting "management"; and

(3) revising subsection (c)(3) by striking out "disposal" and inserting "management" in lieu thereof.

(s) Section 8001(a) of the Solid Waste Disposal Act is amended by—

(1) revising paragraph (2) by striking out "disposal" and inserting "management" in lieu thereof; and

(2) revising paragraph (13) by inserting "treatment," after "for purpose of".

(t) Section 8002 of the Solid Waste Disposal Act is amended by—

(1) revising paragraph (1) of subsection (g) by inserting a comma between "shale" and "liquefaction";

(2) revising paragraph (1) of subsection (j) by inserting "the Secretary of Energy, the Chairman of the Council of Economic Advisors," before "and a representative of the Office of Management and Budget,";

(3) revising paragraph (2) of subsection (j) by striking "(2)(D)" and inserting "(1)(D)" in lieu thereof;

(4) revising pragraph (3) of subsection (j) by striking "(2)(D)" and inserting "(1)" in lieu thereof; and

(5) revising subsection (1) by striking out "required under subsection (a), (h), (i) and (j)" and inserting in lieu thereof "required under subsections (a), (h), and (i)".

(u) Section 8003(a)(3) of the Solid Waste Disposal Act is amended by striking out "discarded materials" and inserting "solid waste" in lieu thereof.

(v) Section 8004(a)(1) of the Solid Waste Disposal Act is amended by striking out "discarded material" and inserting "solid waste" in lieu thereof.

SEC. 8. (a) The Secretary of Transportation and the Administrator of the Environmental Protection Agency shall jointly study the aircraft noise effects from an airport on communities located in a State other than the State in which the airport is located. The criteria to be used in selecting the airport to be studied shall include:

(1) the airport shall be operated by a State, a unit of general purpose local government of a State, or a special purpose entity constituted for the purpose of operating an airport, and

(2) the airport shall have a point on the airport boundary within one nautical mile from a State boundary, and

(3) the airport shall have had in excess of sixty thousand scheduled air carrier departures during the preceding calendar year.

(b) The study shall be conducted in cooperation with the airport operator, appropriate Federal, State, and local officials, and the appropriate Metropolitan Planning Organization.

(c) The Secretary and the Administrator shall prepare and submit to Congress a report within nine months of the conclusion of the study, but no later than 24 months after enactment of this section.

The SPEAKER pro tempore. Is a second demanded?

Mr. BAUMAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania (Mr. ROONEY) will be recognized for 20 minutes, and the gentleman from Maryland (Mr. BAUMAN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. ROONEY).

Mr. ROONEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this amendment, which is a substitute to S. 3083 and to H.R. 12647 as reported by the Interstate and Foreign Commerce Committee, authorizes $15 million for 1 year to allow the Environmental Protection Agency to carry out the activities described in its budget request of $10,812,000, and additionally: First, to coordinate noise control efforts within the Federal Government; second, to coordinate those efforts with those of the States and local governments; and third, to educate localities on effective noise control. Four million dollars has been separately authorized in the EPA research and development bill, to continue much needed research into the effects of undue exposure to noise in our environment.

The bill creates the quiet communities program which will allow EPA to direct its activities where they will do the most good, which is educating and assisting local officials in workable noise control. The bill also requires a greater degree of response by the Federal Aviation Administration to the aircraft noise problem.

On that question, Mr. FLORIO has reached an agreement with the Public Works and Transportation Committee on language which differs from that originally in H.R. 12647. He will elaborate on that language. I will only say that the concurrent jurisdiction over this problem by the Public Works Committee and the Commerce Committee is maintained. You should also know that the Senate agrees with this substitute as well.

Finally, we want to add, as did the Senate, amendments of a technical nature to the Resource Conservation and Recovery Act of 1976. These amendments are noncontroversial and agreeable to EPA.

A conference with the Senate will be avoided by accepting this substitute. This legislation is crucial to the agencies involved and will lead to successful implementation of both the Noise Control Act and the Solid Waste Act. I urge the favorable consideration by my colleagues of this bill.

Mr. BAUMAN. Mr. Speaker, I yield back the balance of my time.

Mr. CARTER. Mr. Speaker, will the distinguished gentleman from Pennsylvania yield for the purpose of a colloquy?

Mr. ROONEY. Yes, of course.

Mr. CARTER. I thank the gentleman for yielding. Would the gentleman please advise whether I am correct in understanding the technical amendments to the Solid Waste Disposal Act embodied in the Senate bill are similar to amendments which have been proposed by you?

Mr. ROONEY. That is correct. They are similar in every respect. The subcommittee staff has been in close consultation with the staff of the Senate Subcommittee on Resource Protection on these matters and there is agreement on these technical amendments.

Mr. CARTER. Do I understand the changes to section 6002 of the act to indicate that contracting officers should only use subsection (e) guidelines in carrying out the subsection (c) requirements?

Mr. ROONEY. My colleague is completely correct in that interpretation. Otherwise, contracting officers, who generally do not have the staff to establish either those guidelines or percentages of recovered material content for a procurement item in the absence of a guideline, could be establishing and enforcing bid criteria on different bases at all levels of government. What is needed is a rational, well thought out approach to establishment of these fundamental guidelines. Then the contracting officers will have a sound basis for carrying out the mandate of this section.

Mr. CARTER. Is it correct then to assume that there would be no enforceable recovered materials percentage established for items under subsection (c)(1) prior to certification dates specified in subsection (e) guidelines applicable to particular procurement items?

Mr. ROONEY. Again, my colleague is correct in his understanding.

Mr. CARTER. I thank the Chairman for his clarifying statements.

Mr. BAUMAN. Mr. Speaker, will the gentleman yield?

Mr. ROONEY. I yield to the gentleman from Maryland.

Mr. BAUMAN. What has the discussion that just took place got to do with the noise control legislation now pending?

Mr. ROONEY. There are also technical amendments to the Resource Conservation and Recovery Act. As I understand it, if these technical amendments are not adopted, one in particular, it will be impossible to rectify the situation caused by EPA's failure to issue any guidelines as to procurement prior to October 21.

Mr. BAUMAN. So the bill contains two nongermane provisions?

Mr. ROONEY. The technical amendments are not germane to the House bill, but are germane to the Senate bill.

Mr. BAUMAN. I thank the genleman.

Mr. FLORIO. Mr. Speaker, the provision that the committee intends to substitute for the airport noise abatement plan section of H.R. 12647 is the product of long discussion and negotiation among all interested parties. I am pleased to state that these efforts have resulted in a section that has been agreed to by all concerned, and that meets the needs that led to my original efforts that appear in the current version of the Noise Act.

My concern is that of a Representative

of a district that directly adjoins a major international airport that is located in another State. It is clear to me that the financial incentives built into the Airport and Aircraft Noise Control Act (H.R. 8729) would not be sufficient to guarantee participation in the noise planning program of an airport insulated by a State border from the popular and political pressures of the noise impacted communities. I therefore attempted to amend the Airport and Aircraft Noise Control Act to insure that at least the major interstate airports (which the FAA numbered at seven) would be required to engage in noise planning efforts with the metropolitan planning agencies of their regions. That initiative was rejected by a floor vote in the House.

My concern remains however, that those citizens most severely impacted by the airport noise problem are exactly those citizens least likely to get any relief under the current legislative initiatives. Despite other differences, this concern is shared by members of the Public Works Committee, as well as representatives of the airport operators and airlines.

It is to meet that concern that this language evolved. This language will guarantee that at least one of the interstate airports will be studied for noise compatibility. The existing expertise of EPA and FAA will be utilized to reduce the harmful impacts of airport noise on the residential and industrial neighbors of the airport. The results of this study will be made available to the Congress, at which time we can assess the success of the current voluntary approach to the airport noise planning problem.

This language does not require that any particular airport participate in the study. (It is not Federal land use control in any sense.) In fact, of the seven airports that the FAA considers to be major interstate airports, two are currently engaged in noise planning, and one has indicated a willingness to do so under the new Airport and Aircraft Noise Control Act.

This provision will continue the course of cooperation set forth in the Airport and Aircraft Noise Control Act provisions that require the FAA and the EPA to work together in developing and reviewing noise control standards and plans. It will provide the Congress with valuable information on the progress of the program in one of its most practical aspects, and will benefit the residents who live in the vicinity of at least one of our major airports.

I urge your support of this measure.●

● Mr. SKUBITZ. Mr. Speaker, I rise in support of this authorization bill and urge that at the appropriate time the Senate language for the bill be substituted for H.R. 12647 so that the authorization can be passed without the need for a conference between the Senate and the House.

The Senate bill, S. 3083, also contains additional technical amendments to the Resource Conservation and Recovery Act. As you will recall, Mr. Speaker, the Resource Conservation and Recovery Act was passed in 1976 and contains a number of requirements for rulemaking by the Environmental Protection Agency. During the course of that rulemaking, it has become clear that certain technical amendments are necessary to assure the workability of the act. Those technical amendments are contained in the Senate bill which at the appropriate time will be substituted for this bill.

In addition, the Senate bill provides for a 2-year authorization for the Noise Control Act. The House bill has an authorization of $10,812,000 for fiscal year 1979. The Senate bill has an authorization of $15 million for fiscal year 1979, and $17 million for fiscal year 1980. In ordinary times, I would have urged my colleagues to at least request a conference with the Senate. These are not ordinary times since all of us are anxious to complete the business of this Congress.

I have been assured by Chairman ROONEY that this subcommittee will carefully consider additional legislation affecting both the Noise Control Act and the Resource Conservation and Recovery Act early in the next Congress. Therefore, I support the passage of S. 3083 as a substitute for H.R. 12647.●

Mr. ROONEY. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. ROONEY) to suspend the rules and pass the bill H.R. 12647, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. ROONEY. Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate bill (S. 3083) to extend the authorizations for the Noise Control Act of 1972, to expand the quiet communities program, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3083

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Quiet Communities Act of 1978".

SEC. 2. Section 14 of the Noise Control Act of 1972 is amended to read as follows:

"QUIET COMMUNITIES, RESEARCH, PUBLIC INFORMATION

SEC. 14. To promote the development of effective State and local noise control programs, to provide an adequate Federal noise control research program designed to meet the objectives of this Act, and to otherwise carry out the policy of this Act, the Administrator shall, in cooperation with other Federal agencies and through the use of grants, contracts, and direct Federal actions—

"(a) develop and disseminate information and educational materials to all segments of the public on the public health and other effects of noise and the most effective means for noise control, through the use of materials for school curricula, volunteer oganizations, radio and television programs, publication, and other means;

"(b) conduct or finance research directly or with any public or private organization or any person on the effects, measurement, and control of noise, including but not limited to—

"(1) investigation of the psychological and physiological effects of noise on humans and the effect of noise on domestic animals, wildlife, and property, and the determination of dose/response relationships suitable for use in decisionmaking, with special emphasis on the nonauditory effects of noise;

"(2) investigation, development, and demonstration of noise control technology for products subject to possible regulation under sections 6, 7, and 8 of this Act;

"(3) investigation, development, and demonstration of monitoring equipment and other technology especially suited for use by State and local noise control programs;

"(4) investigation of the economic impact of noise on property and human activities; and

"(5) investigation and demonstration of the use of economic incentives (including emission charges) in the control of noise;

"(c) administer a nationwide Quiet Communities Program which shall include, but not be limited to—

"(1) grants to States, local governments, and authorized regional planning agencies for the purpose of—

"(A) identifying and determining the nature and extent of the noise problem within the subject jurisdiction;

"(B) planning, developing, and establishing a noise control capacity in such jurisdiction, including purchasing initial equipment;

"(C) developing abatement plans for areas around major transportation facilities (including airports, highways, and rail yards) and other major stationary sources of noise, and, where appropriate, for the facility or source itself; and

"(D) evaluating techniques for controlling noise (including institutional arrangements) and demonstrating the best available techniques in such jurisdiction;

"(2) purchase of monitoring and other equipment for loan to State and local noise control programs to meet special needs or assist in the beginning implementation of a noise control program or project;

"(3) development and implementation of a quality assurance program for equipment and monitoring procedures of State and local noise control programs to help communities assure that their data collection activities are accurate;

"(4) conduct of studies and demonstrations to determine the resource and personnel needs of States and local governments required for the establishment and implementation of effective noise abatement and control programs; and

"(5) development of educational and training materials and programs, including national and regional workshops, to support State and local noise abatement and control programs;

"(d) develop and implement a national noise environmental assessment program to identify trends in noise exposure and response, ambient levels, and compliance data and to determine otherwise the effectiveness of noise abatement actions through the collection of physical, social, and human response data;

"(e) establish regional technical assistance centers which use the capabilities of university and private organizations to assist State and local noise control programs;

"(f) provide technical assistance to State and local governments to facilitate their development and enforcement of noise control, including direct onsite assistance of agency or other personnel with technical ex-

perience, and preparation of model State or local legislation for noise control; and

"(g) provide for the maximum use in programs assisted under this section of senior citizens and persons eligible for participation in programs under the Older Americans Act.".

SEC. 3. The fourth sentence of section 611 (c)(1) of the Federal Aviation Act, as amended by section 7 of the Noise Control Act of 1972, is amended by striking "a reasonable time" and inserting in lieu thereof "ninety days", and by adding before the period "and a detailed analysis of and response to all documentation or other information submitted by the Environmental Protection Agency with such proposed regulations".

SEC. 4. Section 11(a) of the Noise Control Act of 1972 is amended by inserting "(1)" after "(a)" and by adding the following new paragraph:

"(2) Any person who violates paragraph (1), (3), (5), or (6) of subsection (a) of section 10 of this Act shall be subject to a civil penalty not to exceed $10,000 per day of such violation."

SEC. 5. Section 6 of the Noise Control Act of 1972 is amended by adding the following subsection:

"(f) At any time after the promulgation of regulations respecting a product under this section, a State or political subdivision thereof may petition the Administrator to revise such standard on the grounds that a more stringent standard under subsection (c) of this section is necessary to protect the public health and welfare. The Administrator shall publish notice of receipt of such petition in the Federal Register and shall within ninety days of receipt of such petition respond by (1) publication of proposed revised regulations in accordance with subsection (c)(3) of this section, or (2) publication in the Federal Register of a decision not to publish such proposed revised regulations at that time, together with a detailed explanation for such decision.".

SEC. 6. Section 19 of the Noise Control Act of 1972 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 19. There are authorized to be appropriated to carry out this Act (other than for research and development) $15,000,000 for the fiscal year ending September 30, 1979, and $17,000,000 for the fiscal year ending September 30, 1980.".

SEC. 7. (a) Section 1002(a)(4) of the Solid Waste Disposal Act is amended by deleting the hyphen between the words "solid" and "waste" in the last line.

(b) Section 1004 of the Solid Waste Disposal Act is amended by—

(1) revising pararaph (8) by striking out everything after "improvement of land";

(2) revising paragraph (10) by striking out "disposal" and inserting in lieu thereof "management";

(3) by revising paragraph (29) to read as follows:

"(29) Then term 'solid waste management facility' includes (A) any resource recovery system or component thereof, (B) any system, program, or facility for resource conservation, and (C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.".

(c) Section 1008(a)(3) of the Solid Waste Disposal Act is amended by striking out "title IV" and inserting in lieu thereof "subtitle D".

(d) Section 1008(b) of the Solid Waste Disposal Act is amended by striking ", pursuant to this section" and by inserting after "suggested guidelines" each time it appears the phrase "or proposed regulations under this Act".

(e) Section 2003 of the Solid Waste Disposal Act is amended by inserting "Federal agencies," after "to provide."

(f) Section 3002 of the Solid Waste Disposal Act is amended by—

(1) revising paragraph (5) by striking out the semicolon after "subtitle" and substituting a comma, and by striking out "and" and inserting in lieu thereof "or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052); and"; and

(2) revising paragraph (6) by adding a close parenthesis after "subtitle" the first time it appears.

(g) Section 3003 of the Solid Waste Disposal Act is amended by—

(1) revising subsection (a)(4) by striking out the period after "subtitle" and substituting a comma, and by adding at the end thereof "or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052).."; and

(2) revising subsection (b) by striking out "subtitle" after "the regulations promulgated by the Administrator under this" and inserting in lieu thereof "section".

(h) Section 3005(a) of the Solid Waste Disposal Act is amended by inserting "treatment, storage, or" after "and upon and after such date the".

(i) Section 3006(c) of the Solid Waste Disposal Act is amended by striking out "required for" whenever it appears in the subsection and inserting in lieu thereof "of".

(j) Section 3007(a)(1) of the Solid Waste Disposal Act is amended by striking out "or disposed of" and inserting in lieu thereof "disposed of, or transported from".

(k) Section 3008 of the Solid Waste Disposal Act is amended by (1) revising subsection (d)(1) to read as follows:

"(1) transports any hazardous waste identified or listed under this subtitle to a facility which does not have a permit under section 3005 (or 3006 in the case of a State program), or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052),."; and (2) revising subsection (d)(2) to read as follows:

"(2) treats, stores, or disposes of any hazardous waste identified or listed under this subtitle without having obtained a permit under section 3005 (or 3006 in the case of a State program) or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052).".

(l) Section 4007(C) of the Solid Waste Disposal Act is amended by redesignating subsection "(C)" as "(c)".

(m) Section 6001 of the Solid Waste Disposal Act is amended by inserting "or management" between "disposal" and "of solid waste".

(n) Section 6002 of the Solid Waste Disposal Act is amended by—

(1) deleting "(A)" after "(1)" in subsection (c) and changing "(B)" and "(C)" to "(2)" and "(3)", respectively; and changing "(i)", "(ii)", and "(iii)" to "(A)", "(B)", and "(C)", respectively;

(2) in subsection (c)(3) as redesignated, striking "Contracting" and inserting in lieu thereof, "After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting"; and

(3) inserting in the second sentence of subsection (e) after "containing such materials" the phrase "and with respect to certification by vendors of the percentage of recovered materials used".

(o) Section 6004 of the Solid Waste Disposal Act is amended by—

(1) revising subsection (a)(1)(A) by striking out "disposal" and inserting in lieu thereof "management";

(2) revising subsection (a)(1)(B) by striking out "disposal" and inserting in lieu thereof "management"; and

(3) revising subsection (b) by striking out "Secretary" and inserting in lieu thereof "Administrator".

(p) Section 7002 of the Solid Waste Disposal Act is amended by—

(1) revising subsection (c) by striking out "section 212" and inserting in lieu thereof "subtitle C"; and

(2) revising subsection (e) my striking out "requiring" and insert in lieu thereof "require".

(q) Section 7003 of the Solid Waste Disposal Act is amended by striking out "for" before "contributing to the alleged disposal".

(r) Section 7007 of the Solid Waste Disposal Act is amended by—

(1) revising subsection (b)(1)(A) by striking out "disposal" and inserting "management"; and by striking out "resources" and inserting "resource".

(2) revising subsection (b)(1)(B) by striking out "disposal" and inserting "management"; and

(3) revising subsection (c)(3) by striking out "disposal" and inserting "management" in lieu thereof.

(s) Secton 8001(a) of the Solid Waste Disposal Act is amended by—

(1) revising paragraph (2) by striking out "disposal" and inserting "management" in lieu thereof; and

(2) revising paragraph (13) by inserting "treatment," after "for purpose of"

(t) Section 8002 of the Solid Waste Disposal Act is amended by—

(1) revising paragraph (1) of subsection (g) by inserting a comma between "shale" and "liquefaction";

(2) revising paragraph (1) of subsection (j) by inserting "the Secretary of Energy, the Chairman of the Council of Economic Advisors," before "and a representative of the Office of Management and Budget,";

(3) revising paragraph (2) of subsection (j) by striking "(2)(D)" and inserting "(1)(D)" in lieu thereof;

(4) revising paragraph (3) of subsection (j) by striking "(2)(D)" and inserting "(1)" in lieu thereof; and

(5) revising subsection (1) by striking out "required under subsection (a), (h), (i) and (j)" and inserting in lieu thereof "required under subsections (a), (h), and (i)".

(u) Section 8003(a)(3) of the Solid Waste Disposal Act is amended by striking out "discarded materials" and inserting "solid waste" in lieu thereof.

(v) Section 8004(a)(1) of the Solid Waste Disposal Act is amended by striking out "discarded material" and inserting "solid waste" in lieu thereof.

AMENDMENT OFFERED BY MR. ROONEY

Mr. ROONEY. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROONEY: Strike out all after the enacting clause of S. 3083 and insert in lieu thereof the provisions of H.R. 12647, as passed by the House.

The amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 12647) was laid on the table.

PROVIDE SERVICES FOR DRUG-DEPENDENT OFFENDERS

Mr. DANIELSON. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 3336) to enable the Department of Justice and the Administrative Office of the United States Courts to provide services and special supervision to drug

dependent Federal offenders in an efficient and effective manner, as amended.

The Clerk read as follows:

S. 3336

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Contract Services for Drug Dependent Federal Offenders Act of 1978".

SEC. 2. Section 3651 of title 18, United States Code, relating to suspension of sentence and probation, is amended by deleting from the second to the last paragraph the colon and everything thereafter, and inserting in lieu thereof a period.

SEC. 3. Section 4255 of title 18, United States Code, relating to supervision in the community of certain convicted offenders, is amended to read as follows:

"An offender who has been conditionally released shall be under the jurisdiction of the United States Parole Commission as if on parole, pursuant to chapter 311 of this title.

"The Director of the Administrative Office of the United States Courts may contract with any appropriate public or private agency or any person for supervisory aftercare of an offender. The Director may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).".

SEC. 4. (a) To carry out the purposes of this Act, there are authorized to be appropriated sums not to exceed $3,500,000 for the fiscal year ending September 30, 1980; $3,645,000 for the fiscal year ending September 30, 1981; and $3,750,000 for the fiscal year ending September 30, 1982.

(b) The amendments made by this Act shall take effect on October 1, 1979.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD of California. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. DANIELSON) will be recognized for 20 minutes, and the gentleman from California (Mr. MOORHEAD) will be recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Speaker, the bill S. 3336 is substantially identical to a bill H.R. 12290, which was introduced and handled by the Committee on the Judiciary in the House.

The bill was recommended in an Executive communication from the Department of Justice. This bill would consolidate the authority for supervisory care for drug-dependent persons in a single agency. It would not alter the authority of the courts or the U.S. Parole Commission to release an offender to the community. It is intended only to remedy an inefficiency that still exists after 10 years of experience with the aftercare provisions of title II of the Narcotic Addict Rehabilitation Act.

The aftercare services that are being provided to addicted and dependent persons include but are not limited to medical, educational, social, psychological, and vocational services; as well as corrective and preventive guidance and periodic urine analyses. The scope of aftercare services has changed somewhat since passage of the Narcotic Addict Rehabilitation Act in 1966, but the Bureau of Prisons still has the responsibility for the aftercare services provided to offenders.

During the time that a convicted Federal offender is imprisoned, he is under the jurisdiction of the Bureau of Prisons. But when he is paroled or otherwise released, he no longer is under the jurisdiction of the Bureau of Prisons but comes under the supervision of the probation officer who serves as an agent of the Parole Commission. An offender on probation is also under the supervision of his probation officer who must provide supervision for offenders who receive services from agencies under contract with the Bureau of Prisons. This arrangement has been cumbersome, and leads to confusion and duplication of services and supervision. One difficulty has been that when problems with the contracts occur, the probation officer must call in a representative of the Bureau of Prisons who is often located some distance from the scene. If the U.S. probation officer could deal directly with the contractor, operational problems would be resolved more expeditiously and more effectively.

The Department of Justice has informed us that the amendments provided in this bill will result in more efficient and effective programs for addicted and drug-dependent offenders.

I would like further to add that this bill does not create new programs. It merely continues in existence a 10-year-old program but makes it efficient in its operation.

Mr. MOORHEAD of California. Mr. Speaker, I rise in support of this legislation.

This legislation would transfer responsibility for the drug aftercare program from the Department of Justice, Bureau of Prisons, to the Administrative Office of the U.S. Courts, Division of Probation. The aim is to consolidate the authority for supervisory aftercare for drug-dependent former offenders in a single Federal agency.

Supervisory drug aftercare was first authorized under title II of the Narcotic Addict Rehabilitation Act of 1966 (18 U.S.C. 4255). The scope of the aftercare program was later broadened through the enactment of Public Law 92-293. It gave authority to require all drug-dependent parolees mandatory releases, and probationers to participate in aftercare-type services. The purpose of the aftercare program is to provide community care services to all drug-dependent and drug-addicted Federal offenders released from institutions through parole or mandatory release procedures, and also to Federal offenders designated to drug aftercare programs as a condition to probation.

All aftercare services are provided by private contractors, through contracts negotiated by the Bureau of Prisons.

At this time the Bureau of Prisons has 160 contracts providing such after care services to over 2,300 Federal offenders. The Bureau of Prisons feels that these services can be provided with greater efficiency and reliability if they come directly under the jurisdiction of the U.S. Probation Office.

The current situation is viewed by Justice as a management problem, often leading to confused supervision and duplication of services. The Administrative Office of the U.S. Courts testified that this transfer of authority was not objectionable to them.

I think this is a move that could really lead toward public efficiency and, in the long run, save money and achieve better results.

Mr. Speaker, I ask for an aye vote.

Mr. DANIELSON. Mr. Speaker, I have no further requests for time.

Mr. MOORHEAD of California. I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. DANIELSON) that the House suspend the rules and pass the Senate bill S. 3336, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid in the table.

PROVIDING FOR PAYMENT OF LOSSESS AS RESULT OF BAN ON THE CHEMICAL TRIS

Mr. DANIELSON. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1503) to provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes as amended.

The Clerk read as follows:

S. 1503

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Court of Claims shall have jurisdiction to hear, determine, and render judgment upon any claim for losses sustained by any producer, manufacturer, distributor, or retailer of children's sleepwear, or by any producer, converter, manufacturer, distribtuor, or retailer of fabric, yarn, or fiber contained in or intended for use in children's sleepwear, as a result of the actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate: *Provided, however,* That such children's sleepwear and such fabirc, yarn, or fiber contained in or intended for use in children's sleepwear was subject to the requirements of or for use in compliance with the mandatory Federal flammability standard, FF3-71, or FF5-74, at the time of its manufacture.

(b)(1) In determining the validity of any claim under this Act and the amount of the losses sustained for which such a claim is brought, the court shall consider the following factors:

(A) The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard referred to in subsection (a).

(B) Whether it would have been feasible, or reasonable, for the claimant to have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Gov-

ernment established such flammability standard.

(C) The degree to which the Federal Government, prior to establishing such flammability standard, tested Tris (2,3-dibromopropyl) phosphate for toxicity, or other health hazards, and disseminated the results of these tests.

(D) The degree of good faith demonstrated by a claimant in seeking to comply fully with such Federal flammability standard.

(E) The extent to which a claimant may have relied in good faith on assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.

(F) The degree to which a claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate for the time period that such substance was used.

(G) The degree to which a claimant, in good faith, complied with actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977.

(2) In determining the amount of the losses for which a claim is brought under this Act, the amount of such losses shall not include lost profits, proceeds from distress sales, attorney's fees, or interest on any such loss resulting to any producer, converter, manufacturer, distributor, or retailer of such children's sleepwear, or to any producer or manufacturer of fabric, yarn, or fiber.

(c) (1) The measure of losses for producers or manufacturers of children's sleepwear shall be the cost of producing or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber used for such production or manufacture, held in stock on the date of enactment of this Act, less the fair market value, if any, of the sleepwear garment or the fabric, yarn, or fiber. If the sleepwear garment or the fabric, yarn, or fiber has been resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber less the proceeds from any such sale.

(2) The measure of losses for producers, converters, or manufacturers of fabric, yarn, or fiber shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting, or manufacture, held in stock on the date of enactment of this Act, less the fair market value, if any, of the fabric, yarn, or fiber. If the fabric, yarn, or fiber has been resold after April 8, 1977, but prior to such date of enactment then the measure of losses shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting, or manufacture less the proceeds from any such sale.

(3) The measure of losses for distributors and retailers shall be the distributor's or the retailer's purchase price for goods referred to in paragraphs (1) and (2) of this subsection, held in stock on the date of enactment of this Act, less the fair market value, if any, of such goods and less the amount of any reimbursement received.

(4) In addition to the losses determined under paragraphs (1), (2), and (3) of this subsection, a claimant may also be compensated for unreimbursed costs of transportation paid for the return of such sleepwear garments, fabric, yarn, or fiber.

(d) No claim under this Act may be brought as a class action nor may any claim under this Act be brought by two or more parties unless damages are claimed to be jointly recoverable or are disputed among the parties claimant.

(e) Upon payment of any claim under this Act, by court judgment or by settlement, the United States shall be subrogated to the claimant's rights to recover losses or assert a claim against any person or organization relating to the subject matter of the claim paid by the United States. The claimant shall execute and deliver instruments and papers and take whatever steps are necessary to secure such rights in the United States in order to be entitled to the entry of a judgment by the Court and payment under this Act, and the failure of the claimant to perform such acts or take such steps shall constitute cause to deny the entry of such judgment and payment. The failure of the claimant to perform such acts or to take such steps shall not limit or adversely affect the right of the United States to act as subrogee or assignee to the full extent of its payments under this Act. Any purported limitation on the right of the United States to act as assignee or to become subrogated to the rights of a claimant shall be without any affect, to the extent that the United States has made payments under the Act.

(f) Any claim under this Act shall be barred unless commenced within two years after the date of enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD of California. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California (Mr. DANIELSON) and the gentleman from California (Mr. MOORHEAD) will be recognized for 20 minutes each.

The Chair recognizes the gentleman from California, Mr. DANIELSON.

Mr. DANIELSON. Mr. Speaker, this is the bill which relates to the subject matter of the compound "Tris". The bill would provide that the Court of Claims would be granted jurisdiction to hear, determine, and adjudicate claims by various entities against the United States for losses allegedly sustained as result of the fact that the U.S. Government placed a ban on the sale of children's sleepwear garments that were treated with the agent Tris.

In about the year 1971 or 1972, the Government, under previously existing authority, promulgated flammability standards which pertained to children's sleepwear sizes 0 to 6–X. The flammability standard was promulgated in order to protect little children from having their sleepwear catch fire.

The textile industry was not compelled to use any particular method of flammability treating, but within the industry the state of the art was such that the chemical Tris was the best known and most commonly accepted substance. Other substances did enable clothes to meet the flammability standards, but most of them caused the garments to become rather stiff, as though they were starched and, as a result, they were not generally accepted for flammability treatment. Tris was the chemical process used within the industry.

In 1975 the appropriate Government agency issued new and different standards on flammability but only as to sizes 7 through 14. The previous standards for sizes 0 through 6–X remained the same. Another standard was promulgated for sizes 7 to 14. This new standard was less demanding than the earlier standard and chemicals other than Tris could be used and were used by some manufacturers.

This fact is important for the Members to bear in mind, Mr. Speaker, because the textile industry witnesses testified that had the standards for the smaller sizes been changed at the same time that the standards for the larger sizes were promulgated, it might have been possible for the textile industry to meet the flammability standards without the use of Tris.

However, this took place in 1975.

In about 1976 the interested persons became aware of the fact that Tris possibly could be, under some circumstances, a carcinogen. It is not established that it is carcinogenic, but there is some evidence to establish that it does cause mutations in salmonella—I do not know what a salmonella is, but it is either a bug or something like that, or a form of bacteria—salmonella undergoes mutations when it comes in close contact with Tris. This is significant in that mutations in salmonella are a high prediction factor for carcinogens.

Experiments were undertaken by the National Institutes of Health and in private laboratories to test the effect of Tris as a carcinogen or mutagen.

After a period of approximately 1 year, it was determined that the previous suspicions were confirmed. Accordingly, in April 1977, the Government issued a ban on the further sale of children's sleepwear and other fabrics which had been treated with Tris. At that time many textile manufacturers were in possession of children's sleepwear which had been treated with Tris, or were in possession of fabrics intended to be used in the manufacture of such sleepwear which had been treated with Tris. They were unable to dispose of these fabrics; and they have been caught, of course, with a substantial inventory on hand.

Mr. Speaker, there is no provision under existing law which would permit these people to bring a claim against the United States or which would enable them to sue for whatever damages they may have sustained.

That is the purpose of this bill, Mr. Speaker. This bill would confer upon the Court of Claim jurisdiction to hear, to determine, and to adjudicate claims against the Government based upon the losses sustained by the manufacturers, retailers and other handlers of Tris-treated garments.

The bill has within it rather careful formulas as to what would be the measure of damages; namely, the measure of damages would be the cost of the material in the possession of the manufacturer or dealer, less whatever salvage value there might be to such product.

Second, the court is instructed by the terms of the bill to consider the good faith of the claimant and what opportunities the claimant might have had to reduce his losses or his damages. In other words, the claimant, under the provisions of the bill, would have to establish the amount of his loss as well as the fact that he suffered the loss in good faith.

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. DANIELSON. I yield to the gentleman from Ohio.

Mr. VANIK. Mr. Speaker, I did not find a report on this bill.

Mr. DANIELSON. The report is not yet available, although it has been turned in. We were delayed because the Committee on the Budget could not get its information to us until Monday.

Mr. VANIK. I feel under a very definite handicap in endeavoring to consider this legislation without the report. I thought, as a condition of bringing a bill up under these circumstances, that a report should be available to the membership of the House.

As I take it, this legislation provides that the taxpayers of the United States are going to be called upon to reimburse for losses which the industry or retailers or others may sustain in disposing of or not being able to market these garments or this material which has been reported as dangerous to life. Is that not what it amounts to?

Mr. DANIELSON. That is correct.

Mr. VANIK. What about the basic obligation which should put the burden on the shoulders of those producing a product to have some sense of compassion and understanding with respect to the safety of the consuming public?

Why should the Federal Treasury and all of the taxpayers of the United States be liable to reimburse those who produce faulty or dangerous merchandise?

Mr. DANIELSON. If the gentleman will let me reclaim my time, I would like to respond to the gentleman.

First of all, on the report, the information supplied by our Committee on the Budget is that the maximum exposure would be approximately $51 million. There is nothing in the report that I have not said except that. I have made an independent check with the Consumer Products Safety Commission which has made a poll by correspondence, by letter, and their opinion is that the actual measure of exposure would probably be closer to $35 million. So, I think it is safe in assuming that it would be in the area of $35 million to $51 million, gross exposure.

As to the second question raised by the gentleman, the textile industry, and in fact all of the testimony before the committee by the proponents of the bill was that the textile manufacturers were placed in the position in 1971 where they were compelled to meet certain flammability standards. There was no way to meet the flammability standards except by the chemical treatment of the fabric that went into children's sleepwear. Therefore, a regulation had been issued saying, "You must make these clothes so they will not burn under certain circumstances, and the only way you can prevent them from burning under certain circumstances is to treat them with Tris."

Now, after treating the garments with Tris, then the situation was reversed, and the Government said, "No, you may not sell any of those garments treated with Tris. As a result, they were left there holding the bag with garments in stock. Those are the answers I can give to the gentleman.

Mr. VANIK. If the gentleman will yield further, is there any precedent for extending the liability of the United States in this manner?

Mr. DANIELSON. There is no precedent. In the 8 years that I have been on this committee, we have had a number of analogous situations come to our attention: One involving cranberries. There was a different provision under the Agricultural Code which permitted the Secretary of Agriculture to buy up cranberries which had been treated with some kind of insecticide or fungicide and were no longer fit for human consumption. We had a problem with Newcastle's disease in chickens, down in the territory represented by our southern California Members. The claim was denied.

We had cyclamates. Those claims were denied.

We had mercury contamination of some hogs out in Arizona or New Mexico. The claims were denied.

There is no existing precedent for the enactment of this bill.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. DANIELSON. I am afraid I am going to be running out of time, but I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding.

I just have one question. I was very concerned about this whole question of Tris-treated sleepwear, having studied the issue in the Oversight and Investigations Committee.

Mr. DANIELSON. I know the gentleman has been very involved in this subject.

Mr. WAXMAN. One point of great concern to me was that some of the apparel manufacturers who found themselves with a huge supply of sleepwear when the ban went into effect dumped this overseas, exported it, knowing in effect that the apparel was treated with Tris and that Tris was dangerous. I was interested to know what provision there is in the bill that would keep these people, who I do not think in any sense have clean hands in asking for equitable relief, from any recovery whatsoever.

Mr. DANIELSON. There is no provision which would keep them from recovery. The elements which must be considered by the Court of Claims are: One, the degree to which reasonable alternatives to the use of Tris existed at the time the standards were applied; two, would it have been feasible or reasonable for the claimant himself to have tested the Tris for the chronic hazards at the time they used them? Three, to what degree had the Federal Government prior to establishing the flammability standards tested Tris for toxicity and other health hazards and disseminated the results of the test? Four, the degree of good faith demonstrated by a claimant in seeking to comply fully with the Federal flammability standard.

Fifth. The extent to which a claimant may have relied in good faith on assurances from suppliers that Tris was safe.

Sixth. The degree to which a claimant acted reasonably in using Tris for the time period it was used, and, lastly, the degree to which a claimant in good faith complied with the actions taken by the United States under the Federal Hazardous Substances Act of April 8, 1977. These are the standards which must be considered by the Court of Claims.

Mr. WAXMAN. Mr. Speaker, if the gentleman will yield further, it seems to me one thing greatly missing in those standards is to deny any degree of relief to those apparel manufacturers who knowing the danger of Tris tried to export their garments to recoup whatever money they could get, which may well come back to us to further support companies in their losses. That is a serious enough defect for me, even though I support the idea of indemnity, to oppose the idea on the Suspension Calendar.

Mr. STRATTON. Mr. Speaker, will the gentleman yield?

Mr. DANIELSON. As long as I have time, I will yield to anyone.

Mr. STRATTON. Mr. Speaker, I want to support what the gentleman from California has said. I support the gentleman's position. The gentleman knows I testified in support of this bill before his committee.

We have had a lot of abstract arguments presented here, at least in the few minutes I have been on the floor; but it might be helpful if we looked at this issue from the viewpoint of a particular case.

As the gentleman knows, I have the Swanknit Co. in Cohoes, N.Y., in my district. It is a small textile manufacturing firm. They manufacture sleepwear for kids. They have 130 employees. They buy their material from some manufacturer who put the Tris in it. They then fabricate that material into sleepwear and sell it to Montgomery Ward and to Sears. When the Federal Consumer Products and Safety Commission decided that Tris was not viable and could not be sold, the Swanknit people had already paid for the material which they had already woven into garments and sent on to Wards and Sears. So the original manufacturer did not get hurt. But Sears and Wards refused to accept the sleepwear and sent all these garments back to this small company which then had to refund the money they had received from these purchasers. This action almost wiped them out financially for they had to pick up the cost of their entire prior inventory.

This is the point that I think places a clear responsibility on the Federal Government, since the Federal Government in the person of the Consumer Products Safety Commission, takes a regulatory action that could wipe out an entire manufacturer and destroy 130 jobs. We have a Federal responsibility. I think that is the important point, and I strongly support the bill.

Mr. DANIELSON. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. DRINAN).

Mr. DRINAN. Mr. Speaker, this is an unprecedented and unwise way to use Federal funds to indemnify private companies. The gentleman from Ohio (Mr. VANIK) stated it well. We are excusing from liability those people who could

have known and should have known that Tris is a cancer-causing substance.

Mr. Speaker, this is not the way to resolve this problem. This is a radical and potentially very dangerous and a costly departure from existing law. It creates a new theory of Government liability which could have a major impact on the degree of care exercised by those who produce consumer goods.

This effort has resulted in a bill which will prove to be a cure far worse than the disease it seeks to treat.

There is but one way to insure that only deserving companies receive Tris-related funds. That is not this way.

The Department of Justice is strongly opposed to this bill. The OMB is even more strenuously opposed.

I just talked last Friday with Mr. Ben Civiletti, Deputy Attorney General. He and the administration are doing all they can to defeat this very bad precedent.

It is brought up on suspension, without a report where I and others have a dissenting view. Nine people in the Committee on the Judiciary dissented and dissented strongly.

Mr. Speaker, it seems to me the method is inappropriate and the bill is inappropriate. I hope that on a record vote, which we will demand on Thursday, this bill is overwhelmingly defeated.

Mr. Speaker, S. 1503 is an unprecedented and unwise use of Federal funds to indemnify private companies for losses incurred as a result of compliance with a Federal safety standard. As representatives of the Department of Justice testified in opposing this bill, such reimbursement of private companies is unprecedented. The unique character of S. 1503 was acknowledged during the hearings and markup of this bill.

If we break new ground and provide the requested relief to manufacturers, distributors, and retailers of Tris-treated children's sleepwear, we will put every industry subject to any kind of Federal regulation on notice that they can be reimbursed by the taxpayers for the costs of compliance. The primary responsibility for insuring the safety of consumer goods must rest with the producers and retailers of such goods. To depart from this central principle, as S. 1503 does, would lead inevitably to a reduction in the incentive to manufacture and market safe products. Enactment of S. 1503 would enable any company to ask the taxpayers to pay for losses each time new information is discovered which shows that a product used to meet regulatory standards is hazardous.

The case of Tris is not, as proponents of this bill insist, a unique one. Moreover, by removing the costs of using unsafe products to meet Federal standards, we remove the incentive to meet those standards with products which are themselves safe. Proponents of S. 1503 argue that the Tris losses are unique and that this bill will not, therefore, be a precedent for future claims. But the contrary is true: The kind of corporate inattention to public safety represented by the use of Tris is not unique, and if we bail out the people who placed this cancer-causing sleepwear in the marketplace, we will make it virtually certain that other people will demonstrate the same kind of inattention to the safety of their own products.

Let me cite an example. If the automobile industry places in its products a device to increase mileage and thereby comply with Federal standards, and a year later it is clear that this new device caused brake failure leading to a large number of accidents, will we absolve the companies of responsibility for placing this deadly device on the market merely because they were prompted to do so by a Federal standard? Of course not; we do not waive their duty to see to it that their products are safe. This fundamental responsibility does not vanish in the presence of a regulation. That is the law. But if S. 1503 is enacted, it will be the law no more.

As the hearing record indicates, one prominent manufacturer of children's sleepwear ceased the use of Tris in June 1976, almost a year before the Consumer Product Safety Commission banned it. Why were others not more prudent? How can the court ascertain that a manufacturer continued to use Tris after he became or should have become aware of its hazards? The record of the Senate hearings indicates that the industry was aware of possible health hazards associated with flame retardant chemicals but chose to use Tris anyway. What sort of precedent will this represent as other firms in other industries debate the use of possibly hazardous products? While S. 1503 sets forth certain criteria by which to ascertain the equities, the task of determining the exact state of knowledge and intent as of a precise time is essentially impossible. The bill provides us with absolutely no assurance that companies which knew or should have known the dangers of Tris, but continued selling it, will be treated any differently than companies which stopped selling the sleepwear as soon as they were aware of the risk.

S. 1503 will cost the taxpayers at least $50 million, a significant share of which will almost certainly go to manufacturers who continued to treat children's sleepwear with a chemical known to be a cause of cancer. This $50 million plus, however, will constitute only the beginning of Federal expenditures to indemnify the makers and sellers of hazardous products.

The Office of Management and Budget and the Department of Justice both testified in strong opposition to this bill. Any effort to reimburse companies which used Tris should be part of a general approach to the issue. An attempt to do this in piecemeal fashion will only establish a bad precedent, reward one industry and not others, and reduce the incentive to comply with regulations in a responsible way. If the issue of reimbursement is considered at all, the Department of Justice testified, it should deal with the overall problem of indemnifications of this kind, and it should have guidelines to avoid any reduction in the incentive to make and sell safe products.

S. 1503 represents a radical and potentially very dangerous and very costly departure from existing law. It creates a new theory of Government liability which could have a major impact on the degree of care exercised in the manufacture of consumer goods. It is a well-intentioned effort to compensate those who have suffered undue financial loss. This effort, however, has resulted in a bill which, if enacted, will prove to be a cure far worse than the disease it seeks to treat. There is but one way to insure that only deserving companies receive Tris-related funds, and there is but one way to avoid establishing a bad precedent. We can achieve these goals only by rejecting S. 1503 and by attempting to draft a bill which addresses this issue in a comprehensive way, so as to avoid the problems in the basic approach and the very structure of S. 1503.

Mr. DANIELSON. Mr. Speaker, may I inquire how much time I have remaining?

The SPEAKER pro tempore. The gentleman from California (Mr. DANIELSON) has 2½ minutes remaining.

Mr. DANIELSON. Mr. Speaker, I yield 30 seconds to the gentleman from North Carolina, the Honorable RICHARDSON PREYER.

Mr. PREYER. Mr. Speaker, as a sponsor of this legislation which would allow those textile manufacturers to file a claim for losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or other fiber, I am grateful that the House is taking up the bill and I wholeheartedly support its passage.

It was Government action that required that children's sleepwear be made flame retardant. Stringent standards were placed into effect and the chemical used to make the garments flame retardant, Tris, turned out to be considered carcinogenic. But the damage had already been done. Millions of dollars had been expended on fabric and garments that were in retail inventories when the ban was imposed. Two manufacturers of sleepwear in my hometown of Greensboro alone suffered combined losses of almost $6 million.

Government action is needed to these manufacturers a form of relief for losses incurred as a direct result of Government imposed standards and through no fault of their own.

Many of these small companies could ill afford to absorb the losses which they have suffered and it is my hope that the House will provide relief through the enactment of this bill, a measure which has previously passed the Senate, and restore faith to private industry's support of the process to establish certain standards for the protection of the public at large.

Mr. DANIELSON. Mr. Speaker, I yield 30 seconds to the gentleman from Texas (Mr. ROBERTS).

Mr. ROBERTS. Mr. Speaker, I rise in support of this bill.

The situation in a little town in my district close to my home town is identical to that of the gentleman from New York (Mr. STRATTON). The Government is putting these people out of business,

and we certainly ought to indemnify them.

Mr. Speaker, I certainly think we ought to support this bill.

Mr. MOORHEAD of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, On April 8, 1977, the Consumer Product Safety Commission banned the sale of Tris-treated children's sleepwear in the United States. This decision reflected a legitimate public health concern on the part of both Government officials and consumer advocates.

But while this was appropriate regulatory action in a general sense, the Commission's overall conduct in the Tris affair can only be characterized as clumsy and confused. The initial terms of the Tris ban were both illogical and unfair. It was structured so that almost the entire brunt of the repurchase costs were borne by the garment manufacturers. Despite subsequent judicial and administrative attempts to redefine the repurchase responsibilities later on, the apparel manufacturers have still been left with an inordinate share of the responsibility and loss. The apparel industry, generally, and the children's sleepwear producers, in particular, are small manufacturers. Most of these operations have fewer than 100 employees. Thus, the loss occasioned by the Tris ban fell on that segment of the garment industry least able to sustain the loss.

Perhaps the Washington Post summed it up best in a June 4, 1977 editorial entitled "The Tris Mess." The Post said:

> The manner in which the Federal Government has gone about banning Tris-treated sleepwear has been almost a model of how not to handle a serious matter of public safety.

The legislation would offer these small businessmen an opportunity to recoup a portion of their losses. Specifically, S. 1503 would confer special jurisdiction on the U.S. Court of Claims to determine if there is Federal liability, if any, and to assess the losses incurred by the producers, converters, manufacturers, or retailers involved.

I would point out that our committee's bill is more conservatively drafted than the measure which was passed by the other body last January. Under the Senate-passed bill the Court of Claims was given jurisdiction merely to "render judgment" on claims submitted to it; that is, they were to certify losses. Under the committee bill, the Court of Claims will "hear, determine, and render judgment" on these claims. That is, they will hear the evidence, determine liability, and make a determination. This language is much more in line with the traditional evaluative role of a court in an action like this and would permit the court to reject a claim brought under this statute.

Also as it came to us, the bill set no standards or criteria for the court to consider in this unusual case. Section (b)(1) of our bill requires the Court of Claims to consider a series of important factors, including:

Did reasonable alternatives to Tris exist at the time of the establishment of the Federal flammability standards?

Did the claimant have an affirmative duty to test this chemical?

The extent of the claimant's reliance on assurances by the suppliers that Tris was safe.

Claimant's compliance with the terms of the "ban" issued by the Consumer Product Safety Commission.

Also, it should be emphasized that the other body did not include retailers as potential claimants. Our subcommittee received evidence that, in some instances, retailers were not reimbursed by their suppliers when they returned the Tris-treated goods (under the "repurchase" provisions of the Federal Hazardous Substances Act). Under the bill as reported by our committee, if the retailer has possession of the goods in question at the date of enactment, then they too will be able to file a claim under this legislation.

The chemical Tris was placed in the children's sleepwear in 1971–72 in response to mandatory flammability standards issued by the Department of Commerce under the authority granted by the Flammable Fabrics Act, as amended. 15 U.S.C. 1191 et seq. At the time the Tris was used by the apparel industry to comply with flame-retardent standards, it was not known that the chemical was a potential carcinogen. The carcinogenic properties of Tris did not become suspected until late 1975 when a study by the National Science Foundation determined it to be a mutagen and, therefore, probably a carcinogen. In 1976, the Environmental Defense Fund petitioned the CPSC to require labels on products containing Tris. Then in February 1977 evidence from the National Cancer Institute was provided to the Commission confirming that indeed Tris was a potential carcinogen. The point is that the apparel industry made a good-faith attempt to comply with Federal safety standards, when they included the chemical Tris in children's garments to begin with.

This brings me to the scope of the ban. The April 1977 ban extended solely to children's wearing apparel. It did not cover all Tris-treated garments or products. We received testimony before our subcommittee that there is considerable use of Tris in other products. These products include draperies, camping equipment, toys, dolls, doll clothing, stuffed animals, wigs, and the interiors of some automobiles. The Environmental Defense Fund testified that the Tris in children's sleepwear represented less than 50 percent of the Tris used in this country. If this is so, why was the CPSC order limited solely to children's sleepwear? Why was one industry singled out?

The CPSC ban also made a distinction between washed garments and unwashed garments. The thrust of the rationale was that three or more washings would remove the carcinogenic properties from the clothing. However, there is a serious scientific dispute as to whether or not washings remove the cancer-causing properties from the clothing. Suffice it to say, this distinction was a highly questionable one and it confused both consumers and retailers alike.

Lastly, the ban imposed a repurchase order on the manufacturer of the garments containing the Tris. There are five industries involved in the apparel manufacturing process. These consist of: First, the chemical company; second, the fiber company; third, the fabric manufacturer; fourth, the garment manufacturer; and fifth, the retailer. The CPSC ban was applied so that the entire financial loss would fall solely on the garment manufacturer—one level of this industry. Ironically, the Tris was already in the fabric before the garment manufacturer received it to cut and sew and ship it to the retailers. They did not make the chemical. They did not make the fabric. They did not retail it. Yet, they were made totally responsible under the terms of the ban.

Over 70 percent of the manufacturers in the apparel industry are small businessmen. The percentage of profits are generally low in the apparel industry as a whole. Once it became evident that the burden of the ban was to fall solely on one level, serious problems developed. These small manuacturers, already drastically undercapitalized, saw their normal sources of credit dry up. The lack of business confidence seriously curtailed their ability to borrow money from banks or their supplier. Product liability insurance also became increasingly difficult to obtain or maintain. While some Small Business Administration loans were made available, the equity required in terms of personal assets was a serious deterrent to applications.

Again, I want to emphasize that I view indemnification, in the context of hazardous products, as a drastic and unusual remedy. But I do strongly urge the Members of this House to give serious consideration to some form of a remedy for the small apparel manufacturers, who have been unfairly singled out in this situation. They acted in good faith to comply with antiflammability standards. In a sense, they were caught in a crossfire between two competing regulatory aims. Serious consideration should be given to allowing these small manufacturers an opportunity to go to the Court of Claims and recover their actual losses resulting from the Tris ban.

I urge an "aye" vote.

Mr. Speaker, I yield 2 minutes to the gentleman from Missouri (Mr. VOLKMER).

Mr. VOLKMER. Mr. Speaker, I would like to echo the words of those who have spoken here in opposition to the bill, principally because it is on the Suspension Calendar. I do not believe that this bill belongs on the Suspension Calendar. We have a potential cost to the taxpayers of $52 million, and perhaps even in excess of that. It is an unprecedented action. It is a matter which I believe should be discussed thoroughly in the House. As the gentleman from California stated, he would like to propose an amendment to it. I think he should be given that opportunity. At least there should be further discussion on the same matter that he brings up, and that is on the matter of Tris-treated items which, I just recently read, were sold overseas; that people unwittingly, unknowingly have now been sold this merchandise in other countries when our manufacturers know that it contains material that can be carcinogenic. For that reason I, along with eight other members of the Committee on the Judiciary, voted

against it in the Committee on the Judiciary.

The other reason that I would like to mention is that there is no report before us. No one has read that report, because we do not have one. I think it is a little appalling, really, as one who believes in openness in Government, to come before this House, before this body, with a bill of this importance and not even have a report before the body so that the Members can review the legislation.

For those reasons I am going to request that we have the yeas and nays on this bill, and then we can let the full House decide it on Thursday.

Mr. MOORHEAD of California. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. STRATTON).

Mr. STRATTON. Mr. Speaker, it is a little bit hard for me to understand the approach of those who are opposing this bill. I think they are either living in a dream world or they do not really understand the situation.

Here for the last 12 months we have been emoting on this floor day after day about the economic situation and about the unemployed. We have been passing billions of dollars in bills to put people to work on CETA, on the public works jobs bill and on many other employment programs, and all of the other things that Members on this side of the aisle are supposed to be interested in and a good many Members on the other side of the aisle too. Yet here is a little bill that is designed not to create new jobs or to put people back to work, but to try to keep people, little people in small companies, alive, and keep them working on their present jobs, because through no fault of their own their company was thrust onto the brink of financial disaster by a regulation issued by the Federal Government without any understanding or prior appreciation of its economic impact on average American working men and women.

There are 130 people at the Swanknit Co. in the little city of Cohoes, N.Y., an All America City in 1966. They have a huge old mill building left behind when one of those textile mills moved out of New York State in the late 1920's and went down South and took all of the jobs with it. The people of Cohoes have been working hard to rehabilitate their city to invite small new companies to take space in these huge mill buildings, to make a new effort to make a living for themselves and their families. These are not the fat-cat "industry" representatives referred to in the Ralph Nader handout. These are plain American workers, mostly women, many of them middle-aged. They are members of the International Ladies Garment Workers.

They are not going to rip off the taxpayers for $52 million. Why, this small company is in no position to analyze whether the Tris-treated material supplied to them by their fabric suppliers is safe or unsafe as the gentleman from Massachusetts has suggested. They have got hardly enough capital to keep the operation going. They are not in a position to maintain a fabric testing laboratory. They are caught, as the gentleman from California (Mr. MOORHEAD) has said, between the manufacturers who have not been hurt by this Tris ruling because their bills were paid in advance, and the merchandisers, such as Sears and Wards, who simply send the finished products back to Cohoes and say, "We will not accept these garments because of the Government edict against it."

This is simply a modest attempt to try to keep these working people off welfare. If the gentleman from Missouri (Mr. VOLKMER) is disturbed because it is on the legislative calendar now, it is because if we do not get this bill enacted in this Congress we are not going to be able to keep the jobs of these people, and 130 people in Cohoes will be out on the unemployment rolls.

Oh, it will not make the headlines, of course. It will not be in the New York Times. They will not write an article on it in the Washington Post and follow it up with three more pages on the inside. It will just be 130 more people losing their livelihoods and going on welfare.

That is the purpose of this legislation. We pass bills to support the shipping industry and the aviation industries. Let us take a little interest now in the small people who are hit by Government edicts through no fault of their own.

Mr. DANIELSON. Mr. Speaker, I yield 1½ minutes to the gentleman from South Carolina (Mr. MANN).

Mr. MANN. Mr. Speaker, I think the gentleman from New York has made some very cogent points. I support S. 1503 because of the small towns and communities of this country which rely for their economic well-being on a garment industry or a small textile plant and because of the employees of these businesses who will have nowhere to go if the plants fail.

But, Mr. Speaker, most of all I support S. 1503 because it represents simple equity. As Members are aware, the textile and apparel industry began treating fabric with the chemical Tris only to comply with Federal flammability standards promulgated by the Department of Commerce and the Consumer Product Safety Commission in early 1975. At that time, the record shows that the textile/apparel industry voiced grave concern about the possibility of unknown toxic effects of chemicals that would be required to meet these standards, and warned that technology necessary to treat conventional fabrics to achieve technology did not exist. To stay in business and in compliance with the law manufacturers were forced to turn from conventional fabrics to fabrics of polyester, acetate, and triacetate treated with Tris, the only flame retardant then available to effectively treat these fabrics.

Critics of S. 1503 allege that marketability was a major factor in the decision to use Tris. But I submit, Mr. Speaker, that that is a simplistic attitude. It is true that a spokesman for the American Apparel Manufacturers Association mentioned market response in his testimony, but it is ludicrous to believe that the "hand or feel of the garment," to quote the AAMA spokesman, would not be one of—if not the—major considerations in choosing children's sleepwear. Further, Mr. Speaker, I would point out that Tris-treated fabrics produced at the time of the flammability standard were subjected to and passed the tests then known and required.

In the spring of 1976, the Environmental Defense Fund raised questions about possible carcinogenic effects of unwashed Tris-treated garments. Responsible witnesses before the House and Senate Judiciary Committees agree that industry began phasing out the use of Tris as soon as it was suggested that the chemical might pose a health risk.

So we have an industry which originally raised reasonable objections to a proposed Federal standard which would heavily impact its operations and which involved unknown human risks. We have an industry which then moved responsibly and in good faith to comply with that standard. When health questions arose and when, incidentally, continued research had produced other chemicals which would allow compliance with the flammability standard, we have an industry which moved immediately away from Tris as a chemical treatment. The textile/apparel industry went all out to meet the rigid requirements of the federally mandated flammability standard, and did so by the best means it had available at the time and with no indication that Tris was in any way a mutagen or carcinogen. Several years after forcing chemical treatment on sleepwear manufacturers, the same Federal Government now requires that the manufacturers recall these garments and pay for millions of dollars of goods which they were forced by Federal regulation to treat chemically.

The bill's critics further allege, Mr. Speaker, that S. 1503 is precedent-setting. I submit that the precedent that it has been charged that this bill will establish is a precedent which would require regulations be to promulgated with some sanity, with some consideration of economic impact. If there is a precedent, it is that the Congress will be watching regulations proposed by the Executive and will move in when necessary to correct the problems they cause if there is no other means of redress.

S. 1503 is important. The committee has worked long and hard on this legislation, and the committee has done a fine job on it. I recommend passage of this bill to all my colleagues.

● Mr. WEISS. Mr. Speaker, I support the bill, S. 1503, a bill to reimburse firms in the children's clothing industry for losses due to the Government's ban on the use of TRIS.

Although I am concerned that a presedent will be established for payment of costs incurred by Federal regulations, I am also concerned that failure of the Congress to act to offset these losses will result in the losses of many small businesses and the loss of jobs.

In 1971, manufacturers and small businesses, in compliance with newly imposed flammability standards, began selling flame retardant children's sleepwear. The apparel was treated with the chemical TRIS, the only chemical known to meet with these standards. In 1977, 6 years after the imposition of Federal regulations, the Government banned the sale of TRIS-treated sleepwear. The small businesses who sold the sleepwear acted in good faith and in compliance

with Federal regulations. Many small manufacturers of children's sleepwear, devastated by the losses imposed by the recall, are faced with bankruptcy. This legislation is an attempt to address this problem. In a time when we are all concerned with the demise of small, community-based businesses, and ever-rising unemployment, enactment of this legislation is crucial. This bill provides reimbursement not for lost profits, but only for the losses incurred by the recall and removal of the products from the market. It will allow these small businesses to remain solvent, to retain employees, and to continue to provide a service for their community. These businesses have in the past acted in good faith. It is now time for the House to act in good faith, and to rectify this situation, by passing the bill, S. 1503.●

Mr. MOORHEAD of California. Mr. Speaker, I yield back the balance of my time.

Mr. DANIELSON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. DANIELSON) that the House suspend the rules and pass the Senate bill S. 1503, as amended.

The question was taken.

Mr. VOLKMER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

PRIVACY PROTECTION FOR RAPE VICTIMS ACT OF 1977

Mr. MANN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4727) to amend the Federal Rules of Evidence to provide for the protection of the privacy of rape victims, as amended.

The Clerk read as follows:

H.R. 4727

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Protection for Rape Victims Act of 1978".

SEC. 2 (a) Article IV of the Federal Rules of Evidence is amended by adding at the end thereof the following new rule:

"Rule 412. Rape Cases; Relevance of Victim's past Behavior

"(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behavior of an alleged victim of such rape or assault is not admissible.

"(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is—

"(1) admitted in accordance with subdivisions (c)(1) and (c)(2) and is constitutionally required to be admitted; or

"(2) admitted in accordance with subdivision (c) and is evidence of—

"(A) past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

"(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which rape or assault is alleged.

"(c)(1) If the person accused of committing rape or assault with intent to commit rape intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

"(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subdivision (b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

"(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

"(d) For purposes of this rule, the term 'past sexual behavior' means sexual behavior other than the sexual behavior with respect to which rape or assault with intent to commit rape is alleged.".

(b) The table of contents for the Federal Rules of Evidence is amended by inserting immediately after the item relating to rule 411 the following new item:

"Rule 412. Rape cases; relevance of victim's past behavior."

SEC. 3. The amendments made by this Act shall apply to trials which begin more than thirty days after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. WIGGINS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from South Carolina (Mr. MANN) will be recognized for 20 minutes, and the gentleman from California (Mr. WIGGINS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from South Carolina (Mr. MANN).

Mr. MANN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, for many years in this country, evidentiary rules have permitted the introduction of evidence about a rape victim's prior sexual conduct. Defense lawyers were permitted great latitude in bringing out intimate details about a rape victim's life. Such evidence quite often serves no real purpose and only results in embarrassment to the rape victim and unwarranted public intrusion into her private life.

The evidentiary rules that permit such inquiry have in recent years come under question; and the States have taken the lead to change and modernize their evidentiary rules about evidence of a rape victim's prior sexual behavior. The bill before us similarly seeks to modernize the Federal evidentiary rules.

The present Federal Rules of Evidence reflect the traditional approach. If a defendant in a rape case raises the defense of consent, that defendant may then offer evidence about the victim's prior sexual behavior. Such evidence may be in the form of opinion evidence, evidence of reputation, or evidence of specific instances of behavior. Rule 404(a)(2) of the Federal Rules of Evidence permits the introduction of evidence of a "pertinent character trait." The advisory committee note to that rule cites, as an example of what the rule covers, the character of a rape victim when the issue is consent. Rule 405 of the Federal Rules of Evidence permits the use of opinion or reputation evidence or the use of evidence of specific behavior to show a character trait."

Thus, Federal evidentiary rules permit a wide ranging inquiry into the private conduct of a rape victim, even though that conduct may have at best a tenuous connection to the offense for which the defendant is being tried.

H.R. 4727 amends the Federal Rules of Evidence to add a new rule, applicable only in criminal cases, to spell out when, and under what conditions, evidence of a rape victim's prior sexual behavior can be admitted. The new rule provides that reputation or opinion evidence about a rape victim's prior sexual behavior is not admissible. The new rule also provides that a court cannot admit evidence of specific instances of a rape victim's prior sexual conduct except in three circumstances.

The first circumstance is where the Constitution requires that the evidence be admitted. This exception is intended to cover those infrequent instances where, because of an unusual chain of circumstances, the general rule of inadmissibility, if followed, would result in denying the defendant a constitutional right.

The second circumstance in which the defendant can offer evidence of specific instances of a rape victim's prior sexual behavior is where the defendant raises the issue of consent and the evidence is of sexual behavior with the defendant. To admit such evidence, however, the court must find that the evidence is relevant and that its probative value outweighs the danger of unfair prejudice.

The third circumstance in which a court can admit evidence of specific instances of a rape victim's prior sexual behavior is where the evidence is of behavior with someone other than the defendant and is offered by the defendant

on the issue of whether or not he was the source of semen or injury. Again, such evidence will be admitted only if the court finds that the evidence is relevant and that its probative value outweighs the danger of unfair prejudice.

The new rule further provides that before evidence is admitted under any of these exceptions, there must be an in camera hearing—that is, a proceeding that takes place in the judge's chambers out of the presence of the jury and the general public. At this hearing, the defendant will present the evidence he intends to offer and be able to argue why it should be admitted. The prosecution, of course, will be able to argue against that evidence being admitted.

The purpose of the in camera hearing is twofold. It gives the defendant an opportunity to demonstrate to the court why certain evidence is admissible and ought to be presented to the jury. At the same time, it protects the privacy of the rape victim in those instances when the court finds that evidence is inadmissible. Of course, if the court finds the evidence to be admissible, the evidence will be presented to the jury in open court.

The effect of this legislation, therefore, is to preclude the routine use of evidence of specific instances of a rape victim's prior sexual behavior. Such evidence will be admitted only in clearly and narrowly defined circumstances and only after an in camera hearing. In determining the admissibility of such evidence, the court will consider all of the facts and circumstances surrounding the evidence, such as the amount of time that lapsed between the alleged prior act and the rape charged in the prosecution. The greater the lapse of time, of course, the less likely it is that such evidence will be admitted.

Mr. Speaker, the principal purpose of this legislation is to protect rape victims from the degrading and embarrassing disclosure of intimate details about their private lives. It does so by narrowly circumscribing when such evidence may be admitted. It does not do so, however, by sacrificing any constitutional right possessed by the defendant. The bill before us fairly balances the interests involved—the rape victim's interest in protecting her private life from unwarranted public exposure; the defendant's interest in being able adequately to present a defense by offering relevant and probative evidence; and society's interest in a fair trial, one where unduly prejudicial evidence is not permitted to becloud the issues before the jury.

I urge support of the bill.

Mr. WIGGINS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation addresses itself to a subject that is certainly a proper one for our consideration. Many of us have been troubled for years about the indiscriminate and prejudicial use of testimony with respect to a victim's prior sexual behavior in rape and similar cases. This bill deals with that problem. It is not, in my opinion, Mr. Speaker, a perfect bill in the manner in which it deals with the problem, but my objections are not so fundamental as would lead me to oppose the bill.

I think, Mr. Speaker, that it is unwise to adopt a per se rule absolutely excluding evidence of reputation and opinion with respect to the victim—and this bill does that—but it is difficult for me to foresee the specific case in which such evidence might be admissible. The trouble is this, Mr. Speaker: None of us can foresee perfectly all of the various circumstances under which the propriety of evidence might be before the court. If this bill has a defect, in my view it is because it adopts a per se rule with respect to opinion and reputation evidence.

Alternatively we might have permitted that evidence to be considered in camera as we do other evidence under the bill.

I should note, however, in fairness, having expressed minor reservations, that the bill before the House at this time does improve significantly upon the bill which was presented to our committee.

I will not detail all of those improvements but simply observe that the bill upon which we shall soon vote is a superior product to that which was initially considered by our subcommittee.

Mr. Speaker, I ask my colleagues to vote for this legislation as being, on balance, worthy of their support, and urge its adoption.

I reserve the balance of my time.

Mr. MANN. Mr. Speaker, this legislation has more than 100 cosponsors, but its principal sponsor, as well as its architect is the gentlewoman from New York (Ms. HOLTZMAN). As the drafter of the legislation she will be able to provide additional information about the probable scope and effect of the legislation.

I yield such time as she may consume to the gentlewoman from New York (Ms. HOLTZMAN).

Ms. HOLTZMAN. Mr. Speaker, I would like to begin first by complimenting the distinguished gentleman from South Carolina (Mr. MANN), the chairman of the subcommittee, for his understanding of the need for corrective legislation in this area and for the fairness with which he has conducted the subcommittee hearings. I would like also to compliment the other members of the subcommittee, including the gentleman from California (Mr. WIGGINS).

Too often in this country victims of rape are humiliated and harrassed when they report and prosecute the rape. Bullied and cross-examined about their prior sexual experiences, many find the trial almost as degrading as the rape itself. Since rape trials become inquisitions into the victim's morality, not trials of the defendant's innocence or guilt, it is not surprising that it is the least reported crime. It is estimated that as few as one in ten rapes is ever reported.

Mr. Speaker, over 30 States have taken some action to limit the vulnerability of rape victims to such humiliating cross-examination of their past sexual experiences and intimate personal histories. In federal courts, however, it is permissible still to subject rape victims to brutal cross-examination about their past sexual histories. H.R. 4727 would rectify this problem in Federal courts and I hope, also serve as a model to suggest to the remaining states that reform of existing rape laws is important to the equity of our criminal justice system.

H.R. 4727 applies only to criminal rape cases in Federal courts. The bill provides that neither the prosecution nor the defense can introduce any reputation or opinion evidence about the victim's past sexual conduct. It does permit, however, the introduction of specific evidence about the victim's past sexual conduct in three very limited circumstances.

First, this evidence can be introduced if it deals with the victim's past sexual relations with the defendant and is relevant to the issue of whether she consented. Second, when the defendant claims he had no relations with the victim, he can use evidence of the victim's past sexual relations with others if the evidence rebuts the victim's claim that the rape caused certain physical consequences, such as semen or injury. Finally, the evidence can be introduced if it is constitutionally required. This last exception, added in subcommittee, will insure that the defendant's constitutional rights are protected.

Before any such evidence can be introduced, however, the court must determine at a hearing in chambers that the evidence falls within one of the exceptions.

Furthermore, unless constitutionally required, the evidence of specific instances of prior sexual conduct cannot be introduced at all if it would be more prejudicial and inflammatory than probative.

Mr. Speaker, I urge adoption of this bill. It will protect women from both injustice and indignity.

Mr. MANN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WIGGINS. Mr. Speaker, I have no further requests for time, and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from South Carolina (Mr. MANN) that the House suspend the rules and pass the bill H.R. 4727, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Chirdon, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On September 29, 1978:

H.R. 7814. An act to authorize Federal agencies to experiment with flexible and compressed employee work schedules.

On September 30, 1978:

H.J. Res. 1140. Joint resolution to amend section 8 of the Export-Import Bank Act of 1945;

H.R. 1427. An act for the relief of Marie Grant;

H.R. 3460. An act for the relief of William J. Elder and the estate of Stephen M. Owens, deceased;

H.R. 3702. An act to amend title 10, United States Code, to make certain changes in the Retired Serviceman's Family Pro-

tection Plan and the Survivor Benefit Plan as authorized by chapter 73 of that title, and for other purposes;

H.R. 5097. An act for the relief of Dr. Daryl C. Johnson;

H.R. 6760. An act for the relief of Charles M. Metott;

H.R. 7819. An act to complement the Vienna Convention on Diplomatic Relations;

H.R. 11401. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, construction of facilities and research and program management, and for other purposes;

H.R. 12772. An act to facilitate the exchange of certain lands in the State of Oregon, and for other purposes;

H.R. 12860. An act to settle Indian claims within the State of Rhode Island and Providence Plantations, and for other purposes;

H.R. 12935. An act making appropriations for the legislative branch for the fiscal year ending September 30, 1979, and for other purposes; and

H.R. 12936. An act making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1979, and for other purposes.

On October 3, 1978:

H.R. 8149. An act to provide customs procedural reform, and for other purposes.

On October 5, 1978:

H.J. Res. 1007. Joint resolution authorizing and requesting the President to proclaim the 7-day period beginning on May 4, 1979, as "Asian/Pacific American Heritage Week";

H.J. Res. 1088. Joint resolution providing financial assistance for the city of New York;

H.R. 8449. An act for the relief of Lourdes Marie Hudson;

H.R. 8812. An act to name a certain Federal building in Jonesboro, Arkansas, the "E. C. 'Took' Cathings Building";

H.R. 11291. An act to authorize appropriations for the Federal Fire Prevention and Control Act of 1974, and to change the name of the National Fire Prevention and Control Administration to the United States Fire Administration;

H.R. 12443. An act to amend section 201(a), 202(c) and 203(a) of the Immigration and Nationality Act, as amended, and to establish a Select Commission on Immigration and Refugee Policy;

H.R. 12508. An act to amend the Immigration and Nationality Act to facilitate the admission into the United States of more than two adopted children, and to provide for the expeditious naturalization of adopted children; and

H.R. 13745. An act to authorize appropriations to carry out conservation programs on military reservations and public lands during fiscal years 1979, 1980, and 1981.

On October 6, 1978:

H.R. 1920. An act to amend section 5064 of the Internal Revenue Code of 1954 to provide for refund of tax on distilled spirits, wines, rectified products, and beer lost or rendered unmarketable due to fire, flood, casualty, or other disaster, or to breakage, destruction, or other damage (excluding theft) resulting from vandalism or malicious mischief while held for sale;

H.R. 9071. An act to confer jurisdiction upon the United States Court of Claims to hear, determine, and render judgment upon the claim of John T. Knight;

H.R. 11567. An act to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1979 and 1980, and for other purposes; and

H.R. 12222. An act to amend the Foreign Assistance Act of 1961 to authorize development and economic assistance programs for fiscal year 1979, to make certain changes in the authorities of that Act and the Agricultural Trade Development and Assistance Act of 1954, to improve the coordination and administration of United States development-related policies and programs, and for other purposes.

On October 7, 1978:

H.R. 10822. An act to improve the operations of the national sea grant program, to authorize appropriations to carry out such program for fiscal years 1979 and 1980, and for other purposes;

H.R. 12598. An act to authorize appropriations for fiscal year 1979 for the Department of State, the International Communication Agency, and the Board for International Broadcasting, to make changes in the laws relating to those agencies, to make changes in the Foreign Service personnel system, to establish policies and responsibilities with respect to science, technology, and American diplomacy, and for other purposes; and

H.R. 12841. An act to prohibit the issuance of regulations on the taxation of fringe benefits, and for other purposes.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 7010, VICTIMS OF CRIME ACT OF 1977

Mr. MANN. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 7010) to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

NOBEL PEACE PRIZE FOR SOVIET WATCHERS OF HELSINKI AGREEMENT

Mr. ZABLOCKI. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 1372) supporting the nomination of the Public Groups to Promote Observance of the Helsinki Agreement in the Union of Soviet Socialist Republics for the 1978 Nobel Peace Prize.

The Clerk read as follows:

H. RES. 1372

Whereas the Union of Soviet Socialist Republics freely agreed to the international humanitarian and human rights obligations of the Final Act of the Conference on Security and Cooperation in Europe, also known as the Helsinki Agreement;

Whereas the Soviet members of the Public Groups to Promote Observance of the Helsinki Agreement in the Union of Soviet Socialist Republics have encouraged the Government of the Soviet Union to abide by such obligations in the conviction that international openness and the freer movement of peoples and ideas have a direct relationship to the problems of international security;

Whereas Soviet members of the Public Groups in Moscow, the Ukraine, Lithuania, Georgia, and Armenia have been harassed, arrested, imprisoned, stripped of their citizenship, exiled, tried, and sentenced.

Whereas the brave men and women of various faiths and nationalities who are members of the Public Groups deserve admiration, respect, and support for placing their lives at the service of decency and peace in relationships among nations; and

Whereas the Public Groups to Promote Observance of the Helsinki Agreement in the Union of Soviet Socialist Republics have been nominated for the 1978 Nobel Peace Prize by parliamentarians of Norway, Belgium, Great Britain, and Canada and by the members of the United States Commission on Security and Cooperation in Europe: Now, therefore, be, it

Resolved, That the United States House of Representatives joins in support of the nomination of the Public Groups to Promote Observance of the Helsinki Agreement in the Union of Soviet Socialist Republics for the Nobel Peace Prize to be awarded on December 10, 1978.

SEC. 2. The Clerk of the United States House of Representatives shall transmit a copy of this resolution to the Nobel Institute in Oslo, Norway.

The SPEAKER pro tempore. Is a second demanded?

Mr. BUCHANAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. ZABLOCKI) and the gentleman from Alabama (Mr. BUCHANAN) will be recognized for 20 minutes each.

The Chair recognizes the gentleman from Wisconsin (Mr. ZABLOCKI).

Mr. ZABLOCKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1372 was introduced by our colleague, the gentleman from California (Mr. WAXMAN). Joining him were our colleagues, the gentleman from Michigan (Mr. BROOMFIELD) and the gentleman from New York (Mr. GILMAN).

Mr. Speaker, this resolution was introduced on September 21, 1978. On October 4 the Committee on International Relations considered the resolution and ordered the resolution favorably reported by unanimous voice vote.

House Resolution 1372 would endorse the decision made by the parliamentarians of Canada, Great Britain, Norway, and Belgium, and the members of the Conference on Security and Cooperation in Europe, to nominate for the Nobel Peace Prize the public groups which monitor compliance by the Soviet Union with the human rights provisions of the Helsinki Agreement. The prize is to be awarded on December 10, 1978.

Mr. Speaker, the first Public Group To Promote Observance of the Helsinki Agreement and to undertake the oversight of Soviet compliance with the Helsinki Agreement was established in Moscow in May 1976 by Yuri Orlov, and includes in its membership Aleksandr Ginzburg and Anatoly Scharansky. Similar watch or observance groups were organized and formed in Armenia, Georgia, Lithuania, and the Ukraine.

Mr. Speaker, the committee has been advised that of the 59 members of the monitoring groups, 21 have been imprisoned for their courageous efforts. This resolution recognizes the actions of these courageous groups in monitoring the violations of human rights in the Soviet Union, in violation of the Helsinki agreement, and expresses the sense of House of Representatives in support of their nomination for the Nobel Peace Prize.

A Senate resolution, Senate Resolution 512, similar to this House resolution now before us, was passed by the Senate on July 13, 1978, by a vote of 90 to 1.

I urge favorable action on the part of this House and urge an aye vote for this House Resolution 1372.

GENERAL LEAVE

Mr. ZABLOCKI. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on this resolution (H. Res. 1372).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. BUCHANAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join with our distinguished chairman in urging the adoption of this resolution.

In the 2 years that I have served as a member of the Commission on Security and Cooperation in Europe, I have witnessed repeated acts of heroism in which citizens behind the Iron Curtain armed not with military weapons but with the truth sought to fight those who would continue tyranny and repression.

In many instances they have suffered gravely. At least one man has died. Many others are imprisoned and may die there. Families are separated.

Yet the record of the suffering of those who have gone before them has not deterred the Helsinki monitors who continue today in their efforts to create a more open society for those who will follow.

The resolution before us today commends the Soviet members of the public groups to promote observance of the Helsinki agreement and underlines our support of the nomination of the public groups for the Nobel Peace Prize, a nomination already submitted by the Commission on Security and Cooperation in Europe.

The men and women of the Helsinki watch groups have put consideration for their own safety aside to espouse those principles to which the Soviet Government committed itself in signing the Helsinki Final Act 3 years ago.

They have displayed a courage much akin to that of the founders of this Nation who sought to create a nation based upon a respect for human dignity and the protection of basic freedoms.

Their struggle ought to be recognized and encouraged. The awarding of the Nobel Peace Prize to this group would constitute significant recognition and underline the importance to all mankind of their heroism and courage.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. BUCHANAN. I gladly yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank my colleague for yielding.

As a fellow member of the Commission, I know the wonderful work my colleague has done in this regard and the concern that we all feel for these heroic people. They are not asking for anything extraordinary. They are merely asking that the provisions of the final act signed at Helsinki on August 1, 1974, be obeyed, be honored, by those signatory countries that put their names to that final document.

I think it is clear and appropriate that the Nobel Peace Prize should go to these people because they are talking for justice. Certainly we have learned that without justice there is no peace.

I thank the gentleman for yielding.

Mr. BUCHANAN. I thank the gentlewoman. She is the distinguished author of the idea of the Commission which was formed by this Congress to oversee the performance of those who had signed the Helsinki accords. She is a very valuable member of that Commission, and I know her devotion to the cause which these heroic people are espousing. Again, I urge adoption of this resolution.

Mr. Speaker, I yield back the remainder of my time.

Mr. ZABLOCKI. Mr. Speaker, I yield such time as he may require to the principal sponsor of the resolution, the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I am honored to have authoried this resolution. It forcefully expresses the endorsement of this body of the nomination of the Helsinki watch groups in the Soviet Union for this year's Nobel Peace Prize. In so doing, the House of Representatives will joint the Senate, the parliaments of Norway, Belgium, the United Kingdom, and Canada, and our own Commission on Security and Cooperation in Europe in urging the award of humanity's most coveted honor on the courageous men and women who have worked so hard for decency and peace in the Soviet Union.

They have paid a terrible price for their efforts; 1978 has seen the culmination of the Soviet Union's campaign to systematically destroy the Helsinki watch groups, Anatoly Scharansky, Aleksandr Ginzburg, Yuri Orlov, Ida Nudel, Vladimir Slepak, and Grigory Goldshtein have this year joined dozens of their colleagues from throughout the Soviet Union—from Moscow, the Ukraine, Lithuania, Georgia, and Armenia—in prison or in exile.

In their work, these members of the Helsinki watch group have merely sought to obtain their government's compliance with the solemn obligations the Soviet Union undertook in Helsinki 3 years ago to protect human rights and freedom of emigration.

But time and again, the Soviet Government has demonstrated—through intimidation, harassment, arrest, and imprisonment—its utter intolerance of these activities.

The message has hardly been lost on those who are seeking justice in the Soviet Union. I visited Moscow, Leningrad, and Kiev in March, and met with many who are today imprisoned. All of them, their families, and those associated with them knew what their fate would be. But they could not, and would not, be deterred from acting on their consciences, from seeking to make their Government accountable to the standards it had set for itself, and from acting in the highest interests of human dignity and freedom.

No prison can silence their voices. No walls can shield their activities. No shroud of repression can keep out the concern of so many in all corners of the Earth.

The member of the Helsinki Watch Groups in the Soviet Union stand as examples to all who cherish the cause of peace throughout the world. No greater tribute could be bestowed in recognition of their achievement than the award of the Nobel Peace Prize.

Mr. Speaker. I cannot thank enough the distinguished chairman of the International Relations Committee for his determination to bring this resolution to the floor, and to the ranking minority member of the committee (Mr. BROOMFIELD) for his cosponsorship and assistance.

Mr. Speaker, I urge adoption of this resolution.

● Mr. BROOMFIELD. Mr. Speaker, I rise in support of House Resolution 1372. This resolution, which I cosponsored, provides that the Congress support the nomination of the Public Group to Promote Observance of the Helsinki Agreement in the Soviet Union for the Nobel Peace Prize.

Mr. Speaker, soon after the final act of the Helsinki Conference on Security and Cooperation was completed in 1975, citizen groups throughout the Soviet Union were formed to insist upon the full and true implementation of the agreement. These groups have tried to better acquaint the public with the Helsinki Accords and, in particular, to make people aware of individual rights as provided by the agreement. The Soviets, however, have arrested, imprisoned, and exiled many members of the citizen groups despite the strong warnings by our Government and, in particular, our courageous Ambassador to the Belgrade Conference, Arthur J. Goldberg.

At this time, progress in the humanitarian area of the Helsinki Agreement—known as Basket Three—has been disturbingly disappointing. In the last year the Soviets have sentenced Yuri Orlov, the founder of a public group to monitor Helsinki violations, to 7 years imprisonment followed by 5 years of internal exile. The treason trials of Anatoly Scharansky and others, staged with Stalinist-like controls, are simply further chapters in the continuing story of the Russian repression of members of the Helsinki monitoring groups.

I sincerely believe that these heartless Soviet activities not only strongly undermine the spirit of détenté, but also the spirit of individuality. These harassments—these arrests—these exiles are indicative of the continued Communist repression of people who simply wish to better guarantee the dignity and the rights of individuals—as provided by the Helsinki Agreement which the Soviet Union has signed.

The members of the citizen groups deserve our deepest concerns—our admiration—our respect—our support. In joining in the support of these people for the Nobel Peace Prize, by recognizing these citizens who wish to guarantee the dignity and rights of all individuals, we can

help to provide for a new and better world in which to live.

I urge my colleagues to adopt the resolution before us.●

● Mr. DRINAN. Mr. Speaker, I rise in support of House Resolution 1372, which would nominate the Public Groups to Promote Observance of the Helsinki Agreement in the Union of the Soviet Socialist Republics for the Nobel Peace Prize.

It is altogether fitting that these groups should receive the Nobel Peace Prize in acknowledgement of their dedication to the protection of basic human rights. The Soviet Government, in flagrant disregard for the terms of the Helsinki Agreement and international law, refuses to respect the right of these groups to exist. Instead, that government has systematically attempted to destroy these groups by intimidating, harassing, and imprisoning their members.

Since February 1977, 22 Soviet citizens, including Anatoly Scharansky and Yuri Orlov, have been arrested because they chose to exercise rights guaranteed by the terms of the Helsinki Accords. Their sole "crime" was to openly question whether their government had actually implemented the 1975 Helsinki Agreement, which guaranteed that signatory nations would conform their domestic conduct to internationally recognized standards of human rights.

Mr. Speaker, by its actions the Soviet Government has clearly demonstrated that it has not fulfilled its obligations, and that it continues to ignore basic human freedoms. By recommending the Public Groups for the Nobel Peace Prize, the House of Representatives will not only be endorsing the conduct of these courageous freedom fighters, but we will further alert the Soviet Government to the grave concern with which we look upon their continuing campaign of brutal repression. I urge the unanimous passage of this resolution.●

● Mr. BINGHAM. Mr. Speaker, I urge passage of the bill now under consideration, House Resolution 1372, which expresses the sense of the Congress that the 1978 Nobel Peace Prize should be awarded to the 55 men and women who comprise the Soviet Helsinki watchers. This legislation, introduced by my distinguished colleagues, Representatives WAXMAN, BROOMFIELD, and GILMAN, supports the formal nomination of the Helsinki monitors made by parliamentarians in Belgium, Canada, Great Britain, and Norway, as well as by the Commission on Security and Cooperation in Europe, of which I am a member. It is similar to legislation enacted by the Senate earlier this year. I urge my colleagues in the House to demonstrate their support for this nomination by adopting the resolution.

In May 1976, the first Public Group to Promote Observance of the Helsinki Agreement in the U.S.S.R. was formed in Moscow under the leadership of Prof. Yuri Orlov. Companion groups were later established in Ukraine, Georgia, Armenia, and Lithuania. These courageous Soviet citizens took upon themselves the thankless task of encouraging their government to comply with the human rights and humanitarian provisions of the 1975 Helsinki Final Act. Collecting and disseminating information on violations of those provisions, these activists expressed their stated conviction "that the issues of humanitarianism and free information have a direct relationship to the problem of international security." Respect for human rights in the U.S.S.R., they hold, is a precondition for the development of a genuine East-West détente.

Through their actions, they have expressed the view held by the late Nobel Peace laureate, Dr. Martin Luther King, that "injustice anywhere is a threat to justice everywhere." Documenting and publicizing breaches of the Helsinki Accord—political, religious and ethnic persecution; obstacles to travel and emigration; censorship of communications—the members of the Helsinki monitoring groups sacrificed their security and often their freedom to advance the cause of peace, of peace founded in nations' respect for the dignity of every citizen, of peace founded on the universal acceptance of universal standards of human rights.

With the formation of the Moscow group and the subsequent establishment of the republican groups, the Soviet authorities were faced with an unprecedented situation. For the first time, all the diverse elements that make up what is known as the human rights movement were merged. Jewish refuseniks joined Ukrainian nationalists, Russian Orthodox worked together with Lithuanian Catholics, intellectuals were allied with workers. Men and women of various ages, nationalities and backgrounds—holding disparate opinions—were united in their desire and their efforts to see the humanitarian provisions of the Helsinki Final Act implemented in the Soviet Union. Soviet authorities—used to dealing with each of these groups separately and thus, effectively—were clearly alarmed by the specter of a unified movement and reacted by initiating a campaign of repression aimed at eliminating this threat.

For their efforts, many of the Helsinki monitors have already paid a terrible price. Two group members have been stripped of their Soviet citizenship while abroad and thus banished from their homeland. Twenty Helsinki watchers including Anatoly Scharansky, Aleksandr Ginzburg, Viktoras Petkus, Mykola Rundenko, and Merab Kostava, have been tried, convicted and sentenced to up to 15 years in prison, labor camp, and exile. It is extremely ironic and timely that today—while the House debates the merits of this resolution—in the Armenian capital of Yerevan, the trial of the last imprisoned Helsinki monitor, Robery Nazaryan, on charges of "anti-Soviet agitation and propaganda" begins. Nazaryan, a founding member and treasurer of the Armenian Group, was arrested on December 23, 1977. A member of the Armenian Apostolic Church he has, through his activities in the Public Group, attempted to focus world attention on the conditions under which the church operates in Armenia.

Tragically, the harassment and repression of Helsinki monitors does not end once they have become political prisoners. Reports have reached the West that both Ukrainian group member Pyotr Vins and Aleksandr Podrabinek, the founder of the group affiliate investigating psychiatric abuse, have been regularly beaten while in labor camp. Moscow group leader Yuri Orlov, a physicist sentenced to 12 years, somehow managed to write three scholarly scientific papers while being transferred to labor camp only to have them confiscated when he entered the camp. Similarly, Ukrainian Group Leader Mykola Rudenko, while serving his 12 year term, has had his private papers taken away.

Yet, despite such persecution, the groups continue to assemble their material and to transmit it to the Helsinki signatories for consideration, evaluation and public attention. The flow of information—like the current of repression in the Soviet Union itself—is almost uninterrupted. The work of the Public Groups in Moscow, Ukraine, Lithuania, Georgia, and Armenia is the work of men and women of great moral courage. They have committed their lives to the service of peace and decency in the conduct of nations.

Their dedication and sacrifice have earned them the special acknowledgement only the Nobel Institute can confer. The Helsinki commission was honored to act on the suggestion of former political prisoner Vladimir Bukovsky by nominating the Public Groups to Promote Observance of the Helsinki Agreement in the U.S.S.R. for the 1978 Nobel Peace Prize. I urge my colleagues to express their support for the nomination by voting in favor of House Resolution 1372.●

● Mr. GILMAN. Mr. Speaker, I rise in support of House Resolution 1372. When the United States signed the Helsinki Final Act in 1975, there was a glimmer of hope that a significant understanding had been worked out which would help bridge the gap between the East and West and which would ameliorate a number of longstanding political problems. Unfortunately, the legacy of Helsinki has fallen far short of those goals envisioned in 1975.

The Soviet Union's unconscionable disregard for its obligations under the Helsinki accords and other international covenants guaranteeing human rights has recently manifested itself in that Government's systematic campaign of repression against a small group of Soviet dissidents. Loosely organized under the title of the Public Groups to Promote Observance of the Helsinki Agreement in the Union of Soviet Socialist Republics, these brave men and women of the Public Groups in Moscow, the Ukraine, Lithuania, Georgia, and Armenia have been harassed, arrested, imprisoned, stripped of their citizenship, exiled, tried, and sentenced.

Their "crime" has been to organize and promote an open, nonviolent effort to encourage Soviet authorities to honor the human rights and humanitarian obligations, voluntarily undertaken by Secretary Brezhnev himself in signing the Helsinki Final Act in 1975.

The 58 members belonging to the Hel-

sinki Watch Groups, which represent numerous faiths and nationalities, have placed their freedom and their lives at great risk in support of decency and peace in relations among peoples and nations. Included in this group are Yuri Orlov, Aleksandr Ginzburg, Anatoly Scharansky, Vladimir Slepak, Viktoras Petkus, Naum Meiman, Father Yakunin, Olesky Tikhy, Mykola Rudenko, Pyotr Vins, Elena Bonner (wife of Andrei Sakharov), and Lev Lukyanenko.

In recognition of this remarkable dedication to peace and decency of the Helsinki monitors, an international effort has been undertaken to honor these groups by their nomination for the 1978 Nobel Peace Prize. Resolution endorsing their nomination have been passed by parliamentarians in Norway, Belgium, Great Britain, and most recently Canada. In addition, 11 members of our Commission on Security and Cooperation in Europe wrote the Nobel Institute in this regard.

On July 13, the Senate overwhemingly adopted such a resolution that was cosponsored by a bipartisan group of 58 Senators. Such action by the House would reiterate our commitment to the Helsinki accords, human rights, and freedom for those who have been so unjustly treated in the Soviet Union.

The resolution before the House, House Resolution 1372, expresses support of the House for the nomination for the 1978 Nobel Peace Prize of certain groups monitoring compliance of the Soviet Union with the human rights provisions of the Helsinki agreements.

As an original cosponsor of House Resolution 1372, which is identical to the Senate-passed version, I urge the full support of all my colleagues in the House in recognition of the brave men and women who have risked their lives for a free and peaceful world.●

Mr. ZABLOCKI. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. ZABLOCKI) that the House suspend the rules and agree to the resolution (H. Res. 1372).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

EXPORT-IMPORT BANK ACT AMENDMENTS

Mr. NEAL. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 1157) to amend section 8 of the Export-Import Bank Act of 1945.

The Clerk read as follows:

H.J. RES. 1157

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 of the Export-Import Bank Act of 1945 is amended by striking out "December 31, 1978" and inserting in lieu thereof "June 30, 1979".

The SPEAKER pro tempore. Is a second demanded?

Mr. STANTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina (Mr. NEAL) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. STANTON) will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. NEAL).

Mr. NEAL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Banking Committee has approved a continuing resolution (H.J. Res. 1157) to permit the Export-Import Bank of the United States to continue its work through June 30, 1979. Without this resolution, the Bank's authorization will expire on December 31, 1978.

As you know, the House approved on July 27 a full reauthorization bill, H.R. 12157, to extend the Eximbank through September 30, 1983, and to raise its credit ceiling from $25 billion to $40 billion. The Senate now has before it a similar bill, S. 3077, but that measure has been so loaded down with nongermane amendments, some of which are controversial, that it seems unlikely that Senate action can be completed in time to permit a conference before adjournment.

In the event that no appropriate reauthorization bill can be enacted this year, we will need this continuing resolution to keep the Bank going. If we do not take this precaution, the Eximbank would be unable to function for a considerable time next year until the new Congress could act on a reauthorization bill.

In view of our trade deficit of more than $30 billion a year and in view of President Carter's plan to use the Eximbank more aggressively in his new export promotion program, it would be unfortunate to have the bank immobilized for even a few months. Precious opportunities for sales abroad could be lost in this period.

It is regrettable, of course, that the Senate Eximbank bill has been bogged down by debate on unrelated amendments. But I recognize that some of these amendments deal with urgent and important matters. For example, one amendment approved by 56 to 21 in the Senate would exempt textiles from the multilateral trade negotiations at Geneva.

I am a cosponsor of the House version of the Senate textile amendment. I believe that it is an important and necessary measure. In fact, I only wish that this House had considered and passed the textile bill long ago, so that this issue would not have arisen so late in the session and at such a critical time in the GATT negotiations.

If any American product deserves to be taken off the negotiating table at Geneva, it is textiles. This industry, which employs nearly 2.5 million American workers, is particularly vulnerable to import competition. When developing nations industrialize, they turn first to production of textile products.

Over the years this country has been overly generous, I think, in our trade policies that have permitted these textile imports to penetrate the American market significantly. We certainly want an open world trading system. But there comes a time when we must see that our own interests receive fair consideration from others participating in the system. And there is strong evidence that textiles should not be required to sacrifice any further in the tariff-cutting agreements at Geneva.

An estimated 400,000 textile jobs in the United States have been eliminated by import competition over the past decade. Textile and apparel imports are now rising so rapidly that, at present rate, may exceed 50 percent of the U.S. market by 1981. Our textile and apparel trade deficit during 1977 was $3.4 billion; during 1978 it may be as much as $4.4 billion. And all this has happened without the tariff cuts contemplated by the administration.

As I said, it is unfortunate that the House did not consider and pass earlier the measure introduced by Mr. HOLLAND of South Carolina and Mr. BROYHILL of North Carolina to exempt textiles from the Geneva negotiations. Timely passage of that bill would have spared us this late-session tangle over the important but unrelated Eximbank bill.

The only alternative now, however, is to continue the Eximbank with this resolution so that its important work in promoting the sale of American goods overseas will not be interrupted.

Mr. STANTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Joint Resolution 1157, of which I am a cosponsor. The purpose of this joint resolution is to extend the life of the U.S. Export-Import Bank from the end of December to the end of June next year. The need for this continuing resolution arises because of the Senate's failure to pass the 5-year extension of the Bank which we passed months ago in the House by a vote of 314 to 47. This extension will enable us to consider "a renewal of Exim's charter early next year when time is not such a problem."

I urge my colleagues to support this resolution.

Mr. Speaker, I have no requests for time. I yield back the balance of my time.

Mr. NEAL. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. NEAL) that the House suspend the rules and pass the joint resolution (H.J. Res. 1157).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. NEAL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution (H.J. Res. 1157) just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Debate has been concluded on all motions to suspend the rules.

Pursuant to clause 3, rule XXVII, and the order of October 4, 1978, votes on the following motions to suspend the rules will be postponed until October 12, when they will be the unfinished business of the House in the following order:

H.R. 9893, yeas and nays.

S. 957, yeas and nays.

S. 1503, yeas and nays.

EXCHANGE STABILIZATION FUND AMENDMENTS ACT OF 1978

Mr. NEAL. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the Senate bill (S. 2093) to provide that the Exchange Stabilization Fund shall not be available for payment of administrative expenses; and for other purposes, with a House amendment to the Senate amendments, to the House amendment to the Senate amendment, and concur in the Senate amendment with an amendment.

The Clerk read the title of the Senate bill.

The Clerk read the House amendment to the Senate amendments to the House amendment to the Senate amendment, as follows:

Pages 1 and 2 strike Sec. 3 and insert in lieu thereof the following:

SEC. 3. (a)(1) Subject to the provisions of chapter 51 of title 5, United States Code, but notwithstanding the last two sentences of section 5108(a) of such title, the Secretary may place at GS–16, GS–17, and GS–18, no more than 61 positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title.

(2) A person may be appointed to a position placed at GS–16, GS–17, or GS–18 under the authority of paragraph (1) only if such person, immediately before the effective date of this Act, held a position or has reemployment rights to a position—

(A) the duties of which were comparable to those of the position to which he is to be appointed; and

(B) for which the compensation derived from the stabilization fund established under section 10 of the Gold Reserve Act of 1934 (31 U.S.C. 822a).

Appointments made under this paragraph may be made without regard to the provisions of section 3324 of title 5, United States Code, relating to the approval by the Civil Service Commission of appointments to GS–16, GS–17, and GS–18.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to such position under paragraph (2) leaves such position.

(b) The first sentence of section 5108(a) of title 5, United States Code, is amended by striking out "3301" and inserting in lieu thereof "3362".

(c) For purposes of determining the aggregate number of positions which may be placed in GS–16, GS–17, or GS–18 under sections 5108(a) of title 5, United States Code, a position established under subsection (a) shall be deemed a GS–16 position.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

Mr. STANTON. Mr. Speaker, reserving the right to object, I shall not object, but I wonder if the chairman of our subcommittee would kindly explain what the purpose of this legislation is.

Mr. NEAL. Mr. Speaker, if the gentleman will yield, I will be glad to do so.

Mr. Speaker, the amendment I propose is a simple one: it restores the language of the House as it relates to the Government-wide pooling of supergrade positions. Under S. 2093 some 60 positions are created to replace those non-civil-service positions abolished by this legislation. The Senate amendment would assign these permanently to the Treasury Department, while the House language assigns them to a Government-wide pool. Under the House language these positions will be initially assigned to the Treasury; though they may be reassigned if that is deemed appropriate.

I understand that the Senate and the Treasury now agree to this language and that the Senate will act on this legislation promptly.

Mr. STANTON. Mr. Speaker, as the gentleman said, what we have been referring to here is that what we wanted to do is to preserve the House version, which is the Hanley-Rousselot amendment.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 12050, TUITION TAX CREDIT ACT OF 1978

Mr. ULLMAN. Mr. Speaker, I call up the conference report on the bill (H.R. 12050) to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

The Clerk read the title of the bill.

(For conference report and statement, see proceedings of the House of October 3, 1978.)

The SPEAKER pro tempore. Under the rule previously adopted, the conference report is considered as having been read.

The gentleman from Oregon (Mr. ULLMAN) will be recognized for 30 minutes, and the gentleman from New York (Mr. CONABLE) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the House must vote on the conference report on H.R. 12050 which provides a tax credit for tuition paid to institutions of higher education and postsecondary vocational schools. As chairman of the conference, and as one of the House conferees who made the difficult decision to bring this report back without tax credits for elementary and secondary education to the House, I would like to explain the issues and choices faced by the conference committee.

When I went into the conference, I had every intention of bringing back an agreement containing the full program desired by the membership of this House. I was firmly committed to a program of tax credits, not just for postsecondary education, but a program which also covered tuition paid to elementary and secondary schools. The deliberations by the conference committee on providing a credit for elementary and secondary school tuition was one of the toughest I have participated in since coming to the Congress.

From the outset, the House conferees were confronted with the firm opposition of the Senate conferees on behalf of the Senate against extending any credit to elementary and secondary schools. Some of the Senate conferees, particularly Senator MOYNIHAN and Senator PACKWOOD had been the strongest proponents of elementary and secondary credits during the Senate debate. But, even those Senators indicated that a conference report containing a tuition credit for elementary and secondary education could not pass the Senate.

After much debate, the conferees from both the House and Senate discussed the possibility of including a de minimis credit for elementary and secondary education in the conference bill. It was our hope that at least we could provide a test case for the constitutionality of elementary and secondary credits.

However, before the conferees even could vote on this de minimis approach, the Senate opponents of elementary and secondary credits learned about the conferees' discussion of a de minimis credit. The Senate opponents notified the Senate conferees that a bill containing even a token elementary and secondary credit could not pass the Senate. The principal Senate opponent of elementary and secondary credits, Senator HOLLINGS, came to the conference and personally informed the conference committee that the Senate would not pass any form of elementary or secondary school credit, even one designed, merely, to provide the courts with a test case.

Thus, the choice for the House conferees became clear. We could stalemate the conference by holding out for an elementary and secondary credit, and probably kill any tuition credit legislation in this Congress; or, we could consider agreeing to a bill which would contain only the higher education credit.

Also looming over the entire conference, was the renewed threat of a Presidential veto. While it is not clear whether the President will accept even a bill providing a credit only for higher educational expenses, the President has stated emphatically that he will not sign a bill providing tax credits for elementary and secondary education.

Mr. Speaker, the majority of the House conferees felt that the Members of this House want some form of tuition credit legislation this year. We believed that, rather than stalemate, it would be the preference of the House to have the opportunity to vote at least for credits for higher education.

We also believed that it was important to establish in the law the principle of a tax credit for education expenses. This bill establishes that important principle.

I sincerely regret that the sentiment in the Senate prevents the inclusion of a credit for elementary and secondary education in this legislation, as the House voted. However, I believe that by enacting this bill to provide a tuition credit for higher educational expenses, we will improve the chances for the enactment of elementary and secondary credits in the future.

Mr. Speaker, H.R. 12050, as reported by the conference committee, provides a nonrefundable tax credit equal to 35 percent of the tuition paid to one or more institutions of higher education or to postsecondary vocational schools. This was a compromise between the 25-percent credit in the House bill and 50 per cent in the Senate bill.

The credit applies to tuition paid by an individual for himself, his spouse, or his dependents and is effective for amounts paid for education on or after August 1, 1978.

The conferees accepted the maximum amounts of the credit as provided by the House. For 1978, the maximum allowable credit is $100. The maximum increases to $150 in 1979 and to $250 for both 1980 and 1981. Tuition for half-time students, who are enrolled for at least 4 months of a calendar year, will be covered as of January 1, 1980. The credit is to apply for 4 years through 1981.

The conference bill involves lower revenue losses than either the original House or Senate bills. The conference bill entails revenue losses of $330 million in fiscal year 1979, $539 million in fiscal year 1980, $968 million in fiscal year 1981, and $845 million in fiscal year 1982.

Mr. Speaker, I would like to speak very briefly about the possibility of a vote to recommit the conference report because of the primary and secondary issue. I think that such a vote would guarantee that the Congress would stalemate on this entire issue this year. For those who would like to kill the whole issue, a vote to recommit or to reject the conference report obviously would be one way to do it. I personally feel that those people who want the principle of credits established in the law should vote favorably on this conference report. I think it would give the supporters of primary and secondary credits a far better chance to work for their goal in the future, once the principle of a tuition credit has been established.

So, I strongly urge the Members of the House to support the conference report.

Mr. VANIK. Mr. Speaker, will the gentleman yield?

Mr. ULLMAN. I will be happy to yield to my friend, the gentleman from Ohio (Mr. VANIK), who led the fight on the House floor and in the conference for the primary and secondary education credit.

I want to say that he has been a valiant fighter for that cause, and could not have done a better job in conference in defending that position. So, I am happy to yield to the gentleman from Ohio.

Mr. VANIK. I thank the distinguished chairman of the Ways and Means Committee.

Mr. Speaker, I simply want to point out that I understand that the gentleman from Ohio (Mr. GRADISON), a distinguished colleague, will offer a motion to recommit the conference report on this bill with instructions to include the provisions of the amendment I offered when the House considered this bill, and which was adopted in the bill, that is, to provide for the eligibility of private elementary and secondary schools for the tuition credit.

I disagreed with the decision of the conferees to limit the credit to tuition for higher education. The tuition tax credit conference report before us today provides for minimum tuition credits for a minimum period of time to provide for an opportunity for a court test for the constitutionality of the legislation. It is important that the court test be applied to tuition credits for elementary and secondary schools as well as higher education. The court test should apply to the complete issue involved.

So, Mr. Speaker, I urge the House to support the motion to recommit this conference report in order to include credits for secondary and elementary school tuition.

Mr. ULLMAN. Mr. Speaker, I reserve the balance of my time.

Mr. CONABLE. Mr. Speaker, I yield 5 minutes to the gentleman from Ohio (Mr. GRADISON).

Mr. GRADISON. Mr. Speaker, I thank the gentleman for yielding. At the appropiate time after the debate is completed, I will offer a motion to recommit already alluded to by my colleague on the Committee on Ways and Means, the gentleman from Ohio (Mr. VANIK).

Mr. Speaker, I rise to offer a motion to recommit the conference report on H.R. 12050 with instructions to the managers on the part of the House to insist that a tuition tax credit be provided for tuition paid to elementary and secondary schools. This would mean a reduction in taxes of 35 percent of amounts paid by taxpayers for their children's elementary and secondary school tuition up to a maximum credit this year of $50 and in later years of $100.

I believe the arguments for the tax credit at all levels of education—including elementary and secondary grades—are strong and persuasive. Singling out just some rungs of the educational ladder for assistance but not others makes no sense in a bill designed to help parents meet the costs of educating their dependents. Equity demands responding to the needs at all levels of education.

The need for the tax credits is certainly as great at the elementary and secondary levels as at the college level. Half the parents of children in private elementary and secondary schools have incomes of less than $17,000 a year. Although many private school tuitions are as low as a few hundred dollars a year, many families have to scrimp on basic necessities to meet these costs. Often these same parents are staggering under the heavy load of property taxes which pay for the public schools in their area—schools which they do not use. Sometimes their child has special needs which require an educational approach different from that offered by the local public schools. Sometimes the public schools simply are not doing an adequate job. But whatever their reasons for choosing nonpublic education, these parents need the tax credit not only to ease their financial burden but more importantly, to show them that the Federal Government is doing its part, along with State and local governments, in developing an even-handed approach to financing public and nonpublic education.

Parents ought to have a choice about where their children go to school. Most will continue to use the public schools as I did for my elementary and secondary education. But when they feel it would be in their children's best interests, parents ought to be able to turn to nonpublic alternatives. Maintaining the educational diversity that makes us all richer requires not only that parents have the right to use alternative institutions, but that they be able to afford to exercise this right. Both public and nonpublic education will benefit from this healthy competition. Indeed the heavy burden of financing public education is reduced when nonpublic education lowers the number of students in public systems. The tuition tax credit embodies our belief that many educational options ought to exist and be encouraged.

The constitutionality of tuition tax credits at the elementary and secondary levels has been questioned. I do not know what the court will decide; its record on this issue is uneven, contradictory, and bewildering. Until a court test actually occurs on the credits contemplated in this legislation, there is no way to be certain of the result. I firmly believe, however, that it is up to the Court to decide the constitutionality of these credits—not the Congress, not the President, and certainly not the Secretary of Health, Education, and Welfare. Our job here is to legislate to the best of our ability and to devise the most appropriate Government responses to the needs and problems of our citizens. We should concentrate on this task and leave to the Supreme Court its job of subsequently reviewing the product of our efforts.

I urge the House to instruct its conferees to return to the conference committee and hold fast to the House position in favor of including elementary and secondary education in the tax credit bill. When the conferees reached an impasse over this issue 2 weeks ago, limiting the bill to just higher education broke the deadlock and gave the House another chance to express its will on including elementary and secondary education. A vote in favor of my motion to recommit is a vote to insist on the posi-

tion of this House in adopting the Vanik amendment to make tuition paid to elementary or secondary schools eligible for the same credit as post-secondary education.

Mr. CONABLE. Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Speaker, when I heard that the conferees on the tuition tax credit bill had eliminated the House position on credits for elementary and secondary education tuition on the conference report, I knew I would have to support a motion to recommit the report to the conference. Along with my distinguished colleague from Ohio (Mr. VANIK), I was the sponsor of the amendment which established the House position on this floor. I think it is both unwise and unfair to abandon the House position on this matter.

I am now pretty well persuaded that such an action will not be successful. The Senate managers have indicated that any conference report containing either elementary or secondary, or both, tuition tax credits will be filibustered and eventually lost in the other body. That is a persuasive threat.

And, as if that were not bad enough, the President, at monotonously regular intervals, keeps threatening to veto this bill. The veto, no matter how misguided, will surely come, we are told, if elementary and secondary credits are in the bill. A veto is also threatened on the college credits, but that is less likely, and perhaps it can be overridden.

Therefore, I expect the recommittal motion to fail, not because our Members do not support the inclusion of elementary and secondary education, but because they fear the college credit may be lost. They feel it is better that we establish the precedent of tuition tax credits this year in this bill for college tuition, than to make a desperate battle to maintain elementary and secondary credits and ultimately lose the whole bill. They may be right, but I think we ought to make one last try for fairness. If my fears are realized, and the motion to recommit is lost, it is my hope that we pass this bill by a strong enough majority so that the threat of a veto is obviated. The case for college tax credits has been proved and reproved. The people who are paying this tuition desperately need this vital tax relief. There is little objection to college tuition-tax credits except from the President and others who want the Federal Government to control all facets of education.

The bill contained in this conference report is a meager first step. Not only is it lacking in coverage of elementary and secondary education, but also the percent allowed and the maximum amounts are so small as to be described as "only-a-beginning" program.

But, I, personally, feel the greatest regret about the elimination of elementary and secondary education. The percentage of school children in nonpublic institutions will continue to decline. Freedom of choice will not be available to most parents, especially to those with more than one or two children. A choice will surely not be available for most parents in central cities.

Parents who place a special priority on traditional values, academic achievement and discipline, but who are of limited means, will, along with their children, be the big losers. And the fine public system we all support with enthusiasm will not necessarily be the winner. As nonpublic schools fade from the scene, the public schools will have less competition, less challenge and will be less motivated. Like any institution, the individual elements of our public school system function best when they are subject to real competition in the marketplace. Public systems often operate best where nonpublic schools are strongest.

The educational establishment may breathe a sigh of relief that this challenge has passed, but thoughtful people who want our public system at its very best are not relieved. For instance, all of my own children attended public elementary and secondary schools which were of good quality partly because they were challenged by good local nonpublic schools. Those nonpublic schools helped to make the public schools my children attended much better schools.

Mr. Speaker, even though I expect the motion to recommit to fail, I will certainly work to add next year, or whenever soonest possible, elementary and secondary tax credits to the bill we are passing today. We need them now, but we will have to try for them again in the future.

The rest of the conference report, the college credit, represents a first step forward. It will be a fine thing to be able to offer relief to people who are facing one of the fastest rising, and most necessary, costs in our society today, college tuition. It is an even finer thing that we are doing it with a minimum of Federal redtape, a minimum of Federal interference, and a maximum of personal choice.

I wanted a bigger step forward, but I am pleased with this beginning. I hope the vote for this conference report is overwhelming.

Mr. CONABLE. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania (Mr. COUGHLIN).

Mr. COUGHLIN. Mr. Speaker, I rise in support of tuition tax credits, a measure designed to provide long overdue financial assistance to students and families to meet the ever-increasing costs of education. The conference report to H.R. 12050, which is before us today, provides a 35 percent tax credit for college tuition paid up to $100 in 1978, $150 in 1979, and $250 in 1980 and 1981. It applies to full-time students through 1979 and full- and part-time students from 1980. It is at least a start in providing middle income families some relief during that period in their lives when they are most financially hard pressed.

Tuition tax credits have been passed by the Senate several times and were approved by the House on June 1, 1978, by a solid vote of 237 yeas to 158 nays. This show of support is further bouyed by votes on making provision in the budget resolutions for the cost of a system of tax credits. The Coughlin amendment to the second concurrent budget resolution for fiscal year 1978 was approved by a vote of 331 yeas to 76 nays. The Coughlin amendment, as amended by Congressman LUKEN, to the first concurrent budget resolution for fiscal year 1979 was approved by a vote of 227 yeas to 136 nays. The Budget Committee, itself, made room in the second concurrent budget resolution for fiscal year 1979 for this program.

The Department of Health, Education, and Welfare does not like the tuition tax credits approach and widely touts the Middle Income Student Assistance Act as an alternative. In a secret memo from HEW Secretary Joseph Califano, Jr., to President Jimmy Carter, the need to "move quickly if we are to seize the initiative on this very hot issue" is stressed. MISA was developed in response to a fear that Congress might enact some form of tuition tax credits and it looks as though it is just such a hastily drawn and poorly planned program. In order to retain control over educational assistance, HEW favors taxing U.S. citizens, transferring the money from the Internal Revenue Service to the Department of the Treasury, running it through the congressional authorization and appropriations process, giving it to the Department of Health, Education, and Welfare, and allowing HEW to give it back to the students if applications are filled out correctly.

On the other hand, tuition tax credits allow the individual family to retain control of its own money. A simple program to administer, the taxpayer does the work him or herself, sparing the country from further proliferation of HEW employees and redtape. Tax credits respect the relative privacy of students and parents. It gives certainty and predictability to family planning for educational expenses, while encouraging the family to maintain responsibility for education of the children since only a 35 percent credit is provided. Over 78 percent of the tuition tax benefits will go to those with annual incomes below $25,000. Although this may be considered a good income by many, it is hardly adequate to allow a family to devote $3,000 to $7,000 per year to college expenses. Widely accepted and understood, there is precedent for tax credits and certainly no activity more worthy than education.

For all of these reasons, I urge swift approval of the conference report by my colleagues and an even swifter approval of this legislation by the President. During a telephone conversation with President Carter last week, I was heartened to learn that his mind is open to tuition tax credits and that he will consider them. One cannot help but recognize the overwhelming, bipartisan, and broad-based support for tax credits. Perhaps this is because tuition tax credits provide modest assistance for those sincerely in need of it, stay within the budget, and do not require additional administrative employees.

Mr. CONABLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have already had from several Members a careful description of the situation the House finds itself in in this particular case. I am pleased that the conference is back with a favorable report for tuition tax credits for higher

education. I would have preferred a proposal that would have given credits also to elementary and secondary students and their families and I will support the motion to recommit.

I must say that as I went through this particular conference, I found it very difficult to decide what was the correct strategy for those who support such generalized tuition tax credits.

According to the Senate conferees, including the two prime sponsors of elementary and secondary credits in the Senate, House conferees had to make a choice between getting some sort of a tuition tax credit bill by limiting it to higher education only or insisting on including elementary and secondary education and, in effect, killing the bill for the 95th Congress.

Whatever the attitude of my colleagues on that particular issue, I think they would agree that this should not have been killed in conference, through a continuing impasse that developed there over elementary and secondary tuition tax credits.

For that reason, Mr. Speaker, I accepted the views of the prime sponsors of elementary and secondary credits in the other body and signed the conference report, giving the House a chance, once again, to work its will and to consider and reconsider, if it wishes, the issue of elementary and secondary tuition tax credits.

Mr. Speaker, I hope the House will stand firm. I hope the conference will be reconstituted and the Senate will reconsider its position because I think we are making a very important and pattern-setting decision which ought to be resolved in favor of elementary and secondary children as well as college students.

But I do not agree with those people who say if we cannot get elementary and secondary credits, the correct thing to do is to vote against any form of tuition tax credit. If we take that position, Mr. Speaker, I am afraid the result will be inevitably to skew our educational policy in the direction of the middle-income student assistance plan which the President has proposed as an alternative, which is a bureaucratic device for taking tax money in and then passing it out through the colleges themselves. That obviously is not an option available on the elementary and secondary education level, for constitutional reasons. In my view, that would not be in the long-term interests of education.

I will say that some colleges seem to prefer this expansion of the bureaucratic process of passing out tax money because it gives them some control over the money, whereas the tuition tax credit leaves the control over the money in the hands of the taxpayers themselves.

That argument alone is decisive for me in preferring the tuition tax credit and in preferring that this benefit be spread as broadly as possible rather than be subject to bureaucratic caprice.

I have been asked to mention some of the costs of the proposal now before us whether or not we add the elementary and secondary credit by a vote to recommit, and I think that it is important that we have an understanding of costs before us when we vote on this legislation.

As my distinguished chairman said, the maximum credit per student, based on 35 percent of the tuition paid, was to be, until the end of 1978, $100; for calendar year 1979, $150; and for calendar years 1980 and 1981, $250. The cost of that would be $330 million for fiscal year 1979, $539 million for fiscal year 1980, $968 million for fiscal year 1981, and $845 million for fiscal year 1982. The elementary and secondary credit which was considered was the so-called Vanik proposal at $50 for the first year and $100 for the 2 successive years. The cost of that would be $260 million additional for fiscal year 1979, $405 million for fiscal year 1980, $415 million for fiscal year 1981. If tuition credit were accepted for both levels of education, the higher education and the elementary and secondary levels, in other words, the cost for fiscal year 1979 would be something under $600 million, something that was encompassed in our budget and which I think is a reasonable cost to pay.

Let me say also, Mr. Speaker, that I personally am satisfied that giving an elementary and secondary credit at the level of $50 or $100 is not going to tip the balance in favor of private education as opposed to public education.

There has been a great deal of alarmist talk about this among public school administrators and teachers. Considering the total amount of money, both Federal and local, that is spent on public schools already through direct grants paid for by the taxpayer, it seems to me this type of credit would be a very modest token of our support of diversity in education generally. So I hope it will not be described in the alarmist vocabulary that I have heard as tolling the death knell of public education.

In short, Mr. Speaker, I personally support this measure but would much prefer to see a broader tuition tax credit and will support the motion to recommit to be offered by the gentleman from Ohio. The higher education credit has also been attached to the general tax bill on the Senate floor. What the effect of that can be, I think it is difficult for us to tell at this point because the Senate is still deliberating on the tax bill. But I would hope that we would not put our reliance in the overall tax revenue measure still before the Senate but would try to deal with this issue in this bill presently before the House and deal with it on as broad and as encompassing a base as possible so that this principle can be firmly established and can be a ray of hope for those who send their children to private schools on the elementary and secondary, and on the college levels, despite the sacrifice that is involved in doing this.

One last point, Mr. Speaker, about tuition credits for college-level students: It was claimed by one of the conferees, one of the distinguished Members from the other body, that we should have a 50-percent credit rather than the 35 which was the eventual compromise between the House version at 25 percent and the Senate version at 50 percent, because that would be to the advantage of poor people. Poor people already participate heavily in the basic educational opportunity grants. That grant is usually an offset under the proposals of this conference report against the tuition credit that is granted. For low tuition schools, the grant exceeds the tuition payable. Thus, those who come from very low income groups will qualify for basic educational opportunity grants, the so-called BEOG, and will never be in a position to claim the tuition credit that is granted herein unless they go to a high tuition school. I think for that reason the argument that somehow a higher percentage tuition credit would help poor people in low tuition schools is specious. It seems to me that a low credit, a low percentage credit of 35 percent or below, as the House version was at 25, would be in fact a sounder approach than giving a very substantial percentage of the tuition up to a cap because it helps preserve diversity in our educational system, and that is one of the prime purposes behind a tuition tax credit generally.

● Mr. ROSTENKOWSKI. Mr. Speaker, I wish to commend my distinguished chairman, the gentleman from Oregon, for his leadership and concern for the product of the conference on H.R. 12050. As always, he had the unenviable task of shepherding the divergent views of many into a form ready for consideration by this body. He did this well, despite his own misgivings about the basic concept involved here.

I earnestly wish, however, that the conference report more nearly reflected the will of the House with regard to the key question of eligibility for the credit. As it was passed in this Chamber, H.R. 12050 recognized the real need for this type of tax relief for parents of nonpublic elementary and secondary schools. This was an issue which was thoroughly discussed, analyzed, and debated in this Chamber. Members who voted for inclusion of these schools knew full well that college tuition credits were contingent upon acceptance of the concept of tax credits for elementary and secondary school expenses. This was the key bargaining element as we approached the conference. Yet, and this is why I refused to sign the conference report, the House did not prevail. In my opinion, there was no legitimate reason for the other body not to accept at least partial inclusion of elementary and secondary schools.

The conferees from the other body insisted initially that the opposition came from those of their colleagues who believed that the essential issues were constitutionality and cost. In my opinion, we provided a very adequate response to those issues in the form of a compromise. The compromise provided that an early, expedited court test would occur on the question of Government aid in the form of tuition tax credits for private school students. It also reduced, by one-half billion dollars, the overall cost of the credits by limiting eligibility to secondary school tuition expenses. In point of fact, we answered the objections of our colleagues in a more than generous fashion. For those who objected to the cost of the bill we provided for a substantial cut.

For those who insisted this form of assistance was unconstitutional we provided a swift court test of the issue.

The response was intransigence. The other body simply said "no." I did not sign this conference report because no bargain was struck on these essential provisions—the House simply gave in. The bargaining leverage which this House provided was ignored in the face of a total unwillingness on the part of the other body to compromise at all. This is a bitter pill for those of us who went into the conference on H.R. 12050 committed to the concept of credits for elementary and secondary school students' tuition expense. As my friend and coconferee, the gentleman from Massachusetts, said in conference, the House was most generous in its willingness to compromise but received nothing in return. I urge my colleagues to vote against the conference report.●

● Mr. PICKLE. Mr. Speaker, the tuition tax credit bill, depending on your viewpoint, is a bill that a member can justify a vote for or against. From my viewpoint, under the financial circumstances our country faces today, I do not think it timely or wise to enact tuition tax credit either as a measure to benefit higher education only, or to include benefits to primary and secondary education.

I do recognize that there are serious problems in our public school system. I also recognize that some of these problems have resulted from things that the Federal Government required, and this has added to the burden of our public school system. This, in turn, has encouraged the development of nonpublic education. However that may be, the fact of the matter is that the one great protection that we must give is the strengthening of our free public education system. If we create competing schools for tax dollars this surely will weaken public education. I admit that private schools do relieve our school system of some responsibilities and they should be encouraged as an alternative. However, I cannot come to believe that both can flourish when competing for tax support dollars.

I signed the conference report because I thought that Congress should have the right to vote on whether a tax credit should be given for tuition at least at the college level. That would help the middle income parents struggling to provide a college education for their children. I reserve the right not to vote for the bill on final passage. I am convinced that H.R. 11274, the Middle Income Student Assistance Act, that we will vote on later this week is the sounder approach.●

● Mr. LAFALCE. Mr. Speaker, we vote today on the conference report to accompany the tuition tax credit bill, and on a motion to recommit that conference report to the conferees with instructions to insist on the House position including elementary and secondary education in the program. I intend to vote against the motion to recommit for the conference report.

My vote against the motion to recommit is based primarily on practical and procedural grounds. We have a well established legislative process, and it works. The conferees on this bill spent many long hours in reaching the compromise with which we are presented today, and we should not lightly reject their efforts. When conferees are appointed, it is with the understanding that they are to reach an agreement with the Senate that is as close to the position taken by the House as possible. We should respect their judgment in the conference process, unless there is something to show that the full consideration was not given to the actions of the whole House.

Pure practicality also dictates that we should not vote to recommit this bill to conference. We are now in the last 3 days of the 95th Congress. The wide variety of issues facing the House insures that we all, including the conferees on this bill, have many other responsibilities. To think that another compromise could be worked out before adjournment is ridiculous. The Senate had opposed the inclusion of elementary and secondary education in this bill, and there is no reason to expect that should the impossible be accomplished and the conferees agree to the House position, the Senate would be willing to accept that.

I plan also to vote for the conference report as it is now written, primarily because it is impossible to predict what the House will do later in the day. While a preferable plan to provide assistance to middle income students with financial assistance is scheduled for consideration and a vote, there is no guarantee that the House will pass that bill, and I believe it is imperative that we enact some legislation to accomplish these goals.

However, I do prefer the President's Middle Income Student Assistance Act as it is more effective in targeting the financial aid to those in the middle income brackets than is the tuition tax credit proposal. The proposal also has the distinct advantage of being an expansion of an already existing program, so that dollars used up in paperwork and administration will be minimized. Finally, it has the support of the administration, which is important if we really hope to make this assistance available in the near future.

In March of this year I was one of the 156 Members who voted to consider this proposal under suspension of the rules. I preferred the Middle Income Student Assistance Act at that time to the tuition tax credit approach. I still do. I intend to vote for the bill again, and I sincerely hope it will pass and become law in preference to the tuition tax credit approach.●

● Mr. BIAGGI. Mr. Speaker, I rise in complete support of the pending motion to recommit the conference report to insist on the House inclusion of tax credits for elementary and secondary education expenses. Unless the final legislation contains this provision, it will be thwarting the will of a majority of this House which voted to include these credits.

I am aware of how conference committees work. I have served on a number in my 10 years here. I am aware that the art of compromise is practiced in these conferences; however, I contend there is a fundamental difference between compromise and decimation. Removing the elementary and secondary education tax credits from this bill is decimation pure and simple, and I for one am totally opposed.

What was our intent in this legislation? Was it to provide selective relief or are we intending to correct an across-the-board wrong. The House's message was clear relief for all—the Senate position more generous relief but only for some—the conference committee instead of accepting the fairer House version chose the Senate route. We cannot sit idly by; thus it is imperative that this motion pass.

At the time I supported the inclusion of elementary and secondary education expenses in this legislation I noted that parents of children in nonpublic elementary and secondary schools have been victimized by a double-edged economic sword. In addition to paying ever higher rates of tuition for the schools their children do attend they are also paying higher taxes for the schools their children do not attend. The result is economic chaos in many American households merely in the pursuit of an education for their children.

We hold ourselves to be the leaders among democratic nations—equality of opportunity and the like. Yet with respect to education we fall somewhat short. H.R. 12050 as passed by the House represented a breakthrough in restoring a sense of equality in this area. Yet unless we are able to pass this motion, we will have fallen far short of our original intention.

We have been down this road before. Due to the nature of our schedule, we may not travel down it again this year. This vote is the last hope for preserving the tax credits for elementary and secondary education. We still face a possible Presidential veto on this legislation. We have many possibilities before us, I hope we choose to maintain the House position agreed to this past June. It was the right course of action then and it is again now.

Nonpublic school education definitely has its place in this Nation. It benefits not just the well to do—in my home city of New York we find more than three-quarters of those enrolled in schools run by the New York Catholic Archdiocese are from minority groups.

This vote is one of principle and we cannot lose sight of this fact. I urge my colleagues to insist on the House position and keep this bill's eligibility for the parents of students attending nonpublic elementary and secondary schools.●

● Mr. GREEN. Mr. Speaker, I make this statement to explain my vote in support of the motion to recommit the conference report on H.R. 12050, the Tuition Tax Credit Act, with instructions to the managers on the part of the House to insist that a tuition tax credit be provided for tuition paid to elementary and secondary schools.

While I am pleased that the House-Senate conference committee reached an

agreement on legislation to provide tax credits for college tuition, I am most disappointed that the conferees voted against such credits for elementary and secondary education expenses.

On August 15, the Senate voted 56 to 41 to limit the tuition tax credits provided in H.R. 12050 only to postsecondary education expenses. In contrast, the House-passed version of H.R. 12050 included the Vanik amendment, adopted by a vote of 209 to 194, which extended tuition tax credits to cover nonpublic elementary and secondary tuitions.

On September 21, 44 of my colleagues joined with me to send the following letter to the seven House conferees on the Tuition Tax Credit Act to urge them to stand fast in support of tuition tax credits for elementary and secondary education expenses:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 21, 1978.

Hon. AL ULLMAN,
Chairman, House Committee on Ways and Means, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We wish to take this opportunity to reiterate our strong support for tuition tax credits for elementary and secondary education expenses and to urge you respectfully to uphold the House position in this regard during your consideration of the conference report to accompany the Tuition Tax Credit Act.

We are disappointed that the Senate failed to include elementary and secondary tuition tax credits in its version of the Tuition Tax Credit Act. In our opinion, the House acted wisely when it adopted the Vanik Amendment.

Tuition tax credits for elementary and secondary education would not hurt our public school system, but would help to insure the viability of nonpublic institutions. Nonpublic education today is struggling to meet rising costs and to keep up enrollments. In order to survive, these schools must depend upon the financial support and sacrifices of their students' families. Tuition tax credits would help these families to meet the expenses involved in obtaining nonpublic education for their children.

It is clear that tuition tax credits would help financially-pressed families in their efforts to exercise educational freedom of choice. Across the nation, 51.4% of the families who send their children to nonpublic schools have annual incomes below $15,000, and over 71% have incomes below $25,000.

We hope you will vote to provide much-needed tax relief for these families and to help maintain educational diversity in this country. Please support the House vote to extend tuition tax credits for elementary and secondary education.

Sincerely,

S. William Green, John W. Wydler, Lawrence Coughlin, Norman F. Lent, Joe Moakley, Samuel S. Stratton, James H. Scheuer, David C. Treen, Robert A. Roe, Dan Quayle, Robert J. Cornell. Robert J. Lagomarsino, Robert A. Young, Bill Frenzel, Larry McDonald, Michael O. Myers, Richard T. Schulze, Joshua Eilberg, Edward J. Derwinski, Thomas A. Luken, Romano L. Mazzoli. Henry J. Nowak, Robert K. Dornan, Thomas L. Ashley, John J. Cavanaugh, Arlan Stangeland, Robert W. Daniel, Jr., Edwin B. Forsythe, Raymond F. Lederer, Michael T. Blouin, Cecil Heftel, Douglas Applegate, Robert C. McEwen. James C. Cleveland, Jonathan B. Bingham, Harold S. Sawyer, James M. Collins, Daniel J. Flood, Thomas B. Evans, Jr., Barry M. Goldwater, Jr., Richard A. Gephardt, Philip E. Ruppe, Gus Yatron, Willis D. Gradison, Jr., Robert E. Bauman.

Unfortunately the House conferees voted 4 to 3 to accept the Senate position on tuition tax credits, thereby excluding elementary and secondary education expenses from eligibility for the tax credits. Since the conferees did not uphold the House vote in favor of the Vanik amendment, the only option available to supporters of elementary and secondary education tax credits is to vote to recommit the conference report with instructions that the House conferees insist that tuition tax credits be provided for elementary and secondary expenses.

The point of providing tax credits is to help ease the financial burden of tuition expenses. Those most in need of this tax relief are the families struggling to obtain nonpublic education for their children. As my colleagues and I pointed out in our letter to the House conferees on the Tuition Tax Credit Act, 51.4 percent of the families across the country who send their children to nonpublic schools have annual incomes below $15,000, and over 71 percent have incomes below $25,000.

We must not abandon these financially pressed low- and moderate-income families. Let us send this bill back to conference and insist that the conferees vote in favor of tuition tax credits for elementary and secondary education expenses.●

● Mr. LUKEN. Mr. Speaker, today is a sad day for freedom of choice in America.

We are presented today a conference report on tuition tax credits which discriminates against those parents who have children enrolled in either elementary or secondary private schools.

I do not see how the House can approve such a report, particularly in light of the long and diligent struggle on the part of so many Members to guarantee the educational independence of American children through elementary and secondary tuition tax credits.

I urge my colleagues to vote for the motion to recommit the report to the conferees with the instructions to provide for a tax credit for tuition paid to elementary and secondary schools.

It is the parents of children in these private elementary and secondary schools who bear an unfair burden of the Nation's educational costs. More than half of those parents with children in private schools have incomes below $17,000 and often have more than one child enrolled in such institutions.

These parents are also subject to skyrocketing property taxes across the country, taxes which are often used to pay for public schools, schools these parents do not use.

The failure of the Congress to address the plight of these parents on the grounds of preserving the national public school system is shortsighted and sidesteps the real issue of the matter.

Should the cost of private elementary and secondary schools continue to rise at the present rate, parents will be forced to pull their children out of this educational system. Private schools will be crippled to such an extent that an already overcrowded public school system will pick up the cost of absorbing the private school pupils.

The issue here is not the survival of the Nation's private schools.

The entire American educational system, both public and private, will suffer if one system or the other is forced out of existence by simple economics.

We can save the American education system, one which has developed over two centuries of cooperation and complementary service, by voting to recommit the conference report on H.R. 12050.●

Mr. CONABLE. Mr. Speaker, I have no further requests for time. I yield back the balance of my time.

Mr. ULLMAN. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

MOTION TO RECOMMIT OFFERED BY MR. GRADISON

Mr. GRADISON. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the conference report?

Mr. GRADISON. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

MR. GRADISON moves to recommit the conference report on the bill (H.R. 12050) to the committee of conference with instructions of the managers on the part of the House to insist on those provisions of the House bill which provide that tuition paid to elementary or secondary schools is eligible for the tax credit and to insist on the provision of the House bill which sets forth the maximum amount of the credit for tuition paid to elementary or secondary schools.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. FRENZEL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the order of the House of October 4, further proceedings on this vote will be postponed until Thursday, October 12.

GENERAL LEAVE

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on this conference report on the bill, H.R. 12050.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

SUSPENDING DUTY ON YANKEE DRYER CYLINDERS

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 8755) to make specific provisions for ball or roller bearing pillow block, flange, take-up

cartridge, and hanger units in the Tariff Schedules of the United States, with Senate amendments thereto and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, line 3, after "That" insert "(a)".

Page 1, after line 4, insert:

(1) by striking out "pulleys, pillow blocks, and shaft couplings;" in the superior heading to items 680.45 through 680.54 and inserting in lieu thereof "pulleys and shaft couplings; pillow blocks; flange, take-up cartridge, and hanger units;";

Page 1, line 5, strike out "(1)" and insert "(2)".

Page 1, line 7, strike out "(2)" and insert "(3)".

Page 2, line 1, strike out "SEC. 2." and insert "(b)".

Page 2, lines 1 and 2, strike out "the first section of this Act" and insert "subsection (a)".

Page 2, after line 4, insert:

SEC. 2. (a) Subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting in numerical sequence the following new item:

"912.06: Yankee Dryer Cylinders (provided for in item 668.06, part 4D, schedule 6): Free, No change, On or before January 31, 1981".

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption cn or after the date of the enactment of this Act.

Page 2, after line 4, insert:

SEC. 3. (a) Subpart A of part 6 of Schedule 7 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting immediately after item 740.10 the following new item:

"740.20: Necklaces, valued not over 30 cents per dozen, composed wholly of plastic shapes mounted on fiber string: Free, Free".

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of enactment of this Act.

Amend the title so as to read: "An Act to make specific provisions for ball or roller bearing pillow block, flange, take-up, cartridge, and hanger units in the Tariff Schedules of the United States, and for other purposes.".

Mr. ULLMAN (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon to dispense with further reading of the Senate amendments?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Oregon (Mr. ULLMAN)?

Mr. CONABLE. Mr. Speaker, reserving the right to object, we have no objection to the Senate amendments, but I would appreciate the gentleman enumerating them for us.

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield, H.R. 8755 passed the House on September 18, 1978, and the Senate made six clerical amendments to its provision, as approved by the House. However, the Senate added two substantive amendments as follows:

Amendment numbered 7 includes the provisions of H.R. 7108, a bill to suspend the duty on Yankee dryer cylinders. This bill is noncontroversial and was passed by the House on September 18 by unanimous consent. Therefore, I recommend that the House concur with Senate amendment numbered 7.

Mr. Speaker, Senate amendment numbered 8 would provide for duty-free entry of certain plastic souvenir bead necklaces used as carnival jewelry. There is some opposition to this bill; however, the Senate has taken action to limit the duty suspension to a very specific type of plastic jewelry which is of little significance from a volume standpoint. In consideration of the fact that this item is of minimal negotiating value to us in the multilateral trade negotiations and that the volume represents a minor share of domestic production of plastic jewelry, I recommend that the House concur with Senate amendment numbered 8.

Mr. CONABLE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Oregon (Mr. ULLMAN)?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, I am fascinated by the necessity of the two Houses of Congress, created under article I of the Constitution by the Founding Fathers, to have to consider lifting the duty on plastic bead necklaces at this late hour of our final deliberations.

Mr. Speaker, is my understanding correct, these necklaces are worn during Mardi Gras in a State known as Louisiana? I wonder who is the sponsor of this provision?

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield, the gentleman from Maryland is very perceptive. That is, as I understand it, the prime use for this particular kind of jewelry.

I cannot enlighten the gentleman as to where it originated over on the other side.

Mr. CONABLE. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from New York.

Mr. CONABLE. Mr. Speaker, I find it unusual that the gentleman from Maryland would object to this and thus prolong the debate far beyond the value of the beads that we are considering.

Mr. BAUMAN. Oh, I want the gentleman and anyone else reading the RECORD to understand that the gentleman from Maryland is not objecting.

Mr. CONABLE. He is expressing a healthy curiosity?

Mr. BAUMAN. Curiosity is what prompted my question. I am pleased to see that the interests of Louisiana are being taken care of once again.

Mr. CONABLE. Someone in the other body appears to be from Louisiana, yes.

Mr. BAUMAN. That is quite obvious.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Oregon (Mr. ULLMAN)?

There was no objection.

A motion to reconsider was laid on the table.

EXTENDING EXISTING SUSPENSION OF DUTIES ON CERTAIN METAL WASTE AND SCRAP, UNWROUGHT METAL, AND OTHER ARTICLES OF METAL

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 12165) to extend until the close of June 30, 1981, the existing suspension of duties on certain metal waste and scrap, unwrought metal, and other articles of metal, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments as follows:

Page 1, line 3, after "That" insert "(a)".

Page 2, strike out lines 6 to 9, inclusive, and insert:

(b) The amendments made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the enactment of this Act.

(c) Upon request therefor filed with the customs officer concerned on or before the ninetieth day after the date of the enactment of this Act, the entry or withdrawal of any article—

(1) which was made after June 30, 1978, and before the date of the enactment of this Act and

(2) with respect to which there would have been no duty if the amendment made by subsection (a) (2) applied to such entry or withdrawal

shall, notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, be liquidated or reliquidated as though such entry or withdrawal had been made on the date of the enactment of this Act.

Page 2, after line 9, insert:

SEC. 2. (a) Subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by adding in numerical sequence the following new item:

"903.60: Mixtures of mashed or macerated hot real peppers and salt (provided for in item 141.77 or 141.81, part 8C, schedule 1): Free, No change, on or before 6/30/81".

(b) The amendment made by subsection (a) shall apply with respect to articles entered or withdrawn from warehouse, for consumption on or after the date of enactment of this Act.

Amend the title so as to read: "An Act to extend until the close of June 30, 1981, the existing suspension of duties on certain metal waste and scrap, unwrought metal, and other articles, of metal, and for other purposes.".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, I wonder if the distinguished chairman of the committee would enlighten us as to what items have been added to this particular bill?

Mr. ULLMAN. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Oregon.

Mr. ULLMAN. Mr. Speaker, H.R. 12165 passed the House on September 12, 1978, and the Senate made two clerical amendments to its provision, as approved by the House. Also, the Senate added a substantive amendment as follows:

Amendment numbered 3 would provide

for the duty-free treatment of mixtures of mashed or macerated hot red peppers and salt until June 30, 1981. The administration has no objection to this amendment and no opposition to enactment has been received from any source. Therefore, I recommend that Senate amendment numbered 1 be agreed to at this time.

Mr. CONABLE. Mr. Speaker, if the gentleman will allow me to make this observation, I suppose this will give the lovers of tabasco sauce reason to celebrate; is that not correct?

Mr. ULLMAN. Mr. Speaker, I am sure the gentleman is correct.

Mr. CONABLE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, so we may pursue the continuity of these interesting matters, if I am not mistaken, red peppers are an essential ingredient of tabasco sauce, which is made at Avery Island, La.; is that not correct?

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield, yes, it is used all over the country. However, I suspect that at certain times of the year it is used there in larger quantities than anywhere else.

Mr. BAUMAN. There have been few hotter issues before the Congress.

Mr. CONABLE. Mr. Speaker, if the gentleman will yield, may I say to the gentleman that tabasco sauce is also strong enough to dissolve plastic beads.

Mr. BAUMAN. Depending on what it is mixed with.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

A motion to reconsider was laid on the table.

REVISING MISCELLANEOUS TIMING REQUIREMENTS OF THE REVENUE LAWS

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 7320) to revise miscellaneous timing requirements of the revenue laws, and for other purposes, with Senate amendments thereto, concur in the Senate amendments numbered 1, 2, 3, 4, and 5; disagree with Senate amendment numbered 7; and concur in the Senate amendments numbered 6 and 8 with amendments.

The SPEAKER pro tempore. The Clerk will report the title of the bill, the Senate amendments, and the proposed amendments to the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 5, strike out lines 11 to 21, inclusive, and insert:

"(c) WHEN AND HOW MADE.—

"(1) IN GENERAL.—An election under subsection (a) may be made by a small business corporation for any taxable year—

"(A) at any time during the preceding taxable year, or

"(B) at any time during the first 75 days of the taxable year.

"(2) TREATMENT OF CERTAIN LATE ELECTIONS.—If—

"(A) a small business corporation makes an election under subsection (a) for any taxable year, and

"(B) such election is made after the first 75 days of the taxable year and on or before the last day of such taxable year, then such election shall be treated as having been made for the following taxable year.

"(3) MANNER OF MAKING ELECTION.—An election under subsection (a) shall be made in such manner as the Secretary shall prescribe by regulations.".

Page 5, after line 21, insert:

(b) TECHNICAL AMENDMENTS.—

(1) Section 1372(e)(1)(A) (relating to termination in the case of new shareholders) is amended to read as follows:

"(A) an election under subsection (a) made by a small business corporation shall terminate if any person who is not a shareholder in such corporation on the day on which the election was made becomes a shareholder in such corporation and affirmatively refuses (in such manner as the Secretary may by regulations prescribe) to consent to such election on or before the 60th day after the day on which he acquired the stock.".

(2) The last sentence of section 1372(a) (relating to eligibility for election by a small business corporation) is amended to read as follows: "Such election shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.".

(3) Subparagraph (C) of section 1372(e)(1) is amended by inserting "(or, if later, the first taxable year for which such election would have taken effect)" after "in the corporation".

Page 5, line 22, strike out "(b)" and insert "(c)".

Page 5, lines 22 and 23, strike out "amendment made by subsection (a)" and insert "amendments made by subsections (a) and (b)".

Page 6, line 1, strike out "(c)" and insert "(d)".

Page 18, after line 16, insert:

SEC. 10. TEMPORARY SUSPENSION OF DUTY ON IMPORTS OF INSULATION.

(a) IN GENERAL.—Subpart B of part 1 of the appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting after item 907.20 the following new item:

"907.40: Boric acid (provided for in item 416.10, part 2B, schedule 4): Free, No change, On or before 6/30/79".

(b) Such subpart B is amended by inserting before item 911.00 the following new items:

"909.10: Mineral wool, in bulk, or in batts, blankets, or similar forms, whether or not lined, backed, or supported with paper, paperboard, or similar materials (provided for in item 522.81, part 1J, schedule 5): Free, No change, On or before 6/30/79.

909.30: Glass fibers in bulk; glass fibers in the form of mats, batts, blankets, felts, pads, casings, and boards, all the foregoing, of a density not over 4 pounds per cubic foot, whether or not coated, impregnated, or bonded with glue, plastics, or other substances, or lined, backed, or supported with paper, paperboard, fabrics or similar materials, or with metal mesh or foil (provided for in item 540.71, part 3A, of schedule 5): Free, No change, On or before 6/30/79".

(c)(1) The rate of duty prescribed in rate column numbered 1 of the Tariff Schedules of the United States, as amended by this section, shall be considered to have been proclaimed by the President as necessary or appropriate to trade agreements to which the United States is a party, not as a statutory provision enacted by the Congress.

(2) The amendments made by this section apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of enactment of this Act.

Page 18, after line 16, insert:

SEC. 11. TREATMENT OF INDIVIDUALS AS EMPLOYEES.

(a) In determining whether an individual is an employee for purposes of chapters 21, 23, and 24 of the Internal Revenue Code of 1954, the Internal Revenue Service shall not apply any changed position or any newly stated position which is inconsistent with a general audit position in effect prior to January 1, 1976, or which is inconsistent with a regulation or ruling in effect on December 31, 1975.

(b) Notwithstanding subsection (a), an individual shall not be treated as an employee of any person for purposes of chapters 21, 23, and 24 of the Internal Revenue Code of 1954 if such person, in good faith, consistently treated such individual or the class of individuals of which such individual is a member as independent contractors for such purposes. Such person shall be deemed to have acted in good faith only if—

(1) all Federal tax returns (including information returns) required to be filed by such person were filed on a basis consistent with such person's treatment of such individual or such class of individuals as independent contractors; and

(2) such individual or such class of individuals were treated by such person as independent contractors in reasonable reliance on any of the following:

(A) past Internal Revenue Service audit practice with respect to such person;

(B) published rulings or judicial precedent;

(C) recognized practice in the industry of which such person is a member; or

(D) long-standing treatment by such person of such individual or such class of individuals as independent contractors for employment tax purposes.

In no event shall such person be deemed to have acted in good faith if the treatment of such individual or such class of individuals as independent contractors would, on the basis of the pertinent facts and circumstances, constitute negligence, intentional disregard of rules and regulations, or fraud within the meaning of section 6653 of the Internal Revenue Code of 1954.

(c) The provisions of this Act shall apply in determining the employment status of individuals for—

(1) all calendar quarters for which, on the date of enactment of this Act, assessment of an underpayment of tax, or refund of an overpayment of tax, under chapters 21, 23, and 24 of the Internal Revenue Code of 1954 is not barred by the operation of any law or rule of law, and

(2) for the calendar quarter in which this Act is enacted and for all future calendar quarters until the end of the calendar year in which the Congress enacts a law terminating the future applicability of this Act.

Page 18, after line 16, insert:

SEC. 12. FONDATION JOSÉE ET RENÉ DE CHAMBRUN.

For the purpose of determining the liability for tax of Josée or René Chambrun, citizens of France, under chapter 12 of the Internal Revenue Code of 1954, and for the purpose of determining the liability for tax of the estate of the said Josée or René de Chambrun under chapter 11 of such Code, the Fondation Josée

et René de Chambrun, Paris, France, shall be treated as if it were an organization described in sections 2522(b)(2) and 2106(a)(2)(A)(ii) of such Code, respectively.

The Clerk read the House amendment to Senate amendment numbered 6, as follows:

Page 4, beginning in line 3, of the Senate engrossed amendments, strike out "(c)(1)" and all that follows down through line 9, and insert:

"(c) The amendments made by this section shall apply with".

The Clerk read the House amendment to Senate amendment No. 8, as follows:

Redesignate the section proposed to be inserted by the Senate amendment numbered 8 as section 11.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, I will yield to the gentleman from Oregon (Mr. ULLMAN), the distinguished chairman of the Committee on Ways and Means, for an explanation of this and what he proposes to do with it.

Mr. ULLMAN. I thank the gentleman for yielding.

Mr. Speaker, H.R. 7320, as passed by the House, contained eight technical amendments to the Internal Revenue Code based upon legislative recommendations received from the American Bar Association, the American Institute of Certified Public Accountants, and various other groups including State and local bar and accounting associations.

The Senate added several amendments. First, the Senate adopted several perfecting amendments relating to the election of subchapter S status by a corporation.

Another Senate amendment would allow a gift and estate tax deduction to nonresident aliens for contributions to the Fondation Josee et Rene de Chambrun, a French charity created to preserve the home of General Lafayette, near Paris, along with his personal papers, belongings, and correspondence. This is intended to benefit Josee and Rene de Chambrun and their estates. The Treasury Department does not object to this amendment.

Finally, the Senate added an amendment on a provision which is dealt with in another bill approved by the Ways and Means Committee. Therefore, it is recommended that the House agree to delete this amendment.

Mr. Speaker, Senate amendment No. 6 would provide for the temporary suspension of the duty on imports of certain insulation materials used in building construction. The administration has no objection to enactment as they point out that there is insufficient domestic production of insulation materials to meet domestic demand.

Therefore, I recommend that the House concur in Senate amendment No. 6 with a technical amendment to delete subsection (c)(1) which contains unnecessary language regarding the necessary or appropriate nature of this action in trade agreements, as proclaimed by the President, to which the United State is a party.

Mr. CONABLE. Mr. Speaker, further reserving the right to object, is the gentleman certain that the matter relating to insulation material is in this bill?

It was my understanding that that was not a part of this bill.

Mr. ULLMAN. If the gentleman will yield, the answer is in the affirmative; it is in this bill.

Mr. CONABLE. It is one of the substantive amendments of this bill?

Mr. ULLMAN. This only has to do with duty and not tax credit. This only has to do with the duty.

Mr. CONABLE. With duty on insulation for special purposes?

Mr. ULLMAN. Insulation material for construction relating only to the duty on the import of such material.

Mr. CONABLE. What type of insulation is it?

Mr. ULLMAN. It does not have anything to do with the investment credit provision.

Mr. CONABLE. I understand what the gentleman is saying, but I am curious about what type of insulation it is. I was not aware that that was included in this bill. Is it home insulation?

Mr. ULLMAN. This had been agreed to in the energy conference already. It was a matter that was very actively before the committee. It has been thoroughly considered.

Domestic demand for insulation materials for residential and industrial use has greatly increased in recent years as a result of rising energy costs, increasing consumer awareness of the need for energy conservation, and the boom in housing starts. During the winter of 1977–78, there was a shortage of many forms of insulation in the United States, causing prices to escalate rapidly for the material available. Boric acid, mineral wool, and glass fibers are among the materials used for residential and industrial insulation purposes which are in short supply.

The committee considers it appropriate to take temporary action that will encourage greater imports of boric acid, mineral wool, and glass fibers to relieve supply shortages and help restrain increasing prices. In particular, greater imports of boric acid would help to control the production costs of cellulosic insulation, the major product competing with fiber glass and mineral wool as an insulation material. Boric acid is used as a fire retardant in the manufacture of cellulosic insulation materials.

Mr. CONABLE. Mr. Speaker, does the gentleman know what volume of insulation we are talking about? I acknowledge that our domestic insulation manufacturing is running at capacity and that it may be desirable indeed to make available substantial amounts of insulation from abroad. But am I to understand that this measure has been agreed to by the conferees in the energy conference that is now in progress?

Mr. ULLMAN. It has been agreed to in the earlier conference. It is not part of the conference report that is being processed, but it had been agreed to earlier by the conferees on both the Senate and House side. It has been thoroughly considered. There is a very minor amount of imports of this type of insulation, but because of the impact of the energy bill, through its insulation credit, it is the feeling of the committee that it would be very beneficial to allow this import so that we do not have an escalating cost factor in insulation.

Mr. CONABLE. Well, Mr. Speaker, continuing my reservation of objection, I have simply been misinformed about the contents of this bill, but it does not sound as though I should change my attitude because of that misinformation.

Mr. Speaker, I support the chairman's motion to return H.R. 7320 to the other body in the form he has proposed.

The main text of H.R. 7320 as passed by the other body is substantially similar to the House-passed bill and I approve it. However, the other body added two amendments, one of which merits our concurrence and one of which should be removed from this bill.

The amendment which is deleted deals with the payroll tax liability of independent contractors. The independent contractor issue is an important one but this is not the proper bill to address it. Last week the Ways and Means Committee ordered reported H.R. 14159, a bill which protects independent contractors through 1979. The other body also has included an amendment on this issue in H.R. 13511, the Revenue Act of 1978.

The amendment of the other body which merits our concurrence addresses the issue of estate tax deductibility for certain gifts to a foreign charity by a nonresident alien. Normally the estate of a nonresident alien receives a deduction only for gifts to domestic charities but not foreign charities. The amendment would permit nonresident aliens to deduct contributions to a French charitable foundation organized to preserve the home of General Lafayette, the great friend of the American Revolution. The amendment means that the foundation's continuance will be assured because of bequests of U.S. property which it stands to inherit from foreign benefactors. The provision is not a major policy change, since currently U.S. residents can deduct bequests to both domestic and foreign charities, but nonresident aliens are limited to domestic charities.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon to concur in the Senate amendments Nos. 1, 2, 3, 4, and 5; disagree with the Senate amendment No. 7, and concur in Senate amendments Nos. 6 and 8 with amendments?

There was no objection.

A motion to reconsider was laid on the table.

CONTINUING TO CLOSE OF JUNE 30, 1981, EXISTING SUSPENSION OF DUTIES ON CERTAIN FORMS OF ZINC

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 9911) to continue until the close of June 30, 1981, the existing suspension of duties on certain forms of zinc, with Senate amendments thereto, concur in Senate

amendments Nos. 1, 2, 3, 4, 5, and 6, concur in the Senate amendment to the title of the bill, disagree to Senate amendment No. 7, and concur in Senate amendment No. 8 with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, line 3, after "That" insert "(a)".

Page 1, line 7, strike out "SEC. 2." and insert "(b)".

Page 1, lines 7 and 8, strike out "the first section of this Act" and insert "subsection (a)".

Page 1, line 9, strike out "consumption," and insert "consumption on or".

Page 1, lines 9 and 10, strike out "June 30, 1978." and insert "the date of enactment of this Act.".

Page 1, after line 10, insert:

(c) Upon request therefor filed with the customs officer concerned on or before the ninetieth day after the date of enactment of this Act, the entry of any article—

(1) which was made after June 30, 1978, and before the date of enactment of this Act, and

(2) with respect to which there would have been no duty if the amendment made by subsection (a) of this section applied to such entry

shall, notwithstanding section 514 of the Tariff Act of 1930 or any other provisions of law, be liquidated or reliquidated as though such entry had been made on the date of enactment of this Act.

Page 1, after line 10, insert:

SEC. 2. SUSPENSION OF DUTY ON SOLUBLE NITROCELLULOSE.

(a) Subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting in numerical sequence the following new item:

"906.00: Gloves and trousers especially designed for use in forestry and incorporating two or more layers of protective lining material made wholly of woven manmade fibers (provided for in item 380.66, 380.84, or 705.35): Free, No change, On or before 6/30/80".

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of enactment of this Act.

Page 1, after line 10, insert:

SEC. 3. SUSPENSION OF DUTIES ON CERTAIN GLOVES AND TROUSERS DESIGNED FOR USE IN FORESTRY.

(a) Subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting in numerical sequence the following item:

"907.77: Nitrocellulose (provided for in item 445.25, part 4A, schedule 4): Free, No change, on or before 6/30/80".

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the enactment of this Act.

Amend the title so as to read: "An Act to continue until the close of June 30, 1981, the existing suspension of duties on certain forms of zinc, and for other purposes.".

The Clerk read the House amendment to Senate amendment numbered 8 as follows:

On page 3 of the Senate amendments, strike out lines 2, 3, and 4 and insert the following:

SEC. 2. SUSPENSION OF DUTY ON SOLUBLE NITROCELLULOSE.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, will the distinguished chairman discuss this matter with us further?

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield, H.R. 9911 passed the House on September 18, 1978, and the Senate made six clerical amendments to its provision, as approved by the House. The Senate added two substantive amendments as follows.

Mr. Speaker, there is controversy on amendment No. 7, a proposal to suspend the duty on protective gloves and trousers used in the forestry industry. Objections have been raised by the administration as well as the domestic manufacturer's association. Therefore, I recommend that Senate amendment No. 7 not be agreed to at this time. This would enable the Subcommittee on Trade of the Committee on Ways and Means to hold a hearing on the gloves and trousers duty suspension issue to fully examine the merits of this proposal.

Amendment No. 8 includes the provisions of H.R. 9628, a bill to suspend the duty on certain nitrocellulose until the close of June 30, 1980. This bill is noncontroversial and was passed by the House on September 18 by unanimous consent. Therefore, I recommend that the House concur with Senate amendment No. 8 with a technical amendment to correct the section heading.

Mr. CONABLE. Mr. Speaker, the minority concurs with the chairman in accepting the Senate amendment on nitrocellulose, and in disagreeing with the Senate amendment on gloves and trousers.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Oregon (Mr. ULLMAN) to concur in the Senate amendments numbered 1, 2, 3, 4, 5, and 6, and the Senate amendment to the title, to disagree to Senate amendment numbered 7, and concur in Senate amendment numbered 8 with an amendment?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on the measure just passed (H.R. 9911) and on the various measures that have been considered from the Ways and Means Committee today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

AUTHORIZING FUNDS FOR CIVIL AIR PATROL SERVICES TOWARD NONCOMBATANT MISSION OF AIR FORCE

Mr. STRATTON. Mr. Speaker, on behalf of the Committee on Armed Services, I ask unanimous consent for the immediate consideration of the bill (H.R. 6237) to amend section 9441 of title 10, United States Code, to provide for the budgeting by the Secretary of Defense, the authorization of appropriations, and the use of those appropriated funds by the Secretary of the Air Force, for certain specified purposes to assist the Civil Air Patrol in providing services in connection with the noncombatant mission of the Air Force.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, I do so only so that the gentleman from New York can give an explanation of the bill.

Mr. STRATTON. Mr. Speaker, if the gentleman will yield, this bill was reported unanimously out of the Armed Services Committee. It is a bill that would permit the Secretary of the Air Force to provide certain assistance to the Civil Air Patrol on those missions which it is performing in connection with the noncombatant mission of the Air Force. This would include providing excess equipment, it would include providing uniforms, and it would reimburse Civil Air Patrol members for fuel and oil consumed by their aircraft which are flown in connection with the noncombatant mission of the Air Force. It would also provide reimbursement for maintenance expenses and travel expenses and subsistence while flying authorized missions.

The total amount involved for fiscal year 1979 is slightly over $1 million.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman from New York, and withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the bill, as follows:

H.R. 6237

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That chapter 909 of title 10, United States Code, is amended as follows:

(1) Section 9441 is amended to read as follows:

"§ 9441. Status: support, employment

"(a) The Civil Air Patrol is a volunteer civilian auxiliary of the Air Force.

"(b) To assist the Civil Air Patrol in the fulfillment of its objectives as set forth in section 202 of title 36, the Secretary of Defense may budget, and appropriations are authorized, for funds, which shall be specifically identified as being for, and necessary to carry out, the purposes set forth in subsection (c)(2)(A)–(D).

"(c) The Secretary of the Air Force may, under regulations prescribed by him with the approval of the Secretary of Defense, do the following:

"(1) Give, lend, or sell to the Civil Air Patrol without regard to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.)—

"(A) major items of equipment, including aircraft, motor vehicles, and communications equipment; and

"(B) necessary related supplies, equipment, and training aids;

that are excess to the military departments, or any such property acquired by the Department of the Air Force under that Act as excess to any other Federal department or

agency, including excess Government-owned property in the hands of contractors.

"(2) Use funds authorized to be appropriated under subsection (b) to—

"(A) provide such articles of the Air Force uniform to cadets of the Civil Air Patrol, in such quantities and under such limitations as he may prescribe;

"(B) furnish such quantities of fuel and lubricants to the Civil Air Patrol as are needed by it to carry out any mission assigned to it by the Air Force, including operational, unit capability testing, and approved training missions;

"(C) reimburse, in a fixed amount per flying hour above fuel and lubricant costs, members of the Civil Air Patrol while they are flying specifically authorized missions, subject to such limitations, as he may prescribe; and

"(D) reimburse members of the Civil Air Patrol for the payment of travel expenses and subsistence while they are assigned to authorized specific missions, subject to such limitation as he may prescribe.

"(3) Permit the use of such services and facilities of the Air Force as he considers to be needed by the Civil Air Patrol to carry out its mission, and arrange for the use of those services and facilities of the other military departments or Federal departments or agencies as he considers necessary.

"(4) Establish, maintain, and supply liaison offices of the Air Force at the National, State, and Commonwealth headquarters, and at not more than eight regional headquarters, of the Civil Air Patrol.

"(5) Detail or assign any member of the Air Force or any officer or employee of the Department of the Air Force to any—

"(A) Liaison office at the National, State, or Commonwealth headquarters, and at not more than eight regional headquarters, of the Civil Air Patrol; or

"(B) unit or installation of the Civil Air Patrol to assist in the training program of the Civil Air Patrol.

"(6) In time of war, or of national emergency declared after May 27, 1954, by Congress or the President, authorize the payment of travel expenses and allowances, in accordance with subchapter I of chapter 57 of title 5, to members of the Civil Air Patrol while carrying out any misison specifically assigned by the Air Force.

"(d) The Secretary of the Air Force may use the services of the Civil Air Patrol in fulfilling the noncombat mission of the Department of the Air Force."

(2) The analysis is amended by striking out the items relating to section 994 and inserting in place thereof the following:

"9441. Status: support; employment.".

With the following committee amendments:

Page 1, strike out lines 3 through 5 and insert in lieu thereof the following:

That section 9441 of title 10, United States Code, is amended to read as follows:

Page 2, line 1, strike out the comma and insert in lieu thereof a semicolon.

Page 2, line 5, strike out "section 202 of title 36" and insert in lieu thereof "section 2 of the Act of July 1, 1946 (36 U.S.C. 202)".

Page 2, line 10, strike out "(A)-(D)".

Page 2, line 16, strike out ", as amended".

Page 3, line 5, strike out "such".

Page 4, line 1, strike out "mission," and insert in lieu thereof "mission".

Page 4, line 3, strike out "Federal departments or agencies".

Page 4, line 12, strike out "Liaison" and insert in lieu thereof "liaison".

Page 5, strike out lines 4 through 6 and insert in lieu thereof the following:

SEC. 2. The item relating to section 9441 in the table of sections at the beginning of chapter 909 of title 10, United States Code, is amended to read as follows:

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

The committee amendments were agreed to.

GENERAL LEAVE

Mr. STRATTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill H.R. 6237, just passed by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

DESIGNATING OCTOBER 7, 1979, THE SUNDAY OF "FIRE PREVENTION WEEK" AS "FIREFIGHTERS' MEMORIAL SUNDAY"

Mr. LEHMAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 685) to designate October 7, 1979, the Sunday of "Fire Prevention Week" as "Firefigters' Memorial Sunday," with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendments, as follows:

Page 2, after line 6, insert

SEC. 2. The President is authorized and requested to issue a proclamation declaring October 14, 1978, as "National Jogging Day", and calling upon the people of the United States and interested groups to celebrate such day by embarking upon or containing a program of regular exercise, participation in sports and games for fitness and fun.

Page 2, after line 6, insert

SEC. 3. In honor of the important role played by inventors in promoting progress in the useful arts and in recognition of the invaluable contribution of investors to the welfare of our people, February 11, 1979, is hereby designated "National Investors' Day". The President is authorized and requested to issue a proclamation calling upon the people of the United States to celebrate such day with appropriate ceremonies and activities.

Amend the preamble as follows:

Page 1, in the unnumbered line 11 of the preamble, strike out "men: Now, therefore, be it" and insert "men;".

Page 1, after the unnumbered line 11 of the preamble, insert:

Whereas jogging is an excellent form of exercise that provides opportunities for a graduated program of physical fitness for most individuals regardless of age, sex, or level of fitness;

Whereas numerous medical authorities believe that a regular, sensible jogging program improves the function of heart, blood vessels, and lungs, and serves as an advisable supplement to a weight-reducing or weight control program;

Whereas a positive correlation exists between the development of a fit body and the ability to experience an enriched and more satisfying life;

Whereas over three hundred thousand persons all across America participated in hundreds of fun runs and fitness clinics last year and countless other individuals participated in jogging and running as a leisure time activity which is beneficial and enjoyable: Now, therefore, be it

Amend the title so as to read; "Joint resolution to designate October 7, 1979, the Sunday of 'Fire Prevention Week' as 'Firefighters' Memorial Sunday'; to designate October 14, 1978, as 'National Jogging Day'; and to designate and authorize the President to proclaim, February 11, 1979, as "National Inventors' Day.".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, do I understand that this resolution now covers both firemen and joggers, as result of this amendment?

Mr. LEHMAN. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Florida.

Mr. LEHMAN. This is the Firefighters' Memorial Sunday resolution, which was passed on September 29. During the Senate consideration of this resolution amendments were added to also recognize joggers and inventors.

Mr. BAUMAN. Did the gentleman say inventors?

Mr. LEHMAN. Inventors.

Mr. BAUMAN. As in Thomas Edison?

Mr. LEHMAN. Yes. These were not included in the original House version of the resolution and therefore it was necessary that the House agree to the amendments.

I think it is very appropriate especially after the Marine Marathon of yesterday. I believe that makes this resolution very timely. In fact, one of our colleagues from Maryland did an outstanding job in yesterday's marathon.

Mr. BAUMAN. The gentleman from Florida (Mr. LEHMAN) is referring to the gentleman from western Maryland (Mr. BYRON) and he is indeed a noted jogger. He may also be a fireman, for all I know.

But why are we prejudiced toward inventors? It seems to me that we ought to include everybody we can in these resolutions.

The gentleman does not have to answer that question if he does not wish to do so.

Mr. LEHMAN. I understand the gentleman's concern and his question is certainly appropriate.

However, Mr. Speaker, I do believe that it is very important that we adopt the firefighters' resolution. It is important that we recognize them at this time. Of course we did not pass it in this form, certainly, in this body, but it came back to us in this form. The only way we can get the Firefighters' resolution agreed to is to adopt these amendments, since the Senate added these. If that had not been done we would not have this problem. Now they have returned the resolution with these additions, they included joggers and also inventors. You cannot separate them now, they are locked in together.

Mr. BAUMAN. I do not want even to explore that thought, but I certainly am in support of the legislation as an appropriate memorial to firemen.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

A motion to reconsider was laid on the table.

BROADENING OBSERVANCE OF THANKSGIVING TO AN OCCASION OF SHARING OUR PLENTY WITH THE HUNGRY OF OTHER LANDS

Mr. LEHMAN. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate concurrent resolution (S. Con. Res. 32) relating to broadening the observance of Thanksgiving to an occasion of sharing our plenty with the hungry of other lands, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate concurrent resolution.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 32

Whereas since 1621 Americans have each year celebrated a day of gratitude for the bountiful harvests and blessings of our own land with feasts and family gatherings; and

Whereas Americans have a long-demonstrated history of compassion for those less fortunate; and

Whereas compassionate Americans seek a vehicle through which to translate their concerns into constructive action; and

Whereas there is a need to help combat world hunger beyond what governments are providing; and

Whereas in a world where hunger is haunting an ever-growing proportion of the human family, it is appropriate that Americans should express their thankfulness by sharing with the hungry of other countries; and

Whereas this observance should serve to rekindle the original spirit of sharing and give our people the pride and satisfaction of contributing toward a better-fed world; and

Whereas this observance should add a practical aspect and broaden the ethical aspect of Thanksgiving: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress, that—

(1) the national observance of Thanksgiving should include a voluntary practice to be called "Thankful Giving", whereby Americans are invited to share with those aboard who are hungry;

(2) before starting their Thanksgiving meal, family members should be invited to make personal donations to combat hunger abroad as a way of giving thanks for the feast that follows;

(3) the sums so collected should be forwarded to the charities their donors choose, either religious or secular;

(4) schools, churches, clubs, labor organizations, and the media should disseminate and promote the concept of "Thankful Giving", and provide lists of appropriate charities;

(5) the President, the Governors of the several States, and local public officials should consider recommending the observance of "Thankful Giving" in their Thanksgiving proclamations.

Sec. 2. The Secretary of the Senate is directed to transmit copies of this resolution to the President, the Secretary of State, the Secretary of Agriculture, and to the Governors of the several States.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

AMENDMENT OFFERED BY MR. LEHMAN

Mr. LEHMAN. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LEHMAN: On page 2, line 3, immediately after "Thanksgiving" insert "on November 23rd, 1978,".

Mr. LEHMAN. Mr. Speaker, this amendment brings this resolution into compliance with the House's own committee rules, by limiting a commemorative period to a single year.

The amendment was agreed to.

The Senate concurrent resolution, as amended, was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEHMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolutions just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

AMENDING RULES CONCERNING COSPONSORSHIP OF PUBLIC BILLS AND RESOLUTIONS

Mr. LONG of Louisiana. Mr. Speaker, by direction of the Committee on Rules, I call up House Resoluution 86 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 86

Resolved, That (a) the last sentence of clause 4 of rule XXII of the Rules of the House of Representatives is amended by striking out "but not more than twenty-five".

(b) Clause 4 of such rule is further amended by adding at the end thereof the following: "The name of any Member may be added (or deleted) as a sponsor of a bill, memorial, or resolution which has been introduced and to which this paragraph applies, if a request on behalf of such Member is made by a Member to the Speaker (prior to the enactment or adoption of such bill, memorial, or resolution by the House), and such name shall be added (or deleted, as the case may be,) as a sponsor of such bill, memorial, or resolution when such bill, memorial, or resolution is next printed or reported. Such request shall be printed in the Record. The Public Printer shall not reprint any bill, memorial, or resoluton for the purpose of adding (or deleting) the name of an additional sponsor.".

With the following committee amendment:

Strike out all after the resolving clause and insert:

That clause 4 of rule XXII of the Rules of the House of Representatives is amended by inserting "(a)" immediately after "4.", by striking out "but not more than twenty-five" and "memorial" in the last sentence thereof, and by adding at the end thereof the following new paragraph:

"(b)(1) The name of any Member shall be added as a sponsor of any bill or resolution to which paragraph (a) applies, and shall appear as a sponsor in the next printing of that bill or resolution: *Provided*, That a request signed by such Member is submitted by the first sponsor to the Speaker (in the same manner as provided in paragraph (a)) no later than the day on which the last committee authorized to consider and report such bill or resolution reports it to the House.

"(2) The name of any Member listed as a sponsor of any such bill or resolution may be deleted by unanimous consent, but only at the request of such Member, and such deletion shall be indicated in the next printing of the bill or resolution (together with the date on which such name was deleted). Such consent may be granted no later than the day on which the last committee authorized to consider and report such bill or resolution reports it to the House: *Provided, however*, That the Speaker shall not entertain a request to delete the name of the first sponsor of any billl or resolution.

"(3) The addition of the name of any Member, or the deletion of any name by unanimous consent, as a sponsor of any such bill or resolution shall be entered on the Journal and printed in the Record of that day.

"(4) Any such bill or resolution shall be printed, and (B) if twenty or more Members is listed as the first sponsor submits to the Speaker a written request that it be reprinted, and (B) if twenty or more Members have been added as sponsors of that bill or resolution since it was last printed.".

SEC. 2. The provisions of this resolution shall become effective immediately prior to noon on January 3, 1979.

The SPEAKER pro tempore. The gentleman from Louisiana (Mr. LONG) is recognized for 1 hour.

Mr. LONG of Louisiana. Mr. Speaker, I yield the usual 30 minutes for the purposes of debate on the part of the minority to the distinguished gentleman from Maryland (Mr. BAUMAN), pending which I yield myself such time as I may consume.

Mr. LONG of Louisiana. Mr. Speaker, House Resolution 86 is a proposal to amend rule XXII of the Rules of the House to eliminate the limitation on the number of Members who may cosponsor a bill or resolution. This proposal enjoys wide bipartisan support and would be a beneficial change in many respects.

Clause 4 of rule XXII currently imposes a limit of 25 Members who may cosponsor a single bill or resolution. The result is that a measure with many cosponsors may be repeatedly introduced in order that all the cosponsors may have their names on the legislation. The situation created is confusing because identical proposals may bear many different bill numbers. In addition, repeated introduction of measures in order to accommodate additional cosponsors raises printing costs.

Let me point out here that the original proposal to eliminate the limitation on cosponsorship is the contribution of our colleague, the Honorable JOHN BURTON of California, to whom we are most appreciative. Both he and the Honorable JOE MOAKLEY of Massachusetts, a member of the Rules Subcommittee, have done a great deal of research into the cosponsorship problems of this body. With their counsel, the Subcommittee on the Rules and Organization of the House has developed a resolution that will rationalize our cosponsorship system. It takes into account the administrative capabilities of the Clerk's Office and allows ample time for implementation of the new system at the beginning of the 96th Congress, if we adopt this resolution today.

House Resolution 86 preserves the current practice of introducing legislation, but eliminates the limitation on the number of cosponsors. Currently a meas-

ure may be introduced with any number of sponsors—from one to 25, but 25 is the maximum. If a measure has more than 25 sponsors, an additional bill must be introduced for every additional 25 sponsors—that is, for every 24 additional cosponsors the principal sponsor enlists.

Under the provisions of House Resolution 86, however, any number of cosponsors may join in introducing a bill or resolution. The resolution completely eliminates the limitation of the number of cosponsors of a bill or resolution. A bill will not be held on the table prior to referral to committee, but will only be introduced when it is perfected, according to the judgment of the principal sponsor. Referral by the Speaker will follow immediately as it occurs in the current practice of the House.

In cases where additional Members wish to join as cosponsors of a measure after it is introduced, the resolution as amended provides that cosponsorship will be permitted upon submission by the principal sponsor to the Speaker of a request personally signed by the Member requesting cosponsorship. This requirement for a signed request is an effort to emphasize the importance of the decision to cosponsor legislation. Additional cosponsors will be entered on the Journal and printed in the CONGRESSIONAL RECORD of that day. Reprinting of bills and resolutions will not be automatic as it currently is, but reprinting will be permitted upon written request to the Speaker by the principal sponsor of the legislation, once 20 or more additional cosponsors have been enlisted since the last printing.

House Resolution 86 as amended also provides a procedure for deletion of a Member's name from a bill or resolution, if he seeks unanimous consent for this purpose. Such deletion will be entered in the Journal and printed in the CONGRESSIONAL RECORD, just as is provided for additional cosponsors. The principal sponsor is not eligible to have his or her name deleted because the committee feels it inappropriate to permit a bill once introduced to be withdrawn from the House.

Additions and deletions of cosponsors may occur at any time, but no later than the day on which the last committee to which the bill or resolution has been referred, orders the measure reported to the House.

By removing the cosponsorship limitation, we can clarify the sponsorship procedure, permitting all Members desiring to cosponsor a proposal to cosponsor the same bill or resolution. This change in the cosponsorship procedure would also result in cost savings to the House of Representatives. Depending upon Members' reaction to the change and the way they proceed to introduce legislation in the future, if this resolution is adopted, we may expect to save a great deal of money. The Clerk's office estimates our savings to be approximately $177,000, based on the expected elimination of printing 3,500 bills and some additional personnel costs for recordkeeping. The Congressional Research Service anticipates that the savings might even approach $1 million, if no identical or duplicate measures are introduced in addition to cosponsored ones. It is my feeling that we can save at least the $177,000 anticipated by the Clerk. The savings alone should be adequate justification for the adoption of this resolution. House Resolution 86, however, has other benefits beyond mere cost economy.

Mr. Speaker, the House did not permit cosponsorship in any form until 1967, when the distinguished chairman of the Committee on Rules at that time, the Honorable William Colmer of Mississippi, brought about this change by the introduction and adoption of House Resolution 42. The Colmer resolution, as amended on the floor, brought into being the current limitation of 25 cosponsors per bill or resolution. Cosponsorship has been an improvement to the legislative process, and I believe that House Resolution 86 as reported will further improve the procedures of this body with regard to cosponsorship of legislation. I was very pleased that the full Committee on Rules unanimously adopted the recommendations of the Subcommittee on the Rules and Organization of the House without modification.

House Resolution 86 does not prohibit the introduction of measures identical to cosponsored ones, but it makes them unnecessary. We therefore hope and expect that the adoption of this resolution will greatly reduce the introduction of individual measures by Members. To assure that the provisions of House Resolution 86, if adopted, are working to bring about greater efficiency and economy in the legislative process, our subcommittee will conduct a review of the effects of the rules change at the end of the 96th Congress.

Mr. Speaker, I heartily encourage my colleagues to support this resolution so that the Clerk may lay the groundwork for putting it into effect with the beginning of the 96th Congress.

Mr. Speaker, I reserve the remainder of my time.

Mr. JOHN L. BURTON. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from California.

Mr. JOHN L. BURTON. I thank the gentleman for yielding.

This bill was introduced this year, January 6, 1978. We are taking it up in the closing days of this session. I would like to thank the gentleman from Louisiana (Mr. LONG) for the diligence he has shown, given the heavy workload that his Subcommittee on Rules had.

I would like to point out also that this resolution was introduced during the 94th Congress and also the 95th Congress by myself and our late colleague, the gentleman from California, Mr. William Ketchum. We do believe that it will not only save in the hundreds of thousands of dollars in printing but will also save time and effort on the part of Members, and will also keep in the sink the fact that if you introduce one bill and the bill has a number, if you reintroduce it with coauthors, if that is the determination, although not necessarily, the same number will apply throughout the history of the bill, which I think will be good for Members who get communications from constituents asking them to support H.R. 17 when in fact they may be cosponsors of H.R. 18, which is the exact same measure as the one that their constituents are concerned with, but the constituents may not understand the number differential.

Last, I believe that there are some 27 copies of this measure introduced on the floor of the House adding cosponsors, which I think again proves the need for this legislation.

I am very grateful again to the gentleman from Louisiana (Mr. LONG) and the work that he has done, and also for the support given us, through the 3-year fight to get it passed, by our late esteemed colleague, the Honorable William Ketchum of California.

I thank the gentleman for yielding.

Mr. BAUMAN. Mr. Speaker, I certainly support this rules change. Unlike many rules changes, it has clarity of logic and simplicity that commends itself on its face.

I think it is a commentary on the method of deliberation in the House that it only took 11 years from the time the original cosponsorship rule was adopted to amend it to the reasonable fashion which we propose today. It never made sense to me why 25 was a magic number of cosponsors.

I would suggest one unfortunate development we might look for in the adoption of this rule. That is what we call in the State of Maryland General Assembly the bandwagon effect of cosponsorship. In our legislature, it is common practice for the entire reporting committee to add their names to a popular piece of legislation on the day it is reported out.

I assume that can be done by members of any legislative body, even those a little late to get the message on a good bill; but this will not only allow Members to add their sponsorship, but will save the taxpayers some money and that is always something devoutly to be wished.

Mr. Speaker, as was said, House Resolution 86 will amend the rules of the House to permit an unlimited number of Members to cosponsor a public bill or resolution at the time of its introduction, and to allow Members to be added or deleted as cosponsors of such a measure after it is introduced but not later than the date on which it is reported to the House by the committee or committees to which it has been referred.

Specifically, House Resolution 86, as reported by the committee, will amend clause 4 of rule XXII by striking from the last sentence the provision that not more than 25 Members may jointly introduce or cosponsor a public bill or resolution and by adding to clause 4 a new paragraph with the following provisions:

First. A Member may become a sponsor of a measure, after it is introduced, if a request signed by that Member is submitted to the Speaker by the first sponsor of the measure;

Second. A member may be deleted as a sponsor of a measure by unanimous consent, but only at the request of that Member; provided, however, that the

first sponsor of a measure may not be deleted;

Third. Any additions or deletions of Members as sponsors of a measure must be made no later than the day on which the last committee to which it has been referred reports the measure to the House;

Fourth. The addition or deletion of any Member as sponsor of a measure shall be entered on the Journal and printed in the CONGRESSIONAL RECORD of that day, and recorded on subsequent printings of the measure; and

Fifth. A measure shall be reprinted if its first sponsor makes such a request in writing to the Speaker, and if 20 or more Members have been added as sponsors of the measure since it was last printed.

The provisions of the resolution will become effective immediately before the 96th Congress convenes on January 3, 1979.

Mr. Speaker, this resolution should help clarify the legislative process and result in substantial cost savings. I, therefore, support the legislation and urge its immediate passage.

Mr. LONG of Louisiana. Mr. Speaker, I have no requests for time.

I move the previous question on the committee amendment.

The previous question was ordered.

The committee amendment was agreed to.

The resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LONG of Louisiana. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just considered (H. Res. 86).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

PUBLIC HEALTH SERVICES PLANNING AMENDMENTS

Mr. ROGERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11488) to amend titles XV and XVI of the Public Health Service Act to revise and extend the authorities and requirements under those titles for health planning and health resources development.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS).

The motion was ageed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 11488, with Mr. FISHER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Florida (Mr. ROGERS) will be recognized for 30 minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 30 minutes.

The Chair now recognizes the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the legislation before us today is H.R. 11488, the health planning and Resources Development Amendments of 1978, a bill which would amend titles XV and XVI of the Public Health Service Act to revise and extend the program of health planning and resources development.

The health planning program which we are proposing to extend and amend was established by Public Law 93–641, the National Health Planning and Resources Development Act of 1974. Since its passage significant progress has been made in implementing this law. Two hundred and five health systems agencies (HSA's) have been designated on a conditional basis. Of these, more than 145 have moved to full designation. Fifty-six State health planning and development agencies (SHPDA's) have been established. In addition, 10 health planning centers have been put in place to meet the technical assistance and training needs of the agencies.

H.R. 11488 is the result of careful analysis of the existing health planning program, 4 full days of hearings and several days of markup by the Committee on Interstate and Foreign Commerce. As a result of this process, the committee has concluded that the basic structure of the planning system is sound.

The HSA's after spending much of their initial efforts on organizational matters are now beginning to concentrate on the development of health plans and their implementation. These agencies will begin to realize their full potential during the next 3 years if not deterred from their focus on planning by new and unnecessary organizational requirements. However, the early experience of this program indicates that some minor changes in the law are in order. H.R. 11488 accomplishes these changes without undue disruption to the developing planning effort. The reported bill deals with seven major issues.

First, the planning program is extended for 3 years at funding levels which recognize inflation and the increase in responsibility required of fully designated health planning agencies. The bill would authorize $205 million in fiscal year 1979 and $219 million and $233 million in fiscal years 1980 and 1981, respectively.

Second, HSA organizational requirements are slightly modified and the governing body requirements are strengthened. The self-perpetuation of HSA governing bodies would be prohibited. Provisions are made for active local elected official participation in the health planning process. The process for selecting HSA governing body members would be required to be open and well publicized. More adequate support would be required to be given to continuing education and training of governing body members so that their decisionmaking capability would be enhanced. In addition, a member of the HSA staff would be designated to have responsibility for providing the consumer members of the governing body with such assistance as they may require to effectively perform their functions. In public HSA's, the bill would provide the regional planning board or unit of local government with more authority over health planning in its area.

Third, the reported bill would provide a larger role for Governors and State government in the health planning process. It would assure a Governor's active involvement in both health service area and in HSA designation. In addition, the SHPDA would be required to define the statewide health needs for local HSA's to consider in their planning activities. The Governor of each State would be permitted to disapprove the State health plan if he finds the plan does not effectively meet those established statewide health needs.

Fourth, the legislation would strengthen the linkages between planning at local and State levels and that which takes place at the Federal level. The Secretary would be required to analyze and review the health plans which are developed by the HSA's and the States and use that analysis in modifying the national guidelines for health planning and in developing additional guidelines. The bill makes it clear that the national guidelines for health planning are not to be rigid standards inflexibly applied but rather benchmarks which HSA's can adjust as local circumstances require. The bill requires more adequate consultation with various groups prior to revision or establishment of additional national guidelines.

Fifth, the requirements for State certificate of need programs are strengthened. The reported bill requires closer ties between planning and regulatory decisions by requiring that certificate of need decisions not be inconsistent with the State health plan. Required certificate of need coverage would be extended to home health services and major medical equipment—defined as equipment over $150,000—that would be used to serve inpatients of a hospital. This later change would close a loophole in existing certificate of need requirements where a physician can purchase equipment and install it in leased space in a hospital or in a facility adjacent to a hospital and carry out diagnostic or treatment procedures avoiding certificate of need review.

Sixth, the planning agencies are encouraged to begin planning for a reduction in unneeded and duplicative health facilities and services. Experts have testified that we have 100,000 excess hospital beds. Such excesses contribute to total costs because higher prices must be charged to cover the fixed costs of keeping the unit or facility in operation. Health planning agencies should begin to identify this excess capacity while assuring access to needed services. I should point out, however, that while the health planning agencies are expected to focus on making the health care system more efficient, neither the bill nor the existing law contains authority for the health

planning agencies to force or require individual institutions to close unneeded or duplicative services. Such changes would have to come about voluntarily. It is our intent that health care providers work together in cooperation with the HSA to carry out the appropriateness review findings and recommendations.

Finally, the resource development authority of Title XVI of the Public Health Service Act is also revised and extended. The bill would extend Federal loan and loan guarantee support for health care facilities although support would be limited to priority areas. Project grant authority for the construction and modernization of public hospitals and health care facilities to correct life safety code and other accreditation violations and grant authority for the area health services development funds would be extended. New grant authority for the construction of outpatient medical facilities in medically underserved areas and the conversion of existing facilities into facilities for outpatient and long-term care would be established. The legislation repeals the provisions of existing law that have provided allotment grants to States to develop health care facilities. The bill would authorize $250 million for fiscal year 1979 and $290 million in fiscal years 1980 and 1981 for the development of health care resources.

Mr. Chairman, there is one issue that is not dealt with in H.R. 11488 that should be clarified. Concern has been expressed that HSA's and health care providers who voluntarily carry out the mandates of the health planning laws (titles XV and XVI of the Public Health Service Act) may be in violation of the antitrust laws.

The antitrust laws prohibit actions which have the effect of restraining trade or competition. We have found, however, that there is minimal price competition within some parts of the health sector and that often the only competition is around the provision of services. One undesirable result of service competition has been that hospitals and other health care providers have acquired duplicative and expensive equipment and facilities which have led to higher costs for the consumer. In enacting Public Law 93–641, which added titles XV and XVI to the Public Health Service Act, the Congress made a specific judgment that control of the development of health care facilities was needed even though price and service competition might be restrained, and created a health planning system that could promote the efficient use of health resources through the regulation of and voluntary action by providers.

Title XV requires HSA's to bring together both consumers and providers to plan for an efficient health care system that will meet the area's needs. The HSA governing body is to make decisions in its health systems plan and in appropriateness review recommendations that affect market allocation. For example, the HSA should set goals relating to the number of beds and other hospital resources that are needed in its area. If there is excess capacity in the area, the HSA will want to identify it and call for its reduction. In doing so, the HSA may develop institution-specific recommendations; for example, hospital X should close its underutilized cardiac catheterization laboratory, or develop broader recommendations, such as, three cardiac catheterization laboratories in the area should be consolidated. In either case, it is congressional intent that providers and consumers work together in cooperation with the HSA to determine how best to carry out such recommendations. Without the voluntary cooperation of providers, the provision of title XV dealing with the development of a plan and the review of existing institutional health services could not be carried out.

Title XV also requires that before an institutional health service is begun the HSA must recommend to the State health planning agency whether the institutional health service is needed and a certificate of need snould be granted. This control function directly affects entry into the market and competition. Because such decisions are tied to a State certificate of need law, however, there is little question whether they are exempt from antitrust laws. In any event, congressional intent was for the HSA, the provider seeking the certificate of need and other providers which might seek to provide similar services to coordinate their activities to assure that new institional health services are developed in accordance with the health systems plan for the area.

To carry out each of these activities the HSA needs the cooperation of providers. Explicit reference to such cooperation is contained in the national health priorities which set forth the expectation that providers should work together to coordinate and consolidate services. Priority two calls for the development of multi-institutional systems for coordination or consolidation of institutional health services. Priority five calls for the development of multi-institutional arrangements for the sharing of support services necessary to all health service institutions.

Although Public Law 93–641 contains no specific exemption from the antitrust laws, an analysis of the activities required of HSA's and providers indicates that Congress sanctioned actions which might otherwise be in violation of our antitrust laws. The intent of Congress was that HSA's and providers who voluntarily work with them in carrying out the HSA's statutory mandate should not be subject to the antitrust laws. If they were, Public Law 93–641 simply could not be implemented.

Thus, it is my view that the concerns which have been expressed are unnecessary and should not deter the cooperative relationships which are developing.

Mr. Chairman, H.R. 11488 is important legislation. The health planning program and the resources development program have great potential to help us move toward a more efficient health care delivery system and to prevent duplication of unnecessary facilities and services and thus help contain rapidly rising health care costs. It will also provide for the identification of areas where services are not adequate or access to services is poor and a mechanism to work to solve these problems. Yet the health planning program needs strengthening. We believe that the 3-year extension and these substantive changes will greatly assist the planning program in reaching maturity and beginning to fulfill its promise of working toward increasing accessibility to care, maintaining quality of care, and restraining increases in cost for the citizens of our Nation.

Mr. CARTER. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Chairman, I rise in opposition to this Health Planning and Resources Development Act amendment that we have before us.

I realize that to speak against health seems like one is against motherhood. But basically, what we need to evaluate more and more in Congress is the fact that we cannot spend money, spend money, spend money. We should realize that there must be a day when we evaluate all bills, not based on their names but based on the dollar signs that are involved in them.

In this particular bill we have one title I would like to discuss, title XVI. In title XVI, by which we have projected a total of $830 million, the President did not request anything for 1979. In other words, we are moving into a field in which President Carter did not think we should be spending money. He did not request it in his budget, and since it is not requested in the Presidential budget, it would seem incumbent upon us to show that we are following very strong financial guidelines of our own, and we should remove this section XVI from the bill.

I understand that there are many good clarification improvements that have been made in this bill as we have it before us. Most of them are made to leave more control in the hands of local HSA's. In fact, the thing that impressed me the most in the report was the part where it said that this makes it clear that the HSA can establish goals that are different from the national guidelines in order to be responsive to the unit needs and resources of its area.

That decentralization is a big step forward, and that is the great achievement of this bill.

The bill goes on, though, as happens in so many cases, to define who is going to be on the boards and how they qualify for a board. Selection is not based on merit but based on a determination that we are, for instance, going to have five women, three minority representatives, three physicians, one practicing hospital administrator, one health insurance representative, one labor leader, and one industry representatives.

Every time I see these Government boards I get more and more disgusted with the concept that we are trying to represent everybody. Selection is not put on a quality basis. It sounds like we are trying to pick boards on the basis that everybody must be represented politically. What we should be thinking about in health is whether we have the brains in the country working together to come out with the best research for better medical achievements.

Mr. Chairman, in the past 30 years, we have seen the Government agencies here in Washington grow so large that they have become the heaviest financial burden on the American taxpayer. The worst offender of inflationary Government spending is the enormous Department of Health, Education, and Welfare which has created mounds of guidelines and unnecessary paperwork. The Health Planning and Resource Development Amendments of 1978 will pour an additional $1.5 billion into health planning and construction under HEW supervision.

The main reason money will not cure the problem of Federal health programs is that there is no incentive to make them operate efficiently. When a private business starts out, they borrow the money within certain limits of their budget, and then work hard to pay that money back to be free of debt. To do so, they must build their business to make it profitable and appealing to consumers. Not so with bureaucracies like HEW. If their programs do not prove beneficial to the American people, the money is lost. Yet, they come back the next year and the next to ask for more.

Title XV of H.R. 11488 includes $657 million for a 3-year extension for the planning and development of local health programs in coordination with HEW. These local groups, health systems agencies, were originally implemented to place health planning responsibility at the State and local level. Planning grants for these HSA's started at $60 million for fiscal year 1976.

This year we are giving HSA's $150 million for review procedures, grant formulas, board membership requirements and more detailed plans to perpetuate a local system which has been consistently used by HEW to install its own system into local health care. Coordination on a Federal level with HSA's is handled by the National Council on Health Planning and Development.

The type of people chosen by the bureaucrats to develop health planning is interesting in that professionals with a health background are not in the majority membership on this board. Instead, they mandate 5 women; 3 minority representatives—1 black and 1 Hispanic; 3 physicians; 1 practicing hospital insurance representative; 1 labor leader; and 1 industry representative. The health members are outnumbered 10 to 6. It seems to me that if this national board is there to help the local health authorities do their planning, they should all be experts in the health field.

Mr. Chairman, we have had a lot of discussion in the Interstate and Foreign Commerce Committee this year about cutting hospital costs and the need for controls of hospital spending. How can we set an example for the private hospitals when we authorize $830 million in title XVI of this bill for hospital construction and modernization? The administration has not supported this expenditure as acknowledged by the good chairman of the subcommittee, Mr. ROGERS, in our recent floor discussion of this bill. The President did not request these construction funds in his budget plan.

Congress debated for months on hospital cost containment. The same liberals who asked for price controls now ask to spend more money on construction.

Mr. CARTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the purpose of this legislation is to save money for the people of the United States, for those people who are ill and who have to go into hospitals, by not increasing the number of exotic machines such as CAT scanners, linear accelerators, and things of that nature throughout our country. The purpose is to save money.

And how would we do this? The HSA of course, would insure that only a number sufficient to the need in the different communities throughout the States would be put in place.

At the present time, almost every hospital in every city, every large hospital, wants a linear accelerator or a CAT scanner or a coronary care unit. And, of course, as these multiply, as they increase in number, the cost, not only to the patient, but to the people, to the taxpayers, to my friend, the gentleman from Texas all of that increases. So we are calling upon the people to get together and to say, for instance, where a coronary care unit is needed, where computerized axial tomography is needed, to insure that these health facilities are available, but, at the same time to keep these from proliferating, to not have too many. If we did not have such health systems plans to control this, the actual price, the medical costs would go out of sight, hospital costs and costs to our patients would be completely out of control.

Now, under the old Hill-Burton Act, which was very, very good, we built many hospitals throughout our country, in every State and in almost every rural community. As a result of that, today we have 100,000 beds which are not used and which are costing us at least $20,000 per year for each one of those beds.

From what one of my friends who spoke in opposition to this legislation says, I believe he would want to retain those 100,000 unused beds in their unused state at $20,000 per year. Well, does he really want to save money or does he want to spend money? Is he one of the big spenders? I am afraid that he is. He does not want to conserve.

Mr. Chairman, now I have said a great deal about the health care cost restraints which health planning can provide, and which this bill supports. However, I also would like to emphasize another— and in my view, an equally important—responsibility of health planning. The national health priorities set out in the Health Planning Act make it clear that one of the major responsibilities of health planning agencies is to insure that every American has access to high quality medical care.

I regret to say, Mr. Chairman, that as yet we have not met this goal. In many areas of our country—both rural and urban—citizens of this great country do not receive the medical care they deserve—and this health planning bill is one of the ways in which we are trying to do something about these problems.

For example, in my own area, the East Kentucky Health Systems Agency, in cooperation with the Appalachia Regional Commission, is working with local communities to provide better primary care to the people of this region.

We are already beginning to see the results of these efforts. In Lee and Owsley Counties, a new primary care center is being established, and—in Whitley County, the HSA is assisting local citizens to develop a grant application for their own clinic.

Let me point out that these types of efforts can have a direct and beneficial impact upon the health of the residents of these areas. In Perry County, Ky., a primary care project has been able to reduce the infant mortality rate in that county from one of the highest in the Nation to one of the lowest—from over 40 deaths per 1,000 live births—to only 8 infant deaths per 1,000 live births.

These are the kinds of results which can be achieved when local citizens, working together through their health systems agencies, plan for needed improvements in health care. This is the major reason why I support health planning, and this is why I urge my colleagues to support this bill.

Of course, I am very much aware of the ability of the health planning system to help hold down spiraling health care costs. By avoiding duplication of facilities and equipment, and through promoting efficiency in the use of health care resources, recent reports indicate that HSA's may have saved this country between $1.8 and $3.1 billion.

These are important results, and cannot be ignored. Although the health planning system is relatively young, it is already contributing significantly to improve our health-care delivery system. Again, that is why I support health planning, and that is why I would urge my colleagues to do the same.

I would like to emphasize what I believe are some of the important improvements in the health planning system included in the bill before the House today.

First, the committee has taken steps to insure that health planning is in fact a local process—done by and for local people in consideration of their special needs and circumstances. The bill makes clear that the national guidelines for health planning, promulgated by the secretary of HEW, will not be used by the Secretary to dictate to local health systems agencies the content of their health plan. In making this change, it is my strong belief that the committee has reaffirmed the original intent of Congress in passing the Health Planning Act.

Second, the committee bill provides assurances that local health systems agencies will have the benefit of the expertise of those most affected by their decisions by insuring that hospital administrators, medical schools, and public officials will be represented on HSA boards. I believe that it is extremely important that HSA boards be composed of interested, informed, decisionmakers. In that regard, I would note that the committee has once again rejected the idea that

strict quotas be used to select the consumer members of an HSA board. It is certainly important to have each point of view represented on these community boards, but I do not believe that it is necessary that each group in the population be represented in strict accordance with its numbers. To do so would be detrimental to the health planning process.

Third, the committee bill charts a responsible course on the subject of review and determination of need for health care facilities and services under the certificate of need program. The bill proposes to extend certificate of need review to major medical equipment which is used to provide services to in-patients regardless of ownership or physical location. The committee has taken this step because we have found that at times an attempt has been made to evade the certificate of need process through having another individual purchase the equipment, locate it within or near the hospital, and then provide that service to the hospital's in-patients. However, the bill does not propose a blanket extension of certificate of need to private for the construction or modernization of free-standing out-patient clinics. I believe that the priorities reflected in the committee's proposal for health resources development provides for the most prudent management of our limited health care dollars and represents the best approach to meeting the unmet health care needs of the Nation.

Mr. Chairman, this bill provides important improvements in our efforts to assist local citizens in making decisions about health care, and I believe that passage of this bill will have a beneficial impact upon the cost, availability, and the accessibility of needed health care services.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. I would like to ask the gentleman from Kentucky, who is a doctor and certainly has his heart in the field of medicine, if he will remember the hearings we held in our committee just a short time ago, just 2 weeks ago, when they said we have too many hospitals in this country, we should not build any more hospitals, and why does the gentleman urge that we consider this title XVI in the bill when they said we did not want to build more hospitals.

Mr. CARTER. This is not for building hospitals. It is for building ambulatory care centers, out-patient clinics, where these people can be taken care of at less expense than if they were placed in a hospital, and for rennovating hospitals and for bringing them up to code and accreditation standards. Not only that, but for converting the 100,000 beds we have to intermediate or skilled long-term care facilities. That is what we are doing, making use of something which we do not need which is costing us millions of dollars a year.

Mr. COLLINS of Texas. If the gentleman will yield further, I would like to ask my colleague, the gentleman from Kentucky, when he speaks of the Government being able to do something on an economic basis, does he remember that the Post Office operates at a $2 billion deficit and is the most inefficient operation? We know that Amtrak came in here the other day——

Mr. CARTER. I will take my time back to respond to the first point the gentleman raised.

The gentleman talked about the Post Office Department. How did the distinguished gentleman from Texas vote on that bill?

Mr. COLLINS of Texas. I voted against the budget. I voted against the appropriation.

Mr. CARTER. Wait a minute now. I am talking about the bill that reorganized the Post Office. That came up about 1970, I believe. I certainly was one who opposed it.

Mr. COLLINS of Texas. I agree. I voted for it. That was a mistake.

Mr. CARTER. The gentleman voted for it.

Mr. COLLINS of Texas. I voted for it. We all make mistakes.

Mr. CARTER. That puts the gentleman from Texas in the big spender class again, does it not?

Mr. COLLINS of Texas. I will tell the gentleman that I never voted for it since.

We have many modes of communication in this country. We can use the telephone, we can use the telegram.

Those are private operations. The Government has nothing to do with them, and they both operate at a profit. Any time the Government takes on an operation, whether it is the Post Office or running a train, whatever they do, it is a financial disaster. How does the gentleman say here in this bill that he can see them operating anything efficiently? What example can he point to where the Government has provided us with a model of efficiency?

Mr. CARTER. Last year, because of this very legislation, we saved almost a billion dollars. We cut out excessive amounts of money in this bill for building new hospitals, and inserted instead, funds for building ambulatory care units, outpatient departments, and rebuilding and reconstructing the hospitals that need to be modernized and brought up to code.

Mr. COLLINS of Texas. Is the gentleman saying that we saved the money by reducing the amount of the appropriation?

Mr. CARTER. Yes, from Hill-Burton funds, from the amount we have spent on that over the years.

Mr. COLLINS of Texas. If we carry this a step forward, we could save $150 million if we would just delete it this year.

Mr. CARTER. I want to respond to that very thing, because actually the purpose of this bill is to save tax dollars, and it will save tax dollars. But, the distinguished gentleman there will go on to oppose it as he has, and certainly he will most likely vote against this attempt to save money.

Mr. ROGERS. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from Florida.

Mr. ROGERS. I thank the gentleman for yielding. I think the gentleman may want to know that a recent study made in the Southeast on HSA's has shown that they saved $367 million just in that area in an 18-month period of time in preventing duplication of equipment, unneeded equipment. Also, in the certificate of need and section 1122 programs, it is estimated that the savings for the last 2 years will be between $1.8 billion and $3.1 billion. Surely, the gentleman is for savings. I cannot understand his reasoning.

Mr. CARTER. I just made that point about the saving of billions of dollars which the gentleman brought up, and I want to thank the gentleman for bringing that out. This is a bill to save money. I hope the distinguished gentleman from Texas would look at this legislation carefully and really see what it is doing, the purpose of it.

The bill represents an attempt to reduce the number of unused beds, to get rid of that expense. It is to not build unneeded beds, and to cut down on the purchase of unneeded equipment. This is what this is all about, to save money, to control costs and to improve health care. If the gentleman is interested in saving again, I would ask him to help us out.

Mr. COLLINS of Texas. If the gentleman will yield further, I was interested in the figure the gentleman from Florida picked out of the air.

Mr. ROGERS. Just a minute. Would the gentleman yield?

Mr. CARTER. I do yield. It is in the report.

Mr. ROGERS. I do not mind the gentleman engaging in fair debate, but this business of talking about figures picked out of the air, there was a study undertaken and the results were presented in testimony to the committee by the Southeast Association of HSA Executives. They are statistics, facts, savings. I want the gentleman to know that. I thank the gentleman for yielding.

Mr. COLLINS of Texas. Since the gentleman answered, what are these facts we are talking about? These facts were the results of a study for the Government for orders on vertification, and it is our report. Where does the gentleman save the money?

Mr. ROGERS. Will the gentleman yield further?

Mr. CARTER. I am happy to yield.

Mr. ROGERS. It is savings made through good planning where they have turned down the requests. It has been verified in this report. Without the planning agency, unnecessary hospitals would have been built, unneeded equipment would have been installed. Because they prevented these unnecessary facilities and equipment there are savings to the taxpayers. That is what we are talking about.

Mr. COLLINS of Texas. Will the gentleman yield further?

Mr. CARTER. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. I would say to the gentleman from Florida, who is the greatest advocate of health in this country, that would be like taking my wife

into Neiman Marcus, and she saw seven dresses she liked, so she only bought two. Think of all the money she saved. I want to tell the gentleman, when I got through buying those two dresses, and we presented this card——

Mr. ROGERS. Let me tell the gentleman, if your wife had already asked for them and had signed all of the papers to purchase them and the gentleman said no, he could say then that he has saved some money

Mr. CARTER. I want to congratulate the gentleman on his ability and financial stature, but I would like for him to help us in planning to save money and improve health care in this country.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I am pleased to yield to the distinguished gentlewoman from New Jersey.

Mrs. FENWICK. I thank my colleague for yielding. I served on the health plan council in New Jersey for about 3 years, and I know we do save money in this way. It is the only way we are going to keep down these exaggerated costs. But, I must ask in good conscience, why does it cost $455 million a year for this planning?

What is it spent on?

Mr. CARTER. Where does it go?

Mrs. FENWICK. Yes.

Mr. CARTER. Well, in fiscal year 1979 $205 million goes to the different HSA's, that is the Health System Agencies in all the various States and the State health-planning agencies. Much of it is used as the Hill-Burton funds were for renovation of hospitals and for building ambulatory care centers. In fact, $250 million is authorized for this purpose.

Mrs. FENWICK. Oh, I see.

Mr. CARTER. And for conversion of existing facilities to outpatient clinics and long-term care facilities.

Mrs. FENWICK. It is for needed construction and equipment, in other words.

Mr. CARTER. Yes.

Mrs. FENWICK. I thank the gentleman.

Mr. CARTER. In a sense it is a replacement of the Hill-Burton program. Although the Hill-Burton bill has not been repealed, it has not been funded since 1976, I believe.

Mrs. FENWICK. Under which title is this? The title XV extends funds for Health Systems Agencies, and planning grants are given under that figure, and it is $205 million. Under title XVI we have deleted, as I understand it, the State allotment grants to develop health care facilities. Is that true?

Mr. CARTER. Would the gentlewoman repeat that?

Mrs. FENWICK. The State allotment grants to develop health care facilities, that has been deleted from title XVI, so there will not be any more grants going to local health care facilities under title XVI as they were before. Is that correct?

Mr. ROGERS. Mr. Chairman, if the gentleman will yield, I will respond.

Mr. CARTER. I yield to the gentleman from Florida.

Mr. ROGERS. That is true. We are not building new hospitals. That is correct.

Mrs. FENWICK. So it would be more like equipment.

Mr. ROGERS. It would be for outpatient facilities and the modernization of existing public hospitals that do not meet life-safety codes but not building new facilities.

Mrs. FENWICK. Just while we are on the subject of health, is there anything in here for the HMO's, which I think are a promising development?

Mr. ROGERS. There is nothing in this bill for that. There is another bill for that.

Mr. CARTER. There is another bill that has recently passed the House on HMO's.

Mrs. FENWICK. I thank the gentleman.

Mr. DORNAN. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from California.

Mr. DORNAN. Mr. Chairman, it is imperative that medical care be guided by principles of right and justice. Considerations of cost and planning are not sufficient guides in themselves to make public policy decisions. German medicine in the 1930's and 1940's was very much concerned with planning and cost, but ethics were considered merely a private affair.

How about ethics? This is the missing element that underlies so many of the criticisms leveled at the delivery and accessibility to medical services today. My amendment would simply require that the 5-year plan—HSP—and the annual implementation plan—AIP—of a health systems agency must be described in terms of the ancient and venerable Hippocratic oath, as restated in 1948 by the World Medical Association meeting in Geneva.

The flora and fauna of our environment have been properly singled out by Congress for special protection under environmental impact statements. How much more consideration do we owe to our fellow citizens? At a time when many question the integrity of those of us in professional life. I think that your support for my ethical impact statement amendment will be appreciated by your constituents. The oath protects the doctor from becoming a tool of totalitarian social policy. The oath protects the sanctity of life for the patient.

It is worth noting that the Geneva version of the oath of Hippocrates was reformulated in the wake of Nazi horrors perpetrated during World War II.

The oath states:

Now being admitted to the profession of medicine, I solemnly pledge to consecrate my life to the service of humanity. I will give respect and gratitude to my deserving teachers. I will practice medicine with conscience and dignity. The health and life of my patient will be my first consideration. I will hold in confidence all that my patient confides in me.

I will maintain the honor and noble traditions of the medical profession. My colleagues will be as my brothers. I will not permit consideration of race, religions, nationality, party politics or social standing to intervene between my duty and my patient.

I will maintain the utmost respect for human life from the time of its conception. Even under threat, I will not use my knowledge contrary to the laws of humanity.

My amendment reads:

Page 97, insert after line 24 the following:

(i) Section 1513(c) is amended by adding at the end the following:

"(5) The HSP of a health systems agency shall include a statement of the effect that achievement of the goals of the HSP will have on the requirements placed on the practice of medicine by the Oath of Hippocrates (as restated in Geneva, Switzerland, in 1948 by the World Medical Association), and the AIP of a health systems agency shall include a statement of the effect that achievement of the objectives in the AIP will have on such requirements."

Mr. CARTER. I took the Hippocratic oath myself when I graduated from medical school.

Mr. DORNAN. I thank the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Ohio (Mr. GRADISON).

Mr. GRADISON. Mr. Chairman, H.R. 11488, the health planning and resource development amendments, which I supported under suspension of the rules on September 18, 1978, requires health care facilities to apply for a certificate of need for capital expenditures over $150,000. With current and predicted inflation rates near 10 percent, $150,000 will purchase less and less capital equipment over the years. As the $150,000 threshold applies to a greater and greater number of purchases, it will increase the occasions where hospitals must seek certificates of need. Consequently, hospital operating costs will increase due to the necessary extra staff time involved. I am sure the gentleman will agree that we have no interest in increasing the hospitals' operating costs.

While I considered offering an amendment to index, or adjust annually, the $150,000 threshold for the rate of inflation, I realize that the Subcommittee on Health has not held hearings on such a provision and therefore, lacks necessary background information on the increasing burden of a certificate of need threshold not adjusted for inflation.

During the next Congress, I would hope that the subcommittee will review available information on the effects of this provision to assure that the threshold is maintained at a reasonable level during these inflationary times. In this regard, perhaps the chairman and ranking minority member of the subcommittee would agree to request that the HEW report mandated by section 125 of the bill specifically address the question of inflation's effect on the certificate of need threshold. As the report required by the bill will review "the extent to which * * * the increases in cost of the provision of health care have been restrained," I think it is appropriate for HEW to review the cost increases that may result from increases in the number of certificates of need required as inflation pushes up the prices or capital purchases.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. GRADISON. I am happy to yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, I find myself in agreement with the gentleman's position, and certainly I would like to ask the chairman of the committee, the gentleman from Florida (Mr. ROGERS) if he also agrees.

Mr. ROGERS. Mr. Chairman, if the gentleman will yield, I certainly do agree with the concept of a study. I would also say that the committee did, in presenting the legislation before the House, increase that amount from $100,000 to $150,000. So we have acted in line with the gentleman's thinking. I believe it is appropriate that we study it and have it reported to us.

Mr. GRADISON. Mr. Chairman, I thank the distinguished gentleman from Florida (Mr. ROGERS) the chairman of the committee and the gentleman from Kentucky (Mr. CARTER) for their thoughts on this item. I appreciate the gentleman yielding to me.

● Mrs. LLOYD of Tennessee. Mr. Chairman, permit me to associate myself with those here today who have spoken in behalf of the work which the committee has done on the thorny issue of certificate of need application to capital expenditures for medical equipment exceeding $150,000.

The chairman's committee amendment has removed the controversial sting from this issue while protecting the planning act from the threat of circumvention which would lead to the duplication of expensive equipment when such duplication could prove unnecessarily costly to health care consumers, providers and the American taxpayers.

The language of the other body in this regard is far too broad, much too controversial and unquestionably unnecessary.

The chairman and the committee are to be commended in the wisdom of their approach to the resolution of this issue and the House language should prevail when the President signs this legislation into law.●

● Mr. BROYHILL. Mr. Chairman, I support H.R. 11488, the Health Planning and Resources Development Amendments of 1978. As a member of the Commerce Committee's Subcommittee on Health and the Environment and a cosponsor of the bill, I think that this legislation represents a responsible and appropriate extension of the health planning law. One significant and important aspect of this bill is that it increases the role of local and State health planning authorities to establish and implement their own State programs. The approach taken in this legislation, namely to grant more authority and independence to States and localities in carrying out Federal programs, should be encouraged and applied more often in the consideration of other legislation.

I would further urge my colleagues to support this bill because I believe that the health planning law represents a positive step in controlling health care costs. As many of my colleagues know, the health planning program was designed to eliminate the duplication of health services and to coordinate health planning in an effort to check rising health costs. We are seeing significant cost savings which justify the continuation of this program.

For example, 41 Southeastern health service areas in the United States, in which North Carolina is included, reported this past January the recommended disapproval of 235 proposals for spending in that region.

This action resulted in a cost-savings of more than $367 million. H.R. 11488 will foster and strengthen the planning process so that we can see an orderly and rational approach to containing health care costs.

Further, I would like to refer to the colloquy which the distinguished chairman of the Health Subcommittee (Mr. ROGERS) and I had on September 18, 1978, when we first considered this legislation on the House floor under suspension. At that time, I asked Mr. ROGERS a question with respect to section 117 of the bill. Section 117 of H.R. 11488 would exempt independent laboratories from the necessity of securing a certificate of need before purchases of major items of medical equipment. It was the opinion of the subcommittee that the certificate of need program should not be applied to independent labs since they are already fully regulated by competition in the marketplace. For the record, I asked Mr. ROGERS, who introduced this provision in subcommittee, that section 117 was adopted without opposition by the subcommittee and subsequently approved by the full committee without dissent. Mr. ROGERS responded in the affirmative.

I make reference to the colloquy so that the House conferees will recognize and insist on the House position with respect to this section.

Finally, may I take this opportunity to compliment the chairman of the subcommittee, Mr. ROGERS, and the ranking minority member, Dr. CARTER, for their leadership and efforts to guide this legislation successfully through the Commerce Committee.●

● Mr. BAUCUS. Mr. Chairman, I wish to join and associate myself with my colleagues here today in regard to expressing my support for the committee's treatment of the certificate-of-need issue. The language in this bill, the House bill, is preferable to the Senate language and I also express my view and hope that it will be maintained in conference.●

Mr. CARTER. Mr. Chairman, I thank the distinguished gentleman from Ohio (Mr. GRADISON) and also my good friend the gentleman from Texas, for their remarks.

Mr. Chairman, I have no further requests for time.

Mr. ROGERS. Mr. Chairman, I have no further requests for time. I yield back the balance of my time.

Mr. CARTER. I yield back the balance of my time.

Mr. ROGERS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. FOUNTAIN) having assumed the chair, Mr. FISHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11488) to amend titles XV and XVI of the Public Health Service Act to revise and extend the authorities and requirements under those titles for health planning and health resources development, had come to no resolution thereon.

GENERAL LEAVE

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on the bill H.R. 11488, just under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 10173, VETERANS' AND SURVIVORS' PENSION IMPROVEMENT ACT OF 1978

Mr. MONTGOMERY. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 10173) to amend title 38, United States Code, to improve the pension programs for veterans and survivors of veterans, of the Mexican border period, World War I, World War II, the Korean conflict, and the Vietnam era, and for other purposes.

The SPEAKER pro tempore. Is there ojection to the request of the gentleman from Mississippi?

There was no objection.

BIOMEDICAL RESEARCH AND TRAINING AMENDMENTS OF 1978

Mr. ROGERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12347) to amend the Public Health Service Act to revise and extend the programs of assistance for libraries of medicine and the programs of the National Heart, Lung, and Blood Institute and the National Cancer Institute, to revise and extend the program for National Research Service Awards, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 12347, with Mr. FISHER in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Florida (Mr. ROGERS) will be recognized for 30 minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today, it is my pleasure to present to the House of Representatives H.R. 12347, the Biomedical Research and Research Training Amendments of 1978. This bill amends the Public Health Service Act to revise and extend for 3 years the programs of assistance for medical libraries, the programs of the National Heart, Lung, and Blood Institute, the National Cancer Institute, and the program for national research service awards. It also contains other amendments to the Public Health Service Act which are intended to make the act more responsive to national health needs. The bill is cosponsored by most of the subcommittee members and was passed unanimously by voice vote of the Committee on Interstate and Foreign Commerce on May 2, 1978.

Mr. Chairman, we have made significant gains in our assault on the Nation's leading killers—cardiovascular disease and cancer—an effort which would not have been possible without the strong commitments made by Congress to both the National Heart, Lung, and Blood Institute and to the National Cancer Institute. However, there is still much to be accomplished. I consider it essential for the improvement of our Nation's health that we continue to support and strengthen all of our biomedical research programs as well as training programs to provide our Nation with outstanding scientists to carry out these research programs.

The research supported by the programs covered by this legislation are beginning to show substantial gains as indicated by significant declines in deaths from heart attacks, hypertensive disease, stroke, and several forms of cancer.

For example, from 1970 to 1975 deaths from heart attack declined 14 percent. Hypertensive disease mortality declined 34 percent. Mortality for stroke declined 18 percent. Mortality for rheumatic fever and rheumatic heart disease declined 25 percent, and for congenital heart disease it declined 14 percent. Further, it is estimated that 49,000 fewer deaths from cardiovascular disease occurred in 1976 compared to 1974. This savings in lives alone is greater than the number of lives that could be saved if all deaths from automobile accidents could be avoided.

For victims of cancer the outlook is also beginning to improve. The death rate from Hodgkins disease has decreased 17 percent since 1970. There are 1.5 million Americans alive today, have been cured of cancer, and are free of the disease at least 5 years after diagnosis and treatment.

Although all these statistics seem to indicate that we are finally making some breakthroughs with respect to these devastating diseases, we still have a long way to go as deaths from these diseases still constitute an overwhelming proportion of total causes of all deaths of Americans. Cardiovascular diseases still account for 52.5 percent of all deaths in the United States. The over 100 forms of cancer constitute the second leading cause of deaths and emphysema and other chronic obstructive lung diseases constitute the fifth leading cause of death from all diseases in the United States. It is vital to the Nation's health that these programs be continued.

In general, the amendments to the Public Health Service Act contained in H.R. 12347, taken together with the proposed 3-year extension of authorizations of appropriations, underscore Congress's renewed commitment to biomedical research in order that we may understand and some day effectively treat and prevent such killers as heart disease and cancer as well the spectrum of respiratory and blood diseases. Included in the bill is recognition of the new awareness that diet and environment play very important roles in both cardiovascular disease and cancer. As part of this emphasis on the recognized importance of the prevention of such diseases, the committee has strengthened programs to provide information to the public and in the continuing education of health professionals, in order that society will benefit from our research efforts as soon as possible. In accordance with this philosophy, the National Research Service Awards programs was revised and expanded in order to guarantee that the most capable young science students will be attracted to careers in biomedical and behavioral research.

This bill contains total authorizations of $1.765 billion for fiscal year 1979, $1.846 for fiscal year 1980 and $1.927 for these programs. This compares to a level of $1.640 billion in fiscal year 1978 authorizations and $1.429 billion in fiscal year 1978 appropriations.

Mr. Chairman, the following is a table of authorizations and appropriations and a summary of the provisions in H.R. 12347 as reported by the committee.

TABLE OF AUTHORIZATIONS AND APPROPRIATIONS IN H.R. 12347, AS REPORTED

(In millions of dollars)

Program	Fiscal year 1978		Fiscal year 1979		Fiscal year 1980	Fiscal year 1981
	Authorizations	Appropriations	Authorizations, H.R. 12347	President's budget	authorizations, H.R. 12347	authorizations, H.R. 12347
National Library of Medicine; library assistance program	14.6	7.987	15	7.987	16	17
Programs of the National Cancer Institute	1,008.15	847.25	1,020	858.39	1,030	1,040
Programs of the National Heart, Lung, and Blood Institute	456.32	422.56	510	432.18	560	610
National Research Service awards	[1] 161.39	[1] 151.03	220	[2] 169 72	240	260
Total	1,640.46	1,428.827	1,765	1,468.277	1,846	1,927

[1] Does not include +$19,900,000 under old sec. 301 authority.

[2] Includes $148,000,000 in NIH, $21,800,000 in ADAMHA.

SUMMARY OF THE PROVISIONS IN H.R. 12347, AS REPORTED

THE NATIONAL LIBRARY OF MEDICINE

The proposed legislation requires that the members of the Board of Regents of the National Library of Medicine be appointed by the Secretary of the Department of Health, Education, and Welfare.

THE NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

Revisions of the National Heart, Lung, and Blood Institute information and education programs are included in the proposed legislation which are designed to accelerate the dissemination of information on research results and the prevention, diagnosis, and treatment of heart, lung, blood vessel, and blood diseases to both health professionals and the general public. In addition, the National Heart, Lung, and Blood Institute would be required to provide information concerning the effect of diet and environmental pollutants, in addition to the other factors which influence heart, lung, blood vessels, and blood diseases. The centers' programs are also expanded to include both continuing education and public information programs.

THE NATIONAL CANCER INSTITUTE

Most of the substantive revisions in the programs of the National Cancer Institute included in the bill are made: first, to respond to the present recognition that a large fraction of cancer is induced by agents in the environment and, therefore, is preventable; and second, to expand both continuing education programs for health professionals and public information programs.

Additional amendments to the National Cancer Act require that both the Director of the National Cancer Institute and the National Cancer Advisory Board be appointed by the Secretary of Health, Education, and Welfare.

NATIONAL RESEARCH SERVICE AWARDS

In addition to a substantial increase in authorizations in appropriations for research training, the proposed legislation includes a number of changes in the existing law which are designed to liberalize the service and payback requirements of the national research service awards and to make improvements in the methods for determining the research areas in which awards are made and service is required and in administering the service and payback requirements.

OTHER PROVISIONS

Additional amendments to the Public Health Service Act made under the proposed legislation include: First, authority for the Secretary of the Department of Health, Education, and Welfare to

provide substances and living organisms for research purposes; second, a requirement that the Secretary conduct a program to test substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects, and conduct a program of research into the biological effects of low-level ionizing radiation; and third, a repeal of the requirement that the Secretary of the Department of Health, Education, and Welfare provide tobacco to patients in health care facilities of the Public Health Service.

Mr. Chairman, there are several issues relating to provisions in the bill and programs authorized under the laws amended by the bill which, I believe, need further clarification in the legislative history. Although the committee report addresses these issues in a general fashion, several points need to be more specifically addressed.

First, under title IV concerning the extension and revision of the National Research Service Awards program, the question was raised whether or not the service requirement for individuals trained under the provisions of this act could be fulfilled by working in a Government policy position concerned with the areas in which an individual was trained.

It is the committee's intent that the type of service allowable under this act be broadly interpreted, as long as it is relevant to the area of training. Clearly there are ways beside research and academic teaching in which an individual can render valuable service. The committee considers contributions to science policy through appropriate Government employment to be equal in importance to teaching or research, and therefore permissable as service fulfillment.

Second, the committee has heard reports that the agencies administering the National Research Service Awards program have interpreted the provisions of law establishing separate clinical training and research training authorities in a manner to require totally separate training programs. The committee does not intend that the activities engaged in under research training programs and clinical educational programs need to be entirely separate in order to be supported under either type of training authority. The best research training programs should obviously focus on all of the needs of the trainees, not exclusively on whether they provide purely research or purely clinical aspects of biomedical or behavioral science. Therefore, these training authorities should be interpreted to permit some clinical training in the curriculums of individuals preparing for research careers in certain areas of biomedical research where such clinical experience would be appropriate. Some research training in clinical-directed curriculums should also be permissible where training in certain research methods and techniques is appropriate for the education of a clinical professional.

Finally, the requirement in the amendments to the National Cancer Act that the Director of NCI publish an annual report containing "a list of all known or suspected carcinogens to which a significant number of persons residing in the United States are exposed" has raised the question of on what basis a substance is either "known" or "suspected", and, if so, suspected by whom. While this provision is discussed in some detail on page 28 of the committee report, additional clarification is included here.

It is the committee's intent that any such list include not only the name of the substance, but the data which supports the inclusion of each compound on the list. any uncertainties in the data yet to be resolved, and where possible, estimates the magnitude of the risk each poses. This list should include any compound as "suspect" for which there may be, for example, sound theoretical grounds for suspecting that it may have carcinogenic potential, such as a stereosomer of a known carcinogen, or data showing it to be mutagenic in bacteria. However, the nature of all such supporting data must be included in the report. The report should be properly organized so that no possible confusion could exist between clearly demonstrated carcinogens and those for which convincing data are not yet available to the Director of NCI, information concerning the relative risk posed by each substance and the quality of the data will be made unequivocably clear to the reader.

Suggestions that such a list include only those compounds demonstrated to be carcinogenic in man—through epidemiological studies—or in animals by direct tests were rejected as being too limited, in that difinitive animal or human data does not exist for large numbers of substances for which there are many grounds for suspecting carcinogenic properties. The committee believes that cases where synergestic effects have been shown between two or more compounds also be discussed in the Director's report.

Mr. Chairman, today I will offer three amendments to H.R. 12347 as reported by the committee. None of these amendments contain any additional authorizations.

The first of these requires that the Department of HEW conduct and support research and information programs in human nutrition. This is an area vitally important to human health in which research has, in recent years, received inadequate Federal support.

The second provision is more or less a technical amendment delaying the date by which the Commisison on Digestive Diseases must submit its report for about 4 months.

The third provision directs the Secretary of HEW to review Federal research program concerned with the biological effects of ionizing radiation.

Mr. Chairman, I want to take this opportunity to thank the chairman of the full committee, Mr. STAGGERS for his support of this legislation. I particularly want to thank the distinguished ranking minority member of the subcommittee, Dr. CARTER for his leadership and efforts in bringing this bill to the floor of the House. Finally, I want to thank all of the other members of the Subcommittee on Health and the Environment—Mr. PREYER, Mr. SCHEUER, Mr. FLORIO, Mr. MAGUIRE, Mr. OTTINGER, Mr. MARKEY, Mr. WALGREN, Mr. MADIGAN, and Mr. SKUBITZ—for their support of this bill.

Mr. Chairman, I strongly urge you and my colleagues in the House to support this legislation for the continued authorization of biomedical research and training programs of the medical libraries; National Heart, Lung and Blood Institute; National Cancer Institute; and National Research Service Awards.

The CHAIRMAN. The gentleman from Kentucky (Mr. CARTER) is recognized for 30 minutes.

Mr. CARTER. Mr. Chairman, I am sure my distinguished friend, the gentleman from Texas (Mr. COLLINS), would like some time on this bill. Since one out of every four persons here during his lifetime will develop cancer and one out of every six who develops cancer will die, I am just sure that my good friend, the gentleman from Texas, being a humanitarian and a worthy trustee in the church down in Dallas, will support this. I think he wants to do something about it. For that reason, Mr. Chairman, I now yield 5 minutes to the distinguished gentleman from Texas.

Mr. CARTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, these are the highlights of the biomedical research amendments.

Mr. Chairman, this bill continues for 3 years—several important health authorities in the biomedical field. Total authorizations: $5.5 billion.

(1) PROGRAMS OF THE NATIONAL CANCER ACT

More than 377,000 Americans died in 1976 from cancer;

One out of every four persons will develop cancer in his or her lifetime and one out of six will die from it;

It is estimated that between 60 and 90 percent of cancers are environmentally caused; and

This program is needed to continue the research and control activities to fight and eventually prevent cancer.

(2) PROGRAMS OF THE NATIONAL HEART, LUNG, BLOOD INSTITUTE

More than 723,000 Americans died from heart disease in 1976;

More than 188,000 died from stroke;

Millions more Americans are afflicted with related conditions of the heart and lung which cause much suffering and morbidity.

This authority must be continued to support further research into the causes of these diseases—and to improve our information and control activities for these conditions.

(3) NATIONAL RESEARCH SERVICE AWARDS

This program provides Federal support for the training of our Nation's biomedical and behavioral researchers;

The strength of our Nation's excellence in the worldwide scientific community depends on our continued support for this program;

The results of this research will help save lives and reduce suffering.

(4) NATIONAL LIBRARY OF MEDICINE

This valuable program provides grants for research—training—and demonstrations in medical library science. Over the years this program has greatly strengthened our Nation's medical libraries and has encouraged the development of regional medical libraries.

Mr. Chairman, I strongly support H.R. 12347 which revises and extends for 3 years important biomedical research and training authorities—that would expire this fiscal year.

Included in the bill are authorizations for:

Medical library assistance;

Programs of the National Heart, Lung, and Blood Institute;

Programs of the National Cancer Institute; and

National Research Service awards.

Mr. Chairman, I believe these programs have contributed a great deal to improvements in the health of our people. These accomplishments have come through research, research training, demonstration and control programs, and through dissemination of knowledge under these programs.

For example, the programs of the National Cancer Institute have produced remarkable results—since we passed the National Cancer Act 7 years ago. Yet, I would be among the first to agree that many difficult challenges lie ahead in this field—and that is why we cannot afford to lose the momentum that has been gained thus far.

We have seen encouraging results of new treatments for childhood cancer repeated and confirmed. It is now apparent—for example—that acute Lymphocytic leukemia—which is the leading cause of cancer mortality in children—has a cure rate of over 50 percent compared to 20 percent 10 years ago.

Treatment of Hodgkin's disease has also improved. More than 90 percent of patients with early Hodgkin's disease—and about 70 percent with advanced disease are surviving 5 years.

Notable progress has also been made in treating histiocytic lymphomas—Burkitt's lymphoma—and osteogenic sarcoma.

While these examples of progress in treatment are tremendously important—we must continue to search for ways to diagnosis cancer early—and preferably—prevent it from occurring.

We know that one out of four persons will develop cancer in his or her lifetime—and that one out of six will die from it. Moreover—we are aware that between 60 and 90 percent of all cancers are environmentally caused.

That is why our legislation calls for a renewed emphasis on cancer prevention—since prevention offers the best approach to the ultimate control of this disease.

Also—the legislation includes a new provision under the cancer control authority which I offered that authorizes funding of locally initiated cancer control programs. This provision should help build up expertise at the community level—where over 80 percent of cancer is first detected. In this way we can speed up the transfer of knowledge from the national cancer institute and other major research centers—to the local practitioners—and thereby improve cancer patients' care.

This bill also includes authorizations for programs of the National, Heart, Lung, and Blood Institute.

As you know, Mr. Chairman, heart and blood vessel diseases continue to be the major cause of death in this country—but significant improvements are being observed.

For example—annual deaths from major cardiovascular disease have dropped below 1 million for the first time since 1964—despite an increase in population and the growing proportion of senior citizens. The Heart, Lung, and Blood Institute's programs have contributed in significant measure to this improvement—especially through advances in basic research.

The Institute has been investigating the process leading to the formation of atherosclerotic lesions. Studies of blood platelet and vessel wall interaction have offered new insights into the process of atherogenesis.

Also—research on the structure of "lung elastin"—which is a protein in the lung—has resulted in progress in the understanding of emphysema.

Important progress has also been made in the field of blood diseases. For example—new methods of transfusing white cells (granulocytes) have been discovered thus adding an important new dimension to the treatment of leukemia—cancer—and certain infections.

There have also been encouraging developments in the fields of blood clotting and thrombosis—and new discoveries about the way anticoagulants act.

Insights have also been gained regarding "Von Willebrand's" disease—which is similar in some ways to hemophilia.

Also the institute has found new techniques for the management of blood transfusion—and hopes to develop blood substitutes in the future—to relieve the stress on national blood resources.

All of these examples provide evidence of the achievements of these biomedical research programs—and testify to the importance of continuing support for them.

Mr. Chairman, I also support extension of the National Research Service Awards program, which provides funds to train our Nation's future biomedical and behavioral researchers. The legislation reaffirms our committee's commitment to support institutional as well as individual awards—to insure a proper balance of Federal funding.

Finally—it should be noted that the National Medical Libraries asssitance program has accomplished a great deal—with very limited funds.

Through grants and contracts—research and demonstrations—it has effectively disseminated important and timely biomedical information to medical libraries across the country.

Mr. Chairman, I urge favorable consideration of this legislation.

Mr. Chairman, I reserve the balance of my time.

● Mr. COLLINS of Texas. Mr. Chairman, I protest the further expansion of the HEW bureaucracy represented in H.R. 12347, the Biomedical Research and Research Training Amendments of 1978. We are authorizing $5.538 billion for disease research and prevention programs which include the National Cancer Institute; the National Heart, Blood and Lung Institute; the National Research Service Awards; and the Library of Medicine. We think that by spending more and more money on these research programs we will automatically find the cure for fatal illnesses. What about the disease of inflation that is killing this country's economy and causing overwhelming hardship for the taxpayers of this country? Congress has not realized that the only cure for inflation is less Government spending. We continue to increase the cost of Federal health programs while the taxes for these programs take so much out of the working man's budget that he can hardly afford to go to the hospital.

Spending for the National Cancer Institute rose from $528 million in 1974 to $867 million in 1978. The National Heart, Lung and Blood Institute almost doubled its budget, up from $286.7 in 1974 to $445.6 in 1978. There was a $12 million expansion in the Library of Medicine over the same period. The National Research Service Awards, started in 1975, tripled its spending from $45.7 million to $132 million over a 4-year period. The total spending level of these HEW programs since 1974 will more than double with the 1979 authorization of $1.765 billion. This authorization is $279 million above the amount the President requested for the same programs.

Mr. Chairman, all of these increases have not found a cure for cancer or a way to stop heart attacks. In fact, HEW red tape and delay has caused the United States to fall far behind many foreign countries in significant medical advances. I find it most disturbing to see these voluminous spending levels when the American consumer is suffering from runaway inflation. If we are to stop the spread of inflation, we must cure the Congressional mania for expanding costly Federal programs.●

Mr. ROGERS. Mr. Chairman, I have no further requests for time, and I reserve the balance of my time.

Mr. CARTER. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. Does the gentleman from Florida (Mr. ROGERS) yield back the balance of his time?

Mr. ROGERS. Mr. Chairman, I yield back the balance of my time, and I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore. (Mr. BROWN of California) having assumed the Chair, Mr. FISHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H R. 12347) to amend the Public Health Service Act to revise and extend the programs of assistance for libraries of medicine and the programs of the National Heart, Lung, and Blood Institute and the National Cancer Institute, to revise and extend the program for National Re-

search Service Awards, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 12347, the bill just under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

AFDC ASSISTANCE AND ERROR REDUCTION INCENTIVE PAYMENTS

Mr. CORMAN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 13335) to amend part A of title IV of the Social Security Act to provide additional fiscal relief for States and political subdivisions with respect to the costs of certain welfare programs.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. CORMAN).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 13335, with Mr. MAZZOLI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California (Mr. CORMAN) will be recognized for 30 minutes, and the gentleman from New York (Mr. CONABLE) will be recognized for 30 minutes.

The Chair now recognizes the gentleman from California (Mr. CORMAN).

Mr. CORMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the purpose of H.R. 13335 is to assist States and localities in meeting current costs of the aid to families with dependent children (AFDC) program in a manner that provides an incentive for them to reduce AFDC errors, including payments to ineligibles, overpayments and underpayments.

Permanent Federal assumption of a substantial share of current State and local welfare costs, as proposed in the welfare reform bills introduced in this Congress, should be enacted only as a part of comprehensive welfare reform legislation which also makes the programmatic and administrative improvements in the current welfare system that are long overdue. Some level of Federal assistance to States and localities in meeting their current AFDC costs, however, should not be deferred until enactment of comprehensive welfare reform. It is the position of the Ways and Means Committee that between now and the time Congress enacts comprehensive welfare reform legislation, the Federal Government should assist State and local governments in meeting their current welfare costs on a limited and temporary basis as provided under H.R. 13335.

It is also the committee's position that this interim financial assistance be distributed in a manner that encourages States and localities to improve the administration of the AFDC program. The allocation formula described below was intended to provide a financial incentive for State and local governments that administer the AFDC program to reduce their AFDC payment errors. Equally important, the committee encourages and expects States and localities to use the Federal funds provided under this bill to finance innovations in the administration of their AFDC program—such as upgrading computer equipment and retraining administrative personnel—that will result in permanent cost savings and improvements in the administration of the program.

To achieve these purposes, the bill would authorize up to $400 million for financial assistance and incentive payments to be made to States and localities in fiscal 1979. Each State's initial share of this $400 million would be determined half on the basis of December 1976 AFDC benefit expenditures and half according to the current general revenue sharing allocation formula. The amount of the initial share actually received by a State would be determined as follows:

First, States with AFDC payment error rates during the specified test period at or below 4 percent would receive 100 percent of their initial share of the $400 million;

Second, States with payment error rates above 4 percent, but at or below the weighted national average AFDC error rate (currently 9.5 percent), would receive 90 percent of their initial share of the $400 million; and

Third, States with payment rates over the national average would receive a percentage of their initial share of the $400 million representing the progress the State has made, in relation to a specified base period, in bringing its error rate down to the level of the weighted national average error rate for the test period. In no case could a State with an error rate above the national average receive more than 90 percent of its initial share of the $400 million.

States would be required to pass through to local governments from any payments provided under this bill an amount equal to any AFDC expenditures made by such political subdivisions within the States.

The error rate test period for the purpose of this bill would be the quality control period from October 1978 through March 1979. Payments would be made as soon thereafter as is administratively feasible. The base period for any State would be the 6-month period, beginning on either July 1, 1974, or January 1, 1975, during which its AFDC payment error rate is higher.

For purposes of this bill, the AFDC payment error rate would include payments to ineligibles, overpayments to eligibles, and underpayments to eligibles.

Because of the error rate factor used in distributing the funds provided under this bill, a number of States would not receive all of their initial share of the $400 million. As a result the full $400 million authorized under the bill would not be spent. The Congressional Budget Office revised September 10 estimate shows that the net cost of the bill in fiscal 1979 would be $306 million. This estimate includes $332 in payments to States minus $26 million in savings resulting from a reduction in AFDC errors. The Congressional Budget Office estimates that, over the next 5 years, the $332 million in incentive payments provided by this bill will produce $76 million in savings due to a reduction in AFDC errors.

I request permission to include in the RECORD at this point the Congressional Budget Office September 10, estimate of H.R. 13335 plus two pieces of correspondence from the Congressional Budget Office and a table containing information pertaining to their earlier cost estimate on this bill.

I urge the Members to support this important legislation.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 10, 1978

MEMORANDUM

To: Jim Rotherham.
From: Al Peden.

CBO has updated its cost estimate of H.R. 13335 based on later data on error rates.

Fiscal year 1979 costs

[In millions of dollars]

Payments for tax relief	$332
Induced AFDC savings	—34
Share necessary to reduce error rates	8
Total	306

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 18, 1978.

Hon. AL ULLMAN,
Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request of this morning, the Congressional Budget Office has reexamined the cost estimate for H.R. 13335, a bill which would provide up to $400 million in fiscal relief to the states in fiscal year 1979. The part of the estimate that has been questioned is whether the financial incentives offered to the states in the bill would induce them on average to reduce their error rates by 0.8 percentage points, the amount assumed in the estimate.

Unfortunately, this is an area about which little is known. We based our estimate on several considerations. One is that error rates have been falling over the past few years, partly in response to considerable pressure from the Department of Health, Education and Welfare. From the period April to September, 1973 to January to June, 1977 the average error rate across states fell from 18 percent to 9.5 percent. Since the states are already involved in an effort to reduce their error rates, we reasoned that the prospect of additional federal funds would encourage them to accelerate their efforts somewhat. In addition, a recent study by the Urban Institute has suggested that there are various mechanisms that the states could adopt to reduce their error rates further, some involving little additional administrative costs.

We arbitrarily assumed that the reduction in error rates which in 1979 leads to induced program savings of $28 million would require $9 million in increased administrative costs. We did not mean to imply that an increase

in administrative costs for error reducing activities would necessarily lead to savings on a three for one basis. As shown in the Urban Institute study, some states have produced much higher ratios of savings to administrative costs and some states have produced little or no savings with high administrative expenditures.

The estimate of possible costs and savings arising from H.R. 13335 is subject to a wide range of uncertainty because of the lack of information about state behavior and the many assumptions required. As I noted above, the CBO estimate assumed an average reduction in error rates of 0.8 percentage points in response to the bill. If there were no response at all by the states, the net cost of the bill would be $347 million in fiscal year 1979, instead of the $331 million given in our estimate.

I hope this information clarifies the estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 24, 1978.

MEMORANDUM

To: Jim Rotherham, House Budget Committee.

From: Al Peden, Congressional Budget Office.

Attached are two estimated distributions of fiscal relief funds to states under H.R. 13335: The first assumes that each state receives its maximum award and the second assumes penalties for state error rates in excess of four percent (as given in the bill). Under the second distribution state error rates are taken from recent trends and also include incentive adjustments for states who would benefit from reducing their error rates. These error rate estimates are very tentative because there is very little experience on which to base them and because forecasting state behavior (as compared to national behavior) is hazardous at best. The same incentive adjustment was not made for each state. Some states (e.g. California) needed very little improvement in their error rate to receive the maximum benefit. Other states (e.g. Illinois) would receive a greater share of their fiscal relief maximum by lowering their error rate more. For the latter a greater incentive adjustment was made. Finally, the size of the current error rate was taken into account. States with larger error rates were assumed to adjust further because of their greater potential for improvement.

State	State allocation before error rate calculation	State allocation after deduction for extrapolated error rate calculation
Alabama	$4,663	$4,197
Alaska	791	380
Arizona	2,795	2,516
Arkansas	2,930	2,432
California	54,001	54,001
Colorado	3,787	3,787
Connecticut	5,282	4,754
Delaware	1,118	1,006
District of Columbia	2,578	902
Florida	8,452	7,607
Georgia	6,284	5,656
Guam	101	101
Hawaii	2,434	2,191
Idaho	1,094	1,094
Illinois	24,854	14,912
Indiana	6,495	6,495
Iowa	4,167	3,750
Kansas	3,204	2,884
Kentucky	6,086	5,477
Louisiana	6,409	5,768
Maine	2,099	1,889
Maryland	6,994	5,945
Massachusetts	15,341	13,347
Michigan	22,506	20,255
Minnesota	6,890	6,201
Mississippi	3,499	3,149
Missouri	6,695	6,026
Montana	955	821
Nebraska	1,758	1,758
Nevada	665	665
New Hampshire	1,046	941
New Jersey	14,868	13,381
New Mexico	1,971	1,971
New York	56,600	50,940
North Carolina	7,493	6,744
North Dakota	704	704
Ohio	16,689	15,020
Oklahoma	3,694	3,694
Oregon	4,746	4,271
Pennsylvania	24,044	21,640
Puerto Rico	962	866
Rhode Island	1,936	1,742
South Carolina	3,564	3,208
South Dakota	976	976
Tennessee	5,294	4,765
Texas	12,438	11,194
Utah	1,848	1,848
Vermont	1,033	930
Virgin Islands	70	63
Virginia	6,789	6,110
Washington	5,834	5,251
West Virginia	2,856	2,856
Wisconsin	9,169	9,169
Wyoming	466	419
Totals	400,000	358,669

Mr. CONABLE. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan (Mr. VANDER JAGT).

Mr. VANDER JAGT. Mr. Chairman, I rise in support of H.R. 13335, a bill which provides Federal fiscal assistance and incentives to the States to reduce their error rates in welfare payments under the AFDC program.

I commend the distinguished chairman of the subcommittee, the gentleman from California, for his fine work in developing this legislation. I am aware of the fact that there are mixed views on this legislation among the minority members of the Committee on Ways and Means. But I have concluded that the legislation is sound, it is prudent, and it is a very necessary step for this Congress to take at this time. Every public opinion poll that I have seen indicates that the American people are as concerned about the waste and inefficiency of Government spending as they are about the level of that Government spending. This bill is an effort by the committee and by this Congress to reduce the waste and inefficiency of Government spending by reducing the error rate in welfare payments. At the same time, a vote for this bill will be a vote to reduce the current annualized level of Federal fiscal relief for the States for the welfare program.

Currently we are funding, at almost a $400 million a year rate, fiscal relief for the States. Although this bill would authorize $400 million for fiscal 1979, the actual payments are estimated to be around $330 million, and that is because some of the States simply are not able to meet the very real, the very tough, the very stringent objectives that we have put in the bill.

I know that there are those who argue that really we should take away the fiscal relief that we are currently providing for those States because then next year the pressure would be all the more intense on the Congress for comprehensive welfare reform with a decided Federal slant. The argument goes that then the States would be clamoring to get out from under the welfare burden, at a Federal cost increase of perhaps $10 to $15 billion for welfare.

However you feel, one way or the other, about comprehensive welfare reform with a decided Federal twist, it seems to me that that stance is blatantly unfair to the States. I do not believe that the States should be penalized for our inability here in the Congress or with the administration to develop comprehensive welfare reform. Every single welfare reform proposal that I have seen includes fiscal relief for the States. The platforms of both political parties call for temporary fiscal relief until such time as we work out a permanent fiscal relief program.

I do not believe it is fair for the States to pay the penalty of our inability to act this year on comprehensive welfare reform. We should not take away the welfare funding help we are providing them.

A vote for this bill is a vote first, for reduced waste and inefficiency in Federal spending by reducing the error rate.

Second, it is a vote for what is actually a reduced level of Federal assistance to the States, in terms of fiscal relief.

And, finally, it is a vote to be fair with the States and not penalize the States for the Federal Government's inability to act.

I want to acknowledge that the minority members of the Ways and Means Committee hold mixed views on the bill. I, however, have concluded that its enactment would be a desirable and positive step.

The purpose of this bill is to provide financial assistance to States and localities in fiscal 1979 in order to ease the growing burden which they face with respect to the costs of the aid to families with dependent children program. In the decade beginning with fiscal 1967, the non-Federal share of AFDC costs rose from 42.4 to 46.1 percent, and the dollar totals from just over $1 billion to over $5 billion. The restricted tax bases of States and localities have been severely strained by these growing costs.

The committee bill would provide this fiscal relief in a manner which would encourage States and localities to reduce administrative errors in the AFDC program. We all recognize the importance of securing administrative improvements in public assistance, as a means of protect-

ing the interests of both welfare recipients and the taxpayers who must bear the costs of welfare programs.

Under the measure before us, each State first would be allocated a share of the $400 million the bill would authorize in total. That basic share would be based upon the State's AFDC expenditures in December 1976, as well as its allocation of general revenue sharing funds. The amount of relief that the State would actually receive, however, would depend upon its performance in reducing administrative errors in AFDC during the period from October 1978 through March 1979, as compared to one of two prior 6-month intervals. A State with a payment error rate at or below the 4 percent will receive its full allotment. One with a payment error rate above 4 percent but at or below the national average will receive 90 percent of its initial share. And a State with a payment error rate above the national average will receive a share which represents its progress in reducing its payment error rate to the national average rate, but not more than 90 percent of its basic allotment.

I want to emphasize that these funds will enable the States to make further improvements in welfare administration. To quote from the Ways and Means report accompanying this bill:

> The committee encourages and expects States and localities to use the Federal funds provided under this bill to finance innovations in the administration of their AFDC program (such as upgrading computer equipment, retraining administrative personnel, etc.) that will result in permanent cost savings and improvements in the administration of the program.

While the bill would authorize $400 million to be spent for fiscal relief payments in fiscal 1979, it is estimated that the net cost of the bill will be only $331 million. The second budget resolution for 1979 includes budget authority and outlay provisions which may be used for this purpose. The lower figure results from the fact that a considerable number of States will not receive their full allocations because they will be unable to cut their error rates to the 4 percent target within such a short span of time. Also, the net figure takes into account the considerable savings to the Federal Government which will be achieved by virtue of States' progress in reducing their payment errors. Such savings will be realized not only in 1979, but in future years.

Mr. Chairman, I do not reject the argument of some persons that major reductions in State and local welfare costs should be enacted only as an integral element of comprehensive welfare reform. I understand the incentive to reform that such a relationship offers. But if we have learned one thing in this session, it is that the road to comprehensive welfare reform is strewn with obstacles not easily overcome. Congress approach to this awesome task must be cautious. In the meantime, I believe that interim fiscal relief for States and localities is a reasonable concept for Congress to advance, especially if it is structured so as to induce them to improve their administrative performance.

Congress already approved the concept of interim fiscal relief for welfare costs in enacting the Social Security Amendments of 1977, under which $187 million was provided States and localities for welfare costs during half of fiscal 1978. It has been expected that Congress would approve legislation providing a similar amount for the remaining months of fiscal 1978. The bill before us would provide for fiscal 1979 assistance, within a context which seeks to lessen administrative errors.

I wish to point out to my colleagues that the Ways and Means Committee report on this measure includes a discussion of issues associated with the calculation of payment error rates. Our subcommittee hearings provided important information which administrators and legislators should consider as they increase the significance of quality control efforts through basing Federal funding upon payment error rates.

Mr. Chairman, I urge my colleagues to support this legislation.

Mr. CORMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to thank the gentleman from Michigan for his help in bringing this bill to the floor and for his very lucid explanation of it.

As the gentleman pointed out, one of the purposes of this bill is to reduce the error rate. In Los Angeles County we have reduced the error rate to less than 3 percent.

I will put in the RECORD later today some detailed explanation of how Los Angeles County has accomplished this. I hope that other local and State governments will be able to do the same thing.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. RANGEL).

Mr. RANGEL. Mr. Chairman, I think that the Congress, or at least the Committee on Ways and Means, has shown a great deal of wisdom in recognizing that, while we did fail in coming up with a comprehensive welfare reform program, as my colleague, the gentleman from Michigan, pointed out, it should not be the States that are penalized. There are some who argue that the bill is very expensive because of the amount of money that we are talking about sending to the States and the actual amount in savings that is to be expected. I think we should look at what is expected to happen to the money. States which cannot afford computerized services would use the money to develop a system that would reduce its AFDC errors on a permanent basis.

This is not comprehensive welfare reform, but certainly is the type of reform that we cannot expect the State legislatures to handle during a time when people are emphasizing reduction of taxes. There are some that complain that perhaps the money is not earmarked to the poor, but for those who show this sensitivity to the poor, we have to direct our attention to local legislative bodies and ask them to make certain that it is the recipient that gets the money. I do not think anyone can argue that when we find wrongdoers receiving funds to which they are not entitled, anything we can do to encourage localities and States to set aside the funds to improve a system so that only the needy are the recipients, makes it easier for local bodies to legislate for those that are most needy. It does not take, really, a profile in courage for us to do this.

With regard to welfare reform we have made many statements to localities that we would have a comprehensive bill, but no matter what bill we talked about, there was always a fiscal relief element included. I do not think that this House or the other body has to be prodded by States to do what is right.

I think that the select committee that was appointed to deal with the welfare problem has really made great inroads, except that the conflict of legislation which came to many members of that committee prohibited us from concluding our work in this area in a manner that the administration would accept. We did not take those three giant steps forward, but we do ask the House and the other body to provide this fiscal relief to take advantage of the improvements that have been made. As far as the House is concerned, the idea of reform is alive and well, and we are concerned that the maximum amount of local, State, and Federal dollars actually do go to our needy rather than for maladministration.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. RANGEL. I will be glad to yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I thank my colleague for yielding. I have two questions.

On the question of investigation of fraud, I was told—and I believe it is true—that at one time, if not still now, the States were required to investigate for fraud, and then were required to pay for it. Knowing human nature, it seemed to me that would not always produce the most vigorous fraud investigations. I wondered if we were moving to a different system. That was the first question.

Mr. RANGEL. I would answer in the affirmative. Yes, there is a different system because—if I can speak for my own locality, where the beneficiary of those funds was underpaid or overpaid here we are penalized for those errors. This bill provides a financial incentive for States to improve their error rates.

Mrs. FENWICK. I thank my colleague, but I do not think I made my question clear. Who is responsible under this bill? Who will be responsible for investigating and finding fraud?

Mr. RANGEL. It would be the States.

Mrs. FENWICK. Still the States?

Mr. RANGEL. Yes, it would be.

Mrs. FENWICK The State would still be the one that would be penalized if it is found?

Mr. RANGEL. We are saying that if you are able to find some method to eliminate the fraud and reduce the number of errors, that we will provide an incentive for you to do that.

Mrs. FENWICK. I submitted a report

from my own State on this, and 68 percent of the errors in some areas were caused by the complications of the formula: the set-asides and whether aliens are to be given coverage, and so forth. But there are other difficulties. In one State in this Union—and I forget which it is—1 lady used 8 aliases, claimed 47 childern, and got over $200,000 from welfare.

The second question I have is, Is there any method of fitting these pieces of the puzzle together? In my State people have been found enrolled in welfare in both Pennsylvania and New Jersey or New York and New Jersey; and one man was drawing welfare from all three. We must have some method of making sure that no one has eight aliases drawing from the same program.

Mr. RANGEL. I would like to believe that if all of the States are able to rout out this fraud, the methods they use would be shared with the Health, Education, and Welfare Department, and they would share information with other localities. What we are trying to do is to provide that machinery to eliminate the type of abuses that the gentlewoman is talking about.

Mrs. FENWICK. My own State is very vigorous. In fact one-half of all the successfully prosecuted fraud cases last year in the United States were prosecuted in New Jersey and we have only about 7 million people.

I submitted the report on that and the speech made by our deputy attorney general who had been in charge of prosecuting these frauds to the Federal authorities. I never heard a word as to whether or not those ideas have been incorporated in the new legislation.

Unfortunately there is a curious practice in this Congress. We see there is a gap in enforcement, or method of investigating that is not very productive and yet we go right on using it. I believe it would be wiser if spot checks were made and investigated by the Federal Government and not leave it entirely to the States.

Mr. RANGEL. We can only tell the gentlewoman that when the States have proven to be successful, when in fact they have reduced their errors, this is when this program will lock into place.

Mrs. FENWICK. Who finds the errors?

Mr. RANGEL. It is the States that find errors.

Mrs. FENWICK. I thank the gentleman.

Mr. CONABLE. Mr. Chairman, I yield 10 minutes to the gentleman from Ohio (Mr. GRADISON).

Mr. GRADISON. I thank the gentleman for yielding.

Mr. Chairman, I would like to join in congratulating those of my colleagues on the Ways and Means Committee who have worked so hard on this bill.

All of us want to reduce errors in the AFDC program and want to increase aid to the truly needy. If H.R. 13335 would do these things I would be standing here supporting it. Unfortunately, this bill will not accomplish those goals. Of the money it has authorized, most is going to be paid out whether the States do anything about the matter of errors or not. As a matter of fact, the most recent estimates available to me from the Congressional Budget Office indicate that under this bill every State would get something. The errors figure included in the committee report indicate only three jurisdictions would get nothing under the bill and the formula included therein.

What this says is that if the error rate is under 4 percent in a State, that State will get 100 percent of its allotment. It does not have to improve. If it is under 4 percent, it gets 100 percent of its allotment—period.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. GRADISON. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Does the gentleman mean to tell me if a State almost doubles its error rate from 2.9 percent to 4 percent, it still gets 100 percent of its allotment?

Mr. GRADISON. That is correct.

The national average is now about 9 percent, and a State exceeding that rate would still get 90 percent of its allotment without doing anything to reduce its error rate below what it is today.

The purpose of this incentive is presumably to bring the rates down from what they are now. If we are getting reductions that exist today based upon the figures they gave, without paying out the $400 million, what are we getting in return for the $400 million? The answer is, according to the Congressional Budget Office this expenditure of money over the next 5 years will produce a reduction in errors of $76 million. That means to me that by spending $5 we will save $1. It does not make a whole lot of sense even with the new math, unless we assume that these additional funds are going to be used for some program related to the purpose of the bill and of the Social Security Act, which is assisting needy people.

There is no assurance whatsoever within this bill that it would help the needy. There is no requirement, absolutely none, that any of these funds be used to aid those who are in need or to tighten up the welfare administration. There is absolutely nothing in this bill to prevent the use of these funds for a new limousine for the mayor, or for putting up statues in the park.

This very question became an issue in the other body last Friday during the debate on a very similar bill and the Senator from Missouri who offered the amendment to strike the fiscal relief section introduced into the RECORD a letter from Mr. Barry L. Van Lare, Associate Commissioner for Family Assistance in the Department of HEW. The following paragraph in that letter speaks directly to the fact that the legislation before us, like the Senate provision, provides moneys which a State can use as they see fit, unfettered by Federal objections or restraints, and I quote:

> It is our interpretation that section 403 of the Social Security Act does not impose any limitations on the use of these funds by State and local governments except that the funds must be passed through as required by the act to local governments which share in the cost of the AFDC program. As a result we have responded to inquiries from States that these moneys may be used for any purposes that they choose.

What is this, really? This bill is a new form of revenue sharing, but it is certainly one which is not targeted to the States and communities with the greatest needs, because most, if not all States, will get some money under this bill.

The most recent figures available to me, which were prepared by the National Association of State Budget Officers and the National Governors' Association, indicate that there are 16 States which are currently expected to have surpluses in excess of 6 percent of their expenditure rate.

What that means applied to the figures that we would use here at the Federal level is that these States have surpluses which would be equivalent to $30 billion surpluses at the Federal level, if you apply the 6 percent to our $500 billion-plus of current expenditures. It is very difficult for me to see why the Federal Government, which is operating at a very large deficit, needs to provide fiscal relief to so many States which are in far better shape than the Federal Government itself.

In the spirit of proposition 13, which seems to me to be an attempt to hold down taxes and expenditures, I am really troubled by the notion that this measure would carry to the States and to the American people the message that if a State reduces its taxes and reduces its fiscal effort, that Uncle Sam will come along to help them pick up the difference. I do not think that is the spirit of proposition 13 and it is a dangerous road, in my judgment, for us to start down.

The question is raised as to whether this is a step toward welfare reform. In my judgment it is just the opposite because the main pressure behind welfare reform is coming from those States which want fiscal relief, and it is my personal opinion that if we are going to get fiscal relief without having it as a part of a welfare reform package, the pressure for welfare reform will be substantially diminished.

I would call the attention of my colleagues to the fact that last Friday, by a vote of 52 to 37, the other body rejected a fiscal relief proposal, which their Committee on Finance had reported as part of the tax bill. Although the specifics of that bill differed somewhat from the measure before us, its concept is very comparable. And in light of the action of the other body, I think we have to recognize the likelihood of the adoption of this legislation by the 95th Congress is not particularly high.

Mr. Chairman, the bill before us was rejected by the Senate last Friday by a vote of 52 to 37. It has been rejected in very strong terms by the President, and we have been advised in a letter of September 27 from the Secretary of the Department of Health, Education, and Welfare that this bill is not in accord with the program of the President. It

has been opposed in even stronger terms by the Secretary of the Department of Health, Education, and Welfare.

Mr. Chairman, in these waning days of this session before we go home—and I am sure most of us will—to campaign on programs and platforms of being frugal in the use of public funds, I think we have one last opportunity to indicate our devotion to that goal. That will come on Thursday when this body votes on H.R. 13335.

Mr. Chairman, I would urge my colleagues at that time to put this bill to rest.

Mr. RANGEL. Mr. Chairman, will the gentleman yield?

Mr. GRADISON. I am happy to yield to the gentleman from New York.

Mr. RANGEL. Mr. Chairman, is the gentleman suggesting to this body that H.R. 13335 was defeated last week by the other body?

Mr. GRADISON. No. I was careful not to say that. What I said was that a similar bill was removed from the tax bill by the Senate on a vote of 52 to 37.

Mr. RANGEL. If the gentleman will yield further, the mere fact that the gentleman says that a similar bill was removed from the tax bill does not mean that the gentleman is suggesting that a similar parliamentary situation exists in the House, does it?

Mr. GRADISON. No, I am not suggesting that at all. I am suggesting that, in my mind, there is serious question whether the Senate, in light of the vote last Friday, would be prepared to support H.R. 13335 should it pass the House and reach that body.

My crystal ball is no clearer than anyone else's; but my reading not only of the vote but of the debate on this issue suggests that that would be a correct conclusion.

Mr. RANGEL. If the gentleman will yield further, I do not know how frequently Members of this august body consider the deliberations of the other House, but the fact that the gentleman mentioned close to a half dozen times what they have done over there, which I have yet to understand, obviously is rather persuasive to the gentleman from Ohio (Mr. GRADISON).

However, my only point is that it would seem to me that if this body, the House of Representatives, decided that if a particular matter should not be on a tax bill or should not be on a public works bill, it would not be persuasive to the argument to carry that to the other body. It seems to me that we have an obligation to discuss this bill on the merits. It just bothers me, after reading some of the exchange on the other side, that the gentleman would select some parts of the argument and reject others.

Mr. Chairman, I ask the gentleman, is he persuaded that he could support this bill if it was targeted in and locked in that the fiscal relief which has been provided to the States and locales as a result of efficiency in reducing error, if it was targeted in to make certain that this money poured right back into the program, the gentleman would have no objections to the bill?

The CHAIRMAN. The time of the gentleman from Ohio (Mr. GRADISON) has expired.

Mr. CONABLE. Mr. Chairman, I yield 2 additional minutes to the gentleman from Ohio (Mr. GRADISON).

Mr. GRADISON. In answer to the gentleman, Mr. Chairman, we face a situation in the House, as I understand it, of having and up or down vote on H.R. 13335. It cannot, as I understand it, be amended. Therefore, I have to deal with the bill which is before us, not with some hypothetical bill which we might have.

Let me go further and indicate the reason I focus on the action of the other body. We are frequently told and we have been told in the debate so far that somehow there is an obligation to continue these payments. The fact is, as I understand the situation up to the moment, the House of Representatives has never voted separately in favor of this fiscal relief provision. The $187 million which has been paid out in fiscal year 1978 was tacked onto the social security financing bill by the other body and came back to us in conference and was approved as part of that package; but I do not believe that there is any reason or any justification to say that we should vote for the additional $400 million because we will be continuing something which the House has approved before. We did it in a most tangential way; and this is, to the best of my knowledge, our first debate on a separate bill addressed to this kind of issue.

Mr. RANGEL. That was not my argument. My only suggestion to the gentleman—and I thank him for yielding—is that we do have a matter before the House that I think should pass or fail on its merits, rather than a parliamentary situation of a similar piece of legislation being rejected, that being included in the other body's tax bill.

Mr. GRADISON. Certainly I am not going to argue that we are in any way bound by what the other body has done. However, I think the debate on it has been instructive, in my judgment, on the fact that this is an opportunity to save $400 million which could be used better either as a means of reducing taxes or reducing the deficit.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CONABLE. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. BURGENER).

Mr. BURGENER. Mr. Chairman, I am not a member of the Committee on Ways and Means. My remarks will be related to information that I glean from reading the committee report.

Mr. Chairman, I rise in support of H.R. 13335 which relates to Federal assistance to States for reductions in AFDC error rates. It is now certain that comprehensive welfare reform will not be enacted during the 95th Congress and there is no guarantee that it will be achieved during the 96th Congress. Therefore, many of us feel that some level of Federal assistance to States and localities in meeting their current AFDC costs should not be deferred any longer. This bill does not provide any permanent assistance in this category of aid but rather a limited and temporary form of assistance. The purpose of this assistance is to improve their administration of this costly but very important program of aid to families with dependent children. This bill's purpose is to reduce the error rate in this program as well as to finance innovations such as upgrading computer equipment, retraining administrative personnel, et cetera.

I am certain every Member of the House is interested in seeing AFDC payments go only to those eligible under the law and further that the payments be accurately computed. This kind of management will help to restore public confidence in a program that has been much maligned and criticized. And in far too many cases the criticism is well justified.

While there is $400 million provided in the budget act and in this bill, the Congressional Budget Office estimates the cost of the bill in fiscal year 1979 to be $331 million. The cost of this program in the current year—fiscal year 1978—is $187 million, so the actual increase for fiscal year 1979 is $144 million. One very important aspect of this bill is that local governments will receive this aid, that is in those States in which the States require local government to contribute to AFDC. This required "pass-through" is key to this bill.

Contrary to what some people seem to believe, the percentage level of Federal support for AFDC to States and localities has been going down since 1967. In 1967 the non-Federal share of this program was 42.4 percent and by 1977 the non-Federal share had increased to 46.1 percent.

Regardless of the cost sharing, this bill is designed to reduce the errors and fraud that are known to exist in the current AFDC program. This is a laudable and achievable goal. Therefore, H.R. 13335 should receive the approval of this House.

I thank my colleague for yielding me this time.

Mr. CONABLE. Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, I voted against this bill in the committee. I am going to vote against it when we vote for it in this House. I would urge all Members to emulate that good example.

Mr. Chairman, as most of us know, the administration is solidly opposed to the bill. I think, since this is one of the few times when we have the Secretary of HEW in the proper position, I think we ought to give him the incentive to return to that position once in awhile, and vote down the bill. It provides for about $360 million of new expense, which need not be spent and which very well could be saved.

It is a bill for fiscal relief to the States. The gentleman from Ohio has already pointed out that the States as a group collectively are in surplus. The Federal Government is somewhere near $800 billion in deficit. For that good reason, we seem to think that we have to provide fis-

cal relief to the States. Obviously, that is not very good mathematics for most people.

This is a fiscal relief bill. The error rate in the secondary part of the bill has been put in there, I suppose, to make people think we will reduce errors. I think it is a fiscal relief bill for only a few States. We have heard Members from California, New York and Michigan, speak in support of this bill. By an odd coincidence, the three large States to benefit under this bill are New York, California, and Michigan, by the time they get 40 percent of all the money that is going to be doled back to the States.

Now, if you want to see the taxpayers in your States distribute largess on the beneficiary States of New York, California, and Michigan, you ought to vote for the bill; otherwise, you ought to show good sense and vote against the bill, as I shall.

Mr. CONABLE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we have had some interesting and somewhat inflamatory rhetoric on this measure.

I support the measure. I note that I am from New York, a high welfare State. I would like to say I think that welfare continues to be one of our most aggravating and intractable problems in this country. A year ago this body did vote through the social security bill some fiscal relief to the States. This year when it was sought to extend that fiscal relief, because of the complete failure of welfare reform, the happy idea was developed of adding some changes that would insure that the money would be used to reduce the error rate and to encourage better administration of welfare.

Either there is going to be none of that work done, or the money is going to be spent by the localities and the States. The Federal Government, by its policies, encourages further erosion of our dollar. The cost of living goes up, not just for the well-to-do, but for the very poor. The result is that adjustments are made in welfare costs which cause them constantly to mount. Then if the Federal Government gives no fiscal relief to the localities, clearly they pick up a greater and greater burden of the welfare dollar. That is what has been happening out in the highways and byways of America, as the local and State contribution to welfare has risen from 42 to 46 percent.

I would like to say, Mr. Chairman, in a comprehensive welfare reform measure, I cannot conceive of one that did not give a degree of fiscal relief to our States and localities larger than that embodied in this bill; but I think, failing welfare reform, and we have failed to come up with a solution, unfortunately, during the 95th Congress, the least we can do is give some degree of fiscal relief to the States and localities with the encouragement to use that money in ways that will improve the administration of welfare and reduce the error rate.

It is for these reasons that I support this modest measure.

Mr. Chairman, I reserve the balance of my time.

Mr. CORMAN. Mr. Chairman, I yield myself such time as I may consume.

I would point out in passing that very little if any of this money is going to the State of Minnesota. Most of that State's allocation will go to local governments, because Minnesota is one of the States that relies very heavily on local governments to pay the cost of providing for their dependent children.

That is also the case in New York.

It was true in California until proposition 13 made it impossible for local governments to pay any portion of the cost of the aid to families with dependent children program.

The assertion that this money will not go to the poor is not true. This money goes, first, to local governments that contribute toward the cost of the AFDC program and then to those States that do not impose AFDC costs on local governments.

One of the things President Carter promised in his election campaign was that he would make relieving local governments, and to some degree the States, from the cost of supporting the poor in this Nation a high priority. He promised to place that responsibility where it ought to be, at the Federal level.

His welfare reform proposal would have made giant strides in that direction. It would have done something else: it would have greatly simplified the administration of the public assistance programs in this Nation. I think it is regrettable that the House was unable to act on the President's welfare reform bill. We missed a great opportunity to improve our welfare program and we will have to wait until next year.

On the error rate, the gentlewoman from New Jersey (Mrs. FENWICK) asked whose responsibility it is to determine error rates. Federal law requires the States to monitor their programs by sampling a percentage of their total caseload, and then the Federal Government reviews a portion of each State's sample.

I would point out that in all States underpayments as well as overpayments make up the error rate percentages. In California we have an error rate of 3.9 percent for overpayments and 0.6 percent for underpayments, giving us a total error rate of 4.5.

We had some interesting testimony before our subcommittee as to what constitutes errors in making payments. For example, there is a provision that a family living on aid to families with dependent children may own only one car. Some people who are very poor, it turns out, own two automobiles. Probably neither of them will run. They are cannibalizing parts from one to try to get the other one to run. When the welfare worker goes out and sees these two derelict automobiles in the front yard and asks if the family owns them both, if the answer is "yes," then the family is considered to have been drawing welfare payments illegally.

One of the things that disturbs me about our fussing at the States on error rates is, as the gentlewoman from New Jersey (Mrs. FENWICK) pointed out, that much of the error rate is due to the complexity of the system, and we at the Federal level have brought about much of that complexity.

For example, a short time ago the Committee on Agriculture came in here with a massive food stamp reform bill. That bill added complexity to the administration of the AFDC program, in that it will require every recipient to go in and qualify under two different programs, AFDC and food stamps, with two different standards, and two different needs tests. I suspect we will not be able to correct this situation very quickly in the next session.

We have heard today about the case of the lady from Los Angeles County who is accused of claiming welfare benefits for some 8 families and 34 children. We have lots of creative people in California. I plan to put into the RECORD later today an analysis of some creative efforts and programs in Los Angeles County that have been successful in detecting that and other types of welfare fraud.

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. Mr. Chairman, I will yield to the gentlewoman in just a moment. My statement will also call to the attention of the Congress some other fraud cases that did not involve the government, but did involve large amounts of money.

Mr. Chairman, I will now be glad to yield to the gentlewoman from New Jersey (Mrs. FENWICK) if she has a question.

Mrs. FENWICK. Mr. Chairman, I was just wondering, if the gentleman is familiar with the case, if he knows what happened to that woman he mentioned.

Mr. CORMAN. Mr. Chairman, that lady is going to be tried in court. Her trial starts October 30.

Mrs. FENWICK. Mr. Chairman, this brings up something else.

I do not blame that woman as much as I blame us. We are creating traps into which people fall. We do not seem to make any effort to correct it, and then we blame and incarcerate the poor who are desperate and fall into the trap.

This is something that really I would like to see this House address. We are always blaming the people who are taking advantage of the kind of legislation we draw up, but it is legislation which has no sufficient safeguards. It is legislation which does not warn people right from the start that they are in trouble if they do hanky-panky.

Mr. CONABLE. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from New York.

Mr. CONABLE. I thank the gentleman for yielding.

Mr. Chairman, I would like to say to the gentlewoman from New Jersey (Mrs. FENWICK) that this lady I do not feel needed to fall into the trap so many times.

Mrs. FENWICK. If the gentleman will yield, if one is innovative and creative, with all of that sunshine, one develops spirit. I think, obviously, it is wrong.

Mr. CONABLE. I think that the gentlewoman should be grateful for the fact that this, what is essentially a fiscal relief bill, has at least had attached to it some effort to deal with the problem of fraud and error. And for that reason, it is a step in the direction of trying to remove from us some of the guilt that I quite agree we have to share when there are abuses.

Mrs. FENWICK. If the gentleman will yield, we do not need this money to do that. Just look and see what New Jersey did without any of this new Federal money. One-half, 50 percent, of all of the successfully prosecuted fraud cases were done in a State with 7½ million people called New Jersey. There is a system already operating. We do not need to find new ways for finding fraud. I think it will be hard to insist on a system which says, "We are going to monitor your work, but you can go in and ferret out the fraud, and when it is found, to pay for it." I do not think that is working with human nature. I think it is working against it.

Mr. CONABLE. There is much to what the gentlewoman says. I would hope that we would all agree that an overall comprehensive welfare reform bill is needed, is indicated, and very much desired by the people of this country. I hope we will be able to achieve it. This bill is a modest palliative a very short-term lozenge, if you please, to try to give some symptomatic relief to a very serious and deep-seated ill.

Mr. CORMAN. Mr. Chairman, I urge my colleagues to vote aye on H.R. 13335 when it is before the House on Thursday.

Mr. Chairman, I yield back the balance of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. BROWN of California) having assumed the chair, Mr. MAZZOLI, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 13335) to amend part A of title IV of the Social Security Act to provide additional fiscal relief for States and political subdivisions with respect to the costs of certain welfare programs had come to no resolution thereon.

GENERAL LEAVE

Mr. CORMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 13335.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

REPORT ON PROGRESS OF VETERANS OF THE VIETNAM-ERA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 95–396)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on the Whole House on the State of the Union and ordered to be printed:

To the Congress of the United States:

I am submitting this Message to report on the progress of Veterans of the Vietnam-era, and to describe the actions I will take to respond to the special problems a number of these Veterans still face.

Veterans of World War I, World War II and Korea have received the recognition and gratitude they deserve. They are honored and remembered as men and women who served their country. This has not always been the case for those who served during the War in Vietnam. In many ways, their service was more painful than in other eras: the selection process was often arbitrary; the war was long and brutal; the changes in warfare and innovations in medicine meant that fewer soldiers were killed than in other wars, but a far greater percentage survived with disabling injuries.

Because the war did not have the full backing of the American public, neither did those who fought in Vietnam. Many civilians came to confuse their views of the war with their view of those who were called upon to fight it. They confused the war with the warrior. Yet I know that all Americans join me in stating that the courage and patriotism of those who served in Vietnam have earned them full measure of honor and respect.

It is a tribute to the caliber of those who served that most Vietnam-era Veterans have already adjusted very successfully to civilian life. Still, in many ways, the effects of the war in Vietnam linger on. We have only begun to understand the full impact of the conflict. As part of healing its wounds, we have recognized our obligation to forget many harsh words and rash acts, and to forgive those who resisted the war. Of even greater importance is our determination to recognize those who did serve and to show our appreciation for the sacrifices they made.

I have directed the Secretary of Defense to honor the memory of all those who fought and died as well as those who are missing in action in Southeast Asia in ceremonies this fall at Arlington Cemetery.

As for those who did return, our review has found their personal and family median incomes are substantially higher than similar-aged non-Veterans, and their unemployment rates have been lowered. For the third quarter of 1978, Vietnam-era Veterans aged 20–34 had a 4.7% unemployment rate as compared to a 6.7% rate for the third quarter of 1977. Although rates vary from month to month, it is fair to say that most Vietnam-era Veterans have moved into the mainstream of economic life. Vietnam-era Veterans are making comparable or better use of their Veteran benefits than Veterans of previous wars. To date, nearly 65% have utilized their GI Bill benefits, which is far greater than under the World War II or Korean programs. We should not fail to recognize the hard work and determination that typify most Vietnam-era Veterans who have been successful in their military to civilian transition.

But for many Veterans—especially minority and disadvantaged Veterans—the transition to civilian life has led to unemployment, poverty and frustrations. The key to making our Veterans' programs successful—and efficient—is to target them carefully on those who continue to need help. By using our resources more skillfully and coordinating our efforts more closely, we can aid those ex-servicemen and women who are most in need of government assistance.

In my written State of the Union message to you last January, I indicated that my Administration would undertake a government-wide review of the status of the Vietnam-era Veteran and the programs designed to serve them. Since that time, the Veterans Administration, the Department of Labor, the Department of Defense, the Department of Justice, the Department of Health, Education, and Welare, the Community Services Administration, the Council of Economic Advisors, the Office of Management and Budget, and the Domestic Policy Staff have reviewed the status of these ex-servicemen and women and have prepared recommendations for improved government performance. On the basis of that policy review, I have ordered improvements in four areas of Veteran affairs:

Employment opportunities
Educational opportunities
Other Veterans services and benefits
Military status

In order to implement my decisions in these areas and improve delivery of services to veterans, I have established an interagency Veterans Federal Coordinating Committee, composed of representatives of eight agencies, operating under the direction of the Executive Office of the President.

I am also conferring upon the Veterans Administration the status of a Cabinet Agency, for the purpose of attending Cabinet meetings. The Veterans Administration is a large and important part of our government. Its presence at Cabinet meetings will be useful for other departments with overlapping responsibilities, and for the Veterans Administration itself, which will have a stronger voice.

To better understand some of the issues that will continue to confront the Vietnam-era Veteran, I am instituting a survey of public attitudes toward those Veterans. This study will help us identify the real areas of concern, as well as accurately portray the public's overall support of Veterans' benefit programs generally.

I. EMPLOYMENT OPPORTUNITIES

Most Vietnam-era Veterans are now doing better economically than non-veterans of the same age and background. In 1977, Vietnam-era Veterans aged 20–39 had median personal incomes of $12,680 compared to $9,820 for similar-aged non-veterans. When compared by family income, the figures are $15,040 and $12,850 respectively. For Vietnam-era Veterans aged 20–34, the unemployment rate of 7.4% for September one year ago de-

clined to 4.9% in September, 1978. As in all other sectors, unemployment rates for Veterans are substantially lower than they were when this Administration took office. We have hired nearly 98,000 Vietnam-era Veterans in public service jobs as part of the Administration's Economic Stimulus Package. Jobs and training assistance for Veterans became a top domestic priority when the Administration took office; the results are now clearly visible.

But if the overall employment picture for Vietnam-era Veterans is encouraging, the unemployment problems of minority, disabled, and disadvantaged Vietnam-era Veterans are cause for continued concern and attention. Black Vietnam-era Veterans, a significant percentage of whom saw active combat, face unemployment rates of 11.2% for the third quarter of 1978 compared to 15.9% for the third quarter of 1977. For the more seriously disabled Veterans, the unemployment rate is estimated to range as high as 50%. We have made great strides in every area of employment since the beginning of my Administration, but these jobless rates are still far too high. There is a clear need to better coordinate employment and employment assistance programs so that they are targeted on those Veterans most in need.

With that in mind, I have ordered a comprehensive review of the overall system for delivery of employment services to veterans. The review will yield further suggestions for improvement, but I have already initiated action to:

improve the participation of Veterans in all Comprehensive Employment and Training Act (CETA) programs. We have designed a number of ways of making sure CETA prime sponsors take account of the special needs of Veterans. They include: inspecting grant plans and monitoring local prime sponsor systems to assure consideration of the Vietnam-era Veteran and seeking to have better Veterans representation on prime sponsor councils.

continue operation of a national Help Through Industry Retraining and Employment (HIRE) program at a $40 million level, and supplement it with a $90 million HIRE II program, paid for with carry-over funds from the original HIRE effort. HIRE I is a national contract program operated through State Employment Services across the country, and through the National Alliance for Business. It hires and trains Veterans, members of Veterans' families eligible for Veterans' preference, and disadvantaged non-veteran youth for jobs in the private sector. HIRE II will decentralize sponsors to contract for and operate it in cooperation with State Employment Security agencies. HIRE II will be available exclusively for Veterans. Participants will also have access to all of the training, public employment and outreach services available through other CETA programs.

Secure from Congress authority to spend in Fiscal 1979 HIRE funds appropriated in 1977. Without this extension the unobligated funds would have reverted to the Treasury.

continued support will be given for the special outreach programs for Veterans operated by the National Alliance for Business and selected community organizations. One of the most important contributions government can make to Vietnam-era Veterans is to support outreach programs. They extend Veterans services to those who are unaware of the availability of assistance or intimidated by the idea of seeking it. We have extended our outreach efforts through HIRE II program and Veterans organizations. The National Alliance for Business and 13 other private programs funded by the Department of Labor must have continued backing.

maintain current funding levels for the Disabled Veterans Outreach Program (DVOP). DVOP was originally funded as part of the economic stimulus package, but the program deserves to continue at its current level of $30 million. DVOP employs 2,000 disabled Veterans to help find jobs for other disabled Veterans. So far, 26,000 disabled Veterans have found work through the program and it continues to be targeted at those Veterans with the severest employment problems.

improve coordination between Department of Labor and Veterans Administration employment programs. These programs will become more efficient as departmental policy links are clarified by a new high-level joint committee appointed by the Secretary of Labor and the Veterans Administrator. Money-wasting duplication of effort will be ended.

order all Federal agencies to make greater use of the Veterans Readjustment Appointment (VRA) authority to bring Vietnam-era Veterans, especially the disabled, into government service. I have already submitted legislation to liberalize and extend the authority to June 30, 1980. The bill has passed both Houses of Congress and is now in conference.

II. EDUCATIONAL OPPORTUNITIES

Vietnam-era Veterans are in the process of becoming the best educated group of Veterans in our history. Already, 65% of Vietnam-era Veterans have taken advantage of the GI Bill. That compares to a final rate of some 51% for World War II Veterans and 43% for Veterans of the Korean War. The Nation has spent nearly $25 billion on the GI Bill for Vietnam-era Veterans compared with $14 billion for those who served in World War II and $4.5 billion for Veterans of the Korean conflict.

But these readjustment assistance benefits often have not been utilized by those Vietnam-era Veterans who need them the most. Many members of minority groups and those lacking a high school diploma have not taken full advantage of the GI Bill. For them, outreach efforts must be intensified and eligibility expanded. At present, eligibility for most benefits under the GI Bill generally ends 10 years after discharge. Although these provisions are more liberal than for Veterans of previous wars, we will:

—submit legislation to the Congress that would extend eligibility beyond ten years for these Veterans the Veterans Administration defines as in need or educationally disadvantaged.

—continue a VA program called "Operation Boost" designed to seek out Veterans who are unaware of the time limit that is fast approaching for many of them.

III. OTHER VETERANS SERVICES AND BENEFITS

In general, Veterans benefits have been generous for Vietnam-era Veterans, but these and other benefits to which they are entitled need to be targeted better on those who really need them. Among those benefits and services requiring improvement are ones relating to:

Disabled Veterans
Incarcerated Veterans
Readjustment counselling and substance abuse treatment.

DISABLED VETERANS

Individuals with service-connected disabilities are especially in need of greater assistance from the government. That is particularly true for Vietnam-era Veterans, who suffered a 300% greater loss of lower extremities than Veterans of any other war. Altogether, 512,000 have sustained some kind of disability.

Our vocational rehabilitation programs must reflect our paramount concern for those Veterans who have service-connected disabilities. The current VA program is based on a 1943 model and requires major updating. I will submit legislation to the next Congress that will modernize and improve that program.

READJUSTMENT COUNSELING AND SUBSTANCE ABUSE TREATMENT

The frequent image of the Vietnam Veteran as unbalanced, unstable and drug-dependent is simply not borne out by available information. Most Veterans have adjusted well and the incidence of drug abuse, although greatly increased while in service, has for the most part declined to pre-Vietnam levels or lower. Nevertheless, there is evidence that suggests a significant minority of Vietnam Veterans have experienced problems of readjustment which continue even today.

Vietnam-era Veterans under age 34 have a suicide rate 23% higher than non-Veterans of the same age group. The number of hospitalized Vietnam-era Veterans identified as alcoholics or problem drinkers more than doubled from 13% in 1970 to 31% in 1977. And, although the drug abuse problem has declined, Vietnam-era Veterans account for 39% of all inpatients and 55% of all outpatients being treated by the VA for drug dependence problems.

The government is addressing these concerns, but more must be done:

—The Administration has already proposed legislation which would authorize psychological readjustment counseling to Vietnam-era Veterans and their families. The proposal is aimed at those Veterans who are not classified as mentally ill but

nevertheless need some kind of counseling. I urge Congress to enact this proposal prior to adjournment.

The Administration also requested legislative authority to contract for halfway houses in the treatment of Vietnam-era Veterans with substance abuse problems. This authority, together with the activation of 20 new VA substance abuse treatment units in this coming fiscal year, should provide needed resources to treat those with continuing alcohol and drug abuse problems.

—Finally, more research needs to be done into the problems of Vietnam-era Veterans. I am directing both the Veterans Administration and the National Institute of Mental Health to initiate studies in this area. A major study contracted for by the Veterans Administration to be submitted next year should enable us to better identify the nature and extent of problems being experienced by Vietnam-era Veterans.

INCARCERATED VETERANS

Like Veterans of all wars, a certain percentage of Vietnam-era Veterans end up in prison after returning home. Available data suggest that there are about 29,000 Vietnam-era Veterans in State and Federal prisons. Many of these Veterans received discharges which entitle them to VA benefits. Unfortunately, we lack comprehensive information about imprisoned Veterans.

I have directed the Law Enforcement Assistance Administration (LEAA) to compile accurate data about incarcerated Veterans. I have also asked the LEAA and the Bureau of Prisons to develop an information dissemination program for criminal justice system officials aimed at informing Veterans of the benefits available to them.

IV. MILITARY STATUS

Ninety-seven percent of all Vietnam-era Veterans received discharges under honorable conditions after completing service. It is only fair that those few individuals with discharges under other than honorable conditions be presented with the fullest possible justification for the action taken against them. Because of the serious harm such a discharge can do to a Veteran seeking a responsible place in society, the government must assure that discharge review is readily available to insure fair and humane treatment.

In this connection the Administration will:

—grant assistance to Veterans seeking discharge review. The Department of Defense has agreed to provide indices of discharge review/correction board cases to selective regional offices of the VA.

—submit legislation to modify the provisions of PL 95-196 which automatically barred VA benefits for combat Veterans discharged because of unauthorized absences of 180 days or more.

CONCLUSION

No steps we take can undo all the damage done by the war. There is no legislation that can bring those who died back to life, nor restore arms, legs, eyes to those who lost them in service. What we can do is to acknowledge our debt to those who sacrificed so much when their country asked service of them, and to repay that debt fully, gladly, and with a deep sense of respect.

JIMMY CARTER.

THE WHITE HOUSE, *October 10, 1978.*

MEMBERS OF THE HOUSE—BE KIND TO EACH OTHER

(Mr. BUCHANAN asked and was given permission to address the House for 1 minute and revise and extend his remarks.)

Mr. BUCHANAN. Mr. Speaker, I would like to compliment Speaker O'NEILL and the leadership of the House on the scheduling during this high holy day for people of the Jewish faith. I am particularly pleased that the leadership showed the sensitivity to a very important group of American citizens and citizens of the world that is reflected in our scheduling these days.

I also would like to take this occasion to comment on something that has disturbed me for quite some time. Mr. Speaker, I am concerned that the Members of this House are not kind enough to each other at this point in history.

On the occasion that my own State's junior Senator suffered a tragic heart attack and died, all Members of the Alabama delegation had to go to Alabama, of course, to attend his funeral. It happened to be on Tuesday when some eight States, some of the largest States in the Union, also had their primaries. Notwithstanding the primaries of all those different States, not to mention, of course, the travail of those of us from Alabama, there were a number of votes on that day that reflect adversely on the voting records of every Member who had to go home to vote, as his duty and his privilege as an American citizen and as a public officer required.

I have noted on a repeated number of occasions this tendency of the House at this point in history to show insensitivity to Members of the House and to delegations from the several States. It seems to me that the leadership of the House on this occasion has set a good example for all of us to follow, and I would appeal to my colleagues in the future that we show a little more sensitivity, a little more kindness, to each other. It will make it a better House in which to live and work for all of us.

CHILD NUTRITION AMENDMENTS OF 1978

Mr. PERKINS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12511) to extend for 1 year the child care food program of the National School Lunch Act and the women, infants, and children program of the Child Nutrition Act of 1966.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky (Mr. PERKINS).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 12511, with Mr. HARRIS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Under the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Kentucky (Mr. PERKINS) will be recognized for 30 minutes, and the gentleman from Alabama (Mr. BUCHANAN) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Kentucky (Mr. PERKINS).

Mr. PERKINS. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, H.R. 12511 extends two expiring child nutrition programs—the child care program for day care centers and the special supplemental food program for day care centers and the special supplemental food program for women, infants, and children—also known as the WIC program. The bill also amends these programs in order to simplify their administration and to encourage their expansion.

The other significant component of this bill is a requirement that the school breakfast program be expanded. Congress established that program in 1966 as a means of providing breakfast to needy children and children who had to travel great distances. But, over the years, that program has experienced slow growth so that today only 3 million children receive its benefits. This represents only 19 percent of the eligible population.

This bill requires school districts offering the school lunch program also to offer the breakfast program in any school with a high concentration of needy students and with an enrollment of at least 125 students. Districts would have 4 years to phase in these breakfast programs.

Mr. Chairman, the remainder of the bill deals with relatively minor amendments modifying payment indices and administrative provisions.

Mr. Chairman, H.R. 12511, the Child Nutrition Amendments of 1978, is a very important piece of legislation because it extends and amends two child nutrition programs which expired September 30. It also makes needed improvements in other child nutrition programs.

H.R. 12511, as reported from the Committee on Education and Labor on May 9, extends the child care food program making it one of the permanently authorized programs, and extends the WIC program until September 30, 1982.

First, let me outline for the Members the changes in the child care food program. This program provides Federal reimbursement for meals served to preschool children in day-care settings. This program reaches some 550,000 children, although the Department of Health, Education, and Welfare estimates that 3.6 million children are regular day-care participants.

H.R. 12511 seeks to expand the program's outreach and increase its cost-effectiveness through a number of changes. First, the definition of "eligibility" is broadened to permit institutions which receive funds under title XX of the Social Security Act to participate, as an alternative to the licensing requirements which govern eligibility for other institutions. In my judgment, this provision will allow for program growth in communities where it is most needed, and will maintain quality standards for day care services.

Second, H.R. 12511 establishes a simplified Federal payment structure. Under current law, institutions receive reimbursements for meals served on an individual income basis, similar to eligibility for the regular school lunch program. H.R. 12511 prescribes a single payment rate for all institutions within the same average income category. Family and group day care homes which will receive flat reimbursements for administration and for food and labor costs, are excepted from this provision, as are institutions which choose to continue under the present system. This amendment should reduce paperwork considerably and thereby encourage participation.

The third provision I would like to note authorizes startup and advance payments for family and group homes. Since much day care for poor children is provided through these types of homes, this amendment should increase the number of homes which will apply for the program.

The second program with extensive modifications, which I would like to mention, is the special supplemental program for women, infants, and children. This program makes Federal funds available to local health and welfare agencies for the purpose of providing nutritious foods to low-income infants, mothers, and children, who are determined to be at nutritional risk.

Mr. Chairman, there is mounting evidence that the WIC program is a highly effective delivery system for providing needed supplemental nutrition to groups of infants and pregnant and nursing mothers, at a time in their lives when the risks to proper development of fetus and infant are the highest. It is, so to speak, preventive medicine, and has the real possibility of cutting costs in the future of the health and hospital care of these groups it is serving. However, only one-eight of the target population—about 1.24 million WIC recipients—is now being reached. There are an estimated 8.3 million low-income individuals who are potentially eligible. It is estimated that more than half of the counties in the United States do not have WIC facilities. To meet this need, H.R. 12511 increases the authorization of appropriations to the following levels:

[In millions]

Fiscal year:	
1979	$650
1980	850
1981	900
1982	950

Several other changes in the WIC program are also included in H.R. 12511.

First, the committee bill strengthens the nutrition education component of the program by authorizing the Secretary of Agriculture to establish standards to insure that adequate educational services are included.

Second, the formula for distributing WIC administrative funds is revised. Under present law, State and local agencies receive 20 percent of their total WIC grant for administrative expenses. However, this 20 percent is defined in terms of the amount of supplemental food provided to recipients. The revision proposes that 20 percent of the total funds for the program shall be separated out and allocated to the States as grants for administrative purposes, and the Secretary is authorized to take into account each State's individual needs, and to exceed the 20-percent limit if necessary for good administration, when reallocating these funds.

Third, the eligibility requirements of the program have been changed to make clear that the program is to be targeted to low-income persons, by limiting participation to women, infants, and children whose family income is below 195 percent of the poverty level.

Fourth, greater access to the program is provided to migrant individuals and Indian populations.

As I stated earlier, the original purpose of the legislation was to reauthorize expiring programs. However, the bill contains changes in several other programs as well.

First, I want to mention the school breakfast program. Mr. Chairman, a number of studies have illustrated the valuable contribution that the school breakfast program makes to the nutrition and the academic performance of children in school. Many classroom teachers have told us that the child who has had a nourishing breakfast is a child who is in a more responsive pattern both in behavior and in scholastic achievement than a child who starts his class-day with an empty stomach.

Yet, our many previous efforts to promote this worthy program have not been as successful as I would like. Currently, while 90,000 schools participate in the school lunch program, only 23,000 schools participate in the breakfast program. In actual student participation, this means over 26 million children have school lunch, but only about 3 million have school breakfast.

I want to emphasize that Congress created the breakfast program specifically for needy schoolchildren who would otherwise go without breakfast. It also was aimed at providing breakfast to children who travel long distances on the way to school and to children from homes where the adults in the family work out of the home, and are gone at an early hour. The amendments contained in H.R. 12511 support these objectives.

Under the committee proposal, schools with an enrollment of over 125 students and a high concentration of needy students will be required to implement a breakfast program, and the phase-in period would be during the next 4 years. Some flexibility is provided to the school district, permitting it to establish the breakfast program in an alternate school as long as that school enrolls as many needy children as the basically needy school. Flexibility of reimbursement is also provided.

As an incentive to school districts, under this mandate, the bill gives first priority to schools initiating a breakfast program to obtain equipment funds, and at the same time, the authorization for school food service equipment is increased from $40 to $75 million, and the share of these funds set aside for especially needy schools is increased from one-third to one-half.

The final inducement to initiate a breakfast program is the elimination of the requirement that schools maintain separate accountability for their school lunch and school breakfast programs. This will do away with excessive recordkeeping of which school food service authorities have been complaining.

A few other miscellaneous amendments are worth noting. First, the minimum level for State administrative expenses for school food programs is increased from 1 percent to 1½ percent of the second previous fiscal year's expenditures. The bill also amends the method of allocating these funds in order to take into account the needs of rural areas with concentrations of small schools and of economies of scale in populated areas. In addition, the bill proposes a small increase in State administrative funds for the summer feeding program. Additionally there are changes in the indexes currently being used to determine cash reimbursements for commodities and milk; and lastly, the bill also sets the reimbursement rate for reduced price lunches at 20 cents less than the reimbursement for free lunches. The purpose of this change is to make the revenues from reduced price lunches equal the revenues from free lunches.

Mr. Chairman, I believe this legislation represents a reasonable response to deficiencies which have become apparent in the child nutrition legislation. We must keep in mind our goal of providing Federal assistance to insure that all children will receive quality food in sufficient quantity to maintain good health.

I urge my colleagues to support H.R. 12511.

Mr. BUCHANAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 12511, the Child Nutrition Amendment of 1978. Chairman PERKINS has made his usual detailed explanation of the provisions of this bill, and I need not repeat those. I do, however, want to emphasize the importance of this legislation and to commend the chairman, and our ranking minority member, the gentleman from Minnesota (Mr. QUIE) for their leadership through the years of this vital legislation.

There is only one truly controversial

provision in this bill—that which would require schools serving a high percentage of free and reduced price lunches to also have a breakfast program. This will be discussed and debated thoroughly when the gentleman from Illinois (Mr. ERLENBORN) offers an amendment on Thursday to strike that provision. Even here, Mr. Chairman, the controversy is limited to the so-called mandate and there is no disagreement over additional financial incentives to expand the school breakfast program, particularly in low-income areas.

In Alabama we have had very good participation in the breakfast program, with 37 percent of our schools serving a breakfast. Participation grew from 66 schools in the school year 1971–72 to 469 schools in 1977–78. Much of this has occurred in the past 3 years since we made the program a permanent feature of the Child Nutrition Act of 1966, rather than a temporary, experimental program.

In my congressional district participation has been particularly good—nearly 45 percent of the schools; 44 of the 92 schools in the Birmingham City system, 35 of the 78 schools in the Jefferson County system, and 81 of 188 schools in smaller school systems are participating. This is considerably above the national average of school participation in the breakfast program.

The other two major nutrition programs which the bill extends and expands are the child care food program and the special supplemental food program for women, infants, and children (WIC). Both of these programs serve very special and very important nutritional, economic, and social needs.

The child care program is a blessing for working mothers whose young children spend the day in day care centers, Head Start programs, and similar child care programs. It has been a small program in Alabama, but is growing. In fiscal year 1976 there were 163 sponsors serving 13,782 daily meals on an average day; in fiscal year 1978 there were 191 sponsors with average daily meals served numbering over 16,000. I would expect to see additional sponsors and participants in this program in Alabama with the additional assistance provided by this bill.

The WIC program is unique in many ways. First, it is the one nutritional program run through State and local health agencies and having a medical evaluation built into it. Second, it is squarely aimed at the population and age group—expectant mothers, infants, and preschool children at nutritional risk—for whom poor nutrition poses the greatest threat of irreparable harm. The greatest threat is irreversible brain damage in infants and pre-school children, which can and does lead to a lifetime of complete dependency or drastically lowered intellectual ability and earning capability. This is a preventable tragedy which the WIC program, by solid medical evidence, is in fact preventing. The human, social, and economic costs of not providing preventive nutritional aid to this group is infinitely greater than the cost of the assistance we provide.

Yet WIC is by no means reaching all those it should—and will not, even with this expanded funding. In Alabama, for example, WIC currently is reaching just over 30,000 persons, half of whom are children between the ages of 1 and 5 years—the remainder being mothers and infants. Yet our State officials estimate that there are 89,000 Alabama children between the ages of 1 and 5 years who are in the need category WIC is designed to help. Only 45 of our 67 counties participate in the program, but we have tried to reach the neediest counties first. In Jefferson County, which I represent, there are 5,335 participants in the program and we spend about $1.3 million of the $8 million available in the State. Next year the State should get about $11 million and it is hoped that new counties can be added.

This is, however, a costly process as a staff must be trained and put to work in each new county added. One of the very good features in this bill is that a more flexible treatment of administrative cost limitations will make it easier to extend the program to rural areas where costs may run higher due to greater distances and smaller populations.

This bill deals mainly with the improvement of programs of demonstrated value to the children of America, and it merits our support. There will be a number of technical amendments, and as I have indicated, one and perhaps two substantive amendments involving some controversy, but the bill is an excellent piece of legislation. I urge my colleagues to support the legislation on final passage so that it may be enacted.

Mr. PERKINS. Mr. Chairman, I have no further requests for time.

Mr. BUCHANAN. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania (Mr. GOODLING).

Mr. GOODLING. Mr. Chairman, by and large, I think this bill is an indication of our committee's assuming their responsibility of oversight and doing the best we thought we possibly could as far as the nutrition of our children and of those who give birth to those children is concerned.

I think we may have created one monster, and everyone will have to decide for himself or for herself on that issue; but I think it is something which I should point out in detail to all of the Members; that is the fact that we have mandated a breakfast program. We have made this mandate as a part of a program which is not mandated, and that is the school lunch program. The school lunch program is not mandated; however, we have mandated the school breakfast program under certain circumstances.

I am not sure that, in the long run, we have done harm to the school lunch program. Only time will tell.

Mr. Chairman, I would like to read a paragraph from a letter written by Caryl Kline, who happens to be the Secretary of Education in the Commonwealth of Pennsylvania, and she is asking the Pennsylvania delegation not to support the school breakfast requirement. She says the following:

> I would urge you to oppose the expansion for several reasons. In Pennsylvania we have established excellent working relations with school districts. Currently 500 school districts out of 505 are participating in the national school lunch program. This high rate of participation is due to cooperative efforts between the staff of the Department and the school districts. Requiring school districts to expand their food programs to include breakfast programs would not be well received. Our staff has worked to encourage school districts to participate in the breakfast programs as the districts' capability to handle food programs increased. As a result, the number of breakfast programs is gradually increasing. I urge you to consider voting against the breakfast mandate.

Mr. Chairman, this comes from Secretary Kline, Secretary of Education in the Commonwealth of Pennsylvania.

There is a second part of that mandate about which I am concerned. It happened so quickly and so quietly in committee. We indicated that we would require or we would mandate public schools, under certain circumstances, to participate. We said private and parochial schools did not have to participate. I submit to the Members that private and parochial schools are in a much better position to reach that mandate, simply because of logistics, simply because of numbers, simply because of flexibility in scheduling, and so on.

Mr. Chairman, I think that is a real problem with this whole piece of legislation. By and large, it is a very fine piece of legislation; but I am wondering—and I have not made a conclusive decision on my own part—whether we may, in the long run, discourage participation in the school lunch program in some areas to get out from under the mandate that the districts provide a breakfast program.

I mention that simply because I have understood from some of the studies, particularly on the secondary level, that many secondary students do not want to participate and do not want to become involved. However, the school has felt that they must supply necessary staff to make sure, if they do participate, that they can handle it. Therefore, this has become an expensive project for them.

Mr. Chairman, there is one other area to which I would call the attention of my chairman, only because I will need his assistance in responding to her.

She indicates that another issue that she is concerned about is the ambiguity to the free milk provisions, and this is what she says:

> The amendemnt would allow children who qualify for free lunches to be eligible for free milk at their request.

Then she says:

> It is not clear whether the requests would be limited to the lunch period or whether it includes the entire school day.

I think we somehow in language or in conference, or something, will have to make sure that they understand that.

Mr. PERKINS. If the gentleman will yield, it will be limited to the lunch period, and the milk will be served at that time.

Mr. GOODLING. And we will have language to make sure of that?

Mr. PERKINS. Yes, we will have language.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BUCHANAN. I yield 5 additional minutes to the gentleman from Pennsylvania (Mr. GOODLING).

Mr. GOODLING. The second question, Mr. Chairman, that she refers to is she also says that additionally it is not clear whether there is a limit on the amount of milk a child may request, and I do not know whether there is or not, but again we will have to have some kind of language, I suppose, to make that clear.

Mr. PERKINS. There is a limit. It is one extra. That is it.

Mr. GOODLING. That would be clear in the language?

Mr. PERKINS. That would be clear. We will make that clear in the report.

Mr. GOODLING. Let me say again by and large it is a very fine bill. Time will tell if we do not change it whether we have improved the nutrition of young people by mandating a breakfast or whether we may force some school districts into the business of getting out of the school lunch program.

Mr. PERKINS. Mr. Chairman, will the gentleman yield to me just for one brief response?

Mr. GOODLING. I yield to the gentleman.

Mr. PERKINS. I thank the gentleman for yielding.

The gentleman made mention of the fact that it would be expensive in some secondary schools where in all probability they would not prefer to have a mandated breakfast program. Practically in all school systems of the country we are going to have some hungry children who come to school early in the morning, and in the majority of the schools of the country, the great majority of the schools, elementary and secondary—more so secondary than elementary—we are going to have this busing situation, whether it is brought about by desegregation or whether it is just regular busing like we have down home where children are bused from 20 to 50 miles of a morning over mountains. They pick them up out at the side of the road at 5 o'clock a.m. and they get back after dark on many occasions. I personally cannot see anything wrong with mandating a program. We are not compelling the children, the girls and boys, to eat breakfast, but we are making certain that they have the opportunity when they leave that breakfast, and I think it is a reasonable requirement and the Congress has acted wisely in giving this reasonable mandate to these school systems of the country. I think it will redound to the health and the welfare and the well-being of that child and will pay for itself many times. It is only in high-poverty schools that it would be required.

Mr. GOODLING. I think the problem comes, Mr. Chairman, in the fact that we do not mandate a school lunch, so if it is important soon after they left for school to have breakfast, it would be even more important to make sure something is mandated at lunch.

The busing situation is one of the problems that will create a real problem for many school districts, because they will be the last wave of buses that come in, which will make a real problem as far as scheduling of buses coming in. That is why it is easier in private and parochial schools where you have bus schedules.

Mr. PERKINS. The tendency has been always that children will eat something for lunch, but from the standpoint of human nature, I think it is somewhat different when you get a child out of bed by his parents at 5 o'clock, 5 a.m., and get him or her ready for school. They do not have the appetite at that time, but by the time they get to school, they are ready to eat, and I think it behooves us all to do something for that child, especially in high-poverty schools that we have in the country.

Mr. GOODLING. I have no problem with that, Mr. Chairman. The problem is that it does just the opposite as far as the school lunch program is concerned and pushes some schools out of participation. Then, of course, we are doing a great injustice trying to do something we thought was good and it turns around to be just the opposite.

I understand that has happened in States where they have that mandate.

Mr. BUCHANAN. Mr. Chairman, if the gentleman will yield, there is a problem with the secondary school level. Some of the schools that sought to establish a breakfast program find that teenagers simply will not eat breakfast. They establish a program and a small number of teenagers will participate.

Mr. GOODLING. With a very large staff.

Mr. BUCHANAN. I think, like the gentleman, we have done something well, but we ought to follow up and do something about it.

Mr. PERKINS. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. FORD).

Mr. FORD of Michigan. Mr. Chairman, I rise in support of this legislation; but I wanted to address myself briefly to the observations of my colleague from Pennsylvania about the compulsory nature of the breakfast program.

I would not like to leave on the record suspended without explanation a suggestion that this program is some way more compulsory for public schools than it is for nonpublic schools. In fact, it might work out to be that way by virtue of what it is that triggers the compulsion to initiate the program. The requirement is that by the year 1979 or 1980 the school have at least 125 needy children and that 50 percent of the children in the school be eligible for free or reduced price lunches. Now, that is the very poor people.

Then in 1980 and 1981 that 50-percent figure drops to 45 percent. In 1981 and 1982 it drops to 40 percent.

I might observe that when you compare that to several States, such as my own State of Michigan, where our legislature has already mandated school breakfasts, the schools that have a concentration of very low-income children, you will find that the percentages needed to trigger the mandate are much lower in our State.

I might say to the gentleman from Pennsylvania that we have heard no criticism at all directed toward the legislature taking this action. It has also been done in Texas, Ohio, and New York, along with our State, and there are several States, including the States right around the Capitol here who have legislation underway that is patterned after this same picture.

I think the gentleman and I both recognize because of other debates that have taken place this year that the nonpublic schools are not often the repository of high concentrations of low-income children and that it would be unusual, perhaps, in many parts of the country, particularly in the East, to find private schools with large numbers of children qualifying for reduced and free lunches.

With that in mind, I would hope that the gentleman would agree with me that the compulsion here is directed toward the concentration of low-income children and then finally observe that there are no sanctions in this bill that have been imposed upon a school district for failing to respond; but parents who feel that their children should be able to participate may seek to have the school district participate, if it is reluctant to do so. It would have to be initiated—in other words, for the program, in fact, ultimately to be compulsory, the compulsion would have to be initiated by local parents, not by a Federal agency. They could not be told from Washington to do this or else.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. FORD of Michigan. I yield to the gentleman from Pennsylvania.

Mr. GOODLING. Mr. Chairman, I merely pointed out the private and parochial, because the bill specifically says public schools; in other words, it exempts private and parochial schools from the mandate and says by the beginning of the school year ending June 30, any public school as defined in section 6; so it is strictly the public school that the mandate fits in.

I would imagine, if I may make just one other comment, that the local school districts would rather have some mandated punishment than they would to have the continual court cases they now find themselves involved in when they do not write the proper prescriptions for each individual statute and they are going to court for that reason.

Mr. FORD of Michigan. Mr. Chairman, I might agree with the gentleman from Pennsylvania (Mr. GOODLING) on that as a matter of local political reality, but I might suggest—and this is only a personal opinion—that I would regard the way in which this bill is written as a preference for using this program in the public schools, and that does not offend me at all.

I think there are many kinds of aids that the public schools, as the continual repository of the poor children and other children with problems in this country, need that the private schools are able to take care of themselves, either by eliminating them, excluding them, or providing them from ample resources. I do not think the children in the private day schools in a city like this or in our big Eastern cities, with tuition payments of several thousand dollars a year being paid to them, really need this kind of help, but the public schools in the gentleman's State and in my State do really need that help.

Mr. GOODLING. Mr. Chairman, I would hope that the church-related schools are taking care of the poor.

Mr. BUCHANAN. Mr. Chairman, I

yield 1 minute to the gentleman from Texas (Mr. COLLINS).

OPPOSES MANDATORY SCHOOL BREAKFAST

Mr. COLLINS of Texas. Mr. Chairman, I rise in support of my colleagues Mr. ERLENBORN and Mr. GOODLING to strike the provision for a mandatory breakfast program in the Child Nutrition Amendments of 1978. For the past 32 years, we have had a program to provide federally subsidized meals for school-age children. We all realize that children work better when they are well fed. However, the basic concept of this program has been abused. We have progressively turned school feeding into a welfare situation.

H.R. 12511 would extend the school feeding program to include mandatory school breakfasts. For the first time in history, we would see a school program become a Federal law. This requirement is a dangerous step in the direction of Federal dictation of State and local policy. Breakfast is already subsidized 100 percent for the schools that want to participate. Yet, this bill would go even further and make it compulsory to serve breakfast in schools with more than 125 students serving 50 percent of their daily lunches free or at a reduced price. To implement the school breakfast program, USDA would withhold administrative or lunch funds from the schools that did not comply by 1980. Many schools would be forced to stop serving lunches, which are not required by law, rather than implementing a cumbersome, expensive breakfast program.

The reaction of the school administrators to mandated school breakfasts has been extremely negative. In Texas, the legislature has chosen to mandate a breakfast program administrated by the State education agency. Mr. Charles Cole, director of the school lunch program in Texas, told me,

> We are feeding breakfast in 5,000 schools in Texas. However, we are greatly concerned about the Feds mandating a program in the schools. No other school programs are law. The Federal government should not get involved in local school decisions.

Mr. Edward J. Post, the director of food and nutrition services for the State Department of Public Instruction in Wisconsin, has stated,

> We are opposed to a mandated program as stated in H.R. 12511. Such an approach would be counterproductive: many school authorities would, no doubt, withdraw from the national school lunch program, thereby eliminating the opportunity for needy students to receive a free or reduced price lunch. In many instances, the earlier arrival of students because of breakfast programs would cause a severe busing problem and would further diminish the opportunity for children to eat breakfast at home if they so desire.

With the breakfast program, as with the free lunch program, the taxpayers subsidize completely whatever is served. Federal spending in this area has increased from $180 million in fiscal year 1977 to $215 million in fiscal year 1978 and will increase by $30 million more by 1980. Over the past decade, Federal expenditures for the school lunch program have increased from less than $75 million to over $2.4 billion for fiscal year 1977.

Yet with all the money spent on these feeding programs, the fraud and abuse level continues to expand. My colleagues may remember that in May 1977 when we debated the school lunch program, New York City was cited as a blatant example of misuse of school lunch funds. We noted that under the summer feeding program, New York City was feeding 1.3 million kids while only 555,000 were fed during the entire school year. In other words, the city was receiving 50 percent more funding for 3 months of summer school lunches than they received for feeding kids for the other 9 months altogether.

Little progress has been made to clean this situation up. This summer, the gentlewoman from New York (Ms. HOLTZMAN) found that food vendors who had used questionable bidding practices and served spoiled food in the past were being allowed to bid again. It was also charged that the city's $30 million program should provide feeding for 900,000 children instead of the 400,000 it was serving. Besides the inequities of making the breakfast program a mandatory Federal law, it would seem the abuses in the lunch program should first be eliminated.

● Mr. MICHAEL O. MYERS. Mr. Chairman, I support the child nutrition legislation that we are now considering. The legislation offers considerable hope for youngsters around the country who are in need of nutrition assistance under the various child feeding programs. The bill undertakes a comprehensive rewrite of the special supplemental feeding program for women, infants, and children—the so-called WIC program—and it does the same for the child care food program.

The legislative rewrite of these two programs will improve the delivery of much-needed nutrition services to large numbers of children in every section of the country. These modifications, standing alone, would warrant the support of the entire House. However, this bill contains additional legislative changes that are beneficial to children. These changes. which focus on the national school breakfast program, are extremely helpful.

The school breakfast program changes were drafted to spur program growth. Currently, out of 90,613 schools operating the school lunch program, only 21,218 operate the breakfast program. Even worse, program growth has stalled to a snail's pace, thereby discouraging those of us who want to see breakfast program coverage in local areas with a high concentration of poor children.

In my home State of Pennsylvania, there is considerable room for breakfast program expansion. Out of 4,397 schools (as of the start of the last school year) implementing the school lunch program, only 342 schools operated the breakfast program. Translated into numbers of children, this means that 448,885 poor children each day were receiving free or reduced-price lunches, while only 45,-519 of those children were receiving school breakfasts.

Since studies conducted around the country indicate that the breakfast program has been very effective in improving classroom performance, it is important that we take swift and effective measures to bring about program growth. Studies indicated that the school breakfast program: improves alertness in the classroom; increases attendance rates, particularly in poor areas; decreases disciplinary problems; and aids in general classroom behavior and concentration. These observations seem especially pertinent in poverty-stricken communities.

The Education and Labor Committee's bill seems to offer the solutions required to bring about program expansion. The cornerstone of the committee's bill is a requirement that the program be implemented in schools containing high percentages of poor children. Through a phased-in schedule starting in school years 1979–1980 and ending in school year 1981–1982, schools containing 40–50 percent needy children would be required to implement the breakfast program. The percentage measurement of need would be based on the percentage of children receiving free or reduced-price lunches.

This implementation requirement makes a great deal of sense. Clearly it targets in on the areas of incontrovertible need. Any school which has 40–50 percent children who are needy enough to actually receive free or reduced-price meals should be offering school breakfast program services. Children in those schools are likley to be coming from a home that cannot provide them with adequate morning nourishment. Consequently, without school breakfast program aid, those children will be concerned about their empty stomachs, rather than their classroom learning.

The bill, also, provides additional opportunities for program growth. It offers increased per meal reimbusements for schools containing 40–50 percent or more children who are needy—the very schools covered by the expansion requirement. It provides additional equipment assistance so that schools can obtain the cooking, storage, and refrigeration facilities necessary to operate the program. And the bill significantly reduces bureaucratic redtape by permitting schools to keep one set, instead of the currently prescribed two sets, of books for the school lunch and school breakfast programs.

In sum, this bill should provide substantial assistance to children in need of nutrition services. I hope that the bill, and the breakfast program provisions in particular, will be passed without amendment.●

● Mr. ERLENBORN. Mr. Chairman, when we begin the amendment process on this bill on Thursday, I intend to offer an amendment to strike out the provision which would mandate schools to serve a school breakfast if they serve a high percentage of free and reduced-price lunches in their lunch program. When this bill was reported, eight of us joined in minority views just on this provision. We favor the expansion of the breakfast program where local schools wish to do so, and we favor incentives provided for this purpose, but we do not feel that it is either wise or necessary for the Federal Government to attempt to use compulsion in this program. The lunch program itself is not compulsory, and should not be.

We are joined in this position by the

people who know the program best and who would most benefit from its expansion—the American School Food Service Association, whose 60,000 members run the school lunch and breakfast programs. The association staff tells us that at least 85 percent of their members, while favoring an expanded breakfast program where it is feasible, oppose Federal compulsion. They fear that, aside from being inappropriate, it would injure the lunch program. They also feel that compulsion is unnecessary.

In the 2 school years since we made the breakfast program a permanent feature of our child nutrition policy and began providing better financial support for it, over 7,100 schools have joined the program. U.S.D.A. estimates that a mandated program backed up by financial sanctions to force compliance would bring only 9,000 or so additional schools into the program in the next 2 years—little more than are expected to voluntarily start a breakfast program during this time.

But this bill removed the proposed financial sanctions. Instead, it left enforcement of the mandate up to anyone with standing to walk into the local U.S. district court and seek an injunction against noncomplying school boards. Many State directors of school food services have warned that before this happens some schools might simply drop the lunch program, thus denying needy students a free or reduced price lunch and lowering nutritional standards for all students.

Spokesmen for the Roman Catholic parochial school systems warned of exactly this if the breakfast mandate were applied to their schools, so the committee bill exempts nonpublic schools. This is ironical, first because it proposes for the first time in these programs to treat public and private schools differently; and, second, because most nonpublic schools may be in a better position to offer a school breakfast than many public schools. In many States local school boards might also have the same freedom to opt out of the lunch program.

The problem for many schools is that a breakfast program presents too many administrative problems. For example, it often requires extensive rescheduling of bus service, with earlier arrivals for all students and administrative personnel. This is the kind of additional expense, also, which is not covered by Federal reimbursement.

Also, many parents object to children—particularly younger children—having to go to school earlier, particularly those already facing long bus rides. It deprives many of these children of the time to have a good breakfast at home. Among older children, breakfast frequently is not eaten at all, even when it is offered free. Thus many schools have gone through all the trouble of setting up a breakfast program only to have a mere handful of students take advantage of it.

For many reasons, this really should be a local decision. Several States have tried mandating a program in schools serving large numbers of low-income children, but it has not proven popular. The State board of education in Massachusetts did this by rule in February of this year, only to have the State legislature reverse that action in July, returning the decision to local school boards after heated opposition from parents and school administrators all over the State. Ohio and Michigan are having difficulties with a mandated program. But if a State—which has the constitutional responsibility for a public school system—wishes to experiment with this sort of compulsion, that is not our responsibility. My point is only that the limited experiments in compulsion are not working well and ought not in any event to be followed by the Federal Government.

The companion bill in the other body carries no such provision, probably because they acted upon it after our committee and had time to reconsider the proposal and reject it. We should do the same thing Thursday for the reasons I have briefly outlined today.●

● Mr. FRENZEL. Mr. Chairman, I rise in support of the Child Nutrition Amendments of 1978 and wish to commend the members of the Education and Labor Committee for their work in providing initiatives for expanding and strengthening the child nutrition programs to make them more responsive to the nutritional needs of our Nation's children.

H.R. 12511 will permanently authorize the child care food program, providing much needed services to day-care centers, Head Start programs, and similar child-care institutions. Amendments in the bill will facilitate participation in family and group day-care organizations.

The special supplement food program for women, infants, and children (WIC) has been an extremely successful program, having a positive impact on our Nation's nutritionally deprived woman, and children. I am pleased that the committee has extended its authorization and strengthened and improved the program, particularly in the nutrition education provisions of the program.

I have supported the expansions of the child nutrition programs in the past, and particularly supported the bill which removed the initial limitation on the types of schools eligible for the school breakfast program and authorized the Secretary to pay up to 100 percent of the full operating costs of a breakfast program in needy schools on a voluntary basis. Since that provision was enacted into law, the program has been further expanded with greater incentives to establish a voluntary breakfast program.

While I intend to support the final version of the bill, I have some great concerns about mandating a school breakfast program and am glad that feature of the bill has been removed. I believe that a school breakfast program is important, and hope that more schools will volunteer to participate, but to mandate the program in my view, is a dangerous step toward more Federal dictation of State and local educational policy and school programing. Congress has declared it to be a national policy to encourage schools to make the breakfasts available where they are most needed. While we still have a long way to go, in the past 2 years some 7,100 schools have come into the breakfast program. It has been estimated that under the mandate, only an additional 9,000 would be forced to be included in the program. I would prefer that individual schools have the option to chose to establish such programs and it seems to me that the sensible approach would be to provide additional incentives, without the mandate, and see what results could be produced over the next 2 years. Until we have exhausted all possible alternatives toward voluntary participation, I cannot support such a mandate and hope my colleagues will agree that a mandate is unnecessary and unwarranted at this time.

Thus, this bill, H.R. 12511, deserves the support of all Members in this body, but without the mandate. I hope the mandate will not be included in the final bill so it can be supported enthusiastically.●

● Mr. VENTO. Mr. Chairman, millions of infants, young children, and needy women have been helped by the Federal child nutrition programs. Since 1966, needy students have received free breakfasts because of the school reimbursement program enacted by Congress. Since 1968, when Congress passed the child care food program, hundreds of tax-exempt, licensed, and nonresidential child care institutions have been able to provide children with good, nutritious meals. And for the last 6 years, local health clinics as well as Indian tribes have been able to give supplemental food to low-income women, infants, and children because of the special WIC program Congress enacted.

This growing recognition of the importance of nutrition programs to meet the needs of millions of deprived individuals is reflected in the Child Nutrition Amendments, H.R. 12511, now before us. This bill is aimed at carefully expanding the successful programs we have without sacrificing their nutritional integrity. The bill will also simplify complex administrative requirements that may be inhibiting growth of the program and, perhaps inadvertently, excluding millions of women, children, and infants from the nutritional help they need.

The idea of free food and nutrition education programs is not new. For decades, intelligent and sensitive people have been concerned not just about people who do not have enough to eat, but also about those who do not eat the proper food. While we may all be guilty of neglecting our diets at one time or another, there is a major difference between such lapses and the situation of those people who do not understand proper nutrition or who do not have the right food available.

We are all familiar with the classic case of the obese individual who in fact suffers from malnutrition. Or the pictures of those pathetic children suffering from illness and disease because they have not been eating the right food or receiving proper nutrition.

The bill before us takes these problems into account and provides permanent authorization for the child care food programs. In addition, it extends the special supplemental food program for

women, infants, and children, and expands the school breakfast program for many public schools.

As a former teacher who has seen firsthand the advantages of such nutrition programs for students, and the devastating effects of undernourishment on children's learning abilities and entire lives, I cannot speak strongly enough for the importance and legitimacy of this bill. I urge my colleagues to approve H.R. 12511 without amendment ●

● Mr. STOKES. Mr. Chairman, I rise to voice my support in favor of H.R. 12511, the Child Nutrition Amendments of 1978. This legislation contains many critical provisions that are beneficial to our Nation's youngsters. Specifically, it rewrites the legislation authorizing the child care food program and the special supplemental food program for women, infants and children—the so-called WIC program.

Additionally, the legislation would bring about significant improvements in the school breakfast program. It is on these improvements that I would like to focus my brief remarks.

The school breakfast program is very important for needy children throughout the country. Since many children from impoverished neighborhoods are unable to obtain morning nutrition, the school breakfast program offers them the food assistance they need to focus on their studies, rather than their empty stomachs. The program is similarly important to children from families that are headed by females or where the mother works, because children from these families often get up after their parents leave for work, and, therefore, do not receive adequate morning nourishment before school. For these youngsters, the breakfast program is critically important.

Although USDA studies verify the necessity of the school breakfast program in impoverished and other communities, the program has not been expanded as rapidly as expected. As an illustration, more than 90,000 schools currently implement the school lunch program while only 21,000 operate the breakfast program. Despite this wide gap in program coverage, the rate of school breakfast program implementation is less than 2,000 new schools per year.

H.R. 12511 takes some modest, but much-needed, steps to accelerate breakfast program expansion. Through the development of a school breakfast legislative package endorsed by the Carter administration, the House Education and Labor Committee has offered this body a fine opportunity to improve school breakfast coverage in poor communities. The bill appropriately targets the neediest areas of the country—schools in which more than 40 to 50 percent of our children fall below the eligibility criteria for free and reduced-price meals—for program expansion.

The bill offers a series of financial incentives for program expansion, and requires school breakfast program implementation in the neediest schools of the country. In school year 1979–80, the breakfast program would have to be expanded to schools in which 50 percent or more of the children receive free or reduced-price lunches; in 1980–81, the percentage would drop to 45 percent; and in 1981–82 and thereafter, the percentage would drop to 40 percent.

These proposed expansion provisions are quite modest. Nevertheless, they should be very effective. It is expected that the expansion requirement coupled with the financial incentives in this bill will bring many, perhaps 15,000 to 20,000, additional schools into the breakfast program by the 1981–82 school year.

Additionally, Mr. Chairman, H.R. 12511 contains a set of legislative provisions which, I believe, would be especially beneficial to the State of Ohio. Ohio is one of only four States that has enacted legislation seeking to insure that schools in needier neighborhoods offer school breakfasts to their pupils. Specifically, Ohio law requires breakfast program implementation in all schools wherein one-third or more of the children are eligible for free meals or wherein 50 percent or more of the pupils' parents requested the program. This bill offers strong support to Ohio's breakfast program in three ways. First, schools required to implement the program would become automatically eligible for "especially needy" status, thereby entitling them to an extra 10-cent reimbursement per pupil per day. Second, school districts are permitted, for the first time, to blend their Federal lunch and breakfast reimbursements, thereby potentially offering additional reimbursements for one program from unused subsidies originally provided under the other program. Third, additional nonfood assistance funds—used for equipment costs, such as refrigeration and storage—are to be reserved for schools seeking to implement the breakfast program for the first time.

These three provisions would offer considerable aid to school districts in Ohio. In fact, the combination of Ohio law and the provisions in this legislative package would make a large percentage of our State's schools eligible for an additional subsidy, over current funding, of 10-cents per pupil per day.

I strongly urge my colleagues to support this legislation. Needy children in communities across the United States will benefit from this bill.●

Mr. BUCHANAN. Mr. Chairman, I yield back the balance of my time.

Mr. PERKINS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. HARRIS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 12511) to extend for 1 year the child care food program of the National School Lunch Act and the women, infants, and children program of the Child Nutrition Act of 1966, had come to no resolution thereon.

GENERAL LEAVE

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 12511, the bill just debated.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 15, EDUCATION AMENDMENTS OF 1978

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 15) to extend and amend expiring elementary and secondary education programs, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 12931, FOREIGN ASSISTANCE AND RELATED PROGRAMS APPROPRIATIONS, 1979

Mr. YATES. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 12931) making appropriations for foreign assistance and related programs for the fiscal year ending September 30, 1979, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

CONFERENCE REPORT ON H.R. 5146, POWERPLANT AND INDUSTRIAL FUEL USE

Mr. DINGELL submitted the following conference and statement on the bill (H.R. 5146) to amend the Tariff Schedules of the United States to provide for the duty-free entry of competition bobsleds and luges:

CONFERENCE REPORT (H. REPT. NO. 95–1749)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment numbered 6 of the Senate to the bill (H.R. 5146) to amend the Tariff Schedules of the United States to provide for the duty-free entry of competition bobsleds and luges, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate numbered 6 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—GENERAL PROVISIONS

SEC. 101. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Powerplant and Industrial Fuel Use Act of 1978".

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL PROVISIONS

Sec. 101. Short title; table of contents.
Sec. 102. Findings; statement of purposes.
Sec. 103. Definitions.
Sec. 104. Territorial application.

TITLE II—NEW FACILITIES
SUBTITLE A—PROHIBITIONS
Sec. 201. New electric powerplants.
Sec. 202. New major fuel-burning installations.
SUBTITLE B—EXEMPTIONS
Sec. 211. Temporary exemptions.
Sec. 212. Permanent exemptions.
Sec. 213. General requirements for exemptions.
Sec. 214. Terms and conditions; compliance plans.
TITLE III—EXISTING FACILITIES
SUBTITLE A—PROHIBITIONS
Sec. 301. Existing electric powerplants.
Sec. 302. Existing major fuel-burning installations.
Sec. 303. Rules relating to case-by-case and category prohibitions.
SUBTITLE B—EXEMPTIONS
Sec. 311. Temporary exemptions.
Sec. 312. Permanent exemptions.
Sec. 313. General requirements for exemptions.
Sec. 314. Terms and conditions; compliance plans.
TITLE IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES
Sec. 401. Authority to prohibit use of natural gas in certain boilers used for space heating.
Sec. 402. Prohibition on use of natural gas decorative outdoor lighting.
Sec. 403. Conservation in Federal facilities, contracts, and financial assistance programs.
Sec. 404. Emergency authorities.
Sec. 405. Authority to restrict increased use of petroleum by existing powerplants.
TITLE V—SYSTEM COMPLIANCE OPTION
Sec. 501. Electric utility system compliance option.
TITLE VI—FINANCIAL ASSISTANCE
Sec. 601. Assistance to areas impacted by increased coal or uranium production.
Sec. 602. Loans to assist powerplant acquisitions of air pollution control equipment.
TITLE VII—ADMINISTRATION AND ENFORCEMENT
SUBTITLE A—PROCEDURES
Sec. 701. Administrative procedures.
Sec. 702. Judicial review.
SUBTITLE B—INFORMATION AND REPORTING
Sec. 711. Information.
Sec. 712. Compliance reports.
SUBTITLE C—ENFORCEMENT
Sec. 721. Notice of violation; other general provisions.
Sec. 722. Criminal penalties.
Sec. 723. Civil penalties.
Sec. 724. Injunctions and other equitable relief.
Sec. 725. Citizen suits.
SUBTITLE D—PRESERVATION OF CONTRACTUAL RIGHTS
Sec. 731. Preservation of contractual rights.
SUBTITLE E—STUDIES
Sec. 741. National coal policy study.
Sec. 742. Coal industry performance and competition study.
Sec. 743. Impact on employees.
Sec. 744. Study of compliance problems of small electric utility systems.
Sec. 745. Emissions monitoring.
Sec. 746. Socioeconomic impacts of increased coal production and other energy development.
Sec. 747. Use of petroleum and natural gas in combustors.
SUBTITLE F—APPROPRIATIONS AUTHORIZATION
Sec. 751. Authorization of appropriations.
SUBTITLE G—COORDINATION WITH OTHER PROVISIONS OF LAW
Sec. 761. Effect on environmental requirements.
Sec. 762. Effect of orders under section 2 of ESECA; amendments to ESECA.
Sec. 763. Environmental impact statements under NEPA.
TITLE VIII—MISCELLANEOUS PROVISIONS
Sec. 801. Coal reserves disclosure.
Sec. 802. Coal preparation facilities.
Sec. 803. Railroad rehabilitation for carriage of coal.
Sec. 804. Office of Rail Public Counsel.
Sec. 805. Retroactive application of certain remedial orders.
Sec. 806. Annual report.
Sec. 807. Submission of reports.
TITLE IX—EFFECTIVE DATES
Sec. 901. Effective date.
Sec. 902. Interim petition and consideration for certain exemptions.

SEC. 102. FINDINGS; STATEMENT OF PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the protection of public health and welfare, the preservation of national security, and the regulation of interstate commerce require the establishment of a program for the expanded use, consistent with applicable environmental requirements, of coal and other alternate fuels as primary energy sources for existing and new electric powerplants and major fuel-burning installations; and

(2) the purposes of this Act are furthered in cases in which coal or other alternate fuels are used by electric powerplants and major fuel-burning installations, consistent with applicable environmental requirements, as primary energy sources in lieu of natural gas or petroleum.

(b) STATEMENT OF PURPOSES.—The purposes of this Act, which shall be carried out in a manner consistent with applicable environmental requirements, are—

(1) to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States to the extent such reduction and use further the goal of national energy self-sufficiency and otherwise are in the best interests of the United States;

(2) to conserve natural gas and petroleum for uses, other than electric utility or other industrial or commercial generation of steam or electricity, for which there are no feasible alternative fuels or raw material substitutes;

(3) to encourage and foster the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum, as a primary energy source;

(4) to the extent permitted by this Act, to encourage the use of synthetic gas derived from coal or other alternate fuels;

(5) to encourage the rehabilitation and upgrading of railroad service and equipment necessary to transport coal to regions or States which can use coal in greater quantities;

(6) to prohibit or, as appropriate, minimize the use of natural gas and petroleum as a primary energy source and to conserve such gas and petroleum for the benefit of present and future generations;

(7) to encourage the modernization or replacement of existing and new electric powerplants and major fuel-burning installations which utilize natural gas or petroleum as a primary energy source and which cannot utilize coal or other alternate fuels where to do so furthers the conservation of natural gas and petroleum;

(8) to require that existing and new electric powerplants and major fuel-burning installations which utilize natural gas, petroleum, or coal or other alternate fuels pursuant to this Act comply with applicable environmental requirements;

(9) to insure that all Federal agencies utilize their authorities fully in furtherance of the purposes of this Act by carrying out programs designed to prohibit or discourage the use of natural gas and petroleum as a primary energy source and by taking such actions as lie within their authorities to maximize the efficient use of energy and conserve natural gas and petroleum in programs funded or carried out by such agencies;

(10) to insure that adequate supplies of natural gas are available for essential agricultural uses (including crop drying, seed drying, irrigation, fertilizer production, and production of essential fertilizer ingredients for such uses);

(11) to reduce the vulnerability of the United States to energy supply interruptions; and

(12) to regulate interstate commerce.

SEC. 103. DEFINITIONS.

(a) Unless otherwise expressly provided, for the purposes of this Act—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "person" means any (A) individual, corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company, (B) any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States, or (C) any agency or instrumentality (including any municipality) thereof.

(3)(A) Except as provided in subparagraph (B), the term "natural gas" means any fuel consisting in whole or in part of—

(i) natural gas;

(ii) liquid petroleum gas;

(iii) synthetic gas derived from petroleum or natural gas liquids; or

(iv) any mixture of natural gas and synthetic gas.

(B) The term "natural gas" does not include—

(i) natural gas which is commercially unmarketable (either by reason of quality or quantity), as determined under rules prescribed by the Secretary;

(ii) natural gas produced by the user from a well the maximum efficient production rate of which is less than 250 million Btu's per day;

(iii) natural gas to the extent the exclusion of such gas is provided for in subsection (b); or

(iv) synthetic gas, derived from coal or other alternate fuel, the heat content of which is less than 600 Btu's per cubic foot at 14.73 pounds per square inch (absolute) and 60 degrees Fahrenheit.

(4) The term "petroleum" means crude oil and products derived from crude oil, other than—

(A) synthetic gas derived from crude oil;

(B) liquid petroleum gas;

(C) liquid, solid, or gaseous waste byproducts of refinery operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; or

(D) petroleum coke or waste gases from industrial operations.

(5) The term "coal" means anthracite and bituminous coal, lignite, and any fuel derivative thereof.

(6) The term "alternate fuel" means electricity or any fuel, other than natural gas or petroleum, and includes—

(A) petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood, and renewable and geothermal energy sources;

(B) liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; and

(C) waste gases from industrial operations.

(7)(A) The terms "electric powerplant" and "powerplant" mean any stationary electric generating unit, consisting of a boiler, a gas turbine, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(i) has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) For purposes of subparagraph (A), the term "electric generating unit" does not include—

(i) any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(ii) any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale, as determined by the Secretary.

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule, to be appropriate.

(8) The term "new electric powerplant" means—

(a) any electric powerplant for which construction or acquisition began on a date on or after the date of enactment of this Act; and

(B) any electric powerplant for which construction or acquisition began on a date after April 20, 1977, and before the date of the enactment of this Act, unless the Secretary finds the construction or acquisition of such powerplant could not be canceled, rescheduled, or modified to comply with the applicable requirements of this Act without—

(i) adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority), or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(9)(A) The term "existing electric powerplant" means any electric powerplant other than a new electric powerplant.

(B) Any powerplant treated under this Act as an existing electric powerplant shall not be treated thereafter as a new electric powerplant merely by reason of a transfer of ownership.

(10)(A) The terms "major fuel-burning installation" and "installation" mean a stationary unit consisting of a boiler, gas turbine unit, combined cycle unit, or internal combustion engine which—

(i) has a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) the terms "major fuel-burning installation" and "installation" do not include—

(i) any electric powerplant; or

(ii) any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to the Secretary of such use (in accordance with rules prescribed by the Secretary).

(C) for purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule, to be appropriate.

(11) The term "new major fuel-burning installations" means—

(A) any major fuel-burning installation on which construction or acquisition began on a date on or after the date of the enactment of this Act; and

(B) any major fuel-burning installation on which construction or acquisition began on a date after April 20, 1977, and before the date of the enactment of this Act, unless the Secretary finds the construction or acquisition of such installation could not be canceled, rescheduled, or modified to comply with applicable requirements of this Act without—

(i) incurring significant operational detriment of the unit (as determined by the Secretary); or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(12)(A) The term "existing major fuel-burning installation" means any installation which is not a new major fuel-burning installation.

(B) Such term does not include a major fuel-burning installation for the extraction of mineral resources located—

(i) on or above the Continental Shelf of the United States, or

(ii) on wetlands areas adjacent to the Continental Shelf of the United States.

where coal storage is not practicable or would produce adverse effects on environmental quality.

(C) Any installation treated as an existing major fuel-burning installation shall not be treated thereafter as a new major fuel-burning installation merely by reason of a transfer of ownership.

(13) The term "construction or acquisition began" means, when used with reference to a certain date, that—

(A) construction in accordance with final drawings or equivalent design documents (as defined by the Secretary, by rule) began on or after that date; or

(B)(i) construction or acquisition had been contracted for on or after that date, or (ii) if the construction or acquisition had been contracted for before such date, such construction or acquisition could be canceled, rescheduled, or modified to comply with the applicable requirements of this Act—

(I) without imposing substantial financial penalty, as determined under rules prescribed by the Secretary;

(II) in the case of a powerplant, without adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority); or

(III) in the case of a major fuel-burning installation, without incurring significant operational detriment of the unit (as determined by the Secretary).

(14) The term "construction" means substantial onsite construction or reconstruction, as defined by rule by the Secretary.

(15) The term "primary energy source" means the fuel or fuels used by any existing or new electric powerplant or major fuel-burning installation, except it does not include, as determined under rules prescribed by the Secretary—

(A) the minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses, and

(B) the minimum amounts of fuel required to alleviate or prevent (i) unanticipated equipment outages and (ii) emergencies directly affecting the public health, safety, or welfare which would result from electric power outages.

(16) The term "site limitation" means, when used with respect to any powerplant or installation, any specific physical limitation associated with a particular site which relates to the use of coal or other alternate fuels as a primary energy source for such powerplant or installation, such as—

(A) inaccessibility to coal or other alternate fuels;

(B) lack of transportation facilities for coal or other alternate fuels;

(C) lack of adequate land or facilities for the handling, use, and storage of coal or other alternate fuels;

(D) lack of adequate land or facilities for the control or disposal of wastes from such powerplant or installation, including lack of pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(E) lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

(17) The term "applicable environmental requirements" includes—

(A) any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(B) any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act, the Federal Water Pollution Control Act, the Solid Waste Disposal Act, or the National Environmental Policy Act of 1969.

(18)(A) The terms "peakload powerplant" means a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours.

(B) The term "intermediate load powerplant" means a powerplant (other than a peakload powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(C) The term "base load powerplant" means a powerplant the electrical generation of which in kilowatt hours exceeds, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(D) Not later than 90 days after the date of the enactment of this Act, the Federal Energy Regulatory Commission shall prescribe rules under which a powerplant's design capacity may be determined for purposes of this paragraph.

(19) The term "cogeneration facility" means an electric powerplant or a major fuel-burning installation which produces—

(A) electric power; and

(B) any other form of useful energy (such as steam, gas, or heat) which is, or will be, used for industrial, commercial, or space heating purposes.

(20) The term "cost", unless the context indicates otherwise, means total costs (both operating and capital) incurred over the estimated remaining useful life of an electric powerplant or major fuel-burning installation, discounted to present value, as determined by the Secretary (in the case of powerplants, in consultation with the State regulatory authorities). In the case of an electric powerplant, such costs shall take

into account any change required in the use of existing electric powerplants in the relevant dispatching system and other economic factors which are included in planning for the production, transmission, and distribution of electric power within such system.

(21) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electricity by any State regulated electric utility.

(22) The term "air pollution control agency" has the same meaning as given such term by section 302(b) of the Clean Air Act.

(23) The term "electric utility" means any person, including any affiliate, or Federal agency which sells electric power.

(24) The term "affiliate", when used in relation to a person, means another person which controls, is controlled by, or is under common control with, such person.

(25) The term "Federal agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States; and

(D) the government of the District of Columbia.

(26) The term "Btu" means British thermal unit.

(27) The term "Mcf" means, when used in relation to natural gas, 1,000 cubic feet of natural gas.

(28) The term "mixture", when used in relation to fuels used in a unit, means a mixture of such fuels or a combination of such fuels used simultaneously or alternately in such unit.

(29) The term "fluidized bed combustion" means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by means of air or other gases being passed through such materials.

(b) SPECIAL RULES RELATING TO DEFINITIONS OF NATURAL GAS AND ALTERNATE FUEL.—(1) Subject to paragraph (2), natural gas which is to be used by a powerplant or major fuel-burning installation shall, for purposes of this Act (other than this subsection), be excluded from the definition of "natural gas" under subsection (a)(3)(B)(iii) and shall be included within the definition of "alternate fuel" under subsection (a)(6) if the person proposing to use such natural gas certifies to the Secretary (together with such supporting documents as the Secretary may require) that—

(A) such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel:

(B) the Btu content of such synthetic gas is equal to, or greater than, the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) all necessary permits, licenses, or approvals from appropriate Federal, State, and local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved, except that for purposes of the prohibition under section 201(2) against powerplants being constructed without the capability of using coal or another alternate fuel, only permits, licenses, and approvals for the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented.

(2) The application of paragraph (1) with respect to the use of natural gas by any powerplant or major-fuel burning installation shall be conditioned on the person using such natural gas submitting to the Secretary a report not later than one year after certification is made under paragraph (1), and annually thereafter, containing the following information:

(A) the source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which paragraph (1) applied during the annual period ending with the calendar month preceding the date of such report; and

(B) the amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by paragraph (1) which is used by such person during such annual period.

(3) In the case of any boiler subject to a prohibition under section 401, the preceding provisions of this subsection shall apply with respect to such boiler to the same extent and in the same manner as they apply in the case of major fuel-burning installations.

(4) For purposes of this subsection, the term "pipeline" means any interstate or intrastate pipeline or local distribution company.

SEC. 104. TERRITORIAL APPLICATION.

The provisions of this Act shall apply in all the States, Puerto Rico, and the territories and possessions of the United States, except that—

(1) the provisions of titles II and III (other than section 301) shall only apply to powerplants and installations situated within the contiguous 48 States, Alaska, and the District of Columbia; and

(2) the provisions of section 301 shall only apply to powerplants situated within the contiguous 48 States and the District of Columbia.

TITLE II—NEW FACILITIES

Subtitle A—Prohibitions

SEC. 201. NEW ELECTRIC POWERPLANTS.

Except to such extent as may be authorized under subtitle B—

(1) natural gas or petroleum shall not be used as a primary energy source in any new electric powerplant; and

(2) no new electric powerplant may be constructed without the capability to use coal or any other alternate fuel as a primary energy suorce.

SEC. 202. NEW MAJOR FUEL-BURNING INSTALLATIONS.

(a) GENERAL PROHIBITION.—Except to such extent as may be authorized under subtitle B, natural gas or petroleum shall not be used as a primary energy source in a new major fuel-burning installation consisting of a boiler.

(b) AUTHORITY OF SECRETARY TO PROHIBIT NONBOILERS FROM USING NATURAL GAS OR PETROLEUM.—(1) The Secretary may, by rule, prescribe categories (identified in such rules) of new major fuel-burning installations, other than boilers, in which natural gas or petroleum, or both, shall be prohibited from being used as a primary energy source. In identifying categories of new major fuel-burning installations pursuant to this paragraph, the Secretary shall take into account any special circumstances or characteristics of each category of such installations (such as the technical feasibility of burning coal or other alternate fuels and the size of geographic location of such installations). The application of any such final rule in the case of any new major fuel burning installation subject to such rule shall be stayed pending a resolution (including judicial review) of any petition for an exemption for such installation which is filed with the Secretary not later than 60 days after such final rule is published under section 702(a). Any such final rule shall not apply in the case of any installation with respect to which a comparable prohibition was issued by order (or was proposed but was not issued because it was demonstrated that it could qualify for an exemption under subtitle B).

(2)(A) The Secretary may, by order, prohibit the use of natural gas or petroleum, or both, as a primary energy source in any new major fuel-burning installations, other than a boiler, if such installation is not, at the time of the issuance of the proposed order, in a category identified in a final rule issued under paragraph (1).

(B) Subject to subparagraph (C), the Secretary shall not issue a final order under this paragraph with respect to any installation if it is demonstrated that there would have been granted an exemption for such installation if such prohibition had been established by rule pursuant to paragraph (1) rather than by order pursuant to this paragraph, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as such temporary exemption would have terminated.

(C) In any case in which an order is not issued by reason of subparagraph (B) or in which the effective date of such order is delayed under subparagraph (B), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 214(a)) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.

(3) A prohibition under this subsection shall apply only with respect to an installation for which construction or acquisition began on or after the date of the publication under section 701(b) of the proposed rule or order establishing the prohibition. Any installation not subject to such a prohibition because of the preceding sentence shall be considered an existing major fuel-burning installation for purposes of title III.

Subtitle B—Exemptions

SEC. 211. TEMPORARY EXEMPTIONS.

(a) GENERAL EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant or installation at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using important petroleum as a primary energy source;

(2) one or more site limitations exist which would not permit the location or operation of such a powerplant or installation using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 201 or 202 could not be satisfied without violating applicable environmental requirements.

(b) TEMPORARY EXEMPTION BASED UPON FUTURE USE OF SYNTHETIC FUELS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary shall,

by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of subtitle A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 214(b).

(c) TEMPORARY PUBLIC INTEREST EXEMPTION.—After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption would be in the public interest and would be consistent with the purposes of this Act.

(d) TEMPORARY EXEMPTION FOR THE USE OF PETROLEUM BY CERTAIN INSTALLATIONS.—After consideration of a petition (and comments thereon) for an exemption from the prohibition of the use of petroleum under section 202 for an installation with a design capacity of consuming any fuel (or any mixture thereof) at a fuel heat input rate which does not exceed 300 million Btu's per hour, the Secretary may, by order, grant an exemption under this subsection for the use of petroleum if he finds that the petitioner has demonstrated, by the existence of binding contracts or other evidence, including appropriate State construction permits, that he will use coal or another alternate fuel for at least 75 percent of the annual fuel heat input rate upon the expiration of such exemption. For provisions relating to authority to receive, consider and granting (or denying) certain petitions for an exemption under this subsection, see section 902(b).

(e) DURATION OF TEMPORARY EXEMPTIONS.—(1) Except as provided in paragraph (2), exemptions under this section for any powerplant or installation may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) An exemption under subsection (b) may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) If an exemption is granted for any powerplant or installation before the powerplant or installation is placed in service, the period before it is placed in service shall not be taken into account in computing the 5-year and the 10-year limitations of paragraphs (1) and (2).

SEC. 212. PERMANENT EXEMPTIONS.

(a) PERMANENT EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, ENVIRONMENTAL REQUIREMENTS, OR ADEQUATE CAPITAL.—(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source (i) will not be available within the first 10 years of the useful life of the powerplant or installation, or (ii) will not be available at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the useful life of the powerplant or installation involved;

(B) one or more site limitations exist which would not permit the location or operation of such powerplant or installation using coal or any other alternate fuel as a primary energy source;

(C) the prohibitions of subtitle A could not be satisfied without violating applicable environmental requirements; or

(D) the required use of coal or any other alternate fuel would not allow the petitioner to obtain adequate capital for the financing of such powerplant or installation.

(2) The demonstration required to be made by a petitioner under paragraph (1) shall—

(A) in the case of a new major fuel-burning installation, be made with respect to the site of such installation proposed by the petitioner; and

(B) in the case of a new electric powerplant, be made with respect to the site of such powerplant and reasonable alternative sites.

(3) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (h) may not be granted an exemption under this subsection.

(b) PERMANENT EXEMPTION DUE TO CERTAIN STATE OR LOCAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) with respect to the proposed site of the powerplant or installation, the construction or operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement (other than a building code or a nuisance or zoning law);

(2) in the case of a powerplant, there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1)(A) through (D); and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this Act.

(c) PERMANENT EXEMPTION FOR COGENERATION.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) PERMANENT EXEMPTION FOR CERTAIN FUEL MIXTURES CONTAINING NATURAL GAS OR PETROLEUM.—(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(A) the powerplant or installation uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant or installation needed to maintain reliability of operation of such powerplant or installation consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(2) In the case of a new major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.

(e) PERMANENT EXEMPTION FOR EMERGENCY PURPOSES.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant or installation will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) PERMANENT EXEMPTION FOR POWERPLANTS NECESSARY TO MAINTAIN RELIABILITY OF SERVICE.—After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of subtitle A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum if he finds that the petitioner has demonstrated that—

(1) such exemption is necessary to prevent impairment of reliability of service, and

(2) the petitioner, despite diligent good faith efforts, is not able to make the demonstration necessary to obtain an exemption under subsection (a) or (b) in the time required to prevent such impairment of service.

(g) PERMANENT EXEMPTION FOR PEAKLOAD POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant—

(1) in the case of a proposed use of petroleum, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to petroleum if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant; and

(2) in the case of a proposed use of natural gas, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas if—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded; and

(B) the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(h) PERMANENT EXEMPTION FOR INTERMEDIATE LOAD POWERPLANTS.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A on the use of petroleum by a powerplant, the Secretary may grant a permanent exemption under this subsection for such use, by order, if he finds that the petitioner has demonstrated that—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or con-

tribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded;

(B) such powerplant is to be constructed and operated only to replace no more than the equivalent capacity of existing electric powerplants—

(i) which use natural gas or petroleum as a primary source,

(ii) which are owned by the same person who is to operate such powerplant, and

(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such area;

(C) such powerplant is to be operated solely as an intermediate load powerplant;

(D) the net heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the useful life of the powerplant;

(E) there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1) (A) through (D); and

(F) the powerplant is to be constructed with the capability to use a synthetic fuel derived from coal or other alternate fuel.

(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption when he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

(i) PERMANENT EXEMPTIONS FOR INSTALLATIONS BASED UPON PRODUCT OR PROCESS REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the use of coal or another alternate fuel is not technically feasible due to the necessity to maintain satisfactory control of product quality; and

(2) substitution of steam is not technically feasible due to process requirements.

(j) PERMANENT EXEMPTION FOR INSTALLATIONS NECESSARY TO MEET SCHEDULED EQUIPMENT OUTAGES.—After consideration of a petition (and comments thereon) for any exemption from one or more of the prohibitions of subtitle A for an installation, the Secretary may, by order, grant a permanent exemption under this subsection if he finds that the petitioner has demonstrated that such exemption is necessary to meet scheduled equipment outages (as defined by the Secretary by rule).

SEC. 213. GENERAL REQUIREMENTS FOR EXEMPTIONS.

(a) USE OF MIXTURES OR FLUIDIZED BED COMBUSTION NOT FEASIBLE.—Except in the case of an exemption under section 212 (d) or (g), the Secretary may grant a permanent exemption for a powerplant or installation under this subtitle only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal or another alternate fuel, for which an exemption under section 212(d) would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or another alternate fuel is economically and technically feasible.

(b) STATE APPROVAL REQUIRED FOR POWERPLANT.—If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption—

(1) to the extent it applies to the prohibition under section 201(2) against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained; and

(2) to the extent it applies to the prohibition under section 201(1) against the use of natural gas or petroleum as a primary energy source, shall not take effect until all approvals required by such State regulatory authority which relate to construction or operation have been obtained.

(c) NO ALTERNATIVE POWER SUPPLY IN THE CASE OF A POWERPLANT.—(1) Except in the case of an exemption under section 212 (c) or (g), the Secretary may not grant an exemption for a new powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with such Commission before making any finding on such petition under paragraph (1).

SEC. 214. TERMS AND CONDITIONS; COMPLIANCE PLANS.

(a) TERMS AND CONDITIONS GENERALLY.—Any exemption from any prohibition under this subtitle shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b)) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant or installation covered by such exemption will comply with the applicable prohibitions.

(b) COMPLIANCE PLANS.—A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibitions of this Act will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

TITLE III—EXISTING FACILITIES

SUBTITLE A—PROHIBITIONS

SEC. 301. EXISTING ELECTRIC POWERPLANTS.

(a) GENERAL PROHIBITIONS.—Except to such extent as may be authorized under subtitle B—

(1) natural gas shall not be used as a primary energy source in an existing electric powerplant on or after January 1, 1990;

(2) natural gas shall not be used as a primary energy source in an existing electric powerplant before January 1, 1990, unless such powerplant used natural gas as a primary energy source at any time during calendar year 1977; and

(3) natural gas shall not be used as a primary energy source in an existing electric powerplant in any calendar year before 1990 in greater proportions than the average yearly proportion of natural gas which—

(A) such powerplant used as a primary energy source in calendar years 1974 through 1976, or

(B) if such powerplant began operations on or after January 1, 1974, such powerplant used as a primary energy source during the first two calendar years of its operation.

The prohibition of paragraph (1) shall be stayed with respect to any existing powerplant pending a resolution (including judicial review) or any petition for any exemption from such prohibition which is filed for such powerplant at any time after the effective date of this Act, but at least one year before the date such prohibition first takes effect.

(b) AUTHORITY OF SECRETARY TO PROHIBIT WHERE COAL OR ALTERNATE FUEL CAPABILITY EXISTS.—The Secretary may prohibit, in accordance with section 303 (a) or (b), the use of petroleum or natural gas, or both, as a primary energy source in any existing electric powerplant, if the Secretary finds that—

(1) such powerplant has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) such powerplant has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without—

(A) substantial physical modification of the powerplant, or

(B) substantial reduction in the rated capacity of the powerplant; and

(3) it is financially feasible to use coal or another alternate fuel as a primary energy source in such powerplant.

The requirement of paragraph (1) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 701(b) and is published with such notice.

(c) AUTHORITY OF SECRETARY TO PROHIBIT EXCESSIVE USE IN MIXTURES.—In the case of any existing electric powerplant in which the Secretary finds it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or an alternate fuel as a primary energy source, the Secretary may prohibit, in accordance with section 303(a), the use of petroleum or natural gas, or both, in such powerplant in amounts in excess of the minimum amount necessary to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

SEC. 302. EXISTING MAJOR FUEL-BURNING INSTALLATIONS.

(a) AUTHORITY OF SECRETARY TO PROHIBIT WHERE COAL OR ALTERNATE FUEL CAPABILITY EXISTS.—The Secretary may prohibit, in accordance with section 303 (a) or (b), the use of petroleum or natural gas, or both, as a primary energy source in any existing major fuel-burning installation, if the Secretary finds that—

(1) such installation has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) such installation has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without—

(A) substantial physical modification of the unit, or

(B) substantial reduction in the rated capacity of the unit; and

(3) it is financially feasible to use coal or another alternate fuel as a primary energy source in such installation.

The requirement of paragraph (1) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 701(b) and is published with such notice.

(b) AUTHORITY OF SECRETARY TO PROHIBIT EXCESSIVE USE IN MIXTURES.—

(1) In the case of any existing major fuel-burning installation in which the Secretary finds it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source the Secretary may prohibit, in accordance with section 303(a), the use of petroleum or natural gas, or both, in such installation in amounts in excess of

the minimum percentage of the total Btu heat input of the primary energy sources needed to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

(2) The percentage determined by the Secretary under paragraph (1) shall not be less than 25 percent.

SEC. 303. RULES RELATING TO CASE-BY-CASE AND CATEGORY PROHIBITIONS.

(a) CASE-BY-CASE PROHIBITIONS.—(1) Except to the extent authorized by subsection (b), the Secretary shall prohibit any powerplant or installation from using natural gas or petroleum under the authority granted him under section 301(b) or (c) or 302 only by means of a final order issued by him which shall be limited to the particular powerplant or installation involved.

(2) The Secretary may issue such a final order only with respect to a powerplant or installation which is not, at the time the proposed order is issued, covered by a final rule issued under section (b).

(3)(A) Subject to subparagraph (B), the Secretary shall not issue a final order under this subsection to any powerplant or installation if it is demonstrated that such powerplant or installation would have been granted an exemption if such prohibition had been established by a final rule pursuant to subsection (b) rather than by order pursuant to this subsection, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as the temporary exemption would have terminated.

(B) In any case in which an order is not issued by reason of subparagraph (A) or in which the effective date of such order is delayed under subparagraph (A), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 314(a)) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.

(b) PROHIBITIONS APPLICABLE TO CATEGORIES OF FACILITIES.—(1) The Secretary may, by rule, prohibit the use of natural gas or petroleum pursuant to section 301(b) or 302(a)—

(A) in the case of any category of existing electric powerplants identified in such rule; and

(B) in the case of any category of existing major fuel-burning installations which have design capabilities of consuming fuel (or any mixture thereof) at a fuel heat input rate of 300 million Btu's per hour or greater which are identified in such rule.

(2) Each powerplant or installation to be covered by any final rule issued under this subsection shall be specifically identified in the proposed rule published under section 701(b).

(3) In prescribing any final rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of powerplants or installations (such as the intermittent use, size, age, or geographic location of such powerplants or installations). Any such rules shall not apply in the case of any existing electric powerplant or major fuel-burning installation—

(A) pending a resolution (including judicial review) of any petition for any exemption for such powerplant or installation which may be filed with the Secretary not later than 60 days after such final rule is published under section 702(a); or

(B) with respect to which a comparable prohibition was issued by order (or was proposed but was not issued by reason of subsection (a)(3)).

Subtitle B—Exemptions

SEC. 311. TEMPORARY EXEMPTIONS

(a) TEMPORARY EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENT.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant such an exemption for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source, will not be available to such powerplant or installation at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the costs, as determined by rule by the Secretary, of using imported petroleum as a primary energy source;

(2) one or more site limitations exist which would not permit the operation of such a powerplant or installation using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 301 or 302 could not be satisfied without violating applicable environmental requirements.

(b) TEMPORARY EXEMPTION BASED UPON FUTURE USE OF SYNTHETIC FUELS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of subtitle A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirement of section 314(b).

(c) TEMPORARY EXEMPTION BASED UPON USE OF INNOVATIVE TECHNOLOGIES.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant or installation will comply with such prohibitions at the expiration of such exemption by the adoption of a technology for the use of coal or another alternate fuel which at the time of the granting of the exemption is determined by the Secretary to be an innovative technology. The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 314(b).

(d) TEMPORARY EXEMPTION FOR UNITS TO BE RETIRED.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant or installation is to permanently cease operation at or before the expiration of the exemption period. An exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 314(b) (other than paragraph (1)(B)).

(2) Notwithstanding any other provision of this Act, an exemption under this subtitle may not be granted for any powerplant or installation once an exemption under this subsection has been granted for such powerplant or installation.

(e) TEMPORARY PUBLIC INTEREST EXEMPTION.—After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption is in the public interest and is consistent with the purposes of this Act.

(f) TEMPORARY EXEMPTION FOR PEAKLOAD POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(g) TEMPORARY EXEMPTION FOR POWERPLANTS WHERE NECESSARY TO MAINTAIN RELIABILITY OF SERVICE.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such exemption is necessary to prevent impairment of reliability of service.

(2) Notwithstanding any other provision of this Act, an exemption under this subtitle (other than a permanent exemption under section 312(f) for the use of petroleum) may not be granted for any powerplant for which an exemption under this subsection has been granted.

(h) DURATION OF TEMPORARY EXEMPTIONS.—(1) Except as provided in paragraphs (2) and (3), exemptions under this section for any powerplant or installation may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) Subject to paragraph (3), an exemption under subsections (b), (c), and (g) may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) An exemption under subsections (d), (f), and (g) for the use of natural gas by a powerplant may not extend beyond December 31, 1994.

(4) In computing the 5-year and 10-year limitations of paragraphs (1) and (2) in the case of any exemption under this section, the period before the prohibition on the use of natural gas and petroleum would first apply (if the exemption had not been granted) shall be disregarded.

SEC. 312. PERMANENT EXEMPTIONS.

(a) PERMANENT EXEMPTION DUE TO LACK OF ALTERNATIVE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas or petroleum, if he finds that the

petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuels of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant or installation at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the remaining useful life of the powerplant or installation;

(B) one or more site limitations exist which would not permit the operation of such a powerplant or installation using coal or any other alternate fuel as a primary energy source; or

(C) the prohibitions of subtitle A could not be satisfied without violating applicable environmental requirements.

(2) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (g) may not be granted an exemption under this subsection.

(b) PERMANENT EXEMPTION DUE TO CERTAIN STATE OR LOCAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) with respect to the site of the powerplant or installation, the operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement;

(2) if such State or local requirement is under a building code or nuisance or zoning law, no other exemption under this subtitle could be granted for such facility; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this Act.

(c) PERMANENT EXEMPTION FOR COGENERATION.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) PERMANENT EXEMPTION FOR CERTAIN FUEL MIXTURES CONTAINING NATURAL GAS OR PETROLEUM.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the powerplant or installation uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant or installation needed to maintain reliability of operation of the unit consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(2) In the case of an existing major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.

(3) In the case of an existing electric powerplant, the Secretary may authorize a higher percentage than that referred to in paragraph (1)(B) if he finds that the higher percentage of natural gas allowed would be mixed with synthetic fuels derived from municipal wastes or agricultural wastes and would encourage the use of alternate or new technologies which use renewable sources of energy.

(e) PERMANENT EXEMPTION FOR EMERGENCY PURPOSES.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such powerplant or installation will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) PERMANENT EXEMPTION FOR PEAKLOAD POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that—

(1) the powerplant is operated solely as a peakload powerplant;

(2) a denial of such petition is likely to result in an impairment of reliability of service; and

(3)(A) modification of the powerplant to permit compliance with such prohibitions is technically infeasible; or

(B) such modification would result in an unreasonable expense.

(g) PERMANENT EXEMPTION FOR INTERMEDIATE LOAD POWERPLANTS.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A on the use of petroleum by a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such area;

(B) such powerplant is to be operated only to replace no more than the equivalent capacity of existing electric powerplants—

(i) which use natural gas or petroleum as a primary energy source,

(ii) which are owned by the same person who is to operate such powerplant, and

(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such region;

(C) such powerplant is and shall continue to be operated solely as an intermediate load powerplant;

(D) the net fuel heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the remaining useful life of the powerplant; and

(E) the powerplant has the capability to use synthetic fuels derived from coal or other alternate fuel.

(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption if he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

(h) PERMANENT EXEMPTION FOR USE OF NATURAL GAS BY CERTAIN POWERPLANTS WITH CAPACITIES OF LESS THAN 250 MILLION BTU'S PER HOUR.—(1) Subject to paragraph (2), after consideration of a petition (and comments thereon) for an exemption from any prohibition of subtitle A for the use of natural gas by a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for such use, if he finds that the petitioner has demonstrated that—

(A) such powerplant has a design capability of consuming fuel (or any mixture thereto) at a fuel heat input rate of less than 250 million Btu's per hour;

(B) such powerplant was a baseload powerplant on April 20, 1977; and

(C) such powerplant is not capable of consuming coal without—

(i) substantial physical modification of the unit; or

(ii) substantial reduction in the rated capacity of the unit (as determined by the Secretary).

(2) An exemption under this subsection may only apply to the prohibitions under section 301 and prohibitions established by final rules or orders issued before January 1, 1990.

(i) PERMANENT EXEMPTION FOR THE USE OF LNG BY CERTAIN POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of liquefied natural gas if the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) has certified to the Secretary that the use of coal by such powerplant as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such region or area and the use of coal would not comply with applicable environmental requirements.

(j) PERMANENT EXEMPTION FOR INSTALLATIONS SERVED BY CERTAIN INTERNATIONAL PIPELINES.—(1) After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant permanent exemption under this subsection for the use of natural gas, if he finds that the petitioner has demonstrated that—

(A) such installation's primary source of natural gas is under a contract with a pipeline between Canada and the United States which cannot be cancelled by the petitioner without his suffering substantial financial penalty;

(B) such pipeline was supplying to such installation before April 21, 1977, natural gas from Canada under such contract;

(C) such pipeline serves high-priority users within the United States service to whom would be jeopardized if service to such installation is terminated;

(D) the revenues from the transportation and sale of natural gas transported by such pipeline are essential to the economic vitality of the pipeline; and

(E) the exemption is consistent with the purposes of this Act, and the denial of such exemption would not result in natural gas being made available for any other use within the United States.

(2) For purposes of this subsection, the term "high-priority user" means any residential user of natural gas, or any commercial user whose consumption of natural gas on a peak day is less than 50 Mcf, as de termined by the Secretary.

(k) PERMANENT EXEMPTION FOR INSTALLATION BASED UPON PRODUCT OR PROCESS RE-

QUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) the use of coal or other alternate fuels is not technically feasible due to the necessity to maintain satisfactory control of produce quality; and

(2) substitution of steam is not technically feasible due to process requirements.

(l) PERMANENT EXEMPTIONS FOR INSTALLATIONS NECESSARY TO MEET SCHEDULED EQUIPMENT OUTAGES.—After consideration of a petition (and comments thereon) for any exemption from one or more of the prohibitions of subtitle A for an installation, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such exemption is necessary to meet scheduled equipment outages (as defined by the Secretary by rule).

SEC. 313. GENERAL REQUIREMENTS FOR EXEMPTIONS.

(a) USE OF MIXTURES OR FLUIDIZED BED COMBUSTION NOT FEASIBLE.—Except in the case of an exemption under section 312(b), (f), (i) or (j), the Secretary may grant a permanent exemption for a powerplant or installation under this subtitle only—

(1) if the applicant has demonstrated that use of a mixture of natural gas or petroleum and coal (or other alternate fuels), for which an exemption under section 312(b) would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or an alternate fuel is economically and technically feasible.

(b) NO ALTERNATIVE POWER SUPPLY IN THE CASE OF A POWERPLANT.—(1) In the case of an exemption under section 312 (b) or (g), the Secretary may not grant an exemption for an existing powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with the Commission before making any finding on such petition under paragraph (1).

SEC. 314. TERMS AND CONDITIONS; COMPLIANCE PLANS.

(a) TERMS AND CONDITIONS GENERALLY.—Any exemption from any prohibition under this subtitle shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b)) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant or installation covered by such exemption will comply with the applicable prohibitions.

(b) COMPLIANCE PLANS.—A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibition of this Act will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

TITLE IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

SEC. 401. AUTHORITY TO PROHIBIT USE OF NATURAL GAS IN CERTAIN BOILERS USED FOR SPACE HEATING.

(a) EXISTING BOILERS.—The Secretary may prohibit the use of natural gas as a primary energy source in any existing boiler (other than a major fuel-burning installation) if he finds that—

(1) such boiler is used to produce steam for space heating purposes;

(2) such boiler consumes 500 Mcf or more of natural gas per day on a peak day;

(3) such boiler has, or previously had, the technical capability to use petroleum as a primary energy source;

(4) such boiler has the technical capability to use petroleum as a primary energy source or it could have such capability without—

(A) substantial physical modification of the boiler, or

(B) substantial reduction in the rated capacity of the unit;

(5) it is financially feasible for such boiler to use petroleum as a primary energy source; and

(6) such prohibition is consistent with the purposes of this Act. The requirement of paragraph (3) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 701(b).

(b) NEW BOILERS.—The Secretary may prohibit the use of natural gas as a primary energy source in any new boiler (other than a major fuel-burning installation) if he determines that—

(1) such boiler will be used to produce steam for space heating purposes;

(2) such boiler will, by design, be capable of consuming 300 Mcf or more of natural gas per day; and

(3) such prohibition is consistent with the purposes of this Act.

(c) EXEMPTION.—The Secretary shall exempt any person from any prohibition prescribed pursuant to subsection (a) or (b) if such person demonstrates to the Secretary that an adequate and reliable source of petroleum is not likely to be available to such person during the period of the exemption.

(d) DEFINITIONS.—

(1) The term "new boiler" means any boiler for which there was not a commitment for construction or acquisition as of the date of the publication under section 701 (b) of the proposed rule or order establishing the prohibition.

(2) The term "existing boiler" means any boiler other than a new boiler.

(e) METHOD OF PROHIBITION.—(1)(A) Except to the extent authorized by paragraph (2), the Secretary shall prohibit boiler fuel use of natural gas under the authority granted him in subsection (a) or (b) only by means of a final order issued by him which shall be limited to the particular boiler involved.

(B) The Secretary may issue such an order only with respect to a boiler which is not, at the time the proposed order is issued, covered by a final rule issued under paragraph (2).

(C) The Secretary shall not issue a final order under this subsection with respect to any boiler if it is demonstrated that an exemption under subsection (c) would have been granted with respect to such boiler if such prohibition had been established by rule pursuant to paragraph (2) rather than by order.

(2)(A) The Secretary may, by rule, prohibit the use of natural gas under the authority of subsection (a) or (b) in the case of any category of boilers identified in such rule.

(B) Any existing boiler to be covered by any rule issued under this subsection shall be specifically identified in the proposed rule published under section 701(b).

(C) In prescribing any rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of boilers (such as the technical feasibility of burning petroleum and the size, age, or geographic location of such boilers). Any such final rule shall not apply in the case of any boiler—

(i) subject to such rule pending a resolution of any petition (including judicial review) for any exemption for such boiler which may be filed with the Secretary not later than 60 days after such rule is published under section 701(b); or

(ii) with respect to which a comparable prohibition was issued by order (or was proposed but was not issued because it was demonstrated that it could qualify for an exemption under subsection (c)).

SEC. 402. PROHIBITION ON USE OF NATURAL GAS FOR DECORATIVE OUTDOOR LIGHTING.

(a) PROHIBITION ON INSTALLATION OF NEW OUTDOOR LIGHTING.—Effective beginning on the date of the enactment of this Act, no local distribution company, or any industrial user of natural gas who obtains such gas under a contract between such user and a natural gas pipeline, or any agent thereof, shall install any outdoor lighting fixture using natural gas.

(b) PROHIBITION OF SELLING NATURAL GAS TO BE USED IN OUTDOOR LIGHTING.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary shall, by rule, prohibit any local distribution company (unless an exemption has been obtained under subsection (c)) from providing natural gas service for use in outdoor lighting—

(A) effective on the date such final rule is issued, in the case of any residential, commercial, or industrial customer unless a later effective date is applicable under subparagraph (B) or (C) of this paragraph:

(B) effective beginning 180 days after the date such final rule is issued, in the case of any industrial or commercial structure for which natural gas was being provided by such company for outdoor lighting use on the date of the enactment of this Act; and

(C) effective beginning January 1, 1982, in the case of—

(i) any municipal outdoor lighting fixture, and

(ii) any outdoor lighting fixture used in connection with a residence,

for which natural gas was being provided by such company for outdoor lighting use on the date of the enactment of this Act.

(2) The rule prescribed under paragraph (1) shall provide that any industrial user of natural gas who obtains such natural gas under a contract between such user and a natural gas pipeline shall be prohibited from using such natural gas for outdoor lighting (unless an exemption has been obtained under subsection (c))—

(A) Effective 180 days after the date such final rule takes effect, if the industrial user was using natural gas for outdoor lighting on the date of the enactment of this Act; or

(B) beginning on the date such final rule takes effect, if such industrial user was not so using natural gas on such date.

(c) EXEMPTIONS.—(1) The Secretary shall, by order—

(A) exempt from the prohibition under subsection (a) the installation of a replacement lighting fixture for any memorial light or light of historical significance, and

(B) permanently exempt from a prohibition under subsection (b) the use of natural gas in any memorial light or light of historical significance.

if a petition for such exemption is made by a Federal, State, or local government agency or by any appropriate historical association.

(2) The Secretary shall, by order—

(A) exempt from the prohibition under subsection (a), upon a petition therefor, the installation of a replacement lighting fixture for any natural gas outdoor lighting, and

(B) permanently exempt from a prohibition under subsection (b), upon a petition therefor, use of natural gas for outdoor lighting,

which is used for commercial purposes, which is of a traditional nature, and which conforms with the cultural or architectural style of the area in which such light is located.

(3) The Secretary shall, by order, exempt any local distribution company or industrial user described in subsection (b)(2), from the rule required to be prescribed under subsection (b) concerning the continuation of such service in effect on the date of the enactment of this Act upon the filing of a petition therefor by such pipeline or company, or by any other interested person. Such exemption shall be for such period as, and to the extent that, the Secretary finds—

(A) such exemption is necessary to protect the safety of persons or property;

(B) such exemption is necessary to permit the installation of substitute lighting where no adequate outdoor lighting (other than that using natural gas) exists on the date of the enactment of this Act;

(C) compliance with such rule would entail substantial expense and would not be cost justified; or

(D) the issuance of the exemption is in the public interest and is consistent with the purposes of this Act.

(4) Determinations on any petition for an exemption under this section shall be made under criteria which the Secretary shall establish by rule, which rule shall be prescribed not later than 180 days after the effective date of this Act.

(d) PROCEDURES.—Rules and orders under this section shall be made in accordance with the provisions of section 553 of title 5, United States Code, except that determinations on any petition for exemption under this section shall be made only after interested persons have been afforded an opportunity for a public hearing. Under rules prescribed by the Secretary, the Secretary may stay the application of any prohibition under subsection (b) applicable to any person pending the resolution of any petition for an exemption for such person.

(e) AUTHORITY MAY BE DELEGATED TO STATES.—(1) Under regulations prescribed by the Secretary, the responsibility and authority of the Secretary with regard to outdoor lighting under this section may be delegated to the appropriate regulatory authority of a State if he determines that such delegation would be consistent with the purposes of this section.

(2) Any delegation under paragraph (1) shall be on terms and conditions prescribed by the Secretary and may be rescinded by the Secretary at any time by notifying the State authority of such rescission.

(3) Any State authority to which the Secretary has delegated authority under this subsection shall prepare and transmit reports to the Secretary on a periodic basis (as determined by the Secretary) on actions taken to carry out the purposes of this section.

(f) DEFINITIONS.—As used in this section—

(1) The term "outdoor lighting" means lighting by any stationary source which is not located inside any building.

(2) The term "pipeline company" means any person engaged in the business of transporting natural gas by pipeline other than as a local distribution company.

(3) The term "local distribution company" means any person engaged in the business of transportation and local distribution of natural gas and the sale of natural gas for ultimate consumption.

(4) The term "residence" means any single or multiple family dwelling unit, including commonly held areas associated with any such unit.

SEC. 403. CONSERVATION IN FEDERAL FACILITIES, CONTRACTS, AND FINANCIAL ASSISTANCE PROGRAMS.

(a) FEDERAL FACILITIES.—(1) Each Federal agency owning or operating any electric powerplant, major fuel-burning installation, or other unit shall comply with any prohibition, term, condition, or other substantial or procedural requirement under this Act, to the same extent as would be the case if such powerplant, installation, or unit were owned or operated by a nongovernmental person.

(2) The President may, by order, exempt from the application of paragraph (1) any powerplant, installation, or other unit owned or operated by any Federal agency, if the President determines that—

(A) such use is in the paramount interest of the United States and that the powerplant, installation, or unit involved is a component of or is used solely in connection with any weaponry, equipment, aircraft, vessels, vehicles or other classes or categories of property which—

(i) are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State; and

(ii) are uniquely military in nature; or

(B) there is a lack of appropriation for such use but only if the President specifically requested such appropriations as a part of the budgetary process and the Congress failed to make available such requested appropriation.

Such order shall not take effect until 60 days after a copy of such order has been transmitted to each House of the Congress. The President shall review each such determination every 2 years and submit a report to the Congress on the results of such review. Any powerplant, installation, or other unit permitted to use natural gas or petroleum under an exemption under this paragraph shall establish and carry out effective fuel conservation measures, as determined by the Secretary.

(3) Any powerplant, installation, or unit owned or operated by any such Federal agency shall be entitled to any exemption by the Secretary to the same extent, in the same manner, and under the same terms and conditions as would apply if it were owned or operated by a nongovernmental person.

(b) FEDERAL CONTRACTS AND FINANCIAL ASSISTANCE.—(1) In order to implement the purposes of this Act, the President shall, not later than 30 days after the effective date of this Act, issue an order—

(A) requiring each Federal agency which is authorized to extend Federal assistance by way of grant, loan, contract, or other form of financial assistance, to promptly effectuate the purposes of this Act relating to the conservation of petroleum and natural gas, by rule, in such contracting or assistance activities within 180 days after issuance of such order, and

(B) setting forth procedures, sanctions, penalties, and such other provisions as the President determines necessary to carry out such requirement effectively, including a requirement that each agency annually transmit to the President, and make available to the public, a report on the actions taken and to be taken to implement such order.

(2) The President may exempt by order any specific grant, loan, contract, or other form of financial assistance from all or part of the provisions of this subsection if he determines such exemption is in the national interest. The President shall notify the Congress in writing of such exemption at least 60 days before it is effective.

(3) The President or any Federal agency may not use the authority granted under paragraph (1) to require compliance, including the use of coal, by any person or facility with any prohibition under other sections of this Act if such person or facility has been specifically determined by the Secretary as subject to such prohibition or has been exempted from the application of such prohibition.

(c) ANNUAL REPORT.—The President shall annually submit a detailed report to each House of the Congress on the actions taken by the President and each Federal agency to implement this section, including the progress and problems associated with implementation of this section.

SEC. 404. EMERGENCY AUTHORITIES.

(a) COAL ALLOCATION AUTHORITY.—If the President—

(A) declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act, or

(B) finds, and publishes such finding, that a national or regional fuel supply shortage exists or may exist which the President determines—

(i) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(ii) causes, or may cause, major adverse impact on public health, safety, or welfare or on the economy; and

(iii) results, or is likely to result, from an interruption in the supply of coal or from sabotage, or an act of God;

the President may, by order, allocate coal (and require the transportation thereof) for the use of any electric powerplant or major fuel-burning installation, in accordance with such terms and conditions as he may prescribe, to insure reliability of electric service or prevent unemployment, or protect public health, safety, or welfare.

(2) For purposes of this subsection, the term "coal" means anthracite and bituminous coal and lignite (but does not mean any fuel derivative thereof).

(b) EMERGENCY PROHIBITION OR USE OF NATURAL GAS OR PETROLEUM.—If the President declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act, the President may, by order, prohibit any electric powerplant or major fuel-burning installation from using natural gas or petroleum, or both, as a primary energy source for the duration of such interruption. Notwithstanding any other provision of this section, any suspension of emission limitations or other requirements of applicable implementation plans, as defined in section 110(d) of the Clean Air Act, required by such prohibition shall be issued only in accordance with section 110(f) of the Clean Air Act.

(c) EMERGENCY STAYS.—The President may, by order, stay the application of any provision of this Act, or any rule or order thereunder, applicable to any new or existing electric powerplant, if the President finds, and publishes such finding, that an emergency exists, due to national, regional, or system-wide shortages of coal or other alternate fuels, or disruption of transportation facilities, which emergency is likely to affect reliability of service of any such electric powerplant.

(d) DURATION OF EMERGENCY ORDERS.—(1) Except as provided in paragraph (3), any order issued by the President under this section shall not be effective for longer than the duration of the interruption or emergency, or 90 days, whichever is less.

(2) Any such order may be extended by a subsequent order which the President shall transmit to the Congress in accordance with section 551 of the Energy Policy and Conservation Act. Such order shall be subject to

congressional review pursuant to such section.

(3) Notwithstanding paragraph (1), the effectiveness of any order issued under this section shall not terminate under this subsection during the 15-calendar-day period during which any such subsequent order described in paragraph (2) is subject to congressional review under section 551 of the Energy Policy and Conservation Act.

(4) For purposes of this subsection, the provisions of this subsection supersede the provisions of title II of the Act of September 14, 1976 (Public Law 94-412; 50 U.S.C. 1621 and following).

(e) DELEGATION OF AUTHORITY PROHIBITED.—The authority of the President to issue any order under this section may not be delegated. This subsection shall not be construed to prevent the President from directing any Federal agency to issue rules or regulations or take such other action, consistent with this section, in the implementation of such order.

(f) PUBLICATION AND REPORTS TO CONGRESS OF ORDERS.—Any order issued under this section shall be published in the Federal Register. To the greatest extent practicable, the President shall, before issuing any order under this section, but in no event later than 5 days after issuing such order, report to the Congress of his intention to issue such order and state his reasons therefor.

(g) EMERGENCY USES OF NATURAL GAS OR PETROLEUM.—(1) During a temporary emergency condition (other than emergency conditions provided for under section 103(a)(15)), any person operating a peakload powerplant or a major fuel-burning installation may, under rules prescribed by the Secretary, use natural gas or petroleum as a primary energy source in such powerplant or installation, notwithstanding any prohibition otherwise imposed by or pursuant to this Act, if—

(A) such person notifies the Secretary within 24 hours after commencing such use; and

(B) the Secretary has not notified such person that in his judgment the emergency condition does not exist or does not warrant the use of natural gas or petroleum involved.

(2) Within 90 days after the effective date of this Act, the Secretary shall, by rule, prescribe the form and content of such notices and the conditions which may constitute a temporary emergency.

(3) Hours of operation allowed under paragraph (1) shall not be included in the peakload powerplant's operating hours for the purposes of the penalties in section 723(b).

SEC. 405. AUTHORITY TO RESTRICT INCREASED USES OF PETROLEUM BY EXISTING POWERPLANTS.

The Secretary shall, by rule, require that, in the case of any existing electric powerplant which during calendar year 1977 uses coal or another alternate fuel as a primary energy source, petroleum may not be used in such powerplant as a primary energy source in excess of the quantities of petroleum used in such powerplant as a primary energy source during such year unless a permit is issued by the Secretary authorizing such increased use of petroleum. Such permit shall be issued if—

(1) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary (A) that the powerplant cannot comply with the requirements of the Clean Air Act, including any applicable implementation plan, as defined in section 110(d) of the Clean Air Act, without the issuance of such permit and (B) the petitioner has established the duration of the need for increased petroleum to comply with such plan; and

(2) the appropriate State regulatory authority has certified to the Secretary that the increased use of petroleum by such powerplant is necessary to prevent impairment of reliability of service.

Such permit shall be issued only for such period as the Secretary determines necessary under paragraph (1) or (2) for such increased use of petroleum.

TITLE V—SYSTEM COMPLIANCE OPTION

SEC. 501. ELECTRIC UTILITY SYSTEM COMPLIANCE OPTION.

(a) GENERAL RULE.—Existing electric powerplants owned or operated by an electric utility shall be considered in compliance with any prohibition under title III relating to the use of natural gas if there is in effect a plan of system compliance for such utility approved by the Secretary under subsection (b). No exemption under title III relating to the use of natural gas shall be available for any powerplant which is, or has ever been, covered by such an approved plan (other than an exemption under section 312(e)).

(b) REQUIREMENTS FOR PLAN APPROVAL.—The Secretary shall, by order, approve any plan of system compliance submitted by an electric utility to the Secretary before January 1, 1980, if the Secretary finds that such plan—

(1) identifies all powerplants owned or operated by such electric utility and indicates which of the powerplants—

(A) would be subject to, or could be subject to, prohibitions under title III relating to the use of natural gas if such plan were not approved; and

(B) of those so indicated in subparagraph (A), would be, or in the opinion of such electric utility would be likely to be, entitled to an exemption under title III relating to the use of natural gas if such plan were not approved;

(2) contains a commitment that, if such plan is approved, no new electric powerplant which is or is to be a base load powerplant owned or operated by such utility shall use natural gas or petroleum as its primary energy source (whether or not such powerplant could qualify for an exemption under title II for such use);

(3) contains a commitment (including a schedule for an orderly progression in satisfying such commitment) that, if such plan is approved, all existing electric powerplants owned or operated by such utility—

(A) subject to subparagraph (B), on and after January 1, 1995, would not use natural gas as a primary energy source, except in the case of an intermediate load powerplant or a peakload powerplant, and then only in accordance with rules prescribed by the Secretary; and

(B) on and after January 1, 2000, would not use natural gas as a primary energy source except in the case of a temporary extension obtained under subsection (d);

(4) contains a commitment that, if such plan is approved, natural gas will, on and after January 1, 1990, be used by powerplants owned or operated by such utility in excess of—

(A) 20 percent (or such higher percentage as may be allowed under subsection (d)(2)) of the electric utility's base period usage of natural gas, or, if lower,

(B) the electric utility's minimum peakload requirement for the calendar year;

(5) contains a commitment that, if such plan is approved, the natural gas used by such utility will be obtained only under—

(A) a contract entered into before the date of the enactment of this Act (other than under an extension or renewal of such contract occurring on or after such date); or

(B) a contract entered into on or after such date, or an extension or renewal occurring on or after such date of a contract entered into before such date, but only if such contract, extension, or renewal has been approved by the Secretary under subsection (g); and

(6) contains a 10-year forecast of such utility's demand for electricity, a 10-year construction forecast, and a 10-year financial plan, which provide a reasonable basis for concluding that the commitments in such plan will be carried out.

Approval of the Secretary under this subsection shall be conditioned on the utility involved updating on an annual basis the information contained in such plan to the extent provided under rules prescribed by the Secretary.

(c) PLAN REVISION.—A plan under subsection (b) may be revised but only if the Secretary, by order, approves such revision.

(d) EXTENSION FOR EMERGENCY OR PEAKLOAD PURPOSES.—(1) For purposes of subsection (b)(3)(B), the Secretary may extend the date specified therein for not more than 5 years with respect to the use of natural gas by any powerplant if it is demonstrated that such use of natural gas is to be—

(A) for emergency purposes consistent with section 312(e), or

(B) for peakload purposes, consistent with section 312(f).

(2) The Secretary may exempt from the requirements of subsection (b)(4) such quantities of natural gas as would otherwise exceed such requirement if it is demonstrated that such natural gas is used solely for emergency or peakload purposes described in paragraph (1) (A) or (B).

(e) DETERMINATION OF BASE PERIOD USAGE.—(1) For purposes of subsection (b)(4)(A), an electric utility's base period usage of natural gas shall be the sum of—

(A) the quantities of natural gas used in calendar year 1976 by powerplants which are owned or operated by such utility and which were placed in service on or before January 1, 1976; plus

(B) one-half of the quantities used during the first 24 calendar months after being placed in service by powerplants which are owned or operated by such utility and which were placed in service after January 1, 1976, and before the effective date of this Act.

(2) The Secretary may allow for the substitution of a higher percentage for the 20 percent specified in subparagraph (A) of subsection (b)(4) if he determines that the utility has demonstrated that such higher percentage is necessary—

(A) because of delays which occurred, despite diligent good faith efforts, in the construction of powerplants which will use a primary energy source other than natural gas, or

(B) because it would not be feasible for such utility to comply with the requirements of such subsection (b)(4) in the absence of such higher percentage without impairing reliability of service.

(f) DETERMINATION OF MINIMUM PEAKLOAD REQUIREMENT.—For purposes of subsection (b)(4)(B), an electric utility's minimum peakload requirement for any calendar year shall be defined as the total kilowatt-hours generated during the calendar year by natural gas on the system of the applicant electric utility company system divided by the aggregate capacity of all the electric powerplants in such system, but not to exceed 1,500 full-load hours per year.

(g) APPROVAL OF NATURAL GAS CONTRACTS.—The Secretary shall approve any contract, or contract extension or renewal, for purposes of applying subsection (b)(5)(B) with respect to any plan, if he determines that the electric utility which submitted such plan has demonstrated that the quantities available under such contract, or extension or renewal, do not exceed those which are necessary to meet the requirements of the powerplants under such plan. The Secretary may not approve any contract, or extension or renewal, which provides for the delivery of such natural gas after December 31, 1999.

(h) TERMS AND CONDITIONS.—Any approval by the Secretary under subsection (b) shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act.

TITLE VI—FINANCIAL ASSISTANCE

SEC. 601. ASSISTANCE TO AREAS IMPACTED BY INCREASED COAL OR URANIUM PRODUCTION.

(a) DESIGNATION OF IMPACTED AREAS.—(1) In accordance with such criteria and guidelines as the Secretary of Agriculture shall, by rule, prescribe, the Governor of any State may designate any area within such State for the purposes of this section, if he finds that—

(A) either (i) employment in coal or uranium production development activities in such area has increased for the most recent calendar year by 8 percent or more from the immediately preceding year or (ii) employment in such activities will increase 8 percent or more per year during each of the 3 calendar years beginning after the date of such finding;

(B) such employment increase has required or will require substantial increases in housing of public facilities and services or a combination of both in such area; and

(C) the State and the local government or governments serving such area lack the financial and other resources to meet any such increases in public facilities and services within a reasonable time.

The Secretary of Agriculture shall prescribe a rule containing criteria and guidelines for making a designation under this subsection, after consultation with the Secretary of Labor and the Secretary of Energy, not later than 180 days after the effective date of this Act.

(2) For purposes of paragraph (1)(C), increased revenues, including severance tax revenues, royalties, and similar fees to the State and local governments which are associated with the increase in coal or uranium development activties and which are not prohibited from being used under provisions of law in effect on the date of the enactment of this Act shall be taken into account in determining if a State or local government lacks financial resources.

(3) The Secretary shall, after consultation with the Secretary of Agriculture, approve any designation of an area under paragraph (1) only if—

(A) the Governor of the State making the designation provides the Secretary in writing with the data and information on which such designation was made, together with such additional information as the Secretary may require to carry out the purposes of this section; and

(B) the Secretary determines that the requirements of subparagraphs (A), (B), and (C) of paragraph (1) have been met.

(b) PLANNING GRANTS.—(1) The Secretary of Agriculture may make a grant to any State in which there is an area designated and approved under subsection (a) for the purposes of developing a plan for such area which shall include determinations of—

(A) the anticipated level of coal or uranium production activities in such area;

(B) the socioeconomic impacts which have occurred or which are reasonably projected to occur as a result of the increase in coal or uranium production activities;

(C) the availability and location of resources within such area to meet the increased needs resulting from socioeconomic impacts determined under subparagraph (B) (such as any increased need for housing, or for public facilities and services); and

(D) the nature and expense of measures necessary to meet within a reasonable time the increased needs resulting from such impact for which there are no resources reasonably available other than under this section.

(2)(A) Any grant for developing a plan under this subsection shall be for an amount equal to 100 percent of the costs of such plan, as determined by the Secretary of Agriculture.

(B) The aggregate amount granted under this subsection in any fiscal year may not exceed 10 percent of the total amount appropriated for purposes of this section for such year.

(3) The Governor of a State receiving a grant under this subsection for developing a plan shall submit a copy of such plan to the Secretary of Agriculture as soon as practicable after it has been prepared.

(c) LAND ACQUISITION AND DEVELOPMENT GRANTS.—(1) In the case of any real property—

(A) within an area for which a plan meeting the requirements of subsection (b)(1) has been approved;

(B) which is for housing or public facilities determined in such plan as necessary due to an increase in employment due to coal or uranium development activities;

(C) with respect to which the Secretary of Agriculture has determined that the State and the local governments serving such area do not have the financial resources to acquire or the legal authority to acquire by condemnation; and

(D) with respect to which there has been an approval in writing by the Governor of such State that the Secretary of Agriculture exercise his authority under this paragraph;

the Secretary of Agriculture may acquire such real property or interest therein, by purchase, donation, lease, or exchange. Property so acquired shall be transferred to the State under such terms and conditions as the Secretary of Agriculture deems appropriate. Such terms and conditions shall provide for the reimbursement to the Secretary of Agriculture for the fair market value of the property, as determined by the Secretary of Agriculture. The value of any improvement of such property made after such acquisition shall not be taken into account in determining the fair market value of such property under this subsection. Amounts so received by the Secretary of Agriculture shall be deposited in the Treasury of the United States as miscellaneous receipts.

(2) Any approval by a Governor of a State under paragraph (1)(D) shall constitute a binding commitment of such State to accept the property to be acquired and to provide reimbursement for the amount of the fair market value of such property, as determined under paragraph (1).

(3) The Secretary of Agriculture may acquire property under paragraph (1) by condemnation only if he finds that—

(A) such property is not available by means other than condemnation at a price which does not substantially exceed the fair market value of such property;

(B) other real property is not similarly available which is within the same designated area and which is suitable for the purposes to which the property involved is to be applied; and

(C) the State and the local governments serving such area lack the legal authority to acquire such property by condemnation.

(4)(A) In the case of any real property which meets the requirements of subparagraphs (A), (B), and (C) of paragraph (1), the Secretary of Agriculture may make a grant to the State in which such property is located for the purposes of acquiring such property, and for any site development which is consistent with the plan developed under subsection (b).

(B) In the case of property acquired by the Secretary of Agriculture under paragraph (1) and transferred to the State, the Secretary of Agriculture may make a grant to such unit of government for the purposes of site development which is consistent with such plan.

(C) Grants for real property acquisition or site development or both under this paragraph may not exceed 75 percent of the costs thereof, as determined by the Secretary of Agriculture.

(5) In the selection of real property for acquisition and in such acquisition under this subsection, preference shall be given to real property which the Secretary of Agriculture determines at such time to be unoccupied or previously mined and abandoned.

(6)(A) Property held by the United States in trust for Indians or any Indian tribe may not be acquired by condemnation under this section.

(B) No property within the National Forest System (as defined in section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974) may be exchanged by the Secretary in any acquisition under paragraph (1).

(d) GENERAL REQUIREMENTS REGARDING ASSISTANCE.—(1) Assistance under this section shall be provided only upon application, which application shall contain such information as the Secretary of Agriculture shall prescribe.

(2) The Secretary of Agriculture may make any grant under this section in whole or in part to the local government or governments serving an area designated and approved under subsection (a), or to a council of local governments which includes one or more local governments serving such area (in lieu of making such grant solely to the State), if he has determined, after consultation with the Governor of the State, that to do so would be appropriate.

(3) The Secretary of Agriculture shall prescribe, by rule, criteria for the allocation of assistance under this section. Such criteria shall give due weight to the magnitude of the employment increase involved, the financial resources of the designated area, and the ratio of the financial burden on the area to the resources available to such area.

(4) Assistance under this section shall be provided only if the Secretary of Agriculture is satisfied that—

(A) the amounts expended by the State and the local governments involved for the same purposes for which such assistance is provided will not be reduced; and

(B) the amount of such assistance does not reflect any amount for which other Federal financial assistance is provided or on proper application would be provided.

(e) DEFINITIONS.—For the purposes of this section—

(1) The term "coal or uranium development activities" means the production, processing, or transportation of coal or uranium.

(2) The term "site development" means necessary off-site improvements, such as the construction of sewer and water connections, construction of access roads, and appropriate site restoration, but does not include any portion of the construction of housing or public facilities.

(f) REPORTS.—Any person regularly engaged in any coal or uranium development activity within an area designated and approved under subsection (a) shall prepare and transmit a report to the Secretary of Energy within 90 days after a written request to such person by the Governor of the State in which such area is located. Such report shall include—

(1) projected employment levels for such activity by such person within such area during each of the following 3 calendar years;

(2) the projected increase in employees in such area to engage in such activity during each of such calendar years;

(3) the projected quantity of coal (or uranium) to be produced, processed, or trans-

ported by such person during each of such calendar years;

(4) actions such companies plan to take or are taking to provide needed housing and other facilities for their employees directly or by providing funds to the States or local communities for this purpose.

Copies of the report shall be provided to the Secretary of Energy and the Secretary shall, subject to the provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, provide the report to the Secretary of Agriculture, the Governor, and the appropriate county or local officials and make it available for public review.

(g) ADMINISTRATION.—The Secretary of Agriculture shall carry out his responsibilities under this section through the Farmers Home Administration and such other agencies within the Department of Agriculture as he may determine appropriate.

(h) APPROPRIATIONS AUTHORIZATION.—(1) There is hereby authorized to be appropriated to the Secretary of Energy for purposes of this section, $60,000,000 for fiscal year 1979, and $120,000,000 for fiscal year 1980. The Secretary of Energy and the Secretary of Agriculture shall enter into an agreement for the allocation of funds appropriated pursuant to this section for carrying out their respective responsibilities under this section, including the amounts for personnel and administrative costs, and upon such agreement, the Secretary of Energy shall transfer to the Secretary of Agriculture amounts determined under that agreement.

(i) PROTECTION FROM CERTAIN HAZARDOUS ACTIONS.—Federal agencies having responsibilities concerning the health and safety of any person working in any coal, uranium, metal, or nonmetallic mine regulated by any Federal agency shall interpret and utilize their authorities fully and promptly, including the promulgation of standards and regulations, to protect existing and future housing, property, persons, and public facilities located adjacent to or near active and abandoned coal, uranium, metal, and nonmetallic mines or from actions occurring at such activities that pose a hazard to such property or persons.

(j) REORGANIZATION.—The authority of the Secretary of Agriculture and the authority of the Secretary of Energy under this section may not be transferred to any other Secretary or to any other Federal agency under chapter 9 of title 5, United States Code, or under any other provision of law, other than under specific provisions of a law enacted after the date of the enactment of this Act. The preceding provisions of this subsection shall not preclude either Secretary from delegating any such authority to any officer, employee, or entity within such Secretary's department.

SEC. 602. LOANS TO ASSIST POWERPLANT ACQUISITION OF AIR POLLUTION CONTROL EQUIPMENT.

(a) AUTHORITY TO MAKE LOANS.—The Secretary may, in accordance with the provisions of this section and such rules and regulations as he shall prescribe, make a loan (and may make a commitment to loan) to any person who owns or operates any existing electric powerplant converting to coal or other alternate fuel as its primary energy source after the effective date of this Act for the purpose of financing the purchase and installation of one or more certified air pollution control devices for such electric powerplant.

(b) LIMITATION AND CONDITIONS.—A loan made under this section shall—

(1) not exceed two-thirds of the cost of purchasing and installing the certified air pollution control devices;

(2) have a maturity date not extending beyond 10 years after the date such loan is made;

(3) bear interest at a rate not less than

(A) a rate determined by the Secretary of Treasury, taking into consideration the average market yield of outstanding Treasury obligations of comparable maturity, plus (B) 1 percent;

(4) be made on the condition of payment to the Secretary of a loan fee in an amount equal to (A) such insurance fee as the Secretary determines is necessary to avoid a Federal revenue loss under this section plus (B) 1 percent of the loan amount; and

(5) be made only if the Secretary finds that—

(A) the financial assistance applied for is not otherwise available from other Federal agencies;

(B) the applicant is unable to obtain sufficient funds on reasonable terms and conditions from any other source;

(C) there is continued reasonable assurance of full repayment of the principal, interest, and fees; and

(D) competition among private entities for the provision of air pollution control devices for electric powerplants using coal as their primary energy source to be assisted under this section will be in no way limited or precluded.

(c) ALLOCATION AND PRIORITIES.—In making loans or commitments to loan pursuant to this section, the Secretary shall—

(1) allocate a minimum of 25 percent of available financial assistance to existing small municipal and rural powerplants; and

(2) give priority consideration to requests for financial assistance by existing electric powerplants subject to any prohibition under title III (or under section 2 of the Energy Supply and Environmental Coordination Act of 1974).

(d) DEFINITIONS.—For purposes of this section—

(1) the term "certified pollution control device" means a new identifiable device which—

(A) is used, in connection with a powerplant, to abate or control atmospheric pollution by removing, altering, disposing, storing, or preventing the emission of pollutants;

(B) the appropriate State air pollution control agency has certified to the Administrator of the Environmental Protection Agency that such device is needed to meet, and is in conformity with, State requirements for abatement or control of atmospheric pollution or contamination;

(C) the Administrator of the Environmental Protection Agency has certified to the Secretary as not duplicating or displacing existing air pollution control devices with a remaining useful economic life in excess of 2 years and as otherwise being in furtherance of the requirements and purposes of the Clean Air Act;

(D) does not constitute or include a building, or a structural component of a building, other than a building used exclusively for the purposes set forth in subparagraph (A); and

(E) the construction of which began after the effective date of this Act.

(2) The term "small municipal or rural cooperative electric powerplant" means an electric generating unit, which—

(A) by design is not capable of consuming fuel at a fuel heat input rate in excess of a rate determined appropriate by the Secretary by rule; and

(B) is owned or operated by a municipality or a rural electric cooperative.

(e) RECORDS.—(1) The Secretary shall require all persons receiving financial assistance under this section to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the later of—

(A) the expiration of 3 years after completion of the project or undertaking referred to in subsection (a), or

(B) full repayment of interest and principal on a loan made under this section, occurs have access for the purposes of audit, evaluation, examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comproller General may be related or pertinent to such loan.

(f) DEFAULT.—(1) If there is a default in any payment by the obligor of interest or principal due under a loan entered into by the Secretary under this section and such default has continued for 90 days, the Secretary has the right to demand payment of such unpaid amount, unless the Secretary finds that such default has been remedied, or a satisfactory plan to remedy such default by the obligor has been accepted by the Secretary.

(2) In demanding payment of unpaid interest or principal by the obligor, the Secretary has all rights specified in the loan-related agreement with respect to any security which he held with respect to the loan, including the authority to complete, maintain, operate, lease, sell, or otherwise dispose of any property acquired pursuant to such loan or related agreements.

(3) If there is a default under any loan, the Secretary shall notify the Attorney General who shall take such action against the obligator or other parties liable thereunder as is, in his discretion, necessary to protect the interests of the United States. The holder of such loan shall make available to the United States all records and evidence necessary to prosecute any such suit.

(g) DEPOSIT OF RECEIPTS.—Amounts received by the Secretary as principal, interest, fees, proceeds from security acquired following default, or other amounts received by the Secretary in connection with loans made under this section shall be paid into the Treasury of the United States as miscellaneous receipts.

(h) AUTHORIZATION OF APPROPRIATION.—There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this section, but not to exceed $400,000,000 for fiscal year 1979 and $400,000,000 for fiscal year 1980. Authority granted to the Secretary under subsection (a) may be exercised only to the extent as may be provided in advance in appropriation Acts.

TITLE VII—ADMINISTRATION AND ENFORCEMENT

Subtitle A—Procedures

SEC. 701. ADMINISTRATIVE PROCEDURES.

(a) GENERAL RULE MAKING.—Except to the extent otherwise provided in this section or other provisions of this Act, rules prescribed under this Act shall be made in accordance with the procedures set forth in section 553 of title 5, United States Code.

(b) NOTICES OF RULES AND ORDERS IMPOSING PROHIBITIONS.—Before the Secretary prescribes any rule or issues any order imposing a prohibition under this Act (other than under section 402), he shall publish such proposed rule or order in the Federal Register, together with a statement of the reasons for such rule or order and, in the case of a rule, a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the person who operates any such powerplant or in-

stallation required to be specifically identified in such rule or order.

(c) PETITIONS FOR EXEMPTIONS.—(1) Any petition for an exemption from any prohibition under this Act or for any permit under section 405, shall be filed at such time and shall be in such form as the Secretary shall by rule prescribe. The Secretary, upon receipt of such petition, shall publish a notice thereof in the Federal Register together with a statement of the reasons set forth in such a petition for requesting such exemption or permit, and provide a period of public comment of at least 45 days for written comments thereon. Rules required under this paragraph shall be prescribed not later than 120 days after the date of the enactment of this Act.

(2) The Secretary, upon receipt of such petition, shall notify the appropriate State agencies having primary authority to permit or regulate the construction or operation of the electric powerplant or, where appropriate, major fuel-burning installation which is the subject of such petition, and, to the maximum extent practicable, consult with such agencies.

(3) The Secretary, within 6 months after the period for public comment and hearing applicable to any petition for an exemption or permit, shall issue a final order granting or denying the petition for such exemption or permit, except that the Secretary may extend such period to a specified date if he publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension.

(4) Any order for the approval of a system compliance plan under section 501, and any petition for such an order, shall be treated for purposes of this title the same as an order (or petition) for an exemption.

(d) PUBLIC COMMENT ON PROHIBITIONS AND EXEMPTIONS.—(1) In the case of any proposed rule or order by the Secretary imposing a prohibition or any petition for any order granting an exemption (or permit) under this Act (other than under section 402), any interested person shall be afforded an opportunity to present oral data, views, and arguments at a public hearing. At such hearing any interested person shall have an opportunity to question—

(A) other interested persons who make oral presentations,

(B) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of such petition, and

(C) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation,

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(2) A rule or order subject to this section may not be issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.

(e) TRANSCRIPT.—A transcript shall be kept of any public hearing made in accordance with this section.

(f) ENVIRONMENTAL PROTECTION AGENCY COMMENT.—A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this Act (other than under section 402 or 404), or a petition for an exemption (or permit) under this Act (other than under section 402 or 404), shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request such agency to comment thereon within the period provided to the public unless a longer period is provided under the Clean Air Act. In any such case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d).

(g) FEDERAL TRADE COMMISSION COMMENT.—A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this Act (other than under section 402 or 404) with respect to a major fuel-burning installation or a boiler subject to section 401 or a petition by such installation or boiler for an exemption (or permit) under this Act (other than under section 402 or 404), shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public. In any such case, the Federal Trade Commission shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d).

(h) COORDINATION WITH OTHER PROVISIONS OF LAW.—(1) Except as provided in sections 702(c)(4), 723(d)(5), and 724 of this Act, title V of the Department of Energy Organization Act (42 U.S.C. 7191, et seq.) shall not apply with respect to this Act.

(2) The preceding provisions of this section shall not apply with respect to any exercise of authority under section 404.

(3) The procedures applicable under this Act shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this Act (or provisions of law cited herein), or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this Act, and declaring that such provision supersedes, in whole or in part, the procedures of this Act.

SEC. 702. JUDICIAL REVIEW

(a) PUBLICATION AND DELAY OF PROHIBITION OR EXEMPTION TO ALLOW FOR REVIEW.—Any final rule or order prescribed by the Secretary imposing a prohibition or granting an exemption (or permit) under this Act shall be published in the Federal Register, and shall not take effect earlier than the 60th calendar day after such rule or order is published.

(b) PUBLICATION OF DENIAL OF EXEMPTION OR PERMIT.—Any final order issued by the Secretary denying any petition for an exemption or a permit under this Act shall be published in the Federal Register, together with the reasons for such action.

(c) JUDICIAL REVIEW.—(1) Any person aggrieved by any final rule or order referred to in subsection (a) or in section 404, or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b), may at any time before the 60th day after the date such rule, order, or denial is published under subsection (a) or (b), file a petition with the United States court of appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which the rule or order was based as provided in section 2112 of title 28, United States Code.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule, order, or denial in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule or order (or denial thereof) may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule, order, or denial shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(4) Subject to the direction and control of the Attorney General, as provided in section 519 of title 28, United States Code, attorneys appointed by the Secretary may appear for and represent the Secretary in any proceeding instituted under this section in accordance with section 502(c) of the Department of Energy Organization Act.

Subtitle B—Information and Reporting

SEC. 711. INFORMATION.

(a) AUTHORITY OF SECRETARY.—For purposes of carrying out his responsibilities under this Act, the Secretary may require, under the authority of this Act or any other authority administered by him, any person owning, operating or controlling any electric powerplant or major fuel-burning installation, or any other person otherwise subject to this Act to submit such information and reports of any kind or nature directly to the Secretary necessary to implement the provisions of this Act and insure compliance with the provisions of this Act, and any rule or order thereunder. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this section to the same extent and in the same manner as it applies with respect to energy information obtained under section 11 of such Act.

(b) AUTHORITY OF PRESIDENT AND FEDERAL ENERGY REGULATORY COMMISSION.—In the case of responsibilities expressly given by this Act to the President or the Federal Energy Regulatory Commission, subsection (a) shall be applied as if the references to the Secretary were references to the President or the Federal Energy Regulatory Commission, as the case may be.

SEC. 712. COMPLIANCE REPORT.

Any person owning, operating, or proposing to operate one or more existing electric powerplants required to come into compliance with the prohibitions of this Act shall on or before January 1, 1980, and annually thereafter, submit to the Secretary a report identifying all such existing electric powerplants owned or operated by such person. Such report shall—

(1) set forth the anticipated schedule for compliance with the applicable requirements and prohibitions by each such electric powerplant;

(2) indicate proposed or existing contracts or other commitments or good faith negotiations for such contracts or commitments for coal or another alternate fuel, equipment, or combinations thereof, which would enable such powerplant to comply with such prohibitions; and

(3) identify those electric powerplants, if any, for which application for temporary or permanent exemption from the prohibitions of this Act may be filed.

Subtitle C—Enforcement

SEC. 721. NOTICE OF VIOLATION; OTHER GENERAL PROVISIONS.

(a) NOTICE OF VIOLATION.—(1) Whenever, on the basis of any information available, the Secretary finds that any person is in violation of any provision of this Act, or any rule or order thereunder, the Secretary shall issue notice of such violation. Any notice issued under this subsection shall be in writing and shall state with reasonable specificity the nature of the violation.

(2) Paragraph (1) shall not be construed to relieve any person of liability under the other provisions of this Act for any act or omission occurring before the issuance of notice.

(b) INDIVIDUAL LIABILITY OF CORPORATE PERSONNEL.—Any individual director, officer, or agent of a corporation who willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of this Act, or any rule or order thereunder, shall be subject to penalties under this section without regard to any penalties to which the corporation may be subject, except that no such individual director, officer, or agent shall be subject to imprisonment under section 722, unless he also knew of noncompliance by the corporation or had received from the Secretary notice of noncompliance by the corporation.

(c) LIABILITY FOR CERTAIN PEAKLOAD OPERATION.—No person shall be subject to any penalty under this subtitle with respect to the operation of any powerplant in excess of that allowed by an exemption granted on the basis of the operation of such powerplant as a peakload powerplant if it is demonstrated to the Secretary that such operation was necessary to meet peakload demand and that other peakload powerplants within the same system as such powerplant—

(1) were unavailable for service—

(A) due to unit or system outages; or

(B) because operation of such other powerplants would result in their exceeding the hours of operation allowed under an exemption; and

(2) have not been operated other than to meet peakload demand.

(d) FEDERAL AGENCIES.—The provisions of sections 722 and 723 shall not be construed to apply to any Federal agency or officer or employee thereof acting in his official capacity.

SEC. 722. CRIMINAL PENALTIES.

Any person who willfully violates any provision of this Act (other than section 402), or any rule or order thereunder, shall be subject to a fine of not more than $50,000, or to imprisonment for not more than one year, or both, for each violation.

SEC. 723. CIVIL PENALTIES.

(a) GENERAL CIVIL PENALTY.—Any person who violates any provision of this Act (other than section 402), or rule or order thereunder, shall be subject to a civil penalty, which shall be assessed by the Secretary, of not more than $25,000 for each violation. Each day of violation shall constitute a separate violation.

(b) CIVIL PENALTIES FOR OPERATION OR USE OF FUELS IN EXCESS OF EXEMPTION.—(1) In the case of any electric powerplant granted an exemption, any person who operates such powerplant during any 12-calendar-month period in excess of that authorized in such exemption, shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas used in operation of such powerplant in excess of that authorized in such exemption.

(2) Any person operating a major fuel-burning installation granted an exemption which, for any 12-calendar-month period, uses petroleum or natural gas, or both, in excess of that use allowed by such exemption shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas which was used in excess of that use allowed by such exemption.

(c) PENALTIES FOR VIOLATION OF SECTION 402.—(1) Any person who violates any prohibition under subsection (b)(1) of section 402 with respect to providing of natural gas service to any person for use in outdoor lighting shall be subject to a civil penalty, which shall be assessed by the Secretary and which shall not exceed $500 for each outdoor lighting fixture involved.

(2) Any industrial user who violates prohibition under subsection (b)(2) of section 402 shall be subject to a civil penalty, which shall be assessed by the Secretary and which shall not exceed $500 per day of violation for each outdoor lighting fixture involved which was used by an industrial customer, but not to exceed $5,000 per outdoor lighting fixture involved.

(3) The penalties under this subsection shall only apply in the case of a violation by any person who at the time of the violation had knowledge or reasonably should have had knowledge that the action involved was prohibited under section 402.

(d) ASSESSMENT.—(1) Before issuing an order assessing a civil penalty against any person under this Act, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, United States Code, or of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 402(d) of the Department of Energy Organization Act shall not apply with respect to the functions of the Secretary under this subsection.

SEC. 724. INJUNCTIONS AND OTHER EQUITABLE RELIEF.

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of this Act, or any rule or order thereunder, a civil action, may be brought, in accordance with section 502(c) of the Department of Energy Organization Act, in the appropriate district court of the United States to enjoin such acts or practices, and, upon a proper showing, the court shall grant, without bond, mandatory or prohibitive injunctive relief, including interim equitable relief.

SEC. 725. CITIZENS SUITS.

(a) GENERAL RULE.—Except as otherwise provided in subsection (b), any aggrieved person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against the Secretary or the head of any Federal agency which has a responsibility under this Act if there is an alleged failure of the Secretary or such agency head to perform any act or duty under this Act which is not discretionary. The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) NOTICE TO SECRETARY OR AGENCY HEAD.—No action may be commenced under subsection (a) before the 60th calendar day after the date on which the plaintiff has given notice of such action to the Secretary or the agency head involved. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by rule.

(c) AUTHORITY OF SECRETARY TO INTERVENE.—In any action brought under subsection (a), the Secretary, if not a party, may intervene as a matter of right.

(d) COSTS OF LITIGATION.—The court, in issuing any final order in any action brought under subsection (a), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) OTHER REMEDIES TO REMAIN AVAILABLE.—Nothing in this section shall restrict any right which any aggrieved person (or class of aggrieved persons) may have under any statute or common law to seek enforcement of this Act or any rule thereunder, or to seek any other relief (including relief

against the Secretary or the agency head involved).

Subtitle D—Preservation of Contractual Rights

SEC. 731. PRESERVATION OF CONTRACTUAL INTEREST.

(a) RIGHT TO TRANSFER CONTRACTUAL INTERESTS.—(1) If any person receives natural gas, the use of which is prohibited by the provisions of title II or title III or any rule or order thereunder, and if such natural gas is received pursuant to a contract in effect on April 20, 1977, between such person and any other person, such person receiving such natural gas may transfer all or any portion of such person's contractual interests under such contract and receive consideration from the person to whom such contractual interests are transferred. The consideration authorized by this subsection shall not exceed the maximum consideration established as just compensation under this section.

(2) Any person who would have transported or distributed the natural gas subject to a contract with respect to which contractual interests are transferred pursuant to paragraph (1) shall be entitled to receive just compensation (as determined by the Commission) from the person to whom such contractual interests are transferred.

(b) DETERMINATION OF CONSIDERATION.—(1) The Commission shall, by rule, establish guidelines for the application on a regional or national basis (as may be appropriate) of the criteria specified in subsection (e)(1) to determine the maximum consideration permitted as just compensation under this section.

(2) The person transferring contractual interests pursuant to subsection (a)(1) and the person to whom such interests are transferred may agree on the amount of, or method of determining, the consideration to be paid for such transfer and certify such consideration to the Commission. Except as provided in paragraph (4), such agreed-upon consideration shall not exceed the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1).

(3) In the event the person transferring contractual interests pursuant to subsection (a)(1) and the person to whom such interests are to be transferred fail to agree, under paragraph (2), on the amount of, or method of determining, the consideration to be paid for such transfer, the Commission may, at the request of both such persons, prescribe the amount of, or method of determining, such consideration. Upon the request of either such person, the Commission shall make such determination on the record, after an opportunity for agency hearing. In any such latter case, the determination of the Commission shall be binding upon the party requesting that such determination be made on the record of the agency hearing. The consideration prescribed by the Commission shall not exceed the maximum consideration permitted as just compensation under this section. In prescribing the amount of, or method of determining, consideration under this paragraph, to the maximum extent practicable, the Commission shall utilize any liquidated damages provision set forth in the applicable contract, but in no event may the Commission prescribe consideration in excess of the maximum consideration permitted as just compensation under this section.

(4) In the event that the consideration agreed upon under paragraph (2) exceeds the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1), the Commission may approve such agreed-upon consideration if the Commission determines such agreed-upon consideration does not exceed the maximum consideration permitted as just compensation under this section.

(5) If consideration is agreed upon under paragraph (2) and such consideration exceeds the consideration determined by application of the guidelines prescribed under paragraph (1), but does not exceed the maximum consideration permitted as just compensation under this section, the Commission may not require a refund of any portion of the agreed-upon consideration paid with respect to deliveries of natural gas occurring prior to the Commission's action under paragraph (4) approving or disapproving such consideration unless the Commission determines—

(A) such agreed-upon consideration was fraudulently established;

(B) the processing of the request for approval of such agreed-upon consideration under paragraph (4) was willfully delayed by a party to the transfer; or

(C) such agreed-upon consideration exceeds the maximum consideration permitted as just compensation under this section.

(c) RESTRICTIONS ON TRANSFERS UNENFORCEABLE.—(1) Any provision of any contract, which prohibits any transfer authorized by subsection (a)(1) or terminates such contract on the basis of such transfer, shall be unenforceable in any court of the United States and in any court of any State.

(2) No State may enforce any prohibition on any transfer authorized by subsection (a)(1).

(d) CONTRACTUAL OBLIGATIONS UNAFFECTED.—The person acquiring contractual interests transferred pursuant to subsection (a)(1) shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This subsection shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) DEFINITIONS.—Four purposes of this section.—

(1) The term "just compensation", when used with respect to any transfer of contractual interests authorized by subsection (a)(1), means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (excluding capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred under subsection (a)(1), in direct association with the use of a fuel, other than natural gas, as a primary energy source by the applicable existing electric powerplant or major fuel-burning installation, exceed

(B) the price of natural gas under such contract during such period.

For purposes of subparagraph (A), the reasonable costs associated with the use of a fuel, other than natural gas, as a primary energy source shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such electric powerplant or major fuel burning installation, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such other fuel.

(2) The term "just compensation", when used with respect to subsection (a)(2), means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to subsection (a)(1), to the extent such loss (A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to subsection (a)(1), and (B) is not offset by revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(3) The term "contractual interests", with respect to a contract described in subsection (a)(1), includes the right to receive natural gas as affected by any applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(4) The term "State" means each of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, and any political subdivision of any of the foregoing.

(5) The term "interstate pipeline" means any person engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission under the Natural Gas Act.

(6) The term "Commission" means the Federal Energy Regulatory Commission.

(7) The term "contract", when used with respect to a contract for receipt of natural gas, which contract was in existence on April 20, 1977, does not include any renewal or extension occurring after such date unless such renewal on extension occurs pursuant to the exercise of an option by the person receiving natural gas under such contract.

(f) COORDINATION WITH THE NATURAL GAS ACT.—(1) Consideration paid by any interstate pipeline pursuant to this section shall be deemed just and reasonable for purposes of sections 4, 5, and 7 of the Natural Gas Act. The Commission shall not deny a pass-through by such interstate pipeline of such consideration based upon the amount of such consideration paid pursuant to this section.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1).

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale or person is subject to the jurisdiction of the Commission under such Act without regard to the transfer of contractual interests under subsection (a)(1).

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the transportation by an interstate pipeline of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1). The Commission shall not deny such a certificate for the transportation in interstate commerce of natural gas based upon the amount of consideration paid pursuant to this section.

(g) VOLUME LIMITATION.—No supplier of natural gas under any contract, with respect to which contractual interests have been transferred under subsection (a)(1), shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests under subsection (a)(1), if no such transfer had occurred;

(3) the volume which would have been delivered, or for which payment would have been made, pursuant to such contract but

for the prohibition on the use of such natural gas under title II or title III of this Act or any rule or order thereunder; and

(4) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests pursuant to this section.

(h) JUDICIAL REVIEW.—Any action by the Commission under this section is subject to judicial review in accordance with chapter 7 of title 5, United States Code.

Subtitle E—Studies

SEC. 741. NATIONAL COAL POLICY STUDY.

(a) STUDY.—The President, acting through the Secretary and the Administrator of the Environmental Protection Agency, shall make a full and complete investigation and study of the alternative national uses of coal available in the United States to meet the Nation's energy requirements consistent with national policies for the protection and enhancement of the quality of the environment and for economic recovery and full employment. In particular the study should identify and evaluate—

(1) current and prospective coal requirements of the United States;

(2) current and prospective voluntary and mandatory energy conservation measures and their potential for reduction of the United States coal requirements;

(3) current and prospective coal resource production, transportation, conversion, and utilization requirements;

(4) the extent and adequacy of coal research, development, and demonstration programs being carried out by Federal, State, local and nongovernmental entities (including financial resources, manpower, and statutory authority);

(5) programs for the development of coal mining technologies which increase coal production and utilization while protecting the health and safety of coal miners;

(6) alternative strategies for meeting anticipated United States coal requirements, consistent with achieving other national goals, including national security and environmental protection;

(7) existing and prospective governmental policies and laws affecting the coal industry with the view of determining what, if any, changes in and implementation of such policies and laws may be advisable in order to consolidate, coordinate, and provide an effective and equitable national energy policy consistent with other national policies; and

(8) the most efficient use of the Nation's coal resources considering economic (including capital and consumer costs, and balance of payments), social (including employment), environmental, technological, national defense, and other aspects.

(b) REPORT.—Within 18 months after the effective date of this Act, the President shall submit to the Congress a report with respect to the studies and investigations, together with findings and recommendations in order that the Congress may have such information in a timely fashion. Such report shall include the President's determination and recommendations with respect to—

(1) the Nation's projected coal needs nationally and regionally, for the next 2 decades with particular reference to electric power;

(2) the coal resources available or which must be developed to meet those needs, including, as applicable, the programs for research, development, and demonstration necessary to provide technological advances which may greatly enhance the Nation's ability to efficiently and economically utilize its fuel resources, consistent with applicable environmental requirements;

(3) the air, water, and other pollution created by coal requirements, including any programs to overcome promptly and efficiently any technological or economic barriers to the elimination of such pollution;

(4) the existing policies and programs of the Federal Government and of State and local governments, which have any significant impact on the availability, production or efficient and economic utilization of coal resources and on the ability to meet the Nation's energy needs and environmental requirements; and

(5) the adequacy of various transportation systems, including roads, railroads, and waterways to meet projected increases in coal production and utilization.

Before submitting a report to the Congress under subsection (b), the President shall publish in the Federal Register a notice and summary of the proposed report, make copies of such report available, and afford interested persons an opportunity (of not less than 90 days' duration) to present written comments; and shall make such modifications of such report as he may consider appropriate on the basis of such comments.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Secretary for allocation between the Department of Energy and the Environmental Protection Agency for fiscal years 1979 and 1980, not to exceed $18,000,000, for use in carrying out the purposes of this section.

SEC. 742. COAL INDUSTRY PERFORMANCE AND COMPETITION STUDY.

(a) STUDY.—The Secretary shall make a complete investigation of the performance and competition of the coal industry. The study shall be an interagency effort under the direction of the Secretary and shall include participation by—

(1) the Federal Trade Commission,
(2) the Department of Justice,
(3) the Department of Energy,
(4) the Federal Energy Regulatory Commission,
(5) the Department of the Interior,
(6) the Department of Transportation,
(7) the Department of Commerce,
(8) the Department of Labor,
(9) the Department of State,
(10) the Department of the Treasury,
(11) the Interstate Commerce Commission,
(12) the Council on Wage and Price Stability,
(13) the Tennessee Valley Authority, and
(14) the Appalachian Regional Commission.

(b) COVERAGE OF STUDY.—The study shall consider the following elements relating to competition:

(1) interests in, or ownership or production of, coal reserves by firms which—

(A) own or have an interest in commodity transportation systems by rail, water, or pipeline,

(B) own or produce oil, natural gas, or uranium, or

(C) use significant amounts of coal in their processes, including electrical generation and steelmaking,

(2) prices, profitability, and levels of concentration in sales of various identifiable submarket structures in the coal industry, including the market for—

(A) steam and metallurgical coal,
(B) low-sulfur coal,
(C) lignite, anthracite, bituminous and subbituminous coal,
(D) spot sales and long-term delivery contracts, and
(E) exports,

(3) overall profitability of coal operations,

(4) capital requirements, sources and uses of funds,

(5) vertical integration of production, cleaning, processing, gasification, liquefaction, transportation, marketing, distribution, combustion, and other phases of the coal fuel cycle,

(6) the effect of interfuel ownership, vertical integration, and market concentration upon innovation, efficiency, prices and profits,

(7) costs of production, transportation, processing, and other components of coal prices for different regions and different types of mines,

(8) responsiveness of coal supply to market demand,

(9) productive capacity,

(10) productivity,

(11) economies and diseconomies of scale,

(12) distribution and flow of executive, managerial, and technical personnel between the various coal producers,

(13) management and directorate interlocks,

(14) relationships to financial institutions,

(15) government-industry relationships, including lease bidding, technology, research, development, demonstration and transfer, and personnel movement,

(16) joint ventures, consortia, and cross-ownership,

(17) identification of the major owners of coal industry stock,

(18) control of patents and technologies,

(19) barriers to greater competition in the market for coal, and

(20) Federal income tax policies.

(c) IMPACTS ON COAL-PRODUCING COUNTIES AND STATES.—The study shall evaluate the economic and social impacts upon coal-producing counties and States of present and prospective land ownership patterns and levels of income, property, severance and other taxes paid by coal producers.

(d) EXPORT OF METALLURGICAL COAL.—The study shall identify and evaluate national policies toward the export of metallurgical coal as they relate to—

(1) national security,
(2) national energy goals,
(3) balance of payments,
(4) comparative advantage in world trade,
(5) materials policy,
(6) United States and international reserves and resources, and
(7) likely future metallurgical technologies.

(e) REPORTS.—(1) Pursuant to the provisions of the preceding subsection of this section, the Secretary shall submit to the President for transmittal to the Congress such interim reports as he deems advisable and, not later than 18 months after the effective date of this Act, a comprehensive and final report to the Congress containing the findings with respect to such study and investigation. Such report may include such legislative and administrative recommendations as the President deems advisable.

(2) Before submitting a report to the Congress under paragraph (1), the President shall—

(A) publish in the Federal Register a notice and summary of the proposed report and make copies of such report available and afford interested persons an opportunity (of not less than 90 days' duration) to present written comments; and

(B) make such modifications of such report as he may consider appropriate on the basis of such comments.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for allocation between the Department of Energy and the other agencies participating in the study under this section for the fiscal years 1979 and 1980, not to exceed $18,000,000 to carry out the provisions of this section.

SEC. 743. IMPACT ON EMPLOYEES.

(a) EVALUATION.—The Secretary shall conduct continuing evaluations of potential loss or shifts of employment which may result from any prohibition under this Act, including, if appropriate, investigating threatened plant closures or reductions in employment

allegedly resulting from such prohibition. The results of such evaluations and each investigation shall promptly be made available to the public.

(b) INVESTIGATION AND HEARINGS.—On a written request filed with the Secretary by or on behalf of any employee who is discharged or laid off, threatened with discharge or layoff, or otherwise discriminated against, by any person because of the alleged effects of any such prohibition, the Secretary shall investigate the matter and, at the request of any party, shall hold public hearings, after not less than 30 days notice, at which the Secretary shall require the parties, including any employer involved, to present information on the actual or potential effect of such prohibition on employment and on any alleged employee discharge, layoff, or other discrimination relating to prohibitions and the detailed reasons or justification therefor. At the completion of such investigation, the Secretary shall make findings of fact as to the effect of such prohibition on employment and on the alleged employee discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. The Secretary of Labor shall participate in each such investigation.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require or authorize the Secretary to modify or withdraw any prohibition under this Act.

SEC. 744. STUDY OF COMPLIANCE PROBLEM OF SMALL ELECTRIC UTILITY SYSTEMS.

(a) STUDY.—The Secretary shall conduct a study of the problems of compliance with this Act experienced by those electric utility systems which have a total system generating capacity of less than 2,000 megawatts. The Secretary shall report his findings and his recommendations to the Congress not later than 2 years after the effective date of this Act.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for the fiscal year 1979 not to exceed $500,000 to carry out the provisions of this section.

SEC. 745. EMISSIONS MONITORING.

(a) MONITORING PROGRAM.—The Administrator of the Environmental Protection Agency shall conduct, on a continuing basis, a program of monitoring, to the greatest extent possible and in accordance with the applicable authorities and provisions of the Clean Air Act, the emissions from new and existing electric powerplants and major fuel-burning installations required to use coal or other alternate fuels by reason of this Act or otherwise using coal or other alternate fuels and the effect thereof on the public health, safety, and welfare and the movement of such emissions in the atmosphere and their impact on land and water and other resources and the public health in various regions of the Nation. Such Administrator shall submit an annual report to the Congress on such program. In carrying out his responsibilities under this section, the Administrator of the Environmental Protection Agency shall consult with the other Federal and State agencies concerned with the health effects of such emissions.

(b) APPROPRIATIONS AUTHORIZATION.—There is authorized to be appropriated to the Administrator of the Environmental Protection Agency $2,000,000 in fiscal year 1979 for the report required under section 806.

SEC. 746. SOCIOECONOMIC IMPACTS OF INCREASED COAL PRODUCTION AND OTHER ENERGY DEVELOPMENT.

(a) COMMITTEE.—There is hereby established an interagency committee composed of the heads of the Departments of Energy, Commerce, Interior, Transportation, Housing and Urban Development, and Health, Education, and Welfare, the Environmental Protection Agency, the Appalachian Regional Commission, the Farmers' Home Administration, the Office of Management and Budget, and such other Federal agencies as the Secretary shall designate. In carrying out its functions the committee shall consult with the National Governors' Conference and interested persons, organizations, and entities. The chairman of the committee shall be designated by the President. The committee shall terminate 90 days after the submission of its report under subsection (c).

(b) FUNCTIONS OF COMMITTEE.—It is the function of the committee to conduct a study of the socioeconomic impacts of expanded coal production and rapid energy development in general, on States, including local communities, and on the public, including the adequacy of housing and public, recreational, and cultural facilities for coal miners and their families and the effect of any Federal and State laws or regulations on providing such housing and facilities. The committee shall gather data and information on—

(1) the level of assistance provided under this Act and any other programs related to impact assistance,

(2) the timeliness of assistance in meeting impacts caused by Federal decisions on energy policy as well as private sector decisions, and

(3) the obstacles to effective assistance contained in regulations of existing programs related to impact assistance.

(c) REPORT.—Within 1 year after the effective date of this Act, the committee shall submit a detailed report on the results of such study to the Congress, together with any recommendations for additional legislation it may consider appropriate.

SEC. 747. USE OF PETROLEUM AND NATURAL GAS IN COMBUSTORS.

The Secretary shall conduct a detailed study of the uses of petroleum and natural gas as a primary energy source for combustors and installations not subject to the prohibitions of this Act. In conducting such study, the Secretary shall—

(1) identify those categories of major fuel-burning installations in which the substitution of coal or other alternate fuels for petroleum and natural gas is economically and technically feasible, and

(2) determine the estimated savings of natural gas and petroleum expected from such substitution.

Within 1 year after the effective date of this Act, the Secretary shall submit a detailed report on the results of such study to the Congress, together with any recommendations for legislation he may consider appropriate.

Subtitle F—Appropriations Authorization

SEC. 751. AUTHORIZATION OF APPROPRIATIONS

There is authorized to be appropriated to the Secretary for fiscal year 1979 $11,900,000 to carry out the provisions of this Act (other than provisions for which an appropriations authorization is otherwise expressly provided in this Act) and section 2 of the Energy Supply and Environmental Coordination Act of 1974.

Subtitle G—Coordination with other Provisions of Law

SEC. 761. EFFECT ON ENVIRONMENTAL REQUIREMENTS.

(a) COMPLIANCE WITH APPLICABLE ENVIRONMENTAL REQUIREMENTS.—Except as provided in section 404, nothing in this Act shall be construed as permitting any existing or new electric powerplant or major fuel-burning installation to delay or avoid compliance with applicable environmental requirements.

(b) LOCAL ENVIRONMENTAL REQUIREMENTS.—In the case of any new or existing facility—

(1) which is subject to any prohibition under this Act, and

(2) which is also subject to any requirement of any local environmental requirement which may be stricter than any Federal or State environmental requirement,

the existence of such local requirement shall not be construed to affect the validity or applicability of such prohibition to such facility, except to the extent provided under section 212(b) or section 312(b); and the existence of such prohibition shall not be construed to preempt such local requirement with respect to that facility.

SEC. 762. EFFECT OF ORDERS UNDER SECTION 2 OF ESECA; AMENDMENTS TO ESECA.

(a) EFFECT OF CONSTRUCTION ORDERS.—Any electric powerplant or major fuel-burning installation issued an order pursuant to section 2(c) of the Energy Supply and Environmental Coordination Act of 1974 that is pending on the effective date of this Act shall, notwithstanding the provisions of such section 2(c) or any other provision of this Act, be subject to the provisions of this Act as if it were a new electric powerplant or new major fuel-burning installation, as the case may be, except that if such order became final before such date, the provisions of title II of this Act shall not apply to such powerplant or installation.

(b) EFFECT OF PROHIBITION ORDERS.—The provisions of titles II and III shall not apply to any powerplant or installation for which an order issued pursuant to section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 before the effective date of this Act is pending or final or which, on review, was held unlawful and set aside on the merits; except that any installation issued such an order under such section 2(a) which is pending on the effective date of this Act may elect to be covered by title II or III (as the case may be) rather than such section 2. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary shall, within 90 days after the date of the enactment of this Act, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary prescribes the form and manner of making such election.

(c) VALIDITY OF ORDERS.—The preceding provisions of this Act shall not affect the validity of any order issued under subsection (a), or any final order under subsection (c), of section 2 of the Energy Supply and Environmental Coordination Act of 1974, and the authority of the Secretary to amend, repeal, rescind, modify, or enforce any such order, or rules applicable thereto, shall remain in effect notwithstanding any limitation of time otherwise applicable to such authority. Except as provided in this section, the authority of the Secretary under section 2 of such Act shall terminate on the effective date of this Act.

(d) AMENDMENTS TO ESECA.—(1) Section 11(g) of the Energy Supply and Environmental Coordination Act of 1974 is amended—

(1) by striking out paragraph (2), and

(2) in paragraph (1), by striking out "(g)" "(1)" and inserting in lieu thereof "(g)".

SEC. 763. ENVIRONMENTAL IMPACT STATEMENTS UNDER NEPA.

The following actions are not deemed to be major Federal actions for purposes of section 102(a)(C) of the National Environmental Policy Act of 1969:

(1) the grant or denial of any temporary exemption under this Act for any electric powerplant or major fuel-burning installation;

(2) the grant or denial of any permanent exemption under this Act for any existing

electric powerplant or major fuel-burning installation, other than an exemption—

(A) under section 312(c), relating to cogeneration;

(B) under section 312(l), relating to scheduled equipment outages;

(C) under section 312(b), relating to certain State or local requirements;

(D) under section 312(g), relating to certain intermediate load powerplants; and

(3) the grant or denial of any exemption under this Act for any powerplant or major fuel-burning installation for which the Secretary finds, in consultation with the appropriate Federal agency, and publishes such finding that an environmental impact statement is required in connection with another Federal action and such statement will be prepared by such agency and will reflect the exemption adequately.

Except as provided in the preceding provisions of this section, any determination of what constitutes or does not constitute a major Federal action shall be made under section 102 of the National Environmental Policy Act of 1969.

TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. COAL RESERVES DISCLOSURE.

(a) DISCLOSURE.—Within 2 years after the effective date of this Act, and annually thereafter, the Secretary shall require the disclosure, pursuant to section 11 of the Energy Supply and Environmental Coordination Act of 1974, of the extent, characteristics, and productive capacity of coal reserves, or interest therein, within the United States held by any person or governmental entity, as necessary, and shall publish a summary of such information.

(b) EXEMPTION FOR SMALL RESERVES.—The Secretary may exempt small reserves from the requirements of this section if the Secretary finds that the imposition of the requirements of this section would impose an unreasonable economic burden on such person (or entity) or would not be of significant aid to achievement of the purposes of this Act, and publishes such finding in the Federal Register.

SEC. 802. COAL PREPARATION FACILITIES.

Section 102(c)(4) of the Energy Policy and Conservation Act is amended by adding at the end thereof (42 U.S.C. 6211(c)(4)) the following new sentence: "Such term also includes construction of a coal preparation plant which is designed to reduce the sulfur content of coal produced from any coal mine.".

SEC. 803. RAILROAD REHABILITATION FOR CARRIAGE OF COAL.

(a) STATEMENT OF PURPOSE.—It is the purpose of this section to facilitate and encourage the use of and conversion to coal as an energy resource in regions and States which can use coal in greater quantity as a substitute for imported petroleum.

(b) AUTHORIZATION.—There is authorized to be appropriated, for deposit in the Railroad Rehabilitation and Improvement Fund established under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822), not more than $100,000,000. The money appropriated to the Railroad Rehabilitation and Improvement Fund pursuant to this subsection shall be expended by the Secretary of Transportation, in the same manner as other money in such Fund, to provide financial assistance to railroads for maintenance, rehabilitation, improvement, and acquisition of equipment and facilities which will be used for the rail transportation of coal to regions or States which can use coal in greater quantities (whether or not such equipment or facilities were designed specifically for such purpose).

(c) CONFORMING AMENDMENTS.—(1) Section 501(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(2)) is amended by inserting "(except as provided in section 803 (a) and (b) of the Powerplant and Industrial Fuel Use Act of 1978)" immediately after "or other features".

(2) Section 502(b) of such Act (45 U.S.C. 822(b)) is amended by inserting at the end thereof the following: "Money appropriated to the Fund under section 803(a) and (b) of the Powerplant and Industrial Fuel Use Act of 1978 shall be used to provide financial assistance to railroads for maintenance, rehabilitation, improvement, and acquisition of equipment and facilities which will be used for the rail transportation of coal to regions or States which can use coal in greater quantities as a substitute for imported petroleum.".

(3) Section 502(f) of such Act (45 U.S.C. 822(f)) is amended—

(A) by striking out "and" at the end of paragraph (5) thereof;

(B) by inserting between paragraphs (5) and (6) the following new paragraph:

"(6) funds as may hereafter be appropriated to the Fund as authorized under section 803(a) and (b) of the Powerplant and Industrial Fuel Use Act of 1978; and"; and

(C) by redesignating paragraph (6) as paragraph (7).

(4) Section 502(i) of such Act (45 U.S.C. 822(i)) is amended—

(A) by striking out "and" at the end of paragraph (4) thereof;

(B) by striking out "Treasury." at the end of paragraph (5) and inserting in lieu thereof "Treasury and"; and

(C) by adding at the end thereof the following new paragraph:

"(6) to carry out the purposes of section 803(a) and (b) of the Powerplant and Industrial Fuel Use Act of 1978".

(5) Section 505(b)(2) of such Act (45 U.S.C. 825) is amended by inserting between the fourth and fifth sentences thereof the following new sentence: "With respect to funds appropriated for financial assistance under this section which were authorized pursuant to section 803(a) and (b) of the Powerplant and Industrial Fuel Use Act of 1978, applications for such funds for the purpose of coal transportation shall be deemed to be for the provision of essential freight services.".

(6) Section 505(d)(3) of such Act (45 U.S.C. 825) is amended—

(A) by striking out in the first sentence "$600,000,000" and inserting in lieu thereof "$700,000,000", and

(B) by striking out in the second sentence "$100,000,000" and inserting in lieu thereof "$150,000,000".

SEC. 804. OFFICE OF RAIL PUBLIC COUNSEL.

Section 27 of the Interstate Commerce Act is amended—

(1) by striking out "and" at the end of paragraph (4)(d),

(2) by striking out the period at the end of paragraph (4)(e) and inserting in lieu thereof "and", and

(3) by inserting after paragraph (4)(e) the following:

"(f) shall present the views of users, as well as the views of the general public and affected communities, and, where appropriate, providers of rail services in proceedings of Federal agencies concerning—

"(1) the impact of energy proposals and actions on rail transportation, and

"(2) whether transportation policies are consistent with National energy policies.".

SEC. 805. RETROACTIVE APPLICATION OF CERTAIN REMEDIAL ORDERS.

(a) GENERAL RULE.—Section 503 of the Department of Energy Organization Act (42 U.S.C. 7193) is amended by adding at the end thereof the following new subsection:

"(g) With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against such person for any violation of any rule or regulation if—

"(1) such civil action or order is based on a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

"(2) such person relied in good faith upon rules, regulations, or ruling in effect on the date of the violation interpreting such rules or regulations.".

(b) TECHNICAL CONFORMING AMENDMENTS.—In subsections (e) and (f) of such section 503, insert "preceding provisions of" before "this section".

SEC. 806. ANNUAL REPORT.

The Secretary shall submit to the Congress on March 1 of each year a detailed report prepared by him in conjunction with the Administrator of the Environmental Protection Agency of the actions taken under this Act and under section 2 of the Energy Supply and Environmental Coordination Act of 1974 during the preceding calendar year, and the actions to be taken. Each such report shall include data on the effectiveness of this Act in achieving the purposes of this Act.

SEC. 807. SUBMISSION OF REPORTS.

Copies of any report required by this Act to be submitted to the Congress shall be separately submitted to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

TITLE IX—EFFECTIVE DATES

SEC. 901. EFFECTIVE DATES.

Unless otherwise provided in this Act, the provisions of this Act shall take effect 180 days after the date of the enactment of this Act, except that the Secretary may issue rules pursuant to such provisions at any time after such date of enactment, which rules may take effect no earlier than 180 days after such date of enactment.

SEC. 902. INTERIM PETITION AND CONSIDERATION FOR CERTAIN EXEMPTIONS.

(a) EXEMPTIONS IN THE CASE OF CERTAIN POWERPLANTS.—In the case of—

(1) any electric powerplant which, as of April 20, 1977, has received a final decision from the appropriate State agency authorizing the construction of such powerplant, and

(2) any electric powerplant (A) consisting of one or more combined cycle units owned or operated by an electric utility which serves at least 2,000,000 customers and (B) for which an application has been filed for at least one year before the date of the enactment of this Act with the appropriate State agency for authorization to construct such powerplant,

the Secretary may receive, consider, and grant (or deny) any petition for an exemption under title II or III, notwithstanding section 901 or the fact that all rules related to such petition have not been prescribed at the time.

(b) EXEMPTIONS UNDER SECTION 211(d).—The Secretary may receive, consider, and grant (or deny) any petition for any exemption under section 211(d), notwithstanding section 901 or the fact that all rules related to such petition have not been prescribed at the time.

And the House agree to the same.

HARLEY O. STAGGERS,
THOMAS L. ASHLEY,
AL ULLMAN,
RICHARD BOLLING,
THOMAS S. FOLEY,
JOHN D. DINGELL,
PAUL G. ROGERS,
BOB ECKHARDT,
PHILIP R. SHARP,
ANTHONY TOBY MOFFETT,
CHARLES WILSON,
HENRY S. REUSS,
DAN ROSTENKOWSKI,
CHARLES A. VANIK,
JAMES C. CORMAN,
JOSEPH D. WAGGONNER, Jr.,
CHARLES B. RANGEL,
Managers on the Part of the House.

HENRY M. JACKSON,
FLOYD K. HASKELL,
WENDELL H. FORD,
J. BENNETT JOHNSTON,
JAMES ABOUREZK,
JOHN A. DURKIN,
HOWARD M. METZENBAUM,
CLIFFORD P. HANSEN,
MARK O. HATFIELD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate numbered 6 to the bill (H.R. 5146) to amend the Tariff Schedules of the United States to provide for the duty-free entry of competition bobsleds and luges, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I. GENERAL PROVISIONS

SECTION 101—SHORT TITLE

The conference substitute states that title II shall be cited as the "Powerplant and Industrial Fuel Use Act of 1978".

SECTION 102—FINDINGS, STATEMENT OF PURPOSES

The House bill and the Senate amendment contain many similar findings and purposes. In addition, each version includes provisions not found in the other, such as provisions relating to the rehabilitation and upgrading of railroads to transport coal and to insure adequate supplies of natural gas for certain agricultural uses. The conference substitute combines the findings and purposes of both versions, including the requirement that the program be carried out in a manner consistent with applicable environmental requirements.

SECTION 103—DEFINITIONS

Both bills define a number of terms used in the Act. Many of the definitions are identical or very similar. The conference substitute adopts the identical provisions and generally makes only technical changes in many more that are similar. The following discusses primarily those definitions that are substantially modified.

The conferees in adopting a definition of "natural gas" restate the definition of this term as it appears in the Natural Gas Act and intend that administrative and judicial interpretations of that term under the Natural Gas Act made prior to enactment of the conference substitute should apply to this definition. But future administrative and judicial interpretations of this term in the Natural Gas Act shall not apply here. The reason is that as time goes on it is likely that the two statutes would require interpretations which may not and should not apply to both. Thus, we expect the administrators and the courts to treat both laws individually insofar as this definition is concerned.

Excluded from the Natural Gas Act definition are the following:

(a) natural gas which is commercially unmarketable (either by reason of quality or quantity) as determined under rules prescribed by the Secretary.

(b) natural gas produced by the user from a well the maximum efficient production rate of which is less than 250 million Btu's per day;

(c) mixtures of natural gas and synthetic gas derived from coal and other fuels which meets the requirements of subsection (b) of this section.

All synthetic gas derived from coal or alternate fuel which is not mixed with natural gas is an alternate fuel, whatever the Btu content.

In the case of synthetic gas, a mixture of natural gas and synthetic gas derived from coal or other fuels would not be considered natural gas for the purposes of the Act if the owner meets the requirements of section 103(b).

In applying the exclusion for natural gas produced by the user from a well with a maximum efficient production rate less than 250 million Btu's per day, the conferee intend that the maximum efficient production rate mean that rate at which production may be sustained without damage to the reservoir or the rate which may be sustained without damage to the ultimate recovery of natural gas through the well.

The Senate excluded from the definition of "natural gas" synthetic natural gas derived from coal where owned by the user before entry into the pipeline. The House included synthetic natural gas in the definition of natural gas, but authorized a permanent exemption from the prohibition of the use of natural gas if the Secretary finds, among other things, that the applicant demonstrated that he owns synthetic gas derived from coal; the pipeline has been certificated to transport such gas; and all necessary permits have been obtained for the manufacture of the synthetic gas.

The conference agreement includes within the definition of "natural gas" mixtures of natural gas and high Btu synthetic gas used by a powerplant or MFBI. Synthetic gas derived from coal which is not mixed with natural gas is an alternate fuel. The conference agreement also provides a procedure in section 103(b) of the conference agreement for excluding high Btu gas which is only comprised of mixtures of synthetic and natural gas. Such high Btu gas shall be treated as an alternative fuel if the person planning to use such gas for a MFBI or powerplant files a certification with the Secretary, together with such supporting data as the Secretary may require. The person certifying must clearly demonstrate he has complied fully with conditions (A) through (D) of section 103(b) of the conference agreement. However, in the case of condition (D), he need only obtain all pertinent approvals relative to the construction of the synthetic fuels facility in order to begin construction, including Federal, State, and local approvals and, where appropriate, those of Indian tribes. But he cannot thereafter operate that plant until he has also certified to the Secretary that he has obtained not only the construction approvals, but also all approvals relative to the actual operation or use of such facility. Provision is also made for an annual report by such user.

In the case of an electric powerplant or major fuel-burning installation that cannot initially satisfy the requirements of section 103(b), the conference agreement provided temporary exemptions pursuant to section 211(b) or 311(b) of this Act for this purpose. The conditions set forth therein would, of course, have to be satisfied.

The conference agreement defines an "electric powerplant" as a stationary electric generating unit consisting of a boiler, gas turbine, or combined cycle unit, that produces electricity for sale or exchange. The unit must be by design capable of a fuel heat input rate of 100 million Btu's per hour or greater, or be an aggregation of one of more units which together are capable of a fuel input rate of 250 million Btu's per hour, or greater. The emphasis is on the unit. There may be several units comprising a generating facility all of which taken individually are under the threshold, but considered together meet the aggregation test. They would then be subject to the prohibitions. The Secretary may exclude from aggregation units of less than 100 million Btu's per hour where he, by rule, deems appropriate.

Excluded are nuclear generating units subject to the licensing jurisdiction of the Nuclear Regulatory Commission and any cogeneration unit which the Secretary determines on a case-by-case basis sells or exchanges for resale less than one-half of its annual electric power generation.

The conference agreement defines a "major fuel-burning installation" (which does not include an electric powerplant) as any stationary unit consisting of a boiler or a nonboiler. The conference agreement limited the coverage of the definition only to boilers, gas turbines, internal combustion engines, and combined cycle units. The conferees stress that the Secretary has no authority under this Act to regulate combustors, other than boilers, gas turbines, combined cycle units, and internal combustion engines. The size thresholds are the same as for electric powerplants. Again, the emphasis is on the unit, except for aggregation purposes.

Excluded by definition are pumps and compressors used solely in connection with the production, gathering, transmission, storage, and distribution of gases and liquids. Refineries and natural gas processing plants are not excluded. Before the exclusion applies, the owner or operator must certify to the Secretary that they are being used for such purposes and will continue to be so used. The Secretary will prescribe by rule the method, form, and content of the certification. The Secretary will also define by rule what constitutes compressors or pumps for the purpose of this exclusion.

The agreement distinguishes between new and existing electric powerplants and major fuel burning installations.

The new powerplant and MFBI definition includes any that are acquired or constructed after the date of enactment of this Act. It also includes any MFBI and powerplant the construction of which was initiated, or the acquisition thereof occurred, subsequent to April 20, 1977, but before the date of enactment of the conference agreement, unless the Secretary finds that the construction or acquisition of such facility cannot be canceled, rescheduled or modified to comply with the applicable requirements of this Act without incurring significant or operational detriment or imposing substantial financial penalty. In making a determination as to what constitutes a substantial financial penalty, the Secretary should consider the financial impact of the cancellation, rescheduling, or modification on the individual unit and the impact on the person owning, controlling or operating the facility. In this case, the "person" includes a parent corporation.

Provision is made for the Secretary of Energy to find that a plant built or acquired during the period after April 20, 1977 and before the date of enactment of this Act

should not be treated as a new unit. In such case, it will be treated as an existing electric powerplant or MFBI for the purposes of this Act.

Any MFBI or powerplant that does not meet the test of a new MFBI or powerplant shall be an existing MFBI or powerplant for purposes of this Act. The conference substitute provides that an existing MFBI or powerplant which is acquired by another person after April 20, 1977 shall not be treated as a new plant merely by reason of the transfer of ownership. The transfer of title to an existing facility, including controlling stock, does not make a new unit. Once a plant is determined to be a new or an existing plant, it shall always retain that designation for purposes of the prohibitions and exemptions.

Powerplants and MFBI's issued construction or prohibition orders under the Energy Supply and Environmental Coordination Act of 1974 are discussed later in this statement.

The conference agreement also excludes existing MFBI's located on the continental shelf of the United States. In this case, the conferees intend that the continental shelf to be the area beyond the shoreline of the United States. Also excluded are existing MFBI's located in wetlands adjacent to the continental shelf. However, in both situations the exclusion only applies where coal storage is not practicable or such storage would produce adverse effects on environmental quality.

The conference substitute defines the term "construction or acquisition began" in reference to April 20, 1977, or the date of enactment of the Act. In the case of "construction," the conferees intend that the construction be substantial in terms of an actual and meaningful commitment to building the powerplant or MFBI, and more than merely clearing a site or putting in foundation pilings for the unit.

The conference agreement defines "primary energy source" to include the fuels that are used for normal operation of an MFBI or powerplant. Excluded are the minimum amounts required for unit ignition, startup, testing, flame stabilization, and control uses. Also excluded, the the case of powerplants, are the minimum amounts of fuel needed for unanticipated equipment outages, and emergencies that directly affect the public health, safety, or welfare. Both exclusions are subject to rules prescribed by the Secretary. They also are in addition to any exemptions granted elsewhere under the Act.

The conference agreement adopts the House definition of site limitation with the inclusion of the Senate provisions concerning (a) pollution control equipment or devices necessary to assure compliance with applicable environmental requirements, and (b) equipment and facilities necessary to the handling, use, and the storage of coal or other fuels.

The conferees intend that the term "site limitation" be restricted to physical limitations only that exist despite good faith efforts to overcome them. Physical limitations would include, for example, lack of available space for coal storage and handling equipment or for environmental control equipment necessary to assure compliance with applicable environmental requirements. The conferees do not intend that the term "site limitation" include such requirements of Federal, State, or local law as building codes, nuisance or zoning laws, or land use requirements which are considered in connection with specific exemption provisions.

The conference agreement defines the term "applicable environmental requirements" to include, but not be limited to, any government standard, limitation, or other requirement established pursuant to Federal or State law (including any final order of any Federal or State court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment. Included are variances granted or issued in accordance with Federal or State law to the extent consistent with Federal law. The reference to court orders covers only situations where the court construes or enforces Federal and State environmental laws or regulations. It does not cover local laws or regulations unless they are a part of the Federal or State law, etc.

Such definition also includes, but is not limited to, any standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act, the Federal Water Pollution Control Act, the Solid Waste Disposal Act, or National Environmental Policy Act of 1969. They would also include the Wilderness Act, Fish and Wildlife Laws, and the Coastal Zone Management Act.

In agreeing to use the term "applicable environmental requirements," the conferees do not intend to refer only to those requirements which are applicable or in effect on the date of enactment of this Act. Rather, the conferees intend to include within the scope of that term any limitation, standard, prohibition or other requirement which subsequently becomes applicable under any environmental law.

For example, the conferees are aware that several regulatory changes are anticipated under the Clean Air Act. Among these expected changes are the revision of State implementation plans, the regulation of previously unregulated pollutants and sources of pollution, and the revision of certain national standards. The conferees expect and intend such new and revised regulations be counted as "applicable environmental requirements" for the purposes of this Act.

SECTION 104—TERRITORIAL APPLICATION

The conference agreement applies the prohibitions and exemptions of title II and title III to all new and existing powerplants and MFBI's located within the contiguous 48 States and the District of Columbia. The prohibitions and exemptions also apply to new powerplants located in Alaska and to new and existing MFBI's. All other provisions of the conference agreement, including the enforcement provisions, shall apply in all the States, including Alaska and Hawaii, and Puerto Rico, and the territories and possessions of the United States, and the District of Columbia.

TITLE II. NEW FACILITIES

SUBTITLE A—PROHIBITIONS

SECTION 201—NEW ELECTRIC POWERPLANTS

The conference agreement combines the House and Senate provisions prohibiting any person from using, after the effective date of this Act, natural gas or petroleum as a primary energy source in a new powerplant, except as otherwise permitted in subtitle B. It also prohibits such person from constructing a new electric powerplant without the capability to use coal or another alternate fuel.

The conference agreement, however, does not give the Secretary authority to require the specific use of coal or any particular alternate fuel. The choice of such fuel is within the discretion of the person building and operating the new powerplant. If such person fails to obtain an exemption to permit the use of natural gas or petroleum, however, the prohibition will apply and in order to build and operate such powerplant, such person will have to use coal or an alternate fuel or not build and operate the powerplant.

The prohibition applies only to the primary energy source of the powerplant as defined in section 103 of the conference agreement. Thus, the conferees do not intend to preclude the construction of units with dual-fired capability where appropriate.

SECTION 202—NEW MAJOR FUEL-BURNING INSTALLATIONS

Both the House and Senate versions prohibited the use of oil and natural gas by new MFBI boilers. The Senate extended that prohibition to certain new nonboilers. The House authorized the Secretary to prohibit by rule or order the use of oil and gas by certain new MFBI nonboilers. The conferees adopted the House version.

By statute, a person is prohibited from using natural gas or petroleum in each new MFBI unit consisting of a boiler, as a primary energy source, unless an exemption from this prohibition is obtained. As in the case of new powerplants, the Secretary cannot require the specific use of coal or another alternate fuel by the MFBI. The choice is up to the owner or operator of the MFBI. The prohibition applies only to the primary energy source of the MFBI as defined in section 103 of the conference agreement. Thus, the conferees do not intend to preclude the construction of units with dual-fired capability where appropriate.

In the case of any new MFBI, other than a boiler, the conference agreement authorizes the Secretary to prohibit, by rule, categories of nonboilers from using natural gas or petroleum. In identifying categories of new MFBI's to be subject to a prohibition, the Secretary must consider any special circumstances or characteristics of each such category (such as the technical feasibility of burning coal or other fuels) which may militate against the promulgation of the rule or, at a minimum, require that the rule be crafted to overcome potential problem areas. The parenthetical statement of examples of possible special characteristics is not intended to be exhaustive. There are other examples, such as seasonal use of the MFBI's. These are all factors that the DOE must consider and give weight to, when raised.

Each rule will apply to MFBI's qualifying as new under the definitions set forth in this Act as of the date of publication of the proposed rule. In short, a rule is not intended to apply retroactively. The rule does not apply to any new MFBI while a petition for an exemption from such rule is pending. The petition, however, must be filed within 60 days after final promulgation of the rule.

The conference agreement also authorizes the Secretary to prohibit, by order, on a case-by-case basis, the use of natural gas or petroleum by any new nonboiler MFBI which is not within any category established by rule. No order may be issued if the person affected by the proposed order demonstrates that he could obtain an exemption if his MFBI had been subject to a category rule. If the powerplant or MFBI is entitled to a temporary exemption, the Secretary shall issue the prohibition but stay its effect during the exemption period, including appropriate extensions. Thus, at the end of the exemption period the prohibition order applies.

Recognizing the fact that the new MFBI's may often be constructed by one person and operated by another, the statutory prohibition runs to the use of the fuel and not the construction of the MFBI. Because it is believed that the operator of the MFBI will be in the best position to seek and obtain an exemption from the prohibition, as such person is more aware of the problems he will face in operating the plant, the conferees did not apply the prohibition against the construction of the MFBI. The conferees intend, however, that the Secretary consider petitions for exemptions at the earliest possible time, namely prior to construction of the MFBI. At the same time, it must be made very clear that no exemption is available to the user on the basis that either he or the

person who built the plant acted with ignorance of the law. Also any person who acts in violation of the law or any rule or order shall not be eligible for an exemption merely because he spent large sums to his detriment.

SUBTITLE B—EXEMPTIONS

SECTION 211—TEMPORARY EXEMPTIONS

Both versions provided for temporary exemptions of up to 5 years.

The Senate version did not provide an exemption for the use of natural gas. The conferees adopted the House version which provided for temporary exemptions, to permit the use of natural gas or petroleum.

Both bills required that the person seeking a temporary exemption clearly demonstrate to the Secretary that such person will qualify for the entire period of the exemption. Unless otherwise specified in the applicable provisions, the Secretary is required to grant an exemption if he finds that the person has clearly met the tests for an exemption. The burden is on the person requesting the temporary or permanent exemption.

In those instances where a temporary exemption is authorized and there is also authorized a permanent exemption with identical criteria if the petitioner demonstrates to the satisfaction of the Secretary that he would be entitled to the temporary exemption, but for the fact that he could not comply within the time provided for such exemption, he is then eligible for the companion permanent exemption.

The conferees intend that the Secretary be flexible enough to grant a permanent or temporary exemption if the person qualifies, even though the person may not qualify for the exemption he requests or for the full time period of the requested exemption. In short, the person should not have to reapply for the exemption, assuming, of course, that the person is willing to accept the other exemption. If he does not, then the Secretary has no choice but to reject the petition.

General temporary exemptions

The criteria for granting a general temporary exemption for new powerplants and MFBI's were similar in both bills. The conference agreement combines them. Thus, a person may apply for, and based on an adequate showing, as determined by the Secretary, obtain exemptions relating to the adequacy and reliability of a supply of coal or other alternate fuels, site limitations, or for environmental reasons. In case of each of the criteria, the petitioner must make a good faith effort to try to comply with the prohibition and show, that despite such efforts, he will be unable to do so for the period of the exemption and thus is eligible for the exemption.

Temporary exemption based upon future use of synthetic fuels

The Senate bill authorized a temporary exemption for the use of natural gas or petroleum if the petitioner was able to show that he would be in compliance at the end of the exemption period by using synthetic fuels. The House had no similar provision.

The conference agreement adopts the Senate provision with some modifications. They provide that the petitioner must clearly show that there will be compliance by the end of the exemption period through the use of synthetic fuels derived from coal or another alternate fuel, and that without the temporary exemption, the petitioner could not comply with the applicable prohibition through the use of such synthetic fuel until the end of the exemption period. The granting of the exemption and its continued application during the exemption period is subject to the petitioner filing and maintaining a compliance plan pursuant to section 214 (b). This plan requires evidence of binding contracts obligating the petitioner and supplier to provide the synthetic gas. In this regard the conferees observe that the supplier or the petitioner may seek to condition any such obligation on the granting by the DOE of the exemption. This is a matter that should be handled by the lawyers for the petitioner and the supplier. The conferees intend that if such reasonable condition is adopted by the parties that the Secretary will view it sympathetically in carrying out his responsibilities.

Temporary public interest exemption

The House bill provided for a temporary and permanent general exemption where the applicant demonstrated that it would further the purposes of the legislation. The exemption was mandatory. The Senate had no comparable provision.

The conference agreement adopts the House provision with modifications authorizing the Secretary, in his discretion, to grant an exemption to use natural gas or petroleum, if he finds that the petitioner has shown that for the entire exemption period it would be in the public interest and consistent with the purposes of the Act to grant the exemption. The exemption is temporary only.

Temporary exemption for the use of petroleum by certain installations

The Senate version excluded from the statutory prohibition in the Senate bill new MFBI's which are incapable of consuming any fuel at a fuel input rate of more than 300 million Btu's per hour. It also provided for a study. The House version prohibited by statute the use of petroleum by new MFBI's which are capable of consuming any fuel at a fuel input rate of 100 million Btu's per hour or more.

The conference substitute adopts the House version. It also adopts a temporary exemption provision. If a petitioner makes a showing substantiated by contractual agreements or other evidence, including a State permit to construct, of firm plans (in the case of new MFBI's with a fuel input of not more than 300 million Btu's per hour) to utilize after the period of exemption coal or another alternate fuel for at least 75 percent of the annual fuel heat input, the Secretary at his discretion, may, before the effective date of this Act or the effective date of the regulations implementing this Act, consider and issue a temporary exemption allowing the MFBI to use petroleum for not more than 5 years.

Duration of temporary exemptions

The conference substitute, except in the case of two temporary exemptions, provides that each exemption shall not exceed 5 years. In the case of temporary exemptions due to inadequate and unreliable supplies of coal or another alternate fuel (sec. 211(a)(1)) the exemption may be up to for 10 years. In the case of the future use of synthetic fuels (sec. 211(b)), the exemption may be extended by the Secretary beyond 5 years on the same basis as the initial exemption was granted, but the total exemption period may not exceed 10 years.

SECTION 212—PERMANENT EXEMPTIONS

Permanent exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

The Senate version authorized general permanent exemptions to permit the use of petroleum, but not natural gas, by either new electric powerplants or new major fuel-burning installations. The House provision provided an exemption from both the petroleum and natural gas prohibitions. The Senate and House criteria are comparable, except that the Senate provided:

(a) that the test period for determining whether or not coal or other fuels will be available is to be the majority of the useful life of the facility;

(b) physical and legal factors criteria; and

(c) coal characteristics must conform with design requirements of the powerplant;

and the House provided;

(a) the test period is to be the useful life of the facility;

(b) site limitation criterion; and

(c) the use of coal or other fuels would preclude obtaining capital.

The conference substitute provides for permanent exemptions from the natural gas and petroleum prohibitions, except where specifically noted by statute. The conference agreement combines with some modification most of the Senate and House criteria as a basis for granting a general permanent exemption for a new electric powerplant or major fuel-burning installation. The physical and legal factors criterion of the Senate was not adopted.

Just as in the case of temporary exemptions, the petitioner must make a good faith effort to try to comply with the prohibition and show that despite such efforts, he will be unable to do so for the period of the exemption and thus is eligible for the exemption.

The conference agreement adopts the House test of coal availability. However, when it is shown on a case-by-case basis that coal would not be immediately "available" but would become "available" within the first 10 years of operation of the powerplant or MFBI, construction with a dual-fired fuel capability would be required in order to build and operate the facility and a temporary exemption to use petroleum or natural gas would be granted for the necessary initial years of operation until the coal was available. This would all be determined by the DOE, after the proper showing by the applicant. If it is shown that coal will not become available at anytime during the first 10 years, a permanent exemption shall be granted.

Permanent exemption due to certain State or local requirements

The Senate authorized a permanent exemption to use petroleum or natural gas where DOE finds—

(a) that compliance with legal factors established pursuant to Federal and State law would be feasible, but compliance with local legal requirements would not be feasible, and

(b) compliance with the statutory prohibitions would not be in the public interest or would not be of significant value in serving the purposes of the Act.

The House had no comparable provision.

The conference agreement authorizes, in the discretion of the Secretary, a permanent exemption where it is demonstrated that a new powerplant or MFBI cannot comply with the prohibitions because of the existence of a State law or a local law (other than a building code, or nuisance or zoning law) which would prevent the construction or operation of such facility using coal or another alternate fuel with respect to the proposed site of the powerplant or installation, and that the exemption would be in the public interest and consistent with the purposes of this Act. This provision could include environmental laws not covered by the definition of "applicable environmental requirements" in section 103 of this Act. In the case of a powerplant, it also must be shown that there is no reasonable alternative site for the facility which meets the criteria for a general permanent exemption.

The conferees intend that the Secretary determine the purposes of the State or local law and he certainly should not grant an exemption under this provision where it is clear that such law was established, for example, to aid the affected powerplant or installation to preclude the use of coal or alternate fuels in preference for natural gas or petroleum in order to evade the policies, pur-

poses, and prohibitions of this Act. The conferees are particularly concerned about any collusive practices in this regard. The conferees stress that the granting of any petition for such an exemption is entirely discretionary with the Secretary.

Permanent exemption for cogeneration

The conference agreement combines the House and Senate provisions and authorizes, in the discretion of the Secretary, permanent exemptions for new cogeneration facilities.

Permanent exemption for certain fuel mixtures containing natural gas or petroleum

The conference agreement combines the Senate and House provisions providing for a permanent exemption to permit the use of mixtures of coal or another alternate fuel and natural gas or petroleum. The granting of such exemptions is conditioned on the use of natural gas or petroleum in minimum percentages necessary to maintain reliability of operation consistent with maintaining a reasonable level of fuel efficiency.

In the case of new major fuel-burning installations, the percentage shall be no less than 25 percent of the total Btu heat input.

Permanent exemption for emergency purposes

The conference agreement adopts the Senate provisions with modification providing for a permanent exemption for the use of petroleum or natural gas by new electric powerplants or major fuel-burning installations where operated only for emergency purposes. The Secretary would define by rule what constitutes emergency purposes.

Permanent exemption for powerplants necessary to maintain reliability of service

The conference agreement adopts the Senate provision with modifications providing for a permanent exemption for the use of natural gas or petroleum by a new electric powerplant where necessary to prevent impairment of reliability of service. The petitioner must demonstrate that he cannot obtain a general exemption in the time required to prevent impairment of service.

Permanent exemption for peakload powerplants

Both versions allowed a permanent exemption for use of petroleum for new peakload powerplants. The Senate version also allowed such an exemption for use of natural gas for peakload purposes if the Environmental Protection Agency certified such use for air quality reasons.

The conference agreement combines these versions with modifications. To use petroleum for peakload purposes and to build a peakload powerplant without the capability to use coal or an alternate fuel as a primary energy source, the petitioner must certify that the proposed powerplant will operate solely for peakload purposes. The Secretary will prescribe the form and manner of certification. The certification runs for the life of the powerplant. All certifications are subject, of course, to 18 U.S.C. 1001.

In order to use natural gas for a peakload powerplant and to construct one without the capability to use coal or an alternate fuel as the primary energy source, the petitioner must obtain the above certification. In addition, the EPA or the appropriate State air quality agency must certify that the use of coal or other available alternate fuels as a primary energy source will cause or contribute to a concentration, in an air quality control region or in any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded. It is important to stress that the EPA or State agency must consider whether other available alternate fuels could be used before making such a certification.

Permanent exemption for intermediate load powerplants

The conference agreement adopts a modified Senate provision authorizing the Secretary, in his discretion, to provide a permanent exemption from the prohibitions against the use of petroleum only for new intermediate load powerplants. The petitioner, to be eligible for the exemption to use petroleum, must demonstrate that—

there exists an EPA or State certification of the type required for peakload powerplants seeking to use natural gas;

the proposed powerplant will be operated solely as an intermediate load powerplant;

the net heat input rate for the powerplant will be maintained continuously at not more than 9,500 Btu's per kilowatt hour throughout the plant's useful life;

there is no reasonable alternate site for the powerplant which meets the criteria for a general exemption;

the powerplant will be constructed with the capability of using synthetic fuels as the primary energy source; and

the powerplant is constructed and operated only to replace equivalent powerplant capacity of existing powerplants which use natural gas or petroleum of the petitioner.

In addition, the applicant must intend to use synthetic fuels derived from coal or another alternate fuel at the earliest practicable time.

The permanent exemption shall terminate automatically whenever the Secretary finds that a suitable synthetic fuel supply is available. In addition, no general permanent exemption under section 211 would be available for such new intermediate load powerplant.

Permanent exemptions for installations based upon product or process requirements

The conference agreement combines the House and Senate versions granting permanent exemptions to permit the use of petroleum or natural gas by any new MFBI where the petitioner demonstrates that the use of coal or other alternate fuels is not technically feasible due to the need to maintain satisfactory control over product quality and the substitution of steam is not technically feasible due to operational requirements.

It is important to emphasize here and elsewhere that the petitioner must not only show that coal will not meet this test, but also that other available alternate fuels are also unable to meet this test.

Permanent exemptions for installations necessary to meet scheduled equipment outages

The Senate version provided an exemption for standby purposes. The House had no such provision.

The conference agreement authorizes the Secretary, in his discretion, to permit a permanent exemption for an MFBI to use natural gas or petroleum where the petitioner demonstrates that the installation will be needed solely for scheduled equipment outages, as defined. This provision does not relate to emergencies, but it is intended to provide needed flexibility for the petitioner to install a unit which would be used on a temporary basis when scheduled repairs or maintenance are required for another MFBI.

SECTION 213—GENERAL REQUIREMENT FOR TEMPORARY AND PERMANENT EXEMPTIONS

Use of mixtures or fluidized bed combustion not feasible

This conference agreement adopts a modified Senate provision that the Secretary, in granting permanent exemptions in all but two situations, must find that the petitioner has demonstrated that the use of a mixture of petroleum and coal or other alternate fuels is not economically or technically feasible. Such exemptions may only be granted if the Secretary fails to find that the use of fluidized bed combustion is economically and technically feasible. This provision does not apply in the case of the mixture and peakload exemptions.

State approval required for powerplant

The conference agreement adopts a modified House provision which requires that, in the case of a powerplant, the State regulatory authority that has jurisdiction over the proposed powerplant for ratemaking purposes must approve the proposed powerplant before the requested exemption can take effect. Thus, the petitioner can file for an exemption and the DOE shall consider the petition, but any exemption granted by the DOE for such a powerplant prior to State approval shall not take effect until the State regulatory authority acts and approves the powerplant construction or operation and informs the DOE. This requirement only applies to powerplants that are subject to the State regulatory authority.

The provision makes it clear that there are two types of approvals. One is for construction. The other is for use. The second is not required to begin construction. Both are required to use petroleum or natural gas.

No alternative power supply in the case of a powerplant

Both versions contain an alternative power supply test for powerplant exemptions. However, the Senate test did not apply to all exemptions. The House test required a certification by the Federal Energy Regulatory Commission.

The conference agreement melds these versions to require such a test for all temporary or permanent exemptions, except in the case of a cogeneration or peakload exemption. The petitioner seeking the exemption would be required to demonstrate and the Secretary must determine that, despite good faith efforts, no alternative supply of electric power is available within a reasonable distance to the petitioner's utility system and at a reasonable cost without impairing reliability of service. In granting or denying the exemption the Secretary would have to give consideration to the short- and long-term reliability of such power. Ultimately, the test of "reasonableness" will be made by the Secretary, but, of course, the conferees intend and expect that the Secretary will not be arbitrary in making these determinations. The Secretary also is required to consult with the Federal Energy Regulatory Commission before making such determinations.

Nothing in this section empowers the Secretary to order, as a condition of any exemption, pooling or wheeling, except as is authorized to do so pursuant to other law.

SECTION 214—TERMS AND CONDITIONS; COMPLIANCE PLANS

The conference agreement combines the compliance plan provision of the Senate and the terms and conditions provisions of the House into one section.

This section requires that any exemption from any prohibition under subtitle B shall be on such terms and conditions as the Secretary of Energy determines appropriate, including terms and conditions requiring the use of effective fuel conservation which are practicable and consistent with the purposes of this Act. In the case of temporary exemptions, the terms and conditions are also to be designed to insure that when the exemption period ends, the powerplant or installation will be in compliance with the prohibition.

Compliance plans will include a compliance schedule and evidence of binding contracts for fuels or facilities to produce fuel in order to comply. They must be approved by the Secretary. Such plans must be filed before the exemption is granted, and they may be required to be revised periodically.

TITLE III. EXISTING FACILITIES

SUBTITLE A—PROHIBITIONS

SECTION 301—EXISTING ELECTRIC POWERPLANTS—GENERAL PROHIBITIONS

Both bills prohibited existing electric powerplants from using natural gas on or after January 1, 1990.

The conference agreement also provides a statutory prohibition against conversion to natural gas by an existing electric powerplant that did not use natural gas as a primary energy source at any time during calendar year 1977.

The conference agreement adopts the Senate and House prohibition after the effective date, against an existing electric powerplant using natural gas in greater proportions than used in calendar years 1974 through 1976, or if the powerplant began operation on or after January 1, 1974, in greater proportions than used during the first two calendar years of operation.

The conference agreement adopts the House provision authorizing a stay of the 1990 prohibition on the use of natural gas by an existing electric powerplant pending resolution of any petition for an exemption from such prohibition. Such petition may be filed at any time after the effective date of the act, but it must be filed at least 1 year prior to January 1, 1990.

Authority of Secretary to prohibit where coal or alternate fuel capability exists

The conference agreement adopts with modification the House provision which authorizes the Secretary to issue prohibitions (by order or rule) pursuant to section 303 against any existing powerplant using natural gas or petroleum if he finds prior to issuing the proposed rule or order that the powerplant has, or previously had, the technical capability to use coal or another alternate fuel.

Before issuing a notice of a proposed rule or order prohibiting the use of natural gas or oil, the Secretary has the burden to find, at the time of issuance of such proposed rule or order, that the existing powerplant is technically capable or was technically capable of using coal as a primary energy source. Any reasonable evidence of such capability, such as engineering drawings, will suffice in meeting this burden. It is not intended that the Secretary go through any hearings or exhaustive investigation to make this initial finding. It is in essence a paper search. The final rule or order, of course, concerning this test must be supported by substantial evidence. The conferees intend, however, that by the term "technical capability" that there must have existed or exists a real capability to use coal or coal derivatives. For example, the facility must not only be able or have been able to burn synthetic gas from coal or other sources, but the facilities to do so must exist or have existed including the facility to convert the coal or other fuel to such gas.

When the final rule or order is issued, the Secretary must find that the powerplant has such capability or could have without substantial physical modification or substantial reduction in the rated capacity of the powerplant. In addition, the Secretary must find that it is financially feasible for such powerplant to use coal or another alternate fuel. The Secretary could not issue a final order if such units would have been granted an exemption had the prohibition been established by rule rather than by order.

The Secretary is not authorized by this Act to require the building of a synthetic fuels facility by the powerplant or MFBI.

One test of financial feasibility, in the case MFBI's, is the effect of the proposed rule or order in the operations of the facilities at which the unit is located and whether any required modification to effect the use of coal or another alternative fuel can take place without unreasonable shutdown of the entire facility.

Authority of the Secretary to prohibit excessive use in mixtures

The conference agreement combines the House and Senate provisions authorizing the Secretary to limit by order, on a case-by-case basis, the amounts of petroleum or natural gas used by an existing electric powerplant unit in mixtures with coal or other fuels, after a finding of technical and financial feasibility. The order would require that such amounts not be in excess of the amounts necessary to maintain reliability of operation of such unit consistent with maintaining a reasonable level of fuel efficiency.

SECTION 302—EXISTING MAJOR FUEL-BURNING INSTALLATION

Authority of Secretary to prohibit where coal or alternate fuel capability exists

The conference agreement authorizes the Secretary to issue prohibitions (by order or rule) pursuant to section 303 against an existing major fuel-burning installation unit where coal or alternate fuel capability exists in the same manner as is provided for existing powerplants. As in the case of new facilities, if the powerplant or MFBI is entitled to a temporary exemption, the Secretary shall issue the prohibition but stay its effect during the exemption period including appropriate extensions. Thus, at the end of the exemption period the prohibition order applies.

Authority of Secretary to prohibit excessive use in mixtures

The conference agreement combines the House and Senate provisions authorizing the Secretary to limit by order, on a case-by-case basis, the amounts of petroleum or natural gas used by an existing MFBI in mixtures with coal or other fuels. The order would require that such amounts not exceed the amounts necessary to maintain reliability of operation of that unit consistent with maintaining a reasonable level of fuel efficiency, except that the amount of natural gas or petroleum used in such mixture shall equal either (a) 25 percent of the total Btu heat input, or (b) a greater percentage where needed to maintain reliability of operation consistent with a reasonable fuel efficiency.

SECTION 303—RULES RELATING TO CASE-BY-CASE AND CATEGORY PROHIBITIONS

The conference agreement authorizes the Secretary to issue (1) case-by-case orders and (2) rules by category prohibiting certain existing electric powerplants or major fuel-burning installations from using natural gas and petroleum. (All existing powerplants would be prohibited by statute from using natural gas after January 1, 1990.)

The conference agreement restricts the use of category rules to existing MFBI's equal to or greater than 300 million Btu's per hour.

The proposed rules shall identify each affected unit which was initially constructed or later modified to use coal or another alternate fuel. In issuing final rules, the Secretary must find that each unit is technically and financially capable of using coal or alternate fuels without substantial physical modification of the unit or without suffering substantial downgrading of the rated capacity of the unit.

In the case of orders, the Secretary shall not issue the final order if the powerplant or MFBI would be eligible for an exemption if one had been requested. However, in the case of temporary exemptions, the Secretary shall issue a final order which will be effective at the end of the exemption period. Also, the powerplant and MFBI is required to comply with the conditions for which the exemption could be granted and the terms and conditions of section 314(a). The latter section requires compliance plans in the case of some exemptions. In the case of rules by category, exemptions from the rules are to be sought and granted or denied after the rule is finalized in the same manner as it would be sought from an exemption from a statutory prohibition.

In prescribing any rule, the Secretary must take into account, just as in the case of new MFBI's, special circumstances or characteristics, where appropriate, of each category of powerplants or installations. For example, size, age, seasonal operations or use, and geographic location, are all factors that the DOE must consider and give weight to, when raised.

SUBTITLE B—EXEMPTIONS

SECTION 311—TEMPORARY EXEMPTIONS

As noted under section 211 of this statement, both bills required that the person seeking a temporary exemption, clearly demonstrate to the Secretary that such person will qualify for an exemption for the entire period of the exemption. Unless otherwise specified in the applicable provisions, the Secretary is required to grant an exemption if he finds that the person has clearly met the tests for the exemption. The burden is on the person requesting the exemption.

The conferees intend that the Secretary be flexible enough to grant an exemption if the person qualifies, even though the person may not qualify for the exemption he requests. In short, the person should not have to reapply for the exemption, assuming, of course, that the person is willing to accept another exemption. If he does not, then the Secretary has no choice but to reject the request.

The conference agreement adopts the same criteria for the temporary exemption for existing powerplants and major fuel-burning installations as applies to new powerplants and MFBI's under title II of this Act. Similarly, the provisions for synthetic fuels, and public interest temporary exemptions for new powerplants and MFBI's are identical in substance to those for existing powerplants and MFBI's.

Temporary exemption based upon use of innovative technologies

The conference agreement adopts a modified Senate provision under which a temporary exemption to use natural gas or petroleum for an existing electric powerplant or major fuel-burning installation shall be granted where the petitioner demonstrates that such powerplant or MFBI will comply with the prohibitions by using innovative technologies, as determined by the Secretary, for the use of coal or other fuels or facilities. A compliance plan, approved by the Secretary, is required before the exemption is effective. There also must be binding contracts for fuels or facilities which will permit the unit to comply with the prohibition.

Temporary exemption for units to be retired

The conference agreement adopts a modified Senate provision granting temporary retirement exemptions for an existing electric powerplant or major fuel-burning installation to use natural gas or petroleum. A compliance plan, approved by the Secretary, would be required under which such unit would be retired. Such unit would not be eligible for any other temporary or permanent exemption once this exemption is granted. In the case of existing powerplants, no retirement exemption to use natural gas shall extend beyond December 31, 1994.

Temporary exemption for peakload powerplants

The conference agreement adopts the provision granting a temporary exemption to use natural gas or petroleum in an existing powerplant where the applicant certifies to the Secretary that such powerplant will

be used solely for peakload purposes during the exemption period. This exemption cannot extend beyond December 31, 1994.

Temporary exemption for powerplants where necessary to maintain reliability of service

The conference agreement provides a temporary exemption to use natural gas or petroleum by an existing powerplant where the applicant demonstrates that such exemption is necessary to prevent impairment of reliability of service.

No exemption or renewal thereof can extend beyond December 31, 1994. However, such powerplant would be eligible to apply for a permanent peakload exemption to use petroleum beyond such date but no other exemption is authorized.

Duration of temporary exemptions

The conference agreement limits the period temporary exemptions to a maximum of 5 years, except for the synthetic fuels, innovative technology, and reliability exemptions which may be renewed under specified conditions for up to an additional 5 years. The temporary exemption concerning the availability of an adequate and reliable supply of coal may be initially granted for a period of not to exceed 10 years.

SECTION 312—PERMANENT EXEMPTIONS

Permanent exemption due to lack of alternative fuel supply, site limitations, or environmental requirements

The Senate provision granted a general permanent exemption for existing powerplants and MFBI's from the petroleum, but not natural gas prohibition. The Senate and House criteria are comparable, except that the Senate provides (a) that the test period for determining whether or not coal or other fuels will be available is the majority of the remaining useful life of the facility; (b) physical and legal factors criteria; and (c) that coal must conform with design requirements.

The House provision provides for such an exemption from both the petroleum and natural gas prohibitions. The House and Senate criteria are comparable, except that the House provides that:

(a) the test period is the useful life of the facility;

(b) site limitation criterion;

(c) in the case of an existing powerplant, FERC certifies that there is no alternative power supply;

(d) in the case of an existing MFBI, the use of coal would preclude obtaining capital.

The conference agreement conforms the Senate and House criteria as a basis for granting a general permanent exemption for an existing electric powerplant or major fuel-burning installation to those for new electric powerplants or major fuel-burning installations.

Permanent exemption due to certain State or local requirements

As in the case of new powerplants and installations, the conference agreement adopts a modified Senate provision authorizing, at the discretion of the Secretary, a permanent exemption where an existing electric powerplant or major fuel-burning installation which cannot comply with a prohibition because of the existence of a State or local requirement. Such exemption also may be obtained due to a local building code or nuisance or zoning law. However, in all cases the petitioner must show that no other permanent or temporary exemption could be granted for such facility.

The conferees intend that the Secretary determine the purposes of the State or local law and he certainly should not grant an exemption under this provision where it is clear that such law was established, for example, to aid the affected powerplant or installation, to preclude the use of coal or alternate fuels in preference for natural gas or petroleum in order to evade the policies, purposes, and prohibitions of this Act. The conferees are particularly concerned about any collusive practices in this regard. The Secretary has discretion here to reject petitions in such situations.

Just as in the case of new powerplants and MFBI's, the exemption must be in the public interest and consistent with the Act's purposes.

Permanent exemption for cogeneration

The conference agreement authorizes, at the Secretary's discretion, permanent exemption for existing cogeneration facilities if the benefits of cogeneration cannot otherwise be obtained, just as in the case of new cogeneration facilities.

Permanent exemption for certain fuel mixtures containing natural gas or petroleum

The conference agreement combines the House and Senate provisions granting a permanent exemption in the case of existing powerplants and major fuel-burning installations to permit the use of mixtures of coal or other fuels and natural gas or petroleum, as for new powerplants and installations. Such exemptions would be conditioned on the minimum percentage necessary to maintain reliability of operation at a reasonable level of fuel efficiency. In the case of existing MFBI's, the percentage shall not be less than 25 percent. However, in the case of existing powerplants, the Secretary may authorize greater percentages of natural gas if he finds that such higher percentage of natural gas would be mixed with synthetic fuels derived from municipal wastes or agricultural wastes and would encourage alternate or new technologies which use renewable sources of energy.

Permanent exemption for emergency purposes

The conference agreement adopts the same modified Senate provision for permanent exemptions for the use of petroleum or natural gas for emergency purposes by an existing electric powerplant or major fuel-burning installation as was adopted for new powerplants and MFBI's.

Permanent exemption for peakload powerplants

The conference agreement adopts a modified Senate provision granting a permanent exemption to use natural gas or petroleum where the petitioner demonstrates that the existing powerplant (a) will be operated solely for peakload purposes; (b) denial of the exemption is likely to impair reliability of service; and (c) modification to meet the prohibition is technically infeasible or would result in unreasonable expense to the petitioner.

Permanent exemption for intermediate load powerplants

The conference agreement conforms the permanent exemption for existing intermediate load electric powerplants to that for new intermediate load electric powerplants. However, the alternative site and reliability of service test would not apply. A powerplant granted an exemption under section 312(g) for intermediate load purposes is not eligible for an exemption under section 312(a) provision.

Permanent exemption for certain powerplants with capacities of less than 250 million Btu's per hour

The Senate provision did not cover existing electric powerplants with fuel heat input rates between 100 and 200 million Btu's per hour which are not capable of using coal or other fuel than natural gas or petroleum. The House provision made such powerplants subject to the prohibitions.

The conference agreement adopts the House provision, but provides a permanent exemption to permit the use of natural gas or petroleum by an existing electric powerplant if the petiitoner demonstrates that it (a) has a fuel input rate between 100 and 250 million Btu's per hour; (b) was in operation as a baseload operation on April 20, 1977; and (c) is not capable of consuming coal without substantial physical modification of the unit, or without suffering substantial reduction in the rated capacity of the unit, as determined by the Secretary.

This exemption would apply only to category rules or orders issued to such size powerplants prior to January 1, 1990, concerning the use of natural gas.

Permanent exemption for the use of LNG by certain powerplants

The conference agreement adopts the House provision as modified to grant a permanent exemption for the use of liquefied natural gas if the Environmental Protection Agency or State appropriate air pollution control agency certifies that use of coal by such powerplant will cause or contribute to a concentration in an air quality control region or any area thereof of a pollutant for which a natural ambient air quality standard is or would be exceeded and that the use of coal would not comply with applicable environmental requirements.

Permanent exemption for installations served by certain international pipelines

The conference agreement adopts a modified Senate provision granting a permanent exemption for existing MFBI's to use natural gas if the petitioner demonstrates and the Secretary finds that—

the MFBI's primary source of natural gas is under a contract with a pipeline originating in Canada which cannot be canceled by the petitioner without substantial financial penalty;

the pipeline was in existence and providing natural gas to the applicant before April 20, 1977;

the pipeline serves high priority residential users in the United States who consume less than 50 Mcf of natural gas per day on a peak day to whom service would be jeopardized if it is terminated;

the revenues from the transportation and sale of the gas are essential to the economic viability of the pipeline;

the exemption is consistent with the purposes of this Act; and

the prohibition would not result in making the gas from the international pipeline available for any other use in the United States.

Permanent exemption for installations based upon process requirement

The conference agreement grants a permanent exemption to permit the use of petroleum or natural gas by an existing major fuel-burning installation where necessary to meet product or process requirements, as in the case of new major fuel-burning installations.

Permanent exemption for installations necessary to meet scheduled equipment outages

The conference agreement includes an exemption for scheduled equipment outages for existing MFBI's, as in the case of new MFBI's.

SECTION 313—GENERAL REQUIREMENTS FOR EXEMPTIONS

Use of mixtures or fluidized bed combustion is not feasible

As in the case of new facilities, the conference agreement adopts the Senate provision requiring that before the Secretary can approve any permanent exemption for an existing powerplant or major fuel burning installation (a) the applicant must demonstrate that the use of a mixture of natural gas or petroleum and "coal or other fuel" is not

technically and economically feasible, and (b) the Secretary has not made a finding that fluidized bed combustion of coal is technically or economically feasible. However, this requirement would not apply to sections 312 (b), (f), (i), or (j).

No alternative power supply in the case of a powerplant

The conference agreement requires that existing powerplants seeking permanent exemptions pursuant to sections 312 (b) and (g) must meet the same "no alternative power supply" test as in the case of new powerplants.

Terms and conditions; compliance plans

The conference agreement combines the Senate and House provisions regarding compliance plans and other terms and conditions for existing facilities to conform to the provisions for new facilities.

TITLE IV. ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

SECTION 401—AUTHORITY TO PROHIBIT USE OF NATURAL GAS IN CERTAIN BOILERS USED FOR SPACE HEATING

The conference agreement adopts the House provision as modified to authorize the Secretary to prohibit, by rule, the use of natural gas in existing boilers (other than a major fuel-burning installation) for space heating purposes where such boiler consumes 300 Mcf or more of natural gas on a peak day, and such boiler had, or has, the technical capability to use petroleum as of the date of publication of the rule. He must also find that the boiler has the technical capability to use petroleum as a primary energy source, or it could have such capability without substantial physical modification of the boiler or substantial reduction in the rated capacity of the boiler, that it is financially feasible to use petroleum, and such prohibition is consistent with the purposes of this Act. Each existing boiler must be identified in the proposed rule.

The provision also authorizes the Secretary to prohibit by rule or order the use of natural gas in a new boiler (other than a major fuel burning installation) for space heating purposes where such boiler consumes 300 Mcf or more of natural gas on a peak day and where the prohibition would be consistent with the purposes of the Act. New boilers mean any for which no commitment for construction or acquisition has occurred, as of the date of publication of the proposed rule or order. Provision is made for issuance of the prohibition by rule or order.

The Secretary must exempt any person from this rule if the person demonstrates that an adequate and reliable source of petroleum is not likely to be available during the period of the exemption. The Secretary determines the period or length of the exemption based on the record.

SECTION 402—PROHIBITION ON USE OF NATURAL GAS FOR DECORATIVE OUTDOOR LIGHTING

The conference agreement adopts the House provision as modified to prohibit by statute the installation of new outdoor lighting fixtures using natural gas and to direct the Secretary, in the case of existing units, to prohibit natural gas pipelines and local distribution companies from providing natural gas to residential, commercial, and industrial customers for use in outdoor lighting. (Outdoor lighting is defined as lighting by any stationary source not located inside any building.)

Within 180 days after enactment of this Act, the Secretary shall, by rule, prohibit local distribution companies from providing natural gas service for outdoor lighting. The prohibition is effective on date of promulgation of the rule unless a later effective date is provided. In the case of any industrial or commercial structure the rule is effective 180 days after the rule is promulgated, unless, in the case of such industrial user, natural gas was not used for such purposes on the date of enactment. In such cases, it takes effect on publication. By statute, the prohibition applies to municipal and residential outdoor lights as of January 1, 1982.

The Secretary shall exempt any new or existing memorial lights or lights of historical significance upon petition to the Secretary and a certification made by a Federal, State, or local government agency or by an appropriate historic association. Similar exemptions are available for existing commercial lighting units which are of a traditional nature and which conform with cultural or architectural style of the area where the light is located. Replacement units are permitted.

The conferees intend that the Secretary's enforcement of civil penalties be reasonable. For instance, lights that are located on the users side of the meter, and are not visible from the street present problems to a company in enforcing the ban. Similarly, a light that was turned off by the company, and later reconnected by the residential user may be difficult to detect. The Secretary should provide some guidelines.

Provision is made for exemptions for industrial, residential, and municipal users for reasons of safety, time to obtain substitute lighting, costs, and because the exemption is in the public interest and consistent with the Act's purposes. The Secretary will establish criteria for exemptions. Anyone can apply for an exemption and can request a public hearing

The authority to administer the program, in accordance with the bill, may be delegated by the Secretary to the appropriate regulatory authority of the State. The Secretary is encouraged to do so.

Under the conference agreement the penalties are not applicable to residential users. Civil penalties for violations are to be assessed against the local distribution company up to a maximum of $500 per any gaslight.

In the case of industrial users who violate the prohibitions the civil penalty shall be up to $500 per day for each gaslight with a maximum of $5,000.

The penalties apply only where the violator knows or reasonably should have known of the violation.

The conference agreement provides that rulemaking concerning each prohibition and the granting of orders shall be carried out in accordance with 5 U.S.C. 553. The provisions of section 701 of this Act are not applicable. The intent is to provide informal procedures, particularly in the case of exemptions.

SECTION 403—CONSERVATION IN FEDERAL FACILITIES, CONTRACTS AND FINANCIAL ASSISTANCE PROGRAMS

The conference agreement combines the Senate and House versions to provide that all Federal agencies, including corporations, like TVA, and such agencies as the various components of the DOE, and other executive branch entities, are subject to the prohibitions of the Act applicable to powerplants and major fuel-burning installations. These agencies could also obtain exemptions in accordance with the procedures of section 701, but civil and criminal penalties would not apply. The President may exempt an agency or delay application where it is in the paramount interests of the United States or where funds requested by the President from the Congress have not been appropriated. The first situation only applies to purely military agencies and functions.

The President is also required to issue an Executive order within 30 days after the effective date of this Act requiring Federal agencies which provide any form of Federal financial assistance through loans, grants, contracts, and loan guarantees to take steps to effectuate the purposes of this Act relating to the conservation of petroleum and natural gas, by rule, within 180 days after the issuance of the order. The order has to set forth procedures, sanctions, penalties and other provisions necessary to carry out this requirement effectively. The President is authorized to exempt specific grants, loans, contracts, or other forms of financial assistance from this requirement, but before doing so he must give the Congress at least 60 days notice.

The conference agreement also adopts a provision concerning Federal activities to make it clear that a Federal agency cannot use as a condition of financial assistance or contract activities to require compliance by any person or facility with any prohibition under other sections of this Act if such person or facility has been specifically determined by the Secretary to be subject to such prohibition or has been exempted from the application of such prohibition.

The conferees intend that federally owned, operated, or controlled electric power plants, such as those of TVA, and MFBI's and boilers comply with the prohibitions, et cetera, of this Act to the same extent and manner as non-Federal entities, including the States. The conferees also intend that in providing financial assistance, Federal agencies should insure that such assistance is not being used to encourage the use of natural gas and petroleum, where other energy fuels or methods are available.

SECTION 404—EMERGENCY AUTHORITIES

Coal allocation authority

If the President (a) declares a severe energy supply interruption (as defined in section 3(8) of the Energy Policy and Conservation Act) or (b) finds a national or regional fuel supply shortage exists or may exist which he determines is likely to be of significant scope and duration and of an emergency nature, and which causes or may cause a major adverse impact on public health, safety or welfare or on the economy, and which results, or is likely to result, from an interruption in the supply of coal or from sabotage or an act of God, he may by order allocate coal, but not any fuel derivatives. The allocation would be for the use of any electric powerplant or MFBI to insure reliability of service or to prevent unemployment, or protect public health, safety, or welfare. The order could require the transportation of coal. The allocation order would include such terms and conditions as the President shall prescribe.

Emergency prohibition or use of natural gas or petroleum

The President also is authorized to issue an order halting the use of natural gas or petroleum by powerplants and MFBI is during an emergency declared pursuant to section 3(8) of Energy Policy and Conservation Act. Any suspension of environmental requirements must be in accordance with section 110(f) of the Clean Air Act.

Emergency stays

The President may also stay the applications of any provision of this Act or any rule or order issued thereunder, if he finds that an emergency exists due to national, regional, or systemwide shortages of coal or other alternate fuel, or there is a disruption of transportation facilities and that the emergency is likely to affect reliability of service of a powerplant.

Duration of emergency orders

In all cases, the orders by the President shall not be effective for longer than the interruption or emergency or 90 days, whichever is less. The Presidential order may be extended through an energy action which will be subject to review by the Congress. Any order issued shall remain in effect throughout the 15-day period during which

any order is subject to Congressional review under section 551 of EPCA.

Delegation of authority prohibited

The President cannot delegate the authority to issue any order but he can direct Federal agencies to issue rules or regulations or take other actions necessary to implement his orders.

Publication and reports to Congress of orders

Each order must be published in the Federal Register and the President shall, to the greatest extent practicable, before issuing the order but in no event later than 5 days after doing so, report to the Congress of his intention to issue the order and then state his reasons for it.

Emergency uses of natural gas or petroleum

Authority is provided to use natural gas or petroleum to operate a peakload electric powerplant and major fuel-burning installation during temporary emergencies. Operators of such powerplants and MFBI's must notify the Secretary within 24 hours that the emergency exists. The Secretary shall prescribe by rule what constitutes a temporary emergency. The powerplant and MFBI must halt its use of natural gas or petroleum if the Secretary so orders. The intent of the conferees is to provide a quick and informal procedure to meet temporary emergencies that may occur. It is expected that the procedure will be used sparingly. If the Secretary does not agree that the emergency exists or that its duration has ended, then such use must be halted.

The provisions of section 701 of this Act do not apply to this section.

SECTION 405—AUTHORITY TO RESTRICT INCREASED USES OF PETROLEUM BY EXISTING POWERPLANTS

The conference agreement combines the Senate and House provisions directing the Secretary to prohibit, by rule, existing electric powerplants which during calendar year 1977 used coal or another alternate fuel, or a combination of petroleum and coal or another alternate fuel from increasing their use of petroleum without a Federal permit. Such permits are to be issued only where a powerplant cannot comply with requirements of the Clean Air Act and the appropriate State regulatory authority has certified the use of petroleum is necessary to prevent impairment of reliability of service.

TITLE V. SYSTEMS COMPLIANCE OPTION

SECTION 501—ELECTRIC UTILITY SYSTEM COMPLIANCE OPTION

The conference agreement adopts the Senate provision as modified to authorize a system compliance option for existing electric powerplants using either interstate or intrastate natural gas and subject to the 1990 statutory prohibition on the use of natural gas. Election of this option would preclude any other exemption except as otherwise expressly permitted. The Secretary shall approve this option if the compliance plan meets certain requirements.

First, all utilities that elect this option and which have powerplants subject to the 1990 statutory deadline on the use of natural gas shall submit a system compliance plan by January 1, 1980, identifying the powerplants subject to the prohibition, those likely to fully comply by that date, and those for which a temporary or permanent exemption would otherwise be sought. The plan must contain a 10-year forecast of electricity demand, a 10-year construction forecast, including modification of existing units, and a 10-year financial plan. The plan must be updated annually and may be modified at such times and to the extent provided under rules provided by the Secretary.

Second, the plan must contain a commitment that no new baseload electric powerplants will be constructed by such utility after the date of enactment of this Act which will use natural gas or petroleum as their primary energy source.

Third, in lieu of all other exemptions (except the emergency exemption, which use would be identified in the plan), the plan must provide for an orderly progression of phasing out all powerplants within the entire electric utility system which use natural gas into either intermediate load or peakload powerplants by January 1, 1995. In addition, such plan must provide for final termination of the use of natural gas by all such plants in the system by December 31, 1999, except where provided for peakload powerplants. The Secretary is authorized to extend this deadline up to 5 years beyond 1999 for any unit in the system which satisfies the criteria established for peakload and emergency exemptions.

Fourth, the plan must provide for a reduction of natural gas by January 1, 1990, throughout the utility's system.

Fifth, the plan must provide for a reduction by January 1, 1990, of the use of natural gas to (a) 20 percent or less of the base period usage, or (b) the utility system peakload requirement, whichever is less.

The base period usage is the quantity of gas used in 1976 for all generation of electricity on the system plus one-half of the quantities used during the first 24-calendar months after being placed in service by powerplants owned or operated by such utility and placed in service after July 1, 1976. The utility system peakload operation requirement is a provision allowing averaging of peakload usage of gas units over the entire system. If no single unit were allowed to operate in excess of 1,500 hours, the utility would be forced to operate less efficient units for peakload service as more efficient units neared the 1,500 hour limit. This provision would allow, by application of the formula, for averaging the usage of all units, thus saving energy. If the system average does not exceed the 1,500 hour limit, such usage will qualify under the peakload operation requirement.

The plan must provide that there shall be no renewals or extensions of any existing natural gas contract or execution of any such new contracts for the electric utility system, except with the approval of the Secretary. No such contract or extension or renewal may be approved which calls for natural gas to be delivered after December 31, 1999. The Secretary shall approve any new contracts or renewals or extensions, including those under normal escalation clauses or other clauses, if they are needed to insure compliance with the plan.

TITLE VI. FINANCIAL ASSISTANCE

SECTION 601—ASSISTANCE TO AREAS IMPACTED BY INCREASED COAL OR URANIUM PRODUCTION

The conference agreement adopts the Senate provision on impact assistance as modified to provide:

Designation of impacted area

Whenever a Governor of a State identifies within that State an area or areas to be impacted by energy development such as new or existing coal or uranium producing, processing, and transportation industries and demonstrates to the Secretary that:

(a) such development has increased employment by at least 8 percent over the prior year directly (i.e., this does not include increases from non-energy activities, such as a shopping center) from coal or uranium production, processing, or transportation, or is projected to increase employment by at least 8 percent annually over the next 3 years from the same activities;

(b) such increase will require substantial public facilities and services and housing and related energy-impacted resources; and

(c) State and local governments lack the financial and other resources to cope with this increase,

the Governor may designate, subject to the Secretary of Energy's approval, the area as an energy-impacted region and notify the Secretary of Energy and the Secretary of Agriculture.

In making a designation of an energy-impacted area, a Governor must demonstrate that the State and local governments "lack the financial and other resources" to cope with the increased demand for housing, public facilities, and public services. This demonstration is to be based on existing Federal, State, and local financial resources currently available at the time of the designation. Anticipated revenues from aid and tax programs in force at the time of the designation are also to be considered.

The Governor, in demonstrating that State and local governments lack the financial and other resources to cope with this increase, shall take into account all relevant factors, including any increase in State mineral revenues which arise from the same activities but are not available to the energy-impacted region for the purposes of this section.

The Secretary of Energy, after consultation with the Secretary of Agriculture, shall approve the designation of the energy-impacted region by the Governor, if he is satisfied that the criteria (a), (b), and (c) have been demonstrated.

Planning grants

Once approval of the Governor's designation is obtained, the Secretary of Agriculture may promptly make 100 percent Federal planning grants available to the affected States. The total amount of these planning grants shall not exceed 10 percent of the total appropriation for this program in any year.

Planning grants can be made directly to local communities including areawide councils of government, after the Secretary of Agriculture has consulted with the Governor. Such grants should not duplicate or conflict with already existing local, State, Federal, or regional planning efforts being conducted in that area.

Planning grants may be made to the State to update existing plans or to expand existing plans, where such plans are not sufficiently comprehensive.

The purposes of the plan developed pursuant to the grant are to develop a growth management and housing plan for the energy-impacted region. The plan shall identify, among other impacts, the anticipate levels of coal or uranium development within the region; the actual and projected socioeconomic impacts resulting from the energy development; and the sites and resources available within the designated region which can meet actual and projected needs in a timely and orderly fashion. The plan also shall identify the actions and aid required to meet these needs which are unavailable through any other Federal program.

Land acquisition and development grants

If any plan meeting the requirements of this section identifies areas within a designated energy-impacted region where land is needed for public facilities and housing and a State or local community lacks financial resources or legal ability to acquire such land by condemnation, the Secretary of Agriculture, subject to the approval of the Governor, would be authorized to acquire such land pursuant to this section. Such land could be acquired by purchase, lease, donation, or exchange and transferred to the State under such terms and conditions as the Secretary of Agriculture deems appropriate, including provision for reimbursement over a period of time for the fair market value of such land prior to development. Forest Service lands are not eligible for exchange.

The approval of the Governor for the acquisition of such land by the Secretary of Agriculture shall constitute a binding com-

mitment by the State to receive such property and to reimburse the United States for it.

The Secretary may not exercise the Federal powers of condemnation unless he finds that the availability of land in the energy-impacted region is limited, the State lacks condemnation authority in the particular case, the land is not available through negotiation or otherwise, and alternate real property is not available.

In selecting areas, the Secretary of Agriculture shall give priority to acquiring tracts of land which he determines are uninhabited or were previously mined and abandoned. In the latter case, the Secretary of Agriculture must first determine that the previously mined sites are stable and are not likely to be affected by subsidence, mine fires, et cetera. Wherever possible, the Secretary of Agriculture should coordinate the development efforts with the reclamation activities of the Department of Interior's Office of Surface Mining under title IV of the Surface Mining Control Act of 1977.

General requirements regarding assistance

Grants will be authorized to be made directly that the States or local communities to acquire such lands. Grants for site development work may be combined with direct acquisition efforts by the Secretary as well as with grants to the States for acquisition. Site preparation grants may include, but are not limited to, construction of access roads within and leading to the planned housing development, construction of water and sewers within the development and extensions of existing water and sewer lines to the new development. No part of the funds may be used to pay the actual construction costs of housing.

Such grants may not exceed 75 percent of the costs. The grant money must supplement, not supplant, State or local funds.

Where adequate Federal funds are available under other programs, they shall be used rather than these grants. Where existing Federal programs are providing funding to communities for site development related purposes, grants under this section should not duplicate or supersede such funding.

The Secretary of Agriculture shall prescribe, by rule, criteria for distribution of the grants. Among other considerations, he shall take into account the magnitude of the employment increase, the financial need of the energy-impacted region, and the ratio of the financial burden on the region to the resources available to such region.

The conferees recognize that these assessments are quite complex. The criteria, as well as the actual assessments, should be developed in close consultation with State and local government officials.

Reports

Any company producing or transporting coal or uranium through the areas shall prepare a report to the Secretary of DOE if the individual company is requested by the Governor. Such report shall include projected annual employment demand over the life of the operations, annual projected influx of employees from outside the area, and the actions such companies plan to take or are taking to provide needed housing and other facilities for their employees directly or by providing funds to the States or local communities for this purpose. Copies of the report shall be provided to the Secretary of Energy and the Secretary shall, subject to the provisions of section 11(d) of ESECA, provide the report to the Governor and the appropriate county or local officials, and make it available for public review. In addition, such reports should be provided to the Secretary of Agriculture.

Administration

The Secretary of Agriculture must administer this program through the Farmers Home Administration and other appropriate agencies of the Department.

Authorization of appropriations

The bill authorizes appropriations to the Secretary of Energy of $60 million for fiscal year 1979 and $120 million for fiscal year 1980 for the administration of the program, including grants and land acquisition.

For the purposes of carrying out this section, the Secretary of Energy shall transfer funds to the Secretary of Agriculture, who shall implement this program through the Farmers Home Administration and related agencies. By agreement between the Secretary of Energy and the Secretary of Agriculture, an appropriate portion of transferred funds shall be available for aditional personnel or other costs of administering the program.

Protection from certain hazardous actions

Federal agencies, such as the Labor Department, which regulate the health and safety of persons working in coal, uranium, metal, or nonmetallic mines are directed to interpret and utilize their statutory authorities fully and promptly, including the promulgation of standards and regulations, to protect existing and future public and private housing, real property, persons and public facilities located adjacent to or near these operations from actions occurring at such mines that pose a hazard to such property or persons.

Reorganization

The authority of the Secretary of Agriculture and the authority of the Secretary of Energy under this section may not be transferred to any other Secretary or to any other Federal agency by reorganization plan, or under any other provision of law, other than under specific provisions of a law enacted after the date of the enactment of this Act.

SECTION 602—LOANS TO ASSIST POWERPLANT ACQUISITIONS OF AIR POLLUTION CONTROL EQUIPMENT

The conferees adopted a modified Senate provision authorizing loans for existing powerplants to finance the purchase and installation of certified pollution control devices which the Secretary determines are necessary to burn coal in compliance with any rule or order issued against such powerplant or with any statutory prohibition.

The term "certified pollution control devices" will mean a new identifiable device which is used, in connection with a powerplant, to abate or control atmospheric pollution by removing, altering, disposing, storing, or preventing the emission of pollutants which—

(1) the State certifying authority having air quality jurisdiction over the powerplant has certified to EPA that devices are needed to meet, and are in conformity with, State requirements for abatement or control of atmospheric pollution or contamination; and

(2) the EPA has certified to the FEA as being in furtherance of the requirements and purposes of the Clean Air Act. The devices (not including a building and its structural components, other than a building used exclusively for treatment) must have been constructed after the effective date of the legislation.

Priority is given to existing powerplants subject to prohibitions under this Act or ESECA. But at least 25 percent of the funds appropriated for loans must be allocated for small municipal and rural cooperative electric powerplants which by design are not capable of consuming fuel at a fuel heat input rate of greater than 250 million Btu's per hour. However, there must be a clear showing that no other financing is available and that there is an expectation of repayment.

Loans are for two-thirds of costs and shall be for not more than 10 years. The interest rate will be the Treasury rate plus 1 percent. In addition, there will include a one-time 1 percent fee to cover costs, insurance fees, and other charges.

Authorized appropriations in each of fiscal years 1979 and 1980 are $400 million.

TITLE VII. ADMINISTRATION AND ENFORCEMENT

SUBTITLE A—PROCEDURES

SECTION 701—ADMINISTRATIVE PROCEDURES

General rulemaking

Section 553 of title 5, United States Code, will apply to all rules prescribed under the Act except as otherwise provided in this section and elsewhere in this Act.

Notice of rules and orders imposing prohibitions

The conference agreement requires publication of proposed prohibition rules and orders in the Federal Register. The notice of such proposed rule or order must include explanatory material in sufficient detail to inform those affected and the public of the basis for each rule or order and, in the case of a rule, any special circumstances or characteristics will be set forth in the notice. Copies of each must be sent to those powerplants or MFBI's identified therein.

Petitions for exemptions

The Secretary will promulgate rules within 120 days after enactment of this Act governing the form and content and filing and timing of petitions for permits and exemptions. Notice of such petitions shall be published in the Federal Register, giving a minimum of 45 days opportunity for public written comment on such petitions. The notice will include a summary of the reasons for the petition to the same extent as proposed prohibition rules or orders.

The conference agreement requires that the Secretary also notify State agencies having primary authority to permit or regulate the construction or operation of powerplants or, where appropriate, MFBI's. It also requires that he consult with them on such petitions to the greatest extent practicable, recognizing the time constraints under which he must operate.

The conference agreement requires the Department of Energy to grant or deny such petitions within 6 months after the public comment period, including the public hearings period, is completed. However, the DOE can extend this time period to another date certain upon notice published in the Federal Register which sets forth reasons for the delay.

Public comments on prohibitions and exemptions

An opportunity is provided for any interested person to request and obtain a public hearing on proposed prohibition rules and orders and on petitions subject to the procedures of section 701 (b) to (e). At that hearing, such person must be able to present an oral statement and be given a reasonable opportunity to question other participants, including their experts and consultants as well as the experts of the Government (including Federal employees, officials and consultants) who participated in the development of the proposed rule or order, or in the preparation of any petition. Unlimited and duplicative questioning is not sanctioned. But the conferees intend that the Government and the petitioner and other participants at the hearing shall be subjected to reasonable questioning in order to be insured that the proposed rule or order and the petition are well-founded. It should be clearly noted that this provision is derived from a similar provision applicable to the appliance program. It, however, has been revised so that interpretations applicable to the appliance program are not appropriate here. Our objective in providing an opportunity for such questioning is to insure that all issues are fully and properly developed.

A final rule or order granting or denying an exemption or a permit or issuing a prohibition mut be based on consideration of the whole record or parts thereof cited by a party and supported by and in accordance with reliable, probative, and substantial evidence.

The conferees note that the only hearings required are those on proposed prohibition orders and rules and on petitions for exemptions. No hearing is required or expected in the case of the actual order issued by the Secretary granting or denying a petition for the reason that the hearing is provided for on the petition. The adjudication provisions of 5 U.S.C. 554 and 556 do not apply here. Finally, all hearings are to be held by the DOE, not FERC.

Transcript

A transcript of every public hearing shall be kept. It shall be available for public review and for copying. Normal Department of Energy rules for paying the reproduction cost of copying shall apply.

EPA comment

The conference agreement provides for Environmental Protection Agency comment on all petitions and all proposed rules and orders, during the time for public comment, except those issued pursuant to sections 401, 402, and 404 of the Act. The EPA can also participate in public hearings and question witnesses.

FTC comment

The conference agreement provides that the Secretary request the FTC to review any petition and all proposed rules or orders issuing a prohibition or granting an exemption for a new or existing MFBI to evaluate the impact of the proposed order or rule on competition. The FTC must comment within the period provided for public comment. The FTC can also participate in the public hearings and question the participants.

Coordination with other provisions of law

The provisions of title V of the Department of Energy Act do not apply except as specifically provided.

SECTION 702—JUDICIAL BEVIEW

The conference agreement provides that any rule or order prescribed by the Secretary imposing a prohibition or granting an exemption (or permit) shall not take effect earlier than 60 days after final publication. Denials of petitions for exemptions or permits shall be promptly published in the Federal Register, together with the reasons for the denial.

The conference agreement provides for judicial review in the U.S. Court of Appeals within the 60-day period by any person who is aggrieved by a rule, order, or denial.

Participation in the administrative proceeding is not required.

Department attorneys may represent the Secretary in any proceeding under this section, subject to the direction and control of the Justice Department as provided in section 502(c) of the Department of Energy Act.

SUBTITLE B—INFORMATION AND REPORTING

SECTION 711—INFORMATION

The conference agreement combines the Senate and House provisions directing that any energy information and data acquired, collected, or held by the Department of Energy pursuant to this Act shall be subject to section 11(d) of ESECA.

The Senate bill included a provision making section 11(d) of ESECA apply to all information held or collected by the DOE, including the Energy Information Administration established by the DOE Organization Act. The Secretary, FERC, and the President are given broad authority to obtain needed data, using section 11 of ESECA, and other authorities from persons subject to the Act. The conferees did not adopt this provision, but recommended that the Congress consider it in connection with the annual Department of Energy authorization act for fiscal year 1979. The conferees note that section 11 of ESECA is available to the EIA and that the EIA has authority to utilize it fully, as do other DOE agencies, including those administering this Act.

SECTION 712—COMPLIANCE REPORT

The conference agreement adopts the Senate provision requiring that any existing facility subject to the prohibitions of the Act shall on or before January 1, 1980, and annually thereafter, submits a report to the Secretary. Such report shall (a) set forth an anticipated compliance schedule for each existing powerplant; (b) indicate proposed or existing contracts or other commitments or good faith negotiations to enable compliance with such prohibitions; and (c) identify those existing powerplants for which temporary or permanent exemptions may be sought.

SUBTITLE C—ENFORCEMENT

SECTION 721—NOTICE OF VIOLATIONS: OTHER GENERAL PROVISIONS

The conference agreement provides that the Secretary must issue written notices of violation.

The conference agreement combines the House and Senate provisions so that a corporate officer would not be subject to imprisonment unless he knew of noncompliance by the corporation or had received from the Department of Energy notice of noncompliance.

The conference agreement combines the Senate and House provision regarding liability for certain peakload operations.

SECTION 722—CRIMINAL PENALTIES

The conference agreement provides that any person who willfully violates any provision of this Act (other than section 402) or any rule or order issued pursuant to this Act is subject to a fine of not more than $50,000 or imprisonment for up to 1 year, or both, for each violation.

SECTION 723—CIVIL PENALTIES

Any person who violates any provision of this Act (other than outdoor decorative lighting) or rule or order shall be subject to a civil penalty of not more than $25,000 for each violation. A separate civil penalty is provided for violations of section 402 by certain persons. In addition, the use of natural gas or petroleum in amounts in excess of those authorized in an exemption shall be subject to a civil penalty up to $10 per barrel of petroleum or $3 per Mcf of natural gas.

The Secretary shall issue notices of proposed assessments of civil penalties. The notice will inform the alleged violator that he can elect to have the assessment made after an administrative proceeding and judicial review thereof or after a *de novo* proceeding in a district court. The election may not be revoked. Lawyers for the DOE shall conduct the *de novo* proceedings.

SECTION 724—INJUNCTION AND OTHER EQUITABLE RELIEF

The conference agreement authorizes injunctive relief, including interim equitable relief in accordance with section 502(c) of the Department of Energy Organization Act.

SECTION 725—CITIZEN SUITS

The conference agreement adopts the House provision as modified to authorize any aggrieved person to commence a civil action for mandatory or injunctive relief against any Federal agency which has responsibility under this legislation if there is an alleged failure of such agency to perform any nondiscretionary act or duty.

The civil suit must be brought in the United States district court. Notice must be provided at least 60 days prior to the filing of the suit. If the Secretary begins and diligently prosecutes the civil action to provide for compliance, the citizen suit may not begin but the person may intervene as a matter of right in the Secretary's action. Provision is made for awarding costs of litigation to any party whenever the court determines the award is appropriate. The Secretary may intervene as a matter of right.

SUBTITLE D—PRESERVATION OF CONTRACTUAL RIGHTS

SECTION 731—PRESERVATION OF CONTRACTUAL RIGHTS

Both the House and Senate passed bills contained provisions which would have allowed any person receiving natural gas pursuant to a contract and who is later prohibited from burning natural gas by the provisions of this Act, to transfer his remaining interests under such contract and receive in consideration therefor just compensation. The conferees agreed that they would generally follow the House provisions, although concepts contained in the Senate bill are also included in the agreement.

Under the conference agreement, if any person receives natural gas pursuant to a contract in effect on April 20, 1977, and such gas use is prohibited pursuant to the provisions of title II or title III, or any rule or order thereunder, that person may transfer all or any part of his interests under the contract and receive consideration from the person to whom his contractual interests are transferred. In addition, any person who would have transported or distributed natural gas with respect to which contractual interests are transferred would be entitled to receive just compensation, as determined by the Commission. In establishing just compensation for persons who would have transported or distributed natural gas that has been transferred pursuant to this section, the conferees intend that such persons be compensated for all expenditures incurred by reason of such transfer.

The agreement attempts to provide a reasonable and workable framework within which the parties to a transfer of contractual interests under this section can come to agreement regarding the consideration to be paid. Under the agreement, the Federal Energy Regulatory Commission is required to institute a rulemaking proceeding to establish guidelines, on a regional or national basis, to determine maximum consideration permitted as just compensation. In establishing these guidelines, the conferees intend that the Secretary take into consideration those factors and criteria which may be unique to a particular area or region and that he establish regional guidelines where significant differences occur.

If the parties to the transfer of contractual interests pursuant to this section agree on the amount of consideration to be paid, and this amount does not exceed the guidelines established by the Commission, this consideration shall not be subject to Commission review or modification. On the other hand, if the consideration agreed upon by the parties exceeds the Commission guidelines, the Commission may nonetheless approve such agreed-upon consideration if it determines that the consideration does not exceed the maximum consideration permitted as just compensation. In addition, the conference agreement provides that if the agreed-upon consideration exceeds the applicable guidelines but does not exceed just compensation, the Commission may not require a refund with respect to prior deliveries unless the Commission proves that there was fraud or a willful delay in the filing of a request for approval of the consideration.

If the agreed-upon consideration is paid by an interstate pipeline, the conferees agreed that the consideration paid shall be deemed just and reasonable for the purposes of sections 4, 5, and 7 of the Natural Gas Act. In addition, the conferees intend that the

Commission be prohibited from denying a passthrough of any consideration paid so long as such consideration falls within the maximum amount permitted as just compensation under this section.

The conferees agreed that no exemption would be provided to any person from the obligation to obtain a certificate of public convenience and necessity for the transportation by an interstate pipeline of natural gas authorized to be transported by these provisions. However, the conferees do intend to eliminate any Commission authority to deny a certificate of public convenience and necessity for the transportation of natural gas because of the amount of consideration paid by any person pursuant to this provision. In addition, the conferees agreed that no person shall be subject to the jurisdiction of the Commission under the Natural Gas Act or to regulation as a common carrier by reason of the transfer of contractual interests authorized under this section.

In the event that parties to a transfer of contractual interests pursuant to this provision fail to agree on the amount of, or method of determining, consideration, the Commission may, at the request of both parties, prescribe the amount of, or method of determining, such consideration. The conferees intend that this determination be made by order. If either party to a transfer so requests, the Commission is required to make a determination as to the amount of, or method of determining, consideration, on the record after an opportunity for hearing. In the event a party so requests such a hearing, and a determination is made on the record after an opportunity for hearing, the Commission determination shall be binding upon the party so requesting the hearing. The party not asking for the hearing will not be bound by the Commission determination.

In authorizing the transfer of contractual interests under this section, the conferees do not intend to relieve any party transferring such interests from performing any obligation under the contract. In addition, the conferees intend that the person acquiring contractual interests pursuant to this section shall assume all terms, conditions, and obligations existing under the contract. For example, contract provisions governing the place of delivery will remain in force and effect unless the parties agree otherwise.

SUBTITLE E—STUDIES

The conference agreement adopts the Senate provision requiring an 18-month national coal policy study, with an authorization of $18 million and an interagency coal industry performance and competition study, with an authorization of $18 million. Both studies require public review of the proposed reports, before they are finalized.

The conference agreement adopts the House provision requiring the Secretary to conduct on a continuing basis evaluations of potential losses of employment which may result from the application of this Act. This provision is not to be construed to require or authorize the Secretary to modify or withdraw any rule or order under this title. The Secretary of Labor shall participate in each investigation.

The conference agreement adopts the Senate provision directing the Secretary to conduct a 2-year study of the compliance problems with this title of small electric utility systems having a total generating capacity of 2,000 megawatts or less.

The conference agreement adopts the House provision requiring the Environmental Protection Agency to conduct a continuing study, with an annual report to the Congress, on air pollution emissions from new and existing powerplants and major fuel-burning installations subject to this title. An authorization of $2 million for fiscal year 1979 is provided initially. The conferees consider this to be a very important function relative to the so-called acid-rain problem associated with the use of coal.

The conference agreement combines the Senate and House provisions requiring an interagency committee to study the socioeconomic impacts of expanded coal production on States, local communities and the public. The study is to be completed within 1 year.

The conference provision combines the Senate and House provisions requiring a 1-year study by the Secretary of major fuel-burning installations and combustors not subject to this Act.

SUBTITLE F—AUTHORIZATION OF APPROPRIATIONS

Authorization of appropriation

The conference agreement adopts the House provision authorizing $11.9 million for this program in fiscal year 1978, plus other funds authorized for the Department of Energy under the annual authorization process.

SUBTITLE G—COORDINATION WITH OTHER PROVISIONS OF LAW

SECTION 761—EFFECT ON ENVIRONMENTAL REQUIREMENTS

The conference agreement provides that the Act shall not be construed as permitting any powerplant or MFBI to delay or avoid compliance with applicable environmental requirements as a result of this Act, except where provided for in section 404 of this Act.

SECTION 762—EFFECT OF ORDERS UNDER SECTION 2 OF ESECA: AMENDMENTS TO ESECA

Effect of construction orders

The conference agreement provides that any powerplant or major fuel-burning installation which received a construction order issued under ESECA which is not finalized shall be subject to this Act as a new facility. Where such orders are finalized before the effective date they shall not be subject to this Act.

Effect of prohibition orders

The conference agreement excludes from this Act any powerplant or major fuel-burning installation to which a prohibition order was issued under ESECA prior to the effective date which is pending or final or which, on review, was held unlawful or set aside on the merits. However, an existing major fuel-burning installation subject to a prohibition order will have an opportunity to elect whether to be subject to this Act or ESECA.

SECTION 763—ENVIRONMENTAL IMPACT STATEMENTS UNDER NEPA

The conference agreement adopts the Senate provision as modified declaring that certain actions under this Act are not deemed to be major Federal actions for the purposes of section 102(2)(c) of the National Environmental Policy Act. The actions excluded would be (a) the granting or denying of any temporary exemption; and (b) in the case of existing powerplants or major fuel-burning installations, the granting or denying of permanent exemptions except in the case of permanent exemptions for cogeneration, scheduled equipment outages, State and local requirements, and intermediate load powerplants.

Consistent with the "lead agency" concept, where an EIS is required, not by reason of the coal conversion program, but because another Federal agency which also has jurisdiction over the new powerplant or MFBI determines that the proposed construction is a "major Federal action", that EIS would be deemed sufficient for the purposes of this legislation so long as it adequately considers the fuel uses that would be required.

TITLE VIII. MISCELLANEOUS PROVISIONS

SECTION 801—COAL RESERVES DISCLOSURE

The conference agreement adopts the Senate provision directing the Secretary to require disclosure of all coal reserves except small reserves.

SECTION 802—COAL PREPARATION FACILITIES

The conference agreement adopts the Senate provisions adding a new definition to section 102 of the Energy Policy and Conservation Act extending the loan guarantees to coal preparation facilities associated with new underground coal production.

SECTION 803—RAILROAD REHABILITATION

The conference agreement adopts the Senate provision authorizing $100 million for rehabilitation of branch railroad lines to transport coal and coal products. Appropriations are to be deposited in the Railroad Rehabilitation and Improvement Fund (45 U.S.C. 882).

This would authorize the addition of $100 million to the Railroad Rehabilitation and Improvement Fund created by section 502 of the 1976 Railroad Revitalization and Regulatory Reform Act. Title V of that Act generally provides for improvement and rehabilitation of deteriorated, privately owned (not Government owned) rail lines which apply for funds by affording Federal low-interest loans (the "redeemable preference share" program) or Government guarantees of loans.

This provision will expand the fund and specifically earmark loan money to upgrade marginal and branch line physical plant and equipment to carry coal or coal products to regions or States which can use these resources in greater quantities as a substitute for imported petroleum. Presently, the title V program, as administered by the Federal Railroad Administration, awards loan funds among competing applications based primarily upon the quantity of freight carried on the relevant lines for which improvement is sought. This provision defines coal carriage as an equally "essential freight service", thus giving applications for the new purpose an equally high priority for authorized funds.

SECTION 804—OFFICE OF RAIL PUBLIC COUNSEL

The conference agreement adopts the Senate provision for revisions in existing authority to provide that the existing Office of Rail Public Counsel present the views of communities and users of rail service, the general public, and, where appropriate, the railroads, before Federal agency proceedings affecting railroads concerning the impact of energy proposals and actions on rail transportation. The conferees also intend that national transportation policies be implemented in a manner consistent with the needs of national energy policy.

SECTION 805—RETROACTIVE APPLICATION OF CERTAIN REMEDIAL ORDERS

The conference agreement adopts the Senate provision.

SECTION 806—ANNUAL REPORT

The conference agreement combines the Senate and House provisions requiring an annual report by the Secretary to the Congress on March 1 of each year.

TITLE IX—EFFECTIVE DATES

SECTION 901—EFFECTIVE DATE

The provisions of this Act take effect 180 days after the date of enactment. Prior to that time, the Department of Energy is empowered to promulgate the regulations and take other actions as provided in this Act.

In a number of provisions, the conference agreement requires that the Department of Energy propose and finally promulgate regulations or rules before the effective date of the agreement. In others provision is made for issuance of rules, but no time limit is prescribed. The conferees expect the Department of Energy to move expeditiously to publish and promulgate all such rules. At the same time, the conferees also expect that the Department of Energy will provide an

ample opportunity for public input and comment on all such rules.

SECTION 902—INTERIM PETITION AND CONSIDERATION OF CERTAIN EXEMPTIONS

Exemptions in the case of certain powerplants

The conference agreement adopts the Senate provision as modified to authorize the Secretary to grant exemptions, prior to the effective date, for new electric powerplants where (a) as of April 20, 1977, an appropriate State energy agency had authorized construction of such powerplant; or (b) in the case of combined-cycle units in an electric utility system serving at least 2 million customers, at least 1 year prior to enactment an application was filed with the appropriate State energy agency requesting authority to construct such powerplant.

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Managers on the Part of the House.
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HOWARD M. METZENBAUM,
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Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 4018, PUBLIC UTILITIES REGULATORY POLICY ACT OF 1977

Mr. DINGELL submitted the following conference report and statement on the bill (H.R. 4018) to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics:

CONFERENCE REPORT (H. REPT. NO. 95-1750)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 4018) entitled "An Act to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Public Utility Regulatory Policies Act of 1978".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.
Sec. 4. Relationship to antitrust laws.

TITLE I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

Subtitle A—General Provisions

Sec. 101. Purposes.
Sec. 102. Coverage.
Sec. 103. Federal contracts.

Subtitle B—Standards for Electric Utilities

Sec. 111. Consideration and determination respecting certain ratemaking standards.
Sec. 112. Obligations to consider and determine.
Sec. 113. Adoption of certain standards.
Sec. 114. Lifeline rates.
Sec. 115. Special rules for standards.
Sec. 116. Reports respecting standards.
Sec. 117. Relationship to State law.

Subtitle C—Intervention and Judicial Review

Sec. 121. Intervention in proceedings.
Sec. 122. Consumer representation.
Sec. 123. Judicial review and enforcement.
Sec. 124. Prior and pending proceedings.

Subtitle D—Administrative Provisions

Sec. 131. Voluntary guidelines.
Sec. 132. Responsibilities of Secretary of Energy.
Sec. 133. Gathering information on costs of service.
Sec. 134. Relationship to other authority.

Subtitle E—State Utility Regulatory Assistance

Sec. 141. Grants to carry out titles I and III.
Sec. 142. Authorizations.
Sec. 143. Conforming amendments.

TITLE II—CERTAIN FEDERAL ENERGY REGULATORY COMMISSION AND DEPARTMENT OF ENERGY AUTHORITIES

Sec. 201. Definitions.
Sec. 202. Interconnection.
Sec. 203. Wheeling.
Sec. 204. General provisions regarding certain interconnection and wheeling authority.
Sec. 205. Pooling.
Sec. 206. Continuance of service.
Sec. 207. Consideration of proposed rate increases.
Sec. 208. Automatic adjustment clauses.
Sec. 209. Reliability.
Sec. 210. Cogeneration and small power production.
Sec. 211. Interlocking directorates.
Sec. 212. Public participation before Federal Energy Regulatory Commission
Sec. 213. Conduit hydroelectric facilities.
Sec. 214. Prior action; effect on other authorities.

TITLE III—RETAIL POLICIES FOR NATURAL GAS UTILITIES

Sec. 301. Purposes; coverage.
Sec. 302. Definitions.
Sec. 303. Adoption of certain standards.
Sec. 304. Special rules for standards.
Sec. 305. Federal participation.
Sec. 306. Gas utility rate design proposals.
Sec. 307. Judicial review and enforcement.
Sec. 308. Relationship to other applicable law.
Sec. 309. Reports respecting standards.
Sec. 310. Prior and pending proceedings.
Sec. 311. Relationship to other authority.

TITLE IV—SMALL HYDROELECTRIC POWER PROJECTS

Sec. 401. Establishment of program.
Sec. 402. Loans for feasibility studies.
Sec. 403. Loans for project costs.
Sec. 404. Loan rates and repayment.
Sec. 405. Simplified and expeditious licensing procedures.
Sec. 406. New impoundments.
Sec. 407. Authorizations.
Sec. 408. Definitions.

TITLE V—CRUDE OIL TRANSPORTATION SYSTEMS

Sec. 501. Findings.
Sec. 502. Statment of purposes.
Sec. 503. Definitions.
Sec. 504. Applications for approval of proposed crude oil transportation systems.
Sec. 505. Review schedule.
Sec. 503. Environmental impact statements.
Sec. 507. Decision of the President.
Sec. 508. Procedures for waiver of Federal law.
Sec. 509. Expedited procedures for issuance of permits: enforcement of rights-of-way.
Sec. 510. Negotiations with the Government of Canada.
Sec. 511. Judicial review.
Sec. 512. Authorization for appropriation.

TITLE VI—MISCELLANEOUS PROVISIONS

Sec. 601. Study concerning electric rates of State utility agencies.
Sec. 602. Seasonal diversity electricity exchange.
Sec. 603. Utility regulatory institute.
Sec. 604. Coal research laboratories.
Sec. 605. Conserved natural gas.
Sec. 606. Voluntary conversion of natural gas users to heavy fuel oil users.
Sec. 607. Emergency conversion of utilities and other facilities.
Sec. 608. Natural gas transportation policies.

SEC. 2. FINDINGS.

The Congress finds that the protection of the public health, safety, and welfare, the preservation of national security, and the proper exercise of congressional authority under the Constitution to regulate interstate commerce require—

(1) a program providing for increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers,

(2) a program to improve the wholesale distribution of electric energy, the reliability of electric service, the procedures concerning consideration of wholesale rate applications before the Federal Energy Regulatory Commission, the participation of the public in matters before the Commission, and to provide other measures with respect to the regulation of the wholesale sale of electric energy,

(3) a program to provide for the expeditious development of hydroelectric potential at existing small dams to provide needed hydroelectric power,

(4) a program for the conservation of natural gas while insuring that rates to natural gas consumers are equitable,

(5) a program to encourage the development of crude oil transportation systems, and

(6) the establishment of certain other authorities as provided in title VI of this Act.

SEC. 3. DEFINITIONS.

As used in this Act, except as otherwise specifically provided—

(1) The term "antitrust laws" includes the Sherman Antitrust Act (15 U.S.C. 1 and following), the Clayton Act (15 U.S.C. 12 and following), the Federal Trade Commission Act (15 U.S.C. 14 and following), the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21A).

(2) The term "class" means, with respect to electric consumers, any group of such consumers who have similar characteristics of electric energy use.

(3) The term "Commission" means the Federal Energy Regulatory Commission.

(4) The term "electric utility" means any person, State agency, or Federal agency, which sells electric energy.

(5) The term "electric consumer" means any person, State agency, or Federal agency,

to which electric energy is sold other than for purposes of resale.

(6) The term "evidentiary hearing" means—

(A) in the case of a State agency, a proceeding which (i) is open to the public, (ii) includes notice to participants and an opportunity for such participants to present direct and rebuttal evidence and to cross-examine witnesses, (iii) includes a written decision, based upon evidence appearing in a written record of the proceeding, and (iv) is subject to judicial review;

(B) in the case of a Federal agency, a proceeding conducted as provided in sections 554, 556, and 557 of title 5, United States Code; and

(C) in the case of a proceeding conducted by any entity other than a State or Federal agency, a proceeding which conforms, to the extent appropriate, with the requirements of subparagraph (A).

(7) The term "Federal agency" means an executive agency (as defined in section 105 of title 5 of the United States Code).

(8) The term "load management technique" means any technique (other than a time-of-day or seasonal rate) to reduce the maximum kilowatt demand on the electric utility, including ripple or radio control mechanisms, and other types of interruptible electric service, energy storage devices, and load-limiting devices.

(9) The term "nonregulated electric utility" means any electric utility other than a State regulated electric utility.

(10) The term "rate" means (A) any price, rate, charge, or classification made, demanded, observed, or received with respect to sale of electric energy by an electric utility to an electric consumer, (B) any rule, regulation, or practice respecting any such rate, charge, or classification, and (C) any contract pertaining to the sale of electric energy to an electric consumer.

(11) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(12) The term "rate schedule" means the designation of the rates which an electric utility charges for electric energy.

(13) The term "sale" when used with respect to electric energy includes any exchange of electric energy.

(14) The term "Secretary" means the Secretary of Energy.

(15) The term "State" means a State, the District of Columbia, and Puerto Rico.

(16) The term "State agency" means a State, political subdivision thereof, and any agency or instrumentality of either.

(17) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility (other than such State agency), and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(18) The term "State regulated electric utility" means any electric utility with respect to which a State regulatory authority has ratemaking authority.

SEC. 4. RELATIONSHIP TO ANTITRUST LAWS.

Nothing in this Act or in any amendment made by this Act affects—

(1) the applicability of the antitrust laws to any electric utility or gas utility (as defined in section 302), or

(2) any authority of the Secretary or of the Commission under any other provision of law (including the Federal Power Act and the Natural Gas Act) respecting unfair methods of competition or anticompetitive acts or practices.

TITLE I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

Subtitle A—General Provisions

SEC. 101. PURPOSES.

The purposes of this title are to encourage—

(1) conservation of energy supplied by electric utilities;

(2) the optimization of the efficiency of use of facilities and resources by electric utilities; and

(3) equitable rates to electric consumers.

SEC. 102. COVERAGE.

(a) VOLUME OF TOTAL RETAIL SALES.—This title applies to each electric utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(b) EXCLUSION OF WHOLESALE SALES.—The requirements of this title do not apply to the operations of an electric utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of electric energy for purposes of resale.

(c) LIST OF COVERED UTILITIES.—Before the beginning of each calendar year, the Secretary shall publish a list identifying each electric utility to which this title applies during such calendar year. Promptly after publication of such list each State regulatory authority shall notify the Secretary of each electric utility on the list for which such State regulatory authority has ratemaking authority.

SEC. 103. FEDERAL CONTRACTS.

Notwithstanding the limitation contained in section 102(b), no contract between a Federal agency and any electric utility for the sale of electric energy by such Federal agency for resale which is entered into or renewed after the date of the enactment of this Act may contain any provision which will have the effect of preventing the implementation of any requirement of subtitle B or C. Any provisions in any such contract which has such effect shall be null and void.

Subtitle B—Standards For Electric Utilities

SEC. 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS

(a) CONSIDERATION AND DETERMINATION.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title. For purposes of such consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of such consideration and determination in any court in accordance with section 123, the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) PROCEDURAL REQUIREMENTS FOR CONSIDERATION AND DETERMINATION.—(1) The consideration referred to in subsection (a) shall be made after public notice and hearing. The determination referred to in subsection (a) shall be—

(A) in writing,

(B) based upon findings included in such determination and upon the evidence presented at the hearing, and

(C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 112(a), and in sections 121 and 122, the procedures for the consideration and determination referred to in subsection (a) shall be those established by the State regulatory authority or the nonregulated electric utility.

(c) IMPLEMENTATION.—(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law—

(A) implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this title, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) which is determined under subsection (a) to be appropriate to carry out the purposes of this title, such authority or nonregulated electric utility shall state in writing the reasons therefor. Such statement of reasons shall be available to the public.

(d) ESTABLISHMENT.—The following Federal standards are hereby established:

(1) COST OF SERVICE.—Rates charged by any electric utility for providing electric service to each class of electric consumers shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such class, as determined under section 115(a).

(2) DECLINING BLOCK RATES.—The energy component of a rate, or the amount attributable to the energy component in a rate, charged by any electric utility for providing electric service during any period to any class of electric consumers may not decrease as kilowatt-hour consumption by such class increases during such period except to the extent that such utility demonstrates that the costs to such utility of providing electric service to such class which costs are attributable to such energy component decrease as such consumption increases during such period.

(3) TIME-OF-DAY RATES.—The rates charged by any electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class as determined under section 115(b).

(4) SEASONAL RATES.—The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflects the costs of providing service to such class of consumers at different seasons of the year to the extent that such costs vary seasonally for such utility.

(5) INTERRUPTIBLE RATES.—Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which such consumer is a member.

(6) LOAD MANAGEMENT TECHNIQUES.—Each electric utility shall offer to its electric consumers such load management techniques as the State regulatory authority (or the nonregulated electric utility) has determined will—

(A) be practicable and cost-effective, as determined under section 115(c),

(B) be reliable, and

(C) provide useful energy or capacity management advantages to the electric utility.

SEC. 112. OBLIGATIONS TO CONSIDER AND DETERMINE.

(a) REQUEST FOR CONSIDERATION AND DETERMINATION.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility may undertake the consideration and make the determination referred to in section 111 with respect to any standard established by section 111(d) in any proceeding respecting the rates of the electric utility. Any participant or intervenor (including an intervenor referred to in section 121) in such a proceeding may request, and shall obtain, such consideration and determination in such proceeding. In undertaking such consideration and making such determination in any such proceeding with respect to the application to any electric utility of any standard established by section 111(d), a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or nonregulated electric utility may take into account in such proceeding—

(1) any appropriate prior determination with respect to such standard—

(A) which is made in a proceeding which takes place after the date of the enactment of this Act, or

(B) which was made before such date (or is made in a proceeding pending on such date) and complies, as provided in section 124, with the requirements of this title; and

(2) the evidence upon which such prior determination was based (if such evidence is referenced in such proceeding).

(b) TIME LIMITATIONS.—(1) Not later than 2 years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by section 111(d).

(2) Not later than 3 years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by section 111(d).

(c) FAILURE TO COMPLY.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall undertake the consideration, and make the determination, referred to in section 111 with respect to each standard established by section 111(d) in the first rate proceeding commenced after the date 3 years after the date of enactment of this Act respecting the rates of such utility if such State regulatory authority or nonregulated electric utility has not, before such date, complied with subsection (b)(2) with respect to such standard.

SEC. 113. ADOPTION OF CERTAIN STANDARDS.

(a) ADOPTION OF STANDARDS.—Not later than 2 years after the date of the enactment of this Act, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall provide public notice and conduct a hearing respecting the standards established by subsection (b) and, on the basis of such hearing, shall—

(1) adopt the standards established by subsection(b) (other than paragraph (4) thereof) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate to carry out the purposes of this title, is otherwise appropriate, and is consistent with otherwise applicable State law, and

(2) adopt the standard established by subsection (b)(4) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate and consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) or (2) and any review of such determination in any court in accordance with section 123, the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to adopt any such standard, pursuant to its authority under otherwise applicable State law.

(b) ESTABLISHMENT.—The following Federal standards are hereby established:

(1) MASTER METERING.—To the extent determined appropriate under section 115(d), master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purposes of this title.

(2) AUTOMATIC ADJUSTMENT CLAUSES.—No electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements of section 115(e).

(3) INFORMATION TO CONSUMERS.—Each electric utility shall transmit to each of its electric consumers information regarding rate schedules in accordance with the requirements of section 115(f).

(4) PROCEDURES FOR TERMINATION OF ELECTRIC SERVICE.—No electric utility may terminate electric service to any electric consumer except pursuant to procedures described in section 115(g).

(5) ADVERTISING.—No electric utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 155(h).

(c) PROCEDURAL REQUIREMENTS.—Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility, within the 2-year period specified in subsection (a), shall (1) adopt pursuant to subsection (a), each of the standards established by subsection (b) or, (2) with respect to any such standard which is not adopted, such authority or nonregulated electric utility shall state in writing that it has determined not to adopt such standard, together with the reasons for such determination. Such statement of reasons shall be available to the public.

SEC. 114. LIFELINE RATES.

(a) LOWER RATES.—No provision of this title prohibits a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or a nonregulated electric utility from fixing, approving, or allowing to go into effect a rate for essential needs (as defined by the State regulatory authority or by the nonregulated electric utility, as the case may be) of residential electric consumers which is lower than a rate under the standard referred to in section 111(d)(1).

(b) DETERMINATION.—If any State regulated electric utility or nonregulated electric utility does not have a lower rate as described in subsection (a) in effect 2 years after the date of enactment of this Act, the State regulatory authority having ratemaking authority with respect to such State regulated electric utility or the nonregulated electric utility, as the case may be, shall determine, after an evidentiary hearing, whether such a rate should be implemented by such utility.

(c) PRIOR PROCEEDINGS.—Section 124 shall not apply to the requirements of this section.

SEC. 115. SPECIAL RULES FOR STANDARDS.

(a) COST OF SERVICE.—In undertaking the consideration and making the determination under section 111 with respect to the standard concerning cost of service established by section 111(d)(1), the costs of providing electric service to each class of electric consumers shall, to the maximum extent practicable, be determined on the basis of methods prescribed by the State regulatory authority (in the case of a State regulated electric utility) or by the electric utility (in the case of a nonregulated electric utility). Such methods shall to the maximum extent practicable—

(1) permit identification of differences in cost-incurrence, for each such class of electric consumers, attributable to daily and seasonal time of use of service and

(2) permit identification of differences in cost-incurrence attributable to differences in customer, demand, and energy components of cost. In prescribing such methods, such State regulatory authority or nonregulated electric utility shall take into account the extent to which total costs to an electric utility are likely to change if—

(A) additional capacity is added to meet peak demand relative to base demand; and

(B) additional kilowatt-hours of electric energy are delivered to electric consumers.

(b) TIME-OF-DAY RATES.—In undertaking the consideration and making the determination required under section 111 with respect to the standard for time-of-day rates established by section 111(d)(3), a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering costs and other costs associated with the use of such rates.

(c) LOAD MANAGEMENT TECHNIQUES.—In undertaking the consideration and making the determination required under section 111 with respect to the standard for load management techniques established by section 111(d)(6), a load management technique shall be determined, by the State regulatory authority or nonregulated electric utility, to be cost-effective if—

(1) such technique is likely to reduce maximum kilowatt demand on the electric utility, and

(2) the long-run cost-savings to the utility of such reduction are likely to exceed the long-run costs to the utility associated with implementation of such technique.

(d) MASTER METERING.—Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(1), if—

(1) there is more than one unit in such building,

(2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and

(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

(e) AUTOMATIC ADJUSTMENT CLAUSES.—(1) An automatic adjustment clause of an electric utility meets the requirements of this subsection if—

(A) such clause is determined, not less often than every 4 years, by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by the electric utility (in the case of a nonregulated electric utility), after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and

(B) such clause is reviewed not less often

than every 2 years, in the manner described in paragraph (2), by the State regulatory authority having ratemaking authority with respect to such utility (or by the electric utility in the case of a nonregulated electric utility), to insure the maximum economies in those operations and purchases which affect the rates to which such clause applies.

(2) In making a review under subparagraph (B) of paragraph (1) with respect to an electric utility, the reviewing authority shall examine and, if appropriate, cause to be audited the practices of such electric utility relating to costs subject to an automatic adjustment clause, and shall require such reports as may be necessary to carry out such review (including a disclosure of any ownership or corporate relationship between such electric utility and the seller to such utility of fuel, electric energy, or other items).

(3) As used in this subsection and section 113(b), the term "automatic adjustment clause" means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include an interim rate which takes effect subject to a later determination of the appropriate amount of the rate.

(f) INFORMATION TO CONSUMERS.—(1) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility shall transmit to each of its electric consumers a clear and concise explanation of the existing rate schedule and any rate schedule applied for (or proposed by a nonregulated electric utility) applicable to such consumer. Such statement shall be transmitted to each such consumer—

(A) not later than 60 days after the date of commencement of service to such consumer or 90 days after the standard established by section 113(b)(3) is adopted with respect to such electric utility, whichever last occurs, and

(B) not later than 30 days (60 days in the case of an electric utility which uses a bimonthly billing system) after such utility's application for any change in a rate schedule applicable to such consumer (or proposal of such a change in the case of a nonregulated utility).

(2) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility shall transmit to each of its electric consumers not less frequently than once each year—

(A) a clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate, and

(B) an identification of any classes whose rates are not summarized.

Such summary may be transmitted together with such consumer's billing or in such other manner as the State regulatory authority or nonregulated electric utility deems appropriate.

(3) For purposes of the standard for information to consumers established by section 113(b)(3), each electric utility, on request of an electric consumer of such utility, shall transmit to such consumer a clear and concise statement of the actual consumption (or degree-day adjusted consumption) of electric energy by such consumer for each billing period during the prior year (unless such consumption data is not reasonably ascertainable by the utility).

(g) PROCEDURES FOR TERMINATION OF ELECTRIC SERVICE.—The procedures for termination of service referred to in section 113(b)(4) are procedures prescribed by the State regulatory authority (with respect to electric utilities for which it has ratemaking authority) or by the nonregulated electric utility which provide that—

(1) no electric service to an electric consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to an electric consumer would be especially dangerous to health as determined by the State regulatory authority (with respect to an electric utility for which it was ratemaking authority) or nonregulated electric utility, and such consumer establishes that—

(A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) he is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

(h) ADVERTISING.—(1) For purposes of this section and section 113(b)(5)—

(A) The term "advertising" means the commercial use, by an electric utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's electric consumers.

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation of any appliance or equipment designed to use such utility's service.

(2) For purposes of this subsection and section 113(b)(5), the terms "political advertising" and "promotional advertising" do not include—

(A) advertising which informs electric consumers how they can conserve energy or can reduce peak demand for electric energy.

(B) advertising required by law or regulation, including advertising required under part I of title II of the National Energy Conservation Policy Act,

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient applicances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.

SEC. 116. REPORTS RESPECTING STANDARDS.

(a) STATE AUTHORITIES AND NONREGULATED UTILITIES.—Not later than 1 year after the date of the enactment of this Act and annually thereafter for 10 years, each State regulatory authority (with respect to each State regulated electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall report to the Secretary, in such manner as the Secretary shall prescribe, respecting its consideration of the standards established by sections 111(d) and 113(b). Such report shall include a summary of the determinations made and actions taken with respect to each such standard on a utility-by-utility basis.

(b) SECRETARY.—Not later than 18 months after the date of the enactment of this Act and annually thereafter for 10 years, the Secretary shall submit a report to the President and the Congress containing—

(1) a summary of the reports submitted under subsection (a),

(2) his analysis of such reports, and

(3) his actions under this title, and his recommendations for such further Federal actions, including any legislation, regarding retail electric utility rates (and other practices) as may be necessary to carry out the purposes of this title.

SEC. 117. RELATIONSHIP TO STATE LAW.

(a) REVENUE AND RATE OF RETURN.—Nothing in this title shall authorize or require the recovery by an electric utility of revenues, or of a rate of return, in excess of, or less than, the amount of revenues or the rate of return determined to be lawful under any other provision of law.

(b) STATE AUTHORITY.—Nothing in this title prohibits any State regulatory authority or nonregulated electric utility from adopting, pursuant to State law, any standard or rule affecting electric utilities which is different from any standard established by this subtitle.

(c) FEDERAL AGENCIES.—With respect to any electric utility which is a Federal agency, and with respect to the Tennessee Valley Authority when it is treated as a State regulatory authority as provided in section 3(17), any reference in section 111 or 113 to State law shall be treated as a reference to Federal law.

Subtitle C—Intervention and Judicial Review

SEC. 121. INTERVENTION IN PROCEEDINGS.

(a) AUTHORITY TO INTERVENE AND PARTICIPATE.—In order to initiate and participate in the consideration of one or more of the standards established by subtitle B or other concepts which contribute to the achievement of the purposes of this title, the Secretary, any affected electric utility, or any electric consumer of an affected electric utility may intervene and participate as a matter of right in any ratemaking proceeding or other appropriate regulatory proceeding relating to rates or rate design which is conducted by a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by a nonregulated electric utility.

(b) ACCESS TO INFORMATION.—Any intervenor or participant in a proceeding described in subsection (a) shall have access to information available to other parties to the proceeding if such information is relevant to the issues to which his intervention or participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State regulatory authority (in the case of proceedings concerning electric utilities for which it has ratemaking authority) or by the nonregulated electric utility (in the case of a proceeding conducted by a nonregulated electric utility).

(c) EFFECTIVE DATE; PROCEDURES.—Any intervention or participation under this section, in any proceeding commenced before the date of the enactment of this Act but not completed before such date, shall be permitted under this section only to the extent such intervention or participation is timely under otherwise applicable law.

SEC. 122. CONSUMER REPRESENTATION.

(a) COMPENSATION FOR COSTS OF PARTICIPATION OR INTERVENTION.—(1) If no alternative means for assuring representation of electric consumers is adopted in accordance with subsection (b) and if an electric consumer of an electric utility substantially contributed to the approval, in whole or in part, of a position advocated by such consumer in a proceeding concerning such utility, and relating to any standard set forth in subtitle B, such utility shall be liable to compensate such consumer (pursuant to paragraph (2) for reasonable attorneys' fees, expert witness fees, and other reasonable costs incurred in preparation and advocacy of such position in such proceeding (including fees and costs of obtaining judicial

review of any determination made in such proceeding with respect to such position).

(2) A consumer entitled to fees and costs under paragraph (1) may collect such fees and costs from an electric utility by bringing a civil action in any State court of competent jurisdiction, unless the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility) or nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has adopted a reasonable procedure pursuant to which such authority or nonregulated electric utility—

(A) determines the amount of such fees and costs, and

(B) includes an award of such fees and costs in its order in the proceeding.

(3) The procedure adopted by such State regulatory authority or nonregulated utility under paragraph (2) may include a preliminary proceeding to require that—

(A) as a condition of receiving compensation under such procedure such consumer demonstrate that, but for the ability to receive such award, participation or intervention in such proceeding may be a significant financial hardship for such consumer, and

(B) persons with the same or similar interests have a common legal representative in the proceeding as a condition to receiving compensation.

(b) ALTERNATIVE MEANS.—Compensation shall not be required under subsection (a) if the State, the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility), or the nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has provided an alternative means for providing adequate compensation to persons—

(1) who have, or represent, an interest—

(A) which would not otherwise be adequately represented in the proceeding, and

(B) representation of which is necessary for a fair determination in the proceeding, and

(2) who are, or represent an interest which is, unable to effectively participate or intervene in the proceeding because such persons cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of preparing for, and participating or intervening in, such proceeding (includuing fees and costs of obtaining judicial review of such proceeding).

(c) TRANSCRIPTS.—The State regulatory authority or nonregulated electric utility, as the case may be, shall make transcripts of the proceeding available, at cost of reproduction, to parties or intervenors in any ratemaking proceeding, or other regulatory proceeding relating to rates or rate design, before a State regulatory authority or nonregulated electric utility.

(d) FEDERAL AGENCIES.—Any claim under this section against any Federal agency shall be subject to the availability of appropriated funds.

(e) RIGHTS UNDER OTHER AUTHORITY.—Nothing in this section affects or restricts any rights of any participant or intervenor in any proceeding under any other applicable law or rule of law.

SEC. 123. JUDICIAL REVIEW AND ENFORCEMENT.

(a) LIMITATION OF FEDERAL JURISDICTION.—Notwithstanding any other provision of law, no court of the United States shall have jurisdiction over any action arising under any provision of subtitle A or B or of this subtitle except for—

(1) an action over which a court of the United States has jurisdiction under subsection (b) or (c)(2); and

(2) review of any action in the Supreme Court of the United States in accordance with sections 1257 and 1258 of title 28 of the United States Code.

(b) ENFORCEMENT OF INTERVENTION RIGHT.—(1) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene and participate under section 121(a), and such court shall have jurisdiction to grant appropriate relief.

(2) If any electric utility or electric consumer having a right to intervene under section 121(a) is denied such right by any State court, such electric utility or electric consumer may bring an action in the appropriate United States district court to require the State regulatory authority or nonregulated electric utility to permit such intervention and participation, and such court shall have jurisdiction to grant appropriate relief.

(3) Nothing in this subsection prohibits any person bringing any action under this subsection in a court of the United States from seeking review and enforcement at any time in any State court of any rights he may have with respect to any motion to intervene or participate in any proceeding.

(c) REVIEW AND ENFORCEMENT.—(1) Any person (including the Secretary) may obtain review of any determination made under subtitle A or B or under this subtitle with respect to any electric utility (other than a utility which is a Federal agency) in the appropriate State court if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if State law otherwise permits such review. Any person (including the Secretary) may bring an action to enforce the requirements of this title in the appropriate State court, except that no such action may be brought in a State court with respect to a utility which is a Federal agency. Such review or action in a State court shall be pursuant to any applicable State procedures.

(2) Any person (including the Secretary) may obtain review in the appropriate court of the United States of any determination made under subtitle A or B or this subtitle by a Federal agency if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if otherwise applicable law permits such review. Such court shall have jurisdiction to grant appropriate relief. Any person (including the Secretary) may bring an action to enforce the requirements of subtitle A or B or this subtitle with respect to any Federal agency in the appropriate court of the United States and such court shall have jurisdiction to grant appropriate relief.

(3) In addition to his authority to obtain review under paragraph (1) or (2), the Secretary may also participate as an amicus curiae in any review by any court of an action arising under the provisions of subtitle A or B or this subtitle.

(d) OTHER AUTHORITY OF THE SECRETARY.—Nothing in this section prohibits the Secretary from—

(1) intervening and participating in any proceeding, or

(2) intervening and participating in any review by any court of any action under section 204 of the Energy Conservation and Production Act.

SEC. 124. PRIOR AND PENDING PROCEEDINGS.

For purposes of subtitles A and B, and this subtitle, proceedings commenced by State regulatory authorities (with respect to electric utilities for which it has ratemaking authority) and nonregulated electric utilities before the date of the enactment of this Act and actions taken before such date in such proceedings shall be treated as complying with the requirements of subtitles A and B, and this subtitle if such proceedings and actions substantially conform to such requirements. For purposes of subtitle A, B, and this subtitle, any such proceeding or action commenced before the date of enactment of this Act, but not completed before such date, shall comply with the requirements of subtitles A and B and this subtitle, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date, except as otherwise provided in section 121(c).

Subtitle D—Administrative Provisions

SEC. 131. VOLUNTARY GUIDELINES.

The Secretary may prescribe voluntary guidelines respecting the standards established by section 111(d) and 113(b). Such guidelines may not expand the scope or legal effect of such standards or establish additional standards respecting electric utility rates.

SEC. 132. RESPONSIBILITIES OF SECRETARY OF ENERGY.

(a) AUTHORITY.—The Secretary may periodically notify the State regulatory authorities, and electric utilities identified pursuant to section 102(c), of—

(1) load management techniques and the results of studies and experiments concerning load management techniques;

(2) developments and innovations in electric utility ratemaking throughout the United States, including the results of studies and experiments in rate structure and rate reform;

(3) methods for determining cost of service; and

(4) any other data or information which the Secretary determines would assist such authorities and utilities in carrying out the provisions of this title.

(b) TECHNICAL ASSISTANCE.—The Secretary may provide such technical assistance as he determines appropriate to assist the State regulatory authorities in carrying out their responsibilities under subtitle B and as is requested by any State regulatory authority relating to the standards established by subtitle B.

(c) APPROPRIATIONS.—There are authorized to be appropriated to carry out the purposes of subsection (b) not to exceed $1,000,000 for fiscal years 1979 and 1980.

SEC. 133. GATHERING INFORMATION ON COSTS OF SERVICE.

(a) INFORMATION REQUIRED TO BE GATHERED.—Each electric utility shall periodically gather information under such rules (promulgated by the Commission) as the Commission determines necessary to allow determination of the costs associated with providing electric service. For purposes of this section, and for purposes of any consideration and determination respecting the standard established by section 111(d)(2), such costs shall be separated, to the maximum extent practicable, into the following components: customer cost component, demand cost component, and energy cost component. Rules under this subsection shall include requirements for the gathering of the following information with respect to each electric utility—

(1) the costs of serving each electric consumer class, including costs of serving different consumption patterns within such class, based on voltage level, time of use, and other appropriate factors;

(2) daily kilowatt demand load curves for all electric consumer classes combined representative of daily and seasonal differences in demand, and daily kilowatt demand load curves for each electric consumer class for which there is a separate rate, representative of daily and seasonal differences in demand;

(3) annual capital, operating, and maintenance costs—

(A) for transmission and distribution services, and

(B) for each type of generating unit; and

(4) costs of purchased power, including representative daily and seasonal differences in the amount of such costs.

Such rules shall provide that information required to be gathered under this section shall be presented in such categories and

such detail as may be necessary to carry out the purposes of this section.

(b) COMMISSION RULES.—The Commission shall, within 180 days after the date of enactment of this Act, by rule, prescribe the methods, procedure, and format to be used by electric utilities in gathering the information described in this section. Such rules may provide for the exemption by the Commission of an electric utility or class of electric utilities from gathering all or part of such information, in cases where such utility or utilities show and the Commission finds, after public notice and opportunity for the presentation of written data, views, and arguments, that gathering such information is not likely to carry out the purposes of this section. The Commission shall periodically review such findings and may revise such rules.

(c) FILING AND PUBLICATION.—Not later than 2 years after the date of enactment of this Act, and periodically, but not less frequently than every 2 years thereafter, each electric utility shall file with—

(1) the Commission, and

(2) any State regulatory authority which has ratemaking authority for such utility,

the information gathered pursuant to this section and make such information available to the public in such form and manner as the Commission shall prescribe. In addition, at the time of application for, or proposal of, any rate increase, each electric utility shall make such information available to the public in such form and manner as the Commission shall prescribe. The 2-year period after the date of the enactment specified in this subsection may be extended by the commission for a reasonable additional period in the case of any electric utility for good cause shown.

(d) ENFORCEMENT.—For purposes of enforcement, any violation of a requirement of this section shall be treated as a violation of a provision of the Energy Supply and Environmental Coordination Act of 1974 enforceable under section 12 of such Act (notwithstanding any expiration date in such Act) except that in applying the provisions of such section 12 any reference to the Federal Energy Administrator shall be treated as a reference to the Commission.

SEC. 134. RELATIONSHIP TO OTHER AUTHORITY.

Nothing in this title shall be construed to limit or affect any authority of the Secretary or the Commission under any other provision of law.

SUBTITLE E—STATE UTILITY REGULATORY ASSISTANCE

SEC. 141. GRANTS TO CARRY OUT TITLES I AND III

Section 207 of title II of the Energy Conservation and Production Act is amended to read as follows:

"STATE UTILITY REGULATORY ASSISTANCE

"SEC. 207. (a) The Secretary may make grants to State utility regulatory commissions and nonregulated electric utilities (as defined in the Public Utility Regulatory Policies Act of 1978) to carry out duties and responsibilities under titles I and III, and section 210, of the Public Utility Regulatory Policies Act of 1978. No grant may be made under this section to any Federal agency.

"(b) Any requirements established by the Secretary with respect to grants under this section may be only such requirements as are necessary to assure that such grants are expended solely to carry out duties and responsibilities referred to in subsection (a) or such as are otherwise required by law.

"(c) No grant may be made under this section unless an application for such grant is submitted to the Secretary in such form and manner as the Secretary may require. The Secretary may not approve an application of a State utility regulatory commission or nonregulated electric utility unless such commission or nonregulated electric utility assures the Secretary that funds made available under this section will be in addition to, and not in substitution for, funds made available to such commission or nonregulated electric utility from other governmental sources.

"(d) The funds appropriated for purposes of this section shall be apportioned among the States in such manner that grants made under this section in each State shall not exceed the lesser of—

"(1) the amount determined by dividing equally among all States the total amount available under this section for such grants, or

"(2) the amount which the Secretary is authorized to provide pursuant to subsections (b) and (c) of this section for such State".

SEC. 142. AUTHORIZATIONS.

Title II of the Energy Conservation and Production Act is amended by adding the following at the end thereof:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 208. There are authorized to be appropriated—

"(1) not to exceed $40,000,000 for each of the fiscal years 1979 and 1980 to carry out section 207 (relating to State utility regulatory assistance);

"(2) not to exceed $10,000,000 for each of the fiscal years 1979 and 1980 to carry out section 205 (relating to State offices of consumer services); and

"(3) not to exceed $8,000,000 for the fiscal year 1979, and $10,000,000 for the fiscal year 1980 to carry out section 204(1)(B) (relating to innovative rate structures).".

SEC. 143. CONFORMING AMENDMENTS.

(a) ADMINISTRATOR.—Title II of the Energy Conservation and Production Act is amended by striking out "Administrator" in each place it appears and substituting "Secretary". Section 202(1) of the Energy Conservation and Production Act is amended to read as follows:

(b) DEFINITION.—

"(1) The term 'Secretary' means the Secretary of Energy.".

TITLE II—CERTAIN FEDERAL ENERGY REGULATORY COMMISSION AND DEPARTMENT OF ENERGY AUTHORITIES

SEC. 201. DEFINITIONS.

Section 3 of the Federal Power Act is amended by inserting the following before the period at the end thereof:

"(17)(A) 'small power production facility' means a facility which—

"(i) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, or any combination thereof; and

"(ii) has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), is not greater than 80 megawatts;

"(B) 'primary energy source' means the fuel or fuels used for the generation of electric energy, except that such term does not include, as determined under rules prescribed by the Commission, in consultation with the Secretary of Energy—

"(i) the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and

"(ii) the minimum amounts of fuel required to alleviate or prevent—

"(I) unanticipated equipment outages, and

"(II) emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages;

"(C) 'qualifying small power production facility' means a small power production facility—

"(i) which the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe; and

"(ii) which is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);

"(D) 'qualifying small power producer' means the owner or operator of a qualifying small power production facility;

"(18)(A) 'cogeneration facility' means a facility which produces—

"(i) electric energy, and

"(ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes;

"(B) 'qualifying cogeneration facility' means a cogeneration facility which—

"(i) the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe; and

"(ii) is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);

"(C) 'qualifying cogenerator' means the owner or operator of a qualifying cogeneration facility;

"(19) 'Federal power marketing agency' means any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy;

"(20) 'evidentiary hearing' and 'evidentiary proceeding' mean a proceeding conducted as provided in sections 554, 556, and 557 of title 5, United States Code;

"(21) 'State regulatory authority' has the same meaning as the term 'State commission', except that in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority (as defined in section 3 of the Public Utility Regulatory Policies Act of 1978), such term means the Tennessee Valley Authority;

"(22) 'electric utility' means any person or State agency which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency".

SEC. 202. INTERCONNECTION.

Part II of the Federal Power Act is amended by adding the following new section at the end thereof:

"CERTAIN INTERCONNECTION AUTHORITY

"SEC. 210. (a)(1) Upon application of any electric utility, Federal power marketing agency, qualifying cogenerator, or qualifying small power producer, the Commission may issue an order requiring—

"(A) the physical connection of any cogeneration facility, any small power production facility, or the transmission facilities of any electric utility, with the facilities of such applicant,

"(B) such action as may be necessary to make effective any physical connection described in subparagraph (A), which physical connection is ineffective for any reason, such as inadequate size, poor maintenance, or physical unreliability,

"(C) such sale or exchange of electric energy, or other coordination, as may be necessary to carry out the purposes of any order under subparagraph (A) or (B), or

"(D) such increase in transmission capacity as may be necessary to carry out the purposes of any order under subparagraph (A) or (B).

"(2) Any State regulatory authority may apply to the Commission for an order for any action referred to in subparagraph (A), (B), (C), or (D) of paragraph (1). No such order may be issued by the Commission with respect to a Federal power marketing agency upon application of a State regulatory authority.

"(b) Upon receipt of an application under subsection (a), the Commission shall—

"(1) issue notice to each affected State regulatory authority, each affected electric utility, each affected Federal power marketing agency, each affected owner or operator of a cogeneration facility or of a small power production facility, and to the public.

"(2) afford an opportunity for an evidentiary hearing, and

"(3) make a determination with respect to the matters referred to in subsection (c).

"(c) No order may be issued by the Commission under subsection (a) unless the Commission determines that such order—

"(1) is in the public interest,

"(2) would—

"(A) encourage overall conservation of energy or capital,

"(B) optimize the efficiency of use of facilities and resources, or

"(C) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies, and

"(3) meets the requirements of section 212.

"(d) The Commission may, on its own motion, after compliance with the requirements of paragraphs (1) and (2) of subsection (b), issue an order requiring any action described in subsection (a)(1) if the Commission determines that such order meets the requirements of subsection (c). No such order may be issued upon the Commission's own motion with respect to a Federal power marketing agency.

"(e)(1) As used in this section, the term 'facilities' means only facilities used for the generation or transmission of electric energy.

"(2) With respect to an order issued pursuant to an application of a qualifying cogenerator or qualifying small power producer under subsection (a)(1), the term 'facilities of such applicant' means the qualifying small power production facilities of the applicant, as specified in the application. With respect to an order issued pursuant to an application under subsection (a)(2), the term "facilities of such applicant" means the qualifying cogeneration facilities, qualifying small power production facilities, or the transmission facilities of an electric utility, as specified in the application. With respect to an order issued by the Commission on its own motion under subsection (d), such term means the qualifying cogeneration facilities, qualifying small power production facilities, or the transmission facilities of an electric utility, as specified in the proposed order.".

SEC. 203. WHEELING.

Part II of the Federal Power Act, as amended by section 202 of this Act, is further amended by adding the following new section at the end thereof:

"CERTAIN WHEELING AUTHORITY

"SEC. 211. (a) Any electric utility or Federal power marketing agency may apply to the Commission for an order under this subsection requiring any other electric utility to provide transmission services to the applicant (including any enlargement of transmission capacity necessary to provide such services). Upon receipt of such application, after public notice and notice to each affected State regulatory authority, each affective electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commission may issue such order if it finds that such order—

"(1) is in the public interest,

"(2) would—

"(A) conserve a significant amount of energy,

"(B) significantly promote the efficient use of facilities and resources, or

"(C) improve the reliability of any electric utility system to which the order applies, and

"(3) meets the requirements of section 212.

"(b) Any electric utility, or Federal power marketing agency, which purchases electric energy for resale from any other electric utility may apply to the Commission for an order under this subsection requiring such other electric utility to provide transmission services to the applicant (including any increase in transmission capacity necessary to provide such services). Upon receipt of an application under this subsection, after public notice and notice to each effected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commissioner may issue such an order if the Commission determines that—

"(1) such other electric utility has given actual or constructive notice that it is unwilling or unable to provide electric service to the applicant and has been requested by the applicant to provide the transmission services requested in the application under this subsection, and

"(2) such order meets the requirements of section 212.

"(c)(1) No order may be issued under subsection (a) unless the Commission determines that such order would reasonably preserve existing competitive relationships.

"(2) No order may be issued under subsection (a) or (b) which requires the electric utility subject to the order to transmit, during any period, an amount of electric energy which replaces any amount of electric energy—

"(A) required to be provided to such applicant pursuant to a contract during such period, or

"(B) currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission.

"(3) No order may be issued under the authority of subsection (a) or (b) which is inconsistent with any State law which governs the retail marketing areas of electric utilities.

"(4) No order may be issued under subsection (a) or (b) which provides for the transmission of electric energy directly to an ultimate consumer.

"(d)(1) Any electric utility ordered under subsection (a) or (b) to provide transmission services may apply to the Commission for an order permitting such electric utility to cease providing all, or any portion of, such services. After public notice, notice to each affected State regulatory authority, each affected Federal power marketing agency, and each affected electric utility, and after an opportunity for an evidentiary hearing, the Commission shall issue an order terminating or modifying the order issued under subsection (a) or (b), if the electric utility providing such transmission services has demonstrated, and the Commission has found, that—

"(A) due to changed circumstances, the requirements applicable, under this section and section 212, to the issuance of an order under subsection (a) or (b) are no longer met, or

"(B) any transmission capacity of the utility providing transmission services under such order which was, at the time such order was issued, in excess of the capacity necessary to serve its own customers is no longer in excess of the capacity necessary for such purposes.

No order shall be issued under this subsection pursuant to a finding under subparagraph (A) unless the Commission finds that such order is in the public interest.

"(2) Any order issued under this subsection terminating or modifying an order issued under subsection (a) or (b) shall—

"(A) provide for any appropriate compensation, and

"(B) provide the affected electric utilities adequate opportunity and time to—

(i) make suitable alternative arrangements for any transmission services terminated or modified, and

(ii) insure that the interests of ratepayers of such utilities are adequately protected.

"(3) No order may be issued under this subsection terminating or modifying any order issued under subsection (a) or (b) if the order under subsection (a) or (b) includes terms and conditions agreed upon by the parties which—

"(A) fix a period during which transmission services are to be provided under the order under subsection (a) or (b), or

"(B) otherwise provide procedures or methods for terminating or modifying such order (including, if appropriate, the return of the transmission capacity when necessary to take into account an increase, after the issuance of such order, in the needs of the electric utility subject to such order for transmission capacity).

"(e) As used in this section, the term "facilities" means only facilities used for the generation or transmission of electric energy.".

SEC. 204. GENERAL PROVISIONS REGARDING CERTAIN INTERCONNECTION AND WHEELING AUTHORITY.

(a) RESTRICTIONS AND OTHER PROVISIONS.—Part II of the Federal Power Act, as amended by sections 202 and 203 of this Act, is further amended by adding the following new section at the end thereof:

"PROVISIONS REGARDING CERTAIN ORDERS REQUIRING INTERCONNECTION OR WHEELING

"SEC. 212. (a) No order may be issued by the Commission under section 210 or subsection (a) or (b) of section 211 unless the Commission determines that such order—

"(1) is not likely to result in a reasonably ascertainable uncompensated economic loss for any electric utility, qualifying cogenerator, or qualifying small power producer, as the case may be, affected by the order;

"(2) will not place an undue burden on an electric utility, qualifying cogenerator, or qualifying small power producer, as the case may be, affected by the order;

"(3) will not unreasonably impair the reliability of any electric utility affected by the order; and

"(4) will not impair the ability of any electric utility affected by the order to render adequate service to its customers.

The determination under paragraph (1) shall be based upon a showing of the parties. The Commission shall have no authority under section 210 or 211 to compel the enlargement of generating facilities.

"(b) No order may be issued under section 210 or subsection (a) or (b) of section 211 unless the applicant for such order demonstrates that he is ready, willing, and able to reimburse the party subject to such order for—

"(1) in the case of an order under section 210, such party's share of the reasonably anticipated costs incurred under such order, and

"(2) in the case of an order under subsection (a) or (b) of section 211—

"(A) the reasonable costs of transmission services, including the costs of any enlargement of transmission facilities, and

"(B) a reasonable rate of return on such costs, as appropriate, as determined by the Commission.

"(c)(1) Before issuing an order under section 210 or subsection (a) or (b) of section 211, the Commission shall issue a proposed order and set a reasonable time for parties to the proposed interconnection or transmission order to agree to terms and conditions under which such order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them. Such proposed order shall not be reviewable or enforceable in any court. The time set for such parties to agree to such terms and conditions may be shortened if the Commission determines that delay would jeopardize the attainment of the purposes of any proposed

order. Any terms and conditions agreed to by the parties shall be subject to the approval of the Commission.

"(2)(A) If the parties agree as provided in paragraph (1) within the time set by the Commission and the Commission approves such agreement, the terms and conditions shall be included in the final order. In the case of an order under section 210, if the parties fail to agree within the time set by the Commission or if the Commission does not approve any such agreement, the Commission shall prescribe such terms and conditions and include such terms and conditions in the final order.

"(B) In the case of any order applied for under section 211, if the parties fail to agree within the time set by the Commission, the Commission shall prescribe such terms and conditions in the final order.

"(d) If the Commission does not issue any order applied for under section 210 or 211, the Commission shall, by order, deny such application and state the reasons for such denial.

"(e) No provision of section 210 or 211 shall be treated—

"(1) as requiring any person to utilize the authority of such section 210 or 211 in lieu of any other authority of law, or

"(2) as limiting, impairing, or otherwise affecting any authority of the Commission under any other provision of law.

"(f)(1) No order under section 210 or 211 requiring the Tennessee Valley Authority (hereinafter in this subsection referred to as the 'TVA') to take any action shall take effect for 60 days following the date of issuance of the order. Within 60 days following the issuance by the Commission of any order under section 210 or of section 211 requiring the TVA to enter into any contract for the sale or delivery of power, the Commission may on its own motion initiate, or upon petition of any aggrieved person shall initiate, an evidentiary hearing to determine whether or not such sale or delivery would result in violation of the third sentence of section 15d(a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4), hereinafter in this subsection referred to as the TVA Act.

"(2) Upon initiation of any evidentiary hearing under paragraph (1), the Commission shall give notice thereof to any applicant who applied for and obtained the order from the Commission, to any electric utility or other entity subject to such order, and to the public, and shall promptly make the determination referred to in paragraph (1). Upon initiation of such hearing, the Commission shall stay the effectiveness of the order under section 210 or 211 until whichever of the following dates is applicable—

"(A) the date on which there is a final determination (including any judicial review thereof under paragraph (3)) that no such violation would result from such order, or

"(B) the date on which a specific authorization of the Congress (within the meaning of the third sentence of section 15d(a) of the TVA Act) takes effect.

"(3) Any determination under paragraph (1) shall be reviewable only in the appropriate court of the United States upon petition filed by any aggrieved person or municipality within 60 days after such determination, and such court shall have jurisdiction to grant appropriate relief. Any applicant who applied for and obtained the order under section 210 or 211, and any electric utility or other entity subject to such order shall have the right to intervene in any such proceeding in such court. Except for review by such court (and any appeal or other review by an appellate court of the United States), no court shall have jurisdiction to consider any action brought by any person to enjoin the carrying out of any order of the Commission under section 210 or section 211 requiring the TVA to take any action on the grounds that such action requires a specific authorization of the Congress pursuant to the third sentence of section 15d(a) of the TVA Act.".

(b) APPLICATION OF FEDERAL POWER ACT.—(1) Section 201(b) of such Act is amended by inserting "(1)" after "(b)", by inserting "except as provided in paragraph (2)" after "but" in the first sentence thereof, and by adding the following at the end thereof:

"(2) The provisions of sections 210, 211, and 212 shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions and for purposes of applying the enforcement authorities of this Act with respect to such provisions. Compliance with any order of the Commission under the provisions of section 210 or 211, shall not make an electric utility or other entity subject to the jurisdiction of the Commission for any purposes other than the purposes specified in the preceding sentence.".

(2) Section 201(e) of such Act is amended by inserting "(other than facilities subject to such jurisdiction solely by reason of section 210, 211, or 212)" after "under this part".

SEC. 205. POOLING.

(a) STATE LAWS.—The Commission may, on its own motion, and shall, on application of any person or governmental entity, after public notice and notice to the Governor of the affected State and after affording an opportunity for public hearing, exempt electric utilities, in whole or in part, from any provision of State law, or from any State rule or regulation, which prohibits or prevents the voluntary coordination of electric utilities, including any agreement for central dispatch, if the Commission determines that such voluntary coordination is designed to obtain economical utilization of facilities and resources in any area. No such exemption may be granted if the Commission finds that such provision of State law, or rule or regulation—

(1) is required by any authority of Federal law, or

(2) is designed to protect public health, safety, or welfare, or the environment or conserve energy or is designed to mitigate the effects of emergencies resulting from fuel shortages.

(b) POOLING STUDY.—(1) The Commission, in consultation with the reliability councils established under section 202(a) of the Federal Power Act, the Secretary, and the electric utility industry shall study the opportunities for—

(A) conservation of energy,

(B) optimization in the efficiency of use of facilities and resources, and

(C) increased reliability,

through pooling arrangements. Not later than 18 months after the date of the enactment of this Act, the Commission shall submit a report containing the results of such study to the President and the Congress.

(2) The Commission may recommend to electric utilities that such utilities should voluntarily enter into negotiations where the opportunities referred to in paragraph (1) exist. The Commission shall report annually to the President and the Congress regarding any such recommendations and subsequent actions taken by electric utilities, by the Commission, and by the Secretary under this Act, the Federal Power Act, and any other provision of law. Such annual reports shall be included in the Commission's annual report required under the Department of Energy Organization Act.

SEC. 206. CONTINUANCE OF SERVICE.

(a) AMENDMENT OF FEDERAL POWER ACT.—Section 202 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

"(g) In order to insure continuity of service to customers of public utilities, the Commission shall require, by rule, each public utility to—

"(1) report promptly to the Commission and any appropriate State regulatory authorities any anticipated shortage of electric energy or capacity which would affect such utility's capability of serving its wholesale customers,

"(2) submit to the Commission and to any appropriate State regulatory authority, and periodically revise, contingency plans respecting—

"(A) shortages of electric energy or capacity, and

"(B) circumstances which may result in such shortages, and

"(3) accommodate any such shortages or circumstances in a manner which shall—

"(A) give due consideration to the public health, safety, and welfare, and

"(B) provide that all persons served directly or indirectly by such public utility will be treated, without undue prejudice or disadvantage.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall not affect any proceeding of the Commission pending on the date of the enactment of this Act or any case pending on such date respecting a proceeding of the Commission.

SEC. 207. CONSIDERATION OF PROPOSED RATE INCREASES.

(a) NOTICE PERIOD.—Section 205(d) of the Federal Power Act is amended by striking out "thirty" each place it appears and substituting "sixty".

(b) STUDY.—The chairman of the Federal Energy Regulatory Commission, in consultation with the Secretary is directed to conduct a study of the legal requirements and administrative procedures involved in the consideration and resolution of proposed wholesale electric rate increases under the Federal Power Act for the purposes of (1) providing for expeditious handling of hearings consistent with due process, (2) preventing the imposition of successive rate increases before they have been determined by the Commission to be just and reasonable and otherwise lawful, and (3) improving procedures designed to prohibit anticompetitive or unreasonable differences in wholesale and retail rates or both. The chairman shall report to Congress within 9 months from the date of enactment of this Act on the results of the study required under this section, on the administrative actions taken as a result of this study, and on any recommendations for changes in existing law that will aid the purposes of this section.

SEC. 208. AUTOMATIC ADJUSTMENT CLAUSES.

Section 205 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

"(f)(1) Not later than 2 years after the date of the enactment of this subsection and not less often than every 4 years thereafter, the Commission shall make a thorough review of automatic adjustment clauses in public utility rate schedules to examine—

"(A) whether or not each such clause effectively provides incentives for efficient use of resources (including economical purchase and use of fuel and electric energy), and

"(B) whether any such clause reflects any costs other than costs which are—

"(i) subject to periodic fluctuations and

"(ii) not susceptible to precise determinations in rate cases prior to the time such costs are incurred.

Such review may take place in individual rate proceedings or in generic or other separate proceedings applicable to one or more utilities.

"(2) Not less frequently than every 2 years, in rate proceedings or in generic or other separate proceedings, the Commission shall review, with respect to each public utility, practices under any automatic adjustment clauses of such utility to insure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses.

"(3) The Commission may, on its own motion or upon complaint, after an opportunity for an evidentiary hearing, order a public utility to—

"(A) modify the terms and provisions of any automatic adjustment clause, or

"(B) cease any practice in connection with the clause,

if such clause or practice does not result in the economical purchase and use of fuel, electric energy, or other items, the cost of which is included in any rate schedule under an automatic adjustment clause.

"(4) As used in this subsection, the term 'automatic adjustment clause' means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both in costs incurred by an electric utility. Such term does not include any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate.".

SEC. 209. RELIABILITY.

(a) STUDY.—(1) The Secretary, in consultation with the Commission, shall conduct a study with respect to—

(A) the level of reliability appropriate to adequately serve the needs of electric consumers, taking into account cost effectiveness and the need for energy conservation,

(B) the various methods which could be used in order to achieve such level of reliability and the cost effectiveness of such methods, and

(C) the various procedures that might be used in case of an emergency outage to minimize the public disruption and economic loss that might be caused by such an outage and the cost effectiveness of such procedures.

Such study shall be completed and submitted to the President and the Congress not later than 18 months after the date of the enactment of this Act. Before such submittal the Secretary shall provide an opportunity for public comment on the results of such study.

(2) The study under paragraph (1) shall include consideration of the following:

(A) the cost effectiveness of investments in each of the components involved in providing adequate and reliable electric service, including generation, transmission, and distribution facilities, and devices available to the electric consumer;

(B) the environmental and other effects of the investments considered under subparagraph (A);

(C) various types of electric utility systems in terms of generation, transmission, distribution and customer mix, the extent to which differences in reliability levels may be desirable, and the cost-effectiveness of the various methods which could be used to decrease the number and severity of any outages among the various types of systems;

(D) alternatives to adding new generation facilities to achieve such desired levels of reliability (including conservation);

(E) the cost-effectiveness of adding a number of small, decentralized conventional and nonconventional generating units rather than a small number of large generating units with a similar total megawatt capacity for achieving the desired level of reliability; and

(F) any standards for electric utility reliability used by, or suggested for use by, the electric utility industry in terms of cost-effectiveness in achieving the desired level of reliability, including equipment standards, standards for operating procedures and training of personnel, and standards relating the number and severity of outages to periods of time.

(b) EXAMINATION OF RELIABILITY ISSUES BY RELIABILITY COUNCILS.—The Secretary, in consultation with the Commission, may, from time to time, request the reliability councils established under section 202(a) of the Federal Power Act or other appropriate persons (including Federal agencies) to examine and report to him concerning any electric utility reliability issue. The Secretary shall report to the Congress (in its annual report or in the report required under subsection (a) if appropriate) the results of any examination under the preceding sentence.

(c) DEPARTMENT OF ENERGY RECOMMENDATIONS.—The Secretary, in consultation with the Commission, and after opportunity for public comment, may recommend industry standards for reliability to the electric utility industry, including standards with respect to equipment, operating procedures and training of personnel, and standards relating to the level or levels of reliability appropriate to adequately and reliably serve the needs of electric consumers. The Secretary shall include in his annual reoprt—

(1) any recommendations made under this subsection or any recommendations respecting electric utility reliability problems under any other provision of law, and

(2) a description of actions taken by electric utilities with resepct to such recommendations

SEC. 210. COGENERATION AND SMALL POWER PRODUCTION.

(a) COGENERATION AND SMALL POWER PRODUCTION RULES.—Not later than 1 year after the date of enactment of this Act, the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production which rules require electric utilities to offer to—

(1) sell electric energy to qualifying cogeneration facilities and qualifying small production facilities and

(2) purchase electric energy from such facilities.

Such rules shall be prescribed, after consultation with representatives of Federal and State regulatory agencies having ratemaking authority for electric utilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments. Such rules shall include provisions respecting minimum reliability of qualifying cogeneration facilities and qualifying small power production facilities (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies. Such rules may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.

(b) RATES FOR PURCHASES BY ELECTRIC UTILITIES.—The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase—

(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

(c) RATES FOR SALES BY UTILITIES.—The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to sell electric energy to any qualifying cogeneration facility or qualifying small power production facility, the rates for such sale—

(1) shall be just and reasonable and in the public interest, and

(2) shall not discriminate against the qualifying cogenerators or qualifying small power producers.

(d) DEFINITION.—For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to cogenerator or qualifying small power proelectric energy purchased from a qualifying ducer, the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

(e) EXEMPTIONS.—(1) Not later than 1 year after the date of enactment of this Act from time to time thereafter, the Commission shall, after consultation with representatives of State regulatory authorities, electric utilities, owners of cogeneration facilities and owners of small power production facilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments, prescribe rules under which qualifying cogeneration facilities and qualifying small power production facilities are exempted in whole or part from the Federal Power Act, from the Public Utility Holding Company Act, from State laws and regulations respecting the rates, or respecting the financial or organizational regulation, of electric utilities, or from any combination of the foregoing, if the Commission determines such exemption is necessary to encourage cogeneration and small power production.

(2) No qualifying small power production facility which has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), exceeds 30 megawatts may be exempted under rules under paragraph (1) from any provision of law or regulation referred to in paragraph (1), except that any qualifying small power production facility which produces electric energy solely by the use of biomass as a primary energy source may be exempted by the Commission under such rules from the Public Utility Holding Company Act and from State laws and regulations referred to in such paragraph (1).

(3) No qualifying small power production facility or qualifying co-generation facility may be exempted under this subsection from—

(A) any State law or regulation in effect in a State pursuant to subsection (f),

(B) the provisions of section 210, 211, or 212 of the Federal Power Act or the necessary authorities for enforcement of any such provision under the Federal Power Act, or

(C) any license or permit requirement under part I of the Federal Power Act, any provision under such Act related to such a license or permit requirement, or the necessary authorities for enforcement of any such requirement.

(f) IMPLEMENTATION OF RULES FOR QUALIFYING COGENERATION AND QUALIFYING SMALL POWER PRODUCTION FACILITIES.—(1) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority.

(2) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) or revised

under such subsection, each nonregulated electric utility shall, after notice and opportunity for public hearing, implement such rule (or revised rule).

(g) JUDICIAL REVIEW AND ENFORCEMENT.—(1) Judicial review may be obtained respecting any proceeding conducted by a State regulatory authority or nonregulated electric utility for purposes of implementing any requirement of a rule under subsection (a) in the same manner, and under the same requirements, as judicial review may be obtained under section 123 in the case of a proceeding to which section 123 applies.

(2) Any person (including the Secretary) may bring an action against any electric utility, qualifying small power producer, or qualifying cogenerator to enforce any requirement established by a State regulatory authority or nonregulated electric utility pursuant to subsection (f). Any such action shall be brought only in the manner, and under the requirements, as provided under section 123 with respect to an action to which section 123 applies.

(h) COMMISSION ENFORCEMENT.—(1) For purposes of enforcement of any rule prescribed by the Commission under subsection (a) with respect to any operations of an electric utility, a qualifying, cogeneration facility or a qualifying small power production facility which are subject to the jurisdiction of the Commission under part II of the Federal Power Act, such rule shall be treated as a rule under the Federal Power Act. Nothing in subsection (g) shall apply to so much of the operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility as are subject to the jurisdiction of the Commission under part II of the Federal Power Act.

(2)(A) The Commission may enforce the requirements of subsection (f) against any State regulatory authority or nonregulated electric utility. For purposes of any such enforcement, the requirements of subsection (f)(1) shall be treated as a rule enforceable under the Federal Power Act. For purposes of any such action, a State regulatory authority or nonregulated electric utility shall be treated as a person within the meaning of the Federal Power Act. No enforcement action may be brought by the Commission under this section other than—

(i) an action against the State regulatory authority or nonregulated electric utility for failure to comply with the requirements of subsection (f) or

(ii) an action under paragraph (1).

(B) Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph. If the Commission does not initiate an enforcement action under subparagraph (A) against a State regulatory authority or nonregulated electric utility within 60 days following the date on which a petition is filed under this subparagraph with respect to such authority, the petitioner may bring an action in the appropriate United States district court to require such State regulatory authority or nonregulated electric utility to comply with such requirements, and such court may issue such injunctive or other relief as may be appropriate. The Commission may intervene as a matter of right in any such action.

(i) FEDERAL CONTRACTS.—No contract between a Federal agency and any electric utility for the sale of electric energy by such Federal agency for resale which is entered into after the date of the enactment of this Act may contain any provision which will have the effect of preventing the implementation of any rule under this section with respect to such utility. Any provision in any such contract which has such effect shall be null and void.

(j) DEFINITIONS.—For purposes of this section, the terms "small power production facility", "qualifying small power production facility", "qualifying small power producer", "primary energy source", "cogeneration facility", "qualifying cogeneration facility", and "qualifying cogenerator" have the respective means provided for such terms under section 3 (17) and (18) of the Federal Power Act.

SEC. 211. INTERLOCKING DIRECTORATES.

(a) AMENDMENT OF FEDERAL POWER ACT.—Section 305 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

"(c)(1) On or before April 30 of each year, any person who, during the calendar year preceding the filing date under this subsection, was an officer or director of a public utility and who held, during such calendar year the position of officer, director, partner, appointee, or representative of any other entity listed in paragraph (2) shall file with the Commission, in such form and manner as the Commission shall by rule prescribe, a written statement concerning such positions held by such person. Such statement shall be available to the public.

"(2) The entities listed for purposes of paragraph (1) are as follows—

"(A) any investment bank, bank holding company, foreign bank or subsidiary thereof doing business in the United States, insurance company, or any other organization primarily engaged in the business of providing financial services or credit, a mutual savings bank, or a savings and loan association;

"(B) any company, firm, or organization which is authorized by law to underwrite or participate in the marketing of securities of a public utility;

"(C) any company, firm, or organization which produces or supplies electrical equipment or coal, natural gas, oil nuclear fuel, or other fuel for the use of any public utility;

"(D) any company, firm, or organization which during any one of the 3 calendar years immediately preceding the filing date was one of the 20 purchasers of electric energy which purchased (for purposes other than for resale) one of the 20 largest annual amounts of electric energy sold by such public utility (or by any public utility which is part of the same holding company system) during any one of such three calendar years;

"(E) any entity referred to in subsection (b); and

"(F) any company, firm, or organization which is controlled by any company, firm, or organization referred to in this paragraph. On or before January 31 of each calendar year, each public utility shall publish a list, pursuant to rules prescribed by the Commission, of the purchasers to which subparagraph (D) applies, for purposes of any filing under paragraph (1) of such calendar year.

"(3) For purposes of this subsection—

"(A) The term 'public utility' includes any company which is a part of a holding company system which includes a registered holding company, unless no company in such system is an electric utility.

"(B) The terms 'holding company', 'registered holding company', and 'holding company system' have the same meaning as when used in the Public Utility Holding Company Act of 1935.".

(b) EFFECTIVE DATE.—No person shall be required to file a statement under section 305(c)(1) of the Federal Power Act before April 30 of the second calendar year which begins after the date of the enactment of this Act and no public utility shall be required to publish a list under section 305(c)(2) of such Act before January 31 of such second calendar year.

SEC. 212. PUBLIC PARTICIPATION BEFORE FEDERAL ENERGY REGULATORY COMMISSION

The Federal Power Act is amended by redesignating section 319 and 320 as 320 and 321, respectively, and by inserting the following new section after section 318:

"OFFICE OF PUBLIC PARTICIPATION

"SEC. 319. (a)(1) There shall be an office in the Commission to be known as the Office of Public Participation (hereinafter in this section referred to as the 'Office').

"(2)(A) The Office shall be administered by a Director. The Director shall be appointed by the Chairman with the approval of the Commission. The Director may be removed during his term of office by the Chairman, with the approval of the Commission, only for inefficiency, neglect of duty, or malfeasance in office.

"(B) The term of office of the Director shall be 4 years. The Director shall be responsible for the discharge of the functions and duties of the Office. He shall be appointed and compensated at a rate not in excess of the maximum rate prescribed for GS-18 of the General Schedule under section 5332 of title 5 of the United States Code.

"(3) The Director may appoint, and assign the duties of, employees of such Office, and with the concurrence of the Commission he may fix the compensation of such employees and procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5, United States Code.

"(b)(1) The Director shall coordinate assistance to the public with respect to authorities exercised by the Commission. The Director shall also coordinate assistance available to persons intervening or participating or proposing to intervene or participate in proceedings before the Commission.

"(2) The Commission may, under rules promulgated by it, provide compensation for reasonable attorney's fees, expert witness fees, and other costs of intervening or participating in any proceeding before the Commission to any person whose intervention or participation substantially contributed to the approval, in whole or in part, of a position advocated by such person. Such compensation may be paid only if the Commission has determined that—

"(A) the proceeding is significant, and

"(B) such person's intervention or participation in such proceeding without receipt of compensation constitutes a significant financial hardship to him.

"(3) Nothing in this subsection affects or restricts and rights of any intervenor or participant under any other applicable law or rule of law.

"(4) There are authorized to be appropriated to the Secretary of Energy to be used by the Office for purposes of compensation of persons under the provisions of this subsection not to exceed $500,000 for the fiscal year 1978, not to exceed $2,000,000 for the fiscal year 1979, not to exceed $2,200,000 for the fiscal year 1980, and not to exceed $2,400,000 for the fiscal year 1981.".

SEC. 213. CONDUIT HYDROELECTRIC FACILITIES

Part I of the Federal Power Act is amended by adding the following new section at the end thereof:

"SEC. 30. (a) Except as provided in subsection (b) or (c), the Commission may grant an exemption in whole or in part from the requirements of this part, including any license requirements contained in this part, to any facility (not including any dam or other impoundment) constructed, operated, or maintained for the generation of electric power which the Commission determines, by rule or order—

"(1) is located on non-Federal lands, and

"(2) utilizes for such generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

"(b) The Commission may not grant any exemption under subsection (a) to any facility the installed capacity of which exceeds 15 megawatts.

"(c) In making the determination under subsection (a) the Commission shall consult with the United States Fish and Wildlife Service and the State agency exercising administration over the fish and wildlife resources of the State in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.), and shall include in any such exemption—

"(1) such terms and conditions as the Fish and Wildlife Service and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

"(2) such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provisions of this section and the terms and conditions included in any such exemption.

"(d) Any violation of a term or condition of any exemption granted under subsection (a) shall be treated as a violation of a rule or order of the Commission under this Act.".

SEC. 214. PRIOR ACTION; EFFECT ON OTHER AUTHORITIES.

(a) PRIOR ACTIONS.—No provision of this title or of any amendment made by this title shall apply to, or affect, any action taken by the Commission before the date of the enactment of this Act.

(b) OTHER AUTHORITIES.—No provision of this title or of any amendment made by this title shall limit, impair or otherwise affect any authority of the Commission or any other agency or instrumentality of the United States under any other provision of law except as specifically in this title.

TITLE III—RETAIL POLICIES FOR NATURAL GAS UTILITIES

SEC. 301. PURPOSES; COVERAGE.

(a) PURPOSES.—The purposes of this title are to encourage—

(1) conservation of energy supplied by gas utilities;

(2) the optimization of the efficiency of use of facilities and resources by gas utility systems; and

(3) equitable rates to gas consumers of natural gas.

(b) VOLUME OF RETAIL SALES.—This title applies to each gas utility in any calendar year, and to each proceeding relating to each gas utility in such year, if the total sales of natural gas by such utility for purposes other than resale exceeded 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(c) EXCLUSION OF WHOLESALE SALES.—The requirements of this title do not apply to the operations of a gas utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of natural gas for purposes of resale.

(d) LIST OF COVERED UTILITIES.—Before the beginning of each calendar year, the Secretary shall publish a list identifying each gas utility to which this title applies during such calendar year. Promptly after publication of such list, each State regulatory authority shall notify the Secretary of each gas utility on the list for which such State regulatory authority has ratemaking authority.

SEC. 302. DEFINITIONS.

For purposes of this title—

(1) The term "gas consumer" means any person, State agency, or Federal agency, to which natural gas is sold other than for purposes of resale.

(2) The term "gas utility" means any person, State agency, or Federal agency, engaged in the local distribution of natural gas, and the sale of natural gas to any ultimate consumer of natural gas.

(3) The term "State regulated gas utility" means any gas utility with respect to which a State regulatory authority has ratemaking authority.

(4) The term "nonregulated gas utility" means any gas utility other than a State regulated gas utility.

(5) The term "rate" means any (A) price, rate, charge, or classification made, demanded, observed, or received with respect to sale of natural gas to a gas consumer, (B) any rule, regulation, or practice respecting any such rate, charge, or classification, and (C) any contract pertaining to the sale of natural gas to a gas consumer.

(6) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(7) The term "sale", when used with respect to natural gas, includes an exchange of natural gas.

(8) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of natural gas by any gas utility (other than by such State agency).

SEC. 303. ADOPTION OF CERTAIN STANDARDS.

(a) ADOPTION OF STANDARDS.—Not later than 2 years after the date of the enactment of this Act, each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas utility shall provide public notice and conduct a hearing respecting the standards established by subsection (b) and, on the basis of such hearing, shall—

(1) adopt the standard established by subsection (b)(1) if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate and is consistent with otherwise applicable State law, and

(2) adopt the standard established by subsection (b)(2) if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate to carry out the purposes of this title, is otherwise appropriate, and is consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) and (2) and any review of such determination in any court under section 307, the purposes of this title supplement State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) ESTABLISHMENT.—The following Federal standards are hereby established:

(1) PROCEDURES FOR TERMINATION OF NATURAL GAS SERVICE.—No gas utility may terminate natural gas service to any gas consumer except pursuant to procedures described in section 304(a).

(2) ADVERTISING.—No gas utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 304(b).

(c) PROCEDURAL REQUIREMENT.—Each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas utility, within the 2-year period specified in subsection (a), shall adopt, pursuant to subsection (a), each of the standards established by subsection (b) or, with respect to any such standard which is not adopted, such authority or nonregulated gas utility shall state in writing that it has determined not to adopt such standard, together with the reasons for such determination. Such statement of reasons should be available to the public.

SEC. 304. SPECIAL RULES FOR STANDARDS.

(a) PROCEDURES FOR TERMINATION OF GAS SERVICE.—The procedures for termination of service referred to in section 303(b)(1) are procedures prescribed by the State regulatory authority (with respect to gas utilities for which it has ratemaking authority) or the nonregulated gas utility which provide that—

(1) no gas service to a gas consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to a gas consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to gas utility for which it has ratemaking authority) or nonregulated gas utility, and such consumer establishes that—

(A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) he is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

(b) ADVERTISING.—(1) For purposes of this section and section 303—

(A) The term "advertising" means the commercial use, by a gas utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or such utility's gas consumers.

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matter, or with respect to any controversial issue of public importance.

(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of a gas utility or the selection or installation of any appliance or equipment designed to use such utility's service.

(2) For purposes of this section and section 303, the terms "political advertising" and "promotional advertising" do not include—

(A) advertising which informs natural gas consumers how they can conserve natural gas or can reduce peak demand for natural gas,

(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act,

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notification of hearings thereon.

SEC. 305. FEDERAL PARTICIPATION.

(a) INTERVENTION.—In addition to the authorities vested in the Secretary pursuant

to any other provision of law, the Secretary, on his own motion, may intervene as a matter of right in any proceeding before a State regulatory authority which relates to gas utility rates or rate design. Such intervention shall be solely for the purpose of advocating policies or methods which carry out the purposes set forth in section 301 of this title.

(b) RIGHTS.—The Secretary shall have the same rights as any other party to a proceeding before a State regulatory authority which relates to gas utility rates or rate design.

(c) NONREGULATED GAS UTILITIES.—The Secretary, on his own motion, may, to the same extent as provided in subsections (a) through (b), intervene as a matter of right in any proceeding which relates to rates or rate design of nonregulated gas utilities.

SEC. 306. GAS UTILITY RATE DESIGN PROPOSALS.

(a) STUDY.—(1) The Secretary, in consultation with the Commission and, after affording an opportunity for consultation and comment by representatives of the State regulatory commissions, gas utilities, and gas consumers, shall study and report to Congress on gas utility rate design within 18 months after the date of the enactment of this Act. Such study shall address the effect (both separately and in combination) of the following factors upon the items listed in paragraph (2): incremental pricing; marginal cost pricing; end user gas consumption taxes; wellhead natural gas pricing policies; demand-commodity rate design; declining block rates; interruptible service; seasonal rate differentials; and end user rate schedules.

(2) The items referred to in paragraph (1) are as follows:

(A) natural gas pipeline and local distribution company load factors;

(B) rates to each class of user, including residential, commercial, and industrial users;

(C) the change in total costs resulting from gas utility designs (including capital and operating costs) to gas consumers or classes thereof;

(D) demand for, and consumption of, natural gas;

(E) end use profiles of natural gas pipelines and local distribution companies; and

(F) competition with alternative fuels.

(b) PROPOSALS.—Based upon the study prepared pursuant to subsection (a), the Secretary shall develop proposals to improve gas utility rate design and to encourage conservation of natural gas. Such proposals shall include any comments and recommendations of the Commission.

(c) TRANSMISSION TO CONGRESS.—The proposals prepared under subsection (b) shall be transmitted, together with any legislative recommendations, to each House of Congress not later than 6 months after the date of submission of the study under subsection (a). Such proposals shall be accompanied by an analyses of—

(1) the projected savings (if any) in consumption of natural gas, and other energy resources,

(2) changes (if any) in the cost of natural gas to consumers, which are likely to result from the implementation nationally of each of such proposals, and

(3) the effects of the proposals on other provisions of this Act on gas utility rate structures.

(d) PUBLIC PARTICIPATION.—The Secretary shall provide for public participation in the conduct of the study under subsection (a) and the preparation of proposals under subsection (b).

SEC. 307. JUDICIAL REVIEW AND ENFORCEMENT.

(a) LIMITATION OF FEDERAL JURISDICTION.—(1) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction over any action arising under any provision of this title except for—

(A) an action over which a court of the United States has jurisdiction under paragraph (2), or

(B) review in the Supreme Court of the United States in accordance with sections 1257 and 1258 of title 28 of the United States Code.

(2) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under section 305 and such court shall have jurisdiction to grant appropriate relief.

(b) ENFORCEMENT.—(1) Any person may bring an action to enforce the requirements of this title in the appropriate State court. Such action in a State court shall be pursuant to applicable State procedures.

(2) Nothing in this title shall authorize the Secretary to appeal or otherwise seek judicial review of the decisions of a State regulatory authority or nonregulated gas utility or to become a party to any action to obtain such review or appeal. The Secretary may participate as an amicus curiae in any judicial review of an action arising under the provisions of this title.

SEC. 308. RELATIONSHIP TO OTHER APPLICABLE LAW.

Nothing in this title prohibits any State regulatory authority or nonregulated gas utility from adopting, pursuant to State law, any standard or rule affecting gas utilities which is different from any standard established by this title.

SEC. 309. REPORTS RESPECTING STANDARDS.

(a) STATE AUTHORITIES AND NONREGULATED UTILITIES.—Not later than 1 year after the date of the enactment of this Act and annually thereafter for 10 years, each State regulatory authority (with respect to each gas utility for which it has ratemaking authority), and each nonregulated gas utility, shall report to the Secretary, in such manner as the Secretary shall prescribe, respecting its consideration of the standards established by this title. Such report shall include a summary of the determinations made and actions taken with respect to each of such standards on a utility-by-utility basis.

(b) SECRETARY.—Not later than 18 months after the date of the enactment of this Act and annually thereafter for 10 years, the Secretary shall submit a report to the President and the Congress containing—

(1) a summary of the reports submitted under subsection (a),

(2) his analysis of such reports, and

(3) his actions under this title, and his recommendations for such further Federal actions, including any legislation, regarding retail gas utility rates (and other practices) as may be necessary to carry out the purposes of this title.

SEC. 310. PRIOR AND PENDING PROCEEDINGS.

For purposes of this title, proceedings commenced by any State regulatory authority (with respect to gas utilities for which it has ratemaking authority) and any nonregulated gas utility before the date of the enactment of this Act and actions taken before such date in such proceedings shall be treated as complying with the requirements of this title if such proceedings and actions substantially conform to such requirements. For purposes of this title, any such proceeding or action commenced before the date of enactment of this Act but not completed before such date shall comply with the requirements of this title, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date.

SEC. 311. RELATIONSHIP TO OTHER AUTHORITY.

Nothing in this title shall be construed to limit or affect any authority of the Secretary or the Commission under any other provision of law.

TITLE IV—SMALL HYDROELECTRIC POWER PROJECTS

SEC. 401. ESTABLISHMENT OF PROGRAM.

The Secretary shall establish a program in accordance with this title to encourage municipalities, electric cooperatives, industrial development agencies, nonprofit organizations, and other persons to undertake the development of small hydroelectric power projects in connection with existing dams which are not being used to generate electric power.

SEC. 402. LOANS FOR FEASIBILITY STUDIES.

(a) LOAN AUTHORITY.—The Secretary, after consultation with the Commission, is authorized to make a loan to any municipality, electric cooperative, industrial development agency, nonprofit organization, or other person to assist such person in defraying up to 90 percent of the costs of—

(1) studies to determine the feasibility of undertaking a small hydroelectric power project at an existing dam or dams and

(2) preparing any application for a necessary license or other Federal, State, and local approval respecting such a project at an existing dam or dams and of participating in any administrative proceeding regarding any such application.

(b) CANCELLATION.—The Secretary may cancel the unpaid balance and any accrued interest on any loan granted pursuant to this section if he determines on the basis of the study that the small hydroelectric power project would not be technically or economically feasible.

SEC. 403. LOANS FOR PROJECT COSTS.

(a) AUTHORITY.—The Secretary is authorized to make loans to any municipality, electric cooperative, industrial development agency, nonprofit organization, or other person of up to 75 percent of the project costs of a small hydroelectric power project. No such loan may be made unless the Secretary finds that—

(1) the project will be constructed in connection with an existing dam or dams,

(2) all licenses and other required Federal, State, and local approvals necessary for construction of the project have been issued,

(3) the project will have no significant adverse environmental effects, including significant adverse effects on fish and wildlife, on recreational use of water, and on stream flow, and

(4) the project will not have a significant adverse effect on any other use of the water used by such project.

The Secretary may make a commitment to make a loan under this subsection to an applicant who has not met the requirements of paragraph (2), pending compliance by such applicant with such requirements. Such commitment shall be for a period of not to exceed 3 years unless the Secretary, in consultation with the Commission, extends such period for good cause shown. Notwithstanding any such commitment, no such loan shall be made before such person has compiled with such requirements.

(b) PREFERENCE.—The Secretary shall give preference to applicants under this section who do not have available alternative financing which the Secretary deems appropriate to carry out the project and whose projects will provide useful information as to the technical and economic feasibility of—

(1) the generation of electric energy by such projects, and

(2) the use of energy produced by such projects.

(c) INFORMATION.—Every applicant for a license for a small hydroelectric power project receiving loans pursuant to this section shall furnish the Secretary with such information as the Secretary may require regarding

equipment and services proposed to be used in the design, construction, and operation of such project. The Secretary shall have the right to forbid the use in such project of any equipment or services he finds inappropriate for such project by reason of cost, performance, or failure to carry out the purposes of this section. The Secretary shall make information which he obtains under this subsection available to the public, other than information described as entitled to confidentiality under section 11(d) of the Energy Supply and Environmental Coordination Act of 1974.

(d) JOINT PARTICIPATION.—In making loans for small hydroelectric power projects under this section, the Secretary shall encourage joint participation, to the extent permitted by law, by applicants eligible to receive loans under this section with respect to the same project.

SEC. 404. LOAN RATES AND REPAYMENT.

(a) INTEREST.—Each loan made pursuant to this title shall bear interest at the discount or interest rate used at the time the loan is made for water resources planning projects under section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 1962–17(a)). Each such loan shall be for such term, as the Secretary deems appropriate, but not in excess of—

(1) 10 years (in the case of a loan under section 402) or

(2) 30 years (in the case of a loan under section 403).

(b) REPAYMENTS.—Amounts repaid on loans made pursuant to this title shall be deposited into the United States Treasury as miscellaneous receipts.

SEC. 405. SIMPLIFIED AND EXPEDITIOUS LICENSING PROCEDURES

(a) ESTABLISHMENT OF PROGRAM.—The Commission shall establish in such manner as the Commission deems appropriate, consistent with the applicable provisions of law, a program to use simple and expeditious licensing procedures under the Federal Power Act for small hydroelectric power projects in connection with existing dams.

(b) PREREQUISITES.—Before issuing any license under the Federal Power Act for the construction or operation of any small hydroelectric power project the Commission—

(1) shall assess the safety of existing structures in any proposed project (including possible consequences associated with failure of such structures), and

(2) shall provide an opportunity for consultation with the Council on Environmental Quality and the Environmental Protection Agency with respect to the environmental effects of such project.

Nothing in this subsection exempts any such project from any requirement applicable to any such project under the National Environmental Policy Act of 1969, the Fish and Wildlife Coordination Act, the Endangered Species Act, or any other provision of Federal law.

(c) FISH AND WILDLIFE FACILITIES.—The Commission shall encourage applicants for licenses for small hydroelectric power projects to make use of public funds and other assistance for the design and construction of fish and wildlife facilities which may be required in connection with any development of such project.

SEC. 406. NEW IMPOUNDMENTS.

Nothing in this title authorizes (1) the loan of funds for construction of any new dam or other impoundment, or (2) the simple and expeditious licensing of any such new dam or other impoundment.

SEC. 407. AUTHORIZATIONS.

There are hereby authorized to be appropriated for each of the fiscal years ending September 30, 1978, September 30, 1979, and September 30, 1980, not to exceed $10,000,000 for loans to be made pursuant to section 402, such funds to remain available until expended. There are hereby authorized to be appropriated for each of the fiscal years ending September 30, 1978, September 30, 1979, September 30, 1980, not to exceed $100,000,000 for loans to be made pursuant to section 403, such funds to remain available until expended.

SEC. 408. DEFINITIONS.

For purposes of this title, the term—

(1) "small hydroelectric power project" means any hydroelectric power project which is located at the site of any existing dam, which uses the water power potential of such dam, and which has not more than 15,000 kilowatts of installed capacity;

(2) "electric cooperative" means any cooperative association eligible to receive loans under section 4 of the Rural Electrification Act of 1936 (7 U.S.C. 904);

(3) "industrial development agency" means any agency which is permitted to issue obligations the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1954;

(4) "project costs" means the cost of acquisition or construction of all facilities and services and the cost of acquisition of all land and interests in land used in the design and construction and operation of a small hydroelectric power project;

(5) "nonprofit organization" means any organization described in section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954 and exempt from tax under section 501(a) of such Code (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization);

(6) "existing dam" means any dam, the construction of which was completed on or before April 20, 1977, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project;

(7) "municipality" has the meaning provided in section 3 of the Federal Power Act; and

(8) "person" has the meaning provided in section 3 of the Federal Power Act.

TITLE V—CRUDE OIL TRANSPORTATION SYSTEMS

SEC. 501. FINDINGS.

The Congress finds and declares that—

(1) a serious crude oil supply shortage may soon exist in portions of the United States;

(2) a large surplus of crude oil on the west coast of the United States is projected;

(3) any substantial curtailment of Canadian crude oil exports to the United States could create a severe crude oil shortage in the northern tier States;

(4) pending the authorization and completion of west-to-east crude oil delivery systems, Alaskan crude oil in excess of west coast needs will be transshipped through the Panama Canal at a high transportation cost;

(5) national security and regional supply requirements may be such that west-to-east crude delivery systems serving both the northern tier States and inland States, consistent with the requirements of section 410 of the Act approved November 16, 1973 (87 Stat. 594), commonly known as the Trans-Alaska Pipeline Authorization Act, are needed;

(6) expeditious Federal and State decisions for west-to-east crude oil delivery systems are of the utmost priority; and

(7) resolution of the west coast crude oil surplus and the need for crude oil in northern tier States and inland States require the assignment and coordination of overall responsibility within the executive branch to permit expedited action on all necessary environmental assessments and decisions on permit applications concerning delivery systems.

SEC. 502. STATEMENT OF PURPOSES.

The purposes of this title are—

(1) to provide a means for—

(A) selecting delivery systems to transport Alaskan and other crude oil to northern tier States and inland States, and

(B) resolving both the west coast crude oil surplus and the crude oil supply problems in the northern tier States;

(2) to provide an expedited procedure for acting on application for all Federal permits, licenses, and approvals required for the construction and operation or any transportation system approved under this title and the Long Beach-Midland project; and

(3) to assure that Federal decisions with respect to crude oil transportation systems are coordinated with State decisions to the maximum extent practicable.

SEC. 503. DEFINITIONS.

As used in this title—

(1) The term "northern tier States" means the States of Washington, Oregon, Idaho, Montana, North Dakota, Minnesota, Michigan, Wisconsin, Illinois, Indiana, and Ohio.

(2) The term "inland States" means those States in the United States other than northern tier States and the States of California, Alaska, and Hawaii.

(3) The term "crude oil transportation system" means a crude oil delivery system (including the location of such system) for transporting Alaskan and other crude oil to northern tier States and inland States, but such term does not include the Long Beach-Midland project.

(4) The term "Long Beach-Midland project" means the crude oil delivery system which was the subject of, and is generally described in, the "Final Environmental Impact Statement, Crude Oil Transportation System: Valdez, Alaska, to Midland, Texas (as proposed by Sohio Transportation Company)", the availability of which was announced by the Department of the Interior in the Federal Register on June 1, 1977 (42 Fed. Reg. 28008).

(5) The term "Federal agency" means an Executive agency, as defined in section 105 of title 5, United States Code.

SEC. 504. APPLICATIONS FOR APPROVAL OF PROPOSED CRUDE OIL TRANSPORTATION SYSTEMS.

The following applications for construction and operation of a crude oil transportation system submitted to the Secretary of the Interior by an applicant are eligible for consideration under this title:

(1) Applications received by the Secretary before the 30th day after the date of the enactment of this Act.

(2) Applications received by the Secretary during the 60-day period beginning on the 30th day after the date of the enactment of this Act, if the Secretary determines that consideration and review of the proposal contained in such application is in the national interest and that such consideration and review could be completed within the time limits established under this title.

An application under this section may be accepted by the Secretary only if it contains a general description of the route of the proposed system and identification of the applicant and any other person who, at the time of filing, has a financial or other interest in the system or is a party to an agreement under which such person would acquire a financial or other interest in the system.

SEC. 505. REVIEW SCHEDULE.

(a) ESTABLISHMENT.—The Secretary of the Interior, after consultation with the heads of appropriate Federal agencies, shall establish an expedited schedule for conducting reviews and making recommendations concerning

crude oil transportation systems proposed in applications filed under section 504 and for obtaining information necessary for environmental impact statements required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) with respect to such proposed systems.

(b) ADDITIONAL INFORMATION.—(1) On his own initiative or at the request of the head of any Federal agency covered by the review schedule established under subsection (a), the Secretary of the Interior shall require that an applicant provide such additional information as may be necessary to conduct the review of the applicant's proposal. Such information may include—

(A) specific details of the route (and alternative routes) and identification of Federal lands affected by any such route;

(B) information necessary for environmental impact statements; and

(C) information necessary for the President's determination under section 507(a).

(2) If, within a reasonable time, an applicant does not—

(A) provide information required under this subsection, or

(B) comply with any requirement of section 304 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2765; 43 U.S.C. 1934),

the Secretary of the Interior may declare the application ineligible for consideration under this title. After making such a declaration, the Secretary of the Interior shall notify the applicant and the President of such ineligibility.

(c) RECOMMENDATIONS OF THE HEADS OF FEDERAL AGENCIES.—(1) Pursuant to the schedule established under subsection (a), heads of Federal agencies covered by such schedule shall conduct a review of a proposed crude oil transportation system eligible for consideration under this title and shall submit their recommendations concerning such systems (and the bases for such recommendations) to the Secretary of the Interior for submission to the President. After receipt of such recommendations and before their submission to the President, the Secretary of the Interior shall provide an opportunity for comments in accordance with paragraph (2). The Secretary of the Interior shall forward such comments to the President with the recommendations—

(A) in the case of applications filed under section 504(1), on or before December 1, 1978, and

(B) in the case of applications filed under section 504(2), on or before the 60th day after December 1, 1978.

(2)(A) After receipt of recommendations under paragraph (1) the Secretary of the Interior shall provide appropriate means by which the Governor and any other official of any State and any official of any political subdivision of a State, may submit written comments concerning proposed crude oil transportation systems eligible for consideration under this title.

(B) After receipt of recommendations referred to in subparagraph (A), the Secretary of the Interior shall make such comments and recommendations available to the public and provide an opportunity for submission of written comments.

(d) REVIEW BY THE FEDERAL TRADE COMMISSION; EFFECT ON THE ANTITRUST LAWS.—(1) Promptly after he receives an application for a proposed crude oil transportation system eligible for consideration under this title, the Secretary of the Interior shall submit to the Federal Trade Commission a copy of such application and such other information as the Commission may reasonably require. The Commission may prepare and submit to the President a report on the impact of implementation of such application upon competition and restraint of trade and on whether such implementation would be inconsistent with the antitrust laws. Such report shall be made available to the public. Nothing in this subsection shall be construed to prevent the President from making his decision under section 507(a) in the absence of such report.

(2) Nothing in this title shall bar the Attorney General or any other appropriate officer or agent of the United States from challenging any anticompetitive act or practice related to the ownership, construction, or operation of any crude oil transportation system approved under this title. The approval of any such system under this title shall not be deemed to convey to any person immunity from civil or criminal liability or to create defenses to actions under the antitrust laws and shall not modify or abridge any private right of action under such laws.

(e) FILING AND REVIEW OF PERMITS, RIGHTS-OF-WAY APPLICATIONS, ETC., NOT AFFECTED.—Nothing in this title shall be construed to prevent the acceptance and review by any Federal agency of any application for any Federal permit, right-of-way, or other authorizations under other provisions of law for a crude oil transportation system eligible for consideration under this title; except that any determination with respect to such an application may be made only in accordance with the provisions of section 509(a).

SEC. 506. ENVIRONMENTAL IMPACT STATEMENTS.

(a) PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS.—Any Federal agency required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) to issue an environmental impact statement concerning a proposed crude oil transportation system eligible for consideration under this title shall, in preparing such statement, utilize, to the maximum extent practicable and consistent with such Act, appropriate data, analyses, conclusions, findings, and decisions regarding environmental impacts developed or made by any other Federal or State agency.

(b) FILING OF ENVIRONMENTAL IMPACT STATEMENTS.—On or before December 1, 1978, all environmental impact statements concerning proposed crude oil transportation systems eligible for consideration under this title and required under section 102 of the National Environmental Policy Act of 1969 shall be completed, made available for public review and comment, revised to the extent appropriate in light of such comment, and submitted to the President and the Council on Environmental Quality; except that in the case of any environmental impact statement concerning any crude oil transportation system which is eligible for consideration and which was filed under section 504 (2) of this title, such actions may be taken not later than 60 days after December 1, 1978.

(c) REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY.—Promptly after receiving an environmental impact statement referred to in subsection (b) for a crude oil transportation system, the Council on Environmental Quality shall submit to the President a report on the Council's opinion concerning such statement and concerning other matters related to the environmental impact of such system.

SEC. 507. DECISION OF THE PRESIDENT.

(a) DECISION CONCERNING APPROVAL OR DISAPPROVAL OF PROPOSED SYSTEMS.—(1) After reviewing all the information submitted to him concerning the various proposed crude oil transportation systems eligible for consideration under this title (including environmental impact statements, comments, reports, recommendations, and other information submitted to him at any time before he makes his decision) and after consulting the Secretaries of Energy, the Interior, and Transportation, the President shall decide which, if any, of such systems shall be approved for the purposes of section 508 (relating to procedures for waiver of law), section 509 (relating to expedited procedures for issuance of permits), section 510 (relating to negotiations with the Government of Canada), and section 511 (relating to judicial review). A decision approving a crude oil transportation system may include such modifications and alterations in such system as the President finds appropriate. The President shall issue his decision within 45 days after receiving recommendations and comments submitted to him under section 505(c), except that the President, for such period as he deems necessary, but not to exceed 60 days, may delay his decision and its issuance if he determines that additional time is otherwise necessary to enable him to make a decision. If the President so delays his decision, he shall promptly notify the House of Representatives and the Senate of such delay and shall submit a full explanation of the basis for such delay.

(2) Any decision made under this subsection approving a system proposed under this title shall include a determination that construction and operation of such system is in the national interest and shall be based upon the criteria specified in subsection (b).

(b) CRITERIA.—(1) The criteria for making a decision under this subsection shall include findings of—

(A) environmental impacts of the proposed systems and the capability of such systems to minimize environmental risks resulting from transportation of crude oil;

(B) the amount of crude oil available to northern tier States and inland States and the projected demand in those States under each of such systems;

(C) transportation costs and delivered prices of crude oil by region under each of such systems;

(D) construction schedules for each of such systems and possibilities for delay in such schedules;

(E) feasibility of financing for each of such systems;

(F) capital and operating costs of each of such systems, including an analysis of the reliability of cost estimates and the risk of cost overruns;

(G) net national economic costs and benefits of each such system;

(H) the extent to which each system complies with the provisions of section 410 of the Act approved November 16, 1973 (87 Stat. 594), commonly known as the Trans-Alaska Pipeline Authorization Act;

(I) the effect of each such system on international relations, including the status and time schedule for any necessary Canadian approvals and plans;

(J) impact upon competition by each system;

(K) degree of safety and efficiency of design and operation of each system;

(L) potential for interruption of deliveries of crude oil from the west coast under each such system;

(M) capacity and cost of expanding such system to transport additional volumes of crude oil in excess of initial system capacity;

(N) national security considerations under each such system,

(O) relationship of each such system to national energy policy; and

(P) such other factors as the President deems appropriate.

(2) The period of time for which such findings shall be made shall be the useful life of the crude oil transportation system involved.

(c) PUBLICATION OF FINDINGS AND DECISION.—The President shall make available to the public at the time of issuance of a decision under this section a written statement setting forth findings with respect to each of the criteria specified in subsection (b) and describing the nature and route of crude oil transportation systems, if any, which are approved in the decision. If the President's decision is to approve a system, such statement shall set forth his reasons for approving such system over other proposed systems

(if any) eligible for consideration under this title. Such statement along with notification of such decision shall be published in the Federal Register.

SEC. 508. PROCEDURES FOR WAIVER OF FEDERAL LAW.

(a) WAIVER OF PROVISIONS OF FEDERAL LAW.—The President may identify those provisions of Federal law (including any law or laws regarding the location of a crude oil transportation system but not including any provision of the antitrust laws) which, in the national interest, as determined by the President, should be waived in whole or in part to facilitate construction or operation of any such system approved under section 507 or of the Long Beach-Midland project, and he shall submit any such proposed waiver to both Houses of the Congress. The provisions so identified shall be waived with respect to actions to be taken to construct or operate such system or project only upon enactment of a joint resolution within the first period of 60 calendar days of continuous session of Congress beginning on the date of receipt by the House of Representatives and the Senate of such proposal.

(b) JOINT RESOLUTION.—The resolving clause of the joint resolution referred to in subsection (a) is as follows: "That the House of Representatives and Senate approve the waiver of the provisions of law (———) as proposed by the President, submitted to the Congress on ———, 19 .". The first blank space therein being filled with the citation to the provisions of law proposed to be waived by the President and the second blank space therein being filled with the date on which the President submits his decision to waive such provisions of law to the House of Representatives and the Senate. Rules and procedures for consideration of any such joint resolution shall be governed by section 8 (c) and (d) of the Alaskan Natural Gas Transportation Act, other than paragraph (2) of section 8(d), except that for the purposes of this subsection, the phrase "a waiver of provisions of law" shall be substituted in section 8(d) each place where the phrase "an Alaska natural gas transportation system" appears.

SEC. 509. EXPEDITED PROCEDURES FOR ISSUANCE OF PERMITS: ENFORCEMENT OF RIGHTS-OF-WAY.

(a) EXPEDITED PROCEDURES FOR APPROVED SYSTEMS.—After issuance of a decision by the President approving any crude oil transportation system, all Federal officers and agencies shall expedite, to the maximum extent practicable, consistent with applicable provisions of law, all actions necessary to determine whether to issue, administer, or enforce rights-of-way across Federal lands and to issue Federal permits in connection with, or otherwise to authorize, construction and operation of such system. Any such action shall be consistent with applicable provisions of law. After taking any such action, such officer or agency shall publish notification of the taking of such action in the Federal Register.

(b) EXPEDITED PROCEDURES FOR LONG BEACH-MIDLAND PROJECT.—All decisions regarding issuance of Federal permits, rights-of-way, and leases and other Federal authorizations necessary for construction and operation of the Long Beach-Midland project shall be consistent with applicable provisions of Federal law, except that such decisions shall be made within 30 days after the date this title becomes effective. The President may extend the date by which such decisions, under the preceding sentence, are to be made to a date not later than 90 days after the effective date of this title. Notification of the making of such decisions shall be published in the Federal Register. Nothing in this section affects any decision made before the date of the enactment of this title.

(c) LAW GOVERNING RIGHTS-OF-WAY.—Rights-of-way over any Federal land with respect to an approved crude oil transportation system or the Long Beach-Midland project shall be governed by the provisions of section 28 of the Act of February 25, 1920, commonly referred to as the Mineral Leasing Act of 1920 (30 U.S.C. 185), other than subsection (w)(2) of such section.

SEC. 510. NEGOTIATIONS WITH THE GOVERNMENT OF CANADA.

With respect to any crude oil transportation system approved under section 507(a) all or any part of which is to be located in Canada, the President of the United States is authorized and requested to enter into negotiations with the Government of Canada to determine what measures can be taken to expedite the granting of approvals by the Government of Canada for construction or operation of such system, and he is authorized and requested to explore the possibility of further exchanges of crude oil supplies between the United States and Canada.

SEC. 511. JUDICIAL REVIEW.

(a) NOTICE.—The President or any other Federal officer shall cause notice to be published in the Federal Register and in newspapers of general circulation in the areas affected whenever he makes any decision described in subsection (b).

(b) REVIEW OF CERTAIN FEDERAL ACTIONS.—Any action seeking judicial review of an action or decision of the President or any other Federal officer taken or made after the date of the enactment of this Act concerning the approval or disapproval of a crude oil transportation system or the issuance of necessary rights-of-way, permits, leases, and other authorizations for the construction, operation and maintenance of the Long Beach-Midland project or a crude oil transportation system approved under section 507(a) may only be brought within 60 days after the date on which notification of the action or decision of such officer is published in the Federal Register, or in newspapers of general circulation in the areas affected, whichever is later.

(c) JURISDICTION OF COURTS.—An action under subsection (b) shall be barred unless a petition is filed within the time specified. Any such petition shall be filed in the appropriate United States district court. A copy of such petition shall be transmitted by the clerk of such court to the Secretary. Notwithstanding the amount in controversy, such court shall have jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided and to provide appropriate relief. No State or local court shall have jurisdiction of any such claim whether in a proceeding instituted before, on, or after the date this title becomes effective. Any such proceeding shall be assigned for hearing at the earliest possible date and shall be expedited by such court. No court shall have jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization in connection with a crude oil transportation system approved under section 507 (a) or the Long Beach-Midland project, except as part of a final judgment entered in a case involving a claim filed pursuant to this section.

SEC. 512. AUTHORIZATION FOR APPROPRIATION.

There are authorized to be appropriated to the Secretary of the Interior to carry out his responsibilities under this title not to exceed $500,000 for the fiscal year ending on September 30, 1978, and not to exceed $1,000,000 for the fiscal year ending on September 30, 1979.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. STUDY CONCERNING ELECTRIC RATES OF STATE UTILITY AGENCIES.

(a) STUDY AND REPORT.—The Secretary, in consultation with the Commission and appropriate State regulatory authorities and other persons, shall conduct a study concerning the effects of provisions of Federal law on rates established by State utility agencies. The Secretary shall submit a report to Congress containing the results of such study not later than 1 year after the date of the enactment of this Act.

(b) DEFINITION.—The term "State utility agency" means an agency of a State (not including any political subdivision or agency thereof or any public power district) which is an electric utility.

SEC. 602. SEASONAL DIVERSITY ELECTRICITY EXCHANGE.

(a) AUTHORITY.—The Secretary may acquire rights-of-way by purchase, including eminent domain, through North Dakota, South Dakota, and Nebraska for transmission facilities for the seasonal diversity exchange of electric power to and from Canada if he determines—

(1) after opportunity for public hearing—

(A) that the exchange is in the public interest and would further the purposes referred to in section 101 (1) and (2) of this Act and that the acquisition of such rights-of-way and the construction and operation of such transmission facilities for such purposes is otherwise in the public interest,

(B) that a permit has been issued in accordance with subsection (b) for such construction, operation, maintenance, and connection of the facilities at the border for the transmission of electric energy between the United States and Canada as is necessary for such exchange of electric power, and

(C) that each affected State has approved the portion of the transmission route located in such State in accordance with applicable State law, or if there is no such applicable State law in such State, the Governor has approved such portion; and

(2) after consultation with the Secretary of the Interior and the heads of other affected Federal agencies, that the Secretary of the Interior and the heads of such other agencies concur in writing in the location of such portion of the transmission facilities as crosses Federal land under the jurisdiction of such Secretary or such other Federal agency, as the case may be.

The Secretary shall provide to any State such cooperation and technical assistance as the State may request and as he determines appropriate in the selection of a transmission route. If the transmission route approved by any State does not appear to be feasible and in the public interest, the Secretary shall encourage such State to review such route and to develop a route that is feasible and in the public interest. Any exercise by the Secretary of the power of eminent domain under this section shall be in accordance with other applicable provisions of Federal law. The Secretary shall provide public notice of his intention to acquire any right-of-way before exercising such power of eminent domain with respect to such right-of-way.

(b) PERMIT.—Notwithstanding any transfer of functions under the first sentence of section 301(b) of the Department of Energy Organization Act, no permit referred to in subsection (a)(1)(B) may be issued unless the Commission has conducted hearings and made the findings required under section 202 (e) of the Federal Power Act and under any applicable executive order respecting the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country. Any finding of the Commission under an applicable executive order referred to in this subsection shall be treated for purposes of judicial review as an order issued under section 202(e) of the Federal Power Act.

(c) TIMELY ACQUISITION BY OTHER MEANS.—The Secretary may not acquire any rights-of-way under this section unless he determines that the holder or holders of a permit referred to in subsection (a)(1)(B)

are unable to acquire such right-of-way under State condemnation authority, or after reasonable opportunity for negotiation, without unreasonably delaying construction, taking into consideration the impact of such delay on completion of the facilities in a timely fashion.

(d) PAYMENTS BY PERMITTEES.—(1) The property interest acquired by the Secretary under this section (whether by eminent domain or other purchase) shall be transferred by the Secretary to the holder of a permit referred to in subsection (b) if such holder has made payment to the Secretary of the entire costs of the acquisition of such property interest, including administrative costs. The Secretary may accept, and expend, for purposes of such acquisition, amounts from any such person before acquiring a property interest to be transferred to such person under this section.

(2) If no payment is made by a permit holder under paragraph (1), within a reasonable time, the Secretary shall offer such rights-of-way to the original owner for reacquisition at the original price paid by the Secretary. If such original owner refuses to reacquire such property after a reasonable period, the Secretary shall dispose of such property in accordance with applicable provisions of law governing disposal of property of the United States.

(e) FEDERAL LAW GOVERNING FEDERAL LANDS.—This section shall not affect any Federal law governing Federal lands.

(f) REPORTS.—The Secretary shall report annually to the Congress on the actions, if any, taken pursuant to this section.

SEC. 603. UTILITY REGULATORY INSTITUTE.

(a) MATCHING GRANTS.—The Secretary may make grants under this section to an institute established by the National Association of Regulatory Utility Commissioners to enable such institute to—

(1) conduct research on electric and gas utility regulatory policy issues,

(2) develop data processing and retrieval methods for electric and gas utility ratemaking, and

(3) perform other functions directly related to assisting State regulatory authorities in carrying out their functions under State law and this Act.

(b) FEDERAL SHARE.—Grants under this section shall not be used to provide more than the following percentages of the cost to the institute of carrying out the activities specified in subsection (a):

(1) 80 percent for the fiscal year 1979; and

(2) 60 percent for the fiscal year 1980.

The remaining amounts expended by the institute may not be provided from Federal sources.

(c) RESTRICTIONS.—Grants under this section may not be made subject to terms and conditions other than those the Secretary deems necessary for purposes of administering this section and for purposes of assuring that—

(1) all information gathered by the institute is available to the Secretary, the Commission, and the public, and

(2) no portion of any such grant is used to support or oppose any legislative proposal except by means of testimony by representatives of the institute provided by invitation to a committee of Congress or of a State legislature.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated not more than $2,000,000 for each of the fiscal years 1979 and 1980 for purposes of making grants under this section. No amounts may be appropriated for any fiscal year after the fiscal year 1980 to carry out the purposes of this section without a specific authorization of Congress.

SEC. 604. COAL RESEARCH LABORATORIES.

(a) DESIGNATION.—So much of section 801 of the Surface Mining Control and Reclamation Act of 1977 as precedes subsection (b) of paragraph (2) thereof is amended to read as follows:

"ESTABLISHMENT OF UNIVERSITY COAL RESEARCH LABORATORIES

"SEC. 801. (a) The Secretary of Energy, after consultation with the National Academy of Engineering, shall designate thirteen institutions of higher education at which university coal research laboratories will be established and operated. Ten such designations shall be made as provided in subsection (e) and the remaining three shall be made in fiscal year 1980.

"(b) In making designations under this section, the Administrator shall consider the following criteria:

"(1) Those ten institutions of higher education designated as provided in subsection (e) shall be located in a State with abundant coal reserves.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 806 of such Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 806. (a) For the ten institutions referred to in the last sentence of section 801 (a), there are authorized to be appropriated not to exceed $30,000,000 for the fiscal year ending September 30, 1979 (including the cost of construction, equipment, and start-up expenses), and not to exceed $7,500,000 for the fiscal year ending before October 1, 1984, to carry out the provisions of this title.

"(b) For the three remaining institutions referred to in the last sentence of section 801(a), there are authorized to be appropriated not to exceed $6,500,000 for the fiscal year 1980 (including the cost of construction, equipment, and startup expenses), and not to exceed $2,000,000 for each fiscal year after fiscal year 1980 ending before October 1, 1984, to carry out the provisions of this title.".

(c) CONFORMING AMENDMENT.—Title VIII of such Act is amended by striking out the terms "Administrator" and "Administrator, ERDA" in each place they appear and substituting "Secretary of Energy" in each such place.

SEC. 605. CONSERVED NATURAL GAS.

(a) GENERAL RULE.—(1) For purposes of determining the natural gas entitlement of any local distribution company under any curtailment plan, if the Commission revises any base period established under such plan, the volumes of natural gas which such local distribution company demonstrates—

(A) were sold by the local distribution company, for a priority use immediately before the implementation of conservation measures, and

(B) were conserved by reason of the implementation of such conservation measures, shall be treated by the Commission following such revision as continuing to be used for the priority use referred to in subparagraph (A).

(2) The Commission shall, by rule, prescribe methods for measurement of volumes of natural gas to which subparagraphs (A) and (B) of paragraph (1) apply.

(b) CONDITIONS, LIMITATIONS, ETC.—Subsection (a) shall not limit or otherwise affect any provision of any curtailment plan, or any other provision of law or regulation, under which natural gas may be diverted or allocated to respond to emergency situations or to protect public health, safety, and welfare.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "conservation measures" means such energy conservation measures, as determined by the Commission, as were implemented after the base period established under the curtailment plan in effect on the date of the enactment of this Act.

(2) The term "local distribution company" means any person engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(3) The term "curtailment plan" means a plan (including any modification of such plan required by the Natural Gas Policy Act of 1978) in effect under the Natural Gas Act which provides for recognizing and implementing priorities of service during periods of curtailed deliveries.

SEC. 606. VOLUNTARY CONVERSION OF NATURAL GAS USERS TO HEAVY FUEL OIL USERS.

(a) IN GENERAL.— (1) In order to facilitate voluntary conversion of facilities from the use of natural gas to the use of heavy petroleum fuel oil, the Commission shall, by rule, provide a procedure for the approval by the Commission of any transfer to any person described in paragraph 2(B) (i), (ii), or (iii) of contractual interests involving the receipt of natural gas described in paragraph 2(A).

(2)(A) The rule required under paragraph (1) shall apply to—

(i) natural gas—

(I) received by the user pursuant to a contract entered into before September 1, 1977, not including any renewal or extension thereof entered into on or after such date other than any such extension or renewal pursuant to the exercise by such user of an option to extend or renew such contract;

(II) other than natural gas the sale for resale or the transportation of which was subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act as of September 1, 1977;

(III) which was used as a fuel in any facility in existence on September 1, 1977.

(ii) natural gas subject to a prohibition order issued under section 607.

(B) The rule required under paragraph (1) shall permit the transfer of contractual interests—

(i) to any interstate pipeline;

(ii) to any local distribution company served by an interstate pipeline; and

(iii) to any person served by an interstate pipeline for a high priority use by such person.

(3) The rule required under paragraph (1) shall provide that any transfer of contractual interests pursuant to such rule shall be under such terms and conditions as the Commission may prescribe. Such rule shall include a requirement for refund of any consideration, received by the person transferring contractual interests pursuant to such rule, to the extent such consideration exceeds the amount by which the costs actually incurred, during the remainder of the period of the contract with respect to which such contractual interests are transferred, in direct association with the use of heavy petroleum fuel oil as a fuel in the applicable facility exceeds the price under such contract for natural gas, subject to such contract, delivered during such period.

(4) In prescribing the rule required under paragraph (1), and in determining whether to approve any transfer of contractual interests, the Commission shall consider whether such transfer of contractual interests is likely to increase demand for imported refined petroleum products.

(b) COMMISSION APPROVAL.—(1) No transfer of contractual interests authorized by the rule required under subsection (a)(1) may take effect unless the Commission issues a certificate of public convenience and necessity for such transfer if such natural gas is to be resold by the person to whom such contractual interests are to be transferred. Such certificate shall be issued by the Commission in accordance with the requirements of this subsection and those of section 7 of the Natural Gas Act, and the provisions of such Act applicable to the determination

of satisfaction of the public convenience and necessity requirements of such section.

(2) The rule required under subsection (a)(1) shall set forth guidelines for the application on a regional or national basis (as the Commission determines appropriate) of the criteria specified in subsection (e)(2) and (3) to determine the maximum consideration permitted as just compensation under this section.

(c) RESTRICTIONS ON TRANSFERS UNENFORCEABLE.—Any provision of any contract, which provision prohibits any transfer of any contractual interests thereunder, or any commingling or transportation of natural gas subject to such contract with natural gas the sale for resale or transportation of which is subject to the jurisdiction of the Commission under the Natural Gas Act, or terminates such contract on the basis of any such transfer, commingling, or transportation, shall be unenforceable in any court of the United States and in any court of any State if applied with respect to any transfer approved under the rule required under subsection (a)(1).

(d) CONTRACTUAL OBLIGATIONS UNAFFECTED.—The person acquiring contractual interests transferred pursuant to the rule required under subsection (a)(1) shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This section shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) DEFINITIONS.—For purposes of this section—

(1) The term "natural gas" has the same meaning as provided by section 2(5) of the Natural Gas Act.

(2) The term "just compensation", when used with respect to any contractual interests pursuant to the rule required under subsection (a)(1), means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (not including capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1), in direct association with the use of heavy petroleum fuel oil as a fuel in the applicable facility, exceeds

(B) the price under such contract for natural gas, subject to such contract, delivered during such period.

For purposes of subparagraph (A), the reasonable costs directly associated with the use of heavy petroleum fuel oil as a fuel shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such facility, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such heavy petroleum fuel oil.

(3) The term "just compensation," when used with respect to any intrastate pipeline which would have transported or distributed natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1), means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1), to the extent such loss—

(A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to the rule required under subsection (a)(1); and

(B) is not offset by—

(i) a reduction in expenses associated with such discontinuation; and

(ii) revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(4) The term "contractual interests" means the right to receive natural gas under contract as affected by an applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(5) The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act.

(6) The term "high-priority use" means any use of natural gas (other than its use for the generation of steam for industrial purposes or electricity identified by the Commission as a high priority use for which the Commission determines a substitute fuel is not reasonably available.

(7) The term "heavy petroleum fuel oil" means number 4, 5, or 6 fuel oil which is domestically refined.

(8) The term "local distribution company" means any person, other than any intrastate pipeline or any interstate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(9) The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act.

(10) The term "facility" means any electric powerplant, or major fuel burning installation, as such terms are defined in the Powerplant and Industrial Fuel Use Act of 1978.

(11) The term "curtailment plan" means a plan (including any modification of such plan required by the Natural Gas Policy Act of 1978), in effect under the Natural Gas Act or State law, which provides for recognizing and implementing priorities of service during periods of curtailed deliveries by any local distribution company, intrastate pipeline, or interstate pipeline.

(12) The term "interstate commerce" has the same meaning as such term has under the Natural Gas Act.

(f) COORDINATION WITH THE NATURAL GAS ACT.—(1) Consideration in any transfer of contractual interests pursuant to the rule required under subsection (a)(1) of this section shall be deemed just and reasonable for purposes of sections 4 and 5 of the Natural Gas Act if such consideration does not exceed just compensation.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act as a natural gas-company (within the meaning of such Act) or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1).

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale, or person is subject to the jurisdiction of the Commission under such Act without regard to the transfer of contractual interests pursuant to the rule required under subsection (a)(1).

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the sale in interstate commerce for resale or the transportation in interstate commerce of natural gas with respect to which contractual interests are transferred pursuant to the rule required under subsection (a)(1).

(g) VOLUME LIMITATION.—No supplier of natural gas under any contract, with respect to which contractual interests have been transferred pursuant to the rule required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum utility obligations specified in such contract:

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests pursuant to the rule required under subsection (a)(1), if no such transfer had occurred; and

(3) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests.

SEC. 607. EMERGENCY CONVERSION OF UTILITIES AND OTHER FACILITIES.

(a) PRESIDENTIAL DECLARATION.—The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

(1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and

(2) the exercise of authorities under this section is reasonably necessary, having been exhausted other alternatives (not including section 303 of the Natural Gas Policy Act of 1978) to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) LIMITATION.—(1) Any declaration of a natural gas supply emergency (or extension thereof) under subsection (a), shall terminate at the earlier of—

(A) the date on which the President finds that any shortage described in subsection (a) does not exist or is not imminent; or

(B) 120 days after the date of such declaration of emergency (or extension thereof).

(2) Nothing in this subsection shall prohibit the President from extending, under subsection (a), any emergency (or extension thereof), previously declared under subsection (a), upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

(c) PROHIBITIONS.—During a natural gas emergency declared under this section, the President may, by order, prohibit the burning of natural gas by any electric powerplant or major fuel-burning installation if the President determines that—

(1) such powerplant or installation had on September 1, 1977 (or at any time thereafter) the capability to burn petroleum products without damage to its facilities or equipment and without interference with operational requirements;

(2) significant quantities of natural gas which would otherwise be burned by such powerplant or installation could be made available before the termination of such emergency to any person served by an interstate pipeline for use by such person in a high-priority use; and

(3) petroleum products will be available for use by such powerplant or installation throughout the period the order is in effect.

(d) LIMITATIONS.—The President may specify in any order issued under this section the periods of time during which such order will be in effect and the quantity (or rate of

use) of natural gas that may be burned by an electric powerplant or major fuel-burning installation during such period, including the burning of natural gas by an electric powerplant to meet peak load requirements. No such order may continue in effect after the termination or expiration of such natural gas supply emergency.

(e) EXEMPTION FOR SECONDARY USES.—The President shall exempt from any order issued under this section the burning of natural gas for the necessary processes of ignition, startup, testing, and flame stabilization by any electric powerplant or major fuel-burning installation.

(f) EXEMPTION FOR AIR-QUALITY EMERGENCIES.—The President shall exempt any electric powerplant or major fuel-burning installation, in whole or in part, from any order issued under this section for such period and to such extent as the President determines necessary to alleviate any imminent and substantial endangerment to the health of persons within the meaning of section 303 of the Clean Air Act.

(g) LIMITATION ON INJUNCTIVE RELIEF.—(1) Except as provided in paragraph (2), no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued under this section unless such relief is in connection with a final judgment entered with respect to such order.

(2)(A) On the petition of any person aggrieved by an order issued under this section, the United States District Court for the District of Columbia may, after an opportunity for a hearing before such court and on an appropriate showing, issue a preliminary injunction temporarily enjoining, in whole or in part, the implementation of such order.

(B) For purposes of this paragraph, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States, except that no writ of subpena under the authority of this section shall issue for witnesses outside of the District of Columbia at a greater distance than 100 miles from the place of holding court unless the permission of the District Court for the District of Columbia has been granted after proper application and cause shown.

(h) DEFINITIONS.—For purposes of this section—

(1) The terms "electric powerplant", "powerplant", "major fuel-burning installation", and "installation" shall have the same meanings as such terms have under section 103 of the Powerplant and Industrial Fuel Use Act of 1978.

(2) The term "petroleum products" means crude oil, or any product derived from crude oil other than propane.

(3) The term "high priority use" means any—

(A) use of natural gas in a residence;

(B) use of natural gas in a commercial establishment in amounts less than 50 Mcf on a peak day; or

(C) any use of natural gas the curtailment of which the President determines would endanger life, health, or maintenance of physical property.

(4) The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

(i) USE OF CERTAIN TERMS.—In applying the provisions of this section in the case of natural gas subject to a prohibition order issued under this section, the term "petroleum products" (as defined in subsection (h)(2) of this section) shall be substituted for the term "heavy petroleum fuel oil" (as defined in section 606(e)(7)) if the person subject to any order under this section demonstrates to the Commission that the acquisition and use of heavy petroleum fuel oil is not technically or economically feasible.

SEC. 608. NATURAL GAS TRANSPORTATION POLICIES.

(a) IN GENERAL.—Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) is amended by adding at the end thereof the following:

"(2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of—

"(A) natural gas sold by the producer to such person; and

"(B) natural gas produced by such person.".

(b) CONFORMING AMENDMENT.—(1) Subsection (c) of section 7 of the Natural Gas Act (15 U.S.C. 717f(c)) is amended—

(A) by striking out "(c)" and inserting in lieu thereof "(c)(1)(A)", and

(B) by inserting "(B)" immediately before "In all other cases" where such term appears in the second undesignated paragraph of such subsection.

(2) Subsection (e) of section 7 of the Natural Gas Act (15 U.S.C. 717f(d)) is amended by striking out "subsection (c)" and inserting in lieu thereof "subsection (c)(1)".

And the Senate agrees to the same.

HARLEY O. STAGGERS,
T. L. ASHLEY,
AL ULLMAN,
DICK BOLLING,
THOMAS S. FOLEY,
JOHN D. DINGELL,
PAUL G. ROGERS,
BOB ECKHARDT,
PHILIP R. SHARP,
ANTHONY MOFFETT,
HENRY S. REUSS,
JAMES C. CORMAN,
C. B. RANGEL,
Managers on the Part of the House.

HENRY M. JACKSON,
J. BENNETT JOHNSTON,
JOHN A. DURKIN,
FLOYD K. HASKELL,
DALE BUMPERS,
H. M. METZENBAUM,
JAMES A. MCCLURE,
PETE DOMENICI,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 4018) entitled "An Act to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics" submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the House bill (H.R. 4018) struck out all of the bill after the enacting clause and inserted a substitute text which contained two titles. Title I (the "Public Utilities Regulatory Policies Act of 1977") contained the text of S. 2114, as amended by the Senate. Title II was identical, except for clerical and conforming changes, to part V (Public Utility Regulatory Policies) of title I or H.R. 8444, as passed by the House.

The House amendment to the Senate amendment and struck out the text of the Senate amendment and substituted the text of title I of H.R. 8444 as passed by the House.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for both the Senate amendment and the House amendment. The differences between the Senate amendment, the House amendment, and the substitute agreed to in conference are noted below, except for clerical correction, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Since the Senate and House amendments both substituted new texts for the House bill; H.R. 4018 (which was unrelated to electric and gas utility matters when it originally passed the House), references in the explanation below to "the House bill" are not intended to serve as references to H.R. 4018 as originally passed by the House but as references to part V of title I of H.R. 8444 as passed by the House. Similarly, since the Senate amendment contained both the texts of S. 2114 as amended by the Senate and the text of part V of title I of H.R. 8444, as passed by the House, references to the Senate amendment in the explanation below are intended to serve as references to S. 2114 as passed by the Senate.

No action was taken by the conferees with respect to that portion (title II) of the Senate amendment which contained the text of part V of title I of H.R. 8444 or with respect to that portion of the House amendment to the Senate amendment as contained in other titles of H.R. 8444.

House bill

The House bill contained provisions designed to encourage the conservation of resources by electric utilities and to carry out other purposes by means of establishing national minimum retail electric rate design standards and policies, by adding to the authority of the Federal Energy Regulatory Commission to prescribe rules and procedures regarding the improving of efficiency of, and preserving competition in, generation and transmission of electricity at the wholesale level, by authorizing the Department of Energy to make certain grants to assist the States and by authorizing the Commission to make loans and grants to develop the hydroelectric potential of existing dams which are not being used to generate electric power. In addition, it required the Commission to undertake a study of natural gas retail rate design and imposed certain limited requirements on natural gas utilities.

There were six chapters in the House bill. Chapter 1 set forth the purposes of the House bill including the need to establish national retail electric rate design policies in order to assure that States which would implement rate reforms would not be placed at a competitive economic disadvantage by reason of rates in other States which subsidize certain classes of users.

In chapter 2, the House bill imposed a number of requirements on regulated and nonregulated electric utilities above a certain size after 2 years from the date of enactment. Requirements regarding retail rate design included provisions that rates must be designed to reflect costs of service and be on a time of day and seasonal basis except where not cost-effective. Notwithstanding the requirement that rates reflect cost of service, a State could establish lower than cost rates for the essential electric energy needs of residential class electric customers. Also, individual customers could obtain limited exceptions to these provisions upon a showing of significant economic hardship. There were also provisions requiring the gathering of certain information prohibiting the recovery by the electric utility from its electric consumers of certain advertising expenses, provisions governing the use of automatic adjustment clauses, and requirements regarding the establishment of nondiscriminatory

rates for small electric systems, implementation of load management techniques, transmittal of information to electric consumers, and procedures for termination of electric service.

Chapter 2 of the House bill imposed a compliance determination role on State regulatory authorities and a role for the Commission. It also required State regulatory authorities to prescribe methods for the determination of costs of services and to consider load management techniques. Provision was made for the reimbursement of intervenors in regulatory proceedings and for enforcement and judicial review of utility compliance with chapter 2 in State and Federal court.

Chapter 3 of the House bill expanded the authority of the Federal Energy Regulatory Commission to order interconnections between electric utilities and to order the wheeling of electric power to utilities and pooling among utilities. Chapter 3 also required the Commission to issue rules to insure continuance of service, to establish electric utility reliability standards, and to facilitate the sale and purchase of electricity between electric utilities and cogeneration facilities. In addition, it contained requirements regarding Commission consideration of proposed new rate schedules. Finally, chapter 3 established requirements governing the use of automatic adjustment clauses in wholesale sales of electric power and amended restrictions in the Federal Power Act governing interlocking directorates.

Chapter 4 provided for the establishment of a grant program to improve staffing for State regulatory authorities, extended already existing authority to fund innovative rate structures and established a grant program to assist intervenors before State regulatory authorities. In addition, it authorized the establishment in the Commission of an Office of Public Counsel with standing to become a party in any proceeding, and to petition the Commission to seek judicial review of Commission actions.

Chapter 5 required the Commission to undertake a 1-year study of gas utility ratemaking so as to address the effect of incremental and marginal cost pricing, wellhead pricing and declining block gas rates, among other things, on such factors as pipeline and distribution company load factors and demand for and consumption of natural gas. In addition, the chapter established standards regarding the recovery of advertising expenses from consumers and procedures for termination of service, and set forth procedures similar to those in chapter 2 relating to the role of the State regulatory authority and Commission with respect to compliance determination and enforcement.

Chapter 6 established a 3-year program of grants and loans to encourage municipalities, cooperatives, industrial development agencies, and other nonprofit organizations to develop the hydroelectric potential of existing dams at which no such potential is currently in use.

Senate amendment

The Senate amendment set forth three broad national purposes and an additional three purposes related to lifeline rates which were to be advocated by the Secretary of Energy through intervention as a party in ratemaking proceedings before State regulatory authorities and, where no appropriate proceedings for intervention are available, through the submission of written recommendations to nonregulated utilities. The three broad purposes were to encourage overall energy conservation in electric and gas utility systems, to encourage the efficient use of utility facilities and resources, and to encourage equitable ratemaking.

As part of such intervention the Secretary was to examine the utility's methods of determining costs of service and the extent to which the purposes of the Senate amendment might be advanced by the application of rates based on cost of service; by the elimination of declining block rates; by the implementation of time of day rates, load management systems, seasonal rates or special rates for interruptible service.

Furthermore, the Senate amendment provided funding to States for offices of consumer services to assist consumers in their presentations before utility regulatory commissions.

The legislation also required utilities, during the next three years, to adopt so-called "lifeline" rates for subsistence quantities of electricity provided to certain classes of elderly consumers. The level of these rates was to be no more than the lowest rate offered by the utility to any other electric consumer.

The Senate amendment required State regulatory authorities and nonregulated utilities to furnish bi-annually any available information which the Secretary determined to be necessary to ascertain the costs related to providing electric and natural gas service. If the information was not available, the Secretary could direct the utility or authority to gather the information, if the Secretary reimbursed them for the cost of such gathering.

The utilities covered by the information provisions of the legislation included only those over a certain size.

The Senate amendment had a provision whereby the Federal Energy Regulatory Commission could order utilities to interconnect if certain conditions were met. There were also provisions regarding Commission authority with respect to continuance of service, including requirements that regulated electric utilities report anticipated shortages of electric energy and submit contingency plans to the Commission.

In the case of natural gas utility rate design, the amendment directed that the Department of Energy conduct a 1-year study to examine the relationship of various pricing policies to patterns of consumption and demand and other variables. On the basis of this study, the Secretary of Energy would develop proposals to improve gas utility rate design and to encourage conservation of natural gas.

The Secretary also was required to report to Congress on the implementation of his responsibilities under the Act, on the status of rate-making and load management practices in the States, on his recommendations for further Federal action, the financial impact of the Act on State regulatory authorities, and on the most cost effective methods of increasing electrical system reliability.

The legislation had provisions which encouraged the development and use of these power sources through the establishment of regulatory guidelines, through exemption from certain Federal requirements, and through a loan guarantee program for development of small hydro-electric facilities.

Finally, the Senate amendment contained certain miscellaneous provisions dealing with the following: grants to the National Regulatory Research Institute, the granting of Federal eminent domain for an electrical transmission line through North Dakota, South Dakota, and Nebraska, natural gas transportation policies, and other policies with respect to natural gas, the consideration of oil pipelines in the western part of the United States, a study of "pancaking" of successive requests to the Commission for wholesale electric rate increases, and other miscellaneous provisions.

Conference substitute

The conference substitute is divided into six separate titles as follows:

Title I—Retail Regulatory Policies for Electric Utilities

Title II—Certain Federal Energy Regulatory Commission and Department of Energy Authorities

Title III—Retail Policies for Natural Gas Utilities

Title IV—Small Hydroelectric Power Projects

Title V—Crude Oil Transportation Systems

Title VI—Miscellaneous Provisions.

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

The first section of the conference substitute contains the short title and table of contents.

SECTION 2. FINDINGS

Section 2 relates to Congressional findings. The conference substitute, as did parts of both the House bill and the Senate amendment, affects certain activities which have traditionally been subject to primary regulation by the States.

Parts of the conference substitute establish procedures and requirements applicable to State utility commissions and to electric and natural gas utilities, and to certain Federal agencies, in the consideration of retail utility rates by such commissions, utilities, and agencies. The conference substitute does not change the primary responsibility of the States with respect to electric utility rates, but it places certain Federal responsibilities and obligations on the State commissions in the exercise of their responsibilities and on utilities within the States which are not otherwise regulated by State commissions.

This section states that the Congress finds that the protection of public health, safety, and welfare, the preservation of national security, and the proper exercise of its authority under the Constitution to regulate interstate commerce and matters affecting interstate commerce, require the Federal program set forth in title I which imposes certain obligations on State regulatory commissions and gives certain rights to persons to go before State regulatory commissions and courts. The Congress also finds for the same reasons that programs are required to improve the wholesale distribution of electric energy, the reliability of electric service, the procedures concerning consideration of applications for changes in wholesale rates, and the participation of the public in matters before the Federal Energy Regulatory Commission relating to electric utilities. Section 2 also states that for the same reasons programs are required to provide other measures for the regulation of the wholesale sale of electric energy, to assist in the expeditious development of hydroelectric potential at existing small dams to provide needed hydroelectric power, to provide for the conservation of natural gas, while assuring that rates to natural gas consumers are equitable, and to encourge the development of certain crude oil transportation systems and to create certain other authorities as contained in title VI of the conference substitute.

SECTION 3. DEFINITIONS

Section 3 contains the definitions used in the conference substitute. The definitions in this section are a result of combining the definitions from both the House bill and the Senate amendment with technical and clarifying changes.

With respect to the definition of the term "class", the conferees intend that State commissions, nonregulated utilities, and, on review, the courts, in determining what constitutes similar characteristics of energy use for purposes of this definition, are to base such determinations on factors relating to the nature of the requirements, such as the voltage level, the amount of peak kilowatt demand, and kilowatt-hour demand, placed on the system of the electric utility by a group of consumers and to consider the time at which such peak demand occurs. Thus, the characteristics of a class are to be determined essentially in terms of the charac-

teristics of energy consumption at the electric consumer's electric meter.

The term "electric utility" includes State and Federal power marketing agencies and the Tennessee Valley Authority. This definition does not apply to the provisions of title II which amend the Federal Power Act. For purposes of these amendments, different definitions are provided in section 201.

With respect to the definition of the term "load management technique", the conferees intend that the words in the definition "to reduce maximum kilowatt demand on the electric utility" are to be interpreted broadly to include reductions in any high demand point in the utility's load curve, and not be interpreted narrowly as applying only to the reduction of demand at the utility's highest peak on the load curve. The language from the House bill relating to maximum kilowatt demand of an electric consumer has been deleted in the conference substitute. The conferees feel that reduction of peak demand on the system is the most important focus for load management techniques and reduction of individual consumer peak demand may or may not coincide with the utility's peak demand periods.

With respect to the definition of the term "sale", the conferees intend that it cover any charge for purchase of electric energy, including an exchange of electric energy.

SECTION 4. RELATIONSHIP TO ANTITRUST LAWS

Section 4 of the conference substitute sets forth a disclaimer to the effect that Federal and State antitrust laws are not affected by the conference substitute and such laws will continue to apply to electric and gas utilities to the same extent as prior to enactment of this substitute. Similarly the section contains a disclaimer to the effect that the authority of the Secretary of Energy and the Commission under other provisions of law respecting unfair methods of competition or anticompetitive acts or practices is not affected. The conferees intend that the provisions of the conference substitute be strictly neutral and not add or subtract from the immunities and defenses available under such laws nor add or subtract from authorities contained in such laws.

The conferees intend to preserve the jurisdiction of the Federal and State courts in actions under antitrust laws whether or not the parties to such actions could have sought remedies under this legislation.

Specifically with regard to certain authorities to order interconnections and wheeling under title II, it is not intended that the courts defer actions arising under the antitrust laws pending a resolution of such matters by the Federal Energy Regulatory Commission. The conferees specifically intend to preserve jurisdiction of Federal and State courts to resolve, independent of the Commission, such actions, including for example, cases where a refusal to wheel electric energy is alleged to be in violation of such laws. The court should be able to act whether or not action by the Commission under the provisions in title II can be requested or would be justified. In this way, the courts have jurisdiction to proceed with antitrust cases without deferring to the Commission for the exercise of primary jurisdiction.

TITLE I—RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

SUBTITLE A—GENERAL PROVISIONS

SECTION 101. PURPOSES

The conference substitute sets out three purposes for the title on retail electric utility rate reform. These are largely drawn from the Senate amendment.

The first purpose relates to conservation of energy supplied by electric utilities. It is a purpose of this title to foster conservation by the ultimate end-user of electricity.

The second purpose relates to optimization of the efficiency of use of facilities and resources by electric utilities. This purpose is directed at the utility in its use of energy and of its facilities. The conferees intend to include capital resources within the meaning of resources. The concept of optimization is intended to include the notion that the most efficient use is made of electric generating and related facilities. Also, the phrase "efficiency of use of . . . resources" is intended to include the concept of conserving scarce energy resources by techniques of rate reform which substitute the use of more plentiful resources produced in the United States in lieu of less plentiful resources, especially those imported into this country.

The third purpose relates to encouraging equitable rates for consumers.

These purposes are independent of one another and not listed in any order of preference or priority.

The conferees intend that it is not necessary that all of these three purposes be achieved for any action to be considered as carrying out these purposes. Rather, if any of these purposes is achieved and the others are not negatively impacted, a finding can be made that the purposes of the title are carried out.

SECTION 102. COVERAGE

For purposes of determining which utilities are covered by this title, subsection (a) of this section provides a measurement of total retail sales of electric utilities in a baseline year. If such retail sales are more than 500 million kilowatt-hours in the baseline year, the utility is covered. The baseline year is two years before the year in question, but no year beginning before January 1, 1976, is to be used as a baseline year. Subsection (b) indicates that the requirements of this title apply only to those operations and proceedings of an electric utility that relate to retail sales of electric energy. Operations and proceedings relating to wholesale sales of electric energy by a covered utility which has both wholesale and retail operations are thus not covered by this title.

Subsection (c) is intended to reduce uncertainty as to which specific utilities are covered under this title. The requirement that each State regulatory authority notify the Secretary as to the utilities over which it has ratemaking authority is intended to distinguish the regulated electric utilities from the nonregulated electric utilities, as the requirements of this title are somewhat different for these two kinds of electric utilities. It should be stressed that the list is informational and for the convenience of the public, but it is not intended in any way to affect the legal obligations of any utility, or State regulatory commission with regard to any utility, to comply with the provisions of this title if their sales are in fact over the 500 million kilowatt-hour amount specified in subsection (a), even though the utility is not included on the list. On the other hand, if its sales are, in fact, at or under such 500 million kilowatt-hour amount, although included on such list, the utility is not to be covered.

In some instances electric utilities purchase power at wholesale for resale to their customers and consume small quantities of this purchased electric power for their own needs incidental to operation of their own facilities. Arguably, because this power is consumed directly by the purchaser and is not resold prior to consumption, it therefore is obtained by the utility in a retail sale, not as part of the wholesale sale. This argument leads to the result of having what the conferees understand to be a relatively small portion of the sale treated as a retail sale under this Act whereas the balance of the power sold is treated as a wholesale sale. The conferees expect the Secretary to review this situation and determine the extent to which such consumption by utilities actually occurs and the extent to which such use affects the coverage requirements of section 102(a).

SECTION 103. FEDERAL CONTRACTS

The purpose of this section is to ensure that where a Federal agency is making wholesale sales of electric energy to an electric utility, any contract entered into or renewed after the date of enactment between these parties will not prevent the implementation of any requirement of subtitle B or C, regardless of the fact that (because of section 102(b)) such wholesale sales would not otherwise be covered by the title.

SUBTITLE B—STANDARDS FOR ELECTRIC UTILITIES

SECTION 111. CONSIDERATION AND DETERMINATION RESPECTING CERTAIN RATEMAKING STANDARDS

Subsection (a) of this section requires each State regulatory authority, on a utility-by-utility basis, and each covered utility not subject to regulation by a State regulatory authority to consider each standard established by this section. The conferees intend that this consideration will focus on how implementation of each standard would affect each utility and its consumers in terms of the three purposes set forth in section 101. For example, would the implementation aid energy conservation by consumers? Would it help the utility optimize the efficient use of resources and facilities? Would it provide equity to ratepayers?

The State regulatory authority or nonregulated utilities would be required, under subsection (a), to make a specific determination whether implementation of the standard is appropriate to carry out the purposes of the title.

The conferees wish to emphasize that under the last sentence of subsection (a) it is provided that for purposes of consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of the consideration and determination in any court, the purposes of this title supplement State law. The conferees intend that these purposes supplement, but do not override State law.

The conferees wish to emphasize that for purposes of consideration and determination in accordance with section 111(b) and (c) and for the purposes of any review of the consideration and determination in any court, the purposes of this title supplement State law.

It should be noted that the test of consistency with State law, as described in section 111(c)(1) is with respect to State law alone and not with respect to State law as supplemented by the 3 purposes of the title. The intent here is that where a State regulatory authority or nonregulated utility finds insufficient authority, pursuant to otherwise applicable State law, under which it may adopt a standard established in section 111, then these three purposes of the title provide such authority. In effect the three purposes expand the discretion of the State regulatory authority or nonregulated utility to adopt the standards of section 111. However, the conferees also intend that 3 purposes do not override State law.

The last sentence of section 111(a) states that nothing in this subsection prohibits any State regulatory authority or nonregulated utility from making the determination that it is not appropriate to implement any such standard pursuant to its authority under otherwise applicable State law. The intention here is to preserve the discretion of the State regulatory authorities and nonregulated utilities which is provided by State law, except to the extent this title imposes procedural requirements such as requirements to hold a hearing, consider and make a determination.

Thus, in making its determination under section 111, the State regulatory authority or nonregulated electric utility may consider, in addition to the 3 purposes of this title,

any other factors which State law would permit for consideration in the proceeding.

For example, if the State constitution or State law affords the State regulatory authority or nonregulated utility broad discretion to consider any factors, as documented in the hearing record, that they deem appropriate, then those factors may serve as a basis for the decision of the State regulatory authority or nonregulated utility, either to adopt any standard under this title or to reject it.

Subsection (b)(1) requires that the State authority, or nonregulated utility, in considering each standard, provide a public hearing, after adequate public notice, and make their determination in writing. Such determination must include written findings and be based on the evidence established in the hearing. Copies of such determination must be available to the public.

Subsection (b)(2) generally requires that such consideration and determination must be made in accordance with procedures established by the State authority or nonregulated utility. However, the subsection identifies specific procedural provisions of the conference substitute which supplement the procedures of the State regulatory authority or nonregulated electric utility and which, if State procedural law is in conflict with these provisions, override State procedural law to the extent of such conflict. The conferees intend that the procedural features of the process of consideration and determination, including such concepts as the nature of evidence and the relationship, if any, between findings and the record of a proceeding, be governed by State law. State law governs on such matters as burden of proof, standard for review in State courts, and in any other matters not inconsistent with the requirements of this title.

In requiring that proceedings be held by State regulatory authorities and certain nonregulated utilities, the conferees do not mean to imply that these entities must institute new procedures to comply with this title. Existing procedures may be adequate for this purpose if such procedures are consistent with the requirements of this title.

The conferees understand that many of the issues which will be raised at the State level by reason of the requirements of this legislation will be common to more than one utility under the jurisdiction of a single State regulatory authority. Furthermore, it is recognized that the State regulatory authority may wish to separate consideration of these issues from rate case proceedings at which revenue questions are settled. The conference agreement permits rate structure proceedings which apply either to an individual utility or to more than one utility. These proceedings, either individual or generic, may be distinct from specific rate cases. However, the conferees expect that (1) the results of the rate structure proceedings will apply fully to rate cases, (2) the hearings will be held within the time limits specified within the title, (3) the standards will be examined on a utility-by-utility basis, (4) separate determinations will be made for each utility and each standard, (5) the appellate process for these proceedings will be consistent with that otherwise provided for in the conference substitute, (6) and the rights and privileges of all parties including intervenors will be the same as those in rate cases and will otherwise meet the requirements of this legislation.

Subsection (c) states that the State regulatory authority or nonregulated electric utility may, to the extent consistent with State law, implement any standard determined to be appropriate to carry out the purposes of title or decline to implement any such standard.

The State regulatory authority (or nonregulated utility) could determine the particular standard appropriate to carry out the purposes of section 101 when applied to the particular utility and that such implementation is consistent with otherwise applicable State law. In such case, the State regulatory authority or utility would be authorized by Federal law to implement the standard. Failure to implement such standard would not constitute a violation of this section since this section does not require implementation of any standard but failure to do so could violate otherwise applicable State law, where such law, for example, requires the regulatory body to act in accordance with determinations made on the record.

Another result could be a determination that the standard is inappropriate to carry out the purposes but consistent with otherwise applicable State law. In this case, nothing in the legislation would require implementation or bar implementation.

Still another possible case is that a standard is not appropriate to carry out the purposes of this title and is inconsistent with otherwise applicable State law. In this case, nothing in the legislation would support any State regulatory authority (or nonregulated utility) or any court in implementing the standard.

Another option is that the standard was determined appropriate to carry out the purposes but inconsistent otherwise applicable with State law. In this case, otherwise applicable State law governs and prevents the implementation of the standard.

In any case in which the State regulatory authority with respect to a particular State regulated electric utility or nonregulated utility determines not to implement a Federal standard determined to be appropriate to carry out the purposes of the title, a statement of the reasons for such determination is required. The requirement of the statement is intended to provide information to the parties and the public.

With respect to each of the standards, the State authority or nonregulated utility may decide to partially implement the standard, such as moving toward the cost of service, but not fully implementing the standard in that regard. Alternatively, a State regulatory authority or nonregulated utility may decide to phase in the implementation of the standard in several steps, or decide not to implement the standard.

In considering the standards set forth in this section, it is expected that State regulatory authorities and the nonregulated utilities take into account the need to protect ratepayers against sudden shifts in electric utility rates which might lead to significant economic hardships. The State regulatory authorities and nonregulated utilities may consider phasing in the implementation of the standards, providing for temporary exemptions from implemented standards, or providing other means determined appropriate by the State authorities or the nonregulated utilities to mitigate any such hardships.

States are also, of course, free to implement, pursuant to State authority, cost of service based rates, time of day rates, seasonal rates, and other concepts related to any standard established by this subtitle even if the standard which is related to such concept is not determined to be appropriate to carry out the purposes of this title.

Any determination that it is inappropriate to implement a standard will be made in writing and available to the public as provided in subsection (c)(2).

Subsection (d) establishes the Federal standards to be considered under this procedure: cost of service, declining block rates, time of day rates, seasonal rates, interruptible rates, and load management techniques.

The time of day and seasonal standards are intended to structure rates so as to lower the peaks and fill the valleys of the load curves because to do so may reduce the need for more expensive peaking generation and otherwise carry out the purposes of the title. With respect to time of day and seasonal rates, the conferees do not intend that time of day or seasonal variation in rates exactly reflect the time of day or seasonal variation in costs of providing service. A less than proportional increase in rates at the peak may be appropriate to send the signal to the consumer to reduce the elastic demand for peak energy without causing unnecessarily high rates which have no effect on inelastic demand at the peak.

The standard concerning seasonal rates does not contain any qualification reflecting cost effectiveness. The cost of reflecting seasonal variations in cost does not involve the use of time of day metering equipment or other expenses at the consumer's end of the line. However, State regulatory authorities (and nonregulated electric utilities) may choose to disregard insignificant seasonal variations in costs of providing electric service. A variation of the rates based upon these insignificant variations in costs is not necessary to reflect costs accurately to consumers or otherwise carry out the purposes of this title.

SECTION 122. OBLIGATIONS TO CONSIDER AND DETERMINE

The first purpose of this section is to authorize each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility to undertake the consideration and determination referred to in section 111. The second purpose is to require each State regulatory authority and each nonregulated utility to consider and to make a determination (as described in section 111(a)) with respect to any of the six Federal standards established by section 111(d) when requested to do so by a participant or intervenor in any proceeding relating to rates. The final purpose is to set out the time limitations under which the process of consideration and determination must begin and be completed for each of the six standards. The section prescribes the consequences of failure to complete by the specified time the determination for each of the six standards with respect to a particular utility. In that event the State regulatory authority or nonregulated utility, as the case may be, must at the next rate proceeding applicable to the electric utility which begins after the end of this 3-year period, make the determination for each of the six standards for which a determination has not been made.

The conferees intend that State regulatory authorities and nonregulated utilities consider each of the standards specified in section 111(d) whether or not electric utilities, intervenors, or other parties raise them in rate proceedings. This is the purpose of the time limits in this section—to insure expeditious consideration once with the obligation being on the State regulatory authority, or nonregulated utility, without any other action by any other person to initiate such consideration. At any time, parties to any proceeding relating to rates or intervenors in such a proceeding may raise any of these standards for consideration. The conference substitute does not permit a person to initiate a proceeding for this purpose. However, if a proceeding has been initiated under State law, a person eligible under section 121 may intervene and require such consideration and determination in such proceeding. If the rate case or other proceeding has already begun, no new notice is required if there was adequate prior notice to apprise persons that the issues may be raised.

The conferees are aware of the problems of delay in consideration of rate cases. It is not the intention of the conferees that the requirement of this section for the considera-

tion of any standard upon request of a party or intervenor be used solely for purposes of delaying the rate proceeding process. Even though an intervenor in any rate case can force consideration as specified in section 112(a), the State regulatory authority or nonregulated utility may take into account in such proceeding any appropriate prior determination with respect to such standard and the evidence upon which determination was based. Any proceeding related to such determination may have taken place after the date of enactment of this Act, or prior to such date, or have been pending on such date, although in the latter two cases, the requirements of this title as provided in section 124 apply. It is not the intention of the conferees that, if a standard has been considered in accordance with the requirements of this title, the second process of consideration and determination be necessarily as extensive as the first. Of course, the State court may rule on review, that reliance on prior determinations or evidence was properly placed. Reliance on a prior determination does not relieve the State regulatory authority or nonregulated utility from meeting whatever burden is imposed under State law.

The State regulatory authority or nonregulated utility has no obligation to make any determination under section 111(b) with respect to concepts (other than the standards listed in section 111(d)) which are claimed to contribute to the achievement of the purposes of this title, and which are raised pursuant to an intervenor or participant's right under section 121.

SECTION 113. ADOPTION OF CERTAIN STANDARDS

The purpose of this section is to establish a second group of Federal standards with respect to electric utilities. Unlike the first group established by section 111(d), some of these standards are not directly related to the rate structure of the electric utility, but rather relate to other practices of electric utilities regarding terms and conditions of electric service that may indirectly affect the rate structure of the utility.

The conferees intend that the discretion under this title of a State regulatory authority or nonregulated electric utility to adopt the standards established by section 113 or not adopt them or to implement the standards established by section 111 or not implement them is very broad, so long as the requirements of this title are met. Such authority and utility are not required by these sections to adopt or implement such standards. However, any provisions of State law or regulations that may require such adoption or implementation are not affected by this title.

The conferees wish to emphasize that for purposes of the determination in accordance with paragraph (1) or (2) of section 113 and for the purposes of any review of the consideration and determination in any court, the purposes of this title supplement State law.

It should be noted that the test of consistency with State law, as described in section 113(a) (1) and (2), is with respect to State law alone and not with respect to State law as supplemented by the 3 purposes of the title. The intent here is that where a State regulatory commission or nonregulated utility finds insufficient authority pursuant to otherwise applicable State law, under which it may adopt a standard established in section 113, then these three purposes of the title provide such authority. In effect the three purposes expand the discretion of the State regulatory commission or nonregulated utility to adopt the standards of section 113. However, the conferees also intend that 3 purposes do not override State law.

The last sentence of section 113(a) states that nothing in this subsection prohibits any State regulatory authority or nonregulated utility from making the determination that it is not appropriate to implement any such standard pursuant to its authority under otherwise applicable State law. The intention here is to preserve the discretion of the State regulatory authorities and nonregulated utilities which is provided by State law, except to the extent this title imposes procedural requirements such as requirements to hold a hearing, consider and make a determination.

Thus, in making its determination under section 113, the State regulatory authority or nonergulated electric utility may consider, in addition to the 3 purposes of this title, any other factors which State law would permit for consideration in the proceeding.

For example, if the State constitution or State law affords the State regulatory authority or nonregulated utility broad discretion to consider any factors, as documented in the hearing record, that they deem appropriate, then those factors may serve as a basis for the decision of the State regulatory authority or nonregulated utility, either to adopt any standard under this title or to reject it.

This section requires each State regulatory authority, with respect to each electric utility for which it has ratemaking authority, and each nonregulated utility after public notice and hearing, to adopt these standards if, and to the extent such adoption is determined appropriate to carry out the purpose of this title, is otherwise appropriate, and is consistent with otherwise applicable State law. In the case of the standard related to termination of service, such authority or utility must adopt this standard if, and to the extent such adoption is appropriate and consistent with otherwise applicable State law. Any adoption is on a utility-by-utility basis. The conferees treated termination of service differently from the other standards in this section because this provision is generally not related to these purposes but is an important provision to protect consumers from inappropriate termination of service.

This section requires each State authority and each nonregulated utility to examine these standards in a hearing within two years after enactment. This section does not require a State regulatory authority or nonregulated utility to undertake the consideration of these standards as provided in section 112(a) whenever an intervenor or participant raises them in any rate proceeding as provided with respect to the standards set forth in section 111(d). Neither does it preclude the consideration and adoption of any of the standards under otherwise applicable law.

The conferees expect that the modifications of the standards described in this section may meet the test of appropriateness in the context of a particular potential application. The conferees therefore understand that individual States (or utilities) may choose to adapt the standards to their particular situation as documented in the record of the hearing held to examine the standard.

This second group of five standards consists of the following: master metering, automatic adjustment clauses, information to consumers, minimum procedures for termination of electric service and advertising.

With regard to the standard for master metering, the conferees leave the matter of what is a new building to the States for their determination. The States should be guided by the cost of purchasing and installing individual meters in the building after the date of adoption of the standard balanced against the energy to be saved over the anticipated useful life of the building. The conferees believe that the case for adopting the standard is stronger if the person using the space in a building uses significant amounts of electric energy and controls its use and the installation of meters would be cost effective. There is no intention here to have State regulatory authorities or nonregulated utilities dictating the design of buildings, the choice or design of heating systems, cooling systems, or any other such energy consuming systems in buildings. Rather, this standard goes only to the choice of whether, given a specific multiunit building, the electrical consumption in the building will be measured by a master meter or by use of individual meters in the separate dwelling units.

The conferees stress that the standard on advertising prohibits recovery of expenditures for promotional or political advertising from anyone "other than the shareholders (or other owners)" of the utility, instead of prohibiting recovery from the electric consumers of the utility, as did the House bill. Without this change from the House bill, utilities for which the owners are also the electric consumers, i.e. cooperatives, could be effectively prohibited from undertaking any political or promotional advertising if this standard were adopted. Adoption of the standard does not prohibit any utility from engaging in this kind of advertising. The standard merely specifies who is to pay for the advertising.

Subsection (c) of this section contains the procedural requirements which attach to a decision not to adopt each of these standards. In such a case, the State regulatory authority or nonregulated electric utility shall state in writing which of the standards it has determined not to adopt and the reasons therefor. Adoption of standards which vary insignificantly from the standards spelled out in this section may be treated as adoption of the standards for purposes of this subsection.

SECTION 114. LIFELINE RATES

This section was adopted from the House bill with technical changes. The purpose of this section is to authorize lifeline rates as an exception to the Federal standard on cost of service (section 111(d)(1)). Thus, if a State regulatory authority or nonregulated utility, as the case may be, adopts the Federal standard on cost of service, this legislation would not prohibit the adoption of lifeline rates as well, even though a certain portion of the charge to residential electric consumers would not necessarily reflect the cost of providing service to them.

A second purpose of this section is to require each State regulatory authority and each nonregulated utility to determine after an evidentiary hearing whether a lifeline rate should be implemented if any particular utility, covered by the legislation and under the ratemaking authority of the regulatory authority, or the nonregulated utility, as the case may be, does not have a lifeline rate. This provision provides a full hearing on this issue at the State level, with no judgment made in Federal law as to how it should be resolved.

Subsection (c) provides that section 124 shall not apply to the requirements of this section. The conferees intend that the hearing be held after the date of enactment of this legislation and prior proceedings held before that time not be referenced as complying with these requirements.

SECTION 115. SPECIAL RULES FOR STANDARDS

Subsection (a) describes how the cost of service is to be determined by the State regulatory authority or the nonregulated utility, as the case may be, when they undertake the consideration and make the determination with respect to the standard on cost of service, as required under section 111. The conference agreement includes the requirement that the methods precribed for determining the cost of providing electric service shall reflect differences in cost-incurrence attributable to differences in customer, demand, and energy charges.

The conferees chose the phrase "take into account" so as not to imply a preference for a State regulatory authority or a nonregu-

lated electric utility to follow any specific costing methodology for determining cost of service. The State regulatory authority or nonregulated utility has the discretion to select which costing methodology or methodologies it chooses, consistent with State law. However, the conferees feel that the matters specified in paragraphs (A) and (B) of subsection (a)(1) are factors to be taken into consideration in determining costs of service, especially with respect to time of day, interruptible, and seasonal rates. State utility commissions and utilities should apply the conclusions of taking these factors into account in a manner best calculated to fulfill the purposes of this title.

Where the conference substitute states in subsection (a)(2)(A) that additional capacity is added to meet peak demand relative to base demand, the conferees intend that capacity be measured both in terms of the need to construct additional generation facilities and in terms of wear and tear on existing facilities caused by additional demand.

The purpose of subsection (b) is to explain how to determine whether a time of day rate is cost effective for a class of electric consumers, as section 111(c)(3) provides that the standard on time of day rates does not apply if the rates have been determined not to be cost-effective for a class of electric consumers with respect to the specified class.

In weighing whether time of day rates are cost effective, the long-run benefits of such rate to the utility and the class of electric consumers concerned should be measured against the metering costs and other costs associated with the use of such rates. The conferees intend long-run benefits to include savings by reason of using less expensive, rather than more expensive, fuels as well as using more efficient generation facilities rather than less efficient generation facilities. In terms of metering costs and other costs associated with the use of such rates, the conferees intend that the term "other costs" be interpreted narrowly and include only those costs directly involved in using these rates (such as added costs due to more complex billing services) and not costs indirectly involved such as the start up costs involved in fashioning a time of day rate structure for initial consideration in a rate case. These start up costs are already incurred before a decision is made to implement time of day rates, hence they are not a consequence of such decision. This test is not intended to be an exclusive test for time of day rates. States could still implement time of day rates pursuant to State authority even if the implementation of the Federal standard was determined not appropriate to carry out the purposes of section 101.

Nothing in this subsection prohibits the offer of a time of day rate to any electric consumer willing to pay the metering costs, notwithstanding a determination that the Federal standard on time of day rates is not cost effective with respect to the class of which that consumer is a member.

Similarly, subsection (c) explains how the determination is made that a load management technique under section 111 is cost-effective. The determination should focus on the reduction of maximum kilowatt demand on the electric utility and long-run cost savings to the utility versus long-run costs to the utility associated with implementation of the technique. Although individual consumers may wish to install load management techniques to reduce their individual peak demand and thereby reduce overall costs of electric energy supplied to them, the conferees intend the main focus of this examination to relate to the reduction of the utility's peak demand, when it is most likely that generation is most expensive.

Subsection (d) explains the special rule on when a State regulatory authority or nonregulated electric utility should determine separate metering appropriate. If the occupant of the individual unit of the building does not have control over any portion of the electric energy used in the unit or if he does have such control but the costs of metering are more than the long-run benefits to the consumer, then separate meters would not be appropriate in each separate unit in the building.

Subsection (e) describes the requirements with respect to automatic adjustment clauses which meet the standard in section 113(b)(3).

In order to increase any rate pursuant to such a clause which meets the standard, the clause must be reviewed at least every 4 years by the State regulatory authority (with respect to each utility it regulates) and by the nonregulated electric utility. That review must be made in an evidentiary hearing. Based on that hearing a determination must be made by the State regulatory authority or nonregulated utility, as appropriate, as to whether or not the clause effectively provides incentives for the efficient use of resources by the affected utility and as to whether or not costs not subject to periodic fluctuations and therefore not susceptible to precise determinations in rate cases prior to the time such costs are incurred are incorporated in the automatic adjustment clause. The incentives include the economical purchase and use of electric energy acquired from another utility and fuel. In addition, the clause must be reviewed at least biennially at an evidentiary hearing to insure the maximum economies in those operations and purchases that affect the rates of a utility. The latter review shall include an examination of the practices of the effected electric utility which relate to the costs included in the clause. In appropriate cases, an audit of such costs may be required. This review shall also include such reports as necessary to carry out the review, including disclosure of any ownership or corporate relationship between the affected utility and the seller of fuel, electric energy, and other items covered by the clause.

The conferees, in adopting these provisions, do not endorse or encourage the use of automatic adjustment clauses nor do they mean to suggest that the use of automatic adjustment clauses is inappropriate. The conferees do not indicate a preference of any particular item for inclusion or exclusion in such a clause. The conferees intend that adoption of this standard should not in any way bar the use of the rate setting procedure known as cost of service indexing, such as being currently used in the State of New Mexico for retail rates.

In the last sentence of the definition of the term "automatic adjustment clause," the conference substitute excludes from the definition the temporary rate schedule which goes into effect pending final determination of the lawfulness of the rate application in a rate case.

Subsection (f) closely follows the House bill with minor technical changes. The conferees felt that the ability of the electric consumer to make the right decisions regarding the use of electric energy depends greatly on the information available to him. This is especially true if time of day rates are in place. The success of such a rate practice depends upon consumers voluntarily moving from on-peak use to off-peak use where they have a choice as to when to use the electricity. The statement given to the consumer pursuant to subsection (f)(1) could also include a listing of his rights and responsibilities as an electric consumer. Paragraph (3) of this subsection sets forth a consumer's right to receive information on his past year's consumption. If this information has already been provided on the bills received by the consumer during the time for which the request is made, the State regulatory authority or nonregulated utility could take that fact into account in deciding whether to adopt this part of the standard on information to consumers.

With respect to procedures for termination of service specified in subsection (g), the conferees modified the House provision to assure that consumers have a reasonable opportunity to dispute the reasons for termination after they receive notice. The electric consumer should be given adequate notice of the proposed termination, together with a clear and concise statement of such consumer's rights and remedies, and an adequate opportunity to dispute the payment and the reasons for termination. Such an opportunity could include a hearing or a less formal procedure that would allow the consumer an effective opportunity to dispute those reasons.

In addition, the standard would preclude termination of service to residential electric consumers, including tenants and homeowners, where such consumers establish an inability to pay for the service within a reasonable period of time and there is a danger to the consumer or someone in the household. In such case termination should not occur if payment can be made in installments rather than in a lump sum.

For purposes of the standard on advertising, subsection (h) defines "advertising" in general and then defines by inclusion and by exclusion "political advertising" and "promotional advertising". These definitions are derived from the language of the House bill, except that "institutional advertising" is not covered by the standard, and justification of existing or proposed rate schedules is not covered as well as advertising concerning employment, or services which promote energy conservation.

SECTION 116. REPORTS RESPECTING STANDARDS

This section concerns reporting requirements applicable to State regulatory authorities, nonregulated utilities, and the Secretary of Energy. The conferees expect that through the reports made under this section, the progress of the States will be accurately measured and reported to Congress to provide a basis for legislative oversight by the Congress.

SECTION 117. RELATIONSHIP TO STATE LAW

The conferees agreed to adopt the provision from the House bill found in subsection (a) of this section with the inclusion of the words "or less than" after "in excess of". This is an expression by the conferees that determinations with respect to rate of return and overall revenues permitted to utilities is exclusively a matter of State law, and the principal Federal concern is with the structure of the rates to different classes of consumers as specified in the rate schedule.

Subsection (b) of this section states that State regulatory authorities and nonregulated utilities are not prohibited from deviating from any standard identified in this title, adopting additional standards, more stringent standards, less stringent standards, or only some of the standards or modifying these standards in applying them to rate schedules of particular utilities to the extent permitted by State law. The conferees feel that the standards spelled out in this legislation are worthy of careful consideration but recognize the need to adapt these standards, after such consideration, to local conditions and particular situations. This subsection is an expression of the flexibility the conferees intend that the States will continue to have in adopting at the State level rules or standards affecting electric utilities.

Subsection (c) of this section contains a conforming provision which clarifies which law is meant to otherwise apply in the case of Federal agencies which are electric utilities and in the case of the TVA which is both an electric utility and a State regu-

latory authority within the meaning of the Act. Since these agencies are not subject to State law, the conferees do not wish their judgments with regard to whether or not the standards contained in section 111(d) are appropriate to carry out the purposes of this title or to whether or not to adopt the standards contained in section 113(b) to be bound by State law but rather the applicable law which governs their actions, namely Federal law. The statutory requirements with regard to ratemaking and other matters which apply to these Federal agencies would continue to apply and would still be required to be followed.

SUBTITLE C—INTERVENTION AND JUDICIAL REVIEW

SECTION 121. INTERVENTION IN PROCEEDINGS

In order to initiate the consideration, or provide for participation by the Secretary of Energy and certain other persons in the consideration, of any standard under subtitle B or any other concept which may contribute to the achievement of the purposes of the title, this section creates a Federal right of participation and intervention in rate-making proceedings or other appropriate regulatory proceedings conducted by a State regulatory authority or by a nonregulated electric utility. The conferees adopted this provision in recognition of the reliance they place on intervention and participation in these proceedings to further the purposes of this title.

The Secretary of Energy, any affected utility, or any electric consumer of an affected utility may intervene under this provision to initiate or participate in the consideration of one or more of the standards established by this title or other concepts which contribute to the achievement of the purposes of the title. The conferees intend for the term intervention to be interpreted broadly to include intervention or participation at the beginning of a proceeding or otherwise but do not intend for such term to connote a right to initiate a proceeding.

The conferees intend that the phrase "other concepts which contribute to the achievement of the purposes of this title" be construed broadly so that no one will have to prove his case in advance before being allowed to intervene. Any issue which may contribute to the purposes of the title should be given consideration if it may contribute to these purposes. The procedures for the type of intervention are left to State law.

This section ties in with section 112(a) in the sense that the Federal right to intervene can result in a request for consideration of a particular standard specified in section 111(d), in which case a section 111(a) determination should be made. Again, section 112(a) contains a provision by which this determination may be based on appropriate prior determinations and evidence so as to avoid unnecessary delay and expense. However, the conferees are relying on the State courts (except as otherwise specified in section 123) to review these proceedings and insure that proper procedures under this Act and State law are followed.

The conferees intend that the phrase "affected electric utility" means any utility which is subject to regulation by the same regulatory authority which utility might be affected by precedents set in a case relating to another utility. This term would also include utilities permitted to participate or intervene under State law.

Subsection (b) of this section deals with the participant's or intervenor's access to relevant information available to other parties to the proceeding.

It is the intention of the conferees as expressed in subsection (c) that the right to intervene or participate created by this section vest as of the date of enactment of the legislation. Intervenors or participants should be permitted to intervene or participate in proceedings which are ongoing on that date only to the extent such intervention would be timely and not disruptive of the proceeding and is in accordance with otherwise applicable law. Within this constraint, the State regulatory authority or nonregulated utility should provide maximum opportunity under State law to participate in ongoing proceedings. Federal courts will be available to interpret the actions under this provision of Federal law after protest in a State court, as provided in section 123(a)(2)(B), or directly in the case of the Secretary of Energy.

SECTION 122. CONSUMER REPRESENTATION

Section 122 is a modified version of the House provision with respect to consumer representation. The purpose of this section is to provide a mechanism to assure that the interests of electric consumers will be represented at the State level in proceedings dealing with the standards set forth in subtitle B. The mechanism chosen for this purpose is either of two options. One makes the utility liable to provide compensation directly to electric consumers who substantially contribute to the approval, in whole or in part, of a position advocated by the consumer in a proceeding concerning the utility relating to any standard set forth in this title by creating a right of action against the utility. The second option provides that the State or State regulatory authority or nonregulated utility may have a program to otherwise provide adequate compensation to persons described in subsection (b). Such a program may include an adequately funded office of public counsel which adequately represents the interests of persons described in paragraphs (1) and (2) of subsection (b).

The conferees intend that the phrase "substantially contribute to the approval, in whole or in part," be broadly construed by the State agencies, nonregulated utilities, and the courts to effectively provide for compensation commensurate with the contribution to the approval of one or more of the standards.

In section 122(a)(3)(A), the State regulatory authority or nonregulated electric utility may include a preliminary proceeding to require that (1) as a condition of receiving compensation under the procedure under paragraph (2), the consumer demonstrate that, but for the ability to receive the award of fees, participation in such proceeding may be a significant financial hardship for the consumer, and (2) persons with same or similar interests have a common legal representative in the proceeding as a condition to receiving compensation. The conferees intend that phrase "significant financial hardship" is to be construed broadly, the determination not being restricted to whether the consumer can participate in that particular case but give consideration to other financial burdens, including those associated with intervention in other cases. The intention is not to compensate intervenors who can afford to intervene in any event if the State regulatory authority or nonregulated utility adopts the procedures in subsection (a)(2) or (a)(3)(A).

Subsection (d) provides that any Federal payments to intervenors under this section are subject to the appropriation process.

Subsection (e) states that nothing in this section shall affect or restrict any rights of any participant in any proceeding under any other applicable law or rule of law. Payment of funds pursuant to this section does not permit the State regulatory authority to control the nature of the legal representation or manner of handling of a case in any proceeding. Payment of costs of participation are not intended to be used as method to dictate who should represent a participant or intervenor.

SECTION 123. JUDICIAL REVIEW AND ENFORCEMENT

This section provides for the judicial review of any actions arising under subtitles A, B, or C and for enforcement of the requirements of these subtitles. In general, as stated in subsection (a), the jurisdiction of the Federal courts is limited by this section; review and enforcement is primarily in the State courts. Federal court review can occur in only limited instances described in this section; the provisions of appellate review under title 28 of the U.S.C. do not apply to actions arising under subtitle A, B, or C except as specifically provided for in this section.

With respect to subsection (a)(2) of this section, the Supreme Court would have jurisdiction as provided in existing law to consider any action upon appeal from the highest court of any State.

Under subsection (b), the Secretary may enforce his right to intervene or participate under section 121(a) in Federal courts. Also any electric utility or electric consumer who is denied that right may bring an action in Federal court to enforce that right if he has first tried to enforce that right in State court. Such person may also appeal through the State court system. The conferees wanted to make enforcement of the right to participate and intervene in proceedings before State regulatory authorities and nonregulated utilities as rapid as possible consistent with the provisions of this title. Intervenors or participants must first go to State court to enforce this right, but are not required to appeal through the State court system. In fact, if the State authority or nonregulated utility has refused him the right to intervene under section 121(a), even a denial on the grounds that the appeal is premature or interlocutory and therefore not appropriate at that time, is enough to satisfy this requirement. The Federal Court can only require that the intervenor be allowed to participate to the extent provided under this title. It cannot require any particular outcome from the intervention, nor that any issue raised by an intervenor be considered appropriate.

With regard to this section, the conferees do not intend to foreclose Federal courts from jurisdiction to review cases involving electric utility rates which do not involve actions arising under subtitle A, B, or C. Where the Federal Government has authority in law to cause review of electric rates in Federal court as a purchaser of electric energy, this subsection is not meant to limit this review in Federal courts, except that the Federal courts will have no jurisdiction with respect to issues arising under subtitle A, B, or C.

Subsection (c)(1) deals with review of determinations and enforcement of requirements of subtitle A, B, or C in State courts with respect to utilities which are not Federal agencies. The second sentence provides for enforcement authority. This enforcement provision contemplates enforcement (including by writ of mandamus) of obligations of State regulatory authorities and nonregulated utilities to hold hearings, to make determinations, and to comply with all the other requirements of subtitles A, B, and C. The enforcement authority does not provide an independent authority to attack a final determination of a regulatory authority or a nonregulated electric utility which is reviewed under the first sentence of the subsection.

The conferees intend that any appeal from a final determination by a State regulatory authority or nonregulated utility will be in that State's courts and the scope of review will be pursuant to State law. The findings and determinations by the courts

are reviewable under the substantive standards of review as established under State law, as such standards are supplemented by the purposes of this title. Although State law is supplemented in this respect, discretion under otherwise applicable State law is not restricted. Procedures for State court review (including burdens of proof) shall be as provided by State law except as may be modified in section 123(c).

Subsection (c)(2) of this section reserves review of Federal agency action under subtitles A, B, and C in Federal courts to the same extent as provided in existing law. The conferees, in generally choosing to rely on State courts, did not wish to remove electric utilities which are Federal agencies from their traditional forum for review.

Subsection (c)(3) provides that the Secretary of Energy may file an amicus curiae brief in a judicial review of a proceeding of a State regulatory authority or nonregulated utility regardless of whether he participated in the original proceeding.

SECTION 124. PRIOR AND PENDING PROCEEDINGS

This section deals with the question of whether and to what extent prior or pending proceedings will be treated as fulfilling the requirements of this title. It states that proceedings commenced by State regulatory authorities and nonregulated utilities before the date of enactment of this title and actions taken in such proceedings shall be treated as complying with the requirements of this title if the proceedings and actions substantially comply with the requirements of this title.

The conferees recognize that several State regulatory authorities and nonregulated utilities may have already addressed one or more of these standards before enactment of this legislation. The conferees also recognize that those responsible for these proceedings could not have anticipated in detail the requirements of this title. The fact that the prior proceeding did not permit the full right of participation and intervention as required by section 121 of this title does not automatically constitute the absence of substantial conformance. It is not the intention of the conferees that the standards be reconsidered at great expense and without purpose if the original proceedings substantially conformed with the requirements of this title. The essential feature of the process contemplated by the conferees in this title with respect to the standards established by section 111(d) is that there be utility-by-utility analysis of the appropriateness of these standards to carry out the purposes specified in section 101. Of course, no one could precisely follow the exact consideration required here because the legislation did not exist. Therefore, the State regulatory authorities and nonregulated utilities will have to determine whether they substantially conformed to the requirements of the title and the courts will be able to review this determination.

This section also states that any proceeding or action pending on the date of enactment of this Act shall comply with the requirements of this title, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after the date of enactment. If a proceeding has been begun prior to such date, nothing here would require restarting the entire proceeding to give any person a right to participate or intervene if such right would be untimely, as stated in section 121(c). Nor does this section require notice in accordance with the requirements of this title if the proceeding had begun before enactment. However, if no determination had been made, then the requirements in section 111(d) with regard to a written determination which is based upon findings included in such determination and upon evidence presented at the hearing, and which is available to the public, should be followed.

SUBTITLE D—ADMINISTRATIVE PROVISIONS

SECTION 131. VOLUNTARY GUIDELINES

This section gives the Secretary the authority to prescribe voluntary guidelines respecting the standards established by subtitle B. The conferees intend that by using the word "prescribe", the Secretary utilize a procedure which involves significant input from concerned persons in formulating these guidelines. These guidelines are not to be construed as binding or mandatory on the State regulatory authorities, nonregulated utilities, or on the courts in interpreting the standards. These guidelines may not expand the scope or legal effect of the standards. The Secretary would have no authority to enforce these guidelines in court. Rather, the guidelines would be voluntary in nature. They are the Secretary's opinion of the standards, which opinion the States would weigh as they would other opinions on how these standards should be interpreted.

The House bill contained a section that established a "Utility Advisory Committee" to advise the Federal Energy Regulatory Commission respecting certain duties and functions assigned to the Commission. There was no comparable Senate provision. The conferees did not adopt this section. Rather, the conferees anticipate that the Secretary of Energy will consult with the State regulatory authorities, nonregulated utilities, and other entities in prescribing any guidelines under this section.

SECTION 132. RESPONSIBILITIES OF SECRETARY OF ENERGY

The conferees agreed to adopt a modified version of the language of the House provision that requires the Secretary of Energy to inform the State regulatory authorities and nonregulated utilities about data or information that would assist them in carrying out the provisions of this title.

In addition the conferees added a subsection from the House bill authorizing the Secretary of Energy to provide such technical assistance as he determines appropriate to any State regulatory authority, if it requests it. A subsection authorizing appropriations for this technical assistance is included.

SECTION 133. GATHERING INFORMATION ON COSTS OF SERVICE

The purpose of this section is to require electric utilities to gather information (under rules prescribed by the Commission) which is necessary to determine the costs associated with providing electric service and to provide for the filing and publication of this information. The conferees intend that good information with regard to costs of providing service must be readily available on a timely basis to everyone concerned. The Commission is given 180 days to promulgate these rules so as to begin the process of collecting and publishing this information during the consideration and determination phase of this program within the first 2 years after the date of enactment. Subsection (a) contains a list of four items the Commission is mandated to include in these rules, these items being basic to any determination with respect to the cost of providing electric service. These four items are not meant to be an exclusive list of what the Commission could require to be gathered under these rules but rather are intended to be minimum requirements.

The conferees agreed to make this section enforceable under section 12 of the Energy Supply and Environment Coordination Act of 1974. If this section 12 expires at any time, the legislation specifically authorizes continued use of it after that date for purposes of enforcing any violation of this section 133. Nothing done in this section affects the authority of the Commission or the Department of Energy under section 11 of E.S.E.C.A. or other statutes to collect and publish energy information.

Under subsection (c) of this section, the electric utilities are required to file the information gathered pursuant to subsection (a) with the Commission and the State regulatory authorities, and make it available to the public, in a manner and form described by the Commission. It is the intention of the conferees that such information be filed with respect to each class of electric consumers and not with respect to any particular electric consumer. The conferees intend to protect individual bills and consumption patterns of individuals from disclosure because such information may be proprietary information. The Commission and the State regulatory authority, however, shall be able to review the individual data to verify accuracy of information filed with them and for enforcement purposes.

The information gathered under subsection (a) shall be coordinated with the filing requirements under subsection (c) so as to reduce unnecessary burdens.

SECTION 134. RELATIONSHIP TO OTHER AUTHORITY

This section provides that nothing in this title shall be construed to limit or affect any authority of the Secretary or the Commission under any other provision of law. This is not intended by the conferees to give the Secretary authority to raise issues related to the requirements of this title in Federal court pursuant to the general jurisidiction provisions of title 28, United States Code. Judicial review of issues related to this title has been provided for under section 123, and such review can occur only pursuant to that provision. His right to use those provisions with regard to actions permissible to be brought under them would still pertain as long as issues related to this title were not entertained.

SUBTITLE E—STATE UTILITY REGULATORY ASSISTANCE

SECTION 141. GRANTS TO CARRY OUT TITLES I AND III

Section 141 amends the Energy Conservation and Production Act to authorize the Secretary to make grants to State utility regulatory commissions and nonregulated utilities to carry out duties and responsibilities under this title of the conference substitute.

The Secretary, as expressed in subsection (b), may establish only such requirements with respect to these grants as are necessary to assure that grants are expended solely to carry out the duties and responsibilities under the legislation. The conferees included this provision to assure that the Secretary could not attempt, by means of grants, to influence the outcome of deliberations in the States concerning these standards.

Additionally subsection (c) states that these grants are to be in addition to and not in substitution for funds otherwise available to the State regulatory authorities or nonregulated utilities to carry out these functions.

Finally, subsection (d) states that, in apportioning the funds among the States, any disbursal of funds must not result in any State, as a whole, receiving for its State commission or nonregulated utilities located in it, more than an amount determined by dividing the total amount available under this program equally among States from which applications are received, except that no State regulatory authority or nonregulated utility can receive more funds than the Secretary, pursuant to his authority under subsections (b) and (c), determines necessary to carry out the duties and responsibilities under this title.

The conferees intend that the funds provided to the State regulatory authorities and

nonregulated electric utilities under this section not be used primarily for paying personnel salaries and related costs.

SECTION 142. AUTHORIZATIONS

Section 142 adds a new section 208 to the Energy Conservation and Production Act to provide certain authorizations of appropriations. The first authorization deals with assistance to carry out duties and responsibilities under the conference substitute. Since most of these duties and responsibilities will occur for the first two or three years after enactment, the conferees targeted the authorization to meet this start-up need. The conferees do not intend to make this assistance program a permanent one, but rather to help the States carry out these new responsibilities and duties until they can find ways to deal with them at the State level.

The other two authorizations deal with programs that have been authorized since August 14, 1976, the date of enactment of the Energy Conservation and Production Act.

SECTION 143. CONFORMING AMENDMENTS

This section contains technical amendments to conform title II of the Energy Conservation and Production Act to the transfer of functions made by section 301 of the Department of Energy Organization Act, which section transferred authorities of the Administrator of the Federal Energy Administration to the Secretary of the Department of Energy.

TITLE II—CERTAIN FEDERAL ENERGY REGULATORY COMMISSION AND DEPARTMENT OF ENERGY AUTHORITIES

SECTION 201. DEFINITIONS

Section 201 amends the Federal Power Act to insert a number of new definitions in that Act. These definitions are taken from the House bill and Senate amendment with technical and conforming changes. They supersede the definitions contained in section 3 with respect to the Federal Power Act amendments. The section 3 definitions do not apply for purposes of such amendments.

With regard to the definition of "small power production facility", the conferees intend, for purposes of maintaining status as a small power production facility, that the phrase "primary energy source" does not preclude the use of gas or oil in a facility for the generation of electricity during scheduled outages.

It is the intention of the conferees that the term "waste" as used in the definition of "small power production facility" includes wood and liquid or solid waste. The power production capacity of the facility means the rated capacity of the facility. The conferees added the term "primary energy source" to this definition in recognition of the fact that a facility using waste, biomass, or renewable resources, or any combination thereof as the primary fuel might nevertheless require the use of oil or natural gas or other nonrenewable fuels in emergencies or in outages or to start the unit, test it, stabilize the flame or control the operation of the unit or for other minor uses.

The definition of small power production facility includes solar electric systems, wind electric systems, systems which produce electric energy from waste or biomass, and electric energy storage facilities. The conferees intend that water be included within the meaning of the term renewable resources with respect to hydroelectric facilities at existing dams.

The term "qualifying small power production facility" and "qualifying cogeneration facility" exclude facilities which are owned by a person who is primarily engaged in the generation or sale of electric power. Electric utilities may participate in an entity which owns such facilities with other persons and such entity could qualify under these definitions. The test of this case is whether the entity which owns the facility is primarily engaged in the generation or sale of electric power other than in connection with its ownership of the cogeneration facilities or small power production facilities.

The new paragraphs 17(C) and 18(B) of the definitions provide that the Commission shall determine, by rule, on a case-by-case basis, or otherwise, that a small power production facility or cogeneration facility is a qualifying small power production facility or a qualifying cogeneration facility, as the case may be. The purpose of this determination is to provide a means to insure that such a facility is identified through Commission action for purposes of showing that it is in fact included in any exemption under section 210 (e) of the Federal Power Act. Such determination would also prevent such facility from being challenged concerning the application of such exemption to it.

The conferees intend, in providing for requirements respecting qualifying facilities to be established by the Commission by rule, that the Commission provide requirements under which a person may ascertain in advance of construction or operation of any facility whether or not such facility will meet the criteria contained in these definitions.

The Commission should prescribe these rules as soon as practicable after enactment.

The language in these definitions relating to fuel use and fuel efficiency may not always be applicable as some power production facilities (such as hydroelectric facilities) may not use fuel.

It is also the intention of the conferees that the definitions of "qualifying cogeneration facility" and "qualifying small power production facility" will not be construed as prohibiting or discouraging electric utilities from cogenerating.

SECTION 202. INTERCONNECTION

This section amends the Federal Power Act to add a new section 210 at the end of part II of that Act. It describes who may apply to the Commission for an order requiring an interconnection and certain other specified actions. In addition, this section describes who is subject to such orders and what procedures the Commission must employ, the criteria they must use, and the action required or permitted to be taken by the Commission with respect to such applications. It also provides for issuance of an order by the Commission on its own motion.

Federal power marketing agencies are not included as targets of interconnection orders under this section.

The conferees recognize that other provisions of law provide adequate authority for the Secretary to arrange for interconnections between utilities (or other persons) and the Federal power marketing entities which are under the jurisdiction of the Department of Energy. The conferees expect that the Secretary will adopt procedures permitting persons to request interconnection of the systems of such power marketing entities under the jurisdiction of the Department of Energy with other utilities or other persons.

Under subsection (a)(1) of new section 210, actions under subparagraphs (C) or (D) may be ordered only if actions have been ordered under subparagraph (A) or (B). Subparagraph (B) contains a listing of examples of reasons by which an interconnection may be inadequate but it is not the conferees' intention that this list represent an exclusive list.

The conferees believe that if the Commission modifies, in any order issued under this section, the action applied for, it must state its reasons therefore and base such modification on the record before it.

The conferees intend that the reference to efficiency of use of facilities and resources in subsection (c)(2)(B) include efficient use of both existing facilities and resources and facilities and resources reasonably contemplated to be used in the future. The conferees also intend that the term "resources" include capital resources.

Subsection (c) provides that no order may be issued under subsection (a) unless the Commission determines that the order: (1) is in the public interest; (2) would encourage overall conservation of energy or capital, or optimize the efficiency of use of facilities and resources, or improve the reliability of one or more of the utility systems to which the order applies; and (3) meets the requirements of section 212.

In the conference substitute, the conferees extended the right to apply for interconnection orders to certain cogenerators and small power producers. Operators of these facilities may own several qualifying facilities which meet standards set forth by the Commission and also own facilities which do not meet these standards (and therefore are not qualifying facilities). It is the intent of the conferees that orders issued under this section be applicable to qualifying cogeneration facilities and qualifying small power production facilities and not be so broad as to encompass both qualifying and nonqualifying facilities. This intent is expressed in subsection (e)(2) of this section.

The conferees intend that the term "transmission facilities of an electric utility" be interpreted broadly.

SECTION 203. WHEELING

This section amends part II of the Federal Power Act to permit any electric utility to apply to the Commission for an order requiring another electric utility to wheel power to the applicant.

Subsection (a) provides for an application procedure for electric utilities. The application must include notice and an opportunity for an evidentiary hearing. For purposes of providing notice, the conferees intend that the phrase "affected electric utility", as used in this subsection and subsection (b), be interpreted to apply to the two electric utilities which have made the arrangements for the sale of power as well as the utility being requested to wheel the power.

In subsection (a)(2)(B), the conferees intended that the phrase "efficient use of facilities and resources" include the efficient use of both existing facilities and resources and facilities and resources reasonably contemplated to be used in the future. The conferees intend that the term "resources" include capital resources.

Subsection (a) also provides that no order may be issued under subsection (a) unless the Commission determines that the order: (1) is in the public interest; (2) would conserve a significant amount of energy, or significantly promote the efficient use of facilities or resources, or improve the reliability of one or more of the utility systems to which the order applies; and (3) meets the requirements of section 212.

The conferees note that the tests specified in section 210(c)(2) for an interconnection order are not the same as the tests specified in the new section 211(a)(2) for a wheeling order.

Subsection (b) deals with the situation where one electric utility has been requested to provide transmission services to the applicant utility and gives actual or constructive notice that it is unwilling or unable to provide electric service to the applicant utility. If one utility decides to cut off electric service to another which he had previously supplied, the other utility may apply for an order under this subsection as, for example, when the first utility has a contract to cover the power needs of other utility and decides not to renew the contract thus jeopardizing the second utility's ability to serve its customers.

It is intended that applicants for transmission services be entitled to proceed under either 211(a) or 211(b), or apply under both subsections through pleadings framed in the alternative.

In granting the Commission authority to order a utility to increase its transmission capacity in order to carry out wheeling, the conferees intended the Commission to consider situations for wheeling other than those which solely involved the use of excess capacity. Should a wheeling order involve the use of excess capacity, the Commission, in its order and deliberations, should take into account the financial and technical adjustments which may have to be made in the future by the affected utilities as the excess capacity is absorbed by the growth in transmission requirements.

Subsection (c)(1) stipulates that any order for transmission services under subsection (a) may not be issued unless the Commission finds that such order reasonably preserves existing competitive relationships between the utilities affected by the order. These relationships may involve, in addition to utilities mentioned in the order, utilities serving or seeking to serve the ultimate consumers of the electric energy transmitted pursuant to the order. The conferees do not intend that the Commission order wheeling which significantly alters the competitive relationship among utiltities in competition with one another for the same customers. Further, it is not the intention of the conferees that the Commission should be required to maintain or protect in any manner any relationship between utilities which is unlawful under the antitrust laws.

The conferees intend in subsection (c)(2)(B) that the term "amount . . . currently provided" be measured on the effective date of the order under subsection (a) or (b).

Subsection (c)(3) is intended by the conferees to bar wheeling orders for purposes of sale by a utility to an ultimate consumer who is within the service territory of another utility (other than the applicant) where such territory is established by or under State law, rule, or decision.

In subsection (c)(4), the conferees intend that the Commission not issue any order under subsection (a) or (b) to provide transmission of electric energy directly to any ultimate consumers of an electric utility, but that they issue orders, subject to this section, for the transmission of electric energy among electric utilities.

Subsection (d) provides for a statutory procedure by which a utility ordered to provide transmission services under this section may apply for any order permitting such utility to cease providing all or any portion of such services. The original order may provide for termination procedures.

Subsection (d)(1)(B) contains a means by which a utility may regain transmission capacity which was excess to its needs at the time the wheeling order was issued, but only if the order was predicated on the existence of this excess capacity.

The conferees do not intend that the wheeling authority granted by this section affect the authority of the Commission under other provisions of law to order wheeling for purposes of continuation of service. Orders under this section are not to be used to require utilities to enter into arrangements for buying or selling power, but rather to require a third party to provide transmission services between a willing seller and a willing buyer of electric energy.

SECTION 204. GENERAL PROVISIONS REGARDING CERTAIN INTERCONNECTION AND WHEELING AUTHORITY

Subsection (a) of this section adds a section 212 to the Federal Power Act. It sets out general terms and conditions which govern issuing orders under sections 210 and 211.

Section 212 prohibits the Commission from issuing an order under section 210 or 211 unless it makes certain findings as to the economic loss, burden, effects on reliability, and ability to render adequate service, as a result of the order.

The Commission is prohibited from compelling the enlargement of generating facilities for purposes of an order under section 210 or 211.

Section 212 also requires the applicant for an order under section 210 or 211 to demonstrate that he is ready, willing, and able to reimburse the utility subject to the order for various costs incurred by the utility subject to the order. In addition, this provision identifies the procedures that the Commission must follow in the determination of the terms and conditions under which the order will be carried out.

Finally, section 212 provides for limited jurisdiction to the Commission under the Federal Power Act for electric utilities subject to an order under section 210 or 211 of the Act and not otherwise subject to Commission jurisdiction under part II of the act.

The conferees intend that any evidentiary hearing held under new sections 210, 211 or 212 of the Federal Power Act provide an opportunity in such hearing for participation utilities involved in an interconnection arrangement, the utility being requested to wheel power, the utilities which are or would be the present and the proposed seller and buyer in an arrangement for the sale or exchange of power, and all utilities whose systems, operations, costs or revenues would be affected by the proposed order and arrangements, and customers of such utilities.

Subsection (a)(1) of new section 212 contains a requirement that no order be issued unless the Commission determines, based upon a showing of the parties, that the order is not likely to result in a reasonably ascertainable uncompensated economic loss for any electric utility, qualifying cogenerator, or qualifying small power producer, affected by the order. The conferees intend that the Commission evaluate (based upon a showing by the party claiming the loss) the likelihood of incurring, either at the time the order is issued, or at any time thereafter, any reasonable ascertainable costs to the party as a result of the order being issued. If such reasonably ascertainable uncompensated economic losses are likely to result, the order shall not be issued. The requirement that a Commission determination be based upon a showing of the parties is not intended to preclude the Commission from considering all the evidence in the proceeding, including material presented by the Commission staff.

Subsection (a)(2) of new section 212 states that no order may be issued unless the Commission determines that the order will not place an undue burden on an electric utility, qualifying cogenerator, or qualifying small power producer affected by the order. The conferees intend that the Commission not consider any loss under paragraph (1) of this subsection as an undue burden under this paragraph because the evaluation under paragraph (1) should take that kind of loss into account.

Subsection (a) also indicates the Commission has no authority under section 210 or 211 to compel enlargement of generating facilities although it may compel the enlargement of transmission capacity.

Subsection (b)(1) provides that no order may be issued under section 210 unless the applicant for such order demonstrates that he is ready, willing and able to reimburse the person subject to the order for reasonably anticipated costs incurred under the order. The conferees intend that the phrase "reasonably anticipated costs incurred" include costs of any enlargement of transmission facilities.

It is the intention of the conferees that subsection (b)(2) of section 212 permits the Commission, in appropriate circumstances, to require that in the case of an application for wheeling services where enlargement of transmission capacity is necessary, the applicant must demonstrate that he is ready, willing, and able to reimburse the wheeler for that enlargement prior to the utility subject to the wheeling order undertaking the enlargement. The conferees intend that the Commission will evaluate the costs of transmission services.

Subsection (c) of section 212 sets forth the procedure for reaching agreement on the terms and conditions of the order. Paragraph (1) allows the Commission to disapprove terms and conditions agreed to by the parties. The Commission is to determine a reasonable period of time for these negotiations, based upon its view of the purposes of the order in terms of need for implementation. It is the intention of the conferees that generally the Commission shall not disapprove such terms and conditions unless the Commission determines that they are inconsistent with the applicable provisions of section 210, or 211 and 212 or that they would be detrimental to ratepayers of one or more of the parties.

Subsection (d) provides that when the Commission fails to issue an order for which an application was made, the Commission shall issue an order denying the application. Such denial shall include a statement of the reasons for the denial.

Subsection (e) of new section 212 expresses the intention of the conferees that the authorities granted in sections 210 and 211 are in addition to and not in lieu of other authority the Commission may have under the Federal Power Act.

Subsection (f) of new section 212 deals with the issuance of orders under sections 210 and 211 and the relationship of such orders to one provision of the Tennessee Valley Authority Act. That provision is the third sentence of section 15d(a) of the TVA Act. The limitations contained in that sentence are not superseded by the conference agreement.

After the Commission issues an order under either section 210 or 211 requiring an action by TVA, the order will be stayed for 60 days. During this period, the Commission may initiate a determination whether implementation of the order would violate the third sentence of section 15d(a) of the TVA Act. It shall initiate such a determination if any aggrieved person petitions it to do so within such 60-day period. Once initiated, the Commission must give public notice thereof and promptly make the determination. The conferees intend that any person can appeal the determination of the Commission. The Commission must stay its order until there is a final resolution of the matter in the form of a final determination that no violation exits or until congressional action within the third sentence of 15d(a) of the TVA Act takes effect. Provision is made for judicial review of the determination.

Subsection (b) of section 204 of the conference substitute provides for limited jurisdiction for electric utilities subject to an order under section 210 or 211 of the Federal Power Act (as added by the conference substitute) and not otherwise subject to jurisdiction under part II of the Federal Power Act.

If a utility, not otherwise subject to the jurisdiction of the Commission, is ordered to interconnect or wheel under this section or to make sales or exchanges over a transmission line under this section, only the limited jurisdiction as stated in this subsection would attach to that utility. Any other utility, which is not subject to the jurisdiction of the Commission, and which is connected to

the utility ordered to interconnect or wheel would remain free from the Commission's jurisdiction as long as the required interconnection or wheeling is not used in a manner unauthorized by the order.

However, the electric utility ordered to interconnect or wheel and any utility connected to it may become subject to the jurisdiction of the Commission if the utility ordered to interconnect or wheel acts in a manner not authorized by the order and such unauthorized action would be otherwise subject to the jurisdiction of the Commission.

SECTION 205. POOLING

This section authorizes the Commission on its own motion, and requires the Commission on application, to exempt electric utilities, where the circumstances specified in this section exist, from State laws, rules or regulations that prohibit or prevent voluntary pooling. No exemption is authorized where FERC finds that the law, regulation, or rule is required by Federal law or is designed to protect public health, safety or welfare or the environment or conserve energy or mitigate emergencies resulting from fuel shortages. This prohibition would include State siting laws, regulations under the Clean Air Act, and zoning laws, among others. Second, this section requires an 18-month Commission study on pooling. Third, it authorizes the Commission to recommend to electric utilities that they voluntarily negotiate to establish pooling arrangements where there is an opportunity through such an arrangement to conserve energy, to optimize the efficiency of use of facilities and resources, or to increase reliability.

The conferees do not intend that the authority contained in subsection (a) of this section override any exclusive retail marketing area. It is directed at State laws and rules or regulations thereunder which prohibit or prevent voluntary coordination of electric utilities if the Commission determines, upon its own motion or upon complaint, that such voluntary coordination is designed to obtain economical utilization of facilities and resources in any area.

SECTION 206. CONTINUANCE OF SERVICE

The purpose of this section is to help insure the continuity of service to customers of public utilities. Public utilities are required to promptly report any anticipated shortages which would affect their capability to serve their wholesale customers, to submit contingency plans and to accommodate shortages (or circumstances which may result from such shortages) consistent with the provisions of this section.

The language of this section is a combination of the House and Senate provisions with some modifications.

The phrase in paragraph (3)(A) of subsection (g) "give due consideration to the public health, safety, and welfare" is intended to convey the idea that contingency plans, if implemented, should have a minimum adverse effect on the public health, safety, and welfare.

The conferees understand that proceedings are now pending that relate to the question of priority of service in the event of an outage of electrical service. In adopting the language of this section it is the intention of the conferees that their action will have no influence on the outcome of the pending litigation insofar as existing law is concerned. Furthermore, this section, is not intended to impinge on any emergency authority regarding continuity of service in existing law.

In subsection (g)(2) the conferees intend that the Commission can approve plans submitted thereunder on the basis of the criteria listed in paragraph (3) and require use of these approved plans under paragraph (3). Also the conferees intend that the Commission may require periodic updating of these plans.

SECTION 207. CONSIDERATION OF PROPOSED RATE INCREASES

This section amends the Federal Power Act to increase the number of days of notice that a public utility must provide to the Commission and to the public prior to such public utility making any change in the rate schedule then in effect. It also requires that the Commission conduct a study of the legal requirements and administrative practices and proceedings involved in the consideration of applications for proposed wholesale electric rate increases under the Federal Power Act. The Commission must report to Congress regarding the results of its study within 9 months after the date of enactment.

In adopting subsection (b), the conferees do not intend to imply that the Commission should postpone, until the study mandated in this section is complete, any efforts under existing law to improve the consideration of proposed rate increases.

SECTION 208. AUTOMATIC ADJUSTMENT CLAUSES

This section amends section 205 of the Federal Power Act to require that, not less often than every 4 years, the Commission make a thorough review of automatic adjustment clauses in public utility rate schedules to examine whether or not each such clause effectively provides incentives for the efficient use of resources (including economical purchase and use of fuel and electric energy) and whether each clause reflects any cost other than those subject to periodic fluctuations and not susceptible to precise determination in rate cases in individual rate proceedings or in separate proceedings. Since this is an amendment to part II of the Federal Power Act, these requirements apply only to the rates of public utilities which rates are subject to the jurisdiction of the Commission as provided in section 201. If a public utility has both nonjurisdictional and jurisdictional rates the amendment would still apply only to the jurisdictional rates of the utility.

Paragraphs (2) and (3) contain additional requirements and powers with respect to the Commission's review of the use of automatic adjustment clauses. Paragraph (4) contains the definition of the term "automatic adjustment clause". The conferees do not indicate any preference for inclusion or exclusion of any item in an automatic adjustment clause.

SECTION 209. RELIABILITY

The purpose of this section is to require the Secretary of Energy to study ways to improve the reliability of service to electrical consumers, to authorize the Secretary to request appropriate persons to examine and report to him on reliability issues, to authorize the Secretary to recommend to the electric utility industry standards for reliability, and to require that the Secretary, in his annual report, make recommendations concerning reliability of service to electrical consumers.

SECTION 210. COGENERATION AND SMALL POWER PRODUCTION

Section 210, as agreed to by the conferees, is a compromise of the House and Senate positions on cogeneration and small power production. In lieu of the Senate guideline approach, this section requires that States and utilities follow rules which the Federal Energy Regulatory Commission is to prescribe within one year after the date of enactment of this legislation.

Subsection (a) of this section states that the rules the Commission is required to prescribe under this section require electric utilities to offer to sell electric energy to qualifying cogeneration facilities and qualifying small power production facilities and require electric utilities to offer to purchase electric energy from these facilities.

Subsection (a) also contains procedural requirements with respect to the hearings to be conducted prior to final promulgation of the rules and limits the authority of the Commission to authorize in these rules cogeneration facilities or small power production facilities to make any sale for purposes other than resale. The conferees do not intend that this limitation on the Commission's authority will limit the States from allowing such sales to take place. The cogenerator or small power producer may be permitted to make retail sales pursuant to State law.

Subsection (b) of this section deals with the requirements that the Congress places on the Federal Energy Regulatory Commission in prescribing the rules under subsection (a). These rules shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualified cogenerator or qualified small power producer, the rates for this type of purchase are to be just and reasonable to the electric consumers of the utility, in the public interest, and are not to discriminate against cogenerators or small power producers. The conferees intend that the phrase "just and reasonable to the electric consumers of the utility" be interpreted in a manner which looks to protecting the interests of the electric consumers in receiving electric energy at equitable rates. It is not the intention of the conferees that cogenerators and small power producers become subject, by virtue of this language, and the rules promulgated under this section, to the type of examination that is traditionally given to electric utility rate applications to determine what is the just and reasonable rate that they should receive for their electric power. The conferees recognize that cogenerators and small power producers are different from electric utilities, not being guaranteed a rate of return on their activities generally or on the activities vis a vis the sale of power to the utility and whose risk in proceeding forward in the cogeneration or small power production enterprise is not guaranteed to be recoverable.

The conferees wish to make clear that cogeneration is to be encouraged under this section and therefore the examination of the level of rates which should apply to the purchase by the utility of the cogenerator's or small power producer's power should not be burdened by the same examination as are utility rate applications, but rather in a less burdensome manner. The establishment of utility type regulation over them would act as a significant disincentive to firms interested in cogeneration and small power production.

This subsection further states that the utility would not be required to purchase electric energy from a qualifying cogeneration or small power production facility at a rate which exceeds the lower of the rate described above, namely a rate which is just and reasonable to consumers of the utility, in the public interest, and nondiscriminatory, or the incremental cost of alternate electric energy. This limitation on the rates which may be required in purchasing from a cogenerator or small power producer is meant to act as an upper limit on the price at which utilities can be required under this section to purchase electric energy. The conferees do not intend cogenerators or small power producers to be subject, under the Commission's rules, to utility-type regulation.

Subsection (c) deals with the requirements with respect to sales by utilities to cogenerators and small power producers and requires that these rates be just and reasonable and in the public interest and do not discriminate against cogenerators or small power producers. Here the phrase "just and reasonable" is intended to refer to tradi-

tional utility ratemaking concepts. The conferees do not intend that the cogenerator or small power producer pay any more or any less than is otherwise just and reasonable in terms of the utility receiving the reasonable rate of return for providing service to those kinds of users. However, unreasonable rate structure impediments, such as unreasonable hookup charges or other discriminatory practices, would not be allowed.

The conferees use the phrase "not discriminate against cogenerators or small power producers" because they were concerned that the electric utility's obligations to purchase and sell under this provision might be circumvented by the charging of unjust and non-cost based rates for power solely to discourage cogeneration or small power production. This phrase should not be construed to permit discrimination against the electric consumers of an electric utility in formulating rates under this provision. The provisions of this section are intended to require the rate payers of a utility to subsidize cogenerators or small power producers.

Subsection (d) deals with the definition of the term "incremental cost of alternative electric energy" as used in the last sentence of subsection (b). This term is defined as the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source. In interpreting the term "incremental cost of alternative energy", the conferees expect that the Commission and the States may look beyond the cost of alternative sources which are instantaneously available to the utility. Rather, the Commission and States should look to the reliability of that power to the utility and the cost savings to the utility which may result at some later date by reason of supply to the utility at that time of power from the cogenerator or small power producer; for example, an electric utility which owns a source of hydroelectric power and which is offered the sale of electric energy from a cogenerator or small power producer might, if measured over the short term, have a low incremental cost of alternative power because of its access to hydropower; however, it may be the case that by purchasing from the cogenerator or small power producer and saving hydropower for later use, the utility can avoid the use of expensive electric energy generated by fossil fired units during later months of its seasonal generation cycle. Thus, viewed over the longer period of time, the incremental cost of alternative electric energy might be substantially higher than that measured by the instantaneously available hydropower.

In providing that the 30–80 megawatt class of small power production facilities may not be exempt from the Federal Power Act under subsection (e), the conferees intended that where such facilities are subject to Federal Power Act jurisdiction, the Commission must set the rates for the sale of power by such facilities in accordance with the requirements of this section.

The conferees expect that the Commission, in judging whether the electric power supplied by the cogenerator or small power producer will replace future power which the utility would otherwise have to generate itself either through existing capacity or additions to capacity or purchase from other sources, will take into account the reliability of the power supplied by the cogenerator or small power producer by reason of any legally enforcible obligation of such cogenerator or small power producer to supply firm power to the utility.

SECTION 211. INTERLOCKING DIRECTORATES

This section amends section 305 of the Federal Power Act, by adding a new subsection. The conferees agreed to adopt with some revisions the disclosure provisions contained in the House bill. The provisions in the House bill authorizing the Commission to prohibit an officer or director of a public utility from holding other positions were not adopted. The Senate amendments contained no comparable provision.

In paragraph (2)(D) of this new subsection, the conferees intend that the 20 purchasers of electric energy be measured in terms of electric energy bought from the utility.

The definition of the word "controlled" in paragraph (2)(F) of new subsection (c) is, the conferees intend, to be defined by the Commission. The conferees were reluctant to establish a single arbitrary percentage of stock ownership as the yardstick for measuring control. Rather, it is anticipated that after appropriate consideration, the Commission will arrive at a definition that takes into account the nature and extent of control of one firm by another.

SECTION 212. PUBLIC PARTICIPATION BEFORE FEDERAL ENERGY REGULATORY COMMISSION

The House bill contained a provision creating an Office of Public Counsel and provided that the Director of the Office would administer and distribute a fund to compensate certain intervenors unable to afford to participate in proceedings before the Commission. The conferees agreed to adopt this provision with some modification and to require the Director of the Office to coordinate all other assistance provided by the Commission to intervenors in proceedings before the Commission.

The creation of the Office of Public Participation, it should be emphasized, does not relieve the Commission of its obligations under other provisions of law to provide for public participation.

Paragraph (3) states that nothing in this section shall affect or restrict any rights of any participant in any proceeding under any other applicable law or rule of law. Payment of funds pursuant to this section does not permit the Director or the Commission to control the nature of the legal representation or manner of handling of a case in any proceeding. Payment of costs of participation are not intended to be used as a method to dictate who should represent a participant or intervenor.

The conferees intend that nothing in this section affects any authority the Commission may have with respect to providing assistance to the public with regard to matters before the Commission.

SECTION 213. CONDUIT HYDROELECTRIC FACILITIES

The House bill contained a provision which required the Commission to grant an exemption from any licensing or other requirements of part I of the Federal Power Act for any hydroelectric facilities using the hydroelectric potential of a manmade conduit on non-Federal lands if the installed capacity of the facility is not more than 15 megawatts. Such conduit must be operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. The Senate provision was identical except that the Commission was given discretion to provide such exemptions.

The conferees agreed to adopt the Senate provision.

At the same time, the conferees intend that the Commission apply expedited licensing procedures to the maximum extent practicable (consistent with applicable law) with respect to facilities which are not exempted from licensing.

The amendment in subsection (c) requires consultation with Federal and State fish and wildlife authorities and inclusion of appropriate terms and conditions in the exemption to prevent loss or damage to fish and wildlife resources.

Subsection (d) provides for enforcement of the requirements of subsection (a).

SECTION 214. PRIOR ACTION; EFFECT ON OTHER AUTHORITIES

The conferees agreed to adopt this section so as to ensure that the provisions of title II of this act and any amendments to other laws contained in title II will operate prospectively and will not have a retroactive effect with respect to actions taken by the FERC before the date of enactment of this act. In addition, this section is intended to establish the policy that title II of this act serves to create authorities in addition to those established under other Federal law for the FERC and all other Federal agencies. Title II does not affect any existing authorities of the Commission or other Federal agencies under any other provision of law except as specifically provided therein.

TITLE III—RETAIL POLICIES FOR NATURAL GAS UTILITIES

SECTION 301. PURPOSES; COVERAGE

The conference substitute sets out three purposes for the title on retail policies for natural gas utilities. These are largely drawn from the Senate amendment.

The first purpose relates to conservation of energy supplies by gas utilities. It is a purpose of this title to foster conservation by the ultimate end-user of natural gas.

The second purpose relates to optimization of the efficiency of use of facilities and resources by gas utilities. This purpose is directed at the utility in its use of energy and its facilities. The conferees intend to include capital resources within the meaning of resources. The concept of optimization is intended to include the notion that the most efficient use is made of natural gas facilities.

The third purpose relates to encouraging equitable rates for consumers.

These purposes are independent of one another and not listed in any order of preference or priority.

The conferees intend that it is not necessary that all of these three purposes be achieved for any action to be considered to carry out these purposes. Rather, if any of these purposes are achieved and the others are not negatively impacted, a finding can be made that the purposes of the title are achieved. The coverage provision is similar to the coverage provision for title I, except that the threshold here for gas utilities is 10 billion cubic feet.

SECTION 302. DEFINITIONS

Although the definitions listed in section 3 apply to the provisions of title III, there are some terms that appear exclusively in this title and they are defined in this section.

The definitions in this section are a result of combining the definitions from both the House bill and the Senate amendment with technical and clarifying changes.

SECTION 303. ADOPTION OF CERTAIN STANDARDS

The conferees intend that since the provisions of this section are parallel to the provisions of section 113, the explanation contained in this statement with respect to the adoption of standards for electric utilities as provided in section 113 are to apply in the same manner to the adoption of standards for gas utilities as provided in this section (except with respect to references in such explanation to section 121).

SECTION 304. SPECIAL RULES FOR STANDARDS

Since the provisions of this section are parallel to the provisions of section 115 relating to the termination of service and advertising standards established under section 115 for electric utilities, the conferees intend that the explanation in this statement concerning such standards (in the material relating to section 115) is to apply in the same manner to the special rules under this section for gas utilities.

SECTION 305. FEDERAL PARTICIPATION

This section is taken from the Senate amendment and grants the Secretary authority to intervene on his own motion in certain proceedings before State regulatory authorities and nonregulated gas utilities to advocate policies and methods that achieve the purposes in section 301.

Subsection (a) grants new authority, in addition to that contained in existing law, to the Secretary of Energy to intervene on his own motion in any proceeding before a State regulatory authority which relates to gas utility rates or rate design. The Secretary is only to intervene under the authority of this section to advocate policies or methods which achieve the three purposes stated in section 301.

Subsection (b) grants the Secretary the same rights as any other party to a proceeding before a State regulatory authority in which the Secretary is authorized by this section to intervene. Such proceeding must be related, however, to gas utility rates or rate design.

Subsection (c) grants to the Secretary the same rights as any other party to a proceeding before a nonregulated gas utility, if the Secretary is authorized by this section to intervene in such a proceeding.

In the case where the nonregulated utility sets its rates or rate designs without proceedings that are appropriate for intervention, the Secretary is permitted to review those rates or rate designs, notify the nonregulated utility of his recommendations to carry out the purposes of section 301 and such notification must be made available to the public.

SECTION 306. GAS UTILITY RATE DESIGN PROPOSALS

Both the Senate bill and the House bill contained a provision on gas utility rate design proposals. Based upon this study the Secretary is directed to develop proposals to improve gas utility rates and encourage conservation of natural gas. The Secretary is directed to transmit the proposals and specified analyses to Congress within 12 months after the date of enactment.

SECTION 307. JUDICIAL REVIEW AND ENFORCEMENT

This section provides for the judicial review of actions arising under this title and for enforcement of the requirement of this title.

Subsection (a) expressly limits Federal jurisdiction, regarding any action arising under this title, to only two situations. First, the Secretary may bring an action in the appropriate Federal court to enforce his right to intervene under section 305. Second, the Supreme Court would have jurisdiction in accordance with sections 1257 and 1258 of title 28 of the United States Code to consider any action upon appeal from the highest court of any State. Aside from these two exceptions no Federal court has jurisdiction over any action arising under this title.

This section provides for judicial review and enforcement of this title in State court but only if, either, the person seeking review was a participant or intervenor in the original proceeding, or if State law otherwise permits such review. The conferees, agreement provides that any such review will be conducted in accordance with the applicable State procedures.

This section expressly provides that this title provides no authority for the Secretary to appeal or otherwise seek judicial review of the decisions of a State regulatory authority or nonregulated gas utility, or to be a party to any action to obtain review or appeal of such a decision.

Finally, this section grants the Secretary the authority to participate as an amicus curiae in any judicial review of an action arising under this title.

SECTION 308. RELATIONSHIP TO OTHER APPLICABLE LAW

Since this section is parallel to section 117 (b), the explanation set forth earlier in this statement respecting electric utilities under section 117(b) is intended to apply in the same manner to gas utilities under this section.

SECTION 309. REPORTS RESPECTING STANDARDS

This section parallels section 116 of title I. The conferees intend the explanation in this statement concerning section 116 is to apply as well to this section.

SECTION 310. PRIOR AND PENDING PROCEEDINGS

This section parallels section 124. The conferees intend the explanation in this statement concerning section 124 is to apply as well to this section.

SECTION 311. RELATIONSHIP TO OTHER AUTHORITY

This section parallels section 134. The conferees intend the explanation in this statement concerning section 124 is to apply as well to this section.

TITLE IV—SMALL HYDROELECTRIC PROJECTS

SECTION 401. ESTABLISHMENT OF PROGRAM

This section establishes a program to be administered by the Secretary to provide incentives for the construction of small hydroelectric power projects in connection with existing dams. The provisions described below incorporate a loan program to help fund feasibility studies and application preparation, as proposed in the Senate bill, and a loan program to help fund the costs of constructing projects, as proposed in the House bill. The conference substitute includes provisions directing the Commission to establish a simple and expeditious licensing procedure for such projects.

SECTION 402. LOANS FOR FEASIBILITY STUDIES

This section authorizes the Secretary to make loans of up to 90 percent of the costs of conducting feasibility studies and preparing and approving applications for a license or other Federal, State and local approvals.

The Secretary shall cancel the unpaid balance and any accrued interest on any loan granted under this section if he determines on the basis of a feasibility study that the proposed project would not be technically or economically feasible, except that the Secretary shall not cancel the unpaid balance and accrued interest on any loan pursuant to the section if he finds that the applicant, in applying for the loan, failed to provide information reasonably available to such applicant which would have indicated that there was not a reasonable likelihood that the project might be found to be technologically and economically feasible.

The conferees intend that the Secretary should take reasonable steps prior to approving a loan pursuant to the section to determine that, on the basis of available information, there exists a reasonable likelihood that the project may be found to be both technically and economically feasible. Any determination under this section as to economic feasibility shall include consideration of costs associated with environmental and safety factors.

The conference substitute provides that no part of any loan under this section may be used to defray any part of any fee charged by any Federal, State or local agency as condition of receiving a license or other approval from such agency.

In cases where there are two or more proposed projects located upon the same waterway, the Secretary may approve one loan for a single feasibility study dealing with all such projects (in which the persons proposing the projects will jointly participate) even though such projects are proposed by different persons, if he finds that to do so would avoid unnecessary duplication of effort and costs and would provide adequate information to make a determination concerning the feasibility of all such projects.

Before making a loan for feasibility studies to any applicant, the Secretary shall consult with the Commission to determine whether any other person may be entitled to priority consideration by reason of the issuance by the Commission of a preliminary permit under part I of the Federal Power Act. The Secretary shall take such priority into consideration in determining whether or not to make a loan under this section to such applicant.

SECTION 403. LOANS FOR PROJECT COSTS

The conference substitute includes provisions authorizing the Secretary to make loans to eligible persons of up to 75 percent of project costs of small hydroelectric power projects which meet criteria set forth in the section. It was agreed that the costs of constructing fish and wildlife facilities required in connection with such projects should be included in project costs to the extent that other public funds are not available for that purpose.

Since licenses may not be issued in some cases unless financing is available, the conference substitute provides that the Secretary may make a commitment to make a loan to a person who has not met the requirements of paragraph (2), pending compliance by such person with these requirements. The commitment shall be for a period of not to exceed 3 years unless the Secretary, in consultation with the Commission, extends such period for good cause shown. Notwithstanding any such commitment, no loan shall be made before such person has complied with these requirements.

The conference substitute incorporates a provision directing the Secretary to give preference to applicants who do not have available alternative financing which the Secretary deems appropriate to carry out the project. It was intended that under this provision preference should be given to applicants for projects for which other sources of financing are unavailable or, if available, are only available at a cost that might render the project economically infeasible. The conferees also agreed that an important part of the responsibility of the Secretary under the section is to encourage investors from the private sector to participate in projects with applicants who in the Secretary's opinion have not in the past had ready access to private sources of financing for such projects.

In directing the Secretary to encourage joint participation by applicants, the conference substitute encourages the broadest possible cooperation between qualified applicants in developing and utilizing energy from each individual small hydroelectric project rather than to encourage cooperation between applicants for two or more projects.

SECTION 404. LOAN RATES AND REPAYMENT

The conference substitute provides that every loan made pursuant to this title shall bear interest at the discount or interest rate used at the time the loan is made for water resources planning projects under section 80 of the Water Resources Development Act of 1974 and shall be for such term, as the Secretary deems appropriate, but not in excess of (1) 10 years (in the case of a loan under section 402) or (2) 30 years (in the case of a loan under section 403). Amounts repaid on loans made pursuant to this title shall be deposited into the Treasury as miscellaneous receipts.

SECTION 405. SIMPLIFIED AND EXPEDITIOUS LICENSING PROCEDURES

The conference substitute provides that the Commission shall establish a program to use simple and expeditious licensing procedures under the Federal Power Act for small hydroelectric power projects in connection with existing dams.

Before issuing any license under the Federal Power Act for the construction or operation of any small hydroelectric power project the Commission is directed to assess the safety of existing structures in any proposed project (including possible consequences associated with failure of such structure), and to consult with the Council on Environmental Quality and the Environmental Protection Agency with respect to the environmental effects of such project.

Nothing in this subsection exempts any project from any applicable requirement under the National Environmental Policy Act of 1969, the Fish and Wildlife Coordination Act, the Endangered Species Act, or any other provision of Federal law.

The Commission is also directed to encourage applicants for licenses for small hydroelectric power projects to make use of public funds and other assistance for the design and construction of fish and wildlife facilities which may be required in connection with any development of such project.

SECTION 406. NEW IMPOUNDMENTS

The conference substitute provides no authorization for the loan of funds for construction of any new dam or other impoundment, or the simple and expeditious licensing of any new dam or other impoundment. This section does not restrict authority available to the Commission under other law.

SECTION 407. AUTHORIZATIONS

The conference substitute authorizes the appropriation for each of the fiscal years ending September 30, 1978, September 30, 1979, and September 30, 1980, $10 million for loans to be made pursuant to section 402, such funds to remain available until expended. It also authorizes the appropriation for each of the fiscal years ending September 30, 1978, September 30, 1979, and September 30, 1980, of $100 million for the loans to be made pursuant to section 403, such funds to remain available until expended.

SECTION 408. DEFINITIONS

In defining "small hydroelectric power project" for the purpose of this title, the conferees intended that the phrase "at the site of an existing dam" should be strictly construed to mean at the site of an existing impoundment.

The term "project costs" includes any insurance costs related to the construction of the project.

TITLE V—CRUDE OIL TRANSPORTATION SYSTEMS

SECTION 503. DEFINITIONS

In adopting the definitions of "crude oil transportation system" and the "Long Beach-Midland project", the conferees agreed that the national interest may require the operation of new systems for delivering oil from west to east. The conferees also agreed that, while the Long Beach-Midland project, if approved, is to be a pipeline to transport crude oil between two known points and over a specific known route it is not the intent of Congress to limit in any way the consideration of crude oil transportation alternatives serving the Northern Tier States, either as the method of transporting oil, or the route to be followed. Finally, the conferees agreed that the Long Beach-Midland project and any proposals for a crude oil transportation system shall be treated as entirely unrelated delivery systems and that any consideration or decision regarding one shall have no bearing on considerations or decisions regarding the other.

SECTION 504. APPLICATIONS FOR APPROVAL OF PROPOSED CRUDE OIL TRANSPORTATION SYSTEMS

The conferees adopted language providing that applications for the construction and maintenance of a crude oil transportation system submitted to the Secretary of Interior shall be eligible for consideration under the title if they are received by the Secretary before the 30th day after the date of enactment of the Act. Applications received by the Secretary during the 60-day period beginning on the 30th day after the date of enactment of the Act will also be eligible, if the Secretary determines that consideration and review of the proposals contained in such applications is in the national interest and that such consideration could be completed within the time limits established under this title. The conferees agreed that while it was the intent of Congress that any proposals for crude oil transportation systems submitted pursuant to this title should be given full consideration, it is not the intent of Congress that the Secretary be required to entertain applications which he finds speculative in nature and unlikely to be approved within the time limits established under this title.

SECTION 505. REVIEW SCHEDULE

The conferees adopted language directing the Secretary to establish an expedited schedule for conducting reviews and making recommendations concerning crude oil transportation systems proposed in applications under the title. The conferees agreed that while it is the intent of Congress that reviews and recommendations pursuant to this title should be expedited, it is also the clear intent of Congress that the schedule for such review and recommendations not be so restrictive as to limit full consideration of reasonable alternatives that could possibly be approved within the schedule provided under this title.

The conferees adopted a provision authorizing the Secretary of the Interior on his own initiative, or on the request of the head of any Federal agency covered by the review schedule established pursuant to subsection (a) of the section, to require that an applicant provide such additional information as may be necessary to conduct the review of the applicant's proposal.

The conferees also adopted language providing that nothing in the title shall bar the Attorney General or any other appropriate officer or agent of the Federal Government from challenging any anticompetitive act or practice related to the ownership, construction or operation of any crude oil transportation system approved under the title. They further specified that approval of any such system shall not be deemed to convey to any person immunity from civil or criminal liability or to create defenses to actions under the antitrust laws, nor shall such approval modify or abridge any private right of action under such laws. The conferees agreed that the provisions regarding antitrust laws under the title may not be construed as affecting State antitrust laws or the existing relationship between Federal and State antitrust laws. Thus, for example, if a Federal law has preempted a State law, a waiver of any provisions of such Federal law shall not be construed to reinstate any provisions of the preempted State law.

SECTION 506. ENVIRONMENTAL IMPACT STATEMENT

The conferees adopted language requiring that on or before December 1, 1978, all environmental impact statements concerning proposed crude oil transportation systems eligible for consideration under this title shall be completed, made available for public review and comment, revised to the extent appropriate in light of such comment and submitted to the President and the Council on Environmental Quality; except that in the case of any environmental impact statement concerning a system eligible for consideration and filed under section 504 (2) of the title, such actions may be taken not later than 60 days after December 1, 1978. The conferees agreed that for the purposes of the section a "completed" environmental impact statement means a statement in regard to which the actions of the responsible Federal agencies have been completed and does not include the completion of any court review with regard to such statement or such actions.

SECTION 507. DECISION OF THE PRESIDENT

The President shall make a decision within 45 days on which proposal, if any, shall be approved. If the President determines that a proposal which filed late appears to have merit, he may delay his decision for an additional 60 days beyond the 45-day period provided for under this title.

In adopting language setting forth the criteria to be considered by the President in making a decision under the section, the conferees agreed that the provision requiring the Executive to consider the "environmental impacts of the proposed systems and the capability of such systems to minimize environmental risks resulting from transportation of crude oil" should be understood as setting forth the intent of Congress that the Executive should take actions to minimize both existing and future environmental risks from the transportation of crude oil. In specific, the conferees noted that there are environmental and economic risks associated with the existing crude oil tanker traffic serving refineries on Puget Sound—an invaluable and irreplaceable national resource. Risks to the economically and aesthetically important resources dependent on good water quality in Puget Sound would be substantially reduced if the existing Washington refineries were connected to and utilized a northern crude oil delivery system, if one is built. This position is consistent with the federally approved Washington coastal zone management program.

SECTION 508. PROCEDURES FOR WAIVER OF FEDERAL LAW

The conferees authorized the President to identify those provisions of Federal law (including any law or laws regarding the location of a crude oil transportation system) which, in the national interest as determined by the President, should be waived in whole or in part to facilitate construction or operation of any crude oil transportation system approved under section 507 of the title or the Long Beach-Midland project.

The conferees agreed that this should be construed as authorizing the President to consider provisions of law restricting the location of any part of a project or an approved system, or related facilities of such a project or system, and to propose the waiver of such provisions if he determines such waiver to be in the national interest.

The conferees also adopted a provision specifying the language of the joint resolution to be used by the President in proposing a waiver of provisions of law under this section and establishing procedures for the consideration of such joint resolution by the House of Representatives and the Senate.

The conferees agreed that all the provisions of law, if any, for which the President proposes a waiver in connection with the Long Beach-Midland project shall be included in one joint resolution which may be submitted to Congress at any time after the date of enactment of the act. All the provisions of law, if any, for which the President proposes a waiver in connection with an approved crude oil transportation system under this title, shall be included in another joint resolution which may be submitted to Congress after the President has approved such system under section 507 of the title.

At the time of submission to Congress of any joint resolution proposing a waiver of provisions of law under this section, the President shall specify which system or project is the subject of such joint resolution. Enactment of such joint resolution, consistent with the requirements of the section, shall waive such provisions only for the sys-

tem or project which is the subject of the enacted joint resolution.

The conferees noted that actions by the State of California have resulted in delays in the construction and operation of the Long Beach-Midland project. They expressed concern over the possibility of continuing delays on the part of the State that may adversely affect the interests of the people of California and the Nation.

TITLE VI—MISCELLANEOUS PROVISIONS

SECTION 601. STUDY CONCERNING ELECTRIC RATES OF STATE UTILITY AGENCIES

Section 601 is a study concerning the effects of provisions of Federal law on rates established by State utility agencies. The study is to be conducted by the Secretary, in consultation with the Commission, appropriate State regulatory authorities, and interested persons. The Secretary shall submit a report to the Congress containing the results of the study within a year after the date of enactment of the Act.

The conferees intend that the term "Federal laws" not include environmental laws, health and safety law, or tax laws or other laws not relating to the concerns expressed in the House provision. The section also defines the term "State utility agency" as an agency of a State which is an electric utility. The term does not include any political subdivision or agency thereof or any public power district.

This section is a modification of a provision in the House bill which required rates of a State utility agency to be based on the total costs of all electric energy generated by all facilities of the entire system of the agency together with all electric energy purchased by the agency. The House provisions prohibited the assigning of the output of a specific generating facility and its corresponding cost of electric service to a specific customer rather than aggregating all output and corresponding cost of service for purposes of the rates of all electric customers of the agency.

In adopting a study in lieu of the mandatory requirements in the House, the conferees do not intend to affect a State's or State utility agency's determination as to how it should establish rates with regard to electric energy or to affect the authority of the State or State utility agency to continue, as authorized by law, to follow present practices in this regard.

SECTION 602. SEASONAL DIVERSITY ELECTRICITY EXCHANGE

The Senate bill contained a provision that would authorize the use of Federal eminent domain authority by private parties to acquire property interests necessary to construct an electrical transmission line called the Mandan line from Manitoba, Canada to North Dakota, South Dakota, and Nebraska. The exercise of the power of eminent domain would be conditional on the parties acquiring a Presidential permit for transmission facilities at the international border. The House bill contained no comparable provision.

The conferees understand that the purpose of the Mandan line is to facilitate the exchange of electric power to take advantage of the complementary seasonal variation in energy demand in Canada and the States through which the line would pass. Such an exchange could contribute significantly to the more efficient use of existing power production facilities, thereby reducing the pressure on capital resources for construction of new generation facilities. The conference substitute establishes a mechanism to provide for the acquisitions of rights-of-way for the construction of this line which, because of its unique and, international, and interstate nature, may require the use of such authority.

However, the conferees stress that before such authority may be used, the determinations required by this section must be made and they must result in an affirmative determination by the Secretary. If the Secretary makes the required determinations, the conferees intend that the Secretary have the full authority necessary to expedite the project subject, of course, to the provisions of this section.

The conference substitute authorizes the Secretary of Energy in his discretion to acquire rights-of-way by purchase, including the use of eminent domain, through the above States for transmission facilities. The conferees believe that the Secretary may be able to keep acquisition costs down through this purchase authority. Before such acquisition, the Secretary of Energy, after an opportunity for public hearings must make several determinations. He must determine that the exchange of power is in the public interest and that it would further the purposes of section 101(1) and (2) of this Act. It is the intention of the conferees in subsection (a)(1)(A) that, for this exchange to be considered to further these purposes, it is not necessary that both of these purposes must be furthered. The conferees intend that it would further the purposes referred to in section 101(1) and (2) if either of these purposes are furthered and the other is not negatively impacted.

The Secretary must also find that the acquisition of such rights-of-way and the construction and operation of the facilities would be in the public interest. He must also be assured that a permit to cross the international border has been issued. In addition, he must determine that each affected State has approved each portion of the transmission route that is to be located in that State. He must determine, after consultation with the Secretary of the Interior and other affected Federal agencies, that each concurs with the location of the route of the transmission line across any Federal lands under their jurisdiction and any related requirements. The objective of this provision is to protect Federal lands that may be utilized for this transmission line.

In the case of the State approval, the conference substitute provides authority for the Secretary to cooperate with the States and provide technical assistance, subject to the availability of funds, in determining what is an appropriate transmission route. If the transmission route approved by one State does not appear feasible or in the public interest or if the States are in disagreement as to the siting of the route, the Secretary should encourage the States to review the route and to develop a route that is satisfactory and meets the concerns of the States.

The authority of the Secretary to exercise eminent domain would be carried out in accordance with normal statutory provisions providing for declarations of taking and other matters under Federal law (i.e. 40 U.S.C. 257 and 258a and Rule 71a of the Federal Rules of Civil Procedure).

The section requires that the Secretary provide public notice of his intention to acquire the right-of-way before he exercises the power of eminent domain with respect to such right-of-way. Such notice is not necessary if he plans to acquire it by purchase.

Subsection (b) of the conference substitute requires that before a permit can be issued for the crossing of the international border, the Commission must make findings concerning that crossing.

Subsection (c) requires that before the Secretary acquires a right-of-way, the holders of the permit must show that they are unable to acquire the right-of-way, without unreasonably delaying construction, by condemnation under State authority or that they have tried to negotiate for the right-of-way but have been unable to reach satisfactory agreement. The conferees intend that the Secretary not delay the holders of the permit indefinitely in this regard but that he merely satisfy himself that the permittees have made an earnest effort to negotiate but have been unable to do so.

Subsection (d) provides for the transfer of the right-of-way acquired by the Secretary to the holders upon their paying to him the cost of the acquisition, including the administrative costs. Such payments will be deposited in the Treasury as miscellaneous receipts. The Secretary could, however, reach agreement with the holders that they provide to him the funds for the acquisition, including administrative costs, so that he does not have to use appropriated funds. If the holders fail to make the payments required, then the Secretary must offer the right-of-way, after a reasonable time, to the original owner. The original owner could reacquire it at the same amount paid by the Secretary for the right-of-way. If the original owner does not want to reacquire it after a reasonable period, then the Secretary can dispose of it under other provisions of law.

Subsection (e) makes it clear that the section does not in any way affect Federal laws governing Federal lands. There are a number of Federal statutes relative to national parks, fish and wildlife refuges, and other areas which establish conditions or other requirements concerning the use of those lands for purposes other than those for which they were acquired or withdrawn. Those statutory provisions would apply to these rights-of-way. They are not intended to be overridden or affected in any way by this conference agreement.

Subsection (f) requires an annual report to the Congress about the actions taken. If the Secretary does not take any action under the agreement in any particular year, no report is required.

SECTION 603. UTILITY REGULATORY INSTITUTE

The Senate bill contained a provision that authorized the Secretary of Energy to make grants to an institute established by the National Association of Regulatory Utility Commissioners "to provide State regulatory authorities with an independent source of applied economic and technical research on critical regulatory policy issues and with improved data retrieval systems." The House bill contained no comparable provision.

The conferees adopted a modified version of the Senate provision. Matching grants were substituted for the 100 percent grants contained in the original provision and restrictions were placed on the terms and conditions that the Secretary of Energy may impose on the matching grants. In particular the Secretary may impose only such terms and conditions as he deems necessary to administer this section, to assure that any information gathered by the Institute is available to the public, and to assure that none of the Federal funds are used to support or oppose any legislative proposal, unless a representative of the institute is invited to testify before a committee of Congress or before a State legislature.

The Senate bill contained a provision which reversed a General Services Administration decision with respect to rent allowance for office space provided to the National Association of Regulatory Utility Commissioners. The Senate receded to the House and this provision was deleted in the conference substitute with the understanding that the General Services Administration will review its decision. The conferees do not intend that such review in any way prejudice the result of such review. The General Services Administration could modify, or reverse the decision or let it stand as is.

SECTION 604. COAL RESEARCH LABORATORIES

The conference agreement adopts with some modifications the Senate amendment

to the Surface Mining Control and Reclamation Act of 1977 increasing from ten to thirteen the number of institutions of higher education at which coal research laboratories will be established and operated. The Secretary of Energy is required to make the designations. The first ten of the designations shall be made, as required in present law, in accordance with section 801(e).

The conferees, in adding more designations, do not intend to affect or slow down the designations and their related actions required by the 1977 law to establish the first 10 institutions. The agreement also continues the requirement that these ten be located only in States with abundant coal reserves. The other three are not required to be located in such States. The other two criteria of existing law apply to all of the designations. Funds for the three additional institutions are provided beginning in fiscal year 1980.

SECTION 605. CONSERVED NATURAL GAS

The Senate amendment provided that no action of the Federal Energy Regulatory Commission shall directly or indirectly take natural gas from any natural gas utility if the utility demonstrated that the natural gas was conserved as a result of energy conservation measures. A schedule for allocation of such conserved gas among the utility's customers was set forth. The House bill had no comparable provision.

The conference substitute deals with this issue in the following manner. Curtailment plans establish priorities for the delivery of natural gas when supplies are insufficient to meet contract demand. In most cases, a local distribution company's entitlement to natural gas under a curtailment plan is determined by reference to the priorities of use, and volumes of gas used, by its customers during a particular base period.

Since the base period, some local distribution companies have established conservation programs which have conserved natural gas. For example, as the result of a residential conservation program established by the distribution company, natural gas may have been made available to a local industrial user. If the base period is updated, the user profile of this local distribution company could thereby include a larger proportion of low priority use, and under certain circumstances, the local distribution company's entitlement could be reduced. This result would discourage local distribution companies from establishing such conservation programs.

If an updating of the base period occurs, section 605 requires that under certain circumstances the Commission must consider volumes of conserved natural gas as being used for the same priority as the priority for which the gas was used in the prior base period. Thus a local distribution company will not be penalized for implementing a conservation program.

The Commission must determine what conservation measures qualify for consideration under the section and the methods by which the volumes of conserved gas are to be measured. It is the intention of the conferees that such measures include any conservation measures mandated by law. The conserved gas must be the direct result of conservation measures implemented by the local distribution company.

A change in a curtailment plan which does not require an updating of the base period data, such as the revisions required in title IV of the Natural Gas Policy Act of 1978, would not trigger the application of this section.

An example may help to explain the operation of the section. A local distribution company had customers using natural gas in the following manner during 1972, the base period: 50 MMcf for Priority 1; 30 MMcf for Priority 2; 20 MMcf for Priority 3. As the result of a conservation program, Priority 1 users saved 10 MMcf, which is now used for Priority 3 uses. The new use profile, therefore, is 40 MMcf for Priority 1; 30 MMcf for Priority 2; 30 MMcf for Priority 3. If the Commission chooses to update the base period and the local distribution company demonstrates that the 10 MMcf of Priority 1 use was conserved by the distribution company through approved conservation measures, then 10 MMcf used for Priority 3 in the revised base period would be deemed to be used for Priority 1, and the revised use profile would be identical to the earlier profile.

SECTION 606. VOLUNTARY CONVERSION OF NATURAL GAS USERS TO HEAVY FUEL OIL USERS

The Senate amendment directed the Federal Energy Regulatory Commission to promulgate regulations under which electric utilities and major fuel-burning installations could voluntarily transfer their contractual rights to receive natural gas supplies in exchange for just compensation. The regulations were required to allow such sales only by those electric utilities and major fuel burning installations which, on the date of enactment of the legislation, own or have contracted for natural gas supplies and have an ability to burn heavy petroleum fuel oil in lieu of natural gas. The Senate provision authorized sales for a maximum of five years and in no case were sales permitted to extend beyond December 31, 1989.

The Federal Energy Regulatory Commission was to determine the level of just compensation which could be received by an electric utility or major fuel-burning installation which converted from the use of natural gas to heavy petroleum fuel oil. Such compensation was to include at least:

(1) the cost of the substituted heavy petroleum fuel;

(2) the cost of transporting, handling, and storing the substitute fuel;

(3) increased costs of power plant operations and maintenance attributable to use of the substitute fuel and decreased fuel efficiency; and

(4) a proportionate share of the average cost of the seller's gas system.

The Senate bill also provided for compensation to any intrastate pipeline which lost revenue due to the transfer of contractual rights to receive natural gas.

The Senate amendment provided a statutory exemption from the provisions of the Natural Gas Act for persons engaged in the transfer of contractual interests under the section.

The House bill contained no comparable provision.

The conference substitute deals with this matter as set forth in section 606. In order to facilitate the conversion of electric utilities and major fuel-burning installations from the use of natural gas to the use of heavy petroleum fuel oil, the conferees agreed to substitute provisions based upon the Senate provision. The conference substitute requires the Commission to establish a mechanism whereby the transfer of contractual interests involving the receipt of natural gas may be approved by the Commission.

The section applies only to intrastate natural gas, received by the user pursuant to a contract entered into before September 1, 1977, for use as a fuel in a facility in existence on September 1, 1977. The Commission's rule must permit the transfer of contractual interests by the person using such natural gas to an interstate pipeline, to any local distribution company served by an interstate pipeline, or to any person, served by an interstate pipeline, for a high priority use by such person. The Commission is authorized to prescribe terms and conditions under which the transfer of contractual interests under this section may proceed.

The section requires the Commission to establish a mechanism for refund of any consideration received by the person transferring contractual interests under this section if the consideration actually received exceeds the amount by which the costs, actually incurred by the transferor in association with the substitution of heavy petroleum fuel oil, exceeds the price of natural gas under the contract with respect to which contractual interests were transferred under this section. The purpose of the compensation provisions is to make the transferor whole for any expenses incurred, including increased costs related to increased maintenance or operational requirements, increased costs due to reduced operating efficiency, and added administrative costs. A refund is required to the extent the consideration received exceeds the just compensation permitted by the section.

The Commission is required to consider whether any transfer of contractual interests is likely to increase demand for imported refined petroleum products both at the time the Commission prescribes the rule required by this section and when the Commission determines whether to authorize a particular transfer of contractual interests.

If the natural gas is to be resold by the person to whom the contractual interests are to be transferred, the Commission must issue a certificate of public convenience and necessity for the transfer. In such cases, the certificate is to be issued by the Commission in accordance with the requirements of this section and those of section 7 of the Natural Gas Act. Specifically, the public convenience and necessity requirements of section 7 of the Natural Gas Act are made applicable to the certificate of public convenience and necessity required under this section.

The conference agreement renders unenforceable contractual provisions which could interfere with the transfer of contractual interests under this section. Such contractual provisions were included in contracts in order to protect the supplier of the natural gas from unanticipated jurisdictional consequences attaching to him under the Natural Gas Act by reason of a subsequent transfer of the gas. Because the conference substitute insulates such suppliers from jurisdictional consequences under the Natural Gas Act arising from transfers under this section, such contractual restrictions are not necessary to protect the interests of the gas supplier. Moreover, because the person acquiring contractual interests under this section is required to assume the obligations of the person transferring these interests, and the person transferring contractual interests is not relieved of any obligation not performed by the person acquiring such interests, the supplier of the natural gas has adequate recourse to assure enforcement of his contractual rights.

The person transferring contractual interests under this section may receive consideration for that transfer. However, such consideration may not exceed the level of "just compensation" established in the section. Just compensation when used with respect to the transferor means the maximum amount of consideration which does not exceed the amount by which the reasonable cost of using heavy petroleum fuel oil as a substitute exceeds the cost of natural gas under the contract. Costs associated with the use of heavy petroleum fuel oil as a substitute include allowances for amortization of undepreciated depreciable assets located on the premises of the facility if the assets were directly associated with the use of natural gas and are no longer usable in connection with the use of heavy petroleum fuel oil.

In the case of intrastate pipelines, the term, "just compensation" means an amount equal to any loss of revenue resulting from the transfer of contractual interests due to the reduction in transportation or distribution of natural gas if the lost revenue has not been offset by a reduction in expenses or

by revenue derived from transportation or distribution of natural gas which would not have occurred if the contractual interests had not been transferred. Of course, such offset may be partially from a reduction in expenses and from new revenues. For example, a transfer of contractual interests may result in a reduction in the use of the transportation facilities of the intrastate pipeline. Such would be the case where, after the transfer of contractual interests and by agreement of the parties, the natural gas is delivered by the intrastate pipeline at a point closer to the source of supply than the former delivery point and, therefore, the intrastate pipeline does not transport the gas as far. However, in some cases, the intrastate pipeline may be able to use the transportation capacity made available after the transfer of contractual interests to transport natural gas to other customers. The revenues from this latter transportation must be offset against any lost revenue resulting from the transfer of contractual interests.

The section provides for coordination with the Natural Gas Act and provides volume limitations on the amount of gas which a supplier may be required to supply pursuant to the transfer of contractual interests under the section.

In authorizing the transfer of contractual interests under this section, the conferees do not intend to relieve any party transferring such interests from performing any obligation under the contract. In addition, the conferees intend that the person acquiring contractual interests pursuant to this section shall assume all terms, conditions, and obligations existing under the contract. For example, contract provisions governing the place of delivery will remain in force and effect unless the parties agree otherwise.

It is contemplated by the conferees that the authority of this section will be utilized prior to the imposition of any prohibition on the use of natural gas by a major fuel-burning installation or electric utility under the Power Plant and Industrial Fuel Use Act of 1978. A companion provision in that act will facilitate the transfer of contractual interests in cases where the major fuel-burning installation or electric powerplant is prohibited from using natural gas under this act. For that reason, the time limitations contained in the original Senate provision have been deleted from the conference substitute.

SECTION 607. EMERGENCY CONVERSION OF UTILITIES AND OTHER FACILITIES

The Senate amendment granted the Secretary of Energy authority to prohibit the use of natural gas as a fuel in any electric utility powerplant or major fuel-burning installation during a natural gas emergency declared pursuant to the Emergency Natural Gas Act of 1977. The provision applied to facilities which on September 1, 1977, or thereafter could burn petroleum products without damage to the facility or interference with production processes. The provision did not apply to facilities subject to a coal conversion order issued pursuant to the Energy Supply and Environmental Coordination Act of 1974. In addition, the exercise of authority under the Senate provision required a determination that the order would result in savings of significant quantities of natural gas before the termination of the natural gas emergency. The Secretary was required to find that petroleum products would be available to the electric utility powerplants or major fuel-burning installation prohibited from using natural gas.

The Secretary was authorized to permit facilities to use quantities of natural gas during the emergency period for serving peakloads and for ignition, startup, testing, and flame stabilization. The Secretary was required to grant exemptions from the emergency prohibition orders to alleviate short-term air quality emergencies.

Judicial review of prohibition orders under the section was limited. No court had jurisdicition to grant interim injunctive relief deferring or staying implementation of a prohibition order issued under the section.

The Federal Energy Regulatory Commission was directed to prescribe rules providing for just compensation to all parties involved in the sale and transportation of natural gas prohibited from use by an order under the section. The level of just compensation was to be determined in the same manner as was provided in the companion provision of the Senate bill dealing with the voluntary conversion of industrial users of natural gas to heavy petroleum fuel.

The House bill had no comparable provision.

The conference substitute authorizes the President to declare a natural gas supply emergency based upon the same findings utilized for purposes of the declaration of a natural gas supply emergency under the Natural Gas Policy Act of 1978. The authority of this section is to be exercised after a declaration of an emergency under section 301 of the Natural Gas Policy Act of 1978 and after utilization of the emergency sales authority of section 302 of that Act, but before resort to the allocation authorities of section 303 of that Act. The limitations on the duration of any natural gas supply emergency declared under this section are identical to those contained in the Natural Gas Policy Act of 1978. During a natural gas supply emergency, the President is authorized to prohibit the burning of natural gas by major fuel-burning installations and electric powerplants.

Any such prohibition must be based upon a determination by the President that the powerplant or major fuel-burning installation had on September 1, 1977, the capability to burn petroleum products without damage to the facility or equipment and without interference with operational requirements. This limitation is not intended to encourage the President to issue prohibition orders inflexibly where, at the time of the order, alternative fuel burning capability no longer exists and, as a result, a prohibition order would cause severe hardship. In addition, the President must determine that significant quantities of natural gas which would otherwise be burned by the powerplant or installation can be made available to persons served by an interstate pipeline for use by such person in a high priority use. Finally, the President must determine that petroleum products will be available for use throughout the period any prohibition order under this section is in effect.

The section permits the President to authorize the continued burning of natural gas during the period in which any prohibition order is in effect, including the burning of natural gas by an electric powerplant to meet peakload requirements. Moreover, the President is required to exempt from prohibition orders the burning of natural gas for the necessary processes of ignition, startup, testing, and flame stabilization. The President is also required to exempt the burning of natural gas which the President determines is necessary to alleviate any imminent and substantial endangerment of human health within the meaning of section 303 of the Clean Air Act.

The conference substitute limits the jurisdiction of courts to grant injunctive relief to stay implementation of a prohibition order issued under the section. The U.S. District Court for the District of Columbia is the only court authorized to issue preliminary injunctive relief or temporary injunctive relief staying, in whole or in part, the implementation of any prohibition order issued under the section. The authority of the U.S. District Court for the District of Columbia may only be exercised after an opportunity for a hearing before the court has been afforded.

Once natural gas has been prohibited from use under this section, it is available for sale and may be the subject of a transfer of contractual interests under section 606 of the conference agreement. In applying the provisions of section 606 in such cases, the term "petroleum product" is substituted for the term "heavy petroleum fuel oil" in section 606 if the person subject to the prohibition order under this section demonstrates to the Federal Energy Regulatory Commission that the acquisition and use of heavy petroleum fuel oil is not technically or economically feasible. The practical effect of this provision is to broaden the application of section 606 in those instances where natural gas has been prohibited from use under this section. The conferees anticipate that this will facilitate the transfer of natural gas to another user during the period of the emergency. Moreover, under the emergency provisions of the Natural Gas Policy Act of 1978 provision is made for subjecting natural gas prohibited from use under this section to allocation under section 303 of that act.

SECTION 608. NATURAL GAS TRANSPORTATION POLICIES

The Senate amendment provided for a continuation of Federal Energy Regulatory policies encouraging the transportation of natural gas owned by the user of the gas. In addition, the Senate bill provided that if the Federal Energy Regulatory Commission approved the transportation of natural gas from reserves owned by the user, the Commission was required to approve the transportation for the life of reserves or such shorter period as provided in the contract between the user and the transporter of the natural gas. The section further provided that notwithstanding any other provision of law natural gas may be purchased by an end-user for a price in excess of any lawfully established ceiling price if the Commission determines that: (1) approval of the transaction is consistent with the public convenience and necessity; and (2) such natural gas will be consumed by the purchaser in a high priority use, as determined by the Commission. The purpose of the Senate provision was three-fold. First, the Senate provision would have codified in statute regulatory provisions of Commission Order No. 533 under which provision is made for the certification of transportation of natural gas in interstate commerce where the sale of the natural gas is not subject to the jurisdiction of the Commission because there is not a sale for resale, for example, the gas is sold to the user by the producer. However, the duration of transportation certificates issued under Order No. 533 has been limited. The second purpose of the Senate provision, therefore, was to require an extension of the duration of transportation approvals granted by the Federal Energy Regulatory Commission under the policies set forth in Order No. 533. Thirdly, the Senate provision was intended to exempt from all ceiling prices any purchase of natural gas by an end-user directly from the producer.

The conferees recognize that FPC Order 533 and the successor FERC program under Order No. 2 have proven to be of critical importance in helping industrial and commercial users of natural gas meet their high priority needs in times fo curtailment. Because of the importance of these programs the conferees intend that if the FERC in any way modifies or changes Order No. 2 (the presently effective direct purchase program) it report to the Congress the nature of the change the basis and rationale for the change and the impact that such change will have on fuel supply to traditional users of these programs.

The conference substitute is based upon, but is more narrow in scope, than the Senate provision. The conference substitute amends section 7(c) of the Natural Gas Act to au-

thorize the issuance of a certificate of public convenience and necessity by the Commission in the case of natural gas sold by the producer to the user and in case of natural gas produced by the user.

The provision is intended to remove any uncertainty which may exist regarding the basis for present Federal Energy Regulatory Commission policy regarding the transportation of user-owned natural gas by interstate pipelines. However, the conference substitute is not intended to require the Commission to issue a certificate of public convenience and necessity in any specific case. The question of whether to issue a certificate is left to the Commission based upon its determination of whether the transportation of the gas will serve the public convenience and necessity. In addition, limitations are not imposed on the exercise of this authority by the Commission other than the public convenience and necessity standard which is generally applicable to certification by the Commission of natural gas transportation.

Finally, the amendment is not intended to, and does not in any way, affect the applicability of ceiling prices, established under the Natural Gas Act, the Natural Gas Policy Act of 1978, or any other provision of law, to the sale of natural gas by a producer to a user.

Intention concerning certain accounting rules

No language appears in the conference report concerning section 141 of the Senate amendment.

Section 503 of the Energy Policy and Conservation Act (EPCA), entitled "Accounting Practices", requires "For purposes of developing a reliable energy data base related to the production of crude oil and natural gas, the Securities and Exchange Commission shall take such steps as may be necessary to assure the development and observance of accounting practices to be followed in the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States."

The Senate bill contained a section 141 that amended section 503 by adding a new subsection 503(d) which would have provided that this section of the EPCA is intended to apply only to the develoment of accounting practices required for the preparation of the reports to be filed with the Department of Energy for use in compiling a reliable energy data base. The amendment also provided that nothing contained in section 503 was to be construed to establish, or to affect the establishment of, generally accepted accounting principles for financial reporting purposes.

Senate and House conferees approve of the intent of section 141 that section 503 of EPCA does not compel nor prohibit the Securities and Exchange Commission from addressing public financial reporting in conjunction with the development of uniform accounting practices for reporting to the Department of Energy. However, the conferees regard section 141 as unnecessary.

In November 2, 1977, letter of response to Congressman John E. Moss concerning section 141, Chairman Harold M. Williams of the SEC reviewed the SEC's statutory authority to establish uniform accounting standards under the provisions of EPCA and the Federal securities laws. He noted the Commission's longstanding concern over the diversity of accounting and financial reporting practices in the oil and gas producing industry.

After noting the present role of the Financial Accounting Standards Board (FASB) in setting accounting standards, Chairman Williams stated:

"The Commission fully recognizes the widespread public interest in petroleum industry accounting practices and intends to scrutinize carefully any FASB pronouncement on financial reporting in that field. The Commission plans to solicit written public comment on the FASB's determination in this area, and, because of the importance of the issue, has also decided to hold public hearings on the matter early in 1978."

Chairman Williams said the SEC believed section 141 of H.R. 4018 was unnecessary, and might hamper efforts to establish uniform accounting standards for oil and gas producing companies.

The conferees expect that the SEC will consider in accordance with appropriate statutes all issues relating to changes in accounting by oil and gas producing companies, including the impact on exploration and development. The SEC has specifically stated in Securities Act Release No. 5861 (42 FR 44972) that it will consider the competitive impact of any changes in public financial reporting by producers of oil and gas.

HARLEY O. STAGGERS,
T. L. ASHLEY,
AL ULLMAN,
DICK BOLLING,
THOMAS S. FOLEY,
JOHN D. DINGELL,
PAUL G. ROGERS,
BOB ECKHARDT,
PHILIP R. SHARP,
ANTHONY MOFFETT,
HENRY S. REUSS,
JAMES C. CORMAN,
C. B. RANGEL,
Managers on the Part of the House.

HENRY M. JACKSON,
J. BENNETT JOHNSTON,
JOHN A. DURKIN,
FLOYD K. HASKELL,
DALE BUMPERS,
H. M. METZENBAUM,
JAMES A. McCLURE,
PETE DOMENICI,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 5037, NATIONAL ENERGY CONSERVATION POLICY ACT

Mr. DINGELL submitted the following conference report and statement on the bill (H.R. 5037) for the relief of Jack R. Misner:

CONFERENCE REPORT (H. REPT. No. 95–1294)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment numbered (3) of the Senate to the bill (H.R. 5037) entitled "An Act for the relief of Jack R. Misner", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate numbered (3) and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—GENERAL PROVISIONS

SEC. 101. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Energy Conservation Policy Act".

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL PROVISIONS
Sec. 101. Short title and table of contents.
Sec. 102. Findings and statement of purposes.
TITLE II—RESIDENTIAL ENERGY CONSERVATION
PART 1—UTILITY PROGRAM
Sec 210. Definitions.
Sec. 211. Coverage.
Sec. 212. Rules of Secretary for submission and approval of plans.
Sec. 213. Requirements for State residential energy conservation plans for regulated utilities.
Sec. 214. Plan requirements for nonregulated utilities and home heating suppliers.
Sec. 215. Utility programs.
Sec. 216. Supply, installation, and financeing by public utilities.
Sec. 217. Home heating supplier programs.
Sec. 218. Temporary programs.
Sec. 219. Federal standby authority.
Sec. 220. Relationship to other laws.
Sec. 221. Rules.
Sec. 222. Product standards.
Sec. 223. Authorization of appropriations.
Sec. 224. Report on energy conservation in apartment buildings.
Sec. 225. Federal Trade Commission study and report.
PART 2—WEATHERIZATION GRANTS FOR THE BENEFIT OF LOW-INCOME FAMILIES
Sec. 231. Department of Energy weatherization grant program.
Sec. 232. Farmers Home Administration weatherization grant program.
Sec. 233. Availability of labor.
PART 3—SECONDARY FINANCING AND LOAN INSURANCE FOR ENERGY CONSERVING IMPROVEMENTS AND SOLAR ENERGY SYSTEMS
Sec. 241. Loan insurance for energy conserving improvements and solar energy systems under title I of the National Housing Act.
Sec. 242. Purchase by Government National Mortgage Association of loans to low- and moderate-income families for energy conserving improvements.
Sec. 243. Standby authority of Government National Mortgage Association to purchase loans for energy conserving improvements.
Sec. 244. Purchase by Government National Mortgage Associations of loans for solar energy systems.
Sec. 245. Secondary financing by Federal Home Loan Mortgage Corporation of solar energy and energy conserving improvement loans.
Sec. 246. Secondary financing by Federal National Mortgage Association of solar energy and energy conserving improvement loans.
Sec. 247. Loan insurance for energy conserving improvements and solar energy systems in multi-family projects under section 241 of the National Housing Act.
Sec. 248. Increase in mortgage limits to cover costs of solar energy systems.
PART 4—MISCELLANEOUS
Sec. 251. Energy-conserving improvements for assisted housing.
Sec. 252. Energy conserving standards for newly constructed residential housing insured by Federal Housing Administration or assisted by Farmers Home Administration.
Sec. 253. Residential energy efficiency standards study.
Sec. 254. Weatherization study.
Sec. 255. Authorization for appropriations for new building performance standards grants.
TITLE III—ENERGY CONSERVATION PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENTS AND PUBLIC CARE INSTITUTIONS
PART 1—SCHOOLS AND HOSPITALS
Sec. 301. Statement of findings and purposes.
Sec. 302. Amendment to the Energy Policy and Conservation Act.
Sec. 303. Technical amendments.
Sec. 304. Cross reference.

PART 2—UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS
Sec. 310. Statement of findings and purposes.
Sec. 311. Amendment to the Energy Policy and Conservation Act.
Sec. 312. Application of Davis-Bacon Act.
TITLE IV—ENERGY EFFICIENCY OF CERTAIN PRODUCTS AND PROCESSES
PART 1—ENERGY EFFICIENCY STANDARDS FOR AUTOMOBILES
Sec. 401. Fuel economy information.
Sec. 402. Civil penalties relating to automobile efficiency.
Sec. 403. Disclosure in labeling.
Sec. 404. Study.
PART 2—ENERGY EFFICIENCY STANDARDS FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES
Sec. 421. Test procedures.
Sec. 422. Energy efficiency standards.
Sec. 423. Assessment of civil penalties.
Sec. 424. Effect of standards on other laws.
Sec. 425. Technical and conforming amendments.
Sec. 426. Appropriations authorization.
Sec. 427. Effects of other laws on procedures.
PART 3—ENERGY EFFICIENCY OF INDUSTRIAL EQUIPMENT
Sec. 441. Energy efficiency of industrial equipment.
PART 4—ENERGY EFFICIENCY BY USE OF RECOVERED MATERIALS
Sec. 461. Use of recovered materials.
TITLE V—FEDERAL ENERGY INITIATIVES
PART 1—EXECUTIVE AGENCY CONSERVATION PLAN
Sec. 501. Conservation plan authorization.
PART 2—DEMONSTRATION OF SOLAR HEATING AND COOLING IN FEDERAL BUILDING
Sec. 521. Definitions.
Sec. 522. Federal solar program.
Sec. 523. Duties of Secretary.
Sec. 524. Authorization of appropriations.
PART 3—ENERGY CONSERVATION AND SOLAR ENERGY IN FEDERAL BUILDINGS
Sec. 541. Findings.
Sec. 542. Policy.
Sec. 543. Purpose.
Sec. 544. Definitions.
Sec. 545. Establishment and use of life cycle cost methods.
Sec. 546. Energy performance targets for Federal buildings.
Sec. 547. Energy audits and retrofitting of existing Federal buildings.
Sec. 548. Leased Federal buildings.
Sec. 549. Budget treatment of energy conserving improvings by Federal agencies.
Sec. 550. Reports.
Sec. 551. Authorization of appropriations.
PART 4—FEDERAL PHOTOVOLTAIC UTILIZATION
Sec. 561. Short title of part.
Sec. 562. Definitions.
Sec. 563. Photovoltaic energy program.
Sec. 564. Purpose of program.
Sec. 655. Acquisition of systems.
Sec. 566. Administration.
Sec. 567. System evaluation and purchase program.
Sec. 568. Advisory committee.
Sec. 569. Authorization of appropriations.
TITLE VI—ADDITIONAL ENERGY-RELATED MEASURES
PART 1—INDUSTRIAL ENERGY EFFICIENCY REPORTING
Sec. 601. Industrial energy efficiency reporting.
PART 2—STATE ENERGY CONSERVATION PLANS
Sec. 621. State energy conservation plans.
Sec. 622. Supplemental State energy conservation plans.
Sec. 623. Report on coordination of energy conservation programs.
PART 3—MINORITY ECONOMIC IMPACT
Sec. 641. Minority economic impact.
PART 4—CONSERVATION OF NATIONAL COAL RESOURCES
Sec. 661. Major fuel burning stationary source.
PART 5—STUDIES
Sec. 681. Off-highway motor vehicles.
Sec. 682. Bicycle study.
Sec. 683. Second law efficiency study.
PART 6—TECHNICAL AMENDMENTS
Sec. 691. Definition or Administrator.

SEC. 102. FINDINGS AND STATEMENT OF PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the United States faces an energy shortage arising from increasing demand for energy, particularly for oil and natural gas, and insufficient domestic supplies of oil and natural gas to satisfy that demand;

(2) unless effective measures are promptly taken by the Federal Government and other users of energy to reduce the rate of growth of demand for energy, the United States will become increasingly dependent on the world oil market, increasingly vulnerable to interruptions of foreign oil supplies, and unable to provide the energy to meet future needs; and

(3) all sectors of our Nation's economy must begin immediately to significantly reduce the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.

(b) STATEMET OF PURPOSES.—The purposes of this Act are to provide for the regulation of interstate commerce, to reduce the growth in demand for energy in the United States, and to conserve nonrenewable energy resources produced in this Nation and elsewhere, without inhibiting beneficial economic growth.

TITLE II—RESIDENTIAL ENERGY CONSERVATION

PART 1—UTILITY PROGRAM

SEC. 210. DEFINITIONS

As used in this title—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "load management technique" means any technique to reduce the maximum kilowatt demand on an electric utility, including ripple or radio control mechanisms, or other types of interruptible electric service, energy storage devices, and load limiting devices.

(3) The term "natural gas" means natural gas as defined in the Natural Gas Act.

(4) The term "public utility" means any person, State agency, or Federal agency which is engaged in the business of selling natural gas or electric energy, or both, to residential customers for use in a residential building.

(5) The term "regulated utility" means a public utility with respect to whose rates a State regulatory authority has ratemaking authority.

(6) The term "nonregulated utility" means a public utility which is not a regulated utility.

(7) The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale of electric energy or natural gas.

(8) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(9) The term "residential building" means any building used for residential occupancy which—

(A) is not a new building to which final standards under sections 304(a) and 305 of the Energy Conservation and Production Act apply,

(B) contains at least one, but no more than four, dwelling units, and

(C) has a system for heating or cooling, or both.

(10) The term "residential customer" means any person to whom—

(A) a public utility sells natural gas or electric energy, or

(B) a home heating supplier supplies or sells home heating fuel (including No. 2 heating oil, kerosene, butane, and propane), for consumption by such customer in a residential building.

(11) The term "residential energy conservation measure" means—

(A) caulking and weatherstripping of doors and windows;

(B) furnace efficiency modifications including—

(i) replacement burners, furnaces or boilers or any combination thereof which, as determined by the Secretary, substantially increases the energy efficiency of the heating system,

(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system, and

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(C) clock thermostats;

(D) ceiling, attic, wall, and floor insulation;

(E) water heater insulation;

(F) storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed window and door materials;

(G) devices associated with load management techniques;

(H) devices to utilize solar energy or windpower for any residential energy conservation purpose, including heating of water, space heating or cooling; and

(I) such other measures as the Secretary by rule identifies for purposes of this part.

No measure referred to in subparagraphs (B) through (I) shall be treated as a residential energy conservation measure for purposes of this Part unless such measure is warranted by the manufacturer to meet a specified level of performance over a period of not less than three years.

(12) The term "residential energy conservation plan" means a plan approved by the Secretary pursuant to section 212.

(13) The term "State" me ns a State, the District of Columbia, and Puerto Rico.

(14) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy or natural gas by any public utility (other than by such State agency); except that in the case of a public utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(15) The term "State agency" means a State. a political subdivision thereof, or any agency or instrumentality of either.

(16) The term "suggested measures" means, with respect to a particular residential building, the residential energy conservation measures which the Secretary, in the rules prescribed pursuant to section 212, determines to be appropriate for the location and the category of residential buildings which includes such building. In determining which of the residential energy conservation measures shall be suggested measures for a location and category of residential building, the Secretary shall consider the cost of the inspection offered under section 215(b)(1)(A) and its effect on the will-

ingness of residential customers to participate in the utility program.

(17) The term "utility program" means a program meeting the requirements of section 215.

(18) The term "Governor" means the Governor or chief executive officer of a State or his designee.

(19) The term "home heating supplier program" means a program meeting the requirements of section 217.

(20) The term "home heating supplier" means a person who sells or supplies home heating fuel (including No. 2 heating oil, kerosene, butane, and propane) to a residential customer for consumption in a residential building.

SEC. 211. COVERAGE.

(a) IN GENERAL.—This part shall apply in any calendar year to a public utility only if during the second preceding calendar year either—

(1) sales of natural gas by such public utility for purposes other than resale exceeded 10 billion cubic feet, or

(2) sales of electric energy by such public utility for purposes other than resale exceeded 750 million kilowatt-hours.

(b) LIST OF COVERED UTILITIES.—Before the beginning of each calendar year, the Secretary shall publish a list identifying each public utility to which this part applies during such calendar year. Promptly after publication of such list, each State regulatory authority shall notify the Secretary of each public utility on the list for which such State regulatory authority has ratemaking authority.

SEC. 212. RULES OF SECRETARY FOR SUBMISSION AND APPROVAL OF PLANS.

(a) PROMULGATION OF RULES BY SECRETARY.—The Secretary shall, not later than 45 days after enactment of this Act, publish an advanced notice of proposed rulemaking with respect to rules on the content and implementation of residential energy conservation plans which meet the requirements of Sections 213 and 214. Not later than 60 days after the date of publication of the advanced notice of proposed rulemaking, and after consultation with the Secretary of Housing and Urban Development, the Secretary of Commerce (acting through the National Bureau of Standards), the Federal Trade Commission, the Consumer Product Safety Commission, and the heads of such other agencies as he deems appropriate, the Secretary shall publish a proposed rule on content and implementation of such plans. After publication of such proposed rule, the Secretary shall afford interested persons (including Federal and State agencies) an opportunity to present oral and written comments on matters relating to such proposed rule. A rule prescribing the content and implementation of residential energy conservation plans shall be published not earlier than 45 days after publication of the proposed rule.

(b) CONTENT OF SECRETARY'S RULES.—The rules promulgated under subsection (a)—

(1) shall identify the suggested measures for residential buildings, by climatic region and by categories determined by the Secretary on the basis of type of construction and any other factors which the Secretary may deem appropriate;

(2) shall include—

(A) standards which the Secretary determines necessary for general safety and effectiveness of any residential energy conservation measure;

(B) standards which the Secretary determines necessary for installation of any residential energy conservation measure;

(C) standards for the procedures concerning fair and reasonable prices and rates of interest required under section 213(a)(4);

(D) standards, developed in consultation with the Federal Trade Commission, concerning unfair, deceptive, or anticompetitive acts or practices, for the measures required under section 213(b);

(E) standards which (i) require the lists referred to in section 213(a)(2) (concerning lists of suppliers and contractors) and 213(a)(3) (concerning lists of lending institutions) to be prepared in a fair, open, and nondiscriminatory manner and (ii) provide for the removal, in appropriate cases, of suppliers, contractors, or lending institutions from such lists; and

(F) standards which assure that any person who alleges any injury resulting from a violation of the requirements of the standards under subparagraph (E) shall be entitled to redress under procedures established by the Governor (or the Secretary in any case in which section 219, relating to Federal standby authority applies); and

(3) may include such other requirements as the Secretary may determine to be necessary to carry out this part.

(c) PROCEDURE FOR SUBMISSION AND APPROVAL OF STATE RESIDENTIAL ENERGY CONSERVATION PLANS.—(1)(A) Not later than 180 days after promulgation of rules under subsection (a), the Governor of each State or any State agency specifically authorized to do so under State law, may submit to the Secretary a proposed residential energy conservation plan which meets the requirements of the rules promulgated under subsection (a). Within such 180-day period, each nonregulated utility shall submit a proposed plan, which meets the requirements of the rules promulgated under subsection (a), to the Secretary unless a plan submitted under the preceding sentence for the State in which the nonregulated utility provides utility service applies to nonregulated utilities as provided in paragraph (2). The Secretary may, upon request of the Governor or State agency or nonregulated utility, extend, for good cause shown, the time period for submission of a plan.

(B) Each such plan shall be reviewed and approved or disapproved by the Secretary not later than 90 days after submission. If the Secretary disapproves a plan, the Governor or State agency or nonregulated utility may submit a new or amended plan not later than 60 days after the date of such disapproval, or such longer period as the Secretary may, for good cause, allow. The Secretary shall review and approve or disapprove any such new or amended plan not later than 90 days after submission.

(C) After approval of a plan, a Governor or State agency or nonregulated utility may submit an amended plan and such plan shall be approved or disapproved in the same manner as the original plan.

(2) Any plan submitted by a Governor or State agency under paragraph (1) may, in the discretion of the Governor, if he notifies the Secretary within 30 days after promulgation of rules under subsection (a), apply to nonregulated utilities providing utility service in the State in the same manner as to regulated utilities. In any such case references elsewhere in this part to regulated utilities (including references to utilities with respect to which a State regulatory authority exercises ratemaking authority) shall, with respect to such State, be treated as references also to nonregulated utilities and references elsewhere in this part to nonregulated utilities shall not apply. For purposes of this paragraph, the term "nonregulated utility" shall not include any public utility which is a Federal agency.

(3) A plan applicable to home heating suppliers may be submitted by the Governor in his discretion.

(4) In the case of the Tennessee Valley Authority or any public utility with respect to which the Tennessee Valley Authority has ratemaking authority, the authority otherwise vested in the Governor or State agency under this section shall be vested in the Tennessee Valley Authority.

SEC. 213. REQUIREMENTS FOR STATE RESIDENTIAL ENERGY CONSERVATION PLANS FOR REGULATED UTILITIES.

(a) GENERAL REQUIREMENTS.—No proposed residential energy conservation plan submitted for regulated utilities shall be approved by the Secretary unless such plan—

(1) requires each regulated utility to implement a utility program which meets the requirements of section 215 (except such requirements of section 215 as do not apply by reason of section 216(f)) and contains adequate State enforcement procedures in connection with such implementation;

(2) provides a procedure for permitting any supplier or contractor—

(A) who sells or installs residential energy conservation measures in the area served by such utility, and

(B) who meets such minimum requirements as may be contained in rules promulgated by the Secretary under section 212(b)(2)(E)

to be included on a list made public by such utility as provided under section 215(a)(3);

(3) provides a procedure for permitting any bank, savings and loan association, credit union, or other public or private lending institution which—

(A) offers loans for the purchase and installation of residential energy conservation measures in the areas served by such utility and

(B) which meets such minimum requirements as may be promulgated by the Secretary under section 212(6)(2)(E)

to be included on a list made public by such utility as provided under section 215(a)(3);

(4) provides adequate procedures to assure that each regulated utility will charge fair and reasonable prices and rates of interest to its residential customers under such utility program in connection with the purchase and installation of residential energy conservation measures;

(5) provides procedures for resolving complaints against persons who sell or install residential energy conservation measures under such program;

(6) provides procedures for insuring that effective coordination exists among various local, State, and Federal energy conservation programs within and affecting such State, including any energy extension service program administered by the Secretary of Energy;

(7) is adopted after notice and public hearings; and

(8) meets such other requirements as may be contained in the rules promulgated under section 212.

(b) REQUIREMENTS CONCERNING UNFAIR, DECEPTIVE, OR ANTICOMPETITIVE ACTS OR PRACTICES.—

(1) No proposed residential energy conservation plan submitted for regulated utilities shall be approved by the Secretary unless such plan contains adequate measures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of utility programs within such State.

(2) The measures under paragraph (1) shall include—

(A) provisions to assure that, in carrying out procedures under section 215 (b)(1) (or the corresponding procedures in section 217) the regulated utility will not unfairly discriminate among—

(i) residential customers,

(ii) suppliers and contractors of such measures, or

(iii) lending institutions in the utility's service area which offer loans for the purchase and installation of residential energy conservation measures, and

will not unfairly discriminate among measures which are purchased from, or installed by, any person under such program, and

(B) provisions to assure that in the case of a furnace which uses as its primary source of energy any fuel or source of energy other than the fuel or source of energy sold by a utility, such utility will not inspect such furnace, or make, install, or inspect any furnace efficiency modification referred to in section 210(11)(B), unless the residential customer requests (in writing) such inspection, installation, or modification.

(c) REDRESS.—No residential energy conservation plan submitted for regulated utilities shall be approved by the Secretary unless such plan contains provisions to assure that any person who alleges any injury resulting from a violation of any plan provision shall be entitled to redress under such procedures as may be established by the Governor or State agency.

SEC. 214. PLAN REQUIREMENTS FOR NONREGULATED UTILITIES AND HOME HEATING SUPPLIERS.

(a) REQUIREMENTS FOR PLANS FOR NONREGULATED UTILITIES.—No residential energy conservation plan proposed by a nonregulated utility shall be approved by the Secretary unless such plan meets the same requirements as provided under section 213 for regulated utilities and in addition contains procedures pursuant to which such utility will submit a written report to the Secretary not later than one year after approval of such plan, and biennially thereafter, regarding the implementation of a utility program under section 215 and containing such information as may be required by the Secretary in the rules promulgated under section 212. In applying the requirements of section 213 in the case of a plan for nonregulated utilities under this section, any reference to a regulated utility shall be treated as a reference to a nonregulated utility.

(b) REQUIREMENTS FOR PLANS FOR HOME HEATING SUPPLIERS.—No residential energy conservation plan proposed for home heating suppliers shall be approved by the Secretary unless such plan meets the same requirements as provided under section 213(a) (other than paragraphs (1) and (8) thereof) and section 213(b) and (c) and in addition—

(1) meets the requirements of section 217 and contains adequate enforcement procedures with respect to such requirements;

(2) meets such requirements applicable to home heating suppliers as may be contained in the rules promulgated under section 212; and

(3) takes into account the resources of small home heating suppliers.

In applying the requirements of section 213 in the case of a plan for home heating suppliers under this section, any reference to a regulated utility shall be treated as a reference to the home heating supplier and any reference to a utility program shall be treated as a reference to a home heating supplier program.

SEC. 215. UTILITY PROGRAMS.

(a) INFORMATION REQUIREMENTS.—Each utility program shall include procedures designed to inform, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, and each two years thereafter before January 1, 1985, each of its residential customers who owns or occupies a residential building, of—

(1) the suggested measures for the category of buildings which includes such residential building;

(2) the savings in energy costs that are likely to result from installation of the suggested measures in typical residential buildings in such category;

(3) the availability of the arrangements described in subsection (b) and the lists referred to in section 213(a)(2) and (3); and

(4) suggestions of energy conservation techniques, including suggestions developed by the Secretary, such as adjustments in energy use patterns and modifications of household activities which can be employed by the residential customer to save energy and which do not require the installation of energy conservation measures (including the **savings in energy costs that are likely to result from the adoption of such suggestions**).

(b) PROJECT MANAGER REQUIREMENTS.—Each utility program shall include—

(1) procedures whereby the public utility, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, will, for each residential customer who owns or occupies a residential building, offer to—

(A) inspect the residential building (either directly or through one or more inspectors under contract) to determine and inform the residential customer of the estimated cost of purchasing and installing the suggested measures and the savings in energy costs that are likely to result from the installation of such measures (a report of which inspection shall be kept on file for not less than 5 years which shall be available to any subsequent owner without charge), except that a utility shall be required to make only one inspection of a residence unless a new owner requests a subsequent inspection;

(B) arrange to have the suggested measures installed (except for furnace efficiency modifications with respect to which the inspection prohibition of section 213(b)(2)(B) applies, unless the customer requests in writing arrangements for such modifications); and

(C) arrange for a lender to make a loan to such residential customer to finance the purchase and installation costs of suggested measures; and

(2) procedures whereby the public utility provides to each of its residential customers the lists as described in section 213(a)(2) and (3).

(c) REQUIREMENTS CONCERNING ACCOUNTING AND PAYMENT OF COSTS.—(1) Each utility program shall include—

(A) procedures to assure that all amounts expended or received by the utility which are attributable to the utility program (including any penalties paid by such utility under section 219(d)) are accounted for on the books and records of the utility separately from amounts attributable to all other activities of the utility;

(B) procedures to assure that all amounts expended by a utility for providing information under subsection (a) are to be treated for such purposes as a current expense of providing utility service and charged to all ratepayers of such utility in the same manner as current operating expenses of providing such utility service;

(C) procedures to permit general administrative costs of carrying out a utility program and the amounts expended by a public utility to carry out subsection (b) to be, in the discretion of the State regulatory authority (or in the case of a nonregulated utility, in the discretion of such nonregulated utility)—

(i) treated as a current expense of providing utility service and charged to all ratepayers of such utility in the same manner as current operating expenses of providing such utility service, or

(ii) charged to the residential customer for whom the activity is performed; and

(D) procedures to assure that the costs of labor and materials incurred by a utility for the purchase or installation of any residential energy conservation measure shall be charged to the residential customer for whom such activity is performed.

(2)(A) The costs of carrying out any activity as a part of a utility program under this section (other than an activity described in subparagraph (B), (C), or (D) of paragraph (1)) shall be charged to the residential customer for whom such activity is performed, unless (and to the extent that) the State regulatory authority or nonregulated utility (as the case may be) finds, after public notice and an opportunity for a public hearing, that treatment of such costs in the manner described in clause (i) of paragraph (1)(C) is likely to result (by reason of reduction in demand for energy) in lower rates to the ratepayers of such utility than would occur if the utility did not treat such costs in the manner described in such clause. Any such costs with respect to which such finding is made shall be treated in the manner described in clause (i) of paragraph (1)(C).

(B) Any portion of the costs of carrying out any activity as a part of a utility program under this section which are charged to the residential customer for whom such activity is performed and included on a billing for utility service submitted by the utility to such residential customer shall be stated separately on such billing from the cost of providing utility service.

(C) For purposes of this subsection, the term "ratepayer" means any person, State agency, or Federal agency who purchases electric energy or natural gas from a utility.

(d) REQUIREMENTS RESPECTING NEW CUSTOMERS.—In the case of any person who becomes a residential customer of a utility carrying out a utility program under this section after January 1, 1980 (or the date six months after approval of the applicable plan, if later), and before January 1, 1985, not later than 60 days after such person becomes a residential customer of such utility, such utility shall inform such person of the items listed in subsection (a), the offer required under subsection (b)(1)(A), and shall offer such person the opportunity to enter into arrangements referred to in subparagraphs (B) and (C) of subsection (b)(1).

(e) TERMINATION OF SERVICE.—No utility implementing any program under this section may terminate utility service to any customer by reason of any default of such customer with respect to payments due for energy conservation measures installed pursuant to such program.

(f) LOANS.—(1) In the case of any loan made by a public utility (as may be permitted under subsection (c), (d)(1), (d)(2), or (e) of section 216) to a residential customer under a utility program under this part, the public utility carrying out such program shall permit the residential customer to repay the principal and interest of such loan as a part of his periodic bill (over a period of not less than 3 years unless he elects a shorter payment period. In the case of a loan made by any other person, the public utility shall permit repayment of the loan as part of the periodic bill if such other person agrees to repayment in such manner.

(2) In the case of any loan referred to in paragraph (1)—

(A) a lump-sum payment of outstanding principal and interest may be required by the lender upon default (as determined under otherwise applicable law) in payment by the residential customer, and

(B) no penalty shall be imposed by the lender for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(g) EXEMPT ACTIVITIES.—For purposes of this section, the term "utility program" includes activities which are subject to this section by reason of section 216(f).

SEC. 216. SUPPLY, INSTALLATION, AND FINANCING BY PUBLIC UTILITIES

(a) PROHIBITION ON SUPPLY, INSTALLATION, OR FINANCING.—Except as provided in this section, no public utility may—

(1) supply or install a residential energy conservation measure, or

(2) make a loan to any residential customer for the purchase or installation of any residential energy conservation measure.

(b) EXEMPTION FROM PROHIBITION ON INSTALLATION.—The prohibition contained in subsection (a)(1) shall not apply to the energy conservation measures referred to in section 210(11)(B) or 210(11)(C), or devices associated with load management techniques for the type of energy sold by the utility.

(c) EXEMPTION FROM PROHIBITION ON FINANCING.—The prohibition contained in subsection (a)(2) shall not apply to any loan to a residential customer which does not exceed the greater of—

(1) $300, or

(2) the cost of purchase, and installation in such customer's residence, of items referred to in subsection (b).

(d) GENERAL EXEMPTIONS.—The prohibitions contained in subsection (a) shall not apply to—

(1) the supply, installation, or financing of those specific residential energy conservation measures which the Secretary determines were being installed or financed by a public utility on the date of enactment of this Act;

(2) supply, installation, or financing activities which the Secretary determines were broadly advertised or for which substantial preparations were completed on or before the date of enactment of this Act; or

(3) supply installation, or financing activities by a public utility with respect to energy conservation measures where a law or regulation in effect on or before the date of enactment of this Act either requires, or explicitly permits, the public utility to carry out such activities.

(e) WAIVER.—The Secretary may, upon petition of a public utility, supported in the case of a regulated utility by a Governor, waive in whole or in part the prohibitions contained in subsection (a) with respect to the utility if such utility demonstrates to the satisfaction of the Secretary that, in carrying out prohibited activities under subsection (a), fair and reasonable prices and rates of interest would be charged and the Secretary finds, after consultation with the Federal Trade Commission, that such activities would not be inconsistent with the prevention of unfair methods of competition and the prevention of unfair or deceptive acts or practices.

(f) APPLICABILITY OF SECTION 215.—Any public utility carrying out activities permitted under subsection (b) or (c) or subsection (d)(2) or (e) of this section shall be subject to all the requirements of section 215 with respect to such activities. A public utility which is carrying out activities permitted pursuant to subsection (d)(1) shall, within such reasonable period as may be prescribed by the Secretary, be subject to all such requirements of section 215 with respect to such activities. A public utility carrying out activities permitted pursuant to the exemption contained in subsection (d)(3) shall not be subject to the requirements of section 215 with respect to such activities.

(g) PROHIBITION ON SUPPLY, INSTALLATION OR FINANCING BY UTILITIES.—After the date of the enactment of this Act, no public utility may make any loan, to finance the purchase or installation of, or supply or install, any residential energy conservation measure if the Secretary has determined, after notice and opportunity for public hearing, and after consultation with the Federal Trade Commission, that—

(1) such loans are being made, or supply or installations carried out by such utility at unreasonable rates or on unreasonable terms and conditions, or

(2) such loans made, or supply or installations carried out by such utility, have a substantial adverse effect upon competition.

(h) ENFORCEMENT.—For purposes of section 219(d), any violation of a prohibition contained in this section shall be treated as a violation of a plan promulgated under section 219(a).

SEC. 217. HOME HEATING SUPPLIER PROGRAMS.

(a) REQUIREMENTS.—Each home heating supplier program shall include—

(1) procedures designed to inform, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 212, if later, and the each two years thereafter before January 1, 1985, each residential customer of each participating home heating supplier who owns or occupies residential building of—

(A) the suggested measures for the category of buildings which includes such residential building;

(B) the savings in energy costs that are likely to result from installation of the suggested measures in typical residential buildings in such category; and

(C) the availability of the arrangements described in paragraph (2) of this subsection; and

(2) procedures whereby a participating home heating supplier, no later than January 1, 1980 (or the later date referred to in paragraph (1)) will offer each such residential customer the opportunity to enter into arrangements with the home heating supplier under which such supplier, directly or through one or more inspectors under contract, will—

(A) inspect the residential building to determine and inform the residential customer of the estimated cost of purchasing and installing. and the savings in energy costs that are likely to result from installing, suggested measures;

(B) inform each interested customer of the lists referred to in section 213(a)(2) and (3);

(C) install or have suggested measures installed;

(D) make, or arrange for another lender to make, a loan to such residential customer to finance the purchase and installation costs of suggested measures; and

(E) permit the residential customer to repay the principal of and interest on any loan made pursuant to subparagraph (D) (over a period of not less than three years unless the customer elects a shorter payment period) as a part of his periodic bill except:

(i) failure to make any payment of such principal or interest shall not be grounds for the termination of fuel deliveries to the residential customer; and

(ii) a lump-sum payment of outstanding principal and interest may be required upon default (as determined under otherwise applicable law) in payment by the residential customer.

No penalty shall be imposed by the lender, under procedures described in paragraph (2), for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(b) NOTICE; WAIVER.—A home heating supplier who wishes to participate in the program established pursuant to this section may so notify the Governor. The Governor may waive, for any home heating supplier, any requirement of this section, upon demonstration to his satisfaction that the resources of such supplier do not enable him to comply with such requirement.

SEC. 218. TEMPORARY PROGRAMS.

(a) EXEMPTION FROM CERTAIN REQUIREMENTS.—A Governor of any State, on behalf of one or more utilities, or any public utility (supported by the Governor in the case of a regulated utility) may, no later than 180 days after the promulgation of rules pursuant to section 212, apply for a temporary exemption for one or more utilities from one or more of the requirements of section 215 and the prohibitions contained in section 216(a). Such temporary exemption may be granted, as determined by the Secretary, for a period not to exceed 3 years after the date of approval of such exemption.

(b) TIME LIMIT.—An application for an exemption under subsection (a) shall be approved or disapproved by the Secretary within 90 days of receipt of such application or such longer period as the Secretary may require in the case of any particular application.

(c) INFORMATION.—An application for an exemption under subsection (a) to establish a temporary program shall contain such information and meet such requirements as the Secretary shall prescribe by rule.

(d) REQUIREMENTS.—In order for an application for an exemption under subsection (a) to be granted, the Governor or the public utility shall demonstrate to the satisfaction of the Secretary that the temporary program will:

(1) contain adequate procedures to assure that each public utility, in connection with such program, will charge fair and reasonable prices and rates of interest to its residential customers in connection with the purchase and installation of residential energy conservation measures;

(2) contain adequate procedures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of such program; and

(3) be likely to result in the installation of suggested measures in at least as many residential buildings as would have been installed had such utility submitted a program which met the requirements of section 215 and did not violate the prohibitions contained in section 216(a).

(e) FEDERAL STANDBY AUTHORITY.—The Secretary shall not exercise the Federal standby authority, pursuant to section 219(a) or (b) with respect to any public utility which is covered by a temporary exemption approved by the Secretary pursuant to this section. Upon termination of such temporary exemption, the Secretary shall exercise such authority unless, within such period as he deems reasonable after such termination, the State (or nonregulated utility as the case may be) has a plan applicable to such utility approved under section 212 and such plan is being adequately implemented (as determined by the Secretary).

SEC. 219. FEDERAL STANDBY AUTHORITY

(a) STANDBY AUTHORITY FOR STATE REGULATED UTILITIES.—If a State does not have a plan approved under section 212(c) within 270 days after promulgation of rules under section 212(a), or within such additional period as the Secretary may allow pursuant to section 212(c)(1), or if the Secretary determines, after notice and opportunity for a public hearing that an approved plan is not being adequately implemented in such State, the Secretary shall—

(1) promulgate a plan which meets the requirements of section 213, and

(2) under such plan, by order, require each regulated utility in the State to offer, no later than 90 days following the date of issuance of such order, to its residential customers a utility program prescribed in such order which meets the requirements specified in section 215 (except with respect to a utility for which such requirements are inapplicable by reason of section 216(f)).

For purposes of applying section 213(c) in the case of a plan promulgated by the Secretary under this section, the references to the Governor or State agency shall be treated as references to the Secretary.

(b) NONREGULATED UTILITIES.—If a nonregulated utility which is not covered by an approved State plan under section 212 does not have a plan approved under section 212

(c) within 270 days after promulgation of rules under section 212(a) or within such additional period as the Secretary may allow pursuant to section 212(c)(1), or if the Secretary determines that such nonregulated utility has not adequately implemented an approved plan, the Secretary shall, by order, require such nonregulated utility to—

(1) promulgate a plan which meets the requirements of section 214 and which applies to the residential buildings which would have been covered had such a plan been so approved or implemented, and

(2) under such plan, by order, require the nonregulated utility to offer, not later than 90 days following the date of issuance of such order, to its residential customers a utility program prescribed in such order which meets the requirements specified in section 215 (except in the case of a nonregulated utility for which such requirements are inapplicable by reason of section 216(f)).

(c) FAILURE TO COMPLY WITH ORDERS.—If the Secretary determines that any public utility to which an order has been issued pursuant to subsection (a) or (b) has failed to comply with such order, he may file a petition in the appropriate United States district court to enjoin such utility from violating such order.

(d) CIVIL PENALTY.—(1) Any public utility which violates any requirement of a plan promulgated under subsection (a) or (b) or which fails to comply with an order under subsection (a) or (b) within 90 days from the issuance of such order shall be subject to a civil penalty of not more than, $25,000 for each violation. Each day that such violation continues shall be considered a separate violation.

(2)(A) Notwithstanding section 402(d) of the Department of Energy Organization Act, a civil penalty under this subsection shall be assessed by an order of the Secretary.

(B) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after receipt of such notice to have the procedures of paragraph (4) (in lieu of those of paragraph (3)) apply with respect to such assessment.

(3)(A) Unless an election in writing is made within 30 calendar days after receipt of notice under paragraph (2) to have paragraph (4) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom such penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(4)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall assess such penalty, by order, not later than 60 calendar days after the date of receipt of notice under paragraph (2) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(5) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (3), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (4), the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final order or judgment imposing the civil penalty shall not be subject to review.

(6)(A) Notwithstanding the provisions of title 28, United States Code, or of section 502 of the Department of Energy Organization Act, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which this subsection applies (including any related collection action) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

SEC. 220. RELATIONSHIP TO OTHER LAWS

(a) STATE AND LOCAL LAW IN GENERAL.—Nothing in this Part shall supersede any law or regulation of any State or political subdivision thereof, except to the extent that the Secretary, upon petition of a public utility and for good cause, determines that such law or regulation prohibits a public utility from taking any action required to be taken under this part or that such law or regulation requires or permits any public utility to take any action prohibited under this part.

(b) LAWS RELATING TO UNFAIR COMPETITION AND DECEPTIVE ACTS.—Nothing in this Part shall be construed as restricting the authority of any agency or instrumentality of the United States or of any State under any provision of law to prevent unfair methods of competition and unfair or deceptive acts or practices.

(c) TRUTH IN LENDING.—Nothing contained in section 104(4) of the Truth in Lending Act (15 U.S.C. 1603(4)) or the regulations issued pursuant thereto shall be deemed to exempt sales or credit extensions by public utilities under this part.

(d) MANUFACTURER'S WARRANTIES.—With respect to the last sentence of section 210(11) respecting warranties offered by a manufacturer, all Federal and State laws otherwise applicable to such warranties offered by a manufacturer shall apply, except to the extent inconsistent with such last sentence.

SEC. 221. RULES.

The Secretary is authorized to promulgate such rules as he determines may be necessary to carry out this Part.

SEC. 222. PRODUCT STANDARDS.

The Secretary shall consult with the Secretary of Commerce, acting through the National Bureau of Standards, with regard to any product or material standard which is relied on in implementing this part as a basis for judging the efficacy, energy efficiency, safety, or other attributes of energy conservation materials, products, or devices, and with the Federal Trade Commission for the purpose of insuring that such standards do not operate to deceive consumers or unreasonably restrict consumer or producer options, and that such standards (when applicable) are suitable as a basis for making truthful and reliable disclosures to consumers regarding performance and safety attributes of energy conservation products, materials, and devices.

SEC. 223. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated $5,000,000 to the Secretary for each of the first three fiscal years 1979, 1980, and 1981, to carry out his responsibilities under this Part.

SEC. 224. REPORT ON ENERGY CONSERVATION IN APARTMENT BUILDINGS.

(a) REPORT.—The Secretary shall, within six months after the date of enactment of this Act, prepare a report on the potential for energy conservation in apartment buildings.

(b) CONSIDERATION REQUIRED.—The report required under this section shall include a consideration of:

(1) structural and energy control measures which may result in energy conservation in apartment buildings;

(2) potential for energy conservation in apartment buildings which could be achieved by the application of a utility program (such as provided in this part) to apartment buildings;

(3) the costs of achieving energy conservation in apartment buildings, and the need for Federal financial assistance to achieve energy savings; and,

(4) recommendations for appropriate legislation.

(c) DEFINITION.—For purposes of this section, the term "apartment building" means a building used for residential occupancy which is not a new building to which final standards under section 304(a) of the Energy Conservation and Production Act apply and which contains more than four dwelling units.

SEC. 225. FEDERAL TRADE COMMISSION STUDY AND REPORT.

(a) STUDY.—(1) Before January 1, 1982, the Federal Trade Commission shall complete a study and submit a report to Congress and the President on the activities of public utilities and home heating suppliers under this part.

(2) The study shall include a review of the making, or arranging, of loans and the installation, or arranging for installation, of any residential energy conservation measure by public utilities and home heating suppliers.

(3) Such study may contain legislative recommendations respecting lending and installation activities for any residential energy conservation measure by public utilities and home heating suppliers and may contain recommendations concerning whether public utilities or home heating suppliers should be permitted by State or Federal law to continue to carry out such activities.

(b) CONSIDERATIONS REQUIRED.—In conducting the study under this part, the Commission shall consider the effect of public utility and home heating supplier activities under this part on—

(1) competition among utilities, home heating suppliers, contractors, and lenders in a utility's service area;

(2) the availability of supplies of each residential energy conservation measure and

the price of purchasing and installing each such measure;

(3) the increase in the number of residential buildings in which are installed, or likely to be installed, any such measure; and

(4) any other factors the Commission deems appropriate.

PART 2—WEATHERIZATION GRANTS FOR THE BENEFIT OF LOW-INCOME FAMILIES

SEC. 231. DEPARTMENT OF ENERGY WEATHERIZATION GRANT PROGRAM.

(a) ELIGIBILITY.—(1) Section 412(7)(A) of the Energy Conservation in Existing Buildings Act of 1976 is amended—

(A) by inserting "125 percent of" after "is at or below"; and

(B) by inserting after "Budget," the following: "except that the Administrator may establish a higher level if the Administrator, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 222(a)(12) of the Economic Opportunity Act of 1964,".

(2) The last sentence of section 413(a) of such Act is amended by striking out "in which the head of the household is a low-income person." and inserting in lieu thereof "occupied by low-income families.".

(b) STANDARDS AND MATERIALS.—(1) Section 413 (b) of such Act is amended by inserting the following new paragraph at the end thereof:

"(3) The Administrator, in coordination with the Secretaries and Director described in paragraph (2)(A) and with the Director of the Community Services Administration and the Secretary of Agriculture, shall develop and publish in the Federal Register for public comment, not later than 60 days after the date of enactment of this paragraph, proposed amendments to the regulations prescribed under paragraph (1). Such amendments shall provide that the standards described in paragraph (2)(A) shall include a set of procedures to be applied to each dwelling unit to determine the optimum set of cost-effective measures, within the cost guidelines set for the program, to be installed in such dwelling unit. Such standards shall, in order to achieve such optimum savings of energy, take into consideration the following factors—

"(A) the cost of the weatherization material;

"(B) variation in climate; and

"(C) the value of energy saved by the application of the weatherization material.

Such standards shall be utilized by the Administrator in carrying out this part, the Secretary of Agriculture in carrying out the weatherization program under section 504(c) of the Housing Act of 1949, and the Director of the Community Services Administration in carrying out weatherization programs under section 222(a)(12) of the Economic Opportunity Act of 1964. The Administrator shall take into consideration comments submitted regarding such proposed amendment and shall promulgate and publish final amended regulations not later than 120 days after the date of enactment of this paragraph.".

(2) Section 412(9) of such Act is amended to read as follows:

"(9) The term 'weatherization materials' means—

"(A) caulking and weatherstripping of doors and windows;

"(B) furnace efficiency modifications limited to—

"(i) replacement burners designed to substantially increase the energy efficiency of the heating system.

"(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system, and

"(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

"(C) clock thermostats;

"(D) ceiling, attic, wall, floor, and duct insulation;

"(E) water heater insulation;

"(F) storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective window and door materials; and

"(G) such other insulating or energy conserving devices or technologies as the Administrator may determine, by rule, after consulting with the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Director of the Community Services Administration.".

(c) LIMITATIONS ON EXPENDITURES.—Section 415 of such Act is amended—

(1) by striking out "weatherization materials, except that" in subsection (a) and all that follows through the period at the end of such subsection and inserting in lieu thereof the following: "weatherization materials and related matter described in subsection (c), except that not more than 5 percent of any grant made pursuant to section 413(a) and not more than 5 percent of any amount allocated under this section may be used for administration in carrying out duties under this part."; and

(2) by striking out subsection (c) and inserting in lieu thereof the following:

"(c)(1) Except as provided in paragraph (2), not more than $800 of any financial assistance provided under this part may be expended with respect to weatherization materials and the following related matters for any dwelling unit—

"(A) the appropriate portion of the cost of tools and equipment used to install such materials for such unit;

(B) the cost of transporting labor, tools, and material to such unit;

"(C) the cost of having onsite supervisory personnel; and

"(D) the cost (not to exceed $100) of making incidental repairs to such unit if such repairs are necessary to make the installation of weatherization materials effective.

"(2) The limitation of $800 described in paragraph (1) shall not apply if the State policy advisory council, established pursuant to section 414(b)(1), requests the Administrator to provide for a greater amount with respect to specific categories of units or materials in the State, and the Administrator approves such request.".

(d) FUNDING.—Section 422 of such Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 422. There are authorized to be appropriated for purposes of carrying out the weatherization program under this part, not to exceed $55,000,000 for the fiscal year ending September 30, 1977, not to exceed $130,000,000 for the fiscal year ending September 30, 1978, not to exceed $200,000,000 for the fiscal year ending September 30, 1979, and not to exceed $200,000,000 for the fiscal year ending September 30, 1980, such sums to remain available until expended.".

SEC. 232. FARMERS HOME ADMINISTRATION WEATHERIZATION GRANT PROGRAM

(a) ESTABLISHMENT OF PROGRAM.—Section 504 of the Housing Act of 1949 is amended by adding the following new subsection at the end thereof:

"(c)(1) In addition to other duties specified in this section, the Secretary shall develop and conduct a weatherization program for the purpose of making grants to finance the purchase or installation, or both, of weatherization materials in dwelling units occupied by low-income families. Such grants shall be made to low-income families who own dwelling units or, subject to the provisions of paragraph (2), to owners of such units for the benefit of the low-income tenants residing therein. In making grants under this subsection, the Secretary shall give priority to the weatherization of dwelling units occupied by low-income elderly or handicapped persons. The Secretary shall, in carrying out this section, consult with the Director of the Community Services Administration and the Secretary of Energy for the purpose of coordinating the weatherization program under this subsection, section 222(a)(12) of the Economic Opportunity Act of 1964, and part A of the Energy Conservation in Existing Buildings Act of 1976.

"(2) In the case of any grant made under this subsection to an owner of a rental dwelling unit, the Secretary shall provide that (A) the benefits of weatherization assistance in connection with such unit will accrue primarily to the low-income family residing therein, (B) the rents on such dwelling unit will not be raised because of any increase in value thereof due solely to weatherization assistance provided under this subsection, and (C) no undue or excessive enhancement will occur to the value of such unit.

"(3) In carrying out this subsection, the Secretary shall (A) implement the weatherization standards described in paragraphs (2)(A) and (3) of section 413(b) of the Energy Conservation in Existing Buildings Act of 1976, and (B) provide that, with respect to any dwelling unit, not more than $800 of any grant made under this section be expended on weatherization materials and related matters described in section 415(c) of the Energy Conservation in Existing Buildings Act of 1976, except that the Secretary shall increase such amount to not more than $1,500 to cover labor costs in areas where the Secretary, in consultation with the Secretary of Labor, determines there is an insufficient number of volunteers and training participants and public service employment workers, assisted pursuant to the Comprehensive Employment and Training Act of 1973 or the Older American Community Service Employment Act, available to work on weatherization projects under the supervision of qualified supervisors.

"(4) For purposes of this subsection, the terms 'elderly,' 'handicapped person', 'low income', and 'weatherization materials' shall have the same meanings given such terms in paragraphs (3), (5), (7), and (9), respectively, of section 412 of the Energy Conservation in Existing Buildings Act of 1976.".

(b) FUNDING.—Section 513(b) of such Act is amended by inserting the following before the semicolon at the end thereof: ', except that not less than $25,000,000 of any amount authorized to be appropriated for the fiscal year ending September 30, 1979, is authorized to be appropriated for making grants pursuant to section 504(c)".

SEC. 233. AVAILABILITY OF LABOR

The following actions shall be taken in order to assure that there is a sufficient number of volunteers and training participants and public service employment workers, assisted pursuant to the Comprehensive Employment Training Act of 1973 and the Older American Community Service Employment Act, available to work in support of weatherization programs conducted under part A of the Energy Conservation in Existing Buildings Act of 1976, section 222(a)(12) of the Economic Opportunity Act of 1964, and section 504 of the Housing Act of 1949:

(1) First, the Secretary of Energy (in consultation with the Director of the Community Services Administration, the Secretary of Agriculture, and the Secretary of Labor) shall determine the number of individuals needed to supply sufficient labor to carry out such weatherization programs in the various areas of the country.

(2) After the determination in paragraph (1) is made, the Secretary of Labor shall identify the areas of the country in which there is an insufficient number of such volunteers and training participants and public service employment workers.

(3) After such areas are identified, the Secretary of Labor shall take steps to assure that such weatherization programs are supported to the maximum extent practicable in such areas by such volunteers and training participants and public service employment workers.

PART 3—SECONDARY FINANCING AND LOAN INSURANCE FOR ENERGY CONSERVING IMPROVEMENTS AND SOLAR ENERGY SYSTEMS

SEC. 241. LOAN INSURANCE FOR ENERGY CONSERVING IMPROVEMENTS AND SOLAR ENERGY SYSTEMS UNDER TITLE I OF THE NATIONAL HOUSING ACT.

Subparagraphs (2) and (3) of the last paragraph of section 2(a) of the National Housing Act are amended to read as follows:

"(2) the term 'energy conserving improvements' means the purchase and installation of weatherization materials as defined in section 412(9) of the Energy Conservation in Existing Buildings Act of 1976; and

"(3) the term 'solar energy system' means any addition, alteration, or improvement to an existing or new structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Secretary of Energy.".

SEC. 242. PURCHASE BY GOVERNMENT NATIONAL MORTGAGE ASSOCIATION OF LOANS TO LOW- AND MODERATE-INCOME FAMILIES FOR ENERGY CONSERVING IMPROVEMENTS.

The Federal National Mortgage Association Charter Act is amended by adding the following new section at the end thereof:

"PURCHASE OF ENERGY CONSERVING IMPROVEMENT LOANS TO LOW- AND MODERATE-INCOME FAMILIES

"SEC. 314. (a) As soon as practicable after the date of enactment of this section, the Secretary shall direct the Association to begin making commitments to purchase, and to purchase, loans and advances of credits (and related purchase certificates and other related instruments) in accordance with this section.

(b) In accordance with the directive issued by the Secretary under subsection (a), the Association shall make commitments to purchase and purchase, and may service, sell (with or without recourse), or otherwise deal in, loans and advances of credit (and related purchase certificates and other related instruments) which are insured under title I of the National Housing Act and which are made to low- and moderate-income families for the purpose of purchasing and installing energy conserving improvements in one- to four-family dwelling units owned by such families. A loan or advance of credit may be purchased under this section only if—

"(1) the term of repayment does not exceed 15 years and is not less than 5 years, except that there shall be no penalty imposed if the borrower repays such loan or advance of credit at any time before the term of repayment expires;

"(2) such loan or advance of credit involves an interest rate which the Secretary (after consulting with the Secretary of Agriculture and the Secretary of Energy and after taking into account the probable scope of the program at such rate and the impact a program at such rate may have on credit markets, the Federal budget, and on inflation) establishes, for the purpose of encouraging the making of loans and advances of credit to be purchased under this section, at or below the maximum interest rate permissible for such loan or advance of credit insured under title I of the National Housing Act, but in no event shall such rate be below the current average yield on outstanding interest bearing obligations of the United States of comparable maturities then forming a part of the public debt (computed at the end of the fiscal year next proceeding the date on which the loan or advance is made, and adjusted to the nearest one-eighth of 1 per centum) plus an allowance adequate to cover administrative costs;

"(3) the amount of such loan or advance of credit does not exceed $2,500;

"(4) such loan or advance of credit is not used for the refinancing of any extension of credit; and

"(5) the energy conserving improvements financed by such loan or advance of credit are purchased and installed after the date of enactment of this section.

"(c) The Secretary shall direct the Association to give priority to purchasing loans and advances of credit under this section which are made to low- and moderate-income elderly or handicapped persons or to families with which such persons reside.

"(d) The Association may issue, to the extent and in such amounts as may be approved in appropriation Acts, to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section. Each such obligation shall mature at such time and be redeemable at the option of the Association in such manner as may be determined by the Association, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Association issued under this section, and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchase of the Association's obligations hereunder.

"(e) No State or local usury law or comparable law establishing interest rates or prohibiting or limiting the collection or amount of discount points or other charges in connection with loan transactions and no State law prohibiting coverage of loan insurance required by the Association shall apply to transactions under this section.

"(f) The Association is authorized to—

"(1) sell loans and advances of credit purchased under this section at prices which it determines will help promote the objectives of assuring that operations under this section are, to the extent feasible, fully self-supporting; and

"(2) pay for services performed in carrying out its functions under this section without regard to any limitation on administrative expenses heretofore enacted.

"(g) The total amount of outstanding purchases and commitments authorized by the Secretary to be made pursuant to this section shall not exceed amounts approved in appropriations Acts, but in no case may such amount exceed $3,000,000,000 at any one time.

"(h) The Secretary shall establish a purchase price to be paid by the Association for loans and advances of credit under this section which shall be adequate to compensate the lender for a reasonable return on such loan or advance, plus such reasonable costs as are normally incurred in originating, servicing, and otherwise processing such loans and advances.

"(i) Any loan or advance of credit purchased under this section shall be purchased with recourse to the originator.

"(j) For purposes of this section—

"(1) the term 'low- and moderate-income family' means a family, including a single individual, whose income does not exceed 100 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 100 per centum of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, usually high- or low-median family incomes, or other factors;

"(2) the term 'energy conserving improvements' shall have the same meaning given such term in subparagraph (2) of the last paragraph of section 2(a) of the National Housing Act; and

"(3) the terms 'elderly' and 'handicapped person' shall have the meaning given such terms by paragraphs (3) and (5), respectively, of section 412 of the Energy Conservation in Existing Buildings Act of 1976.".

SEC. 243. STANDBY AUTHORITY OF GOVERNMENT NATIONAL MORTGAGE ASSOCIATION TO PURCHASE LOANS FOR ENERGY CONSERVING IMPROVEMENTS

The Federal National Mortgage Association Charter Act is amended by adding the following new section at the end thereof:

"STANDBY AUTHORITY TO PURCHASE LOANS FOR ENERGY CONSERVING IMPROVEMENTS

"SEC. 315. (a)(1) Whenever the Secretary finds that insufficient credit is available on a national basis to finance the purchase and installation of energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 2(a) of the National Housing Act) to an extent which the Secretary determines is necessary to advance the achievement of the national program of energy conservation in residential dwelling units, the Secretary shall direct the Association to begin making commitments to purchase, and to purchase, loans and advances of credit (and related purchase certificates and other related instruments) in accordance with this section.

"(2) The Secretary may direct the Association to terminate its activities under this section whenever the Secretary determines that the conditions which gave rise to the determination under paragraph (1) are no longer present.

"(b) In accordance with the directive issued by the Secretary under subsection (a), the Association shall make commitments to purchase and purchase, and may service, sell (with or without recourse), or otherwise deal in, loans and advances of credit (and related purchase certificates and other related instruments) which are insured under title I of the National Housing Act and made to owners of one- to four-family dwelling units or insured under section 241 of the National Housing Act and which are made for the purpose of purchasing and installing energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 2(a) of such Act) in dwelling units.

"(c) The Association may issue, to the extent and in such amounts as may be approved in appropriation Acts, to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section. Each such obligation shall mature at such time and

be redeemable at the option of the Association in such manner as may be determined by the Association, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Association issued under this section, and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchase of the Association's obligations hereunder.

"(d) No State or local usury law or comparable law establishing interest rates or prohibiting or limiting the collection or amount of discount points or other charges in connection with loan transactions and no State law prohibiting the coverage of loan insurance required by the Association shall apply to transactions under this section.

"(e) The Association is authorized to—

"(1) sell loans and advances of credit purchased under this section at prices which it determines will help promote the objective of assuring that operations under this section are, to the extent feasible, fully self-supporting; and

"(2) pay for services performed in carrying out its functions under this section without regard to any limitation on administrative expenses heretofore enacted.

"(f) The total amount of outstanding purchases and commitments authorized by the Secretary to be made pursuant to this section shall not exceed amounts approved in appropriation Acts, but in no case may such amount exceed $2,000,000,000 at any one time.

"(g) A loan or advance of credit may be purchased under this section only if—

"(1) such loan or advance of credit is not used for the refinancing of an extension of credit; and

"(2) the energy conserving improvements financed by such loan or advance of credit are purchased and installed after the date of enactment of this section.".

SEC. 244. PURCHASE BY GOVERNMENT NATIONAL MORTAGE ASSOCIATION OF LOANS FOR SOLAR ENERGY SYSTEMS.

The Federal National Mortgage Association Charter Act is amended by adding the following new section at the end thereof:

"PURCHASE OF LOANS FOR SOLAR ENERGY SYSTEMS

"SEC. 316. (a) The Secretary shall direct the Association to begin making commitments to purchase, and to purchase, loans and advances of credits (and related purchase certificates and other related instruments) in accordance with this section.

"(b) In accordance with the directive issued by the Secretary under subsection (a), the Association shall make commitments to purchase and purchase, and may service, sell (with or without recourse), or otherwise deal in, loans and advances of credit (and related purchase certificates and other related instruments) which are made to owners of one- to four-family dwelling units and insured under title I of the National Housing Act and which are made for the purpose of purchasing and installing solar energy systems (as defined in subparagraph (3) of the last paragraph of section 2(a) of such Act) in such dwelling units. A loan or advance of credit may be purchased under this section only if—

"(1) the term of repayment does not exceed fifteen years, except that there shall be no penalty imposed if the borrower repays such loan or advance of credit at any time before the term of repayment expires;

"(2) subject to subsection (i), such loan or advance of credit involves an interest rate which the Secretary (after consulting with the Secretary of Energy) establishes and which is not less than the current average yield on outstanding interest bearing obligations of the United States of comparable maturities then forming a part of the public debt (computed at the end of the fiscal year next preceding the date on which the loan or advance is made, and adjusted to the nearest one-eighth of 1 per centum) plus an allowance adequate to cover administrative costs and not more than the maximum interest rate permissible for such a loan or advance of credit insured under title I of the National Housing Act;

"(3) the amount of such loan or advance of credit does not exceed $8,000;

"(4) the security for such loan or advance of credit is acceptable to the Secretary;

"(5) such loan or advance of credit is not used for the refinancing of any other extension of credit; and

"(6) the solar energy system financed by such loan or advance of credit is purchased and installed after the date of enactment of this section.

"(c) The Association may issue, to the extent and in such amounts as may be approved in appropriation Acts, to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section. Each such obligation shall mature at such time and be redeemable at the option of the Association in such manner as may be determined by the Association, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of compatible maturities during the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Association issued under this section, and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchase of the Association's obligations hereunder.

"(d) No State or local usury law or comparable law establishing interest rates or prohibiting or limiting the collection or amount of discount points or other charges in connection with loan transactions and no State law prohibiting coverage of loan insurance required by the Association shall apply to transactions under this section.

"(e) The Association is authorized to—

"(1) sell loans and advances of credit purchased under this section at prices which it determines will help promote the objectives of assuring that operations under this section are, to the extent feasible, fully self-supporting; and

"(2) pay for services performed in carrying out its functions under this section without regard to any limitation on administrative expenses heretofore enacted.

"(f) The total amount of outstanding purchases and commitments authorized by the Secretary to be made pursuant to this section shall not exceed amounts approved in appropriation Acts, but in no case may such amount exceed $100,000,000 at any one time.

"(g) The Secretary shall establish a purchase price to be paid by the Association for loans and advances of credit under this section which shall be adequate to compensate the lender for a reasonable return on such loan or advance, plus such reasonable costs as are normally incurred in originating, servicing, and otherwise processing such loans and advances.

"(h) Any loan or advance of credit purchased under this section shall be purchased with recourse to the originator.

"(i) If, after one year following the date on which the Association may issue obligations under subsection (c), 50 per centum of the amount available during such one-year period for financing the program established by this section has not been utilized, the Secretary shall provide that loans and advances of credit which may be purchased under this section shall have the lowest interest rate authorized by subsection (b)(2) unless the Secretary finds that the interest rate is not the primary impediment to carrying out such program and that lowering the interest rate will not increase the utilization of the funds made available to carry out such program.

"(j) The authority to purchase loans and advances of credit under this section shall terminate five years after the date of enactment of this section.".

SEC. 245. SECONDARY FINANCING BY FEDERAL HOME LOAN MORTGAGE CORPORATION OF SOLAR ENERGY AND ENERGY CONSERVING IMPROVEMENT LOANS.

Section 302(h) of the Federal Home Loan Mortgage Corporation Act is amended by adding the following new sentence at the end thereof: "The term 'residential mortgage' also includes a loan or advance of credit insured under title I of the National Housing Act whose original proceeds are applied for in order to finance energy conserving improvements, or the addition of a solar energy system, to residential real estate. The term 'residential mortgage' also includes a loan or advance of credit for such purposes not having the benefit of such insurance and includes loans made where the lender relies for purposes of repayment primarily on the borrower's general credit standing and forecast of income, with or without other security.".

SEC. 246. SECONDARY FINANCING BY FEDERAL NATIONAL MORTGAGE ASSOCIATION OF SOLAR ENERGY AND ENERGY CONSERVING IMPROVEMENT LOANS.

Section 302(b) of the Federal National Mortgage Association Charter Act is amended by adding at the end thereof the following new paragraph:

"(3) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in loans or advances of credit made for energy conserving improvements and solar energy systems described in the last paragraph of section 2(a) of the National Housing Act, whether or not insured under such section. To be eligible for purchase, any such loan not so insured may be secured as required by the corporation.".

SEC. 247. LOAN INSURANCE FOR ENERGY CONSERVING IMPROVEMENTS AND SOLAR ENERGY SYSTEMS IN MULTIFAMILY PROJECTS UNDER SECTION 241 OF THE NATIONAL HOUSING ACT.

Section 241 of the National Housing Act is amended by adding the following new subsection at the end thereof:

"(e)(1) Notwithstanding any other provision of this section, the Secretary may insure a loan for purchasing and installing energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 2(a) of this Act), for purchasing and installing a solar energy system (as defined in subparagraph (3) of the last paragraph of section 2(a) of this Act), and for purchasing or installing (or both) individual utility

meters in a multifamily housing project without regard to whether the project is covered by a mortgage under this Act.

"(2) Notwithstanding the provisions of subsection (b), a loan insured under this subsection shall—

"(A) not exceed an amount which the Secretary determines is necessary for the purchase and installation of individual utility meters plus an amount which the Secretary deems appropriate taking into account amounts which will be saved in operation costs over the period of repayment of the loan by reducing the energy requirements of the project as a result of the installation of energy conserving improvements or a solar energy system therein;

"(B) be insured for 90 percent of any loss incurred by the person holding the note for the loan; except that, for cooperative multifamily projects receiving assistance under section 236 or financed with a below market interest rate mortgage insured under section 221(d)(3) of this Act, 100 percent of any such loss may be insured;

"(C) bear an interest rate not to exceed an amount which the Secretary determines, after consulting with the Secretary of Energy, to be necessary to meet market demands;

"(D) have a maturity satisfactory to the Secretary;

"(E) be insured pursuant to a premium rate established on a sound actuarial basis to the extent practicable;

"(F) be secured in such manner as the Secretary may require;

"(G) be an acceptable risk in that energy conservation or solar energy benefits to be derived outweigh the risks of possible loss to the Federal Government; and

"(H) contain such other terms, conditions, and restrictions as the Secretary may prescribe.

"(3) The provisions of subsection (c) shall apply to loans insured under this subsection.

"(4) The Secretary shall provide that any person obligated on the note for any loan insured under this section be regulated or restricted, until the termination of all obligations of the Secretary under the insurance, by the Secretary as to rents or sales, charges, capital structure, rate of return, and methods of operation of the multifamily project to such extent and in such manner as to provide reasonable rentals to tenants and a reasonable return on the investment.".

SEC. 248. INCREASES IN MORTGAGE LIMITS TO COVER COSTS OF SOLAR ENERGY SYSTEMS.

(a) ONE- TO FOUR-FAMILY HOUSING.—Section 203(b)(2) of the National Housing Act is amended by adding the following new sentence at the end thereof: "Nothwithstanding any other provision of this paragraph, the amount which may be insured under this section may be increased by up to 20 percent if such increase is necessary to account for the increased cost of the residence due to the installation of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 2(a) of this Act) therein.".

(b) MULTIFAMILY HOUSING.—Section 207(c)(3) of such Act is amended by adding the following new sentence at the end thereof: "Notwithstanding any other provision of this paragraph, the amount which may be insured under this section may be increased by up to 20 percent if such increase is necessary to account for the increased cost of the project due to the installation of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 2(a) of this Act) therein.".

(c) FARMERS HOME ADMINISTRATION AUTHORITY.—Section 501 of the Housing Act of 1949 is amended by adding the following new subsection at the end thereof:

"(f) With respect to any limitation on the amount of any loan which may be made, insured, or guaranteed under this title for the purchase of a dwelling unit, the Secretary may increase such amount by up to 20 percent if such increase is necessary to account for the increased cost of the dwelling unit due to the installation of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 2(a) of the National Housing Act) therein.".

PART 4—MISCELLANEOUS

SEC. 251. ENERGY-CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING.

(a) PUBLIC HOUSING.—Section 5(c) of the United States Housing Act of 1937 is amended by adding the following new sentence at the end thereof: "In addition to any other authority to enter into annual contribution contracts under this subsection, the Secretary may, subject to approval in appropriation Acts, enter into such contracts aggregating not more than $10,000,000 per annum for financing the purchase and installation of energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 2(a) of the last paragraph of section 2(a) of the National Housing Act) in existing low-income housing projects, other than projects assisted under section 8, which the Secretary determines have the greatest need for such improvements based on the energy consumption of the projects and the amount of such consumption which can be reduced by such improvements.".

(b) GRANTS.—(1) The Secretary of Housing and Urban Development is authorized to make grants to finance energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 2(a) of the National Housing Act) to projects which are financed with loans under section 202 of the Housing Act of 1959, or which are subject to mortgages insured under section 221(d)(3) or section 236 of the National Housing Act. The Secretary shall make assistance available under this subsection on a priority basis to those projects which are in financial difficulty as a result of high energy costs. In carrying out the program authorized by this subsection, the Secretary shall issue regulations requiring that any grant made under this subsection shall be made only on the condition that the recipient of such grant shall take steps (prescribed by the Secretary) to assure that the benefits derived from such grants in terms of lower energy costs shall accrue to tenants in the form of lower rentals or to the Federal Government in the form of a lower operating subsidy if such a subsidy is being paid to such recipient.

(2) The Secretary shall establish minimum standards for energy conserving improvements to multifamily dwelling units to be assisted under this subsection.

(3) There are authorized to be appropriated to carry out the provisions of this subsection not to exceed $25,000,000.

SEC. 252. ENERGY CONSERVING STANDARDS FOR NEWLY CONSTRUCTED RESIDENTIAL HOUSING INSURED BY FEDERAL HOUSING ADMINISTRATION OR ASSISTED BY FARMERS HOME ADMINISTRATION

(a) FEDERAL HOUSING ADMINISTRATION STANDARDS.—Section 526 of the National Housing Act is amended by inserting the following new sentence at the end thereof: "Such standards shall establish energy performance requirements that will achieve a significant increase in the energy efficiency of new construction, until such time as the energy conservation performance standards required under the Energy Conservation Standards for New Buildings Act of 1976 become effective. Such requirements shall be implemented as soon as practicable after the date of enactment of this sentence.".

(b) FARMERS HOME ADMINISTRATION STANDARDS.—Title V of the Housing Act of 1949 is amended by adding the following new section at the end thereof:

"MINIMUM PROPERTY STANDARDS FOR ENERGY CONSERVATION

"SEC. 529. To the maximum extent feasible, the Secretary of Agriculture shall promote the use of energy saving techniques through minimum property standards established by such Secretary for newly constructed residential housing assisted under this title. Such property standards shall, insofar as is practicable, be consistent with the standards established pursuant to section 526 of the National Housing Act and shall incorporate the energy performance requirements developed pursuant to such section. Such property standards shall be implemented as soon as practicable after the date of enactment of this section.".

SEC. 253. RESIDENTIAL ENERGY EFFICIENCY STANDARDS STUDY.

(a) GENERAL AUTHORITY.—The Secretary of Housing and Urban Development (hereinafter in this section referred to as the "Secretary") shall, in coordination with the Secretary of Agriculture, the Secretary of the Treasury, the Administrator of Veterans' Affairs, the Secretary of Energy, and such other representatives of Federal, State, and local governments as the Secretary shall designate, conduct a study, utilizing the services of the National Institute of Building Sciences pursuant to appropriate contractual arrangements, for the purpose of determining the need for, the feasibility of, and the problems of requiring, by mandatory Federal action, that all residential dwelling units meet applicable energy efficient standards. The subjects to be examined shall include, but not be limited to, mandatory notification to purchasers, and policies to prohibit exchange or sale, of properties which do not conform to such standards.

(b) SPECIFIC FACTORS.—In conducting such study, the Secretary shall consider at least the following factors—

(1) the extent to which such requirement would protect a prospective purchaser from the uncertainty of not knowing the energy efficiency of the property he proposes to purchase;

(2) the extent to which such requirement would contribute to the Nation's energy conservation goals;

(3) the extent to which such a requirement would affect the real estate, home building, and mortgage banking industries;

(4) the sanctions which might be necessary to make such a requirement effective and the administrative impediments there might be to enforcement of such sanctions;

(5) the possible impact on sellers and purchasers as a result of the implementation of mandatory Federal actions, taking into account the experience of the Federal Government in imposing mandatory requirements concerning the purchase and sale of real property as occurred under the Real Estate Settlement Procedures Act of 1974 and the Federal Disaster Protection Act of 1973;

(6) an analysis of the effect of such a requirement on the economy as a whole and on the Nation's security as compared to the impact on the credit and housing markets caused by such a requirement;

(7) the effect of such a requirement on availability of credit in the housing industry;

(8) the extent to which the imposition of mandatory Federal requirements would temporarily reduce the number of residential dwellings available for sale and the resulting effect of such mandatory actions on the price of those remaining dwelling units eligible for sale; and

(9) the possible uncertainty, during the period of developing the standards, as to what standards might be imposed and any resulting effect on major housing rehabilitation efforts and voluntary efforts for energy conservation.

(c) COMMENTS AND FINDINGS BY SECRETARY OF ENERGY.—The Secretary shall incorporate into such study comments by the Secretary of Energy on the effects on the economy as a whole and on the Nation's security which may result from the requirement described in subsection (a) as compared to the impact on the credit and housing markets likely to be caused by such a requirement. In addition, the Secretary shall incorporate into such study the following findings by the Secretary of Energy:

(1) the savings in energy costs resulting from the requirement described in subsection (a) throughout the estimated remaining useful life of the existing residential buildings to which such requirement would apply; and

(2) the total cost per barrel of oil equivalent, in obtaining the energy savings likely to result from such requirement, computed for each class of existing residential buildings to which such requirement would apply.

(d) REPORT DATE.—The Secretary shall report, no later than one year after the date of enactment of this section, to both Houses of the Congress with regard to the findings made as a result of such study along with any recommendations for legislative proposals which the Secretary determines should be enacted with respect to the subject of such study.

SEC. 254. WEATHERIZATION STUDY.

The President shall conduct a study which shall monitor the weatherization activities authorized by this Act and amendments made thereby and those weatherization activities undertaken independently of this Act and such amendments. The President shall report to the Congress within one year from the date of enactment of this Act, and annually thereafter, concerning—

(1) the extent of progress being made through weatherization activities toward the achievement of national energy conservation goals;

(2) adequacy and costs of materials necessary for weatherization activities; and

(3) the need for and desirability of modifying weatherization activities authorized by this Act, and amendments made thereby, and of extending such activities to a broader range of income groups than are being assisted under this Act and such amendments.

SEC. 255. AUTHORIZATION FOR APPROPRIATIONS FOR NEW BUILDING PERFORMANCE STANDARDS GRANTS

Section 307(b) of the Energy Conservation Standards for New Buildings Act of 1976 is amended to read as follows:

"(b) There is authorized to be appropriated, for the purpose of carrying out this section, the following amounts—

"(1) for the fiscal year ending September 30, 1977, not to exceed $5,000,000;

"(2) for the fiscal year ending September 30, 1978, not to exceed $10,000,000; and

"(3) for the fiscal year ending September 30, 1979, not to exceed $10,000,000.

Any amount appropriated pursuant to this subsection shall remain available until expended.".

TITLE III—ENERGY CONSERVATION PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENTS AND PUBLIC CARE INSTITUTIONS

PART 1—SCHOOLS AND HOSPITALS

SEC. 301. STATEMENT OF FINDINGS AND PURPOSE

(a) FINDINGS.—The Congress finds that—

(1) the Nation's nonrenewable energy resources are being rapidly depleted;

(2) schools and hospitals are major consumers of energy, and have been especially burdened by rising energy prices and fuel shortages;

(3) substantial energy conservation can be achieved in schools and hospitals through the implementation of energy conservation maintenance and operating procedures and the installation of energy conservation measures; and

(4) public and nonprofit schools and hospitals in many instances need financial assistance in order to make the necessary improvements to achieve energy conservation.

(b) PURPOSE.—It is the purpose of this part to authorize grants to States and to public and nonprofit schools and hospitals to assist them in identifying and implementing energy conservation maintenance and operating procedures and in evaluating, acquiring, and installing energy conservation measures to reduce the energy use and anticipated energy costs of schools and hospitals.

SEC. 302. AMENDMENT TO THE ENERGY POLICY AND CONSERVATION ACT

(a) AMENDMENT TO TITLE III.—Title III of the Energy Policy and Conservation Act is amended by adding at the end thereof the following new part:

"PART G—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

"DEFINITIONS

"SEC. 391. For the purposes of this part—

"(1) The term 'building' means any structure the construction of which was completed on or before April 20, 1977, which includes a heating or cooling system, or both.

"(2) The term 'energy conservation measure' means an installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source, including, but not limited to—

"(A) insulation of the building structure and systems within the building;

"(B) storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door system modifications.

"(C) automatic energy control systems;

"(D) equipment required to operate variable steam, hydraulic, and ventilating systems adjusted by automatic energy control systems;

"(E) solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

"(F) solar water heating systems;

"(G) furnace or utility plant and distribution system modifications including—

"(i) replacement burners, furnaces, boilers, or any combination thereof, which substantially increases the energy efficiency of the heating system,

"(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system,

"(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights, and

"(iv) utility plant system conversion measures including conversion of existing oil- and gas-fired boiler installations to alternative energy sources, including coal;

"(H) caulking and weatherstripping;

"(I) replacement or modification of lighting fixtures which replacement or modification increases the energy efficiency of the lighting system without increasing the overall illumination of a facility (unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by the Secretary);

"(J) energy recovery systems;

"(K) cogeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by a school or hospital and which meet such fuel efficiency requirements as the Secretary may by rule prescribe;

"(L) such other measures as the Secretary identifies by rule for purposes of this part; and

"(M) such other measures as a grant applicant shows will save a substantial amount of energy and as are identified in an energy audit prescribed pursuant to section 365(e)(2).

"(3) The term 'hospital' means a public or nonprofit institution which is—

"(A) a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and

"(B) duly authorized to provide hospital services under the laws of the State in which it is situated.

"(4) The term 'hospital facilities' means buildings housing a hospital and related facilities, including laboratories, outpatient departments, nurses' home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing or training facilities for health professions personnel operated as an integral part of a hospital.

"(5) The term 'public or nonprofit institution' means an institution owned and operated by—

"(A) a State, a political subdivision of a State or an agency or instrumentality of either, or

"(B) an organization exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

"(6) The term 'school' means a public or nonprofit institution which—

"(A) provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

"(B)(i) provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

"(ii) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

"(iii) is accredited by a nationally recognized accrediting agency or association; and

"(iv) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the requirements of clauses (i), (ii), and (iii) and which provides such a program;

"(C) provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (i), (ii), and (iii) of subparagraph (B); or

"(D) is a local educational agency.

"(7) The term 'local education agency' means a public board of education or other public authority or a nonprofit institution legally constituted within, or otherwise recognized by, a State for either administrative control or direction of, or to perform administrative services for, a group of schools within a State.

"(8) The term 'school facilities' means buildings housing classrooms, laboratories, dormitories, athletic facilities, or related facilities operated in connection with a school.

"(9) The term 'State' means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

"(10) The term 'State energy agency' means the State agency responsible for developing State energy conservation plans pursuant to section 362 of this Act, or, if no such agency exists, a State agency designated by the Governor of such State to prepare and

submit a State plan under section 394 of this part.

"(ii) The term 'State school facilities agency' means an existing agency which is broadly representative of public institutions of higher education, nonprofit institutions of higher education, public elementary and secondary schools, nonprofit elementary and secondary schools, public vocational education institutions, nonprofit vocational education institutions, and the interests of handicapped persons, in a State or, if no such agency exists, an agency which is designated by the Governor of such State which conforms to the requirements of this paragraph.

"(12) The term 'State hospital facilities agency' means an existing agency which is broadly representative of the public hospitals and the nonprofit hospitals, or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this paragraph.

"(13) The term 'energy audit' means a determination of the energy consumption characteristics of a building which—

"(A) identifies the type, size, and rate of energy consumption of such building and the major energy using systems of such building;

"(B) determines appropriate energy conservation maintenance and operating procedures; and

"(C) indicates the need, if any, for the acquisition and installation of energy conservation measures.

"(14) The term 'preliminary energy audit' means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption and major energy-using systems of such building.

"(15) The term 'energy conservation project' means—

"(A) an undertaking to acquire and to install one or more energy conservation measures in school or hospital facilities and

"(B) technical assistance in connection with any such undertaking and technical assistance as described in paragraph (17)(A).

"(16) The term 'energy conservation project costs' includes only costs incurred in the design, acquisition, construction, and installation of energy conservation measures and technical assistance costs.

"(17) The term 'technical assistance' means assistance, under rules promulgated by the Secretary, to States, schools, and hospitals—

"(A) to conduct specialized studies identifying and specifying energy savings and related cost savings that are likely to be realized as a result of (i) modification of maintenance and operating procedures in a building, or (ii) the acquisition and installation of one or more specified energy conservation measures in such building, or (iii) both, and

"(B) the planning or administration of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation measures in such building.

"(18) The term 'technical assistance costs' means costs incurred for the use of existing personnel or the temporary employment of other qualified personnel (or both such types of personnel) necessary for providing technical assistance.

"(19) The term 'energy conservation maintenance and operating procedure' means modification or modifications in the maintenance and operations of a building, and any installations therein, which are designed to reduce energy consumption in such building and which require no significant expenditure of funds.

"(20) The term 'Secretary' means the Secretary of Energy or his designee.

"(21) The term 'Governor' means the chief executive officer of a State or his designee.

"GUIDELINES

"SEC. 392. (a) The Secretary shall, by rule, not later than 60 days after the date of enactment of this part—

"(1) prescribe guidelines for the conduct of preliminary energy audits, including a description of the type, number, and distribution of preliminary energy audits of school and hospital facilities that will provide a reasonably accurate evaluation of the energy conservation needs of all such facilities in each State, and

"(2) prescribe guidelines for the conduct of energy audits.

"(b) The Secretary shall, by rule, not later than 90 days after the date of enactment of this part, prescribe guidelines for State plans for the implementation of energy conservation projects in schools and hospitals. The guidelines shall include—

"(1) a description of the factors which the State energy agency may consider in determining which energy conservation projects will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals,

"(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to implement energy conservation projects, and

"(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

"(c) Guidelines prescribed under this section may be revised from time to time after notice and opportunity for comment.

"(d) The Secretary shall, by rule prescribe criteria for determining schools and hospitals which are in a class of severe hardship. Such criteria shall take into account climate, fuel costs, fuel availability, ability to provide the non-Federal share of the costs, and such other factors that he deems appropriate.

"PRELIMINARY ENERGY AUDITS AND ENERGY AUDITS

"SEC. 393. (a) The Governor of any State may apply to the Secretary at such time as the Secretary may specify after promulgation of guidelines under section 392(a) for grants to conduct preliminary energy audits and energy audits of school facilities and hospital facilities in such State under this part.

"(b) Upon application under subsection (a) the Secretary may make grants to States for purposes of conducting preliminary energy audits of school facilities and hospital facilities under this part in accordance with the guidelines prescribed under section 392(a)(1). If a State does not conduct preliminary energy audits within two years after the date of the enactment of this part, the Secretary may conduct such audits within such State.

"(c) Upon application under subsection (a) the Secretary may make grants to States for purposes of conducting energy audits of school facilities and hospital facilities under this part in accordance with the guidelines prescribed under section 392(a)(2).

"(d) If a State without the use of financial assistance under this section, conducts preliminary energy audits or energy audits which comply with the guidelines prescribed by the Secretary or which are approved by the Secretary the funds allocated for purposes of this section shall be added to the funds available for energy conservation projects for such State and shall be in addition to amounts otherwise available for such purposes.

"(e)(1) Except as provided in paragraph (2), amounts made available under this section (together with any other amounts made available from other Federal sources) may not be used to pay more than 50 percent of the costs of any preliminary energy audit or any energy audit.

(2) Upon the request of the Governor, the Secretary may make grants to a State for up to 100 percent of the costs of any preliminary energy audits and energy audits, subject to the requirements of section 398(a)(3).

"STATE PLANS

"SEC. 394. (a) The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 392, or such longer period as the Secretary may, for good cause, allow, a State plan under this section for such State. Such plan shall include—

"(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed under section 392(a)(1), and an estimate of the energy savings that may result from the modification of maintenance and operating procedures and installation of energy conservation measures in the schools and hospitals in such State,

"(2) a recommendation as to the types of energy conservation projects considered appropriate for schools and hospitals in such State, together with an estimate of the costs of carrying out such projects in each year for which funds are appropriated.

"(3) a program for identifying persons qualified to carry out energy conservation projects,

"(4) procedures to insure that funds will be allocated among eligible applicants for energy conservation projects within such State, including procedures—

"(A) to insure that funds will be allocated on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, and

"(B) to insure that equitable consideration is given to all eligible public or nonprofit institutions regardless of size and type of ownership;

"(5) a statement of the extent to which, and by which methods, such State will encourage utilization of solar space heating, cooling, and electric systems and solar water heating systems where appropriate,

"(6) procedures to assure that all assistance under this part in such State will be expended in compliance with the requirements of an approved State plan for such State, and in compliance with the requirements of this part;

"(7) procedures to insure implementation of energy conserving maintenance and operating procedures in those facilities for which projects are proposed; and

"(8) policies and procedures designed to assure that financial assistance provided under this part in such State will be used to supplement, and not to supplant, State, local, or other funds.

"(b) The Secretary shall review and approve or disapprove each State plan not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a), the Secretary shall approve the plan. If a State plan submitted within the 90-day period specified in subsection (a) has not been disapproved within the 60-day period following its receipt by the Secretary, such plan shall be treated as approved by the Secretary. A State energy agency may submit a new or amended plan at any time after the submission of the original plan if the agency obtains the consent of the Secretary.

"(c)(1) If a State plan has not been approved under this section within 2 years and 90 days after the enactment of this part, or within 90 days after the completion of the preliminary audits under section 393(a), whichever is later, the Secretary may take such action as necessary to develop and implement such a State plan and to carry out the functions which would otherwise be carried out under this part by the State energy agency, State school facilities agency, and State hospital facilities agency, in order that the energy conservation program for

schools and hospitals may be implemented in such State.

"(2) Notwithstanding any other provision contained in this section, a State may, at any time, submit a proposed State plan for such State under this section. The Secretary shall approve or disapprove such plan not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) and is not inconsistent with any plan developed and implemented by the Secretary under paragraph (1), the Secretary shall approve the plan and withdraw any such plan developed and implemented by the Secretary.

"APPLICATIONS FOR FINANCIAL ASSISTANCE

"SEC. 395. (a) Applications of States, schools, and hospitals for financial assistance under this part for energy conservation projects shall be made not more than once for any fiscal year. Schools and hospitals applying for such financial assistance shall submit their applications to the State energy agency and the State energy agency shall make a single submittal to the Secretary, containing all applications which comply with the State plan.

"(b) Applications for financial assistance under this part for energy conservation projects shall contain, or shall be accompanied by, such information as the Secretary may reasonably require, including the results of energy audits which comply with guidelines under this part. The annual submittal to the Secretary by the State energy agency under subsection (a) shall include a listing and description of energy conservation projects proposed to be funded within the State during the fiscal year for which such application is made, and such information concerning expected expenditures as the Secretary may, by rule, require.

"(c)(1) The Secretary may not provide financial assistance to States, schools, or hospitals for energy conservation projects unless the application for a grant for such project is submitted through, or approved by the appropriate State hospital facilities agency or State school facilities agency, respectively, and determined by the State energy agency to comply with the State plan.

"(2) Applications, of States, schools, and hospitals and State plans pursuant to this part shall be consistent with—

"(A) related State programs for educational facilities in such State, and

"(B) State health plans under section 1524 (c)(2) and 1603 of the Public Health Service Act, and shall be coordinated through the review mechanisms required under section 1523 of the Public Health Service Act and section 1122 of the Social Security Act.

"(d) The Secretary shall approve such applications submitted by a State energy agency as he determines to be in compliance with this section and with the requirements of the applicable State plan approved under section 394. The Secretary shall state the reasons for his disapproval in the case of any application which he disapproves. Any application not approved by the Secretary may be resubmitted by the applicant at any time in the same manner as the original application and the Secretary shall approve such resubmitted application as he determines to be in compliance with this section and the requirements of the State plan. Amendments of an application shall, except as the Secretary may otherwise provide, be subject to approval in the same manner as the original application. All or any portion of an application under this section may be disapproved to the extent that funds are not available under this part to carry out such application or portion.

"(e) Whenever the Secretary, after reasonable notice and opportunity for hearing to any State, school, or hospital receiving assistance under this part, finds that there has been a failure to comply substantially with the provisions set forth in the application approved under this section, the Secretary shall notify the State, school, or hospital that further assistance will not be made available to such State, school or hospital under this part until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied no further assistance shall be made to such State, school, or hospital under this part.

"GRANTS FOR PROJECT COSTS AND TECHNICAL ASSISTANCE

"SEC. 396. (a) The Secretary may make grants to schools and hospitals for carrying out energy conservation projects the applications for which have been approved under section 395.

"(b)(1) Except as provided in paragraph (2), amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may not be used to pay more than 50 percent of the costs of any energy conservation project.

"(2) Amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may be used to pay not to exceed 90 percent of the costs of an energy conservation project if the Secretary determines that a project meets the hardship criteria of section 392(d). Grants made under this paragraph shall be from the funds provided under section 398(a)(2).

"(c) Grants made under this section in any State in any year shall be made in accordance with the requirements contained in section 398.

"(d) The Secretary may make grants to States for paying technical assistance costs. Schools in any State shall not be allocated less than 30 percent of the funds for energy conservation projects within such State and hospitals in any State shall not be allocated less than 30 percent of such funds.

"(e) No grant made under this part to a school which is a local educational agency may be used for acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration, or technical assistance in connection with any such undertaking for such a building.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 397. (a) For the purpose of making grants to States to conduct preliminary energy audits and energy audits pursuant to section 393, there is authorized to be appropriated not to exceed $20,000,000 for the fiscal year ending September 30, 1978, and $5,000,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

"(b) For the purpose of making energy conservation project grants pursuant to section 396, there is authorized to be appropriated not to exceed $180,000,000 for the fiscal year ending September 30, 1978, $295,000,000 for fiscal year ending September 30, 1979, and $400,000,000 for the fiscal year ending September 30, 1980, such funds to remain available until expended. Of the amounts appropriated under this subsection for each of the following fiscal years not more than the following percentage may be used for purposes of technical assistance:

Fiscal year ending:	Percentage
September 30, 1978	30
September 30, 1979	15
September 30, 1980	5

"(c) For the expenses of the Secretary in administering the provisions of this part, there are hereby authorized to be appropriated such sums as may be necessary for each fiscal year in the three consecutive fiscal year periods ending September 30, 1980, such funds to remain available until expended.

"ALLOCATION OF GRANTS

"SEC. 398. (a)(1) Except as otherwise provided in subsection (b), the Secretary shall allocate 90 percent of the amounts made available under section 397(b) in any year for purposes of making energy conservation project grants pursuant to section 396 as follows:

(A) Eighty percent of amounts made available under section 397(b) shall be allocated among the States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

"(B) Ten percent of amounts made available under section 397(b) shall be allocated among the States in such manner as the Secretary determines by rule after taking into account the availability and cost of fuel or other energy used in, and the amount of fuel or other energy consumed, by schools and hospitals in the States, and such other factors as he deems appropriate.

"(2) The Secretary shall allocate 10 percent of the amounts made available under section 397(b) in any year for purposes of making grants as provided under section 396(b)(2) in excess of the 50 percent limitation contained in section 396(b)(1).

(3) In the case of any State which received for any fiscal year an amount which exceeded 50 percent of the cost of any energy audit as provided in section 393(e)(2), the aggregate amount allocated to such State under this subsection for such fiscal year (determined after applying paragraphs (1) and (2)) shall be reduced by an amount equal to such excess. The amount of such reduction shall be reallocated to the States for such fiscal year as provided in this subsection except that for purposes of such reallocation, the State which received such excess shall not be eligible for any portion of such reallocation.

"(b) The total amount allocated to any State under subsection (a) in any year shall not exceed 10 percent of the total amount allocated to all the States in such year under such subsection (a). Except for the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants to States and to schools and hospitals in each State which has an approved State plan under this part.

"(c) Not later than 60 days after the date of enactment of this Act, the Secretary shall prescribe rules governing the allocation among the States of funds for grants for preliminary energy audits and energy audits. Such rules shall take into account the population and climate of such States and such other factors as he may deem appropriate.

"(d) The Secretary shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

"(e) Funds allocated for projects in any States for a fiscal year under this section but not obligated in such fiscal year shall be available for reallocation under subsection (a) of this section in the subsequent fiscal year.

"ADMINISTRATION; ANNUAL REPORTS

"SEC. 399. (a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

"(b) The Secretary shall, within one year after the date of the enactment of this part and annually thereafter while funds are available under this part, submit to the Congress a detailed report of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such report shall show the allocations made (including the allocations made to each State) and include information on the types of conservation measures implemented, with funds allocated, and an estimate of the energy savings achieved.

"RECORDS

"SEC. 400. (a) Each recipient of assistance under this part shall keep such records, pro-

vide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.".

(b) TABLE OF CONTENTS.—The table of contents of such title III is amended by inserting the following at the end thereof:

"PART G—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

"Sec. 391. Definitions.
"Sec. 392. Guidelines.
"Sec. 393. Preliminary energy audits and energy audits.
"Sec. 394. State plans.
"Sec. 395. Applications for financial assistance.
"Sec. 396. Grants for project costs and technical assistance.
"Sec. 397. Authorization of appropriations.
"Sec. 398. Allocation of grants.
"Sec. 399. Administration; annual reports.
"Sec. 400. Records.".

(c) SEVERABILITY.—If any provision of this title or the application thereof to any person or circumstances be held invalid, the provisions of other sections of this title and their application to other persons or circumstances shall not be affected thereby.

SEC. 303. TECHNICAL AMENDMENTS.

(a) SECTION 1502.—Section 1502 of the Public Health Service Act is amended by adding at the end thereof the following new paragraph:

"(11) The promotion of an effective energy conservation and fuel efficiency program for health service institutions to reduce the rate of growth of demand for energy.".

(b) SECTION 1532(b)(2).—Section 1532(b)(2) of the Public Health Service Act is amended by deleting the period after "made" and inserting in lieu thereof: ", or in the case of non-substantive reviews, provision for a shortened review period.".

(c) SECTION 1532(c).—Section 1532(c) of the Public Health Service Act is amended by deleting the comma in paragraph (9)(A) after "construction" and inserting in lieu thereof: ", including the costs and methods of energy provision," and by adding at the end thereof the following new paragraph:

"(10) The special circumstances of health service institutions and the need for conserving energy.".

SEC. 304. CROSS REFERENCE.

For provisions relating to application of Davis-Bacon Act to this part, see section 312.

PART 2—UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

SEC. 310. STATEMENT OF FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the Nation's nonrenewable energy resources are being rapidly depleted;

(2) buildings owned by units of local government and public care institutions are major consumers of energy, and such units and institutions have been especially burdened by rising energy prices and fuel shortages;

(3) substantial energy conservation can be achieved in buildings owned by units of local government and public care institutions through the implementation of energy conservation maintenance and operating procedures; and

(4) units of local government and public care institutions in many instances need financial assistance in order to conduct energy audits and to identify energy conservation maintenance and operating procedures and to evaluate the potential benefits of acquiring and installing energy conservation measures.

(b) PURPOSE.—It is the purpose of this part to authorize grants to States and units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits in identifying and implementing energy conservation maintenance and operating procedures and in evaluating energy conservation measures to reduce the energy use and anticipated energy costs of buildings owned by units of local government and public care institutions.

SEC. 331. AMENDMENT TO THE ENERGY POLICY AND CONSERVATION ACT.

(a) AMENDMENT TO TITLE III.—Title III of the Energy Policy and Conservation Act is amended by adding at the end thereof the following new part:

"PART H—ENERGY CONSERVATION PROGRAM FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTES

"DEFINITIONS

"SEC. 400A. For purposes of this part—

"(1) The terms 'hospital', 'State', 'school', 'Governor', 'State energy agency', 'energy conservation measure', 'energy conservation maintenance and operating procedure', 'preliminary energy audit', 'technical assistance costs', 'energy audit' and 'Secretary' have the meanings provided in section 391.

"(2) The term 'unit of local government' means the government of a county, municipality, or township, which is a unit of general purpose government below the State (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and the District of Columbia. Such term also means the recognized governing body of an Indian tribe (as defined in section 412 of the Energy Conservation and Production Act) which governing body performs substantial governmental functions.

"(3) The term 'building' has the meaning provided in section 391 except that for purposes of this part such term includes only buildings which are owned and primarily occupied by offices or agencies of a unit of local government or by a public care institution and does not include any building intended for seasonal use or any building utilized primarily by a school or hospital.

"(4) The term 'public care institution' means a public or nonprofit institution which owns—

"(A) a facility for long term care, a rehabilitation facility, or a public health center, as described in section 1633 of the Public Health Service Act, or

"(B) a residential child care center.

"(5) The term 'public or nonprofit institution' means an institution owned and operated by—

"(A) a State, a political subdivision of a State or an agency or instrumentality of either, or

"(B) an organization exempt from income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954.

"(6) The term 'technical assistance program costs' means the costs of carrying out a technical assistance program.

"(7) The term 'technical assistance' means assistance under rules, promulgated by the Secretary, to States, units of local government and public care institutions—

"(A) to conduct specialized studies identifying and specifying energy savings and related cost savings that are likely to be realized as a result of (i) modification or maintenance and operating procedures in a building, (ii) the acquisition and installation of one or more specified energy conservation measures in such building or (iii) both, or

"(B) the planning or administration of such specialized studies.

"GUIDELINES AND RULES

"SEC. 400B. (a) The Secretary shall, by rule, not later than sixty days after the date of enactment of this part—

"(1) prescribe guidelines for the conduct of the preliminary energy audits for buildings owned by units of local government and public care institutions, including a description of the type, number and distribution of preliminary energy audits of such buildings that will provide a reasonably accurate evaluation of the energy conservation needs of all such buildings in each State, and

"(2) prescribe guidelines for the conduct of energy audits.

"(b) The Secretary shall, by rule, not later than 90 days after the date of the enactment of this part, prescribe guidelines for State plans for the implementation of technical assistance programs for buildings owned by units of local government and public care institutions. The guidelines shall include—

"(1) a description of the factors to be considered in determining which technical assistance programs will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals;

"(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to undertake technical assistance work; and

"(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

"(c) Guidelines prescribed under this part may be revised from time to time after notice and opportunity for comment.

"PRELIMINARY ENERGY AUDITS AND ENERGY AUDITS

"SEC. 400C. (a) The Governor of any State may apply to the Secretary at such time as the Secretary may specify after promulgation of the guidelines under section 400B(a) for grants to conduct preliminary energy audits of buildings owned by units of local government and public care institutions in such State under this part.

"(b) Upon application under subsection (a), the Secretary may make grants to States to assist in conducting preliminary energy audits under this part for buildings owned by units of local government and public care institutions. Such audits shall be conducted in accordance with the guidelines prescribed under section 400B(a)(1).

"(c) The Governor of any State, unit of local government or public care institution may apply to the Secretary at such time as the Secretary may specify after promulgation of the guidelines under section 400B(a) for grants to conduct energy audits of buildings owned by units of local government and public care institutions in such State under this part.

"(d) Upon application under subsection (c) the Secretary may make grants to States, units of local government, and public care institutions for purposes of conducting energy audits of facilities under this part in accordance with the guidelines prescribed under section 400B(a)(2).

"(e) If a State, unit of local government, or public care institution, without the use of financial assistance under this section, conducts preliminary energy audits or energy audits which comply with the guidelines prescribed by the Secretary or which are approved by the Secretary, the funds allocated for purposes of this section shall be added to the funds available for technical assistance programs for such State, and shall be in addition to amounts otherwise available for such purpose.

"(f) Amounts made available under this section (together with any other amounts made available from other Federal sources) may not be used to pay more than 50 percent of the costs of any preliminary energy audit or energy audit.

"STATE PLANS

"SEC. 400D. (a) The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 400B, or such longer period as the Secretary may, for good cause, allow, a proposed State plan under this section for such State. Such plan shall include—

"(1) the results of preliminary energy audits conducted in accordance with the

guidelines prescribed pursuant to section 400B(a)(1), and an estimate of the energy savings that may result from the modification of maintenance and operating procedures in buildings owned by units of local government and public care institutions.

"(2) a recommendation as to the types of technical assistance programs considered appropriate for buildings owned by units of local government and public care institutions in such State, together with an estimate of the costs of carrying out such programs;

"(3) a program for identifying persons qualified to carry out technical assistance programs,

"(4) procedures for the coordination among technical assistance programs within any State and for coordination of programs authorized under this part with other State energy conservation programs,

"(5) a description of the policies and procedures to be followed in the allocation of funds among eligible applicants for technical assistance within such State, including procedures to insure that funds will be allocated among eligible applicants on the basis of relative need and including recommendations as to how priorities should be established between buildings owned by units of local government and public care institutions, and among competing proposals taking into account such factors as costs, energy consumption, and energy savings;

"(6) procedures to assure that all grants for technical assistance provided under this part are expended in compliance with the requirements of an approved State plan for such State and in compliance with the requirements of this part (including requirements contained in rules promulgated under this part); and

"(7) policies and procedures designed to assure that financial assistance provided under this part in such State will be used to supplement, and not to supplant State, local or other funds.

"(b) Each State plan submitted under this section shall be reviewed and approved or disapproved by the Secretary not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a), the Secretary shall approve the plan. If a State plan submitted within the 90 day period specified in subsection (a) has not been disapproved within the 60-day period following its receipt by the Secretary, such plan shall be treated as approved by the Secretary. A State energy agency may submit a new or amended plan at any time after the submission of the original plan if the agency obtains the consent of the Secretary.

"APPLICATIONS FOR GRANTS FOR TECHNICAL ASSISTANCE

"SEC. 400E. (a) Applications of units of local government and public care institutions for grants for technical assistance under this part shall be made not more than once for any fiscal year. Such applications shall be submitted to the State energy agency and the State energy agency shall make a single submitted to the Secretary containing all applications which comply with the State plan.

"(b) Applications for grants for technical assistance under this part shall contain or be accompanied by, such information as the Secretary may reasonably require, including the results of energy audits which comply with guidelines under this part. The annual submittal to the Secretary by the State energy agency under subsection (a) shall include a listing and description of technical assistance proposed to be funded under this part within the State during the fiscal year for which such application is made, and such information concerning expenditures as the Secretary may, by rule, require.

"(c) The Secretary shall approve such applications submitted by a State energy agency as he determines to be in compliance with this section and the requirements of the applicable State plan approved under section 400D. The Secretary shall state the reasons for his disapproval in the case of any application which he disapproves. Any application not approved by the Secretary may be resubmitted by the applicant at any time in the same manner as the original application and the Secretary shall approve such resubmitted application as he determines to be in compliance with this section and the requirements of the State plan. Amendments of an application shall, except as the Secretary may otherwise provide be subject to approval in the same manner as the original application. All or any portions of an application under this section may be disapproved to the extent that funds are not available under this part.

"(d) Whenever the Secretary after reasonable notice and opportunity for hearing to any unit of local government or public care institution receiving assistance under this part, finds that there has been a failure to comply substantially with the provisions set forth in the application approved under this section, the Secretary shall notify the unit of local government or public care institution that further assistance will not be made available to such unit of local government or public care institution under this part until he is satisfied that there is no longer any failure to comply. Until he is so satisfied, no further assistance shall be made to such unit of local government or public care institution under this part.

"GRANTS FOR TECHNICAL ASSISTANCE

"SEC. 400F. (a) The Secretary may make grants to States and to units of local government and public care institutions in payment of technical assistance program costs for buildings owned by units of local government and public care institutions the applications for which have been approved under section 400E.

"(b) Amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may not be used to pay more than 50 percent of technical assistance program costs.

"(c) Grants made under this section in any State in any year shall be made in accordance with the requirements contained in section 400H.

"(d) The Secretary shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 400G. (a) For the purpose of making grants to States to conduct preliminary energy audits and energy audits under this part there is authorized to be appropriated not to exceed $7,500,000 for the fiscal year ending September 30, 1978, and $7,500,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

"(b) For the purpose of making technical assistance grants under this part to States and to units of local government and public care institutions, there is hereby authorized to be appropriated not to exceed $17,500,000 for the fiscal year ending September 30, 1978, and $32,500,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

"(c) For the expenses of the Secretary in administering the provisions of this part, there are hereby authorized to be appropriated such sums as may be necessary for each fiscal year in the two consecutive fiscal year periods ending September 30, 1979, such funds to remain available until expended.

"ALLOCATION OF GRANTS

"SEC. 400H. (a) Grants made under this part shall be allocated among the States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

"(b) The total amount allocated to any State under subsection (a) in any year shall not exceed 10 percent of the total amount allocated to all the States in each year under such subsection (a). Except for the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants in each State which has an approved State plan under this part.

"ADMINISTRATION; ANNUAL REPORTS

"SEC. 400I. (a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

"(b) The Secretary shall, within one year after the date of the enactment of this part and annually thereafter while funds are available under this part, submit to the Congress a detailed report of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such report shall show the allocations made (including the allocations made to each State) and include information on the technical assistance carried out, with funds allocated, and an estimate of the energy savings, if any, achieved.

"RECORDS

"SEC. 400J. Each recipient of assistance under this part shall keep such records, provide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.".

(b) TABLE OF CONTENTS.—The table of contents for such title III is amended by inserting the following at the end thereof:

"PART H—ENERGY CONSERVATION PROGRAM FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

"Sec. 400A. Definitions.
"Sec. 400B. Guidelines and rules.
"Sec. 400C. Preliminary energy audits and energy audits.
"Sec. 400D. State plans.
"Sec. 400E. Applications for grants for technical assistance.
"Sec. 400F. Grants for technical assistance.
"Sec. 400G. Authorization of appropriations.
"Sec. 400H. Allocation of grants.
"Sec. 400I. Administration; annual reports.
"Sec. 400J. Records.".

SEC. 312. APPLICATION OF DAVIS-BACON ACT.

No grant for a project (other than so much of a grant as is used for a preliminary energy audit, energy audit, or technical assistance or a grant the total project cost of which is $5,000 or less, excluding costs for a preliminary energy audit, energy audit, or technical assistance) shall be made under this part or part 1 unless the Secretary finds that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction utilizing such grants will be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Act of March 31, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

TITLE IV—ENERGY EFFICIENCY OF CERTAIN PRODUCTS AND PROCESSES

PART I—ENERGY EFFICIENCY STANDARDS FOR AUTOMOBILES

SEC. 401. FUEL ECONOMY INFORMATION.

(a) AMENDMENT TO SECTION 506.—(1) Section 506(c) of the Motor Vehicle Information

and Cost Savings Act (15 U.S.C. 2006(c)) is amended by adding at the end thereof the following:

"(3) As used in this section, the term 'automobile includes any automobile with a gross vehicle weight rating of 8,500 pounds or less, notwithstanding any lack of determination required of the Secretary under section 501 (1)(B)(ii) or (iii).".

(2) Section 506(c)(2) of such Act (15 U.S.C. 2006(c)(2)) is amended by inserting before the period the following: "(taking into account paragraph (3) of this subsection)".

(b) RULE OF CONSTRUCTION.—The amendment made by this section shall not be construed to affect the authority in section 506 of the Motor Vehicle Information and Cost Savings Act to require labels or other information for fuel economy for automobiles rated in excess of 8,500 pounds gross vehicle weight.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective for automobiles manufactured in model years after model year 1979.

SEC. 402. CIVIL PENALTIES RELATING TO AUTOMOBILE FUEL EFFICIENCY.

Section 508 of Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2008) is amended by adding at the end thereof the following new subsections:

"(d)(1)(A) The Secretary shall, by rule in accordance with the provisions of this subsection and subsection (e), substitute a higher amount for the amount per tenth of a mile per gallon which would be used to calculate the civil penalty under subsection (b)(1) in the absence of such rule, if the Secretary finds that—

"(i) the additional amount of the civil penalty which may be imposed under such rule will result in, or substantially further, substantial energy conservation for automobiles in future model years for which such higher penalty may be imposed; and

"(ii) subject to subparagraph (B), such additional amount of civil penalty will not result in substantial deleterious impacts on the economy of the United States or of any State or region of any State.

"(B) Any findings under subparagraph (A)(ii) may be made only if the Secretary finds that it is likely that—

"(i) such additional amount of civil penalty will not cause a significant increase in unemployment in any State or region thereof;

"(ii) such additional amount will not adversely affect competition; and

"(iii) such additional amount will not cause a significant increase in automobile imports.

"(2) Any rule under paragraph (1) may not provide that the amount per tenth of a mile per gallon used to calculate the civil penalty under subsection (b)(1) be less than $5.00 or more than $10.00.

"(3) Any rule prescribed under paragraph (1) shall be effective for the later of—

"(A) automobile model year beginning after model year 1981, or

"(B) automobile model years beginning at least 18 months after such rule becomes final.

"(4) Any rule prescribed under paragraph (1) shall provide that the amount per tenth of a mile per gallon used to calculate a credit under subsection (a)(3) for any model year shall equal the amount per tenth of a mile per gallon applicable to the calculation of the civil penalty for which the credit is allowed.

"(e)(1)(A) After the Secretary of Transportation develops a proposed rule pursuant to subsection (d), he shall publish such proposed rule in the Federal Register, together with a statement of the basis for such rule, and provide copies thereof to the manufacturers. He shall then provide a period of public comment on such rule of at least 45 days for written comments thereon. A copy of any such proposed rule shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public concerning such proposed rule.

"(B) After such written comment period, any interested person, (including the Federal Trade Commission) shall be afforded an opportunity to present oral data, views, and arguments at a public hearing concerning such proposal. At such hearing such interested person (including the Federal Trade Commission) shall have an opportunity to question—

"(i) other interested persons who make oral presentations.

"(ii) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or in the consideration thereof, and

"(iii) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation; with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

"(C) A rule subject to this subsection may not be issued except on consideration of the whole record supported by, and in accordance with, the reliable, probative, and substantial evidence.

"(D) A transcript shall be kept of any such public hearing made in accordance with this section and such transcripts and written comments shall be available to the public at the cost of reproduction.

"(2) If any final rule is prescribed by the Secretary after such public comment period under subsection (d) it shall be published in the Federal Register, together with each of the findings required by subsection (d).

"(3)(A) Any person aggrieved by any final rule under subsection (d) may at any time before the 60th day after the date such rule is published under paragraph (2) file a petition with the United States Court of Appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written and oral proceedings on which the rule was based, as provided in section 2112 of title 28, United States Code.

"(B) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule may be affirmed unless supported by substantial evidence.

"(C) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(4) In the case of any information which is provided the Secretary or the court during the consideration and review of any such rule and which is determined to be confidential by the Secretary pursuant to the provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, any disclosure of such information by an officer or employee of the United States or of any department or agency thereof, except in an *in camera* proceeding by the Secretary or the court, shall be deemed a violation of section 1905 of title 18, United States Code."

SEC. 403. DISCLOSURE IN LABELING.

(a) DISCLOSURE.—Section 506(a)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006(a)(1) is amended by striking out "and" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

"(C) containing in the case of any automobile the sale of which is subject to any Federal tax imposed with respect to automobile fuel efficiency, a statement indicating the amount of such tax, and".

(b) TIME AND MANNER OF DISCLOSURE.—Section 506(a)(3) of such Act (15 U.S.C. 2006(a)(3) is amended by inserting after the first sentence thereof the following new sentence: "The time and manner by which the statement referred to in paragraph (1)(C) must be included on any label may be prescribed so as to take into account any special circumstances or characteristics.".

(c) EFFECTIVE DATE.—The amendments made by this section shall not take effect unless and until there is in effect a Federal tax imposed with respect to automobile fuel efficiency which is enacted during the Ninety-fifth Congress.

SEC. 404. STUDY.

Within six months after the date of the enactment of this Act, the Environmental Protection Agency, in consultation with the Secretary of Energy and the Secretary of Transportation and after an opportunity for public comment, shall submit to the Congress a detailed report on the degree to which fuel economy estimates required to be used in new car fuel economy labeling and in the annual fuel economy mileage guide required under section 506 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2006) provide a realistic estimate of average fuel economy likely to be achieved by the driving public. Such report shall include such recommendations as the Environmental Protection Agency deems appropriate based on the report and written findings or conclusions stated therein, other than recommendations concerning changes or alterations in the testing and calculation procedures and methods measuring fuel economy under such Act as utilized by the Environmental Protection Agency for model year 1975 passenger automobiles. Nothing in this section shall authorize such agency to make any changes or alterations in such procedures and methods in effect for such model year for measuring automobile fuel economy.

PART 2—ENERGY EFFICIENCY STANDARDS FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

SEC. 421. TEST PROCEDURES.

(a) PRESCRIPTION OF TEST PROCEDURES.—Section 323(a)(4) of the Energy Policy and Conservation Act (42 U.S.C. 6293(a)(4)) is amended—

(1) in subparagraph (A), by striking out "(A) Except as provided in paragraph (6), the" and inserting in lieu thereof "The";

(2) in subparagraph (A), by adding at the end thereof the following: "Except as provided in paragraph (6), such test procedures shall be prescribed not later than January 31, 1978."; and

(3) by striking out subparagraph (B).

(b) EXTENSIONS.—Section 323(a)(6) of such Act (42 U.S.C. 6293(a)(6)) is amended to read as follows:

"(6)(A) The Secretary may delay the prescription of test procedures under paragraph (4) for a type of covered product (or class thereof) if he determines that he cannot, within the applicable time period, prescribe test procedures applicable to such type (or class) which meet the requirements of subsection (b), and he submits to the Congress a report of such determination together with the reasons therefor, and also publishes such determination (and reasons) in the Federal

Register. In any such case, he shall prescribe such test procedures as soon as practicable, but in no event later than 90 days after the date specified in paragraph (4).

"(B) The Secretary is not required to publish and prescribe test procedures under paragraphs (3) and (4) for a type of covered product (or class thereof) if he determines, by rule, that test procedures cannot be developed which meet the requirements of subsection (b) and publishes such determination in the Federal Register, together with the reasons therefor. For purposes of section 327, a determination under this subparagraph with respect to any type (or class) of covered product, while effective, shall have the same effect as would a standard prescribed for such type (or class) under section 325.".

(c) REEVALUATIONS OF TEST PROCEDURES, ETC.—Section 323(a) of such Act (42 U.S.C. 6293(a)) is amended by adding at the end thereof the following:

"(7)(A) In the case of—

"(i) any test procedure prescribed under this subsection; or

"(ii) any determination under paragraph (6) that a test procedure cannot be developed which meets the requirements of subsection (b);

the Secretary shall, not later than 3 years after the date of the enactment of this paragraph (and from time to time thereafter), conduct a reevaluation and, on the basis of such reevaluation, shall determine if such test procedure should be amended or such determination should be rescinded. In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant, including technological developments relating to the energy efficiency of the type (or class) of covered products involved.

"(B) If the Secretary determines under subparagraph (A) that—

"(i) a test procedure should be amended, he shall promptly publish in the Federal Register proposed test procedures incorporating such amendments, or

"(ii) a determination under paragraph (6) should be rescinded, he shall promptly publish notice thereof in the Federal Register, and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days.".

(d) ENERGY EFFICIENCY REPRESENTATIONS.—Section 323(c) of such Act (42 U.S.C. 6293(c)) is amended—

(1) by striking out "90 days" and inserting in lieu thereof "180 days";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(3) by inserting "(1)" after "(c)"; and

(4) by adding at the end thereof the following new paragraph:

"(2) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (1) may be extended by the Commission with respect to the petitioner (but in no event for more than an additional 180 days) if he finds that the requirements of paragraph (1) would impose on such petitioner an undue hardship (as determined by the Commission).".

SEC. 422. ENERGY EFFICIENCY STANDARDS.

Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended to read as follows:

"ENERGY EFFICIENCY STANDARDS

"SEC. 325. (a)(1) The Secretary shall, by rule, prescribe an energy efficiency standard for each type (or class) of covered products specified in paragraphs (1) through (13) of section 322(a).

"(2) The Secretary may, by rule, prescribe an energy efficiency standard for any type (or class) of covered products of a type specified in paragraph (14) of section 322(a), if he determines, for the purposes of this section, that—

"(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-calendar-month period ending before such determination;

"(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-calendar-month period;

"(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

"(D) the application of a labeling rule under section 324 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible to attain and is economically justified.

Not later than 2 years after the date of the enactment of this paragraph, the Secretary shall publish in the Federal Register a list of those types (and classes) of covered products which he considers may be subject to standards authorized to be prescribed under this paragraph. The Secretary may revise such list from time to time thereafter.

"(b) No standard for a type (or class) of covered products shall be prescribed pursuant to subsection (a) if—

"(1) a test procedure has not been prescribed pursuant to section 323 with respect to that type (or class) of products, or

"(2) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 327, a determination under paragraph (2) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class) under this section.

"(c) Energy efficiency standards for each type (or class) of covered products prescribed under this section shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. Such standards may be phased in, over a period not in excess of 5 years, through the establishment of intermediate standards, as determined by the Secretary.

"(d) Before determining whether a standard is economically justified under subsection (c), the Secretary, after receiving any views and comments furnished with respect to the proposed standard under section 336, shall determine that the benefits of the standard exceed its burdens based, to the greatest extent practicable, on a weighing of the following factors:

"(1) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard,

"(2) the savings in operating costs throughout the estimated average life of the covered products in the type (or class), compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard,

"(3) the total projected amount of energy savings likely to result directly from the imposition of the standard,

"(4) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard,

"(5) the impact of any lessening of competition determined in writing by the Attorney General that is likely to result from the imposition of the standard,

"(6) the need of the Nation to conserve energy, and

"(7) any other factors the Secretary considers relevant.

For purposes of paragraph (5), the Attorney General shall, not later than 60 days after the publication of a proposed rule prescribing an energy efficiency standard, make a determination of the impact, if any, from any lessening of competition likely to result from such standard and transmit such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

"(e)(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any rule prescribing an energy efficiency standard under this section for any period which does not extend beyond the date which is 24 months after the date such rule is prescribed, if the Secretary finds that the annual gross revenues to such manufacturer for the preceding 12-month period from all its operations (including the manufacture and sale of covered products) does not exceed $8,000,000. In making such finding in the case of any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer.

"(2) The Secretary may not exercise the authority granted under paragraph (1) with respect to any type (or class) of covered product subject to an energy efficiency standards established under this section unless he makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition.

"(f)(1) A rule prescribing an energy efficiency standard for a type (or class) of covered products shall specify a level of energy efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary, in his discretion, determines that covered products within such group—

"(A) consume a different kind of energy from that consumed by other covered products within such type (or class), or

"(B) have a capacity or other performance-related feature which other products within such type (or class) do not have, justifying a higher or lower standard from that which applies (or will apply) to other products within such type (or class). In determining under this paragraph whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as he deems appropriate.

"(2) Any rule prescribing a higher or lower level of energy efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

"(g) In prescribing energy efficiency standards under this section, the Secretary shall give priority to the establishment of energy efficiency standards for types of products (or classes thereof) specified in paragraphs (1), (2), (4), (5), (6), (7), (9), (12), and (13) of section 322(a).

"(h)(1) Not later than 5 years after prescribing an energy efficiency standard under this section (and from time to time thereafter), the Secretary shall—

"(A) conduct a reevaluation in order to determine whether such standard should be amended in any manner, and

"(B) make, and publish in the Federal Register, such determination.

In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant, including technological developments with respect to the type (or class) of covered products involved, and the economic impact of the standard.

"(2) If the Secretary determines under paragraph (1) that a standard should be amended, he shall promptly publish a proposed rule incorporating such amendments and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days.

"(i) Any energy efficiency standard shall be prescribed in accordance with the following procedure:

"(1) The Secretary shall (A) publish an advance notice of proposed rulemaking which specifies the type (or class) of covered products to which the rule is likely to apply, and (B) invite interested persons to submit, within 45 days after the date of publication of such advance notice, written presentations of data, views, and arguments relevant to establishing such an energy efficiency standard.

"(2) An advance notice of proposed rulemaking under paragraph (1) shall be published by the Secretary—

"(A) in the case of types of covered products (or classes thereof) of the types specified in paragraphs (1), (2), (4), (5), (6), (7), (9), (12), and (13) of section 322(a), not later than 30 days after a test procedure with respect to that type of covered products (or class thereof) has been prescribed, or 45 days after the date of the enactment of this subparagraph, whichever is later; and

"(B) in the case of types of covered products (or classes thereof) specified in paragraphs (3), (8), (10), and (11), of section 322(a), not later than 30 days after a test procedure with respect to that type (or class) of covered products has been prescribed, or one year after the date of the enactment of this subparagraph, whichever is later.

"(3) A proposed rule which prescribes an energy efficiency standard for a type (or class) of covered products may not be published earlier than 60 days after the date of publication of advance notice of proposed rulemaking for such type (or class). The Secretary shall determine the maximum improvement in energy efficiency that is technologically feasible for each type (or class) of covered products in prescribing such standard and if such standard is not designed to achieve such efficiency, the Secretary shall state in the proposed rule the reasons therefor. After the publication of such proposed rulemaking, the Secretary shall afford interested persons, in accordance with section 336, an opportunity to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

"(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (d)),

"(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible,

"(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate, and

"(D) whether such rule should prescribe a level of energy efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) to be subject to such standard.

"(4) A rule prescribing an energy efficiency standard for a type (or class) of covered products may not be published earlier than 60 days after the date of publication of the proposed rule under this section for such type (or class). Such rule shall be published as soon as practicable after such 60-day period, but in no event later than 2 years after publication of the advance notice. Such rule shall take effect not earlier than 180 days after the date of its publication in the Federal Register. Such rule (or any amendment thereto) shall not apply to any covered products the manufacturer of which was completed before the effective date of the rule or amendment as the case may be.

"(j) An energy efficiency standard prescribed under this section shall include test procedures prescribed in accordance with section 323, and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency specified in such standard.".

SEC. 423. ASSESSMENT OF CIVIL PENALTIES.

Section 333 of the Energy Policy and Conservation Act (42 U.S.C. 6303) is amended by adding at the end thereof the following new subsection:

"(d)(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

"(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

"(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

"(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

"(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have justification to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

"(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

"(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

"(5)(A) Notwithstanding the provisions of title 28, United States Code, or section 502 (c) of the Department of Energy Organization Act, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

"(B) Subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropirate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

"(C) Section 402(d) of the Department of Energy Organization Act shall not apply with respect to the functions of the Secretary under this subsection.

"(6) For purposes of applying the preceding provisions of this subsection in the case of the assessment of a penalty by the Commission for a violation of paragraphs (1) and (2) of section 332, references in such provisions to 'Secretary' and 'Department of Energy' shall be considered to be references to the 'Commission'."

SEC. 424. EFFECT OF STANDARDS ON OTHER LAWS.

(a) INTERIM PREEMPTION.—Section 327(b) of the Energy Policy and Conservation Act (42 U.S.C. 6297(b)) is amended to read as follows:

"(b)(1) If a State regulation is prescribed which an energy efficiency standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered products and which is not superseded by subsection (a)(2) or (b)(2), then any person subject to such regulation may file a petition with the Secretary requesting that the Secretary prescribe a rule under this subsection which supersedes such State regulation in whole or in part. The Secretary, after consideration of the petition, the views of the affected State, and the comments of any interested person, shall issue such requested rule only if the Secretary finds (and publishes such finding) that—

"(A) there is no significant State or local interest sufficient to justify such State regulation; and

"(B) such State regulation unduly burdens interstate commerce.

(2) If a State regulation is prescribed after January 1, 1978, which establishes an energy efficiency standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered products and which is not superseded by subsection (a)(2), then such State regulation is superseded. Nothwithstanding the requirement of the preceding sentence, such State may file a petition with the Secretary requesting a rule that such State regulation is not superseded pursuant to this paragraph. The Secretary, after consideration of the petition and the comments of interested persons, shall prescribe such rule only if he finds there is a significant State or local interest

to justify such State regulation; except that the Secretary may not prescribe such rule if he finds that such State regulation would unduly burden interstate commerce.

"(3) Notwithstanding subsection (a)(2), any State prescribing a State regulation which provides an energy efficiency standard or other requirement respecting energy use or energy efficiency for any type (or class) of covered products for which a Federal energy efficiency standard is applicable may file a petition with the Secretary requesting a rule that such regulation not be superseded. The Secretary, after consideration of the petition and the comments of interested persons, shall prescribe such rule only if he finds (and publishes such finding) that—

"(A) there is a significant State or local interest to justify such State regulation; and

"(B) such State regulation contains a more stringent energy efficiency standard than such Federal standard;

except that the Secretary may not prescribe such rule if he finds that such State regulation would unduly burden interstate commerce.

"(4) The Secretary shall give notice of any petition filed under this subsection and afford interested persons a reasonable opportunity to make written comments thereon. The Secretary, within 6 months after the date any petition is filed, shall deny such petition or prescribe the requested rule, except that the Secretary may publish a notice in the Federal Register extending such period to a date certain. Such notice shall include the reasons for delay. In the case of any denial of a petition under this subsection, the Secretary shall publish in the Federal Register notice of such denial and the reasons for such denial.

"(5) The requirement of paragraph (2) shall not continue in effect after July 1, 1980, in the case of any type (or class) of covered products specified in paragraphs (1) through (13) of section 322(a).".

(b) PREEMPTION OF CERTAIN STATE REGULATIONS.—Paragraph (2) of section 327(a) of such Act (42 U.S.C. 6297(a)) is amended by striking out "similar requirement" and inserting in lieu thereof "other requirement".

SEC. 425. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENT TO SECTION 323(a).—Section 323(a)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6293(a)(3)) is amended—

(1) by striking out "Except as provided in paragraph (6), the" and inserting in lieu thereof "The"; and

(2) by striking out the last sentence thereof.

(b) AMENDMENTS TO SECTION 324(a).—Section 324(a) of such Act (42 U.S.C. 6294(a)) is amended—

(1) in paragraph (1), by striking out "(or class thereof)" and all that follows and inserting in lieu thereof: "(or class thereof), the Commission determines under the second sentence of subsection (b)(5) that labeling in accordance with this section is not technologically or economically feasible."; and

(2) in paragraph (2), by striking out "(or class thereof)" and all that follows and inserting in lieu thereof: "(or class thereof), the Commission determines under the second sentence of subsection (b)(5) that labeling in accordance with this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions.".

(c) AMENDMENTS TO SECTION 324(c).—Section 324(c)(5) of such Act (42 U.S.C. 6294(c)(5)) is amended by inserting "including instructions for the maintenance, use, or repair of the covered product," after "energy consumption," in the matter following subparagraph (C).

(d) AMENDMENTS TO SECTION 326.—(1) Section 326 of such Act (42 U.S.C. 6296) is amended by adding at the end thereof the following:

"(d) For purposes of carrying out this part, the Secretary may require, under authority otherwise available to him under this part or other provisions of law administered by him, each manufacturer of covered products to submit such information or reports of any kind or nature directly to the Secretary with respect to energy efficiency of such covered products, and with respect to the economic impact of any proposed energy efficiency standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy efficiency standards for such products and to insure compliance with the requirements of this part. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as it applies with respect to energy information obtained under section 11 of such Act.".

(2) Section 326(b)(1) of such Act (42 U.S.C. 6296(b)(1)) is amended to read as follows:

"(b)(1) Each manufacturer of a covered product to which a rule under section 324 applies shall notify the Secretary or the Commission—

"(A) not later than 60 days after the date such rule takes effect, of the models in current production (and starting serial numbers of those models) to which such rule applies; and

"(B) prior to commencement of production, of all models subsequently produced (and starting serial numbers of those models) to which such rule applies.".

(3) Paragraph (3) of section 326(b) of such Act (42 U.S.C. 6296(b)(3)) is amended to read as follows:

"(3) When requested—

"(A) by the Secretary for purposes of ascertaining whether a product subject to a standard prescribed under section 325 is in compliance with that standard, or

"(B) by the Commission for purposes of ascertaining whether the information set out on a label of a product, as required under section 324, is accurate,

each manufacturer of such a product shall supply at his expense a reasonable number of such covered products to any laboratory designated by the Secretary or the Commission, as the case may be. Any reasonable charge levied by the laboratory for such testing shall be borne by the United States, if and to the extent provided in appropriation Acts."

(e) AMENDMENTS TO SECTION 333.—(1) Section 333(a) of such Act (42 U.S.C. 6303(a)) is amended by striking out "subsection (b)" and inserting in lieu thereof "subsection (c)".

(2) Section 333(c) of such Act (42 U.S.C. 6303(c)) is amended—

(A) by striking out "section 323(d)(2)" and inserting in lieu thereof "section 323(c)"; and

(B) by striking out the period at the end thereof and inserting in lieu thereof ", except to the extent that such violation is prohibited under the provisions of section 332(a)(1), in which case such provisions shall apply.".

(f) AMENDMENTS TO SECTION 335.—Section 335(a) of such Act (42 U.S.C. 6305(a)) is amended—

(1) by inserting after "or rule," in the last sentence thereof the following: "or order such Federal agency to perform such act or duty,", and

(2) by striking out the parenthetical clauses in paragraphs (1) and (2) thereof.

(g) AMENDMENTS TO SECTION 336.—(1) Section 336(a)(1) of such Act (42 U.S.C. 6306(a)(1) is amended by striking out "(1)", and by striking out "325(a) (1), (2), or (3)" in the first sentence thereof and inserting "325(a)" in lieu thereof.

(2) Section 336(a)(1)(B) of such Act (42 U.S.C. 6306(a)(1)(B)) is amended by striking out "paragraph (1), (2), or (3) of" in the first sentence thereof.

(3) Section 336(a) of such Act (42 U.S.C. 6306(a)) is amended—

(A) by redesignating subparagraphs (A) and (B) and clauses (i) and (ii) of subparagraph (B) as paragraphs (1) and (2) and subparagraphs (A) and (B) of paragraph (2), respectively;

(B) in paragraph (2)(B), as redesignated under subparagraph (A), by striking out "subparagraph (A)" and inserting "paragraph (1)" in lieu thereof; and

(C) in the last sentence thereof, by striking out "paragraph" and inserting "subsection" in lieu thereof.

(4) Sections 336(b) (1) and (2) of such Act (42 U.S.C. 6306(b) (1) and (2) are each amended by striking out "section 323 or 324" and inserting in lieu thereof "section 323, 324, or 325".

(5) Section 336(b) of such Act (42 U.S.C. 6306(b)) is amended by striking out paragraph (5).

(h) AMENDMENT TO SECTION 338.—Section 338 of such Act (42 U.S.C. 6308) is amended by adding at the end thereof the following new sentence: "Each such report shall specify the actions undertaken by the Secretary in carrying out this part during the period covered by such report, and those actions which the Secretary was required to take under this part during such period but which were not taken, together with the reasons therefor.".

SEC. 426. APPROPRIATIONS AUTHORIZATION.

(a) Section 339(a) of the Energy Policy and Conservation Act (42 U.S.C. 6309) is amended—

(1) by striking out "and" at th end of paragraph (2); and

(2) by striking out paragraph (3) and by inserting in lieu thereof the following:

"(3) $3,300,000 for fiscal year 1978; and

"(4) $10,000,000 for fiscal year 1979.

Amounts authorized for such purposes under paragraph (3) shall be in addition to amounts otherwise authorized and appropriated for such purposes.".

(b) Section 339(b) of the Energy Policy and Conservation Act (42 U.S.C. 6309) is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and by inserting in lieu thereof the following "; and"; and

(3) by adding at the end thereof the following:

"(3) $2,000,000 for fiscal year 1979.".

SEC. 427. EFFECTS OF OTHER LAWS ON PROCEDURES.

Section 336 of the Energy Policy and Conservation Act (42 U.S.C. 6306) is amended by adding at the end thereof the following:

"(c)(1) Titles IV and V of the Department of Energy Organization Act (42 U.S.C. 7191 et seq.) shall not apply with respect to the procedures under this part.

"(2) The procedures applicable under this part shall not—

"(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein), or

"(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this part, and declaring that such provision supersedes, in whole or in part, the procedures of this part.".

PART 3—ENERGY EFFICIENCY OF INDUSTRIAL EQUIPMENT

SEC. 441. ENERGY EFFICIENCY OF INDUSTRIAL EQUIPMENT

(a) IN GENERAL.—Title III of the Energy Policy and Conservation Act, relating to improving energy efficiency, is amended by redesignating parts C, D, and E as parts D, E, and F, respectively, and by inserting after part B the following new part:

"PART C—CERTAIN INDUSTRIAL EQUIPMENT

"DEFINITIONS

"SEC. 340. For purposes of this part—

"(1) The term 'covered equipment' means one of the following types of industrial equipment:

"(A) Electric motors and pumps.

"(B) Any other type of industrial equipment which the Secretary classifies as covered equipment under section 341(b).

"(2)(A) The term 'industrial equipment' means any article of equipment referred to in subparagraph (B) of a type—

"(i) which in operation consumes, or is designed to consume, energy;

"(ii) which, to any significant extent, is distributed in commerce for industrial or commercial use; and

(iii) which is not a 'covered product' as defined in section 321(a)(2), other than a component of a covered product with respect to which there is in effect a determination under section 341(c);

without regard to whether such article is in fact distributed in commerce for industrial or commercial use.

"(B) The types of equipment referred to in this subparagraph (in addition to electric motors and pumps) are as follows:

"(i) compressors;
"(ii) fans;
"(iii) blowers;
"(iv) refrigeration equipment;
"(v) air conditioning equipment;
"(vi) electric lights;
"(vii) electrolytic equipment;
"(viii) electric arc equipment;
"(ix) steam boilers;
"(x) ovens;
"(xi) furnaces;
"(xii) kilns;
"(xiii) evaporators; and
"(xiv) dryers.

"(3) The term 'energy efficiency' means the ratio of the useful output of services from an article of industrial equipment to the energy use by such article, determined in accordance with test procedures under section 343.

"(4) The term 'energy use' means the quantity of energy directly consumed by an article of industrial equipment at the point of use, determined in accordance with test procedures established under section 343.

"(5) The term 'manufacturer' means any person who manufactures industrial equipment.

"(6) The term 'label' may include any printed matter determined appropriate by the Secretary.

"(7) The terms 'energy', 'manufacture', 'import', 'importation', 'consumer product', 'distribute in commerce', 'distribution in commerce', and 'commerce' have the same meaning as is given such terms in section 321.

"PURPOSES AND COVERAGE

"SEC. 341. (a) It is the purpose of this part to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation.

"(b) The Secretary may, by rule, include a type of industrial equipment as covered equipment if he determines that to do so is necessary to carry out the purposes of this part.

"(c) The Secretary may, by rule, include as industrial equipment articles which are component parts of consumer products, if he determines that—

"(1) such articles are, to a significant extent, distributed in commerce other than as component parts for consumer products; and

"(2) such articles meet the requirements of section 340(2)(A) (other than clauses (ii) and (iii)).

"STUDY OF ELECTRIC MOTORS AND PUMPS AND OTHER INDUSTRIAL EQUIPMENT

"SEC. 342. (a) Not later than 18 months after the date of the enactment of this section, the Secretary shall—

"(1) evaluate electric motors and pumps to—

"(A) determine standard classifications with respect to size, function, type of energy used, method of manufacture or other factors which may be appropriate for purpose of this part; and

"(B) determine the practicability and effects of requiring all or part of the classes of electric motors and pumps determined under subparagraph (A) to meet performance standards establishing minimum levels of energy efficiency; and

"(2) submit a report to the Congress on the results of such evaluation, together with such recommendations for legislation as he considers appropriate.

"(b)(1) The Secretary may conduct an evaluation of any type of industrial equipment (other than electric motors or pumps) to—

"(A) determine standard classifications with respect to size, function, type of energy used, method of manufacture, or other factors which may be appropriate for purposes of this part; and

"(B) determine the practicability and effects of requiring all or part of the classes determined under subparagraph (A) to meet performance standards establishing minimum levels of energy efficiency.

"(2) After the completion of an evaluation under paragraph (1), the Secretary shall submit to the Congress a report on such evaluation, together with such recommendations for legislation as he considers appropriate.

"(c)(1) In conducting an evaluation under subsection (a) or (b), the Secretary shall, with respect to equipment covered by the evaluation—

"(A) identify significant factors that determine energy efficiency, including hours of operation per year and average power consumption at normal use and at full capacity;

"(B) estimate current and future equipment population profiles;

"(C) estimate the potential for improvements in energy efficiency that in the Secretary's judgment are both technologically feasible and economically justified;

"(D) estimate likely increases or decreases in energy efficiency and total energy savings likely to result from implementation of—

"(i) labeling rules, and

"(ii) energy efficiency standards; and

"(E) examine such other factors as the Secretary determines appropriate.

"(2) Before submitting a report to the Congress under subsection (a) or (b), the Secretary shall—

"(A) make available to interested persons copies of the proposed report, publish in the Federal Register notice of availability of such report, and afford interested persons an opportunity (of not less than 60 days' duration) to present written comments; and

"(B) make such modifications of such report as he may consider appropriate on the basis of such comments.

"(3) Any standard classification of industrial equipment established under subsection (a) or (b) shall—

"(A) define the equipment contained therein; and

"(B) characterize the equipment and its general use.

"TEST PROCEDURES

"SEC. 343. (a)(1) If the Secretary has conducted an evaluation of a class of covered equipment under section 342, he may prescribe test procedures for such class in accordance with the following provisions of this section.

"(2) Test procedures prescribed in accordance with this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct.

"(3) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such equipment during such cycle. The Secretary shall provide information to manufacturers of covered equipment respecting representative average unit costs of energy.

"(b) Before prescribing any final test procedures under this section, the Secretary shall—

"(1) publish proposed test procedures in the Federal Register; and

"(2) afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures.

"(d)(1) The Secretary shall, not later than 3 years after the date of prescribing a test procedure under this section (and from time to time thereafter), conduct a reevaluation of such procedure and, on the basis of such reevaluation, shall determine if such test procedure should be amended. In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant, including technological developments relating to the energy efficiency of the type (or class) of covered equipment involved.

"(2) If the Secretary determines under paragraph (1) that a test procedure should be amended, he shall promptly publish in the Federal Register proposed test procedures incorporating such amendments and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days' duration.

"(d)(1) Effective 180 days after a test procedure rule applicable to any covered equipment is prescribed under this section, no manufacturer, distributor, retailer, or private labeler may make any representation—

"(A) in wrting (including any representation on a label), or

"(B) in any broadcast advertisement,

respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

"(2) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (1) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if he finds that the requirements of paragraph (1) would impose on such petitioner an undue hardship (as determined by the Secretary).

"(e) The Secretary may direct the National Bureau of Standards to provide such assistance as the Secretary deems necessary to carry out his responsibilities under this part, including the development of test procedures.

"LABELING REQUIREMENTS

"SEC. 344. (a) If the Secretary has prescribed test procedures under section 343 for any class of covered equipment, he may prescribe a labeling rule applicable to such class of covered equipment in accordance with the following provisions of this section.

"(b) A labeling rule prescribed in accordance with this section shall require that each article of covered equipment which is in the type (or class) of industrial equipment to which such rule applies, discloses by label, the energy efficiency of such article, determined in accordance with test procedures under section 343. Such rule may also require that such disclosure include the estimated operating costs and energy use, determined in accordance with test procedures under section 343.

"(c) A rule prescribed in accordance with this section may include such requirements as the Secretary determines are likely to assist purchasers in making purchasing decisions, including—

"(1) requirements and directions for display of any label,

"(2) requirements for including on any label, or separately attaching to, or shipping with, the covered equipment, such additional information relating to energy efficiency, energy use, and other measures of energy consumption, including instructions for the maintenance, use, or repair of the covered equipment, as the Secretary determines necessary to provide adequate information to purchasers, and

"(3) requirements that printed matter which is displayed or distributed at the point of sale of such equipment shall disclose such information as may be required under this section to be disclosed on the label of such equipment.

"(d) Before prescribing any labeling rules for a type (or class) of covered equipment, the Secretary shall consult with, and obtain the written views of, the Federal Trade Commission with respect to such rules. The Federal Trade Commission shall promptly provide such written views upon the request of the Secretary.

"(e)(1) Before prescribing any labeling rules under this section, the Secretary shall—

"(A) publish proposed labeling rules in the Federal Register, and

"(B) afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed rules.

"(2) A labeling rule prescribed under this section shall take effect not later than 3 months after the date of prescription of such rule, except that such rules may take effect not later than 6 months after such date of prescription if the Secretary determines that such extension is necessary to allow persons subject to such rules adequate time to come into compliance with such rules.

"(f) The Secretary shall not promulgate labeling rules for any class of industrial equipment unless he has determined that—

"(1) labeling in accordance with this section is technologically and economically feasible with respect to such class;

"(2) significant energy savings will likely result from such labeling; and

"(3) labeling in accordance with this section is likely to assist consumers in making purchasing decisions.

"(g) When requested by the Secretary, any manufacturer of industrial equipment to which a rule under this section applies shall supply at the manufacturer's expense a reasonable number of articles of such covered equipment to any laboratory or testing facility designated by the Secretary, or permit representatives of such laboratory or facility to test such equipment at the site where it is located, for purposes of ascertaining whether the information set out on the label, or otherwise required to be disclosed, as required under this section, is accurate. Any reasonable charge levied by the laboratory or facility for such testing shall be borne by the United States, if and to the extent provided in appropriations Acts.

"(h) A labeling rule under this section shall not apply to any article of covered equipment the manufacture of which was completed before the effective date of such rule.

"(i) Until such time as labeling rules under this section take effect with respect to a type (or class) of covered equipment, this section shall not affect any authority of the Commission under the Federal Trade Commission Act to require labeling with respect to energy consumption of such type (or class) of covered equipment.

"ADMINISTRATION, PENALTIES, AND ENFORCEMENT

"SEC. 345. (a) The provisions of section 326 (a), (b), and (d) and sections 328 through 336 shall apply with respect to this part to the same extent and in the same manner as they apply in part B. In applying such provisions for the purposes of this part—

"(1) references to sections 323 and 324 shall be considered as references to sections 343 and 344, respectively;

"(2) references to 'this part' shall be treated as referring to part C;

"(3) the term 'equipment' shall be substituted for the term 'product'; and

"(4) the term "Secretary" shall be substituted for "Commission" each place it appears (other than in section 333(c)).

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 346. (a) There are hereby authorized to be appropriated to carry out the purposes of this subpart—

"(1) $2,000,000 for fiscal year 1978; and

"(2) $3,000,000 for fiscal year 1979.".

(b) TECHNICAL AMENDMENTS.—The table of contents for the Energy Policy and Conservation Act is amended—

(1) by striking out "PART C", "PART D", and "PART E" in the items relating to parts C, D, and E of title III of such Act and inserting in lieu thereof "PART D", "PART E", and "PART F", respectively, and

(2) by inserting after the item relating to section 339 the following:

"PART C—CERTAIN INDUSTRIAL EQUIPMENT

"Sec. 340. Definitions.
"Sec. 341. Purpose and coverage.
"Sec. 342. Study of electric motors and pumps and other industrial equipment.
"Sec. 343. Test procedures.
"Sec. 344. Labeling requirements.
"Sec. 345. Administration, penalties, and enforcement.
"Sec. 346. Authorization of appropriations.".

PART 4—ENERGY EFFICIENCY BY USE OF RECOVERED MATERIALS

SEC. 461. USE OF RECOVERED MATERIALS.

(a) FINDINGS.—The Congress finds that—

(1) significant amounts of industrial energy and other scarce natural resources are conserved in certain major energy-consuming industries where recovered materials are utilized in their manufacturing operations;

(2) substantial additional volumes of industrial energy and other scarce natural resources will be conserved in future years if such major energy-consuming industries increase to the maximum feasible extent utilization of recovered materials in their manufacturing operations;

(3) millions of tons of recoverable materials which could be used by such industries are needlessly wasted and buried each year at great cost to State and local governments, while technology and methods exist whereby those materials could readily be made available for utilization; and

(4) the recovery and utilization of such recovered materials can substantially reduce the dependence of the United States on foreign natural resources and reduce the growing deficit in its balance of payments.

(b) PURPOSES.—The purposes of this subtitle are to conserve valueable energy and scarce natural resources, promote the national security, and protect the environment by—

(1) directing that targets for increased industrial utilization of recovered materials be established for certain major energy-consuming industries;

(2) creating procedures whereby such industries may cooperate with the Federal Government in the establishment and achievement of such targets; and

(3) providing incentives for increased industrial utilization of energy-saving recovered materials in such major energy-consuming industries.

(c) TARGETS FOR USE OF RECOVERED MATERIALS.—Part E of title III of the Energy Policy and Conservation Act, as redesignated by section 441(b)(2) of this Act, is amended by inserting the following new section after section 374:

"TARGETS FOR USE OF RECOVERED MATERIALS

"SEC. 374A. (a) For purposes of this section, the term 'energy-saving recovered materials' means aluminum, copper, lead, zinc, iron, steel, paper and allied paper products, textiles, and rubber, recovered from solid waste, as defined in the Solid Waste Disposal Act.

"(b) Within one year after the date of the enactment of this section, the Secretary shall set targets for increased utilization of energy-saving recovered materials for each of the following industries; the metals and metal products industries, the paper and allied products industries, the textile mill products industry, and the rubber industry. Such targets—

"(1) shall be based on the best available information,

"(2) shall be established at levels which represent the maximum feasible increase in utilization of energy-saving recovered materials each such industry can achieve progressively by January 1, 1987, and

"(3) shall be published in the Federal Register, together with a statement of the basis and justification for such targets.

"(c) In establishing targets under subsection (b), the Secretary shall consult with the Administrator of the Environmental Protection Agency and with each of the major industries subject to this section, and shall consider—

"(1) the technological and economic ability of each such industry progressively to increase its utilization of energy-saving recovered materials by January 1, 1987, and

"(2) all actions taken or which before such date could be taken by each such industry, or by Federal, State, or local governments to increase that industry's utilization of energy-saving recovered materials.

"(d) Any target established under subsection (b) may be modified if the Secretary—

"(1) determines that such target cannot reasonably be attained, or that it should require greater use of energy-saving recovered materials, and

"(2) publishes such determination in the Federal Register, together with a basis and justification for such modification.

"(e) Within each of the industries subject to this section, the Secretary shall notify each corporation which is a major energy consumer (within the meaning of section 373) of the requirements of this section. Not later than January 1, 1979, the

chief executive officer of each such corporation (or individual designated by such officer) shall include in his report to the Secretary under section 375, or if section 376 (g) applies, prepare and transmit a report which includes, a statement of the volume of energy-saving recovered materials that such corporation is using in each of its manufacturing operations located in the United States and what plans, if any, the corporation has to increase the utilization of such materials in those operations in each of the next ten years. Not later than January 1, 1980, and annually thereafter, each such corporation shall include in such report a statement of the progress it has made to increase its utilization of energy-saving recovered materials to reach targets established under this section by the Secretary for its industry. Such reports shall contain such information as the Secretary determines is necessary to measure progress toward meeting the industry targets established under this section.

"(f) The Secretary shall include in his annual report under section 375(e) a report on the industrial energy and natural resource conservation and recovery program established under this section. Each such report shall include—

"(1) a summary of the progress made toward the achievement of targets set by the Secretary under this section; and

"(2) a summary of the progress made toward meeting such targets since the date of publication of the previous report, if any.".

(d) TECHNICAL AMENDMENTS.—(1) Section 376 of such Act is amended by—

(A) inserting "or 374A" after "section 372" in subsection (b), and

(B) inserting "or any target under section 374A" after "374" in subsections (c) and (f).

(2) The table of contents of such Act is amended by inserting after the item relating to section 374 the following new item:

"374A. Targets for use of recovered materials.".

TITLE V—FEDERAL ENERGY INITIATIVE

PART 1—EXECUTIVE AGENCY CONSERVATION PLANS

SEC. 501. CONSERVATION PLAN AUTHORIZATION.

Section 381 of the Energy Policy and Conservation Act (42 U.S.C. 6361) is amended by adding at the end thereof the following new subsections:

"(d) The plan developed by the President pursuant to subsection (a)(2) shall be applicable to Executive agencies as defined in section 105 of title 5, United States Code, and to the United States Postal Service.

"(e) In addition to funds authorized in any other law, there is authorized to be appropriated to the President for fiscal year 1978 not to exceed $25,000,000, and for fiscal year 1979 not to exceed $50,000,000, to carry out the purposes of subsection (a)(2).".

PART 2—DEMONSTRATION OF SOLAR HEATING AND COOLING IN FEDERAL BUILDING

SEC. 521. DEFINITIONS.

As used in the part—

(1) The term "Federal agency" means—

(A) an Executive agency as defined in section 105 of title 5, United States Code; and

(B) each entity specified in paragraphs (B) through (H) of subsection (1) of section 5721 of title 5, United States Code.

(2) The term "Federal building" means any building or other structure owned in whole or part by the United States or any Federal agency, including any such structure occupied by a Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation.

(3) The term "solar heating" means, with respect to any Federal building, the use of solar energy to meet all or part of the heating needs of such building (including hot water), or all or part of the needs of such building for hot water.

(4) The term "solar heating and cooling" means the use of solar energy to provide all or part of the heating needs of a Federal building (including hot water) and all or part of the cooling needs of such building, or all or part of the needs of such building for hot water.

(5) The term "solar energy equipment" means equipment for solar heating or solar heating and cooling.

(6) The term "Secretary" means the Secretary of Energy.

SEC. 522. FEDERAL SOLAR PROGRAM.

The Secretary, in consultation with the Administrator of the General Services Administration, shall develop and carry out a program to demonstrate the application to buildings of solar heating and solar heating and cooling technology in Federal buildings.

SEC. 523. DUTIES OF SECRETARY.

(a) DUTIES.—In exercising the authority provided by section 522, the Secretary, in consultation with the Administrator of the General Services Administration, shall—

(1) promulgate, by rule

(A) requirements under which Federal agencies shall submit proposals for the installation of solar energy equipment in Federal buildings which are under their control and which are selected in accordance with procedures set forth in such rule, and

(B) criteria by which proposals under subparagraph (A) will be evaluated, which criteria shall provide for the inclusion in each proposal of a complete analysis of the present value, as determined by the Secretary, of the costs and benefits of the proposal to the Federal agency, and for the demonstration, to the maximum extent practicable, of innovative and diverse applications to a variety of types of Federal buildings of solar heating and solar heating and cooling technology, and for location of demonstration projects in areas where a private sector market for solar energy equipment is likely to develop;

(2) evaluate in writing each such proposal pursuant to the criteria promulgated pursuant to paragraph (1)(B), and make such evaluation available to the agency and, upon request, to any person;

(3) provide technical and financial assistance by interagency agreement for implementing a proposal evaluated under paragraph (2) and approved by the Secretary; except that such assistance shall be limited to the design, acquisition, construction, and installation of solar energy equipment;

(4) provide, by rule, that Federal agencies report to the Secretary periodically such information as they acquire respecting maintenance and operation of solar energy equipment for which assistance is provided under paragraph (3);

(5) require that a life cycle cost analysis in accordance with part 3 be done for any Federal building for which a proposal is submitted under this section and the results of such analysis be included in such proposal; and

(6) if solar energy equipment for which assistance is to be provided under paragraph (3) is not the minimum life-cycle cost alternative, require the Federal agency involved to submit a report to the Secretary stating the amount by which the life-cycle cost of such equipment exceeds the minimum life-cycle cost.

(b) CONTENTS OF PROPOSALS.—Proposals under paragraph (1)(A) of subsection (a) shall include a list of the specific Federal buildings proposed to be provided with solar energy equipment, the funds necessary for the acquisition and installation of such equipment, the proposed implementation schedule, maintenance costs, the estimated savings in fossil fuels and electricity, the estimated payback time, and such other information as may be required by the Secretary.

(c) INITIAL SUBMISSION OF PROPOSALS.—Under the requirements established under subsection (a)(1)(A), initial proposals for the installation of solar energy equipment in Federal buildings selected under subsection (a)(1)(A) shall be submitted not later than 180 days after the date of promulgation of the rule under subsection (a)(1).

SEC. 524. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary through fiscal year ending September 30, 1980, to carry out the purposes of this part not to exceed $100,000,000. Funds so appropriated may be transferred by the Secretary to any Federal agency to the extent necessary to carry out the purposes of section 523(a)(3).

PART 3—ENERGY CONSERVATION AND SOLAR ENERGY IN FEDERAL BUILDINGS

SEC. 541. FINDINGS.

The Congress finds that—

(1) there is an urgent need to promote the design, construction, and operation of buildings to conserve and make more efficient use of fuels and energy;

(2) a shift from dependence on nonrenewable to renewable energy sources would have a beneficial effect on the Nation's overall energy supply;

(3) programs for energy conservation in buildings, along with the use of renewable energy sources, would stimulate industries and create new job opportunities for supply and servicing new or improved energy-conserving and energy-supplying systems and equipment;

(4) in the construction or renovation of buildings, the cost of energy consumed over the life of such buildings must be considered as well as the initial cost of such construction or renovation; and

(5) the Federal Government, the largest energy consumer in the United States, should be in the forefront in implementing energy conservation measures and in promoting the use of solar heating and cooling and other renewable energy sources.

SEC. 542. POLICY.

It is the policy of the United States that the Federal Government has the opportunity and responsibility, with the participation of industry, to further develop, demonstrate, and promote the use of energy conservation, solar heating and cooling, and other renewable energy sources in Federal buildings.

SEC. 543. PURPOSE.

It is the purpose of this part to promote—

(1) the use of commonly accepted methods to establish and compare the life cycle costs of operating Federal buildings, and the life cycle fuel and energy requirements of such buildings, with and without special features for energy conservation, and

(2) the use of solar heating and cooling and other renewable energy sources in Federal buildings.

SEC. 544. DEFINITIONS.

For purposes of this part—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "life cycle cost" means the total costs of owning, operating, and maintaining a building over its useful life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems; except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

(3) The term "preliminary energy audit" means a determination of the energy consumption characteristics of an existing Federal building, including the size, type, rate of energy consumption and major energy

using systems of such building and the climate characterizing the region where such building is located.

(4) The term "energy survey" means a procedure to be used in determining energy conservation and cost savings likely to result from appropriate energy conserving maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related fixtures to a Federal building.

(5) The term "Federal building" means any building, structure, or facility which is constructed, renovated or leased or purchased in whole or in part for use by the United States, and which includes a heating system, a cooling system, or both.

(6) The term "construction" means construction and substantial reconstruction or renovation, as determined under rules prescribed by the Secretary.

(7) The term "energy performance target" means a rate of energy consumption which is the minimum practically achievable, taking into account life-cycle cost, by adjusting maintenance and operating procedures, or by modifying a Federal building's equipment or structure, or both.

SEC. 545. ESTABLISHMENT AND USE OF LIFE CYCLE COST METHODS.

(a) ESTABLISHMENT OF LIFE CYCLE COST METHODS.—The Secretary, in consultation with the Director of the Office of Management and Budget, the Director of the National Bureau of Standards, and the Administrator of the General Services Administration, shall—

(1) establish practical and effective methods for estimating and comparing life cycle costs for Federal buildings; and

(2) develop and prescribe the procedures to be followed in applying and implementing the methods so established and in conducting preliminary energy audits required by section 547.

(b) USE OF LIFE CYCLE COSTS.—All new Federal buildings shall be life cycle cost effective as determined in accordance with the methods established under subsection (a). In the design of new Federal buildings, cost evaluation shall be made on the basis of life cycle cost rather than initial cost.

(c) USE IN NON-FEDERAL STRUCTURES.—The Secretary shall make available to the public information on the use of life cycle cost methods in the construction of buildings, structures, and facilities in all segments of the economy.

SEC. 546. ENERGY PERFORMANCE TARGETS FOR FEDERAL BUILDINGS.

The Secretary, in consultation with the Administrator of the General Services Administration, the Director of the National Bureau of Standards, and the Director of the Office of Management and Budget, shall establish and publish energy performance targets for Federal Buildings, and shall take such actions as may be necessary or appropriate to promote to the maximum extent practicable achievement of such targets by Federal buildings. The performance targets established under the preceding sentence shall be compatible with energy conservation performance standards adopted or developed by the Secretary of Housing and Urban Development for buildings.

SEC. 547. ENERGY AUDITS AND RETROFITTING OF EXISTING FEDERAL BUILDINGS.

(a) AUDITS OF BUILDINGS WITH 30,000 OR MORE SQUARE FEET.—As soon as possible after the date of the enactment of this part, each Federal agency shall conduct, to the maximum extent feasible, a preliminary energy audit, of all Federal buildings under its jurisdiction, occupancy, or control which contain 30,000 or more square feet of floor space, and shall furnish the results of such audit to the Secretary. The Secretary shall submit to the Congress a full report on all preliminary energy audits conducted under this subsection no later than August 15, 1979.

(b) AUDITS OF FEDERAL BUILDINGS WITH 1,000 OR MORE BUT LESS THAN 30,000 SQUARE FEET.—As soon as possible after the completion of the preliminary energy audits required under subsection (a) (and concurrently with such audits to the maximum extent feasible in the case of any agency), each Federal agency shall conduct a preliminary energy audit of all Federal buildings under its jurisdiction, occupancy, or control which contain 1,000 or more but less than 30,000 square feet of floor space, and shall furnish the results of such audit to the Secretary. The Secretary shall submit to the Congress a full report on all preliminary energy audits conducted under this subsection no later than August 15, 1980.

(c) RETROFIT OF FEDERAL BUILDINGS.—(1) Each Federal agency shall, in accordance with this subsection, select from each preliminary energy audit conducted by such agency under subsections (a) and (b) appropriate Federal buildings under its jurisdiction, occupancy, or control for retrofit measures to improve their energy efficiency in general and to minimize their life cycle cost. Such measures shall include, without being limited to, energy conservation measures, measures involving solar technology and other renewable energy resources, and any maintenance and operating procedures and particular energy-related modifications determined appropriate by an energy survey. In selecting the measures to be applied, Federal agencies shall give priority to changes in maintenance and operating procedures over measures requiring substantial structural modification or the installation of equipment.

(2) At least 1 percent of the total gross square floor footage contained in all Federal buildings which are under the jurisdiction, occupancy, or control of Federal agencies, and which are included in a preliminary energy audit conducted by such agencies under subsection (a) and (b) shall be retrofitted by such agencies under paragraph (1) pursuant to actions taken or arrangements made by such agencies during the first full fiscal year beginning after the date of the enactment of this part; and an additional percentage of such total gross square footage equal to at least 1 percentage point higher than the percentage applicable under this paragraph in the preceding year shall be so retrofitted pursuant to actions taken or arrangements made during the second and third such fiscal years, with a view to achieving full compliance with paragraph (3) by the time specified therein.

(3) On or before January 1, 1990, all Federal buildings which are under the jurisdiction, occupancy, or control of any Federal agency shall be the subject of such retrofit measures under paragraph (1) as will assure their minimum life cycle costs.

SEC. 548. LEASED FEDERAL BUILDINGS

In leasing buildings for its own use or that of another Federal agency, each Federal agency shall give appropriate preference to buildings which use solar heating and cooling equipment or other renewable energy sources or which otherwise minimize life cycle costs.

SEC. 549. BUDGET TREATMENT OF ENERGY CONSERVING IMPROVEMENTS BY FEDERAL AGENCIES.

Each Federal agency, in the preparation and submission of its requests to the Congress for appropriations, and authorizations for appropriations, for any fiscal year beginning after the date of the enactment of this Act, shall specifically set forth and identify in a separate line item or items—

(1) the funds requested for retrofit measures to be undertaken under this part; and

(2) the portion of any other funds requested which represent to the maximum extent practicable the initial costs of construction or renovation attributable to capital equipment for energy conservation or the utilization of solar energy and other renewable energy sources.

SEC. 550. REPORTS.

Each Federal agency shall periodically furnish the Secretary with full and complete information on its activities under this part, and the Secretary shall annually submit to the Congress a comprehensive report on all activities under this part and on the progress made toward achievement of the objectives of this part.

SEC. 551. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary not to exceed $2,000,000 for the fiscal year ending September 30, 1979, to enable him to perform the analytical and administrative functions vested in him under this part.

PART 4—FEDERAL PHOTOVOLTAIC UTILIZATION

SEC. 561. SHORT TITLE OF PART.

This part may be cited as the "Federal Photovoltaic Utilization Act".

SEC. 562. DEFINITIONS.

For purposes of this part—

(1) The term "Federal facility" means any building, structure, or fixture or part thereof which is owned by the United States or any Federal agency or which is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation.

(2) The term "Secretary" means the Secretary of Energy.

SEC. 563. PHOTOVOLTAIC ENERGY PROGRAM.

There is hereby established a photovoltaic energy commercialization program for the accelerated procurement and installation of photovoltaic solar electric systems for electric production in Federal facilities.

SEC. 564. PURPOSE OF PROGRAM.

The purpose of the program established by section 563 is to—

(1) accelerate the growth of a commercially viable and competitive industry to make photovoltaic solar electric systems available to the general public as an option in order to reduce national consumption of fossil fuel;

(2) reduce fossil fuel costs to the Federal Government;

(3) stimulate the general use within the Federal Government of methods for the minimization of life cycle costs; and

(4) develop performance data on the program established by section 563.

SEC. 565. ACQUISITION OF SYSTEMS.

The program established by section 563 shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability by the Secretary for their use by Federal agencies. The acquisition of photovoltaic solar electric systems shall be at an annual level substantial enough to allow use of low-cost production techniques by suppliers of such systems. The Secretary is authorized to make such acquisitions through the use of multiyear contracts. Authority under this part to enter into acquisition contracts shall be only to the extent as may be provided in advance in appropriation Acts.

SEC. 566. ADMINISTRATION.

The Secretary shall administer the program established under section 563 and shall—

(1) consult the Secretary of Defense to insure that the installation and purchase of photovoltaic solar electric systems pursuant to this part shall not interfere with defense-related activities;

(2) prescribe such rules and regulations as may be appropriate to monitor and assess the

performance and operation of photovoltaic electric systems installed pursuant to this part; and

(3) report annual to the Congress on the status of the program.

SEC. 567. SYSTEM EVALUATION AND PURCHASE PROGRAM.

(a) PROGRAM.—The Secretary shall establish, within 60 days after the date of the enactment of this part, a photovoltaic systems evaluation and purchase program to provide such systems as are required by the Federal agencies to carry out this part. In acquiring photovoltaic solar electric systems under this part, the Secretary shall insure that such systems reflect to the maximum extent practicable the most advanced and reliable technologies and shall schedule purchases in a manner which will stimulate the early development of a permanent low-cost private photovoltaic production capability in the United States, and to stimulate the private sector market for photovoltaic power systems. The Secretary shall, subject to the availability of appropriated funds, procure not more than 30 megawatts of photovoltaic solar electric systems during fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(b) OTHER PROCUREMENT.—Nothing in this part shall preclude any Federal agency from directly procuring a photovoltaic solar electric system (in lieu of obtaining one under the program under subsection (a)), except that any such Federal agency shall consult with the Secretary before procuring such a system.

SEC. 568. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established an advisory committee to assist the Secretary in the establishment and conduct of the programs established under this part.

(b) MEMBERSHIP.—Such committee shall be composed of the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of the National Aeronautics and Space Administration, the Administrator of the General Services Administration, the Secretary of Transportation, the Administrator of the Small Business Administration, the chairman of the Federal Trade Commission, the Postmaster General, and such other persons as the Secretary deems necessary. The Secretary shall appoint such other nongovernmental persons to the extent necessary to assure that the membership of the committee will be fairly balanced in terms of the point of view represented and the functions to be performed by the committee.

(c) TERMINATION.—The advisory committee shall terminate October 1, 1981.

SEC. 569. AUTHORIZATION OF APPROPRIATIONS.

For the purposes of this part, there is authorized to be appropriated to the Secretary not to exceed $98,000,000 for the period beginning October 1, 1978, and ending September 30, 1981.

TITLE VI—ADDITIONAL ENERGY-RELATED MEASURES

PART 1—INDUSTRIAL ENERGY EFFICIENCY REPORTING

SEC. 601. INDUSTRIAL ENERGY EFFICIENCY REPORTING

(a) IDENTIFICATION OF MAJOR ENERGY CONSUMERS.—Section 373 of the Energy Policy and Conservation Act (42 U.S.C. 6343) is amended—

(1) in the first sentence by inserting "(a)" before "Within";

(2) by striking out the second sentence thereof; and

(3) by adding at the end thereof the following new subsection:

"(b) Within 90 days after the date of the enactment of this subsection, the Secretary shall identify each corporation which consumes at least one trillion British thermal units of energy per year and which is within a major energy-consuming industry identified under subsection (a).".

(b) REPORTS.—Section 375 of such Act (42 U.S.C. 6345) is amended to read as follows:

"REPORTS

"SEC. 375. (a) The chief executive officer (or individual designated by such officer) of each corporation which is identified by the Secretary pursuant to section 373 shall report to the Secretary on an annual basis (as determined by the Secretary) on the progress such corporation has made in improving its energy efficiency. Such report shall contain such information as the Secretary determines is necessary to measure progress toward meeting the energy efficiency improvement target set for the industry of which such corporations is a part, except that the Secretary shall not require such report if such corporation is in an industry which has an adequate voluntary reporting program (as defined by section 376(g)).

"(b) Each report to the Secretary under subsection (a) shall include data aggregated to SIC codes from plant reporting forms in a manner to be determined by the Secretary.

"(c) Each plant shall periodically file a plant reporting form with its corporation at the corporation's headquarters within the United States. Each plant reporting form will be retained by the plant's corporation at its headquarters for at least 5 years. Such forms will be made available to the Secretary for verification purposes upon request, but information from forms made so available shall not be released to the public.

"(d) The Secretary shall prepare, publish, and make available for use in complying with the reporting requirements under subsections (a) and (c), forms which shall be designed in such a way as to avoid imposing on any corporation which is required to submit reports under subsection (a) an undue burden with respect to the corporation or any plant of such corporation.

"(e) The Secretary shall prepare and submit to the Congress and to the President, and shall cause to be published, an annual report on the industrial energy efficiency program established under section 372. Each such report shall include—

"(1) a summary of the progress made toward the achievement of the industrial energy efficiency improvement targets set by the Secretary,

"(2) a summary of the progress made toward meeting such industrial energy efficiency improvement targets since the date of publication of the previous such report, if any, and

"(3) recommendations to the Congress as to how additional improvements might be achieved."

(c) DEFINITION OF PLANT.—Section 371 of such Act (42 U.S.C. 6341) is amended by adding after paragraph (4) the following new paragraphs:

"(5) The term 'plant' means an economic unit at a single physical location where industrial processes are performed, as determined by the Secretary, and may be referred to as a factory, a mill, or an establishment.

"(6) The term 'United States' means each of the several States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States."

PART 2—STATE ENERGY CONSERVATION PLANS

SEC. 621. STATE ENERGY CONSERVATION PLANS.

Section 365(f) of the Energy Policy and Conservation Act (42 U.S.C. 6325(d)) is amended—

(1) by striking out "and"; and

(2) by striking out the period and inserting in lieu thereof the following: ", and $50,000,000 for fiscal year 1979.".

SEC. 622. SUPPLEMENTAL STATE ENERGY CONSERVATION PLANS.

Section 367(c) of the Energy Policy and Conservation Act is amended by striking out "$40,000,000 for fiscal year 1979" and inserting lieu thereof "$50,000,000 for fiscal year 1979".

SEC. 623. REPORT ON COORDINATION OF ENERGY CONSERVATION PROGRAMS.

Not later than 6 months after the date of the enactment of this section, the Secretary of Energy shall submit to the Congress a report on the coordination of Federal energy conservation programs involving State and local government.

PART 3—MINORITY ECONOMIC IMPACT

SEC. 641. MINORITY ECONOMIC IMPACT.

(a) ESTABLISHMENT OF OFFICE MINORITY ECONOMIC IMPACT.—Title II of the Department of Energy Organization Act (42 U.S.C. 7131–7139) is amended by adding at the end thereof the following new section:

"OFFICE OF MINORITY ECONOMIC IMPACT

"SEC. 211. (a) There shall be established within the Department an Office of Minority Economic Impact. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) The Director shall have the duty and responsibility to advise the Secretary on the effect of energy policies, regulations, and other actions of the Department and its components on minorities and minority business enterprises and on ways to insure that minorities are afforded an opportunity to participate fully in the energy programs of the Department.

"(c) The Director shall conduct an ongoing research program, with the assistance of the Administrator of the Energy Information Administration, and such other Federal agencies as the Director determines appropriate, to determine the effects (including the socioeconomic and environmental effects) of national energy programs, policies, and regulations of the Department on minorities. In conducting such program, the Director shall, from time to time, develop and recommend to the Secretary policies to assist, where appropriate, such minorities and minority business enterprises concerning such effects. In addition, the Director shall, to the greatest extent practicable—

"(1) determine the average energy consumption and use patterns of minorities relative to other population categories;

"(2) evaluate the percentage of disposable income spent on energy by minorities relative to other population categories; and

"(3) determine how programs, policies, and actions of the Department and its components affect such consumption and use patterns and such income.

"(d) The Director may provide the management and technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying out his functions under this section, the Director may enter into contracts, in accordance with section 646 of this Act and other applicable provisions of law, with any person, including minority educational institutions, minority business enterprises, and organizations the primary purpose of which is to assist the development of minority communities. The management and technical assistance may include—

"(1) a national information clearinghouse which will develop and disseminate information on the aspects of energy programs to minority business enterprises, minority edu-

cational institutions and other appropriate minority organizations;

"(2) market research, planning economic and business analysis, and feasibility studies to identify and define economic opportunities for minorities in energy research, production, conservation, and development;

"(3) technical assistance programs to encourage, promote, and assist minority business enterprises in establishing and expanding energy-related business opportunities which are located in minority communities and that can provide jobs to workers in such communities; and

"(4) programs to assist minority business enterprises in the commercial application of energy-related technologies.

"(e)(1) The Secretary, acting through the Office, may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department and to the extent he considers appropriate. He shall limit the use of financial assistance to providing funds necessary for such enterprises to bid for and obtain contracts or other agreements and shall limit the amount of the financial assistance to any recipient to not more than 75 percent of such costs.

"(2) The Secretary shall determine the rate of interest on loans under this section in consultation with the Secretary of the Treasury.

"(3) The Secretary shall deposit into the Treasury as miscellaneous receipts amounts received in connection with the repayment and satisfaction of such loans.

"(f) As used in this section, the term—

"(1) 'minority' means any individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent; and

"(2) 'minority business enterprise' means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a minority or group of minorities.

"(3) 'minority educational institution' means an educational institution with an enrollment in which a substantial proportion (as determined by the Secretary) of the students are minorities.

"(g) There is authorized to be appropriated to the Secretary to carry out the functions of the Office not to exceed $3,000,000 for fiscal year 1979, not to exceed $5,000,000 for fiscal year 1980, and not to exceed $6,000,000 for fiscal year 1981. Of the amounts so appropriated each fiscal year, not less than 50 percent shall be available for purposes of financial assistance under subsection (e).".

PART 4—CONSERVATION OF NATIONAL COAL RESOURCES

SEC. 661. MAJOR FUEL BURNING STATIONARY SOURCE.

Part A of title I of the Energy Policy and Conservation Act is amended by adding at the end thereof a new section as follows:

"SEC. 107. (a) No Governor of a State may issue any order or rule pursuant to section 125 of the Clean Air Act to any major fuel burning stationary source (or class or category thereof)—

"(1) prohibiting such source from using fuels other than locally or regionally available coal or coal derivatives, or

"(2) requiring such source to enter into a contract (or contracts) for supplies of locally or regionally available coal or coal derivatives.

"(b)(1) The Governor of any State may petition the President to exercise the President's authorities pursuant to section 125 of the Clean Air Act with respect to any major fuel burning stationary source located in such State.

"(2) Any petition under paragraph (1) shall include documentation which could support a finding that significant local or regional economic disruption or unemployment would result from use by such source of—

"(A) coal or coal derivatives other than locally or regionally available coal,

"(B) petroleum products,

"(C) natural gas, or

"(D) any combination of fuels referred to in subparagraphs (A) through (C), to comply with the requirements of a State implementation plan pursuant to section 110 of the Clean Air Act.

"(c) Within 90 days after the submission of a Governor's petition under subsection (b), the President shall either issue an order or rule pursuant to section 125 of the Clean Air Act or deny such petition, stating in writing his reasons for such denial. In making his determination to issue such an order or rule pursuant to this subsection, the President must find that such order or rule would—

"(1) be consistent with section 125 of the Clean Air Act;

"(2) result in no significant increase in the consumption of energy;

"(3) not subject the ultimate consumer to significantly higher energy costs; and

"(4) not violate any contractual relationship between such source and any supplier or transporter of fuel to such source.

"(d) Nothing in subsection (a) or (b) of this section shall affect the authority of the President or the Secretary of the Department of Energy to allocate coal or coal derivatives under any provision of law.

"(e) The term 'major fuel burning stationary source (or class or category thereof)' and 'locally or regionally available coal or coal derivatives' shall have the meanings assigned to them for the purposes of section 125 of the Clean Air Act.".

PART 5—STUDIES

SEC. 681. OFF-HIGHWAY MOTOR VEHICLES

(a) IN GENERAL.—Title III of the Energy Policy and Conservation Act is amended by adding the following new part at the end thereof:

"PART I—OFF-HIGHWAY MOTOR VEHICLES

"OFF-HIGHWAY MOTOR VEHICLE CONSERVATION STUDY

"SEC. 385. Not later than 1 year after the date of the enactment of this section, the Secretary of Transportation shall complete a study of the energy conservation potential of recreational motor vehicles, including, but not limited to, aircraft and motor boats which are designed for recreational use, and shall submit a report to the President and to the Congress containing the results of such study.".

(b) CONFORMING AMENDMENTS.—The table of contents for such Act is amended by inserting after the item relating to part H the following:

"PART I—OFF-HIGHWAY MOTOR VEHICLES

"Sec. 385. Off-Highway motor vehicle conservation study."

SEC. 682. BICYCLE STUDY.

(a) FINDINGS.—The Congress recognizes that bicycles are the most efficient means of transportation, represent a viable commuting alternative to many people, offer mobility at speeds as fast as that of cars in urban areas, provide health benefits through daily exercise, reduce noise and air pollution, are relatively inexpensive, and deserve consideration in a comprehensive national energy plan.

(b) STUDY.—Not more than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall complete a study of the energy conservation of potential bicycle transportation, determine institutional, legal, physical, and personal obstacles to increased bicycle use, establish a target for bicycle use in commuting, and develop a comprehensive program to meet these goals. In developing the program, consideration should be given to educational programs, Federal demonstrations, planning grants, and construction grants. The Secretary of Transportation shall submit a report to the President and to the Congress containing the results of such a study.

SEC. 683. SECOND EFFICIENCY STUDY.

(a) STUDY.—(1) The Secretary of Energy, in consultation with the Director of the National Bureau of Standards and such other agencies as he deems necessary, shall conduct a study of the relevance to energy conservation programs of the use of the concept of energy efficiency as being the ratio of the minimum available work necessary for accomplishing a given task to the available work in the actual fuel used to accomplish that task.

(b) REPORT.—A report on the study under subsection (a) shall be submitted to the Congress within 12 months after the date of enactment of this Act. The programs to be covered by such study include—

(1) energy conservation programs authorized in the Energy Policy and Conservation Act, the Energy Conservation and Production Act, and this Act;

(2) appropriate Federal programs in energy research, development, and demonstration.

(c) CONTRACT PROCEDURE.—Any contract in connection with the study or report under this section shall be made by advertising and shall be in accordance with procedures established under the Federal Property and Administrative Services Act.

PART 6—TECHNICAL AMENDMENTS

SEC. 691. DEFINITION OF ADMINISTRATOR.

(a) IN GENERAL.—Paragraph (1) of section 3 of the Energy Policy and Conservation Act (42 U.S.C. 6202(1)) is amended to read as follows:

"(1) The term 'Secretary' means the Secretary of Energy.".

(b) CONFORMING AMENDMENTS.—(1) Section 527 of such Act (42 U.S.C. 6397) is hereby repealed.

(2) Such Act is amended by striking out "Administrator" and "Administrator's" each place they appear (unless the context indicates a reference other than to the Administrator of the Federal Energy Administration) and inserting in lieu thereof "Secretary" or "Secretary's", respectively.

And the Senate agree to the same.

HENRY M. JACKSON,
J. BENNETT JOHNSTON,
JOHN A. DURKIN,
FLOYD K. HASKELL,
DALE BUMPERS,
H. M. METZENBAUM,
MARK O. HATFIELD,
JAMES A. MCCLURE,
LOWELL P. WEICKER, JR.,
PETE V. DOMENICI,

Managers on the Part of the Senate.

HARLEY O. STAGGERS,
THOMAS L. ASHLEY,
AL ULLMAN,
DICK BOLLING,
THOMAS S. FOLEY,
JOHN D. DINGELL,
PAUL G. ROGERS,
BOB ECKHARDT,
PHILIP R. SHARP,
ANTHONY MOFFETT,
CHARLES WILSON,
HENRY S. REUSS,
DAN ROSTENKOWSKI,
JAMES CORMAN,
C. B. RANGEL,
JOHN B. ANDERSON,
CLARENCE J. BROWN,
GARRY BROWN,
WILLIAM STEIGER,

Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate numbered 3 to the bill (H.R. 5037) for the relief of Jack R. Misner, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment numbered 3 contains the text of S. 2057, as amended by the Senate, the text of S. 701, as passed the Senate, and parts I, II, III, and VII of title I of H.R. 8444, as passed by the House.

The House amendment to the Senate amendment numbered 3 struck out the text of Senate amendment numbered 3 and substituted the text of title I of H.R 8444 as passed by the House.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for both the House amendment and the Senate amendment. The differences between the House amendment, the Senate amendment, and the substitute agreed to in conference are noted below.

TITLE I—GENERAL PROVISIONS

Title I of the conference substitute contains the short title, table of contents, findings and statement of purposes.

TITLE II—RESIDENTIAL ENERGY CONSERVATION

PART 1—UTILITY PROGRAM

SECTION 210. DEFINITIONS

The conference substitute combines the House and Senate provisions on definitions, with the following modifications.

The conferees agreed to define a "residential energy conservation plan" as a plan approved by the Secretary which, in the case of regulated utilities, has been submitted by the Governor or a State agency specifically designated by State law. "Residential building" means, in accordance with the conference agreement, a building used for residential occupancy which contains one but no more than four dwelling units, which is not subject to the final standards of section 304 (a) of the Energy Conservation and Production Act, and has a system for heating or cooling or both. The term "residential" is used with reference to a person's home or dwelling place. For purposes of this part, the final performance standards for new residential buildings under section 304(a) of ECPA shall be deemed to apply to any residential building only when there has been a State certification pursuant to section 305(a)(1) or a determination as set forth in section 305(a) (2) and (3). A "State" means a State, the District of Columbia, and Puerto Rico. The term "Secretary" of the Department of Energy was substituted for the term "Administrator". Of the remaining terms defined differently in the House and Senate versions, the House definitions of "residential energy conservation measure" and "suggested measures" and the Senate definition of "residential customer" are adopted in the conference substitute. The term, solar energy or windpower devices, is intended to have the same meaning as the term, solar energy system, in section 241 of this Title, except for the criteria and standards, if any, to which such solar energy systems must conform under section 241. Instead, solar energy or windpower devices must conform to the standards which the Secretary of Energy, after consultation with the Secretary of Housing and Urban Development and others, determines necessary under the authority contained in section 212 of this Title. As far as practicable, the conferees intend that any standards issued under the authority contained in section 212 for solar energy or windpower devices shall be consistent with the standards prescribed for solar energy systems pursuant to the authority contained in section 241 of this Title.

The House definition of "public utility" has been modified to clarify the intention that only utilities which have residential customer's are within the scope of the defined term.

With respect to the definition of the term "load management technique", the conferees intend that the words in the definition "to reduce maximum kilowatt demand on the electric utility" be interpreted broadly to include reductions in any high demand point in the utility's demand, and not be interpreted narrowly as applying only to the reduction of demand at the utility's one peak demand period, either daily, or seasonal, or otherwise.

In including devices associated with load management techniques on the list of energy conservation measures to be offered to residential customers under this part, the conferees do not intend to imply a requirement in this legislation that the rate schedule of any utility must be restructured so as to provide incentives for the use of these devices or that this inclusion affects existing State authority with respect to utility rates for electric or natural gas service under applicable State law.

The conference agreement with respect to the definition of residential energy conservation measures requires that certain measures be warranted by the manufacturer to meet a specified level of performance. There is, of course, a considerable body of Federal and State law which governs manufacturers' warranties. Some of these laws applicable to manufacturers' warranties may operate so as to prevent the manufacturer from offering a specified level of performance for a duration of at least three years. The conferees intend that these laws or portions thereof, will be superseded only to the extent necessary to make them consistent with this Part. Therefore, any right, remedy, or other requirement in Federal or State law would still apply, unless such right, remedy or requirement was inconsistent with the requirements of section 210(11). For example, section 111(d) of the Magnuson-Moss Warranty Act renders the warranty requirements of that statute inapplicable to any written warranty "the making or content of which is otherwise governed by Federal law".[1] Nothing in the Magnuson-Moss Warranty Act is inconsistent with a requirement that manufacturers offer a specified level of performance for not less than 3 years. Hence, the Act and the Commission's rules under that Act would continue to apply.

In adopting the House provision requiring a specified level of performance, the conferees note that the term "specified level of performance" was construed in committee as being a manufacturer's stated minimum product useful life. It is not intended to require manufacturers to state a level of product efficiency although he is not precluded from doing so. The conferees intend that the specified level of performance for at least three years is necessary in order for a residential energy conservation measure to be placed on, and remain on the list of suggested measures under section 212(b)(1).

The conferees do not intend that this provision gives the Secretary any authority to enforce such warranties against manufacturers.

Finally, it should be emphasized that the manufacturer is free to offer any warranty he desires, consistent with applicable State and Federal law, as long as it specifies a minimum useful life for the product of not less than 3 years.

SECTION 211. COVERAGE

The conference substitute adopts the provisions of the Senate bill specifying coverage. The conferees included a provision requiring the Secretary to publish a list of utilities covered by this part prior to the beginning of each calendar year. State regulatory authorities are required to promptly notify the Secretary which of these utilities they regulate. It should be stressed that the list is informational and for the convenience of the public, but it is not intended in any way to affect the legal obligations of any utility with regard to compliance by any utility with the provisions of this part if its sales in fact exceed the amounts specified in subsection (a), even though it was not included on the list.

SECTION 212. RULES OF THE SECRETARY FOR SUBMISSION AND APPROVAL OF PLANS

(a) *Promulgation of rules by the Secretary*

The conference substitute combines the House and Senate provisions, and shortens the time period for publication of an advanced notice of proposed rulemaking to 45 days after enactment.

(b) *Content of the Secretary's rules*

The conferees agreed to combine the House and Senate versions specifying the content of the rules promulgated under section 212 (a). The conferees intend that the term "fair and reasonable prices and rates of interest" be interpreted as a ceiling, but not as a floor, for such prices and rates of interest. The conferees understand that the concept of a fair and reasonable rate of interest may encompass interest rates below those prevailing for other kinds of loans, and in certain instances, subject to the other constraints of this part, may include a zero rate of interest. The conferees also intend that such prices and rates of interest conform to applicable State laws and regulations.

The Secretary's consultation with the Federal Trade Commission in the development of standards concerning unfair, deceptive or anticompetitive acts or practices affecting commerce is expected by the conferees to be substantial. The conferees recognize that the primary responsibility and expertise concerning consumer protection at the Federal level is with the Commission. The Department of Energy is expected to utilize the Commission's expertise in developing and administering the rules.

The conferees agreed to a requirement similar to the Senate provision that the rules must include standards requiring the lists of suppliers, contractors and lending institutions to be prepared in a fair, open, and nondiscriminatory manner and assuring any person who alleges any injury resulting from a violation of the requirements of such standards the right to redress under procedures established by the Governor. The conferees intend that such procedures concerning redress established by the Governor will apply to nonregulated utilities and home heating suppliers, whether or not included in the plan submitted by the Governor.

One example of the rules which the conferes expect to be promulgated under this authority is the guidelines for procedures for suppliers, contractors, and lending institutions to be placed on lists which are made public and provided to residential customers. The conferees intend that the suppliers and contractors be required, for example, to use materials which meet any applicable Federal or State standards, and to agree to provide a minimum warranty that installation is done in a workmanlike manner. The conferees also expect the Secretary to establish guidelines for due process procedures for removing any supplier, contractor or lender who fails to comply, from the list. The Governor would

[1] Section 102(c) of the Magnuson-Moss Warranty Act is parenthetically preserved by section 111(d) of that Act and will apply to a residential energy conservation measure warranted pursuant to this Act. Section 102(c) contains the anti-tie-in provisions of the Magnuson-Moss Warranty Act.

be responsible for implementing the standards and procedures contained in these guidelines.

The conferees intend that the activities of the Secretary with respect to standards for general safety and effectiveness of residential energy conservation measures be limited to those necessary to establish a minimum level for the general safety and effectiveness of any such measure. Such standards are only for purposes of this part and not for other purposes. The authority granted in this section should not be interpreted as requiring the Secretary to establish comprehensive Federal standards for any specific energy conservation measure. If existing standards adequately address the general safety and effectiveness of any such measure, or if such standards are determined by the Secretary to be unnecessary, the Secretary need not include such standards in his rules under this section. The conferees believe that flexibility is required to permit the Secretary to establish an effective program for the Nation's public utilities. The conferees emphasize their intention that the Secretary proceed cautiously in establishing specificity in rules with respect to the standards to be met by measures offered under this program. If standards are promulgated, representatives of the manufacturers and vendors of these measures and the public should be consulted to the maximum extent practicable. Detailed specific and prevasive rules with respect to any measure should be avoided. The conferees recognize that the Consumer Product Safety Commission is the Federal agency with the principal authority and responsibility for establishing safety standards for consumer products. The conference substitute directs the Secretary to consult with the Consumer Product Safety Commission, as well as other Federal agencies, in promulgating these rules. The conferees also expect the Consumer Product Safety Commission to exercise its authority to the maximum extent feasible.

(c) *Procedure for submission and approval of State residential energy conservation plans*

The conference substitute adopts the House version with an amendment providing that the Governor of each State or any State agency specifically authorized to do so under State law may submit a proposed plan for regulated utilities within such State. Each nonregulated utility is required to submit its own plan unless the Governor exercises his discretion to cover nonregulated utilities (but not Federal power marketing agencies) in the State plan. In permitting the Governor to include nonregulated utilities in the State plan, the conferees do not intend to imply that the Governor may regulate nonregulated utilities. The only purpose here is to achieve a unified effort at the State level.

The House version was further modified to provide the Governor with discretion to submit a plan applicable to home heating suppliers in the State.

The language in this subsection relating to TVA is intended to provide that for the purpose of this section the TVA is to have the authority of a State Governor with respect to utilities for which it has ratemaking authority, including utilities which may also be subject to State authority as well as the TVA authority.

The conferees expect that the plan requirements for a utility program developed by any State for a utility which is also subject to the jurisdiction of another State or States should be developed in coordination with the plan of the other State or States.

SECTION 213. REQUIREMENTS FOR STATE RESIDENTIAL ENERGY CONSERVATION PLANS FOR REGULATED UTILITIES

The conference substitute combines the House and Senate provisions concerning plan requirements It provides that enforcement of the State plan is a State responsibility. Therefore, State plans should contain adequate enforcement procedures before being approved by the Secretary.

The conferees also intend that the State procedures for resolving complaints against persons who sell or install residential energy conservation measures provide for the fair and expeditious settlement of consumer complaints without necessarily requiring formal hearing procedures.

The measures must contain provisions to assure that a utility will not inspect any furnace, install any replacement furnace, or make, install or inspect any furnace modification in the case of a furnace which uses as its primary source of energy any fuel or source of energy other than that sold by the utility. The conferees agreed that this prohibition could be waived by a residential customer who requests in writing such inspection, installation, or modification. The conferees intend that the compliance with this provision by public utilities be carefully scrutinized by the Federal Trade Commission and the Department of Justice under their authority to prevent unfair methods of competition. The Commission is also expected to use its authority to prevent unfair or deceptive acts or practices by public utilities. The Congressional committees with oversight responsibility intend to carefully examine utility compliance.

In connection with the applicable procedures in the State plan, the Governor shall identify in the plan, the person or agency responsible for developing lists of approved suppliers, lenders, and installers, and for implementing delisting procedures. The person or agency so designated shall not be a regulated utility. In general, the conferees understand that the procedures and requirements contained in the State plans will vary from State to State but intend that they be consistent with the Federal standards set forth pursuant to section 212.

The conferees expect that existing State procedures for redress may suffice for purposes of section 213(c).

SECTION 214. PLAN REQUIREMENTS FOR NONREGULATED UTILITIES AND HOME HEATING SUPPLIERS

The conferees agreed to combine the provisions in the House and Senate bills containing the requirements for plans for nonregulated utilities.

Section 214(b) contains the requirements for plans for home heating suppliers. The conferees agreed to modify the Senate language by providing that any residential energy conservation plan proposed for home heating suppliers must take into account the resources of small home heating suppliers in order to obtain approval by the Secretary.

SECTION 215. UTILITY PROGRAMS

The conferees agreed to adopt a substitute concerning the utility program provisions which contains elements of both the House and Senate provisions.

(a) *Information requirements*

Section 215(a) combines the requirements for information to residential customers from the House and Senate bills. The conferees believe that a public utility or home heating supplier implementing a program should have a minimum of six months after approval of the State plan under Section 212 before being required to send the information specified in section 215(a) to its residential customers.

The conferees also recognize that the time period for promulgation of rules by the Secretary and for the submission and approval of State residential energy conservation plans under section 212 is approximately 18 months from date of enactment. The conferees believe that carefully considered rules and State plans are essential to the successful implementation of these utility programs. For this reason the time period in the House and Senate versions was not shortened and may, in certain instances, be extended for good cause shown. In order to avoid a potential problem for the utilities, the conference substitute specifies that if the approval of the applicable plan under section 212 occurs after July 1, 1979, such public utility or home heating supplier will have 6 months after that later approval date before being required to send the specified information to its residential customers. Nevertheless, the conferees expect the Secretary of Energy, the States, and utilities who are participating in a program to undertake and complete their responsibilities as soon as possible after enactment.

(b) *Project manager requirements*

Section 215(b) as agreed to by the conferees contains the project manager requirements for utility programs. The substitute combines provisions from the House and Senate bills. The project manager requirements include an offer by the utility to each customer to inspect the residential building to determine and inform the customer of the estimated cost of purchasing and installing the suggested measures and the savings in energy costs likely to result from such installation. The utility should be capable of providing the customer with information about all of the suggested measures; however, the utility may provide such information to individual customers as they request. The conferees assume that routine service checkups by utilities would not qualify as inspections under a utility program.

The conferees assume further that the utility which arranges for a lender to make a loan to, or a contractor to perform work for, a residential customer, should not be held liable, by virtue of its role as project manager, in any cause of action between the customer and the lender or contractor.

The conferees also agreed that the requirement to provide the lists of approved suppliers, contractors and lenders to each of the utility's residential customers does not require the mailing of these lists. However, the conferees intend that the lists should be provided to customers in a timely and convenient manner. The purpose of this provision is to provide the customer with these lists in advance of making an agreement for financing or installation to enable the customer to choose a contractor or a lender in an informed manner. To accomplish this purpose, the lists can, for example, be made available to a customer at the time of the inspection of the building or in response to a customer's request.

(c) *Requirements concerning accounting and payment of costs*

The conferees agreed to a modification of the House requirements concerning accounting and payment of costs in section 215(c). All amounts expended by a public utility for providing information under section 215(a) are treated as a current expense of providing utility service and are charged to all customers of such utility in the same manner as current operating expenses of providing utility service. Amounts expended by a utility for labor and materials in connection with the purchase or installation of conservation measures, shall be charged to the residential customer for whom the installation is made. The conferees agreed that the State regulatory authority should have the discretion to decide whether the amounts expended by a regulated utility to carry out the project manager requirements of section 215(b) will be (1) treated as a current expense of providing utility service and charged to all customers of such utility in the same manner as current operating expenses of providing such utility service, or (2) charged to the

customer for whom the activity is performed. Nonregulated utilities could also choose between these options with respect to those costs. The conferees agreed that this decision should be left to the sole discretion of the State regulatory authority or nonregulated utility, operating under any applicable provision of State law and do not indicate preference for either method of treatment for these activities.

With respect to other costs (including the interest cost on a loan made by a utility to a residential customer) associated with any activity under a utility program, the conference agreement provides that the full amount of such costs shall be charged to the person for whom the activity is performed unless (and only to the extent that) the State regulatory authority (or nonregulated utility) finds after public notice and opportunity for a hearing that the expense of these costs is likely to result in lower rates for all the ratepayers. Such lower rates occurring as a result of the installation of energy conservation measures must be likely to result in lower future demand for energy than might have occurred without installation of such measure. Such lower rates must result from a reduction in demand the utility's need to purchase additional energy or capacity at costs which result in rates above the existing rates. The conferees thus permit the cross subsidization of the costs of a utility program at the discretion of the State regulatory authority (or nonregulated utility) when it can be determined that such cross subsidization will actually benefit each ratepayer of a utility, including those who have installed energy conservation measures prior to enactment and those who do not implement any of the suggested measures under the program. Again, the conferees do not indicate preference for either method of treatment for these activities.

In no event, however, may any of the costs incurred under a utility program be included in the rate base which determines the permissible profit to the utility's stockholders.

(d) Requirements respecting new customers

Section 215(d) adopts the House provision on requirements respecting new customers.

(e) Termination of service

Section 215(e) is based on language in the House and Senate versions relating to termination of service. The definition of the term default in this provision is intended to be determined by otherwise applicable State or Federal laws.

(f) Loans

Section 215(f) contains the provisions on loans for the purchase and installation of residential energy conservation measures, and reflects the conferees' decision to combine the provisions in the House and Senate amendments.

Concerning the loan provisions, the conferees agreed that a utility must offer a residential customer the opportunity to repay the principal and interest of a loan obtained from any lender for the purchase and installation of any residential energy conservation measures as a part of such customer's periodic bill. However, if a residential customer defaults in such payments, the conferees intend that the utility not be required to be involved in the collection process. The matter of collection should be referred to the lending institution which originally provided the loan to the customer. In the case of any loan made under the provisions of section 216 whereby a utility itself may be permitted to make a loan to a customer, the utility would, in that instance, be able to collect a lump-sum payment of outstanding principal and interest upon default in payment by a residential customer. In no case, however, is any utility permitted to terminate utility service upon failure to collect such outstanding principal and interest of a loan.

The conferees also intended that a lending institution, which is not a utility and which makes a loan to a residential customer for the purchase and installation of any residential energy conservation measure, cannot require such customer to use the services of a utility's periodic billing statements for repayment of such loan. The purpose of the provision in the conference substitute is to require the utility to offer a repayment service to the customer, but to leave the customer free to choose whether or not to make use of the service. If a lending institution, not a utility, is making the loan, by not using the utility billing for repayment, the customer may avoid an additional service charge which could be imposed by the utility providing the repayment service. Moreover, a lending institution can inform a customer that any loan made by that institution must be repaid directly to it.

SECTION 216. (a) SUPPLY, INSTALLATION, AND FINANCING BY PUBLIC UTILITIES

The conferees agreed to adopt the Senate version prohibiting supply, installation and financing activities by utilities with the following modifications.

First, under section 216(b), the prohibition on supply and installation does not apply to furnace efficiency modifications, including replacement burners, devices for modifying flue openings, and electrical or mechanical furnace ignition systems which replace standing gas pilot lights; clock thermostats; and load management techniques associated with the type of energy sold by the utility.

Second, under section 216(c) the prohibition on public utility lending does not apply to any loan to a residential customer which does not exceed the greater of (1) $300, or (2) the cost of purchase, and installation in such customer's residence, of furnace efficiency modifications, clock thermostats, and load management techniques, as specified in section 216(b). The conferees intend that this exemption from the prohibition on public utility financing permit a utility, subject to applicable State laws, to make small loans, not to exceed $300, to residential customers for the purchase or installation of any residential energy conservation measure. If a residential customer is purchasing and installing one or more of the three residential energy conservation measures specified in section 216(b), a utility can make a loan to such customer for more than $300, if the cost of the specified measure or measures is greater than that amount.

These provisions generally follow those in the Senate bill.

If a law or regulation referred to in subsection (d)(3) permits or requires supply, installation, or financing with respect to certain residential energy conservation measures by a utility and contemplates the addition of other measures to that utility's program under such law or regulation, the conferees intend for the added measures to be included within the scope of the exemption of subsection (d)(3).

The conferees agreed to retain the Senate provision under which the Secretary has discretionary authority to grant a waiver from the prohibitions contained in section 216(a).

Section 216(f), based on language in the Senate bill, makes it clear that any public utility carrying out supply, installation or lending activities as permitted under section 216(b), (c), (d)(2) or (e), is subject to all the requirements of section 215 for utility programs. A public utility which is continuing activities as provided in subsection (d)(1) is required, within such reasonable period as may be prescribed by the Secretary, to be subject to all the requirements of section 215. The conferees assume that, at the time the section 215 requirements become applicable, they would have prospective application only and that the affected utilities would not be required or expected to renegotiate any existing loans or contracts entered into with residential customers with respect to the exempted activities, in order to meet the requirements of section 215.

Section 216(f) also provides that utilities required or permitted by other laws to carry out supply, installations, or lending activities, as described in subsection 216(d)(3), shall not be subject to the utility program requirements of section 215 with respect to those exempt activities. This section does not, however, exempt such utilities from other applicable provisions of this part, in particular the requirements which may be contained in State plans under section 213.

The conferees recognize that because subsection (f) will exempt certain activities from section 215, it will be necessary to coordinate the parts of the utility program which are subject to section 215 with the exempt activities. It is expected that, in the case of extensive programs which are within the exemption, the application of the requirements of section 215 (a) and (b) will not result in duplication or inconsistency since the section 215 requirements will be relatively minimal in this case and readily integrated into the existing exempt program.

Section 216(g), a modified provision from the House bill, authorizes the Secretary to prohibit any public utility from financing, supplying or installing any residential energy conservation measure if the Secretary finds at any time after date of enactment that these activities are anticompetitive or that the terms or interest rates connected with the activities are unreasonable.

The conferees understand that a Secretarial prohibition pursuant to section 216(g) would supersede any exemptions contained in section 216.

Section 216(h), taken from the House bill, provides for enforcement of the prohibitions contained in this section.

SECTION 217. HOME HEATING SUPPLIER PROGRAMS

The conferees agreed to incorporate the provisions in the Senate amendment on home heating supplier programs with modifications. Once the Governor has determined in his discretion, that his proposed State residential energy conservation plan will include a plan for home heating supplier programs, this section requires such programs to include items similar to those procedures required for utility programs. Under section 217(b) the Governor may waive any requirement of this section for an individual home heating supplier, or a class of suppliers, which demonstrates inability to comply with the requirement.

The conferees intend that participating home heating suppliers use the same lists of approved suppliers and installers of residential energy conservation measures and lenders as will be used by the utilities in the same service area. Similarly, participating home heating suppliers should inform their customers about all the suggested measures, using information provided pursuant to the State plan for both utilities and home heating suppliers. The conferees do not intend, however, that home heating suppliers, many of whom operate small businesses, be required to offer to install all the suggested measures or to conduct a comprehensive audit. Home heating suppliers, subject to the Governor's discretion, should be free to choose among the suggested measures they must offer to supply and install. However, the information requirements for a participating home heating supplier under section 217(a)(1) should be no less comprehensive than the requirements for utilities serving the same area.

SECTION 218. TEMPORARY PROGRAMS

The conferees agreed to combine the House provisions on temporary programs and those in the Senate version on alternative programs in section 218. The conference substi-

tute modifies those provisions by stating that the Governor of any State on behalf of one or more utilities or a public utility (supported by the Governor in the case of a regulated utility) may apply for a temporary exemption from the requirements of sections 215 and 216(a) in whole or in part, no later than 180 days after the promulgation of rules pursuant to section 212. The period of the exemption shall not exceed 3 years and is not renewable.

Second, the Secretary has 90 days from receipt of an application for an exemption to approve or disapprove it; the Secretary is allowed such longer period of time as he may require in the case of any particular application.

Third, the Secretary is not to exercise the Federal standby authority, pursuant to sections 219(a) or (b) to promulgate a plan which meets the requirements of section 212, for any public utility which is covered by a temporary exemption approved by the Secretary pursuant to this section. After the termination of a temporary exemption, the conferees expect that the Secretary will allow a reasonable period of time for the State or nonregulated utility to have a plan applicable to any utility previously covered by such temporary exemption approved under section 212(c). If the State or nonregulated utility fails to have a plan approved within the time period allowed by the Secretary, or if an approved plan is not being adequately implemented, the Secretary is authorized to exercise the Federal standby authority pursuant to section 219 (a) or (b) to promulgate a plan which meets the requirements of section 212.

SECTION 219. FEDERAL STANDBY AUTHORITY

The conferees agreed to adopt the House version for the Federal standby authority for State regulated utilities and for nonregulated utilities, as well as the House provisions concerning failure to comply with orders, and the amount of the civil penalty for violations.

The House bill established procedures for the assessment of such penalties. The Senate bill contained no such procedures.

The conference substitute modifies the House language on procedures. Under the provision, the Secretary of Energy shall issue notices of proposed assessments of civil penalties. The notice will inform the alleged violator that he can elect to have the assessment made after an administrative proceeding and judicial review thereof or after a de novo proceeding in a district court. The election may not be revoked.

This procedure is the same as that adopted in the Powerplant and Industrial Fuel Use Act.

It should be emphasized that although the language of section 219(d) says that "the court shall have authority to review de novo the law and the fact involved, . . ." the conferees fully intend that the party electing the de novo review procedure is entitled to such a review, and the scope of review used by the district court under this provision shall be no other than a de novo review of the facts and issues pleaded.

Of course, at any time the penalty is paid or compromised there is no need to proceed further. If the civil penalty is not paid after it has become a final and unappealable order or a final judgment under the above procedures, then a collection action may be instituted in the appropriate U.S. District Court. In the collection action, the District Court may not review the validity or appropriateness of the final and unappealable order or the final judgment, as the case may be.

SECTION 220. RELATIONSHIP TO OTHER LAWS

The conferees agreed to a substitute which combines the House and Senate provisions, deletes a House provision relating to the Public Utility Holding Company Act of 1935, and adds a provision relating to State and Federal warranty laws.

SECTION 221. RULES

The conferees agreed to incorporate the House version authorizing the Secretary to promulgate such rules as he determines may be necessary to carry out this part.

SECTION 222. PRODUCT STANDARDS

The conference substitute contains the provisions on product standards which were identical in the House and Senate versions.

SECTION 223. AUTHORIZATION OF APPROPRIATIONS

The conferees agreed to adopt the House version providing an authorization of appropriations in the amount of $5 million to the Secretary for each of the fiscal years 1979, 1980, and 1981.

SECTION 224. REPORT ON ENERGY CONSERVATION IN APARTMENT BUILDINGS

The conferees agreed to adopt the Senate amendment with technical modifications.

SECTION 225. FEDERAL TRADE COMMISSION STUDY AND REPORT

The conferees agreed to a substitute provision requiring the Federal Trade Commission to study and submit a report to Congress and the President on the activities of public utilities and home heating suppliers under this part.

PART 2—WEATHERIZATION GRANTS FOR THE BENEFIT OF LOW-INCOME FAMILIES

SECTION 231. DEPARTMENT OF ENERGY WEATHERIZATION GRANT PROGRAM

The conference report contains the House provision.

SECTION 232. FARMERS HOME ADMINISTRATION WEATHERIZATION GRANT PROGRAM

The conference report contains the House provision.

SECTION 233. AVAILABILITY OF LABOR

The conference report contains the Senate provision.

PART 3—SECONDARY FINANCING AND LOAN INSURANCE FOR ENERGY CONSERVING IMPROVEMENTS AND SOLAR ENERGY SYSTEMS

SECTION 241. LOAN INSURANCE FOR ENERGY CONSERVING IMPROVEMENTS AND SOLAR ENERGY SYSTEMS UNDER TITLE I OF THE NATIONAL HOUSING ACT

The conference report includes the definition of energy conserving improvements contained in the House provision and the definition of solar energy systems contained in the Senate provision, amended to include systems using wind energy to reduce the energy requirements of a structure.

SECTION 242. PURCHASE BY GOVERNMENT NATIONAL MORTGAGE ASSOCIATION OF LOANS TO LOW- AND MODERATE-INCOME FAMILIES FOR ENERGY CONSERVING IMPROVEMENTS

The conference report contains the House provision with amendments defining a low- and moderate-income family as one whose income does not exceed 100 percent of median for the area, establishing the maximum loan amount at $2,500 and authorizing a total of $3 billion of purchases and commitments to be outstanding at any one time. The conferees intend that this program be used to insulate primary residences, not vacation homes.

SECTION 243. STANDBY AUTHORITY OF GOVERNMENT NATIONAL MORTGAGE ASSOCIATION TO PURCHASE LOANS FOR ENERGY CONSERVING IMPROVEMENTS

The conference agreement contains the House provision amended to authorize no more than $2 billion to be outstanding at any one time and to require the Secretary of HUD to direct GNMA to begin the program whenever the Secretary finds that insufficient credit is available on a national basis to finance the purchase and installation of energy measures to the extent necessary to advance the achievement of a national program of energy conservation in residential dwelling units. The conferees expect that the Secretary of HUD will consult with the Secretary of Energy to determine what progress has been made toward achieving the national energy conservation goal and whether instituting this program would be necessary to assist in reaching that goal. The determination of whether adequate credit is available is not to be a complex one—simply whether a sufficient amount of credit is available generally on a national basis in order to assist in achieving the national energy conservation goal.

The conferees also intend this program be used to insulate primary residences, not vacation homes.

SECTION 244. PURCHASE BY GOVERNMENT NATIONAL MORTGAGE ASSOCIATION OF LOANS FOR SOLAR ENERGY SYSTEMS

The House recedes to the Senate with an amendment which replaces the direct loan program proposed by the Senate with a secondary market provision. The Secretary of HUD is to direct GNMA to purchase and sell loans and advances of credit which are insured under Title I of the National Housing Act and which are made for the purpose of purchasing and installing solar energy systems in 1–4 family dwelling units. The maximum loan amount is $8,000, the repayment term cannot exceed 15 years, no penalty may be charged for repayment, security must be acceptable to the Secretary and the interest rate will be established by the Secretary of HUD (after consulting with the Secretary of Energy) at a rate which is not less than the Treasury borrowing rate for outstanding interest bearing obligations of the United States of comparable maturities and not more than the maximum Title I rate, plus an allowance for administrative costs. All loans will be purchased with recourse to the lender and only solar systems purchased and installed after the date of enactment are eligible. These transactions are exempt from state or local usury laws. GNMA is authorized to sell the loans and advances of credit, which are purchased under this section, at prices GNMA determines will help make the program fully self-supporting. If after one year, fifty percent of the amount available for that year for financing the program has not been used, the Secretary shall reduce the interest rate to the lowest rate authorized by the program, unless the Secretary finds that the interest rate is not the primary impediment to carrying out the program and that lowering the interest rate will not increase the utilization of the funds made available by the program. As approved in appropriation acts, $100 million of purchases and commitments are authorized to be outstanding at any one time. The authority to purchase loans and advances expires five years after enactment.

SECTION 245 AND 246. SECONDARY FINANCING BY THE FEDERAL HOME LOAN MORTGAGE CORPORATION AND THE FEDERAL NATIONAL MORTGAGE ASSOCIATION OF SOLAR ENERGY AND ENERGY CONSERVING IMPROVEMENT LOANS

The conference report contains the House provision.

Study Regarding Actuarially Sound Interest Rate of Energy Conserving Improvements

The conference report does not include this provision.

SECTION 247. LOAN INSURANCE FOR ENERGY CONSERVING IMPROVEMENTS AND SOLAR ENERGY SYSTEMS IN MULTIFAMILY PROJECTS UNDER SECTION 241 OF THE NATIONAL HOUSING ACT

The conference report contains the Senate provision.

SECTION 248. INCREASE IN MORTGAGE LIMITS TO COVER COSTS OF SOLAR ENERGY SYSTEMS

The conference report contains the House provision.

PART 4—MISCELLANEOUS

SECTION 251. ENERGY CONSERVING IMPROVEMENTS FOR ASSISTED HOUSING

The House recedes to the Senate with an amendment directing the Secretary of HUD to issue regulations requiring that the benefits derived from the grants in terms of lower energy costs shall accrue to the tenants in the form of lower rentals, or in cases where the Federal Government is making operating subsidy payments, that the lower energy cost benefits shall accrue to the Federal Government in the form of lower operating subsidy payments. The conferees expect that if the Secretary of Energy decides to add the conversion from a master utility meter to individual meters to the list of eligible energy conservation measures, any grant given for that purpose should also include an adequate amount to provide for the installation of other measures that reduce the energy needs of the multifamily projects.

SECTION 252. ENERGY CONSERVING STANDARDS FOR NEWLY CONSTRUCTED RESIDENTIAL HOUSING INSURED BY FEDERAL HOUSING ADMINISTRATION OR ASSISTED BY FARMERS HOME ADMINISTRATION

The conference report contains the House provision.

SECTION 253. RESIDENTIAL ENERGY EFFICIENCY STANDARDS STUDY

The Senate recedes to the House with an amendment directing the Secretary of HUD, in coordination with the Administrator of Veterans' Affairs, the Secretaries of Agriculture, Treasury and Energy, and other Federal, state and local government representatives designated by the Secretary of HUD and utilizing the services of the National Institute of Building Sciences, to study the need for, the feasibility of, and the problems of requiring, by mandatory Federal action, that all residential dwelling units meet applicable energy efficiency standards. The study is to consider the impact of requiring mandatory notification to purchasers and policies to prohibit the exchange or sale of properties which do not conform to the standards. The study is to consider at least nine factors related to the impact of these requirements on the housing and credit markets and is to incorporate both the findings by the Secretary of Energy on the energy cost savings resulting from the imposition of the requirement, and on the total cost, per barrel of oil equivalent, in obtaining the resultant energy savings, as well as the comments by the Secretary of Energy on the effects any requirement might have on the economy as a whole and on the Nation's security. The conferees expect a detailed and objective analysis of the issues involved. The study should weigh carefully the impact of any mandatory requirements on the housing and credit markets against the impact of any energy savings resulting from such requirements on the Nation's economy and security.

Underground housing study

The conference report does not contain this provision. The conferees understand that HUD has already examined the feasibility of underground housing and has determined that existing FHA minimum property standards allow for the construction of such housing. FHA will insure mortgages for underground housing structures that meet those standards. However, additional research is needed to examine the impact local housing codes and local financing practices have on retarding the development of underground housing. The conferees, therefore, direct the Secretary of HUD to study these problems and to report promptly to Congress on the findings made as a result of such study and on any related legislative proposals which the Secretary determines should be enacted.

SECTION 254. WEATHERIZATION STUDY

The House and Senate bills each contained a study of both the weatherization activities undertaken as a result of this Act and those activities undertaken independently of this Act. The conference report contains this study amended to direct the President to undertake the study. The conferees believe it is crucial that the progress toward achieving the national energy conservation goal be monitored and periodically reviewed so that the impact of federally directed programs and of individual efforts may be measured and that where appropriate legislative actions be recommended to facilitate the achievement of that goal. In addition, the conferees expect that particular attention will be given to the effectiveness and efficiency of the programs designed to reach lower income families and to reduce the impact of high energy prices on these families. The conferees thus expect that this report will include a description of the steps taken by the Secretary of Labor to assure that sufficient CETA workers are available to support the weatherization programs for low-income families.

TITLE III—ENERGY CONSERVATION PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENTS AND PUBLIC CARE INSTITUTIONS

PART 1—SCHOOLS AND HOSPITALS

SECTION 301. STATEMENT OF FINDINGS AND PURPOSES

The conference agreement is identical to the provisions in the House bill.

SECTION 302. AMENDMENT TO THE ENERGY POLICY AND CONSERVATION ACT

The conference agreement, as in the House bill, adds a new "Part G—Energy Conservation Program for Schools and Hospitals", to the Energy Policy and Conservation Act, beginning with section 391.

SECTION 391. DEFINITIONS

The definition of "hospital" taken from the Senate bill excludes rehabilitation facilities, nursing homes, and public health centers. However, the conferees decided to provide such institutions with grants for energy audits and technical assistance under Part 2 of Subtitle B of this act.

The conferees adopted language from the Senate bill defining "hospital facilities," and "public or nonprofit institution."

The definition of "school" is similar to that contained in the Senate bill. It includes institutions which admit students without certificates of graduation from secondary schools. The words "recognized equivalent" of a certificate includes whatever entrance requirements short of a high school certificate an institution otherwise qualified chooses to impose for admission. Thus, for example, institutions following open admission policies are eligible to receive aid if they meet the other applicable criteria of this part. "Local educational agencies" are also included in the term "school" with the understanding that such agencies would act on behalf of a group of schools in submitting applications under this part. "Residential child care institutions" are not included in the definition of school, however, they are included in the grants program under Part 2 of this Subtitle.

The conferees adopted the House definition of "school facilities" which includes athletic facilities, with the understanding that the definition is not intended to include large stadiums used primarily for exhibitions for which admission is to be charged and not also generally used for intra-mural sports and physical fitness programs generally available to all students.

The conferees adopted the Senate definition of the term "State," which includes Puerto Rico, Guam, American Samoa and the Virgin Islands, as well as definitions of "Governor" and "Secretary."

The conferees clarified the definition of "preliminary energy audit" contained in the House bill by distinguishing between the preliminary energy audits (required for the development of the State plans) and energy audits (a more detailed determination required for applicants for energy conservation project grants). The definition of "energy conservation project" was taken from the House bill and expanded by the conferees to include technical assistance.

By including Technical Assistance under the definition of an energy conservation project, the conferees did not intend to require that a project necessarily receive a technical assistance grant before the project is funded, nor to require that a project receiving technical assistance also necessarily receive a project grant.

The remaining definitions are based on the language of the House bill.

SECTION 392. GUIDELINES

The conferees agreed to a provision based on language in the House bill directing the Secretary to issue guidelines for preliminary energy audits. This section also contains a provision based on Senate and House language authorizing the Secretary to issue guidelines for State plans. The conferees agreed to shorten the time period provided in the House bill for State plan guidelines. Finally, the section contains a House provision directing the Secretary to establish criteria for a class of severe hardships for the purpose of making grants to schools and hospitals under Sec. 392(b)(2).

SECTION 393. PRELIMINARY ENERGY AUDITS AND ENERGY AUDITS

The provision on energy audits, which is similar to the House bill, authorize the Secretary to make grants to the States for preliminary energy audits and energy audits. Preliminary energy audits conducted by the States are to provide general information to aid in the preparation of State plans. They are to be conducted within a short timeframe and are not intended to be costly or complex.

At his discretion, the Secretary may authorize the payment of up to 100 percent of the costs of preliminary energy audits and energy audits in any State; however, an amount equal to the amount in excess of 50 percent of the costs must then be deducted from the funds available for energy conservation projects in such State. If a State has not acted within two years after enactment, preliminary energy audits may be conducted by the Secretary.

The conferees understand that many States may have conducted energy audits preliminary energy audits prior to the enactment of this part. If the Secretary finds that preliminary energy audits and energy audits conducted by the States prior to the issuance of his guidelines are nonetheless consistent with those guidelines, it is the intent of the conferees that he should accept the audits as fulfilling the requirements of this title. In such cases, funds that would otherwise have been available to a State to conduct preliminary energy audits are to be added to the funds available for such State for energy conservation projects. In order to allow the energy conservation project grants program to commence as expeditiously as possible, the conferees expect the Secretary to allow the States a maximum degree of flexibility in

satisfying the requirements of the preliminary energy audits and energy audit section.

SECTION 394. STATE PLANS

The provision on State plans agreed to by the conferees establishes requirements for the plan which each State agency must submit to the Secretary and sets up procedures for approval or disapproval of State plans as well as for federal implementation under certain circumstances. The conferees shortened the time periods contained in the House bill for the procedures relating to State Plans but otherwise adopted language similar to the House provision.

SECTION 395. APPLICATIONS FOR FINANCIAL ASSISTANCE

The conferees adopted the procedures contained in the House bill for submission and approval of grant applications at the State and Federal levels. The State energy agency forwards applications to the Secretary in an annual submittal after determining that the applications conform to the State Plan. State school facilities agencies and State hospital facilities agencies are required to certify that applications submitted to the State energy agency do not conflict with related State plans for education and health.

The conferees anticipate that applications from institutions under this part will be reviewed by the State to ensure that all applications conform to law, regulation and the State Plan before they are submitted to DOE. As part of this review, applications are to be ranked by the State in priority in accordance with the criteria specified in the State Plan. States will be responsible for program management, including auditing, monitoring, and evaluation. The conferees expect that DOE will be responsible for general program oversight, but do not anticipate that DOE will review every application. DOE may rely on the States for detailed evaluation and funding recommendations.

It is the understanding of the conferees that while it is not the intent of Congress to dictate to the States the manner in which school and hospital facilities agencies are to be composed nor to impose cumbersome, formalized approval procedures that could delay this important program, equitable implementation does require that the interests and needs of all types of eligible institutions be fully and fairly represented in the State decisionmaking process.

For the purposes of this section, State hospital facilities agency shall mean the State Health Planning and Development Agency, if such Agency exists in a State. The conferees also adopted language from Senate bill authorizing the Secretary to withhold financial assistance from any grantee which has failed to comply with the provisions of an approved application.

SECTION 396. GRANTS FOR PROJECT COSTS AND TECHNICAL ASSISTANCE

The conference agreement authorizes the Secretary to make grants of up to 50 percent of the costs of energy conservation projects (which may include technical assistance) to schools and hospitals, as in the Senate bill. Technical assistance grants may also be made to the States in connection with projects approved for schools and hospitals. If a project meets the criteria of a class of severe hardship, Federal funds may be used to pay up to 90 percent of the project costs, as in the House bill.

Funds for the non-Federal portion of any grant must come from State, local or private sources and cannot, for example, be derived from revenue sharing or any other Federal sources.

The conferees adopted a House provision allocating funds between school and hospitals in such a manner that neither schools nor hospitals may receive less than 30 percent of the funds available to any State.

The conference substitute also includes a proposition which makes it clear that grants made to local educational agencies are intended to benefit the schools administered by such agencies and may not be used in connection with any project for any administrative building of a local educational agency.

Funds under this section may not be used to repay moneys expended for any energy conservation project commenced prior to the effective date of this act.

SECTION 397. AUTHORIZATION OF APPROPRIATIONS

The conferees combined the appropriation authorization for technical assistance grants with the authorization for energy conservation projects grants. The amount of funds that can be expended for technical assistance is limited to the same ratio as the two separate authorizations had in the House bill. This action was taken on the understanding that the limitation on technical assistance funding is to be regarded as a ceiling, not a floor, as the conferees were concerned that money, which could be invested in energy conserving modifications and installations, not be spent on unnecessarily costly planning and design.

SECTION 398. ALLOCATION OF GRANTS

The conferees agreed that grants would be allocated among the States according to the formula provided in the House bill with the modifications described below.

The conferees decided to limit the total grants to facilities in any one State to 10 percent of the total sums appropriated in any one year and to require that grants made to eligible institutions in each of the States, other than the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands, shall not total less than 0.5 percent of the total funds appropriated in any year. Amounts to be received by eligible institutions in the District of Columbia, Puerto Rico, Guam, American Samoa and the Virgin Islands are left at the discretion of the Secretary with the understanding that such provision is not intended to limit the amounts allocated to such jurisdictions to less than they would have been entitled under the application of the formula developed by the Secretary, taking into account such factors as population, climate, fuel availability and cost, fuel use, hardship and such other factors as the Secretary may deem appropriate. In other respects, the conferees adopted the House language.

SECTION 399. ADMINISTRATION; ANNUAL REPORTS

The conferees adopted a provision on administration, which was identical in both bills, as well as the provision contained in the House bill requiring the Secretary to report to the Congress annually on the actions taken under this part.

SECTION 400. RECORDS

The conferees agreed to require grantees under this part to keep and furnish access to records, as prescribed by the Secretary. The conference substitute also amends the Table of Contents for Title III of the Energy Policy and Conservation Act, as did the House bill. Finally this section contains a severability provision identical to the language of the Senate bill.

SECTION 303. TECHNICAL AMENDMENTS

The conference agreement is identical to the provisions in the House bill.

PART 2—UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

SECTION 310. STATEMENT OF FINDINGS AND PURPOSES

The conferees agreed to adopt the language of the House bill, modified to reflect the decision of the conferees to include buildings owned by public care institutions in the program.

SECTION 311. AMENDMENT TO THE ENERGY POLICY AND CONSERVATION ACT

As in the House bill, the conference agreement adds a new "Part H—Energy Conservation Program for Buildings Owned by Units of Local Government and Public Care Institutions" to the Energy Policy and Conservation Act, beginning with section 400A.

SECTION 400A. DEFINITIONS

The conference substitute combines the provisions of the House and Senate bills and adds definitions of the terms "public care institution" and "public or nonprofit institution." A public care institution is a public or nonprofit institution which owns a facility for long term care, a rehabilitation facility, a public health center, or a residential child care institution. A "residential child care institution" means an institution (other than a foster home) operated by a public or nonprofit agency and primarily intended to provide full-time residential care with an average length of stay of at least 30 days for at least 10 minor persons who are in the care of such agency as a result of a finding of abandonment, or neglect or of being persons in need of treatment or supervision. A public or nonprofit institution is owned and operated by a State, a political subdivision of a State or an agency or instrumentality of either, or an organization exempt for income tax under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. The conferees also agreed that for the purposes of the part the definition of "public or nonprofit institution" should be construed to include libraries which derive their principal support from tax revenues even though such libraries may not be owned or operated by units of local government as defined in the part.

SECTION 400B. GUIDELINES AND RULES

The conferees adopted a combination of the House and Senate provisions relating to the Secretary's guidelines for State plans as well as language based on the House provision relating to guidelines for preliminary energy audits.

SECTION 400C. PRELIMINARY ENERGY AUDITS AND ENERGY AUDITS

The conference substitute modifies the House provision by authorizing the Secretary to make preliminary energy audit grants to the States for public care institutions as well as for units of local government. The conferees also agreed to allow the Governor of a State to apply for grants under this section prior to the approval of a State plan and at any time after the guidelines on preliminary energy audits have been prescribed. Language contained in both bills limiting the federal share of the costs of any preliminary energy unit to 50 percent or less, is also included in the conference substitute. The House provision was further modified to authorize grants to the States, units of local government and public care institutions for energy audits.

SECTION 400D. STATE PLANS

The provision establishing requirements for the plan which each State Energy Agency is invited to submit to the Secretary, as agreed to by the conferees, follows the language of the House bill.

The procedures for approval or disapproval of State plans and the circumstances which require Federal implementation are similar to the conference agreement for Part 1—Schools and Hospitals.

SECTION 400E. APPLICATIONS FOR GRANTS FOR TECHNICAL ASSISTANCE

The conferees agreed to the procedures contained in the House and Senate bills for the submission and approval of applications for technical assistance grants at the State

and Federal levels. Only those applications which are in compliance with the applicable State plan may be approved; however, the conferees agreed not to require assurances from the State because they were duplicative of the State plan requirements.

SECTION 400F. GRANTS FOR TECHNICAL ASSISTANCE

The conferees agreed to adopt language similar to provisions in the House and Senate bills authorizing the Secretary to make grants to units of local government for technical assistance, with a modification adding public care institutions and States as potentials grantees.

SECTION 400G. AUTHORIZATION OF APPROPRIATIONS

The conference substitute is based on the language of the House bill.

SECTION 400H. ALLOCATION OF GRANTS

The conferees agreed to adopt the House formula for the allocation of grants among the States, with a limitation of 10 percent on the total amount allocated to any one State. The conference substitute also provides that, no State, other than the District of Columbia, Puerto Rico, Guam, American Samoa and the Virgin Islands, shall be allocated less than 0.5 percent of the funds allocated in any year. In the case of the District of Columbia, however, the conferees expect that the allocation will be based on the formula developed by the Secretary, and not necessarily limited by the 0.5 percent figure.

SECTION 400I. ADMINISTRATION; ANNUAL REPORTS

The conferees adopted a provision on administration, which was identical in both bills, as well as a provision contained in the House bill directing the Secretary to report to the Congress annually on the actions taken under this part.

SECTION 400J. RECORDS

The conferees substitute includes an amendment to the Table of Contents for Title III of the Energy Policy and Conservation Act, from the House bill, and adds a requirement that grantees under this part keep and furnish access to records, as prescribed by the Secretary.

SECTION 312. APPLICATION OF DAVIS-BACON ACT

The conferees agreed to adopt the provision in the House bill making the Davis-Bacon Act applicable to the programs under this title, with a modification exempting work performed in the conduct of preliminary energy audits, energy audits, technical assistance programs and energy conservation projects costing less than $5,000.

TITLE IV—ENERGY EFFICIENCY OF CERTAIN PRODUCTS AND PROCESSES

PART 1—ENERGY EFFICIENCY STANDARDS FOR AUTOMOBILES

SECTION 401. FUEL ECONOMY INFORMATION

The conferees adopted the Senate provision changing in the Motor Vehicle Information and Cost Savings Act the weight limitation in the definition of the term "automobile" for labeling purposes from 6,000 to 8,500 pounds. The new amendment is not intended to affect the Secretary's current authority to increase this weight limit. It merely requires that he do so for model year 1980 automobiles and thereafter. The new definition does not affect the definition of the term "automobile capable of off-highway operation" under section 501(3) of the Motor Vehicle Information and Cost Saving Act.

SECTION 402. CIVIL PENALTIES RELATING TO AUTOMOBILE FUEL EFFICIENCY

This section amends section 508 of the Motor Vehicle Information and Cost Savings Act. It adds two new subsections. Under Subsection (d), the Secretary of Transportation shall provide, by rule, for an increase in existing civil penalties for violations by manufacturers of fuel economy standards for automobiles. The Department of Transportation is provided discretion to establish in the rule the additional penalty at an amount up to $10 for each tenth of a mile per gallon. However, before adopting such a rule, this subsection requires that the Secretary make two specific findings concerning the proposed increased penalty. He must find that the higher penalty, which will be the same for all manufacturers when adopted, imposed in the case of a violation by a manufacturer will result in, or substantially further, substantial energy conservation in the case of automobiles produced after the effective date of the rule. He also must find that such additional civil penalty will not result in substantial deleterious impact on the economy of the United States or of any State or region of any State. The latter finding may only be made if he finds that it is likely that such additional penalty will not adversely affect competition in the industry, will not cause a significant increase in imports, and will not cause a significant increase in unemployment in any State or region thereof. The findings must be made after a full opportunity for public review, including adjudicatory hearings, and judicial review. The substantial evidence rule will apply. There is also provision for questioning participants in the hearings. Unlimited and duplicative questioning is not sanctioned. But the conferees intend that the Government and the persons concerned about the proposed rule shall be subjected to reasonable questioning in order to be assured that the proposed rule is well-founded. The objective in providing an opportunity for such questioning is to insure that all issues are fully and properly developed.

Amendments to the rule for further increases of the penalty may be made after making the same findings and following the same procedures. No provision is made for lowering the penalty. Under 5 U.S.C. 553(e), provision is made for repeal or modification of any rule issued under this subsection.

Provision is also made for preventing disclosure of proprietary information, while, at the same time, providing a procedure for making such information available for consideration.

The rule cannot be effective earlier than model year 1982 automobiles. Once adopted all the procedures for assessing, mitigating, or compromising such penalties under current law will apply.

SECTION 403. DISCLOSURE IN LABELING

This provision provides for the disclosure of the tax upon fuel inefficient automobiles upon enactment under other provisions of law.

SECTION 404. STUDY

Section 404 requires the EPA Administrator to conduct a study which compares the mileage estimates for automobiles derived from EPA test procedures with the actual performance by these automobiles. The EPA Administrator must report his findings to the Congress. The report should be sufficiently detailed so that consumers will be able to better evaluate the fuel efficiency of the automobiles they intend to purchase and should include the comments of the Secretary of Energy and Transportation. For example, the report should discuss the deviation from EPA published mileage estimates which are caused by particular driving habits or by the addition of particular optional equipment. The report should therefore not be merely the percentage by which all automobiles in the aggregate deviate in actual performance from EPA mileage estimates.

The EPA Administrator is not to focus his study on possible changes of EPA test procedures used for testing automobile fuel efficiency, and the report is not to contain recommendations in this area. The conferees have no intention of authorizing any change in the test procedures as established for model year 1975, and the statutory language specifically prohibits such changes. The test procedures required to be used under EPCA are those for the 1975 model year, and they are not to be amended. The conferees recognize that any change in these tests procedures would effectively change the fleet average mileage standards in EPCA. Such a "change in the rules" for the testing of automobiles, except by statute, is therefore, prohibited.

PART 2—ENERGY EFFICIENCY STANDARDS FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

The House and Senate bills were similar in most regards concerning the amendments to the appliance program in the Energy Policy and Conservation Act. In general, both bills provided authority to the Secretary of Energy to establish minimum energy efficiency standards for all the appliances listed in Section 322 of EPCA (Public Law 94–163) without first monitoring the voluntary progress of the industry in meeting energy efficiency targets. The relatively small differences in the two bills were resolved as follows.

SECTION 421. TEST PROCEDURES

The conferees adopted a substitute that is similar to the House provision. Final test procedures for each of the 13 types of appliances must be prescribed by January 31, 1978, although a 90-day delay is permitted, if appropriate notice is given to Congress and the public. The conferees understand that the DOE has already established these test procedures. As under existing law the conference substitute permits EPA not to prescribe a test procedure if one cannot be developed to meet the necessary criteria. All test procedures must be reevaluated within three years after they are prescribed. If the Department prescribes a test procedure after the deadline of January 31, 1978, the failure to meet this statutory deadline does not in any way affect the legal effect of the test procedure.

Existing law states that, effective 90 days after prescription of a test procedure applicable to a covered product, no manufacturer, distributor, retailer, or private labeler may make any representation either in writing or in any broadcast advertisement respecting energy consumption of the product unless it has been tested in accordance with the test procedure and the representation fairly discloses the results of the test.

The conferees accepted the Senate provisions which extend the 90 day period to 180 days and which gives the Secretary discretion to grant an additional 180 days to a petitioning manufacturer where the Secretary determines that the requirement would impose an undue hardship on the manufacturer.

It should be noted that if the Secretary determines to amend or rescind a test procedure pursuant to section 421(c), he is expected to carry out the amendment or rescission, unless of course he is persuaded to do otherwise by public comment.

SECTION 422. ENERGY EFFICIENCY STANDARDS

Coverage and schedule

The House bill required the Secretary of Energy to establish energy efficiency standards for all thirteen listed products in section 322(a) of the Energy Policy and Conservation Act. The Senate bill required the Secretary to establish standards for nine of the thirteen products, and gave the Secretary discretion to establish standards for the other four products.

The conference substitute combines the House and Senate provisions. The Secretary

must establish energy efficiency standards for the thirteen categories of appliances listed under Section 322(a) of the Energy Policy and Conservation Act. However, priority must be given to nine types of appliances—refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, kitchen ranges and ovens, central air conditioners, furnaces, clothes dryers and home heating equipment other than furnaces. An advanced notice of proposed rulemaking must be published for these appliances within 30 days after test procdures are prescribed or 45 days after enactment of this part, whichever is later. In the case of dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers, the notice must be published not later than 30 days after test procedures have been prescribed or one year after enactment of this subparagraph whichever is later.

The Secretary of Energy is also granted discretionary authority to set efficiency standards for products other than those 13 specifically named above. However, certain criteria must be satisfied regarding energy consumption, potential for improvement in energy efficiency, and whether a labeling rule alone would be sufficient to induce the production and purchase of appliances with the desired efficiency.

Standards for each of the thirteen appliances must be prescribed not later than two years after publication of the advance notice of rulemaking for each such appliance.

Prerequisites for promulgation of efficiency standards

The conference substitute combines House and Senate provisions. The Secretary is prohibited from prescribing a standard if he determines, by rule, it would result in significant energy conservation, is not technologically feasible, or is not economically justified.

Intermediate standards

Both House and Senate provisions permitted the use of intermediate standards to phase in the efficiency standards. The conference substitute limits the phase-in period to five years to coincide with the required reevaluation of efficiency standards.

Small business exemption

The conferees adopted the House language which was similar to Senate language on the small business exemption. The exemption may extend for a maximum of 2 years after the date an energy efficiency standard is prescribed.

Subclassification of covered products

Both the House and Senate bills permitted the Secretary to establish different standards within each type of covered product based upon the kind of energy consumed by the product or based upon performance-related features of the product. For example, the Secretary could establish a different minimum standard for gas-fired furnaces and oil-fired furnaces. He could also establish different standards for microwave ovens and conventional ovens, or different standards for frost-free refrigerators and regular refrigerators. The purpose of the provision is to permit the minimum energy efficiency standards to account for the varied performance-related features of appliances within a given type of product, and various forms of energy used by such products. Obviously, if the Secretary established a separate standard for every appliance having a detectable difference in features, no matter how slight, as compared to other appliances in the class, then hundreds of standards might result, assuming that these standards were all technologically feasible and economically justified. Therefore, the conferees intend that the Secretary use his discretion carefully, and establish separate standards only if the feature justifies a separate standard, based upon the utility to the consumer and other appropriate criteria. In providing the Secretary the authority to establish different standards based upon the type of energy consumed, the conferees intend to provide the Secretary flexibility so that energy efficiency standards will not result in the elimination of any type of covered product using a particular form of energy. Again, the requirement that any standard be technologically feasible and economically justified would be expected to prevent such effects from occurring.

Criteria for economic justification

The conference substitute combines the House and Senate criteria for determining whether an energy efficiency standard is "economically justified", a prerequisite for promulgation of any standard. The substitute adopts the Senate language requiring the Secretary to determine that the benefits of the standard exceed its burdens based upon a weighing of the listed factors. The conferees recognize that some of the factors cannot be quantified, such as "the need of the Nation to conserve energy." However, where quantification is possible, it is expected that the Secretary will perform such quantification of individual factors to the greatest extent practicable. The conferees do not intend that quantification of a factor inherently enhances its weight as against nonquantifiable factors. Because the conference substitute requires the Secretary to weigh the factors, and because the increase in initial charges and any change in maintenance costs and energy savings will be quantified and compared, the House criterion, defined as the total cost per Btu of energy saved, has been deleted.

Procedures for establishing efficiency standards

The conferees adopted the House procedures for establishing energy efficiency standards, including provisions for an advance notice of proposed rulemaking, a proposed rule, and a final rule. The advance notice need only state the coverage of the rule being proposed and invite the submission of written comments. No hearings are required or expected at this stage. It is intended as a notice to facilitate the gathering of information. No earlier than 60 days after publication of the advance notice, a proposed rule is to be issued. The proposed rule must state the proposed standard, the maximum improvement in energy efficiency which is technologically feasible, and if the proposed standard is not designed to achieve the maximum improvement, the reasons therefor. Interested parties are given an opportunity for written and oral presentations of views, data, and arguments on the standard, including an opportunity to question those who make such presentations. This presentation may address a number of factors including whether the standard is economically justified. Although, under Section 336 (a) the right to question interested persons and employees of the United States making written and oral statements is subject to the discretion of the Secretary, based upon his determination that such questioning is likely to result in a more timely and effective resolution of the issues, the conferees intend that the right will be a meaningful one, and that persons will be given a reasonable opportunity to cross-examine witnesses. A rule may not become effective earlier than 180 days after it is prescribed in order to provide time for manufacturers to meet the standards.

SECTION 423. ASSESSMENT OF CIVIL PENALTIES

Existing law (EPCA) provides for the assessment of civil penalties by the Federal Trade Commission and the Department of Energy for violations of appliance labeling rules and efficiency standards. The House bill established procedures for the assessment of such penalties. The Senate bill contained no such procedures.

The conference substitute modifies the House language on procedures. Under the provision, the Secretary of Energy (or Federal Trade Commission, as the case may be) shall issue notices of proposed assessments of civil penalties. The notice will inform the alleged violator that he can elect to have the assessment made after an administrative proceeding and judicial review thereof or after a *de novo* proceeding in a district court. The election may not be revoked. This procedure is the same as that adopted in the Powerplant and Industrial Fuel Use Act.

It should be emphasized that although the language of section 333(d)(3)(B) says that "the court shall have authority to review de novo the law and the facts involved, . . ." the conferees fully intend that the party electing the *de novo* review procedure is entitled to such review, and the scope of review used by the district court under this provision shall be no other than a *de novo* review of the facts and issues pleaded.

Of course, at any time the penalty is paid or compromised there is no need to proceed further. If the civil penalty is not paid after it has become a final and unappealable order or a final judgment under the above procedures, then a collection action may be instituted in the appropriate U.S. District Court. In the collection action, the District Court may not review the validity or appropriateness of the final and unappealable order or the final judgment, as the case may be.

SECTION 424. EFFECT OF STANDARDS ON OTHER LAW

The EPCA provides for the preemption of State energy efficiency standards once a Federal standard is prescribed. Manufacturers are permitted to petition the Secretary of Energy to preempt State standards which are not statutorily preempted and the States may petition to be exempted from Federal preemption. Both the House and Senate bills modified EPCA to establish a period of automatic preemption of State standards prior to the establishment of a Federal standard.

The conference substitute melds the House and Senate language. State standards prescribed on or before January 1, 1978, are not preempted. State standards prescribed after January 1, 1978 are automatically preempted. This automatic preemption period for the thirteen enumerated appliances ends on July 1, 1980. For other appliances, the preemption does not terminate. Once a Federal standard is prescribed for a type of appliance, all State efficiency standards for such an appliance are preempted, regardless of when the State standard was prescribed.

The conferees originally intended that the period of automatic preemption would run generally concurrently with the period during which the DOE is to establish the standards. However, the period of automatic preemption will end on July 1, 1980 while the DOE may prescribe standards for the covered products at a later date. The conferees understand that DOE has begun preparations to implement the standards and may be able to prescribe the standards by mid-1980, and the conferees encourage the DOE to prescribe the standards by July 1, 1980. Nevertheless, it is possible that for a period of time, State standards could become effective until the Federal standards are prescribed. The conference agreement, however, permits manufacturers to petition the Secretary of DOE for a rule preempting these standards pending the prescription of a Federal standard. In determining whether a State standard would unduly burden interstate commerce and whether there is a significant State or local interest to justify the standard, the conferees expect the Secretary to weigh heavily the fact that the State stand-

ard will soon be preempted by the prescription of a Federal standard.

States and manufacturers continue to have the right to petition the Secretary to be exempted from preemption, or to preempt a State standard, as the case may be. However, the conferees modified the burden of proof under current law for a petitioner who is a State. The use of the words "except that the Secretary may not prescribe such rule if he finds that such State regulation would unduly burden interstate commerce" is intended to require the Secretary to determine the extent to which the State regulation would unduly burden interstate commerce. It is not the intent of the conferees for a petitioning State to be required to attempt to prove a negative prediction, *i.e.*, that the State regulation would *not* impose an undue burden on interstate commerce.

Under subsection 424(b) preemption would apply to both a State standard and any "other" requirement respecting the energy efficiency of any product. Thus establishment of a Federal standard, for example, with respect to the energy efficiency of gas ranges would automatically preempt both State efficiency standards affecting such ranges and any other State requirements affecting gas range energy efficiency such as a State prohibition on gas pilot lights.

SECTION 425. TECHNICAL AND CONFORMING AMENDMENTS

Appliance labeling

Both the House and Senate bills permitted the Federal Trade Commission to require instructions for the maintenance, use, or repair of an appliance to appear on its label. The conference substitute retains this provision.

Information

The conference substitute is a combination of the House and Senate provisions. The Secretary of Energy is authorized to use whatever authorities are available to him under any law to require any manufacturer of a covered product to submit information concerning the energy efficiency of his covered product and the economic impact of any proposed energy efficiency standard, if such information may be necessary to establish standards or verify compliance. Section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 applies to this information.

Citizen suits

The conference substitute adopts the House provision amending the citizen suit provision in EPCA to permit citizen suits against manufacturers or private labelers for violations of energy efficiency standards, and against the Department of Energy for failure to perform any nondiscretionary duty concerning the establishment or enforcement of energy efficiency standards.

Report to Congress

The conference substitute adopts the House provision requiring the Secretary to include in his report to Congress a detailed explanation of the reasons for any delays in implementing this program.

SECTION 426. APPROPRIATIONS AUTHORIZATION

The conference substitute provides an increase in the authorization of appropriations for this program for FY 1978 of $3.3 million. (An FY 1978 authorization for appropriations is already provided in section 29 of the Federal Energy Administration Act of 1974, as amended by Public Law 95-70 of July 21, 1977). The authorization for appropriations for fiscal year 1979 is $10 million.

SECTION 427. EFFECTS OF OTHER LAWS ON PROCEDURES

The conferees adopted a provision of the House bill which ensured that the procedures for the appliance program contained in EPCA, as amended by this bill, would supersede any procedural requirements contained in the Department of Energy Organization Act or in other laws. The Senate bill had no comparable provision. The conference substitute adopts the House language with a technical revision.

PART 3—ENERGY EFFICIENCY OF INDUSTRIAL EQUIPMENT

The conferees agreed to a modified version of the Senate's language amending Title III, Part D of the Energy Policy and Conservation Act of 1975. This amendment authorizes the Secretary to prescribe test procedures and labeling requirements with respect to electric motors, pumps and a variety of industrial equipment.

The information contained on these labels is intended to inform the purchaser of industrial equipment of the relative energy efficiency, annual operating costs, and other energy use factors of various industrial equipment. Given this information, the purchaser will be equipped to select the more energy efficient equipment.

The Secretary may not issue test procedures or labeling requirements unless first he makes certain findings and establishes industrial equipment classifications.

The Senate provision mandating the establishment of energy efficiency performance standards was deleted by the conferees.

To qualify as "industrial equipment" an article of equipment must consume or be designed to consume energy either directly itself or indirectly, i.e., via shaft power obtained from an energy-consuming device separate and a part from the article of equipment, and satisfy the additional criteria in Sec. 340(2)(A). The Secretary has the authority to expand, by rule, "covered equipment" to include equipment qualifying as industrial equipment and, under certain restrictions, to component parts of consumer products.

The conferees required the Secretary to conduct an 18-month evaluation and determination of standard classifications of electric motors and pumps and to provide the Secretary with the authority to include all or part of the industrial equipment listed in Sec. 340(2)(B) in that evaluation and determination. In conducting the evaluation and determination the conferees expect that the Secretary will consult with the affected manufacturers, users of industrial equipment, and with the public.

A report on the standard classifications must be submitted to Congress no later than 18 months after the date of enactment. It is expected that the findings made under Sec. 342(c)(1) will be included in the report even though it may or may not be appropriate to base the standard classifications in part on these findings. In addition, the report must include an assessment of the impact of requiring performance standards for electric motors and pumps. Other industrial equipment may be included in that assessment. In either case, the Secretary should include in the report his recommendation regarding further legislation. Finally, the Secretary is expected to identify in this report any types of equipment from the list in Sec. 340(2)(B) which he will consider in the future.

In assessing the impact of requiring performance standards, the Secretary should consider technical, economic, institutional, and other factors from the manufacturers' as well as the consumers' point of view. The assessment should take into account the possibility of retrofitting equipment with new equipment, and other possible means by which a manufacturer could comply with a performance standard.

PART 4—ENERGY EFFICIENCY BY USE OF RECOVERED MATERIALS

The House and Senate provisions were essentially identical. The provisions require the Secretary to establish targets for the increased utilization of energy-saving recovered materials by four industries, and require these industries to report on their use of such materials.

TITLE V—FEDERAL ENERGY INITIATIVES

PART 1—EXECUTIVE AGENCY CONSERVATION PLAN

The conferees adopted language that clarified which agencies are subject to requirements of the ten-year energy conservation plan to be developed by the President pursuant to Section 381 of the Energy Policy and Conservation Act. This section makes the plan applicable to the Executive agencies defined in section 105 of Title 5, United States Code, and to the United States Post Office.

$25,000,000 in FY 1978 and $50,000,000 in FY 1979 is authorized to be appropriated to the President to carry out the plan.

PART 2—DEMONSTRATION OF SOLAR HEATING AND COOLING IN FEDERAL BUILDINGS

The purpose of this part is to demonstrate solar heating and cooling technology by installing solar energy equipment in selected Federal buildings to heat or cool them. The agencies will periodically make reports on the operation and maintenance of this equipment. The Secretary of Energy is directed to promulgate criteria for evaluating agency proposals for demonstration of solar energy equipment, to evaluate the proposals and to make these evaluations available to interested persons upon request. Each agency must submit to the Secretary proposals for selected Federal buildings under its control. The Secretary will require that a life cycle cost analysis be included in each proposal. Where the installation of solar energy equipment will not result in a minimum life cycle cost for a given building, the agency must explicitly state in its application the additional life cycle costs projected to be incurred as a result of installing solar energy equipment in the building instead of the minimum life cycle cost alternative.

$100,000,000 is authorized to be appropriated to the Secretary through FY 1980. The Secretary shall provide by interagency agreement assistance to approved projects for design, acquisition, construction, and installation of solar energy equipment.

The term "building" was renamed "Federal building" and only slight changes were made in the definition taken from the House bill.

The use of the term "solar heating" is not meant to exclude passive solar energy designs.

PART 3—ENERGY CONSUMPTION AND SOLAR-ENERGY IN FEDERAL BUILDINGS

The conference substitute provides for the development of methods to analyze the life cycle cost effectiveness of various energy conserving techniques in buildings. In addition energy performance targets will be set for Federal buildings and after preliminary energy audits are performed, selected Federal buildings will be retrofitted so as to reduce their energy consumption. New Federal buildings will be designed to save nonrenewable energy over the life of the building. In leasing buildings each Federal agency will give appropriate preference to buildings that use renewable energy sources or which otherwise minimize the costs of supplying the building with energy over its lifetime.

SECTION 541. FINDINGS

The conferees adopted the five findings which were identical in the House and Senate provisions.

SECTION 542. POLICY

This section contains the language from the House bill but it includes the Senate reference to "other renewable energy sources".

SECTION 543. PURPOSE

The conferees combined the language of the House and Senate provisions. The conferees anticipate that this program for Federal buildings will result by 1985 compared to 1975 in a reduction of 20 percent in the annual energy use per unit of floor area for existing buildings and a 45 percent reduction for new buildings.

SECTION 544. DEFINITIONS

The conferees agreed that the Secretary of Energy should administer the program rather than the Administrator of GSA. Thus, a definition of "Secretary" is included.

The definition of "life cycle cost" is a refinement of the language in the House and Senate bills. The Secretary shall base estimates of life cycle costs for an existing building on the expected "useful life" of the building, as well as can reasonably be predicted. (At present, the General Services Administration most commonly uses an expected useful life of 30 years when comparing options for leasing, acquiring, or constructing Federal buildings. In considering new buildings only, an expected useful life of 50 years is often used.) In the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease. While this term does not include options to renew the lease, which are not binding on the government, the life cycle cost calculation may include a realistic estimate of the likelihood of such renewal.

The definition of "preliminary energy audit" is a variation of the Senate provision. The phrase "rate of energy consumption" was substituted for "energy use level" to clarify the intent of the conferees. The phrase "major energy using systems" refers to those devices which, relative to all energy consuming devices in that building, consume the major portions of energy used in the building as a whole. Such devices might generally include the systems for heating or cooling the building. In some buildings the lighting arrangements would be a major energy user. No fixed number of major energy consuming systems need be described for a particular building, the number will vary from building to building.

The definition of "energy survey" is taken with some modification from the Senate definition of "energy audit".

The definition of "Federal building" is similar to the Senate definition of that term. The conference substitute omits definitions of "existing Federal building" and "new Federal building" as both new and existing Federal buildings are included under the definition of "Federal building". In the case of an existing building only part of which is leased by Federal agencies, that part which is leased is subject to the provisions of this part. However, it is not the intent of this part to require inclusion of such buildings under this part where the Federal share of the building is an insignificant portion of the entire building.

The definition of "energy performance target" is a modified version of the Senate's definition of "energy conservation goal".

SECTION 545. ESTABLISHMENT AND USE OF LIFE CYCLE COST METHODS

The conference substitute requires, as in the House bill, the Secretary of Energy to establish methods for estimating and comparing life cycle costs in Federal buildings procedures for the conduct of preliminary energy audits. New Federal buildings must be life cycle cost effective and in their design preference must be given to life cycle cost rather than initial cost. This requirement is intended to include any building construction or renovation which was incomplete at the date of enactment and the design of which the Secretary determines can be feasibly modified so as to be life cycle cost effective.

As for non-Federal structures, the conference substitute provides for public disclosure of information regarding the use of life cycle costs (instead of initial costs) in planning construction and renovation of buildings.

The conferees recognize that in the case of short term leases where there is no lease renewal option or if such option is unlikely to be exercised, the Federal agency will not occupy the building long enough to cost-justify any significant building improvements. Carrying out the steps required in this subpart will only lead to a conclusion that is obvious from the start. In such cases the requirements of this part would be satisfied by a report to the Secretary of Energy explaining to his satisfaction why it is clear without further analysis that no significant retrofit can be justified on the basis of life cycle costs.

SECTION 546. ENERGY PERFORMANCE TARGETS FOR FEDERAL BUILDINGS

The conference substitute melds the Senate and House language in requiring the Secretary of Energy to establish energy performance targets for Federal buildings and to take the action necessary to promote compliance to the maximum extent practicable.

SECTION 547. ENERGY AUDITS AND RETROFITTING OF EXISTING FEDERAL BUILDINGS

The conference substitute for this section is a combination of the House and Senate provisions. For existing Federal buildings, owned or leased, the Secretary of Energy shall receive the results of preliminary energy audits from the agencies and shall compile such results and submit a full report to the Congress no later than August 15, 1979, for buildings with 30,000 or more square feet, and no later than August 15, 1980, for buildings with 1,000 or more but less than 30,000 square feet. It is recognized that special circumstances such as national security considerations or inaccessibility of a Federal building may occasionally make the conduct or reporting of a building audit impractical, in which case the reporting agency shall report to the Secretary the reasons for not conducting or reporting the audit, who shall also include notice of such special circumstances in his reports to Congress.

Each agency is required to select each year from the audit required by this part buildings appropriate for retrofit measures to improve energy efficiency, including energy conservation measures, solar technology, and other renewable energy sources. The conferees recognize that where an agency is ready to move ahead with a retrofit project before the audit is completed, this part should not prohibit such agency from proceeding with such project. By January 1, 1990, each agency is required to have subjected all Federal buildings to such retrofit measures as will assure minimum life cycle costs. Of course, absolute minimization of life cycle costs would be achieved by not heating, cooling, or illuminating any buildings at all. The intent of the conferees in this section is not to suggest the reduction of, or elimination, of basic requirements such as reasonable heating, cooling, and illumination of a building. Rather, the goal is the ample satisfaction of such basic needs in a building but at minimum cost over the life of the building.

It is the intent of the conferees that the requirements of this part will strengthen, not replace, current efforts by Executive agencies and the U.S. Postal Service pursuant to Section 381 of the Energy Policy and Conservation Act, Public Law 91–163, and that procedures established pursuant to Section 381 should be utilized where possible to carry out the additional requirements of this part. This subtitle is not intended to replace or be a substitute for the requirements of Section 381 of the Energy Policy and Conservation Act.

SECTION 548. LEASED FEDERAL BUILDINGS

The conference substitute is from the Senate bill but with the addition that the preference applies when a lease renewal option is exercised as well as when a new lease is commenced.

The purpose of this section is to require Federal agencies when leasing buildings to give "appropriate preference to buildings which use solar heating and cooling equipment or other renewable energy sources or which otherwise minimize life cycle costs." Giving "appropriate preference" is intended to mean more than affording mere consideration to a building having the desired features. As a general rule the building having lowest life cycle cost to the Government over the period of the lease should be the one that is ultimately selected. However, there may be unforeseen circumstances in which the best interests of the Government dictate a deviation from the general rule. In the case of a renewal option, the life cycle cost calculation may include a realistic estimate of the likelihood of lease renewal.

A building having solar heating and cooling or other renewable energy sources should receive preference but not without regard to overall life cycle costs to the Government.

SECTION 549. BUDGET TREATMENT OF ENERGY CONSERVING IMPROVEMENTS BY FEDERAL AGENCIES

The conferees adopted a variation of the House and Senate provisions. Additional initial costs incurred by agencies as a consequence of this part are not authorized to be appropriated by this part. Rather, each agency is to identify those additional costs in its future budget requests to Congress.

SECTION 550. REPORTS

The House and Senate provisions were identical.

SECTION 551. AUTHORIZATION OF APPROPRIATION

The conferees adopted the House provision.

There are authorized to be appropriated to the Secretary of Energy not to exceed $2,000,000 for FY 1979, as may be necessary to carry out his duties under this part.

PART 4—FEDERAL PHOTOVOLTAIC UTILIZATION

The purpose of this part is to encourage the development of a commercially viable photovoltaic industry in the United States by accelerating the procurement and use of photovoltaic solar electric systems by Federal agencies. These photovoltaic systems consist of solar cells that convert sunlight directly into electricity. This part establishes a program to evaluate and purchase these photovoltaic systems for use by Federal agencies to meet a small portion of their needs for electricity. The conferees anticipate that these systems would be employed at remote sites where electrical service is unavailable or very expensive.

Nothing in this part is intended to prohibit any agency, where its needs for Photovoltaic systems cannot appropriately be met under this program, from purchasing them under other authority. The photovoltaic systems evaluation and purchase program should, the conferees intend, devote appropriate attention to helping small businesses and promoting competition.

There are authorized to be appropriated to the Secretary of Energy no more than $98,000,000 for the three year period of fiscal year 1979 through fiscal year 1981, to carry out the purposes of this part.

The conferees agreed to adopt the Senate provision which was similar in many respects to the House provision. In addition the conferees made several minor changes to the Senate language such as adding a definition for "Secretary." The term "Federal facility" is intended to include structures such as federally owned roadway signs or repeating stations that are not necessarily contained in a building.

TITLE VI—ADDITIONAL ENERGY-RELATED MEASURES

PART 1—INDUSTRIAL ENERGY EFFICIENCY REPORTING

SECTION 601. INDUSTRIAL ENERGY EFFICIENCY REPORTING

The Senate bill amended Part D of Title III of the Energy Policy and Conservation Act, which requires certain corporations to report on their progress in energy conservation. The House bill contained no comparable provision. The conference substitute adopts the Senate language with modifications.

First, all corporations in any major energy-consuming industry which consume one trillion Btu's or more of energy per year would be required to report on their energy efficiency.

Second, all plants of a corporation must file with their corporate headquarters a completed plant reporting form furnished by the Secretary. The corporation's report, based on the data taken from all plant reporting forms, must be aggregated to SIC codes determined by the Secretary. It is not the intent of the conferees for the Secretary of Energy to require every report to be aggregated to 3 or 4 digit SIC codes. Rather, aggregation to the 3 or 4 digit SIC code would be required only where the Secretary considers it reasonably necessary.

Third, the conferees agreed that, although plant reporting forms must be retained by the corporation for five years, plant reporting forms will be available for purposes of verification to the Secretary. It is the intent of the conferees that data available to the DOE and other Federal agencies be kept confidential. The public will not be given access to these forms. However, the second sentence of 5 U.S.C. 552(c) is not affected.

Finally, the Conferees agreed not to change the language on the voluntary reporting exemption. However, it was agreed that the Secretary had not sufficiently defined "adequate voluntary reporting program" within the guidelines provided in Sec. 376(g), and that the Secretary should set more explicit criteria for the determination of whether a voluntary program is adequate.

PART 2—STATE ENERGY CONSERVATION PLANS

SECTION 621. STATE ENERGY CONSERVATION PLAN

The conference substitute adopts a modified Senate provision authorizing $50,000,000 for fiscal year 1979 for State energy conservation plans authorized in Part C of Title III of the Energy Policy and Conservation Act.

SECTION 622. SUPPLEMENTAL STATE ENERGY CONSERVATION PLANS

The conference substitute adopts a modified Senate provision amending section 367 (c) of the Energy Policy and Conservation Act to authorize $50,000,000 for fiscal year 1979 for supplemental State conservation plans. The EPCA had contained an authorization for $40,000,000 for fiscal year 1979.

SECTION 623. REPORT ON COORDINATION OF ENERGY CONSERVATION PROGRAMS

The conference substitute includes a Senate provision requiring the Secretary of Energy to report to Congress on the coordination of Federal energy conservation programs involving State and local governments. The report must be submitted not later than six months after the date of enactment of this section.

PART 3—MINORITY ECONOMIC RESEARCH AND DEVELOPMENT

SECTION 641. MINORITY ECONOMIC IMPACT

The conference substitute includes a modified version of a Senate provision which establishes within the Department of Energy an Office of Minority Economic Impact.

The Office is to be headed by a Director, who is appointed by the President, by and with the advice and consent of the Senate. The Director is given the responsibility of advising the Secretary on the effect of energy policies, regulations, and other Departmental actions on minorities and minority business enterprises, and on methods to afford an opportunity to minorities to participate fully in the Department's energy programs.

The Director is also given the responsibility of conducting an ongoing research program on the effect of energy programs on minorities.

The Director may provide management and technical assistance to minority educational institutions and minority business enterprises to enable them to participate in the research, development, demonstration, and contract activities of the Department.

The Secretary of Energy, acting through the Office, may provide loans to minority business enterprises to assist them in participating in Department programs. These loans are to be used to assist the businesses in bidding for and obtaining contracts. Such loans are limited to 75 percent of the firm's costs for such activities. Repayments of such loans are to be deposited in the U.S. Treasury.

Authorization of appropriations for the Office are $3,000,000 in fiscal year 1979, $5,000,000 in fiscal year 1980, and $6,000,000 in fiscal year 1981. Not less than 50 percent of appropriated funds are to be available for the loans described above.

PART 4—CONSERVATION OF NATIONAL COAL RESOURCES

SECTION 661. MAJOR FUEL BURNING STATIONARY SOURCE

The conferees accepted the Senate provisions with substantial modifications. There was no comparable House provision.

Section 125 of the Clean Air Act as amended provides that in order to minimize local unemployment or economic disruption, a Governor (with consent of the President) or the President (or his designee) may prohibit a major fuel-burning stationary source from using fuels other than local coal. Furthermore, the Governor or the EPA Administrator may order that facility to enter into long-term contracts to buy locally or regionally available coal.

The conference substitute repealed in effect, the authorities granted to the Governor under section 125. However, a Governor may petition the President to exercise the President's authorities under Section 125. The petition must include documentation showing that significant local or regional economic disruption or unemployment would result from use by such source of fuels (as described in the bill) other than local or regional coal.

Before issuing a rule or order the President must find that it would—

Be consistent with section 125.

Result in no significant increase in energy consumption.

Not subject ultimate consumers to significantly higher energy costs.

Not violate any contractual relationship between the source and any supplier or transporter of fuel to that source.

PART 5—STUDIES

SECTION 681. OFF-HIGHWAY MOTOR VEHICLES

The conferees adopted the House provision that requires the Secretary of Transportation to conduct a study on the potential for conserving energy used by recreational motor vehicles and to submit the study to the President and the Congress. The conferees deleted the House provision that "such report shall contain recommendations respecting the desirability and practicability of applying fuel efficiency standards or taxes on fuel use (or both) to such vehicles." In deleting this sentence the conferees intend to remove any suggestion of Congressional prejudgment or presumption as to the outcome of the study. The language adopted by the conferees does not call for a focus on any particular incentive or disincentives for promoting energy conservation in these vehicles.

SECTION 682. BICYCLE STUDY

The conferees adopted the language (identical in both House and Senate bills) requiring a study by the Secretary of Transportation of the energy conservation that would be achieved through potential bicycle transportation, and the development of a comprehensive program to achieve increased bicycle use. The Secretary of Transportation must report to the President and Congress on the results of the study.

SECTION 683. SECOND LAW EFFICIENCY STUDY

The conferees adopted, with technical amendments, the Senate provision requiring the Secretary of Energy to conduct a study of the relevance to energy conservation programs of the use of the concept of the second law of thermodynamics. The conferees added language to ensure that any contract in connection with the study will be awarded on a competitive basis.

FEDERAL PURCHASE OF VEHICLES EQUIPPED WITH PASSIVE RESTRAINT DEVICES

The conferees did not adopt the Senate provision which would have required all passenger vans and automobiles purchased by the Federal Government after fiscal year 1978 to be equipped with airbags or other passive restrain systems for the occupants.

Vehicles used by the Federal Government are procured by the General Services Administration (GSA) under authority vested by the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481). The Act authorizes GSA to stipulate appropriate performance requirements for procurement items. The conferees take recognition of the fact that in 1964 the Administrator of GSA was granted specific authority under Public Law 88-515 (40 U.S.C. 701) to require motor vehicles purchased by the Federal Government to be equipped with such reasonable passenger safety devices as he may require.

VANPOOLING AND WOOL PRODUCTS LABELING

With respect to provisions in the Senate bill and not in the House bill concerning Federal vanpooling, and wool products labeling, the Senate receded.

HENRY M. JACKSON,
J. BENNETT JOHNSTON,
JOHN A. DURKIN,
FLOYD K. HASKELL,
DALE BUMPERS,
H. M. METZENBAUM,
MARK O. HATFIELD,
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LOWELL P. WEICKER, Jr.,
PETE V. DOMENICI,
Managers on the Part of the Senate.

HARLEY O. STAGGERS,
THOMAS L. ASHLEY,
AL ULLMAN,
DICK BOLLING,
THOMAS S. FOLEY,
JOHN D. DINGELL,
PAUL G. ROGERS,
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JAMES CORMAN,
C. B. RANGEL,
JOHN B. ANDERSON,
CLARENCE J. BROWN,
GARRY BROWN,
WILLIAM STEIGER,
Managers on the Part of the House.

CONFERENCE REPORT ON H.R. 5289, THE NATURAL GAS POLICY ACT OF 1978

Mr. DINGELL submitted the following conference report and statement on the bill (H.R. 5289) for the relief of Joe Cortina of Tampa, Fla.:

CONFERENCE REPORT (H. REPT. No. 95–1752)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment numbered 8 of the Senate to the bill (H.R. 5289) for the relief of Joe Cortina of Tampa, Fla., having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate numbered 8 and agree to the same with an amendment as follows:

In lieu of the matter propcsed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Natural Gas Policy Act of 1978".

(b) TABLE OF CONTENTS.—

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—WELLHEAD PRICING

Subtitle A—Wellhead Price Controls

Sec. 101. Inflation adjustment; other general price ceiling rules.
Sec. 102. Ceiling price for new natural gas and certain natural gas produced from the Outer Continental Shelf.
Sec. 103. Ceiling price for new, onshore production wells.
Sec. 104. Ceiling price for sales of natural gas dedicated to interstate commerce.
Sec. 105. Ceiling price for sales under existing intrastate contracts.
Sec. 106. Ceiling price for sales under rollover contracts.
Sec. 107. Ceiling price for high-cost natural gas.
Sec. 108. Ceiling price for stripper well natural gas.
Sec. 109. Ceiling price for other categories of natural gas.
Sec. 110. Treatment of State severance taxes and certain production-related costs.

Subtitle B—Decontrol of Certain Natural Gas Prices

Sec. 121. Elimination of price controls for certain natural gas sales.
Sec. 122. Standby price control authority.
Sec. 123. Report to the Congress.

TITLE II—INCREMENTAL PRICING

Sec. 201. Industrial boiler fuel use.
Sec. 202. Amendment expanding application for other industrial uses.
Sec. 203. Acquisition costs subject to passthrough.
Sec. 204. Method of passthrough.
Sec. 205. Local distribution company passthrough requirements.
Sec. 206. Exemptions.
Sec. 207. Treatment of certain imports.
Sec. 208. Alaska natural gas.

TITLE III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

Subtitle A—Emergency authorities

Sec. 301. Declaration of emergency.
Sec. 302. Emergency purchase authority.
Sec. 303. Emergency allocation authority.
Sec. 304. Miscellaneous provisions.

Subtitle B—Other Authorities and Requirements

Sec. 311. Authorization of certain sales and transportation.
Sec. 312. Assignment of contractual rights to receive surplus natural gas.
Sec. 313. Effect of certain natural gas prices on indefinite price escalator clauses.
Sec. 314. Clauses prohibiting certain sales, transportation, and commingling.
Sec. 315. Contract duration; right of first refusal; filing of contracts and agreements.

TITLE IV—NATURAL GAS CURTAILMENT POLICIES

Sec. 401. Natural gas for essential agricultural uses.
Sec. 402. Natural gas for essential industrial process and feedstock uses.
Sec. 403. Establishment and implementation of agricultural and industrial priorities.
Sec. 404. Limitation on revoking or amending certain pre-1969 certificates of public convenience and necessity.

TITLE V—ADMINISTRATION, ENFORCEMENT AND REVIEW

Sec. 501. General rulemaking authority.
Sec. 502. Administrative procedure.
Sec. 503. Determinations for qualifying under certain categories of natural gas.
Sec. 504. Enforcement.
Sec. 505. Intervention.
Sec. 506. Judicial review.
Sec. 507. Congressional review.
Sec. 508. Technical amendment.

TITLE VI—COORDINATION WITH THE NATURAL GAS ACT; EFFECT ON STATE LAWS

Sec. 601. Coordination with the Natural Gas Act.
Sec. 602. Effect on State laws.

SEC. 2. DEFINITIONS.

For purposes of this Act—

(1) NATURAL GAS.—The term "natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(2) WELL.—The term "well" means any well for the discovery or production of natural gas, crude oil, or both.

(3) NEW WELL.—The term "new well" means any well—

(A) the surface drilling of which began on or after February 19, 1977; or

(B) the depth of which was increased, by means of drilling on or after February 19, 1977, to a completion location which is located at least 1,000 feet below the depth of the deepest completion location of such well attained before February 19, 1977.

(4) OLD WELL.—The term "old well" means any well other than a new well.

(5) MARKER WELL.—

(A) GENERAL RULE.—The term "marker well" means any well from which natural gas was produced in commercial quantities at any time after January 1, 1970, and before April 20, 1977.

(B) NEW WELLS.—The term "marker well" does not include any new well under paragraph (3)(A) but includes any new well under paragraph (3)(B) if such well qualifies as a marker well under subparagraph (A) of this paragraph.

(6) RESERVOIR.—The term "reservoir" means any producible natural accumulation of natural gas, crude oil, or both, confined—

(A) by impermeable rock or water barriers and characterized by a single natural pressure system; or

(B) by lithologic or structural barriers which prevent pressure communication.

(7) COMPLETION LOCATION.—

(A) GENERAL RULE.—The term "completion location" means any subsurface location from which natural gas is being or has been produced in commercial quantities.

(B) MARKER WELL.—The term "completion location", when used with reference to any marker well, means any subsurface location from which natural gas was produced from such well in commercial quantities after January 1, 1970, and before April 20, 1977.

(8) PRORATION UNIT.—The term "proration unit" means—

(A) any portion of a reservoir, as designated by the State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, which will be effectively and efficiently drained by a single well;

(B) any drilling unit, production unit, or comparable arrangement, designated or recognized by the State or Federal agency having jurisdiction with respect to production from the reservoir, to describe that portion of such reservoir which will be effectively and efficiently drained by a single well; or

(C) if such portion of a reservoir, unit, or comparable arrangement is not specifically provided for by State law or by any action of any State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, any voluntary unit agreement or other comparable arrangement applied, under local custom or practice within the locale in which such reservoir is situated, for the purpose of describing the portion of a reservoir which may be effectively and efficiently drained by a single well.

(9) NEW LEASE.—The term "new lease", when used with respect to the Outer Continental Shelf, means a lease, entered into on or after April 20, 1977, of submerged acreage.

(10) OLD LEASE.—The term "old lease", when used with respect to the Outer Continental Shelf, means any lease other than a new lease.

(11) NEW CONTRACT.—The term "new contract" means any contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas which was not previously subject to an existing contract.

(12) ROLLOVER CONTRACT.—The term "rollover contract" means any contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after such date of enactment) specified by the provisions of such existing contract, as such contract was in effect or the date of the enactment of this Act, whether or not there is an identity of parties or terms with those of such existing contract.

(13) EXISTING CONTRACT.—The term "existing contract" means any contract for the first sale of natural gas in effect on the day before the date of the enactment of this Act.

(14) SUCCESSOR TO AN EXISTING CONTRACT.—The term "successor to an existing contract" means any contract, other than a rollover contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract.

(15) INTERSTATE PIPELINE.—The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act.

(16) INTRASTATE PIPELINE.—The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act).

(17) LOCAL DISTRIBUTION COMPANY.—The term "local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in the transportation, or local distribution of natural gas and the sale of natural gas for ultimate consumption.

(18) COMMITTED OR DEDICATED TO INTERSTATE COMMERCE.—

(A) GENERAL RULE.—The term "committed or dedicated to interstate commerce", when used with respect to natural gas, means—

(i) natural gas which is from the Outer Continental Shelf; and

(ii) natural gas which, if sold, would be required to be sold in interstate commerce (within the meaning of the Natural Gas Act) under the terms of any contract, any certificate under the Natural Gas Act, or any provision of such Act.

(B) EXCLUSION.—Such term does not apply with respect to—

(i) natural gas sold in interstate commerce (within the meaning of the Natural Gas Act)—

(I) under section 6 of the Emergency Natural Gas Act of 1977;

(II) under any limited term certificate, granted pursuant to section 7 of the Natural Gas Act, which contains a pregrant of abandonment of service for such natural gas;

(III) under any emergency regulation under the second proviso of section 7(c) of the Natural Gas Act; or

(IV) to the user by the producer and transported under any certificate, granted pursuant to section 7(c) of the Natural Gas Act, if such certificate was specifically granted for the transportation of that natural gas for such user;

(ii) natural gas for which abandonment of service was granted before the date of enactment of this Act under section 7 of the Natural Gas Act; and

(iii) natural gas which, but for this clause, would be committed or dedicated to interstate commerce under subparagraph (A)(ii) by reason of the action of any person (including any successor in interest thereof, other than by means of any reversion of a leaseshold interest), if on May 31, 1978—

(I) neither that person, nor any affiliate thereof, had any right to explore for, develop, produce, or sell such natural gas; and

(II) such natural gas was not being sold in interstate commerce (within the meaning of the Natural Gas Act) for resale (other than any sale described in clause (i) (I), (II), or (III)).

(19) CERTIFICATED NATURAL GAS.—The term "certificated natural gas" means natural gas transported by any interstate pipeline in a facility for which there is in effect a certificate issued under section 7(c) of the Natural Gas Act. Such term does not include natural gas sold to the user by the producer and transported pursuant to a certificate which is specifically issued under section 7(c) of the Natural Gas Act for the transportation of that natural gas, for such user unless such natural gas is used for the generation of electricity.

(20) SALE.—The term "sale" means any sale, exchange, or other transfer for value.

(21) FIRST SALE.—

(A) GENERAL RULE.—The term "first sale" means any sale of any volume of natural gas—

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;

(iii) to any person for use by such person;

(iv) which precedes any sale described in clauses (i), (ii), or (iii); and

(v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this Act.

(B) CERTAIN SALES NOT INCLUDED.—Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.

(22) DELIVER.—The term "deliver" when used with respect to any first sale of natural gas, means the physical delivery from the seller; except that in the case of the sale of proven reserves in place to any interstate pipeline, any intrastate pipeline, any local distribution company, or any user of such natural gas such term means the transfer of title to such reserves.

(23) CERTIFICATE.—The term "certificate", when used with respect to the Natural Gas Act, means a certificate of public convenience and necessity issued under such Act.

(24) COMMISSION.—The term "Commission" means the Federal Energy Regulatory Commission.

(25) FEDERAL AGENCY.—The term "Federal agency" has the same meaning as given such term in section 105 of title 5, United States Code.

(26) PERSON.—The term "person" includes the United States, any State, and any political subdivision, agency, or instrumentality of the foregoing.

(27) AFFILIATE.—The term "affiliate", when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person.

(28) ELECTRIC UTILITY.—The term "electric utility" means any person to the extent such person is engaged in the business of the generation of electricity and sale, directly or indirectly, of electricity to the public.

(29) MCF.—The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square *inch* (absolute) and a temperature of 60 degrees Fahrenheit.

(30) BTU.—The term "Btu" means British thermal unit.

(31) MONTH.—The term "month" means a calendar month.

(32) MILE.—The term "mile" means a statute mile of 5,280 feet.

(33) UNITED STATES.—The term "United States" means the several States and includes the Outer Continental Shelf.

(34) STATE.—The term "State" means each of the several States and the District of Columbia.

(35) OUTER CONTINENTAL SHELF.—The term "Outer Continental Shelf" has the same meaning as such term has under section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

(36) PRUDHOE BAY UNIT OF ALASKA.—The term "Prudhoe Bay Unit of Alaska" means the geographic area subject to the voluntary unit agreement approved by the Commissioner of the Department of Natural Resources of the State of Alaska on June 2, 1977, and referred to as the "affected area" in Conservation Order No. 145 of the Alaska Oil and Gas Conservation Committee, Division of Oil and Gas Conservation, Department of Natural Resources of the State of Alaska, as such order was in effect on June 1, 1977, and determined without regard to any adjustments in the description of the affected area permitted to be made under such order.

(37) ANTITRUST LAWS.—The term "Federal antitrust laws" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 13, 14–19, 20, 21, 22–27), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8–9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13(b) and 21a).

TITLE I—WELLHEAD PRICING

Subtitle A—Wellhead Price Controls

SEC. 101. INFLATION ADJUSTMENT; OTHER GENERAL PRICE CEILING RULES.

(a) ANNUAL INFLATION ADJUSTMENT FACTOR.—

(1) GENERAL RULE.—For purposes of this title, the annual inflation adjustment factor applicable for any month shall be the sum of—

(A) a factor equal to one hundredth of the quarterly percent change in the GNP implicit price deflator, plus

(B) a correction factor of 1.002.

(2) QUARTERLY PERCENT CHANGE IN THE GNP IMPLICIT PRICE DEFLECTOR.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term "quarterly percent change in the GNP implicit price deflator", when used with respect to any month, means the quarterly percent change in the GNP implicit price deflator, computed and published as an annual rate by the Department of Commerce, for the most recent calendar quarter for which such quarterly percent change has been so published at least 8 days before the beginning of such month.

(B) MONTHS BEFORE ENACTMENT.—For purposes of applying such term with respect to any month in any calendar quarter which ends before the date of the enactment of this Act and for which a quarterly percent change in the GNP implicit price deflator has been published by the Department of Commerce as of such date of enactment, the quarterly percent change in the GNP implicit price deflator for the calendar quarter in which such month occurs shall be used in lieu of the quarterly percent change in the GNP implicit price deflator for a preceding calendar quarter.

(3) GNP IMPLICIT PRICE DEFLATOR.—For purposes of paragraph (2)—

(A) IN GENERAL.—The term "GNP implicit price deflator" means, except as provided in subparagraph (B), the preliminary estimate of the implicit price deflator, seasonally adjusted, for the gross national product, as computed and published by the Department of Commerce for the calendar quarter involved.

(B) MOST RECENT DATA AVAILABLE ON ENACTMENT.—The most recent revision, if any, of such implicit price deflator which has been so published before the date of the enactment of this Act, shall be used in lieu of the preliminary estimate of such implicit price deflator.

(b) RULES OF GENERAL APPLICATION.—

(1) DEPTH.—Except where otherwise provided, the depth of the completion location of any well shall be the true vertical depth, measured from the surface location of the well.

(2) COMMERCIAL QUANTITIES.—In determining whether production of natural gas has occurred in commercial quantities, quantities of natural gas produced from a well and used for the testing of such well or for other field

uses which are production related shall not be taken into account.

(3) COMPUTATION OF MONTHLY EQUIVALENT.—For purposes of computing any price under this title, the monthly equivalent of any factor shall be the twelfth root of such factor.

(4) APPLICATION OF CEILING PRICES.—The maximum lawful ceiling prices under this title—

(A) shall only apply to natural gas produced in the United States;

(B) shall apply to the month of delivery without regard to the date of the sale or the date of the contract under which the sale occurs; and

(C) shall not apply to deliveries occurring before the first day of the first month beginning after the date of the enactment of this Act.

(5) SALES QUALIFYING UNDER MORE THAN ONE PROVISION.—If any natural gas qualifies under more than one provision of this title providing for any maximum lawful price or for any exemption from such a price with respect to any first sale of such natural gas, the provision which could result in the highest price shall be applicable.

(6) COMPUTATION AND PUBLICATION OF CEILING PRICES.—The Commission shall—

(A) not later than 5 days before the beginning of any month, compute and make available the maximum lawful prices prescribed under this title for such month and the monthly equivalent of the annual inflation adjustment factor for such month, and

(B) as soon as possible thereafter, publish such maximum lawful prices and such factor for such month in the Federal Register.

(7) ROUNDING.—Any maximum lawful price under this title shall be computed to the nearest mill (rounding any fraction thereof which is one-half a mill or higher to the next highest mill).

(8) COMPUTATION OF INITIAL CEILING PRICES.—In computing any maximum lawful price under the provisions of this title for the first month for which such provisions take effect, if the initial maximum lawful price is established by reference to any month before such month, such maximum lawful price shall be computed as if such provisions had been in effect during each such prior month.

(9) EFFECT ON CONTRACT PRICE.—In the case of—

(A) any price which is established under any contract for the first sale of natural gas and which does not exceed the applicable maximum lawful price under this title, or

(B) any price which is established under any contract for the first sale of natural gas which is exempted under subtitle B of this title from the application of a maximum lawful price under this title,

such maximum lawful price, or such exemption from such a maximum lawful price, shall not supersede or nullify the effectiveness of the price established under such contract.

SEC. 102. CEILING PRICE FOR NEW NATURAL GAS AND CERTAIN NATURAL GAS PRODUCED FROM THE OUTER CONTINENTAL SHELF.

(a) APPLICATION.—The maximum lawful price computed under subsection (b) shall apply to any first sale of natural gas delivered during any month in the case of—

(1) new natural gas; and

(2) natural gas produced from any old lease on the Outer Continental Shelf and qualifying under subsection (d) for the new natural gas ceiling price.

(b) MAXIMUM LAWFUL PRICE.—The maximum lawful price under this section for any month shall be—

(1) $1.75 per million Btu's, in the case of April 1977; and

(2) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subsection for the preceding month multiplied by the monthly equivalent of a factor equal to the sum of—

(A) the annual inflation adjustment factor applicable for such month; plus

(B)(i) .035, in the case of any month beginning before April 20, 1981; or

(ii) .04, in the case of any month beginning after April 20, 1981.

(c) DEFINITION OF NEW NATURAL GAS.—

(1) GENERAL RULE.—For the purposes of this section, the term "new natural gas" means each of the following categories of natural gas:

(A) NEW OCS LEASES.—Natural gas determined in accordance with section 503 to be produced from a new lease on the Outer Continental Shelf.

(B) NEW ONSHORE WELLS.—Natural gas determined in accordance with section 503 to be produced (other than from the Outer Continental Shelf) from—

(i) any new well which is 2.5 miles or more (determined in accordance with paragraph (2)) from the nearest marker well; or

(ii) any completion location, of any new well, which is located at a depth at least 1,000 feet below the deepest completion location of each marker well within 2.5 miles (determined in accordance with paragraph (2)) of such new well.

(C) NEW ONSHORE RESERVOIRS.—

(i) GENERAL RULE.—Except as provided in clauses (ii) and (iii), natural gas determined in accordance with section 503 to be produced (other than from the Outer Continental Shelf) from a reservoir from which natural gas was not produced in commercial qualities before April 20, 1977.

(ii) BEHIND-THE-PIPE EXCLUSION.—Clause (i) shall not apply to natural gas produced from any reservoir if—

(I) the reservoir was penetrated before April 20, 1977, by an old well from which natural gas or crude oil was produced in commercial quantities (whether or not such production was from such reservoir); and

(II) natural gas could have been produced in commercial quantities from such reservoir through such old well before April 20, 1977.

(iii) WITHHELD GAS EXCLUSION.—Clause (i) shall not apply to natural gas produced from any reservoir—

(I) if such natural gas is produced through an old well; and

(II) subject to clause (iv), suitable facilities for the production and delivery to a pipeline of such natural gas were in existence on April 20, 1977.

(iv) EMERGENCY SALE FACILITIES.—The criteria of clause (iii)(II) shall not be considered to be met by reason of the existence of production and delivery facilities which were installed to carry out sales and deliveries of natural gas—

(I) under section 6 of the Emergency Natural Gas Act of 1977; or

(II) under the emergency sale authority pursuant to Opinion 699-B issued by the Federal Power Commission under section 7(c) of the Natural Gas Act.

(2) DETERMINATIONS OF DISTANCE.—For purposes of determining the distance from any new well to any marker well—

(A) SURFACE LOCATION TO SURFACE LOCATION.—The measurement shall be the horizontal distance from the surface location of the new well to the surface location of the marker well—

(i) in any case in which the new well meets requirements for the non-directional drilling of wells prescribed by the appropriate State or Federal agency having regulatory jurisdiction over the drilling of such well; or

(ii) in any case in which—

(I) the surface drilling of such new well began on or after February 19, 1977;

(II) production of natural gas in commercial quantities began from such well before the date of the enactment of this Act; and

(III) the drilling of such well was not subject to any requirement regarding directional or non-directional drilling, or the drilling of such well was subject to requirements regarding directional drilling but such requirements did not necessitate the obtaining of any permit or other certificate before drilling began.

(B) COMPLETION LOCATION TO SURFACE LOCATION.—In the case of any new well which is not covered by subparagraph (A), the measurement shall be the horizontal distance from—

(i) the closest point of any completion location of the new well, vertically projected to the same elevation as the surface location of the nearest marker well; to

(ii) the surface location of such marker well.

(3) DETERMINATION OF COMMERCIAL QUANTITIES.—For purposes of determining whether production of natural gas has occurred in commercial quantities under paragraph (1)(C)—

(A) a rebuttable presumption exists that production from a reservoir in commercial quantities has not occurred if natural gas has not been sold and delivered from such reservoir before April 20, 1977; and

(B) quantities of natural gas sold in interstate commerce (within the meaning of the Natural Gas Act) shall not be taken into account if such quantities were sold before the date of the enactment of this Act—

(i) under section 6 of the Emergency Natural Gas Act of 1977; or

(ii) under the emergency sale authority pursuant to Opinion 699-B issued by the Federal Power Commission under section 7(c) of the Natural Gas Act.

(4) NEW WELLS WHICH ARE ALSO MARKER WELLS.—For purposes of applying paragraph (c)(1)(B)(ii) in the case of any marker well which is also a new well under section 2(3)(B), the reference in such paragraph (c)(1)(B)(ii) to the deepest completion location of any marker well shall be deemed to be a reference to any subsurface location from which natural gas was produced in commercial quantities after January 1, 1970, and before February 19, 1977.

(d) OCS GAS QUALIFYING FOR NEW NATURAL GAS CEILING PRICE.—For purposes of this section—

(1) OCS RESERVOIRS DISCOVERED ON OR AFTER JULY 27, 1976.—Natural gas determined in accordance with section 503 to be produced from an old lease on the Outer Continental Shelf shall qualify for the new natural gas ceiling price if such natural gas is produced from a reservoir which was not discovered before July 27, 1976.

(2) RESERVOIRS PENETRATED BEFORE JULY 27, 1976.—For purposes of paragraph (1), a reservoir shall be considered as having been discovered before July 27, 1976, if—

(A) such reservoir was penetrated by a well before July 27, 1976; and

(B) with respect to such well—

(i) the results of any production test meeting the requirements of OCS Order No. 4 demonstrate that, as of the time of such test, the reservoir is capable of producing in paying quantities (within the meaning of such Order);

(ii) any production capability evidence meeting the requirements of OCS Order No. 4 demonstrates that, as of the time such evidence is obtained, the reservoir is capable of producing in paying quantities (within the meaning of such Order); or

(iii) subject to paragraph (3), an induction-electric log, sidewall cores and core analysis, or a wire line formation test indicates that, as of the time of such test, the reservoir is commercially producible.

(3) EFFECT OF NEGATIVE PRODUCTION CAPABILITY TESTS.—For purposes of paragraph (1), a reservoir shall not be considered as having been discovered before July 27, 1976, by the penetration of such reservoir by a well before July 27, 1976, if, with respect to such well—

(A) a production test meeting the requirements of OCS Order No. 4 was performed and the results of such test fail to demonstrate that, as of the time of such test, such reservoir was capable of producing in paying quantities (within the meaning of such Order); and

(B) production capability evidence meeting the requirements of OCS Order No. 4 does not exist or, if existing, does not demonstrate that, as of the date such evidence was obtained, such reservoir was capable of producing in paying quantities (within the meaning of such Order).

(4) BURDEN OF PROOF.—For purposes of paragraph (1), the producer shall have the burden of showing that—

(A) no test described in paragraph (2)(B)(i) or (iii) was performed and no evidence described in paragraph (2)(B)(ii) or (iii) exists; or

(B) if any such test was performed or such evidence exists, the results of such tests or such evidence do not provide the applicable demonstration or indication specified under paragraph (2).

(5) DEFINITION OF OCS ORDER NO. 4.—For purposes of this subsection, the term "OCS Order No. 4" means the order numbered 4 of the Conservation Division, Geological Survey, Department of the Interior, as approved by the Chief of the Conservation Division on August 28, 1969.

(e) EXCLUSION OF CERTAIN ALASKA NATURAL GAS.—The preceding provisions of this section shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

SEC. 103. CEILING PRICE FOR NEW, ONSHORE PRODUCTION WELLS.

(a) APPLICATION.—In the case of natural gas determined in accordance with section 503 to be produced from any new, onshore production well, the maximum lawful price computed under subsection (b) shall apply to any first sale of such natural gas delivered during any month.

(b) MAXIMUM LAWFUL PRICE.—

(1) GENERAL RULE.—The maximum lawful price under this section for any month shall be—

(A) $1.75 per million Btu's, in the case of April 1977; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(2) PRODUCTION AFTER 1984 FROM WELLS 5,000 FEET OR LESS IN DEPTH.—Effective beginning with the month of January 1985 and in any month thereafter, in the case of any first sale of natural gas which was not committed or dedicated to interstate commerce on April 20, 1977, and which is produced from a new, onshore production well from a completion location located at a depth of 5,000 feet or less, the maximum lawful price under this section for any such natural gas delivered during any month shall be a price which is midway between—

(A) the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas); and

(B) the maximum lawful price, per million Btu's, computed for such month under paragraph (1).

(c) DEFINITION OF NEW, ONSHORE PRODUCTION WELL.—For purposes of this section, the term "new, onshore production well" means any new well (other than a well located on the Outer Continental Shelf)—

(1) the surface drilling of which began on or after February 19, 1977;

(2) which satisfies applicable Federal or State well-spacing requirements, if any; and

(3) which is not within a proration unit—

(A) which was in existence at the time the surface drilling of such well began;

(B) which was applicable to the reservoir from which such natural gas is produced; and

(C) which applied to a well (i) which produced natural gas in commercial quantities or (ii) the surface drilling of which was begun before February 19, 1977, and which was thereafter capable of producing natural gas in commercial quantities.

(d) EXCLUSION OF CERTAIN ALASKA NATURAL GAS.—The preceding provisions of this section shall not apply to any natural gas gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

SEC. 104. CEILING PRICE FOR SALES OF NATURAL GAS DEDICATED TO INTERSTATE COMMERCE.

(a) APPLICATION.—In the case of natural gas committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and for which a just and reasonable rate under the Natural Gas Act was in effect on such date for the first sale of such natural gas, the maximum lawful price computed under subsection (b) shall apply to any first sale of such natural gas delivered during any month.

(b) MAXIMUM LAWFUL PRICE.—

(1) GENERAL RULE.—The maximum lawful price under this section for any month shall be the higher of—

(A)(i) the just and reasonable rate, per million Btu's, established by the Commission which was (or would have been) applicable to the first sale of such natural gas on April 20, 1977, in the case of April 1977; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month, or

(B) any just and reasonable rate which was established by the Commission after April 20, 1977, and before the date of the enactment of this Act and which is applicable to such natural gas.

(2) CEILING PRICES MAY BE INCREASED IF JUST AND REASONABLE.—The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) just and reasonable within the meaning of the Natural Gas Act.

SEC. 105. CEILING PRICE FOR SALES UNDER EXISTING INTRASTATE CONTRACTS.

(a) APPLICATION.—The maximum lawful price computed under subsection (b) shall apply to any first sale of natural gas delivered during any month in the case of natural gas, sold under any existing contract or any successor to an existing contract, which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act.

(b) MAXIMUM LAWFUL PRICE.—

(1) GENERAL RULE.—Subject to paragraphs (2) and (3), the maximum lawful price under this section shall be the lower of—

(A) the price under the terms of the existing contract, to which such natural gas was subject on the date of the enactment of this Act, as such contract was in effect on such date; or

(B) the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas).

(2) CONTRACT PRICE EXCEEDING NEW GAS CEILING PRICE ON ENACTMENT.—In the case of any natural gas described in subsection (a) for which the contract price applicable on the date of the enactment of this Act exceeds the maximum lawful price, per million Btu's, computed for such date under section 102 (relating to new natural gas), the maximum lawful price under this section shall be the higher of—

(A) the maximum lawful price, per million Btu's, computed for such month under section 102; or

(B)(i) the contract price on the date of the enactment of this Act, in the case of the month in which this Act is enacted; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(3) PRICE INCREASES RESULTING FROM INDEFINITE PRICE ESCALATOR CLAUSES.—

(A) IN GENERAL.—Effective January 1985, and each month thereafter, in the case of any first sale of natural gas, which is sold at a price established under any indefinite price escalator clause of any existing contract or successor to an existing contract and for which the contract price on December 31, 1984, is higher than $1.00 per million Btu's, the maximum lawful price under this section for any such natural gas delivered during any month shall be the higher of—

(i) the maximum lawful price, per million Btu's, computed under paragraph (2)(B); or

(ii)(I) in the case of January 1985, the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for such month; and

(II) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this clause for the immediately preceding month multiplied by the monthly equivalent of the sum of a factor equal to the annual inflation adjustment factor applicable for such month plus .03.

(B) DEFINITION OF INDEFINITE PRICE ESCALATOR CLAUSE.—For purposes of this paragraph, the term "indefinite price escalator clause" includes any provision of any contract—

(i) which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or

(ii) which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties.

(C) CONTRACT MODIFICATION AFTER MAY 3, 1978, TO BE DISREGARDED.—In the case of any natural gas which was subject to any contract on May 3, 1978, that contained an indefinite price escalator clause on such date, no amendment to or modification of the op-

eration of such contract made after such date may have the effect of limiting or precluding the application of this paragraph on or after January 1, 1985, to prices allowed with respect to such natural gas.

(D) EXCLUSION.—Subparagraph (A) shall not apply to any first sale of new natural gas (as defined in section 102(c)), stripper well natural gas (as defined in section 108(b)), high-cost natural gas (as defined in section 107(c)), natural gas produced from a new, onshore production well (as defined in section 103(c)) from a completion location located at a depth of more than 5,000 feet, and, beginning July 1, 1987, or, if later, the date of expiration of any price controls from any new, onshore production well (as defined in section 103(c)) from a completion location located at a depth of 5,000 feet or less.

(c) DEFINITION OF CONTRACT PRICE.—For purposes of this section, the term "contract price", when used with respect to any specific date, means—

(1) the price paid, per million Btu's under a contract for deliveries of natural gas occurring on such date; or

(2) if no deliveries of natural gas occurred under such contract on such date, the price, per million Btu's, that would have been paid had such deliveries occurred on such date.

SEC. 106. CEILING PRICE FOR SALES UNDER ROLLOVER CONTRACTS

(a) INTERSTATE ROLLOVER CONTRACTS.—In the case of any first sale under any rollover contract of natural gas which was committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, the maximum lawful price under this subsection for such natural gas delivered during any month shall be the higher of—

(1)(A) in the case of the month in which the effective date of such rollover contract occurs, the just and reasonable rate, if any, per million Btu's, established by the Commission and applicable on such date to the natural gas subject to the expired contract; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month; or

(2)(A) $.54 per million Btu's, in the case of April 1977; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factors applicable for such month.

For purposes of this subsection, the term "rollover contract" includes any contract which would have been a rollover contract but for the fact that the expiration of the previous contract occurred prior to the day before the date of the enactment of this Act.

(b) INTRASTATE ROLLOVER CONTRACTS.—

(1) GENERAL RULE.—In the case of any first sale under any rollover contract of natural gas which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, the maximum lawful price under this subsection for such natural gas delivered during any month shall be the higher of—

(A)(i) the maximum price paid under the expired contract, per million Btu's, in the case of the month in which the effective date of such rollover contract occurs; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month; or

(B)(i) $1.00 per million Btu's, in the case of April 1977; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(2) CERTAIN STATE OR INDIAN PRODUCTION OR ROYALTY SHARES.—

(A) GENERAL RULE.—In the case of any first sale under any rollover contract of natural gas which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and which constitutes a State government's or Indian tribe's natural gas production, or royalty share or other interest (as of such day) in natural gas production, from real property (including subsurface mineral interests) owned on the date of the enactment of this Act by such State government or Indian tribe (as the case may be), the maximum lawful price under this subsection for any such natural gas delivered during any month shall be the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas).

(B) INDIAN TRIBAL LANDS.—For purposes of this paragraph, land shall be considered to be owned by an Indian tribe only if—

(i) such land is owned directly by such tribe; or

(ii) such land is held by the United States or any State in trust for Indian persons and is located within the boundaries of an Indian reservation (as such boundaries were in effect on the date of the enactment of this Act).

(C) DEFINITIONS.—For purposes of this paragraph—

(i) STATE GOVERNMENT.—The term "State government" means any State or any agency, instrumentality, or political subdivision of a State.

(ii) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians.

(c) CEILING PRICES MAY BE INCREASED IF JUST AND REASONABLE.—The Commission may, by rule or order, prescribe a maximum lawful price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—

(1) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(2) just and reasonable within the meaning of the Natural Gas Act.

SEC. 107. CEILING PRICE FOR HIGH-COST NATURAL GAS

(a) WELLS COMPLETED BELOW 15,000 FEET.—In the case of any first sale of high-cost natural gas produced from any well the surface drilling of which began on or after February 19, 1977, if such production is from any completion location which is located at a depth of more than 15,000 feet, the maximum lawful price under this section for such natural gas delivered during any month shall be the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas).

(b) COMMISSION AUTHORITY TO PRESCRIBE HIGHER INCENTIVE PRICES.—The Commission may, by rule or order, prescribe a maximum lawful price, applicable to any first sale of any high-cost natural gas, which exceeds the otherwise applicable maximum lawful price to the extent that such special price is necessary to provide reasonable incentives for the production of such high-cost natural gas.

(c) DEFINITION OF HIGH-COST NATURAL GAS.—For purposes of this section, the term "high-cost natural gas" means natural gas determined in accordance with section 503 to be—

(1) produced from any well the surface drilling of which began on or after February 19, 1977, if such production is from a completion location which is located at a depth of more than 15,000 feet;

(2) produced from geopressured brine;

(3) occluded natural gas produced from coal seams;

(4) produced from Devonian shale; and

(5) produced under such other conditions as the Commission determines to present extraordinary risks or costs.

(d) PROVISIONS FOR HIGH-COST NATURAL GAS TO BE ELECTIVE.—If any credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax is specifically allowable with respect to any high-cost natural gas (or category thereof) under any provision of law enacted after the date of the enactment of this Act, the provisions of subsections (a) and (b) of this section and the provisions of subtitle B shall not apply to such natural gas produced from any well unless an election to have such provisions apply (in lieu of such credit, exemption, deduction, or adjustment) with respect to such natural gas produced from such well is filed with the Commission on or before the later of—

(A) the 30th day after the date of the enactment of the Act under which such credit, exemption, deduction, or adjustment is provided; or

(B) the date the surface drilling of such well began.

SEC. 108. CEILING PRICE FOR STRIPPER WELL NATURAL GAS

(a) GENERAL RULE.—In the case of any first sale of stripper well natural gas the maximum lawful price under this section for such natural gas delivered during any month shall be—

(1) $2.09 per million Btu's, in the case May 1978; and

(2) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subsection for the preceding month multiplied by the monthly equivalent of a factor equal to the sum of—

(A) the annual inflation adjustment factor applicable for such month; plus

(B) (i) .035, in the case of any month beginning before April 20, 1981; or

(ii) .04, in the case of any month beginning after April 20, 1981.

(b) DEFINITION OF STRIPPER WELL NATURAL GAS.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the term "stripper well natural gas" means natural gas determined in accordance with section 503 to be nonassociated natural gas produced during any month from a well if—

(A) during the preceding 90-day production period, such well produced nonassociated natural gas at a rate which did not exceed an average of 60 Mcf per production day during such period; and

(B) during such period such well produced at its maximum efficient rate of flow, determined in accordance with recognized conservation practices designed to maximize the ultimate recovery of natural gas.

(2) PRODUCTION IN EXCESS OF 60 MCF.—The Commission shall, by rule, provide that, if nonassociated natural gas produced from a

well which previously qualified as a stripper well under paragraph (1) exceeds an average of 60 Mcf per production day during any 90-day production period, such natural gas may continue to qualify as stripper well natural gas if the increase in nonassociated natural gas produced from such well was the result of the application of recognized enhanced recovery techniques.

(3) DEFINITIONS.—For purposes of this subsection—

(A) PRODUCTION DAY.—The term "production day" means—

(i) any day during which natural gas is produced; and

(ii) any day during which natural gas is not produced if production during such day is prohibited by a requirement of State law or a conservation practice recognized or approved by the State agency having regulatory jurisdiction over the production of natural gas.

(B) 90-DAY PRODUCTION PERIOD.—The term "90-day production period" means any period of 90 consecutive calendar days excluding any day during which natural gas is not produced for reasons others than voluntary action of any person with the right to control production of natural gas from such well.

(C) Nonassociated natural gas.—The term "nonassociated natural gas" means natural gas which is not produced in association with crude oil.

SEC. 109. CEILING PRICE FOR OTHER CATEGORIES OF NATURAL GAS.

(a) APPLICATION.—The maximum lawful price computed under subsection (b) shall apply to any first sale of any natural gas delivered during any month, in the case of any natural gas which is not covered by any maximum lawful price under any other section of this subtitle, including—

(1) natural gas produced from any new well not otherwise qualifying for a higher maximum lawful price under this title;

(2) natural gas committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and for which a just and reasonable rate under the Natural Gas Act was not in effect on such date for the first sale of such natural gas;

(3) natural gas which was not committed or dedicated to interestate commerce on the day before the date of the enactment of this Act and which was not subject to an existing contract on such day; and

(4) natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(b) MAXIMUM LAWFUL PRICE.—

(1) THE MAXIMUM LAWFUL PRICE UNDER THIS SECTION FOR ANY MONTH SHALL BE—

(A) $1.45 per million Btu's, in the case of April 1977; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(2) CEILING PRICES MAY BE INCREASED IF JUST AND REASONABLE.—The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this sector, if such price is—

(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) just and reasonable within the meaning of the Natural Gas Act.

SEC. 110. TREATMENT OF STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS.

(a) ALLOWANCE FOR STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS.—Except as provided in subsection (b), a price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas under this subtitle if such first sale price exceeds the maximum lawful price to the extent necessary to recover—

(1) State severance taxes attributable to the production of such natural gas and borne by the seller, but only to the extent the amount of such taxes does not exceed the limitation of subsection (b); and

(2) any costs of compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or other similar costs, borne by the seller and allowed for, by rule or order, by the Commission.

(b) LIMITATION ON STATE SEVERANCE TAXES.—The State severance tax allowable under subsection (a)(1) with respect to the production of any natural gas may not include any amount of State severance taxes borne by the seller which results from a provision of State law enacted on or after December 1, 1977, unless such provisions of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

(c) DEFINITION OF STATE SEVERANCE TAX.—For purposes of this section, the term "State severance tax" means any severance, production, or similar tax, fee, or other levy imposed on the production of natural gas—

(1) by any State or Indian tribe (as defined in section 106(b)(2)(B)(ii)); and

(2) by any political subdivision of a State if the authority to impose such tax, fee, or other levy is granted to such political subdivision under State law.

Subtitle B—Decontrol of Certain Natural Gas Prices

SEC. 121. ELIMINATION OF PRICE CONTROLS FOR CERTAIN NATURAL GAS SALES.

(a) GENERAL RULE.—Subject to the reimposition of price controls as provided in section 122, the provisions of subtitle A respecting the maximum lawful price for the first sale of each of the following categories of natural gas shall, except as provided in subsections (d) and (e), cease to apply effective January 1, 1985:

(1) NEW NATURAL GAS.—New natural gas (as defined in section 102(c)).

(2) NEW, ONSHORE PRODUCTION WELLS.—Natural gas produced from any new, onshore production well (as defined in section 103(c)), if such natural gas—

(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

(B) is produced from a completion location which is located at a depth of more than 5,000 feet.

(3) INTRASTATE CONTRACTS IN EXCESS OF $1.00.—Natural gas sold under an existing contract, any successor to an existing contract, or any rollover contract, if—

(A) such natural gas was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act; and

(B) the price paid for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price would have been paid had deliveries occurred on such date, is higher than $1.00 per million Btu's.

(b) HIGH-COST NATURAL GAS.—Effective beginning on the effective date of the incremental pricing rule required under section 201, the provisions of subtitle A respecting the maximum lawful price for the first sale of natural gas shall cease to apply to the first sale of high-cost natural gas which is described in section 107(c) (1), (2), (3), or (4).

(c) NATURAL GAS PRODUCED FROM 5,000 OR LESS.—Effective beginning July 1, 1987, or, if later, the date of expiration of any price controls reimposed under section 122, the provisions of subtitle A respecting the maximum lawful price for any first sale of natural gas shall, except as provided in subsection (d), cease to apply to any first sale of natural gas produced from any new, onshore production well (as defined in section 103(c)), if such natural gas—

(1) was not committed or dedicated to interstate commerce on April 22, 1977; and

(2) is produced from a completion location which is located at a depth of 5,000 feet or less.

(d) EXCLUSION OF CERTAIN ALASKA NATURAL GAS.—The provisions of subsections (a) and (c) shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(e) LIMITATION ON INDEFINITE PRICE ESCALATORS.—Natural gas which is not subject to maximum lawful prices under subtitle A solely by reason of subsection (a)(3) and which is sold under any existing contract or successor to an existing contract at a price established under an indefinite price escalator clause (as defined in section 105(b)(3)(B)) shall be subject to the provisions of section 105(b)(3).

SEC. 122. STANDBY PRICE CONTROL AUTHORITY.

(a) REIMPOSITION OF PRICE CONTROLS.—The President, in accordance with subsection (c)(1), or the Congress, in accordance with subsection (c)(2), may reimpose maximum lawful prices for first sales of natural gas to which section 121(a) applies and delivery of which occurs after the effective date of the reimposition of such maximum lawful prices.

(b) LIMITATIONS.—A reimposition of maximum lawful prices under this section—

(1) may not take effect earlier than July 1, 1985, nor later than June 30, 1987; and

(2) shall remain in effect for a period of 18 months.

(c) PROCEDURE FOR REIMPOSING PRICE CONTROLS.—For purposes of this section—

(1) PRESIDENTIAL REIMPOSITION.—Any exercise of authority by the President under subsection (a) shall be by written order issued after May 31, 1985, and, subject to subsection (b), shall take effect for the first month beginning after the first 30 calendar days of continuous session of Congress (as determined in accordance with section 507(b)) after a copy of such order has been submitted to each House of the Congress unless during such 30 calendar days of continuous session of Congress, the Congress adopts a concurrent resolution of disapproval described in section 507(c)(1).

(2) CONGRESSIONAL REIMPOSITION.—Any exercise of authority by the Congress under subsection (a) shall be by the adoption of a concurrent resolution after May 31, 1985, described in section 507(c)(2) and, subject to subsection (b), shall take effect for the first month beginning after the date of the adoption of such resolution.

(d) MAXIMUM LAWFUL PRICES APPLICABLE UNDER REIMPOSITION OF PRICE CONTROL.—If maximum lawful prices are reimposed under this section on first sales of natural gas to which section 121(a) applies, the maxi-

mum lawful price under this section for any first sale of such natural gas delivered during any month shall be—

(1) except as provided in paragraph (2), the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas); and

(2) the maximum lawful price, per million Btu's, computed for such month under section 103(b)(2) (relating to new, onshore production wells 5,000 feet or less in depth), in the case of natural gas produced from any new, onshore production well (as defined in section 103(c)) if such natural gas—

(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

(B) is produced from a completion location which is located at a depth of 5,000 feet or more.

(e) ALLOWANCE FOR STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS.—A price may exceed the maximum lawful price applicable for such natural gas under this section to the same extent as is provided under section 110 with respect to maximum lawful prices under subtitle A.

(f) LIMITATION.—Maximum lawful prices may be reimposed only once under this section.

SEC. 123. REPORT TO THE CONGRESS.

(a) REPORTS.—On or before July 1, 1984, and on or before January 1, 1985, the Department of Energy shall prepare and transmit to the President and to each House of the Congress a report on natural gas prices, supplies, and demand, and the competitive conditions and market forces in the natural gas industry in the United States. Each such report shall include an evaluation by the Department of Energy whether equilibrium exists between supply and demand for natural gas.

(b) PUBLIC COMMENT.—In preparing each report required under subsection (a), the Department of Energy shall provide an opportunity for public comment with respect to matters required under subsection (a) to be included in such report.

TITLE II—INCREMENTAL PRICING

SEC. 201. INDUSTRIAL BOILER FUEL USE.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Commission shall prescribe and make effective (and may from time to time amend) a rule designed to provide for the passthrough, in accordance with the provisions of this title, of the costs of natural gas which are—

(1) described in section 203; and

(2) incurred by any interstate pipeline.

(b) INITIAL APPLICATION.—The requirements of the rule under this section shall apply with respect to the boiler fuel use of natural gas by any industrial boiler fuel facility.

(c) DEFINITIONS.—For purposes of this section—

(1) INDUSTRIAL BOILER FUEL FACILITY.—The term "industrial boiler fuel facility" means any industrial facility, as defined by the Commission, which uses natural gas as a boiler fuel and which is not exempt under section 206.

(2) BOILER FUEL USE.—The term "boiler fuel use" means the use of any fuel for the generation of steam or electricity.

SEC. 202. AMENDMENT EXPANDING APPLICATION FOR OTHER INDUSTRIAL USES.

(a) IN GENERAL.—

(1) COMMISSION RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall, by rule, prescribe an amendment to the rule required under section 201 designed to provide for the passthrough, in accordance with the provisions of this title, of the costs of natural gas which are—

(A) described in section 203; and

(B) incurred by any interstate pipeline.

(2) EFFECTIVENESS.—The amendment required by this section, and any amendment to the rule under section 201 which is applicable to facilities to which the amendment required by this section applies (other than a technical or clerical amendment), shall take effect only as provided under subsection (c).

(b) EXPANDED APPLICATION.—The requirements of the rule under section 201 as amended under subsection (a), shall apply with respect to the industrial use of natural gas (as defined by the Commission in such rule), including boiler fuel use of natural gas (as defined in section 201(C)(2)) by—

(1) any industrial boiler fuel facility (as defined in section 201(c)(1)); and

(2) any industrial facility which is within a category defined by the Commission in such amendment as subject thereunder to the requirements of such rule which is not exempt under section 206.

(c) CONGRESSIONAL REVIEW.—

(1) IN GENERAL.—Any amendment, the effectiveness of which is subject to this subsection, shall take effect beginning with the first month which begins more than 30 days after the first 30 calendar days of continuous session of Congress (determined in accordance with section 507(b)) after a copy of such amendment has been submitted to each House of the Congress or on such later date, not more than 90 days thereafter, as may be provided in such amendment unless, during such 30 day period of continuous session of Congress, either House of the Congress adopts a resolution of disapproval described in section 507(c)(3) with respect to such amendment.

(2) AUTHORITY IN THE EVENT OF CONGRESSIONAL DISAPPROVAL.—

(A) AUTHORITY TO RESUBMIT.—If either House of the Congress adopts a resolution of disapproval with respect to the amendment required under subsection (a) (or any amendment proposed and submitted under this subparagraph), the Commission may thereafter submit to each House of the Congress an amendment, satisfying the requirements of subsections (a) and (b), which amendment shall take effect as provided under paragraph (1).

(B) LIMITATION.—The authority of subparagraph (A) may not be exercised—

(i) earlier than 6 months after the date of the adoption of the most recent resolution of disapproval with respect to any such amendment under this section; and

(ii) later than 2 years after the date of the adoption of any resolution of disapproval described in section 507(c)(3) with respect to the amendment required under subsection (a).

SEC. 203. ACQUISITION COSTS SUBJECT TO PASSTHROUGH.

(a) IN GENERAL.—The following costs shall be subject to the passthrough requirements of the rule prescribed under section 201 (including any amendment under section 202):

(1) NEW NATURAL GAS.—In the case of new natural gas (as defined in section 102(c)), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs.

(2) NATURAL GAS UNDER INTRASTATE ROLLOVER CONTRACT.—In the case of natural gas, delivered under a rollover contract, which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which such delivery occurs.

(3) NEW, ONSHORE PRODUCTION WELL GAS.—In the case of natural gas produced from any new, onshore production well (as defined in section 103(c)), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs.

(4) LNG IMPORTS.—Subject to section 207, in the case of liquefied natural gas imported into the United States, any portion of the first sale acquisition cost of such natural gas (whether or not liquefied when acquired) which exceeds the incremental pricing threshold applicable for the month in which such liquefied natural gas enters the United States.

(5) NATURAL GAS (OTHER THAN LNG) IMPORTS.—Subject to section 207, in the case of natural gas (other than liquefied natural gas) imported into the United States, any portion of the first sale acquisition cost of such imported natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for the month in which such natural gas enters the United States, without regard to section 110.

(6) STRIPPER WELL NATURAL GAS.—In the case of stripper well natural gas (as defined in section 108(b)), any portion of the first sale acquisition cost of such natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for the month in which the delivery of such natural gas occurs, without regard to section 110.

(7) HIGH-COST NATURAL GAS.—In the case of high-cost natural gas (as defined in section 107(c)), any portion of the first sale acquisition cost of such natural gas which exceeds 130 percent of the amount the Commission determines represents—

(A) the weighted average per barrel cost of Number 2 fuel oil landed in the greater New York City metropolitan area, during an appropriate period preceding the month during which delivery of such natural gas occurs; divided by

(B) a Btu conversion factor of 5.8 million Btu's per barrel.

(8) ALASKA NATURAL GAS TRANSPORTATION SYSTEM.—In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976—

(A) any portion of the first sale acquisition cost of such natural gas which is not described in subparagraph (B) and which exceeds the maximum lawful price, per million Btu's, computed under section 109 (relating to other categories of natural gas) for the month in which delivery of such natural gas occurs, without regard to section 110; and

(B) any amount paid to any person (other than the producer of such natural gas or an affiliate of such producer) for, or attributable to, any compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or any similar service provided with respect to such natural gas, before the delivery of such natural gas to such system.

(9) INCREASED STATE SEVERANCE TAXES.—

(A) INCREASES INCLUDED.—Any portion of the cost of natural gas at any first sale attributable to any increase in the amount of State severance taxes (as defined in section 110(c)) which results from a provision of State law enacted on or after December 1, 1977

(B) CERTAIN CHANGES ALLOWED IN METHOD OF COMPUTING TAX.—Subparagraph (A) shall not apply to any increase in State severance taxes resulting from a change in the method of computation of such tax by reason of any

provision of State law enacted on or after December 1, 1977, if—

(i) as of the effective date of such change in method of computation, such increase does not result in an increase in the level of such tax, expressed as a percentage of the weighted average first sale price of natural gas produced in such State, above the percentage of such average first sale price which such tax constituted on the day before such effective date; and

(ii) such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

(C) DETERMINATION OF AVERAGE PRICE.—The price to be used in determining the weighted average first sale price for purposes of clause (i) shall be the price paid at the first sale which is used by such State in administering such tax (or an imputed value, if the State uses an event other than a first sale in administering such tax).

(10) PURCHASES UNDER SECTION 311.—In the case of any sale of natural gas authorized under section 311, any portion of any amount paid, per million Btu's, in the acquisition of such natural gas in any such sale which exceeds the incremental pricing threshold applicable for the month in which such acquisition occurs.

(11) SURCHARGES PAID TO OTHER PIPELINES.—The amount of any surcharge (described in section 204(c)(3)) paid by any interstate pipeline for natural gas acquired by such pipeline from another interstate pipeline.

(b) FIRST SALE ACQUISITION COSTS.—

(1) GENERAL RULE.—For purposes of this section, the first sale acquisition cost of natural gas is—

(A) the price paid, per million Btu's, in any first sale of such natural gas, in the case of any natural gas produced in the United States and acquired in such first sale; and

(B) the price paid for such natural gas, per million Btu's, at the point of entry to the United States, in the case of natural gas or liquefied natural gas imported into the United States.

Any amount of State severance taxes paid at any first sale shall not be included under subparagraph (A) or (B)

(2) INTERSTATE PIPELINE PRODUCTION.—For purposes of this section, in the case of any natural gas produced by any interstate pipeline or any affiliate of such pipeline, the first sale acquisition cost of such natural gas shall be determined in accordance with rules prescribed by the Commission.

(c) INCREMENTAL PRICING THRESHOLD.—For purposes of this section, the incremental pricing threshold applicable for any month shall be—

(1) $1.48 per million Btu's, in the case of March 1978; and

(2) in the case of any month thereafter, the amount, per million Btu's, determined under this subsection for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor (as defined in section 101(a)) applicable for such month.

(d) CLASSIFICATION TO BE BASED ON PROVISIONS UNDER WHICH SALE PRICE IS DETERMINED.—In the case of natural gas which is described in more than one paragraph of paragraphs (1) through (8) of subsection (a), the Commission shall, by rule, prescribe the method for determining under which such paragraph the first sale acquisition costs of such natural gas shall be subject to the passthrough requirements of this title, based upon the classification of such natural gas under which the price of such natural gas is determined under title I.

SEC. 204. METHOD OF PASSTHROUGH.

(a) ESTABLISHMENT OF INCREMENTAL PRICING ACCOUNT.—The rule required under section 201 (including any amendment under section 202 to such rule) shall provide that any interstate pipeline subject to such rule shall establish and maintain an incremental pricing account (hereinafter in this title referred to as the "account").

(b) CREDITS TO ACCOUNT.—The rule required under section 201 (including any amendment under section 202 to such rule) shall provide that any costs subject to the passthrough requirements of this title under section 203 (and any carrying charges permitted by the Commission) shall be credited to the account of such pipeline. Amounts so credited may not be allocated to the rates and charges of such pipeline except to the extent provided under this section.

(c) REQUIREMENT FOR DIRECT PASSTHROUGH.—

(1) IN GENERAL.—The rule required under section 201 (including any amendment under section 202 to such rule) shall be designed to provide that any amounts in any interstate pipeline's account will be passed through, in accordance with a method prescribed under paragraph (2), by means of a surcharge determined in accordance with a method prescribed under paragraph (3).

(2) SURCHARGE PASSTHROUGH.—The rule required under section 201 (including any amendment under section 202) shall provide—

(A) that any surcharge calculated under paragraph (3) may not be imposed by any interstate pipeline except in accordance with a method prescribed under subparagraph (B); and

(B) one or more methods for imposing such surcharge on the rates and charges of such pipeline applicable to any volume of natural gas delivered, during the calendar period involved, for industrial use to any incrementally priced industrial facilities served directly by such interstate pipeline and to incrementally priced industrial facilities served indirectly through any other interstate pipeline or any local distribution company.

(3) SURCHARGE.—

(A) CALCULATION OF SURCHARGE.—Subject to subparagraphs (B) and (C), the amount of any surcharge imposed by any interstate pipeline under this subsection on deliveries of natural gas during the calendar period involved shall be based on the dollar amount in such pipeline's account at the beginning of such period and on the volume of natural gas delivered directly or indirectly by such pipeline during such period or a preceding calendar period to incrementally priced industrial facilities for industrial use with such adjustments as the Commission determines necessary to carry out the purposes of this title.

(B) ELIMINATION OR REDUCTION OF SURCHARGE APPLICABLE TO A FACILITY.—The rule under section 201 (including any amendment under section 202 to such rule) shall provide one or more methods which have the effect of eliminating or reducing the amount of the surcharge determined under subparagraph (A) to be passed through under paragraph (2) with respect to volumes of natural gas to be delivered directly or indirectly to any incrementally priced industrial facility for industrial use to the extent that such surcharge, in the absence of such elimination or reduction, would cause the rates and charges, per million Btu's, paid for such volumes of natural gas by that incrementally priced industrial facility to exceed the appropriate alternative fuel cost.

(C) INCREASE IN GENERAL SURCHARGE TO REFLECT AN ADJUSTMENT UNDER SUBPARAGRAPH (B).—The rule under section 201 (including any amendment under section 202 to such rule) shall provide one or more methods by which, in any case in which the surcharge is eliminated or reduced under subparagraph (B) with respect to certain deliveries of natural gas, the interstate pipeline involved may recover from incrementally priced industrial facilities which are not subject to any surcharge elimination or reduction under subparagraph (B) the dollar amount which would have been so passed through if the elimination or reduction under subparagraph (B) had not occurred.

(D) EXCEPTION.—The methods prescribed under subparagraphs (B) and (C) need not require—

(i) elimination or reduction under subparagraph (B) of the surcharge with respect to any specific deliveries of natural gas; or

(ii) the increase under subparagraph (C) of the surcharge generally applicable due to any adjustment under subparagraph (B), if the Commission determines that to do so would be impracticable or unnecessary to carry out the purposes of this title.

(4) LOCAL DISTRIBUTION COMPANY DIRECT PURCHASES.—In any case in which a local distribution company directly incurs any first sale acquisition cost subject to the passthrough requirements of this title under section 203 or otherwise directly incurs any other cost subject to such requirements under sections 203(a)(8)(B), (9), or (10), such local distribution company shall, with respect to the natural gas involved, be treated for purposes of this title as if it were an interstate pipeline.

(5) PIPELINES AND LOCAL DISTRIBUTION COMPANIES WITH MORE THAN ONE SOURCE OF NATURAL GAS.—The rule under section 201 (including any amendment under section 202 to such rule) shall prescribe one or more methods for determining, for purposes of paragraph (2)(B) and paragraph (3)(A), the volume of natural gas delivered indirectly by any interstate pipeline to any incrementally priced industrial facility through any other interstate pipeline or local distribution company for purposes of applying subsection (d)(2).

(d) DEDUCTIONS FROM ACCOUNT.—

(1) IN GENERAL.—Amounts passed through by any interstate pipeline by means of any surcharge under this section shall be deducted from such pipeline's account.

(2) NORMAL ALLOCATION TO OCCUR WHERE BTU EQUIVALENCY IS REACHED FOR ALL FACILITIES SERVED BY A PIPELINE.—In any case in which the rates and charges to incrementally priced industrial facilities for natural gas delivered, directly or indirectly, by any interstate pipeline for industrial use to incrementally priced industrial facilities subject to the rule required under section 201 (including any amendment under section 202 to such rule), are not less than the appropriate alternative fuel cost, such rule shall prescribe one or more methods by which amounts in excess of that reasonably necessary to maintain such rates and charges applicable to such industrial facilities at the appropriate alternative fuel cost may be deducted from such pipeline's account and may be allocated to the rates and charges of such interstate pipeline in any manner which would be permitted in the absence of this title.

(e) DETERMINATION OF ALTERNATIVE FUEL COST.—

(1) IN GENERAL.—Except as provided in paragraph (2), the appropriate alternative fuel cost for any region (as designated by the Commission) shall be the price, per million Btu's, for Number 2 fuel oil determined by the Commission to be paid in such region by industrial user of such fuel.

(2) REDUCTION OF APPROPRIATE ALTERNATIVE FUEL COST ALLOWED.—The Commission may, by rule or order, reduce the appropriate alternative fuel cost—

(A) for any category of incrementally priced industrial facilities, subject to the rule required under section 201 (including any amendment under section 202 to such rule) located within any region and served by the same interstate pipeline; or

(B) for any specific incrementally priced industrial facility which is subject to such requirements and which is located in any region;

to an amount not lower than the price, per million Btu's, for Number 6 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel, if and to the extent the Commission determines, after an opportunity for written and oral presentation of views, data, and arguments that such reduction is necessary to prevent increases in the rates and charges to residential, small commercial, and other high-priority users of natural gas which would result from a reallocation of costs caused by the conversion of such industrial facility or facilities from natural gas to other fuels, which conversion is likely to occur if the level of the appropriate alternative fuel cost were not so reduced.

(f) DETERMINATION OF APPROPRIATE ACCOUNTING PERIOD.—The rule required to be prescribed in section 201 shall specify the appropriate calendar periods used for purposes of such rule (including any amendment under section 202 to such rule).

(g) INCREMENTALLY PRICED INDUSTRIAL FACILITY DEFINED.—For purposes of this section, the term "incrementally priced industrial facility" means any industrial facility subject to the requirements of the rule under section 201 (including any amendment under section 202 to such rule).

(h) INDUSTRIAL USE DEFINED.—For purposes of this section, the term "industrial use", when used with respect to natural gas, means the boiler fuel use of natural gas (as defined in section 201(c)(2)) and any other use defined, by rule, by the Commission as an industrial use.

SEC. 205. LOCAL DISTRIBUTION COMPANY PASSTHROUGH REQUIREMENTS.

(a) GENERAL RULE.—Any surcharge under this title, paid by any local distribution company with respect to natural gas which is indirectly delivered by any interstate pipeline to incrementally priced industrial facilities which are served by such local distribution company, shall be directly passed through to such industrial facilities.

(b) PROHIBITION ON OFFSETTING MODIFICATIONS IN RATES AND CHARGES.—Any modification of the method of allocating costs to the rates and charges of such local distribution company in effect on the date of the enactment of this Act is prohibited if a court, in any action brought under section 504(b)(3), determines that such modification has the effect of creating any offset, in the rates and charges for natural gas applicable to any incrementally priced industrial facility served by such company, for the amount of any surcharge under this title paid by such local distribution company with respect to natural gas delivered by any interstate pipeline indirectly to that incrementally priced industrial facility.

(c) SPECIAL ENFORCEMENT AUTHORITY OF ATTORNEY GENERAL.—In addition to such enforcement authority as may be available to the Commission or any person, the Attorney General may enforce the requirements of this subsection in accordance with the provisions of section 504(b)(3).

(d) PREEMPTION OF STATE OR LOCAL LAW.—The requirements of this title shall preempt and supersede any provision of State or local law to the extent such provision of law would preclude the passthrough of any surcharge under this title or prevent the application of the requirements of this section.

(e) STATE COMMISSION DEFINED.—For the purposes of this subsection, the term "State commission" means the State, political subdivision, or an agency of either, having jurisdiction with respect to the rates and charges of any local distribution company.

SEC. 206. EXEMPTIONS.

(a) SMALL EXISTING INDUSTRIAL BOILER FUEL USERS.—

(1) INTERIM EXEMPTION.—During the period preceding the effective date of any permanent exemption under paragraph (2), the rule required under section 201 shall not apply with respect to any boiler fuel use of natural gas by any industrial boiler fuel facility in existence on the date of the enactment of this Act if such use of natural gas by such facility does not exceed an average of 300 Mcf per day during any month of a base period determined appropriate by the Commission.

(2) PERMANENT EXEMPTION.—

(A) GENERAL RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall prescribe and make effective a rule providing for the exemption of any small industrial boiler fuel facility from the rule required under section 201 (including any amendment under section 202 to such rule).

(B) DEFINITION.—For purposes of this paragraph, the term "small industrial boiler fuel facility" means any industrial boiler fuel facility in existence on the date of the enactment of this Act that had an average per day use of natural gas as a boiler fuel during the month of peak use during calendar year 1977 which did not exceed the lesser of—

(i) 300 Mcf; or

(ii) such average daily rate of use during a month of peak use as the Commission determines in such rule is necessary to assure that the volume of natural gas estimated by the Commission to have been used for boiler fuel during calendar year 1977 by facilities which are exempted under this paragraph does not exceed 5 percent of the total volume of natural gas estimated by the Commission to have been used for boiler fuel transported by interstate pipelines and used during calendar year 1977 as a boiler fuel.

(b) AGRICULTURAL USERS OF NATURAL GAS.—

(1) INTERIM EXEMPTION.—During the period preceding the effective date of any permanent exemption under paragraph (2), the rule prescribed under section 201 shall not apply to any facility to the extent of any agricultural use of natural gas.

(2) EXEMPTION BY RULE.—Not later than 16 months after the date of the enactment of this Act, the Commission shall prescribe and make effective a rule providing for the exemption from the rule required under section 201 (including any amendment under section 202 to such rule) any facility with respect to any agricultural use of natural gas for which the Commission determines that an alternative fuel or feedstock is not—

(A) economically practicable; or

(B) reasonably available.

(3) AGRICULTURAL USE DEFINED.—For purposes of this subsection, the term "agricultural use", when used with respect to natural gas, means the use of natural gas to the extent such use is—

(A) for agricultural production, natural fiber production, natural fiber pocessing, food processing, food quality maintenance, irrigation pumping, or crop drying; or

(B) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food.

(c) SCHOOLS, HOSPITALS, AND CERTAIN OTHER FACILITIES.—The rule under section 201 (including any amendment to such rule under section 202) shall not apply to—

(1) any school, hospital, or other similar institution;

(2) the generation of electricity by any electric utility; or

(3) to the extent provided by the Commission by rule, any qualifying cogenerator (as defined in section 3(18)(B) of the Federal Power Act, as amended by the Public Utility Regulatory Policies Act of 1978).

(d) OTHER EXEMPTIONS.—

(1) IN GENERAL.—The Commission may, by rule or order, provide for the exemption, in whole or in part, of any other incrementally priced industrial facility or category thereof from the rule prescribed under section 201 (including any amendment under section 202 to such rule).

(2) CONGRESSIONAL REVIEW.—Any rule which provides for any exemption under this subsection may take effect after the expiration of the first 30 calendar days of continuous session of Congress (determined in accordance with section 507(b)) after a copy of such rule has been submitted to each House of the Congress, unless, during such 30 day period of continuous session of Congress, either House of the Congress adopts a resolution of disapproval described in section 507(c)(3), with respect to such rule.

SEC. 207. TREATMENT OF CERTAIN IMPORTS.

(a) CERTAIN LNG IMPORTS.—Except to the extent of a determination otherwise under subsection (c)(1), the provisions of section 203(a)(4) shall not apply to the passthrough of the first sale acquisition costs of liquefied natural gas (or natural gas vaporized from liquefied natural gas) imported into the United States if—

(1) the importation of such liquefied natural gas has been authorized under section 3 of the Natural Gas Act on or before May 1, 1978.

(2) an application for such authority was pending under such section on such date; or

(3) in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the Department of Energy Organization Act (or any delegation or assignment thereunder), determines that a contract binding on the importer or other substantial financial commitment of the importer has been made on or before such date.

(b) CERTAIN NATURAL GAS IMPORTS (OTHER THAN LNG).—Subject to subsection (c)(2), the provisions of section 203(a)(5) shall only apply to the passthrough of the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceeds both—

(1) the maximum delivery obligations, for the month in which such delivery of such natural gas occurs, which is specified in contracts entered into on or before May 1, 1978, and in effect when such delivery occurs; and

(2) the volume of natural gas imported into the United States by the interstate pipeline involved during any corresponding period (determined appropriate by the Commission) of calendar year 1977.

(c) AUTHORITY WITH RESPECT TO INCREMENTAL PRICING OF NATURAL GAS OR LNG IMPORTS.—

(1) LNG IMPORTS.—Subsection (a)(2) and (3) shall not apply with respect to any liquefied natural gas imports if, in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that the provisions of section 203(a)(4) shall apply with respect to such liquefied natural gas imports.

(2) NATURAL GAS IMPORTS (OTHER THAN LNG).—The provisions of section 203(a)(5) shall apply to the passthrough of the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceed the volume of natural gas imported into the United States by the interstate pipeline involved during any corresponding period (determined appropriate by the Commission) of calendar year 1977 if, in connection with the granting of any authority under the Natural Gas Act to import such natural gas, the Secretary of the Department of Energy or the Commission, in accordance

with the assignment of functions under the Department of Energy Organization Act, determines that the provisions of section 203 (a)(5) shall apply with respect to such natural gas imports.

SEC. 208. ALASKA NATURAL GAS.

In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976—

(1) any portion of the first sale acquisition cost of such natural gas incurred by any interstate pipeline which is not required to be incrementally priced under this title, and

(2) any amount incurred by any interstate pipeline, for transportation of such natural gas after delivery of such natural gas to such system,

shall be allocated to the rates and charges of such interstate pipeline in accordance with the general principles applicable on the date of the enactment of this Act for establishing rates in connection with the issuing of certificates under the Natural Gas Act for interstate pipelines.

TITLE III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

Subtitle A—Emergency Authority

SEC. 301. DECLARATION OF EMERGENCY.

(a) PRESIDENTIAL DECLARATION.—The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

(1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and

(2) the exercise of authorities under section 302 or section 303 is reasonably necessary, having exhausted other alternatives to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) LIMITATION.—

(1) EXPIRATION.—Any declaration of a natural gas supply emergency (or extension thereof) under subsection (a), shall terminate at the earlier of—

(A) the date on which the President finds that any shortage described in subsection (a) does not exist or is not imminent; or

(B) 120 days after the dat of such declaration of emergency (or extension thereof).

(2) EXTENSIONS.—Nothing in this subsection shall prohibit the President from extending, under subsection (a), any emergency (or extension thereof), previously declared under subsection (a), upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

SEC. 302. EMERGENCY PURCHASE AUTHORITY.

(a) PRESIDENTIAL AUTHORIZATION.—During any natural gas supply emergency declared under section 301, The President may, by rule or order, authorize any interstate pipeline or local distribution company served by any interstate pipeline to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for the purchase of emergency supplies of natural gas—

(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser, as determined by the President) if—

(A) such natural gas is not produced from the Outer Continental Shelf; and

(B) the sale or transportation of such natural gas was not pursuant to a certificate issued under the Natural Gas Act immediately before the date on which such contract was entered into; or

(2) from any intrastate pipeline, local distribution company, or other person (other than an interstate pipeline or a producer of natural gas).

(b) CONTRACT DURATION.—The duration of any contract authorized under subsection (a) may not exceed 4 months. The preceding sentence shall not prohibit the President from authorizing under subsection (a) a renewal of any contract, previously authorized under such subsection, following the expiration of such contract.

(c) RELATED TRANSPORTATION AND FACILITIES.—The President may, by order require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any contract authorized under subsection (a). The costs of any construction or transportation ordered under this subsection shall be paid by the purchaser of natural gas under the contract with respect to which such order is issued. No order to transport natural gas under this subsection shall require any pipeline to transport natural gas in excess of such pipeline's available capacity.

(d) MAINTENANCE OF ADEQUATE RECORDS.—The Commission shall require any interstate pipeline or local distribution company contracting under the authority of this section for natural gas to maintain and make available full and adequate records concerning transactions under this section, including records of the volumes of natural gas purchased under the authority of this section and the rates and charges for purchase and receipt of such natural gas.

(e) SPECIAL LIMITATIONS.—No sale under any emergency purchase contract under this section for emergency supplies of natural gas for sale and delivery from any intrastate pipeline which is operating under court supervision as of January 1, 1977, may take effect unless the court approves.

SEC. 303. EMERGENCY ALLOCATION AUTHORITY.

(a) IN GENERAL.—In order to assist in meeting natural gas requirements for high-priority uses of natural gas during any natural gas supply emergency declared under section 301, the President may, by order, allocate supplies of natural gas under subsections (b), (c), and (d) to—

(1) any interstate pipeline;

(2) any local distribution company—

(A) which is served by any interstate pipeline;

(B) which is providing natural gas only for high-priority uses; and

(C) which is in need of deliveries of natural gas to assist in meeting natural gas requirements for high-priority uses of natural gas; and

(3) any person for meeting requirements of high-priority uses of natural gas.

(b) ALLOCATION OF CERTAIN BOILER FUEL GAS.—

(1) REQUIRED FINDING.—The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, emergency purchase authority under section 302 has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) emergency purchases of natural gas supplies under section 302 are not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses; and

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries.

(2) ALLOCATION AUTHORITY.—Subject to paragraph (1), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas the use of which has been prohibited by the President pursuant to authority under section 607 of the Public Utility Regulatory Policies Act of 1978 (relating to the use of natural gas as a boiler fuel during any natural gas supply emergency).

(b) ALLOCATION OF GENERAL PIPELINE SUPPLY.—

(1) REQUIRED FINDINGS.—The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (b) has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses;

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries;

(E) such allocation will not create, for the interstate pipeline delivering certificated natural gas, a supply shortage which will cause such pipeline to be unable to meet the natural gas requirements for high-priority uses of natural gas served, directly or indirectly, by such pipeline; and

(F) such allocation will not result in a disproportionate share of deliveries and resulting curtailments of natural gas being experienced by such interstate pipeline when compared to deliveries and resulting curtailments which are experienced as a result of orders issued under this subsection applicable to other interstate pipelines (as determined by the President).

(2) REQUIRED NOTIFICATION FROM STATE.—

(A) NOTIFICATION.—The President shall not allocate supplies of natural gas under this subsection unless he is notified by the Governor of any State that—

(i) a shortage of natural gas supplies available to such State exists or is imminent;

(ii) such shortage or imminent shortage endangers the supply of natural gas for high-priority uses in such State; and

(iii) the exercise of authority under State law is inadequate to protect high-priority uses of natural gas in such State from an interruption in natural gas supplies.

(3) BASIS OF FINDING.—To the maximum extent practicable, the Governor shall submit, together with any notification under subparagraph (A), information upon which he has based his finding under such subparagraph, including—

(i) volumes of natural gas required to meet the natural gas requirements for high-priority uses of natural gas in such State;

(ii) information received from persons in the business of producing, selling, transporting, or delivering natural gas in such State as to the volumes of natural gas supplies available to such State;

(iii) information on the authority under State law which will be exercised to protect high-priority uses; and

(iv) such other information which the President requests or which the Governor determines appropriate to apprise the President of emergency deliveries and transportation of interstate natural gas needed by such State.

(4) ALLOCATION AUTHORITY.—Subject to paragraphs (1), (2), and (5), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of certificated natural gas from any interstate pipeline.

(5) CONSIDERATION OF ALTERNATIVE FUEL AVAILABILITY.—In issuing any order under this subsection the President shall consider the relative availability of alternative fuel to natural gas users supplied by the interstate pipeline ordered to make deliveries pursuant to this subsection.

(d) ALLOCATION OF USER-OWNED GAS.—

(1) REQUIRED FINDING.—The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (c) has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses;

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries; and

(E) such allocation will not create, for the person who owns and would otherwise use such natural gas, a supply shortage which will cause such person to be unable to satisfy such person's natural gas requirements for high-priority uses.

(2) ALLOCATION AUTHORITY.—Subject to paragraphs (1) and (3), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas which would be certificated natural gas but for the second sentence of section 2(19).

(3) CONSIDERATION OF ECONOMIC FEASIBILITY OF ALTERNATIVE FUELS.—In issuing any order under this subsection, the President shall consider the economic feasibility of alternative fuels available to the user which owned the natural gas subject to an order under this subsection.

(e) LIMITATION.—No order may be issued under this section unless the President determines that such order will not require transportation of natural gas by any pipeline in excess of its available transportation capacity.

(f) INDUSTRY ASSISTANCE.—The President may request that representatives of pipelines, local distribution companies, and other persons meet and provide assistance to the President in carrying out his authority under this section.

(g) COMPENSATION.—

(1) IN GENERAL.—If the parties to any order issued under subsection (b), (c), (d), or (h) fail to agree upon the terms of compensation for natural gas deliveries or transportation required pursuant to such order, the President, after a hearing held either before or after such order takes effect, shall, by supplemental order, prescribe the amount of compensation to be paid for such deliveries or transportation and for any other expenses incurred in delivering or transporting natural gas.

(2) CALCULATION OF COMPENSATION FOR CERTAIN BOILER FUEL NATURAL GAS.—For purposes of any supplemental order under paragraph (1) with respect to emergency deliveries pursuant to subsection (b), the President shall calculate the amount of compensation—

(A) for supplies of natural gas based upon the amount required to make whole the user subject to the prohibition order, but in no event may such compensation exceed just compensation prescribed in section 607 of the Public Utility Regulatory Policies Act of 1978; and

(B) for transportation, storage, delivery, and other services, based upon reasonable costs, as determined by the President.

(3) COMPENSATION FOR OTHER NATURAL GAS ALLOCATED.—For the purpose of any supplemental order under paragraph (1), if the party making emergency deliveries pursuant to subsection (c) or (d)—

(A) indicates a preference for compensation in kind, the President shall direct that compensation in kind be provided as expeditiously as practicable;

(B) indicates a preference for compensation, or the President determines that, notwithstanding paragraph (A) of this subsection, any portion thereof cannot practicably be compensated in kind, the President shall calculate the amount of compensation—

(i) for supplies of natural gas, based upon the amount required to make the pipeline and its local distribution companies whole, in the case of any order under subsection (c), or to make the user from whom natural gas is allocated whole, in the case of any order under subsection (d), including any amount actually paid by such pipeline and its local distribution companies or such user for volumes of natural gas or higher cost synthetic gas acquired to replace natural gas subject to an order under subsection (c) or (d); and

(ii) for transportation, storage, delivery, and other services, based upon reasonable costs, as determined by the President. Compensation received by an interstate pipeline under this subsection shall be credited to the account of any local distribution company served by that pipeline to the extent ordered by the President to make such local distribution company whole.

(h) RELATED TRANSPORTATION AND FACILITIES.—The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any order under subsection (b), (c), or (d). Compensation for the costs of any construction or transportation ordered under this subsection shall be determined under subsection (g) and shall be paid by the person to whom supplies of natural gas are ordered allocated under this section.

(i) MONITORING.—In order to effect the purposes of this subtitle, the President shall monitor the operation of any order made pursuant to this section to assure that natural gas delivered pursuant to this section is applied to high-priority uses only.

(j) COMMISSION STUDY.—Not later than June 1, 1979, the Commission shall prepare and submit to the Congress a report regarding whether authority, to allocate natural gas, which is not otherwise subject to allocation under this subtitle, is likely to be necessary to meet high-priority uses.

(k) DEFINITION OF HIGH-PRIORITY USE.—For purposes of this section, the term "high-priority use" means any—

(1) use of natural gas in a residence;

(2) use of natural gas in a commercial establishment in amounts less than 50 Mcf on a peak day; or

(3) any use of natural gas the curtailment of which the President determines would endanger life, health, or maintenance of physical property.

SEC. 304. MISCELLANEOUS PROVISIONS.

(a) INFORMATION.—

(1) OBTAINING OF INFORMATION.—In order to obtain information to carry out his authority under this subtitle, the President may—

(A) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information, and such answers shall be made within such reasonable period, and under oath or otherwise, as the President may determine; and

(C) secure, upon request, an information from any Federal agency.

(2) ENFORCEMENT OF SUBPENAS AND ORDERS.—The appropriate United States district court may, upon petition of the Attorney General at the request of the President, in the case of refusal to obey a subpena or order of the President issued under this subsection, issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

(b) REPORTING OF PRICES AND VOLUMES.—In issuing any order under section 302 or 303, the President shall require that the prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order shall be reported to him on a weekly basis. Such reports shall be made available to the Congress.

(c) PRESIDENTIAL REPORTS TO CONGRESS.—The President shall report to the Congress, not later than 90 days following the termination under section 301(b) of any declaration of a natural gas supply emergency (or extension thereof) under section 301(a), respecting the exercise of authority under section 301, 302, 303, or this section.

(d) DELEGATION OF AUTHORITIES.—The President may delegate all or any portion of the authority granted to him under section 301, 302, 303, or this section to such Federal officers or agencies as he determines appropriate, and may authorize such redelegation as may be appropriate. Except with respect to section 552 of title 5 of the United States Code, any Federal officer or agency to which authority is delegated or redelegated under this subsection shall be subject only to such procedural requirements respecting the exercise of such authority as the President would be subject to if such authority were not so delegated.

(e) ANTITRUST PROTECTIONS.—

(1) DEFENSES.—There shall be available as a defense for any person to civil or criminal action brought for violation of the Federal antitrust laws (or any similar law of any State) with respect to any action taken, or meeting held, pursuant to any order of the President under section 303 (b), (c), (d), or (i), or any meeting held pursuant to a request of the President under section 303(g), if—

(A) such action was taken or meeting held solely for the purpose of complying with the President's request or order;

(B) such action was not taken for the purpose of injuring competition; and

(C) any such meeting complied with the requirements of paragraph (2).

Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(2) REQUIREMENTS OF MEETINGS.—With respect to any meeting held pursuant to a request by the President under section 303(g) or pursuant to an order under section 303—

(A) there shall be present at such meeting a full-time Federal employee designated for such purpose by the Attorney General;

(B) a full and complete record of such meeting shall be taken and deposited, together with any agreements resulting therefrom, with the Attorney General, who shall make it available for public inspection and copying;

(C) the Attorney General and the Federal Trade Commission shall have the opportunity to participate from the beginning in the development and carrying out of agreements and actions under section 303, in order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of section 303 and any order thereunder; and

(D) such other procedures as may be specified by the President in such request or order shall be complied with.

(f) EFFECT ON CERTAIN CONTRACTUAL OBLIGATIONS.—There shall be available as a defense to any action brought for breach of contract under Federal or State law arising out of any act or omission that such act was taken or that such omission occurred for purposes of complying with any order issued under section 303.

(g) PREEMPTION.—Any order issued pursuant to this title shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order.

Subtitle B—Other Authorities and Requirements

SEC. 311. AUTHORIZATION OF CERTAIN SALES AND TRANSPORTATION.

(a) COMMISSION APPROVAL OF TRANSPORTATION.—

(1) INTERSTATE PIPELINES.—

(A) IN GENERAL.—The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—

(i) any intrastate pipeline; and

(ii) any local distribution company.

(B) JUST AND REASONABLE RATES.—The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act).

(2) INTRASTATE PIPELINES.—

(A) IN GENERAL.—The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

(i) any interstate pipeline; and

(ii) any local distribution company served by any interstate pipeline.

(B) RATES AND CHARGES.—

(i) MAXIMUM FAIR AND EQUITABLE PRICE.—The rates and charges of any intrastate pipeline with respect to any transportation authorized under subparagraph (A), including any amount computed in accordance with the rule prescribed under clause (ii), shall be fair and equitable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(ii) COMMISSION RULE.—The Commission shall, by rule, establish the method for calculating an amount necessary to—

(I) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, delivery, or similar service provided by such pipeline in connection with any transportation of natural gas authorized under subparagraph (A); and

(II) provide an opportunity for such pipeline to earn a reasonable profit for such services.

(b) COMMISSION APPROVAL OF SALES.—

(1) IN GENERAL.—The Commission may, by rule or order, authorize any intrastate pipeline to sell natural gas to—

(A) any interstate pipeline; and

(B) any local distribution company served by any interstate pipeline.

(2) RATES AND CHARGES.—

(A) MAXIMUM FAIR AND EQUITABLE PRICE.—The rates and charges of any intrastate pipeline with respect to any sale of natural gas authorized under paragraph (1) shall be fair and equitable and may not exceed the sum of—

(i) such intrastate pipeline's weighted average acquisition cost of natural gas;

(ii) an amount, computed in accordance with the rule prescribed under subparagraph (B); and

(iii) any adjustment permitted under subparagraph (C).

(B) COMMISSION RULE.—The Commission shall, by rule, establish the method for calculating an amount necessary to—

(i) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, or delivery service provided by such pipeline in connection with any sale of natural gas authorized under paragraph (1); and

(ii) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(C) ADJUSTMENT.—

(i) APPLICATION.—This subparagraph shall apply in any case in which, in order to deliver any volume of natural gas pursuant to any sale authorized under paragraph (1), any intrastate pipeline acquires quantities of natural gas under any existing contract, if—

(I) such intrastate pipeline acquires any volume of natural gas under such contract in excess of that which such pipeline would otherwise have acquired; and

(II) the price paid for such additional volume of natural gas acquired under such contract is greater than such pipeline's weighted average acquisition cost of natural gas, computed without regard to the acquisition of such additional volume of natural gas.

(ii) COMMISSION ADJUSTMENT.—In any case to which this subparagraph applies, the Commission shall permit an adjustment to the maximum fair and equitable price provided under subparagraph (A) to increase the revenue to the intrastate pipeline under such sale by an amount determined by the Commission to be adequate to offset the additional cost incurred by such pipeline due to any increase in such pipeline's weighted average acquisition cost of natural gas.

(3) LIMITATION.—

(A) TWO-YEAR DURATION.—No authorization of any sale (or any extension thereof) under paragraph (1) may be for a period exceeding two years.

(B) EXTENSION.—Any authorization of any sale under paragraph (1), and any extension of any such authorization under this subparagraph, may be extended by the Commission if such extension satisfies the requirements of this subsection.

(4) ADEQUACY OF SERVICE TO INTRASTATE CUSTOMERS.—Any sale authorized under paragraph (1) shall be subject to interruption to the extent that natural gas subject to such sale is required to enable the intrastate pipeline involved to provide adequate service to such pipeline's customers at the time of such sale.

(5) PROCEDURAL REQUIREMENTS.—

(A) AFFIDAVIT.—Any application for authorization of any sale under paragraph (1) shall be accompanied by an affidavit filed by the intrastate pipeline involved and setting forth—

(i) the identity of the interstate pipeline or local distribution company involved;

(ii) each point of delivery of the natural gas from the intrastate pipeline;

(iii) the estimated total and daily volumes of natural gas subject to such sale;

(iv) the price or prices of such volumes; and

(v) such other information as the Commission may, by rule, require.

(B) VERIFICATION OF COMPLIANCE.—Any application for authorization of any sale under paragraph (1) shall be accompanied by a statement by the intrastate pipeline involved verifying by oath or affirmation that such sale, if authorized, would comply with all requirements applicable to such sale under this subsection and all terms and conditions established, by rule or order, by the Commission and applicable to such sale.

(6) TERMINATION OF SALES.—

(A) HEARING.—Upon complaint of any interested person, or upon the Commission's own motion, the Commission shall, after affording an opportunity for oral presentation of views and arguments, terminate any sale authorized under paragraph (1) if the Commission determines—

(i) such termination is required to enable the intrastate pipeline involved to provide adequate service to the customers of such pipeline at the time of such sale;

(ii) such sale involves the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(iii) such sale violates any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(iv) such sale circumvents or violates any provision of this Act.

(B) SUSPENSION PENDING HEARING.—Prior to any hearing or determination required under subparagraph (A), upon complaint of any interested person or upon the Commission's own motion, the Commission may suspend any sale authorized under paragraph (1) if the Commission finds that it is likely that the determinations described in subparagraph (A) will be made following the hearing required under subparagraph (A).

(C) DETERMINATION.—The determination of whether any interruption of any sale authorized under paragraph (1) is required under subparagraph (A)(i) shall be made by the Commission without regard to the character of the use of natural gas by any customer of the intrastate pipeline involved.

(D) STATE INTERVENTION.—Any interested State may intervene as a matter of right in any proceeding before the Commission relating to any determination under this section.

(7) DISAPPROVAL OF APPLICATION.—The Commission shall disapprove any application for authorization of any sale under paragraph (1) if the Commission determines—

(A) such sale would impair the ability of the intrastate pipeline involved to provide adequate service to its customers at the time of such sale (without regard to the character of the use of natural gas by such customer);

(B) such sale would involve the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(C) such sale would violate any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(D) such sale would circumvent or violate any provision of this Act.

(c) TERMS AND CONDITIONS.—Any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe.

SEC. 312. ASSIGNMENT OF CONTRACTUAL RIGHTS TO RECEIVE SURPLUS NATURAL GAS.

(a) AUTHORIZATION OF ASSIGNMENTS.—The Commission may, by rule or order, authorize any intrastate pipeline to assign, without compensation, to any interstate pipeline or local distribution company all or any portion of such intrastate pipeline's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate.

(b) EFFECT OF AUTHORIZATION UNDER SUBSECTION (a).—For the effect of an authorization under subsection (a), see section 601 (relating to the coordination of this Act with the Natural Gas Act).

(c) SURPLUS NATURAL GAS.—For purposes of this section, the term "surplus natural gas" means any natural gas—

(1) which is not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act;

(2) the first sale of which is subject to a

maximum lawful price established under title I of this Act; and

(3) which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to receive such natural gas in the absence of any assignment to exceed the then current demands on such pipeline for natural gas.

SEC. 313. EFFECT OF CERTAIN NATURAL GAS PRICES ON INDEFINITE PRICE ESCALATOR CLAUSES.

(a) HIGH-COST NATURAL GAS.—No price paid in any first sale of high-cost natural gas (as defined in section 107(c)) may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B)) with respect to any first sale of any natural gas other than high-cost natural gas (as defined in section 107(c)).

(b) OTHER TRANSACTIONS.—No price paid—

(1) in any sale authorized under section 302(a), or

(2) pursuant to any order issued under section 303 (b), (c), (d), or (g), may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B)).

SEC. 314. CLAUSES PROHIBITING CERTAIN SALES, TRANSPORTATION, AND COMMINGLING.

(a) GENERAL RULE.— Any provision of any contract for the first sale of natural gas is hereby declared against public policy and unenforceable with respect to any natural gas covered by this Act if such provision—

(1) prohibits the commingling of natural gas subject to such contract with natural gas subject to the jurisdiction of the Commission under the provisions of the Natural Gas Act;

(2) prohibits the sale of any natural gas subject to such contract to, or transportation of any such natural gas by, any person subject to the jurisdiction of the Commission under the Natural Gas Act, or otherwise prohibits the sale or transportation in interstate commerce (within the meaning of the Natural Gas Act) of natural gas subject to such contract; or

(3) terminates, or grants any party the option to terminate, any obligation under any such contract as a result of such commingling, sale, or transportation.

(b) NATURAL GAS COVERED BY THIS ACT.—For purposes of subsection (a), the term "natural gas covered by this Act" means—

(1) natural gas which is not committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act;

(2) natural gas, the sale in interstate commerce of which—

(A) is authorized under section 302(a) or 311(b); or

(B) is pursuant to an assignment under section 312(a); and

(3) natural gas, the transportation in interstate commerce of which is—

(A) pursuant to any order under section 302(c) or section 323 (b), (c), (d), or (h); or

(B) authorized by this Commission under section 311(a).

SEC. 315. CONTRACT DURATION; RIGHT OF FIRST REFUSAL; FILING OF CONTRACTS AND AGREEMENTS.

(a) CONTRACT DURATION.—

(1) GENERAL RULE.—The Commission may, by rule or order, specify the minimum duration of any contract (other than any existing contract) for the purchase of natural gas to which section 601(a)(1)(A) or (B) is applicable. In no case may the minimum contract duration specified under this paragraph applicable to natural gas produced from any reservoir exceed 15 years or, if less, the commercially producible life of such reservoir. The provisions of this paragraph shall not apply to contracts of natural gas subject to the requirements of paragraph (3).

(2) NONDISCRIMINATORY APPLICATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Commission may not exercise the authority provided under paragraph (1) in a manner which—

(i) provides an advantage to interstate pipelines by diverting supplies of natural gas to interstate pipelines and thereby denying adequate supplies of natural gas to intrastate pipelines; or

(ii) otherwise discriminates between purchases by interstate pipelines and intrastate pipelines of natural gas.

(B) SPECIAL CIRCUMSTANCES.—The Commission may vary any requirement established under paragraph (1) with respect to any contract by an interstate pipeline or intrastate pipeline to the extent necessary to respond to special circumstances.

(3) CONTRACTS FOR PURCHASE OF OCS NATURAL GAS.—The Commission shall prescribe a rule which shal require that any first sale contract (other than any existing contract) for the purchase of natural gas which is produced from any reservoir on the Outer Continental Shelf and which is new natural gas (as defined in section 102(b)) or high-cost natural gas (as defined in section 107(c)(1), (2), (3), or (4) shall be for a duration of not less than 15 years or, if less the commercially producible life of the reservoir.

(b) OFFERS; RIGHT OF FIRST REFUSAL.—

(1) APPLICATION.—This subsection shall apply with respect to any natural gas which is committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and which is—

(A) high-cost natural gas (as defined in section 107(c)(1), (2), (3), or (4));

(B) new natural gas (as defined in section 102(c)); or

(C) natural gas produced from any new, onshore production well (as defined in section 103 (c)). This subsection shall not apply to any natural gas committed or dedicated to interstate commerce solely by reason of section 2(18)(A)(i).

(2) OFFER OF SALE.—The Commission shall, by rule, require that if natural gas subject to the requirements of this subsection is produced on or after the first day of the first month beginning after the date of the enactment of this Act, a bona fide offer to sell such natural gas must be made to the person who, but for the provisions of section 601(a)(1)(B) (relating to deregulation), would have been entitled pursuant to the commitment or dedication of such natural gas to interstate commerce to receive such natural gas if such natural gas were sold or any successor in interest to such person).

(3) RIGHT OF FIRST REFUSAL.—The Commission shall, by rule, require that following—

(A) the expiration or termination of any contract with respect to the first sale of natural gas subject to the requirements of this subsection to the person who, but for the provisions of section 601(a)(1)(B) (relating to deregulation), would have been entitled pursuant to the commitment or dedication of such natural gas to interstate commerce to receive such natural gas if such natural gas were sold (or any successor in interest to such person), or

(B) any rejection of any bona fide offer, described in paragraph (2), to sell natural gas subject to the requirements of this subsection,

such person who would have been entitled to receive such natural gas shall be granted a right of first refusal of the first offer to sell such natural gas which, subject to the exercise of any right of first refusing under this paragraph, has been substantially accepted in principle by another person in an arms-length transaction.

(c) FILING OF CONTRACTS AND ANCILLARY AGREEMENTS.—The Commission may, by rule or order, require any first sale purchaser of natural gas under a new contract, a successor to an existing contract, or a rollover contract to file with the Commission a copy of such contract, together with all ancillary agreements and any existing contract applicable to such natural gas.

TITLE IV—NATURAL GAS CURTAILMENT POLICIES

SEC. 401. NATURAL GAS FOR ESSENTIAL AGRICULTURAL USES.

(a) GENERAL RULE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Energy shall prescribe and make effective a rule, which may be amended from time to time, which provides that, notwithstanding any other provision of law (other than subsection (b)) and to the maximum extent practicable, no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use, unless such curtailment—

(1) does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c); or

(2) is necessary in order to meet the requirements of high-priority users.

(b) CURTAILMENT PRIORITY NOT APPLICABLE IF ALTERNATIVE FUEL AVAILABLE.—If the Commission, in consultation with the Secretary of Agriculture, determines, by rule or order, that use of a fuel (other than natural gas) is economically practicable and that the fuel is reasonably available as an alternative for any agricultural use of natural gas, the provisions of subsection (a) shall not apply with respect to any curtailment of deliveries for such use.

(c) DETERMINATION OF ESSENTIAL AGRICULTURAL USE REQUIREMENTS.—The Secretary of Agriculture shall certify to the Secretary of Energy and the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential agricultural uses in order to meet the requirements of full food and fiber production.

(d) AUTHORITY OF SECRETARY OF AGRICULTURE TO INTERVENE.—The Secretary of Agriculture may intervene as a matter of right in any proceeding before the Commission which is conducted in connection with implementing the requirements of the rule prescribed under subsection (a).

(e) LIMITATION.—The Secretary of Agriculture may not exercise any authority under this section for the purpose of restricting the production of any crop.

(f) DEFINITIONS.—For purposes of this section—

(1) ESSENTIAL AGRICULTURAL USE.—The term "essential agricultural use", when used with respect to natural gas, means any use of natural gas—

(A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or

(B) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food,

which the Secretary of Agriculture determines is necessary for full food and fiber production.

(2) HIGH-PRIORITY USER.—The term "high-priority user" means any person who—

(A) uses natural gas in a residence;

(B) uses natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day;

(C) uses natural gas in any school, hospital, or similar institution; or

(D) uses natural gas in any other use the curtailment of which the Secretary of Energy determines would endanger life, health, or maintenance of physical property.

SEC. 402. NATURAL GAS FOR ESSENTIAL INDUSTRIAL PROCESS AND FEEDSTOCK USES.

(a) GENERAL RULE.—The Secretary of Energy shall prescribe and make effective a rule which provides that, notwithstanding any other provision of law (other than subsection (b)) and to the maximum extent practicable, no interstate pipeline may curtail deliveries of natural gas for any essential industrial process or feedstock use, unless such curtailment—

(1) does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c);

(2) is necessary in order to meet the requirements of high-priority users; or

(3) is necessary in order to meet the requirements for essential agricultural uses of natural gas for which curtailment priority is established under section 401.

(b) CURTAILMENT PRIORITY APPLICABLE ONLY IF ALTERNATIVE FUEL NOT AVAILABLE.—The provisions of subsection (a) shall apply with respect to any curtailment of deliveries for any essential industrial process or feedstock use only if the Commission determines that use of a fuel (other than natural gas) is not economically practicable and that no fuel is reasonably available as an alternative for such use.

(c) DETERMINATION OF ESSENTIAL INDUSTRIAL USE REQUIREMENTS.—The Secretary of Energy shall determine and certify to the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential industrial process and feedstock uses (other than those referred to in section 401 (f) (1) (B)).

(d) DEFINITIONS.—For purposes of this section—

(1) ESSENTIAL INDUSTRIAL PROCESS OR FEEDSTOCK USE.—The term "essential industrial process or feedstock use" means any use of natural gas in an industrial process or as a feedstock which the Secretary determines is essential.

(2) HIGH-PRIORITY USER.—The term "high-priority user" has the same meaning as given such term in section 401(f)(2).

SEC. 403. ESTABLISHMENT AND IMPLEMENTATION OF PRIORITIES.

(a) ESTABLISHMENT OF PRIORITIES.—The Secretary of Energy shall prescribe the rules under sections 401 and 402 pursuant to his authority under the Department of Energy Organization Act to establish and review priorities for curtailments under the Natural Gas Act.

(b) IMPLEMENTATION OF PRIORITIES.—The Commission shall implement the rules prescribed under sections 401 and 402 pursuant to its authority under the Department of Energy Organization Act to establish, review, and enforce curtailments under the Natural Gas Act.

SEC. 404. LIMITATION ON REVOKING OR AMENDING CERTAIN PRE-1969 CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.

(a) GENERAL RULE.—The Commission may not, during the 10-year period beginning on the date of the enactment of this Act, revoke or amend any certificate of public convenience and necessity issued before January 1, 1969, under setction 7 of the Natural Gas Act for the transportation of natural gas owned by any electric utility except upon the application of the person to whom such certificate was issued.

(b) COMMISSION CURTAILMENT AUTHORITY.—The limitation under subsection (a) shall not affect the authority of the Commission to enforce any curtailment of deliveries of natural gas under the Natural Gas Act.

TITLE V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

SEC. 501. GENERAL RULEMAKING AUTHORITY.

(a) IN GENERAL.—Except where expressly provided otherwise, the Commission shall administer this Act. The Commission, or any other Federal officer or agency in which any function under this Act is vested or delegated, is authorized to perform any and all acts (including any appropriate enforcement activity), and to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this Act.

(b) AUTHORITY TO DEFINE TERMS.—Except where otherwise expressly provided, the Commission is authorized to define, by rule, accounting, technical, and trade terms used in this Act. Any such definition shall be consistent with the definitions set forth in this Act.

(c) DELEGATION OF CERTAIN DETERMINATIONS.—The Commission may delegate to any State agency (with the consent of such agency) any of its functions with respect to section 105, 106(b), and 109(a)(1), and (3).

SEC. 502. ADMINISTRATIVE PROCEDURE.

(a) ADMINISTRATIVE PROCEDURE ACT.—Subject to subsection (b), the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply to any rule or order issued under this Act having the applicability and effect of a rule as defined in section 551(4) of title 5, United States Code; except that sections 554, 556, and 557 of such title 5 shall not apply to any order under such section 301, 302, or 303.

(b) OPPORTUNITY FOR ORAL PRESENTATIONS.— To the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments shall be afforded with respect to any proposed rule or order described in subsection (a) (other than an order under section 301, 302, or 303). To the maximum extent practicable, such opportunity shall be afforded before the effective date of such rule or order. Such opportunity shall be afforded no later than 30 days after such date in the case of a waiver of the entire comment period under section 553(d)(3) of title 5, United States Code, and no later than 45 days after such date in all other cases. A transcript shall be made of any such oral presentation.

(c) ADJUSTMENTS.—The Commission or any other Federal officer or agency authorized to issue rules or orders described in subsection (a) (other than an order under section 301, 302, or 303) shall, by rule, provide for the making of such adjustments, consistent with the other purposes of this Act, as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens. Such rule shall establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, exception to, or exemption from, such applicable rules or orders. If any person is aggrieved or adversely affected by the denial of a request for adjustment under the preceding sentence, such person may request a review of such denial by the officer or agency and may obtain judicial review in accordance with section 506 when such denial becomes final. The officer or agency shall, by rule, establish procedures, including an opportunity for oral presentation of data, views, and arguments, for considering requests for adjustment under this subsection.

(d) PROCEDURES APPLICABLE FOR INCREMENTAL PRICING DETERMINATIONS RESPECTING IMPORTS.—Notwithstanding the preceding provisions of this section, any determination made under section 207(c) shall be made in accordance with the procedures applicable to the granting of any authority under the Natural Gas Act to import natural gas or liquefied natural gas (as the case may be).

SEC. 503. DETERMINATIONS FOR QUALIFYING UNDER CERTAIN CATEGORIES OF NATURAL GAS.

(a) GENERAL RULE.—

(1) DETERMINATION.—If any State or Federal agency makes any final determination which it is authorized to make under subsection (c) for purposes of—

(A) applying the definition of new natural gas under section 102(c);

(B) deciding if certain natural gas produced from the Outer Continental Shelf qualifies under section 102(d) for the new natural gas ceiling price;

(C) applying the definition of new, onshore production well under section 103(c);

(D) applying the definition of high-cost natural gas under section 107(c); or

(E) applying the definition of stripper well natural gas under section 108(b);

such determination shall be applicable under this Act for such purposes unless such determination is reversed under the provisions of subsection (b) or unless such State or Federal agency has waived its authority under the provisions of subsection (c).

(2) NOTICE TO COMMISSION.—Any Federal or State agency making a determination under paragraph (1) shall provide timely notice in writing of such determination to the Commission. Such notice shall include such substantation and be in such a manner as the Commission may, by rule, require.

(b) COMMISSION REVIEW.—

(1) AUTHORITY TO REVIEW AND REVERSE..— The Commission shal reverse any final State or Federal agency determination described in subsection (a) if—

(A) it makes a finding that such determination is not supported by substantial evidence in the record upon which such determination was made; and

(B) such preliminary finding and notice thereof under paragraph (3) is made within 45 days after the date on which the Commission received notice of such determination under subsection (a)(2) and the final such finding is made within 120 days after the date of the preliminary finding.

(2) REMAND ON BASIS OF COMMISSION INFORMATION.—If—(A) the Commission finds that a State or Federal agency determination is not consistent with information contained in the public records of the Commission, and which is not part of the record upon such determination was made; and

(B) such preliminary finding and notice thereof under paragraph (3) is made within 45 days after the date on which the Commission received notice of such determination under subsection (a)(2) and the final such finding is made within 120 days after the date of the preliminary finding,

it may remand the matter to such State or Federal agency for consideration of such information. If such agency, after consideration of the information transmitted to it by the Commission, affirms its previous determination, such determination, as so affirmed shall be subject to review in accordance with this subsection (other than this paragraph).

(3) NOTICE.—The Commission shall provide notice of any proposed finding under this subsection to the State or Federal agency which made such determination and those parties identified in the notice to the Commission of such determination.

(4) JUDICIAL REVIEW OF COMMISSION ACTIONS.—

(A) REMANDS.—Any party identified in the notice to the Commission of a determination by a State or Federal agency may obtain review of any final decision by the Commission to remand under paragraph (2) in the United States Court of Appeals for any circuit in which such party is located or has its principal place of business, or in the

United States Court of Appeals for the District of Columbia circuit. The reviewing court shall reverse any such decision if it finds such decision is arbitrary or capricious.

(B) FINDINGS.—Any person aggrieved or adversely affected by a final finding of the Commission under paragraph (1) may within 60 days thereafter file a petition for review of such finding in the United States Court of Appeals for any circuit in which the party involved in such determination is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. The reviewing court shall reverse any such finding of the Commission if the State or Federal agency determination involved is supported by substantial evidence.

(c) STATE AUTHORITY.—

(1) GENERAL RULE.—A Federal or State agency having regulatory jurisdiction with respect to the production of natural gas is authorized to make determinations referred to in subsection (a).

(2) WAIVER.—

(A) IN GENERAL.—Any Federal or State agency may, in whole or in part, waive its authority to make determinations referred to in subsection (a)(1) by entering into an agreement in accordance with subparagraph (B). If such agency executes such a waiver, the Commission shall, consistent with the agreement, make the determinations which would otherwise be made by such Federal or State agency until the earlier of—

(i) the expiration of the period specified in the agreement; or

(ii) the date such agency transmits to the Commission written notice that it terminates such waiver and assumes the authority to make determinations referred to in subsection (a)(1).

Any waiver. or termination of any waiver, shall not apply to any determination with respect to any petition therefor which is pending before such agency or the Commission as the case may be on the date on which such a waiver or revocation is made.

(B) AGREEMENTS.—Any waiver under subparagraph (A) may be made only by a written agreement between th Federal or State agency involved and the Commission. Any such agreement shall set forth the terms and conditions applicable to such waiver.

(3) PROCEDURES APPLICABLE.—Determinations of a Federal or State agency referred to in subsection (a)(1) shall be made in accordance with the procedures generally applicable to such agency for the making of such determinations or comparable determinations under the provisions of Federal or State law, as the case may be, pursuant to which they exercise their regulatory jurisdiction. The Commission may prescribe the form and content of filings with a Federal or State agency in connection with determinations made under this section.

(4) JUDICIAL REVIEW.—Any such determination referred to in subsection (a)(1) made in accordance with procedures described in paragraph (3) shall not be subject to judicial review under any Federal or State law except as provided under subsection (b).

(d) EFFECT OF DETERMINATION.—For purposes of this Act—

(1) GENERAL RULE.—Any final determination referred to in subsection (a)(1) made by a Federal or State agency (or by the Commission under subsection (c)(2)) which relates to any natural gas and which is no longer subject to review by the Commission under this section or to judicial review shall thereafter be binding with respect to such natural gas. The preceding sentence shall not apply to any final determination—

(A) if in making such determination the Commission or such Federal or State agency relied on any untrue statement of a material fact, or

(B) if there was omitted a statement or material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made, to the Federal or State agency in making such final determination or to the Commission in reviewing such determination.

(2) APPLICATION OF TITLE 18.—Any untrue statement or omission of material fact to a Federal or State agency upon which the Commission replied shall be deemed to be statement or entry under section 1001 of title 18, United States Code.

(e) INTERIM COLLECTION OF MAXIMUM LAWFUL PRICE.—

(1) COLLECTION OF SECTION 109 PRICE.—

(A) GENERAL RULE.—Effective beginning on the first day of the first month beginning after the date of the enactment of this Act, a seller of natural gas which is produced from a new well may, in accordance with subparagraph (B), charge and collect the appropriate maximum lawful price under section 109 for any first sale of such natural gas.

(B) REQUIREMENTS.—A seller may charge and make collections under subparagraph (A) only in accordance with the following requirements:

(i) SWORN STATEMENT.—Before any such collection is made, the seller shall file with the Commission, and any Federal or State agency having authority to make determinations referred to in subsection (a)(1), a written sworn statement that such natural gas is produced from a new well and that such seller believes in good faith that such natural gas is eligible under this Act to be sold at a price not less than the appropriate maximum lawful price under section 109.

(ii) PETITION FOR DETERMINATION.—Within 90 days after the date of the enactment of this Act, the seller files a petition to such Federal or State agency for a determination under this section.

(iii) COLLECTION SUBJECT TO REFUND.—Any such collection made by the seller pending a determination under this section shall be collected subject to a condition of refund, with interest, in the event it is determined by such Federal or State agency that the applicable maximum lawful price is lower than that provided under section 109.

(2) ALTERNATE INTERIM COLLECTION AUTHORITY.—

(A) GENERAL RULE.—Promptly after the date of the enactment of this Act, the Commission shall, by rule or order, provide one or more methods under which a seller of natural gas may, in accordance with requirements established, and for such period as may be prescribed, under such rule or order, charge and collect for any first sale of such natural gas the maximum lawful price under title I for which a petition is filed for a determination under this section in any case in which such price exceeds the appropriate maximum lawful price under section 109.

(B) COLLECTION SUBJECT TO REFUND.—Any such collection made by the seller pending a determination under section 503 shall be collected subject to a condition of refund, with interest. Such refund with interest shall be paid, in accordance with the rule under subparagraph (A), unless it is determined under this Act that the applicable maximum lawful price is equal to or greater than that collected. In addition, such seller shall comply with such requirements as the Commission shall prescribe in the applicable rule or order to provide adequate assurance that funds, to the extent attributable to a price in excess of the appropriate maximum lawful price under title I are available in the event of such refund.

(3) COLLECTION AFTER INITIAL DETERMINATION.—

(A) GENERAL RULE.—Effective beginning on the date of the notice of a determination under subsection (a)(2), a seller of natural gas covered by such determination may, in accordance with subparagraph (P), charge and collect the appropriate maximum lawful price applicable under such determination.

(B) REQUIREMENTS.—A seller may charge and make collections under subparagraph (A) if such collection is subject to conditions prescribed by the Commission to assure refund, with interest, in the event it is determined under this Act that the applicable maximum lawful price is lower than that provided under section 109.

SEC. 504. ENFORCEMENT.

(a) GENERAL RULE.—It shall be unlawful for any person—

(1) to sell natural gas at a first sale price in excess of any applicable maximum lawful price under this Act; or

(2) to otherwise violate any provision of this Act or any rule or order under this Act.

(b) CIVIL ENFORCEMENT.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), whenever it appears to the Commission that any person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of any provision of this Act, or of any rule or order thereunder, the Commission may bring an action in the District Court of the United States for the District of Columbia or any other appropriate district court of the United States to enjoin such act or practice and to enforce compliance with this Act, or any rule or order thereunder.

(2) ENFORCEMENT OF EMERGENCY ORDERS.—Whenever it appears to the President that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order under section 302 or any order or supplemental order issued under section 303, the President may bring a civil action in any appropriate district court of the United States to enjoin such acts or practices.

(3) ENFORCEMENT OF INCREMENTAL PRICING.—The Secretary, the Commission, or, on the request of the Secretary of Energy or the Commission, the Attorney General may institute a civil action for injunctive or other equitable relief as may be appropriate to assure compliance with the provisions of section 205 requiring the passthrough of surcharges paid under section 204 by any local distribution company with respect to natural gas delivered to incrementally priced industrial facilities served by such company. Such action may be instituted in any district court of the United States in the State in which such local distribution company conducts business or in the District Court of the United States for the District of Columbia.

(4) RELIEF AVAILABLE.—In any action under paragraph (1), (2), or (3), the court shall, upon a proper showing, issue a temporary restraining order or preliminary or permanent injunction without bond. In any such action, the court may also issue a mandatory injunction commanding any person to comply with any applicable provision of law, rule, or order, or ordering such other legal or equitable relief as the court determines appropriate including refund or restitution.

(5) CRIMINAL REFERRAL.—The Commission may transmit such evidence as may be available concerning any acts or practices constituting any possible violations of the Federal antitrust laws to the Attorney General, who may institute appropriate criminal proceedings.

(6) CIVIL PENALTIES.—

(A) IN GENERAL.—Any person who knowingly violates any provision of this Act, or any provision of any rule or order under this Act, shall be subject to—

(i) except as provided in clause (ii) a civil penalty, which the Commission may assess, or not more than $5,000 for any one violation; and

(ii) a civil penalty, which the President may assess, of not more than $25,000, in the case of any violation of an order under sec-

tion 302 or an order or supplemental order under section 303.

(B) DEFINITION OF KNOWING.—For purposes of subparagraph (A), the term "knowing" means the having of—

(i) actual knowledge; or

(ii) the constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

(C) EACH DAY SEPARATE VIOLATION.—For purposes of this paragraph, in the case of a continuing violation, each day of violation shall constitute a separate violation.

(D) STATUTE OF LIMITATIONS.—No person shall be subject to any civil penalty under this paragraph with respect to any violation occurring more than 3 years before the date on which such person is provided notice of the proposed penalty under subparagraph (E). The preceding sentence shall not apply in any case in which an untrue statement of material fact was made to the Commission or a State agency by, or acquiesced to by, the violator with respect to the acts or omissions constituting such violation, or if there was omitted a material fact necessary in order to make any statement made by or acquiesced to by, the violator with respect to such acts or omissions not misleading in light of circumstances under such statement was made.

(E) ASSESSED BY COMMISSION.—Before assessing any civil penalty under this paragraph, the Commission shall provide to such person notice of the proposed penalty. Following receipt of notice of the proposed penalty by such person, the Commission shall, by order, assess such penalty.

(F) JUDICIAL REVIEW.—If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (E), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(c) CRIMINAL PENALTIES.—

(1) VIOLATIONS OF ACT.—Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any provision of this Act shall be subject to—

(A) a fine of not more than $5,000; or

(B) imprisonment for not more than two years; or

(C) both such fine and such imprisonment.

(2) VIOLATION OF RULES OR ORDERS GENERALLY.—Except in the case of violations covered under paragraph (3) any person who knowingly and willfully violates any rule or order under this Act (other than an order of the Commission assessing a civil penalty under subsection (b)(4)(E)), shall be subject to a fine of not more than $500 for each violation.

(3) VIOLATIONS OF EMERGENCY ORDERS.—Any person who knowingly and willfully violates an order under section 302 or an order or supplemental order under section 303 shall be fined not more than $50,000 for each violation.

(4) EACH DAY SEPARATE VIOLATION.—For purposes of this subsection, each day of violation shall constitute a separate violation.

(5) DEFINITION OF KNOWINGLY.—For purposes of this subsection, the term "knowingly", when used with respect to any act or omission by any person, means such person—

(A) had actual knowledge; or

(B) had constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

SEC. 505. INTERVENTION.

(a) AUTHORITY TO INTERVENE.—

(1) INTERVENTION AS MATTER OF RIGHT.—The Secretary of Energy may intervene as a matter of right in any proceeding relating to the prorationing of, or other limitations upon, natural gas production which is conducted by any State agency having regulatory jurisdiction over the production of natural gas.

(2) ENFORCEMENT OF RIGHT TO INTERVENE.—The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under paragraph (1).

(3) ACCESS TO INFORMATION.—As an intervenor in a proceeding described in subsection (a), the Secretary shall have access to information available to other parties to the proceeding if such information is relevant to the issues to which his participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State agency.

(b) ACCESS TO STATE COURTS.—

(1) REVIEW IN STATE COURTS.—The Secretary may obtain review of any determination made in any proceeding described in subsection (a)(1) in the appropriate State court if the Secretary intervened or otherwise participated in the original proceeding or if State law otherwise permits such review.

(2) PARTICIPATION AS AMICUS CURIAE.—In addition to his authority to obtain review under paragraph (1), the Secretary may also participate an amicus curiae in any judicial review of any proceeding described in subsection (a)(1).

SEC. 506. JUDICIAL REVIEW.

(a) ORDERS.—

(1) IN GENERAL.—The provisions of this subsection shall apply to judicial review of any order, within the meaning of section 551(6) of title 5, United States Code (other than an order assessing a civil penalty under section 504(b)(4) or any order under section 302 or any order under section 303), issued under this Act and to any final agency action under this Act required to be made on the record after an opportunity for an agency hearing.

(2) REHEARING.—Any person aggrieved by any order issued by the Commission in a proceeding under this Act to which such person is a party may apply for a rehearing within 30 days after the issuance of such order. Any application for rehearing shall set forth the specific ground upon which such application is based. Upon the filing of such application, the Commission may grant or deny the requested rehearing or modify the original order without further hearing. Unless the Commission acts upon such application for rehearing within 30 days after it is filed, such application shall be deemed to have been denied. No person may bring an action under this section to obtain judicial review of any order of the Commission unless—

(A) such person shall have made application to the Commission for a rehearing under this subsection; and

(B) the Commission shall have finally acted with respect to such application.

For purposes of this section, if the Commission fails to act within 30 days after the filing of such application, such failure to act shall be deemed final agency action with respect to such application.

(3) AUTHORITY TO MODIFY ORDERS.—At any time before the filing of the record of a proceeding in a United States Court of Appeals, pursuant to paragraph (4), the Commission may, after providing notice it determines reasonable and proper, modify or set aside, in whole or in part, any order issued under the provisions of this Act.

(4) JUDICIAL REVIEW.—Any person who is a party to a proceeding under this Act aggrieved by any final order issued by the Commission in such proceeding may obtain review of such order in the United States Court of Appeals for any circuit in which the party to which such order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. Review shall be obtained by filing a written petition, requesting that such order be modified or set aside in whole or in part, in such Court of Appeals within 60 days after the final action of the Commission on the application for rehearing required under paragraph (2). A copy of such petition shall forthwith be transmitted by the clerk of such court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to such order of the Commission shall be considered by the court if such objection was not urged before the Commission in the application for rehearing unless there was reasonable ground for the failure to do so. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court deems proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive. The Commission shall also file with the court its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(5) ORDERS REMAIN EFFECTIVE.—The filing of an application for rehearing under paragraph (2) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(b) REVIEW OF RULES AND ORDERS.—Except as provided in subsections (a) and (c), judicial review of any rule or order, within the meaning of section 551(4) of title 5, United States Code, issued under this Act may be obtained in the United States Court of Appeals for any appropriate circuit pursuant to the provisions of chapter 7 of title 5, United States Code, except that the second sentence of section 705 thereof shall not apply.

(c) JUDICIAL REVIEW OF EMERGENCY ORDERS.—Except with respect to enforcement of orders or subpenas under section 304(a), the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended, shall have exclusive original jurisdiction to review all civil cases and controversies under section 301, 302, or 303, including any order issued, or other action taken, under such section. The Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 304(a)(2); such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty

days after the entry of judgment by the district court. Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, under section 301, 302, or 303.

(d) JUDICIAL REVIEW OF CERTAIN INCREMENTAL PRICING DETERMINATIONS.—Notwithstanding the preceding provisions of this section, any final determination made under section 207(c) shall be subject to judicial review in accordance with the provisions of the Natural Gas Act applicable to judicial review of any final determination respecting the grant or denial of any authority to import natural gas or liquefied natural gas.

SEC. 507. CONGRESSIONAL REVIEW.

(a) APPLICATION. This section applies with respect to—

(1) any disapproval by concurrent resolution of a Presidential reimposition of maximum lawful prices under section 122;

(2) any congressional reimposition by concurrent resolution of maximum lawful prices under section 122; and

(3) any resolution of disapproval relating to incremental pricing under section 202(c) or 206(d)(2).

(b) DETERMINATION OF CALENDAR DAYS OF CONTINUOUS SESSION.—In determining calendar days of continuous session for purposes of provisions of this Act providing for disapproval under this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 32-calendar-day period involved.

If both Houses are not in session on the day any submittal subject to disapproval is received by the appropriate officers of each House, for purposes of this section such submittal shall be deemed to have been submitted on the first succeeding day on which both Houses are in session. If both Houses of the Congress do not receive a submittal on the same day, it shall not be considered to be received by either House until the day on which both Houses receive it.

(c) RESOLUTION.—For purposes of this section, and sections 122, 202, and 206—

(1) CONCURRENT RESOLUTION DISAPPROVING REIMPOSITION OF PRICE CEILINGS.—The term "concurrent resolution of disapproval", when used with respect to reimposition of maximum lawful prices under section 122(c)(1), means a resolution the matter after the resolving clause of which is as follows: "That the Congress does not approve of the reimposition of maximum lawful prices for first sales of natural gas under section 122(c)(1) of the Natural Gas Policy Act of 1978 pursuant to the transmittal by the President to the Congress on _____, 19__.", the blank spaces being filled with the appropriate date.

(2) CONCURRENT RESOLUTION EFFECTING REIMPOSITION OF PRICE CEILINGS.—The term "concurrent resolution", when used with respect to reimposition of maximum lawful prices under section 122(c)(2), means a resolution the matter after the resolving clause of which is as follows: "That the Congress favors reimposition of maximum lawful prices for first sales of natural gas as provided for under section 122(c)(2) of the Natural Gas Policy Act of 1978.".

(3) RESOLUTION OF DISAPPROVAL OF INCREMENTAL PRICING ACTION.—The term "resolution of disapproval", when used with respect to incremental pricing rules, means a resolution the matter after the resolving clause of which is as follows: "That the _____ does not approve the proposed rule under section ____ of the Natural Gas Policy Act of 1978 (relating to incremental pricing of natural gas) a copy of which was transmitted to the Congress on _____.", the first blank being filled with the House in which such resolution is introduced, the second blank space being filled with the section under which proposed rule was issued, and the following blank spaces being filled with the appropriate date. For purposes of this paragraph, the term "rule" means any rule or any amendment thereto (other than a technical or clerical amendment).

(d) EXPEDITED PROCEDURE.—

(1) CONGRESSIONAL RULEMAKING POWER.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) REFERRAL.—A resolution described by paragraph (2) once introduced with respect to any submittal shall immediately be referred to a committee (and all resolutions with respect to the same submittal shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(3) DISCHARGE.—

(A) IN GENERAL.—If the committee to which a resolution with respect to a submittal has been referred has not reported it at the end of 20 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such submittal which has been referred to the committee.

(B) MOTIONS.—A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same submittal) and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) RENEWAL.—If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to the same submittal.

(4) FLOOR CONSIDERATION.—

(A) MOTION TO CONSIDER.—When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) DEBATE AND CONSIDERATION.—Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6) DETERMINATION ON MOTIONS.—

(A) MOTIONS TO POSTPONE OR TO PROCEED TO OTHER BUSINESS.—Motions to postpone, made with respect to the discharge of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) APPEALS FROM THE DECISION OF THE CHAIR.—Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) SUBSEQUENT ACTION.—Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to a submittal, then it shall not be in order to consider in that House any other resolution with respect to the same such submittal.

SEC. 508. TECHNICAL PROVISIONS.

(a) Section 645 of the Department of Energy Organization Act.—Section 645 of the Department of Energy Organization Act is amended by inserting at the end thereof the following new sentence: "For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978, the Commission shall have the same powers and authority as the Secretary has under this Section.".

(b) Section 301(a) of the Department of Energy Organization Act.—In order to obtain information for the purpose of carrying out its functions under this Act, the Commissioner shall have the same authority as is vested in the Secretary under section 301(a) of the Department of Energy Organization Act with respect to the exercise of authority under section 11(b) of the Energy Supply and Environmental Coordination Act of 1974 and sections 13 (b), (c), and (d) of the Federal Energy Administration Act of 1974.

TITLE VI—COORDINATION WITH NATURAL GAS ACT; MISCELLANEOUS PROVISIONS

SEC. 601. COORDINATION WITH THE NATURAL GAS ACT.

(a) JURISDICTION OF THE COMMISSION UNDER THE NATURAL GAS ACT.—

(1) SALES.—

(A) NATURAL GAS NOT COMMITTED OR DEDICATED.—For purposes of section 1(b) of the Natural Gas Act, effective on the first day of the first month beginning after the date of the enactment of this Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to natural gas which was not committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act solely by reason of any first sale of such natural gas.

(B) COMMITTED OR DEDICATED NATURAL GAS.—Effective beginning on the first day of the first month beginning after the date of the enactment of this Act, for purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act and which is—

(i) high-cost natural gas (as defined in section 107(c) (1), (2), (3), or (4) of this Act);

(ii) new natural gas (as defined in section 102(c) of this Act); or

(iii) natural gas progduced from any new, onshore production well (as defined in section 103(c) of this Act).

(C) AUTHORIZED SALES OR ASSIGNMENTS.—For purposes of section 1(b) of the Natural Gas Act the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply by reason of any sale of natural gas—

(i) authorized under section 302(a) or 311(b); or

(ii) pursuant to any assignment authorized under section 312(a).

(D) NATURAL GAS COMPANY.—For purdoses of the Natural Gas Act, the term "natural gas company" (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any sale of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission do not apply to such sale solely by reason of subparagraph (A), (B), or (C) of this paragraph.

(E) ALASKAN NATURAL GAS.—Subparagraph (B)(ii) and (iii) shall not apply with respect to natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(2) TRANSPORTATION.—

(A) JURISDICTION OF THE COMMISSION.—For purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply to any transportation in interstate commerce of natural gas if such transportation is—

(i) pursuant to any order under section 302(c) or section 303(b), (c), (d), or (h) of this Act; or

(ii) authorized by the Commission under section 311(a) of this Act.

(B) NATURAL-GAS COMPANY.—For purposes of the Natural Gas Act, the term "natural-gas company" (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any transportation of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission under the Natural Gas Act do not apply to such transportation by reason of subparagraph (A) of this paragraph.

(b) CHARGES DEEMED JUST AND REASONABLE.—

(1) SALES.—

(A) FIRST SALES.—Subject to paragraph (4), for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if—

(i) such amount does not exceed the applicable maximum lawful price established under title I of this Act; or

(ii) there is no applicable maximum lawful price solely by reason of the elimination of price controls pursuant to subtitle B of title I of this Act.

(B) EMERGENCY SALES.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any sale authorized under section 302 (a) shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established under such section and applicable to such sale.

(C) SALES BY INTRASTATE PIPELINES.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any sale authorized by the Commission under section 311(b) shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established by the Commission and applicable to such sale.

(D) ASSIGNMENTS.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid pursuant to the terms of any contract with respect to that portion of which the Commission has authorized an assignment authorized under section 312(a) shall be deemed to be just and reasonable if such amount does not exceed the applicable maximum lawful price established under title I of this Act.

(E) AFFILIATED ENTITIES LIMITATION.—For purposes of paragraph (1), in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid in any first sale shall be deemed to be just and reasonable if, in addition to satisfying the requirements of such paragraph, such amount does not exceed the amount paid in comparable first sales between persons not affiliated with such interstate pipeline.

(2) OTHER CHARGES.—

(A) ALLOCATION.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid by any interstate pipeline for transportation, storage, delivery or other services provided pursuant to any order under section 303 (b), (c), or (d) of this Act shall be deemed to be just and reasonable if such amount is prescribed by the President under section 303(h)(1).

(B) TRANSPORTATION.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid by any interstate pipeline for any transportation authorized by the Commission under section 311(a) of this Act shall be deemed to be just and reasonable if such amount does not exceed that approved by the Commission under such section.

(c) GUARANTEED PASSTHROUGH.—

(1) CERTIFICATE MAY NOT BE DENIED BASED UPON PRICE.—The Commission may not deny, or condition the grant of, any certificate under section 7 of the Natural Gas Act based upon the amount paid in any sale of natural gas, if such amount is deemed to be just and reasonable under subsection (b) of this section.

(2) RECOVERY OF JUST AND REASONABLE PRICES PAID.—For purposes of sections 4 and 5 of the Natural Gas Act, the Commission may not deny any interstate pipeline recovery of any amount paid with respect to any purchase of natural gas if—

(A) under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of section 4 and 5 of such Act, and

(B) such recovery is not inconsistent with any requirement of any rule under section 201 (including any amendment under section 202),

except to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

SEC. 602. EFFECT ON STATE LAWS.

(a) AUTHORITY TO PRESCRIBE LOWER MAXIMUM LAWFUL PRICES.—Nothing in this Act shall affect the authority of any State to establish or enforce any maximum lawful price for the first sale of natural gas produced in such State which does not exceed the applicable maximum lawful price, if any, under title I of this Act.

(b) COMMON CARRIERS.—No person shall be subject to regulation as a common carrier under any provision of Federal or State law by reason of any transportation—

(1) pursuant to any order under section 302(c) or section 303 (b), (c), (d), or (i) of this Act; or

(2) authorized by the Commission under section 311(a) of this Act.

And the House agree to the same.

HARLEY O. STAGGERS,
THOMAS L. ASHLEY,
AL ULLMAN,
RICHARD BOLLING,
THOMAS S. FOLEY,
JOHN D. DINGELL,
PAUL D. ROGERS,
BOB ECKHARDT,
PHILIP R. SHARP,
CHARLES WILSON,
DAN ROSTENKOWSKI,
JAMES C. CORMAN,
CHARLES B. RANGEL,
Managers on the Part of the House.

HENRY M. JACKSON,
FRANK CHURCH,
FLOYD K. HASKELL,
DALE BUMPERS,
WENDELL H. FORD,
SPARK M. MATSUNAGA,
MARK O. HATFIELD,
JAMES A. MCCLURE,
PETE V. DOMENICI,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate numbered 8 to the bill (H.R. 5289) for the relief of Joe Cortina of Tampa, Florida, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment numbered 8 to the text added the text of S. 2104, as amended, and Part 4 (Natural Gas) of H.R. 8444, the National Energy Act. The House agreed to the Senate amendment, and further amended H.R. 5289 by striking out the text of the Senate amendment and inserting in lieu thereof the text of Title I of H.R. 8444 as passed by the House.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The Senate recedes from its disagreement to the House amendment to the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below.

The managers note that a Concurrent Resolution pertaining to this legislation is intended to be presented to the House and the Senate for consideration. It will remove the portions of this legislation pertaining to Mr. Cortina, for whom a relief bill has already passed. It will also make technical corrections and any changes necessary to conform this legislation to the other portions of the National Energy Act which may pass this year.

INTRODUCTION

The natural gas pricing policy passed by the House as Part 4 of H.R. 8444, the National Energy Act, established a single uniform price policy for natural gas produced in the United States. It imposed Federal price controls on the intrastate market for the first time. All price controls were permanent. It defined "new natural gas" and established a Federal ceiling price for such gas which was related to the average refiner acquisition cost of domestically produced crude oil. The initial price was guaranteed to be a minimum of $1.75 per million Btu's. Increases in the initial price were tied to increases in crude oil

costs. It also established a comprehensive pattern of Federal ceiling prices for other categories of natural gas production.

The House passed bill provided an incremental pricing mechanism for passing on natural gas price increases experienced by both interstate and intrastate pipeline companies. It would have required these increases to be paid by low-priority users until the delivered price of natural gas to these users reached equivalency with the cost of substitute fuels at the burner-tip.

The House passed bill also extended certain provisions of the Emergency Natural Gas Act of 1977, which has now expired, and amended the Natural Gas Act to alter the regulatory burdens imposed upon natural gas producers.

The natural gas pricing policy legislation passed by the Senate was an amended version of S. 2104, the Natural Gas Policy Act. The Senate bill was a substitute for S. 2104 as reported from Committee which was adopted on the floor of the Senate.

The Senate passed bill embodied a significantly different approach to the natural gas pricing policy issue than that adopted by the House.

The Senate bill eliminated Federal price controls on new natural gas produced onshore in two years. Different price controls for new natural gas produced from the offshore Federal domain lands were established. Those price controls expired in five years. Pending the elimination of price controls, interim price ceilings were established in each case. The interim price ceiling for new natural gas production onshore was tied to the current cost of No. 2 fuel oil landed in New York City. The interim price ceiling for offshore new natural gas production was set at a national ceiling price to be established pursuant to criteria specified in the legislation.

Existing Federal regulation of flowing interstate natural gas was continued; flowing intrastate natural gas was not regulated by the Federal Government.

The Senate passed bill directed the Federal Power Commission (now the Federal Energy Regulatory Commission) to implement incremental pricing through its regulatory authority over the rates and charges for interstate pipelines. It also extended certain provisions of the Emergency Natural Gas Act of 1977, and amended the Natural Gas Act to limit the regulatory authority of the Commission.

The conference agreement reconciles these two very different bills by redefining what natural gas production qualifies as "new natural gas" and lengthening the period of time prior to the deregulation of most categories of natural gas. The initial price for new natural gas is comparable to the one provided in the House passed bill, though it increases over time according to a new schedule specified in the conference agreement. The difference between the definitions of new natural gas qualifying for new natural gas price treatment is reconciled by expanding the House definition of new natural gas, and by providing an additional category of natural gas, new onshore production wells. The ceiling price for production from this category increases at a slower rate than the ceiling price for most of the gas that would have qualified as new natural gas under the Senate passed bill, but which does not qualify under the conference agreement.

The conference agreement provides an incremental pricing mechanism for passing through to end users some of the increased prices for natural gas and implements incremental pricing for industrial users in two steps. The direct application of the incremental pricing section is patterned after the Senate passed bill by being limited to consumers served directly or indirectly by interstate pipeline companies. The operation of the incremental pricing mechanism for passing through increased costs is patterned after the House passed bill which utilized a burnertip passthrough requirement.

The conference agreement extends authority for emergency allocation of natural gas and provides authority for natural gas sales from unregulated intrastate pipelines, and local distribution companies.

A detailed summary of the conference agreement follows.

SHORT TITLE

Section 1. The conferees agreed to the short title, "Natural Gas Policy Act of 1978".

SEC. 2. DEFINITIONS

The conference agreement provides definitions for several terms. The conferees have provided the Commission authority to define additional terms as necessary for the purpose of implementing this Act under the authority provided in sec. 501(b). The conferees also provide the Commission authority to refine definitions of terms provided in the Act in a manner that is consistent with the definitions provided.

The definitions provided in the Act are generally self-explanatory, except as noted.

Natural gas

The definition of natural gas is identical to the definition of natural gas provided in the Natural Gas Act. It is not intended to extend the provisions of the Act to facilities for the production of synthetic natural gas, or facilities for methane gas generated by the decomposition of organic waste. The conference agreement declares clauses prohibiting commingling unenforceable in sec. 314. The definition of natural gas is not intended to be used to impose regulations, or price controls, under this Act on the sale of synthetic natural gas which is commingled with natural gas meeting the requirements of the definition.

Marker well

The concept of a marker well is intended by the conferees to be used for the purpose of delineating those wells from which distance and depth are to be measured for the purpose of determining whether natural gas qualifies under the definition of new natural gas. A marker well is any well from which natural gas was produced in commercial quantities at any time after January 1, 1970 and before April 20, 1977. A well first producing natural gas on or after April 20, 1977 does not qualify as a marker well. If a well has been increased in depth by means of drilling on or after February 1, 1977 to a completion location which is at least 1,000 feet below the deepest completion location which produced natural gas before February 19, 1977, that well qualifies as a new well and as a marker well. However, a well the surface drilling of which began on or after February 19, 1977, and as such qualifies as a new well does not qualify as a marker well under this definition, regardless of whether it produced in commercial quantities before April 20, 1977. A well which qualifies as a new well because the surface drilling of it began on or after February 19, 1977, which also produced natural gas in commercial quantities prior to April 20, 1977, is not a marker well under this definition. Such a construction would make it impossible for all other new wells within 2.5 miles to qualify for new gas price treatment under the definition of new natural gas.

Reservoir

The conferees intend that two separate productible accumulations of natural gas within the same formation, but separated by a permeability restriction, or water barrier, which prevents pressure communication are to be considered to be separate reservoirs.

Rollover contract

An existing contract which expires at the end of a fixed term qualifies as a rollover contract. An existing contract may have a specified term of five years which will be extended by operation of the contract for one or more years unless the producer gives notice of his intention to terminate the contract within a specified period of time in advance. Such a contract will qualify as a rollover contract at the end of the fixed five year term without regard to the extensions occurring after the date of enactment.

An existing contract may also have a specified term of five years unless the price of natural gas subject to it is deregulated during that given year period whereupon the price to be paid under the terms of the contract will be renegotiated by the parties to the contract. Such a contract will not qualify as a rollover contract by operation of the renegotiation provision until the end of the five year term. The contract resulting from the operation of the renegotiation provision qualifies instead as a successor to an existing contract.

Existing contract

The conferees intend the term "existing contract" to cover any contract in existence on the day before the date of enactment. It is intended that the operative terms of an existing contract be determined by the terms of the contract in effect as of the date of enactment of this Act.

Successor to an existing contract

The conferees intend any successor to an existing contract which does not qualify as a rollover contract, or a new contract, to be a successor to an existing contract. Identity of parties or terms is not necessary to qualify under this definition.

Interstate pipeline

The definition of an interstate pipeline does not include so-called Hinshaw pipelines which are those pipelines that are exempt from the jurisdiction of the Commission by sec. 1(c) of the Natural Gas Act. Hinshaw pipelines are subject to incremental pricing, however, as local distribution companies. Hinshaw pipelines are not subject to allocation under this Act.

Intrastate pipeline

The definition of the term intrastate pipeline is intended to include any pipeline which transports natural gas under a limited claim of jurisdiction asserted by the Commission under the Natural Gas Act. For example, participation by an intrastate pipeline in a transaction pursuant to Federal Power Commission Order No. 533 involves it in intrastate transportation which is an activity subject to Commission jurisdiction under the Natural Gas Act. In order to encourage intrastate pipelines to participate in Order No. 533 arrangements, the Commission has ruled that it will assert only a limited claim of jurisdiction over participating intrastate pipelines. Intrastate pipelines which participate in Order No. 533 or similar transactions do not become interstate pipelines solely by virtue of such participation.

Committed or dedicated to interstate commerce

The term committed or dedicated to interstate commerce, for purposes of this Act, means natural gas from the Outer Continental Shelf and most natural gas which, if sold, would be required to be sold in interstate commerce within the meaning of the Natural Gas Act. The definition is intended by the conferees to clarify any uncertainty resulting from recent court decisions as to what natural gas may qualify under what price categories in Title I of this Act, and what natural gas may qualify for non-price deregulation in Title VI of this Act.

The term does not apply to:

(A) natural gas sold in interstate commerce—

(1) under sec. 6 of the Emergency Natural Gas Act of 1977;

(2) under a limited term certificate with a pregrant of abandonment of service pursuant to sec. 7 of the Natural Gas Act;

(3) under any emergency sale pursuant to sec. 7(c) of the Natural Gas Act; and

(4) to the user by the seller and transported under a certificate granted pursuant to sec. 7(c) of the natural Gas Act;

(B) natural gas for which abandonment of service was granted on or before the date of enactment under sec. 7 of the Natural Gas Act; and

(C) natural gas which would be committed or dedicated pursuant to the above criteria by reason of the action of any person (including any successor in interest thereof, other than by means of any reversion of a leasehold interest), if on May 31, 1978—

(1) neither that person, nor any affiliate thereof, had any right to explore for, develop, produce, or sell such natural gas; and

(2) such natural gas was not being sold in interstate commerce (with the meaning of the Natural Gas Act) for resale (other than any sale described in (A)(1), (2), or (3) above).

The conferees intend that the term "successor in interest" shall exclude any interest owner who acquires his right pursuant to the reversion or any other termination of a natural gas leasehold interest, or any subsequent grantee of such interest owner who acquires his interest after the date of such reversion or other termination.

The exclusion described in paragraph (C) above limits further extension of the holding of the Supreme Court in *California et al.* v. *Southland Royalty Co. et al.* (Slip Opinion No. 76–1114, decided May 31, 1978). The case is not, however, reversed on its facts.

Under the exclusion, certain natural gas is not to be considered committed or dedicated, if such natural gas is committed or dedicated by reason of the action of any person and neither that person (or any successor in interest thereof) nor any affiliate, on May 31, 1978, had any right to explore for, develop, produce, or sell such natural gas. If the right to explore is vested in any other person by means of any reversion of a leasehold, such other person is not to be considered a successor in interest, and thus the natural gas would not be considered committed or dedicated, unless the gas is also sold in interstate commerce (within the meaning of the Natural Gas Act) for resale on May 31, 1978.

Several examples may be helpful. Seller A commits natural gas to interstate commerce in 1950. On May 31, 1978, Seller B, Seller A's successor in interest, has the right to explore for, develop, produce, or sell such natural gas. The natural gas remains committed or dedicated to interstate commerce.

Seller C is a lessee, who commits natural gas under a leasehold interest to interstate commerce in 1950. In 1971, the lease reverts to Seller D, and Seller D terminates the sales in interstate commerce. No natural gas from the lease is sold in interstate commerce for resale on May 31, 1978. Such natural gas is excluded from the definition of committed or dedicated. However, if Seller D had sold such natural gas in interstate commerce for resale on May 31, 1978, such natural gas would be committed or dedicated under the definition.

With respect to natural gas from the Outer Continental Shelf that is not subject to a certificate of public convenience and necessity under the Natural Gas Act on the date of enactment, the term "committed or dedicated to interstate commerce" is used solely for the purpose of the pricing and other provisions of this Act. This definition does not create new freestanding obligations or expand the jurisdiction of the Commission under the Natural Gas Act.

TITLE I—WELLHEAD PRICING

SUBTITLE A—WELLHEAD PRICE CONTROLS

INFLATION ADJUSTMENT; OTHER GENERAL PRICE CEILING RULES

SEC. 101. (a) ANNUAL INFLATION ADJUSTMENT FACTOR

The House provision tied increases in the ceiling price for new natural gas to increases in the refiner acquisition cost of domestic crude oil. The Senate provision tied ceiling price increases to increases in the landed cost of No. 2 fuel oil in New York City for onshore production, and to increase according to specified criteria for production from offshore Federal lands.

The conferees agreed that all natural gas prices would be allowed to escalate with inflation and, in some cases, faster than inflation. Escalation is intended to be compounded annually, but not monthly. Both an inflation factor and a Consumer Price Index (CPI) "correction factor" are included in the "annual inflation adjustment factor" that is used to adjust prices for inflation.

The inflation factor component of the annual inflation adjustment factor is based upon the Gross National Product (GNP) implicit price deflator. The quarterly percent change in the implicit price deflator for the Gross National Product expressed as an annual rate, as published by the Department of Commerce, is divided by 100 to convert the published number, which is expressed in percentage points, to a number that can be used in a multiplicative formula.

Two rules are utilized in determining the appropriate quarterly percent change to use in the calculation of the ceiling price for any given month.

The first rule determines which quarter should be used for the purpose of calculating the inflation adjustment to be used for any given month. The purpose of the rule is to insure that the most recent data available is used in calculating ceiling prices for months that have already occurred. The rule states that for any month prior to the date of enactment for which any GNP implicit price deflator data is available on the date of enactment of this Act for the quarter in which that month occurs, the GNP implicit price deflator data for that quarter will be used for calculating the price for that month. For any other month, the GNP implicit price deflator data available for the most recent quarter preceding that month for which data has been published at least seven days before the beginning of that month will be used. Thus, for most months prior to enactment, prices will be adjusted for inflation that actually occurred in that month. For all other months, however, because of the time lag in the collection and compilation of inflation data, the inflation adjustment will be based upon data for one or two quarters prior to the quarter in which that month occurs.

Since the preliminary GNP estimate for a given quarter is generally not published until twenty days after the end of that quarter, for the first month of any calendar quarter after enactment of this Act the preliminary estimate for the second preceding quarter will be used. However, because the preliminary estimate for the preceding quarter will generally be published more than seven days prior to the beginning of the second month of any calendar quarter, that estimate will be used in calculating prices for both the second and the third month of that quarter and the first month of the following quarters.

The second rule addresses the question of which revision of the quarterly percent change in the GNP implicit price deflator will be used. It states that, for any quarter for which any version of the quarterly percent change is available on the date of enactment of this Act, the most recent version of that percent change which is available on the date of enactment will be used whenever data for that quarter is used. For any quarter for which no version of the quarterly percent change has been published as of the date of enactment the preliminary estimate of the percent change for that quarter would be used when that estimate becomes available. Thus, the most recent data available on date of enactment is used for all quarters for which data is available at that time. From that point on, the preliminary estimate is always used.

The GNP implicit price deflator is adjusted by addition of a CPI "correction factor" of 0.2 percentage points (.002). The conferees added the 0.2 percentage point figure to adjust the GNP inflation factor to better approximate the Consumer Price Index (CPI) inflation factor in each month. Over the past seven years, the annual rate of increase in the CPI has exceeded the rate of increase in the GNP implicit price deflator by about 0.2 percentage points. Because the CPI is in the process of being phased out in its current form, the Conferees agreed to use the annual rate of increase in the deflator adjusted by the historical difference between the rate of inflation as measured by the GNP implicit price deflator as measured by the CPI for purposes of adjusting ceiling prices for inflation.

For purposes of calculating the annual inflation adjustment factor, the 0.2 percentage points are incorporated into a factor of 1.002, which when added to the GNP inflation factor described above, becomes the basis for a multiplicative adjustment to previous ceiling prices.

The conferees recognize that the Department of Commerce may develop a new inflation index for use in lieu of the GNP implicit price deflator. If that occurs, the conferees intend that the Commission shall make the necessary adjustments in the new index to conform as closely as possible to the deflator as it is presently calculated. Authority to do so is provided by sec. 501.

SEC. 101. (b) RULES OF GENERAL APPLICATION

The conference agreement includes several rules of general application to be used in interpreting this Act.

The "commercial quantities" rule has broader application than that required under the new natural gas definition. It also applies to marker wells and to completion location. The concept of field uses which are production related used in defining the term is not meant to include uses in refineries. It is more limited, covering uses such as reinjection or compression.

The annual rate of inflation described above is converted to a monthly adjustment factor by taking the twelfth root of the annual inflation adjustment factor. This adjustment is termed the "computation of monthly equivalent". Because adjustment of prices is by a multiplicative, rather than by an additive formulation, the twelfth root (as opposed to one-twelfth) of the annual rate is used for the monthly inflation adjustment factor. This results in an inflation adjustment factor that compounds annually, but not monthly, as was intended by the conferees.

Ceiling prices are calculated from the date specified in the appropriate section. However, they do not go into effect prior to the date of enactment, and apply only to deliveries occurring on or after the date of the enactment of this Act.

The conference agreement provides that if natural gas qualifies under more than one price category, the provisions that permit

the seller to obtain the highest price applies. If a seller wishes to change the category under which production from a given well qualifies, he must apply to the appropriate State or Federal agency with authority to make determinations under section 503.

The rule for application of ceiling prices pertains to maximum lawful prices. All maximum lawful prices are ceiling prices only. In no case may a seller receive a higher price than his contract permits.

The price ceilings provided by the conference agreement apply to the "first sale" of any natural gas. The first sale, which is defined in sec. 2, means any sale of any volume of natural gas to any pipeline, to any local distribution company, to any person for his use, and all sales occurring before such sales.

In addition to publishing maximum lawful prices each month, the Commission should publish the monthly equivalent of the annual inflation adjustment factor for that month and a cumulative inflation adjustment factor for each month since the date of enactment of this Act, which would reflect the combination of all monthly adjustment factors between the given month and the current month. Such figures could be used for the calculation of maximum lawful prices for existing and rollover contracts.

CEILING PRICE FOR NEW NATURAL GAS AND CERTAIN NATURAL GAS PRODUCED FROM OUTER CONTINENTAL SHELF

SEC. 102. (a) APPLICATION

House provision

The House passed bill established a statutory ceiling price which was applicable to the first sale of new natural gas. The ceiling price was equal to the Btu equivalent of the average refiner acquisition cost of domestic crude oil (excluding North Slope Alaskan crude oil) calculated without regard to the crude oil equalization tax, if any.

Senate provision

The Senate passed bill established a separate ceiling price mechanism for onshore and offshore production of new natural gas.

The ceiling price for new natural gas produced onshore was equal to the "current" Btu equivalent price of No. 2 fuel oil landed in New York City, as determined by the Commission. It was applicable as of January 1, 1977, and expired two years after the date of enactment of the legislation.

The ceiling price for new natural gas produced from offshore Federal lands was set by establishing a national ceiling price. The national ceiling price was to be determined by the Commission according to criteria which took into account various costs and prices enumerated in the legislation. Pending establishment of the national ceiling price, the legislation provided an interim ceiling price tied to the average first sale price of new domestic crude oil as of the date of enactment of the legislation. The interim ceiling price was to be adjusted monthly until superceded by establishment of the national ceiling price.

Conference agreement

The conference agreement provides a ceiling price which is expressed as the maximum lawful price, per million Btu's, for any first sale of new natural gas, and for any first sale of natural gas produced from an old lease on the Outer Continental Shelf that qualifies for the new natural gas ceiling price.

The ceiling price is adjusted on a monthly basis and increases on a monthly basis. Ceiling prices are not "vintaged" according to the month, quarter, or year during which the natural gas is first delivered from a given well (see sec. 101(b)(4)(B)) or according to contract date.

To obtain the price applicable to all deliveries made during any given month, the price applicable during the immediately preceding month is multiplied by the monthly equivalent of the new gas price escalator described in sec. 102(b) for that month.

In addition, the maximum lawful price charged by the producer is exclusive of certain state severance taxes, and may include any adjustment for gathering, processing, compression, treating, liquefaction, or transportation if borne by the seller and allowed by the Commission (see sec. 110).

SEC. 102. (b) MAXIMUM LAWFUL PRICE

House provision

The House passed bill allowed the statutory ceiling price to increase over time at a rate equal to the rate of increase in the average refiner acquisition cost of domestic crude oil.

Senate provision

The Senate passed bill allowed the ceiling price for new natural gas produced onshore to increase over time so that it would be equal to the "current" Btu equivalent price of No. 2 fuel oil landed in New York City, as determined by the Commission. It allowed the ceiling price for new natural gas produced from offshore Federal lands to increase monthly to correspond to increases in the first sale price of new doemstic crude oil under the interim ceiling price; monthly increases were also allowed under the national ceiling price.

Conference Agreement

The conferees agreed that the new gas price would escalate at an annual rate equal to the sum of an inflation factor, a .002 CPI "correction factor", and a real growth factor, which is equal to 3.5 percentage points (.035) from April 20, 1977 through April 1981 and 4.0 percentage points (.04) thereafter.

The conference agreement establishes an initial price of $1.75/MMBtu's beginning April 20, 1977. On the first day of each calendar month, beginning May 1, 1977, this price is adjusted to reflect the rate of escalation agreed upon by the Conferees.

The mathematical statement of the formula is:

$$P_n = P_{n-1}\left(\frac{GNP}{100} + 1.002 + GF\right)^{1/12} \quad (1)$$

where

P_n = the applicable price for such month;
P_{n-1} = the applicable price for the month immediately preceding such month;
GNP = the quarterly percent change of the GNP implicit price deflator, expressed as an annual rate, for the appropriate quarter; and
GF = the growth factor, as defined above.

A sample calculation can be used to illustrate the operation of the ceiling price mechanism for the months prior to enactment of the Act.

The ceiling price for new gas is initially set at $1.75 as of April 20, 1977. The first price adjustment to be applied to that $1.75 price occurs on May 1, 1977. The quarterly percent change in the GNP implicit price deflator for the second quarter of 1977, expressed as an annual rate is 7.7, which, when divided by 100 and added to 1.002 yields an annual inflation adjustment factor of 1.079. The growth factor of .035 is added to this to yield an annual escalation rate of 1.114 the twelfth root of which is 1.00904. The price for April 20, 1977 ($1.75) is multiplied by this monthly price adjustment factor of 1.00904. The price for April 20, 1977 ($1.75) is multiplied by this monthly price adjustment factor of 1.00904 to yield a maximum price of $1.766 applicable to all deliveries made during May, 1977.

On June 1 another price adjustment is made. Again, the quarterly percent change in the GNP implicit price deflator for the second quarter of 1977 is used, and the growth factor is the same. Thus, the price adjustment is identical to that calculated for May. The May price is multiplied by the 1.00904 adjustment factor to yield a June price of $1.782.

In the calculation of the price for July, the quarterly percent change for the third quarter of 1977 is used to reflect inflation that actually occurred during that month. The June price would be multiplied by the monthly price adjustment based on these updated inflation figures to yield the price applicable during July.

Estimates of the ceiling prices that would be in effect under this section for August, September, and October of 1978 are set forth below. These estimates are based on the most recently published revisions of GNP implicit price deflator data available as of August 1, 1978, which is the second quarter preliminary estimate of the deflator. The actual prices will be determined by the most recent GNP deflator data published on the date of enactment of this Act.

August 1, 1978, $2.014 per MMBtu's.
September 1, 1978, $2,036 per MMBtu's.
October 1, 1978, $2.057 per MMBtu's.

The legislation directs the Commission to compute the ceiling prices established under this section and to publish them in the Federal Register to the nearest mill (see sec. 101(b)(6)).

SEC. 102. (c) DEFINITION OF NEW NATURAL GAS

House provision

The House defined the term "new natural gas" separately with respect to onshore and offshore natural gas production.

With respect to onshore production, new natural gas was defined as natural gas produced from a well (the drilling of which began after April 20, 1977) which is:

(1) more than 2.5 miles from an old well;
(2) 1,000 feet deeper than an old well within 2.5 miles; or
(3) in a newly discovered reservoir (as determined by the appropriate State agency, pursuant to Federal guidelines).

With respect to offshore production, new natural gas was defined as natural gas produced from:

(1) Federal leases granted on or after April 20, 1977; or
(2) previously granted Federal leases which have been abandoned and are subject to releasing by the Federal Government.

Senate provision

The Senate made no distinction in its definition of the term "new natural gas" between onshore and offshore production, except that offshore natural gas must be dedicated for the lesser of the life of the reservoir or 15 years to qualify as new natural gas.

The Senate defined the term "new natural gas" as:

(1) natural gas "sold or delivered" in interstate commerce for the first time on or after January 1, 1977, not including any natural gas which the Commission determines could have been produced economically and sold prior to January 1, 1977, and was wrongfully withheld from sale or delivery (natural gas previously sold in interstate commerce, pursuant to FPC limited term certificates or temporary emergency contracts, is deemed not to have been "committed" to interstate commerce); or

(2) natural gas produced from a reservoir discovered on or after January 1, 1977 (including a reservoir discovered by the deeper drilling of an existing well), as determined by rule by the Commission, regardless of whether or not the lease covering a newly discovered reservoir was previously committed or dedicated to the interstate market; or

(3) natural gas produced from a well initiated on or after January 1, 1977, and completed within an extension of a previously discovered reservoir, as determined by rule by the Commission, regardless of whether or not the lease covering such a previously discovered reservoir was previously committed or dedicated to the interstate market.

Conference agreement

The conference agreement combines portions of the House and Senate definitions of new natural gas. New natural gas is defined as gas produced from:

(1) new Outer Continental Shelf leases; and

(2) new onshore wells—

(a) which are 2.5 miles or more from the nearest marker well; or

(b) from a completion location which is at least 1,000 feet (measured by the true vertical depth) below the deepest completion location of all marker wells within 2.5 miles; and

(3) a reservoir from which natural gas was not produced in commercial quantities prior to April 20, 1977.

The term new Outer Continental Shelf lease may apply to submerged acreage which has been or is subject to a lease, if such lease expires and is released by the Secretary of Interior. The conferees understand that the Secretary of Interior has authority under the Outer Continental Shelf Lands Act, as amended, to insure that any releasing of submerged acreage is not accomplished for the purpose of avoiding the maximum lawful price that would otherwise be applicable to production under the terms of the expired lease.

The conference agreement specifies the manner in which the distance between any new well and the nearest marker well is to be measured for the purpose of qualifying under (1) or (2) above (see sec. 102(c)(2)).

The conference agreement includes certain limitations upon what constitutes production in commercial quantities for the purpose of qualifying under (3) above (see sec. 102(c)(3)).

The conference agreement excludes "behind-the-pipe" natural gas (under sec. 102(c)(1)(C)(ii)) and "withheld" natural gas (under sec. 102(c)(1)(C)(iii)) from qualifying as new natural gas and defines each term.

The behind-the-pipe exclusion prohibits natural gas produced from any reservoir from qualifying as new natural gas under this definition if natural gas "could have been produced in commercial quantities from such reservoir through such old well before April 20, 1977." The phrase "could have been produced" is intended by the conferees to refer to the capability of the reservoir to produce without regard to whether actual production capability existed. For example, the pipe in the well piercing the reservoir, which is producing from another horizon, may not have the appropriate perforation to produce from the pierced reservoir. However, if the pipe were perforated, or if the necessary additional facilities were installed at the appropriate place, it could have produced natural gas. Such instances are intended to be covered by the exclusion.

The criteria of the withheld gas exclusion are not to be considered as being met if production and delivery facilities were installed for the purpose of carrying out sales pursuant to the Emergency Natural Gas Act of 1977, or under the emergency sale authority pursuant to Federal Power Commission Opinion 699-B 60-day emergency sales and rollovers of those sales).

Gas produced from the Prudhoe Bay Unit on the North Slope of Alaska and transported through the Alaska Natural Gas Transportation System (as described in the President's Decision and Report to Congress transmitted to the Congress on September 22, 1977 pursuant to the Alaska Natural Gas Transportation Act) is specifically excluded from qualifying as new natural gas. The term "Prudhoe Bay Unit" is defined in section 2.

SEC. 102. (d) OCS GAS QUALIFYING FOR NEW NATURAL GAS CEILING PRICE

The conference agreement provides that production from Outer Continental Shelf reservoirs discovered on or after July 27, 1976 on leases issued prior to April 20, 1977 may qualify for the new natural gas ceiling price. Such gas would not have qualified as new gas under the House passed bill but would have qualified as new natural gas under the Senate passed bill.

For purpose of qualifying for the new natural gas ceiling price under this subsection, a reservoir is considered as having been discovered before July 27, 1976 if it was penetrated before July 27, 1976 by a well capable of producing natural gas in paying or commercial quantities. The conference agreement provides several tests for use in making such determination. The tests for what constitutes paying quantities or commercially producible natural gas are:

(1) the results of a production test described in OCS Order No. 4; or

(2) any production capability evidence described in OCS Order No. 4; or

(3) an induction-electric log, sidewall cores and core analysis, or wire line formation test indicates that the reservoir was commercially producible.

The reference to Order No. 4 is to the Outer Continental Shelf Order No. 4, issued by the United States Geological Survey Gulf of Mexico Area, Conservation Division (effective August 28, 1969).

For the purpose of determining the existence of natural gas in paying or commercial quantities the results of the above referenced tests and evidence are to be evaluated at the time such test results or evidence are known utilizing the evaluating techniques available and conditions existing at the time of such evaluation. Any of the results of the above referenced tests, and evidence obtained from any test performed after July 27, 1976, are not included under this subsection.

Generally induction-electric log tests are performed in conjunction with other logs such as porosity logs. It is contemplated that the determination of commercial producibility under part three above will consider the results of any such tests performed in conjunction with the induction-electric log.

The conference agreement requires that the seller assume the burden of proof before the appropriate State or Federal agency which has the responsibility to determine whether a well qualifies for new natural gas price treatment.

The conference agreement delegates the authority to make determinations required under this section. See sec. 503.

CEILING PRICE FOR NEW, ONSHORE PRODUCTION WELLS

SEC. 103(a) APPLICATION; AND

SEC. 103(b) MAXIMUM LAWFUL PRICE

This section of the conference agreement provides a special ceiling price schedule for natural gas production from new, onshore production wells. These wells would have been excluded from the House passed definition of new natural gas and included in the Senate passed definition of new natural gas. The ceiling prices provided by this section of the conference agreement are more generous than would have been provided for such gas by the House passed bill and less generous than would have been provided by the Senate passed bill.

The initial ceiling price for gas produced from new onshore production wells was provided by the conference agreement is $1.75/MMBtu's beginning in April, 1977. That initial ceiling price increases monthly under the conference agreement by multiplying the previous month's price by the monthly equivalent of the annual inflation adjustment factor.

The formula for determining increases in the ceiling price for this natural gas is the same as that provided for determining the ceiling price of new natural gas *except* that the formula does not include the 3.5% and 4.0% allowances. (Technical note: Referring to eq. 1 the growth factor GF=0.)

Estimates of ceiling prices that would be in effect under this section for August, September, and October of 1978 are set forth below. These estimates are based on the most recently published revisions of GNP implicit price deflator data available as of August 1, 1978. The actual prices will be determined by the most recent GNP data published on the date of enactment of this Act.

August 1, 1978, $1.930 per MMBtu's.

September 1, 1978, $1.945 per MMBtu's.

October 1, 1978, $1.961 per MMBtu's.

As of January 1, 1985, ceiling prices are removed for natural gas which was not committed or dedicated to interstate commerce on April 20, 1977, produced from new onshore production wells producing from a depth of 5,000 feet deep or more. A special ceiling price for natural gas which was not committed or dedicated to interstate commerce on April 20, 1977 produced from wells producing from less than 5,000 feet deep goes into effect on January 1, 1985. The ceiling price, which is to be computed by the Commission, is a price which is is midway between the new gas ceiling price (computed under sec. 102) and the new onshore production well ceiling price (computed under this section). These prices continue through June 30, 1987 or the last date on which price controls remain in effect if price controls are reimposed pursuant to sec. 122.

SEC. 103. (c) DEFINITION OF NEW, ONSHORE PRODUCTION WELL

A new onshore production well is defined as any new well—

(1) the surface drilling of which began on or after February 19, 1977; and

(2) which satisfies applicable Federal or State well-spacing requirements; and

(3) which is not within a proration unit—

(A) which was in existence at the time the surface drilling of the well began; and

(B) which was applicable to the reservoir from which such natural gas is produced; and

(C) applicable to a well which produced natural gas in commercial quantities or the surface drilling of which was begun before February 19, 1977 and which was thereafter capable of producing natural gas in commercial quantities.

In some instances, a State or Federal agency may designate a proration unit for a reservoir which it later determines cannot effectively or efficiently be drained by a single well. In such cases, the State or Federal agency may allow another well to be drilled on the same proration unit. The conferees do not intend a new well to be disqualified as a new onshore production well in such cases. The important factor in that determination is whether the portion of the reservoir covered by the unit will be effectively and efficiently drained by a single well. In all cases, the unit must be designated prior to drilling the new well.

Natural gas produced from the Prudhoe Bay Unit does not qualify for the ceiling price established by this section.

The conference agreement delegates the authority to make determinations required under this section. See sec. 503.

CEILING PRICE FOR SALES OF NATURAL GAS DEDICATED TO INTERSTATE COMMERCE

SEC. 104. (a) APPLICATION

Both the House passed bill and the Senate passed bill would have determined the ceiling price for existing interstate contracts by reference to existing law. However, the conference agreement addresses ceiling prices for sales under existing interstate contracts by conforming price increases under such contracts with the other ceiling price increases provided for in the legislation.

The ceiling price computed under subsection (b) applies to any first sale of natural gas delivered during any month for natural gas committed or dedicated to interstate commerce on the day before the date of enactment of this Act and for which a just and reasonable price under the Natural Gas Act was in effect.

SEC. 104. (b) MAXIMUM LAWFUL PRICE

The conference agreement allows the just and reasonable rates that were in effect on

April 20, 1967 as converted, if necessary, to a million Btu basis, for natural gas subject to the jurisdiction of the Commission under the Natural Gas Act to be adjusted by multiplying those prices by the monthly equivalent of the annual inflation adjustment factor. This means that just and reasonable rates in effect as of April 20, 1977 will escalate thereafter with inflation as measured by the GNP implicit price deflator plus 0.2 percentage points.

The ceiling prices under this section are calculated from April, 1977. However, they do not become effective until the date of enactment of this Act, if the contract so permits. See sec. 101(b)(4)(C).

CEILING PRICE FOR SALES UNDER EXISTING INTRASTATE CONTRACTS

SEC. 105. (a) APPLICATION

The conference agreement establishes a maximum lawful price for first sales of natural gas under an existing intrastate contract or any successor to an existing intrastate contract. The maximum lawful price depends upon the contract price in effect on the date of enactment of this Act. If the contract price in effect on the date of enactment is less than the new gas ceiling price, the maximum lawful price for any subsequent month is the lower of (1) the price under the terms of the existing contract in effect on the date of enactment, or (2) the new gas price. Thus, the price under the contract may escalate through the operation of both fixed price escalator clauses and indefinite price escalator clauses in existence as of the date of enactment, but the price may not exceed the new gas price.

If the contract price in effect on the date of enactment is greater than the new gas price, the maximum lawful price for any subsequent month is the higher of (1) the contract price in effect on the date of enactment escalated by the monthly equivalent of the annual inflation adjustment factor, or (2) the new gas price. Thus the operation of both fixed price escalator clauses and indefinite price escalator clause is limited to the rate of the inflation adjustment until the price equals the new gas price.

Once the price under an existing intrastate contract equals the new gas price, the contract price may increase at a rate equal to the increase in the new gas price. All maximum lawful prices are ceiling prices only; in no case may a seller receive more than the contract permits.

The conference agreement imposes additional limits upon the operation of indefinite price escalator clauses in existing contracts as of January 1, 1985. A special rule, in sec. 105(b)(3), limits the escalation of prices of natural gas for certain intrastate contracts in existence as of the date of enactment. The special rule is not to be applied to intrastate contracts that roll over between the date of enactment and January 1, 1985. If the contract price on December 31, 1934 is higher than $1.00 per MMBtu's, the ceiling prices for such gas are removed pursuant to sec. 121(a)(3), subject to the special rule. This special rule limits the operation of indefinite price escalator clauses in existing intrastate contracts for which the contract price on December 31, 1984 is higher than $1.00 per MMBtu's so that the contract price may not exceed the new gas ceiling price as of January 1, 1985, adjusted by the monthly equivalent of the annual inflation adjustment factor, plus 3.0 percentage points. This limitation applies to natural gas which is deregulated solely as a result of qualifying as an existing contract or a successor to an existing contract in excess of $1.00 per million Btu's on or before December 31, 1984. Thus, natural gas which is deregulated as a result of being new gas under sec. 121(a)(1), gas from deregulated new, onshore production wells under sec. 121(a)(2) or 121(c), or high cost natural gas under sec. 121(b), would not be subject to this limitation, even if it were sold under an existing intrastate contract. Furthermore, natural gas qualifying as gas produced from a natural gas stripper well would not be so limited, if such gas were sold subject to the provisions of sec. 108, rather than taking deregulated treatment as an existing intrastate contract.

The conference agreement specifically prohibits prices paid in any sale of high-cost natural gas, from triggering the operation of any indefinite price escalator clauses. The conference agreement also cedes the Federal Government's authority to further limit the operation of indefinite price escalator clauses to State governments wishing to do so. The Congress, by adoption of this section, recognizes the right of States to prescribe more stringent limitations on the operation of such clauses than those prescribed herein.

This section of the conference agreement is not intended to apply to interstate contracts is existence as of the date of enactment. Such contracts are currently subject to regulation by the Commission pursuant to the Natural Gas Act. Commission regulations bar the use of indefinite price escalator clauses in interstate sales.

Some intrastate contracts currently in existence contain indefinite price escalator clauses which can be triggered by a number of factors, including adjustments by the Commission of "just and reasonable" rates established under the Natural Gas Act. The conferees do not intend that the mere establishment of the ceiling prices under this Act shall trigger indefinite price escalator clauses in existing intrastate contracts. Once natural gas is sold pursuant to the ceiling prices under this Act, such clauses would be activated as limited by this section.

The conference agreement requires that no alteration made after May 3, 1978, of any provision of an intrastate contract in effect as of that date shall be effective to alter the application of the ceiling price limitations of this provision that would have prevailed had such alteration not occurred.

SEC. 106. CEILING PRICE FOR SALES UNDER ROLLOVER CONTRACTS

House provision

The House passed bill provided different ceiling prices for previously interstate sales and previously intrastate sales. The legislation defined the term rollover contract as a contract entered into after April 20, 1977 for the sale of natural gas which was previously subject to an existing contract that expired at the end of a fixed term specified in such contract.

Senate provision

The Senate passed bill did not include comparable provisions for rollover contracts. It relied upon existing law under which rollover contracts of previously interstate sales are regulated by the Commission and previously intrastate sales are not regulated by the Federal government unless that gas is sold in interstate commerce.

Conference agreement

Under the conference agreement, the ceiling price applicable to natural gas sold pursuant to rollover contracts depends upon whether the gas is sold in interstate or intrastate commerce as of the date of enactment. If production from a well or a reservoir is committed or dedicated to interstate commerce as of the date of enactment, production from that well or that reservoir is governed by the provision for rollover interstate contracts (sec. 106(a)). If production from a well or a reservoir is not committed or dedicated to interstate commerce as of the date of enactment, production from that well or reservoir is governed by the provisions for rollover intrastate contracts (sec. 106(b)). Provision is made to assure interstate sellers to receive the same rollover price treatment they would receive under existing law if the natural gas is flowing in interstate commerce but no contract is in effect on the date of enactment; when the rollover contract is entered into they may receive the rollover price.

An existing interstate contract may require a producer to deliver a specified amount of natural gas. In order to fulfill the terms of that contract, a producer may drill new wells that but for the contract obligation would otherwise qualify for the new gas price. Once the existing contract rolls over, the conferees do not intend the production from such new wells that would otherwise qualify for the new gas price to be bound by the ceiling price terms of this section unless the rollover contract itself so provides.

If a contract that was an intrastate contract as of the date of enactment rolls over in a manner that the natural gas production becomes interstate, the provision for rollover intrastate contracts still applies. In other words, the conferees intend the nature of the contract in effect on the date of enactment to govern which of the subsections of this section applies.

SEC. 106. (a) INTERSTATE ROLLOVER CONTRACTS

House provision

Under the House passed legislation, the ceiling price for previously interstate sales was to be established by the Commission at a level which did not exceed the maximum price received under the expiring contract, except to the extent that the Commission authorized a higher price as necessary to permit recovery of increased costs to maintain production. The legislation specified that in no event could the Commission authorize a price in excess of $1.45 per MMBtu's.

The House passed legislation allowed the ceiling price to increase according to an inflation adjustment based upon the GNP deflator (so that the ceiling price levels are expressed in constant real dollar terms). However, where the price under the expiring contract exceeded $1.45 per million Btu's, the ceiling price would have been adjusted at the rate of increase of the average refiner acquisition cost of domestic crude oil.

Senate provision

The Senate passed legislation had no comparable provision. Under existing law, old natural gas sold following the expiration of an existing contract would be permitted to receive the applicable Commission determined just and reasonable price. In most instances, that just and reasonable price is set by a FPC decision at 55¢/MMBtu's for the second half of 1978 and is allowed to increase 1¢ per year.

Conference agreement

The conference agreement provides a ceiling price of 54¢ per million Btu's escalated with inflation for interstate rollover contracts. However, if the just and reasonable rate applicable to the expiring contract was greater than the price that represents 54¢ per million Btu's escalated with inflation until the time of rollover, the new ceiling price is based upon the just and reasonable rate applicable to the expiring contract.

The measure of inflation used for escalation of prices under this section is the monthly equivalent of the annual inflation adjustment factor. The measure of inflation is the same as that provided for new onshore production wells.

SEC. 106. (b) INTRASTATE ROLLOVER CONTRACTS

House provision

Under the House passed legislation, the ceiling price for previously intrastate sales was to be established by the Commission at a level which did not exceed the maximum

price received under the expiring contract, except to the extent that the Commission authorized a higher price as necessary to permit recovery of increased costs to maintain production. The legislation specified that in no event may the Commission authorize a price—

(1) in excess of $1.45 per MMBtu's if the contract under the expiring contract was less than or equal to $1.45 per MMBtu's; or

(2) in excess of the Btu related price (for new natural gas) if the contract price under the expiring contract was greater than $1.45 per MMBtu's.

The House passed legislation allowed the ceiling price to increase according to an inflation adjustment based upon the GNP deflator described in the previous subsection.

Senate provision

The Senate passed legislation provided the natural gas that was previously subject to an intrastate contract would qualify as new natural gas if subsequently sold in interstate commerce. Previously intrastate gas subsequently sold in intrastate commerce would remain exempt from Federal price regulation.

Conference agreement

The conference agreement provides a ceiling price of $1.00 per million Btu's escalated with inflation for intrastate rollover contracts if the maximum price paid under the expiring contract is below that price.

If the maximum price paid under the expiring contract is greater than $1.00 per million Btu's escalated with inflation until the time of rollover, the new ceiling price is that price.

The conference agreement does not roll back the price paid under any existing intrastate contract. Nor does it roll back the price under any existing intrastate contract upon its rollover.

The measure of inflation used to escalate prices under this section is the monthly equivalent of the annual inflation adjustment factor. The formula for determining increases in the ceiling price is the same as that provided for new onshore production wells and interstate rollover sales.

The conference agreement provides a ceiling price equal to the new natural gas ceiling price for any first sale under an intrastate rollover contract for certain State or Indian tribe royalty shares of production. Both (1) the State royalty share of natural gas produced from real property owned, as of date of enactment, by a State or Indian tribe, and (2) production owned by a State or local government unit or Indian tribe, from such real property, may receive the new gas price (under sec. 102). Royalty interests, or production interests, from State and Indian tribe lands owned as of April 20, 1977 qualify under this subsection.

The conferees intend the term "real property owned" to include the ownership of subsurface mineral rights owned by a State or local government unit. However, the term is not meant to include mineral rights leased by a State or local government unit that are owned by another party.

The term Indian tribe, as used in this section, includes both lands owned by Indian tribes, and lands within the existing boundaries of Indian reservations which are held in trust by the Secretary of Interior for Indian persons. It is not intended to include the so-called allotment lands located outside the existing boundaries of Indian reservations.

SEC. 107. CEILING PRICE FOR HIGH COST NATURAL GAS

House provision

The House passed bill authorized the Commission to establish special ceiling prices in excess of the ceiling prices established by the legislation for high cost natural gas. The higher prices were authorized to the extent necessary to provide reasonable incentives for the production of high cost natural gas. High cost natural gas was defined as natural gas produced from wells located beneath more than 500 feet of water; from completion locations producing from more than 15,000 feet; from geopressured brine; or under such other conditions as present extraordinary risks or costs.

Senate provision

The Senate passed bill gave the Commission authority to authorize a price in excess of either the interim ceiling price, or the national ceiling price for new natural gas for natural gas produced from high cost production area or vertical drilling depth. The Commission was authorized to designate high cost production areas and vertical drilling depths for offshore Federal lands. The operation of the new natural gas definition would have eliminated Federal ceiling prices for several of the categories of natural gas production that were covered by the House passed definition of high cost natural gas.

Conference agreement

Under the conference agreement, high cost natural gas is defined as natural gas produced from any new well, the surface drilling of which began on or after February 19, 1977, from a completion location more than 15,000 feet deep; natural gas produced from geopressured brine; occluded natural gas produced from coal seams; natural gas produced from Devonian shale; and natural gas determined by the Commission to be produced under such other conditions as present extraordinary risks or costs. The first four categories of high cost natural gas deregulated upon the effective date of the first incremental pricing rule. See sec. 121. Pending such deregulation, the conference agreement provides an interim ceiling price, which shall be equal to the new natural gas ceiling price, for natural gas produced from a well, the surface drilling of which began on or after February 19, 1977, from a completion location below 15,000 feet. Gas produced from geopressurized brine, occluded natural gas produced from coal seams and natural gas produced from Devonian shale, receives whatever price is otherwise applicable under this Title until such gas becomes deregulated upon the effective date of the first incremental pricing rule.

The Commission may determine that natural gas produced from submerged acreage located beneath more than 500 feet of water; or natural gas produced from tight formations with little permeability, including Western tight sand formations; or natural gas produced from hydropressured brine qualify as natural gas produced under such other conditions as present extraordinary risks or costs. The conference agreement gives the Commission authority to add other categories of natural gas production to the list which qualifies for special price treatment under this section.

This authority is intended by the conferees to be exercised in advance of drilling activity, in order to create price incentives. Such special ceiling prices are not intended by the conferees to be cost-based in nature, and do not require cost justification.

For example, some new wells will produce from depths close to 15,000 feet and some reentries will produce from depths below 15,000 feet, both possibly involving costs greater than normal, but neither qualifying as high cost gas under sec. 107(c). The Commission may determine that such wells should receive special price treatment under this section. The Commission could also determine that stripper natural gas wells with more than *de minimis* associated oil production qualify for treatment under this section. This gas, however, would not be deregulated upon the effective date of the first incremental pricing rule.

The ceiling price provisions of this section do not apply to natural gas for which any credit, exemption, deduction, or comparable adjustment to any Federal tax is specifically allowable if the producer elects to have such credit exemption, deduction or adjustment apply. If the producer chooses to have the provisions of this section apply, he is required to file an election indicating his plans to take advantage of the ceiling price provisions of this section not later than 30 days after enactment of the Act providing the special tax or comparable adjustment, or the date the surface drilling of the well qualifying under this section began, whichever is later. The conferees intend the term "comparable adjustment" to be construed broadly. It is meant to include any device or allowance which would have the effect of reducting a seller's Federal tax liability relating specifically to high cost natural gas as defined herein or by the Commission.

SEC. 108. CEILING PRICE FOR STRIPPER WELL NATURAL GAS

The conference report agreement provides a special ceiling price for natural gas produced from stripper wells. The initial ceiling price for natural gas produced from stripper wells is $2.09 MMBtu's. The ceiling price is allowed to increase at the monthly equivalent of the annual inflation adjustment factor, plus a real growth factor which is equal to .035 until April 20, 1981 and .04 thereafter. Escalation commences as of May, 1978 rather than as of April 20, 1977 as in the case of new gas. Estimates of the ceiling prices that would be in effect under this section for August, September and October of 1978 are set forth below. These estimates are based on the most recently published revisions of GNP deflator data available as of August 1, 1978. The actual prices will be determined by the most recent GNP data published on the date of enactment of this Act.

August 1, 1978, $2.158 per MMBtu's.
September 1, 1978, $2.181 per MMBtu's.
October 1, 1978, $2.205 per MMBtu's.

A stripper well is defined as a well producing non-associated natural gas for a ninety-consecutive day period at a rate which did not exceed an average of 60 Mcf per day when produced for such three consecutive months at its maximum efficient rate of flow and in accordance with recognized conservation practices. The conferees intend that the appropriate state or Federal regulatory body with authority to make determinations under sec. 503 will determine what constitutes application of recognized conservation practices.

The conferees intend that the phrase "maximum efficient rate of flow" means the maximum rate at which the well could produce without damage to the reservoir. In instances where the well is incapable of producing at the reservoir's maximum efficient rate of flow, the well's maximum efficient rate of flow shall be based upon the maximum rate at which that well could produce. The conferees intend that application of the standard of the maximum rate at which a well could produce to the average of 60 Mcf per day measurement be consistent with recognized conservation practices but not to allow any limitation on production solely for the purpose of qualifying for price treatment under this section.

The conferees also intend that the Commission shall have authority to define what constitutes non-associated gas. The agreement contemplates that the Commission could allow a *de minimus* amount of oil to be produced from the well without disqualifying the well as a natural gas stripper well. The 60 Mcf per day measurement is intended to be applied after extraction of natural gas liquids; production of natural gas liquids does not disqualify a well from qualifying as a natural gas stripper well.

The section directs the Commission to provide, by rule, that stripper wells retain their stripper well status even if production is increased to an average above 60 Mcf per day but only if such increase is due to the application of recognized enhanced recovery techniques. The objective of this section is to insure that the producer does not have a built-in incentive to limit the production from a given well to an average of 60 Mcf per day.

Non-associated natural gas is defined as natural gas which is not produced in association with crude oil.

SEC. 109. CEILING PRICE FOR OTHER CATEGORIES OF NATURAL GAS

House provision

The House passed bill established ceiling prices for all "old natural gas" which was defined as natural gas other than new natural gas. Some old natural gas would have been subject to the rollover contract price ceilings discussed previously. Other old natural gas would have had different price ceilings according to whether it was subject to an existing or new contract.

The ceiling price applicable to old natural gas sold under an existing contract was to be determined according to—

(1) the Commission determined just and reasonable rate in effect on April 20, 1977 in the case of interstate sales; or

(2) the contract price in effect on April 20, 1977 in the case of intrastate sales.

The ceiling price applicable to old natural gas sold under a new contract was initially established at $1.45 per MMBtu's.

In all cases, the House passed legislation allowed the ceiling price to increase according to an inflation adjustment based upon the GNP deflator.

Senate provision

The Senate passed bill established ceiling prices for "old natural gas" which was defined as natural gas sold or delivered in interstate commerce other than new natural gas. Old natural gas sold under an existing contract would continue to be subject to the Commission determined just and reasonable price ceiling. The legislation did not include ceiling prices for intrastate sales under existing contracts; nor did it include ceiling prices for old natural gas sold under a new contract. In the latter case, existing law would apply the Commission determined just and reasonable price.

The Senate passed bill depended upon existing law for establishing increases in the ceiling prices. However, the legislation also removed from the Commission the power to decrease any interstate rate for old natural gas if the rate had previously been determined by the Commission to be just and reasonable.

Conference agreement

This section applies to—

(1) natural gas produced from any new well not otherwise qualifying for a higher ceiling price; and

(2) natural gas committed or dedicated to interstate commerce for which a just and reasonable rate was not in effect under the Natural Gas Act; and

(3) natural gas which was not committed or dedicated to interstate commerce and which was not subject to an existing contract; and

(4) natural gas produced from the Prudhoe Bay Unit on the North Slope of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976; and

(5) any natural gas which is not covered by any maximum lawful price under any other section of this subtitle.

In determining whether a "just and reasonable" price ceiling has been established under the Natural Gas Act, the conferees do not intend to require that a certificate has been issued with respect to that gas.

The conference agreement establishes an initial ceiling price of $1.45 per MMBtu's for natural gas produced from wells which qualify under the categories of this section. The inflation factor to be applied to such production is the same as that provided for new onshore production wells and rollover contracts which is equal to the monthly equivalent of the annual inflation adjustment factor. (See sec. 103 for a detailed description.) The ceiling prices under this section are calculated from April 20, 1977. However, such ceiling prices do not become effective until the date of enactment (see sec. 101(b)(4)(C)).

SEC. 110. TREATMENT OF STATE SEVERANCE TAXES AND OTHER SIMILAR PRODUCTION-RELATED COSTS

All ceiling prices under this Act are exclusive of State severance taxes borne by the seller and any adjustment which may be allowed by the Commission for specified production related costs.

Increases in State severance taxes above levels enacted on or before December 1, 1977, are excluded from the applicable ceiling price so long as they are applied uniformly to natural gas sold within the state in which it is produced, and to natural gas sold outside the state in which it is produced. Such increases, however, are required to be incrementally priced under sec. 203(a)(9). State severance taxes levied as a function of price for or as a function of the volume of production of all natural gas are considered by the conferees to be uniformly priced.

The term "State severance tax" is intended to be construed broadly. It includes any tax imposed upon mineral or natural resource production including an ad valorem tax or a gross receipts tax. It also includes any tax imposed by a local government unit under authority of State law or by an Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians.

While severance taxes which may be imposed by an Indian tribe are to be treated in the same manner as State imposed severance taxes, the conferees do not intend to prejudge the outcome of the cases on appeal before the Tenth Circuit Court of Appeals respecting the right of Indian tribes to impose taxes on persons or organizations other than Indians who are engaged in business activities on Indian reservations. The outcome of the cases on appeal will determine the legality of imposing such taxes. The cases are *Jicarilla Apache Tribe et al vs. J. Gregory, Merrion and Robert L. Bayless* (78–1154, 10th Cir.) and *Jicarilla Apache Tribe vs. Amoco Production Co. and Marathon Oil Co.* (78–1251, 10th Cir.).

The conference agreement provides authority for the Commission, by rule or order, to make adjustments in ceiling prices for production-related costs which include the costs of compressing, gathering, processing, treating, liquefying, or transporting natural gas. The authority is available for making adjustments to all ceiling prices.

The conferees recognize that, in certain cases, the just and reasonable rates under the Natural Gas Act include an allowance for production related costs. The conference agreement is not intended to alter or change that practice.

SUBTITLE B—DECONTROL OF CERTAIN NATURAL GAS PRICES

SEC. 121. ELIMINATION OF PRICE CONTROLS FOR CERTAIN NATURAL GAS SALES

House provision

The House passed bill did not contain any termination of the ceiling prices established pursuant to the legislation.

Senate provision

The Senate passed bill provided for termination of the ceiling price applicable to onshore production of new natural gas two years after the date of enactment of the legislation. The ceiling price authority applicable to offshore production of new natural gas terminated on December 31, 1981. Intrastate natural gas production would have continued exempt from Federal price controls.

Conference agreement

The conference agreement provides for the elimination of Federal price controls for certain categories of natural gas. Thus the agreement "deregulates" those categories for ceiling price purposes.

New natural gas (under sec. 102) is deregulated effective January 1, 1985.

Natural gas produced from new onshore production wells (under sec. 103) producing from a completion location deeper than 5,000 feeet is deregulated effective January 1, 1985, provided that such gas was not committed or dedicated to interstate commerce on April 20, 1977. Natural gas produced from new onshore production wells producing from a completion location shallower than 5,000 feet that was not dedicated to interstate commerce on April 20, 1977, is deregulated effective July 1, 1987, or as of the last date on which price controls are in effect if reimposed (under sec. 122), whichever is later. Gas produced from new onshore production wells committed or dedicated to interstate commerce on April 20, 1977 is not deregulated.

Natural gas sold under an existing intrastate contract, a successor to an existing contract, or any rollover contract is deregulated as of January 1, 1985, if such gas was not committed or dedicated to interstate commerce as of the day before the date of enactment and if the price paid pursuant to the contract for that gas greater than $1.00 per million Btu's on December 31, 1984. Natural gas subject to an intrastate contract in existence on the date of enactment is not deregulated if the price paid pursuant to the contract is less than equal to $1.00 per MMBtu's on December 31, 1984.

Certain categories of high-cost gas (under sec. 107(c)(1–4)) are deregulated on the effective date of the first incremental pricing rule (required by sec. 201).

The conference agreement does not provide for deregulation of any natural gas production not specifically enumerated in this section.

SEC. 122. STANDBY PRICE CONTROL AUTHORITY

The conference agreement provides authority for the President or the Congress to reimpose price controls in the form of maximum lawful prices on all categories of natural gas described in sec. 121(a) for a single period of 18 months. This authority may not be exercised to take effect earlier than July 1, 1985 nor later than June 30, 1987. If this authority is exercised, price controls could only be reimposed once. The Congressional decision to reimpose price controls is to be implemented by concurrent resolution which is not subject to judicial review or Presidential approval. The concurrent resolution to reimpose price controls under the authority and procedures provided by this section may not be passed prior to June 1, 1985.

The President's decision to reimpose price controls is subject to Congressional review. His decision may not be submitted prior to June 1, 1985. The President's decision is effective unless both Houses of Congress pass a concurrent resolution to veto the Presidential reimposition of controls.

The conference agreement requires the President to transmit his decision to reimpose price controls to the Speaker of the House of Representatives and to the President of the Senate. The Congress would have 30 days in which to act to pass a concurrent resolution to veto the reimposition of controls.

The conference agreement provides an expedited procedure for Congressional consid-

eration of a Presidential decision to reimpose price controls.

If price controls are reimposed under this section, the maximum lawful price for deliveries of any category of natural gas is the maximum lawful price computed under sec. 102, except for natural gas which was not committed or dedicated to interstate commerce on April 20, 1977, and which is produced from a completion location which is located at a depth of 5,000 feet or more which would have a maximum lawful price computed under sec. 103(b).

If price controls are reimposed, the reimposed price for new onshore production wells would be the same as that for new onshore production wells that were not deregulated (because the production from such wells was committed or dedicated to interstate commerce). If price controls are reimposed, the conferees intend that such price controls will be reimposed without respect to whether production of natural gas commenced before or after the date of deregulation, or the date of reimposition of controls. In some cases, a seller may sign a contract during the period of deregulation under which the contract price is greater than the price reimposed for categories of production covered by that contract. In such cases, the contract price will be rolled back upon the effective date of the reimposition. However, the reimposition will not have a retroactive effect requiring the buyer to refund payments made prior to reimposition.

If price controls are reimposed, the conference agreement provides that they must be reimposed for the full 18 month period on all categories described in this section.

SECTION 123. REPORT TO CONGRESS

The Senate passed bill required the Commission to study exploration, production, sale, transportation, distribution and consumption of natural gas. It also required the Commission to make an annual independent estimate of natural gas reserves; to keep current information regarding the following: ownership, operation, management, and control of all natural gas facilities; the utilization of natural gas; rates and charges for services to each type of consumer; and the relationship of the information to conservation, industry, commerce, and the national defense. The Commission was required to publish its studies and to report to Congress on them. The House passed bill did not contain a comparable provision.

The conference agreement requires the Department of Energy to submit two reports to the President and to Congress. The reports, to be submitted on or before July 1, 1984, and January 1, 1985, are required to discuss natural gas prices, supplies, and demand, and the competitive conditions and market forces in the natural gas industry in the United States. The reports are required to include an evaluation of whether a supply/demand balance exists in natural gas markets at the time of the reports, and/or whether that balance is expected to exist in the future.

The conference agreement requires the Department of Energy to provide an opportunity for public comment during preparation of the reports.

TITLE II—INCREMENTAL PRICING

House provisions—In general

The House passed bill required the Commission to allocate increases in the average cost of natural gas in excess of general inflation-based increases in the pipeline's average cost of gas (based upon costs for the 12-month period preceding enactment of the legislation) to low priority users. Low priority users were defined as any user of natural gas other than residential users and small commercial users using less than 50 thousand cubic feet of natural gas on a peak day.

The legislation made incremental charges applicable to both low priority users served by pipelines and to local distribution companies in proportion to their respective volumes of sales to low priority users.

It required local distribution companies to pass through incremental charges received by the local distribution company from its supplying pipeline or pipelines. The charges were to be passed through to low priority users. It provided that incremental pricing to a low priority user would end when the price of natural gas to the user reached the Btu equivalency with the reasonable cost of substitute fuels.

Further increases in natural gas costs would be borne by both high priority and low priority customers of the pipeline after all low priority users reached Btu equivalency with the reasonable cost of substitute fuels.

The House passed bill applied incremental pricing to both interstate and intrastate pipelines and to local distribution companies served by interstate or intrastate pipelines.

Senate provisions—In general

The Senate passed bill required the Commission to allocate costs of old natural gas for rate purposes to residential users, small users (less than 50 thousand cubic feet of natural gas on a peak day), hospitals, uses vital to public health and safety, agricultural users, food processing users and food packaging users until the price of natural gas to low priority users (all other users) equaled the reasonable cost of substitute fuel oil.

The legislation required the Commission to report annually to the Congress on the effect of incremental pricing. It also required interstate pipelines to report to the Commission at least annually on the volumes and prices of old natural gas, new natural gas and synthetic or liquefied natural gas transported by them.

The requirements of the Senate passed legislation applied only to interstate pipelines and not to intrastate pipelines or to local distribution companies.

Conference agreement—In general

The conference agreement requires the Commission to prescribe a rule for implementing incremental pricing. Each pipeline would be required under the rule to place certain portions of its acquisition costs of natural gas into a special incremental pricing account for passthrough to incrementally priced users.

A two stage process is utilized for identification of users who will be subject to incremental pricing. First, the Commission is required to develop a rule, within 12 months after the date of enactment, for implementation of incremental pricing applicable to certain industrial boiler fuel facilities. Second, the Commission is required to develop an amendment to the first rule, within 18 months after the date of enactment, for implementation of incremental pricing to other industrial users. This amendment to the first rule will be submitted to Congress for review. The amendment becomes effective unless disapproved by either House of Congress. If the second rule is disapproved, the Commission may submit a substitute proposal for review under the same procedure.

The conference agreement provides a statutory exemption from both rules for any residence, school, hospital, or similar institution for any elective utility, and for certain industrial cogenerators. In addition, other "small" industrial boiler fuel users and "agricultural" users, as defined in sec. 206, are excluded from both the first rule and the amendment. The Commission is authorized to propose other exemptions from the first rule and from the amendment. If proposed, any exemption would be subject to Congressional review and veto by either House of Congress under sec. 202.

Only certain portions of an interstate pipeline's acquisition cost of natural gas are subject to the incremental pricing requirements and are required to be placed in the incremental pricing account for passthrough to low priority users under sec. 203.

Under sec. 204, the incremental pricing mechanism would operate to increase prices to incrementally-priced users until the price they pay for their natural gas equals the Btu equivalent price of substitute fuel oil. Once all incrementally-priced industrial users served by a given pipeline reach the Btu equivalency price, those users would not receive any further incremental pricing surcharge, except to maintain those users at the Btu equivalent price. Once all incrementally priced users served by a given pipeline reach the Btu equivalency price, that pipeline would not receive any further incremental pricing surcharge, except to maintain all covered users at the Btu equivalent price.

Amounts in excess of that necessary to maintain incrementally-priced users at the Btu equivalent price of substitute fuels will go back into the pipelines' general gas acquisition cost accounts for recovery through pipeline cost recovery procedures that would otherwise be applicable.

The conferees recognize that implementation of this program will be complex. The conference agreement provides for implementation of incremental pricing by rule, which is intended to give the Commission the requisite discretion to deal with difficulties that may arise.

Explanations of the operation of each section of this Title follows:

SEC. 201. INDUSTRIAL BOILER FUEL USE

The conference agreement requires the Commission to prescribe and make effective a rule, within 12 months after the date of enactment, designed to provide that natural gas acquisition costs subject to incremental pricing passthrough (under sec. 203) are passed through to any industrial boiler fuel facility which uses natural gas as a boiler fuel. The application of this rule is limited to boiler fuel facilities served by an interstate pipeline, and those served by a local distribution company that is served by an interstate pipeline. The term interstate pipeline is meant to include those pipelines which are subject to the jurisdiction of the Commission under the Natural Gas Act. "Hinshaw" pipelines, which are not subject to the Commission's jurisdiction under sec. 1(c) of the Natural Gas Act, are considered local distribution companies, for purposes of incremental pricing, to the extent that they are served by an interstate pipeline.

This section sets forth general guidelines respecting the rule by which the Commission is to implement the passthrough requirement. The Commission is given flexibility under the conference agreement to prescribe the mechanics of passthrough, both as to the timing, and the amount of the surcharge.

The first rule applies to industrial boiler fuel facilities only. Natural gas fired boilers used to heat apartment buildings or shopping centers, for example, are not included in the rule required by this section.

The Commission is accorded flexibility by the conference agreement to make necessary adjustments in the calculation of the surcharge to be passed through. For example, in some instances State regulations may already provide some form of incremental pricing which has resulted in the fuel price paid by industrial facilities (which will qualify as incrementally priced industrial facilities under this Title) already equalling the Btu-equivalent price of alternative fuel. The conferees do not intend the operation of this section to require the surcharge to be passed through to such facilities. The Com-

mission is accorded the flexibility to adjust the surcharge to provide for an equitable distribution of such surcharge, so long as the distribution is consistent with the intent of this Title.

The Commission is required to make the rule under this section effective 12 months after the date of enactment. Flexibility is afforded the Commission to require accruals to the account established under sec. 204 (a) to begin in the first calendar period beginning after the effective date, and passthrough to incrementally priced industrial facilities to begin in the next calendar period.

SEC. 202. AMENDMENT EXPANDING APPLICATION FOR OTHER INDUSTRIAL USES

The conference agreement requires the Commission to prescribe an amendment to the first rule, within 18 months after the date of enactment, designed to provide that natural gas acquisition costs subject to incremental pricing passthrough (under sec. 203) are passed through to other industrial facilities using natural gas. The application of the provisions of the amendment will be limited to industrial facilities served by an interstate pipeline, and those served by a local distribution company that is served by an interstate pipeline.

The section provides a Congressional review mechanism, by which either the Senate or the House of Representatives may adopt a resolution of disapproval of any amendment proposed by the Commission under this section. The amendment will take effect only if not disapproved by either House of Congress within 30 calendar days of continuous session after it has been submitted. If the amendment required by sec. 202(a) is disapproved, after six months the Commission may submit additional proposals. Authority to submit proposals extends for a 2-year period beginning at the time of the adoption of the first disapproval resolution.

The conference agreement provides a mechanism for exempting "small" industrial users and "agricultural" users under sec. 206.

SEC. 203. ACQUISITION COSTS SUBJECT TO PASSTHROUGH

Only certain portions of an interstate pipeline's acquisition cost of natural gas are subject to passthrough under this section.

The conference agreement requires the following amounts to be subject to the passthrough requirements:

(1) That portion of the acquisition cost of—

(a) new natural gas;

(b) rollovers into the interstate system of previously intrastate natural gas;

(c) production from new, onshore production wells; and

(d) new liquefied natural gas imports (excluding projects exempted under sec. 207) to the extent that the acquisition cost exceeds $1.48 per million Btu's for March, 1978, and adjusted for inflation in subsequent months.

(2) That portion of the acquisition cost of—

(a) volumes of natural gas imports (other than LNG) in excess of both actual calendar year 1977 import volumes and contract volumes under a contract entered into on or before May 1, 1978 whichever is greater; and

(b) stripper well natural gas;

to the extent that the acquisition cost exceeds the new gas price applicable during the month in which delivery or importation of the gas occurs.

(3) That portion of the acquisition cost of high-cost gas which exceeds 130% of the Btu-equivalent of the landed cost of No. 2 fuel oil in New York harbor during an appropriate period preceding the month in which delivery of the gas occurs;

(4) In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976—

(a) that portion of the amount paid to the producer that exceeds the cost computed under sec. 109; and

(b) any amount paid to any person other than the producer for costs of gathering, processing, treating, liquefying, transporting, or compressing such gas prior to its delivery to the pipeline system.

(5) Any increase in the acquisition cost of natural gas attributable to any increase in State severance taxes or other similar production taxes above levels enacted on or before December 1, 1977.

The first sale acquisition cost of natural gas is defined as—

(1) the cost of such gas acquired in any first sale in the case of any natural gas produced in the United States; or

(2) the cost at the point of entry to the United States in the case of natural gas or liquefied natural gas imported into the United States.

The first sale acquisition cost is exclusive of State severance taxes,

With respect to State severance or other similar production taxes, the conference agreement requires increases in such taxes enacted after December 1, 1977 to go into the incremental pricing account. State severance taxes that were enacted on or before December 1, 1977 that did not become effective until after that date are not required to be placed in the incremental pricing account.

A change in the method of computation of State severance taxes or other similar production taxes which does not result in an increase in the level of such tax expressed as a percentage of the average price of all natural gas sold in the State (calculated as of the effective date of such change in the method of computation) does not constitute an increase in State severance taxes for purposes of incremental pricing under this section, if the newly computed tax is applied uniformly to interstate and intrastate sales. If the test of even application is not met, the increase in the taxes will be required to be incrementally priced.

The treatment to be given to severance taxes imposed upon the gas by the State of Alaska is the same as the treatment to be given all other severance or other similar production taxes under the conference agreement; that is, only increases in such taxes enacted after December 1, 1977, shall be incrementally priced.

The conference agreement also requires transportation costs for gas transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976 to be rolled in. See sec. 208.

Where natural gas qualifies for two or more categories, the determination of which threshold price applies is left to the Commission, based upon the classification of the gas for purposes of pricing under Title I.

SEC. 204. METHOD OF PASSTHROUGH

The conference agreement requires each interstate pipeline serving any industrial users of natural gas that are subject to incremental pricing requirements under sec. 201 or 202 to establish and maintain an incremental pricing account. Amounts required by sec. 203 to be passed through are to be credited to the account and passed through by means of a surcharge on volumes of natural gas delivered, directly or indirectly, to incrementally priced industrial facilities for ultimate industrial use.

Under the conference agreement, the incremental pricing surcharge passthrough operates to allocate increases in gas prices to incrementally priced industrial facilities until the price paid by those facilities at the burnertip is equal to the Btu-equivalent cost of alternative fuel.

The surcharge is based upon the amount in the account and the pipeline's total volume of natural gas delivered directly or indirectly to incrementally priced industrial facilities. When a local distribution company receives natural gas from more than one interstate pipeline, the proportion of gas deliveries by any given pipeline for ultimate consumption by an incrementally priced industrial facility is assumed to be equal to the proportion of total gas volume delivered to that local distribution company which comes from that given pipeline. Thus, for example, if 60 percent of a local distribution company's total supply of gas is supplied by pipeline A, pipeline A is allowed to impose a surcharge of 60 percent of the volumes delivered to incrementally priced industrial facilities served by that local distribution company.

The surcharge to any facility may be reduced if an unadjusted surcharge would result in rates and charges paid by an incrementally priced industrial facility that would exceed the appropriate alternative fuel cost as determined under this section.

The amount of that reduction would be borne by the other incrementally priced industrial facilities served by that pipeline. Any amount that the local distribution company could not recover from an individual facility because its price would then exceed the Btu-equivalent cost would revert back to the pipeline's account, to be recovered from all remaining incrementally priced facilities served by the pipeline that are paying less than the alternative fuel price. The amount of the reduction in the costs being passed through will be retained in the account for pass through to other incrementally priced industrial facilities.

When and if the price paid by all incrementally priced users served by a local distribution company equals the alternative fuel price, the local distribution company would receive only that portion of its pipeline's account necessary to maintain those users at the alternative fuel price. In this manner, the share of the pipeline's account borne by a local distribution company serving incrementally priced facilities still paying less than the alternative fuel price will increase when all incrementally priced users served by a second local distribution company have reached the alternative fuel price.

When all incrementally priced industrial facilities served by a pipeline reach the Btu-equivalency of the cost of the alternate fuel, the passthrough will operate only to the extent necessary to maintain rates and charges for industrial users at that equivalency. Excess amounts may be allocated in whatever manner by which the pipeline or local distribution company is permitted to recover normal costs.

The conference agreement does not include a requirement for, nor any prohibition on, any particular manner of distribution of this excess cost among the customers of the interstate pipeline, nor among those of the local distribution company.

The cost of substitute fuel oils is to be determined by the Commission on a regional basis. The conference agreement provides the Commission discretion to select as a "region" any geographic or economic unit which it deems appropriate. Thus, the region could be several States, a part of a State, or even an area with particular geographic or air quality characteristics which affect the type of fuel used by industrial facilities. The conference agreement provides that the price paid by industrial users for No. 2 fuel oil is the alternative fuel cost unless the Commission determines otherwise. The Commission can determine that, in certain cases, the price paid by industrial users for fuel oil costing as low as No. 6 fuel oil is the appropriate

fuel cost to use as the alternative fuel cost. The Commission may make this determination either by rule or by order, on a case-by-case basis, or regionally by category of user on a pipeline-by-pipeline basis. The conferees intend that this determination may be made on the motion of any party, or on the Commission's own motion at any time after the date of enactment of this Act. The conferees recognize that it may be necessary or appropriate for the Commission to make this determination in advance of the effective date of the first rule. The conferees urge the Commission to take whatever action it deems appropriate or necessary (including expeditious consideration of these proceedings and consolidation of these cases) to avoid any delays in reducing the substitute fuel level so as to avoid the likelihood of conversions from natural gas by industrial users if those conversions would result in increases in natural gas rates for any residential, small commercial, and other high priority customers. The conferees intend that in determining the likelihood of these conversions occurring, the Commission move rapidly in the administrative hearings so as to avoid the irreparable damage which the conferees believe will occur to high priority users if these other industrial users, faced with uncertain natural gas rates, begin taking steps to secure alternate fuel supplies.

The conference agreement requires the Commission to make the determination of the cost of alternative fuel following the opportunity for written and oral presentation of views, data, and arguments. The determination is to be based upon a finding that the use of the lower Btu equivalency level is necessary to avoid load shifting that would otherwise result from conversion of incrementally priced industrial facilities to substitute fuels, if that shifting would, in turn, result in increased natural gas rates to high priority users, including residential and small commercial users.

SEC. 205. LOCAL DISTRIBUTION COMPANY PASSTHROUGH REQUIREMENTS

The conference agreement requires any surcharge paid by any local distribution company to be directly passed through to the incrementally priced industrial facility or facilities it serves.

The conference agreement prohibits States from modifying or otherwise changing the method of allocating costs to the rates and charges of local distribution companies in a manner that would have the effect of creating any offset for the surcharges required to be paid due to the operation of this Act. For example, a State regulatory commission wishing to soften the effect of incremental pricing could lower the basic cost of service charge to any facility which is an incrementally priced industrial facility under sec. 201 or 202. Such a reduction would neutralize the impact of the surcharge passthrough requirement. The conference agreement specifically prohibits such actions and provides authority to enforce the requirements of this section under sec. 504.

The requirements of this Title of the conference agreement preempt and supersede any provision of State or local law to the extent that such a provision would preclude the passthrough of any surcharge under this Title or prevent the application of the requirements of this section.

The conference agreement does not preclude State regulatory agencies from exercising their authority under State law to regulate local distribution companies. A State regulatory agency could, for example, raise prices to be paid by incrementally priced industrial facilities to levels higher than the levels required by this Title. The conferees have not mandated such a practice; nor has it been precluded. State law is not peempted in this case and States may wish to place more of the costs of service onto a particular class of industrial users. The conferees make no judgment as to the advisability of this action.

A State regulatory agency may wish to provide for some form of inverted rate schedules, or other rate-making technique, to provide for recovery of the costs required to be passed through under this Title. So long as the costs are passed through to the incrementally priced industrial facilities covered by the required rule, the State may use whatever rate-making technique it so desires. The basic requirement of this Title is to recover the surcharge from the identified class of incrementally priced industrial facilities.

SECTION 206. EXEMPTIONS

Several types of users are exempted by this section from the requirements of the incremental pricing rules to be prescribed under sec. 201 and 202.

Any existing industrial facility which uses natural gas as a boiler fuel (that is not already exempted under sec. 201) is given an interim exemption grom the requirements of the industrial boiler fuel use rule if the facility's use did not exceed an average of 300 Mcf per day during any month of a base period determined appropriate by the Commission. The interim exemption lasts until the Commission prescribes and makes effective a rule exempting any existing industrial boiler fuel facility from the requirements of both rules if the facility's boiler fuel use of natural gas did not exceed an average of 300 Mcf per day during any month of calendar year 1977.

The conference agreement provides the Commission authority to change the 300 Mcf threshold to a lower average daily rate of use, determined by the Commission to be necessary to assure that exempt "small" industrial boiler fuel facility use of natural gas did not exceed 5 percent of the United States interstate boiler fuel use of natural gas. The 5 percent determination is based upon the aggregate amount of natural gas which was used in calendar year 1977 for boiler fuel use, and that was transported through the facilities of interstate pipelines. The Commission is required to make any downward adjustment in the 300 Mcf threshold necessary to make the threshold correspond to a 5 percent exemption.

Any agricultural facility using natural gas is given an interim exemption from the requirements of the industrial boiler fuel use rule. Agricultural facilities are defined as users of natural gas for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or as a process fuel or feedstock in the production of fertilizer agricultural chemicals, animal feed or food.

The interim exemption lasts until the Commission prescribes and makes effective a permanent rule exempting agricultural users from incremental pricing. Agricultural uses are exempted in the permanent rule unless the Commission determines that an alternative fuel or feedstock is *both* economically practicable and reasonably available.

The conference agreement provides authority for the Commission, by rule, to provide for other exemptions from either rule. The Commission may propose exemptions which exempt any other incrementally priced industrial facility or category thereof either partially or completely. To give the Commission flexibility, the Conferees intend that these other exemptions may deal with either who is covered by the rule or at what level any particular class of users covered by the rule will be incrementally priced. Partial exemptions could be structured to lower the substitute fuel level applicable to any category of users to below the levels otherwise provided for in this title. Any proposed exemption is required to be submitted to Congress for review under sec. 508. Either House of Congress can veto a proposed exemption.

SEC. 207. TREATMENT OF CERTAIN IMPORTS

The conference agreement does not require incremental pricing for liquefied natural gas import projects which received a certificate under section 3 of the Natural Gas Act on or before May 1, 1978. Other projects for which incremental pricing is not required by this legislation are those for which an application for a certificate was pending on or before May 1, 1978, and projects for which the Secretary of Energy or the Commission determines that substantial financial commitments of the importer, including those of the applicant pipeline or consortium, or contract binding on the importer have been made on or before May 1, 1978. The conference agreement provides that the decision of whether incremental pricing will be required for such pending projects will be made under the authority and procedures of the Natural Gas Act. If a decision to require incremental pricing for a pending project is made under the Natural Gas Act, the incremental pricing would be implemented under the provisions of this Act.

New liquefied natural gas import projects, which are projects not described in this section, are treated under section 203.

The conference agreement exempts other natural gas imports from incremental pricing if the volume of such imports does not exceed the volume of natural gas imported into the United States during calendar year 1977. The conference agreement does not require incremental pricing for natural gas imports pursuant to contracts entered into on or before May 1, 1978 although the Secretary of Energy is authorized to determine if such import volumes will be subject to incremental pricing. The conference agreement provides that the decision of whether incremental pricing shall apply to these volumes will be made under the authority and procedures of the Natural Gas Act. If a decision to require incremental pricing for the imports described above is made under the Natural Gas Act, the incremental pricing would be implemented under the provisions of this Act.

New natural gas imports, which are projects not described in this section, are treated under sec. 203.

The term import is intended to cover natural gas produced outside of the United States. It does not cover natural gas produced in any State of the United States.

SEC. 208. ALASKA NATURAL GAS

The conference agreement requires rolled in pricing for any portion of the first sale acquisition cost which is not required to be incrementally priced, and transportation costs, for gas produced from the Prudhoe Bay Unit and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

The conferees agreed to provide rolled in pricing for natural gas transported through the Alaska Natural Gas Transportaiton System and for the cost of transportation because they believed that private financing of the pipeline would not be available otherwise. Rolled in pricing is the only Federal subsidy, of any type, direct or indirect, to be provided for the pipeline.

TITLE III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

SUBTITLE A—EMERGENCY AUTHORITY

SEC. 301. EMERGENCY AUTHORITIES

Both the House and Senate passed bills extended the life of the Emergency Natural Gas Act of 1977 (ENGA), which has since expired. Both bills extended the emergency

purchase authority contained in Section 6 of ENGA. The House and Senate passed bills also extended the allocation authority contained in Section 4 of ENGA. In both cases, the House passed bill amended ENGA to make it apply to both interstate and intrastate pipelines. The Senate passed bill was limited to interstate pipelines.

The conference agreement incorporates certain provisions that were contained in ENGA which are described below. This section gives the President authority similar to that contained in ENGA to declare a natural gas supply emergency, or to extend a previously declared emergency, if he makes findings required by the section. The emergency terminates on the date on which the President finds that a shortage does not exist, or is not imminent, or 120 days after the date of emergency declaration, which is earlier.

An emergency declared under this Act is subject to the requirements of Title II of the National Emergencies Act (50 U.S.C. 1601). That Act requires Congress to meet to consider a vote on a concurrent resolution to determine whether the emergency declared under this Act shall be terminated if the emergency is still in effect six months after its declaration.

SEC. 302. EMERGENCY PURCHASE AUTHORITY

The conference agreement incorporates the emergency purchase authority contained in Section 6 of ENGA, making it a part of this Act, and extends such authority permanently. The conference agreement provides that the President may authorize transactions under this section. It provides authority for any interstate pipeline, or local distribution company served by an interstate pipeline, to contract for emergency supplies of natural gas. The contract may be with any producer of natural gas (except a producer who is affiliated with the purchaser) if such gas is not produced from the OCS, and if it is not subject to a certificate under the Natural Gas Act; or with any intrastate pipeline, local distribution company, or other person (other than an interstate pipeline). The duration of any contract authorized under this section may not exceed four months. The President may authorize renewals. The conference agreement gives the President authority to require any pipeline to transport such natural gas, and to construct and operate such facilities for transportation of such natural gas as may be necessary to carry out contracts authorized under this section. The purchasing party must pay the costs of any such required construction. The operations of this section are specifically exempted from the requirements of the Natural Gas Act in Title VI.

The conference agreement requires the Commission to require the purchaser to maintain and make available records concerning emergency gas purchases, and gives the President authority to impose such other terms and conditions on these sales as he may deem necessary. He may, for example, prohibit purchases from being made under this authority while the purchasing pipeline has not curtailed deliveries for low priority uses, or if the pipeline does not expect to have to curtail deliveries for low priority uses during the period in which the emergency purchase gas would be consumed.

SEC. 303. EMERGENCY ALLOCATION AUTHORITY

The conference agreement restructures the emergency allocation authority contained in Section 4 of ENGA; limits it to interstate pipelines in most instances; and makes it permanent.

The conference agreement sets up a priority system for sources from which natural gas may be allocated during times of emergency. That priority system is described below. Prior to use of the authority, the President must make an emergency declaration pursuant to section 301.

The President is given authority to allocate supplies of natural gas to any interstate pipeline; any local distribution company served by an interstate pipeline which is providing natural gas for only high-priority uses and which is in need of deliveries of natural gas to assist in meeting natural gas requirements for high-priority uses of natural gas; and any person for meeting requirements of high-priority uses of natural gas.

The conference agreement requires the emergency purchase authority provided in section 302 to be exhausted to the maximum extent practicable before the allocation authority under this section may be exercised. Allocation to a pipeline would occur only after that pipeline has ordered the termination of all deliveries for other than high-priority uses and terminated such deliveries to the maximum extent practicable.

The conferees recognize that in some cases the requirement that allocation to a pipeline would occur only when that pipeline is providing, directly or indirectly deliveries for high-priority uses may be interpreted to disqualify a pipeline from receiving an allocation if a local distribution company it serves is still serving low priority uses while another local distribution company it serves is only providing service for high-priority uses. For instance, a potential problem could arise in cases where a local distribution company receives natural gas from more than one pipeline or has developed its own supplies of natural gas through its own drilling program or through the use of synthetic natural gas. In such narrow cases, the conferees do not intend an interstate pipeline to be automatically disqualified from receiving an allocation for the sole purpose of serving a local distribution company which needs such gas for meeting the requirements of its high priority users. In all other cases, however, the conferees intend that the interstate pipeline company or local distribution company receiving the allocation has ordered the termination of all deliveries of natural gas for other than high priority uses before the pipeline is eligible to receive allocated volumes of natural gas.

The Public Utility Regulatory Policies Act, currently pending in conference committee, would give the President authority to prohibit the use of natural gas for certain boiler fuel uses during a natural gas supply emergency.

The conference agreement gives the President authority to order allocation of the natural gas freed from boilers pursuant to the Public Utility Regulatory Policies Act in order to protect high priority users.

After natural gas freed from boilers has been allocated to the maximum extent practicable, and if the President is notified by a Governor of any State that further measures under State law are insufficient to protect high priority users, the President may exercise his allocation authorities according to the priority schedule specified below.

First, he may allocate general pipeline supply gas between and among interstate pipelines.

Natural gas transported by an interstate pipeline which is used as boiler fuel by an electric utility shall be treated as general pipeline supply gas under this section if it does not qualify as natural gas freed from boilers under the definition in the Public Utilities Energy Policies Act.

Finally, he may allocate gas owned by an end user and transported by an interstate pipeline pursuant to a transportation certificate issued by the Commission.

The conference agreement requires the President to utilize his authority, to the maximum extent practicable, to allocate general pipeline supplies prior to the allocation of any user-owned gas. Therefore, it is contemplated that all low-priority customers using general pipeline supplies will be curtailed before the President orders the allocation of user-owned gas from that pipeline.

The conference agreement provides authority for the President to prescribe the amount of compensation to be paid for emergency deliveries and for any other expenses incurred in delivering or transporting such gas if the parties to any order issued under this section fail to agree upon the terms of compensation or transportation. The President is given authority to direct that compensation may be in kind and that it be provided by a date he specifies. The compensation provision is similar to the compensation provision provided by ENGA.

The Commission is required to prepare and submit a report to the Congress regarding the need for additional authority, if any, to allocate supplies of natural gas which are not subject to allocation herein and which are likely to be necessary to meet high-priority uses. The report is required to be submitted not later than June 30, 1979.

High priority uses are defined in the conference agreement to include residential uses; small commercial uses using natural gas in a commercial establishment in amounts less than 50 Mcf per day on a peak day; or any other use of natural gas the termination of which the President determines would endanger life, health, or maintenance of physical property.

The conferees do not intend to authorize the President to use the authority under this section to allocate gas away from an industrial use of natural gas in one State, for the purpose of supplying natural gas for industrial use in another State, unless that gas is to be used for the maintenance of physical property that would otherwise be damaged.

This section incorporates several provisions, with minor revisions, which were contained in ENGA (sec. 303(e–j)). The conferees' intent is to preserve the legislative history of ENGA for these provisions.

SEC. 304. MISCELLANEOUS PROVISIONS

The conference agreement incorporates the ENGA provisions, with minor revisions, pertaining to obtaining of information, administrative procedure, judicial review, enforcement, reporting, delegation of authorities, antitrust protection effect on certain contractual obligations, and preemption. The conferees' intent is to preserve the legislative history of ENGA for these provisions.

SUBTITLE B—OTHER AUTHORITIES AND REQUIREMENTS

SEC. 311. AUTHORIZATION OF CERTAIN SALES AND TRANSPORTATION

House provision

The House passed bill included authority for the Commission to authorize an intrastate pipeline to sell natural gas to an interstate pipeline and to transport natural gas on behalf of an interstate pipeline which sales and transportation were to be upon such terms and conditions, including fair and equitable price terms, as determined by the Commission. Such sales and transportation would have been exempt from regulation under the Natural Gas Act and the intrastate pipeline would not have been subjected to regulation as a common carrier under Federal or State law by reason of such sale or transportation.

This authority was in addition to the emergency authority described under sec. 301 authorizing sales of natural gas by an intrastate pipeline to an interstate pipeline.

Senate provision

The Senate passed bill did not contain any such authorization for sales by interstate pipelines to interstate pipelines. Its transportation provision, however, was similar to the provision in the House passed bill. However, the transportation authority extended to both interstate and intrastate pipelines and transportation by either could have been on behalf of any interstate pipeline, intra-

state pipeline, or any local distribution company served by an interstate or intrastate pipeline.

Conference agreement

The conference agreement gives the Commission authority to authorize interstate pipelines to transport natural gas on behalf of any intrastate pipeline, and any local distribution company. The rates and charges for such transportation are required to be just and reasonable within the meaning of the Natural Gas Act.

The conference agreement also gives the Commission authority to authorize intrastate pipelines, and any local distribution company served by any interstate pipeline. The rates and charges for such transportation are required to be fair and equitable, as defined. They may not exceed an amount which is determined by the Commission to be reasonably comparable to the rates and charges which any interstate pipeline would be permitted to charge for providing a similar transportation service. Such a transaction would not effect the exempt status of any party to the transaction under the Natural Gas Act.

The Commission may also authorize any intrastate pipeline to sell natural gas to any interstate pipeline, and to any local distribution company served by any interstate pipeline. The conference agreement provides that the rates and charges for such sales are required to be fair and equitable. A fair and equitable price may not exceed the sum of—

(1) the seller's weighted average acquisition cost of natural gas; plus

(2) an amount, calculated pursuant to a rule required to be established by the Commission, necessary to—

(a) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline, if any, for gathering, treating, processing, transportation, or delivery service provided; and

(b) provide an opportunity for the pipeline to earn a reasonable profit on such services.

Any profit spread established by rule would be based upon the service cost, rather than on the total cost of gas. Such a transaction would not affect the exempt status of any party to the transaction under the Natural Gas Act. The conference agreement gives the Commission authority to allow an adjustment to the sales price calculated pursuant to the above in one particular circumstance.

The conferees recognize that in some instances an intrastate pipeline may experience a contemporaneous increase in its weighted average acquisition cost of natural gas purchased under existing intrastate contracts as a result of entering into transactions under this section. In such instances, the conference agreement provides authority for the Commission to offset such an increase. The word "offset" is intended to refer to the amount necessary to compensate for the increase in the weighted average acquisition cost of natural gas necessary to make the intrastate pipeline whole.

A very simple illustration seems appropriate. Assume that an intrastate pipeline (pipeline A) is transporting 3,000,000 cubic feet (3,000 Mcf) of natural gas per day at an average purchased gas cost of $1.00 per Mcf. Pipeline A has an option under an existing contract to take an additional 2,000,000 cubic feet (2,000 Mcf) of natural gas per day at a price of $2.00 per Mcf. At this particular time, pipeline A does not need the additional gas to serve its existing or projected customers. However, it has located a nearby interstate pipeline, pipeline B, that wishes to purchase the natural gas. As a result of entering into the transaction, the weighted average acquisition cost of natural gas purchased by pipeline A would increase to $1.40 per Mcf. By reason of taking greater quantities of gas under existing intrastate contracts at prices higher than the intrastate pipeline's weighted average acquisition cost of natural gas in order to consummate the sale, the intrastate pipeline will experience a contemporaneous increase in its weighted average acquisition cost of natural gas. The Commission shall increase the fair and equitable sales price in this circumstance only to offset such an increase, by providing an allowance equal to the $.40 increase for each thousand cubic feet being delivered by the pipeline.

The determination of the weighted average acquisition cost is meant to be a contemporaneous determination. It is not based upon an historical cost which may have been lower. Instead, it is intended to look to the cost of the gas at the time it is acquired and resold. In some instances, the weighted average acquisition cost of natural gas may even exceed the new gas ceiling price. This allowance for an adjustment to the fair and equitable price is intended to insure there is no incentive for an intrastate pipeline to defer purchases of gas from producers that would otherwise be available; nor is it intended that the mechanism available under this section be used as a vehicle to increase the producer's price; or to increase the price received by an intrastate pipeline from its intrastate customers above what it would have received had the mechanism not been available.

The conferees intend that the customers of a selling intrastate pipeline shall be in no worse position as to price and supply as a result of that pipeline entering into a sale under this section.

The conferees do not intend the selling pipeline to make a profit on the purchase and sale aspects of the transaction. Again, perhaps this can best be illustrated by means of a hypothetical transaction.

Assume, for example, that the selling intrastate pipeline has been operating at 80% capacity, supplying intrastate gas to intrastate customers, and the State regulatory agency has permitted a rate on such intrastate gas which covers the total cost of service including all fixed capital costs. Under this situation, any additional amount of gas carried by the pipeline under the provisions of this section would not have been built into the rate structure to amortize or retire fixed capital costs. The rate on such additional 20%, the gas carried under this provision, would be governed only by that amount necessary to reasonably compensate the seller for the additional expenses associated with the performance of transportation, gathering, treating, and affording delivery service occasioned by its carriage plus a reasonable profit on such services.

Assume, though, a State regulatory commission, recognizing that a pipeline was regularly transporting 80% intrastate gas and 20% gas under this provision, permitted only 80% of the total cost of service including fixed capital costs in the intrastate gas rate structure. Under that situation, the Commission could properly attribute 20% of the cost of service, including fixed capital costs, as the amount necessary to reasonably compensate the seller for expenses associated with transporting, gathering, treating, and delivery of the gas transported under this provision. Of course, the Commission would not have to grant such allocation as such allocation would be within its discretion.

Thus, it is not contemplated that there would be any double recovery for cost of service including fixed capital costs by virtue of an overlapping as between a State regulatory commission's permissible rate and the amount calculated by the Commission as necessary and reasonable compensation for transportation for performance of services under this provision.

The duration of sales entered into under this section is limited to two years. Successive extensions of not more than two years per extension are authorized, if approved by the Commission.

Sales authorized by this section are subject to interruption by the seller at his discretion, or by the Commission to the extent that the natural gas sold is required to enable the seller to render adequate service to its existing customers. The determination of what constitutes adequate service is made by the Commission without regard to the priority of the intrastate customers to be served. Such customers are to be evaluated as of the date of filing by the intrastate pipeline of an application to sell natural gas under this provision. The determination shall also encompass the foreseeable growth in demand, during the period of the sale under this section, of such industrial, residential, and commercial customers of the pipeline, and the local distribution companies served by the pipeline.

The conference agreement includes several procedural provisions for transactions under this section.

It gives the Commission authority to authorize the sale, transportation, or exchange by rule or by order. It provides authority for the Commission to condition approval of the sale, transportation, or exchange under this section upon such specified terms and conditions as it deems appropriate. It requires the Commission to disapprove any sale which involves the sale of natural gas by an intrastate pipeline that is determined to have been solely or primarily acquired by the pipeline for the purpose of purchase and resale into the interstate market. Gas that is determined by the Commission to be reasonably projected to be necessary to meet an intrastate pipeline's future market and buyer requirements shall not be considered by the Commission to be solely or primarily acquired by the intrastate pipeline for the purchase and resale in the interstate market. It requires the Commission to disapprove any application, or terminate any sale previously authorized under this section that would circumvent any provision of this Act.

SEC. 312. ASSIGNMENT OF CONTRACTUAL RIGHTS TO RECEIVE SURPLUS NATURAL GAS

The conference agreement gives the Commission authority to allow any intrastate pipeline to assign without compensation the right to receive surplus natural gas to an interstate pipeline or local distribution company. The determination of what constitutes "surplus" natural gas would be made by the appropriate State agency with jurisdiction over the rates of charges of the intrastate pipeline. The contract assignment would cover natural gas that is subject to a price ceiling under this Act. Entering into such an arrangement would not affect the exempt status of any party to the transaction under the Natural Gas Act.

The conferees intend that the term "assign" shall have its traditional meaning under contract law. It is a simple assignment of the rights of one party to receive goods and/or services under a contract entered into by that party. The assignee would not receive any additional right to receive goods or services beyond what was available to the assignor; nor would he incur any additional obligations or be required to pay additional compensation beyond what was available to the assignor. Both partial and total assignments are authorized. Thus, an assignment for a period of time less than the full contractual term or for a quantity less than the maximum daily contract volume is permissible.

SEC. 313. EFFECT OF CERTAIN NATURAL GAS PRICES ON INDEFINITE PRICE ESCALATOR CLAUSES

The conference agreement limits the effect of prices paid for high-cost natural gas defined in sec. 107, emergency purchases au-

thorized under sec. 302(a), and allocations ordered under sec. 303, in the application of indefinite price escalator clauses, as defined in sec. 105(b).

SEC. 314. CLAUSES PROHIBITING CERTAIN SALES, TRANSPORTATION, AND COMMINGLING

Both the House and Senate passed bills contained provisions which declared contractual prohibitions on commingling of intrastate natural gas with interstate natural gas unenforceable with respect to sales of natural gas to which the legislation applies. The application of the provision in the Senate passed bill was limited to sales of natural gas authorized by proposed section 28 of the Natural Gas Act. The conference agreement adopts the House provision.

This section is not intended by the conferees to affect the exempt status of any party under the Natural Gas Act.

SEC. 315 CONTRACT DURATION; RIGHT OF FIRST REFUSAL; FILING OF CONTRACTS AND AGREEMENTS

The House passed bill authorized the Commission to regulate terms and conditions of service (other than price) contained in producer contracts for sales of natural gas. The authority applied to both interstate and intrastate sales contracts. The Senate passed bill did not contain a similar provision.

The conference agreement provides the Commission authority to specify the minimum duration of contracts for purchases to which sec. 601 (a) (1) (A) or (B) is applicable. The duration is not to exceed 15 years or the commercially producible life of the reservoir, whichever is shorter.

The conference agreement also requires the Commission to exercise this authority in a nondiscriminatory manner with respect to onshore purchases by interstate and intrastate pipelines. The Commission is specifically precluded from exercising its contract duration authority in a manner which gives an advantage to interstate pipelines which has the effect of diverting supplies of natural gas to interstate pipeline systems, thus denying adequate supplies of gas to intrastate pipeline systems. The Commission is authorized to vary the application of the general requirements under this section for purchases of onshore gas as necessary to respond to special circumstances of any particular pipeline or pipelines.

The conference agreement also directs the Commission to—

(1) require new contracts for sales of natural gas from lands on the Outer Continental Shelf to be for a minimum 15-year term or the commercially producible life of the reservoir (whichever is less);

(2) provide for a right-of-first refusal for certain categories of natural gas production.

A bona fide offer must be made to the purchaser of deregulated high cost natural gas, new natural gas, and natural gas produced from any new onshore production well which, but for the provisions of sec. 601(a)(1)(B), would be subject to the provisions of the Natural Gas Act. The term bona fide offer is intended, at a minimum, to include terms that would be legal for any purchaser to accept under the Natural Gas Act. Following the expiration of any contract covering such natural gas, and any rejection of a bona fide offer by the purchaser who would have been entitled to receive the natural gas under the Natural Gas Act, such purchase is granted a right of first refusal of the first offer to sell such natural gas which has been accepted by another person in an arms-length transaction.

The right of first refusal provided in this section is in addition to any certificate and abandonment requirements of the Natural Gas Act which are not eliminated by Title VI.

The conferees do not intend anything in this section, or anything in this Act, to prejudge the outcome of *Shell Oil* v. *FERC*, No. 76–3066 (5th Cir. Jan. 20, 1978), currently pending before the Supreme Court on the question of the extent of the Commission's jurisdiction over producer performance standards.

The conference agreement also gives the Commission authority to require purchasers to file copies of all new contracts with the Commission for natural gas sales, and all ancillary agreements pertinent to those contracts.

TITLE IV—NATURAL GAS CURTAILMENT POLICIES

SEC. 401. NATURAL GAS FOR ESSENTIAL AGRICULTURAL USES

House provision

The House passed legislation prohibited any pipeline or local distribution company from curtailing natural gas deliveries to essential agricultural users identified by the Secretary of Agriculture below the essential requirements of such user, unless necessary to meet the natural gas requirements of high priority users.

The legislation defined "agricultural use" as any agricultural or food processing use of natural gas, including the use of natural gas—

(1) for irrigation pumping;

(2) for crop drying; or

(3) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, or food.

The legislation defined "high priority user" as any person who uses natural gas—

(1) in a residence;

(2) in a commercial establishment (in amounts less than 50,000 cubic feet on a peak day);

(3) in any other use the curtailment of which the Commission, the Department of Energy, or the State agency exercising regulatory authority (as the case may be) determines would endanger life, health, or physical property.

The Secretary of agriculture was given authority to identify agricultural uses for which natural gas is essential, and to determine the supply requirements (including requirements resulting from capacity expansion) of identified agricultural uses to satisfy the requirements of full food and fiber production and processing, and to preserve public health, safety, and welfare.

The House passed bill applied to both interstate and intrastate pipelines, and to local distribution companies.

Senate provision

The Senate passed bill required the Commission or the Department of Energy, not later than 120 days after the date of enactment of this Act, to prohibit interstate pipelines from curtailing natural gas for essential agricultural purposes for which natural gas is necessary, as determined by the Secretary of Agriculture, unless such curtailment is required to maintain natural gas service for high priority users.

The agricultural priority extended to agricultural, food processing and food packaging for which natural gas is necessary, including—

(1) irrigation pumping;

(2) crop drying; and

(3) use of natural gas as a raw material feedstock or process fuel and in production of fertilizer and essential agricultural chemicals (for present and expanded capacity in existing and future plants).

High priority user protection was afforded to—

(1) residential users;

(2) small users (using less than 50,000 cubic feet of natural gas on a peak day);

(3) hospitals; and

(4) similar users vital to public health and safety.

The Secretary of Agriculture was given authority to determine agricultural, food processing, and food packaging uses for which natural gas is necessary. He was required to certify natural gas quantities necessary for such essential uses in order to satisfy requirements for full food and fiber production.

The Senate passed bill applied solely to interstate pipelines.

Conference agreement

The conference agreement includes the Senate provision, with certain modifications, requiring the Commission to prohibit interstate pipelines from curtailing deliveries of natural gas for any agricultural use, unless such curtailment of deliveries does not reduce the quantity of natural gas delivered for the use requirement of essential agricultural uses for which natural gas is necessary or is necessary to meet the requirements of high-priority users.

The modifications in the Senate provision which are included in the conference agreement require the Secretary of Energy to amend the current schedule of curtailment priorities adopted pursuant to the Natural Gas Act so as to bring them into conformity with the statutory requirements in this Act. This modification was necessary to bring the division of responsibility between the Secretary and the Commission into conformity with the Department of Energy Act. Nothing in this section denies the Commission's right under section 404 of the Department of Energy Organization Act to review the Secretary's rule under subsection (a).

Once the schedule of curtailment priorities is brought into conformity with the requirements of this Act, the Commission will be required to implement the revised curtailment priority schedule applicable to interstate pipelines. For purposes of implementing this section, the Commission is instructed to reopen curtailment plans that are already in effect under the Natural Gas Act only to the extent necessary to adjust those plans to bring them into conformity with the new curtailment priority schedule. The conferees were concerned that these changes not burden the Commission with lengthy proceedings which might throw existing curtailment plans into disarray. Therefore, the conference agreement includes the term "to the maximum extent practicable" to assure that the Commission has the necessary flexibility in implementing any changes. For example, the conferees do not intend the reopening of curtailment plans for this limited purpose to result in adoption of a new base year for curtailment purposes.

The conference agreement defines the term "agricultural use" to include uses of natural gas for agricultural production, natural fiber production, natural fiber processing, food quality maintenance, irrigation pumping, crop drying, or as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food.

The conference agreement includes the House definition of "high priority use", modified to include schools, hospitals, and any other similar institutions for which the Secretary determines that curtailment of natural gas supplies would endanger life, health, welfare, or maintenance of physical property. The term residence is intended to include apartment buildings and other multi-unit high-rise buildings used predominantly for residential purposes such as space heating, hot water heating, cooking and clothes drying. Such buildings may contain some space used for commercial purposes but, if such uses would each qualify as high priority under the commercial definition, the combination of such uses together with the residential use should not prevent the building from qualifying as high priority. It is intended that consideration of human needs be the basis for qualifying the building as high priority and the presence of

commercial uses within the building should not disqualify the unit as high priority. Maintenance of physical property includes protection of plant property as it did under ENGA.

The conference agreement gives authority to the Secretary of Agriculture to certify to the Secretary of Energy and to the Commission the natural gas requirements for agricultural uses in order to meet the requirements of full food and fiber production, base upon the definition of "agricultural use" contained in this section.

The Commission, in consultation with the Secretary of Agriculture, will determine if alternative fuels are economically practicable and reasonably available to meet the needs of agricultural uses as certified by him. If the Commission determines that alternative fuels meet both tests, the uses will not qualify for a curtailment priority. The conferees specifically granted the Secretary of Agriculture a special consultative role with respect to determinations regarding alternative fuel capability. The conferees do not intend the consultations between the Secretary of Agriculture and the Commission to be subject to the Commission's *ex parte* consultation rules.

The conferees intend that the authority to restrict curtailment priority by determining that alternative fuels are economically practicable and reasonably available be utilized only in cases where it is clear that both tests are met. One of the reasons for imposing such a requirement is to prevent unnecessary increases in the cost of food in this country. The Commission determination that an alternative fuel is "economically practicable" shall not include a requirement to switch to high cost alternatives. That is not what the conferees consider to be "economically practicable".

The conference agreement specifically includes authority for the Secretary of Agriculture to intervene before the Commission in curtailment proceedings implementing this section. The conferees do not intend that anything in this Act shall give the Secretary of Agriculture authority to exercise, or limit the performance of his duties under this section for the purpose of restricting production of any crop or crops.

SEC. 402. NATURAL GAS FOR ESSENTIAL INDUSTRIAL PROCESS AND FEEDSTOCK USES

The Senate passed bill contained a requirement for the Commission to give a curtailment priority for deliveries of natural gas for industrial use in which natural gas is essential and for which there is no economically practicable and reasonably available substitute. The term economically practicable is intended to have the same meaning as the Commission's standard of economic feasibility under extraordinary relief in curtailment cases. Industrial process fuel and feedstock uses would be given priority over all industrial boiler fuel uses. The priority follows high priority and essential agricultural uses directly, as defined elsewhere in the legislation.

The House passed bill did not contain a comparable provision.

The conference agreement incorporates the Senate provision, modifying it to conform with the division of responsibilities between the Secretary of Energy and the Commission contained in the Department of Energy Organization Act.

The conference agreement requires the Secretary of Energy to certify to the Commission the natural gas requirements for essential industrial process fuel or feedstock uses of natural gas for which the Secretary determines natural gas is essential. The Commission is given authority to implement the priority schedule. If the Commission determines that use of an alternative fuel is economically practicable and such fuel is reasonably available, the user will not be given a curtailment priority.

SEC. 403. ESTABLISHMENT AND IMPLEMENTATION OF PRIORITIES

The conference agreement conforms the responsibilities of the Secretary of Energy and the Commission under this Title to the division of responsibilities established in the Department of Energy Organization Act. Under this division, the Secretary establishes and reviews priorities for curtailments under the Natural Gas Act, and the Commission implements the priorities.

SEC. 404. LIMITATION ON REVOKING OR AMENDING CERTAIN PRE-1969 CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

The Senate passed bill contained a provision prohibiting the Commission from:

(1) modifying, amending, or abrogating contracts entered into prior to January 1, 1977, for the sale or transportation of natural gas for boiler fuel use;

(2) modifying, amending, or abrogating the supply terms of certificates issued under section 7 of the Natural Gas Act authorizing the sale or transportation of natural gas for boiler fuel use under a contract entered into prior to January 1, 1977, unless requested to do so by the certificate holder; or

(3) preventing, impairing, or limiting deliveries of natural gas for boiler fuel use under a contract entered into prior to January 1, 1977, or under a certificate issued under section 7 of the Natural Gas Act, authorizing the sale or transportation of natural gas for boiler fuel use under such a contract, unless requested to do so by the certificate holder.

The provision was expressly qualified as not limiting the curtailment authority of the Commission.

The House bill did not contain a comparable provision.

The conference agreement incorporates a modified version of the Senate passed provision. This section denies the Commission authority to revoke or amend any certificate of public convenience and necessity, issued prior to January 1, 1969, for the transportation of natural gas owned by an electric utility, except upon the application by the holder of such transportation certificates. The provision is effective for a period of 10 years after the date of enactment of this Act.

This limitation on the Commission's authority does not limit the authority of the Commission to effectuate natural gas curtailments.

Natural gas affected by this section is subject to allocation under sec. 303(c) of this Act along with other general pipeline supply gas. Such gas may also qualify for allocation under sec. 303(b) of this Act.

Nothing in this section is intended to override any provision of the Powerplant and Industrial Fuel Use Act of 1978.

TITLE V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

SEC. 501. GENERAL RULEMAKING AUTHORITY

The House passed bill provided authority to issue rules in enforcing compliance with the provisions of the legislation, and to further define terms used.

The Senate passed bill did not contain a comparable provision, relying instead upon sections of the Natural Gas Act under which the Commission may establish procedures to govern its proceedings, and has general powers to issue orders, rules, and regulations.

The conference agreement provides authority for the Commission or any other Federal officer or agency in which any function under the Act is vested to issue rules and orders under the Act, and to perform any and all acts as it may find necessary or appropriate to carry out the provisions of this Act. The authority to prescribe rules and orders necessary to carry out the provisions of this Act includes the authority to issue rules and orders necessary to prevent circumvention of the Act.

The Commission may define terms, prescribe the forms of reports, and prescribe effective dates for rules and regulations. For instance, the Commission may define terms such as "transfer for value" used in the definition of first sale; it may also establish rules applicable to intracorporate transactions under the first sale definition.

SEC. 502. ADMINISTRATIVE PROCEDURE

The House passed bill provided that the rulemaking procedures of the Administrative Procedure Act would apply to the promulgation of any rule or order having the effect of a rule issued under the legislation. In addition, it required that there must be an opportunity for oral presentation of views; aggrieved persons may receive exceptions from, or modifications of, such rules in the case of special hardship, inequity, or unfair distribution of burdens.

The Senate passed bill did not contain a comparable provision, relying instead upon a section in the Natural Gas Act under which hearings, investigations, and proceedings are governed by procedures adopted by the Commission.

The conference agreement adopts the House provision.

Procedures applicable for State or other Federal agency determinations required by this Act are those procedures which are generally applicable for decisionmaking by such agency.

SEC. 503. DETERMINATIONS FOR QUALIFYING UNDER CERTAIN CATEGORIES OF NATURAL GAS

House provision

The House passed bill required the Commission to delegate the authority to determine which production qualifies as new natural gas produced from a newly discovered reservoir to the appropriate State regulatory agency upon the request of that agency. The Commission was authorized to set terms and conditions for such a delegation, to rescind such delegation, and, within one year, to reverse or modify any determination made by the State agency.

Senate provision

The Senate passed bill assigned the Commission authority to determine what natural gas qualifies as new natural gas.

Conference agreement

The conference agreement provides a delegation to certain State or Federal agencies to make classification determinations required by Title I.

The State or Federal agency with natural gas under its regulatory jurisdiction determines whether certain natural gas satisfies the required factual determinations to be classified as new natural gas under sec. 102; new onshore production wells under sec. 103; high-cost natural gas under sec. 107; and stripper well natural gas under sec. 108. The determination made by such State or Federal agency includes the subsidiary determinations required to be made to determine the category for which natural gas production qualifies. For example, in determinations regarding new natural gas, the agency determinations would include deciding whether a new well is outside the 2.5 mile distance from a marker well; or whether natural gas is behind-the-pipe or withheld, within the definitions specified in the appropriate section, as may be further defined by the Commission. The State or Federal agency determination must then be submitted to the Commission for review, accompanied by such substantiation as the Commission may require. The Commission may reverse the State or Federal agency classification if it finds that such determination is not supported by substantial evidence. A seller may not collect a price under sections 102, 107 or 108 until a determination under this section has been made final, unless it is in accordance with the interim or alternative collection procedures described in this section.

The conferees intend that a determination that certain natural gas does not qualify for a certain category to be a determination within the scope of sec. 503(a), which is subject to Commission review. In cases in which the State or Federal agency finds that natural gas does not fall within one of the enumerated categories because the producer's application is not supported by substantial evidence, the absence of such evidence from the record would be treated by the Commission as substantial evidence supporting the agency's determination. In such cases, the Commission would not be required to reverse the finding under review. However, as many such determinations will be routine and may be reported *en bloc*, and the conferees do not intend to impose more paperwork than necessary on the States, the record of such negative determinations need be sent to the Commission only upon the request of the aggrieved party, normally the seller.

A preliminary reversal of the State or Federal determination must be made by the Commission within 45 days of receipt of notification, accompanied by the record, of the State or Federal agency decision. The initial finding is not subject to judicial review.

The conferees intend that such preliminary reversal be akin to the Commission's exercise of its suspension authority under section 205 of the Federal Power Act and section 4 of the Natural Gas Act.

The Commission may remand a State or Federal agency determination if it finds such determination is not consistent with information contained in its public records.

The provisions allowing Commission remand of a State or Federal agency determination are intended to provide a means for resolving conflicts caused by information available to the Commission where such information was not part of the record before the State agency. This provision is not intended to allow undue delay in the determination process. Thus, a party aggrieved by a Commission remand order has the option of seeking judicial review of such remand, based on the arbitrary and capricious standard.

Determinations made under this section are for the purpose of this Act only. For example, the determination of what constitutes a new reservoir shall not be binding on the State for any other purpose.

The final finding by the Commission to reverse a State or Federal agency determination must come within 120 days after the Commission's initial action.

A preliminary reversal must be followed by a final action to reverse, or it has no effect; the conferees do not intend to allow the Commission's initial action to stand without a subsequent final action that shall constitute final agency action for purposes of judicial review. The State or Federal agency determination stands if no action is taken within the 45 and 120 days provided. Only a final Commission reversal is binding under sec. 503(d).

The Commission's action in reversing a State or Federal agency determination is subject to judicial review. The conferees intend that the question of whether the State or Federal agency determination is supported by substantial evidence shall be a question of law. The Commission's determination of this question may be reversed by the court if it is not in accordance with the requirements of law; the Commission's determination to reverse a State or Federal agency determination must be based on a finding that there was no substantial evidence for such determination.

The conferees intend that the Commission's authority to review State or Federal agency determinations shall be limited to determining the narrow question of whether or not the agency determination is supported by substantial evidence. The conferees have followed the traditional definition of substantial evidence review; that is, there is no intention to allow the Commission to "second guess" the agency by independently weighing the evidence and reversing the agency's determination as if the initial responsibility to make the determination were placed within the Commission. If the Commission determines that substantial evidence exists for the State or Federal agency's determination, the Commission's inquiry and reviewing responsibilities terminate. The Commission may utilize information available to it in its own files, books, and records for assistance in conducting its review. Such evidence shall also be made available to the State or Federal agencies with responsibilities under this section upon the request of such agencies.

Nothing in this Title is intended to limit the jurisdiction of State courts to decide questions of State law. A party aggrieved by procedural aspects of State or Federal agency determinations may pursue whatever appeal rights are otherwise available under State or Federal law. The party is, at the same time, bound by the record made in the proceeding for purposes of Commission review. Thus, the party is free simultaneously to pursue Commission review, arguing that the record as transmitted did have substantial evidence to support the determination and to pursue procedural review, in State court for State determinations, arguing that the record is prejudiced due to procedural error. That State or Federal court's review of the record is limited to procedural questions. If successful before the Commission, the party has prevailed in any event. If unsuccessful there, but successful in the State or Federal court review, there would be an opportunity to make a new record before the State or Federal agency.

With respect to any natural gas, any final determination made by the State or Federal agency, or by the Commission, which is no longer subject to judicial review is binding with respect to such natural gas, unless the agency or Commission relied on any untrue statement of a material fact, or there was an omission of a material fact.

The conferees recognize that gas may be produced by the seller and sold to the buyer even while the determination process is proceeding either before a State or Federal agency or before the Commission, or before the courts. This section includes provision for a seller of natural gas to make collections during this period in certain cases of production from new wells. In other cases, the conferees intend that the Commission should have power to establish rules concerning the collection and accounting for monies paid during this period, the effect of a preliminary reversal, and the adjustment of prices and monies upon any final determination different from that under which the parties were initially operating.

The State or Federal agency having regulatory jurisdiction with respect to the production of natural gas may waive its authority to make determinations under this section, if the Commission agrees.

The conference agreement provides several methods for interim collection of maximum lawful prices. Paragraphs (1) and (3) of subsection (e) provide statutory rules; paragraph (2) requires the Commission to establish, by rule, alternate methods for interim collection of maximum lawful prices. In all cases, the interim collection of such prices must be collected subject to a condition of refund, with interest, if the price collected is higher than the final maximum lawful price. Under paragraph (1), a seller of natural gas from a new well may collect the maximum lawful price under sec. 109 pending a determination by the appropriate State or Federal agency. In order to qualify for such interim collection the seller must file a sworn statement that such natural gas is produced from a new well, and that the seller believes in good faith that such natural gas is eligible to be sold at a price not less than the price under sec. 109. The seller must also file a petition for a determination within 90 days after the date of enactment with the appropriate State or Federal agency or, if later, before collection of the higher rate.

Under paragraph (2), the Commission must prescribe alternate methods of interim collection. The alternate method would permit the seller to collect for any natural gas the maximum lawful price under Title I for which a petition is filed for a determination in any case in which such price exceeds the price under sec. 109. Again, this collection is subject to refund with interest. In addition, the seller must comply with such requirements prescribed by the Commission to provide adequate assurance that funds attributable to the collection of a price in excess of the price under sec. 109 are available for refund. This assurance could be by means of bonding, escrow, posting of security, or such other means as the Commission determines to be appropriate.

Under paragraph (3), the seller may collect, after a determination by the appropriate State or Federal agency, the appropriate maximum lawful price applicable under such determination. If the State or Federal agency determines that the seller is entitled to a price in excess of the maximum lawful price under sec. 109, the seller may retroactively collect the appropriate price effective the first day of the first month after the date of enactment, or the day deliveries began, whichever is later, if the contract so permits. Again, this collection must be subject to refund, with interest. If, for example, the State or Federal agency determines that the production qualifies as new natural gas under sec. 102(b), the seller may collect the maximum lawful price provided under sec. 102(b), if his contract so permits. If either the Commission or a court reverses the State or Federal agency determination under the appropriate section, the seller would be required to refund moneys collected in excess of the maximum lawful price for which the production qualifies.

SEC. 504. (a) ENFORCEMENT

The conference agreement provides that it shall be unlawful for any person to violate any provision of this Act or any rule or order under this Act. Both civil and criminal enforcement provisions are provided.

SEC. 504. (b) CIVIL PENALTIES

House provision

The House passed bill subjected violators of any provision, rule or order to the following civil penalties for each violation:

(1) $20,000 for violations relating to production, gathering, sale, transmission or distribution of natural gas; or

(2) $2,500 for other violations.

Civil penalties would have been assessed by the Commission after a hearing on the record. The assessment would have been enforced, modified or set aside in the appropriate district court.

Senate provision

The Senate passed bill did not contain a comparable provision, relying instead on a section of the Natural Gas Act under which the Commission may bring an action in U.S. District Court if it appears a person is engaged or about to engage in acts or practices that constitute or will constitute violations of the Act. Injunctive relief and mandamus are available civil remedies under the Natural Gas Act.

Conference agreement

The conference agreement adopts procedures for civil enforcement based upon the

Natural Gas Act, as in the Senate passed bill. In addition, the conference agreement includes a modified version of the House provision, making violators of any provision, rule or order subject to a civil penalty of up to $5,000 for knowing violations of the Act or knowing violations of rules and orders pursuant to the Act.

The conference agreement provides authority for the Secretary or the Commission, or the Attorney General upon request of the Secretary or the Commission to institute a civil action for injunctive or other equitable relief to enforce the incremental pricing passthrough requirements in sec. 205(e).

The term "knowing" means the having of—

(1) actual knowledge, or

(2) the constructive knowledge deemed to be possessed by a reasonable person who acts in the circumstances.

The conferees intend that every person shall be presumed to have constructive knowledge of this Act. However, every person shall not necessarily be presumed to have constructive knowledge of the regulations adopted pursuant to the Act. The latter would be a question of fact to be determined by the reasonable man test.

A seller would not be in violation of sec. 504(a)(1) if the seller charged a price higher than the maximum lawful price because of reliance on prices or inflation factors published by the Commission in accordance with Title I. This follows from sec. 504(b)(6)(B), which indicates that a violation is not knowing if it rests on information not in the possession of a reasonable person who acts in the circumstances.

Of course, if such prices of inflation factors are later found in error or change, the definition of knowing would apply as soon as an individual actually knew, or reasonably should have known, of the correction. Continuing to charge the price based on the earlier published information would then be a violation.

In the case of a continuing violation, each day of violation constitutes a separate violation. The conference agreement includes a three-year statute of limitations for civil penalties. The statute of limitations with regard to civil penalties is not intended by the conferees to affect the rights or remedies otherwise available under any provision of law for any person, State or Federal agency to bring any action to recover damages which may result from any violation of this Act or rule or regulation issued hereunder, or otherwise enforce any provision of this Act or rule or regulation issued hereunder. The statute of limitations shall not apply in the case of untrue statements of material facts, and omissions of material facts, during the determination process.

The Commission is given authority to assess civil penalties. Violators may obtain review of the Commission's assessment through a trial *de novo* in Federal district court. In addition, the Commission's authority pursuant to this section includes the authority to require refunds from any person.

Attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought under this section. Such an action would be an action brought "in connection with any function carried out by the Commission", which enables Commission attorneys to bring actions under sec. 401(i) of the Department of Energy Organization Act.

SEC. 504. (C) CRIMINAL PENALTIES

House provision

The House passed bill subjected persons willfully violating any provision, rule or order to the following criminal penalties for each violation:

(1) one year imprisonment; or

(2) a fine of:

(a) $40,000 for vioations relating to production, gathering, sale, transmission or distribution of natural gas; or

(b) $10,000 for other violations, or

(3) both imprisonment and fine.

Senate provision

The Senate passed bill did not contain a comparable provision, relying instead on a section of the Natural Gas Act under which willful and knowing violators of the Act are subject to a $5,000 fine, or two years, imprisonment, or both. In addition, willful and knowing violators of rules and orders issued under the Act are subject to a $500 fine for each day of violation.

Conference agreement

The conference agreement adopts procedures for criminal enforcement based upon the Natural Gas Act.

SEC. 505. INTERVENTION

The Secretary of Energy is given authority under this section to intervene in any State agency proceeding relating to the prorationing of, or other limitations upon natural gas production.

SEC. 506. JUDICIAL REVIEW

The House passed bill provided authority for persons aggrieved by rules and orders under the Act to obtain judicial review in the United States Court of Appeals for the District of Columbia Circuit.

The Senate passed bill did not contain a comparable provision, relying instead upon authority under the Natural Gas Act for persons aggrieved by orders to obtain judicial review in the United States Court of Appeals for the District of Columbia Circuit, or in the circuit where the person is located or has his principal place of business.

The conference agreement provides judicial review based upon the Natural Gas Act provision described above.

SEC. 507. CONGRESSIONAL REVIEW

The conference agreement provides procedures for Congressional action required by sec. 122, 202, or 206.

The section specifies the manner in which calendar days of continuous session are to be counted. It also provides expedited procedures for insuring floor consideration of any resolution required by sec. 122, 202, or 206. It is similar to the Congressional review procedure established in the Energy Policy and Conservation Act (40 U.S.C. 6201).

SEC. 508. TECHNICAL AMENDMENT

This section conforms the powers of the Commission under this Act to the Department of Energy Organization Act. The conferees intend that the information-gathering authority granted under this section be exercised in a manner which avoids duplication of submissions by any person to the maximum extent practicable to achieve the purposes of this Act.

TITLE VI—COORDINATION WITH NATURAL GAS ACT: MISCELLANEOUS PROVISIONS

SEC. 601. (a) AND (b) COORDINATION WITH THE NATURAL GAS ACT

The conference agreement limits the jurisdiction of the Commission under the Natural Gas Act in a manner similar to the House-passed bill.

Natural gas not committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act is never made subject to the Commission's jurisdiction under sec. 1(b) of the Natural Gas Act.

The Commission's jurisdiction under section 1(b) of the Natural Gas Act ceases on the first day of the first month beginning after the date of enactment of this Act for the following categories of natural gas:

High-cost natural gas which qualifies for deregulated price treatment under section 107(c)(1), (2), (3), or (4);

New natural gas under sec. 102(c); and

Natural gas produced from any new, onshore production well under section 103(c).

Emergency sales, intrastate pipeline sales, and assignments authorized under this Act do not become subject to the Commission's jurisdiction under sec. 1(b) of the Natural Gas Act.

No person is a "natural-gas company" under section 2(6) of the Natural Gas Act with respect to, or by reason of, emergency sales, intrastate pipeline sales, or assignments authorized under this Act.

Certain transportation of natural gas, pursuant to any order under sec. 302(c), or 303, or authorized by the Commission under sec. 311 of this Act, does not become subject to the Commission's jurisdiction under sec. 1(b) of the Natural Gas Act. Nor is any person a "natural-gas company" under section 2(6) of the Natural Gas Act, with respect to, or by reason of, such transportation.

Any amount paid in any first sale of natural gas is deemed "just and reasonable" for purposes of sections 4 and 5 of the Natural Gas Act, if such amount does not exceed the applicable maximum lawful price established under Title I of this Act; or, if there is no applicable maximum lawful price, by reason of the elimination of price controls pursuant to subtitle B of Title I of this Act.

Any amount paid in any emergency sale authorized under sec. 302 which does not exceed the fair and equitable price, as defined in sec. 302, is deemed to be "just and reasonable" for purposes of sections 4 and 5 of the Natural Gas Act.

Any amount paid in any sale by an intrastate pipeline authorized under sec. 311 which does not exceed the fair and equitable price, as defined in sec. 311, is deemed to be "just and reasonable" for purposes of sections 4 and 5 of the Natural Gas Act.

Any amount paid pursuant to the terms of a contract assignment authorized under sec. 312(a) which does not exceed the maximum lawful prices established under Title I of this Act, is deemed to be "just and reasonable" for purposes of sections 4 and 5 of the Natural Gas Act.

Any amount paid in any first sale between any interstate pipeline and any affiliate of such pipeline which does not exceed the same amount paid in comparable first sales between unaffiliated persons is deemed to be "just and reasonable".

Any amount paid by any interstate pipeline for transportation, storage, delivery, or other services provided pursuant to an allocation order under sec. 303 of this Act, and any amount paid by any interstate pipeline for any transportation authorized by the Commission under sec. 311(a) of this Act, is deemed to be "just and reasonable" for purposes of sections 4 and 5 of the Natural Gas Act.

SEC. 601. (C) GUARANTEED PASSTHROUGH

The conference agreement guarantees that interstate pipelines may pass through costs of natural gas purchases if the price of the purchased natural gas does not exceed the ceiling price levels established under the legisation which are deemed "just and reasonable" for purposes of the Natural Gas Act in the previous section. The conferees do not intend to guarantee passthrough of costs of natural gas purchases in cases of fraud or abuse, as determined by the Commission. This recovery must be consistent with the incremental pricing provisions of Title II; however, Title II is structured to permit recovery of all costs which a pipeline is entitled to recover.

The provision is similar to passthrough provisions in both the Senate and House passed bills.

SEC. 602. EFFECT ON STATE LAWS

The conference agreement provides that nothing in this Act shall affect the authority of any State to establish or enforce any maximum lawful price for sales of gas in intrastate commerce which does not exceed the applicable maximum lawful price, if any, under Title I of this Act. This authority extends to the operation of any indefinite price escalator clause. The Congress enacts this provision with a recognition that it is ceding its authority under the commerce clause of the Constitution to regulate prices for such production to affected States.

HARLEY O. STAGGERS,
THOMAS L. ASHLEY,
AL ULLMAN,
RICHARD BOLLING,
THOMAS S. FOLEY,
JOHN D. DINGELL,
PAUL D. ROGERS,
BOB ECKHARDT,
PHILIP R. SHARP,
CHARLES WILSON,
DAN ROSTENKOWSKI,
JAMES C. CORMAN,
CHARLES B. RANGEL,
Managers on the Part of the House.

HENRY M. JACKSON,
FRANK CHURCH,
FLOYD K. HASKELL,
DALE BUMPERS,
WENDELL H. FORD,
SPARK M. MATSUNAGA,
MARK O. HATFIELD,
JAMES A. MCCLURE,
PETE V. DOMENICI,
Managers on the Part of the Senate.

PROVIDING FOR PRINTING OF ADDITIONAL COPIES OF CONFERENCE REPORT AND STATEMENT OF THE MANAGERS ON H.R. 5146

Mr. DINGELL. Mr. Speaker, I offer a resolution (H. Res. 1418) to provide for the printing of additional copies of the conference report on the Powerplant and Industrial Fuel Use Act of 1978, and ask unanimous consent for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, I do so for the purpose of asking the gentleman from Michigan whether this resolution and the next three resolutions are simply providing for additional printing of the conference report and statement of the managers on the energy package.

Mr. DINGELL. If the gentleman will yield, the answer is yes.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 1418

Resolved, That there shall be printed for the use of the Interstate and Foreign Commerce Committee of the House of Representatives such number of additional copies of the conference report and statement of managers on H.R. 5146 (Powerplant and Industrial Fuel Use Act of 1978) as does not exceed a cost of $1,200.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR PRINTING OF ADDITIONAL COPIES OF CONFERENCE REPORT AND STATEMENT OF THE MANAGERS ON H.R. 4018

Mr. DINGELL. Mr. Speaker, I offer a resolution, House Resolution 1419, and ask unanimous consent for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, is this part of this explantion to develop an energy package?

Mr. DINGELL. If the gentleman will yield, what we are doing at this particular minute is, under the unanimous-consent request, we are considering the authorization of printing of copies of the document referred to, and the particular one that we address at this particular time is the conference report and statement of the managers on H.R. 4018, which is the Public Utility Regulatory Policies Act, as will not exceed a total cost of $1,200.

Mr. ROUSSELOT. Further reserving the right to object, just for my own edification, why does the gentleman need unanimous consent?

Mr. DINGELL. If the gentleman will yield, because we are bringing the basic resolution up under unanimous consent. The resolution will be considered under unanimous consent, but the resolution authorizes printing above and beyond what would ordinarily occur under the rules of the House. The reason is that there is substantial controversy surrounding this legislation, and unless the House prints a larger number than would be done under ordinary practices, there just would not be enough copies for all of the lobbyists who want them.

Mr. ROUSSELOT. Further reserving the right to object, Mr. Speaker, the gentleman says there is substantial controversy?

Mr. DINGELL. If the gentleman will yield, yes, there is substantial controversy, I am so advised.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 1419

Resolved, That there shall be printed for the use of the Interstate and Foreign Commerce Committee of the House of Representatives such number of additional copies of the conference report and statement of managers on H.R. 4018 (the Public Utility Regulatory Policies Act) as does not exceed a cost of $1,200.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR PRINTING OF ADDITIONAL COPIES OF CONFERENCE REPORT AND STATEMENT OF THE MANAGERS ON H.R. 5037

Mr. DINGELL. Mr. Speaker, I offer a resolution, House Resolution 1420, and ask unanimous consent for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, I understand this is going to come to us as one package. Why do we have to have all of these extra copies?

Mr. DINGELL. If the gentleman will yield, the answer is that it is all coming in one package if the House adopts the rule. I would observe, in any event, they must be printed as separate bills, and because the adoption of the rule lies yet before us, I am simply serving as a functionary of the Committee on Interstate and Foreign Commerce so that the necessary printing is done, so it then can consider whether this should be printed all in one package or seriatim.

Mr. ROUSSELOT. I would observe that the gentleman is an outstanding functionary.

Mr. DINGELL. I thank the gentleman.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the resolution as follows:

H. RES. 1420

Resolved, That there shall be printed for the use of the Interstate and Foreign Commerce Committee of the House of Representatives such number of additional copies of the conference report and statement of managers on H.R. 5037 (the National Energy Conservation Policy Act) as does not exceed a cost of $1,200.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR PRINTING OF ADDITIONAL COPIES OF CONFERENCE REPORT AND STATEMENT ON H.R. 5289

Mr. DINGELL. Mr. Speaker, I offer a resolution (H. Res. 1421) providing for the printing of additional copies of Conference Report and Statement of Manager on H.R. 5289, the Natural Gas Policy Act of 1978, and ask unanimous consent for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 1421

Resolved, That there shall be printed for the use of the Interstate and Foreign Commerce Committee of the House of Represent-

atives such number of additional copies of the conference report and statement of managers on H.R. 5037 (the National Energy Conservation Policy Act) as does not exceed a cost of $1,200.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING LIFE AND HEALTH INSURANCE BENEFITS FOR EMPLOYEES AFTER 5 YEARS OF SERVICE

Mr. HARRIS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 4319) to amend subchapter III of chapter 83 of title 5, United States Code, to provide that employees who retire after 5 years of service, in certain instances. may be eligible to retain their life and health insurance benefits, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

That (a) section 8706 of title 5, United States Code, is amended—

(1) by striking out subsections (b) and (c) and inserting in lieu thereof the following new subsection:

"(b) If on the date the insurance would otherwise stop—

"(1) the employee—

"(A) retires on immediate annuity, or

"(B) is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, and is certified by the Secretary of Labor or his delegate as being unable to return to duty; and

"(2) the employee has been issued under this chapter during—

"(A) the 5-year period immediately preceding such date, or

"(B) if the employee was entitled to be insured during only a part of such 5-year period, the entire period for which he was so entitled,

life insurance only may be continued under conditions determined by the Commission. The amount of life insurance continued under this subsection shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving such compensation for work injury. The Commission shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.";

(2) by redesignating subsections (d) through (f) as subsections (c) through (e), respectively;

(3) by striking out "The" in the first sentence of subsection (c), as redesignated by paragraph (2), and inserting in lieu thereof "Notwithstanding subsections (a) and (b) of this section, the"; and

(4) by striking out "(a)–(c)" in subsection (d), as redesignated by paragraph (2), an inserting in lieu thereof "(a) and (b)".

(b) Section 8705(a) of title 5, United States Code, is amended by striking out "or (c)".

(c) Paragraph (2) of section 8714(a) of title 5, United States Code, is amended to read as follows:

"(2) So much of the standard optional life insurance (without accidental death and dismemberment insurance) in force on an employee on the date he retires on an immediate annuity or becomes entitled to receive compensation for work injuries under subchapter I of chapter 81 of this title which has been in force under this chapter during—

"(A) the 5-year period immediately preceding such date, or

"(B) any period of service during such 5-year period which the standard optional insurance was available to him if not available the entire 5-year period,

may be continued, under conditions determined by the Commission, after retirement or during the period the employee is receiving compensation for work injuries and is certified by the Secretary of Labor or his delegate as being unable to return to duty, subject to the same monthly reductions required for regular life insurance under section 8706 (b) of this title.".

SEC. 2. Section 8901(3)(A) of title 5, United States Code, is amended by striking out "12" and inserting in lieu thereof "5".

SEC. 3. The amendments made by this Act shall take effect on the later of—

(1) the date of the enactment of this Act, or

(2) October 1, 1978.

The Clerk read the House amendment to the Senate amendment, as follows:

In lieu of the amendment proposed by the Senate insert:

That (a) section 8706 of title 5, United Code, is amended—

(1) by striking out subsections (b) and (c) and inserting in lieu thereof the following new subsection:

"(b)(1) If on the date the insurance would otherwise stop the employee retires on an immediate annuity and has been insured under this chapter throughout—

"(A) the 5 years of service immediately preceding such date, or

"(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance only may be continued, without cost to the employee, under conditions determined by the Commission.

"(2) If on the date the insurance would otherwise stop the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

"(A) the 5 years of service immediately preceding such date, or

"(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance only may be continued, without cost to the employee, under conditions determined by the Commission, during the period the employee is receiving compensation for work injuries and is held by the Secretary of Labor or his delegate to be unable to return to duty.

"(3) The amount of life insurance continued under paragraph (1) or paragraph (2) of this subsection shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving such compensation for disease or injury. The Commission shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.";

(2) by redesignating subsections (d) through (f) as subsections (c) through (e), respectively; and

(3) by striking out "(a)–(c)" in subsection (d), as redesignated by paragraph (2), and inserting in lieu thereof "(a) and (b)".

(b) Section 8705(a) of title 5, United States Code, is amended by striking out "or (c)".

(c) Section 8714a of title 5, United States Code, is amended—

(1) by striking out "8706(d)" in subsection (c)(1) and inserting in lieu thereof "8706(c)";

(2) by amending subsection (c)(2) to read as follows:

"(2)(A) In the case of any employee who retires on an immediate annuity and has been insured under this section throughout—

"(i) the 5 years of service immediately preceding the date of such retirement, or

"(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Commission.

"(B) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this section throughout—

"(i) the 5 years of service immediately preceding the date such employee becomes entitled to such compensation, or

"(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Commission, during the period the employee is receiving such compensation for disease or injury and is held by the Secretary of Labor or his delegate to be unable to return to duty.

"(C) The amount of optional life insurance continued under subparagraph (A) or subparagraph (B) of this paragraph shall be subject to the same monthly reductions as required for regular life insurance under section 8706(b)(3) of this title."; and

(3) by striking out "or 8706(c)" in subsection (d).

SEC. 2. Section 8901(3)(A) of title 5, United States Code, is amended by striking out "12" and inserting in lieu thereof "5".

SEC. 3. The amendments made by this Act shall take effect on the date of the enactment of this Act.

Mr. HARRIS (during the reading). Mr. Speaker, I ask unanimous consent that the House amendment to the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, my understanding is that H.R. 4319 was passed by the House in July 1977?

Mr. HARRIS. Yes, sir.

Mr. ROUSSELOT. Can the gentleman tell us basically the differences between the version that we passed and these amendments?

Mr. HARRIS. If my colleague will yield, essentially——

Mr. ROUSSELOT. I would be delighted to yield.

Mr. HARRIS. I thank my colleague. Essentially, there are two differences. No. 1, the effective date of the bill is now upon the enactment, not a 5-year delay. This is because a mandatory retirement provision in the bill was subsequently taken out in the Senate because we had passed a subsequent bill which had made it redundant.

The other provision is that the provision in the House bill carried over the right to carry through to retirement the medical benefits on the basis of 5 years of active service. The Senate amendment has applied that to participation in the programs. It is the same 5 years, but requires 5 years participation in the program instead of just 5 years of service. Essentially, those are the only two differences in the Senate bill.

Mr. ROUSSELOT. So, except for the two items my colleague has outlined, this bill is essentially the same as the House passed version by a rather overwhelming majority in July 1977?

Mr. HARRIS. If my colleague will yield further, the answer to that question is yes.

Mr. ROUSSELOT. I appreciate the gentleman's explanation. Reserving the right to object, is there anything else we should know about this? No other surprises?

Mr. HARRIS. I think my colleague was extremely helpful in having me bring out the main features of the bill as it has been changed in the Senate.

Mr. ROUSSELOT. There are no nongermane amendments the Senate has attached?

Mr. HARRIS. I can respond to my colleague again as I responded previously, that this bill is essentially the same bill as passed by the House except for those provisions which we have discussed.

Mr. ROUSSELOT. That certainly is good and different procedure for the other body.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I will be glad to yield to the gentlewoman from New Jersey.

Mrs. FENWICK. I would like to ask the gentleman a question. He said, as I understood it, those who were employed for 5 years and those who participated in a program for 5 years. What is participating in a program?

Mr. HARRIS. If my colleague would yield for a response——

Mr. ROUSSELOT. I would be more than happy to yield.

Mr. HARRIS. I appreciate the gentleman yielding. Basically, we are talking about the medical benefits program. In the one case, the language read just service. The language now reads participation in that medical program. In other words, if they had chosen a program, whatever it was, if they had participated in it for those 5 years.

Mrs. FENWICK. Are they going to continue to pay into the program so that they receive the benefits?

Mr. HARRIS. Yes, that provision has not been changed, as in the House bill. They go in retirement, but with payment of premium.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, I yield further to my colleague, the gentlewoman from New Jersey (Mrs. FENWICK).

Mrs. FENWICK. I thank the gentleman for yielding.

What does the 5-year service entail? Is it 5 years of service?

Mr. HARRIS. In the House-passed bill, it is 5 years of service. The change in the Senate-passed bill would require a showing of 5 years participation in the program.

Mrs. FENWICK. Participation—what are we referring to?

Mr. HARRIS. One can be an employee without participating.

Mrs. FENWICK. But can one participate in the program without being an employee?

Mr. HARRIS. Of course not.

Mr. ROUSSELOT. What it means is one could be an employee without taking advantage of the option to participate so the Senate specified that the Federal employee must fully participate in the required premiums.

I think my colleague has made an excellent description of this bill.

Is the gentleman from Arizona (Mr. UDALL) participating in this?

Mr. HARRIS. My colleague indicates if we can go without his help, we should.

The SPEAKER. Is there objection to the request of the gentleman from Virginia (Mr. HARRIS)?

There was no objection.

A motion to reconsider was laid on the table.

REQUEST FOR APPOINTMENT OF CONFEREES ON H.R. 12250, DESIGNATING BOUNDARY WATERS CANOE WILDERNESS AREA

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12250) to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Area, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

Mr. LIVINGSTON. Mr. Speaker, I object at this time.

The SPEAKER. Objection is heard.

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION AMENDMENTS OF 1978

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 11092) to increase the authorization of appropriations under the Act of December 22, 1974 (88 Stat. 1712), with Senate amendments thereto, and concur in the Senate amendments with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert: That this Act may be cited as the "Navajo and Hopi Indian Relocation Commission Amendments of 1978".

SEC. 2. Section 12(b) of the Act of December 22, 1974 (88 Stat. 1712, 1716) is amended by inserting before the period at the end of the sentence the following: ": *Provided*, That effective March 1, 1979, no person who is serving in an elected Federal, State, or local public office shall be eligible to serve or continue to serve as a member of the Commission".

SEC. 3. The first sentence of section 12(e) of the Act of December 2, 1974 (88 Stat. 1712, 1717) is amended by inserting before the period at the end thereof the following: ": *Provided*, That effective October 1, 1978, no such member shall be paid more than $28,000 during any fiscal year".

SEC. 4. Section 13(c)(5) of the Act of December 22, 1974 (88 Stat. 1712, 1718), is amended to read as follows:

"(5) take effect one hundred and twenty days (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) after the date of submission to the Congress pursuant to subsection (a) of this section, unless during such one hundred and twenty day period one House of the Congress adopts a resolution disapproving such plan: *Provided, however*, That the Commission is authorized and directed to proceed with voluntary relocations as promptly as practicable following its first meeting.".

SEC. 5. (a) Section 25(a)(5) of the Act of December 22, 1974 (88 Stat. 1712, 1723) is amended by striking out "$500,000" and inserting in lieu thereof "$1,000,000".

(b) The Navajo and Hopi Indian Relocation Commission is authorized, subject to the approval of the Committees on Appropriations of the House of Representatives and the Senate, to utilize not to exceed $400,000 of the appropriations otherwise available to them for the fiscal year ending September 30, 1978, for the administration and operation of the Commission under the Act of December 22, 1974 (88 Stat. 1712).

SEC. 6. (a) There is hereby established a Navajo and Hopi Indian Relocation Commission and Planning Committee (hereinafter referred to as the "Committee").

(b) The Committee shall be composed of one member and the executive director of the Navajo and Hopi Indian Relocation Commission, the Secretary of the Interior or his designee: *Provided*, That the Secretary may not designate other than an Under Secretary or Assistant Secretary, the Director of the Joint Use Administration or his designee, the Secretary of Health, Education, and Welfare or his designee, the Chairman of the Navajo Tribe or his designee, and the Chairman of the Hopi Tribe or his designee.

(c) The Secretary of the Interior or his designee shall serve as the Chairman of the Committee. In the absence of the Secretary or his designee the Director of the Joint Use Administration shall serve as Chairman of the Committee.

(d) Five members of the Committee shall constitute a quorum.

(e) A member of the Committee who is an officer or employee of the United States shall serve without additional compensation. Each Federal department or agency shall reimburse their officers or employees for travel, subsistence, and other expenses incurred by them in the performance of

their duties as members of the Committee. All nongovernmental workers of the Committee shall be reimbursed for travel, subsistence, and other expenses incurred by them in the performance of their duties as members of the Committee by the Department of the Interior.

(f) The designees of the Committee shall be named by the respective Federal agencies and tribes within forty-five days of the date of the enactment of this Act and the first meeting of the Committee shall be held within sixty days of such date.

(g) The Committee shall have the following responsibilities:

(1) Assess the allocation and adequacy of Federal and tribal services being provided to relocatees who are residing within the relocation area and those who have been relocated on or off the respective reservations. Such assessment shall identify specific problems associated with the delivery and adequacy of the services provided and shall further include specific recommendations to the Federal agencies and tribes concerning what steps they should take to ensure that the Federal and tribal programs and services are coordinated, funded, and allocated in a manner which will adequately meet the needs of the relocatees.

(2) Submit semiannual reports to the Congress by February 1 and August 1 of each year concerning the assessment of services required by subsection (g)(1) including an assessment of the degree of coordination which is taking place between the Commission, the Navajo and Hopi tribal officials, and the respective Federal agencies.

(3) Within sixty days after the Commission submits its "relocation plan" to the Congress pursuant to section 13(c) of the Act of December 22, 1974 (88 Stat. 1714, 1717) the Committee shall submit a report to the Congress assessing the feasibility of implementation and the adequacy of the relocation plan in meeting the mandates of said section 13(c).

(4) Each tribe and Federal agency represented on the Committee which does not agree with the respective majority reports of the Committee required by subsections (g)(2) and (3) of this section shall submit their separate views to the Congress at the time the respective Committee reports are submitted.

(h) The head of each Federal agency not represented on the Committee but identified by the Committee as being necessarily involved in the implementation of the relocation plan and the provision of services shall submit semiannual reports to the Congress on April 1 and October 1 each year detailing the level of funding and services being provided to the relocatees prior to and following their relocation and the degree to which such funding and services conform to the assessments and recommendations made by the Committee. Such reports shall further specify the degree to which such respective Federal agencies are consulting and coordinating with the Commission with regard to the feasibility of implementing the "relocation plan".

(i) The Joint Use Administration shall provide the staff, supplies, and equipment necessary for the preparation of the reports of the Committee and the meetings of the Committee.

(j) The Department of the Interior shall provide for the publication of the reports required of the Committee including any separate views of the respective members. The respective Federal agencies which are not members of the Committee shall bear the expenses of the preparation and publication of the reports required of them.

(k) The Committee shall cease to exist when the Commission has expired.

SEC. 7. (a)(1) Notwithstanding the provisions of the Act of December 22, 1974 (88 Stat. 1712), in any case in which a Navajo or Hopi individual believes that he or she can qualify as an eligible applicant (as defined by subsection (e)(1) of this section), such individual is authorized, within the forty-eight-month period following the effective date of the relocation plan pursuant to the Act of December 22, 1974, to file an application with the Navajo and Hopi Indian Relocation Commission requesting that he or she be granted a life estate in lands in accordance with this section. Such application shall be submitted in such manner, and contain such information, as the Commission shall prescribe.

(2) If the Commission determines, on the basis of such application, timely filed, that the applicant is an eligible applicant, the Commission shall make available to such applicant a limited tenure, of such land as the Commission determines necesary, in order to avoid the necessity of relocating such applicant, and his or her spouse and dependents, if residing with such applicant. Such tenure shall consist of the right of use and occupancy of such land, including a grazing area of such size as the Commission determines necessary in order to enable such applicant to raise livestock in such numbers as are necessary to meet subsistence level for such applicant, his or her spouse, and dependents residing with such applicant, for a term ending at the death of the applicant or the death of the spouse of the applicant, whichever last occurs. Nothing in this Act shall preclude such applicant from making improvements within the area covered by such tenure. Nothing in this section shall be construed as prohibiting any such applicant who receives a life estate under this section from relinquishing, prior to its termination, such estate at any time and voluntarily relocating. Upon relinquishing such estate, by such means or instrument as the Secretary of the Interior shall prescribe, such applicant shall be entitled to relocation benefits from the Secretary of the Interior comparable to those provided by subsections (b), (c), and (d) of section 15 of such Act of December 22, 1974.

(b) The Secretary of the Interior is authorized to receive, consider, and pay any claim received by it from the Navajo Tribe, or Hopi Tribe, for compensation for any losses or other expenses incurred by such tribe by reason of such life estates conferred pursuant to this section. Such claim shall be submitted at such time, in such manner, and contain such information, as the Secretary of the Interior may prescribe. Any payment made pursuant to a claim filed under this subsection shall be in lieu of rental payments under section 16 of the Act of December 22, 1974, with respect to lands covered by such claim.

(c) Notwithstanding any other provision of law, the Secretary of the Interior shall compensate the head of each household, who receives a life tenure of land under an applicaton submitted pursuant to this section, for the fair market value of the habitation and other improvements owned by such head of a household within the area from which he, but for such tenure, was required to relocate. Such compensation shall be paid to the estate of such head and shall be based on the fair market value of such habitation and improvements as of the time of the expiration of such tenure, and, except as hereinafter provided, shall not be payable until such time. Any such compensation or assistance owing to the estate of any such head shall be paid and distributed in accordance with the last will and testament of such head, or in the event no such valid will and testament is left, such compensation shall be paid and distributed to his heirs in accordance with the laws of the tribe of which such head is a member. Notwithstanding the foregoing provisions of this subsection, in any case in which any such compensation would be payable to the estate of any such applicant, such compensation shall, in the event such applicant relinquishes such life estate prior to its termination in accordance with subsection (a)(3) of this section, be payable to such applicant at the time of the relinquishment of such life estate. Such payment shall be in lieu of any other payment pursuant to subsection (a) of section 15 of the Act of December 22, 1974.

(d)(1) Any such eligible applicant, and his or her spouse and dependents so living on the Navajo Reservation shall be subject to the jurisdiction of the Navajo Tribe and any such eligible applicant and his or her spouse and dependents so living on the Hopi Reservation shall be subject to the jurisdiction of the Hopi Tribe, except that the land laws of the Navajo Tribe shall not be applicable to any tenure granted to a member of the Hopi Tribe, and the land laws of the Hopi Tribe shall not be applicable to any tenure granted to a member of the Navajo Tribe.

(2) Within ninety days following the date of the enactment of this subsection, the Secretary shall promulgate such regulations as may be necessary to assure that in the case of a life estate granted pursuant to this section, no person may reside on the land covered by such life estate other than the applicant, his or her spouse, and the applicant's dependents, except that such regulations may provide that in case of illness or disability persons necessary to attend upon and care for such applicant, spouse, or dependent may reside on such lands during such illness or disability. Such regulations shall further provide for the right of all residents and visitors to the lands covered by such life estate to have access thereto by use of all established roads or ways leading thereto.

(3) The Secretary of the Interior is authorized to take such action as may be necessary in order to assure the protection, until relocated, of the rights and property of individuals subject to relocation pursuant to the Act of December 22, 1974, or any judgment of partition pursuant thereto, including any individual authorized to reside on land covered by a life estate conferred pursuant to this section.

(4) With respect to any individual referred to in paragraph (3) of this subsection, the Secretary shall take such action as may be necessary to assure that such individuals are not deprived of benefits or services by reason of their status as an individual subject to relocation.

(e) As used in this section, the term—

(1) "eligible applicant" means, with respect to a Navajo or Hopi individual, an individual—

(A) who on December 22, 1974, maintained a place of abode in an area from which such applicant, but for this section, would be required to relocate, and who, but for this section would be relocated in an area other than an area comprising a part of the reservation of which such individual is a member or an area made a part of any such reservation by reason of a final judgment of partition or the Act of December 22, 1974; and

(B) who on or before the date of application for a life estate, was at least forty years of age; and

(C) with respect to whom the Commission determines, if required to relocate, would most likely be unable to earn a livelihood by reason of age, mental or physical dis-

ability, inability to adequately speak the English language, lack of education or skill, or otherwise;

(2) "Commission" means the Navajo and Hopi Relocation Commission;

(3) "dependent" shall have the same meaning as that provided by section 152 of the Internal Revenue Code of 1954.

(f) Notwithstanding any other provision of this section, any applicant who meets the requirements of clause (C) of subsection (e)(1) by reason of his or her mental or physical disability shall not be required to meet the requirements of clause (B) of subsection (e)(1).

(g) The Secretary of the Interior is authorized to make available to applicants receiving a life tenure under this section such assistance, during that tenure, as may be necessary to enable such applicant to feed and maintain that applicant's livestock.

(h) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 8. (a) The Commission is authorized to purchase, with appropriated funds, such lands, not to exceed twenty-five thousand acres, in the aggregate, as the Commission determines necessary to enable it to relocate members of the Navajo Tribe pursuant to the Act of December 22, 1974. Title to such lands so acquired by the Commission, if contiguous or adjacent to the Navajo Reservation, shall be taken by the United States in trust for the benefit of the Navajo Tribe. With respect to such lands so acquired which are not so contiguous or adjacent to such reservation, the Commission is authorized to transfer title to such lands to the head of a household and his or her spouse so relocated thereon.

(b) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 9. Effective December 22, 1974, paragraph (4) of section 5(a) of the Act of December 22, 1974, is repealed.

SEC. 10. Notwithstanding any other provision of law to the contrary, the Commission shall on a preferential basis provide relocation assistance and relocation housing under subsections (b), (c), and (d) of section 15 of the Act of December 22, 1974, to the head of each household of members of the Navajo Tribe who were evicted from district 6 of the Hopi Indian Reservation as a consequence of the survey conducted by the Department of the Interior in 1972: *Provided*, That such heads of households have not already received equivalent assistance from Federal agencies.

Amend the title so as to read: "An Act to amend the Act of December 22, 1974 (88 Stat. 1712) relating to the Navajo and Hopi Indian Relocation Commission.".

The Clerk read the House amendment to the Senate amendments, as follows:

In lieu of the Senate amendment to H.R. 11092, insert the following:

"That this Act may be cited as the "Navajo and Hopi Indian Relocation Commission Amendments of 1978".

SEC. 2. Section 12(b) of the Act of December 22, 1974 (88 Stat. 1712, 1716), is amended by inserting before the period at the end of the sentence the following: ": *Provided*, That effective March 1, 1979, no person who is serving in an elected Federal, State, or local public office shall be eligible to serve or continue to serve as a member of the Commission".

SEC. 3. The first sentence of section 12(e) of the Act of December 22, 1974 (88 Stat. 1712, 1717) is amended by inserting before the period at the end thereof the following: ": *Provided*, That effective November 1, 1978, no such member shall be paid more than $28,000 during any fiscal year".

SEC. 4. Section 13(c)(5) is amended to read as follows:

"(5) take effect ninety days (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) after the date of submission to the Congress pursuant to subsection (a) of this section, unless during such ninety-day period one House of the Congress adopts a resolution disapproving such plan: *Provided, however*, That the Commission is authorized and directed to proceed with voluntary relocation as promptly as practicable following its first meeting.".

SEC. 5. Section 25(a)(5) of the Act of December 22, 1974 (1712, 1723) is amended by striking out "$500,000" and inserting in lieu thereof "$1,000,000"."

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the House amendment to the Senate amendments.

The SPEAKER. Is there objection to the request of the gentleman from Arizona to dispense with further reading?

There was no objection.

The SPEAKER. Is there objection to the first request of the gentleman from Arizona?

There was no objection.

A motion to reconsider was laid on the table.

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the House concur in the Senate amendment to the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

PERMITTING STATE OF HAWAII TO USE PROCEEDS FROM SALE, LEASE, OR OTHER DISPOSITION OF CERTAIN REAL PROPERTY FOR ANY PUBLIC PURPOSE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of the Senate bill (S. 1318) to permit the State of Hawaii to use the proceeds from the sale, lease, or other disposition of certain real property for any public purpose, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1318

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 4(a) of the Act entitled "An Act to provide for the transfer of title to certain land at Sand Island, Territory of Hawaii, to the Territory of Hawaii, and for other purposes', approved August 25, 1958, the State of Hawaii may use for any public purpose the revenue or proceeds from the sale, lease, or other disposition of the lands held by it under a transfer made by Executive Order Numbered 10833 under such Act on August 25, 1959. Such sale, lease, or other disposition shall comply with the laws of the State of Hawaii relating to public lands.

● Mr. AKAKA Mr. Speaker, one of the most pressing problems confronting the State of Hawaii is a shortage of industrial land on Oahu, the State's most populous island. An ideal location for the expansion of industrial activity within the city of Honolulu is Sand Island, which forms the protective seaward perimeter of Honolulu Harbor. Because of Sand Island's proximity to the State's business and industrial centers, the land is greatly needed for the continued development of the State's transportation and commerce.

However, an oversight in the applicable Federal statutes effectively prevents the State of Hawaii from selling, leasing, or developing 202 acres of State-owned land on Sand Island for these much-needed purposes. The acreage, formerly part of the Sand Island Military Reservation, was transferred to the then-Territory of Hawaii under Executive Order No. 10837 in August 1959. The order was issued in accordance with the provisions of Public Law 85–756, signed by former President Eisenhower a year earlier.

A key provision in that legislation transferring title to Hawaii, specified that the proceeds from the sale, lease, or other disposition of the 202 acres were to be used solely for the support of the University of Hawaii. The stipulation, included in the bill enacted 1 year prior to Hawaii's entrance into the Union, was intended as a means of providing the university with essential funds.

Since the passage of the authorizing legislation and the subsequent Executive order, Hawaii has become a State, and the University of Hawaii is now funded directly from the State's general fund. However, the outdated restriction on the use of the 202 acres of Sand Island has not been lifted. Therefore, while within the purview of the State's right to allocate its resources as it sees fit, further legislation is needed to end the present restrictions which the 1958 law place on the use of this land.

Mr. Speaker, S. 1318 is straightforward. It simply seeks to remedy an oversight in Federal law which is a remnant of Hawaii's relatively recent prestatehood past. It was passed last October by the Senate, under unanimous consent. I would ask that we do the same today.●

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

PROVIDING FOR CORRECTION ON ENGROSSED COPY OF HOUSE AMENDMENT TO S. 491, FORT UNION TRADING POST NATIONAL HISTORIC SITE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the engrossed copy of the House amendment to Senate bill (S. 491) to authorize establishment of the Fort Union Trading Post National His-

toric Site, North Dakota and Montana, and for other purposes", approved June 20, 1966 (80 Stat. 211), and for other purposes, be corrected as follows:

Section 501(c)(3) delete "the dwelling is situated, the said land being in the same" and insert "'dwelling'), together with so much of the land on which".

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I reserve the right to object only to ask the chairman why he is making this request.

Mr. UDALL. Mr. Speaker, if the gentleman will yield, this just simply corrects a printing error. The portion that is to be deleted was repeated twice when it was prepared, and the amendment to be inserted was omitted. They are technical amendments purely and simply.

Mr. LAGOMARSINO. I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

CONFERENCE REPORT ON H.R. 10587, PUBLIC RANGE LANDS IMPROVEMENT ACT OF 1978

Mr. UDALL. Mr. Speaker, I call up the conference report on the bill (H.R. 10587) to improve the range conditions of the public grazing lands.

The Clerk read the title of the bill.

The SPEAKER. Pursuant to the rule the conference report is considered as read.

(For conference report and statement, see proceedings of the House of October 6, 1978.)

The SPEAKER. The gentleman from Arizona (Mr. UDALL) is recognized for 30 minutes.

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

I urge my colleagues' support today of the conference report on H.R. 10587, the Public Range Lands Improvement Act of 1978. The conference report is virtually the same H.R. 10587 which passed the House by unanimous voice vote on June 29. The only conference issue involved the wild horse and burro section of the House-passed bill, which has been revised by the conferees to meet many of the concerns of horse protective associations and humane societies. A list of these concessions is attached to my statement, and I should note that these concessions were made despite letters from several major environmental groups requesting passage of the House language. Copies of those letters are also attached to my statement.

My colleagues, H.R. 10587 is landmark legislation that will go a long way toward improving the unsatisfactory range conditions which prevail on some 170 million acres of public range lands. I urge that we approve the conference report, and reconfirm the overwhelming support which the measure received from the House on June 29.

CONCESSIONS MADE TO WILD HORSE AND BURRO GROUPS

The following changes in the House-passed language on H.R. 10587 have been offered by the House in an effort to placate wild horse and burro protection interests:

First. A limit of four animals per individual per year was placed on adoption programs. The language agreed to is "verbatim" as requested by wild horse and burro groups.

Second. A limit of four animals per individual per year was placed on the transfer of title provisions. This was also requested by horse and burro groups.

Third. The Secretary's authority to contract with animal protective organizations such as humane societies for the purpose of screening applicants for adoption and conducting followup inspections after adoption was deleted as requested by horse protection groups.

Fourth. A research study to further knowledge of horse and borro population dynamics was mandated. This study will be guided by the recommendations of a "research design panel" composed of individuals recommended by the National Academy of Sciences, including representatives of horse protective groups.

Fifth. In conducting inventories of wild horse and burro populations, and in determining whether an overpopulation exists, the Secretaries are mandated to consult with individuals independent of Federal and State government whom the National Academy of Sciences recommends as having scientific expertise or special knowledge of wild horse and burro problems.

These concessions from the House bill are proposed despite letters from the National Wildlife Federation, the wilderness Society, National Audubon Society, Wildlife Management Institute, and the Sierra Club urging the conferees to support the House provisions.

NATIONAL AUDUBON SOCIETY,
Washington, D.C., October 2, 1978.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: The National Audubon Society, although not in favor of the grazing fee formula (see attached letter dated September 7, 1978), does support the intent of Section 7—Wild and Free Roaming Horses and Burros—of S. 2475. In order to maintain the natural ecological balance of the range community, it is essential that the numbers of horses and burros be brought, in the most humane and biologically sound manner possible, into balance with the carrying capacity of the range. If this is not done, the endemic species of wildlife, such as the desert big horn sheep, will suffer and could become endangered.

Therefore, we urge you to adopt a *strengthened* version of Section 7 during Conference with the House.

Thank you for your assistance in this important conservation matter.

Sincerely,

MICHAEL D. ZAGATA, Ph. D.,
Director of Federal Relations.

WILDLIFE MANAGEMENT INSTITUTE,
Washington, D.C., October 2, 1978.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: We understand that the Energy and Natural Resources Committee has dropped the section from H.R. 10587 that would permit a more reasonable and scientific approach to managing feral horses and burros. It concerns us that the Committee may have been swayed by emotional reactions that prevail in 1971 when the Wild Horse and Burro Act was adopted. We urge that this serious problem be addressed directly, as has been done by the House.

Excessive feral horses and burros on public lands are causing problems for certain native wildlife in certain areas. That is documented in a variety of authoritative reports from wildlife agencies in western states. It is necessary that public land agencies have the authority and direction to control all uses of public lands so as to assure perpetuation of the lands' many resource values. Those agencies are bound now by the strict language of the Wild Horse and Burro Act. That should be changed so that land managers can get about their business of balancing land uses, including protection for feral horses and burros. During the Committee's hearing, Senator Hansen, I believe, sagely observed that the Act presently makes it socially and politically impossible for an agency to take required action to balance, as necessary, the number of feral horses and burros with range capability.

We hope that the Senate will see fit to adopt the House language in H.R. 10587 with respect to feral horses and burros.

Finally, we again would like to register strong opposition to the grazing fee formula in H.R. 10587. That formula would guarantee permittees subsidized grazing privileges, which the vast majority of this nation's livestock producers do not have. In our opinion, it would encourage overgrazing which the bill proposes to rectify.

We hope the Senate will approve instead the fee formula proposed by the Administration so that the public will receive some semblance of fair market value for its forage. Overgrazing must not be encouraged.

Sincerely,

DANIEL A. POOLE,
President.

SEPTEMBER 29, 1978.

Hon. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: The Wilderness Society and the American Forestry Association are concerned because S2475 as reported by the Senate Energy and Natural Resources Committee does not address the issue of wild horse and burro management on the public lands—a major range management problem in many areas of the west.

While we fully understand the difficulties associated with this very controversial subject, we also believe that neither the range, the native wildlife species, nor the wild horses and burros will benefit from further delaying a solution.

The administration, in its suggested amendments to S2475, has offered language which we feel would provide a balanced and

humane maintenance program for our wild horse and burro population. If the Senate passes a Public Rangeland Improvement Act this session, it is imperative that the Act contain a provision similar to this regarding wild horse and burro management.

We urge you to actively support the inclusion of a wild horse and burro section for S2475 when it comes before the Senate.

Respectfully,

WILLIAM E. TOWELL,
Executive Vice President, American Forestry Association.
CELIA M. HUNTER,
Executive Director, The Wilderness Society.

SIERRA CLUB,
Santa Fe, N. Mex., September 29, 1978.

Hon. HENRY JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: The Sierra Club has long sought to have damaging uses of public lands brought under management and control. Accordingly, we have supported measures to mitigate and prevent damage to the public rangelands by recreation seekers, ORV users, livestock operators, and others. It is with considerable apprehension, therefore, that we view the elimination of the wild horse and burro management provisions from HR 10587, the Public Rangeland Improvement Act of 1978.

It is our conviction that wild horses and burros are rightful occupants of portions of the public ranges, and that it is the inescapable responsibility of the public land agencies to manage their number and location. It is equally inescapable that this is not currently being done and that serious and increasing damage is occuring on the public lands.

We urge you to either restore the language regarding wild horses and burros, or seek an amendment which will clearly direct the land managing agencies to protect the lands from the effects of wild horse and burro overpopulations. We certainly do not oppose an approach which will provide for biological research and for an improved census, but some interim authority to deal with present problems is essential.

Thank you for your concern.

Sincerely yours,

BRANT CALKIN,
Southwest Representatives.

NATIONAL WILDLIFE FEDERATION,
Washington, D.C., September 28, 1978.

Hon. HENRY M. JACKSON,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR JACKSON: The National Wildlife Federation is hopeful that members of the Senate Committee on Energy and Natural Resources will act to rectify at least one disappointment in the rangelands bill.

In our opinion, as reported by your Committee, it has only one good major feature: the range rehabilitation provisions. We were terribly disappointed when the section on wild horses and burros was dropped, and the primary purpose of this letter is to urge that it be restored. As we testified earlier, our organization is in complete sympathy with humane treatment of these animals and will fight for it. However, their number must be kept in check through humane removal of surplus animals. Deer, antelope, elk, and other big mammals and livestock are removed. Why not horses and burros? The present Act is unworkable and major damage to rangelands and native wildlife is resulting.

We still believe the Committee also acted unwisely with respect to grazing fees and shall recommend that the President veto the bill. Without an effective wild horses and burros section, it is totally unpalatable.

Sincerely,

THOMAS L. KIMBALL,
Executive Vice President.

Mr. JOHNSON of Colorado. Mr. Speaker, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Colorado.

Mr. JOHNSON of Colorado. Mr. Speaker, I thank the gentleman for yielding. As the gentleman from Arizona (Mr. UDALL) has pointed out, there was little or no controversy when the bill passed. The amendments that were tacked on as a result of the action of the Senate I do not believe particularly enhanced the bill or made it better, but neither do they bend the ultimate direction of the bill. So, Mr. Speaker, I urge all of my colleagues on this side of the aisle to adopt the conference report, because it is desperately needed.

Mr. UDALL. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING CLERK OF THE HOUSE TO MAKE CORRECTIONS IN ENROLLMENT OF H.R. 10587, PUBLIC RANGE LANDS IMPROVEMENT ACT OF 1978

Mr. UDALL. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 740) relating to the conference report on H.R. 10587, Public Range Lands Improvement Act of 1978, just agreed to, and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill H.R. 10587, the Clerk of the House of Representatives be authorized to make the following corrections:

(1) In section 14 (a), change the paragraph designated "(b)(3)" to "'(3)".

(2) In section 14, change the paragraph beginning "SEC. 14(b)" to "(b)" and insert quotation marks after the period of the immediately preceding paragraph ending with the word "products".

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I have one final request. I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bills, H.R. 11092, S. 1318, and S. 491, the three bills we considered earlier.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

REMARKS OF CONGRESSMAN CHARLES E. BENNETT HONORING CONGRESSMAN ROBERT L. F. SIKES

The SPEAKER. Under a previous order of the House, the gentleman from Florida (Mr. BENNETT) is recognized for 30 minutes.

Mr. BENNETT. Mr. Speaker, I and the other Members of Congress rise today to pay tribute to Congressman ROBERT L. F. SIKES of Crestview, Fla., who is concluding his long and distinguished service at the end of this session of Congress. Congressman SIKES is a 1927 graduate of the University of Georgia and received a master of science degree from the University of Florida in 1929. He also received honorary degrees from Stetson University, St. Leo College, University of West Florida, University of Inca, and others. He is major general of the Army, retired, and was awarded the Legion of Merit. He is married to the former Inez Tyner and they have two children, Mrs. Bobbye S. Wicke and Robert K. Sikes. He served in the Florida Legislature from Okaloosa County and was elected to Congress in 1940 and has been reelected ever since, having served for the longest period of time of any Member of Congress from the State of Florida in its entire history. He is dean and chairman of the Florida delegation in Congress and has been for many years.

His accomplishments are so numerous and his awards so outstanding that time does not permit me to name them, however, in conclusion, I would like to say that I know of no one in Congress that has ever done more for the national defense of our country than he; and his accomplishments in wildlife conservation and many other fields are truly outstanding in bills introduced and passed and positions taken for the betterment of mankind. We will all certainly and sincerely miss him in the Halls of Congress.

● Mr. FLYNT. Mr. Speaker, the adjournment of the 95th Congress will mark the end of the distinguished congressional career of the dean of the Florida delegation, the Honorable ROBERT L. F. SIKES. I am pleased to have this opportunity to join with my colleagues today in paying tribute to my good friend BOB SIKES, congratulating him for his distinguished record of public service and expressing my warmest best wishes for a well deserved retirement.

For the past 38 years, through 18 successive elections and with the record for longevity of service in the Congress from the State of Florida, BOB SIKES has served the people of his district, the State of Florida and our Nation with dedication and leadership. The results of his individual efforts in behalf of our citizenry through his representation in Congress can never be measured nor replaced.

I feel a special bond and closeness with BOB SIKES because of our native Georgia backgrounds. In fact, his uncle and my father served together in the Georgia State legislature.

Since 1954, when I began my congressional career, BOB SIKES has been a source of inspiration and leadership to me. Through our service together on the House Appropriations Committee and especially the Defense Subcommittee, I have had the closest of opportunities to observe the strong and dedicated position that BOB SIKES holds for the continued strength and defense of our Nation and his every effort to assure that our defense posture remains second to no other. His chairmanship of the Military Construction Subcommittee from January 1965 through January 1977 further demonstrated his capable leadership and loyalty to this Nation. We have always shared a closeness in our belief in the necessity of the strongest and most capable military strength and I shall always cherish the opportunity that I have had to work with BOB SIKES in this area.

The retirement of BOB SIKES will leave a void in this body which cannot be replaced. I shall greatly miss serving with him in the Congress but our friendship shall continue as long as we both live.●

● Mr. DE LA GARZA. Mr. Speaker, today has been chosen by the House as the occasion to pay tribute to the retiring Member from the First District of Florida, my good friend and colleague BOB SIKES.

It is hard to think of Congress without thinking of BOB SIKES. A Member since 1941, BOB has served his constituents for 17 terms. This is an admirable record, and it puts a neophyte like me—with only seven terms of service—in my place.

BOB has long been a productive member of the Committee on Appropriations, and his judgment and vision have helped the committee in its deliberations.

Now this distinguished Member is leaving us for the warmer climes of his homeland—but I know his memory will linger for many years to come.●

● Mr. YOUNG of Florida. Mr. Speaker, it is a great privilege for me to join in this special order honoring, my good friend and colleague, Congressman BOB SIKES, who will be retiring from the House of Representatives at the conclusion of the 95th Congress. BOB was first elected to the House in 1940 and has served in this body since the 77th Congress. He is currently serving his 19th term and this enables him to hold the record for longevity in Congress for the great State of Florida.

Since I first came to Congress in 1971, BOB has been a source of information and inspiration in our work to help the State delegation work together for the benefit of the citizens of Florida. Serving as the dean of the State delegation, BOB has given us the leadership and guidance to do the best job that we can for our constituents. All of us who have worked with him will certainly miss his service in this important position.

I have worked with BOB not only in the House Chamber and in our delegation work, but also as a fellow member of the House Appropriations Committee. We have worked together in an effort to save the American taxpayers dollars from being wasted. The citizens of the first district are losing an experienced legislator, the delegation is losing a leader and I am losing a colleague who offered me advice and the benefit of his years on the committee. I wish him the best as he continues his work and private life back in Florida.●

● Mr. DERWINSKI. Mr. Speaker, as the adjournment of the 95th Congress draws near, I would like to join in paying tribute to one of our distinguished colleagues, ROBERT L. SIKES, who will be leaving the House after 38 years of dedicated and capable service.

Having served in the House of Representatives for more consecutive terms than any individual from the State of Florida, BOB SIKES has effectively represented the people of the First District of Florida, and has played a major role in the consideration and passage of defense legislation.

BOB SIKES possesses a true awareness of the problems confronting the Congress and our country, and he has played a major role in the shaping of legislation during his service. His efforts and achievements on the Appropriations Committee are of special significance.

Mrs. Derwinski joins me in wishing Bob and Inez, many happy years in retirement.●

● Mr. IRELAND. Mr. Speaker, as you know, our good friend and colleague, BOB SIKES, has decided to retire after 38 years of faithful and dedicated service to his Nation and to his State.

To many of us here, and to everyone in Florida, BOB SIKES is known as the "He-Coon." For those of you who are not familiar with the derivation of this term, a little explanation may be in order.

In north Florida, the "He-Coon" is the leader of a pack of raccoons. He is the strongest and the shrewdest of the group; the natural and undisputed leader. All of the others look to the "He-Coon" for protection and leadership.

Mr. Speaker, as you well know from your many years of service with BOB, there could be no more appropriate title for BOB SIKES than "He-Coon."

During his 38 years of service in Congress, the people of the First Congressional District of Florida, indeed all of Florida, looked to BOB SIKES for leadership and direction. And he never failed them; he was always there when someone needed help.

BOB SIKES is a living legend in Florida and he cannot be replaced. His leadership and his courage have been tremendously beneficial to Florida and the Nation, and we all owe this remarkable man a debt of gratitude.

Mr. Speaker, I know that you join with me in bidding Bob and Inez Sikes farewell and Godspeed as they return to the First District of Florida and to the people and the land they love so much. We shall never forget BOB SIKES, the "He-Coon."

Thank you Mr. Speaker.●

● Mr. ZABLOCKI. Mr. Speaker, as you know, the adjournment of the 95th Congress brings the retirement of a number of our colleagues who have decided not to seek reelection to the House of Representatives.

Representative ROBERT L. F. SIKES has served with us for 38 years. He presently holds the record for longevity of service in Congress from the State of Florida.

Born and educated in Worth County, Ga., BOB SIKES moved to Florida as a young graduate student. After earning a master's degree from the University of Florida in 1929, he became politically active in Okaloosa County, Fla. In 1937 and 1939 he was elected to the Florida State Legislature.

Subsequently, Representative SIKES was elected to the 77th Congress in 1940. His constituents in Florida have indicated trust and support in Representative SIKES by reelecting him to every Congress since that time. He is leaving many friends who will miss him.

Mr. Speaker, I am happy to join with our colleagues in extending best wishes to BOB SIKES for a pleasant retirement from Congress and wish him success in future endeavors.●

GENERAL LEAVE

Mr. BENNETT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the subject of my special order today honoring Congressman ROBERT L. F. SIKES, who is retiring as a Member of Congress.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

THE NECESSITY OF THE SCHOOL BREAKFAST EXPANSION REQUIREMENT

The SPEAKER. Under a previous order of the House, the gentleman from Connecticut (Mr. MCKINNEY) is recognized for 5 minutes.

Mr. MCKINNEY. Mr. Speaker, the child nutrition bill prepared by the Education and Labor Committee is a worthwhile and important piece of legislation that merits adoption by this body, and I am pleased to voice my support for it.

H.R. 12511 brings about a much needed expansion of the school breakfast program. Nutritionists agree that breakfast is the most important meal of the day and this is verified by numerous reports, beginning with the Iowa breakfast study, which demonstrate a close relationship between morning nutrition and scholastic achievement, attentiveness, and in-school deportment.

Despite the overwhelming evidence linking nutrition and academic performance, only 20 percent of needy children in this country are served school breakfasts. In my own State of Connecticut, less than 2 percent of the students receiving reduced-price and free lunches are also provided breakfasts. I believe these statistics dramatically underscore the need for a school breakfast program expansion.

Much of the reluctance of local officials to implement the breakfast program stems from the anticipation of in-

curring new costs. The committee bill should assuage this fear through its provision of funding for new equipment expenses to schools seeking to implement the breakfast program for the first time as well as permitting schools to blend their Federal lunch and breakfast reimbursements, thereby potentially offering additional reimbursements for one program from subsidies from the other. Additionally, those schools required to make breakfasts available by either Federal or State mandate would be eligible for "especially needy" status entitling them to an extra 10 cent reimbursement per pupil per day.

Despite these incentives, the new bill promises to cost no more and perhaps less than current programs because it eliminates several outdated and unnecessary sections at a savings of $50 to $60 million yearly, while new outlays are estimated at between $35 and $60 million.

Finally, I believe that the school breakfast program expansion requirement is necessary to achieve the goals of the 1975 Nutrition Act—Public Law 94-105—which called for the availability of the school breakfast program, "in all schools where it is needed to provide adequate nutrition for children in attendance." We must realize that the expansion requirement does not dictate educational policy to local school systems. Instead, it follows the precedent set in 1975 when we required the provision of reduced-price lunches in school lunch programs as part of our child nutrition policy.

We recently authorized over $10 billion per year for aid to elementary and secondary schools. If children are too hungry to listen and learn, I am sure you would agree that the wisdom of that substantial investment would be undermined. I urge you to join me in supporting the recommendation of the Education and Labor Committee.●

OUR $7 TRILLION ACTUAL NATIONAL DEBT

The SPEAKER. Under a previous order of the House, the gentleman from Texas (Mr. COLLINS) is recognized for 10 minutes.

Mr. COLLINS of Texas. Mr. Speaker, during the past few years the American people have grown increasingly apprehensive about the financial statements of their Federal Government. Amazingly, no single central accounting system covering all Federal agencies now exists.

There are some figures compiled by the U.S. Treasury Department which provide us with a disturbing idea of the total actual debt of our Federal Government, which is over $7 trillion. This raises a fundamental question—how much longer can Washington's liberal politicians ignore our $7 trillion actual national debt?

Like most other Americans, I have long thought the "national debt" was the red ink side of the ledger for the Federal budget each fiscal year. Officially listed at $849 billion, this "national debt" consumes $128 million every day of the year just for payment on its interest. More than 50 percent of the available private lending funds are absorbed by Washington, D.C., to finance this immense and growing Government obligation.

While $849 billion is an incredibly large amount of money, it is only the veritable tip of the Federal fiscal debt iceberg and equals less than one-seventh of our actual national debt. This actual national debt—the total amount citizens of America are obligated to as a result of all of Washington's spending—is approximately $7 trillion, $428 billion, according to calculations based on the latest available figures from the U.S. Treasury's Bureau of Government Financial Operations.

We should all think about that figure for a moment. Think about a debt to which Congress has obligated our citizens of $7,428 billion. Think about what our constituents will say when they realize that figure amounts to nearly $100,000 for every man, woman, and child in America.

This amazing debt encompasses the following figures included in and updated from the "Statement of Liabilities and Other Financial Commitments of the United States Government as of September 30, 1977," published by the Bureau of Government Financial Operations in the U.S. Treasury Department. I have updated these 1977 figures, the latest available official statistics, as indicated in the chart below:

Actual national debt—Total estimated debt (actual and contingent)

[In millions]

Category	
Public debt	[1] $849,000
Accounts payable	[2] 88,000
Undelivered orders	[2] 364,000
Long-term contracts	[3] 15,000
Loan and credit guarantees	[4] 42,000
Insurance commitments	[5] 170,000
Annuity programs (actuarial deficiencies in reserves):	
Social security:	
Old Age and Survivors Trust Fund	3,496,000
Disability Insurance Trust Fund	1,292,000
Hospital Insurance Trust Fund	241,000
Military Retirement	175,085
Foreign Service (State Department)	1,611
Civil Service Retirement	116,000
Railroad Retirement System	9,253
All others	512,732
Annuity deficiencies total	5,900,000
	7,428,000

[1] As authorized by 95th Congress, Second Session.

[2] 1977 Treasury figures plus 10 percent to account for estimated growth during unaccounted period.

[3] 1977 Treasury figures without additional 10 percent.

[4] Based on figures included in 1977 Treasury statement, total federal loan and credit guarantees are $210 billion. For purposes of this statement, this obligation is projected at 20 percent of the Treasury total.

[5] Based on figures included in 1977 Treasury statement, total federal insurance commitments are $1.7 trillion. For purposes of this statement, this obligation is projected at 10 percent of the Treasury total.

THE CONTINUING TRAGEDY OF OCCUPATIONAL HAZARDS AND DISEASE

The SPEAKER. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, during the month of June, the Chicago Sun-Times printed a series of articles on the tragedy of workers, millions across the country, who put their faith in the occupational safety codes of their employers and those of the Federal and State Governments, only to find that they have been struck with some incurable disease or disability as a result of their faithful service. Two articles in that series follow:

[From the Chicago Sun-Times, June 20, 1978]

THE WORKING WOUNDED

(By Michael Flannery)

A black shroud of smoke swept across the walkway and engulfed me, swirling soot into my eyes and nostrils.

In a furious whoosh of poison gases and cinders, 10-foot tongues of flame erupted from charging holes near where I stood on top of the huge coke-oven batteries at Interlake Inc., 11236 S. Torrence.

The heat from the ovens was so intense that a scrap of paper I dropped turned brown and crinkled at my feet.

Sam W. Howell, 30, of 10510 S. Avenue G, a one-time Interlake coke-oven lidman, was not exaggerating when he said:

"It's so hot up there that if you leave a broom lying around too long, the bristles will start on fire. My safety shoes couldn't take it. The soles started to come apart on me."

Working on the ovens is the dirtiest job in the steel mills, and it may very well be the most hazardous. For me, it was an unnerving experience. I had slipped into Interlake's coke plant, posing as a workman for an outside contractor, to see up close how men and women do the dirtiest work in the steel industry.

They tend the superheated ovens that convert coal into coke, a residue of almost pure carbon. Coke is what goes into blast furnaces, along with iron ore, sinter and limestone, to produce the molten iron that is one step short of becoming steel, the fundamental metal of the modern world.

Unlike the men and women working beside me that day, I am not used to blowing from my nose soot-blackened lumps of mucous. And I am not used to grime that penetrates almost every crevice of the body.

The soot and grime that emerge from a coke oven contain dozens of known cancer-causing agents, including virulent benzo-(a)pyrene, chrysene, betanaphthylamine and 2-3-azotoluene.

What went into my handkerchief was a gruesome reminder of what I had inhaled, despite the leaky respirator I wore over my nose and mouth—a respirator issued by Interlake to its coke-oven employees.

The 18,000 U.S. coke-oven workers, not surprisingly, die of lung cancer at a rate of 2.5 times greater than that of other steelworkers, according to medical studies.

Kidney cancer kills them 7.5 times more frequently. Cancers of the prostate, large intestine, skin and pancreas are also contracted at abnormally high rates. Coke-oven workers are nearly twice as likely to die of chronic lung diseases such as emphysema.

I learned—almost too well—that long, lingering death inflicted by chronic disease is not the only way that coke ovens claim their victims.

I was walking through a passageway on the southeast side of Interlake's ovens when suddenly a shower of red-hot coke cinders poured down on me. As they rattled my hardhat and bounced sizzling and smoking on the ground around me, I dashed to safety.

Steelworker Margett A. Luter, 30, of 6838

S. Throop, had not been as lucky on the morning of July 8, 1977, I later learned.

After just three weeks on the job, she was given a shovel and told to clear fallen coke from the same passageway where I had my close encounter.

"We didn't have training or explanation about the ovens. They told us, 'Just be careful and look around.'

"All of a sudden, big hunks of coke fell down on me. It was just like a volcano eruption—molten, hot lava. It was smoking, and I can still smell the gas coming off it. I'll never forget it.

"I dropped the shovel and took a step, but it kept falling on me. My work suit—it's supposed to be flame retardant, but the more you wash it, the less retardant it is. Well, it caught on fire. I was getting burned pretty bad."

Ricardo Sumner, another laborer, ran to her aid. "Ric knocked me into a pool of water. He wouldn't have got hurt if he hadn't come back for me. He hollered, 'Roll, baby, roll!' "

She was in intensive care in the burn unit of Billings Hospital for eight days.

"When I came home, my own kids were scared of me. They wouldn't stay with me. They would always stay a little bit away, pushing things to me across the table and such.

"I was a sight to see. I looked like a person with leprosy on my face. I was all first-degree burns from the buttocks on down. My leg muscles were all burned and the doctor said I might always walk with a limp. I did that therapy every day till it hurt, till I cried from those exercises."

Interlake offered her some $2,400 to settle all claims for her pain, said Luter, who has returned to work in the coke plant, saying she is unable to top her $280 a week salary elsewhere.

"For what I went through I don't think Interlake could ever match the price of it. I don't even wear dresses or shorts or short-sleeved things any more. When I go to church, I wear long dresses and long sleeves. My body is messed up."

"I used to go to the 'Y' to swim all the time. I don't any more. I'm gonna carry these scars around with me until I die."

Interlake has recently begun to repair its 100 ovens. It will cost $24 million and take approximately two years. The massive effort marks the first major maintenance on them since the ovens were built in 1956. An additional $6.5 million will be spent on an emissions control system developed in West Germany.

Interlake is under intense government pressure to reduce by 1980 the smoke that billows out of the ovens and permeates the South Deering neighborhood.

Both the Environmental Protection Agency and the Occupational Safety and Health Administration, which last month fined Interlake more than $16,000 for 18 "serious" violations, have set schedules for abatement. If the deadlines are not met, Interlake risks fines totalling thousands of dollars a day.

OSHA, which has often been criticized for nitpicking impositions upon industry, cited Interlake for failing to provide workers with a lunchroom that had a filtered air supply, temperature controls and positive air pressure (so that the acrid pall outside will no longer flow in when a door is opened).

As I discovered, dining conditions are not a frivolous matter. Eating, drinking, chewing and smoking in the fumes of coke emissions is downright hazardous, according to OSHA. If carcinogenic grime settles on a sandwich, it will end up in the worker's stomach. If the worker takes a drag on his cigaret, he will inhale coke-oven poisons, too, setting up a sort of double-whammy effect that medical experts believe is particularly dangerous.

I found the lunchroom wedged between the two 50-oven batteries. It was furnished with dirty linoleum-covered tables and benches. Soot and coke dust covered everything and more kept wafting through the door as I sipped an orange drink.

It tasted vile, but then not even champagne would go down easy amidst the fumes of a coke-oven battery.

[From the Chicago Sun-Times, June 21, 1978]

THE WORKING WOUNDED—PART II

(By Michael Flannery)

There is still terror in Robert Stone's eyes as he describes how flames burst out of No. 43 oven at Interlake Inc.'s South Side coke plant and swallowed a co-worker.

"They were getting ready to empty the oven and they took them big, 14-foot doors off. But the coke wasn't cooked all the way and lots of black smoke poured out. The oxygen hit it and it ignited," said Stone, 29, of 4913 Hickory, Hammond.

"The flames just shot straight out and it set him completely on fire, burned all his clothes off him."

The victim, who spent six weeks in Billings Hospital, is now back working the same job—door cleaner—he held on the day of the accident last year. He has worked for eight years on the huge, 2,300-degree-hot ovens, which cook 3 million pounds of coal at a time into coke—an indispensable element in steelmaking. He asked that his name not be used.

"I held my breath to keep from inhaling the fire," said the man, who still walks with a limp as a result of the injuries. "It was all around me. I was burned on my bottom and on down both legs. Both my gloves caught fire and burned my wrists straight across."

"It affected my hands pretty bad. My right ring finger and my right index finger stay cold all the time. I can put them in a hot bath, and they feel just like it's zero weather. My left hand bothers me at night. I wake up and it feels so dead sometimes that I have to grab it and shake life into it."

The victim, whose daughter works as a laborer in the plant, added, "The doctors want to operate on my two hands, but I am afraid to let them. I am getting along as it is.

"I think my worst problem is that, since I got burned, I haven't been able to have sex. I got burned all around down there, in the front and back. I don't know what it did to me. The doctors say, 'It'll come around.' But it sure hasn't."

The Occupational Safety and Health Administration last month hit Interlake with a $16,290 fine for, among other things, exposing its workers to dangerously high levels of the cancer-causing emissions that pour from its ovens. Inspectors found levels as much as 15 times above the limit. Oak Brook-based Interlake, which has begun a two-year, $30.5-million repair of the ovens ($6.5 million of which is devoted to cutting emissions), declined a Sun-Times offer to comment on the specific issues raised in this story.

Medical studies have shown that workers at the nation's 65 coke-oven plants face an appalling risk of cancer—with malignancies of the lung, kidney, prostate, large intestine, pancreas and skin—far more frequent than among other steelworkers. They suffer disabling respiratory diseases such as emphysema at a higher rate.

Workers at Interlake complain, too, that there is a serious lack of elementary safety precautions. When something is done, they say, it is usually only a response to a serious worker injury. Only after the door cleaner was nearly burned to death, for example, was long-promised fire-retardant clothing provided to those on the ovens, workers said. OSHA safety inspectors are now conducting a wall-to-wall safety inspection of the plant.

William Velasquez is a "spellman" who replaces various workers when they go on break. He has seen a great deal of the coke plant, 11236 S. Torrence.

"If you say anything about safety, you can be fired," he said. "Your job is on the line. They are ripping and running to get the company its production."

Referring to the quench car, the vehicle that takes tons of superheated coke to a tower to be quenched cool with water, Velasquez said:

"They have been running the quench car without brakes since I got there three years ago. The company told me you could stop it by slamming it into reverse. What happens if the transmission fails? They say that is unlikely. I say that is taking chances with a man's life."

The same door cleaner who was burned so badly last year was involved in another serious accident in 1971—involving that time a vehicle used to transport limestone and other raw materials at Interlake's furnace plant, 10730 S. Burley. The vehicle had no brakes and only a flimsy wooden barricade at the end of the tracks to stop a runaway.

"The car was up on top of the high line," he said. "I was to drive it about three-quarters of a mile. But them people don't seem to put good brakes on nothing. I went right through the pieces of wood at the end of the track. I fell about 60 feet, broke three ribs and punched a hole in my left knee."

The victim, who received $2,170 from the company to settle claims arising from the 1971 accident, was out of work for three weeks at that time.

Attempting to minimize its lost workday count, which the Occupational Safety and Health Administration uses as one measure of a company's safety record, Interlake ordered the victim to report to the plant for "light duty" for another three weeks after that. "They had me sitting in the locker room for eight hours a day for three weeks," he said. "I could have nursed my wounds better off at home, but they sent me a letter saying that if I didn't report at such and such a time, I would be terminated."

James Balanoff, district director of 115,000 Chicago-area United Steelworkers Union members, charged that such methods of reducing the lost workday count are widely used in the industry.

Stone, who has witnessed four bad burn accidents in the three years he has worked in the plant and spoken to the victims of several others, was suspended for three days last month when he refused as unsafe an assignment to work on top of the ovens. Stone, who normally works as a locomotive switchman in the nearby coal handling department, was ordered with other workers to replace an oven work crew whose members had just been fired or suspended. United Steelworkers Local 1657 is grieving to get those firings reversed.

"I don't know anything about the ovens," Stone said. "I told them I would have to refuse to do the job because I could endanger my life or the lives of others. They gave me a three-day suspension for insubordination and job refusal. I could have worked in a higher job class and gotten higher pay, but I've seen too many guys burned up there."

One of those whom Stone was being ordered to replace was Sam W. Howell, 30, of 10516 S. Avenue G, a lidman atop the ovens who said he was fired for insubordination. The firing came during a recent spell of 90-degree weather, and Howell contended that the temperature atop the superheated ovens had become unbearable.

"The company offers salt tablets in the foreman's office if you want them," Howell said. "But they don't help the heat any. I was getting sick every day up there. I was vomiting till there was nothing left."

Howell also denounced the respirators that workers must wear to protect themselves

from coke-oven emissions that contain dozens of cancer-causing agents. "Trying to breathe with that face mask is like taking a pillow over your head and trying to breathe through that. It gets so hot and all, you have to pull it down to get some fresh air," he said, pausing to laugh at his description of the atmosphere around the perpetually smog-bound ovens.

"You can't help but get that black smoke and ash in your mouth. And when you blow your nose, all you get is soot," he said.

The inherent folly of relying upon respirators to protect workers who either won't or can't wear them has been illustrated repeatedly. The day a Sun-Times reporter visited the Interlake plant, a majority of workers were not using the respirators properly, and some not at all.

OSHA, which fined the company for failing to clean and regularly inspect its respirators, also cited Interlake for allowing exposed workers to unhook the devices. Considering the deep-seated disdain workers hold for respirators, it might require a corporate Gestapo to force their use.

The agency has repeatedly pressed for engineering controls that would cut health hazards like emissions and noise at the source, ending the need for such makeshift protections as face masks and ear plugs.

The door cleaner who was burned so badly is black, as are 90 per cent of the estimated 18,000 U.S. coke oven workers. Only 22 per cent of the work force in the basic steel industry as a whole is black.

Morris E. Davis, associate director of the Labor Occupational Health Program at the University of California at Berkeley, cited the coke-oven experience as a classic example of the way in which blacks have ended up doing industry's dirty work and of the damage it has inflicted on their physical well-being.

"Five out of every 10 black workers incur work-related injuries each year, a higher rate than for whites," Davis wrote in the publication Urban Health last August. The toll on the ovens is one factor contributing to that disturbing figure. Lured by the prospect of earning up to $20,000 with overtime—far more than they could draw elsewhere—they often pay little heed to health factors.

One who wished he had is A. J. Watson, 53, who worked on coke ovens for 27 years until emphysema forced him to retire last January. He is also convinced that racism was a factor behind his original assignment to the ovens when he joined Youngstown Sheet and Tube Co.'s East Chicago (Ind.) plant in 1951.

"When I hired in, I didn't have no choice—that is where they sent me. Nobody told me a thing about how dangerous it was—how I might wind up with emphysema or cancer or dead," Watson said.

"We should have been given some way to protect ourselves. It is only since all this talking about how them ovens been killing the men that anything's been done."●

AVAILABILITY OF COMMITTEE REPORT ON FREEDOM OF INFORMATION ACT

The SPEAKER. Under a previous order of the House, the gentleman from North Carolina (Mr. PREYER) is recognized for 5 minutes.

● Mr. PREYER. Mr. Speaker, I am pleased to be able to tell my colleagues about the enthusiastic public response to a recent committee report on the Freedom of Information Act. The report is entitled "Freedom of Information Act Requests for Business Data and Reverse-FOIA Lawsuits." It was prepared by the Subcommittee on Government Information and Individual Rights, which I chair, and approved by the Committee on Government Operations on July 19, 1978.

The report describes the current state of the law surrounding the fourth exemption of the Freedom of Information Act, which covers trade secrets and confidential business information. It also contains a review of agency procedures for processing requests for business data and makes several recommendations to improve and make more equitable the administration of the act. There is also a discussion of the legal and procedural problems surrounding reverse-FOIA lawsuits, which are actions brought to enjoin the Government from releasing certain information. This is an especially timely subject because Chrysler against Brown, the first reverse-FOIA lawsuit that the Supreme Court has agreed to hear, will be argued this fall.

Since the publication of the report, there has been a heavy public demand, and initial supplies were quickly exhausted. The printing of an additional 1,700 copies was authorized by the House on September 26, 1978, but all of the additional copies have been distributed.

Although the supplies of the full committee and the subcommittee are now gone, the report can be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The stock number is 052-071–00571–4 and the price is $2.

An earlier report entitled "A Citizens Guide on How to Use the Freedom of Information Act and the Privacy Act in Requesting Government Documents" is also available from the Superintendent of Documents. Its stock number is 052–071–00540–4, and its price is also $2.●

FRAUD INSIDE AND OUTSIDE GOVERNMENT

The SPEAKER. Under a previous order of the House, the gentleman from California (Mr. CORMAN) is recognized for 30 minutes.

● Mr. CORMAN. Mr. Speaker, in June of this year a news story about Mrs. Barbara Williams of Los Angeles, who was accused of fraudulently collecting approximately $300,000 through the welfare program for dependent children received considerable publicity. It was alleged that this mother of four children, by the use of eight aliases and faked drivers' licenses, birth certificates, and social security cards received welfare aid from 8 different offices for some 34 needy children.

Certainly Mrs. William's crime cannot be condoned, but the magnitude of it is rare in the history of welfare abuse. Fortunately, the fraud-detecting procedure at one of the Los Angeles County welfare offices was able to discover her crime. Mrs. Williams has been arraigned, and her trial is set for October 30, 1978. If convicted, she can be sentenced to a maximum term of 8 years in prison. In attendant proceedings, the court has prevented her from disposing of any of her property, both real and personal. Once convicted, every effort will be made to recoup the money she fraudulently collected from the welfare department.

The county of Los Angeles, which administers the welfare program for that area, has instituted innovative procedures in the past few years that have been extremely effective in detecting fraud and administrative error, making its welfare program one of the best in the Nation. These procedures which I will summarize are built around a computer system that verifies and matches information, both at the point of intake of a welfare application and whenever reapplication for welfare benefits is made. Some of the procedures are in full use; some partially in use; and some which I will not discuss, are still in developmental stages.

First. "Match" system for addresses. This is partially in effect now, and soon to be fully automated. It alerts a welfare office when more than one welfare check is going to the same address. It is through this "match" that Mrs. Williams' fraud was apprehended.

Second. "Match" system for recipient information. This is an automated system, soon to be put into use, that will match information on an application for welfare benefits submitted in one office with an application by the same person taken by another welfare office. The address given at the point of intake in any welfare office will be the identifying factor in the "feedback." The system will be an important preventive measure against fraud.

Third. Alert system to identify prior fraud. This system should be in effect before the end of this year. Its objective is to identify welfare recipients who have defrauded the program in the past and who try to reapply for benefits.

Fourth. Persons "match" system. This system is now in effect and identifies, through the computer, similar names and birth dates on applications at the point of intake. It is another effective alert for possible fraud and has had positive results since it came into use.

Fifth. The earnings clearance system. This computer system has been used for several years to identify employed welfare recipients and doublecheck their earnings. It entails a "match" of the welfare rolls with various payroll records of private sector employees, county employees and employees of large local cities.

Sixth. The central fraud reporting line. The system has been in effect since January of this year and has produced meaningful results. It permits citizens to call a welfare office and leave a message on a tape recorder concerning any individual who may be, in the citizen's opinion, committing fraud; such as, information that the person is working and receiving welfare benefits. The information is taken off the recorder, put through the computer system to identify if the person is on the welfare rolls of the county. If so, the district office near-

est to the person's address is asked to handle the case. If the eligibility officer finds no indication of wrongdoing then nothing else is done. If there is a conflict of information, the case is then carefully investigated before any action is taken. All information on the recorder is confidential. The county welfare department is extremely cautious that no action is taken in any case reported by a citizen until fraud is undeniably established. As of August of this year, the recorder has received around 1,000 calls a month. Of a monthly 1,000 calls, about half have been welfare cases, and of these about 6 percent have been fraudulent.

Seventh. District attorney unit assignment. A district attorney unit was assigned to the Welfare Department as of July, 1977 as a demonstration program. It has been extremely helpful to the department and has produced very good results. A 31-member district attorney investigative staff has now been assigned to the Welfare Department for difficult and complicated cases of fraud where police powers are required.

These computer verification and match systems have been a significant factor in reducing the incidence of fraud and error in welfare recipient cases in Los Angeles County. The error rate in the welfare program in the county has decreased from a 14 percent error rate in 1973 to a 2.6 error rate in the January-June 1977 period. Los Angeles County has the lowest error rate in its welfare programs of any comparable area in the Nation, and the county expects to retain an error rate below 3 percent.

The welfare proposal which President Carter sent to the Congress last year contained important provisions aimed at reducing fraud and administrative error on a nationwide basis. By consolidating and simplifying current welfare programs, it would have made it possible to implement throughout the Nation the fraud detecting and preventing computer techniques currently used in Los Angeles County. Had his proposal been enacted, we would be well on our way to reducing abuse of the system. President Carter has not wavered in his commitment to restructuring the existing fragmented, inadequate and inefficient system of welfare. Support for welfare reform will continue and increase until his goal of a system that is "pro-family, pro-work, anti-fraud and anti-abuse, equitable and efficient" will become public law.

Mr. Speaker, I would like to take a few minutes now to discuss some other situations, similar to the Williams case but with important differences, in which individuals have been accused or found guilty of fraudulent acts; beginning with the case of the Equity Funding Corp. of America. This case involved an insurance and securities organization based in Los Angeles, which over a decade defrauded thousands of Americans out of hundreds of millions of dollars.

Equity Funding was one of the largest of the business fraud cases to occur in the central judicial district of California. As an established, nationally known holding, insurance, and securities company, it sold life insurance and mutual funds primarily to middle-income families. For over a decade Equity Funding perpetuated a fraud involving thousands of Americans and hundreds of millions of dollars. The fraud was conducted by a large number of employees who knowingly, fraudulently, and systematically inflated stock values and painted a false picture of the company's stock value by a series of transactions ranging from penciling in phony profits to manufacturing and selling fictitious insurance policies. They literally took a pencil at the end of the year and if they wanted to show $10 million in earnings, they would write in that sum and the auditors were told to let it go by.

Beginning in 1964 and continuing until 1973, in their regularly issued financial statements, income was inflated with no documents to support such income. Indeed, much of the reported income was never received. As the inflated income was reported, a corresponding higher profit was reported. This was done to increase the market value of the stock of EFCA. For the 10 years preceding April 5, 1973, the company never had a profitable year. Because the true income was considerably less than the reported income, management encountered many cash flow problems. This was temporarily solved by procuring loans on the basis of their reported income.

When the fraud was detected, it was found that the actual amount of legitimate business transacted was nominal and their financial structure a shambles. With $480 million claimed in assets, liabilities were $737 million. Of 50,000 listed insurance policies, only 15,000 were legitimate. Two-thirds were bogus policies. To date the exact amount of faked entries has not been fully determined, nor the magnitude of overstatement in their financial entries. However, it has been estimated that Equity Funding received at least $17.2 million in fraudulent funds in 1969; $15.6 million in 1970; $17.9 million in 1971; and $21 million in 1972. The participants in the fraud included some of the largest, most prestigious accounting firms in the world.

Many innocent people were hurt; not just big investors, but elderly people and families of moderate means who had invested their life savings. Additionally, many universities, churches and nonprofit organizations, which had purchased certificates for endowment funds, were swindled out of hundreds of thousands of dollars. We can only begin to estimate the number of people who were defrauded. It is my understanding that to date approximately 30,000 people have filed claims since a proceeding was filed on April 5, 1973, under chapter X of the Bankruptcy Act. One of the judges in the case told me he still receives letters from persons who were defrauded by Equity Funding.

Some of the defendants did go to prison. Twenty-two were convicted of taking part in the fraud; all but three pleaded guilty and four others were acknowledged coconspirators.

Another example involving widespread fraud is the case of the Westgate-California Corp. On February 26, 1974, this corporation and four of its subsidiaries filed petitions for reorganization under chapter X of the Bankruptcy Act. These cases were filed in the Southern District Court of California in San Diego.

During the 1960's and early 1970's, Westgate acted the fashionable role of a rapidly growing and profitable conglomerate whose chief executive officer and majority stockholder, C. Arnholt Smith (Smith), was named "Mr. San Diego of the Century" for his activities in the San Diego community.

Westgate was formed in June, 1960, and in a series of transactions acquired assets consisting of certain real estate, a tuna canning operation, and stock in the U.S. National Bank (USNB), a publicly owned bank—all controlled and dominated by Smith. Westgate paid for these assets with its own securities which were, in part, distributed to the public shareholders of the selling company. These transactions thus resulted in a public market for Westgate's securities without their registration with the Securities and Exchange Commission (SEC). This pattern of acquiring assets for stock, with no cash involved, generally from entities owned or controlled by Smith, his family, or close business associates, and the subsequent distribution of this stock to the public without registration, was frequently repeated throughout the corporation's history.

Westgate began to expand its business enterprises: in 1962, taxicabs; 1963, advertising, insurance and fishing vessel ownership; 1964, small business investments and mutual funds; 1968 farming, shopping centers, residential real estate development, horse training facilities, bakeries and commissaries and wholesale fresh produce; 1970, air transportation and hotels; and 1971, fishing vessel management.

Westgate's history consists largely of a round-robin of frenetic acquisitions and dispositions of assets from and to the same group of people, at prices arbitrarily set without regard to economic value and largely geared to where recognition of a "gain" or "loss," or movement of cash was deemed useful by Smith at any given moment. USNB provided a ready source of financing for any such transaction desired by Smith, on terms dictated by him. Loan approval and appraisals were never problems, as Smith often functioned both as the lending officer in charge of the various accounts and the appraiser of the value of the collateral securing the loans.

The bankruptcy trustee determined that virtually all financial information published by Westgate under Smith's management to be inaccurate and misleading.

While the chapter X proceedings by the Westgate and its subsidiaries were not filed until February 26, 1974, the debtors were the subject of SEC investigations beginning in November 1971. In June 1972 the National Bank examiner made his regular examination of the affairs of USNB. On January 8, 1973, the bank examiner began another examination of USNB. Finally, on October 18,

1973, USNB was declared insolvent and the Federal Deposit Insurance Corporation was appointed as receiver. The fraudulent activities of Smith and his associates were responsible for the failure of the U.S. National Bank.

Smith was indicted by a Federal grand jury, to which he pleaded nolo contendere to several counts in the indictment.

Mr. Speaker, Government, at all levels, is constantly in the public eye. People normally want and need to trust their Government, and this trust should not be violated. Government should be above reproach. And, by the same token, the operation of a free economy to which our society is dedicated also demands of the business and corporate world the high degree of trust that the people expect of Government. Breach of this trust by the business and corporate world results in enormous monetary losses to many citizens. But the deeper consequences are to society as a whole—contributing to the erosion of public confidence in our legal, social, and economic institutions, with the concomitant disillusionment that Government seems to be unable to do anything about white-collar crime until it is too late to protect the victims.

Unfortunately, and perhaps because of the uncommon, confusing events of recent years affecting the lives of all Americans, there seems to be increased concern about fraud within Government. Any fraud and abuse within Government, and unabated fraud against governmental programs, cannot be tolerated, and they should not be, for they weaken the very fiber of our society. Government needs to earn the trust and confidence of the American people, and we can earn it only by constant vigilance over all programs, with the important end result of more effective administration and a savings of the taxpayers' dollars.

To achieve control, fraud and abuse must first be detected, and on this premise Congress has acted. In 1976, by Public Law 94–505, we created for the first time an Office of Inspector General in the Department of Health, Education, and Welfare, with specific responsibilities for identifying abuse and fraud in programs administered and financed by the Department, and with staff having special qualifications to develop techniques and systems for detecting fraud and abuse.

In his first annual report to Secretary Califano and to the Congress, the Inspector General's comprehensive review of HEW's outlays during fiscal year 1977 identified all potential areas of unnecessary and inappropriate expenditures of the Department's programs, citing the largest proportion of misused funds as the unnecessary costs associated with health care—mainly in the medicare and medicaid programs. In a new release on the report, the Secretary identified concrete actions designed to reduce fraud an abuse in the Department's programs through innovative initiatives designed by the Inspector General's Office, and he committed himself to take any necessary further steps in combating fraud, abuse, error, and waste of public funds. The release also mentioned that during calendar 1977 "there were some 265 convictions for criminal fraud involving HEW's programs—136 Federal and 129 State—227 of those cases involved medicaid and medicare." I was informed by the Inspector General of HEW that the convictions in these 227 cases were against providers of medicare and medicaid services.

The experience of HEW's Office of Inspector General gave rise to passage earlier this year in the House, with overwhelming support, of a bill (H.R. 8588), "The Inspectors General Act." The Senate approved the legislation within the last few weeks, and the President is expected to sign it into law. The act would establish a similar office of Inspector General in 13 executive agencies and departments "to consolidate existing auditing and investigating resources to more effectively combat fraud, abuse, waste and mismanagement in the programs and operations of those departments and agencies."

In another effort, Congress enacted and the President signed into law Public Law 94–142—the medicare-medicaid anti-fraud and abuse amendments. This important legislation provides the force of law to strengthen the capability of the Government to detect, prosecute and punish fraudulent activities under the medicare and medicaid programs. In the words of the House report:

> This legislation is designed to eliminate weaknesses in existing law that might encourage fraudulent or abusive practices, and to provide the appropriate governmental agencies with additional tools to combat these problems and to address certain policies and practices in the administration of Medicare and Medicaid that have led to an inefficient use of program moneys.

These actions, Mr. Speaker, do not right the past wrongs, but they certainly provide a good protective basis for controlling fraudulent acts and abuses in the future.

Fraud within Government and fraud against governmental programs, at any level and by any person, is indefensible. Equally appalling, indefensible, and socially and economically destructive is the fraud committed in the business community as well. The record indicates beyond doubt that the dollar cost of fraud and abuse within Government in no way approximates the dollar cost to the American taxpayer of the pervasive fraudulent practices of business and corporate institutions. A 1976 report of the Joint Economic Committee of the Congress estimated that white-collar crime alone costs the economy $44 billion a year.

Mr. Speaker, the American people have the right to expect the same degree of integrity from their business and corporate institutions that they expect of their Government. There can be no double standard. Fraud within Government is not to be tolerated. Nor can we tolerate fraud out of Government.

White-collar crime in business, such as the Equity Funding and the Westgate-California cases, and the many others that have indulged in "bilking the public," is unacceptable in a free society and a colossal contempt of the trust that was given to the officials of these companies. If more vigorous laws are needed, with stronger enforcement powers, then they must be enacted and enforced to discourage such crimes from flourishing.

By whatever means necessary, the only acceptable rate of fraud—whether within Government or outside of Government—must be zero.●

CONFERENCE REPORT ON H.R. 15

Mr. PERKINS submitted the following conference report and statement on the bill (H.R. 15) to extend and amend expiring elementary and secondary education programs, and for other purposes.

CONFERENCE REPORT (H. REPT. NO. 95–1753)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 15) to extend and amend expiring elementary and secondary education programs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Education Amendments of 1978".

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TITLE I—AMENDMENT TO TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

SPECIAL EDUCATIONAL PROGRAMS AND PROJECTS FOR EDUCATIONALLY DEPRIVED CHILDREN

SEC. 101. (a) Title I of the Act entitled "An Act to strengthen and improve educational quality and educational opportunities in the Nation's elementary and secondary schools", approved April 11, 1965, as amended (Public Law 89–10, also known as the Elementary and Secondary Education Act of 1965), is amended to read as follows:

"TITLE I—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF CHILDREN

"DECLARATION OF POLICY

SEC. 101. In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this title) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational need of educationally deprived children. Further, in recognition of the special educational needs of children of certain migrant parents, of Indian children and of handicapped, neglected, and delinquent children, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this title) to help meet the special educational needs of such children.

"DURATION OF ASSISTANCE

"SEC. 102. During the period beginning October 1, 1978, and ending September 30, 1983, the Commissioner shall, in accordance with the provisions of this title, make payments to State educational agencies for grants made on the basis of entitlements created under this title.

"PART A—PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

"Subpart 1—Basic Grants

"GRANTS—AMOUNT AND ELIGIBILITY

"SEC. 111. (a) AMOUNT OF GRANTS.—(1) There is authorized to be appropriated for each fiscal year for the purpose of this paragraph 1 per centum of the amount appropriated for such year for payments to States under part E (other than payments under such part to jurisdictions excluded from the term 'State' by this subsection, and payments pursuant to section 156), and there is authorized to be appropriated such additional sums as will assure at least the same level of funding under this title as in fiscal year 1976 for Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and to the Secretary of the Interior for payments pursuant to paragraphs (1) and (2) of subsection (d). The amount appropriated pursuant to this paragraph shall be allotted by the Commissioner (A) among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for grants under this part, and (B) to the Secretary of the Interior in the amount necessary (i) to make payments pursuant to paragraph (1) of subsection (d), and (ii) to make payments pursuant to paragraph (2) of subsection (d). The grant which a local educational agency in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands is eligible to receive shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purpose of this title.

"(2)(A) In any case in which the Commissioner determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State is eligible to receive under this subpart for a fiscal year shall (except as provided in paragraph (3)) be determined by multiplying the number of children counted under subsection (c) by 40 per centum of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (i) if the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, such amount shall be 80 per centum of the average per pupil expenditure in the United States, or (ii) if the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, such amount shall be 120 per centum of the average per pupil expenditure in the United States.

"(B) In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agency is located, which aggregate amount shall be equal to the aggregate amount determined under subparagraph (A) for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with the basic criteria prescribed by the Commissioner.

"(C) For each fiscal year, the Commissioner shall determine the percentage which the average per pupil expenditure in Puerto Rico is of the lowest average per pupil expenditure of any of the fifty States. The grant which Puerto Rico shall be eligible to receive under this subpart for a fiscal year (exclusive of any amount received under paragraph (3)(D)) shall be the amount arrived at by multiplying the number of children counted under subsection (c) for Puerto Rico by the product of—

"(i) the percentage determined under the preceding sentence, and

"(ii) 32 per centum of the average per pupil expenditure in the United States.

"(3(A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (c), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Commissioner, which does assume such responsibility shall be eligible to receive such portion of the allocation.

"(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educational agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes of this title.

"(C) In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency may apply to the Commissioner for authority during any particular fiscal year to make the allocations under this part (other than section 117) directly to local educational agencies without regard to the counties. If the Commissioner approves an application of a State educational agency for a particular year under this subparagraph, the State educational agency shall provide assurances that such allocations will be made using precisely the same factors for determining a grant as are used under this part and that a procedure will be established through which local educational agencies dissatisfied with the determinations made by the State educational agency may appeal directly to the Commissioner for a final determination.

"(D)(i) From one-half of any amount made available for this subpart for any fiscal year in excess of the amount made available for this subpart for fiscal year 1979, there shall be allotted to each State an amount which bears the same ratio to such excess as the product of—

"(I) the number of children in such State aged five to seventeen, inclusive, from families below 50 per centum of the median national income for four-person families from the 1975 survey of income and education conducted by the Bureau of the Census, multiplied by—

"(II) 40 per centum of the amount determined under the second sentence of paragraph (2)(A) and, in the case of Puerto Rico, the product determined under subparagraph (C) (i) and (ii) of this paragraph.

bears to the sum of such products for all the States.

"(ii) In any case in which the Commissioner finds that a State's percentage decrease in children from low-income families exceeds 25 per centum between the 1970 decennial census, as adjusted, and the 1975 survey of income and education, the Commissioner shall allocate funds based on the most current valid data available or based on a resurvey of the affected State by the Bureau of the Census.

"(iii) From the amount allotted to each State under division (i), the amount which each local educational agency in that State shall be eligible to receive under this subparagraph shall be an amount which bears the same ratio to the total amount allotted to such State under this subparagraph as the amount such local educational agency receives under paragraph (2) bears to the total amount of funds made available to local educational agencies in such State under such paragraph.

"(E) From the remaining one-half of any amount made available for this subpart for any fiscal year in excess of the amount made available for this subpart for fiscal year 1979 after the application of subparagraph (D), there shall be allotted to each State an amount determined in accordance with paragraph (2) of this subsection.

"(4) For purposes of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(b) MINIMUM NUMBER OF CHILDREN TO QUALIFY.—A local educational agency shall be eligible for a basic grant for a fiscal year under this subpart only if it meets the following requirements with respect to the number of children counted under subsection (c):

"(1) In any case (except as provided in paragraph (3)) in which the Commissioner determines that satisfactory data for the purpose of this subsection as to the number of children are available on a school district basis, the number of such children in the school district of such local educational agency shall be at least ten.

"(2) In any other case, except as provided in paragraph (3), the number of such children in the county which includes such local educational agency's school district shall be at least ten.

"(3) In any case in which a county includes a part of the school district of the local educational agency concerned and the Commissioner has not determined that satisfactory data for the purpose of this subsection are available on a school district basis for all the local educational agencies or all the counties into which the school district of the local educational agency concerned extends, the eligibility requirement with respect to the number of such children for such local educational agency shall be determined in accordance with regulations prescribed by the Commissioner for the purpose of this subsection.

"(c) CHILDREN TO BE COUNTED.—(1)(A) The number of children to be counted for purposes of this section, other than for subsection (a)(3)(D), is the aggregate of—

"(i) the number of children aged five to seventeen, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2)(A),

"(ii) the number of children aged five to seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B), subject to subparagraph (D) of this paragraph, and

"(iii) the number of children aged five to seventeen, inclusive, in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to subpart 3 of part B for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

"(B) For the purpose of division (ii) of subparagraph (A) of this paragraph the number of children aged five through seventeen, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B) shall be reduced by one-third for fiscal year 1979, except that such reduction shall not be applicable with respect to determinations made under section 117(b) of the number of children to be counted under this subsection.

"(2)(A) For the purposes of this section, the Commissioner shall determine the number of children aged five to seventeen, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Commissioner shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census.

"(B) For purposes of this section, the Secretary shall determine the number of children aged five to seventeen, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census for a nonfarm family of four in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to him before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to him at the time of such determination.

"(C) When requested by the Commissioner, the Secretary of Commerce shall make a special estimate of the number of children of such ages who are from families below the poverty level (as determined under subparagraph (A) of this paragraph) in each county or school district, and the Commissioner is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

"(d) PROGRAM FOR INDIAN CHILDREN.—(1) From the amount allotted for payments to the Secretary of the Interior under clause (B)(i) in the second sentence of subsection (a)(1), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Commissioner determines will best carry out the purposes of this title, with respect to out-of-State Indian children in the elementary and secondary schools of such agencies under special contracts with the Department of the Interior. The amount of such payment may not exceed, for each such child, 40 per centum of (A) the average per pupil expenditure in the State in which the agency is located or (B) 120 per centum of such expenditure in the United States, whichever is the greater.

"(2) The amount allotted for payments to the Secretary of the Interior under clause (B)(ii) in the second sentence of subsection (a)(1) for any fiscal year shall be, as determined pursuant to criteria established by the Commissioner, the amount necessary to meet the special educational needs of educationally deprived Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. Such payment shall be made pursuant to an agreement between the Commissioner and the Secretary containing such assurances and terms as the Commissioner determines will best achieve the purposes of this title. Such agreement shall contain (A) an assurance that payments made pursuant to this subparagraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of subpart 3 of this part and that the Department of the Interior will comply in all other respects with the requirements of this title, and (B) provision for carrying out the applicable provisions of subpart 3 of this part and sectfons 171 and 172.

"TREATMENT OF EARNINGS FOR PURPOSES OF AID TO FAMILIES WITH DEPENDENT CHILDREN

"SEC. 112. Notwithstanding the provisions of title IV of the Social Security Act, a State plan approved under section 402 of such Act shall provide that for a period of not less than twelve months, and may provide that for a period of not more than twenty-four months, the first $85 earned by any person in any month for services rendered to any program assisted under this title of this Act shall not be regarded (1) in determining the need of such person under such approved State plan or (2) in determining the need for any other individual under such approved State plan.

"Subpart 2—Special Grants

"SPECIAL INCENTIVE GRANTS

"SEC. 116. (a) ELIGIBILITY.—(1) Each local educational agency that is eligible to receive a payment under section 111 for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if it is located in a State which has in effect for that fiscal year a State program meeting the requirements of paragraph (2) under which financial assistance is provided to meet the special education needs of educationally deprived children.

"(2) A State program meets the requirements of this subsection if, under State law—

"(A) the program meets the requirements of section 131(c); and

"(B) not less than 50 per centum of the funds expended under the program in any school district of any local educational agency in the State in the fiscal year preceding any fiscal year in which the State receives a payment under this subpart is expended in school attendance areas of such agencies having high concentrations of children from low-income families.

"(b) AMOUNT OF GRANTS.—(1) Except as provided in paragraph (3), the aggregate amounts to which the local educational agencies in a State are entitled under this section for any fiscal year shall be 50 per centum of the amount of State funds expended, in the most recent fiscal year for which data are available under a State program meeting the requirements of paragraph (2) of subsection (a) of this section.

"(2) The amount of the additional grant for each local eduactional agency in a State under this section for any fiscal year shall bear the same ratio to the amount allocated to such State under subsection (c) of this section as the amount allocated to such local educational agency under section 111 of this title for such fiscal year bears to the aggregate amount allocated to all local educational agencies in the State under section 111 for such fiscal year.

"(3) The aggregate amount which the local educational agencies in a State shall be eligible to receive under this section for any fiscal year shall not exceed 10 per centum of the aggregate amount which all local educational agencies in such State are eligible to receive under section 111 of this title for such fiscal year.

"(4) Each State which desires to receive payments under this section shall develop a system for determining the data required by subparagraph (2)(B) of subsection (a) of this section relating to the percentage of State funds expended in school attendance areas having high concentrations of children from low-income families and required by paragraph (1) of this subsection relating to the amount of State funds expended under the State program referred to in that paragraph. The State shall submit to the Commissioner such information as the Commissioner may request concerning that system.

"(c) PAYMENTS; USE OF FUNDS.—(1) Except as provided in paragraph (3), the Commissioner shall pay to each State for each fiscal year the aggregate amount to which the local educational agencies in such State are entitled under subsection (b) after any ratable reductions under subsection (d).

"(2) The total amount to which the local educational agencies in a State are entitled under this section for any fiscal year shall be added to the amount paid to such State under section 191 for such year. From the amount paid to it under this subsection, the State shall distribute to each local educational agency of the State the amount of its additional grant as determined under subsection (b)(2).

"(3) Whenever the expenditures made by a State in accordance with subsection (a) in a fiscal year equal or exceed expenditures in the preceding fiscal year, the amount paid to such State under this section shall, subject to subsection (d), not be less than the amount paid to such State under this section in the preceding fiscal year, and the total of any increases required under this paragraph shall be derived by proportionately reducing the amount paid to States which were not entitled to a payment under this section in the preceding fiscal year, except that the amount paid to a State under this section for any fiscal year shall not exceed the maximum amount to which such State is entitled for such fiscal year under parapragh (1) of subsection (b).

"(4) The amount paid to a local educational agency under this part shall be used by such agency for activities undertaken pursuant to its application submitted under section 121 and shall be subject to all other requirements in subpart 3 of this part.

"(d) RATABLE REDUCTIONS.—If the sums appropriated pursuant to subsection (e) for a fiscal year are not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under this section, the amount to be paid such agencies shall be ratably reduced to the extent necessary to bring such payments within the limits of the amounts so appropriated. In case additional funds become available for making payments under this section for that year, such reduced amounts shall be increased on the same basis that they were reduced.

"(e) APPROPRIATIONS.—There are authorized to be appropriated for the purpcses of this section such sums as may be necessary for fiscal year 1980 and for the three succeeding fiscal years.

"GRANTS FOR LOCAL EDUCATIONAL AGENCIES IN COUNTIES WITH ESPECIALLY HIGH CONCENTRATIONS OF CHILDREN FROM LOW-INCOME FAMILIES

"SEC. 117. (a) PURPOSE.—It is the purpose of this section to provide additional assistance to local educational agencies in counties with especially high concentrations of children from low-income families to enable local educational agencies in such counties to provide more effective programs of instruction, especially in the basic skills of reading, writing, and mathematics, to meet the special educational needs of educationally deprived children.

"(b) ELIGIBILITY FOR AND AMOUNT OF SPECIAL GRANTS.—(1) Each county, in a State other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, which is eligible for a grant under this title for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if—

"(A) the number of children counted under section 111(c) of this title for local educational agencies in such county for the preceding fiscal year exceed five thousand, or

"(B) the number of children counted under section 111(c) exceeds 20 per centum of the total number of children aged five to seventeen, inclusive, in the school districts of local educational agencies in such county in that fiscal year,

except that no such State shall receive less than one-quarter of 1 per centum of the sums appropriated under subsection (d) for such section for such fiscal year.

"(2) For each county in which there are local educational agencies eligible to receive an additional grant under this section for any fiscal year the Commissioner shall determine the product of—

"(A) the number of children in excess of five thousand counted under section 111(c) for the preceding fiscal year or the number of children counted under that section in excess of 20 per centum of the total number of children and five to seventeen, inclusive, in the school districts of local educational agencies in such county for that preceding fiscal year, whichever is greater, and

"(B) the quotient resulting from the division of the amount determined for those agencies under section 111(a)(2) of this title for the fiscal year for which the determination is being made divided by the total number of children counted under section 111(c) for that agency for the preceding fiscal year.

"(3) The amount of the additional grant to which an eligible county is entitled under this section for any fiscal year shall be an amount which bears the same ratio to the amount appropriated under subsection (d) for that fiscal year as the product determined under paragraph (2) for such county for that fiscal year bears to the sum of such products for all counties in the United States for that fiscal year.

"(4) For the purposes of this section, the Commissioner shall determine the number of children counted under section 111(c) for any county, and the total number of children aged five to seventeen, inclusive, in school districts of local educational agencies in such county, on the basis of the most recent satisfactory data available at the time the entitlement of such county is determined under section 111.

"(5) Funds allocated to counties under this part shall be allocated by the State educational agency, pursuant to regulations established by the Commissioner, among the several local educational agencies whose school districts lie (in whole or in part) within the county on the basis of the current distribution in the county of children aged five to seventeen, inclusive, from low-income families (using a poverty level selected by the State educational agency consistent with the purposes of this title) as determined on the basis of the available data which such State educational agency determines best to reflect the current distribution in the county of children aged five to seventeen, inclusive, from low-income families, except that in determining the number of such children in any local educational agency in which less than 20 per centum of the children are from low-income families, each such child shall be counted as a fraction in which the numerator is the percentage of low-income children in the school district of that agency and the denominator is 20.

"(c) PAYMENTS; USE OF FUNDS.—(1) The total amount to which the counties in a State are entitled under this section for any fiscal year shall be added to the amount paid to that State under section 191 for such year. From the amount paid to it under this section, the State shall distribute to local educational agencies in each county of the State the amount (if any) to which it is entitled under this section.

"(2) The amount paid to a local educational agency under this section shall be used by that agency for activities undertaken pursuant to its application submitted under section 121 and shall be subject to the other requirements in subpart 3 of this part.

"(d) APPROPRIATIONS.—There are authorized to be appropriated for the purposes of this section $400,000,000 for fiscal year 1979, and such sums as may be necessary for each of the four succeeding fiscal years.

"SUBPART 3—PROGRAM REQUIREMENTS AND APPLICATIONS

"LOCAL PROGRAM APPLICATION

"SEC. 121. A local educational agency may receive a grant under this title for any fiscal year if it has on file with the State educational agency a current application, approved by the State educational agency, describing the programs and projects to be conducted with assistance provided under this title for a period of not to exceed three fiscal years, including the fiscal year for which the grant is to be made. Such an application may be amended at any time to describe changes in or additions to the activities originally set forth in the application. An application or amendment thereto shall be approved by the State educational agency upon its determination that the application provides for the use of such funds in a manner which meets the requirements of this subpart and is consistent with the assurances contained in the general application required by section 436 of the General Education Provisions Act, subject to such basic criteria as the Commissioner may prescribe.

"DESIGNATING SCHOOL ATTENDANCE AREAS

"SEC. 122. (a) GENERAL PROVISIONS.—(1) Except as provided in paragraph (2) and subsections (b), (c), (d), and (e) of this section, a local educational agency shall use funds received under this title in school attendance areas having high concentrations of children from low-income families (hereinafter referred to as 'eligible school attendance areas'), and where funds under this title are insufficient to provide programs and projects for all educationally deprived children in eligible school attendance areas, a local educational agency shall annually rank its eligible school attendance areas from highest to lowest, according to relative degree of concentration of children from low-income families. A local educational agency may carry on a program or project assisted under this title in an eligible school attendance area only if it also carries on such program or project in all other eligible school attendance areas which are ranked higher under the first sentence. A local educational agency may designate any school attendance area in which at least 25 per centum of the children are from low-income families as an eligible school attendance area if the aggregate amount expended under this title and under a State program meeting the requirements of section 131(c) in that fiscal year in each school attendance area of that agency in which projects assisted under this title were carried out in the preceding fiscal year equals or exceeds the amount expended from those sources in that area in such preceding fiscal year. The same measure of low-income, which shall be chosen by the local educational agency and which may be a composite of several indicators, shall be used with respect to all such areas, both to identify the areas having high concentrations of children from low-income families and to determine the ranking of each area.

"(2)(A) Notwithstanding the provisions of paragraph (1), in the selection of eligible school attendance areas, a local educational agency may, subject to the requirements of subparagraph (B), choose to rank all its school attendance areas as provided in paragraph (1) and also rank all its school attendance areas according to educational deprivation, and then serve all its school attendance areas ranked according to paragraph (1) in the order of their ranking under such paragraph unless another school attendance area ranked according to education deprivation has a substantially greater number or a substantially greater percentage of educationally deprived children, in which case such school attendance area may be served before service is provided to other school attendance areas ranked pursuant to paragraph (1) which have a substantially smaller number or substantially smaller percentage of educationally deprived children. In the event that a local educational agency chooses to exercise the option provided under this paragraph, it shall not serve any more school attendance areas than the number identified pursuant to paragraph (1).

"(B) Any local educational agency desiring to use the alternative ranking system described in subparagraph (A) shall, with the consent of the district-wide parent advisory council of that agency, apply for permission to use such system to the State educational agency of the State wherein such local educational agency is located. Such application shall be approved by such State educational agency only if such State educational agency finds that the use of such alternative ranking system will not substantially impair the delivery of compensatory education services to educationally deprived children from low-income families in project areas served by such local educational agency. Whenever a school district exercises the option under this paragraph and actually serves one or more school attendance areas ranked under this paragraph, none of the areas so ranked but not served shall be considered to be eligible school attendance areas under this title.

"(b) USE OF ENROLLMENT DATA IN CERTAIN SCHOOLS.—A local educational agency may use funds received under this title for educationally deprived children who are in a school of such agency which is not located in an eligible school attendance area, but at which the proportion of children in actual average daily attendance who are from low-income families is substantially the same as the proportion of such children in such an area of that agency (hereinafter referred to as an 'eligible school').

"(c) CONTINUATION OF ELIGIBILITY FOR CERTAIN SCHOOL ATTENDANCE AREAS OR SCHOOLS.—An eligible school attendance area or an eligible school may be designated a project area under subsection (a) or a project school under subsection (b) for a fiscal year, even though it does not qualify under such subsections for that fiscal year, if such area or school was so designated in either of the two preceding fiscal years.

"(d) LOWER RANKED SCHOOL ATTENDANCE AREAS OR SCHOOL HAVING SUBSTANTIALLY GREATER INCIDENTS OF EDUCATIONALLY DEPRIVED CHILDREN THAN HIGHER RANKED AREAS OR SCHOOLS.—The Commissioner shall issue regulations providing for an exception to subsection (a) permitting children in lower ranked eligible school attendance areas or eligible schools having substantially greater incidences of educational deprivation than areas or schools ranked higher under subsection (a) and (b) to receive assistance before such children in higher ranked areas or schools receive such assistance.

"(e) SKIPPING HIGHER RANKED SCHOOL ATTENDANCE AREAS OR SCHOOLS RECEIVING SERVICES OF THE SAME NATURE AND SCOPE FROM NON-FEDERAL SOURCES.—The Commissioner shall issue regulations providing for an exception to subsection (a) or (b) permitting local educational agencies to skip higher ranked eligible school attendance areas or eligible schools receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this title. Whenever children residing in eligible areas and attending private elementary and secondary schools are ineligible for services of the same nature and scope from non-Federal sources, such children shall be selected for programs and projects under this title without regard to the provisions of this subsection. The number of children receiving services under this title who attend private elementary and secondary schools shall be determined in each local educational agency receiving assistance under this title without regard to non-Federal compensatory education funds which serve children in public elementary and secondary schools who are also eligible for assistance under this title. Children attending private elementary and secondary schools who receive assistance under this title shall be identified in accordance with this section and without regard to skipping higher ranked school attendance areas or schools receiving services of the same nature and scope from non-Federal sources.

"CHILDREN TO BE SERVED

"SEC. 123. (a) GENERAL PROVISIONS.—Except as provided in subsections (b), (c) and (d) of this section and section 133, a local educational agency must use funds received under this title for educationally deprived children, identified in accordance with section 124(b) as having the greatest need for special assistance, in school attendance areas or schools satisfying the requirements of section 122.

"(b) CONTINUATION OF ELIGIBILITY FOR EDUCATIONALLY DEPRIVED CHILDREN WHO ARE NO LONGER IN GREATEST NEED OF ASSISTANCE.—Whenever for a fiscal year, an educationally deprived child in a school attendance area or school satisfying the requirements of section 122, does not meet the requirement of subsection (a) requiring that he be in greatest need of special assistance, but did meet such requirement in any previous year, and is still educationally deprived, that child may participate in a program or project assisted under this title for the current fiscal year.

"(c) CONTINUATION OF ELIGIBILITY FOR EDUCATIONALLY DEPRIVED CHILDREN TRANSFERRED TO INELIGIBLE AREAS OR SCHOOLS IN THE SAME YEAR.—Educationally deprived children who begin participation in a program or project assisted under this title, in accordance with subsections (a) and (b) but who, in the same school year, are transferred to a school attendance area or school not receiving funds under this title, may, if the local agency so determined, continue to participate in a program or project funded under this title for the duration of that same school year.

"(d) SKIPPING CHILDREN DETERMINED TO BE IN GREATEST NEED OF ASSISTANCE WHO ARE RECEIVING SERVICES OF THE SAME NATURE AND SCOPE FROM NON-FEDERAL SOURCES.—The Commissioner shall issue regulations providing for an exemption to subsection (a) permitting local educational agencies, in providing services under this title, to skip educationally deprived children in greatest need of assistance who are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this title.

"REQUIREMENTS FOR DESIGN AND IMPLEMENTATION OF PROGRAMS

"SEC. 124. (a) PURPOSE OF PROGRAM.—A local educational agency may use funds received under this title only for programs and projects which are designed to meet the special educational needs of the children referred to in section 123. Such programs and projects may include the acquisition of equipment, payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas, the training of teachers, and, where necessary, the construction of school facilities, and planning for such programs and projects.

"(b) ASSESSMENT OF EDUCATIONAL NEED.—A local educational agency may receive funds under this title only if it makes an assessment of educational needs each year to (1) identify educationally deprived children in all eligible attendance areas and to select those educationally deprived children who have the greatest need for special assistance; (2) identify the general instructional areas on which the program will focus; and (3) determine the special educational needs of

participating children with specificity sufficient to facilitate development of high-quality programs and projects.

"(c) PLANNING.—A local educational agency may use funds received under this title for planning only if (1) the planning relates directly to programs or projects to be assisted under this title and has resulted, or is reasonably likely to result, in a program or project to be assisted under this title, and (2) such funds are needed because of the innovative nature of the program or project or because such agency lacks the resources necessary to plan adequately for programs and projects to be assisted under this title. The amount a local educational agency may use for plans for any fiscal year may not exceed 1 per centum of the amount determined for that agency for that year pursuant to section 111 or $2,000, whichever is greater.

"(d) SUFFICIENT SIZE, SCOPE, AND QUALITY.—A local educational agency may use funds received under this title only for programs and projects which are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served, and to this end such programs and projects must involve an expenditure of not less than $2,500, except that a State educational agency may reduce such $2,500 requirement for a local educational agency if it determines that it would be impossible, for reasons such as distance or difficulty of travel, for such local educational agency to join effectively with other local educational agencies for the purpose of meeting the requirement.

"(e) EXPENDITURES RELATED TO RANKING OF PROJECT AREAS AND SCHOOLS.—A local educational agency may receive funds under this title only if such funds are allocated among project areas or schools for programs and projects assisted under this title on the basis of the number and needs of children to be served as determined in accordance with section 123.

"(f) COORDINATION WITH OTHER PROGRAMS.—(1) A local educational agency may receive funds under this title only if it demonstrates that, in the development of its application, it has taken into consideration benefits and services which are or may be available through other public and private agencies, organizations, or individuals. The local educational agency shall also demonstrate that in order to avoid duplication of effort and to ensure that all programs and projects complement each other, it has considered suggestions and offers of assistance made by other agencies which may aid in carrying out or making more effective the program or project for which the application is made.

"(2) A local educational agency may use funds received under this title for health, social, or nutrition services for participating children under this title only if such agency has requested from the State educational agency assistance in locating and utilizing other Federal and State programs to provide such services.

"(g) EVALUATIONS.—A local educational agency may receive funds under this title only if—

"(1) effective procedures are adopted for evaluating, in accordance with the evaluation schedule promulgated by the Commissioner under section 183(g), the effectiveness of the programs assisted under this title in meeting the special educational needs of educationally deprived children;

"(2) such evaluations will include, during each three-year period, the collection and analysis of data relating to the degree to which programs assisted under this title have achieved their goals, including the requirements of section 130, and will also include objective measurements of educational achievement in basic skills over at least a twelve-month period in order to determine whether regular school year programs have sustained effects over the summer; and

"(3) the evaluation will address the purposes of the programs, including the requirements of section 130, and the results of the evaluations will be utilized in planning for and improving projects and activities carried out under this title in subsequent years.

"(h) INFORMATION DISSEMINATION.—A local educational agency may receive funds under this title only if effective procedures are in existence for acquiring and disseminating to teachers and administrators significant information derived from educational research, demostration, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.

"(i) TEACHER AND SCHOOL BOARD PARTICIPATION.—A local educational agency may receive fund under this title only if teachers in schools participating in programs assisted under this title, and school boards or comparable authority responsible to the public with jurisdiction over the schools, have been involved in planning for those programs and will be involved in the evaluation thereof.

"(j) PARENT PARTICIPATION.—A local educational agency may receive funds under this title only if parents of children participating in programs assisted under this title are permitted to participate in the establishment of such programs and are informed of, and permitted to make recommendations with respect to, the instructional goals of the program and the progress of their children in such program, and such parents are afforded opportunities to assist their children in achieving such goals.

"(k) SUSTAINING GAINS.—A local educational agency may receive funds under this title only if, in developing programs to be assisted under this title, the local educational agency will give due consideration to the inclusion of components designed to sustain the achievements of children beyond the school year in which the program is conducted, through such means as summer programs and intermediate and secondary level programs.

"(l) TRAINING OF EDUCATION AIDES.—A local educational agency may receive funds under this title for programs and projects involving education aides, including volunteers, only if it has in effect well-developed plans providing for coordinated programs of training in which education aides, including volunteers, and the professional staff whom they are assisting will participate together.

"(m) CONTROL OF FUNDS.—A local educational agency may receive funds under this title only if control of such funds, and title to property derived therefrom, is in a public agency for the uses and purposes provided in this title, and only if a public agency will administer such funds and property.

"(n) CONSTRUCTION.—A local educational agency may use funds received under this title for projects for construction of school facilities only if—

"(1) the project is not inconsistent with overall State plans for the construction of school facilities and the requirements of section 433 of the General Education Provisions Act are complied with on all such projects,

"(2) in developing plans for such facilities due consideration has been given to compliance with such standards as the Secretary may prescribe or approve in order to ensure that facilities constructed with the use of Federal funds under this title are, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by, handicapped persons, and

"(3) in developing plans for such facilities, due consideration has been given to excellence of architecture and design, and inclusion of works of art (not representing more than 1 per centum of the cost of the project).

"(o) JOINTLY OPERATED PROGRAMS.—Two or more local educational agencies may, at their option, enter into an agreement for carrying out jointly operated programs and projects assisted under this title.

"PARENTAL INVOLVEMENT

"SEC. 125. (a) ESTABLISHMENT OF ADVISORY COUNCILS.—(1) A local educational agency may receive funds under this title only if it establishes an advisory council for its entire school district which—

"(A) has a majority of members who are parents of children to be served by projects assisted under this title;

"(B) is composed of members elected by the parents in each district; and

"(C) includes representatives of children and schools eligible to be served by, but not currently participating in, programs assisted with funds provided under this title.

"(2)(A) A local educational agency may receive funds under this title only if it establishes an advisory council for each project area or project school, except as provided in subparagraph (B), which—

"(i) has a majority of members who are parents of children to be served by programs assisted under this title, and

"(ii) is composed of members elected by the parents in each project area or project school.

"(B) In the case of any project area or project school in which not more than one full-time equivalent staff member is paid with funds provided under this title, and in which not more than forty students participate in such programs, the requirements of subparagraph (A) shall be waived.

"(C) In the case of any project area or project school in which 75 or more students are served by programs assisted by funds provided under this title, each such project area or project school advisory council, in addition to meeting the requirements of subparagraph (A), shall—

"(i) be composed of not less than 8 members, who shall serve for terms of two years, after which time they may be re-elected;

"(ii) elect officers of the council after it has been fully constituted; and

"(iii) meet a sufficient number of times per year, according to a schedule and at locations to be determined by such council.

"(3) Any individual who is a teacher at a school serving a project area or is a parent of a child residing in an eligible school attendance area or attending an eligible school shall be eligible to be elected as a member of the district-wide advisory councils established pursuant to paragraph (1), but nothing in this sentence shall preclude the eligibility of other individuals who are residents in that district. No individual who is a teacher at a project school or a school serving a project area shall be ineligible to be elected as a member of a district-wide or project area or school advisory council on the basis of residency outside such area or district.

"(b) RESPONSIBILITIES OF ADVISORY COUNCILS.—Each local educational agency shall give each advisory council which it establishes under subsection (a) responsibility for advising it in planning for, and implementation and evaluation of, its programs and projects assisted under this title.

"(c) ACCESS TO INFORMATION.—(1) Each local educational agency shall provide without charge to each member of an advisory council established by such an agency under subsection (a) of this section—

"(A) a copy of the text of this title,

"(B) a copy of any Federal regulations and guidelines issued under such title; and

"(C) a copy of appropriate State regulations and guidelines associated with this title.

"(2) Each State educational agency shall provide a copy of any report resulting from

State or Federal auditing, monitoring, or evaluation activities in any district to the parent advisory council established pursuant to subsection (a)(1) in such district.

"(d) TRAINING PROGRAMS.—Each local educational agency application for funding under this title shall describe a program for training the members of advisory councils established pursuant to subsection (a) to carry out their responsibilities as described in subsection (b). Such training program—

"(1) shall be planned in full consultation with the members of such advisory councils;

"(2) shall provide each member of each such council with appropriate training materials; and

"(3) may permit the use of funds under this title for expenses associated with such training, including expenses associated with the attendance of such members at training sessions.

"(e) WORKSHOPS ON PARENTAL INVOLVEMENT.—For each fiscal year for which payments are made to State educational agencies under this title, the Commissioner shall sponsor workshops in the several regions of the United States which shall be designed to assist local educational agencies to work with and provide training to parent advisory councils established under subsection (a) of this section and to facilitate parental involvement in the programs conducted under this title. The workshops shall be planned and conducted in consultation with members of parent advisory councils in the region served by the workshop.

"(f) ASSESSMENT OF PARENTAL INVOLVEMENT AND TRAINING.—The National Institute of Education shall assess the effectiveness of (1) various forms of parental involvement, including parent advisory councils, on school governance, student achievement, and other purposes of this title, and (2) various methods of training the members of parent advisory councils, and shall report the results of such assessments to the Congress and the public.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1983, such sums as may be necessary to carry out the provisions of subsections (e) and (f) of this section.

"FUNDS ALLOCATION

"SEC. 126. (a) MAINTENANCE OF EFFORT.—(1) Except as provided in paragraph (2), a local educational agency may receive funds under this title for any fiscal year only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures (as determined in accordance with regulations of the Commissioner) of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than such combined fiscal effort per student or the aggregate expenditures for that purpose for the second preceding fiscal year.

"(2) The Commissioner may waive, for one fiscal year only, the requirements of this subsection if he determines that such a waiver would be equitable due to exceptional and unforeseen circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency. In any case in which a waiver under this paragraph is granted, the Commissioner shall reduce the amount of Federal payment for the program affected for the current fiscal year in the exact proportion to which the amount expended (either on an average per pupil or aggregate basis) was less than the amount required by paragraph (1). No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort required, under paragraph (1), for years subsequent to the year covered by such waiver. Such fiscal effort shall be computed on the basis of the level of funding which would, but for such waiver, have been required.

"(3) The Commissioner shall establish objective criteria of general applicability to carry out the waiver authority contained in this subsection.

"(b) USE OF FUNDS LIMITED TO EXCESS COSTS.—Subject to the provisions of section 131, a local educational agency may use funds received under this title only for the excess costs of programs and projects referred to in section 124(a). As used in this subsection, the term 'excess costs' means costs directly attributable to programs and projects which exceed the average per pupil expenditure of a local educational agency in the most recent year for which satisfactory data are available for pupils in the grade or grades included in such programs or projects.

'(c) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT REGULAR NON-FEDERAL FUNDS.—A local educational agency may use funds received under this title only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from regular non-Federal sources and from non-Federal sources for State phase-in programs described in section 131(b) for the education of pupils participating in programs and projects assisted under this title, and in no case may such funds be so used as to supplant such funds from such non-Federal sources.

(d) FEDERAL FUNDS REQUIRED TO SUPPLEMENT, NOT SUPPLANT NON-FEDERAL FUNDS FOR CERTAIN SPECIAL STATE AND LOCAL PROGRAMS.—(1) Subject to section 132, a local educational agency may use funds received under this title only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for each of the special programs described in subsection (b) of section 131 for the education of educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools and in no case, as to supplant such funds from non-Federal sources.

"(2) It shall not be considered a violation of this subsection for a local educational agency, in carrying out a special program described in subsection (b) of section 131, to take into consideration funds made available under this title, and to coordinate such special programs with programs using such Federal funds, provided that educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools, receive at least the same level of such special State and local funds that would have been made available to such children in the absence of funds under this title.

"(3) For purposes of this subsection, the level of funds that, in the absence of funds under this title would have been made available to such children shall be determined by reference to a plan for distributing such special funds. Such plan shall be based on objective criteria of need that do not discriminate against educationally deprived children, in the aggregate, in eligible school attendance areas or attending eligible schools. The objective criteria chosen by the local educational agency shall prescribe, with particularity, the children as well as the schools, grade-spans, or school attendance areas eligible for assistance and the method for selecting the particular children who will receive assistance under such special State or local program and the schools or grade-spans which such children attend or the school attendance areas in which such children reside. The criteria for selecting children, schools, grade-spans, and school attendance areas for participation shall be either educational need, a reasonable proxy for educational need, level of poverty, or a combination of such factors. Educationally deprived children residing in eligible school attendance areas or attending eligible schools, satisfying such objective criteria, must receive assistance under either this title or under such special State or local program before any child who does not satisfy such criteria receives such assistance.

"(e) COMPARABILITY OF SERVICES.—Subject to the provisions of section 131, a local educational agency may receive funds under this title only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this title. Where, under regulations of the Commissioner, all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are substantially comparable, in accordance with regulations of the Commissioner, in each project area. Each local educational agency shall report on or before July 1 of each year with respect to its compliance with this subsection, except for local educational agencies which were not required to report upon the date of enactment of the Educational Amendments of 1978, unless the Commissioner otherwise provides by regulation.

"ACCOUNTABILITY

"SEC. 127. (a) RECORDKEEPING.—Each local educational agency which receives funds under this title shall keep such records and afford such access thereto as the State educational agency shall prescribe, including records which fully disclose the amount and disposition of such funds, the total cost of programs and projects in connection with which such funds are used, the amount of the portion of the cost of the program or project supplied by other sources, and such other records as will facilitate an effective audit. Whenever a local educational agency carries on a single compensatory education program paid for out of funds under this title as well as State or local funds which meets all of the requirements of this title and whenever, under section 131, the local educational agency excludes expenditures from State and local sources in determining compliance with section 126 (b) and (e), the State educational agency need not require the Federal funds to be accounted for separately. In any proceeding, State or Federal, for the recoupment of any such funds which were misspent or misapplied, the percentage of the funds so misspent or misapplied which shall be deemed to be Federal funds shall be equal to the percentage of the funds used, or intended for use, for the program or project which were Federal funds.

"(b) REPORTING.—Each local educational agency which receives funds under this title shall make an annual report and such other reports to the State educational agency, in such form and containing such information (which in the case of reports relating to performance is in accordance with specific performance criteria related to program objectives), as may be reasonably necessary to enable the State educational agency to perform its duties under this title, including information relating to the educational achievement of students participating in programs and projects assisted under this title.

"(c) ACCESS TO INFORMATION.—Each local educational agency which applies for or receives funds under this title shall make the application and all pertinent documents related thereto available to parents, teachers, and other members of the general public.

"COMPLAINT RESOLUTION

"SEC. 128. Each local educational agency which receives funds under this title shall develop and implement, in accordance with

criteria prescribed by the Commissioners, written procedures for the resolution of complaints made to that agency by parent advisory councils, parents, teachers, or other concerned organizations or individuals concerning violations of this title, or of applicable provisions of the General Education Provisions Act in connection with programs under this title. Such procedures shall—

"(1) provide specific time limits for investigation and resolution of complaints, which shall not exceed thirty days unless a longer period of time is provided by the State educational agency due to exceptional circumstances in accordance with regulations established by the Commissioner;

"(2) provide an opportunity for the complainant or the complainant's representative, or both, to present evidence, including an opportunity to question parties involved;

"(3) provide the right to appeal the final resolution of the local educational agency to the State educational agency within thirty days after receipt of the written decision; and

"(4) provide for the dissemination of information concerning these procedures to interested parties, including all district and school parent advisory councils.

"INDIVIDUALIZED PLANS

"Sec. 129. It is the intent of the Congress to encourage, whenever feasible, the development for each educationally deprived child participating in a program under this title of an individualized educational plan (maintained and periodically evaluated), agreed upon jointly by the local educational agency, the teacher, a parent or guardian of the child, and, when appropriate, the child.

"PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

"Sec. 130. (a) General Requirements.—To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and meeting the requirements of sections 122 and 123, and subsections (a), (b), (d), and (l) of section 124, and subsection (c) of section 126. Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

"(b) By-Pass Provision.—(1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Commissioner shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

"(2) If the Commissioner determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), he shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

"(3)(A) When the Commissioner arranges for services pursuant to this subsection, he shall, after consultation with the appropriate public and private school officials, pay to the provider the cost of such services, including the administrative cost of arranging for such services, from the appropriate allocation or allocations under this title.

"(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Commissioner may withhold from the allocation of the affected State or local educational agency the amount he estimates would be necessary to pay the cost of such services.

"(C) Any determination by the Commissioner under this section shall continue in effect until the Commissioner determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsection (a).

"(4)(A) The Commissioner shall not take any final action under this subsection until the State educational agency and local educational agency affected by such action have had an opportunity, for at least forty-five days after receiving written notice thereof, to submit written objections and to appear before the Commissioner or his designee to show cause why such action should not be taken.

"(B) If a State or local educational agency is dissatisfied with the Commissioner's final action after a proceeding under subparagraph (A) of this paragraph, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(C) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"Subpart 4—Exemptions From Certain Program Requirements

"EXCLUSIONS FROM EXCESS COSTS AND COMPARABILITY PROVISION FOR CERTAIN SPECIAL STATE AND LOCAL PROGRAMS

"Sec. 131. (a) In General.—For the purpose of determining compliance with the requirement of section 126(b) (relating to use of funds only for excess costs of programs and projects) and of section 126(e) (relating to comparability of services), a local educational agency may, at its option, exclude State and local funds expended for carrying out a special program or a State phase-in program.

"(b) Special Program and State Phase-In Program Defined.—For purposes of this section—

"(1) a special program is limited to—

"(A) a State compensatory education program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (c) and which the State educational agency determines is being implemented by the local educational agency in accordance with subsection (c);

"(B) a State compensatory education program which the Commissioner has determined in advance under subsection (e) does not satisfy the requirements of subsection (c), but which he has determined permits the local educational agency, at its option, to use such special State funds in accordance with subsection (c), provided that the local educational agency designs a program which the State educational agency determines in advance under subsection (f) meets the requirements of subsection (c) and which the State educational agency determines will be implemented by the local educational agencies in accordance with subsection (c); or

"(C) a local compensatory education program which the State educational agency has determined in advance under subsection (f) meets the requirements of subsection (c) and which the State educational agency determines is being implemented in accordance with subsection (c); and

"(D) a bilingual program for children of limited English proficiency or special educational program for handicapped children or children with specific learning disabilities; and

"(2) a State phase-in program is a program which the Commissioner has determined in advance under subsection (e) meets the requirements of subsection (d) and which the State educational agency determines will be implemented by local educational agencies in accordance with subsection (d).

"(c) State and Local Compensatory Education Programs Similar to Title I Programs.—A State or local program meets the requirements of this subsection if it is similar to programs assisted under this part. The Commissioner shall consider a State or local program to be similar to programs assisted under this part if—

"(1) all children participating in the program are educationally deprived.

"(2) the program is based on performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

"(3) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

"(4) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of clauses (1), (2), and (3) of this subsection, and

"(5) the State educational agency monitors performance under the program to assure that the requirements of clauses (1), (2), (3), and (4) of this subsection are met.

"(d) Certain State Phase-In Programs.—A state education program which is being phased into full operation meets the requirements of this subsection if the Commissioner is satisfied that—

"(1) the program is authorized and governed specifically by the provisions of State law;

"(2) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

"(3) the program is based on objectives, including but not limted to performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;

"(4) parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

"(5) the program will benefit all children in a particular school or grade-span within a school;

"(6) school participating in a program de-

scribe, in a school level plan, programs strategies for meeting the special educational needs of educationally deprived children;

"(7) the phase-in period of the program is not more than six school years, except that the phase-in period for a program commenced prior to the date of enactment of the Education Amendments of 1978 shall be deemed to begin on the date of enactment of such Amendments;

"(8) at all times during such phase-in period at least 50 per centum of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families;

"(9) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in such program;

"(10) the local educational agency is separately accountable, for purposes of compliance with paragraphs (1) through (6), (8), and (9) of this subsection, to the State educational agency for any funds expended for such program; and

"(11) the local educational agencies carrying out the program are complying with paragraphs (1) through (6), (8), and (9) and the State educational agency is complying with paragraph (10).

"(e) ADVANCE DETERMINATION BY THE COMMISSIONER.—The Commissioner shall make an advance determination of whether or not a State program described in subsection (b)(1)(A) or (B) or (b)(2) meets the requirements of subsection (c) or meets the requirements of subsection (d). The Commissioner shall require each State educational agency to submit to him the provisions of State law together with implementing rules, regulations, orders, guidelines, and interpretations which are necessary for him to make such an advance determination. The Commissioner's determination shall be in writing and shall include the reasons for his determination. Whenever there is any material change in pertinent State law affecting the program, the State educational agency shall submit such changes to the Commissioner.

"(f) ADVANCE DETERMINATION BY THE EDUCATIONAL AGENCY.—The State educational agency shall make an advance determination of whether or not a program described in subsection (b)(1)(C) meets the requirements of subsection (c). The State educational agency shall require each local educational agency to submit the provisions of local law, together with implementing rules, regulations, guidelines, and interpretations which are necessary to make such an advance determination. The State educational agency's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent local law affecting the program, the local educational agency shall submit such changes to the State educational agency.

"LIMITED EXEMPTION TO SUPPLEMENT, NOT SUPPLANT, REQUIREMENT WHERE CERTAIN SPECIAL PROGRAMS FOR EDUCATIONALLY DEPRIVED CHILDREN ARE FULLY FUNDED

"SEC. 132. Whenever for a fiscal year—

"(1) a local educationa' agency provides special State and local funds for programs for educationally deprived children which qualify under clause (A), (B), or (C) of section 131(b)(1) for an exception from the comparability and excess costs provisions under such section 131, and

"(2) the amount of such special State and local funds provided in eligible school attendance areas and for eligible schools when added to the Federal funds provided for programs under this subpart equals the amount such agency is eligible to receive for such fiscal year under section 111(a)(2) (without regard to adjustments under section 193), then the local educational agency may, without being considered in violation of section 126(d), utilize additional State and local funds for special programs and projects which are solely for educationally deprived children residing in nonproject areas or attending nonproject schools, including areas and schools ineligible for assistance under this title. The exemption in the preceding sentence does not apply to the extent the level of such special State and local funds, per child participating in such programs residing in ineligible school attendance areas or attending ineligible schools, exceeds the amount of funds, per child participating in programs in project areas, provided to the agency under this part plus the amount of such special State or local funds provided for use in such areas.

"SCHOOLWIDE PROJECTS

"SEC. 133. (a) USE OF FUNDS FOR SCHOOLWIDE PROJECTS.—In the case of any school serving an attendance area that is eligible to receive services under this title and in which not less than 75 per centum of the children are from low-income families (in accordance with criteria established by the Commissioner), the local educational agency may carry out a project under this title to upgrade the entire educational program in that school if the requirements of subsection (b) are met.

"(b) DESIGNATION OF SCHOOLS.—A school may be designated for a schoolwide project under subsection (a) if—

"(1) a plan has been developed for that school by the local educational agency and has been approved by the State educational agency providing for—

"(A) a comprehensive assessment of the educational needs of all students in the school, in particular the special needs of educationally deprived children, and

"(B) an instructional program designed to meet the special needs of all students in the school;

"(2) the plan has been developed with the involvement of those individuals who will be engaged in carrying out the plan, including parents, teachers, teacher aides, administrators, and secondary students if the plan relates to a secondary school;

"(3) the plan provides for consultation among those individuals as to the educational progress of all studies;

"(4) the plan has been approved by the advisory council for that school established under section 125;

"(5) appropriate training is provided to teachers and teacher aides to enable them effectively to carry out the plan;

"(6) the plan includes procedures for evaluation involving the participation of the individuals listed in paragraph (2), and opportunities for periodic improvements in the plan based on the results of those evaluations;

"(7)(A) in the case of a school district in which there are one or more schools described in subsection (a) and there are also one or more other schools serving project areas, the local educational agency makes the Federal funds provided under this part available for children in such schools described in subsection (a) in amounts which per educationally deprived child served, equal or exceed the amount of such funds made available per educationally deprived child served in such other schools;

"(B) the local educational agency makes special supplementary State and local funds available for the children in schools described in subsection (a) in amounts which, per child served who is not educationally deprived, equal or exceed the amount of Federal funds provided under this part which, per educationally deprived child served, are made available for children in such schools; and

"(C) the average per pupil expenditure in schools described in subsection (a) (excluding amounts expended under a State compensatory education program) for the fiscal year in which the plan is to be carried out will not be less than such expenditure in such schools in the previous fiscal year.

"(c) APPROVAL OF SCHOOL: OPERATION OF PROJECT.—(1) The State educational agency shall approve the plan of any local educational agency for a schoolwide project if that plan meets the requirements of subsection (b).

"(2) For any school which has such a plan approved, the local educational agency—

"(A) shall, in order to carry out the plan, be relieved of any requirements under this title with respect to the commingling of funds provided under this title with funds available for regular programs;

"(B) shall not be required to identify particular children as being eligible to participate in programs assisted under this title; and

"(C) shall not be required to demonstrate that services provided with funds under this title are supplementary to the services regularly provided in the school.

"NONINSTRUCTIONAL DUTIES

"SEC. 134. Notwithstanding any provision of subpart 3 of this part, personnel paid entirely by funds made available under this title may be assigned to certain limited, rotating, supervisory duties not related to classroom instruction, the benefits of which are not limited to participating children under this title. Such duties may include only those to which similarly situated personnel not hired with funds made available under the title are assigned at the same school site, and for which such similarly situated personnel are paid, and may not exceed the same proportion of total time as similarly situated personnel at the same school site, or 10 per centum of the total time, whichever is less.

"PART B—PROGRAMS OPERATED BY STATE AGENCIES

"Subpart 1—Programs for Migratory Children

"GRANTS—ENTITLEMENT AND AMOUNT

"SEC. 141. (a) ENTITLEMENT.—A State educational agency or a combination of such agencies shall, upon application, be entitled to receive a grant for any fiscal year under this part to establish or improve, either directly or through local educational agencies, programs of education for migratory children of migratory agricultural workers or of migratory fishermen which meet the requirements of section 142.

"(b) AMOUNT OF GRANT.—(1) Except as provided in sections 156 and 157, the total grants which shall be made available for use in any State (other than Puerto Rico) for this subpart shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States) multiplied by (i) the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State full time, and (ii) the full-time equivalent of the estimated number of such migratory children aged five to seventeen, inclusive, who reside in the State part time, as determined by the Commissioner in accordance with regulations, except that if, in the case of any State, such

amount exceeds the amount required under section 142, the Commissioner shall allocate such excess, to the extent necessary, to other States whose total of grants under this sentence would otherwise be insufficient for all such children to be served in such other States. In determining the full-time equivalent number of migratory children who are in a State during the summer months, the Commissioner shall adjust the number so determined to take into account the special needs of those children for summer programs and the additional costs of operating such programs during the summer. In determining the number of migrant children for the purposes of this section the Commissioner shall use statistics made available by the migrant student record transfer system or such other system as he may determine most accurately and fully reflects the actual number of migrant students.

"(2) For each fiscal year, the Commissioner shall determine the percentage which the average per pupil expenditure in Puerto Rico is of the lowest average per pupil expenditure of any of the fifty States. The grant which Puerto Rico shall be eligible to receive under this section for a fiscal year shall be the amount arrived at by multiplying the number of such migrant children in Puerto Rico by the product of—

"(A) the percentage determined under the preceding sentence, and

"(B) 32 per centum of the average per pupil expenditure in the United States.

"PROGRAM REQUIREMENTS

"SEC. 142. (a) REQUIREMENTS FOR APPROVAL OF APPLICATION.—The Commissioner may approve an application submitted under section 141(a) only upon his determination—

"(1) that payments will be used for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of migratory children of migratory agricultural workers or of migratory fishermen, and to coordinate such programs and projects with similar programs and projects in other States, including the transmittal of pertinent information with respect to school records of such children;

"(2) that in planning and carrying out programs and projects there has been and will be appropriate coordination with programs administered under part B of title III of the Economic Opportunity Act of 1964 and under section 303 of the Comprehensive Employment and Training Act;

"(3) that such programs and projects will be administered and carried out in a manner consistent with the basic objectives of subpart 3 of part A, other than sections 122, 123, 126(d), and 130 thereof;

"(4) that, in planning and carrying out programs and projects at both the State and local educational agency level, there has been and will be appropriate consultation with parent advisory councils established in accordance with regulations of the Commissioner (consistent with the requirements of section 125(a)); and

"(5) that, in planning and carrying out programs and projects, there has been adequate assurance that provision will be made for the preschool education needs of migratory children of migratory agricultural workers or of migratory fishermen, whenever such agency determines that compliance with this paragraph will not detract from the operation of programs and projects described in paragraph (1) of this subsection after considering funds available for this purpose.

"(b) CONTINUATION OF MIGRANT STATUS.—For the purposes of this subpart, with the concurrence of his parents, a migratory child of a migratory agricultural workers or a migratory fisherman shall be deemed to continue to be such a child for a period, not in excess of five years, during which he resides in the area served by the agency carrying on a program or project under this section. Such children who are presently migrant, as determined pursuant to regulations of the Commissioner, shall be given priority in this consideration of programs and activities contained in applications submitted under this subsection.

(c) BY-PASS PROVISION.—If the Commissioner determines that a State is unable or unwilling to conduct educational programs for migratory children of migratory agricultural workers or of migratory fishermen, or that it would result in more efficient and economic administration, or that it would add substantially to the welfare or educational attainment of such children, he may make special arrangements with other public or nonprofit private agencies to carry out the purposes of this section in one or more States, and for this purpose he may use all or part of the total of grants available for any such State under this section.

"COORDINATION OF MIGRANT EDUCATION ACTIVITIES

"SEC. 143. (a) ACTIVITIES AUTHORIZED.—The Commissioner is authorized to make grants to, or enter into contracts with, State educational agencies to operate a system for the transfer among State and local educational agencies of migrant student records and to carry out other activities, in consultation with the States, to improve the interstate and intrastate coordination among State and local educational agencies of the educational programs available for migratory students.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for this section not more than 5 per centum of the total amount paid for the preceding fiscal year to State educational agencies under section 141.

"Subpart 2—Programs for Handicapped Children

"AMOUNT AND ELIGIBILITY

"SEC. 146. (a) ELIGIBILITY FOR GRANT.—A State agency which is directly responsible for providing free public education for handicapped children (as that term is defined in section 602(1) of the Education of the Handicapped Act), shall be eligible to receive a grant under this subpart for any fiscal year.

"(b) AMOUNT OF GRANT.—(1) Except as provided in sections 156 and 157, the grant which a State agency referred to in subsection (a) (other than the agency for Puerto Rico) shall be eligible to receive under this section shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditures in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States), multiplied by the number of such handicapped children in average daily attendance, as determined by the Commissioner, at schools for handicapped children operated or supported by the State agency, including schools providing special education for handicapped children under contract or other arrangement with such State agency, in the most recent fiscal year for which satisfactory data are available.

"(2) For each fiscal year, the Commissioner shall determine the percentage which the average per pupil expenditure in Puerto Rico is of the lowest average per pupil expenditure of any of the fifty States. The grant which Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of such handicapped children in Puerto Rico by the product of—

"(A) the percentage determined under the preceding sentence, and

"(B) 32 per centum of the average per pupil expenditure in the United States.

"(c) COUNTING OF CHILDREN TRANSFERRING FROM STATE TO LOCAL PROGRAMS.—In the case where a child described in subsection (a) leaves an educational program for handicapped children operated or supported by the State agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (b) if (1) he continues to receive an appropriately designed educational program and (2) the State agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State agency under this section which are attributable to such child, to be used for the purposes set forth in section 147.

"PROGRAM REQUIREMENTS

"SEC. 147. A State shall use the payments made under this subpart only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of handicapped children. Such programs and projects shall be administered and carried out in a manner consistent with subpart 3 of part A, other than sections 122, 123, 125, 126(d), 126(e), and 130 thereof. The State agency shall provide assurances to the Commissioner that each such child in average daily attendance counted under subsection (b) of section 146 will be provided with such a program, commensurate with his special needs, during any fiscal year for which such payments are made.

"Subpart 3—Programs for Neglected and Delinquent Children

"AMOUNT AND ENTITLEMENT

"SEC. 151. (a) ENTITLEMENT TO GRANTS.—A State agency which is directly responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions shall be entitled to receive a grant under this subpart for any fiscal year (but only if grants received under this subpart are used only for children in such institutions).

"(b) AMOUNT OF GRANT.—(1) Except as provided in sections 156 and 157, the grant which such an agency (other than the agency for Puerto Rico) shall be eligible to receive shall be an amount equal to 40 per centum of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 per centum of the average per pupil expenditure in the United States, of 80 per centum of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 per centum of the average per pupil expenditure in the United States, of 120 per centum of the average per pupil expenditure in the United States) multiplied by the number of such neglected or delinquent children in average daily attendance, as determined by the Commissioner, at schools for such children operated or supported by that agency, including schools providing education for such children under contract or other arrangement with such agency, in the most recent fiscal year for which satisfactory data are available.

"(2) For each fiscal year, the Commissioner shall determine the percentage which the average per pupil expenditure in Puerto Rico is of the lowest average per pupil expenditure of any of the fifty States. The grant which Puerto Rico shall be eligible to receive

under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of such neglected or delinquent children in Puerto Rico by the product of—

"(A) the percentage determined under the preceding sentence, and

"(B) 32 per centum of the average per pupil expenditure in the United States.

"PROGRAM REQUIREMENT

"SEC. 152. (a) USE OF PAYMENTS.—A State agency shall use payments under this subpart only for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of children in institutions for neglected or delinquent children or in adult correctional institutions. Such programs and projects shall be designed to support educational services supplemental to the basic education of such children which must be provided by the State, and such programs and projects shall be administered and carried out in a manner consistent with subpart 3 of part A, other than sections 122, 123, 125, 126(d), 126(e), and 130 thereof.

"(b) THREE-YEAR PROJECTS.—Where a State agency operates programs under this title in which children are likely to participate for more than one year, the State educational agency my approve the application for a grant under this subpart for a period of more than one year, but not to exceed three years.

"TRANSITION SERVICES

"SEC. 153. (a) GRANTS AUTHORIZED.—The Commissioner is authorized to make grants to State and local educational agencies to support projects to facilitate the transition of children from State operated institutions for neglected and delinquent children into locally operated programs. Grants under this section shall be used to provide special educational services for such children in schools other than State operated institutions.

"(b) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated for the purposes of this section for any fiscal year, not to exceed 5 per centum of the amount State agencies are entitled to receive under section 151 for that year.

"Subpart 4—General Provisions for State Operated Programs

"RESERVATION OF FUNDS FOR TERRITORIES

"SEC. 156. There is authorized to be appropriated for each fiscal year for purposes of each of subparts 1, 2, and 3 of this part, an amount equal to not more than 1 per centum of the amount appropriated for such year for such subparts, for payments to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands under each such subpart. The amounts appropriated for each such subpart shall be allotted among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for such grants, based on such criteria as the Commissioner determines will best carry out the purposes of this title.

"MINIMUM PAYMENTS FOR STATE OPERATED PROGRAMS

"SEC. 157. No State shall receive in any fiscal year prior to October 1, 1983, pursuant to subpart 1, 2 or 3 of this part an amount which is less than 85 per centum of the amount which that State received in the prior fiscal year pursuant to the comparable sections of this title as in effect immediately preceding the enactment of the Education Amendments of 1978 or the comparable subpart of this part, whichever was in effect for such prior fiscal year, and, for any fiscal year ending prior to October 1, 1982, no State shall receive, pursuant to subpart 1 of this part, an amount which is less than 100 per centum of the amount that State received in the prior fiscal year pursuant to the comparable section of this title as in effect immediately prior to the enactment of the Education Amendments of 1978 or under subpart 1 of this part, which ever was in effect for such prior fiscal year.

"PART C—STATE ADMINISTRATION OF PROGRAMS AND PROJECTS

"Subpart 1—Applicability; State Applications

"APPLICABILITY

"SEC. 161. The provisions of this part (other than section 162 and subpart 3) shall apply in any fiscal year in which the provisions of section 510(b)(2) of this Act are not met.

"STATE APPLICATIONS

"SEC. 162. (a) SUBMISSION OF STATE APPLICATIONS.—Any State desiring to participate under this title (except with respect to the program provided for in subpart 1 of part B relating to migratory children) shall have on file with the Commissioner an application submitted by its State educational agency.

"(b) CONTENTS OF STATE APPLICATIONS.—Each application required by subsection (a) shall contain (1) satisfactory assurances that the State educational agency will comply with the requirements of this part, and (2) such information as the Commissioner may consider necessary for him to make the findings required by section 182.

"Subpart 2—Duties Imposed on State Educational Agencies

"APPLICATION APPROVAL

"SEC. 164. (a) REQUIREMENTS FOR APPROVAL.—(1) A State educational agency shall approve an application of a local educational agency or a State agency under this title if (A) such State educational agency is satisfied, after considering the factors specified in paragraph (2), that such applicant agency will use the funds received under the application in a manner which meets the requirements of this title, the General Education Provisions Act, and the rules, regulations, procedures, guidelines, criteria, or other requirements adopted by such agency which pertain to programs and projects assisted under this title, and (B) such applicant agency is not out of compliance with a determination of the State educational agency or the Commissioner that it repay funds paid it under this title which were misused, and is not out of compliance with a compliance agreement under section 169(c).

"(2) A State educational agency may approve an application under paragraph (1), only after it has considered, where pertinent, (A) the results of Federal and State audits, (B) the results of Federal and State monitoring reports, (C) administrative complaints made by parents or other individuals concerning the applicant agency's compliance with this title, and (4) evaluations conducted under section 124(g).

"(b) PAYMENTS.—Except as provided in section 194, a State educational agency may make payments from funds received under this title only for programs and projects which it has approved under subsection (a).

"(c) OPPORTUNITY FOR HEARING.—A State educational agency shall not finally disapprove in whole or in part any application for funds under part A or under subpart 2 or subpart 3 of part B without first affording the local educational agency or other applicant submitting the application reasonable notice and opportunity for a hearing.

"STATE RULEMAKING

"SEC. 165. Nothing in this title shall be deemed to prohibit a State educational agency from adopting rules, regulations, procedures, guidelines, criteria, or other requirements applicable to programs and projects assisted under this title if they do not conflict with the provisions of this title, with regulations promulgated by the Commissioner implementing this title, or with other applicable Federal laws. The Commissioner shall encourage a State educational agency in adopting such rules, regulations, procedures, guidelines, criteria, or other requirements to recognize the special and unique needs and circumstances of the State and of each local educational agency in the State.

"TECHNICAL ASSISTANCE AND DISSEMINATION OF INFORMATION

"SEC. 166. Each State educational agency shall carry on a comprehensive program to provide technical assistance to local educational agencies and State agencies with respect to the use of funds received under this title. Such a program shall include technical assistance for management procedures, for planning, development, implementation, and evaluation of programs, and for preparation of applications, as well as other forms of technical assistance needed by local educational agencies and State agencies. Each State educational agency shall also adopt effective procedures for disseminating to local educational agencies and State agencies (1) significant and relevant information derived from educational research, (2) information about successful compensatory education projects, (3) information about other Federal and State funded programs which may provide needed health, social, and nutrition services to eligible participating children under this title, and (4) such other information as will assist local educational agencies and State agencies in planning, developing, implementing, and evaluating programs assisted under this title.

"MONITORING

"SEC. 167. Each State educational agency shall adopt standards, consistent with minimum standards established by the Commissioner and with the State monitoring and enforcement plan submitted under section 171, for monitoring the effectiveness of programs and projects assisted under this title. Such standards shall (1) describe the purpose and scope of monitoring; (2) specify the frequency of onsite visits; (3) describe the procedures for issuing and responding to monitoring reports, including but not limited to, the period of time in which the State educational agency must issue its report, the period of time in which the applicant agency must respond, and the appropriate followup by the State educational agency; (4) specify the methods for making monitoring reports available to parents, State and local auditors, and other persons, and (5) specify the methods for insuring that non-complaint practices are corrected.

"COMPLAINT RESOLUTION

"SEC. 168. Each State educational agency shall adopt written procedures for receiving complaints, or reviewing appeals from decisions of local educational agencies with respect to complaints, concerning violations of this title or applicable provisions of the General Education Provisions Act in connection with programs assisted under this title, and for conducting onsite investigations of such complaints which the State educational agency deems necessary. Such procedures shall include—

"(1) specific time limits for resolving the complaint or completing the review and, if necessary, the independent onsite investigation, which shall not exceed sixty days unless exceptional circumstances exist;

"(2) an opportunity for the complainant or the complainant's representative, or both, and the local educational agency involved to present evidence, including the opportunity to question parties to the dispute and any of their witnesses;

"(3) the right to appeal the final resolution of the State educational agency to the Commissioner within thirty days after receipt of the written decision; and

"(4) dissemination, free of charge, of information concerning these procedures to

interested parties, including all district and school advisory councils.

"WITHHOLDING OF PAYMENTS

"SEC. 169. (a) WITHHOLDING.—Whenever a State educational agency, after reasonable notice and opportunity for a hearing (consistent with the requirements of section 434(b) of the General Education Provisions Act) to any local educational agency or State agency, before an impartial decisionmaker, finds that there has been a failure to comply substantially with any provision of subpart 3 of part A or subpart 2 or 3 of part B, the State educational agency shall notify such agency that further payments, in whole or in part, will not be made to it under this title until it is satisfied that there is no longer any such failure to comply. Until it is so satisfied, no further payments shall be made to such agency under this title, except as may be provided in a compliance agreement entered into under subsection (c). Pending the outcome of any proceeding under this subsection, the State educational agency may suspend, in whole or in part, payments to such agency, after such agency has been given reasonable notice and opportunity to show cause why such action should not be taken.

"(b) NOTICE TO PUBLIC OF STATE WITHHOLDING.—Upon submission to a local educational agency or a State agency of a notice that the State educational agency pursuant to subsection (a) is withholding payment, the State educational agency shall inform the district advisory council (if any) and shall take such additional action as may be necessary to bring the State action to the attention of the public.

"(c) COMPLIANCE AGREEMENTS.—A State educational agency may suspend the initiation or continuation of its withholding action under subsection (a) while there is in effect a compliance agreement with the local educational agency or State agency under this subsection. Such an agreement shall be deemed to be in effect for the period specified therein, except that if the local educational agency or State agency fails to comply with the terms agreed to, such agreement shall no longer be in effect and subsection (a) shall be fully operative. In implementing such subsection, the State educational agency shall take into account any partial compliance by such agency under such agreement. For purposes of this subsection, the term 'compliance agreement' means an agreement which—

"(1) sets forth the terms and conditions to which the local educational agency or State agency has agreed in order to comply with the requirements of this title or the General Education Provisions Act and regulations promulgated thereunder, and with the applicable rules, regulations, procedures, guidelines, criteria or other requirements adopted by the State educational agency;

"(2) addresses all the matters that formed the basis for the initiation of the withholding action by the State educational agency; and

"(3) may consist of a series of agreements that in the aggregate dispose of all such matters.

Within fifteen days after the execution of any compliance agreement, the State educational agency shall send a copy thereof to the district advisory council affected, and to each organization or person who filed a complaint with respect to any failure to comply which is covered by that agreement.

"(d) REVIEW BY THE COMMISSIONER.—A local educational agency or State agency may, in accordance with section 425(a) of the General Education Provisions Act, appeal a final determination of the State educational agency under subsection (a) to the Commissioner.

"AUDITS AND AUDIT RESOLUTION

"SEC. 170. (a) AUDITING.—Each State shall make provision for audits of the expenditure of funds received under this title to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant. Such audits shall be made with reasonable frequency considering the nature, size, and complexity of the activity.

"(b) AUDIT RESOLUTION.—Each State educational agency shall have in effect written procedures, meeting minimum standards established by the Commissioner, to assure timely and appropriate resolutions of audit findings and recommendations arising out of audits provided for in subsection (a). Such procedures shall include a description of the audit resolution process, timetables for each step of the process, and an audit appeals process. Whenever under such procedures, the audit resolution process requires the repayment of Federal funds which were misspent or misapplied, such repayment may be made in either a single payment or in installments over a period not to exceed three years.

"(c) REQUIREMENT FOR REPAYMENT.—A local educational agency or State agency shall repay from non-Federal sources or from Federal funds no accountability for which is required to the Federal Government the amount of funds under this title which have been finally determined through the audit resolution process to have been misspent or misapplied.

"(d) REVIEW BY THE COMMISSIONER.—A local educational agency or State agency may, in accordance with section 425(a) of the General Education Provision Act, appeal a final determination of the State educational agency under subsection (b) to the Commissioner.

"(e) FAILURE TO REPAY.—If, following an affirmation by the Commissioner of a final determination of a State educational agency under subsection (b) or failure by a local educational agency or State agency to seek timely review by the Commissioner, such local educational agency or State agency refuses to repay from non-Federal sources, or from Federal funds no accountability for which is required to the Federal Government, funds which have been misspent or misapplied under this title, the State educational agency shall promptly notify the Commissioner and the Commissioner shall promptly initiate collection action.

"Subpart 3—Responsibilities of State Educational Agencies to Commissioner

"STATE MONITORING AND ENFORCEMENT PLANS

"SEC. 171. (a) STATE PLAN.—Each State educational agency participating in programs under this title shall submit, at such times (at least once every three years) and in such detail as the Commissioner shall prescribe, a State monitoring and enforcement plan. Such plan shall set forth—

"(1) a program of regular visits by State educational agency personnel to projects assisted under this title;

"(2) the matters to be reviewed during such visits;

"(3) procedures for verifying information provided by local educational agencies and State agencies, including the use of other information available to the State to cross-check that information;

"(4) procedures for regular audits of local educational agency and State agency expenditures under this title, and procedures for the recovery of any expenditure determined not to be allowable under this title;

"(5) procedures for resolving each complaint received by the State relating to programs assisted under this title, including complaints referred to the State by the Commissioner and complaints by representatives of children enrolled in private schools that those children are not receiving the services to which they are entitled under this title; and

"(6) a description of the means by which the state educational agency has determined, and will continue to determine, the compliance by local educational agencies with the requirements of section 130 relating to the equitable provision of services to children enrolled in private schools.

"(b) REPORT.—Each plan submitted by a State educational agency under this section shall include a report, in such form as the Commissioner shall prescribe, of the activities undertaken by the State in the years since the previous plan was filed to carry out its monitoring and enforcement efforts under this title.

"REPORTING

"SEC. 172. Each State educational agency shall make to the Commissioner (1) periodic reports (including the results of objective measurements required by section 124(g) and of research and replication studies) evaluating the effectiveness of payments under this title and of particular programs assisted under it in improving the educational attainment of educationally deprived children, and (2) such other reports as may be reasonably necessary to enable the Commissioner to perform his duties under this title (including such reports as he may require to determine the amounts which the local educational agencies of that State are eligible to receive for any fiscal year).

"RECORDKEEPING, FISCAL CONTROL, AND FUND ACCOUNTING

"SEC. 173. Each State educational agency which receives funds under this title shall use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, funds made available under this title, and keep such records, and afford access thereto, as the Commissioner shall prescribe, including records which fully disclose the amount and disposition by such agency of such funds, the total cost of programs and projects in connection with which such funds are used, the amount of that portion of the cost of the program and project supplied by other sources, and such other records as will facilitate an effective audit.

"PROHIBITION OF CONSIDERATION OF FEDERAL AID IN DETERMINING STATE AID

"SEC. 174. No State shall take into consideration payments under this title in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.

"PART D—FEDERAL ADMINISTRATION OF PROGRAMS AND PROJECTS

"APPLICABILITY

"SEC. 181. In addition to other requirements contained in this part, the requirements of the General Education Provisions Act which relate to Federal administration of elementary and secondary education programs shall apply to programs carried out under this title.

"APPROVAL OF APPLICATIONS

"SEC. 182. (a) REQUIREMENT FOR APPROVAL.—The Commissioner shall not approve an application under section 162 until he has made specific findings, in writing, that (1) the application and the State monitoring and enforcement plan required under section 171 comply with this title, and (2) that he is satisfied that the assurances in such application and the assurances contained in its general application under section 435 of the General Education Pro-

visions Act (where applicable) will be carried out.

"(b) HEARINGS.—The Commissioner shall, in accordance with the procedures set forth in section 453 of the General Education Provisions Act, not finally disapprove an application under section 142 or section 162 except after notice and opportunity for a hearing to the State educational agency.

"PROGRAM EVALUATION

"SEC. 183. (a) INDEPENDENT EVALUATIONS.—The Commissioner shall provide for independent evaluations which describe and measure the impact of programs and projects assisted under this title. Such evaluations may be provided by contract or other arrangements, and all such evaluations shall be made by competent and independent persons, and shall include, whenever possible, opinions obtained from program or project participants about the strengths and weaknesses of such programs and projects.

"(b) EVALUATION STANDARDS AND SCHEDULE.—The Commissioner shall (1) develop and publish standards for evaluation of program or project effectiveness in achieving the objectives of this title, and (2) develop, in consultation with State educational agencies and representatives of local educational agencies, a schedule for conducting evaluations under section 124(g) designed to ensure that evaluations are conducted in representative samples of the local educational agencies in any State each year. Such standards will be developed only after widespread consultation and hearings with practicing State and local agency evaluators, and the Commissioner's standards will reflect the input of these groups.

"(c) JOINTLY SPONSORED STUDIES.—The Commissioner shall consult with State and local educational agencies in order to provide for jointly sponsored objective evaluation studies of programs and projects assisted under this title within a State.

"(d) EVALUATION MODELS.—The Commissioner shall provide to State educational agencies, models for evaluations of all programs conducted under this title, for their use in carrying out their functions under section 172, which shall include uniform procedures and criteria to be utilized by local educational agencies and State agencies, as well as by the State educational agency in the evaluation of such programs. In developing evaluation design models the Commissioner shall consult with State and local evaluators experienced in conducting such evaluations.

"(e) TECHNICAL ASSISTANCE.—The Commissioner shall provide such technical and other assistance as may be necessary to State educational agencies to enable them to assist local educational agencies and State agencies in the development and application of a systematic evaluation of programs in accordance with the models developed by the Commissioner.

"(f) SPECIFICATION OF OBJECTIVE CRITERIA.—The models developed by the Commissioner shall specify objective criteria which shall be utilized in the evaluation of all programs and shall outline techniques (such as longitudinal studies of children involved in such programs) and methodology (such as the use of tests which yield comparable results) for producing data which are comparable on a statewide and nationwide basis.

"(g) REPORT TO CONGRESS.—The Commissioner shall make a report to the respective committees of the Congress having legislative jurisdiction over programs authorized by this title and the respective Committees on Appropriations no later than February 1, 1980, 1982, and 1984 concerning the results of evaluations of programs and projects required under this section, which shall be comprehensive and detailed, as up-to-date as possible, and based to the maximum extent possible on objective measurements, together with other related findings and evaluations and his recommendations with respect to legislation.

"(h) INFORMATION DISSEMINATION.—The Commissioner shall also develop a system for the gathering and dissemination of results of evaluations and for the identification of exemplary programs and projects, or of particularly effective elements of programs and projects, and for the dissemination of information concerning such programs and projects or such elements thereof to State agencies and local educational agencies responsible for the design and conduct of programs and projects under this title, and to the education profession and the general public.

"(i) MAXIMUM EXPENDITURES.—The Commissioner is authorized, out of funds appropriated to carry out this title in any fiscal year, to expend such sums as may be necessary to carry out the provisions of this section, but not to exceed one-half of 1 per centum of the amount appropriated for such programs. In carrying out the provisions of this section, the Commissioner shall place priority on assisting States, local educational agencies, and State agencies to conduct evaluations and shall, only as funds are available after fulfilling that purpose, seek to conduct any national evaluations of the program.

"COMPLAINT RESOLUTION

"SEC. 184. The Commissioner shall develop and implement written procedures for receiving and resolving appeals from final resolutions of State educational agencies with respect to complaints concerning violations of this title or of applicable provisions of the General Education Provisions Act in connection with programs under this title, for receiving such complaints directly from parent advisory councils, parents, teachers, or other concerned organizations or individuals, and for conducting independent onsite investigations of complaints if the Commissioner deems necessary. Such procedures shall include—

"(1) specific time limits for resolving the complaint or for completing the review and any necessary independent investigation, which shall not exceed sixty days unless exceptional circumstances exist;

"(2) an opportunity for the complainant, the complainant's representative, the local educational agency and the State educational agency to present evidence;

"(3) a requirement that the complainant, the complainant's representative, the local educational agency, the State educational agency, State agency, the district parent advisory council, and appropriate school-parent advisory councils shall be notified, in writing, within ten days after the resolution of the appeal of the nature of the resolution, the reasons therefore, and the right to an administrative appeal; and

"(4) dissemination of information concerning the procedures.

"AUDITS AND AUDIT RESOLUTION

"SEC. 185. (a) AUDITING.—The Inspector General of the Department of Health, Education, and Welfare shall make provision for audits of grants made under this title to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant.

"(b) AUDIT RESOLUTION AND REPAYMENT.—The Commissioner shall adopt procedures to assure timely and appropriate resolution of audit findings and recommendations arising out of audits provided for in subsection (a). Such procedures shall include timetables for each step of the audit resolution process and an audit appeals process. Where, under such procedures, the audit resolution process requires the repayment of Federal funds which were misspent or misapplied, the Commissioner shall require the repayment of the amount of funds under this title which have been finally determined through the audit resolution process to have been misspent or misapplied. Such repayment may be made from funds derived from non-Federal sources or from Federal funds no accountability for which is required to the Federal Government. Such repayments may be made in either a single payment or in installment payments over a period not to exceed three years.

"WITHHOLDING OF PAYMENTS

"SEC. 186. (a) WITHHOLDING.—Whenever the Commissioner, after reasonable notice to any State educational agency and an opportunity for a hearing on the record, finds that there has been a failure to comply substantially with any assurance set forth in the application of that State approved under section 142 or 162, the Commissioner shall notify the agency that further payments will not be made to the State under this title (or, in his discretion, that the State educational agency shall reduce or terminate further payments under this title to specified local educational agencies or State agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, (1) no further payments shall be made to the State under this title, or (2) payments by the State educational agency under this title shall be limited to local educational agencies and State agencies not affected by the failure, or (3) payments to particular local educational agencies or State agencies shall be reduced, as the case may be. Where partial payments to a local educational agency are continued under this subsection, the expenditure of the payments shall be subject to such conditions as the Commissioner deems appropriate in light of the failure which led to partial withholding. In the case of a substantial and continuing violation, the Commissioner may suspend payments to such agency, after such agency has been given reasonable notice and opportunity to show cause why such action should not be taken.

"(b) NOTICE TO PUBLIC OF COMMISSIONER WITHHOLDING.—Upon submission to a State of a notice under subsection (a) that the Commissioner is withholding payments, the Commissioner shall take such action as may be necessary to bring his action to the attention of the public within the State.

"(c) COMPLIANCE AGREEMENT.—(1) The Commissioner may suspend the initiation or continuation of his withholding action under subsection (a) during any period there is in effect a compliance agreement with the State educational agency under this subsection. Such an agreement shall be deemed to be in effect for the period specified therein, except that if the State educational agency fails to comply with the terms agreed to, such an agreement shall no longer be in effect and subsection (a) shall be fully operative. In implementing such subsection, the Commissioner shall take into account any partial compliance by such agency under such agreement.

"(2) For the purpose of this subsection, the term 'compliance agreement' means an agreement which—

"(A) sets forth the terms and conditions to which the State or local educational agency or State agency has agreed in order to comply with the requirements of this title or the General Education Provisions Act and regulations promulgated thereunder;

"(B) addresses all the matters that formed the basis for the initiation of the withholding action by the Commissioner; and

"(C) may consist of a series of agreements that in the aggregate dispose of all such matters.

"(3) In any case in which a State educational agency desires to enter into a compliance agreement, but alleges that full com-

pliance with the requirements of this title is genuinely not feasible until a future date, the Commissioner shall hold a hearing at which that agency shall have the burden of demonstrating that immediate compliance is not feasible. The Commissioner shall provide an opportunity for parents, their representatives, and other interested parties to participate in that hearing. If the Commissioner determines, on the basis of all the evidence presented to him, that immediate compliance is genuinely not feasible, he shall make written findings to that effect before entering into such a compliance agreement with that State educational agency. A compliance agreement under this subsection shall not be exempt from disclosure under any provision of section 552, of title 5, United States Code. Within fifteen days after the execution of any compliance agreement under this subsection, the Commissioner shall send a copy thereof to each organization or person who filed a complaint with respect to any failure to comply which is covered by that agreement.

"POLICY MANUAL

"SEC. 187. (a) SCOPE AND PURPOSE.—The Commissioner shall, not later than six months after the publication of final regulations with respect to the amendments to this title made by the Education Amendments of 1978, prepare and distribute to State educational agencies, State agencies operating programs for neglected and delinquent and handicapped children, local educational agencies, and district-wide advisory councils, and shall make available to other interested individuals, organizations, and agencies, a policy manual for this title to—

"(1) assist such agencies in (A) preparing applications for program funds under this title, (B) meeting the applicable program requirements under this title, and (C) enhancing the quality, increasing the depth, or broadening the scope of activities for programs under this title;

"(2) assist State educational agencies in achieving proper and efficient administration of programs funded under this title;

"(3) assist advisory councils established under section 125(a) in advising the local educational agencies in the planning for, and implemention and evaluation of, programs and projects under this title; and

"(4) insure that officers and employees of the Department of Health, Education, and Welfare, including, but not limited to, officers and employees of the Commissioner and officers and employees of such Department charged with auditing programs carried on under this title, uniformly interpret, apply, and enforce requirements under this title throughout the United States.

"(b) CONTENTS OF POLICY MANUAL.—The policy manual shall, with respect to programs carried on under this title, contain descriptions, statements, procedural and substantive rules, opinions, policy statements and interpretations and indices to and amendments of the foregoing, and in particular, whether or not such items are required under section 552 of title 5, United States Code to be published or made available, the manual shall include (but not be limited to)—

"(1) a statement of the requirements applicable to the programs carried on under this title including such requirements contained in this title, the General Education Provisions Act, other applicable statutes, and regulations issued under the authority of such statutes;

"(2) an explanation of the purpose of each requirement, including appropriate references to legislative history;

"(3) an explanation of the interrelationships between the applicable requirements;

"(4) a statement of the procedures to be followed by the Commissioner and the Secretary with respect to proper and efficient performance of their administrative responsibilities, including but not limited to (A) approving State applications or State plans, (B) distributing grants to appropriate agencies, (C) resolving problems discovered during monitoring visits, (D) resolving financial exceptions disclosed during audits, (E) collecting outstanding claims arising out of activities under this title, (F) resolving complaints, (G) responding to requests for advisory opinions interpreting and applying standards contained in applicable statutes and regulations to the public, (H) identifying and publicizing exemplary programs, and (I) making public audit determinations of the Commissioner or of any officer or panel authorized by the Commissioner to make such determinations;

"(5) summaries of (A) advisory opinions referred to in paragraph (4)(G) of this section and (B) final audit determinations referred to in paragraph (4)(I), including examples of actual applications of the legal requirements of applicable statutes and regulations;

"(6) model forms and instructions developed by the Commissioner for use by State and local educational agencies, at their discretion, including, but not limited to, application forms, application review checklists, and instruments for monitoring programs operated by applicant agencies;

"(7) summaries of appropriate court decisions concerning programs under this title;

"(8) examples of methods of distributing State and local funds which do and do not satisfy the applicable requirements under this title; and

"(9) model forms, policies, and procedures developed by State educational agencies.

"ENFORCEMENT REPORT

"SEC. 188. The Commissioner shall, in conjunction with the report required by section 183(g), submit to the Congress a report concerning the enforcement of this title. The report submitted in 1980, 1982, and 1984 shall contain—

"(1) an analysis, for each State which has an application approved for that year under section 182, of the extent to which the assurances, policies, and procedures of that State submitted as part of that application satisfying the requirements of this title,

"(2) a description for each such State of the manner in which monitoring reports of the Commissioner were taken into consideration in the approval of such applications.

"(3) a description, with respect to appropriate States of the manner in which unresolved audit and program monitoring findings were taken into consideration in the approval of such applications,

"(4) a description for each such State of the manner in which the annual evaluation report of that State was taken into consideration in the approval of such applications,

"(5) a summary of the findings of the Commissioner's on-site monitoring visits, of the actions taken by State educational agencies to correct problems identified in each report based on such visits, and of the number, type, and location of problems which have been so identified but which have not been corrected as of the date of the submission of the annual enforcement report under this section.

"(6) with respect to audits conducted under this title, (A) the number and type of audits conducted in the year preceding the date of submission of the report, (B) the identity of each State or local educational agency audited during that year, (C) the resolution status of each outstanding audit, including the dates on which each step of the resolution process with respect to such outstanding audits was completed, the scheduled for completion of such process, the amount of the financial exceptions noted in final audit reports and in letters of final determination, and an explanation of any differences in such amounts as noted in draft audit reports, final audit reports, and letters of final determination, (D) the number and identity of any States which did not appeal to the audit hearing board for this title with respect to audits conducted during that year and the status of recoupment activities for each such State, (E) the number and identity of States which appealed to such board during that year and the status of each active appeal, (F) the number and identity of States which have completed such appeals during that year and the status of recoupment activities with respect thereto, (G) the number and type of any cases referred to the Attorney General during that year for collection of misspent funds, (H) the amount of any funds recovered during that year as a result of such audit resolution process, (I) an analysis of the type of violations identified in final audit reports, letters of final determination, and final decisions of the audit hearing board for this title and of the Commissioner on appeal from the decisions of such board, (J) a summary of audit follow-up actions conducted during that year for the purpose of determining that deficiencies which led to financial audit exceptions or audit findings of procedural noncompliance have been corrected, (K) a description of audits planned for the year succeeding the date of the submission of the report, and (L) recommendations for improvement of the audit resolution process, and

"(7) with respect to complaints made to the Commissioner concerning programs under this title during the year preceding the date of submission of the report under this section, the number and type of complaints, the identity of the State and local educational agencies, the action taken by the Commissioner to resolve the complaints, and the number and type of complaints which remain unresolved as of the date of such submission.

"PART E—PAYMENTS

"PAYMENT METHODS

"SEC. 191. The Commissioner shall, from time to time pay to each State, in advance or otherwise, the amount which it and the local educational agencies of that State are eligible to receive under this title. Such payments shall take into account the extent (if any) to which any previous payment to such State educational agency under this title (whether or not in the same fiscal year) was greater or less than the amount which should have been paid to it.

"AMOUNT OF PAYMENTS TO LOCAL EDUCATIONAL AGENCIES

"SEC. 192. From the funds paid to it pursuant to section 191 each State educational agency shall distribute to each local educational agency of the State which is eligible to receive a grant under this title and which has submitted an application approved pursuant to section 121 the amount for which such application has been approved, except that the amount shall not exceed the amount determined for that agency under this title.

"ADJUSTMENTS WHERE NECESSITATED BY APPROPRIATIONS

"SEC. 193. (a) ADJUSTMENT ALLOCATION.—If the sums appropriated for any fiscal year for making the payments provided in this title other than amounts appropriated for subpart 2 of part A are not sufficient to pay in full the total amounts which all local and State educational agencies are entitled to receive under this title for such year, the amount available for each grant to a State agency eligible for a grant under subpart 1, 2, or 3 of part B shall be equal to the total amount of the grant as computed under each such subpart. If the remainder of such sums available after the application of the preceding sentence is not sufficient to pay in full the total amounts which all local

educational agencies are entitled to receive under subpart 1 of part A of this title for such year, the allocations to such agencies shall, subject to adjustments under the next sentence, be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated. The allocation of a local educational agency which would be reduced under the preceding sentence to less than 85 per centum of its allocation under subpart 1 of part A for the preceding fiscal year, shall be increased to such amount, the total of the increases thereby required being derived by proportionately reducing the allocations of the remaining local educational agencies, under the preceding sentence, but with such adjustments as may be necessary to prevent the allocation to any remaining local educational agency from being thereby reduced to less than 85 per centum of its allocation for such year.

"(b) ADDITIONAL FUNDS ALLOCATION.—In case additional funds become available for making payments under this title for that year, allocations that were reduced pursuant to subsection (a) shall be increased on the same basis that they were reduced. In order to permit the most effective use of all appropriations made to carry out this title, the Commissioner may set dates by which (1) State educational agencies must certify to him the amounts for which the applications of educational agencies have been or will be approved by the State and (2) State educational agencies referred to in subpart 1 of part B must file applications. If the maximum grant a local educational agency would receive (after any ratable reduction which may have been required under the first sentence of subsection (a) of this section) is more than an amount which the State educational agency determines, in accordance with regulations prescribed by the Commissioner, such agency will use, the excess amount shall be made available first to educational agencies in that State. Determinations of the educational agencies to which such excess amounts shall be made available shall be made by the State educational agency in furtherance of the purposes of this title in accordance with criteria prescribed by the Commissioner which are designed to assure that such excess amounts will be made available to other eligible educational agencies with the greatest need, for the purpose of where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the provisions of section 111(a) as a result of such factors as population shifts and changing economic circumstances. In the event excess amounts remain after carrying out the preceding two sentences of this section, such excess amounts shall be distributed among the other States as the Commissioner shall prescribe for use by local educational agencies in such States for the purposes of this title in such manner as the respective State educational agencies shall prescribe.

"PAYMENTS FOR STATE ADMINISTRATION

"SEC. 194. (a) Except as provided in subsection (b), the Commissioner is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this title, except that the total of such payments in any fiscal year shall not exceed—

"(1) 1.5 per centum of the amount allocated to the State and its local educational agencies and to other State agencies as determined for that year under this title; or

"(2) $225,000, or $50,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands,

whichever is the greater, except that any amount paid by reason of clause (1) or (2) in excess of the limitations on such payments in effect prior to the effective date of the Education Amendments of 1978 shall be used exclusively for monitoring, audit resolution, enforcement, or similar compliance activities and shall supplement and not supplant funds otherwise available from non-Federal sources for such purposes.

"(b) The provisions of this section shall apply in any fiscal year in which the provisions of section 510(b)(2) are not met.

"PART F—GENERAL PROVISIONS

"JUDICIAL REVIEW

"SEC. 195. (a) FILING APPEALS.—If any State is dissatisfied with the Commissioner's final action with respect to the approval of its application submitted under subpart 1 or part B or section 162 or with his final action under section 185 or 186, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(b) BASIS OF REVIEW.—The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) JUDICIAL APPEALS.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"NATIONAL ADVISORY COUNCIL

"SEC. 196. (a) COUNCIL ESTABLISHED.—There shall be a National Advisory Council on the Education of Disadvantaged Children (hereinafter in this section referred to as the 'National Council') consisting of fifteen members appointed by the President, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, for terms of three years, except that (1) in the case of initial members, five shall be appointed for terms of one year each and five shall be appointed for terms of two years each, and (2) appointments to fill vacancies shall be only for such terms as remain unexpired. The National Council shall meet at the call of the Chairman.

"(b) FUNCTIONS.—The National Council shall review and evaluate the administration and operation of this title, including its effectiveness in improving the educational attainment of educationally deprived children, including the effectiveness of programs to meet their occupational and career needs, and make recommendations for the improvement of this title and its administration and operations. These recommendations shall take into consideration experience gained under this and other Federal educational programs for disadvantaged children and, to the extent appropriate, experience gained under other public and private educational programs for disadvantaged children.

"(c) REPORTS.—The National Council shall make such reports of its activities, findings, and recommendations (including recommendations for changes in the provisions of this title) as it may deem appropriate and shall make an annual report to the President and the Congress not later than March 31 of each calendar year. Such annual report shall include a report specifically on which of the various compensatory education programs funded in whole or in part under the provisions of this title, and of other public and private educational programs for educationally deprived children, hold the highest promise for raising the educational attainment of these educationally deprived children. The President is requested to transmit to the Congress such comments and recommendations as he may have with respect to such report. Subject to section 448(b) of the General Education Provisions Act, the National Council shall continue to exist until October 1, 1984.

"LIMITATION ON GRANT TO PUERTO RICO

"SEC. 197. Notwithstanding the provisions of part A or of subpart 1, 2, or 3 of part B of this title, the amount paid to the Commonwealth of Puerto Rico under this title for any fiscal year shall not exceed 150 per centum of the amount received by Puerto Rico under this title in the preceding fiscal year. Any excess over such amount shall be used to ratably increase the allocations under subpart 1 of part A of the other local educational agencies whose allocations do not exceed the maximum amount for which they are eligible under section 111.

"DEFINITIONS

"SEC. 198. (a) Except as otherwise provided, for purposes of this title:

"(1) The term 'average daily attendance' means attendance determined in accordance with State law, except that notwithstanding any other provisions of this title, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this title the attendance of such child at such school shall be held and considered (A) to be in attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (B) not to be in attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

"(2) The term 'average per pupil expenditure' means in the case of a State or the United States, the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available), of all local educational agencies in the State, or in the United States (which for the purposes of this subsection means the fifty States, and the District of Columbia), as the case may be, plus any direct current expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

"(3) The term 'Commissioner' means the United States Commissioner of Education.

"(4) The term 'construction' includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

"(5) The term 'county' means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

"(6) The term 'current expenditures' means expenditures for free public educa-

tion, including expenditures for administration, instruction, attendance, and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under this title or parts B and C of title IV of this Act.

"(7) The term 'elementary school' means a day or residential school which provides elementary education, as determined under State law, and the term 'secondary school' means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"(8) The term 'equipment' includes machinery, utilities, and building equipment and any necessary enclosure or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals,

"(9) The term 'free public education' means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade 12.

"(10) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

"(11) The term 'parent' includes a legal guardian or other person standing in loco parentis.

"(12) The term 'project area' means a school attendance area having a high concentration of children from low-income families which, without regard to the locality of the project itself, is designated as an area from which children are to be selected to participate in a program or project assisted under this title.

"(13) The term 'school attendance area' means in relation to a particular school, the geographical area in which the children who are normally served by that school reside.

"(14) The term 'school facilities' means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

"(15) The term 'Secretary' means the Secretary of Health, Education, and Welfare.

"(16) The term 'State' means a State, Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"(17) The term 'State educational agency' means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.".

(b) Section 403 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended—

(1) by striking out, "except as used in title II", where it appears in paragraph (2);

(2) by striking out, ", except that for purposes of title II such term does not include any education provided beyond grade 12", where it appears in paragraph (4);

(3) by striking out, "title II of this act or title III" where it appears in paragraph (5), and inserting "title I, II, or III";

(4) by striking out, "(A)" where it appears in paragraph (6) and by striking out subparagraph (B) of such paragraph;

(5) by striking out ", and for purposes of title II, such term includes the Trust Territory of the Pacific Islands" in paragraph (8); and

(6) by striking out paragraphs (15), (16), and (17).

(c) Title II of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is repealed.

(d) Section 101(a)(10) of the Education Amendments of 1974 is amended by striking out "Part A" and inserting in lieu thereof "subpart 1 of part A, and part B," and by striking out "such part A" and inserting in lieu thereof "such subpart or part".

STUDY OF ALTERNATIVES FOR DEMONSTRATING COMPARABILITY

SEC. 102. (a) The Commissioner shall, not later than September 30, 1981, make a study of the feasibility and desirability of alternative criteria for demonstrating the comparability of services provided with State and local funds in each project area (as defined in section 198(12) of the Elementary and Secondary Education Act of 1965) to those provided outside such areas which ensure, at least to the same extent as the criteria in existing regulations published in the Federal Register (41 F.R. 42894 et seq., September 28, 1976), that children in each school serving such a project area receive comparable services paid for out of State and local funds.

(b) The Commissioner may select all the local educational agencies in one State and not more than twenty such agencies in other States which are reasonably representative of the various geographical areas of the Nation for participation in the study provided for in this section. For purposes of the study, the Commissioner, without regard to section 431 of the General Education Provisions Act, may permit the use of substitute criteria meeting the requirements of subsection (c) in place of criteria contained in existing regulations, to be applicable only for the school years 1979–1980 and 1980–1981 and only to local educational agencies selected to participate in the study.

(c) Local educational agencies selected for participation in the study provided for in this section shall demonstrate comparability through the use of alternative criteria, which, at a minimum, meet the conditions of the following paragraphs:

(1) Such criteria are approved by the districtwide advisory council established under section 125 of the Elementary and Secondary Education Act of 1965.

(2) Based on such criteria, each school serving such a project area receives services comparable to those services provided with State and local funds in schools not receiving assistance under this title.

(3) Services measured by such criteria shall vary by not more than 5 per centum between each school serving such a project area and other schools of the agency.

(4) Compliance with such criteria shall be determined on the basis of services actually provided during the current school year.

(5) If expenditures are used in the criteria, only expenditures for instructional services shall be included and for this purpose "instructional services" means current expenditures for free public education other than expenditures for attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(6) In all other respects, such criteria shall be consistent with the regulations of the Commissioner pertaining to comparability of services.

(d) In order to provide a basis for comparison, local educational agencies participating in the study under this section shall continue to make reports under existing criteria for comparability of services.

TITLE II—ESTABLISHMENT OF A NEW TITLE II OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

BASIC SKILLS

SEC. 201. Title II of the Elementary and Secondary Education Act of 1965 (hereinafter in titles II through IX of this Act referred to as "the Act") is amended to read as follows:

"TITLE II—BASIC SKILLS IMPROVEMENT

"PART A—NATIONAL PROGRAM

"PURPOSE

"SEC. 201. The purpose of this part is—

"(1) to assist Federal, State, and local educational agencies to coordinate the utilization of all available resources for elementary and secondary education to improve instruction so that all children are able to master the basic skills of reading, mathematics, and effective communication, both written and oral;

"(2) to encourage States to develop comprehensive and systematic plans for improving achievement in the basic skills;

"(3) to provide financial assistance to State and local educational agencies for the development of programs in the basic skills;

"(4) to develop means by which parents working with the schools can contribute to improving the educational achievement of their children;

"(5) to encourage the involvement of the private sector in the delivery to children, youths, and adults of educational services and materials that will improve achievement in the basic skills; and

"(6) to expand the use of television and other technology in the delivery of instructional programs aimed at improving achievement in the basic skills.

"APPLICATIONS

"SEC. 202. (a) The Secretary may make a grant or award a contract under this part only upon the submission of an application by an eligible entity at the time and in the form prescribed by the Secretary. Each such application by a State or local educational agency shall provide assurances that—

"(1) in designing the proposal for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with private school officials; and, to the maximum extent feasible, and consistent with the number of such children in the area to be served who have the educational needs the proposal is intended to address, those children will be provided an opportunity to participate in the proposed activity on a basis comparable to that provided for public school children;

"(2) procedures have been developed to evaluate the effectiveness of the proposed activity in achieving the purposes of this title; and

"(3) procedures have been developed for incorporating successful practices developed with assistance under this title into the regular instructional program.

"(b) No grant or contract may be awarded to a local educational agency under this part unless the appropriate State educational agency has been provided an opportunity for at least thirty days to comment on the application.

"ACCEPTANCE OF GIFTS

"SEC. 203. Notwithstanding the provisions of section 408(a)(3) of the General Education Provisions Act, the Secretary may accept, on behalf of the United States, conditional or unconditional gifts or donations of services, money, or property, made for any activities authorized to be carried out under this title.

"GRANTS AND CONTRACTS

"SEC. 204. (a) In order to achieve the purposes of this part, the Secretary is authorized, during the period of October 1, 1979, through September 30, 1983, to make grants to, and enter into contracts with, State and local educational agencies, and other public and private agencies, organizations, and institutions to carry out planning, research, development, demonstrations (including training of leadership personnel, evaluation, and dissemination, as described in sections 205 through 209), except that no grant may be made under this part to other than a public or nonprofit private agency, organization, or institution.

"(b) The Secretary may provide to such agencies, organizations, and institutions, either directly or through grants or contracts, technical assistance related to the purposes of this part.

"INSTRUCTION IN BASIC SKILLS

"SEC. 205. The Secretary shall provide assistance, in accordance with section 204, for activities designed to demonstrate improved delivery of instructional services in the areas of reading, mathematics, and oral and written communication, including—

"(1) assessment of schoolwide needs to identify the instructional needs of children in basic skills;

"(2) establishing learning goals and objectives for each school;

"(3) the development of comprehensive programs to address the needs through the use of resources available under this part and other resources from local, State, and Federal programs;

"(4) the demonstration of techniques for coordinating the efforts of local agencies, organizations, and institutions, to improve achievement in basic skills;

"(5) preservice training programs for teaching personnel including teacher aides and other ancillary educational personnel, and in-service training and development programs, designed to enable such personnel to improve their ability to teach basic skills; and

"(6) active involvement of teachers, teacher aides, administrators, and other educational personnel to improve their ability to utilize available resources to carry out the purposes of this part.

"PARENTAL PARTICIPATION IN BASIC SKILLS INSTRUCTION

SEC. 206. The Secretary, in accordance with section 204, shall support activities designed to enlist the assistance of parents and volunteers working with schools to improve the skills of children in reading, mathematics, and oral and written communication. The activities which may be supported under this section include—

"(1) the development and dissemination of materials that, with appropriate training, parents may use in the home to impose their children's performance in those skills; and

"(2) voluntary training activities for parents to encourage them to assist their children in developing basic skills.

"USE OF TECHNOLOGY IN BASIC SKILLS INSTRUCTION

"SEC. 207. The Secretary, in accordance with section 204, shall support development and demonstration activities related to the improved use of television and other technology to contribute to the instruction of children in reading, mathematics, and written and oral communication. The activities authorized under this section shall be designed to expand the variety and improve the quality of instructional efforts involving the use of technology. The activities which may be supported under this section include—

"(1) the development and acquisition of educational programing, including audio and video materials distributed through broadcast, cable, tape, film, cassettes, or other means that provide instruction in basic skills in an effective manner;

"(2) the development and acquisition of instructional materials that supplement educational programing described in clause (1) of this section in order to improve its effectiveness in the school, the home, and other learning environments;

"(3) the development and acquisition of materials to assist teachers in relating such programing, or similar public or commercial programs of educational value, to instruction in the classroom;

"(4) the training of teachers, administrators, and other instructional personnel in the use of educational technology;

"(5) assistance to teachers, administrators, and other instructional personnel for experimentation with new technological approaches to instruction; and

"(6) distribution of information about, and promotion of the use of, such programing and technology in the classroom and other learning environments.

"INVOLVEMENT OF EDUCATIONAL AGENCIES AND PRIVATE ORGANIZATIONS

"SEC. 208. (a) The Secretary shall provide assistance and information to State and local educational agencies, institutions of higher education, and private agencies, organizations, and institutions (such as labor unions, volunteer organizations, and business associations) to support the efforts of such agencies, organizations, and institutions to stimulate children, youths, and adults to improve their achievement in basic skills. The activities may be supported under this section include—

"(1) programs to motivate children to improve their reading skills through the distribution to children of books;

"(2) instructional programs and voluntary tutorial programs to provide individual assistance outside of the school to children, youths, and adults with instruction needs;

"(3) community efforts to encourage individuals to improve their performance in basics skills; and

"(4) the establishment of programs for lending or selling books to children, youths, and adults.

"(b) Activities supported under subsection (a)(2) may be known as reading academics.

"COLLECTION AND DISSEMINATION OF INFORMATION RELATING TO BASIC SKILLS PROGRAMS

"SEC. 209. The Secretary is authorized to use funds appropriated under this paper to collect and analyze information concerning the results of activities carried out under this title and under part C of title IV, including information on the activities which have been successful in improving the achievement of students in the basic skills. Such funds may also be used to disseminate that information to State and local educational agencies and other interested public and private agencies, organizations, and institutions.

"COORDINATION

"SEC. 210. The Secretary shall establish effective and efficient procedures for coordination between the programs assisted under this part and other parts of this Title, with programs assisted under title I and title IV of this Act, title V of the Economic Opportunity Act of 1964, title V of the Higher Education Act of 1965, and other such Federal programs that support efforts to improve the basic skills of children, youth and adults.

"AUTHORIZATION OF APPROPRIATIONS

"PART B—STATE BASIC SKILLS IMPROVEMENT PROGRAM

"STATEMENT OF PURPOSE

"SEC. 221. It is the purpose of this part to provide financial assistance to States to enable them—

"(1) to develop comprehensive and systematic statewide plans for improving achievement in the basic skills, to coordinate available resources for elementary and secondary education, and to provide financial assistance to improve the instruction so that all children are able to master the basic skills of reading, mathematics, and effective communication, both written and oral;

"(2) to provide assistance to local agencies in the development and implementation of comprehensive programs to improve basic skills proficiency and instruction in the elementary and secondary schools;

"(3) to develop means by which parents working with the schools can contribute to improving the educational achievement of their children;

"(4) to provide State leadership in the planning, execution, and evaluation of basic skills instructional programs in elementary and secondary schools;

"(5) to arrange for and assist in the training of educational staff, including special reading and mathematics personnel and specialists needed in programs assisted under this part.

"AGREEMENTS WITH STATE EDUCATIONAL AGENCIES

"SEC. 222. (a) Any State which desires to receive grants under this part shall, through its State educational agency, enter into an agreement with the Secretary, in such detail as the Secretary deems necessary, which—

"(1) designates the State educational agency as the agency for administration of the agreement:

"(2) provides for a process of active and continuing consultation with the State educational agency, by persons broadly representative of the educational resources of the State and of the general public including persons representative of—

"(A) public and private nonprofit elementary and secondary schoolchildren.

"(B) institutions of higher education.

"(C) parents of elementary and secondary schoolchildren,

"(D) areas of professional competence relating to basic skills instruction in reading and mathematics,

"(E) classroom teachers in the State, and

"(F) local administrators including principals and superintendents,

to advise the State educational agency on the planning, development, implementation, and evaluation of a comprehensive State program for improving basic skills,

"(3) describes the basic skills instructional programs in elementary and secondary schools for which assistance is sought under this part and procedures for giving priority to basic skills programs which are already receiving Federal financial assistance and show reasonable promise of achieving success:

"(4) sets forth criteria for achieving an equitable distribution of that part of the assistance under this part which is made available to local educational agencies pursuant to the second sentence of subsection (b) of this section, which criteria shall—

"(A) take into account the size of the population to be served, beginning with preschool, the relative needs of pupils in different population groups within the State for the program authorized by this part, and the financial ability of the local educational agency serving such pupils, and

"(B) assure that such distribution shall include grants to local educational agencies

having high concentrations of children with low reading or mathematics proficiency;

"(5) provides for the coordination and evaluation of programs assisted under this part;

"(6) provides for technical assistance and support services for local educational agencies participating in the program;

"(7) makes provision for the dissemination to the educational community and the general public of information about the objectives of the program and results achieved in the course of its implementation;

"(8) provides for making a report, at least once every three years, and such other reports, in such form and containing such information, as the Secretary may reasonably require to evaluate the effectiveness of the program and to carry out his other functions under this part;

"(9) provides that not more than 5 per centum of the amount allotted to the State under this part for any fiscal year may be retained by the State educational agency for purposes of administering the agreement;

"(10) provides that programs assisted under this part shall be of sufficient size, scope, and quality so as to give reasonable promise of substantial progress toward achieving the purposes of this part; and

"(11) provides that Federal funds expended under the program will supplement the level of State and local funds that would be available for such programs in the absence of Federal assistance, and in no event will supplant such State and local funds.

"(b) Grants for projects to carry out the purposes of this part may be made to local educational agencies (subject to the provision of subsection (c) relating to the participation of private elementary and secondary school pupils), institutions of higher education, and other public and nonprofit agencies and institutions. Not less than 70 per centum of the amount allotted to a State under this part for any fiscal year shall be made available by the State for grants to local educational agencies within that State.

"(c) The provisions of section 130(a)(1) of this Act relating to the participation of children enrolled in private elementary and secondary schools shall apply to programs assisted under this part.

"(d) Each application by a local educational agency within a State for assistance under this part shall be developed in conjunction with teachers and building administrators in such district. The application shall set forth a systematic strategy for improving basic skills instruction in the local district which provides for the planning and implementation of comprehensive basic skills instructional programs at the school building level. The school level programs shall address the needs of all students and shall utilize, in a coordinated fashion, resources available from all Federal, State, and local sources. Teachers, administrators, and parents shall be involved in the development of the comprehensive school level programs. Such programs shall include—

"(1) diagnostic assessment to identify the needs of all of the children in the school;

"(2) the establishment of learning goals and objectives for the school;

"(3) to the extent practicable, preservice training and inservice training and development programs for teaching and administrative personnel, including teacher-aides and other ancillary educational personnel, designed to enable such personnel to improve their ability to teach students the basic skills;

"(4) activities designed to enlist the support of parents to aid in the instruction of their children at home and school;

"(5) procedures for the evaluation of the effectiveness of the program, including a program of periodic testing of basic skills achievement and the publication of test results on basic skills performance by grade level and by school, without identification of performance of individual children;

"(6) Assessment, evaluation, and collection of information on individual children by teachers during each year of a pre-elementary program, to be made available for teachers in the subsequent year, in order that continuity for the individual child not be lost. Such information shall also be available to parents or guardians of the individual children.

"(e) In addition to the grants authorized in subsection (d), the State educational agency may also make grants to support activities designed to enlist the assistance of parents working with schools to improve the skills of their children in reading, mathematics, and oral and written communication. Activities that may be supported under this section include—

"(1) the development and dissemination of materials that parents may use in the homes to improve their children's performance in those skills;

"(2) the encouragement of closer contacts between parents and teachers to improve the coordination between learning experiences in the home and those in school;

"(3) planning for, developing and improving centers accessible to parents to provide materials and professional guidance, including volunteers, for parents who desire to assist in the instruction of their children; and

"(4) the demonstration of training programs for parents who desire to develop new skills to complement the instruction their children receive in school.

"(f) The Secretary shall enter into an agreement which complies with the provisions of subsection (a) with any State which desires to enter into such an agreement.

"DISTRIBUTION OF FUNDS

"SEC. 223. The Secretary shall distribute grants under the provisions of this part so as to assure that each State having an agreement under section 222 will receive not less than the amount which bears the same ratio to the total amount available for this part for a fiscal year as the number of school age children (aged five through seventeen inclusive) in that State bears to the number of such children in all States, except that any State having an agreement shall not receive less than $50,000 in any such fiscal year.

"STATE LEADERSHIP PROGRAM

"SEC. 224. The Secretary is authorized to enter into agreement with State educational agenices for the carrying out by such agencies of leadership and training activities designed to prepare personnel throughout the State to implement programs which have been demonstrated in that State or other States to be effective in overcoming deficiencies in the basic skills, and to develop and implement statewide plans for improving the skills of children, youth, and adults in reading, mathematics, and oral and written communication. The activities authorized by this section shall be limited to—

"(1) the development of a comprehensive statewide program providing for the coordination of all Federal and State programs that provide instruction in basic skills;

"(2) planning activities that involve local administrators, teachers, and parents in the development of strategies to improve instruction in basic skills;

"(3) statewide assessments of need relating to basic skills, including the needs of both students and instructional personnel;

"(4) in-service training programs for local administrators, instructional personnel, and other staff members involved in instruction in basic skills; and

"(5) the provision of technical assistance and the dissemination of information relating to basic skills instruction to local educational agencies and other organizations and institutions involved in programs of instruction in basic skills.

"PART C—SPECIAL PROGRAMS FOR IMPROVING BASIC SKILLS

"INEXPENSIVE BOOK DISTRIBUTION PROGRAM FOR READING MOTIVATION

"SEC. 231. (a) The Commissioner is authorized (1) to enter into a contract with a private nonprofit group or public agency (hereinafter in this section referred to as the 'contractor'), which has as its primary purpose the motivation of children to learn to read, to support and promote the establishment of reading motivational programs which include the distribution of inexpensive books to students and (2) to pay the Federal share of the cost of such programs.

"(b) The contract shall provide that—

"(1) the contractor will enter into subcontracts with local private nonprofit groups or organizations or with public agencies (hereinafter referred to as 'subcontractors') under which the subcontractors will agree to establish, operate, and provide the non-Federal share of the cost of reading motivational programs which include the distribution of books by gift or loan, to pre-elementary, elementary or secondary schoolchildren;

"(2) funds made available by the Commissioner to a contractor pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating reading motivational programs as provided in paragraph (1); and

"(3) the contractor will meet such other conditions and standards as the Commissioner determines to be necessary to assure the effectiveness of the programs authorized by this section and will provide technical assistance in furtherance of the purposes of this section.

"(c) The Commissioner shall make no payment of the Federal share of the cost of acquiring and distributing books pursuant to a contract authorized by this section unless he determines that the contractor or the subcontractor, as the case may be, has made arrangements with book publishers or distributors to obtain books at discounts at least as favorable as discounts that are customarily given by such publisher or distributor for book purchases made under similar circumstances in the absence of Federal assistance.

"(d) For purposes of this section—

"(1) the term 'nonprofit', when used in connection with any organization, means an organization no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

"(2) the term 'Federal share' means, with respect to the cost of books purchased by a local private nonprofit group, organization, or public agency for a program in a locality for distributing such books to schoolchildren in that locality, 75 per centum of the cost of that agency or group or organization for such books for such program; except when such nonprofit group, organization or public agency has within the two years preceding its application for assistance, received Federal funds under a program to benefit migrant and seasonal farmworkers in which the Federal share was 100 per centum. In that case the term 'Federal share', under this section, shall mean 100 per centum of the cost of that agency or group or organization for such books that are distributed to the children of migrant and seasonal farmworkers; and

"(3) the term 'pre-elementary school' means a day or residential school which provides pre-elementary education, as determined under State law, except that such term does not include education for children who have not attained three years of age.

"(e) There are authorized to be appropriated to carry out the provisions of this section $9,000,000 for fiscal year 1979, $10,000,000 for fiscal year 1980, $11,000,000 for fiscal year 1981, and $12,000,000 for each of the two succeeding fiscal years. Under such conditions as the Commissioner determines to be appropriate, not to exceed 10 per centum of the amounts appropriated for each fiscal year shall be available for a contract from the Commissioner to the contractor designated under subsection (a) of this section for technical assistance under subsection (b)(3) of this section to carry out the provisions of such section.

"SPECIAL MATHEMATICS PROGRAM

"SEC. 232. (a) The Commissioner is authorized to make grants to, and enter into contracts with, one or more private nonprofit agencies, institutions, or organizations, for the conduct, in cooperation with one or more local educational agencies, of special programs for the teaching of standard mathematics to children eligible for services under titles I and VI of this Act through instruction in advanced mathematics by qualified instructors with bachelor's degrees in mathematics, or the mathematical sciences from colleges or other institutions of higher education, or equivalent experience.

"(b) There are authorized to be appropriated such sums as may be necessary for fiscal year 1980 and for each of the three succeeding fiscal years, to carry out the provisions of this section.

"PART D—GENERAL PROVISIONS

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 241. There are authorized to be appropriated such sums for the fiscal year 1980 and for each succeeding fiscal year ending prior to October 1, 1983, as may be necessary to carry out the provisions of parts A and B of this title.

"APPORTIONMENT OF APPROPRIATIONS

"SEC. 242. (a) From the first $20,000,000 appropriated pursuant to section 241 for any fiscal year the Secretary shall carry out the provisions of part A of this title.

"(b) From the amounts in excess of $20,000,000 in any fiscal year the Secretary shall carry out the provisions of part B of this title.".

TITLE III—ESTABLISHMENT OF A NEW TITLE III OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

SPECIAL PROJECTS

SEC. 301. (a) Title III of the Act is amended to read as follows:

"TITLE III—SPECIAL PROJECTS

"PART A—GENERAL PROVISIONS

"STATEMENT OF PURPOSE

"SEC. 301. It is the purpose of this title to authorize the Commissioner to carry out special projects—

"(1) to experiment with new educational and administrative methods, techniques, and practices;

"(2) to meet special or unique educational needs or problems;

"(3) to place special emphasis on national education priorities; and

"(4) to disseminate information to State and local educational agencies.

"GRANTS AND CONTRACTS AUTHORIZED

"SEC. 302. (a) The Commissioner is authorized, during the period of October 1, 1979, through September 30, 1983, to make grants to, and enter into contracts with, State and local educational agencies, other public and private agencies, organizations, and institutions, and individuals to carry out the purposes of this title, except that no grant may be made under this title to other than a public agency or nonprofit private organization, or institution, or to an individual under section 303(b) of this part.

"(b) No grant or contract may be awarded under this title to a State or local educational agency unless the Commissioner determines that in designing the proposal for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with private school officials; and, to the maximum extent feasible, and consistent with the number of such children in the area to be served who have the educational needs the proposal is intended to address, those children will be provided an opportunity to participate in the proposed activity on a basis comparable to that provided for public schoolchildren.

"COMMISSIONER'S DISCRETIONARY PROJECTS

"SEC. 303 (a) From the amount available for the purposes of this section, the Commissioner is authorized, through grants or contracts, to carry out innovative or experimental projects to assist in the development or demonstration of methods, techniques, or practices which contribute to the solution of educational problems and which are consistent with the purposes of this title.

"(b) The Commissioner is also authorized, from the amount available for the purposes of this section, to make grants not to exceed $25,000, to teachers, administrators, other educational personnel, and parent organizations to assist in the development or demonstration of innovative methods or techniques which would contribute to the solution of educational problems. Any grant to an individual who is employed by a local educational agency shall be made only if the Commissioner determines that the agency has had an opportunity to comment on the proposal and will cooperate with the grantee in carrying out the proposed activity.

"(c) The Commissioner is also authorized, from the amount available for the purpose of this section, to make grants and enter into contracts for—

(1) the development of curricula, and the dissemination of information relating to the improvement of teaching energy conservation to elementary and secondary school children, and

(2) the training of personnel to teach energy conservation to such children,

In carrying out the provisions of this subsection, the Commissioner shall use to the maximum extent practicable materials developed by the Department of Energy, the Community Services Administration, and the Department of Housing and Urban Development.

"(d)(1) There are authorized to be appropriated for the purposes of this section such sums as may be necessary for fiscal year 1980 and for each of the three succeeding fiscal years.

"(2) From the sums appropriated for any fiscal year for the purposes of this title (other than sums appropriated pursuant to paragraph (1) of this subsection), the Commissioner may reserve not more than 10 percent of such sums for the purposes of this section. The Commissioner shall not reserve from sums appropriated for any fiscal year for any part of this title (other than sums appropriated pursuant to paragraph (1) of this subsection) more than 10 percent from the sums so appropriated for each such part.

"PART B—METRIC EDUCATION

"SHORT TITLE; DECLARATION OF PURPOSE

"SEC. 311. (a) This part may be cited as the 'Metric Education Act of 1978'.

"(b)(1) The Congress finds that—

"(A) the metric system of measurement is in general use in industrially developed nations and its use is increasing;

"(B) increased use of such metric system in the United States is inevitable, and such a metric system will become the dominant system of weights and measures in the United States; and

"(C) a Federal program is vitally necessary if the American people are to adapt to the use of the metric system of weights and measures.

"(2) It is the purpose of this part to encourage and support programs that prepare students to use the metric system of measurement with ease and facility as a part of the regular education program.

"PROGRAM AUTHORIZED

"SEC. 312. (a) The Commissioner shall carry out a program of grants and contracts to encourage educational agencies and institutions to prepare students to use the metric system of measurement. Activities assisted under this part may include—

"(1) the development, demonstration, improvement, or adaptation of programs of education in the use of the metric system;

"(2) training educational personnel to carry out programs in the use of the metric system;

"(3) the development and dissemination of instructional materials for use in metric education programs; and

"(4) other activities that will encourage and assist students to learn the use of the metric system.

"(b) For the purposes of this part, the term 'metric system of measurement' means the international system of units as established by the General Conference of Weights and Measures in 1960 and interpreted or modified for the United States by the Secretary of Commerce.

"APPLICATION

"SEC. 313. Financial assistance under this part may be made only upon application to the Commissioner. The application shall be submitted at such time, in such form, and containing such information as the Commissioner may reasonably prescribe. The application shall be approved only if it—

"(1) provides that the activities and services for which assistance is sought will be administered by, or under the supervision of, the applicant;

"(2) describes a program which holds promise of making a substantial contribution toward attaining the purpose of this part;

"(3) sets forth such policies and procedures as will insure adequate evaluation of the activities intended to be carried out under the application; and

"(4) contains such other provisions as the Commissioner determines necessary in order to accomplish the purpose of this part.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 314. There are authorized to be appropriated $20,000,000 for the fiscal year 1979 and for each of the four succeeding fiscal years to carry out the provisions of this part.

"PART C—ARTS IN EDUCATION

"SHORT TITLE; STATEMENT OF FINDINGS

"SEC. 321. (a) This part may be cited as the 'Arts in Education Act of 1978'.

"(b) (1) The Congress finds that—

"(A) the arts should be an essential and vital component of every student's education;

"(B) the arts provide students with useful insights to all other areas of learning; and

"(C) a Federal program is necessary to foster and maintain the interrelationship of arts and education.

"(2) It is the purpose of this part to encourage and support programs that recognize and stress the essential role the arts can play in elementary and secondary education.

"PROGRAM AUTHORIZED

"SEC. 322. The Commissioner shall carry out a program of grants and contracts to encourage and assist State and local educational agencies and other public and private agencies, organizations, and institutions to

establish and conduct programs in which the arts are an integral part of elementary and secondary school curricula. Activities carried out under this part may include arrangements with public and private cultural organizations, agencies, and institutions, including museums, libraries, and theaters, to achieve the purpose of this part. Furthermore, the Commissioner may carry out a program to develop and implement model projects and programs in the performing arts for children and youth, through arrangements made with the John F. Kennedy Center for the Performing Arts. In addition, the Commissioner may carry out a program for the purpose of identifying, developing, and implementing model projects or programs in all the arts for handicapped persons through arrangements made with the National Committee, Arts for the Handicapped.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 323. There are authorized to be appropriated $20,000,000 for the fiscal year 1979 and for each of the four succeeding fiscal years to carry out the provisions of this part.

"PART D—PRESCHOOL PARTNERSHIP PROGRAMS

"ESTABLISHMENT OF PROGRAM

"SEC. 325. (a) The Commissioner is directed to establish, in cooperation with the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare, a program of cooperative pilot projects between local educational agencies and Project Head Start, as authorized by the Head-start-Follow Through Act, which will provide a smoother and more successful transition to formal schooling for certain preschool-aged children, and thereby improve their long-term achievement in elementary school.

"(b) Projects established under this program will be designed to achieve the purposes of subsection (a) by—

"(1) providing to a limited number of children aged three to four, inclusive, of low-income families and to their parents, families, or guardians a program of educational services including instruction, counseling, and testing, to be conducted primarily in the child's home;

"(2) providing to children and adults who have participated in the services described above, during the following year appropriate educational services, testing, and counseling, to be primarily conducted on the premises of an elementary school; and

"(3) providing a coordinated program of testing and assessment, along with such other evaluation procedures as the Commissioner and the Assistant Secretary shall deem appropriate, designed to assess the achievement of children during their participation in the program and subsequently at the end of each of the first two years of formal schooling.

"(c) Funds provided under this part may also be used to fund early childhood and family education programs for children below kindergarten age. Such programs may include—

"(1) the identification of potential barriers to learning;

"(2) education of parents in child development, including education of parenthood programs for secondary school students; and

"(3 homebased programs of early childhood and family education.

"(d) Not less than 10 percent of the funds made available for purposes of section 303 for each fiscal year shall be made available for purposes of this part.

"PART E—CONSUMER EDUCATION

"SHORT TITLE; STATEMENT OF FINDINGS

"SEC. 331. (a) This part may be cited as the 'Consumer Education Act of 1978'.

"(b) The Congress finds that—

"(1) in an inflated economy, the American consumer is finding that the dollar is buying less and less;

"(2) the consumer needs useful information in order to make wise economic choices; and

"(3) Federal involvement is needed to encourage and support the development of consumer education programs throughout the country.

"OFFICE OF CONSUMERS' EDUCATION

"SEC. 332. (a) There shall be within the Office of Education an Office of Consumers' Education (hereafter in this section referred to as the 'Office') which shall be headed by a Director of Consumers' Education (hereafter in this section referred to as the 'Director') who, subject to the management of the Commissioner, shall have responsibility for carrying out the provisions of this section.

"(b) The Director shall be appointed by the Commissioner in accordance with the provisions of title 5 of the United States Code relating to appointments to the competitive service.

"PROGRAM AUTHORIZED

"SEC. 333. (a) The Commissioner shall carry out a program of making grants to, and contracts with, institutions of higher education, State and local educational agencies, and other public and private agencies, organizations and institutions (including libraries) to support research, demonstration, and pilot projects designed to provide consumer education to the public except that no grant may be made other than to a nonprofit agency, organization, or institution.

"(b) (1) Funds appropriated for grants and contracts under this part shall be available for such activities as—

"(A) the development of curricula (including interdisciplinary curricula) in consumer education;

"(B) dissemination of information relating to such curricula;

"(C) in the case of grants to State and local educational agencies and institutions of higher education, for the support of education programs at the elementary and secondary and higher education levels; and

"(D) preservice and in-service training programs and projects (including fellowship programs, institutes, workshops, symposiums, and seminars) for educational personnel to prepare them to teach in subject matter areas associated with consumer education.

"(2) In addition to the activities specified in the first sentence of this subsection, such funds may be used for projects designed to demonstrate, test and evaluate the effectiveness of any such activities, whether or not assisted under this section. Activities assisted pursuant to this section shall provide bilingual assistance when appropriate.

"APPLICATION

"SEC. 334. Financial assistance under this part may be made available only upon application to the Commissioner. Each application shall be submitted at such time, in such form, and containing such information as the Commissioner shall prescribe by regulation and shall be approved only if it—

"(1) provides that the activities and service for which assistance is sought will be administered by, or under the supervision of, the applicant;

"(2) describes a program for carrying out one or more of the activities described in section 333(b) which holds promise of making a substantial contribution toward attaining the purposes of this part;

"(3) sets forth such policies and procedures as will insure adequate evaluation of the activities intended to be carried out under the application;

"(4) sets forth policies and procedures which assure that Federal funds made available under this part for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purposes described in this part, and in no case supplant such funds;

"(5) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

"(6) provides for making an annual report and such other reports, in such form and containing such information, as the Commissioner may reasonably require and for keeping such records, and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

"REPORTS AND EVALUATIONS

"SEC. 335. Each recipient of Federal funds under this part shall make such reports and evaluations as the Commissioner shall prescribe by regulation.

"RESERVATION OF FUNDS

"SEC. 336. From funds available for purposes of section 303, not less than $5,000,000 shall be made available for each fiscal year to carry out this part.

"PART F—YOUTH EMPLOYMENT

"PROGRAM AUTHORIZED

"SEC. 341. (a) The Commissioner shall carry out a youth employment program, the purpose of which shall be to prepare children to take their place as working members of society.

"(b) The program carried out under this part shall support activities designed to—

"(1) study the relationship of work to academic and intellectual achievement;

"(2) develop ways to improve achievement in basic educational skills through work experience;

"(3) enhance job opportunities for youths by coordinating educational activities with youth employment activities, particularly those carried out by the Secretary of Labor under the Comprehensive Employment and Training Act;

"(4) encourage educational agencies and institutions to develop means to award academic credit for competencies derived from work experience; and

"(5) provide technical assistance, information, training, and other assistance to eligible entities to develop programs to enable students more readily to make the transition from school to work.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 342. There is authorized to be appropriated $7,500,000 for the fiscal year 1979 and for each of the four succeeding fiscal years to carry out the provisions of this part.

"PART G—LAW-RELATED EDUCATION

"SHORT TITLE; DECLARATION OF FINDINGS

"SEC. 346. (a) This part may be cited as the 'Law-Related Education Act of 1978'.

"(b) The Congress finds and declares that—

"(1) there is a widespread lack of understanding of how our system of law and legal institutions works;

"(2) such an understanding is an essential component in developing faith and appreciation in our democratic system of government and in preparing our youth to be knowledgeable, responsible citizens; and

"(3) there is an urgent need for Federal involvement designed to encourage and support the development of law-related education programs.

"PROGRAM AUTHORIZED

"SEC. 347. (a) The Commissioner shall carry out a program of grants and contracts to encourage State and local educational agencies and other public and private nonprofit agencies, organizations, and institutions to provide law-related education programs.

"(b) For the purposes of this part, the term 'law-related education' means education to equip nonlawyers with knowledge and skills pertaining to the law, the legal process and the legal system, and the fundamental principles and values on which these are based.

"(c) Financial assistance under this part may be made available only upon application to the Commissioner. The application shall be submitted at such time, in such form, and containing such information as the Commissioner shall prescribe by regulation.

"(d) Funds appropriated for grants and contracts under this part shall be available for activities such as—

"(1) awareness activities, to provide educators, low-related personnel, and the public with an understanding of what law-related education is;

"(2) support for new and ongoing programs in elementary and secondary schools, adult education, community organizations, and institutions of higher education, to provide law-related education, to develop materials and methods, to conduct pilot and demonstration projects, and to disseminate the products of these activities;

"(3) clearinghouse and technical assistance, to collect and provide information and assistance on existing experience and resources to institutions, groups, agencies, organizations, and individuals to aid in establishing, improving, and expanding law-related education activities;

"(4) training for educators and law-related personnel in the substance and practice of law-related education, including pre-service and in-service seminars, workshops, institutes, and courses;

"(5) research and evaluation, to study and improve the effectiveness of materials and methods in law-related education;

"(6) involvement of law-related organizations, agencies and personnel, such as lawyers, law schools, law students, and law enforcement personnel, in the provision of law-related education activities; and

"(7) youth internships for outside-the-classroom experience with the law and the legal system.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 348. There is authorized to be appropriated $15,000,000 for the fiscal year 1979 and for each of the four succeeding fiscal years to carryout the provisions of this part.

"PART II—ENVIRONMENTAL EDUCATION

"SHORT TITLE; DECLARATION OF FINDINGS; PURPOSE

"SEC. 351. (a) This part may be cited as the 'Environmental Education Act of 1978'.

"(b) The Congress finds and declares that—

"(1) the deterioration of the quality of the Nation's environment and of its ecological balance poses a serious threat to the strength and vitality of the people of the Nation;

"(2) that this deterioration is in part due to poor understanding of the Nation's environment and of the need for ecological balances;

"(3) that existing resources are not adequate for educating and informing citizens about environmental matters; and

"(4) that the Federal Governmental should encourage and support efforts to educate citizens about environmental quality and ecological balance.

"(c) It is the purpose of this part to encourage and support the development of new and improved curricula to encourage understanding of policies, and support of activities designed to enhance environmental quality and maintain ecological balance while giving due consideration to the economic considerations related thereto; to demonstrate the use of such curricula in model educational programs and to evaluate the effectiveness thereof, to provide support for the initiation and maintenance of programs in environmental education at the elementary and secondary levels; to disseminate curricular materials and other information for use in educational programs throughout the Nation; to provide training programs for teachers, other educational personnel, public service personnel, and community, labor, and industrial and business leader and employees, and government employees at State, Federal, and local levels; to provide for the planning of outdoor ecological study centers; to provide for community education programs on preserving and enhancing environmental quality and maintaining ecological balance; and to provide for the preparation and distribution of materials by mass media in dealing with the environment and ecology.

"OFFICE OF ENVIRONMENTAL EDUCATION

"SEC. 352. There is established within the Office of Education an Office of Environmental Education (referred to in this section as the 'Office') which, under the supervision of the Commissioner, by regulation, shall be responsible for (1) the administration of the program authorized by section 355 and (2) the coordination of activities of the Office of Education which are related to environmental education. The Officer shall be headed by a Director who shall be compensated at a rate not to exceed that prescribed for grade GS–17 in section 5332 of title 5, United States Code.

"PROGRAM AUTHORIZED

"SEC. 353. (a) For the purposes of this part, the term 'environmental education' means the educational process dealing with man's relationship with the Earth and his effect on the Earth and his relationship with his natural and man-made surroundings, and includes the relations of energy, population, pollution, resource allocation and depletion, conservation, transportation, technology, economic impact, and urban and rural planning to the total human environment.

"(b)(1) The Commissioner shall carry out a program of making grants to, and contracts with, institutions of higher education, State and local educational agencies, regional educational research organizations, and other public and private agencies, organizations, and institutions (including libraries and museums) to support research, demonstration, and pilot projects designed to educate the public on the problems of environmental quality and ecological balance, except that no grant may be made other than to a nonprofit agency, organization, or institution.

"(2) Funds appropriated for grants and contracts under this part shall be available for such activities as—

"(A) the development of curricula (including interdisciplinary curricula) in the preservation and enhancement of environmental quality and ecological balance;

"(B) dissemination of information relating to such curricula and to environmental education, generally;

"(C) in the case of grants to State and local educational agencies, or groups of such agencies, for the support of environmental education programs at the elementary and secondary education levels;

"(D) preservice and in-service training programs and projects (including fellowship programs, institutes, workshops, symposia, and seminars) for educational personnel to prepare them to teach in subject matter areas associated with environmental quality and ecology or to develop interdisciplinary strategies and programs of environmental quality and ecology and for public service personnel, Government employees and business, labor, and industrial leaders and employees;

"(E) planning of outdoor ecology study centers;

"(F) community education programs on environmental quality, including special programs for adults;

"(G) preparation and distribution of materials suitable for use by the mass media in dealing with the environment and ecology; and

"(H) establishing prize contests in the elementary and secondary schools in the area of energy, the emphasis to be placed upon stimulating new thinking about ways to better understand and solve the energy crisis.

In addition to the activities specified in the first sentence of this paragraph, such funds may be used for projects designed to demonstrate, test, and evaluate the effectiveness of any such activities, whether or not assisted under this section.

"APPLICATION

"SEC. 354. (a) Financial assistance under this part may be made available only upon application to the Commissioner. The application shall be submitted at such time, in such form, and containing such information as the Commissioner shall prescribe by regulation and shall be approved only if it—

"(1) provides that the activities and services for which assistance is sought will be administered by, or under the supervision of, the applicant;

"(2) describes a program for carrying out one or more of the activities described in section 353(b)(2) which holds promise of making a substantial contribution toward attaining the purposes of this part;

"(3) sets forth such policies and procedures as will insure adequate evaluation of the activities intended to be carried out under the application;

"(4) sets forth policies and procedures which assure that Federal funds made available under this part for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purposes described in this part, and in no case supplant such funds.

"(5) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

"(6) provides for making an annual report and such other reports, in such form and containing such information, as the Commissioner may reasonably require and for keeping such records, and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports.

"(b) Applications from local educational agencies for financial assistance under this part may be approved by the Commissioner only if the State educational agency has been notified of the application and been given the opportunity to offer recommendations.

"(c) Amendments of applications shall, except as the Commissioner may otherwise provide by or pursuant to regulation, be subject to approval in the same manner as original applications.

"(d) Federal assistance to any program or project under this section, other than those involving curriculum development, dissemination of curricular materials, and evaluation, shall not exceed 80 per centum of the cost of such program for the first fiscal year of its operation, including costs of administration, unless the Commissioner determines, pursuant to regulations adopted and promulgated by the Commissioner establishing objective criteria for such determinations, that assistance in excess of such percentages is required in furtherance of the purposes of this section. The Federal share for the second year shall not exceed 60 per centum, and for the third year and each succeeding fiscal year 40 per centum. Non-Federal contributions may be in cash or kind, fairly evaluated, including but not limited to plant, equipment, and services.

"TECHNICAL ASSISTANCE

"SEC. 355. The Commissioner in cooperation with the heads of other agencies with relevant jurisdiction, shall insofar as practicable upon request, render technical assistance to local educational agencies, public and private nonprofit organizations, institutions of higher education, agencies of local, State, and Federal governments and other agencies deemed by the Commissioner to play a role in preserving and enhancing environmental quality and maintaining ecological balance. The technical assistance shall be designed to enable the recipient agency to carry on education programs which are related to environmental quality and ecological balance.

"SPECIAL GRANTS

"SEC. 356. (a) In addition to the grants authorized under section 353, the Commissioner, from the sums appropriated, shall have the authority to make grants, in sums not to exceed $10,000 annually, to nonprofit organizations such as citizens' groups, volunteer organizations working in the environmental field, and other public and private nonprofit agencies, institutions, or organizations for conducting courses, workshops, seminars, symposia, institutes, and conferences, especially for adults and community groups (other than the group funded).

"(b) Priority shall be given to proposals demonstrating innovative approaches to environmental education.

"(c) For the purposes of this section, the Commissioner shall require evidence that the interested organization or group shall have been in existence one year prior to the submission of a proposal for Federal funds and that it shall submit an annual report on Federal funds expended.

"(d) Proposals submitted by organizations and groups under this section shall be limited to the essential information required to evaluate them, unless the organization or group shall volunteer additional information.

"ADMINISTRATION

"SEC. 357. In administering the provisions of this part, the Commmissioner is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public or private agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement, as may be agreed upon. The Commissioner shall publish annually a list and description of projects supported under this part and shall distribute such list and description to interested educational institutions, citizens' groups, conservation organizations, and other organizations and individuals involved in enhancing environmental quality, and maintaining ecological balance.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 358. (a) There is authorized to be appropriated $5,000,000 for the fiscal year 1979, $7,000,000 for the fiscal year 1980, $9,000,000 for the fiscal year 1981, $11,000,000 for the fiscal year 1982, and $13,000,000 for the fiscal year 1983 to carry out the provisions of this part. Funds appropriated under this part shall remain available to the Commissioner for the duration of this part in order to permit multiple-year funding of projects under this part.

"(b) For each fiscal year, not to exceed $500,000 of the sums appropriated under this part shall be available for the purpose of carrying out section 353(b)(2)(H).

"PART I—HEALTH EDUCATION

"SHORT TITLE; DECLARATION OF PURPOSE

"SEC. 361. (a) This part may be cited as the 'Health Education Act of 1978'.

"(b)(1) The Congress finds and declares that—

"(A) there is an increased concern for physical health and well-being;

"(B) an understanding of the principles of good health can play a vital role in preventing illness and diseases;

"(C) a Federal program is needed to assist State and local educational agencies in developing health education programs.

"(2) It is the purpose of this part to encourage and support programs that prepare students to maintain their physical health and well-being and to prevent illness and diseases, as part of the regular education program.

"PROGRAM AUTHORIZED

"SEC. 362. (a) The Commissioner is authorized to make grants to State and local educational agencies to establish and support programs in health education.

"(b) Prior to establishing final regulations for making grants under this part, the Commissioner shall consult with the Assistant Secretary of Health, Education, and Welfare for Health and the Surgeon General to assure coordination and nonduplication of effort.

"APPLICATION

"SEC. 363. Financial assistance under this part may be made only upon application to the Commissioner. Each such application shall contain assurances that any funds received under this part will be used in a coordinated and cooperative manner with any other health education related program that the applicant may be undertaking, and shall not duplicate such other programs.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 364. There are authorized to be appropriated $10,000,000 for the fiscal year 1979 and for each of the four succeeding fiscal years to carry out the provisions of this part.

"PART J—CORRECTION EDUCATION

"SHORT TITLE

"SEC. 371. This Act may be cited as the 'Correction Education Demonstration Project Act of 1978'.

"PROGRAM AUTHORIZED

"SEC. 372. (a) The Commissioner is authorized to make grants to State and local educational agencies, institutions of higher education, and other public and private nonprofit agencies, organizations, and institutions of demonstration projects relating to the academic and vocational education of antisocial, aggressive, or delinquent persons, including juvenile delinquents, youth offenders, and adult criminal offenders. All projects shall include an evaluation component.

"(b) Financial assistance under this part may be made available only upon application to the Commissioner. The application shall be submitted at such time, in such form, and containing such information as the Commissioner may reasonably prescribe.

"TECHNICAL ASSISTANCE

"SEC. 373. The Commissioner is authorized to appoint such special or technical advisory committtees as he may deem necessary to advise him no matters of general policy relating to the education of persons intended to be benefitted by this section, and shall secure the advice and recommendations of the Director, Bureau of Prisons; Administrator, Office of Juvenile Justice and Delinquency Prevention; Director of the Teacher Corps; the Director of the National Institute of Law Enforcement and Criminal Justice; the Administrator of the Law Enforcement Assistance Administration, and such other persons and organizations as he, in his discretion, deems necessary before making any grant under this section.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 374. There is authorized to be appropriated $5,000,000 for fiscal year 1979 and for each of the four succeeding fiscal years to carry out the provisions of this part.

"PART K—DISSEMINATION OF INFORMATION

"DISSEMINATION OF INFORMATION

"SEC. 376. The Commissioner shall allocate at least 5 percent of the funds available for purposes of section 303 to collect, analyze, and disseminate information derived from activities carried out under this title and under part C of title IV, including information as to which of those activities have been successful in improving the achievement of students in the basic skills.

"PART L—BIOMEDICAL SCIENCES

"FINDINGS AND PURPOSE

"SEC. 381. It is the purpose of this part to—

"(1) introduce secondary students from an economically disadvantaged background to the challenges, opportunities, and needs of serving in communities which have a need for professionals trained in the biomedical sciences and which have an underrepresentation of individuals from such a disadvantaged background serving as medical professionals;

"(2) motivate and educate these students to successfully pursue careers in the biomedical sciences;

"(3) develop academic, cognitive, and communicative skills in these students;

"(4) rectify disadvantages resulting from foreign language barriers; and

"(5) instill awareness and concern in these students for the health of their families and communities;

by offering these students an intensive academic program in mathematics, the sciences, and English, study skill development, experiences in laboratory and health care delivery settings, and frequent exposure to individuals trained, or receiving training, in the biomedical sciences.

"DEFINITIONS

"SEC. 382. For the purposes of this part—

"(1) The term 'applicant' means an institution which has made application under section 385 for assistance under this part.

"(2) The term 'biomedical science' means a field relevant to the study of human biology, and includes chemistry biology, medicine, dentistry, osteopathy, optometry, podiatry, pharmacy, and public health.

"(3) The term 'full participant' means with respect to a project conducted in an academic year, a student who has participated satisfactory in the project for not less than one hundred hours in the academic year.

"(4) The term 'project' means a project funded under this part.

"(5) The term 'public secondary school system' means secondary schools operated by a local educational agency or a secondary school operated predominantly for Indian children and operated by, or receiving financial assistance from, the Department of the Interior.

"(6) The term 'school of biomedical science' means an institution of higher education which provides training leading to a doctorate or master's degree in a biomedical science.

"(7) The term 'student from an economically disadvantaged background' means an individual from a family which had, during the preceding year, an income equal to 50 per centum or less of the national median income for families of comparable size and (A) who is enrolled in good standing in the ninth, tenth, eleventh, or twelfth grade of a secondary school and (B) whose access to medical science is significantly limited due higher educational opportunity in the bio- to the income of the individual's family.

"(8) The term 'talented student from an economically disadvantaged background' means a student from an economically disadvantaged background who has demonstrated such proficiency or potential as will enable the student, after satisfactory participation in a project, to undertake successfully a

course of study in a biomedical science at an institution of higher education. Such proficiency or potential shall be determined in a manner such that (A) a student from a non-English speaking background is not penalized for the student's lack of proficiency in English, and (B) due notice is taken of difficulties inherent in traditional testing methods.

"(9) The term 'target student' means, with respect to a project offered in an academic year in cooperation with a secondary school system or systems, a talented student from an economically disadvantaged background who is enrolled in the school system or systems in the academic year—

"(A) in the ninth or tenth grade, or

"(B) in the eleventh or twelfth grade and who has participated satisfactorily in a project (or in a program comparable to a project) for not less than one hundred hours during the student's enrollment in the ninth or tenth grade in a school system.

"PROJECTS FOR ECONOMICALLY DISADVANTAGED STUDENTS

"SEC. 383. (a) To the extent provided in appropriation Acts, the Commissioner is authorized to make grants to and enter into contracts with institutions of higher education for the purpose of offering projects to educate, motivate, and encourage students from an economically disadvantaged background to pursue training at the undergraduate and graduate levels in the biomedical sciences.

"(b) The Commissioner, in his selection among applications meeting the requirements for approval under section 385, shall (1) give prioritity to each such qualified application that proposes the offering of a program not previously offered, (2) give special consideration to each such qualified application that proposes the offering of a project to students enrolled in secondary schools located in a health manpower shortage area (designated under section 332 of the Public Health Service Act) or in a rural area, and (3) take into account the location where the project is proposed to be offered to assure that projects are offered in a diversity of geographic settings.

"(c) The amount of money to be provided, under any grant or contract entered into for a project, for all its expenses (other than special expenses approved by the Commissioner for its summer program offered pursuant to section 384(a)(10)) for a single fiscal year may not exceed an amount equal to $2,400 for each talented student from an economically disadvantaged background who was a full participant in the project in the academic year ending in that fiscal year.

"PROJECT ACTIVITIES

"SEC. 384. (a) Each project funded under this part shall—

"(1) except as provided in subsection (b), extend over a multiyear grant or contract period of at least five academic years;

"(2)(A) be carried out in cooperation with a public or private nonprofit secondary school system, or with a combination of such systems, which is located in the area in which the applicant is located and which has a relatively high proportion, as determined by the Commissioner, of students from an economically disadvantaged background enrolled in the secondary schools in such system, and (B) involve in a formal role in policymaking decisions in the project an individual who is employed at an administrative level, no lower than principal or dean, in a secondary school with target students who are participating in the project;

"(3) be conducted, to the extent feasible, in a manner which does not conflict with a student's participation in extracurricular activities of the school in which he is enrolled;

"(4) provide that not less than one hundred talented students from an economically disadvantaged background, who are enrolled in the ninth grade in such public or private nonprofit school system or systems in each academic year in which the project is offered, are full participants in the project in such academic years;

"(5) provide for validation of the participation of a target student in such project by a science teacher or the parent or guardian of such student;

"(6) make arrangements to use in such project—

"(A) the research and other facilities and personnel of schools of biomedical science located in the area in which such project is offered;

"(B) the special knowledge of individuals from economically disadvantaged background who live in the area in which such project is offered and who are employed in the biomedical sciences;

"(C) the expertise of teachers in secondary schools and institutions of higher education located in the area in which such project is offered; and

"(D) the talents and experience of other groups located in the area in which such project is offered, such as parent-teacher associations, foundations, civic groups, and professional organizations, which would further the goals of such project;

"(7) expose target students to professionals trained in the biomedical sciences and to the resources of the biomedical sciences, including those described in paragraph (6), and such other academic and health-related experiences as are designed to—

"(A) inform and educate such students to the challenges, opportunities, and needs of serving in the biomedical science professions;

"(B) educate and motivate such students to pursue successful careers in the biomedical sciences;

"(C) cultivate the development of academic, cognitive, and communication skills in such students; and

"(D) instill awareness, concern, and information in such students for the health of their families and communities;

"(8)(A) provide counseling to target students who are participating, and to individuals who were such students and who were full participants in an academic year, in the project on the range of opportunities available in the biomedical sciences upon completion of high school, college, and professional training, and on the financial and other prerequisites to pursue such opportunities, and (B) inform parents of participating students of the goals and structure of the project and provide opportunities for the involvement of these parents in the project;

"(9) provide for the offering for target students, by a school of biomedical science during each academic year of such project, of a course or courses which—

"(A) are in one or more of the biomedical sciences,

"(B) encompass at least one hundred hours of classrooms, laboratory, and fieldwork experience, and

"(C) use the facilities of such school, including laboratories, libraries, classrooms, audiovisual equipment, conference and meeting rooms, and other necessary facilities;

"(10) provide for the offering—

"(A) in the summer following each academic year of the project, and

"(B) for each individual who was a target student and a full participant in the project in the previous academic year,

of a summer program of at least six weeks' duration and involving such academic study and other activities as promote the purposes of this part; and

"(11) provide for the following (through qualitative assessments by a student's teachers and professors and through documentation of a student's cumulative grade point average in high school, scholastic aptitude test scores, acceptances to colleges and universities, and grade point average and major pursued during attendance at a college or university) of each individual who was a target student and a full participant in the project in an academic year in which the project is offered, to evaluate the impact of the project on the careers pursued by former participants in the project.

"(b) The Commissioner may not provide funds under this part to an institution for a project (other than for the part of the project described in subsection (a)(11)) during an academic year (hereinafter in this subsection referred to as the 'project year') occurring after the second academic year of the project unless—

"(1) the number of target students who were enrolled in the tenth grade and were full participants in the project in the academic year preceding the project year is not less than 50 per centum of the number of target students who were enrolled in the ninth grade and were full participants in the project in the second academic year preceding the project year; and

"(2) not less than 50 per centum of the particular target students who were enrolled in the tenth or eleventh grade and were full participants in the project in the second academic year preceding the project year also were full participants in the project during the academic year preceding the project year.

"APPLICATIONS

"SEC. 385. (a) Any institution desiring assistance under this part shall make application therefor in accordance with the provisions of this part and other applicable law and with regulations of the Commissioner promulgated for the purpose of this part. The Commissioner shall approve an application under this part only if he determines that the project for which the application seeks assistance—

"(1) will be operated by the applicant and that the applicant will carry out such project in accordance with this part; and

"(2) will provide for the activities described in section 384(a).

"(b) In approving an application for assistance under this title, the Commissioner shall insure that there is cooperation and coordination of efforts among the projects, including the exchange of materials and information among such projects.

"USE OF FUNDS

"SEC. 386. (a) Funds appropriated to carry out projects under this part may be used to cover all or part of the cost of establishing and carrying out projects, including the cost of stipends, allowances, travel, and subsistence expenses (in such amounts as may be determined in accordance with regulations of the Commissioner) to target students during their participation in a summer program offered pursuant to section 384(a)(10).

"(b) Each target student who is participating on an essentially full-time basis in a project during the academic year may be paid a stipend in an amount not in excess of $30 per month, except in exceptional cases as determined by the Commissioner.

"APPROPRIATIONS AUTHORIZED

"SEC. 387. (a) For the purpose of carrying out projects under this part, there are authorized to be appropriated $40,000,000 for the fiscal year 1979 and each of the four succeeding fiscal years.

"(b) From the funds appropriated pursuant to subsection (a), an amount not to exceed 5 per centum thereof shall be used for the purpose of conducting evaluations of the projects authorized under this part.

"(c) Sums appropriated pursuant to this section shall remain available for expenditure and obligation on or before September 30, 1983.

"PART M—POPULATION EDUCATION

"SHORT TITLE

"SEC. 391. This part may be cited as the 'Population Education Act'.

"PROGRAM AUTHORIZED

"SEC. 392. (a) The Commission, in consultation with the Deputy Assistant Secretary for Population Affairs, established by section 3 of the Family Planning Services and Population Research Act of 1970, is authorized, from the sums available for purposes of this part, to carry out a program of making grants to, and contracts with, institutions of higher education, State and local educational agencies, research organizations, and other public and private agencies, organizations, and institutions to implement a program of population education in elementary and secondary schools.

"(b) Funds available for grants and contracts under subsection (a) shall be available for such activities as—

"(1) preservice and inservice training programs and projects (including fellowship programs, institutes, workshops, symposiums, and seminars) for educational personnel to prepare them to incorporate population concepts into a broad array of subject fields such as geography, history, science, biology, social studies, and home economics;

"(2) development and dissemination of teacher and student educational, training, and instructional materials, including the identification, evaluation, improvement, and adaptation of existing curricula and educational materials;

"(3) research support to develop curriculum content and to evaluate programs and materials for the purpose of widespread dissemination;

"(4) in the case of grants to State and local educational agencies, the support of population education programs at the elementary and secondary educational levels; and

"(5) projects which demonstrate, test, and evaluate the effectiveness of the activities (described in clauses (1) through (4) of this subsection) whether or not assisted under this section.

Programs assisted under clauses (2) and (3) shall be carried out in cooperation with State and local educational agencies.

"(c) Applications for grants and contracts under this section shall be submitted at such time, in such form, and contain such information as the Commissioner shall prescribe.

"(d) The National Institute of Education shall establish or designate, with funds available under this part, a clearinghouse on population education for the purpose of evaluating, cataloging, and disseminating teacher and student materials on population. Such activities shall be carried out in coordination with related activities carried out under title X of the Public Health Service Act. For the purposes of carrying out this subsection, the Commissioner is authorized to transfer from sums available for this part to the National Institute of Education sums not to exceed $500,000.

"(e) Not less than 10 percent of the funds available for purposes of section 303 shall be made available in each fiscal year for activities under subsection (b) of this section.".

(b) (1) Effective September 30, 1979—

(A) section 402(b) of the Education Amendments of 1974.

(B) section 403 of the Education Amendments of 1974,

(C) section 404 of the Education Amendments of 1974,

(D) section 405 of the Education Amendments of 1974,

(E) sections 406 (a), (b), (d), (e), (f), and (h) of the Education Amendments of 1974,

(F) section 811 of the Elementary and Secondary Education Act of 1965,

(G) section 408 of the Education Amendments of 1974, and

(H) section 409 of the Education Amendments of 1974 are repealed,

(2) Effective September 30, 1979, the Special Projects Act is repealed.

(3) Effective September 30, 1978, section 406(c)(1) is amended by striking out "this section" the first time it appears and inserting in lieu thereof "the Career Education Incentive Act".

TITLE IV—AMENDMENT TO TITLE IV OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

LIBRARIES, LEARNING RESOURCES, EDUCATIONAL INNOVATION AND SUPPORT

SEC. 401. Title IV of the Act is amended to read as follows:

"TITLE IV—EDUCATIONAL IMPROVEMENT, RESOURCES, AND SUPPORT

"PART A—GENERAL PROVISIONS

"PURPOSE

"SEC. 401. It is the purpose of this title to provide financial assistance to State and local educational agencies—

"(1) to strengthen the quality of elementary and secondary education through support of locally initiated projects and activities designed to improve educational practices;

"(2) to assist local educational agencies in the acquisition of necessary books, materials, library resources, and instructional equipment; and

"(3) to strengthen and expand programs of counseling and guidance services and testing of students in elementary and secondary schools.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 402. (a) (1) Subject to the provisions of paragraph (2), there is authorized to be appropriated such sums as may be necessary for obligation by the Commissioner during fiscal year 1980 and for each succeeding fiscal year ending prior to October 1, 1983, for the purpose of making grants under part B, relating to instructional materials and school library resources.

"(2) No funds are authorized to be appropriated under this subsection for obligation by the Commissioner during any fiscal year unless—

"(A) (i) the aggregate amount which would be appropriated under this subsection is at least equal to the aggregate amount appropriated for obligation by the Commissioner during the preceding fiscal year in which part B was in effect, or

"(ii) in the case of appropriations under this subsection for the first fiscal year in which part B is effective, such amount is at least equal to the aggregate amount appropriated for obligation by the Commissioner for the fiscal year 1974, or for the preceding fiscal year, whichever is higher, under title II of this Act, and under title III (except for section 305) of the National Defense Education Act of 1958, and

"(B) the sums appropriated pursuant to this subsection are included in an Act making appropriations for the fiscal year prior to the fiscal year in which such sums will be obligated, and are made available for expenditure prior to the beginning of such fiscal year.

"(3) Whenever the requirements of paragraph (2) are not met, the Commissioner shall carry out programs under title II of this Act and under title III (except for section 305) of the National Defense Education Act of 1958 as in effect for the fiscal year 1978 (prior to the repeal or expiration thereof). If any fiscal year in which the provisions of the preceding sentence are in effect, sums equal to the sums authorized to be appropriated for such programs for fiscal year 1978 are authorized to be appropriated for such fiscal year.

"(b) (1) Subject to the provisions of paragraph (2) there is authorized to be appropriated such sums as may be necessary for obligation by the Commissioner during the fiscal year 1980 and for each succeeding fiscal year ending prior to October 1, 1983, for the purpose of making grants under part C, relating to improvements in local educational practices.

"(2) No funds are authorized to be appropriated under this subsection for obligation by the Commissioner during any fiscal year unless—

"(A) (i) the aggregate amount which would be appropriated under this subsection is at least equal to the aggregate amount appropriated for obligation by the Commissioner during the preceding fiscal year in which part C was in effect, or

"(ii) in the case of appropriations under this subsection for the first fiscal year in which part C is effective, such amount is at least equal to the aggregate amount appropriated for obligation by the Commissioner for fiscal year ending June 30, 1974, or for the preceding fiscal year, whichever is higher, under title III (except for programs of testing, guidance, and counseling), title V, and sections 807 and 808 of this Act, and

"(B) the sums appropriated pursuant to this subsection are included in an Act making appropriations for the fiscal year prior to the fiscal year in which such sums will be obligated, and are made available for expenditure prior to the beginning of such fiscal year.

"(3) Whenever the requirements of paragraph (2) are not met, the Commissioner shall carry out programs under title III (except for programs of testing, guidance, and counseling), title V and sections 807 and 808 of this Act in effect for fiscal year 1978 (prior to the repeal thereof). In any fiscal year in which the provisions of the preceding sentence are in effect, sums equal to the sums authorized to be appropriated for such programs for fiscal year 1978 are authorized to be appropriated for such fiscal year.

"(c) (1) Subject to the provisions of paragraph (2) there is authorized to be appropriated the sum of $50,000,000 for obligation by the Commissioner during the fiscal year 1980, and for each succeeding fiscal year ending prior to October 1, 1983, for the purpose of making grants under part D, relating to formula grants for guidance, counseling, and testing.

"(2) No funds are authorized to be appropriated for obligation by the Commissioner for any fiscal year unless—

"(A) (i) the aggregate amount which would be appropriated under this subsection for part D is at least equal to the aggregate amount appropriated for obligation by the Commissioner during the preceding fiscal year in which part D is in effect; or

"(ii) in the case of appropriations under this subsection for the first fiscal year in which part D is in effect, the amount is at least equal to $18,000,000, and

"(B) the sums appropriated pursuant to this subsection are included in an Act making appropriations for the fiscal year prior to the fiscal year in which such sums will be obligated, and are made available for expenditure prior to the beginning of such fiscal year.

"(3) Whenever the requirements of paragraph (2) are not met, the Commissioner shall carry out programs under part A of title V of the National Defense Education Act of 1958 as in effect for fiscal year 1971 (prior to the expiration thereof). In any fiscal year in which the provisions of the preceding sentence are in effect, sums equal to the sums

authorized to be appropriated for such programs for fiscal year 1978 are authorized to be appropriated for such fiscal year.

"(d) There are auhorized to be appropriated for obligation by the Commissioner during each fiscal year ending prior to October 1, 1983, such sums as may be necessary for the purpose of increasing the allotment under section 403(a)(1) for that year to any State to a level of funding which equals the amounts of funds received by that State for the fiscal year ending June 30, 1974, for programs under title II, title III, title V, and sections 807 and 808 of this Act, and title III (except for section 305) of the National Defense Education Act of 1958.

"ALLOTMENTS TO STATES

"SEC. 403. (a)(1) From the amounts appropriated to carry out part B, part C, and part D of this title for any fiscal year, the Commissioner shall allot to each State from each such amount an amount which bears the same ratio to that amount as the number of children aged five to seventeen, inclusive, in the State bears to the number of those children in all the States.

"(2) For the purpose of this subsection, the term 'State' shall not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The number of children aged five to seventeen, inclusive, in a State and in all States shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

"(b) The amount of any State's allotment under subsection (a) for any fiscal year to carry out part B, part C, or part D, which the Commissioner determines will not be required for that fiscal year to carry out any of those parts shall be available for reallotment from time to time, on such dates during that year as the Commissioner may fix, to other States in proportion to the original allotments to those States under subsection (a) for that year but with such proportionate amount for any of those other States being reduced to the extent it exceeds the sum the Commissioner estimates that State needs and will be able to use for that year; and the total of those reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amounts reallotted to a State under this subsection during a year shall be deemed a part of its allotment under subsection (a) for that year.

"(c) There are authorized to be appropriated for each fiscal year for the purpose of this subsection amounts equal to not more than 1 per centum of each of the amounts appropriated for such year under part B, part C, and part D of this title. The Commissioner shall allot each of the amounts appropriated pursuant to this subsection among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective needs for assistance under part B, part C, and part D of this title. In addition, for each fiscal year he shall allot from each of such amounts to (A) the Secretary of the Interior the amounts necessary (including not more than $75,000 for administration) for the programs authorized by each such part for children and teachers in elementary and secondary schools operated for Indian children by the Department of the Interior, and (B) the Secretary of Defense the amounts necessary for the programs authorized by each such part for children and teachers in the overseas dependents schools of the Department of Defense. The terms upon which payment for such purposes shall be made to the Secretary of the Interior and the Secretary of Defense shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this title.

"STATE PLANS

"SEC. 404. (a) A State shall be eligible to receive grants under this part if it has on file with the Commissioner a general State application under section 501 or section 435 of the General Education Provisions Act, whichever is applicable, and if it submits to the Commissioner a State plan at such times (not more often than once every three years) and in such detail as the Commissioner deems necessary, which—

"(1) designates the State educational agency as the State agency which shall, either directly or through arrangements with other State or local public agencies, act as the sole agency for the administration of the State plan;

"(2) sets forth a program under which funds paid to the State from its allotments under section 403 will be expended solely for the programs and purposes that meet the requirements set forth in part B, part C, and part D of this title;

"(3) provides assurances that the requirements of section 406 (relating to the participation of pupils and teachers in private elementary and secondary schools) will be met, or certifies that such requirements cannot legally be met in such State;

"(4) describes the means by which the State educational agency will provide technical assistance to local educational agencies to enable them fully to participate in programs assisted under this title;

"(5) provides assurances that funds such agency receives from appropriations made under section 402(b) will be distributed among local educational agencies on an equitable basis, recognizing the competitive nature of the grantmaking except that the State educational agency shall provide assistance in formulating proposals and in operating programs to local educational agencies which are less able to compete due to small size or lack of local financial resources to distribute funds made available under this title to local educational agencies; and describes the procedures the State will use;

"(6) provides that local educational agencies applying for funds under part B and part D shall be required to submit applications for that program not more often than once every three years:

"(7) provides assurances that the aggregate amount to be expended per student or the aggregate expenditure by the State, its local educational agencies, and private schools in such State from funds derived from non-Federal sources for programs described in part B and part D, respectively, for the preceding fiscal year are not less than the amount per student expended or the aggregate expenditure for the second preceding fiscal year for each such part:

"(8) provides that, for any fiscal year in which the provisions of section 510(b)(2) are not met, of the funds the State receives under section 402 for each fiscal year, the State will use for administration of the State plan not to exceed whichever of the following is greater: (A) 5 per centum of the amount so received ($75,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands), excluding any part of such amount used for purposes of section 431 (a), or (B) $225,000; and provides that the remainder of such funds shall be made available to local educational agencies to be used for the purposes of parts B, C, and D, respectively;

"(9) provides that, for any fiscal year in which the provisions of section 523(b) are not met, not more than the greater of (A) 15 per centum of the amount which such State receives pursuant to section 402(b) for any fiscal year, or (B) the amount available by appropriation to such State in the fiscal year ending June 30, 1973 and periods covered by section 431(a)(3) as in effect in such year, shall be used for activities described in section 421;

"(10) sets forth policies and procedures which give satisfactory assurance that Federal funds made available under this title for any fiscal year will not be commingled with State funds;

"(11) sets forth the means by which the State will make information and technical assistance available to private nonprofit school officials who desire to arrange for children in those schools to participate in Federal elementary and secondary education programs;

"(12) sets forth a comprehensive plan for the coordination of Federal and State funds for training activities for educational personnel in the State including preserve and inservice training, which plan shall be developed with the involvement of teachers, professional associations, institutions of higher education, and other interested individuals; and

"(13) provides that the State has established a State advisory council in accordance with subsection (b).

"(b)(1) The State advisory council shall—

"(A) be appointed by the State educational agency or as otherwise provided by State law and be broadly representative of the cultural and educational resources of the State and of the public, including—

"(i) teachers, principals, superintendents, and other professional employees of local educational agencies and private schools,

"(ii) teachers from institutions of higher education,

"(iii) school librarians, personnel involved in operating media programs in local schools, and guidance counselors,

"(iv) individuals from fields of professional competence in dealing with children needing special education because of physical or mental handicaps, specific learning disabilities, severe educational disadvantages, and limited English proficiency or because they are gifted or talented, and of professional competence in guidance and counseling, and

"(v) parents, students, and other interested members of the public;

"(B) advise the State educational agency on the preparation of, and policy matters arising in the administration of, the State plan, including the development of criteria for the distribution of funds and the approval of applications for assistance under this title;

"(C) evaluate all programs and projects assisted under this title; and

"(D) prepare at least every three years and submit through the State educational agency a report of its activities, recommendations, and evaluations, together with such additional comments as the State educational agency deems appropriate, to the Commissioner.

"(2) Not less than ninety days before the beginning of any fiscal year for which funds will be available for carrying out this title, each State shall certify the establishment of, and membership of (including the name of the person designated as Chairman), its State advisory council to the Commissioner.

"(3) Each State and advisory council shall meet within thirty days after certification has been accepted by the Commissioner and establish the time, place, and manner, of its future meetings, except that such council shall have not less than one public meeting each year at which the public is given an opportunity to express views concerning the administration and operation of this title.

"(4) Each State advisory council shall be authorized to obtain the services of such professional, technical, and clerical personnel, and to contract for such other services as may be necessary to enable them to carry out their functions under this title, and the Commissioner shall assure that funds sufficient for these purposes are made available

to each council from funds available for administration of the State plan.

"(c) The Commissioner shall approve any State plan and any modification thereof which complies with the provisions of subsections (a) and (b) of this section.

"PAYMENTS TO STATES

"SEC. 405. From the amounts allotted to each State under section 403 for carrying out the programs authorized by part B, part C, and part D, respectively, the Commissioner shall pay to that State an amount equal to the amount expended by the State in carrying out its State plan (after withholding any amount necessary pursuant to section 406 (g)).

"PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS

"SEC. 406. (a)(1) To the extent consistent with the number of children in the school district of a local educational agency which is eligible to receive funds under this title or which serves the area in which a program or project assisted under this title is located who are enrolled in private nonprofit elementary and secondary schools, such agency, after consultation with the appropriate private school officials, shall provide for the benefit of such children in such schools secular, neutral, and nonideological services, materials, and equipment including the repair, minor remodeling, or construction of public facilities as may be necessary for their provision (consistent with subsection (c) of this section), or, if such service, materials, and equipment are not feasible or necessary in one or more such private schools as determined by the local educational agency after consultation with the appropriate private school officials, shall provide such other arrangements as will assure equitable participation of such children in the purposes and benefits of this title.

"(2) If no program or project is carried out under part B in the school district of a local educational agency, the State educational agency shall make arrangements, such as through contracts with nonprofit private agencies or organizations, under which children in private schools in that distirct are provided with services and materials under that part to the extent that would have occurred if the local educational agency had received funds under this title.

"(b) Expenditures for programs pursuant to subsection (a) shall be equal (consistent with the number of children to be served) to expenditures for programs under this title for children enrolled in the public schools of the local educational agency, taking into account the needs of the individual children and other factors which relate to such expenditures, and when funds available to a local educational agency under this title are used to concentrate programs or projects on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance area, or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be assured equitable participation in the purposes and benefits of such programs or projects.

"(c)(1) The control of funds provided under this title and title to materials, equipment, and property repaired, remodeled, or constructed therewith shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer such funds and property.

"(2) The provision of services pursuant to this section shall be provided by employees of a public agency or through contract by such public agency with a person, an association, agency, or corporation who or which in the provision of such services is independent of such private school and of any religious organizations, and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this title shall not be commingled with State or local funds.

"(d) If a State is prohiibted by law from providing for the participation in programs of children enrolled in private elementary and secondary schools, as required by this section, the Commissioner shall waive such requirements and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this section.

"(e)(1) If the Commissioner determines that a State or a local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in private elementary and secondary schools as required by this section, he may waive such requirements and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this section.

"(2) Pending final resolution of any investigation or complaint that could result in a determination under this subsection or subsection (d), the Commissioner may withhold from the allocation of the affected State or local educational agency the amount he estimates would be necessary to pay the cost of those services.

"(f) Any determination by the Commissioner under this section shall continue in effect until the Commissioner determines that there will no longer be any failure or inability on the part of the State or local educational agency to meet the requirements of subsections (a) and (b).

"(g) When the Commissioner arranges for services pursuant to this section, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allotment of the State under this title.

"(h)(1) The Commissioner shall not take any final action under this section until the State educational agency and local educational agency affected by such action have had an opportunity, for at least forty-five days after receiving written notice thereof, to submit written objections and to appear before the Commissioner or his designee to show cause why that action should not be taken.

"(2) If a State or local educational agency is dissatisfied with the Commissioner's final action after a proceeding under paragraph (1) of this subsection, it may within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(3) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(4) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"PART B—INSTRUCTIONAL MATERIALS AND SCHOOL LIBRARY RESOURCES

"ACTIVITIES AUTHORIZED

"SEC. 421. The amounts allotted to each State under section 403 for the purposes of this part shall be used to provide assistance to local educational agencies within that State—

"(1) for the acquisition of school library resources, textbooks, and other printed and published instructional materials for the use of children and teachers in public and private elementary and secondary schools which shall be used for instructional purposes only; and

"(2) for the acquisition of instructional equipment and materials suitable for use in providing education in academic subjects for use by children and teachers in elementary and secondary schools which shall be used for instructional purposes only.

"PROGRAM REQUIREMENTS

"SEC. 422. (a) Funds available to a State under this part shall be distributed among local educational agencies in that State according to the enrollments in public and nonpublic schools within the school districts of those agencies, adjusted, in accordance with criteria prescribed by the Commissioner, to provide higher per pupil allocations to (1) local educational agencies whose tax effort for education is substantially greater than the State average tax effort for education, but whose per pupil expenditure (excluding payments made under title I of this Act) is no greater than the average per pupil expenditure in the State, and (2) local educational agencies which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as children from low-income families, children living in sparsely populated areas, and children from families in which English is not the dominant language.

"(b) Local educational agencies shall be given complete discretion (subject to the provisions of section 406) in determining how funds they receive under this part will be divided among the purposes described in section 421, except that the State educational agency shall insure that each local educational agency, in making that determination, has adopted appropriate procedures, including periodic consultation with teachers, librarians, media specialists and other professional staff in the schools, and private school officials, to coordinate the selection of equipment and materials under this part with curricula being carried out in the schools within that agency.

"PART C—IMPROVEMENT IN LOCAL EDUCATIONAL PRACTICES

"ACTIVITIES AUTHORIZED

"SEC. 431. (a) The amounts allotted to each State under section 403 for the purpose of this part shall be used to provide assistance to local educational agencies within the State for activities that will improve the educational practices of those agencies, including—

"(1) the development and demonstration of activities designed to address serious educational problems in elementary and secondary schools, including—

"(A) the need for effective programs for children with special needs, such as educationally deprived children, gifted and talented children, and handicapped children,

"(B) high rates of children who do not complete secondary school, and

"(C) the need of children in private schools for improved educational services;

"(2) encouraging the development and demonstration of improved means of carrying out programs for educationally deprived children in school attendance areas having high concentrations of children from low-income families;

"(3) activities designed to improve the achievement of children in basic skills;

"(4) activities to encourage the participation of parents in the education of their children;

"(5) the development of programs to diagnose learning problems and assess the educational achievement of children, including children in nonprofit private schools;

"(6) developing and implementing model plans to demonstrate effective means of improving school management and fully coordinating all the Federal, State, and local resources available in a school in a fashion designed to meet the individual needs of every child in that school;

"(7) professional development programs for teachers, administrators, and other instructional personnel in the schools of such agencies;

"(8) early childhood and family education programs for children not yet enrolled in kindergarten programs and below age six for activities related to the identification of potential barriers to learning, the education of parents in child development, home-based programs, and referral services; and

"(9) programs to extend the educational process beyond the school building through the use of other resources in the community, such as museums, businesses, cultural organizations, labor unions, and governmental agencies.

"(b)(1) Funds available to the States under this part shall also be used (pursuant to State plans approved under section 404) for the purpose of encouraging innovation and improvement in compensatory educational efforts. Such efforts may include—

"(A) programs of grants to local educational agencies for summer bridge programs which provide students with continued academic improvement and stimulation during the summer months in order to preserve and increase the academic progress of such students in regular school year programs;

"(B) programs of parent education which enable parents to better contribute to their children's academic progress by such means as the conducting of parent education or parenting programs which promote partnership between parents and teachers and help parents develop the skills necessary to motivate and assist such children;

"(C) programs that provide retraining to improve the skills of teachers and other educational personnel to enable such personnel to meet better the specific educational needs of the children served by such personnel; and

"(D) programs to develop educational materials for use by children in the home to improve student achievements in the basic skills.

"(2) Each State shall ensure that not less than 50 per centum of those funds appropriated for any fiscal year which exceed the amount appropriated for this part for the fiscal year ending September 30, 1979, will be used for the purposes of programs described in paragraph (1).

"PROGRAM REQUIREMENTS

"SEC. 432. (a) Funds may be provided to a local educational agency under this part for a particular activity for a period of not to exceed five fiscal years (excluding any period for which such agency receives a planning grant for such activity), subject to the availability of appropriations for this part of each fiscal year. The amount provided to a local educational agency for any activity under this part shall decline after the third year, in accordance with criteria prescribed by the Commissioner, in order to ensure that successful practices developed with assistance under this part will be adopted and supported as part of the regular program of such agency.

"(b)(1) From sums made available to each State under this part, the following sums shall be allocated for activities under section 431(a)(6), relating to plans for improved school management and the coordinated use in schools of all available resources:

"(A) In fiscal year 1980, not less than 5 percent of any amount by which the amount available for this part in fiscal year 1980 exceeds the amount so available in fiscal year 1979.

"(B) In fiscal year 1981 and in each succeeding fiscal year, not less than 10 percent of any amount by which the amount available for this part in such year exceeds the amount so available in fiscal year 1979.

(2) No activity under section 431(a)(6) shall be approved by the State educational agency unless the proposal therefor has been developed in consultation with, and has been approved by, a committee composed of administrators, teachers, other staff at the school, and parents whose children attend the school.

"(c) Not less than 15 per centum of the amount received by a State under this part in any fiscal year shall be used for special programs or projects meeting the purposes of this part for the education of handicapped children. For the purpose of this part, the term 'handicapped children' has the meaning set forth in section 602(1) of the Education of the Handicapped Act.

"(d) Subject to section 406 (d) and (e), a State educational agency shall not approve the application of a local educational agency for assistance under this part unless the State educational agency determines that in designing the proposal to which that application relates, the needs of children in nonprofit private schools have been taken into account through consultation with private school officials and other means.

"PART D—GUIDANCE, COUNSELING, AND TESTING

"PROGRAM AUTHORIZED

"SEC. 441. (a) The Commissioner shall carry out a program for making grants to States (pursuant to State plans approved under section 404) for—

"(1) State leadership and supervisory services in the fields of guidance, counseling, and testing; and

"(2) comprehensive guidance, counseling, and testing programs in elementary and secondary schools throughout the State, including such services as—

"(A) elementary and secondary school counseling,

"(B) in-service training for guidance and counseling personnel,

"(C) supervision and leadership services at the local level,

"(D) program planning and development,

"(E) special guidance and counseling programs suited to meet the special needs for such programs by persons who are disadvantaged,

"(F) a program of testing students in elementary and secondary schools, and

"(G) evaluation of such programs.

"(b) Of the sums allotted to any State for any fiscal year for the purposes of this part, not to exceed 7½ per centum shall be available for the purpose described in clause (1) of subsection (a).

"PROGRAM REQUIREMENTS

"SEC. 442. Each local educational agency shall be given complete discretion (subject to the provisions of section 406) in determining how funds it receives from appropriations made under section 401(c)(1)(A) will be divided among various programs described in this part.

"ADMINISTRATION

"SEC. 443. (a) The Commissioner shall establish or designate an administrative unit within the Office of Education for purposes of—

"(1) carrying out provisions of this section;

"(2) providing information regarding guidance and counseling as a profession, guidance and counseling activities of the Federal Government, and, to the extent practicable, activities of State and local programs of guidance and counseling; and

"(3) advising the Commissioner on coordinating guidance and counseling activities included in all programs which he is authorized to carry out, and to the extent he deems practicable, how such activities may be coordinated with other programs of the Federal Government and State and local guidance and counseling programs.

"(b) The Commissioner may reserve an amount not to exceed 5 per centum of the sums appropriated for this part to carry out the provisions of this section.".

EFFECTIVE DATE

SEC. 402. The amendments and repeals made by this title shall take effect October 1, 1979.

TITLE V—ESTABLISHMENT OF NEW TITLE V OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

STATE LEADERSHIP

SEC. 501. Title V of the act is amended to read as follows:

"TITLE V—STATE LEADERSHIP

"PART A—ADMINISTRATION OF EDUCATION PROGRAMS AND DUTIES OF THE STATE EDUCATIONAL AGENCY

SINGLE STATE APPLICATION

"SEC. 501. (a) Each State which desires to participate in programs authorized under title I and title IV of this Act shall submit to the Commissioner a general application containing the assurances set forth in subsection (b). That application may be submitted jointly for all programs covered by the application, or it may be submitted separately for each such program or for groups of programs. Each application submitted under this section must be approved by each official, agency, board, or other entity within the State which, under State laws, is primarily responsible for supervision of the activities conducted under each program covered by the application.

"(b) An application submitted under subsection (a) shall set forth assurances, satisfactory to the Commissioner—

"(1) that each program will be administered in accordance with all applicable statutes, regulations, program plans and applications;

"(2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to those entities, and that the public agency or nonprofit private agency, institution, or organization will administer those funds and property.

"(3) that the State will adopt and use proper methods of administering each program to which this part applies including—

"(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law.

"(B) providing technical assistance, where necessary, to those agencies, institutions, and organizations,

"(C) encouraging the adoption by those agencies, institutions, and organizations for promising or innovative educational techniques,

"(D) the dissemination throughout the State of information on program requirements and successful practices, and

"(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation;

"(4) that the State will evaluate the effec-

tiveness of covered programs in meeting their statutory objectives, at such intervals (not less often than once every three years) and in accordance with such procedures as the Commissioner may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

"(5) that the State will use such fiscal control and fund accounting procedures as will insure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

"(6) that the State will make reports to the Commissioner (including reports on the results of evaluations required under paragraph (4)) as may reasonably be necessary to enable the Commissioner to perform his duties under each program, and that the State will maintain such records, in accordance with the requirements of section 437 of the General Education Provisions Act, and afford access to the records as the Commissioner may find necessary to carry out his duties;

"(7) that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program, and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

"(A) the State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;

"(B) the State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted to the Commissioner or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least thirty days;

"(C) the State will hold public hearings on the proposed plans if required by the Commissioner by regulation; and

"(D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations.

"(c) Each general application submitted under this section shall remain in effect for the duration of any program subject to the application. The Commissioner shall not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant change in the circumstances affecting an assurance in that application.

"SINGLE LOCAL EDUCATIONAL AGENCY APPLICATION

"SEC. 502. (a) Each local educational agency which participates in a program subject to this Act under which Federal funds are made available to that agency through a State agency or board shall submit to that agency or board a general application containing the assurances set forth in subsection (b). That application shall cover the participation by the local educational agency in all such programs.

"(b) The general application submitted by a local educational agency under subsection (a) shall set forth assurances—

"(1) that the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

"(2) that the control of funds provided to the local educational agency under each program and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

"(3) that the local educational agency will use fiscal control and fund accounting procedures that will insure proper disbursement of, and accounting for Federal funds paid to that agency under each program;

"(4) that the local educational agency will make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties and that the local educational agency will maintain such records, including the records required under section 437 of the General Educational Provisions Act, and give access to those records, as the State agency or board or the Commissioner deem necessary to perform their duties;

"(5) that the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

"(6) that any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

"(7) that in the case of any project involving construction—

"(A) the project is not inconsistent with overall State plans for the construction of school facilities,

"(B) in developing plans for construction, due consideration will be given to excellence of achitecture and design and to compliance with standards prescribed by the Secretary under section 504 of the Rehabilitation Act of 1973 in order to insure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals,

"(C) in developing plans for such facilities, due consideration has been given to excellence of architecture and design, and inclusion of works of art (not representing more than 1 per centum of the cost of the project); and

"(8) that the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through those projects.

"(c) A general application submitted under this section shall remain in effect for the duration of the programs it covers. The State agencies or boards administering the programs covered by the application shall not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant change in the circumstances affecting an assurance in that application.

"APPLICATION APPROVAL

"SEC. 503. (a)(1) A State educational agency shall approve an application of a local educational agency or a State agency subject to this part if (A) such State educational agency is satisfied, after considering the factors specified in paragraph (2), that such applicant agency will use the funds received under the application in a manner which meets the requirements of this title, the General Education Provisions Act and other applicable requirements and (B) such applicant agency is not out of compliance with a determination of the State educational agency or the Commissioner that it repay funds paid it under this title which were misused, and is not out of compliance with a compliance agreement under section 508(c).

"(2) A State educational agency may approve an application under paragraph (1) of this subsection, only after it has considered, where pertinent, (A) the results of Federal and State audits, (B) the results of Federal and State monitoring reports, (C) administrative complaints made by parents or other individuals concerning the applicant agency's compliance with this title, and (D) reports on evaluations conducted by the local education agency of its programs.

"(b) A State education agency may make payments from funds received under this part only for programs and projects which it has approved under subsection (a).

"(c) A State educational agency shall not finally disapprove in whole or in part any application for funds under this part without first affording the local educational agency or other applicant submitting the application reasonable notice and opportunity for a hearing in accordance with section 434 of the General Education Provisions Act.

"STATE RULEMAKING

"SEC. 504. Nothing in this part shall be deemed to prohibit a State educational agency from adopting rules, regulations, procedures, guidelines, criteria, or other requirements applicable to programs and projects, assisted under this part if they do not conflict with the provisions of this part or with regulations promulgated by the Commissioner implementing this title or other applicable Federal law. The Commissioner shall encourage State educational agencies, in adopting such rules, regulations, procedures, guidelines, criteria, or other requirements to recognize the special and unique needs and circumstances of the State and of each local educational agency in the State.

"TECHNICAL ASSISTANCE AND DISSEMINATION OF INFORMATION

"SEC. 505. Each State educational agency shall carry out a comprehensive program to provide technical assistance to local educational agencies and State agencies with respect to the use of funds received under this part. Such a program shall include technical assistance for management procedures, for planning, development, implementation, and evaluation of programs, and for preparation of applications, as well as other forms of technical assistance needed by local educational agencies and State agencies. Each State educational agency shall also adopt effective procedures for disseminating to local educational agencies and State agencies (1) significant and relevant information derived from education research, (2) information about successful compensatory education projects, (3) information about other Federal and State funded programs, which may provide needed health, social, and nutrition services to eligible participating children under this title, and (4) such other information as will assist local educational agencies and State agencies in planning, developing, implementing, and evaluating programs subject to this part.

"MONITORING

"SEC. 506. Each State educational agency shall adopt standards consistent with minimum standards established by the Commissioner, for monitoring the effectiveness of programs and projects subject to this part. Such standards shall (1) describe the purpose and scope of monitoring; (2) specify the frequency of on-site visits; (3) describe the procedures for issuing and responding to monitoring reports, including but not limited to, the period of time in which the State educational agency must issue its report, the period of time in which the applicant agency must respond, and the appropriate follow-up by the State educational agency, (4) specify the methods for making monitoring reports available to parents, State and local auditors, and other persons,

and (5) specify the methods for insuring that noncompliant practices are corrected.

"COMPLAINT RESOLUTION

"SEC. 507. Each State educational agency shall adopt written procedures for receiving and resolving complaints, or reviewing appeals from decisions of local educational agencies with respect to complaints concerning violations of this title, applicable provisions of the General Education Provisions Act or programs subject to this part, and for conducting on-site investigations of complaints which the State educational agency deems necessary. Such procedure shall include—

"(1) specific time limits for resolving the complaint or completing the review and, if necessary, the independent on-site investigation, which shall not exceed sixty days unless exceptional circumstances exist;

"(2) an opportunity for the complainant or the complainant's representative, or both, and the local educational agency involved to present evidence, including the opportunity to question parties to the dispute and any of their witnesses;

"(3) the right to appeal the final resolution of the State educational agency to the Commissioner within thirty days after receipt of the written decision; and

"(4) dissemination of information concerning the procedures to interested parties, including all district and school advisory councils.

"WITHHOLDING OF PAYMENTS

"SEC. 508. (a) Whenever a State educational agency, after reasonable notice and opportunity for a hearing to any local educational agency or State agency, before an impartial decisionmaker, finds that there has been a failure to comply substantially with any provision of the programs subject to this part the State educational agency shall notify such agency that further payments, in whole or in part, will not be made to it under applicable provisions of law until it is satisfied that there is no longer any such failure to comply. Until it is so satisfied, no further payments shall be made to such agency under applicable provisions of law, except as may be provided in a compliance agreement entered into under subsection (c). Pending the outcome of any proceeding under this subsection, the State educational agency may suspend payments to such agency, after such agency has been given reasonable notice and opportunity to show cause why such action should not be taken.

"(b) Upon submission to a local educational agency or a State agency of a notice that the State educational agency pursuant to subsection (a) is withholding payment the State educational agency shall inform the district advisory council, if any, and shall take such additional action as may be necessary to bring the State action to the attention of the public.

"(c) A State educational agency may suspend the initiation or continuation of its withholding action under subsection (a) while there is in effect a compliance agreement with the local educational agency or State agency under this subsection, except that if the local educational agency or State agency fails to comply with the terms agreed to, such agreement shall no longer be in effect and subsection (a) shall be fully operative. In implementing such subsection, the State educational agency shall take into account any partial compliance by such agency under such agreement. For purposes of this subsection, the term 'compliance agreement' means an agreement which—

"(1) sets forth the terms and conditions to which the local educational agency or State agency has agreed in order to comply with the requirements of this title or the General Education Provisions Act and regulations promulgated thereunder, and with the applicable rules, regulations, procedures, guidelines, criteria or other requirements adopted by the State educational agency;

"(2) addresses all the matters that formed the basis for the initiation of the withholding action by the State educational agency; and

"(3) may consist of a series of agreements that in the aggregate dispose of all such matters.

Within fifteen days after the execution of any compliance agreement, the State educational agency shall send a copy thereof to the district advisory council affected, and to each organization or person who filed a complaint with respect to any failure to comply which is covered by that agreement.

"(d) A local educational agency or State agency may, in accordance with section 425(a) of the General Education Provisions Act, appeal a final determination of the State educational agency under subsection (a) to the Commissioner.

"AUDITS AND AUDIT RESOLUTION

"SEC. 509. (a) Each State shall make provision for audits of the expenditure of funds received under programs subject to this part, including funds received under this part, to determine, at a minimum, the fiscal integrity of grant or subgrant financial transactions and reports, and the compliance with applicable statutes, regulations, and terms and conditions of the grant or subgrant. Such audits shall be made with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

"(b) Each State educational agency shall have in effect written procedures, meeting minimum standards established by the Commissioner, to assure timely and appropriate resolution of audit findings and recommendations arising out of audits provided for in subsection (a). Such procedures shall include a description of the audit resolution process, timetables for each step of the process, and an audit appeals process. Where, under such procedures, the audit resolution process requires the repayment of Federal funds which were misspent or misapplied, such repayment may be made in either a single payment or in installments over a period not to exceed three years.

"(c) A local educational agency or State agency shall repay from non-Federal sources or from Federal funds no accountability for which is required to the Federal Government the amount of funds under any program to which this part applies which have been finally determined through the audit resolution process to have been misspent or misapplied.

"(d) A local educational agency or State agency may, in accordance with section 425 (a) of the General Education Provisions Act, appeal a final determination of the State educational agency under subsection (b) to the Commissioner.

"(e) If, following an affirmance by the Commissioner of a final determination of a State educational agency under subsection (b) or failure by a local educational agency or State agency to seek timely review by the Commissioner, such local educational agency or State agency refuses to repay from non-Federal sources or from Federal funds no accountability for which is required to the Federal Government funds which have been misspent or misapplied under any program to which this part applies, the State educational agency shall promptly notify the Commissioner and the Commissioner shall promptly initiate collection action.

"PAYMENTS; AUTHORIZATION

"SEC. 510. (a) The Commissioner is authorized to pay each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this part, except that the total of such payments in any fiscal year shall not exceed—

"(1) 1.75 per centum of the amount allocated to the State and its local educational agencies as determined for that year under the programs described in section 501(a); or

"(2) $550,000, or $87,500 in the case of Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, or the Northern Marianas.

whichever is the greater, but such payment shall not be less than the amount each State received for administration of programs under this Act for fiscal year 1978.

"(b)(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this part for the fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1983.

"(2) No funds are authorized to be appropriated under this subsection by the Commissioner during any fiscal year unless—

"(A) the amount appropriated under this subsection is sufficient to pay the full amount for which each State is eligible under subsection (a) of this section for that fiscal year, and

"(B) the sums appropriated pursuant to this subsection are included in an act making appropriations for the fiscal year prior to the fiscal year in which such sums will be obligated, and are made available for expenditure prior to the beginning of such fiscal year.

"(3) Whenever the requirements of paragraph (2) are not met, each State shall receive payments under section 194 and under section 404(a)(8) of this Act, for the administration of the programs in accordance with subpart 2 of part C of title I and title IV of this Act, and sections 435 and 436 of the General Education Provisions Act.

"(c)(1) The Commissioner is authorized to pay to each State in addition to the amount authorized under the preceding subsection an amount not to exceed 25 per centum of the amount authorized for that State under the preceding subsection in cases where—

"(1) such funds are used solely for purposes of monitoring, audit resolution, enforcement, or other similar activities which are directly and exclusively related to the enforcement of the requirements of titles I and IV of this Act and of this part.

"(2) the State applies to receive such individual funds and, in the annual application submitted under section 142 of this Act specifically describes the intended uses of such funds, and

"(3) such funds are used to supplement, and not supplant, funds from non-Federal sources for such enforcement purposes.

"(2) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of paragraph (1) of this subsection for the fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1983.

"PART B—STRENGTHENING STATE EDUCATIONAL AGENCY MANAGEMENT

"ACTIVITIES AUTHORIZED

"SEC. 521. The amounts available to each State for the purposes of this part shall be used by the State educational agency of that State to strengthen the educational leadership resources of that agency and to assist that agency in identifying and meeting the critical educational needs of the State. Such activities may include—

"(1) developing more equitable means of financing education in the State:

"(2) providing resources to other branches of the State government to conduct analyses of educational issues facing the State;

"(3) developing statewide programs to assess the educational progress of students in the State in both public and private schools, including testing programs and

other methods of assessing student achievement in reading, writing, and mathematics;

"(4) providing technical assistance to local educational agencies for improving planning, management of State and Federal programs, citizen involvement, and staff development;

"(5) providing technical assistance to local educational agencies for improving their instructional programs, including programs that enable parents to assist in the instruction of their children at home;

"(5) workshops, conferences, and other means of providing communication among educators and between educators and the public;

"(7) dissemination of information concerning effective educational practices;

"(8) coordinating public educational programs with those carried out in private nonprivate elementary and secondary schools in the State, and monitoring the requirements of Federal programs with respect to the participation therein of children enrolled in those schools;

"(9) professional development of employees of the State educational agency; and

"(10) developing curricular materials and programs.

"PROGRAM REQUIREMENTS

"SEC. 522. Each State which desires to participate in programs under this part shall submit to the Commissioner a State plan which sets forth in such detail as the Commissioner prescribes the purposes for which funds provided under this part will be used by the State educational agency. The plan shall also set forth—

"(1) the means by which the State will make information and technical assistance available to private nonprofit school officials who desire to arrange for children in those schools to participate in Federal elementary and secondary education programs; and

"(2) a comprehensive plan for the coordination of Federal and State funds for training activities for educational personnel in the State including preservice and inservice training, which plan shall be developed with the involvement of teachers, professional associations, institutions of higher education, and other interested individuals and organizations.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 523. (a) There are authorized to be appropriated for the purposes of this part such sums as may be necessary for fiscal year 1980 and for each of the succeeding fiscal years ending prior to October 1, 1983.

"(b) No funds are authorized to be appropriated under this subsection for obligation by the Commissioner during any fiscal year unless—

"(A) the amount appropriated under this subsection is at least equal to 15 percent of the amount appropriated for part C of title IV for that fiscal year, and

"(B) the sums appropriated pursuant to this subsection are included in an Act making appropriations for the fiscal year prior to the fiscal year in which such sums will be obligated, and are made available for expenditure prior to the beginning of such fiscal year.

"(c) Whenever the requirements of subsection (b) are not met, each State may reserve sums under section 404(a)(9) of this Act.

"PART C—COUNCILS ON QUALITY IN EDUCATION

"NATIONAL AND STATE ADVISORY COUNCILS

"SEC. 531. (a)(1) There is hereby established a National Council on Quality in Education (hereafter referred to as the 'National Council') composed of fifteen members appointed by the President, by and with the advice and consent of the Senate. The membership of the National Council shall include persons who are familiar with the educational needs and goals of the Nation, persons with competence in assessing the progress of the education agencies, institutions, and organizations in meeting those needs and achieving those goals, persons familiar with the administration of State and local educational agencies and of institutions of higher education, and persons representative of the general public. Members shall be appointed without regard to political affiliation. Members shall be appointed for terms of three years, except that (A) in the case of initial members, one-third of the members shall be appointed for terms of one year each and one-third of the members shall be appointed for terms of two years each, and (B) appointments to fill the unexpired portion of any term shall be for such portion only.

"(2) The National Council shall—

"(A) review the administration of, general regulations for, and operation of the programs assisted under this title at the Federal, States, (and local levels, and other Federal education programs;

"(B) advise the Commissioner and, when appropriate, the Secretary and other Federal officials with respect to the educational needs and goals of the Nation and assess the progress of the educational agencies, institutions, and organizations of the Nation toward meeting those needs and achieving those goals;

"(C) conduct objective evaluations of specific education programs and projects in order to ascertain the effectiveness of such programs and projects in achieving the purpose for which they are intended;

"(D) review, evaluate, and transmit to the Congress and the President the reports submitted pursuant to clause (E) of paragraph (3) of subsection (b) of this section;

"(E) make recommendations (including recommendations for changes in legislation) for the improvement of the administration and operation of education programs including the programs authorized by this title;

"(F) consult with Federal, State, local, and other educational agencies, institutions, and organizations with respect to assessing education in the Nation and the improvement of the quality of education, including—

"(i) areas of unmet needs in education and national goals and the means by which those areas of need may be met and those national goals may be achieved;

"(ii) determinations of priorities among unmet needs and national goals;

"(iii) specific means of improving the quality and effectiveness of teaching, curricula, and educational media and of raising standards of scholarship and levels of achievement; and

"(G) conduct national conferences on the assessment and improvement of education, in which national and regional education associations and organizations, State and local education officers and administrators, and other organizations, institutions, and persons (including parents of children participating in Federal education programs) may exchange and disseminate information on the improvement of education; and

"(II) conduct, and report on, comparative studies and evaluations of education systems in foreign countries.

"(3) No member of the council shall evaluate any program or project if such member is associated with the program or project as a consultant, technical advisor, or in any other similar capacity.

"(4) The National Council shall make an annual report, and such other reports as it deems appropriate, on its findings, recommendations, and activities to the Congress and the President. The President is requested to transmit to the Congress, at least annually, such comments and recommendations as he may have with respect to such reports and its activities.

"(5) In carrying out its responsibilities under this section, the National Council shall consult with the National Advisory Council on the Education of Disadvantaged Children, and such other advisory councils and committees as may have information and competence to assist the National Council. All Federal agencies are directed to cooperate with the National Council in assisting it in carrying out its functions.

"(b)(1) Any State receiving payments under this title for any fiscal year may establish a State advisory council (hereafter referred to as 'State council') which if it meets the requirements and has the authority specified in this subsection may receive payments pursuant to subsection (c). The State council shall be appointed by the Governor or, in the case of States in which the members of the State educational agency are elected (including election by the State legislature), by such agency.

"(2) The State council established pursuant to this subsection shall be broadly representative of the educational resources of the State and of the public. Representation on the State council shall include, but not be limited to, persons representative of—

"(A) public and nonprofit private elementary and secondary schools;

"(B) institutions of higher education;

"(C) areas of competence in planning and evaluating education programs, and the assessment of the effectiveness of, and the administration of, such programs at the State and local levels; and

"(D) areas of competence dealing with children for whom special educational assistance is available under this Act.

"(3) The State council shall—

"(A) prepare and submit through the State educational agency a report of its activities, recommendations, and evaluations, together with such additional comments as the State educational agency deems appropriate, to the Commissioner and the National Council at such times, in such form, and in such detail, as the Commissioner may prescribe;

"(B) advise the State educational agency on the preparation of, and policy matters arising in the administration of, State and local educational programs in the State, including the development of criteria for approval of applications for assistance under this title;

"(C) advise State and local officials who have a responsibility for education in the State with respect to the planning evaluating, administration, and assessment of education in the State;

"(D) review and make recommendations to the State educational agency on the action to be taken with respect to applications for assistance under this title by local educational agencies; and

"(E) evaluate programs and projects assisted under this title.

"(4) Any such State shall certify the establishment and membership of the State council to the Commissioner.

"(5) Such State council shall meet within thirty days after its certification has been accepted by the Commissioner and select from among its membership a chairman. The time, place, and manner of meeting shall be as provided by the rules of the State council, except that such rules must provide for not less than one public meeting each year at which the public is given opportunity to express views concerning the operation of programs and projects assisted under this title.

"(6) Such State council shall be authorized to obtain the services of such professional, technical, and clerical personnel as may be necessary to enable them to carry out their functions under this title and to contract for such services as may be necessary to enable them to carry out their evaluation functions.

"(c)(1) There are authorized to be appropriated for each fiscal year such sums, not in

excess of 2½ per centum of the amount otherwise appropriated for such year for the purposes of this title, as may be necessary to carry out the provisions of this subsection.".

TITLE VI—ESTABLISHMENT OF A NEW TITLE VI OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

EMERGENCY SCHOOL AID

SEC. 601. (a) Title VI of the Act is amended to read as follows:

"TITLE VI—EMERGENCY SCHOOL AID

"SHORT TITLE

"SEC. 601. This title may be cited as the 'Emergency School Aid Act'.

"FINDINGS AND PURPOSE

"SEC. 602. (a) The Congress finds that the process of eliminating or preventing minority group isolation and improving the quality of education for all children often involves the expenditure of additional funds to which local educational agencies do not have access.

"(b) The purpose of this title is to provide financial assistance—

"(1) to meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools; and

"(2) to encourage the voluntary elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students.

"POLICY WITH RESPECT TO THE APPLICATION OF CERTAIN PROVISIONS OF FEDERAL LAW

"SEC. 603. (a) It is the policy of the United States that guidelines and criteria established pursuant to this title shall be applied uniformly in all regions of the United States in dealing with conditions of segregation by race in the schools of the local educational agencies of any State without regard to the origin or cause of such segregation.

"(b) It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 and section 182 of the Elementary and Secondary Education Amendments of 1966 shall be applied uniformly in all regions of the United States in dealing with conditions of segregation by race whether de jure or de facto in the schools of the local educational agencies of any State without regard to the origin or cause of such segregation.

"AUTHORIZATION

"SEC. 604. (a) The Assistant Secretary shall, in accordance with the provisions of this title, carry out a program designed to achieve the purpose set forth in section 602(b). The Assistant Secretary shall delegate the responsibilities for the operation for such program to the Commissioner.

"(b)(1) There are authorized to be appropriated for the purposes of this title, to be apportioned among the States in accordance with section 605, $155,000,000 for fiscal year 1980 and for each of the three succeeding fiscal years.

"(2) There are further authorized to be appropriated for the purpose of this title $245,000,000 for fiscal year 1980 and for each of the three succeeding fiscal years for special programs and projects under section 608 (except subsection (b) thereof) and under section 611, and for evaluations under section 613. From the amount appropriated under this subsection for any fiscal year, the Assistant Secretary shall reserve $20,000,000 or 25 per centum of such sums appropriated under this title, whichever is greater, for the purpose of carrying out programs and projects described in section 698(a)(1) through (3) and shall reserve 7 per centum for the projects described in section 611.

"(3) There are further authorized to be appropriated for the purpose of this title $15,000,000 for the fiscal year 1980 and for each of the three succeeding fiscal years for programs and projects designed to support the development or implementation of plans under section 608(b).

"(c)(1) There are further authorized to be appropriated for the purpose of this title $7,250,000 and such additional sums as may be necessary for fiscal year 1980 and for each of the three succeeding fiscal years for providing compensatory services to students who had previously received such services funded in whole or in part under title I of this Act, but who are no longer receiving such services as a result of attendance area or enrollment changes under a plan implemented or ordered after August 21, 1974, if the plan meets the requirements of section 606(a)(1)(A), (B), (C), or (D) for eligibility for assistance under this title.

"(2) Funds made available under paragraph (1)—

"(A) shall not be used in any manner which would result in the isolation of the students described in such paragraph from other students in the school to which the students so described have been assigned by such plan; and

"(B) shall be used to establish compensatory education programs, not less than 30 per centum of the enrollment in which is such other students, except that—

"(i) if such school receives funds under provisions of this title other than this subsection, such funds shall be used to provide such services to such other students; or

"(ii) if such school does not receive such funds, funds provided under this subsection may be used for such other students, not exceeding 30 per centum of the enrollment in such program.

"APPORTIONMENT AMONG STATES

"SEC. 605. (a) From the sums appropriated pursuant to section 604(b)(1) for any fiscal year, the Assistant Secretary shall apportion to each State for grants and contracts within the State $75,000 plus an amount which bears the same ratio to such sums as the number of minority group children aged five through seventeen, inclusive, in that State bears to the number of such children in all States, except that the amount apportioned to any State shall not be less than $100,000. The number of such children in each State and in all of the States shall be determined by the Assistant Secretary on the basis of the most recently available satisfactory data.

"(b)(1) The amount by which any apportionment to a State for a fiscal year under subsection (a) exceeds the amount which the Assistant Secretary determines will be required for that fiscal year for programs and projects within that State shall be available either—

"(A) for reapportionment to other States for which the amount so apportioned is insufficient for approvable programs or projects for that fiscal year, or

"(B) for special programs and projects under section 608(a), whichever the Assistant Secretary determines will best achieve the purposes of this title. The Assistant Secretary shall distribute any amounts reapportioned among the States pursuant to clause (A) in proportion to the need of eligible applicants in each such State for approvable programs or projects.

"(2) The Assistant Secretary shall not fix a date for reapportionment, pursuant to this subsection, of any portion of any apportionment to a State for a fiscal year which date is earlier than one hundred and twenty days prior to the end of such fiscal year.

"(3) Notwithstanding the provisions of paragraph (1) of this subsection, no portion of any apportionment to a State for a fiscal year shall be available for reapportionment pursuant to this subsection unless the Assistant Secretary determines that the applications for assistance under this title which have been filed by eligible applicants in that State for which a portion of such apportionment has not been reserved (but which would necessitate use of that portion) are applications which do not meet the requirements of this title, as set forth in sections 606, 607, and 610, or which set forth programs or projects of such insufficient promise for achieving the purposes of this title stated in section 602(b) that their approval is not warranted.

"ELIGIBILITY FOR ASSISTANCE

"SEC. 606. (a)(1) The Assistant Secretary is authorized to make a grant to, or a contract with, a local educational agency—

"(A) which is implementing a plan—

"(i) which has been undertaken pursuant to a final order issued by a court of the United States, or a court of any State, or any other State agency or official of competent jurisdiction, and which requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency, or otherwise requires the elimination or reduction of minority group isolation in such schools, and which may, in addition, require educational activities in minority group isolated schools not affected by the reassignment of children or faculty under the plan in order to remedy the effects of illegal segregation; or

"(ii) which has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 for the desegregation of minority group segregated children or faculty in such schools; or

"(B) which without having been required to do so, has adopted and is implementing, or will, if assistance is made available to it under this title, adopt and implement, a plan for the complete elimination of minority group isolation in all the minority group isolated schools of such agency; or

"(C) which has adopted and is implementing, or will, if assistance is made available to it under this Act, adopt and implement a plan—

"(i) to eliminate or reduce minority group isolation in one or more of the minority group isolated schools of such agency,

"(ii) to reduce the total number of minority group children who are in minority group isolated schools of such agency, or

"(iii) to prevent minority group isolation reasonably likely to occur (in the absence of assistance under this title) in any school in such district in which school at least 20 per centum but not more than 50 per centum, of the enrollment consists of such children, or

"(D) which, without having been required to do so, has adopted and is implementing, or will, if assistance is made available to it under this title, adopt and implement a plan to enroll and educate in the schools of such agency children who should not otherwise be eligible for enrollment because of nonresidence in the school district of such agency, where such enrollment would make a significant contribution toward reducing minority group isolation in one or more of the school districts; or

"(E) which is developing a plan of desegregation—

"(i) issued by a court of the United States or a court of any State, or any other State agency or official of competent jurisdiction, or

"(ii) undertaken by such agency voluntarily, and

which plan will require the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency, or otherwise will require the elimination or reduction of minority group isolation in such schools, or which has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 for the desegregation of minority group segregated children or faculty in such schools,

and the period for such planning does not exceed two years.

Grants under clause (E) shall be from funds appropriated to carry out the purposes of section 608, and not more than one grant for the development of a plan under clause (E) of this paragraph may be made to any local educational agency. Receipt of a grant or contract under clause (E) of this paragraph shall not be used as an absolute defense in any court of the United States, or a court of any State, or before any other State agency or official of competent jurisdiction.

"(2)(A) The Assistant Secretary is authorized, in accordance with special eligibility criteria established by regulation for the purposes of this paragraph, to make grants to, and contracts with, local educational agencies for the purposes of section 609(a)(1).

"(B) A local educational agency shall be eligible for assistance under this paragraph only if—

"(i) such agency is located within, or adjacent to, a Standard Metropolitan Statistical Area;

"(ii) the schools of such agency are not attended by minority group children in a significant number or proportion; and

"(iii) such local educational agency has made joint arrangements with a local educational agency, located within that Standard Metropolitan Statistical Area, and the schools of which are attended by minority group children in a significant proportion, for the establishment or maintenance of one or more integrated schools as provided in section 617(5).

"(b) No local educational agency making application under this section shall be eligible to receive a grant or contract in an amount in excess of the amount determined by the Assistant Secretary, in accordance with regulations setting forth criteria established for such purpose, to be the additional cost to the applicant arising out of activities authorized under this title, above that of the activities normally carried out by the local educational agency.

"(c)(1) Except as provided in paragraph (2), no educational agency shall be eligible for assistance under this title if it has, after June 23, 1972—

"(A) transferred (directly or indirectly by gift, lease, loan, sale, or other means) real or personal property to, or made any services available to, any transferee which it knew or reasonably should have known to be a nonpublic school or school system (or any organization controlling, or intending to establish, such a school or school system) without prior determination that such nonpublic school or school system (i) is not operated on a racially segregated basis as an alternative for children seeking to avoid attendance in desegregated public schools, and (ii) does not otherwise practice, or permit to be practiced, discrimination on the basis of race, color, or national origin in the operation of any school activity;

"(B) had in effect any practice, policy, or procedure which results in the disproportionate demotion or dismissal of instructional or other personnel from minority groups in conjunction with desegregation or the implementation of any plan or the conduct of any activity described in this section, or otherwise engaged in discrimination based upon race, color, or national origin in the hiring, promotion, or assignment of employees of the agency (or other personnel for whom the agency has any administrative responsibility);

"(C) in conjunction with desegregation or the conduct of an activity described in this section, had in effect any procedure for the assignment of children to or within classes which results in the separation of minority group from nonminority group children for a substantial portion of the school day, except that this clause does not prohibit the use of bona fide ability grouping by a local educational agency as a standard pedagogical practice; or

"(D) had in effect any other practice, policy, or procedure, such as limiting curricular or extracurricular activities (or participation therein by children) in order to avoid the participation of minority group children in such activities, which discriminates among children on the basis of race, color, or national origin; except that, in the case of any local educational agency which is ineligible for assistance by reason of clause (A), (B), (C), or (D), such agency may make application for a waiver of ineligibility, which application shall specify the reason for its ineligibility, contain such information and assurances as the Secretary shall require by regulation in order to insure that any practice, policy, or procedure, or other activity resulting in the ineligibility has ceased to exist or occur and include such provisions as are necessary to insure that such activities do not reoccur after the submission of the application.

"(2) Whenever a local educational agency applies for assistance under clause (E) of section 606(a)(1), the provisions of clauses (C) and (D) of paragraph (1) of this subsection shall not apply if the local educational agency provides assurances in the application for assistance that the development of the plan for which assistance is sought will address the conditions described in such clauses (C) and (D).

"(3)(A) Applications for waivers under paragraph (1) may be approved only by the Secretary. The Secretary's functions under this paragraph shall, notwithstanding any other provision of law, not be delegated.

"(B) Application for waiver shall be granted by the Secretary upon determination that any practice, policy, procedure or other activity resulting in ineligibility has ceased to exist, and that the applicant has given satisfactory assurance that the activities prohibited in this subsection will not reoccur.

"(4) No application for assistance under this title shall be approved prior to a determination by the Secretary that the applicant is not ineligible by reason of this subsection.

"(5) All determinations pursuant to this subsection shall be carried out in accordance with criteria and investigative procedures established by regulations of the Secretary for the purpose of compliance with this subsection.

"(6) All determinations and waivers pursuant to this subsection shall be in writing.

"(7) The Assistant Secretary shall prepare and include in the annual report required by section 422(a)(4) of the General Education Provisions Act a list of all the waivers granted under this subsection for the preceding fiscal year.

"AUTHORIZED ACTIVITIES

"SEC. 607. (a) The Assistant Secretary shall make sums appropriated under section 604 (a) for any fiscal year available for programs and projects designed to meet educational needs that arise from the development of or the implementation of a plan described in section 606(a). Those programs and projects may include, but are not limited to—

"(1) the training of school staff and local educational agency staff in the handling of problems incident to the implementation of a qualifying plan;

"(2) the provision of additional staff members (including teacher aides) to assist in meeting educational needs that arise from the implementation of the plan;

"(3) the development or acquisition of new curricula, methods, practices, techniques, or materials to support a program of instruction for children from all racial, ethnic, and economic backgrounds, including instruction in the language and cultural heritage of minority groups;

"(4) innovative educational activities, including extracurricular activities, which involve the joint participation of minority group children and other children;

"(5) community relations activities, including public information efforts, in support of the implementation of a qualifying plan;

"(6) planning, evaluation, dissemination, and other administrative activities directly related and necessary to other activities in the program or project;

"(7) repair or minor remodeling or alteration of existing school facilities (including the acquisition, installation, modernization, or replacement of instructional equipment) and the lease or purchase of mobile classroom units or other mobile education facilities, where necessary to carry out other activities in the program or project;

"(8) the provision of compensatory services to children who have received such services under title I but who are no longer eligible to receive those services as a result of attendance area changes under a qualifying plan;

"(9) activities to prevent or eliminate recurring or continuing problems resulting from the implementation of a qualifying plan;

"(10) planning to implement or carry out a plan of desegregation issued by a court of the United States, or a court of any State, or any other State agency or official of competent jurisdiction, and which requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency, or otherwise requires the elimination or reduction of minority group isolation in such schools or which has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 for the desegregation of minority group segregated children or faculty in such schools; and

"(11) in the case of an applicant implementing a court-ordered desegregation plan under section 606(a)(1)(A)(i), the conduct of educational activities in one or more minority group isolated schools which are not affected by the reassignment of children or faculty under the plan, where the activities have been required by the court to remedy the effects of illegal segregation.

"(b) In recruiting and hiring teacher aides to assist in carrying out a program or projects under this section the local educational agency shall give preference to parents of children affected by the implementation of a qualifying plan.

"SPECIAL PROGRAMS AND PROJECTS

"SEC. 608. (a) From the amount appropriated for any fiscal year under section 604 (b), the Assistant Secretary is authorized to make grants to, and contracts with, State and local educational agencies, and other public and private nonprofit agencies and organizations (or a combination of such agencies and organizations) for the purpose of carrying out activities which the Assistant Secretary determines will make substantial progress toward achieving the purposes of this title, including, but not limited to—

"(1) the planning for, design of, and conduct of programs in magnet schools;

"(2) the pairing of schools and programs with institutions of higher education and with businesses;

"(3) the development of plans for neutral site schools;

"(4) activities designed to meet the needs of minority group children of limited English language proficiency enrolled in the schools of a local educational agency eligible for assistance under section 606; and

"(5) the development and production of integrated children's television and radio programs of cognitive and effective educational value, as described in section 611.

"(b) From the amount appropriated for any fiscal year under section 604(b)(3), the Assistant Secretary, in cases in which it would effectively carry out the purpose of this title stated in section 602(b), may assist by grant or contract any public or private nonprofit agency, institution, or organization (other than a local educational agency) in any State to carry out programs or projects designed to support the development or implementation of a plan described in section 606(a).

"(c)(1) From the amount available for the purposes of this section for each fiscal year, the Assistant Secretary shall carry out a program of making grants to State educational agencies, or other State agencies involved in or responsible for the desegregation of public elementary and secondary schools, to pay a portion of the cost of State activities related to—

"(A) planning (i) for the implementation of voluntary plans to eliminate or reduce minority group isolation in those schools, and (ii) to assess future needs, and to develop further strategies to meet those needs;

"(B) providing technical assistance to encourage local educational agencies or groups of those agencies to develop or implement voluntary plans to eliminate or reduce minority group isolation in those schools; and

"(C) providing training for educational personnel involved in developing or carrying out a voluntary plan to eliminate or reduce minority group isolation in those schools.

"(2) The amount of assistance made available to a State under this subsection for any fiscal year shall be twice the amount of State funds expended in the preceding fiscal year for the activities listed in paragraph (1). The amount provided to a State under this section for any fiscal year shall not exceed—

"(A) 10 per centum of the amount apportioned to the State for that fiscal year under section 605, or

"(B) $500,000,

whichever is greater.

"(3) No grant may be made to a State under this subsection unless the application for that grant has been developed in consultation with teachers, educators, parents (including parents of minority group children), and representatives of the general public (including representatives of minority groups), of whom the proportion of minority group individuals shall be approximately the same as the proportion of minority group children enrolled in the elementary and secondary schools in the State.

"METROPOLITAN AREA PROJECTS

"SEC. 609. (a) Sums available to the Assistant Secretary under section 608 for metropolitan area projects shall be available for the following purposes:

"(1) A program of grants to, and contracts with local educational agencies which are eligible under section 606(a)(2) in order to assist them in establishing and maintaining integrated schools as defined in section 617(3).

"(2) A program of grants to groups of local educational agencies located in a Standard Metropolitan Statistical Area for the joint development of a plan to reduce and eliminate minority group isolation, to the maximum extent possible, in the public elementary and secondary schools in the Standard Metropolitan Statistical Area, which shall, as a minimum, provide that by a date certain, but in no event later than July 1, 1983, the percentage of minority group children enrolled in each school in the Standard Metropolitan Statistical Area shall be at least 50 per centum of the percentage of minority group children enrolled in all the school in the Standard Metropolitan Statistical Area. No grant may be made under this paragraph unless—

"(A) two-thirds or more of the local educational agencies in the Standard Metropolitan Statistical Area have approved the application, and

"(B) the number of students in the schools of the local educational agencies which have approved the application constitutes two-thirds or more of the number of students in the schools of all the local educational agencies in the standard metropolitan statistical area.

"(b) In making grants and contracts under this section, the Assistant Secretary shall insure that at least one grant shall be for the purposes of paragraph (2) of subsection (a).

"APPLICATIONS

"SEC. 610. (a) Any local educational agency desiring to receive assistance under this title shall submit to the Assistant Secretary, at such time, in such form, and containing only such information as the Secretary and the Assistant Secretary deem necessary to carry out their functions under this title, an application describing the activities to be carried out under the application during the period, not to exceed five academic years, for which assistance is being sought. That application, together with all correspondence and other written materials relating thereto, shall be made readily available to the public by the applicant and by the Assistant Secretary. The Assistant Secretary may approve an application only upon a determination that such application—

"(1) has been developed—

"(A) in open consultation with parents, teachers and, where applicable, secondary school students, including at least one public hearing at which such persons have had a full opportunity to understand the program for which assistance is being sought and to offer recommendations thereupon, and

"(B) with the participation of a committee composed of parents of children enrolled in the applicant's schools, teachers and, where applicable, secondary school students, of which at least half the members shall be such parents and at least half shall be persons from minority groups;

"(2) sets forth such policies and procedures as will insure that the program for which assistance is sought will be operated in consultation with, and with the involvement of, parents of the children and representatives of the area to be served, including the committee established for the purposes of clause (1)(B);

"(3) sets forth such policies and procedures, and contains such information, as will insure that funds paid to the applicant under the application will be used solely to pay the additional costs to the applicant in carrying out the program described in the application;

"(4) contains such assurances and other information as will insure that the program for which assistance is sought will be administered by the applicant, and that any funds received by the applicant, and any property derived therefrom, will remain under the administration and control of the applicant;

"(5) provides that the plan with respect to which such agency is seeking assistance (as specified in section 606(a)(1)(A)) does not involve freedom of choice as a means of desegregation, unless the Assistant Secretary determines that freedom of choice has achieved, or will achieve, the complete elimination of a dual school system in the school district of such agency;

"(6) provides assurances that such agency will carry out, and comply with, all provisions, terms, and conditions of any plan, as described in section 606, upon which a determination of its eligibility for assistance under this title is based;

"(7) sets forth such policies and procedures, and contain such information, as will insure that funds made available to the applicant (A) under this title will be so used (i) as to supplement the level of funds that would, in the absence of such funds, be made available from non-Federal sources for the purposes of the program for which assistance is sought, and for promoting the integration of the schools of the applicant, and for the education of children participating in such program, and (ii) in no case, as to supplant such funds from non-Federal sources, and (B) under any other law of the United States will, in accordance with standards established by regulation, be used in coordination with such programs to the extent consistent with such other law, except that nothing in this clause shall prohibit the use of funds under this title for otherwise authorized activities required under a court-ordered plan described in section 606(a)(1)(A)(i);

"(8) provides that (A) to the extent consistent with the number of minority group children in the area to be served who are enrolled in private nonprofit elementary and secondary schools which are operated in a manner free from discrimination on the basis of race, color, or national origin, and which do not serve as alternatives for children seeking to avoid attendance in desegregated or integrated public schools, whose participation would assist in achieving the purpose of this title stated in section 602(b), provides assurance that such agency after consultation with the appropriate private school officials) has made provision for their participation on an equitable basis, and (B) to the extent consistent with the number of children, teachers, and other educational staff in the school district of such agency enrolled or employed in private nonprofit elementary and secondary schools whose participation would assist in achieving the purpose of this title stated in section 602(b), such agency (after consultation with the appropriate private school officials) has made provisions for their participation on an equitable basis;

"(9) provides that the applicant has not reduced its fiscal effort per student or the aggregate expenditure for the provision of free public education for children in attendance at the schools of such agency for the fiscal year for which assistance is sought under this title to less than that of the second preceding fiscal year;

"(10) provides that the appropriate State educational agency has been given reasonable opportunity to offer recommendations to the applicant and to submit comments to the Assistant Secretary;

"(11) sets forth effective procedures, including provisions for objective measurement of change in educational achievement and other change to be effected by programs conducted under this title, for the continuing evaluation of programs under this title, including their effectiveness in achieving clearly stated program goals, their impact on related programs and upon the community served, and their structure and mechanisms for the delivery of services, and including, where appropriate, comparisons with proper control groups composed of persons who have not participated in such programs or projects;

"(12) provides (A) that the applicant will make periodic reports at such time, in such form, and containing such information as the Assistant Secretary may prescribe, including, in the case of reports relating to performance, that the reports be consistent with specific criteria related to the program objectives and (B) that the applicant will keep such records and afford such access thereto as—

"(i) will be necessary to insure the correctness of such reports and to verify them,

"(ii) will be necessary to insure the public adequate access to such reports and other written materials; and

"(13) provides that the applicant, in developing the program or project for which it seeks assistance, has considered the need for compensatory services for children who received those services under title I of this Act, but who are no longer eligible to receive those services as a result of attendance area changes under a qualifying plan.

"(b) Except in the case of applications for assistance under section 608(a), the Secretary shall determine whether the applicant is eligible under section 606(c), and notify the applicant in writing of any determination of ineligibility under that subsection, including in detail the relevant information on which the determination of ineligibility is based, not later than March 1 of the year in which the academic year or other period for which the assistance is sought begins. Not later than June 30 of that year, the Assistant Secretary shall notify the applicant of the approval of the application and the amount of its award, if any.

"(c) No application under this section may be approved which is not accompanied by the written comments of a committee established pursuant to clause (2)(B) of subsection (a). The Assistant Secretary shall not approve an application without first affording the committee an opportunity for an informal hearing if the committee requests such a hearing.

"(d) In approving applications submitted under this title (except for those submitted under sections 608(b) and 613) the Assistant Secretary shall apply the following criteria:

"(1) the need for assistance based on the expense or difficulty or effectively carrying out a plan described in section 606(a) and the program or projects for which assistance is sought;

"(2) the degree to which implementation of the plan described in section 606(a) has effected or will effect a decrease in minority group isolation in minority group isolated schools;

"(3) the recentness of the implementation of the plan described in section 606(a);

"(4) the degree to which the program or project for which assistance is sought affords promise of achieving the purposes of this title; and

"(5) the degree to which the plan described in section 606 involves to the fullest extent practicable the total educational resources, both public and private, of the community to be served.

"(e)(1) An application of a local educational agency for assistance under this title may cover a period of from one to five years. A new application shall be required for any assistance under this title for years subsequent to that period. The Assistant Secretary shall base the decision as to the length of time for which an application will be approved on—

"(A) the severity of the problems addressed by the program or project for which assistance is being sought;

"(B) the nature of the activities proposed in the application;

"(C) the likely duration of the problems addressed by the application; and

"(D) such other criteria, established by the Assistant Secretary as will assure the most effective use of this title.

"(2) If the Assistant Secretary approves an application of a local educational agency under this title for a period covering more than one fiscal year, no subsequent application shall be required from that agency in any fiscal year during that period unless the agency proposes to carry out, in any such fiscal year, activities not included in the approved application. However, payments to any such agency for any fiscal year subsequent to the first fiscal year for which the application has been approved shall be made only if—

"(A) sufficient appropriations are available for making payments in each subsequent fiscal year; but such payments to applicants which are approved for a period of more than one year shall be made prior to any approval of funding requests from other applicants unless the Assistant Secretary finds that the urgency of needs elsewhere requires a reduction of the level of support for the applicants first approved;

"(B) the Assistant Secretary determines that the agency is not ineligible for assistance under section 606(d) in each subsequent fiscal year; and

"(C) the agency demonstrates, by such means as the Assistant Secretary may prescribe, that satisfactory progress is being made toward achieving the objectives of the program or projects for which assistance has been available under this title.

"(f) The Assistant Secretary shall not give less favorable consideration to the application of a State or local educational agency (including an agency currently classified as legally desegregated by the Secretary) which has voluntarily adopted a plan qualified for assistance under this title (due only to the voluntary nature of the action) than to the application of a local educational agency which has been legally required to adopt such a plan.

"(g) The Assistant Secretary may, from time to time, set dates by which applications shall be filed.

"(h) In the case of an application by a combination of local educational agencies for jointly carrying out a program or project under this title, at least one such agency shall be a local educational agency described in section 606(a) and any one or more of such agencies joining in such application may be authorized to administer such program or project.

"(i) No State shall reduce the amount of State aid with respect to the provision of free public education in any school district of any local educational agency within such State because of assistance made or to be made available to such agency under this title.

"EDUCATIONAL TELEVISION AND RADIO

"SEC. 611. (a)(1) The Assistant Secretary shall carry out a program of making grants to, or contracts with, public or private nonprofit agencies, institutions, or organizations with the capability of providing expertise in the development of high quality television and radio programing, in sufficient number to assure diversity, to pay the cost of development and production of integrated children's television and radio programs of cognitive and affective educational value.

"(2) Television and radio programs developed in whole or in part with assistance provided under this title shall be made reasonably available for transmission, free of charge, and shall not be transmitted under commercial sponsorship.

"(3) The Assistant Secretary may approve an application under this section only if he determines that the applicant—

"(A) will employ members of minority groups in responsible positions in development, production, and administrative staffs;

"(B) will assure the development of productions having a substantial artistic or educational significance;

"(C) will use modern television and radio techniques of research and production; and

"(D) has adopted effective procedures for evaluating educational and other changes achieved by children viewing the program.

"(b) Grants and contracts pursuant to subsection (a) may be made from funds available to carry out section 604(b)(2) of this Act.

"(c) Not to exceed 10 per centum of the amounts available for this section shall be used for grants and contracts for development and production of radio programing.

"PAYMENTS

"SEC. 612. (a) Upon his approval of an application for assistance under this title, the Assistant Secretary shall reserve from the applicable apportionment (including any applicable reapportionment) available therefor the amount fixed for such application.

"(b) The Assistant Secretary shall pay to the applicant such reserved amount, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine. Payments under this title for a fiscal year shall remain available for obligation and expenditure by the recipient until the end of the succeeding fiscal year.

"(c)(1) If a local educational agency in a State is prohibited by law from providing for the participation of children and staff enrolled or employed in private nonprofit elementary and secondary schools as required by paragraph (8) of section 610(a), the Assistant Secretary may waive such requirement with respect to local educational agencies in such State and, upon the approval of an application from a local educational agency within such State, shall arrange for the provision of services to such children enrolled in, or teachers or other educational staff of, any nonprofit private elementary or secondary school located within the school district of such agency if the participation of such children and staff would assist in achieving the purpose of this title stated in section 602(b). The services to be provided through arrangements made by the Assistant Secretary under this paragraph shall be comparable to the services to be provided by such local educational agency under such application. The Assistant Secretary shall pay the cost of such arrangements from such State's allotment or, in the case of an application under section 608(a), from the sums available to the Assistant Secretary under section 604(b) for the purpose of that subsection.

"(2) In determining the amount to be paid pursuant to paragraph (1), the Assistant Secretary shall take into account the number of children and teachers and other educational staff who, except for provisions of State law, might reasonably be expected to participate in the program carried out under this title by such local educational agency.

"(3) If the Assistant Secretary determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of children and staff enrolled or employed in private nonprofit elementary and secondary schools as required by paragraph (8) of section 610(a), he shall arrange for the provision of services to children enrolled in, or teachers or other educational staff of, the nonprofit private elementary or secondary school or schools located within the school district of such local educational agency, which services shall, to the maximum extent feasible, be identical with the services which would have been provided such children or staff had the local educational agency carried out such assurance. The Assistant Secretary shall pay the cost of such services from the grant to such local educational agency and shall have the authority for this purpose of recovering from such agency any funds paid to it under such grant.

"(d) After making a grant or contract under this title, the Assistant Secretary shall notify the appropriate State educational agency of the name of the approved applicant and of the amount approved.

"EVALUATIONS

"SEC. 613. From the amount appropriated under section 604(b) for any fiscal year, the

Assistant Secretary is authorized to reserve for the purpose of this section not to exceed 1 per centum of the amount appropriated under this title for that fiscal year. From such reservation, the Assistant Secretary is authorized to make grants to, and contracts with, State educational agencies, institutions of higher education and private organizations, institutions, and agencies, including committees established pursuant to section 610(a)(1) for the purpose of evaluating specific programs and projects assisted under this title.

"JOINT FUNDING

"SEC. 614. Pursuant to regulations prescribed by the President, where funds are advanced under this title, and by one or more other Federal agencies for any project or activity funded in whole or in part under this title, any one of such Federal agencies may be designated to act for all in administering the funds advanced. In such cases any such agency may waive any technical grant or contract requirement (as defined by regulations) which is inconsistent with the similar requirements of the administering agency or which the administering agency does not impose. Nothing in this section shall be construed to authorize (1) the use of any funds appropriated under this title for any purpose not authorized herein, (2) a variance of any reservation or apportionment under section 604 or 605, or (3) waiver of any requirement set forth in sections 606 through 611.

"ATTORNEY FEES

"SEC. 615. Upon the entry of a final order by a court of the United States against a local educational agency, a State (or any agency thereof), or the United States (or any agency thereof), for failure to comply with any provision of this title or for discrimination on the basis of race, color, or national origin in violation of title VI of the Civil Rights Act of 1964, or the fourteenth amendment to the Constitution of the United States as they pertain to elementary and secondary education, the court, in its discretion, upon a finding that the proceedings were necessary to bring about compliance, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

"NEIGHBORHOOD SCHOOLS

"SEC. 616. Nothing in this title shall be construed as requiring any local educational agency which assigns students to schools on the basis of geographic attendance areas drawn on a racially nondiscriminatory basis to adopt any other method of student assignment.

"DEFINITIONS

"SEC. 617. Except as otherwise specified, the following definitions shall apply to the terms used in this title:

"(1) The term 'equipment' includes machinery, utilities and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the provision of educational services, such as instructional equipment and necessary furniture, printed, published, and audiovisual instructional materials, and other related material.

"(2) The term 'institution of higher education means an educational institution in any State which—

"(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

"(B) is legally authorized within such State to provide a program of education beyond high school;

"(C) provides an educational program for which it awards a bachelor's degree; or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

"(D) is public or other nonprofit institution; and

"(E) is accredited by a nationally recognized accrediting agency or association listed by the Assistant Secretary for the purpose of this paragraph.

"(3) For the purpose of section 606(a)(2) and section 609(a)(1), the term 'integrated school' means a school with an enrollment in which a substantial proportion of the children is from educationally advantaged backgrounds, in which the proportion of minority group children is at least 50 per centum of the proportion of minority group children enrolled in all schools of the local educational agencies within the Standard Metropolitan Statistical Area, and which has a faculty and administrative staff with substantial representation of minority group persons.

"(4) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a federally recognized Indian reservation, or such combination of school districts, or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies; and includes any other public institution or agency having administrative control and direction of a public elementary or secondary school and where responsibility for the control and direction of the activities in such schools which are to be assisted under this title is vested in an agency subordinate to such a board or other authority, the Assistant Secretary may consider such subordinate agency as a local educational agency for the purposes of this title.

"(5) The term 'magnet school' means a school or education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

"(6) The term 'minority group' refers to (A) persons who are American Indians and Alaskan Natives; Asians and Pacific Islanders; blacks, not of Hispanic origin; Hispanics; Franco-Americans; and Portuguese; and (B) (except for purposes of section 605), as determined by the Assistant Secretary, persons who are from environments in which the dominant language is other than English and who, as a result of langauge barriers and cultural differences, do not have an equal educational opportunity.

"(7) The terms 'minority group isolated school' and 'minority group isolation' in reference to a school mean a school and condition, respectively, in which minority group children constitute more than 50 per centum of the enrollment of a school.

"(8) The term 'neutral site school' means a school that is located so as to be accessible to substantial numbers of students of different racial backgrounds.

"(9) The term 'Standard Metropolitan Statistical Area' means the area in and around a city of fifty thousand inhabitants or more as defined by the Office of Management and Budget.

"(10) The term 'State' means one of the fifty States or the District of Columbia, and for purposes of section 608 (a) and (b), Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall be deemed to be States."

(b)(1)(A) Section 704(c) of the Emergency School Aid Act is amended by striking out "for fiscal year 1978" and inserting in lieu thereof "each for fiscal year 1978 and for the fiscal year 1979".

(B) Section 704(d) of the Emergency School Aid Act is amended by striking out "for the fiscal year 1978" and inserting in lieu thereof "each for the fiscal year 1978 and for the fiscal year 1979".

(2) Title VII of the Education Amendments of 1972 is repealed effective September 30, 1979.

TITLE VII—AMENDMENT TO TITLE VII OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

AMENDMENT

SEC. 701. Title VII of the Elementary and Secondary Education Act of 1965 is amended to read as follows:

"TITLE VII—BILINGUAL EDUCATION PROGRAMS

"SHORT TITLE

"SEC. 701. This title may be cited as the 'Bilingual Education Act.'

"POLICY; APPROPRIATIONS

"SEC. 702. (a) Recognizing—

"(1) that there are large numbers of children of limited English proficiency;

"(2) that many of such children have a cultural heritage which differs from that of English-speaking persons;

"(3) that a primary means by which a child learns is through the use of such child's language and cultural heritage;

"(4) that, therefore, large numbers of children of limited English proficiency have educational needs which can be met by the use of bilingual educational methods and techniques;

"(5) that, in addition, children of limited English proficiency and children whose primary language is English benefit through the fullest utilization of multiple language and cultural resources;

"(6) children of limited English proficiency have a high dropout rate and low median years of education; and

"(7) research and evaluation capabilities in the field of bilingual education need to be strengthened,

the Congress declares it to be the policy of the United States, in order to establish equal educational opportunity for all children (A) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods, and (B) for that purpose, to provide financial assistance to local educational agencies, and to State educational agencies for certain purposes, in order to enable such local educational agencies to develop and carry out such programs in elementary and secondary schools, including activities at the preschool level, which are designed to meet the educational needs of such children, with particular attention to children having the greatest need for such programs; and to demonstrate effective ways of providing, for children of limited English proficiency, instruction designed to enable them, while using their native language, to achieve competence in the English language.

"(b)(1) For the purpose of carrying out the provisions of this title, there are authorized to be appropriated $200,000,000 for fiscal year 1979; $250,000,000 for fiscal year 1980; $300,000,000 for fiscal year 1981; $350,000,000 for fiscal year 1982; and $400,000,000 for fiscal year 1983.

"(2) There are further authorized to be appropriated to carry out the provisions of section 721(b)(5) $12,000,000 for fiscal year 1979; $14,000,000 for fiscal year 1980; $16,000,000 for fiscal year 1981; and such sums as may be necessary for each of the two succeeding fiscal years.

"(3) From the sums appropriated under

paragraph (1) for any fiscal year, the Commissioner shall reserve $16,000,000 of that thereof that does not exceed $70,000,000 for training activities carried out under section 721(a)(3), and shall reserve for those activities not less than 20 per centum of that part thereof which is in excess of $70,000,000.

"(4) The Commissioner shall reserve from the amount not reserved pursuant to paragraph (3) of this subsection such amount as may be necessary, but not in excess of 1 per centum thereof, for the purposes of section 732.

"DEFINITIONS; REGULATIONS

"SEC. 703. (a) The following definitions shall apply to the terms used in this title:

"(1) The term 'limited English proficiency' when used with reference to individuals means—

"(A) individuals who were not born in the United States or whose native language is a language other than English,

"(B) individuals who come from environments where a language other than English is dominant, as further defined by the Commissioner by regulation, and

"(C) individuals who are American Indian and Alaskan Native students and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, subject to such regulations as the Commissioner determines to be necessary;

and, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms where the language of instruction is English.

"(2) The term 'native language,' when used with reference to an individual of limited English proficiency, means the language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

"(3) The term 'low-income' when used with respect to a family means an annual income for such a family which does not exceed the poverty level determined pursuant to section 111(c)(2) of title I of the Elementary and Secondary Education Act of 1965.

"(4)(A) The term 'program of bilingual education' means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, in which, with respect to the years of study to which such program is applicable—

"(i) there is instruction given in, and study of, English and, to the extent necessary to allow a child to achieve competence in the English language, the native language of the children of limited English proficiency, and such instruction is given with appreciation for the cultural heritage of such children, and of other children in American society, and, with respect to elementary and secondary school instruction, such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to progress effectively through the educational system; and

"(ii) the requirements in subparagraphs (B) through (F) of this paragraph and established pursuant to subsection (b) of this section are met.

"(B) In order to prevent the segregation of children on the basis of national origin in programs assisted under this title, and in order to broaden the understanding of children about languages and cultural heritages other than their own, a program of bilingual instruction may include the participation of children whose language is English, but in no event shall the percentage of such children exceed 40 per centum. The objective of the program shall be to assist children of limited English proficiency to improve their English language skills, and the participation of other children in the program must be for the principal purpose of contributing to the achievement of that objective. The program may provide for centralization of teacher training and curriculum development, but it shall serve such children in the schools which they normally attend.

"(C) In such courses or subjects of study as art, music, and physical education, a program of bilingual education shall make provision for the participation of children of limited English proficiency in regular classes.

"(D) Children enrolled in a program of bilingual education shall, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of bilingual education shall seek to insure that each child is provided with instruction which is appropriate for his level of educational attainment.

"(E) An application for a program of bilingual education shall—

"(i) be developed in consultation with an advisory council, of which a majority shall be parents and other representatives of children of limited English proficiency, in accordance with criteria prescribed by the Commissioner;

"(ii) be accompanied by documentation of such consultation and by the comments which the Council makes on the application; and

"(iii) contain assurances that, after the application has been approved, the applicant will provided for the continuing consultation with, and participation by, the committee of parents, teachers, and other interested individuals (of which a majority shall be parents of children of limited English proficiency) which shall be selected by and predominantly composed of parents of children participating in the program, and in the case of programs carried out in secondary schools, representatives of the secondary students to be served.

"(F) Parents of children participating in a program of bilingual education shall be informed of the instructional goals of the program and the progress of their children in such program.

"(5) The term 'Office' means the Office of Bilingual Education.

"(6) The term 'Director' means the Director of the Office of Bilingual Education.

"(7) The term 'Council' means the National Advisory Council on Bilingual Education.

"(8) The term 'other programs for persons of limited English proficiency' when used in sections 731 and 732 means any programs within the Office of Education directly involving bilingual education activities serving persons of limited English proficiency, such as the program authorized by section 708(c) of the Emergency School Aid Act as in effect for fiscal year 1979, section 608(a)(4) of this Act for subsequent fiscal years, and the programs carried out in coordination with the provisions of this title pursuant to section 122(a)(4)(C) and part J of the Vocational Education Act of 1963, and section 306(a)(11) of the Adult Education Act, and programs and projects serving areas with high concentrations of persons of limited English proficiency pursuant to section 6(b)(4) of the Library Services and Construction Act.

"(b) The Commissioner, after receiving recommendations from State and local educational agencies and groups and organizations involved in bilingual education, shall establish, publish, and distribute, with respect to programs of bilingual education, suggested models with respect to pupil-teacher ratios, teacher qualifications, and other factors affecting the quality of instruction offered in such programs.

"(c) In prescribing regulations under this section, the Commissioner shall consult with State and local educational agencies, appropriate organizations representing parents and children of limited English proficiency, and appropriate groups and organizations representing teachers and educators involved in bilingual education.

"PART A—FINANCIAL, ASSISTANCE FOR BILINGUAL EDUCATION PROGRAMS

"BILINGUAL EDUCATION PROGRAMS

"SEC. 721. (a) Funds available for grants under this part shall be used for—

"(1) the establishment, operation, and improvement of programs of bilingual education;

"(2) auxiliary and supplementary community and educational activities designed to facilitate and expand the implementation of programs described in clause (1), including such activities as (A) adult education programs related to the purposes of this title, particularly for parents of children participating in programs of bilingual education, and carried out, where appropriate, in coordination with programs assisted under the Adult Education Act, and (B) preschool programs preparatory and supplementary to bilingual education programs;

"(3)(A) the establishment, operation, and improvement of training programs for personnel preparing to participate in, or personnel participating in, the conduct of programs of bilingual education and (B) auxiliary and supplementary training programs, which shall be included in each program of bilingual education, for personnel preparing to participate in, or personnel participating in, the conduct of such programs; and

"(4) planning, and providing technical assistance for, and taking other steps leading to the development of, such programs.

"(b)(1) A grant may be made under this section only upon application therefore by one or more local educational agencies or by an institution of higher education, including a junior or community college, applying jointly with one or more local educational agencies (or, in the case of a training activity described in clause (3)(B) of subsection (a) of this section, by eligible applicants as defined in section 723). Each such application shall be made to the Commissioner at such time, in such manner, and containing such information as the Commissioner deems necessary, and

"(A) include a description of the activities set forth in one or more of the clauses of subsection (a) which the applicant desires to carry out; and

"(B) provide evidence that the activities so described will make substantial progress toward making programs of bilingual education available to the children having need thereof in the area served by the applicant.

"(2)(A) No order to submit an application in preparation for termination of assistance shall be issued to any local educational agency which shows adequate progress in meeting the goals of this title and which demonstrates a clear fiscal inability to carry on a program without such assistance, if—

"(i) there is a continuing presence of a substantial number of students of limited English proficiency in a program under this title in such school or group of schools;

"(ii) there has been a recent, substantial increase in the number of students of limited English proficiency who have enrolled in such program; or

"(iii) there is an obligation of the local educational agency in which such school or group of schools is located to initiate compliance with an order of a court of the United States or of any State respecting services to be provided for those children, or a plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964

with respect to services to be provided for those children.

"(B) The Commissioner, after review of program operations by each local educational agency, may on the basis of a finding, after notice and opportunity for a hearing, that a school or group of schools of such an agency does not have a long-term need for continued assistance under this title issue an order to such agency to prepare and submit within one year a revised application setting forth a schedule under which such school or group will cease receiving such assistance in the fifth year following the year of issuance of such order. Projects and activities for which funds were available prior to October 1, 1978, may continue to receive assistance under this part through September 30, 1983. The amount made available for the third, fourth, or fifth year of any such project or activity after the year of issuance of such an order shall be reduced in accordance with criteria established by the Commissioner designed to ensure the gradual assumption by the applicant of the costs of projects and activities assisted under this title.

"(C) The Commissioner shall annually review conditions in any school or group of schools for which an order has been issued under subparagraph (B), and shall suspend and withdraw any order issued under subparagraph (B) if, after such order has gone into effect, one or more of the conditions described in subparagraph (A) occurs, and shall permit the local educational agency involved to revise its application in the light of such conditions.

"(D) Any order issued pursuant to subparagraph (A) shall be subject to review by the Commissioner if such review is sought within 60 days of the issuance of such order.

"(3) An application for a grant under this part may be approved only if—

"(A) the provision of assistance proposed in the application is consistent with criteria established by the Commissioner, after consultation with the State educational agency, for the purpose of achieving an equitable distribution of assistance under this part within the State in which the applicant is located, which criteria shall be developed by his taking into consideration (i) the geographic distribution of children of limited English proficiency, (ii) the relative need of persons in different geographic areas within the State for the kinds of services and activities described in subsection (a), (iii) with respect to grants to carry out programs described in clauses (1) and (2) of subsection (a) of section 721, the relative ability of particular local educational agencies within the State to provide such services and activities, (iv) with respect to such grants, the relative numbers of persons from low-income families sought to be benefited by such programs;

"(B) in the case of applications from local educational agencies to carry out programs of bilingual education under subsection (a)(1), the Commissioner determines that the applicant shall expend adequate funds for purposes of such programs for auxiliary and supplementary training programs in accordance with the provisions of subsection (a)(3)(B) and section 723;

"(C) the Commissioner determines—

"(i) that the program will use the most qualified available personnel, including only those personnel who are proficient in the language of instruction and in English, to the extent possible, and the best resources, and will substantially increase the educational opportunities for children of limited English proficiency in the area to be served by the applicant;

"(ii) that in designing the program for which application is made, the needs of the children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials; and consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children; and

(iii) that the program includes a plan for evaluation consistent with guidelines prescribed by the Commissioner:

"(D) the State educational agency has been notified of the application and has been given the opportunity to offer recommendations thereon to the applicant and to the Commissioner;

"(E) the Commissioner determines that the assistance provided under the application will contribute toward building the capacity of the applicant to provide a program of bilingual education on a regular basis which will be of sufficient size, scope, and quality to promise significant improvement in the education of children of limited English proficiency, and that the applicant will have the resources and commitment to continue the program when assistance under this title is reduced or no longer available;

"(F) the program of bilingual education for which assistance is sought will (i) serve those children most in need of assistance under this title, (ii) provide measurable goals for determining when those children no longer need such assistance, and (iii) provide, from State and local sources, for necessary followup services to sustain the achievement of the children after they have left the program, except that if any child is enrolled in a bilingual program assisted under this title for two years, that child shall have an individual evaluation establishing the need for continued services;

"(G) Federal funds made available for the project or activity will be so used as to supplement the level of State and local funds that, in the absence of those Federal funds, would have been expended for special programs for children of limited English proficiency and in no case to supplant such State and local funds, except that nothing in this clause shall (i) preclude a local education agency from using funds under this title for activities carried out under an order of a court of the United States or of any State respecting services to be provided such children, or to carry out a plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 with respect to services to be provided such children, or (ii) authorize any priority or preference to be assigned by the Commissioner to the funding of the activities under this title; and

"(H) the applicant demonstrates that, to the extent possible, personnel recruited and employed to carry out projects and activities under this title are bilingual.

"(4) In the consideration of initial applications from local educational agencies to carry out programs of bilingual education under paragraph (1) of this subsection, the Commissioner shall give priority to applications from local educational agencies which are located in various geographical regions of the Nation and which propose to assist children of limited English proficiency who have historically been underserved by programs of bilingual education, taking into consideration the relative numbers of such children in the schools of such local educational agencies and the relative need for such programs. In approving such applications, the Commissioner shall, to the extent feasible, allocate funds appropriated in proportion to the geographical distribution of children of limited English proficiency throughout the Nation, with due regard for the relative ability of particular local educational agencies to carry out such programs and the relative numbers of persons from low-income families sought to be benefited by such programs.

"(5)(A) Upon an application from a State educational agency, the Commissioner shall make provision for the submission and approval of a State program for the coordination by such State agency of technical assistance to programs of bilingual education in such State assisted under this title. Such State program shall contain such provisions, agreements, and assurances as the Commissioner shall, by regulation, determine necessary and proper to achieve the purposes of this title, including assurances that funds made available under this section for any fiscal year will be so used as to supplement, and to the extent practical, increase the level of funds that would, in the absence of such funds, be made available by the State for the purposes described in this section, and in no case to supplant such funds.

"(B) Except as provided in the second sentence of this subparagraph, the Commissioner shall pay from the amounts authorized for these purposes pursuant to section 702 for each fiscal year to each State educational agency which has a State program submitted and approved under subparagraph (A) such sums as may be necessary for the proper and efficient conduct of such State program. The amount paid by the Commissioner to any State educational agency under the preceding sentence for any fiscal year shall not exceed 5 per centum of the aggregate of the amounts paid under this part to local educational agencies in the State of such State educational agency in the fiscal year preceding the fiscal year in which this limitation applies.

"(c) In determining the distribution of funds under this title, the Commissioner shall give priority to areas having the greatest need for programs assisted under this title.

"(d) Programs of bilingual education under this title in the Commonwealth of Puerto Rico may, notwithstanding any other provision of this title, include programs of instruction, teacher training, curriculum development, and evaluation and testing designed to improve the English proficiency of children, and may also make provision for serving the needs of students of limited proficiency in Spanish.

"(e)(1) An application of a local educational agency for assistance under this title may cover a period of from one to three years. A new application shall be required for any assistance under this title for years subsequent to such period. The Commissioner shall base the decision as to the length of time for which an application will be approved on—

"(A) the severity of the problems addressed by the program for which assistance is being sought:

"(B) the nature of the activities proposed in the application;

"(C) the likely duration of the problems addressed by the application; and

"(D) such other criteria, established by the Commissioner, as will assure the most effective use of the available funds in achieving the purposes of this title.

"(2) If the Commissioner approves an application of a local educational agency under this title for a period covering more than one fiscal year, no subsequent application shall be required from such agency in any fiscal year during such period unless the agency proposes to carry out, in any such fiscal year, activities not included in the approved application. Payments to any such agency for any fiscal year subsequent to the first fiscal year for which the application has been approved shall be made only if—

"(A) sufficient appropriations are available for making payments in each such subsequent fiscal year:

"(B) the Commissioner determines that the agency is not ineligible for assistance

under this title in each subsequent fiscal year; and

"(C) the agency demonstrates, by such means as the Commissioner may prescribe, that satisfactory progress is being made toward achieving the objectives of the program for which assistance has been made available under this title, including objectives of section 703(a)(4)(E)(iii) and section 703(a)(4)(F).

"(f) If the Commissioner determines that an applicant for assistance under this title is unable or unwilling to provide for the participation in the program for which assistance is sought of children of limited English proficiency enrolled in nonprofit, nonpublic schools, as required by paragraph (3)(C)(ii) of subsection (b), the Commissioner shall—

"(1) withhold approval of such application until the applicant demonstrates that it is in compliance with those requirements; or

"(2) reduce the amount of the grant to such applicant by the amount which is required for the Commissioner to arrange (such as through a contract with a nonprofit, nonsectarian agency, organization, or institution) to assess the needs of the children in the area to be served for a program of bilingual instructions and to carry out such a program for the children.

"INDIAN CHILDREN IN SCHOOLS

"SEC. 722. (a) For the purpose of carrying out programs under this part for individuals served by elementary and secondary schools operated predominantly for Indian children, a nonprofit institution or organization of the Indian tribe concerned which operates any such school and which is approved by the Commissioner for the purposes of this section may be considered to be a local educational agency as such term is used in this title.

"(b) From the sums appropriated pursuant to section 702(b), the Commissioner is authorized to make payments to the applicants to carry out programs of bilingual education for Indian children on reservations served by elementary and secondary schools operated or funded by the Bureau of Indian Affairs.

"(c) The Assistant Secretary of the Interior for the Bureau of Indian Affairs shall submit to the Congress, the President, and the Commissioner, by September 30, 1980, an assessment of the needs of Indian children with respect to the purposes of this title in schools operated or funded by the Department of the Interior, including those tribes and local educational agencies receiving assistance under the Johnson-O'Malley Act (25 U.S.C. 452 et seq.) and an assessment of the extent to which such needs are being met by funds provided to such schools for educational purposes through the Secretary of the Interior.

"TRAINING

"SEC. 723. (a)(1). In carrying out the provisions of clauses (1) and (3) of subsection (a) of section 721, with respect to training, the Commissioner shall, through grants to, and contracts with, eligible applicants, as defined in subsection (b), provide for—

"(A)(i) training, carried out in coordination with any other programs training auxiliary educational personnel, designed (I) to prepare personnel to participate in, or for personnel participating in, the conduct of programs of bilingual education, including programs emphasizing opportunities for career development, advancement, and lateral mobility, (II) to train teachers, administrators, counselors, paraprofessionals, teacher aides, and parents, and (III) to train persons to teach and counsel such persons, and (ii) special training programs designed (I) to meet individual needs, and (II) to encourage reform, innovation, and improvement in applicable education curricula in graduate education, in the structure of the academic profession, and in recruitment and retention of higher education and graduate school facilities, as related to bilingual education; and

"(B) the operation of short-term training institutes designed to improve the skills of participants in programs of bilingual education in order to facilitate their effectiveness in carrying out responsibilities in connection with such programs.

"(2) In addition the Commissioner is authorized to award fellowships for study in the field of training teachers for bilingual education. For the fiscal year ending June 30, 1975, not less than 100 fellowships leading to a graduate degree shall be awarded under the preceding sentence for preparing individuals to train teachers for programs of bilingual education. Such fellowships shall be awarded in proportion to the need for teachers of various groups of individuals with limited English proficiency. For each fiscal year after June 30, 1975, and prior to October 1, 1983, the Commissioner shall report to the Committee on Education and Labor of the House of Representatives and the Committee on Human Resources of the Senate on the number of fellowships in the field of training teachers for bilingual education which he recommends will be necessary for that fiscal year.

"(3) The Commissioner shall include in the terms of any arrangement described in paragraphs (1) and (2) of subsection (a) of this section provisions for the payment, to persons participating in training programs so described, of such stipends (including allowances for subsistence and other expenses for such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported programs.

"(4) In making grants or contracts under this section, the Commissioner shall give priority to eligible applicants with demonstrated competence and experience in the field of bilingual education. Funds provided under grants or contracts for training activities described in this section to or with a State educational agency, separately or jointly, shall in no event exceed in the aggregate in any fiscal year 15 per centum of the total amount of funds obligated for training activities pursuant to clauses (1) and (3) of subsection (a) of section 721 in such year.

"(5) The Commissioner shall undertake an ongoing longitudinal study of the impact of recipients of such fellowships on the field of bilingual education, and shall disseminate research undertaken by recipients of such fellowships.

"(6) Any person receiving assistance under this subsection shall agree either to repay such assistance or to work for a period equivalent to the period of time during which such person received assistance, and such work shall be in an activity related to the training of teachers and related personnel of bilingual education, as further determined by the Commissioner through regulations. The Commissioner may waive this requirement in extraordinary circumstances.

"(7) The Commissioner shall issue regulations specifying such activities as shall constitute training under this section and section 721(a)(3)(B).

"(8) An application for a grant or contract for preservice or inservice training activities described in clause (A)(i)(I) and clause (A)(ii)(I) and in subsection (a)(1)(B) of this section shall be considered an application for a program of bilingual education for the purposes of subsection (a)(4)(E) of section 703.

"(b) For the purposes of this section, the term 'eligible applicants' means—

"(1) institutions of higher education (including junior colleges and community colleges) and private nonprofit organizations which apply, after consultation with, or jointly with, one or more local educational agencies or a State educational agency;

"(2) local educational agencies; and

"(3) State educational agencies.

"PART B—ADMINISTRATION

"OFFICE OF BILINGUAL EDUCATION

"SEC. 731. (a) There shall be, in the Office of Education, an Office of Bilingual Education (hereafter in this section referred to as the 'Office') through which the Commissioner shall carry out his functions relating to bilingual education.

"(b)(1) The Office shall be headed by a Director of Bilingual Education, appointed by the Commissioner, to whom the Commissioner shall delegate all of his delegable functions relating to bilingual education. The Director shall also be assigned responsibility for coordinating the bilingual education aspects of other programs administered by the Commissioner.

"(2) The Office shall be organized as the Director determines to be appropriate in order to enable him to carry out his functions and responsibilities effectively.

"(c) The Commissioner, in consultation with the Council, shall prepare and, not later than February 1, 1980, 1982, and 1984, shall submit to the Congress and the President a report on the condition of bilingual education in the Nation and the administration and operation of this title and of other programs for persons of limited English proficiency. Such report shall include—

"(1) a national assessment of the educational needs of children and other persons with limited English proficiency and of the extent to which such needs are being met from Federal, State, and local efforts, including (A) not later than October 1, 1977, the results of a survey of the number of such children and persons in the States, and (B) a plan, including cost estimates, to be carried out during the five-year period beginning on such date, for extending programs of bilingual education and bilingual vocational and adult education programs to all such preschool and elementary school children and other persons of limited English proficiency, including a phased plan for the training of the necessary teachers and other educational personnel necessary for such purpose;

"(2) a report on and an evaluation of the activities carried out under this title during the preceding fiscal year and the extent to which each of such activities achieves the policy set forth in section 702(a);

"(3) a statement of the activities intended to be carried out during the succeeding period, including an estimate of the cost of such activities;

"(4) an assessment of the number of teachers and other educational personnel needed to carry out programs of bilingual education under this title and those carried out under other programs for persons of limited English proficiency and a statement describing the activities carried out thereunder designed to prepare teachers and other educational personnel for such programs, and the number of other educational personnel needed to carry out programs of bilingual education in the States and a statement describing the activities carried out under this title designed to prepare teachers and other educational personnel for such programs;

"(5) a description of the personnel, the functions of such personnel, and information available at the regional offices of the Department of Health, Education, and Welfare dealing with bilingual programs within that region; and

"(6) an estimate of the number of fellowships in the field of training teachers for bilingual education which will be necessary for the two succeeding fiscal years.

The Commissioner shall conduct a study on the extent of the need for these programs in the Commonwealth of Puerto Rico, and shall report the results thereof, together with recommendations, to the President and Congress not later than eighteen months after the enactment of the Education Amendments of 1978.

"(d) The Commissioner shall, within six months after the date of the enactment of the Education Amendments of 1978, develop and publish in the Federal Register (1) models for programs of bilingual education which may include suggested teacher-pupil ratios, teacher qualifications, and other factors affecting the quality of instruction offered, and which shall represent a variety of types of such programs, and (2) models for the evaluation of such programs as to the progress made by participants therein attaining English language skills.

"(e)(1) The Secretary, in consultation with the Council, shall prepare and, not later than September 30, 1980, submit to the Congress and the President a report identifying the approximate number of children of limited English proficiency in the Nation, by language and by State.

"(2) By September 30, 1980, the Secretary shall develop methods for identifying children of limited English proficiency who are in need of bilingual education programs.

"(3) By September 30, 1980, the Secretary shall develop evaluation and data gathering models, which take into account linguistic and cultural differences of the child, which consider the availability and the operations of State programs for such children, and shall include allowances for variables which are applicable to programs under this title such as pupil-teacher ratios, teacher qualifications, length of the program, hours of instruction, percentage of children in the classroom who are English dominant and the percentage who have limited English proficiency.

"(f) The Secretary shall prepare and submit to the President and to the Congress not later than December 31, 1981, a report setting forth recommendations on the methods of converting, not later than July 1, 1984, the bilingual education program from a discretionary grant program to a formula grant program to serve students of limited English proficiency and recommendations on whether or not such conversion would best serve the needs of such students. The study required by this subsection shall consider the findings of other studies required to be made under this section, and shall include cost estimates for the phasing in of the formula grant program.

"(g) In order to maximize Federal efforts aimed at serving the educational needs of children of limited English proficiency, the Commissioner shall coordinate and closely cooperate with other programs administered by the Office of Education, including such areas as teacher training, program content, research, and curriculum. The Commissioner's annual report under subsection (c) shall include demonstration that such coordination has taken place.

"(h) The Commissioner shall insure that the Office of Bilingual Education is staffed with sufficient personnel trained, or with experience in, bilingual education to discharge effectively the provisions of this title.

"NATIONAL ADVISORY COUNCIL ON BILINGUAL EDUCATION

"SEC. 732. (a) Subject to part D of the General Education Provisions Act, there shall be a National Advisory Council on Bilingual Education composed of fifteen members appointed by the Secretary, one of whom he shall designate as Chairman. At least eight of the members of the Council shall be persons experienced in dealing with the educational problems of children and other persons who are of limited English proficiency, at least one of whom shall be representative of persons serving on boards of education operating programs of bilingual education. At least two members shall be experienced in the training of teachers in programs of bilingual education. At least two members shall be persons with general experience in the field of elementary and secondary education. At least two members shall be classroom teachers of demonstrated teaching abilities using bilingual methods and techniques. The Council shall also include at least two parents of students whose language is other than English and at least one State educational agency representative and one member at large. The members of the Council shall be appointed in such a way as to be generally representative of the significant segments of the population of persons of limited English proficiency and the geographic areas in which they reside. Subject to section 448(b) of the General Education Provisions Act, the Advisory Committe shall continue to exist until October 1, 1983.

"(b) The Council shall meet at the call of the Chairman, but, notwithstanding the provisions of section 446(a) of the General Education Provisions Act, not less often than four times in each year.

"(c) The Council shall advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration and operation of this title, including the development of criteria for approval of applications, and plans under this title, and the administration and operation of other programs for persons of limited English proficiency. The Council shall prepare and, not later than March 31 of each year, submit a report to the Congress and the President on the condition of bilingual education in the Nation and on the administration and operation of this title, including those items specified in section 731(c), and the administration and operation of other programs for persons of limited English proficiency.

"(d) The Commissioner shall procure temporary and intermittent services of such personnel as are necessary for the conduct of the functions of the Council, in accordance with section 445, of the General Education Provisions Act, and shall make available to the Council such staff, information, and other assistance as it may require to carry out its activities effectively.

"PART C—SUPPORTIVE SERVICES AND ACTIVITIES

"ADMINISTRATION

"SEC. 741. (a) The provisions of this part shall be administered by the Assistant Secretary in consultation with—

"(1) the Commissioner, through the Office of Bilingual Education; and

"(2) the Director of the National Institute of Education, notwithstanding the second sentence of section 405(b)(1) of the General Education Provisions Act;

in accordance with regulations.

"(b) The Assistant Secretary shall, in accordance with clauses (1) and (2) of subsection (a), develop and promulgate the regulations for this part and then delegate his functions under this part, as may be appropriate under the terms of section 742.

"BILINGUAL EDUCATION RESEARCH AND DEVELOPMENT

"SEC. 742. (a)(1) The Commissioner shall, through competitive contracts under this section, provide financial assistance for research and development proposals submitted by institutions of higher education, private and non-profit organizations, State educational agencies, and individuals.

"(2) The National Institute of Education, after consultation with the Office of Bilingual Education, shall carry out a program of research in the field of bilingual education in order to enhance the effectiveness of bilingual education carried out under this title and other programs for persons who have language proficiencies other than English.

"(3) The Assistant Secretary shall coordinate research activities of the National Institute of Education, with the Office of Bilingual Education, the National Center for Education Statistics, and other appropriate agencies, in order to develop a national research program for bilingual education.

"(b) Research activities authorized to be assisted under this section shall include—

"(1) studies to determine and evaluate effective models for bilingual-bicultural programs:

"(2) studies to determine (A) language acquisition characteristics and (B) the most effective method of teaching English within the context of a bilingual-bicultural program to students who have language proficiencies other than English;

"(3) a five-year longitudinal study in order to measure the effect of this title on the education of students who have language proficiencies other than English;

"(4) studies to determine the most effective and reliable methods of identification of students who should be entitled to services under this title;

"(5) the operation of a clearinghouse on information for bilingual education, which shall collect, analyze, and disseminate information about bilingual education and such related programs;

"(6) studies to determine the most effective methods of teaching reading to children and adults who have language proficiencies other than English;

"(7) studies to determine the effectiveness of teacher training pre-service and inservice programs funded under this title;

"(8) studies to determine the critical characteristics of selected groups of individuals assisted under this title for purposes of teaching about culture in the program.

"(c) In carrying out their responsibilities under this section, the Commissioner and the Director of the National Institute of Education shall provide for periodic consultation with representatives of State and local educational agencies and appropriate groups and organizations involved in bilingual education.

"(d) The Assistant Secretary shall publish and disseminate all requests for proposals in research and development assisted under this title.

"(e) The Commissioner and the Director of the National Institute of Education shall, through competitive contracts with appropriate public agencies and private institutions and organizations, develop and disseminate instructional materials and equipment suitable for bilingual educational programs. The quality of materials developed pursuant to this subsection shall be comparable to the quality of materials provided in classrooms for English dominant children. In the development of instructional materials for the purpose of this subsection, the availability of materials already in existence from private and public sources shall be taken into account, and special attention shall be given to language groups for whom private organizations are unlikely to develop such materials.

"(f) There is authorized to be appropriated for the fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1983, $20,000,000 to carry out the provisions of this section.

"PART D—CONTINUED BILINGUAL EDUCATION ASSISTANCE

"ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES ELIGIBLE UNDER THE EMERGENCY SCHOOL AID ACT

"SEC. 751. (a)(1) The Commissioner, from funds appropriated under subsection (c), shall carry out a program to meet the needs of minority group children (as such term is defined for purposes of title VI) who are

from an environment in which a dominant language is other than English and who, because of language barriers and cultural differences, do not have equality of educational opportunity. The Commissioner shall, for fiscal year 1980, allot to each local educational agency an amount which bears the same ratio to such funds as the amount such agency received under section 708(c) of the Emergency School Aid Act for fiscal year 1979, bears to the total amount of funds available under such section. From such allotment the Commissioner is authorized to make grants to and contracts with—

"(A) private nonprofit agencies, institutions, and organizations to develop curricula, at the request of one or more local educational agencies which are eligible for assistance under section 606 of this Act, designed to meet the special educational needs of minority group children who are from environments in which a dominant language is other than English, for the development of reading, writing, and speaking skills, in the English language and in the language of their parents or grandparents, and to meet the educational needs of such children and their classmates to understand the history and cultural background of the minority groups of which such children are members;

"(B) local educational agencies which are eligible for assistance under such section 606 for the purpose of engaging in such activities; or

"(C) local educational agencies which are eligible to receive assistance under such section 606, for the purpose of carrying out activities to implement curricula developed under clauses (A) and (B) or curricula otherwise developed which the Commissioner determines meets the purposes stated in clause (A).

In making grants and contracts under this paragraph, the Commissioner shall assure that sufficient funds remain available to provide for grants and contracts under clause (C) of this paragraph for implementation of such curricula as the Commissioner determines meet the purposes stated in clause (A) of this paragraph. In making a grant or contract under clause (C) of this paragraph the Commissioner shall take whatever action is necessary to assure that the implementation plan includes provisions adequate to ensure training of teachers and other ancillary educational personnel and meets the requirements of section 721(b)(3)(C)(ii).

"(2)(A) In order to be eligible for a grant or contract under this subsection—

"(i) a local educational agency must establish a program or project committee meeting the requirements of subparagraph (B), which will fully participate in the preparation of the application under this subsection and in the implementation of the program or project and join in submitting such application; and

"(ii) a private nonprofit agency, institution, or organization must (I) establish a program or project board of not less than ten members which meets the requirements of subparagraph (B) and which shall exercise policymaking authority with respect to the program or project, and (II) have demonstrated to the Commissioner that it has the capacity to obtain the services of adequately trained and qualified staff.

"(B) A program or project committee or board, established pursuant to subparagraph (A), must be broadly representative of parents, school officials, teachers, and interested members of the community or communities to be served, not less than half of the members of which shall be parents and not less than half of the members of which shall be members of the minority group the educational needs of which the program or project is intended to meet.

"(3) All programs or projects assisted under this subsection shall be specifically designed to complement any programs or projects carried out by the local educational agency under section 606 of the Act. The Commissioner shall insure that programs of Federal financial assistance related to the purposes of this subsection are coordinated and carried out in a manner consistent with the provisions of this subsection, to the extent consistent with other law.

"(b) All programs or projects assisted under subsection (a) shall be part of a program of bilingual-bicultural education.

"(c) There are authorized to be appropriated to carry out subsection (a) $15,000,000 for fiscal year 1980, $20,000,000 for fiscal year 1981, $25,000,000 for fiscal year 1982, and $30,000,000 for fiscal year 1983.".

TITLE VIII—ESTABLISHMENT OF A NEW TITLE VIII AND A NEW TITLE IX OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

COMMUNITY EDUCATION PROGRAM AUTHORIZED

SEC. 801. The Act is amended by—

(1) redesignating title VIII and all references thereto as title IX;

(2) redesignating sections 801, 803(c), 804, 805, 810, and 812, as sections 1001, 1002, 1003, 1004, 1005, and 1006, respectively; and

(3) inserting after title VII the following new title:

"TITLE VIII—COMMUNITY SCHOOLS

"SHORT TITLE

"SEC. 801. This title may be cited as the 'Community Schools and Comprehensive Community Education Act of 1978'.

"STATEMENT OF FINDINGS AND POLICY

"SEC. 802. (a) The Congress finds that—

"(1) the school is an integral part of the local human service delivery system;

"(2) the school is a primary institution for the delivery of services and may be the best instrument for the coordination of frequently fragmented services, including benefits obtained by energy savings and parental involvement in the delivery of such services;

"(3) community education promotes a more efficient use of public education facilities through an extension of school buildings and equipment;

"(4) as the primary educational institution of the community, the school is most effective when it involves the people of that community in a program to fulfill the educational needs of individuals of the community; and

"(5) community schools provide a great potential for the use of needs assessment as a basis for human resources policies.

"(b) It is the purpose of this title—

"(1) to provide in collaboration with other public and nonprofit agencies educational, recreational, cultural, and other related community and human services, in accordance with the needs, interests, and concerns of the community through the expansion of community education programs;

"(2) to coordinate the delivery of social services to meet the needs and preferences of the residents of the community served by the school;

"(3) to provide for an efficient, energy-conserving use of school facilities; and

"(4) to provide for a research and development emphasis in community education which can contribute to an improved formulation of Federal, State, and local policy.

"DEFINITION OF COMMUNITY EDUCATION PROGRAM

"SEC. 803. For the purpose of this title, a 'community education program' means a program in which a public building, including but not limited to, a public elementary or secondary school, or a community or junior college (or a related extension center), is used as a community center operated by a local educational agency in conjunction with other groups in the community, community organizations, and local governmental agencies, to provide educational, recreational, health care, cultural, and other related community and human services for the community that the center serves in accordance with the needs, interests, and concerns of that community.

"STATE PROGRAMS FOR COMMUNITY EDUCATION

"SEC. 804. (a) The Commissioner is authorized to make grants to State educational agencies in accordance with the provisions of this title, to pay the Federal share of the cost of planning, establishing, expanding, and operating community education programs.

"(b) There are authorized to be appropriated to carry out the provisions of subsection (a) of this section $40,000,000 for fiscal year 1979, $50,000,000 for fiscal year 1980, $60,000,000 for fiscal year 1981, $50,000,000 for fiscal year 1982, and $40,000,000 for fiscal year 1983.

"ALLOTMENT

"SEC. 805. (a)(1) From the funds appropriated pursuant to section 804, the Commissioner shall allot not more than 1 per centum among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Bureau of Indian Affairs schools, according to their respective needs.

"(2) From the remainder of such sums the Commissioner shall allot to each State an amount which bears the same ratio to such remainder as the population of the State bears to the population of all States except that no State shall receive less than $50,000 in any fiscal year. For the purpose of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(b) That portion of any State's allotment under subsection (a) for a fiscal year which the Commissioner determines will not be required for the period such allotment is available, for carrying out the purposes of this title, shall be available for reallotment from time to time on such date during such period as the Commissioner may fix, to other States in proportion to the original allotment to such States under subsection (a) for such year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum which the Commissioner estimates will be needed in such State and will be used for such period for carrying out applications approved under this title, and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts are not so reduced. Any amount reallotted to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) for such year.

"USE OF COMMUNITY EDUCATION PROGRAMS FOR NON-FEDERAL CONTRIBUTION IN CERTAIN FEDERAL PROGRAMS

"SEC. 806. (a) Notwithstanding any other provision of law, any State or local public agency may use the fair value of any community service program assisted under this title as part or all of the non-Federal contribution required under any program set forth in subsection (b) of this section, if—

"(1) a portion of any program set forth in subsection (b) is implemented in any building conducting a community education program assisted under this title, and

"(2) there is a necessary relationship between such portion of the program set forth in subsection (b) and any element of the community education program assisted under this title.

"(b) Programs to which subsection (a) applies are—

"(1) the Public Health Service Act,
"(2) the Headstart-Follow Through Act,
"(3) title XX of the Social Security Act, relating to child care and day care and other services,
"(4) the youth employment demonstration programs authorized under the Comprehensive Employment and Training Act,
"(5) the Older Americans Act of 1965,
"(6) the Vocational Education Act of 1963,
"(7) the Adult Education Act,
"(8) title I and title X of the Higher Education Act of 1965, relating to community services and continuing education programs and community college programs,
"(9) titles I through IV and VI through IX of the Economic Opportunity Act of 1964 (also known as the Community Services Act of 1974),
"(10) the Legal Services Corporation Act,
"(11) Safe Streets and Omnibus Crime Control Act of 1968,
"(12) science education programs assisted under the National Science Foundation Act of 1950,
"(13) the Rehabilitation Act of 1973, and
"(14) such other community service programs as the Assistant Secretary deems appropriate.

"USES OF FUNDS

"SEC. 807. Payments made under this title to any State educational agency and to any local educational agency, either directly by the Commissioner under section 809 or in accordance with a State plan approved under section 808, may be used by such State and local educational agencies for the Federal share of the cost of planning, establishing, expanding, and operating community education programs including—
"(1) educational, cultural, recreational, health care, and other related community and human services, whether or not in the form of formal courses,
"(2) activities making the school or other public facilities and equipment available for use by public agencies and private nonprofit organizations, individuals and groups in the community,
"(3) preventive health, dental care, and nutrition.
"(4) special programs for particular target groups, such as older persons,
"(5) services designed to eliminate the high incidence of suspension, expulsion, and other disciplinary action involving chronically maladjusted students,
"(6) services for students who withdraw from school before completing secondary school requirements, regardless of age or time of withdrawal,
"(7) services for mentally or physically handicapped individuals or other health impaired individuals,
"(8) rehabilitation purposes for juvenile and adult offenders,
"(9) parent education for care, development, and education of handicapped children, and
"(10) training programs in institutions of higher education for the purpose of assisting full-time training for personnel who are engaged in or who intend to engage in community education programs;
"(11) specialized high schools or schools within schools organized around particular interests such as the arts, or using flexible scheduling and summer learning programs to take into account special needs of students, or creating interrelationships between secondary schools and such community resources as museums, cultural centers, and institutions of higher education;
"(12) development of means to use technology to improve the relationship between the school, the home, and community resources such as libraries, museums, and cultural centers;
"(13) early childhood and family education grants for programs operated by State and local education agencies and public and private, nonprofit agencies or organizations for children below age six, which may include identification of potential barriers to learning, education of parents in child development, family services, education for parenthood programs and referral services; and
"(14) leisure education.

"STATE PLAN

"SEC. 808. (a) Any State desiring to participate in the program authorized by this title shall submit through its State educational agency to the Commissioner a plan, in such detail as the Commissioner deems necessary. Each such plan shall provide satisfactory assurance—
"(1) that payments made under this title will be used for community education programs described in section 807, and to the extent practicable such payments will be used to expand community education programs of the schools of local educational agencies within the State;
"(2) that provide, after consultation with the appropriate State agencies, the State will develop a ten-year plan for the coordination of education programs with all relevant community services, including but not limited to State and local recreation authorities and associations;
"(3) that 80 per centum of the amounts received by the State from its allotment will be distributed among local educational agencies within the State with due regard for such factors as the size of the population to be served by the community education program of the local educational agency;
"(4) that community education programs assisted under this part will, to the extent feasible, serve all age groups within the community, including preschool children, children and youth in school, out of school youths, adults, and senior citizens as well as groups in the community with special needs for community education program services, such as individuals with limited speaking ability, mentally and physically handicapped individuals, and other health impaired individuals;
"(5) that the community education program will include procedures for the systematic and effective identification and documentation of the needs and concerns of the community;
"(6) that the community education program will provide for the identification and use of existing educational, cultural, recreational, health care, and other resources outside the school or other public facility (including the services of volunteers) and will contain provisions to encourage the use of cooperative arrangements with public and private agencies to make the maximum use of existing resources within the community;
"(7) the community education program will provide for the active and continuous involvement on an advisory basis of institutions, groups, and individuals in the community to be served by the program and the active and continuous involvement of parents of school children in the planning, development, and implementation of programs;
"(8) that the State educational agency will establish procedures for submitting applications by local educational agencies within that State for payments under this title, for approval by the State educational agency, including appropriate procedures to assure that the State educational agency concerned will not disapprove an application of any local educational agency without notice and opportunity for a hearing;
"(9) that the State will pay from non-Federal sources the remaining cost of carrying out the State plan;
"(10) that the State educational agency, from the funds received by it under section 804 for any fiscal year, will reserve not to exceed 15 per centum of such funds for the administration of the State plan, technical assistance to local educational agencies, the conduct of conferences and dissemination activities among local educational agencies within the State and other community service agencies, the coordination between local educational agencies, community colleges, and other institutions of higher education in the State with respect to the coordination of the delivery of social services, with particular emphasis on the application of section 806 and the training and conversion activities authorized by section 812 of this title; and
"(11) that effective procedures will be adopted to evaluate the effectiveness of the community education programs assisted under this title (including where possible payments made directly under section 809).
"(b) The Commissioner shall approve a State plan which meets the requirements of subsection (a), and he shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State educational agency.

"GRANTS TO LOCAL EDUCATIONAL AGENCIES

"SEC. 809. (a) The Commissioner is authorized to make grants to local educational agencies for the Federal share of the cost of planning, establishing, expanding, and operating community education programs including any use described in section 807, whenever the Commissioner determines, pursuant to an application filed under paragraph (2), that the community education program for which application is made under subsection (b) holds reasonable promise of success and is in substantial compliance with the requirements of section 808(a) (4), (5), (6), and (7).
"(b) No grant may be made under this section unless an application is made to the Commissioner at such time, in such manner, and containing or accompanied by such information, as the Commissioner may reasonably require.
"(c) There are authorized to be appropriated $20,000,000 for fiscal year 1979, $25,000,000 for fiscal year 1980, $30,000,000 for fiscal year 1981, $25,000,000 for fiscal year 1982, and $20,000,000 for fiscal year 1983 to carry out the provisions of this section.

"GRANTS TO PUBLIC AGENCIES AND NONPROFIT ORGANIZATIONS FOR DELIVERY OF COMMUNITY SERVICES THROUGH COMMUNITY EDUCATION

"SEC. 810. (a) The Commissioner is authorized to make grants to and contracts with public agencies and nonprofit private organizations to encourage the use of school facilities and other facilities eligible to receive assistance under this title for the efficient and coordinated delivery of community services set forth in section 806(b) and 807. Each such application shall contain provisions to assure that the public agency or nonprofit private organization making application has entered or will enter into contractual arrangements or other suitable forms of agreement with the local educational agency concerned.
"(b) No grant may be made under the provisions of this section unless an application is made to the Commissioner at such time, in such manner and containing or accompanied by such information, as the Commissioner may reasonably require.
"(c) There are authorized to be appropriated $5,000,000 for fiscal year 1979, $7,000,000 for fiscal year 1980, $10,000,000 for fiscal year 1981, $7,000,000 for fiscal year 1982, and $5,000,000 for fiscal year 1983 to carry out the provisions of this section.

"NATIONAL LEADERSHIP AND PLANNING

"SEC. 811. (a) The Assistant Secretary shall undertake certain national leadership and planning activities in order to assist the purposes of this title. Such activities include but

are not limited to national leadership, including publications, convening of national conferences, and other dissemination activities to provide in formation of successful community education programs and activities.

"(b) There are authorized to be appropriated for fiscal year 1979 and for each fiscal year ending prior to October 1, 1983, $5,000,000 to carry out the provisions of this section.

"TRAINING OF COMMUNITY EDUCATION PERSONNEL

"SEC. 812. (a) The Commissioner is authorized to make grants to institutions of higher education for the purpose of providing full-time and part-time training for personnel who are engaged in or who intend to engage in community education programs.

"(b)(1) No grant may be made under the provisions of this section unless an application is made at such time, in such manner, and containing or accompanied by such information as the Commissioner may reasonably require.

"(2) No grant may be entered into under the provisions of this section unless provision is made in the application for the institution of higher education to consult with appropriate State and local educational agencies.

"(c) There are authorized to be appropriated $5,000,000 for fiscal year 1979, $10,000,000 for fiscal year 1980, $15,000,000 for fiscal year 1981, $10,000,000 for fiscal year 1982, and $5,000,000 for fiscal year 1983 to carry out the provisions of this section.

"RESEARCH

"SEC. 813. (a) In conjunction with the planning activities required of the Assistant Secretary for Education under section 811 of this title, the Director of the National Institute of Education shall carry out a program of research on community education programs, from sums available under subsection (b) of this section. Such research shall include an analysis of program impact with respect to individuals and communities, the importance of parental involvement, school vandalism and violence, and the effect of non-Federal funds contributed under provisions of section 815 of this title.

"(b) There are authorized to be appropriated $1,000,000 for fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1983, to carry out the provisions of this section.

"ADMINISTRATION

"SEC. 814. (a) The Commissioner shall establish or designate a clearinghouse to gather and disseminate information received from community education programs, including but not limited to, information regarding new programs, methods to encourage community participation, methods of formulating and conducting needs assessments, and the ways of coordinating community education programs with other community services, with particular emphasis upon the coordination of delivery of community services described in section 806(b). The Commissioner is authorized to contract with public agencies or private organizations to establish and operate the clearinghouse.

"(b)(1) There is established, subject to part D of the General Education Provisions Act, in the Office of the Commissioner, a Community Education Advisory Council (referred to in this section as the 'Advisory Council') to be composed of eleven members. The members of the Advisory Council shall be appointed by the Secretary, without regard to political affiliation.

"(2) A substantial number of the members of the Advisory Council shall be individuals experienced in the operation of community education programs and the training of such individuals. The Council shall include participants and consumers of community education programs.

"(3) Appointed to the Advisory Council shall be completed within three months after enactment of this title. Individuals serving in any predecessor Community Education Advisory Council may be appointed under this subsection.

"(4) The Commissioner shall make available to the Advisory Council such staff, information, and other assistance as it may require to carry out its activities.

"(5) The Advisory Council shall advise the Commissioner on policy matters relating to the interests of community schools and the community education program authorized by this title.

"(6) The Advisory Council shall advise the National Institute of Education with respect to the research concerning community education programs, and shall advise the Office of Education with respect to the evaluation of such programs. The Council shall present to Congress a complete and thorough assessment of the programs and operation of this section for each fiscal year.

"(7) No member of the Council shall evaluate any community education program if such member is associated with that program as a consultant, technical advisor, or in any other similar capacity.

"(c) The program authorized by this part shall be under the authority of the Executive Deputy Commissioner for Educational Programs.

"(d)(1) There are authorized to be appropriated for the fiscal year 1979 and for each fiscal year ending prior to October 1, 1983, $500,000 to carry out the provisions of subsection (a) of this section.

"(2) There are authorized to be appropriated for fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1983, $500,000 to carry out the provisions of subsection (b) of this section.

"(3) There are authorized to be appropriated for fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1983, such sums, but not to exceed $1,000,000 in any fiscal year, as are necessary to provide for the administration of this title.

"FEDERAL SHARE

"SEC. 815. (a) The Federal share of the cost of the State plan approved under section 807 shall be 80 per centum for fiscal year 1979, 70 per centum for fiscal year 1980, 50 per centum for fiscal year 1981, 30 per centum for fiscal year 1982, and 20 per centum for the fiscal year 1983.

"(b) The Federal share of the cost of applications of local educational agencies approved under section 808 shall be 90 per centum for fiscal years 1979 and 1980, 80 per centum for the fiscal year 1981 and each of the two succeeding fiscal years.

"(c) The Federal share of the cost of grants to nonprofit organizations under section 809 shall be 90 per centum for fiscal years 1979 and 1980, and 80 per centum for the fiscal year 1981 and for each of the two succeeding fiscal years.".

ADDITIONAL PROGRAMS AUTHORIZED

SEC. 802. The Act is amended by adding after title XIII, as added by section 801, the following new title:

"TITLE IX—ADDITIONAL PROGRAMS

"PART A—GIFTED AND TALENTED CHILDREN

"SHORT TITLE; PURPOSE

"SEC. 901. (a) This part may be cited as the 'Gifted and Talented Children's Education Act of 1978'.

"(b) The Congress hereby finds and declares that—

"(1) the Nation's greatest resource for solving critical national problems in areas of national concern is its gifted and talented children.

"(2) unless the special abilities of gifted and talented children are developed during their elementary and secondary school years, their special potentials for assisting the Nation may be lost, and

"(3) gifted and talented children from economically disadvantaged families and areas often are not afforded the opportunity to fulfill their special and valuable potentials, due to inadequate or inappropriate educational services.

"(c) It is the purpose of this part to provide financial assistance to State and local educational agencies, institutions of higher education, and other public and private agencies and organizations, to assist such agencies, institutions and organizations to plan, develop, operate, and improve programs designed to meet the special educational needs of gifted and talented children.

"DEFINITION

"SEC. 902. For the purposes of this part, the term 'gifted and talented children' means children and, whenever applicable, youth, who are identified at the preschool, elementary, or secondary level as possessing demonstrated or potential abilities that give evidence of high performance capability in areas such as intellectual, creative, specific academic, or leadership ability, or in the performing and visual arts, and who by reason thereof, require services or activities not ordinarily provided by the school.

"AUTHORIZATION OF APPROPRIATIONS; APPORTIONMENT OF APPROPRIATIONS

"SEC. 903. (a) For the purpose of carrying out this part there are authorized to be appropriated $25,000,000 for fiscal year 1979, $30,000,000 for fiscal year 1980, $35,000,000 for fiscal year 1981, $40,000,000 for fiscal year 1982, and $50,000,000 for fiscal year 1983.

"(b)(1) From the amounts appropriated under subsection (a) for each fiscal year, the Commissioner shall reserve 25 per centum or $5,000,000, whichever is less, for carrying out the provisions of section 905, relating to discretionary programs.

"(2) The remainder of the sums appropriated under subsection (a) for each fiscal year shall be available to carry out the provisions of section 904, relating to State programs.

"STATE PROGRAMS

"SEC. 904. (a) From the amounts available in any fiscal year under section 903(b)(2), the Commissioner shall make grants to State educational agencies for the Federal share of the cost of planning, developing, operating, and improving programs designed to meet the educational needs of gifted and talented children at the preschool, elementary, and secondary levels. Such programs may include in-service training of personnel to teach such children.

"(b)(1) Except as provided in paragraph (2), to the extent funds are available in any fiscal year to carry out the provisions of this section, the Commissioner shall distribute funds so as to assure that each State educational agency which submits an application which fully meets all requirements of this section and is approved by the Commissioner will receive not less than $50,000 in that fiscal year. If sums appropriated for any fiscal year for making payments under this subsection are not sufficient to pay in full the amount to which each State educational agency is entitled under the previous sentence, such amounts shall be ratably reduced.

"(2) In any fiscal year in which appropriations under this part equal or exceed $15,000,000, the Commissioner shall allot the amount so appropriated in accordance with the provisions of section 906.

"(c) Each State educational agency desiring to receive a grant under this section shall submit an application at such time, in such manner and accompanied by such information as is necessary for the purposes of this section. Each such application shall contain assurances that—

"(1) funds paid to the State educational agency will be expended solely to plan, develop, operate, and improve programs and projects which—

"(A) are designed to identify the educational needs of gifted and talented children,

"(B) are of sufficient size, scope, and quality to hold reasonable promise of making substantial progress toward meeting such needs, and

'(C) give appropriate consideration to the particular educational needs of disadvantaged gifted and talented children:

"(2)(A) the State educational agency will reserve from funds made available under this section in each fiscal year not more than 10 per centum of such funds for the purpose of administration, technical assistance, coordination, and statewide planning related to program, and projects designed to meet the needs of gifted and talented children:

"(B) the State educational agency will distribute, on a competitive basis, not less than 90 per centum of the funds made available under this section for payments to local educational agencies within the State which apply to the State educational agency, with due regard for the quality of activities proposed in the application of the local educational agencies;

"(3) the State educational agency will use at least 50 per centum of the funds made available under this section for programs and projects which include a component for the identification and education of disadvantaged gifted and talented children from low-income families;

"(4) the State educational agency and the local educational agencies within the State may use funds made available under this section to acquire instructional equipment only if such equipment will enhance the program or project for which such funds are furnished;

"(5)(A) the requirements of section 406 of this Act (relating to participation of pupils and teachers in private elementary and secondary schools) are met unless such requirements cannot legally be met in the State (as determined by the State educational agency);

"(B) the State educational agency will not approve the application of a local educational agency within the State for assistance under this section unless the State educational agency determines that in designing the proposal subject to the application the needs of children in nonprofit private elementary and secondary schools have been taken into account through the consultation with private school officials and by other appropriate means; and

"(6) the State educational agency will provide to local educational agencies within the State, which are unable to compete due to smaller size or lack of financial resources, technical assistance in preparing proposals and in planning, developing, and operating programs under this section.

"(d) The Commissioner shall approve any application which meets the requirements of subsection (c) and not disapprove any such application without first affording an opportuntiy for a hearing.

"DISCRETIONARY PROGRAMS

"SEC. 905. (a) From the amounts available in any fiscal year under section 903(b)(1) the Commissioner may—

"(1) make grants to State educational agencies, local educational agencies, institutions of higher education, and other public and private agencies and organizations, to assist them in establishing or maintaining programs or projects designed to meet the educational needs of gifted and talented children including the training of personnel in educating gifted and talented children or in supervising such personnel;

"(2) make grants to State educational agencies to assist them, either directly or through arrangements by the State educational agency with other institutions, agencies, and organizations eligible to receive funds under this part, to provide training of personnel engaged in the education of gifted and talented children or supervision of such personnel;

"(3) enter into contracts with, and make grants to, public agencies and private organizations including State and local educational agencies, to establish and operate model projects for the identification and education of gifted and talented children;

"(4) make grants to, or enter into contracts with, public agencies, private organizations, or institutions which together or singly constitute a clearinghouse to disseminate information about programs, services, resources, research, methodology, and media materials for the education of gifted and talented children;

"(5) make grants to State educational agencies to assist them in the statewide planning, development, operation, and improvement of programs and projects designed to meet the educational needs of gifted and talented children; and

"(6) conduct, either directly or by grant or contract, a program of research, evaluation and related activities pertaining to the education of gifted and talented children and may transfer to the National Institute of Education pursuant to subsection (c) not more than 20 per centum of the sums available in any fiscal year to carry out the provisions of this section;

to pay the Federal share of the cost of such grants or contracts. Not more than 20 per centum of the sums available in any fiscal year under this section may be used pursuant to clause (1) of this subsection for grants to institutions of higher education for the training of national leadership personnel.

"(b)(1) No grant may be made and no contract may be entered into under this section unless an application is submitted to the Commissioner in such form, in such manner, and containing such information, as is necessary for the purposes of this section.

"(2) The requirements of section 406 of this Act (relating to the participation of pupils and teachers in private, elementary and secondary schools) shall apply to programs and projects under this section unless such requirements cannot legally be met in the State (as determined by the State educational agency of the State in which the applicant for funds under this section is located).

"(c)(1) Notwithstanding the second sentence of section 405(b)(1) of the General Education Provisions Act, the National Institute of Education may, in accordance with the terms and conditions of section 405 of such Act, carry out a program of research and related activities pertaining to the education of gifted and talented children from funds transferred pursuant to subsection (a)(6).

"(2) For purposes of this section the term 'research, evaluation and related activities means research, research training, evaluation, surveys, and demonstrations in the field of education of gifted and talented children and youth, or the dissemination of information derived from such research, surveys or demonstrations, and all such activities, including experimental and model schools.

"STATE ALLOTMENTS

"SEC. 906. (a)(1) In any fiscal year in which appropriations for this part are equal to or exceed $15,000,000 the Commissioner shall allot, from amounts available under section 903(b)(2), not more than 1 per centum among—

"(A) Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands;

"(B) programs for children and teachers in elementary and secondary schools operated for Indian children by the Department of the Interior; and

"(C) programs authorized for children and teachers in overseas dependent schools of the Department of Defense,

in accordance with their respective needs.

"(2) From the remainder of such sums in any such fiscal year, the Commissioner shall allot to each State which has an application meeting the requirements of section 904, an amount which bears the same ratio to such remainder as the number of children in the State aged 5 to 17 years, inclusive, bears to the number of children in all States, except that no State shall receive less than $50,000 in any such fiscal year.

"(3) For the purpose of this subsection the term 'State' means the several States, the Commonwealth of Puerto Rico, and the District of Columbia.

"(b) The amount of any State's allotment under subsection (a) for any fiscal year which the Commissioner determines will not be required for such fiscal year shall be available for reallotment from time to time, on such dates during such year as the Commissioner may fix, to other States in proportion to the original allotments to such States under subsection (a) for that year but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Commissioner estimates such State needs and will be able to use for such year; and the total of such reduction shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amounts reallotted to a State under this subsection during a year from funds appropriated under section 903 shall be deemed part of its allotment under section (a) for such year.

"ADMINISTRATION

"SEC. 907. (a) The Commissioner shall designate an administrative unit within the Office of Education to administer the programs and projects authorized by this part and to coordinate all programs for gifted and talented children and youth administered by the Office of Education.

"(b) Notwithstanding any other provision of law, any Indian tribe which operates schools for its children shall be deemed to be a local educational agency for the purposes of this part.

"(c) No financial assistance may be made to a local educational agency for a period in excess of 5 years. The limitation contained in this subsection shall not apply to any financial assistance extended prior to the date of enactment of the Education Amendments of 1978.

"FEDERAL SHARE

"SEC. 908. The Federal share for any fiscal year shall be 90 per centum, except that the Federal share for the clearinghouse activities under section 905(a)(4), the research, evaluation and related activities under section 905(a)(6), and programs and projects involving the participation of students in nonprofit private elementary and secondary schools shall be 100 per centum.

"PART B—EDUCATIONAL PROFICIENCY STANDARDS

"GRANTS TO IMPLEMENT EDUCATIONAL PROFICIENCY STANDARDS

"SEC. 921. (a) The Commissioner is authorized to make grants to any State educational agency (or to any local educational agency located in a State in which the State educational agency has not submitted an application for a grant under this section) to carry out any plan approved by the Commissioner in accordance with this section to assist students in achieving levels of educational proficiency compatible with basic standards established by such educational agency.

"(b)(1) Each applicant which desires to receive a grant under this section may submit an application to the Commissioner. Any

such application shall be submitted in such form, and in accordance with such procedures, as the Commissioner shall require and shall contain an educational proficiency plan, as described in paragraph (2) of this subsection.

"(2) The educational proficiency plan referred to in paragraph (1) of this subsection—

"(A) shall contain a description of the educational proficiency standards established by the applicant for reading, writing, mathematics, and any other subject for which the State may require such standards;

"(B) shall contain a description of the programs designed to assist students in achieving levels of educational proficiency compatible with the standards described in subparagraph (A) of this paragraph;

"(C) may provide for the administration of examinations to students, at specified intervals or grade levels, to measure their reading, writing, or mathematical proficiency, or their proficiency in other subjects which the applicant considers appropriate for testing; and

"(D) shall contain the assurances of the applicant that any student who fails any examination provided for under subparagraph (C) of this paragraph shall be offered supplementary instruction in the subject matter covered by such examination.

"(c) The Commissioner shall award a grant to any applicant, in such amounts as the Commissioner considers appropriate, only it (1) the Commissioner approves the educational proficiency plan submitted by the applicant pursuant to subsection (b) of this section, and (2) the application submitted pursuant to such subsection satisfies all other requirements established by the Commissioner. Grants awarded under this section may be used by applicants either to continue to implement their ongoing educational proficiency plans, or to implement new plans, including the provision of supplementary instruction to be provided to students who fail the examinations.

"(d) There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal year ending September 30, 1979, and for each of the four succeeding fiscal years.

"(e) For purposes of this section, the term 'applicant' means any State or local educational agency which submits an application under this section.

"(f) Nothing in this section shall authorize the Commissioner to impose tests on State educational agencies or local educational agencies, and no such agency shall be compelled in any way to apply for funds under this section.

"ACHIEVEMENT TESTING ASSISTANCE

"SEC. 922. (a) The Commissioner is authorized, either directly or through grants or contracts awarded to State and local educational agencies and other public agencies, organizations, and institutions, and through contracts with private agencies, organizations, and institutions, to assist State and local educational agencies to develop their capacity to conduct programs of testing the achievement in the basic skills of children in elementary and secondary schools. The activities which may be supported under this section include—

"(1) disseminating information to State and local educational agencies on the availability and uses of achievement tests;

"(2) training of and assistance to administrators, teachers, and other instructional personnel in the use of tests and test results; and

"(3) research and evaluation designed to determine improved means of assessing more accurately the achievement of children in basic skills and of diagnosing instructional needs.

"(b) Nothing in this section shall authorize the Commissioner to require specific tests or test questions. Any State or local educational agency may refuse to use any test or test question developed under this section.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section for fiscal year 1980, and for each of the three succeeding fiscal years.

"PART C—WOMEN'S EDUCATIONAL EQUITY

"SHORT TITLE; PURPOSE

"SEC. 931. (a) This part may be cited as the 'Women's Educational Equity Act of 1978'.

"(b)(1) The Congress finds and declares that educational programs in the United States, as presently conducted, are frequently inequitable as such programs relate to women and frequently limit the full participation of all individuals in American society.

"(2) It is the purpose of this part to provide educational equity for women in the United States and to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Education Amendments of 1972.

"(c) As used in this part, the term 'Council' means the National Advisory Council on Women's Educational Programs.

"GRANT AND CONTRACT AUTHORITY

"SEC. 932. (a) The Commissioner is authorized to make grants to, and enter into contracts with, public agencies, private nonprofit agencies, organizations, and institutions, including student and community groups, and individuals, for activities designed to achieve the purpose of this part of all levels of education, including preschool, elementary and secondary education, higher education, and adult education. The activities may include—

"(1) demonstration, developmental, and dissemination activities of national, statewide, or general significance, including—

"(A) the development and evaluation of curricula, textbooks, and other educational materials related to educational equity;

"(B) model preservice and inservice training programs for educational personnel with special emphasis on programs and activities designed to provide educational equity;

"(C) research and development activities designed to advance educational equity;

"(D) guidance and counseling activities, including the development of nondiscriminatory tests, designed to insure educational equity;

"(E) educational activities to increase opportunities for adult women, including continuing educational activities and programs for underemployed and unemployed women; and

"(F) the expansion and improvement of educational programs and activities for women in vocational education, career education, physical education, and educational administration; and

"(2) assistance to eligible entities to pay a portion of the costs of the establishment and operation, for a period of not to exceed two years, of special programs and projects of local significance to provide equal opportunities for both sexes, including activities listed in paragraph (1), activities incident to achieving compliance with title IX of the Education Amendments of 1972 and other special activities designed to achieve the purposes of this part.

Not less than 75 per centum of funds used to support activities covered by paragraph (2) shall be used for awards to local educational agencies.

"(b) For each fiscal year, the Commission shall use $15,000,000 from the funds available under this part to support activities described in paragraph (1) of subsection (a). Any funds in excess of $15,000,000 available under this part shall be used to support activities described in paragraph (2) of subsection (a).

"APPLICATION; PARTICIPATION

"SEC. 933. (a) A grant may be made, and a contract may be entered into, under this part only upon application to the Commissioner, at such time, in such form, and containing or accompanied by such information as the Commissioner may prescribe. Each such application shall—

"(1) provide that the program or activity for which assistance is sought will be administered by or under the supervision of the applicant;

"(2) describe a program for carrying out one or more of the purposes set forth in section 932(a) which holds promise of making a substantial contribution toward attaining such purposes; and

"(3) set forth policies and procedures which insure adequate evaluation of the activities intended to be carried out under the application;

"(b) Nothing in this part shall be construed as prohibiting men and boys from participating in any programs or activities assisted under this part.

"SMALL GRANTS

"SEC. 934. In addition to the authority of the Commissioner under section 932, the Commissioner shall carry out a program of small grants (as part of the grant program administered under section 932(a)(1)), not to exceed $25,000, each, in order to support innovative approaches to achieving the purposes of this part; and for that purpose the Commissioner is authorized to make grants to public and private nonprofit agencies and to individuals.

"CRITERIA AND PRIORITIES

"SEC. 935. The Commissioner shall establish criteria and priorities for awards under this part to insure that available funds are used for programs that most effectively will achieve the purposes of this part. Those criteria and priorities shall be promulgated in accordance with section 431 of the General Education Provisions Act.

"NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS

"SEC. 936. (a) There is established in the Office of Education a National Advisory Council on Women's Educational Programs. The Council shall be composed of—

"(1) seventeen individuals, some of whom shall be students, and who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals, broadly representative of the general public who, by virtue of their knowledge or experience, are versed in the role and status of women in American society;

"(2) the staff Director of the Civil Rights Commission;

"(3) the Director of the Women's Bureau of the Department of Labor; and

"(4) the Director of the Women's Action Program of the Department of Health, Education, and Welfare.

The Council shall elect its own Chairperson from among the members described in paragraph (1).

"(b) The term of office of such member of the Council appointed under paragraph (1) of subsection (a) shall be three years, except that—

"(1) the members first appointed under such clause shall serve as designated by the President, six for a term of one year, five for a term of two years, and six for a term of three years; and

"(2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term.

"(c) The Council shall—

"(1) advise the Secretary, Assistant Secretary, and the Commissioner on matters relating to equal educational opportunities for women and policy matters relating to the administration of this part:

"(2) make recommendations to the Commissioner with respect to the allocation of any funds pursuant to this part, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation;

"(3) recommend criteria for the establishment of program priorities:

"(4) make such reports as the Council determines appropriate to the President and the Congress on the activities of the Council; and

"(5) disseminate information concerning the activities of the Council under this part.

"(d) The provisions of part D of the General Education Provisions Act shall apply with respect to the Council established under this subsection.

"REPORT

"SEC. 937. The Commissioner is directed, not later than September 30, 1980, 1982, and 1984, to submit to the President and the Congress and to the Council a report setting forth the programs and activities assisted under this part, and to provide for the distribution of this report to all interested groups and individuals, including the Congress, from funds authorized under this part. After receiving the report from the Commissioner, the Council shall evaluate the program and projects assisted under this part and include such evaluation in its annual report.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 938. For the purpose of carrying out this part there are authorized to be appropriated $80,000,000 for fiscal year 1980, and each of the three succeeding fiscal years.

"PART D—SPECIAL GRANTS FOR SAFE SCHOOLS

"PURPOSE

"SEC. 941. The purpose of this part is to provide financial assistance to aid local educational agencies throughout the Nation to meet special needs incident to providing security for children, employees, and facilities in elementary and secondary schools by reducing and preventing crimes against them and to encourage the reporting of serious crimes committed in schools to local law enforcement agencies.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 942. There is authorized to be appropriated $15,000,000 for the fiscal year ending September 30, 1979, and such sums as may be necessary for each of the four succeeding fiscal years to carry out this part.

"ALLOTMENTS TO LOCAL EDUCATIONAL AGENCIES

"SEC. 943. (a) Within one hundred and eighty days after the date of enactment of the Education Amendments of 1978, the Commissioner shall select 15 local educational agencies for funding under this section. The Commissioner is to take into full account geographical considerations in the determination of the 15 agencies.

"(b) The sums appropriated to carry out this part for a fiscal year shall be allotted by the Commissioner among the local educational agencies identified pursuant to subsection (a) in a manner which gives consideration to the following criteria in the following order:

"(1) The extent and impact upon elementary and secondary education of crime in the schools of the district to be served, including the reported incidences of such crime in the school.

"(2) Districts which have ongoing programs aimed at promoting school safety, but nothing in this paragraph shall be construed to mean that funds made available under this part will be used to substitute for local funds in such programs, but rather be used to expand such programs.

"(3) The financial need of such local educational agency.

"(4) The expense and difficulty of effectively carrying out a plan described in section 944(a) in such school district.

"(5) The degree to which measurable deficiencies in the quality of public education afforded in such district exceed those of other school districts within the State.

"(6) The degree to which the plan described in section 944(a), and the program or project to be assisted, are likely to effect a decrease in crime in the schools.

"(7) The degree to which a local educational agency has developed administrative guidelines encouraging the reporting to local law enforcement agencies of all serious crimes committed in schools under their jurisdiction.

"(8) The degree to which employees of the local educational agency report serious crimes committed in schools to local law enforcement agencies.

"APPLICATION

"SEC. 944. (a) A local educational agency may receive a grant under this part for any fiscal year only upon application therefor approved by the Commissioner, with the consent of the appropriate State educational agency, upon the Commissioner's determination that the local educational agency has adopted and is implementing, or will, if assistance is made available under this part, adopt and implement, a plan to reduce crime and increase the safety and security of the students, employees, and facilities of its elementary and secondary schools through programs and projects designed to carry out the purpose of this part, including—

"(1) the provision of additional professional or other staff members (including staff members especially trained in problems incident to crime control) and the training and retraining of staff for schools which are affected by such a plan;

"(2) provision of information to parents and other members of the general public incident to the development or to the implementation of such plan;

"(3) the adoption of administrative guidelines so that school officials and staff are encouraged to report all serious crimes occurring in school or in school buildings to local law enforcement agencies;

"(4) planning and evaluation activities;

"(5) other specially designed programs or projects that meet the purpose of this part;

"(b) Funds may also be used for minor alteration of school plants and facilities, including the acquisition, installation, modernization, or replacement of equipment to reduce the susceptibility of the facility to crimes or vandalism. No more than 10 percent of the funds under any plan shall be used for this purpose.

"(c) The Commissioner shall promulgate such regulations as may be necessary to provide for the suspension of funding under this part to any local educational agency which the Commissioner determines has not complied with the requirement of subsection (a)(3).

"(d) The Commissioner shall consult with the Associate Administrator of the Office of Juvenile Justice and Delinquency Prevention for the purpose of coordinating programs and activities funded under this section with those related programs funded under the Juvenile Justice Delinquency Prevention Act of 1974.

"PART E—ETHNIC HERITAGE PROGRAM

"STATEMENT OF POLICY

"SEC. 951. In recognition of the heterogeneous composition of the Nation and of the fact that in a multiethnic society a greater understanding of the contributions of one's own heritage and those of one's fellow citizens can contribute to a more harmonious, patriotic, and committed populace, and in recognition of the principle that all persons in the educational institutions of the Nation should have an opportunity to learn about the differing and unique contributions to the national heritage made by each ethnic group, it is the purpose of this part to provide assistance designed to afford to students opportunities to learn about the nature of their own cultural heritage, and to study the contributions of the cultural heritages of the other ethnic groups of the Nation.

"ETHNIC HERITAGE STUDIES PROGRAMS

"SEC. 952. The Commissioner is authorized to make grants to, and contracts with, public and private nonprofit educational agencies, institutions, and organizations to assist them in planning, developing, establishing, and operating ethnic heritage studies programs, as provided in this part.

"AUTHORIZED ACTIVITIES

"SEC. 953. Each program assisted under this part shall—

"(1)(A) develop curriculum materials for use in elementary or secondary schools or institutions of higher education relating to the history, geography, society, economy, literature, art, music, drama, language, and general culture of the group or groups with which the program is concerned, and the contributions of that ethnic group or groups to the American heritage; or

"(B) disseminate curriculum materials to permit their use in elementary or secondary schools or institutions of higher education throughout the Nation; or

"(C) provide training for persons using, or preparing to use, curriculum materials developed under this part; and

"(2) cooperate with persons and organizations with a special interest in the ethnic group or groups with which the program is concerned to assist them in promoting, encouraging, developing, or producing programs or other activities which relate to the history, culture, or traditions of that ethnic group or groups.

"APPLICATIONS

"SEC. 954. (a) Any public or private nonprofit agency, institution, or organization desiring assistance under this part shall make application therefor in accordance with the provisions of this part and other applicable law and with regulations of the Commissioner promulgated for the purposes of this part. The Commissioner shall approve an application under this part only if he determines that—

"(1) the program for which the application seeks assistance will be operated by the applicant and that the applicant will carry out such program in accordance with this part;

"(2) such program will involve the activities described in section 953; and

"(3) such program has been planned, and will be carried out, in consultation with an advisory council which is representative of the ethnic group or groups with which the program is concerned and which is appointed in a manner prescribed by regulation.

"(b) In approving applications under this part, the Commissioner shall ensure that there is cooperation and coordination of efforts among the programs assisted under this part, including the exchange of materials and information and joint programs where appropriate.

"ADMINISTRATIVE PROVISIONS

"SEC. 955. (a) In carrying out this part, the Commissioner shall make arrangements which will utilize (1) the research facilities and personnel of institutions of higher education, (2) the special knowledge of ethnic groups in local communities and of foreign

students pursuing their education in this country, (3) the expertise of teachers in elementary and secondary schools and institutions of higher education, and (4) the talents and experience of any other groups such as foundations, civic groups, and fraternal organizations which would further the goals of the programs.

"(b) Funds appropriated to carry out this part may be used to cover all or part of the cost of establishing and carrying out the programs, including the cost of research materials and resources, academic consultants, and the cost of training of staff for the purposes of carrying out the purposes of this part. Such funds may also be used to provide stipends (in such amounts as may be determined in accordance with regulations of the Commissioner) to individuals receiving training as part of such programs, including allowances for dependents.

"NATIONAL ADVISORY COUNCIL

"SEC. 956. (a) There is hereby established a National Advisory Council on Ethnic Heritage Studies consisting of fifteen members appointed by the Secretary who shall be appointed, serve, and be compensated as provided in part D of the General Education Provisions Act.

"(b) Such Council shall, with respect to the program authorized by this part, carry out the duties and functions specified in part D of the General Education Provisions Act.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 957. For the purpose of carrying out this part, there are authorized to be appropriated $15,000,000 for each of the fiscal years ending prior to October 1, 1983. Sums appropriated pursuant to this section shall, notwithstanding any other provision of law unless enacted in express limitation of this sentence, remain available for expenditure and obligation until the end of the fiscal year succeeding the fiscal year for which they were appropriated.".

TITLE IX—AMENDMENTS RELATING TO GENERAL PROVISIONS OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

REVISION OF TITLE VIII—GENERAL PROVISIONS

SEC. 901. (a)(1) The matter preceding the hyphen in section 1001 of the Act (as redesignated by section 801 of this Act) is amended by striking out "and VII" and inserting in lieu thereof "VII, VIII, and IX".

(2) Section 1001(j) of the Act (as so redesignated) is amended by striking out "and VII" and inserting in lieu thereof "VII, VIII, and IX" and by inserting before the period a comma and "and the Northern Mariana Islands".

(3) Section 1001(l) of the Act (as so redesignated) is repealed.

(b) Section 1004 of the Act (as so redesignated) is amended to read as follows:

"WAIVER OF REQUIREMENTS FOR CERTAIN JURISDICTIONS

"SEC. 1004. (a)(1) If the Commissioner determines that compliance with any of the requirements of this Act by Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands is practical or inappropriate because of conditions or circumstances particular to any of such jurisdictions, he may waive any of those requirements upon the request of the State educational agency for such jurisdiction. At least thirty days prior to approving any such request for a waiver, the Commissioner shall publish in the Federal Register a notice of his intent to grant such a waiver and the terms and conditions upon which such a waiver will be granted.

"(a) Any waiver of requirements under this subsection shall be subject to such terms and conditions as the Commissioner deems necessary to carry out the purposes of this Act, including the submission by the jurisdiction concerned of a plan for the management of the funds provided under this Act, in order to insure that those funds are used in a manner designed to achieve the purposes of this Act.

"(b)(1) If the Commissioner determines that compliance with any of the requirements of title I by Puerto Rico is impractical or inappropriate because of conditions or circumstances particular to that jurisdiction, he may waive any of those requirements upon the request of the State educational agency for that jurisdiction. At least thirty days prior to approving any such request for a waiver, the Commissioner shall publish in the Federal Register a notice of his intent to grant such a waiver and the terms and conditions upon which such a waiver will be granted.

"(2) Any waiver of requirements under this subsection shall be subject to such terms and conditions as the Commissioner deems necessary to carry out the purposes of title I, including the submission by Puerto Rico of a plan for the management of the funds provided under such title, in order to insure that those funds are used in a manner designed to achieve the purposes of such title.

"(3) No waiver may be granted under this subsection after July 1, 1980 or apply to any period after such date."

TITLE X—IMPACT AND AMENDMENTS

PART A—PUBLIC LAW 874

GENERAL EXTENSIONS OF PUBLIC LAW 874

SEC. 1001. (a) Section 2(a) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by striking out "1978" and inserting in lieu thereof "1983".

(b) Section 3(b) of such Act is amended by striking out "1978" and inserting in lieu thereof "1983".

(c) Section 4(a) of such Act is amended by striking out "1978" and inserting in lieu thereof "1983".

(d) Subparagraph (B) of the second paragraph (2) of section 305(a) of the Education Amendments of 1974 is amended by striking out "1978" and inserting in lieu thereof "1983".

(e) Subparagraph (C) of such paragraph (2) is amended by striking out "1978" and inserting in lieu thereof "1983".

REVISION OF JURISDICTIONAL LIMITS ON LOCATIONS OF FEDERAL PROPERTY

SEC. 1002. (a) Section 3(b)(2)(A) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by inserting before the comma the following: ", or in whole or in part in the school district of such agency if the school district is located in more than one county".

(b) Section 3(b)(2)(B) of such Act is amended by inserting after "county" the following: "or district".

PROVISIONS REGARDING HEAVILY IMPACTED SCHOOL DISTRICTS

SEC. 1003. (a) Section 3(d)(1)(A) of the Act of September 30, 1950 (Public Law, 874, Eighty-first Congress) is amended by striking out "25 per centum" and inserting in lieu thereof "20 per centum".

(b) Section 2(d) of such Act is amended—

(1) in paragraph (2)(B) thereof, by striking out "clause (1) of" each time it appears therein; and

(2) in the first sentence of such paragraph, by striking out "the Commissioner is authorized, to", and inserting in lieu thereof "the Commissioner shall".

"(e)(1) Paragraph (2)(A) of section 5(c) of such Act is amended to read as follows:

"(A) to each local educational agency—

"(i) with respect to which the local contribution rate has been increased under paragraph (2)(B) of section 3(d), which equals 75 per centum of the amount to which such agency is entitled as computed under section 2(d) for such fiscal year; and

"(ii) described in clause (A) of section 3(d)(1) which equals 75 per centum of the amount to which such agency is entitled, as computed under section 3(d), with respect to a determination of number of children under section 3(a) and section 3(b)(3) of such fiscal year;"

(2) Paragraph (2)(D) of such section 5(c) of such Act is amended by inserting after "section 3(b)" the following: "(other than such children with respect to whom a payment is made under clause (A)(ii) of this paragraph)".

(d) Section 3 of such Act is amended by adding at the end thereof the following new subsection:

"(g) Notwithstanding any other provisions of this Act, no State may require that a vote of the qualified electors of a heavily impacted school district of a local educational agency be held to determine if such school district will spend the amounts to which the local educational agency is entitled under this Act.".

ABSORPTION

SEC. 1004. Subparagraph (A) of paragraph (2) of section 3(d) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is hereby repealed.

EARLY PAYMENTS ON THE BASIS OF ESTIMATES

SEC. 1005. Subsection (b) of section 5 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended by inserting "(1)" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) Not later than thirty days after the beginning of any fiscal year the Commissioner shall, on the basis of any application for preliminary payment from any local educational agency which was eligible for a payment during the preceding fiscal year on the basis of entitlements established under section 2 or 3, make such a payment to such agency of not less than 75 per centum of the amount that such agency received during such preceding fiscal year.".

STATE EQUALIZATION

SEC. 1006. (a) Section 5(d)(2) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended by adding at the end thereof the following new subparagraph:

"(C)(i) If a State desires to take payments under this section into consideration as provided in this paragraph for any fiscal year, that State shall, not later than sixty days prior to the beginning of such fiscal year, submit notice to the Commissioner of its intention to do so. Such notice shall be in such form and be accompanied by such information as to enable the Commissioner to determine the extent to which the program of State aid of that State is consistent with the provisions of subparagraph (A). In addition, such notice shall be accompanied by such evidence as the Commissioner finds necessary that each local educational agency in that State has been given notice of the intention of the State. If the Commissioner determines that the program of State aid of a State submitting notice under this subparagraph is consistent with the provisions of subparagraph (A), the Commissioner shall certify such determination to that State.

"(ii) Prior to certifying any determination under division (i) for any State for any fiscal year, the Commissioner shall give the local educational agencies in that State an opportunity for a hearing at which such agencies may present their views with respect to the consistency of the State aid program of that State with the provisions of subparagraph (A).

"(iii) The Commissioner shall not finally deny to any State for any fiscal year certifica-

tion of a determination under division (1) without first giving that State an opportunity for a hearing.".

(b) No State or local educational agency located therein shall, on the basis of noncompliance with standards established by regulations prescribed pursuant to section 5(d)(2) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), be required to make restitution of funds distributed to local educational agencies under such Act for the 1977–1978 school year if such State has an equalization program which, for the 1978–1979 school year complies with such standards.

ADJUSTMENTS NECESSITATED BY APPROPRIATIONS

SEC. 1007. (a) Section 5(c) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended—

(1) by redesignating paragraph (2) (as amended by section 1003(c) of this Act) as paragraph (2)(A);

(2) by striking out "amount—" and inserting in lieu thereof the following: "amount equal to 65 per centum of the amounts described in the following schedule:";

(3) by designating divisions (i) and (ii) of clause (A) of such paragraph (as added by such section 1003(c)) as subdivisions (I) and (II), respectively;

(4) by redesignating clauses (A), (B), (C), (D), (E), and (F) of such paragraph (2) as divisions (i), (ii), (iii), (iv), (v), and (vi), respectively;

(5) by inserting at the end of paragraph (2) the following new subparagraph;

"(B) From that part of the sums which remains after the allocation required by paragraph (1) and by subparagraph (A) of this paragraph for any fiscal year, he shall, in accordance with the requirements of subsection (e), allocate an amount not to exceed 35 per centum of the amounts described in the schedule set forth in subparagraph (A).";

(6) in the matter following paragraph (3) by striking out "paragraph (2)" the second place it appears and inserting "paragraph (2)(A)".

(b) Section 5(e) of such Act is amended to read as follows:

"HOLD HARMLESS: DISCRETIONARY ALLOCATIONS

"(e)(1) In carrying out the required allocations under paragraph (2) of subsection (c), if any amount remains after making allocations under paragraph (2)(A) of such subsection, the Commissioner shall allocate, from the amounts available under paragraph (2)(B) of such subsection, to each local educational agency described in the schedule in such paragraph (2)(A) an amount which shall not be less than 90 per centum of the amount paid to such agency under this section for the preceding fiscal year. If sums appropriated for any fiscal year for making payments under this section are not sufficient to pay in full the amount to which each local educational agency is entitled under the previous sentence, such amounts shall be ratably reduced.

"(2) Any sums which remain from the amounts available under paragraph (2)(B) of subsection (c) after making payments required by the first sentence of paragraph (1) of this subsection shall be allocated by the Commissioner among local educational agencies which have unsatisfied entitlements under sections 3 and 4 in accordance with appropriations Acts.".

HEARINGS

SEC. 1008. Section 5 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended by adding at the end thereof the following new subsection:

"(g) Each local educational agency which is adversely affected or aggrieved by any action of the Commissioner under this title shall be entitled to a hearing on, and review of, such action in the same manner as if such agency were a person under the provisions of chapters 5 and 7 of title 5, United States Code.".

CHILDREN FOR WHOM LOCAL AGENCIES ARE UNABLE TO PROVIDE EDUCATION

SEC. 1009. (a) Section 6(a)(2) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended by inserting after "(5) the Performance Rating Act of 1950, as amended (5 U.S.C. 2001 et seq.)." the following: "Personnel provided for under this subsection outside of the continental United States, Alaska, and Hawaii, shall receive such compensation, tenure, leave, hours of work, and other incidents of employment on the same basis as provided for similar positions in the public schools of the District of Columbia.".

(b) Section 6(c) of such Act is amended by striking out everything after "United States" and inserting in lieu thereof the following: "in a grade, position, or classification subject by policy and practice to transfer or reassignment to areas where English is the language of instruction in the schools normally attended by children of Federal employees. Dependents of excepted service professional employees of the schools shall be eligible to attend the schools. In any case where education is being provided under an arrangement made under this subsection, it shall be presumed that no local educational agency is able to provide suitable free public education for the children of eligible parents employed by the United States until the Commissioner determines, after consultation with the appropriate State educational agency, that a local educational agency is able to do so.".

(c) Section 6(d) of such Act is amended by inserting at the end thereof the following: "The Commissioner shall ensure that funds provided under such arrangement or arrangements are expended in an efficient manner, and shall require an accounting of funds by such agency at least on an annual basis. The Commissioner shall further be provided with data relating to the quality and type of education provided to such children under such arrangement or arrangements.".

(d) Section 6 of such Act is further amended by adding at the end thereof the following new subsections:

"(g) The Commissioner shall ensure the establishment of an elective school board in schools assisted under this section. Such school board shall be composed of a minimum of three members, elected by the parents of students in attendance at such school. The Commissioner shall, by regulation, establish procedures for carrying out such school board elections as provided in this subsection.

"(h) A school board established pursuant to subsection (g) shall be empowered to oversee school expenditures and operations, subject to audit procedures established by the Commissioner, and other provisions of this section.".

PROMPT CONSIDERATION FOR APPLICATIONS

SEC. 1010. (a) Section 7(d) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by adding at the end thereof a new sentence to read as follows: "In any case in which the Commissioner does not complete, within sixty days, all action leading to approval or disapproval of an application filed under this section, the Secretary of Health, Education, and Welfare shall assume responsibility for such approval or disapproval of such application and shall complete such action within ninety days of the filing of such application.".

(b) Section 16(c) of the Act of September 23, 1950 (Public Law 815, Eighty-first Congress) is amended by adding at the end thereof a new sentence to read as follows: "In any case in which the Commissioner does not complete, within sixty days, all action leading to approval or disapproval of an application filed under this section, the Secretary of Health, Education, and Welfare shall assume responsibility for such approval or disapproval of such application and shall complete such action within ninety days of the filing of such application.".

PROPERTY OWNED BY FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

SEC. 1011. The second sentence of paragraph (1) of section 403 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended by striking out "and (D)" and inserting in lieu thereof "(D)" and by striking out the period at the end thereof and inserting in lieu thereof the following: "and (E) any property owned by a foreign government or by an international organization which by reason of such ownership is not subject to taxation by the State in which it is located or a subdivision thereof.".

DEFINITION OF LOCAL EDUCATIONAL AGENCY

SEC. 1012. Effective October 1, 1979, section 403(6)(A) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by striking out "free public education" and inserting in lieu thereof "free public elementary and secondary education through grade 12".

HANDICAPPED CHILDREN

SEC. 1013. Paragraph (10) of section 403 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended by adding at the end thereof the following new sentence: "A child shall, for the purposes of section 3, be deemed to be in attendance at a school of a local educational agency if such child is determined to be federally connected under clause (1) or (2) of section 3(a) or under clause (1), (2), or (3) of section 3(b) for any fiscal year and if such child is attending a school other than a school of such agency because such child is handicapped (as defined in section 602(1) of the Education of the Handicapped Act) and if such agency makes a tuition payment on behalf of such child to such school for such fiscal year.".

USE OF AVERAGE DAILY MEMBERSHIP

SEC. 1014. Paragraph (10) of section 403 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is further amended by adding at the end thereof the following new sentence: "Regulations promulgated by the Commissioner in accordance with clause (A) of this paragraph shall permit the conversion of average daily membership to average daily attendance for local educational agencies in States which reimburse local educational agencies based upon average daily membership and which do not require local educational agencies to keep records based on average daily attendance.".

IMPACT AID STUDY

SEC. 1015. (a) The President shall appoint a Commission on the Review of the Federal Impact Aid Program consisting of ten members.

(b) The Commission shall review and evaluate the administration and operation of the impact aid program under the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) including—

(1) the equity of the present funding structure under Public Law 874,

(2) the relative benefit of the assistance for impact aid under Public Law 874 review of the increasing costs of the program and the limitation on the availability of funds; and

(3) the ways in which districts of local educational agencies which are Federally impacted can best be assisted in meeting their educational needs.

(c)(1) The Secretary of Health, Education,

and Welfare shall assure that the Department of Health, Education, and Welfare provide full support and cooperation to the Commission appointed under this section.

(2) The provisions of part D of the General Education Provision Act, not inconsistent with the provisions of this section, shall apply to the Commission appointed under this section.

(3) This Commission shall closely coordinate its activities with activities of the Advisory Panel on Elementary and Secondary Education authorized under section 1203 of this Act.

(d) The Commission shall prepare and submit to the President and to the Congress not later than December 1, 1979, a report on the review and evaluation required by this section, together with such recommendations, including recommendations for legislation relating to the authorization of the program and funding for the program, as the Commission deems appropriate.

PART B—PUBLIC LAW 815

GENERAL EXTENSIONS OF PUBLIC LAW 815

SEC. 1021. (a) Sections 3 and 16 of the Act of September 23, 1950 (Public Law 815, Eighty-first Congress), are each amended by striking out "1978" and inserting in lieu thereof "1983".

(b) Section 15(15) of such Act is amended by striking out "1973–1974" and inserting in lieu thereof "1978–1979".

DETERMINATION OF NUMBER OF CHILDREN

SEC. 222. Section 5(a) of the Act of September 23, 1950 (Public Law 815, Eighty-first Congress), is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) the estimated increase, since the base years, in—

"(A) the number of children determined with respect to such agency under section 3(a)(2) of the Act of September 30, 1950, multiplied by 100 per centum of the average per pupil cost of constructing minimum school facilities in the State in which the school district of such agency is situated;

"(B) the number of children determined with respect to such agency under section (3)(a)(1) and such Act multiplied by 90 per centum of such cost;

"(2) the estimated increase, since the base year, in—

"(A) the number of children determined with respect to such agency under section 3(b)(3) of such Act multiplied by 50 per centum of such cost;

"(B) the number of children determined with respect to such agency under section 3(b)(1) of such Act multiplied by 45 per centum of such cost; and

"(C) the number of children determined with respect to such agency under section 3(b)(2) of such Act multiplied by 40 per centum of such cost;".

CONSTRUCTION ARRANGEMENTS

SEC. 1023. Section 10(a) of the Act of September 23, 1950 (Public Law 815, Eighty-first Congress), is amended by inserting ", leasing renovating, remodeling, or rehabilitating" after "arrangements for constructing" and after "this section for constructing".

DISASTER ASSISTANCE

SEC. 1024. Section 16(a) of the Act of September 23, 1950 (Public Law 815, Eighty-first Congress), is amended by striking out the last sentence in the matter following paragraph (6).

PART C—GENERAL PROVISIONS

NORTHERN MARIANA ISLANDS

SEC. 1031. (a) The Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is further amended by inserting "the Northern Mariana Islands," immediately after "American Samoa," each place it appears in section 3(d), (3)(B), (iii), (d)(3)(C), 6(c), and 403(8).

(b)(1) Section 10(a) of the Act of September 23, 1950 (Public Law 815, Eighty-first Congress), is amended by inserting "American Samoa, the Northern Mariana Islands," immediately after "Guam,".

(2) Section 15(13) of such Act is amended by inserting "the Northern Mariana Islands," immediately after "American Samoa,".

EFFECTIVE DATE

SEC. 1032. This title shall be effective with respect to the 1979 fiscal year, and subsequent fiscal years, except that—

(1) the amendments made by section 1006 shall be effective upon enactment of this Act and actions of the Commissioner of Education under the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), during or with respect to fiscal year 1978, shall be subject to the provisions of such amendments;

(2) the amendments made by sections 1003, 1007, 1011, and 1012 shall be effective with respect to fiscal year 1980, and subsequent fiscal years; and

(3) the provisions of section 1015 shall be effective upon enactment of this Act.

TITLE XI—INDIAN EDUCATION

PART A—ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

AMENDMENT TO PUBLIC LAW 874

SEC. 1101. (a) Effective with respect to fiscal years beginning on or after the date of enactment of this Act, section 3(d)(2) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by adding at the end thereof the following new subparagraph:

"(D) The amount of the entitlements of any local educational agency under this section for any fiscal year with respect to children who, while in attendance of such agency, resided on Indian lands, as described in clause (A) of section 403(1), shall be the amount determined under paragraph (1) with respect to such children for such fiscal year multiplied by 125 per centum.".

(b) Effective with respect to fiscal years beginning on or after the date of enactment of this Act, section 5(a)(2) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is repealed and section 5(a)(1) of such Act is redesignated as section 5(a).

(c) Effective with respect to fiscal years beginning on or after the date of enactment of this Act, section 5(b) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), is amended by inserting after paragraph (2)(as added by section 1005 of this Act) the following new paragraph:

"(3)(A) Payments of entitlements under section 3(d)(2)(D) of this Act shall be made only to local educational agencies which have, within one year of the date of enactment of this paragraph, or when local educational agencies are formed after such date of enactment, within one year of their formation, established such policies and procedures with respect to information received from Indian parents and tribes as required by this paragraph and which have made assurances to the Commissioner, at such time and in such manner as shall be determined by regulation, that such policies and procedures have been established. The Commissioner shall have the authority to waive this one-year limit for good cause, and in writing to the tribes to be affected.

"(B) Each local educational agency shall establish such policies and procedures as are necessary to insure that—

"(i) Indian children claimed under section 3(a) participate on an equal basis in the school program with all other children educated by the local educational agency;

"(ii) applications, evaluations, and program plans are adequately disseminated to the tribes and parents of Indian children claimed under section 3(a); and

"(iii) tribes and parents of Indian children claimed under section 3(a) are—

"(I) afforded an opportunity to present their views with respect to the application, including the opportunity to make recommendations concerning the needs of their children and the ways by which they can assist their children in realizing the benefits to be derived from the educational programs assisted under this paragraph;

"(II) actively consulted and involved in the planning and development of programs assisted under this paragraph; and

"(III) afforded a general opportunity to present their overall views on the educational program, including the operation of such programs, and the degree of parental participation allowed.

"(C)(i) Any tribe, or its designee, which has students in attendance at a local educational agency may file a written complaint with the Commissioner regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of subparagraph (B) of this paragraph.

"(ii) Within ten working days from receipt of the complaint, the Commissioner shall—

"(I) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or, if the Commissioner determines there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;

"(II) designate a hearing examiner to conduct the hearing; and

"(III) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.

"(iii) The hearing shall be held within thirty days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.

"(iv) The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceeding.

"(v) Within thirty days of the completion of the hearing, the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial actions (if any) which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Commissioner.

"(vi) Within thirty days of his receipt of the findings, recommendations, and record, the Commissioner shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for his decision.

"(vii) Upon completion of his final determination, the Commissioner shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Commissioner's final determination. The final determination of the Commissioner shall be subject to judicial review.

"(viii) In all actions under this subparagraph, the Commissioner shall have discretion to consolidate complaints involving the same tribe or local educational agency.

"(D) If the local educational agency rejects the determination of the Commissioner, or if the remedy required is not undertaken within the time established and the Com-

missioner determines that an extension of the time established will not effectively encourage the remedy required, the Commissioner shall withhold payment of all moneys to which such local agency is entitled under section 3(d)(2)(D) until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency: *Provided*, That the Commissioner may not withhold such moneys during the course of the school year if he determines that it would substantially disrupt the educational programs of the local educational agency.

"(E) This paragraph is based upon the special relationship between the Indian nations and the United States and nothing in it shall be deemed to relieve any State of any duty with respect to any citizens of that State.".

(d) Within one year of the date of enactment of this Act, the Secretary, in cooperation with the Commissioner, shall propose and promulgate special regulations which will provide that where a local educational agency does not undertake the remedial action required by the Commissioner under section 5(b)(3)(C)(vi) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) and the Commissioner determines that an extension of time will not effectively encourage the remedy, the affected tribes may elect to contract with the Bureau under title I of the Indian Self-Determination and Education Assistance Act to provide educational services provided by the local educational agency or elect to have such services provided by a Bureau of Indian Affairs school. Such regulations shall also establish procedures whereby the funding necessary to provide such educational services may be obtained, and establish such procedures as are necessary to insure orderly and expeditious transition in provision of educational services.

(e) Effective with respect to fiscal years beginning on or after the date of the enactment of this Act, section 5(c)(2)(A) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), as amended by section 1097 of this Act, is amended by redesignating divisions (ii) through (vi) as divisions (iii) through (vii), respectively, and by adding after division (i) the following new division:

"(ii) to each local educational agency which provides free public education for children who reside on Indian land, as described in clause (A) of section 403(1), which equals 75 per centum of the amount to which such agency is entitled under section 3(d)(2)(D);".

FUNDING PROVISION

SEC. 1102. (a) The Secretary of the Interior shall develop alternative methods for the equitable distribution of any supplemental program funds provided, pursuant to an appropriation under the Act of November 2, 1921, commonly referred to as the Snyder Act, for contracting under the Act of April 16, 1934, commonly referred to as the Johnson-O'Malley Act, and shall publish in the Federal Register by March 1, 1979 such alternatives for the purpose of allowing eligible tribes to comment by May 1, 1979. At that time, the Secretary shall conduct a field survey listing all alternative formulas.

(b) By July 1, 1979, the Secretary shall establish and publish the formula in the Federal Register which the majority of such tribes determine, by vote certified to the Secretary, to be most equitable and shall use such formula for purposes of distribution of the funds appropriated pursuant to such Act beginning on or after October 1, 1979. The Secretary shall, in accordance with procedures consistent with that prescribed herein, revise such formula periodically as necessary.

BASIC EDUCATIONAL SUPPORT

SEC. 1103. (a)(1) From sums already appropriated under the Act of November 2, 1921 (25 U.S.C. 13) and notwithstanding any other provision of law or any requirement of a grant or agreement relating to the timing of payments for basic support contracts or grants under the Act of April 16, 1934 (25 U.S.C. 452–457), the Secretary of the Interior shall make payments of any unexpended funds obligated for basic support contracts or grants under such Act of November 2, 1921, for fiscal year 1978 to any school that has received notification from the Department of the Interior of the award of such a contract or grant. Such payments shall be made in accordance with any applicable condition of such contracts or grants other than conditions relating to the time of payments.

(2) The Secretary of the Interior shall make the payments referred to in paragraph (1) not later than thirty days after the date of the enactment of this Act. Saturdays, Sundays, and legal public holidays, as established by section 6103 of title 5, United States Code, shall not be considered as days for purposes of the preceding sentence.

(b) Such sums as are needed under such Act of November 2, 1921, are authorized to be appropriated to provide funds for basic educational support through parent committees under such Act of April 16, 1934, to those public schools educating Indian students and whose total sum of Federal, State, and local funds is insufficient to bring the education of the enrolled Indian students to a level equal to the level of education provided non-Indian students in the public schools in which they are enrolled where the absence of such support would result in the closing of schools or the reduction in quality of the education program afforded Indian students attending public schools.

PART B—BUREAU OF INDIAN AFFAIRS PROGRAMS

STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN IN BUREAU OF INDIAN AFFAIRS SCHOOLS

SEC. 1121. (a) The Secretary, in consultation with the Assistant Secretary of Health, Education, and Welfare for Education, and in consultation with Indian organizations and tribes, shall carry out or cause to be carried out by contract with an Indian organization such studies and surveys, making the fullest use possible of other existing studies, surveys, and plans, as are necessary to establish and revise standards for the basic education of Indian children attending Bureau schools and Indian controlled contract schools (hereinafter referred to as "contract schools"). Such studies and surveys shall take into account factors such as academic needs, local cultural differences, type and level of language skills, geographical isolation and appropriate teacher-student ratios for such children, and shall be directed toward the attainment of equal educational opportunity for such children.

(b)(1) Within fifteen months of the date of enactment of this Act, the Secretary shall propose minimum academic standards for the basic education of Indian children, and shall distribute such proposed standards to the tribes and publish such proposed standards in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within eighteen months of the date of enactment of this Act, the Secretary shall establish final standards, distribute such standards to all the tribes and publish such standards in the Federal Register. The Secretary shall revise such standards periodically as necessary. Prior to any revision of such standards, the Secretary shall distribute such proposed revision to all the tribes, and publish such proposed revision in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

(2) Such standards shall apply to Bureau schools, and subject to subsection (e), to contract schools, and may also serve as a model for educational programs for Indian children in public schools. In establishing and revising such standards, the Secretary shall take into account the special needs of Indian students and the support and reinforcement of the specific cultural heritage of each tribe.

(c) The Secretary shall provide alternative or modified standards in lieu of the standards established under subsection (b), where necessary, so that the programs of each school shall be in compliance with the minimum standards required for accreditation of schools in the State where the school is located.

(d) A tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsections (b) and (c), where such standards are deemed by such body to be inappropriate or ill-conceived, and shall also have the authority to revise such standards to take into account specific needs of the tribe's children. Such revised standards shall be established by the Secretary unless specifically rejected by the Secretary for good cause and in writing to the affected tribes or local school board, which rejection shall be final and unreviewable.

(e) The Secretary, through contracting procedures, shall assist school boards of contract schools in the implementation of the standards established under subsection (b) and (c), if the school boards request that such standards, in part or in whole, be implemented. The Secretary shall not refuse to enter into a contract with respect to any contract school on the basis of failure to meet such standards. At the request of a contract school board, the Secretary shall provide alternative or modified standards for the standards established under subsections (b) and (c) to take into account the needs of the Indian children and the contract school.

(f) Subject to subsections (d) and (e), the Secretary shall begin to implement the standards established under this section immediately upon the date of their establishment. Within one year of such date, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract schools up to the level required by the applicable standards established under this section. Such plan shall include, but not be limited to, detailed information on the status of each school's educational program in relation to the applicable standards established under this section, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school up to the level required by such standards.

(g) There are hereby authorized to be appropriated such sums as may be necessary, for academic program costs, in order to bring all Bureau and contract schools up to the level required by the applicable standards established under this section.

NATIONAL CRITERIA FOR DORMITORY SITUATIONS

SEC. 1122. (a) The Secretary, in consultation with the Assistant Secretary for Health, Education, and Welfare for Education, and in consultation with Indian organizations and tribes, shall conduct or cause to be conducted by contract with an Indian organization, a study of the costs applicable to boarding arrangements for Indian students provided in Bureau and contract schools, for the purpose of establishing national criteria for such dormitory situations. Such criteria shall include adult-child ratios, needs for counselors (including special needs related to off-reservation boarding arrangements), space, and privacy.

(b) Within fifteen months of the date of enactment of this Act, the Secretary shall propose such criteria, and shall distribute such proposed criteria to the tribes and publish such proposed criteria in the Federal Register for the purpose of receiving comments from the tribes and other interested parties. Within eighteen months of the date of enactment of this Act, the Secretary shall establish final criteria, distribute such criteria to all the tribes, and publish such criteria in the Federal Register. The Secretary shall revise such criteria periodically as necessary. Prior to any revision of such criteria, the Secretary shall distribute such proposed revision to all the tribes, and publish such proposed revisions in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

(c) The Secretary shall begin to implement the criteria established under this section immediately upon the date of their establishment. Within one year of such date, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract boarding schools up to the criteria established under this section. Such plan shall include, but not be limited to, predictions for the relative need for each boarding school in the future, detailed information on the status of each school in relation to the criteria established under this section, specific cost estimates for meeting such criteria at each school, and specific time lines for bringing each school up to the level required by such criteria.

(d) There are hereby authorized to be appropriated such sums as may be necessary in order to bring each school up to the level required by the criteria established under this section.

REGULATIONS

SEC. 1123. The Secretary shall establish such regulations as are necessary to carry out sections 1121 and 1122 within eighteen months after the date of enactment of this Act.

STUDIES

SEC. 1124. There are hereby authorized to be appropriated no more than $1,000,000 to carry out the studies conducted under section 1121(a) and section 1122(a).

FACILITIES CONSTRUCTION

SEC. 1125. (a) The Secretary shall immediately begin to bring all schools, dormitories, and other facilities operated by the Bureau or under contract with the Bureau in connection with the education of Indian children into compliance with all applicable Federal, tribal, or State health and safety standards, whichever provide greater protection (except that the tribal standards to be applied shall be no greater than any otherwise applicable Federal or State standards), and with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), except that nothing in this section shall require termination of the operations of any facility which does not comply with such provisions and which is in use on the date of enactment of this Act.

(b) Within one year of the date of enactment of this Act, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congrees a detailed plan to bring such facilities into compliance with such standards. Such plan shall include, but not be limited to, detailed information on the status of each facility's compliance with such standards, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school into compliance with such standards.

(c) Within six months of the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress, and publish in the Federal Register, the system used to establish priorities for school construction projects. At the time any budget request for school construction is presented, the Secretary shall publish in the Federal Register and submit with the budget request the current list of all school construction priorities.

(d) There are hereby authorized to be appropriated such sums as may be necessary to carry out subsection (a).

BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS

SEC. 1126. (a) The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure, and supervision of programs and expenditures of Federal funds for the purpose of Indian Education administered by the Bureau. The Assistant Secretary shall carry out such functions through the Director of the Office of Indian Education Programs within the Bureau (hereinafter referred to as the "Office"), which shall be governed by the provisions of this Act, any other provision of law to the contrary notwithstanding.

(b) The Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved with provision of education services by the Bureau. The Assistant Secretary for Indian Affairs shall provide for the adequate coordination between the affected Bureau offices and the Office in order to facilitate the expeditious consideration of all contract functions relating to education. Nothing in this Act shall be construed to require the provision of separate support services for Indian education.

(c) Education personnel located in Bureau agencies, who are under the direction and supervision of the Director of the Office in accordance with the first sentence of subsection (b), shall—

(1) monitor and evaluate Bureau education programs, and

(2) provide technical and coordinating assistance in areas such as procurement, contracting, budgeting, personnel, and curriculum.

However, in the case of boarding schools located off reservation operated by the Bureau, education personnel located in area offices of the Bureau shall provide such services, under the direction and supervision of the Director of the Office.

(d) For the purpose of this section the term "functions" includes powers and duties.

IMPLEMENTATION

SEC. 1127. Within six months after the date of enactment of this Act, the Secretary shall establish and publish in the Federal Register the policies and procedures which are necessary to implement the transfer of functions made under section 1126.

ALLOTMENT FORMULA

SEC. 1128. (a) The Secretary shall establish, by regulation adopted in accordance with section 1138, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau or contract school. In establishing such formula, the Secretary shall consider—

(1) the number of Indian students served and size of the school;

(2) special cost factors, such as—

(A) isolation of the school;

(B) need for special staffing, transportation, or educational programs;

(C) food and housing costs;

(D) overhead costs associated with administering contracted education functions; and

(E) maintenance and repair costs associated with the physical condition of the educational facilities;

(3) the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located;

(4) the cost of bringing the school up to the level of the standards established under sections 1121 and 1122; and

(5) such other relevant factors as the Secretary determines are appropriate.

(b) Notwithstanding any other provisions of law, Federal funds appropriated for the general local operation of Bureau and contract schools, shall be allotted pro rata in accordance with the formula established under subsection (a), except that, in the case of any such school which is located in a school district of a local educational agency which receives from Federal funds under other provisions of law an average payment per Indian child attending such school in that district which is higher than the amount which would be received by such Bureau or contract school under such formula for each Indian child attending such school, the payment to be received by that school under this section for each such child shall be equal to such average payment for an Indian child in public school in that district.

(c) Notwithstanding subsection (b), the Secretary shall provide funds for the general local operation of Bureau and contract schools where necessitated by cases of emergencies or unforeseen contingencies not otherwise provided for under subsection (a). Whenever the Secretary makes funds available under this subsection, the Secretary shall report such action to the appropriate committees of Congress.

UNIFORM DIRECT FUNDING AND SUPPORT

SEC. 1129. (a) Within six months after the date of enactment of this Act, the Secretary shall establish, by regulation adopted in accordance with section 1138, a system for the direct funding and support of all Bureau and contract schools. Such system shall allot funds, in accordance with section 1128, and shall provide each affected school with notification of its approximate allotment not later than the end of the school year preceding the year for which the allotment is to be made.

(b) In the case of all Bureau schools, allotted funds shall be expended on the basis of local financial plans which shall be prepared by the local school supervisor in active consultation with the local school board for each school, and the local school board for each school shall have the authority to ratify, reject, or amend such financial plan, and expenditures thereunder, and, on its own determination or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan. The supervisor of the school may appeal any such action by the local school board to the superintendent for education of the Bureau agency, and the superintendent may, for good cause and in writing to the local school board, overturn the action of the local school board.

(c) Funds for self-determination grants under section 104(a)(2) of the Indian Self-Determination and Education Assistance Act shall not be used for providing technical assistance and training in the field of education by the Bureau unless such services are provided in accordance with a plan, agreed to by the tribe or tribes affected and the Bureau, under which control of education programs is intended to be transferred to such tribe or tribes within a specific period of time negotiated under such agreement.

(d) In the exercise of its authority under this section, a local school board may request technical assistance and training from the Secretary, and he shall, to the greatest extent possible, provide such services, and make appropriate provisions in the budget of the Office for such services.

POLICY FOR INDIAN CONTROL OF INDIAN EDUCATION

SEC. 1130. It shall be the policy of the Bureau, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

EDUCATION PERSONNEL

SEC. 1131. (a)(1) Chapter 51, subchapter III of chapter 53, and chapter 63 of Title 5, United States Code relating to leave, pay, and classification, and the sections relating to the appointment, promotion and removal of civil employes, shall not apply to educators or to education positions (as defined in subsection (n)).

(2) Paragraph (1) shall take effect one year after the date of enactment of this Act.

(b) Not later than the effective date of subsection (a)(2), the Secretary shall prescribe regulations to carry out this section. Such regulations shall govern—

(1) the establishment of education positions,

(2) the establishment of qualifications for educators,

(3) the fixing of basic compensation for educators and education positions,

(4) the appointment of educators,

(5) the discharge of educators,

(6) the entitlement of educators to compensation,

(7) the payment of compensation to educators,

(8) the conditions of employment of educators,

(9) the length of the school year applicable to education positions described in subsection (n)(1)(A),

(10) the leave system for educators, and

(11) such other matters as may be appropriate.

(c)(1) In prescribing regulations to govern the qualifications of educators, the Secretary shall require—

(A)(i) that lists of qualified and interviewed applicants for education positions be maintained in each agency and area office of the Bureau from among individuals who have applied at the agency or area level for an education position or who have applied at the national level and have indicted in such application an interest in working in certain areas or agencies; and

(ii) that a list of qualified and interviewed applicants for education positions be maintained in the Office from among individuals who have applied at the national level for an education position and who have expressed interest in working in an education position anywhere in the United States;

(B) that a local school board shall have the authority to waive on a case-by-case basis, any formal education or degree qualifications established by regulation pursuant to subsection (b)(2), in order for a tribal member to be hired in an education position to teach courses on tribal culture and language and that subject to subsection (d)(2)(A), a determination by a school board that such a person be hired shall be followed by the supervisor; and

(C) that it shall not be a prerequisite to the employment of an individual in an education position at the local level that such individual's name appear on the national list maintained pursuant to subsection (c)(1)(A)(ii) or that such individual has applied at the national level for an education position.

(2) The Secretary may authorize the temporary employment in an education position of an individual who has not met the certification standards established pursuant to regulations, if the Secretary determines that failure to do so would result in that position remaining vacant.

(d)(1) In prescribing regulations to govern the appointment of educators, the Secretary shall require—

(A)(i) that educators employed in a school (other than the supervisor of the school) shall be hired by the supervisor of the school unless there are no qualified applicants available, in which case the vacant position shall be filled at the national level from the list maintained pursuant to subsection (c)(1)(A)(ii).

(ii) each school supervisor shall be hired by the superintendent for education of the agency office of the Bureau in which the school is located, and

(iii) educators employed in an agency office of the Bureau shall be hired by the superintendent for education of the agency office;

(B) then before an individual is employed an education position in a school by the supervisor of a school (or, with respect to the position of supervisor, by the appropriate agency superintendent for education), the local school board for the school shall be consulted, and that subject to subsection (d)(2), a determination by the school board that such individual should or should not be so employed shall be followed by the supervisor (or with respect to the position of supervisor, by the agency superintendent for education); and

(C) that before an individual may be employed in an education position at the agency level, the appropriate agency school board shall be consulted, and that, subject to subsection (d)(3), a determination by such school board that such individual should or should not be employed shall be followed by the agency superintendent for education.

(2)(A) The supervisor of a school may appeal to the appropriate agency superintendent for education any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school other than that of supervisor. Upon such an appeal, the agency superintendent for education may, for good cause and in writing to the local school board, overturn the determination of the local school board with respect to the employment of such individual.

(B) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for a school that an individual be employed, or not be employed, as the supervisor of the school. Upon such an appeal, the Director of the Office may, for good cause and in writing to the local school board, overturn the determination of the local school board with respect to the employment of such individual.

(3) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office. Upon such an appeal, the Director of the Office may, for good cause and in writing to the agency school board, overturn the determination of the agency school board with respect to the employment of such individual.

(4) Any individual who applies at the local level for an education position shall state on such individual's application whether or not such individual has applied at the national level for an education position in the Bureau. If such individual is employed at the local level, such individual's name shall immediatey be forwarded to the Secretary, who shall, as soon as possibe but in no event in more than thirty days, ascertain the accuracy of the statement made by such individual pursuant to the first sentence of this subparagraph. If the individual's statement is found to have been false, such individual, at the Secretary's discretion, may be disciplined or discharged. If the individual had applied at the national level for an education position in the Bureau, the appointment of such individual at the local level shall be conditional for a period of ninety days, during which period the Secretary may appoint a more qualified individual (as determined by the Secretary) from the list maintained at the national level pursuant to subsection (c)(1)(A)(ii) to the position to which such individual was appointed.

(5) Except as expressly provided, nothing in this section shall be construed as conferring upon local school boards, authority over, or control of educators.

(e)(1) In prescribing regulations to govern the discharge and conditions of employment of educators, the Secretary shall require—

(A) that procedures be established for the rapid and equitable resolution of grievances of educators;

(B) that no educator may be discharged without notice of the reasons therefor and opportunity for a hearing under procedures that comport with the requirements of due process; and

(C) educators employed in Bureau schools shall be notified sixty days prior to the end of the school year whether their employment contract will be renewed for the coming year.

(2) The supervisor of a Bureau school may discharge (subject to procedures established under paragraph (1)(B)) for cause (as determined under regulations prescribed by the Secretary) any educator employed in such school. Upon giving notice of proposed discharge to an educator, the supervisor involved shall immediately notify the local school board for the school of such action. A determination by the local school board that such educator shall not be discharged shall be followed by the supervisor. The supervisor shall have the right to appeal such action to the superintendent for education of the appropriate agency office of the Bureau. Upon such an appeal, the agency superintendent for education may, for good cause and in writing to the local school board, overturn the determination of the local school board with respect to the employment of such individual.

(3) Each local school board for a Bureau school shall have the right (A) to recommend to the supervisor of such school that an educator employed in the school be discharged, and (B) to recommend to the superintendent of education of the appropriate agency office of the Bureau and to the Director of the Office, that the supervisor of the school be discharged.

(f)(1) Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section respecting an employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill a vacancy (no matter how such vacancy is created).

(2) For purposes of this subsection, the term "tribal organization" means—

(A) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c); 85 Stat. 688); or

(B) in connection with any personnel action referred to in this subsection, any local school board as defined in section 1139, and which has been delegated by such governing body the authority to grant a waiver under such subsection with respect to such personnel action.

(3) The term "Indian preference laws" means section 12 of the Act of June 18, 1934 (25 U.S.C. 472; 48 Stat. 986) or any other provision of law granting a preference to Indians in promotions and other personnel actions, except that such term shall not be considered to include section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(b); 88 Stat. 2205).

(g) Subject to the authority of the Civil Service Commission to determine finally the applicability of chapter 51 of title 5, United States Code, to specific positions and employees in the executive branch, the Secretary shall determine in accordance with subsection (a)(1) the applicability or inapplicability of such chapter to positions and employees in the Bureau.

(h)(1) The Secretary shall fix the basic compensation or annual salary rate for educators and education positions at rates comparable to the rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 is applicable.

(2) Each educator employed in an education position in Alaska shall be paid a cost-of-living allowance equal to 25 per centum of the rate of basic compensation to which such educator is entitled.

(3) The Secretary may pay a postdifferential not to exceed 25 per centum of the rate of basic compensation, on the basis of conditions of environment or work which warrant additional pay as a recruitment and retention incentive.

(i) Any individual—

(1) who on the date of enactment of this Act is holding a position which is determined under subsection (f) to be an education position and who elects under subsection (o)(2) to be covered under the provisions of this section, or

(2) who is an employee of the Federal Government or the municipal government of the District of Columbia and is transferred, promoted, or reappointed, without break in service, from a position under a different leave system to an education position,

shall be credited for the purposes of the leave system provided under regulations prescribed pursuant to subsection (b)(10), with the annual and sick leave to his credit immediately before the effective date of such election, transfer, promotion, or reappointment.

(j) Upon termination of employment with the Bureau, any annual leave remaining to the credit of an individual within the purview of this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, United States Code, except that leave earned or accrued under regulations prescribed pursuant to subsection (b)(10) shall not be so liquidated.

(k) In the case of any educator who is transferred, promoted, or reappointed, without break in service, to a position in the Federal Government under a different leave system, any remaining leave to the credit of such person earned or credited under the regulations prescribed pursuant to subsection (b)(10) shall be transferred to his credit in the employing agency on an adjusted basis in accordance with regulations which shall be prescribed by the Civil Service Commission.

(l) An educator who voluntarily terminates employment with the Bureau before the expiration of the existing employment contract between such educator and the Bureau shall not be eligible to be employed in another education position in the Bureau during the remainder of the term of such contract.

(m) In the case of any educator employed in an education position described in subsection (n)(1)(A) who—

(1) is employed at the close of a school year,

(2) agrees in writing to serve in such a position for the next school year, and

(3) is employed in another position during the recess period immediately preceding such next school year, or during such recess period receives additional compensation referred to in subsection (g)(2) or (g)(3), section 5533 of title 5, United States Code, relating to dual compensation, shall not apply to such educator by reason of any such employment during a recess period for any such receipt of additional compensation.

(n) For the purpose of this section—

(1) The term "education position" means a position in the Bureau the duties and responsibilities of which—

(A) are performed on a school-year basis principally in a Bureau school and involve—

(i) classroom or other instruction or the supervision or direction of classroom or other instruction;

(ii) any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(iii) any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(B) are performed at the agency level of the Bureau and involve the implementation of education-related programs other than the position of agency superintendent for education.

(2) The term "educator" means an individual whose services are required, or who is employed, in an education position.

(o)(1) This section shall apply with respect to any individual hired after the effective date of subsection (a)(2) for employment in an education position and to the position in which such individual is employed. Subject to paragraph (2), the enactment of this Act shall not affect the continued employment of any individual employed immediately before the effective date of subsection (a)(2) in an education position, or such individual's right to receive the compensation attached to such position.

(2) Any individual employed in an education position immediately before the effective date of subsection (a)(2) may, within five years of the date of enactment of this Act, make an irrevocable election to be covered under the provisions of this section.

MANAGEMENT INFORMATION SYSTEM

SEC. 1132. The Secretary shall establish within the Bureau, within one year after the date of the enactment of this Act, a computerized management information system, which shall provide information to all agency and area offices of the Bureau, and to the Office. Such information shall include but shall not be limited to—

(1) student enrollment;
(2) curriculum;
(3) staff;
(4) facilities;
(5) community demographics; and
(6) student assessment information.

BUREAU EDUCATION POLICIES

SEC. 1133. Within one hundred and eighty days of the date of enactment of this Act, the Secretary shall develop, publish in the Federal Register, and submit to all agency and area offices of the Bureau, all tribal governments, and the appropriate committees of the Congress, a draft set of education policies, procedures, and practices for education-related action of the Bureau. The Secretary shall, within one year of the date of enactment of this Act, provide that such uniform policies, procedures, and practices shall be finalized and promulgated. Thereafter, such policies, procedures and practices and their periodic revisions, shall serve as the foundation for future Bureau actions in education.

UNIFORM EDUCATION PROCEDURES AND PRACTICES

SEC. 1134. The Secretary shall cause the various divisions of the Bureau to formulate uniform procedures and practices with respect to such concerns of those divisions as relate to education, and shall report such practices and procedures to the Congress.

RECRUITMENT OF INDIAN EDUCATORS

SEC. 1135. The Secretary shall institute a policy for the recruitment of qualified Indian educators and a detailed plan to promote employees from within the Bureau. Such plan shall include opportunities for acquiring work experience prior to actual work assignment.

ANNUAL REPORT

SEC. 1136. The Secretary shall submit to each appropriate committee of the Congress a detailed annual report on the state of education within the Bureau and any problems encountered in the field of education during the year. Such report shall contain suggestions for improving the Bureau educational system and increasing local Indian control of such system.

RIGHTS OF INDIAN STUDENTS

SEC. 1137. Within six months of the date of enactment of this Act, the Secretary shall prescribe such rules and regulations as are necessary to insure the constitutional and civil rights of Indian students attending Bureau schools, including, but not limited to, their right to privacy under the laws of the United States, their right to freedom of religion and expression and their right to due process in connection with disciplinary actions, suspensions, and expulsions.

REGULATIONS

SEC. 1138. Regulations required to be adopted under sections 1126 through 1137 of this Act shall be deemed rules of general applicability prescribed for the administration of an applicable program for the purposes of section 431 of the General Education Provisions Act and shall be promulgated, submitted for congressional review, and take effect in accordance with the provisions of such section.

DEFINITIONS

SEC. 1139. For the purposes of this title—

(1) the term "agency school board" means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Secretary in consultation with the affected tribes, except that, in agencies serving a single school, the school board of such school shall fulfill these duties;

(2) the term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior;

(3) the term "Commissioner" means the Commissioner of Education;

(4) the term "financial plan" means a plan of services to be provided by each Bureau school;

(5) the term "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized Indian tribes;

(6) the term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State, and includes any State agency which directly operates and maintains facilities for providing free public education;

(7) the term "local school board", when used with respect to a Bureau school, means

a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected; and the number of such members shall be determined by the Secretary in consultation with the affected tribes;

(8) the term "Secretary" means the Secretary of the Interior;

(9) the term "supervisor" means the individual in the position of ultimate authority at a Bureau school; and

(10) the term "tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

PART C—INDIAN EDUCATION PROVISIONS

EXTENSION OF AUTHORIZATION

SEC. 1141. (a) Section 1005(g) of the Elementary and Secondary Education Act of 1965 as redesignated by section 801 of this Act, is amended by striking out "July 1, 1978" and inserting in lieu thereof "October 1, 1983".

(b) Section 303(a)(1) of the Indian Elementary and Secondary School Assistance Act (title III of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress)) as added by the Indian Education Act, is amended by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1983".

(c)(1) Section 422 of the Indian Education Act is amended by striking out "each of the three succeeding fiscal years" and inserting in lieu thereof "each of the succeeding fiscal years ending prior to October 1, 1983".

(2) Section 423(a) of such Act is amended by striking out "each of the three succeeding fiscal years" and inserting in lieu thereof "each of the succeeding fiscal years ending prior to October 1, 1983".

(3) Section 442(a) of such Act is amended by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1983".

CULTURALLY RELATED ACADEMIC NEEDS

SEC. 1142. (a) Section 302(a) of the Indian Elementary and Secondary School Assistance Act as amended—

(1) by striking out "special educational needs of Indian students" and inserting in lieu thereof "special educational and culturally related academic needs of Indian students"; and

(2) by striking out "these special educational needs" and inserting in lieu thereof "these special educational or culturally related academic needs, or both".

(b) Section 304 of such Act is amended by striking out "special educational needs" each place it appears in paragraphs (1) and (2) and inserting in lieu thereof "special educational or culturally related academic needs, or both,".

DEMONSTRATION PROJECTS

SEC. 1143. Section 303 of the Indian Elementary and Secondary School Assistance Act is amended by adding at the end thereof the following new subsection:

"(c) In addition to the sums appropriated for any fiscal year for grants to local educational agencies under this title, there is hereby authorized to be appropriated for any fiscal year an amount not in excess of 10 per centum of the amount appropriated for payments on the basis of entitlements computed under subsection (a) for that fiscal year, for the purpose of enabling the Commissioner to make grants on a competitive basis to local educational agencies to support demonstration projects and programs which are designed to plan for and improve education opportunities for Indian children, except that the Commissioner shall reserve a portion not to exceed 25 per centum of such funds to make grants for demonstration projects examining the special educational and culturally related academic needs that arise in school districts with high concentrations of Indian children.".

PARENT COMMITTEES

SEC. 1144. Section 305(b) of the Indian Elementary and Secondary School Assistance Act is amended—

(1) by inserting "(including persons acting in loco parentis other than school administrators or officials)" after "Indian children" in paragraph (2)(B)(i) and after "children participating in the program" in paragraph (2)(B)(ii);

(2) by inserting ", including policies and procedures relating to the hiring of personnel," after "policies and procedures" in paragraph (2)(C); and

(3) by striking out the period at the end of paragraph (2)(C) and inserting in lieu thereof a semicolon and by adding at the end thereof the following new paragraph:

"(3) provides that the parent committee formed pursuant to paragraph (2)(B)(ii) will adopt and abide by reasonable by-laws for the conduct of the program for which assistance is sought.".

ALLOCATION ADJUSTMENT

SEC. 1145. Section 307(b) of the Indian Elementary and Secondary School Assistance Act is amended to read as follows:

"(b) In the case of any fiscal year in which the maximum amounts for which local educational agencies are eligible have been reduced under the first sentence of subsection (a), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the second sentence of such subsection, the Commissioner may reallot, in such manner as he determines will best assist in advancing the purposes of this title, any amount awarded to a local education agency in excess of the amount to which it is entitled under section 303(a) and subsection (a) of this section, or any amount which the Commissioner determines, based upon estimates made by local educational agencies, will not be needed by any such agency to carry out its approved project.".

TRIBAL SCHOOLS

SEC. 1146. Notwithstanding any other provision of law, any Indian tribe or organization which is controlled or sanctioned by an Indian tribal government and which operates any school for the children of that tribe shall be deemed to be a local educational agency for purposes of section 303(a) of the Indian Elementary and Secondary School Assistance Act if each such school, as determined by the Commissioner, operated by that tribe or organization provides its students an educational program which meets the standards established under section 1121 for the basic education of Indian children, or is a school operated under contract by that tribe or organization in accordance with the provisions of the Indian Self-Determination and Education Assistance Act.

DEFINITION STUDY

SEC. 1147. Section 453 of the Indian Education Act is amended by inserting "(a)" immediately after "SEC. 453." and by adding at the end thereof the following new subsection:

"(b) The Assistant Secretary of Health, Education, and Welfare for Education, in consultation with Indian tribes, national Indian organizations, and the Secretary of the Interior, shall supervise a thorough study and analysis of the definition of Indian contained in subsection (a) and submit a report on the results of such study and analysis to the Congress not later than January 1, 1980. Such study and analysis shall include but not be limited to—

"(1) an identification of the total number of Indian children being served under this title;

"(2) an identification of the number of Indian children eligible and served under each of the four clauses of such definition in such subsection;

"(3) an evaluation of the consequences of eliminating descendants in the second degree from the terms of such definition, or of specifying a final date by which tribes, bands, and groups must be recognized, or of both;

"(4) other options for changes in the terms of such definition and an evaluation of the consequences of such changes, together with supporting data;

"(5) recommendations with respect to criteria for use by the Commissioner under the rulemaking authority contained in clause (4) of such subsection.".

DATA COLLECTION

SEC. 1148. Section 453 of the Indian Education Act is amended by inserting after subsection (b), as added by section 1147:

"(c) In establishing a child's eligibility for entitlement under part A of this Act, the Commissioner shall request at least the following information on the student eligibility form:

"(1) the name of the tribe, band, or other organized group of Indians with which the applicant claims membership, along with the enrollment number establishing membership (where applicable), and the name and address of the organization which has updated and accurate membership data for such tribe, band, or other organized group of Indians; or, if the child is not a member of a tribe, band, or other organized group of Indians, the student eligibility form shall bear the name, the enrollment number (where applicable) and the organization (and address thereof) responsible for maintaining updated and accurate membership roles of any of the applicant's parents or grandparents, from whom the applicant claims eligibility;

"(2) whether the tribe, band, or other organized group of Indians with which the applicant, his parents, or grandparents claim membership are federally recognized;

"(3) the name and address of the parent or legal guardian;

"(4) the signature of the parent or legal guardian verifying the accuracy of the information supplied; and

"(5) any other information which the Secretary deems necessary to provide an accurate program profile.".

PROGRAM MONITORING

SEC. 1149. (a) The Commissioner shall establish a method of auditing on an annual basis a sample of not less than one-third of the total number of school districts receiving funds under part A of the Indian Education Act, and shall report to the Congress his findings.

(b) Any falsification of information provided on the local educational agency application for funds under part A of such Act is punishable by impoundment of unused funds and an ineligibility for receiving any future entitlement under such Act.

(c) Any falsification of information provided on the student eligibility form for funds under part A of such Act is punishable by making that individual ineligible for receiving any future entitlement under the Act.

AMENDMENTS TO TITLE X OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

SEC. 1150. (a) Section 1005(c)(1)(E) of the Elementary and Secondary Education Act of 1965, as redesignated by section 801 of this

Act, is amended by inserting "and gifted and talented Indian children" after "handicapped".

(b)(1) Section 1005(c)(1)(F) of the Elementary and Secondary Education Act of 1965, as redesignated by section 801 of this Act, is amended to read as follows:

"(F) early childhood programs, including kindergarten;".

(2)(A) Section 1005(d) the Elementary and Secondary Education Act of 1965, as redesignated by section 801 of this Act, is amended—

(i) by striking out "children" in paragraphs (1) and (2) of such section and by inserting in lieu thereof "students" each time it appears; and

(ii) by inserting after "teachers" a comma and the following: "administrators".

(B) The section heading of section 1005 of the Elementary and Secondary Education Act of 1965, as redesignated by section 801 of this Act, is amended to read as follows:

"IMPROVEMENT OF EDUCATIONAL OPPORTUNITIES FOR INDIAN STUDENTS"

(c)(1) Section 1005(e) of the Elementary and Secondary Education Act of 1965, as redesignated by section 801 of this Act, is amended as follows:

"(e)(1) The Commissioner is also authorized to make grants to and contracts with public agencies, State educational agencies in States in which more than five thousand Indian children are enrolled in public elementary and secondary schools, Indian tribes, Indian institutions, Indian organizations, or to make contracts with private institutions and organizations, to establish, on a regional basis, information centers to—

"(A) evaluate programs assisted under this part, under the Indian Elementary and Secondary School Assistance Act, under section 314 of the Adult Education Act, and other Indian education programs in order to determine their effectiveness in meeting the special educational and culturally related academic needs of Indian children and to conduct research to determine those needs;

"(B) provide technical assistance upon request to local educational agencies and Indian tribes, Indian organizations, Indian institutions, and parent committees created pursuant to section 305(b)(2)(B)(ii) of the Indian Elementary and Secondary School Assistance Act in evaluating and carrying out programs assisted under this part, under such Act, and under section 314 of the Adult Education Act through the provision of materials and personnel resources; and

"(C) disseminate information upon request to the parties described in subparagraph (B) concerning all Federal education programs which affect the education of Indian children including information on successful models and programs designed to meet the special education needs of Indian children.

"(2) Grants or contracts made pursuant to this subsection may be made for a term not to exceed three years (renewable at the end of that period subject to the approval of the Commissioner) provided that provision is made to insure annual review of the projects.".

(2) Section 1005(b) of such Act, as redesignated by section 801 of this Act, is amended by striking out "Indian tribes, organizations, and institutions" and inserting in lieu thereof "Indian tribes, Indian organizations, and Indian institutions".

(d) Section 1005(f) of the Elementary and Secondary Education Act of 1965, as redesignated by section 801 of this Act, is amended by inserting "(1)" and "(f)", by redesignating clauses (1), (2), (3), and (4) as clauses (A), (B), (C), and (D) respectively, and by adding at the end thereof the following:

"(2) The Commissioner shall not approve an application for a grant under subsection (e) of this section unless he is satisfied that the funds made available under that subsection will be so used as to supplement the level of funds from State, local, and other Federal sources that would, in the absence of Federal funds under this subsection, be made available by the State or local educational agency for the activities described in this subsection, and in one case will be used so as to supplant those funds.".

(c) Section 1005(g) of the Elementary and Secondary Education Act of 1965, a redesignated by section 801 of this Act is amended by inserting "(1)" after "(g)" and by adding at the end therof the following:

"(2) For the purpose of making grants under subsection (c) of this section there are hereby authorized to be appropriated $8,000,000 for each of the fiscal years ending prior to October 1, 1983. The sum of the grants made to State educational agencies under subsection (e) of this section shall not exceed 15 per centum in any fiscal year of the sums appropriated for that year.".

(f) Section 306(a) of the Indian Elementary and Secondary School Assistance Act is amended by inserting "estimated to be" after "equal to the amount".

DEFINITION OF INDIAN

SEC. 1151. Section 453(1) of the Indian Education Act is amended by striking out "now or in the future".

TEACHER TRAINING AND FELLOWSHIPS

SEC. 1152. (a) The first sentence of section 422(a) of the Indian Education Act is amended by striking out "children" and inserting in lieu thereof "people".

(b) Section 423(a) of the Indian Education Act is amended—

(1) by striking out "less than three, nor"; and

(2) by striking out "professional or graduate degree in engineering, medicine, law, business, forestry, and related field" and inserting in lieu thereof "postbaccalaureate degree in medicine, law, education, and related fields or leading to an undergraduate or graduate degree in engineering, business administration, natural resources, and related fields.".

TITLE XII—ADMINISTRATIVE PROVISIONS

PART A—EQUALIZATION

DATA COLLECTION

SEC. 1201. Section 406 of the General Education Provisions Act is amended by adding at the end thereof the following new subsection:

"(i)(1) In addition to its other responsibilities, the National Center for Education Statistics shall, in consultation with the Office of Education, collect uniform data from the States on financing of elementary and secondary education. Each State receiving funds under the Elementary and Secondary Education Act of 1965 shall cooperate with the National Center in this effort.

"(2)(A) The National Center shall, in consultation with the Office of Education, publish by no later than September 30, 1979, and by no later than September 30 of each second fiscal year thereafter, a composite profile of each State showing the degree to which each has achieved equalization of resources for elementary and secondary education among the school districts within the State. A summary of these profiles shall show this equalization among the States.

"(B) In compiling the profiles required by this paragraph, the National Center shall list the degree of equalization both within and among the States according to the following standards:

"(i) the disparity in expenditures among school districts;

"(ii) the disparity from wealth neutrality; and

"(iii) such other measures as the National Center considers appropriate, including a consideration of price differentials and pupil-teacher ratios.

"(3) There are authorized to be appropriated such sums as may be necessary for any fiscal year to assist the National Center in carrying out its responsibilities under this subsection.".

EQUALIZATION ASSISTANCE

SEC. 1202. Part C of the General Education Provisions Act is amended by inserting after section 426 the following new section:

"EQUALIZATION ASSISTANCE

"SEC. 426A. (a) The Commissioner is authorized from the sums appropriated pursuant to subsection (d) to make grants to States to assist in developing and implementing plans to revise their systems of financing elementary and secondary education in order to achieve a greater equalization of resources among school districts. Any State desiring to receive such a grant shall (1) submit an application approved by the State legislature for such funds, (2) provide that State funds will match the Federal funds on a dollar for dollar basis, and (3) show how these efforts build upon the knowledge gained through the plans developed pursuant to section 842 of the Education Amendments of 1974.

"(b) The Commissioner is authorized, from sums appropriated pursuant to subsection (d), (1) to develop and disseminate models and materials useful to the States in planning and implementing revisions of their school financing systems, and (2) to establish temporary national and regional training centers to assist those involved in school finance in providing the level of expertise needed by the States in revising their financing systems.

"(c) The Commissioner shall (1) designate a unit within the Office of Education to serve as a national dissemination center for information on the States' efforts to achieve a greater equalization of resources for elementary and secondary education, and (2) develop an analysis of what has been learned through the use of funds available under section 842 of the Education Amendments of 1974 and disseminate the results of this analysis.

"(d) There are hereby authorized to be appropriated $4,000,000 for each of the fiscal years ending prior to September 30, 1983, for the purposes of this section.".

SCHOOL FINANCE

SEC. 1203. (a) It is the purpose of this section to provide for—

(1) the availability of reliable and comparative data on the status and trends in financing elementary and secondary education;

(2) the conduct of studies necessary to understand and analyze the trends and problems affecting the financing of elementary and secondary education, both public and non-public, including the prospects for adequate financing during the next ten years; and

(3) the development of recommendations for Federal policies to assist in improving the equity and efficiency of Federal and State systems for raising and distributing revenues to support elementary and secondary education.

(b) In order to carry out the purposes of this section, the Secretary shall carry out the studies and surveys set forth in subsection (e) relating to the financing of elementary and secondary education.

(c)(1) In order to provide the Secretary and the Congress with advice and counsel from distinguished and knowledgeable members of the public on the conduct of the activities authorized under this section, there

is established within the Department of Health, Education, and Welfare an Advisory Panel on Financing Elementary and Secondary Education to be composed of fifteen members appointed by the President. The Panel shall include (A) representatives of public and non-public elementary and secondary education, including board members, administrators, and teachers, (B) State and local officials, (C) citizens, and (D) scholars of school finance.

(2) The members of the Advisory Panel shall be appointed, without regard for the provisions of title 5, United States Code, governing appointments in the competitive service, not later than sixty days after the enactment of this section.

(3) Members who are not in the regular full-time employ of the United States shall, while attending to the business of the Advisory Panel, be entitled to receive compensation at the daily rate prescribed for grade 18 in section 5332 of such title 5, including travel time. All members while serving on the business of the Advisory Panel away from their homes or regular places of business, may be allowed travel expenses in accordance with Section 5703 of title 5.

(4) The Advisory Panel shall provide periodic advice to the Secretary concerning all activities conducted under this section. The Secretary shall make available to the Advisory Panel such technical and other assistance as may be necessary to enable the Advisory Panel to carry out its responsibilities.

(5) The views and recommendations of the Advisory Panel shall be presented to the White House Conference on Education called pursuant to the provisions of section 804 of the Education Amendments of 1974.

(6) Sixty days after the submission of the final report under subsection (f) of this section, the Advisory Panel shall terminate.

(7) There are authorized to be appropriated such sums as may be necessary for fiscal years 1979 and 1980 to carry out the provisions of this subsection.

(8) Section 804(c)(1) of the Education Amendments of 1974 is amended—

(A) by striking out "thirty-five" and inserting in lieu thereof "forty-one";

(B) by striking out "fifteen" and inserting in lieu thereof "twenty-one"; and

(C) by inserting after the first sentence the following new sentence: "Six of the members appointed by the President shall be members of the Advisory Panel on Financing Elementary and Secondary Education.".

(d) The studies and surveys conducted under this section shall consider (1) the prospects for adequate financing of elementary and secondary schools during the ten year period from October 1, 1979, through September 30, 1989, and (2) the distribution of financial resources for elementary and secondary education among the States, among school districts within the States, and among schools within school districts. The Secretary shall have the authority necessary to achieve coordination, avoid redundancy, and insure the high quality of the studies and surveys carried out under this section and to ensure the relevance of those studies to the objectives of this section.

(e) The studies and surveys carried out under this section shall include—

(1) an analysis of the capacity of educational finance systems to provide adequate school revenues, including an examination of future trends in educational service requirements, cost of supplying these services, and available school revenues from Federal, State, and local sources, taking account of noneducational service demands on revenues;

(2) to the extent feasible, the development of procedures for the conduct of the activities of the National Center for Education Statistics under section 406(1) of the General Education Provisions Act;

(3) an analysis of the recent trends in the distribution of these resources including (A) an examination of recent court and State legislative developments, (B) case studies of States showing the greatest degree of equalization of resources in order to determine whether common elements exist leading to such equalization, and (C) special analyses of the effects of such recent trends on school districts in large urban areas and in poor rural areas and the effects of such trends on students who are members of minority groups, or who are economically or educationally disadvantaged or handicapped;

(4) an analysis of standards to measure inter-State, intra-State, and intradistrict equalization, including an examination of the standards showing disparities in expenditures, variations from fiscal neutrality, weightings of classes of pupils, and applications of these standards to an illustrative number of States, school districts, and schools;

(5) an analysis of the impact of Federal and State education programs on the distribution of State and local education resources and of the relationship between such Federal and State programs;

(6) recommendations for alternative Federal roles in the context of the total responsibility for financing schools among local, State, and Federal levels, including recommendations for changes in current Federal programs and suggestions for new Federal programs to promote greater equalization;

(7) an analysis of the impact of school finance equalization on the cost and quality of education programs, including particularly the quality of education programs in those districts recognized as educational leaders prior to equalization;

(8) an analysis of the effects of school finance equalization on curricular and extracurricular activities related to the arts, athletics, foreign languages, music, and other programs or activities of special value, or enrichment, or which especially serve the needs or talents of a limited sector of the preschool, elementary, or secondary school population;

(9) an analysis of the effects of school finance equalization on the distribution of tax burdens by level of government, type of revenue, and family income of taxpayers;

(10) an analysis of current and future Federal assistance for non-public elementary and secondary education, including the extent of non-public participation in Federal programs, trends in enrollments and costs of private education, the impact of private schools on public school enrollments and financial support, and an examination of alternative Federal policies for support of private education; and

(11) an analysis of the extent to which school districts participate in programs administered by Federal agencies other than the Education Division of the Department of Health, Education, and Welfare which analysis (A) shall include an assessment of barriers to school district participation in programs which have general purpose governments as primary beneficiaries and (B) shall explore alternative coordinating mechanisms to achieve equitable school district participation in such programs.

The studies described in this section shall be assigned to such organizational units within the Department as the Secretary deems appropriate. All studies and surveys described in this section shall utilize existing information to the extent possible, and shall require the collection of new information only as may be required. Appropriate resources shall be made available to reimburse respondents for costs associated with any additional data collection required by this section.

(f) The Secretary and the Advisory Panel shall make interim reports to the President and the Congress no later than December 31, 1979, and December 31, 1980, and shall make a final report thereto no later than December 31, 1981, on the results of the studies conducted under this section. The Secretary and the Advisory Panel shall provide comments on each of the above reports and such additional recommendations, including recommendations for legislation, as the Secretary and the Panel may deem appropriate to the President and to the Congress no later than sixty days after the submission of such reports. Any other provision of law, rule, or regulation to the contrary notwithstanding, such reports of the Panel shall not be submitted to any review outside of the Panel before their transmittal to the Congress, but the President and the Secretary may make to the Congress such recommendations with respect to the contents of the reports as each may deem appropriate.

(g)(1) The Secretary shall submit to the Congress, within one hundred and twenty days after the date of the enactment of the Act, a plan for studies to be conducted under this section. The Secretary shall have such plan delivered to both Houses on the same day and to each House while it is in session. The Secretary shall not commence such studies until the first day after the close of the first period of sixty calendar days of continuous session of Congress after the date of the delivery of such plan to the Congress.

(2) For the purposes of paragraph (1)—

(A) continuity of session is broken only by adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

(h) Sums made available pursuant to section 183 of the Elementary and Secondary Education Act of 1965 and other funds available to any agency of the Department of Health, Education, and Welfare for purposes consistent with this section, shall be available to carry out the provisions of this section.

(i) For purposes of this section, the term "State" means each of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

PART B—PAPERWORK CONTROL

SHORT TITLE

SEC. 1211. This part may be cited as the "Control of Paperwork Amendments of 1978".

GENERAL EDUCATION PROVISIONS ACT AMENDMENT

SEC. 1212. (a) Paragraph (3) of section 406(b) of the General Education Provisions Act is amended by inserting ", including State agencies responsible for postsecondary education," immediately after "local educational agencies".

(b) The General Education Provisions Act is amended by adding after section 400 the following new section:

"CONTROL OF PAPERWORK

"SEC. 400A. (a)(1)(A) In order to eliminate excessive detail and unnecessary and redundant information requests and to achieve the collection of information in the most efficient and effective possible manner, the Secretary shall coordinate the collection of information and data acquisitioned activities of all Federal agencies, (i) whenever the respondents are primarily educational agencies or institutions, and (ii) whenever the purpose of such activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

"(B) There is hereby established a Federal Education Data Acquisition Council, to consist of members appointed by the Secretary who shall represent the public and the major agencies which collect and use education data, including one representative each of the Office of Management and Budget and of the Office of Federal Statistical Policy and Standards. The members representing the public may be appointed for not more than three years. The Council shall advise and assist the Secretary with respect to the improvement, development, and coordination of Federal education information and data acquisition activities, and shall review the policies, practices, and procedures established by the Secretary. The Council shall meet regularly during the year and shall be headed by an individual from an agency which has expertise in data collection but which undertakes no major data collection of education data.

"(2) For the purposes of this section, the term—

"(A) 'information' has the meaning given it by section 3502 of title 44, United States Code:

"(B) 'Federal agency' has the meaning given it by section 3502 of the same title; and

"(C) 'educational agency or institution' means any public or private agency or institution offering education programs.

"(A)(3) The Secretary shall review and coordinate all collection of information and data acquisition activities described in paragraphs (1)(A) of this subsection, in accordance with procedures approved, by the Federal Education Data Acquisition Council. Such procedures shall be designed in order to enable the Secretary to determine whether proposed collection of information and data acquisition activities are excessive in detail, unnecessary, redundant, ineffective, or excessively costly, and, if so, to advise the heads of the relevant Federal agencies.

"(B) No collection of information or data acquisition activity subject to such procedures shall be subject to any other review, coordination, or approval procedure outside of the relevant Federal agency except as required by this subsection and except that an aggrieved agency may seek review of an adverse action by the Secretary under subparagraph (A) to the Director of the Office of Management under the rules and regulations established pursuant to section 3509 of title 44, United States Code, and the Director shall issue a decision thereon within 10 days after receipt of the request for review.

"(C) The procedures established by the Secretary shall include a review of plans for evaluations and for research when such plans are in their preliminary stages, in order to give advice to the heads of Federal agencies regarding the data acquisition aspects of such plans.

"(b)(1) The Secretary shall assist each Federal agency in performing the review and coordination required by this section and shall require of each agency a plan for each collection of information and data acquisition activity, which shall include—

"(A) a detailed justification of how information once collected will be used;

"(B) the methods of analysis which will be applied to such data;

"(C) the timetable for the dissemination of the collected data; and

"(D) an estimate of the costs and manhours required by each educational agency or institution to complete the request and an estimate of costs to Federal agencies to collect, process, and analyze the information, based upon previous experience with similar data or upon a sample of respondents.

"(2) In performing the review and coordination required by this section, the Secretary shall assure that—

"(A) no information or data will be requested of any educational agency or institution unless that request has been approved and publicly announced by the February 15 immediately preceding the beginning of the new school year, unless there is an urgent need for this information or a very unusual circumstance exists regarding it;

"(B) sampling techniques, instead of universal responses, will be used wherever possible, with special consideration being given to the burden being placed upon small school districts, colleges, and other educational agencies and institutions; and

"(C) no request for information or data will be approved if such information or data exist in the same or a similar form in the automated indexing system required to be developed pursuant to subsection (d).

"(3) Each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a thirty-day period, to comment to the Secretary on the collection of information and data acquisition activity. The exact data instruments for each proposed activity shall be available to the public upon request during this comment period.

"(4) No changes may be made in the plans for the acquisition of that information or data, except changes required as a result of the review described in this section, after such plans have been finally approved under this section, unless the changed plans go through the same approval process.

"(5) The Secretary may waive the requirements of this section for individual research and evaluation studies which are not designated for individual project monitoring or review, provided that—

"(A) the study shall be of a nonrecurring nature;

"(B) any educational agency or institution may choose whether or not to participate, and that any such decision shall not be used by any Federal agency for purposes of individual project monitoring or funding decisions;

"(C) the man-hours necessary for educational agencies and institutions to respond to requests for information or data shall not be excessive, and the requests shall not be excessive in detail, unnecessary, redundant, ineffective, or excessively costly; and

"(D) the Federal agency requesting information or data has announced the plans for the study in the Federal Register.

The Secretary shall inform the relevant agency or institution concerning the waiver decision within thirty days following such an announcement, or the study shall be deemed waived and may proceed. Any study waived under the provisions of this subsection shall be subject to no other review than that of the agency requesting information or data from educational agencies or institutions.

"(6) Nothing in this section shall be construed to interfere with the enforcement of the provisions of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law.

"(c) The Secretary shall, insofar as practicable, and in accordance with the provisions of this Act, provide educational agencies and institutions and other Federal agencies, pursuant to the requirement of section 406(f)(2)(A), with summaries of information collected and the data acquired by Federal agencies, unless such data were acquired on a confidential basis.

"(d) The Secretary shall, insofar as practicable—

"(1) develop standard definitions and terms consistent, wherever possible, with those established by the Office of Federal Statistical Policy and Standards, Department of Commerce, to be used by all Federal agencies in dealing with education-related information and data acquisition requests;

"(2) develop an automated indexing system for cataloging all available data;

"(3) establish uniform reporting dates among Federal agencies for the information and data acquisition required after review under this section;

"(4) publish annually a listing of education data requests, by Federal agency, and for the programs administered in the Education Division, publish a listing annually of each such program with its appropriation and with the data burden resulting from each such program; and

"(5) require the Federal agency proposing the collection of information or data acquisition activity to identify in its data instrument the legislative authority specifically requiring such collection, if any and require the responding educational agency or institution to make the same identification if it in turn collects such information or data from other agencies or individuals.

"(e)(1) Subject to the provisions of paragraph (2), the Secretary shall develop, in consultation with Federal and State agencies and local educational agencies, procedures whereby educational agencies and institutions are permitted to submit information required under any Federal educational program to a single Federal or State educational agency.

"(2) Any procedures developed under paragraph (1) shall be considered regulations for the purpose of section 431 and shall be submitted subject to disapproval in accordance with section 431(e) of this Act for a period of not to exceed 60 days computed in accordance with such section.

"(f) The Secretary shall submit a report to the Congress not less than once every three years, describing the implementation of this section. Such report shall contain recommendations for revisions to Federal laws which the Secretary finds are imposing undue burdens on educational agencies and institutions, and such recommendations shall not be subject to any review by any Federal agency outside the Department.

"(f)(1) The Secretary is authorized to make grants from sums appropriated pursuant to this subsection to State educational agencies, including State agencies responsible for postsecondary education, for the development or improvement of education management information systems.

"(2) Any State educational agency is eligible for a grant of funds under this subsection subject to the following conditions:

"(A) The agency agrees to use such funds for the development or improvement of its management information system and agrees to coordinate all data collection for Federal programs administered by the agency through such a system.

"(B) The agency agrees to provide funds to local educational agencies and institutions of higher education for the development or improvement of management information systems when such grants are deemed necessary by the State educational agency.

"(C) The State agency agrees to take specific steps, in cooperation with the Secretary and with local educational agencies or institutions of higher education in the State, as appropriate, to eliminate excessive detail and unnecessary and redundant information requests within the State and to achieve the collection of information in the most efficient and effective possible manner so as to avoid imposing undue burdens on local educational agencies or institutions of higher education.

"(g) For the purpose of carrying out this subsection—

"(1) there are authorized to be appropriated for salaries and expenses $600,000 for fiscal year 1979, $1,000,000 for fiscal year 1980, and $1,200,000 for each of the two succeeding fiscal years;

"(2) there are authorized to be appropriated for grants under paragraph (6) the

sums of $5,000,000 for fiscal year 1979, $25,000,000 for fiscal year 1980, and $50,000,000 for each of the two succeeding fiscal years; and

"(3) the sums appropriated according to paragraphs (1) and (2) shall be appropriated as separate line items.".

(c) Section 406 of such Act is amended—

(1) by striking out subsection (g), and

(2) by redesignating subsection (h), and all references thereto, as subsection (g).

APPLICATIONS

SEC. 1213. Subpart 2 of part C of the General Education Provisions Act is amended by adding immediately before section 431 thereof the following new section:

"APPLICATIONS

"SEC. 430. (a) Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this section, the Commissioner is authorized to provide for the submission of applications for assistance effective for three fiscal years under any applicable program with whatever amendments to such applications being required as the Commissioner determines essential.

"(b) The Commissioner shall, insofar as is practicable, establish uniform dates during the year for the submission of applications under all applicable programs and for the approval of such applications.

"(c) The Commissioner shall, insofar as is practicable, develop and require the use of—

"(1) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local agencies pursuant to some objective formula, and such application shall be used as the single application for as many of these programs as is practicable;

"(2) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local agencies on a competitive or discretionary basis, and such application shall be used as the single application for as many of such programs as is practicable; and

"(3) a common application for grants to local educational agencies in applicable programs which are directly administered by the Commissioner, and such application shall be used as the single application for as many of these programs as is practicable.".

PART C—FEDERAL, STATE AND LOCAL RESPONSIBILITIES

STATE AND LOCAL ADMINISTRATION

SEC. 1231. (a) The General Education Provisions Act is further amended—

(1) by redesignating section 435 as section 415, by inserting such section (as so redesignated) immediately after section 414, and by deleting such section from its previous location;

(2) by redesignating section 437 as section 406A, by inserting such section immediately after section 406, and by deleting such section from its previous location; and

(3) by striking out sections 434 and 436 and by inserting immediately after section 433 the following new subpart:

"Subpart 3—Administration of Education Programs and Projects by States and Local Educational Agencies

"STATE EDUCATIONAL AGENCY MONITORING AND ENFORCEMENT

"SEC. 434. (a) In the case of any applicable program in which Federal funds are made available to local agencies in a State through or under the supervision of a State board or agency, the Commissioner may require the State to submit a plan for monitoring compliance by local agencies with Federal requirements under such program and for enforcement by the State of such requirements. The Commissioner may require such plan to provide—

"(1) for periodic visits by State personnel of programs administered by local agencies to determine whether such programs are being conducted in accordance with such requirements;

"(2) for periodic audits of expenditures under such programs by auditors of the State or other auditors not under the control, direction, or supervision of the local educational agency; and

"(3) that the State investigate and resolve all complaints received by the State, or referred to the State by the Commissioner, relating to the administration of such programs.

"(b) In order to enforce the Federal requirements under any applicable program the State may—

"(1) withhold approval, in whole or in part, of the application of a local agency for funds under the program until the State is satisfied that such requirements will be met; except that the State shall not finally disapprove such an application unless the State provides the local agency an opportunity for a hearing before an impartial hearing officer and such officer determines that there has been a substantial failure by the local agency to comply with any of such requirements;

"(2) suspend payments to any local agency, in whole or part, under the program if the State has reason to believe that the local agency has failed substantially to comply with any of such requirements, except that (A) the State shall not suspend such payments until fifteen days after the State provides the local agency an opportunity to show cause why such action should not be taken and (B) no such suspension shall continue in effect longer than sixty days unless the State within such period provides the notice for a hearing acquired under paragraph (3) of this subsection;

"(3) withhold payments, in whole or in part, under any such program if the State finds, after reasonable notice and opportunity for a hearing before an impartial hearing officer, that the local agency has failed substantially to comply with any of such requirements.

Any withholding of payments under paragraph (3) of this subsection shall continue until the State is satisfied that there is no longer a failure to comply substantially with any of such requirements.

"SINGLE STATE APPLICATION

"SEC. 435. (a) In the case of any State which applies, contracts, or submits a plan, for participation in any applicable program in which Federal funds are made available for assistance to local educational agencies through, or under the supervision of the State educational agency of that State, such State shall submit (subject, in the case of programs under titles I and IV of the Elementary and Secondary Education Act of 1965, to the provisions of title V of such Act) to the Commissioner a general application containing the assurances set forth in subsection (b). Such application may be submitted jointly for all programs covered by the application, or it may be submitted separated for each such program or for groups of programs. Each application submitted under this section must be approved by each official, agency, board, or other entity within the State which, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

"(b) An application submitted under subsection (a) shall set forth assurances, satisfactory to the Commissioner—

"(1) that each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

"(2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to such entities, and that the public agency or nonprofit private agency, institution, or organization will administer such funds and property;

"(3) that the State will adopt and use proper methods of administering each applicable program, including—

"(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law,

"(B) providing technical assistance, where necessary, to such agencies, institutions, and organizations,

"(C) encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations.

"(D) the dissemination throughout the State of information on program requirements and successful practices, and

"(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation;

"(4) that the State will evaluate the effectiveness of covered programs in meeting their statutory objectives, at such intervals (not less often than once every three years) and in accordance with such procedures as the Commissioner may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

"(5) that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

"(6) that the State will make reports to the Commissioner (including reports on the results of evaluations required under paragraph (4)) as may reasonably be necessary to enable the Commissioner to perform his duties under each program, and that the State will maintain such records, in accordance with the requirements of section 437 of this Act, and afford access to the records as the Commissioner may find necessary to carry out his duties; and

"(7) that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program, and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

"(A) the State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;

"(B) the State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted to the Commissioner or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least thirty days;

"(C) the State will hold public hearings on the proposed plans if required by the Commissioner by regulation; and

"(D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations.

"(c) Each general application submitted under this section shall remain in effect for the duration of any program it covers. The Commissioner shall not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant changes in

the circumstances affecting an assurance in that application.

"SINGLE LOCAL EDUCATIONAL AGENCY APPLICATION

"SEC. 436. (a) Each local educational agency which participates in an applicable program under which Federal funds are made available to such agency through a State agency or board shall submit to such agency or board a general application containing the assurances set forth in subsection (b). That application shall cover the participation by that local education agency in all such programs.

"(b) The general application submitted by a local educational agency under subsection (a) shall set forth assurances—

"(1) that the local educational agency will administer each program covered by the application in accordance wtih all applicable statutes, regulations, program plans, and applications;

"(2) that the control of funds provided to the local educational agency under each program and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

(3) that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

"(4) that the local educational agency will make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties and that the local educational agency will maintain such records, including the records required under section 437, and provide access to those records, as the State agency or board or the Commissioner deem necessary to perform their duties;

"(5) that the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

"(6) that any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

"(7) that in the case of any project involving construction—

"(A) the project is not inconsistent with overall State plans for the construction of school facilities, and

"(B) in developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under section 504 of the Rehabilitation Act of 1973 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals; and

"(8) that the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.

"(c) A general application submitted under this section shall remain in effect for the duration of the programs it covers. The State agencies or boards administering the programs covered by the application shall not require the submission or amendment of such application unless required by changes in Federal or State law or by other significant change in the circumstances affecting an assurance in such application.".

(b) Section 497A(a) of the Higher Education Act of 1965 is amended by striking out "or of section 434(c) of the General Education Provisions Act.".

(c) Part C of the General Education Provision Act is further amended by inserting immediately after section 436 the following:

"Subpart 4—Records; Privacy; Limitation on Withholding Federal Funds

"RECORDS

"SEC. 437. (a) Each recipient of Federal funds under any applicable program through any grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency) shall keep records which fully disclose the amount and disposition by the recipient of those funds, the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and such other records as will facilitate an effective audit. The recipient shall maintain such records for five years after the completion of the activity for which the funds are used.

"(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit examination, to any records of a recipient which may be related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements to which reference is made in subsection (a), or which may relate to the compliance of the recipient with any requirement of an applicable program.".

ENFORCEMENT

SEC. 1232. The General Education Provisions Act is amended by adding at the end thereof the following new part:

"PART E—ENFORCEMENT

"EDUCATION APPEAL BOARD

"SEC. 451. (a) The Commissioner shall establish in the Office of Education an Education Appeal Board (hereinafter in this part referred to as the 'Board') the functions of which shall be to conduct—

"(1) audit appeal hearings pursuant to section 452 of this Act,

"(2) withholding hearings pursuant to section 453 of this Act,

"(3) cease and desist hearings pursuant to section 454 of this Act, and

"(4) other proceedings designated by the Commissioner.

"(b) The members of the Board shall be designated by the Secretary, in consultation with the Assistant Secretary for Education and the Commissioner, and may include individuals who are officers or employees of the United States, as well as individuals who are not full-time employees of the Federal Government.

"(c) The Board shall be composed of not less than fifteen nor more than thirty members, of whom no more than one-third shall be officers or employees of the Department. The Secretary shall designate one of the members of the Board to be the Chairman.

"(d) For the purposes of conducting hearings as provided in subsection (a) the Chairman may appoint hearing panels of not less than three members of the Board, or the Chairman may designate the entire Board to sit as a panel for any case or class of cases. On any such panel—

"(1) the majority of members shall not be individuals in the full-time employment of the Federal Government.

"(2) the membership shall not include any individual who is a party to, or has any responsibility for, any particular matter assigned to that panel, and

"(3) the Chairman of the Board shall designate one member of each such panel to be the presiding officer.

"(e) The proceedings of the Board shall be conducted according to such rules as the Commissioner shall prescribe by regulation in conformance with the rules relating to hearings in title 5, United States Code, sections 554, 556, and 557 respecting—

"(1) the receipt of oral and written testimony,

"(2) notice of the issues to be considered,

"(3) the right to counsel,

"(4) intervention of third parties,

"(5) transcripts of proceedings, and

"(6) such other matters as may be necessary to carry out the functions of the Board.

"(f) If there has been established within the Department of Health, Education, and Welfare an appeal board which the Commissioner determines is capable of carrying out the functions of the Board established under this section, he may, with the approval of the Secretary, designate such Department appeal board to carry out the functions of this section.

"AUDIT DETERMINATIONS

"SEC. 452. (a) Whenever the Commissioner determines that an expenditure not allowable under a program listed in section 435(a) of this title, or conducted under title VI and title VII of the Elementary and Secondary Education Act of 1965 or under the Emergency School Aid Act has been made by a State or by a local educational agency, or that a State or local educational agency has otherwise failed to discharge its obligation to account for funds under any such program, the Commissioner shall give such State or local educational agency written notice of a final audit determination, and he shall at the same time notify such State or agency of its right to have such determination reviewed by the Board.

"(b) A State or local educational agency that has received written notice of a final audit determination and that desires to have such determination reviewed by the Board shall submit to the Board an application for review not later than thirty days after receipt of notification of the final audit determination. The application for review shall be in the form and contain the information specified by the Board. The Board shall return to the Commissioner for such action as he deems appropriate any final audit determination which, in the judgment of the Board, contains insufficient detail to identify with particularity those expenditures which are not allowable. Unless the Board determines that a final audit determination lacks sufficient detail, the burden shall be upon the State or local educational agency to demonstrate the allowability of expenditures disallowed in the final audit determination.

"(c) When a State or a local educational agency has submitted an application for review with respect to a final audit determination, no action shall be taken by the Commissioner to collect the amount determined to be owing until the Board has issued a final decision upholding the audit determination as to all or any part of such amount. The filing of such an application shall not affect the authority of the Commissioner to take any other adverse action against such State or agency under this part.

"(d) A decision of the Board with respect to an application for review under this section shall become final unless within sixty days following receipt by the State or by the local educational agency of written notice of the decision—

"(1) the Commissioner for good cause shown, modifies or sets aside the decision, in whole or in part, in which case the decision shall become final sixty days after such action by the Commissioner, or

"(2) the State or the local educational agency files a petition for judicial review as provided in section 455 of this Act.

"(e) A final audit determination by the Commissioner under subsection (a) with respect to which review has not been requested pursuant to subsection (b), or a final decision of the Board under this section upholding a final audit determination

against a State or a local educational agency shall establish the amount of the audit determination as a claim of the United States which the State or the local educational agency shall be required to pay to the United States and which may be collected by the Commissioner in accordance with the Federal Claims Collection Act of 1966.

"(f) (1) Notwithstanding any other provision of law, the Commissioner may, subject to the notice requirements of paragraph (2), compromise any claim established under this section for which the initial determination was found to be not in excess of $50,000, where the Commissioner determines that (A) the collection of any or all of the amount thereof would not be practical or in the public interest, and (B) the practice which resulted in the claim has been corrected and will not recur.

"(2) Not less than forty-five days prior to the exercise of the authority to compromise a claim pursuant to paragraph (1), the Commissioner shall publish in the Federal Register a notice of his intention to do so. Such notice shall provide interested persons an opportunity to comment on any proposed action under this subsection through the submission of written data, views, or arguments.

"(a) No State and no local educational agency shall be liable to refund any amount expended under an applicable program which is determined to be unauthorized by law if that expenditure was made more than five years before that State or local educational agency is given the notice required by subsection (a).

"(h) The Secretary shall employ, assign, or transfer sufficient professional personnel to ensure that all matters brought before the Board may be dealt with in a timely manner.

"WITHHOLDINGS

"SEC. 453. (a) Whenever the Commissioner has reason to believe that any recipient of funds under any applicable program (other than a program to which regulations promulgated under section 497A of the Higher Education Act of 1965 apply), has failed to comply substantially with any requirement of law applicable to such funds, he shall notify such recipient in writing of his intention to withhold, in whole or in part, further payments under such program, including payments for State or local administrative costs, until he is satisfied that the recipient no longer fails to comply with such assurances or other terms.

"(b) The notification required under subsection (a) shall state (1) the facts upon which the Commissioner has based his belief and (2) a notice of opportunity for a hearing to be held on a date at least thirty days after the notification has been sent to the recipient. The hearing shall be held before the Board and shall be conducted in accordance with rules prescribed pursuant to section 451(c) of this Act.

"(c) Pending the outcome of any proceeding initiated under this section, the Commissioner may suspend payments to such a recipient, after such recipient has been given reasonable notice and opportunity to show cause why such action should not be taken.

"(d) The decision of the Board in any proceeding brought under this section shall become final unless within sixty days following receipt by the recipient of written notice of the decision—

"(1) the Commissioner for good cause shown, modifies, or sets aside the decision in whole or in part, in which case the decision as modified shall become final sixty days after such action by the Commissioner, or

"(2) the recipient files a petition for judicial review as provided in section 455 of this Act.

"CEASE AND DESIST ORDERS

"SEC. 454. (a) Whenever the Commissioner has reason to believe that any State or any local educational agency that receives funds under any applicable program has failed to comply substantially with any requirement of law applicable to such funds, in lieu of proceeding under section 453 of this Act, the Commissioner may issue and cause to be served upon such State or upon such local educational agency a complaint (1) stating the charges upon which his belief is based, and (2) containing a notice of a hearing to be held before the Board on a date at least thirty days after the service of that complaint.

"(b) The State or the local educational agency upon which such a complaint has been served shall have the right to appear before the Board on the date specified and to show cause why an order should not be entered by the Board requiring such State or such local educational agency to cease and desist from the violation of law charged in the complaint.

"(c) The testimony in any hearing held under this section shall be reduced to writing and filed with the Board. If upon that hearing the Board shall be of the opinion that the State or the local educational agency is in violation of any requirement of law as charged in the complaint, it shall make a report in writing stating its findings of fact and shall issue and cause to be served upon the State or the local educational agency an order requiring the State or the local educational agency to cease and desist from the practice, policy, or procedure which resulted in such violation.

"(d) The report and order of the Board shall become final on the sixtieth day following the date upon which the order of the Board was served upon the State or the local educational agency unless before that day the State or local educational agency files a petition for judicial review as provided in section 455 of this Act.

"(e) A final order of the Board under this section may be enforced, as determined by the Commissioner, by—

"(1) the withholding of any portion of the amount payable, including amounts payable for administrative costs, under the affected program to the State or the local educational agency against which the final order has been issued, or

"(2) the Commissioner certifying the facts to the Attorney General whose duty it shall be to cause appropriate proceeding to be brought for the enforcement of the order.

"JUDICIAL REVIEW

"SEC. 455. (a) Any recipient of funds under an applicable program that would be adversely affected by any action under section 452, 453, or 454 of this Act, and any State entitled to receive funds under a program listed in section 435(a) of this title whose application therefor has been disapproved by the Commissioner, shall be entitled to judicial review of such action in accordance with the provision of this section.

"(b) Any State, local educational agency, or other recipient entitled to judicial review under subsection (a) that desires such review of any action by the Commissioner or the Board qualifying for review under this section shall, within sixty days of that action, file with the United States Court of Appeals for the circuit in which that State, local educational agency, or other recipient is located a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which the action was based, as provided in section 2112 of title 28, United States Code.

"(c) The findings of fact by the Board, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Board to take further evidence, and the Board may thereupon make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(d) The court shall have jurisdiction to affirm the action of the Board or the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"USE OF RECOVERED FUNDS

"SEC. 456. (a) Whenever the Commissioner has recovered funds following a final audit determination with respect to any applicable program, he may consider those funds to be additional funds available for that program and may arrange to repay to the State or the local agency affected by that action not to exceed 75 percent of those funds upon his determination that—

"(1) the practices or procedures of the State or local agency that resulted in the audit determination have been corrected, and that the State or the local agency is in all other respects in compliance with the requirement of that program:

"(2) the State or the local agency has submitted to the Commissioner a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

"(3) the use of those funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally granted.

"(b) Any payments by the Commissioner under this section shall be subject to such other conditions as the Commissioner deems necessary to accomplish the purposes of the affected programs, including—

"(1) the submission of periodic reports on the use of funds provided under this section; and

"(2) consultation by the State or local agency with parents or representatives of the population that will benefit from the payments.

"(c) Notwithstanding any other provisions of law, the Commissioner may authorize amounts made available under this section to remain available for expenditure, subject to such conditions as he deems appropriate, for up to three fiscal years following the fiscal year in which the audit determination referred to in subsection (a) was made.

"(d) At least thirty days prior to entering into an arrangement under this section, the Commissioner shall publish in the Federal Register a notice of his intent to do so and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least thirty days to submit comments to the Commissioner regarding the proposed arrangement.".

PART D—GENERAL ADMINISTRATIVE PROVISIONS

OFFICE OF NON-PUBLIC EDUCATION

SEC. 1241. Section 403 of the General Education Provisions Act is amended by adding at the end thereof the following new subsection:

"(d) (1) There shall be, in the Office of Education, an Office of Non-Public Education to insure the maximum potential participation of nonpublic school students in all Federal educational programs for which such children are eligible.

"(2) The Office shall be headed by the Deputy Commissioner for Non-Public Education, who shall be appointed by the Commissioner.".

NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

SEC. 1242. Section 405 of the General Education Provisions Act is amended by adding

at the end thereof the following new subsection:

"(k)(1) In addition to other responsibilities of the Institute under this section, the Institute shall carry out, by grant to or cooperative agreement (subject to the provisions of the Federal Grant and Cooperative Agreement Act of 1977) with a nonprofit education organization, a National Assessment of Educational Progress which shall have as a primary purpose the assessment of the performance of children and young adults in the basic skills of reading, mathematics, and communication. Such a National Assessment shall—

"(A) collect and report at least once every five years data assessing the performance of students at various age or grade levels in each of the areas of reading, writing, and mathematics;

"(B) report periodically data on changes in knowledge and skills of such students over a period of time;

"(C) conduct special assessments of other educational areas, as the need for additional national information arises; and

"(D) provide technical assistance to State educational agencies and to local educational agencies on the use of National Assessment objectives, primarily pertaining to the basic skills of reading, mathematics, and communication, and on making comparisons of such assessments with the national profile and change data developed by the National Assessment.

"(2)(A) The education organization through which the Institute carries out the National Assessment shall be responsible for overall management of the National Assessment. Such organization shall delegate authority to design and supervise the conduct of the National Assessment to an Assessment Policy Committee established by such organization. The Assessment Policy Committee shall be composed of—

"(i) five members appointed by the education organization of whom two members shall be representatives of business and industry and three members shall be representatives of the general public, and

"(ii) twelve members appointed by the education organization from the categories of membership specified in subparagraph (B).

"(B) Members of the Assessment Policy Committee appointed in accordance with division (ii) of subparagraph (A) shall be—

"(i) one chief State school officer;

"(ii) two State legislators;

"(iii) two school district superintendents;

"(iv) one chairman of a State board of education;

"(v) one chairman of a local school board;

"(vi) one Governor of a State; and

"(vii) four classroom teachers.

"(C) The Director of the Institute shall serve as an ex officio member of the Assessment Policy Committee. The Director shall also appoint a member of the National Council on Education Research to serve as a nonvoting member of the Assessment Policy Committee.

"(D) Members appointed in accordance with divisions (i) and (ii) of subparagraph (A) shall be appointed for terms of three years, except that (i) in the case of members appointed for fiscal year 1979, one third of the membership shall be appointed for terms of one year each and one third shall be appointed for terms of two years each, and (ii) appointments to fill vacancies shall be for such terms as remain unexpired. No member shall be appointed to serve more than two consecutive terms.

"(3) The Assessment Policy Committee established by paragraph (2) shall be responsible for the design of the National Assessment, including the selection of the learning areas to be assessed, the development and selection of goal statements and assessment items, the assessment methodology, the form and content of the reporting and dissemination of assessment results, and studies to evaluate and improve the form and utilization of the National Assessment.

"(4) Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, subject matter specialists, local school administrators, parents, and concerned members of the general public. All items selected for use in the assessment shall be reviewed to exclude items which might reflect racial, sex, cultural, or regional bias.

"(5) Participation in the National Assessment by State and local educational agencies selected as part of a sample of such agencies shall be voluntary.

"(6) The Director of the Institute shall provide for a review of the National Assessment at least once every three years. This review shall provide an opportunity for public comment on the conduct and usefulness of National Assessment and shall result in a report to the Congress and to the nation on the findings and recommendations, if any, stemming from the review.

"(7) There are authorized to be appropriated $10,500,000 for each fiscal year ending prior to October 1, 1983, to carry out the provisions of this subsection.".

NATIONAL CENTER FOR EDUCATIONAL STATISTICS

SEC. 1243. (a) Section 406(g) of the General Education Provisions Act (as redesignated by section 1212(c)) is amended by striking out "October 1, 1978" both places it appears therein, and by inserting instead "October 1, 1983".

(b)(1) Section 408(a) of such Act is amended by inserting "or by delegation of authority pursuant to law" immediately after "vested in him by law".

(2) Section 408(a)(1) of that Act is amended by inserting after "operation of" a comma and the following: "and governing the applicable programs administered by".

GENERAL AUTHORITY OF ADMINISTRATIVE HEADS OF EDUCATION AGENCIES

SEC. 1244. Section 408 of the General Education Provisions Act is further amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting immediately after subsection (a) the following new subsection:

"(b) The administrative head of an education agency shall ensure that, in contracting under the authority of this section for the services of independent persons in the competitive review of grant applications, all such persons are qualified, by education and experience, to perform such services. The qualifications of such persons and the terms of such contracts, other than information which identifies such person, shall be readily made available to the public.".

(4) Section 408(d) of such Act (as redesignated by paragraph (3) of this subsection) is amended by striking out "For the purposes of this section" and inserting in lieu thereof "For the purposes of this title".

AVAILABILITY OF APPROPRIATIONS

SEC. 1245. (a) Section 412(b) of the General Education Provisions Act is amended by striking out "ending prior to October 1, 1979.".

(b) Section 412(b) of such Act is further amended by inserting "(1)" immediately after the subsection designation thereof and by inserting at the end of subsection (b) the following new paragraph:

"(2) Any funds under any applicable program which, pursuant to paragraph (1), are available for obligation and expenditure in the year succeeding the fiscal year for which they were appropriated shall be obligated and expended in accordance with—

"(A) the Federal statutory and regulatory provisions relating to such program which are in effect for such succeeding fiscal year, and

"(B) any program plan or application submitted by such educational agencies or institutions for such program for such succeeding fiscal year.".

EVALUATION

SEC. 1246. (a) Section 417(a)(1) of the General Education Provisions Act is amended by adding, after "effectiveness of applicable programs", the following: "(including compliance with provisions of law requiring the maintenance of non-Federal expenditures for the purposes of such applicable programs)".

(b) Section 417(a)(1) is further amended by striking out "Committee on Labor and Public Welfare" and inserting in lieu thereof "Committee on Human Resources".

(c) Section 418(b)(A) of such Act is amended by adding, after "expenditures", the following: "(including, where applicable, State and local expenditures)".

REVIEW OF APPLICATIONS

SEC. 1247. Section 425(a) of General Education Provisions Act is amended by striking out "or (3)" and inserting in lieu thereof the following: "(3) ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds, or (4)".

TECHNICAL ASSISTANCE; DISSEMINATION

SEC. 1248. Section 426 of the General Education Provisions Act is amended by redesignating subsection (c) of such section as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) In awarding contracts and grants for the development of curricula or instructional materials, the Commissioner and the Director of the National Institute of Education shall—

"(1) encourage applicants to assure that such curricula or instructional materials will be developed in a manner conducive to dissemination through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administors community representatives; and other individuals experienced in such dissemination;

"(2) permit applicants to include provision for reasonable consultation fees or planning costs; and

"(3) insure that grants to public agencies and nonprofit private organizations and contracts with public agencies and private organizations for publication and dissemination of curricula or instructional materials, or both, are awarded competitively to such agencies and organizations which provide assurances that the curricula and instructional materials will reach the target populations for which they were developed.".

MAINTENANCE OF EFFORT

SEC. 1249. Section 431A of the General Education Provisions Act is amended to read as follows:

"MAINTENANCE OF EFFORT DETERMINATION

"SEC. 431A. (a) In prescribing regulations for carrying out the requirements of section 403(a)(10) for fiscal year 1979 and section 404(a)(1) for subsequent fiscal years of the Elementary and Secondary Education Act of 1965 and section 307(b) of the Adult Education Act, the Commissioner shall determine the amount so expended on the basis of per pupil or aggregate expenditures.

"(b) The Commissioner may waive, for one fiscal year only, the requirements of this section if he determines that such a waiver would be equitable due to exceptional and unforeseen circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency. In any case in which a

waiver under this subsection is granted, the Commissioner shall reduce the amount of the Federal payment for the program affected for the current fiscal year in the exact proportion to which the amount expended (either on an average per pupil or aggregate basis) was less than the amount required by section 403(a)(10) for fiscal year 1979, and section 404(a)(7) for subsequent fiscal years of the Elementary and Secondary Education Act of 1965 or section 307(b) of the Adult Education Act. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort required, under such sections, for years subsequent to the year covered by such waiver; such fiscal effort shall be computed on the basis of the level of funding which would, but for such waiver, have been required.

"(c) The Commissioner shall establish objective criteria of general applicability to carry out the waiver authority contained in this section.

"(d) This section shall be effective with respect to each requirement to which it applies, during the period which begins on the date of the enactment of the Education Amendments of 1978, and ends on the date of termination of the program to which the requirement applies. For purposes of the preceding sentence, a program shall be considered to terminate on September 30 of the fiscal year, if any, during which such program is automatically extended pursuant to section 414 of the General Education Provisions Act.".

PROTECTION OF PUPIL RIGHTS

SEC. 1250. Section 439 of the General Education Provisions Act (relating to protection of pupil rights) is amended by inserting "(a)" after "439" and by adding at the end thereof a new subsection as follows:

"(b) No student shall be required, as part of any applicable program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning:

"(1) political affiliations;

"(2) mental and psychological problems potentially embarrassing to the student or his family;

"(3) sex behavior and attitudes;

"(4) illegal, anti-social, self-incriminating and demeaning behavior;

"(5) critical appraisals of other individuals with whom respondents have close family relationships;

"(6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

"(7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.".

PART E—EFFECTIVE DATES

EFFECTIVE DATES

SEC. 1261. The amendments made by section 1231 shall take effect with respect to appropriations for fiscal year 1980 and subsequent fiscal years. The amendments made by section 1232 shall take effect 120 days after the enactment of this Act.

TITLE XIII—REVISION OF OTHER EDUCATION PROGRAMS

PART A—ADULT EDUCATION

STATEMENT OF PURPOSE

SEC. 1301. Section 302 of the Adult Education Act (hereafter in this part referred to as the "Act") is amended to read as follows:

"STATEMENT OF PURPOSE

"SEC. 302. It is the purpose of this title to expand educational opportunities for adults and to encourage the establishment of programs of adult education that will—

"(1) enable all adults to acquire basic skills necessary to function in society,

"(2) enable adults who so desire to continue their education to at least the level of completion of secondary school, and

"(3) to make available to adults the means to secure training that will enable them to become more employable, productive, and responsible citizens.".

DEFINITION OF ADULT EDUCATION

SEC. 1302. Section 303(b) of the Act is amended by inserting "lack sufficient mastery of basic educational skills to enable them to function effectively in society or who" immediately after "(1)".

GRANTS TO STATES

SEC. 1303. (a) Section 304 of the Act is amended by striking out "private nonprofit agencies" each place it appears and inserting in lieu thereof "by public or private nonprofit agencies, organizations, and institutions" and by adding at the end thereof the following: "Grants provided under this section to States to carry out the programs described in the preceding sentence may be carried out by public or private nonprofit agencies, organizations, and institutions only if the applicable local educational agency has been consulted with and has had an opportunity to comment on the application of such agency, organization, or institution. The State educational agency shall not approve any application unless assured that such consultation has taken place. Such application shall contain a description of the cooperative arrangements that have been made to deliver services to adult students.".

(b) Section 304 of such Act is further amended by redesignating subsection (b) as subsection (a) and by adding at the end thereof the following new subsection:

"(b) Not more than 20 per centum of the funds granted to any State under subsection (a) for any fiscal year shall be used for the education of institutionalized individuals.".

NORTHERN MARIANA ISLANDS

SEC. 1304. (a) Section 303(g) is amended by inserting "the Northern Mariana Islands," immediately after "the Pacific Islands,".

(b) Section 305(a) of the Act is amended by inserting "the Northern Mariana Islands," immediately after "the Pacific Islands,".

STATE PLANS

SEC. 1305. Section 306 of the Act is amended to read as follows:

"STATE PLANS

"SEC. 306. (a) A State shall be eligible to receive its allotment under section 305 if—

"(1) it has on file with the Commissioner a general State application under section 434 of the General Education Provisions Act, and

"(2) it has submitted to the Commissioner at such times (not more frequently than one every three years), and in such detail, as the Commissioner shall prescribe a State plan meeting the requirements of subsection (b).

"(b) A State plan under this title shall—

"(1) set forth a program for the use of funds provided under this title to carry out the purposes stated in section 302 with respect to all segments of the adult population in the State, including residents of rural areas, residents of urban areas with high rates of unemployment, adults with limited English language skills, and institutionalized adults;

"(2) provide for the administration of the program by the State educational agency;

"(3) describe the procedures the State will use to ensure that in carrying out such program there will be adequate consultation, cooperation, and coordination among the State educational agency, State manpower service councils, State occupational information systems, and other agencies, organizations, and institutions in the State which operate employment and training programs or other educational or training programs for adults; and for coordination of programs carried on under this title with other programs, including reading improvement programs, designed to provide reading instruction for adults carried on by State and local agencies;

"(4) identify (A) the needs of the population of the State for service authorized under this title, (B) the other resources in the State available to meet those needs, and (C) the goals the State will seek to achieve in meeting those needs over the period covered by the plan;

"(5) provide that such agency will make available not to exceed 20 per centum of the State's allotment for programs of equivalency for a certificate of graduation from a secondary school;

"(6) provide such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid the State under this title (including such funds paid by the State to local educational agencies and public or private nonprofit agencies, organizations, and institutions);

"(7) describe the means by which the delivery of adult education services will be significantly expanded through the use of agencies, institutions, and organizations other than the public school systems, such as business, labor unions, libraries, institutions of higher education, public health authorities, antipoverty programs, and community organizations;

"(8) describe the means by which representatives of business and industry, labor unions, public and private educational agencies and institutions, church, fraternal and voluntary organizations, community organizations, State and local manpower and training agencies, and representatives of special adult populations, including residents of rural areas, residents of urban areas with high rates of unemployment, adults with limited English language skills, and institutionalized adults, and other entities in the State concerned with adult education have been involved in the development of the plan and will continue to be involved in carrying out the plan, especially with regard to the expansion of the delivery of adult education services through those agencies, institutions, and organizations;

"(9) describe the efforts to be undertaken by the State to assist adult participation in adult education programs through flexible course schedules, convenient locations, adequate transportation, and meeting child care needs;

"(10) provide that special emphasis be given to adult basic education programs except where such needs are shown to have been met in the State;

"(11) provide that special assistance be given to the needs of persons with limited English proficiency (as defined in section 703(a) of title VII of the Elementary and Secondary Education Act of 1965) by providing a bilingual adult education program of instruction in English and, to the extent necessary to allow such persons to progress effectively through the adult education program, in the native language of such persons, carried out in coordination with programs of bilingual education assisted under title VII and bilingual vocational education programs under the Vocational Education Act of 1963;

"(12) demonstrate that the special educational needs of adult immigrants in the State have been examined, and provide for the implementation of adult education and adult basic education programs for immigrants to meet existing needs;

"(13) set forth the criteria by which the State will evaluate the quality of proposals from local agencies, organizations, and institutions; and

"(14) provide such further information and assurances as the Commissioner may by regulation require, including information regarding the extent to which the goals of the program have been achieved during the preceding three years.

"(c) The Commissioner shall not finally disapprove any State plan submitted under this title, or any modification thereof, without first affording the State educational agency reasonable notice and opportunity for a hearing.".

PAYMENTS

SEC. 1306. Section 307 of the Act is amended to read as follows:

"PAYMENTS

"SEC. 307. (a) The Federal share of expenditures to carry out a State plan shall be paid from a State's allotment available for grants to that State. The Federal share shall be 90 per centum of the cost of carrying out the State's programs, except that with respect to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Federal share shall be 100 per centum.

"(b) No payment shall be made to any State from its allotment for any fiscal year unless the Commissioner finds that the fiscal effort per student or the amount available for expenditure by such State for adult education from non-Federal sources for the preceding fiscal year was not less than such fiscal effort per student or such amount available for expenditure for such purposes from such sources during the second preceding fiscal year, but no State shall be required to use its funds to supplant any portion of the Federal share.".

RESEARCH, EVALUATION, AND CLEARINGHOUSE

SEC. 1307. (a) The Act is amended—

(1) by redesignating section 309, relating to use of funds for special experimental demonstration projects and teacher training, as section 310.

(2) by striking out section 309A, relating to the clearinghouse on adult education, and

(3) by redesignating section 310, relating to special projects for the elderly, section 310A, relating to State Advisory Councils, section 311, relating to the National Advisory Council on Adult Education, section 312, relating to limitations, section 313, relating to authorizations, section 314, relating to Indian programs, section 315, relating to Indochinese refugees, as sections 311, 312, 313, 314, 315, 316, and 317, respectively.

(b) The Act is further amended by inserting after section 308 the following new section:

"RESEARCH, DEVELOPMENT, DISSEMINATION, EVALUATION, AND INFORMATION CLEARINGHOUSE

"SEC. 309. (a)(1) Subject to appropriations under this section, the Commissioner shall directly, and through grants and contracts with public and private nonprofit agencies, institutions, and organizations, carry out a program—

"(A) to develop new and promising approaches and innovative methods which are designed to address those problems and which may have national significance or be of special value in promoting effective programs under this Act, including one-year grants to States to plan for the expansion of their systems for the delivery of adult education services;

"(B) to determine, using appropriate objective evaluation criteria, which projects and approaches assisted under clause (A) and under section 310 of this Act have achieved their stated goals and are capable of achieving comparable levels of effectiveness of additional locations; and

"(C) to disseminate throughout the Nation information about those approaches or methods pertaining to adult basic education which are most effective, by establishing and operating a clearinghouse on adult education which shall collect, select, and disseminate to the public information pertaining to the education of adults, those approaches and methods of educating adults which are most effective, and ways of coordinating adult education programs with manpower and other education programs.

"(2) The Commissioner shall directly, and through grants and contracts with public and private agencies, institutions and organizations, evaluate the effectiveness of programs conducted under section 304 of this Act.

"(b) In addition to the responsibilities of the Director under section 405 of the General Education Provisions Act and subject to appropriations under this section, the Director of the National Institute of Education, in consultation with the Commissioner, shall directly, and through grants and contracts with public and private agencies, institutions, and organizations, carry out a program to conduct research on the special needs of individuals requiring adult education.

"(c) There are authorized to be appropriated for the purposes of this section $1,500,000 for the fiscal year ending September 30, 1980, $2,000,000 for the fiscal year ending September 30, 1981, and $3,000,000 for each succeeding fiscal year prior to October 1, 1983.".

SPECIAL PROJECTS FOR THE ELDERLY

SEC. 1308. Section 311 of the Act (as redesignated by section 1307) is amended by striking out "October 1, 1978 and for the period beginning July 1, 1976 and ending September 30, 1976" and inserting in lieu thereof "October 1, 1983".

NATIONAL ADVISORY COUNCIL

SEC. 1309. Section 313(b) of the Act (as redesignated by section 1307) is amended by striking out "October 1, 1978" and inserting in lieu thereof "October 1, 1984".

AUTHORIZATION OF APPROPRIATIONS

SEC. 1310. Section 315 of the Act (as redesignated by section 1307) is amended to read as follows:

"APPROPRIATIONS AUTHORIZED

"SEC. 315. (a) Except as otherwise provided, there are authorized to be appropriated $210,000,000 for fiscal year 1979; $230,000,000 for fiscal year 1980; $250,000,000 for fiscal year 1981; $270,000,000 for fiscal year 1982; and $290,000,000 for fiscal year 1983 to carry out the provisions of this title.

"(b) There are further authorized to be appropriated for each such fiscal year such sums, not to exceed 5 per centum of the amount appropriated pursuant to subsection (a) for that year, as may be necessary to pay the cost of the administration and development of State plans, and other activities required pursuant to this title. The amount provided to a State under this subsection shall not be less than $50,000 for any fiscal year, except that such amount shall not be less than $25,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.".

EDUCATIONAL OPPORTUNITIES FOR ADULT INDIANS

SEC. 1311. (a)(1) Section 314(a)(4) of the Act (as redesignated by section 307) is amended by striking out "on Indian reservations" and inserting in lieu thereof "among Indians".

(2) Section 314 of the Act (as redesignated by section 1307) is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and by inserting immediately after subsection (a) the following new subsection:

"(b) The Commissioner is also authorized to make grants to Indian tribes, Indian institutions, and Indian organizations to develop and establish educational services and programs specifically designed to improve educational opportunities for Indian adults.".

(b) Section 316(e) of the Act (as redesignated by section 1307) is amended by striking out "July 1, 1978" and inserting in lieu thereof "October 1, 1983".

INDOCHINA REFUGEES

SEC. 1312. Section 317(a) of the Act (as redesignated by section 1307) is amended by striking out "1977" and inserting in lieu thereof "1983".

ADULT EDUCATION PROGRAM FOR IMMIGRANTS

SEC. 1313. The Act is further amended by adding at the end thereof the following:

"ADULT EDUCATION PROGRAM FOR ADULT IMMIGRANTS

"SEC. 318. (a) The Commissioner is authorized to enter into grants and contracts with State and local education agencies and other public or private nonprofit agencies, organizations, or institutions to provide programs of adult education and adult basic education to immigrant adults in need of such services. Such grants and contracts may be used for—

"(1) programs of instruction of adult immigrants in basic reading, mathematics, development, and enhancement of necessary skills, and promotion of literacy among adult immigrants for the purpose of enabling them to become productive members of American society;

"(2) administrative costs of planning and operating such programs of instruction;

"(3) educational support services which meet the need of adult immigrants including but not limited to guidance and counseling with regard to educational, career, and employment opportunities; and

"(4) special projects designed to operate in conjunction with existing Federal and non-Federal programs and activities to develop occupational and related skills for individuals, particularly programs authorized under the Comprehensive Employment and Training Act of 1973 or under the Vocational Education Act of 1963.

"(b)(1) Any applicant for a grant or contract under this section shall first submit its application to the State Educational agency. The State educational agency shall expeditiously review and make recommendations to the Commissioner regarding the quality of each such application, consistent with the purposes of section 306(b)(12) and (13) of this title. A copy of the recommendations made by the State educational agency shall be simultaneously submitted to the applicant.

"(2) Any applicant which has submitted an application in accordance with paragraph (1) of this subsection, which is dissatisfied with the action of the appropriate State educational agency may petition the Commissioner to request further consideration by the Commissioner of such application.

"(c) Applications for a grant or contract under this section shall be submitted at such time, in such manner, and contain such information as the Commissioner may reasonably require.

"(d) Notwithstanding the provisions of sections 305 and 307(a), the Commissioner shall pay all the costs of applications approved by him under this section.

"(e) Not less than 50 per centum of the funds appropriated under this section shall be used by the Commissioner to enter into contracts with private nonprofit agencies, organizations, and institutions.

"(f) For the purpose of making grants and entering into contracts under this section, there is hereby authorized to be appropriated such sums as may be necessary for fiscal year 1979 and each of the four succeeding fiscal years.".

PART B—HIGHER EDUCATION

TEACHER TRAINING PROGRAMS

SEC. 1321. (a)(1) Section 531 of the Higher Education Act of 1965 is amended by striking out "and for each of the fiscal years ending prior to October 1, 1979," and inserting in lieu thereof the following: "and the fiscal year 1978, and $100,000,000 for the fiscal year 1979.".

(2) Section 531 of such Act is further amended by inserting at the end thereof the following new sentence: "In the event that sums exceeding $50,000,000 are appropriated in any fiscal year for purposes of carrying out this part, each State shall receive grants sufficient to assure the establishment of one such teacher center in that State in such fiscal year."

(b)(1) Section 532(c)(1) of such Act is amended by inserting after "local educational agencies" the following: "or any consortium of local educational agencies (including statewide programs)".

(2) Section 532(c)(2) of such Act is amended by adding at the end thereof the following new sentence: "The Commissioner shall, upon receipt of such petition request further consideration by the State educational agency.".

(3) Section 532(c) of such Act is amended by adding at the end thereof the following new paragraph:

"(3) If, subsequent to the expiration of thirty days after the Commissioner's petitioning the State educational agency, such agency has not transmitted such application, then such application shall be transmitted to the Commissioner along with the comments and evaluation of the State educational agency.".

AMENDMENT FOR ADVANCES FOR RESERVED FUNDS OF STATE LOAN INSURANCE PROGRAMS

SEC. 1322. (a) Section 422(c)(5) of the Higher Education Act of 1965 is amended by striking out "the effective date of this subsection" each place it appears in subparagraphs (A) and (B) and inserting in lieu thereof "the date of enactment of this subsection".

(b) The amendments made by the subsection (a) of this section shall take effect on October 1, 1977.

DIRECT LOANS TO STUDENTS; CONFORMING AMENDMENT

SEC. 1323. (a) Section 463(a)(2)(A) is amended by striking out "described in clause (A), (B), or (C) of section 103(a)(2) of title I of the Elementary and Secondary Education Act of 1965 (using a low-income factor of $3,000)" and inserting in lieu thereof "counted under section 111(c) of the Elementary and Secondary Education Act of 1965".

PART C—INDOCHINESE REFUGEE CHILDREN

EXTENSION OF PROGRAM

SEC. 1331. (a) Section 201(a) of the Indochina Refugee Children Assistance Act of 1976 is amended by inserting after "1977" a comma and the following: ", and for the period beginning October 1, 1978, and ending September 30, 1981".

(b) Section 201(a)(3) of such Act is amended by inserting before the period at the end thereof a comma and the following: "and who are paroled into the United States by the Attorney General pursuant to section 212(d)(5) of the Immigration and Naturalization Act on or after January 1, 1977".

(c)(1) Section 202(a) of such Act is amended by inserting after "1977" a comma and the following: "and for the period October 1, 1978, through September 30, 1981".

(2)(A) Section 202(b)(1) of such Act is amended by striking out "is entitled" and inserting "is eligible to receive" and by inserting after "1977" a comma and the following: "and for fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1981".

(B) Section 202(b)(1) of such Act is further amended by striking out clauses (B) and (C) of such section and inserting in lieu thereof "(B) an amount not to exceed $450.".

(d) Section 203 of such Act is amended by striking out everything after "may be used" and inserting in lieu thereof "only in accordance with the provisions of section 103".

(c) Section 204(a) of such Act is amended by inserting after "1977" a comma and the following: "and for the period October 1, 1978, through September 30, 1981".

(f) Section 205(a)(3) of such Act is amended to read as follows:

"(3) provide such data and assurances as the Commissioner may prescribe—

"(A) to demonstrate that the costs of the additional services for which the payment will be made are the direct result of the presence of Indochinese refugee children and that those additional instructional services will actually be provided to those children for the duration of the period for which assistance is made available under this title; and

"(B) to demonstrate that such payments are distributed between the State educational agency and the local educational agencies within the State in proportion to the contribution to such costs by each such agency:".

(g) Section 206(b) of such Act is amended by striking out "1 per centum" and inserting in lieu thereof "5 per centum".

(h) Section 208 of such Act is amended by inserting after "1977" a comma and the following: "and for fiscal year 1979 and for each succeeding fiscal year ending prior to October 1, 1982.

(i) The heading of title II of such Act is amended to read as follows:

"TITLE II—PROGRAM FOR SUBSEQUENT FISCAL YEARS".

PART D—EDUCATION OF THE HANDICAPPED

TECHNICAL AMENDMENT

SEC. 1341. (a) Section 611(a)(3) of the Education of the Handicapped Act is amended by striking out "the average of the", and by striking out "October 1 and February 1" and inserting in lieu thereof "December 1".

(b) The amendments made by subsection (a) of this section shall take effect with respect to determinations made in fiscal year 1979 and thereafter.

PART E—GUIDANCE AND COUNSELING

EXTENSION OF PROGRAM

SEC. 1351. Section 342(a) of the Education Amendments of 1976 is amended by striking out "fiscal year 1978 and 1979" and inserting in lieu thereof "fiscal years 1978 through 1983".

TITLE XIV—OVERSEAS DEFENSE DEPENDENTS' EDUCATION

SHORT TITLE

SEC. 1401. This title may be cited as the "Defense Dependents' Education Act of 1978".

ESTABLISHMENT OF DEFENSE DEPENDENTS' EDUCATION SYSTEM

SEC. 1402. (a) The Secretary of Defense shall establish and operate a program (hereinafter in this title referred to as the "defense dependents' education system") to provide a free public education through secondary school for dependents in overseas areas.

(b)(1) The Secretary shall ensure that individuals eligible to receive a free public education under subsection (a) receive an education of high quality.

(2) In establishing the defense dependents' education system under subsection (a), the Secretary shall provide programs designed to meet the special needs of—

(A) the handicapped,

(B) individuals in need of compensatory education,

(C) individuals with an interest in vocational education,

(D) gifted and talented individuals, and

(E) individuals of limited English-speaking ability.

(3) The Secretary shall provide a developmental preschool program to individuals eligible to receive a free public education under subsection (a) who are of preschool age if a preschool program is not otherwise available for such individuals and if funds for such a program are available.

OFFICE OF DEPENDENTS' EDUCATION

SEC. 1403. (a)(1) There is established within the Department of Defense an office to be known as the Office of Dependents' Education.

(2) The Office of Dependents' Education shall be headed by a Director of Dependents' Education (hereinafter in this title referred to as the "Director"), who shall be a civilian and who shall be selected by the Secretary of Defense and shall report to the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics.

(b) Except with respect to the authority to prescribe regulations, the Secretary of Defense may carry out his functions under this Act through the Director.

(c) The Director shall—

(1) establish personnel policies, consistent with the Defense Department Overseas Teachers Pay and Personnel Practices Act, for employees in the defense dependents' education system.

(2) have authority to transfer professional employees in the defense dependents' education system from one position to another.

(3) prepare a unified budget for each fiscal year, which shall include necessary funds for construction and operation and maintenance of facilities, for the defense dependents' education system for inclusion in the Department of Defense budget for that year,

(4) have authority to establish, in accordance with section 1410, local school advisory committees,

(5) have authority to arrange for inservice and other training programs for employees in the defense dependents' education system, and

(6) perform such other functions as may be required or delegated by the Secretary of Defense or the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics.

(d)(1) The Director shall establish appropriate regional or area offices for the Office of Dependents' Education in order to provide for thorough and efficient administration of the defense dependents' education system.

(2) Not later than six months after the date of the enactment of this Act, the Secretary of Defense shall submit to the Congress a report (A) describing the organization of the Office of Dependents' Education in accordance with paragraph (1), (B) describing the assignment of personnel to the central office of the Office of Dependents' Education and to such regional or area offices as are established pursuant to paragraph (1), and (C) detailing the personnel requirements of the defense dependents' education system. Whenever the Office of Dependents' Education is reorganized after the submission of the report required under the preceding sentence, the Secretary of Defense shall submit an additional report to the Congress describing the reorganization.

(3) Subject to the approval of the Secretary of Defense, the Office of Dependents' Education is authorized to employ an appropriate number of civilian employees in its central office and such regional or area office as are established pursuant to paragraph (1).

TUITION-PAYING STUDENTS

SEC. 1404. (a) Subject to subsection (b) and in accordance with regulations issued under subsection (c), the Director may authorize the enrollment in a school of the defense dependents' education system of a

child not otherwise eligible to enroll in such a school if and to the extent that there is space available for such child in the school.

(b)(1) Except as otherwise provided under subsection (c), any child permitted to enroll in a school of the defense dependents' education system under this section shall be required to pay tuition at a rate determined by the Secretary of Defense, which shall not be less than the rate necessary to defray the average cost of the enrollment of children in the system under this section.

(2) Amounts received under paragraph (1) shall be available to the defense dependents' education system to assist in defraying the cost of enrollment of children in the system under this section.

(c) The Secretary of Defense may by regulation identify classes of children who shall be eligible to enroll in schools of the defense dependents' education system under this section if and to the extent that there is space available, establish priorities among such classes, waive the tuition requirement of subsection (b)(1) with respect to any such class, and issue such other regulations as may be necessary to carry out this section.

ANNUAL EDUCATION ASSESSMENT

SEC. 1405. (a) The Director shall assess each year the performance of the defense dependents' education system in providing an education of high quality to children enrolled in the system. Such assessment may include the use of educational assessment measures and such other means as the Director determines to be suitable for assessing student performance.

(b) The results of each annual assessment under subsection (a) with respect to an individual enrolled in the defense dependents' education system shall be made available to the sponsor of such individual, and summary results of each such annual assessment shall be made available to Members of Congress and to professional employees in the system.

SCHOOL CONSTRUCTION BY DIRECTOR OF DEPENDENTS' EDUCATION

SEC. 1406. The President shall include in his budget for each fiscal year a separate request for funds for construction of school facilities by the Director.

SCHOOL SYSTEM FOR DEPENDENTS IN OVERSEAS AREAS

SEC. 1407. (a) The Secretary of Defense shall establish and operate a school system for dependents in overseas areas as part of the defense dependents' education system.

(b) Under such circumstances as he may by regulation prescribe, the Secretary of Defense may provide tuition to allow dependents in an overseas area where a school operated by the Secretary is not reasonably available to attend schools other than schools established under subsection (a) on a tuition-free basis. Any school to which tuition is paid under this subsection to allow a dependent in an overseas area to attend such school shall provide an educational program satisfactory to the Secretary.

(c)(1)(A) Chapter 7 of title 37, United States Code, relating to allowances authorized for members of the uniformed services, is amended by adding after section 428 the following new section:

"§ 429. Travel and transportation allowances: minor dependent schooling

"Under regulations to be prescribed by the Secretary of Defense, a member of a uniformed service whose permanent station is outside the United States may be allowed transportation in kind for any minor dependent (or reimbursement therefor), or a monetary allowance in place of such transportation in kind, to a school operated by the Department of Defense under the Defense Dependents' Education Act of 1978 for dependents in overseas area which is operated, and which such dependent attends, on a 5-day-a-week dormitory basis or on a 7-day-a-week dormitory basis. In the case of a dependent attending a school on a 5-day-a-week dormitory basis, the transportation in kind or allowance authorized by this section shall be for weekly trips to and from such school, and in the case of a dependent attending a school on a 7-day-a-week dormitory basis, such transportation in kind or allowances shall be for not less than three trips to and from such school during the school year.".

(B) The table of sections at the beginning of chapter 7 of title 37, United States Code, is amended by adding after the item relating to section 428 the following new item:

"429. Travel and transportation allowances: minor dependent schooling.".

ELIGIBILITY FOR SCHOOL LUNCH AND BREAKFAST PROGRAMS

SEC. 1408. (a) The National School Lunch Act is amended by adding at the end thereof the following new section:

"DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS

"SEC. 22. (a) For the purpose of obtaining Federal payments and commodities in conjunction with the provision of lunches to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the National School Lunch Program in the United States.

"(b) The Secretary of Defense shall administer lunch programs authorized by this section and shall determine eligibility for free and reduced-price lunches under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the National School Lunch Program under this section.

"(c) The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is impracticable.

"(d) Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section and for payment of the difference between the value of commodities and payments received from the Secretary of Agriculture and (1) the full cost of each lunch for each student eligible for a free lunch, and (2) the full cost of each lunch, less any amounts required by law or regulation to be paid by each student eligible for a reduced-price lunch.

"(e) The Secretary of Agriculture shall provide the Secretary of Defense with technical assistance in the administration of the school lunch programs authorized by this section.".

(b) The Child Nutrition Act of 1966 is amended—

(1) by inserting "and the Department of Defense" after "States" in the first sentence of section 4(a); and

(2) by adding at the end thereof the following new section:

"DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS

"SEC. 20. (a) For the purpose of obtaining Federal payments and commodities in conjunction with the provision of breakfasts to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the school breakfast program in the United States.

"(b) The Secretary of Defense shall administer breakfast programs authorized by this section and shall determine eligibility for free and reduced-price breakfasts under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the school breakfast program under this section.

"(c) The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture: however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is highly impracticable.

"(d) Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section and for payment of the difference between the value of commodities and payments received from the Secretary of Agriculture and (1) the full cost of each breakfast for each student eligible for a free breakfast, and (2) the full cost of each breakfast, less any amounts required by law or regulations to be paid by each student eligible for a reduced-price breakfast.

"(e) The Secretary of Agriculture shall provide the Secretary of Defense with technical assistance in the administration of the school breakfast programs authorized by this section.".

ALLOTMENT FORMULA

SEC. 1409. (a) The Director shall by regulation establish a formula for determining the minimum allotment of funds necessary for the operation of each school in the defense dependents' education system. In establishing such formula, the Director shall take into consideration—

(1) the number of students served by a school and the size of the school;

(2) special cost factors for a school, including—

(A) geographic isolation of the school,

(B) a need for special staffing, transportation, or educational programs at the school, and

(C) unusual food and housing costs,

(3) the cost of providing academic services of a high quality as required by section 1402(b)(1); and

(4) such other factors as the Director considers appropriate.

(b) Any regulation under subsection (a) shall be issued, and shall become effective, in accordance with the procedures applicable to regulations required to be issued by the Department of Health, Education, and Welfare in accordance with section 431 of the General Education Provisions Act.

(c) The provisions of the Education for All Handicapped Children Act of 1975 shall apply with respect to all schools operated by the Department of Defense under this Act.

SCHOOL ADVISORY COMMITTEE

SEC. 1410. (a)(1) The Director shall provide for the establishment of an advisory committee for each school in the defense dependents' education system. An advisory

committee for a school shall advise the principal or superintendent of the school with respect to the operation of the school, may make recommendations with respect to curriculum and budget matters, and, except as provided under paragraph (2), shall advise the local military commander with respect to problems concerning dependents' education within the jurisdiction of the commander. The membership of each such advisory committee shall include an equal number of representatives of sponsors of students enrolled in the school and of employes working at the school and, when appropriate, may include a student enrolled in the school.

(2) In the case of any military installation or overseas area where there is more than one school in the defense dependents' education system, the Director shall provide for the establishment of an advisory committee for such military installation or overseas area to advise the local military commander with respect to problems concerning dependents' education within the jurisdiction of the commander.

(b) Members of a school advisory committee established under this section shall be elected by individuals of voting age residing in the area to be served by the advisory committee. The Secretary of Defense shall by regulation prescribe the qualifications for election to an advisory committee and procedures for conducting elections of advisory committee members.

(c) Members of school advisory committees under this section shall serve without pay.

ADVISORY COUNCIL ON DEPENDENTS' EDUCATION

SEC. 1411. (a) There is established in the Department of Defense an Advisory Council on Dependents' Education (hereinafter in this section referred to as the "Council"). The Council shall be composed of—

(1) the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics (hereinafter in this section referred to as the Assistant Secretary"), who shall be the chairman of the Council;

(2) 12 individuals appointed by the Assistant Secretary, who shall be individuals versed by training or experience in the field of primary or secondary education and who shall include representatives of professional employee organizations, school administrators, sponsors of students enrolled in the defense dependents' education system, and one student enrolled in such system; and

(3) a representative of each of—

(A) the Commissioner of Education, Department of Health, Education, and Welfare.

(B) the Director of the National Institute of Education, Department of Health, Education, and Welfare.

(C) the Director of Educational Directorate of the National Science Foundation,

(D) the Chairman of the National Endowment for the Arts,

(E) the Chairman of the National Endowment for the Humanities, and

(F) the Secretaries of the military departments.

The Director shall be the Executive Secretary of the Council.

(b) The term of office of each member of the Council appointed under subsection (a)(2) shall be three years, except that—

(1) of the members first appointed under such paragraph, four shall serve for a term of one year, four shall serve for a term of two years, and four shall serve for a term of three years, as determined by the Assistant Secretary at the time of their appointment, and

(2) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

No member appointed under subsection (a)(2) shall serve more than two full terms on the Council.

(c) The Council shall meet at least four times each year. The functions of the Council shall be to—

(1) recommend to the Director general policies for operation of the defense dependents' education system with respect to curriculum selection, administration, and operation of the system.

(2) provide information to the Director from other Federal agencies concerned with primary and secondary education with respect to education programs and practices which such agencies have found to be effective and which should be considered for inclusion in the defense dependents' education system.

(3) advise the Director on the design of the study and the selection of the contractor referred to in section 1412(a)(2) of this title, and

(4) perform such other tasks as may be required by the Assistant Secretary.

(d) Members of the Council who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Council or otherwise engaged in the business of the Council, be entitled to receive compensation at the daily equivalent of the rate specified at the time of such service for grade GS–18 in section 5332 of title 5, United States Code, including traveltime, and while so serving on the business of the Council away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(e) The Council shall continue in existence until terminated by law.

STUDY OF DEFENSE DEPENDENTS' EDUCATION SYSTEM

SEC. 1412. (a)(1) As soon as practicable after the date of the enactment of this Act, the Director shall provide for a comprehensive study of the entire defense dependents' education system, which shall include a detailed analysis of the education programs and the facilities of the system.

(2) The study required by this subsection shall be conducted by a contractor selected by the Director after an open competition. After conducting such study, the contractor shall submit a report to the Director not later than one year after the effective date of this title describing the results of the study and giving its assessment of the defense dependents' education system.

(b) In designing the specifications for the study to be conducted pursuant to subsection (a)(1), and in selecting a contractor to conduct such study under subsection (a)(2), the Director shall consult with the Advisory Council on Dependents' Education established under section 1411 of this title.

(c) The Director shall submit to the Congress not later than one year after the effective date of this title the report submitted to him under subsection (a)(2) describing the results of the study carried out pursuant to subsection (a)(1), together with the recommendations, if any, of the contractor for legislation or any increase in funding needed to improve the defense dependents' education system. Notwithstanding any law, rule, or regulation to the contrary, such report shall not be submitted to any review before its transmittal to the Congress, but the Secretary of Defense shall, at the time of the transmittal of such report, submit to the Congress such recommendations as he may have with respect to legislation or any increase in funding needed to improve the defense dependents' education system.

(d) The Director may provide for additional studies of the defense dependents' education system to be conducted in accordance with the provisions of this section, but such studies shall not be conducted more frequently than once a year. A report of each study shall be submitted to the Congress in accordance with subsection (c), and the second sentence of such subsection shall apply with respect to the transmission of each such report.

REGULATIONS

SEC. 1413. Not later than 180 days after the effective date of this title, the Secretary of Defense shall issue regulations to carry out this title. Such regulations shall—

(1) prescribe the educational goals and objectives of the defense dependents' education system,

(2) establish standards for the development of curricula for the system and for the selection of instructional materials,

(3) prescribe professional standards for professional personnel employed in the system,

(4) provide for arrangements between the Director and commanders of military installations for necessary logistic support for schools of the system located on military installations,

(5) provide for a recertification program for professional personnel employed in the system, and

(6) provide for such other matters as may be necessary to ensure the efficient organization and operations of the defense dependents' education system.

DEFINITIONS

SEC. 1414. For purposes of this title:

(1) The term "dependent" means a minor individual—

(A) who has not completed secondary schooling, and

(B) who is the child, stepchild, adopted child, ward, or spouse of a sponsor, or who is a resident in the household of a sponsor who stands in loco parentis to such individual and who receives one half or more of his support from such sponsor.

(2) The term "sponsor" means—

(A) a member of the Armed Forces serving on active duty, or

(B) a civilian officer or employee of the Department of Defense paid from appropriated funds.

(3) The term "overseas area" means any area situated outside the United States.

(4) The term "United States", when used in a geographical sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Island).

EFFECTIVE DATES

SEC. 1415. (a)(1) Except as provided in paragraph (2) this title shall take effect on July 1, 1979.

(2) Section 1407(b) and the amendments made by section 1407(c), 1408(a), and 1408(b) shall take effect on October 1, 1978.

(b) Notwithstanding subsection (a) or any other provision of this title no provision of this title shall be construed to impair or prevent the taking effect of the provision of any other Act providing for the transfer of the functions described in this title to an executive department having responsibility for education.

TITLE XV—MISCELLANEOUS PROVISIONS

PART A—INTERNATIONAL YEAR OF THE CHILD

DECLARATION OF PURPOSE OF THE INTERNATIONAL YEAR OF THE CHILD

SEC. 1501. The United Nations General Assembly, by a resolution approved at its thirty-first session, has designated the year 1979 as the International Year of the Child. This action was designed to focus national and international attention on various aspects of the needs of children and to encourage

all nations, individually and in cooperation, to take appropriate and relevant actions to meet them. The General Assembly called upon member states and international organizations to participate fully in the International Year of the Child and to devote the year 1979 to efforts at the international, national and community levels to provide lasting improvements in the well-being of children.

ESTABLISHMENT OF A NATIONAL COMMISSION

SEC. 1502. (a) The President shall establish a National Commission on the International Year of the Child (hereinafter in this Act referred to as the "Commission"), and to appoint to the Commission not more than twenty-five members chosen from among citizens in private life.

(b) The President shall designate a Chairperson and two Vice Chairpersons from among the members.

(c) The President of the Senate and the Speaker of the House of Representatives may each designate two Members of the Senate and the House of Representatives, respectively, to serve on the Commission, in addition to the members to be appointed by the President.

FUNCTIONS OF THE COMMISSION

SEC. 1503. (a) The Commission shall promote: (i) effective and significant observance in the United States of 1979 as the International Year of the Child (hereinafter in this Act referred to as the "Year"), with particular reference to the goals stated in section 2; (ii) cooperation by the United States with UNICEF and other international organizations and with other nations to achieve the objectives of the Year. To these ends, the Commission shall seek to stimulate within the United States a better understanding of, and actions to meet, the needs of children both in this and in other countries. Such needs would include, but not be limited to the social, health, educational, and developmental needs of children, as well as concern for the general conditions and rights of children.

(b) The Commission shall keep informed of activities undertaken or planned by various organizations and groups in the United States and abroad in observance of the Year and shall consult with such groups and stimulate such activities and programs through community, civic, local, State, regional, national, Federal, international, private and professional organizations.

(c) The Commission may conduct studies, inquiries, and hearings and hold meetings as it deems necessary. It may assemble and disseminate information and issue reports and other publications. It may also coordinate, sponsor, perform, or oversee projects, studies, events, and other activities that it deems necessary or desirable for the observance of the Year.

(d) The Commission shall make recommendations to the President on national policies in furtherance of the goals of the Year; and shall make a final report to the President on its work and recommendations, not later than March 31, 1980.

COORDINATION AND ADMINISTRATION

SEC. 1504. (a) The Commission is authorized to establish such subcommittees, the membership of which may include persons not members of the Commission, as it deems necessary to carry out the purpose of this Act.

(b) Each agency of the executive branch of the Government is authorized: (1) to furnish to the Commission, upon request of the Chairperson of the Commission, such information, advice, services, and funds as may be useful to the Commission for the fulfillment of its functions under this Act, and (2) to detail personnel to the Commission.

(c) Each member of the Commission or any of its subcommittees, who is not a member of Congress may, while serving on business of the Commission, be compensated at a rate not to exceed the daily equivalent of GS–15 for each day they are engaged in the actual performance of duties.

(d) The Commission may appoint such staff personnel as it considers necessary to carry out its duties under this Act without regard to the provisions of title 5, United States Code, governing appointment in the competitive civil service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that not more than two individuals so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–15 of the General Schedule. Appointments shall be made without regard to political affiliation.

(e) The Commission is authorized to accept and use services of voluntary and uncompensated personnel. Such personnel shall not be considered Federal employees for any purpose other than for purposes of chapter 81 of title 4, United States Code (relating to compensation for injury), and section 2671 through 2680 of title 28, United States Code (relating to tort claims), and shall not perform the work of Federal employees.

(f) Members or staff of the Commission or of a subcommittee thereof, shall be allowed travel expenses while attending meetings of the Commission or its subcommittees or otherwise engaged in the business of the Commission away from their homes or regular places of business, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code, for persons in government service employed intermittently.

(g) The Commission is authorized to procure such temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3100 of title 5, United States Code.

(h) The Commission is authorized to accept, use, and dispose of contributions of money or property.

(i) The Commission is authorized to enter into contracts with Federal and State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(j) The Commission may use the United States mails under the same conditions as other departments and agencies of the United States.

(k) The powers granted the Commission by this Act shall be in addition to those granted by Executive Order 12053. The powers granted the Commission by Executive Order 12053 may be employed to fulfill the responsibilities of the Commission under this Act.

(l) The powers granted the Commission under this Act may be delegated to any member or employee of the Commission by the Commission Chairperson.

(m) Financial and administrative support services (including those related to budget and accounting, financial reporting, personnel, and procurement) shall be provided to the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement, from funds of the Commission, in such amounts as may be agreed upon by the Chairperson of the Commission and the Administrator of the General Services Administration.

WAIVERS OF CERTAIN OTHER PROVISIONS OF LAW

SEC. 1505. In order to expedite matters pertaining to the planning for, and work of, the Commission, the Commission is authorized to make purchases and contracts without regard to section 252 of title 41 of the United States Code, pertaining to advertising and competitive bidding, and may arrange for the printing of any material pertaining to the work of the Commission without regard to the Government Printing and Binding Regulations and any related laws or regulations.

TERMINATION DATE

SEC. 1506. The Commission shall continue in existence until thirty days after submission of its final report to the President pursuant to section 1503(d), at which time it shall terminate, but the life of the Commission shall in no case extend beyond April 30, 1980.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1507. There are authorized to be appropriated, without fiscal year limitations such sums as may be necessary to carry out the provisions of this Act. Such sums shall remain available for obligation until expended. No funds authorized hereunder may be used for lobbying activities.

PART B—NATIONAL ACADEMY OF PEACE AND CONFLICT RESOLUTION

ESTABLISHMENT

SEC. 1511. There is established a commission to be known as the Commission on Proposals for the National Academy of Peace and Conflict Resolution.

DUTIES OF COMMISSION

SEC. 1512. (a) The Commission shall undertake a study to consider—

(1) whether to establish a National Academy of Peace and Conflict Resolution;

(2) the size, cost, and location of an Academy;

(3) the effects which the establishment of an Academy would have on existing institutions of higher education;

(4) the relationship which would exist between an Academy and the Federal Government;

(5) the feasibility of making grants and providing other forms of assistance to existing institutions of higher education in lieu of, or in addition to, establishing an Academy; and

(6) alternative proposals, which may or may not include the establishment of an academy, which would assist the Federal Government in accomplishing the goal of promoting peace.

(b) In conducting the study required by subsection (a), the Commission shall—

(1) review the theory and techniques of peaceful resolution of conflict between nations; and

(2) study existing institutions which assist in resolving conflict in the areas of international relations.

MEMBERSHIP

SEC. 1513. (a) The Commission shall be composed of nine members as follows—

(1) three appointed by the President pro tempore of the Senate;

(2) three appointed by the Speaker of the House of Representatives; and

(3) three appointed by the President.

(b) Members shall be appointed for the life of the Commission.

(c) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(d)(1) Except as provided in paragraph (2), members of the Commission each shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule (5 U.S.C. 5332) for each day during which they are engaged in the actual performance of the duties of the Commission.

(2) Members of the Commission who are full-time officers or employees of the United States or Members of the Congress shall receive no additional pay on account of their service on the Commission.

(3) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel

expenses, including a per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(e) The Commission shall elect a Chairman and a Vice Chairman from among its members.

(f) Five members of the Commission shall constitute a quorum.

(g) The Commission shall meet at the call of the Chairman or a majority of its members.

DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS

SEC. 1514. (a) Subject to such rules as may be adopted by the Commission, the Chairman, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classifications and General Schedule pay rates, shall have the power to—

(1) appoint a Director who shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316);

(2) appoint and fix the compensation of such staff personnel as he considers necessary; and

(3) procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code.

(b) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this title.

POWERS OF COMMISSION

SEC. 1515. (a) The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(c) The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title. Upon request of the Chairman, the head of any such Federal agency shall furnish such information to the Commission.

REPORTS

SEC. 1516. The Commission shall transmit to the President and to each House of the Congress such interim reports as it considers appropriate and shall transmit a final report to the President and to each House of the Congress not later than one year after the date on which appropriations first became available to carry out this title. The final report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation as it considers appropriate.

TERMINATION

SEC. 1517. The Commission shall cease to exist sixty days after transmitting its final report under section 1516.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1518. There is authorized to be appropriated not to exceed $500,000 to carry out this title.

DEFINITIONS

SEC. 1519. For purposes of this title—

(1) the term "Academy" means the National Academy of Peace and Conflict Resolution;

(2) the term "Chairman" means the Chairman of the Commission elected under section 1513(e);

(3) the term "Commission" means the Commission on Proposals for the National Academy of Peace and Conflict Resolution; and

(4) the term "Federal agency" means any agency, department, or independent establishment in the executive branch of the Federal Government, including any Government corporation.

PART C—MISCELLANEOUS AMENDMENTS; EFFECTIVE DATES

PREPARATION OF CENSUS DATA

SEC. 1521. For the purpose of establishing a reliable statistical basis for the rendering of determinations under section 111(c) of the Elementary and Secondary Education Act of 1965, and for other purposes, the Secretary of Commerce shall take such steps as may be necessary to ensure that data developed from the 1980 decennial census will be available to the Secretary of Health, Education, and Welfare and to the Commissioner of Education identifying data for children under 18 years of age, by single year of age, for school districts. Such data shall relate to the family characteristics of these children, including income, education, and such other family characteristics as may be appropriate and available from the decennial census.

AUTHORIZATION OF APPROPRIATIONS FOR RACIALLY ISOLATED SCHOOL DISTRICTS

SEC. 1522. There is authorized to be appropriated $1,200,000 for each fiscal year prior to October 1, 1981, for assistance to local educational agencies which are racially isolated as a result of geographic location of the school district of such agencies, and which have adopted and are implementing, or will adopt and implement, a plan to aid schoolchildren in overcoming the educational disadvantage of minority group isolation.

AVAILABILITY OF EDUCATION REPORTS

SEC. 1523. Any evaluation report or data or information collected in preparation of such report, which is paid for with appropriated funds, shall be made available, upon request, within 4 days to the chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives and of the Committee on Human Resources of the Senate.

GENERAL ASSISTANCE FOR THE VIRGIN ISLANDS

SEC. 1524. There is hereby authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1979, and for each of the four succeeding fiscal years, for the purpose of providing general assistance to improve public education in the Virgin Islands.

TERRITORIAL TEACHER TRAINING ASSISTANCE

SEC. 1525. There is hereby authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1979, and for each of the four succeeding fiscal years for the purpose of assisting teacher training programs in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. From the sums appropriated pursuant to this section the Commissioner of Education shall make grants and enter into contracts for the purpose of providing training to teachers in schools in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The Commissioner may make grants to or contracts with any organization that he deems qualified to provide training for teachers in such schools and shall allot such sums among such territories on the basis of the need for such training.

STUDY OF EVALUATION PRACTICES AND PROCEDURES

SEC. 1526. The Commissioner of Education shall conduct a study of evaluation practices and procedures at the national, State, and local levels with respect to federally funded elementary and secondary educational programs and shall include in the first annual report to Congress submitted more than one year after the date of enactment of this Act proposals and recommendations for the revision or modification of any part or all of such practices and procedures. Such proposals and recommendations shall include provisions—

(1) to ensure that evaluations are based on uniform methods and measurements;

(2) to ensure the integrity and independence of the evaluation process; and

(3) to ensure appropriate follow-up on the evaluations that are conducted.

TELEVISION PROGRAM ASSISTANCE

SEC. 1527. (a) The Secretary is authorized to make grants to and contracts with public and private agencies for the production, development, or distribution (or any combination thereof) of programs designed for television systems, whether broadcast or nonbroadcast.

(b) The Assistant Secretary for Education shall be responsible for the administration of this section and shall also conduct surveys, research, and evaluation studies which may assist in decisions to support pilot programs for full scale production.

LIMITATION ON CONTRACTING AUTHORITY

SEC. 1528. Notwithstanding any other provision of this Act, no authority to enter into contracts under this Act shall be effective except to such an extent or in such amounts as are provided in advance in appropriations Acts.

REPEAL

SEC. 1529. Title VII of the Education Amendments of 1974 is repealed.

GENERAL EFFECTIVE DATE

SEC. 1530. Except as otherwise specifically provided in this Act, the provisions of this Act and the amendments and repeals made by this Act shall take effect October 1, 1978.

And the Senate agree to the same.

CARL D. PERKINS,
WILLIAM D. FORD,
IKE ANDREWS,
MIKE BLOUIN,
PAUL SIMON,
LEO C. ZEFERETTI,
RON MOTTL,
AUSTIN J. MURPHY,
JOSEPH A. LE FANTE,
TED WEISS,
CEC HEFTEL,
BALTASAR CORRADA,
DALE E. KILDEE,
GEO. MILLER,
ALBERT H. QUIE,
JOHN BUCHANAN,
BILL GOODLING,
CARL PURSELL,
JOHN N. ERLENBORN,
JAMES M. JEFFORDS,

Managers on the part of the House.

CLAIBORNE PELL,
JENNINGS RANDOLPH,
EDWARD M. KENNEDY,
TOM EAGLETON,
HARRISON A. WILLIAMS, Jr.,
ROBERT T. STAFFORD,
DICK SCHWEIKER,
S. I. HAYAKAWA,
JACOB K. JAVITS,

The managers on the part of the House
Managers on the part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

and the Senate at the conference on the disagreeing votes of the two Houses on the

amendment of the Senate to the bill (H.R. 15) to extend and amend expiring elementary and secondary education programs, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

1. Hold-harmless for outlying areas and BIA programs

The House bill provides for a fiscal year 1976 hold harmless for the outlying areas and for Indian programs. The Senate amendment retains the existing hold harmless levels of 1973.

The Senate recedes.

2. Title I formula

The House bill, but not the Senate amendment, includes a new provision allocating funds appropriated for the basic title I program in excess of the sums appropriated for fiscal 1979 according to information from the 1975 Survey of Income and Education. In particular, the SIE data for children from families below 50 percent of the median national income for four-person families is used for this distribution. Within-State, each local educational agency would receive an amount equal to its percentage of the State's basic title I allocation. The House bill also provides for a resurvey of any State where the State's percentage decrease of such children exceeds 25 percent.

The Senate amendment does not change the existing formula for distribution of title I funds.

The Senate recedes with an amendment allocating one-half of the funds appropriated for the basic Title I program in excess of the sums appropriated for fiscal 1979, according to the SIE data.

3. AFDC children

Beginning with fiscal year 1980 appropriations, the House bill modifies the current title I formula to count AFDC children in full, instead of at two-thirds, for the distribution of appropriations. The Senate amendment makes the same change, effective in fiscal year 1979. Because of the formula change made by the House bill (see note 2), all funds in excess of the amount appropriated for fiscal year 1979 will be distributed on the basis of the Survey of Income and Education. As a result, the 100% AFDC count would only apply to funds below the 1979 level, under the House bill. Since the Senate amendment does not change the basic title I formula, its AFDC amendment would apply to all funds.

The House recedes with an amendment which provides for a full count of AFDC children for the purposes of the new concentration program for fiscal 1979 and which provides for a full count of AFDC children for appropriations distributed for the basic Title I program (except for those distributed using the SIE data) beginning in fiscal 1980.

4. Incentive grant ratable reduction

The House bill, but not the Senate amendment, contains a ratable reduction provision for the new State incentive grant program.

The Senate recedes.

The conferees wish to clarify two points with respect to the requirements which must be met before a State compensatory education program qualifies for Title I funds made available through the new special incentive grant provision.

Some States have or will develop multiple purpose legislation, one component of which provides educationally disadvantaged children with supplementary services similar to Title I. If a State enacts such legislation, only the portion of State funds which are actually spent on educationally deprived children and which meet all of the other requirements of section 116, including the requirement that programs comply with section 131(b), will qualify for Title I matching funds under the new incentive grant provision.

The second point of clarification concerns the flexibility States have in allocating their own State compensatory education funds. So long as: (1) the recipients of the State compensatory education program are educationally deprived children, (2) at least 50 percent of the State compensatory education funds are allocated to Title I eligible areas in all participating school districts, and (3) the program meets the requirements of section 131(b), the conferees do not intend to restrict the States in the selection of objective criteria for determining district and school eligibility for State compensatory education funds. For example, (1) educational need, (2) a reasonable proxy for educational need, (3) level of poverty, or (4) a combination of these factors are acceptable and in keeping with the intent of the incentive grant provision.

5. Distribution of concentration grants to school districts

The House bill provides that the funds available under the new concentration grant program will generally be distributed within counties receiving those funds to school districts on the basis of their current distribution of title I children, using a poverty level selected by the State educational agency consistent with the purposes of title I. The Senate amendment provides for allocating concentration funds among school districts in eligible counties on the same basis as the House bill, but provides that funds may be allocated only to those school districts whose incidence of children from low-income families is at least 10 percent or is above the county's average incidence of such children, whichever would result in grants being made to the fewer number of districts.

The conference substitute provides for allocating concentration grants to school districts within counties receiving those funds according to the distribution of the regular title I grants for school districts with 20 percent or more poor children. The substitute provides that for school districts with fewer than 20 percent of such students their concentration grants would be determined in accordance with their relative concentrations of such children as determined by dividing their percentage of Title I children by 20.

6. Approval of local applications

The House bill, but not the Senate amendment, requires that local applications can be approved by State educational agencies only upon determinations that such applications provide for the use of funds consistent with the requirements of title I and with the assurances contained in the general application provided for under the General Education Provisions Act.

The Senate recedes.

7. Eligible areas

The House bill, but not the Senate amendment, provides that any school attendance area having at least 20 percent poor children must be designated as an eligible school attendance area for title I.

The Senate recedes with an amendment which makes optional the designation of these eligible areas, increases the number of poor children to at least 25 percent, and provides that formerly designated areas must retain the same amount of funds as in the preceding year if the school district exercises this option.

8. Ranking of schools

The House bill, but not the Senate amendment, would give local school districts the option of ranking schools according to both poverty and educational deprivation and then substituting schools with greater educational deprivation for those with greater poverty but less educational deprivation.

The House bill also contains a limitation that if a school district exercises this option, it cannot serve any more schools than are eligible using poverty alone.

The Senate recedes with an amendment requiring a school district which chooses to exercise this option to submit an application to the State educational agency in order to seek approval of this course of action. This application must be approved in advance by the districtwide parental advisory council in the school district and may be approved by the State educational agency only if such agency finds that the use of this option will not substantially impair the provision of title I services to educationally deprived, low-income children.

9. Eligibility of nonpublic school children

The Senate amendment, but not the House bill, provides that whenever children who reside in eligible school attendance areas and attend private school are not eligible for services from non-Federal sources, they shall be selected for programs under title I despite the fact that the public school in that attendance area has been skipped.

The House recedes with an amendment combining this provision with a similar provision which is mentioned in item 26(b).

10. Eligibility of children who transfer to non-title I schools

Although both the House bill and the Senate amendment permit a child to continue eligibility for title I services if transferred to an ineligible school, the House bill makes it explicit that it is the right of a local educational agency to make that determination.

The Senate recedes.

11. Assessment of needs

The House bill, but not the Senate amendment, makes explicit that the needs of educationally deprived children in all eligible attendance areas must be assessed each year.

The Senate recedes.

12. Minimum project size

The House bill, but not the Senate amendment, retains the provision of current law requiring that a title I program in a local school district must involve an expenditure of at least $2,500 unless the State educational agency waives this requirement.

The Senate recedes.

13. Use of funds for health, social, or nutrition services

The House bill, but not the Senate amendment, bars school districts from using title I funds for health, social or nutrition services unless such school district has requested assistance from the State in locating and using other State and Federal programs for such services.

The Senate recedes.

14. Evaluation schedule

The House bill, but not the Senate amendment, provides that the 3-year local evaluations of title I must be conducted in accordance with an evaluation schedule promulgated by the Commissioner.

The Senate recedes. The conferees urge the Commissioner to provide that these local evaluations be evenly spaced throughout the three-year period.

15. Dissemination of information

The House bill, but not the Senate amendment, requires local school districts to have procedures for acquiring and disseminating to teachers and administrators significant information derived from educational research.

The Senate recedes.

16. Involvement of school boards in planning

The House bill, but not the Senate amendment, requires that local school boards must be involved in planning programs.

The Senate recedes.

17. Parental involvement

The House bill, but not the Senate amendment, requires local school districts to involve parents in the establishment of title I programs and to permit parents to make recommendations with respect to the instructional goals of the program.

The Senate recedes.

18. General provisions

The House bill, but not the Senate amendment, includes in title I specific provisions requiring public control of funds and allowing the use of funds for construction.

The Senate recedes.

19. Parental advisory councils

(a) The House bill, but not the Senate amendment, provides that any title I school with fewer than one full-time equivalent title I staff member may simply describe how parents are involved in planning for programs, instead of requiring that an advisory council exist in that school. The House bill also provides that school district-wide advisory councils and advisory councils for schools having at least one full-time title I staff member shall have majorities composed of parents of children eligible to be served and shall be composed of members elected by the parents in each school attendance area.

The Senate amendment provides that a district may receive funds under title I only if it establishes a district-wide advisory council composed of representatives elected by the project area and school advisory councils and also an advisory council for each project area or school. Any school district with less than 100 students served by title I shall establish a district-wide advisory council, which is composed of members elected by the parents. Any project school with less than 50 students in title I programs shall establish a school advisory council with a majority of members who are parents and who are elected by the parents of the attendance area.

The conference substitute requires the establishment of a district-wide parental advisory council in every school district receiving title I funds. These councils must have a majority of members who are parents of children to be served, be composed of members elected by the parents in each district, and include representatives of children and schools eligible to be served but not currently participating in programs. The substitute also requires the establishment of school parental advisory councils composed of a majority of members who are parents of children to be served and members elected by such parents. The requirement for a school-level council must be waived for any school in which not more than one full-time equivalent staff person is assigned and in which not more than one full-time equivalent staff person is assigned and in which not more than 40 students participate in title I programs.

At the district level, it is important to strike and maintain a balance between the immediate concerns of the parents of children participating in title I projects at any given time, and the long-term concerns of parents of children who attend schools eligible for title I assistance but not currently participating in projects. The language in the conference substitute is intended to promote such a balance. It is not required that district councils have a representative from each school in a district. Such representation could in some cases, produce a council too large to effectively carry out the council's responsibilities.

(b) The House bill provides that advisory councils for schools with at least two full-time title I staff members must be composed of not less than five members, must meet at least four times a year, and must be composed of members elected for terms not less than one nor more than three years and who shall be eligible for reelection. The House bill also provides that any individual who is a teacher in a title I school or a parent in a title I eligible area shall be eligible to be elected a member of the district-wide council, and that no teacher shall be ineligible for non-residence in the title I area or in the school district.

The Senate amendment provides that each area or project school advisory council shall be composed of not less than 10 members (three-fourths of whom are parents of children to be served who are elected by parents in the attendance area and one-fourth of whom shall be elected by the parent members) shall elect its officers, shall have members' terms of 2 years and shall meet a sufficient number of times to carry out their responsibility. The first meeting of the council shall occur no later than the second month of the school year.

The conference substitute provides that for every school in which 75 or more students are served by programs, each school advisory council must be composed of not less than eight members, serving two-year term and being eligible for re-election, must elect officers of the council, and must meet a sufficient number of times a year according to a schedule and in locations determined by such council. Furthermore, the substitute provides that any teacher in a title I school and any parent in an eligible school shall be eligible to be elected as a member of the district-wide advisory council and that any teacher in a project school shall be eligible to be elected to either a district-wide or school advisory council regardless of place of residence.

In certain rural areas, in which participating schools each have only a small number of participating students, or where several schools are served by a single title I teacher, the functions of school level parent advisory councils and district level parent advisory councils may be identical. In such cases, the requirements for schools level councils may be waived in order to strengthen, not dilute, the effectiveness of parental involvement.

Parent advisory councils should plan to meet regularly throughout the school year, with the first meeting taking place no later than the end of the second month of the school year. However, many important activities, including planning and evaluation and the operation of summer components, may take place during the summer, and parent advisory councils should plan the number and schedule of their meetings accordingly.

(c) The Senate amendment, but not the House bill, provides that each local educational agency shall make available without charge to each member of an advisory council certain Federal and State laws and regulations plus appropriate training materials. In addition, each State educational agency shall furnish to each parent advisory council in that State copies of reports and other appropriate documents resulting from monitoring and evaluation, including audits, of programs conducted under this title, insofar as they pertain to programs operated by the local education agency.

The conference substitute requires each school district to provide without charge to each member of a district-wide or school council a copy of the text of title I, a copy of Federal regulations, and a copy of State regulations. Furthermore, the substitute requires each State educational agency to provide each districtwide council a copy of any report resulting from State or Federal audit, monitoring, or evaluation activities in the district.

(d) The Senate amendment, but not the House bill, authorizes the Commissioner to develop criteria for training of advisory council members and permits the use of title I funds for attendance by such members at relevant local, State, regional, and national meetings.

The conference substitute requires each school district to include in its application for funding a description of the training it will provide to advisory councils. This training program must be planned in consultation with the members of such councils, must provide each member of such councils with appropriate training materials and may permit use of title I funds for expenses associated with such training, including expenses associated with the attendance of such members at training sessions.

Local educational agencies must make every effort to provide training for parent council members at a location within the school district, so that such training may be accomplished without undue delay, and take place at a location convenient to all council members. In certain areas, several districts may wish to provide such training jointly, necessitating travel by council members to a single, central location. Expenses associated with regional or national conferences are not prohibited, but should be paid only in special and unusual circumstances.

(e) The Senate amendment, but not the House bill, requires the Commissioner annually to sponsor workshops in the several regions of the country designed to assist school districts in working with parent advisory councils and to facilitate parental involvement in title I programs. The workshops shall be planned and conducted in consultation with members of the councils in the region to be served and with organizations concerned with Federal educational policies.

The House recedes with an amendment requiring these workshops to provide training to parental advisory councils and deleting the requirement that these workshops must be planned and conducted in consultation with organizations concerned with Federal education policy. Private organizations may be able to provide important expertise in the planning and conduct of these workshops, when representatives of the local educational agencies and the relevant parent advisory councils agree.

(f) The Senate amendment, but not the House bill, authorizes the National Institute of Education to develop models for successful parent involvement training programs and to report and disseminate the results to the Congress and the public.

The conference substitute requires the NIE to assess the effectiveness of various forms of parental involvement and of various methods of training members of councils. The results of such assessments shall be reported to the Congress and to the public. The study should include an examination of the extent to which local educational agencies have complied with the requirements of this section.

(g) The Senate amendment, but not the House bill, authorizes such sums as may be necessary for fiscal years 1979 through 1983 to carry out the workshops and the NIE model training programs.

The House recedes.

20. Maintenance of effort

The House bill, but not the Senate amendment, provides for a waiver of the maintenance of effort provision for title I whenever exceptional or unforeseen circumstances exist. The Senate amendment requires that such circumstances be exceptional *and* unforeseen.

The House recedes.

21. Comparability

The House bill requires filing of comparability reports by July 1 of each year except that a school district not required to file a report on the date of enactment of these amendments may not be required to file one subsequently. The Senate amendment re-

quires each school district to report annually on its comparability status.

The Senate recedes with an amendment authorizing the Commissioner to waive the exception in the House bill whenever he determines it necessary, such as in situations where several small school districts are consolidated into a single district of a size sufficient to warrant the filing of comparability reports.

22. Records

The House bill includes in title I requirements that local school districts must keep adequate records and afford access to such records to the State. The House bill also provides that a State educational agency need not require that title I funds be accounted for separately, when a local school district carries on a single compensatory program from both Federal and State or local funds. The House bill also requires local school districts to submit annual reports to State educational agencies.

The Senate recedes.

23. Access to information

The Senate amendment, but not the House bill, specifically includes teachers as eligible recipients of title I applications, evaluations, reports and other pertinent documents.

The House recedes.

24. Complaint resolution

The House bill, but not the Senate amendment, includes as part of the complaint process that school districts must disseminate to organizations and individuals the names, titles, addresses, and phone numbers of local officials responsible for investigating complaints. The House bill also provides for an exception to the 30-day period for investigating complaints whenever the State educational agency provides for a longer period of time due to exceptional circumstances. The House bill also provides for keeping all correspondence regarding complaints in a central file and for notification in writing to complainants and others of the resolution of the complaint.

The House recedes with an amendment permitting the State educational agency to set a longer period of time for local school districts to investigate complaints whenever exceptional circumstances exist.

25. Individualized plans

The Senate amendment, but not the House bill, includes the teacher as a participant in the development of each child's individualized written educational plan.

The House recedes with an amendment deleting "written" from the Senate provision.

26. Participation of non-public school children

(a) The Senate amendment makes explicit that title I programs shall offer non-public school children an opportunity to participate on a basis equitable to that provided similarly deprived children enrolled in public schools.

The Senate recedes.

(b) The House bill provides that the number of private school children must be determined for title I services without regard to non-Federal compensatory education funds and without regard to skipping how ranked schools receive services from non-Federal sources. The Senate amendment (see note 9) provides for participation of non-public school students who are ineligible for State or local compensatory programs in those cases where public schools in their attendance area have been skipped over as eligible title I schools because of their participation in State or local compensatory education programs.

The Senate recedes with an amendment combining the House provision with a Senate provision which appears in item 9.

(c) The House bill provides that the Commissioner cannot take any final action to bypass a State or local educational agency in order to provide services to private school children unless such agency has had an opportunity for at least 45 days after receiving written notification to submit written objections and to appear for a show cause proceeding. The Senate amendment prevents the Commissioner from taking any action without at least 60 days notification and an option for a State or local educational agency to have a hearing on the record.

The Senate recedes.

27. Excess costs

The Senate amendment, but not the House bill, makes explicit that a bilingual program for children of limited English-speaking ability or a special program for handicapped children or children with specific learning disabilities may be excluded from the determination of excess costs if the program provides services to children in project areas which are comparable to those provided to similarly disadvantaged children in non-project areas.

The Senate recedes.

28. Exception to anti-supplanting requirement

The Senate amendment, but not the House bill, includes a school district's entitlement under the incentive grant and concentration provisions, as well as under the basic title I program, in the amount which must be fully funded by Federal, State and local funds, before a school district may use State and local funds to supplant local funds.

The Senate recedes.

The conferees wish to clarify the circumstances under which State or local funds may be counted for purposes of qualifying for the limited exemption from the supplanting provision. Some States have developed or will develop multipurpose legislation under which one component provides supplementary assistance for educationally disadvantaged children and a second component provides assistance for other children, e.g., gifted and talented, or for other purposes, e.g., to pay for security guards. For purposes of section 132, only the compensatory education portion of State funds provided by such multipurpose legislation which is actually spent on educationally deprived children and which meet the other requirements of section 131 (a)(1) (A), (B), and (C) will be considered for the limited exemption from the nonsupplanting requirement.

29. Waiver

The House bill, but not the Senate amendment, authorizes a waiver under certain conditions for school districts which spend $2 of State compensatory money in ineligible title I schools for each dollar of State compensatory education money spent in eligible title I schools.

The House recedes.

30. School-wide projects

(a) The House bill permits school-wide projects in schools having not less than 70 percent of the children from low-income families. The Senate amendment provides for such projects when not less than 80 percent of the children are from such families.

The conference substitute provides that only schools with 75 percent or more low-income children may conduct school-wide projects.

(b) The House bill requires school districts seeking to operate these school-wide projects to spend the same amount of title I funds per child on title I children within such schools as they are spending in regular title I schools. The House bill also requires that the non-title I children within such schools having school-wide projects must have spent on them the same amount per child as the title I children but that these funds must come from special supplementary State and local sources.

The Senate amendment requires that the average per pupil expenditure in the school involved in a school-wide project be no less than such expenditure in that school in the previous fiscal year. In addition, the Senate amendment requires the average per pupil amount of Federal, State and local compensatory education funds to be at least 32 percent of the average per pupil expenditure in the school district. The Senate amendment allows the State educational agency to approve a school-wide project which does not meet the latter requirement if the State finds that implementation of such a plan would be of equal or greater efficiency, in terms of cost, and would not cause a dilution of service to eligible children.

The Senate recedes with an amendment adding an additional requirement that the average per pupil expenditure in the school involved in a school-wide project be no less than such expenditure in that school in the previous fiscal year.

31. Treatment of Puerto Rico in State agency programs

The House bill sets the payments for Puerto Rico for the State agency programs at an amount arrived at by multiplying the number of children in such programs by a percentage related to a minimum per pupil expenditure for education in the 50 States. The Senate amendment retains the formula in existing law.

The Senate recedes.

32. Migrant children

The House bill gives priority in service to children who were migrant on the date of enactment of the Education Amendments of 1974, whether or not they are currently migrant. The Senate amendment gives priority to children who are presently migrant.

The House recedes.

33. Migrant transfer system

The House bill authorizes the Commissioner to make grants or contracts with State educational agencies for the operation of a system to transfer student records of migratory children. The Senate amendment authorizes the Commissioner to operate such a system.

The Senate recedes.

34. Neglected and delinquent

(a) The House bill, but not the Senate amendment, makes explicit that title I funds for State programs for neglected and delinquent children must be used to provide services supplemental to the basic education of such children which must be provided by the State.

The Senate recedes.

(b) The Senate amendment, but not the House bill, provides that where a State agency operates title I programs for neglected and delinquent children in which such children are likely to participate for more than one year, the State educational agency may approve an application for more than one year, but not to exceed three years.

The House recedes.

(c) The Senate amendment, but not the House bill, authorizes the Commissioner to make grants to State and local educational agencies for projects for transition services for children moving from State programs into locally operated programs. Not to exceed 5 percent of the amount available for State programs for neglected and delinquent children is authorized to be appropriated for transition services for each year.

The House recedes.

35. Minimum payments for State agency programs

The Senate amendment provides that no State shall receive less for any State operated program than 85 percent of the amount paid to the State for such program in the preceding year. The House bill also provides for such 85 percent hold harmless, but provides for 100 percent hold harmless for migrant programs through 1982.

The Senate recedes.

36. State plan

(a) The House bill requires States to set out a program of regular visits by State personnel to local projects. The Senate amendment states this requirement as a schedule of regular visits.

The Senate recedes.

(b) The House bill provides that the State plan shall contain procedures for verifying information and for audits of local educational agencies and State agencies. The Senate amendment only applies to local educational agency programs.

The Senate recedes.

37. Recordkeeping

The House bill, but not the Senate amendment, provides in title I that each State educational agency shall use fiscal control and accounting procedures to insure proper disbursement of funds.

The Senate recedes.

38. State aid

The House bill continues the present law's prohibition against the consideration by any State of the amount received by local school districts for title I when the State determines the amount of its own aid which will be available to local school districts. The Senate amendment prohibits such consideration with regard to State aid for that year or the preceding year.

The Senate recedes.

39. Evaluations

(a) The House bill, but not the Senate amendment, requires that the Commissioner must appoint an advisory committee, the majority of whom are local evaluators, to make recommendations regarding the adequacy of evaluation designs.

The House recedes with an amendment requiring the Commissioner to consult with State and local evaluators from school systems of all sizes who are experienced in evaluations under title I when he develops evaluation design models.

(b) The House bill, but not the Senate amendment, requires the Commissioner to develop, in consultation with State and local agencies, a schedule for conducting local evaluations designed to insure that one-third of such evaluations in any State are conducted each year. In addition, widespread consultation and hearings are required in developing national standards.

The Senate recedes.

(c) The House bill requires consultation with State and local educational agencies in developing jointly sponsored evaluations. The Senate amendment provides for consultation with State agencies, where appropriate.

The Senate recedes.

(d) The House bill requires an annual report to authorizing and appropriations committees concerning evaluation results. The Senate amendment requires the report every two years.

The House recedes.

40. Complaint Resolution

The House bill, but not the Senate amendment, requires the Commissioner to identify by name, title, address and telephone number the officials in the Office of Education responsible for complaint procedures and requires public access to all correspondence and other written communications concerning complaints.

The House recedes.

41. Audit reports

The House bill, but not the Senate amendment, requires the Commissioner to submit an annual report to the Congress containing specific information on audits of title I programs. (Also see item 45 regarding Senate provision for annual report on title I.)

The House recedes.

42. Withholding of payments

The Senate amendment, but not the House bill, provides for a hearing on the record prior to the withholding of funds to any State educational agency. It authorizes suspension of payments to such agency in the case of a substantial and continuing violation. The House bill authorizes suspension of payments pending the outcome of proceedings under this section.

The House recedes.

43. Compliance agreement

The House bill, but not the Senate amendment, contains a definition of the term "compliance agreement."

The Senate recedes.

44. Policy manual

(a) The House bill requires the Commissioner to publish a policy manual on title I no later than six months after the publication of final regulations on title I as amended by this bill. The Senate amendment requires such publication no later than 12 months after the publication of the regulations.

The Senate recedes.

(b) The House bill requires the distribution of these policy manuals to district-wide parent advisory councils. The Senate amendment requires such distribution to both district-wide and local parent advisory councils.

The Senate recedes. The conferees wish to make clear their intention that the policy manuals which must be distributed to the district-wide parental advisory councils must be made available to the school parental advisory councils.

(c) The House bill, but not the Senate amendment, includes in the policy manual audit determinations of officers or panels prior to a final audit determination by the Commissioner.

The House recedes.

45. Enforcement report

The Senate amendment, but not the House bill, requires the Commissioner to submit to the Congress in 1982 and 1984 a report concerning his enforcement of title I, including an analysis of the extent to which State assurances have been followed, a description of monitoring and evaluation activities, detailed information concerning audits and their resolution, and a report on complaints received and their resolution. As previously noted in note 41, the House bill requires an annual report from the Commissioner on audits but does not include any of the other information mentioned above.

The House recedes with an amendment requiring these reports in 1980, 1982, and 1984.

46 Payments

The House bill, but not the Senate amendment, provides for a redistribution of funds to other school districts within a State when the allocation to a local education agency from regular Title I funds and from the new State incentive grant program exceeds that agency's entitlement for the regular program.

The House recedes. The conferees wish to state their intention that Title I funds are meant to remain within the school district receiving them regardless of the fact that these funds may exceed the school district's entitlement under the basic program.

47. State administration

The House bill authorizes States to use up to 1.5 percent of the amount allocated to the State for State administration and specifies a minimum amount of $225,000 per State and $50,000 for the outlying areas for this purpose. In addition, the House bill requires that any additional amount received as a result of this amendment must be used exclusively for monitoring, audit resolution, enforcement and similar activities, and that these funds must be supplementary to non-Federal funds. The Senate amendment authorizes funds for administration of title I and title IV of ESEA in its new title V which is contained in the discussion of the consolidated programs.

The conference substitute adopts the provisions of the House bill but requires that the provisions of the Senate amendment must be followed instead in any year in which the appropriations are provided in full for the new Title V.

48. National Advisory Council

The House bill extends the authorization for the National Advisory Council through October 1, 1984. The Senate amendment extends this authorization through October 1, 1983.

The Senate recedes.

49. Definitions

(a) The Senate amendment, but not the House bill, includes Wake Island in the definition of "State".

The Senate recedes.

(b) The House bill excludes from the definition of "current expenditures" funds made available under titles I, II, III, IV, VI, and VII of ESEA. The Senate amendment extends existing law by excluding funds granted under title I and parts B and C of title IV.

The House recedes.

(c) The House bill extends current law by defining "average per pupil expenditure" in relation to the third preceding fiscal year. The Senate amendment relates to the second preceding year.

The Senate recedes.

50. Equalization funds

The House bill, but not the Senate amendment, repeals the program to assist States in equalizing education funds which was created by the Education Amendments of 1974.

The House recedes.

51. Study of comparability

Both the House bill and the Senate amendment require the Commissioner to conduct a study on alternatives to the present methods for demonstrating comparability under title I. Under the House bill this study is to be completed by September 30, 1981. Under the Senate amendment the study is to be completed by September 30, 1980.

The Senate recedes.

52. Study of parental involvement

The House bill, but not the Senate amendment requires the National Institute of Education to assess the effects of parental involvement on the operation of programs under title I.

The House recedes.

BASIC SKILLS, SPECIAL PROJECTS, AND RELATED PROGRAMS

1. Reading program

The House bill extends and amends the National Reading Improvement Act which was first authorized in the Education Amendments of 1974. The House bill expands this program to include mathematics instruction, as well as reading instruction, and to include programs in secondary schools. The House bill also revises the present Act to place greater emphasis upon State administration of the program through repealing the present law's provision that the first $30 million of appropriations must be directly administered by the Commissioner of Education and instead making the program a State operated program. The Commissioner would, however, still have reserved to him under a separate authorization of appropriations funds for nationally funded programs. The House bill also places a greater emphasis upon the involvement of parents in these programs.

The Senate amendment does not extend the National Reading Improvement Act.

The House recedes with an amendment described in item 2.

2. Basic skills

The Senate amendment, but not the House bill, adoptes a new title to assist Federal, State and local educational agencies to coordinate resources to improve instruction so that children are able to master basic skills to reading, mathematics, and communica-

tions. The title includes aid to State and local educational agencies for the development of basic skills programs, involvement of parents and the private sector in such programs and expansion of the use of televisions and other technology in the delivery of the instructional programs. Grants and contracts would be made by the Secretary of HEW to State and local educational agencies and other public and private agencies, organizations and institutions. Applications to the Secretary would require assurances concerning the equitable participation of non-public school children, evaluation procedures and development of procedures for incorporating successful practices into the regular school program. State educational agencies would be given 30 days to comment on all applications.

The House recedes with an amendment which basically retains the authorities proposed in the Senate amendment for the first $20 million of appropriations provided for any fiscal year and which then makes any appropriations above $20 million available for grants to States under approved State plans. States would receive grants based on their relative populations as if all States had approved applications, and then with the amount remaining (due to the fact that some States might not apply or would not receive approval) being distributed to those States which did receive approval, in amounts at the discretion of the Commissioner.

The conferees wish to make clear that, in awarding grants and contracts for the development, acquisition, and dissemination of educational technology, the Commissioner is to utilize, to the fullest extent possible, the expertise and resources of the telecommunications industry. Although the conferees' intent is to stimulate the use of educational technology through Federal assistance, the conferees do not intend that HEW or the Office of Education produce, disseminate, or in any way control the contents of the educational technology developed under this Act, including both hardware and software.

The conference substitute continues, in this new program, the discretionary authority which the Commissioner held previously under the reading improvement program to award funds to support the activities of reading academies.

3. Inexpensive book distribution program

Both the House bill and the Senate amendment continue the authorization for the program of distribution of inexpensive books. The House bill provides that the Federal share will be 50 percent of the cost. The Senate amendment makes the share 75 percent. The House bill authorizes $9 million per year for the book distribution program.

The Senate amendment authorizes $9 million for fiscal 1979, $10 million for fiscal 1980, $11 million for fiscal 1981, and $12 million for each of the fiscal years 1982 and 1983.

The House recedes.

4. Special mathematics program

The Senate bill authorizes the Commissioner to make grants and contracts for special programs for teaching of mathematics by qualified instructors, with an authorization of such sums as may be necessary through fiscal year 1983. The House bill retains the authorization under existing law for support of such projects under the Emergency School Aid Act.

The House recedes.

5. Special projects

(a) The House bill vests general authority for grants and contracts in the Secretary and the Commissioner. The Senate amendment vests all authority in the Commissioner.

The House recedes.

(b) The Senate amendment, but not the House bill, authorizes the Commissioner to make grants and contracts to carry out innovative or experimental programs which contribute to the solution of education problems and which are consistent with the purposes of the title. The Commissioner is also authorized to make grants and contracts for development of curricula and dissemination of information relating to energy conservation. Such sums as may be necessary are authorized to be appropriated for fiscal year 1980 and each of the three succeeding fiscal years for this purpose. In addition, from sums appropriated for other programs under the Special Projects title of the Senate amendment, the Commissioner is authorized to reserve not more than 10 percent for discretionary projects, except that he shall not reserve more than 10 percent of the amount appropriated for any specific program.

The House bill authorizes the Secretary and the Commissioner to award grants and contracts for the activities authorized by the Special Projects part of the House bill. Unlike the Senate amendment, the House bill contains a single authorization of appropriations for all of these activities; and unlike the Senate amendment, the House bill gives the Secretary and Commissioner complete discretion in deciding whether to fund any of these particular activities except for those with specific reservations of funds.

The House recedes.

6. Arts in education

The Senate amendment provides for a separate Arts in Education Act of 1978 and contains a congressional statement of findings and purpose. It authorizes the Commissioner to carry out a program of grants and contracts for programs in which the arts are an integral part of elementary and secondary schools curricula. Activities may include arrangements with public and private cultural organizations and institutions including museums, libraries, and theatres. In addition, the Commissioner may carry out a program for model projects in the performing arts through arrangements made with the John F. Kennedy Center, and he may carry out a program of model projects in the arts for handicapped persons through arrangements with the National Committee, Arts for the Handicapped. Twenty million dollars is authorized for fiscal year 1979 and each succeeding year through 1983.

The House bill authorizes this program to be administered by the Secretary of HEW, and requires that programs for handicapped persons be operated through arrangements with the National Committee of the Arts for the Handicapped. Under the House bill there is no separate authorization of appropriations for this program. Funds would be available for this purpose under the general authorization of appropriations for the Special Projects Act at the discretion of the Secretary and the Commissioner.

The House recedes.

7. Metric education

The House bill authorizes the Secretary of HEW to administer a program of metric education from appropriations made under the Special Projects Act. The Senate amendment creates a separate program with applications for grants made to the Commissioner. It authorizes $20 million a year for fiscal years 1979 through 1983.

The House recedes.

8. Consumer education

The House bill authorizes the funding of consumer education programs under the Special Projects Act and requires that applications from local educational agencies may only be approved by the Commissioner if they have been previously submitted to State educational agencies for comment. In addition, the House bill authorizes up to 100 percent Federal payments for programs other than curriculum development and evaluation. Contributions in kind are also acceptable as local contributions. Lastly, the House bill requires that $5 million of the appropriations made for the Special Projects Act must be reserved for these programs.

The Senate amendment also continues the consumer education program as the Consumer Education Act of 1978 and authorizes an annual appropriation of $20 million for fiscal years 1979 through 1983.

The House recedes with an amendment reserving at least $5 million of the Commissioner's discretionary funds for this purpose, in lieu of a separate authorization.

9. Youth employment

The House bill authorizes the Secretary to support activities regarding career education and youth employment from funds available under the Special Projects Act if those activities achieve the purposes of the Career Education Incentive Act. The Senate amendment vests authority for the program in the Commissioner and authorizes appropriations of $7.5 million for each fiscal year from 1979 through 1983.

The House recedes.

10. Preschool programs

The House bill, but not the Senate amendment, requires the Commissioner, in cooperation with the Assistant Secretary for Human Development of HEW, to establish a program of pilot projects to further cooperation between local educational agencies and Head Start programs. In addition, the House bill requires that at least 10 percent of the funds under the Special Projects Act must be used for this purpose.

The Senate recedes with an amendment reserving at least 10 percent of the Commissioner's discretionary funds for this purpose.

11. Small grants

The House bill authorizes the Secretary to make small grants, from appropriations under the Special Projects Act, for the development of innovative methods in education. Any grant to an individual employed by a school district may only be made if that district has had an opportunity to comment on the proposal and if the district will cooperate with the grantee in carrying out the activity. The Senate amendment authorizes the Commissioner to make such small grants from funds available to him under this discretionary authority and does not require a determination that the local educational agency will cooperate.

The Senate recedes.

12. Population education

The House bill authorizes the Commissioner to fund a program of population education under the Special Projects Act and requires that at least 10 percent of the appropriation under that Act must be used for this purpose. In addition, the House bill directs the National Institute of Education to establish a clearinghouse on population education from funds authorized for this purpose.

The Senate amendment authorizes the same activity but directs the Commissioner to consult with the Deputy Assistant Secretary for Population Affairs in carrying out that program. The Senate amendment authorizes $3 million a year from fiscal year 1979 through 1983 for this purpose and requires the National Institute of Education to either establish or designate a clearinghouse with funds available under the part. The activities of the NIE shall be carried out in accordance with related activities under title X of the Public Health Services Act.

The House recedes with an amendment requiring that at least 10 percent of the Commissioner's discretionary funds must be used for this purpose, in lieu of a separate authorization.

13. Dissemination of information

The House bill, but not the Senate amendment, requires the Commissioner to use at least 5 percent of the appropriations under

the Special Projects Act to disseminate information about the reading improvement program and the innovative programs operated under title IV of ESEA. At least 70 percent of these funds must be used to disseminate information through the National Diffusion Network.

The Senate recedes with an amendment requiring at least 5 percent of the Commissioner's discretionary funds to be used for this purpose and deleting the set-aside for the National Diffusion Network. The conferees would urge the Commissioner to make use of the National Diffusion Network under this authority wherever he determines that this use would best meet the purposes of this section.

14. Law-related education

The Senate amendment, but not the House bill, authorizes a new Law-related Education Act of 1978 which authorizes the Commissioner to make grants and contracts for the provision of law-related education programs designed to equip non-lawyers with knowledge and skills pertaining to the law, legal process and the legal system and the principles and values upon which these are based. Fifteen million dollars is authorized for fiscal 1979 and each succeeding fiscal year through 1983.

The House recedes.

15. Health education

The Senate amendment, but not the House bill, authorizes a new Health Education Act of 1978 which authorizes the Commissioner to make grants to State and local educational agencies to establish and support programs in health education. Prior to establishing final regulations, the Commissioner shall consult with the Assistant Secretary for Health and the Surgeon General to assure coordination and nonduplication of effort. Twenty million dollars is authorized for each year through 1983.

The House recedes with an amendment deleting the list of specifically authorized activities and reducing the authorization of appropriations to $15 million a year.

16. Correction education

The Senate amendment creates a new Correction Education Demonstration Project Act which authorizes the Commissioner to make grants for demonstration projects relating to the academic and vocational education of juvenile delinquents, youth offenders and adult criminal offenders. All programs shall include an evaluation component. The Commissioner shall appoint special or technical advisory committees as necessary and shall secure the advice of other Federal officials in the corrections field. Five million dollars is authorized for fiscal year 1979 and each succeeding fiscal year through 1983.

The House recedes.

17. Women's educational equity

The House bill requires the Commissioner to report annually on the administration of the Women's Educational Equity Act. The Senate amendment requires reports in 1980, 1982, and 1984.

The House recedes.

18. Community schools

(a) The Senate amendment, but not the House bill, contains congressional findings that the school is an integral part of the local human service delivery system and community schools provide a great potential for the use of needs assessment as a basis for human resource policies.

The House recedes.

(b) The Senate amendment, but not the House bill, provides that the purpose of the program is to provide services in collaboration with other public and nonprofit agencies and also to provide for an efficient, energy-conserving use of school facilities.

The House recedes.

(c) The Senate amendment, but not the House bill specifically provides that a community or junior college or related extension center may serve as a community center.

The House recedes.

(d) The House bill authorizes appropriations of $55 million for 1979, $72 million for 1980, $90 million for 1981, $72 million for 1982, $55 million for 1983 to carry out State programs for community education. The Senate amendment authorizes $40 million for 1979, $50 million for 1980, $60 million for 1981, $50 million for 1982 and $40 million for 1983 for such State programs.

The House recedes.

(e) The House bill, but not the Senate amendment, includes the Northern Mariana Islands and Bureau of Indian Affairs schools as eligible recipients of funds.

The Senate recedes.

(f) The Senate amendment, but not the House bill, includes as programs eligible to serve as the non-Federal contribution other service programs under title XX of the Social Security Act (in addition to child care and day care services), funds under all of the Comprehensive Employment and Training Act, and the Rehabilitation Act of 1973. The Senate amendment does not include title V of the Economic Opportunity Act of 1964 or programs authorized under title 38 of the U.S. Code, which are included in the House bill.

The conference substitute includes title XX programs, youth employment programs under the Comprehensive Employment and Training Act, and the Rehabilitation Act.

(g) The Senate amendment, but not the House bill, makes eligible for funding activities making the school available for use by public organizations and private nonprofit organizations, as well as by individuals and community groups.

The House recedes. The conferees wish to state their intention that schools receiving funds under this title are to make their facilities available without charge to these organizations, groups, and individuals.

(h) The House bill, but not the Senate amendment, authorizes funding of training programs at institutions of higher education for full-time training of personnel in community education programs, of specialized high schools or schools within schools, of development of the use of technology in improving the relationship between the school, the home, and community resources, and of early childhood and family education programs.

The Senate amendment, but not the House bill, authorizes funding of parent education for care, development, and education of handicapped children, and leisure education.

The conference substitute combines the provisions of the House bill and Senate amendment.

(i) The Senate amendment, but not the House bill, provides that the 10-year plan for coordination of education programs shall include State and local recreation authorities. It includes in the distribution formula the need for assistance and current and historical rates of youth and adult employment. The Senate amendment also requires that programs will serve the school attendance area of the local educational agency except in special circumstances, and will include where appropriate satellite and mobile facilities.

The Senate recedes with an amendment including recreation authorities in the plan for coordination.

(j) The House bill, but not the Senate amendment, requires the active and continuous involvement of parents in the planning, development, and implementation of community education programs.

The Senate recedes.

(k) The House bill authorizes the State educational agency to reserve up to 5 percent of the funds for administration of the State plan and technical assistance. In addition, the House bill authorizes the reservation of 10 percent for conferences and dissemination and coordination of delivery of services. The Senate amendment authorizes reservation of 20 percent of the funds for administration, technical assistance, conferences, and coordination.

The House recedes with an amendment setting the reservation at 15 percent.

(l) The Senate amendment, but not the House bill, requires the adoption of effective procedures to evaluate the effectiveness of community education programs.

The House recedes.

(m) The House bill authorizes the Commissioner to make grants to local educational agencies when he finds the application holds reasonable promise of success. No grant may be made to operate any program or activity being conducted by another public agency unless the Commissioner determines collaboration exists between the local educational agency and the other public agency. The Senate amendment authorizes grants to local educational agencies upon a determination that the agency is not receiving assistance under a State plan approved under this title.

The Senate amendment authorizes $20 million for fiscal year 1979, $25 million for fiscal 1980, $30 million for fiscal 1981, $25 million for fiscal 1982 and $20 million for fiscal 1983 for the purposes of this section.

The Senate recedes to the House on its provision regarding local grants, and the House recedes to the Senate on its authorizations.

(n) The Senate amendment, but not the House bill, authorizes grants to public agencies to encourage the use of school facilities to receive assistance under this title. The Senate amendment authorizes $5 million for fiscal 1979, $7 million for fiscal 1980, $10 million for fiscal 1981, $7 million for fiscal 1982, and $5 million for fiscal 1983 for grants to public agencies and private nonprofit organizations. The House bill authorizes $10 million for each fiscal year for both grants to local education agencies by the Commissioner and for grants to nonprofit private organizations.

The House recedes.

(o) The House bill requires the Assistant Secretary to hold not less than two national conferences on community education and to publish the proceedings of such conferences. There is authorized to be appropriated $1 million for fiscal 1979 through 1983.

The Senate amendment requires the Assistant Secretary to undertake national leadership and planning activities including publications, convening of national conferences, and developing a proposed 10-year plan for Federal efforts to assist community education, and to use the mission budget required by the Budget and Accounting Act as the foundation of such plan. The mission definitions involved in this mission budget must be submitted to the relevant committees by January 20, 1979. There are authorized to be appropriated $5 million a year from fiscal 1979 through fiscal 1983 for this purpose.

The House recedes on the leadership and planning activities and on the authorization of appropriations.

(p) The Senate amendment authorizes the Commissioner to make grants to institutions of higher education for training of personnel in community education. Five million is authorized for fiscal 1979, $10 million for fiscal 1980, $15 million for fiscal 1981, $10 million for fiscal 1982, and $5 million for fiscal 1983.

The House recedes with an amendment requiring institutions of higher education to consult with appropriate State and local educational agencies.

(q) The House bill requires the National

Institute of Education to carry out a program of research in community education and to conduct an evaluation of such program. The NIE is directed to use comparison models involving different kinds of programs.

The Senate amendment requires the NIE to conduct a program of research in conjunction with the planning activities of the Assistant Secretary. The Senate amendment requires that these activities must be carried out under the separate authorization of appropriations provided for this provision. The Senate amendment also requires the submission of a plan for this research to the relevant committees of the Congress 1 year after date of enactment.

The House recedes with an amendment deleting the requirement for the submission of the plan to Congress.

(r) The Senate amendment, but not the House bill, requires that the members of the Advisory Council on Community Education must be appointed without regard to political affiliation. The Senate amendment requires that a substantial number of the members of the council must be experienced in the operation of programs while the House bill requires that these individuals must constitute a majority of the members. The Senate amendment requires the council to include as members participants and consumers of programs while the House bill requires the inclusion of representatives from various disciplines involved in providing services in community school programs.

The Senate amendment, but not the House bill, requires the council to advise the NIE on its research activities. The Senate amendment, but not the House bill, forbids any member of the council from evaluating any program if such member is associated with that program

The House recedes.

(s) The House bill, but not the Senate amendment, requires the program to be under the authority of the Executive Deputy Commissioner for Educational Programs.

The Senate recedes.

(t) The Senate amendment, but not the House bill, authorizes $1 million a year for fiscal years 1979 through 1983 for the administration of the program.

The House recedes.

19. Biomedical sciences

(a) The House bill requires that individuals chosen for the new biomedical science program must be chosen in such a manner that due notice is taken of cultural and linguistic biases inherent in traditional testing methods. The Senate amendment states this requirement in terms of due notice being taken of difficulties inherent in such methods.

The House recedes.

(b) The House bill, but not the Senate amendment, requires that these programs must be carried out in cooperation with either public or private nonprofit school systems. The Senate amendment requires that the programs be carried out solely with the public school system.

The Senate recedes.

(c) The House bill authorizes appropriations of $40 million for fiscal 1979 and such sums as may be necessary for each of the four succeeding years. The Senate amendment authorizes $40 million for fiscal 1979.

The Senate recedes.

20. Ethnic heritage

The House bill extends existing law concerning the ethnic heritage program through fiscal year 1983. The Senate amendment extends the program through fiscal year 1982 and makes explicit that the National Advisory Council on Ethnic Heritage Studies shall remain in existence during that period.

The Senate recedes.

21. Safe schools program

The House bill, but not the Senate amendment, authorizes a new program of grants by the Commissioner to local educational agencies for the purpose of aiding such agencies to meet the special needs incident to providing security for the children, employees and facilities of schools. There are authorized to be appropriated $15 million a year for fiscal 1979 and such sums as may be necessary for each of the four succeeding fiscal years for this purpose. Fifteen local educational agencies with the highest incidences of crime in the schools would be identified by the Commissioner for purposes of these grants Activities supportable through these grants include the provision of additional personnel, the training of present personnel, providing information to parents, adoption of guidelines to encourage the reporting of all crimes, and the installation of appropriate equipment.

The Senate recedes with amendments deleting the requirement that the 15 school districts chosen for grants must be those with the highest incidences of crime and placing a limit of no more than 10 percent on the uses of these funds for equipment.

22. Effective dates

The House bill repeals immediately the reservation of funds specified in the Special Projects Act. The Senate amendment makes this repeal effective September 30, 1979, but retains the authority for the Office of Career Education.

The House recedes.

23. Environmental education

The Senate amendment, but not the House bill, extends and amends the Environmental Education Act with authorizations of $5 million for fiscal 1979, $7 million for fiscal 1980, $9 million for fiscal 1981, $11 million for fiscal 1982, and $13 million for fiscal 1983. The text of the Senate amendment is identical with existing law and the text of H.R. 10570, as passed separately by the House, with the amendments to the Environmental Education Act made on the floor and included in this bill.

The House recedes.

CONSOLIDATED PROGRAMS

1. Extensions of consolidated programs

(a) The House bill extends the authorizations through fiscal year 1983 of the five programs which were consolidated into title IV of ESEA in 1974; but, as under current law, these programs are only funded if the consolidated programs do not receive sufficient appropriations. The Senate amendment repeals these titles but retains the trigger provision reinstating their funding in the case of insufficient appropriations for the consolidated title.

The House recedes.

(b) The House bill, but not the Senate amendment, includes the Northern Mariana Islands in the programs which were consolidated in 1974 and which will be funded only if title IV does not receive sufficient appropriation.

The Senate recedes.

2. Purpose

The Senate amendment, but not the House bill, states that the purpose of the title is to provide financial assistance to State and local educational agencies to strengthen the quality of education through the support of locally initiated projects to improve educational practices, to assist local educational agencies in acquisition of books and materials, to strengthen and expand guidance and counseling programs, and to assist State and local educational agencies in planning and development of programs for gifted and talented children.

The House recedes with a conforming amendment deleting the reference to gifted and talented children, which is not in title IV.

3. Appropriations

(a) The House bill, but not the Senate amendment, amends the authorization of appropriations for the innovation and support program by striking $350 million for fiscal year 1976 and by inserting in lieu thereof $450 million for fiscal 1976.

The House recedes.

(b) The House bill creates a new authorization of appropriations for guidance and counseling programs in the amount of $80 million for fiscal year 1980 and such sums as may be necessary through fiscal 1983. In addition, the House bill requires that no funds can be appropriated for the library book program, the innovative program, or the guidance and counseling program under title IV unless appropriations are provided for all three of those programs and, furthermore, unless the appropriation provided for the guidance and counseling program is at least $18 million or the level appropriated for the preceding fiscal year, whichever is higher.

The Senate amendment authorizes $50 million per year beginning in fiscal 1979 for formula grants for guidance, counseling, and testing and an additional $20 million per year for discretionary grants. In addition, the Senate amendment requires appropriation of the amount made available for this purpose in the preceding fiscal year or $18 million, whichever is higher. If appropriations do not reach this level, appropriations are authorized to be made under title V–A of the National Defense Education Act, relating to guidance and counseling, as it existed in 1971.

The House recedes with an amendment deleting from title IV the provision for discretionary grants. The current discretionary grants program is extended through fiscal year 1983 in another part of this act.

4. Allotments

(a) The House bill, but not the Senate amendment, authorizes payments to the Bureau of Indian Affairs of not more than $75,000 a year for its administration of the title IV programs.

(b) The Senate amendment, but not the House bill, authorizes a reservation of 1 percent of the amount appropriated for gifted and talented programs for outlying areas, as well as 1 percent of the amounts appropriated for the other title IV programs.

The Senate recedes on both provisions.

5. Guidance and counseling

(a) The House bill authorizes grants by the Commissioner to States to support guidance and counseling activities such as State leadership and supervisory services and comprehensive guidance and counseling and testing programs in elementary and secondary schools. In addition to these activities, the State educational agency may make grants and contracts to State and local educational agencies, institutions of higher education and private nonprofit organizations to conduct institutes and workshops to improve the professional qualifications of teachers and counselors. The House bill limits States to reserving not to exceed 7½ percent of the funds they receive for guidance and counseling under title IV for State level activities.

The Senate amendment authorizes both grants to the States and discretionary grants by the Commissioner for guidance and counseling activities. The grants to the States are for programs of testing students in elementary and secondary schools, programs of guidance and counseling services, leadership activities and acquisition of materials. The Senate amendment also provides that local school districts must be given complete discretion in choosing which of the abovementioned activities they will fund in guidance and counseling. The discretionary grants authorized by the Senate amendment are to be made to State and local educational agencies, institutions of higher education, and private nonprofit organizations to conduct institutes, workshops and seminars for guidance and counseling personnel. The Commissioner is also authorized to make

grants to States to assist them in coordination of new and existing programs of guidance and counseling.

The Senate recedes with amendments deleting the authority to conduct institutes and workshops and requiring that school districts have complete discretion over uses of funds.

(b) The House bill provides for the establishment or the designation of an administrative unit within the Education Division for guidance and counseling. The Senate amendment requires that such unit be located within the Office of Education and authorizes the Commissioner to reserve up to 5 percent of the appropriation for administration of the guidance and counseling program.

The House recedes.

6. State plans

(a) The House bill, but not the Senate amendment, authorizes programs for early childhood and family education and for parenthood education and requires that not less than 5 percent of funds appropriated under title IV for innovative programs must be used for these purposes.

The Senate recedes with an amendment deleting the reservation of funds for this purpose.

(b) The Senate amendment, but not the House bill, rewrites the State plan portion of title IV and in so doing deletes the following requirements of existing law—

(1) the provision that the State must distribute approximately 95 percent of the library and equipment funds to local school districts;

(2) the provision that any repair or construction of facilities will be done so as to make them accessible to handicapped persons;

(3) the provision forbidding commingling of Federal and State funds; and

(4) the provision requiring a maintenance of effort for the innovative programs portion of title IV.

In addition, the Senate amendment does not extend provisions for separate administrative moneys for title IV and the reservation of funds for strengthening State educational agencies. These two activities are covered in the new title V of ESEA contained in the Senate amendment.

The Senate recedes on the provisions in paragraphs (1) and (3). Regarding the provisions for administrative and strengthening funds, the conference substitute provides that funds for these activities are to be reserved under Title IV unless the new title V–A and V–B of ESEA, respectively, are fully funded.

(c) The Senate amendment rewrites the provisions concerning State advisory councils to make it explicit that members shall include teachers, principals, superintendents, and other professional employees of public and private schools, teachers in institutions of higher education, and parents of students. The House bill adds a requirement that school librarians, media specialists, and guidance counselors must be represented on these councils.

The conference substitute includes the provisions in both the House bill and the Senate amendment. The conferees wish to make clear, however, that the States may appoint one person to their advisory councils to fulfill more than one of the requirements for membership.

(d) The House bill continues current law which requires an annual report by the State advisory council. The Senate amendment requires that a State advisory council report on its activities and evaluations at least once every 3 years.

The House recedes.

(e) The Senate amendment, but not the House bill, deletes from current law the requirements that the establishment of State advisory councils must be certified by the State within 90 days of the beginning of a fiscal year, that each such council shall meet within 30 days after certification and that each such council must hold at least one public meeting a year for public comment.

The Senate recedes.

(f) The House bill, but not the Senate amendment, adds the following three new requirements to the State plan:

(1) A requirement that there must be consultation with librarians and media specialists when the local school district selects its books and equipment with funds provided under title IV.

(2) A requirement that the State provide information and technical assistance to private nonprofit school officials who desire participation in Federal programs for their children.

(3) A requirement that the State develop a comprehensive plan for the coordination of Federal and State funds for teacher and professional training.

The Senate recedes.

(g) The House bill, but not the Senate amendment, increases from $50,000 to $75,000 the minimum amount which must be given to each of the outlying areas for administration of this program.

The Senate recedes.

7. Payments

The Senate amendment, but not the House bill, establishes a Federal share for programs for gifted and talented children at 90 percent for fiscal 1979, 80 percent for fiscal 1980, 70 percent for fiscal 1981, 60 percent for fiscal 1982, and 50 percent for fiscal 1983.

The Senate recedes since the conference substitute includes the provisions for gifted and talented children, including matching requirements, in another portion of the bill.

Note.—The Senate amendment includes in title IV the standard provisions for appeal and judicial review of the Commissioner's decision to withhold funds. The House bill contains an identical provision as part of the General Education Provisions Act.

The House recedes.

8. Instructional materials activities

(a) The Senate amendment rewrites the existing authorization of activities to provide that funds shall be used for the acquisition of school library resources and for the acquisition of instructional equipment and materials suitable for education in academic subjects. It deletes specific authority for use of funds for minor remodeling, which is authorized by existing law.

The House recedes.

(b) The House bill, but not the Senate amendment, includes a new requirement that funds available under this program must be used only for equipment and materials for instructional purposes.

The Senate recedes. The conferees wish to emphasize that the use of these funds for general office equipment would be specifically prohibited by this amendment.

9. Innovative programs

(a) The Senate amendment, but not the House bill, rewrites the innovative programs part of title IV focusing its activities on development and demonstration programs designed to address serious educational problems in elementary and secondary schools; encouraging improved means of carrying out programs for educationally deprived children; activities designed to improve achievement in basic skills; activities to encourage parental involvement; programs to diagnose learning problems to assess achievement, including that of children in nonpublic schools; model plans for improvement of school management; professional development programs for administrators and instructional personnel; and programs to use other community resources beyond the school building.

The House bill continues the listing of fundable activities from current law and adds new authority for the funding of model programs to improve school management, planning activities, early childhood and family education programs, and parenthood education.

The House recedes with an amendment including a listing of new fundable activities—

(b) The House bill continues current law which requires that innovative funds be distributed among local school districts on a competitive basis and that the State must provide technical assistance to smaller school districts in applying for these funds.

The Senate amendment requires distribution of funds among districts on an equitable basis, with due regard for the quality of the proposal. It makes permissive the responsibilities of the States in providing assistance in formulating proposals and operating programs in those districts which are less able to complete due to small size or lack of local financial resources.

The Senate recedes.

(c) The Senate amendment, but not the House bill, reserves 5 percent in fiscal year 1980 and 10 percent in each year thereafter for the purpose of improved school management and the coordinated use of all available resources. No such project shall be approved by the State unless it has been developed and approved by a committee of administrators, teachers, school staff and parents.

The House recedes with an amendment applying these reservations to appropriations made in excess of the amount provided for fiscal 1979.

(d) The Senate amendment, but not the House bill, provides that the State may not approve an application for an innovative program unless the State educational agency determines that the application has taken into account the needs of children in nonpublic schools.

The House recedes.

10. Innovative compensatory education programs

The House bill requires each State to fund innovative programs to improve compensatory education, including summer programs, parent education programs, retraining programs, and programs to develop educational materials for use by children in the home. Each State would have to spend at least 50 percent of the funds it receives for innovative programs in excess of the fiscal 1979 appropriation on such compensatory education programs.

The Senate amendment authorizes support of projects for educationally deprived children. Funds available for such projects must be used in schools eligible to receive title I funds and must be coordinated with title I programs. The State educational agency shall evaluate projects assisted with innovative program funds, with particular regard to sustaining educational gains and improvement of achievement in basic skills.

The Senate recedes.

11. Effective date

The House bill contains an effective date of fiscal year 1980 for its amendments to title IV.

The Senate amendment takes effect in fiscal year 1979.

The Senate recedes.

The conferees intend that the provisions of the revised title IV, parts B, C, and D, will be implemented beginning with the 1979–80 school year.

12. Gifted and talented children

(a) The House bill, but not the Senate amendment, contains findings that the Nation's greatest resource is its gifted and talented children, that unless their special abilities are developed during the elementary and secondary school years their potential may be lost and that gifted and talented children from low-income families and areas

are often not afforded the opportunity to fulfill their potential due to inadequate or inappropriate educational services.

(b) The House bill authorizes the Commissioner to conduct a discretionary grant program for gifted and talented children: 55 percent of the amount appropriated for this purpose must be evenly divided between regular grants in local school districts for gifted children and grants in local school districts for economically disadvantaged gifted children (no such grant may have a duration of more than five years); 30 percent of the appropriations must be used for grants to State educational agencies, and no such grant shall have a duration of more than 3 years; the remaining 15 percent of the funds must be used for research and demonstration programs and for establishing a clearinghouse on information about gifted and talented children.

The Senate amendment provides that 75 percent of the funds appropriated for gifted and talented children shall be allotted among the States on the basis of population aged 5 to 17 except that no State shall receive less than $50,000. The remaining 25 percent of the appropriation is available to the Commissioner for discretionary grants. Funds available to States may be used for planning, development, operation and improvement of programs for gifted and talented children. Funds shall be distributed among local educational agencies on an equitable basis and the State may provide assistance to local educational agencies which are less able to compete due to small size or lack of local financial resources. Not more than 5 percent of a State's funds may be reserved for technical assistance. From his discretionary funds, the Commissioner may make grants to State educational agencies, institutions of higher education and other appropriate nonprofit private institutions or agencies for training personnel and may make grants and contracts for the establishment of model programs. The National Institute of Education shall carry out a program of research relating to education of gifted and talented children, and the Commissioner may transfer funds to the Institute up to 5 percent of the amount available to him in any fiscal year.

(c) The Senate amendment, but not the House bill, continues the requirement of current law that the Commissioner designate an administrative unit within the Office of Education to administer this program and to coordinate all programs for gifted and talented children programs administered by the Office of Education.

The Senate amendment also requires the Commissioner to establish or designate a clearinghouse on information relating to the education of gifted and talented children. The Commissioner is authorized to contract with public or private agencies to establish or operate the clearinghouse. The House bill authorizes the Commissioner through grants or contracts with public and private agencies to form such a clearinghouse.

(d) The House bill, but not the Senate amendment, authorizes Indian tribes operating schools to be treated as local school districts for purposes of this program.

(e) The House bill contains a definition of gifted and talented children which includes children and youth identified in school as possessing demonstrated or potential abilities that give evidence of high performance capability and who by reason thereof require special education services.

The Senate amendment defines such children in accordance with objective criteria of the Commissioner as children who have outstanding ability or talent, the development of which requires services or activities not ordinarily provided by the school.

(f) The House bill authorizes for this program $10 million for fiscal 1979, $15 million for fiscal 1980, $20 million for fiscal 1981 and $25 million each for fiscal years 1982 and 1983. The Senate amendment authorizes an annual appropriation of $50 million for each of those years.

The conference substitute incorporates provisions from both the House bill and the Senate amendment. The new Federal gifted and talented children program is part A of a new title IX of the Elementary and Secondary Education Act. Not less than 75 percent of appropriations for part A are reserved to the States, which must pass through at least 90 percent of these funds to local educational agencies, based on competitive applications. The remaining 10 percent of State grants may be used by the State educational agency for Statewide planning, administration, technical assistance, and coordination. When appropriations for part A reach $15 million, the State allocation formula based upon relative State population of school age children will be used for allotments to States. Below that level, the Commissioner may vary the size of a State's grant, based upon the merits of its application. All States which file a completed application which fully meets the requirements of the statute and which is approved by the Commissioner shall receive a minimum grant of $50,000, subject to ratable reduction based on appropriations. At least one-half of the funds available in the State program for distribution to local educational agency projects shall be used for projects which include a component of disadvantaged gifted and talented children.

Twenty-five percent of the funds appropriated, but an amount not to exceed $5 million, are to be distributed by the Commissioner on a discretionary grant basis to State educational agencies, local educational agencies, institutions of higher education, and other eligible applicants for the following purposes: (1) programs and projects, including training of personnel; (2) grants to states for personnel training, to be carried out either directly or through arrangements by State educational agencies with other eligible institutions, agencies and organizations; (3) model projects; (4) an information clearinghouse; (5) grants to states for statewide planning and other activities; and, (6) research, evaluation and related activities. The managers intend that not more than 20 percent of the funds for discretionary activities under section 905 are to be available for the purpose of research, evaluation, and related activities. The managers intend to limit, under purpose (1), the amount of direct grants to institutions of higher education for national leadership training to 20 percent of section 905 funds. The limit does not apply to training arranged through State educational agencies or other types of training programs.

The House recedes on the provision of the Senate amendment which designates an administrative unit in the Office of Education to operate programs for gifted and talented children. This mandates the provision of current law, which allows the Commissioner to determine the location of this unit.

The House recedes on the provision of the Senate amendment regarding the non-Federal matching requirement, with an amendment that non-Federal matching for part A be limited to 10 percent per year, with an exemption for matching for nonpublic schools, research and evaluation, and the information clearinghouse.

The Senate recedes on the provision of the House bill that local educational agency projects grants be limited to five years.

The House bill entitled its gifted and talented provisions "The Gifted and Talented Children's Education Act of 1978," and contained findings that the gifted and talented are a critical national resource. The Senate recedes.

The House bill provided that Indian tribes may be considered as local educational agencies for the purposes of the program. The Senate recedes, with an amendment that an Indian tribe may participate in local educational agency projects if the tribe is within the jurisdiction of an agency funded under the part and if it does not choose to be considered as a local educational agency.

The Senate amendment retained the definition of gifted and talented in current law. The House bill contained a comprehensive definition including artistic ability and ability in the visual and performing arts. The Senate recedes, with an amendment, inserting a portion of the language of existing law in lieu of "requires special education services" as in the House bill.

Authorizations of appropriations for part A agreed to by the conferees are as follows: $25 million for fiscal year 1979; $30 million for fiscal year 1980; $35 million for fiscal year 1981; $40 million for fiscal year 1982; and $50 million for fiscal year 1983.

13. State agency management

The Senate amendment adds a new part to title V of ESEA designed to strengthen State educational agency management. Funds made available to States under this part shall be used to strengthen the educational leadership resources of the State educational agency and to assist that agency in identifying and meeting the State's critical education needs. Such activities may include more equitable school finance programs to assess educational progress, teacher assistance, dissemination, training activities, and development of curricula materials. Each State desiring to participate shall submit a State plan which will set forth the means by which the State will provide information and technical assistance to nonpublic school officials and a comprehensive plan for the coordination of State and Federal funds for training of educational personnel. The Senate amendment authorizes appropriations of such sums as may be necessary for fiscal 1980 and each of the 3 succeeding fiscal years.

The House bill extends current law which permits a State to reserve up to 15 percent of the amount it receives for innovation purposes under title IV for the purpose of funding activities to strengthen the State agency.

The conference substitute retains the reservation in existing law for this purpose but also provides that this reservation cannot be made in any year in which the new title V–B of ESEA is funded in full. The conferees intend that in implementing section 522 the Commissioner take into account, insofar as possible, the current and continuing planning activities of State educational agencies and credit them in satisfaction of the requirements of the section, whenever it is appropriate to do so in order to reduce the fiscal and paperwork burden resulting from duplicative or significantly overlapping activities.

14. Councils on quality in education

The Senate amendment, but not the House bill, extends existing law which authorizes establishment of national and State councils on quality in education. Members of the national council shall be appointed without regard to political affiliation and no member of the council shall evaluate any program if he is associated with the program as a consultant, technical advisor or in any similar capacity. There are authorized to be appropriated up to 2½ percent of the amount appropriated for title V of ESEA to carry out the council activities.

The House recedes.

EMERGENCY SCHOOL AID ACT

Note.—The Senate amendment moves the Emergency School Aid Act into ESEA.

The House recedes.

1. Appropriations

The House bill authorizes such sums as may be necessary for the funding of special programs and projects and for evaluations

under the Emergency School Aid Act. From the amount appropriated under this authority, $20 million or 25 percent of the total appropriation, whichever is greater, must be used for the funding of magnet schools. In addition, the House bill set aside 8 percent of the amounts appropriated for State grants under the Act for contracts and grants with public and private nonprofit agencies.

The Senate amendment authorizes $244 million for fiscal year 1980 and for each of the three succeeding fiscal years for such purposes including the funding of educational TV programs. Of the amounts appropriated under this authority 25 percent must be spent for magnet schools and 7 percent must be spent for educational TV programs. In addition, the Senate amendment authorizes $16 million for fiscal 1980 and for each of the three succeeding fiscal years for contracts and grants with public and private nonprofit agencies.

The House recedes with an amendment requiring that at least $20 million must be reserved for magnet schools.

2. "Follow the child" services

The House bill, but not the Senate amendment, requires that any funds appropriated for providing services to children transferred from title I to non-title I schools must be used in such a manner so as not to result in the isolation of such students and shall be used for compensatory education programs in which not less than 30 percent of the enrollment are non-title I students.

The Senate recedes.

3. Apportionment

The Senate amendment provides for an allocation to each State of $75,000 plus an additional amount to be determined on the basis of the State's proportion of minority group children within the Nation. The House bill simply apportions to the States on the basis of each State's proportionate number of minority group children. Both bills provide for a minimum allocation of $100,000 per State.

The House recedes.

4. Eligibility

The Senate amendment, but not the House bill, adds as a new category of eligible districts those which are developing a desegregation plan, either under court order or voluntarily, which will require the desegregation of children or faculty or which has been approved by the Secretary as adequate under title VI of the Civil Rights Act for the desegregation of children or faculty. The period for which a district is eligible to receive funds for such planning may not exceed 2 years, and not more than one planning grant may be made to any local educational agency. Receipt of a planning grant shall not be used as an absolute defense to an action in court.

The House bill does not expand the classes of eligible districts to include any such districts, but it does expand the list of eligible activities which can be funded under the Act to include planning (see item 6).

The House recedes with amendments requiring that these districts are to receive their funding from the amount appropriated for special projects, that no school district is to receive more than one grant for more than a 2-year period, and that the receipt of such a grant is not to be an absolute defense in any court or agency proceeding.

5. Waivers of ineligibility

(a) The House bill, but not the Senate amendment, modifies the existing provisions barring school districts conducting certain practices from eligibility under the Act in order to authorize the Secretary of HEW to grant a waiver of ineligibility if the applicant is seeking assistance for activities related to the assignment of employees.

The House recedes.

(b) The Senate amendment, but not the House bill, provides that the prohibitions on assignment of students and other practices limiting curricular activities shall not apply in the case of a district seeking planning money, when the plan for which assistance is sought will address those problems.

The House recedes.

(c) The Senate amendment, but not the House bill, repeals the requirement in existing law that notice of waivers be sent to the authorizing committees and that applications of local education agencies which require waivers may not be approved until 15 days after the committees have received such notice. The Senate amendment requires the Assistant Secretary to prepare and include in his annual report a list of all the waivers granted for the preceding fiscal year.

The House recedes.

6. Authorized activities

The House bill but not the Senate amendment, authorizes an approved applicant school district to use the funds it receives under the Act for planning to implement a plan of desegregation issued pursuant to a court order or approved under title VI of the Civil Rights Act.

The Senate recedes.

7. Special projects

The House bill continues the present law's authority for the funding of special mathematic programs under the act. The Senate amendment authorizes this activity as a separate authority under the basic skills title of the Senate bill.

The House recedes.

8. Applications

(a) The House bill provides that a school district applying for funds must first submit a notice of intention to do so and that this notice must be used as a basis for determining the eligibility or the lack of eligibility of that school district. The House bill also requires a set time schedule for processing of waivers of ineligibility and for the submission and final approval or disapproval of applications for funds.

The Senate amendment provides that the Secretary shall notify each school district which has announced its intention to apply for funds under the act whether or not it is in noncompliance with title VI of the Civil Rights Act or any other nondiscrimination provision of Federal law not later than June 1 in the year before the fiscal year for which the Assistant Secretary is determining eligibility for aid under the act.

The conference substitute requires the Secretary to make a determination of eligibility for any applicant district by March 1 and to notify applicants of the approval or disapproval of applications and of amounts of awards (if any) by June 30.

(b) The Senate amendment continues current law which permits the Assistant Secretary to require an applicant school district to include such information in its application as he prescribes. The House bill limits the Assistant Secretary to requiring the submission of only such information as is deemed necessary to determine approval of an application.

The Senate recedes.

(c) The House bill, but not the Senate amendment, provides that payments under the 5-year application shall be made to those school districts approved first under those applications, prior to payments being made to subsequent applicants.

The Senate recedes.

9. Educational television and radio

The House bill (as previously mentioned in item 1) repeals the reservation contained in existing law for educational television.

The Senate amendment retains the reservation, and adds educational radio as eligible to receive funding. The Assistant Secretary may approve an application only if he determines that the applicant will assure the development of productions having a substantial artistic or educational signifiance. The Senate amendment removes the limitation of ten grants for educational television contained in existing law, and provides that not to exceed 10 percent of the available funds shall be used for radio programming.

The House recedes.

10. Carryover

The House bill, but not the Senate amendment, permits a recipient of funds to carry over from one fiscal year to the next funds received under the act.

Tho Senate recedes.

11. National Advisory Council

The House bill, but not the Senate amendment, repeals the provisions authorizing the National Advisory Council on Equality of Educational Opportunity.

The Senate recedes.

12. General provisions

The House bill, but not the Senate amendment, provides that the Assistant Secretary shall have the authority vested in the Commissioner by the General Education Provisions Act, in administering the program.

The House recedes.

13. Definition of "minority group"

The House bill revises the definition of "minority group" to conform it with the definition generally used throughout the Federal Government, with the addition of Franco-Americans and Portuguese. The Senate bill continues the definition of existing law, which includes Portuguese, and adds Franco-Americans.

The Senate recedes.

BILINGUAL EDUCATION

1. Definitions

(a) The House bill defines bilingual children as those with "limited English language skills". The Senate amendment defines such children as "limited English proficiency".

The House recedes. The conferees wish to state their intention that children with the greatest needs must be served first in these programs.

(b) The Senate amendment, but not the House bill, includes Alaskan native students who come from an environment where a language other than English has an impact on their English proficency as eligible to receive bilingual education.

The House recedes.

2. Eligibility for bilingual education

The House bill makes eligible for participation in programs those who have difficulty speaking, reading, writing, or understanding the English language Furthermore, the House bill requires that children will be considered proficent in English when they speak, read, write, and understand English.

The Senate amendment provides that children are eligible for bilingual services if they have sufficient difficulty speaking, reading, writing, or understanding the English language so that they are denied the opportunity to obtain levels of proficency comparable to others at their appropriate age and grade levels.

The House recedes with an amendment deleting the phrase "to obtain levels of profiency comparable to others at their appropriate age and grade levels" and inserting in lieu thereof the phrase "to learn successfully in classrooms where the language of instruction is English."

3. Participation of English-speaking children

The House bill limits participation in programs designed expressly for the purpose of promoting English language skills in children with limited English language skills to

such children, unless there is a determination by the local school unit that including a minority of children whose primary language is English in the program will be of substantial assistance in promoting English language skills. In other programs funded under this title the enrollment of children shall, to the extent possible, reflect the enrollment in that school of children with and without limited English language skills.

The Senate amendment provides that a program of bilingual instruction may include children whose language is English, up to 40 percent of the class. The objective of the program shall be to assist children of limited English proficiency in improving their English and participation of other children must be for the principal purpose of contributing to the achievement of that objective. Under the Senate amendment the program may provide for centralization of teacher training and curriculum development, but shall serve the children in the schools they normally attend.

The House recedes.

4. Advisory councils

The Senate amendment, but not the House bill, requires that each application for a program of bilingual education must be accompanied by documentation that the parental advisory council has been consulted in developing the application.

The House recedes.

5. Limitation on assistance

The House bill, but not the Senate amendment, requires that funds provided under the act for a program of bilingual education at a school or group of schools shall be available for no more than 5 fiscal years, except that projects supported with funds piror to October 1, 1978, may continue to receive assistance through September 30, 1983. The amount of assistance available for the third, fourth, or fifth year beginning after fiscal 1980 must be reduced in accordance with criteria established by the Commissioner designed to insure the gradual assumption by the applicant of the cost. The House bill, furthermore, provides that in the case of a school district showing adequate progress and demonstrating a clear fiscal inability, the Commissioner shall waive these requirements if (1) there is a continuing presence of a substantial number of students with limited English language skills, (ii) there is a recent, substantial increase in the number of such students, or (ii) there is an obligation of the school district to comply with a court order respecting services for such children or a plan approved under title VI of the Civil Rights Act as regards such chidren.

The conference substitute states that no order to submit an application in preparation for termination of assistance may be issued to any district showing progress and demonstrating clear fiscal inability if such a district has a continuing presence of such children, a recent influx of such children, or is under a court order or title VI plan affecting such children. If a district is not in such a situation, then the Commissioner may issue such an order, which would apply after one year and after a right to appeal. If the district's situation changes, it may reapply to have its grants continued.

6. Teacher qualification

The House bill, but not the Senate amendment, includes a new requirement that an application may only be approved by the Commissioner if it proposes a program using personnel who are proficient in the English language.

The Senate recedes with an amendment requiring proficiency in the language in the program as well as in English.

7. In-service training

The House bill requires each applicant to expend adequate funds for purposes of in-service teacher training. The Senate amendment requires the Commissioner to determine that the applicant has made adequate provision for carrying out programs.

The Senate recedes.

8. Participation of children in nonpublic schools

The House bill continues existing law to require provision of services to children in nonpublic schools whose education needs are of the type which the program is intended to meet. The Senate amendment provides for participation of those nonpublic school children whose language and grade level are of a similar type.

The House recedes with an amendment requiring the participation of such children to the extent consistent with their numbers and on a comparable basis to the public school children.

9. Use of funds for court orders

The House bill states that nothing shall prohibit the use of funds under this act to enable the applicant to carry out activities previously paid for out of non-Federal funds, to comply with a court order. The Senate amendment provides that nothing shall preclude a local educational agency from using Bilingual Education Act funds for activities carried out under a court order.

The House recedes.

10. Limitation on hiring personnel

The House bill, but not the Senate amendment, states that nothing in the act shall be interpreted as encouraging or requiring the hiring or retention of personnel who are not as proficient in English as personnel employed to carry out regular programs.

The House recedes.

11. Distribution of funds

The Senate amendment, but not the House bill, provides that in considering initial applications for bilingual education funds, the Commissioner shall give priority to applications from school districts located in various geographical regions which propose to assist children that have historically been underserved in bilingual education programs, taking into consideration their relative numbers and relative need. In approving such applications, the Commissioner shall, to extent feasible, allocate funds appropriated in proportion to the geographical distribution of children of limited English proficiency, with due regard for the relative ability of school districts to carry out such programs and the relative numbers of persons from low-income families to be benefited by such programs.

The House recedes.

12. Programs in Puerto Rico

The Senate amendment, but not the House bill, provides that programs of bilingual education in Puerto Rico may include programs of instruction, teacher training, curriculum development, and evaluation and testing designed to improve English proficiency of children.

The House recedes.

13. Fellowships

The House bill, but not the Senate amendment, requires recipients of fellowships for bilingual teacher training to either repay such assistance or to work for a comparable period of time, as further determined by the Commissioner through regulations. The Senate amendment simply requires recipients to work for the equivalent period of time.

The Senate recedes.

14. In-service training

The House bill, but not the Senate amendment, requires the issuance of regulations specifying the activities constituting the in-service training required of local school districts under the Act.

The Senate recedes.

15. Training grants

The House bill, but not the Senate amendment, excludes State educational agencies as eligible applicants for training grants.

The House recedes.

16. Reservation of funds

The House bill, but not the Senate amendment, reserves not in excess of 1 percent of the funds for the National Advisory Council on Bilingual Education.

The Senate recedes.

17. Reports

The House bill continues the requirement of an annual report on bilingual education. The Senate amendment provides for reports every 2 years and adds a new requirement that the report include an estimate of the number of bilingual fellowships which will be necessary for the 2 succeeding fiscal years.

The House recedes.

18. Report on Puerto Rico

The House bill requires the Commissioner to report on the need for bilingual education in Puerto Rico in his first annual report submitted more than 90 days after the date of enactment of this act. The Senate amendment requires such report within 18 months of enactment.

The House recedes.

19. Report on conversion from a discretionary grant program to a formula-grant program

The Senate amendment, but not the House bill, requires the Secretary to submit to Congress by December 31, 1981, a report setting forth the methods of converting, not later than July 1, 1984, the bilingual education program from a discretionary grant program to a formula grant program.

The House recedes with an amendment requiring the Secretary also to submit his views on the advisability of such a conversion.

20. Office of Bilingual Education

The House bill requires that the Office of Bilingual Education be adequately staffed to effectively discharge the provisions of the title. The Senate amendment requires that it be staffed with sufficient personnel trained, or with experience in, bilingual education.

The house recedes.

21. Bilingual research and development

The House bill continues existing law as regards research and demonstration projects, with the addition of provisions requiring the Commissioner and the National Institute of Education to conduct research, development, and evaluation activities to improve teacher training and to measure the effectiveness of cultural heritage activities in improving the achievement of children.

The Senate amendment rewrites the section, authorizing the Commissioner to provide financial assistance for research and development proposals, on a competitive basis. In addition, the Senate amendment authorizes the National Institute of Education, after consultation with the Office of Bilingual Education, to carry out a program of research in bilingual education. The Assistant Secretary for Education shall coordinate activities of NIE, the Office of Bilingual Education, the National Center for Education Statistics, and other appropriate agencies, to develop a national research program for bilingual education. Under the Senate amendment, the Commissioner and the Director of NIE shall periodically consult with representatives of State and local educational agencies and appropriate groups and organizations. The Assistant Secretary shall publish and disseminate all requests for proposals for research and development assisted under the act.

The House recedes.

22. Emergency school aid bilingual programs

The House bill, but not the Senate amendment, transfers to the Bilingual Education Act the program of bilingual education which is presently authorized under the Emergency School Aid Act. A separate authorization of appropriations of $10 million for fiscal 1979, $15 million for fiscal 1980, $20 million for

fiscal 1981, $25 million for fiscal 1982, and $30 million for fiscal 1983 is created for this program. The Senate amendment continues the program as part of the Emergency School Aid program.

The Senate recedes with an amendment deleting the authorization for fiscal 1979. The conferees wish to state that this program is being transferred from the office within OE responsible for the Emergency School Aid Act to the office responsible for the Bilingual Education Act because there was no coordination between those two offices in funding programs even though such coordination was required by law. The conferees therefore believe that this program more properly should be administered by the Office of Bilingual Education.

ADDITIONAL PROGRAMS

1. Minimum proficiency standards

(a) The House bill requires an applicant for funds under the new minimum proficiency program to establish proficiency standards for reading, writing, mathematics and any other subject for which the State requires standards. The Senate amendment requires the establishment of standards for the basic skills and other subjects which the Commissioner may require.

The Senate recedes.

(b) The House bill, but not the Senate amendment, permits funds to be used for continuing ongoing educational proficiency plans.

The Senate recedes.

2. Achievement testing

(a) The House bill vests authority for the program in the Secretary of HEW. The Senate amendment vests authority in the Commissioner of Education.

The House recedes.

(b) The House bill, but not the Senate amendment, limits grants to private agencies or organizations which are nonprofit.

The House recedes.

(c) The House bill, but not the Senate amendment, states that nothing in this new section shall authorize the Secretary to develop specific tests or test questions.

The Senate recedes with an amendment forbidding the Secretary from requiring the use of specific tests or test questions and permitting any State or local education agency to refuse to use any such test or test question.

3. Waiver for outlying jurisdictions

The House bill, but not the Senate amendment, authorizes the Commissioner to waive any requirement of the Elementary and Secondary Education Act for Puerto Rico and the outlying areas if he determines that compliance with any such requirement is impractical or inappropriate due to the particular circumstances of any such jurisdictions. At least 30 days prior to approving any waiver, notice must be published in the Federal Register; and the granting of any such waiver is subject to such conditions as the Commissioner deems necessary to carry out the purpose of the act, including submission of a plan for the management of the funds.

The Senate recedes with an amendment limiting any such waiver for Puerto Rico to activities carried out under title I of ESEA and forbidding the granting of any such waiver to Puerto Rico or the applicability of any such waiver after July 1, 1980.

4. Funding authority

The House bill, but not the Senate amendment, requires that no provision of ESEA can be deemed to authorize entering into contracts or making payments except to such extent as appropriations are provided in advance

The House recedes.

5. Adult education

(a) The House bill, but not the Senate amendment, permits grants to be made to agencies other than educational agencies only on condition that the duly constituted educational agency concurs.

The Senate recedes with an amendment requiring consultation and not concurrence.

(b) The House bill, but not the Senate amendment, continues the provision of existing law that no more than 20 percent of a State's grant can be used for institutionalized individuals.

The Senate recedes.

(c) The House bill, but not the Senate amendment, requires that the needs of residents of rural areas, residents of urban areas with high rates of unemployment and adults with limited English language skills must be specifically in the State plan.

The Senate recedes.

(d) The House bill requires the State plan to describe the procedures that State will use to assure adequate consultation, cooperation and coordination between the State educational agency and the State manpower services councils and other agencies involved in employment and training for adults.

The Senate amendment requires the State plan to provide for such consultation and coordination also with State occupational information systems, and for coordination of programs under the Adult Education Act with other programs designed to provide reading instruction for adults.

The conference substitute combines the provisions of both the House bill and the Senate amendment.

(e) The Senate amendment, but not the House bill, includes the list of agencies through which services can be delivered public health authorities and anti-poverty programs.

The House recedes.

(f) The House bill, but not the Senate amendment requires that representatives of residents of rural areas, residents of urban areas, with high rates of unemployment, adults with limited English language skills, and institutionalized adults have been involved in the development of the State plan and will be involved in carrying out the plan.

The Senate recedes.

(g) The Senate amendment, but not the House bill, requires that the State plan demonstrate that the special educational needs of adult immigrants have been examined and will be met.

The House recedes.

(h) The House bill directs the National Institute of Education to carry out a research, demonstration and dissemination program on adult education including the establishment of a clearinghouse. The Commissioner is charged with evaluating the programs he funds under the act. There are authorized to be appropriated for these purposes $1,500,000 for fiscal 1980, $2 million for fiscal 1981, and $3 million for each of the fiscal years through 1983.

The Senate amendment provides that the Commissioner shall directly and through grants and contracts with public and private agencies and organizations, including the National Institute of Education, carry out a program of development, evaluation, and dissemination of new and promising approaches to adult education. In addition, the Commissioner shall establish and operate a clearinghouse on adult education. The Senate amendment provides that the NIE and the Commissioner may carry out research on adult education and that the Commissioner may transfer all or part of the amounts available for research to the NIE, except that such sums shall not exceed 20 percent of the total available for research and demonstration. The Senate amendment authorizes the Commissioner to reserve not less than 1 percent nor more than 5 percent of the amount appropriated for adult education for research and demonstration. Of this amount at least as much as was spent on the clearinghouse in fiscal 1978 shall be reserved for establishment and operation of the clearinghouse.

The conference substitute adopts the authorizations of appropriation in the House bill but provides that these sums are to be used for two separate activities: funding of innovation, evaluation and dissemination by the Commissioner; and funding of research by the Director of the National Institute of Education.

(i) The House bill, but not the Senate amendment, requires the National Center for Education Statistics to develop a data reporting and accounting system for adult education.

The House recedes.

(j) The House bill extends the National Advisory Council on Adult Education through fiscal year 1984. The Senate amendment extends the council through 1983 and requires the Commissioner to reserve at least the amount available to the council in 1978 from each year's appropriation for adult education for purposes of funding the council.

The Senate recedes. The conferees expect that funding for the National Advisory Council on Adult Education will continue in amounts sufficient to enable the Council to carry out all of its statutory duties and responsibilities.

(k) The House bill authorizes $200 million for adult education for each fiscal year 1979 through 1983.

The Senate amendment authorizes $225 million for fiscal 1979, $250 million for fiscal 1980, $275 million for fiscal 1981, $300 million for fiscal 1982, and $325 million for fiscal 1983.

The House recedes with an amendment setting the appropriation at $210 million for fiscal 1979, $230 million for 1980, $250 million for 1981, $270 million for fiscal 1982, and $290 million for fiscal 1983.

The Senate amendment, but not the House bill, expands the provision in existing law regarding educational opportunities for adult Indians which provides for surveys and evaluations of the problems of illiteracy and lack of high school completion, to include the problems of all Indians, whether or not they are living on reservations. The Senate amendment, but not the House bill, also authorizes a new program of grants to Indian tribes, Indian organizations, and Indian institutions to develop and establish educational services and programs specifically designed to improve educational opportunities for Indian adults.

The House recedes.

(m) The Senate amendment, but not the House bill extends the adult education program for Indochinese refugees through fiscal year 1983.

The House recedes.

(n) The Senate amendment, but not the House bill, authorizes a new program of adult education and adult basic education for adult immigrants. Applications shall be submitted to the State educational agency which shall make recommendations to the Commissioner. Not less than 50 percent of the funds appropriated shall be used for contracts with private nonprofit agencies, organizations and institutions. Such sums as may be necessary are authorized to be appropriated for fiscal 1979 through fiscal 1983.

The House recedes.

6. Teacher training

The Senate amendment, but not the House bill, increases the authorization for the teacher center program for fiscal 1979 to $100 million and provides that if appropriations for the program exceed $50 million each State shall receive grants sufficient to assure the establishment of one teacher center. The Senate amendment also authorizes grants to any consortium of local educational agencies and provides that the Commissioner, upon receipt of a petition from an applicant, shall require further considera-

tion of the application by the State educational agency. If after 30 days the State educational agency has not transmitted the application, it shall be transmitted to the Commissioner along with the comments of the State educational agency.

The House recedes.

7. Indochinese refugee children

The Senate amendment, but not the House bill, extends programs of the Indochinese Refugee Children's Assistance Act of 1976 through fiscal year 1983.

The House recedes with an amendment limiting aid to the actual costs associated with children whose parents were paroled into the United States under authority of the Attorney General after January 1, 1977. The extension will expire in 1981.

8. DOD schools

The House bill, but not the Senate amendment, directs the Secretary of Defense to operate a program of free public education through secondary schools for dependents in overseas areas. An Office of Dependent Education would be established within the Department of Defense and would be headed by a civilian. The duties of this office are specified in the legislation, and a report to the Congress describing the organization of the office is required to be submitted not later than 6 months after the effective date. Tuition-paying students are permitted to be enrolled under certain conditions. An assessment of the school system must be made annually, and the President must submit a separate request for funds for construction of school facilities in his annual budget. These overseas schools are made eligible for benefits under the National School Lunch Act and the Child Nutrition Act. An allotment formula for the development of funding among these schools is required, and each local school must establish an advisory council elected by individuals residing in the area. An Advisory Council on Dependents' Education would also be established. A comprehensive study of the overseas school system would be required, and the Secretary would be required to issue regulations affecting the schools not later than 180 days after date of enactment.

The Senate recedes with an amendment providing that these provisions take effect on July 1, 1979, except for the provisions affecting eligibility for school lunch benefits and for travel of dependents which are to take effect on October 1, 1978. The Senate's amendment, furthermore, provides that nothing in these provisions is to be construed as impairing the transfer of these functions to an executive department having responsibility for education.

9. Effective dates

The House bill, but not the Senate amendment, contains a general effective date of October 1, 1978, unless otherwise provided.

The Senate recedes.

10. Contracting authority

The House bill, but not the Senate amendment, contains a provision stating that no authority to enter into contracts except to the degree provided in the appropriations acts shall be effective as regards any provision in the Education Amendments of 1978.

The Senate recedes.

11. State guaranteed loan program

The Senate amendment, but not the House bill, amends the guaranteed loan program as it applies to advances to State guarantee agencies by making such provision effective on October 1, 1977.

The House recedes.

12. Basic educational opportunity grants

The Senate amendment, but not the House bill, provides that if the College Opportunity Act or similar legislation is enacted and appropriations are insufficient to fully fund all entitlements, the Commissioner shall set the assessment rate to be applied to parental income at a level so that payments to students will not be reduced below the grant they could have expected to receive if such act had not been enacted. Such students would receive the full amount of their entitlements before payments were made to students with higher family incomes.

The Senate recedes. The conferees wish to state their intention that further study of this matter must be made by the Congress and that such future action as may be necessary must be taken to insure (1) that students in similar financial circumstances do not receive smaller basic grants than in the previous year, and (2) that the poorest students will be provided the greatest protection if there are inadeuate appropriations. The conferees anticipate the opportunity to address this issue as legislative activity continues on proposed reductions of the assessment rate on family income, as part of amendments to increase the participation of middle-income students in the basic grant program.

13. Education of the handicapped

The Senate amendment, but not the House bill, amends the Education of the Handicapped Act to provide for a single count of handicapped children on December 1, rather than the counts on October 1 and February 1 contained in existing law. This amendment shall take effect with respect to determinations made in fiscal year 1979.

The House recedes.

14. National direct student loans

The Senate amendment, but not the House bill, amends the teacher cancellation provisions of the National Direct Student Loan Program to reflect the current formula for title I of ESEA.

The House recedes with an amendment deleting the limitation date in the Senate amendment.

15. Tuition tax credits

The Senate amendment, but not the House bill, provides that any tax credit received for education shall be reduced by the amount received during the taxable year under Basic and Supplemental Educational Opportunity Grant Programs.

The Senate recedes. The managers anticipate the opportunity to address this issue in subsequent legislative consideration of proposals to increase financial aid to postsecondary students through grants and tax credits.

16. International Year of the Child

The Senate amendment, but not the House bill, requires the President to establish a national commission on the International Year of the Child composed of at least 25 members. In addition, the President of the Senate and the Speaker of the House may each designate two members to serve on the Commission. The Commission shall promote observance in the United States in 1979 as the International Year of the Child and cooperate with international organizations and other nations to seek a better understanding of the needs of children in this and in other countries. The Commission may conduct studies and hearings and shall make a final report to the President not later than March 1, 1980. The Commission may appoint necessary staff, no more than two of whom may receive pay in excess of the rate in effect for GS–15 and may accept voluntary services and procure temporary services of experts and consultants. The Commission may make purchases and contracts pertaining to advertising and bidding without regard to other provisions of law and may arrange for printing of materials without regard to government printing regulations. The Commission shall terminate 30 days after submission of its final report but in no event later than April 30, 1980. Such sums as necessary are authorized to be appropriated without fiscal year limitation.

The House recedes.

17. National Academy of Peace and Conflict Resolution

The Senate amendment, but not the House bill, establishes a Commission on proposals for the National Academy of Peace and Conflict Resolution. This Commission shall undertake a study to consider whether to establish such an academy, the size, cost and location of such academy, the effects of the establishment would have on existing institutions of higher education; the relationship between the Academy and the Federal Government; the feasibility of grants to existing institutions of higher education in lieu of or in addition to establishing an academy; and alternative proposals which would assist the Federal Government in accomplishing the goal of promoting peace. The Commission shall be composed of three members appointed by the President pro-tem of the Senate, three appointed by the Speaker of the House and three appointed by the President. The Chairman of the Commission shall appoint a director who shall be paid at the rate in effect for Executive Level V and such other staff personnel as he considers necessary. The Commission shall transmit to the President and the Congress interim reports and a final report not later than 1 year after the date on which appropriations become effective to carry out the title. The Commission shall cease to exist 60 days after transmitting its final report. $500,000 is authorized to be appropriated for the Commission.

The House recedes.

IMPACT AID

1. Hold-harmless provisions

The House bill, but not the Senate amendment, extends through fiscal year 1983 the general hold-harmless provision. The Senate amendment, but not the House bill, reduces the out-of-State and out-of-county hold-harmless provision from 90 percent to 75 percent per year.

The House recedes to the Senate on the general hold harmless provision, and the Senate recedes to the House on the out-of-State and out-of-county hold-harmless provision. (A new hold-harmless provision is discussed in item 9.)

2. Multicounty school districts

The Senate amendment, but not the House bill, provides that children attending school in a school district which overlaps county lines will receive payments as regular "b" category students, rather than being paid at the reduced, out-of-county rate.

The House recedes.

3. Heavily impacted school districts

The Senate amendment, but not the House bill, reduces from 25 percent to 20 percent the number of "a" category students a district must enroll in order to be eligible to receive payments as a "super a" district.

The House recedes.

4. State equalization

The House bill, but not the Senate amendment, requires any State seeking a waiver of the prohibition against considering impact aid when distributing State aid to first notify all school districts within the State of its intention to do so. In addition, the Commissioner is required, before granting any such waiver, to afford school districts within that State an opportunity for a hearing. The State is also afforded a hearing before any request for a waiver can be denied by the Commissioner.

The Senate recedes.

5. Public housing

The House bill removes limitations on payments on behalf of public housing children, providing that they will receive funds on the same basis as other federally connected children. In addition, the House bill repeals the requirement that funds attributable to public housing children must be spent on compensatory education.

The Senate amendment continues exist-

ing law, which only provides for payments on behalf of public housing children in the first and third tiers, and which requires expenditure of funds received for compensatory education. In addition, the Senate amendment adds a new authorization of $120,000,000 per year to meet the unsatisfied entitlements of public housing children.

The Senate recedes.

The conferees would like to state clearly their intention that, in removing the requirements that assistance received through the public housing entitlement be used for a compensatory educations title I-type project, it is not also intended that the funds be available for other than educational purposes. In providing these dollars without restrictions, the conferees clearly intend that they continue to be used to improve educational opportunities in the school district. The temptation for cities with fiscally dependent school districts to supplant local dollars with these newly available impact aid funds must be totally resisted. Otherwise, those cities and school districts will be in clear violation of the law.

6. Section 6 schools

The House bill, but not the Senate amendment, authorizes dependents of employees of section 6 schools to attend such schools.

The Senate recedes. The conferees wish to state their intention that dependents of Federal employees who are presently attending section 6 schools are legitimately enrolled in such schools and must be afforded the full benefits given other children in such schools.

7. Property owned by foreign governments

The Senate amendment, but not the House bill, includes any property owned by a foreign government or international organization which is not subject to taxation by a State as eligible for impact aid.

The House recedes. The conferees wish to state their intention that the international organizations which are meant to be affected by this provision are only those which are organizations of governments.

8. Study

The Senate amendment, but not the House bill, provides for a Presidentially-appointed Commission on the Review of the Federal Impact Aid Program to review and evaluate the administration and operation of the program. The Commission shall report to the Congress by December 1, 1979, including its recommendations for changes in the legislation.

The House recedes.

9. Tier system

The Senate amendment, but not the House bill, repeals the second tier in the mandatory funding process of the impact aid program.

The House recedes with an amendment increasing flexibility in funding the second tier by only requiring funding at the level of 65 percent of the second tier entitlements, requiring the funding of a 90 percent declining hold harmless provision if any additional appropriations are provided for the second tier above the level necessary to fulfill the 65 percent requirement, and permitting appropriations provided in excess of the amounts needed to meet the 65 percent funding requirement and the hold harmless requirement to be provided pursuant to the appropriations Acts to satisfy the remaining entitlements in the second tier.

The purpose of these amendments is to give the appropriations committees a degree of flexibility which they do not have under existing law. The conferees wish to emphasize, however, their belief that the priorities in funding established in the second tier through the varied degrees of entitlements are the proper ones, and the conferees do not mean to show any abandonment on their part of these priorities through the adoption of these amendments.

10. Northern Mariana Islands

The House bill, but not the Senate amendment, includes the Northern Mariana Islands in the outlying areas eligible to receive impact aid funds.

The Senate recedes.

11. Effective dates

The House bill, but not the Senate amendment, provides that the actions of the Commissioner with respect to impact aid payments for fiscal year 1978 will be subject to the new "due process" requirements contained in these amendments.

The Senate recedes with an amendment continuing the provisions of existing law through fiscal year 1979, and making the changes in the tier system, heavily impacted districts, foreign government property, and the treatment of public housing children effective in fiscal year 1980. The provision for due process with regard to State equalization programs and the impact aid study become effective upon enactment.

12. Prohibition against election

The Senate amendment, but not the House bill, provides that no State may require a vote of the qualified electors of a heavily impacted school district to determine if the district will spend its impact aid funds.

The House recedes.

INDIAN EDUCATION

1. Impact aid

(a) The Senate amendment, but not the House bill, repeals on date of enactment the provision of the current impact aid law requiring an assurance from a school district reciving funds that Indian children will participate on an equitable basis in the school program.

The House recedes.

(b) The House bill requires comments from the Indian community; the Senate amendment requires that such information be received from Indian parents and tribes. In addition, the Senate amendment requires that if the Commissioner waives the 1 year limit, he shall do it in writing to the Indian parents and tribes.

The House recedes with an amendment clarifying that Indian parents do not have to be notified of a waiver.

(c) The House bill requires that parents of Indian children be involved in the operation of impact aid programs and that parents and tribes have an opportunity to present their views with respect to the applicaion for impact aid. The Senate amendment requires that applications be disseminated to tribes and parents, does not require their involvement in program operations, but does require that tribes and parents be afforded a general opportunity to present overall views on educational programs and on the degree of parental participation.

The House recedes adding language clarifying that Indian tribes and parents be afforded an opportunity to comment on the operation of school programs.

(d) Both the House bill and the Senate amendment provide a procedure for the filing of complaints with the Commissioner as regards actions of a local school district. The Senate amendment, however, specifies that these complaints must be written. In addition, the House bill and the Senate amendment differ to a minor degree in the details of the processing of the complaint.

The House recedes.

(e) The House bill provides that the hearing shall be conducted so that a record of the proceedings is maintained and the public is provided an opportunity to attend. The Senate amendment provides that the hearing shall be open to the public.

The House recedes adding an amendment to make clear that a record of the public proceedings is to be maintained.

(f) The Senate amendment, but not the House bill, requires the examiner's findings and recommendations to be based on the record.

The House recedes.

(g) The Senate amendment, but not the House bill, requires the Commissioner to set out in his determination the reasons for his decision and to provide the complaining tribe and local school district with copies of the relevant documents.

The House recedes.

(h) The House bill permits a tribal council having students served by a school district which has rejected a determination of the Commissioner or which has not undertaken the required remedy, to elect to have educational services provided by a BIA school or to operate its own school. The Commissioner is required within one year to establish regulations to insure an orderly and expeditious transition in those cases, and the BIA is required to submit an appropriate request for funding of the construction of facilities where necessary to implement such election. Nothing in these provisions is made applicable to school districts having school boards, a majority of whose members are Indian.

The Senate amendment requires the Commissioner to withhold payment of impact aid funds attributable to these Indian children until such time as the required remedy is undertaken unless the complaining tribe formally requests that such funds be released to the school district. In no case may the Commissioner withhold such funds during the course of a school year if he determines that it would substantially disrupt the programs of the local school district.

The House recedes to Senate version with the agreed upon insertion of a new subsection 1101(d) allowing tribal governing bodies to contract educational services under Public Law 93-638 (or have the Bureau of Indian Affairs provide it) if the local education agency rejects the Commissioner's recommendations (made pursuant to a complaint).

2. Johnson-O'Malley

The House bill, but not the Senate amendment, includes for the first time a formula for the distribution of funds under the Johnson-O'Malley Act. This formula is based upon the number of Indian children in public schools in the State multiplied by the average per pupil expenditure in such State. In addition, the House bill, but not the Senate amendment, permits funding of basic educational support under the Johnson-O'Malley Act in cases where schools would close or there would otherwise be a reduction in the quality of education programs afforded Indian students. For fiscal year 1978, funds presently authorized under the act would be available for that purpose, and for subsequent fiscal years, a separate authorization of appropriations would be provided.

The Senate recedes to the House language on basic support fund distribution. The conferees agreed that the Secretary of Interior is to poll the federally recognized tribes to determine the preferred formula for distribution of supplemental funds and put the preferred formula into effect.

3. Standards for education of Indian children in BIA schools

(a) The House bill provides that the Secretary shall carry out studies and surveys necessary to establish standards for the basic education of Indian children in BIA or contract schools through the National Institute of Education and the National Center for Education Statistics. The Senate amendment requires such studies to be carried out by contract with an Indian organization. The Senate amendment also requires the Secretary to publish in the Federal Register proposed standards within 15 months of the date of enactment of the act. In addition, the Senate amendment requires the Secretary to distribute any revisions of the standards to

all tribes and to publish such revisions in the Federal Register.

The House recedes after deletion clarifying the type of consultation to be carried on with Indian tribes and organizations. Also, the conferees expect the Interior Secretary to work closely with the affected Indian tribes and organizations, and with the HEW Assistant Secretary for Education, in conducting and interpreting any studies, if required, whether such studies are contracted out to qualified Indian organizations or performed by the Interior Department. The conferees further expect that the HEW Assistant Secretary for Education will substantially utilize the expertise and experience of both the National Center for Education Statistics and National Institute of Education which are under his authority.

The conferees expect the Secretary to, consistent with the statutory language, make an effort to make the standards specific to the special needs and specific cultural heritage of the tribe to be served. However, the Secretary shall have considerable latitude in applying this to a school serving students from many different tribes.

The conferees most strongly urge and expect the Interior Department and the Bureau of Indian Affairs to immediately begin to implement the various activities mandated in these sections, and to make a special effort to adhere to the time frames.

The standards established under subsection 1121(e) will provide the primary basis for contract negotiation between the Secretary and the contract school board. Nothing in this section shall be construed as allowing the Secretary to require any contract school to establish standards for his review or ratification.

(b) The Senate amendment, but not the House bill, proposes that the standards established shall place special emphasis on the support and reinforcement of the specific cultural heritage of such tribe.

The House recedes with a deletion clarifying that special emphasis would not be placed on specific cultural heritages.

(c) The House bill requires the BIA to implement these standards in its schools not later than the beginning of the first school year after the date of issuance of the standards, but no less than six months following the date of issuance. The Senate amendment provides that the Secretary shall begin to implement the standards immediately upon date of their establishment. At the time the BIA budget request is presented the Secretary shall submit to Congress a detailed plan to bring all BIA and contract schools up to the standards, including cost estimates and specific time lines.

The House recedes.

(d) The Senate amendment, but not the House bill, provides that a tribe or a school board designated by the tribe shall have authority to waive, in whole or in part, the standards set by the Secretary if it finds that the standards are deemed to be inappropriate or ill conceived. In addition, the tribe or school board may revise such standards to take into account the specific needs of the tribe's children. Such revised standards shall be established unless specifically rejected by the Secretary for good cause and in writing, which rejection shall be final and nonreviewable.

The House bill permits the Secretary to provide alternative standards, as he deems appropriate, in order to take into account the needs of individual tribes as expressed through their governing bodies, if such standards are not lower than the general standards prescribed by the Secretary.

The House recedes.

(e) The Senate amendment directs the Secretary, at the request of a contract school board, to provide alternative or modified standards.

The House bill grants the Secretary discretion to provide alternative or modified standards.

The House recedes.

4. National criteria for dormitories

The House bill requires the Secretary, in consultation with the NIE or by contract, and in consultation with tribal governments, to conduct a study, within 18 months of enactment of these amendments, on the costs of boarding schools for Indian students and to establish national criteria for these schools based on the results of this study. Within one year of date of establishment of these criteria, the Secretary shall submit to Congress a detailed plan for meeting these criteria.

The Senate amendment requires that the study shall be conducted by contract with an Indian organization. It requires the Secretary to publish proposed criteria in the Federal Register within 15 months of the date of enactment of the Act and to establish, distribute, and publish final criteria within 18 months after the date of enactment. The Senate amendment also requires the Secretary to begin to implement the criteria immediately upon their establishment and to submit to the Congress annually a detailed plan to bring all BIA and contract boarding schools up to the criteria. The Senate amendment authorizes such sums as may be necessary in order to bring each school up to the level required by the criteria.

The House recedes with a deletion clarifying the type of consultation to be conducted with Indian tribes and organizations. The same rationale for the participation of the National Institute of Education and National Center for Education Statistics as was given for section 1121 applies here.

5. Studies

The House bill permits up to $1 million of the appropriations provided under the Snyder Act to be used to carry out the national standards and the dormitories studies. The Senate amendment separately authorizes $1 million for these studies.

The House recedes. The conferees firmly expect and assume that the Administration and the Bureau of Indian Affairs will promptly present a request in the first fiscal year 1979 Supplemental, specifically for the funds necessary to conduct the studies required under sections 1121 and 1122.

6. Facilities construction

(a) The Senate amendment, but not the House bill, requires facilities to meet tribal health and safety standards, as well as Federal and State standards.

The House recedes with the understanding that the term "greater" shall be interpreted with respect to cost factors.

(b) The House bill requires the BIA to submit to Congress and to publish in the Federal Register the system used to determine priorities for school construction projects. The BIA is also required, at the time any budget of such construction is presented, to print in the Federal Register and to include in the budget request a current list of all construction priorities. The Senate amendment requires the Secretary, within 1 year of the date of enactment and annually thereafter when the BIA budget is presented, to submit to the Congress a detailed plan to bring facilities into compliance. Within 6 months of enactment, the Secretary shall submit to the Congress and publish in the Federal Register the system used to establish priorities for school construction projects.

The House recedes.

7. BIA functions

(a) The House bill requires the Secretary to vest authority for education programs in the Office of Indian Education Programs of the BIA and it states that nothing within this act shall be construed as diminishing the authority of the Secretary.

The Senate amendment requires all functions with respect to formulation and establishment of policy and procedures, supervision of programs, and expenditure of Federal funds for Indian education to be vested in the Assistant Secretary for Indian Affairs. These functions may not be further delegated to any official other than the Deputy Assistant Secretary for Indian Affairs or the Director of the Office of Indian Education Programs of BIA. The Director of the Office may redelegate his function to personnel under his discretion.

The conference substitute clarifies that the purpose of this section is to recognize the administrative structure of the Bureau with respect to education functions only. Under this section, the Assistant Secretary for Indian Affairs will coninue to have ultimate authority (along with the Secretary) for the provision of educational services by the Bureau but such authority must be exercised through the Director of the Office of Indian Education Programs of the Bureau and personnel within the Office under the Director's control. The conferees hope that by placing primary authority for Indian education within the Office, the quality of educational services provided by the Bureau will be improved and the status of the Office and education programs of the Bureau will be enhanced. However, this section does not preclude the Assistant Secretary from providing, through intermediate managerial personnel, for adequate coordination between the Office and other Bureau programs, including contracting functions related to education.

(b) The House bill, but not the Senate amendment, forbids area offices of the BIA, other than personnel in those offices who are under the control of the Director of Indian Education Programs, from exercising any functions with respect to Indian education. The personnel in those offices under the direction of the Director shall provide technical assistance to schools. However, functions relating to contract schools shall be carried out directly by the Director of the Office.

The conferees agreed on compromise language that places BIA education personnel under the Director of the Office of Indian Education Programs and which facilitates contracting coordination. The Assistant Secretary shall establish practices guaranteeing educational personnel access to, and input into the work assignment of, support personnel who are not transferred under this section but who impact on education in field settings. The conferees expect the Director of the Office to maintain education personnel at Area and Agency levels to provide coordination between education functions and the functions of other divisions which impact on education. The conferees direct that in all activities relating to the implementation of this section and the following sections tions, representative agency and school personnel be involved.

(c) The House bill, but not the Senate amendment, requires educational personnel in BIA agencies to provide assistance in connection with personnel actions relating to programs supported by the BIA.

The House recedes.

(d) The Senate amendment but not the House bill, includes a new subparagraph (d) which specifies that the term "functions" includes powers and duties.

The House recedes.

8. Allotment formula

(a) The Senate amendment, but not the House bill, provides that in establishing an allotment formula the Secretary shall consider overhead costs associated with administering contract education function, maintenance and repair costs associated with the physical condition of education facilities, the cost of bringing the school up to the level of standards established for basic education and

dormitories, and such other relevant factors as the Secretary deems appropriate.

The House recedes with language clarifying that the figure of overhead costs to be factored into this formula will be based on the figure negotiated between the Secretary and the contract school board under existing procedures.

(b) The Senate amendment, but not the House bill, contains a pro rata clause for the allocation of funds appropriated.

The House recedes.

(c) The House bill requires the Secretary to establish a fund for the purpose of providing funds in cases of emergencies or unforeseen contingencies; such fund shall be in the discretion of the Director in the Office of Indian Education Programs, except that the Director must consult with the superintendents of the various BIA agencies. The Senate amendment authorizes the Secretary to provide funds to BIA and contract schools without regard to the allotment formula where necessitated by emergency or unforeseen contingencies. Whenever the Secretary does so, he shall report such action to the Congress.

The House recedes with an amendment mandating that the Secretary shall have the funds available. Nothing in this section shall be interpreted so as to give the Secretary authority to provide money for any purpose other than emergencies or unforeseen contingencies (i.e. unusual maintenance or repair), which significantly impede or block the progress of an educational program serving Indian students in either Bureau or contract schools. When such circumstances arise, preference shall not be given to either Bureau or contract schools. In this process, the conferees expect the Secretary to consult with field personnel prior to distribution of these funds (i.e. area and agency education personnel) and give due regard to their opinions.

9. Direct funding

(a) The House bill provides for a system of direct funding and support of all Bureau and Indian controlled contract schools on the basis of local financial plans prepared by local school administrators. The local school board shall have authority to ratify or reject such a plan. Each such plan prepared for a contract school must involve local participation. The House bill provides that funds distributed under the system shall not be subject to the band analysis system of any tribe, but nothing shall be construed as prohibiting the tribe from stipulating that funds that are on the band analysis system shall augment funds under this section. The Senate amendment provides that the financial plan shall be prepared by the local school supervisor in active consultation with the local school board. The board shall have authority to ratify, reject, or amend such plan.

The House recedes. The House recedes on language in section 1129(a)(2) acknowledging that because the band analysis budgetary prioritization system is not statutorily referenced, this subsection would have no longstanding application. It is the understanding of the conferees that the Bureau of Indian Affairs will revert in the next fiscal year to a system of zero based budgeting and that the budgeting and the budgets of tribes will be determined according to the principles inherent in that new system. The conferees intend that no moneys distributed under the direct funding system shall supplant moneys otherwise authorized to assist tribes in their budget from the Bureau; nor that any action of the BIA or tribes diminish the allotments provided to schools under the formula contained in 1128.

(b) The House bill provides that, in the case that a tribe determines that a local board shall not have final plan authority, the Secretary shall investigate the causes of the determination and take necessary remedial steps. The Senate amendment provides that in the case of such determination, the tribal governing body shall have final plan authority.

The House recedes on its provision, and the Senate recedes on its provision, since changes in the definition section render it unnecessary.

(c) The House bill, but not the Senate amendment, provides that funds for self determination grants under the Indian Self-Determination in Education and Assistance Act shall not be used for providing teacher assistance and training in the field of education by BIA unless such services are provided in accordance with a plan agreed to by the tribes affected and BIA, under which control of the programs will be transferred to such tribe within a specified time.

The conferees have agreed on substitute language following the House provision with a Senate clarification that the plan approved may be altered if circumstances warrant.

10. Educational personnel

(a) The Senate amendment, but not the House bill, provides that civil service requirements relating to appointment, promotion, removal, and leave shall not apply to educators and to education positions in BIA schools.

The conferees agreed on language which followed the Senate, but clarified that all applicable code sections are included.

(b) The House bill provides that its amendments affecting education personnel shall take effect at the end of the 180-day period beginning on the date of enactment. The Senate amendment provides for an effective date one year after date of enactment.

The House recedes.

(c) The House bill, but not the Senate amendment, requires the Secretary to publish regulations governing the appointment of educators.

The House recedes with an amendment clarifying that local lists are to be only of those expressing an interest in the particular locale.

(d) The Senate amendment, but not the House bill, authorizes local school boards to waive on a case by case basis any formal education requirements established by regulation in order to permit a tribal member to be hired to teach tribal culture and language.

The House recedes.

(e) The House bill provides that the local school board has the right to appeal an action discharging an educator. The Senate amendment provides that upon discharging an educator, the supervisor shall notify the local school board and shall follow their determination if the board decides that the educator should not be discharged. In that situation the Senate amendment authorizes the supervisor to appeal the decision.

The House recedes.

(f) The House bill requires the Secretary by regulation to establish procedures to provide for the resolution of grievances of educators relating to personnel practices including the discharges of any educators. The Senate amendment requires regulations involving procedures to be established for grievance resolution and provides that no educator may be discharged without notice and opportunity for a hearing. Educators employed in BIA schools shall be notified 60 days prior to the end of the school year whether their contract will be renewed.

The House recedes.

(g) The House bill, but not the Senate amendment, permits local school boards for BIA schools to waive the Indian preference rule as regards education positions in such schools.

The conferees agreed on language following the intent of the House but vesting the waiver authority in the tribal governing body or its designee. The Secretary, in promulgating regulations concerning this subsection, shall deem an affected tribal organization to be one with a substantial number of children involved.

11. Management information system

The House bill, but not the Senate amendment, requires the Secretary's management information system to be computerized.

The Senate recedes adding the clarifying phrase that data items listed are not exclusive.

12. BIA policies

The Senate amendment, but not the House bill, requires publication in the Federal Register of draft policies and procedures for BIA education programs.

The House recedes.

13. Rights of Indian students

The Senate amendment, but not the House bill, requires the Secretary, within 6 months of the date of enactment, to prescribe rules and regulations necessary to insure the constitutional and civil rights of Indian students attending BIA schools.

The House recedes adding clarifying phrase that rights named are not inclusive.

14. Other funding

The House bill, but not the Senate amendment, makes clear that nothing in this act shall be interpreted as denying BIA funding from any source of funding available prior to enactment of this act.

The House recedes.

15. Definitions

(a) The Senate amendment, but not the House bill, provides that the number of members of a local school board shall be determined by the Secretary in consultation with the tribes. It also gives initial control over the membership of the school board to the tribal council, requiring affirmative tribal action prior to a local election.

The conferees agreed on substitute language making selection of school board subject to tribal law, or, in its absence, election by the parents affected. Off-reservation boarding school boards would be tribally appointed.

(b) The Senate amendment, but not the House bill, contains definitions of "agency school board", "Indian organization", and "tribe".

The conferees agreed on substitute language which establishes Agency school boards from the membership of the local school boards.

16. Allocation adjustment

The Senate amendment, but not the House bill, amends the Indian Elementary and Secondary School Assistance Act to authorize the Commissioner to reallocate funds among local educational agencies.

The House recedes.

17. Study

The House bill, but not the Senate amendment, requires the Assistant Secretary of Education in consultation with Indian organizations to conduct a thorough study on the definition of "Indian" contained in the Indian Education Act.

The Senate recedes with an agreement from the House to substitute language for House section 1146(b) to clarify the role of the Assistant Secretary. The conferees have sensed a growing concern with regard to the definition of "Indian" as applicable to title IV of Public Law 92-318 and have therefore directed that a study be conducted which will bring together the views of all interested tribes, both federally recognized and nonrecognized, together with the National Advisory Council on Indian Education, the National Tribal Chairmen's Association, the National Indian Education Association, the National Congress of American Indians, and any other national tribal organizations which may desire to participate. The expertise of the National Institute of Education (NIE) and the National Center for Education Sta-

tistics (NCES) shall be utilized through the participation of the Assistant Secretary of Health, Education, and Welfare for Education for the express purpose of providing technical expertise in data collection and survey monitoring, and any other area where the Assistat Secretary deems the expertis to be of value. The Conferees, however, stress that it is not their intention to use NIE or NCES to provide assistance in areas affecting the definition of "Indian".

18. Data collection

The House bill, but not the Senate amendment, requires a student eligibility form to be filled out for each child seeking to participate in a local school district program funded under part A of the Indian Education Act. In addition, the House bill, but not the Senate amendment, requires the Commissioner to audit annually a sample of not less than one-third of school districts receiving funds for that program. Any falsification of information found to exist is punishable by impoundment of unused funds and ineligibility for future funding, and any falsification provided on the student eligibility form is punishable by ineligibility for future participation in these programs.

The Senate recedes.

During the reauthorization process, it became apparent to the Committees that the title IV program staff had operated at a handicap in not being able to request sufficient information to give a clear program profile regarding those served under the act. This section is designed to give statutory authority for the Office of Indian Education within the Department of Health, Education, and Welfare to collect the specified data on the student eligibility forms, otherwise known as "506" forms. The current data collection method was found to be insufficient because it did not request adequate data. For example, a local educational agency may qualify for entitlement for every student claiming to be Indian either because the student is a member himself, or is a descendant or a member of a band, tribe, or organized group in the first or second degree. The student eligibility form presently requires that the child only state the tribal affiliation of the student's qualifying relative if the applicant child is in fact a bona fide recipient. The data requested in this section is intended to provide an accurate and detailed profile of the program recipients, and will hopefully assist the Congress in future reauthorizations.

Now going into its seventh year of operation the title IV program has never been audited. This section requires that an annual rolling audit be conducted in which at least one-third of the local educational agencies receiving funds under the program are evaluated each year.

The audit is intended to verify that the students served are bona fide recipients, and that the educational programs that are offered are of substantial quality and are in fact meeting the educational needs that are associated with those students in attendance in the LEA.

19. Amendments to title VIII of ESEA

(a) The Senate amendment, but not the House bill, amends the section dealing with educational opportunities for Indian children to authorize grants to prepare persons to serve Indian students as administrators as well as teachers.

The House recedes.

(b) The House bill, but not the Senate amendment, makes clear that the groups involved are Indian tribes, Indian organizations, and Indian institutions.

The Senate recedes.

20. Definition of Indian

The House bill, but not the Senate amendment, removes from the definition of "Indian", for purposes of the Indian Education Act, the phrase "now or in the future."

The Senate recedes.

21. Teacher training

The Senate amendment, but not the House bill, expands existing teacher training provisions to allow training of teachers of Indian people, rather than Indian children. In addition, the Senate amendment authorizes fellowships for courses of study of less than 3 years and expands the fields for which the fellowships may be made available.

The House recedes.

GENERAL PROVISIONS

1. Equalization data

Both the House bill and the Senate amendment require composite profiles of the States to be compiled on their efforts to achieve equalization of resources for education. The House bill, but not the Senate amendment, specifically requires the National Center for Education Statistics to collect uniform data from the States, requires the NCES to consult with the Office of Education in performing this task, and authorizes separate appropriations for both the collection of data and the compilation of profiles by the National Center.

The Senate amendment requires the profiles to include the degree to which the State equalizes expenditures by local educational agencies and contains a definition of "wealth neutrality" which the Center should use in compiling such profiles. Under the Senate amendment this activity would be supported under the basic NCES appropriation.

The Senate recedes.

2. Equalization assistance

The House bill, but not the Senate amendment, authorizes $4 million a year through fiscal year 1983 for the Commissioner to make grants to the States to assist them in revising their system of financing elementary and secondary education. The Commissioner is also authorized to develop models and materials useful to the States in such activities and to establish training centers. A unit within the Office of Education would also be established as a national dissemination center for information on State efforts to achieve equalization.

The Senate recedes. The conferees wish to emphasize that these activities by the Office of Education are not intended to duplicate the present activities of the National Institute of Education in school finance. The managers expect that the Commissioner and the Director will coordinate their respective responsibilities so that similar activities do not result in duplication of efforts in the areas of school finance and equalization, and in the dissemination of information.

3. Advisory panel on financing elementary and secondary education

The Senate amendment, but not the House bill, establishes within the Department of HEW an advisory panel on financing elementary and secondary education to be composed of 15 members appointed by the President. The advisory panel shall conduct a study of the financial conditions of public and nonpublic elementary schools in the United States, including nonpublic education permissible to the extent provided under the Constitution. Such study shall include a survey of the existing information on school finance, such additional studies as are determined to be necessary by the panel, and a survey of the prospects for financing public and nonpublic education during the decade between October 1, 1979, and September 30, 1989. In addition, the advisory panel, after consultation with the National Center for Education Statistics, shall develop a procedure for collection of uniform school finance data. The panel may enter into contracts and employ staff. It shall not later than 1 year plus 60 days after the date of enactment submit to the Commissioner a preliminary report and not later than 6 months thereafter make a final report to the Congress. The views and recommendations of the panel shall be presented to the White House Conference on Education called pursuant to the provisions of the Education Amendments of 1974. The panel shall terminate 60 days after the submission of its final report. Such sums as may be necessary are authorized for fiscal years 1979 and 1980. The White House Conference on Education is expanded so that the President may appoint six members of the advisory panel.

The House bill vests authority for conducting a study on public school financing in the National Institute of Education. This study would involve an analysis of the recent trends in school finance, an analysis of the standards used to measure equalization of financing, an analysis of the impact of Federal and State categorical programs, recommendations for alternative Federal roles, an analysis of the effects of equalization on districts which were previously educational leaders and on certain curricular and extracurricular activities. The study would specifically include Puerto Rico. The Institute is required to submit a plan for its study to the Congress and to make a final report by December 31, 1981, without this report being reviewed by any other agency in the Executive Branch. The House bill makes funds available from the evaluation portion of title I of ESEA to fund this study and requires the Assistant Secretary to coordinate this study with the data collection duties of NCES and with the equalization assistance program of the Office of Education discussed in comment 2 of this print.

The conference substitute requires the establishment of an advisory panel on school finance within the Department of HEW but vests the authority to conduct the studies in the Secretary. The Secretary's and the panel's reports are to be submitted to the Congress without any review outside of the agency. Funds would be available from the evaluation portion of title I of ESEA to conduct these studies.

It is imperative in the view of the Congress that an assessment of the advisability of general Federal aid to public and non-public elementary and secondary education expressly be addressed by the advisory panel, including the desirability, feasibility, cost and acceptability of tuition tax credits among other general education funding devices.

Given the importance of this effort to the Nation's schools, and in light of the expenditure of billions of dollars a year for elementary and secondary education, it is important that the advisory panel authorized in this section and the administrative responsibility for the conduct of all remaining work be transferred to a new Department of Education on its effective date in the event that legislation establishing a Department be enacted and signed into law. It is important, moreover, that such studies as are appropriate to its expertise be allocated to the National Institute of Education, particularly in those areas in which the Institute has had experience and has already begun work.

4. Racially isolated school districts

The Senate amendment, but not the House bill, auhorizes an appropriation of $1.2 million for assistance to school districts which are racially isolated as a result of geographic location and which have adopted or will adopt a plan to aid children in overcoming the educational disadvantage of minority group isolation.

The House recedes with an amendment limiting this authorization to the fiscal years expiring before October 1, 1981.

5. Data systems

The House bill, not the Senate amendment, includes State agencies responsible for postsecondary education among the agencies which the National Center for Educational Statistics must assist in improving and automating their data collection.

The Senate recedes.

6. Paperwork control

(a) The House bill requires the Secretary and the Assistant Secretary to coordinate the collection of Federal education data acquisition through the National Center for Education Statistics. The Senate amendment places this responsibility in the Secretary.

The House recedes.

(b) The House bill includes in its coverage the collection of information and data acquisition activities of all Federal agencies whenever such activities request information from educational agencies or institutions or whenever the purpose of such activities is to request information needed for the management of or the formulation of policy related to Federal education programs.

The Senate amendment covers requests which are made of such agencies by institutions and which relate to management or policy related to Federal education programs or to research or evaluation of Federal education programs.

The House recedes. The conferees wish to state their intention that the Senate provision is to be interpreted broadly so as to include as many activities as possible. The conferees deleted the House provision only because it could possibly have been interpreted as including such activities as the conduct of the Census, which were clearly not intended.

(c) The House bill, but not the Senate amendment, requires the establishment of a unit for education data management within NCES. This unit would be headed by a GS–17 and would assist the administrator of NCES in performing his duties.

The House recedes.

(d) The House bill and the Senate amendment both require the establishment of a Federal Education Data Acquisition Council. The House bill requires that members of this council be appointed by the Secretary and that the public members may serve for no more than 3 years. The House bill requires this council to review the practices of the data management unit and to hear appeals from its decisions by heads of aggrieved agencies. This council must meet regularly during the year and be headed by an individual from an agency which has expertise in data collection but which undertakes no major data collection of education data.

The Senate amendment limits public representation on the council to three members appointed for non-renewable terms. The council's functions are strictly advisory.

The Senate recedes with an amendment deleting the council's authority to hear appeals.

(e) The House bill requires the procedures for control of paperwork to be established by the administrator of NCES with the approval of the Secretary and the Assistant Secretary. The administrator is authorized to withhold approval of any proposed activities which violate the standards established for paperwork control. The administrator is required to inform the Office of Management and Budget of all proposed data collection activities, and the OMB is permitted within 10 days of such notice to require that any of such activities be reviewable by OMB instead of by NCES if it involves a significant data acquisition policy issue.

The Senate amendment authorizes the data acquisition council to develop procedures for paperwork control so that the Secretary may advise heads of relevant agencies if their requests do not meet the standards. Authority to disapprove proposed data collection remains in the Office of Management and Budget.

The House recedes with an amendment requiring the Secretary to approve or disapprove all agency requests for data but also providing for an appeal to OMB by an agency which has a disapproved request. This appeal must be acted on by OMB within 10 days.

(f) The Senate amendment, but not the House bill, requires each agency's plan to include an estimation of the cost required to each school district or college to comply with the data request and of the cost to Federal agencies to collect, process, and analyze the information.

The House recedes.

(g) The House bill requires each request for information from the Federal Government to be approved and publicly announced by the January 1 preceding the beginning of a school year. This restriction does not apply in the case of research and evaluation studies mandated by Congress. The Senate amendment requires that all plans for acquisition of information must be publicly announced by February 15.

The Senate recedes with an amendment setting the date at February 15 and deleting the exception for congressionally mandated studies. The conferees wish to state their intent that the enactment by Congress of a mandated study subsequent to February 15 can be considered an "unusual circumstance" permitting a waiver of this requirement if such study is to be conducted immediately under the law.

The conferees also wish to state their intention that all requests for information must be approved and announced by February 15, but the exact data collection instrument may be subsequently modified in light of this review and need not be disseminated to the responding agencies by that date.

(h) The Senate amendment, but not the House bill, requires that only those changes in plans for data acquisition which did not come about as a result of the review of the plan be subject to the same approval process.

The House recedes.

(i) The Senate amendment, but not the House bill, authorizes the Secretary to waive the review procedure for individual research and evaluation studies which are nonrecurring, voluntary, and not excessively detailed or burdensome to the school districts or institutions involved. The Federal agency requesting the information must also announce its plans in the Federal Register. The Secretary shall inform the Federal agency concerning the waiver within 30 days of such announcement or the study shall be deemed waived and may proceed.

The House recedes. The conferees wish to emphasize that this exception is to be narrowly construed and used infrequently, and that the criteria for its uses are to be rigidly applied.

(j) The House bill authorizes the administrator of NCES to develop standard definitions to be used by all Federal agencies dealing with education. The Senate amendment requires the Secretary to develop such definitions consistent with those established by the Office of Federal Statistical Policy and Standards, Department of Commerce.

The House recedes with an amendment inserting the phrase "whenever possible."

(k) The House bill, but not the Senate amendment, requires the development of procedures whereby educational agencies are permitted to submit information required under any Federal education program to a single Federal or State educational agency.

The Senate recedes with an amendment requiring the submission to Congress of these procedures and authorizing the Congress to disapprove them within 60 days.

(l) The House bill provides grants to State educational agencies for improving their data collection systems if such agency agrees to coordinate all data collection for Federal programs through such a system and if such agency agrees to take specific steps to eliminate excessive detail and redundant requests.

The Senate amendment provides similar assistance but requires a State agency to coordinate Federal data collection through the system to the extent practicable.

7. State financial reporting

The House bill, but not the Senate amendment, transfers responsibility for collecting information from States concerning their administration of Federal funds from the Office of Education to the National Center for Education Statistics.

The House recedes.

8. Applications

The House bill, but not the Senate amendment authorizes the Commissioner to provide for 3-year applications instead of for annual applications for programs within the Office of Education, requires the Commissioner insofar as practicable to establish uniform dates during the year for the submission and approval of applications, and requires the Commission insofar as is practicable to develop common applications for programs.

The Senate recedes.

9. Office of Non-Public Education

The Senate amendment, but not the House bill, creates an Office of Non-Public Education headed by a deputy commissioner in the Office of Education to insure the maximum potential participation of non-public school students in all Federal education programs for which they are eligible.

The House recedes.

10. National Assessment of Educational Progress

The Senate amendment, but not the House bill, authorizes the National Institute of Education to carry out a National Assessment of Educational Progress to assess performances in basic skills and report at least once every 5 years on performance of students at various age and grade levels in the areas of reading, writing and mathematics. In addition, the National Assessment shall conduct special assessments of other educational areas and provide technical assistance to State and local educational agencies on the use of National Assessment objectives and on making comparisons of such assessments with national profiles. The Assessment shall be carried out through an education organization and supervised by a policy committee established by such organization with members representing the general public and State and local officials and educators. Participation in the National Assessment by State and local educational agencies shall be voluntary. The Director of NIE shall review the National Assessment at least once every 3 years, providing an opportunity for public comment and shall report to Congress on the results of the review. The Senate amendment authorizes $10.5 million for each fiscal year through 1983 to carry out the National Assessment.

The House recedes.

11. Authority of administrators

The Senate amendment, but not the House bill, retains the provisions of existing law authorizing the administrative heads of Federal education agencies to make regulations governing the manner of operation of the agency.

The House recedes.

12. Review panels

The House bill, but not the Senate amendment, requires that persons chosen as members of grant review panels must be qualified by education and experience to perform such services and that such qualifications must be made public.

The Senate recedes.

13. GAO monitoring

The House bill, but not the Senate amendment, requires the Comptroller General of the GAO to monitor the performance of the Secretary in carrying out the legislatively required evaluation responsibilities for Federal education programs. An annual report to

the Congress is required on this monitoring.

The House recedes.

Although the House language was deleted on the grounds that it does not alter existing authority of the GAO to review evaluation performance and report its findings to the Congress, the managers feel strongly that section 417 of the General Education Provisions Act must be implemented fully by the Secretary, and that the General Accounting Office should pay particular attention to the adequacy of the evaluations and of the procedures utilized by HEW in making them, and that the House Committee on Education and Labor and the Senate Committee on Human Resources be informed of any deficiencies perceived by GAO.

14. Right to appeal

The House bill, but not the Senate amendment, permits any applicant or recipient of Federal funds to request a hearing within 30 days if it is aggrieved by the final action of a State educational agency in ordering, in accordance with the final State audit resolution determination, the repayment of misspent or misapplied Federal funds.

The Senate recedes.

15. Evaluation reports

The Senate amendment, but not the House bill, requires the Commissioner to include in his annual evaluation report information on compliance with Federal maintenance of effort requirements and to include in the renewal evaluation report information on State and local expenditures, where applicable.

The House recedes.

16. Maintenance of effort

The House bill permits a 1-year waiver of certain Federal maintenance of effort requirements if exceptional or unforeseen circumstances exist. The Senate amendment provides for such a waiver in cases where unforeseen and exceptional circumstances exist.

The House recedes.

17. Confidentiality

The House bill, but not the Senate amendment, forbids HEW from disclosing the identity of individual schools, school districts, State educational agences, or post-secondary institutions which participate in any federally-funded research study through the Education Division which necessitates an assurance of the confidentiality of identity in order to obtain full and candid responses if such study is (1) limited, (2) not required for auditing or monitoring, (3) voluntary, and (4) conducted after notice in the Federal Register. This provision in the House bill terminates on December 31, 1980.

The House recedes.

18. Technical assistance

The Senate amendments, but not the House bill, makes it explicit that curricula or instructional materials be well developed through consultation with personnel of State and local educational agencies, teachers, and community representatives and provides for grants as well as contracts with public and private organizations.

The House recedes. In accepting this provision, the conferees wish to express their concern that in the past USOE and NIE have supported some projects which have not been accepted for publication by private companies and, consequently, were not effectively disseminated. While expanding the types of organizations and individuals to be consulted, the conferees wish to make clear their intent that publishers be consulted on curriculum and materials development projects, in addition to any of the individuals of organizations included in the Senate amendment. The conferees do not intend the requirements of this section to be met solely through consultations with State and local educational agencies, to the exclusion of publishers.

19. Administrative provisions regarding titles I and IV of ESEA

(a) The House bill includes in the revised title I of ESEA a series of administrative provisions applicable to the program. The Senate amendment contains very similar provisions regarding title I, but these provisions are included in a new title V of ESEA which covers the operation of both the title I and title IV consolidated programs.

(b) The House bill, but not the Senate amendment, includes in these administrative provisions requirements that (1) the State must adopt effective procedures for disseminating information about other Federal and State funded programs providing health, social and nutrition services; (2) the complaint procedure must include dissemination of information to organizations and individuals concerning the names and phone numbers of the State officials responsible for receiving complaints, must provide for keeping all correspondence accessible to all parties, and must provide for notifying the complainant, the affected school district, and the advisory councils within 10 days of the State's resolution of the dispute; (3) any withholding hearing conducted by the State educational agency must be before an impartial decisionmaker and such withholding may involve all or part of the funds affected; (4) a definition of a "compliance agreement" is specifically included; and (5) the State educational agency is required to attempt to conduct annual audits of local programs but in no event may these audits be less frequent than once every 2 years. The Senate amendment, but not the House bill, permits Federal impact aid funds to be used to repay audit exceptions for misspent funds under title IV.

Regarding (a) the conference substitute includes the provisions in title I as well as in the new title V.

Regarding (b) the House recedes on the provision affecting the complaint procedure and on the provisions permitting repayment of funds from impact aid; the Senate recedes on the other provisions.

20. State monitoring plan

The House bill, but not the Senate amendment, authorizes the Commissioner to require a State educational agency to submit a monitoring and enforcement plan for Federal funds which are made available through that agency to local agencies. This plan may include provisions for periodic visits by State personnel, periodic audits, and State investigations of complaints. Furthermore, the House bill, but not the Senate amendment, specifically authorizes States to withhold approval of local applications, to suspend payments, and to withhold payments in order to carry out their responsibilities.

The Senate recedes.

21. State application

(a) The House bill, but not the State amendment, requires any State which desires to participate in certain programs under which Federal funds are distributed through a State agency to local agencies to submit a general application to the Commissioner. The Senate amendment continues existing law which requires the submission of such a general application for programs administered by the State educational agency. In addition, the Senate amendment requires the submission of a single State application for the administration of the title I and title IV ESEA programs.

The House recedes.

(b) The House bill requires States to involve representatives of the class of individuals affected by the programs included in this general application in the planning and operation of each program.

The Senate amendment requires individuals affected by each program to have an opportunity to be so involved.

The Senate recedes.

22. Local applications

Both the House bill and the Senate amendment require local educational agencies to submit a single administrative application to State educational agencies for participation in Federal programs. The Senate amendment, but not the House bill, permits, as part of this application, the local agency to use Federal funds for developing plans for use of its facilities, with due consideration being given to architectural excellence and inclusion of works of art (not representing more than 1 percent of the cost of tho project).

The House recedes.

23. Administrative payments

The House bill reserves 1.5 percent of each State's title I allocation for State administrative purposes, with an additional one-quarter of 1 percent being made available if such funds are used specifically for monitoring and enforcement. The House bill continues the current reservation of funds for State administration under title IV of ESEA which permits States to reserve either 5 percent of their grants or the amount available in fiscal 1973 for the purpose of State administration of the consolidated programs.

The Senate amendment authorizes such sums as may be necessary through fiscal 1983 for State administration of these two programs. This authorization may not exceed 1.5 percent of the total amounts allocated to States for titles I and IV or $550,000 a State or $87,500 for the outlying areas, whichever is the greater. The Senate amendment contains a provision that such payments may not be less than the amount received by each State for administration of programs under the Act for fiscal 1978. In addition, the Senate amendment authorizes one-quarter of 1 percent of a State's total amount for administration for monitoring and enforcement of titles I and IV.

The conference substitute includes both the provisions in the House bill and the Senate amendment, but requires that the provisions in titles I and IV are to be followed unless the new title V–A is fully funded, in which case title V–A, and not the administrative payment provisions of titles I and IV, is to be operative.

24. Recordkeeping

The House bill exempts procurement contracts awarded by heads of Federal education agencies from the recordkeeping requirements of the General Education Provisions Act. The Senate amendment continues existing law which exempts formal advertising from such requirements.

The Senate recedes.

25. Enforcement

(a) The House bill, but not the Senate amendment, requires the establishment within the Office of Education of an education appeal board which would conduct audit appeal hearings, withholding hearings, cease and desist hearings, and such other proceedings as designated by the Commissioner. The House bill contains specific requirements regarding the membership and functions of this appeal board.

The Senate recedes.

The managers stress that the Secretary and the Commissioner may not delegate the making of decisions under their legal authority for enforcement to the Appeal Board, which includes a majority of persons who are not Federal employees. The Secretary and the Commissioner can utilize the reviews and advice of an appeals board in reaching their enforcement decisions, but cannot totally delegate their authority to persons or

groups of persons who are not Federal officials.

(b) The House bill, but not the Senate amendment, includes the Bilingual Education Act and the Emergency School Aid Act in the provision requiring the Commissioner to give State and local educational agencies written notice of final audit determinations.

The Senate recedes.

(c) The House bill, but not the Senate amendment, specifically authorizes the Commissioner to compromise any claims involved in audit determinations if those claims involve not in excess of $50,000 and the collection of that amount would not be practical and the practice involved in the claim has been corrected.

The Senate recedes.

(d) The House bill, but not the Senate amendment, requires the Commissioner to notify in writing any recipient of funds under any applicable program whenever he has reason to believe that such recipient has failed to comply substantially with any requirement of law and that he intends to withhold in whole or in part further payments under such program including State or local administrative payments.

The Senate recedes.

(e) The House bill, but not the Senate amendment, authorizes the Commissioner to issue cease and desist orders, in lieu of withholding funds, whenever the Commissioner has reason to believe that any State or local educational agency receiving funds has failed to comply substantially with any requirement of law applicable to such funds. Such agency shall be afforded the right to appear before the appeal board to contest such an order.

The Senate recedes.

26. Protection of pupil rights

The Senate amendment, but not the House bill, forbids any student from being required as part of an applicable program to submit to any psychiatric or psychological examination, testing or treatment for which the primary purpose is to reveal information concerning political affiliation, mental problems, sex behavior, illegal behavior, critical appraisals, privileged relationships, or income without the prior consent of the student or, in the case of unemancipated minors, without the prior written consent of the parent.

The House recedes.

27. Advisory council consolidation

The House bill but not the Senate amendment, permits a local educational agency to consolidate parent advisory councils into a single school council or a single district council when such agency is in a State with mandated parent advisory councils for State education programs which substantially meet the requirements and intent of Federal education programs requiring such councils.

The House recedes.

28. Census data

The House bill, but not the Senate amendment, requires the Secretary of Commerce to take such steps as may be necessary to insure that data from the 1980 decennial census will be available to HEW identifying family income by school district, parental education by school district, and size of each cohort of children born within the same calendar year by school district, for purposes of assisting in the distribution of funds under title I of the Elementary and Secondary Education Act.

The Senate recedes with clarifying language.

29. Education reports

The House bill, but not the Senate amendment, requires that any evaluation report on data collected in preparation of such report, which is paid for with appropriated funds, shall be available, upon request, within 4 days to the chairman and ranking minority member of the House Education and Labor Committee and the Senate Human Resources Committee.

The Senate recedes.

30. Virgin Islands

The House bill, but not the Senate amendment, authorizes $5 million for each fiscal year through 1983 for the purpose of providing general assistance to improve public education in the Virgin Islands.

The Senate recedes.

31. Teacher training

The House bill, but not the Senate amendment, authorizes $2 million a year through fiscal 1983 for the purpose of assisting teacher training programs in the outlying areas.

The Senate recedes.

32. Study of evaluation

The House bill, but not the Senate amendment, requires the Commissioner to conduct a comprehensive study of evaluation practices and procedures at the national, State and local levels with respect to federally funded elementary and secondary programs, and to submit a report within 1 year.

The Senate recedes with an amendment encouraging this study to be intensive on certain problems instead of comprehensive.

33. Television programs

The House bill, but not the Senate amendment, authorizes the Secretary to provide assistance to public and private agencies for the production, development, or distribution of programs designed for television systems whether broadcast or nonbroadcast. At least one grant or contract must be for a proven instructional program for children who need enrichment, compensatory, and bilingual education.

The Senate recedes with an amendment deleting the requirement that at least one grant or contract must be made for a proven instructional program.

NEW ACTIVITIES OF NIE

The managers wish to note that the large number of new activities in this bill will create a greatly expanded group of mandated efforts for the National Institute of Education. New statutory responsibilities as well as activities which may be assigned to the NIE are included in the gifted and talented children education program, the school finance equalization study, the ESEA title I parent involvement study, the new educational proficiency and basic skills programs, the bilingual education program, the community education program, the adult education program, the Indian education studies, and the new population education program.

The managers view this range of activities as a vote of confidence for the Institute. The high quality and extremely useful work accomplished by NIE in the ESEA title I study was particular influential in impressing the Congress that the Institute has grown and matured. It now represents a unique and solid resource which educators and educational policy makers can depend on for the study of difficult and previously unknown areas which affect learning and the education process, as well as national education policy issues.

Within the context of the respective programs and studies, the new NIE requirements make sound policy. Taken as a whole, however, H.R. 15 creates such a large volume of variable and complex demands on the Institute that its basic purposes could be distorted or disrupted. With regard to funding, such disruptions are largely eliminated because most of the new requirements are based on separate authorizations of funds which must be appropriated to support the new activities. However, the impact of new requirements on the leadership and expert staff resources of NIE will create significant difficulties. The managers have confidence that the Institute is capable of meeting these challenges and carrying out its new responsibilities while maintaining its basic mission already established in section 405 of the General Education Provisions Act which provides the general authority for NIE.

In the 96th Congress, this authorizing legislation will expire, and the Institute will be reviewed by the Congress. In the oversight process leading to reauthorization of NIE, the managers intend to consider very carefully the impact of the many new requirements in H.R. 15 on the overall purposes of the Institute. The managers will consider what statutory changes may be necessary in order to maintain a Federal research agency which can fully carry out its basic purposes and also meet additional requirements such as those included in H.R. 15.

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Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 12931

Mr. LONG of Maryland submitted the following conference report and statement on the bill (H.R. 12931) making appropriations for the foreign assistance and related programs for the fiscal year ending September 30, 1979, and for other purposes.

CONFERENCE REPORT (H. REPT. NO. 95–1754)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12931) making appropriations for Foreign Assistance and related programs for the fiscal year ending September 30, 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 8, 15, 17, 28, 29, 30, 36, 58, 59, 69, 71, 97, and 99.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 5, 20, 23, 25, 26, 27, 31, 33, 34, 42, 43, 47, 49, 50, 51, 52, 53, 54, 55, 57, 66, 68, 70, 74, 75, 77, 78, 79, 81, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, and 100, and agree to the same.

Amendment numbered 2: That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows: ": *Provided*, That the amount provided for loans to

carry out the purposes of this paragraph shall remain available for expenditure until September 30, 1980"; and the Senate agree to the same.

Amendment numbered 3: That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$185,000,000"; and the Senate agree to the same.

Amendment numbered 4: That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows: ": *Provided*, That the amounts provided for loans to carry out the purposes of this paragraph shall remain available for expenditure until September 30, 1980"; and the Senate agree to the same.

Amendment numbered 6: That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$130,000,000"; and the Senate agree to the same.

Amendent numbered 7: That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment insert the following: ": *Provided*, That the amounts provided for loans to carry out the purposes of this paragraph shall remain available for expenditure until September 30, 1980: *Provided further*, That not more than $5,000,000 shall be available for an Expanded Immunization Program—Yaws Eradication Program in West Africa"; and the Senate agree to the same.

Amendment numbered 9: That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$97,000,000"; and the Senate agree to the same.

Amendment numbered 10: That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows: ": *Provided*, That the amounts provided for loans to carry out the purposes of this paragraph shall remain available for expenditure until September 30, 1980"; and the Senate agree to the same.

Amendment numbered 11: That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$115,000,000"; and the Senate agree to the same.

Amendment numbered 12: That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows: ": *Provided*, That the amounts provided for loans to carry out the purposes of this paragraph shall remain available for expenditure until September 30, 1980"; and the Senate agree to the same.

Amendment numbered 13: That the House recede from its disagreement to the amendment of the Senate numbered 13, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$396,200,000"; and the Senate agree to the same.

Amendment numbered 19: That the House recede from its disagreement to the amendment of the Senate numbered 19, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment amended to read as follows: "Assistance to African refugees: For necessary expenses to carry out the provisions of section 495F, $15,000,000."

And the Senate agree to the same.

Amendment numbered 22: That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$38,500,000"; and the Senate agree to the same.

Amendment numbered 32: That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows: In lieu of the matter proposed by said amendment insert: ", of which sum not more than $5,000,000 shall be for refugee assistance through International Relief Organizations in Rhodesia,".

And the Senate agree to the same.

Amendment numbered 35: That the House recede from its disagreement to the amendment of the Senate numbered 35, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$254,000,000"; and the Senate agree to the same.

Amendment numbered 38: That the House recede from its disagreement to the amendment of the Senate numbered 38, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$10,000,000"; and the Senate agree to the same.

Amendment numbered 39: That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$83,375,000"; and the Senate agree to the same.

Amendment numbered 44: That the House recede from the disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$27,900,000"; and the Senate agree to the same.

Amendment numbered 56: That the House recede from the disagreement to the amendment of the Senate numbered 56, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$13,000"; and the Senate agree to the same.

Amendment numbered 60: That the House recede from its disagreement to the amendment of the Senate numbered 60, and agree to the same with an amendment, as follows: In lieu of the section number named in said amendment insert "112"; and the Senate agree to the same.

Amendment numbered 61: That the House recede from its disagreement to the amendment of the Senate numbered 61, and agree to the same with an amendment, as follows: In lieu of the section number named in said amendment insert "113"; and the Senate agree to the same.

Amendment numbered 62: That the House recede from its disagreement to the amendment of the Senate numbered 62, and agree to the same with an amendment, as follows: In lieu of the section number named in said amendment insert "114"; and the Senate agree to the same.

Amendment numbered 64: That the House recede from its disagreement to the amendment of the Senate numbered 64, and agree to the same with an amendment, as follows: In lieu of the section number named in said amendment insert "115"; and the Senate agree to the same.

Amendment numbered 67: That the House recede from its disagreement to the amendment of the Senate numbered 67, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$654,500,000"; and the Senate agree to the same.

Amendment numbered 72: That the House recede from its disagreement to the amendment of the Senate numbered 72, and agree to the same with an amendment, as follows: In lieu of the matter proposed by said amendment insert: ": *Provided*, That not to exceed $3,225,000 of this amount shall be available for refugees in Africa"; and the Senate agree to the same.

Amendment numbered 76: That the House recede from its disagreement to the amendment of the Senate numbered 76, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$265,000,000"; and the Senate agree to the same.

Amendment numbered 80: That the House recede from its disagreement to the amendment of the Senate numbered 80, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "458,000,000"; and the Senate agree to the same.

Amendment numbered 95: That the House recede from its disagreement to the amendment of the Senate numbered 95, and agree to the same with an amendment, as follows: In lieu of the section number named in said amendment insert "609"; and the Senate agree to the same.

Amendment numbered 98: That the House recede from its disagreement to the amendment of the Senate numbered 98, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to change the section number as follows: "611"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 14, 16, 18, 21, 24, 37, 40, 41, 45, 46, 48, 63, 65, 73, 82, 94, and 96.

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DAVID R. OBEY,
CHARLES WILSON,
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Managers on the Part of the House.

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RICHARD S. SCHWEIKER,
EDWARD W. BROOKE,
CHARLES MCC. MATHIAS, Jr.,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12931), making appropriations for Foreign Assistance and related programs for the fiscal year ending September 30, 1979, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I—FOREIGN ASSISTANCE ACT ACTIVITIES

FUNDS APPROPRIATED TO THE PRESIDENT

Economic assistance

Amendment No. 1: Agriculture, rural development, and nutrition; Development Assistance: Appropriates $605,000,000 as proposed by the Senate instead of $610,000,000 as proposed by the House.

Amendment No. 2: Restores the language proposed by the House amended to allow loan

funds to remain available for expenditure until September 30, 1980.

Amendment No. 3: Population, Development Assistance: Appropriates $185,000,000 instead of $195,000,000 as proposed by the House and $180,000,000 as proposed by the Senate.

Amendment No. 4: Restores the language proposed by the House amended to allow loan funds to remain available for expenditure until September 30, 1980.

Amendment No. 5: Health, Development Assistance: Changes the section reference to conform with the authorizing legislation as proposed by the Senate.

Amendment No. 6: Appropriates $130,000,000 instead of $135,000,000 as proposed by the House and $125,000,000 as proposed by the Senate.

Amendment No. 7: Restores the language proposed by the House amended to allow loan funds to remain available for expenditure until September 30, 1980. and amends the language inserted by the Senate to provide not more than $5,000,000 for an Expanded Immunization Program—Yaws Eradication Program in West Africa.

Amendment No. 8: Deletes the language proposed by the Senate which would have provided $4,000,000 for the establishment of an Institute of International Medicine.

The conferees agree that the development of a model program specifically designed to promote a better understanding of the nature and incidence of disease in developing countries and to facilitate more effective treatment and prevention of such diseases has merit. In this connection, it has been suggested that the establishment of an Institute of International Medicine may be the proper approach to this model program with the possible location of such an Institute at the University of Alabama in Birmingham.

The conferees request the Agency for International Development to make an evaluation of the proposed Institute and to make recommendations of the feasibility of establishing such an Institute in connection with its fiscal year 1980 budget presentation to the Congress.

Amendment No. 9: Education and human resources development, Development Assistance: Appropriates $97,000,000 instead of $100,000,000 as proposed by the House and $94,000,000 as proposed by the Senate.

Amendment No. 10: Restores the language proposed by the House amended to allow loan funds to remain available for expenditure until September 30, 1980.

Amendment No. 11: Technical assistance, energy, research, reconstruction, and selected development problems, Development Assistance: Appropriates $115,000,000 instead of $120,000,000 as proposed by the House and $114,794,000 as proposed by the Senate.

Amendment No. 12: Restores the language proposed by the House amended to allow loan funds to remain available for expenditure until September 30, 1980.

Amendment No. 13: Loan allocation, Development Assistance: Places a floor of $396,200,000 on the amount of funds to be used for loans for development assistance instead of $406,000,000 as proposed by the House and $372,558,000 as proposed by the Senate.

Amendment No. 14: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides that development assistance loans made available under this bill and made to countries whose annual per capita gross national product exceeds $350 but is less than $900 shall be repayable within twenty-five years and that loans made to countries whose annual per capita gross national product is greater than $900 shall be repayable within twenty years.

Amendment No. 15: International organizations and programs: Appropriates $260,000,000 as proposed by the House instead of $261,700,000 as proposed by the Senate. The funds appropriated for International organizations and programs are allocated as shown in the following table:

	Fiscal 1979 budget request	Conference allowance
United Nations (voluntary programs)	$264,050,000	$243,900,000
Development technical assistance:		
U.N. Development Program (UNDP)	133,000,000	126,050,000
U.N. Capital Development Fund	2,000,000	2,000,000
FAO Post Harvest Losses Fund	3,000,000	3,000,000
FAO World Food Program (FAO/WFP)	2,000,000	2,000,000
Humanitarian needs:		
U.N. Children's Fund (UNICEF)	35,000,000	30,000,000
U.N. International Year of the Child (IYC)	1,000,000	----------
U.N. Relief and Works Agency for Palestine Refugees (UNRWA)	52,000,000	52,000,000
U.N. Decade for Women	2,000,000	2,000,000
U.N. Disaster Relief Organization (UNDRO)	250,000	250,000
International scientific cooperation:		
World Meteorological Organization (WMO)	2,000,000	2,000,000
International Atomic Energy Agency (IAEA)	12,000,000	12,000,000
(Safeguards program)	(6,600,000)	(6,600,000)
U.N. Environmental Program (UNEP)	10,000,000	10,000,000
UNESCO World Heritage Trust Fund	300,000	300,000
Education and training:		
U.N. Educational and Training Program for Southern Africa (NETPSA)	$1,000,000	$1,000,000
U.N. Institute for Namibia	500,000	500,000
U.N. Institute for Training and Research (UNITAR)	500,000	500,000
U.N. University (UNU)	7,500,000	----------
U.N. Trust Fund on South Africa	----------	300,000
Organization of American States (voluntary programs)	17,500,000	15,500,000
Special Multilateral Fund (SMF)	7,300,000	[1] 2,000,000
Special Development Assistance Fund (SCAF)	6,300,000	----------
Special Projects Fund (Mar del Plata)	3,000,000	----------
Inter-American Export Promotion Fund (CIPE)	400,000	----------
Special cultural account	500,000	----------
Central Treaty Organization (CENTO)	600,000	600,000
Total, international organizations and programs	282,150,000	260,000,000

[1] Undistributed reduction.

Amendment No. 16: American schools and hospitals abroad: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum named in said amendment, insert "$1,000,000".

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

This provision provides $1,000,000 to institute a student exchange program between Israeli and Arab students studying in American sponsored centers of learning in the Middle East.

Amendment No. 17: International disaster assistance: Appropriates $20,000,000 as proposed by the House instead of $22,500,000 as proposed by the Senate.

Amendment No. 18: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides $1,000,000 to control locust plagues in Africa.

Amendment No. 19: Assistance to African refugees: Restores appropriation language and appropriates $15,000,000 as proposed by the House.

Amendment No. 20: Sahel development program: Appropriates $75,000,000 as proposed by the Senate instead of $60,000,000 as proposed by the House.

Amendment No. 21: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which limits the United States contribution to the Sahel development program to not to exceed 10 per centum of the total contributions to such program.

Amendment No. 22: International narcotics control: Appropriates $38,500,000 instead of $40,000,000 as proposed by the House and $37,500,000 as proposed by the Senate.

Amendment No. 23: Retains language proposed by the Senate which provides that not to exceed $3,000,000 shall be available for the United Nations Fund for Drug Abuse Control.

Amendment No. 24: Payment to the Foreign Service Retirement and Disability Fund: Reported in disagreement. The managers on the part of the House will offer a motion to insist on the House position which would delete the provision of the Senate prohibiting the use of all funds available to the Foreign Service Retirement and Disability Fund from being available to carry out the provisions of section 406 of the Foreign Relations Authorization Act, Fiscal Year 1979 (high one year retirement).

Amendment No. 25: Deletes the language proposed by the House which would have allowed the reappropriation of unobligated balances for use in fiscal year 1979 and the reobligation during the year of funds deobligated for use in international narcotics control, military assistance and international military education and training providing Congress was notified fifteen days in advance.

The conferees have agreed to delete general authority providing for the reappropriation of unobligated balances of prior year funds and for the reappropriation of prior year funds which have been obligated but not expended. In certain specified instances, these prior year funds are continued available for the express purpose of providing a smooth and orderly transition to current year funding of United States foreign assistance and related programs.

The conferees note that both the Senate Budget Committee and the House Budget Committee agree that extensions of fund availability should be treated as budget authority in the fiscal year for which the funds are made available.

Accordingly, the conferees direct the agencies and departments, having responsibility for the budgeting and administration of programs for which funds are appropriated in the Foreign Assistance and Related Programs Appropriations Act, to submit their fiscal year 1980 budget justifications on the basis of current year funding of proposed programs.

Economic support fund

Amendment No. 26: Changes the reference section numbers to conform with authorizing legislation as proposed by the Senate.

Amendment No. 27: Appropriates $1,882,-

000,000 as proposed by the Senate instead of $1,747,000,000 as proposed by the House. During consideration of this bill, the House of Representatives deleted the funding for Syria under the Economic Support Fund. The Senate subsequently provided funding for Syria in the amount of $90,000,000. The conferees are very much aware of the recent progress made at Camp David and are in agreement that the President should have maximum flexibility in pursuing peace in the Middle East.

The conferees are of the opinion that the funds requested for Syria should be retained, to be used only if the President believes that their use will serve the process of peace in the Middle East.

Amendment No. 28: Restores the word "and" as proposed by the House.

Amendment No. 29: Deletes the language proposed by the Senate which would have earmarked funds for Syria. The action of the conferees regarding Syria is discussed above under amendment number 27.

Amendment No. 30: Deletes the language proposed by the Senate which would have provided that not to exceed $200,000,000 in Economic Support Fund loans could have maturities in excess of twenty years for loans made to countries whose annual gross national product per capita is in excess of $3,500.

Amendment No. 31: Appropriates $45,000,000 as proposed by the Senate instead of $50,000,000 as proposed by the House for the Southern Africa Program.

Amendment No. 32: Amends the language proposed by the Senate providing that not more than $5,000,000 of the funds for the Southern Africa Program shall be used for refugee assistance through International Relief Organizations in Rhodesia.

Amendment No. 33: Deletes the language proposed by the House which would have restricted funding for regional cooperation and regional development.

Amendment No. 34: Deletes the language proposed by the House which would have restricted funding for Turkey and Syria.

Operating expenses of the Agency for International Development

Amendment No. 35: Appropriates $254,000,000 instead of $258,000,000 as proposed by the House and $240,000,000 as proposed by the Senate.

Amendment No. 36: Deletes the language proposed by the Senate which would have prohibited funds from being made available to pay the salary of any person who was appointed or assigned on or after July 1, 1978, as a Foreign Service Reserve officer or Class 1 or of Class 2 or to pay the salaries of more than ten persons who were appointed or assigned on or after September 15, 1978, as Foreign Service Reserve officers of Class 3.

Amendment No. 37: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which places a limitation of $10,000,000 on funds made available for personal service contracts.

Inter-American Foundation

Amendment No. 38: Appropriates $10,000,000 instead of $25,000,000 as proposed by the House and $7,882,000 as proposed by the Senate.

The conferees note that in addition to appropriated funds the Inter-American Foundation has made use of reflows of the Social Progress Trust Fund (SPTF), which was created by the Congress in 1960 to assist Latin American democratic development. The Inter-American Development Bank was named Trustee of the SPTF monies, which are, in fact, local currency repayments of United States development assistance loans and are owned by the United States. These local currency funds, however, are restricted to use in countries where they are available. Although the Congress has repeatedly urged the Bank to modify policies on local currencies in order that SPTF monies might be redistributed, restrictions on their use are essentially unchanged. The critical point has been reached where the Foundation now has virtually no SPTF monies available for its use in Central America, despite the serious need for funds in that area.

In the past, the Congress has called upon appropriate U.S. officials concerned with the administration of SPTF to take advantage of this country's ownership of the fund to ensure that effective steps are undertaken to permit more flexible use of its cash reflows.

Having seen no improvement in the availability of SPTF funds, the conferees direct the Department of the Treasury to report no later than February 1, 1979 as to how SPTF reflows might be freed for the use of the Inter-American Foundation. If such a course does not appear feasible, then we request the Treasury to propose appropriate action for removing the SPTF from the trusteeship of the Inter-American Development Bank.

Military assistance

Amendment No. 39: Appropriates $83,375,000 instead of $64,500,000 as proposed by the House and $84,875,000 as proposed by the Senate. The conferees agree that the appropriation level provided reflects a reduction of $2,500,000 for the Philippines and an addition of $35,000,000 for Greece.

Amendment No. 40: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the sum named in said amendment, insert "$210,375,000".

The mangers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

This provision deals with the reappropriation of unobligated balances, the reobligation of deobligated funds and the establishment of an overall ceiling

Amendment No. 41: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides for a fifteen day advance prior notification requirement concerning the obligation of deobligated funds.

Amendment No. 42: Changes the word "Provided" to "Provided further".

Amendment No. 43: Deletes the words "in this paragraph" and inserts the words "under this heading" as proposed by the Senate.

International military education and training

Amendment No. 44: Appropriates $27,900,000 instead of $25,700,000 as proposed by the House and $30,060,000 as proposed by the Senate.

Amendment No. 45: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the sum named in said amendment, insert "$28,755,000".

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

This provision deals with the reappropriation of unobligated balances, the reobligation of deobligated funds and the establishment of an overall ceiling.

Amendment No. 46: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides for a fifteen day advance prior notification requirement concerning the obligation of deobligated funds.

GENERAL PROVISIONS

Amendment No. 47: Section 102: Changes the percentage amount which can be obligated by various appropriation items during the last month of availability to 15 percent as proposed by the Senate instead of 20 percent as proposed by the House.

Amendment No. 48: Section 103: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides for the reappropriation of unobligated balances for use in fiscal year 1979 for International disaster assistance, the Middle East special requirements fund and the United States emergency refugee and migration assistance fund.

Amendments No. 49, 50, 51, 52, 53, 54, and 55: Change section numbers.

Amendment No. 56: Section 110: Places a limitation of $13,000 on the entertainment expenses of the Agency for International Development during fiscal year 1979 instead of $16,000 as proposed by the House and $10,000 as proposed by the Senate.

Amendment No. 57: Changes section number.

Amendment No. 58: Deletes the language proposed by the Senate which would have prohibited funds in this Act from being made available to lease or purchase housing or office space outside the United States except through the Office of Foreign Buildings of the Department of State.

Single manager concept for acquisition of U.S. real estate needs overseas

The managers on the part of the Senate agree that it is the sense of the Senate that real property for Government use overseas whether by lease, purchase or construction, should be acquired under a consolidated master plan through a single Government agency and that entity should be the Office of Foreign Buildings of the Department of State. We, therefore, request that the Office of Management and Budget prepare a proposal contemplating such consolidation of management and acquisition for all Department of State related activities although costs would continue to be budgeted by the using agency. This report should provide full information on the economies and efficiencies expected and submitted to the Senate Appropriations Committee by January 1, 1979.

Amendment No. 59: Deletes the language proposed by the Senate which would have prohibited funds in this Act from being made available to pay amounts of compensation attributable to step increases and rate increases with respect to more than ninety percent of the full-time Civil Service and Foreign Service employees in permanent positions of the Agency for International Development who are otherwise eligible for such step increases or rate increases.

The conferees are of the agreed opinion that, throughout the Federal Government, personnel evaluation reports have customarily been handled in a routine fashion, without any real effort to analyze the merits and shortcomings of the individual employee. The conferees share the view that, as a result of this cursory treatment of personnel evaluations, the Civil Service system has been abused and has not functioned as it was designed to function.

The conferees are, however, concerned with the more immediate problem of the proper exercise of their oversight responsibilities. In this regard, the conferees note that, in fiscal year 1977, there were no employees of the Agency for International Development who were not granted step increases because they failed to merit such an increase in salary. The conferees believe that this indicates that those charged with the administration of the Agency's personnel actions are not carefully attending to the merits and shortcomings of individual employees.

The Senate had proposed language that would have restricted ingrade step increases to no more than 90 percent of those Agency for International Development full-time Civil

Service and Foreign Service employees who are otherwise eligible to receive such increases. The managers on the part of the House, however, felt that this restriction was premature, in that the Congress has just recently passed the Civil Service Reform Act which is designed to address many of the problems concerning merit increases of government employees.

Amendments No. 60, 61, and 62: Change section numbers.

Amendment No. 63: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides Presidential waiver authority regarding assistance to Mozambique and Angola. The waiver provision is similar to the waiver authority contained in the International Security Assistance Act of 1978.

Amendment No. 64: Changes section number.

Amendment No. 65: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which requires written prior approval of the Appropriations Committees of both Houses of Congress in order to transfer funds between appropriation accounts.

Amendment No. 66: Deletes the language proposed by the House which would have provided that of the total budget authority provided under title I (except sums allocated to Israel, Egypt, Jordan and Syria under the Economic Support Fund), two percent would be withheld from obligation and expenditure.

While the conferees have agreed to delete the general 2-percent reduction provision, it should be pointed out that, in fact, the House managers considered the effect of this provision in dealing with each of the specific appropriation accounts. This is reflected by the fact that the final conference amount totals $7,303,391,948 (excluding the International Monetary Fund) which is a level lying between $7,372,166,072 as recommended by the Senate and $7,176,722,653 as recommended by the House including the provision requiring a general 2-percent reduction.

TITLE II—FOREIGN MILITARY CREDIT SALES

FOREIGN MILITARY CREDIT SALES

Amendment No. 67: Appropriates $654,500,000 instead of $635,400,000 as proposed by the House and $673,960,000 as proposed by the Senate. The conferees agree that the appropriation level provided includes an additional $5,000,000 for Lebanon which is in addition to the funds originally requested by the Administration.

Amendment No. 68: Deletes the language proposed by the House which would have earmarked funds for Lebanon and Jordan.

TITLE III—FOREIGN ASSISTANCE (OTHER)

INDEPENDENT AGENCY ACTION—INTERNATIONAL PROGRAMS

Peace Corps

Amendment No. 69: Appropriates $95,000,000 as proposed by the House instead of $95,135,000 as proposed by the Senate.

DEPARTMENT OF STATE

Migration and refugee assistance

Amendment No. 70: Appropriates $111,544,200 as proposed by the Senate instead of $91,336,000 as proposed by the House.

The United States refugee effort, operated through three major federal agencies and more than a dozen private organizations, has become an assemblage of overlapping and frequently competing programs that have resisted reorganization, central direction and reform at least since 1972. Ongoing programs bear little relationship to established need and have perpetuated inexplicable inequities in the types and levels of assistance to which individual refugees are entitled.

The managers agree that it is necessary to consolidate the management and administration of the United States overseas refugee assistance program if a rational and coherent effort is to be achieved. The Senate report called for consolidation in the Office of Migration and Refugee Assistance in the Department of State. The majority of the conferees expressed the view that the effort would be more appropriately consolidated in the Agency for International Development, since refugee needs are fundamentally humanitarian and developmental in nature.

Therefore, the managers direct that, in the budget presentation for fiscal year 1980, the Administration present the Congress with its plan to consolidate overseas refugee programs managed, budgeted and justified by A.I.D.

If the Administration feels that the consolidation of the overseas refugee program in the Agency for International Development creates difficulties, it should be prepared to present Congress with an alternative consolidation plan, which would be considered along with the primary A.I.D. plan.

The conferees further direct that the Administration, in February of 1979 and thereafter, present the Congress with an annual review of the status of refugees throughout the world and propose a "fair share" contribution for the United States to make toward this international problem. The managers wish to underscore their belief that the race, creed, color, religion or national origin of a refugee have no place in determining entitlement to any assistance which the United States has to offer.

Amendment No. 71: Deletes the language proposed by the Senate which would have earmarked $1,500,000 for the United Nations High Commissioner for Refugees for assistance to Cambodian refugees in Vietnam. However, the conferees have provided an additional $1,500,000 for Cambodian refugees.

Amendment No. 72: Retains the language proposed by the Senate which places a limitation of $3,225,000 on assistance to refugees in Africa.

Amendment No. 73: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which provides that $20,000,000 of the funds made available under this paragraph shall be expended only by the Department of Health, Education, and Welfare for the resettlement of Soviet and other refugees in the United States on an equitable basis.

United States emergency refugee and migration assistance fund

Amendment No. 74: Adds an additional legislative reference.

Amendment No. 75: Appropriates $9,500,000 as proposed by the Senate instead of $15,000,000 as proposed by the House.

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL FINANCIAL INSTITUTIONS

Contribution to the Asian Development Bank

Amendment No. 76: Appropriates $265,000,000 instead of $220,000,000 as proposed by the House and $309,643,124 as proposed by the Senate. The conferees agree that these funds should be allocated as follows: Paid-in capital—$19,451,200; Callable capital—$175,060,800; and the Asian Development Fund—$70,488,000.

Contribution to the Inter-American Development Bank

Amendment No. 77: Appropriates $763,728,483 as proposed by the Senate instead of $797,725,373 as proposed by the House. The conferees agree that these funds should be allocated as follows: Interregional Paid-in capital—$27,296,025; Callable capital—$322,367,077; Interregional callable capital—$239,065,381; and the Fund for Special Operations—$175,000,000.

Contribution to the International Bank for Reconstruction and Development

Amendment No. 78: Appropriates $163,079,165 as proposed by the Senate instead of $300,000,000 as proposed by the House. The conferees agree that these funds should be allocated as follows: Paid-in capital—$16,307,917 and Callable capital—$146,771,248.

Contribution to the International Finance Corporation

Amendment No. 79: Appropriates $40,045,100 as proposed by the Senate instead of $39,000,000 as proposed by the House.

Contribution to the International Development Association

Amendment No. 80: Appropriates $458,000,000 for the fourth replenishment instead of $421,400,000 as proposed by the House and $500,000,000 as proposed by the Senate.

Amendment No. 81: Deletes the language proposed by the House which would have prohibited assistance made available under this paragraph for Vietnam.

Future United States contributions to the international financial institutions

Amendment No. 82: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which includes a sense of the Congress provision stating that the United States share of contributions to future replenishments of the international financial institutions should not exceed certain specific percentages.

TITLE V—UNITED STATES PARTICIPATION, SUPPLEMENTARY FINANCING FACILITY, INTERNATIONAL MONETARY FUND

Amendment No. 83: Appropriates $1,831,640,000 and limits the compensation provided to the U.S. Executive and alternate Executive Directors of the Fund to not to exceed the rate of compensation paid to U.S. Executive Schedule levels IV and V, respectively as proposed by the Senate.

TITLE VI—GENERAL PROVISIONS

Amendment No. 84: Changes title number.

Amendments No. 85, 86, and 87: Change section numbers.

Amendment No. 88: Deletes the language proposed by the House which would have allowed assistance to be furnished to countries in default during a period in excess of one year on any loan made by the United States if that debt had been disputed by such country or such country had arranged to make payment of the amount in arrears or otherwise taken appropriate steps, including renegotiation, to cure the existing default.

Amendments No. 89, 90, and 91: Change section numbers.

Amendment No. 92: Section 606: Deletes the language proposed by the House which would have prohibited indirect assistance to Cuba.

Amendment No. 93: Changes section number.

Amendment No. 94: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

"Restore the matter stricken by said amendment, amended to read as follows:

" 'Sec. 608. None of the funds appropriated or made available pursuant to this Act for direct foreign assistance and none of the funds otherwise made available pursuant to this Act to the Export-Import Bank and the Overseas Private Investment Corporation

shall be obligated or expended to finance any loan, any assistance or any other financial commitments for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar or competing commodity: *Provided*, That such prohibition shall not apply to the Export-Import Bank if in the judgment of its Board of Directors the benefits to industry and employment in the United States are likely to outweigh the injury to United States producers of the same, similar or competing commodity.'"

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 95: Changes section number.

Amendment No. 96: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the section number named in said amendment, insert "610".

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

This provision states that the President shall initiate wide international consultations with various nations designed to develop a viable standard governing the allocation of development assistance for the production and export of commodities. The President is to report to Congress not later than one year after the enactment of the provision on the progress made concerning these consultations.

Amendment No. 97: Deletes the language proposed by the Senate which would have restricted assistance to Nicaragua and Afghanistan.

Amendment No. 98: Restores the language proposed by the House which states that the President shall direct the United States Governors of the international financial institutions to propose and seek adoption of an amendment to the Articles of Agreement for their respective institutions to establish human rights standards to be considered in connection with each application for assistance.

Amendment No. 99: Deletes the language proposed by the Senate which would have restricted assistance to Zambia.

The conferees are of the opinion that funds appropriated for Zambia under the Economic Support Fund should be limited in use to the purchase of materials and equipment for food production. Furthermore, the conferees believe that such funds should be made available to Zambia only after the State Department is assured that Zambia is meeting the conditions of its "standby" agreement with the International Monetary Fund.

Amendment No. 100: Deletes the language proposed by the House which would have provided that of the total budget authority provided under this Act, except for the appropriations in title I, title II, the Inter-American Development Bank and the International Development Association, two percent would be withheld from and expenditure.

While the conferees have agreed to delete the general 2-percent reduction privision, it should be pointed out that, in fact, the House managers considered the effect of this provision in dealing with each of the specific appropriation accounts. This is reflected by the fact that the final conference amount totals $7,303,391,948 (excluding the International Monetary Fund) which is a level lying between $7,372,166,072 as recommended by the Senate and $7,176,722,653 as recommended by the House including the provision requiring a general 2-percent reduction.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1979 recommended by the committee of conference, with comparisons to the fiscal year 1978 amount, the fiscal year 1979 budget estimates, and the House and Senate bills for fiscal year 1979 follows:

New budget (obligational) Authority, fiscal year 1978	$6,763,873,000
Budget estimates of new (obligational) authority, fiscal year 1979	8,556,120,919
House bill, fiscal year 1979	7,176,722,653
Senate bill, fiscal year 1979 [1]	7,372,166,072
Conference agreement	7,303,391,948
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1978	+539,518,948
Budget estimates of new (obligational) authority, fiscal year 1979	−1,252,728,971
House bill, fiscal year 1979	+126,669,295
Senate bill, fiscal year 1979	−68,774,124

[1] Includes $146,300,000 in budget amendments not considered by the House.

The total new budget (obligational) authority for fiscal year 1979 for the Participation in the Supplementary Financing Facility of the International Monetary Fund recommended by the committee of conference, with comparisons:

Budget estimates of new (obligational) authority, fiscal year 1979 [1]	$1,831,640,000
House bill, fiscal year 1979 [1]	———
Senate bill, fiscal year 1979	1,831,640,000
Conference agreement	1,831,640,000
Conference agreement compared with:	
Budget estimates of new (obligational) authority, fiscal year 1979	
House bill, fiscal year 1979	+1,831,640,000
Senate bill, fiscal year 1979	

[1] Budget amendment submitted to the Senate.

CLARENCE D. LONG,
DAVID R. OBEY,
CHARLES WILSON,
SIDNEY R. YATES,
YVONNE BRAITHWAITE BURKE,
MATTHEW F. MCHUGH,
LOUIS STOKES,
SILVIO O. CONTE,
Managers on the Part of the House.

DANIEL K. INOUYE,
LAWTON CHILES,
J. BENNETT JOHNSTON, Jr.
PATRICK J. LEAHY,
DENNIS DECONCINI,
WARREN G. MAGNUSON,
RICHARD S. SCHWEIKER,
EDWARD W. BROOKE,
CHARLES MCC. MATHIAS, Jr.,
Managers on the Part of the Senate.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. AMMERMAN (at the request of Mr. WRIGHT), for this week on account of convalescence from injury.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LIVINGSTON) to revise and extend their remarks and include extraneous material:)

Mr. MCKINNEY, for 5 minutes, today.

Mr. COLLINS of Texas, for 10 minutes, today.

(The following Members (at the request of Mr. VENTO) to revise and extend their remarks and include extraneous material:)

Mr. BINGHAM, for 5 minutes, today.

Mr. GONZALEZ, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. PREYER, for 5 minutes, today.

Mr. TEAGUE, for 5 minutes, today.

Mr. CORMAN, for 30 minutes, today.

Mr. MURTHA, for 60 minutes, October 11, 1978.

Mrs. COLLINS of Illinois, for 60 minutes, October 11, 1978.

Mr. ADDABBO, for 60 minutes, October 12, 1978.

Mr. ADDABBO, for 60 minutes, October 13, 1978.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. LIVINGSTON), and to include extraneous matter:)

Mr. DERWINSKI in two instances.

Mr. VANDER JAGT.

Mr. COUGHLIN in two instances.

Mr. WYDLER.

Mr. SCHULZE.

Mr. ARMSTRONG.

Mr. O'BRIEN.

Mr. COLLINS of Texas in three instances.

Mr. JOHN T. MYERS.

Mr. MICHEL.

Mr. BURGENER.

Mr. CARTER.

Mr. LAGOMARSINO in two instances.

Mr. SYMMS in three instances.

Mr. DORNAN.

(The following Members (at the request of Mr. VENTO) and to include extraneous matter:)

Mr. FORD of Michigan.

Mr. BINGHAM in ten instances.

Mr. ASPIN.

Mr. LEVITAS.

Mr. WAXMAN in four instances.

Mr. EILBERG.

Mr. ANNUNZIO in six instances.

Mr. ANDERSON of California in three instances.

Mr. GONZALEZ in three instances.

Mr. BROWN of California in 10 instances.

Mr. SISK.

Mr. CARR.

Mr. RYAN.

Mr. ROGERS in five instances.

Mr. ROE.

Mr. MICHAEL O. MYERS.
Mr. HAWKINS.
Mr. MCDONALD in two instances.
Mr. FARY.

SENATE BILLS AND CONCURRENT RESOLUTION REFERRED

Bills and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 2502. An act to authorize the States and the Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country; to the Committee on Interior and Insular Affairs;

S. 3578. An act to transfer to the Superintendent of Documents the function of distributing Government publications to certain foreign governments; to the Committee on House Administration; and

S. Con. Res. 108. Concurrent resolution authorizing the printing of the prayers of the Chaplain of the Senate during the 95th Congress as a Senate document; to the Committee on House Administration.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 1081. An act to amend certain laws relating to the Osage Tribe of Oklahoma, and for other purposes;

S. 2358. An act to declare that the United States holds in trust for the Pueblo of Zia certain public domain lands;

S. 2588. An act to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands;

S. 3259. An act to authorize the permanent establishment of a system of Federal information centers; and

S. 3486. An act to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation of the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes.

THE LATE HONORABLE RALPH H. METCALFE

Mr. MICHEL. Mr. Speaker, I offer a resolution (H. Res. 1422)) on the death of the Honorable RALPH H. METCALFE.

The Clerk read the resolution, as follows:

H. RES. 1422

Resolved, That the House has heard with profound sorrow of the death of the Honorable RALPH H. METCALFE, a Representative from the State of Illinois.

Resolved, That a committee of such Members of the House as the Speaker may designate, together with such Members of the Senate as may be joined, be appointed to attend the funeral.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

The resolutions were agreed to.

The SPEAKER. The Clerk will report the remaining resolution.

The Clerk read as follows:

Resolved, That as a further mark of respect the House do now adjourn.

The resolution was agreed to.

ADJOURNMENT

Accordingly (at 5 o'clock and 8 minutes p.m.), pursuant to House Resolution 1422, the House adjourned until tomorrow, Wednesday, October 11, 1978, at 10 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5108. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to section 112 (b) of Public Law 92-403; to the Committee on International Relations.

5109. A letter from the Assistant Secretary of State for Congressional Relations, transmitting notice of proposed licenses for the export of major defense equipment sold commercially (MC-36-78), pursuant to section 36(c) of the Arms Export Control Act; to the Committee on International Relations.

5110. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a report on political contributions made by Ambassadors-designate Henry Owen, Herbert S. Okun, Samuel R. Gammon, Richard A. Ericson, Jr., and Richard B. Parker and their families, pursuant to section 6 of Public Law 93-126; to the Committee on International Relations.

5111. A letter from the Acting Director of Congressional Affairs, Department of Energy, transmitting a report on private grievances and redress, covering the third quarter of fiscal year 1978, pursuant to section 21(c) of the Federal Energy Administration Act; to the Committee on Interstate and Foreign Commerce.

5112. A letter from the Adjutant General, United Spanish War Veterans, transmitting the proceedings of the stated convention of the 79th National Encampment, United Spanish War Veterans, Inc., held in Rochester, N.Y., pursuant to Public Law 90-620 (H. Doc. No. 397); to the Committee on Veterans' Affairs and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DANIELSON: Committee on the Judiciary. S. 1503. An act to provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes; with amendment (Rept. No. 95-1747). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 14159. A bill relating to the interim treatment of controversies involving whether certain individuals are employees for purposes of the employment taxes (Rept. No. 95-1748). Referred to the Committee of the Whole House on the State of the Union.

Mr. STAGGERS: Committee of Conference. Conference report on H.R. 5146 (Rept. No. 95-1749). Ordered to be printed.

Mr. STAGGERS: Committee of conference. Conference report on H.R. 4018; with amendment (Rept. 95-1750). Ordered to be printed.

Mr. STAGGERS: Committee of conference. Conference report on H.R. 5037 (Rept. No. 95-1751). Ordered to be printed.

Mr. STAGGERS: Committee of conference. Conference report on H.R. 5289 (Rept. No. 95-1752). Ordered to be printed.

Mr. PERKINS: Committee of conference. Conference report on H.R. 15 (Rept. No. 95-1753). Ordered to be printed.

Mr. LONG of Maryland: Committee of conference. Conference report on H.R. 12931 (Rept. No. 95-1754). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. AMMERMAN (for himself, Mr. JENRETTE, Mr. RAILSBACK, and Mr. CEDERBERG):

H.R. 14270. A bill to establish standards of fair practices that shall be observed by handlers and associations of producers in their dealings in agricultural products; to the Committee on Agriculture.

By Mr. CARR (for himself and Mr. STEIGER):

H.R. 14271. A bill to amend titles II and XVI of the Social Security Act to provide that an individual receiving child's insurance benefits on the basis of blindness or other disability shall not lose his or her entitlement to such benefits by reason of marriage, if such marriage is to a recipient of supplemental security income benefits; to the Committee on Ways and Means.

By Mr. CONABLE (for himself and Mr. CORMAN):

H.R. 14272. A bill to amend the Internal Revenue Code of 1954 to extend the special elections for section 403(b) annuity contracts to employees of churches, conventions, or associations of churches, and their agencies to permit a de minimis contribution amount in lieu of such elections; to the Committee on Ways and Means.

H.R. 14273. A bill to amend the Employee Retirement Income Security Act of 1974 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; jointly, to the Committees on Education and Labor, and Ways and Means.

H.R. 14274. A bill to amend the Internal Revenue Code of 1954 to permit a church plan to continue after 1982 to provide benefits for employees of organizations controlled by or associated with the church and to make certain clarifying amendments to the definition of church plan; to the Committee on Ways and Means.

By Mr. CONABLE (for himself and Mr. OTTINGER):

H.R. 14275. A bill to amend title II of the Social Security Act to make it clear that every beneficiary is entitled to apply the monthly earnings test (under the amendment made by section 303 of the Social Security Amendments of 1977) in at least 1 year after 1977; to the Committee on Ways and Means.

By Mr. CONABLE (for himself and Mr. CORMAN):

H.R. 14276. A bill to amend section 403(b) of the Internal Revenue Code of 1954 with respect to computation of the exclusion allowance for ministers and lay employees of the church; to the Committee on Ways and Means.

By Mr. EDWARDS of California (for himself and Mrs. BURKE of California):

H.R. 14277. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to increase financial assistance to States and units of general local government for the implementation of programs to strengthen prosecution of career criminals, and for other purposes; to the Committee on the Judiciary.

By Mr. JOHN T. MYERS:

H.R. 14278. A bill to reduce by 50 percent the premiums for U.S. Government Life Insurance or National Service Life Insurance charged to persons who have attained age 65 and whose annual incomes do not exceed $10,000; to the Committee on Veterans' Affairs.

By Mr. ST GERMAIN (for himself, Mr. REUSS, and Mr. ANNUNZIO):

H.R. 14279. A bill to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions; to the Committee on Banking, Finance and Urban Affairs.

By Mr. STEERS:

H.R. 14280. A bill to amend title 18 of the United States Code to prohibit the possession, sale, and manufacture of certain inexpensive handguns commonly used in crime; to the Committee on the Judiciary.

By Mr. BONIOR (for himself, Mr. EVANS of Delaware, Mr. HOLLENBECK, Mr. BOLAND, Mr. WEISS, Mr. DAVIS, Mr. FISHER, Mr. MCCLOSKEY, Mr. BROYHILL, Mr. GILMAN, Mr. LE FANTE, Ms. KEYS, MR. SYMMS, and Mr. CLEVELAND):

H.J. Res. 1165. Joint resolution authorizing and requesting the President to designate the 7-day period beginning on May 28, 1979, as "Vietnam Veterans Week"; to the Committee on Post Office and Civil Service.

By Mr. McDONALD (for himself, Mr. COLLINS of Texas, Mr. DEVINE, Mr. GUYER, Mr. RUDD, Mr. FLYNT, Mr. KINDNESS, Mr. LAGOMARSINO, Mr. FARY, Mr. LOTT, Mr. BRINKLEY, Mr. KELLY, Mr. SYMMS, Mr. STUMP, Mr. CHAPPELL, Mr. ZEFERETTI, Mrs. LLOYD of Tennessee, and Mr. BEVILL):

H. Con. Res. 741. Concurrent resolution expressing the sense of Congress with respect to the Internal Revenue Service's proposed procedure on private tax-exempt schools; to the Committee on Ways and Means.

MEMORIALS

Under clause 4 of rule XXII,

495. The SPEAKER presented a memorial of the Legislature of the State of California, relative to bilingual education; to the Committee on Education and Labor.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. PERKINS introduced a bill (H.R. 14281) for the relief of Mrs. Lucy E. Blevins, which was referred to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

555. By the SPEAKER: Petition of the National Association of Retail Druggists, New Orleans, La., relative to the need to retain the services of a registered pharmacist in the U.S. Capitol; to the Committee on House Administration.

556. Also, petition of the Second World Congress of Overseas Cypriots, Nicosia, Cyprus, relative to the lifting of the Turkish embargo; to the Committee on International Relations.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 10909

By Mr. SYMMS:

—Page 6, line 14, strike out the comma and insert "and" and beginning in line 16 on that page, strike out "and (iii)" and all that follows through line 18.

—Page 6, strike out lines 19 through 23.

Page 6, line 24, strike out "(F)" and insert in lieu thereof "(E)".

Page 7, line 4, strike out "and technicians".

Page 7, line 8, strike out "subparagraphs (D) and (E)" and insert in lieu thereof "subparagraph (D)".

Page 7, strike out lines 13 through 21 and insert in lieu thereof the following:

"(2) For purposes of paragraph (1), the term 'technologist' means an individual employed in a laboratory who is performing services in such laboratory is required to exercise independent judgment.

Page 13, beginning in line 3, strike out "technologist, or technicians" and insert in lieu thereof "or technologists".

Page 35, line 4, strike out "technologists, and technicians" and insert in lieu thereof "and technologists".

—Page 9, beginning in line 7, strike out "which are located or doing at least 10 per centum of their business within the State" and insert in lieu thereof "which are located within the State or, as determined by the the State, doing business within the State".

Page 20, beginning in line 24, strike out "or doing at least 10 per centum of their business" and insert in lieu thereof "or, as determined by the State, doing business".

—Page 9, strike out lines 10 and 11 and insert in lieu thereof the following: "'(c)(1) During the".

Page 9, beginning in line 20, strike out "and which is not subject to section 103(a)(2) of the Clinical Laboratory Improvement Act of 1978".

Page 10, strike out lines 24 and 26 and insert in lieu thereof the following: "(B) The".

Page 11, insert "and" after the comma in line 5, strike out ", and" in line 11 on that page and insert in lieu thereof a period, and strike out lines 15 through 17.

Page 36, line 21, strike out "(1)".

Page 37, line 5, strike out "(A)" and insert in lieu thereof "(1)" and in line 8 on that page, strike out "(B)" and insert in lieu thereof "(2)".

Page 37, strike out lines 13 through 19.

Page 37, strike out line 20 and all that follows through line 24 on page 38 and insert in lieu thereof the following:

(b) Within two years of the date of the enactment of this Act, the Secretary shall report to the Congress the results of the evaluation made under subsection (a). In such report the Secretary shall make recommendations as to whether clinical laboratories granted an exemption under section 372(c)(3)(B) of the Public Health Service Act should be required as a condition to such exemption (1) to participate in proficiency testing programs, (2) to have laboratory procedure manuals or other items or procedures bearing on the medical reliability of tests and procedures performed by such laboratories, or (3) to both participate in such programs and have such manuals or other items or procedures.

Page 38, line 17, strike out "(a)(1)(B)" and insert in lieu thereof "(a)".

—Page 16, beginning in line 14, strike out "refused a request of the Secretary or any individual duly designated by him for permission to inspect, under section 376(b)" and insert in lieu thereof "refused to permit the Secretary, or any individual duly designated by him, to inspect, in accordance with section 376(b)",

Page 26, line 6, insert after "upon" the following: "obtaining a search warrant from a judicial officer and after".

Page 26, line 10, insert "pursuant to the search warrant" after "inspect".

Page 27, strike out lines 8 through 13.

Page 27, line 14, strike out "(4)" and insert in lieu thereof "(3)".

—Page 27, strike out lines 14 through 22.

—Page 27, strike out line 23 and all that follows down through and including line 16 on page 31.

—Page 11, line 22, after "research" insert "or for the analysis or diagnosis of rare disorders".

—Page 16, after line 2, insert the following:

"(3) the Secretary or the health systems agency, as the case may be, shall maintain records of the disclosures of any information under subparagraphs (A) and (B) of paragraph (2), including the purpose and identity of the individual or organization to which such disclosure is made."

—Page 24, line 23, after "who", insert "knowingly and willfully".

—Page 2, strike out line 8 and all that follows through line 18 on page 3.

Page 3, line 20, strike out "(7)" and insert in lieu thereof "(3)".

—Page 4, line 11, before the dash, insert "the primary mission of which is".

Page 4, strike out "for" in lines 12 and 20.

—Page 4, line 19, strike out ", or" and insert in lieu thereof a period.

Page 4, strike out lines 20 and 21.

—Page 5, insert after the period in line 19 the following: "Standards and substantive amendments to standards shall be made on the record after opportunity for agency hearing.".

—Page 5, line 9, strike out "ten" and insert in lieu thereof "seventy".

—Page 7, insert after line 12 the following:

Requirements prescribed under subparagraphs (D), (E), and (F), shall not take effect until ninety days after the submission to the Congress of the results of the study conducted pursuant to section 102(a) of the Clinical Laboratories Improvement Act of 1978.

—Page 7, line 23, strike out "may" and insert in lieu thereof "shall".

—Page 8, line 8, insert "and" before "(ii)" and in line 12 strike out the semicolon and all that follows through line 16 and insert in lieu thereof a period.

—Page 9, beginning in line 7, strike out "which are located or doing at least 10 per

centum of their business within the State" and insert in lieu thereof "which are located within the State or, as determined by the State, doing business within the State".

Page 20, beginning in line 24, strike out "or doing at least 10 per centum of their business" and insert in lieu thereof "or, as determined by the State, doing business".

Page 23, beginning in line 4 strike out "located or doing at least 10 per centum of its business within the State" and insert in lieu thereof "located within the State or, as determined by the State, doing business within the State".

—Page 11, line 5, strike out "not more than five".

—Page 11, insert at the end of line 20 the following: ", or any identifiable portion thereof,".

—Page 11, line 22, strike out "biomedical or behaviorial".

—Page 11, line 22, after "research" insert "or for the analysis or diagnosis of rare disorders".

—Page 8, line 12, strike out "376" and insert in lieu thereof "375".

Page 13, strike out line 11 and all that follows through line 10 on page 20.

Page 20, line 12, strike out "374" and insert in lieu thereof "373", line 14, strike out "(c)" and insert in lieu thereof "(b)", and in line 16 strike out "(d)" and insert in lieu thereof "(c)".

Page 20, line 17, strike out "(A)" and beginning in line 19, strike out ", and" and all that follows through line 5 on page 21 and insert in lieu thereof a semicolon.

Page 22, strike out lines 5 through 19 and in line 20 strike out "(c)" and insert in lieu thereof "(d)".

Page 23, line 6, strike out "(d)" and insert in lieu thereof "(c)".

Page 24, line 16, strike out "(e)" and insert in lieu thereof "(d)" and in line 17 strike out "(d)" and insert in lieu thereof "(c)".

Redesignate sections 375, 376, 377, and 378, which begin in line 23 on page 24, line 20 on page 25, line 18 on page 31, and line 23 on page 33, as sections 374, 375, 376, and 377, respectively.

Page 24, strike out line 25 and all that follows through line 3 on page 25, and insert in lieu thereof "by a clinical laboratory which is subject to national standards and which is not in compliance with such standards shall be fined".

Page 25, beginning in line 6, strike out "have" and all that follows through line 10, and insert in lieu thereof "comply with national standards and which is not in compliance with such standards may—"

Page 25, beginning on line 22, strike out "required to be licensed under section 373 by the Secretary" and insert in lieu thereof "which is subject to national standards and which is not in compliance with such standards".

Page 28, line 5, strike out "373(c) or 375 (a)" and insert in lieu thereof "374(a)".

Page 35, line 7, strike out "licensed under section 373 of" and insert in lieu thereof "subject to national standards under".

Page 36, insert "and" and at the end of line 4, strike out lines 5 through 10, and in line 11 strike out "(5)" and insert in lieu thereof "(4)".

Page 54, strike out "374" in lines 7 and 20 and insert in lieu thereof "373".

—Page 14, line 3, strike out "may" and insert in lieu thereof "shall".

Page 22, line 14, strike out "may" and insert in lieu thereof "shall".

—Page 14, line 6, strike out "(1)", line 9, strike out "(A)" and insert in lieu thereof "(1)", line 11, strike out "(B)" and insert in lieu thereof "(2)", and strike out line 14 and all through line 2 on page 16.

—Page 14, line 20, strike out "such" and all that follows through "disclose" on line 21 and insert in lieu thereof "a description of".

—Page 15, line 2, after "(C)", insert "the Secretary or".

—Page 16, after line 2, insert the following:

"(3) the Secretary of the health systems agency, as the case may be, shall maintain records of the disclosures of any information under subparagraphs (A) and (B) of paragraph (2), including the purpose and identity of the individual or organization to which such disclosure is made."

—Page 17, strike out line 17 and all that follows through "any" on line 18 and, in line 22, strike out the close parenthesis.

—Page 31, line 16, before the period, insert "or frivolously causes to be commenced a matter described in subsection (c)(1)(A)".

—Page 31, after line 16, insert the following:

"(9) If the Secretary determines that the complaint is frivolous, the Secretary shall assess against the persons who filed the complaint a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees), reasonably incurred, as determined by the Secretary, by the employer in connection with responding to the complaint."

—Page 36, line 10, strike out "and".

Page 36, line 13, strike out the period and insert in lieu thereof "; and".

Page 36, after line 13, insert the following:

"(6) an analysis of the effect on competition between laboratories of a requirement that a laboratory may not be licensed under section 373 of the Public Health Service Act unless its personnel meet standards developed by the Secretary under paragraph (2)."

—Page 37, strike out line 13 and all that follows through line 19.

Page 36, line 21, strike out "(1)".

Page 37, line 5, strike out "(A)" and insert in lieu thereof "(1)", line 8 strike out "(B)" and insert in lieu thereof "(2)", and in line 23 strike out "(A)".

Page 38, line 17, strike out "(B)".

Page 9, beginning in line 10 strike out "Except as provided in section 103(a) of the Clinical Laboratory Improvement Act of 1978, during" and insert in lieu thereof "During".

Page 9, beginning in line 20 strike out "and which is not subject to section 103(a)(2) of the Clinical Laboratory Improvement Act of 1978".

—Page 60, strike out line 14 and all that follows through line 18 on page 63, and on page 64, strike out "205" in line 14 and insert in lieu thereof "204".

—Page 41, insert after line 14 the following:

CONGRESSIONAL VETO

SEC. 106. (a)(1) National standards promulgated under section 371 of the Public Health Service Act and any substantive amendments to such standards shall take effect if, and only if—

(A) the Secretary of Health, Education, and Welfare delivers a copy of such standards or amendments to the House of Representatives and a copy to the Senate, and

(B) before the close of the 60-day period which begins on the day on which the copies of such standards or amendments are delivered to the House of Representatives and to the Senate, neither the House of Representatives nor the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval.

(2) For purposes of this subsection, the term "resolution of disapproval" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the ——— does not favor the taking effect of the [national standards for clinical laboratories] [amendments to the national standards for clinical laboratories] transmitted to the Congress by the Secretary of Health, Education, and Welfare on ——", the first blank space therein being filled with the name of the resolving House, the second blank space therein being filled with the day and year, and the inapplicable bracketed material being stricken.

(3) A resolution of disapproval in the House of Representatives shall be referred to the Committee on Interstate and Foreign Commerce, and a resolution of disapproval in the Senate shall be referred to the Committee on Human Resources.

(4)(A) If the committee to which a resolution of disapproval has been referred has not reported it at the end of 30 calendar days of continuous session of Congress after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution of disapproval which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution of disapproval), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution of disapproval.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution of disapproval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution of disapproval shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee or the consideration of a resolution of disapproval, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or the Senate, as the case may be, to the procedure relating to any resolution of disapproval shall be decided without debate.

(7) Whenever the Secretary of Health, Education, and Welfare transmits copies of the standards or amendments to the Congress, a copy of such standards or amendments shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(8) The 60-day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(9) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions of disapproval described in paragraph (2); and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

—Page 50, line 15, strike out "nominal" and insert in lieu thereof "reasonable".

H.R. 11153

By Mr. SYMMS:

—Page 3, following line 21, insert the following new section:

SEC. 6. Notwithstanding any other provision of law, the Secretary of Interior is authorized and directed to pay and discharge that portion of the costs associated with the replacement of the American Falls Dam which the irrigation spaceholder contracting entities are obligated to pay pursuant to the implementation of the act of December 28, 1973 (87 Stat. 904), to treat such costs as costs incurred under this Act, and to enter into contracts with the irrigation spaceholder contracting entities to accomplish the payment and discharge of such costs.

H.R. 11488

By Mr. SYMMS:

—Page 89, insert after line 16 the following:

(e) Section 1513(a) is amended by adding after the first sentence the following: "A health systems agency may not use any funds provided under this title or title XVI to, directly or indirectly, influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency or to influence the passage, amendment, or defeat of any legislation by the Congress or by any State or local legislative body, except that this sentence does not apply to the use of such funds by a health systems agency in making its views known on any matter upon the request of any Member of Congress, committee of Congress, or any other Federal, State, or local governmental authority."

Page 119, insert after line 8 the following:

(g) Section 1523 is amended by adding at the end the following:

"(d) No funds made available under a grant under section 1525 may be used by a State Agency to, directly or indirectly, influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency or to influence the passage, amendment, or defeat of any legislation by the Congress or by any State or local legislative body, except that this subsection does not apply to the use of such funds by a State Agency in making its views known on any matter upon the request of any Member of Congress, committee of Congress, or any other Federal, State, or local governmental authority."

H.R. 14104

By Mr. BEARD of Tennessee:

—Page 1, strike out all after the enacting clause, and insert in lieu the following:

That section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

"INTERAGENCY COOPERATION

"SEC. 7. (a) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act.

"(b) All other Federal departments and agencies shall, in consultation with, and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as is appropriate with the affected States, to be critical.

"(c)(1) In applying subsection (b) of this section, no Federal public works project shall, if such project is on, or directly affects, the navigable waters of the United States, be deemed—

"(A) to jeopardize the continued existence of an endangered species or threatened species; or

"(B) to result in the destruction or modification of habitat of such species which is determined by the Secretary to be critical if the construction, reconstruction, or operation of the Federal public works project was commenced before the date on which the notice required under section 4(b)(1)(A) of this Act regarding such species was published in the Federal Register.

"(2) With respect to any Federal public works project to which paragraph (1) of this subsection applies, the Secretary—

"(A) may, after consultation with the Federal department or agency concerned, and with the affected States, by regulation prescribe such requirements regarding the construction, reconstruction, or operation of such project as may be necessary and appropriate to minimize the adverse effects, if any, which such construction, reconstruction, or operation may have on any endangered species or threatened species, and on any critical habitat of such species, within the geographic area directly affected by such project; and

"(B) shall implement such protective measures (including, but not limited to, transplantation) with respect to the endangered species and threatened species in such area as he deems necessary and appropriate.

"(3) The harassment, harm, killing, or wounding of any endangered species or threatened species within the geographical area directly affected by any Federal public works project to which paragraph (1) of this subsection applies shall, if such harassment, harm, killing, or wounding is—

"(A) directly attributable to the construction, reconstruction, or operation of such project; and

"(B) not in violation of any requirement imposed by the Secretary pursuant to paragraph (2)(A) of this subsection

not be deemed to be a taking of any endangered species within the meaning of section 9(a)(1) of this Act or the taking of any threatened species if a prohibition against the taking thereof is imposed by regulation issued under section 4(d) of this Act.

"(4) For purposes of this subsection, the term 'Federal public works project' includes, but is not limited to, any public works project carried out by any corporation established under Federal law.".

SEC. 2. Section 7(c) of the Endangered Species Act of 1973 (as added by the first section of this Act) shall apply with respect to Federal public works projects described in such section the construction of which commenced on or after January 1, 1967.

SEC. 3. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, and not to exceed $23,000,000 for the fiscal year ending September 30, 1979, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, and not to exceed $2,500,000 for the fiscal year ending September 30, 1979, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

Amend the title so as to read: "A bill to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1979.".

—Page 9, line 5, delete the word "listed".

—Page 9, line 11, after the word "completed", add "within 90 days after date on which initiated, and".

—Page 9, line 17, insert after paragraph (3) the following new paragraphs (4) and (5), and renumber:

(4) Any exemption for an agency action if granted after completion of the biological review under paragraph (3) shall constitute a permanent exemption for the purposes of completing such agency action.

(5) Any enforcement measures under this section subsequent to the granting of an exemption under subsection (f) shall be limited to determining and conducting mitigation measures.

—Page 13, line 24, strike all after the word "determines", through the comma in line 9.

—Page 14, line 3, strike the word "feasible" and insert in lieu the word "reasonable".

—Page 17, line 23, strike the word "feasible" and insert in lieu the word "reasonable".

—Section 4(c)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(2)) is amended:

By inserting after "shall", "within 90 days of the receipt of,"

and striking the word "upon";

By inserting after "conduct", "and publish in the Federal Register";

By inserting after the word "of", "the status of"; and

By inserting after the final period, "Both the review and such finding must be made and published prior to the initiation of any procedures required under section 4(b)(1) of this Act (16 U.S.C. 1533(b)(1))."

(Amendment in the nature of a substitute.)

—Strike out all after the enacting clause and insert in lieu thereof the following:

That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, and not to

exceed $23,000,000 for the fiscal year ending September 30, 1979, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, and not to exceed $2,500,000 for the fiscal year ending September 30, 1979, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

Amend the title so as to read: "A bill to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1979.".

H.R. 14104

By Mr. McKAY:

—Page 7, beginning on line 22, strike out "by the Endangered Species Committee under subsection (f)" and insert in lieu thereof "under this section".

Page 10, line 6, strike out "An" and all that follows down through line 11 and insert in lieu thereof the following: "A determination with respect to an application for an exemption shall be made by a review board appointed under paragraph (3), in accordance with paragraphs (5) and (6)".

Page 11, beginning on line 5, strike out "and making recommendations to the Endangered Species Committee".

Page 13, line 21, strike out "The" and all that follows down through line 21 on page 14 and insert in lieu thereof the following:

The review board may only grant an exemption from the requirements of subsection (c)(1) if, by a majority vote—

"(A) there are no reasonable and prudent alternatives to the agency action;

"(B) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

"(C) the action is of regional or national significance; and

"(1) it establishes such reasonable mitigation measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

"The review board shall determine whether or not to grant an exemption not later than 180 days after the hearing described in this paragraph is initiated. The review board shall notify the Endangered Species Committee of its determinations and decision under this paragraph (including any mitigation measures established) within ten days of its decision. The review board shall transmit the record of its proceedings and its decision to the Committee."

Page 17, strike out line 12 and all that follows down through line 17 on page 18 and insert in lieu thereof the following:

"(8) The Committee shall review the decision of a review board after notification of such decision under subsection (d)(6). The Committee may, by a vote of not less than four of its members, disapprove the decision of the review board not later than 60 days after such notification. The Committee shall make such a disapproval if, based upon the review board's decision and the record of its determinations and on such other testimony or evidence as it may receive on the record, the Committee makes the determinations required to be made under subsection (d)(6) contrary to the determinations of the review board. Any determination of disapproval under this paragraph shall be final agency action for purposes of chapter 7 of title 5 of the United States Code.

"(f) EXEMPTION ORDERS.—If a review board grants an exemption which is not disapproved under subsection (e), or if the Committee grants an exemption after disapproving a denial of an exemption by a review board, the review board or the Committee, as the case may be, shall issue an order granting the exemption and specifying the mitigation measures established with respect to such exemption which shall be carried out and paid for by the Federal agency in implementing the agency action. All necessary mitigation measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

"(2) The Federal agency receiving such exemption shall include the costs of such mitigation measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any Federal agency may request the Secretary to carry out such mitigation measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the agency receiving the exemption. No later than one year after the granting of an exemption, the agency to which the exemption was granted shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation measures prescribed by this section. Such a report shall be submitted annually until all such mitigation measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the agency preparing such reports."

Page 18, line 19, strike out "the Committee" and insert in lieu thereof "a review board".

Page 18, line 23, strike out "Committee" and insert in lieu thereof "review board".

—Page 19, strike out line 5 and all that follows down through line 22 on page 20 and insert in lieu thereof the following:

"(h) JUDICIAL REVIEW.—Any real party in interest or the Federal agency involved may obtain review, under chapter 7 of title 5 of the United States Code, of—

"(1) any decision (including any decision with respect to mitigation measures) made by a review board under subsection (d) which is not disapproved by the Endangered Species Committee under subsection (e), and

"(2) any decision by the Endangered Species Committee to disapprove a decision of a review board under subsection (e),

in the United States court of appeals for any circuit wherein the agency action concerned will be, or is being, carried out, by filing a written petition for review in such court within 90 days after the last date on which the Committee may disapprove the review board's decision if it fails to disapprove such decision, as the case may be. Attorneys designated by the review board or the Committee may appear for, and represent the board or Committee, respectively, in, any action for review under this paragraph."

Page 20, line 23, strike out "(j)" and insert in lieu thereof "(i)".

Page 21, line 2, strike out "(f)" and insert in lieu thereof "(d)(6)".

Page 21, line 11, insert "review boards and" and "section".

Page 21, line 13, strike out "(k)" and insert in lieu thereof "(j)".

Page 21, line 14, insert "a review board or by" after "by".

Page 22, line 3, strike out "(l)" and insert in lieu thereof "(k)".

Page 22, beginning on line 5, strike out "subsections (d), (e), and (f) of".

SENATE—*Tuesday, October 10, 1978*

(Legislative day of Thursday, September 28, 1978)

The Senate met at 7:30 a.m., on the expiration of the recess, and was called to order by Hon. PATRICK J. LEAHY, a Senator from the State of Vermont.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray:

O God, by whom the meek are guided in judgment and light riseth up in darkness for the godly: Grant us, in our doubts and uncertainties, the grace to ask what Thou wouldst have us to do; that the spirit of wisdom may save us from all false choices, and that in Thy light we may see light, and in Thy straight path may not stumble.

Direct us, O Lord, in all our doings, with Thy most gracious favor, and further us with Thy continual help; that in all our works begun, continued, and ended in Thee, we may glorify Thy holy name, and finally, by Thy mercy, obtain everlasting life, through Him who is Lord of all life. Amen.

Common Worship, adapted.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 10, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PATRICK J. LEAHY, a Senator from the State of Vermont, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. LEAHY thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield back my time.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Does the distinguished acting minority leader seek recognition?

Mr. STEVENS. Mr. President, I yield the minority leader's time to the Senator from Arizona.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order the Senator from Arizona (Mr. GOLDWATER) is recognized in his own right for 10 minutes and then for the time yielded to him by the acting minority leader.

SENATE CONCURRENT RESOLUTION 109—SUBMISSION OF A CONCURRENT RESOLUTION RELATING TO TERMINATION OF TREATIES

Mr. GOLDWATER (for himself, Mr. BAKER, Mr. BARTLETT, Mr. CURTIS, Mr. DECONCINI, Mr. DOLE, Mr. DOMENICI, Mr. EASTLAND, Mr. GARN, Mr. GRIFFIN, Mr. HANSEN, Mr. HATCH, Mr. HAYAKAWA, Mr. HELMS, Mr. INOUYE, Mr. LAXALT, Mr. LUGAR, Mr. MORGAN, Mr. MCCLURE, Mr. SCHMITT, Mr. SCOTT, Mr. THURMOND, Mr. TOWER, Mr. WALLOP, and Mr. YOUNG) submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations and the Committee on the Judiciary, jointly, by unanimous consent:

S. CON. RES. 109

Whereas under the Constitution of the United States, treaties are solemn undertakings of the duly established authorities;

Whereas by Article VI of the Constitution and decisions of the Supreme Court, treaties are deemed to be part of the law of the land;

Whereas Article II, section 3, of the Constitution states that the President "shall take care that the laws be faithfully executed;"

Whereas the Senate, being a partner with the President to the treaty-making authority, possesses a special interest and role in the method used by the United States for the termination of treaties;

Whereas, in accordance with the separation of powers, the President should not unilaterally terminate a treaty absent a material breach by another party;

Whereas the termination of a defense treaty is a decision of the highest national importance which, under the checks and balances system, should receive the added deliberation provided by the participation of the Senate or Congress;

Whereas, as a matter of actual practice under the Constitution, treaties or obligations thereunder generally have been terminated by the United States only upon notice having been given by the President acting pursuant to or in anticipation of the authorization or direction of the Congress or Senate;

Whereas under United States practice, the Senate and House of Representatives have acted jointly in the enactment of legislation terminating over 40 treaties;

Whereas the United States has never terminated a defense treaty with a friendly government; and

Whereas bipartisan support in the United States Senate was instrumental in creating the entire structure of interlocking and interdependent treaties which has helped safeguard the peace and security of the Nation in the period following World War II: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That, in accordance with the separation of powers under the Constitution, the President should not unilaterally take any action which has the effect of abrogating or otherwise affecting the validity of any of the security treaties comprising the post-World War II complex of treaties, including mutual defense treaties, without the advice and consent of the Senate, which was involved in their initial ratification, or the approval of both Houses of Congress.

THE CONSTITUTIONAL ROLE OF CONGRESS IN TERMINATING DEFENSE TREATIES

Mr. GOLDWATER. Mr. President, it is my pleasure today to introduce a concurrent resolution stating the position of one-fourth of the Senate on an important constitutional doctrine. The resolution declares that this body or both Houses of Congress should give its approval before our Government can abrogate any of the post-World War II mutual defense treaties.

Mr. President, the subject matter of this resolution is fundamental to representative government. The resolution affirms that the termination of any of our collective defense treaties is a matter of such grave consequences that the voice of the people speaking through their elected representatives should be heard before the act is accomplished.

Now, the issue is unusual, but it is not unprecedented. The matter has come up for heated debate in the Senate and the House of Representatives once or twice in the past, although that was many, many decades ago.

In fact, the controversy in past Congresses was not over the necessity for having action by either the Senate or Congress before a treaty is terminated, but rather the argument arose as to whether action by the Senate alone was sufficient to authorize the President to terminate a treaty or whether that authority could only be granted by both Houses of Congress.

In other words, both the Senate and House of Representatives have uniformly agreed in the past that the President acting alone does not possess authority to terminate a formal treaty. The President must obtain some form of congressional approval or his action lacks constitutional validity.

The resolution we are introducing today reaffirms the previous position taken in Congress. It also restates the traditional practice of the United States.

The resolution recites the fact that over 40 treaties have been terminated by joint action of both Houses of Congress. It also recognizes the fact that the Senate, as a partner to the making of treaties, possesses a role in the repeal of treaties.

The resolution is solidly based on the specific provision of the Constitution that a treaty has status as law of the land. As a law cannot be repealed unilaterally by the President, so a treaty cannot be abrogated by the President acting alone.

It also rests firmly on the historical fact that no defense treaty has ever been abrogated by the United States without prior legislative approval. Moreover, no defense treaty has been abrogated by our Government with a friendly country. Therefore, it would be totally unprecedented in American history for the Government to annul any of the present security treaties without approval by the Senate or Congress.

Mr. President, the immediate issue arises out of the repeated demands made by Peking that we must abrogate the Mutual Defense Treaty of 1954 with the Republic of China as a condition to the normalization of relations with Mainland China. The Washington Post has even reported that the State Department has a legal opinion in hand which says that the 1954 treaty could be terminated without any voice in the decision by Congress. Therefore, the resolution is not moot, but deals with a very live issue.

But, Mr. President, the Constitutional principle involved goes far beyond the treaty with the Republic of China. The issue deals with each and every security treaty the United States has with other countries.

NATO, the Rio Treaty, and our bilateral defense treaties with other countries, such as Japan and South Korea, are each directly involved in the notion that the President can decide that a treaty is at an end without coming to the Senate or Congress for authority to make that decision.

Each defense treaty we have with another nation will be hostage to the discretion of the person who sits in the Oval Office at any given moment of history if the theory being put forward concerning the ROC defense pact is accepted.

The precedent established by the annulment of the treaty with the Republic of China would be used by the executive branch to make unilateral decisions affecting other treaties in the future. As sure as night follows day, the time for Congress to act is now, not after the event.

If we want to protect the historical prerogative of the Senate or Congress, we must announce our concern now. We must recognize that the issue presents a major institutional question involving the separation of powers betweeen the executive and legislative branches. We must announce clearly our position that the termination of a defense treaty is a decision of the highest national importance which, under the checks and balances system, requires the added deliberation provided by the participation of the Senate or Congress.

Mr. President, the specific language of our resolution states the sense of Congress that the President should not unilaterally take any action having the effect of abrogating, or otherwise affecting the validity of any of the post-World War II complex of security

treaties, specifically mutual defense treaties. The resolution further states that before he President takes any such action, he should seek the advice and consent of the Senate, which was involved in the initial ratification of the treaty, or he should obtain the approval of a majority of both Houses of Congress.

Mr. President, I wish to emphasize that the resolution does not apply to all the treaties the United States has ever ratified since 1789. The resolution is limited in terms to the security treaties our country has entered into after World War II.

Further, I will clarify that the resolution does not seek to take away the necessary flexibility which a President must possess in order to respond to sudden emergencies and changed circumstances.

The resolution openly recognizes the historical exception, in which Congress has generally concurred, that the President can find a treaty is at an end due to a material breach by the other party. It is an elementary principle of contract law that a party is no longer bound to a contract if the other party breaks it.

Similarly, it is well settled under U.S. practice, and international law, that a material violation of a treaty by another party releases the innocent party from the agreement.

Nor, by offering the resolution, do we attempt to deny the President his traditional function of interpreting whether or not a later law enacted by Congress, or a new treaty ratified by the Senate, is inconsistent with an earlier treaty. It has happened occasionally in our history that Congress has enacted a statute which is clearly at odds with a prior treaty, and in these circumstances it is obvious the President has no recourse but either to carry out the latest expression of congressional intent or to be in violation of the will of Congress.

Finally, we do not seek to withhold from the President the discretion he has historically exercised, with the acquiescence of Congress, to suspend a treaty which he finds can no longer be carried out because changed conditions, beyond his control and not of his doing, have made it impossible to perform. For example, during World War II, President Franklin Roosevelt suspended a treaty governing ocean shipping during the period of hostilities, since it was impossible to comply with the treaty in wartime.

However, it must be noted that this last exception is qualified by at least two, indispensible conditions. First, it must be truly impossible to perform a treaty and the President is not to abuse his discretion by arbitrarily making a finding that flies in the face of common sense or normal principles of international practice and law.

Specifically, the derecognition of Taipei would not be ground for a Presidential decision that the defense treaty with Taiwan has lapsed or been suspended. It is not impossible to have treaties with nonrecognized governments and there is no requirement in international law or American usage which holds that prior treaties entered into with a once-recognized government will lapse upon the derecognition of that government, so long as the same authorities continue to exercise practical control over the territory they governed before losing recognition.

Second, historical usage and the precepts of international law admit of a privilege for the President, always subject to review by Congress, to consider a treaty suspended only if the fundamental change of circumstances is not caused by our Government's own action. Under international law, the country who causes the changed conditions cannot invoke that change as a ground for suspending or withdrawing from a treaty.

Thus, for the sake of discussion, if the President should be persuaded to take the wrong and unwise course of derecognizing the Republic of China, it is clear he could not present his own action as the basis of a Presidential decision that the defense treaty with Taiwan had lapsed.

Mr. President, I would conclude by stating my firm conviction that any unilateral attempt by the executive branch to terminate the defense treaty with Taiwan, or to decide that the treaty has lapsed, would present a "case or controversy" to which the judicial power extends.

The resolution we are submitting today, which is publicly endorsed by one-fourth of the Senate, will strengthen the position of the Senate as a corporate entity, or of any individual Senator, to challenge in the courts unilateral action by the President, should that unlikely event occur. I, for one, am prepared to file such a court action immediately, if it proves to be necessary.

But, Mr. President, I urge the administration not to create the grave constitutional crisis which would occur if our Government capitulates to the conditions being demanded by Peking. Not only would our country suffer a constitutional confrontation of major proportions, but a dangerous precedent would be set which would cast doubt upon the stability of each and every defense treaty our country has with another nation.

Mr. President, I hope that the declaration today by one-fourth of the Senate will be sufficient to persuade the administration not to take any course of action altering the validity of the defense treaty with the Republic of China, or any other defense treaty which the United States has with another nation, unless the proposed decision is first submitted to the Senate or both Houses of Congress for prior approval.

Mr. President, I ask unanimous consent that there may appear in the RECORD a list of U.S. collective defense arrangements.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

POST WORLD WAR II SECURITY TREATIES

NORTH ATLANTIC TREATY (15 NATIONS)

A treaty signed April 4, 1949, by which "the Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and . . . each of them . . . will assist the . . . attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force . . ."

United States, Canada, Iceland, Norway, United Kingdom, Netherlands, Denmark, Belgium, Luxembourg, Portugal, France, Italy, Greece, Turkey, Federal Republic of Germany.

ANZUS (AUSTRALIA—NEW ZEALAND—UNITED STATES) TREATY (3 NATIONS)

A treaty signed September 1, 1951, whereby each of the parties "recognizes that an armed attack in the Pacific Area on any of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes."

United States, New Zealand, Australia.

PHILIPPINE TREATY (BILATERAL)

A treaty signed August 30, 1951, by which the parties recognize "that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety" and each party agrees that it will act "to meet the common dangers in accordance with its constitutional processes."

United States, Philippines.

SOUTHEAST ASIA TREATY (7 NATIONS)

A treaty signed September 8, 1954, whereby each party "recognizes that aggression by means of armed attack in the treaty area against any of the Parties . . . would endanger its own peace and safety" and each will "in that event act to meet the common danger in accordance with its constitutional processes."

United States, United Kingdom, France, New Zealand, Australia, Philippines, Thailand.

REPUBLIC OF CHINA TREATY (BILATERAL)

A treaty signed December 2, 1954, whereby each of the parties "recognizes that an armed attack in the West Pacific Area directed against the territories of either of the Parties would be dangerous to its own peace and safety . . ." and that each "would act to meet the common danger in accordance with its constitutional processes." The territory of the Republic of China is defined as "Taiwan (Formosa) and the Pescadores."

United States, Republic of China (Formosa).

JAPANESE TREATY (BILATERAL)

A treaty signed January 19, 1960, whereby each party "recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes." The treaty replaced the security treaty signed September 8, 1951.

United States, Japan.

REPUBLIC OF KOREA TREATY (BILATERAL)

A treaty signed October 1, 1953, whereby each party "recognizes that an armed attack in the Pacific area on either of the Parties . . . would be dangerous to its own peace and safety" and that each Party "would act to meet the common danger in accordance with its constitutional processes."

United States, Republic of Korea.

RIO TREATY (22 NATIONS)

A treaty signed September 2, 1947, which provides that an armed attack against any American State "shall be considered as an attack against all the American States and . . . each one . . . undertakes to assist in meeting the attack . . ."

United States, Mexico, Haiti, Dominican Republic, Honduras, Guatemala, El Salvador, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, Ecuador, Peru, Brazil, Bolivia, Paraguay, Chile, Argentina, Uruguay, Trinidad, and Tobago.

NOTE.—Cuba has been suspended by the OAS.

Source: Department of State.

● Mr. DOLE. Mr. President, as a cosponsor of the measure introduced by my good friend and colleague, Mr. GOLDWATER, I want to add a few words of my own concerning this constitutional issue.

Questions dealing with the abrogation of bilateral treaties have arisen recently in relation to the mutual defense treaty which the United States has maintained with the Republic of China since 1954. Last July, the Senate, on a unanimous vote of 94 to 0, approved my amendment to the security assistance authorization bill, mandating prior consultation with Congress before any executive action is taken to cancel that treaty. Both congressional and public sentiment on this particular treaty issue is apparent.

The implications for the treaty abrogation issue in general, however, are major and immediate. For that reason, it is important that we consider the treaty cancellation issue in conjunction with the specific case at hand. Although the political and constitutional issues are separate, it is clear that in this instance, each will have an impact upon the other.

TERMINATING THE TREATY

Top-ranking leaders of the People's Republic of China have stated repeatedly that abrogation of our mutual defense treaty with Taiwan is an indispensable precondition to normalization of relations between mainland China and the United States. Many of those in this country who favor relations with the mainland openly advocate the unilateral cancellation of the 1954 treaty for that reason. In fact, some in this Chamber have suggested that we break our longstanding security relationship with Taiwan, and rely instead on creative diplomacy to guarantee the future security and well-being of Taiwan's more than 16 million people. In my opinion, such conclusions are unfortunately naive.

But what particularly concerns this Senator, and many others as well, is the faulty assumption that the mutual defense treaty with Taiwan would somehow automatically lapse once the United States establishes diplomatic ties with the Communist government on the mainland. This conclusion not only denies reality, but ignores the clear constitutional and legal arguments to the contrary.

The scenario, according to those sources, would go something like this: Our Government announces that "we hereby recognize the People's Republic of China; we hereby derecognize the Republic of China; and by the way, since in our eyes the Republic of China no longer exists, it follows that any treaty obligations we happen to have had with it have also vanished from the face of the Earth." A simple scenario—no mess, no fuss, no hand wringing about legal complications.

Fortunately, it simply is not that easy. In the first place, the 1954 treaty clearly provides, in article X, that "this treaty shall remain in force indefinitely. Either party may terminate it 1 year after notice has been given to the other party." There is no way the U.S. Government can legally or morally circumvent that provision. Significantly, no President of the United States has ever unilaterally abrogated a treaty with any foreign government in violation of the provisions of that treaty.

CONSTITUTIONAL RAMIFICATIONS

The Constitution of the United States makes no specific provisions for the abrogation of treaties with other nations. It does, however, declare such treaties to be the supreme law of the land and therefore subject to the full support of the President and Congress. Constitutionally, only Congress has the power to repeal Federal laws.

Even though no single procedure for treaty abrogation is clear from historical precedents, the weight of those precedents which do exist lean heavily in favor of Senate or congressional coparticipation. In a detailed staff report prepared for the Senate Committee on Foreign Relations in November 1977, which was widely distributed among all Senate Members during the Panama Canal Treaty debate, it was determined that:

Neither practice or opinion give the President exclusive power to terminate treaties . . . most scholars agree that a strong case can be made in principle for the view that treaties should be terminated by the treaty-making power—that is, the President with the advice and consent of the Senate.

Our colleague, Senator GOLDWATER, did extensive historical research into precedents of treaty termination by the U.S. Government. In his recent publication, "China and the Abrogation of Treaties," our colleague votes appropriately that "the first treaties ever to be declared null and void by the United States were canceled by Congress alone," in 1778, and that after that, "The joint resolution, followed by Presidential notice to the other country, would become the general vehicle for removing our Nation from treaties that we no longer could or wished to enforce." The Senator from Kansas cannot, in a few moments, begin to reiterate the many points of history and constitutionality covered in Senator GOLDWATER's informative monograph, which supports the congressional advisory role, and I commend it highly to all of our colleagues for additional background on the subject.

For these reasons, Mr. President, I believe it is important that we make a definitive statement as to congressional interpretaion of the treaty abrogation powers shared by the legislative and executive branches of our Government. Senator GOLDWATER's resolution provides a vehicle for that statement, and I support it fully.●

Mr. ROBERT C. BYRD subsequently said: Mr. President, I ask unanimous consent that the concurrent resolution introduced today by the Senator from Arizona (Mr. GOLDWATER) be referred jointly to the Committees on Foreign Relations and the Judiciary.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin (Mr. PROXMIRE) is recognized for not to exceed 5 minutes.

(Mr. MORGAN assumed the chair.)

LOCKS AND DAM 26

Mr. PROXMIRE. Mr. President, last night the Senator from Louisiana (Mr. LONG) indicated that he would be willing to accept an amendment that would permit locks and dam 26 to be put on a tax bill and advanced in that manner.

Mr. President, I express my concern about that because I think the previous Presiding Officer, Senator LEAHY, and the present Presiding Officer, Senator MORGAN, both, for example, represent States that pay taxes which subsidize the construction of locks and dam 26.

The principle that the President of the United States has been holding out for is that the people who benefit from the use of locks and dam 26 and other locks and dams on waterways should pay for them with a user tax.

We pay for our highways with a user tax through the gasoline tax, and we should pay for the use of our waterways in that way. This is a principle the administration has fought for. Unfortunately, they have compromised to a point where although there will be a user charge, if the proposed amendment is accepted, that user charge will be so low as to be almost pathetic.

Last year we passed through the Senate a 12-cent-a-gallon user charge, and the administration was very much opposed to that because it was too small. This compromise would provide a 10-cent-a-gallon user charge.

Obviously, the taxpayer, the general taxpayer, of North Carolina, Vermont, Alaska, and elswhere, would have to pay for this cost, and I think it is an imposition. I think it is wrong. But, nevertheless, it is progress. It does mean that for the first time we would have a user charge of sorts. Later on today we will be considering, I presume, that locks and dam 26 matter. I wanted to bring that up at the present time.

NAMING THE INDIANA DUNES AFTER PAUL DOUGLAS

Mr. PROXMIRE. Mr. President, in the years I have served in the Senate, certainly one of the very most distinguished Senators has been Paul Douglas of Illinois, a great, great Senator, a great economist, president of the American Economic Association, and a superlative human being.

When Senator Douglas died, the one wish he had for his memory was that Indiana Dunes would be named after him, and he was the man who made the Indiana Dunes possible. He fought for them; he did everything he could to provide the Indiana Dunes would be a national park, and he won.

Unfortunately, there is resistance in the Senate to naming the Indiana Dunes after him. Senator JACKSON of Washington is going to try a little later on, as I understand it, this week to win the naming of the Indiana Dunes after Paul Douglas, and I earnestly hope that takes place.

GENOCIDE IN TIBET?

Mr. PROXMIRE. Mr. President, the nations of the world are often fragmented, their borders arbitrary remnants of age-old wars and partitions.

Often several ethnic groups are forced to live as neighbors within a common boundary. Sometimes distinct ethnic groups are divided—one segment in one country, one segment in another.

An important duty of government then is to weave these often-warring neighbors into a national fabric, while recognizing their individual concerns and identities. It is essential to insure the human rights of the weak, as well as the powerful.

Sadly, Mr. President, too many nations have chosen to further the fortunes of the strong at the expense of the powerless. When the stronger group is in control, it kills or maims the weaker. Rather than dealing with the problem group in a humane way, it oppresses it.

Mr. President, a recent letter to the Washington Post has brought the trials of these small groups into sharp focus.

On October 5, India Trinley, Director of the U.S. Tibet Committee, castigated the United States. She abhorred our policy of ignoring the extermination and reeducation of various sectors of the Tibetan nation, as China transforms Tibet into yet another "autonomous region."

Mr. President, should individual groups become pawns in the diplomatic chess games of larger nations? Should the United States ignore the "Sinocization" occurring along China's borders in order not to rock the détente boat?

I think not. Genocide, real or alleged, should not get lost in the diplomatic shuffle.

Mr. President, we have a means for shedding light on those human rights violations ignored or forgotten in the shadows of larger diplomatic maneuvers. We have a treaty signed by 82 other nations which promises to clarify the meaning of the international crime of genocide, and to protect the human rights of groups both large and small.

Mr. President, we must ratify the Genocide Convention.

THE HUMPHREY-HAWKINS BILL

Mr. PROXMIRE. Mr. President, the Humphrey-Hawkins bill may still be revived, and I anticipate it will be. I hope when it is we add an inflation amendment, an amendment to control inflation.

Sunday on "Issues and Answers" the Vice President of the United States was questioned about the Humphrey-Hawkins bill, and he said that this is a bill that provides for full employment with price stability.

Mr. President, it is not that kind of a bill in the form it was introduced, because there is a goal for eliminating unemployment, but no goal for holding down prices. I think it should be a balanced bill, as the Employment Act of 1946 was a balanced act, providing for both full employment and price stability. I believe we should balance the economic goal with an anti-inflation goal, or this will be a badly unbalanced law.

Mr. President, I yield the floor.

REVENUE ACT OF 1978

The PRESIDING OFFICER. In accordance with the previous order, the Senate will now resume consideration of H.R. 13511, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 13511) to amend the Internal Revenue Code of 1954 to reduce income taxes, and for other purposes.

The Senate resumed the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, if Senators will come to the floor now and call up their amendments, perhaps they can get them adopted quickly by voice vote. I hope that Senators' offices are listening to the intercom, and will respond accordingly.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4494

(Purpose: To amend the Revenue Act of 1978 regarding the time for making contributions to employee stock ownership plans)

Mr. LONG. Mr. President, I call up my amendment No. 4494.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an amendment numbered 4494.

Mr. LONG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 188, of the committee amendment strike from line 1 through line 14, and insert in lieu thereof the following:

"(6) On making a claim for credit under section 44C, the employer shall state in such claim that it agrees, as a condition of receiving any such credit—

"(A) to transfer employer securities to the plan having a value at the time of the claim equal to the amount of the credit claimed under section 44C for the taxable year,

"(B) except as provided in subparagraph (C), to effect the transfer not later than 30 days after the time (including extensions) for filing its income tax return for a taxable year, and

"(C) in the case of an employer whose credit (as determined under section 44C(a)) for a taxable year, exceeds the limitations of subsection (c) of such section to effect that portion of the transfer allocable to credit carryovers of such excess credit at the time required under subparagraph (B) for the taxable year to which such portion is carried over.

For purposes of meeting the requirements of this paragraph, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the plan, used to purchase employer securities.".

Mr. LONG. Mr. President, the committee agreed that we should require employers which set up TRASOP's to contribute stock to the TRASOP in the year the capital investment, which creates the investment tax credit, is made, rather than the year the investment tax credit was applied against income taxes.

We did not take into consideration that many employers have such a high investment tax credit that they may never use it up before it expires.

This provision provides a tremendous disincentive for employers to adopt TRASOP's or continue to maintain existing TRASOP's, especially since we changed the law requiring the timing of the contributions without giving the business community any notice at all. The only people who would be hurt are the employees who will not get stock if TRASOP's are terminated.

I propose that we amend section 141 of the bill to go back to what we had: An employer will be required to make the TRASOP contribution in the year he actually gets to use the TRASOP investment tax credit on his income tax return.

I know of no objection to the amendment, Mr. President.

Mr. PROXMIRE. Will the Senator yield?

Mr. LONG. Yes.

Mr. PROXMIRE. Does the amendment have any revenue effect?

Mr. LONG. No, it would not. It would simply deal with the issue of whether an employee was in the plan at the time the contribution was earned or whether he was in it at the time the contribution was made. It would not have any revenue effect.

Mr. PROXMIRE. Does the Treasury have any position on the amendment?

Mr. LONG. Not to my knowledge. You see, you can argue that when you make a contribution to an employee stock ownership plan, it ought to apply to the employees who were in the plan when you made the contribution or that it is for employees that were in it when the tax credit was earned.

It really could not make much difference one way or the other in terms of money. But if someone had left the employer meanwhile and someone else had come in, the new employee might get the benefit of the contribution and the other one might not. It could not amount to more than $30 or $40 to an employee anyway.

Mr. PROXMIRE. So the Senator could say, in the aggregate, this could have a less than $1 million effect on the budget?

Mr. LONG. I do not see how it could have any cost. It is just a matter of whether the employee left the company between the time the company earned the credit and the time the company made the credit: The new employee would be placed on the contribution rather than the employee who was there when it was earned.

Mr. PROXMIRE. Is there any reason why the committee did not adopt this?

Mr. LONG. It just was not considered at the time.

Mr. PROXMIRE. Is the amendment germane?

Mr. LONG. Yes, it is germane. There is a whole list of amendments on this subject of the bill.

Mr. PROXMIRE. I see.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 4493

(Purpose: To amend the tax law to establish voting rights for participants in qualified plans which invest in employer securities)

Mr. LONG. I move to call up amendment No. 4493.

The PRESIDING OFFICER. Without objection, the clerk will state the amendment.

The second assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an amendment numbered 4493.

The PRESIDING OFFICER. Without objection, further reading of the amendment will be dispensed with.

The amendment is as follows:

On page 197, of the committee amendment between lines 12 and 13, insert the following:

(f) VOTING RIGHTS ON EMPLOYER SECURITIES HELD BY OTHER QUALIFIED PLANS.—Any money purchase pension plan, profit-sharing plan, or stock bonus plan not described in subsection (a) which—

(1) is established by an employer whose stock is not publicly traded, and

(2) invests more than 10 percent of its total assets in securities of the employer, will not satisfy the requirements of section 401(a) unless it satisfies the requirements of subsection (a)(5).

Mr. LONG. Mr. President, as part of this tax bill, the Treasury Department proposed an amendment to provide for voting rights on major corporate decisions (mergers, acquisitions, sale of substantially all assets) for employees of employer which are closely held and which set up an ESOP.

In making this proposal, the Treasury Department argued that we are making shareholders out of these employees through the ESOP and that they should have the same rights as shareholders on stock which is held in the plan. This would apply to voting rights.

If this is true for employees who are covered by ESOP's, then it would also be true for any other employee covered by a retirement plan which invests in stock of the employer. If the plan purchases employer stock as part of its investments, then the employees who are participating in the plan are being made shareholders, and they should have the same voting rights on this employer stock as the Treasury Department wants to give to employees covered by ESOP's.

Therefore, I propose to amend section 141 to provide that any employee who participates in any qualified retirement plan (pension plans, profit sharing plans, stock bonus plans, ESOP's and TRASOP's which invests more than 10% of the plan's assets in stock of the closely held employer shall be entitled to direct the voting of employer stock held in the plan on major corporate decisions.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. LONG. Mr. President, I ask unanimous consent that we might have a quorum call without it being charged to anyone's side.

The PRESIDING OFFICER. It would not be, anyway.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, there is one nomination under Civil Aeronautics Board that I understand is cleared on both sides. I ask unanimous consent that the Senate proceed in executive session for not to exceed 1 minute to consider the nomination of Marvin S. Cohen.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, I rise only to advise the majority leader, as I have done privately just now, that we have no objection to proceeding with this item. Indeed, I support the nomination and I appreciate the majority leader's calling it up at this time.

There being no objection, the Senate proceeded to the consideration of executive business.

CIVIL AERONAUTICS BOARD

The PRESIDING OFFICER. The clerk will state the nomination.

The second assistant legislative clerk proceeded to read the nomination of Marvin S. Cohen, of Arizona, to be a member.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. I move to reconsider the vote by which the nomination was confirmed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, this is an ideal time for Senators who are accustomed to arising early to come to the floor and call up amendments. The managers of the bill (Mr. LONG and Mr. CURTIS) are both here, ready to take on all comers.

Mr. CURTIS. We would welcome third reading, Mr. President.

Mr. ROBERT C. BYRD. They are ready for third reading. I hope many Senators will take this opportunity, which does not come too often, to strike. The knock on the door comes only once.

Mr. BAKER. Mr. President, I am sure the speakers in several offices on this side of the Capitol are fairly resonant with that call at this moment.

Mr. ROBERT C. BYRD. Now is the time to speak or forever hold one's peace.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CURTIS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REVENUE ACT OF 1978

INTERPRETATION OF SECTION 371

Mr. CURTIS. Mr. President, I rise to propound a question to the distinguished chairman of the Finance Committee.

I have a question for the chairman of the committee, the Senator from Louisiana (Mr. LONG). It is my understanding that it is not intended that the provisions of section 371 regarding entertainment facilities change the tax status of demonstration and experimental facilities owned or operated by companies manufacturing sporting arms and ammunition which are generally utilized to demonstrate the capabilities or benefits of preserve hunting, as well as their own products.

Mr. LONG. Assuming that the facility is not primarily for entertainment but for demonstration of firearms and equipment in the course of the owner's business, this new provision is not intended to change the tax status of facilities of the type the Senator describes.

Mr. CURTIS. I thank the distinguished chairman.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SMALL BUSINESS INVESTMENT ACT AMENDMENTS—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 11318 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11318) to amend the Small Business Act and the Small Investment Act of 1958, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1978.)

Mr. WEICKER. Mr. President, I rise to support the conference report on H.R. 11318. This legislation amends the Small Business Act and the Small Business Investment Act of 1958 to clarify and improve the minority enterprise small business investment company (MESBIC) program, the surety bond guarantee program, the section 8(a) and subcontracting programs and related procurement assistance activities for small business and small businesses owned and controlled by socially and economically disadvantaged individuals.

Significant steps have been taken in this bill to assist disadvantaged individuals gain a stake in our free enterprise system. In 1967, the report of the Commission on Civil Disorders concluded that disadvantaged persons did not play an integral role in America's free enterprise system because they enjoyed no appreciable ownership of small business and did not share in the community redevelopment process. This legislation is designed to help increase the level of business ownership by minorities and other disadvantaged individuals to enable them to have a better opportunity to materially share in our economic system.

Chapter 1 of title I of the bill provides for changes to ameliorate the present sluggishness of the MESBIC program. MESBIC's are small business investment companies licensed and regulated by the SBA which provides equity capital and subordinated long-term debt for businesses owned and operated by socially and economically disadvantaged individuals. The provisions of the bill relating to preferred stock leverage and sale of debentures will enable MESBIC's to play a greater role in assisting such businesses to grow and compete in our economic system.

In chapter 2 to title I, the conferees substantially adopted the provisions of the Senate bill concerning the surety bond program. These important changes, which authored by the distinguished Senator from Oklahoma (Mr. BARTLETT), set specific standards under which SBA can deny liability on a bond. As a result of this provision, many operational problems in the surety bond program will be removed and it will be made more attractive to surety companies, hereby easing the bonding programs encountered by small businesses, and especially minority small businesses. Additionally, a pilot program is established pursuant to which SBA is authorized to act to prevent an imminent breach of a surety bond. It is hoped that by allowing SBA to so act, breaches will be prevented and a great deal of expense saved.

The conferees give statutory direction to the SBA's 8(a) program to insure that the program develops strong businesses owned by disadvantaged individuals. Section 8(a) of the Small Business Act presently authorizes the SBA to enter into contracts with Federal procuring agencies or departments for the purchase of articles, equipment, supplies or materials. SBA is empowered to let subcontracts to business concerns to perform such contracts. The 8(a) authority has been used since 1968 to channel Federal procurement funds to small businesses owned by socially or economically disadvantaged persons.

The goal of the 8(a) program has been to slowly develop the business abilities of these small businesses with the support of management and technical assistance from SBA's business development specialists. The firm theoretically is to graduate into the free enterprise system and compete for regular, non-8(a) business.

However, the envisioned development of small minority businesses has not occurred. A total of 3,726 firms were awarded $2.2 billion in contracts between fiscal year 1968 and fiscal year 1977. Approximately 1,500 businesses are presently participating in the program. In fiscal year 1977, these firms received $53 million in contracts. Reports prepared by the General Accounting Office and investigations conducted by both the executive and legislative branches have disclosed that the 8(a) program has fallen far short of its goal to develop strong and growing disadvantaged small businesses. Only 33 of the more than 3,700 firms which have participated in the program have both completed the 8(a) program and are known to have a positive net worth.

The conferees have taken affirmative steps to correct this deficiency. The 8(a) program is given a statutory basis with the goals of developing businesses owned by socially and economically disadvantaged persons and promoting the viability of businesses run by such persons by providing contract, financial, technical, and management assistance.

Chapter 1 of title II provides statutory authority for the SBA's 8(a) program and establishes eligibility criteria for the program. These provisions will provide SBA with the necessary guidance to assure proper administration of this important program. The bill as reported by the conferees remains true to the intent of the Senate-passed legislation. The pattern of social and economic discrimination that continues to deprive racial and ethnic minorities of the opportunity to participate fully in the free enterprise system is recognized. However, the conferees rejected the language of the House version of the bill which would have instructed the SBA to presume that black Americans and Hispanic Americans are eligible for the program. Instead, definitions are given for ascertaining social disadvantagement and economic disadvantagement. Thus, although it is expected that the vast majority of 8(a) program participants will come from racial and ethnic minorities, others will be able to participate provided that they can, on a case-by-case basis, satisfy the eligibility criteria.

One of the key reasons for the high failure rate of the present 8(a) program is the inadequate level of management and technical assistance provided to participants. To remedy this situation, the conferees incorporated the Senate

provisions for improved management assistance and other business development services for firms eligible to be awarded 8(a) contracts. A small business and capital ownership development program is established. An important part of the program is a special surety bond assistance program which gives 8 (a) firms the assistance needed to procure a surety bond. Thus, this chapter provides a legislative design for the business development services of the 8(a) program to insure that the emphasis is placed on the development of 8(a) participants rather than on the quantity of contracts awarded.

The conferees also adopted a 2-year pilot program whereby SBA can waive all Federal bonding requirements for its 8(a) contractors which are startups and have been in the program for less than 1 year. Because of the improvements for the surety bond program contained in chapter 2 of title I and provisions for surety bond assistance, it is expected that this waiver provision will be proven to be superfluous at the end of the 2-year pilot. However, the conferees did recognize that many disadvantaged businesses are presently unable to obtain requisite bonding. Accordingly, the pilot program was established and its efficacy will be thoroughly reviewed.

In chapter 2 of title II, the conferees adopted the Senate provisions for formally advertised Government procurements and the House provisions for negotiated procurements. Basically, the compromise calls for a subcontracting plan to be submitted by the low bidder on a formally advertised contract and by the apparent successful offeror on a negotiated contract. The subcontracting plan is to indicate how the contractor intends to utilize small businesses and businesses owned and controlled by socially and economically disadvantaged individuals in subcontracts let pursuant to Government procurements.

The House provision which would authorize SBA to delay placement of a contract where the SBA judges the subcontracting plan to be adequate was deleted by the conferees. However, failure of a contractor to submit a subcontracting plan will cause the contractor's offer to be deemed to be unresponsive to the solicitation for the contract and thereby result in the offeror being found ineligible to receive the contract.

The conferees also deleted the House provision which would have mandated that the Department of Defense participate in the labor surplus area procurement program. This provision would have overridden the so-called "Maybank" amendment to the Defense authorization bill. Instead, the conferees directed the President to study the effectiveness of the labor surplus area program and the efficacy of its attempt to reduce unemployment in areas of high unemployment.

Mr. President, this legislation is the product of extensive labor on the part of numerous Senators and Representatives. I point particularly to the efforts of the distinguished Senator from Georgia (Mr. NUNN) and the distinguished Senator from Oklahoma (Mr. BARTLETT). Accords were reached on many difficult issues. On the whole, this report provides a sound legislative base for development of programs to assist disadvantaged individuals to participate in our Nation's free enterprise system.

I urge my colleagues to support the conference report to H.R. 11318.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. WEICKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. WEICKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. CURTIS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WEICKER. Mr. President. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. PROXMIRE). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REVENUE ACT OF 1978

The Senate continued with the consideration of H.R. 13511.

Mr. MORGAN. Mr. President, I have an amendment at the desk which I will not call up at the present time. I will speak on it and then take action, after I have stated the purposes of the amendment.

Mr. President, the purpose of this amendment, which has been cosponsored by Senator NUNN, Senator LEAHY, and Senator MARK O. HATFIELD, is to bring the legislative branch into the social security system within 2 years.

I introduced this amendment as a bill last December, and was also prepared to offer it as an amendment to H.R. 7200, a public assistance bill which has never reached the floor of the Senate. It has been cosponsored previously, in addition to Senators NUNN, LEAHY, and HATFIELD, by Senator HOLLINGS, Senator DOMENICI, Senator LUGAR, Senator STONE, and Senator DANFORTH.

This is an important amendment, for it will demonstrate to the public that Congress supports the social security system, that we feel the program is so sound and so valuable that we ourselves are prepared to take part.

It is the right and proper thing to do, for Congress has no business passing major social programs and then exempting itself from the tax burden the programs require.

Last year, Congress enacted the largest peacetime tax increase in the history of the United States. This was done reluctantly, but it was necessary to prevent the social security system from going bankrupt. Now, the social security system was in such great financial difficulty for a number of reasons, and one of the most important of these was poor financial management by earlier Congresses. The way I see it, and the way that most people see it, is that Congress has no business exempting itself from a tax burden which exists largely because of previous congressional actions.

This becomes even more true when we consider that the tax increase enacted last fall may be insufficient in the long term. According to the estimates offered by the Finance Committee and the Social Security Administration, the social security system is still going to run a deficit in the medium and long term. And this is based on certain goals for the performance of the economy, goals that we have so far failed to reach.

The unemployment rate we assumed has been reached; it is now about 6 percent, rather than the 6.3 percent we assumed in the bill. But we have not been so fortunate with regard to either the inflation rate or the average increase in real wages, that is, wage increases adjusted for inflation. It was hoped that inflation would be down to 5.4 percent annually, but so far this year, the annual inflation rate has increased, rather than dropped, to at least 7.4 percent. And the average real wage increase in the last year has been 0.9 percent, not the 2.7 percent that was estimated and assumed when we passed the social security tax bill. In short, at the present time, the social security trust fund is in worse shape than was predicted last year.

If this trend continues for the next couple of years, we are going to have to enact another social security tax increase, or reduce benefits, even though the combined employer-employee social security tax is going to be over 14 percent in 7 years.

We will be facing many difficult problems relating to the social security system in the years ahead, and frankly, I would feel much more confident in Congress ability to deal with these problems responsibly if Congress had something at stake, if Congress was a part of the social security program just like most of the people in the country are required to be.

A number of objections have been raised to this proposal, of which the one I hear most frequently is: "We do not need to be a part of social security; we already have our own pension plan." This objection is simply not valid. If possession of an adequate pension plan was grounds for exemption from social security, we would not require everyone in the private sector to take part. Many people

in the private sector have excellent pension plans, or are sufficiently wealthy as to not require one, yet all these people have to pay social security taxes.

Almost every industry that I know of today has its own retirement plan, and yet the employees are required to participate in the social security system.

The State of North Carolina, my own State, has a good retirement plan, and yet the employees are required to participate in the social security system.

So the argument that we in Congress have our own pension plan and therefore should not be required to participate in the social security system is not valid.

Millions of people have paid more in to the social security system than they can ever hope to recover. This is because Congress has wisely decided that the purpose of social security is not only to provide a supplementary pension, but also to provide some basic security to the elderly and disabled. As a result, many of the benefits bear little or no relation to contributions.

Medicare is equally available to all the elderly and some of the disabled covered by social security, regardless of previous contributions. The extra benefits for dependent spouses are not based on contributions. Lower wage earners, when retired, receive a higher percentage of their income than their wealthier brothers. And I could go on. In fact, social security bears a closer resemblance to an insurance program than a retirement plan.

An insurance program cannot survive if it arbitrarily excludes large groups of people who will recover less than they pay in. I do not believe that social security will survive unless all wage earners take part, and it is especially important that those of us who have created the program and who from time to time change the taxes, that the Americans who do participate have to pay, join with the program.

A second objection to this amendment has centered around its failure to deal with the difficult problem of coordinating our retirement plan with our proposed membership in social security. To simply add social security taxes and benefits on to what we have now will, as this amendment does, and I admit this, lead to a situation where total retirement contributions plus social security taxes will lead to a payroll deduction that is excessive, and the combined benefits, after retirement, will be greater than most of us need.

Bringing a group of people whose pension plan assumes they will not receive social security into the system is a highly difficult technical problem, and nobody, including this Senator, has yet worked out a satisfactory solution. It is for this reason that this amendment has a two-year delay in the effective date.

Last fall's social security tax bill mandates a study which will deal with the problem of how to equitably bring workers not now covered into social security. This study is due in December 1979. Since my amendment would not go into effect until January 1, 1981, Congress would have a whole year, using the results of this study, in which to determine what changes need to be made in our retirement plan.

I might add again, Mr. President, that we in North Carolina did bring our workers into the social security system along with our schoolteachers, and we worked out a satisfactory plan whereby we could mesh or merge the retirement plan that existed in the State at that time with the social security system without unduly burdening those who participated or were brought in and also without diminishing to any substantial degree the retirement benefits of those who were already in the retirement system.

Some will say that we should wait for the results of this study which has been mandated, before deciding whether to join social security. That argument assumes that coordination between the two plans may not be possible. This is simply not right; virtually every private pension plan, as a result of congressional mandates, is now coordinated with social security. The solution is there; we just have to find it.

And, I suggest, that the need for Congress to show some confidence in social security is so great as to require a vote in favor of having us join the social security system, and I refer to all of our employees, even if we do not have all the details of that change worked out.

Finally, I make one other point, one which is admittedly less important than the basic requirements of fairness and equity.

The social security tax is a payroll tax which the Federal Government has decided it and its employees will not pay. We are, in effect, giving the public sector a 12 percent tax credit, soon to be 14 percent, not available to the private sector, and so encouraging the expansion of the public sector at the expense of the private sector. I do not believe any of us want to do that.

In summary, I think it is quite clear, as a simple matter of equity, Congress and legislative branch employees need to be a part of the social security system. This amendment would bring this desirable goal about at a certain date, 2 years in the future.

The passage of this amendment now, in order that we might show the public that we really have some competence in the social security system, is important and also it would show that we are avoiding procrastinating and procrastinating always saying that the necessary details have not been worked out.

Mr. President, my amendment, amendment No. 3852, is at the desk, and in all candor I cannnot find a way to make it germane, but for the record I ask the Parliamentarian if he can find any way that my amendment would be germane since cloture has been invoked.

The PRESIDING OFFICER. It definitely covers a new subject matter not covered in the bill; therefore, it would not be germane.

Mr. MORGAN. Mr. President, I must say that I agree, although I would like and had planned to offer the amendment had cloture not been invoked, and I must say in all candor I think the amendment had a very good chance of passing because the public reaction and the public comments and the reaction of the Members of this body have been very, very good. I say for the record and to the American public that I believe Congress will eventually rectify this matter.

Mr. CURTIS. Mr. President, I yield myself 2 minutes of my time.

The distinguished Senator from North Carolina has called our attention to an important matter. The social security system is not a system whereby an individual pays for his own benefits. It is a tax levied on all the producers to pay a benefit to those who retire. In the past those who have drawn benefits and those who are drawing benefits now have paid a very little portion of their benefits. So I agree with the distinguished Senator that everyone should help carry this social burden of paying the benefits.

I would also like to call attention to some discussion that goes on here in committees with reference to social security of which the American people ought to be alerted. When the Carter administration proposed paying social security benefits out of the general fund, there was a great hue and cry against it. I am still against it. Everybody patted themselves on their backs and said.

Here we are for a sound social security. We are not going to let them pay it out of the general fund.

Here we have tax relief, added relief in taxes, to make up for the social security tax.

Mr. President, that is still paying it out of the general fund. This is not backdoor financing; it is forcing a window and climbing in and taking something out of the Treasury to finance social security.

Those who persist in enlarging the social security and voting for more benefits and an increase in benefits as elections draw near will have to face the music and impose whatever social security taxes are needed to keep the fund going or find some other equitable way of raising it.

We should not pay these benefits out of the general fund, and we do that when we have a tax reduction measure for the purpose of making up for the increase in social security taxes.

The PRESIDING OFFICER. Are there further amendments?

Mr. MORGAN. Mr. President, I thank my colleague.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3851

(Purpose: To make permanent the ceiling on title XX funds and eliminate the child care set-aside after fiscal year 1979)

Mr. MORGAN. I call up my amendment numbered 3851.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. MORGAN), for himself and others, proposes an amendment numbered 3851.

Mr. MORGAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 387, strike out lines 16 through 20 and insert in lieu thereof:

SEC. 602. (a)(1) Section 2002(a)(2)(A) of the Social Security Act is amended—

(A) by striking out "$2,500,000,000" and inserting in lieu thereof "the amount specified in clause (ii)";

(B) by inserting "(i)" after "(2)(A)"; and

(C) by adding the following clause at the end thereof:

"(ii) The amount specified for purposes of clause (i) is $2,500,000,000 for fiscal years prior to fiscal year 1979, $2,700,000,000 for fiscal year 1979, and $2,900,000,000 for fiscal years after fiscal year 1979.".

Mr. MORGAN. Mr. President, the amendment I have just called up would make the 1-year temporary increase in the title XX fund ceiling which is contained in this bill a permanent increase. This is an amendment which will allow the States to continue to provide a range of vital and comprehensive social services to its citizens. It has been cosponsored by Senator MOYNIHAN, Senator HUMPHREY, Senator ANDERSON, Senator RIEGLE, Senator MATSUNAGA, Senator DOMENICI, and Senator DOLE. It is a more modest version of a bill which passed the House by a vote of 346 to 54, and which was introduced in the Senate by Senators GRAVEL and DOLE, along with 18 other cosponsors.

Mr. President, the present $2.5 billion ceiling on funding for title XX social services was established in 1972. Due to inflation, this same $2.5 billion is now worth only 1.7 billion 1972 dollars, 32 percent less. Even the additional $20 million setaside for day care centers, which was first started in 1976, has been nowhere near enough to compensate for this inflation.

Title XX of the Social Security Act is a mechanism by which the Federal Government provides States with block grants to provide its citizens with a comprehensive range of social services, services which are fulfilling critical human needs. States spend this money in various ways, including homemaker services, which allow the aged and disabled to live in their homes in a more dignified fashion, and also reduces the need for expensive institutional care; day care services, the value of which virtually every Senator is aware of; services for the mentally and physically handicapped; services for the elderly, including the funding of senior citizen centers; counseling and training for welfare recipients, which, by increasing the employment potential of these people can eventually save all levels of government money; nutrition projects, which are also of great human value and cost-effective; and emergency shelter services, which help persons who have been physically or mentally abused and which can assist in reuniting families.

In effect, Mr. President, I believe this is one of the most beneficial programs of all of the social programs that I know of, and certainly ones that the people are less critical of.

The title XX program not only allows States to provide many needed services, but it grants states the money in such a way as to allow it to be used most wisely. The block grant lets States use the funds in a way that best meets the needs and desires of its citizens, and with a minimum of Federal interference. The entitlement feature of the program assures the States of stability and continuity in its funding and allows States to engage in multiyear planning. This insures that limited dollars can be used to provide the greatest possible number of services.

A 1-year, temporary increase in the title XX ceiling robs the program of some of these important features. If States cannot count on receiving the same funds next year, they cannot afford to begin providing any new services. In fact, many States have already begun to cut back services, and these would have to continue to do so in order to prepare for the fiscal 1980 reduction.

I think also, Mr. President, it would encourage wastefulness of the additional money provided for 1979 unless there was some assurance that this money would continue because it would be expended for makeshift programs.

The secretary of human resources from my State came to Washington to visit me the other day, and she made an excellent point. She said that a 1-year increase was worse than no increase because, since the new money could not be used for services, it would end up being used for salary increases. The long-term result of this would be less money for services, and more money for salaries and bureaucracy.

Because of this and in order to assure States of a stability in funding, I feel it is important that we make the proposed ceiling for fiscal year 1979, $2.9 billion, a permanent ceiling.

Mr. President, before I conclude, I would like to say a few words about the title XX program in my State, a program which has worked extremely well and is highly prized by North Carolinians. As you know, title XX funds have a 25-percent State matching requirement. In North Carolina, the State, using its own allocation formula, provides this money to counties in much the same way that the Federal Government gives it to the States. Of the required 25 percent matching funds, the State provides 3 percent, and the counties the remaining 22 percent.

It took 2 or 3 years, but now virtually every one of the 100 counties meets its full 22-percent matching requirement and receives its complete share of the State allocation. Many of us have had experience at the local level of government, and we know how hard it is for these counties, and especially the small rural counties, to raise money. But the counties in my State are contributing about $14 million so as to receive their title XX money, a clear indication of how they value this program.

Of course, it goes much farther than that. Since this program is centered at the lowest level of government, the one closest to the people, we can be sure that this money is being used for the most needed and valued services. Each county is using the money differently, but in a way this is most effective considering local conditions.

By giving control of this program to the counties, my State has insured that the people of North Carolina would have the greatest possible control over the actual use of the funds. And because of this, the people support this program, as shown by their willingness to spend $14 million, and as shown by the hundreds of letters and phone calls I have received supporting this program.

The amendment before us is a good amendment to continue a good program, and I urge my colleagues to support it.

(Mr. HODGES assumed the chair.)

Mr. LONG. Mr. President, when the committee recommended that this money be made available for 1 year only, it was not intended to reduce social services funds in fiscal year 1980. Rather, it was an accommodation to the administration, who asked that the social services ceiling be raised for only 1 year, in fiscal year 1979, so that the administration could review proposals in connection with social services next year.

Even so, I can see no problem with accepting the Senator's amendment which will make it clear that the Senate does not intend to have the level of social services grants be reduced after 1979.

I would think that even if the administration does recommend something that would reduce the social services funds, they would recommend substituting something for it, so that the problem would nevertheless be met. Even without the Senator's amendment, the States would be confronted with a serious problem in determining where to make cuts in social services for the poor.

Mr. PROXMIRE. Mr. President, will the Senator yield on that?

Mr. LONG. I yield.

Mr. PROXMIRE. I understand that the Budget Office opposes the amendment on the grounds that it would mean an additional $400 million permanent commitment, and that the administration may develop other programs which will be more efficient to do the job, but cost less over all.

Mr. LONG. As I understand it, the administration asked that we provide an increase for only 1 year, on the ground that they are going to send up their own proposals next year, but we doubt very much that they are going to propose to cut back in this area. If they want to come up with a program which would provide more generously for these programs, or more efficiently support them by some other arrangement, then we could accompany that with something to cut back on the amount that would be spent in this area.

Mr. PROXMIRE. Why not wait and see? You lose nothing by providing it for 1979, and then if they do not come forward with a program that Congress can accept, you can provide the additional money next year, rather than make a commitment now where you might be duplicating a program that might be more efficient.

Mr. LONG. At this late date, all it would do is increase uncertainty for the States. Suppose next year this is a part of a great big welfare plan which gets tied up in a long debate, so that the administration recommends it, but we fail to dispose of it, and they are cut back next year. Then the States will have no sort of a cushion.

Mr. PROXMIRE. Why not provide that they would have to provide additional money, otherwise they will not get it?

Mr. LONG. I believe the States would feel more secure about the matter if they knew the funds would not be cut, rather than have the hope that the administration would have a big program, which could get bogged down and not pass through here, as often happens, and they would be without funding.

Mr. PROXMIRE. The only reason I raise this is that, as the Senator from Louisiana knows, with the tremendous increases we are now putting on the books for 1980 and later, the Budget Committee was saying we might stay within the budget for 1979, but in the out-years it is becoming a nightmare. We are already $10 billion over now, and this is another $200 million.

Mr. MORGAN. Mr. President, had we not increased it for this year, I would not be on the floor with any amendment to increase it permanently, but it is the feeling of my State and the National Governors' Conference and others that have contacted me that since we are increasing it this year, if we do not give the States some certainty about it in the future, the money may be wasted, because the feeling may be, "We had better not start any continuing programs; let us use this money elsewhere or in some other way," and it will probably not be utilized as well as it would otherwise be.

Mr. PROXMIRE. Will this item be in conference with the House?

Mr. LONG. Yes. In 1972, we put on a ceiling of $2.5 billion on this program, and there has been a lot of inflation since that time. Up to that time the program was open-ended. Since that time the demands of the program have increased tremendously, and inflation has eaten away at the funds that were available. This $2.9 billion is only 16 percent higher than the original $2.5 billion ceiling. The Senator well knows we have had a lot more inflation than that since 1972.

Mr. PROXMIRE. This goes to $2.9 billion, however, is that right?

Mr. LONG. Yes. The $2.9 billion adds $400 million, which is only 16 percent, to the original $2.5 billion, and thus does not even take care of the inflation that has occurred since that time and is going on right now. To propose that we cut back on this program, unless we want to substitute something else for it, really, I think, would be irresponsible. We are not going to be able to do it without putting the States in a squeeze they will not be able to handle, and that, I submit, does not make much sense.

Mr. PROXMIRE. One further point. There has been a decline in unemployment, and somewhat of an easing of the welfare burden in the country nationally, so that increase of 16 percent conceivably could be enough.

Mr. LONG. One of the big items these funds pay for is to provide child care, for the mother to be able to get a job so that she could provide better for the child. As employment increases, the need for this service increases.

Mr. CURTIS. I yield myself 1 minute.

Mr. President, I shall not oppose my chairman's agreeing to this unless it be made permanent. There are some objections to it, but it is true that these States, whether they are providing for the handicapped, the mentally retarded, or what not, have to think in terms of equipment, facilities, and personnel, and planning on a 1-year basis does have its difficulties.

I would rise, however, to call attention to the fact that the Senator from Nebraska offered an amendment requiring a cost-benefit analysis of the various aspects of title XX. The States have wide latitude to spend this money. I think that is a good thing; I favor this latitude on the part of the States. But I believe there should be a cost analysis, so that we know what particular activities are accomplishing the most good.

Mr. MORGAN. Mr. President, if I may submit one further thought, I want to say to the Senator from Nebraska that I am appreciative of the committee's giving to the States the wide latitude in how to use this money, and I think my statement emphasized how meaningful it can be. By giving our State the authority and latitude, they delegated that, as assigned to the counties the responsibility of raising the money. The counties raised the $4 million, which made it go farther, and in addition made it a local program.

Mr. President, there are a number of associations which support this proposal, including the National Governors Association, the National Association of Counties, and the U.S. Conference of Mayors. I ask unanimous consent that the list be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

National Governors' Association.
National Association of Counties.
U.S. Conference of Mayors.
National Conference of State Legislatures.
National Association for Retarded Citizens.
American Parents Committee.
Child Welfare League of America, Inc.
National Society for Autistic Children.
National Association of State Units on Aging.
National Retired Teachers Association/American Association of Retired Persons.
Urban Elderly Coalition.
American Public Welfare Association.

● Mr. DOLE. Mr. President, I am pleased to cosponsor the amendment offered by the Senator from North Carolina (Mr. MORGAN) which would make permanent the $2.9 billion increase in title XX services which the Finance Committee approved for fiscal year 1979. This is a subject in which I have long been interested, and I know that there is wide support throughout the Congress for the social service programs funded through this title.

HISTORY

Prior to 1972, there was no Federal ceiling placed on social service authorizations. The programs were so popular, that States planned rapid program growth, which resulted in skyrocketing costs. At one point, these social service programs were estimated to cost $6 billion by fiscal year 1974. In view of these predictions, in 1972 the Congress imposed a $2.5 billion ceiling for social services, which up until then had been open-ended. In 1974, the title XX as it exists today was established under the Social Security Act. Under this program, there is a 75/25 matching ratio of Federal/State funds.

PROGRAMS FUNDED

It is estimated that child care services now utilize approximately 22 percent of the Federal money going into title XX. Throughout the history of the program, there has been strong emphasis given on child care services, in an attempt to provide strong work incentives to parents with young children. In addition, services for senior citizens receive a substantial amount of the money, particularly in home support services. Education programs for the handicapped, foster care services, home delivered meals for the elderly, medical screening and treatment for children, sheltered workshops, programs for abused children, and legal services are additional programs funded with this money.

WIDE SUPPORT

In its short history, this program has built a strong base of support made up of concerned individuals. Besides the fact that the programs offered are those which attract support and approval, title XX has also been well liked because of the noticeable lack of Federal restrictions which are tied to the programs. Basically, the Federal Government makes this money available to the States, and the States have total discretion to spend it where services are most needed. At various times during this year when

the question of funding has been raised, I have been overwhelmed with the numbers of individual, hand-written letters from constituents who have written to express their views in support of the program.

FISCAL CONSTRAINTS

Since the $2.5 billion ceiling was proposed in 1972, there has been no increase in the general title XX funding. The only increase in funding is attributable to a temporary $200 million which was added for fiscal years 1977 and 1978, and which was earmarked for child care services. Had title XX been tied to the Consumer Price Index, the funding level would now be $3.64 billion, since between 1973 and 1977, the CPI has increased by 45.7 percent.

Or, to express the financial situation from another approach, inflation has eroded the purchasing power to the extent that the original $2.5 billion is now worth approximately $1.7 billion.

HOUSE ACTION

Already this year, the House of Representatives has considered this problem, and by a vote of 346 to 54, voted for a 3-year increase in the title XX ceiling. Several months ago, Senator GRAVEL and I, along with several cosponsors, introduced an amendment to the now defunct H.R. 7200, calling for a 3-year increase in the title XX ceiling.

The increases were to be $2.9 billion in fiscal year 1979, $3.15 billion in fiscal year 1980, and $3.45 billion in fiscal year 1981.

Last week, the Senate Finance Committee considered legislation calling for this increase. At the time, it was the sense of the majority of the Members that a 1-year increase would be sufficient for now. There was talk of major reform in the broad area of social services which was to be completed, and it was recommended that the committee wait until next year to make such substantial changes in the program.

THE MORGAN AMENDMENT

I think that today's amendment is an important one, for by setting a permanent $2.9 billion ceiling rather than a temporary one, we are giving the States greater leeway and flexibility in their planning. It seems to me that it would be almost impossible to have efficient, careful planning of social service programs if States were left in the dark as to what their next year's funding level would be. I think this increase is more than justified, and am pleased to give my support to the Morgan amendment.●

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MORGAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4054

(Purpose: To reduce the corporate tax rate to 44 percent for the period 1979 through 1981)

Mr. DANFORTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH), for himself and Mr. JAVITS, proposes amendment numbered 4054.

Mr. DANFORTH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. . REDUCTION IN CORPORATE RATE OF TAX.

Notwithstanding any other provision of this act to the contrary, the amount of tax imposed by section 11(a) of the Internal Revenue Code of 1954 on taxable income in excess of $100,000 shall be—

(a) 46 percent for taxable years beginning after December 31, 1978 and before January 1, 1980;

(b) 46 percent for taxable years beginning after December 31, 1979 and before January 1, 1981; and

(c) 44 percent for taxable years beginning after December 31, 1980.

Mr. DANFORTH. Mr. President, this amendment pertains to the maximum corporate tax rate.

In the bill as it presently stands, after the amendment offered by Senator KENNEDY and Senator PACKWOOD was adopted last week, the corporate rate would be phased down to 47.5 percent in 1979, 1980, and 1981, and then down to 45 percent in 1982.

This amendment would alter that by changing the corporate rate to 46 percent in 1979 and 1980, and 44 percent in 1981 and 1982. That is to say that the corporate rate under this amendment would be half a percentage point higher than the bill in its present form in 1979 and 1980. It would be 1.5 points lower in 1981, and it would be 1 point lower than the present bill in 1982.

So what we are doing, if we were to adopt this amendment—Mr. President, could we have order?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Missouri.

Mr. DANFORTH. What we would be doing by adopting this amendment would be to provide $213 million more revenue in 1979 than under the present bill, and $950 million more revenue in 1980 than under the bill in its present form. However, there would be a revenue loss, and this is just gross loss, it does not pertain to any reflows at all by virtue of any increased economic activity—there would be a revenue loss in 1981 of $3.15 billion and in 1982 of $2.30 billion. Therefore, there is a tradeoff. There is a little bit of gain in 1979 and 1980, and there is some loss in 1981 and thereafter.

The object of this amendment is to move the corporate rate to 44 percent by 1981 instead of 45 percent by 1982, as is now in the bill.

Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DANFORTH. What do we buy for the extra 1 point reduction in the corporate rate? Why do we want to do it? What do we get in exchange for it?

According to one economic analysis, in the first year of a corporate reduction 1 point in a rate reduction equals 160,000 additional jobs. One point in corporate rate reduction equals $22 billion in additional gross national product. One point in corporate reduction equals $12 billion additional investment in the first year alone.

Mr. President, we have been discussing the tax bill thus far in terms of how much tax relief each group within the economy would get. What we have not given adequate attention to is the total effect of tax policy on the economy itself. That is what is involved in this amendment.

What are the economic consequences of tax policy; what are the economic results of reducing a tax rate? The whole purpose of trying to get the corporate rate down to 44 percent is to provide for an expanding economy, to provide for more capital investment, to provide for more productivity, to provide for a higher gross national product.

We are in a period of economic recovery in this country. However, that recovery has been limping along at a very slow pace.

The latest unemployment rates annualized are 5.8 percent, still too high. The latest inflation rate is about 8 percent, still unacceptable.

In the Finance Committee witness after witness came before the Finance Committee and talked about the problems of the economy, talked about the sluggish growth in the economy, talked about the fact that capital formation in the United States is not adequate. They talked about the fact that the rate of growth of productivity in this country is much less than it is in other countries that are competing with us economically.

That is the problem with the economy. It is not just a question of dividing the economic pie; it is the fact that the pie itself is not large enough, that the pie itself is not expanding enough to take care of the needs of the country which has more and more people making more and more demands on it.

Therefore, when we address tax policy it is not simply enough to address the question of how we slice the pie between who gets a rate cut in one category or another, but how do we fashion the kind of policy which would provide for increased productivity, increased investment, and increased growth in the gross national product.

Mr. PROXMIRE. Will the Senator yield?

Mr. DANFORTH. Certainly.

Mr. PROXMIRE. The Senator has three amendments which reduce the corporate tax base. What is this one? Is it 4054?

Mr. DANFORTH. That is correct.

Mr. PROXMIRE. It reduces it to 46 percent after December 31, 1978, 46 percent after December 31, 1979, and 44 percent after December 31, 1980. Is that correct?

Mr. DANFORTH. That is right.

Mr. PROXMIRE. I congratulate the Senator on this amendment. I think he is absolutely right. I think this is the way to stimulate the economy. It is interesting that the New York Times, for example, supports the abolition of the corporate tax rate. The influence of the corporate tax rate is disputed by many economists, but many feel it is a sales tax. I think it is. Furthermore, there is no question about the fact that it reduces the availability of cash flow to corporations and investment capital. This is the time to reduce the corporate tax rate. I agree with the Senator from Missouri on it. I see the Senator from New York is a cosponsor. I think this is the way to do it. I just wish we could abolish the corporate tax over a period of 5 or 6 years. I think the Senator is moving in the right direction.

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Mr. President, I am delighted that Senator PROXMIRE touched upon what I think is the key point here, and I hope Members who are not present are listening on their squawk boxes. The fact is that now we are at the guts of the tax bill. That is what this tax bill was supposed to be all about. It was supposed to be a way to stabilize the economic situation of the United States and to give certainty, for uncertainty is eroding the whole economic system in this country.

I thoroughly agree with the Senator. This is the amendment, as far as I am concerned, that really makes the tax bill. I have only taken this time so Members will listen. Let them decide this one on the merits, and what they really want to accomplish by passing a tax bill in 1978.

Mr. PROXMIRE. If the Senator will yield on just one more point, let me say there is another reason why this is so important. The difficulty with the corporate income tax is that it encourages featherbedding by corporations. It encourages them to do all sorts of things they would not do otherwise—hiring inefficient people, engaging in entertaining of a frivolous sort—because they can charge half of it to Uncle Sam. The more inefficient a corporation is, the more it can charge. Furthermore, the small growing corporation can retain its earnings. The more efficient a corporation is, the more rapidly and efficiently it can grow, provided it does not have a prohibitive tax rate. At Harvard Business School, a study that was made by two of the outstanding economists found that if we had half the tax rate in earlier years that we have now, none of our large corporations could have grown to their present size. This is an anti-inflationary proposal in the best sense. I congratulate the Senator from Missouri.

Mr. DANFORTH. Mr. President, Senator JAVITS and I have a variety of appropriate tax proposals. Frankly, our original idea, until very late yesterday, was to propose a tax cut which would phase down at 42 percent, but our theory last night would be that, given the tone of the Senate, it would probably be more difficult to get it down to 42 percent than to 44 percent. So we at least wanted to establish a principle.

This principle is agreed on by all kinds of people. As a matter of fact, at first, when the administration originally unveiled its tax cut proposal, it, too, phased the corporate rate down to 44 percent. It has backed off from that now, but it, too, provided for a phase-down of the corporate rate to 44 percent.

When Secretary Blumenthal appeared before the Committee on Finance and we asked him what kinds of tax relief would provide the greatest incentive for business expansion—would it be increasing the investment credit or increasing the asset depreciation range or having a corporate tax cut—he, without any equivocation at all, said that, in his opinion, a reduction in the corporate rate was called for.

Mr. BROOKE. Will the Senator yield at that point?

Mr. DANFORTH. Certainly.

Mr. BROOKE. Would he consider a rollback in capital gains tax as a possibility of creating new venture capital for new businesses or for the expansion of existing businesses?

Let me pursue this just a little farther, since the distinguished Senator from Missouri and the distinguished Senator from New York are cosponsors of this amendment on the floor. I am primarily concerned about the expansion of existing businesses and the creation of new businesses in an effort to create jobs in the private sector, rather than jobs in the public sector, which is the direction we have taken over the years. I am sure that many Senators are on the floor who have voted for public service jobs because of the high unemployment rate in this country, particularly in the last few years.

That unemployment rate is still, I believe, unconscionably high. It now appears that we very well may not even see the goals which would be established by the Humphrey-Hawkins bill. So, here we are, faced with the problems of high inflation and high unemployment.

I agree with the Senator from Missouri and commend him in trying to find a manner in which we can stimulate the economy and expand American business. But I want to be sure that the way that he and the Senator from New York are suggesting is the best way that we can accomplish these goals which we seek; namely, the expansion of existing American business and the creation of new American business. This in my opinion means the creation of new private sector jobs.

Mr. DANFORTH. I think we are talking about two sides of the same coin. The theory of capital gains tax reduction is to provide additional incentives for people to save and invest and, hopefully, make equity financing more attractive. The theory behind a corporate rate reduction is to provide a better rate of return down the road so that a going business would then be able to make the decision now to invest in plant and equipment, given a prediction of an aftertax return rate 4 or 5 years from now.

It is interesting that the reason this particular amendment raises the corporate rate over what is now in the bill for a couple of years and then reduces it to 44 percent is that the testimony we received in the Committee on Finance is that the business decision on investment in plant and equipment, and, therefore, new jobs in the future, is not made on the corporate rate today or next year, but made on the certainty of knowing what the corporate rate will be 3 or 4 or 5 years down the road.

We have been talking a lot on the floor of the Senate, well, how can we look down the road? Should we go to 4 or 5 years down in cutting taxes? In the area of business taxes and business income taxes, it is really a necessity, because the decisions today on investment in plant and equipment are made on the basis of what the tax rate is going to be down the road.

I think that the business income tax question is really another side of the coin of the capital gains question and that both are very important.

Mr. BROOKE. And they are not mutually exclusive.

Mr. DANFORTH. Certainly not exclusive of the other, that is right.

Mr. BROOKE. I thank the Senator.

Mr. DANFORTH. In testimony before the Finance Committee, Secretary Blumenthal said as follows:

> We happen to think an increase in cash flow through a reduction in the corporate rate across the board would be very good to stimulate capital investment and productivity. And we still do.

This opinion on the advisability of a corporate rate cut was also shared by numerous economists—Alan Greenspan, Herb Stein, Paul McCracken, Martin Feldstein from Harvard, who has done a lot of work in this field, Robert Eisener from Northwestern University, a more liberal economist, who said that the corporate rate should be eliminated entirely. So, right across the board, these economists were testifying that we need a reduction or, in the case of Mr. Eisener, even an elimination of the corporate rate. It is clear we are not going to go that far in this bill, but at least moving it down to 44 percent would be a step in the right direction.

The problem with the economy is that, in the United States as compared to our competitors, investment as a percent of gross national product, increase in productivity, and increase in the growth of real gross national product have been much lower than in other countries throughout the world. For example, in each of these areas, the United States is behind Japan, France, the Netherlands, Belgium, and Germany. In productivity increase, the United States is behind Italy and France and tied with Great Britain. In increase in the percent of gross national product dedicated to capital investment, the United States falls behind Great Britain by a substantial margin. So our performance compared with the rest of the world has been very, very sluggish. Some people are predicting that by the mid-1980's, unless remedial steps are taken, we are going

to have a trillion-dollar shortfall in capital investment.

Now, what is the effect of all this? The effect of it is very simply, jobs. The effect of it is, very simply, opportunities for our people. The only way to increase the wealth of a country is to increase its productivity. That is the only way you can do it. You cannot do it by any other method. So if you want to provide opportunities for people to better their lives, particularly people who are left out today, people who are having a hard time making ends meet today, the only way to do it is to provide for expanded productivity and expanded capital formation. That is the only answer. There are no magical solutions. This is it.

So Senator JAVITS is quite right in suggesting that, in our opinion, this is really the guts of the tax bill. It is not just a question of how to carve up a pie which is too small; it is a question of how to provide enough pie for the kind of country which, hopefully, is continuing to grow.

Mr. BROOKE. Will the Senator yield?

Mr. DANFORTH. Yes.

Mr. BROOKE. What kind of assurance do we have that if we had this reduction in corporate income tax, the money would be used for the purposes for which the Senator intends, as stated in his statement, namely, the expansion of business and the creation of jobs?

That is the question that always is raised, I think the Senator ought to direct his remarks to that.

Mr. DANFORTH. There is, of course, no assurance other than the fact that Senator JAVITS convened a meeting on the day after Labor Day at which a number of economists were present and a number of business people were present who thought very hard about this question.

We went around the table, there were about 10 people there, asking them what kind of tax policy would best assure the kind of growth in the economy we need. Each one of them said a corporate rate reduction.

Also, since 1966, the effective corporate tax rate has increased from 41 to 51.4 percent. The reason for this increase is that we are taxing inflation and inventory and we are also not providing for recovery through depreciation of the replacement cost of equipment.

Therefore, the effect of this is the effective corporate rate has increased from about 41 percent to a little over 51 percent over a decade. During the same decade, we have seen a contraction of productivity and of gross national product.

So that by 1951 and 1966, the growth of productivity in the United States was an ample rate of 3.1 percent; then in 1966 to 1973 it declined to 2.1 percent; from 1973 to 1977, 1.4 percent; 1977 to 1978, 1 percent; second quarter of 1978, .8 percent.

So with the increase in the effective corporate rate, a reduction in productivity has come about.

I suppose we could extrapolate from those facts the fact that there really is a relationship between the effective corporate rate and what happens to productivity at the same time.

Mr. JAVITS. If the Senator will yield to me again, I yield myself 2 minutes, Mr. President.

I think the question is the key question to our amendment, and I answer as follows: The fact is that not over 25 percent of corporate earnings are generally devoted to dividends, and, even if they are devoted to dividends, they serve a very constructive purpose because one of our curses now is that we cannot raise equity capital. We cannot raise it out of stock. Therefore, we must engage in debt financing which is not as desirable a method of expanding corporate investment as equity funding. Equity capital is the traditional American way of corporate expansion.

Now, what we are relying on here and what the economists testified to, as Senator DANFORTH said, is the self-interest of those who run enterprises. Their self-interest would indicate that if they have more money left, they will reinvest in their companies to make them more productive. More productive companies will, in turn, be more attractive to investors, and we will be able to stem the tide of debt financing and increase equity funding.

It may sound to the listeners, if they look at it superficially, like giving too much to big business. But, who employs many of American workers? The major corporations.

We have millions upon millions of small businesses, 13 to 14 million, that employ half of the people. So while we want to stimulate them through capital gains tax cuts and other advantages, we must also provide sufficient incentives to big business. I would hope, though, that my distinguished colleagues would note that this reduction in the maximum corporate rate applies to all corporations with taxable incomes over $100,000, not just what we traditionally think of as big business.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BROOKE. Will the Senator yield for one observation?

Mr. JAVITS. Of course.

Mr. BROOKE. I certainly agree with the Senator from New York, who is well versed in the whole subject of American business and what it means to this Nation.

However, the Senator realizes that there will be many who will consider this amendment as merely a means of giving major U.S. corporations a tax break. They would argue that these cuts will result in profits for these corporations and their investors, while not assuring the expansion of business or the creation of jobs.

That is why I raised the question, because I think it is the question that must be answered and answered successfully if we are going to get 51 Senators to vote for this amendment.

I am prepared to vote for the amendment myself, because I do believe in this system. I believe in the free enterprise system. I believe that, in addition thereto, if we do not do something, these corporations are not going to expand. Further we are not going to have sufficient capital for the creation of new private sector jobs, which I think is the best direction for the country. In fact I believe that it should be the only direction in which it should go, barring some real national emergency where we have to resort to public service jobs.

That is why I cosponsored the so-called Steiger-Hansen bill some time ago, because I thought capital gains decrease would be one way of creating new venture capital and assuring the creation of new businesses and new industries and the expansion of existing businesses.

That is the question we have got to answer. I think we have to hit it right on the head, that this is not just a tax break for the major corporations in this country, that this money will be used, it will be put back into the business, not just in dividends. Although, I would agree that even if there are more dividends, that, too, has value in the American free enterprise system.

But I think some money must go back into the expansion of American industry and the creation of new American jobs.

Mr. JAVITS. The Senator is extremely perceptive. That is why we are laying it out very frankly and facing this issue, and facing the accusations which will be made and answering them.

I believe our people in this country now are sophisticated enough to understand.

I thank my colleague.

Mr. CURTIS. Mr. President, I yield myself 2 minutes.

May I ask the Senator, does this amendment apply only to corporations of $100,000 or more?

Mr. DANFORTH. That is correct. This is the maximum corporate rate, and only the maximum corporate rate, in this particular amendment.

Mr. CURTIS. And it does not change what has been done by the corporations with the smaller amount, these additional brackets?

Mr. DANFORTH. That is the same as in the bill.

Mr. CURTIS. Yes.

Mr. President, the need for a corporate reduction is very evident. The committee originally reported out a 46-percent rate for 1979 and for 1980. Then the Haskell amendment removed that reduction for 1979. We went back up to 48. Then the Bumpers-Kennedy amendment raised it again, 45.5.

This amendment would fix it at 46, where the committee fixed it for 1979 and 1980, and then takes it to 44 thereafter.

I do not say this to create amusement. I favor a corporate reduction. I only hope that the last action of this Senate just before we pass the bill is one to reduce it rather than increase it.

Mr. President, I yield the floor.

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

I consider this amendment the important amendment in connection with the tax bill. Senator DANFORTH has set for very clearly the specific rate reductions which are the subject of our amendment.

I have voted against extensive individual tax cuts because they were based on the concept that you had to build up demand, that there was a shortage of

demand in this country; but the fact is that there is no shortage of demand. We are awash in money.

As Arthur Burns has said time and again, the question is not whether you have a lot of money but what is the velocity of its use. How much is it turning over?

M–1, which is cash in hand and demand deposits, is somewhat more than $300 billion—let us say, for the sake of this discussion, $350 billion—in a gross national product every year of $2,000 billion. So the alchemy in this country is not that you have a lot of money in the bank. The alchemy is, how are you turning it over? What are you doing with it? That is what this amendment is directed to.

This amendment is directed to putting in the hands of those who give the maximum employment the opportunity to act with certainty in the economy. We are not only interested in a cut which will give more capital to these fruitful and productive people; we are interested in certainly. That is why this is a 3-year program.

What we are trying to find out, therefore, is what is ailing this system. Why is it stagnant? Senator DANFORTH and I surveyed corporate executives of major corporations and leading economists. The major thing we found is that it is stagnant because of uncertainty. Nobody knows what is going to happen tomorrow in the tax area.

With all the good will in the world toward what the Senate did yesterday in approving the Nunn-Bellmon coalition amendment, that does not give us certainty. It is based on so many ifs, ands, and buts that nobody knows whether he has a tax cut or not.

The concept of tax cuts for individuals is sound, but such cuts must be done responsibly. To impose such conditions as are imposed on individual cuts in the Nunn amendment makes them just uncertain enough not to be really effective.

The argument made in favor of the amendment is that if economic conditions change, the tax cuts will not go into effect. This is exactly the reason this amendment is wrong. If we cannot include contingencies that could be foreseen in a piece of legislation, then we should not try to make into law such legislation.

Nor should we institute such a sizable tax cut by itself. As I said earlier, we do not need to build up demand.

Also, we must not limit Federal revenues so substantially without precautions to protect necessary spending for vital social and economic goals. The corporate cut we are proposing today is much less costly than the individual cuts enacted yesterday and is targeted where it is most useful in making our economy more productive.

I did not get into a big argument about the Nunn amendment, because that is the way the Senate wanted to go. I am confident they will work out a feasible scheme in conference that will protect individuals from the impact of inflation and increased social security taxes without placing undue burdens on Federal spending.

The real problem is how to stimulate this economy and give it certainty, so that people can look ahead and say, "OK, this is worth working for and therefore investing in, because we know where we are."

Business will live with anything, any kind of regulation, any kind of law, and they will get along and work it out. Just tell them what the deal is long enough ahead so that they can plan.

American business today has a lead time of not less than 3 years and generally up to 10 years, before something can get built. So, they need to plan ahead at least the 3 years that our amendment covers.

So, what we are seeking is certainty and assurance of where we are going and an understanding of "what makes Sammy run" in this country; that we understand the issues; that we are sophisticated; that we know what builds up a private enterprise economy.

The one thing in this bill that will show it will be this understanding of the importance of the corporate tax rate and the sophistication which is shown by the fact that Senator DANFORTH and I and the Senate are not thrown by the superficial observation that we are helping the rich.

We are helping ourselves. We all work in this economy and we all own these businesses. That is the essence of what we are trying to accomplish.

Mr. DANFORTH. Mr. President, the point that Senator JAVITS has made about uncertainty is extremely important.

It is argued, I suppose, that the principal argument against an out year tax cut, a long-term program, is that we should proceed 1 year at a time. This argument was made with respect to the individual tax cuts, that we should proceed 1 year at a time. Last night, it went the other way—that we should consider a long-term program for individual taxes.

The same is true, and more so, for corporate taxes because of the uncertainty; because business people, in making business decisions, want to have some idea as to what the results of those decisions will be down the road.

Arthur Burns made the same point that Senator JAVITS has just made. He said in a speech, in late 1977:

> Many businessmen have a deep sense of uncertainty about what the longer future holds and, as a consequence, are discounting expected future earnings more heavily than they ordinarily would in their investment calculations. They voice concern about their inability to make meaningful projections of corporate costs and earnings for the years immediately ahead.

We cannot continue to have a policy which keeps people off balance and have the kind of healthy economy we need.

When we have the system we presently have, in which we have a tax bill virtually every year—virtually every year we come up with a tax bill—there is no way under that setup to have the kind of confidence which will lead people to be able to go out and make the kinds of investments that are necessary if we are going to have a healthy economy.

Mr. JAVITS. Mr. President, to continue for a moment or two: In 1976, the Council of Economic Advisors stated that U.S. business must invest at least 12 percent of the gross national product in order to obtain full employment and increase our productivity.

Let us see what the record is. In 1976, we hit a 13-year low of 9.1 percent of gross national product in our investment, and by 1977 we were only at 9.4 percent. The expectation is that we will do no better, if as well, in 1978.

Mr. President, we are the engine of prosperity or depression in the world because we represent so much of the world's production. We talk about the locomotives being Japan and Germany; but, as a matter of fact, we are the locomotive—the biggest locomotive there is. The reason we are in this serious inflationary situation is that we have not been pulling our weight on the train, considering our size. It is for that reason that we have had to appeal to the Japanese and the Germans to hook up their locomotives with ours.

That is all very good, but the Greeks always said, "Know thyself," and that is what we are trying to recommend by this amendment: to know ourselves and what really will make us the major locomotive for our own and the world's economic prosperity.

Mr. President, I know we all want to vote as quickly as possible, and I am very much a party to that, and I will not delay the Senate further, so I close as follows:

It is my profound conviction that this is the guts of the tax bill, that this represents the sophistication and the understanding of the American economic system, the way it works, its purpose, and how to make it work better. I hope all Senators will respond thoughtfully on that basis and support this amendment.

Mr. LONG. Mr. President, this amendment would reduce revenues further in 1981 by $3.150 billion from what we have now, and it would mean a reduction of $2.3 billion in 1982.

Each Senator is very proud of his own amendment, because he has given a lot of thought to it, and he is convinced that he is right.

We are being criticized severely—even by the Wall Street Journal—for the very large tax cuts we have approved. I think it is almost universally being regarded by responsible people as far more than the country can afford. This is just one more budget buster down the road. We are being criticized as irresponsible, as going too far in these tax cuts already.

I yield to the Senator from Maine.

Mr. MUSKIE and Mr. CURTIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, I join the distinguished floor manager of the bill in his reaction to this amendment.

We were acting here last night and during the days of this debate and now this morning as though there were no end to the tax reductions that we could write into law today for 5 years into the future. We assumed that we can predict with precision what economic conditions are going to be, that there will be no recessions and no depressions and as a consequence no deficit and no problems.

Last night we adopted an amendment

that cumulatively will cost us $142 billion, as I recall the figures, by 1983, and now we would add another $2.5 billion to that revenue reduction if the Danforth corporate rate reduction is adopted.

All the budget process is going to amount to, it seems to me, is a computer. We have been limited by the Nunn amendment now as to the level of spending increases. Revenues are going to be cut by what we adopted last night and what we are being asked to adopt this morning. We will not need a Budget Committee to exercise some judgment and make some tradeoffs to take into account economic conditions. We are acting as though we can predict precisely what is going to happen economically for the next 5 years and we can budget both revenues and overall spending today.

Our experience this year indicates that that is not so in a period of 8 or 9 months. We surely cannot do it for the next 5 years and have no fears about the consequences.

Mr. President, I join the distinguished Senator. I hope that economic conditions make it possible for us to do what the Danforth amendment proposes. If the budget process enables us to implement that kind of an objective, I assure Senators that we will try, but to write it into law at this point I do not think is the way to do it.

So I join the distinguished floor manager.

Mr. BENTSEN. Mr. President, will the manager yield?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. CURTIS. Mr. President, I yield myself 3 minutes.

Mr. President, it is not very often that I disagree with our distinguished chairman after the committee worked hard and threshed out a provision of a tax bill. However, this amendment so far as 1979 and 1980 is concerned is identical with the Finance Committee's version. Down the road in 1981 and 1982, it further lowers the corporate tax to 44 percent. At the present time it is 48 percent. The committee said make it 46 percent for the next 2 years. That is what this amendment does, and then down the road it has another one.

Mr. President, there is not anyone in this Chamber who can predict whether or not this will cost revenue. I want to venture a guess that it will increase revenue. The amount of revenue that flows in the Treasury is the amount of corporate profit times the rate, and we can move the rate up but if the profit goes down the money flowing in the Treasury is less. Therefore, none of us can predict just what the revenue effect will be.

The history of tax legislation is that when we lower the rate we get more money.

Now, of course, that must be within the bounds of reason and not carried to the extreme. But the fact remains that the better climate we have for a plant, the more it grows; the more fertilizer, the more water, the more care we give something the more it grows. That is true in the economic world. If we create an atmosphere that causes men to want to do more and produce more in the hope that they will have more left for themselves we collect more revenue.

Mr. President, as I say, this gets us back for the next 2 years exactly where the Finance Committee recommended, and I think this expectation of a further reduction will increase the endeavor throughout our economy and will result in more revenue.

I respect the opinion of those who predict that it will cost revenue, but I say that there are no facts upon which any of us can base such a guess.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, will the manager of the bill yield 2 minutes to the Senator from Texas?

Mr. LONG. Mr. President, the Senator had his own time.

I hope, Mr. President, I will be permitted to make a motion to table because this debate could keep going on and on, and we have so many other amendments to be considered.

Mr. BENTSEN. I will be happy to yield.

Mr. JAVITS. Mr. President, I suggest that there be a time limitation of 15 minutes on this amendment.

Mr. LONG. Mr. President, I will not debate the amendment at all. I just want to move to table.

I move that the amendment be laid on the table. I ask for the yeas and nays.

Mr. JAVITS. Mr. President, will the Senator withhold that a few minutes?

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, will the Senator withhold it a few minutes so we can continue the debate for another 10 minutes?

Mr. LONG. I am trying to get along with this bill.

Mr. JAVITS. I know the Senator is. But we do not want to choke this off. We have only dealt with it for a half-hour.

Mr. ROBERT C. BYRD. Mr. President, the manager of the bill was here at 8 a.m. and so was the ranking minority manager of the bill. We were pleading with Senators to get over to the Chamber and call up amendments, and we could not get them over to the Chamber.

Mr. JAVITS. Mr. President, will the Senator yield a moment?

The PRESIDING OFFICER. The motion to table is not debatable.

The yeas and nays have been ordered.

Mr. ROBERT C. BYRD. I say that in defense of the manager of the bill.

Mr. JAVITS. Mr. President, I ask unanimous consent that the debate may continue for 10 minutes evenly divided.

The PRESIDING OFFICER. Is there objection?

Mr. LONG. I object.

The PRESIDING OFFICER. Objection is heard.

The question is on agreeing to the motion to lay on the table the amendment of the Senator from Missouri.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from New Hampshire (Mr. DURKIN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Washington (Mr. MAGNUSON), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Montana (Mr. MELCHER), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Michigan (Mr. GRIFFIN), the Senator from Idaho (Mr. MCCLURE), the Senator from Virginia (Mr. SCOTT), the Senator from South Carolina (Mr. THURMOND), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. GRIFFIN), the Senator from South Carolina (Mr. THURMOND) and the Senator from Texas (Mr. TOWER) would each vote "nay."

The PRESIDING OFFICER (Mr. ABOUREZK). Has everybody in the Chamber voted?

The result was announced—yeas 44, nays 37, as follows:

[Rollcall Vote No. 469 Leg.]

YEAS—44

Abourezk	Hatch	Moynihan
Bayh	Hatfield, Paul G.	Muskie
Bentsen	Hollings	Nelson
Burdick	Huddleston	Nunn
Byrd, Harry F., Jr.	Humphrey	Pearson
Byrd, Robert C.	Inouye	Pell
Cannon	Jackson	Randolph
Chiles	Johnston	Ribicoff
Church	Kennedy	Sarbanes
Clark	Leahy	Sasser
Cranston	Long	Sparkman
Culver	McGovern	Stevenson
Eagleton	McIntyre	Talmadge
Glenn	Metzenbaum	Williams
Goldwater	Morgan	

NAYS—37

Baker	Hansen	Percy
Bartlett	Hart	Proxmire
Bellmon	Hatfield, Mark O.	Riegle
Biden	Hayakawa	Roth
Brooke	Heinz	Schmitt
Case	Helms	Schweiker
Chafee	Hodges	Stafford
Curtis	Javits	Stevens
Danforth	Laxalt	Stone
DeConcini	Lugar	Weicker
Dole	Mathias	Young
Ford	Packwood	Zorinsky
Garn		

NOT VOTING—19

Allen	Griffin	Scott
Anderson	Haskell	Stennis
Bumpers	Hathaway	Thurmond
Domenici	Magnuson	Tower
Durkin	Matsunaga	Wallop
Eastland	McClure	
Gravel	Melcher	

So the motion to lay on the table amendment No. 4054 was agreed to.

Mr. LONG. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HARRY F. BYRD, JR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin (Mr. NELSON) is recognized.

AMENDMENT NO. 4483

(Purpose: To amend the tax law to provide for accelerated depreciation for small business)

Mr. NELSON. Mr. President, I call up amendment No. 4483, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON), for himself and Mr. Durkin, proposes an amendment numbered 4483.

The amendment is as follows:

Beginning with line 24, on page 312, strike through line 12, on page 313, and insert in lieu thereof the following:

DEPRECIATION REFORM

SEC. 361(a) Section 167 of the Internal Revenue Code of 1954 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(q) THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—

"(1) GENERAL RULE.—In the case of a taxpayer who has made an election under this subsection for the taxable year, the term 'reasonable allowance' as used in subsection (a) means (with respect to property which has a useful life of 36 months or more) an allowance based on a useful life of 36 months computed under the straight-line method (within the meaning of subsection (b)(1)).

"(2) $25,000 BASIS LIMITATION.—For purposes of this subsection, the basis (as determined under subsection (g)) of property placed in service during the taxable year shall, to the extent that such basis exceeds $25,000 for the taxable year, not be taken into account.

"(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time, in such manner, and subject to such conditions as may be prescribed by the Secretary by regulations.".

"(4) LIMITATION—

(A) GENERAL RULE—subject to the exception provided by subparagraph (B), the provisions of this section shall not apply to property to which an election under section 179 applies.

(B) Exception—the provisions of subparagraph (A) shall not apply to that portion of the basis of property placed in service during the taxable year which exceeds $25,000 for the taxable year.".

(5) Subsection (c) of section 46 is amended by adding at the end thereof the following new paragraph:

"(6) APPLICABLE PERCENTAGE IN THE CASE OF THREE-YEAR USEFUL LIFE, STRAIGHT-LINE DEPRECIATION.—Notwithstanding subsection (c)(2), in the case of property with respect to which an election under section 167(q) applies, the useful life of any such property for purposes of this subpart shall be the useful life determined without regard to section 167(q).".

EFFECTIVE DATE

(c) the amendments made by this section shall apply in the case of property acquired and placed in service in taxable years beginning after December 31, 1978.

Mr. NELSON. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. The Senator will suspend until order is restored. The Senator will not proceed until there is order in the Senate Chamber.

The Senator will not proceed until there is order in the Chamber.

Mr. MOYNIHAN. Mr. President, it is pretty quiet.

The PRESIDING OFFICER. It was until the Senator from New York interrupted.

The Senator from Wisconsin may proceed.

Mr. NELSON. Mr. President, I ask that the following be added as cosponsors of amendment No. 4483, proposing accelerated depreciation for small business: The Senator from New Hampshire (Mr. DURKIN), the Senator from Idaho (Mr. CHURCH), the Senator from Rhode Island (Mr. PELL), the Senator from Alabama (Mr. SPARKMAN), the Senator from Rhode Island (Mr. CHAFEE), the Senators from Minnesota (Mrs. HUMPHREY and Mr. ANDERSON), and the Senator from Montana (Mr. MELCHER).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, this amendment would replace, in the Finance Committee bill, the increase in the accelerated depreciation from 20 percent to 30 percent by providing a 3-year straight-line depreciation on the first $25,000 of machinery or equipment purchased each year.

Under our proposal, above that $25,000 level, the depreciation would have to be computed under the present system.

This proposal would permit a business to depreciate an asset in 3 years, regardless of its normal useful life.

RELATIONSHIP TO THE INVESTMENT TAX CREDIT

Assets with a useful life of 7 years or more would receive the full investment tax credit of 10 percent. Those with a useful life of 5 or 6 years would receive, as under the present law two-thirds credit, and assets with a useful life of 3 or 4 years would receive one-third credit.

Thus, the percentage of investment credit to which a business would otherwise be entitled under current law would not be reduced because the business wanted to use a 3-year accelerated straight-line depreciation.

THE VALUE OF SMALL BUSINESS

As a matter of historical background, it should be noted that the small business community has always been the cutting edge of the American free enterprise system.

However, during the past quarter-century economic forces and public policy have created a hostile environment for small business: increasing barriers to capital formation, massive and unnecessary paperwork, proliferating regulation, the spread of anticompetitive practices, and unequal treatment under the many laws. These conditions threaten the future of small enterprise in this Nation.

There are about 14 million business enterprises in the United States and 97 percent of them are "small business" according to the standards of the Small Business Administration.

Small business desparately needs to continue to make significant technological and innovative contributions to our Nation's economy. In order to maintain a viable small business community, capital formation and capital recovery for business investment must be improved. Simplified and accelerated depreciation is the key to accomplishing tihs goal.

This proposal will make available a massive simplification of depreciation for 80 percent of the 14 million of U.S. businesses which are defined as "small business." In addition, for those small and medium-size independent businesses which have difficulty obtaining outside capital, this method will permit the accumulation of additional funds through internal generation of cash.

DIFFICULTIES EXPERIENCED BY SMALL BUSINESS IN USING PRESENT COMPLEX SYSTEM

Studies have shown that small businesses which possess depreciable assets lag far behind in using the special capital recovery provisions of the law. A good example is the asset depreciation range (ADR) provision which allows a 20 percent shortening or lengthening of the "useful life" of equipment or machinery.

The Finance Committee bill would increase the ADR range from 20 to 30 percent at an additional cost over present law of some $3 billion by 1983.

Capital intensive businesses such as manufacturing firms and utilities are most likely to take advantage of ADR. According to a 1974 Treasury study, only 0.7 percent of all corporations or 11,042 corporations out of a total 1.6 million corporations surveyed elected ADR. Only one-half of 1 percent of all corporations with less than $5 million in total assets elected ADR. Over 90 percent of all corporations with total assets of more than $1 billion elected ADR. Clearly, ADR is used primarily by the largest corporations and the committee bill would continue this pattern. It would not provide any relief for the other 99 percent of the Nation's enterprises. The following table illustrates this point, and I ask unanimous consent that it be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Size of total assets	Total number of firms in population	Firms electing ADR	
		Number	Percent
$1 to $500,000	1,493,000	5,482	1.0
$500,000 to $1M	56,000	1,064	2.0
$1M to $5M	42,000	1,788	5.0
$5M to $10M	5,000	665	13.0
$10M to $50M	4,000	991	38.0
$50M to $100M	625	304	49.0
$100M to $200M	396	242	61.0
$200M to $300M	156	107	69.0
$300M to $600M	203	167	82.0
$600M to $1B	88	80	91.0
Over $1 billion	166	152	94.0
Total	1,601,634	11,042	.7

*NOTE: Only 0.7 percent of all corporations or 11,042 corporations out of 1,601,634 corporations surveyed elected to use ADR. Moreover, only one-half of one percent of all corporations with less than $5 million in total assets elected ADR.

Source: 1974 Statistics of Income, Department of Treasury.

LARGE COMPANIES POSSESS AMPLE FUNDS

Mr. NELSON. Moreover, according to a study compiled by Compustat Services, Inc., a subsidiary of Standard and Poor's Corp., the Nation's biggest corporations right now are sitting atop a record $80 billion pile of ready cash. Those funds could finance a grand boom in capital

spending if all of it were to be spent at once. Instead, the money is being fed out slowly, the pace of business investment remains sluggish, and top corporate executives and a good many economists concede that tax measures aimed at generating more cash as a way to stimulate investment probably would not do the trick.

The richest industries include aerospace, oil service and supply, office equipment, and instruments, which together hold $13.4 billion in cash and equivalents—much of which could go into plant and equipment spending. For aerospace companies as a group, cash amounts to more than four times the sum spent in 1977 on fixed investment, as is far higher than the ratio of 0.67 times for all industries included in the survey. The electronics group's cash is 1.72 times greater than its 1977 spending. Liquidity is very good in that industry to judge from the measure of cash against long-term debt, which is 1.11 times versus the industry composite of 0.27.

SMALL FIRMS HAVE GREATEST CAPITAL FORMATION NEEDS

Clearly, the Nation's largest corporations have an abundance of cash. Business Week magazine said last October that U.S. capital markets have been virtually closed to all but our 1,000 largest corporations for some years. Small and medium-sized businesses must thus rely on internally generated funds.

Since big business already receives over 90 percent of the nearly $3 billion allocated for ADR in the Finance Committee bill, small business should also be afforded a simplified method of capital recovery which would provide a greater after tax rate of return on investment to facilitate capital formation.

Although this proposal is limited to the first $25,000 of annual investment, the Joint Committee estimates that over 80 percent of all business enterprises purchase less than $25,000 in machinery and equipment each year.

SHORTCOMINGS OF FINANCE COMMITTEE BILL

The Finance Committee failed to adopt special depreciation provisions for small business contained in the House bill which would have increased the maximum deduction for additional first year depreciation from the present $2,000 to $5,000. In so doing, the committee bill is presently devoid of any improvement in depreciation methods for small business.

Moreover, the general posture of the committee bill fails to achieve a proper balance between big and small business. In addition to an increase in depreciation deductions, the business tax reductions in the committee bill include an increase in the amount of tax liability that may be offset by the investment tax credit—90 percent above $25,000, compared to the present 50 percent—and substantial cuts in corporate tax rates. The committee bill distributes almost 90 percent of these tax savings to larger businesses at the expense of the small business community.

In 1983, when the Revenue Act of 1978 reported by the Finance Committee becomes fully effective, small and medium-sized businesses—with less than $100,000 in taxable income—will receive about 11 percent of the benefits, compared to 89 percent for the largest corporations which already possess most of the tax and economic advantages. The following table details the dollar amounts allocated to small and medium-sized businesses, and the percentage of the total dollar amount benefiting small businesses. I ask unanimous consent that the table be printed at this point in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

SMALL BUSINESS SHARE OF H.R. 13511

[When fully effective in calendar year 1983]

	Dollar amount (billions) to—		
	Small- and medium-sized business [1]	Big business [2]	Percentage of benefits to small business
Corporate rate reductions	$1.1	$6.2	15.5
Depreciation, 30-percent ADR	Negligible	2.8	
Investment credit, 90-percent offset	Negligible	.8	
Total	1.1	9.8	11.22

[1] Small- and medium-sized business (taxable income under $100,000).
[2] Big business (taxable income over $100,000).

Mr. NELSON. The 14 million enterprises in the Nation which are considered small businesses are entitled to a larger share of the bill's corporate tax reductions by virtue of their proven worth to the economy and society. These businesses account for 55 percent of the jobs in the private labor force—59 percent if farming is included—48 percent of the business output, and 43 percent of the gross national product and more than half of all inventions and innovations.

In order to achieve a proper balance on the business side of the tax cut, the 30 percent ADR variance allowed under the committee bill ought to be cut back to the present level of 20 percent.

In so doing, we will be able to include this simplified method of depreciation for small business within the budget limitation at a savings of some $194 million over the committee bill in fiscal year 1979.

EXPLANATION OF THE PROPOSAL

Mr. President, I ask unanimous consent that a 1-page explanation of this proposal be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NELSON ACCELERATED DEPRECIATION PROPOSAL

EXPLANATION OF SMALL BUSINESS DEPRECIATION PROPOSAL

This amendment would allow businesses of all sizes to use a 3-year straight-line depreciation method but only on the first $25,000 of machinery or equipment purchased each year. Above that level, depreciation would have to be computed under the present system. The provision would be optional.

RETENTION OF INVESTMENT TAX CREDIT

Under present law, a business receives a 10% investment tax credit for investment in assets with a useful life of 5 or 6 years and to one-third for assets with a useful life of 3 or 4 years. No credit is allowed for assets having a useful life of less than 3 years.

This proposal would permit a business to depreciate an asset in 3 years, regardless of its normal useful life. Assets with a useful life of 7 years or more would receive the full 10% investment tax credit. Assets with a useful life of 5 or 6 years would receive a two-third credit and assets with a useful life of 3 or 4 years would receive a one-third credit. Thus, the amount of the investment tax credit to which a business would otherwise be entitled would not be reduced because the business elected to use 3 year straight-line depreciation.

ESTIMATED REDUCTION IN TAX LIABILITY

[In millions of dollars]

	Revenue cost				
	1979	1980	1981	1982	1983
3-Yr Depreciation, $25,000 Ceiling, Without Sec. 179 Bonus Depreciation					
Fiscal year	37	421	1,438	2,373	2,377
Calendar year	178	1,017	2,090	2,508	2,178
Finance Committee Bill 30-Percent ADR Range					
Fiscal year	231	919	1,723	2,337	2,812
Calendar year	513	1,415	2,110	2,626	3,040

Mr. NELSON. Mr. President, I would like to point out that in the tax bill before the Senate, the one that came out of the Finance Committee, there is $9.8 billion of tax cuts for big businesses, and $1.1 billion in tax cuts for small businesses, with the small businesses representing 97 percent of all the businesses in this country, over 50 percent of the employment, and 40 percent of the gross national product.

AVAILABILITY TO UNINCORPORATED FIRMS

Mr. CURTIS. Will the Senator yield for a very brief question?

Mr. NELSON. Yes, I yield to the Senator from Nebraska for a question.

Mr. CURTIS. Does the amendment affect individuals? I am talking about the unincorporated businesses.

Mr. NELSON. All businesses.

Mr. CURTIS. It is not just the smaller corporations?

Mr. NELSON. No. It would be available for any business.

Mr. CURTIS. It would allow for an individual to depreciate in 3 years?

Mr. NELSON. That is correct. Any business, whether it is an unincorporated business, would have the benefit of the option of using a 3-year straight line depreciation on the first $25,000 of any capital investment in any single year. That means that 80 percent of all the benefits of this proposal would go to what are defined by the Small Business Administration as "small businesses."

REVENUE EFFECTS

As to the cost, the first year cost of this proposal is $37 million. The first year cost of the Finance Committee proposal is $231 million. The out-year cost in 1983 of this proposal is $2.377 billion; the fiscal out-year cost, 1983, is $2,800 billion with the Finance Committee bill. However, the cost of this proposal begins

to go down in 1983; the cost of the Finance Committee proposal is not projected beyond 1983 but it is still going up in 1983 over 1982. However, these are only the first-order effects. As the distinguished chairman of the Finance Committee has been pointing out, the additional investment and jobs generated by new investment will bring additional profits and therefore substantial additional revenues to the Treasury.

It seems to me that it is long overdue that we provide some simplification of tax reporting for small business. It is long overdue that we give some opportunity for capital accumulation for small business, which are the ones which are suffering the most in this economy.

I would like to point out that in Business Week magazine of September 1978, just a month ago, the opening paragraph in an article entitled "Corporate Cash Scoreboard," reads:

> The Nation's biggest corporations are sitting atop a record $80 billion pile of ready cash that could finance a grand boom in capital spending if all of it were to be spent at once. Instead, the money is being fed out slowly, the pace of business investment remains sluggish, and top corporate executives and a good many economists concede that tax measures aimed at generating more cash as a way to stimulate investment probably would not do the trick.

Well, small businesses are not sitting on top of an $80 billion capital surplus available for capital investment. I think it is time that we paid some attention to those businesses who are at the competitive edge of the free enterprise capitalist system. They will produce enormous benefits for the economy if given an opportunity to accumulate capital and grow.

Mr. President, I know the Senator from Texas has a later commitment. I yield the floor at this moment to allow the Senator from Texas to proceed.

(Mr. PAUL G. HATFIELD assumed the chair.)

Mr. BENTSEN. I thank the distinguished Senator from Wisconsin.

Mr. President, this amendment was considered at length in the Finance Committee. It was thoroughly studied. It was rejected by a very substantial majority, a bipartisan majority.

Let me further state that Treasury opposes this amendment.

Let me say one thing more: If we really want to set up some tax shelters, this is the way to do it, because what we are saying is that on $25,000 of new equipment they can write it off in 3 years. Who do you think is going to do that? You watch the wealthy doctors and the wealthy lawyers line up to buy that equipment, $25,000 worth. Let them take their $8,000 a year for 3 years. In the meantime, let them rent it out to small business. So they are the ones who will have the advantage of it.

Then watch Treasury come back in here next year asking us to correct this kind of abuse.

My friend from Wisconsin says there was just $1.1 billion for small business. We have a difference in the numbers. I have been advised it is $1.75 billion that is in the graduated corporate tax cut, of which a very major portion of that alone goes to small business. That was a major concession to small business that I supported and the members of that committee supported, to put in a real graduation in tax up to $100,000 for small business.

What else did we do? We said that if you have a loss on the stock of a small business, we shall give you a special concession.

We put in a deal there for subchapter S to try to assist them, to add more members of the family so they would be considered as one in a subchapter S situation, to assist small business.

Now, in the ADR provision that this would replace, we changed the ADR, because he is right; small business has not really been utilizing ADR. We said, we shall do away with the complicated Government form. It is very difficult for small business to fill out and comply with. We struck that.

What is the basic problem we are trying to get to in this country? It is the loss in productivity. What is one of the major contributions today to inflation? Loss in productivity in this country.

How do we stack up with the rest of the nations of the world on productivity? We had a less than 1-percent increase in 1978. The Japanese are absolutely putting us in the shade.

What is the country that is just above us in its increase in productivity? England. How do you like that one? Greater productivity than the United States this year. We are facing what England faced in the early 1970's. When Denis Healey, Chancellor of the Exchequer, came in, he began to try to change some of those things around, to modernize the productivity, the manufacturing capacity of England. And they are beginning to make a little headway, but it is a long-term effort.

What is our balance of trade? Some months approaching $3 billion. What is the comparison with Japan, who is doing so much more in productivity? Last year, our deficit with Japan was between $8 and $9 billion and the Japanese told us at the beginning of the year, "Don't worry about that, it is going to go down."

Did it go down? No; this year, it will be between $13 and $14 billion.

No one questions the quality of their products any more; fine workmanship. But they have modernized all their manufacturing capacity and we have not done it in this country.

Some of my friends in business circles say, "You know, Senator, really, what we really want is a corporate tax cut."

I understand that. That gives them more options. That means they can take that money and go out and buy another company or they can increase their dividends, or maybe buy some new machinery. But we are not going to increase productivity in this country until we modernize manufacturing capacity.

This is what is necessary to stop this depreciation of the dollar, the situation where we see the yen as a solid currency and the dollar something we are apologizing for today; to see the mark a stable currency and a balance of trade that is a deficit with the Germans.

One of the problems is that all of our factories were not bombed out. We kept them and a lot of them are old, antiquated. They talk about our being at 85 percent of productive capacity in this country. What do you think the other 15 percent is? That is the oldest, that is the least efficient, that is the most antiquated and the least competitive in the world.

Accelerated depreciation helps provide the cash flow to make those major investments to turn productivity around in this country—and we have no more serious problem facing this Nation.

No, mine is not the popular vote, but it is right for our country. It deals with a very substantive issue: How we become competitive in the world, stabilize the dollar, take care of the balance of trade. This is a step in that direction.

I strongly urge the Senate to support the Finance Committee's position, that of Bill Miller, head of the Federal Reserve, who testified before us, saying that this is the greatest correlative effect you can get in trying to help productivity.

Leading economists of the Brookings Institution, of Harvard, of Wharton, say this is a real payoff in trying to increase productivity in this country and trying to fight inflation. I hope that the Senate will reject the amendment.

TREASURY DEPARTMENT POSITION

Mr. NELSON. Mr. President, first, let me say that the distinguished Senator from Texas stated in his opening paragraph that Treasury opposes the 3-year straightline depreciation. That is correct. They also oppose Senator BENTSEN's proposal which was adopted by the Finance Committee. So they oppose them both.

The distinguished Senator talks about capital accumulation. Of course, that is important. Those who cannot get capital are small businesses in this country? Does General Motors have any capital accumulation problem? Most of their funds are generated internally. Does A.T. & T. have a big problem of capital accumulation? They have raised nearly a billion dollars through dividend reinvestment.

The Senator from Texas says that this is a substantive issue. I agree. It may very well be, as some of the witnesses before the Finance Committee said, that we ought to abolish the corporation taxes and we ought to do all kinds of other things to allow businesses to accumulate capital, for at least those that cannot raise funds. That is a substantive issue, but is it not a substantive issue to create a favorable climate for small and independent businesses to start and thrive and grow in this country?

USE OF ADR SYSTEM

What is happening is that they cannot get any capital at all. We are not talking about laundromats. Let us see what corporations take advantage of the ADR. This addition to the ADR will cost $3 billion—this addition. Seven-tenths of 1 percent of all the corporations in America take advantage of the ADR. Not 1 percent; seven-tenths of 1 percent.

What about those innovative corporations worth $1 million, or $5 million, that are now being bought up by Japa-

nese and German firms, because they cannot get any capital in this country? Well, those corporations with assets worth $500,000 to $1 million—2 percent of them use the ADR. Those with capital assets of $1 million to $5 million, of which there are 42,000 in America—42,000 corporations who want the chance to grow and compete and will grow and compete and do a better job than the big ones because they are run by the people who own them and live and have watched over their growth; 42,000 of those; and only 5 percent use the ADR.

Then move to those corporations of $5 million to $10 million; 5,000 of those corporations are in this country, only 665 out of the 5,000 use the ADR.

But let us look at General Motors and those corporations of over $1 billion. There are 166 corporations of over $1 billion value in this country; 152 use the ADR, 94 percent.

Those of $600 million to $1 billion, 88 corporations like that, 80 of them use the ADR, 91 percent.

I am not saying it may not be important to do more about capital accumulation than we are doing. But, do we need to do it for those largest of corporations?

In the face of Business Week's publication 30 days ago, and nobody questions their credentials as spokespeople for the business community of this country when they say that a good many economists, top corporate executives and economists. I will ask that the article and accompanying materials be reprinted at the conclusion of my statement.

OVERALL DISTRIBUTION OF TAX SAVINGS FOR BUSINESS IN THE BILL

We are dealing with a situation in which there is $21 billion of tax cuts. We are trying to make some distribution that is equitable. It might be good if we abolish corporation taxes at a cost of a good many more billions of dollars than this bill would allow. But that is not our option.

Our option is to decide what we do about individual tax cuts. What do we do about business and corporation tax cuts, and the large corporations, considering this package, are getting $9.5 billion of the tax cuts, and at the outside, depending on whose statistics we use, the small businesses, representing 97 percent of the businesses in this country, are getting just over $1 billion. It may be more or less but around that.

So all I am saying is that in designing the legislation, given the constraints under which we must operate here, we ought to give more of the depreciation money to the small businesses who are having a very difficult time in the environment which has been created and developed in this country since the Second World War. That involves these 14 million businesses and small corporations, small businesses, which are the heart and soul of the competitive free enterprise system.

We all want this system to flourish and grow. It must be nourished from the roots. This is a modest lift for the small and new enterprise. It is much more important to them than this additional increase in the ADR from 20 to 30 percent, is to General Motors or any of the $1 billion, $600 million, or $100 million corporations.

So let us give a boost to the small business community, to the seed bed where the small businesses start, and from which they flower into middle-sized and big businesses.

That is what this amendment is all about.

The NFIB—National Federation of Independent Businessmen—plus a whole group of other organizations I have listed here commented on this.

Just let me read this. The National Federation of Independent Businessmen is the biggest group of businessmen in America, over half a million members. Here is what they say:

This proposal would solve both small business problems explained above. It would reduce the gap in the rate at which large and small firms can recover invested capital and it would be a massive simplification of the depreciation section of the code. Remember, this change would not be restricted only to small firms. Any business can use it for its first $25,000 in purchases.

Let me skip a little forward in the statement here, which says:

Small businesses, and even some medium size ones, do not use ADR. It is simply too complicated to use without expert assistance. To illustrate: 63 percent of the firms with over one billion dollars in assets used ADR, while only five-tenths of one percent of those with under one million dollars in assets use it. Since ADR allows firms to recover invested capital 20 percent faster than other methods of depreciation, it gives large businesses that can afford expensive expert assistance a big advantage. The Finance Committee proposal would aggravate the situation by increasing the gap in the difference in the recovery rate to 30 percent.

Mr. President, I ask unanimous consent to have some of these materials, plus a statement and some other materials, printed in the RECORD at the close of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 1.]

EXHIBIT 1

MONEY IS THERE FOR THE CAPITAL SPENDING

The nation's biggest corporations are sitting atop a record $80 billion pile of ready cash that could finance a grand boom in capital spending if all of it were to be spent at once. Instead, the money is being fed out slowly, the pace of business investment remains sluggish, and top corporate executives and a good many economists concede that tax measures aimed at generating more cash as a way to stimulate investment probably would not do the trick.

The slow pace of business investment and the buildup of cash in the hands of business both stem from a profound lack of business confidence in the national and international outlook—a desire to husband resources rather than commit them in a climate that many managers fear will soon turn harsh. Inflation, uncertainty over Carter Administration policies in such areas as energy and taxes, and concern over the fundamental health of key foreign economies make it nearly impossible for corporations to estimate whether a major investment will produce a desired rate of return over the long haul. Paul W. McCracken, professor of business administration at the University of Michigan and former chief economic adviser in the Nixon Administration, notes that in this environment businessmen simply opt "not to go ahead with long-term commitments that would use up cash."

Sitting. Instead, the relatively high rates of return available on cash invested in such short-term financial instruments as supersafe Treasury bills, certificates of deposit, and commercial paper, coupled with all the uncertainties about investments in plant and equipment, make it all the more attractive to sit on money instead of spending it. Carter Administration officials may argue that such cash-producing devices as a permanent 10 percent investment tax credit would stimulate investment, but the reality is that record corporate earnings have so far merely added to corporate cash without firing the long-overdue spending boom. When corporations do spend today, it frequently is to retire debt, buy back outstanding shares, or make acquisitions for cash. But the results of a protracted slackening are aging and obsolete physical plant and economic growth stunted by lack of innovation. McCracken frets that "it's becoming increasingly clear that there's a fundamental problem with the U.S. economy." Above all, he says, "What we need is more steadiness and certainty about policy."

Business Week's first Corporate Cash Scoreboard lays out just how much cash is currently in the hands of the 545 biggest industrial and transportation companies and utilities—those with at least $500 million in 1977 sales. The tables, compiled by Compustat Services Inc., a Denver-based subsidiary of Standard & Poor's Corp., show corporate cash and how it has grown over the past year and the past five years. The cash data are as of Mar. 31, 1978—the latest date for which complete information is available. In addition to total cash, the tables relate cash to a variety of important corporate measures, such as long-term debt, total plant and equipment, sales, and, most important, capital spending. The survey reveals many businesses with deep pockets of spendable capital as of Mar. 31.

Liquidity. The tables show that the richest industries include aerospace, oil service and supply, office equipment, and instruments, which together hold $13.4 billion in cash and equivalents—much of which could go into plant and equipment spending. For aerospace companies as a group, cash amounts to more than four times the sum spent in 1977 on fixed investment, and is far higher than the ratio of 0.67 times for all industries included in the survey. The electronics group's cash is 1.72 times greater than its 1977 spending. Liquidity is very good in that industry to judge from the measure of cash against long-term debt, which is 1.11 times, vs. the industry composite of 0.27.

Conversely, cash accumulation in the beverage and personal products industries has been relatively modest. Consumers have been relatively modest. Consumers have been on a buying binge and these industries have been spending heavily to keep up with high demand.

Sinking spending rates. Although business spending on plant and equipment did pick up in the first half of this year—up 7% over the first half of 1977 after inflation is factored in—it still was far from robust and is, in fact, lower than it has been in past recovery periods. Further, a number of economists and corporate executives now fear a slowdown in what little growth there is. Reginald H. Jones, chairman of General Electric Co., warned the Senate Finance Committee on Aug. 24 that GE economists foresee real growth in spending sinking to only 2% per year in 1979 and 1980. Testifying as chairman of the Business Roundtable's task force on taxation, Jones urged Congress to act fast on a tax program that includes making the 10% investment tax credit permanent, and further acceleration of depreciation, to help jog spending loose.

The argument in favor of the tax credit is

that it will help step up spending because it essentially reduces the amount of a company's own money required in a project. Making it a permanent feature would simply give corporations a bit of desperately needed certainty about government policy. Accelerated depreciation hastens the payback period on an investment, and should further make investment attractive in an uncertain economic climate.

Yet while every corporate treasurer applauds tax relief measures, Albert M. Wojnilower, economist at First Boston Corp., cautions against counting on them too heavily to solve the sluggish spending problem. A tax credit might bolster a company's rate of return on an investment a bit, but not enough to send corporations panting after brand-new investment opportunities. However, Wojnilower does point out that once capital spending is under way, such tax benefits would tend to motivate companies to spend more.

Ebb and flow. Corporations started saving cash at a great rate in 1975 in the wake of the preceding year's credit crunch, when many of them were forced to scurry around for high-priced external funds. Those sums were plumped up with borrowings in 1975–76, as interest rates fell. Allen Sinai, economist with Data Resources Inc., says that "the corporate sector was probably in the midst of the biggest capital rebuilding period since the 1930s." And of course, the recent 10% to 15% growth per year in corporate profits, plus proceeds from wholesale corporate divestitures of divisions and product lines, added even more. Last year cash accumulation slowed down as corporations paid off debt, bought in stock, and made a record number of acquisitions. This year's pileup is still slower, as corporations dig into reserves to make up for weak first-quarter earnings and start to do some investing. But there is a record amount of cash still left in the till at most big U.S. corporations.

Even if companies were running low on cash, external financing is still readily available. The big money center banks remain very liquid and so does the commercial paper market, where these cash-rich companies are parking a lot of excess cash. Institutional lenders say they will have $20 billion to $25 billion in long-term money available to lend next year.

There appears, therefore, to be potential enough for a veritable boom in capital spending. Indeed, the potential is so large that First Boston's Wojnilower says, "It's alarming, because to me the great danger is one of a runaway boom and inflation." He adds: "Some of this iceberg is going to move, and when it moves, it's going to creat some big waves."

Loosening up. Some cash is already starting to move. Some companies have piled up cash because they do intend to do a lot of big spending. Ford Motor Co., for example, is swinging into a $15 billion five-year spending program, and Boeing Co. is beginning to build a whole new fleet of 757s that eventually will eat up billions. And Mobil Corp. says that in common with other oil companies, it is running down its cash reserves in a search for new energy sources.

One big Midwestern corporation with $300 million in excess cash has begun to tire of holding quantities of low-yielding securities, which has damped its overall rate of return, and has begun to spend on activities it had turned down in the past. "To use up the cash," says this corporation's treasurer, it has lowered its rate-of-return standard below its traditional 20% cutoff in order to pursue investment opportunities that were once rejected "because the alternative is a money market instrument" yielding about 8%. Further, the company has been extending more credit to its customers as a means of jacking up sales, as well as making a higher return on its extra cash.

Some cash-rich companies have peculiar problems that hamper their ability to spend. The business investments of giant International Business Machines Corp., which has about $5 billion in cash, are restricted by antitrust considerations. That company has so far confined its investments largely to government securities. Westinghouse Electric Corp. is hanging on too much of its $671 million in anticipation of settling $2 billion worth of uranium contract disputes.

Still, there are plenty of other corporations that continue to hoard their cash for reasons that include insecurity about government policies, fears of recession, and lack of enthusiasm over rates of return. Further, notes Dale W. Jorgenson, professor of economics at Harvard University, "fear of a credit crunch in the very near future is making companies leery of spending." Corporate executives also point out that inflation has doubled and tripled the cost of building new plants and replacing equipment, forcing them to save more to pay for it. Finally, treasurers note that they need more cash on hand simply to fund inflation day-to-day operating expenses.

Thin reward. Many corporations complain that it is just plain tougher to find investment opportunities with sufficient returns to justify the risk of investing. GE's Jones noted in his Senate testimony that real aftertax return on investment for nonfinancial companies, deflated for "phantom" inventory profits and underdepreciation, fell to a measly 4% in 1977 from 9.9% in the 1965 high-investment period. Money must be spent on pollution-control equipment, but it does not add to productive capacity and hence drags down the overall return on investment for a plant. Further, it is money spent on which there is no return. "It makes the whole plant more expensive and causes the rate of return to be lower," says Kevin J. Hurley, director of financial forecasting for Chase Econometric Associates Inc. If the government would ease up on those requirements, "it may generate more spending than just making more money available." Hurley suggests that the government should at least allow corporations to write off the full cost of pollution control equipment in the year in which the money is spent. In addition, productivity gains have slumped to an annual rate of less than 1% this year, from 2.6% per year in the 1960s, says Jones, all of which makes for an unattractive investment climate.

For these reasons, Dart Industries Inc. is still in no hurry to unload its $265.6 million in cash, although Thomas Mullen, treasurer, figures he need only $75 million to run the $1.6 billion diversified manufacturer. Bounding profits and proceeds from selling off several businesses have fattened the pot, as did borrowings in late 1975. Meanwhile, Dart has chopped capital spending from $120.6 million in 1976 to $95 million in 1977 and 1978. Dart's excess cash is currently parked in short-term investments yielding 8%, compared with the 15% aftertax return Mullen expects from investments in operations. "We'd rather have our funds invested more productively, in successful businesses," Mullen concedes, but he adds that they are hard to come by. "We'd like to spend it soon, but we feel it is more important to spend it well." Mullen feels corporate tax cuts and credits will shake loose some spending, since they will move him closer to his target of a 15% rate of return.

"Strong cash position." Fears of inflation and illiquidity are prompting Honeywell Inc. to hang onto its cash. The company stepped up its capital spending program this year, but its cash assets of $240 million still represent 10% of total assets—twice what Louis E. Navin, chief financial officer, says has traditionally been necessary to run the business. In addition, Honeywell has an unused line of credit for $500 million at a bank. "We feel we simply have to have a strong cash position," he explains. "Inflation is running at 10%, which is 2% to 3% above what we'd pegged it at. You can run into an extremely tough corporate liquidity position pretty fast."

Some companies are not spending because they believe they do not need the extra capacity. Cash at Hercules Inc., for instance, has been growing and now amounts to 140 percent of the company's needs, says William Bewley, corporate economist. Bewley notes that Hercules is operating at only 78 percent of capacity. After suffering through years of notorious overcapacity, Hercules, like other chemical companies, is not about to add more plant until the company is sure demand for its products will be there. Meantime, Hercules is using its cash to pay down some debt and buy back stock.

Acquisitions. Some companies simply avoid the uncertain returns of brand-new investment and are instead acquiring going concerns whose track records are known. To be sure, such spending amounts to a transfer of ownership rather than capital expansion. Borg-Warner Corp. sat around with $90 million until last December, when it spent its wad on Baker Industries Inc., a maker of armored trucks. Borg-Warner Treasurer William M. Valiant notes that his company's capital spending was below budget last year because of management's unwillingness to let go of cash. "Most major decision makers in the U.S. had just gone through the only deep recession in their business careers," he says, "and they were very cautious about spending. When you've just come back from the fire, you don't jump back into it with both feet."

Bendix Corp., whose former chief executive, W. Michael Blumenthal, now heads the Treasury Dept., had cautiously accumulated $100 million in cash. "We didn't run out and spend it until we were sure of predictability," says F. Joseph Svec, senior vice-president and chief financial officer. Finally, last April, Bendix simply bought 3.8 million shares of Asarco Inc., the mining company.

Government action. Borg-Warner's Valiant suggests that the secret to improved capital spending is renewed confidence. "Investment tax credits are helpful," he says. "But what most businessmen really want is some measure of certainty [of what the government is going to do]. What makes it difficult to make long-range investment is that you are worried about some impending government action that could change the prospects for that investment overnight," he says.

Apprehension about another business downturn has held up needed expansion for EG&G Inc., a Boston-based electronics company. EG&G's net profits have climbed 25 percent annually over the past six years, and cash flow has been quite good. Yet, when the head of EG&G's office equipment subsidiary appealed to Treasurer Eugene J. White for another plant to relieve capacity constraints, he was put off. "All we have to do is add a plant and then have the business cycle spin off and we're stuck," says White. Instead, White is investigating other options, such as leasing the necessary equipment from others.

Even such heavy spenders as Ford and TRW Inc. are admittedly more conservative about their cash than they were in earlier recovery periods. John Sagan, Ford's treasurer, observes that Ford built up an unusually high amount of cash as "insurance" against having to scramble for last-minute external financing. And he plans to keep some extra cash on hand throughout the five-year spending program to cushion his company against a bad year or two in corporate earnings.

And Charles R. Allen, TRW's chief financial officer, plans to withhold about $50 million in cash from the spending stream, too, partly to be able to seize on investment opportunities quickly. But, wincing at memories of the last credit crunch, he notes that the sum is also "for comfort."

CORPORATE CASH SCOREBOARD

Company	Total assets, 3/31/78 (millions)	Cash: Total, 3/31/78 (millions)	Cash: Percent change: From 1977	Cash: Percent change: 12/31/73 to 3/31/78	Ratio of cash to—: Current assets: 3/31/78	Current assets: Percent change: From 1977	Current assets: Percent change: 12/31/73 to 3/31/78	Ratio of cash to—: Long-term debt, 3/31/78	Ratio of cash to—: Property, plant, and equipment 3/31/78	Capital spending: 1977	Capital spending: Percent change: 1976–77	Capital spending: Percent change: 1973–77	Sales 3/31/78 (millions)	Cash turnover 3/31/78 (days)
AEROSPACE (Airframes, general aircraft and parts)														
Boeing	$2,626.6	$1,072.3	84.0	1,981.3	0.55	34.8	1,022.6	10.25	2.65	8.15	42.2	471.8	$4,283.3	69.6
Cessna Aircraft [3]	480.2	15.2	192.3	−24.7	.05	122.9	−61.7	NA	.22	.52	−50.7	−58.5	652.0	5.6
Grumman	639.2	37.7	41.7	−13.9	.08	35.6	−56.4	.31	.26	1.37	−.4	−49.6	1,599.6	7.2
Lockheed	1,537.7	137.3	−34.2	80.4	.17	−32.6	240.4	.29	.54	4.26	−20.7	248.6	3,245.4	19.2
McDonnell Douglas	2,657.4	487.7	414.5	6,892.2	.23	315.1	5,133.4	6.22	1.89	3.40	269.0	1,530.3	3,772.3	27.8
Northrop	845.7	355.5	155.6	2,359.6	.55	60.2	887.0	6.23	2.45	7.98	110.6	600.1	1,663.4	53.5
Rockwell International [3]	3,530.7	489.0	57.9	347.6	.20	28.1	119.9	1.04	.56	2.44	185.3	243.1	5,836.6	24.6
United Technologies	3,008.0	531.1	39.1	556.3	.25	20.5	169.9	1.96	.74	3.98	52.8	129.9	5,662.9	29.0
Industry composite	[1] 15,325.0	3,125.8	78.7	675.2	.28	46.1	392.5	1.99	1.09	4.25	60.3	297.6	26,715.4	32.8
AIRLINES														
Allegheny Airlines	306.4	36.9	30.0	21.1	.33	20.4	−6.3	.29	.25	2.75	65.4	−38.4	507.3	23.2
American Airlines	2,538.4	447.6	20.9	500.1	.49	2.4	165.0	.45	.30	1.79	−55.1	4.0	2,397.5	61.4
Braniff International	671.1	30.8	29.5	37.5	.22	5.1	1.4	.11	.06	.37	22.7	134.5	827.4	11.9
Continental Air Lines	669.4	30.6	0	−19.3	.22	0	−41.6	.13	.06	.92	−54.7	232.5	689.2	16.0
Delta Air Lines [6]	1,594.5	107.5	122.0	11.1	.36	58.8	−39.0	.53	.08	.21	−43.5	−71.7	1,948.8	14.4
Eastern Air Lines	1,706.1	103.6	−26.1	15.0	.27	−23.4	−9.8	.12	.08	.74	−50.8	160.9	2,099.2	20.9
National Airlines	448.3	12.3	−26.4	−39.4	.15	−33.4	−33.1	.20	.04	1.83	−32.6	1,084.8	566.0	9.2
Northwest Airlines	1,344.1	111.8	334.5	195.6	.43	167.7	33.1	1.12	.10	.65	431.4	373.7	1,083.4	22.8
Pan American World Airways	1,921.7	178.0	43.2	59.4	.34	26.2	19.0	.17	.15	.67	−69.8	−42.1	1,955.9	27.8
Tiger International	1,489.4	76.3	83.9	19.0	.38	30.6	14.9	.08	.07	.38	−48.5	−36.2	552.4	38.4
Trans World Airlines	2,245.6	123.9	44.1	27.4	.20	26.1	−7.0	.12	.08	1.59	−24.0	272.2	3,468.0	10.9
UAL	3,398.9	529.0	−.5	124.7	.45	−8.4	15.8	.42	.25	3.01	−53.5	63.1	3,377.1	56.5
Western Air Lines	488.2	29.7	−35.5	−37.7	.25	−33.1	−47.1	.29	.08	.66	−37.0	3.1	718.9	19.0
Industry composite	18,821.8	1,818.1	20.1	88.1	.37	4.6	16.0	.25	.14	1.10	−34.7	106.3	20,191.2	29.7
APPLIANCES														
Hoover	423.2	35.6	49.4	−65.2	.12	53.0	65.1	3.64	.33	3.00	−59.9	−27.0	590.3	32.3
Singer	1,496.8	77.3	−21.7	15.9	.08	17.2	41.0	.22	.28	1.75	−24.8	219.4	2,321.2	13.7
Sunbeam [9]	750.6	25.8	−22.2	13.1	.05	−32.4	−21.0	.19	.19	.61	−42.8	−45.0	1,178.3	9.0
Whirlpool	913.3	188.3	158.3	1,043.8	.31	141.0	872.5	2.18	.83	3.44	35.1	1,279.1	1,929.1	24.4
White Consolidated Industries	1,011.2	14.7	53.8	−47.9	.02	25.7	−69.7	.05	.05	.37	−58.7	−67.5	1,451.7	3.0
Zenith Radio	474.9	7.5	−74.0	−66.8	.02	−72.0	−63.1	.14	.06	1.21	−18.0	152.1	948.1	6.9
Industry composite	5,070.0	349.2	11.3	34.8	.10	5.7	23.4	.37	.30	1.69	−19.4	99.2	8,418.6	14.2
AUTOMOTIVE (Autos, trucks, equipment and parts)														
American Motors [3]	934.9	49.5	71.9	−54.8	.08	70.1	−66.4	.62	.22	1.28	−25.5	−70.8	2,344.5	6.0
Bendix [3]	1,942.5	33.5	−32.6	−24.4	.03	−37.7	−46.1	.13	.06	.61	−30.0	18.8	3,420.9	4.4
Chrysler	7,878.7	255.5	−46.7	−54.6	.06	−49.6	−66.2	.19	.15	1.06	−57.9	−37.8	16,708.9	7.9
Cummins Engine	874.2	38.4	−23.9	154.9	.07	−35.3	43.1	.27	.13	.65	−48.3	121.6	1,312.0	12.2
Dana [4]	1,233.0	60.3	33.7	802.6	.08	4.8	305.5	.31	.17	1.17	−28.6	978.3	2,022.0	9.4
Eaton	1,609.9	115.9	−9.2	90.9	.11	−16.6	29.5	.32	.23	1.70	−12.1	124.1	2,200.0	19.9
Ford Motor	20,276.4	3,328.7	42.6	207.6	.29	17.0	63.0	2.45	.65	3.09	2.5	155.0	38,597.0	26.4
Fruehauf	1,281.9	39.7	15.2	39.4	.06	−6.5	−5.2	.11	.07	1.09	66.4	419.9	1,855.3	7.2
General Motors	28,577.5	3,603.6	−26.4	18.3	.21	−27.2	−17.9	3.50	.48	1.73	−62.6	−33.9	56,275.6	27.2
International Harvester [7]	4,245.0	5.9	−79.0	−91.9	0	−81.5	−94.3	.01	.01	.11	−59.1	−83.6	6,096.4	1.9
PACCAR	550.6	13.0	NA	107.8	.03	NA	26.1	.65	.15	.60	26.2	166.2	1,454.5	NA
Sheller-Globe [3]	289.6	6.1	48.1	6.8	.03	51.6	53.9	.08	.08	.05	97.6	92.7	566.3	5.7
Smith (A.O.)	364.0	9.3	47.8	12.3	.05	45.4	17.5	.20	.07	.67	73.8	53.1	735.6	6.6
Timken	806.1	103.6	8.4	56.7	.24	3.4	2.0	3.30	.29	1.11	1.1	36.2	996.6	36.0
TRW	2,143.7	153.0	22.9	332.4	.12	6.2	167.1	.37	.25	1.26	29.4	264.0	3,357.4	14.9
White Motor	615.0	29.6	13.2	93.3	.07	33.0	104.1	.16	.28	2.50	7.4	274.3	1,213.5	8.3
Industry composite	73,622.6	7,845.5	−6.0	51.8	.18	−14.4	−1.2	1.15	.41	1.83	−40.2	12.0	139,156.3	20.9
BEVERAGES (Brewers, distillers, soft drinks)														
Anheuser-Busch	1,433.3	95.0	−.5	58.1	.24	−6.8	−30.7	.28	.10	.98	44.2	49.7	1,920.9	17.8
Coca-Cola	2,321.0	331.7	6.9	8.6	.29	−2.1	−31.1	NA	.37	1.33	−32.9	−47.1	3,680.8	31.4
Heublein [6]	865.9	54.7	115.0	129.0	.11	115.3	27.6	.27	.19	.60	44.0	−7.7	1,178.0	12.3
Pabst Brewing	384.5	8.2	−83.0	−89.2	.07	−78.8	−88.5	.43	.03	.55	−64.8	−82.6	637.0	15.9
Pepsi Co.	2,098.0	207.3	−18.9	70.1	.21	−25.9	−11.5	.48	.24	.88	−44.4	−24.4	3,686.0	22.6
Schlitz (Joseph) Brewing	741.8	14.0	16.3	−75.9	.09	16.0	−77.6	.07	.03	.62	133.1	−31.7	916.0	5.1
Industry composite	7,844.5	710.9	−4.8	10.2	.22	−10.1	−34.6	.61	.18	.98	−15.1	−32.9	12,018.6	21.8
BUILDING MATERIALS (Cement, wood, paint, heating and plumbing, roofing, etc.)														
Boise Cascade	1,831.8	34.5	−61.2	−81.5	.05	−60.4	−84.8	.08	.03	.34	−14.2	−87.5	2,380.9	9.3
Certain Teed	626.5	43.7	1,007.1	152.4	.15	734.8	39.9	.33	.15	.99	73.8	238.8	851.8	10.1
Champion International	2,499.9	90.8	36.4	78.8	.11	41.9	44.4	.13	.06	.47	−38.5	46.0	3,173.1	8.9
Evans Products	588.5	15.2	6.3	−47.2	.05	−14.7	−28.6	.09	.09	.82	−47.0	39.1	966.2	5.5
Flintkote	492.8	1.4	−31.0	−72.0	.01	−38.6	−81.1	.01	.01	.11	−76.1	16.7	612.2	1.0
GAF	770.5	18.6	−17.4	32.6	.04	−11.7	2.4	.10	.07	.38	−2.3	−30.4	969.5	7.6
Georgia-Pacific	3,060.0	15.0	−31.5	−74.5	.02	−35.6	−83.3	.02	.01	.02	−72.1	−86.3	3,782.4	1.8
Jim Walter [4]	1,643.4	48.1	6.5	−29.9	.05	−6.5	−52.4	.09	.08	.55	−21.9	−26.6	1,565.3	10.7
Johns-Manville	1,345.3	104.5	77.6	405.2	.18	55.2	179.5	.51	.16	1.65	32.0	745.5	1,492.6	19.7
Lone Star Industries	687.4	16.5	−48.8	66.9	.06	−50.8	18.6	.09	.04	.52	−14.8	97.3	877.4	10.0
Louisiana Pacific	877.2	7.6	−55.3	−74.1	.04	−56.7	−83.7	.04	.02	.09	−14.3	−65.8	826.3	5.4
National Gypsum	635.9	80.2	164.2	88.9	.24	106.9	16.6	.53	.28	1.22	−42.5	11.2	783.5	25.4
Owens-Corning Fiberglas	1,071.3	119.0	−29.6	138.3	.24	−38.9	10.3	.80	.23	.67	−82.4	−8.6	1,598.5	32.4
Sherwin-Williams	651.4	7.1	−32.8	−57.4	.02	−32.1	−71.5	.04	.04	.07	−68.0	93.3	1,048.6	3.1
Southwest Forest Industries	393.2	19.1	163.3	36.3	.13	201.7	16.4	.12	.09	1.41	59.3	178.1	601.7	7.9
U.S. Gypsum	908.8	46.8	267.2	8.6	.13	205.5	−18.0	.35	.10	.88	28.9	20.0	1,241.4	8.6
Weyerhaeuser	4,281.3	210.6	3.6	753.1	.21	−2.6	297.7	.15	.07	.45	−24.0	385.0	3,347.4	22.3
Williamette Industries	530.2	17.2	229.8	8.0	.12	150.6	−48.0	.13	.05	.08	−40.5	82.5	682.9	5.9
Industry composite	22,895.3	896.0	10.4	28.6	.10	2.5	−12.8	.15	.07	.44	−22.2	1.8	26,801.7	11.5

CORPORATE CASH SCOREBOARD—Continued

Company	Total assets, 3/31/78 (millions)	Cash: Total, 3/31/78 (millions)	Cash: Percent change From 1977	Cash: Percent change 12/31/73 to 3/31/78	Ratio of cash to— Current assets 3/31/78	Current assets: Percent change From 1977	Current assets: Percent change 12/31/73 to 3/31/78	Long-term debt, 3/31/78	Property, plant, and equipment 3/31/78	Capital spending 1977	Capital spending: Percent change 1976–77	Capital spending: Percent change 1973–77	Sales 3/31/78 (millions)	Cash turnover 3/31/78 (days)
CHEMICALS														
Air Products & Chemicals [3]	1,097.4	47.9	57.2	264.6	.14	37.5	55.6	.22	.07	.39	124.5	90.5	988.4	14.3
Akzona	664.6	11.1	36.4	−32.2	.04	35.6	−45.5	.06	.03	.27	−21.3	−31.2	829.3	4.2
Allied Chemical	2,929.4	51.8	−27.5	−58.8	.07	−33.1	−66.9	.06	.03	.09	−43.0	−86.5	3,015.4	7.4
American Cyanamid	2,308.8	97.1	−18.5	−43.7	.09	−29.3	−64.4	.23	.09	.47	−26.8	−77.2	2,498.4	15.6
Cabot [3]	591.0	55.5	19.2	66.3	.19	−19.9	−4.1	.44	.20	1.33	141.3	257.8	597.6	37.4
Celanese	2,130.0	197.0	39.7	23.1	.22	18.8	12.4	.34	.18	.50	−17.1	−50.1	2,381.0	25.6
Diamond Shamrock	1,854.4	28.9	−7.3	83.5	.06	−19.0	−9.6	.05	.02	.10	−5.8	−34.9	1,578.7	6.8
Dow Chemical	8,018.0	203.1	65.7	−36.1	.07	49.0	−64.5	.07	.05	.12	4.4	−85.1	6,349.2	9.2
Du Pont	7,686.4	339.6	83.7	−1.2	.10	61.6	−42.2	.27	.09	.34	10.7	−29.8	9,707.7	9.7
Ethyl	1,003.8	175.8	20.1	−1.0	.35	6.2	−28.2	.70	.43	2.01	−7.1	−60.4	1,307.7	44.3
Grace (W. R.)	2,939.1	123.1	−23.8	−13.3	.09	−26.2	−30.8	.17	.10	.76	−30.8	−15.4	4,045.3	12.7
Hercules	1,524.4	35.0	29.7	22.6	.05	16.3	−22.9	.12	.05	.22	10.1	15.2	1,738.5	6.4
Intl. Minerals & Chemical [6]	1,452.8	22.0	−47.5	−35.0	.04	−47.5	−67.4	.06	.03	.47	−17.4	−69.5	1,335.2	8.6
Koppers	824.0	13.1	−34.2	−13.6	.03	−36.9	−45.2	.10	.04	.28	−55.4	2.5	1,377.4	4.3
Lubrizol	371.5	38.9	9.2	−23.3	.16	−1.3	−55.4	NM	.32	1.70	−43.2	−56.2	522.7	25.7
Monsanto	4,579.1	322.7	−29.2	−17.3	.17	−28.6	−45.5	.32	.13	.33	−33.8	−82.8	4,631.1	30.3
Morton-Norwich Products [6]	520.5	100.4	54.9	235.4	.34	30.9	87.9	.85	.52	2.39	215.9	116.3	640.9	46.4
National Distillers & Chemical	1,320.5	91.8	−27.3	−31.9	.12	−27.4	−43.4	.39	.22	1.21	−72.3	−77.9	1,367.1	28.7
Olin	1,327.5	24.5	9.9	−31.1	.04	3.1	34.6	.08	.04	.15	−13.2	−53.2	1,436.6	5.9
Pennwalt	642.6	11.8	−56.7	63.8	.03	−59.0	14.5	.07	.05	.45	−55.7	50.2	850.1	8.2
Reichhold Chemicals	393.6	10.6	165.7	110.1	.05	117.9	−10.1	.14	.06	.27	206.8	50.4	694.9	3.8
Rohm & Haas	1,025.7	15.7	113.9	−6.0	.03	107.5	−34.9	.06	.03	.19	79.6	4.2	1,152.7	3.6
SMC* [6]	787.1	13.1	119.6	39.9	.03	116.5	8.5	.07	.04	.18	−84.9	−15.3	1,449.4	2.4
Stauffer Chemical	1,530.1	213.2	−2.4	178.5	.33	−10.6	27.4	.51	.27	.50	−18.8	−66.0	1,262.2	61.6
Union Carbide	7,506.2	268.8	3.0	−51.3	.09	−4.9	−68.3	.17	.07	.40	−4.6	−79.0	7,176.3	13.3
Industry composite	55,028.5	2,512.4	4.5	−13.5	.11	−3.6	−44.2	.19	.09	.36	−14.7	−61.0	58,933.6	15.0
CONGLOMERATES														
Avco [1]	4,206.1	69.3	−25.1	11.0	.03	−33.5	−77.9	.03	.52	2.30	−26.6	69.4	1,591.5	18.3
Chromalloy American	797.8	14.0	−16.5	−22.6	.03	−29.6	−54.0	.06	.04	.16	−23.2	−51.5	1,191.1	4.7
City Investing	4,828.6	39.9	8.6	−37.5	.06	−14.0	−58.4	.04	.08	.57	58.7	18.0	3,219.8	4.3
Colt Industries	1,154.5	132.9	100.4	85.2	.18	69.9	4.9	.43	.37	2.27	39.7	10.2	1,589.2	22.6
Dart Industries	1,477.0	229.1	21.8	297.9	.28	9.0	100.7	.91	.45	2.60	67.6	206.4	1,639.3	45.8
Fuqua Industries	764.8	47.7	173.4	1,030.0	.10	.5	304.7	.16	.23	.47	−49.9	172.4	873.2	13.4
Gulf & Western Industries [5]	4,491.1	296.5	11.1	39.0	.14	−.5	−34.0	.18	.22	.45	−47.8	−85.1	4,027.6	25.2
IC Industries	2,694.7	25.2	−36.6	−22.9	.04	−46.6	−50.2	.04	.02	.19	−46.4	−30.8	1,950.4	6.0
IU International	2,724.8	64.6	−9.4	−6.1	.11	−15.6	−30.2	.06	.03	.23	−24.2	−43.9	2,322.9	10.5
International Tel. & Tel.	12,918.9	318.5	14.0	−4.3	.05	−.4	−27.7	.13	.07	.31	−21.5	−15.0	13,493.1	8.0
Kidde (Walter)	1,155.3	44.8	354.2	754.8	.05	188.2	344.2	.15	.24	.93	−4.9	574.8	1,558.1	6.3
LTV	2,042.9	36.7	−3.1	−79.8	.04	1.5	−79.4	.03	.04	.65	−0.1	−80.2	4,833.3	2.8
Litton Industries [5]	2,180.8	91.2	11.6	6.5	.06	3.4	6.8	.18	.17	.74	11.9	−32.7	3,591.0	8.7
Martin Marietta	1,399.8	140.2	36.5	147.0	.23	18.9	49.0	.65	.22	1.75	18.4	118.5	1,478.6	29.6
Northwest Industries	1,815.0	35.4	−18.8	−58.0	.04	−30.6	−75.9	.06	.06	.25	−52.6	−76.6	1,981.2	7.2
Signal	2,216.4	135.6	−0.7	307.4	.09	−15.2	93.5	.32	.32	2.43	46.1	190.4	3,096.4	15.8
Studebaker-Worthington	926.1	54.1	−25.4	13.9	.09	−32.9	.8	.70	.24	2.21	−5.4	91.2	1,256.8	18.1
Teledyne	1,431.7	228.5	18.8	122.0	.33	2.8	59.3	.86	.90	4.75	−23.9	134.9	2,241.9	33.8
Tenneco	8,704.6	84.9	−56.6	−40.2	.03	−62.8	−69.4	.03	.02	.12	−43.7	−68.2	7,634.4	6.6
Textron	1,820.9	288.5	93.1	601.3	.21	60.5	346.3	.97	.92	2.88	68.0	365.9	2,848.9	27.7
U.S. Industries	865.5	33.5	−22.4	−21.9	.07	−20.2	−.5	.32	.19	1.25	−26.0	47.9	1,319.6	10.5
Whittaker* [3]	485.0	12.7	116.9	−35.4	.04	93.9	−22.6	.09	.12	1.58	76.1	116.3	760.8	4.4
Industry composite	61,102.3	2,424.2	12.9	37.0	.09	−2.3	−14.1	.14	.12	.61	−8.9	−11.3	64,499.1	12.8
CONTAINERS														
American Can	2,170.4	129.4	−28.7	14.2	.10	−37.6	−35.0	.37	.16	1.51	−28.9	12.5	3,586.9	15.6
Anchor Hocking	442.8	34.1	4.9	128.1	.15	−2.2	20.5	.39	.17	.60	−45.5	−26.9	648.6	18.5
Brockway Glass	335.4	30.6	95.3	148.2	.24	71.1	37.0	.40	.15	.98	501.6	57.7	501.7	16.6
Continental Group	2,879.6	56.9	−51.7	−3.9	.05	−53.8	−38.6	.12	.05	.51	−60.6	33.0	3,712.8	8.5
Crown Cork & Seal	729.3	16.4	29.2	156.8	0.4	9.3	35.9	1.15	.06	.18	−66.7	26.6	1,090.8	4.8
Diamond International	644.0	19.8	22.0	79.2	.07	11.8	23.5	.36	.06	.24	26.2	27.8	1,005.4	6.4
National Can	570.6	7.1	12.3	86.8	.02	−2.4	−16.1	.06	.04	.33	18.3	149.6	945.9	2.6
Owens-Illinois	2,391.0	37.5	−43.1	−33.2	.04	−48.1	−53.8	.06	.03	.24	−71.1	−43.1	2,784.4	6.7
Industry composite	10,163.1	331.8	−26.0	19.7	.07	−33.2	−28.1	.18	.07	.56	−43.0	10.1	14,276.5	9.8
DRUGS (Ethical, proprietary, medical and hospital supplies)														
Abbott Laboratories	1,283.5	50.1	−6.6	−43.2	.08	−15.8	−62.4	.28	.14	.76	−54.5	−69.4	1,294.3	14.4
American Home Products	1,711.7	382.3	−6.6	57.9	.32	−13.9	−3.8	NA	1.10	5.41	−22.1	−8.9	2,762.4	51.6
American Hospital Supply	1,045.6	74.0	244.4	614.9	.11	176.7	267.7	.34	.23	1.05	151.1	365.7	1,532.6	11.2
Baxter Travenol Laboratories	1,004.2	62.8	−4.0	22.5	.11	−18.1	−37.7	.29	.16	.82	6.7	6.8	877.5	26.3
Becton, Dickinson [3]	568.2	78.5	−17.1	33.0	.21	−22.9	−24.7	1.08	.46	2.96	−38.6	25.8	633.4	49.2
Bristol-Myers	1,567.8	293.2	1.9	89.8	.26	−5.6	8.9	3.23	.91	3.91	−33.8	−36.8	2,248.8	46.5
Johnson & Johnson	2,155.8	360.3	21.5	74.2	.26	3.2	−9.8	9.90	.54	2.14	−7.4	29.2	3,032.2	39.0
Lilly (Eli)	1,809.8	459.7	11.3	93.2	.37	−2.6	−1.5	NM	.91	5.59	−5.7	−6.8	1,595.1	98.5
Merck	2,045.7	262.5	4.2	124.0	.23	−12.0	13.2	1.23	.31	1.40	−15.9	2.9	1,765.1	52.5
Pfizer	2,478.1	371.4	4.5	116.7	.24	−6.7	24.4	.80	.54	4.04	−6.4	73.7	2,096.2	52.4
Richardson-Merrell [6]	756.7	103.5	−16.1	94.8	.24	−24.8	8.9	1.38	.57	4.39	−10.3	78.4	907.5	45.0
Schering-Plough	1,107.3	203.5	−20.8	13.0	.30	−21.3	−31.9	NA	.68	3.86	−17.8	−16.9	972.4	85.2
Searle (G.D.)	951.6	128.7	70.0	−7.4	.25	51.0	−33.9	.38	.76	1.54	−60.8	−72.3	769.7	47.8
SmithKline	789.3	207.5	−5.2	116.9	.39	−14.0	10.7	1.98	1.14	4.37	−21.3	−26.4	856.2	89.7
Squibb	1,475.2	35.5	−20.9	−71.0	.05	−29.7	−77.8	.10	.07	.47	−54.3	−84.2	1,374.6	10.5
Sterling Drug	943.3	90.3	28.2	10.4	.14	21.8	−30.2	1.74	.37	2.12	−5.5	−16.6	1,215.9	23.8
Upjohn	1,068.1	44.4	−5.2	10.9	.08	−12.4	−35.2	.19	.10	1.43	64.1	100.5	1,185.2	13.8
Warner-Lambert	2,214.3	282.6	4.9	42.0	.20	−3.0	−6.2	1.03	.48	2.09	−23.4	−30.0	2,605.5	38.1
Industry composite	24,976.0	3,490.6	4.0	55.2	.23	−6.8	−9.7	1.20	.48	2.41	−20.3	−7.8	27,724.6	44.5

Footnotes at end of tables.

Company	Total assets, 3/31/78 (millions)	Cash: Total, 3/31/78 (millions)	Cash: Percent change: From 1977	Cash: Percent change: 12/31/73 to 3/31/78	Ratio of cash to— Current assets: 3/31/78	Current assets: Percent change: From 1977	Current assets: Percent change: 12/31/73 to 3/31/78	Long-term debt, 3/31/78	Property, plant, and equipment 3/31/78	Capital spending: 1977	Capital spending: Percent change: 1976–77	Capital spending: Percent change: 1973–77	Sales 3/31/78 (millions)	Cash turnover 3/31/78 (days)
ELECTRICAL, ELECTRONICS (Heavy equipment, conponents radio and TV sets, etc.)														
AMP [6]	595.8	122.0	13.4	288.3	.29	−7.7	107.5	2.58	.72	2.57	−46.9	336.2	664.8	62.2
Avnet	397.8	5.0	−83.9	−54.8	.02	−85.1	−71.9	.16	.10	1.26	14.4	−5.4	773.5	8.4
Champion Spark Plug	507.2	68.2	−11.5	18.8	.19	−25.2	−28.7	2.61	.54	3.40	−22.5	−46.1	609.4	42.9
Cutler-Hammer	346.8	2.8	−72.2	−74.6	.01	−74.2	−83.0	.03	.03	.21	−69.7	−84.0	532.7	4.3
Eltra [3]	685.2	28.1	−9.7	84.7	.06	−19.1	18.1	.30	.21	1.36	−4.8	108.0	966.1	11.0
Emerson Electric [3]	1,223.9	21.8	−65.9	−29.4	.03	−70.4	−65.7	.25	.07	1.20	−8.1	92.6	2,028.3	7.6
General Electric	14,124.2	2,334.5	35.4	624.8	.28	15.6	295.7	1.83	.65	2.77	27.1	414.8	17,899.0	40.8
General Instrument [10]	365.8	41.5	6.2	82.6	.18	6.1	89.4	.59	.40	1.58	1.2	42.4	502.8	28.8
Gould	1,295.3	9.1	−19.5	−54.8	.01	−28.3	−82.8	.03	.02	.22	32.2	−57.9	1,682.3	2.2
Harris [6]	664.5	110.2	−12.7	464.7	.22	−25.1	223.4	1.10	.76	2.73	−46.0	80.4	816.7	52.1
Lear Siegler [6]	598.4	20.1	−26.1	284.1	.05	−27.2	149.8	.12	.15	.25	−86.6	−48.8	1,118.8	7.6
McGraw-Edison	643.8	67.5	14.5	280.6	.13	11.3	198.8	1.24	.61	3.42	−33.6	472.7	1,075.4	21.2
Motorola	1,462.2	128.7	52.3	172.5	.13	25.9	99.9	.65	.29	.78	−3.0	58.0	1,922.9	20.0
North American Phillips	1,114.0	17.7	−42.9	−70.9	.02	−49.5	−87.1	.10	.07	.24	−88.2	−85.1	1,962.7	4.5
RCA	4,498.9	325.0	92.7	13.3	.13	59.5	−16.6	.30	.18	.30	32.7	−34.3	6,005.8	14.8
Raytheon	1,902.0	763.9	12.5	3,309.4	.51	−0.8	1,076.6	9.60	2.41	5.82	−19.3	966.0	2,926.1	88.7
Reliance Electric [2]	557.2	20.9	−37.2	79.4	.06	−43.8	11.9	.22	.14	1.61	0.7	64.5	897.8	10.9
Square D	410.0	37.3	−21.6	161.8	.14	−24.6	79.7	.70	.29	1.93	−36.5	119.5	630.5	24.2
Texas Instruments	1,289.2	252.5	−18.5	40.9	.31	−22.3	.6	8.33	.60	1.28	−39.8	−9.1	2,142.1	47.3
UV Industries	579.9	68.5	106.0	153.4	.21	76.5	67.5	.33	.40	3.77	118.8	154.9	578.0	31.7
Westinghouse Electric	5,669.0	653.4	10.2	405.4	.19	−3.0	281.2	1.73	.48	2.79	−22.3	337.2	6,254.2	35.9
Industry composite	38,930.9	5,098.7	18.9	279.7	.21	3.6	130.3	1.11	.49	1.72	−0.9	160.3	51,989.8	32.5
FOOD PROCESSING (Baked goods, canned and packaged foods, dairy products, meat, condiments, etc.).														
Amstar [6]	512.4	8.7	−33.0	−9.4	.04	−36.9	−45.2	.16	.03	.20	28.4	−57.1	934.2	4.2
Anderson, Clayton [6]	527.3	115.3	82.0	400.9	.35	81.5	236.2	3.32	1.45	21.56	116.8	733.4	919.6	35.0
Archer-Daniels-Midland [6]	823.8	53.8	48.6	62.1	.10	87.9	−22.4	.52	.22	.39	−20.2	−81.4	1,952.3	8.3
Beatrice Foods [10]	2,560.0	186.3	0.4	216.5	.12	−11.6	66.2	.61	.25	.95	−20.4	63.3	6,323.2	10.6
Borden	2,023.4	74.8	−44.1	−19.9	.07	−45.7	−43.1	.19	.09	.86	−40.6	−14.5	3,501.4	10.7
CPC International	1,674.8	79.5	−3.3	19.8	.09	−11.3	−14.6	.46	.11	.58	−6.8	−41.9	2,933.8	9.9
CFS Continental * [3]	189.1	4.7	NA	65.8	.04	NA	−4.1	.10	.10	.35	136.3	30.2	676.8	NA
Campbell Soup [5]	1,102.0	159.7	104.1	704.9	.26	73.3	376.0	9.42	.34	1.21	−8.3	266.3	1,849.9	23.2
Campbell Taggart	347.4	16.4	47.1	57.3	.13	24.3	−19.6	.29	.08	.35	63.6	−7.7	801.6	6.2
Carnation	1,277.7	197.9	27.4	73.6	.21	13.0	−3.9	1.08	.70	3.94	32.0	5.3	2,386.2	26.7
Castle & Cooke	878.1	20.0	43.3	−40.8	.04	9.2	−65.1	.08	.06	.19	−18.2	−91.4	1,070.5	5.7
Central Soya [4]	566.4	14.2	21.9	−41.7	.04	55.1	−59.5	.13	.09	.92	131.1	−48.5	2,151.8	2.2
ConAgra [7]	177.0	20.6	2.8	26.9	.18	−3.0	43.5	.52	.38	1.39	33.9	42.5	525.6	13.9
Consolidated Foods [6]	1,667.7	148.3	60.4	729.7	.14	6.0	341.8	.56	.33	1.64	−18.5	691.1	3,247.9	13.3
Del Monte [7]	941.5	36.9	−5.0	−39.2	.05	−12.6	−62.8	.19	.16	.67	−49.4	−70.3	1,519.7	9.0
Esmark [2]	1,844.3	53.2	−6.0	490.6	.06	−9.9	271.2	.12	.07	.57	291.4	550.5	5,317.4	3.7
Fairmont Foods [10]	153.5	3.6	−74.0	−43.8	.05	−72.2	−52.7	.10	.05	.22	−87.1	−45.1	512.6	6.1
Federal [7]	176.2	6.3	2.4	−46.8	.06	−5.0	−53.6	.50	.09	NA	NA	NA	649.3	3.5
General Foods [9]	2,433.0	132.5	2.4	0.6	.08	−.7	−31.5	.51	.17	1.05	−8.8	−29.7	5,376.2	8.8
General Host	206.7	6.3	−39.4	−76.5	.07	−40.3	−72.8	.06	.07	.63	−38.6	−60.8	687.8	4.4
General Mills [7]	1,561.2	29.1	−36.2	46.4	.04	−40.0	11.4	.11	.05	NA	NA	NA	3,095.4	4.3
Greyhound	1,733.4	26.5	17.8	−72.9	.05	12.1	−76.0	.05	.04	.32	−38.6	−74.7	3,941.3	2.2
Heinz (H. J.) [8]	1,333.8	84.0	−52.1	2.9	.10	−51.3	−18.1	.59	.20	NA	NA	NA	2,150.0	21.7
Hershey Foods	379.2	95.6	54.0	1,205.0	.48	35.7	536.7	3.25	.64	4.26	39.1	920.8	689.0	41.2
Hormel (Geo. A.) [2]	263.3	6.3	10.0	−58.0	.04	−3.8	−71.4	.22	.06	2.12	122.0	124.9	1,151.2	1.9
International Multifoods [10]	331.7	7.5	−52.0	13.8	.04	−51.4	9.6	.11	.08	.34	−65.6	−34.4	822.7	5.1
Iowa Beef Processors [2]	335.2	14.0	−52.5	87.0	.07	−62.4	−14.7	.19	.10	.55	9.1	−61.6	2,219.7	3.5
Kane-Miller	225.4	5.0	976.1	−61.4	.05	871.6	−71.4	.07	.06	.41	190.8	−70.8	907.9	1.1
Kellogg	879.5	99.8	−12.7	40.9	.24	−16.7	−20.0	1.24	.24	.94	−27.5	−52.0	1,569.6	24.5
Kraft	2,177.9	235.8	55.1	593.9	.17	35.2	316.3	.69	.39	2.65	497.8	460.3	5,345.4	13.1
MBPXL [2]	142.5	4.3	177.8	NA	.05	113.7	NA	.12	.09	.24	−54.1	NA	1,124.3	.9
Mayer (Oscar) [2]	396.7	13.5	332.2	−34.8	.08	292.7	−60.2	.41	.06	.58	110.2	−36.4	1,255.1	2.4
Nabisco	1,082.0	107.8	288.6	336.7	.19	238.0	219.6	.51	.26	1.05	148.5	293.1	2,089.2	11.7
Norin	207.7	12.2	29.1	NA	.11	43.2	NA	.20	.19	1.01	9.0	NA	569.6	6.9
Norton Simon [6]	1,896.6	115.2	−56.7	−62.5	.09	−65.4	−76.0	.26	.30	3.12	−48.2	−50.3	2,221.2	30.9
Peavey [3]	336.0	16.9	6.6	16.1	.08	−0.4	.5	.25	.14	.37	−60.9	−73.0	503.4	11.7
Pet [9]	517.5	1.2	−93.6	−11.5	.0	−94.1	−23.6	.01	.01	.05	−93.9	2.2	1,103.0	3.2
Pillsbury [7]	1,254.0	42.2	−12.8	−12.7	.06	−17.7	−54.6	.14	.09	NA	NA	NA	1,620.0	10.1
Quaker Oats [6]	985.3	74.9	−.6	184.3	.15	−3.3	84.1	.46	.17	.62	−48.9	24.7	1,643.7	16.5
Ralston Purina [3]	1,786.2	139.3	−7.4	220.2	.18	−3.0	143.5	.34	.15	1.22	−23.6	207.8	3,883.4	13.4
Spencer Foods [3]	37.2	1.4	−59.6	−68.1	.06	−30.0	−53.8	.13	.23	3.37	103.6	−18.8	507.5	1.8
Stanley (A.E.) manufacturing [3]	598.4	12.7	−3.0	181.6	.05	−10.1	31.3	.10	.04	.11	123.4	−77.1	1,165.1	4.0
Standard Brands	1,180.0	26.1	86.6	16.8	.04	65.3	−23.4	.11	.06	.83	230.8	9.5	2,190.1	3.3
United Brands [6]	1,126.1	38.1	−26.9	−7.9	.08	−32.0	−11.9	.13	.11	1.90	75.8	213.2	2,498.1	6.5
Industry composite	40,849.1	2,548.7	3.0	51.4	.11	−4.8	−1.4	.35	.18	1.05	5.6	9.5	87,603.3	10.3
FOOD AND LODGING														
ARA Services [3]	706.9	18.5	−18.3	−45.5	.06	−25.5	−60.5	.15	.06	.18	−39.7	−73.3	1,639.9	4.5
Denny's [6]	259.8	17.3	−4.2	84.2	.33	−15.4	−10.9	.21	.09	.41	−31.6	−21.7	520.0	12.2
Holiday Inns	1,079.7	103.1	57.3	209.7	.43	19.4	97.9	.30	.14	.81	−7.0	223.3	1,055.7	28.7
Howard Johnson	425.6	91.1	17.5	73.2	.74	3.9	9.8	.66	.31	2.00	−24.2	40.5	509.6	59.5
Marriott [5]	927.3	16.4	387.7	−28.6	.11	303.6	−59.0	.05	.02	.34	143.3	56.6	1,131.7	3.1
McDonald's	1,690.0	125.1	9.7	62.0	.62	−5.4	−12.4	.18	.09	.43	−14.7	−0.1	1,446.7	29.8
Saga [6]	118.4	1.7	−82.2	−67.4	.03	−84.1	−85.3	.08	.03	.28	−51.3	−43.6	548.7	3.6
Sambo's	398.7	38.1	98.7	238.6	.47	31.1	−17.4	.17	.13	.36	35.3	−57.8	526.3	19.6
Industry composite	5,606.4	411.1	24.7	67.3	.35	4.8	−.7	.21	.10	.52	2.0	16.6	7,378.7	18.1

Footnotes at end of table.

CORPORATE CASH SCOREBOARD—Continued

Company	Total assets, 3/31/78 (millions)	Cash: Total, 3/31/78 (millions)	Cash: Percent change From 1977	Cash: Percent change 12/31/73 to 3/31/78	Ratio of cash to— Current assets 3/31/78	Current assets: Percent change From 1977	Current assets: Percent change 12/31/73 to 3/31/78	Long-term debt, 3/31/78	Property, plant, and equipment 3/31/78	Capital spending 1977	Capital spending: Percent change 1976–77	Capital spending: Percent change 1973–77	Sales 3/31/78 (millions)	Cash turnover 3/31/78 (days)
GENERAL MACHINERY														
(Machine tools, industrial machinery, metal fabricators, etc.)														
A-T-O[3]	395.5	7.1	.1	−19.4	.03	−16.0	−38.4	.06	.08	.31	−55.8	−67.4	584.4	4.4
Black & Decker Manufacturing	766.2	38.7	366.7	307.4	.07	301.5	103.3	.43	.19	1.04	2.2	481.4	875.0	9.7
Cincinnati Milacron	436.5	17.0	49.0	−9.2	.06	29.1	−20.9	.16	.16	.73	−32.0	−4.7	563.5	9.1
Combustion Engineering	1,688.1	321.1	28.9	662.8	.29	7.4	256.1	2.19	.73	2.20	−4.0	200.0	2,105.6	48.7
Cooper Industries	505.5	15.0	−8.0	171.3	.05	−15.9	43.9	.23	.11	.79	172.1	65.5	711.2	7.9
Foster Wheeler	601.4	137.7	48.9	151.5	.29	14.8	10.8	3.68	1.63	6.11	46.1	−12.2	1,263.3	32.8
Gardner-Denver	458.0	55.1	47.4	633.2	.15	24.3	247.4	.63	.74	2.35	−0.1	663.4	534.2	31.2
Ingersoll-Rand	1,823.2	49.6	1.3	−1.8	.04	−3.8	−43.9	.18	.11	1.39	99.6	10.4	2,095.4	8.5
Joy Manufacturing[3]	577.8	13.0	−62.3	84.1	.03	−67.8	−14.5	.19	.09	.88	−9.9	77.6	666.0	12.9
Parker-Hannifin[6]	380.3	5.4	−54.7	242.7	.02	−59.4	85.8	.08	.05	.29	−11.6	194.0	668.8	4.7
Rexnord[2]	537.0	9.5	−70.5	20.4	.03	−72.0	−16.9	.12	.05	.40	−66.1	−44.7	785.8	9.6
Sundstrand	582.1	6.5	10.9	−53.1	.02	−.1	−64.3	.04	.03	.18	2.5	−61.3	659.5	3.4
Industry composite	8751.6	675.7	21.7	196.7	.11	6.7	66.2	.52	.30	1.43	16.7	87.3	11,512.6	19.2
INSTRUMENTS														
(Controls, measuring devices, photo and optical)														
Bell & Howell	382.5	27.2	312.8	108.9	.09	230.9	66.6	.49	.43	2.08	283.4	171.5	505.1	12.1
Eastman Kodak	5,946.3	973.2	39.1	−6.0	.30	20.4	−26.7	14.73	.37	2.25	43.5	−22.2	6,147.3	49.0
General Signal	628.5	102.7	41.1	907.5	.22	20.1	305.3	1.96	.79	3.92	35.0	680.6	892.1	35.4
Hewlett-Packard[2]	1,295.8	188.6	54.6	2,013.2	.22	18.9	889.8	17.79	.45	1.50	44.8	1,260.5	1,503.5	37.2
Perkin-Elmer[5]	405.4	33.0	21.5	27.4	.10	−6.7	−49.1	.59	.51	1.66	−32.6	−50.1	512.0	21.1
Polaroid	1,051.6	266.6	−1.9	41.7	.33	−9.1	−10.9	NM	1.13	3.10	−59.4	−33.7	1,110.8	87.2
Sybron	450.0	52.2	2.2	129.5	.17	−1.0	84.6	.58	.55	2.71	−17.0	62.4	578.6	32.2
Tektronix[7]	455.6	83.8	.6	348.7	.25	−15.9	136.6	2.04	.77	NA	NA	NA	564.4	53 3
Industry composite	10,615.6	1,727.3	29.5	30.5	.26	10.7	−13.3	4.74	.46	2.26	17.5	−4.0	11,813.8	46 6
LEISURE TIME INDUSTRIES														
AMF	888.0	34.4	−29.9	−50.9	.06	−26.7	−54.9	.16	.14	.79	−1.3	−43.6	1,232.0	12.2
Brunswick	758.0	20.6	15.0	5.6	.04	13.1	−18.9	.11	.08	.22	−82.9	−41.3	994.0	7.0
Columbia Pictures Indus.[6]	383.4	19.7	−30.5	−37.7	.09	−46.7	−56.3	19	.64	1.66	−78.8	−57.7	531.8	16.3
Disney (Walt) Productions[3]	999.9	201.4	99.3	2,006.0	.63	33.4	354.4	23.94	.32	3.89	57.4	3,421.9	677.3	80.4
Fleetwood Enterprises[8]	189.8	33.1	129.6	70.6	.23	88.0	−23.1	NM	.81	4.53	245.1	20.5	680.4	12.6
General Cinema[2]	271.9	5.7	714.9	−48.6	.11	404.3	−65.4	.06	.04	.35	111.1	−31.5	533.0	22.8
MCA	884.6	192.8	25.3	1,050.7	.41	7.5	331.5	NM	1.63	10.00	13.9	1,415.2	916.1	68.1
Outboard Marine[3]	570.6	6.7	−59.8	74.6	.02	66.2	86.4	.08	.04	.33	81.1	−73.9	623.5	6.8
Twentieth Century-Fox Film	431.2	93.3	596.2	347.6	.40	339.2	114.7	1.04	.90	14.04	1,138.2	1,515.2	568.8	33 8
Warner Communications	1,000.8	39.6	−35.7	−81.4	.09	−50.0	−80.5	.15	.20	.43	−73.8	−90.6	1,203.0	15 1
Industry composite	6,378.3	647.3	41.6	47.7	.19	20.5	−2.9	.62	.34	1.82	5.4	41.8	,960.0	25 0
METALS AND MINING														
(Nonferrous metals, iron ore, etc.)														
Aluminum Co. of America	3,900.3	77.5	397.5	9.0	.06	335.1	−24.4	.07	.04	.31	115.0	−13.1	3,510.5	4.8
Amax	2,984.6	108.4	−24.2	−62.3	.16	−23.8	−62.6	.16	.05	.28	11.0	−75.1	1,318.1	34.4
Asarco	1,558.2	14.6	−65.2	−25.7	.04	−62.3	−29.6	.03	.02	.10	−76.3	−53.2	980.8	10.4
Commercial Metals[4]	161.8	7.5	−6.3	10.2	.06	−10.7	−34.1	.28	.30	1.27	118.0	−24.3	621.9	4.5
Harsco	431.4	34.2	−18.8	76.0	.13	−27.2	6.8	.44	.23	1.11	−.4	96.0	712.1	19.3
Kaiser Aluminum & Chemical	2,476.6	22.5	−35.9	−37.8	.02	−43.3	−63.3	.03	.02	.38	−1.6	−46.0	2,205.2	4.7
Kennecott Copper	2,673.4	83.6	192.6	−40.7	.09	39.6	−65.5	.13	.06	.27	−6.2	−64.7	1,120.6	18.0
NL Industries	1,442.5	36.8	−8.8	−11.1	.05	−20.8	−41.9	.12	.07	.29	−33.3	−64.4	1,631.4	8.5
Newmont Mining	1,172.5	62.5	−28.4	22.7	.19	−27.4	−29.9	.20	.10	1.13	−40.0	128.7	603.4	44.6
Phelps Dodge	1,895.3	16.5	0	−85.0	.04	−6.9	−86.9	.03	.01	.17	130.4	−70.8	935.7	6.3
Revere Copper & Brass	504.4	8.4	37.7	−52.2	.04	28.0	−65.5	.05	.05	.94	−34.4	−30.8	613.5	4.2
Reynolds Metals	2,509.4	38.5	−22.9	−32.3	.04	−29.5	−55.1	.04	.04	.57	−28.1	−3.7	2,414.0	6.6
St. Joe Minerals	799.2	66.4	51.6	235.6	.26	43.5	15.8	.54	.13	.21	−53.9	−72.2	739.5	26.8
Industry composite	22,509.6	577.4	3.4	−34.3	.07	−10.1	−54.9	.09	.05	.33	−14.1	−51.5	17,406.6	11.7
MISCELLANEOUS MANUFACTURING														
ACF Industries	837.1	10.4	1.1	1.0	.04	−13.2	−38.0	.04	.02	.17	−2.8	−3.2	709.1	5.3
American Standard	1,178.9	31.8	−76.4	32.9	.04	−76.1	15.8	.15	.10	.36	−84.7	−20.2	1,863.2	16.1
Amsted Industries[3]	324.0	12.6	−28.9	350.4	.08	−37.9	213.9	NM	.10	.95	25.0	279.6	613.6	8.9
Armstrong Cork	844.8	38.8	−8.7	135.2	.09	−16.8	55.3	.27	.10	1.08	38.0	249.2	1,124.5	13.0
Bangor Punta[3]	430.5	9.5	−48.0	31.9	.04	−53.3	−13.2	.07	.09	1.23	−31.2	87.3	593.9	8.4
Borg-Warner	1,484.2	34.3	−79.2	35.7	.05	−75.7	35.3	.21	.08	.32	−90.1	−11.0	2,087.9	17.2
Corning Glass Works	1,128.5	168.5	−3.2	232.4	.29	−10.6	133.4	1.05	.47	2.57	−32.6	650.0	1,130.1	54.6
Crane	900.0	118.2	−3.3	211.4	.28	−4.5	115.9	.37	.32	1.33	−4.2	69.4	1,151.6	37.6
Dayco[2]	327.7	6.8	11.4	−56.0	.04	.7	−63.6	.05	.07	.31	−49.3	−55.8	593.3	3.9
Emhart	731.6	48.0	21.3	180.1	.08	9.2	−26.2	.81	.31	1.44	15.2	−62.5	1,223.5	12.9
GATX	1,386.8	5.7	−89.9	−75.1	.04	−88.4	−75.4	.01	.01	.05	−86.0	−82.3	596.6	18.9
General Cable	519.4	30.8	40.9	259.9	.11	33.9	33.3	.20	.23	.50	4.5	−46.2	643.2	14.7
General Dynamics	1,749.2	43.4	−11.9	151.4	.04	−32.0	32.0	.82	.08	.46	105.5	42.2	2,904.8	5.7
Libbey-Owens-Ford	656.4	11.1	−69.5	−6.3	.03	−71.5	−44.0	.13	.05	.66	−74.6	244.7	1,001.2	8.5
Minnesota Mining & Manufacturing	3,681.2	405.4	16.0	75.4	.19	2.3	5.7	1.09	.29	1.45	−5.9	59.7	4,129.1	32.9
Mohasco	398.9	11.1	−31.3	−19.6	.04	−37.5	−31.0	.09	.08	.81	−16.4	85.5	667.2	7.4
Norris Industries	299.0	2.9	−82.5	−29.9	.02	−82.0	−44.9	.13	.03	.12	−87.0	−53.7	583.4	6.0
Norton	635.6	32.7	−19.9	32.9	.08	−26.0	−25.0	.38	.17	1.07	−35.2	−8.6	867.6	15.3
PPG Industries	2,167.5	141.7	−6.8	26.1	.15	−10.9	−16.0	.28	.13	.67	−36.0	−26.3	2,576.3	20.5
Scovill Manufacturing	434.1	14.5	174.6	43.4	.05	121.7	.1	.24	.12	.78	47.4	84.2	677.4	5.2

Footnotes at end of table.

Company	Total assets, 3/31/78 (millions)	Cash			Ratio of cash to—					Capital spending			Sales 3/31/78 (millions)	Cash turnover 3/31/78 (days)
		Total, 3/31/78 (millions)	Percent change		Current assets	Percent change		Long-term debt, 3/31/78	Property, plant, and equipment 3/31/78	1977	Percent change			
			From 1977	12/31/73 to 3/31/78	3/31/78	From 1977	12/31/73 to 3/31/78				1976–77	1973–77		
Signode	354.0	13.5	−19.3	−36.9	.05	−28.8	−67.6	.44	.14	.93	−53.2	1.9	522.2	10.5
Sperry & Hutchinson	757.7	68.9	48.5	−46.6	.17	21.3	−47.6	1.53	.71	3.14	−41.6	−20.0	722.3	28.7
Stanley Works	451.3	47.7	24.7	310.1	.61	9.1	176.7	.60	.37	1.99	−38.0	412.6	661.8	23.4
Trans Union	1,523.7	22.8	−47.2	1.2	.06	−50.9	−49.7	.03	.02	.40	−35.7	114.0	895.8	13.3
Vulcan Materials	424.3	10.4	73.3	13.6	.07	46.8	−30.9	.12	.04	.29	29.8	24.6	532.1	5.5
Wheelabrator-Frye	450.0	73.8	50.6	153.9	.26	3.0	20.7	1.21	.67	2.20	70.9	−45.4	505.7	43.7
Industry composite	24,076.2	1,415.5	−15.5	59.6	.12	−23.0	4.6	.31	.15	.86	−23.9	35.9	29,577.3	18.8
NATURAL RESOURCES (FUEL)														
(Crude, integrated domestic and international oil, coal)														
Amerada Hess	2,998.0	293.9	349.8	−3.7	.23	293.0	−28.0	.39	.19	.31	−51.9	−75.5	4,663.7	13.9
American Petrofina	823.9	29.5	−18.8	10.2	.08	−21.1	−51.0	.22	.10	.68	10.4	238.1	1,069.6	11.1
Ashland Oil [3]	2,673.2	127.0	−5.8	51.5	.12	−9.2	−8.8	.17	.09	.19	−61.5	−61.1	4,957.4	9.5
Atlantic Richfield	10,893.1	290.9	−68.4	−27.6	.11	−61.6	−60.0	.11	.04	.22	−40.9	−73.5	11,130.7	19.6
Charter	625.8	33.0	−9.7	9.1	.13	−19.6	−34.9	.16	.17	.85	220.7	−34.4	1,467.8	8.5
Cities Service	3,791.2	340.9	−13.5	99.1	.33	−9.4	29.6	.37	.13	.35	−47.6	−19.4	4,443.1	29.8
Clark Oil & Refining	285.7	12.0	−36.0	−71.2	.10	−11.9	−67.0	.22	.08	3.86	65.6	40.6	893.8	6.2
Coastal States Gas	2,630.8	65.0	17.5	211.0	.05	4.1	−17.1	.10	.05	.24	65.3	321.1	3,666.2	5.9
Continental Oil	6,777.6	1,068.1	16.5	271.6	.42	13.8	95.2	.67	.28	.89	−34.3	16.0	8,737.5	40.9
Crown Central Petroleum	237.4	2.9	−71.2	−73.7	.03	−67.0	−81.6	.05	.02	.25	−89.9	−74.8	588.6	4.0
Eastern Gas & Fuel Associates	779.8	21.9	53.0	29.3	.15	84.3	−14.1	.10	.04	.08	−38.1	−64.2	631.0	10.3
Exxon	38,103.0	4,439.0	−15.8	43.7	.30	−13.8	−5.2	1.20	.21	1.30	5.2	−5.7	54,956.0	31.8
Getty Oil	4,312.8	596.4	4.1	285.3	.45	−4.6	55.8	3.23	.21	.75	−13.4	112.6	3,370.0	62.5
Gulf Oil	14,127.0	1,396.0	−41.6	32.2	.28	−25.9	5.5	1.00	.16	.48	−67.3	−64.6	17,849.0	38.2
Houston Natural Gas [5]	1,374.2	55.9	48.1	NA	.15	38.2	NA	.16	.06	NA	NA	NA	1,555.4	10.8
Kerr-McGee	1,832.5	96.6	44.3	32.8	.18	58.5	−15.8	.34	.08	.39	64.1	−39.8	2,154.3	13.7
Mapco	657.6	.5	−99.1	−90.5	0	−98.9	−96.9	0	0	.09	−61.6	5.6	541.7	18.8
Marathon Oil	3,369.0	74.8	−37.2	−21.6	.09	−40.8	−54.4	.08	.03	.24	105.0	−67.7	4,308.6	8.1
Mobil	20,316.4	1,495.2	−5.0	77.4	.17	−7.9	−19.9	.49	.16	1.14	157.0	60.4	33,133.9	16.7
Murphy Oil	1,394.7	73.2	−23.5	−33.8	.20	−22.1	−53.0	.19	.08	.38	−47.1	−68.2	1,163.3	26.1
Natomas	799.8	69.5	351.4	228.1	.39	194.4	26.8	.45	.13	.67	185.8	83.6	541.3	28.2
Occidental Petroleum	4,239.0	149.1	−28.8	−52.1	.12	−21.2	−53.4	.19	.05	.27	−37.0	−82.6	5,799.9	11.1
Pennzoil	2,043.0	49.5	−32.0	−55.2	.10	−33.6	−62.7	.06	.03	.25	−49.4	−27.5	1,283.6	17.2
Petrolane [3]	443.7	15.5	−56.2	83.6	.08	−60.5	−22.4	.17	.07	.13	−13.5	−58.3	893.3	10.3
Phillips Petroleum	6,011.9	544.5	−35.6	23.4	.31	−29.4	−13.1	.61	.15	.30	−69.0	−77.7	6,449.8	38.8
Pittston	952.1	170.7	−18.4	336.8	.45	8.9	154.7	1.87	.35	1.14	−34.0	16.9	1,264.6	54.1
Reserve Oil & Gas	457.4	65.9	57.3	107.8	.27	60.8	−2.3	.78	.34	1.74	256.0	−21.7	1,583.7	12.2
Shell Oil	9,325.8	316.4	−55.5	−29.1	.13	−55.1	−49.7	.20	.05	.12	−76.2	−85.0	10,276.5	18.0
Standard Oil (Indiana)	13,190.0	1,628.7	44.8	206.4	.35	18.6	37.4	.66	.20	.96	37.2	63.5	13,378.0	37.0
Standard Oil (Ohio)	7,825.3	172.0	38.0	12.6	.12	−27.2	−54.0	.04	.03	.17	74.6	−78.6	3,714.9	14.4
Standard Oil Co. of California	15,236.6	1,285.0	18.9	108.9	.22	11.8	5.8	.54	.19	1.41	15.4	89.7	21,580.0	19.7
Sun	5,161.3	172.1	−13.1	−3.5	.13	−4.0	−35.5	.23	.06	.48	−30.1	−24.4	6,563.0	10.2
Superior Oil	1,294.2	87.8	−30.9	135.2	.30	−39.7	−34.6	.36	.10	.47	−61.7	15.6	568.0	68.1
Tesoro Petroleum [3]	597.1	24.1	21.8	188.3	.11	13.0	−9.9	.11	.11	.76	55.0	329.7	1,180.5	6.7
Texaco	18,645.5	658.9	−17.7	9.5	.10	−19.7	−35.1	.25	.07	.51	−17.2	5.1	27,802.8	9.5
Texas Oil & Gas [4]	813.9	3.4	−91.2	−37.8	.02	−90.8	−88.9	.01	.01	.04	−50.7	−55.4	720.9	10.3
Tosco	411.8	6.0	−63.9	−56.8	.03	−62.6	−87.7	.03	.03	.61	195.4	−81.6	1,073.2	3.8
Union Oil Co. of California	4,726.0	114.7	−54.0	9.4	.09	−52.1	−33.1	.11	.04	.08	−67.6	−69.1	5,665.5	11.6
Witco Chemical	373.9	36.4	53.8	100.1	.17	29.3	20.0	.52	.26	1.15	34.6	76.1	641.9	16.8
Industry composite	210,551.1	16,082.6	−14.2	53.2	.22	−14.1	−10.5	.42	.13	.61	−11.8	−23.8	271,927.2	23.0
OFFICE EQUIPMENT, COMPUTERS														
Addressograph-Multigraph [5]	479.6	63.9	13.6	196.4	.19	6.9	170.6	.77	.63	1.84	−8.0	228.3	640.6	33.8
Burroughs	2,716.5	113.9	26.4	17.4	.08	14.0	−27.9	.58	.12	.47	48.7	−12.8	2,152.0	17.1
Control Data	1,880.5	7.6	46.1	−58.6	.01	30.3	−66.4	.02	.02	.06	141.0	−43.0	1,565.4	1.5
Digital Equipment [6]	1,436.5	232.2	943.1	4,580.9	.22	576.2	848.3	.68	.63	.62	−83.3	295.2	1,354.4	33.8
Honeywell	2,459.2	237.6	−12.9	194.8	.20	−22.7	163.0	.97	.29	.86	−8.1	414.6	3,037.1	30.3
International Business Machines	19,368.3	4,916.0	−9.6	48.0	.49	−13.2	−14.2	19.53	.59	1.59	−34.9	4.8	18,474.8	100.9
NCR	2,470.6	390.5	−4.8	222.9	.24	−9.4	123.6	.69	.56	1.57	10.7	141.8	2,459.3	58.6
Pitney-Bowes	519.7	51.2	5.0	165.9	.17	−8.2	91.6	.46	.25	.94	10.0	43.7	629.2	28.6
Sperry Rand [9]	3,286.6	122.9	122.1	369.9	.06	91.0	226.6	.23	.25	.54	95.9	255.3	3,649.5	8.8
Xerox	5,166.6	682.8	−8.1	203.6	.29	−14.0	67.3	.69	.28	.96	−14.8	237.9	5,235.1	49.0
Industry composite	39,784.0	6,818.6	−4.5	73.2	.32	−12.2	6.2	1.88	.46	1.30	−27.2	40.5	39,197.3	64.1
OIL SERVICE AND SUPPLY														
Baker International * [3]	672.5	7.8	−13.4	124.5	.02	−25.4	−47.1	.05	.03	.16	24.2	−3.0	765.3	3.9
Chicago Bridge & Iron	649.4	161.2	1.9	218.9	.43	−6.5	47.6	NM	1.19	7.94	−39.4	227.0	589.2	97.6
Dresser Industries [3]	2,226.9	320.4	23.0	650.7	.21	−.1	153.8	.82	.57	1.47	−16.5	28.9	2,776.7	37.7
McDermott (J. Ray) [9]	3,182.8	627.2	15.8	1,282.7	.34	−43.8	110.8	1.31	.70	1.27	−85.1	121.3	1,293.7	162.6
Santa Fe International	753.7	83.8	−23.6	302.3	.37	−16.2	43.2	.41	.17	.55	19.9	129.7	568.4	61.3
Schlumberger *	2,385.3	665.1	NA	358.1	.44	NA	91.1	11.80	.96	3.14	19.2	147.6	2,235.9	NA
Industry composite	9,870.6	1,865.5	72.9	505.6	.32	−9.7	82.8	1.45	.62	1.59	−36.6	85.8	8,229.2	64.4
PAPER														
Bemis	358.5	9.9	9.3	15.8	.06	8.6	14.2	.13	.06	.13	−56.7	−40.8	638.7	5.3
Crown Zellerbach	1,847.7	142.1	−3.7	−6.7	.19	−11.5	−35.7	.28	.14	.58	−51.9	−65.5	2,362.0	22.1
Great Northern Nekoosa	821.9	53.7	4.3	245.3	.21	2.7	83.7	.34	.10	.71	19.9	177.2	927.2	20.4
Hammermill Paper	552.1	14.8	−27.3	−34.9	.07	−33.4	−55.8	.08	.05	.33	35.3	83.9	814.2	7.8
International Paper	3,835.7	218.4	8.3	−1.5	.21	−1.2	−30.4	.21	.09	.81	8.5	−48.1	3,777.1	20.0
Kimberly-Clark	1,690.3	58.9	42.0	−39.2	.11	23.1	−53.6	.22	.06	.20	−7.2	−88.5	1,765.9	10.2
Mead	1,393.7	41.4	−62.7	40.7	.08	−65.9	−6.4	.10	.06	.77	−59.3	115.0	1,927.9	14.2
Potlatch	694.5	36.4	131.5	−34.3	.19	102.4	−49.0	.19	.08	.33	229.1	−77.3	715.1	13.1
St. Regis Paper	1,961.1	273.6	105.6	130.7	.35	52.7	17.7	.54	.28	3.03	161.4	96.5	2,046.9	35.8
Scott Paper	1,616.8	3.6	−24.5	−74.6	.01	−32.8	−84.8	.01	.00	.04	163.0	−75.8	1,556.6	1.0
Union Camp	1,170.8	55.8	−58.6	−35.3	.19	−48.3	−43.3	.24	.07	.49	−55.8	−65.8	1,101.1	31.2
Westvaco [2]	890.2	89.2	57.3	120.3	.29	40.8	38.2	.35	.16	.80	−34.1	52.2	1,058.8	24.8
Industry composite	16,833.3	998.7	7.5	15.7	.19	−2.6	−21.6	.24	.10	.66	−3.1	−37.8	18,691.4	18.5

Footnotes at end of table.

CORPORATE CASH SCOREBOARD—Continued

Company	Total assets, 3/31/78 (millions)	Cash: Total, 3/31/78 (millions)	Cash: Percent change: From 1977	Cash: Percent change: 12/31/73 to 3/31/78	Ratio of cash to—: Current assets: 3/31/78	Current assets: Percent change: From 1977	Current assets: Percent change: 12/31/73 to 3/31/78	Long-term debt, 3/31/78	Property, plant, and equipment 3/31/78	Capital spending: 1977	Capital spending: Percent change: 1976–77	Capital spending: Percent change: 1973–7/	Sales 3/31/78 (millions)	Cash turnover 3/31/78 (days)
PERSONAL CARE PRODUCTS														
(Cosmetics, soap, etc)														
Avon Products	1,020.4	312.1	5.4	57.2	.41	−8.6	2.4	NA	1.30	11.10	−16.6	96.5	1,704.5	64.2
Chesebrough-Pond's	584.3	38.2	40.0	68.1	.09	20.8	−15.2	.53	.30	1.87	33.6	−.9	831.8	14.2
Clorox[6]	324.5	9.5	−21.9	−10.6	.05	−32.9	−51.7	.20	.09	2.61	44.3	342.1	1,059.8	3.7
Colgate-Palmolive*	1,971.0	119.6	−15.7	−37.6	.09	−17.6	−61.5	1.06	.21	.89	−62.6	−71.9	3,913.3	12.0
Gillette	1,222.2	114.9	51.8	14.9	.14	36.1	−29.1	.52	.42	1.99	52.4	2.1	1,598.5	21.5
Procter & Gamble[6]	4,763.4	690.9	−.9	75.0	.29	−5.8	−8.7	1.24	.30	2.46	−11.6	73.0	7,838.6	31.9
Purex[6]	312.9	5.8	−3.3	−10.4	.03	−15.3	−35.7	.14	.08	.58	−31.9	−6.4	528.2	4.0
Revlon	1,088.8	263.2	−3.8	148.5	.34	−17.5	20.4	1.45	1.30	7.89	1.8	−20.3	1,208.5	80.0
Industry composite	11,287.6	1,554.2	1.6	50.8	.23	−6.6	−14.5	1.26	.40	2.79	−16.3	28.7	18,582.3	29.7
PUBLISHING[5]														
(Periodicals, books, newspapers)														
Gannett	574.8	28.7	−63.1	41.7	.28	−50.1	−18.2	.33	.14	1.05	−15.7	27.0	567.5	33.8
Knight-Ridder Newspaper	573.4	73.6	14.3	203.2	.39	2.1	13.4	5.41	.42	1.77	−56.0	−34.4	782.0	31.8
MacMillan	500.9	49.6	30.3	221.5	.16	18.6	157.7	.47	.80	8.67	3.1	290.9	516.5	30.6
McGraw-Hill	548.5	84.2	69.2	303.2	.28	42.0	184.3	2.16	.94	6.16	0.5	343.8	679.9	35.5
New York Times	299.7	27.0	−3.6	−10.2	.21	−20.1	−40.4	3.21	.35	2.95	149.2	−54.6	533.0	18.5
Time	1,085.6	137.1	13.7	32.8	.26	−9.4	−23.6	1.03	.38	3.31	22.5	4.5	1,325.3	35.0
Times Mirror	889.0	107.7	−18.4	75.8	.26	−30.3	−1.0	2.54	.30	2.00	−3.5	47.6	1,215.1	35.5
Industry composite	4,471.8	507.9	−.5	84.4	.26	−13.2	13.4	1.19	.38	2.56	0.1	28.2	5,619.2	32.6
RADIO AND TV BROADCASTING														
American Broadcasting	963.1	181.3	7.1	153.4	.28	−1.2	51.2	.91	.89	3.91	−32.7	55.1	1,738.7	36.3
CBS	1,546.5	230.5	−25.7	77.1	.21	−32.7	2.7	2.36	.86	3.12	−57.1	−38.2	2,874.3	33.9
Industry composite	2,509.6	411.9	−14.1	104.2	.23	−21.7	19.7	1.39	.88	3.45	−48.6	−7.3	4,613.0	34.8
RAILROADS														
Burlington Northern	3,676.2	70.2	20.3	−16.1	.12	10.4	−49.6	.07	.02	NA	NA	NA	2,173.6	10.7
Chessie System	3,103.8	97.9	−32.9	−38.8	.21	−27.2	−48.7	.10	.04	NA	NA	NA	1,432.5	30.6
Chicago & Northwestern Trans.*	588.3	36.9	NA	−27.3	.30	NA	−29.6	.12	.08	.70	25.6	NA	566.7	NA
Missouri Pacific	1,877.1	173.7	23.9	437.0	.41	.1	−20.1	.22	.13	.91	5.9	−46.8	1,350.5	36.1
Norfolk & Western Ry	2,629.1	156.7	−19.5	24.7	.36	−13.3	−9.8	.25	.07	2.52	30.8	NA	1,177.5	53.7
Santa Fe Industries	3,315.3	216.0	37.1	29.2	.38	10.2	−18.0	.32	.08	.76	−27.5	NA	1,900.9	35.4
Seaboard Coast Line Industries	3,063.2	66.6	−11.9	−52.3	.14	−23.5	−61.4	.06	.03	NA	NA	NA	1,776.3	14.4
Southern Pacific	4,126.6	324.8	1.6	115.5	.50	−3.2	17.1	.33	.10	1.87	−11.0	173.2	2,116.9	54.8
Southern Ry	2,495.5	158.7	−19.3	27.7	.35	−16.9	−23.9	.21	.08	.84	NA	NA	1,154.2	55.4
Union Pacific	4,153.0	15.1	14.3	−82.1	.03	−7.1	−88.3	.02	.00	.07	−39.3	−84.8	2,639.6	1.9
Industry composite	29,028.0	1,316.7	1.1	17.7	.28	−9.0	−26.2	.16	.06	1.08	−7.4	−55.0	16,505.5	28.6
REAL ESTATE AND HOUSING														
Centex [9]	587.6	24.7	−31.2	26.3	.08	−48.6	−13.7	.28	.11	.41	−76.4	−87.2	638.8	17.1
Turner Construction	111.4	18.4	−13.1	72.5	.17	−18.7	98.6	NM	10.77	60.45	2.8	178.5	702.2	10.1
U.S. Home	424.7	14.0	−15.1	−.7	NA	NA	NA	.14	.11	6.07	−34.3	163.0	538.9	10.2
Industry composite	1,123.7	57.1	−22.4	28.8	.14	−38.3	70.3	.30	.16	1.04	−69.4	−70.5	1,599.2	14.7
SERVICE INDUSTRIES														
(Leasing, vending machines, wholesaling, etc.)														
Alco Standard [3]	554.6	10.7	40.3	−58.1	.03	10.7	−73.4	.13	.09	.57	−67.8	−68.4	1,374.0	2.4
Amfac	807.6	11.9	−41.5	68.7	.03	−44.9	20.4	.05	.04	.22	−50.8	22.9	1,353.0	4.3
Braun (C.F.)	235.2	35.1	−12.6	NA	.47	−3.5	NA	NM	.23	1.4	41.3	NA	509.5	26.6
Carrier [2]	1,370.2	33.6	−19.9	−7.0	.04	−47.2	−50.6	.14	.09	1.12	−29.8	30.3	1,666.0	8.2
Di Giorgio	251.8	3.2	−50.2	−52.5	.02	−53.2	−59.2	.05	.06	.37	−45.7	8.4	844.9	2.0
Dillingham	636.9	12.7	18.7	−5.2	.05	13.6	−39.2	.06	.05	.49	64.3	33.3	864.5	4.9
Donnelley (R.R.) & Sons	504.2	106.5	9.1	64.6	.42	−5.4	3.4	NM	.43	2.08	−10.7	3.7	677.0	54.3
Dravo	406.2	30.1	6.8	220.4	.15	−20.4	83.1	.80	.17	1.53	201.4	482.3	874.8	12.0
Dun & Bradstreet	551.3	143.6	10.2	112.2	.41	−.4	14.7	NA	2.12	9.06	16.7	163.8	668.6	73.7
Englehard Minerals & Chemicals	2,136.7	70.9	−22.0	−45.0	.04	−34.7	−72.8	.58	.31	1.30	−17.2	−67.2	7,416.1	3.9
Fischbach & Moore [3]	268.0	10.3	−20.1	−13.7	.05	−24.1	−39.2	.35	.32	2.08	28.5	23.8	649.1	6.5
Fleming	255.5	7.0	92.9	20.4	.04	82.1	−39.7	.09	.09	.39	84.6	−65.1	2,115.5	.9
Flickinger (S. M.) [8]	102.6	2.6	267.0	−2.4	.04	235.8	−60.8	.24	.09	.32	29.7	−47.2	865.3	.7
Fluor	1,043.4	102.2	−51.8	60.6	.20	−59.6	−52.7	2.79	.26	.83	−41.4	−68.4	2,485.8	22.8
Foremost-McKesson [9]	1,037.1	21.6	−47.7	21.0	.03	−52.6	2.6	.09	.09	.54	−66.8	−52.9	3,049.9	3.7
Genuine Parts	361.5	12.0	−25.4	7.0	.04	−34.0	−48.4	1.25	.21	1.54	−33.5	1.4	1,003.0	5.0
Grainger (W.W.)	249.7	1.7	−88.8	−38.8	.01	−90.3	−66.6	.39	.02	.15	−45.7	166.4	515.3	5.8
Halliburton	3,085.8	704.5	25.9	525.8	.39	.9	104.5	2.44	.67	2.61	60.7	331.6	5,684.4	40.0
Hospital Corp. of America	733.9	25.3	5.0	322.1	.18	−13.4	51.1	.07	.04	.26	124.5	139.7	577.4	15.4
Malone & Hyde [6]	201.9	6.0	−25.4	−23.4	.04	−34.4	−61.6	.25	.15	.56	27.5	−50.7	1,320.1	1.9
McKee	129.5	42.9	−4.9	−28.4	.44	.1	7.5	6.11	1.53	4.60	−86.3	−87.7	702.5	22.6
Morrison-Knudsen	346.6	31.3	32.3	138.6	.15	29.2	20.1	.87	.32	.86	−35.5	93.1	796.9	12.4
National Service Industries [4]	275.7	20.9	138.1	313.3	.12	101.0	216.4	1.50	.23	.83	−43.9	166.8	566.5	9.4
Ogden	1,051.6	61.9	−13.9	166.8	.15	−15.4	114.3	.17	.12	1.54	15.1	611.6	1,580.7	15.2
Pacific Gamble Robinson*	81.2	3.5	64.7	332.1	.06	69.3	233.6	.63	.15	.49	126.2	228.6	570.7	1.8
Parsons (Ralph M.)	232.1	75.3	10.5	100.5	.43	−21.1	−23.1	2.87	1.91	4.78	−87.0	78.0	657.9	39.3
Pullman	1,003.2	135.6	−20.4	161.5	.21	−22.1	44.3	1.28	.74	3.88	−43.7	36.9	2,067.3	26.6
Ryder System	983.1	22.7	−14.0	57.2	.11	−24.2	7.3	.05	.03	.07	−39.0	20.6	957.8	9.2
Saxon Industries	364.2	14.5	80.0	14.1	.06	66.0	18.4	.10	.11	.72	7.5	84.2	529.3	7.7
Scot Lad Foods* [8]	117.9	2.8	100.7	−15.3	.03	120.7	−39.0	.09	.13	.31	−3.0	−31.6	806.9	.9
Sea Train Lines [8]	636.2	9.7	126.2	−45.0	.07	63.0	−62.7	.02	.02	.15	172.7	−48.3	505.2	5.0
Super Food Services [4]	63.8	1.1	−43.0	−9.7	.02	−47.9	−60.5	.14	.16	.82	35.5	50.3	613.7	.9
Super Valu Stores [10]	392.8	29.1	−38.9	469.1	.12	−48.4	233.9	.33	.21	.58	−67.5	41.7	2,593.5	5.3
Sysco [6]	189.3	2.2	10.0	.5	.02	−6.0	−56.1	.06	.05	.48	27.6	−14.7	788.6	1.0
Tecumseh Products	332.6	79.6	−.1	71.5	.32	−6.9	12.1	NM	1.03	3.53	−48.5	−25.3	683.4	41.9

Footnotes at end of table.

Company	Total assets, 3/31/78 (millions)	Cash: Total, 3/31/78 (millions)	Cash: Percent change: From 1977	Cash: Percent change: 12/31/73 to 3/31/78	Ratio of cash to—: Current assets: 3/31/78	Current assets: Percent change: From 1977	Current assets: Percent change: 12/31/73 to 3/31/78	Long-term debt, 3/31/78	Property, plant, and equipment 3/31/78	Capital spending: 1977	Capital spending: Percent change: 1976–77	Capital spending: Percent change: 1973–77	Sales 3/31/78 (millions)	Cash turnover 3/31/78 (days)
Trane	367.5	40.3	−15.6	188.6	.16	−19.2	100.9	.69	.40	2.46	−51.5	307.0	502.5	31.5
Transway International	288.8	19.3	39.6	46.3	.15	16.2	−2.7	.47	.19	.53	−70.4	−56.6	739.3	8.0
Univar [10]	249.1	6.7	9.4	25.3	.04	20.3	−15.9	.07	.08	.35	127.2	−37.9	649.2	3.5
Universal Leaf Tobacco* [6]	235.1	3.5	57.9	−63.8	.02	24.9	−69.9	1.45	.09	.25	−7.9	85.9	993.8	1.0
Wetterau [9]	168.6	4.6	−5.1	−1.9	.05	−5.9	−33.8	.17	.08	.46	26.0	72.6	973.6	1.7
Williams	2,175.5	118.5	88.4	−34.0	.18	23.8	−61.8	.13	.10	.46	55.0	−80.1	1,319.3	24.7
Industry composite	24,478.2	2,077.4	.5	85.4	.15	−14.2	4.3	.43	.24	1.08	−2.8	27.2	54,122.5	13.8
SPECIAL MACHINERY (Farm, construction, materials handling)														
Allis-Chalmers	1,190.8	60.3	−35.4	86.6	.09	−39.9	54.1	.45	.21	.80	−48.2	−4.7	1,559.8	17.7
Bucyrus-Erie	636.8	199.7	182.2	3,672.9	.45	124.1	1,030.4	2.00	1.32	7.81	610.1	628.3	536.9	90.7
Caterpillar Tractor	4,628.6	53.8	2.7	14.2	.02	−7.1	−42.2	.05	.03	.41	127.8	127.0	6,115.5	3.1
Clark Equipment	938.0	50.5	17.2	81.9	.10	13.2	75.9	.30	.17	.74	−16.2	−10.6	1,306.9	12.9
Deere [2]	3,854.0	60.6	39.8	−56.2	.02	17.8	−78.9	.09	.08	.27	−80.4	−89.1	3,895.5	4.8
FMC	2,130.4	317.8	−1.2	2,871.9	.27	−10.2	1,669.7	.67	.39	1.86	−28.4	1,980.4	2,425.1	47.5
Industry composite	13,378.5	742.8	18.9	183.8	.09	5.1	57.6	.29	.17	.81	−3.6	60.3	15,839.7	15.5
STEEL														
Allegheny Ludlum Industries	1,134.0	7.0	5.8	−23.1	.01	−32.9	−57.5	.02	.02	.08	−46.0	−71.2	1,102.8	2.1
Armco	2,807.3	23.6	−41.9	−79.8	.02	−38.4	−83.0	.04	.02	.25	61.8	−82.4	3,707.3	3.
Bethlehem Steel	4,792.8	380.0	55.6	−20.7	.27	68.1	−23.1	.34	.13	.45	−55.7	−76.8	5,481.1	20.5
Cyclops	337.7	3.9	381.8	−46.8	.02	351.2	−51.6	.10	.03	.27	−21.7	−54.0	680.4	1.2
Inland Steel	2,283.3	62.4	−64.2	45.3	.09	−61.8	10.8	.10	.04	.21	−10.8	−51.9	2,810.2	15.2
Interlake	550.0	21.4	40.0	11.4	.08	31.6	−32.1	.24	.10	.45	36.1	−54.6	789.4	8.4
Kaiser Steel	992.0	63.9	30.2	−14.6	.25	23.4	−24.8	.22	.11	.51	−36.3	−80.2	682.7	29.8
Lykes	1,635.3	76.5	14.8	−47.6	.14	37.0	−54.1	.13	.08	1.14	72.0	−53.2	1,805.9	14.3
McLouth Steel	434.4	26.0	146.0	−10.7	.15	102.4	−39.9	.19	.12	.11	−48.5	−97.9	563.2	11.7
NVF	406.2	46.0	59.4	91.0	.25	49.2	31.2	.37	.31	2.62	116.9	33.7	519.1	25.9
National Steel	2,823.8	195.2	571.6	−11.9	.20	576.1	−39.5	.27	.12	.65	121.4	−68.1	3,244.1	12.4
Republic Steel	2,427.3	111.3	415.3	−24.6	.13	400.4	−46.0	.24	.08	.33	72.7	−83.1	3,092.1	7.7
United States Steel	10,161.9	897.1	95.3	59.4	.28	78.3	−.4	.41	.16	.81	38.0	−37.5	9,800.7	24.9
Wheeling-Pittsburgh Steel	752.4	48.2	75.4	53.2	.16	63.2	60.5	.24	.13	.86	19.5	−24.7	1,016.9	13.4
Industry composite	31,538.2	1,962.4	67.1	2.6	.18	62.6	−23.3	.26	.11	.54	7.6	−64.6	35,296.0	16.0
TEXTILES AND APPAREL														
Blue Bell [3]	531.4	32.4	37.8	334.6	.07	12.6	111.1	.80	.44	1.08	−59.8	138.7	872.9	11.5
Brown Group [2]	395.9	26.6	−14.2	377.1	.09	−17.3	276.7	.35	.33	2.55	0	684.9	925.8	11.2
Burlington Industries [3]	1,833.1	137.3	13.1	196.8	.14	9.3	159.9	.29	.17	.59	−44.8	27.9	2,438.1	19.1
Cannon Mills	319.7	26.4	−43.7	−56.9	.14	−44.1	−61.8	NM	.23	.59	−68.0	−70.3	502.4	26.2
Cluett, Peabody	309.6	22.3	85.9	10.2	.09	87.6	11.3	.57	.58	3.73	−9.3	37.9	588.7	10.5
Collins & Aikman [10]	281.4	12.6	−1.7	297.0	.07	−12.1	191.5	.60	.12	.65	−30.5	420.2	539.8	8.5
Cone Mills	350.5	5.4	7.7	−19.0	.02	−2.2	−42.6	.17	.04	.21	−71.8	−43.8	652.2	2.9
Dan River	317.6	4.9	−23.2	−41.9	.03	−22.7	−36.8	.05	.04	.17	−46.0	−72.4	502.4	4.1
Genesco [3]	428.1	18.6	−4.9	48.7	.06	−.4	81.4	.14	.19	2.96	46.8	447.7	1,018.6	6.7
Hart Schaffner & Marx [1]	324.9	21.6	46.6	561.3	.08	36.5	496.3	.36	.38	1.24	−26.3	429.2	585.7	11.2
Interco [10]	899.8	113.8	20.1	366.5	.16	7.2	184.5	1.13	.63	3.90	17.8	282.6	1,666.7	22.5
Kellwood [8]	308.7	6.1	−28.5	−47.7	.02	−36.9	−51.7	.10	.11	.38	−71.2	−66.5	515.3	5.1
Levi Strauss [1]	885.8	167.3	42.9	949.4	.22	13.6	326.6	2.09	1.35	5.13	−30.7	829.0	1,620.0	31.6
Lowenstein (M.) & Sons	317.0	4.1	1.7	−28.5	.02	5.5	−23.1	.04	.05	.28	−75.5	−23.6	567.3	2.6
Melville	563.0	43.6	117.6	190.2	.10	81.9	44.1	1.07	.39	3.64	40.0	487.6	1,524.3	7.5
Springs Mills	442.1	21.8	−30.3	145.8	.08	−34.2	105.2	.34	.15	.53	−66.0	22.1	645.0	14.8
Stevens (J. P.) [2]	953.0	12.2	54.9	48.2	.02	58.5	−61.5	.05	.04	.32	−48.1	−45.2	1,574.2	4.5
U.S. Shoe [5]	317.9	23.3	432.3	147.7	.10	346.3	90.8	.31	.38	.32	8.8	−69.1	685.7	7.3
West Point-Pepperell [4]	500.1	5.5	−13.1	−52.0	.02	−17.2	−70.2	.05	.03	.24	−2.2	−51.5	874.0	2.4
Industry composite	10,279.6	705.8	16.3	134.5	.10	6.5	75.2	.38	.25	1.21	−26.1	86.2	18,299.2	12.9
TIRE AND RUBBER														
Firestone Tire & Rubber [2]	3,455.7	184.1	−17.6	51.1	.09	−22.9	12.1	.27	.13	1.05	−45.2	157.6	4,616.4	15.9
General Tire & Rubber [1]	1,576.8	112.0	26.5	47.1	.15	21.0	9.3	.39	.21	1.86	20.5	291.3	2,079.5	17.4
Goodrich (B. F.)	1,772.7	78.3	−13.3	62.9	.08	−21.5	35.9	.16	.11	1.36	−17.1	199.5	2,241.1	13.5
Goodyear Tire & Rubber	4,947.9	105.8	17.6	66.6	.04	9.9	29.6	.09	.05	.27	−7.6	28.7	6,710.8	5.3
Uniroyal	1,808.6	23.2	−49.8	−42.3	.02	−52.4	−49.6	.05	.04	.44	−11.5	21.4	2,562.2	4.9
Industry composite	13,561.6	503.5	−6.5	43.9	.07	−12.6	13.1	.16	.09	.79	−25.3	121.4	18,210.0	10.3
TOBACCO (Cigars, cigarettes)														
American Brands	2,795.2	25.7	34.6	−19.5	.02	30.6	−39.5	.05	.06	.31	−7.9	−28.3	3,397.3	2.4
Liggett Group	723.0	5.2	−28.7	−45.2	.01	−30.0	−59.2	.03	.04	.36	19.3	−42.4	869.2	2.6
Loews	7,112.8	271.9	116.2	1,175.6	NA	NA	NA	.27	1.16	19.51	425.2	893.4	3,293.9	21.7
Philip Morris	4,222.1	75.0	59.4	33.6	.03	41.9	−27.9	.05	.06	.24	−18.5	−25.9	4,021.9	5.5
Reynolds (R. J.) Industries	4,443.6	181.4	4.9	357.0	.09	5.9	149.1	.23	.09	.33	161.8	183.3	4,807.3	13.3
Industry composite	19,296.7	559.3	50.3	252.5	.09	43.6	135.7	.14	.13	.74	190.1	186.4	16,389.5	10.2
TRUCKING														
Consolidated Freightways	528.2	27.1	−23.1	−25.0	.11	−34.9	−58.4	.62	.11	.49	−67.0	−37.6	1,178.5	9.5
Leaseway Transportation	565.2	36.4	−50.0	46.3	.32	−37.4	−4.2	.19	.09	.18	−68.2	−12.1	730.2	26.9
Roadway Express	409.5	152.0	14.9	171.2	.71	−.1	5.0	NM	.90	1.84	−75.6	48.5	839.2	61.0
Yellow Freight Systam	359.2	13.6	−52.9	120.9	.16	−53.7	1.3	.44	.06	.25	−49.0	113.9	681.8	11.2
Industry composite	1,862.0	229.1	−14.8	86.0	.35	−19.8	−6.1	.86	.22	.54	−57.8	16.1	3,429.7	26.1

Footnotes at end of table.

CORPORATE CASH SCOREBOARD—Continued

Company	Total assets, 3/31/78 (millions)	Cash: Total, 3/31/78 (millions)	Cash: Percent change From 1977	Cash: Percent change 12/31/73 to 3/31/78	Ratio of cash to—: Current assets 3/31/78	Current assets: Percent change From 1977	Current assets: Percent change 12/31/73 to 3/31/78	Long-term debt, 3/31/78	Property, plant, and equipment 3/31/78	Capital spending 1977	Capital spending: Percent change 1976–77	Capital spending: Percent change 1973–77	Sales 3/31/78 (millions)	Cash turnover 3/31/78 (days)
UTILITIES														
(Telephone, electric, gas)														
Allegheny Power System	2,439.0	52.8	−34.1	NA	.20	−32.1	NA	.05	.02	NA	NA	NA	812.0	29.5
American Electric Power	7,566.0	281.9	37.2	NA	.37	26.6	NA	.08	.05	NA	NA	NA	2,079.9	42.2
American Natural Resources	2,924.8	150.3	−18.9	NA	.26	−22.6	NA	.16	.07	NA	NA	NA	1,719.4	35.1
American Tel. & Tel.[1]	93,931.8	NA	NA	NA	NA	NA	NA	NA	NA	.11	−23.5	−2.4	36,981.4	NA
Arizona Public Service	1,756.4	4.9	−42.2	NA	.05	−45.3	NA	.01	.00	NA	NA	NA	512.0	4.7
Baltimore Gas & Electric	2,544.9	7.9	−5.8	NA	.03	−18.1	NA	.01	.00	NA	NA	NA	833.2	3.5
Boston Edison	1,469.4	20.7	−21.4	NA	.15	−28.8	NA	.03	.02	NA	NA	NA	607.9	14.0
Carolina Power & Light	2,842.3	118.1	88.7	NA	.53	59.1	NA	.11	.05	NA	NA	NA	851.9	38.2
Central & South West	2,781.9	42.0	−20.1	NA	.20	−29.3	NA	.04	.02	NA	NA	NA	1,224.5	13.9
Central Telephone and Utility	1,411.1	14.4	−11.6	247.9	.17	−20.5	138.4	.02	.01	.04	7.5	3.3	504.4	10.9
Cincinnati Gas & Electric	1,576.5	6.5	−78.2	NA	.04	−78.3	NA	.01	0	NA	NA	NA	726.6	8.9
Cleveland Electric Illuminating	2,122.5	28.4	202.6	NA	.13	137.6	NA	.03	.02	NA	NA	NA	682.7	10.0
Columbia Gas System	3,492.2	187.8	3.8	NA	.23	−8.3	NA	.17	.08	NA	NA	NA	2,298.9	28.9
Commonwealth Edison	7,775.3	24.7	28.9	NA	.05	2.6	NA	.01	0	NA	NA	NA	2,197.0	3.6
Consolidated Edison of New York	6,764.1	587.4	18.7	NA	.58	11.9	NA	.21	.10	NA	NA	NA	3,040.2	64.1
Consolidated Natural Gas	2,299.5	212.8	8.9	NA	.38	−5.9	NA	.29	.12	NA	NA	NA	1,501.1	48.9
Consumers Power	4,465.5	211.1	61.9	NA	.29	31.3	NA	.11	.06	NA	NA	NA	1,700.0	36.2
Continental Telephone	2,261.1	35.1	−.6	−33.9	.21	−13.1	−13.9	.03	.02	.17	−7.2	−9.4	784.1	16.2
Detroit Edison	4,158.2	33.5	−37.8	NA	.09	−34.2	NA	.02	.01	NA	NA	NA	1,459.2	10.8
Duke Power	4,679.4	19.3	−75.3	NA	.08	−69.5	NA	.01	0	NA	NA	NA	1,309.2	13.4
El Paso	2,954.4	72.7	−17.7	25.8	.14	−15.0	−15.0	.05	.03	.27	−23.0	−12.0	1,740.7	16.7
Enserch	1,543.8	26.0	46.8	NA	.06	12.4	NA	.05	.03	NA	NA	NA	1,547.5	5.1
Entex[6]	413.5	5.3	−85.3	1.6	.06	−83.6	−75.6	.04	.02	.28	460.4	−17.0	607.6	12.2
Florida Power	1,680.8	28.3	2.5	NA	.22	2.7	NA	.04	.02	NA	NA	NA	662.6	15.2
Florida Power & Light	4,232.0	98.1	38.7	NA	.29	34.3	NA	.05	.03	NA	NA	NA	1,501.9	20.2
General Public Utilities	4,398.1	20.9	NA	NA	.07	NA	NA	.01	.01	NA	NA	NA	1,281.1	NA
General Telephone & Electronics	14,939.9	180.2	−7.2	32.3	.06	−17.3	−11.4	.03	.02	.10	−20.1	.5	7,908.6	8.5
Gulf States Utilities	1,826.7	6.9	9.3	NA	.07	−15.5	NA	.01	0	NA	NA	NA	624.7	3.8
Houston Industries	2,825.5	31.7	27.3	NA	.18	6.6	NA	.03	.01	NA	NA	NA	1,118.2	9.1
Illinois Power	1,830.6	19.7	−41.9	NA	.16	−42.4	NA	.03	.01	NA	NA	NA	601.5	16.0
Long Island Lighting	2,622.4	18.0	−29.1	NA	.09	−30.5	NA	.02	.01	NA	NA	NA	847.9	9.2
Middle South Utilities	4,993.0	136.3	8.6	NA	.34	−6.0	NA	.06	.03	NA	NA	NA	1,553.7	30.3
National Fuel Gas[3]	602.7	49.3	−41.4	NA	.27	−37.5	NA	.26	.12	NA	NA	NA	526.7	45.6
New England Electric System	1,791.7	74.9	24.7	NA	.36	24.5	NA	.10	.05	NA	NA	NA	769.8	31.5
Niagara Mohawk Power	3,067.1	15.6	449.7	NA	.06	401.2	NA	.01	.01	NA	NA	NA	1,245.7	2.7
Nicor	1,377.3	76.8	−38.8	NA	.29	−34.5	NA	.21	.08	NA	NA	NA	1,119.6	32.5
Northeast Utilities	2,967.4	15.0	3.2	NA	.07	−2.8	NA	.01	.01	NA	NA	NA	814.9	6.5
Northern Indiana Public Service	1,915.1	60.2	100.5	NA	.26	68.5	NA	.08	.04	NA	NA	NA	849.7	19.1
Northern Natural Gas	2,285.3	69.5	−65.1	152.0	.12	−65.5	15.2	.11	.05	.09	−74.8	71.5	1,774.3	27.3
Northern States Power	2,457.5	95.0	282.4	NA	.39	171.8	NA	.10	.04	NA	NA	NA	930.6	23.2
Northwest Energy	670.1	56.2	−21.5	NA	.25	−45.5	NA	.28	.14	.11	−92.2	NA	770.1	29.9
Ohio Edison	2,749.6	9.3	−81.1	NA	.06	−75.2	NA	.01	0	NA	NA	NA	817.3	12.8
Oklahoma Natural Gas[4]	520.5	21.9	126.7	NA	.17	62.1	NA	.12	.06	NA	NA	NA	608.3	9.3
Pacific Gas & Electric	7,995.2	20.2	−47.1	NA	.02	−40.1	NA	.01	0	NA	NA	NA	3,577.9	2.9
Pacific Gas Transmission *	260.5	.1	NA	−82.7	0	NA	−96.5	0	0	.01	−95.1	−96.1	845.9	NA
Pacific Lighting	1,954.4	51.7	14.9	NA	.13	4.2	NA	.07	.04	NA	NA	NA	1,516.6	11.5
Panhandle Eastern Pipeline	1,958.4	29.2	−42.4	−6.6	.08	−44.2	−62.0	.04	.02	.18	−27.1	−38.0	1,216.7	11.8
Pennsylvania Power & Light	3,035.5	35.5	150.6	NA	.11	119.1	NA	.03	.01	NA	NA	NA	763.0	11.7
Peoples Gas[3]	2,699.8	101.9	−11.7	NA	.18	−27.5	NA	.12	.06	NA	NA	NA	1,725.3	22.7
Philadelphia Electric	4,707.0	143.7	92.9	NA	.33	75.3	NA	.07	.03	NA	NA	NA	1,431.0	27.4
Pioneer	419.9	16.8	−43.6	NA	.13	−41.1	NA	.14	.06	NA	NA	NA	515.6	16.3
Potomac Electric Power	1,997.9	5.3	145.2	NA	.03	120.2	NA	.01	0	NA	NA	NA	679.7	2.0
Public Service Co. of Colorado	1,595.8	29.2	−9.0	NA	.17	−16.3	NA	.05	.02	NA	NA	NA	644.5	17.1
Public Service Electric & Gas	5,175.8	66.2	43.9	NA	.14	34.2	NA	.03	.02	NA	NA	NA	2,092.1	9.7
San Diego Gas & Electric	1,457.5	4.0	10.4	NA	.02	−27.1	NA	.01	0	NA	NA	NA	528.3	2.6
Southern	9,208.8	501.0	13.8	NA	.48	2.9	NA	.11	.06	NA	NA	NA	2,733.7	62.0
Southern California Edison	5,766.2	8.7	−37.1	NA	.01	−59.0	NA	0	0	NA	NA	NA	2,085.2	2.0
Southern Natural Resources	1,472.1	119.9	86.1	347.7	.32	44.4	93.9	.27	.13	.39	−48.6	14.6	906.1	36.6
Southern New England Telephone	1,388.7	5.8	18.5	18.0	.06	−5.7	−15.9	.01	0	.04	13.0	9.0	597.8	3.2
Southern Union	424.3	20.2	13.0	NA	.19	8.6	NA	.18	.07	NA	NA	NA	544.3	12.6
Texas Eastern *	2,838.0	69.0	NA	81.9	.14	NA	−11.0	.07	.03	.38	−28.7	115.9	2,021.7	NA
Texas Gas Transmission	1,095.3	19.0	−63.1	−57.2	.09	−60.7	−68.3	.05	.02	.08	−89.9	−83.1	1,076.1	11.8
Texas Utilities	4,679.6	46.4	−60.5	NA	.19	−53.8	NA	.02	.01	NA	NA	NA	1,424.3	20.7
Transco *	2,140.4	79.2	124.1	147.0	.28	65.1	27.7	.07	.05	.39	51.5	42.0	802.0	25.7
Union Electric	2,556.0	13.0	−7.4	NA	.06	−21.8	NA	.01	.01	NA	NA	NA	793.8	6.1
United Energy Resources	1,070.6	161.4	83.0	NA	.30	29.7	NA	.96	.40	1.04	−18.1	NA	1,801.5	24.9
United Telecommunications	2,978.4	15.3	−32.0	−32.3	.06	−22.2	−35.3	.01	.01.	.04	−25.0	−50.1	1,241.4	5.5
Virginia Electric & Power	4,870.5	5.3	−94.1	NA	.02	−92.8	NA	0	0	NA	NA	NA	1,406.0	12.1
Western Union	1,634.9	25.9	−9.3	−41.2	.14	−18.9	−33.2	.04	.02	.11	−5.7	−37.8	657.2	14.9
Wisconsin Electric Power	1,402.9	19.7	−77.0	NA	.12	−68.3	NA	.04	.02	NA	NA	NA	691.6	27.5
Industry composite	300,708.6	4,840.9	2.6	NA	.15	−7.7	NA	.04	.02	NA	NA	NA	126,367.1	13.6
All-industry composite	1,193,093.0	77,833.3	2.9	67.5	0.18	−6.3	3.3	0.27	0.12	0.67	10.8	7.4	1,296,941.0	21.3

[1] Fiscal year ends Nov. 30.
[2] Fiscal year ends Oct. 31.
[3] Fiscal year ends Sept. 30.
[4] Fiscal year ends Aug. 31.
[5] Fiscal year ends July 31.
[6] Fiscal year ends June 30.
[7] Fiscal year ends May 31.
[8] Fiscal year ends Apr. 30.
[9] Fiscal year ends Mar. 31.
[10] Fiscal year ends Feb. 28.
[11] Fiscal year ends Jan. 31.

NA—not available; NM—not meaningful.

* Data were not available for the 3 mo ended Mar. 31; data used were for 3 mo ending Dec. 31, 1977. Data: Standard & Poor's Compustat Services Inc.

Note: Unless otherwise indicated, company's fiscal year ends in December.

SMALL BUSINESS LEGISLATIVE COUNCIL*

Ninety-seven organizations support in principle the Small Business Legislative Council policy supporting a simplified and graduated business tax system. These are:

* Of the National Small Business Association.

American Association of Nurserymen, Washington, D.C.

American Gear Manufacturers Asosciation, Washington, D.C.

American Pipe Fittings Association, Stamford, Connecticut.

American Pulpwood Association, Washington, D.C.

American Road Builders Association, Washington, D.C.

Appalachian Hardwood Manufacturers Association, High Point, North Carolina.

Associated Master Barbers & Beauticians of America, Charlotte, North Carolina.

Associated Retail Bakers of America, Annapolis, Maryland.

Association of Steel Distributors, Cleveland, Ohio.

Association of Diesel Specialists, Kansas City, Missouri.

Automotive Parts & Accessories Assoc., Washington, D.C.

Boat Manufacturers Association, Chicago, Illinois.

Building Service Contractors Association, McLean, Virginia.

Casket Manufacturers Association of America, Evanston, Illinois.

Christian Booksellers Association, Colorado Springs, Colorado.

Colorado Organic Growers' and Marketers' Association, Denver, Colorado.

Computer & Communications Industry Association, Rosslyn, Virginia.

Connecticut Small Business Federation, Hartford, Connecticut.

Delaware Retail Association, Wilmington, Delaware.

Direct Selling Association, Washington, D.C.

Electrical Generating Systems Marketing Association, Chicago, Illinois.

Electronic Representatives Association, Chicago, Illinois.

Engraved Stationery Manufacturers Assoc., Chicago, Illinois.

Farmers Elevator Association of Minnesota, Minneapolis, Minnesota.

Greater Washington Business Center, Washington, D.C.

Idaho Feed & Grain Association, Caldwell, Idaho.

Independent Bakers Association, Washington, D.C.

Independent Media Producers Association, Washington, D.C.

Independent Sewing Machine Dealers Association, Hilliard, Ohio.

International Franchise Association, Washington, D.C.

International Repro Graphic Blueprint Association, Franklin Park, Illinois.

Machinery Dealers National Association, Silver Spring, Maryland.

Manufacturers Agents National Association, Irvine, California.

Menswear Retailers of America, Washington, D.C.

Metal Treating Institute, Phoenix, Arizona.

Metropolitan Contractors Association, Washington, D.C.

Minnesota Motorcycle Dealers Association, Minneapolis, Minnesota.

Motorcycle Trades Association, Alexandria, Virginia.

Narrow Fabrics Institute, New Rochelle, New York.

National Appliance Service Association, Kansas City, Missouri.

National Association for Child Development and Education, Washington, D.C.

National Association of Black Manufacturers, Washington, D.C.

National Association of Brick Distributors, McLean, Virginia.

National Association of Business & Educational Radio, Washington, D.C.

National Association of Catalog Showroom Merchandisers, New York, New York.

National Association of Floor Covering Distributors, Chicago, Illinois.

National Association of Furniture Manufacturers, Washington, D.C.

National Association of Glove Manufacturers, Gloversville, New York.

National Association of Home Manufacturers, Washington, D.C.

National Association of Independent Lumbermen, Washington, D.C.

National Association of Installment Companies, New York, New York.

National Association of Men's and Boys' Apparel Clubs, Atlanta, Georgia.

National Association of Plastics Distributors, Devon, Pennsylvania.

National Association of Plumbing-Heating-Cooling Contractors, Washington, D.C.

National Association of Printing Ink Manufacturers, New York.

National Association of Retail Druggists, Washington, D.C.

National Beer Wholesalers of America, Chicago, Illinois.

National Bicycle Dealers Association, Wickliffe, Ohio.

National Building Material Distributors Association, Chicago, Illinois.

National Campground Owners Assoc., Martinsville, Illinois.

National Candy Wholesalers Association, Washington, D.C.

National Commercial Refrigeration Sales Association, Philadelphia, Pennsylvania.

National Concrete Masonry Association, McLean, Virginia.

National Electronic Service Dealers Association, Indianapolis, Indiana.

National Environmental Systems Contractors Association, Arlington, Virginia.

National Family Business Council, Westville, New Jersey.

National Glass Dealers Association, Washington, D.C.

National Home Furnishings Assoc., Washington, D.C.

National Home Improvement Council, New York, New York.

National Independent Dairies Assoc., Washington, D.C.

National Insulation Contractors Assoc., Washington, D.C.

National Liquor Stores Association, Washington, D.C.

National Lumber & Building Material Dealers Association, Washington, D.C.

National Office Machine Dealers Assoc., Hackensack, New Jersey.

National Office Products Association, Alexandria, Virginia.

National Paper Trade Association, New York, New York.

National Parking Association, Washington, D.C.

National Patent Council, Arlington, Virginia.

National Peach Council, Martinsburg, West Virginia.

National Pest Control Association, Vienna, Virginia.

National Precast Concrete Association, Indianapolis, Indiana.

National Roofing Contractors Association, Oak Park, Illinois.

National School Supply & Equipment Assoc., Arlington, Virginia.

National Screw Machine Products Assoc., Cleveland, Ohio

National Selected Morticians, Evanston, Illinois.

National Small Business Association, Washington, D.C.

National Tire Dealers and Retreaders Association, Inc., Washington, D.C.

National Utility Contractors Association, Washington, D.C.

National Woodwork Manufacturers Association, Chicago, Illinois.

New York State Council of Retail Merchants, Albany, New York.

Northeastern Lumber Manufacturers Assoc., Glens Falls, New York.

Oregon Feed, Seed & Suppliers Assoc., Portland, Oregon.

Small Business Service Contractors Assoc., Washington, D.C.

Society of American Florists and Ornamental Horticulturists, Alexandria, Virginia.

South Dakota Retailers Association, Pierre, South Dakota.

Truck Body and Equipment Association, Washington, D.C.

Truck Equipment and Body Distributors Association, Cincinnati, Ohio.

Additional small and independent business associations supporting Nelson 3-year depreciation amendment

98. American Federation of Small Business	5,000
99. Associated Builders and Contractors	11,500
100. Connecticut Small Business Federation	1,500
101. Council of Smaller Enterprises (Cleveland)	1,220
102. Electronic Representatives Association	1,400
103. Illinois Federation of Small Businesses	3,000
104. Independent Business Association of Washington	3,000
105. Independent Business Association of Wisconsin	400
106. Manufacturers Agents National Association	5,000
107. National Association of Black Manufacturers	425
108. National Association of Small Business Investment Companies	375
109. National Association of Wholesaler-Distributors	35,000
110. National Business League	3,000
111. National Federation of Independent Business	525,000
112. National Retail Merchants Association	3,500
113. National Society of Public Accountants	16,000
114. National Venture Capital Association	71
115. Small Business Council (Syracuse)	1,100
116. Small Business Service Bureau	35,000
117. Smaller Manufacturers Council (Pittsburgh)	768
118. Smaller Business Association of New England	1,300
119. Toledo Area Small Business Association	450
120. National Association of Women Business Owners	400
121. National Automobile Parts Association	5,000
122. National Automobile Dealers Association	21,000
123. National Council of Professional Services Firms	2,000
124. National Home Furnishings Association	5,000
125. National Council of Salesmen's Organizations, Inc.	60,000
Subtotal, additional associations	747,409
Subtotal, Small Business Legislative Council	2,750,000
Total	3,000,000

THREE-YEAR ENDORSEMENTS OF SIMPLIFIED DEPRECIATION AMENDMENT

ACCELERATED DEPRECIATION

The Problem: Present depreciation methods in the tax code present small firms with a dual problem. First, they allow large firms that have access to unlimited professional expertise to recover their invested capital 20 percent faster than smaller firms that can't afford this additional help. Second, the same complexity that gives big business this advantage gives small firms difficulty and is the major reason they are found in violation of the law when audited by IRS. The 125 pages of regulations that implement this part of the code are simply Greek to small businessmen. The bill reported by the Finance Committee does nothing to ease this problem. In fact, it could be easily argued that the Committee's action exacerbates this problem by increasing the rate at which firms that use ADR can recover invested capital. In addition, a last minute decision by the Committee deleted a House passed provision that would have helped small firms by more than doubling allowable first year depreciation.

The Proposal: To replace the Committee's ADR depreciation proposal with one drafted by Senator Nelson that would allow a firm, any firm, to use three-year, straight-line depreciation on its first $25,000 in equipment purchases each year. This proposal would solve both small business problems explained above. It would reduced the gap in the rate at which large and small firms can recover invested capital and it would be a massive simplification of the depreciation section of the code. Remember, this change would not be restricted only to small firms. Any business can use it for its first $25,000 in purchases.

Discussion:

1. The Finance Committee adopted a liberalization of ADR (Asset Depreciation Range) which provides a significant amount of tax relief to business. Why doesn't the small business community find this proposal acceptable?

Small businesses, and even some medium size ones, do not use ADR. It is simply too complicated to use without expert assistance. To illustrate: 63 percent of the firms with over one billion dollars in assets used ADR, while only five-tenths of one percent of those with under one million dollars in assets use it. Since ADR allows firms to recover invested capital 20 percent faster than other methods of depreciation, it gives large businesses that can afford expensive expert assistance a big advantage. The Finance Committee proposal would aggravate the situation by increasing the gap in the difference in the recovery rate to 30 percent.

2. Why did the Committee adopt this approach?

It adopted this approach on a voice vote early in the markup session, before it had a chance to focus on the issues involved. When Senator Nelson offered his alternative, the die had been cast and backers of the ADR proposal and their big business supporters were able to hold their votes.

3. Why is the Nelson proposal favored by small business?

It is favored because it addresses the two major problems small firms have with the present depreciation sections of the code—complexity and rate of recovery. It is a massive simplification of the present rules (anyone can use straight-line depreciation), and provides a rate of recovery similar to ADR.

4. How much does Senator Nelson's three-year, straight-line proposal cost?

Senator Nelson's proposal is actually cheaper than the Committee ADR proposal—and it will help many million more firms. The Joint Tax Committee's revenue loss estimates are below:

[In billions of dollars]

Calendar year	1979	1980	1981	1982	1983
ADR	.5	1.4	2.0	2.5	2.9
3-year straight line	.4	1.4	2.2	2.6	2.3

5. Opponents of Senator Nelson's proposal say that it will encourage shelters by professionals—doctors, dentists, lawyers, etc. Is this true?

There could be some sheltering under the Nelson proposal, but the same accusation could, and has been, made against any well meaning small business tax relief proposal. We simply cannot fail to enact significant tax reforms that benefit millions of firms because a few will use them for something other than their intended purpose. In addition, Senator Nelson has offered to work with Treasury to seek ways to limit this type of abuse.

Conclusion: NFIB believes that Senator Nelson's three-year straight-line depreciation proposal is the best alternative for all but a few thousand firms in the American business community. It addresses the main problem that most businesses have with depreciation, complexity, and it reduces the advantages the present code gives to our large conglomerates. In other words, we believe it gives the Senate more bang for the buck, a chance to help several million more businesses (the job creators) for less money. We think it's a sound approach and urge the Senate to support it.

SMALL BUSINESS LEGISLATIVE COUNCIL

DEAR SENATOR: Small business needs a simplification of depreciation methods. Because most smaller and new businesses use straight-line depreciation, we support an optional simple straight-line depreciation system, with shorter useful life—three years—for investments in new and used equipment. Where this system is elected, it would eliminate for most small businesses the complicated combination of present depreciation laws, including dispute about useful life, salvage value, and rapid depreciation and amortization methods.

This change would be particularly attractive to smaller business. Rarely can the smaller business understand the complex depreciation laws, let alone utilize them. A system such as the one proposed would represent true reform for small business. And the IRS should welcome the adoption of this proposal because depreciation, according to the IRS is one of the most common causes of error in the tax returns of small business.

For these reasons we support S. 3493, introduced by Senator Nelson.

About 80 percent of U.S. businesses buy less than $25,000 of equipment per year. S. 3493 offers simplification and stops discrimination in the form of depreciation laws which smaller business cannot use to full advantage.

A total of 97 associations endorse in principle the Small Business Legislative Council policy supporting a simplified and graduated business tax system. (See Attachment A.)

Sincerely,

JOHN LEWIS,
Executive Director.

Attachment.

DEAR SENATOR: Small business needs a simplification of depreciation methods. Because most smaller and new businesses use straight-line depreciation, we support an optional simple straight-line depreciation system, with shorter useful life—three years—for investments in new and used equipment. Where this system is elected, it would eliminate for most small businesses the complicated combination of present depreciation laws, including dispute about useful life, salvage value, and rapid depreciation and amortization methods.

This change would be particularly attractive to smaller business. Rarely can the smaller business understand the complex depreciation laws, let alone utilize them. A system such as the one proposed would represent true reform for small business. And the IRS should welcome the adoption of this proposal because depreciation, according to the IRS, is one of the most common causes of error in the tax returns of small business.

For this reason we support Senator Nelson's depreciation simplification proposal.

About 80 percent of U.S. businesses buy less than $25,000 of equipment per year. Senator Nelson's proposal offers simplification and stops discrimination in the form of depreciation laws which smaller business cannot use to full advantage.

The small business community is united in heading off any abuses in the use of this provision, so that the possible abuse by a few will not deny legitimate use by the vast number of small businesses. Small business employs over 60 percent of the work-force, and creates 96 percent of new jobs.

We support the Haskell-Hathaway proposal for job credit. While there may be a temporary loss in income to the Treasury, the utilization of the job credit will add $16–17 billion to the treasury for each million persons employed. The repayment to the government in the form of Income, Social Security, and Unemployment taxes now and in the future justifies any possible expenditure at this time.

Sincerely,

HERBERT LIEBENSON,
Associate Executive Director.

Enclosure.

ATTACHMENT A

Ninety-seven organizations support in principle the Small Business Legislative Council policy supporting a simplified and graduated business tax system. These are:

American Association of Nurserymen, Washington, D.C.

American Gear Manufacturers Association, Washington, D.C.

American Pipe Fittings Association, Stamford, Conn.

American Pulpwood Association, Washington, D.C.

American Road Builders Association, Washington, D.C.

Appalachian Hardwood Manufacturers Association, High Point, N.C.

Associated Master Barbers & Beauticians of America, Charlotte, N.C.

Associated Retail Bakers of America, Annapolis, Md.

Association of Steel Distributors, Cleveland, Ohio.

Association of Diesel Specialists, Kansas City, Mo.

Automotive Parts & Accessories Assoc., Washington, D.C.

Boat Manufacturers Association, Chicago, Ill.

Building Service Contractors Association, McLean, Va.

Casket Manufacturers Association of America, Evanston, Ill.

Christian Booksellers Association, Colorado Springs, Colo.

Colorado Organic Growers' and Marketers' Association, Denver, Colo.

Computer & Communications Industry Association, Rosslyn, Va.

Connecticut Small Business Federation, Hartford, Conn.

Delaware Retail Association, Wilmington, Del.

Direct Selling Association, Washington, D.C.

Electrical Generating Systems Marketing Association, Chicago, Ill.

Electronic Representatives Association, Chicago, Ill.

Engraved Stationery Manufacturers Assoc., Chicago, Ill.
Farmers Elevator Association of Minnesota, Minneapolis, Minn.
Greater Washington Business Center, Washington, D.C.
Idaho Feed & Grain Association, Caldwell, Idaho.
Independent Bakers Association, Washington, D.C.
Independent Media Producers Assoc., Washington, D.C.
Independent Sewing Machine Dealers Association, Hilliard, Ohio.
International Franchise Association, Washington, D.C.
International Repro Graphic Blueprint Association, Franklin Park, Ill.
Machinery Dealers National Assoc., Silver Spring, Md.
Manufacturers Agents National Assoc., Irvine, Calif.
Menswear Retailers of America, Washington, D.C.
Metal Treating Institute, Phoenix, Ariz.
Metropolitan Contractors Association, Washington, D.C.
Minnesota Motorcycle Dealers Assoc., Minneapolis, Minn.
Motorcycle Trades Association, Alexandria, Va.
Narrow Fabrics Institute, New Rochelle, N.Y.
National Appliance Service Assoc., Kansas City, Mo.
National Association for Child Development and Education, Washington, D.C.
National Association of Black Manufacturers, Washington, D.C.
National Association of Brick Distributors, McLean, Va.
National Association of Business & Educational Radio, Washington, D.C.
National Association of Catalog Showroom Merchandisers, New York, N.Y.
National Association of Floor Covering Distributors, Chicago, Ill.
National Association of Furniture Manufacturers, Washington, D.C.
National Association of Glove Manufacturers, Gloversville, N.Y.
National Association of Home Manufacturers, Washington, D.C.
National Association of Independent Lumbermen, Washington, D.C.
National Association of Installment Companies, New York, N.Y.
National Association of Men's and Boys' Apparel Clubs, Atlanta, Ga.
National Association of Plastics Distributors, Devon, Pa.
National Association of Plumbing-Heating-Cooling Contractors, Washington, D.C.
National Association of Printing Ink Manufacturers, Harrison, N.Y.
National Association of Retail Druggists, Washington, D.C.
National Beer Wholesalers of America, Chicago, Ill.
National Bicycle Dealers Association, Wickliffe, Ohio.
National Building Material Distributors Association, Chicago, Ill.
National Campground Owners Assoc., Martinsville, Ill.
National Candy Wholesalers Association, Washington, D.C.
National Commercial Refrigeration Sales Association, Philadelphia, Pa.
National Concrete Masonry Association, McLean, Va.
National Electronic Service Dealers Association, Indianapolis, Ind
National Environmental Systems Contractors Association. Arlington, Va.
National Family Business Council, Westville, N.J.
National Glass Dealers Association, Washington, D.C.
National Home Furnishings Assoc., Washington, D.C
National Home Improvement Council, New York, N.Y.
National Independent Dairies Assoc., Washington, D.C.
National Insulation Contractors Assoc., Washington, D.C.
National Liquor Stores Association, Washington, D.C.
National Lumber & Building Material Dealers Association, Washington, D.C.
National Office Machine Dealers Assoc., Hackensack, N.J.
National Office Products Association, Alexandria, Va.
National Paper Trade Association, New York, N.Y.
National Parking Association, Washington, D.C.
National Patent Council, Arlington, Va.
National Peach Council, Martinsburg, W. Va.
National Pest Control Association, Vienna, Va.
National Precast Concrete Association, Indianapolis, Ind.
National Roofing Contractor Association, Oak Park, Ill.
National School Supply & Equipment Assoc., Arlington, Va.
National Screw Machine Products Assoc., Cleveland, Ohio.
National Selected Morticians, Evanston, Ill.
National Small Business Association, Washington, D.C.
National Tire Dealers and Retreaders Association, Inc., Washington, D.C.
National Utility Contractors Association, Washington, D.C.
National Woodwork Manufacturers Association, Chicago, Ill.
New York State Council of Retail Merchants, Albany, N.Y.
Northeastern Lumber Manufacturers Assoc., Glens Falls, N.Y.
Oregon Feed, Seed & Suppliers Assoc., Portland, Oreg.
Small Business Service Contractors Assoc., Washington, D.C.
Society of American Florists and Ornamental Horticulturists, Alexandria, Va.
South Dakota Retailers Association, Pierre, S. Dak.
Truck Body and Equipment Association, Washington, D.C.
Truck Equipment and Body Distributors Association, Cincinnati, Ohio.

NATIONAL VENTURE
CAPITAL ASSOCIATION,
Washington, D.C., October 3, 1978.

Hon. GAYLORD NELSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NELSON: Although we feel the Senate Finance Committee's capital gains proposal significantly improves the economic climate for venture capital investment in small business, we believe small business needs additional legislative assistance in the area of more liberalized depreciation policies.

Accordingly, we urge your support of Senator GAYLORD NELSON's proposal for a three-year, straight line depreciation on equipment up to $25,000 annually.

Sincerely,

REID W. DENNIS,
President.

CINCINNATI UPDATE
OCTOBER 4, 1978.

TO OUR CUSTOMERS: The telegram set forth below was sent in response to a call for help from our legislative contacts in Washington—to Senators John Glenn, Howard Metzenbaum, Birch Bayh, Richard G. Lugar, Walter Huddleston, Wendell H. Ford, Howard Baker, James Sasser, Jennings Randolph, and Robert C. Byrd. It was dated Oct. 4, 1978.

Will you please help small business by supporting tax legislation introduced by the small business committee, as follows:

1. Graduated corporate income tax.
2. Two-tier capital gains taxation for very long held investments such as small business owners must make in their businesses through retention of tax-paid income which IRS taxes again as capital gains.
3. Senator Nelson's amendment to allow for simplified three-year straight line depreciation.

Past tax legislation has been drafted with only big business in mind. For the first time small business has really been considered.

Your help will be appreciated.

If the Senate has not voted by the time you receive this and you would like to pick up an oar and help row the boat, pick up your phone and call the local office of your Senator and convey the message.

We're getting as far as we've gotten because we have worked to get there. Small business is being recognized really for the first time. The more they hear from us, the stronger we get.

JOHN K. LAMB,
Chairman, Legislative Committee, Business Advertising Council.

POBLOCKI AND SONS,
Milwaukee, Wis., October 3, 1978.

Mr. WILLIAM B. CHERKASKY,
Senator GAYLORD NELSON'S OFFICE,
Senate Office Building,
Washington, D.C.

DEAR BILL: I thought you would be interested in the enclosed copy of page 3 from the recent Newsletter of the Wisconsin Advertising Association, Inc. I didn't give them the figures but I gave them the information about Senator Nelson's proposals.

Thank you.

Very truly yours,

EDWARD C. POBLOCKI,
President.

TAX BREAKS PENDING

While a push is underway in Congress to revamp the currently unfair and confiscatory tax structure for capital gains, efforts are continuing to be made by Senator Nelson of Wisconsin to gain reduction of corporate taxes on small and independent business firms.

Nelson's "Small Business Tax Reduction and Stimulation Act of 1978," which is a bit of one-ups-manship on the Administration, would give less of a break to companies with taxable incomes of $150,000 or more, and redistribute these savings to the vast majority of firms that have taxable incomes under that amount.

Comparison of current corporate tax rates, Administration and Nelson proposals

[In percent]

Corporation taxable income	Current law	Administration proposal	Nelson bill
0 to $25,000	20	18	15
$25,000 to $50,000	22	20	20
$50,000 to $100,000	48	44	30
$100,000 to $150,000	48	44	40
Above $150,000	48	44	45

The fact that Small Business is really the backbone of our economy is finally gaining some recognition from Congress. It's a most encouraging sign; largely the result of efforts by an increasing number of Small Business groups and associations such as the Independent Business Association of Wisconsin

(IBAW) who are tired of playing second fiddle to our mammoth corporations and conglomerates.

Mr. DURKIN. Will the Senator yield?

Mr. NELSON. We are not under a time limitation.

Mr. BENTSEN. No.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. DURKIN. I thank the Chair.

Mr. President, I am delighted to rise in support of the amendment offered by the distinguished Senator from Wisconsin which I have cosponsored. I cannot think of a legislative change to this revenue bill that can have a more beneficial effect on small business in New Hampshire and all across the country.

We are all aware of the recent disturbing trends affecting small businesses in the United States. Beset by inflation and regulation, overtaxed and underrewarded, many small businessmen are giving up, closing down their operations or else selling out to the growing conglomerates all around us.

Mr. President, I firmly believe that this trend is profoundly dangerous for the future of this country, for much of the strengh of America is embodied in its small businessmen and women. In this century they have truly formed the backbone of our American economy.

Yet today, Mr. President, the small businessman is becoming an endangered species. It is time, and past time, to reverse this trend and give small businesses the chance to survive in today's regulatory climate.

This amendment would set up a new method for quick depreciation for small businesses. Senator NELSON'S proposal would allow a straight-line, 3-year depreciation on up to $25,000 of equipment purchases each year. This accelerated depreciation could be coupled with the 10-percent investment tax credit.

This new depreciation option would allow quick writeoffs of new purchases. Almost as important, the benefits could be claimed by small businesses after simple computations. The independent businessman would no longer have to employ platoons of lawyers and accountants to figure out his depreciation allowances. So this proposal involves tax simplification as well as tax relief—and God knows the whole country is looking for tax simplification as well as tax relief.

Accelerated depreciation is especially important for struggling new businesses that face high startup costs and cash flow problems during their beginning years. But it is also important to all of those businesses which contemplate expansion or modernization.

I know this amendment will be of great benefit to small businesses in New Hampshire and across the country, and I urge its adoption.

I thank the Senator.

Mr. RIBICOFF. May I ask a few questions on my time of the distinguished Senator from Texas?

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I oppose the Nelson amendment. I think I have listened to some of the arguments.

Is it not true that the Treasury has indicated that they could lower and change the complicated, bureaucratic paperwork that is now plaguing small business and small business would be able to take advantage of ADR just as well as large business?

Mr. BENTSEN. The Senator from Connecticut is absolutely right.

There is a complicated Federal form that has to be filled out and this legislation calls for doing away with that.

Mr. RIBICOFF. Does not the testimony before the Finance Committee also show that one of the best ways of fighting inflation is the ADR route—accelerated depreciation?

Chairman Miller, of the Federal Reserve, testified before the Finance Committee, and I read from his statement:

> It is my judgment that at the present time, when changes affecting the environment in which firms operate seem to occur rapidly and unpredictably and businessmen are highly risk-averse, faster depreciation is likely to yield the greatest addition to investment per dollar of tax reduction.

Mr. BENTSEN. That is correct. He stated that, and forcibly so. That is backed up by economists from the Brookings Institution, from Harvard, from the Wharton School who feel that way very strongly.

Mr. RIBICOFF. The 1978 report of the Congressional Budget Office points out that economists generally believe that accelerated depreciation has a larger effect on investment per dollar of tax reduction than a corporate income tax rate. Is that not correct?

Mr. BENTSEN. That is correct.

Mr. RIBICOFF. Are we not plagued in this country with inflation and our adverse trade balances by the fact that all the industrial Western countries are outpacing the United States in productivity?

Mr. BENTSEN. They all are. We are the lowest of all the industrial countries.

Mr. RIBICOFF. Japan has an annual increase of productivity of 8 percent; West Germany 6 percent; and unfortunately we are now down to zero. Unless we increase productivity, we will not be able to lick inflation.

It is not a question of doing something for small business. Certainly, we should. But when all is said and done, you have to take care of the needs of all business, large and small, if we are going to lick inflation, because it is the large companies, basically, that are the large employers. If their productivity goes down and if they do not get capital improvement and increased production, we will have a burgeoning inflationary rate that will keep on, as it has been for the last few years.

Mr. BENTSEN. The Senator has addressed himself to the most devastating problem facing this Nation today.

Mr. RIBICOFF. The amendment to eliminate the ADR from all business, large and small, would be retrogressive and probably the worst thing we could do in fighting inflation in America today.

Mr. BENTSEN. I certainly agree with the Senator.

Mr. RIBICOFF. I agree completely with the distinguished Senator from Texas, and I hope we defeat the Nelson amendment, if we really want to start getting a handle on inflation.

Mr. BENTSEN. I thank the distinguished Senator.

The Senator from Wisconsin was speaking earlier about what the Treasury opposes. The Treasury opposes the substitution of this amendment for the provision that is now in the Finance Committee bill.

As the Senator from Connecticut has stated, we went a long way in simplifying ADR so that small business could utilize it.

My friend was talking about how small companies were being bought and the ownership being transferred to Japan and other places. The small companies he is talking about are not the ones that would utilize $25,000.

We have gone a long way to try to assist in what he has referred to, and I thoroughly concur with him, in trying to get capital for those small companies; and this capital gains tax reduction is one of the finest things we can do for venture capital in this country.

When it comes to risk takers, that starts the small entrepreneur going. I have some knowledge of that. I started a small business. I spent 16 years building that business before I came to the Senate. I know the problems of raising capital.

I also know the problems of cash flow and what I think it is going to take to modernize the productive capacity of this country to help us in foreign trade and stabilize the dollar and bring back our balance of trade to where it should be, and to try to curb inflation in this country.

I strongly urge the defeat of the amendment.

Mr. President, if the Senator from Wisconsin is prepared to vote, I am.

Mr. NELSON. The Senator from Wisconsin is prepared to vote, but Senator LEAHY is on his way and wants to comment.

Mr. BENTSEN. Would the Senator be happy to put his remarks in the RECORD?

Mr. NELSON. Would the Senator from Vermont be happy to put them in the RECORD?

Mr. BENTSEN. Mr. President, the pending amendment was carefully studied by the Finance Committee and rejected by a wide margin. I urge the Senate to defeat the amendment.

The Finance Committee bill already provides billions of dollars of tax savings for small business through corporate rate cuts, liberalization of subchapter S, favorable loss treatment on small business stock as well as capital gains reductions. The provisions in the Finance Committee bill for graduated corporate rates on income up to $100,000 result in a revenue loss of about $1.7 billion in 1979 and this will increase to roughly $2.5 billion by 1983. There are several amendments to the subchapter S provision to make them easier for small businesses to use. Subchapter S allows certain corporations to elect tax treatment similar to that of partnerships. Also, the bill substantially liberalizes the provision

in present law which allows liberal deductions of capital losses on certain venture capital investments.

The pending amendment provides real potential for tax abuse. Under this amendment, small firms would try to divide their operations into several parts in order to take advantage of the $25,000 limit for 3-year depreciation several different times. A "paper" partnership or corporation might be established for the sole purpose of purchasing $25,000 of equipment on behalf of a related firm. Although this is not the intent of the amendment, there is a real potential for the creation of sham business entities and spinoffs to take advantage of the 3-year writeoffs.

In addition, this amendment could be an attractive device to shelter other income. The amendment would be very attractive to doctors and lawyers who could purchase equipment as a tax shelter and lease it to small businessmen. A doctor, for example, could receive $8,000 of writeoffs for each of the 3 years. After the 3 years, the doctor could transfer ownership of the equipment to the small businessman.

The ADR provision in the Finance Committee bill both simplifies and liberalizes ADR to make it more attractive to small firms.

ADR would be simplified by eliminating the complicated annual Federal form and disregarding salvage value. The reporting requirement is both ineffective and costly to taxpayers and the Government.

Simplification of ADR will enable small business to take advantage of this incentive on a much wider basis.

Inadequate productivity is one of the most serious economic problems facing the country today. The United States ranks last in a list of seven major industrial nations with respect to productivity growth. ADR which is directly linked to investment in new equipment will help boost productivity and moderate inflation.

The pending amendment will not have much impact in terms of modernizing manufacturing capacity and holding prices down.

The ADR provision in the Finance Committee bill provides greater balance to the House bill and fills a major gap. The House tax cut bill provides billions of dollars of tax relief through individual and corporate rate cuts. However, the bill lacks comparable incentives such as liberalized ADR to provide an immediate stimulus for modernization.

Mr. President, I ask unanimous consent to have printed in the RECORD an explanation of the Senate Finance Committee's ADR provision.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE FINANCE COMMITTEE'S ADR PROVISION

This provision of the Finance Committee bill would increase the so-called ADR System (Asset Depreciation Range) from its present level of 20 percent to 30 percent. Under present law, taxpayers are allowed to increase or decrease the guideline life of eligible machinery by 20 percent. This would be increased to 30 percent under the proposal.

In addition, ADR would be simplified by eliminating the complicated annual federal form, removing the affirmative election requirement and disregarding salvage value. The reporting requirement is both ineffective and costly to taxpayers and the government.

Simplification of ADR will enable small business to take advantage of this incentive on a much wider basis. It will provide an additional incentive for small business to invest in depreciable equipment and machinery.

Inadequate productivity is one of the most serious economic problems facing the country today. The U.S. ranks last in a list of seven major industrial nations with respect to productivity growth. Accelerated depreciation which is directly linked to investment in new equipment will help boost productivity and moderate inflation.

The House tax cut bill provides billions of dollars of tax relief through individual and corporate rate cuts. However, the bill lacks comparable incentives such as liberalized ADR to provide an immediate stimulus for modernization.

A February, 1978 Report of the Congressional Budget Office points out economists generally believe that accelerated depreciation has a larger effect on investment per dollar of tax reduction than a cut in the corporate income tax rate. Liberalization of accelerated depreciation has been advocated by leading economists at Harvard University, the Wharton School and the Brookings Institution.

Federal Reserve Chairman G. William Miller recently told the Senate Finance Committee, "It is my judgment that at the present time, when changes affecting the environment in which firms operate seem to occur rapidly and unpredictably and businessmen are highly risk averse, faster depreciation is likely to yield the greatest addition to investment per dollar of tax reduction."

Mr. BENTSEN. Mr. President, I sponsored the provision in the Finance Committee bill to liberalize and simplify ADR. I urge the Senate to agree to this provision which will help fight inflation by encouraging firms to invest in new equipment to boost productivity.

This provision would increase the so-called ADR System (Asset Depreciation Range) from its present level of 20 percent to 30 percent. Under present law, taxpayers are allowed to increase or decrease the guideline life of eligible machinery by 20 percent. This would be increased to 30 percent under the proposal.

In addition, under the provision ADR would be simplified by eliminating the complicated annual Federal form and removing the affirmative election requirement. The reporting requirement is both ineffective and costly to taxpayers and the Government. Furthermore, salvage value will be ignored for ADR computations.

Simplification of ADR (through paperwork reduction) will enable small business to take advantage of this incentive on a much wider basis. It will provide an incentive for small business to invest in depreciable equipment and machinery.

One of the more serious problems facing our Nation is inadequate productivity. The Senate would be making a mistake if we fail to address this pressing problem in the tax bill. The United States ranks last in a list of seven major industrial nations with respect to productivity growth. We are even behind Great Britain. A tax incentive—such as liberalized ADR—which is directly linked to investment in new equipment will help boost productivity and moderate inflation. We must modernize American industry if we are to remain competitive in world markets and reduce the staggering trade deficit. This amendment will also help offset the costs of Government-mandated expenditures.

The House tax cut bill is deficient in this respect. The House bill provides substantial individual income tax cuts. In addition, it provides several billion dollars of tax relief to corporations through reductions in income taxes. This is desirable. However, the House bill fails to provide comparable incentives such as accelerated depreciation which will provide a direct and immediate incentive for modernization.

Lagging productivity is one of the primary reasons prices are rising so rapidly in this country. Our productivity increased by 3.3 percent a year from 1948–67, but from 1967–77 the increase was only 1.8 percent a year and during the first quarter of this year productivity actually declined at an annual rate of 4.5 percent.

Productivity is defined as output per worker. Low productivity usually indicates that businesses are not investing in newer, more efficient equipment and machinery. When increases in productivity fail to keep pace with increases in wages, businesses have to charge higher prices for their products and inflation results.

Since 1967, the productivity rate has surged ahead 105 percent in Japan, 54 percent in Italy and France, and 39 percent in Canada. Even Great Britain topped America, edging past the United States, 25 percent to 24 percent.

Barry Bosworth, Director of the President's Council on Wage and Price Stability, recently stated:

We're turning into the British situation of the early '70's when they had almost no productivity growth.

An increase in ADR will help meet this problem.

A February 1978 Report of the Congressional Budget Office points out that economists generally believe that accelerated depreciation has a larger effect on investment per dollar of tax reduction than a cut in the corporate income tax rate. Liberalization of accelerated depreciation has been advocated by leading economists at Harvard University, the Wharton School and the Brookings Institution.

Accelerated depreciation is a very efficient way to encourage investment. The tax benefits of faster depreciation accrue to a firm only after new plant and equipment has been in place. Federal Reserve Chairman G. William Miller recently told the Senate Finance Committee:

It is my judgement that at the present time, when changes affecting the environment in which firms operate seem to occur rapidly and unpredictably and businessmen are highly risk-averse, faster depreciation is likely to yield the greatest addition to investment per dollar of tax reduction.

Although lower tax rates would improve after-tax profits, the linkage between this improvement in cash flow and

spending on new plant and equipment is a loose one. The additional cash might be channeled into any of a number of uses—including the acquisition of other firms, the purchase of securities, or an increase in dividends. A smaller gain in real investment would be achieved for a given dollar of tax revenue loss than would be the case with tax reductions that are linked directly to capital expenditures. While some cut in corporate tax rates is desirable—in part to enhance the profitability of businesses in less capital-intensive sectors such as services and finance—greater emphasis should be placed on other, more efficient, tax incentives for investment.

Accelerated depreciation would redress—if in an indirect way—the serious drag on real corporate profitability that has occurred in recent years as inflation has caused replacement costs to exceed depreciation deductions by a wide margin. With no high rates of inflation in recent years, the use of historical cost depreciation unadjusted for inflation reduces depreciation deductions by over $30 billion each year relative to economic depreciation.

Mr. President, our economy has been experiencing inadequate levels of capital investment. Of the many factors that influence economic growth rates, none is more important than the level of capital investment. A strong rate of new capital investment is required to generate sustained economic growth. However, during the 1960's, the United States had the worst record of capital investment among the major industrialized nations of the free world. A study prepared by the Department of the Treasury indicates that total U.S. fixed investment as a share of national output between 1960 through 1973 was 17.5 percent. The U.S. figure ranks last among a group of major industrial nations and Great Britain ranks second to last. Our investment was 7.2 percentage points below the average commitment of the entire group.

The following Treasury Department statistics dramatically illustrate this problem:

Investment as percent of real national output 1960–73

	Total fixed	Nonresidential fixed
Japan	35.0	29.0
West Germany	25.8	20.0
France	24.5	18.2
Canada	21.8	17.4
Italy	20.5	14.4
United Kingdom	18.5	15.2
U.S	17.5	13.6
11 OECD Countries	24.7	19.4

In 1976, the Department of Commerce prepared one of the most detailed and comprehensive discussions of investment requirements. In its "Study of Fixed Capital Requirements of the U.S. Business Economy, 1971 to 1980," the Department's Bureau of Economic Analysis looked at capital needs on an industry-by-industry basis. The purpose of this study, was to estimate the amount of investment necessary, through 1980, in order to have an economy capable of meeting three objectives—reasonably full employment; a national program of environmental protection; and decreased dependence on potentially unstable foreign energy resources. The Bureau found that capital investment—that is, nonresidential fixed investment—must average about 11.4 percent of gross national product. Capital spending has, however, not led the economic recovery, averaging less than 10 percent of the recovery period.

The Commerce Department's study is consistent with other studies. In 1977, the Council of Economic Advisers estimated that business fixed investment would need to account for 12 percent of forecast GNP during the last half of the decade to achieve full employment, reasonable growth in productivity, certain environmental objectives, and greater energy independence. In 1976, however, the actual rate of fixed business investment hit a 13-year low of 9.1 percent, and in 1977 it was 9.4 percent.

During the decade of the 1960's the United States ranked 17th in a list of 2.0 industrial nations belonging to the Organization for Economic Cooperation and Development (OECD) as to the average annual growth rate of real output. For example, our growth rate was onl yabout one-third the rate in Japan.

Mr. President, I ask unanimous consent to have printed in the RECORD a table in this connection.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Average annual rate of change in real growth for member nations of OECD, 1960–1970

	Percent
Japan	11.1
Greece	7.6
Portugal	6.3
Yugoslavia	6.7
France	5.8
Italy	5.6
Canada	5.2
Finland	5.2
Australia	5.1
Netherlands	5.1
Norway	5.0
Belgium	4.9
Denmark	4.9
West Germany	4.8
Austria	4.8
Iceland	4.3
Ireland	4.0
U.S.	4.0
Luxembourg	3.3
United Kingdom	2.8

SOURCE.—Organization for Economic Development and Cooperation.

Mr. BENTSEN. Mr. President, an increase in ADR from 20 to 30 percent, as proposed by the Senate Finance Committee, will help increase capital investment and promote economic growth. Most importantly this proposal is directly related to investment in new equipment and machinery and will help boost productivity.

Nothing can demonstrate the need for this amendment more than a look at our productivity growth compared to our competitors abroad.

I ask unanimous consent to have a table printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Productivity growth, 1960–1973
[Average annual rate]

	Gross domestic product per employed person	Manufacturing output per manhour
United States	2.1	3.3
Japan	9.2	10.5
West Germany	5.4	5.8
France	5.2	6.0
Canada	2.4	4.3
Italy	5.7	6.4
United Kingdom	2.8	4.0
11 OECD nations	5.2*	6.1

*Average for 6 OECD countries listed.
Source: Department of the Treasury.

Mr. BENTSEN. Mr. President, I ask unanimous consent to have printed in the RECORD an article published in the Washington Post of October 4, 1978, in connection with this matter.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PRODUCTIVITY PROBLEMS OUTLINED

(By Bradley Graham)

NEW YORK.—It had the look of a sober business conference, but the feel and ring of a pep rally.

In what was billed as part teach-in, part political blitz, 130 representatives of business, government and labor met here yesterday to draw attention to an issue that has been remarkable in its singular ability to put people to sleep—America's productivity slowdown.

The point of the two-day conference is to warn that the U.S. can no longer afford to slough the problem off, that without a concerted effort to improve productivity America stands both to suffer continued inflation and to lose what competitive edge it still has in world markets.

It wasn't your normal demonstration. As a theme, productivity lacks the moral force of a peace movement or the emotional charge of a drug legalization drive. As a drawing card, it isn't likely to attract a militant crowd. The featured speakers, all very establishment, weren't the kind of people one would expect to find raising a ruckus—people like the chairman of General Motors, the chairman of the Federal Reserve, a few distinguished labor leaders and a couple of top Carter administration officials.

But their message was as urgent and alarmist as any clarion call to arms or action. America, they said, has to figure out again how to work efficiently.

"Productivity is a terrible problem for this nation," said Robert Strauss, President Carter's special assistant for both inflation and trade policy and the keynote speaker at yesterday's conference luncheon. "It is a difficult and debilitating problem. The time has come we all are in accord that we must face up to it."

The figures on what's been happening to producitvity are indeed disturbing—and were quoted by almost every speaker at some point or another. They show that in the past decade, U.S. productivity gains have slowed to only half what they were during the previous 20-year period (1.6 percent per year increase versus 3.2 percent). In the past four quarters, the gains have averaged less than one percent.

But the U.S. is doing poorly not only in relation to its past record. It has also fallen to the bottom of the list among the world's industrial powers, each of which achieved larger gains in productivity over the last 10 years than the U.S.

"Why don't we shake ourselves awake?" asked Thomas Murphy, chairman of GM. "Why don't we get on with the all-important job of improving?"

The answer isn't simple. For one thing, as Murphy noted, too few people understand what the concept of productivity really means."

Literally, productivity is a measure of what you get out for what you put in. But a common understanding of the subject ends there. Though economists have a number of ideas about what lies behind America's productivity slump, it remains to most of them somewhat of a puzzle.

The factors most frequently cited as contributing to the slowdown are:

A fall-off in capital investment by industry.

A large influx of relatively inexperienced teenagers and women into the labor force, estimated at 15 million, or 80 percent of the growth in the labor force over the last 10 years.

The rise of service occupations, which are often thought of as less productive than manufacturing jobs.

A slackening in the introduction and development of new technology.

However, in what was generally regarded as the most impressive talk of the day, Barry Bosworth, head of the president's Council on Wage and Price Stability, debunked most of these explanations as hardly significant enough to explain the severity of the current productivity decline.

As critical as the slowdown has been, there is no national program to address it. The National Center for Productivity and the Quality of Working Life, chartered in 1971 to keep at least some discussion going on the subject, went out of business four days ago.

Strauss indicated that President Carter is considering appointing a cabinet-level council which would both monitor productivity improvement within the federal government and draft a national action plan.

Other speakers offered a variety of proposals to improve productivity. Fed Chairman William Miller stressed the need for tax incentives to spur capital investment. GM's Murphy called for major reform of costly and counterproductive government regulations. And Bruce Thrasher, a director of the United Steel Workers of America, emphasized the role labor unions could play in cooperating with management to increase productivity—providing labor received sufficient guarantees that any gains in productivity would not cost jobs.

The thrust of the conference was summarized by C. Jackson Grayson, chairman of the year-old American Productivity Center in Houston and who, along with Business Week magazine, organized the meeting. "Productivity must be put on the national agenda," Grayson said. "We must somehow get the interest, the motivation and the attention of the average individual."

Mr. BENTSEN. Mr. President, although reductions in corporate rates are highly desirable, it is clear that increases in ADR will be even more beneficial to the economy.

A February 1978 report of the Congressional Budget Office points out economists generally believe that accelerated depreciation has a larger effect on investment per dollar of tax reduction than a cut in the corporate income tax rate. Liberalization of accelerated depreciation has been advocated by leading economists at Harvard University, the Wharton School, and the Brookings Institution.

A corporate rate cut increases the return on both new and existing investment. Accelerated depreciation focuses on new investment. Accelerated depreciation is a carrot for new investment and does not simply increase the overall profitability of a firm.

Poor productivity is an immediate problem. Perhaps corporate rate cuts will result in modernized plant and equipment over the long run but the problem is too serious to wait for a long-term effect. A corporate rate cut is an extremely roundabout approach to the problem of productivity.

Corporate rate cuts increase cash flow for acquisitions and stock purchases. Corporate rate cuts might also result in reduced prices in a competitive industry. As much as we want to reduce prices, modernization, and increased productivity will be more beneficial to curbing inflation over the long term.

Federal Reserve Chairman G. William Miller recently told the Senate Finance Committee:

> It is my judgment that at the present time, when changes affecting the environment in which firms operate seem to occur rapidly and unpredictably and businessmen are highly risk averse, faster depreciation is likely to yield the greatest addition to investment per dollar of tax reduction.

Mr. President, I urge the Senate to approve the Finance Committee's proposal.

Mr. DECONCINI. Mr. President, will the Senator from Wisconsin yield for a question?

Mr. NELSON. Let me make one comment, first. If I correctly understood the Senator from Connecticut (Mr. RIBICOFF), he feels that this amendment would eliminate the ADR. This amendment does not eliminate the ADR.

Mr. BENTSEN. I think he was referring to the increase.

Mr. NELSON. I wanted that to be clear.

The current ADR is 20 percent. The Finance Committee increased it to 30 percent. This amendment would restore it from 30 percent back to the current law, which is 20 percent. The amendment would then apply the 3-year straight line depreciation, which saves in the future approximately $1 billion or $800 million.

Mr. RIBICOFF. Mr. President, if the Senator will yield, that is absolutely correct. But even under the present depreciation, we find that the amount going into capital expenditure by American industry is one of the lowest in the world. That has not done the job. What we have to do is to get a larger proportion of our real national output back into productivity and capital investment.

A survey of investment as percent of real national output between 1960 and 1973 indicated that Japan was 35 percent; West Germany, 25 percent; France, 24 percent; Canada, 21 percent; Italy, 20 percent; United Kingdom, 18 percent; United States, 17 percent. The recent figures show that we are down to about 9.5 percent.

If we are only putting about 9.5 percent back into productivity and capital investment, it is no wonder that the United States is being outpaced, outproduced, and outsold throughout the world. We are running trade deficits of $27 billion in 1977, and it probably could go up to $35 billion in 1978. That is the prospect we are facing, and it becomes absolutely essential, if we are going to solve the problem of a sinking dollar, the problem of inflation, and the problem of foreign trade, to do something to get America's productivity up. This is one of the best devices we can have in the tax bill to increase American productivity.

● Mr. MCINTYRE. Mr. President, I am pleased to be a cosponsor of this amendment, which I believe will be a substantial help to this country's struggling small businesses.

The amendment would accomplish a massive simplification in the depreciation laws for those small businesses which purchase less than $25,000 worth of equipment each year—an estimated 80 percent of all business enterprises.

Because of the complexity of current law, it is very difficult for small businesses to comply, and to derive full benefit from the system. The law allows large firms that have the resources to take full advantage of the sytsem to recover their invested capital 20 percent faster than smaller firms. The complexity of the law is one of the two largest sources of errors in small business tax returns. New and small businesses need a simplified method of depreciation.

Mr. President, we are properly concerned about the necessity to increase investment. Here we have an opportunity to have an impact on the sector of our economy which offers tremendous possibilities for growth and investment.

Small businesses account for more than half the jobs in the private labor force, 45 percent of our business output, more than 40 percent of the gross national product, and more than half of all innovation. It is only good sense that we should make an effort to distribute the benefits of the tax system more fairly.

The amendment would allow any business to recover the capital invested in machinery and other equipment by using 3-year straight-line depreciation on the first $25,000 of equipment purchased in a given year. It would thus eliminate the necessity of deciphering a hundred pages of regulations and technical calculations which constitute an onerous burden for a small businessman who is fighting to keep his head above water.

I urge my colleagues to support this amendment.●

Mr. DECONCINI. Mr. President, I wonder whether we intend to wait for the Senator from Vermont. I wonder whether there would be any objection to calling up an amendment in the meantime which the Finance Committee has agreed to accept.

Mr. NELSON. If there is no objection by the Senator from Texas or the minority, Mr. President, I ask unanimous consent that the pending business be laid aside temporarily, for the specific purpose of considering the amendment of the Senator from Arizona.

Mr. BENTSEN. Mr. President, reserving the right to object, the Senator from Texas is supposed to be chairing a con-

ference for the Senate side on the highway bill, and I am pressed for time.

How long does the Senator think he will be? Can we not go ahead? The Senator from Vermont was on notice that this was going to be brought up at the earliest opportunity. He was put on notice as of last night. It is in the RECORD.

Mr. NELSON. Yes, and I did discuss it with the Senator this morning and told him what the unanimous-consent agreement was, so I am puzzled, frankly, as to why the Senator is not here.

Mr. BENTSEN. I know he is an eloquent and articulate man. I think most of the Members have made up their minds. Perhaps he can put his remarks in the RECORD, and we can take care of the amendment of the Senator from Arizona.

Mr. DECONCINI. Mr. President, if the Senator from Texas will yield, I shall not take more than 5 minutes, and maybe less.

Mr. BENTSEN. I have been there before on those.

Mr. DECONCINI. I am glad to have unanimous consent to limit it to 3 minutes or 5 minutes.

Mr. NELSON. If the Senator from Vermont is not here at the conclusion of 5 minutes, I guess we should go on.

Mr. BENTSEN. All right. I withdraw my objection.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. I thank the distinguished Senator from Wisconsin.

AMENDMENT NO. 4486

(Purpose: Providing for tentative refund adjustment in matters involving amounts held under claims of right)

Mr. DECONCINI. Mr. President, I call up my amendment No. 4486 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DECONCINI) proposes an amendment numbered 4486.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 383, between lines 7 and 8, add the following new section:

SEC. 510. REFUND ADJUSTMENTS FOR AMOUNTS HELD UNDER CLAIM OF RIGHT.

(a) APPLICATION FOR ADJUSTMENT.—Subsection (a) of section 6411 (relating to application for adjustment) is amended—

(1) by inserting after the first sentence thereof the following new sentence: "A taxpayer may file an application for a tentative refund adjustment of amounts treated as an overpayment of tax under section 1341 (b) (1).";

(2) by striking out "or" after "work incentive program credit,";

(3) by inserting "or deemed overpayment under section 1341 (b) (1)" after "from which the carryback results";

(4) by striking out "and" at the end of paragraph (5); and

(5) by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) In the case of a tentative refund adjustment of a deemed overpayment under section 1341 (b) (1);

"(A) the amount of the tax for the taxable year of the deemed overpayment without the deduction provided in 1341 (a) (2),

"(B) the amount of the tax previously determined for all prior taxable years affected by the decrease in tax provided in section 1341 (a) (5) (B), the tax previously determined being ascertained in accordance with the method prescribed in section 1314 (a),

"(C) the decrease in tax provided in section 1341 (a) (5) (B), and

"(D) the amount of the deemed overpayment provided in section 1341 (b) (1), and".

(b) ALLOWANCE OF ADJUSTMENTS.—Subsection (b) of section 6411 (relating to allowance of adjustments) is amended—

(1) by inserting "or refund" after "for a tentative carryback application";

(2) by inserting "or the taxable year of deemed overpayment under section 1341 (b) (1)," after "credit from which such carryback results,";

(3) by inserting "or the amount of such deemed overpayment" after "attributable to such carryback";

(4) by inserting "or deemed overpayment" after "Such decrease" and after "or unused new employee credit,";

(5) by striking out "or" after "unearned work incentive program credit," the second place it appears; and

(6) by inserting "or deemed overpayment," after "unused new employee credit,".

(c) CONSOLIDATED RETURNS.—Subsection (c) of section 6411 (relating to consolidated returns) is amended—

(1) by inserting "or refund" after "corporation seeking a tentative carryback";

(2) by striking out "or" after "unused work incentive program credit,";

(3) by inserting "or deemed overpayment" after "unused new employee credit";

(4) by striking "or" after "affected by such loss" and inserting in lieu thereof a comma; and

(5) by inserting "or deemed overpayment," before "the provisions of this section".

(d) TECHNICAL AND CONFORMING AMENDMENTS—

(1) (A) The heading for section 6411 is amended by inserting "and refund" after "carryback".

(B) The table of sections for subchapter B of chapter 65 is amended by inserting "and refund after "carryback" in the item relating to section 6411.

(2) Paragraph (3) of section 6213 (b) (relating to assessments arising out of tentative carryback adjustments) is amended—

(A) by inserting "or refund" after "carryback" in the heading; and

(B) by inserting "or the amount of the deemed overpayment" after "carryback".

(3) Subsection (m) of section 6501 (relating to tentative carryback adjustment period) is amended by inserting "and refund" after "carryback" the first place it appears.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to tentative refund claims filed on and after the date of the enactment of this Act.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. DECONCINI. I yield.

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, this request has been cleared with the distinguished minority leader. I ask unanimous consent that all amendments at the desk that are not germane and that are out of order on their face, for example, because they amend two or more places in the bill, be considered out of order en bloc with the provision that any Senator whose amendment is affected will not have his right to appeal waived because of this order.

This will aid the desk in clearing away some of the deadwood, the manager of the bill will know more precisely how many serious amendments are at the desk, and will not waive any Senator's right to appeal to the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. PROXMIRE. Mr. President, reserving the right to object, does this unanimous-consent request save the Senator's right to appeal?

Mr. ROBERT C. BYRD. Yes. If any Senator wishes to appeal to the Senate with respect to the germaneness or nongermaneness of his particular amendment, he may do so. Of course, he can do it anyhow.

Mr. PROXMIRE. What it means is that the Senate would be put on notice when an amendment comes up it is not in order and then the Senator moving the amendment may make the appeal?

Mr. ROBERT C. BYRD. Yes, he may still make his appeal, without calling up the amendment. He may appeal the ruling of the Chair that the amendment is not germane.

My order was just to do it en bloc, and if Senators have amendments at the desk and they want to appeal that ruling of the Chair they may do so. It will say instead of 249 amendments at the desk, or whatever the number may be, that there are 49 serious ones.

Mr. PROXMIRE. What concerns this Senator is that the unanimous-consent request will or will not put us on notice as to whether a particular amendment is out of order? For instance, say the Senator from Wisconsin calls up an amendment and that amendment is not germane. Will the Chair announce that that amendment is not germane at the time I call it up?

Mr. ROBERT C. BYRD. Yes, he will.

Mr. PROXMIRE. All right.

Mr. STEVENS. Mr. President, is there a request before the Senate?

Mr. ROBERT C. BYRD. Yes. I have cleared this with the minority leader earlier.

Mr. STEVENS. I understand it was discussed. I am having a little difficulty with it, and I am one of those who said I would not have a problem. Now, I have gone to the desk and asked for a copy of an amendment that is not there.

Does this apply only to printed amendments or amendments that are available to other Members? I do not see how the clerk can go through the amendments that are at the desk when a Member cannot get copies of another Member's amendment. I specifically tried to get the amendment introduced by Senator GLENN, and I am told it is not available, that it has been sent to the printer.

Mr. ROBERT C. BYRD. Could we get the order with respect to amendments that are at the desk?

Mr. STEVENS. My problem is: Are we going to be able to look at these amendments before they are ruled upon by the

Chair? I am not inferring any problem with the Chair except I take my amendment and no one else can see it and say "This is germane; do you not think so?" Under the press of business we are liable to get such an interpretation. Yet there are others of us who do not believe they are germane. I particularly do not believe the amendment of the Senator from Ohio is germane because it contains a reference to the Sunset Act of 1978, I might say to the Senator from Maine, and I do not see how that could be germane.

Mr. MUSKIE. Mr. President, in the absence of the distinguished Senator from Ohio, all his present amendment would do is amend the provisions of this tax bill and to apply sunset to the provisions of this tax bill. It would not apply to my sunset provision. It does not apply to existing provisions of the tax code.

I understand from him that the Parliamentarian has told him his amendment is germane to this bill because it applies to this bill. But that is a question to be decided. I am not trying to decide it. I want to be sure.

Mr. STEVENS. My problem is that that ruling is going to be made.

Mr. MUSKIE. But as I understand the majority leader's request if that amendment should be included in the list that the majority leader describes the Senator from Ohio has a right to appeal that.

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. I am interested in the right of the Senator from Alaska to argue it is not germane.

I have a copy of what purports to be the amendment of the Senator from Ohio, and it specifically refers to the review of tax expenditures provisions during the same Congress as the review under part B of the Sunset Act of 1978.

Mr. DECONCINI. Regular order, Mr. President.

Mr. STEVENS. It is my understanding that the Sunset Act of 1978 is not germane to this bill, and this is conditioned upon that. I do not see how the Chair could rule on the germaneness until some of the others of us who are involved in it could point out some of the defects. You can look at it on its face. It looks as if it probably might be germane. But once you start examining into the provisions of the Glenn amendment, it is couched in terms of still an amendment to the Muskie amendment. As such it should not be germane if the Muskie amendment has already been ruled not germane.

Now, does the Senator understand what I am saying?

Mr. ROBERT C. BYRD. I withdraw my request. I am sorry all this commotion was caused over a little request.

Mr. STEVENS. I hope the Senator will withdraw the request.

Mr. ROBERT C. BYRD. I have. It is withdrawn. The request is withdrawn.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me for one other matter?

Mr. DECONCINI. I yield without losing my right to the floor.

Mr. BENTSEN. We were getting along pretty good over here.

Mr. ROBERT C. BYRD. Yes, we are getting along pretty good.

I inquire at the desk if the Chair is keeping a list. I express opposition to any keeping of lists of Senators at the desk.

The PRESIDING OFFICER. There is no speaker list, but there is the unanimous-consent list of amendments.

Mr. ROBERT C. BYRD. That is all right. Anything that is there by order of the Senate is fine. But I hope we will not have a list. I urge that the Chair throughout the remainder of this session not retain lists at the desk of Senators who are to be called upon for recognition because this causes other Senators to be disadvantaged and it is not provided for in the rules, and it can create some real problems.

So I will urge against that.

I ask that a notice be placed on the desk so that as Presiding Officers change from time to time the notice will be put there.

Mr. BAKER. Mr. President, will the Senator yield to me a moment?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Mr. President, I join in that request. I would point out, as I am sure the distinguished occupant of the chair knows, and I am sure the majority leader will agree, that in the matter of recognition of Senators the rules provide that the Chair will recognize that Senator first seeking recognition.

Those of us on the minority side of the aisle have absolute and total commitment to the idea that the Chair will be impersonal in that respect. But I did not want to refrain from pointing that out.

The PRESIDING OFFICER. The Senator is correct.

Does the Senator from Arizona have a pending request to offer his amendment? We set aside the Nelson amendment. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, I ask that the Senator from Arizona not be prejudiced by his yielding to me, his having yielded the floor.

Mr. DECONCINI. Mr. President, I notice the Senator from Vermont is here. The Senator from Texas and the Senator from Wisconsin were kind enough to let me take that time. I ask unanimous consent that we go back to the Senator from Wisconsin's amendment, permitting the Senator from Vermont to make his statement and discussion, and after the vote that my amendment then be called up and be the next order of business.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. I ask unanimous consent, Mr. President, that I follow in the next order following the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4483

Mr. LEAHY. Mr. President, I appreciate the courtesy of the Senator from Arizona, the Senator from Wisconsin, and the Senator from Texas, and I appreciate their bearing with me and giving me the time to finish chairing a hearing that was being held at the same time.

Mr. President, I am pleased to have the opportunity to join my colleague from Wisconsin in offering this amendment. His efforts on behalf of small business interests have been truly outstanding, and this amendment is no exception.

I have taken this amendment and excerpts from it throughout the State of Vermont. Vermont is a State whose economy is predominantly comprised of small businesses. I have met with representatives of every type of business trip there, Democrats and Republicans alike, and in every instance, the reaction toward the amendment of the Senator from Wisconsin has been favorable. I suspect that anyone of us who talked to representatives of the small and medium-sized businesses in our States would get precisely the same reaction.

As work on the Revenue Act now before us has progressed, it has become increasingly in vogue to speak of the need to stimulate capital formation and business investment. And of course, if the word "small business" could be thrown in as a sweetener, all the better.

We have heard countless of our colleagues stand up and decry the need to cut the top corporate rate. Such a rate cut, they argued, would stimulate business investment and thus quicken the sluggish pace of productivity growth. They got the corporate rate cut they asked for. They got that cut despite the fact that, as Business Week reported on September 18, the Nation's biggest corporations are sitting atop a record $80 billion pile of ready cash. In all fairness, I must also add that I view the institution of a graduated corporate rate structure as a positive step—a truly meaningful victory for the interests of small business.

But on other fronts, small business interests have not fared so well.

There has been much talk of the importance of simplified and accelerated depreciation schedules for small business. The recently convened White House Conference on Small Business has set such depreciation changes as one of its top priorities.

Testifing before the House Ways and Means Committee on behalf of the Regional Small Business Coalition, Edward Pendergast stated that, simplified depreciation schedules, with shorter lives, would be much more stimulative to small business than would other forms of investment tax incentives.

Indeed, members of the Finance Committee heeded these calls for faster depreciation. But they did so in a way that seriously neglects the interests of the truly small businesses across the country. Few would argue that the measure they approved—that is, expanding the useful life variation under ADR to 30 percent—does much for small businesses. In fact, among corporate taxpayers with $500,000 or less in depreciable assets, only 0.36 percent even use ADR. Not one out of a hundred.

Mr. President, with the pressing need for simplification and acceleration of depreciation for small businesses so widely demonstrated, it would indeed be an outrage if this body failed to act to provide such depreciation changes.

Inflation has caused capital replacement costs to exceed depreciation deduc-

tions by a wide margin. We must act today to redress this grave situation. What is more, according to a study conducted by the National Federation of Independent Businesses, small businesses have accounted for approximately 58 percent of employment gains since 1973. In this time of high unemployment, this study further underscores the need to take action to stimulate capital investment in the small business sector of our economy.

The amendment offered by the Senator from Wisconsin represents a sensible and fair incentive for small business capital investment. It is indeed a balanced combination of both simplification and acceleration.

Mr. President, I would hope that since this body saw fit to approve corporate rate reductions for those who presently sit atop huge cash reserves—we could also see fit to approve an expenditure of $37 million for a far more deserving cause. Compared to the $231 million fiscal year 1979 price tag of the increased depreciation benefits for those who use ADR, the $37 million cost of this measure indeed seems modest, when one considers that roughly 97 percent of all businesses are in fact small businesses.

On behalf of the people of the State of Vermont and on behalf of small businesses in Vermont and across the country, I wholeheartedly endorse the amendment of the Senator from Wisconsin. I am proud to be one of the cosponsors of the amendment, and to have had the opportunity during the summer and fall to encourage its adoption.

I yield back the time to the Senator from Wisconsin.

Mr. BENTSEN. I want to make some comments in reply.

Mr. President, I am proud to be a friend of the Senator from Wisconsin, and he is my good friend. He is an able spokesman for small business. But I want the Senator to understand that I am for small business, I am for God and mother and country, and I am for Texas, and I am for apple pie, and we have done a lot for small business in this. Do they want another cut in their taxes? Of course. You go and make a survey of all individuals and see if they want another cut in their taxes. Of course. You will get 100 percent vote on that from any group you talk to.

Is this really simplification? We have seen a system that has been tested in the courts, the termination of depreciation schedules, and we said that we were going to simplify that. We do away with the complicated Federal form that has been used. We do away with the affirmative action provision; we do away with residual salvage value. We do all of those things so that small business can take advantage of them.

Now, what do you talk about with this amendment? You talk about a new one that is going to be a real tax dodge utilized by wealthy individuals to buy machinery, buy $25,000 worth of machinery here, take their $8,000 on each of it and write off, and then turn around and lease it to small business.

What will Treasury try to do? They will write pages and pages and pages and pages of regulations to try to stop that. You think it is going to be simple? Small business is going to have to understand all those regulations, read those new regulations, and it will take them probably a couple of years more to get the regulations published. In the meantime, small business will operate in a vacuum because it is a new approach, something else they are trying to do.

Then, at the same time, small business has the investment tax credit just like everybody else, and they are going to have to keep a set of books on what the useful life is of that equipment, a different set of schedules from what you are talking about here, two sets of books.

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. BENTSEN. Yes, I yield.

Mr. RIBICOFF. Small business can also come in under the same rules as ADR's in this bill.

Mr. BENTSEN. That is right.

Mr. RIBICOFF. There is nothing to prevent them from taking advantage of the tax considerations embraced in the breaks in ADR under the present formula. They have it. What the Treasury has said is they will simplify the regulations on one page instead of many pages, so it will make it easier for small business to take advantage of ADR.

Mr. BENTSEN. That is correct.

One of them they just do away with entirely.

Mr. CURTIS. Mr. President, will the distinguished Senator yield for a question?

Mr. BENTSEN. Yes, on the Senator's time.

Mr. CURTIS. If ADR is increased, as the Senator proposes and industry does buy and install new equipment, will that help small business and individuals?

Mr. BENTSEN. I should say it will. It will help small business because small business buys a lot of that equipment, and that they will utilize and they will be able to buy at a small cost and, in turn, that will help curb inflation in this country. It means when you look at something that says on it "Allis Chalmers," for example, on a tractor, then you check and where was it built? It was built in Japan.

I bought a tractor the other day, Allis Chalmers, and I thought I was getting myself a good American product. It was not until I had closed the deal and had the thing home that I found it was made in Japan.

Then when I called the dealer he said, "Well, all the other tractors of this size," and went down the list and gave me great old American names, "and they are all going to be built in Japan."

It happened to us on our television sets. They came in first in black and white and then they moved up in the price range, and now they manufacture practically all the television sets that we buy in this country. Just a pittance of them are manufactured in this country. That is what we have to turn around, and that is what this amendment is addressed to.

Mr. RIBICOFF. Mr. President, will the Senator yield? We are in the process of penalizing American business through our tax system and tax code.

We chased them to South Korea and we chased them to Japan and we chased them to Taiwan, and we chased them to Hong Kong where they are able to get all the tax benefits and tax breaks and lower wage rates and they come back and outsell, and we lose the jobs, we lose the business, in the United States.

Mr. BENTSEN. I would say to the Senator from Wisconsin that I am prepared to vote as he is.

AMENDMENT NO. 4483

The PRESIDING OFFICER. The Senator from Wisconsin. Will the Senator withhold?

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON) for himself and Mr. DURKIN proposes an amendment numbered 4483.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. Mr. President, just to comment for 1 minute. The Senator from Connecticut said that nothing stops small business from using the ADR. Well, nothing stops them except every single organization in America representing small business says it is too complicated for them, and the statistics are that seven-tenths of 1 percent of all the corporations in America used it. The proof is in the pudding. Small business cannot use it because it is too complicated. That is why they are supporting this amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SPARKMAN (after having voted in the negative). Mr. President, on this vote I have a pair with the Senator from Montana (Mr. MELCHER). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mr. ALLEN), the Senator from Arkansas (Mr. BUMPERS), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Illinois (Mr. STEVENSON), and the Senator from Montana (Mr. MELCHER) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mrs. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

The PRESIDING OFFICER (Mr. SASSER). Have all Senators in the Chamber voted?

The result was announced—yeas 62, nays 25, as follows:

[Rollcall Vote No. 470 Leg.]

YEAS—62

Anderson	Hart	Metzenbaum
Bayh	Hatch	Muskie
Biden	Hatfield,	Nelson
Brooke	Mark O.	Nunn
Burdick	Hatfield,	Packwood
Byrd, Robert C.	Paul G.	Pell
Cannon	Hayakawa	Proxmire
Case	Heinz	Randolph
Chafee	Helms	Riegle
Chiles	Hodges	Sarbanes
Church	Hollings	Sasser
Clark	Huddleston	Schmitt
Culver	Jackson	Schweiker
DeConcini	Kennedy	Stafford
Dole	Laxalt	Stone
Durkin	Leahy	Thurmond
Eagleton	Lugar	Weicker
Ford	Magnuson	Williams
Garn	Mathias	Young
Glenn	Matsunaga	Zorinsky
Gravel	McGovern	
Griffin	McIntyre	

NAYS—25

Baker	Eastland	Pearson
Bartlett	Goldwater	Percy
Bellmon	Hansen	Ribicoff
Bentsen	Inouye	Roth
Byrd,	Javits	Scott
Harry F., Jr.	Johnston	Stennis
Cranston	Long	Stevens
Curtis	Morgan	Talmadge
Danforth	Moynihan	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Sparkman, against.

NOT VOTING—12

Abourezk	Haskell	Melcher
Allen	Hathaway	Stevenson
Bumpers	Humphrey	Tower
Domenici	McClure	Wallop

So amendment No. 4483 was agreed to.

Mr. NELSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4486

The PRESIDING OFFICER. The question now recurs on the amendment of the Senator from Arizona (Mr. DECONCINI).

Mr. DECONCINI. Mr. President, I yield without losing my right to the floor to the Senator from Colorado.

ORDER OF BUSINESS

Mr. HART. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House of Representatives on S. 2584, the regulatory commission authorization bill, and that the Senate proceed to its consideration.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, has this been cleared with the leadership?

Mr. HANSEN. Reserving the right to object.

Mr. ROBERT C. BYRD. I am just asking if it has been cleared with the leadership. We know nothing about it on this side.

Mr. HANSEN. I know nothing about it on this side.

Mr. ROBERT C. BYRD. Will the Senator withhold his request?

Mr. HART. I withhold the request.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. DECONCINI. Mr. President, does the majority leader wish time?

Mr. ROBERT C. BYRD. The Senator has kindly yielded to me twice.

Mr. DECONCINI. I yield to the majority leader without losing my right to the floor.

Mr. ROBERT C. BYRD. Mr. President, we have a long way to go before we sleep, and I should like to call to the attention of the Chair and the Senate a ruling by the Chair that occurred last year.

After cloture has been invoked, the Chair will take the initiative to call out of order dilatory amendments and amendments which are out of order on their face.

I read this rule at this time, not because any dilatory amendments have been called up, but because of amendments that are out of order on their face. I understand that out of a couple of hundred amendments at the desk, probably 9 out of 10 are out of order on their face. It could be 8 out of 10. I hope that the Chair will follow the ruling that the Chair issued last year. I think it would save the Senate much time in this instance. This does not take away any Senator's right to appeal that ruling of the Chair if his amendment is called up and the Chair says it is out of order, because it is out of order on its face, because of nongermaneness.

That does not waive the Senators' right to appeal the ruling of the Chair. That is the ruling that I hope the Chair will take upon itself to follow, its own rule of last year. I think it will save the time of the Senate today when the Senate is making an effort to complete action on this bill before the Senate recesses.

Mr. BAKER. Mr. President, I shall take but just a moment. I am happy to have this time charged to my side and not that of Senator DECONCINI.

Mr. President, I participated in the legislative undertaking which produced the precedent to which the majority leader is referring. I think it is a good precedent—that is, that the Chair of its own initiative will identify those amendments which are defective on their face. I think it is important to point out that every Member has an opportunity to appeal that ruling. By the same token, I hope that we can agree that there would be a reasonable time for all Senators to do that. The precedent does not specify a time in which the Senator can appeal from the ruling of the Chair made pursuant to the Chair's own initiative. I, therefore, propound this parliamentary inquiry to the Chair.

If, in fact, the Chair, under this precedent, of its own initiative, declares an amendment at the desk nongermane or out of order for some other reason, is there a time limitation within which a Member of the Senate could appeal that ruling?

The PRESIDING OFFICER. There is. Under the precedents, if the Senate goes on to another question, it is then too late to appeal.

Mr. BAKER. In view of that, Mr. President, I hope that the majority leader will join me in trying to arrange a sequence of events so that Senators whose amendments are ruled out of order on the initiative of the Chair will have reasonable notice of that fact so that they can perfect their appeals.

Mr. ROBERT C. BYRD. The ruling of the Chair was that as each Senator calls up his amendment—I am not asking that these amendments be ruled out en bloc. I am simply asking the Chair to enforce its own ruling that, if a Senator calls up an amendment and it is out of order on its face, the Chair will take the initiative, without a point of order being raised before it, to state that it is out of order. It does not state the ruling. I am only asking the Chair to follow what has been the ruling of the Chair. This will allow a Senator to appeal.

The PRESIDING OFFICER. The Senator is correct and the appeal should come at that time.

Mr. MUSKIE. Will the majority leader yield?

Mr. ROBERT C. BYRD. If the Senator from Arizona will permit me.

Mr. DECONCINI. Yes, without losing my right to the floor.

Mr. MUSKIE. The precedent did not cover points of order raised under the Budget Act. Is it the majority leader's understanding that the precedent would apply to those points of order as well? I ask that question simply so I may understand what my responsibility is as to points of order under the Budget Act and how the Chair will be advised by the Parliamentarian.

The PRESIDING OFFICER. The Chair will not initiate a point of order under the Budget Act.

Mr. MUSKIE. I appreciate that comment.

Mr. BAKER. If I may have just one more moment: It is my understanding that the majority leader is not requesting, as I had first assumed, that the Chair aggregate the amendments at the desk and declare those which are ineligible for one reason or another out of order, but rather, that the Chair will rely on the precedent previously established in respect to his initiative and that we shall proceed one amendment at a time.

Mr. ROBERT C. BYRD. Yes. The first request, as the distinguished minority leader knows, because he was agreeable to proceeding with it, was objected to. That having been objected to, I am simply going back to a ruling of last year and asking that it be enforced by the Chair.

Mr. BAKER. Mr. President, I understand. I thank the Senator for yielding.

APPEAL FOR NO VOTES AFTER 6 P.M. TONIGHT

Mr. STONE. Mr. President, I ask for 1 minute without the Senator from Arizona losing his right to the floor.

Mr. DECONCINI. I yield.

Mr. STONE. It is not the wish of the Senator from Florida to alter in any way the understanding arrived at by some of my colleagues, announced by the Senator from Connecticut last night. I think that my colleagues have made great efforts to be on the team of the Senate. Nor is it my wish to intrude on what the leadership has been trying to do this morning with the questions of germaneness and amendments out of order. But I appeal to my colleagues in the Senate that it is very important to me not to have to vote after 6 o'clock tonight if it is at all avoid-

able. My colleagues would feel the same way if they had to vote during a midnight mass, if they happened to be Catholic and the midnight mass were the Christmas midnight mass. This is very important to me.

Furthermore, as I understand it, there really are only three, at the most four or five major substantive amendments to be tested. So I urge and appeal to my colleagues, let us not argue points of order. Let us not make lengthy procedural presentations. Let us get to it and get done with it.

Let us finish this bill by 6 o'clock tonight as if we had not relented on the leadership's gracious and generous commitment, which he made to some of us many weeks ago, that we would not have to vote after 6 o'clock tonight.

So help us. Really, we can finish this bill by 6 o'clock. There is no reason why we cannot if we operate on that procedure.

I thank my colleagues.

Mr. ROBERT C. BYRD. I thank the Senator.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 4486

(Purpose: Providing for tentative refund adjustment in matters involving amounts held under claims or right.)

Mr. DECONCINI. Mr. President, I have amendment No. 4486 at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DECONCINI) proposes amendment numbered 4486.

Mr. DECONCINI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DECONCINI. Mr. President, the purpose of this amendment is to correct a technical deficiency in the law having to do with repayment procedures in so-called "claim-of-right" cases. The amendment has no net impact and is intended to provide for a timely refund of overcollected taxes under section 1341 of the Internal Revenue Code of 1954. The Treasury Department has reviewed the amendment and has no objection to it.

Section 1341 of the Internal Revenue Code was enacted to provide relief to certain taxpayers making repayment in a current year of amounts previously included in income of a prior year under a "claim of right." Prior law held that a taxpayer making such a repayment could claim only a deduction for such repayment in the year of repayment and could not restate income for the prior year. Under section 1341(a)(5), however, the taxpayer is entitled to recompute taxes for the prior year by excluding amounts previously included in income of that year, and the resulting tax reduction is treated as a decrease in tax for the current year. If the decrease exceeds the tax for the year of repayment, it is treated as an overpayment of tax for the current year (the year of repayment), and the taxpayer is entitled to a refund of such overpayment. Section 1341(b)(1). The taxpayer apparently must use this method if it results in a lesser tax than treating the repayment as a deduction in the current year.

Prior to the enactment of section 1341, a taxpayer whose repayment created a "net operating loss" in the current year was entitled to a tentative carryback refund within 90 days of the date for filing under section 6411. That remains true under section 1341 if taking the deduction for repayment in the current year results in the same or a larger refund than recomputation of the prior year.

Where, however, recomputation of the prior year results in a greater refund than results from deduction in the current year, there is no provision for a prompt, tentative refund of the "overpayment" under the technical language of the statute. Accordingly, in the case in which section 1341 was intended to provide relief, refund of any of the overpaid tax may be delayed for a number of years while the Internal Revenue Service audits the return for the year of repayment. Certainly, no such difference in result could have been intended from a relief provision, and an amendment to section 6411 should be adopted to assure a prompt, tentative refund on the same conditions as in the case of a refund arising from the carryback of a net operating loss.

I hope the distinguished floor manager of the bill will see fit to accept this amendment.

Mr. President, is the amendment acceptable by the floor manager?

Mr. LONG. Mr. President, the Treasury does not object to the amendment. It is acceptable, as far as the Senator from Louisiana is concerned. It provides for a quick refund.

SEVERAL SENATORS. Vote!

Mr. DECONCINI. Mr. President, I move the adoption of the amendment.

Mr. ROBERT C. BYRD. Vote! Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arizona.

The amendment (No. 4486) was agreed to.

Mr. DECONCINI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4008

Mr. DECONCINI. Mr. President, I have an amendment numbered 4008 and ask as to its germaneness.

Several Senators addressed the Chair.

Mr. DANFORTH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Under the previous order, the Senator from Missouri was to be recognized.

Mr. DECONCINI. Mr. President, I have the floor under the previous order setting aside the Senator from Wisconsin's amendment. I would like to ask regarding the other amendment, No. 4008, whether or not it falls within the precedents and the order.

The PRESIDING OFFICER. We have disposed of the Senator's amendment that was within the order.

Mr. DECONCINI. Mr. President, I ask if the Senator from Missouri will let me ask this question on amendment No. 4008. I will then defer, of course, and take it up later.

Mr. DANFORTH. Certainly.

Mr. DECONCINI. Mr. President, I ask the Chair to rule on amendment No. 4008, that was read and taken up Friday last, as to the germaneness.

The PRESIDING OFFICER. Amendment No. 4008 would bring in new subject matter and would not be germane.

Mr. DECONCINI. Then I ask a further parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. DECONCINI. Mr. President, this amendment was brought up for debate and discussed at some length Friday evening last week. We set it aside due to objections.

My question is whether or not because it was filed prior to the cloture motion, whether or not filing it before the cloture motion and the fact that there was a unanimous consent at that time that this would be debated again, regardless, no precedent set then or reference to any germaneness, whether or not this amendment can be debated.

The PRESIDING OFFICER. Under the precedents, the fact that the amendment was taken up prior to cloture does not qualify it as to germaneness at this point.

Mr. DECONCINI. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DECONCINI. What about the unanimous consent agreement that was entered into Friday that this could be taken up and debated prior to final passage, does that exempt it from the precedents now imposed by the Chair?

The PRESIDING OFFICER. The Senator could debate it. In any event, he could use his hour as he wishes.

Mr. DECONCINI. That is not quite my question, Mr. President.

Under the unanimous consent, as I recall, last Friday, it was agreed that this could be brought up and voted on, considered, and that was prior to cloture and the precedents being set.

My question is now, is this amendment No. 4008 exempt from the ruling of the Chair as to germaneness?

The PRESIDING OFFICER. No, it is not exempt. As the Chair has observed, cloture was subsequently invoked and now it must be germane under the rule.

Mr. DECONCINI. Then my last parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. DECONCINI. Is it fair to say the unanimous-consent agreement entered into before cloture is wiped out by a cloture motion?

The PRESIDING OFFICER. In essence the Senator is correct.

Mr. DECONCINI. I thank the Chair very much for the interpretation on my amendment.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, might I

suggest to the Chair that under the cloture rule, the rule says that an amendment not germane will not be received.

Now, if the Senate gives unanimous consent that the amendment can be considered, then that is unanimous consent to receive the amendment and once the amendment is before the Senate it would seem to me it shows the Senate can vote on it, that the rule does not preclude the voting, but the receiving of the amendment, or the consideration of the amendment.

Now, if unanimous consent was given that the amendment can be considered and be debated, then it can be voted on because the rule does not refer to whether it can be voted on, it refers to whether the amendment can be received.

Mr. DECONCINI. Mr. President, a point of order, if the Senator would yield, and I appreciate that point.

My understanding is the unanimous consent included a vote on the amendment, whether or not it was a rollcall or a voice vote was not determined at that time.

Mr. LONG. But my opinion, the unanimous consent would be that it would be in order to bring the amendment up subsequently, the cloture motion pending at the time.

Now, if the amendment can be considered, then it can be voted on. It seems to me, if we look at the rule—I am just thinking of it from memory—but if we look at it, it seems to me the rule says the amendment will not be received.

Well, that was unanimous consent the amendment would be considered, and it seems to me if it is to be considered, if it can be brought before the Senate at all, then—so if there is consent, the amendment can be laid before the Senate here, then the amendment is received.

Mr. ROBERT C. BYRD. But, Mr. President, if that consent was given before cloture was invoked, the consent no longer is valid because cloture wipes out that previous consent.

Mr. DECONCINI. Mr. President, if the Senator from West Virginia will yield.

Mr. ROBERT C. BYRD. Yes.

Mr. DECONCINI. That is not correct, because——

Mr. ROBERT C. BYRD. Maybe I misunderstand.

Mr. DECONCINI. If we had a unanimous-consent agreement that an amendment could be brought up and it could be debated——

Mr. ROBERT C. BYRD. Yes.

Mr. DECONCINI (continuing). And thereby voted on——

Mr. ROBERT C. BYRD. Notwithstanding cloture?

Mr. DECONCINI. Prior to cloture.

Now, once cloture is filed, I believe the Senator's precedents he cited earlier apply from that time on.

Mr. ROBERT C. BYRD. Yes.

Mr. DECONCINI. And not prior.

And this was all done last Friday, and I put off my amendment, to bring it up at another time.

I thank the Senator from Louisiana for clarifying that. I hope the Chair, on on its own, will reconsider.

Mr. ROBERT C. BYRD. Unless I misunderstand the set of facts the Senator is alluding to, I cannot believe that an agreement prior to the invoking of cloture, that his amendment will be called up and voted on, would still be valid after cloture had been invoked, that that amendment is out of order under the cloture rule.

Mr. PROXMIRE. Mr. President, I asked the precise question when the unanimous-consent request was granted, and I was informed by the Chair that I would not be waiving my right to make my point on germaneness. I was told that. That was the ruling of the Chair at that time.

The PRESIDING OFFICER. The Senator from Wisconsin is correct.

Generally speaking, a unanimous-consent agreement on an amendment to consider and even to vote on it does not waive a possible point of order.

Mr. DECONCINI. Mr. President, is it fair to interpret that the decision, then, is altered, and the point of order is not going to be raised by the Chair as to 4008 and is subject to being raised by a Member of the Senate? Is that correct?

The PRESIDING OFFICER. That is correct. The Senator from Arizona is correct.

Mr. DECONCINI. I thank the Chair. Therefore, the Chair itself does not rule 4008 out of order. Am I correct?

The PRESIDING OFFICER. The Senator from Arizona is correct.

Mr. PROXMIRE. I make the point of order that the pending amendment is not in order.

The PRESIDING OFFICER. Will the Senator from Wisconsin allow the amendment to be reported?

Mr. DANFORTH. Mr. President, a parliamentary inquiry. Is it not true that under the order of last night, I am to be recognized at this time for the purpose of calling up an amendment?

The PRESIDING OFFICER. Yes, the Senator from Missouri does have the floor.

AMENDMENT NO. 4056

(Purpose: To reduce the corporate tax rate to 44 percent over the period 1979 through 1981)

Mr. DANFORTH. Mr. President, I call up amendment No. 4056.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH), for himself and Mr. JAVITS, proposes amendment numbered 4056.

Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill and committee bill, insert the following:

SEC. . REDUCTION IN CORPORATE RATE OF TAX.

Notwithstanding any other provision of this act to the contrary, the amount of tax imposed by Section 11(a) of the Internal Revenue Code of 1954 on taxable income in excess of $100,000 shall be—

(a) 46 percent for taxable years beginning after December 31, 1978 and before January 1, 1980;

(b) 45 percent for taxable years beginning after December 31, 1979 and before January 1, 1981; and

(c) 44 percent for taxable years beginning after December 31, 1980.

Mr. DANFORTH. Mr. President, this amendment does approximately what the earlier amendment that Senator JAVITS and I offered did, except with a slightly different phase-in—namely, it would reduce the corporate tax rate to 44 percent by 1981. However, it would phase in so that it would be 46 percent in 1979, 45 percent in 1980, and 44 percent in 1981.

Ordinarily, I would not have called up this particular amendment in view of the result of the earlier amendment that Senator JAVITS and I offered.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. DANFORTH. However, in view of the fact that Senator NELSON's amendment was adopted, thereby stripping the bill of its provisions for expanding the asset depreciation range, we are offering this amendment at this time; because without this amendment, this bill is going to have nothing to redress the problem we are having in this country with respect to capital formation and productivity—nothing will be in the bill.

In the Finance Committee, we spent a great deal of time questioning witnesses about whether they preferred expanding the asset depreciation range or reducing the corporate tax rate as a means of inducing further investment and increased productivity.

The Finance Committee, in the markup, addressed itself to the relative merits of expanding ADR and reducing the corporate tax rate. By very close votes, it was decided that the best thing to do in order to encourage corporate investment in this economy is to expand the ADR.

Senator JAVITS and I offered our amendment earlier this morning to reduce the corporate rate, and that was rejected; but at the time it was rejected, the notion was that we would have an expanded asset depreciation range to encourage business to invest in plants and equipment and new job opportunities for the American people.

Now that Senator NELSON has prevailed and the only thing that is left in it is more rapid depreciation of the first $25,000 of investment, the result of this is that we have almost nothing in this bill to correct the serious problem we have in our country with respect to investment and productivity, because right now we trail all our major competitors in the world. That is the economic problem we have in this country.

I will repeat briefly what was said earlier today. The question is, why do you need an outyear corporate tax cut? The answer is that the testimony before the Finance Committee by the economists was that what happens this year with respect to corporate rate or what happens next year with respect to corporate rate is far less significant than what happens 3, 4, or 5 years down the road, for the reason that businessmen, making their decision on what to invest in plants and equipment this year, look not at this year's rates but look at the rate of return 4 and 5 years down the road.

Therefore, if you want to do anything right now for this economy to expand productivity and to increase investment, the only thing you can do that is responsible is to reduce corporate rates a few years down the road. That is what this amendment is all about.

Mr. President, I yield the floor.

Mr. PACKWOOD. Mr. President, I join in support of this amendment.

Time after time, in listening to witness after witness after witness from different business groups, in the Finance Committee, over and over they emphasized the fact that, given the choice, they would rather have a corporate rate reduction than an ADR increase or DISC. Sure, this gave them more flexibility, and this gave them the opportunity to use the money as they thought seemed wise to produce the jobs and invest the capital.

I supported the Nelson amendment. I was a cosponsor of it. I thought it was a good amendment.

The argument now made by the Senator from Missouri that, having passed the Nelson amendment, we have now substantially reduced the incentive for larger businesses in this country, is true.

If you were to say to business, "Would you like an incentive?" they would say, "Sure. We'll take any incentive we can get." Absent a corporate rate reduction, they would take the decrease in the asset depreciation range. Absent the corporate tax cut, they would take DISC. Absent the corporate tax cut, they would take anything they could get. It is some help in capital formation. But, given the choice, they will promptly opt for a corporate rate reduction rather than any of the secondary or tertiary capital formation devices we give them.

I emphasize again that, having adopted the Nelson amendment, which I supported and which I think was a good amendment, this amendment that the Senator from Missouri and the Senator from New York now offer is a very necessary amendment.

Mr. JAVITS. I yield myself 3 minutes.

Mr. President, I will not reargue the case at all. We argued it very thoroughly. I do wish to emphasize the changed situation.

The fact is that the Nelson amendment takes $194 million and restores it, as it were, to the revenues, because it strikes out the ADR improvement. The ADR increase was very clearly calculated to induce business to make capital investment. That is now gone.

We must, therefore, replace it with another method of spurring capital formation—reduction of the rate of corporate tax. The testimony is clear from economists and from the business community that the corporate rate reduction is the way to go.

Mr. President, I cannot say often enough, in terms of stimulating the economy and shaking it out of the stagnation in which it now lies, that this is the guts of this bill. This is one thing we can do in this bill which will give the American economy a real shot in the arm, for those who employ the people and make the capital investments and do the things which make the American economy the vital organ it is.

I hope the Senate will change its vote. It takes only a few votes, and we will legislate this particular change as we request.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I ask unanimous consent that the name of the Senator from Oregon (Mr. PACKWOOD) be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. Mr. President, when the President sent his tax recommendations to Congress, they included some so-called reforms; and of those so-called reforms, such as eliminating DISC and deferral, that would have amounted to an annual saving of about $2.6 billion a year for the Treasury, to help cushion the cost of the tax cuts that were being recommended in rates for the larger corporations.

Now, the $2.6 billion worth of cuts, with the reforms to help cushion the cost of the reforms, was not passed. Congress would not buy that. It would not buy eliminating the DISC. It would not buy eliminating deferral.

So that is $2.6 billion that the large corporations will be better off because the President's so-called reforms did not go into effect.

Now, notwithstanding that, the Senate had voted to give the corporations 3 percentage points out of the 4 points of tax cuts that the President recommended anyway.

That makes this a far sweeter bill than the President recommended in terms of dollars. When you eliminate the so-called reforms that cost the corporations some additional taxes and when you then proceed to give them 3 out of the 4 percentage points of the corporate tax cut, it makes it just a much bigger tax advantage than the administration and the House of Representatives intended and I think a much bigger advantage than we intended.

Keep in mind, Mr. President, that the capital gains reduction that is in this bill is a very controversial item, a major cut in capital gains that also benefits the same class of individuals who hold this corporation stock. Even though the corporate tax cut on capital gains is only about a couple hundred million dollars, it is a very big item running into billions of dollars where individuals are concerned, and the individuals who hold the corporate stock are, in the main, the ones who are going to get the benefit of the cut in the capital gains.

Mr. President, when you tax corporations you tax people, either because the tax is passed through to them in the price of the product or because the shareholders find it reflected in the size of their dividends. This bill is extremely good to the people who own those corporations, and that is, after all, what we are talking about. When you are talking about corporations, you do not tax corporations; you tax people, the people who own a corporation or the people who buy the products. This bill is very, very good to those people even though the emphasis of the depreciation does go to small business which incidentally also benefits big business. They get it on the first $100,000 just like the smaller ones do. Even though the depreciation is now slanted toward small business in the Senate bill, big business people can still take it insofar as the Nelson amendment goes.

Mr. MUSKIE. Mr. President, will the Senator yield for a question?

Mr. LONG. I yield on the Senator's time.

Mr. MUSKIE. Yes, on my time, of course.

The other day, in addition, we adopted an amendment—I think it was the Packwood amendment—further reducing the corporate rate to 45 percent. The present rate is 48 percent. The committee bill would have provided 46 percent, and we reduced it further in the Chamber to 45 percent as a result of an amendment that coupled it to the elimination of DISC. But we did not eliminate DISC. So that reduction of the corporation tax rate was an additional plus, was it not, for business? I understand that an additional point reduction results in $1.7 billion in revenue reductions this year and that reduction will climb to $2.5 billion in the next 4 or 5 years. Am I correct in saying that?

Mr. LONG. Yes, the Senator is correct. It would mean an additional cut of $1.7 billion.

Mr. DANFORTH. Mr. President, just in very brief response to the Senator from Louisiana, day after day, day after day in the Finance Committee the chairman of the Finance Committee made the point, talked to the witnesses, berated the Treasury Department about the issue of reflows, constantly making the point that a tax reduction is not a pure revenue loss. Now, if the argument about reflows ever applies, it applies about business tax cuts.

I do not think that it is going to produce any revenue to have a high rate of tax on a shrinking economy. That is what we have now. We have a shrinking economy in this country. For every percent we lower the corporate rate, it is $1.7 billion. If we can provide that kind of minor dollar tax reduction and at the same time provide the kind of business confidence long term about a reduced corporate rate so they can make the kind of investment decisions to get this economy moving, then we are going to provide the kind of expanded economy which will produce more revenue than lose revenue.

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. DANFORTH. I yield.

Mr. RIBICOFF. Mr. President, having voted first for the Danforth and Javits amendment and now what has transpired with the Nelson amendment ADR, I agree with the distinguished Senators from Missouri and New York that it is absolutely essential that we stimulate productivity in this country. It is a key to the shrinking dollar. It is a key to inflation, and it is a key to the balance of trade. Unless we get the American indus-

trial system really moving by giving them more funds in the short market for capital we are going to find ourselves in a constant decline competitively with the major industrial nations of the world.

For the future of our country and our productivity, I will support and vote with the Danforth-Javits amendment this time around.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

Mr. President, I thank Senator RIBICOFF. I think his views are critically important and very strongly supportive of our amendment, and I am very grateful to him.

I just wanted to answer the point Senator LONG made that the benefits go to the same class of individuals who hold the stock. Mr. President, we want the benefits to go to any class of individuals who will be entrepreneurs and who will move forward and take risks in major enterprises which have lots of employment and which can go out and get exports and can really get, as Senator RIBICOFF said, this economy moving. Mr. President, there are some 18 million Americans who own our big American enterprises and about 80 million in addition to that who own them through insurance companies and savings banks.

I hope very much the Senate will now approve this amendment.

Mr. DANFORTH. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Missouri. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Alabama (Mrs. ALLEN), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Montana (Mr. MELCHER), and the Senator from Montana (Mr. HATFIELD) are necessarily absent.

I further announce that, if present and voting, the Senator from Montana (Mr. MELCHER) would vote "yea."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "yea."

The PRESIDING OFFICER. Has every Senator in the Chamber voted?

The result was announced—yeas 60, nays 30, as follows:

[Rollcall Vote No. 471 Leg.]

YEAS—60

Anderson	Curtis	Hatch
Baker	Danforth	Hatfield, Mark O.
Bartlett	DeConcini	Hayakawa
Bellmon	Dole	Heinz
Bentsen	Durkin	Helms
Biden	Eagleton	Hodges
Brooke	Ford	Inouye
Byrd, Harry F., Jr.	Garn	Javits
Cannon	Goldwater	Johnston
Case	Gravel	Laxalt
Chafee	Griffin	Leahy
Chiles	Hansen	Lugar
Mathias	Hart	Stevens
Moynihan	Riegle	Stone
Nunn	Roth	Thurmond
Packwood	Sasser	Weicker
Pearson	Schmitt	Williams
Percy	Schweiker	Young
Proxmire	Scott	Zorinsky
Ribicoff	Sparkman	
	Stafford	

NAYS—30

Bayh	Hollings	Metzenbaum
Bumpers	Huddleston	Morgan
Burdick	Humphrey	Muskie
Byrd, Robert C.	Jackson	Nelson
Church	Kennedy	Pell
Clark	Long	Randolph
Cranston	Magnuson	Sarbanes
Culver	Matsunaga	Stennis
Eastland	McGovern	Stevenson
Glenn	McIntyre	Talmadge

NOT VOTING—10

Abourezk	Hatfield, Paul G.	Melcher
Allen	Hathaway	Tower
Domenici	McClure	Wallop
Haskell		

So the amendment (No. 4056) was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SEVERAL SENATORS. Mr. President?

The PRESIDING OFFICER. The Senator from Idaho.

UP AMENDMENT 4031

(Purpose: To provide a one-time up to $100,000 exclusion of gain from the sale of a principal residence of an individual who has attained age 55 or is disabled)

Mr. CHURCH. Mr. President, I call up amendment No. 4031 on my own behalf and that of Senators PACKWOOD and NELSON, and 17 other cosponsors, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Idaho, (Mr. CHURCH), for himself, Mr. PACKWOOD, Mr. NELSON, Mr. MCINTYRE, Mr. STAFFORD, Mr. STONE, Mr. RANDOLPH, Mr. ANDERSON, Mr. GOLDWATER, Mr. MCGOVERN, Mr. INOUYE, Mr. WALLOP, Mr. DOMENICI, Mr. DECONCINI, Mr. RIEGLE, Mr. CLARK, Mr. DURKIN, Mr. MELCHER, and Mr. BAYH, proposes an amendment numbered 4031.

Mr. CHURCH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, on page 2, line 20, of the proposed amendment, there is a typographical error. Section 105(d)(4) should read section 105(d)(5).

I ask unanimous consent that this technical correction may be made to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as corrected, is as follows:

On page 348, beginning with line 6, strike out all through page 352, line 5, and insert the following:

SEC. 404. ONE-TIME EXCLUSION OF GAIN FROM SALE OR EXCHANGE OF PRINCIPAL RESIDENCE OF INDIVIDUAL WHO HAS ATTAINED AGE 55 OR IS DISABLED.

(a) GENERAL RULE.—The section heading and subsection (a) of section 121 (relating to gain from sale or exchange of residence of individual who has attained age 65) are amended to read as follows:

"SEC. 121. ONE-TIME EXCLUSIONS OF GAIN FROM SALE OR EXCHANGE OF PRINCIPAL RESIDENCE OF INDIVIDUAL WHO HAS ATTAINED AGE 55 OR IS DISABLED.

"(a) GENERAL RULE.—At the election of the taxpayer, gross income does not include gain from the sale or exchange of property if—

"(1) the taxpayer—

"(A) has attained the age of 55 before the date of such sale or exchange, or

"(B) is permanently and totally disabled (within the meaning of section 105(d)(5) on the date of such sale or exchange, and

"(2) during the 3-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as his principal residence for periods aggregating 2 years or more.".

(b) INCREASE IN EXCLUSION.—The heading and text of paragraph (1) of section 121(b) are each amended by striking out "$35,000" each place it appears and inserting in lieu thereof "$100,000".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 121(b) is amended by adding at the end thereof the following new paragraph:

"(3) ADDITIONAL ELECTION IF PRIOR SALE WAS MADE ON OR BEFORE JULY 26, 1978.—In the case of any sale or exchange after July 26, 1978, this section shall be applied by not taking into account any election made with respect to a sale or exchange on or before such date.".

(2) Paragraph (2) of section 121(d) is amended by striking out "8-year period" and inserting in lieu thereof "3-year period".

(3) Paragraph (5) of section 121(d) is amended—

(A) by striking out "8-year period" and inserting in lieu thereof "3-year period", and

(B) by striking out "5 years" and inserting in lieu thereof "2 years".

(4) Paragraph (7) of section 121(d) is amended to read as follows:

"(7) SECTIONS 1033 AND 1034 NOT TO APPLY TO SALES TO WHICH THIS SECTION APPLIES.—Section 1033 (relating to involuntary conversions) and 1034 (relating to rollover of gain on sale of principal residence) shall not apply to any sale or exchange of a residence with respect to which an election under this section applies."

(5) Subsection (d) of section 121 is amended by adding at the end thereof the following new paragraph:

"(8) PROPERTY ACQUIRED AFTER INVOLUNTARY CONVERSION.—If the property sold or exchanged had its basis determined, in whole or in part, by reference to subsection (a) of section 1033 (relating to basis of property acquired through involuntary conversion), then the holding and use of the converted property shall be treated as holding and use of the property sold or exchanged.".

(6) The table of section for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 121 and inserting in lieu thereof the following:

"Sec. 121. One-time exclusion of gain from sale or exchange of principal residence of individual who has attained age 55 or is disabled.".

(7) Paragraph (3) of section 1033(g) (relating to cross references) is amended to read as follows:

"(3) For one-time exclusion from gross income of gain from involuntary conversion of principal residence of individual who has attained age 55 or is disabled, see section 121."

(8) Subsection (k) of section 1034 (re-

lating to cross references) is amended to read as follows:

"(k) CROSS REFERENCE.—

"For one-time exclusion from gross income of gain from sale or exchange of principal residence of individual who has attained age 55 or is disabled, see section 121."

(9) Sections 1038(e)(1)(A), 1250(d)(7)(B), and 6012(c) are each amended by striking out "age 65" and inserting in lieu thereof "age 55 or is disabled".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after July 26, 1978, in taxable years ending after such date.

(d) TRANSITIONAL RULE.—In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to substitute both "8-year period" for "3-year period" and "5 years" for "2 years" in applying subsection (a) of section 121 of the Internal Revenue Code of 1954 as amended by this section.

Mr. CHURCH. Mr. President, this amendment would provide a one-time, up to $100,000 exclusion from capital gains tax for homeowners who are 55 years of age or older, or disabled. The major beneficiaries of this amendment would be older homeowners who, first, no longer need a large house once their families are out on their own, or, second, are retired or about to retire.

A homeowner 65 years old or older may now exclude the gain on the sale of the personal residence provided the adjusted sales price does not exceed $35,000 and other conditions are met. Many older Americans, though, must still pay a tax when they sell their dwelling, since the price of most houses today is well above $35,000, primarily because of the rapid escalation of real estate values. The amount excludable under these circumstances is the total gain multiplied by $35,000 divided by the adjusted sales price of the personal residence.

Existing law also permits individuals of all ages to postpone the tax on the gain from the sale of a home if they purchase a replacement residence costing as much or more than the one sold. This provision works well for persons who are on their way up in life, who are climbing the economic ladder. It is ideally suited for individuals earning more money who want a larger house because of a growing family or a rising life style. But existing law provides little relief for persons who desire to move to a more modest residence, as is often the case for married couples in their late 50's or early 60's after they have raised their families. These people typically must pay a large capital gains tax which is mostly a tax on inflation.

The Senate Finance Committee proposal makes several changes in existing law which improve somewhat the present tax burden for homeowners. I commend the distinguished chairman of the Finance Committee (Mr. LONG) for his leadership in developing those provisions. My purpose here is not to criticize what the Finance Committee has done, but to offer an amendment which, in my judgment, is better designed to help those who need the help the most.

Let us review what the committee bill has done.

First, it would increase the $35,000 numerator for computing the exclusion, to $50,000. The effect of this provision is that taxpayers who sell their homes for $50,000 or less would not pay any capital gains tax. But those who sell for more than $50,000, which would be the case for most homeowners since the median value of a home today exceeds $50,000, still would be subject to a capital gains tax.

Second, the committee would permit the special exclusion to be used more than once, which I will return to in a moment.

(Mr. DECONCINI assumed the chair.)

Mr. CHURCH. Third, the special exclusion would be made available to all taxpayers regardless of age.

Fourth, the special exclusion would only apply to sales or exchanges of homes which the taxpayer owned and used as his or her principal residence for 2 years within a 3-year period preceding the sale or exchange. Under present law, homeowners 65 or older must have owned and occupied their principal residences for 5 years out of the 8 years immediately preceding the sale.

Fifth, the committee bill would establish a limited transition rule permitting individuals satisfying the age, ownership and use requirements of present law—5 years or more out of the 8-year period preceding the sale for persons 65 years or older—to qualify for the exclusion under the new or old rules if they sell or exchange their personal residences before July 26, 1981.

Our amendment differs from the committee bill in that it would provide a once-in-a-lifetime exclusion from capital gains tax for persons 55 years or older, or disabled individuals regardless of age, who sell their homes.

In addition, the numerator for determining the excludable gain would be $100,000, instead of the $50,000 in the committee bill.

The exclusion would be available for older homeowners who owned and occupied their principal residence for 2 years out of 3 years immediately preceding the sale of their dwellings.

Our amendment would also provide a transition rule identical to the Finance Committee proposal.

The cost to the Treasury of the two approaches differs very little. The committee exclusion for homeowners would cost about $138 million in fiscal year 1979 and $295 million in calendar year 1979—compared with $150 million in fiscal 1979 and $322 million in calendar 1979 under our amendment.

So, when it comes to cost, there is comparatively little difference between these two proposals. However, I believe that our approach is preferable to the committee approach, for several reasons.

Most homeowners would pay a capital gains tax under the committee proposal because the median sales price of a single family dwelling unit is well above $50,000 today.

Moreover, the committee bill may permit windfall benefits to accrue to speculators. They may take advantage of the exclusion over and over again during their lifetimes.

The net effect is that speculators who skillfully make use of provisions in the committee proposal could pile up excludable gains totaling several hundred thousand dollars, which would clearly constitute a serious abuse of what it is we are all trying to accomplish.

Our amendment, on the other hand, would wipe out the capital gains tax for practically all homeowners 55 years or older, or those who are disabled, instead of limiting the full exemption only to those selling their personal residences for not more than $50,000.

I would think, Mr. President, that this amendment might reach 99 percent of all the homeowners in this country, excluding only the rich. Perhaps 1 percent of the people would still have to pay a capital gains tax on the sale of homes that exceed $100,000 in value. But for 99 percent of the homeowners in America, this amendment would enable them, once in their lifetime when they need it most, when they are stepping down, as it were, from a higher standard of living, arranging for their retirement, adjusting for the time when their own income substantially drops off—for this one time this amendment would enable them to sell their home without a big bite being taken by the Federal Government in the form of a capital gains tax.

How much would that help people augment their limited retirement income? They are entitled to that much of a break, Mr. President, at least once in their lifetime. And the best time to give it to them is when they need it most, when they are making their financial adjustments for retirement.

So, for these reasons, we think the amendment we offer does much more good for those taxpayers who need help the most.

Mr. President, the vote in California in support of proposition 13—and the growing number of similar initiatives in other States—has demonstrated how keenly Americans feel about their homes.

Congress has no control over State and local property taxes, but we clearly have control over capital gains taxation. Adoption of this amendment can materially ease the burden imposed upon hundreds of thousands of older Americans each year when they sell their homes.

These elderly persons now find themselves in a "no-win" situation. If they remain in their homes, they are confronted with rapidly rising property taxes, maintenance costs, and energy charges, trying to make ends meet on a limited income. On the other hand, if they sell their homes and, obviously, do not purchase a replacement residence costing more, because they are unable to do it, unable to afford it, since they are adjusting to a lower standard of living with a lower anticipated income—in these adverse circumstances, the older seller must pay a big chunk of the proceeds in Federal capital gain taxes.

Our amendment, I am pleased to say, is strongly supported by the National Retired Teachers Association-American Association of Retired Persons, which has more than 12 million members.

Mr. President, I urge the Senate to adopt the amendment.

● Mr. GOLDWATER. Mr. President, I rise to support the amendment offered by my colleague from Arizona.

The amendment has no revenue im-

pact on the Treasury and will not cost the taxpayer 1 cent. It is intended solely to correct a legal technicality in the tax law which precludes the timely refund of overcollected taxes.

The need for the amendment arises out of a 1954 law which provided a method of calculating income tax overpayments for amounts held under claim of right. Due to an oversight, Congress neglected to provide a means for obtaining a timely refund of an overpayment in certain circumstances and a taxpayer who is fully entitled to a refund may have to wait several years to receive it.

The amendment will correct that technicality and permit a speedy refund of the amount due.●

Mr. PACKWOOD. Mr. President, I rise in support of the amendment of the Senator from Idaho. This is a philosophical question as to what we want to do with roughly the same amount of money, whether we want to distribute benefits over the entire age spectrum or whether or not we think that the people that are hardest hit by inflation and capital gains on the sale of their homes are those who are elderly. Let us face just what happens, practically, as a matter of fact, now.

Most people, until they are 55, 60, in some cases 65, if they sell a house, usually buy another house. Because their family is getting larger, it is normally a larger house, and because inflation has made real estate prices go up, it is normally a more expensive house. Under the present law, and the Finance Committee does not change this and our amendment does not change this, you are allowed to roll over the profit you made on selling your older, smaller house into the cost of the new one. You pay no tax on that so-called capital gain. And you can keep doing that so long as you buy a bigger, more expensive house, and you never have to pay any tax.

The problem comes when you finally, in your retiring years, sell the last house you have. Then you pay a tax, not on just the difference between that last house you might have bought, the one you bought when you were 25 or 30 and have been continuing to roll over this into a larger house as your family got bigger. You are allowed to sell that house and move into an apartment or condominium or a much smaller house at a lesser price. You are now faced with the one capital gains tax, at the one time in your life when you most need the money, because you are now retiring. You are lucky if you have social security and a company pension. More likely, you have just social security. So this is a philosophical choice. Our amendment does not hurt one iota those people who are 25, 30, 35, 40, 45, 50, who buy a bigger house because they have a bigger family. It does not hurt them a bit. The committee amendment not only continues that benefit, but gives them a rather substantial break on capital gains at the expense of those who are 55 and older.

All I am asking the Senate to do is make a choice. Where do we think the need is greatest for, roughly, the same amount of money.

I think it is infinitely greater for the people retiring, who have no other savings but their house, nothing but probably social security, and will have to live for the last 10, 15, 25 years of their lives, even with whatever they can realize from the savings account, based on the capital gain of the house, and live at a substantially reduced income from what they have lived on until they retired.

I would say to the Senators, the equities are far and away on the side of the amendment offered by Senator CHURCH, Senator NELSON, and others, rather than the committee amendment which spreads the same amount of money over all age classes.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I am not under any illusion about the popularity of this kind of amendment. But let me just make a point which I think falls to my painful duty as chairman of the Senate Finance Committee.

What people are concerned about in the way of reform more than anything else is the fact that some people make large incomes and pay no taxes.

The Treasury did a study of people making $200,000 or over who paid no taxes. We have heard a lot about the fact that 216 people some years ago made that much and paid no tax.

We worked very hard to close those loopholes and see that they would pay something. They used to say that someone made $1 million and paid no tax; we have that closed off, and they now pay some tax—maybe not enough, but they pay something. Now we have it down where nobody making $200,000 escapes taxes. They pay something. If they do not pay us anything, it is because, in a practical sense, they do not owe anything.

But now we will see that level drop down. They will be keeping score on the $100,000 level. They will tell us, maybe 10,000 or 20,000 people in America made $100,000 and paid no tax.

This is where the reason will be, right here in this area of these people over 55 who sold a home, made $100,000, and paid no tax.

That will, of course, be misunderstood by a lot of people who will say, "Look at all these people who made that money and paid no tax." It will lead to an additional complaint about the tax system being unfair.

That pains me, Mr. President, because we try very hard to see that the system is fair and that everyone who makes a substantial income pays at least some tax.

Under the committee bill, if one made the same $100,000, if he were in the 30-percent bracket he would pay about $5,000 in taxes, 5 percent.

If he were in a 70-percent bracket, meaning he had $100,000 of income, as a single person he would pay about $12,000, or about 12 percent.

Now, is 5 percent to 12 percent really too much for someone who actually made $100,00 to pay in taxes? I think most people would feel a person with that much income should pay something.

That, Mr. President, was the view of the committee, that rather than have these people pay nothing, they should pay a tax, small though it would be, if for no other reason that when people start keeping score on our tax laws, when they say, "Here are 10,000 or 20,000 people who paid no tax," that we not be subject to the charge that we permitted this to happen in this country.

Keep in mind, those over 65 have laws very favorable to them with regard to the special tax considerations for the aged the way it is.

That being the case, Mr. President, I assume the Senate will want to say these people pay just nothing. Well, those who are under 55 and who will be paying will be looking at these returns and these studies. I suspect, Mr. President, we will be accused of being very unfair in havnig tax laws that permit some people to make $100,000 and pay nothing, because when people look at these studies, they are not going to be thinking in terms of who these people were. They will be thinking in terms of how unjust it was.

Here is a man who made $10,000, with his wife and two children. He paid 10 percent of his income in taxes, while someone else made $100,000 and paid nothing.

That is hard to explain even if we are talking about people over 65.

Mr. President, I may be the only one not to go along with this amendment. But I honestly feel I must protest about it because we are setting the stage here for a set of tax studies in future years to indicate all these people made $100,000 and paid no tax at all to this Federal Government.

That, Mr. President, leads to the type of tax resentment, tax chiseling, and tax cheating, by citizens who ordinarily would tend to voluntarily pay their taxes. But when they feel this way, it sets the stage for them to feel they are justified in chiseling, cheating, doing business in cash and not reporting it, and a great number of sharp practices which we seek to discourage with our tax laws.

Therefore, Mr. President, it pains me to see the amendment offered. I suspect it has so much appeal, that these elderly people should pay just nothing, that it is hopeless to oppose it. But I think I should protest because the majority of people feel they should pay something, when they pay nothing. Let it be said we did not suggest that.

Mr. PACKWOOD. Mr. President, first, to be very clear, under our amendment, somebody who makes $100,000, the schoolteacher making $18,000, they built their house in 1950 and they sell it in 1978, and it cost $25,000 and they sell it for $125,000. and they can "make $100,000," and they will still have to pay capital gains tax on that. Only $80,000 will be excluded.

So it will not be a cipher on the list of those who paid no taxes.

Second, I sometimes think this Senate is shell shocked by the Treasury about people who pay no tax.

If we have to defend the argument that people 55, 60, 65, that 1 year in their life—1 year in their life—they

happen to "make" $100,000 because they sold the only asset to put their blood, sweat, and tears into, which was their home, and we are ashamed to defend that, there is something wrong with that.

They will pay a tax anyway, so they will not be on that chart of no taxes.

Mr. CHURCH. Mr. President, I, of course, concur in what the able Senator from Oregon has said.

I simply add that the capital gains tax on a home is largely a tax on inflation. These values have leaped up, not in terms of constant dollars, but in terms of inflationary dollars. A home which sells today for $75,000, which represents, as the Senator correctly points out, the asset into which the typical American couple has poured most of its savings, usually the family's largest single asset, that $75,000 is not worth a cent more in terms of purchasing power than, say, the original purchase price of $25,000 25 or 30 years ago—not a cent more.

The gain is illusory, brought about by a constant depreciation in the value of the dollar.

Yet, the Internal Revenue Service comes along and socks it to these older people, forcing them to pay a big capital gains tax on an illusory profit, a tax on inflation.

So it seems to me there is much equity in this amendment, which would provide that at least once in the lifetime of an American citizen, particularly when he or she must adjust to retirement on a lower income, that person ought to get the full market value of the house without having to pay a big capital gains tax on its sale.

So, Mr. President, in view of the fact that this amendment would cost about the same amount as the committee proposal, and does greater justice for those who need it most, people 55 years of age or older, or disabled people, I do hope that the Senate will approve it.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I ask unanimous consent to have printed in the RECORD a comparison of the Church-Packwood-Nelson amendment and the Finance Committee proposal, which we have readied, together with a chart that makes the comparison even more clear.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMPARISON OF CHURCH-PACKWOOD-NELSON AMENDMENT AND FINANCE COMMITTEE PROPOSAL TO EXCLUDE THE GAIN ON THE SALE OF PERSONAL RESIDENCES FOR CERTAIN TAXPAYERS

Existing Law: Gain is not recognized on the sale or exchange of a personal residence if the taxpayer purchases a new residence costing as much or more than the adjusted sales price of the old residence. The taxpayer must own and occupy the new principal residence within 18 months before or 18 months after the sale of the old residence.

A taxpayer 65 or older may exclude, from gross income, on a one-time basis, the entire gain from the sale of a principal residence if (1) the adjusted sales price is $35,000 or less, and (2) owned and used the property as his principal residence for at least 5 years within the 8-year period preceding the sale. If the adjusted sales price exceeds $35,000, the amount excludable is computed by multiplying the total again by $35,000 divided by the adjusted sales price of the residence. For example, if an elderly taxpayer sold a personal residence for $70,000, one half of the gain would be excludable (before determining the capital gains exclusion) under present law, computed as follows:

Excludable percentage = $35,000; Adjusted sales price of residence.

Excludable percentage=$35,000; total $70,000.

MAJOR PROVISIONS	FINANCE COMMITTEE PROPOSAL	CHURCH-PACKWOOD-NELSON AMENDMENT
1. Computing exclusion:	The Committee bill would increase the $35,000 numerator for computing the exclusion to $50,000. Taxpayers who sell their personal residences for $50,000 or less would not pay capital gains tax. However, those who sell for more than $50,000—which is the case for most homeowners—would be subject to capital gains tax.	The numerator for determining the excludable gain would be $100,000.
2. Application:	The exclusion would be available to all taxpayers, regardless of age.	The amendment would be available to taxpayers 55 or older or the disabled at any age.
3. Availability:	The exclusion could be used more than once by a taxpayer.	A taxpayer would be able to use the exclusion only once.
4. Ownership and use:	The exclusion would only apply to a sale or exchange of a home which the taxpayer owned and used as a principal residence for 2 years within the 3-year period preceding the sale or exchange. Under present law, a homeowner 65 or older must have owned and occupied a principal residence 5 out of 8 years immediately preceding the sale.	Same as Finance Committee.
5. Transition rule:	Individuals 65 or older satisfying the ownership and use requirements of present law—at least 5 years during the 8-year period preceding the sale—would have the option of qualifying under the old or new rules if they sell or exchange their personal residences before July 26, 1981.	Same as Finance Committee.
6. Cost (calendar year 1979):	$295 million.	$305 million—Department of the Treasury; $327 million—Joint Committee on Taxation.

Mr. MUSKIE. Mr. President, since we have just enacted another out-year tax reduction, I feel I have an obligation to present to the Senate the tax consequences in the out years of what the Senate has already done to this tax bill.

As the bill came out of committee, the tax bill would have reduced revenues in fiscal year 1979 by $20.5 billion. That includes $8.2 billion representing extensions of current law and new tax reductions totaling $12.3 billion for a total of $20.5 billion.

Those provisions in 1983 would have amounted to the following: $23.4 billion as the cost of the extensions of current law, and $42.5 billion as the 1983 cost of the new reductions. That is a total of $65.9 billion on an annual basis in 1983.

What we have done up to now is this: The fiscal year 1979 cost at this point is $21.7 billion. The 1983 cost is $144 billion compared to the $65.9 billion 1983 cost of the committee bill. So we have added roughly $80 billion of tax reductions in fiscal year 1983 as of this moment. We found a wide open door to enacting tax reductions, increasing tax losses and escaping the discipline of the current fiscal year, but only by playing with effective dates so that the full cost is reflected in future fiscal years. We are going to worry about them, apparently, when we get to them.

I put this into the RECORD not for the purpose of influencing Senate opinion on Senator CHURCH's amendment, but simply to get these figures into the RECORD at this point so Senators may contemplate them as they consider other amendments which may come before us today.

Mr. STONE. Will the Senator yield for a half minute for the Senator from Florida to support his amendment?

Mr. CHURCH. I welcome the Senator's support. I am happy to yield for that purpose.

Mr. STONE. I thank the distinguished Senator.

Mr. President, I cosponsored this amendment because I feel that the Finance Committee's proposal does not adequately deal with the problems encountered by older Americans, usually in their late fifties or early sixties when they sell their principal residence and

move to a more modest residence. They have to pay, in effect, a tax on inflation when they are forced to pay a capital gains tax on their gain from the sale.

This amendment would provide a one-time only exemption of up to $100,000 from capital gains taxes for persons 55 or older who sell their personal residences and move to more modest residences. This amendment is similar to the House-passed provision with the exception of the age limit and some technical changes.

One of the technical changes I have pushed for is one which would not inadvertently deprive deserving senior citizens of receiving either the $100,000 exclusion allowed under the House bill or the $35,000 exclusion under the present law. It seems that the House-passed version, through changing the residency requirement and removing the age restrictions would cause the aforementioned problem. I feel that in this amendment, we have solved that problem, and not one deserving senior citizen will be deprived of his/her right to this capital gains exclusion.

Mr. President, I strongly urge passage of this amendment as I feel that our senior citizens do need relief from the huge capital gains tax, especially when that tax is levied on the sale of their home, which is usually their most valuable asset.

Mr. President, I ask unanimous consent that a letter to the distinguished chairman of the Finance Committee and a letter to the distinguished Senator from Idaho be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., September 19, 1978.

Hon. FRANK CHURCH,
Chairman, Senate Special Committee on Aging.

DEAR FRANK: This is in response to your dear colleague letter concerning your bill, S. 3385, to provide a one-time exemption of up to $100,000 from capital gains taxes for the sale of a principal residence.

I am interested in cosponsoring this legislation should the Finance Committee decide to omit Sec. 405 of H.R. 13511. However there is a technical change I would like to see made regarding the residency requirement in this provision. I have already communicated this concern to Senator Long, and I have enclosed a copy of my letter for your review. It seems that certain senior citizens would be deprived from receiving the $35,000 exemption allowed under present law or the $100,000 exemption allowed under the proposed law due to the changes in the residency requirements.

I am looking forward to working with you on this matter. If there are any questions, please have a member of your staff contact Bill Pursley or Scott Ozmun of my staff (43041).

Warm personal regards.
Most cordially,
RICHARD (DICK) STONE.

U.S. SENATE,
Washington, D.C., September 13, 1978.

HON. RUSSELL B. LONG,
Chairman, Senate Finance Committee.

DEAR MR. CHAIRMAN: It is my understanding that the Senate Finance Committee, in its mark-up of H.R. 13511, has not yet reached Section 405 which would allow a once-in-a-lifetime exemption of up to $100,000 from taxable income for the gain of sale on a principal residence.

Enclosed is a copy of a letter I have received from a constituent who pointed out a gross inequity in this proposal as presently drafted. It appears that by changing the residency requirements and removing the age restrictions, certain senior citizens would be deprived of not only the $100,000 exemption in the proposed law but also the $35,000 exemption under the present law. I am sure that you will agree with me that this was not the intention of the House Ways and Means Committee in drafting this provision.

I hope that your committee will come up with the proper amendments to rectify this situation so we will not unintentionally exclude deserving senior citizens from receiving tax benefits.

Warm personal regards.
Most cordially,
RICHARD (DICK) STONE.

Mr. STONE. I thank the Senator from Idaho.

Mr. CHURCH. I appreciate the good Senator's support.

Mr. RANDOLPH. Will the Senator yield?

Mr. CHURCH. I yield to the distinguished chairman of the Public Works Committee.

Mr. RANDOLPH. Mr. President, it is my privilege, through the courtesy and the cooperation of the able Senator from Idaho (Mr. CHURCH), to be one of the cosponsors of this amendment, as is the Senator from Florida (Mr. STONE), and others. I will not take time at this point to discuss the provisions of the amendment, the validity of it, and the reasons why. In our opinion, the amendment should be accepted. I will further state, however, that a very careful following of the debate led by the Senator from Idaho is, I think, conclusive evidence of the need for such a provision in the pending tax bill.

This is a situation which comes to a group of people who need it the most; older Americans and the totally disabled. Eleven percent of West Virginians are in this age bracket. They are deserving of this capital gains tax break for the sale of their home.

Mr. CHURCH. I thank the Senator very much for his remarks. As I have pointed out, the cost of this amendment is very slightly different from the cost of the amendment in the committee bill.

● Mr. BELLMON. Many of my colleagues who support Kemp-Roth and Steiger-type tax cut proposals were not surprised by the passage in California of proposition 13. But a lot of the politicians, who have turned in their tracks and very nearly run over us in their rush to get on the tax cut bandwagon, have missed the essential message. The message was to cut taxes, not eliminate them.

John Q. Californian voted for proposition 13, because of a piece of paper he got in the mail. It was the tax assessment on his home. There were two exciting things on that piece of paper. One was the fair market value of his home. It had gone up beyond his wildest dream. The other exciting thing was the tax that the State wanted. That had gone up beyond his wildest dream, also.

In many cases, that tax notice meant that he could no longer afford to live in his own home. But if he sold the home, bought a much cheaper home, or rented a house, he would have to pay a capital gains tax that he could also not afford to pay. Catch 22. Hence, proposition 13. Proposition 13 fixed part of the problem. It is now up to the Congress to fix the rest of the problem. And granting a once-in-a-lifetime waiver from an unfair and confiscatory tax does not solve the problem.

The present tax on capital gains is doubly unfair, and it can be assumed that the roughly 50 million homeowners in this country are aware of how unfair it is. At present, half the gain from the sale of a home is added to the ordinary income of the homeseller and taxed as ordinary income.

It is singly unfair, because much of the "capital gain" is illusionary. It only reflects inflation. The price a homeseller gets is largely determined by replacement cost. As inflation drives up the cost of building a new house, used house prices follow.

It is doubly unfair, because half the gain gets added to an income that has been pushed by inflation into higher income tax brackets. Because of the progressive income tax, inflation makes the capital gains doubly unfair.

Now, what the House has done, the $100,000 once-in-a-lifetime forgiveness of capital gains tax on the sale of a home, is a step forward. And if the only option we had was to leave things they way they are, or to vote for the one-time forgiveness of the tax, I would vote for the one-time forgiveness.

Fortunately, however, the Finance Committee has proposed a different approach. It continues to treat the gain that is taxed as additions to ordinary income for tax purposes. But it does two things that make it much preferable to the one-time forgiveness of the House. And I believe that the House conferees will agree that Senator LONG's proposal is better and will recede from their position.

It drastically reduces the percent of the capital gain that is added to ordinary income for the purposes of computing tax owed. It further allows the homeseller to pay this much reduced tax or to defer that tax by reinvestment in another house if he chooses.

Mr. President, I believe that a tax reform along the lines in the Finance Committee bill has proposed for taxing the gain from the sale of single-family dwellings is exactly the kind of reform that proposition 13 mandated. It is the kind of reform that many of us who have supported Kemp-Roth and Steiger tax cut proposals have worked for. I cannot guarantee that we will ultimately derive more revenue from taxes that have been cut in rate. But I do know that Americans will not pay taxes that they cannot pay.●

Mr. PACKWOOD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. CLARK). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. On this question the yeas and nays have

been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BARTLETT (When his name was called). Present.

Mr. CRANSTON. I announce that the Senator from Colorado (Mr. HART), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), and the Senator from Montana (Mr. MELCHER) are necessarily absent.

I further announce that, if present and voting, the Senator from Montana (Mr. MELCHER) would vote "yea."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. DOMENICI) and the Senator from Texas (Mr. TOWER) would each vote "yea."

The PRESIDING OFFICER (Mr. GRAVEL). Have all Senators voted?

The result was announced—yeas 73, nays 18, as follows:

[Rollcall Vote No. 472 Leg.]

YEAS—73

Abourezk	Goldwater	McIntyre
Allen	Gravel	Metzenbaum
Anderson	Griffin	Morgan
Bayh	Hatch	Muskie
Biden	Hatfield,	Nelson
Brooke	Mark O.	Packwood
Bumpers	Hatfield,	Pearson
Burdick	Paul G.	Pell
Byrd, Robert C.	Hayakawa	Percy
Cannon	Heinz	Proxmire
Case	Helms	Randolph
Chafee	Hodges	Riegle
Chiles	Huddleston	Roth
Church	Humphrey	Sarbanes
Clark	Inouye	Sasser
Cranston	Jackson	Schmitt
Culver	Javits	Schweiker
Danforth	Johnston	Sparkman
DeConcini	Kennedy	Stafford
Dole	Laxalt	Stevens
Durkin	Leahy	Stone
Eagleton	Lugar	Thurmond
Ford	Magnuson	Weicker
Garn	Mathias	Williams
Glenn	McGovern	Zorinsky

NAYS—18

Baker	Hansen	Scott
Bellmon	Hollings	Stennis
Bentsen	Long	Stevenson
Byrd,	Matsunaga	Talmadge
Harry F., Jr.	Moynihan	Young
Curtis	Nunn	
Eastland	Ribicoff	

ANSWERED "PRESENT"—1

Bartlett

NOT VOTING—8

Domenici	Hathaway	Tower
Hart	McClure	Wallop
Haskell	Melcher	

So the Church-Packwood-Nelson amendment (No. 4031), as modified, was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. TALMADGE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TALMADGE. There is an issue that has arisen in my State and in some other States as to the correct interpretation of one of the child support provisions of the Social Security Act. As author of the child support program (title IV(d) of the Social Security Act), as chairman of the Finance Committee, and as the manager of the bill establishing the child support program, I would like the Senator's views on this issue.

The Finance Committee in its report 93–1356, expressed concern with the extent to which the dependency on AFDC resulted from the increasing number of children on the rolls, born out of wedlock, for whom parental support is not being provided because the identity of the father has not been determined.

The report further stated:

In taking the position that a child born out of wedlock has a right to have its paternity ascertained in a fair and efficient manner, the committee acknowledges that legislation must recognize the interest primarily at state in the paternity action to be that of the child. Since the child cannot act on its own behalf in the short time after his birth when there is hope of finding its father, the Committee feels a mechanism should be provided to ascertain the child's paternity whenever it seems that this would both be possible and in the child's best interest.

Did not the committee authorize the establishment of the child support enforcement program as the mechanism best designed to do the work required by the law to undertake to locate the father and to establish the paternity of a child born out of wedlock for both AFDC children and, if requested, for children not receiving welfare and securing support for such children which had been neglected in all but a few States?

Mr. LONG. Yes. it did.

Mr. TALMADGE. Is it not true that the congressional intent was not to require any specific methodology for a State to use in the establishment of paternity, but that the State was expected to use such methodology in the manner most effective for that State?

Mr. LONG. Yes.

Mr. TALMADGE. Could a State discharge its duties in the establishment of paternity by the State's attorney or the district attorney or the child support authorities bringing an action against the man who is alleged to be the father of the child?

Mr. LONG. Yes.

Mr. TALMADGE. Could a State also discharge its duties by requiring the mother of the child to appear at the court or at the office of the district attorney or other law enforcement agency responsible for establishing paternity or otherwise obtaining or enforcing support obligations to swear out or sign a warrant or other legal document necessary to initiate appropriate legal proceedings?

Mr. LONG. Yes. The key issue was and is to establish the paternity of the child and to establish it through a court order, not what method the State uses.

AMENDMENT NO. 4032 (AS MODIFIED)

(Purpose: To extend the targeted jobs tax credit to certain 16- and 17-year-olds)

Mr. JAVITS. Mr. President, I send amendment 4032 to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an amendment numbered 4032.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 266, line 12, insert after "date." the following: "For the purposes of the preceding sentence, an individual, who, on the hiring date, has attained age 16 and either (i) has graduated from high school of vocational school or (ii) has not been enrolled in any high school or vocational school within the 4-month period preceding the hiring date, shall be treated as having attained age 18.".

Mr. JAVITS. Mr. President, I yield myself 2 minutes.

The purpose of the amendment is to add to the targeted tax credit for hiring 18- to 24-year-olds by making certain 16- and 17-year olds eligible.

Mr. President, I do not wish to provide any incentive for youth to drop out of school to take a job. So this inclusion is limited to two categories: 16- and 17-year-olds who have graduated from high school, and 16- and 17-year-olds who have been out of school at least 4 months, in short, dropouts.

Mr. President, as the ranking member of the Human Resources Committee, no one knows better than I that teenagers constitute one-fourth of our unemployed, and I feel we simply have to include these younger groups in the eligibility for the targeted credit. Unless we do we have left out a great many who are the hardest to employ, and we are not supplying the extra incentive which will keep the 16- and 17-year-olds from resorting to a life of crime or delinquency when they cannot find work. So I think they should be given an equal opportunity.

It was my understanding that it was agreeable to the committee, and I hope very much the committee managers will feel the same about it.

Mr. TALMADGE. Mr. President, I am greatly sympathetic with the intent of the amendment, but the language is rather awkwardly worded. The last two lines "preceding the hiring date, shall be treated as having attained age 18," could we not modify that language to make it read—we would not want to say someone who is 16 is 18. Yet that is what the Senator's amendment says. I am in thorough accord with what the Senator is trying to do. and I think it is an improvement over the Senate bill.

Mr. JAVITS. Mr. President, I ask unanimous consent that the words "shall be treated as having attained age 18," be omitted, and the phrase "there shall be included as eligible" be added in the first line after the word "sentence".

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 266, line 12, insert after "date." the following: "For the purposes of the preceding sentence, there shall be included as eligible an individual, who, on the hiring date, has attained age 16 and either (1) has graduated from high school or vocational

school or (ii) has not been enrolled in any high school or vocational school within the 4-month period preceding the hiring date".

Mr. TALMADGE. With that change I have no objection to the amendment, and I urge the Senate to agree to it.

Mr. JAVITS. I am ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified, of the Senator from New York.

The amendment, as modified, was agreed to.

Mr. JAVITS. I move to reconsider the vote by which the amendment was agreed to.

Mr. TALMADGE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4035

(Purpose: To extend the investment credit to certain research and innovation expenses)

Mr. JAVITS. I send amendment 4035 to the desk. This amendment is proposed for Mr. HATHAWAY and myself.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) for himself and Mr. HATHAWAY, proposes an amendment numbered 4035.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. EXTENSION OF THE INVESTMENT CREDIT TO CERTAIN RESEARCH AND INNOVATION EXPENSES.

(a) QUALIFIED INVESTMENT FOR RESEARCH EXPENDITURES.—Section 46(c) (relating to qualified investment) is amended by inserting immediately after paragraph (5), the following new paragraph:

"(6) APPLICABLE PERCENTAGE IN THE CASE OF RESEARCH AND DEVELOPMENT EXPENDITURES.—Notwithstanding paragraph (2), in the case of expenditures—

"(A) with respect to which an election under section 174(b) applies, 66⅔ percent shall be the applicable percentage for purposes of applying paragraph (1).

"(B) with respect to which section 174(a) applies, 33⅓ percent shall be the applicable percentage for purposes of applying paragraph (1).".

(b) EFFECTIVE DATE. — The amendments made by this section shall apply to expenditures made in taxable years beginning after December 31, 1978.

Mr. JAVITS. Mr. President, this amendment would provide that research and innovation would qualify for the investment tax credit.

Mr. President, I will not press this amendment. I shall take, if I may, only 2 or 3 minutes, and I beg the attention of the managers of the bill.

The reason I have proposed it is that we face an enormous gap in research and innovation in this country. We have just had a report on this particular subject by the National Science Board in 1977.

Mr. President, the conclusions arrived at in this report give me great concern. We are falling so very badly behind other nations in the number of people who are engaged in research and development, and the amount in real dollars, that is—not counting inflation, which we put into research and development, and in the number of patents which are granted to the U.S. inventors as compared to the patents granted to German and Japanese inventors. In addition, the nature of our research is far more applied than longer-term theoretically abstract research, and it is the latter which has produced some of the greatest developments in American technology.

The benefit of this amendment would go to companies large and small.

In fact, companies employing fewer than 1,000 people in the 20-year period 1953 to 1973 produced 4 times as many innovations per research dollar as companies employing 1,000 to 10,000 people and 24 times as many as firms over 10,000. So, the superficial thought "Well, General Electric, General Motors, IBM are going to get all the benefit of this," is not true at all. The facts do not bear that out.

My point is this, I say to the Senator from Georgia (Mr. TALMADGE): I hope very much, and I really ask in the most urgent national terms, that the Finance Committee will give this matter a thorough examination. I ask Senator CURTIS to use his influence to the same effect. I understand that Senator HARRY F. BYRD, JR., heads a subcommittee which could go into this very, very carefully.

I would consider it irresponsible to press this amendment in the absence of a very completely documented record, but really I know of nothing that we can do that could be more important to the future of our country than to dig into this subject and try to do it correctly.

It may or may not require this inducement, but something is very wrong somewhere. I hope very much that my colleagues will take a good close look at it.

I shall withdraw the amendment. I have no intention of pressing it, but I did feel this was the focal place to make this point.

Mr. CURTIS. Mr. President, I yield myself 2 minutes.

I want to say to the distinguished Senator from New York that it is the opinion of the Senator from Nebraska that there is nothing more important than tax policy which encourages research, and long-range research. Many of the things that have added so much to the efficiency of American industry and our standard of living are the result of long, long periods of research. I not only favor what the distinguished Senator from New York advocates, but I would call attention to the fact that one of the problems concerning a sunset provision is that laboratories will not be built; and long-range projects extending to 10, 15, or 20 years will not be constructed, because if you have a sunset provision, that means that the special tax incentive and writeoff for research might come to an end; they are dependent upon congressional action, or they can be killed by the nonaction of Congress.

These things should be liberalized, as the Senator suggests. They also should have a degree of permanency, so that American industry and American individuals can rely on them.

Mr. JAVITS. I thank my colleague very much. I yield to the Senator from Georgia.

Mr. TALMADGE. Mr. President, I share to a very great degree the views of the Senator from New York and also those expressed by our ranking minority member, the Senator from Nebraska.

As the Senator from New York knows, and I think every Member of this body knows, this country has the lowest productivity, now, of any of the civilized nations on the face of the Earth. I think one reason for that is that we do not do the necessary research, and do not have the research funds available that we ought to have. And I think one reason for that is that corporate taxes have been too high.

While I cannot speak for the chairman of the committee, I am sure he feels as I do, and, speaking as a member of the Finance Committee, I will be happy to assure the Senator from New York—and I have great interest in the matter—that we will hold hearings next year and study the matter thoroughly.

We have to get this country moving again. We must increase productivity and research and development in order to do that, in my judgment.

Mr. JAVITS. I thank the Senator.

Mr. President, with that assurance, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 3889

(Purpose: To delete the provision increasing the capital gain exclusion from 50 percent to 70 percent)

Mr. KENNEDY. Mr. President, I call up my amendment No. 3889.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes an amendment numbered 3889:

Beginning with line 13, page 343, strike out through line 16, page 345.

On page 129, strike the item relating to section 402 of the bill.

Mr. KENNEDY. Mr. President, this amendment reduces the 70-percent exclusion for capital gains to 50 percent. It provides $1.2 billion in additional relief for capital gains compared to current law, which is ample relief. It cuts back substantially from the committee's bill, which provides an incredible $3.2 billion in tax relief for capital gains.

I would draw the attention of the Members of the Senate to a recent Business Week article, in the September 18 issue, which demonstrates that big money is out there already for capital spending. It points out that—

The nation's largest corporations are sitting atop a record $80 billion pile of ready cash that could finance a grand boom in capital spending if all of it were to be spent at once.

It goes on to state that many economists concede that tax gimmicks to shake it loose will not do the trick.

Mr. President, I ask unanimous con-

sent that the article may be printed in the RECORD.

MONEY IS THERE FOR THE CAPITAL SPENDING

The nation's biggest corporations are sitting atop a record $80 billion pile of ready cash that could finance a grand boom in capital spending if all of it were to be spent at once. Instead, the money is being fed slowly, the pace of business investment remains sluggish, and top corporate executives and a good many economists concede that tax measures aimed at generating more cash as a way to stimulate investment probably would not do the trick.

The slow pace of business investment and the buildup of cash in the hands of business both stem from a profound lack of business confidence in the national and international economic outlook—a desire to husband resources rather than commit them in a climate that many managers fear will soon turn harsh. Inflation, uncertainty over Carter administration policies in such areas as energy and taxes, and concern over the fundamental health of key foreign economies make it nearly impossible for corporations to estimate whether a major investment will produce a desired rate of return over the long haul. Paul W. McCracken, professor of business administration at the University of Michigan and former chief economic adviser in the Nixon Administration, notes that in this environment businessmen simply opt "not to go ahead with long-term commitments that would use up cash."

SITTING

Instead, the relatively high rates of return available on cash invested in such short-term financial instruments as super-safe Treasury bills, certificates of deposit, and commercial paper, coupled with all the uncertainties about investments in plant and equipment, make it all the more attractive to sit on money instead of spending it. Carter Administration officials may argue that such cash-producing devices as a permanent 10% investment tax credit would stimulate investment, but the reality is that record corporate earnings have so far merely added to corporate cash without firing the long-overdue spending boom. When corporations do spend today, it frequently is to retire debt, buy back outstanding shares, or make acquisitions for cash. But the results of a protracted slackening in new plant and equipment spending are aging and obsolete physical plant and economic growth stunted by lack of innovation. McCracken frets that "it's becoming increasingly clear that there's a fundamental problem with the U.S. economy." Above all, he says, "What we need is more steadiness and certainty about policy."

Business Week's first Corporate Cash Scoreboard lays out just how much cash is currently in the hands of the 545 biggest industrial and transportation companies and utilities—those with at least $500 million in 1977 sales. The tables, compiled by Compustat Services Inc., a Denver-based subsidiary of Standard & Poor's Corp., show corporate cash and how it has grown over the past year and the past five years. The cash data are as of Mar. 31, 1978—the latest date for which complete information is available. In addition to total cash, the tables relate cash to a variety of important corporate measures, such as long-term debt, total plant and equipment, sales, and, most important, capital spending. The survey reveals many businesses with deep pockets of spendable capital as of Mar. 31.

LIQUIDITY

The tables show that the richest industries include aerospace, oil service and supply, office equipment, and instruments, which together hold $13.4 billion in cash and equivalents—much of which could go into plant and equipment spending. For aerospace companies as a group, cash amounts to more than four times the sum spent in 1977 on fixed investment, and is far higher than the ratio of 0.67 times for all industries included in the survey. The electronics group's cash is 1.72 times greater than its 1977 spending. Liquidity is very good in that industry to judge from the measure of cash against long-term debt, which is 1.11 times vs. the industry composite of 0.27.

Conversely, cash accumulation in the beverage and personal products industries has been relatively modest. Consumers have been on a buying binge and these industries have been spending heavily to keep up with high demand.

SINKING SPENDING RATES

Although business spending on plant and equipment did pick up in the first half of this year—up 7% over the first half of 1977 after inflation is factored in—it still was far from robust and is, in fact, lower than it has been in past recovery periods. Further, a number of economists and corporate executives now fear a slowdown in what little growth there is. Reginald H. Jones, chairman of General Electric Co., warned the Senate Finance Committee on Aug. 24 that GE economists foresee real growth in spending sinking to only 2% per year in 1979 and 1980. Testifying as chairman of the Business Roundtable's task force on taxation, Jones urged Congress to act fast on a tax program that includes making the 10% investment tax credit permanent, and further acceleration of depreciation, to help jog spending loose.

The argument in favor of the tax credit is that it will help step up spending because it essentially reduces the amount of a company's own money required in a project. Making it a permanent feature would simply give corporations a bit of desperately needed certainty about government policy. Accelerated depreciation hastens the payback period on an investment, and should further make investment attractive in an uncertain economic climate.

Yet while every corporate treasurer applauds tax relief measures, Albert M. Wojnilower, economist at First Boston Corp., cautions against counting on them too heavily to solve the sluggish spending problem. A tax credit might bolster a company's rate of return on an investment a bit, but not enough to send corporations panting after brand-new investment opportunities. However, Wojnilower does point out that once capital spending is under way, such tax benefits would tend to motivate companies to spend more.

EBB AND FLOW

Corporations started saving cash at a great rate in 1975 in the wake of the preceding year's credit crunch, when many of them were forced to scurry around for high-priced external funds. Those sums were plumped up with borrowings in 1975–76, as interest rates fell. Allen Sinai, economist with Data Resources Inc., says that "the corporate sector was probably in the midst of the biggest capital rebuilding period since the 1930s." And of course, the recent 10% to 15% growth per year in corporate profits, plus proceeds from wholesale corporate divestures of divisions and product lines, added even more. Last year cash accumulation slowed down as corporations paid off debt, bought in stock, and made a record number of acquisitions. This year's pileup is still slower, as corporations dig into reserves to make up for weak first-quarter earnings and start to do some investing. But there is a record amount of cash still left in the till at most big U.S. corporations.

Even if companies were running low on cash, external financing is still readily available. The big money center banks remain very liquid and so does the commercial paper market, where these cash-rich companies are parking a lot of excess cash. Institutional lenders say they will have $20 billion to $25 billion in long-term money available to lend next year.

There appears, therefore, to be potential enough for a veritable boom in capital spending. Indeed, the potential is so large that First Boston's Wojnilower says, "It's alarming, because to me the greater danger is one of a runaway boom and inflation." He adds: "Some of this iceberg is going to move, and when it moves, it's going to create some big waves."

LOOSENING UP

Some cash is already starting to move. Some companies have piled up cash because they do intend to do a lot of big spending. Ford Motor Co., for example, is swinging into a $15 billion five-year spending program, and Boeing Co. is beginning to build a whole new fleet of 757s that eventually will eat up billions. And Mobil Corp. says that in common with other oil companies, it is running down its cash reserves in a search for new energy sources.

One big Midwestern corporation with $300 million in excess cash has begun to tire of holding quantities of low-yielding securities, which has damped its overall rate of return, and has begun to spend on activities it had turned down in the past. "To use up the cash," says this corporation's treasurer, it has lowered its rate-of-return standard below its traditional 20% cutoff in order to pursue investment opportunities that were once rejected "because the alternative is a money market instrument" yielding about 8%. Further, the company has been extending more credit to its customers as a means of jacking up sales, as well as making a higher return on its extra cash.

Some cash-rich companies have peculiar problems that hamper their ability to spend. The business investments of giant International Business Machines Corp., which has about $5 billion in cash, are restricted by antitrust considerations. That company has so far confined its investments largely to government securities. Westinghouse Electric Corp. is hanging on to much of its $671 million in anticipation of settling $2 billion worth of uranium contract disputes.

Still, there are plenty of other corporations that continue to hoard their cash for reasons that include insecurity about government policies, fears of recession, and lack of enthusiasm over rates of return. Further, notes Dale W. Jorgenson, professor of economics at Harvard University, "fear of a credit crunch in the very near future is making companies leery of spending." Corporate executives also point out that inflation has doubled and tripled the cost of building new plant and replacing equipment, forcing them to save more to pay for it. Finally, treasurers note that they need more cash on hand simply to fund inflated day-to-day operating expenses.

THIN REWARD

Many corporations complain that it is just plain tougher to find investment opportunities with sufficient returns to justify the risk of investing. GE's Jones noted in his Senate testimony that real aftertax return on investment for nonfinancial companies, deflated for "phantom" inventory profits and underdepreciation, fell to a measly 4% in 1977 from 9.9% in the 1965 high-investment period. Money must be spent on pollution-control equipment, but it does not add to productive capacity and hence drags down the overall return on investment for a plant. Further, it is money spent on which there is no return. "It makes the whole plant more expensive and causes the rate of return to be lower," says Kevin J. Hurley, director of financial forecasting for Chase Econometric Associates Inc. If the government would ease up on those requirements, "it may generate more spending than just making more money available." Hurley suggests that the

government should at least allow corporations to write off the full cost of pollution control equipment in the year in which the money is spent. In addition, productivity gains have slumped to an annual rate of less than 1% this year, from 2.6% per year in the 1960s, says Jones, all of which makes for an unattractive investment climate.

For these reasons, Dart Industries Inc. is still in no hurry to unload its $265.6 million in cash, although Thomas Mullen, treasurer, figures he needs only $75 million to run the $1.6 billion diversified manufacturer. Bounding profits and proceeds from selling off several businesses have fattened the pot, as did borrowings in late 1975. Meanwhile, Dart has chopped capital spending from $120.6 million in 1976 to $95 million in 1977 and 1978. Dart's excess cash is currently parked in short-term investments yielding 8%, compared with the 15% aftertax return Mullen expects from investments in operations. "We'd rather have our funds invested more productively, in successful businesses," Mullen concedes, but he adds that they are hard to come by. "We'd like to spend it soon, but we feel it is more important to spend it well." Mullen feels corporate tax cuts and credits will shake loose some spending, since they will move him closer to his target of a 15% rate of return.

STRONG CASH POSITION

Fears of inflation and illiquidity are prompting Honeywell Inc. to hang onto its cash. The company stepped up its capital spending program this year, but its cash assets of $240 million still represent 10% of total assets—twice what Louis E. Navin, chief financial officer, says has traditionally been necessary to run the business. In addition, Honeywell has an unused line of credit for $500 million at a bank. "We feel we simply have to have a strong cash position," he explains. "Inflation is running at 10%, which is 2% to 3% above what we'd pegged it at. You can run into an extremely tough corporate liquidity position pretty fast."

Some companies are not spending because they believe they do not need the extra capacity. Cash at Hercules Inc., for instance, has been growing and now amounts to 140% of the company's needs, says William Bewley, corporate economist. Bewley notes that Hercules is operating at only 78% of capacity. After suffering through years of notorious overcapacity, Hercules, like other chemical companies, is not about to add more plant until the company is sure demand for its products will be there. Meantime, Hercules is using its cash to pay down some debt and buy back stock.

ACQUISITIONS

Some companies simply avoid the uncertain returns of brand new investment and are instead acquiring going concerns whose track records are known. To be sure, such spending amounts to a transfer of ownership rather than capital expansion. Borg-Warner Corp. sat around with $90 million until last December, when it spent its wad on Baker Industries Inc., a maker of armored trucks. Borg-Warner Treasurer William M. Valiant notes that his company's capital spending was below budget last year because of management's unwillingness to let go of cash. "Most major decision makers in the U.S. had just gone through the only deep recession in their business careers," he says, "and they were very cautious about spending. When you've just come back from the fire, you don't jump back into it with both feet."

Bendix Corp., whose former chief executive, W. Michael Blumenthal, now heads the Treasury Dept., had cautiously accumulated $100 million in cash. "We didn't run out and spend it until we were sure of predictability," says F. Joseph Svec, senior vice-president and chief financial officer. Finally, last April, Bendix simply bought 3.8 million shares of Asarco Inc., the mining company.

GOVERNMENT ACTION

Borg-Warner's Valiant suggests that the secret to improved capital spending is renewed confidence. "Investment tax credits are helpful," he says. "But what most businessmen really want is some measure of certainty [of what the government is going to do]. What makes it difficult to make long-range investment is that you are worried about some impending government action that could change the prospects for that investment overnight," he says.

Apprehension about another business downturn has held up needed expansion for EG&G Inc., a Boston-based electronics company. EG&G's net profits have climbed 25% annually over the past six years, and cash flow has been quite good. Yet, when the head of EG&G's office equipment subsidiary appealed to Treasurer Eugene J. White for another plant to relieve capacity constraints, he was put off. "All we have to do is add a plant and then have the business cycle spin off and we're stuck," says White. Instead, White is investigating other options, such as leasing the necessary equipment from others.

Even such heavy spenders as Ford and TRW Inc. are admittedly more conservative about their cash than they were in earlier recovery periods. John Sagan, Ford's treasurer, observes that Ford built up an unusually high amount of cash as "insurance" against having to scramble for last-minute external financing. And he plans to keep some extra cash on hand throughout the five-year spending program to cushion his company against a bad year or two in corporate earnings.

And Charles R. Allen, TRW's chief financial officer, plans to withhold about $50 million in cash from the spending stream, too, partly to be able to seize on investment opportunities quickly. But, wincing at memories of the last credit crunch, he notes that the sum is also "for comfort."

If we look at the investment picture, Mr. President, based on the period since the end of World War II, we find that the ratio of investment to GNP in the United States was 10.6 percent for the first half of 1978, which is higher than the average since World War II, and close to the 1966 postwar peak of 10.8 percent. So you cannot make the claim that investment is low by historical standards.

But nonetheless, in the dubious name of stimulating investment, the Finance Committee bill provides huge tax cuts for the wealthiest one-tenth or two-tenths of 1 percent of the American taxpayers, who will benefit most from the capital gains provisions. Effectively, $2.3 billion, or more than two-thirds of the total cut, will be going to the 1.4 percent of taxpayers with incomes over $50,000.

This is perhaps the most objectionable feature of the committee bill—the excessive tax relief it gives to those in the highest income groups. If ever there was a bill that could be called the "millionaire's relief act," this bill is it.

Mr. President, it is my position and that of those who support this amendment that if the Nation needs additional capital formation, the most effective way of accomplishing it would be to increase the investment credit, greater accelerated depreciation, or lower corporate tax rates. But virtually no one who does not stand to benefit personally from capital gains cuts thinks this method makes sense.

But nevertheless, the Senate Finance Committee has decreased the capital gains rate by a huge amount. About 85 percent of that saving goes into forms of investment other than corporate stock, such as land or investments in other assets. Of the remaining 15 percent, some is siphoned off in windfalls to stockholders. Very little ever gets into lower costs of equity capital and, therefore, to increases in business investment.

The committee relief is not warranted or justified. They have called it the most effective way to provide capital, and they have adopted a mechanism by which the relief goes to a very small percentage of the taxpayers: The very highest rollers in the tax system.

It is for that reason, Mr. President, that it seems to me that we ought to retain—and that is the purpose of this particular amendment—the present capital gains exclusion ratio. We do not affect the minimum tax in the committee bill. We only raise questions as to the capital gains provision.

Let me explain the background and issues in more detail. Under present law a deduction is allowed equal to 50 percent of an individual's realized long-term gains. In effect, therefore, the basic tax rates on capital gains range from 7 to 35 percent, one-half the rates on ordinary income such as wages, interest on savings accounts, etc. A special alternative 25 percent maximum rate is provided for the first $50,000 of an individual's gains each year. For corporations, an alternative 30 percent rate on capital gains is provided, as compared to the normal 48 percent corporate tax rate.

The House bill retains the 50 percent exclusion for capital gains in present law. It repeals the 25 percent alternative tax in present law, and it retains the 30 percent alternative tax for capital gains of corporations in present law.

The major tax relief for capital gains in the House bill was provided by eliminating capital gains from the list of tax preferences subject to the minimum tax.

The Senate Finance Committee bill increases the present 50 percent exclusion for capital gains to 70 percent. As a result, the basic tax rates on capital gains will range from 4.2 to 21 percent, corresponding to tax brackets ranging from 14 to 70 percent.

The bill also reduces the corporate alternative capital gains rate from 30 to 28 percent.

My proposed amendment would delete the provision in the bill that provides for an exclusion from income of 70 percent of the gain on long-term capital gains.

There are many reasons for rejecting capital gains changes in the committee bill. The Finance Committee action would drastically undermine the fairness of the Federal income tax system and reverse the efforts of several Congresses to provide tax equity between capital gain income and ordinary income such as wages and interest from savings.

Under the bill, the $250,000 a year corporate executive will pay a top marginal rate of only 21 percent on his capital gains; a factory worker with $12,000 of taxable income is in the 22-percent bracket.

About 1.4 percent of the taxpayers in the country have incomes in excess of $50,000 per year. But these individuals receive 60 percent of the capital gain tax reduction in the bill, a total tax cut of over $2.3 billion.

The committee's action provides a $1.1 billion tax cut to individuals with $200,000 and over; this group consists only of about 50,000 taxpayers in the country, the richest six one-hundreds of 1 percent of the people in the United States. The average tax reduction for each of these highest income individuals is over $20,000. The capital gains provisions in the bill give a tax reduction to the over-$200,000 group that is larger than the annual income earned by 8 percent of all Americans.

By contrast, there are over 16 million taxpayers in the $10,000 to $15,000 income class; this group received total tax reductions under the bill of $941 million—$70 million less for the entire group of 16 million than the bill gives to the group of 50,000 in the richest category through the capital gains cut.

By widening the gap between the top rates on capital gains and ordinary income—21 percent versus 50 percent or 70 percent—high income individuals such as doctors, lawyers, corporate executives, investment bankers, and entertainers, will once again instruct their high-priced tax lawyers and accountants to develop artificial and intricate schemes to convert every income transaction into a capital gain deal. This wasteful expenditure of time, effort, and brain power was significantly curtailed by the 1969 and 1976 acts.

Reductions in capital rates are an inefficient and ineffective method of stimulating capital investment. Only a small amount of capital assets consists of corporate stock. Yet the needed capital stimulus is in corporate investment. As Federal Reserve Board Chairman Miller has demonstrated, only 15 percent of the capital gain cut will ever find its way into increased funds for corporations. An improved investment credit and corporate rate reduction would represent a far more efficient stimulus for increased capital investment.

The $3 to $4 billion cuts in capital gains taxes would help our economy far more if placed in the hands of average workers who can use the funds to meet rising housing and education costs, or increase savings for future needs.

The capital gains tax cut will provide a large windfall to investors in tax shelters that specialize in converting ordinary income into capital gains—notably real estate. Using such tax shelters, high income investors take large deductions from their ordinary income, then sell the property for large profits taxed at the favorable capital gains rates, a 21 percent maximum rate under the committee bill.

Mr. President, there are some who suggest that the cut in capital gains rates will encourage realization of gains and thus free locked-in capital.

At best, there might be a short-term increase in sales. But once the investors for whom a 10- to 15-percentage point rate differential is the crucial factor between selling and holding have in fact sold, the rate of realized capital gains will return to historic levels. In short, the rate cuts may produce a surge in fees for stock brokers for the next few months, but there can be no realistic basis for believing that a permanent increased level of buying and selling activity will be produced.

Moreover, the bill actually makes worse one aspect of the "lock-in" effect. It proposes to return to the old law allowing a step-up in basis for assets transferred at death. A person faced with a choice of selling an asset and having 30 percent of the gain taxed or holding it until death so that none of the gain is taxed will obviously hold and not sell.

It is also said that the capital gains tax cuts will encourage entrepreneurial activity and therefore aid small business.

But out of the $3.3 billion in capital gains cuts provided by the bill, only a small amount will go to small business and high risk enterprises. Most of the tax benefits will go to stocks in large publicly held companies, buildings, real estate, and residences. Therefore, if the objective is to provide assistance to entrepreneurs and small business, the capital gains cuts are an extraordinarily wasteful way to achieve the objective.

A Federal tax or direct program targeted directly to entrepreneurs and small business may well be desirable. As one example, the pending 1978 amendments to the Small Business Administration Act provide for funds to be directly targeted to provide venture capital for small business. But the Senate cannot responsibly waste billions of dollars in other areas to get a relatively small amount of funds to these deserving groups.

Nor will a cut in the capital gains rate provide a boost to the stock market.

There is no demonstrable correlation between capital gains rates and stock prices. After the 1969 tax increase on capital gains, the stock market rose by over 40 percent. The reduction in stock prices that occurred subsequently was obviously related to the huge oil price increases, the recession and other adverse economic developments totally unrelated to the capital gains tax rate. Indeed, the latest stock market recovery has come after the 1976 act changes that again increased the tax rate of capital gains.

More likely, the rush of sales by investors now waiting for the lower rates to take effect will depress the stock market.

It is also suggested that a lower capital gains tax rate is justified, because a portion of a taxpayer's gain represents inflation gain, rather than an increase in real value.

In the first place, even if it were desirable to protect only gains from capital assets from the effect of inflation, an increase in the exclusion factor is an irrational and arbitrary way to achieve the objective. Inflation has different effects on every element in the economy. The possibility that an exclusion of 70 percent of the gain will offset inflation for any given asset is extremely unlikely. The committee bill gives the same rebate to a taxpayer who has held an asset for 1 year or 10 years.

Moreover, many kinds of assets are affected by inflation—individuals with savings accounts, holders of U.S. savings bonds, and holders of corporate bonds all suffer losses due to inflation. But they do not get preferential tax treatment to offset inflation. There is no reason why holders of capital assets—primarily the highest income persons, who are least adversely affected by inflation—should be given first priority in being protected from inflation-induced tax consequences.

It is not true that many other countries do not tax capital gains. All industrialized countries tax some of the gains that we call "caiptal gains"—in some cases even more heavily than the U.S. taxes them. For example, countries like Germany, and the Netherlands are frequently said to have no capital gains tax. But in those countries, a person who owns more than 30 percent of the stock of a corporation is taxed at ordinary income rates on gains realized from the sale of the stock. It is true that these countries have no "capital gains" tax as such. But for many persons in these countries, the current U.S. capital gain tax rate would constitute tax relief. This simply illustrates that it is very dangerous to use other countries' tax systems as models for particular U.S. tax policy issues.

In addition, reduction of the capital gains rates will not provide funds for needed research and development to spur productivity.

If the Members of Congress assembled to throw $3 billion off the Capitol steps, some of it undoubtedly would go into more research and development. A $3 billion cut in capital gains taxes has about the same relationship to expanding R. & D. activities.

We should remember that we already provide a powerful tax incentive for R. & D. by allowing an immediate deduction for all R. & D. costs. If even more Federal aid is justified, it should be provided in a form directly targeted to R. & D. Reducing the rate of tax on the sale of land by an individual surely must be one of the most bizarre incentives ever conceived to promote R. & D.

The chairman of the committee likes to say that the Kennedy administration in 1963 proposed an increase in the exclusion factor for capital gain from 50 to 70 percent.

But that proposal was one part of a package of major recommendations concerning capital gains. In addition, the 1963 proposals included:

Full taxation of gains on property transferred by gift or at death.

Recapture of depletion on the sale of oil and gas properties.

Recapture of all depreciation on buildings sold at a gain, not just the excess of accelerated over straight-line depreciation, as under present law.

Taxation of timber income as ordinary income.

Taxation of all coal sales as ordinary income.

Treatment as ordinary income of gain on long-term deferred sales.

If the bill included all these measures, it might be seriously considered as a responsible piece of legislation. But in their absence, the 1963 Kennedy proposal provides no support whatever for the bill.

It should also be remembered that when Congress decided in 1963–64 not to adopt the above proposals, it also decided that it would not cut the tax rate on capital gains. That is a persuasive precedent for the Congress to follow now, by rejecting the SFC capital gains proposal.

It is also alleged that the capital gains tax cut will actually increase revenues, through a so-called feedback effect. Proponents here cite very dubious studies by Martin Feldstein. But the Treasury, even after allowing for an overly generous "feedback" effect, estimates that the SFC proposal will cost the average taxpayer $3 billion in fiscal 1979.

A September 1978 staff paper by the senior economist of the Council of Economic Advisers is sharply critical of the Feldstein study relied upon by feedback proponents. As the CEA Staff Paper states:

> The Feldstein study contains several theoretical and econometric flaws, the results of the study have been misinterpreted, and a replication of their approach . . . yields exactly the opposite results: it implies that a capital gains tax cut would actually decrease realizations.

The staff paper goes on to state that all results in this area are dubious, and more research is needed.

Moreover, the econometric models embraced by proponents of capital gains tax cuts to support their feedback argument have been thoroughly debunked by other responsible economists in the private sector. The estimates rest on unrealistic assumptions that provide no proper basis for sound tax policy decisions. For Congress to accept the "feedback" argument on the basis of current economic knowledge would be irresponsible.

In essence, the "feedback" argument is just the old "trickle down" theory dressed up in computer printouts. The increased revenues—if there are any—will not come from the sellers of capital assets. The increased taxes are supposed to come from people who have been put to work by the invested tax savings. In effect, the bill is saying:

> Take the rich off the tax rolls and trust them to use the funds to create jobs and investment, so that other people can pay the taxes needed for government.

This argument has been wisely rejected by Congress in the past, and should be rejected now. It is no easier to find a "free lunch" in the tax laws than in any other area of life.

This bill is about as gross an example of the trickle down theory as I have ever seen defended here on the floor of the Senate.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 32 minutes remaining.

Mr. KENNEDY. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, it is the judgment of the committee and the judgment of many outstanding people who have worked in this area, the overwhelming majority of men who have served as Secretary of Treasury, Under Secretary of Treasury, and Assistant Secretary of Treasury for tax policy, that the kind of major reduction in capital gains taxes being advocated by the committee will not cost the Treasury any money. It would, instead, make money for the Government.

For example, here is a letter before all Senators, on their desk, containing what they said.

Here is a man who served under John F. Kennedy and who recommended the tax cut of 1963 and testified for it. This is reading from page 17 of the presentation before us:

> In my opinion, the adoption of the principle of President Kennedy's proposal, with a reduction of the percentage of capital gains to be included in taxable income to 30 percent or 35 percent, would result in an increase in Treasury revenues due to the induced effect of lower rates in unlocking capital gains. A similar result would flow from the establishment of a 25 percent maximum rate.

Henry Fowler, who served as Under Secretary in that same administration, and who testified for just the same exclusion that is in the committee bill, came before us to testify that in his judgment you would have a positive effect and you would make money by cutting a capital gains tax rate that is now so high that it reaches 49 percent, and in some cases, in terms of real income, amounts to more than a 100-percent tax.

For example, a 49-percent tax, because of inflation in real terms, results in a tax of more than 100 percent of what the real income was. So it is actually a tax on the capital rather than a tax on the gain.

Henry Fowler came down and testified eloquently. He and Douglas Dillon both recommend that you should have a 70 percent exclusion rather than a 50 percent exclusion, and they testified in their judgment you would not lose any revenue.

They are not the only ones who believed that. I have a strong letter here by William Simon, who recently served with distinction as Secretary of the Treasury, saying the same thing; another by George Shultz making the same statement; another by Robert Anderson saying the same thing. Arthur Burns agreed with them, Alan Greenspan agreed with them, George Dixon agreed with them, William McChesney Martin, who served with distinction, agrees with it; Paul W. McCracken, the chief economic adviser under President Eisenhower, agreed; Leif H. Olsen and Robert Roosa, who also served under President Kennedy and President Johnson, agreed with it; Charls Walker agreed with it, Irving Yeo agrees with that, and Raymond Saulnier and Herbert Stein.

Mr. President, it is true you will find some who do not agree, but this is the overwhelming majority view. I would urge Senators to read it. These are the men who had to work with this problem, make up the budgets, make the recommendations of the President down through the years, and these men are not being told by the White House what to say today because they no longer work in the Government. They have said that if you make a major reduction in capital gains as we are suggesting, everybody would pay on the ordinary rate, pay on 30 percent of the gain rather than 50 percent of the gain, and you would make money for the Government. It will stimulate activity, it will provide jobs in this economy, and it will make money for the Treasury, because people have resources which are not being used very effectively. They would like to sell but they are locked in.

A capital gains tax of 40 or 49 percent, depending on how the minimum tax applies, could mean that it is just ridiculous to sell and pay that much taxes. So people hold onto assets rather than sell them. If they sold them, a large portion of those assets would be in the common domain.

Mr. President, I thought if it was good enough for John F. Kennedy, a great President, it would be good enough for Edward Kennedy. I reget to say it does not seem so. Even so, Mr. President, we have very strong supporting opinions for our position. I would hope that the Senate having considered it would agree that the capital gains tax should be cut.

The Senator's amendment, as I take it, would mean that aside from what we are doing in a minimum tax, and in some respects we are zeroing even more heavily on those who have a lot of preference income with that minimum tax, that there would be no cut in the capital gains tax.

In my judgment, the overwhelming majority of the people think there should be. Therefore, Mr. President, I hope the Senate will not strike from the bill what the committee has recommended; namely, that there should be a substantial cut in capital gains taxes because we believe it will stimulate employment, it will be just and equitable. In many cases, Mr. President, the capital gains tax is very unfair. Dr. Martin Feldstein, a Harvard economist, made a study in which he pointed out that of the capital gains of $4.5 million on which taxes were paid, in real terms, when allowing for inflation the real gain was not a $4.5 million, it was about a $1.5 million loss, notwithstanding which the Government put a heavy capital gains tax on those transactions.

That amounts, Mr. President, to taxing the capital away from a citizen, to putting a penalty on a citizen because his Government failed to maintain the purchasing power of his money, something about which he was powerless to defend himself.

If we are going to have our tax system productive, if it is to be fair rather than unfair, Mr. President, we should not try to tax capital gains as ordinary income, nor should we tax it as heavily as we are taxing it now. Hence, I hope that the Senate will vote and endorse the committee recommendation for a substantial cut in the capital gains tax.

Mr. KENNEDY. Mr. President, the Senator, the chairman of the Committee on Finance, again points out the tax

message of President Kennedy of 1963 that talked about a reduction in capital gains, which President Kennedy did suggest. But, Mr. President, what we have to do is consider the total message. As his message itself said:

I recommend the following changes, the nature of which requires their consideration as a unified package . . .

A unified package. The Senator from Massachusetts is prepared to accept a unified package that includes a reduction of capital gains. That package also included a whole range of additional things: full taxation on gains on property transferred by gift at death; recapture of depletion; recapture of depreciation; and a variety of different measures that were included, which the chairman of the Finance Committee excluded. I would accept the reduction if the Senator had reported out from the Finance Committee the inclusions that President Kennedy had mentioned.

Now he talks about the Feldstein study. That study is close to being the laughing stock of the economics profession. It has been thoroughly debunked by the Treasury. The Council of Economic Advisers says the study shows several theoretical econometric flaws, that the results of the study have been misinterpreted, and that a replication of this approach reached exactly the opposite result yet the Finance Committee uses this discredited study to justify windfalls of billions of tax dollars for the highest income groups.

As Chairman Miller himself testified before the Finance Committee, "All things considered, I would conclude that some cutting of capital gains would be appropriate"—some cutting, he said, not breaking the bank. Mr. President, we are providing $1 billion more in capital gains relief in our amendment. That is some kind of relief. But we have to draw the line someplace; $3 billion in the committee bill is too much.

Mr. Miller continues: "All things considered, I would conclude that some cut in capital gains would be appropriate." But I would not assign it as high a priority as other tax items whose impacts on investment are more direct."

Mr. President, we hear a lot about those who came before the Finance Committee and talked about supporting these capital gains cuts. I wonder whether it is completely coincidental that in many of those instances, the wealthy people who have testified before that committee have a strong personal interest in such cuts, as well as a professional interest. Who is speaking—their pocketbooks or their corporations? Their corporations would benefit more by a reduction in the corporate rates, but their own pocketbooks will benefit more by cuts in capital gains. I wish the chairman had asked each of them how much he stood to benefit personally from the change. Many of them are undoubtedly sitting on very handsome portfolios of stock, including stock in their own corporations. Is it really surprising that they are 100 percent for all the tax breaks they can get for capital gains?

I think it is only appropriate, Mr. President, that we put this into some kind of perspective when we start evaluating the replies solicited by the Finance Committee.

I am amazed we have not heard about the mom and pop farm yet. But I am sure we will hear about it. Or mom and pop's little store. We shall hear about that, too. In order to provide, in the Finance Committee's bill, the little capital gain average cut of $226 for those earning from zero to $50,000, we provide over $22,000 for those earning over $200,000.

Mr. President, I think, from an equity point of view, from an investment point of view, from the standpoint of efficiency and effectiveness, even from the statements of those who have testified before the Finance Committee, this kind of increase is unjustifid.

My amendment allows a capital gains tax cut of a billion dollars. I question whether even that is justified. Certainly what came through the Finance Committee is not justified and this amendment will provide important savings.

(Mr. HUDDLESTON assumed the chair.)

Mr. LONG. Mr. President, referring to page 35 of the committee report, one will see the figures and it shows that 51 percent of the benefit of this will go to people who make less than $100,000.

Mr. KENNEDY. Less than how much—less than $100,000? Very interesting.

Mr. LONG. I suggest the Senator look at page 35, the top chart.

Mr. KENNEDY. Will the Senator say how much below $50,000, which represents 90 percent of the taxpayers?

Mr. LONG. Mr. President, the Senator is badly in error and I think I can show him where. It was my good fortune to buy a piece of land from a dear old couple who had lived on it since they were young. The sale price was $200,000. Those people never made more than $25,000 in their lives. But the dear old lady inherited that land, at that time worth about $10 an acre, from her father. When she finally sold it, she sold it for a great deal more than that, 50 years later. In that 1 year, it looked like that dear old lady was a millionaire, making $200,000. No such thing. She was a retired schoolteacher and her husband a retired plantworker. Those people never made more than $25,000 in their lives.

That is the kind of millionaires the Senator is talking about, dear old people who sell their farm and make a one-time gain. They are listed as people who make $100,000. What is $100,000, a gain? What is it? Inflation. The land is not worth a lot more, it is just that the value of the money went down.

Mr. President, the Senator takes issue with what we have done, but I point out that while he and I may not agree on the revenue effect, the same man who made the study and supervised it and made the recommendations as the Secretary of the Treasury for his brother, John F. Kennedy, agreed with me. The same man who was the Under Secretary of the Treasury at the same time and became a secretary, a great Secretary of the Treasury, under Lyndon Johnson—he agreed with me. Joseph Barr, who served as Assistant Secretary, said he thinks it is a close call but he does not think we are going to lose any money out of it and he thinks it would be good for the economy.

The same thing is true of a man who served with distinction under a Democratic administration, William Martin, and a man who served with distinction under Republicans, Arthur Burns; they said they think it is a good thing.

The Senator can find four economists on that list who do not agree with me. I have plenty who do. I say the jury overwhelmingly agrees that if you make this reduction in capital gains, it is not going to cost us anything.

One thing more, Mr. President. Since the John F. Kennedy recommendations, we put a minimum tax on capitals gains which, far from reducing it, moved it up from a 25-percent tax to as much as a 49-percent tax. Prior to that time, we had not been experiencing the perennial, year-by-year inflation of over 5 percent which we have now, so that, over a 10-year period, your money will buy less than half what it would before.

Mr. PERCY. Mr. President, I should like first to commend my distinguished colleague (Mr. HANSEN) for his leadership in this field, and Congressman STEIGER, who have really had the courage to move forward on what looked like a potentially unpopular tax proposal, but which has become a popular issue, overwhelmingly supported by people in my own State in a recent survey. Now that the educational process has gone forward, people really understand the capital gains tax. What we just did a few moments ago on the capital gains tax on homes for people 55 and over will answer the problem of a couple in Berwyn, Ill.—which could not be called a high-income area.

It is not Winnetka, it is not Kenilworth, it is not Lake Forest. Berwyn and Cicero have hard-working people who have put a large part of their life's earnings into a home. This particular couple stopped me last weekend and said they had built a home 35 years ago for $15,000 and they were going to sell it for $75,000. They were enraged at the thought that they would have confiscated, have the so-called profit, as they move into a rented apartment, taken away from them. We have really taken cognizance of that by our action today.

With respect to capital gains, 62 percent of all capital gains taxes paid last year were paid by families with incomes of less than $50,000, hardly a group of millionaires.

In fact, the problem has been, as has been aptly pointed out by the floor managers of the bill, that since the capital gains tax has been increased from the 1969 level of 25 percent, the revenue to the Treasury has gone down and the number of stockholders has decreased from 31 to 25 million.

We wonder why people do not invest in the stock market. I think, roughly, in that same period of time, investment made in public lotteries—in lotteries—has gone up from $1 billion, to this year, $17 billion.

And what has happened? People have taken their money out of the market, because of this confiscatory tax. As they have taken it out of the stock market, what has happened? Price earnings ra-

tios have dropped. The demand for stocks has been reduced. The money available to industry to expand and grow and develop is less. And where do they go for money? They go to the banks. They go to the debt market, the same place the farmer is going, the same place the small businessman is going, the same place the Federal Government goes constantly to roll over the debt.

They are all competing for the same money. And what happens? With that kind of demand the rates go up and up and up and up. They are 9¾ percent now for prime loans. They are going to be over 10 percent soon, if we do not do something to create another tool of capital in the equity market.

Ford Motor Co. is selling for seven times earnings—and I might say that Bell & Howell is selling for seven times earnings. I look back on the days when I was in business and we could go to the stock market with the stock selling about 40 times earnings, and we could get money much more easily.

I lay awake one night when I borrowed my first multimillion dollar loan for our company from three insurance companies and paid what I considered a very high rate, 3¼ percent, for 15-year money.

Think of a small business today, think of a farmer today, with all that demand going on the debt market.

So this is not anything that just benefits the millionaire. In fact, his benefit will be substantially less with the device that the Finance Committee has worked out to increase the minimum tax. I want to pay tribute to the Finance Committee for really biting the bullet now and doing something that is going to create jobs.

Talk about Humphrey-Hawkins Hubert Humphrey put in a bill, the Investment Policy Act of 1977, and I was proud to cosponsor that bill with him. The managers of Humphrey-Hawkins have accepted, and Labor is supporting and backing strongly—particularly the UAW and the CWA—an amendment to Humphrey-Hawkins to be certain the bill recognizes the fact that not only should we hold inflation at a goal of 3 percent, but that private capital formation will play a vital role in both reducing inflation and creating jobs.

Creating private capital is essential to create jobs. In the steel industry today, it takes $30,000 to $40,000 of capital formation per job.

We cannot pay $7, $8, $10 an hour to someone and give a worker a hammer and saw. We have to provide a $50,000 machine tool. What we have to do is put equipment and capital investment behind the American worker to enable that worker, in a corporate structure, to bring down the unit cost of production as we increase wages.

We are at a grievously low level now in productivity increases. Germany is ahead of us. Japan is ahead of us. Every modern industrialized nation on Earth is increasing productivity faster than the United States. And we ask the question, why? Because they recognize the importance of capital. They recognize the importance of amortization and depreciation. They recognize the importance of allowing a company to recognize early on capital investment as a cost of doing business. Many of those countries allow a writeoff three, four, five times faster than the U.S. Tax Code does today.

That is why we are lagging in productivity. That is why our inflation rate goes so high, because we cannot put behind the American worker the capital equipment and plant necessary to produce at low rates and low cost.

So this, really, is an anti-inflation provision of the Finance Committee bill. It is a measure that will benefit every single American immeasurably. It will create private-sector jobs, not the public sector jobs that many times we look toward as the only hope. The best hope for the unemployed is a private-sector job, so they can stand on their own feet and be taxpayers rather than depending on some other taxpayer.

So I want to commend the Finance Committee and its membership in having the wisdom to bite the bullet on this, going even a step beyond the Steiger-Hansen amendment, with the concept Senator LONG has come up with which I fully support and which I think the American people will overwhelmingly support.

I think any effort to reduce that, particularly considering we know what we are faced with in conference, an effective level of about 35 percent, would be to our great disadvantage.

Reducing the tax on capital gains is the magic signal that will trigger capital formation, that will trigger a shift from debt financing to equity financing, that will benefit every single American.

Mr. HANSEN. Mr. President, there really is not very much that is left to be said.

I think what the distinguished chairman of the Finance Committee pointed out earlier ought to be obvious and persuasive with everyone.

I certainly want to thank my friend from Illinois for explaining in such understandable and clear language precisely why the changes in the capital gains tax laws are necessary, urgent, and must now be made.

The Senator from Louisiana pointed out that it is awfully deceptive when we consider the expanded income, the term that is used by Treasury, to give the illusion that the changes that have been recommended by the Finance Committee will benefit only the rich.

Precisely the opposite is true. It is true, because a family that may have practically every dime of its savings invested in a small business, or a farm, or whatever kind of an operation, will make a once-in-a-lifetime sale and, as a consequence, they can appear in the expanded income columns of the IRS as being in that group of taxpayers with incomes of $50,000, $100,000, or $200,000.

But it is pretty grim irony, I can assure the Senators, Mr. President, for such a family to wind up learning that when they get through paying their taxes, they will not be able to turn around and invest the money they have left over and replace in value the asset they have sold.

That is exactly the situation. It was pointed out by the Senator from Louisiana, the chairman of the Finance Committee, it has been pointed out very ably by the Senator from Illinois, and it is a fact. And the tragedy—the tragedy—is simply this: When the taxes on capital gains were raised back in 1969 and in subsequent years, the Treasury Department predicted that we would increase revenues from the higher rates on capital gains. We did not do any such thing. We reduced them. Less money came into the Treasury than was collected by the Treasury when the rate was much lower, simply because people stopped selling property and they stopped making the kinds of investments that earlier had been encouraged by the lower capital gains tax structure.

So I agree with my chairman, Senator LONG, and I agree with the other 62 Members of the Senate that if we change this tax law back, if we lower it, if we reduce it, we will not reduce or lower the receipts that will go into the Treasury of the United States. We will increase them and, more important, we will increase jobs.

I found out that companies that are 20 or fewer years old have a 20 to 115 times greater employment rate for new jobs than do companies that are older than that.

What I am saying is that these new companies that need the risk and venture capital that they no longer are able to secure in this country, that they have to go abroad for, are the most fertile areas to increase job opportunities. But these young companies require about $14,000 of new risk capital investment in order to create each new job.

Mr. KENNEDY. Mr. President, will the Senator yield on that point?

Mr. HANSEN. For a question or for a speech?

Mr. KENNEDY. I was wondering whether the Finance Committee had any testimony as to the amount of the $3 billion that will actually go for the starting of new companies.

Mr. HANSEN. Yes.

Mr. KENNEDY. To support the Senator's argument, what percentage does he think will go for the new companies?

Mr. HANSEN. As a matter of fact, if I recall correctly, we have had here the head of an electronics concern from the West coast, and he made this point:

For every $100 invested in that kind of operation back in 1970, those companies have returned to the Treasury of the United States $30; $30 in taxes have been paid for every $100 that was invested.

If Senators want to look at the number of companies that were investing, we can get those figures, too. If I do not have them at this moment, I will submit them for the RECORD.

When we changed those tax rates, the investment in this kind of organization dropped from around $1,500 or $500 a person down to $16 in the last year; and only about $4 million, as I recall, was invested when we made those rates too high.

In order to respond more specifically, I do have the figures, and I appreciate the chairman providing them for me.

This is the testimony of former Treasury Secretary Henry Fowler, a man who

was held in very high regard by President Kennedy and a man who continues to be held in very high regard by all Americans, Republicans and Democrats alike. This is his testimony:

The decline in the number of individuals investing in corporate shares was 31 million in 1970 to 25 million in 1975.

In other words, 6 million people stopped investing in corporate shares between the years 1970 and 1975.

The drop in new public security issues for small firms was from about 548 issues, valued at $1.5 billion in 1969, before we changed the law, to four new issues worth $16 million in 1975, with averages of $100 million per year in the 1970 to 1977 period.

Secretary Fowler continues by pointing out the fall off in the formation of new high technology from 300 in 1968 to nearly zero in 1976.

Mr. President, I shall read now what former Federal Reserve Board Chairman Arthur Burns says:

In view of our persistent inflation, the present tax is frequently, if not typically, a tax on phantom profits. Venture capital investment is now virtually dead in our country. If investments of large risk are to be undertaken, there must be the promise of large rewards. Let us never forget that the big corporations of today were small a generation ago; their growth was made possible in large part by preferential treatment of capital gains.

Contrary to what the Treasury has been saying, experience indicates that, as a general rule, a reduction of the capital gains tax is no more likely to decrease than to increase tax revenues in the short run. It would add, however, that in view of recent extended discussions of capital gains, many investors have held off selling; hence a reduction of the capital gains tax may well result in larger tax revenues next year. In any event, if a lower capital gains tax stimulates investment, as is to be expected, tax revenues should rise over the long run.

I pointed out that for each $100 that was invested in these new venture capital companies, such as the electronics industry, the Treasury has received, since 1970, $30 in increased tax revenues. We will create jobs. When these young companies started up on the West coast, they had to go to Japan and to West Germany to get financing.

When you look at the growth in production in the United States for the last year, it is a miserable, paltry 1 percent. West Germany, by contrast, with no capital gains taxes, had a 6-percent increase in production, and Japan had an 8-percent increase in production.

What happened when these companies had to go abroad to get their venture capital? In many instances—and this is true in the electronics industry—they had to give important concessions to Japan and to West Germany, in order to be able to market their new ideas in Asia and in Europe.

This has been of concern to the Department of Defense; because, as they point out, the two things America has had going for it have been the brain power, translated into new ideas, new technology, new production techniques, and second, the production drive—the creative ability of this country to outproduce the world.

The Defense Department is concerned, because if the present trend continues, we will have the brainpower of this country exported, in terms of products that are produced, to Japan and to West Germany, and we will lose the edge which not only has kept the United States ahead but also, so far, has kept this country free.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Undersecretary of Defense, dated September 8, 1978.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C., *September 8, 1978.*
HON. CLIFFORD P. HANSEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HANSEN: I wrote you earlier on August 4, 1978 concerning our ongoing activities addressing industrial innovation and investment climate within U.S. industry. We are having an important meeting on these subjects on September 18, 1978 which I expect will yield a number of observations on the questions you posed to the Secretary of Defense in your letter of June 27, 1978.

However, in anticipation of this September meeting, I am pleased to provide you with some preliminary comments on your questions. I will be writing you with more findings and suggestions following the September 18 meeting.

An improvement in the investment climate for our domestic industry would probably benefit DOD in its R&D and procurement expenditures more than it would any other federal agency. DOD buys over a wider spectrum of goods and services than do other federal agencies. Although military services are labor intensive, military production is generally capital intensive. The private industries on which DOD depends, such as the aerospace, computer, semiconductor and instrumentation industries, are all high technology and their capabilities to sustain large volume production and technological leads are very sensitive to the prevalent investment climate.

In addition, DOD is the single largest customer for batch processed, discrete parts manufacturing products. Barriers to improved investment by U.S. industry impact heavily on DOD through higher costs, lower quality products.

DOD also has some rather severe military specifications to which industry must adhere in selling to DOD. The cost burden of these specifications fall on DOD since the civilian consumer market neither needs nor is willing to pay for milspec equipment. Industry gives preferential investment treatment to large volume civilian products so that for this second reason the cost burden of milspec equipment is borne almost totally by DOD.

The interdependency of military-specific requirements, Industrial R&D (IR&D) funding and changing investment climates needs investigating. We intend to so do in DoD.

DoD has been one of the principal sponsors and has provided a highly significant motivation for innovation by U.S. industry. It has so done through (1) being a well-informed, educated consumer, (2) providing large amounts of funding with a minimum of regulation for innovative long-term and expensive innovation and (3) being the primary customer for the products of the innovative process it has supported.

Senior management within DoD has long been cognizant of the importance of industrial innovation to maintaining the military technological lead on which our national security depends. Any shift to other countries of the industrial innovation balance which is now tilted in favor of the U.S. will not only affect the domestic R&D capacity available to DoD, but will cause serious strains in our rather fragile military technological lead. DoD is thus a strong supporter of an improved investment climate within U.S. industry.

A national problem of increasing importance is that of improving the position of our domestic industry in the international marketplace. This is being addressed by the Industrial Innovation Coordinating Committee with all federal agencies, including DoD, involved. The Secretary of Defense supported this policy in his Interim Policy on the Export of U.S. Technology issued on 26 August 1977. At the same time, the Secretary of Defense is charged with controlling the export of U.S. technology which would provide a military advantage to a potential adversary and thus be detrimental to our national security. Thus, it appears inevitable that relaxation of export controls on U.S. technology coupled with the need to retain our military technological superiority will increase military expenditures in support of industrial innovation. Foreign acquisition of U.S. technology through other means than their import accerbates the cost of maintaining our military technological lead. The interaction of these several activities is receiving considerable attention by my staff.

Sincerely,

WILLIAM J. PERRY.

(Mr. BUMPERS assumed the chair.)

Mr. JAVITS. Will the Senator yield, on my time?

Mr. HANSEN. I am happy to yield.

Mr. JAVITS. I yield myself 3 minutes.

I ask the Senator this question: Is it not a fact that the group whom we who oppose this amendment are trying to stimulate in this particular capital gains measure, in which I fully support the Senator—I emphasize that—is not necessarily the same group in terms of interest as those with whom we were dealing with when we cut a little while ago the corporate tax rate? There may be a few people or dozens of people or hundreds of people, but it is not necessarily the same group, in terms of interest. With a capital gains cut we are dealing with entrepreneurship. We are aiding a smaller enterprise that needs a chance to get going before it can become a larger enterprise; whereas, in the corporate tax cut we are dealing with the accretion of capital which is required by going enterprises and larger enterprises in order to expand and improve and modernize because our industrial plant is getting obsolescent. That is one of the great things of danger that as the patriarchs in our country we should be deeply worried about. We are falling behind. That is why the Japanese and Germans are skinning us alive. They modernize. Their plants were destroyed. They built new ones. We have not. We are running into the current of Great Britain, and we know what happened there.

So I ask the Senator this specific question: Is it not a fact that we have to do both things, because we are reaching a different source of capital investment, both absolutely required if we are going to take our economy out of stagnation?

Mr. HANSEN. I say to my good friend from New York, a very distinguished Member of this body and a man held in

high regard by the economic community throughout the country today, that he is exactly right. I agree with him 100 percent.

Mr. JAVITS. I thank my colleague.

Mr. DANFORTH. Mr. President, I think it is a little bit unfortunate that when we debate a tax bill, the course of the debate often takes the form of what is in it for me, what is in it for this group or that group, how much goes to one particular portion of the economy or one particular income group, as though we are involved in some sort of warfare between the rich and the poor, as though we always have to choose up sides between people who are relatively well to do and those who are not, as though we always have to rush to the Chamber to cast our vote on whether we are for the side of big business or for the side of small business.

I am sure that there is little or no political mileage in being the person who offers an amendment to cut the corporate tax rate. Maybe there is not very much mileage in supporting, as I fully do, Senator HANSEN's initiative to reduce the capital gains tax. But it seems to me that we are all in this together. We all have a stake in the economic health of this country, whether we are people who are wealthy or whether we are people who are very poor. As a matter of fact there are 6 million Americans right now who want jobs who cannot find jobs. That is what we are talking about—the health of the economy of the country.

And it is the health of this economy which all people, all Americans have a stake in. That very same issue, as Senator JAVITS has pointed out so well, was involved this morning when we addressed the corporate tax issue, and it is involved right now when we address capital gains.

Senator BROOKE this morning, during the course of the colloquy on a corporate rate reduction, asked me the question: How about the capital gains matter? Will that not take care of this need we have for investment?

And I said at the time and I repeat now that that is one side of the coin. Another side of the coin is the corporate rate reduction. Both of them go together, because both of them have to do with investment. One has to do with a person's savings and investment; the other has to do with whether business is going to invest in plant and equipment and job opportunities for the American people.

The fact is that we do not now have a healthy economy. It is sluggish and slow moving. It has been estimated that we have a $1 trillion shortfall in capital investment which we are looking forward to between now and the mid-1980's, that people do not have the incentive now to save and invest, that, as a matter of fact, with a high rate of inflation, Government has created a policy for the American people which might be categorized as eat, drink, and be merry. And that is just wrong, and it is not healthy.

So I commend Senator HANSEN for his initiative, and I hope that the Finance Committee will be supportive in this matter.

Mr. CURTIS. Mr. President, I yield myself 3 minutes.

Mr. President, there are many reasons why we should reduce the capital gains tax. In the first place, it is a matter of justice. There are people of modest income called upon to pay a very, very heavy capital gains tax. Most of them will not be relieved by the Church amendment. The Church amendment was sort of a Congressman's severance pay, if he had a big house here in Washington. But the individual who toils and toils and puts his money in a filling station or in a store or in a few acres of land, when he sells, he will not get any benefit from the Church amendment.

The rates are very high. It is a tax on inflation.

The studies by Martin Feldstein, of Harvard, and Joel Slemrod, of the National Bureau of Economic Resources, show that in 1973 there was over $1 billion paid in capital gains tax on stocks but actually those stocks, if you count inflation, suffered a loss of $910 million.

There is another reason why we need relief from capital gains tax. We are in a competitive world. Japan has no capital gains tax. West Germany has no capital gains tax. Neither does France, the Netherlands, Belgium, or Italy, and even in Socialist England the capital gains tax is only 30 percent.

Mr. President, a young man came to my office a while back. He was a son of a college professor. He was a graduate in electronic engineering. He got an idea and he built a factory. It is operating on the west coast. It employs between 200 and 300 people. He needed capital. He went up and down this country and could not get any capital because of the high capital gains rates. He was facing a tough situation. Should he give up and let his employees go? No. He turned to Japan for financing, and today the ownership-management of that plant is in the hands of the Japanese.

It was Congress that forced that bad trend.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. CURTIS. Mr. President, I urge that the amendment be rejected. Our economy cannot afford it.

The PRESIDING OFFICER. Does the Senator from Maryland seek recognition?

Mr. MATHIAS. Yes.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, this debate on capital gains I think should include one four letter word, at the very least, and that word is jobs, j-o-b-s, because that is really at the heart of this debate as far as I am concerned.

I wonder if I could address on my time a question to the distinguished Senator from Wyoming to whom we are all indebted for his earlier statement in this matter. But in connection with jobs, I wonder if he could comment on what I have observed as the apparent result of the sharp increase in capital gains tax in 1969 when there was a high level both of the number of new ventures and the dollar volume invested in new ventures, and at the present time when there is a very much lower number of new ventures and a very much lower dollar volume available to be invested in new businesses and in the provision of new jobs for the American working public.

Mr. MATHIAS. Does the Senator feel the decrease in the number of new ventures and the number of dollars invested in new businesses are related to the sharp increase in capital gains taxes since 1969?

Mr. HANSEN. I think the evidence is incontrovertible. There is a direct relationship. I agree completely with my friend from Maryland.

If I can make this further observation, Mr. President, the fact is, as the distinguished senior Senator from New York pointed out, that the two proposals reducing the corporate tax rate and reducing the capital gains tax rate go hand in hand.

Mr. MATHIAS. I think we ought to learn something from experience. I do not say it was the failure to change the rates from 1969. But if we learn from that experience, what we are learning is that there is a level of tolerance beyond which the economy will not accept high taxation on capital gains. Is that the Senator's conclusion?

Mr. HANSEN. Exactly. When we raised rates we had 6 million people go out of the stock market. The number dropped from 31 million down to 25 million. There were better ways of making money.

Mr. MATHIAS. So there may be people unemployed today who would be employed if we had not done what we did.

Mr. HANSEN. Precisely so.

Mr. MATHIAS. Our duty, it seems to me, for the future if we want to raise the level of employment is to lower the capital gains tax and make that capital available for investment in jobs, that four-letter word I started out with.

Mr. HANSEN. The Senator from Maryland is precisely right. Mr. President, I commend him for his perceptiveness. There is a direct relationship between venture capital and jobs.

Mr. MATHIAS. I thank the Senator.

Mr. HARRY F. BYRD, JR. Mr. President, I yield myself 5 minutes. I like that four-letter word the Senator from Maryland used—jobs: j-o-b-s.

The capital gains proposal in the Finance Committee bill will do much toward creating new job opportunities.

The amendment now before the Senate would eliminate from this tax bill one of the most important parts of the entire legislation.

First, for a bit of history: Until the tax bill of 1969, the maximum tax on capital gains was 25 percent. This has now been changed to where, under normal conditions, it is 35 percent. In many cases the present capital gains tax rate can go much higher—as high as 49 percent.

What the Finance Committee proposal attempts to do is to bring the capital gains tax back to a reasonable level.

There is a vast difference between taxing income and taxing capital gains. Capital gain is the gain from the sale of an asset. It is capital accumulated from investments made with income which has already been taxed. It is important to the general economy of our Nation.

I am convinced that there must be greater activity in the sale of capital assets and that there must be greater activity in investment opportunities, if we are going to have that four-letter word which the Senator from Maryland mentioned; namely, jobs.

I commend the able Senator from Wyoming (Mr. HANSEN) for the tremendous work he has done over a long period of time in bringing to the floor of the Senate a proposal which will reduce to a reasonable degree the very, very high capital gains tax.

I also urge the Senate to study carefully the letters which the chairman of the Finance Committee has very wisely obtained from a number of former Secretaries of the Treasury, from former members and Chairmen of the Federal Reserve Board, and from other important individuals who know from experience the importance of capital investment. They have dealt with the subject of capital gains. They know a reduction in the capital gains tax rate is important for the economic future of our country.

I think it was a very enterprising endeavor on the part of the able Senator from Louisiana to compile this information, which will be tremendously helpful to each of us in Congress, if we will take the time and trouble to study it.

Mr. President, perhaps this might be a good time to have printed in the RECORD, although it does not deal with capital gains, the first income tax form No. 1040 for the year of 1913. The income tax return for 1913 is a single sheet of paper.

The form 1040 provides that there shall be a normal tax of 1 percent on taxable income up to $20,000. After an individual exceeds $20,000, the individual is then subject to a surtax of 1 percent on any amount over $20,000, but not exceeding $50,000. This surtax goes up as high as 6 percent on all sums over $500,000.

So we have come a long way, Mr. President, since the enactment of the income tax.

I happen to think that the income tax is an essential part of the Tax Code. I believe in the progressive income tax. Where I part company with it, however, is with respect to the extremely high rates, which now exist. Income tax rates are too high. I think they need to be reduced. I hope as time goes by that rates will be reduced.

The pending amendment should be defeated. It would take out of this bill one of the most important parts of the entire legislation now before this Senate.

In closing, I ask unanimous consent to have printed in the RECORD form 1040 for the year 1913.

There being no objection, the form was ordered to be printed in the RECORD, as follows:

Form 1040: Income tax.

The penalty for failure to have this return in the hands of the collector of Internal Revenue on or before March 1 is $20 to $1,000. (see instructions on page 4.)

United States Internal Revenue: Return of annual net income of individuals (As provided by Act of Congress, approved October 3, 1913.)

Return of net income received or accrued during the year ended December 31, 1913. (for the year 1913, from March 1, to December 31.)

Filed by (or for) —— of ——.

In the City, Town, or Post Office of —— State of ——.

1. Gross Income (see page 2, line 12).
2. General Deductions (see page 3, line 7).
3. Net Income.

Deductions and exemptions allowed in computing income subject to the normal tax of 1 percent.

4. Dividends and net earnings received or accrued, of corporations, etc., subject to like tax. (See page 2, line 11).
5. Amount of income on which the normal tax has been deducted and withheld at the source. (See page 2, line 9, column A).
6. Specific exemption of $3,000 or $4,000, as the case may be. (See Instructions 3 and 19).

Total deductions and exemptions. (Items 4, 5 and 6).

7. Taxable income on which the normal tax of 1 percent is to be calculated. (See Instruction 3.)
8. When the net income shown above on line 3 exceeds $20,000, the additional tax thereon must be calculated as per schedule below.

1 percent on amount over $20,000 and not exceeding $50,000.

2 percent on amount over $50,000 and not exceeding $75,000.

3 percent on amount over $75,000 and not exceeding $100,000.

4 percent on amount over $100,000 and not exceeding $250,000.

5 percent on amount over $250,000 and not exceeding $500,000.

6 percent on amount over $500,000.

Total additional or super tax.

Total normal tax (1 percent of amount entered on line 7).

Total tax liability.

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. Mr. President, I rise in opposition to this amendment. Of all of the evidence we heard in the Finance Committee on this bill, as a matter of fact, of all the evidence I have heard in the last 5 years in the Finance Committee, the one thing that comes home over and over and over again is our failure to reinvest in this country; our low rate of productivity, our low rate of savings, our low rate generally of encouraging new businesses to start.

I emphasize "new," as most of the support for capital gains, for individual capital gains, has not come from the so-called captains of industry. While they may make salaries of three or four hundred thousand dollars a year, and they have some personal stock investments of their own, their principal concern is the running of the major businesses of this country, the Fortune 500. Their concern is cost, some innovation, but the companies they run today are not the companies they were 50 years ago, and people today do not invest in the General Motors, the General Electrics, or the Duponts, in the hope of the stock doubling, tripling, or quadrupling in 2 or 3 or 4 years.

Nor are those companies now giving to taking fliers on risky ventures. I do not mean to demean the companies; they are great companies, and great research companies. But by the very nature of their size and diversity, and the number of stockholders they have, they are inclined toward caution. For the presidents of those companies, this capital gains provision is not a great incentive for people to invest in those companies. You might as well take your money out and put it in a time certificate at 8 percent as to invest in General Electric or General Motors, based upon stock returns over the last few years.

But where we have seen a tremendous downturn in investment is in the companies that, 25 or 30 years ago, were the Polaroids, the Haloids, the Texas Instruments, the Hewlett-Packards, where persons who had $25,000 or $30,000 to lose could take it and put it in the company on the chance that they could substantially increase their return, but they could afford to lose it if necessary. Because there is only one way a person who chooses to invest in business, who chooses to invest in a company can make it: either through dividends or through increases in the value of stock.

The chance of increased dividends after the first 5 or 10 years in the life of a company is usually very slight. You do not invest for that reason. You invest in the hopes that a company may hit on a bright new idea and its capital stock will increase in value, and, because you were willing to take a risk that no one else was willing to take, you will reap a handsome return on your investment; and there is nothing wrong with that.

The new jobs today are being created by companies that employ less than 100 people, rather than 100 people or more, and they are being squeezed out because of the capital gains tax. I have heard it said over and over again that the increases in value today is in real estate, and heard examples cited of 35 to 47 percent in 1 or 2 years.

That is almost solely due to inflation. If you were to take out of that just one figure, personal residences—people do not speculate in personal residences—if you were to take out of the increase in real estate capital gains just that figure, real estate today would occupy exactly the same place it did in 1962, approximately 31 percent of the net capital gain.

Interestingly, stocks, bonds, securities, and business investments in 1962 were 32 percent of all the net capital gains. Today they are 21 percent.

Do you know why they are 21 percent? Because they are 56 percent of the capital losses. Why on Earth would anyone want to invest when there is better than one chance in two you are going to lose your money?

All we are trying to do with this capital gains investment is encourage people to invest in a company of half a dozen bright young people, with nothing like the wage rate of General Motors, General Electric, or Dupont, with an idea, and they are willing to work 12 to 14 hours a day, 6 days a week, with the hope that they can become the owners of a fair-sized business of their own—an opportunity they will never have working for a major corporation.

That is the kind of thing we ought to encourage in this country. It is the kind of thing that has been discouraged in this country over the past 10 or 15 years.

If you want to see continued growth of conglomerates in this country, and the continued squeezing out of small businesses because those that have succeeded finally have to sell out to big businesses because the estate and the gift taxes are such that they cannot leave

them to their heirs, just leave the capital gains tax the way it is. Believe me, it will not hurt big business, because it will make every successful small business a ripe plum, ready to pick off the tree of success just as soon as the principal owners who founded it have died, until, in 25 or 30 years, we will not have any small businesses left.

If we adopt the amendment of the Senator from Massachusetts, we are headed down that road as surely as I am standing here today.

The PRESIDING OFFICER. The question is on agreeing to the amendment. Who yields time?

Mr. LONG. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

● Mr. MOYNIHAN. Mr. President, I would like to speak in behalf of the individual capital gains tax reductions in the tax bill. This provision will encourage capital investment of all kinds and we hope will rectify the declining investment trend in our economy. In doing so, it will stimulate innovation and productivity, and aid our balance of payments situation.

THE IMPORTANCE OF CAPITAL TO OUR ECONOMY

There have been ample studies to show that capital investment and productivity in our economy are lagging. Of the seven major industrial nations, we rank 7th in investment ratio and 6th in output growth.

Nonresidential fixed investment ratios and growth rates of real output, 1960–73

	Investment rate		Output growth rate	
	Percent	Rank	Percent	Rank
Japan	29.0	1	10.8	1
W. Germany	20.0	2	5.5	3
France	18.2	3	5.9	2
Canada	17.4	4	5.4	4
U.K.	15.2	5	2.9	7
Italy	14.4	6	5.2	5
U.S.	13.6	7	4.1	6

Further, the Economic Report of the President suggested that the best explanation of the decline of productivity may be due to the declining capital-to-labor growth ratio.

In another study, the Joint Economic Committee arrived at similar conclusions. In examining the productivity growth in 10 industrial countries between 1963 and 1974, they found that growth rates in aggregate labor productivity and in capital-labor ratios are highly correlated and that the United States was the only country to experience deceleration in both variables.

THE IMPORTANCE OF A TAX INCENTIVE FOR CAPITAL FORMATION

There is a truism that many economists and financial analysts will attest to, and that is that after tax return is the most significant variable in making investment decisions. As we move toward taxing all income at uniform rates, there is a demonstrated reluctance to invest in risky ventures, and capital flows to the more stable, less risky investments that pay secure returns in cash rather than capital appreciation. But it is through capital appreciation with its attendant risks that these types of high-risk ventures repay their investors.

High capital gains taxes discourage investment in all kinds of ventures including risk ventures. For example, in 1969, there were 548 public offerings of companies having a net worth of less than $5 million. In 1975 there were four. In 1968, over 300 high technology companies were founded; in 1976 there were none.

Another telling example relates to the decline in corporate equity holdings. Between 1962 and 1969, holdings in corporate equities increased 70 percent. Between 1969 and 1976, they declined by 50 percent as investors shifted largely into bonds.

Among the companies that have started from venture capital operations are Xerox, Digital Equipment, Texas Instruments and Polaroid. Among their other virtues, these companies have contributed positively to our balance of payments.

WHO BENEFITS

Although it is true that the direct beneficiaries of capital gains taxes are the most affluent, there is another beneficiary—the economy as a whole. This mix seems appropriate because it is only the affluent that can afford to take the risks involved.

A typcial experience of a venture capital fund appeared in the September issue of Venture Capital magazine.

A 7-year history of this fund's 19 investments were the following: Nine were losses, returning 40 percent of the original investment; six went public and thus were successful; and four are still privately held—the stock has not yet been offered to the public.

Thus at best, 50 percent will be successful and perhaps as few as one-third will be.

The great majority of Americans cannot afford to and should not be taking risks like this.

It is also true that capital formation and investment does produce economic growth and jobs. The most productive nations are those with high rates of savings and investment. The least productive nations are those with the lowest such rates.●

● Mr. DOLE. Mr. President, there is no question in my mind that current levels of capital gains tax have caused a slower rate in the growth of our economy. The capital gains tax which can run as high as 49 percent effective rate has contributed to the shortage of investment funds needed for capital formation, especially for new and smaller businesses. I support the changes made by the Finance Committee bill. I would urge the Senate to retain the committee's decision.

Mr. President, there is a growing consensus among nearly everyone, except the Treasury Department—who has examined the issue of capital gains seriously, that a reduction in the capital gains rates will have a powerful effect on spurring economic growth. Many of us on the Finance Committee believe that a cut in the capital gains tax will actually result in an increase in Government tax revenues.

Mr. President, Chase Econometrics has stated to the Finance Committee:

> The reduction in the maximum rate of capital gains taxes from the current levels to 25 percent would have a positive effect on economic growth while reducing the Federal budget deficit.

Chase Econometrics goes on to say that an additional 400,000 jobs would be created by 1985. Data Resources, Inc.—a most respected authority—agrees with this analysis.

Mr. President, I believe the debate has been clearly focused on this issue. Should the Congress cut capital gains tax, spurring growth, creating jobs, boosting Government revenues and otherwise build a bigger pie for the Federal Government to disperse? Or shall we boost the capital gains tax, close the so-called loophole, and redistribute income even if it makes us all the poorer?

Mr. President, the Finance Committee studied this issue very closely. In fact, the distinguished chairman of our committee requested views from many noted authorities including six former Secretaries of the Treasury. All of the former Secretaries informed the committee that they believe lower capital gains tax will raise, not lower, Federal revenue.

Mr. President, Dr. Martin Feldstein, president of the National Bureau of Economic Research, and professor of economics at Harvard University, testified before the Senate Finance Committee on June 29, 1978. Dr. Feldstein told the committee that part of the problem with taxation of capital gains is that inflation has a particularly harsh result on the taxation of capital gains. A recent study by Dr. Feldstein tried to measure the total excess taxation of corporal capital stock caused by inflation and the extent to which this distortion differs capriciously among individuals. Dr. Feldstein found that in 1973 individuals paid capital gains tax on $4.6 billion of nominal capital gains on corporate stock. When the cost of these shares is adjusted for the increase in consumer price levels since they were purchased, the so-called gain became a loss of nearly $1 billion. The study went on to find that the $4.6 billion of nominal capital gains resulted in a tax liability of $1.1 billion. The tax liability on the real capital gain would have been only $661 million. Inflation raised tax liabilities by nearly $500 million, approximately doubling the overall effective rate on corporate stock capital gains.

Mr. President, the purpose of this statement is not to get into the debate on tax indexing. The Senate had an opportunity to discuss one of my proposals and made the conscious decision to continue to tax inflation. I would point out, however, that the former Secretary of the Treasury, Douglas Dillon, in a letter to the chairman of the Finance Committee, said:

> The dramatic increase in the nation's inflation rate in recent years and the prospect that higher rates will continue into an indefinite future, have posed new problems in

the taxation of capital gains. Because the higher rate of inflation, and ever-increasing share of nominal capital gains is merely the result of inflation and does not in any way represent real gains. for this reason, it seems only equitable that the Archer amendment or some variation of it be included in the final version of the Revenue Act of 1978.

Mr. President, the committee bill does not contain a provision to compensate for inflationary capital gains. However, the committee bill goes far in reducing the capital gains rate to make inroads on this problem. The committee bill is a significant step and should not be altered.●

Mr. HEINZ. Mr. President, the debate about the desirability of a reduction in the capital gains tax has raged for years and has particularly intensified in this session of Congress. Indeed, the Finance Committee bill before us contains a provision to significantly reduce the capital gains tax.

Many questions have been raised and arguments made for and against such a proposal. Some have noted that revenue collections from capital gains taxes have fallen dramatically since the tax was raised in 1969. Others have pointed out, quite accurately in my judgment, that the growth of productivity of American industry is not only low, but the lowest of any industrialized nation in the world, and that this alarming performance is due to a reluctance of Americans to save and invest in research, technology, and more modern, efficient plants and equipment.

They point to the high tax rates on capital gains as an important culprit in discouraging such investment. Still others, on the other side of the fence, claim that lowering the capital gains tax would be nothing more than a windfall for the rich.

In order to make the wisest possible decision on this issue, I recently invited several distinguished economists to study the question of the proposed reduction in capital gains taxes and to give me their analysis and conclusions. Characteristically generous with their time and talent, Dr. Lawrence R. Klein, Benjamin Franklin, professor of economics at the University of Pennsylvania, and Profs. Robert Hodrick and Robert S. Kaplan of the Graduate School of Industrial Administration at Carnegie-Mellon University have come forward with extremely thoughtful responses. They have also been extremely helpful to me personally at arriving at the decision to support the capital gains tax reduction provisions contained in the bill reported by the Senate Finance Committee.

In sense, it is my conclusion, based on the thoughtful comments of Messrs. Klein, Hodrick, and Kaplan, that the capital gains tax reduction proposed is more likely rather than less likely to increase Federal revenues, to stimulate savings and to encourage investment, particularly in riskier activities which have the potential for advances and breakthroughs we might not otherwise achieve.

Mr. President, it is also clear that any conclusion about the effects of lowering capital gains taxes is necessarily speculative. I hope that the conclusion I have come to is the right one. Should, in fact, this provision result in any significant and sustained revenue loss, I would be forced to conclude that the cut in capital gains taxes had in reality been counterproductive and I would not hestitate to seek repeal of the provision in this bill.

But, on the basis of the best information available today, it is my best judgment that this bill will stimulate investment, higher tax revenues, and more jobs because of more investment. It is also my hope that this, in conjunction with other actions we should take, will be an important step in once again making American industry more productive and competitive in the world-at-large.

Mr. President, I ask unanimous consent that the letters from Dr. Klein and the briefing paper by Messrs. Hodrick and Kaplan be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AUGUST 15, 1978.

Hon. JOHN HEINZ III,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HEINZ: Presumably you received a copy of my letter to Senator Muskie concerning the economic effects of contemporary tax proposals, particularly the Kemp-Roth and Steiger proposals. There is little to add, at this time, to the consideration of the Kemp-Roth proposals. I would stand by the analysis contained in that letter.

As for the Steiger proposal about capital gains taxation, the analysis must be less definite. In the case of capital gain, we are dealing with a relatively small and somewhat esoteric segment of the whole tax system. The reason why any analysis must be less definite is that there is comparatively little statistical information about people's attitudes towards capital gains taxes, much of the analysis is not explicit in the sense that it must deal with both unrealized and realized gains, and finally the number of people involved are comparatively few in number (except for homeowners). The main thrust of the Steiger proposal is towards stock shares, although capital gains on real estate are not excluded from favorable consideration.

There are four principal economic issues in connection with the Steiger proposal:

1. The relationship between the rates of capital gains taxation and stock market
2. The relationship between stock market performance and capital formation
3. The relationship between tax revenues and rates of capital gains taxation
4. Socio-economic equity of the tax system.

1. We have not had frequent adjustment of the rates of capital gain taxation that would enable us to detect their influence on equity prices, as measured by stock market averages. The few major changes that we have had have occurred in a situation where many things were changing simultaneously and it is not possible to make a clean assessment of the direct link between capital gains taxation and the stock market. Equity pricing, to say the least, is a complicated phenomenon and not well understood or predicted by anyone. Many times the stock market just seems to go its own way without any obvious relationship to economic fundamentals.

Logical analysis would indicate that the stock market ought to respond favorably to a general lowering of capital gains tax rate. The holding of shares for appreciation bring a better after-tax rate of return; therefore, demand should increase for stocks to be held for capital appreciation. The rate of return on shares is one among several rates of return that enter a person's portfolio decision; therefore, an unequivocal assessment cannot be given by looking at one rate of return alone, but it does seem safe to say that the market should be expected to respond favorably. That remark cannot be scientifically quantified at the present time, although some analysts are acting as though it can.

2. If the stock averages increase, it will be more favorable than at present for enterprises to raise equity capital. The cost of equity capital will, in part, decrease. To the extent to which new capital gains legislation encourages speculation in existing or nonproduction assets, there will be no direct national gain, but to the extent to which risk capital is raised on equity markets for new enterprises we should be getting useful capital formation of a sort that is badly needed for economic progress. We have pretty good estimates from econometric models of the sensitivity of overall capital formation to overall capital costs. The main specific relationship between risk capital for new enterprise and costs of equity capital has been rarely investigated, if at all. We might, however, use the overall sensitivity as a first approximation. The Steiger proposal could add a percent or so to the expansion rate of fixed capital, but the effect probably would not be noticeable before 1980 and would not be at its peak for another year or two.

3. It has been estimated that the Steiger proposal would cost the Treasury about $2.4 billion in lost revenues. This calculation appears to overlook the tendency of more people to realize capital gains if the tax rate is reduced. Enough people may be induced to realize gains so that tax revenues need not be lost. In this respect, some evidence has been introduced into what has otherwise been a barren discussion. Martin Feldstein and Associates from the National Bureau of Economic Research have estimated a microeconomic relationship between realization of gains and the level of rates. I find some technical difficulties with their paper. Some cases, in a sense adverse to their argument, were deleted; some secondary effects have been omitted; their analysis is only partial. Nevertheless, I think that they have a point, although I would like to see the revenue calculation re-done more carefully, taking other things into account. For example, when capital gains are taxed more favorably, some people may be able to shift earnings from salary or dividend types into capital gains types. The revenue increment from realized capital gains must be offset by the possible revenue loss from other forms of income taxation. The whole issue needs to be set in a more general framework than Feldstein and Associates were able to consider.

The neutral position—that Steiger-like reductions in capital gains taxes will result in no revenue loss to the Treasury—is probably the best estimate that can be made at this time. It is between the standard estimate of $2.4 billion loss and the gain calculated by Feldstein and Associates. This position, like all others in this controversy, is subject to statistical error. That should preface the whole discussion but is unfortunately neglected in many instances.

4. Finally, we come to the social equity in the tax system. A unilateral and isolated decrease in the rate of capital gains taxation would seem to be unjust. If that were the only tax reform measure, it would seem to be out of place. We certainly need to get capital formation moving at a better pace, but I would recommend shortening the write-off period (allowable depreciation changes increased) for investment in new fixed capital. Other methods, such as increments in amount or scope of the investment tax credit, could also be used. These do not show up directly in the personal income or income tax distribution.

A more comprehensive approach to tax reform ought certainly to have a capital gains component, and I could very well find justification for our taking a change on a reduction, as in the Steiger proposal, to see if caiptal formation could be stimulated. Better growth in capital formation is very important and improvement in the climate for risk taking is much to be desired. I could support the President, in his ethical-moral stand on capital gains taxation. That is largely a matter of social taste, but I could very well see the possibility of a compromise package that would be found acceptable if it contained some tax reforms that rank high on the President's preference scale, as well as an overall decline in caiptal gains rates.

I appreciate the fact that this is not a very clear cut analysis. The problems involved are thorny and not accurately assessed on a quantitative scale. But I think that all advocates must be as honest and as scientific as possible in applying economic analysis to these issues. By the very nature of this problem—our lack of experience in assessing the changes being discussed—is such that the answers must be subject to significant error margins and put forward in the right spirit of uncertainty.

A lower capital gains rate has a great deal of merit, provided it is put into comprehensive tax package. Then I feel that we might do well to take a chance on it, knowing that it will not work wonders.

Sincerely,

DR. LAWRENCE R. KLEIN,
Benjamin Franklin Professor of Economics, University of Pennsylvania.

ADDENDUM

In a study entitled "Financial Effects of Capital Tax Reforms," my colleagues (Irwin Friend, Jean Crockett and Marshall Blum) find, from a sample of 1041 shareholders, that about 9% would decrease their percentage of assets held as stock if the capital gains rate were reduced by 50%, while about 44% would be expected to increase their percentages.

The remainder would stand pat. Overall, the authors estimate that the stock ratio in an aggregate portfolio would go up by 5.5 percentage points if the capital gains rate were reduced by 50%. The small group who would reduce their percentage are acting according to the way that Feldstein's study would leave us to expect. They would realize past gains. The large group, amounting to 44% of the sample, would increase their holdings, thus contributing to an expected rise in market averages. No doubt, some of the holders in this latter group would realize gains, after a while, thus contributing to the Treasury's revenue stream.

Looking at these figures, and at Feldstein's, I would say that the Steiger Amendment ought to bring about modest but not sensational improvements in stock market averages and in fixed capital formation. At the outset, an announcement effect may appear to be sensational, but the underlying and long lasting changes ought to be moderate.

THE CASE FOR REDUCTION OF CAPITAL GAINS TAXATION

(By Robert Hodrick, Assistant Professor of Economics; Robert S. Kaplan, Dean and Professor of Industrial Administration of Graduate School of Industrial Administration, Carnegie-Mellon University.

At the start of any discussion of the capital gains tax, we must attempt to understand the intellectual basis that justifies any special treatment of capital gains versus other forms of income. Without such a justification, we have little defense against the populist egalitarian rhetoric that the capital gains tax is a windfall for the wealthy. Economists will generally start from a position arguing that if we are going to have a tax on income, then all income should be taxed equally. Exceptions to this rule arise when we wish to encourage certain activites or investiments that may not receive adequate attention from investors without additional incentives. In the case of capital gains, we could identify three justifications for special tax treatment:

1. Encourage investment in riskier activities.

2. Compensate for the effect of inflation on assets held for extended periods of time.

3. Avoid extremely high marginal tax rates in a year when realizing a capital gain would, without special tax treatment, place an investor in a tax bracket not representative of his permanent income. This is a consequence of a graduated tax structure with limited provision for income averaging.

For each objective, it is possible to think of alternative tax incentives or provisions that would achieve the narrow objective more effectively. Nevertheless, developing a series of these specialized tax inceintives introduces additional complexity into the tax code, requires extended debate with less popular support than now exists for a general reduction in the capital gains tax, and could have unforeseen side consequences beyond the narrow objective envisioned for each provision. Thus, relative to the cost of developing, enacting, and implementing specialized tax features, an across the board reduction in the capital gains tax is a reasonable device for achieving the above objectives. It would be desirable if we could provide quantitative estimates on the effect of the capital gains tax on each major objective. But we believe there is little basis for quantitative estimates despite the widely publicized figures produced by certain econometric consulting companies. We will discuss our skepticism concerning these figures later in this report.

We will now discuss the various justifications for reducing the capital gains tax in some detail.

ENCOURAGE LONG TERM INVESTMENT

The United States has the lowest investment rate of any major industrialized nation. This low investment rate hinders productivity increases, leads to supply bottlenecks as demand in the economy grows, and limits the rate at which modern and innovative processes can be embodied in physical capital. Long term equity investments are typically much riskier than short term projects or investments in fixed income securities. High capital gains taxes limit the incentives to investors in equity and long term projects. A reduction in the capital gains tax will provide an incentive for individuals to increase their investment in long term investment projects and reduce expenditures on current consumption. Thus, it should provide a noticeable increase in the savings rate in the U.S. Unfortunately, we have little evidence as to the magnitude of this shift into longer term investments.

We can be sure of the sign of the effect but not its extent. There are alternative schemes for encouraging long term investment in physical assets including elimination of the double taxation of dividends, inflation adjusting the corporate income tax—especially the provision for depreciation, and increasing the investment tax credit or shortening depreciable lives. Therefore, a reduction in the capital gains tax is only one instrument for encouraging corporate investment. But it should not be overlooked as a major incentive for the suppliers of capital.

There are important distributional effects within the corporate sector that are influenced by the capital gains tax. Capital markets are supposed to provide a mechanism for allocating capital to the most productive investments. High capital gains taxes may cause investors to feel "locked in" to certain investments. Even though they see more productive opportunities in alternative investments, investors may be reluctant to switch out of an existing investment because of a high tax on the realized gain. A high capital gains tax therefore hinders the mechanism of allocating capital to the currently most productive investments in the economy. A reduction in the capital gains tax should enable the capital market allocation mechanism to operate more effectively to the overall benefit of the economy.

High capital gains taxes reduce the difference in after tax returns between mature companies with high dividend yields and growing companies with low dividend yields but strong capital gains possibilities. Recently, the mature high dividend yield companies have enjoyed superior stock market prices. Companies with strong growth potential and need for additional capital have therefore been at a disadvantage when attempting to raise equity capital for new and productive investments. The potential rewards to investors in such low dividend yielding but high potential growth stocks have been reduced by the sharp increase in capital gains tax since 1969. A reduction in the capital gains tax should encourage additional investment in these growing and more productive companies by shifting from the current emphasis on dividend yield to long term growth and performance.

A reduction in the capital gains tax should also encourage the movement of capital out of real estate and back into more productive capital investments. Taxes on capital gains from sale of residences can be deferred if the gain is reinvested in another residence within eighteen months. This favorable rollover provision makes speculation in real estate much more profitable than investment in corporation equities. Were the capital tax to be reduced, there would be less incentive for individuals to continually upgrade their investment in personal residences. At some point it might pay to realize the accumulated gain on sale of residences, pay the modest capital gains tax, and reinvest the proceeds in the productive sector of the economy. The lower tax on realized capital gains in the corporate equity market would provide additional incentives for investment in this sector.

ENCOURAGE INVESTMENT IN SMALLER AND RISKIER FIRMS

It is well documented that a disproportionate share of innovations are produced in small businesses and newly formed ventures. These enterprises, however, have much riskier prospects than large and established corporations. Investors in these small businesses recognize that they will lose money on most of their investments but hope to realize substantial rewards on the few investments that succeed and develop into large enterprises.

Small business investors, therefore, realize their return by selling the stock of a few companies at very significant profits to offset the losses in their many ventures that didn't succeed. Two provisions in the tax treatment of capital gains since 1969 have certainly changed the risk-reward relationship of investing in small business. Obviously the increase in the capital gains tax has certainly reduced the benefit from investing in a successful small business. Investors in small businesses and venture capital companies will tend to be wealthier individuals, in high marginal tax brackets, who can better absorb the inherent risk from investing in risky ventures. The increase in the maximum tax rate on capital gains and the special provisions for taxing preferential income makes the reward from a successful venture much lower to these high income investors. Therefore, there has to be a re-

duction in the amount of capital being supplied to this vital sector of the economy. The risks (because of increased regulatory burden and unstable macro-economic policies of the government) have increased and the potential reward (because of increased taxation on successful ventures) has decreased. One does not have to be a Ph. D. in economics to understand what happens to the flow of investment funds to a group of companies for whom the reward has decreased and the risk has increased.

A second and less obvious disincentive for investment in small and innovative businesses is the 1969 provision permitting only a 50 percent deduction for long capital losses. Apart from a superficial symmetry argument, it's hard to find any justification for permitting only a 50 percent deduction for capital losses. We permit preferential treatment of capital gains to encourage investment in long term risky opportunities and to provide an imperfect compensation for inflation for assets held for extended periods. Allowing only a partial loss deduction undoes much of these benefits. Riskier investments with a significant chance of realized losses are now permitted only a partial deduction against other income, thereby increasing the after-tax risk of these investments even further. Also, the partial deduction only aggravates the inequity when 1970 dollars were invested and much less valuable 1978 dollars were received in return. That is, the real loss will be much higher than the loss actually recorded which ignores differences in purchasing power between dollars invested and dollars received. A final problem is the limitation of deductibility of capital losses to $3000 per year (only recently increased from $1000 per year). It seems if we're going to use symmetry as a fundamental argument, we should eliminate this maximum loss provision or else limit the amount of capital gains realizable in a year to a maximum of $3000.

The following suggestions would seem highly desirable to encourage investment in innovative but risky investments:

(i). Allow full loss deductibility for long term capital losses with no limit on maximum losses;

(ii). Reduce the capital gains tax on successful investments and consider removing the capital gains on small business corporations from "preferential income" subjected to minimum taxation;

(iii). Consider deferring tax on capital gains from small business corporations if the gain is reinvested, within one year, in another small business. This deferral would be analogous to the deferral now permitted for the gain on sale of a personal residence. It should certainly provide a strong incentive for investment in innovative small enterprises.

COMPENSATE FOR INFLATION

The most inequitable aspect of taxing the gains on sale of capital assets is the failure to recognize the effects of inflation on the investment in long-lived assets. $100,000 invested in an asset in 1967 is equivalent to investing $190,000 in 1978. Yet if an individual just broke even and sold such an asset for $190,000 in 1978, for no real gain, he would still be liable for a capital gains tax on the nominal gain of $90,000. Martin Feldstein and Joel Slemrod have estimated that of the $1.1 Billion raised by the capital gains tax in 1973, almost 500 Million was collected from phantom inflationary increases in value. Thus inflation nearly doubled the effective tax rate on real capital gains during 1973.

Feldstein and Slemrod examined the insidious effects of inflation on capital gains by income class. They found that for 1973, middle income taxpayers, i.e. those with adjusted gross incomes between $20,000 and $50,000, reported $369 million of nominal capital gains which resulted in $80 million of tax revenue. The real situation, after adjusting for inflation, was actually a capital loss of $1420 million which should have resulted in a $52 million tax credit. They find a similar effect for lower incomes, but the upper income classes generally have tax liabilities for the nominal and real capital gains which are quite close. Feldstein and Slemrod also demonstrate that this mismeasurement of capital gains introduces arbitrariness into the tax schedule by treating a real gain differently for individuals within the same income category. Once again, this inequity is most pronounced in the middle and low income brackets. For taxpayers in the $20,000–$50,000 bracket, 55 percent of actual tax liabilities were incurred by individuals whose liabilities on real capital gains would have been less than 80 percent of their actual 1973 liabilities. This figure falls to 21.5 percent in the $200–500 thousand adjusted gross income category.

One way of viewing the lower tax rate on capital gains is as a crude compensation for such inflationary increases. But a preferential tax rate on capital gains is a blunt instrument to compensate for inflation. It does not distinguish between investors who held an asset for one year from those who held an investment for ten or twenty-five years. It would be greatly preferable and not at all difficult to index the cost of all capital assets to current purchasing power equivalents. Taxes would only be levied on the excess of current selling price (in the year sold) over the adjusted cost. Thus a $100,000 investment in 1967 sold for $200,000 in 1978 would be subject to a tax solely on the $10,000 excess of selling price over adjusted cost ($190,000).

Indexing of the cost of capital assets seems essential if we are not to continually have inflation transfer resources from the private to the public sector through an unindexed tax system. In fact, this point is so crucial that pressure for reduction of capital gains taxes might be dissipated once the cost of assets were indexed to current purchasing power equivalents. The best possibility, already imbedded in the current House bill, is to index the cost of capital assets, to control for inflation during the extended period these assets are held, and to retain preferential tax treatment on real capital gains to encourage continued investment in risky and innovative activities. Secretary Blumenthal has argued in testimony before Congress that such indexation "institutionalizes" inflation, making the problem of fighting inflation more difficult by reducing public displeasure with the process. We would argue that indexation would help in the fight against inflation by making it more difficult for the government sector to finance expansion not with legislated taxes but with inflation created by excessive monetary expansion which implicitly taxes the public without their consent. At present lower and middle income taxpayers face a cruel inflationary tax as they are pushed into higher tax brackets and forced to pay capital gains taxes on inflationary but not real increases in asset values.

One argument against indexing is that capital assets are frequently acquired with borrowed funds. Such borrowing is done at high nominal interest rates (because of anticipated inflation) and are fully deductible for tax purposes. But this effect is partially offset since creditors pay taxes on the nominal interest they receive. Therefore, the equilibrium interest rate is a compromise reflecting the favorable tax deductibility for debtors and the unfavorable tax on nominal interest rates for lenders. The adjustment of interest income and expense for the effect of inflation can be handled but is a complicated subject whose resolution should not affect the important advance of indexing the cost base of capital assets. Inflation adjusted interest expense and revenue is basically a second order effect relative to the indexing of the acquisition cost of capital assets.

Thus we strongly recommend that capital gains taxes be levied only on the real inflation adjusted gain on sale of such assets. Given a choice between a moderate decrease in the maximum capital gains tax rate and the present tax applied on an inflation adjusted basis, we believe that the indexing proposal clearly dominates. It would not only be important in its own right but would set the stage for the long overdue reform of indexing the entire personal and corporate income tax system.

TAX REVENUE CONSEQUENCES OF CHANGES IN THE CAPITAL GAINS TAX

Many statements or studies have been made as to whether there will be a decrease or increase in government revenues if capital gains taxes are lowered. We believe that all of these statements or studies have serious flaws and that it is difficult to predict the magnitude of tax shortfalls or increases. The U.S. Treasury and Congressional staff estimates of a $2.2 Billion reduction in 1978 tax receipts are perhaps the most naive. First they assume an unusually large increase in the stock market for 1978 (therefore conceding an effect assumed by Chase Econometrics and Data Resources Inc. which has been roundly criticized by many in government). More significantly, it is a static analysis that completely ignores the change in individual incentives when tax rates are changed. It assumes that individuals and corporations will report the same amount of capital gains regardless of the tax levied on these gains.

This is the typical but incorrect analysis done by government officials whenever increases in taxes are being advocated or decreases in taxes are being resisted. It should be obvious by now that individuals and corporations respond rationally to the incentives they face. When something is taxed at a higher rate, they demand less of it so that tax receipts never go up proportionately with tax rate increases and, beyond a certain point, may actually decrease. This latter effect did in fact happen after the 1969 increase in the capital gains tax. Receipts from this tax dropped immediately and are just now approaching 1969 levels in nominal (but not real) terms. Therefore, it is entirely likely that a decrease in capital gains tax especially if coupled with an adjustment for inflation may actually increase governmental revenues.

Individuals may sell assets they currently feel locked into and redirect their capital to more productive investments. Investors may shift resources away from relatively low (before tax) yielding but tax sheltered investments into taxable investments where gains will be taxed at the lower capital gains rate. How much the stock market may increase were capital gains taxes to be lowered is difficult to estimate. But certainly, lower and inflation-proof capital gains taxes should provide significant incentives for high and middle income investors to return to the stock market. At present, the best opportunity for such individuals is to increase their investments in personal residences where capital gains can be deferred perhaps indefinitely. Lower capital gains taxes may therefore reduce the excessive real estate speculation of the last several years and encourage more funds to enter productive opportunities in the equity market.

It may seem fanciful to non-economists that lowering marginal tax rates to high income investors can actually increase tax receipts. The record, however, indicates that this does happen. When the maximum tax rate was reduced from 91 percent in 1963 to 70 percent in 1965, the tax receipts from individuals with incomes in excess of $100,000 increased significantly. While some of this increase was due to a healthier economy, much of it must have been due to individuals in the upper tax brackets being

willing to work more because they could keep more of the revenues they received from their services. Perhaps even more significant, these high income individuals probably shifted from low yielding tax sheltered investments into higher yielding, and more socially productive, taxable investments when their marginal tax rates were lowered. High tax rates also encourage the non-reporting of income or investment in assets where transactions are more difficult to trace (diamonds, stamps. rare art).

Thus lowering tax rates encourages more transactions in the legitimate sector of the economy and more truthful reporting of all transactions. All of these factors can cause an increase in tax receipts when tax rates are lowered to high income individuals who have the greatest discretion in labor services they provide and the form of investments they undertake.

We would be extremely skeptical of any econometric study of the effect of changes in the capital gains tax which did not explicitly recognize the significant changes in individual incentives that occur when marginal tax rates are lowered. Any study that assumes individuals will report about the same amount of capital gains, independent of the tax treatment of such gains, is sure to be wrong. While we would like to be able to offer a formal analysis incorporating these incentive effects, we frankly admit the current lack of knowledge to support such a study. The casual evidence is certainly that past increases in the capital gains tax have reduced the tax receipts from this source to the government. On a purely equity basis, it seems essential to index the cost of capital assets to compensate for illusory gains caused by inflation. Once an inflation adjustment has been made, it does seem desirable to allow full deductibility for losses and to lower the maximum tax rate on capital gains to encourage additional investment in risk but innovative and productive opportunities. If there is a significant revenue loss caused by these modest decreases in capital gains taxes (which we doubt), the rate could be readjusted upward, easily enough, in the future. At the present time, capital gains tax reduction seems like a good but not a certain bet.

Mr. KENNEDY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 27 minutes remaining.

Mr. KENNEDY. I yield myself 3 minutes.

Mr. President, listening to the argument that has been made here by a number of my colleagues about the importance of jobs, I ask, how can anyone not be for jobs and support this amendment? Mr. President, we could take this $3 billion, if we could get it all into some big pocket, and take it up on top of the Capitol and let it blow out there in the wind, and someone would pick it up and go out and invest it somewhere, and some jobs would be created.

This dramatic argument about giving $22,000 more to everyone making over $200,000 a year, to go out and invest is the trickle-down theory at its worst. Hubert Humphrey used to talk about that. He said, "If you keep feeding the horses well, the sparrows will be fed well, too." That is what I think we are talking about when we talk about giving everyone over $200,000 a $22,000 reduction in his income tax.

As the Congressional Research Service and responsible economists have pointed out, 85 percent of the cuts in capital gains does not go to business investment, it goes to real estate and other assets.

Mr. President, a final point. My good friend from Wyoming compares the figures of 1969 and 1975. But there was a boom in 1969 and a recession in 1975. How can you compare investment levels in those 2 years? Of course investment was low in 1975—that was the worst recession since World War II.

Finally, as to Mr. Feldstein, he is also the economist who says the minimum wage is bad for workers. His work on capital gains is no better.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. KENNEDY. A few more minutes.

To summarize briefly:

The Finance Committee reduction in capital gains taxes is excessive. The top marginal rate on capital gains would be only 21 percent—lower than the marginal rate of a worker with $12,000 of taxable income. The bill provides a total capital gains tax reduction of $3.2 billion, with $2.3 billion going to the 1.4 percent of taxpayers with incomes over $50,000.

Individuals with incomes over $200,000 receive an average annual tax cut of over $20,000 each.

Reductions in capital gains rates are an extremely inefficient method of stimulating capital investment. According to the Library of Congress, 75 percent of capital gains are in assets other than stock, primarily real estate. Even of the 25 percent that goes to stocks, most goes to large corporations; only a tiny percentage of the capital gains cuts will go to entrepreneurial activities and venture capital.

Any increased sales of stock will be a one-shot, short-term phenomenon. There will be no long-term effect on levels of stock sales. The Feldstein research, on which such claims are based, has been discredited by the Treasury, the Council of Economic Advisers, and impartial economists. Hardly by coincidence, corporate executives and financial advisers supporting the proposal also have large personal portfolios of stock that will benefit from large capital gains cuts.

Capital gains cuts are an irrational method of offsetting inflation—the person who holds stock for a year gets the same tax reduction as the person who has held stock for 25 years. Moreover, inflation protection for the rich is a low priority. If Congress is to protect assets from inflation, it should begin with inflationary losses suffered by average taxpayers in savings accounts, life insurance policies and savings bonds.

The committee cut in capital gains rates is inconsistent with the capital gains proposals of the Kennedy administration in 1963, because the bill fails to couple capital gains cuts with other major capital gains changes proposed in 1963 as a package—such as taxing capital gains at death. These changes would have made a comprehensive revision of capital gains rules.

The revenue "gains" based on so-called "feedback" effects are a modern version of the old "trickle down" theory that has been rejected as unwise economic policy so many times in the past.

There is no relation between stock prices and capital gains rates. Stock prices actually rose to an all-time high after the 1969 change that increased the tax rates on capital gains.

The ratio of investment to GNP in the United States was 10.6 percent for the first half of 1978, which is higher than the average since World War II and close to the 1966 post-war peak of 10.8 percent. Additional investment may be desirable but proponents of large cuts in capital gains ignore the fact that current investment is good by historical standards.

Other nations do tax capital gains—Canada and the United Kingdom, for example. Still other nations tax some capital gains as ordinary income—that is with no special lower rate for capital gains. In addition, all major Western European nations impose an annual net wealth tax on capital.

Finally, OECD statistics on the ratio of tax receipts to GNP for foreign nations show that U.S. taxes are not out of line. In fact, European nations rely much more heavily on regressive payroll and value-added taxes, which the United States is wise to avoid.

Mr. President, I ask unanimous consent that three tables, showing the distribution of tax relief in my amendment compared to the committee bill, the ratio of investment to GNP, and foreign tax rates may be printed in the RECORD.

TABLE I.—CHANGES IN TAXATION OF CAPITAL GAINS

Income group	Percent of returns in class	70-percent exclusion (committee bill)		50-percent exclusion (Kennedy amendment)	
		Cost (millions)	Average tax cut	Cost (millions)	Average tax cut
0 to $50,000	98.6	$859	$226	$200	$58
$50,000 to $100,000.	1.1	829	1,713	343	709
$100,000 to $200,000.	.2	489	3,396	175	1,215
Over $200,000	.1	1,112	22,240	449	8,980
Total	100.0	3,288	734	1,187	265

TABLE II.—BUSINESS FIXED INVESTMENT AS A PERCENT OF THE GROSS NATIONAL PRODUCT IN CURRENT AND CONSTANT DOLLARS, 1929. 1946—2D QUARTER 1978

	Current dollars	1972 dollars
Year:		
1929	10.2	11.8
1946	8.0	8.8
1947	9.8	10.4
1948	10.1	10.5
1949	9.4	9.4
1950	9.5	9.4
1951	9.4	8.2
1952	9.0	8.7
1953	9.4	9.1
1954	9.3	9.0
1955	9.6	9.3
1956	10.4	9.7
1957	10.5	9.7
1958	9.3	8.7
1959	9.3	8.7
1960	9.4	9.0
1961	9.0	8.7
1962	9.1	8.9
1963	9.0	8.8
1964	9.4	9.3
1965	10.4	10.3
1966	10.8	10.8
1967	10.3	10.3
1968	10.3	10.3
1969	10.6	10.6
1970	10.2	10.2
1971	9.8	9.8
1972	10.0	10.0
1973	10.4	10.6
1974	10.7	10.7
1975	9.8	9.4
1976	9.7	9.4
1977	10.1	9.7
1978:		
I	10.3	9.9
II	10.6	10.2
Averages:		
1947–54	9.5	9.5
1955–64	9.5	9.1
1965–74	10.4	10.4
1975–78 (II)	10.0	9.6

Source: Bureau of Economic Analysis, Department of Commerce.

TABLE III.—TAX REVENUES AS A PERCENT OF GROSS DOMESTIC PRODUCT, BY SOURCE, SELECTED COUNTRIES, 1975 [1]

Country	Tax source						
	Individual income	Corporate income	Payroll	Goods and services [2]	Property	Wealth [3]	Total
Netherlands	12.7	3.6	18.0	11.6	0.6	0.4	46.9
Sweden	21.2	2.0	10.8	11.6	(4)	.3	46.0
Norway	17.1	1.3	8.3	17.1	.2	.8	44.7
Denmark	23.9	1.4	.5	15.2	1.7	.4	43.0
Belgium	13.2	3.1	13.1	11.6		.3	41.4
Austria	8.4	1.6	14.4	13.9	.3	.6	39.2
France	4.6	2.0	15.2	14.2	.7	.3	36.9
United Kingdom	14.3	1.9	6.7	9.6	4.0	.3	36.8
Germany	10.6	1.6	12.3	9.8	.4	.5	35.2
Canada	[5] 11.5	[5] 4.8	3.3	11.2	2.8	.3	34.0
Italy	5.0	2.0	14.8	10.4	.1	.1	32.3
United States	10.0	3.3	7.4	5.5	3.7	.4	30.3
Japan	5.1	3.4	5.1	5.2	1.2	.2	20.2

[1] Includes national and local taxes.
[2] Includes sales, value added, and excise taxes, taxes on imports, exports and transfers of property and other securities, and transactions taxes paid by enterprises.
[3] Includes annual net wealth taxes and death and gift taxes.
[4] Less than 0.05 percent.
[5] Adjusted to include unallocable income taxes in proportion to individual and corporation income tax revenues.

Source: Organization for Economic Cooperation and Development, "Revenue Statistics of OECD Member Countries, 1965–75" (Paris: OECD, 1977). Data are for calendar years except for the United States (fiscal year begins July 1) and Japan (fiscal year begins Apr. 1). Figures are rounded.

Mr. KENNEDY. Mr. President, the yeas and nays have been ordered; I am prepared to vote whenever the Senate is ready.

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). The question is on agreeing to the amendment of the Senator from Massachusetts (Mr. KENNEDY). The yeas and nays have been ordered, and the clerk will call the roll.

Mr. NELSON. Mr. President, is this a quorum call?

The PRESIDING OFFICER. This is a rollcall vote. There has been no response.

Mr. NELSON. Mr. President, I call attention to the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON. Mr. President, a parliamentary inquiry concerning an amendment that is not pending.

The PRESIDING OFFICER. The Senator will state the parliamentary inquiry.

Mr. NELSON. I ask the Chair to look at amendment No. 3973, which I propose, the only provision of which is to reduce the 70 percent exclusion in the capital gains to 60 percent, that being changed in all the necessary places in the bill. I understand a point may be raised about that. I ask the Chair whether, in his opinion, the fact that there is an amendment in several places without including all the intervening sentences makes the amendment in fact subject to a point of order.

The PRESIDING OFFICER. Quoting from the Senate Procedure, page 76,

> An amendment consisting of two provisions amending a bill at different points is in fact two amendments and cannot be offered together if the question be raised except by unanimous consent.

Mr. NELSON. For example, on page 343, line 17, the amendment strikes 70 percent and insert in lieu thereof 60 percent, and then the next part is on page 343, line 22, strike 70 percent and insert in lieu thereof 60 percent, on page 344, the same thing. The substance is exactly the same. All that the amendment does is to reduce the exclusion from 70 to 60 percent. If the amendment contained all the intervening sentences would it be subject to a point of order?

The PRESIDING OFFICER. It would not.

Mr. NELSON. Mr. President, I will get to this matter later. I think we probably ought to appeal the ruling of the Chair. If, in fact, on matters which are highly technical, which meant that if the machine had printed a few more sentences in it with the substance unchanged, it would be not subject to a point of order, if that is going to be sustained, I think it ought to be tested. Then I think that on each occasion, if that is the case, when a motion for cloture is made, each Member is entitled to have his amendments, no matter how many, gone through by the parliamentarian with an opinion given or else there is no way, unless each staff hires a parliamentarian, to find out about these highly technical nonsubstantive points of order which are going to be used to bar Members from voting on important substantive matters.

If that is the case, I would think that all of us ought to decide in the future never to vote for cloture until we get an agreement that everybody's amendment will be looked at and ruled germane or not germane, or subject to a point of order or not subject to a point of order, so that after that is settled, after a day, 2 days or 3 days of work by the parliamentarian, then we will vote for cloture knowing that we will not be barred on highly technical matters. Mr. President, I will raise this question at a later point.

Mr. KENNEDY. Mr. President——

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. The only point I make now is that the Senator effectively getting a ruling of the Chair, this will be the only vehicle by which the Senate will be able to express itself on whether the increase in the capital gains was in excess or not. Technically, this proviso maintains the current law. The exclusion is provided at 70 percent and this will be the only vote of the Senate on the issue of capital gains.

Mr. NELSON. There is no ruling on this amendment as of this moment, is there?

The PRESIDING OFFICER. No. The Chair only responded to a parliamentary inquiry.

Mr. NELSON. I will wish to raise that question at a later point.

May I say on the amendment there has been a lot of discussion, testimony, and rhetoric about capital gains. I do not think anybody really knows what the impact of changing the capital gains one way or the other would be. Distinguished witnesses have testified on both sides of the issue. I happen to think we ought to be at about where the President has suggested he would like to see us, and that is at a 28-percent tax maximum rate instead of 49 percent, instead of 21 percent as is in the committee bill or 35 percent as is in Senator KENNEDY's bill. I have taken a position on that in the Finance Committee. Therefore, I regret to say, though I think Senator KENNEDY's proposal is better than the Finance Committee proposal, the proposal half-way in between is an improvement on both. I would hope later to raise that question. Therefore, I cannot vote for Senator KENNEDY's proposal.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), and the Senator from Montana (Mr. MELCHER) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "nay."

The PRESIDING OFFICER. Is there any Senator in the Chamber who wishes to vote?

The result was announced—yeas 10, nays 82, as follows:

[Rollcall Vote No. 473 Leg.]

YEAS—10

Abourezk	Hart	Metzenbaum
Bayh	Hodges	Muskie
Clark	Kennedy	
Culver	McGovern	

NAYS—82

Anderson	Gravel	Nunn
Baker	Griffin	Packwood
Bartlett	Hansen	Pearson
Bellmon	Hatch	Pell
Bentsen	Hatfield,	Percy
Biden	Mark O.	Proxmire
Brooke	Hatfield,	Randolph
Bumpers	Paul G.	Ribicoff
Burdick	Hayakawa	Riegle
Byrd,	Heinz	Roth
Harry F., Jr.	Helms	Sarbanes
Byrd, Robert C.	Hollings	Sasser
Cannon	Huddleston	Schmitt
Case	Humphrey	Schweiker
Chafee	Inouye	Scott
Chiles	Jackson	Sparkman
Church	Javits	Stafford
Cranston	Johnston	Stennis
Curtis	Laxalt	Stevens
Danforth	Leahy	Stevenson
DeConcini	Long	Stone
Dole	Lugar	Talmadge
Durkin	Magnuson	Thurmond
Eagleton	Mathias	Weicker
Eastland	Matsunaga	Williams
Ford	McIntyre	Young
Garn	Morgan	Zorinsky
Glenn	Moynihan	
Goldwater	Nelson	

NOT VOTING—8

Allen	Hathaway	Tower
Domenici	McClure	Wallop
Haskell	Melcher	

So the amendment (No. 3889) was rejected.

AMENDMENT NO. 4127

(Purpose: To disallow the deduction of first class air fare, to disallow the deduction of entertainment costs, and to disallow the deduction for business meals in excess of $25 per person per meal)

Mr. KENNEDY. Mr. President, I call up my amendment numbered 4127.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes an amendment numbered 4127.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of section 371, add the following new sections:

SEC. 371(a).—DISALLOWANCE OF FIRST-CLASS AIR TRAVEL AND CERTAIN LUXURY TRAVEL AS A BUSINESS EXPENSE TAX DEDUCTION.

(a) IN GENERAL.—Section 162 of the Internal Revenue Code of 1954 (relating to trade or business expenses) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting immediately after subsection (g) the following new subsection:

"(h) FIRST-CLASS TRAVEL EXPENSES.—Notwithstanding the provisions of this section or section 212 (relating to expenses for production of income), no deduction shall be allowed for any expense paid or incurred for the transportation of any person by commercial aircraft in excess of an amount which is equal to the lowest priced, generally available, unrestricted fare, tariff, or ticket for such person on the same aircraft to the same destination at the same time of day and at the same time of year, as determined by the Secretary or his delegate.".

(b) DISALLOWANCE OF TRAVEL BY SUPERSONIC COMMERCIAL AIRCRAFT AS A BUSINESS EXPENSE TAX DEDUCTION.—Notwithstanding the provisions of section 162 (relating to trade or business expenses) or section 212 (relating to expenses for production of income) of the Internal Revenue Code of 1954, no deduction shall be allowed for any expense paid or incurred for the transportation of any person by supersonic commercial aircraft in excess of an amount which is equal to the retail price of the lowest priced, generally available, unrestricted fare, traffic, or ticket for the transportation of such person by nonsupersonic commercial aircraft to the same destination at the same approximate time of day and at the same time of year, as determined by the Secretary or his delegate.

(c) DISALLOWANCE OF FIRST-CLASS TRAVEL BY OFFICERS AND EMPLOYEES OF THE UNITED STATES TRAVELING ON APPROPRIATED FUNDS.—No funds appropriated by any Act of Congress may be obligated for the transportation of officers and employees of the United States by commercial aircraft in excess of an amount which is equal to the lowest priced, generally available, unrestricted fare, tariff, or ticket for such person on the same aircraft to the same destination at the same time of day and at the same time of year, as determined by the Secretary or his delegate. If there is no such fare ticket, the preceding sentence shall be applied in accord with regulations of the Secretary.

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall apply with respect to transportation that begins after December 31, 1978.

SEC. 371b. DISALLOWANCE OF CERTAIN ENTERTAINMENT, ETC., EXPENSES.

(a) GENERAL RULE.—Section 274(a) (relating to entertainment, amusement, or recreation) is amended to read as follows:

"(a) ENTERTAINMENT, AMUSEMENT, OR RECREATION.—

"(1) IN GENERAL.—No deduction otherwise allowable under this chapter shall be allowed for any item—

"(A) ACTIVITY.—With respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or

"(B) FACILITY.—With respect to a facility used in connection with an activity referred to in subparagraph (A).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to items paid or incurred after December 31, 1978, in taxable years ending after such date.

SEC. 371c. DISALLOWANCE OF DEDUCTION FOR CERTAIN BUSINESS MEAL COSTS.

(a) GENERAL RULE.—Section 274(a)(2) (relating to entertainment, amusement, or recreation) is amended to read as follows:

"(2) SPECIAL RULES.—Paragraph (1) shall not apply to—

"(A) BUSINESS MEALS.—

"(i) Expenses in excess of $25 per meal for food and beverages furnished to any individual under circumstances which (taking into account the surroundings in which furnished, the taxpayer's trade, business, or income-producing activity and the relationship to such trade, business, or activity of the persons to whom the food and beverages are furnished) are of a type generally considered to be conducive to a business discussion.

"(ii) Expenses in excess of $25 per meal for food and beverages that the taxpayer establishes to be directly related to, or, in the case of the furnishing of food and beverages directly preceding or following a substantial and bona fide business discussion (including business meeting at a convention or otherwise), to be associated with, the active conduct of the taxpayer's trade, business, or activity described in section 212.

"(iii) If the taxpayer is an employer, the expenses for meals furnished to his employees for his convenience and on his business premises, but only if the value of the meals is excludable from the gross income of the employees under section 119.

"(B) BUSINESS MEAL FACILITIES.—

"(i) Expenses in excess of $25 per meal per person with respect to a facility on the business premises of an employer which is used primarily in connection with furnishing food and beverages under circumstances described in subparagraph (A)(i) or (A)(ii).

"(ii) One-quarter of any dues or fees to any club or organization operated solely to provide meals under circumstances described in subparagraph (A)(i).

"(iii) The expenses with respect to a facility used primarily in connection with an activity referred to in subparagraph (A)(iii).

"(C) TRAVEL AWAY FROM HOME.—Traveling expenses while away from home in the pursuit of a trade or business or in pursuit of an activity described in section 212. For purposes of this subparagraph, traveling expenses include transportation and subsistence expenses (as defined in subsection (e)(4)(C)) of an individual in travel status.

For purposes of paragraph (1) and this paragraph, the furnishing of food or beverages shall be treated as an activity described in paragraph (1)(A).".

(b) CONFORMING AMENDMENTS.—

(1) Section 274(d) (relating to substantiation required) is amended by—

(A) striking out "an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity" and inserting in lieu thereof "business meals or business meal facilities",

(B) striking out "entertainment, amusement, recreation" and inserting in lieu thereof "meal", and

(C) striking out "entertained, using the facility, or receiving the gift." and inserting in lieu thereof "using the facility or receiving the meal or gift."

(2) Section 274(g) (relating to treatment of entertainment, etc., type facility) is amended by—

(A) striking out "portion of a facility" and inserting in lieu thereof "facility (or a portion thereof)", and

(B) striking out "such portion" and inserting in lieu thereof "such facility (or such portion)".

(c) EFFECTIVE DATE.—

The amendments made by this section shall, except as provided in subparagraph (2), apply to taxable years beginning after December 31, 1978.

Mr. KENNEDY. Mr. President, may we have order?

The PRESIDING OFFICER. There will be order.

Mr. KENNEDY. I will not take very much time.

Mr. President, this is, approximately, a $400 million gain for the Federal Treasury. It is targeted basically into three areas of expense account living.

One, the deduction for the first-class airfare. This reduces the business deduction for the part of the airfare that is above the coach fare.

Two, it prohibits the deduction for entertainment expenses, such as sports tickets and theater tickets.

The Senate Finance Committee has already eliminated the deduction for fishing and hunting lodges. This amendment provides for elimination of the deduction for sports tickets and theater tickets and other facilities.

Three, in the area of meals, it sets a $25 limitation on the cost of a meal which can be deducted.

This amendment has three elements.

The first part disallows as a deductible business expense the excess of commercial first-class air travel fare over

coach fare; coach fare would remain deductible. It would also prohibit the use of appropriated funds for first-class air travel by Members of Congress and Federal officers and employees.

Based on Treasury estimates, the amendment will produce a revenue gain of $281 million in calendar 1979 and $311 million in calendar 1980.

The Internal Revenue Code allows a tax deduction for "ordinary and necessary" business expenses. Over the years, the deduction has been abused in some cases as a subsidy for expense account living. Travel and entertainment expenses have been a particular and continuing source of controversy, confusion, and injustice in this aspect of the tax law.

The amendment deals with only a small part of the issue—first class versus coach class commercial air travel. It does not affect travel by rail, ship or private aircraft and it does not affect meals, hotels, entertainment, et cetera, all of which raise separate issues.

With a corporate tax rate of 48 percent each dollar of deductible expenses saves the corporation 48 cents in tax. In the case of first-class travel, the Treasury, and therefore the average taxpayer, pays half the cost of the first-class ticket. For high bracket individuals, the saving is even greater—the Treasury may pay up to 70 cents of each dollar of expenses.

It is a legitimate business decision to travel by air instead of by car or train or bus or ship. But once the decision is made to travel by air, the business objective is achieved by traveling in coach class. The executive travels on the same flight, and arrives at the same time and in the same place. This is all that is required to implement the valid business decision, and it is all that should be allowed as a deductible business expense. The additional cost of first-class travel is primarily a luxury item and should not be deductible.

There are many precedents for the legislation. The Internal Revenue Code and Regulations contain detailed rules limiting deductions for foreign travel and for luxury items like yachts, hunting lodges, gifts, and entertainment. These areas of existing law denying business deductions are far more complex than the present proposal. In addition, in the Tax Reform Act of 1976, Congress enacted specific limits on the deduction for foreign conventions.

Since the bill is likely to increase the demand for coach-class seats, the airline industry will meet the demand and the traveling public will benefit. A first-class seat now takes up the space of one and one-half coach seats. As airlines modify their cabin space, the total number of available seats per plan will increase, thereby relieving the crowded conditions and waiting lists that coach passengers now endure during peak travel periods, and producing a more rational allocation of space throughout the entire airplane.

The bill may accelerate the trend to lower air fares. We have had dramatic evidence in the last few months that low-cost air transportation will be eagerly availed of by travelers. Airline revenues may actually increase. To the extent the bill facilitates this development, citizens will benefit as both taxpayers and travelers.

Thus, the legislation is justified on grounds of both tax equity and airlines efficiency. The large annual Treasury subsidy for first-class air travel should be ended.

The second part of the amendment would disallow as a deductible expense all costs of entertainment activities and facilities.

The Senate Finance Committee approved a provision denying a deduction for the cost of acquiring or maintaining entertainment facilities such as yachts, hunting lodges, et cetera, and for fees paid to athletic, sporting, country or social clubs.

But substantial areas of tax deductible entertainment are not covered by the Finance Committee bill, including tickets for athletic and theatrical events and entertainment of "business" friends at parties and other social events.

Full disallowance of deductions for entertainment costs will increase revenues by $114 million.

Entertainment costs are the purest form of personal consumption. The vast majority of Americans pay for their entertainment out of every tax dollar. But for a privileged few—high income individuals and executives of large corporations—as much as 70 percent of entertainment costs are subsidized by the U.S. Treasury.

One result is that the best seats at baseball, basketball, football and other sporting events are always occupied by the subsidized spectators. The average fan, paying for his own ticket, sits in the farthest reaches of the stadium or arena.

Present law is too vague, too subjective and too open to abuse. Let me cite a few examples:

A segment of a recent "60 Minutes" broadcast revealed corporate jets flying corporate executives and their friends into New Orleans for the Super Bowl. It also featured lavish parties thrown for their favored few—all at the expense of the average taxpayer.

Luxury "superboxes" in football stadiums, baseball parks, and basketball arenas are occupied by the largest corporations. The annual cost of one of these plush facilities—used only by the executives and their "business" friends—can be $15,000 a year or more—all subsidized by the U.S. Treasury.

A dental surgeon deducted $17,000 for costs of entertaining other dentists and their wives—all personal friends of the dentist—at his home, at athletic events, at a country club, and at a vacation cottage. Obviously, it is important to be more than just a "friend" to a high-income individual; it is crucial to be a "business" friend.

The controlling shareholder of a corporation deducted $26,000 for entertainment expenses at a cottage on a Caribbean island. What is truly remarkable is that the individual drew a salary of only $19,000 from the corporation.

Having "business friends" allows some individuals to "double their pleasure" in attending sporting events. Suppose a 50 percent bracket taxpayer wants a season ticket to his favorite team's home games. The ticket costs $100. If the individual has some "business friends" he can buy two season tickets for the same $100 out of pocket cost, since $100 of the total $200 cost is deductible. The average fan, who only has "friends," not "business friends" would have to pay the full $200 himself.

Under the amendment, no deduction will be allowed for the cost of entertainment. In addition to the items covered in the Finance Committee bill, deductions will also be disallowed for other entertainment costs, such as tickets to sporting events and theatrical performances, as well as other types of entertainment.

As a result, the entertainment costs of all taxpayers will be treated alike—there will no longer be a privileged small group whose entertainment is subsidized by other taxpayers, who must budget for their entertainment in after-tax dollars.

Mr. President, entertainment costs are not like other deductible business costs, such as advertising to promote good will. Paying entertainment costs provides a personal benefit to the recipient, unlike other business costs such as advertising. Where the entertainment consists heavily of personal consumption, it is inappropriate for the Treasury to be subsidizing the entertainment because of a presumed "business" relationship.

The amendment will not have an adverse effect on business practices. If entertainment makes good economic sense, business will continue to entertain. The present deduction distorts business decisions in the other direction, by favoring the usage of entertainment as opposed to other business promotion methods.

Nor will the amendment hurt professional athletic teams that rely on corporations to buy blocks of season tickets and luxury boxes. If it is good business to buy the tickets, corporations will do so, but not with a Federal tax subsidy. There is no chance that Congress, in order to aid professional athletic teams, would appropriate Federal dollars for corporations to defray part of the cost of season tickets to athletic events. Congress should not allow a similar subsidy through the back door of the tax laws.

More vigorous enforcement of present law will not take care of the abuses in this area.

Present law is too vague and it is too easy to hide abuses in such innocuous categories as "business promotion," "advertising," et cetera. The present rule is an invitation to taxpayers to label all entertainment as "business" and hope that the item is not picked up in audit.

Finally, it is sometimes said that entertainment for business persons is the same as fertilizer for farmers. It increases the yield. But fertilizer has its own built-in disincentive that keeps it from becoming a popular item for personal, as opposed to business, consumption. It smells, just like this deduction.

Mr. HARRY F. BYRD, JR. May we have order, Mr. President? We cannot hear the Senator from Massachusetts.

The PRESIDING OFFICER. The Senate will be in order.

Mr. KENNEDY. Now, I do not know how it works in other States. But I daresay that half of the tickets to the major sporting events in my own city of Boston—whether it is the Boston Bruins, the New England Patriots, the Boston Celtics, or the Boston Red Sox—are purchased by corporations and deducted as a business expense. That is true in instance after instance. The ordinary fan cannot get into these major events because corporations have purchased these tickets. Basically, they have boosted the cost of these tickets.

I know an argument will be made that we have to provide this back door subsidy, in order to support professional sports and professional athletics, and that maybe we have to do it to support college athletics. I am sure that argument will be made.

We are spending tax dollars on sports and theaters in this way. We are subsidizing wealthy business persons who are indulging their sports and other interests. They could never get an application from Congress for these purposes. Yet we are appropriating tax dollars indirectly, through these deductions.

That is the reason the average sports fan cannot get tickets to those games. The tickets are bought up for the season by the companies and corporations that take them as deductions. They virtually close out the average fan. I say, business ends when you go through the turnstile, and entertainment begins. And you shouldn't get a tax break for entertainment.

Finally, Mr. President, on the issue of the meal deduction over $25, the Senate spoke on that the other day. We voted on Saturday on a tougher version of the amendment. This says, "OK, we'll set a limit at $25 a meal." Let us draw the line someplace. And $25 is where we draw it.

Those three items are included in this amendment.

Mr. President, I reserve the remainder of my time.

Mr. PACKWOOD. Mr. President, on my time, will the Senator from Massachusetts respond to a question?

I did not understand about the ticket at the sports park. Will the Senator explain that again?

Mr. KENNEDY. It effectively eliminates the business deduction for sports tickets.

Mr. PACKWOOD. This means season tickets to a basketball game?

Mr. KENNEDY. The Senator is correct—by companies or corporations. They buy up the boxes in the major sporting arenas and virtually close out the average fan.

Mr. PACKWOOD. It does not matter whether it is one of those expensive sky suites or regular seats?

Mr. KENNEDY. If it is an entertainment expense and considered an entertainment expense, it is covered.

Mr. PACKWOOD. And does it apply to theaters, also?

Mr. KENNEDY. It applies to theaters, also.

Mr. PACKWOOD. I thank the Senator.

Mr. LONG. Mr. President, I move that the amendment be laid on the table, and I ask for the yeas and nays.

Mr. KENNEDY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I ask for a division. I would be glad to have 10-minute votes on this, back to back.

The PRESIDING OFFICER. Will the Senator withhold for a moment?

After the motion to table has been made, the motion for a division comes too late.

Mr. LONG. What is that, Mr. President?

The PRESIDING OFFICER. After the motion to table has been made, the motion for a division comes too late.

The question is on agreeing to the amendment of the Senator from Massachusetts. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY) and the Senator from Montana (Mr. MELCHER) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER) and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "yea."

The PRESIDING OFFICER (Mr. ANDERSON). Have all Senators voted?

The result was announced—yeas 70, nays 22, as follows:

[Rollcall Vote No. 474 Leg.]

YEAS—70

Anderson	Goldwater	Muskie
Baker	Gravel	Nunn
Bartlett	Griffin	Packwood
Bayh	Hansen	Pearson
Bellmon	Hatch	Percy
Bentsen	Hatfield, Mark O.	Proxmire
Biden	Hatfield, Paul G.	Randolph
Brooke	Hayakawa	Ribicoff
Bumpers	Heinz	Roth
Byrd, Harry F., Jr.	Helms	Schmitt
Cannon	Huddleston	Schweiker
Case	Inouye	Scott
Chafee	Jackson	Sparkman
Chiles	Javits	Stafford
Cranston	Laxalt	Stennis
Curtis	Long	Stevens
Danforth	Lugar	Stone
DeConcini	Magnuson	Talmadge
Dole	Mathias	Thurmond
Eagleton	Matsunaga	Weicker
Eastland	McIntyre	Williams
Ford	Morgan	Young
Garn	Moynihan	Zorinsky
Glenn		

NAYS—22

Abourezk	Hodges	Nelson
Burdick	Hollings	Pell
Byrd, Robert C.	Humphrey	Riegle
Church	Johnston	Sarbanes
Clark	Kennedy	Sasser
Culver	Leahy	Stevenson
Durkin	McGovern	
Hart	Metzenbaum	

NOT VOTING—8

Allen	Hathaway	Tower
Domenici	McClure	Wallop
Haskell	Melcher	

So the motion to lay on the table amendment No. 4127 was agreed to.

Mr. LONG. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4153

Mr. GLENN. I send my amendment 4153 to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Can the Senator send a copy of his amendment to the desk?

Mr. GLENN. I can send a copy. It is listed in the RECORD as 4153. Is it not at the desk? Very well, we will send up another copy.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. GLENN) proposes an amendment numbered 4153.

Mr. GLENN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SEC. (a) For the purpose of this title—

(1) The term "tax expenditure provision" means any provision of Federal law which allows a special exclusion, exemption, or deduction in determining liability for any tax, a preferential rate of tax, or a deferral of tax liability.

(2) The term "Committee on Ways and Means" means the Committee on Ways and Means of the House of Representatives.

(3) The term "Committee on Finance" means the Committee on Finance of the Senate.

(4) The term "Joint Tax Committee" means the Joint Committee on Taxation of the Congress.

SEC. (a) During the Ninety-sixth Congress, the Committee on Ways and Means and the Committee on Finance shall report, and the Congress shall complete action on, a bill prescribing as schedule of reauthorization dates, with such modifications as may be necessary to take into account the considerations set forth in section for all tax expenditure provisions in this bill (other than those specifically exempted in the bill to be enacted pursuant to this section). Under such schedule there shall be 5 first reauthorization dates for tax expenditure provisions beginning with September 30, 1982, and continuing on September 30 of each of the following 4 even-numbered years, and each subsequent reauthorization date applicable to a tax expenditure provision shall be the date 10 years following the preceding reauthorization date.

(b) Upon enactment of the bill described in subsection (a), and subject to the exemptions and modifications provided pursuant to subsection (a), each tax expenditure provision shall cease to be effective on January 1 of the year following the first (or subsequent) reauthorization date provided in the schedule adopted pursuant to subsection (a) unless it would otherwise cease to be effective at an earlier date, or unless it is reauthorized by a law enacted after the date of enactment of this Act and during or subsequent to the Congress in which it is scheduled for reauthorization.

(c) It shall not be in order in either the Senate or House of Representatives to consider a bill or resolution, or amendment thereto, which provides for the reauthorization of all or part of a tax expenditure pro-

vision which is in the schedule adopted pursuant to subsection (a) (i) for an indefinite period of time, (ii) for a period exceeding 10 taxable years, or (iii) (except during the Congress in which the next reauthorization date for such provision occurs) for any taxable year beginning after the next reauthorization date applicable to such tax expenditure provision.

(d) Reauthorization dates shall be prescribed under subsection (a) so as to provide for a review of tax expenditure provisions during the same Congress as the review under Part B of the Sunset Act of 1978 of programs having similar objectives, consistent with providing an even distribution of the work of reviewing tax expenditure provisions during each Congress and taking into consideration the economic impact of the review process and the interest of avoiding adverse impact on previously acquired assets.

SEC. . In carrying out the requirements of section the Committee on Ways and Means, the Committee on Finance, and the Congress may prescribe such transition rules, conforming and technical changes, and substitute provisions to minimize unfairness, to mitigate any adverse effect which might result for taxpayers who have relied on a tax expenditure provision, or to provide for an orderly end of the effectiveness of any such provision.

SEC. . (a) It shall not be in order in either the Senate or the House of Representatives to consider any bill, resolution, or amendment thereto, which provides for the reauthorization of a tax expenditure provision for a taxable year beginning after the next reauthorization date applicable to such provision, unless a reauthorization review of such provision has been completed during the Congress in which the reauthorization date for such provision occurs, and the report accompanying such bill or resolution includes a recommendation as to whether the tax expenditure provision should be continued without change, continued with modifications, or terminated, and includes, in the scope and detail the Committee on Ways and Means and the Committee on Finance deem appropriate, the following:

(1) information and analysis on the operation, costs, results, accomplishments, and effectiveness of the tax expenditure provision;

(2) an identification of any other tax expenditure provisions or any other programs having similar objectives, and a justification of the need for the proposed tax expenditure in comparison with those tax expenditure provisions or programs which may be potentially conflicting or duplicative; and

(3) an identification of the objectives intended for the tax expenditure provision, and the problems or needs which the tax expenditure provision is intended to address, including an analysis of the performance expected to be achieved, based on the bill or resolution as reported.

Mr. GLENN. Mr. President, after cloture was invoked on the tax bill, the so-called Glenn amendment applying the sunset process to tax incentives and tax credits was ruled nongermane, along with other amendments then pending to the bill.

This new amendment was filed prior to cloture, has no budgetary impact whatsoever, and differs from the first in that it would apply only to the tax incentives in this pending tax bill.

Like the first amendment, it would not in itself terminate any of these tax incentive provisions. What it would do is simply provide for the establishment through legislation to be enacted in the next Congress of an orderly review process for these provisions.

Any of the tax incentives involved could be exempted from the process if the Congress so chose. In other words, the amendment would merely instruct the next Congress to examine each tax incentive provision in the enacted legislation in order to determine whether a 10-year review and reauthorization process on the order of that of the sunset legislation should be applied to it.

Mr. President, there was a great deal of misunderstanding that was injected into our discussion on the original amendment, and I hope we can clear any of that away.

To show the importance of what we are doing and what this would apply to, I point out that in the Finance Committee report which accompanies this Revenue Act of 1978, not including what we have added on the Senate floor, has tax incentives for fiscal year 1979 which would result in a revenue loss of nearly $1.7 billion; this revenue loss would increase to $6.5 billion for 1980; $11 billion for 1981; over $16 billion for 1982; and $18.1 billion by 1983.

The cumulative total revenue loss of these tax incentives is $53.6 billion over the next 5 years.

All we are asking for is to establish a review process over those particular items in this bill when it is enacted.

We tried a few moments ago to get a running total of what tax incentives have been added through Senate floor action on this bill, and we were unable to get an accurate total. But we know it certainly will run that $53.6 billion figure up considerably.

All we are asking is that there be some sort of review process established to consider tax incentives on a timely basis. We are not advocating some crazy theory, as the Senator from Wyoming has termed this, that purports to represent that the Government owns all the wealth in this country and only should give back a certain part to the people. I do not subscribe to that any more than the people of Wyoming.

All this bill does is try to set up a procedure for orderly consideration of tax incentives which are in this bill.

So I think all doubts about this have been removed.

I reserve the remainder of my time for whatever comments the floor managers of the bill might have.

Mr. CURTIS. Mr. President, I yield myself 5 minutes.

Even though this amendment is limited to the tax expenditures in the pending bill, it constitutes an adoption of a principle. Once we embark upon it we will have injected into our tax system the question of uncertainty. We will have put into our economy that feeling that you cannot depend upon the permanency of the tax law.

There are those who believe that all so-called tax expenditures are wrong per se. An examination of those that come within the definition will prove to the contrary. For instance, in the field of company pensions there is a tax preference there. Half of the working public do not have the benefit of a company pension. All the money that the employer puts into the pension fund is tax free. The earnings of the pension fund are tax free.

Is that wrong? Is it wrong to encourage companies to provide pensions for the people that work? I think not. But, now, is it wrong, then, for that tax expenditure to grow? If it is not wrong for some companies to have a tax benefit that makes it possible to have a pension plan, is it not desirable that other companies that have not extended that fringe benefit to their employees do likewise?

We had back here a chart the other day that held in horror the amount of so-called tax expenditures, and then horror again because they were growing.

Now, according to the statute, a tax expenditure is defined much more broadly than in the distinguished Senator's amendment. Any deduction is a tax expenditure according to the statute.

We were able to raise the personal exemption to $1,000. Is that bad? That is a growth in tax expenditures.

Mr. President, this amendment is based upon the philosophy that all tax expenditures, or most of them, are bad, and that the growth of tax expenditures means something is wrong.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. CURTIS. Not on my time.

Mr. GLENN. Will the Senator yield on my time?

Mr. CURTIS. Happy to.

Mr. GLENN. How the Senator can read into this amendment any such strange philosophy as that he has just expressed is beyond my comprehension.

We do not adopt any new principle. The principle we adopt here is not a principle, as the Senator says, of trying to put in a deep-freeze pension funds, of trying not to encourage pension savings that will accrue to the future incomes of older people.

The one thing this amendment provides is that there will be a review. The review itself is neutral, as I have repeated many times on this floor in the past few days. The result of the review could be to increase the incentive to save; it is working so well, we can leave it at the same level, or, if it is not working, we can terminate it. All we are saying is that there should be a review process.

All those tax expenditures which the Senator from Wyoming has brought up that affect unemployment, workmen's compensation, sick pay, veterans', and GI benefits may very well be increased upon review, not sunsetted. But by precluding such a review, or saying we will not even provide for such a review, we are in effect saying to those people, "Whatever benefits you are receiving now, do not expect us to increase them, because we are probably not going to look at them for the next 10 years."

That is not the philosophy behind this amendment. The philosophy behind this amendment is that we will in fact provide an orderly review process, and nothing more. It provides for a review process, and nothing more; it is that simple.

I yield to the Senator for a reply on his time.

The PRESIDING OFFICER (Mr. LEAHY). The Senator from Nebraska.

Mr. CURTIS. Mr. President, it is not a review process. It stops, and then Congress has to reenact it. A President of the United States and 34 Senators can end it.

Now, here is where it comes in: Who is going to set up a pension plan that the actuaries have to fund or have to work out a funding plan for, and make it solvent down through the years, if they do not know what the law will be at the end of the road? And the big difficulty of this sunset provision applied to our tax law is that it creates a doubt and lack of confidence in the continuity of our tax system.

Mr. President, a great deal of the country's planning is long range. Also—and I am not confining my remarks to this bill, because we are adopting a principle here that is dangerous and wrong—suppose we have a termination of the allowance for research, long-term research? What company is going to build a great laboratory and gather students and scholars from all over, and launch out on a long-range research program, if they know it is going to end?

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. CURTIS. Mr. President, this is the most far-reaching proposal in the field of taxation this Senator has witnessed.

Mr. MUSKIE. Mr. President, I just heard an argument that I found most interesting, and I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MUSKIE. I have heard it so much that I believe I should answer it. It is most interesting. It is the question of certainty.

I assume that when it was advanced, the Senator advancing it was asking us to believe that all these tax expenditures or incentives that affect business decisions are permanent law. That is the underlying assumption, namely, that any such provision of the tax law that is not permanent creates chaos or uncertainty in the investment world, in the financial world, and in the business world.

Let me refer to the report of the Committee on Governmental Affairs on this sunset bill, dated July 1, 1977. Here is a list of such tax provisions which at that time the tax-writing committees themselves had set definite termination dates on:

Tax expenditure:	Year
Investment tax credit generally will revert from 10 percent to 7 percent	1980
Expanded corporate surtax exemption	1978
Employment tax credit	1978
ESOP tax credit	1980
Special investment credit treatment for railroads and airlines	1982
Special investment credit treatment for utilities	1980
5-year amortization for low-income housing rehabilitation	1978
Exclusion for prepaid legal expenses	1981
Deduction for removing barriers for the handicapped	1979

And so on and so on. And some of the tax expenditures in the pending tax bill have termination dates.

Well, if the Finance Committee believes so surely that in order to give stability and certainty and investment assurance to the investment, financial, and business world, these things must be made permanent, why have they not made all such provisions permanent?

For a very simple reason: They themselves acknowledge that these provisions, and especially the new ones, ought to be tried. We ought to see whether or not they will work. They ought to be subject to modifications. So they are adopting the very philosophy that underlines the Glenn amendment when they enact these provisions.

We ought to look at these things, and not freeze them in ice. The Finance Committee itself does not do so. There is provision after provision in the Tax Code that can be regarded as an incentive or guarantee of certainty to the financial, investment, and business world, that is not treated as such in the Tax Code. They must be reviewed from time to time and reenacted into law.

That is all that Senator GLENN is requesting. But because Senator GLENN proposes to establish it as a congressional policy to do so, suddenly his action becomes un-American, alien, a shock to the business world, the kind of trauma that our economic structure cannot stand.

Then the most laughable thing about it all, Mr. President, the Senator asks us to accept his argument. For the last 4 days on the floor of this Senate we have seen the most chaotic, unpredictable, uncertain procedure for writing tax policy that I have ever seen.

If the business world of America could sit in these galleries and watch how tax policy is written, they would not invest another nickel in America. And you try to tell me that establishing an orderly process for looking at this is against the public interest? I ask anybody in the gallery who has been listening to this: Would we give more assurance to the business world if we adopted this kind of orderly process for looking at these provisions of the tax cut rather than relying on the disorder and chaos of this floor?

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GLENN. I yield 2 additional minutes.

Mr. MUSKIE. The Finance Committee came to the floor with this bill that would cut taxes by 1979 by $20.5 billion. What we have done now is to insure that $20.5 billion tax cut will amount to $144 billion in fiscal year 1983. Is that an orderly way to write taxes? Is that the tax writing method that brings assurance to the country that the country is in safe hands?

Mr. President, I have heard that argument until it is a little bit upsetting to the stomach.

This amendment is a sensible thing. It does not render judgment with respect to anything that is described as a tax expenditure, a tax loophole, a tax preference, a tax incentive, or a tax disincentive. All it says is that on a regular schedule we look at these provisions, just as the tax-writing committees tell us we must look at provisions from time to time. But we must do it on an orderly schedule so that we can all anticipate the time when the provisions will be reviewed, so that the business world and the investment world can anticipate the time they will be reviewed, so that we can all look at their performance to see how they are performing and render a second judgment.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GLENN. I yield an additional 2 minutes.

Mr. MUSKIE. And if need be a third judgment on the effectiveness and performance of those provisions of the law.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Chair will remind the Senator that the Senator from Ohio was not allowed to yield time to the Senator.

Mr. MUSKIE. I understand that, and I believe I have enough of my own time to take care of this.

The PRESIDING OFFICER. The Chair understands. The question is on agreeing to the amendment.

The Senator from Ohio.

Mr. GLENN. Mr. President, I appreciate the support of the Senator from Maine for this very simple amendment. I could not agree more. The big issue was certainty and yet he has read off item after item on which the Finance Committee itself has recommended termination dates. If there is anything we need in our tax laws it is certainty. The certainty that the tax laws will be fair, certainty that we can rely on them. The certainty that we will not have some tax incentives become the infamous loopholes, the tax breaks that benefit the very few, that do not accomplish the social or business purpose for which they were originally intended, and which, in turn, siphon off needed tax dollars for unworthy purposes. Only by orderly review processes will we ever ferret these out at the earliest possible date.

How we can say now that a tax law passed today will be just as valid down the road in 10 years without any such review, without any such consideration, defies reason.

Yet that is all we are trying to do with this amendment. We want certainty, too. We want certainty that our tax laws will be fair. That is what this guarantees, that a review process will be set up that will consider these tax incentives on an orderly and timely basis over a 10-year period of time.

In establishing that orderly review process we even provide the Finance Committee an opportunity to recommend to the Senate for its approval that certain tax incentives in this bill that we realize are particularly good ones be exempted from even going through this review process.

In order to reduce any potential uncertainty due to the establishment of a review procedure, we provide that the Finance Committee can recommend to

the Senate transition rules for tax expenditures included in the schedule in order to insure that those who would rely on those provisions not be adversely affected.

Mr. President, I reserve the remainder of my time. If anyone else wishes to speak, they may.

Mr. LONG. Mr. President, I believed most of this was left behind us when we voted for cloture. We thought that was the idea of voting for cloture, that we would get on to the bill itself, the tax cut bill.

Mr. President, the business community has been assured by the administration that they would recommend that the investment tax credit be made "permanent." Well, this amendment would make it expire in 2 years, maybe 10, something along that line. The earned income credit is permanent in the bill. That helps low-income individuals. That would expire. The capital gains provision in this bill would expire.

It is the same thing about the targeted jobs credit or the exemption for the disabled or the exclusion of the employee benefit plan. The same thing would also be true for the employee stock ownership plans.

Therefore, Mr. President, I think the Senate wants to get on with the bill. I think that they already thought that the amendment was left behind. Mr. President, I do ask that the amendment be laid on the table and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to lay on the table the amendment of the Senator from Ohio. The yeas and nays have been orderd and the clerk will call the roll.

The legislative clerk called the role.

Mr. WILLIAMS. Mr. President, on this vote I have a live pair with the Senator from Montana (Mr. MELCHER). If he were present and voting, he would vote "aye." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from Montana (Mr. MELCHER), and the Senator from South Dakota (Mr. ABOUREZK) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "yea."

The ACTING PRESIDENT pro tempore. Have all Senators in the Chamber voted?

The result was announced—yeas 50, nays 41, as follows:

[Rollcall Vote No. 475 Leg.]

YEAS—50

Allen	Bentsen	Cannon
Baker	Byrd, Harry F., Jr.	Case
Bartlett	Byrd, Robert C.	Chiles
Bellmon	Curtis	Cranston
Danforth	Huddleston	Schmitt
Dole	Inouye	Schweiker
Eagleton	Johnston	Scott
Eastland	Laxalt	Sparkman
Garn	Long	Stafford
Goldwater	Magnuson	Stennis
Gravel	Matsunaga	Stevens
Hansen	McIntyre	Stone
Hatch	Moynihan	Talmadge
Hatfield, Paul G.	Nunn	Thurmond
Hayakawa	Percy	Weicker
Helms	Randolph	Young
	Ribicoff	
	Roth	

NAYS—41

Anderson	Griffin	McGovern
Bayh	Hart	Metzenbaum
Biden	Hatfield, Mark O.	Morgan
Brooke	Heinz	Muskie
Bumpers	Hodges	Nelson
Burdick	Hollings	Packwood
Chafee	Humphrey	Pearson
Church	Jackson	Pell
Clark	Javits	Proxmire
Culver	Kennedy	Riegle
DeConcini	Leahy	Sarbanes
Durkin	Lugar	Sasser
Ford	Mathias	Stevenson
Glenn		Zorinsky

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Williams, against.

NOT VOTING—8

Abourezk	Hathaway	Tower
Domenici	McClure	Wallop
Haskell	Melcher	

So the motion to lay on the table was agreed to.

Mr. GOLDWATER. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CASE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CURTIS. Third reading.

The PRESIDING OFFICER. Third reading has been requested.

Are there further amendments? If not——

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Mr. President, I see the Senator from Oklahoma on his feet. I withdraw my request for recognition.

AMENDMENT NO. 4029

(Purpose: To count aid to families with dependent children payments when calculating 50 percent support test)

Mr. BELLMON. Mr. President, I call up amendment No. 4029.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. BELLMON) proposes an amendment numbered 4029.

Mr. BELLMON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 223, after line 23, add the following new section:

"SEC. 166. PAYMENTS TO BE DISREGARDED FOR PURPOSES OF SUPPORT AND MAINTENANCE OF HOUSEHOLD TESTS.

"(a) WELFARE PAYMENTS DISREGARDED IN DETERMINING MAINTENANCE OF HOUSEHOLD.—Section 2 (relating to definitions and special rules) is amended by adding the following at the end of both subsections (a)(1) and (b)(1):

"'Any benefit provided under any Federal, State, or local governmental assistance program shall be treated as furnished by the taxpayer for the maintenance of the household if the benefit is provided to or on behalf of the taxpayer or a child of the taxpayer (within the meaning of section 151(e)(3)) who has the same principal place of abode as the taxpayer, provided, however, that under regulations prescribed by the Secretary, the benefit received on behalf of the child is not attributable to the past or present services of the child.'.

"(b) WELFARE PAYMENTS DISREGARDED IN DETERMINING SUPPORT.—Section 152 (relating to definition of dependent) is amended by adding the following new subsection:

"'WELFARE PAYMENTS DISREGARDED IN DETERMINING SUPPORT.—For purposes of this section, whenever it is necessary to determine the extent of the support of a child of the taxpayer provided by the taxpayer, any benefit provided under any Federal, State, or local governmental assistance program shall be treated as furnished by the taxpayer for the support of such child if the benefit is provided to or on behalf of the taxpayer or a child of the taxpayer (within the meaning of section 151(e)(3)) who has the same principal place of abode as the taxpayer: *Provided, however,* That under regulations prescribed by the Secretary, the benefit received on behalf of the child is not attributable to the past or present services of the child.'.

"(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to taxable years beginning after December 31, 1978.".

On page 127, amend the table of contents by adding after item 165 the following:

"SEC. 166. Payments to be disregarded for purposes of support and maintenance of household tests.".

The PRESIDING OFFICER. As the Chair, under the precedents, is required to do, this amendment is ruled out of order as being nongermane.

AMENDMENT NO. 3996

(Purpose: To eliminate the WIN credit and include WIN recipients under the targeted jobs credit)

Mr. BELLMON. Mr. President, I call up amendment No. 3996.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. BELLMON), for himself, Mr. RIBICOFF, Mr. BAKER, and Mr. DANFORTH, proposes an amendment numbered 3996.

The amendment is as follows:

On page 264, strike out lines 6 through 10.

On page 264, line 20, strike out "or".

On page 264, line 21, strike out the period and insert in lieu thereof ", or".

On page 264, between lines 21 and 22, insert the following:

"(G) a WIN registrant.".

On page 269, between lines 12 and 13, insert the following:

"(12) WIN REGISTRANT.—The term 'WIN registrant' means any individual who—

"(A) is certified by the Secretary of Labor as having been placed in employment under a work incentive program established under section 432(b)(1) of the Social Security Act; or

"(B) is eligible for financial assistance under a State plan approved under part A of title IV of the Social Security Act and has continually received such assistance during the 90-day period which immediately precedes the date on which such individual is hired by the employer.".

Beginning on page 275, line 12, strike out

all through page 284, line 7, and insert in lieu thereof the following:

"SEC. 322. WORK INCENTIVE PROGRAM CREDIT TERMINATION.

"Subsection (a) of section 50B (relating to definitions; special rules for WIN credit) is amended by adding at the end thereof the following new paragraph:

"'(4) TERMINATION.—For purposes of this subpart, the term "work incentive program expenses" shall not include any amount paid or incurred by the taxpayer in a taxable year beginning after December 31, 1978.'".

Mr. TALMADGE. Mr. President, I make the point of order the amendment is not in order; it is not germane.

The PRESIDING OFFICER. The Chair rules it out of order, as being out of order on its face, as hitting the bill in more than one place.

Mr. BELLMON. Mr. President, is the amendment divisible?

The PRESIDING OFFICER. Having been ruled out of order, it is no longer divisible.

Are there further amendments?

Mr. HANSEN. Third reading.

Mr. BAKER. Mr. President, if I could, I notice we have good attendance on the floor. This is the second time the Chair has called for further amendments and suggested the possibility of third reading.

I certainly do not want any Senator cut off on this side of the aisle. I would urge them to offer their amendments, to call them up at this time.

Mr. President, I see the Senator from Kansas on his feet.

AMENDMENT NO. 4044

(Purpose: Increase in and simplification of earned income tax credit)

Mr. DOLE. Mr. President, I call up amendment No. 4044 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an amendment numbered 4044:

Strike page 140, line 9 through page 148 line 25 and insert the following:

SEC. 104. INCREASE IN AND SIMPLIFICATION OF THE EARNED INCOME TAX CREDIT.

(a) INCREASE IN CREDIT.—Subsection (a) of section 43 (relating to earned income credit) is amended—

(1) by striking out "chapter" and inserting in lieu thereof "subtitle",

(2) by striking out "10 percent" and inserting in lieu thereof "15 percent".

(b) REVISION OF THE LIMITATION.—Subsection (b) of section 43 is amended to read as follows:

"(b) LIMITATION.—The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(1) $600, over

"(2) 15 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $6,000.".

(c) AMOUNT OF CREDIT TO BE DETERMINED UNDER TABLES.—Section 43 is amended by adding at the end thereof the following new subsection:

"(f) AMOUNT OF CREDIT TO BE DETERMINED UNDER TABLES.—

"(1) IN GENERAL.—The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

"(2) REQUIREMENTS FOR TABLES.—The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than $50 each—

"(A) for earned income between $0 and $9,000, and

"(B) for adjusted gross income between $6,000 and $9,000.".

(d) ADJUSTMENT OF CREDIT FOR STATES FOR WHICH THE OFFICIAL POVERTY LINE IS UNUSUALLY HIGH.—Section 43 is amended by adding after subsection (f) the following new subsection:

"(g) ADJUSTMENT OF AMOUNTS FOR CERTAIN HIGH COST-OF-LIVING AREAS.—

"(1) IN GENERAL.—If the official poverty line for any noncontiguous State for the 12-month period ending on June 30 of each year is at a level equal to or greater than 15 percent above the official poverty line for the 48 contiguous States for that period, then the Secretary shall adjust the dollar amount set forth in subsection (a) and each dollar amount set forth in paragraphs (1) and (2) of subsection (b) and subparagraphs (A) and (B) of subsection (f)(2) for residents of that State by increasing it to an amount (rounded to the nearest multiple of $50) which bears the same ratio to each of those dollar amounts as the official poverty line for that State for the period bears to the official poverty line for the 48 contiguous States for that period. Each such dollar amount, as adjusted and rounded by the Secretary under the preceding sentence, shall be the dollar amount in effect for residents of that State for taxable years ending after the 30th day of June of the year in which the adjustment is made.

"(2) OFFICIAL POVERTY LINE.—For purposes of this paragraph, the term 'official poverty line' means the official poverty line defined by the Director of the Office of Management and Budget under section 625 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d) and revised under that section.

"(3) RESIDENCES—For purposes of this paragraph, an individual shall be treated as a resident of a State if he maintains a household in that State and is physically present in that State for more than 210 days during the taxable year.".

(e) EXCLUDABLE EARNED INCOME TAKEN INTO ACCOUNT.—Subparagraph (B) of section 43(c)(2) (defining earned income) is amended by striking out clause (i) and by redesignating clauses (ii), (iii), and (iv) as clauses (i), (ii), and (iii), respectively.

(f) DEFINITIONS OF ELIGIBLE INDIVIDUAL.—Paragraph (1) of section 43(c) (defining eligible individual) is amended to read as follows:

"(1) ELIGIBLE INDIVIDUAL.—

"(A) IN GENERAL.—The term 'eligible individual' means an individual who, for the taxable year—

"(i) is married (within the meaning of section 143) and is entitled to a deduction under section 151 for a child (within the meaning of section 151(e)(3)),

"(ii) is a surviving spouse (as determined under section 2(a)), or

"(iii) is a head of a household (as determined under subsection (b) of section 2 without regard to subparagraphs (A)(ii) and (B) of paragraph (1) of such subsection).

"(B) CHILD MUST RESIDE WITH TAXPAYER IN THE UNITED STATES.—An individual shall be treated as satisfying clause (i) of subparagraph (A) only if the child has the same principal place of abode as the individual and such abode is in the United States. An individual shall be treated as satisfying clauses (ii) and (iii) of subparagraph (A) only if the household in question is in the United States.

"(C) INDIVIDUAL ENTITLED TO EXCLUDE INCOME UNDER SECTION 911 NOT ELIGIBLE INDIVIDUAL.—The term 'eligible individual' does not include an individual who, for the taxable year, is entitled to exclude any amount from gross income under section 911 (relating to earned income from sources without the United States) or section 931 (relating to income from sources within the possessions of the United States)."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1978.

SEC. 105. ADVANCE PAYMENT OF EARNED INCOME CREDIT.

(a) COORDINATION OF CREDIT WITH ADVANCE PAYMENTS.—Section 43 (relating to earned income credit) is amended by adding at the end thereof the following new subsection:

"(h) COORDINATION WITH ADVANCE PAYMENTS OF EARNED INCOME CREDIT.—

"(1) RECAPTURE OF EXCESS ADVANCE PAYMENTS.—If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

"(2) RECONCILIATION OF PAYMENTS ADVANCED AND CREDIT ALLOWED.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.".

(b) ADVANCE PAYMENT OF EARNED INCOME CREDIT.—

(1) IN GENERAL.—Chapter 25 (general provisions relating to employment taxes) is amended by adding at the end thereof the following new section:

"SEC. 3507. ADVANCE PAYMENT OF EARNED INCOME CREDIT.

"(a) GENERAL RULE.—Except as otherwise provided in this section, every employer making payment of wages to an employee with respect to whom an earned income eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment to such employee equal to such employee's earned income advance amount.

"(b) EARNED INCOME ELIGIBILITY CERTIFICATE.—For purposes of this title, an earned income eligibility certificate is a statement furnished by an employee to the employer which—

"(1) certifies that the employee will be eligible to receive the credit provided by section 43 for the taxable year,

"(2) certifies that the employee does not have an earned income eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer, and

"(3) states whether or not the employee's spouse has an earned income eligibility certificate in effect.

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in effect on the first status determination date following the date on which the employee furnishes the statement in question.

"(c) EARNED INCOME ADVANCE AMOUNT.—

"(1) IN GENERAL.—For purposes of this title, the term 'earned income advance amount' means, with respect to any payroll period, the amount determined—

"(A) on the basis of the employee's wages from the employer for such period, and

"(B) in accordance with tables prescribed by the Secretary.

"(2) ADVANCE AMOUNT TABLES.—The tables referred to in paragraph (1)(B)—

"(A) shall be similar in form to the tables prescribed under section 3402 and, to the maximum extent feasible, shall be coordinated with such tables, and

"(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 43 as if it were a credit—

"(i) of not more than 15 percent of the first $4,000 of earned income which

"(ii) phases out between $6,000 and $9,000 of earned income, or

"(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 43 as if it were a credit—

"(i) of not more than 12 percent of the first $2,000 of earned income, which

"(ii) phases out between $3,000 and $4,500 of earned income.

"(d) PAYMENTS TO BE TREATED AS PAYMENTS OF WITHHOLDING AND FICA TAXES.—

"(1) IN GENERAL.—For purposes of this title, payments made by an employer under subsection (a) to his employees for any payroll period—

"(A) shall not be treated as the payment of compensation, and

"(B) shall be treated as made—

"(i) first out of amounts required to be deducted and withheld for the payroll period under section 3401 (relating to wage withholding), and

"(ii) next out of amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

"(iii) then out of amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes)."

Mr. DOLE. Mr. President, I would like to have the attention of the Senate very briefly.

The ACTING PRESIDENT pro tempore. The Senate will be in order so that the Senator from Kansas can be heard.

EARNED INCOME CREDIT

Mr. DOLE. Mr. President, the Finance Committee has taken an unwarranted step in increasing the eligibility for the earned income credit to $11,000. The Finance Committee bill makes the earned income credit permanent and increases the amount of the credit to 12 percent on the first $5,000 of earned income and a phaseout of the credit at $11,000 of income. However, the Senator from Kansas does not believe that the earned income credit should be extended all the way up to $11,000.

It seems to me, at the outset, that we are starting a precedent, probably a new welfare program that one of these days will be costing us a considerable amount of trouble.

My proposal, I believe, makes the credit more effective to those in the lower brackets. My amendment would increase the amount of credit to 15 percent. It would provide a maximum credit of $600 on $4,000 of earned income. The $600 maximum credit would continue on incomes between $4,000 and $6,000. The credit would then be phased out at a 20-percent reduction rate so that it is eliminated at the income of $9,000.

ADVANTAGES OF DOLE PLAN

Mr. President, I believe that there are many advantages to my plan over the committee's plan. First of all, it provides more aid to the generally needy. As in the committee's bill, my proposal provides that all individuals with no income and incomes of up to $5,000 will realize the maximum increased benefit. However, I believe the benefit at the lower income should extend to $6,000. Thus, the maximum payment, $600, will be available for all those of incomes between $4,000 and $6,000.

Increasing the benefits under the proposal at a rate from 10 to 15 percent, more than fully compensates for increased social security taxes. The current social security tax for employee and employer is combined at a 12.26 percent in 1979. In addition, the unemployment insurance tax, at a minimum rate, for example, in my State of Kansas, is 3.6 percent this year.

Under my proposal, there is a faster phaseout through the higher benefit reduction rate. This will cause fewer persons to become recipients of this new form of welfare payment.

MORE FOR THE POOR

This proposal also allows a greater amount to go to persons receiving categorical aid, such as the AFDC. With the result that welfare costs are reduced and fiscal relief is provided to the States. I also believe that in my proposal there is a greater incentive to work, because most of the relief occurs below the poverty line.

WORK REQUIREMENT

Mr. President, the earned income tax credit has, as its primary virtue, a built-in work requirement. That is, it is only available for those who work. However, its primary value occurs on the so-called "up-side" of the formula. That is, between incomes of zero and $4,000 under current law and between zero and $4,000 under my proposal. The so-called "down-side" has the chief drawback of allegedly containing a work disincentive, for the more one earns, the less credit is available. The solution to the problem usually has been in the form of a small benefit reduction. That, however, creates several disadvantages. It causes more and more Americans to become recipients of this new form of public assistance. It has the effect of exacerbating the problem of dependency rather than solving it.

20-PERCENT PHASEOUT

There are those in this body, including some members of the Finance Committee, who would criticize my proposal, because of the 20-percent phaseout requirement. I believe that their criticism about the work disincentive is misplaced. The Senator from Kansas believes that tax funds should be used for income transfers only to move persons out of poverty, not to encourage them to move to higher and higher income levels. I believe that we should use tax funds to serve as incentives for persons to leave welfare and to elevate them above the poverty line.

There are some that argue that a 20-percent benefit reduction would be a greater work disincentive than a slower benefit reduction. However, I do not believe there is any evidence to justify that concern. The benefit reduction rate in the SSI program is 50 percent and in the AFDC program it is 67 percent. There is no evidence that a lesser benefit reduction rate keeps more people working.

The issue of work for those receiving public assistance should primarily revolve around the question of eligibility requirements rather than financial incentive. Martin Anderson, in a recent book, noted:

The idea of trying to use financial incentives to induce people to get off the welfare rolls is faulty in principle. It attempts to persuade people to do something they should be required to do. If we assume that our welfare system is to provide help to the needy only, it then follows that either a person has a valid need for welfare payments and should be on the welfare rolls or that person does not have a valid need for welfare payments and should not be on the welfare rolls.

REDUCE COSTS

Mr. President, under the committee bill, the earned income tax credit costs $110 million in fiscal year 1979 and a total of $1.7 billion on a calendar year basis. My proposal costs only $97 million in fiscal year 1979 and $1.3 billion on a calendar year basis. This is a net savings of $400 million over the committee bill.

The committee bill provides over $53 million in earned income credit to individuals who have incomes of greater than $10,000. That means 876,000 people would be eligible for this welfare program. My proposal, on the other hand, costs only $4 million for those making over $10,000 and affects only 21,000 individuals.

It is the Senator from Kansas' opinion that the earned income tax credit is a welfare program. No matter what the rhetoric that echoes in this Chamber, we cannot deny that fundamental fact. I would hope that the Senate would not extend this program as far as the committee has gone.

The Finance Committee bill provides $5.1 billion in tax relief to individuals earning less than $15,000. Over half of the $5 billion will go to taxpayers with incomes of less than $10,000. I do not quarrel with that objective. In the Bumpers amendment adopted by the Senate on Friday, the Senate added an extra $700 million of tax relief to those with incomes of less than $10,000 almost $1 billion of relief to those earning between $10,000 and $15,000. I voted for the Bumpers amendment. However, it seems that extension of the earned income credit to those individuals above $9,000 is unwarranted and incompatible with the bill as it now stands.

Mr. President, this matter has been discussed at some length in the committee. I understand that the distinguished chairman is not in total disagreement with the amendment, but he feels that it might be a position we could properly arrive at in conference. So, after some discussion with the distinguished chairman of the committee, the Senator from Kansas will either accept a voice vote or withdraw the amendment.

Mr. LONG. Mr. President, the people for whom this earned income credit is available are poor people who have children and who are working to try to support themselves and are trying to work their way out of poverty.

The Senator shares our objective of trying to make work more attractive than welfare, but the problem this amendment presents is that in order to phase it out, starting at the minimum wage, we might say, of $6,000 a year, his amendment would require a phaseout of about 20 percent. That would be all right if you

were not phasing out the food stamps at the same time and if you did not have the problem of Federal income tax to contend with, as well as the State income tax, which in many instances would mean that the people would be losing 64 cents for every dollar they earned, as a result of phasing out the earned income credit along with the others.

What we have in the committee bill would work out to a relatively higher rate at which the benefits would be phased out, but that would be about 56 cents on the dollar, and they would be able to keep about 44 cents of their earnings.

The point is that if a person, by working and trying to improve his condition, is only able to keep one-third of what he earns, that is very demoralizing, to say the least. These are people trying to improve their condition by working, to work themselves above the point where they would have to ask for the food stamps, and where they would be seeking medicaid or medicare and other benefits that the Government would provide to people who are less fortunate.

It is really because we would have a far better and more reasonable rate at which the benefit would be phased out that I hope the Senate will support the committee amendment.

I appreciate the Senator's amendment. He shows a concern for these people, because he wants those who need it the most to enjoy the full benefits. I hope, however, that the Senator will not insist on his amendment; because I think a more gradual rate at which the benefit is phased out would provide a greater incentive for one to go to work and try to increase his earnings beyond and benefits the Government might provide.

Mr. DOLE. I thank the distinguished chairman.

The Senator from Kansas is trying to make a record. When we go to conference, we will at least have this view already expressed. Someone might ask why it was not raised in the Senate. It was raised in the committee, and it is being raised in the Senate. I believe this credit is more effective for those in lower brackets. We are concerned about those in need. The proposal of the Senator from Kansas does offer a better approach.

Mr. President, I ask unanimous consent to have printed in the RECORD a study which indicates a number of reasons why my proposal has advantages over the committee proposal, together with other material which will be helpful to those of us who may be conferees.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

H.R. 13511

(1) Increase the amount of the benefit to 15 percent.

(2) Provide the maximum of $600 as early as $4,000 (15 percent x $4,000).

(3) Continue the $600 payment from $4,000 to $6,000.

(4) Phase out the maximum benefit at a 20 percent reduction rate, so that it ceases at $9,000.

This plan has several advantages over that now contained in H.R. 13511:

(A) It provides more aid to the genuinely needy.

(B) All persons with incomes between $0 and $5,000 will realize an increased benefit.

(C) The maximum payment, $600, will still be available to those with incomes between $5,000 and $6,000 (as well as to those with incomes between $4,000 and $5,000).

(D) The benefit, at 15 percent, more fully compensates for other employment taxes; the Social Security tax for employer and employee combined is to be 12.26 percent in 1979; the unemployment insurance tax (at the maximum) in Kansas was 3.67 percent this year.*

(E) There is a faster phase-out through a higher benefit reduction rate.

(F) Fewer total persons become recipients of this new form of welfare payment.

(G) A greater amount goes to persons receiving categorical aid (e.g., AFDC), with the result that welfare costs are reduced and fiscal relief is provided the States (AFDC has a general sharing ratio of approximately 50 percent–50 percent federal-State; the EITC is totally federal).

(H) The greatest incentive to work occurs below the poverty line.

(I) The maximum benefit continues to be available to those with incomes at or near the poverty level. The poverty level in 1978 for a family of four is $6,191; for a family of three, $4,833; the average family size for a family headed by an earner is 3.5

Moreover, such a plan would save approximately $380 million over the cost of the EITC now contained in the bill reported from the Senate Finance Committee. Attached are tables showing the fiscal and distributional effect of the proposal.

The EITC has, as its primary virtue, a built-in work requirement; that is, it is available only to those who work. However, its primary value is on the so-called "up side" of the formula—between $0 and $4,000, under current law, or between $0 and $6,000, under the proposal—for it is here that a work incentive is contained (the more one earns, the more he gets). The so-called "down side" has the chief drawback of allegedly containing a work disincentive, for the more one earns, the less he gets. The solution to that problem usually has been in the form of a small benefit reduction rate: e.g., 10 percent in the Committee bill. That, in turn, however, creates another disadvantage: more and more Americans become recipients of this new form of public assistance, in effect exacerbating the problem of dependency rather than solving it, as the benefit is extended upward into the higher income ranges.

The concern about a work disincentive is misplaced, for four reasons:

(a) Tax funds should be used for income transfer only to move persons out of poverty, not to encourage them to move to higher and higher income levels. It is not the business of policymakers to use tax funds to "encourage" persons to move from $8,000 to $10,000; it is the business of policymakers to use tax funds to serve as an incentive for persons to leave welfare and/or poverty. Placing the peak point at or near the poverty level accomplishes the latter objective.

(b) Once above poverty, decisions about greater work and remuneration are made for reasons other than, and in relation to amounts greater than, the EITC. The marginal utility of the EITC is much greater at $4,000 than it is at $8,000. As promotions are offered, they provide much more—in both pay, fringe benefits, and social status—than the EITC represents under either a 10 percent or a 20 percent benefit reduction rate.

(c) There is no evidence that a 20 percent benefit reduction rate would be any greater work disincentive than a 10 percent benefit reduction rate. The benefit reduction rate in SSI is 50 percent and in AFDC it is 67 percent. There is no evidence that a lesser benefit reduction rate saves (in the form of more persons working) than it costs (in the form of more persons eligible at higher income ranges).

(d) The issue of work, for those receiving public assistance, should primarily revolve around the question of an eligibility requirement rather than a financial incentive. As Martin Anderson noted in his recent book:

". . . The idea of trying to use financial incentives to induce people to get off the welfare rolls is faulty in principle. It attempts to persuade people to do something they should be required to do. If we assume that our welfare system is to provide help to the needy only, it then follows that either a person has a valid need for welfare payments and should be on the welfare rolls or that person does not have a valid need for welfare payments and should not be on the welfare rolls. If persons are capable of self-support, both for themselves and their families, then there is no reason they should expect to receive any money from other members of the society who work and pay taxes. There is no reason people should be given financial incentives to do what they rightfully should be doing anyway." *

Accordingly, the "down side" of the EITC should be as steep as possible and phased out as quickly as possible. The chief advantage of the proposal contained in this memo is target efficiency: It targets the EITC funds on those who need it most, and it provides for a broader plateau, wherein the maximum benefit is provided to those lower on the income scale. It should be noted that a broader plateau has the advantage not only of extending the maximum benefit lower into the income range but of providing for a zero benefit reduction rate between $4,000 and $6,000 as well.

It should be noted that Senator Kennedy, in introducing a welfare proposal on September 14 of this year, proposed an EITC with a maximum benefit of 15% and a benefit reduction rate of 20%. His was far more expensive, however, because it peaked at $6,500 and phased out at $11,375. At the time, he stated:

". . . if we are going to raise the level to which payments increase, and if we are going to raise the rate at which they increase, we need to reduce the payments at a faster rate. I propose a 20-cent reduction for each dollar in gross income. This greatly reduces the cost of the program—a 20-percent reduction rate saves $900 million a year over a 15-percent reduction rate, and even more over a 10-percent reduction rate. A higher reduction rate should not seriously interfere with the desire to work particularly because the EITC is not paid out on a continuing basis. If we find that the implicit tax rate actually dissuades people from working we can explore ways in which to reduce that rate."

TABLE A

[In millions of dollars]

Total expenditures	Fiscal year 1979	Calander year 1979
Total expenditures, EITC, bill as reported	110	1,707
Total expenditures, EITC, substitute proposal	97	1,327
Savings	13	380

*It is recognized that half of the Social Security tax, and all of the UI tax, are paid by the employer, but ultimately they become costs borne by the employee.

* p. 162, Welfare: The Political Economy of Welfare Reform in the United States.

TABLE B

[In millions of dollars]

Distributional effect	Calendar year 1978 Revenue[1] (millions)	Returns
EITC, bill as reported:		
Below $5,000	$283	2,750,000
$5,000 to $10,000	1,441	4,706,000
$10,000 to $15,000	53	876,000
Total[2]	1,778	8,326,000
Nontaxable returns		1,189,000
EITC, substitute proposal:		
Below $5,000	450	2,712,000
$5,000 to $10,000	928	3,681,000
$10,000 to $15,000[3]	4	2,1000
Total[2]	1,382	6,414,000
Nontaxable returns		621,000

[1] All figures based upon 1978 levels. To convert to calendar year 1979, multiply by 0.96.
[2] May not add due to rounding.
[3] Even though cutoff is at $9,000, some residual remains in the next income bracket due to groupings.

Mr. DOLE. Mr. President, I withdraw the amendment.

The ACTING PRESIDENT pro tempore. The amendment is withdrawn.

AMENDMENT NO. 4026

(Purpose: To adjust the personal exemption, earned income credit, zero bracket amount, and tax bracket amounts for 1980)

Mr. MORGAN. Mr. President, I call up my amendment No. 4026.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. MORGAN) for himself and Mr. KENNEDY, proposes an amendment numbered 4026.

Mr. MORGAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill and at the appropriate place in the committee bill, insert the following:

"SEC. . ADJUSTMENT TO PERSONAL EXEMPTION, EARNED INCOME CREDIT, ZERO BRACKET AMOUNT, AND TAX BRACKET AMOUNTS FOR 1980.

Effective for taxable years beginning after December 31, 1979, each dollar amount specified under section 1 (relating to imposition of individual tax), section 43 (relating to earned income credit), section 63(d) (relating to zero bracket amount), section 151 (relating to allowance of deductions for personal exemption), section 6012(a)(1) (relating to filing requirements), and section 3402 (m)(1) (relating to withholding allowances based on itemized deductions) is increased by an amount equal to 6 percent of each such dollar amount. For purposes of the preceding sentence, the adjustment made with respect to section 1 shall apply to taxable income amounts and the amount of tax at the beginning of each rate bracket shall be adjusted to reflect the adjustments to taxable income for preceding tax brackets.

The ACTING PRESIDENT pro tempore. The Chair, under the precedents, has to rule that the amendment is not germane.

Mr. KENNEDY. Mr. President, will the Senator from North Carolina yield?

Mr. MORGAN. I yield.

Mr. KENNEDY. Mr. President, I join the Senator from North Carolina in sponsoring this amendment. We submitted this amendment prior to cloture.

It is legislation to overrule the Illinois Brick decision which was decided on June 9, 1977. A number of us, including the Senator from North Carolina, introduced legislation to try to provide the opportunity for indirect purchasers to recover. The distinguished Senator from Missouri, Senator DANFORTH, was also a key leader in this legislation.

We had 8 days of hearings with 55 witnesses in the Judiciary Committee. After it was reported out of Judiciary Committee on May 25 there were many attempts to reach a time agreement for floor action. No time agreement was reached. One result of this failure is that about $1 billion in State and Federal revenues may very well be lost.

We have worked with the Senator from North Carolina in trying to reach a time agreement. He was a distinguished attorney general of his State and was very much involved in the pursuit of the consumers' interest. He brought a great deal of experience and knowledge to this issue, as did the Senator from Missouri, who was enormously helpful and valuable to us. I sponsored this with the Senator from North Carolina, and a number of us worked trying to permit the Senate to come to some resolution on this issue. Senator PAUL HATFIELD has also cosponsored this legislation and he has been of enormous help.

Our only opportunity to pass this legislation this year was to attach it to the tax bill.

It has the support of all 50 Governors, of all 50 State attorneys general, the National Conference of State Legislators, the National Association of Counties, the National Association of Homebuilders, the Consumer Federation of America, the American Association of Retired Persons, the Disabled American Veterans, the Council of Senior Citizens, and a number of other organizations.

Mr. President, we have been denied an opportunity to vote on this measure because 1 Senator has offered 100 amendments. Let the Senate work its will. We are prepared to vote on this measure. We have support from more than half the Members of the Senate, and I must say it is a travesty to the taxpayers of this country and it is an insult to consumers around this Nation that this body is denied action on this important legislation.

Fifty State attorneys general and 50 Governors representing the entire political spectrum and every part of our country have unanimously supported this legislation, and this body has failed to deal with this legislation.

I salute the Senator from North Carolina for raising it at this time and also our colleagues and I shall file a more complete statement in the RECORD.

I pledge to the Senator from North Carolina, and I see the Senator from Missouri in the Chamber, that the Judiciary Committee will make this matter high priority in the next Senate. We will look forward to trying to provide protection to consumers.

Mr. President, my colleagues and I have tried very hard to pass legislation this year which would reverse the Supreme Court's June 9, 1977, Illinois Brick decision. The lateness of the hour now is not because we introduced the legislation late, rather it is because of the delays caused by certain Senators who have opposed the bill from its introduction over15 months ago.

After its introduction on July 15, 1977, the Antitrust Subcommittee held 2 days of hearings on July 27 and 28, 1977. Upon the request of the minority, 1 more day of hearings was held on September 9, 1977. After six attempts to receive a vote at the subcommittee level, we were finally able to report the measure to the full committee.

Upon request of the minority, the Judiciary Committee held 5 more days of hearings on the bill with a total of 55 witnesses. Finally on May 25, the bill was favorably reported out of the committee. Since that time we have attempted to have this bill scheduled for floor action, but we have been stymied in this attempt because of a threat of a filibuster.

Mr. President, it is a sad commentary on our democratic process for one or two Senators to be able to keep Congress from even considering this needed legislation. I regret that we have been forced to attempt consideration of this legislation as an amendment to the Revenue Act.

Ever since 1890, it has been possible for those injured to recover damages for antitrust violations. The legislative histories of the Sherman Act, the Clayton Act, and the Hart-Scott-Rodino Act are very emphatic on these points. I will not soon forget how hard the late Senator Hart fought to preserve and strengthen the rights of consumers under the antitrust laws. Yet most of this work has been put in jeopardy by the Illinois Brick decision.

The Supreme Court's June 9, 1977, opinion in *Illinois Brick Co.* v. *Illinois*, 431 U.S. 720 (1977) held that "the overcharged direct purchaser, and not others in the chain of manufacture or distribution, is the party 'injured in his business or property' within the meaning of section 4 of the Clayton Act." Since most people and organizations purchase goods through retailers or other "middlemen," this opinion has effectively precluded small businesses, farmers, consumers, State governments, and many Federal agencies from recovering damages for antitrust violations. As a group of cattle-ranchers stated to me, as far as they were concerned, the antitrust laws had been repealed by the Illinois Brick opinion.

A bar to actions by all who have not dealt directly with the defendant is flatly contrary to the express intent of Congress in passing the original Sherman Act in 1890 and the Clayton Act in 1914, as well as the recent Hart-Scott-Rodino Act enacted last Congress. A bar to other than direct purchasers is also contrary to the rule applied by a majority of Federal courts prior to the unexpected Illinois Brick decision. If the Illinois Brick decision had been the law, consumers, State governments, and many agencies

of the Federal Government who in the last several years recovered millions of dollars for the higher prices they paid for price-fixed drugs, highway materials, hardware products, and other items purchased through middlemen would have been barred from any recovery.

Ironically, while the rule of the Illinois Brick majority opinion bars any recovery by consumers and others who do not deal directly with antitrust violators, that rule permits persons who do deal directly with antitrust violators to recover huge windfall damages even if they have not been injured at all. This is because the court held that a "direct" purchaser may recover the entire amount of any overcharge even if that purchaser—in most cases a middleman—has passed some or even all of the higher price on to consumers.

For example, drug manufacturers may agree among themselves to fix the price of an antibiotic at a price higher than its value in a competitive market. Their customers, the wholesalers or the pharmacies, then pay the higher price but will then pass all or most of the illegal overcharge on to their customers. Since drug wholesalers and pharmacies usually operate on the basis of a constant percentage markup, they are frequently better off because of the manufacturers' higher price. The consumers are the real party injured. Yet under the Illinois Brick decision the consumer is wholly barred from any recovery, while the wholesaler or pharmacist, if he does sue, can collect three times the overcharge even though he may have passed on the full amount of the overcharge.

The Illinois Brick rule, in addition to being contrary to the purpose and intent of the antitrust laws and fundamentally unfair to those who are truly injured, will also result in a weakening of the important function of antitrust damage suits as a supplement to public enforcement of the antitrust laws. This is because direct purchasers or middlemen frequently are reluctant to sue their supplier for fear of disrupting existing profitable relations, for fear of opening their files to the broad discovery typical of antitrust cases, or because they really are not damaged as a result of the antitrust violations. In such cases, barring suits by "indirect" purchasers and sellers will mean that no party will sue.

The intensity of lobbying by manufacturers indicates their desire to remain immunized from antitrust suits. It is abundantly clear that manufacturers, under the Illinois Brick opinion, will pick and choose the parties to which they will sell directly. By such a selection they can guarantee that they will never have to pay compensation for price fixing.

The loss of private damage actions on behalf of indirect purchasers has an intolerable impact upon antitrust enforcement, and the Illinois Brick decision must either be reversed or will have to be countered by a major increase in Federal enforcement or regulation.

The House Judiciary Committee has also reported a bill which will reverse Illinois Brick. The House leadership stated to me some time ago that they were holding up floor action until some sign of passage was seen on the Senate side. We have not been able to show this sign because the junior Senator from Utah has refused to come to an agreement on a time agreement for the bill.

Mr. President, the support for this measure comes from every part of the political and economic spectrum of this country. President Carter, Vice President MONDALE, the Justice Department and other executive agencies have been actively involved in supporting this bill. Just several weeks ago, all 50 of this Nation's governors unanimously joined in a resolution which calls for enactment of this bill this session. The National League of Cities, the 7,600 members of the National Conference of State Legislators, all 50 State attorneys general, the National Association of Counties, the National Association of State Purchasing Officials, and the National Institute of Governmental Purchasing have all been actively supporting this bill.

Business entities—as well as labor, rancher, farmer and consumer groups—have also strongly supported the bill. Just as consumers and State governments find themselves in a position of buying indirectly, so do many small businesses. Groups such as the 100,000-member National Association of Home Builders, the members of the Computer and Communications Industry Association, MCI Communications Corporation, and the Independent Bankers Association are active supporters of the bill. So, too, are rancher and farmer groups from many States, the Consumer Federation of America, National Council of Senior Citizens, Disabled American Veterans, National Rural Electric Cooperative Association, United Mine Workers of America, the American Federation of State, County and Municipal Employees, and the Cooperative League of the USA.

Ironically, opposition to this measure comes from those who have been most vocal in paying verbal homage to the issue of tax relief, yet one of the major effects of reversing Illinois Brick would be to allow the recovery of overcharges on taxpayer financed programs. There could be as much as $2 billion dollars worth of lawsuits by State government which will be dismissed unless this legislation passes. This is money that should be returned to the various State treasuries. It is money that could be used to lower taxes.

Mr. President, I wish to place in the RECORD some of the many letters and other indications of support we have received on this bill. To these supporters I can only say that if this legislation is not enacted this session, it will have my No. 1 priority for antitrust legislation next year.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL GRANGE,
Washington, D.C., September 20, 1978.

Hon. EDWARD M. KENNEDY,
Chairman, Antitrust and Monopoly Subcommittee, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The National Grange, representing a wide range of agricultural and rural interests, is in support of S. 1874, a bill to restore effective enforcement of the antitrust laws.

We realize that time is short for the 95th Congress to address itself to this important legislation. We therefore request that you do all in your power to bring this bill before the Senate.

The National Grange has had an historic interest in antitrust legislation and believes that enactment of S. 1874 will further strengthen antitrust laws and provide the necessary protection to injured third parties. We therefore urge early action on this controversial but important improvement in antitrust legislation.

Sincerely,

JOHN W. SCOTT,
Master.

UNITED MINE WORKERS,
OF AMERICA,
Washington, D.C., September 22, 1978.

Hon. EDWARD M. KENNEDY,
U.S. Senate,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR KENNEDY: The United Mine Workers of America agrees with you that strong anti-trust enforcement is essential to the well being of the nation. The right of consumers to participate in class action suits, whether individually or in concert through their representatives in state and federal government, should not be abridged by the courts, as is the case in the *Illinois Brick*, decision.

In this age of rapid conglomeration and both vertical and horizontal monopolies, it is imperative that the teeth not be pulled from the Clayton Act. We feel that this legislation will correct the errors made by the courts in *Illinois Brick*.

It is in light of this that we join you in support of H.R. 11942 and S. 1874.

Sincerely,

ARNOLD MILLER.

STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,
Tallahassee, Fla., March 24, 1978.

Hon. EDWARD M. KENNEDY,
U.S. Senator, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR KENNEDY: The State of Florida has a vital interest in Congressional efforts to legislatively overcome the Supreme Court's decision in *State of Illinois v. Illinois Brick Co.*, 431 U.S. 720 (1977). In creating an inflexible rule that prohibits indirect purchasers from recovering under Clayton § 4, as a matter of law, the Court has seriously frustrated effective enforcement of the antitrust laws. Often the direct purchaser is dependent on a manufacturer and is in position to pass on the amount of an illegal overcharge. This combination of factors provides little incentive, on behalf of direct purchasers, to initiate suit against the manufacturer.

The absurd result of the *Illinois Brick* decision is illustrated in the suit, *Florida Power Corporation v. Ray Granlund*, in which the State has sought to intervene on behalf of consumers. That case involves an alleged "daisy chain" scheme to artificially inflate the price of Number 2 fuel oil used in the generation of electricity. Various agents of Florida Power Corporation allegedly conspired with certain oil companies to circumvent federal energy regulations which allegedly restricted the maximum selling price of Number 2 fuel oil. The defendants allegedly sold the oil through a predetermined pattern with each party allegedly receiving part of the illegal overcharge.

Florida Power Corporation now argues that under *Illinois Brick*, it is the direct purchaser of the fuel oil and therefore the only party injured within the meaning of Section 4 of the Clayton Act. The disturbing aspect of this analysis, if judicially adopted, is that

consumers, including the State, would not have a cause of action even though virtually all of the overcharge was passed on to them through the fuel adjustment clause utilized by the utility. In essence, the party allegedly responsible for the illegal scheme would recover three times the amount of the overcharge even though it appears to have suffered virtually none of the injury. It is difficult to understand how this result promotes the effective enforcement of the antitrust laws much less compensates those who were victimized. There is no need for such a result.

Numerous other cases that have been brought by this Office are presently subject to motions to dismiss on the basis of *Illinois Brick* including: *State of Florida* v. *Exxon Corporation, et al.* MDL 150–WPG (C.D. Calif.); *State of Florida* v. *Bethlehem Steel Corporation,* USDC Middle District of Florida, Tampa, Division, 75–43–Civ–T–H; and *State of Florida* v. *National Broiler Marketing Association,* USDC, Northern District of Georgia, Atlanta Division, C–74–1595A. These cases are worth tens of millions of dollars to the State of Florida and its political subdivisions.

It is also clear that the *Illinois Brick* decision frustrates the purpose and intent of the parens patriae provision (Title III) of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, Pub. L. 94–435.

I strongly support your efforts to reverse the *Illinois Brick* decision. Passage of Senate Bill 1874 will revitalize private enforcement efforts and will permit the party actually injured to recover. It will also insure that Title III of the Hart-Scott-Rodino Act will function as Congress intended.

Sincerely,

ROBERT L. SHEVIN,
Attorney General.

NATIONAL ASSOCIATION
OF HOME BUILDERS,
Washington, D.C., April 27, 1978.

Hon. JAMES O. EASTLAND,
Chairman Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: On behalf of the more than 99,000 members of the National Association of Home Builders (NAHB), we are writing to express our strong support for S. 1874. NAHB supports the legislation because it will overrule the result reached by the Supreme Court in the case of *Illinois Brick v. Illinois,* which limits the right of standing of indirect purchasers to bring civil antitrust damage actions pursuant to the section 4 of the Clayton Act.

NAHB's members are small business home builders engaged in the construction of both single family and multi-family housing as well as commercial structures. Annually, our members purchase thousands of items that are used in constructing and equiping the structures they build. The vast majority of builder and sub-contractor purchases are from supplier-middlemen, so that most of our members are in the class of indirect purchasers.

One of the major problems gripping our National economy and the home building industry is the continuing escalation of housing costs. Over the past three year period of 1974–1977, the Wholesale Price Index for Construction Materials has increased an average of 11.6 percent annually. Six construction material items (concrete, lumber, millwork, roofing, drywall, and insulation) make up half the total construction costs for the average house and these materials increased 9 to 35 percent in cost from 1976 to 1977. By providing the builder with a cause of action under section 4, this will provide a deterrent against price fixing or other violations of the antitrust laws by the manufacturers and suppliers of construction materials.

Our National policy is clearly in support of "a decent home and suitable living environment" for every American family. To the degree that this goal is frustrated by increased housing costs that may be the fruit of illegal overcharges passed on to the builder in the chain of distribution, it seems as a matter of fundamental economic policy that builders be entitled to recover damages under section 4.

If the *Illinois Brick* decision is allowed to stand, it will deny injured consumers a needed right to comepnsation for illegal overcharges. The injured indirect purchaser will be left remediless under the antitrust laws.

Opponents claim that S. 1874 would invite numerous frivolous "strike" suits which would further congest the already overloaded courts. This position lacks merit since the legislation would not change the traditional legal safeguards in the Federal Rules of Civil Procedure concerning unjustified claims. Rather, such arguments are targeted at preventing the Federal government and businesses which are injured by antitrust violations from having the opportunity to present their cases in the courtroom.

NAHB believes that injured consumers, whether Government, business or individuals should have access to the courts and that the courts should have the flexibility to determine on a case-by-case basis whether the suit has merit and should be pursued. Equally as impotrant, we believe that all purchases who have been injured be antitrust violations, whether direct or indirect, including states, Federal government, businesses and consumers should be able to recover damages. Thank you for your consideration of our views.

Sincerely yours,

ERNEST A. BECKER, Sr.,
President.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

Hon. ROBERT C. BYRD,
Senate Majority Leader,
Russell Senate Office Building.

DEAR MAJORITY LEADER: We are extremely anxious to have S. 1874 scheduled for floor action as soon as possible. Although we recognize that there are many matters which require action by the Senate, we wish to emphasize our belief that this legislation deserves a high priority. It was favorably reported out of the Judiciary Committee and on June 14 the report was filed with the full Senate. On June 20 the House Judiciary Committee favorably reported similar legislation.

This legislation will once again allow consumers, businesses and Federal and State governments to recover damages for antitrust violations in those instances in which they have not bought goods directly from the antitrust violator. The state governments themselves stand to lose approximately $500 million in damages if this legislation is not speedily enacted.

In light of the widespread support for this legislation, its progress in the House, and the need for immediate action if these pending cases are to be saved, it is our hope that S. 1874 can be scheduled for floor action before the August recess.

Sincerely,

John C. Culver, James S. Abourezk, Dick Clark, Edward M. Kennedy, John C. Danforth, Robert Morgan, John A. Durkin, Muriel Humphrey, William D. Hathaway, Floyd K. Haskell, Wendell R. Anderson, Robert Dole, Edward W. Brooke, Bob Packwood, Harrison A. Williams, Jr., Lowell P. Weicker, Jr. Paul Hatfield, Howard M. Metzenbaum, Spark M. Matsunaga, Claiborne Pell, Dennis DeConcini, John H. Heinz III, James B. Pearson, Joseph R. Biden, Jr., Jennings Randolph, Abraham Ribicoff, Pete V. Domenici, Robert T. Stafford, Thomas J. McIntyre, Gary W. Hart, Gaylord Nelson, Patrick J. Leahy, Donald W. Riegle, Jr., William Proxmire, George McGovern.

[From the Salt Lake City (Utah) Deseret News, Oct. 9, 1978]

LET OVERCHARGE VICTIMS SUE

Utah government buys a lot of paper. Atty. Gen. Robert Hansen believes that some paper manufacturers may have violated antitrust laws forcing the taxpayers to pay $600,000 or so more than they should.

His office is suing to recover the overcharges and, Hansen hopes, additional damages.

But a recent decision by the United States Supreme Court could keep Utah taxpayers from ever having a day in court. In what's called the Illinois Brick case, the high court ruled that to bring an antitrust suit, a person must have dealt directly with the alleged lawbreaker.

In other words, Utah can sue to recover the taxpayers' money only if it bought paper directly from the manufacturers who violated the law.

Only a small part of the paper the government bought came directly from the manufacturer. The rest came from wholesalers. In most cases, wholesalers have passed through the costs of manufacturers' antitrust violations to their customers, Hansen points out, so wholesalers have little incentive to sue.

Pending before Congress is a bill that would allow Utah taxpayers to have a day in court if they feel they've been cheated. It would allow victims of antitrust violations to sue violators even if they did not buy directly from them.

The bill has the unanimous support of the nation's top governors and of state attorneys general. But it doesn't look as if it will pass. A major reason is that Utah Senator Orrin Hatch has threatened to delay the bill and hold up the Senate during its final adjournment rush.

Hatch raises some important objections to the Illinois Brick bill. He points out that the bill could result in litigation costly to innocent businesses and in harassment of some businesses for political publicity.

These dangers could be largely avoided by careful compromise. The bill should make plaintiffs who bring unmeritorious suits pay the costs of litigation of all the parties in the suit. And the bill should limit class action suits brought under it.

But if carefully drawn, the Illinois Brick bill would allow those victimized by illegal business practices to seek justice in court.

Surely no one can reasonably object to that.

[From the Columbus Citizen-Journal, Oct. 6, 1978]

PRICE FIXING

Backroom price fixing by manufacturers is just as pernicious as labor union featherbedding or wasteful government spending. It subverts the much heralded "market mechanism" by protecting the lazy and the inefficient producer. It is inflationary. And it is illegal.

Government has a vital but difficult role in protecting the public interest in this area. The penalties against illegally rigging prices should be made prohibitive.

This brings us to a 1977 Supreme Court ruling which undercuts a 1976 law designed to give state governments and consumers the right to go to court and seek triple damages from producers accused of getting together and setting inflated prices.

The court held the rather narrow view that only the middlemen in the economic

system, those who bought goods directly from manufacturers, were entitled to triple-damage relief under the antitrust laws.

But these middlemen have little incentive to tackle the problem. In the first place, they can simply mark up the already rigged price and pass the goods along. And in the second place, out in the real world, few wholesalers are going to take their suppliers to court and risk losing their sources of supply.

A bill now before Congress which would overturn the Supreme Court's ruling is being bottled up by a single senator who threatens to disrupt the Senate schedule by a filibuster if the measure is brought up.

The bill in question is being supported by all 50 state governors and state attorneys general and the Carter administration, but it is being opposed, inevitably, by manufacturing interests that claim it would invite a blizzard of spurious lawsuits and accomplish little beyond enriching lawyers.

These are legitimate concerns, but they do not justify ignoring the problem. An important public policy question is at stake here, and it ought to be addressed by Congress.

It is probably too late in the congressional session to take action on this complicated issue this year. But it ought to receive high priority on Capitol Hill next year.

[From the Salt Lake Tribune, Oct. 8, 1978]

UTAH SENATOR HATCH SHOULD EASE PRICE-FIXING BILL BARRIER

There can be no true economy in government if governments are prevented from discouraging price-fixing which costs them dollars they needn't spend. And yet, local governments are apt to be stuck in such a situation if congressional action now pending can't move ahead.

Last year, the U.S. Supreme Court startled local officials nationwide when it ruled that under current federal antitrust laws, only buyers who deal directly with manufacturers can sue in U.S. courts for recovery if those manufacturers practice illegal price-fixing. Until that decision, cities, counties, states and school districts normally filed in federal courts for damages they suffer from alleged or proven price-rigging which hits them through middle-man suppliers.

In fact, during his term, former Utah Attorney General Vernon B. Romney recovered $200,000 for Utah in a successful antitrust case against pharmaceutical firms. He wouldn't have had a chance under the 1977 Supreme Court ruling. Right now, Atty. Gen. Robert B. Hansen's antitrust division is attempting to regain $2 million for the state in a suit against sellers of fine paper. Unlike Mr. Romney, however, Mr. Hansen's office is hog-tied unless the measure amending federal antitrust law gets passed.

The pending bill spells out, clearly enough for even Supreme Court judges to understand, the right of those actually hurt by illegal market-rigging to sue for and collect damages at the federal level. It acknowledges that lacking this protection at the buyer end of commercial transactions, there's precious little disincentive for price-fixing.

The bill has moved through House and Senate Judiciary Committees. But Sen. Majority Leader Robert Byrd, D-W.Va., syas he won't schedule a floor vote because Utah Sen. Orrin Hatch is poised to introduce more than 100 amendments—many of them inconsequential—if the bill reaches the Senate chamber. At this late date in the congressional session, that tactic is as good as a filibuster.

Sen. Hatch frankly opposes the bill. He says the problem can be solved with state laws. Unfortunately, his solution would require, because price fixing usually involves commerce across several state lines, identical antitrust legislation in 50 states. That's obviously not possible.

Moreover, it's been common practice to consolidate antitrust actions involving several states in one federal court case. That's convenient for everyone, including defendants otherwise obliged to appear in several state courts over a prolonged period.

Ultimately, however, tax money is at issue. Unless local governments can file original antitrust suits against those who have gouged them through market division agreements or other price-conspiracy schemes, the public will be fleeced as higher noncompetitive costs are passed along to them.

The stalled bill is strongly endorsed by the National Association of Attorneys General. Also by the National League of Cities, the National Conference of State Legislatures, the National Governors Conference, the Independent Bankers Association of America, retirement associations, consumer groups and farm organizations. It at least deserves a debate in the Senate on its merits. Sen. Hatch should help let this happen.

[From the Wisconsin Newspaper Association, Aug. 18, 1978]

RESTORE THE ANTITRUST LAW

Attorney General Bronson La Follette is applying what pressure he can to encourage bills pending in Congress intended to undo an unwise split decision handed down more than a year ago by the U.S. Supreme Court. Known as the Illinois Brick decision, it prevents persons who have been illegally overcharged for goods from suing the price-fixer if they didn't purchase directly from the violator. It is a monstrous decision that reflects badly on the integrity of the highest court in the land. Unfortunately, the only recourse the public has is to appeal to Congress and the President to undo this mischief by adopting a law to restore rights previously recognized as protecting purchasers from being gouged.

The high court majority held that the overcharged direct purchaser and not others in the chain of manufacture or distribution, is the injured party within the meaning of Section 4 of the Clayton Act. Since consumers usually purchase goods through retailers or other middlemen, under this decision they are now unable to recover damages for the higher prices they pay due to price-fixing and other anti-trust violations. It is estimated there are presently pending cases valued up to half a billion dollars which are jeopardized because of the Illinois Brick decision.

Bronson La Follette points out that the State of Wisconsin has collected about $5 million in antitrust cases since 1966 which would have been lost had this ruling been in effect. One of the ironies is that while the court precludes recovery by persons who ultimately pay the higher price, it does not prevent direct purchasers (usually middlemen) who pass on the higher prices, from recovering huge windfall damages even though they had not been injured at all.

In appealing for public support to influence Congress to adopt remedial legislation, La Follette states, "It has become quite common for most of us to complain about waste and the high cost of government. . . . The Supreme Court ruling will have a devastating effect on all consumers, including federal, state and local governments through its ruling."

In other words, those who end up paying inflated prices because of illegal price-fixing can no longer recover the overcharges. This situation should not have been permitted to exist as long as it has but until corrective legislation is adopted there can be no relief. In June, President Carter strongly endorsed legislation to restore the federal antitrust law to its full strength but as with so much other pending legislation, Congress is dragging its heels. The President, in effect, has joined those who assert that so long as the Supreme Court's narrow ruling stands, anti-competitive practices will go unpunished. This is lamentable.

[From the New York Times, October 28, 1977]

BRICKING UP AN ANTITRUST LOOPHOLE

If an appliance store buys an air conditioner or a refrigerator or anything else and then discovers the price has been illegally fixed by manufacturers, it may sue for treble damages under the antitrust laws. But if it manages to pass the rigged price on to a consumer, the consumer is out of luck; he cannot sue.

That, in effect, is what the Supreme Court decided last June when it rejected a suit against an Illinois brick manufacturer. The brick company had allegedly fixed the price of building supplies that it sold to builders, and they in turn passed on the added cost to local governments for which they worked. As "indirect" purchasers of bricks, the Court ruled, the local governments had no right to sue for damages.

The Court's judgment was based on a fear that antitrust defendants might otherwise become liable many times over for the same offense. In a 1968 case, the Court ruled that middlemen—wholesalers, contractors—might still sue manufacturers for price-fixing damages, even if the middlemen had passed on every penny of the actual damage to consumers. Hence, Justice White argued, also to allow the indirect purchasers to sue would open the defendants to treble damage claims from several levels of product distribution.

The difficulty now is that the *Illinois Brick* decision threatens in practice to cripple antitrust enforcement, or to force the Justice Department to seek redress through criminal rather than civil suits. The best deterrent against price-fixing has been the civil suit, often by those wronged indirectly, because of the threat of treble damage payments. The Supreme Court's ruling will also be devastating to class-action suits brought on behalf of groups of consumers by state attorneys-general. About 95 percent of such pending claims (totaling about $200 million) are based on indirect purchases.

The only remedy appears to be an amendment to the Clayton Antitrust Act, now being considered by both the House and Senate Judiciary Committees. It would restore the right of indirect purchasers to initiate suits—but under safeguards to protect defendants petty or frivolous claims. An individual indirect purchaser—who bought the air conditioner—could sue if it seems worth the time or trouble. State attorneys-general could sue on behalf of the whole class of consumers who bought the air conditioners. But private lawyers would not be able to sue on behalf of a random group of indirect purchasers. Moreover, in response to the Court's concern, the bill would make it impossible for claimants at different levels of product distribution to collect redundant damages.

Some argue that the law as it stands goes far enough. Direct purchasers, they contend, have a powerful incentive to sue conspiring sellers, even when they are able to pass on the excess cost to consumers. But that seems a strange argument, on grounds of equity alone. Why should damages go to middlemen rather than to the people who are actually wronged? In the real world, the direct purchasers are often under pressure to let a price-fix go unprotested. They may be wholesalers who depend on manufacturers for their supplies and fear the loss of distribution rights. Sometimes the wholesalers themselves are vulnerable to antitrust complaints and thus reluctant to risk legal action.

Another argument against the proposed

amendment is that it would further complicate antitrust proceedings. In the wake of the Illinois Brick decision, the courts need only determine the price-fixing has been proved and then assess damages. The new amendment would give the courts the extra job of dividing the damage award among direct and indirect purchasers. Few antitrust experts, however, foresee much effect on the work load of the Federal courts; dividing damages used to be a routine part of settling antitrust cases. That is not sufficient reason to tolerate a giant loophole in the Clayton Act.

We need effective antitrust laws to deny price-fixers the fruits of their conspiracies and to dampen inflationary pressures on the economy. Overtuning the Illinois Brick decision would help to achieve those goals.

[From the Washington Post, Oct. 31, 1977]

PURSUING THE PRICE FIXERS

The Supreme Court, in an unfortunate decision last June, suddenly created a large new obstacle to the enforcement of the antitrust laws. Even if you can prove that you are the victim of a price-fixing conspiracy, the Court said, you cannot recover damages unless you dealt directly with the fixer. In an economy as complex as this country's, with its vast networks of distributors, that is an extremely serious qualification. In many kinds of industry, it effectively eliminates any risk of damage suits over price conspiracies.

This anomaly stands out clearly in the case that the Court heard. The state of Illinois sued the Illinois Brick Co., charging that it had conspired to rig prices of concrete blocks. The state government had let construction contracts, the contractors had hired masonary subcontractors, and it was the subcontractors who actually bought the blocks from Illinois Brick. They presumably passed the price on, through the contractors, to the state.

Since it's not illegal to pass a rigged price on, the state can't sue the middlemen. Legally, the middlemen could sue the manufacturer. But these subcontractors weren't hurt by the conspiracy, if there was one, and in any case they are unlikely to undertake prolonged litigation against their supplier. For all the Court knew it might have been the grandest conspiracy in the history of concrete blocks. But nobody, under the Court's rule, would recover anything.

How in the world did the Court arrive at that decision? Well, six of the justices got tangled up in a misconceived effort to apply the logic of an earlier, different case to this one. They were worried, for one thing, about creating multiple liabilities for price fixers if everyone down the distribution chain could sue for triple damages. But trial judges have broad authority to consolidate cases and require plaintiffs to allocate damages among themselves. That, in fact, was what happened in these cases before the Court suddenly halted them.

* * * * *

[From the Denver (Colo.) Rocky Mountain News, Oct. 5, 1978]

PRICE FIXING

Backroom price fixing by manufacturers is just as pernicious as labor unions featherbedding or wasteful government spending. It subverts the much heralded "market mechanism" by protecting the lazy and the inefficient producer. It is inflationary. And it is illegal.

Government has a vital but difficult role in protecting the public interest in this area. The penalties against illegally rigging prices should be made prohibitve.

This brings us to a 1977 Supreme Court ruling which undercuts a 1976 law designed to give state governments and consumers the right to go to court and seek triple damages from producers accused of getting together and setting inflated prices.

The court held the rather narrow view that only the middlemen in the economic system, those who bought goods directly from manufacturers, were entitled to triple-damage relief under the antirust laws.

But these middlemen have little incentive to tackle the problem. In the first place, they can simply mark up the already rigged price and pass the goods along. And in the second place, out in the real world, few wholesalers are going to take their suppliers to court and risk losing their sources of supply.

A bill now before Congress which would overturn the Supreme Court's ruling is being bottled up by a single senator who threatens to disrupt the Senate schedule by a filibuster if the measure is brought up.

The bill in question is being supported by all 50 state governors and state attorneys general and the Carter administration, but it is being opposed, inevitably, by manufacturing interests who claim it would invite a blizzard of spurious lawsuits and accomplish little beyond enriching lawyers.

These are legitimate concerns, but they do not justify ignoring the problem. And important public policy question is at stake here, and it ought to be addressed by Congress.

It is probably too late in the congressional session to take action on this complicated issue this year. But it ought to receive high priority on Capitol Hill next year.

[From the Tallahassee Democrat, Sept. 25, 1978]

CONGRESS SHOULD ACT TO UPHOLD LAWSUITS

Let's say you hire a contractor to build that dream house you've always wanted. He completes the job and you pay his bill. Then you discover that the only suppliers of the bricks the contractor used had gotten together to fix prices. As a result, you paid several thousand dollars more for the house than you should have.

You'll sue the brick suppliers, right? Wrong. The courts say you can't sue, but your contractor can—and he doesn't have to give you any part of the money he collects.

Unfair? Sure it is, but, as a Florida taxpayer, you are in that very "can't sue" position today.

Unless Congress passes the corrective legislation scheduled to come before the House Rules Committee Wednesday, Florida taxpayers could lose as much as $26.5 million in a single lawsuit.

That's because taxpayers have built themselves some large 'houses" (such as the state Capitol) and some expensive bridges and roads.

The state contends that the suppliers of the structural steel for many of these projects conspired to fix prices and has sued for treble damages under a provision of the Clayton Act that has been on the books since 1890.

That suit has not been settled, but another suit, Illinois Brick vs. Illinois, has. The U.S. Supreme Court ruled that Illinois could not sue for treble damages because the bricks involved had not been purchased directly by the state, but by contractors who did work for the state.

The contractors can sue. But will they? It's unlikely they'll want to irritate their suppliers and, besides, they've suffered no loss because the added cost of bricks was simply passed along to the state. It's possible, in fact, that they made some extra money simply by adding an overall profit markup to the cost of supplies and labor.

Contractors are in the same position in the Florida steel case—one of three state anti-trust cases that could be affected by the Supreme Court decision.

The Florida projects contained steel worth $30 million and the state contends that overcharges accounted for $9 million of that amount. If the state should win its treble damage suit, the payoff would be $27 million.

But, if the state can only sue for the material it purchased directly, the amount of steel involved is about a half million dollars and the payoff would be limited to about $450,000.

And that's simply the dollar impact of a single suit.

Florida officials have acted to prevent future problems by requiring contractors to assign their rights to sue to the state. But that won't help the average consumer who purchases a product from a retailer only to find its price was inflated by price fixing at the wholesale level.

Now, states and organizations can bring class action suits in behalf of cheated consumers. The court decision, if allowed to stand, could virtually end such suits.

Congress should act quickly to pass corrective legislation before the Florida case is dismissed by the courts, as a similar Texas case was earlier.

The right to sue should be given to those who are actually damaged, not to the middleman who suffer no losses.

[From the St. Petersburg Times, Sept. 25, 1978]

NIX THE FIXERS

Congress ought not go home next month without fully restoring the rights of governments, small businesses, farmers and consumers to sue for anti-trust violations. Those rights largely were stripped away in June 1977 when the Supreme Court ruled that victims of a price-fixing conspiracy cannot recover damages unless they dealt directly with the fixer.

Rarely in today's complex economy does anyone, or any federal, state or local governmental agency, buy a product directly from the manufacturer.

Purchases mostly are made through retailers, distributors, contractors, subcontractors and other middlemen. The middlemen merely pass on the rigged costs, often profiting from them. They aren't apt to sue their suppliers. Consequently, unless corrective legislation is enacted, many big industries need not fear damage suits over price conspiracies.

At stake are upwards of $300-million in pending lawsuits by Florida and other states, another $200-million in suits filed by federal agencies and untold billions of dollars in future cases.

To make the argument, Florida Atty. Gen. Robert L. Shevin points to the state's class-action suit against Bethlehem Steel and three other suppliers of steel for the construction of government buildings, schools and bridges in this state. The state has alleged a price conspiracy dating as far back as 1959. Based on a study of purchases from 1970 to 1974, economists figured recoverable damages at $27-million for that period alone.

However, if damages are limited to direct steel purchases, the potential recovery is reduced to $450,000.

Even larger amounts are at issue in an anti-trust suit by Florida and six other states against the major oil companies. And, according to the attorney general's anti-trust section, the 1977 Supreme Court ruling also is being cited by defendants in civil action stemming from the Florida Power Corp. "daisy chain" fuel scandal.

The Court practically eliminated the consumer's right to sue price-fixers in a case brought by Illinois against Illinois Brick Co. for allegedly rigging the price of concrete blocks used in the construction of state office building. In a 6–3 ruling, the court seemed unduly concerned about creating multiple liabilities for price fixers is every-

one down the distribution line could sue for triple damages.

Of course, price fixing is still a crime and thus subject to prosecution by the Justice Department. But consumers—whether government, corporations or individuals—have the sharpest interest in keeping the marketplace free and competitive. They are the victims of the artificially inflated prices, directly or indirectly. It's ludicrous to deny them the right to sue.

Judiciary committees in both houses finally approved bills reasserting that right, but intense lobbying by big business interests has kept the legislation bottled up in the House Rules Committee until these waning days of the current session. Now the Rules Committee plans to take up the House version on Tuesday.

Among obstacles still ahead are a threatened filibuster in the Senate, whose version includes a vital savings clause to prevent dismissal of the pending government cases for several hundred millions of dollars in damages. At a time when concern about high taxes is sweeping the land, it's inconceivable, and yet all too possible, that Congress would adjourn without giving taxpayers' representatives a chance to recover damages from unconscionable price-fixers.

We hope that the leadership of both houses, with full support from Florida's delegation, will not let that happen.

[From the Arizona Republic, Oct. 6, 1978]

LaSota Assails Senator on Price-Fixing Bill

(By Bill King)

A Utah senator controlled by business could cost Arizona taxpayers and consumers $50 million by blocking anti-price-fixing legislation, Attorney General Jack LaSota alleged Thursday.

LaSota's denunciation of Sen. Orrin Hatch, R-Utah, came in a news conference at the state capitol. LaSota said he called the conference because Congress is preparing to adjourn and Hatch is coming to Arizona to raise funds for Rep. Eldon Rudd, R-Ariz.

LaSota said Hatch alone is blocking bipartisan legislation that would overrule a U.S. Supreme Court decision preventing recovery of damages for victims of price fixing if they did not deal directly with the price fixers.

LaSota said Hatch's tactics are "duplicitous" and "dilatory" and "subvert our democratic process."

"When I spoke to him last month, for example, he said compromise was possible," LaSota said. "When he returns to Washington, however, he refuses to discuss compromise."

LaSota said his antitrust chief, Ken Reed, was told by Hatch that Hatch could not agree to let the anti-price-fixing legislation come to a vote unless "business" told him it was all right.

"Hatch told Reed that Reed should be talking to the Business Rountable, a group of our nation's biggest corporations, rather than to him about the question of how Sen. Hatch was to vote," LaSota said.

He said big-business interests "apparently control" the vote of Hatch, whose stance is contrary to that of Utah's other top officials, the National Association of Attorneys General, and 50 governors, among other people and groups.

"One of the business interests which I understand is closest to Sen. Hatch on this question is U.S. Steel Corp.," said LaSota. "U.S. Steel recently won dismissal of a $30 million treble damage lawsuit by the state of Texas, not because U.S. Steel was found innocent and not because the state of Texas could not prove that it had been injured $10 million by U.S. Steel's price fixing, but because Congress had not acted."

LaSota said U.S. Steel "is no stranger to price-rigging cases" because it is accused of fertilizer price fixing in the Northwest and is a defendant in lawsuits alleging $500 million of overcharges for cement nationwide. LaSota suggested changing Senate rules to prevent one-man domination of the Senate.

His remarks were endorsed by Julian Rosenthal of Sun City, speaking for the American Association of Retired Persons.

[From the Washington Post, Oct. 3, 1978]

Indirect Purchasers Bill Facing a Probable Death

(By Carole Shifrin)

Despite widespread support in and out of Congress, legislation assuring victims of price-fixing conspiracies of their right to sue for damages faces a probable death this session of Congress.

Without congressional action, courts already have begun dismissing pending suits that could add up to $1 billion to state, federal and local coffers.

Nevertheless, because of vehement opposition to the bill by Sen. Orrin G. Hatch (R-Utah), it is becoming increasingly unlikely that the measure—approved by both judiciary committees—will be scheduled for floor consideration before congressional adjournment, expected in mid-October.

The Senate leadership has been unwilling to schedule floor debate during the final weeks of the session for any measure that promises to be controversial unless senators can agree on time limits for the debate. Sen. Hatch, who already has dumped into the hopper more than 100 proposed amendments to the three-page bill, says he will not agree to a time limit.

"I just don't think that in these waning days that you do that," he said last week. He added that he would "probably have 100 more amendments ready" by the time the bill would come up if the leadership decides to schedule it. [The House leadership has promised to take the bill to the floor if there is a promise of Senate action but doesn't want to waste its time otherwise.]

The measure is intended to overturn a decision by the Supreme Court last week, now referred to as the Illinois Brick decision, which held that only the direct purchasers of a product may sue under the antitrust laws to collect the allowable treble damages.

The bill would allow businesses, consumers and governments injured by antitrust violations to sue to recover damages whether or not they have dealt directly with the antitrust violator. Very often, the injured parties of price-fixing conspiracies are the indirect purchasers.

For instance, governmental units often purchase products through distributors and contractors, small businesses purchase product through wholesalers and consumers purchase products through retail stores—not directly from a manufacturer who might have been part of a price-fix conspiracy.

Supporters of the legislation say that because of the court decision, consumers who paid prices inflated by price-fixing schemes have no recourse to collect damages from the antitrust violator because they bought from a middleman.

President Carter, who supports the bill, complained in a letter urging enactment that without the bill, "Anticompetitive behavior may go unpunished in those instances where direct purchasers have passed on overcharges or otherwise have little motivation to bring an action."

Besides the support of the administration and a plethora of consumer and union groups, the governors and state attorneys general of all 50 states have been urging passage.

The federal, state and local governments as a group stand to lose between $500 million and $1 billion in damages in pending suits subject to dismissal without some congressional action.

Already courts have begun dismissing some of the pending damage suits. At the end of last month, for instance, a federal court dismissed a suit filed by the State of Texas seeking $10 million trebled for damages suffered as a result of buying reinforced steel bars at prices inflated by an alleged conspiracy.

Although lawyers for the state said they had evidence showing the state was overcharged by $10 million—which would have added $30 million to the state coffers—the suit was dismissed before the evidence could be presented because the state had purchased the steel bars from a contractor, not the manufacturer.

"The public has been clamoring for tax relief and yet a bill that would allow federal, state and local government units to recover hundreds of millions of dollars from price fixers has been stopped in its tracks. . . ." Sen. Edward M. Kennedy (D-Mass.), chairman of the Senate Antitrust and Monopoly Subcommittee, complained last week.

Kennedy has lined up support for the measure from more than 60 senators from both sides of the aisle despite the heavy lobbying against it by the Business Roundtable, Chamber of Commerce, National Association of Manufacturers, Food Marketing Institute and members of industries that read like a Who's Who of former price-fixing violators.

"The Illinois Brick opinion has virtually immunized large manufacturers from the antitrust laws and they will not lightly give up this new-found immunity," Kennedy charged.

He said that "a few large manufacturers have managed to convince one or two senators to take up their cause."

If the measure fails to get through this year, he vowed it would be his "top priority" for early next year when he takes over leadership of the Judiciary Committee.

[From the Sunday Oregonian, Aug. 13, 1978]

Oregon Official Pushing for Federal Price-Fixing Legislation

(By Sandra McDonough and Bill Keller)

Oregon has a $54 million stake in the passage of pending federal legislation that would give consumers the right to seek damages from companies found guilty of price fixing.

However, the legislation has been stymied in the U.S. Senate, and Oregon Attorney General James Redden has taken on the role of lobbyist to help the bill over the roadblocks that have kept it off the Senate floor.

Oregon, Redden said, has at least $54 million worth of price-fixing cases pending, and it is worth his time to lobby for passage of the federal legislation. His staff has said that the dollar amount is conservative and the state could lose as much as $70 million in damages if the legislation is not passed.

The bill, which was introduced by Sen. Edward Kennedy, D-Mass., would, in effect, overturn a 1977 ruling by the U.S. Supreme Court that consumers may not sue a company for price fixing unless they purchased the product directly from the manufacturer rather than through a middleman. If a consumer feels he has been the victim of a price-fixing scheme, the court said, he must sue the middleman, who in turn may then sue the manufacturer.

Redden said that ruling was not logical because consumers usually are the ultimate victims of price fixing, which is illegal according to federal and state antitrust laws. The middlemen, or retailers, pass on to their customers any costs they incur because of price fixing.

"We almost never buy from the manufacturer—nobody does." Redden said. About 80 percent of all state purchases are made through middlemen, he added.

The Supreme Court invited Congress to enact new legislation defining consumer rights in antitrust litigation when it issued the ruling about price fixing in the "Illinois brick" case.

Redden said it is imperative that that legislation be enacted as soon as possible because judges may begin throwing out antitrust cases in which consumers seek damages from manufacturers because of the Supreme Court ruling. So far, Redden said, attorneys have been able to stall dismissal of the cases because of the pending federal legislation.

He and other attorneys general from around the country are lobbying to get the bill settled before the Senate recesses for its Labor Day break on Aug. 30. The bill has cleared committees in both the Senate and the House.

However, Theodore L. Lytle, counsel to Kennedy's antitrust subcommittee, said the bill may not make it to the Senate floor this summer because some of its opponents are threatening to filibuster when the debate begins. That threat, coupled with the fact the Senate must consider other controversial bills this summer, may persuade Senate Majority Leader Robert Byrd not to schedule the antitrust bill for consideration this month.

Lytle said Byrd probably will schedule the bill for this summer only if he can get a majority of the senators to agree on limiting debate before it begins. Kennedy is trying to get that guarantee and so far has enlisted the support of 20 senators. Neither of Oregon's two Republician senators, Bob Packwood and Mark Hatfield, is on that list.

"We seem stymied." Lytle said. "If we can't get the support of people like Hatfield and Packwood, we probably can't go anywhere this year."

So far, he added, the two Oregon senators have seemed "a little bit reluctant" to commit themselves on what stand they will take when the bill goes before the Senate.

An aide to Hatfield said that the senator probably would vote to limit debate should the proposal run into a filibuster, but he doesn't know the bill well enough to formally support it.

"He wants to read the fine print before he decides," said aide Lon Fendall.

In a July 25 letter to Redden, Hatfield said his concern about the bill is "whether consumers are best protected by having direct purchasers bring cases before the court, which may have a greater chance of success, or allowing indirect purchasers to bring the cases to the court and insure that consumers can recover damages as a consequence of antitrust violations."

In the letter, Hatfield also said he was aware that Oregon's ability to recover damages from price-fixing schemes may be at stake because of the pending legislation. He said he would consider Redden's views when making his decision.

At Packwood's office, an aide said she didn't recall any correspondence the senator had with Redden about the bill, but she did recall one phone call from "some government agency" about the matter. She said she hadn't discussed the matter with Packwood and did not know where he stands on the issue.

However, in response to Redden's request that Packwood support the bill and the limitation on debate about it. Packwood on July 27 wrote:

"Those who support this antitrust bill see it protecting the consumer. But opponents argue it may nullify effective private antitrust enforcement. I am withholding judgment on this legislation until I hear the floor debate—and I will keep your comments in mind at that time."

Redden said that response appeared to be "a form letter."

"I have been unable to get commitments from either Hatfield or Packwood," Redden said, "I want the public to know that the bill is coming up and they have two senators who are taking a vote on it."

The primary opponents of the bill say it is anti-business. Lobbying to defeat it are large manufacturers and drug companies, which are often the targets of price-fixing lawsuits.

The opponents also say the bill should be defeated because inviting consumers to file antitrust lawsuits will crowd the court calendars with cases that traditionally take a long time to settle. Also, the opponents said in a formal statement about why they want the bill defeated that the proposed legislation could make it difficult to determine who should receive damages because so many people would try to win retribution from the manufacturers.

Redden dismissed those arguments, saying that a crowded court calendar is not a good enough reason to defeat the bill. That problem, he said, should be resolved with new laws or court policies that can expedite the antitrust cases.

Oregon, he said, is a good example of why consumers must be able to sue for damages in price-fixing cases. In one of the most active antitrust law units in the country, the attorney general's office since 1965 has collected more than $8 million in damages from antitrust activity.

Most of that money has been collected in the past few years, after the antitrust laws took effect. Since in punitive action, judges can order companies to pay the injured party three times the amount of actual monetary damages, successful handling of the lawsuit is beneficial to the state, Redden said.

"We've had an especially aggressive state program during the past three years," Redden said.

His office has a number of cases pending in court. One of those suits involves action brought by Oregon and six other states against all the major . . . companies for alleged price fixing in the early 1970s.

Oregon could gain a lot of money if it wins that suit, Redden said.

[From the Minneapolis Star, June 20, 1978]

REBUILDING ANTITRUST LAW

President Carter yesterday strongly endorsed legislation to restore federal antitrust law to its full strength. Bills introduced in both houses of Congress would undo the damage caused by a 6-to-3 U.S. Supreme Court decision last year. Carter rightly urged passage of a curative bill without weakening amendments.

The court's decision last year drastically narrowed the number of suspected price-fixers within the reach of antitrust prosecutions. This affected especially the economic interests of the federal and of state and local governments. Here's one immediate danger. If the decision—which is based on statutory interpretation and not constitutional principle—isn't changed, $500 million in state and federal claims could go down the drain. Atty. Gen. Warren Spannaus said the loss to Minnesota could be $1 million.

Spannaus made that point at a meeting of the National Association of Attorneys General in Paul, where he is the host. The association has lobbied for the legislation Carter endorsed. In Washington, Carter said that if the Supreme Court's narrow ruling stands, anticompetitive practices would go unpunished. We agree with Carter, Spannaus and the association on the need of vigorous enforcement of adequate antitrust laws. Such laws stimulate price competition. That is a weapon against inflation that should not be dulled or broken, a point to which both Carter and Spannaus alluded.

Technically, what the Supreme Court did was to prohibit "indirect" purchasers from recovering antitrust suit damages. In other words, only those who purchase directly from the price-fixer can sue, even though the higher prices are passed through the economic chain to the ultimate consumer. That new technical twist provides antitrust immunity for 95 percent of the manufacturers who supply governmental units because their goods go through distributors. But governmental units aren't the only victims. The decision is a blow for farmer groups, trade associations, businessmen (especially small businessmen) and individuals. It furthermore jeopardizes a special statute that authorizes attorneys general to sue on behalf of citizens who have been overcharged by price-fixers but who simply can't afford to start lawsuits as individual consumers.

Mr. MORGAN. Mr. President, I thank my distinguished colleague for his fine interest and leadership in this matter. I think it important that we build somewhat of a record in the Chamber today to impress upon the Members of the Senate the importance of this bill.

I do not know of any piece of legislation that has been brought before the body this year that I feel more strongly about than I do this one. I must say that I think one of the basic causes or reasons that we had inflation and recession going on in this country at the same time for the last few years has been because of the concentration of economic power in this country in the hands of a few.

I, as attorney general of my State, as I am sure that other attorneys general have, observed time and time again this power has been used to the detriment of the people. Up until the Illinois Brick case last June or July the consumers could sue to recover damages which they had suffered, because of price fixing on the part of these people who exercise and wield such power. Time and time again as during my years as attorney general we brought action. We recovered damages for the State of North Carolina for the libraries and the public school libraries, because of price fixing on the part of the textbook and some of the book publishers. We recovered damages from the plumbing fixtures manufacturers. I could name a dozen such suits.

But when the Illinois Brick case came out and held that no one but the person who had dealt directly with the manufacturer or the producer could bring an action, it for all practical purposes, as the Senator from Massachusetts has pointed out, deprived the consumers of this country of tens of millions of dollars and even beyond that.

And the bill was introduced last June and the hearings were held. I believe 8 days of hearings were held. But I do not think it was ever marked up in the full committee. I hope that the——

Mr. KENNEDY. Mr. President, will the Senator yield at that point?

Mr. MORGAN. I yield.

Mr. KENNEDY. We have it at the desk. It was reported to the Senate on June 25. It has been on the calendar since that date.

Mr. MORGAN. It has been on the calendar.

Mr. KENNEDY. It has been on the calendar since June 25, but we have been unable to get it called up.

Mr. MORGAN. I stand corrected.

Mr. DANFORTH. Mr. President, will the Senator yield?

Mr. KENNEDY. We have that degree of support.

Mr. MORGAN. I am happy to yield.

Mr. DANFORTH. Mr. President, but for the hour and but for the fact that a number of Members of the Senate would like to hopefully conclude the tax bill by 6 p.m., I would carry on at some length saluting the Senator from North Carolina for his efforts.

I do appreciate his calling attention to this bill and to its importance and also appreciate the work of Senator KENNEDY and his concern that the Judiciary Committee once again take on this issue at the earliest date in the next Congress.

Mr. MORGAN. I thank the Senator.

Mr. President, the fact that it was reported out after 8 days' hearings—I stand corrected on that—indicate the strong support that this bill has. I hope that next year we will be able in the early days of the session to do something about it because I think it is important if the attorneys general of the States are to be able to fulfill their responsibility, if consumers of the country are entitled to reap damages for the ripoffs that they have had, and if we are to do something to deter those who would engage in this kind of price fixing.

This amendment will once again allow consumers, including States and the Federal Government, the right to recover damages for antitrust violations which injure them. The private customer has always been the intended beneficiaries of the antitrust laws. The purpose of the antitrust laws, emphasized by both Congress and the courts, has always been to provide consumers with better products and lower prices, to prevent suppliers singly or in combination from raising prices at the expense of individual citizens.

It is conservatively estimated that price fixing and other antitrust violations cost Americans more than $100 billion a year. This cost is carried by persons who can least afford it. The high prices charged consumers as a result of antitrust violations do more than frustrate the economic goal of better products and lower prices. They frustrate basic human goals of fair and equitable treatment that are a fundamental part of the fabric that holds our society together. Consequently, both courts and Congress have long recognized that consumers must be able to recover for antitrust violations that injure them because the threat of such suits deters antitrust violations, and because fundamental fairness requires that those who are injured by antitrust violations should be compensated

It is ironic, then, that on June 9 of last year the Supreme Court, in its Illinois Brick decision, held that most consumers were barred from recovering damages for antitrust violations. In Illinois Brick the Court held that only those parties who purchase directly from an antitrust violator could recover damages. If a group of manufacturers overcharges customers as a result of a price fixing conspiracy, only the direct purchasers—usually wholesalers and other middlemen—can recover. In reality, of course, a middleman passes on his increased cost to ultimate consumers who are the real parties injured. But the Illinois Brick majority opinion says that these injured consumers cannot recover.

In so deciding, the majority opinion was contrary to the vigorous dissent of three Supreme Court Justices, contrary to the rule previously adopted by four Federal Courts of Appeals, and contrary to the legislative history of the Sherman Act and other antitrust legislation. At the time both of the Sherman Act in 1890 and of the Hart-Scott-Rodino bill enacted just last year, Congress clearly expressed its intent that consumers, whether "direct" or "indirect" purchasers, were entitled to recover damages for antitrust violations.

Just last year, Congressman RODINO, cosponsor of the Hart-Scott-Rodino Act said:

> First, if this bill means anything, it means that the State may recover damages for purchasers of price fixed bread, potato chips, and the like. To argue that consumers must be direct purchasers from the price fixer is to deny recovery in these cases—for the consumer rarely, if ever, buys potato chips directly from the manufacturer, or bread directly from the bakery. In these cases, the manufacturer invariably sells through wholesalers and retailers—grocery stores, drug stores, and the like—and if the intervening presence of such a middleman is to prevent recovery, the bill will be utterly meaningless."

In particular, the majority decision in Illinois Brick directly conflicts with the intent of the parens patriae section of the Hart-Scott-Rodino bill. The clear purpose of the parens patriae amendment was to enable State attorneys general to act on behalf of ultimate consumers whose individual interests might be too small to justify separate, individual lawsuits. Although the Illinois Brick decision did not deal directly with the parens patriae section, the majority opinion's restriction on consumer actions is flatly inconsistent with the whole purpose and spirit of the Hart-Scott-Rodino bill.

Moreover, in a footnote, the Supreme Court interprets parens patriae actions as simply a new procedural device to enforce existing damage claims. This interpretation, together with the majority's opinion that most consumers have no existing damage claim because they are indirect purchasers, means that the Illinois Brick decision effectively frustrates the clear legislative intent of Congress. The majority opinion justifies its result, in part, by arguing that it is compelled by stare decisis to follow the earlier Hanover Shoe case. In Hanover Shoe, the Supreme Court held that the first or "direct" purchaser could recover the entire amount of an overcharge even if most or all of the overcharge were passed on to consumers.

In Illinois Brick the Supreme Court said that since first purchasers could recover everything, the consumer can recover nothing. The result is that the first purchasers may get a huge undeserved windfall and the real injured party may go entirely uncompensated. In addition, enforcement of the antitrust laws may be impaired because ultimate consumers, who often will have the most incentive to sue, are barred unless they happen to direct purchasers. While many middlemen do sue, many times the first purchaser will not want to sue or not be in a position to sue. In such cases, unless the ultimate consumer is able to sue, private enforcement of the antitrust laws is effectively precluded. By depriving injured consumers of compensation while granting windfall profits to middlemen, and by impairing the effective enforcement of the antitrust laws, the majority opinion in Illinois Brick raises serious problems. The majority opinion itself in Illinois Brick recognizes some of those problems, but says that if indirect consumers are to be allowed to sue, Congress should provide the remedy. This amendment does just that.

This amendment is identical to S. 1874 which was the subject of 8 days of hearings and the testimony of 55 witnesses. The bill was favorably reported by both the Antitrust Subcommittee and the full Judiciary Committee. More than half of this body has already indicated its strong support for this measure. It has been prevented from coming to a vote as a separate bill only because of the shortness of time and the threat of procedural obstruction.

This measure should not be delayed until next year. Hundreds of millions of dollars of taxpayers' money are at stake. The Illinois Brick bill should be reversed and reversed now.

NEED FOR S. 1874

Until the Supreme Court's Illinois Brick opinion, parties could recover damages if they could prove they were injured by reason of an antitrust violation. They could do so by suing the antitrust violator under section 4 of the Clayton Act. In order to recover, the party had to prove two basic items—one, that the defendant violated one of the antitrust laws and two, that this violation resulted in injury to them.

On June 9, 1977, the Supreme Court issued an opinion in the case of *Illinois Brick Co.* v. *Illinois*, 431 U.S. 720 (1977) holding that "the overcharged direct purchaser, and not others in the chain of manufacture or distribution, is the party 'injured in his business or property' within the meaning of section 4 of the Clayton Act."

Since most people and organizations purchase goods through retailers or other "middlemen," the opinion effectively precludes small businesses, farmers, consumers, State governments, and many Federal agencies from recovering damages for antitrust violations. It has been estimated, for example, that State governments only purchase 5 percent of their requirements directly from manufacturers. The other 95 percent are through middlemen. At the present time there are at least $500 million in State government damage claims which the States will lose if S. 1874 is not passed this session.

A bar to these actions is flatly contrary to the express intent of Congress in passing the original Sherman Act in 1890 and the Clayton Act in 1914, as well as the

recent Hart-Scott-Rodino Act enacted last Congress. A bar to other than direct purchasers is also contrary to the rule applied by a majority of Federal courts prior to the unexpected Illinois Brick decision. If the Illinois Brick decision had been the law, consumers, State governments, and many agencies of the Federal Government who in the last several years recovered millions of dollars for the higher prices they paid for price-fixed drugs, highway materials, hardware products, and other items purchased through middlemen would have been barred from any recovery.

Ironically, while the rule of the Illinois Brick majority opinion bars any recovery by consumers and others who do not deal directly with antitrust violators, that rule permits persons who do deal directly with antitrust violators to recover huge windfall damages even if they have not been injured at all. This is because the court held that a "direct" purchaser may recover the entire amount of any overcharge even if that purchaser—in most cases a middleman—has passed some or even all of the higher price on to consumers.

For example, drug manufacturers may agree among themselves to fix the price of an antibiotic at a price higher than its value in a competitive market. Their customers, the wholesalers or the pharmacies, then pay the higher price but will then pass all or most of the illegal overcharge on to their customers. Since drug wholesalers and pharmacies usually operate on the basis of a constant percentage markup, they are frequently better off because of the manufacturers' higher price. The consumers are the real party injured. Yet under the Illinois Brick decision the consumer is wholly barred from any recovery, while the wholesaler or pharmacist, if he does sue, can collect three times the overcharge even though he may have passed on the full amount of the overcharge.

The Illinois Brick rule, in addition to being contrary to the purpose and intent of the antitrust laws and fundamentally unfair to those who are truly injured, will also result in a weakening of the important function of antitrust damage suits as a supplement to public enforcement of the antitrust laws. This is because direct purchasers or middlemen frequently are reluctant to sue their supplier for fear of disrupting existing profitable relations, for fear of opening their files to the broad discovery typical of antitrust cases, or because they really are not damaged as a result of the antitrust violations. In such cases, barring suits by "indirect" purchasers and sellers will mean that no party will sue.

The intensity of lobbying by manufacturers indicates their desire to remain immunized from antitrust suits. It is abundantly clear that manufacturers, under the Illinois Brick opinion, will pick and choose the parties to which they will sell directly. By such a selection they can guarantee that they will never have to pay compensation for price fixing.

The loss of private damage actions on behalf of indirect purchasers has an intolerable impact upon antitrust enforcement, and the Illinois Brick decision must either be reversed or will have to be countered by a major increase in Federal enforcement or regulation.

Mr. LONG. Mr. President, in view of the situation that developed because of the agreement as to amendments that cost a lot of revenue, the Senator from North Carolina (Mr. HELMS) could not offer his amendment. In view of the fact that his amendment would have been in order at the time cloture was voted to try to fulfill the commitment I made on yesterday, I ask unanimous consent that the Senator from North Carolina (Mr. HELMS) again call up his amendment No. 3850, and I ask unanimous consent that he be allowed the privilege to modify it to eliminate whatever provision there may be in his amendment that make it subject to a point of order in the Budget Act.

Mr. MUSKIE. Mr. President, reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

Mr. MUSKIE. Mr. President, I discussed this matter earlier with the distinguished floor manager of the bill, and he was contemplating a similar request with respect to an amendment which Senator NELSON of Wisconsin wished to bring up which was a modification of an earlier Kennedy amendment. This morning there was a similar request by Senator DECONCINI with respect to an amendment as to which he received approval of a unanimous-consent request last Friday. It just seems to me that to begin this process is to open up the possibility of a lot of amendments that are not germane being offered in an attempt to get around the cloture procedure.

The cloture procedure cut off an amendment in which I have a great stake and which I am not permitted to offer, and I doubt very much I could get unanimous consent to offer it.

Mr. LONG. I say to the Senator he would not get it.

Mr. MUSKIE. I am sure of that.

Before I do object, I say that I have great sympathy for the amendment of the Senator from North Carolina and also the amendment of the Senator from Wisconsin.

But for the reason I have expressed, I do object and I do it with great reluctance.

The ACTING PRESIDENT pro tempore. Objection is heard.

AMENDMENT NO. 4042

Mr. BENTSEN. Mr. President, I have an amendment at the desk and ask that it be reported. It is 4042.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN) proposes an amendment numbered 4042.

Mr. BENTSEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 211, line 12, insert the following:

SEC. 156. INDIVIDUAL RETIREMENT ACCOUNT TECHNICAL CHANGES.

(a) EXTENSION OF PERIOD FOR MAKING INDIVIDUAL RETIREMENT PLAN CONTRIBUTIONS.—

(1) AMENDMENT OF SECTION 219(C)(3).—Paragraph (3) of section 219(c) (relating to time when contributions deemed made in the case of retirement savings) is amended by striking out "not later than 45 days after the end of such taxable year" and inserting in lieu thereof "not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)".

(2) AMENDMENT OF SECTION 220(C)(4).—Paragraph (4) of section 220(c) (relating to time when contributions deemed made in the case of retirement savings for certain married individuals) is amended by striking out "not later than 45 days after the end of such taxable year" and inserting in lieu thereof "not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1977.

(b) EXCESS CONTRIBUTIONS MAY BE DEDUCTED IN SUBSEQUENT YEAR FOR WHICH THERE IS AN UNUSED LIMITATION.—

(1) AMENDMENT OF SECTION 219.—Subsection (c) of section 210 (relating to definitions and special rules for retirement savings) is amended by adding at the end thereof the following new paragraph:

"(5) EXCESS CONTRIBUTIONS TREATED AS CONTRIBUTION MADE DURING SUBSEQUENT YEAR FOR WHICH THERE IS AN UNUSED LIMITATION.—

"(A) IN GENERAL.—If for the taxable year the maximum amount allowable as a deduction under this section exceeds the amount contributed, then the taxpayer shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

"(i) the amount of such excess, or

"(ii) the amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof).

"(B) AMOUNT CONTRIBUTED.—For purposes of this paragraph, the amount contributed—

"(i) shall be determined without regard to this paragraph, and

"(ii) shall not include any rollover contribution.

"(C) SPECIAL RULE WHERE EXCESS DEDUCTION WAS ALLOWED FOR CLOSED YEAR.—Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section or section 220 for a prior taxable year for which the period for assessing a deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year."

(2) AMENDMENT OF SECTION 220.—Subsection (c) of section 220 (relating to definitions and special rules for retirement savings for certain married individuals) is amended by adding at the end thereof the following new paragraph:

"(6) EXCESS CONTRIBUTIONS TREATED AS CONTRIBUTION MADE DURING SUBSEQUENT YEAR FOR WHICH THERE IS AN UNUSED LIMITATION.—

"(A) IN GENERAL.—If for the taxable year the maximum amount allowable as a deduction under this section exceeds the amount contributed, then the taxpayer shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

"(i) the amount of such excess, or

"(ii) the amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof).

"(B) AMOUNT CONTRIBUTED.—For purposes of this paragraph, the amount contributed—

"(i) shall be determined without regard to this paragraph, and

"(ii) shall not include any rollover contribution.

"(C) SPECIAL RULE WHERE EXCESS DEDUCTION WAS ALLOWED FOR CLOSED YEAR.—Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section or section 219 for a prior taxable year for which the period for assessing a deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.".

(3) AMENDMENT OF SECTION 4873.—Paragraph (2) of section 4973(b) (defining excess contributions) is amended to read as follows:

"(2) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

"(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

"(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

"(C) the excess (if any) of the maximum amount allowable as a deduction under sec- amount contributtd (determined without re- tion 219 or 220 for the taxable year over the amount contributed (determined without regar- to sections 219(c)(5) and 220(c)(6)) to the accounts or for the annuities or bonds for the taxable year.".

(4) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to the determination of deductions for taxable years beginning after December 31, 1975.

(B) TRANSITIONAL RULE.—If, but for this subparagraph, an amount would be allowable as a deduction by reason of section 219(c)(5) or 220(c)(6) of the International Revenue Code of 1954 for a taxable year beginning before January 1, 1978, such amount shall be allowable only for the taxpayer's first taxable year beginning in 1978.

(c) ADDITIONAL PERIOD TO RECTIFY CERTAIN EXCESS CONTRIBUTIONS.—

(1) GENERAL RULE.—Subsection (d) of section 408 (relating to tax treatment of distributions) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) CERTAIN DISTRIBUTIONS OF EXCESS CONTRIBUTIONS AFTER DUE DATE FOR TAXABLE YEAR.—

"(A) IN GENERAL.—In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed $1,750, paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 or 220 for the taxable year for which the contribution was paid—

"(i) if such distribution is received after the date described in paragraph (4),

"(ii) but only to the extent that no deduction has been allowed under section 219 or 220 with respect to such excess contribution.

"(B) EXCESS ROLLOVER CONTRIBUTIONS ATTRIBUTABLE TO ERRONEOUS INFORMATION.—If—

"(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

"(ii) such information was erroneous, subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by paragraph (1) shall apply to distributions in taxable years beginning after December 31, 1975.

(B) TRANSITIONAL RULE.—In the case of contributions for taxable years beginning before January 1, 1978, paragraph (5) of section 408(d) of the Internal Revenue Code of 1954 shall be applied as if such paragraph did not contain any dollar limitation.

(d) REQUIREMENT THAT ANNUITY CONTRACTS WILL QUALIFY AS INDIVIDUAL RETIREMENT ANNUITY ONLY IF THE PREMIUMS ARE FLEXIBLE.—

(1) IN GENERAL.—Paragraph (2) of section 408(b) (defining individual retirement annuity) is amended to read as follows:

"(2) Under the contract—

"(A) the premiums are not fixed,

"(B) the annual premium will not exceed $1,500, and

"(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts issued after the date of the enactment of this Act.

(3) TAX RELIEF FOR FIXED PREMIUM CONTRACTS HERETOFORE ISSUED.—In the case of any annuity or endowment contract issued on or before the date of the enactment of this Act which would be an individual retirement annuity within the meaning of section 408(b) of the Internal Revenue Code of 1954 (as amended by paragraph (1) but for the fact that the premiums under the contract are fixed, at the election of the taxpayer an exchange before January 1, 1981, of that contract for an individual retirement annuity within the meaning of such section 408(b) (as amended by paragraph (1) shall be treated as a nontaxable exchange which does not constitute a distribution.

(e) CLARIFICATION OF DOLLAR LIMIT IN THE CASE OF INDIVIDUAL RETIREMENT ANNUITIES AND RETIREMENT BONDS.—

(1) I GENERAL.—

(A) AMENDMENT OF SECTION 408(b)(2).—Subparagraph (B) of section 408(b)(2) (as amended by paragraph (1) of subsection (d) is amended by inserting "on behalf of any individual" after "annual premium".

(B) AMENDMENT OF SECTION 409(a)(4).—Paragraph (4) of section 409(a) (relating to retirement bonds) is amended by inserting "on behalf of any individual" after "may not contribute".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to taxable years beginning after December 31, 1976.

(f) ROLLOVER OF PROCEEDS FROM SALE OF PROPERTY PERMITTED.—

(1) ROLLOVERS FROM QUALIFIED EMPLOYEES' TRUSTS AND ANNUITIES.—Paragraph (6) of section 402(a) (relating to special rollover rules) is amended by adding at the end thereof the following new subparagraph:

"(D) SALES OF DISTRIBUTED PROPERTY.—For purposes of subparagraphs (5) and (7)—

"(i) TRANSFER OF PROCEEDS FROM SALE OF DISTRIBUTED PROPERTY TREATED AS TRANSFER OF DISTRIBUTED PROPERTY.—The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

"(ii) PROCEEDS ATTRIBUTABLE TO INCREASE IN VALUE.—The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

"(iii) DESIGNATION WHERE AMOUNT OF DISTRIBUTION EXCEEDS ROLLOVER CONTRIBUTION.—In any case where part or all of the distribution consists of property other than money, the taxpayer may designate—

"(I) the portion of the money or other property which is to be treated as attributable to employee contributions, and

"(II) the portion of the money or other property which is to be treated as included in the rollover contribution.

Any designation under this clause for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

"(iv) TREATMENT WHERE NO DESIGNATION.—In any case where part or all of the distribution consists of property other than money and the taxpayer fails to make a designation under clause (iii) within the time provided therein, then—

"(I) the portion of the money or other property which is to be treated as attributable to employee contributions, and

"(II) the portion of the money or other property which is to be treated as included in the rollover contribution shall be determined on a ratable basis.

"(v) NONRECOGNITION OF GAIN OR LOSS.—In the case of any sale described in clause (i), to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (5)(B) or (7)(B) (as the case may be), neither gain nor loss on such sale shall be recognized.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to qualifying rollover distributions (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1954) completed after December 31, 1978, in taxable years ending after such date.

(g) DISTRIBUTION FROM EMPLOYEES' QUALIFIED PLAN OR ANNUITY TO SPOUSE MAY BE ROLLOVER CONTRIBUTION TO AN INDIVIDUAL RETIREMENT PLAN.—

(1) ROLLOVERS FROM QUALIFIED EMPLOYEES' TRUST.—Subsection (a) of section 402 (relating to taxability of beneficiary of exempt trust) is amended by adding at the end thereof the following new paragraph:

"(7) ROLLOVER WHERE SPOUSE RECEIVES LUMP-SUM DISTRIBUTION AT DEATH OF EMPLOYEE.—

"(A) GENERAL RULES.—If—

"(i) any portion of a lump-sum distribution from a qualified trust is paid to the spouse of the employee on account of the employee's death,

"(ii) the spouse transfers any portion of the property which the spouse receives in such distribution to an individual retirement plan, and

"(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B) through (E) of paragraph (5) and of paragraph (6) shall apply for purposes of this paragraph.

(2) ROLLOVER FROM QUALIFIED ANNUITY PLANS.—Subparagraph (B) of section 403(a)(4), as amended by section 21(b), is amended by striking out "paragraph (6)" and inserting in lieu thereof "paragraphs (6) and (7)".

(3) NO ROLLOVER TO QUALIFIED PLAN OR ANNUITY FROM IRA TO WHICH SPOUSE MADE ROLLOVER CONTRIBUTION.—Subparagraph (B) of section 408(d)(3) is amended by adding at the end thereof the following: "Clause (ii) of subparagraph (A) shall not apply to any amount paid or distributed out of an individual retirement account or an individual retirement annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) (or in the

case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B)).".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to lump sum distributions completed after December 31, 1978, in taxable years ending after such date.

(h) REMOVAL OF CERTAIN REQUIREMENTS.—

(1) DISREGARD OF 5-YEAR MINIMUM PARTICIPATION RULE FOR PURPOSES OF ROLLOVERS.—Subclause (II) of section 402(a)(5)(D)(i) is amended by striking out "subsection (e)(4)(B)" and inserting in lieu thereof "subparagraphs (B) and (H) of subsection (e)(4)".

(2) REDUCTION OF REQUIRED PERIOD BETWEEN ROLLOVER CONTRIBUTIONS FROM 3 YEARS TO 1 YEAR.—The first sentence of subparagraph (B) of section 408(d)(3) is amended by striking out "3-year period" and inserting in lieu thereof "1-year period".

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to payments made in taxable years beginning after December 31, 1977.

(B) TRANSITIONAL RULE.—In the case of any payment which is described in section 402(a)(5)(A) or 403(a)(4)(A) of the Internal Revenue Code of 1954 by reason of the amendments made by this subsection, the applicable period specified in section 402(a)(5)(C) of such Code (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B) of such Code) shall not expire before the close of December 31, 1978.

(i) WAIVER OF EXCISE TAX ON CERTAIN ACCUMULATIONS IN INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.—

(1) GENERAL RULE.—Section 4974 (relating to excise tax on certain accumulations in individual retirement accounts or annuities) is amended by adding at the end thereof the following new subsection:

"(c) WAIVER OF TAX IN CERTAIN CASES.—If the taxpayer establishes to the satisfaction of the Secretary that—

"(1) the shortfall described in subsection (a) in the amount distributed during any taxable year was due to reasonable error, and

"(2) reasonable steps are being taken to remedy the shortfall,

the Secretary may waive the tax imposed by subsection (a) for the taxable year.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1975.

(j) REMOVAL OF CERTAIN LIMITATIONS ON PROVISION ALLOWING CORRECTION OF EXCESS CONTRIBUTIONS.—

(1) GENERAL RULE.—The last sentence of section 4973(b) (defining excess contributions) is amended to read as follows: "For purposes of this subsection, any contribution which is distributed from the individual retirement account, individual retirement annuity, or bond in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contributions made for taxable years beginning after December 31, 1977.

(k) SIMPLICATION OF RETURN REQUIREMENTS WITH RESPECT TO INDIVIDUAL RETIREMENT PLANS.—

(1) IN GENERAL.—Section 6058 (relating to information required in connection with certain plans of deferred compensation) is amended by redesignating subsection (d) as subsection (f) and by striking out subsection (c) and inserting in lieu thereof the following new subsections:

"(c) EMPLOYER.—For purposes of this section, the term 'employer' includes a person described in section 401(c)(4) and an individual who establishes an individual retirement plan.

"(d) COORDINATION WITH INCOME TAX RETURNS, ETC.—An individual who establishes an individual retirement plan shall not be required to file a return under this section with respect to such plan for any taxable year for which there is—

"(1) no special IRP tax, and

"(2) no plan activity other than—

"(A) the making of contributions (other than rollover contributions), and

"(B) the making of distributions.

"(e) SPECIAL IRP TAX DEFINED.—For purposes of this section, the term 'special IRP tax' means a tax imposed by—

"(1) section 408(f),

"(2) section 409(c),

"(3) section 4973, or

"(4) section 4974.".

(2) INDIVIDUAL RETIREMENT PLAN DEFINED.—Subsection (a) of section 7701 (relating to definitions of general application throughout the Code) is amended by adding at the end thereof the following new paragraph:

"(37) INDIVIDUAL RETIREMENT PLAN.—The term 'individual retirement plan' means—

"(A) an individual retirement account described in section 408(a),

"(B) an individual retirement annuity described in section 408(b), and

"(C) a retirement bond described in section 409.".

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to returns for taxable years beginning after December 31, 1977. The amendment made by paragraph (2) shall apply to taxable years beginning after December 31, 1974.

Mr. BENTSEN. Mr. President, the amendment which I am offering consists of a series of technical corrections to the provisions of the tax law affecting individual retirement accounts. These provisions, in general, are designed to make the IRA provisions more workable for the average person. The proposals have been endorsed by the Treasury Department.

The amendments which I am offering would make it easier to correct unintended excess contributions to an IRA, facilitate the use of rollovers to and from IRA's, and permit the waiver of certain penalty provisions imposed in connection with IRA's where the violation of the IRA rules was due to inadvertent errors. Also my amendment would simplify the reporting requirements with respect to IRA's.

Mr. President, this amendment has broad support and the revenue involved is very modest. It is estimated that these provisions would result in a revenue loss of only about $25 million for fiscal year 1980, and $12 million per year thereafter. The amendment which I offer is essentially the same as the provisions of H.R. 13619 which was unanimously ordered reported by the House Committee on Ways & Means on September 27, 1978. The Treasury Department supports this amendment.

Mr. President, I have additional material here for insertion in the RECORD. I ask unanimous consent that it be printed in the RECORD. I urge adoption of this amendment.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE AMENDMENT

A. PART I OF THE AMENDMENT RELATING TO IRA CONTRIBUTIONS

1. Extension of period for making individual retirement plan contributions.

Under present law, a deduction is allowed for a contribution to an IRA (an individual retirement account, an individual retirement annuity, or a retirement bond) for a year only if it is made within 45 days after the close of the year.

The amendment would permit an individual to make a deductible contribution to an IRA (establish an IRA) for a year up to the time of filing the individual's tax return for the year (including extensions).

2. Deduction of contributions in subsequent year for which there is an unused limitation.

Under present law, if an individual does not make the maximum deductible contribution to an IRA for a year, the additional amount which the individual could have contributed and deducted is applied to reduce any accumulated excess contributions to the IRA as of the close of the year. However, no deduction is allowed with respect to the reduction of excess contributions.

Under the amendment, a deduction would be allowed to the extent that an unused IRA deduction limitation for a year is applied to reduce excess contributions to the IRA, but only to the extent that the excess contributions were not previously deducted. The amendment also allows make-up deductions for corrections made in taxable years beginning after December 31, 1975.

3. Additional period to rectify certain excess contribution.

Under present law, an excess contribution by an individual to an IRA for a year may be corrected without penalty only if the excess and any earnings thereon are withdrawn by the time for filing the individual's tax return for the year (including extensions) and only if the amount withdrawn does not exceed the excess of $1,500 ($1,750 for a spousal IRA) over the amount allowable as a deduction for an IRA contribution for the year.

The amendment would allow an individual who (1) makes a total contribution that does not exceed $1,750 to an IRA for a year (all or part of which is an excess contribution), and (2) fails to correct the excess contribution by the date for filing the individual's tax return for the year (including extensions), later to withdraw the excess contribution without incurring a penalty for the year of withdrawal, but only to the extent that a deduction was not previously allowed with respect to the excess contribution. Also, the amendment would allow an excess rollover contribution, regardless of the amount, to be corrected where it resulted from reasonable reliance on certain erroneous information. The amendment allows corrections for taxable years beginning after December 31, 1975.

4. Addition of requirement that premiums on individual retirement annuity contracts must be flexible.

Under present law, an individual retirement annuity contract may require the payment of fixed premiums, irrespective of whether the premiums are deductible under the IRA provisions.

Under the amendment, individual retirement annuity contracts issued after the date of enactment of the bill would be required to provide for the flexible payment of premiums. In addition, the amendment would permit tax-free exchange of previously issued fixed premium individual retirement annuity contracts for flexible premium individual retirement annuity contracts.

5. Clarification of dollar limitation in the case of individual retirement annuities and retirement bonds

Under present law, the maximum deductible contribution to a spousal individual retirement account is $1,750.

The amendment would correct a technical oversight in connection with individual retirement annuities and retirement bonds to make it clear that contributions of up to $1,750 may be permitted in the case of all spousal IRAs.

B. PART II OF THE AMENDMENT RELATING TO ROLLOVERS

1. Rollover of proceeds from sale of property

Under present law, an individual who receives property as part of a distribution from a qualified plan eligible for rollover treatment is accorded tax-free rollover treatment only if the actual property distributed from the qualified plan is contributed to an IRA or to another qualified plan.

Under the amendment, an individual who receives property as part of a distribution from a qualified plan eligible for rollover treatment would be permitted to engage in a tax-free rollover of the proceeds from the sale of the property distributed rather than of the property itself.

2. Rollover contribution to individual retirement plan of distribution to spouse from qualified plan or annuity

Under present law, a participant in a qualified plan is eligible to make a tax-free rollover contribution to an IRA of a lump sum distribution from the plan, but if the spouse of a deceased participant receives a lump sum distribution as a death benefit under the plan, the spouse is not eligible to make a rollover contribution.

Under the amendment, the spouse of a deceased participant who receives a lump sum distribution as a death benefit from a qualified plan would be eligible to make a rollover contribution to an IRA.

3. Removal of certain restrictions on rollovers

Under present law, an individual must have been a participant in a qualified plan for five years in order to receive a lump sum distribution from the plan which is eligible for tax-free rollover treatment.

Also, under present law, rollovers between IRAs are permitted only once every three years.

Under the amendment, an individual who has participated in a qualified plan for less than five years would be eligible to receive a lump sum distribution from the plan which is eligible for tax-free rollover treatment.

Also under the amendment, rollovers between IRAs would be permitted once a year.

C. PART III OF THE AMENDMENT RELATING TO CHANGES IN PENALTY PROVISIONS

1. Waiver of excise tax on certain accumulations in individual retirement accounts or annuities.

Present law imposes a 50-percent excise tax on an individual who fails to make certain minimum distributions from an IRA beginning at age 70½.

Under the amendment, the Internal Revenue Service would have authority to waive the 50-percent excise tax where the failure to make a required minimum distribution from an IRA is due to reasonable error and reasonable steps are being taken to correct the error.

2. Removal of certain limitations on provision allowing correction of excess contributions.

Under the present law, an excess contribution to an IRA for a year may be corrected without penalty if the contribution and earnings thereon are withdrawn from the IRA by the date for filing the tax return for the year (including extensions) and if the amount withdrawn does not exceed the excess of $1,500 ($1,750 for a spousal IRA) over the amount allowable as a deduction for an IRA contribution for the year.

Under the amendment, the dollar limitations would be withdrawn and an excess contribution to an IRA for a year could be corrected without penalty if the excess contribution and the earnings thereon are withdrawn on or before the date for filing the tax return for the year (including extensions).

D. PART IV OF THE AMENDMENT RELATING TO SIMPLIFICATION OF RETURN REQUIREMENTS WITH RESPECT TO INDIVIDUAL RETIREMENT PLANS

Under present law, an individual maintaining an IRA is required to file a tax return with respect to the IRA each year.

Under the amendment, IRA tax returns would not be required for a year in which no IRA penalty taxes are imposed and no activity occurs with respect to the IRA other than the making of deductible contributions and permissible distributions.

Mr. BENTSEN. I would want to change the date. There is a typographical error in there, and I would like to change it from 1979 to 1980 on its effectiveness.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, it is my understanding that it has been cleared with the minority and, as I say, it is supported by Treasury. I frankly do not know of any objections to it. It passed the Ways and Means Committee unanimously.

Mr. STEVENS. Mr. President, I have no objection to the Senator's amendment. But it is my understanding that the clerk is empowered to make technical and clerical corrections, and there has been a uniform objection to any technical amendment. So long as that continues, I will object to any modification of the amendment.

The ACTING PRESIDENT pro tempore. Objection is heard.

The question still remains on the amendment of the Senator from Texas. The amendment is still before the Senate. It is the Chair's understanding that the Senator from Texas was concerned about a typographical error, the change to be made by unanimous consent in that. But it is also the Chair's understanding that there was objection to the unanimous-consent request to change a typo.

Mr. BENTSEN. The Chair is correct.

The ACTING PRESIDENT pro tempore. The amendment of the Senator from Texas is still before the Senate.

Mr. BENTSEN. I urge the adoption of the amendment without any correction.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Texas.

The amendment was agreed to.

AMENDMENT NO. 4033

(Purpose: To clarify the meaning of "similar provisions of State and local law" in the special recapture rule for federally assisted low-income housing)

Mr. JAVITS. Mr. President, I send an amendment to the desk and ask for its consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. JAVITS. I call up my amendment No. 4033.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an amendment numbered 4033.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following section:

SEC. . RECAPTURE OF GAIN FROM DISPOSITION OF CERTAIN SUBSIDIZED LOW-INCOME RENTAL HOUSING.

(a) IN GENERAL.—

(1) ADDITIONAL DEPRECIATION AFTER DECEMBER 31, 1975.—

(A) Clause (i) of section 1250(a)(1)(B) (relating to applicable percentage for gain from dispositions of certain depreciable realty) is amended by striking out "similar provisions of State or local laws" and by inserting in lieu thereof "provisions of State or local laws intended primarily to finance or assist housing for families or individuals of low or moderate income".

(B) Clause (ii) of section 1250(a)(1)(B) (relating to applicable percentage) is amended by striking out "State or local law authorizing similar levels of subsidy for lower income families" and by inserting in lieu thereof "State or local law providing for subsidies of a similar nature for low- or moderate-income families and individuals."

(2) ADDITIONAL DEPRECIATION AFTER DECEMBER 31, 1969, AND BEFORE JANUARY 1, 1976.—Clause (ii) of section 1250(a)(2)(B) (relating to additional depreciation) is amended by striking out "similar provision of State or local laws" and by inserting in lieu thereof "provisions of State or local laws intended primarily to finance or assist housing for families or individuals of low or moderate income".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective upon date of enactment of this Act.

The ACTING PRESIDENT pro tempore. The Chair, under the precedents of the Senate, must rule the amendment as not being germane.

Mr. JAVITS. Not germane. I thank the Chair, and I yield back my time.

AMENDMENT NO. 4487

(Purpose: To eliminate the requirement that married taxpayers must file a joint return to benefit from the exclusion for disability payments)

Mr. BUMPERS. Mr. President, I call up my amendment No. 4487.

The ACTING PRESIDENT pro tempore. The Clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS) proposes an amendment numbered 4487.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, add the following new section:

SEC. 28. (a) Paragraphs (4) and (6) of subsection (d) of section 105 of the Internal Revenue Code of 1954, as amended by subsection (a) of section 505 of the Tax Reform Act of 1976, Public Law 94-455, approved October 4, 1976, are hereby repealed.

(b) Paragraphs (5) and (7) of subsection (d) of section 105 of the Internal Revenue Code of 1954, as amended by subsection (a) of section 505 of the Tax Reform Act of 1976, Public Law 94-455, approved October 4, 1976, are hereby renumbered (4) and (5).

(c) The amendments made by this section shall be effective as of the effective date of section 505 of the Tax Reform Act of 1976, Public Law 94-455, approved October 4, 1976.

Mr. BUMPERS. Mr. President, this is an amendment that the distinguished floor manager and I had a short colloquy on the other evening but for the edification of my colleagues who were not here then, the amendment is simply this: It deals with a sick pay exclusion provision.

Under present law anybody who is out of work for as long as 2 weeks is entitled after the first 7 days of illness to $100 a week sick pay exclusion. If they are out for 4 weeks they are entitled to $400. If they are out for a year totally disabled or sick for any reason they are entitled to $5,200 a year.

The only thing about it is in 1976 in the tax reform bill we put a provision in that when a taxpayer's income exceeds $15,000 the sick pay exclusion begins to drop off dollar for dollar for every dollar of income the taxpayer has over $15,000. So it works like this: if somebody has a $20,000 income he could only get—and he was totally disabled for the full year, he would only be entitled to—$200 of the sick pay exclusion. He would lose $5,000 of the $5,200 because his income exceeds $15,000 by $5,000.

Now, Mr. President, there is another inequity in this, and I will tell you what it is. The 1976 bill also provided that in order to get the benefit of the sick pay exclusion the taxpayer must file a joint return with his wife or she with her husband. So what this means is if a man is totally disabled and has no income but his wife has $20,000 of income, and she is his total source of support she would not be entitled to more than $200 sick pay exclusion.

I think it is a gross inequity. I think despite the Treasury Department's minor objections we ought to rectify that.

Mr. RIBICOFF. I think there is justification to this amendment, and the manager of the bill will accept the amendment of the senior Senator from Arkansas.

Mr. BUMPERS. I thank the floor manager very much.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NUNN). The clerk will call the roll.

Mr. BUMPERS. Mr. President, will the Senator withhold? I ask unanimous consent that Senator BENTSEN be named as a cosponsor of the amendment which was just offered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment was agreed to.

AMENDMENT NO. 3850

(Purpose: To delete the repeal of the nonbusiness deduction of State and local gasoline taxes)

Mr. HELMS. Mr. President, I have an amendment which was discussed at some length yesterday. It is at the desk, and I ask that it be called up and stated.

The PRESIDING OFFICER. The Chair does not understand the Senator. Will the Senator repeat?

Mr. HELMS. I am trying to find the number of the amendment. No. 3850. I now again call it up and ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (for himself, Mr. RIEGLE, Mr. HATCH, and Mr. TOWER,) proposes an amendment numbered 3850:

Beginning with line 16 on page 159.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Beginning with line 16 on page 159, strike out through line 6 on page 160.

On page 160, line 7, strike out "Subtitle C" and insert in lieu thereof "Subtitle B".

On page 161, line 12, strike out "Subtitle D" and insert in lieu thereof "Subtitle C".

On page 201, line 18, strike out "Subtitle E" and insert in lieu thereof "Subtitle D".

On page 211, line 13, strike out "Subtitle F" and insert in lieu thereof "Subtitle E".

On page 224, line 1, strike out "Subtitle G" and insert in lieu thereof "Subtitle F".

On pages 126 and 127, strike out the item relating to subtitle B of title I of the bill and the item relating to section 111, and redesignate the items relating to subtitles B, C, D, E, F, and G of title I of the bill as relating to subtitles A, B, C, D, E, and F.

Mr. HELMS. Mr. President, this amendment, as I say, was discussed at some length yesterday, and resulted in a ruling by the Chair that the amendment violates section 311 of the Budget Act, which the Senator from North Carolina intended at that time to appeal. But, at the suggestion of the distinguished manager of the bill I withdrew the appeal.

The PRESIDING OFFICER. The Senator has a right to appeal the ruling of the Chair.

Mr. HELMS. I understand. I thank the Chair, and appreciate his remarks.

Mr. President, simply said, this is an amendment which proposes to preserve the gasoline tax deduction. As I said yesterday, it has become almost an annual event that Congress tries to eliminate State and local gasoline taxes as a legitimate deduction on Federal income tax returns.

I have the greatest respect for the distinguished chairman of the Senate Finance Committee and for the outstanding role he and members of his committee have played in formulating a bill that—in my opinion—attempts to provide meaningful tax reduction.

At the same time, Mr. President, I take strong exception to the proposed deletion of the gas tax deduction. At the very moment when we are trying to provide some long overdue relief for the American taxpayer, there is no reason to increase taxes by disallowing the deduction. Repeal of the gas tax deduction is simply inconsistent with the general thrust of this bill.

Contrary to a sort of myth that some have attempted to build up, this deduction is not a rich man's deduction. For the very wealthy, the dollar value of this deduction is insignificant. Rather, this is a modest tax break for the average citizen.

Mr. President, the distinguished Senator from Michigan (Mr. RIEGLE) is a cosponsor of this amendment, because he agrees that citizens receiving the greatest benefit from the gasoline tax deduction are those who must drive their automobiles to work or who live in rural areas, and who are forced to travel great distances for medical care, groceries, farm supplies, and other necessities. These are primarily middle-income people who are already overburdened with taxes and who benefit by the few extra dollars the deduction affords them. Repeal of the deduction is nothing more than another tax increase, and it cannot and should not be viewed in any other light.

The Finance Committee has listed a number of reasons for repeal of the deduction. Basically, the committee makes four arguments: First, the State gas tax is a user charge; second, that the deduction invites tax fraud because it is based on miles driven, a figure hard to prove and easy to manipulate; third, that repeal of the deduction will help achieve tax simplification for taxpayers; and fourth, that repeal of the deduction will—at least symbolically—promote the country's efforts to conserve energy.

Under close examination, these arguments simply do not hold up.

The Nation's road system benefits everyone, not just the motorist. Without our modern highway system most essential goods could never be transported to consumers. The fact that State highway taxes are used to provide the principal funding for State and county roads actually highlights the tremendous contribution to the national welfare made by the motorists. The deduction of the gasoline tax does shift part of the cost from the highway user to the general taxpayer. But all taxpayers benefit in many ways from the highway system.

The tax-cheating argument is a false

issue. Virtually all tax deductions are subject to some abuse including the gas tax deduction. But this is certainly not a good reason to eliminate a valid deduction. Our tax system in this country is based upon voluntary filing and compliance with the law. The deduction may indeed present audit difficulties for the Internal Revenue Service but since the amount of tax savings to itemizers resulting from the deduction is relatively small, I seriously doubt that there is more tax avoidance associated with this deduction than others.

In response to the committee's argument that repeal would promote simplification, there is no evidence that the American people favor tax "reform" or simplification at the expense of provisions which benefit the middle-income taxpayer, and that is what we are talking about with this amendment. The vast majority of the American people see the gas tax deduction as perfectly reasonable. The committee report admits that virtually every itemizer claims the deduction. That is proof—so it seems to me—that the deduction is easily understood and simple enough for the taxpayer. It is just not reasonable to argue that one less deduction—out of many—will simplify the return of the itemizers.

The energy argument is also highly questionable, almost to the point of being absurd. A virtual doubling of the cost of gasoline over the past 4 years caused by skyrocketing oil prices has not noticeably altered gasoline consumption in this country because the demand for gasoline is inelastic. Most Americans work for a living, with the vast majority not having access to alternate means of transportation. If enormous increases in the price of gasoline will not deter driving, elimination of a mere tax deduction will have no impact at all. So there goes that argument, Mr. President.

The only impact in disallowing the deduction is a tax increase on the American people. Over 70 percent of the revenue that will be raised from the repeal of this deduction will come from taxpayers making less than $30,000 a year. In 1983 alone, the elimination of this deduction will take an additional $2.2 billion from the pockets of the American taxpayer who will also be facing spiraling fuel prices. In the wake of proposition 13, it is hardly the time for Congress to burden the American people through such a "backdoor" tax increase as this if we allow the removal and elimination of the gasoline tax deduction.

Because of the parliamentary situation that now exists, it is almost impossible to get a rollcall vote on the amendment itself because of the likelihood of the Chair's adverse ruling, which I believe to be in error.

I do not believe that it is proper to hold that the Finance Committee can effectively change existing law simply by cutting off any opportunity to restore an item the committee proposes to delete; but that is a matter of dispute. The bottom line of the situation as it now stands, Mr. President, is that a vote to sustain the Chair, assuming that the Chair will persist in its position that this amendment is subject to a point of order, will be a vote to terminate the gasoline tax deduction. This deduction is favored by the vast majority of the American people, and a vote to reverse the ruling of the Chair will be a vote to keep the gasoline tax deduction.

Mr. RIEGLE. Mr. President, could we have order in the Senate so that the Senator can be heard?

The PRESIDING OFFICER. The Senate will be in order. The Senator from North Carolina.

Mr. HELMS. I thank the Chair. A vote to reverse the ruling of the Chair will be a vote to allow the Senate to vote on a controversial committee recommendation; and a vote to reverse the ruling of the Chair will be a vote to affirm that keeping the tax code as it is cannot be interpreted as a "revenue loss."

Mr. President, I believe the distinguished assistant minority leader desired to make some comment on the matter, and I will be glad to yield to him on my time.

Mr. MUSKIE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MUSKIE. What was the basis of the point of order yesterday? What was the basis of the ruling of the Chair?

The PRESIDING OFFICER. This amendment was ruled out of order under section 311 of the Congressional Budget Act.

Mr. MUSKIE. At the time that ruling was made, the actions taken by the Senate up to that point had used up all the money in the bank. Since that time, there has been adopted by the Senate a revenue raising measure, and my calculations show that there is some room left as a result of that revenue raising measure, but not enough. I think in all fairness to the Senator from North Carolina we ought to have a ruling from the Chair on the present state of the budget resolution. So I make the point of order again, simply so that we may have a ruling based upon the present state of the budget resolution.

The PRESIDING OFFICER. The Chair rules the same as the previous ruling: since this amendment would still carry the level of revenue below the level specified in the second budget resolution, the ruling of the Chair would remain the same.

Mr. MUSKIE. A point of information has crossed my mind. There is now $173 million of room in the 1979 budget resolution, according to my calculations, but the Senator's amendment would still require over $400 million.

Mr. HELMS. I thank the Senator for making that clear. I yield to the Senator from Alaska.

Mr. STEVENS. Mr. President, I thank the Senator from Maine for making that statement, because it demonstrates again the point I was making; that the amendment of the Senator from North Carolina deals with restoring a provision of existing law. Under existing law, individuals who itemize may deduct the gasoline taxes they pay to States, and I believe that the deductibility of these taxes should be retained.

The Senate Finance Committee is recommending that we eliminate that deduction despite the fact that when we have faced this problem before, the Senate has voted to retain the deduction.

Because of the limitations of the Budget Act, we are now faced with the possible necessity of having a computer on the floor to calculate the net budgetary effect of each and every amendment offered. While I think the Senator from Maine currently performs that function very well, but I do believe that the day will come when we will have to have a computer in the Chamber to accurately compute whether or not there is enough money left. A point of order was raised because this was a $400 million amendment, and we now have only $175 million to work with.

The point is that the Finance Committee's recommendation to eliminate existing law becomes binding upon the Senate because of the net tax cuts provided in this bill. We are told we must maintain a balanced bill where the revenue decreases are offset by equal increases. We had better be very careful, however, because we may not always have a balance in Finance Committee bills, and a majority of the Finance Committee can make up its mind to change existing law simply by saying:

> Let us eliminate the individual exemption, and at the same time come out with a bill that gives everybody a 10 percent tax cut.

We do not get any chance to challenge the elimination of the exemption if it is a balanced bill. As long as it is in balance, we have no choice, under the Senate's budget resolution, to challenge that decision of a majority of the Finance Committee. All we can do is vote for the package; for the elimination of the individual exemption and for the tax cut which makes it a balanced bill.

I believe this is an improper procedure when we are dealing with existing law, because existing law provides this deduction to individuals. We ought to have the right to vote up or down on that change. Moreover, I think it is unconstitutional to prevent the Senate from doing so, I still challenge the ruling of the Chair. I do not think that existing law can be changed without a vote on this floor if a Senator demands it and the Senator from North Carolina is demanding a vote.

Mr. LONG. Will the Senator yield?

Mr. STEVENS. I yield.

Mr. LONG. Mr. President, all that would have been no problem had it not been that in addition to the budget proposition, which has limitations, then the cloture was voted. If you put the cloture together with the budget, you are past the limit. Otherwise, you could vote to recommit and report back anything you wanted to. But under the cloture rule, you cannot do indirectly what the rule will not let you do directly.

You still have options. You can still vote against the bill, you can do that, or you can take something else out of the bill, if there was something put in the bill that would cost money.

It was not the committee that put this recommendation in. It was the House that sent it to us. That was the House bill. That is the way it came to us. It was

a fortuitous set of circumstances. An amendment was agreed to that cost so much revenue that at that point to take out the tax increase on the gasoline matter would mean that the committee amendment would be subject to a point of order. The Senator asked if he could modify the amendment and I understand why objection was made.

But it is the cloture rule that precludes the Senator from doing what he would like to do.

Mr. STEVENS. If I still have the floor, I will finish in a moment.

This issue is a matter of fairness and a matter of precedent in the Senate. I understand what the Senator from Louisiana is saying about the combination of circumstances. But I do not like to see a time come when the combination of circumstances denies a Senator the right to challenge the recommendation of a majority of the committee. That, to me, is a precedent we will sorely regret. I do not think we should be faced with recommendations to change existing law which we are prevented from challenging solely because the books do not balance as far as the budget resolution is concerned.

The final cost of the bill can be adjusted later. I would hope we would find some way to change the Budget Act so that a determination of whether or not the books balance will be made after the last substantive amendment is considered. I just do not like to face the question of changing existing law by the procedure we witnessed earlier.

With due regard to the Senator from Louisiana, I believe this to be a matter of fairness. I want to be able to vote to retain the gasoline tax deduction. I have voted for it in the past as has the majority of this Senate since I have been here. Now we are told:

You cannot vote on that. It is subject to a point of order.

That is notwithstanding the fact that every time it has come up on the floor in the last 10 years, it has been sustained.

The point of order is a way around the past precedents of this Senate. We must not allow it to happen. I urge Senators not to let it happen. I would like to see the matter begun again. I tried to get the point of order withdrawn. The person making the point of order, the Senator from Wisconsin, would have withdrawn it.

I do believe we ought to have a way to challenge this substantive change in existing law without regard to the budget impact and then, during final consideration of the tax bill, have a determination as to what limitations we are faced with, under the existing budget resolution. That would be balancing the books, in my opinion, and I urge the Members here tonight to vote to override the Chair in this instance so we can vote on the gasoline tax deduction.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I feel just as strongly about this as the Senator from North Carolina and the Senator from Alaska. As a matter of fact, the vote last year by the Senate was 65 to 12 in favor of maintaining the gasoline tax deduction. The Senate likewise in 1974 voted the same way. That was to maintain this deduction. Frankly, despite the fact that the chairman of the committee indicates that the House took it out, the House does a lot of things that we do not agree to, but there has been no case made on the merits for doing away with this particular deduction.

One of the things that I worry about is what a lot of people take as sleight of hand. Roughly one-third of the American taxpayers itemize and here we are moving in a direction to provide some tax relief. Next spring when people make out their tax returns they are going to find out that this deductible item they have had for years has suddenly disappeared. On the one hand their taxes are being increased, because that deduction has been taken away, and on the other hand there has been some other part of the tax law changed which presumably is going to reduce their taxes. This is exactly the kind of sleight of hand where we give it with one hand and take it away with the other that I think has created a lot of the cynicism that people feel about the taxing system.

I do not see the justification for taxing income that has already been taxed away. That is the basic question here. The issue here is that this part of the income has already been drawn off in the form of the gasoline tax. Does a person have a right to then deduct that from their income tax return or do they have to pretend that they still have that money and are taxed for money that is already gone?

I might also say, as I said yesterday, that this has an effect on 33 different States which pattern their State income taxes and their local income taxes on the basis of the federal system. By withdrawing the gasoline tax deduction here at the Federal level we are, in effect, taking it away, because of those State and local jurisdictions, so that the taxpayer involved is actually going to end up losing more money than it is alleged here the Federal Government would gain. So I think that ought to be thought about as well.

I have not heard one syllable of justification for eliminating this deduction Quite frankly, as I understand it, and I am willing to be corrected, I gather that it was in the late stages of the work of the Finance Committee when they were looking for the revenue-producing item that somebody hit upon the idea of throwing out the gasoline tax deduction.

That really is not much of a justification. I hope that there is some substantive reason that goes deeper than that to cause us to back away from votes we cast in the past, just last year, 65 to 12, on this item.

I ask unanimous consent to have printed in the RECORD a listing of the cost of what this will mean State by State in terms of the number of dollars pulled out of the various 50 States and the amount of money that is effected in terms of the average return to taxpayers in those States. If you take a look at this, you will understand why, in the Roper poll that was done, 76 percent of the American people polled in the Roper poll on taxes said that they felt that the gasoline tax deduction was a reasonable deduction and ought to be maintained. Only 7 percent, I might say, said that they would be willing to see it eliminated even if it would mean lower tax rates.

There being no objection, the document was ordered to be printed in the RECORD, as follows:

STATE LIST

Alabama	Minnesota
Alaska	Missouri
Arizona	Montana
Arkansas	Nebraska
California	New Jersey
Colorado	New Mexico
Delaware	New York
District of Columbia	North Dakota
Georgia	Oklahoma
Hawaii	Oregon
Idaho	Rhode Island
Iowa	South Carolina
Kansas	Utah
Kentucky	Vermont
Louisiana	Virginia
Maine	West Virginia
Maryland	Wisconsin

Aggregate value and value of deduction per itemized return, by States, 1975

	Aggregate return (millions)	Average return
Alabama	$50.4	$142.83
Alaska	5.1	99.72
Arizona	35.8	118.37
Arkansas	17.0	122.97
California	390.0	116.07
Colorado	42.4	106.25
Connecticut	61.6	158.78
Delaware	9.7	140.54
D.C	8.8	108.53
Florida	98.5	117.84
Georgia	63.3	128.26
Hawaii	12.1	107.94
Idaho	8.5	108.86
Illinois	142.5	108.58
Indiana	56.6	119.10
Iowa	27.0	90.14
Kansas	24.0	101.78
Kentucky	43.1	135.80
Louisiana	42.6	131.40
Maine	11.5	129.84
Maryland	89.2	140.18
Massachusetts	85.2	116.40
Michigan	184.8	150.07
Minnesota	64.5	118.82
Mississippi	29.1	146.39
Missouri	52.6	111.19
Montana	6.5	93.21
Nebraska	14.1	104.14
Nevada	8.3	103.37
New Hampshire	9.3	135.64
New Jersey	132.0	128.55
New Mexico	11.4	110.51
New York	294.2	119.54
North Carolina	79.3	146.24
North Dakota	4.1	80.80
Ohio	112.2	106.86
Oklahoma	26.8	105.67
Oregon	28.2	95.38
Pennsylvania	145.7	124.32
Rhode Island	13.2	133.70
South Carolina	38.6	135.41
South Dakota	4.0	98.18
Tennessee	87.3	123.50
Texas	87.3	87.17
Utah	18.8	110.87
Vermont	5.8	119.91
Virginia	84.0	142.87
Washington	56.5	127.95
West Virginia	9.9	120.77
Wisconsin	53.2	92.97
Wyoming	3.3	102.03
United States	2,946.0	118.16

Mr. RIEGLE. There is enormous support for this. It has been justified in the past. It has been ratified in the Senate. Now we find ourselves in a situation where it is about to be thrown out without any chance for a focus on this thing, without any opportunity for the kind of careful hearings that would need to be done to justify this kind of move.

Sure, I grant we are caught in this budget trap, but that is not really our fault. Our amendment came in a sequence of events where additional money availability in the tax bill had already been pledged to other amendments that came before ours. It is hard for me to understand why trying to save something that is in existing law ought to be ruled out and we cannot even have a direct up or down vote on it simply because our amendment came later in the order of sequence in which amendments were raised. This is hardly a sufficient argument.

I hope that in this case, which I think is unique—I know of no other situation where any amendment has been offered to try to preserve existing law and to keep taxes from going up, which is what will happen if this deduction is taken up. I know of no other amendment that falls in this category.

That is why I hope that, using the only device that we have; namely, asking that the Senators will overturn this rule so we have a chance to preserve this deduction—that the Senate will support us on this. I think it falls in a special category. I think we have made the case on its merits and I hope each Senator will weigh it carefully before voting.

Mr. HELMS. Mr. President, I want to make it crystal clear that there is no criticism, implicit or otherwise, of the distinguished chairman of the Finance Committee or the chairman of the Committee on the Budget. I believe both, as a matter of fact, are in sympathy with the amendment. I understand their position and my dispute is not with them. I am simply challenging the ruling yesterday of the Chair.

Did the Senator from Maine raise a point of order?

Mr. MUSKIE. What was the Senator's question?

Mr. HELMS. Has the Senator yet raised the point of order on the amendment?

Mr. MUSKIE. No, I have not. I wanted to make some brief observations.

Mr. HELMS. I yield to the Senator.

Mr. MUSKIE. I assure the Senator they will be brief.

The PRESIDING OFFICER. A point of order has been raised and sustained.

Mr. MUSKIE. The point of order has been raised and sustained, but the appeal of it is still in order and I should like to make a few brief observations if I may.

First of all, the fact that this amendment comes at a time when there is no more room in the budget is not unusual. It happens on the spending side of the budget all the time. When we set ceilings in the 19 functions of the budget, then amendments are considered by the Senate to spending bills. As they fill the pipeline in any function, when the ceiling is reached, that rules out any others, even though they may be more meritorious than programs that have already been approved. So this is not unusual. It has happened over and over again every year on the spending sides of the budget.

Second, this question of whether or not existing law ought to be changed in order to meet budget objectives—if we were to take the view on the spending side of the budget that existing law should never be changed and that the Budget Committee ought never to recommend or the budget process ought never to have the effect of forcing a change in existing law, we would be stuck with present spending and be building on it. Every Senator knows, I am sure, by now that 75 percent of the spending side of the budget is uncontrollable. It is uncontrollable, because it is mandated by present law. So if we are never to change present law, we shall never have available to us for new priorities the resources that are committed to present law.

The budgetary constraints that Members are restive about are essential if we are to force Congress not only to limit additions to present spending, but to eliminate present spending or present revenue laws that are no longer justified by changing events, changing priorities, and changing values of the country.

Mr. RIEGLE. Will the Senator yield at that point for a question?

Mr. MUSKIE. In just a moment, because I am just about finished. Finally, I know that it is tough to come to the end of the line and find that you are ruled out by a point of order, because you did not get in first. Senator HASKELL'S jobs credit provision is similar to the amendment of the Senator from Michigan. If he had come at the end of the line, even though it is a current provision of the law, he would have been out of order, because there would not have been any money left in the fiscal year 1979 resolution. But, he came in first. I know that it is frustrating to find yourself at the end of the line.

But, the budget discipline requires of each of us is that we follow this process very, very carefully. It is the business of following it and being required to follow it that is part of the discipline.

I am not one who says these procedures should never be changed. But the suggestion of the Senator from Alaska, that we pile up these amendments that go above the ceiling and deal with them all just before we are ready to act finally on the bill, is going to impose an impossible task on somebody. That person is going to have to pick and choose at that point from among competing bills that will exceed the ceiling, in order to impose points of order.

I have responded to what I think are relevant arguments that have been made by the Senator from North Carolina, the Senator from Michigan, and the Senator from Alaska. I urge the Senate to support the congressional budget ceilings. The bill at this point is just under the revenue floor for fiscal year 1979. In the out years, we have gone through the roof and I hope that, in conference, we shall correct that.

I am sure that the chairman of the Committee on Finance will make that his objective, as he has in years past. And, I urge the Senate to observe the discipline of the process.

Now I yield to the Senator from Michigan.

Mr. RIEGLE. I thank the Senator for yielding and I appreciate the point he makes. Would not the Senator agree that when we have a matter of existing law that has been affirmed by the Senate as recently as last year by an overwhelming vote—in this case, 65 to 12—if we are going to overturn that decision and strike something from the law, it would be good practice to have the chance for a straight up and down vote on that issue?

Mr. MUSKIE. May I say to the Senator, and I only have 4 minutes left, so I cannot——

Mr. RIEGLE. I am happy to yield on my time.

Mr. MUSKIE. All right.

The vote that was taken last year was not taken in the context of the priorities decision that the Senate now must make. If the context of this priorities decision, the Senate, is in a position to consider competing demands.

Mr. RIEGLE. But my question really is this, the difficulty we face now is that we really cannot have a straight, direct vote on the merits of this issue.

Mr. MUSKIE. Not without going through the budget procedure.

Mr. RIEGLE. Right.

We are forced now, in effect, to overturn a ruling of the Chair which mixes a different question, an additional question, to the merits of the issue of the gas deduction itself.

So that is a troubling thing. It seems to me, one can argue the merits of the budget process, and one, at the same time, can argue it also would make sense that we are changing existing law that we have assumed as recently as last year, that we ought to have the opportunity to vote up and down on the merits of that issue, especially when it is something of some consequence that the people of the country are familiar with.

I am troubled that we are blindsiding the public on this. I dare say they have not been forewarned that if this deduction vanishes today, essentially, for parliamentary reasons, because of the difficulty of getting a direct vote, when the people sit down next spring to fill out their tax returns and they think they are getting some additional benefit from the Federal Government, they will find, just as with the social security tax increase, that on the Federal tax return they are losing a deduction they have used for years as an offset against some of these other benefits we are trying to build in.

It seems to me, at least, if we debate it openly, not in committee, and not where people are not really focused on the issue, we would be much better off.

I hope the Senator would at least agree with that observation, that we would be much better off to get a direct vote on a matter of this consequence, when we are doing a 180-degree turn from where we were less than a year ago.

Mr. MUSKIE. Let me say in response to that, I suspect the country is going to be surprised about a lot of provisions in

this tax bill when they become aware of them.

A tax bill involves changes in tax law, additions to tax law. There are always tradeoffs. I do not know how one makes possible an individual vote on each of those changes in additions or reductions in tax law and still maintains an overall discipline.

That is the way we used to do it. Now, I understand, more fully perhaps than other Senators, because I run up against the frustration all the time. If we are going to have a budget discipline, it will force us to change our ways to conform to the new discipline. This vote will be an important test of what we think are the outer limits.

RESERVATIONS ABOUT THE ELIMINATION OF THE ITEMIZED DEDUCTION FOR GASOLINE TAXES

● Mr. HATCH. Mr. President, I have reservations about the deletion of the itemized deduction for State and local nonbusiness gasoline and motor fuel taxes for the following reasons:

First. It will have an adverse effect on a large portion of middle-income taxpayers.

Second. It will help undermine the incentive for taxpayers to make use of itemized deductions.

Third. It will not bring about a substantial gain in energy savings.

Present law allows individuals who itemize to deduct State and local excise taxes imposed on gasoline, diesel, and other motor fuels if the fuels are not used for business purposes. If the Senate agrees to repeal this deduction, the middle-income taxpayer will suffer the most from the added tax burden. At a time when the Government is promising tax relief, it is using a "backdoor approach" to impose another new tax on a large segment of American society. According to the U.S. Treasury Department figures, over 70 percent of the revenue that will be raised from the repeal of this deduction will come from taxpayers making less than $30,000 a year. In 1983 alone, the elimination of this deduction will, according to the Treasury, take an additional $2.2 billion from the pockets of the American taxpayer who must also face spiraling fuel prices. Can the Senate justify such an increase during a period when taxpayers are saying "no" to more taxes?

Mr. President, the repeal of this deduction is part of a much larger scenario of tax reform, a scenario that represents a changing attitude within the Treasury with regard to tax legislation. The administration's decision to end the gasoline tax deduction is a diguised attack on the class of itemized deductions. By eliminating a deduction every year, the value of itemized deductions to all taxpayers is gradually eroded.

Contrary to popular belief, those who benefit most from itemizing are not a few "fat cats." According to the Treasury Department's own figures, taxpayers with an income under $25,000 accounted for over 65 percent of the itemized returns in 1975. These are middle-income people who work hard for their take-home pay.

It is my opinion that Congress should view itemized deductions as a class when making revisions in tax law. As each deduction is eliminated, fewer taxpayers are provided the incentive to itemize. I suggest that Congress avoid the piecemeal approach and consider the total effect that is created by the repeal of itemized deductions. We should not allow the Treasury to sneak tax reform past in piecemeal.

Unfortunately, tax reformers have tricked both Houses of Congress into dealing with deductions by following an item-to-item approach. When it comes time to change the Tax Code, all attention is focused on the merits of one narrow issue. This year it happens to be the gasoline tax. Will the itemized deduction for State income taxes be next? Followed by elimination of the itemized deduction for interest on home mortgages?

Mr. President, if we continue to chop down trees one by one, the forest will soon be gone. Do we want that? I believe we need more information before we go any further. We need to look at the broader picture. American taxpayers deserve that much. In fact, they demand it.

In its report on the tax bill, the Finance Committee mentions its concern about conservation of energy and the reduction of oil imports. In my opinion, however, the repeal of the gasoline deduction will not assist our Nation to achieve its energy goals. Instead, it will create an unfair tax burden for many taxpayers in Western and rural States. People who live in these areas must drive greater distances. Should we penalize them when they must drive their family automobiles to seek medical care or travel into town to purchase groceries or farm supplies? And what about commuters? Will the elimination of the gasoline deduction suddenly force them to flee to mass transit? I think not. We promise our constituents a tax cut and then turn right around and pull out a meaningful deduction. We disguise our actions by claiming that it will somehow help cure our energy crisis.

If this measure is designed to save fuel, how can the committee allow business to maintain its fuel deductions? Or will business be next?

Mr. President, this matter was passed by the committee as a sop to the administration during its final hours of markup. I believe it deserves more discussion than it received at that time. I hope that my colleagues will understand the seriousness of this issue.●

Mr. MUSKIE. I expect the Senator from North Carolina would like to make his request to appeal the ruling of the Chair.

Mr. HELMS. Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays were ordered.

The question is, Shall the decision of the Chair stand as the judgment of the Senate? The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Montana (Mr. MELCHER) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. MCINTYRE) and the Senator from Montana (Mr. MELCHER) would each vote "nay."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "nay."

The PRESIDING OFFICER (Mr. SARBANES). Are there any Members in the Chamber who are not recorded and wish to vote?

The result was announced—yeas 49, nays 42, as follows:

[Rollcall Vote No. 476 Leg.]

YEAS—49

Abourezk	Gravel	Muskie
Anderson	Hansen	Nelson
Bayh	Hart	Nunn
Bentsen	Helms	Percy
Biden	Huddleston	Proxmire
Burdick	Humphrey	Randolph
Byrd, Harry F., Jr.	Inouye	Ribicoff
	Jackson	Sarbanes
Byrd, Robert C.	Johnston	Sasser
Chafee	Kennedy	Sparkman
Clark	Leahy	Stennis
Culver	Long	Stevenson
Curtis	Magnuson	Stone
Danforth	Matsunaga	Talmadge
Eagleton	McGovern	Weicker
Eastland	Metzenbaum	Williams
Glenn	Moynihan	

NAYS—42

Baker	Goldwater	Morgan
Bartlett	Griffin	Packwood
Bellmon	Hatch	Pearson
Brooke	Hatfield, Mark O.	Pell
Bumpers		Riegle
Cannon	Hatfield, Paul G.	Roth
Case		Schmitt
Chiles	Hayakawa	Schweiker
Church	Heinz	Scott
Cranston	Hodges	Stafford
DeConcini	Hollings	Stevens
Dole	Javits	Thurmond
Durkin	Laxalt	Young
Ford	Lugar	Zorinsky
Garn	Mathias	

NOT VOTING—9

Allen	Hathaway	Melcher
Domenici	McClure	Tower
Haskell	McIntyre	Wallop

So the ruling of the Chair was sustained as the judgment of the Senate.

Several Senators addressed the Chair.

Mr. HELMS. Mr. President, I move to reconsider and ask for the yeas and nays.

Several Senators addressed the Chair.

Mr. LONG. I move to lay that motion on the table.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The question is on the motion to table the motion to reconsider, and the yeas and nays have been requested.

Is there a sufficient second?

Mr. STEVENS. I sought recognition before the motion to table was made.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LONG. Yeas and nays.

Point of order. The motion is not debatable.

The PRESIDING OFFICER. The yeas and nays are ordered on the motion to table.

The Senator from Alaska.

Mr. LONG. The motion is not debatable, Mr. President.

Mr. STEVENS. The motion to reconsider is. I sought recognition before the motion to table was made.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Chair will inform the Senator from Alaska that a number of Senators were seeking recognition and were recognized. The motion to table the motion to reconsider was made. The yeas and nays on the motion to table have been ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from Alaska have 1 minute and the Senator from Louisiana have 1 minute before the vote on the motion to lay on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair recognizes the Senator from Alaska for 1 minute.

Mr. STEVENS. Mr. President, I am grateful to the Senator from West Virginia. I do not express the same gratitude to the Chair. And I hope the Senate will not see a repeat of this again.

Let me state to the Chair that this is a tax increase for the people who deduct gasoline taxes. This bill has now come out in the form of a closed rule. We have turned the Finance Committee into the Rules Committee. Never before has this tax deduction successfully been changed on the floor. It came over from the House. It has come out of the committee, and we are now in a position where we cannot challenge it, because it would be subject to a point of order.

I will comment later on my own time about the Chair's recognition of minority Members under this bill. It has been very unfair so far, and if it does not stop the Senate is going to be in for a long, long time, Mr. President.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 1 minute.

Mr. LONG. Mr. President, we reported this bill with $1.4 billion of slack in it. At that point anyone could have moved to strike out the items the Senator from North Carolina would like to strike from the bill. That was not done.

The Senate used up all the slack in the bill. Then cloture was voted. After cloture was voted, as an accommodation of the Budget Act and the Cloture Act, it is no longer in order to do what we would otherwise do. We could otherwise move to reconsider and bring back the bill in a different fashion or to offer another amendment to take something out of the bill or do any one of 50 things that would be available to Senators if we did not have a cloture rule. The Senate voted for cloture. You lose all kinds of options when you vote for cloture, and every Senator should know that if he has been here as long as 2 years.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me?

Mr. LONG. I yield.

Mr. ROBERT C. BYRD. Mr. President, if the Chair is not upheld this bill is in danger, because the point of order can then be made against the bill. It can go down the drain and all the work that has been done will be for naught.

I hope the Chair will be upheld. I hope the motion to table the motion to reconsider will succeed.

Mr. CURTIS. Let us vote.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which the Chair sustained the point of order.

On this motion the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Montana (Mr. MELCHER) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Montana (Mr. MELCHER) would each vote "nay."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) would vote "nay."

The PRESIDING OFFICER (Mr. SARBANES). Are there any Senators in the Chamber who have not yet voted and wish to vote?

The result was announced—yeas 50, nays 41, as follows:

[Rollcall Vote No. 477 Leg.]

YEAS—50

Abourezk	Glenn	Moynihan
Anderson	Gravel	Muskie
Bayh	Hansen	Nelson
Bentsen	Hart	Nunn
Biden	Hodges	Percy
Burdick	Huddleston	Proxmire
Byrd, Harry F., Jr.	Humphrey	Randolph
	Inouye	Ribicoff
Byrd, Robert C.	Jackson	Sarbanes
Cannon	Johnston	Sasser
Chafee	Kennedy	Sparkman
Clark	Leahy	Stennis
Culver	Long	Stevenson
Curtis	Magnuson	Stone
Danforth	Matsunaga	Talmadge
Eagleton	McGovern	Weicker
Eastland	Metzenbaum	Williams

NAYS—41

Baker	Griffin	Packwood
Bartlett	Hatch	Pearson
Bellmon	Hatfield, Mark O.	Pell
Brooke		Riegle
Bumpers	Hatfield, Paul G.	Roth
Case		Schmitt
Chiles	Hayakawa	Schweiker
Church	Heinz	Scott
Cranston	Helms	Stafford
DeConcini	Hollings	Stevens
Dole	Javits	Thurmond
Durkin	Laxalt	Young
Ford	Lugar	Zorinsky
Garn	Mathias	
Goldwater	Morgan	

NOT VOTING—9

Allen	Hathaway	Melcher
Domenici	McClure	Tower
Haskell	McIntyre	Wallop

So the motion to lay on the table the motion to reconsider was agreed to.

DEATH OF REPRESENTATIVE RALPH H. METCALFE OF ILLINOIS

Mr. ROBERT S. BYRD. Mr. President, I ask unanimous consent that the Senator from Illinois may be recognized for not to exceed 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, I thank the majority leader. I ask the Chair to lay before the Senate a message from the House of Representatives on House Resolution 1422.

The PRESIDING OFFICER laid before the Senate a resolution (H. Res. 1422) which was read as follows:

Resolved, That the House has heard with profound sorrow of the death of the Honorable Ralph H. Metcalfe, a Representative from the State of Illinois.

Resolved, That a committee of such Members of the House as the Speaker may designate, together with such Members of the Senate as may be joined, be appointed to attend the funeral.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

Resolved, That as a further mark of respect the House do now adjourn.

Mr. STEVENSON. Mr. President, I send a resolution to the desk and for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated.

The legislative clerk read as follows:

Resolved, That the Senate has heard with profound sorrow the announcement of the death of the Honorable Ralph H. Metcalfe, late a Representative from the State of Illinois.

Resolved, That a committee of two Senators be appointed by the Presiding Officer to join the committee appointed on the part of the House of Representatives to attend the funeral of the deceased Representative.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased Representative.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. STEVENSON. Mr. President, the Members of Congress and the people of the State of Illinois are deeply saddened by the death of Representative RALPH H. METCALFE. He was a champion of social justice, a distinguished Member of Congress, and my good friend. Congress and the Nation are made poorer by his death.

I urge the adoption of the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 583) was unanimously agreed to.

The PRESIDING OFFICER. The Chair, pursuant to the resolution, ap-

points the two Senators from the State of Illinois (Mr. PERCY and Mr. STEVENSON) to join the committee appointed on the part of the House of Representatives.

REVENUE ACT OF 1978

The Senate continued with the consideration of H.R. 13511.

AMENDMENT NO. 4123

(Purpose: To eliminate the bias in favor of new residential construction as opposed to low income housing rehabilitation caused by application of the minimum and the maximum tax)

Mr. JAVITS. Mr. President, I send to the desk an amendment numbered 4123, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) proposes an amendment numbered 4123.

The amendment is as follows:

At the appropriate place in the committee amendment, insert the following section:

SEC. . MINIMUM TAX TREATMENT OF RAPID AMORTIZATION OF LOW-INCOME RENTAL REHABILITATION EXPENDITURES.

(a) IN GENERAL.—Paragraph (2) of section 57(a) (relating to items of tax preference) is amended to read as follows:

"(2) Accelerated depreciation on real property.—With respect to each section 1250 property (as defined in section 1250(c)), the amount by which the deduction allowable for the taxable year for exhaustion, wear and tear, obsolescence, or amortization exceeds the depreciation deduction which would have been allowable for the taxable year had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life (determined without regard to section 167(k)) for which the taxpayer has held the property; provided that in the case of an allowable deduction for exhaustion, wear and tear, obsolescence or amortization attributable to an election by the taxpayer pursuant to section 167(k), the amount treated as an item of tax preference shall not exceed the amount which would have been determined as an item of tax preference if the taxpayer had claimed as a depreciation deduction an allowance computed under the declining balance method, using a rate not exceeding twice the rate which would have been used had the allowance been computed under the straight line method."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to taxable years ending after December 31, 1978.

Mr. JAVITS. I yield myself 3 minutes.

Mr. President, I propose my amendment to section 57(a) of the Internal Revenue Code in order to eliminate a bias which presently exists favoring new residential construction over low-income housing rehabilitation. This bias arises from the definition of accelerated depreciation on real property presently set forth in section 57(a) of the Internal Revenue Code, which sets out the items of tax preference which are currently subject to the minimum tax and to the minimum tax offset. Should H.R. 13511 be adopted as reported by the Senate Finance Committee, the same definition of this tax preference item will remain and this bias will continue.

Very simply, my amendment would modify the definition of accelerated depreciation on real estate in section 57(a)(2) to provide that in the case of low-income housing rehabilitated pursuant to section 167(k), the amount treated as an item of tax preference cannot exceed the amount which would be treated as a tax preference if the taxpayer had claimed a deduction under the most rapid method of depreciation—the double declining balance method—which is available for new residential construction.

Under the depreciation provisions of the Internal Revenue Code, housing rehabilitated for the benefit of low-income families is given a distinct advantage over new residential construction. This is done by permitting the rehabilitation expenditures to be amortized over a 60-month (5-year) period under section 167(k) of the Internal Revenue Code, whereas the most rapid rate of depreciation available for new residential construction is the double declining balance method.

However, this advantage has been greatly watered down because, with respect to real estate, one of the important tax preference items is the amount of depreciation claimed in excess of straight-line depreciation ("excess depreciation").

Rehabilitated low-income housing with respect to which the section 167(k) option is elected creates a great deal more excess depreciation than does a comparable amount of new construction during the first 5-year period, even if the new construction is written off using the fastest method presently allowed by the Internal Revenue Code.

Under current law, one's tax preference items, after a limited exemption, are subjected to the 15-percent minimum tax and, without any exemption, also serve to offset and transfer into a higher tax bracket dollar-for-dollar earned income which would otherwise be subject to a 50-percent maximum tax. This greatly reduces the overall tax benefits available from the fast 5-year write-off provided for by section 167(k) for investors and often causes them to prefer new construction as an investment.

For example, a single taxpayer with earned income of $250,000 wants to invest $500,000 in low-income housing. He is faced with two proposals, one for rehabilitation in the inner city and the other for elderly individuals in the suburbs. Were he to choose the inner-city project, he would pay $100,000 in additional taxes over 5 years. Given the added problems such as extra maintenance and security in the inner city compared to a project for the elderly in the suburbs, the choice for the individual is relatively simple. Build the project in the suburbs and save $100,000 plus a lot of headaches.

Even if the proposal of the Senate Finance Committee for a new alternative minimum tax becomes law, this bias working against rehabilitated housing will continue, since there will continue to be an alternative minimum tax on basically the same tax preference items as presently exist in the Code. In addition, H.R. 13511, as reported by the Senate Finance Committee, makes no change in the maximum tax offset, and it is here that the inequity between rehabilitation and new construction is greatest.

Accordingly, this amendment is necessary both under the present law and under the bill as reported out by the Senate Finance Committee.

This amendment is important to the preservation of our Nation's cities. We wish to encourage, not discourage, investment in the rehabilitation of low-income housing. Accordingly, I believe it most important to adopt this amendment.

It is a technical matter; so I respectfully approach the manager of the bill and ask if he would be kind enough simply to take the matter to conference, so it would be before the conference, looked into, and, if found legitimate and justified, the conference can adopt it, or otherwise omit it from the bill.

Mr. MOYNIHAN. Mr. President, on behalf of the manager of the bill, I congratulate my senior colleague, who has long been concerned with housing. This amendment would maximize the computation of the minimum tax for low-income housing rehabilitation expenditures. We think it appropriate to take it to conference and discuss it with the House conferees, and are happy to do so.

Mr. JAVITS. I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. JAVITS. I move to reconsider the vote by which the amendment was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state the inquiry.

Mr. STEVENS. Are there any amendments at the desk that are in order under the ruling of the Chair that has just been upheld?

Let me state first, on my time, that it is my understanding that unless an amendment provides both a decrease and an increase in revenues, under the circumstances that exist now, the amendment would not be in order. I would like to know if there are any such amendments now at the desk that are in order?

The PRESIDING OFFICER. The Chair would inform the Senator from Alaska that there are some 80 to 90 amendments at the desk that are not out of order on other grounds.

Since the point of order with respect to violating the Budget Act would have to come from the floor, the amendments have not been studied for that purpose, and the Chair therefore is unable to respond in that regard to the question of the Senator from Alaska.

PERSONAL PRIVILEGE

Mr. STEVENS. Then, Mr. President, I shall make a short statement and then ask for a quorum call, so that I might study them to see how we may proceed.

First, let me state as a matter of personal privilege, that I believe I know the rules. I know that I was on my feet asking recognition before the Chair ruled that the motion to table had been entered. The Chair did not recognize any Senator from this side of the aisle to make a motion to table the last motion, and I believe the Chair was out of line. The occupant of the Chair may take his own personal privilege at a later time.

On the merits of this matter, however, I think we have just made the Finance Committee into the Rules Committee of the Senate for the purpose of all finance matters, but so long as we go through a period such as we have gone through over the last 3 days, whereby minority Senators can be on their feet time and time again seeking recognition, but it is the majority side that is recognized first, it is the majority's amendments that count—and majority Senators, I would add, that are recognized—we have absolutely emasculated the concept of a two-party system in terms of dealing with fiscal matters.

Second, I hope everyone takes note that the deduction for State gasoline taxes has now been eliminated. It will not be considered in conference. It is no longer a conference item. Elimination of the deduction was in the House bill and it is in this bill. That means that through the sheer operation of majority control—and I think it was total majority control—the Senate was prevented from voting on this amendment. The majority of the people who file long forms and deduct State gasoline taxes, have just gotten a raise in the taxes they will pay by virtue of the sheer exercise of the majority power.

I think it is wrong. You can do it as long as you have the majority and I hope I live long enough to see that we get the majority. When we do, first of all, I will encourage my colleagues on this side of the aisle to be fair and not seek strained rulings.

We provided the vast margin of the authority that this body had to close off debate. I voted to cloture contrary to the statement I made previously that I would not do it because of the circumstance that my friends, who are part of the Jewish faith, and others, wanted this matter to terminate. So we voted cloture.

And since that time, ask my colleagues on this side how many were on their feet and let them tell you they did not get recognized, time and time again. Time and time again. It is time someone stood up and talked about fairness in terms of the two-party system. For almost 2 years no member of the minority party has occupied that chair. In the first 8 years, I was here, it was privilege and an honor for people from both sides of the aisle to occupy that chair.

We are in a situation where those of you from the majority party have blinders on as far as this side of the aisle is concerned. It is going to stop or I am going to urge the Members of the minority side of this aisle to start using their rights, their constitutional rights, to slow down an untrammeled majority.

In my opinion there is no amendment at the desk that can qualify under the ruling that has just been upheld. I do not know of anyone who had the foresight to realize we were going to have both cloture and a closed rule from the Finance Committee and took the occasion to file an amendment which, incidentally, would have been out of order because it would have touched the bill at two points. Do not forget that. It would have been ruled out of order because it would not have been in order under the cloture bill to amend this bill at two points. We have a catch-22 situation. I would challenge the Chair to find an amendment at that desk which would qualify under the ruling just upheld.

I know that the majority leader is fair. I thank him for the 1 minute. It is not very often that I get my ire up, but it is up now. It is a basic unfairness that has occurred to millions of Americans who will no longer be able to deduct the gasoline taxes they pay their States on their individual tax returns because of an abuse of power. This is an abuse of power we have witnessed tonight. It has set a precedent. As I said before, I think the Senate will rue the day it has done it. I hope it becomes one of the mechanisms by which we restore power to this side of the aisle so we can stop this type of abuse.

That kind of power and abuse of power should not be permitted. Above all, people who sit in the chair of the Vice President of the United States should have eyes that cover both sides of the aisle and should recognize a Senator when he is on his feet. I challenge any man in this Senate to tell me I was not on my feet and did not seek recognition before the motion to table was made. The Chair knows it. Every Member of this Senate knows it. It should not happen to anybody.

Mr. LONG. Mr. President——

Mr. STEVENS. I have not yielded. I think I have about 40 minutes. I have not yielded.

The PRESIDING OFFICER. The Senator is correct. He has not yielded the floor.

The Senator from Alaska.

Mr. STEVENS. Mr. President, there comes a time when we decide whether being on this floor means what someone told me the first day I came—that is every person on this floor is equal. The rules were meant to preserve equality and we are seeing them being eroded. We are seeing them being eroded. I really hope that those who are fair-minded in the Senate will recognize what is going on and bring it to a halt.

I want this Senate to finish its business as much as anybody, and I would challenge anybody who claims I have not worked with the majority in order to try to bring that about, to try to work out agreements and to try to find ways to move the Senate along the course it must go in order to complete its business. But you cannot get there by being unfair. There is just enough Scotch in me to demand that I get my full share of rights and that the Senate be given a chance to make public policy on the basis of fairness and not on the basis of politics.

That is what has just happened. We have had politics come into this session. I honestly want to examine those amendments at that desk so, having the floor, I suggest the absence of a quorum.

Mr. STONE. Would the Senator withhold and answer one question from the Senator from Florida?

Mr. STEVENS. If I do not lose my right to the floor, I will be happy to.

Mr. STONE. Without losing his right to the floor.

Would the Senator consider making this statement and addressing this question of partisanship and fairness Thursday, at which point the Senator from Florida will do everything he can, and I am sure he will be joined by others, to try to assist the Senator from Alaska and all Senators on that side of the aisle to get their full share of their rights and their feelings and prerogatives, and the rest of it. It seems to the Senator from Florida we are just about at the end of this particular bill which would allow the Senator from Florida and others to fulfill their other obligations as well. If there are substantive questions still to be discussed, that is another story. But if it is a question of fairness in the procedure here, the Senator from Florida would feel deeply indebted to the Senator from Alaska if the same points that the Senator from Alaska wishes to make and debate could possibly be held until Thursday.

Mr. STEVENS. The Senator's point is well taken. I yield the floor.

The PRESIDING OFFICER (Mr. PROXMIRE). The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Maryland.

Mr. SARBANES. This Senator who was in the Chair wishes to state very simply that the motion to reconsider was made by the Senator from North Carolina whose amendment was in issue. The motion to table was made by the manager of the bill, the Senator from Louisiana who was standing directly in front of the Chair as well. The Chair is prepared to say that a number of Senators were seeking recognition. The Chair recognized the Senator from Louisiana who made the motion to table and asked for the yeas and nays, and the yeas and nays were ordered. It was that simple.

This Senator, who was holding the chair, feels that he proceeded in accordance with the rules, the customs, the traditions of the Senate, and in every respect in a fair spirit.

I understand the Senator from Alaska has very deep feelings about the substance of the amendment proposed by the Senator from North Carolina. I also understand he has deep feelings about the interaction between the report of the Finance Committee and the Budget Act, which made it possible to raise a point of order and placed him in the position of having to appeal that with respect to a ruling from the Chair.

I do not think that the strength of his feelings on those two issues ought to be allowed to becloud his judgment with respect to the fairness of the Chair in dealing with the specific matter that was before the Chair which had to deal with a motion to reconsider and the motion to table.

As the person who was holding the chair at the time on that question, I wish to assert to the Senator from Alaska and to the Members of the Senate, it is this

Senator's view that he proceeded in every respect in a fair manner.

Furthermore, I also say to the Senator with respect to the other point he has made that, during the time I have been in the Chair, not only on this bill but on other legislation, I have made every effort to be evenhanded in my treatment of both the majorityy and the minority side of the aisle in terms of recognition for proposing amendments or engaging in debate.

I thank the Senator for yielding.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. HATCH. Mr. President, I object.

Mr. ROBERT C. BYRD. Was there a response?

The PRESIDING OFFICER. Objection is heard. The clerk will continue to call the roll.

It does not matter if there is a response or not.

Mr. ROBERT C. BYRD. I was hoping——

Mr. HATCH. I shall be happy to respond.

The PRESIDING OFFICER. A quorum call is in progress. The clerk will call the roll.

The second assistant legislative clerk resumed the call of the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. HATCH. I object.

Mr. SCOTT. I object.

Mr. ROBERT C. BYRD. All right, Mr. President, call the roll fast.

The second assistant legislative clerk resumed the call of the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. ABOUREZK. I object.

The PRESIDING OFFICER (Mr. SARBANES). Objection is heard.

The clerk will proceed with the call of the roll.

The second assistant legislative clerk resumed the call of the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

ORDER OF BUSINESS

(The following proceedings occurred during the later remarks of Mr. HELMS and are printed at this point by unanimous consent.)

Mr. GOLDWATER. Will the Senator yield?

The PRESIDING OFFICER. Members will please take their seats and take their conversations to the cloakroom.

Mr. HELMS. I shall take but 1 minute, I tell the Senator from Arizona.

The PRESIDING OFFICER. The Senator's point is well taken.

Could we ask the Members to take their seats and clear the aisles? Will the Members take their seats, please?

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. GOLDWATER. Mr. President, I just have the feeling that we should do something on the request that the Senator from Florida made. This involves religion and the duties that he feels toward it. I think it would be wrong for us to prevent him from pursuing his duties. I do not know how we can work it out, but I would suggest that if we come to some amicable agreement with the majority leader relative to when things might happen, we could come to a quick vote on this and take care of our obligations.

Several Senators addressed the Chair.

Mr. BAKER. Will the Senator yield, without losing——

Mr. HELMS. In just a moment.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. LEAHY. Will the Senator yield to me?

Mr. HELMS. In just one moment I will be glad to yield, first to the distinguished minority leader, and then to my friend from Vermont.

Mr. BAKER. Mr. President, I thank the Senator from North Carolina.

I think the Senator from Arizona well states the unanimous sentiment of the Senate, that is, we have no desire to interefere with the religious celebrations that have begun and will continue for some time.

I also have a feeling the distinguished Senator from North Carolina needs a little time to make his point and that there is good hope and expectation we can work our way into an arrangement that will provide for an orderly consideration of this measure and of those that may follow before very long.

So I rather have some expectation, at least some hope, that in a few more minutes we will reach a satisfactory solution.

Mr. HELMS. The Senator is well justified in both his expectation and his hope.

Mr. BAKER. I thank the Senator.

Mr. LEAHY. Mr. President, I would like to concur in what the distinguished Senator from Arizona said. Deeply and strongly, profoundly and proudly he holds his own religious beliefs, and he also deeply and strongly respects the religious beliefs of the five Jewish Members of the Senate.

I know how strongly I would feel about the session going on unnecessarily, interfering with my own religious practices. I certainly hope and I certainly would encourage all my colleagues to do everything possible to make sure we do not interfere with the religious practices of the Members of the Senate. They hold their religious beliefs as strongly as I hold mine.

I think if this matter can be brought to a conclusion, and soon, we would all benefit by it.

Mr. HELMS. I will say this to the distinguished Senator, that I share his concern and I would be very interested if the time consumed on this floor today could be analyzed to see who consumed it.

Now, I will ask the distinguished Chair, how much time has the Senator from North Carolina used from his 1 hour?

The PRESIDING OFFICER. The Senator has used a total of 28 minutes.

Mr. HELMS. And most of that I used yesterday, Mr. President.

The time has been consumed over there. If anybody wants to make an analysis of who has burned up this day in terms of time, I think it would be most enlightening.

Now, I am going to be through in about 2 minutes.

I ask that all of this that ensued be printed following my remarks in the RECORD so that the list of provisions of this proposed amendment will not be interrupted in the printed version.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

(Conclusion of later proceedings.)

Mr. HELMS. Mr. President, I ask unanimous consent that the time consumed by each Senator since cloture was invoked be printed at this point in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The time consumed by Senators, in minutes, is as follows:

Baker, 7; Bayh, 4; Bellmon, 4; Bentsen, 23; Biden, 2; Brooke, 3; Byrd, Harry F., Va., 8; Byrd, Robert C., W. Va., 18; Chiles, 2; Church, 18; Curtis, 22; Danforth, 33; DeConcini, 16; Dole, 15; Durkin, 3.

Glenn, 12; Hansen, 12; Hart, 40; Hatch, 3; Heinz, 5; Helms, 31; Javits, 33; Kennedy, 48; Leahy, 4; Long, 54; Magnuson, 10; Mathias, 4; McGovern, 1; Melcher, 4; Metzenbaum, 11; Morgan, 24; Moynihan, 7; Muskie, 57.

Nelson, 41; Nunn, 27; Packwood, 9; Percy, 9; Proxmire, 4; Randolph, 2; Ribicoff, 13; Riegle, 17; Roth, 6; Sarbanes, 7; Stevens, 35; Stone, 3; Talmadge, 3; Weicker, 8.

Mr. HELMS. Mr. President, I asked that so that we can have for the record a clear indication as to who has consumed the time of the Senate since cloture was voted.

AMENDMENT NO. 4156

Mr. HELMS. Mr. President, I have an amendment at the desk, No. 4156. I call it up and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment of the Senator from North Carolina.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 4156.

Mr. HELMS. Mr. President, I ask that the clerk read the amendment in its entirety.

The PRESIDING OFFICER. Under the precedents of the Senate——

Mr. MOYNIHAN. Mr. President, may we have order? We are not able to hear the rulings of the Chair.

The PRESIDING OFFICER. Will the Senators take their seats, please?

Under the precedents of the Senate, the amendment being nongermane, the Chair rules the amendment out of order.

Mr. HELMS. Mr. President, may I have the amendment we are concerned with, please? I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I yield myself such time as I may require. I desire to share the text of this amendment, which is about 12 pages long, with the Senate. This is an amendment to be proposed by the Senator from North Carolina for himself and Senators McCLURE, LEAHY, HATCH, BUMPERS, SCHMITT, and GARN.

This act may be cited as "The Taxpayers' Bill of Rights Act."

I ask for regular order, Mr. President.

The PRESIDING OFFICER. The Senator's point is well taken. The Senate will be in order. The Senators will please clear the aisles.

The Senator will continue to suspend until we obtain order in the Chamber.

Could we please clear the aisles?

Mr. STEVENS. Will the Senator yield to me for one correction, without losing his right to the floor for just one comment?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I should like the record to show—earlier, I said I have enough Scotch in me to be excited, and I want to make sure the record shows that I meant I have enough Scots blood in me to be able to be excited.

[Laughter.]

Mr. HELMS. Mr. President, he could have fooled me. I thought he was a bourbon blueblood.

Mr. ROBERT C. BYRD. Whatever he has in him, I would like for it to stay.

Mr. HELMS. Mr. President, the short title of this amendment is "The Taxpayers' Bill of Rights Act." Instead of reading the entire thing, I shall simply say what it would have provided if the Chair had not declared it nongermane.

The bill would: First, require Internal Revenue Service agents to inform a taxpayer of his rights to counsel, to remain silent, and that any statement made might be used against him; second, provide for the awarding of attorneys' fees in cases won by the taxpayer; third, set up an assistant commissioner for taxpayer services to act as ombudsman within the Internal Revenue Service; fourth, provide for taxpayers' assistance in order to postpone seizures or actions by the IRS that would impose undue hardship on taxpayers.

Mr. President, may we have order? I insist that we have order in the Senate.

No. 4, this amendment would have provided for taxpayer assistance orders to postpone seizures or actions by the IRS that would impose undue hardships on taxpayers.

No. 5, it would require the publication of clearly written materials outlining all taxpayers' rights in cases of audits, assessments, and appeals.

No. 6, it would have limited IRS investigations directly related to enforcement of the tax code.

No. 7, it would have provided that a taxpayer could set at a reasonable time and place his interviews with IRS agents.

And No. 8, this amendment would have provided clear authority for the GAO to audit regularly the efficiency, uniformity, and equity of the administration of Internal Revenue laws.

Mr. President, I would like for any Senator in this Chamber, or any absent Senator, to go home and tell the taxpayers in his State that he disagrees with one scintilla of this amendment.

You do not dare to do it. Yet, this amendment has been foreclosed by a ruling of the Chair.

I could consume the time of the Senate by appealing that ruling, but I shall not. But I will simply say this, that sooner or later the American people are going to demand that the Internal Revenue Service play fair and square with them and stop the harassment and stop the intimidation and give the American taxpayer a fair chance.

That was the purpose of this amendment. That was the only purpose of this amendment.

I submit to the Chair's ruling that it was nongermane.

Mr. DURKIN. Will the Senator yield for a question?

Mr. HELMS. Yes, just so long as I do not lose my right to the floor.

Mr. DURKIN. As the Senator described his amendment, I believe he said it would limit the Internal Revenue Service to investigations solely with respect to the Internal Revenue Code.

Is the Senator confident that that type of restriction would not in any way limit the IRS participation in the organized crime tax force?

Mr. HELMS. I am absolutely confident it would not limit the IRS.

Mr. DURKIN. Would the Senator yield for another question?

Mr. HELMS. Yes.

Mr. DURKIN. I feel reassured because I think, on organized crime, we cannot take any action to limit the IRS with respect to organized crime.

What about the situation where the average taxpayer sees the spot on TV, or hears the radio announcement, to come down, bring his stuff, get free professional advice from the IRS office, and then have the situation where the person acts in good faith, gives the IRS agent all the information, fills out the return, and then some higher up in the IRS challenges the return, even though the return was, in substance, prepared by the Internal Revenue Service agent at the local office.

Does the Senator's bill stop the IRS higher-ups from proceeding against the taxpayer, with the taxpayer in good faith operating on the advice of the agent?

Mr. HELMS. I am not sure what the substance of the question is.

Mr. DURKIN. Well, I will rephrase it.

Mr. President, may we have order?

The PRESIDING OFFICER. Will Members take their seats and clear the aisle?

Mr. HELMS Mr. President, who has the floor?

The PRESIDING OFFICER. Well, the Senator from North Carolina has the floor. He may yield to the Senator for a question, if he chooses.

Mr. HELMS. On the condition I not lose my right to the floor.

Mr. DURKIN. The Senator can yield on my time, I have the time.

Mr. HELMS. We can go back to the record.

Mr. President, what I suggest is that the Senator from New Hampshire and I discuss this after third reading and a rollcall on the bill. I will be glad to discuss it at length with him. But I hesitate to consume further time because of my friend from Florida, and others.

So, therefore, with all friendship and with the greatest intent of courtesy to my colleagues, I decline to yield further.

Mr. DURKIN. Well, if the——

The PRESIDING OFFICER. The Senator from North Carolina declines to yield further.

The Senator from North Carolina has the floor.

Mr. HELMS. The Senator can seek recognition in his own right, but I will not join him in consuming more time of the Senate. But I will be glad to discuss it with him.

Mr. DURKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina has the floor until he chooses to yield the floor.

Mr. HELMS. Mr. President, I will withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. DURKIN. That solves my problem.

UP AMENDMENT NO. 2046

(Purpose: To correct technical and clerical errors)

Mr. MOYNIHAN. Mr. President, I send to the desk and ask for the immediate consideration of a number of technical and clerical amendments correcting errors in the amendment of the Senate to the bill, H.R. 13511, and I ask unanimous consent the amendments be agreed to.

Mr. STEVENS. Reserving the right to object——

The PRESIDING OFFICER. The clerk will state the amendments.

The second assistant legislative clerk read as follows:

The Senator from New York (Mr. MOYNIHAN) proposes unprinted amendments numbered 2046, en bloc.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Mr. President, I would like to see the amendments, and I suggest the absence of a quorum.

Mr. STEVENS. Mr. President, will the Senator withhold that?

Mr. HELMS. Yes.

Mr. STEVENS. I would like to know, if the Senator from New York will tell me, are any of the figures in this bill changed by those amendments?

Mr. MOYNIHAN. No figures are changed by the technical and clerical amendments.

Mr. STEVENS. Is there any change made in the amendment which was the subject of controversy here a minute ago?

Mr. MOYNIHAN. No, there is not.

Mr. STEVENS. I thank the Senator from New York.

Mr. MOYNIHAN. I thank the Senator from Alaska.

The amendments are as follows:

Strike out the matter appearing after line 4 on page 134 and before line 1 on page 135 and insert in lieu thereof the following:

Schedule 4

If taxable income is:	The tax is:
Over $1,700 but not over $3,800	13% of excess over $1,700.
Over $3,800 but not over $5,900	$273, plus 14% of excess over $3,800.
Over $5,900 but not over $10,200	$567, plus 16% of excess over $5,900.
Over $10,200 but not over $14,300	$1,255, plus 21% of excess over $14,300.
Over $14,300 but not over $18,500	$2,116, plus 25% of excess over $14,300.
Over $18,500 but not over $22,900	$3,166, plus 29% of excess over $18,500.
Over $22,900 but not over $28,200	$4,442, plus 32% of excess over $22,900.
Over $28,200 but not over $33,500	$6,138, plus 38% of excess over $28.200.
Over $33,500 but not over $44,100	$8,152, plus 43% of excess over $33,500.
Over $44,100 but not over $58,300	$12,710, plus 49% of excess over $44,100.
Over $58,300 but not over $83,900	$19,663, plus 54% of excess over $58,300.
Over $83,900 but not over $107,700	$33,492, plus 59% of excess over $83,900.
Over $107,700 but not over $160,700	$47,534, plus 64% of excess over $107,700.
Over $160,700 but not over $213,700	$81,454, plus 68% of excess over $160,700.
Over $213,700	$117,494, plus 70% of excess over.

On page 135, line 1, strike out "(f)" and insert in lieu thereof "(b)".

On page 135, line 11, strike out "and".

On page 135, line 14, strike out the period and insert in lieu thereof a comma and "and".

On page 135, between lines 14 and 15, insert the following:

(5) by redesignating paragraph (4) as paragraph (5).

On page 135, line 15, strike out "(g)" and insert in lieu thereof "(c)".

On page 136, line 17, strike out "(e)" and insert in lieu thereof "(d)".

On page 137, strike out lines 6 through 15 and insert in lieu thereof the following:

(2) WITHHOLDING ALLOWANCES BASED ON ITEMIZED DEDUCTIONS.—Subparagraph (B) of section 3402(m)(1) (relating to withholding allowances based on itemized deductions) is amended by striking out "$3,200 ($2,200" and inserting in lieu thereof "$3,400 ($3,000 in the case of an individual who is the head of a household, as defined in section 2(b), and $2,300".

On page 137, line 16, strike out "(f)" and insert in lieu thereof "(e)".

On page 137, line 18, strike out "(c), and (d)" and insert in lieu thereof "and (c)".

On page 137, line 21, strike out "(e)" and insert in lieu thereof "(d)".

On page 138, strike out lines 9 through 23, and insert in lieu thereof the following:

(B) by striking out "section 2(a)), and" in clause (i) and inserting in lieu thereof "section 2(a)), is not a head of household (as defined in section 2(b)),", and striking out "$2,950" in such clause and inserting in lieu thereof "$3,300",

(C) by striking out "or" at the end of clause (ii),

(D) by striking out the period at the end of clause (iii) and inserting in lieu thereof a comma and "or" and

(E) by inserting after clause (iii) the following new clause:

"(iv) who is the head of a household (as defined in section 2(b)) and for the taxable year has a gross income of $4,000.".

(2) Subparagraph (B) of section 6012(a)(1) is amended by striking out "clause (i) and (ii)" and inserting in lieu thereof "clause (i), (ii), or (iv)".

On page 169, beginning with line 24, strike out through line 2 on page 170, and insert in lieu thereof the following:

(D) MEANING OF TERMS.—Terms used in this paragraph have the same meaning as when used in section 457 of such Code.

On page 172, line 2, strike out "not" and insert in lieu thereof "no".

On page 180, line 13, strike out "(C)" and insert in lieu thereof "(B)".

On page 183, line 4, after "allowed" insert a comma.

On page 183, line 6, beginning with "an amount" strike out through line 8 and insert in lieu thereof the following: "an amount equal to the sum of—

"(1) 1 percent of the qualified investment (as determined under subsection (c) and (d) of section 46) of the taxpayer for the taxable year, and

"(ii) an additional percent of the qualified investment (as determined under such subsections) for the taxable year and for each of the two preceding taxable years commencing after December 31, 1978, equal to the amount determined under section 416(b).

On page 187, line 17, strike out "(g)(2)(8) or (g)(2)(9)" and insert in lieu thereof "(g)(2)(H)".

On page 187, line 18, after "section," insert the following: "each participant is entitled to direct the plan as to the manner in which any employer securities which are allocated to the account of the participant are to be voted,".

On page 187, line 19, after "securities" insert "held by the plan and".

On page 187, line 21, strike out "(A)," and insert in lieu thereof "(A), each participant is entitled to direct the plan as to the manner in which any employer securities which are allocated to the account of the participant are to be voted with respect to corporate matters which may not by law (or charter) be decided by a majority vote of outstanding common shares.".

On page 187, strike out lines 22, 23, and 24.

On page 195, beginning with line 12, strike out through line 12 on page 197 and insert in lieu thereof the following:

"(c) PLAN REQUIREMENTS FOR TAXPAYERS ELECTING ADDITIONAL ONE-HALF PERCENT CREDIT.—

"(1) GENERAL RULE.—For purposes of clause (ii) of section 46(a)(2)(B), the amount determined under this subsection for a taxable year is an amount equal to the sum of the matching employee contributions for the taxable year which meet the requirements of this subsection.

"(2) ELECTION; BASIC PLAN REQUIREMENTS.—No amount shall be determined under this subsection for the taxable year unless the corporation elects to have this subsection apply for that year. A corporation may not elect to have the provisions of this subsection apply for a taxable year unless the corporation meets the requirements of subsection (a) and the requirements of this subsection.

"(3) EMPLOYER CONTRIBUTION.—On making a claim for credit, under section 38, the employer shall state in such claim that the employer agrees, as a condition of receiving any such credit attributable to the provisions of section 46(a)(2)(B)(ii), to transfer at the time described in subsection (a)(6) employer securities (as defined in subsection (a)(3)(A)) to the plan having an aggregate value at the time of the transfer equal to the amount of matching employee contributions made pursuant to paragraph (4) for the taxable year. For purposes of meeting the requirements of this paragraph, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the plan, used to purchase employer securities within the time provided by subsection (a)(6)(B).

"(4) REQUIREMENTS RELATING TO MATCHING EMPLOYEE CONTRIBUTIONS.—

"(A) An amount contributed by an employee under a plan described in subsection (a) for the taxable year may not be treated as a matching employee contribution for that taxable year under this subsection unless—

"(i) each employee who participates in the plan described in subsection (a) is entitled to make such a contribution,

"(ii) the contribution is designated by the employee as a contribution intended to be used for matching employer amounts transferred under paragraph (3) to a plan which meets the requirements of this subsection, and the contribution is designated by the employer as an amount contributed with respect to a qualified investment or several qualified investments described in section 46(a)(2)(B)(ii), and the aggregate amounts contributed by employees with respect to each such investment for all taxable years does not exceed one-half of one percent of the amount of the investment,

"(iii) the contribution is in the form of an amount paid in cash to the employer or plan administrator not later than 24 months after the close of the taxable year in which the qualified investment with respect to which it is made is made by the employer,

"(iv) in the case of a contribution for the taxable year in which the investment described in (iii) is made, the contribution is paid by the time prescribed by law for filing the employer's return for such taxable year (including extensions thereof),

"(v) in the case of a contribution for the taxable year next following the taxable year described in (iv), the contribution is paid after the time prescribed by law for filing the employer's return for the taxable year described in (iv) (including extensions thereof) and before the close of the taxable year, and

"(vi) in the case of a contribution for the taxable year next following the taxable year described in (v), the contribution is paid before the close of the taxable year.

"(B) The employer may not make participation in the plan a condition of employment and the plan may not require matching employer contributions as a condition of participation in the plan.

"(5) ALLOCATION OF EMPLOYER SECURITIES BY END OF YEAR.—A plan must provide for allocation of all employer securities transferred to it or purchased by it under this subsection to the account of each participant as of the close of the plan year in an amount equal to his matching employee contributions for the year. Matching employee contributions and amounts so allocated shall be deemed to be allocated under subsection (a)(3).

"(6) CORRECTION WITHDRAWALS PERMITTED.—Notwithstanding any other law or rule of law, an amount withdrawn by the employer will neither fail to be considered to be nonforfeitable nor fail to be considered to be for the exclusive benefit of participants or their beneficiaries merely because of the withdrawal from the plan of employer amounts transferred under this subsection to the plan which are not matched by employee contributions or which are in excess of the limitations of section 415 of the Code, nor will the withdrawal of any such amount be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974.

"(c) CONTRIBUTIONS OF STOCK OF CONTROLLING CORPORATION.—If the stock of a corporation which controls another corporation or which controls a corporation controlled by such other corporation is contributed to an employee stock ownership plan described in this section of the controlled corporation, then no gain or loss shall be recognized, because of that contribution, to the controlled corporation. For purposes of this subsection, the term 'control' has the same meaning as that term has in section 368 (c).

"(d) DISTRIBUTIONS.—A participant in an employee stock ownership plan which meets the requirements of this section shall have the right to demand that his benefits under the plan be distributed in the form of employer securities. Subject to the right of a participant to demand that his benefits be so distributed, the plan may distribute the benefits in cash or in the form of employer securities. The recipient of a distribution from an employee stock ownership plan which meets the requirements of this section or a plan described in section 4975 (e) (7) of employer securities which are not readily tradable on an established market shall have the right to require that the employer repurchase such securities. A plan which otherwise meets the requirements of this section will not fail to be a stock bonus plan within the meaning of this title because of such a distribution. The distribution of employer stock to or a participant in a plan that meets the requirements of this section, pursuant to the demand of such participant for a distribution of such securities shall not be deemed to be a sale of a security to such participant under any Federal securities laws.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations and require such reports as may be necessary to carry out the provisions of this section.".

On page 202, lines 7 and 8, strike out "by such individual for the benefit of himself—" and insert in lieu thereof "by the employer for the benefit of such employee—".

On page 202, line 18, after "section 409" insert "(but only if the bond is not redeemed within 12 months after the date of its issuance)".

On page 203, lines 8 and 9, strike out "provided that not more than $100 of such amount" and insert in lieu thereof "provided that not more than $100 of which".

On page 203, between lines 17 and 18, insert the following:

"(3) DESIGNATION REQUIREMENTS.—No deduction is allowed for any amount paid to a plan described in paragraph (1), (2), or (3), of subsection (a) unless the individual notifies the employer maintaining the plan that the amount paid is to be treated as an amount deductible under this section.

On page 206, between lines 11 and 12, insert the following:

(2) Section 408 (c) (4) (relating to excess contributions) is amended—

(A) by striking out "section 219 if" and inserting in lieu thereof "section 219, 220, or 221 if", and

(B) by striking out "or 220" and inserting in lieu thereof ", 220, or 221".

(3) Subparagraph (A) of section 409 (b) (3) (relating to income tax treatment of retirement bonds) is amended by inserting ", 220, or 221" after "section 219".

On page 206, line 12, strike out "(2)" and insert in lieu thereof "(4)".

On page 206, lines 11 and 12, strike out "(Tax Treatment of Certain Contributions)" and insert in lieu thereof "(relating to tax treatment of certain contributions)".

On page 206, line 16, strike out "(3)" and insert in lieu thereof "(5)".

On page 211, between lines 9 and 10, insert the following:

(b) AMENDMENT OF SECTION 801 (g).—Paragraphs (1) (B) (ii) and (7) of section 801(g) are each amended by striking out "subparagraph (A), (B), (C), (D), or (E) of section 805 (d) (1)" and inserting in lieu thereof "paragraph (1), (2), (3), (4), (5), or (6) of section 805(b)".

On page 211, line 10, strike out "(b)" and insert in lieu thereof "(c)".

On page 215, strike out lines 4 through 8, and insert:

"(2) EMPLOYEE.—The term 'employee' includes, for any year, an individual who is an employee within the meaning of section 401(c) (1) (relating to self-employed individuals).

On page 216, strike out line 7 and insert in lieu thereof the following:

"(A) of utilization rates for the different types of educational assistance made available under the program; or

On page 224, line 1, strike out "PARTNERSHIP PROVISIONS" and insert in lieu thereof "PARTNERSHIPS".

On page 226, line 19, before the semicolon insert in lieu thereof "(as defined in subsection (c))".

On page 227, line 14, strike out "ten" and insert in lieu thereof "10".

On page 227, strike out lines 18, 19, and 20, and insert in lieu thereof the following:

"(5) is empowered to invest in the properties (but not in properties acquired by it or for its benefit through the right of eminent domain).

For purposes of this subsection, section 1504 (a) shall be applied by substituting '20 percent' for '80 percent' wherever it appears.

On page 228, line 4, before the comma insert "for the GSOC".

On page 228, line 5, before the period insert "between that date and the date of issuance".

On page 228, between lines 5 and 6, insert the following new subsection:

"(d) Treated as Private Corporation.—For purposes of this title, a GSOC shall be treated as a private corporation and not as a governmental unit.

"(e) Study of General Stock Ownership Corporations.—The staff of the Joint Committee on Taxation shall prepare a report on the operation and effects of this subchapter relating to GSOCs. An interim report shall be filed within two years after the first GSOC is formed and a final report shall be filed by September 30, 1983.

On page 228, lines 13 and 14, strike out "corporation" and insert in lieu thereof "GSOC".

On page 228, line 18, strike out "corporation" and insert in lieu thereof "GSOC".

On page 228, lines 19 and 20, strike out "the taxable years of a shareholder of such corporation" and insert in lieu thereof "each such taxable year".

On page 228, line 21, strike out "such shareholder" and insert in lieu thereof "the shareholders of such GSOC".

On page 229, line 3, strike out "corporation" and insert in lieu thereof "GSOC".

On page 229, line 4, strike out "corporation" and insert in lieu thereof "GSOC".

On page 229, lines 4 and 5, strike out ", with respect to any such taxable year, and subsection (e)." and insert in lieu thereof "under subsection (f).".

On page 229, between lines 5 and 6, insert the following:

"(e) TAXABLE YEAR.—The taxable year of a GSOC shall end on October 31 unless the Secretary consents to a different taxable year.".

On page 229, line 6, strike out "(e)" and insert in lieu thereof "(f)".

On page 229, line 8, before the period insert the following: "such terminations shall be effective for the first taxable year with respect to which the Secretary consents and for all succeeding taxable years".

On page 229, line 13, strike out "corporation" and insert in lieu thereof "GSOC".

On page 229, line 16, strike out "person who is a".

On page 229, lines 17 and 18, strike out "corporation" and insert in lieu thereof "GSOC".

On page 229, line 18, strike out "his" before the word "taxable" and insert in lieu thereof "the".

On page 229, line 19, after the word "year" insert "with or within which the taxable year of the GSOC ends".

On page 229, line 21, strike out "corporation" and insert in lieu thereof "GSOC".

On page 229, line 22, strike out "corporation" and insert in lieu thereof "GSOC".

On page 229, lines 23 and 24, strike out "multiplied by a fraction the numerator of which is and the denominator of which is" and insert in lieu thereof "divided by".

On page 229, line 25, strike out "corporation's" and insert in lieu thereof "GSOC's".

On page 230, line 3, beginning with "regard to—" strike out through line 10 and insert in lieu thereof "regard to the deductions allowed by part VIII of subchapter B (other than deductions allowed by section 248, relating to organizational expenditures).".

On page 230, line 17, strike out "or additional tax".

On page 230, lines 21 through 23, strike out "multiplied by a fraction the numerator of which is and the denominator of which is" and insert in lieu thereof "divided by".

On page 230, line 23, strike out "corporation's" and insert in lieu thereof "GSOC's".

On page 231, between lines 5 and 6, insert the following:

"(3) RECAPTURE.—There shall be apportioned among the shareholders of a GSOC, in the manner described in paragraph (1), an additional tax equal to the excess of any tax resulting from recomputing a prior year's investment credit in accordance with section 47 over the investment credit of the GSOC for it's taxable year.

On page 231, line 9, insert "establish and" before "maintain a shareholder".

On page 231, line 11, strike out "corporation's" and insert in lieu thereof "GSOC's".

On page 231, line 12, strike out "corporation's" and insert in lieu thereof "GSOC's".

On page 231, strike out lines 14 through 16, and insert in lieu thereof the following:

"(2) decreased, but not below zero, on the first day of the GSOC's taxable year by the amount of any GSOC distribution to the shareholders of such GSOC made or treated as made during the prior taxable year.

On page 231, strike out lines 21 through 22, and insert in lieu thereof the following: "of the shareholder income account as of the close of the taxable year of the GSOC, and".

On page 232, strike out lines 1 and 2, and insert in lieu thereof the following: "the balance of the shareholder income account as of the close of the taxable year of the GSOC.

"(c) DISTRIBUTIONS NOT TREATED AS A DIVIDEND.—Any amounts includable in the gross income of any individual by reason of ownership of stock in a GSOC shall not be considered as a dividend for purposes of section 116.

"(d) REGULATIONS.—The Secretary shall have authority to prescribe by regulation, rules for treatment of distributions in respect of shares of stock of the GSOC that have been transferred during the taxable year.".

On page 232, strike out lines 5 through 10, and insert in lieu thereof the following:

"The basis of a shareholder's stock in an electing GSOC shall be increased by the amount includable in the gross income of such shareholder under section 1393, but only to the extent to which such amount is actually included in the gross income of such shareholder.

On page 232, between lines 10 and 11, insert the following:

"SEC. 1396. MINIMUM DISTRIBUTIONS.

"(a) GENERAL RULE.—A GSOC shall distribute at least 90 percent of its taxable income for any taxable year by January 31 following the close of such taxable year. Any distribution made on or before January 31 shall be treated as made as of the close of the preceding taxable year.

"(b) IMPOSITION OF TAX IN CASE OF FAILURE TO MAKE MINIMUM DISTRIBUTIONS.—If a GSOC fails to make the minimum distribution requirements described in subsection (a), there shall be imposed an excise tax equal to 20 percent of the excess of the amount required to be distributed over the amount actually distributed.

On page 232, strike out lines 11 through 25, and insert in lieu thereof the following:

"SEC. 1397. SPECIAL RULES APPLICABLE TO EARNINGS AND PROFITS OF AN ELECTING GSOC.

"(a) The current earnings and profits of an electing GSOC as of the close of its taxable year shall not include the amount of taxable income for such year which is required to be included in the gross income of the shareholders of such GSOC under section 1393(a).

On page 233, line 1, strike out "(c)", and insert in lieu thereof "(b)".

On page 233, lines 12 and 13, strike out "taxable income", and insert in lieu thereof "gross income".

On page 233, lines 13 and 14, strike out "described in subsection (b) or (c)" and insert in lieu thereof "the amount described in paragraph (1) and shall take into account the adjustment described in paragraph (2),",

On page 233, lines 14 and 15, strike out "an amount of interest" and insert in lieu thereof "interest in the amount".

On page 234, line 6, strike out "and" and insert in lieu thereof ", but".

On page 235, line 23, after "subtitle A," insert "the amount of investment credit or additional tax, as the case may be,".

On page 236, line 9, strike out the closing quotation marks and the second period and insert in lieu thereof "every GSOC shall file an annual report with the Secretary summarizing its operations for such year."

On page 248, line 17, strike out "subparagraph (D)," and insert in lieu thereof "subparagraph (C), as redesignated by section 141 of this Act".

On page 248, line 21, strike out "subparagraph (D)" and insert in lieu thereof "subparagraph (C), as redesignated by section 141 of this Act'".

On page 255, line 21, after "by" insert the following: "striking out the period at the end of subparagraph (C) and inserting in lieu thereof ', or', and by".

On page 255, line 23, strike out "A" and insert in lieu thereof "a".

On page 256, lines 1 and 2, strike out " shall be treated as section 38 property".

On page 256, strike out lines 3, 4, and 5 and insert in lieu thereof the following:

(b) EFFECTIVE DATE.—This section shall apply to property described in section 50 of the Internal Revenue Code of 1954 as such section was in effect on the day before the date of enactment of this Act.

On page 259, line 18, strike out "(a) In General.—".

On page 260, strike out lines 3 and 4.

On page 262, line 18, after "plan" insert a closing parenthesis.

On page 267, line 17, strike out "recipients" and insert in lieu thereof "recipient".

On page 270, strike out lines 7 through 17, and insert in lieu thereof the following:

"(2) SPECIAL RULE FOR CERTAIN DETERMINATIONS.—Any determination as to whether paragraph (1), or subparagraph (A) or (B) of subsection (h)(1), applies with respect to any employee for any year shall be made without regard to subsections (a) and (b) of section 52.

"(3) YEAR DEFINED.—For purposes of this subsection and subsection (h), the term 'year' means the taxable year; except that, for purposes of applying so much of such subsections as relates to subsection (e), such term means the calendar year."

On page 273, line 8, strike "52" and insert "53".

On page 275, lines 9 and 10, strike "(c)(2)" and insert "(b)(2)".

On page 275, line 13, strike out "50A" and insert in lieu thereof "50A(a)".

On page 276, line 15, strike out "an".

On page 276, line 16, strike out "employee" and insert in lieu thereof "employees".

On page 276, line 21, strike out "years of employment" and insert in lieu thereof "taxable years".

On page 277, line 1, strike out "years of employment" and insert in lieu thereof "taxable years".

On page 277, between lines 7 and 8, insert the following:

(c) REPEAL OF PROVISION PERMITTING RECOVERY OF CREDIT FOR EARLY TERMINATION OF EMPLOYMENT BY EMPLOYER.—Section 50A is amended by striking out subsection (c) and by redesignating subsection (d) as (c).

On page 277, line 8, strike out "(c)" and insert in lieu thereof "(d)".

On page 278, lines 16 and 17, strike out "Except as provided in section 50A(a)(4), the" and insert in lieu thereof "The".

On page 281, line 20, strike out the period and insert in lieu thereof a comma.

On page 281, line 23, strike out the period and insert in lieu thereof a comma.

On page 283, line 1, after "programs)" insert "determined without regard to the provisions of section 50A(a)(2) (relating to limitation based on amount of tax)".

On page 284, line 19, strike out "5,000,000" and insert in lieu thereof "$5,000,000".

On page 284, line 20, strike out "12,000,000" and insert in lieu thereof "$12,000,000".

Beginning on line 17, page 285, strike out through line 19, page 285, and insert in lieu thereof:

(b) CONFORMING AMENDMENT.—Paragraph (7) of section 103(b) is amended by striking out "and (6)" and inserting in lieu thereof "(6) and (8)".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to refunding issues issued after the date of enactment.

On page 285, line 20, insert "TRANSITIONAL RULE FOR THE" before "ADVANCE REFUNDING".

Beginning with line 22, page 285, strike out through line 8, page 286.

On page 286, line 9, strike "(b) TRANSITIONAL RULE" and insert in lieu thereof "(a) IN GENERAL".

Beginning on line 8, page 288, strike out through line 11, page 288, and insert in lieu thereof:

(b) EXCEPTION WHERE BOND IS HELD BY SUBSTANTIAL USER.—Subsection (a) shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of the facilities or a related person.

On page 288, line 17, strike out "(D)" and insert in lieu thereof "(G)".

On page 300, line 7, strike out "which" and insert in lieu thereof "which has entered into an arrangement described in subsection (a) and which".

On page 302, strike out lines 3 through 24, and insert in lieu thereof the following:

SEC. 343. CERTAIN SIMPLE TRUSTS PERMITTED AS SHAREHOLDERS.

(a) DEFINITION OF SMALL BUSINESS CORPORATION.—Subsection (e) of section 1371 (defining small business corporation) as redesignated by section 341 of this Act is amended—

(1) by inserting after paragraph (3) the following new paragraph:

"(4) A qualified simple trust."; and

(2) by adding at the end thereof the following new sentence: "In the case of a qualified simple trust, each beneficiary of the trust (and not the trust) having a present interest in the trust income shall be treated as a shareholder.".

(b) QUALIFIED SIMPLE TRUST DEFINED.—Section 1371 is amended by adding at the end thereof the following new subsection:

"(f) QUALIFIED SIMPLE TRUST DEFINED.—For purposes of subsection (e)(4), the term 'qualified simple trust' means a United States trust—

"(1) no beneficiary of which is a trust,

"(2) which is required to distribute all its income currently,

"(3) the governing instrument of which provides that the income of the trust includes amounts included in gross income by reason of section 1373(b) (other than amounts treated as long-term capital gain) but does not include distributions described in subsections (d) and (f) of section 1375, and

"(4) the taxable year of which is the same as the taxable year of the corporation.".

On page 310, line 14, strike out "9within" and insert in lieu thereof "(within".

Beginning with line 14, page 334, strike out through line 24, page 338, and insert in lieu thereof the following:

"(h) AMOUNTS PAID TO HIGHLY COMPENSATED INDIVIDUALS UNDER A DISCRIMINATORY SELF-INSURED MEDICAL EXPENSE REIMBURSEMENT PLAN.—

"(1) IN GENERAL.—In the case of amounts paid to a highly compensated individual under a self-insured medical reimbursement plan which does not satisfy the requirements of paragraph (2) for a plan year, subsection (b) shall not apply to such amounts to the extent they constitute an excess reimbursement of such highly compensated individual.

"(2) PROHIBITION OF DISCRIMINATION.—A self-insured medical reimbursement plan satisfies the requirements of this paragraph only if—

"(A) the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate; and

"(B) the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals.

"(3) NONDISCRIMINATORY ELIGIBILITY CLASSIFICATION.—

"(A) IN GENERAL.—A self-insured medical reimbursement plan does not satisfy the requirements of subparagraph (A) of paragraph (2) unless such plan benefits—

"(i) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefit under the plan; or

"(ii) such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated participants.

"(B) EXCLUSION OF CERTAIN EMPLOYEES.—For purposes of subparagraph (A), there may be excluded from consideration—

"(i) employees who have not completed 3 years of service;

"(ii) employees who have not attained age 25;

"(iii) part-time or seasonal employees;

"(iv) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and

"(v) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911 (b)) from the employer which constitutes income from sources within the United States (within the meaning of section 861 (a)(3)).

"(4) NONDISCRIMINATORY BENEFITS.—A self-insured medical reimbursement plan does not meet the requirements of subparagraph (P) of paragraph (2) unless all benefits provided for participants who are highly compensated individuals are provided for all other participants.

"(5) HIGHLY COMPENSATED INDIVIDUAL DEFINED.—For purposes of this subsection, the term 'highly compensated individual' means an individual who is—

"(A) one of the 5 highest paid officers,

"(B) a shareholder who owns (with the application of section 318) more than 10 percent in value of the stock of the employer, or

"(C) among the highest paid 25 percent of all employees (other than employees described in paragraph (3)(B) who are not participants).

"(6) SELF-INSURED MEDICAL REIMBURSEMENT PLAN.—The term 'self-insured medical reimbursement plan' means a plan of an employer to reimburse employees for expenses referred to in subsection (b) for which reimbursement is not provided under a policy of accident and health insurance.

"(7) EXCESS REIMBURSEMENT OF HIGHLY COMPENSATED INDIVIDUAL.—For purposes of this section, the excess reimbursement of a highly compensated individual which is attributable to a self-insured medical reimbursement plan is—

"(A) in the case of a benefit available to a highly compensated individual but not to a broad cross-section of employees, the amount reimbursed under the plan to the employee with respect to such benefit, and

"(B) in the case of benefits (other than benefits described in subparagraph (A)) paid to a highly compensated individual by a plan which fails to satisfy the requirements of paragraph (2), the total amount reimbursed to the highly compensated individual for the plan year multiplied by a fraction—

"(i) the numerator of which is the total amount reimbursed to all participants who are highly compensated individuals under the plan for the plan year, and

"(ii) the denominator of which is the total amount reimbursed to all employees under the plan for such plan year.

In determining the fraction under subparagraph (B), there shall not be taken into account any reimbursement which is attributable to a benefit described in subparagraph (A).

On page 334, line 15, strike out "PARTICIPANTS" and insert in lieu thereof "INDIVIDUALS".

On page 334, line 18, strike out "participant" and insert in lieu thereof "individual".

On page 334, line 19, insert "medical reimbursement" before "plan".

On page 334, line 19, strike out "that" and insert in lieu thereof "which".

On page 335, strike out lines 7 and 8, and insert in lieu thereof the following:

"(B) the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals.

On page 335, line 11, insert "self-insured" before "medical reimbursement".

On page 336, line 12, after the comma insert "which the Secretary finds to be a collective bargaining agreement,".

On page 336, lines 23 and 24, insert "self-insured" before "medical reimbursement".

On page 337, line 1, strike out "highly compensated participants" and insert in lieu thereof "participants who are highly compensated individuals".

On page 383, between lines 8 and 9, insert the following new section:

SEC. 510. DISCLOSURE OF RETURN INFORMATION TO CERTAIN FEDERAL OFFICERS AND EMPLOYEES FOR PURPOSES OF TAX ADMINISTRATION, ETC.

Section 6103(h) is amended—

(1) by striking out subparagraph (A) of paragraph (2) and inserting in lieu thereof the following:

"(A) the taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;", and

(2) by striking out subparagraph (A) of paragraph (4) and inserting in lieu thereof the following:

"(A) the taxpayer is a party to the proceeding, or the proceeding arose out of or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;".

Mr. CURTIS. Third reading.

The PRESIDING OFFICER. The question is on agreeing to the clerical and technical amendments offered by the Senator from New York.

The amendments were agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

Mr. GOLDWATER. Mr. President, have the yeas and nays been ordered?

Mr. DOLE. Mr. President, I am informed that the distinguished Senator from Michigan has an amendment and is on his way. I suggest the absence of a quorum.

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

Mr. BELLMON. Mr. President, will the Senator withhold that?

AMENDMENT NO. 3982

(Purpose: Providing a credit against tax for certain taxes paid as a result of retroactive application of the minimum tax on intangible drilling costs)

Mr. BELLMON. Mr. President, I call up amendment No. 3982 at this time.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. BELLMON) proposes an amendment numbered 3982.

Mr. BELLMON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . CREDIT AGAINST 1976 MINIMUM TAX ON INTANGIBLE DRILLING COSTS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to credits allowable) is amended by inserting after section 44D, as added by this Act, the following new section:

"SEC. 44E. CREDIT FOR 1976 MINIMUM TAX ON INTANGIBLE DRILLING COSTS.

"(a) GENERAL RULE.—If the sum of—

"(1) the tax imposed by this title (other than the tax described in paragraph (2)) for the first taxable year of the taxpayer beginning after December 31, 1975, and

"(2) the tax imposed under section 56(a) attributable during such taxable year attributable to intangible drilling costs of the taxpayer during such taxable year,

exceeded the amount of the taxable income of the taxpayer for such taxable year, there shall be allowed as a credit against the tax imposed by this title for the taxable year an amount equal to the amount of the tax described in paragraph (2).

"(b) LIMITATIONS.—

"(1) REDUCTION FOR PREVIOUS YEAR CREDIT.—The amount of the credit allowed under subsection (a) shall be reduced by the amount of such credit allowed to the taxpayer under this section for any preceding taxable year.

"(2) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed under subsection (a) for the taxable year shall not exceed the amount of the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation than this section, other than the credits allowable by sections 31 and 39.

"(c) DRILLING MUST INCREASE.—No credit shall be allowed under subsection (a) unless the intangible drilling and development costs taken into account under section 57(a)(11) for such taxable year are not equal to or greater than 110 percent of the amount of such costs taken into account under section 57(a)(11) for the first taxable year of the taxpayer beginning in 1976.

"(d) TERMINATION.—The provisions of this section shall apply to taxable years beginning after December 31, 1977, and before January 1, 1982.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 44D the following new item:

"Sec. 44E. Credit for 1976 minimum tax on intangible drilling costs.".

(2) Section 6096(b) (relating to designation of income tax payments to Presidential Election Campaign Fund) is amended by striking out "and 44D" and inserting in lieu thereof "44D, and 44E".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1977, and before January 1, 1982.

Mr. BELLMON. Mr. President, some Members of the Senate may recall that when we passed the 1976 tax bill, we made certain provisions in that bill retroactive, back to the first day of January. The bill was passed in October. The effect of some of those provisions was to levy a tax against certain taxpayers which amounted to more than 100 percent of their net taxable income for that year. The justification for that action was that taxpayers should have known what Congress was considering and conducted their business accordingly.

More than 20,000 bills are introduced in Congress each year, and I doubt that anyone, at the beginning of the year, can guess which bills will pass; and certainly no one knows what the content of those bills will be. As a matter of fact, I doubt that there is any Member on the floor tonight who knows what the content of the bill before us now will be when it comes back from conference.

So the idea that a taxpayer should have known in January what Congress was going to pass in October seems to me to be ridiculous on its face.

The purpose of this amendment, simply, is to allow taxpayers who were caught in that retroactive change in the law to have a chance to earn a tax credit by carrying on activities that, in effect, will earn this tax credit for them.

Mr. President, this amendment would provide tax relief for taxpayers whose tax liability exceeded their net taxable income in 1976 due to the 15-percent minimum tax on intangible drilling cost

enacted in the Tax Reform Act of 1976. The amendment would allow a taxpayer, whose tax liability for 1976, to earn a tax credit in 1978 through 1981 up to the amount of his intangible drilling cost tax payment for 1976. However, no credit shall be allowed unless the taxpayer's intangible drilling cost for the taxable year in question is equal to or exceeds 110 percent of his 1976 intangible drilling cost.

As the distinguished Finance Committee chairman and other Members of the Senate may recall, when the Congress passed the Tax Reform Act in October of 1976, certain provisions of the act were made retroactive to include all of tax retroactive to January 1976. The new 15-percent tax on intangible drilling cost was one of the provisions that was made retroactive to include 1976 in the Reform Act.

The effect of making this tax effective retroactively for 1976 in legislation that was enacted in October of 1976 was to change the rules in the middle of the game.

The Congress recognized this error in the 1976 Tax Reform Act and provided tax relief for 1977. The bill before the Senate contains a provision that provides a permanent remedy from the unjust results that result from the tax on intangible drilling cost for all years except 1976. However, the pending amendment is necessary to provide relief for inequities that occurred in the 1 year 1976.

Mr. President, the pending amendment simply allows a taxpayer, who paid more taxes than he had income in 1976 due to the retroactive intangible drilling cost tax, to earn a tax credit up to that amount. I urge the Senate to adopt my amendment.

I have talked this matter over with the Treasury, and they take the position I have described, that taxpayers should have known what was going to happen. They admit it is unjust. They would not favor retroactive taxes in the future, but this does not help the injustice that was created in the 1976 act.

Mr. LONG. Mr. President, I have no objection to the amendment, but the Treasury objects to the amendment.

Mr. BELLMON. Mr. President, there is very little revenue impact. It is so small that the Treasury cannot even make an estimate of what the amount would be.

Mr. LONG. Personally, I have no objection to the amendment, but the Treasury does object to it.

Mr. METZENBAUM. Mr. President, will the Senator yield?

Mr. BELLMON. I yield.

Mr. METZENBAUM. I am advised, rather casually, that somebody thinks there is $30 million in this amendment. Can that be so?

Mr. BELLMON. There is no such estimate from the Treasury. They had a guess once that there might be $3 or $4 million.

Understand, this is not a rebate. It is a chance to earn a tax credit. It applies to very few taxpayers—only those who pay more taxes in their net taxable income.

Mr. LONG. Mr. President, I am sure there are some equities to support the amendment. I regret to say that we do not have all the information on the amendment we would desire. It is a matter that perhaps should be considered in more detail by the committee, but we have not had a chance to do so at this time.

Mr. BELLMON. Mr. President, this proposal was introduced as a bill several months ago. I hoped it would be in the bill that came from the committee.

Mr. LONG. If the Senator wants us to take the amendment, we will take it to conference and study it in more detail there.

Mr. PROXMIRE. If the Senator will yield, this is an amendment on which, as I understand, there have been no hearings. The Treasury opposes the amendment. It is a complicated amendment, difficult to explain and understand. Under the circumstances, I hope that the Senator will not press the amendment and will give us a chance to consider the amendment next year.

Mr. BELLMON. Mr. President, it is my intention to press for the amendment; and if the committee will take it, fine. If not, I ask for the yeas and nays.

The PRESIDING OFFICER. Is the Senator asking for the yeas and nays?

Mr. BELLMON. Yes.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BELLMON. I would prefer that the committee take the amendment.

Mr. President, I withdraw the request for the yeas and nays and I suggest——

The PRESIDING OFFICER. Is there objection to the unanimous-consent request to withdraw the yeas and nays?

Mr. ABOUREZK. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard to the unanimous-consent request to withdraw the yeas and nays on the amendment.

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GOLDWATER. Have the yeas and nays been ordered on final passage?

The PRESIDING OFFICER. The yeas and nays have not yet been ordered on final passage.

Mr. GOLDWATER. I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. METZENBAUM. I yield.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the yeas and nays on the amendment by Mr. BELLMON be withdrawn, in accordance with the request.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object—and I do not intend to object—may I ask how many other amendments there are?

Mr. DOLE. One.

The PRESIDING OFFICER. Without objection, the request for the yeas and nays on the amendment by the Senator from Oklahoma is withdrawn.

The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4152

Mr. GRIFFIN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Michigan (Mr. GRIFFIN) proposes an amendment numbered 4152.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

That section 1033 of the Internal Revenue Code of 1954 (relating to involuntary conversions) is amended by redesignating subsections (f) and (g) as (g) and (h), respectively, and by inserting immediately after subsection (e) the following new subsection:

"(f) REPLACEMENT OF LIVESTOCK WITH OTHER FARM PROPERTY.—If the proceeds from livestock which is compulsorily or involuntarily converted are reinvested in other property (including real property) to be used for farming purposes, the property shall be treated as property similar or related in service or use to the livestock so converted.".

SEC. 2. The amendment made by the first section of this Act shall apply with respect to taxable years beginning after December 31, 1974.

Mr. GRIFFIN. Mr. President, I offer an amendment to remedy an inequity in the Internal Revenue Service's tax policy which results in unfair treatment of farmers, particularly farmers in Michigan who have lost herds of cattle due to PBB contamination.

Under the "involuntary conversion" provisions (section 1033), of the Internal Revenue Code, a taxpayer who has lost property as a result of "destruction—theft, seizure, or requisition, or condemnation" may defer taxation on any gain which might be realized from insurance payments or other settlements if the proceeds are converted into "property similar or related in service or use to the property" lost by the taxpayer. Such property includes livestock.

In interpreting the "similar or related in service or use" requirement, the IRS ordinarily uses a liberal test, requiring only that the proceeds be reinvested in property of the "same general class" as that of the property which was destroyed.

In the case of farmers, however, the

IRS shifts to a narrower and stricter test. It requires that the new property be "substantially identical" to the property lost in order to qualify. This means that if a farmer loses livestock, he must use the proceeds for the purchase of livestock—and cannot invest in other farm-related property.

In some instances, this proves to be an extremely unfair and troublesome requirement.

Consider the situation in Michigan where hundreds of farmers have lost their herds because the toxic chemical polybrominated biphenyl (PBB) was accidentally mixed in large supplies of cattle feed, resulting in widespread contamination and quarantining.

Many Michigan farmers have now received settlements. But, they are not willing to reinvest this money in livestock, because they have been unable to rid their farms of the PBB contaminant. Many farms still contain high levels of PBB—and the farmers affected do not want to risk recontamination. In fact, a number of recent news accounts have documented sad stories of farmers who have experienced recontamination, losing a second herd of cattle to PBB contamination.

Because the IRS interpretation operates to force farmers to reinvest settlement proceeds in livestock, these farmers find themselves caught between a "rock and a hard place." If they use the money to purchase farm property other than livestock, the proceeds will be taxed; if they use the money to buy more livestock—as the IRS interpretation requires, they then run the risk of recontamination of their herds.

Clearly, this is an unconscionable position for the Government to take. After such a tragedy, the Government should take a posture which helps—rather than hinders—those who have suffered a loss of this nature. It is particularly unfair when one segment of the population—farmers—is singled out and accorded harsher treatment than other segments.

The amendment I offer would grant farmers equitable treatment by permitting them to reinvest their proceeds in any property which is used for farming purposes. This amendment would make clear that such property shall be treated by IRS as property "similar or related in service or use" to the property that was lost.

This will put farmers on an equal footing with other businessmen and investors. Equally as important, it will give farmers who have been decimated by tragedies such as the PBB situation in Michigan a new lease on life by allowing them to start over with a new type of farming operation which would not be threatened by the same kind of disaster as the one they had just suffered through.

With the increasing incidence of toxic chemical and related accidents, it seems to me only fair and prudent that the Senate take this action now.

Mr. LONG. Mr. President, I am sympathetic to the amendment, and I do not oppose the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

The amendment was agreed to.

Mr. RIEGLE. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the amendment of Senator GRIFFIN that was just agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

CARRYOVER BASIS ASPECTS OF ESTATE AND GIFT TAXATION

● Mr. KENNEDY. Mr. President, the Senator from Maine (Mr. HATHAWAY) has prepared a detailed analysis of the background of one of the major provisions in the bill, dealing with the carryover basis issue. I submit the analysis for the RECORD.

The analysis follows:

STATEMENT OF SENATOR HATHAWAY OF THE CARRYOVER BASIS ASPECTS OF ESTATE AND GIFT TAXATION

Mr. President, the Revenue Act of 1978 (H.R. 13511) contains a provision which I believe is a step backward in tax refrom. The problem is section 503 of the bill; it contains a three year deferral of the effective date of the carryover basis rules which were adopted in 1976.

The background on this issue is as follows:

THE CARRYOVER BASIS PROVISIONS OF THE TAX REFORM ACT OF 1976: AN EXAMINATION OF THE LAW, THE CRITICISMS, AND THE PROPOSED REFORMS

The carryover basis provisions of the Tax Reform Act of 1976 [1] have evoked a number of criticisms from practitioners, estate planners, executors, banks and professional organizations, principally because of perceived complexity. Hearings have been held on the subject by both the House Committee on Ways and Means and a subcommittee of the Senate Finance Committee, and numerous bills have been introduced to amend, repeal or revise the new law.

This report will examine the carryover basis provisions of the Tax Refrom Act, discuss some of the criticisms and examine the reforms proposed in the present Congress. No attempt will be made to discuss the economic aspects of carryover basis, or the tax policy issues Congress resolved with its adoption.

I. AN EXAMINATION OF THE CARRYOVER BASIS PROVISIONS

A. Previous law: Fair market value basis at date of death

Prior to 1977, an individual acquiring property from a decedent [2] took a basis in the property equal to its fair market value on the date of death [3] or alternate valuation date,[4] effectively removing the unrealized appreciation from the income tax base because the taxable gain or loss on sale or exchange is measured by the difference between the amount received for the property and its basis.[5] By giving property received from a decedent a fair market value basis, subsequent sale or exchange at date of death value would result in neither a taxable gain nor taxable loss. This adjustment was referred to as a "stepped-up" basis at date of death, though the basis could be reduced if the fair market value at that time was less than the decedent's basis in the property.

B. Carryover basis properties

Unrealized appreciation inherent in property owned at date of death is retained in the income tax base through the carryover basis concept under which an individual takes as his or her basis in property received from a decedent the basis the decedent had in such property, with certain modifications.[6] This rule applies to any property held by a decedent at his or her death after December 31, 1976, known collectively as "carryover basis property." [7]

Certain property is excluded from the definition of carryover basis property although it may be owned by the decedent at the time of his or her death. The most noteworthy exclusions are for life insurance proceeds,[8] survivors annuities,[9] income in respect to a decedent,[10] and up to $10,000 of household goods.[11] Certain other properties excluded from the carryover basis rules are generally those which, although included in the decedent's gross estate, have already been subject to income tax.[12]

C. Adjustments to Carryover Basis

The Tax Reform Act makes four adjustments to the basis of property received from a decedent dying after December 31, 1976. These adjustments are integrally related to the general criticisms of carryover basis and each will be discussed below.

1. The "Fresh Start" Adjustment

The basis of any carryover basis property owned by the decedent on December 31, 1976, is increased to its fair market value on that date.[13] This adjustment is made to each asset individually.

The value of marketable securities is determined from appropriate stock exchange quotations and other appropriate sources. Marketable securities include stocks and securities listed on the New York or American exchanges, regional or foreign stock exchanges, stocks and securities regularly traded in the over-the-counter market or locally if there are regularly published brokers quotations, interests in mutual funds and in common trust funds.[14]

The value of other assets is determined by allocating the total appreciation over the holding period and ascribing a *pro rata* share to the holding period before January 1, 1977.[15]. Consequently, each asset subject to this valuation technique must be supported by proof of the acquisition date and the initial basis.[16] The allocation is computed on a daily basis.[17]

2. The Adjustment for Federal and State Estate Taxes

The basis of carryover basis property is also increased by the share of the total State and Federal death taxes paid by the estate and attributable to the appreciation between the basis of the carryover basis property and its fair market value for estate tax purposes.[18] This adjustment is designed to prevent the appreciation from being subject to both estate and income taxes.[19]

The adjustment for State and Federal estate taxes is computed by comparing the total net appreciation with the total net value of the taxable assets, then reducing the taxes paid by this percentage.[20] The adjustment is made on an asset-by-asset basis and results in an adjustment based on the average estate tax liability paid, rather than the marginal estate tax liability. The adjustment cannot increase the basis of any asset above its fair market value on the date of death.[21]

3. The Minimum Basis Adjustment

An adjustment is permitted to increase the total basis of all carryover basis property to at least $60,000. The total minimum basis adjustment is allocated to the various assets in relation to the share of the total net appreciation represented in each asset.[22] Like the estate tax adjustment, the minimum basis adjustment cannot be used to increase the basis of any asset above its fair market value on the date of death.[23]

4. The Adjustment for State Succession Taxes

An adjustment is permitted for any succession or inheritance taxes paid by the trans-

Footnotes at end of article.

feree of property from the estate, to the extent such taxes are imposed on the unrealized appreciation of the property.[24] The allocation of the tax burden and the adjustment is made on the basis of the relationship between the appreciation and the total value of all property received by the transferee and subject to tax. This relationship is applied against the total succession taxes paid by the transferee to determine the adjustment.[25] The adjustment for succession taxes paid by the transferee cannot be used to increase the basis in carryover basis property above its fair market value on the date of death.[26]

D. Order of adjustments

The fresh start adjustment is made first, followed in sequence by the adjustment for estate-paid death taxes, the adjustment for minimum basis, and the adjustment for transferee-paid succession taxes.

E. Reporting requirements and penalties

The executor must supply the Internal Revenue Service and each transferee with the properly computed carryover basis. Failure to supply the IRS with such information may result in the imposition of a fine of $100 for each such failure, up to a maximum of $5,000. Failure to supply a transferee with proper information can result in a fine of $50 for each such failure, up to $2,500. The maximum fines, therefore, would be $7,500.[27]

II. CRITICISMS OF THE CARRYOVER BASIS PROVISIONS

During consideration of the Technical Corrections Act of 1977[28] a number of witnesses submitted written statements to the House Committee on Ways and Means[29] and either testified before or submitted written statements to the subcommittee of the Senate Finance Committee[30] studying the bill. These commentaries frequently criticized the carryover basis provisions because of their perceived complexity and because of the interaction of carryover basis with other tax provisions.

A. Breadth of application of the carryover basis rules

A common complaint has been that the carryover basis rules apply to estates which are not otherwise subject to Federal estate tax laws.[31] The Tax Reform Act of 1976 raised the amount of a taxable estate which can pass without taxation from $60,000 to $120,000, with respect to estates of decedents dying after December 31, 1976, and increasing up to $175,625 for the estates of decedents dying after December 31, 1980.[32] While such estates are not required to file Federal estate tax returns, they are required to comply with the carryover basis reporting requirements if there is a single item of carryover basis property in the estate.

B. Administrative costs of the carryover basis rules

Each adjustment to carryover basis property must be made to all assets in the estate individually. In most estates, this will include a significant portion of the property of the decedent. Because each adjustment must be made individually, and because any change in valuation of an asset on audit will require the redetermination of the carryover basis of every asset, this will lead to higher administrative costs. Some critics of the carryover basis rules contend that the increased administrative costs will more than offset the tax savings realized under the 1976 legislation's relief provisions.[33]

C. Carryover basis may create additional disputes among the beneficiaries and the executor or administrator

The carryover basis rules make some properties of equal fair market value inequal in actual value to the beneficiaries, depending upon the basis the property carries with it. If one asset has a higher basis than another though their fair market values are equal, the higher-basis asset will be more valuable to the beneficiary because it represents more after-tax dollars upon sale or exchange. Therefore, it is anticipated by some practitioners and probate counsel that beneficiaries will raise disputes among themselves and with the executors and administrators respecting the distribution of high and low basis assets, possibly resulting in court tests and higher total probate costs.[34]

D. Relation of the reduction in post-1916 estate taxes and the increase in income taxes under carryover basis

The Tax Reform Act contained a number of provisions clearly designed to reduce the estate taxes paid by small and moderate size estates, including the increased tax-free estate through the unified transfer tax credit, the higher marital deduction in small estates, and the special valuation for estates comprised of closely-held farms and small businesses.[35] Some commentators, however, view the increase in *post mortem* income taxes derived from the carryover basis to exceed the estate taxes saved, particularly with respect to small and moderate estates.[36] The savings from the estates taxes on larger estates may well exceed the subsequent income taxes, but the income taxes will still make a significant reduction in the total tax relief afforded by the other estate and gift tax provisions.

E. Liquidity problems caused by carryover basis

Many estates suffer from a lack of liquidity—cash to pay debts, expenses and taxes. Formerly the estate could sell or exchange assets to raise the needed cash. However, under the carryover basis rules, such sale or exchange will also give rise to an added income tax liability. In turn, added liquidity will be required.[37] It may be noted, however, that life insurance, a frequent and traditional source of liquidity, is not carryover basis property.

F. Recordkeeping requirements

In order to compute the fresh start adjustment on all property other than marketable securities, the taxpayer must know both his or her basis in the asset and the date of acquisition. With respect to property received as a gift or inherited, this requires knowledge of the donor's basis or, in the case of inherited property, the estate tax valuation. As few individuals maintain such records, the executor or administrator will be required to trace the history of such property at great administrative expense. Individuals unaccustomed to maintaining such meticulous records may find the burden onerous.

G. The penalties: Breadth of application and severity

Testimony has been given that many fiduciaries are finding it no longer profitable to administer small and moderate estates because of the added penalties under the carryover basis provisions.[38] The penalties can reach $7,500 on an estate and the fiduciaries normally are restricted to a statutory fee which does not consider the added liability and work of the new rules. Consequently, some institutional fiduciaries may cease to accept small and moderate estates.

Additionally, the penalties apply to all administrators and executors, regardless of the size of the estate or the experience and skill of the fiduciary. A surviving spouse of a small estate, normally appointed executor or executrix, will be responsible for computation of the carryover basis of all carryover basis property and for the filing of the necessary documents with the IPS and the transferees, even if he or she is the only transferee. Failure to do this will result in penalties under the new rules.

H. Section 306 preferred stock and post-death redemptions

To prevent the removal of cash from a corporation at capital gains rates rather than ordinary income rates (a so-called "bail-out"), to tax the gain from the sale, exchange or redemption of certain preferred stock issued a corporate shareholder of common stock as ordinary income, rather than capital gains. If the preferred stock, known as "section 306 stock," is sold or exchanged, rather than redeemed, the ordinary income treatment applies to the amount realized on the disposition of the shares only to the extent the corporation could have distributed a dividend in cash at the time the stock was distributed.[39] If the stock is redeemed, the entire amount received is treated as a dividend distribution and taxed as ordinary income.[40] The ability of such preferred shares to produce ordinary income is often referred to as the "taint" of section 306 stock.

Section 306 stock does not maintain its taint forever. Where the stock is transferred and the transferee does not compute his or her basis with reference to that of the transferor, the "taint" is removed in the hands of the transferor.[41] For example, in a sale or exchange the taint is removed because the transferor takes a cost basis, rather than a basis computed with reference to the transferor's basis. Similarly, when the law provided that property received from a decedent to a fair market value basis. However, because the Tax Reform Act now requires the basis of property received from a decedent to be computed with reference to the transferor's basis in the property, the "taint" removed under prior law will be retained.

The retention of the "taint" of section 306 stock after death has been criticized because some taxpayers have already planned their estates around this stock, recapitalizing their corporations and taking their interests in section 306 stock with the understanding that at their death the stock could be converted into cash at a stated redemption price. The Tax Reform Act now changes the treatment of such stock without their ability to alter their status. Additionally, it is contended, the stock should be permitted capital gains treatment after death because there is no longer the opportunity for a "bail out" since the shareholder has died.[42]

Another contention with respect to the carryover basis is that the stock "tainted" by section 306 should be permitted to qualify for redemption under section 303, which allows capital gains treatment on stock redemptions where the stock is a significant portion of the total estate and where the redemption provides funds with which to pay death taxes. Questions are raised whether the section 306 "taint" is overridden by the capital gains treatment afforded under section 303. Clarification is requested in some instances and, in others, a specific declaration that the stock's "taint" is removed.[43]

I. The household goods exemption

Some commentators have expressed the view that the $10,000 exemption for household goods is too low for moderate estates.[44] Because of the low value of household goods and the high administrative costs of the carryover basis, more household goods should be excluded, according to these individuals.

J. Computation of the estate tax adjustment

The carryover basis adjustment for the estate-paid death taxes is computed on the basis of the average federal estate tax and state death taxes imposed on the estate, and the representative share attributable to appreciation in carryover basis assets. Because of this methodology, if the value of a single asset is adjusted on audit, the carryover basis of all estate assets must be recomputed. Consequently, some commentators have requested that the adjustment be based on

Footnotes at end of article.

the marginal estate and death tax rates, rather than the average rates.[45] If this were done, the change in the value of a single or a small group of assets would not require recomputation of the carryover basis of the other assets.

II. REFORM PROPOSALS

A number of bills have been introduced in the 95th Congress to repeal, revise or reform the carryover basis rules of the Tax Reform Act of 1976.[46] Those bills suggesting repeal of the carryover basis rules will not be discussed in this report, but the two measures suggesting major revisions in the carryover basis will be examined herein. Furthermore, the commentary of the Treasury Department on the carryover basis proposals introduced by the House Committee on Ways and Means will be discussed as a reform proposal.

A. S. 2238 (Hathaway): The technical Amendments Act of 1977

On October 26, 1977, Senator Hathaway introduced his proposed Technical Amendments Act of 1977, designed to revise and reform the rules on carryover basis. The proposal would remove the restrictions on fresh start adjustment that presently prevent the adjustment from increasing the basis of an asset above its fair market value on the date of death.[47] It also provides for a minimum basis for fresh start purposes applicable only to personal property and to the decedent's personal residence. The minimum basis adjustment would discount the fair market value of the asset, determined for estate tax purposes, by eight (8) percent per annum, to its value on December 31, 1976.[48] The purpose of this adjustment is to provide for those situations in which "it is most likely that a decedent would not have kept adequate basis records before 1977."[49] An additional amendment to the fresh start rules eliminates the possibility that a single asset would receive fresh start adjustments in more than one estate, such as might occur if a decedent died owning property which, because of joint ownership, was also included in the estate of another decedent.[50]

The question of section 306 preferred stock redemptions is also addressed by treating the stock as a "marketable security" for purposes of the fresh start adjustment, and setting its fair market value as equal to the stated redemption price, disregarding dividend arrears or participation in undistributed accumulated capital or earnings.[51] If the beneficiaries redeem the entire interest, this will produce no net taxable gain. With respect to a sale, exchange or redemption of less than the full interest of the deceased, the ordinary income "taint" would still be present.[52]

The present minimum basis adjustment is made the first adjustment to the basis of carryover basis property, and it is increased to the same amount as the exemption equivalent to the unified credit.[53] Therefore, for decedents dying in 1977, the minimum basis adjustment would be $120,000 and for those dying after December 31, 1980, it would be $175,000.[54] In addition, the compliance rules are altered to alleviate the filing requirements when the entire carryover basis property is subject to minimum basis adjustment. As was stated by Senator Hathaway, these amendments would "eliminate the burden on small and moderate sized estates in having to contend with the carryover basis rules . . . [because] it is in these cases where the problems of carryover basis have the greatest adverse impact because basis records may not have been kept. Further, it is in these cases where the administrative cost of ascertaining amounts for original cost, improvements, and the adjustments are the greatest in relationship to the size of the estate."[55]

The adjustments for estate and transferee-paid death taxes are combined into a single adjustment for death taxes on all carryover basis property.[56] The basis adjustment is also computed on the marginal estate tax rates rather than the average estate tax rates, thereby reducing the impact on the total estate of the adjustment in the valuation of a few carryover basis properties. The basis adjustment is also made applicable to those carryover basis properties which pass to a charity or surviving spouse and which are, consequently, excluded from the taxable estate.[57] As Senator Hathaway has stated, the purpose of these amendments is to "alleviate some of the problems faced by an executor in trying to determine to whom property should be distributed because it will eliminate the death tax adjustment as a factor to be considered."[58]

The bill also provides for an automatic holding period on all carryover basis property sufficient to produce long-term capital gains when the property is later sold or exchanged.[59]

The amendments in the bill would be effective for all estates of decedents dying after December 31, 1976.

B. H.R. 6715: The Technical Corrections Act of 1977

H.R. 6715 was introduced by Representative Ullman on April 28, 1977, and referred to the House Committee on Ways and Means, which reported the bill on October 12, 1977.[61] The House of Representatives passed the measure on October 17, 1977, and it went to the Senate. It is presently pending before the Senate Finance Committee, which, through one of its subcommittees, has already taken testimony. This discussion is based on the bill reported by the House Committee on Ways and Means and passed by the House of Representatives.

H.R. 6715 addresses the problems of section 306 stock in two distinct ways. First, the amount received on the redemption of section 306 stock distributed prior to January 1, 1977, will be treated as ordinary income only to the extent it exceeds the shareholder's adjusted basis in the shares, computed after the fresh start adjustment.[62] This rule would be equally applicable to redemptions and to sales and exchanges. Furthermore, the bill provides that the capital gains treatment afforded the redemption of certain closely-held stock will apply to section 306 stock, as well.[63]

The Technical Corrections Act would also provide a special minimum basis fresh start adjustment for tangible personal property owned by the decedent on December 31, 1976, computed by discounting the fair market value on the date of death back to the aforementioned date, at a rate of eight (8) percent per annum, computed monthly.[64] The provision is predicated upon the Committee's view that, with respect to this property, the decedent will probably have maintained inadequate records and the executor, under the provision contained in H.R. 6715, could ascertain the fresh start basis of such assets "without having to ascertain the decedent's basis and the date (or approximate date) of acquisition of the property."[65]

The House bill would also limit any carryover basis property to a single fresh start adjustment though, in the case of such property owned jointly with a right of survivorship, the second fresh start adjustment would be allowed the surviving joint tenant's estate to the extent the property included therein was not included in the estate of the first joint tenant.[66] An automatic holding period sufficient to produce long-term capital gains is also provided for by H.R. 6715.[67]

The bill also modifies the basis adjustment for estate-paid death taxes, which is presently only applicable to property included in the Federal taxable estate. Property qualifying for the marital or charitable deduction, therefore, would not be eligible for this basis adjustment. Under H.R. 6715, though, such property's basis will be adjusted to the extent that it is subject to State death taxes, though not subject to Federal estate taxes.[68] The transferee-paid tax adjustment would also be made applicable where the estate had statutory liability after the transferee but the transferee actually paid the taxes.[69]

The bill would also attempt to correct the disparite tax treatment of the proceeds of the sale or exchange of a capital asset immediately prior to death, where the proceeds have not been collected at the time of death, and the sale of such assets thereafter. When the asset is sold prior to death and the proceeds pass to the beneficiaries as income in respect of a decedent, some courts have held that the beneficiaries are entitled to both the capital gains deduction (50 percent) and the deduction for the estate taxes paid attributable to the income in respect of a decedent (up to 70 percent).[70] The total deductions could exceed the total amount realized on the sale. H.R. 6715 would require the reduction of the amount realized by the IRD deduction prior to the computation of the capital gains deduction, thereby eliminating the double benefit.[71]

The bill also equalizes the treatment of property subject to recourse and nonrecourse debt, insofar as computation of the adjustment for estate-paid death taxes is concerned. As that adjustment is only available with respect to the property included in the taxable estate, different treatment is afforded property subject to a nonrecourse mortgage, which is included in the gross estate in full with an offsetting deduction, and property subject to a nonrecourse mortgage, which is included in the gross estate net of the mortgage. Under the bill, all such properties would, for purposes of the adjustment for estate-paid death taxes, be included in full in the gross estate with an offsetting deduction.[72]

The bill also clarifies questions which have arisen respecting treatment of the transfer of a term for years received from a decedent. The gain on such a transfer is normally ascertained without reference to the basis and, therefore, the impact of carryover basis was questioned. The bill would retain the former tax law with respect to the transfer of such interests.

C. The Treasury views

Deputy Assistant Secretary of the Treasury, Donald C. Lubick, testified before the Senate Finance Committee that the Treasury generally approved of the provisions of H.R. 6715, as passed by the House of Representatives. However, certain modifications were suggested, including exclusion from the special fresh start adjustment minimum basis rule any stock in trade, property held for sale to customers in the ordinary course of the decedent's business, and depreciable business assets.[73] The Treasury also sought clarification of the estate-paid tax adjustment to the basis in carryover basis property would be equally available where a trust or other estate planning device paid the estate's tax liability, and that where property was included in the estates of two decedents, the single fresh start adjustment would be made to the property in the estate of the first decedent to die.[74]

HOWARD ZARITSKY,
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FOOTNOTES

[1] Pub. L. 94-455, sec. 2005, 94th Cong., 2d Sess. (1976) [Hereinafter cited as Tax Reform Act].

[2] Int. Rev. Code of 1954, sec. 1014(b). This

included property received under the decedent's will, by descent and distribution, or by right of survivorship, as long as it had been included in the decedent's gross estate for estate tax purposes.

[3] Int. Rev. Code of 1954, sec. 1014(a).

[4] Int. Rev. Code of 1954, secs. 1014 and 2032. The alternate valuation date is the date an asset is sold or exchanged by the estate or the date six months after the date of death. It is elected by the executor as the date on which all assets in the estate may be valued.

[5] Int. Rev. Code of 1954, sec. 1001. For example, if A owns stock with a basis (cost) of $10 X and he or she later sells it for $25 X, A's taxable gain is the difference between the amount realized ($25 X) and his or her basis ($10 X), or $15 X. If A died leaving the property to B when it was worth $25 X and B then sold it for its fair market value, B would have no taxable gain as the amount realized ($25 X) equals his or her basis. The property would, however, have been included in A's gross estate and subject to an estate tax.

[6] Int. Rev. Code of 1954, sec. 1023.

[7] Int. Rev. Code of 1954, sec. 1023(b)(1).

[8] Int. Rev. Code of 1954, sec. 1023(b)(2)(B).

[9] Int. Rev. Code of 1954, sec. 1023(b)(2)(C).

[10] Int. Rev. Code of 1954, sec. 1023(b)(2)(A). Income in respect of a decedent (IRD) is, generally, income which has accrued to the decedent prior to his or her death, such as unpaid wages.

[11] Int. Rev. Code of 1954, sec. 1023(b)(3).

[12] Int. Rev. Code of 1954, sec. 1023(b)(2)(D)-(F); See also Staff of the Joint Committee on Taxation, 94th Cong., 2d Sess. *General Explanation of the Tax Reform Act of 1976* at 554 (1976) (Committee Print) [Hereinafter cited as *General Explanation*].

[13] Int. Rev. Code of 1954, sec. 1023(b)(3).

[14] Int. Rev. Code of 1954, sec. 1023(h)(1); Temp. Regs. sec. 7.1023(h)-1(d).

[15] Int. Rev. Code of 1954, sec. 1023(h)(2).

[16] For example, if the decedent purchased property on January 1, 1957, for $10 X, and died on January 1, 1987, when the property had a value of $100 X, there would be a $70 X adjustment for fresh start, based on the fact that ⅔ of the holding period was before December 31, 1976, so ⅔ of the appreciation (⅔ of $90=$60) would be added to the basis.

[17] Int. Rev. Code of 1954, sec. 1023(h)(2)(C).

[18] Int. Rev. Code of 1954, sec. 1023(c).

[19] *General Explanation* at 557.

[20] Int. Rev. Code of 1954, sec. 1023(c). For example, if the total death taxes on an estate are $2,000, imposed on $20,000 of property, property with a fair market value of $1,000 and a basis of $500 will receive an adjustment of $50 (500/20,000 times 2000=$40).

[21] Int. Rev. Code of 1954, sec. 1023(f)(1).

[22] Int. Rev. Code of 1954, sec. 1023(d).

[23] Int. Rev. Code of 1954, sec. 1023(f)(1).

[24] Int. Rev. Code of 1954, sec. 1023(e). State law may require the transferee to bear the burden of certain inheritance taxes and the estate to bear the burden of certain other death taxes, or the estate may be permitted or required to bear the burden of all succession taxes. The provisions of the decedent's will can also state whether the estate or transferee bears the burden of certain taxes.

[25] For example, if a beneficiary of the estate receives $10,000 of property subject to inheritance taxes, $5,000 of which is stock with a carryover basis of $3,000, the adjustment for succession taxes would be 2/10 of the total succession taxes ($5,000-$3,000/$10,000).

[26] Int. Rev. Code of 1954, sec. 1023(f)(1).

[27] Int. Rev. Code of 1954, sec. 6694A.

[28] H.R. 6715, 95th Cong., 2d Sess. (1977). This measure passed the House of Representatives on October 17, 1977, and is presently pending before the Senate Finance Committee.

[29] Written Comments received by the House Committee on Ways and Means on the Technical Corrections Act of 1977, H.R. 6715, 95th Cong., 1st Sess. (1977) (Committee Print) [Hereinafter cited as *Ways and Means Statements*].

[30] Hearings before the Subcommittee on Taxation and Debt Management Generally of the Senate Finance Committee on Estate and Gift Tax Problems Arising from the Tax Reform Act of 1976, 95th Cong., 1st Sess. (1977) [Hearinafter cited as *Senate Finance Hearings*].

[31] See, e.g., *Senate Finance Hearings* at 4-5, 16-17, 139-140, and 268. Because of the more general nature of the inquiry in the Senate Finance Committee hearings, references to the statements in the House Committee on Ways and Means will generally be omitted. In those statements, the speakers generally addressed H.R. 6715 specifically, leaving out general comments and critiques of carryover basis.

[32] See, e.g., Int. Rev. Code of 1954, secs. 2001 and 2010. The increase is due to elimination of the $60,000 estate tax exemption and $30,000 gift tax exemption and replacement of both with a credit of $30,000 in 1977 and $47,000 in 1981 and thereafter.

[33] See *Senate Finance Hearings* at 4-6, 49, 97-98, and 153.

[34] See, e.g. *Senate Finance Hearings* at 17-19, 109-110, 279, and 288.

[35] Int. Rev. Code of 1954, secs. 2010, 2032A, and 2056.

[36] See, e.g., *Senate Finance Hearings* at 4-5, 49-50, and 154-55.

[37] See, e.g., *Senate Finance Hearings* at 11, 21, and 76; also, *Ways and Means Statements* at 190 and 201.

[38] See, e.g., *Senate Finance Hearings* at 8, 12-13, 19-30, 153-54, 237-38, 253-54, 278-79, and 287-88.

[39] Int. Rev. Code of 1954, sec. 306(a)(1). The corporation's dividend-paying power is defined by its earnings and profits, as measured for income tax purposes. See Int. Rev. Code of 1954, secs. 301, 312.

[40] Int. Rev. Code of 1954, sec. 306(a)(2).

[41] Int. Rev. Code of 1954, sec. 306(c)(1).

[42] See, e.g., *Senate Finance Hearings* at 8-9, 76-77, 28-31, 43, 117-124, and 170-74; and *Ways and Means Statements* at 176-77, 166, 368-370 *et al.*

[43] See *Senate Finance Hearings* at 8-9, 28-31, 43, 76-77, 118-124; and 170-174, and *Ways and Means Statements* at 177, 166, 370 *et al.*

[44] See, e.g., *Senate Finance Hearings*, at 12-13, 94.

[45] See, e.g., *Senate Finance Hearings* at 13-14, 20, 254.

[46] These repeal bills include, for example, S. 2227, S. 1954, H.R. 9806, H.R. 9693, H.R. 9444, H.R. 9391, H.R. 9221, H.R. 7734, H.R. 7637, H.R. 6842, H.R. 6123, and H.R. 5278.

[47] S. 2238, sec. 2(a)(1).

[48] S. 2238, sec. 2(a)(2). For similar provisions in another reform proposal, see H.R. 6715, sec. 3(c)(1), relating solely to tangible personal property.

[49] 123 *Cong. Rec.* 35180 (Oct. 26, 1977) (remarks of Senator Hathaway).

[50] S. 2238, sec. 2(a)(3). See also H.R. 6715, sec. 3(c)(3).

[51] S. 2238, sec. 2(a)(4). Compare, H.R. 6715, sec. 3(a)(1)-(2).

[52] Int. Rev. Code of 1954, sec. 306(a), (b).

[53] S. 2238, sec. 2(b).

[54] Int. Rev. Code of 1954, sec. 2010.

[55] 123 *Cong. Rec.* 35180-81 (Oct. 26, 1977) (remarks of Senator Hathaway).

[56] S. 2238, sec. 2(c)(1).

[57] S. 2238, sec. 2(c)(2)-(3).

[58] 123 *Cong. Rec.* 35181 (Oct. 26, 1977) (remarks of Senator Hathaway).

[59] S. 2238, sec. 2(f)(2); See also H.R. 6715, sec. 3(c)(4).

[60] S. 2238, sec. 2(g).

[61] H.R. Rep. No. 700, 95th Cong., 1st Sess. (1977).

[62] H.R. 6715, sec. 3(a)(1).

[63] H.R. 6715, sec. 3(a)(2); Int. Rev. Code of 1954, sec. 303.

[64] H.R. 6715, sec. 3(c)(1).

[65] H.R. Rep. No. 700, 95th Cong., 1st Sess. 63 (1977).

[66] H.R. 6715, sec. 3(c)(3).

[67] H.R. 6715, sec. 3(c)(4).

[68] H.R. 6715, sec. 3(c)(5).

[69] H.R. 6715, sec. 3(c)(6).

[70] See, e.g., *Read v. United States*, 320 F. 2d 550 (5th Cir. 1963). The deduction for estate taxes attributable to income in respect of a decedent is measured by the included income's share of the average estate tax on the estate. See Int. Rev. Code of 1954, sec. 691.

[71] H.R. 6715, sec. 3(b).

[72] H.R. 6715, sec. 3(c)(2).

[73] See BNA *Daily Tax Report* No. 207, p. J-21 (Oct. 26, 1977); also Int. Rev. Code of 1954, sec. 1221(1), (2).

[74] *Id.*

STUDENT NOTES AND COMMENTS*

Comment—Carryover basis provisions of the Tax Reform Act of 1976: Section 1023.

The new carryover basis provisions,[1] in addition to being among the more dramatic changes effected by the Tax Reform Act of 1976, are also among the most confusing. Prior law was quite simple: the basis of property acquired from a decedent was the fair market value as determined for estate tax purposes.[2] The new law, however, "carries over" the basis of the decedent to the recipient with a myriad of adjustments, exceptions, and complications.

I. HISTORY

First envisioned as a vehicle for eliminating numerous tax shelters, tax breaks, and tax preferences, the Tax Reform Act of 1976 resulted in some tax relief, some reform, and a complete restructuring of the estate and gift taxes.[3] Although the estate and gift tax provisions are undoubtedly the most momentous changes of the Act, they appear to be a mere Congressional afterthought. The House passed a version of the bill[4] that did not cover gift and estate taxes because its Ways and Means Committee was preparing a separate bill on this subject.[5] Not until the Conference Committee reported its own version of the bill—twenty-two days before the President signed the Act[6]—did these provisions appear before the full Congress.[7] Many of the estate and gift tax provisions ultimately included in the Conference Committee version actually appeared in the earlier bill before the House Ways and Means Committee. The Conference Committee lifted these provisions from the House bill and placed them with some modification in the final Act. Moreover, the fresh start basis rules, among the most significant aspects of the carryover basis provisions, were not even conceived of until the Conference Committee hearings; thus, these important provisions appear to be an afterthought to the afterthought.

II. SCOPE

The primary purpose of his article will be to discuss the preregulation application of section 1023 with particular emphasis upon the questions which will certainly arise. Additionally, the article will take a few excursions into areas of a more pedagogical nature. With a view toward the concerns of the practitioner, there is also a discussion of the various implications of the new law, coupled with planning suggestions. Finally, this article will present a number of examples to help illustrate the application of the new provisions. Perhaps it goes without saying, but the reader will be well advised to realize that this article, as well as other articles on the subject, has been written prior to the

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Footnotes at end of article.

promulgation of any final regulations [8] and thus at times is based only upon a logical reading of the statutory language.

III. HOW THE SECTION WORKS GENERALLY

Although nearly all property comprising most estates is included under the carryover basis rules, section 1023 does exclude some assets.[9] In general, however, a decedent's basis in property will be "carried over" and thus becomes the recipient's basis [10] with the following adjustments:

1. For marketable bonds and securities owned by the decedent on December 31, 1976, the basis is stepped-up, for purposes of determining gain only, to the fair market value as of that date.[11]

2. For other property a similar step-up is allowed to the December 31, 1976 value, except that the Act mandates the use of a formula which assumes that all appreciation during the decedent's holding period has occurred ratably.[12]

3. A further adjustment, known as a "gross-up," is allowed to the extent that assessed federal and state estate taxes are attributable to the appreciation.[13]

4. If, after the first three adjustments, the basis of all covered property is less than $60,000, then the basis of each appreciated asset is raised pro rata until the total basis of all assets reaches $60,000.[14]

5. Finally, if the recipient must pay state inheritance taxes, he may adjust the basis of each asset to the extent that the inheritance tax paid is attributable to the appreciated value of that asset.[15]

Additionally, section 6039A requires the executor [16] to provide basis information, as computed above, to the recipient and to the Service.[17]

IV. CARRYOVER BASIS PROPERTY DEFINED

For the purpose of section 1023, the term carryover basis property means "any property which is acquired from or passed from [18] a decedent (within the meaning of section 1014(b)) and which is not excluded . . ." [19] According to section 1014(b), property acquired from a decedent generally includes "[p]roperty acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent." [20] Significantly, the section also includes: (1) "property which represents the surviving spouse's one-half share of the community property held by the decedent and the surviving spouse under the community property laws of any state," [21] and (2) property donated by the decedent within three years of his death and included in the decedent's gross estate by reason of section 2035 (in contemplation of death rule).[22]

The term carryover basis property does not include: (1) income in respect of a decedent;[23] (2) proceeds of life insurance;[24] (3) joint and survivor annuities;[25] (4) payments under a deferred compensation plan or stock option plan, if taxable to the beneficiary;[26] (5) property included is the gross estate by reason of section 2035 (the new three year contemplation of death rule),[27] section 2038 (relating to revocable transfers),[28] or section 2041 (dealing with the power of appointment),[29] if such property was disposed of by the recipient before the decedent's death in a transaction in which the recipient recognized gain or loss for income tax purposes;[30] (6) stock in a foreign personal holding company;[31] and (7) personal and household effects to the extent that the executor has elected to exclude them, up to a maximum exclusion of $10,000.[32]

The reasoning behind exclusions (1) through (4) is readily apparent since the property described therein is not generally considered to be a capital asset,[33] or any other property which is susceptible of basis valuation. The fifth exclusion clearly was made for administrative reasons: one gain or loss has been recognized, a recomputation of basis would necessitate a recomputation of the recipient's previously reported gain or loss, which would be unnecessarily burdensome.

The basis of foreign personal holding company stock, excluded under number (6), will be its fair market value at the date of the decedent's death, or the basis in the hands of the decedent, whichever is lower.[34] The actual effect of this exclusion is that the basis adjustments [35] for estate and inheritance taxes, minimum basis, and the fresh start basis do not apply, since whenever fair market value exceeds the decedent's basis, the recipient will have a carryover basis, just as allowed under section 1023.

Example: Suppose the decedent died possessed of community property with a basis of $100,000. Both the decedent's one-half share of the property with a basis of $50,000, and the surviving spouse's one-half share with a basis of $50,000 are subject to the carryover basis rules including the partial step-up (fresh start) partial gross-up, and minimum basis adjustments.

Moreover, assume the decedent donated, within three years of his death, separate properties to each of two sons. The first son sold his property prior to the decedent's death while the second son retained the asset. For purposes of determining the value of the gross estate, both pieces of property would be included; however, only the property of the son who retained the asset would be considered carryover basis property for the purpose of section 1023. The other son would receive a transfer basis under section 1015.

V. HOUSEHOLD AND PERSONAL EFFECTS

Recognizing that most decedents leave a large number of personal and household items for which it would be extremely difficult for an executor to determine the carryover basis, Congress provided a method by which the executor may exclude up to $10,000 worth of such assets from coverage under the carryover basis rules.[36] Section 1023(b)(3) provides:

(A) EXCLUSION.—The term "carryover basis property" does not include any asset—

(i) which, in the hands of the decedent, was a personal or household effect, and

(ii) with respect to which the executor has made an election under this paragraph.

(B) LIMITATION.—The fair market value of all assets designated under this subsection with respect to any decedent shall not exceed $10,000.

The House Committee report lists a number of assets which should generally be considered household and personal effects: "clothing, furniture, sporting goods, jewelry, stamp and coin collections, silverware, china, crystal, cooking utensils, books, cars, televisions, radios, stereo equipment, et cetera." [37]

Moreover, the executor must file the election to exclude any such assets not later than the final date for filing the estate tax return—nine months after the decedent's death in most cases.[38] Regulations will prescribe the manner of making the election.[39] Apparently the executor will be able to choose which items are to be excluded from the carryover basis rules.[40] The recipient's basis in such excluded items will be the fair market value on the date of the decedent's death or the alternate valuation date.[41] Thus, the main result of applying the election to a particular asset is that the excluded item will receive a step-up in basis to the full extent of appreciation, rather than the partial step-up allowed under the fresh start basis rules of section 1023.[42] Since many personal items will probably have a basis higher than their fair market value, executors should maximize the benefits of the exclusion by first selecting for exclusion any appreciated personal and household items.[43]

Example: Suppose the decedent died leaving the usual personal items such as clothing and household furnishing, in addition to a stamp collection with a fair market value at the date of death in the amount of $9,000, and $11,000 fair market value on the alternate valuation date. The executor knows that the stamp collection is highly appreciated, but does not know the decedent's basis, or when he acquired it. Likewise, the executor appraises the personal effects at a value of $5,000, but does not know their basis or holding period either.

Since the personal effects have likely depreciated in value, the executor should utilize the $10,000 exclusion for the stamp collection, thus receiving a step-up in basis for the full appreciation. An obvious additional advantage of this provision is that the executor need not be concerned with determining the decedent's basis or holding period for the selected property; however, by applying the election to the stamp collection, he leaves all the other personal items—as to which he may have greater difficulty in determining bases and holding periods—as carryover basis property. By including such potentially large items as stamp and coin collections in the examples of personal and household effects, the House Committee seems to have frustrated the apparent intent of the Act, which was to exclude a large number of small items so that the executor would not have to be concerned with them.[44]

If, for estate tax purposes, the executor values the decedent's assets at the date of death, the stamp collection will only consume $9,000 of the $10,000 exclusion, leaving a $1,000 excess to be applied to other assets. If instead the executor elects the alternate valuation date, the stamp collection will apparently [45] fully consume the $10,000 exclusion, with the remaining $1,000 being considered carryover basis property.

Example: Suppose the decedent owned a sole proprietorship which dealt in the selling and trading of stamps. Would the inventory, to the extent of $10,000, be considered a personal or household effect for purposes of section 1023(b)(3)? The House Committee report seems to include such items; however, surely the intent was not to apply the exclusion to business or investment property. Although the problem may be de minimis from the standpoint of the Service, (being limited to $10,000), from the standpoint of the recipient, it may be quite significant.

For purposes of determining loss on the sale or other disposition of the decedent's personal or household effects, the basis of such property, whether or not excluded from consideration as carryover basis property, may not exceed its fair market value.[46] Thus, if the amount realized on the sale of a personal or household item is greater than the asset's fair market value but less than the decedent's basis, no gain or loss will be recognized on the transaction.

Example: Decedent left furniture with a basis of $5,000 and a fair market value, for estate tax purposes, of $2,000. If the recipient sells the furniture for $4,000, no gain or loss would be recognized. For purposes of gain, the basis would be $5,000 (decedent's basis carried over)—thus resulting in no gain. For purposes of loss, the basis would be $2,000—thus resulting in no loss.

The scope of the term "personal or household effect" is critical for purposes of the loss rule: if items such as coin collections and paintings are actually held for business of investment reasons, the application of the rule to them could be very disadvantageous.

Example: Assume that prior to his death, decedent purchased a painting for $1,000,000; for estate tax purposes, however, the painting was valued at $500,000. Even though the decedent may have considered the painting as an investment, thus normally being subject to either capital gain or loss, the Conference Committee report definition would seem to regard it as a personal item. Consequently, the recipient's basis for purposes

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of loss would be $500,000, effectively depriving the recipient of a valuable capital loss deduction, even though any other investment item would have a normal carryover basis. In this case, of $1,000,000, for purposes of determining both gain and loss. Thus, although the scope of "personal or household effects" may be *de minimis* with regard to the $10,000 exclusion, for purposes of the loss rule, it is extremely important.

VI. FRESH START: SUBSECTION (H)

A. Introduction

Probably the most significant provision of section 1023 is subsection (h), dealing with the "fresh start" valuation; strangely, it was added almost as an afterthought to H.R. 14844, the "parent" bill of section 1023.[47] As the Conference Committee explained, "[i]n essence, this modification continues existing law with respect to appreciation in property accruing before January 1, 1977, and provides everyone with a 'fresh start.'"[48]

Under prior law, the cost basis, for the purpose of determining gain, of any property acquired from a decedent was the fair market value at the date of death.[49] Thus, any or all appreciation accruing while the decedent held the property was never subjected to income tax. To alleviate partially the harshness of the new carryover basis rules, which would have subjected all appreciation to tax, the Conference Committee added a section providing for a step-up in basis to the fair market value as of December 31, 1976.[50] Consequently, as a general rule, any appreciation before January 1, 1977, will remain exempt from income tax.

Recognizing the enormous burden that would be placed on executors if they were forced to estimate the actual December 31, 1976 fair market value of all assets included in the estate, the Committee added special rules for determining that value for the purposes of section 1023. Realizing the ease of determining the value of most marketable bonds and securities—a task that generally could be fulfilled by a simple examination of newspaper quotations[51]—the legislators provided that with respect to such assets, the actual price established in the market place on December 31, 1976, will control.[52] In contrast, the formula to be used for all other assets is exceedingly complex; the new "fresh start" basis formula for assets which are not marketable bonds or securities is:

Decedent's bases + [(fair market value at date of death[53] for estate tax purposes[54]— decedent's actual basis—total depreciation, depletion, or amortization) X (days held before 1977 ÷ total days held)] + depreciation, depletion, or amortization "attributable to"[55] the holding period before 1977.

This formula, of course, does not finally determine the carryover basis; instead, it merely defines the "fresh start" basis from which the carryover basis can ultimately be derived.

B. Marketable bonds and securities

Although the meaning of the term "marketable bonds and securities" might initially seem clear, the definition given by the Act, in the spirit of most tax legislation, tends to confuse. The so called "definition" states that "[t]he term . . . means any security, for which, as of December 1976,[56] there was a market on a stock exchange, in an over-the-counter market, *or otherwise.*"[57] The phrase "or otherwise" immediately precipitates questions regarding the scope of the definition of "market." Since the definition specifically refers to stock exchanges, and over-the-counter markets, the phrase could only refer to much smaller markets which exist merely on a regional or even local basis. Perhaps it could even refer to buy-out agreements for closely held corporations. The Conference Committee report states:

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Marketable bonds or securities are securities which are listed on the New York Stock Exchange, the American Stock Exchange, or any city or regional exchange in which quotations appear on a daily basis, including foreign securities listed on a recognized foreign national or regional exchange; securities regularly traded in the national or regional over-the-counter market, for which published quotations are available; securities locally traded for which quotations can readily be obtained from established brokerage firms; and units in a common trust fund.[58]

The general consensus regards the Conference Committee definition as exclusive, but there is authority to the contrary.[59] The Treasury, in its temporary regulations,[60] essentially adopts the Committee definition as exclusive. While the Committee definition included "securities locally traded for which quotations can readily be obtained," the temporary regulations require that such quotation actually be published.[61] Significantly, the Conference Committee definition appears only to discuss the scope of the term "market," and neither the Act, the report, nor the temporary regulations specifically treat the scope of the term "bonds and securities."

As noted above, the fresh start basis for marketable bonds and securities is equal to the decedent's adjusted basis *plus*, for purposes of gain only,[62] the amount by which the fair market value of the bond or security on December 31, 1976, exceeds the adjusted basis. This provision applies only to those bonds and securities which were actually marketable on December 31, 1976.[63] Thus, any bonds or securities which have been "delisted"[64] since December 31, 1976, are covered, while bonds and securities of corporations which have "gone public" since December 31, 1976, may not be covered.[65] For purposes of loss, the recipient must take the decedent's basis.[66]

The Conference Committee report speaks of a limit on the fresh start basis for marketable bonds and securities in that "the basis cannot be increased above its estate tax value."[67] By referring to "estate tax value" the Conference Committee must mean that if the alternate valuation date is used, the limit is the value on the alternate date and not the value at death. This provision is inconsistent with other parts of subsection 1023(h) which specifically use the date of death value rather than the value as of the alternate valuation date.[68] Despite the remarks of the Committee concerning the limitation, a literal reading of the Act leads to the opposite conclusion—that there is no limit, and that the fresh start value is the December 31, 1976 value irrespective of the value used for estate tax purposes.[69] Most authorities tend to discount the Conference Committee remarks as being inapplicable to any section of the Act.[70]

Example: Assume decedent died leaving a share of stock listed on the New York Stock Exchange, with the following values:

Decedent's basis, $25.
December 31, 1976 value, $55.
Date of death, value, $48.
Alternate date value, $50.

For purposes of gain,[71] according to a literal reading of the statute, the recipient's fresh start basis[72] would be $55. The Conference Committee report, however, seems to put the fresh start basis at $50—the estate tax value—since the December 31, 1976 value is greater than that used for estate taxes. For marketable bonds and securities, the date of death value is irrelevant unless it is also the value used for estate tax purposes.

While little problem exists in applying subsection (h) to widely traded stocks and bonds, significant difficulties arise in discerning whether "marketable bonds and securities" encompasses stocks and bonds with less than national distribution. Prior to the Tax Reform Act of 1976, the marketability of a security related only to its valuation for estate tax purposes. Under the new law, not only does defining a market relate to valuation, but it also affects the choice of the formula used to calculate the fresh start basis. Although the ownership certificate in closely held corporations and partnerships is clearly a security, the issue becomes whether it is marketable for purposes of section 1023(h). As even the Conference Committee report explains, some securities which are only traded locally are considerable marketable.[73]

Example: If the majority of a stock is owned by a single family, but the minority share, albeit quite small, is indeed traded, is the stock marketable? For purposes of both the majority and the minority shares, or for the minority shares alone? Can the price level in that market be considered determinative in the valuation of the majority shares?

If the stock is held only within a family, and is subject to a buy-sell agreement, does the agreement itself constitute a market, even though it is quite limited? The general opinion seems to be that such an agreement is not a market, but surely the Service will have to confront this question.[74]

1. Blockage

Few people would argue with the proposition that the quoted price of nationally traded stock fairly reflects its value for most purposes; it is equally obvious, however, that in some situations market quotations are not representative of the value of large blocks of stock. Two aspects are significant. First, a controlling share may actually have premium value reflecting the influence on ownership and corporate policy.[75] Second the opposite condition may prevail, in that disposing of such a large block might "flood" the market, thus depressing the price.[76] Several courts have recognized the premium value of controlling blocks.[77] Likewise, the regulations provide that for estate tax purposes, stock which is subject to blockage may be valued at other than the market price.[78] The temporary regulations extend the blockage rules to valuation of stock for fresh start basis purposes.[79] Under the blockage rules, to the extent that a premium would result from a control factor the recipient of the stock will benefit by receiving a higher basis. Alternately, to the extent that blockage would depress the market price if sold, the recipient will be required to take a lower fresh start value.

Section 1023(h)(1) does not specifically require use of the quoted price as the December 31, 1976 value; rather, it refers to the fair market value on that date. The Conference Committee report seems to construe this to mean the quoted price.[80] A close reading of the Act, as the temporary regulations recognize, indicates that fair market value is determined under section 1023 in the same manner as it is determined for estate tax purposes,[81] which includes the blockage rules.

2. Tender offers

Another factor in determining the value of stock involves the existence of tender offers.[82] If such an offer was actually made, does it not more accurately reflect the true value of the stock while the offer was outstanding, especially if a large number of shares were traded at the tender offer price? Thus, since the Act does not specifically require the use of a quoted price, perhaps it would be justifiable to use the tender offer price. In an opinion dealing with different factors, but ones which are analogous to the valuation problems involved in tender offers and blockage, the court stated that "[t]o ignore these factors and to fail to recognize the conditions which existed . . . is to ignore and give

no effect to the word 'fair' as used by Congress in bearing upon market values." [83] Admittedly, the language used by the court was quite broad and certainly reflected the effects of the 1929 stock market crash. "Nevertheless, the implications of this case—that true value can be determined apart from the market—must be borne in mind." [84]

3. Discount Bonds

Because section 1023 (b)(2)(a) excludes any item of gross income in respect of a decedent from consideration as carryover basis property, care must be taken in the valuation for fresh start basis purposes of discount bonds. The appreciation in value of such bonds includes two aspects: interest income and actual appreciation in value due to fluctuations of interest rates. To the extent that the increase in value reflects the earned, but unpaid interest, it should not be considered as appreciation for the step-up in value under section 1023(h). Instead, it should be regarded as income in respect of a decedent.[85] Still, the actual appreciation, due to fluctuation of interest rates, should result in a step-up in basis. Logically, the bond should be viewed as two assets, or at least as one asset with two separate factors—the principal factor and the interest factor. Only the principal would be considered carryover basis property. The interest factor would be income in respect of a decedent and thus fully subject to tax as ordinary income.[86]

Example: Suppose the decedent left a marketable discount bond with a face value of $100, an interest rate of 6 percent, and a cost of $50. Assume further that a bond interest table placed the value of the bond on December 31, 1976, at $75, reflecting the $50 principal and $25 of earned but undisbursed interest. The market, however, reflecting a 5 percent interest rate on December 31, 1976, placed the value at $80.

The executor would have difficulty calculating the basis of this security. Although the Act requires the use of the December 31, 1976 market value ($80), it also excludes value to the extent that it is income in respect of a decedent. Thus, although the December 31, 1976 value exceeds basis by $30, $25 of the excess should be considered as income in respect of a decedent, with the remaining $5 due to gain on the principal.

Consequently, the fresh start adjustment should result in an increase of $5 in the bond's basis, for purposes of gain, to $55. If the bond is ultimately redeemed at face value, $100, there should be no gain or loss: the return of principal would be $50, and the $50 of interest would be ordinary income.

If after the death of the decedent the bond is sold for $90, at a time when the interest table gave an $82 value, there would be a capital gain of $3, and ordinary income in the amount of $32 (composed of income in respect of a decedent and interest accrued during the recipient's holding period) calculated as follows:

Total amount realized	$90
Less: Accrued interest (per interest table)	32
Amount realized attributable to principal	58
Less: Carryover basis	55
Capital gain	$3

4. Over-the-counter securities

Stocks and bonds which are not actively traded—a common characteristic of many over-the-counter securities—pose significant valuation problems. As noted earlier, section 1023(g)(1) indicates that fair market value is determined in the same manner as for estate tax purposes. Therefore, the regulations relating to valuation for estate tax purposes should be looked to for guidance. The relevant regulation states:

[I]f there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the valuation date is the fair market value per share or bond. If there were no sales on the valuation date, but there were sales on dates within a reasonable period both before and after the valuation date, the fair market value is determined by taking a weighted average of the means between the highest and lowest sales on the nearest date before and the nearest date after the valuation date. The average is to be weighted inversely by respective numbers of trading days between the selling date and the valuation date.

If . . . actual sales are not available during a reasonable period beginning before and ending after the valuation date, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the valuation date. . . .[87]

5. Multiple Listings

Since a large number of nationally traded securities are listed on more than one exchange, executors may wonder which quotation is to be used to value such stock. The temporary regulations have adopted the solution offered by the Treasury regulations relating to valuation for estate tax purposes: the value is determined by reference to the exchange where the securities are principally traded.[88]

6. Commodity Futures

Commodity futures are marketable securities covered by section 1023(h)(1). But what about the asset delivered in fulfillment of the future? Does its basis fairly reflect the basis of an asset which was a marketable security on December 31, 1976? If so, then the asset itself, which is clearly not a marketable bond or security, would for purposes of the fresh start basis fulfill the requirements for being treated as one: section 1023(h)(1) applies to any property which "reflects the adjusted basis of any marketable bond or security on December 31, 1976. . . . ." [89]

B. General assets

1. Introduction

All property other than marketable bonds and securities is dealt with by section 1023 (h)(2), which determines the December 31, 1976 value by using a formula to allocate a portion of the total appreciation to the period before that date.[90] If the date of death value exceeds the decedent's actual basis, a step-up is allowed to the extent of that pre-1977 appreciation. For purposes of this section, the date of death value is considered to be the value used for estate tax purposes except when the alternate valuation date is used, in which case the actual date of death value is appropriate.[91]

2. Allocation of Appreciation

For purposes of gain, section 1023(h)(2) provides that a portion of the total appreciation of the property should be attributed to the period before January 1, 1977, and thus added to the basis. The fraction used in this allocation, referred to in the Act as the "applicable fraction," [92] is: number of days in the holding period prior to January 1, 1977 times number of days in the total holding period.

The total holding period includes not only the days during which the decedent held [93] the property, but also, with respect to assets acquired by gifts or nontaxable exchanges, the period during which his predecessor in title held the property.[94] To determine the fresh start adjustment, this fraction is then multiplied by the excess of the date of death fair market value over the decedent's basis.[95]

The formula assumes that the rate of appreciation from the acquisition of the property until the date of the decedent's death remains constant over the entire period. Note that this method of establishing value must be used, "even though the executor or beneficiary of the decedent's estate can establish that the fair market value of the property on December 31, 1976, is other than the value determined under the special valuation formula." [96]

Example: Decedent died on May 25, 1978, possessed of land purchased on April 25, 1976, for $15,000. The asset's date of death value, as determined under the procedures used for estate tax purposes, was $30,000; however, the actual value used for the estate tax return was $32,000—calculated on the alternate valuation date, six months after the date of death. The executor can also prove the land was worth $25,000 on December 31, 1976.

The land's fresh start basis, to be later used in calculating its carryover basis, would be $20,000, determined by the following steps:

(1) The actual value on December 31, 1976, is irrelevant since the formula must be used in all cases for carryover basis assets which are not marketable bonds or securities.

(2) Total appreciation:

Date of death value	$30,000
Less: Decendent's basis	15,000
Appreciation	$15,000

(3) Applicable fraction:
Days held before 1977 ÷ total days held = 250/750 = one third.

(4) Adjustment: (applicable fraction) × (total appreciation) ⅓ times $15,000 = $5,000

(5) Fresh start basis:

Decedent's basis	$15,000
Plus: Adjustment	5,000
Fresh start	$20,000

* * * * *

5. What Do You Do If You Don't Know

Certainly, there will be cases in which the holding period, decedent's original basis, or the amount of depreciation, amortization, or depletion [104] are unknown. To preclude this possibility, clients will be well advised to maintain good records; however, most of them probably will not, and even if they do, it will not solve the problem of lost records and prior lack of record keeping. Section 6039A places the burden of ascertaining any unknown information upon the executor who must provide such information to the Service and the recipient.[105] Intending to aid the executor in fulfilling this difficult, if not impossible task, Congress included paragraph (g)(3) which states:

If the facts necessary to determine the basis . . . are unknown to the person acquiring such property from the decedent, such basis shall be treated as being the fair market value of such property as of the date (or approximate date) at which such property was acquired by the decedent.[106]

This subsection provides little help, because essentially it only says that if the exact cost is unknown, the executor may assume that the decedent acquired the asset at a cost equal to its then fair market value. But, if he does not know the exact cost, more likely than not, he will also not know the date of acquisition, much less the fair market value as of that date. Although the executor is authorized to use an approximate date if he does not know the exact date of acquisition, the benefit of this provision appears slight in cases where the executor has no idea whatsoever when the property was purchased. As one writer has asserted, surely the regulations will not allow the executor to simply take a "stab in the dark." [107]

Example: Suppose an attorney is appointed executor of a client's estate containing assets about which he has little, if any, personal knowledge. If the decedent does not have any surviving relative who can sup-

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ply information concerning acquisition dates and costs, what is the attorney to do?

To complicate matters further, suppose the estate contained coin and stamp collections which were obviously acquired over many years. Must the attorney estimate the acquisition date and cost of each stamp and coin? Although Congress intended paragraph (g)(3) to provide the needed guidance, in many instances the provision will be woefully deficient.

6. Recapture of Depreciation

Sections 1245 and 1250 basically require recapture of all or a portion of depreciation deductions taken to the extent that the deducted amounts exceed that actual decrease in the value of the asset. Prior to the Tax Reform Act of 1976, the potential recapture was avoided if the property was transferred from a decedent since the recipient received stepped-up basis under section 1014.

The Ways and Means Committee report accompanying H.R. 14844 [108] expressed the intent that the entire depreciation recapture potential be passed through to the recipient of the property.[109] According to the Conference Committee report, however, the addition of the fresh start basis rules relieves the recipient of the possibility of recapture of pre-1977 depreciation.[110]

VII. ADJUSTMENT FOR FEDERAL AND STATE ESTATE TAXES PAID: SUBSECTION (c)

After the fresh start adjustment under subsection (h),[111] the basis of any appreciated carryover basis property is increased under section 1023(c) by an amount equal to the portion of federal and state estate taxes attributable to the net appreciation in value of the individual asset. The formula for determining the adjustment [112] is as follows:

Net appreciation in value of the individual asset doubles by fair market value of all property subject to federal estate tax times total federal and state estate taxes paid by the estate.

Several terms used in relation to this formula require further clarification. First, the adjustment applies only to "appreciated carryover basis property," which is defined as an asset which has a fair market value in excess of its adjusted basis immediately before the death of the decedent.[113] Some initial confusion may arise regarding whether the phrase "immediately before the death of the decedent" refers to the time at which the fair market value must exceed the adjusted basis or whether it merely establishes the time at which the adjusted basis is to be determined.

Example: Suppose the fair market value of an asset is $100 on the date of death, but the value for estate tax purposes as determined on the alternate valuation date is $110. If the decedent's basis was $105, is the asset appreciated carryover basis property? Although the answer is not readily apparent from the statutory definition, a reading of section 1023(g)(1) clarifies the matter. That paragraph states that "when not otherwise distinctly expressed," the term "fair market value" means value as determined for federal estate tax purposes.[114] Although paragraph (f)(5) may use the term "fair market value" in a confusing manner, it does not distinctly express a meaning different from that given in paragraph (g)(1). Thus an asset should be considered appreciated carryover basis property, thereby qualifying for the subsection (c) adjustment, if its value for federal estate tax purposes exceeds the decedent's adjusted basis.[115] Therefore, the asset in the above example would be appreciated carryover basis property.

A second important phrase used in the subsection (c) formula is "net appreciation." According to paragraph (f)(2), "net appreciation" refers to "the amount by which the fair market value of such property exceeds the adjusted basis of such property immediately before the death of the decedent (as determined after any adjustment for subsection (h) [fresh start basis])."[116] Again, the question arises regarding the meaning of "fair market value". As noted above,[117] this term means the value for estate tax purposes.

A third significant term appears in the fraction's denominator: fair market value of all property "subject to federal estate tax". Though not defining "subject to tax" directly, paragraph (f)(4) does so by way of exclusion, stating that for purposes of subsection (c), property actually used in funding a marital [118] or charitable bequest,[119] resulting in an estate tax deduction, shall be treated as not subject to tax.[122] To the extent property left to a surviving spouse or to a charity is used to pay expenses or taxes, it does not result in an estate tax deduction, and thus *is* subject to tax.[121]

Paragraph (f)(4) further provides that to the extent property is not subject to state estate taxes, "it shall be treated as not subject to tax."[122] This further exception, however, appears to be superfluous since the subsection (c) adjustment is allowed for all property subject to federal estate taxes, irrespective of whether it is subject to state estate taxes.[123] Thus if a particular appreciated asset is actually subject to federal tax, but not subject to state tax, its basis will be increased by a portion of both the federal and state taxes paid by the estate on the value of all property included in the estate, regardless of the fact that no state tax was paid on that particular asset. Although this is clearly a proper analysis of the Act, it does not seem to fulfill the Congressional intent which was to increase the basis of an asset only to the extent that its appreciation was actually taxed.[124] Since the Act specifically provides that marital and charitable deduction property is "not subject to tax," the general concensus is that Congress intended for all other "deduction property"—such as that resulting in the section 2057 orphan's exclusion—to be treated as subject to tax.[125]

The House Committee report states "as a rule of administrative convenience, property qualifying for the exclusion for transfers to orphans . . . is treated as property which is 'subject to tax.'"[126]

The House Committee further explains that a "surviving spouse's share of community property is not considered to be subject to tax since it is not included in the deceased spouse's gross estate. Thus, no adjustment is to be made to the basis of the surviving spouse's share of community property."[127] Nevertheless, as explained earlier, such property does receive the fresh start adjustment under subsection (h).[128]

A final important part of the subsection (c) formula is the multiplier—the total of all federal and state estate taxes. According to paragraph (f)(3), the term means:

(A) the tax imposed by section 2001 [federal estate taxes for citizen or resident decedents] or 2101 [federal estate taxes for decedents who are nonresident aliens] reduced by the credits against such tax, and

(B) any estate, inheritance, legacy, or succession taxes, for which the estate is liable, actually paid by the estate to any State or the District of Columbia.[129]

A limitation on the subsection (c) adjustment appears in paragraph (f)(1) which disallows a subsection (c) increase in basis above the property's fair market value as determined for estate tax purposes.[130]

VIII. $60,000 MINIMUM BASIS: SUBSECTION (d)

Once the adjustments under subsection (h) (fresh start basis) and subsection (c) (partial gross-up for estate taxes) have been made, subsection (d),[131] allows an additional adjustment to the extent that $60,000 exceeds the aggregate bases of all carryover basis property.[132] Ordinarily, this provision will cover only small estates—those in which the bases of all included property total less than $60,000.[133] Moreover, the adjustment applies only to "appreciated carryover basis property" [134] and is apportioned on an asset by asset basis. Thus, if the total bases of all section 1023 property are less than $60,000, and if none of the assets qualify as appreciated carryover basis property, the estate will receive no benefit from the subsection (d) adjustment. Alternately, if the estate contains one or more appreciated carryover basis assets, then the entire adjustment is allowed the same limitations.[135]

The formula for computing the subsection (d) adjustment is:

Net appreciation of the particular asset divided by total net appreciation of all appreciated carryover basis property [136] times $60,000 equals aggregate adjusted bases of all carryover basis property.

For purposes of this formula "net appreciation" refers to the amount by which the asset's fair market value for estate tax purposes exceed the decedent's adjusted basis further adjusted by subsections (h) and (c).[137] Likewise, the term "aggregate adjusted bases of all carryover basis property" is computed after the subsection (h) and (c) adjustments.

Example: Assume the decedent's estate contains the following assets with the respective bases (computed after adjustments for subsection (h) and (c)), fair market values (as used for estate purposes), and net appreciation:

Asset:	*Basis*
A	$15,000
B	15,000
C	9,000
Total	39,000

Asset:	*Fair market value*
A	$30,000
B	45,000
C	5,000
Total	80,000

Asset:	*Net appreciation*
A	$15,000
B	30,000
C	[138] NA
Total	45,000

The computation of the subsection (d) adjustment and its allocation to specific assets is illustrated in the following steps:

(1) Aggregate bases of all carryover basis property equals $39,000

(2) Amount to be apportioned between appreciated carryover basis property: $60,000 minus $39,000 equals $21,000

(3) Only assets A and B are appreciated carryover basis property because C has depreciated. Thus, the entire $21,000 excess will be apportioned between A and B.

(4) Computation of asset A's new basis: $15,000 (basis prior to subsection (d) adjustment) plus $15,000 (net appreciation) divided by $45,000 (total net appreciation) times $21,000 (excess) equals $22,000

(5) Computation of asset B's new basis: $15,000 plus ($30,000/$45,000 times $21,000) equals $29,000

(6) Computation of asset C's basis: no change

(7) Total bases of all carryover basis property:

Asset:	
A	$22,000
B	29,000
C	9,000
Total	[139] 60,000

It is significant to note that for purposes of determining the "aggregate bases of all carryover basis property," as used in the sub-

Footnotes at end of article.

section (d) formula, the basis of any personal or household effect is not to be treated as being greater than its fair market value.[140]

Example: Suppose the estate contains carryover basis property the aggregate bases of which equal $75,000. Additionally, assume that the estate includes as carryover basis property personal and household effects with a total basis of $40,000 (already included in the above $75,000 figure), and a total fair market value of $15,000. For purposes of the subsection (d) adjustment, the total basis of personal and household effects will be treated as being $15,000, rather than $40,000; thus the aggregate bases of carryover basis property will be treated as being $50,000, rather than $75,000. Consequently, subsection (d) would apply to this estate because $60,000 exceeds the aggregate bases of all carryover basis property by $10,000.

The subsection (d) adjustment is subject to two limitations. First, no minimum basis adjustment is permitted if the decedent was, at the time of his death, a nonresident alien.[141] Second, the subsection (d) adjustment may not increase the basis of any property beyond its fair market value reported for estate tax purposes.[142]

Example: Suppose the decedent left, *inter alia*, an asset with a fair market value at death of $11,000, and an adjusted basis after the subsection (c) and (h) adjustments, of $10,000. If the asset's pro rata share of the subsection (d) adjustment exceeds $2,000, the adjustment for this particular asset will be limited to $1,000. The excess would be lost.

IX. STATE TAXES PAID BY THE TRANSFEREE: SUBSECTION (e)

Following the adjustments under subsections (h) (fresh start), (c) (partial gross-up), and (d) ($60,000 minimum), the basis of each appreciated carryover basis asset[143] is further increased by the amount of state estate, inheritance, legacy, or succession taxes paid by the recipient which are attributable to appreciation.[144]

The formula for determining the adjustment is as follows:

Net appreciation of the individual asset times total fair market value[145] of all property acquired by the recipient which is subject to state inheritance taxes equals total of all state inheritance taxes paid by the recipient.

For purposes of this formula, net appreciation refers to the amount by which the asset's fair market value for *federal* estate tax purposes exceeds the decedent's adjusted basis further adjusted by the provisions in subsections (h), (c), and (d), in that order.[146]

This subsection (e) adjustment applies only to property that is "subject to tax."[147] Thus, if the applicable state laws exempt certain bequests, (such as marital, charitable, or orphan's deduction property) from taxes, no portion of the succession taxes can be used to increase the basis of property used to fund those bequests. Moreover, since this adjustment is contingent upon the amount of taxes paid by each recipient, taxes actually paid by other recipients of property from the same decedent are irrelevant.[148]

Subsection (e) is the final adjustment made under the carryover basis rules. As explained earlier, paragraph (f)(1) provides that the total of all adjustments under subsection (c), (d), and (e) may not increase the basis of an asset above its fair market value.[149]

X. EXCURSUS ON THE LOSS RULE

Significantly, unlike subsection (h) fresh start basis, subsections (c), (d), and (e) (the adjustments) do not state whether they apply solely for purposes of gain, or whether they also apply for purposes of loss. The Conference Committee report is curiously silent in this regard.

A proper exegetical analysis[150] of the Act leads to the conclusion that subsections (c), (d), and (e) apply for purposes of both gain and loss. This conclusion is based upon three important provisions of the Act:

(1) Paragraph (a)(1) states the general rule that the recipient's basis equals the decedent's basis plus the (c), (d), (e), and (h) adjustments. This rule does not mention the terms "gain" or "loss"; therefore, it must, except where specifically provided otherwise, apply to both.

(2) Paragraph (a)(2) provides a special rule for loss on personal or household effects, and subsection (h) provides that it applies solely for purposes of gain. Since no other subsection specifically mentions gain or loss, all others must logically apply for both purposes.

(3) Subsections (c), (d), and (e) each state that upon requisite conditions, the respective adjustments "shall" be made. This can only mean that they "shall" be made for *all* purposes.

If the (c), (d), and (e) adjustments do indeed apply for purposes of loss, further complications, surely unintended by Congress, arise. Each of the adjustments is contingent upon subsection (h) (fresh start basis); not only are they computed *after* subsection (h), but also within each of their respective formulae an element computed by reference to subsection (h) appears. Each formula, for example, includes the term "net appreciation" which refers to the excess of the asset's fair market value over decedent's basis plus the subsection (h) fresh start adjustment. Because the (h) adjustment applies only for purposes of gain, the subsection (c), (d), and (e) adjustments must each be computed twice—once for purposes of gain, including the (h) adjustment, and once for purposes of loss, as if the (h) adjustment had never been made. Surely the Congress never intended to require the executor to compute these adjustments twice; however, if subsection (h) is to apply for purposes of gain alone, while the other adjustments are to apply for purposes of gain or loss, there is no other way to apply the Act. Perhaps the reason for this unintended result is that subsection (h) was indeed a hurried afterthought to section 1023.

Example: Assume that the estate included, *inter alia*, an asset with a fair market value for estate tax purposes of $20,000, and a basis prior to any adjustment of $10,000. Assume also that decedent's holding period was one-half prior to 1977, and one-half after 1977; thus, for purposes of gain only, the fresh start basis would equal $15,000,[151] which might be further increased by up to $5,000 worth of adjustments under subsections (c), (d), and (e). For purposes of loss there would be no fresh start basis increase, but adjustments under subsections (c), (d), and (e) would be permitted to increase the $10,000 carryover basis by as much as $10,000.[152] Since the executor does not know whether the recipient will experience gain or loss on the ultimate disposition of the asset, it appears that he must report to the Service and the recipient two bases for each asset: one for gain, and one for loss.

XI. EXCURSUS ON THE SUBJECT OF MORTGAGES

Pursuant to the Congressional intent that adjustments for taxes and the minimum basis apply only to property "subject to tax,"[153] a special rule to adjust the value of property subject to certain mortgages was included in section 1023.[154] Paragraph (g)(4) provides:

For purposes of subsections (c), (d), and (e), if—

(A) there is an unpaid mortgage on, or indebtedness in respect of, property,

(B) such mortgage or indebtedness does not constitute a liability of the estate, and,

(C) such property is included in the gross estate undiminished by such mortgage or indebtedness,

then the fair market value of such property to be treated as included in the gross estate shall be the fair market value of such property, diminished by such mortgage or indebtedness.

On initial reading, this paragraph appears to be quite simple providing that with regard to property taken subject to a liability, the basis adjustments are to be made by using the value of the property net of the indebtedness. Questions arise, however, not only in relation to applying the provision to the complex adjustment formulae of subsections (c), (d), and (e), but also regarding whether the paragraph is anything other than mere surplusage.

While property subject to a mortgage for which the estate is liable clearly should be included in the estate for tax purposes at full value with a deduction taken for the mortgage,[155] the rule with respect to debts for which the estate is not liable is less clear. The regulations somewhat confusingly indicate that "If the decedent's estate is not so liable, only the . . . value . . . less the mortgage . . . *need be* [included] . . ."[156] Although it appears to be well-settled that property subject to nonrecourse debts must be included in the estate net of the debt,[157] there is some authority to the contrary.[158] Assuming the "well settled" rule to be correct, a literal reading of paragraph (g)(4) results in it having no application whatsoever: it would apply only to property which is both included at full value and subject to a nonrecourse mortgage; yet under the "well-settled" rule, no such situation would ever occur, since property subject to nonrecourse debts is always included at *ne value*.[159]

Normally, such confusion in regard to the sense of a statute can be overcome by an examination of the Conference Committee report accompanying the Act; in this instance, however, the report only further obfuscates. The report remarkably provides that "in measuring the property 'subject to tax,' the value is determined net of any indebtedness (regardless of whether the estate is 'personally liable' on that debt)."[160] Thus, despite the literal language of the Act, the only instance in which the provision would be necessary,[161] and the only case in which Congressional intent could be fulfilled, would be for paragraph (g)(4) to apply whenever the estate *is* liable for the debt.[162]

Even if paragraph (g)(4) does make sense, the method of applying it to subsections (c), (d), and (e) is unclear. Included in the subsection (c) (partial gross-up for taxes paid by the estate) and subsection (a) (partial gross-up for taxes paid by the recipient) formulae,[163] are specific references to "fair market value." Clearly this refers to the value of the property diminished by the mortgage. Also included in the subsection (c), (d), and (e) formulae are references to "net appropriation," a figure computed by subtracting the basis of the asset from its "fair market value." The basis of each asset, in turn, is computed as provided in subsection (h),[164] which roughly says that carryover basis equals original basis plus (fair market value minus original basis) times holding period fraction. Thus, fair market value appears in three contexts:

(1) It is specifically referred to in subsections (c) and (e);

(2) It is a component of net appreciation in subsections (c), (d), and (e);

(3) It is a component of basis as used in determining net appreciation in subsections (c), (d), and (e).

Recall that paragraph (g)(4) provides that under subsections (c), (d), and (e) "fair market value" refers to the value net of the mortgage. Surely, paragraph (g)(4) intends to control the specific reference to fair market value as shown in context (1)

Footnotes at end of article.

above. Almost as surely, it must also affect fair market value to the extent that it is a component of net appreciation as shown in context (2) above. Whether it also affects fair market value in context (3) is more doubtful; if it does, it will require special recomputation of basis under subsection (h) for purpose of subsections (c), (d), and (e) whenever there is property taken subject to a nonrecourse liability—a rather improbable intent of Congress. Nevertheless, the language of section 1023(g)(4) supports such a conclusion.

Example: Decedent died on December 31, 1977, possessed of real estate valued at $100,000 for estate tax purposes and subject to a non-recourse mortgage of $60,000. He purchased the property on January 1, 1968, at a cost of $30,000. The fresh start basis for this asset would be $93,000 (90 percent of the $70,000 appreciation would be added to the decedent's basis).

As explained earlier, before computing the section 1023(e) adjustment (partial gross-up for estate taxes paid), the executor would first calculate the net appreciation on the land, the calculation being made after the subsection (h) fresh start adjustment. But for the mortgage, this calculation would be quite simple: fair market value of $100,000 less basis of $93,000 would equal $7,000 appreciation.

Paragraph (g)(4), however, requires that the subsection (c) adjustment be made as if the fair market value had been included net of the mortgage. Thus, for purposes of subsection (c), the land's fair market value would clearly be $40,000. Confusion arises, however, regarding its basis. The fresh start basis was calculated using a fair market value of $100,000 rather than $40,000 as is used for purposes of subsection (c).

If fair market value is to refer consistently to the value net of the mortgage, for purposes of subsection (c), then the fresh start basis must be specially recalculated as if the fair market value were $40,000. This would result in a special fresh start basis of $39,000 and net appreciation of $1,000.

Of course, this entire example is purely an academic exercise in legislative construction since the land would not have been included in the estate at full value anyway.[165] Instead it should have been included net of the mortgage. Consequently, though the statutory language is most confusing, the conditions under which the unclear words would cause problems never arise.[166]

XII. IMPLICATIONS AND PLANNING TIPS

A. Executor's responsibilities

The new carryover basis rules clearly apply to all property acquired from or passed from a decedent. Regardless of whether the estate is opened for administration, the duties imposed by the new law are to be performed by the executor;[167] however, if there is no executor, any person in actual or constructive possession of any property of the decedent must fulfill the requirements.[168] At a time when the public often complains of the high cost of administering estates, the effect of imposing these additional duties upon the executor will be to increase those costs.

Not only are executors now burdened with the responsibilities of computing the bases of all the assets included in the estate—a difficult task even with respect to decedents with excellent records—but they are also saddled with new and undetermined fiduciary duties toward the heirs and legatees. Prior to the carryover rules, the executor had only to calculate the fair market value of each asset; since one asset with a fair market value of $10,000 was equal in value to another worth the same amount, individual legatees or heirs had little reason to complain if they received one asset rather than another. Under section 1023, however, assets have different bases. As a result, the executor, in distributing an asset, will have to consider whether it has a high or low basis. Surely a recipient would have a valid grievance if he were to receive only low basis assets upon which he would be subject to subsequent taxable gain. Thus, unless the estate contains particular legacies, the executor will have to insure that each recipient receives a fair share of low and high basis assets.[169]

In some instances, an individual may be willing to accept a disproportionate share of low basis assets in favor of another heir, especially if the latter is in a higher tax bracket. The question arises concerning whether such action would constitute a gift. Likewise, if the latter pays consideration for the other heir's action, what would be the tax effect?[170] To relieve the executor of the burden of deciding which heir or legatee gets low-basis rather than high-basis assets, the practitioner should advise his clients to designate specific properties to be distributed to particular persons.

An additional consideration that each executor should remember is the penalty for failure to timely report the basis of each asset to the recipient and to the Service. Section 6694[171] provides for a fine of $100 per asset for failure to file information with the Service and $50 per asset for failure to notify the recipients, with maximum fines of $5,000 and $2,500 respectively.

B. Capital loss

Before section 1023, the old basis rule also subjected some property to a step-down in value, forever precluding a capital loss deduction. The new carryover basis rules provide differently: the recipient receives decedent's basis along with his potential for capital gain or loss. As a result, testators will want to consider, in planning the distribution of their property, the prospective recipient's ability to take advantage of potential capital losses.[172]

C. Paying liabilities of the estate

Prior to the adoption of section 1023, executors often sold assets of the estate in order to raise cash to pay administrative expenses, debts, and taxes, without any significant capital gains tax consequences to the estate since the basis of each asset was its fair market value at the date of death. Under the carryover basis rules, however, executors must now analyze the bases of assets to be sold for such purposes since the generation of any capital gains as a result of the sale of a low basis asset will increase the tax burden of the estate and require the raising of additional cash. Several estate planning authorities have suggested that this factor warrants the designation of the insured's estate as the beneficiary of life insurance to provide the needed cash.[173]

Another possible solution would be for the executor to sell the high basis assets to raise needed cash. This of course would necessitate an early determination of basis and would leave only the low basis assets for distribution to the heirs, a situation with which they may not be pleased.

D. Dispositions prior to death

Although in the past the elderly often retained highly appreciated property knowing that the heirs would receive a full step-up in basis, thereby avoiding tax on the appreciation, section 1023 will gradually eliminate this benefit; therefore, elderly persons, who commonly are in a lower tax bracket, increasingly may find it advantageous to sell assets which have a large portion of post-1976 appreciation, and realize the gain themselves, rather than passing it on to their heirs who may be in a higher bracket. An additional advantage is that the seller's estate will be reduced by the amount of income tax paid on the recognized gain.[174]

E. Distribution of low-basis assets to tax exempt organizations

Testators may now consider distributing low basis assets to exempt organizations, and allocating the high basis assets to taxable individual recipients in order to increase the amount of depreciation and to reduce the overall tax burden at the time the property is ultimately sold.[175]

F. Section 306 stock

One potentially significant, yet subtle, change resulting from the new carryover basis rule is the effect on section 306 stock.[176] This section was passed to prevent persons from "bailing out" previously capitalized corporate earnings by distributing them in the form of preferred stock. The rule provides that the proceeds of the sale of such stock are to be fully taxed as ordinary income. Prior to the new Act, such stock lost its taint upon the death of the owner since the recipient received a basis equal to the fair market value at the date of death. Consequently, the step-up basis provisions effectively acted as a loophole through which persons could "bailout" corporate earnings. By replacing the step-up provisions with a carryover basis rule, section 1023 continues the taint of section 306 stock into the hands of the recipient.[177]

XIII. GENERAL EXAMPLE COMPUTATION CARRYOVER BASIS

Assume the following figures are applicable to a depreciable carryover basis asset inherited by one person, the only asset received by him. Also, assume that all assets were subject to tax.

Fair market value at date of death for estate tax purposes	$100,000
Decedent's adjusted basis	40,000
Total depreciation taken on the asset as of the date of death	10,000
Total depreciation taken on the asset as of December 31, 1976	3,000
Holding period prior to January 1, 1977 (days)	500
Total holding period (days)	2,500
Applicable fraction (holding period before 1977/total holding period)	1/5
State inheritance taxes paid by the recipient	2,000
Total federal and state estate taxes paid by the estate	40,000
Total fair market value of all carryover basis property included in the estate	470,000
Aggregate basis of all carryover basis property included in the estate	280,000
The carryover basis would be computed by using the following steps:	
(1) Prior to the adjustment under subsections (h), (c), (d), and (e) the general rule is to use decedent's basis	40,000
A. Subsection (h) adjustment	
(2) Appreciation (fair market value minus decedent's basis)	60,000
(3) Appreciation (2) minus total depreciation ($10,000)	50,000
(4) Step (3) times the applicable fraction (1/5)	10,000
(5) Step (4) plus depreciation "attributable to" holding period prior to 1977 ($3,000)	13,000
(6) Fresh start basis (step (1) plus step (5))	53,000
B. Subsection (c) adjustment	
(7) Net appreciation (fair market value minus fresh start basis)	47,000
(8) Step (7) divided by fair market value of all assets subject to tax ($470,000)	1/10
(9) Step (8) times total estate taxes paid ($40,000)	4,000
(10) Basis after subsection (c) adjustment Step (6) plus step (9)	57,000

Footnotes at end of article.

C. Subsection (d) adjustment

(11) Subsection (d) does not apply since the aggregate basis of all carryover basis property ($280,000) is greater than $60,000; thus, basis after subsection (d) adjustment	57,000
D. Subsection (e) adjustment	
(12) Net appreciation (fair market value minus basis after subsection (d) adjustment (step (11))	43,000
(13) Step (12) divided by the fair market value of all assets received by the recipient ($100,000)	43%
(14) Step (13) times total state inheritance taxes paid by the recipient ($2,000)	860
(15) Carryover basis (step (11) plus step (14)	57,860

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FOOTNOTES

*The views expressed are solely those of the students concerned and not necessarily those of the American Bar Association, Section of Taxation of the Association, The Editorial Board of *The Tax Lawyer* or the Student Editorial Board of *The Tax Lawyer*.

[1] I.R.C. § 1023.

[2] I.R.C. § 1014. *See generally* J. RABKIN & M. JOHNSON, FEDERAL INCOME, GIFT, AND ESTATE TAXATION 7:1350.7 (1977); J. STANLEY & M. KILCULLEN, FEDERAL INCOME TAX LAW, 13–19 (1975); R. STEPHENS, G. MAXFIELD, & S. LIND, FEDERAL ESTATE AND GIFT TAXATION 8–10 (3d ed. 1970) [hereinafter cited as R. STEPHENS].

[3] TAX RESEARCH INSTITUTE OF AMERICA, THE RIA COMPLETE ANALYSIS OF THE '76 TAX REFORM LAW 5 (1976) [hereinafter cited as RIA COMPLETE ANALYSIS].

[4] H.R. 10612, 94th Cong., 1st Sess. (1975), reported Nov. 12, 1975, by the House Committee on Ways and Means (H.R. REP. No. 658), considered and passed by the House of Representatives on Dec. 4, 1975.

[5] H.R. 14844, 94th Cong., 2d Sess. (1976), reported by the House Committee on Ways and Means on Aug. 2, 1976 (H.R. REP. No. 1380). This bill was never voted on by the full House of Representatives.

[6] Pub. L. No. 94–455, 90 Stat. 1520, signed by President Gerald R. Ford on Oct. 4, 1976.

[7] The Conference Committee reported its version on Sept. 13, 1976 (H.R. REP. No. 1515, 94th Cong., 2d Sess. (1976)) and it was passed by Congress on Sept. 16, 1976.

[8] On Aug. 2, 1977, the Treasury Department promulgated Temporary Regulations dealing with the application of section 1023 to marketable bonds and securities. Temp. Reg. § 7.1023(h)–1, 42 Fed. Reg. 39,104 (1977).

[9] Sections 1023(b) (2) and (3) exclude a number of assets from coverage; *see* text accompanying notes 23–32 *infra*.

[10] I.R.C. § 1023(a) (1).

[11] I.R.C. § 1023(h) (1); *see* text accompanying notes 56–89 *infra*.

[12] I.R.C. § 1023(h) (2); *see* text accompanying notes 90–110 *infra*.

[13] I.R.C. § 1023(c); *see* text accompanying notes 111–130 *infra*.

[14] I.R.C. § 1023(d); *see* text accompanying notes 131–142 *infra*.

[15] I.R.C. § 1023(e); *see* text accompanying notes 143–152 *infra*.

[16] The term "executor" is defined by section 2203 as: "the executor or administrator of the decedent, or, if there is [none] . . . , then any person in actual or constructive possession of any property of the decedent."

[17] The specific information to be required by the Service will be provided for in future regulations. I.R.C. § 6039A(a). Penalties are provided for failure to provide the required information. I.R.C. § 6694. *See note* [7] *infra* and accompanying text.

[18] The disjunctive form of "acquired from or passed from" raises questions regarding the distinction between the terms; paragraph (g) (2), however, explains that "property passing from the decedent shall be treated as property acquired from the decedent." Exactly why the legislators insisted on including the redundant phrase with the subsequent superfluous explanation is not readily apparent. Perhaps they lifted the language from similar wording in section 1014. Curiously, the phrase "acquired from" appears in section 1023(a) (1) without the redundancy.

[19] I.R.C. § 1023(b) (1).

[20] I.R.C. § 1014(b) (1).

[21] I.R.C. § 1014(b) (6). Such property is not included in determining the decedent's gross estate, but, under the old law, did receive a step-up in basis. H.R. REP. No. 1380, 94th Cong., 2d Sess. 36 (1976).

[22] I.R.C. § 1014(b) (9). Such property must always be included in determining the value of the decedent's gross estate, under section 2035, but if such property is disposed of by the recipient prior to the decedent's death in a transaction in which gain or loss is recognized the carryover basis rules do not apply. I.R.C. § 1023(b) (2) (D).

[23] I.R.C. § 1023(b) (2) (A). Income in respect of a decedent refers to those items of gross income to which a decedent was entitled but which were not includible in his final income tax return—for example, a cash basis decedent's unpaid salary. These items are taxed to the beneficiary or recipient in the same way they would have been taxed to the decedent. They are also excluded from the stepped-up basis rules of section 1014. I.R.C. § 1014(c). RIA COMPLETE ANALYSIS, *supra* note 3, at 20–21; *see* text accompanying note 85 *infra*.

[24] I.R.C. § 1023(b) (2) (B). Such property is described in section 2042.

[25] I.R.C. § 1023(b) (2) (C).

[26] I.R.C. § 1023(b) (2) (C) and (E). Payments under a deferred compensation plan are excluded only to the extent taxable to the decedent's beneficiary. Stock and stock options are excluded only to the extent income in respect thereof is includable in gross income under sections 422(c) (1), 423(c), or 424(c) (1). Any stock or stock options which the decedent actually received under such a plan are, of course, carryover basis property and to the extent income was recognized thereon, the decedent would have increased his basis. For discussion of marketable securities, see text accompanying notes 56–89 *infra*.

[27] *See* note 22 *supra*.

[28] Gross estate includes the value of any assets transferred by the decedent prior to his death but as to which he retained the power to alter the enjoyment or as to which he relinquished this power in contemplation of death. I.R.C. § 2038.

[29] Gross estate includes the value of any property to the extent it was subject to a general power of appointment which was actually exercised by will or within three years of the decedent's death or in a revocable transfer. I.R.C. § 2041.

[30] I.R.C. § 1023(b) (2) (D).

[31] I.R.C. § 1023(b) (2) (F) (referring to I.R.C. § 1014(b) (5)).

[32] I.R.C. § 1023(b) (3); *see* text accompanying notes 36–46 *infra*.

[33] Stansbury & Blazek, *Revamped Rules for Inherited Property Have Far-Reaching Implications*, 46 J. TAXATION 14, 14 (1977). Section 1221 defines a capital asset.

[34] I.R.C. § 1014(b) (5).

[35] I.R.C. § 1023(c), (d), (e), and (h); *see* text accompanying notes 56–110, 111–130, 131–142, 143–152, respectively, *infra*.

[36] I.R.C. § 1023(b) (3); H.R. REP. No. 1380, *supra* note 21, at 38 (1976).

[37] H.R. REP. No. 1380, *supra* note 21, at 38 (1976).

[38] Section 6075(a) requires that the return be filed within nine months of the decedent's death, unless an extension is granted under section 6081.

[39] I.R.C. § 1023(b) (3) (C).

[40] Although the language of the Act is not absolutely clear with respect to this point, the general consensus is that the executor may choose the items to which the exclusion will apply, rather than having to apply the exclusion to all items pro rata. RIA COMPLETE ANALYSIS, *supra* note 3, at 21; Keydel, *Explaining the Tax Refrom Act of 1976 to Clients*, 23 PRAC. LAW. 11, 28 (1977) Stansbury & Blazek, *supra* note 33, at 14.

[41] Since the excluded items would not be considered carryover basis property, the "old rule" of section 1014 would apply. The alternate valuation date is up to six months after the date of death. I.R.C. § 2032.

[42] For a discussion of the fresh start basis rules, see text accompanying notes 47–110 *infra*.

[43] RIA COMPLETE ANALYSIS, *supra* note 4, at 21.

[44] H.R. REP. No. 1380, *supra* note 21, at 37 (1976).

[45] Section 1023(b) (3) (B) limits the exclusion to assets with a total "fair market value" of $10,000, without mentioning the date at which the fair market value should be determined. Section 1023(g) (1) explains that fair market value is the value determined under the estate tax rules; thus for purposes of the $10,000 limitation, fair market value must be as of the date of death or the alternate valuation date, which ever is used for determining the estate tax.

[46] I.R.C. § 1023(a) (2). For a discussion of the section 1023 loss rule, see text accompanying notes 150–52 *infra*.

[47] *See* text accompanying notes 5–7 *supra*.

[48] H.R. REP. No. 1515, *supra* note 7.

[49] I.R.C. § 1014. This rule is retained in section 1014 for property acquired from a decedent dying before December 31, 1976 and excluded property under section 1023(b) (3).

[50] I.R.C. § 1023(h).

[51] *See e.g.*, STOCK AND BOND VALUES AS OF DECEMBER 31, 1976 (CCH) (1977) (providing the market quotations for nearly all securities).

[52] I.R.C. § 1023(h) (1). The statute itself does not require use of market quotations. *But see* note 80 *infra* and accompanying text.

[53] The value determined under the alternate valuation date of section 2032 is inapplicable to the fresh start rule. I.R.C. § 1023(h) (2) (A) (ii) *see* H.R. REP. No. 1515, *supra* note 7, at 613 (1976); Stansbury & Blazek, *supra* note 33, at 15.

[54] Except in regard to using the alternate valuation date, the "fair market value" used is the value as determined for estate tax purposes. Section 1023(g) (1) provides that "when not otherwise *distinctly expressed*, the term 'fair market value' means value as determined under chapter 11 [referring to federal estate taxes]." (emphasis added). Since section 1023(h) only distinctly expresses that the alternate valuation date, as provided in section 2032, not be used, all other federal estate valuation methods must apply. Generally, fair market value refers to the amount a willing buyer would pay to a willing seller, but there are many special rules. For example, farm and closely held business property may, under certain circumstances, be valued as used for those special purposes rather than at their highest and best use. I.R.C. § 2023A. For a discussion of asset valuation for federal estate tax purposes, *see generally* 132 T.M. Portfolio.

[55] I.R.C. § 1023(h) (2) (B) (ii); *see* text accompanying notes 99–102 *infra*.

[56] I.R.C. § 1023(h) (2) (E) (i). Note that the reference is to a market as of December 1976 rather than as of December 31, 1976. The distinction is probably insignificant; however, if a market existed for a security at

some point during the month of December 1976, but not on the last day of the month, the Act is unclear as to whether the security would be considered marketable.

[57] *Id.* (emphasis added). The phrase "stock exchange, in an over-the-counter market, or otherwise . . ." is not unique to the Tax Reform Act of 1976; the identical phrase appears in regulations section 20.2031-1(b), dealing with the valuation of stocks and bonds based on selling prices. Little can be gained from this discovery since the regulation deals principally with widely traded securities; it also, however, deals with closely held stock in another subsection.

[58] H.R. REP. No. 1515, *supra* note 7, at 613 (1976).

[59] Stansbury & Blazek, *supra* note 33, at 15 n.1, note that [s]ome have suggested the "or otherwise" permits stocks subject to buy-sell agreements, closely held corporate stock and other securities to be treated as marketable securities for purposes of this "fresh start" rule. Regulations may clarify this issue. The current consensus seems to be that such securities do not qualify as marketable securities for this purpose.

See also Boles, New Carryover Basis Rules have Dramatic Implications for Estate Planning, 5 TAXATION FOR LAWYERS 274, 275 (1977).

[60] Temp. Reg. § 7.1023(h)-1(d)(1)(iii), 42 Fed. Reg. 39,104 (1977).

[61] *Id.*

[62] The fresh start basis increase is only permitted for purposes of determining gain I.R.C. § 1023(h)(1). For purposes of loss, the decedent's basis is carried over without any adjustment under subsection (h). For example, if a decedent left stock with a basis of $30, a December 31, 1976 value of $40, and a date of death value of $50 its fresh start basis would be $40 for purposes of gain. Its basis for purposes of loss would be $30 (decedent's basis). Thus, if it were ultimately sold for $25, there would be a loss of $5; if it were sold for $45, there would be a gain of $5; if it were sold for $35, there would be neither gain nor loss. For a discussion of the section 1023 loss rule, see text accompanying notes 150–52 *infra*.

[63] Section 1023(h)(1) refers to marketable securities on December 31, 1976. *But of* I.R.C. § 1023(h)(2)(E)(i) (referring to a mar'et during December 1976).

[64] "De-listed" refers to a security which has gone private and is therefore no longer listed on a exchange.

[65] Some authorities believe that securities which were never publicly traded may nevertheless be covered by the rule of section 1023(h)(1). *See* note 59 *supra*.

[66] Temp. Reg. § 7.1023(h)-1(b), 42 Fed. Reg. 39,104 (1977).

[67] H.R. REP. No. 1515, *supra* note 7, at 612 (1976). Apparently the limit applies to all assets; however, because of the peculiar nature of the adjustments for property which is not marketable bond or security, the basis would never be increased beyond the estate tax value (though it could of course begin there, if the decedent's basis were greater than the estate tax value). This is true because the adjustments are computed as a fraction of the total appreciation to date of death, and thus all the appreciation would never be applied.

[68] The use of the alternative valuation date value is specifically denied, I.R.C. § 1023(h)(2)(A)(ii).

[69] Section 1023(h)(1) specifically states that the asset's *shall* be increased by an amount equalling the excess of the December 31, 1976 value over basis on that date. No limit is mentioned. Usually, the use of such mandatory language as *shall* indicates that no exceptions exist.

[70] *E.g.*, RIA COMPLETE ANALYSIS, *supra* note 3, at 23; Stansbury & Blazek, *supra* note 33, at 14.

[71] For purposes of loss the basis would be $25. *See* note 62 *supra*.

[72] The example demonstrates the computation of *fresh start basis*, not carryover basis. The fresh start calculation is, of course, only one of four adjustments used in determining the carryover basis.

[73] *See* text accompanying note 58 *supra*.

[74] *See* note 59 *supra*.

[75] 248 T.M. Portfolio A–22 to 24.

[76] *Id.* at A–9; 132 T.M. Portfolio A–17.

[77] *See* 248 T.M. Portfolio A–22 to 24 (citing authorities).

[78] Reg. § 20.2031-2(e). *See generally* Rev. Rul. 59–60, 1959–1 C.B. 237, *amplified by* Rev. Rul. 77–287, 1977–33 I.R.B. 20 (August 15).

[79] Temp. Reg. § 7.1023(h)-1(e), 42 Fed. Reg. 39,104.

[80] H.R. REP. No. 1515, *supra* note 7, at 613 (1976); *see* Stansbury & Blazel *supra* note 33, at 15; *Untangling the Tax Reform Act*, TRUSTS & ESTATES 787 (December 1976). Although the Conference Report does not specifically direct the use of the quoted price, the implication of such a requirement is strong.

[81] I.R.C. § 1023(g)(1); *see* H.R. REP. No. 1515, *supra* note 7, at 613 (1976) (referring to valuation as requiring use of the estate tax rules). It never specifically admits, however, that this could be done by methods other than reference to quoted prices.

[82] A tender offer is generally a public offer to shareholders to purchase the stock of a named corporation at a specific price, the same price being offered to all shareholders. In most cases, the price offered will be different than the market price and will usually be above it.

[83] Strong v. Rogers, 14 AFTR 1207, 1224 (D. N.J. 1933) (stock received at height of stock inflation, taxed as income, but at "fair real value" less than market price), 72 F.2d 455 (3d Cir.), *cert. denied*, 293 U.S. 621 (1934).

[84] 248 T.M. Portfolio A–8.

[85] 32 T.M. Portfolio A–11.

[86] I.R.C. § 1232(a)(2).

[87] § § 20.2031-2(b)(1), 20.2031-2(c).

[88] Temp. Reg. § 7.1023(h)-1(e), 42 Fed. Reg. 39,104 (1977).

[89] It seems unlikely that Congress envisioned such an application of section 1023(h)(1), but a literal reading of the statute requires such a result.

[90] *See* text accompanying notes 53–55 *supra* (statement of formula).

[91] I.R.C. § 1023(h)(2)(A)(ii).

[92] I.R.C. § 1023(h)(2)(C); *see* text accompanying notes 99–102 *infra*.

[93] The holding period is considered as ending on the date of the decedent's death so that use of the alternate valuation date has no impact on the holding period. I.R.O. § 1023(h)(2)(E)(ii); Keydel, *supra* note 40, at 29.

[94] The holding period of property acquired in a nontaxable exchange includes the holding period of the property exchanged. I.R.C. § 1223(1). "Thus, property held * * *

* * * * *

[104] Perhaps the amounts of depreciation, amortization, or depletion will usually be discoverable since the executor ought to be able to locate the tax records. Still, whenever depreciation must be allocated between an asset and a "substantial improvement" the executor will have difficulty.

[105] I.R.C. § 6039A. Failure to meet these obligations will result in fines. *See* text accompanying note 171 *infra*.

[106] I.R.C. § 1023(g)(3). The proposed Technical Corrections Bill would strike the requirement that the basis be unknown to the recipient and require more generally that the basis cannot be reasonably ascertained. H.R. 6715, 95th Cong., 1st Sess. § 3(c)(1)(B) (1977).

[107] RIA COMPLETE ANALYSIS, *supra* note 3, at 22.

[108] H. R. REP. No. 1380, *supra*, note 21, at 39 (1976).

[109] *Id.* The House Report refers to the unrecaptured element of "appreciation" rather than "deappreciation".

[110] H.R. REP. No. 1515, *supra* note 7, at 613 (1976). The Conference Report is not perfectly clear on this matter, but the inference is strong that the fresh start rules do alter the recapture requirement. The Conference Committee directed the Treasury to issue regulations on the subject. *Id.*

[111] I.R.C. § 1023(h) (dealing with the fresh start adjustment); *see* text accompanying notes 47–110 *supra*.

[112] This formula appears to be the proper construction of section 1023(c); RIA COMPLETE ANALYSIS, *supra* note 3, at 24. *But see* Boles, *supra* note 59, at 275, Stansbury & Blazek, *supra* note 33, at 15 (giving the denominator as "the fair market value of all property subject to tax," omitting the words "federal estate.") To understand the significance of this error, see text accompanying notes 122–24 *infra*.

[113] I.R.C. § 1023(f)(5).

[114] I.R.C. § 1023(g)(1).

[115] Any other construction would disrupt the purpose of subsection (c) to increase the basis by the amount of estate taxes attributable to appreciation. To achieve this result appreciation must be determined with reference to the estate tax value.

[116] I.R.C. § 1023(f)(2).

[117] *See* text accompanying note 115 *supra*.

[118] I.R.C. § 2056.

[119] I.R.C. §§ 2055, 2106(a)(2).

[120] I.R.C. § 1023(f)(4)(A).

[121] H.R. REP. No. 1380, *supra* note 21, at 40 (1976).

[122] I.R.C. § 1023(f)(4)(B).

[123] Section 1023(c) provides that "[t]he basis of appreciated carryover basis property . . . which is subject to *the tax imposed by section 2001 or 2102* . . . shall be increased . . ." (emphasis added). Both section 2001 and 2101 deal with federal estate tax; of course neither deals with state taxes. Thus, the second reference in subsection (f)(4) appears to be superfluous.

[124] The proposed Technical Corrections Bill will solve this problem by providing for separate computations of federal and state estate taxes attributable to appreciation H.R. 6715, 95th Cong., 1st Sess. § 3(c)(5) (1977).

[125] *E.g.*, Stansbury & Blazek, *supra* note 33, at 15.

[126] H.R. REP. No. 1380, *supra* note 21, at 40 (1976).

[127] *Id.*

[128] *See* text accompanying note 21 *supra*.

[129] I.R.C. § 1023(f)(3).

[130] I.R.C. § 1023(f)(1). This limitation applies to adjustments made under subsections (c), (d), and (e), but *not* to subsection (h). The nature of the formula for the stepped-up basis of property other than bonds and securities makes such a limitation unnecessary. Marketable bonds or securities, however, may have a stepped-up basis in excess of their estate tax value. *See* text accompanying notes 67-70 *supra*.

[131] I.R.C. § 1023(d). For a general discussion of this subsection, see RIA COMPLETE ANALYSIS, *supra* note 3, at 25-26; Stansbury & Blazek, *supra* note 33, at 15-16.

[132] For the definition of "carryover basis property" see text accompanying notes 18-35 *supra*.

[133] Since the requirement is that the aggregate of the bases must be less than $60,000, the provision might also cover a large estate composed primarily of highly appreciated assets. For example, the aggregate bases of all carryover basis property might be $40,000 while the total fair market value of all such assets equals $400,000. The provision would apply even though the estate is not small.

[134] For the definition of "appreciated carryover basis property," see text accompanying note 113 *supra*.

[135] For a discussion of the limitations on

section 1023(d), see text accompanying notes 142-44 *infra*.

[136] I.R.C. § 1023(d)(1); RIA COMPLETE ANALYSIS, *supra* note 3, at 25. *Contra*, Stansbury & Blazek, *supra* note 33, at 15 (fraction's denominator is given as "net appreciation of all carryover basis property"). This formula is clearly incorrect since the total should only be of appreciated property: to the extent that other assets have depreciated, their loss in value is *not* considered in the net figure.

[137] For the definition of net appreciation, see text accompanying note 116 *supra*.

[138] Obviously asset C has not appreciated; rather, it has lost value to the extent of $4,000. Significantly, the total of net appreciation equals $45,000 (the sum of the appreciation of assets A and B) and does not include the value lost by asset C. *See* note 136 *supra*.

[139] Although, in the example, the aggregate bases, after adjustment, equal $60,000, this result may not always occur because of certain limitations placed upon the subsection (d) adjustment. *See* text accompanying notes 140–42 *infra*.

[140] I.R.C. § 1023(d)(2).

[141] I.R.C. § 1023(d)(3).

[142] I.R.C. § 1023(f)(1).

[143] For the definition of "appreciated carryover basis property," see text accompanying note 113 *supra*.

[144] I.R.C. § 1023(e).

[145] Fair market value normally refers to the value used for federal estate tax purposes. I.R.C. § 1023(g)(1). If the property is subject to a nonrecourse liability, however, different rules apply. *See* text accompanying notes 153–167 *infra*.

[146] For a discussion of the term "net appreciation," see text accompanying notes 113–16 *infra*.

[147] I.R.C. § 1023(e), (f)(4). Although only marital and charitable deduction property is considered "not subject to tax" for purposes of subsection (e), any property which is actually not subject to tax" will be so treated for purposes of subsection (e), I.R.C. § 1023(f)(4)(B); RIA COMPLETE ANALYSIS, *supra* note 3, at 26.

[148] H.R. Rep. No. 1380, *supra* note 21, at 42 (1976).

[149] *See* note 130 *supra*.

[150] *See* STOCK AND BOND VALUES AS OF DECEMBER 31, 1976 (CCH) 5 (1977). The authors have located no other authority that leads to the conclusions stated in the text, but they feel that it presents a viable argument that should be considered by anyone affected by section 1023.

[151] *See* text accompanying note 53 *supra* (formula).

[152] *See* text accompanying notes 112, 136, and 145 *supra* (formulae for computing subsection (c), (d), and (e) adjustments).

[153] *See* text accompanying notes 118 and 147 *supra*.

[154] H.R. REP. No. 1380, *supra* note 21, at 40–41; Stansbury & Blazek, *supra* note 33, at 16.

[155] I.R.C. § 2053(a)(4); Reg. § 20.2053–7.

[156] Reg. § 20.2053–7 (emphasis added).

[157] *E.g.*, H.R. REP. No. 1380, *supra* note 21, at 40–41; STEPHENS, *supra* note 2, at 5–23; RIA COMPLETE ANALYSIS, *supra* note 3, at 25.

[158] STEPHENS, *supra* note 2, at 5–23, n.112.

[159] RIA COMPLETE ANALYSIS, *supra* note 3, at 25.

[160] H.R. REP. No. 1380, *supra* note 21 at 41.

[161] *But see* note 158 and accompanying text *supra*.

[162] RIA COMPLETE ANALYSIS, *supra* note 4, at 25; Boles, *supra* note 59, at 276.

[163] *See* text accompanying notes 112, 136, and 145 *supra*.

[164] *See* text accompanying note 53 *supra*.

[165] *See* text accompanying note 159 *supra*.

[166] The proposed Technical Corrections Bill would eliminate this theoretical problem by striking paragraph (g)(4) and adding a parenthetical clause to the definition of "fair market value" in paragraph (g)(1) to the effect that fair market value is determined without regard to any liability to which the property is subject. H.R. 6715, 95th Cong., 1st Sess. § 3(c)(2) (1977).

[167] I.R.C. § 6039A.

[168] I.R.C. § 2203.

[169] *See, e.g.*, Stansbury & Blazek, *supra* note 33, at 16–19.

[170] Keydel, *supra* note 40, at 30–31.

[171] Sections 1203(b)(1) and 2005(d)(2) of the Tax Reform Act of 1976 each added code section numbered 6694. It is the section 6694 added by Act section 2005(d)(2) to which we refer. The proposed Technical Corrections Bill would redesignate this section as section 6698. H.R. 6715, 95th Cong., 1st Sess. § 3(p)(1) (1977).

[172] Ditz, *supra* note 99, at 134.

[173] *E.g.*, Stansbury & Blazek, *supra* note 33 at 18.

[174] *Planning under the New Carryover Basis Rules for Inherited Property*, 3 ESTATE PLANNING REVIEW (CCH) 4, 5 (January 1977).

[175] *Id.*

[176] I.R.C. § 306. *See, e.g.*, J. STANLEY & M. KILCULLEN, *supra* note 2, at 6–23 to 25.

[177] I.R.C. § 306(c)(1)(C). *See e.g.*, Gallagher. *The 1976 Act. Planning for Section 306 Stock*, EST., GIFTS & TR. J. 4 (Jan.–Feb. 1977); Keydel, *supra* note 40, at 30; McCoy, Pearle, & Abramson, *supra* note 95, at 10.

On January 31, 1978, I introduced S. 2461 to "clean-up" the carryover basis rules. An analysis of these provisions follows:

Mr. President, last October I introduced a bill, S. 2238, to offer clarifying, correcting, and technical amendments to the estate and gift tax provisions of the 1976 Act. In large part, these amendments were designed to address a number of administrative and compliance problems created for executors, heirs, and the Internal Revenue Service in connection with the carryover basis provisions adopted by the 1976 Act.

Prior to enactment of the 1976 Act, property passing from a decedent generally received a stepped-up or stepped-down basis equal to its value on the decedent's death for purposes of determining gain or loss for a sale or exchange of the property by the decedent's heir or beneficiary. In 1976, the Congress believed that the stepped-up basis rule resulted in inequitable treatment because a greater overall tax burden was imposed on estates and heirs of decedents who had accumulated wealth through taxable earnings as compared with the estates and heirs of decedents who accumulated wealth through unrealized appreciation in assets. In the latter case, the unrealized appreciation accruing before death was never subjected to an income tax since the heirs or beneficiaries bases for determining gain were stepped to estates tax values. Moreover, there was a distinction between deathtime and lifetime transfers because a donor's basis in property was generally carried over for purposes of determining gain or loss upon a sale or exchange by a donee.

The carryover basis amendments of S. 2238 were designed to retain the basic reform of the 1976 Act but make those provisions simpler and more equitable. As a result of the testimony received on this issue in the October hearings conducted by the Subcommittee on Taxation and Debt Management of the Committee on Finance and other comments and suggestions received by me from Treasury officials and other interested persons, I believe that further improvements can be made to achieve greater simplification and equity. Accordingly, I am introducing another bill to respond to these most helpful comments and suggestions. In particular, I believe this bill will go a great deal further in alleviating the compliance and administrative burdens for small and modest sized estates where the problems are more acute because of the inadequacy of basis records and compliance costs relative to the amount of property involved.

My bill eliminates small and moderate sized estates from coverage under the carryover basis rules. It is in these cases where the burden of the rule has the most severe impact because of the absence of adequate basis records and the compliance cost relative to the size of the estate. An outright exception would be provided for an estate consisting of $175,000 or less of carryover basis property. The $175,000 roughly approximates the exemption equivalent of the estate and gift tax unified credit when it is fully phased in by 1981. In these cases, the basis of assets would be stepped up as under prior law and no special reporting by the executor would be required. As a result of this change, it is estimated that only about the largest 2 percent of estates would have to comply with the carryover basis rules. In those cases where the carryover basis rules would apply, the adjustment would be increased from the $60,000 under present law to $175,000. Unlike S. 2238, the $175,000 amount would not be phased-in but would be available immediately for estates of decedents dying after 1976. In order to simplify the computations, this adjustment would be made before the adjustment provided for death taxes attributable to appreciation.

The 1976 Act provided an exemption for $10,000 in personal and household effects to deal with the problems an executor would have in attempting to ascertain the decedent's bases for these assets. Experience with the new law indicates that the exemption level is inadequate in many cases. My bill would increase the exemption to $25,000.

The bill would also simplify the basis adjustment for death taxes attributable to appreciation and make it more equitable. First, the death tax adjustment would be made on the basis of the marginal estate tax rate rather than the average rate. This approach would provide substantially the same treatment for estates and heirs where assets had been retained until death as is the case for estates where assets are sold before death and the income tax liability incurred reduces the estate tax liability at the highest estate tax marginal rates. Second, the bill would consolidate the three separate death tax adjustments provided under present law into one single adjustment. Third, the death tax adjustment would be made with respect to all appreciated carryover basis property rather than excluding marital and charitable deduction property. This will alleviate some of the problems faced by an executor in trying to decide to whom property should be distributed because it will eliminate the death tax adjustment as a factor to be considered.

The bill differs from the provisions of S. 2238 in several respects. The death tax credit would be based solely on the Federal estate tax rates before the credit for State death taxes is taken into account. This would eliminate the need to make any additional calculations for State death taxes in excess of the credit allowable. In this instance, I believe the need for simplification outweighs the need for absolute precision in taking relatively insignificant amounts for State death taxes into account. The bill would also prescribe a pro rata rule for allocating appreciation to beneficiaries in determining the estate tax attributable to appreciation. This rule would provide certainty in making the calculation and thereby eliminate the suspended basis problems an executor would face in ascertaining to whom property actually passes and the resulting effect upon deductions, such as the marital deduction for purposes of determining the estate tax attributable to appreciation.

In addition, the death tax adjustment would be based on 110 percent of the estate tax attributable to appreciation determined on the basis of the estate tax return as filed.

The extra amount allowed would be to cover any subsequent audit adjustments which do not significantly change the tax liability. In this way, recomputations would not be required every time there was a minor audit change. If audit adjustments increased the estate tax liability by more than 10 percent, recomputation of the basis adjustment for death taxes would be permitted.

The bill contains a number of changes to simplify the operation of the carryover basis fresh-start adjustment for appreciation accruing before 1977. The fresh-start adjustment would be permitted for purposes of determining loss as well as gain. However, the liberalized adjustment for value on December 31, 1976, could not be used to increase the heir's basis above the value used for estate tax purposes. Thus, the "split-basis" for gain or loss under present law would be eliminated. In addition, a formula would be provided to determine a minimum basis for fresh-start purposes. It would apply to nonbusiness tangible personal property and to a personal residence. Unlike S. 2238, intangible assets such as stock in a closely held business would not be eligible under the formula since basis records are ordinarily available for these assets. It is in the case of a tangible personal property and a residence it is most likely that a decedent would not have kept adequate basis records before 1977. In general, the formula assumes that the post-1976 appreciation accrues at approximately 6 percent a year rather than the 8 percent factor which had been proposed in S. 2238. In addition, the requirement under S. 2238 that an eligible residence must have been used by the decedent for 5 out of the 8 years preceding his death as a personal residence would be revised so that a residence would be eligible for the formula method of determining the fresh-start adjustment if it had been used as the decedent's personal residence for 5 years at any time. Finally, the bill would provide that the formula would not reduce the fresh-start basis to less than 50 percent of the value of the property at the time of the decedent's death.

Under the 1976 Act, the fresh-start adjustment for nonmarketable securities is determined by assuming that appreciation accrues uniformly over the holding period. Generally, in the case of preferred stock, the proration of appreciation based on the holding period reaches an inequitable result because the value may fluctuate very little, if at all, and yet a portion of the appreciation is considered to accrue after 1976. Of course, the longer the preferred stock is held after 1976, the greater the amount of appreciation which is automatically treated as accruing after 1976. The bill would resolve this problem by treating preferred stock having a stated redemption price as a marketable security with a market value on December 31, 1976, equal to its stated redemption price. Regulations authority would also be granted to extend this rule to other cases such as nonmarketable stock, notes, or other evidences of indebtedness with a relatively fixed value. For example, the rule could be extended to closely-held stock subject to a fixed-price buy-sell arrangement among shareholders.

Regulations authority would also be provided to permit the various basis adjustments to be made for certain classes of similar property rather than having to compute the adjustments for each separate item of property.

The bill would also provide a rule to deal with proof of basis problems arising from various small improvements to a personal residence. For relatively small amounts, records are not usually maintained. My bill would allow an adjustment of $250 per year during the decedent's holding period of his personal residence to cover minor improvements which are not substantiated by documentary evidence or other records. For any year when substantiated improvements are greater than $250, the actual cost of the improvements would be taken into account rather than the fixed dollar amount.

The carryover basis reporting requirements would be revised in several respects. First, it would no longer be necessary for the executor to furnish information to the Internal Revenue Service. Second, information would be required to be furnished to the beneficiaries only when the gross estate, excluding property which is not carryover basis property by definition, exceeds $175,000. Third, the standard for imposing a penalty for failure to furnish this information to a beneficiary would be changed so that it would be imposed only if the failure is due to negligent or intentional disregard of the reporting requirement.

My bill contains a number of other provisions to improve upon existing law. Under the bill, a decedent's estate would succeed to the decedent's unused capital loss carryovers. This treatment is consistent with the theory of carryover basis and would be justified on equitable grounds since unrealized gains would carry over to the estate or heirs.

The bill also limits the amount of depreciation recaptured as ordinary income upon satisfaction of a pecuniary bequest to the gain recognized by the executor which is generally the amount of any post-death appreciation. Any remaining amount to be recaptured would be treated as ordinary income when the beneficiary disposed of the property.

The bill also permits an estate to sell property on the installment method and distribute the installment obligations without triggering the recognition of income at that time. The beneficiaries would report the income as the installments are collected. In effect, this provision would extend the same tax treatment to sales followed by a distribution of the installment obligation as would occur if the property had been distributed and then sold on the installment basis by the distributees. Permitting the estate to make the sale without a difference in tax consequences resulting from the form rather than the substance of the transaction should facilitate the administration of estates.

The bill also contains a provision to facilitate changing a stock redemption plan funded by life insurance to a cross purchase plan among shareholders. This relief is provided because the carryover basis rule resulted in different tax consequences depending upon which type of plan had been chosen in the past. Under prior law, there would have been no significant difference in tax treatment. Accordingly, for plans in existence on December 31, 1976, a stock redemption plan can be changed to a cross purchase plan without adverse tax consequences if it is done before 1981.

As under S. 2238, the bill changes the material participation requirements for purposes of the special estate tax valuation rules for farm or closely held ousiness real property. Under present law, the decedent or a member of his family must have materially participated in the operation of the farm or business for 5 out of the 8 years preceding the decedent's death. In addition, there is a recapture of the estate tax savings if the qualified heir or member of his family does not materially participate in the farm or business operations. In either case, the activities of an agent are not taken into account. These qualification requirements were intended to distinguish a family-owned and operated business from an ordinary investment. However, there are situations where the material participation requirements impose some hardship. For example, no farmer or businessman could retire without risking loss of eligibility for the special use valuation provision if no member of the family could step in and run the farm or business. In addition, there are situations where the qualified heir may be incapable of running the farm or business and must use the services of an agent. My bill would deal with the retirement problems by providing that eligibility for special use valuation will not be lost because of the material participation requirement if the decedent or the surviving spouse had operated the farm or business for 20 years. The bill would also provide that the activities of an agent will be treated as material participation for an heir if the heir is a minor, a student, a disabled person, or a surviving spouse who has attained age 62.

As under S. 2238, the bill also conforms the definition of a closely held business for purposes of the two special extended payment provisions for estate taxes.

As under S. 2238, the bill also amends the provision which requires the inclusion in a decedent's gross estate of all gift transfers made within 3 years of death. Thus, although these transfers have been subjected to the unified transfer system once as a lifetime transfer, these gifts must be revalued at the time of the decedent's death for inclusion in the gross estate. Since an estate tax credit is allowed for any gift taxes paid, the net effect of the inclusion rule is to tax any appreciation accruing between the time of the gift and the donor's death. This is inconsistent with a unified system and imposes an additional burden upon executors to have new appraisals made for the property. The bill would generally provide that the value used for gift tax purposes would also be used as the value for the estate tax 3-year-within-death transfer rule. This will eliminate the burden imposed on executors to have a second appraisal. However, by continuing the basic inclusion rule, gifts in anticipation of death can not be made solely to satisfy the percentage requirement for special use valuation, closely held stock redemptions, or the extended payment rules for estate tax attributable to a closely held business.

Proposals Relating to Estate and Gift Taxes

A. Bills Relating to Carryover Basis

Prior law

Under prior law, the cost or other basis of property acquired from or passing from a decedent generally was "stepped up" to its fair market value at the date of death (or the alternative valuation date). Under both prior and present law, where property is transferred by gift, the basis of the property in the hands of the donee is generally the same as the donor's basis (i.e., the donor's basis is "carried over" to the donee).

Tax Reform Act of 1976

The Act provides that the basis of most property acquired from or passing from a decedent who dies after December 31, 1976, is to be the same as the decedent's basis immediately before his death (with certain adjustments). The basis of appreciated property is increased by Federal and State death taxes attributable to the appreciation in that property. In addition, the aggregate basis of all carryover basis property may be increased to a minimum of $60,000. A $10,000 exemption is provided for household and personal effects of the decedent. However, the basis of property cannot be increased above the estate tax value by these adjustments.

In addition, as a transitional rule, the adjusted basis of property which the decedent is treated as having held on December 31, 1976, is increased, for purposes of determining gain (but not loss), to its fair market value on December 31, 1976. In essence, this rule continues existing law with respect to appreciation in property occurring before January 1, 1977, and provides everyone with a "fresh start" with respect to the carryover basis rule for property acquired from a decedent.

Proposed amendments

I. SUSPENSION OF CARRYOVER BASIS

S. 2227 (introduced by Senators Byrd of Virginia and Dole) provides for a 2-year suspension of the effective date of the carryover basis provision so that it would apply only with respect to property acquired from a decedent dying after December 31, 1978. Senator Byrd also has a proposal to suspend carryover basis for a longer period of time.

II. REPEAL OF CARRYOVER BASIS

S. 1954 (introduced by Senator Curtis) would repeal the carryover basis provisions in the 1976 Act.

III. MODIFICATIONS OF CARRYOVER BASIS

S. 2228 (introduced by Senators Byrd of Virginia and Dole) and S. 2461 (introduced by Senator Hathaway) would make simplifying, correcting, and technical changes to carryover basis.

1. General Rule

Present law

Under the Tax Reform Act of 1976, the basis of property passing from a decedent is "carried over" from the decedent to the estate or heir. Basis adjustments are made for (1) certain death taxes attributable to appreciation, (2) appreciation arising prior to 1977 (the so-called "fresh start" adjustment), and (3) a $60,000 minimum basis.

S. 2228 (Byrd/Dole)

The bill would retain the general rule but makes simplifying, correcting, and technical changes.

S. 2461 (Hathaway)

The bill would retain the general rule for estates having carryover basis property with a value over $175,000, but make simplifying, correcting, and technical changes. Estates having carryover basis property with a value of $175,000 or less are exempt from carryover basis, and heirs' basis is to be value used for estate tax purposes.

2. Fresh Start Adjustment

Present law

Present law provides for an increase in basis for appreciation arising before 1977 for carryover basis property held on that date.

Technical Corrections Act

H.R. 6715 would provide a formula to determine a minimum basis of nonmarketable property for fresh-start purposes.

S. 2228 (Byrd/Dole)

The bill would exempt or "grandfather" property held on December 31, 1976. The "fresh start" basis adjustment would be repealed.

S. 2461 (Hathaway)

The bill would retain the fresh-start adjustment, but would make simplifying, correcting, and technical changes.

In the case of marketable property, S. 2461 would extend the marketable property rule to certain preferred stock. Regulations authority would be provided to extend the marketable property rule to other assets having a relatively fixed value on December 31, 1976 (e.g., closely held stock subject to buy-sell agreement among shareholders).

In the case of nonmarketable property, S. 2461 would provide a "discount back" formula similar to H.R. 6715 for determining the fresh-start basis, except (1) post-1976 appreciation is assumed to accrue at approximately 6 percent per year, (2) it applies to nonbusiness tangible personal property and a personal residence, and (3) the fresh-start basis is never to be less than 25 percent of the property's value at the decedent's death.

Also, S. 2461 would provide that the fresh-start adjustment is to be made for loss purposes as well as gain.

3. Exemption for personal and household effects

Present law

Under present law, an executor can elect to exclude $10,000 in value of personal and household effects from the carryover basis provisions.

S. 2228 (Byrd/Dole)

The bill has no provision relating to the exemption for personal and household effects.

S. 2461 (Hathaway)

The bill would increase the exemption for personal and household effects to $25,000.

4. Minimum basis adjustment

Present law

Under present law, an aggregate minimum basis of $60,000 is provided for all carryover basis property. The minimum basis adjustment is made after the fresh-start adjustment and the death tax adjustments.

S. 2228 (Byrd/Dole)

The bill would increase the minimum basis adjustment to $175,000 in 1981. It would be phased in from $120,000 beginning in 1977. The minimum basis adjustment would be made before the death tax adjustment.

S. 2461 (Hathaway)

The bill would increase the minimum basis to $175,000. In addition, S. 2461 would provide that the minimum basis adjustment is to be made before the death tax adjustment.

5. Death tax adjustments

Present law

Under present law, adjustments to basis are provided for death taxes attributable to appreciation. Separate adjustments are made for Federal estate taxes, State death taxes paid by an estate, and State death taxes paid by a beneficiary. The amount of the adjustment is determined on the basis of the average death tax rates.

S. 2228 (Byrd/Dole)

The bill would combine the death tax adjustments into a single adjustment to be made on the basis of Federal inclusion rules. Adjustments would be made to all property including charitable and marital deduction property. The amount of the adjustment would be determined on the basis of average marginal death tax rates attributable to appreciation, i.e., the difference in death taxes with and without including appreciation.

S. 2461 (Hathaway)

The bill would combine the death tax adjustments into a single adjustment to be made on the basis of Federal inclusion rules. The adjustment would be computed as follows: (1) single adjustment at highest marginal Federal estate rate if in a bracket by $50,000, (2) no adjustment if a Federal estate tax return is not required, and (3) allow adjustment for nontaxable estates for which returns are required at scheduled rates.

6. Personal residence

Present law

Under present law (as described in item 1 above), certain basis adjustments are permitted to be made to carryover basis property. No special rules are provided in the case of improvements to a personal residence.

S. 2228 (Byrd/Dole)

The bill contains no provision relating to a personal residence.

S. 2461 (Hathaway)

The bill would provide a special adjustment to basis of $250 per year for unsubstantiated improvements to the decedent's personal residence. If greater, the actual cost of substantiated improvements would be taken into account.

7. Information returns

Present law

Under present law, the executor is required to file with the Internal Revenue Service and furnish carryover basis information to the heir receiving property. Penalties are imposed for failure to do so.

S. 2228 (Byrd/Dole)

Under the bill, carryover basis information would not be required to be filed or furnished if the gross estate is less than $175,000 (phased in from $120,000 in 1977 to $175,000 in 1981).

S. 2461 (Hathaway)

Under the bill, the reporting requirements to the Internal Revenue Service would be repealed. In addition, reporting to beneficiaries would be required only if the value of carryover basis property in the estate exceeds $175,000. Finally, penalties would be imposed only if failure to furnish information is due to negligence or intentional disregard of rules.

8. Loss carryovers

Present law

Under present law, capital loss carryovers which were unused by the decedent do not carry over to the estate.

S. 2228 (Byrd/Dole)

The bill provides that the decedent's unused net operating and capital loss carryovers are to be carried over to the estate of the decedent.

S. 2461 (Hathaway)

The bill provides that the decedent's unused capital losses are carried over to the estate.

9. Depreciation recapture and pecuniary bequests

Present law

The gain recognized by an executor upon satisfaction of a pecuniary bequest is limited to post-death appreciation. The limitation upon gain recognized by an executor is not specifically coordinated with the various recapture rules.

S. 2228 (Byrd/Dole)

No provision.

S. 2461 (Hathaway)

The bill would limit depreciation recapture upon satisfaction of a pecuniary bequest to the gain recognized by the executor.

10. Installment sales by executor

Present law

Under present law, gain is recognized upon distribution of installment obligations received from a sale by the executor.

S. 2228 (Byrd/Dole)

No provision.

S. 2461 (Hathaway)

The bill would permit the executor to elect the installment method of reporting without recognition of gain when distributed to heirs who would be taxable as installment payments are received by them.

11. Stock redemption plans

Present law

Under present law, life insurance proceeds are exempt from income taxation unless the policy had been transferred for value.

S. 2228 (Byrd/Dole)

No provision.

S. 2461 (Hathaway)

The bill would provide an exception to the "transferred for value" exception to life insurance exclusion to permit stock redemp-

tion plans funded by life insurance to be converted to cross-purchase plans to prevent adverse tax consequences resulting from adoption of carryover basis for redemption plans established before 1977.

12. Capital gains treatment for inherited art work

Present law

Under present law, capital gain treatment is not available for art work, literary work, and similar property inherited from its creator.

S. 2228 (Byrd/Dole)

The bill would extend capital gain treatment to inherited art work, literary work, and similar property.

S. 2461 (Hathaway)

No provision.

13. Inherited carryover basis crops and livestock

Present law

In certain situations, capital gains treatment is available for sales by an executor to liquidate an estate even though the property sold had been inventory in the hands of the decedent. No specific rule is provided under present law to extend capital gains treatment to sales of crops and livestock which is carryover basis property.

S. 2228 (Byrd/Dole)

The bill would extend capital gain treatment to inherited crops and livestock, whether or not considered inventory in hands of estate or beneficiary.

S. 2461 (Hathaway)

No provision.

B. OTHER BILL PROVISIONS RELATING TO ESTATE AND GIFT TAXES

1. Transfers within 3 years of death

Present law

Transfers made within 3 years of death are included in the decedent's gross estate. These transfers are valued for estate tax purposes at the time of the transferor's death rather than at the time of the transfer.

Technical Corrections Act

The bill makes it clear that gifts eligible for the $3,000 annual gift tax exclusion are not included in the gross estate (exception for life insurance).

S. 2228 (Byrd/Dole)

The bill would repeal the transfer within 3-year-of-death rule except for life insurance transfers and transfers where the decedent had retained "strings."

S. 2461 (Hathaway)

The bill would continue present law (as amended by H.R. 6715), but with gift tax valuations used so that revaluations for the time of the transferors' death are not required. The rule is not applicable to life insurance or to transfers where decedent retained "strings."

2. Special valuation for farm and closely held business real property

Present law

Qualifying farm and closely held business real property may be valued for estate tax purposes at its current use value rather than its highest and best use.

As one of the eligibility requirements, the decedent or a member of his family must have materially participated in the operation for 5 out of 8 years preceding the decedent's death.

The estate tax savings attributable to special use valuation are recaptured if there are periods aggregating 3 years or more during which there is no material participation by a qualified heir or a member of his family.

Technical Corrections Act

The bill contains no provisions relating to the material participation requirements.

S. 2228 (Byrd/Dole)

Under the bill, the initial material participation requirement is met if the decedent or surviving spouse had materially participated for 20 years.

S. 2461 (Hathaway)

Same as S. 2228.

3. Extended payment provisions for estate taxes attributable to a closely held business

Present law

Two extended payment provisions are provided for estate taxes attributable to a closely held business. One provides a 10-year payment period (sec. 6166A) and the other a 15-year period (sec. 6166). The 15-year extension was added by the Tax Reform Act of 1976 and applies where the value of stock is 65 percent of the gross estate reduced by debts and administration expenses.

For the 15-year extension, a closely held business interest includes an interest in a corporation or partnership having 15 or fewer shareholders or partners. For the 10-year extension, an interest in a closely held business includes an interest in a corporation or partnership having 10 or fewer shareholders or partners.

Technical Corrections Act

The bill contains no provision to conform the definitions of an interest in a closely held business.

S. 2228 (Byrd/Dole)

The bill conforms the two definitions so that the rule for 15 shareholders or partners applies for both extended payment rules.

S. 2461 (Hathaway)

Same as S. 2228.

4. Stock redemptions to pay income taxes

Present law

Under present law, capital gains treatment is available for redemptions of closely held stock to pay death taxes and administration expenses (sec. 303). To qualify, the value of the stock included in the gross estate must be 50 percent of the gross estate reduced by debts and administration expenses.

The provision does not apply to stock redemptions to pay the income taxes attributable to a redemption to pay death taxes.

S. 2228 (Byrd/Dole)

The bill would extend capital gains treatment to cover stock redemptions to pay the income taxes attributable to redemptions to pay death taxes.

The bill would provide capital gains treatment for redemptions to pay death taxes and income taxes if the value of the stock is at least 35 percent of the gross estate.

S. 2461 (Hathaway)

No provision.

C. REVENUE EFFECT OF CARRYOVER BASIS BILL PROPOSALS

TABLE 1.—REVENUE EFFECT OF S. 1954 (SENATOR CURTIS): REPEAL OF THE CARRYOVER BASIS PROVISIONS OF THE TAX REFORM ACT OF 1976

[In millions of dollars]

Provision	Fiscal year— 1978	1979	1980	1981	1982	Long run [1]
Repeal of carryover basis	[2]	−36	−93	−162	−238	−1,080

[1] 18 to 20 yr.
[2] Less than $1,000,000.

TABLE 2.—REVENUE EFFECT OF S. 2227 (SENATORS BYRD OF VIRGINIA AND DOLE): POSTPONEMENT OF THE CARRYOVER BASIS PROVISIONS OF THE TAX REFORM ACT OF 1976

[In millions of dollars]

Provision	Fiscal year— 1978	1979	1980	1981	1982	Long run [1]
2-yr postponement of carryover basis	[2]	−36	−93	−76	−63	0

[1] 18 to 20 yr.
[2] Less than $1,000,000.

TABLE 3.—REVENUE EFFECT OF S. 2228 (SENATORS BYRD OF VIRGINIA AND DOLE): AMENDING THE CARRYOVER BASIS PROVISIONS OF THE TAX REFORM ACT OF 1976

[In millions of dollars]

Provision	Fiscal year— 1978	1979	1980	1981	1982	Long run [1]
"Grandfathering" Dec. 31, 1976 property	[2]	−36	−86	−146	−209	0
Increased minimum basis				−23	−39	−243
Single basis adjustment	[2]	[2]	[3]	[2]	[3]	[3]
Marginal rate basis adjustment				−9	−18	−109
Allocation of basis adjustment				+3	+6	+35
Art and literary work treated as capital asset	[2]	[2]	[2]	[2]	[2]	[2]
Crops and livestock as capital asset	[2]	−10	−14	−19	−24	−24
Gross estate includes gift tax and life insurance transferred within 3 yr of death	[4]	[4]	[4]	[4]	[4]	[4]
Material participation rule for farm valuation	[2]	[2]	[2]	[2]	[2]	[2]
Estate succeeds to decedent's NOL's and capital loss carryovers	[4]	[4]	[4]	[4]	[4]	[4]
Capital gains treatment for redemptions of closely held stock to pay income taxes on redemptions to pay death taxes	−1	−2	−3	−4	−5	−17
Capital gains treatment for stock redemptions if value of stock is more than 35 percent of gross estate	[2]	[2]	[2]	[2]	[2]	[2]
Closely held business definition	[2]	[2]	[2]	[2]	[2]	[2]
Total	−1	−48	−103	−198	−289	−358

[1] 18 to 20 yr.
[2] Less than $1,000,000.
[3] Less than $5,000,000.
[4] Less than $10,000,000.

TABLE 4.—REVENUE EFFECT OF S. 2461 (SENATOR HATHAWAY): AMENDING THE CARRYOVER BASIS PROVISIONS OF THE TAX REFORM ACT OF 1976

[In millions of dollars]

Provision	Fiscal year— 1978	1979	1980	1981	1982	Long run [1]
Fresh start for losses	(2)	−10	−8	−5	−2	0
Minimum basis formula	(2)	(2)	(2)	(2)	(2)	(2)
One fresh start						
Treat certain preferred stock as a marketable security	(2)	(2)	(2)	(2)	(2)	(2)
Increased minimum basis	(2)	−9	−23	−40	−60	−243
Single basis adjustment	(2)	(2)	(2)	(2)	(2)	(2)
Marginal rate basis adjustment	(2)	−5	−11	−19	−28	−128
Exclusion of household effects	(2)	(2)	(2)	(2)	(2)	(2)
Improvements on principal residence	(2)	(2)	(2)	(2)	(2)	4
Capital loss carryovers allowed to an estate	(2)	(2)	(2)	(2)	(2)	(2)
Transfer by estate of installment obligations to heirs	(2)	(2)	(2)	(2)	(2)	(2)
Transfer of insurance contract from stock redemption to cross purchase plan	(2)	(2)	(2)	(2)	(2)	(2)
Material participation rule for farm valuation	(2)	(2)	(2)	(2)	(2)	(2)
Closely held business definition	(2)	(2)	(2)	(2)	(2)	(2)
Value taxable gifts made within 3 yr. of death at time of transfer	(2)	(2)	(2)	(2)	(2)	(2)
Total	(3)	−24	−42	−64	−90	−375

[1] 18 to 20 yr.
[2] Less than $1,000,000.
[3] Less than $5,000,000.

WASHINGTON, D.C.,
October 3, 1978.

DEAR COLLEAGUE: The Senate may soon be considering the Revenue Act of 1978 (H.R. 13511). One provision of this legislation is the deferral of the effective date for the carryover basis rules in income taxation which are effective beginning in 1977. The bill, as reported by the Senate Finance Committee, changes the effective date to 1980.

The tax law prior to 1976 provided that the cost or other basis of property acquired from a decedent generally was "stepped up" to its fair market value at the date of death. This meant that appreciation in assets were not fully taxed on their subsequent sale.

The Congress believed this result was inequitable and therefore enacted the "carryover basis" rules as a part of the Tax Reform Act of 1976. The change provides that the basis of most property acquired from a decedent is to be the same as the decedent's basis immediately before his death (with certain adjustments). The basis of appreciated property is increased by Federal and State death taxes attributable to the appreciation in that property. In addition, the aggregate basis of all carryover basis property may be increased to a minimum of $60,000. A $10,000 exemption is provided for household and personal effects of the decedent.

In addition, as a transitional rule, the adjusted basis property which the decedent is treated as having held on December 31, 1976, is increased to its fair market value on December 31, 1976. In essence, this rule continues pre-1976 law with respect to appreciation in property occurring before January 1, 1977, and provides everyone with a "fresh start" with respect to the carryover basis rule for property acquired from a decedent.

The change made in 1976 is an essential element of a fair and progressive tax system. However, there are some technical modifications which need to be made to the carryover basis rules. Therefore, Senator Hathaway introduced S. 2461 to make these changes.

The "clean-up" bill contains the following major provisions: the minimum basis is increased; the death tax adjustment is simplified; the household effects exclusion is increased; a discount back formula is used to determine the "fresh-start" adjustment; and small estates are exempted from the reporting requirements.

We believe it is irresponsible to delay the carryover basis rules without making the necessary technical revisions. We would support a three year deferral and a "clean-up" of carryover basis as an acceptable compromise in order to expedite passage of the Revenue Act of 1978.

We are also opposed to any attempt to repeal or further dilute the important changes made in 1976. It is unconscionable to provide $1 billion tax relief to the wealthiest people in this country after imposing $446 billion of additional Social Security taxes on the low and middle-income workers.

This position has been supported, in principle, by the American Bar Association, the American Institute of CPAs, and the New York State Bar. The Treasury Department strongly supports S. 2461.

We intend to offer a series of amendments to the Revenue Act bill on the floor to make the modifications needed to make carryover basis more workable and equitable.

Should you have any questions, please call Jack Norman at 4-2523.

A COMPARISON OF S. 2461 (HATHAWAY) AND S. 2228 (BYRD/DOLE)

INTRODUCTION

Attached to this memorandum is a schematic comparison of the Hathaway and Byrd/Dole bills with the provisions broken down into the following categories:

I. Structural Provisions.
II. Transition Relief.
III. Reporting Requirements.
IV. Other Conforming Changes Relating to Carryover Basis.
V. Miscellaneous Technical Changes.

The purpose of the schematic comparison is to identify—

(1) areas of conceptual agreement, with a view to isolating those portions of the Hathaway bill which could be offered as non-controversial floor amendments (either seriatim or as a package) to H.R. 6715 (the Technical Corrections Bill); and

(2) areas of disagreement or coverage provided by Byrd/Dole alone which could be resolved and offered as a part of the floor amendments.

The purpose of this memorandum is to provide general background for the schematic comparison and, where appropriate, discussion of specific issues.

GENERAL BACKGROUND

First, there are no major conceptual differences between the two bills in the categories of structural provisions, reporting requirements and miscellaneous technical changes. In most cases, the Hathaway bill refines concepts first introduced in Byrd/Dole and S. 2238. But this is only to be expected since several months of intensive analysis followed the introduction of S. 2228 and S. 2238.

Second, the major area of disagreement is over the form of transition relief. Byrd/Dole would grandfather all assets acquired prior to December 31, 1976. Hathaway would amend the present fresh start rules to provide relief from the "lack of records" dilemma and, in general, insure that the transition relief is granted more equitably.

Third, in the category of other conforming changes, except for item IV, B, the Hathaway provisions should be acceptable to Senator Byrd. The same is not true as to certain provisons of Byrd/Dole that were not included in Hathaway. In particular, items IV, C, G, H, and I may not be acceptable to Senator Hathaway.

Summary: There is conceptual agreement on essentially all major issues directly related to carryover except grandfathering and all conforming issues except:

(1) Use of net operating loss carryovers by estates.

(2) Capital asset status of art work in the hands of heirs.

(3) Capital asset treatment for inherited crops and livestock.

(4) Extent of relief to be afforded by section 303.

Of the issues in disagreement, Treasury has previously indicated that it would not oppose relief for inherited art work and relief for those inheriting crops and livestock. In the latter case, Treasury would prefer to make the proceeds from sale by an estate eligible for the maximum tax rather than capital gain.

SPECIFIC PROVISIONS

(Note: Substantially similar provisions are not discussed.)

I. Structural provisions

A. Coverage

The Hathaway amendment would not only remove all non-filers from the system, but also those estates which include carryover basis property of up to $175,000 plus other assets, such as life insurance or I.R.D. An estimated 8 percent of decedents dying annually are removed from the operation of the system.

The Hathaway amendment will eliminate the proof of basis problem for affected executors and will, therefore, result in significant simplification. However, it is a cutback from current law treatment where property has declined in value from its acquisition date. For example, assume A acquired property for $200,000 and its date of death value was $150,000. Under present law, the carryover basis of the property would be $200,000. Under the amendment, the basis would be $150,000. Notwithstanding this fact, the amendment should be acceptable simply because it removes the necessity for basis inquiry in the bulk of cases.

B. Personal and Household Effects

The Hathaway amendment is intended to alleviate proof of basis problems in an area where basis substantiation is particularly difficult. While there is some difference of opinion as to the definition of assets subject to the exclusion, whether the exclusion should be elective, and the amount of the exclusion, there should be no substantial controversy over liberalizing the dollar amount of the exclusion.

C. Minimum Basis

1. Order of Adjustments. Both bills liberalize present law under which the minimum basis is computed *after* the death tax adjustments. Thus, under present law the minimum basis is a cap on adjustments. Under both bills, it is a floor to which the death tax adjustment is added.

2. Amount of minimum basis. The Hathaway bill provides an immediate increase in the minimum basis from $60,000 to $175,000.

Byrd/Dole phases the increase in over five years.

Both proposed amendments may be criticized on the grounds that the allocation formula requires recomputation of the minimum basis allocable to each asset if the value of one asset is changed on audit. Treasury would have avoided this by making allocation elective.

D. Single Depth Tax Adjustment

1. Method of Computation. The Hathaway bill is simpler and in most cases more generous than Byrd/Dole. Moreover, the revaluation of asset value upon audit will require the recomputation of the basis adjustment for only the affected asset unless the audit adjustment results in a bracket change.

2. Limiting the Adjustment to Property Subject to Tax. This limitation, as under Hathaway but not Byrd/Dole, is conceptually correct because the death tax basis adjustment is granted only to compensate for the estate tax which has been paid on the contingent income tax liability inherent in an appreciated asset. The value of property deductible from the gross estate does not, by definition, bear estate tax and should not, therefore, receive a basis adjustment.

Despite the foregoing, a proposal to apply the death tax adjustment to all assets might be palatable, if the aggregate adjustments were limited to actual taxes paid as in Byrd/Dole, rather than a simple percentage as Hathaway. In that case there is a finite amount of tax to be allocated and if some amount is allocated to property not subject to tax, the amount allocable to property subject to tax is reduced. While the possibility of double death tax adjustment for the same appreciation remains (e.g., if a surviving spouse dies owning the same appreciated property), it is purchased at the price of a reduction of the basis increase for property subject to tax.

The combination of the Hathaway percentage adjustment without limitation to actual tax is improper.

E. Personal Residence

The Hathaway amendment is responsive to the problem of lack of records for minor home improvements. The amendment applies only to a residence the holding period for which began after December 31, 1976. This is because the discount back formula will apply to residence acquired prior to that date. However, there are some unresolved technical problems in combining the fresh start adjustment with the allowance of the special $250 addition where a principal residence is acquired after December 31, 1976 but the basis "reflects" in part the basis of a residence acquired prior to that date because § 1034 applied.

F. Limit on Adjustments to Basis

This amendment in the Hathaway bill, viewed by itself, represents a potential cutback from present law for marketable securities whose estate tax value falls between original cost and 12/31/76 value. For example, if A bought a marketable security for $50 which was worth $100 at 12/31/76 and $75 at date of death, the basis of determining gain would be $100 and for loss $50. If the heir held the property until its value reached $100 and then sold, there would be no gain under present law but gain of $25 under the amendment.

The Hathaway amendment is justified on two grounds:

(1) It is a trade-off for the liberalizing amendment which permits the fresh start to be used for purposes of both gain and loss. (See Item II. 1) To illustrate, under present law in the above last situation, if the property continued to decline in value after being received by an heir, the heir would not be entitled to a loss on sale unless the sales proceeds were less than $50. Under the amendment, a loss would be allowed if the sales proceeds were less than $75.

(2) The amendment narrows the disparity in "fresh start" treatment between nonmarketable property (where under present law the fresh start basis cannot ever equal or exceed date of death value) and marketable securities.

III. Reporting requirements

Both bills effectively remove non-filing estates from reporting obligations. Hathaway goes further because, as noted earlier, his bill removes some filing estates from the system. Hathaway also eliminates reporting to the Service and relaxes the present penalty provision.

IV. Other conforming changes

B. Capital Loss Carryovers. The only difference between the two bills is the time period available to the estate to utilize unused capital loss carryovers of a decedent. Treasury has no objection to the Byrd/Dole formulation.

C. Net Operating Loss Carryovers. Permitting the use of unexpired net operating loss carryovers is not related to carryover basis as a concept and could permit artificial losses generated by tax shelter investments to continue beyond the decedent to his estate.

D. Recapture in Case of Pecuniary Bequest. This is a taxpayer relief provision. Without it, the recapture gain could exceed the amount of gain recognized under section 1040, which was designed to be the exclusive section determining the amount of gain to be recognized upon the funding of pecuniary bequest.

E. Installment Sales by Estate. The Hathaway amendment liberalizes present § 453 to extend the same tax treatment to sales made by the estate as could have been accomplished if the asset in question had been distributed to the beneficiaries and sold by them. The amendment will ease administrative problems where an asset is to be sold and there are multiple beneficiaries.

F. Distribution of Insurance Policies. The Hathaway amendment permits corporations to restructure stock buy-out agreements within a limited time period to avoid the adverse income tax consequences that flow from redemption agreements as compared to cross-purchase agreements. It permits taxpayers to act to remedy an unforseen consequence of the adoption of carryover basis.

G. Inherited Art Work. Treasury does not oppose this provision of Byrd/Dole.

H. Inherited Crops and Livestock. Relief for those inheriting crops or livestock is unjustified except as a political matter. The particular provision is an unwarranted expansion of the capital asset definition and is a dangerous precedent. If relief must be given, it should be done by granting maximum tax treatment (not capital gains status) to sales proceeds received by the decedent's estate (e.g., not individual beneficiaries). Maximum tax would limit tax to 50% as in the case of earned income.

I. Redemption to Pay Tax. The first part of the Byrd/Dole bill raises the issue of the extent to which § 303 should be extended to permit the additional bail-out of corporate earnings and profits at capital gains rates. The purpose of section 303 is to permit a limited bail-out to the extent of death taxes and funeral expenses. Section 303 is presently sufficient relief because:

(1) section 303 is used as a bail-out technique whether or not the liquidity problem exists.

(2) if liquidity problems still exist after a § 303 redemption, additional shares may be redeemed—the tax cost is just a bit higher. Moreover, alternative forms of financing exist to relieve the problem in the limited number of cases in which exists, e.g., loans or sales to other shareholders.

The burden of proving additional relief is necessary should be on those who are requesting the relief. Moreover, empirical, not visceral, evidence should be presented.

The second part of Byrd/Dole would reinstate one of the two qualification tests under prior law as an alternative determinant of qualification. Congress specifically changed the qualification requirements in 1976. The old test should not be reinstated unless the new test is demonstrated to be inadequate.

V. Miscellaneous technical changes

F. Transfers Within Three Years of Death. The provision in Byrd/Dole is an early Treasury proposal which was subsequently withdrawn after it became apparent that it required additional conforming changes to prevent abuses in the area of gifts to qualify for sections 303, 6166 and 6166A. Therefore, there is no reason to adopt the Byrd/Dole amendment. The Hathaway amendment will result in some simplification because the need for multiple appraisals would be reduced.

Comparison of S. 2461 (Hathaway) and S. 2228 (Byrd/Dole)

SUBJECT	S. 2461	S. 2228
I. Structural provisions	New § 1023(a)(3)	
A. Coverage	Exempts all estates with carryover basis property having an estate tax value of $175,000 or less (before personal and household effects exclusion)	No provision
B. Personal and Household Effects	New § 1023(b)(3) Increases present $10,000 exclusion to $25,000	No provision
C. Minimum Basis	New § 1023(c)(1)	§ 3(c)
1. Order of Adjustments	Minimum basis adjustment made prior to death tax adjustment	Same
2. Amount of Minimim Basis	New § 1023(c) Minimum basis increased from $60,000 to $175,000 immediately	§ 3(b) Increased minimum basis phased from $120,000 to $175,000 from 1977 to 1981

Comparison of S. 2461 (Hathaway) and S. 2228 (Byrd/Dole)—Continued

SUBJECT	S. 2461	S. 2228
D. Single Death Tax Adjustment	New § 1023 (d), (f) (3) Apply highest marginal rate from § 2001 (c) applicable to taxable estate to net appreciation in all property other than that used to fund marital or charitable bequest if at least $50,000 is subject to tax at that rate. If less than $50,000 is subject to tax at that rate, next lower marginal rate is used	§ 3(c) (1) (A) Apply actual "average marginal" death tax attributable to appreciation to all included appreciated assets in accordance with ratio of net appreciation in particular asset to total net appreciation
E. Personal Residence	New § 1023(g) (4) Provide a $250 per year addition to basis for unsubstantiated improvements to a personal residence the holding period for which commenced after December 31, 1976	No provision
F. Limit on Adjustments to Basis	New § 1023(f) (1) Adjustments to basis (including fresh start adjustment) cannot increase basis above estate tax value	No provision
G. Elective Average Basis	New § 1023(g) (5) Permits elective average basis for "classes" of property	§ 3(d) Similar
II. Transition relief	New § 1023(e) 1. Fresh start available for gain or loss 2. Fresh start time pro-ration formula calculated from estate tax value 3. Provides 6 percent discount formula with floor of 25 percent of estate tax value for non-business tangible personal property and personal residences 4. Treats non-convertible preferred start as having fresh start value equal to redemption price 5. Authorizes Secretary to issue regulations determining fresh start adjustment where property had a relatively fixed value on 12/31/76 and at all times thereafter	§ (a) (1) (C) Grandfathers all assets acquired prior to December 31, 1976
III. Reporting requirements	§ 3(c) 1. Eliminates requirement to report to IRS. 2. Require executor to report only basis of carryover basis property to recipients. 3. Provide for penalty in case of negligence or willful disregard of rules or regulations	§ 3(f) (1) 1. Eliminates requirement to report carryover basis if estate is less than $175,000 (phased in from 1977 to 1981)
IV. Other conforming changes relating to carryover basis		
A. Technical Changes (in Technical Corrections Bill):		
1. Holding Period	§ 3(d) (1) Provides automatic long term capital gain	§ 3(f) (4) Same
2. Sale of Term Interests	§ 3(d) (2) Denies basis for sale of term interest which is carryover basis property	No provision
B. Capital Loss Carryovers	§ 5(a) (1) Permits estate to use unused capital loss of decedent during estate's first taxable year	§ 6(a) Permits estate to use unused capital loss of decedent under Regulations to be prescribed by Secretary
C. Net Operating Loss Carryover	No provision	§ 6(a) Permits estate to use unused net operating loss of decedent (to extent not attributable to grandfathered property) under Regulations to be prescribed by Secretary
D. Recapture in Case of Pecuniary Bequest	§ 5(b) Limits recapture gain to amount recognized under § 1040	No provision
E. Installment Sales by Estate	§ 5(c) Permits executor to sell property on installment method and distribute installment obligation to beneficiaries without acceleration of gain at estate level	No provision
F. Distribution of Insurance Policies by Corporation to Co-Shareholder of Insured	§ 5(d) Amends § 101(a) (2) to permit a corporation which, on 12/31/76, had a redemption plan funded by insurance to distribute the insurance policies to shareholders so long as the policies are distributed by 1/1/81	No provision
G. Inherited Art Work	No provision	§ 3(f) (2) Would provide that inherited art work, etc. does not automatically lose capital asset status in the hands of an heir
H. Inherited Crops and Livestock	No provision	§ 3(f) (3) Would extend capital asset status to inherited crops or livestock whether or not considered inventory in the hands of heir
I. Redemption to pay Death Taxes, etc.	No provision	§ 7 1. Extends capital gain treatment to stock redemptions to pay the income tax attributable to redemption to pay death taxes 2. Permits § 303 qualifications if value of stock exceeds 35% of gross estate

Comparison of S. 2461 (Hathaway) and S. 2228 (Byrd/Dole)—Continued

SUBJECT	S. 2461	S. 2228
V. Miscellaneous technical changes		
A. Section 691(c) Deduction	§ 3 Provides that the estate tax deduction for income in respect of a decedent is to be computed at marginal rates separately for federal and state death taxes	§ 3(c)(1)(B) Provides a similar change but with the marginal rate determined by a single computation after reducing the estate by "net appreciation"
B. Basis Adjustment for Gift Tax Attributable to Appreciation	§ 4(a), (b) 1. Provides a basis adjustment for both federal and state gift taxes attributable to appreciation (determined at the highest marginal rates) to be allocated among appreciated property given in accordance with the ratio of net appreciation in each propetry to total net appreciation. 2. Gift tax basis adjustment is not available for property retained by donee and included in donor's gross estate	§ 3(c)(1)(C) 1. Similar, but less refined 2. No provision
C. Marginal Tax Adjustment for Generation-Skipping Transfer	§ 4(c) Conforms the generation-skipping tax basis adjustments of § 2614(a) to the amended basis adjustments for estate and gift tax attributable to appreciation	No provision
D. Material Participation and Special Use Valuation	§ 6 1. Initial qualification is met if decedent or spouse materially participated for any 20 year period prior to death 2. "5 of 8" test for continuing qualification measured from date of death where property qualified by reason of 1. 3. Permits activities of agents to be attributed to a limited class of qualified heirs	§ 5 1. Same 2. No provision 3. Same
E. Coordination of Section 6166 and 6166A	§ 7 Conforms the definition of "closely held business" by adopting § 6166 for both sections	§ 8 Same
F. Transfers Within 3 Years of Death	§ 8 Provides for gift tax valuation to be used to determine the includible amount except for life insurance and transfers where decedent retained "strings"	§ 4 Repeals the transfer within 3 years of death rule except for life insurance transfers and transfers where decedent retained "strings"

The provisions of my bill have been endorsed by the Tax Section of the American Bar Association, the American Institute of Certified Public Accountants, and the New York State Bar Association. Their views are reflected in the following letters:

APRIL 6, 1978.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance,
Washington, D.C.

DEAR MR. CHAIRMAN: The Section of Taxation of the American Bar Association was extremely gratified by the action of the Committee on Finance in deferring the effective date of the Carryover Basis provisions of the Internal Revenue Code. This deferral period will provide the necessary time for a deliberate study of the perceived problem and the most effective means of correcting it.

As you are well aware, there are a number of possible solutions to the problems. These range from the simple, rough equity solution adopted by Congress in the 1940's of adding a few percentage points to the top rate brackets (where the greatest benefit from stepped-up basis lies) through a number of different methods of imposing an income tax at death on appreciation in value, to the carryover basis concept. In the opinion of a number of knowledgeable people, some of these "solutions" are substantially less complicated, and possibly more equitable, than is carryover basis.

There appears to be substantial agreement among all concerned, however, that Carryover Basis as presently constituted requires major improvement. Some of the necessary improvements are contained in the bill (S. 2461) introduced by Senator Hathaway on January 30, 1978; additional improvements are contained in proposals of the Department of the Treasury. These improvements at the very least should be considered in evaluating Carryover Basis as one possible solution to the problem. Such an evaluation is meaningful only if Carryover Basis is considered in its most workable and, therefore, most acceptable form.

Accordingly, the Section of Taxation would consider it to be appropriate for the provisions of S. 2461, as amended by other proposals of the Treasury Department and by proposals which we shall make, to be adopted as part of the law during the deferral period as a basis for study of the preferred alternatives.

As you know from our prior correspondence, the Section of Taxation also urges early enactment of those provisions of H.R. 6715, The Technical Corrections Bill of 1977, pertaining to corrections of provisions of the Tax Reform Act of 1976 that are necessary for the orderly and fair administration of our tax laws.

We would welcome the opportunity to work with you and to testify at any further hearings your Committee may hold on Carryover Basis.

Yours very truly,

JOHN S. PENNELL,
Chairman.

MARCH 1, 1978.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: At a meeting on February 18, 1978, the Executive Committee of the Federal Tax Division of the American Institute of Certified Public Accountants determined that the AICPA should modify its position on carryover basis.

For several years, the AICPA has been on record as opposing carryover basis. Our position was detailed in Statement of Tax Policy Number 4, "Estate and Gift Tax Reform", which was approved by the Executive Committee of the Federal Tax Division in 1974. We have expressed this position before the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance at a hearing on October 28, 1977.

Our opposition to carryover basis has been based, in part, on our conclusion that the current law is unworkable. We now believe, however, that the provisions of S. 2461, introduced by Senator Hathaway on January 1, 1978, if amended by certain other proposals which have been made by the Department of the Treasury and which we shall make, would change that conclusion. We recommend, therefore, that the Senate support a deferral of the effective date of carryover, as has been passed by the Senate Finance Committee, and the enactment of S. 2461, as appropriately amended, to become effective at the end of the deferral period. We also recommend that further hearings be held in the near future.

We will be happy to work with you and to testify at any hearings your Committee holds on this subject.

Sincerely,

ARTHUR J. DIXON.

MARCH 6, 1978.

Re H.R. 6715—Carryover Basis Provisions.
Senator HARRY F. BYRD, Jr.
Rayburn Senate Office Building,
Washington, D.C.

DEAR SENATOR BYRD: As a result of your interest and concern (which we appreciate greatly) and at your urging, the Senate Finance Committee has voted that the effective date of the controversial carryover basis provisions of the Tax Reform Act of 1976 be postponed until January 1, 1980.

The members of the Trusts and Estates Law Section of the New York State Bar Association* are keenly interested in this legislative development. Representatives of the Section have prepared and filed submissions to Mr. Ullman's Committee on the subject of carryover basis; the undersigned have testified before his Committee on behalf of the Section; and we have corresponded with Mr. Lubick's office and Senator Moynihan's staff in connection with carryover basis and related problems.

In the Section's statement filed with Mr. Ullman's Committee on October 6, 1977, we

*There are currently approximately 2,900 members of the Section.

expressed our position on carryover basis as follows:

"We believe that carryover basis should either be repealed in its entirety or be substantially modified to make it workable and equitable. For the reasons set forth below, we oppose AET, capital gain tax at death and suspension of the effective date."

Nonetheless, as things have developed since the filing of that statement, we welcome the proposed moratorium. However, we consider it unfortunate that upon the expiration of the postponement, H.R. 6715 in its current form would be effective.

We believe that the carryover basis provisions of the Tax Reform Act, even as modified by H.R. 6715, fall far short of providing a workable and equitable carryover basis rule. On the other hand, the proposed amendments to carryover basis introduced by Senator Hathaway in S. 2461 may, with certain modifications, provide workable and equitable solutions to the most serious deficiencies in the existing carryover basis provisions. We understand that the Administration is content that the Hathaway Bill be passed. Accordingly, we believe that it would be in the best interests of both the Congress and the taxpayers if the Hathaway Bill with modifications were incorporated into H.R. 6715 as a floor amendment or in such other manner as would be feasible procedurally.

If the Hathaway Bill is not enacted, the 1976 legislation will be permitted to stand even though in the view of both the Administration and the great majority of professional commentators, it is seriously deficient technically and will result in harsh and expensive burdens on taxpayers. Because of the ever-mounting pressure of Congressional business, there is a very real danger that there will be no opportunity to reform these defects in the sessions which occur between now and 1980. Surely, it is neither wise nor effective legislative policy to leave clearly defective legislation on the books. The opportunity should now be taken to enact a vastly improved carryover basis rule by adoption of a modified Hathaway Bill together with the moratorium.

Briefly stated, the provisions of the Hathaway Bill which we consider to be the most substantial contributions to the reform of the carryover basis rules are:

(1) The exclusion from carryover basis of estates having a fair market value of $175,000 or less. This provision will have the salutary effect of relieving estates which can least afford it from the burdens and expenses of complying with the carryover basis rules without significant revenue loss;

(2) The increase from $10,000 to $25,000 of the value of personal and household effects that will not be subject to carryover basis treatment. One of the major objections to carryover basis has been the inordinate time and expense that would be required in record searches to establish the acquisition date and cost of personal and household effects. This increase will make a substantial contribution toward alleviating the problem;

(3) The increase from $60,000 to $175,000 of the minimum basis adjustment. As in the case of the two improvements discussed above, this amendment would greatly decrease the burdens of carryover basis for small estates;

(4) Uniformity of basis for purposes of determining gain and loss. We have long urged that there should be no distinction between basis computations for purposes of gain and loss. We welcome the Hathaway Bill's adoption of a uniform rule;

(5) "Fresh Start". The often arbitrary and artificial results of the "fresh-start" formula for nonmarketable securities are greatly ameliorated by the Hathaway Bill and we believe that the fresh-start formula set forth in the Bill will lead to far more equitable results;

(6) Adjustment for Death Taxes. The basis adjustment for Federal death taxes based on the marginal Federal estate tax should clarify and simplify one of the most complex and difficult to administer carryover basis rules; and

(7) Capital Loss Carryover From Decedents. We have earlier urged adoption of such a measure as being a necessary concomitant of carryover basis.

The foregoing is a partial list of the improvements made by the Hathaway Bill. The modifications we would suggest are that:

(1) Assets held by a decedent on December 31, 1976 be "grandfathered"—that is, not considered to be carryover basis property; and

(2) Section 303 be expanded to permit non-dividend treatment when stock is redeemed for the purpose of paying the income tax precipitated by a stock redemption to pay estate tax.

The enactment of the Hathaway Bill, even if not so modified, would go far to putting to rest the most frequent criticisms of the present carryover basis rules which have centered around the burdensome record searching and recordkeeping requirements in cases involving property of relatively little value. Further, taxpayers and their advisors would be in a much better position to plan estates if the Hathaway Bill were passed. If the Bill is not passed, they would be faced with what is clearly an inequitable and unworkable statutory scheme involving many unresolved questions of construction and effect. If the Hathaway Bill as modified were to be adopted now, even if the pressure of legislative business makes it impossible to return to consideration of carryover basis prior to its effective date, there will at least be the assurance of a workable and comprehensible statute coming into play in 1980.

For these reasons, we urge adoption of a combined Byrd-Hathaway Bill as a part of H.R. 6715 and we hope that this will be passed during this session.

Very truly yours,

IRA H. LUSTGARTEN,
WILLIAM B. WARREN,
Vice-Chairman of the Committee on Taxation of the Section.

In addition, the Treasury Department in a letter to all Senators signed by Secretary Blumenthal opposed any deferral or repeal of carryover basis.

WASHINGTON, D.C.,
October 3, 1978.

DEAR SENATOR: The Finance Committee has reported H.R. 13511, the Revenue Act of 1978, to the full Senate for debate. In some respects, the bill marks an improvement over the House version. However, the Administration has major objections to the Committee bill.

First, the tax reductions in the bill are excessive and inflationary. The Finance Committee bill exceeds the Administration's proposed net tax reductions by $5.4 billion in calendar 1979, by $5.3 billion in FY 1980, and by $6.7 billion in FY 1981. These excessive outyear costs would prejudice our efforts to reduce the budget deficit and bring inflation under control. The inflation rate, which has begun to decline from the double digit pace of the first half of this year, must remain our number one concern and must be steadily reduced through the remainder of this decade. The budget deficit in FY 1979 will be about $40 billion. We must reduce that deficit as quickly as possible, and this requires discipline not only on spending but on the size of this tax cut, and not solely for FY 1979 but aslo for FY 1980, 1981 and beyond. The Finance Committee bill does not reflect an adequate anti-inflationary discipline in the outyears. It would seriously compromise the outyear budget flexibility and discretion of both the Congress and the Administration.

Second, the bill's tax relief is unbalanced. While the distribution of the individuals' tax cuts is better than in the House version, it is still not satisfactory. The tax cuts for middle income families barely offset the 1979 Social Security tax increase and one year's inflation, while the relief afforded very high income taxpayers offsets these factors many times over. The individual relief should be redistributed in favor of middle income taxpayers.

Third, the bill is deficient in that its alternate minimum tax permits very high income taxpayers to shelter more of their income from tax than does present law. I'm sure you agree that every taxpayer should contribute a reasonable amount to the costs of government.

The Senate Finance Committee bill does not accomplish this objective. Accordingly, the alternative minimum tax in the bill needs strengthening.

Fourth, the bill ignores most of the proposals for structural reform advanced by the Administration and instead would clutter the tax law with a collection of new and inequitable preferences, loopholes, and special interest tax breaks. For example: tax forgiveness for those inheriting appreciated property; reopening a loophole for bond issues engineered by one securities firm; revival of expired investment credits to benefit a single company; a special exception to reporting requirements for charge account tips; preferential tax postponement for executives of trade associations; and special accounting rules for a few large corporate farms.

A major source of the first three problems—excessive outyear costs, unbalanced distribution of relief, and excessive tax sheltering—lies in the Committee's additions to the House bill in the area of capital income taxation. The House bill cut capital gains taxes by about $1.7 billion on an annual basis, reducing the maximum tax rate on capital gains to 35 percent. The Senate Finance Committee supplemented this very generous relief with another $1.4 billion in revenue losses, further reducing the maximum tax rate on capital gains to only 21 percent (versus 70 percent on ordinary income). Facing stringent budget constraints, the bill's relief for capital gains should be more reasonable in amount and should, as noted, be accompanied by a genuinely effective alternative minimum tax.

The budget constraints also make inadvisable the Committee's liberalization of depreciation rules, another addition to the House bill. The revenue cost of this provision, $1.9 billion, hits hardest in the outyears. These costs cannot be responsibly undertaken until competing budget needs for those outyears are assessed by future Congresses.

Taken together, these added features have made the bill too large from the point of fiscal prudence and have skewed its relief inequitably toward the very highest income brackets.

I urge you to help improve the bill on the Senate floor. While the FY 1979 fiscal impact of the bill is about right, the outyear revenue losses are clearly excessive. The American economy needs a tax cut which allows progressive reduction in the budget deficit, and the American people deserve a cut that is more balanced and equitable.

It is especially important that the Senate refrain from further enlarging the revenue losses.

In this regard, I wish to re-emphasize our opposition to indexing the tax system to inflation. This dangerous and unworkable experiment would mark a surrender by the Congress in the fight against inflation.

I am enclosing a detailed description of H.R. 13511, together with revenue estimates and a summary of the Treasury's position on each provision.

I am also enclosing two tables. The first compares, for fiscal and calendar years 1979, 1980, and 1981, the size of the net tax reductions under the Administration's proposals (including urban initiatives), H.R. 13511 as passed by the House, and H.R. 13511 as reported by the Finance Committee. This table illustrates the excessive current and outyear costs associated with the Finance Committee bill.

The second table shows the distribution of the tax changes attributable to the capital gains provisions of the Finance Committee bill. Of the $3.1 billion in tax relief provided by these provisions, the table demonstrates that about 30 percent of the benefits go to those with expanded incomes of $200,000 and more. Over two-thirds of the benefits go to those earning more than $50,000 annually.

I look forward to working with you to make H.R. 13511 comport with budgetary constraints and basic principles of tax equity.

Sincerely,

W. MICHAEL BLUMENTHAL.

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(2) Carryover Basis. Prior to passage of the Tax Reform Act of 1976, the tax law provided for the complete forgiveness of any income tax on appreciated property held until death. A decedent's heirs were granted a step-up in basis of inherited property. The effect of this rule was to measure taxable gain on a subsequent sale only with respect to appreciation occurring after the decedent's death.

The rule for a step-up in basis at time of death was justifiably criticized as one of the most outrageous loopholes in the Internal Revenue Code. It discriminated among different forms of wealth. If an individual accumulated savings from the proceeds of asset sales or from wages, that wealth was subject to both income and estate taxation. On the other hand, only an estate tax was imposed on those persons who could afford to invest in assets and retain those assets until death (perhaps using the appreciated value to secure loans through the years). The 1963 Administration program proposed that this loophole be closed by taxing unrealized appreciation at death.

As a counterpart to substantial estate tax relief, the Tax Reform Act of 1976 adopted a compromise position between the 1963 proposal for taxing capital gains at death and the step-up basis rule. The 1976 Act would generally require an heir to use the same asset basis as used by the decedent (with certain adjustments to account for death taxes paid).

Transition rules were provided so that the new "carryover basis" rules would apply only to appreciation occurring after 1976.

The provisions in the 1976 Act have been properly criticized as being too complex. Senator Hathaway has worked with the Administration and with representatives of the legal and accounting professions to devise amendments to "clean up" the carryover basis rules. These revisions would eliminate substantially all the technical difficulties of the present statutory structure.

The Finance Committee voted to postpone the effective date of the carryover basis provisions until 1980. The Committee declined to adopt the "clean up" bill proposed by Senator Hathaway.

Revenue Estimate:

FY 79	−36
CY 79	−93
FY 83	−190
CY 83	−200

Administration Position: Opposed.

In view of the remedial changes that would be effected by the Hathaway bill, postponement of carryover basis is unnecessary. The Finance Committee bill would promote uncertainty. Taxpayers would be unable to plan adequately for the future.

Even if carryover basis is postponed, it is critical that the clean up amendments be adopted. The public deserves to see what will go into effect at the end of the deferral period. The failure to enact the Hathaway bill along with postponement is an effort to undermine the carryover basis provisions and to create pressure for restoring the step-up basis loophole.

Mr. President, only yesterday I received a letter from two prestigious lawyers in New York who argue eloquently and effectively for the carryover basis rules and against even a deferral of the effective date of the 1976 changes.

OCTOBER 2, 1978.

Re Carryover Basis.

Hon. WILLIAM D. HATHAWAY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HATHAWAY: I am the co-author, with Jonathan G. Blattmachr, of the major tax treatise on carryover basis entitled: "Carryover Basis Under The 1976 Tax Reform Act" published by the Journal of Taxation in 1977. Having testified before the House Ways and Means Committee on October 17, 1977 and Senator Byrd's Subcommittee of the Senate Finance Committee on October 31, 1977 (Hearings Before the 95th Congress, First Session, at pages 227 et seq. and pages 275 et seq., respectively) our professional credentials and our posture with respect to carryover basis are a matter of public record.

Both before House Ways and Means and the Senate Finance Committee, as well as before many assembled groups of lawyers, bankers, accountants and other professionals who advise clients with respect to such matters, Mr. Blattmachr and I have stated unequivocably that a moratorium on carryover basis would be a terrible mistake for the following reasons:

First, we are convinced that a moratorium is a prelude to repeal. Without arguing the merits of repeal, it seems to us that if the Congress at this stage should conclude that the reasons for enacting carryover basis are no longer valid or were not valid in the first place, then the Congress should repeal carryover basis and revert to prior law.

Second, the strategem of moratorium may be to stall for time in order to develop proposals for capital gains tax at death or the so-called "additional estate tax" as an alternative to carryover basis, which would be the worst result of all. As set forth in our testimony before the House Ways and Means and the Senate Finance Committee, capital gains at death and the additional estate tax have the same inherent problems as carryover basis with one major difference: the estate pays the tax now rather than later.

Third, it places the taxpayer and his advisors in a state of limbo when what we need is certainty not delay.

Fourth, it creates administrative havoc with respect to the thousands of income tax returns heretofore filed reflecting the effects of the new carryover basis provisions.

Of course, the reason given in support of moratorium is that it will provide the time necessary to draft appropriate amendments and corrections to the existing carryover basis provisions. However, we simply do not accept that as a reasonable assumption. We know that as a practical matter, if a moratorium is passed by the Congress, carryover basis will sit on the back burner until the day before the moratorium is to end, and then we will hear a hue and cry for a further moratorium. The fact is that the staffs of the House Ways and Means Committee, the Senate Finance Committee, the Joint Committee on Taxation, the Treasury Department and the Internal Revenue Service are terribly overworked on pressing matters such as the 1978 tax bill new bankruptcy law, the energy bill, the social security bill and the regulations that are absolutely essential with respect to the Tax Reform Act of 1976. The Internal Revenue Service, for example, has recently refused to issue a ruling on a generation-skipping transfer problem because it simply does not have the time to do so. The Service suggests that regulations will be issued shortly and that all such ruling requests must await the issuance of regulations. However, we were told that regulations would issue shortly after the end of 1976. Then we were told that regulations would issue in the spring, then the summer, then the fall of 1977. The fact of the matter is that pencil has not yet been put to paper. Therefore, it is wholly impractical to think that anyone is going to function on carryover basis so long as there is a moratorium in effect.

I would like to address myself to a very brief analysis of the merits of carryover basis. For decades it has been argued that the so-called "step-up in basis" at death was a serious tax loophole and a major "give-away" in our system of Federal income taxation. It is without question that the step-up in basis at death created a very substantial inequity among taxpayers so that those who could afford to hold on to appreciated property until death would no longer be favored over those who could not hold on to appreciated property until death. I am sure you have heard the classic hypothetical case of Mr. A and Mr. B who buy the same security on the same day at the same price through the same stockbroker and the following day decide to sell that stock. On the way to their broker, Mr. A dies before he sells and Mr. B dies immediately after he sells. The fact of the difference in timing of their deaths results in a substantial difference in taxation. Any tax system that creates that result requires change.

The Congress in 1976 decided that carryover basis was the change to be made. Since then, we have heard nothing but complaints about the complexities engendered by that change. First, I would like to point out that the complexities arise not by virtue of the concept of carryover basis but, rather, by Congress's desire to create certain adjustments for the benefit of the taxpayer. For example, the Congress decided that taxpayers should receive a "fresh start" as of December 31, 1976. That adjustment which creates a great deal of complexity was solely for the taxpayers' benefit.

But I think the most cogent point made with respect to the complexities of carryover basis, albeit perhaps facetiously, was that made by Thomas J. Reese in his testimony before the House Ways and Means Committee on October 6 (at page 102 of the Hearings before that Committee). He suggested that we suspend reality for a moment and make believe that Congress, instead of enacting carryover basis, enacted in its place a reward for those taxpayers who were fortunate enough to die owning appreciated property by providing for a credit against the estate tax of an amount equal to 10% of the net appreciation in each carryover basis asset owned by the decedent at the time of his death. It was then suggested by Mr. Reese that it would take the lawyers, accountants and professional fiduciaries a very short period of time in which to ascertain the net appreciation in those assets. The point is obvious: When the work involved generates a credit rather than a tax, we all find the burden of the work acceptable and do-able.

We cannot urge strongly enough our position that a moratorium is the worst possible resolution of this most difficult problem. We should, instead, address ourselves to the merits of the various proposals—particularly your bill—and give the taxpayer and his advisor what they need most: certainty in the law.

Respectfully,

THOMAS J. MCGRATH.●

Mr. President. I believe that it is irresponsible and an affront to the hard-working citizens of America to defer carryover basis and allow $11 billion of appreciation in the estates of the 4 percent wealthiest people in this Nation to go untaxed during the deferral period while at the same time imposing $35 billion of additional social security taxes on the working citizens of America.

I oppose repeal of carryover basis. I do not favor a deferral of the effective date for carryover basis provisions. I would, however, accept a deferral period if coupled with "cleanup" amendments similar to those I introduced in S. 2461.

It is imperative that the estate tax reform of 1976 be retained, but in an equitable and administrable manner.

● Mr. CHURCH. Mr. President, as chairman of the Senate Committee on Aging, I shall direct my remarks to kev provisions in H.R. 13511, which would benefit elderly taxpayers.

I am especially pleased that the Senate today adopted my amendment—by a vote of 73 to 18—to provide a onetime, up to $100,000 exclusion from capital gains tax for homeowners who are 55 or older or disabled.

This provision will be especially helpful for older Americans who must scale down their life style as they prepare for retirement or those who wish to move into smaller homes after raising their children.

The Revenue Act of 1978. includes several other measures directly benefiting older Americans.

TAX CREDIT FOR THE ELDERLY

The committee bill updates the tax credit for Government pensioners and others with little or no social security.

Under present law, taxpayers 65 or older may claim a 15-percent credit on up to $2,500 for individuals and $3,750 for elderly couples. This produces a tax savings of $375 for persons entitled to the maximum credit and $562.50 for elderly couples who are similarly situated.

The maximum amounts for computing the credit, however, are reduced: First, dollar-for-dollar by social security and other tax-exempt Federal benefits, and second, by $1 for each $2 of adjusted gross income above $7,500 for aged individuals and $10,000 for elderly couples. The effect is that the credit is phased out completely for elderly persons with income of $12,500 or more and aged couples with $17,500 or more.

The committee bill would update the tax credit for the elderly—along the line that Senator INOUYE and I recommended—by increasing the maximum amounts for computing it from $2,500 to $3,000 for qualifying individuals and from $3,750 to $4,500 for couples. This change alone could provide an additional $75 in tax relief for single persons and $112.50 for couples.

In addition, H.R. 13511 would raise the adjusted gross income phaseout provisions from $7,500 to $15,000 for individuals and from $10,000 to $17,500 for couples.

Nearly 1.9 million returns with an aged taxpayer would be benefited from these two changes. About 94 percent of the relief would be directed to older taxpayers with lower or moderate income—those with annual incomes under $20,000.

OLDER AMERICANS TAX COUNSELING ASSISTANCE ACT

I am also pleased that the committee bill includes my Older Americans Tax Counseling Assistance Act. I want to pay special tribute to Senator HASKELL, a member of the Senate Finance Committee who offered this provision on my behalf. He has distinguished himself during his 6 years in the Senate as a concerned and effective advocate for older Americans.

Our proposal would authorize the Internal Revenue Service to enter into training and technical assistance agreements with nonprofit organizations to prepare volunteers to provide tax counseling assistance for elderly persons—individuals who are at least 60 years old. It would also permit volunteer tax counselors to be reimbursed for their out-of-pocket expenses in assisting taxpayers. Many competent older persons would like to assist other aged taxpayers in preparing their taxes, but they cannot afford the additional expenses for travel, meals, and other items. The reimbursement would be small for each consultant, but it would be helpful for those who need it.

Finally, the amendment would direct the IRS to conduct special alerts to make elderly persons aware of helpful tax relief provisions, such as the exclusion on the sale of a personal residence for older Americans or the tax credit for the elderly.

Older Americans—more so than younger taxpayers—frequently encounter special problems when they prepare their tax returns, because they are typically faced with a new set of rules upon becoming 65 years old. Perhaps the most troubled is the elderly widow who typically has low or moderate income and little or no experience in preparing a tax return.

Appropriate tax counseling assistance can help to assure that older Americans do not make errors in computing their taxes. It can also protect elderly persons from overpaying their taxes.

OTHER PROVISIONS

Older Americans would receive relief from several other provisions in the committee bill. including:

The rate reduction;

The increase in the minimum standard deduction from $2,200 to $2,300 for individuals and from $3,200 to $3,400 for elderly couples filing jointly; and

The increase in the personal exemption from $750 to $1,000.●

RESERVATIONS ABOUT THE SURTAX PROVISION

● Mr. HATCH. Mr. President, by including this surtax in the bill, the Finance Committee seeks to strike a blow, a fatal blow at the spiraling increase in Government spending. I praise the committee for its good intentions. Let it be known that I take my hat off to any Senator who sincerely wants to put a stop to the senseless growth of Federal Government. Our Federal budget has already reached astronomical figures. Each year, the Congress finds dozens of new programs to create and support. Each year, the Congress builds into its budget dozens of new spending constituencies which grow to depend on Government money. Once a Federal program has been started, it never seems to end. And it usually requires greater commitments of money in future years. Hundreds of lobbyists walk the halls of Congress every day to insure that their special interest group will receive its cut of the pie; and the bigger the cut the better. I wholeheartedly agree with the members of the Finance Committee that the time has come to put a stop to this dangerous pattern of government growth.

Mr. President, another objective of this tax provision, according to the committee report, is to achieve a balanced budget. We are told that this measure will guarantee that additional revenues will be available whenever the Congress gets carried away with extravagant spending programs. Never again will we lose control of the Federal deficit.

Once more, Mr. President, I congratulate the Finance Committee for its noble efforts. As we all know, the promise of a balanced budget has consistently evaded the grasp of Congress during the past decade. And our Nation has suffered. These tremendous deficits are responsible for an inflation rate that has drained the morale and initiative of the American public, upset the international balance of trade, and left our country bankrupt. My constituents write to me daily to express their concern over this matter. Therefore, I wholeheartedly agree with the members of the Finance Committee that the time has come to ultimately decide that the Federal Government be allowed to spend only what it is able to afford.

But, Mr. President, I do not agree with the method chosen by the committee to achieve these laudatory goals. If this provision is sustained, what will happen? No one really knows. By passing this legislation, Congress may very well open a Pandora's box that America's taxpayers will never be able to close. On its face, this provision sounds marvelous. If everything goes according to plan, Members of Congress will suddenly get religion. They will learn that they must turn from their sin of excessive Government spending or face the fiery wrath of voting taxpayers.

But what if they do not? What if Congress has no sense of shame? What if things do not work out as planned? I am sure that I do not need to instruct my colleagues that the congressional appropriations and budget process is very complicated. After many months of committee hearings and analyses, the Federal budget is put together and finally brought to the floors of the House and Senate for approval. It is not until the end of this budget process that Congress can clearly see the total figures; can clearly see the excess that has resulted. And then it is too late. I know from experience that it is too late. I stood on the floor of this Chamber only 1 month ago, during consideration of the second concurrent budget resolution, and was told by the distinguished leaders of the Budget Committee that there was no place to

cut spending. I was told that everything had been done that could be done to slash excess expenditures. I was told that much of our budget was determined by contracts that had been made in the past. I was told that uncontrollables such as social security and pension programs precluded the Congress from changing the budget. I was told that all the waste had been carefully eliminated. And I was told that I should be happy that spending had not reached even higher levels.

Can the sponsors of this provision in the tax bill guarantee that Congress will not overspend the 2-percent limit? Can they guarantee that the surtax will not become just another tax to which the overburdened public will eventually acquiesce? I wish that one additional line on our tax forms would put an end, once and for all, to excessive spending. But there is certainly no assurance that it will. Mr. President, the committee's approach reminds me of the fellow who tries to get a drink of water from an open fire hydrant. He may very well quench his thirst. But he will surely get soaked in the process. The American taxpayer has already been soaked time and time again. They can ill afford another dousing.

Mr. President, this provision was designed to help teach the American people what bigger Government is costing them. However, many voters might learn another lesson.

It seems to me that the effect of this surtax provision will not be to hold down spending, but to teach a majority of the voters that they do not pay for Federal spending. IRS figures show that in 1976, the bottom half of the taxpayers paid only 6.7 percent of the total personal income taxes collected. These were people with adjusted gross incomes of $9,560 or less. Their average tax bill was $224. On page 222 of its report the committee gives an example of how the surtax would work in the event of overspending. In this example the surtax comes out to be 6 percent. For the bottom half of taxpayers, that means an average tax increase of only $13.44.

On the other hand, IRS figures show that in 1976 the top 10 percent of taxpayers—those with adjusted gross incomes of $24,971 or more, paid half of the total personal income taxes collected. The average tax paid by this group was $8,378. Using the Finance Committee's example of a 6-percent surtax, that means an average tax increase of a whopping $502.68. Obviously, the surtax will be paid by people earning $25,000 a year and up. What we have here is another income redistribution tax. If we combine that half of the taxpayers who pay very little tax with the millions of people we have dropped off of the tax rolls, we have a majority of voters who pay next to nothing for Federal spending programs. This is precisely the group who will benefit most from the spending programs. So this surtax becomes an engine, not for holding down spending, but for increasing it, because the surtax will teach everybody that a minority of taxpayers pay for the spending.●

● Mr. HAYAKAWA. Mr. President, I am also concerned about the surtax provision in H.R. 13511.

In an article I published in Reader's Digest earlier this year, I commented that we are reaching the point where there will soon be more people benefiting from Federal Government payments than taxpayers to carry the load. I am afraid that we have already reached and gone beyond that point. The surtax provision in this bill, as the Senator from Utah so incisively points out, would show half the taxpayers who pay only 6 percent of the taxes, plus all of those who pay no taxes, that increased Government spending does not cost them anything. These are the people who benefit from expanded Government programs. Once this is widely understood, there will be uncontrollable pressure for massive income and wealth redistribution.

In the end, of course, everyone will lose. Our economic system will not continue to function with the incentives structured to discourage work and production. Everyone, especially those at the bottom of the economic ladder, will benefit more from a more rapidly growing economy. But we can only achieve a rapidly growing economy by restructuring the incentives to encourage work, savings, and production, not by redistributing income.

In addition, Mr. President, in this time of proposition 13 and tax revolt across our land, the American people do not want automatic tax increases built into their laws. They already get automatic real tax increases as inflation adjustments in their earnings push them into higher tax brackets. The Senate has unfortunately not seen fit to correct this injustice by adopting the indexing amendment. We certainly do not want to make the situation worse by adopting this surtax. The surtax will only make it painless for Congress to be fiscally irresponsible. Future Congresses will be able to increase spending faster than the growth of GNP and will not have to face the political pain of either increasing deficits or increasing taxes. What a dream world for the big spenders. I do not want to create it.

The Congress should instead structure its own incentives to reduce spending and taxes. We have done this in part through the Nunn amendment which promises future tax cuts if the Congress is fiscally responsible. I, therefore, encourage the Senate conferees to keep the Nunn provision and drop this surtax provision. That would be a great service to the American people.●

● Mr. DOLE. Mr. President, during the past several weeks there have been numerous stories appearing in the press about special interest amendments to this tax bill. In addition, there has been a lack of Senate rhetoric on special interest amendments. I do not quarrel with those who wish to watchguard the Federal Treasury or object to a particular amendment on its merits. However, we must remember that many of the amendments brought up by Senators do have merit. They should be discussed. They should be considered on their merits. We should not adopt a blanket rule that accepts or rejects amendments just because they affect a particular group.

Mr. President, on July 24 of this year, I attended a hearing on the Subcommittee on Debt Management and Taxation in the Senate Finance Committee to consider a number of miscellaneous tax bills. Among those bills was a measure offered by Senators BAYH, CHAFEE, PELL, and BROOKE to address the problems created for the New England Patriots football team by the Tax Reform Act of 1976.

As I understand the situation, the Patriots organization had obtained bank financing for a corporate restructuring on the basis of the law existing at that time. The first phase of this restructuring was completed before the enactment of the 1976 Tax Reform Act, however, the second phase was not completed until after the change of the law. Most of the Senators know that the effective dates in that bill were juggled in order to meet revenue limits. The juggling of the effective date on the depreciation of player contracts has caused the Patriots to be treated differently than other National Football League teams.

On August 14 the Senate Finance Committee reported the legislation as a committee amendment to the Senate. There does not appear to be sufficient time in the next few days for the full Senate to give this measure due consideration on its merits. Many of my colleagues both from New England, and elsewhere, hope that at least next session of Congress, the Senate will have the opportunity to consider this proposal on the merits. That is the real question which the Senate must decide.●

● Mr. DURKIN. Mr. President, I join with the Senator from Kansas (Mr. DOLE) in his remarks concerning the tax problems of the New England Patriots. This issue should be discussed by the Senate on its merits. The New England Patriots football team is a source of pride for my part of the country. They are an economic resource, contributing thousands of dollars to the economy of New England.

Mr. President, this situation is highly unusual, because the corporate reorganization was split into two separate transactions it ran afoul to changes that were made by the Tax Reform Act of 1976. It was an unintended result that needs correction. I would hope that the Senate can rationally consider this matter early next session.●

FRATERNAL ORGANIZATIONS

● Mr. DOLE. I introduced an amendment to the tax bill, H.R. 13511, which would allow deductions from income, estate, and gift taxes for those contributions to a section 501(c)(10) organization for the purpose of constructing or maintaining a building. The amendment under the cloture motion is now out of order. However, the amendment is sound and I intend to raise it at the appropriate time early next year.

A 501(c)(10) organization is a domestic fraternal society, order, or association, operating under the lodge system—first, the net earnings of which are devoted exclusively to religious, charitable,

scientific, literary, educational, and fraternal purposes; and second, which do not provide for the payment of life, sick, accident, or other benefits.

I want to point out that deductions would be allowed only for contributions to a building that houses a qualified fraternal organization. It does not apply to investment properties, garages, private homes, or any structure the principal purpose of which is not to house a 501(c)(10) organization.

Mr. President, these religious, charitable, educational, and fraternal groups are already recognized in law as exempt from taxation, because of their unique status as nonprofit organizations created to further community life. They assist many worthwhile causes by raising funds for the sick, the underprivileged, the disadvantaged. They use their energies to promote civic pride and community betterment.

These fraternal lodges meet in buildings often in need of repair, better maintenance, or new construction. If they fulfill a useful purpose for their own tax exemption, then it seems to me that those who contribute to construction or maintenance of their headquarters should have a tax deduction to help the organizations in their endeavors.

I ask unanimous consent that the text of the amendment be printed in the RECORD.

There being no objection, the amendment is ordered to be printed in the RECORD, as follows:

At the appropriate place in the bill insert the following:

That (a) section 170(c)(4) of the Internal Revenue Code of 1954 (relating to charitable contributions) is amended by striking out "or for the prevention of cruelty to children or animals." and inserting in lieu thereof "for the prevention of cruelty to children or animals, or, in the case of a contribution or gift to an organization described in section 501(c)(10), for the construction or maintenance of a building the principal purpose of which is to house such organization."

(b) Section 2055(a)(3) of the Internal Revenue Code of 1954 (relating to estate tax charitable contribution deductions) is amended by striking out "or for the prevention of cruelty to children or animals" and inserting in lieu thereof "for the prevention of cruelty to children or animals, or, in the case of a contribution or gift to an organization described in section 501(c)(10), for the construction or maintenance of a building the principal purpose of which is to house such organization".

(c) Section 2522(a)(3) of the Internal Revenue Code of 1954 (relating to gift tax charitable contribution deductions) is amended by striking out "art and the prevention of cruelty to children or animals" and inserting in lieu thereof "art, the prevention of cruelty to children or animals, and, in the case of a contribution or gift to an organization described in section 501(c)(10), the construction or maintenance of a building the principal purpose of which is to house such organization".

(d) The amendments made by this Act shall be effective with respect to gifts or contributions made after the date of enactment of this Act.●

PROPOSED AMENDMENT ON EMINENT DOMAIN SALES

● Mr. BELLMON. Mr. President, the amendment I planned to propose was intended to correct an injustice that results from existing tax law when a taxpayer gives up his property for public use. The amendment would simply exempt any citizen over 60 years of age who is forced to sell his land under eminent domain, from recognizing any taxable gain on that compulsory sale. The amendment would also allow any taxpayer who is under 60 years of age and realize a gain from an eminent domain sale and reinvests the proceeds in any capital asset within a 2-year period, to avoid tax liability until that capital asset is sold.

When the Federal, State, or local governments acquire privately owned real estate for public use, the respective property owners are paid fair market value of the property on the date of the conversion as is required by the U.S. Constitution. Due to inflation and other factors, most property owners realize a taxable gain from condemnation sales. If the property has been held for a number of years, the gain may be large. The gain from an eminent domain sale is taxed as capital gain if the property has been held for the requisite period prior to the conversion. Because of the tax liability and other factors, a property owner ends up with less after an eminent domain conversion than he had before the public taking. Existing law allows a property owner to avoid tax liability if the seller reinvests the proceeds from the condemnation in the same kind of property within 2 years of the conversion. With property values rapidly rising, the citizen who gives up property for public use frequently suffers severe economic loss before suitable property can be bought. Such citizens have good reason to feel victimized by their government.

The most common examples of condemnation under eminent domain that come to mind in my home State of Oklahoma are flood control and water projects. Some projects required well over 100,000 acres of privately owned land. It was literally impossible for the owners who were forced to sell their property to replace their land within 3 years in the same area of the State, because it was over 10 years before 100,000 acres of land even came up for sale in a contiguous 5 or 10 county area. Additionally, when a large number of citizens are forced to reinvest within 3 years, as land comes up for sale the basic laws of supply and demand push land prices sharply up. Accordingly, it may be impossible for a citizen to replace land within the 2-year period in the same locality. If acceptable land is located, it has usually increased in price since condemnation actions are time consuming. A similar case can be made for other types of property.

Mr. President, the examples I have cited are not unique to Oklahoma. Citizens in each State annually come out on the short end of condemnation actions. Inflation has been the prime culprit. But the cost of locating property to buy, loss of earnings during the transition, and other factors also often seriously injure property owners caught up in forced sales.

In addition, condemnation actions often leave a property owner with an uneconomic operational unit. Present law forces the owner to reinvest in similar property which may only be available in a distant location. This amendment would allow the owner to make a more logical reinvestment.

Citizens nearing retirement age are particularly hurt by condemnation proceedings. For instance a farmer who is about ready to retire who loses land to public use often cannot find new land to buy in the same community. Yet, existing law requires the retiring farmer to reinvest in land to avoid tax liability, because of a Government condemnation.

A retired owner is caught in an even greater bind. When the Government takes such property or home under eminent domain, the children or friends of the elderly person must help find suitable placement property. If the retired citizen chooses not to buy back, then he or she is forced to pay a capital gains tax. Then upon his death, estate taxes are levied upon the estate. If the citizen had not been forced to sell the property, the property would have only been taxed under estate taxes and not capital gains taxes and estate taxes. Mr. President, condemnation of private property for public use is a painful experience for most citizens.

This amendment is intended to help make sure that those who are forced to sell real property under eminent domain do not suffer a loss in the transaction. Without passage of this legislation, citizens who lose their property to public use will continue to be hurt financially in the process.

PROPOSED AMENDMENT ON CONSOLIDATION OF JOBS CREDITS FOR STRUCTURALLY UNEMPLOYED

Mr. President, I had intended to call up amendment No. 3996 had it been held to be in order. This amendment is cosponsored by Senators BAKER, RIBICOFF, DANFORTH, and me.

H.R. 13511, as reported by the Senate Finance Committee, provides for two separate tax credits to encourage private employers to hire hard-to-employ persons. One credit deals with recipients of aid to families with dependent children only, while the other credit would go to employers who hire other structurally unemployed persons.

I ask unanimous consent that a summary comparison of the two jobs credits in the bill before us—and the changes this amendment would make—be printed in the RECORD at this point.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

CORRECTED COPY—COMPARISON OF PROPOSED TAX CREDITS TO PROMOTE PRIVATE SECTOR EMPLOYMENT OF STRUCTURALLY UNEMPLOYED PERSONS

[Amendment No. 3996 to H.R. 13511]

Key features of jobs credits	PROVISIONS NOW IN H.R. 13511		Proposed by amendment 3996 (Bellmon, Baker, Ribicoff and Danforth)
	WIN and welfare credit (sec. 322)	Targeted jobs (sec. 321)	
Eligible groups	AFDC recipients who are either registered under the work incentive program or have been receiving AFDC at least 90 continuous days.	1. Disabled persons referred by vocational rehabilitation programs. 2. Youth between the ages of 18 and 24 whose families have incomes below 70 percent of the Bureau of Labor Statistics lower living standard. 3. Vietnam veterans from low-income families. 4. Ex-convicts (felons) from low-income families. 5. Disabled recipients of supplement security income benefits. 6. Recipients of State or local general assistance benefits for not less than 30 days.	All groups included in both secs. 321 and 322.
Amount of credit	75 percent of 1st $6,000 of wages during 1st year of employment; 65 percent of the 1st $6,000 of wages during the 2d year and 55 percent of the 1st $6,000 of wages during the 3d year of employment.	50 percent of 1st $6,000 of wages during 1st year of employment; 33⅓ percent of 1st $6,000 of wages during 2d year of employment; 25 percent of 1st $6,000 of wages during 3d year of employment.	50 percent of 1st $6,000 of wages during 1st year of employment; 33⅓ percent of the 1st $6,000 of wages during the 2d year; 25 percent of the 1st $6,000 of wages during the 3d year of employment.
Increases in wage base	In 1981 the $6,000 qualifying wage base will be raised to $7,000.	No increase provided for	No increase provided for.
Availability for employment other than in a trade or business.	Credit of 50 percent of 1st $6,000 available for 1 year; no credit is available for 2d or 3d year wages. Credit available for up to 2 employees per employer.	Credit not available	Credit not available.
Certification procedures	Not specifically addressed in amendment. Current procedures under which WIN office informs recipients and employers if eligibility would be continued.	The Secretaries of Treasury and Labor would designate agencies in each locality which would be responsible for certifying eligibility for the credit	The Secretaries of Treasury and Labor would designate agencies in each locality which would be responsible for certifying eligibility for the credit.

Mr. BELLMON. Under this amendment, there would be a single credit which would cover seven groups: AFDC recipients; youth from low-income families; Vietnam veterans from low-income families; persons from low-income families who have been convicted of a felony; disabled recipients of supplemental security income benefits; handicapped people referred by vocational rehabilitation programs, and recipients of State or local general assistance benefits. Employers who hired persons in any of these groups would receive tax credits equal to 50 percent of the first $6,000 of wages paid to each such employee during the first year of employment, 33⅓ percent of the first $6,000 of wages during the second year, and 25 percent of such wages during the third year.

Mr. President, the welfare reform bill Senators BAKER, RIBICOFF, DANFORTH, and I introduced last March (S. 2777) provided for a jobs credit along the lines which would exist if the amendment we now propose is adopted. I am convinced that targeted jobs credits to promote private-sector employment of welfare recipients and other structurally unemployed people are going to become a more and more vital part of our social and economic strategies. The Finance Committee is wise to open up these possibilities. But I think we need to keep the credits simple so that they can be readily understood by employers. Having one credit for AFDC recipients and a separate, less-generous one for other groups will likely cause confusion, administrative inefficiencies, and consequent failures to hire the people we are trying to help.

Moreover, Mr. President, I am not convinced that the high levels of subsidy proposed for employers who hire AFDC recipients are necessary. The Finance Committee proposes that the Federal Government repay private employers—through tax credits—for 75 percent of the cost of employing an AFDC recipient in a minimum wage job for the first year after the AFDC recipient is hired. For the second year, the credit would be 65 percent of the first $6,000 of wages, and in the third year of employment, the employer would still get a 55-percent tax credit on the first $6,000 of wages paid to that person. The employers could claim the rest of the salaries paid to such employees as business expenses on their tax returns.

Our amendment would lower the tax credit for employment of AFDC recipients to the same levels proposed by the Finance Committee for the other six target groups (50 percent of the first $6,000 for the first year, 33⅓ percent for the second year, and 25 percent for the third year). These are still very generous subsidies. They ought to provide plenty of incentive for employers to expand their work force by hiring AFDC recipients as well as people in the other groups. To the extent that this happens, we will save money in AFDC, food stamps, and a host of other benefit programs.

In summary, the following are the key reasons we are offering this amendment:

First. We believe the higher levels of credits reflected in the Finance Committee's bill for employers who hire AFDC recipients are unnecessary; the tax credits which would be provided under this amendment are high enough to be a powerful incentive for employers to hire AFDC recipients as well as people in the other groups.

Second. We are concerned about the administrative complexities of having two separate credits with different rules and different administrative arrangements. Having a single credit will facilitate employer understanding and will reduce redtape.

Third. Having a separate, more generous tax credit for welfare recipients may stigmatize these persons; it would indicate that they have less to offer to employers than members of the other target groups.

Many recipients of AFDC are at least capable of holding jobs, and as motivated to do so, as people in the other target groups.

CHANGE IN EFFECTIVE DATE FOR "REVERSE WITHHOLDING" FEATURE OF EARNED INCOME TAX CREDIT

Mr. President, after discussion with the bill manager, I decided not to call up amendment No. 3995, but I believe its merits should be called to the attention of the Senate.

Mr. President, this is a very simple amendment. It will move up by 6 months—from July 1, 1979, to January 1, 1979—the start of the new "reverse withholding" method of distributing the earned income credit. This amendment will not add to the Federal Government's costs, but it will move the payment of some of the earned income credits from fiscal year 1980 in fiscal year 1979. The Congressional Budget Office estimates that this shift will amount to a total of about $268 million. I understand that, as a result of other amendments on which the Senate has acted, there is now room in the fiscal year 1979 budget for this shift.

The earned income credit is one of the most important innovations in tax policy in recent times. I do not think it is necessary to dwell on its virtues. I just want to say that I see it as a very good way to help families with children which are headed by a wage earner, but have incomes so low that they cannot adequately meet a lot of their living costs, no matter how frugal they are. The earned income credit helps these families to meet their living expenses and it can help a lot of them to avoid falling into welfare dependency.

I want, therefore, to commend Senator LONG and others who have worked with him in developing the earned income credit.

I support the expansion of the credit incorporated in this bill—from 10 percent on the first $4,000 of income under current law to 12 percent on the first $5,000 under this bill.

S. 2777, the welfare reform bill I introduced last spring, along with Senators BAKER, RIBICOFF, and DANFORTH, would have increased the credit to 15 percent and have indexed the wage ceiling. Nevertheless, I think the increase recommended by the Finance Committee is an acceptable one.

I am especially pleased that the Finance Committee has incorporated the "reverse withholding" concept into the earned income credit. Our welfare reform bill (S. 2777) also included this feature. This will permit the credit to be paid to eligible families as they earn it—and when they need it—rather than their having to wait for many months and then receive it in one lump sum after they file their tax returns.

I regret that the Finance Committee did not make the "reverse withholding" feature effective on January 1, 1979—the time when the increases in the rate and the earnings base for the earned income credit take effect. I understand Treasury Department representatives told the committee that January 1 would be the preferable date for reverse withholding to begin, from an administrative standpoint.

January 1 is certainly better than July 1 from the standpoint of people who are eligible for the credit. Under the committee bill, those who are entitled to the credit on the basis of their earnings during the first 6 months of 1979 would not receive payment of the credit until nearly a year later—in the spring of 1980, after they file their income tax returns.

Let me add one other point. In our discussions with the Treasury, they have assured us that they will be able to get the necessary tax forms ready by January 1. They did warn us, however, that it may take a little additional time for employers to fully implement this change. It is understandable that this may be the case. The January 1 effective date will insure that those entitled to benefits will receive them at the earliest possible date.

Mr. President, I want again to stress that starting the reverse withholding feature on January 1, 1979, instead of on July 1 would not cost the Federal Government a dollar more. CBO says it will shift about $268 million from fiscal year 1980 into fiscal year 1979. The Joint Tax Committee's estimate is lower—they say the shift would amount to about $220 million.●

PROPOSED AMENDMENT TO MAKE EARNED INCOME CREDIT AVAILABLE TO FAMILIES SUPPORTED BY BOTH EARNINGS AND AFDC

● Mr. BELLMON. Mr. President, I am very pleased to be a cosponsor of amendment No. 4029, along with Senators KENNEDY and BAKER. The amendment corrects an injustice, but could not be called up because of a ruling by the Chair.

Mr. President, I believe this amendment will help some of the families now on welfare to become independent. For other poor families, who get part of their support from AFDC and part from earnings, this amendment will provide a small supplement to their earnings. It will encourage them to increase the number of hours they work and thus reduce their dependency on welfare.

This amendment will eliminate a restriction in the current law that prevents the earned income credit from being available to any family which receives more than half of its support from AFDC. This restriction means that a family which has a small amount of earnings, but also receives AFDC will get the earned income credit on its earnings only if its AFDC support is less than half of its total support.

Mr. President, I believe we should encourage people to be on payrolls rather than welfare rolls. I think this amendment will help do that. Why should we not make the earned income credit available for people who work at temporary or part-time jobs?

The Senate Finance Committee has wisely provided in this bill for the earned income credit to be distributed, as it is earned, through "reverse withholding." This is a very important improvement. But unless we eliminate the 50 percent self-support rule, a lot of very low-income people are going to be denied the benefit of "reverse withholding." They will not know when they fill out their withholding forms for their employers whether or not they will get at least half of their support during the year from AFDC. So they will be discouraged from taking advantage of "reverse withholding." I do not think the managers of the bill would want that to happen.

Mr. President, the administration supports this amendment. I would like to read one paragraph from the letter sent to all Senators by Donald C. Lubick, Assistant Secretary of Treasury for Tax Policy:

The Senate Finance Committee has decided to distribute EITC benefits on a pre-payment basis through the tax withholding system and to count EITC benefits as earnings in welfare programs. We believe these changes make it essential to change the current treatment of welfare benefits in meeting the support test for dependents and the test for head of household status in the Internal Revenue Code. Senators Bellmon and Kennedy will be offering an amendment to make this change. We support this amendment.

Mr. President, this is a good amendment. I hope the managers of the bill will reconsider their opposition to it and that the Senate will adopt it.

I ask unanimous consent to print in the RECORD the letter from the Department of the Treasury on this matter.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,
Washington, D.C.

DEAR SENATOR: We understand that, during consideration of the tax bill, the Senate will be discussing amendments to the Earned Income Tax Credit (EITC). We are pleased to support the expansion of the EITC in the Senate Finance Committee bill. This expansion is fully consistent with the Administration's desire to provide meaningful work incentives for low-income Americans.

The Senate Finance Committee has decided to distribute EITC benefits on a prepayment basis through the tax withholding system and to count EITC benefits as earnings in welfare programs. We believe these changes make it essential to change the current treatment of welfare benefits in meeting the support test for dependents and the test for head of household status in the Internal Revenue Code. Senators Bellmon and Kennedy will be offering an amendment to make this change. We support this amendment.

Present law does not allow welfare benefits to be considered as support provided by the taxpayer. Thus most AFDC and Food Stamp families with low earnings are not eligible for the EITC if their welfare benefits exceed other income. However, other families on welfare with income greater than welfare benefits are eligible for the EITC.

We believe retaining present law would be highly undesirable for several reasons:

The decision to count EITC benefits as earnings in AFDC was intended to allow AFDC recipients to keep one-third of the benefits and, thus, to increase the rewards for work. We see no reason to deny this encouragement to those families with the lowest earnings.

Adoption of this amendment will greatly simplify the administrative burden of the Internal Revenue Service.

Although many welfare recipients currently are ineligible to claim dependents (or head of household status) because welfare provides more than half of their support, IRS has no practical way to enforce this provision. No information on welfare payments is filed with IRS.

The existing rules are not widely known and are even less widely understood. Few taxpayers are aware that if they live with their children, they may not be "maintaining a household" or that such children may not be "dependents" for tax purposes.

Moreover, there is a point at which taxpayers suddenly become eligible for the earned income credit (or to claim dependents). For instance, a taxpayer with $2,999 of earnings and $3,000 of AFDC is ineligible for the EITC under present rules, while a taxpayer with $3,001 of earnings and $3,000 of AFDC suddenly becomes eligible for a $300 earned income credit under existing law ($360 credit under the Senate Finance bill).

The decision to reflect the EITC in withholding (which we support) exacerbates the problems created by the retention of the current support test, and would have two very undesirable effects with regard to the AFDC program:

During the year, recipients would be faced with great uncertainty regarding whether they would or would not be eligible for the EITC at the end of the year, and hence would be reluctant to request prepayment of the EITC.

AFDC would be unable to assume working family heads are eligible for the EITC in computing monthly AFDC benefits. Hence AFDC would be unable to count EITC benefits on a monthly basis as intended by the Committee. As a result, recipients would have a strong financial incentive to forego EITC benefits on a prepayment basis and receive their benefits as a lump sum payment the following April. Many such families would lose eligibility for AFDC in the month the tax refund is received.

Because of these complications of current law, we request that you support the amendment to allow AFDC and other welfare recipients to treat welfare payments as their own income for purposes of the tests for support of dependents and maintenance of the household.

Sincerely,

DONALD C. LUBICK,
Assistant Secretary for Tax Policy.

● Mr. KENNEDY. Mr. President, I have proposed an amendment along with Senators BELLMON and BAKER which would extend eligibility for the earned income tax credit to AFDC recipients who receive over half of their income from AFDC.

This is an extremely important amendment, Mr. President, since it would extend the incentive to take jobs to those who are on welfare; it would distribute more of the EITC to those who make lesser earnings; and it would have made the Internal Revenue Code much easier to administer. Unfortunately, the Parliamentarian has ruled that this amendment is not germane to the Revenue Act of 1978 and we will be unable to call it up.

At an available opportunity in the coming Congress, I believe that we shall again make such a proposal.

In order to qualify for the earned income tax credit a worker must maintain the household—contribute over half of its support. Under current law, AFDC benefits are not counted as income attributable to the worker. In effect, people who get over half of their income from AFDC are excluded from getting the earned income tax credit. The amendment we had proposed would have counted AFDC income as income for purposes of determining if the worker maintains the household.

This would eliminate the current situation in which a worker who takes a part-time job or whose job is terminated after a few months, does not get the credit.

There are many reasons for eliminating the exclusion. First, it takes much of the incentive away from people on welfare to take part-time jobs or jobs which they think will only last a short while. Yet, all of the incentives created by an EITC are as important with these workers as they are with full-time workers who are relatively assured of keeping their jobs. Part-time jobs, or those which start out with no promise of continued employment, are likely to be the ones which lead to full-time employment which gets people off welfare. Many welfare experts say that the big step off welfare is more often the move from no job to part-time work than it is the move from part-time to full-time work.

In addition, the effect of giving the EITC to those who get more than half their income from work earnings but depriving those who get more than half of their income from AFDC is to give the credits to higher income workers—who make more and need smaller amounts of AFDC rather than those with smaller earnings.

The 50-percent cutoff also creates great problems in the administration of the Internal Revenue Code and the AFDC program. The Internal Revenue Service will require separate withholding tables and forms, with separate instructions. It will have to set aside a separate block on the tax return form. Because the Finance Committee now charges $2 in AFDC benefits for $3 in the EITC and because many people will be uncertain about their eligibility, many people will forgo the new feature of advanced payment of the EITC, going on and off AFDC as they receive and use up their lump sum EITC payment each spring.

Finally, Mr. President, the eligibility test which this amendment sought to delete hinders the use of the new advanced payment provision since the very workers who need advanced payment the most—those with the lowest earnings—will refrain from using it since they are the least certain about whether they might have to pay the money back at the end of the year.

This amendment would result in no windfall gain for the AFDC recipients when they work. As I noted above, their AFDC payment is not sensitive to the EITC, under the Finance Committee changes.

What the amendment would do is to foster the incentive for people to take the work which will get them off welfare; it would give the credit to the poorer workers and it would simplify administration of the Internal Revenue Code and the AFDC program.

I think this would prove a useful change, and hope to propose it at the appropriate time in the next Congress.●

Mr. WALLOP. Mr. President, I recently voted with 61 other Senators to invoke cloture on debate of the tax bill. I did so to allow the Senate to go on with the debate of provisions relating to the tax legislation before us. In my mind it is imperative that the Senate pass this tax relief bill before adjournment.

Unfortunately, since the passage of the cloture vote, the Parliamentarian has taken a very strict interpretation of which amendments will be ruled germane. Under the rules of the Senate, nongermane amendments can be ruled out of order, and the Senate majority leader has requested Senators not to delay this measure further by appealing the ruling of the Chair on whether or not amendments are in order.

I understand that under the strict interpretation of germaneness adopted by the Chair, my amendment has been ruled out of order. I regret this action because my amendment was a straightforward approach to remove an inequity in the Tax Code that strikes hardest at ranchers and farmers. Even though the Senate will not have an opportunity to act on this amendment during consideration of this tax bill, I intend to introduce this measure as a bill, and have it addressed in the next session of Congress.

Mr. President, this amendment is a very simple and straightforward proposal to eliminate an inequity in our Tax Code which directly affects our Nation's farmers.

This amendment would change the capital gains exclusion for the sale of a principal residence. It would change the Internal Revenue Code to allow individuals actively engaged in agriculture to take full advantage of the exclusion when they wish to sell their home and agricultural lands.

The amendment would allow farmers actively engaged in agriculture to include the gain from the sale of the agricultural lands along with the gain from the sale of their principal residence in calculating the exclusion. At present, farmers are unable to include the sale of their agricultural lands for deduction purposes in considering the exclusion.

In examining this amendment, I must emphasize that it is rare for appraisers to make a separate judgment on the value of a farmhouse; the value of the home is always tied to the value of the surrounding real estate.

Let me take a moment to review how the special exemption on the sale of homes affects taxpayers in general, and how the present law ignores the realities of farm economics.

Under the special rule for the elderly, a portion of the gain on a residence sold by those at least 65 years of age may be excluded if the house is used for 5 years out of the previous 8. Basically the provision allows that portion of the gain corresponding to the ratio of $35,000 to the sales price of the house to be excluded. If a home sold for $35,000, all the gain would be excluded; if it sold for $90,000, only a portion of the gain would be excluded. The remainder would be treated as a normal capital gain.

Unfortunately, farm families cannot take full advantage of the tax exclusion law. This is because in estimating the value of the exclusion the farmer is penalized because his capital gains credit is restricted to the home, independent of the land surrounding it.

I would like to take a moment to read a few comments made by a banker in Casper, Wyo., Mr. Ed Bloodworth, who is the vice president of the First National Bank of Casper. Mr. Bloodworth's experience with the housing industry and the appraisal of homes and agricultural land in Wyoming gives us a good perspective on how the present tax treatment for farmhouses is unfair.

Quote from Mr. Bloodworth's letter:

A farm home will go up in cost corollary with the rise in the cost of building materials and labor. However, since the value of an agricultural package (land and buildings) is directly related to its income producing potential, a limit is placed on what a typical purchaser is willing to pay for a farm home. If an expensive home is located on a given farm, the seller may not realize full value on the home because its value is out of balance with the income value of the package. Consequently, a farm home that was built in 1970 at a cost of $25,000 may have a current replacement cost/value of $50,000, but may sell for $30,000 because it is out of balance with the income value of the property.

Mr. Bloodworth goes on to say that:

A farm home would probably increase in value through inflation, at a rate equal to about half the rate experienced in an urban setting. It would probably ultimately reach a ceiling value because of the limitations imposed by its land to improvement ratio, while urban property has no ceiling value except as imposed by the condition of the general economy.

Under the circumstances, a farmer or rancher would most certainly be penalized if his capital gains credit were restricted to the home and non-productive ground surrounding it.

Mr. President, it is my understanding that this question came up in the Finance Committee and that a number of Senators share my concern for the farmer faced with unfair tax treatment in this situation.

I would like to point out that all homeowners need relief from the rising burden imposed by inflation. But inflation hits hard on the farm as well and it seems peculiarly unfair to deny farmers a tax benefit on the sale of their principal residence.

One of the questions in the minds of Senators today is whether the exclusion should be raised to $100,000, as is the case in the House-passed bill, or whether

we should retain the formula developed under the leadership of the distinguished chairman of the Finance Committee. Let me make it clear that the level of the exclusion is a separate issue than the one I raise here. My amendment would merely allow farmers to take full advantage of the exclusion, at whatever level is adopted in conference and enacted into law.

I want to assure my colleagues that this amendment has been drafted in a manner that will restrict the tax benefit of farmers actively engaged in agriculture. The language used to define farm property or farmer comes from sections in the code adopted for estate tax purposes, with a very restricted interpretation. One of my concerns is that the provision might have been used for speculative purposes, inviting investments in agriculture purely for the tax advantages afforded in this amendment. For that reason the amendment requires that the farmer be actively engaged in agriculture for 5 out of the previous 8 years prior to the sale. As such, we can be sure that the amendment's benefits will accrue only to those who need and deserve to have land and home evaluated fairly for capital gains tax purposes.

THE DANFORTH EXCESS SPENDING SURCHARGE

● Mr. MUSKIE. Mr. President, I oppose the Danforth Excess Spending Surcharge in H.R. 13511. That provision would severely and unnecessarily complicate the process formulating congressional budgets.

The provision could force a future Congress into the absurd position of legislating a general tax reduction at the same time a general surtax takes effect.

In addition, that provision would encourage additional use of loan guarantees, off-budget spending, regulatory policies, and tax expenditures, because these policies can provide benefits which are not fully included in the spending side of the budget.

Finally, the provision is written in such a manner that the final size of a surtax would be determined not by the Congress, not even by a fixed formula, but by the Secretary of the Treasury.

The provision, included in the Finance Committee bill after having been offered by Senator Danforth, would impose an income tax surtax on individuals and corporations if Federal Government spending exceeded specified limits. Those limits would allow 2 percent growth in spending after adjustment for inflation. The limits would not be in effect when unemployment has been in excess of 7 percent for 3 months or in case of war.

The surtax rate would be the rate determined by the Secretary of the Treasury to be necessary to raise revenues proportionate to Federal outlays in excess of the specified limit. The Secretary of the Treasury, however, is allowed substantial discretion in this determination. I will point out the very serious implications of allowing that discretion after I discuss the more general weaknesses in the provision.

Mr. President, the Danforth provision would unnecessarily complicate the congressional budgetmaking process. Each time the Budget Committee or the Congress considered a spending program, the potential revenue impact of that program would have to be considered, because each spending program affects the aggregate level of outlays, and the aggregate level of outlays would determine the surtax rate under the Danforth provision.

In fact, under the Danforth provision we might not know the magnitude of the surtax until early or mid-September when the House-Senate conferees agree on the level of outlays provided in the second budget resolution. Tax policy would, therefore, remain uncertain until a few weeks or days before the new fiscal year began. Rational, well-reasoned budgetary policy would be extremely difficult under those circumstances.

Mr. President, when a constant dollar spending increase of less than 2 percent is appropriate, the Congress can and will hold spending growth to that rate. Which is to say that whenever the goal of the Danforth provision is a worthy goal the Congress can achieve it without the Danforth surcharge.

When a constant dollar spending of more than 2 percent is appropriate, however, the Danforth surcharge can become a serious obstacle to prudent budgeting.

Mr. President, the second budget resolution for fiscal year 1979 provides for outlay increases below the level that would trigger a surtax if the Danforth provision had been in effect that year. This demonstrates the fact that this Congress does not need the threat of a Danforth-style penalty to face the hard job of controlling spending. When the need to reduce the budget deficit is clear, and that need has been clear this year, the Congress can and will work through the existing budget process to achieve the necessary reduction in the budget deficit.

Now, consider the options the Congress would face under the Danforth provision if the economy experienced an extended period of stagnation or a recession. A balanced economic stimulus program might combine tax reductions with constant dollar growth in outlays of 3 to 4 percent—a very modest growth rate for Federal spending. Indeed, "real" outlay growth might exceed 2 percent without any new programs, because economic stagnation or a recession would automatically lead to increased spending for unemployment insurance, food stamps, and other income maintenance programs.

Under the Danforth amendment that moderate spending increase would trigger a surtax. The Nation's taxpayers would therefore face the prospect of a tax increase at the same time that a stimulus program provided tax reduction. Moreover, that tax increase would occur just as the country heads into a recession.

As absurd as that possibility might sound, it could be a likely outcome in some future year if the Danforth provision is enacted into law.

Proponents of the surcharge may believe that they have eliminated this problem by providing that the surtax would be turned off if the unemployment rate exceeded 7 percent for 3 consecutive months. While this feature moderates somewhat the possibility of harmful effects of the Danforth provision, it most certainly does not eliminate the possibility.

Under the Danforth surcharge, even with this "escape valve," the Congress could not begin to implement a moderate economic stimulus program like the one I just discussed until an economic downturn was half a year old or older. Unless, of course, the Congress chose to implement that program in the face of the perverse tax increase that stimulus program would trigger.

Mr. President, the Danforth surcharge would also create a new incentive to design legislation in ways that evade the discipline of the budget process to avoid triggering the surtax.

If an increase in spending triggers an automatic tax increase, why not simply provide the same program benefits in ways that don't show up in the budget? Loan guarantees, for example, offer substantial subsidies to those who receive them, and these subsidies are not reflected in the budget. I fear that if the Danforth surcharge is approved by the conferees, there will be increased use of this device to provide benefits to eligible groups, benefits which do not appear as outlays in the Federal budget.

Tax expenditures offer another means to provide benefits to some groups without adding to Federal spending. This option also generally avoids the periodic authorization and appropriations process.

Trade restrictions and regulatory policies represent still more means to establish programs with hidden costs.

Until the congressional budget process has been extended to fully cover these types of practices, mechanisms which encourage their use, mechanisms such as the Danforth provision, should not be enacted.

I have another serious reservation concerning the Danforth surcharge; namely, the discretion that provision provides the Secretary of the Treasury to set the level of the surtax.

I noted earlier that under the Danforth provision, we would not know the level of revenues in the budget before final decisions had been made on all spending items. In fact, however, the Secretary of the Treasury is provided substantial discretion to change the level of the surtax even after the second budget resolution has passed both Houses of Congress.

The Danforth provision states, and I quote:

> The Secretary shall adjust the percentage determined under paragraph (2) whenever necessary, but not more than twice during any twelve-month period, to compensate for errors of estimate or significant changes in Federal outlays or revenues not taken into account when the percentage was determined or previously adjusted.

The language may sound harmless, but outlay estimating differences between CBO and the administration can easily add to $5 billion. The language may also allow the Treasury to adjust the surtax in response to projected outlays from

programs the administration favors but the Congress doesn't want.

Whatever the reasons for Treasury and congressional disagreement, the language in the Danforth provision clearly allows the Secretary of the Treasury to base his surtax calculation on an outlay projection other than the outlay total provided in the second budget resolution.

In summary, Mr. President, the Danforth provision would pose serious impediments to the congressional budget process. It would hamper congressional efforts to provide budgets which appropriately meet the Nation's needs. In a recession, the provision could have a harmful effect on the economy. The provision could encourage poor budgetary practices. Finally, the provision could hand over authority on tax reductions to the Secretary of the Treasury. In so doing, it could greatly weaken congressional control over the budget.

The appropriate way to control Federal spending is not to require taxes to rise when Congress exceeds an arbitrary spending level. The appropriate way to control Federal spending is for Congress to exercise self-discipline—to work within the existing budget process and make reasoned, prudent decisions on each and every spending program we consider. Only then will we have a reasoned, prudent budget.●

PROPOSED AMENDMENT FOR ARTISTS CONTRIBUTION TAX CREDIT

Mr. JAVITS. Mr. President, while this amendment was voted nongermane after the Senate voted cloture I feel my statement should go into the RECORD as I do not propose to let the issue go unsatisfied. I am offering an amendment to provide a tax credit for artists who contribute their original work to nonprofit organizations such as museums, libraries, and universities. The text of my amendment is identical to the text of S. 1384, a bill which I introduced earlier in this Congress. Likewise, it is identical to the provision which was included in the Senate version of the 1976 tax bill, but was not accepted by the conferees.

Mr. President, I believe the provisions of this amendment are necessary to prevent further loss from public access of many irreplaceable materials, documents, and artistic compositions. The impact of a 1969 change in the Tax Code has deprived museums, archives and libraries of works which were previously donated to them by artists. Let me stress that these works include not only painting and sculpture but also manuscripts of scholars, composers of music, and authors. This latter type of material is critical for many scholars to learn more about the work of these masters.

The facts available on the decrease in this type of contribution are very clear and very disheartening. Since 1969, the donation of this type of material to our major repositories for availability to the general public has virtually ceased. Although the revenue loss estimated for this provision is quite small, approximately $5 million plus per year, the inability of scholars and researchers to have free access to the working notes and manuscripts of our greatest artists is a loss to the entire Nation.

There is a second major reason why this amendment is necessary. Under current law, the artist has a very severe prejudice against his charitable deduction. He may claim only the actual cost of materials which went into the production of the donated item. He is, therefore, given no credit for actual value of his own talent.

In our country, artists are constantly called upon to donate to charities and public purposes through their artistic gifts. As a group, they have responded most generously to these requests. As Senators, I am sure we are all personally familiar with artists who have donated their time, efforts and works of artistic merit to public purposes without any remuneration, a tax break or otherwise. The United States is a country which did comparatively little for its artists. Only in the last two decades have we begun to have any Federal funding for support of the arts. This has grown at a remarkable pace from a very small start. However, by international comparison, the U.S. Government still does not do as much as other comparable countries to support arts and the works of artists.

The thrust of my amendment is not to do something extra for artists, but to remedy a present inequity. It attempts only to put an artist on equal footing with a collector when he decides to donate a work of art to a public nonprofit organization. On the basis of simple equity, we should pass this amendment in order to treat artists at least as well as other citizens in this area of charitable contributions.

Mr. President, I have explained the two primary reasons for supporting this amendment. I would also like my colleagues to be aware that a number of safeguards have been built into this amendment to avoid abuses. Government officials are restricted from donating the official papers which result from their carrying out duties of office and claiming a credit under this provision. Second, the IRS has in place, and functioning quite well, an advisory body to provide expert opinions on the evaluation of any work of art. This organization has served the agency to avoid tax abuses based on inflated valuation of artistic works.

Because of this safeguard, there can be no extraordinary or unfair value placed on a work beyond its regular market value for purpose of getting an excessive credit. Third, there are limits on the amount and proportion of the credit allowable. The credit cannot exceed the greater of the artist's tax liability—if it is not in excess of $2,500—or 50 percent of the donor's tax liability for that year. Finally, no credit shall be allowed for any artistic work which exceeds $35,000 in value. I draw these particular provisions to the attention of my colleagues so that they may be assured that this amendment is tightly drawn and will not result in any windfalls or unintended results.

Mr. President, I am today asking the Senate to reaffirm the action taken in August of 1976 on the identical text of this amendment. When I introduced the same amendment as a bill in April 1977, I made extensive remarks explaining the purposes of the bill, details of its operation, the need for this provision and a number of endorsements by leading artists. I ask unanimous consent that my remarks on the introduction of S. 1384 in the CONGRESSIONAL RECORD of April 26, 1977, be reprinted at the conclusion of my remarks.

Mr. President, I believe this amendment has great merit, because it provides an increased public access to works of art, it restores evenhanded treatment to artists, and it has sufficient safeguards to avoid unintended consequences. I urge the adoption of the amendment.

The remarks follow:

Mr. JAVITS. Mr. President, I am introducing a bill to provide a tax credit for artists who contribute their original work to nonprofit organizations such as museums, libraries, and universities. While there is not a great deal of revenue loss to the Government, this is an important amendment for the institutions in our country which make it possible for the general public to enjoy the pleasures of viewing great works of art

The bill provides a tax credit equal to 30 percent of the fair market value of an artistic work contributed by the artist to a tax-exempt organization such as a museum, library, or university. The amount of the credit may not exceed the amount of any tax on the income of the artist attributable to the sale of artistic works. Additionally, the credit cannot exceed the greater of: First, the artist's tax liability if it is not in excess of $2,500; or, second, 50 percent of the artist's tax liability. A last limitation is that no credit shall be allowed for any artistic work which exceeds $35,000 in value. If the credit is in excess of the limitations for any taxable year the excess may be carried over for the next 5 succeeding taxable years.

The bill also contains a prohibition against the credit being used for papers or similar property prepared by or for an individual during such time as that individual is holding public office.

The provisions of this bill are identical to those of an amendment I offered to the Tax Reform Act of 1976 which was agreed to by the Senate but which was not included in the final version of the tax bill enacted into law. A similar bill, H.R. 439, has been introduced in the House by Congressman ED KOCH of New York.

Mr. President, the basic reason for the bill is that the universities, libraries, and museums of the country are suffering from an existing provision of law which dates from 1969. Before 1969, the law was general and broad. If an artist gave his work to a museum the value of that work was a gift, just like any other gift.

In 1969, the tax code was amended so that the artist was deprived of that opportunity. All a painter could deduct was the cost of his canvas and paint. But the collector was not deprived of that opportunity. If he were a buyer of art and the value appreciated—let us say he bought a painting for $500 and it became worth $50,000—he could give that to a museum and get a full $50,000 charitable deduction, and he can do that today. So the law discriminated as between the man or woman who did the work and the person who acquired such a work, even if he acquired it from that very same artist.

Another anomaly in the law was if that artist died and his estate had to be valued for tax purposes, his estate had to pay an estate tax on the full value, not on the value of the paint and the canvas but on the full value.

There is not much revenue loss involved. The estimate of the Treasury Department on

my bill is about $5 million a year. It is an order of magnitude that, obviously, they cannot calculate exactly. But the consequences of this proposal of the American people are very great. Let me just describe what has happened.

The museums have suffered a drastic dimunition of gifts from artists, particularly those who have done contemporary work within this very same period from 1969 until today. I believe most of my colleagues have heard from museums precisely for that reason.

Let me give an example of the New York City Museum of Modern Art, one of the great museums of the country. During the 2-year period, 1968–69, the New York City Museum of Modern Art received 125 donations by artists of their own works. In the 4-year period, 1972–75, the museum received only 28 donations. In the critical and very valuable field of painting and sculpture, the reduction was from 42 works of art received in 1968 and 1969, to only one received in 1972–75.

The artists feel very strongly about this as evidenced from a very interesting point. The National Endowment on the Arts, which we established, and I am very proud to have been one of its initiators, wrote a letter to Senator LONG on April 29, 1976, stating these very considerations which I have described while commenting on an earlier version of this bill.

I ask unanimous consent that that letter may be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

APRIL 29, 1976.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The National Endowment for the Arts strongly recommends favorable consideration of S. 1435, the bill pending before your Committee which relates to the tax consequences of charitable contributions by creative artists and others of literary, musical, and artistic compositions, and similar property.

The bill under consideration would enable an artist to deduct from his adjusted gross income 75 percent of the fair market value of his works which he contributes to nonprofit institutions. Such legislation would restore part of the deduction available to creative artists prior to passage of the Tax Reform Act of 1969. (Of course, the Endowment would prefer to see the full deduction, i.e., 100 percent of the work's fair market value, restored.) The restoration of this deduction, far from being a windfall to individual artists is, in our view, an essential measure which must be taken in order to rectify the inequities existing under present law.

As you know, certain tax benefits attend the transfer sale, or contribution of a capital assets. Under the Tax Reform Act of 1969, however, Section 1221 of the Internal Revenue Code of 1954 was amended to exclude from the definition of a capital assets (and therefore from the tax advantages) a copyright, literary, musical or artistic composition, a letter or memorandum, or similar property when any of the above are in the hands of the taxpayer whose personal effects created the property. Thus, in accordance with Section 170(e) of the Internal Revenue Code, when a taxpayer-creator donates one of his works to a non-profit institution, the allowable deduction is computed by reducing the fair market value of the work by the amount of the appreciation of such property. As a result, the artist may deduct from his adjusted gross income only the cost of the materials utilized to create the work. However, in the hands of a collector or one who procures a work of art from the creator the work is characterized as a capital asset and the collector who contributes the same work to a non-profit institution enjoys the benefits of deducting a portion of the fair market value of the work from his adjusted gross income.

The pending legislation, by affording the creative artist the same benefits as the purchaser/collector, would rectify the inequities which exist under the present law. The present distinction in the tax benefits available to donors of creative works based upon the donor's status as either a purchaser and collector on the one hand, or on the other, a creative artist, is, in our view, contrary to the basic concept of equal treatment under the law. In any case, once the work is received by the donee/non-profit institution it is considered a capital asset regardless of the status of the donor. Therefore, we believe that the law as presently written could be viewed as having an unconstitutional taint in that it creates two classes of donors and applies to each separate and unequal treatment without justification.

The arbitrary treatment of the creative artist continues to affect the artist's estate after his death. Ironically (and unfairly), while he is entitled to deduct only the value of the utilized materials in cases of charitable contributions of his works during his lifetime, all works which become part of an artist's estate are taxed, for estate tax purposes, at 100 percent of their fair market value. As a result, under present law, an artist is faced with the undesirable alternative on the one hand, of selling, donating (without the attendant tax benefits), or otherwise transferring his works during his lifetime, or, on the other, subjecting his family to estate tax liability for the full fair market value of the creative works which become part of his estate.

Further, another adverse consequence of present law is a reported substantial reduction in donations of creative works to nonprofit institutions, such as museums, universities and libraries subsequent to passage of the 1969 Act.

By conferring on creative artists equitable tax treatment with respect to the donation of their works during their lifetime, S. 1435 would help to rectify the above described problems in a manner consistent with the nation's growing support and encouragement of the Arts, as manifested in the National Foundation on the Arts and the Humanities Act of 1965, as amended. Any adverse effect on the Federal Treasury caused by restoration of the deduction previously available to creative artists for the donation of their works would, in our view, be more than compensated for by the salutary benefits to this nation's artistic community, its cultural institutions, and the massive public audience, they serve.

For the above stated reasons, the National Endowment for the Arts strongly recommends favorable consideration of the bill now being studied. Such legislation is necessary in order to restore equality of treatment for our nation's artists and authors under our tax laws, and should provide the incentive for the contribution of more of their valuable works of art and literature to our libraries, universities, and museums, thereby enriching to a significant extent the cultural life of the nation.

The Office of Management and Budget has informed us that there is no objection to the submission of this report, although the Administration has not yet established a position as to the merits of this proposed legislation.

Sincerely,

NANCY HANKS,
Chairman.
JAMIE WYETH.

Mr. JAVITS. That letter protested very seriously both the diminution of the work moving to artists and the discrimination against artists as compared to collectors or other people who buy art. That letter was signed not only by Nancy Hanks, the chairman, but by a prominent member of the National Council of the Arts, Jamie Wyeth, one of our leading artists have been here to talk to Members of the Senate respecting the deep feeling which exists concerning this matter.

One of the points which has been made to me relates to the valuation which may be put on a work of art which is, under this amendment if it becomes law, gifted to a museum. Of course, before 1969 we had very serious trouble with the question of valuation. That was one of the reasons for the 1969 law which tightened up on philanthropic and charitable matters all along the line except, in this case, it really was retrogressive.

But valuation was a problem. Moreover, very material progress has been made in the matter of valuation, and an Art Advisory Panel of a very high order has been developed to advise the IRS Commissioner. I have a list of the members, and it is certainly one of the premier lists in this country. The panel meets 3 times a year, and does the evaluation under the general supervision and jurisdiction of a representative of the Treasury Department.

I have before me a charter for the Art Advisory Panel of the Commissioner of Internal Revenue, which lists the work which they do, and which is dated March 3, 1975. Included in the list of those on the art advisory panel, for example, is Adelyn Breeskin, the curator of the National Collection of Fine Arts, and a whole list, from Kansas City, New York, Cleveland, Washington, Boston, Los Angeles, Toledo, Ohio, of curators and directors of the leading museums of art in the United States.

I have been assured by the Treasury Department itself that they are perfectly satisfied that the question of valuation is now very tightly handled, and that we need have no worry on that score. To me, this is a very major point.

One other very interesting point which should especially interest us as Members of Congress is that not only the museums around the country have suffered from the dearth—and as I say, I think probably most Members have heard from museums on this subject—but the Library of Congress has suffered from it, because the Library itself collects literary, artistic, and musical donations in the way of original manuscripts and scores.

I ask unanimous consent that the charter and the membership list for the Art Advisory Panel of the Commissioner of Internal Revenue to which I referred be printed in the RECORD at this point.

There being no objection, the charter was ordered to be printed in the RECORD, as follows:

THE ART ADVISORY PANEL OF THE COMMISSIONER OF INTERNAL REVENUE

This Charter is prepared and filed in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463, enacted October 6, 1972.

A. *Official Title.* The Committee's official designation is: The Art Advisory Panel of the Commissioner of Internal Revenue.

B. *Objectives and Scope.* The Committee's objectives and scope of its activity are: to assist the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate, or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1954. This activity is based on the authority to administer the Internal Revenue law conferred upon the Secretary

of the Treasury by section 7801 of the Code and delegated to the Commissioner of Internal Revenue.

C. *Time Period.* The period of time necessary for the Committee to carry out its purpose is indeterminate as the need recurs regularly during the audit of Federal Income, Estate and Gift Tax returns. Two-day Panel meetings have been held three times a year since 1968.

D. *Reporting.* The agency or official to whom the Committee reports is the Commissioner of Internal Revenue.

E. *Support Service.* The agency responsible for providing the necessary support for the Committee is the Internal Revenue Service.

F. *Duties.* A description of the duties, all of which are solely advisory, for which the Committee is responsible follows:

1. Prior to a meeting of the Panel, each panelist independently examines copies of photography of the works of art and reviews the text of appraisal reports secured and submitted by the taxpayer in support of his claimed valuation. The panelists are not told the identity of the taxpayer, or of his appraiser, or the tax consequences of adjusting the valuation up or down.

2. At the Panel meeting each member is invited to express his opinion as to the acceptability of the claimed valuation. In the event a panelist disagrees with the taxpayer's valuation, the panelist may state his estimate of value and his reasoning.

This reasoning may include such matters as, challenging the authenticity of the claimed artistic attribution, citing sales prices of comparable works of art, introducing other expert opinions, and reassessing the work's condition, historic importance, or aesthetic qualities. Sometimes experts are identified for needed further studies or for possible use as government witnesses in event of litigation. In some circumstances, a panelist might serve as such a witness. Discussion on each appraised item continues until a consensus of value is reached. The consensus of value is announced as the official advisory conclusion by the chairman of the Panel who moderates the discussions. This full time IRS employee, who specializes in the appraisal of personal property, then so informs the IRS director of the district from which the case was referred.

G. *Annual Operating Costs.* The estimated annual operating cost in dollars and man-years is as follows: Since panelists are not paid for their time or services, the major operating costs consist of reimbursing the panelists for their travel and lodging expenses for three two-day meetings in Washington, D.C. each year. This amounts to approximately $6,000. One man-year of regular employee staffing is required to administer the Panel and to handle the preparation and follow through on the approximately 750 art appraisals reviewed annually by the Panel.

H. *Number and Frequency of Meetings.* The estimated number and frequency of committee meetings are: three two-day meetings each year.

I. *Termination Date.* The services of the Committee are expected to be needed for two years. Unless formally continued, the termination date will be two years from the filing date.

J. *Filing Date.* The date of filing of this Charter is March 3, 1975.

ART ADVISORY PANEL OF THE COMMISSIONER OF THE INTERNAL REVENUE

PRESENT MEMBERS—1976

Mrs. Adelyn D. Breeskin, Curator, Twentieth Century Paintings and Sculpture, National Collection of Fine Arts, Smithsonian Institution, Washington, D.C.

Mr. Ralph T. Coe, Assistant Director and Curator of Paintings and Sculpture, William Rockhill Nelson Gallery of Art, Kansas City, Missouri.

Mr. Everett Fahy, Director, Frick Collection, New York, New York.

Mr. Stephen Hahn, Owner, Director, Stephen Hahn Gallery, New York, New York.

Mr. Edward B. Henning, Curator of Contemporary Art, Cleveland Museum of Art, Cleveland, Ohio.

Mr. Sidney Janis, Owner, Sidney Janis Gallery, New York, N.Y.

Mr. James Maroney, Jr., Associate, Hirschl & Adler Galleries, New York, New York.

Mr. Thomas Kesser, Director, Guggenheim Museum, New York, New York.

Dr. John Seymour Thacher, Director (Ret.), the Dumbarton Oaks Research Library and Collection, Washington, D.C.

Mr. Maurice Tuchman, Senior Curator, Los Angeles County Museum of Art, Los Angeles, California.

Mr. Robert C. Vose, Jr., President, Vose Galleries, Boston, Massachusetts.

Mr. Otto Wittman, Director, Toledo Museum of Art, Toledo, Ohio.

Mr. JAVITS. The Manuscript Division of the Library of Congress reports the following:

Prior to the enactment of the Tax Reform Act of 1969, the Manuscript Division received an average of 15 to 20 new manuscript gifts each year from authors and musical composers. The following table illustrates the gifts to the Library of Congress in this field:

Calendar year 1968	20
Calendar year 1969	17
Calendar year 1975	2
Calendar year 1976 to date	3

This is similar to the comparison I made for the Museum of Modern Art in the city of New York.

I ask unanimous consent that the report be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

Donations by artists of their own works of art to the Museum of Modern Art

Year, number of artists, and number of works of art:

PAINTING AND SCULPTURE		
1967	2	10
1968	1	1
1969	17	41
1972	1	1
1973	0	0
1974	0	0
1975	0	0
DRAWINGS		
1968	5	31
1969	8	23
1972	2	4
1973	2	6
1974	2	3
1975	0	0
PRINTS		
1968	7	12
1969	6	17
1972	2	2
1973	5	7
1974	3	5

Mr. JAVITS. This clearly illustrates that the very, very drastic fall off in donations is attributed to this particular change in law made in 1969. Also, the Music Division of the Library of Congress reports as follows:

It is estimated that some 35 well-known composers have ceased making gifts to the Library of Congress, including Samuel Barbour, Aaron Copland, and Walter Piston.

Likewise, the Prints and Photographs Division of the Library of Congress reports that a number of leading artists have ceased donating their original works to the Library of Congress since 1969. Mr. President, this is simply a way of demonstrating the results since 1969. The facts speak for themselves.

Who will be benefited and who will be hurt if we pass this particular measure? As I said, the order of magnitude is very small: $5 million a year. The National Endowment for the Arts, for example, will give grants to museums for acquisition. That is Federal taxpayers' money. And yet, when it comes to facilitating the giving by the artist of his own work, we seem to be holding back. Would we rather pay for it with taxpayers' money? That is what it comes down to, especially with the very tightened up procedure regarding valuation which I have described.

The other people who pay for it are students. Students are very much interested, and the letter from the National Endowment on the Arts makes that very clear.

Students are interested in the sketches and other preliminary works which go into the development of a major work of art. This is the very thing that the artists will not give on the present basis, but would be very much interested in giving on the basis of some ability to at least get the value of the gifts applied on their art-related income.

I believe that this bill would be of great value to the cultural institutions of our country and to the general public. I am hopeful that it will be enacted into law this year. This is an effort which has gone on for some time and I believe now is the time to address this problem in an equitable manner.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1384

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44B. CERTAIN CONTRIBUTIONS OF LITERARY, MUSICAL, OR ARTISTIC COMPOSITIONS

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the fair market value of a literary, musical or artistic composition created by the personal efforts of that individual and contributed by that individual to an organization described in section 501(c)(3) which is exempt from tax under section 501(a).

"(b) LIMITATIONS.—

"(1) INCOME FROM LITERARY, MUSICAL, OR ARTISTIC COMPOSITION.—The amount of the credit allowed by subsection (a) for the taxable year may not exceed the amount of tax under this chapter attributable to the gross income of the individual for the taxable year attributable to the sale of literary, muscial, or artistic compositions in that taxable year and in previous taxable years.

"(2) AMOUNT OF CREDIT.—The amount of the credit allowed under subsection (a) to the taxpayer for the taxable year, after the application of paragraph (1), shall not exceed the greater of—

"(A) so much of the taxpayer's liability for tax under this chapter for the taxable year as does not exceed $2,500, or

"(B) 50 percent of the taxpayer's liability for tax under this chapter for the taxable year.

"(3) CREDIT DENIED FOR CERTAIN LETTERS, MEMORANDUMS, OR SIMILAR PROPERTY.—The credit allowed by subsection (a) shall not be allowed for the contribution of a letter, memorandum, or similar property which was written, prepared, or produced by or for the individual while he held an office under the Government of the United States or of any State or political subdivision thereof if the writing, preparation or production of such property was related to, or arose out of, the performance of the duties of such office.

"(4) LIMITATION OF CONTRIBUTIONS.—No credit shall be allowed under subsection (a)

for any literary, artistic, or musical composition to the extent that the total of such compositions contributed by such individual for the taxable year to organizations described in subsection 501(c)(3) exceeds $35,000.

"(c) CERTIFICATION REQUIRED.—No credit is allowable under subsection (a) for the contribution of a literary, musical, or artistic composition by the taxpayer unless the taxpayer received from the donee a written statement that the donated property represents material of artistic, musical, or literary significance and that the use of such property by the donee will be related to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in section 170(c)(2)(B)).

"(d) CARRYOVER OF EXCESS CREDIT.—If the amount of the credit determined under subsection (a) for any taxable year exceeds the limitations provided by subsections (b)(2) and (b)(4) for the taxable year, the excess shall be added to the amount allowable as a credit under subsection (a) for the next five succeeding taxable years to the extent it may be used in those years.".

(b) Section 170(e) of such Code (relating to certain contributions of ordinary income and capital gain property) is amended by inserting at the end thereof the following:

"(4) DENIAL OF DEDUCTION FOR CERTAIN CONTRIBUTIONS OF LITERARY, MUSICAL, OR ARTISTIC COMPOSITIONS.—No deduction shall be allowed under this section for any contribution for which a credit is claimed under section 44B.".

(c)(1) The table of sections for such subpart A is amended by inserting immediately before the item relating to section 45 the following:

"Sec. 44B. Certain contributions of literary, musical, or artistic compositions.".

(2) Section 42(b) of such Code (relating to the taxable income credit) is amended by striking out "and" at the end of paragraph (4), by inserting "and" at the end of paragraph (5), and by inserting after paragraph (5) the following new paragraph:

"(6) section 44B (relating to credit for certain contributions of literary, musical, or artistic compositions),".

(3) Section 56(c) of such Code (defining regular tax deduction) is amended by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(9) section 44B (relating to credit for certain contributions of literary, musical, or artistic compositions).".

SEC. 2. The amendments made by the first section of this Act shall apply to taxable years beginning after December 31, 1976.

STATEMENT ON THE ESOP/TRASOP PROVISIONS OF THE REVENUE ACT OF 1978

Mr. JAVITS. Mr. President, I have had a long and continuing interest in expanding the ownership of stock by American working men and women. I strongly believe that our free-enterprise system must expand stock ownership, particularly employee stock ownership, if it is to be in accord with modern times. Expanded employee stock ownership is vital for raising necessary capital, attaining adequate productivity, and broadening our people's participation in the stock market. The more workers who have "a piece of the action," the better will be our Nation's productivity, and therein is our true national strength.

While I have grave doubts about the employee stock ownership plan (ESOP) and its variant, the Tax Reduction Act stock ownership plan (TRASOP), one cannot replace something with nothing.

But, the bill reported out by the Finance Committee is less expansive than the bill which was originally introduced (S. 3241). The committee bill does not raise the investment tax credit for TRASOP contributions from 1 percent to 2 percent. The committee bill also does not allow a corporate employer a credit of 1 percent of the compensation of employees covered by a TRASOP if an amount equal to the credit is contributed to the TRASOP by the employer.

The bill, however, does make the existing TRASOP tax credit permanent. I still do not think such a change is wise. I will, however, not oppose making the tax credit permanent because employers have already expended resources in establishing TRASOP's, and I do not think their programs should be forced to terminate after December 31, 1980.

The ESOP and the TRASOP, I feel, discriminate against lower-paid employees because the size of a worker's interest is tied to this compensation. Both plans lack asset diversification, and with respect to the TRASOP, the tying of "Uncle Sam's gift of stock" to the investment tax credit favors workers of capital intensive corporations. As was pointed out in the debates on the Tax Reform Act of 1976, 72 percent of the labor force would receive no benefit from TRASOP's. The average salaries of those who would receive benefits were 20 to 100 percent higher than those who would not.

As has been suggested by the Treasury Department, I think we should consider ways to reduce the revenue cost of ESOP's and TRASOP's. For example, it may be desirable to limit the amount of wages which are eligible for stock through an ESOP. A Treasury representative has testified that in terms "of broadening stock ownership, it appears counterproductive to provide a $100,000 a year executive with $1,000 or more in stock while providing one-tenth that amount to a $10,000 a year worker."

The cost of TRASOP's could also be reduced if the Government subsidy were less than 100 percent of the total outlay by the employer. The Treasury has testified that it "is reasonable to assume that behavior could be influenced in the desirable direction if the cost to those concerned were substantially reduced without the necessity of making the price zero."

If a tax credit is to be provided for TRASOP's, I would prefer using a wage base for such a credit rather than an investment base. The investment based credit discriminates in favor of workers in the utility, oil, communications, and other capital intensive industries. Such discrimination should be remedied.

It is my belief that employee stock ownership will not become an important part of our economic system until organized labor becomes involved in this matter. The bill which the late Senator Humphrey and I introduced in 1976 called the Employee Stock Ownership Fund Act (ESOPHA) was in attempt to do just that. This bill would have amended the National Labor Relations Act to provide a framework for the establishment, by way of collective bargaining, of jointly managed employee stock ownership trust funds. The bill would have required that a pension plan be in effect before such an ESOP was adopted and that no more than 30 percent of the ESOP assets would be invested in the employer's stock. In addition, participant benefits would have been fully vested after 3 years.

I hope the distinguished chairman of the Finance Committee will agree with me that the role of organized labor in this regard is very important I think we can develop approaches which will bring organized labor into the effort to give workers truly a greater "piece of the action."

Thank you, Mr. President.

Mr. ROBERT C. BYRD. Third reading.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Mr. MUSKIE. Mr. President, I have an analysis of the bill.

I intend these comments to inform my colleagues of the impact this bill would have on the 1979 and future budgets. In addition as a member of the Senate concerned with the equity, efficiency, and simplicity of our tax system, I want to comment on the impact of provisions of the pending bill on achieving these goals.

Mr. President, the second budget resolution for fiscal year 1979 provides up to $21.9 billion of tax reductions below current law levels. This amount includes the effect of extending temporary tax reductions now scheduled to expire at the end of 1978.

According to the Congressional Budget Office and the Joint Committee on Taxation, H.R. 13511, as reported by the Finance Committee, would have reduced fiscal year 1979 revenue collections by $20.5 billion. This would have left $1.4 billion for additional fiscal year 1979 revenue reduction legislation.

I want to compliment the distinguished chairman of the Finance Committee and the members of the Finance Committee for having reported a bill generally consistent with the concurrent budget resolution for fiscal year 1979. I recognize the many pressures for additional tax reductions with which the Finance Committee had to contend. And I applaud the restraint shown by the committee, particularly with respect to the impact of its revenue decisions on fiscal year 1979.

However, the Senate has adopted amendments to the Finance Committee bill which have substantially altered the bill, particularly in the outyears.

For fiscal year 1979, as I am sure every

Senator is aware, amendments to the bill consumed almost the entire $1.4 billion margin the Finance Committee left for additional tax reductions including energy tax legislation and tax relief for Americans abroad.

The pending bill, therefore, does not breach the budget resolution revenue floor by itself, but unless the bill is scaled down in conference there will be inadequate room in the budget for these other major tax measures I have just enumerated.

Mr. President, the American taxpayer has demanded tax relief for fiscal year 1979. But such reductions must be provided within the constraints of the second budget resolution. The Senate has now voted to remove any budgetary constraint on revenue losses in 1980 and thereafter. And we have all witnessed the result.

The fiscal year 1980 and 1981 revenue reductions contained in the bill reported by the Finance Committee were approximately $4.2 and $6.6 billion larger respectively than the revenue reductions assumed in the projections of the Budget Committee. These larger later year reductions compared to the budget assumption resulted from the inclusion by the Finance Committee of several measures which have relatively small fiscal year 1979 effects but substantially larger outyear effects. Major provisions of this type are the capital gains relief, the expanded earned income credit provisions, and the expanded asset depreciation range (ADR) system.

When I first looked at the Finance Committee bill, I was somewhat concerned about the amounts by which the bill exceeded the revenue losses in the 1980's as projected in the Budget Committee second resolution report.

But Mr. President, I would be most happy to turn back the clock to the day of the reported bill. Those amounts have now been greatly exceeded by the large outyear tax reductions provided by floor amendments to the bill.

The latest tally shows that the bill would reduce revenues by $21.8 billion in 1979, $60 billion in 1980, $84 billion in 1981, $114 billion in 1982, and $144 billion in 1983.

Let me indicate just a few of the major provisions added by the Senate to the Finance Committee bill:

A sum of $17 billion of additional individual income tax rate reductions, only some of which are contingent upon limited Federal spending;

An additional 2 percentage point reduction in the corporate income tax rate costing $3.4 billion annually;

A scaled down $1.5 billion a year general employment tax credit that both the House and Finance Committee voted to terminate; and

A tuition tax credit costing $1 billion a year when it is fully effective.

Mr. President, two factors were involved in bloating the Finance Committee bill's outyear effects to these huge totals.

First, Senators used the $1.4 billion available for additional tax reductions as a toehold for establishing further tax reductions. Once a Senator had his "foot in the door" the effective date of his new tax break could be, and often was, set to minimize the effect on 1979 revenues. As a result, floor amendments reduced revenues by $1.3 billion in fiscal year 1979 but by almost $10 billion in fiscal year 1980.

A second tactic was simply to make additional tax reductions first effective in later years. The most important amendment of this type was the Nunn coalition amendment. That amendment had no effect on revenues in fiscal year 1979, but provided tax cuts increasing to $66 billion in fiscal year 1983 if spending does not exceed specific levels.

My colleagues no doubt recall the vote this Chamber took late last week to reverse the Chair's ruling that the Budget Act required waivers for new tax legislation first effective in 1980.

The effect of the Senate's vote was to remove any budget discipline on tax cuts first effective in 1980; and we have all seen the result.

Mr. President, the Senate bill now includes tax reductions effective in fiscal year 1980 which would total almost $60 billion.

And, what about the 1980 budget deficit, Mr. President? Certainly I do not need to remind this body that a balanced budget is as popular a goal as tax reduction. A majority of this body voted a balanced budget amendment to the IMF bill just a few months ago.

Let us assume for the moment that 1980 spending is consistent with the Nunn coalition amendment. And that spending constraint is a tight one. Would anyone care to guess what those assumptions yield with respect to the 1980 budget deficit?

Well, Mr. President, based upon CBO projections, my calculations indicate that we will have a $45 billion deficit in 1980 under this tax bill. That is $7 billion more than the fiscal year 1979 deficit in the congressional budget.

This is hardly progress toward a balanced budget.

Mr. President, I would be gravely concerned about the impact of this bill on the 1980 budget if I thought that this bill would be enacted into law in its present form. Fortunately, however, I doubt very much that will be the case. The chairman of the Finance Committee is one of the Senate's most talented and effective leaders in House-Senate conferences.

He has given us his word, and amended the bill to demonstrate that he will bring back from conference a tax bill both consistent with the fiscal year 1979 budget, and with very greatly reduced later year tax cuts.

The House-passed version of the pending bill contains significantly lower revenue reductions than the Budget Committee assumed for the first year and outyears.

Thus, there is a strong likelihood the tax bill conferees will return with a measure that more closely approximates the Budget Committee's outyear tax reduction levels than does the pending bill.

Mr. President, having now reviewed the budgetary effects of the pending bill, let me now briefly summarize my views on the merits of some of its major components.

I am pleased that the Senate bill provides individual income tax reductions which offset for all income classes the increased taxes that otherwise would result in 1979 from inflation, economic growth, and the 1977 social security tax increases. I also applaud the greater progressivity of the Senate bill compared to the House-passed measure, which favored taxpayers with over $50,000 of income at the expense of taxpayers with incomes below that level.

The Senate bill provides relatively large tax cuts for those taxpayers in tax brackets above the $50,000 level, The major reason for these reductions for high income taxpayers in the bill is the very substantial amount of capital gains relief—over $2.6 billion at an annual rate in 1979 even after all secondary effects are taken into account. And this relief will grow to almost $5 billion by 1983.

Except for the tax relief provided on the sale of a principal residence, the capital gains reductions in the Senate bill are too large. Capital gains tax relief will have less impact on capital formation per dollar of revenue loss than business tax cuts which directly reduce the cost of new capital goods, such as the investment credit or accelerated depreciation.

The relative weakness of capital gains tax reductions in stimulating investment stems from two major sources. First, a significant portion of capital gains results from the sale of unimproved real estate, jewelry, art, and other relatively unproductive assets. Second, capital gains tax reductions provide substantial benefits to taxpayers on investments previously undertaken, and to this extent, would generate revenue losses which were not associated with new investments.

A major justification for capital gains tax relief is that it reduces the unfairness of taxing gains attributable only to inflation. However, it is unfair to single out the sale of capital assets for relief from inflation when other income largely attributable to inflation, such as interest income on savings deposits, does not receive any comparable relief.

There are a number of other important provisions in this bill I would have liked to have seen deleted because they will result in significant unjustifiable future year revenue losses.

One such provision is the deferral through 1979 of the "carry over basis" rules enacted as a major reform in the Tax Act of 1976. This reform ended the practice of excluding from income tax any appreciation of property transferred by death.

The long-run revenue gains from this provision were estimated in 1976 to be $1 billion annually. While 1976 provisions are universally acknowledged to be too complex, my colleague and good friend from Maine (Senator HATHAWAY)

has developed amendments to eliminate the undue complexity and technical difficulties of the 1976 act provisions. However, the Senate bill does not include the "clean up" amendment proposed by Senator HATHAWAY and instead agreed to postpone the 1976 provisions until 1980. Opponents of carryover basis view a 3-year postponement as a major step toward repeal. This should not be allowed to happen.

Other provisions in the bill that I believe will result in either inefficient or inequitable major tax reductions are: Making the ESOP stock distribution credit permanent, the extension of the employment tax credit, and the tuition tax credit grafted on to this bill.

Mr. President, I have taken this opportunity to review the tax bill's relationship to the 1979 and future budgets, and I have indicated several personal concerns with the composition of tax cuts provided in the bill.

Despite these reservations, I shall vote in favor of this bill.

I do expect, however, that the bill which emerges from the conference will be substantially improved from the bill before us now.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, debate is not in order after rollcall begins, but it is possible there may be rollcall votes tonight. Maybe not; maybe yes.

The assistant legislative clerk resumed and concluded the call of the roll.

Mr. STEVENS (When his name was called). On this vote I have a pair with the junior Senator from Wyoming (Mr. WALLOP). If he were present he would vote "aye." If I were at liberty to vote I would vote "nay." I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Montana (Mr. MELCHER) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. MCINTYRE) and the Senator from Montana (Mr. MELCHER) would each vote "yea."

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. DOMENICI), the Senator from Idaho (Mr. MCCLURE), the Senator from Texas (Mr. TOWER), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. TOWER) and the Senator from New Mexico (Mr. DOMENICI) would each vote "yea."

The PRESIDING OFFICER (Mr. GLENN). Have all Senators in the Chamber recorded their vote?

The result was announced—yeas 86, nays 4, as follows:

[Rollcall Vote No. 478 Leg.]

YEAS—86

Allen	Glenn	Muskie
Anderson	Goldwater	Nelson
Baker	Gravel	Nunn
Bartlett	Griffin	Packwood
Bayh	Hansen	Pearson
Bellmon	Hart	Pell
Bentsen	Hatch	Percy
Biden	Hatfield, Paul G.	Proxmire
Brooke	Hayakawa	Randolph
Bumpers	Heinz	Ribicoff
Burdick	Helms	Riegle
Byrd, Harry F., Jr.	Hodges	Roth
Byrd, Robert C.	Huddleston	Sarbanes
Cannon	Humphrey	Sasser
Case	Inouye	Schmitt
Chafee	Jackson	Schweiker
Chiles	Javits	Scott
Church	Johnston	Sparkman
Clark	Kennedy	Stafford
Cranston	Laxalt	Stennis
Culver	Leahy	Stevenson
Curtis	Long	Stone
Danforth	Lugar	Talmadge
DeConcini	Magnuson	Thurmond
Dole	Mathias	Weicker
Durkin	Matsunaga	Williams
Eagleton	McGovern	Young
Ford	Morgan	Zorinsky
Garn	Moynihan	

NAYS—4

Abourezk	Hollings	Metzenbaum
Hatfield, Mark O.		

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stevens, against.

NOT VOTING—9

Domenici	Hathaway	Melcher
Eastland	McClure	Tower
Haskell	McIntyre	Wallop

So the bill (H.R. 13511) as amended, was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LONG. Mr. President, I have a series of routine motions.

The PRESIDING OFFICER. Will the Senator please use his microphone? We cannot hear him.

Mr. LONG. Mr. President, I ask unanimous consent that the bill (H.R. 13511) be printed with the amendment of the Senate, and that in the engrossment of the amendments of the Senate to the bill the Secretary of the Senate be authorized to make all necessary technical and clerical changes and corrections, including corrections in section, subsection, et cetera designations, and cross references thereto.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. Mr. President, I move that the Senate insist on its amendments to the bill (H.R. 13511) and ask for a conference with the House thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. LONG, Mr. TALMADGE, Mr. RIBICOFF, Mr. HARRY F. BYRD, JR., Mr. NELSON, Mr. GRAVEL, Mr. BENTSEN, Mr. MATSUNAGA, Mr. MOYNIHAN, Mr. CURTIS, Mr. HANSEN, Mr. DOLE, Mr. PACKWOOD, and Mr. ROTH conferees on the part of the Senate.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Louisiana.

Mr. LONG. Mr. President, I ask unanimous consent that extra copies of H.R. 13511, the tax bill, just passed today, be printed as amended, and passed by the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

BLACK LUNG BENEFIT TRUST

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 13167.

Mr. BAKER. Mr. President, reserving the right to object, may I ask the majority leader what that measure is?

Mr. ROBERT C. BYRD. Will the floor manager explain it?

Mr. RANDOLPH. Mr. President, may we have order?

Mr. LONG. Mr. President, this bill, H.R. 13167——

The PRESIDING OFFICER. The Senate will be in order. The Senator will suspend until order is restored. Senators will please take their seats.

Mr. LONG. This bill, H.R. 13167, was reported favorably from the House Ways and Means Committee on September 28 and passed the House October 3. Also, Mr. President, the Treasury Department informs me that it has no objections to this measure. I have consulted with the ranking minority member of the Committee on Finance, and he informs me that he has no objection to following this expedited procedure.

This bill is the counterpart of S. 3477, which was introduced by Senator RANDOLPH and which is now in our committee. I understand that he may have a few words to say on this matter.

H.R. 13167 makes necessary adjustments in the self-insurance trust provisions of the Black Lung Benefits Revenue Act of 1977, which we passed earlier this year. That act allows coal mine operators to establish tax-exempt trusts to finance their black lung benefits liability. As it turns out, Mr. President, the present law limitation on annual contributions to these trusts is simply too restrictive to permit coal mine operators to adequately fund the payment of benefits due the victims of black lung disease. Specifically, coal mine operators should be permitted to fund for future claim liability reasonably anticipated to arise from past and currently employed work force, because that is where most of the liability will come from.

The trusts would continue to be irrevocable and could never revert, directly or indirectly, to the operator As additional protection against abuse, annual contributions must be actuarially justifiable. The bill further empowers the Secretary of the Treasury to issue regulations prescribing specific actuarial meth-

ods and assumptions which must be used in computing deduction limitations.

I would anticipate that any revenue loss from the bill will be diminished or eliminated if large numbers of coal companies, which otherwise would insure this liability, utilize self-insurance trust funding instead. For example, one coal company has said that self-insurance for the company would be half as costly as deductible premiums for black lung insurance. If that is a pattern, there may be a slight revenue gain.

The provisions of this bill have been worked out by the staffs of the Ways and Means and Joint Tax Committees and the Treasury Department. As I said earlier, it is a necessary adjustment to something Congress has already enacted, and I hope we can agree to it speedily.

Mr. BAKER. Mr. President, I thank the distinguished manager of the bill. I do understand now, and advise the majority leader that this matter has been cleared on our side, and we have no objection to its passage.

Mr. ROBERT C. BYRD. The clerk has not yet laid the bill before the Senate.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 13167) to amend the Internal Revenue Code of 1954 to insure that the deduction for contributions to a black lung benefit trust be allowed for any such contributions which are made for the purpose of satisfying unfunded future liability, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the bill be considered as having been read twice, and that the Senate proceed to its immediate consideration, with a time limit of not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from West Virginia is recognized.

Mr. RANDOLPH. Mr. President, this bill, H.R. 13167, is similar in purpose to my bill, S. 3477, and I urge my colleagues to support it. The amendments to the Black Lung Benefits Revenue Act proposed by this bill will provide a reliable, secure, and less expensive means for coal mine operators to guarantee black lung benefits to eligible claimants under the Black Lung Benefits Act.

In the amendments to that act reported by the Committee on Human Resources and approved by the Senate last year, we provided that claims filed by or on behalf of miners who retired prior to January 1, 1970, could be paid by a special fund in the Treasury financed by a new Federal excise tax on coal. We further provided that coal mine operators would individually continue to bear the responsibility for paying claims for which they were determined to be liable.

The Black Lung Benefits Act requires coal mine operators to secure their liability and, by reference to the Longshoremen's and Harborworkers' Compensation Act, permits two forms of security, insurance or self-insurance. Insurance policies are commercially available, but can be canceled and may cost as much as $42 per $100 of payroll. Self-insurance involves posting bond with the Department of Labor and satisfying the Department that the operator is financially able to meet his liability. The Internal Revenue Code permits a deduction of insurance premiums, but did not permit deduction of cash reserves set aside by self-insurers for the purpose of meeting their black lung liability until very recently.

As the Senator will recall, certain financing aspects of the program reported from the Committee on Finance by the able Senator from Louisiana, Mr. LONG. H.R. 13167 and my bill S. 3477, deal with one aspect. Self-insurance trusts may be established under Section 501(c)(21) of the Internal Revenue Code and operators can deduct contributions to such trust. The trusts may be established by a self-insuring coal mine operator for the sole purpose of securing his black lung benefits liability and, as other employee benefits trusts, are tax-exempt. The section 501(c)(21) provision was included in the bill reported by the Finance Committee, as the chairman has stated, which was adopted by the Senate and the House.

Unfortunately, Mr. President, certain features of that measure, the Black Lung Benefits Revenue Act of 1977, have proven to be unworkable. Out of a desire to prevent abuse of these trusts, the act limited contributions so severely that operators could not fund claims likely to arise from the current work force although, I believe, we intended these trusts to firmly secure all of an operator's black lung liability. The limitation on deductions and funding in existing law is unworkable, Mr. President, simply because the bulk of an individual operator's liability will arise from his currently employed work force, not from former employees, most of whom will receive their benefits from the excise tax-financed fund in Treasury.

This bill, as it is now before us, has been written to incorporate the interests of operators, in adequately funding the trusts, the Treasury Department, in preventing abuse of the trusts, and disabled miners, who will receive benefits from the trust. The bill's language was carefully prepared by the Treasury Department and the staffs of both the joint Tax and Ways and Means Committees in consultation with my staff, and representatives of Congressman JOHN DUNCAN, who sponsored the bill in the House. The Treasury Department has no objection to the bill in its present form and the operators and UMW are satisfied that, properly administered, it will serve the purpose of securing black lung benefits for all eligible claimants. I am also informed that the Department of Labor has no objections to this bill.

I would add, Mr. President, that, in addition to the limitations on deductions contained in the act and provided by this bill, since these trusts are irrevocable and can never revert, directly or indirectly to an operator, it is highly unlikely, if not impossible, that they will ever become a tax shelter.

The reason coal mine operators favor these trusts, Mr. President, is that self-insurance by this mechanism is considerably less expensive than commercial black lung insurance. The chairman of one company with mines in my State explained to me how a self-insurance trust would cost his company only half as much as insurance. For his company, self-insurance means more capital for investment in improving existing mines and opening new ones. This means more jobs for coal miners and more coal, at relatively lower prices for our Nation. Of more importance to me, is the security of knowing that self-insurance trust funding means an absolute and noncancelable guarantee that funds to pay black lung benefits to disabled coal miners or their survivors will be present when needed.

Mr. President, I note that the staff of the Joint Committee on Taxation guardedly projects an annual revenue loss if this bill is enacted. I will not quarrel directly with their estimates, but I would point out that there is an additional factor which should be taken into account: Insurance premiums are already deductible as business expenses and, according to my information, are higher than contributions to at least one trust. As I said above, Mr. President, one advantage of this funding mechanism is that it is less costly than insurance. The consequences of trust funding as far as the treasury is concerned will be increased revenues, due to lower deductions attributable to lower annual set-asides. I believe we should bear in mind, therefore, that to the extent companies who now insure convert to trust funding, the treasury will realize increased revenues. I believe that this fact only serves to underscore what the Joint Tax Committee stated in the Ways and Means Committee report that the revenue impact of this bill is extremely speculative.

In conclusion, Mr. President, I am grateful to the Senator from Louisiana, Mr. LONG, and the able ranking minority member of the Finance Committee, Mr. CURTIS for their support of this measure and commend them for their continued interest in this subject. I urge my colleagues to support this bill.

Mr. BAKER. Mr. President, I wish to commend the distinguished chairman of the Committee on Environment and Public Works for his constructive and consistent efforts to further the goals and objectives of the black lung benefit program. He has been instrumental in the development of this legislation since its enactment in the late 1960's, and its effectiveness is due in large part to the efforts of the distinguished senior Senator from West Virginia. I commend him for his deep concern for those suffering from black lung disease and congratulate him once again for his most recent effort to alleviate this serious problem.

The PRESIDING OFFICER. The question is on the third reading of the bill.

The bill (H.R. 13167) was ordered to a third reading, was read the third time, and passed.

Mr. LONG. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that an excerpt from the report (No. 95–1656) of the House Committee on Ways and Means be printed in the RECORD.

There being no objection, the excerpt of the House report was ordered to be printed in the RECORD, as follows:

EXCERPT

The Committee on Ways and Means, to whom was referred the bill (H.R. 13167) to amend the Internal Revenue Code of 1954 to insure that the deduction for contributions to a black lung benefit trust be allowed for any such contributions which are made for the purpose of satisfying unfunded future liability, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) subsection (b) of section 192 of the Internal Revenue Code of 1954 (relating to contributions to black lung benefits trust) is amended to read as follows:

"(b) LIMITATION.—The maximum amount of the deduction allowed by subsection (a) for any taxpayer for any taxable year shall not exceed the greater of—

"(1) the amount necessary to fund (with level funding) the remaining unfunded liability of the taxpayer for black lung claims filed (or expected to be filed) by (or with respect to) past or present employees of the taxpayer, or

"(2) the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year."

(b) Paragraph (1) of section 192(c) of such Code (relating to special rules) is amended to read as follows:

"(1) METHOD OF DETERMINING AMOUNTS REFERRED TO IN SUBSECTION (b).—

"(A) IN GENERAL.—The amounts described in subsection (b) shall be determined by using reasonable actuarial methods and assumptions which are not inconsistent with regulations prescribed by the Secretary.

"(B) FUNDING PERIOD.—Except as provided in subparagraph (C), the funding period for purposes of subsection (b)(1) shall be the greater of—

"(i) the average remaining working life of miners who are present employees of the taxpayer, or

"(ii) 10 taxable years.

For purposes of the preceding sentence, the term 'miner' has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

"(C) DIFFERENT FUNDING PERIODS.—To the extent that—

"(i) regulations prescribed by the Secretary provide for a different period, or

"(ii) the Secretary consents to a different period proposed by the taxpayer,

such different period shall be substituted for the funding period provided in subparagraph (B)."

(c) Subsection (c) of section 192 of such Code is amended by adding at the end thereof the following new paragraph:

"(5) DENIAL OF SECTION 162 DEDUCTION WITH RESPECT TO LIABILITY.—No deduction shall be allowed under section 162(a) with respect to any liability taken into account in determining the deduction under subsection (a) of this section of the taxpayer (or a predecessor)."

(d)(1) The first sentence of subparagraph (A) of section 6104(a)(1) of such Code (relating to inspection of applications for tax exemption) is amended by striking out "(other than in paragraph (21) thereof)".

(2) Subsection (b) of section 6104 of such Code (relating to inspection of annual information returns) is amended by striking out the last sentence.

(e) The amendments made by this section shall apply to taxable years beginning after December 31, 1977. Nothing in the amendments made by subsection (d) to section 6104 of the Internal Revenue Code of 1954 shall be construed to permit the disclosure under such section 6104 of confidential business information of contributors to any trust described in section 501(c)(21) of such Code.

I. SUMMARY

Present law allows coal mine operators to take Federal income tax deductions, within certain limitations, for amounts contributed to an irrevocable trust established and used solely to fund the operator's liabilities under Federal and State black lung benefits laws. The amount that may be contributed to a qualified black lung trust and deducted by the operator generally is based on actual benefit claims approved or filed during the taxable year. Also under present law, black lung benefit trusts are exempt from Federal income tax under section 501(c) of the Internal Revenue Code, but are not subject to the public disclosure requirements applicable to other tax-exempt organizations.

The bill modifies the limitation on the amount that may be contributed to a black lung self-insurance trust and deducted by the mine operator. The bill allows contributions and deductions to be made with respect to the amount of anticipated liabilities for claims filed or expected to be filed in the future by past or present employees of the operator, determined by using reasonable actuarial methods and assumptions (which are not inconsistent with any Treasury regulations specifying the actuarial methods and assumptions to be used). Also, the bill makes black lung benefit trusts generally subject to the same public disclosure requirements applicable to other tax-exempt organizations.

II. GENERAL STATEMENT

Present law

Generally, Federal income tax law does not give a taxpayer current deductions for estimated future liabilities. Rather, deductions are allowed for expenses in the taxable year in which all events have occurred that fix the fact of the liability and the amount can be determined with reasonable accuracy (Treas. Reg. § 1.461–1(a)(2)). Exceptions to this general rule include the deduction for additions to a bad debt reserve (sec. 166(c)), certain reserves of insurance companies (secs. 801 ff.), and the limited deduction presently provided for certain future black lung obligations (sec. 192).

The Federal black lung benefits program provides for benefits to be paid to miners who are totally disabled by black lung disease (pneumoconiosis), and to their dependents and survivors. Benefits are payable by the coal mine operator (referred to as the "responsible operator") for whom the miner last worked for a period of at least one year (30 U.S.C. sec. 932; 20 C.F.R. sec. 725.311). Benefits that are not payable or paid by a responsible operator are paid by the Federal government, generally out of revenues raised by the manufacturers excise tax on the sale of coal by producers (sec. 4121 of the Code), as imposed by the Black Lung Benefits Revenue Act of 1977 (Public Law 95–227).

The 1977 Act also amended the Code to provide that a responsible operator may fund its black lung liabilities through deductible contributions to a qualified tax-exempt trust. In order to qualify, the trust must be established for the sole purpose of satisfying all or part of the operator's liabilities (including trust administrative expenses) under black lung acts (sec. 501(c)(21)). Trust assets that are not needed to satisfy current black lung liabilities generally may be invested only in government securities or insured savings deposits. Misuse of trust funds triggers certain excise taxes, assessable against the trust assets, the trustee, and certain other person (such as the operator funding the trust) if involved in any misuse (secs. 4951–4953). Trust funds may in no event revert directly or indirectly to the operator. Any excess trust assets on termination of the trust must be paid over to the Federal government, generally for use in the black lung program.

The amount that during a year may be contributed to the trust and claimed as a deduction by the operator is subject to limitation (sec. 192(b)). Amounts contributed in excess of the limitation may be carried over and deducted in future years, but, until allowed as a deduction (or withdrawal), result in imposition each year of a five percent excise tax payable by the operator (sec. 4953).

The allowable deduction is limited to the amount necessary, when added to the fair market value of trust assets at the beginning of the taxable year, to fund the greater of (1) current year obligations or (2) certain future obligations.

The term "current year obligations" means the amount necessary (1) to satisfy the operator's black lung liabilities payable during the taxable year (only to the extent payable out of trust funds), arising under Federal or State statutes, (2) to purchase insurance exclusively covering such liabilities (in whole or in part), and (3) to pay proper administrative and incidental costs of the trust.

The amount of future obligations that may be taken into account for purposes of the limitations is the lesser of (1) the amount needed to fully fund all expected future black lung benefit payments payable out of the trust with respect to all approved claims and claims filed (and not disapproved) as of the close of the operator's taxable year, or (2) two times the amount needed to fully fund all expected future black lung benefit payments payable out of the trust with respect to either claims approved or claims filed during any one of the current and three preceding taxable years. Current administrative and incidental expenses of the trust may be added to the amount of future obligations to determine the total limitation applicable to that alternative.

Reasons for change

The present-law limitation on the amount that may be contributed to a black lung benefit trust essentially allows a coal mine operator to provide only for claims that have been filed. The committee has concluded that, in order to permit a mine operator to establish properly funded self-insurance trusts for black lung liabilities, and to better secure the payment of benefits to disabled miners, the deduction limitation should also take into account claims that may be filed in the future with respect to the operator's present or past employees.

An estimate of the amount needed to fund such future liabilities of a particular operator will depend on various factors, most of which are commonly taken into account under recognized actuarial principles. The

committee has concluded that it is desirable to allow coal mine operators to fund black lung self-insurance trusts on a sound actuarial basis, and that the bill grants sufficiently broad authority to the Secretary of the Treasury to develop further administrable standards including the promulgation of regulations on specific actuarial methods and assumptions which must be used in computing deduction limitations.

Explanation of the bill

Limitation on Deductions

Under the bill, a taxpayer generally may deduct contributions to a black lung benefit trust that do not exceed the amount necessary to fund, on a sound actuarial basis, the taxpayer's remaining unfunded liability for black lung claims filed or expected to be filed in the future by (or with respect to) past and present employees. However, if there are insufficient funds in the trust to pay all black lung benefit liabilities payable out of the trust during the current taxable year, the taxpayer may contribute to the trust and deduct the amount necessary to allow the trust to pay such claims (including the cost of insurance and trust administrative expenses), even if that amount exceeds the general deduction limitation described in the preceding sentence.[1]

The bill provides that the deduction limitation for the taxable year shall be determined by using reasonable actuarial methods and assumptions which are not inconsistent with regulations prescribed by the Secretary of the Treasury. The bill requires the use of a level method of funding the taxpayer's remaining unfunded black lung liability. Essentially, this means that the entire estimated unfunded liability amount cannot be contributed and deducted in one taxable year, but rather must be contributed and deducted over a reasonable period of time (called the "funding period").

The bill provides that generally the funding period shall be greater of (1) the average remaining working life of miners[2] who are present employees of the taxpayer, or (2) 10 taxable years of the taxpayer. The Secretary of the Treasury may prescribe a different funding period (either longer or shorter) by regulation, or may consent to a different period proposed by the taxpayer.

The committee expects the Secretary of the Treasury to issue regulations at an early date regarding specific actuarial methods and assumptions which must be used in computing the deduction limitation under this bill. The committee expected that the Secretary, in promulgating these regulations, will consider the following points:

(1) Changes in funding requirements occasioned by experience gains and losses, and changes in actuarial assumptions, would be amortized over some appropriate period of time;

(2) A correction of an overfunding of the trust may appropriately be taken into account over a shorter period of time than a correction of an underfunding;

(3) Due regard may be given in promulgating the regulations to the potential for manipulation of deduction limitations through the use of unrealistic actuarial methods or assumptions;

(4) The regulations may require use of statistics compiled nationally or regionally by the Department of Labor, the National Institute of Occupational Safety and Health, or other government agencies regarding the incidence of black lung disease and claims. The committee expects that a taxpayer could use other statistics if the taxpayer can clearly show that they are more appropriate to the pertinent facts and circumstances.

Disclosure of sec. 501(c)(21) applications and trust returns

The bill makes black lung benefit trusts subject to the same public disclosure requirements as apply to other tax-exempt trusts described in section 501(c) of the Code. Generally, this means that the exemption application for the trust is subject to public inspection pursuant to section 6104(a)(1), and annual returns of a tax-exempt trust are subject to public inspection under section 6104(b).

It is expressly provided in the bill that section 6104 of the Code shall not be construed to permit disclosure of confidential business information of a coal mine operator who establishes and contributes to a section 501(c)(21) trust. For example, information such as the operator's estimated total liability for black lung benefits, or the operator's coal pricing policies, is not to be disclosed under section 6104 of the Code.

Effects of the Bill on Certain Excise Tax Provisions

The bill does not affect the operation of the provisions of present law that impose excise taxes on self-dealing and taxable expenditures of black lung trusts (secs. 4951–4952 of the Code). However, the bill indirectly affects the provision imposing an excise tax on excess contributions to a black lung trust (sec. 4953).

Under section 4953, an excise tax of five percent is imposed on the aggregate amount of excess contributions to a black lung trust. The tax is payable by the operator making the excess contribution. Generally, an excess contribution is defined as the excess of the amount contributed over the amount deductible for a taxable year. The committee intends that an overfunding of the trust resulting from experience gains or reasonable changes of actuarial assumptions generally is not to be construed as having been generated by excess contributions for purposes of this excise tax.

Denial of Double Deduction

The bill expressly provides that, with respect to the same black lung liability, an operator may not both fund a black lung trust and pay or accrue the cost of a benefit directly. Thus, for example, if the expected benefits due to a given miner (or group of miners) are taken into account in determining the limitation on contributions to the trust, the coal mine operator may not claim a deduction with respect to those same benefits by paying the miner (or miners within the group) directly rather than through the trust and may not accrue deductions with respect to those same benefits.

This rule does not require that all uninsured black lung benefits payable by a responsible operator must be funneled through a black lung trust. An operator establishing a qualified trust may choose to fund some liabilities on a pay-as-you-go basis. However, the operator is precluded from using the same benefit as a basis for two deductions.

Effective date

The bill is effective for taxable years beginning after December 31, 1977.

Revenue effect

The revenue effect of the bill depends primarily on the extent to which coal mine operators will elect to establish and fund self-insurance trusts. There is no adequate information available as to the extent that operators will make such elections. Assuming that mine operators make deductible trust deposits exceeding by $100 million the amount of their prior (deductible) liability costs, budget receipts will be reduced by approximately $40 million. Also, the bill provides that interest earned by operator self-insurance trust funds is tax-exempt. If mine operators deposit in such trusts $100 million in funds which would otherwise generate taxable earnings, this would result in a revenue loss of about $1 million during the first year, $4 million in the second year, and rising to $16 million by the seventh year.

III. EFFECT OF THE BILL ON THE BUDGET AND VOTE OF THE COMMITTEE IN REPORTING THE BILL

Revenue effect

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made about the effect on the budget of this bill, H.R. 13167, as amended. The effect of the bill on budget receipts depends primarily on the extent to which coal mine operators will elect to establish and fund self-insurance trusts. There is no adequate information available as to the extent that operators will make such elections. Assuming that mine operators make deductible trust deposits exceeding by $100 million the amount of the prior (deductible) liability costs, budget receipts will be reduced by approximately $40 million. Also, the bill provides that interest earned by operator self-insurance trust funds is tax-exempt. If mine operators deposit in such trusts $100 million in funds which would otherwise generate taxable earnings, this would result in a revenue loss of about $1 million during the first year, $4 million in the second year, and rising to $16 million by the seventh year.

The Treasury Department agrees with this statement.

Vote of the committee

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of the committee on the motion to report the bill, as amended. The bill, H.R. 13167, as amended, was ordered favorably reported by voice vote.

IV. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clauses 2(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on H.R. 13167, as amended.

Oversight findings

With respect to subdivision (A) of clause 2(l)(3), the committee advises that it was a result of the committee's oversight activities with respect to the application of tax rules relating to the funding of black lung benefit trusts that the committee concluded that it is appropriate to enact the provisions contained in the bill.

New budget authority and tax expenditures

With respect to subdivision (B) of clause 2(l)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill, as amended, involve no new budget authority or new tax expenditures. The changes made by this bill involve increased tax expenditures for operator trusts for contingent liabilities. The extent of increased expenditures depends primarily on the extent to which coal mine operators will elect to establish and fund self-insurance trusts. There is no adequate information available as to the extent that operators will make such elections. Assuming that mine operators make deductible trust deposits exceeding $100 million the amount of their prior (deductible) liability costs, tax expenditures will be increased by approximately $40 million.

[1] The limitation on amounts deductible under the bill is intended to provide an upper limit on contributions and deductions, and does not set a minimum level of funding that the taxpayer is required to meet if a self-insurance trust is established.

[2] For this purpose, the term "miner" has the same meaning as used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. sec. 902(d)).

Consultation with Congressional Budget Office on budget estimates

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in part III of this report) and agrees with the methodology used and the resulting dollar estimates.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject matter of this bill.

Inflationary impact

In compliance with clause 2(l)(4), the committee states that the enactment of this bill is not expected to have an inflationary impact on prices and costs in the operation of the national economy.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1954

* * * * *

Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

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PART VI—ITEMIZED DEDUCTION FOR INDIVIDUALS AND CORPORATIONS

* * * * *

SEC. 192. CONTRIBUTIONS TO BLACK LUNG BENEFIT TRUST.

(a) ALLOWANCE OF DEDUCTION.—There is allowed as a deduction for the taxable year an amount equal to the sum of the amounts contributed by the taxpayer during the taxable year to or under a trust or trusts describe in section 501(c)(21)

[(b) LIMITATION.—

[(1) IN GENERAL.—The amount of the deduction allowed by subsection (a) for any taxable year with respect to any such trust shall not exceed the amount determined under paragraph (2) or (3), whichever is greater.

[(2) CURRENT YEAR OBLIGATIONS.—The amount determined under this paragraph for the taxable year is the amount which, when added to the fair market value of the assets of the trust as of the beginning of the taxable year, is necessary to carry out the purposes of the trust described in subparagraph (A) of section 501(c)(21) for the taxable year.

[(3) CERTAIN FUTURE OBLIGATIONS.—The amount determined under this paragraph for the taxable year is the sum of—

[(A) the amount which is necessary to meet the expenses of the trust described in clause (iii) of section 501(c)(21)(A) for the taxable year, and

[(B) the lesser of—

[(i) the amount which, when added to the fair market value of the assets of the trust as of the beginning of the taxable year, is necessary to provide all expected future payments with respect to black lung benefit claims which are approved, including any such claims which have been filed and which have not been disapproved, as of the end of the taxable year, or

[(ii) twice the amount which is necessary to provide all expected future payments with respect to the greater of—

[(I) black lung benefit claims filed during the taxable year or any one of the 3 immediately preceding taxable years, or

[(II) such claims approved during any one of those 4 taxable years.]

(b) LIMITATION.—The maximum amount of the deduction allowed by subsection (a) for any taxpayer for any taxable year shall not exceed the greater of—

(1) the amount necessary to fund (with level funding) the remaining unfunded liability of the taxpayer for black lung claims filed (or expected to be filed) by (or with respect to) past or present employees of the taxpayer, or

(2) the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts out of such trust for the taxable year.

(c) SPECIAL RULES.—

[(1) DETERMINATION OF EXPECTED FUTURE PAYMENTS.—The amounts described in subsection (b) shall be determined by using reasonable actuarial assumptions which are not inconsistent with regulations prescribed by the Secretary.]

(1) METHOD OF DETERMINING AMOUNTS REFERRED TO IN SUBSECTION (b).—

(A) IN GENERAL.—The amounts described in subsection (b) shall be determined by using reasonable actuarial methods and assumptions which are not inconsistent with regulations prescribed by the Secretary.

(B) FUNDING PERIOD.—Except as provided in subparagraph (C), the funding period for purposes of subsection (b)(1) shall be the greater of—

(i) the average remaining working life of miners who are present employees of the taxpayer, or

(ii) 10 taxable years.

For purposes of the preceding sentence, the term "miner" has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(C) DIFFERENT FUNDING PERIODS.—To the extent that—

(i) regulations prescribed by the Secretary provide for a different period, or

(ii) the Secretary consents to a different period proposed by the taxpayer.

such different period shall be substituted for the funding period provided in subparagraph (B).

(2) BENEFIT PAYMENTS TAKEN INTO ACCOUNT.—In determining the amounts described in subsection (b), only those black lung benefit claims the payment of which is expected to be made from the trust shall be taken into account.

(3) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment of a contribution on the last day of a taxable year if the payment is on account of that taxable year and is made not later than the time prescribed by law for filing the return for that taxable year (including extensions thereof).

(4) CONTRIBUTIONS TO BE PAID IN CASH OR CERTAIN OTHER ITEMS.—No deduction shall be allowed under subsection (a) with respect to any contribution to a trust described in section 501(c)(21) other than a contribution in cash or in items in which such trust may invest under clause (ii) of section 501(c)(21)(B).

(5) DENIAL OF SECTION 162 DEDUCTION WITH RESPECT TO LIABILITY.—No deduction shall be allowed under section 162(a) with respect to any liability taken into account in determining the deduction under subsection (a) of this section of the taxpayer (or a predecessor).

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

* * * * *

Subchapter B—Miscellaneous Provisions

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SEC. 6104. PUBLICITY OF INFORMATION REQUIRED FROM CERTAIN EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS.

(a) INSPECTION OF APPLICATIONS FOR TAX EXEMPTIONS.—

(1) PUBLIC INSPECTION.—

(A) ORGANIZATIONS DESCRIBED IN SECTION 501.—If an organization described in section 501(c) [(other than in paragraph (21) thereof)] or (d) is exempt from taxation under section 501(a) for any taxable year, the application filed by the organization with respect to which the Secretary made his determination that such organization was entitled to exemption under section 501(a), together with any papers submitted in support of such application, and any letter or other document issued by the Internal Revenue Service with respect to such application shall be open to public inspection at the national office of the Internal Revenue Service. In the case of any application filed after the date of the enactment of this subparagraph, a copy of such application and such letter or document shall be open to public inspection at the appropriate field office of the Internal Revenue Service (determined under regulations prescribed by the Secretary). Any inspection under this subparagraph may be made at such times, and in such manner, as the Secretary shall by regulations prescribe. After the application of any organization has been opened to public inspection under this subparagraph, the Secretary shall, on the request of any person with respect to such organization, furnish a statement indicating the subsection and paragraph of section 501 which it has been determined describes such organization.

(B) PENSION, ETC., PLANS.—The following shall be open to public inspection at such times and in such places as the Secretary may prescribe:

(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401(a), 403(a), or 405(a), an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b)

(ii) any application filed with respect to the exemption from tax under section 501(a) of an organization forming part of a plan or account referred to in clause (i),

(iii) any papers submitted in support of an application referred to in clause (i) or (ii), and

(iv) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in clause (i) or the exemption from tax referred to in clause (ii).

Except in the case of a plan participant, this subparagraph shall not apply to any plan referred to in clause (i) having not more than 25 participants.

(C) CERTAIN NAMES AND COMPENSATION NOT TO BE OPEN TO PUBLIC INSPECTION.—In the case of any application, document, or other papers, referred to in subparagraph (B), information from which the compensation (including deferred compensation) of any individual may be ascertained shall not be opened to public inspection under subparagraph (B).

(D) WITHHOLDING OF CERTAIN OTHER INFORMATION.—Upon request of the organization submitting any supporting papers described in subparagraph (A) or (B), the Sec-

retary shall withhold from public inspection any information contained therein which he determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if he determines that public disclosure of such information would adversely affect the organization. The Secretary shall withhold from public inspection any information contained in supporting papers described in subparagraph (A) or (B) the public disclosure of which he determines would adversely affect the national defense.

(2) INSPECTION BY COMMITTEE OF CONGRESS.—Section 6103(d) shall apply with respect to—

(A) the application for exemption of any organization described in section 501 (c) or (d) which is exempt from taxation under section 501(a) for any taxable year, and any application referred to in subparagraph (B) of subsection (a)(1) of this section, and

(B) any other papers which are in the possession of the Secretary and which relate to such application,

as if such papers constituted returns.

(b) INSPECTION OF ANNUAL INFORMATION RETURNS.—The information required to be furnished by sections 6033, 6034, 6056, and 6058, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe. Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a)) which is required to furnish such information. [This subsection shall not apply to information required to be furnished by a trust described in section 501(c).]

Mr. LONG. Mr. President, Senator RANDOLPH has been in the forefront of black lung legislation—as he is now—originally in 1969 as the author of the Black Lung Act, in 1972 with major amendments to that act, and in 1978 with substantial revisions of the act, expanding the coverage of the act, removing obstacles to eligibility, and making the black lung program permanent. Mr. President, I commend the able and dedicated Senator from West Virginia for his leadership on the black lung self-insurance trust deduction bill and his continued, unflagging support of both miners and the coal industry. The coal miners of this country, as well as the coal industry, have a most able advocate and a true friend in Senator JENNINGS RANDOLPH of West Virginia.

LOCKS AND DAM 26 AND THE WATERWAY USER TAX

Mr. LONG. Mr. President, I am about to move to discharge the Finance Committee from further consideration of a relatively minor House-passed bill, H.R. 8533. We propose to add to that bill, if the Senate will agree, a compromise of the issue that has been debated so long and hard—the waterway user tax and locks and dam 26.

I now ask unanimous consent that the Committee on Finance be discharged from further consideration of H.R. 8533, and that the Senate proceed to its immediate consideration.

Mr. DANFORTH. Mr. President, reserving the right to object, could I inquire what procedures the chairman has in mind for this? Will we have an opportunity, does he anticipate, for a period of debate before we vote?

Mr. LONG. Yes. The first thing is we want to get this bill before the Senate. The bill is the so-called bingo bill, which I will explain in a moment. First I want to get it out of the committee and before the Senate.

The PRESIDING OFFICER. Is there objection?

Mr. DURKIN. Reserving the right to object—I yield to the majority leader.

Mr. ROBERT C. BYRD. I only want to get a time limitation on this measure. I ask unanimous consent that the time overall be limited to 1 hour to be equally divided between Mr. LONG and Mr. HANSEN.

Mr. SCHMITT. Mr. President, a point of order. I believe there is a unanimous-consent request before us.

The PRESIDING OFFICER. Not that the Chair was aware of. What was the request?

Mr. SCHMITT. Whether we would take up this matter.

Mr. ROBERT C. BYRD. Mr. President, I am trying to get a time agreement. Will the Senator include that in his request?

Mr. LONG. Mr. President, I ask unanimous consent that there be a time limitation of 1 hour to be equally divided between the Senator from Missouri (Mr. DANFORTH) and the Senator from Louisiana (Mr. LONG).

The PRESIDING OFFICER. The Chair cannot hear the Senator.

Mr. LONG. I ask that on the bill there be a time limitation of 1 hour to be equally divided between the Senator from Louisiana (Mr. LONG) and the Senator from Missouri (Mr. DANFORTH).

Mr. ROBERT C. BYRD. Will the Senator make that as overall for 1 hour?

Mr. LONG. Yes.

Mr. BAKER. Reserving the right to object and I will not object, but this is the procedure the chairman is using to effectuate what we understand to be the compromise on the locks and dam 26?

Mr. LONG. This is the proposed compromise which I understand has been cleared with Senator DOMENICI, and so far as I can determine, has been cleared with the administration, as well as those of us who favor the waterway operators. It has been cleared all around. It is a compromise to try to satisfy everybody.

Mr. BAKER. Further reserving the right to object, and I now can announce I will not object, I will confirm what the distinguished manager of the bill has said. As far as I can ascertain, the matter has been compromised satisfactorily on this side of the aisle. We have no further objections to proceeding in this matter.

The PRESIDING OFFICER. The Senator from New Hampshire reserved his right to object.

Mr. DURKIN. Reserving the right to object, and I do not think I will, I agree with the Senator from Louisiana with respect to locks and dam 26, but I do have a question as to what is in the bingo bill in addition to locks and dam 26.

Mr. LONG. This bill provides that most tax-exempt organizations under section 501 of the Code and political organizations are not subject to tax on income from bingo games that are conducted in accordance with State and local laws and and not in competition with profit-making businesses, regardless of whether such games are carried on regularly with paid labor. Under present law, if tax-exempt organizations do not carry on the game with paid labor, they are tax exempt on income from bingo. Under the bill, if the organization pays somebody to work for it and the organization qualifies as a tax-exempt organization or a political organization, it is not taxable on income from such bingo games.

Mr. DURKIN. Further reserving the right to object, would the Senator from Louisiana be willing to modify his unanimous-consent request so that no non-germane amendments on locks and dam 26 would be in order?

Mr. LONG. I will ask that no amendments that are not related either to the bill itself, H.R. 8533, or the amendment, which is the waterway user tax and locks and dam 26 amendment, would not be germane.

Mr. DURKIN. In other words, no amendments dealing with subjects other than bingo and no amendments dealing with other than locks and dam 26 would be in order?

Mr. LONG. That is correct.

Mr. DURKIN. I have no objection.

The PRESIDING OFFICER. Is there objection?

Mr. GRAVEL. Reserving the right to object, and I shall not object, I have discussed this at great length with all parties involved. I would like to clear something up before waiting an hour to do it so I do it by way of reserving the right to object.

I propound a question to the majority leader. I am deeply concerned about a piece of legislation before us and I would like to see its passage. There is a Member in the House, serving there from 10 years before I was elected, who came to me with great concern that he had heard a report that I was an obstructionist in this legislation. Quite to the contrary, I want to see this legislation passed as soon as possible. It affects many Members of this body and many Members of the House. That legislation is S. 791.

There was an effort to bring that up last night and it was objected to. I would like to propound a request to the majority leader to find out what is the possible disposition of that legislation. I have no amendment on that. I have been satisfied by the committee. My concern is I do not want to see any amendments placed on that bill which would be of an irrelevant nature to what the leadership in the House would like to see passed and what I think should be passed in this body.

I have heard it mentioned today repeatedly that the senior Senator from Alaska would propound an amendment to that which would be the equivalent to the d-2 legislation, which I am deeply opposed to, and would be constrained to oppose. He has been here all day but he chooses to not be here this evening. My question is, what does the leadership plan with respect to S. 791?

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Alaska (Mr. STEVENS) is here. May I say that it is the leadership's plan to try to call up this measure and at the moment I do not anticipate much of a problem on

it. I think we will be able to work out a time limit which will be acceptable to the Senator from Alaska.

Mr. GRAVEL. Does the leadership think it will be called up this evening?

Mr. ROBERT C. BYRD. No, I do not think this evening. But I hope to call it up. I will make every effort to do so.

Mr. GRAVEL. Reserving the right to object, unless this is passed with some alacrity, just the mechanical difficulty involved, satisfying so many people involved, puts my friend in an impossible position. To object to taking it up this evening is really not doing a service to the people on the House side who want to see it passed and the people on the Senate side who want to see these parks come into being.

Mr. DURKIN. Will the Senator yield for a question?

Mr. GRAVEL. I am only reserving the right to object. If I can yield, I would be happy to yield for a question.

The PRESIDING OFFICER. Has the Senator from Alaska finished?

Mr. GRAVEL. I have reserved the right to object. I would be happy to yield to my friend from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire was seeking recognition?

Mr. GRAVEL. He wanted to ask me a question.

Mr. BAKER. Mr. President, I wonder if the Senator will yield for just a moment.

Mr. DURKIN. I yield.

Mr. BAKER. I thank the Senator. As the Senator from Alaska knows, one of my responsibilities and duties is to protect the Members on this side with regard to unanimous-consent requests. I could not agree tonight to a request to proceed to the consideration of that measure, not on my behalf but on behalf of another Member of this side. I would be happy to proceed with the majority leader to try to arrive at a time to do that, but I simply cannot do it tonight.

Mr. LONG. Mr. President, might I make the point——

Mr. GRAVEL. I am sure if the Senator from Tennessee wanted to object, he would have done so. My understanding is that the objection comes from the senior Senator from Alaska. I do not think the objection has foundation. I think it is unfortunate. It is costing precious time to the Members of the House who desire to see the enactment of this legislation take place. I would make a special appeal. We can pass this in 10 minutes tonight. Everybody is prepared to give a unanimous-consent request or 5 minutes on the amendment and we could have the parks bill pass tonight, to the House, and go its merry way. I would make a special appeal to the minority leader if he would not go back to that person unnamed on the minority side who refuses to let this bill come up and plead with him so as to accommodate these very generous people on the House side.

The PRESIDING OFFICER. The question is on the unanimous-consent request.

Mr. BAKER. Mr. President, if I may have just a moment.

The PRESIDING OFFICER. The question is on agreeing to the unanimous-consent request.

Mr. GRAVEL. I reserved my right to object and I reserved my right so I might enjoy this colloquoy with my colleagues.

The PRESIDING OFFICER. The Chair does not have to permit a speech in order to get on with the unanimous-consent request. So we may get on with the unanimous-consent request, is there objection to the unanimous-consent request?

Mr. GRAVEL. Reserving my right to object, I might tell the Chair that a Senator can reserve his right to object.

The PRESIDING OFFICER. The Chair is told by the Parliamentarian that it is up to the Chair whether he will permit a Senator to make a speech under a unanimous-consent request.

Mr. GRAVEL. It is not that I wish this legislation to come up. It is that I do not wish to hang around for an hour until the disposition of this bill so I can find out when it will.

Mr. ROBERT C. BYRD. Mr. President, let me take just 30 seconds.

In reply to the Senator from Alaska, I cannot call it up tonight, but I shall make every effort to call it up before the Senate adjourns sine die and as much in advance of that as possible. I believe we can work out a time agreement on that and I shall do my very best, but I cannot call that up tonight.

Mr. GRAVEL. Mr. President, I shall not object. I only plead with the leadership to go to that Member and ask him if he might accommodate the leadership of the House.

Mr. BAKER. Mr. President, 1 brief minute.

There is not one Member, there are four Members. The Senator is correct, I will not disclose the names of those Members, but it is not a single Member posing the problem.

The PRESIDING OFFICER. Is there objection? Without objection, the unanimous-consent request is agreed to. The clerk will state the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 8533) to amend the Internal Revenue Code of 1954 to provide that income from the conducting of certain bingo games by certain tax-exempt organizations will not be subject to tax.

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 2047

(Purpose: To add the Inland Waterways Revenue Act of 1978, to authorize the replacement of Locks and Dam 26 on the Mississippi River, and to authorize the preparation of a comprehensive master management plan for the Upper Mississippi River System)

Mr. LONG. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. LONG) proposes an unprinted amendment numbered 2047:

Strike out all after the enacting clause and insert the following titles:

TITLE I—REPLACEMENT OF LOCKS AND DAM 26; UPPER MISSISSIPPI RIVER COMPREHENSIVE MASTER MANAGEMENT PLAN

Sec. 101. (a) The Upper Mississippi River Basin Commission (referred to in this section as the "Commission") shall prepare a comprehensive master plan for the management of the Upper Mississippi River System in cooperation with the appropriate Federal, State, and local officials. The Commission shall publish a preliminary plan not later than January 1, 1981. The Commission shall hold public hearings on the preliminary plan in each State which would be affected by the plan, shall review all comments presented at such hearings or submitted in writing to the Commission, and, after making any revisions in the plan it decides are necessary, submit to Congress a final master plan not later than January 1, 1982. All decisions of the Commission related to the master plan shall be made by a two-thirds majority vote of the Commission.

(b) The Commission shall provide for public participation in the development revisions, and implementation of said plan and shall encourage and assist such participation. The Commission shall, within 150 days after the date of enactment of this Act, public guidelines in the Federal Register for public participation in the development, revision, and implementation of the plan. The final master plan shall not be implemented without the express approval of the plan by an Act of Congress enacted after the date of enactment of this Act. After such approval, no change may be made in the master plan except as may be provided by an Act of Congress enacted after the date of enactment of the Act approving the master plan. No person shall engage in any activity which violates any provision of the plan or which is inconsistent (as determined under regulations promulgated by the Commission) with the plan.

(c) The Commission, in developing the plan, shall identify the various economic, recreational, and environmental objectives of the Upper Mississippi River System, recommend guidelines to achieve such objectives, and propose methods to assure compliance with such guidelines and coordination of future management decisions affecting the Upper Mississippi River System, and include with the proposed master plan any legislative proposals which may be necessary to carry out such recommendations and achieve such objectives.

(d) For the purposes of developing the plan, the Commission shall conduct such studies as it deems necessary to carry out its responsibilities under this section, utilizing, to the fullest extent possible, the resources and results of the Upper Mississippi River resources management (GREAT) study conducted pursuant to section 117 of the Water Resources Development Act of 1976 (Public Law 94–587) and of other ongoing or past studies. The Commission may request appropriate Federal, State, or local agencies to prepare such studies. Any Federal agency to which such a request is submitted may conduct any such study for the purpose of this section.

(e) Studies conducted pursuant to this section shall include, but not be limited to, the following:

(1) The Secretary of the Interior and the Secretary of the Army, working through the Commission, shall undertake a study to determine the carrying capacity of the Upper Mississippi River System, and the long- and short-term systematic ecological impacts of (A) present and any projected expansion of navigation capacity on the fish and wildlife, water quality, wilderness, and public recreational opportunities of said rivers, (B) pres-

ent operation and maintenance programs, (C) the means and measures that should be adopted to prevent or minimize loss of or damage to fish and wildlife, and (D) a specific analysis of the immediate and systematic environmental effects of any second lock at Alton, Illinois, and provide for the mitigation of any adverse impact on, and the enhancement of, such resources.

(2) The Commission shall undertake studies to determine—

(A) the relationship of any expansion of navigational capacity on the Upper Mississippi River System to national transportation policy,

(B) the direct and indirect effects of any expansion of navigational capacity on the Nation's railroads and on shippers dependent upon rail service, and

(C) transportation costs and benefits to the Nation to be derived from any expansion of navigational capacity on said River System.

The Commission is directed to immediately initiate a specific evaluation of the economic need for a second lock at Alton, Illinois, and the direct and indirect systematic effects and needs for such a second lock at Alton, Illinois.

(3) The Commission shall undertake a program of studies, including a demonstration program to evaluate the benefits and costs of disposing of dredge spoil material in contained areas located out of the floodplain. The program shall include, but shall not be limited to, the evaluation of possible uses in the marketplace for the dredge spoil studies and demonstration programs to minimize the environmental effects of channel operation and maintenance activities.

(4) The development by the Commission of a computerized analytical inventory and system analysis for the Upper Mississippi River System to facilitiate evaluation of the comparative environmental effects of alternative management proposals.

(f) Any Secretary responsible for conducting a study under subsection (e) of this section, and other studies conducted under this section, shall produce one of more draft reports containing study conclusions and appropriate appendix materials and shall present the reports to the Commission for approval and inclusion in the master plan process.

(g) To carry out the provisions of this section, there are authorized to be appropriated to the Commission, through the United States Water Resources Council, $12,000,000. The Commission is authorized to transfer funds to such Federal, State, or local government agencies as it deems necessary to carry out the studies and analysis authorized by this section.

(h) For purposes of this section, the Upper Mississippi River System consists of those river reaches containing commercial navigation channels on the Mississippi River main stem north of Cairo, Illinois, the Minnesota River, Minnesota; Black River, Wisconsin; Saint Croix River, Minnesota and Wisconsin; Illinois River and Waterway, Illinois; and Kashaskia River, Illinois.

(i) No replacement, construction, or rehabilitation that expands that navigation capacity of locks, dams, and channels shall be undertaken by the Secretary of the Army to increase the navigation capacity of the Upper Mississippi River System, until the master plan prepared pursuant to this section has been approved by the Congress except as provided in section 102 and except for necessary operating and maintenance activities.

(j) The lock and dam authorized pursuant to section 102 shall be designed and constructed to provide for possible future expansion. All other construction activities initiated by the Secretary of the Army on the Upper Mississippi River north of Cairo, Illinois, and on the Illinois River north of Grafton, Illinois, shall be initiated only in accordance with the guidelines set forth in the master plan.

SEC. 102. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to replace locks and dam 26, Mississippi River, Alton, Illinois, and Missouri, by constructing a new dam and a single, one-hundred-and-ten-foot by one-thousand-two-hundred-foot lock at a location approximately two miles downstream from the existing dam, substantially in accordance with the recommendations of the Chief of Engineers in his report on such project dated July 31, 1976, at an estimated cost of $421,000,000.

(b) The Secretary of the Army, acting through the Chief of Engineers, is authorized to replace, at Federal expense as a part of project costs authorized in subsection (a) terrestrial wildlife habitat inundated as a result of the construction of the project on an acre-for-acre basis in the respective States of Missouri and Illinois and to manage such lands as are thus acquired by the Secretary for wildlife protection purposes. The Secretary is further authorized to provide project-related recreation development on or in the vicinity of Ellis Island, Missouri, that requires no separable project lands and includes facilities such as roads, parking lots, walks, picnic areas, a boat launching ramp, and a beach, at an estimated cost of $4,000,000 to be cost shared with the State of Missouri and administered in accordance with the provisions of the Federal Water Project Recreation Act and undertaken independently of the navigation feature of the project.

(c) The project depth of the channel above Cairo, Illinois, on the Mississippi River shall not exceed 9 feet, and neither the Secretary of the Army nor any other Federal official shall study the feasibility of deepening the navigation channels in the Minnesota River, Minnesota; Black River, Wisconsin; Saint Croix River, Minnesota and Wisconsin; the Mississippi River north of Cairo, Illinois; the Kaskaskia River, Illinois; and the Illinois River and Waterway, Illinois, unless specifically authorized by an Act of Congress enacted after the date of enactment of this Act.

TITLE II—INLAND WATERWAYS REVENUE ACT OF 1978

Sec. 201. Short title.
Sec. 202. Imposition of tax.
Sec. 203. Establishment of Inland Waterways Trust Fund.
Sec. 204. Trust fund available for expenditures for navigation construction and rehabilitation projects on inland waterways.
Sec. 205. Study with respect to inland waterway user taxes and charges.
Sec. 206. Inland and intracoastal waterways of the United States.

SEC. 201. SHORT TITLE.

This title may be cited as the "Inland Waterways Revenue Act of 1978".

SEC. 202. IMPOSITION OF TAX.

(a) IN GENERAL.—Chapter 31 of the Internal Revenue Code of 1954 (relating to special fuels) is amended by adding at the end thereof the following new section:

"SEC. 4042. TAX ON FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

"(a) IN GENERAL.—There is hereby imposed a tax on any liquid used during any calendar quarter by any person as a fuel in a vessel in commercial waterway transportation.

"(b) AMOUNT OF TAX.—The tax imposed by subsection (a) shall be determined from the following table:

"If the use occurs— After September 30—	And before October 1—	The tax is—
1980	1981	4 cents a gallon.
1981	1983	6 cents a gallon.
1983	1985	8 cents a gallon.
1985		10 cents a gallon.

"(c) EXEMPTIONS.—

"(1) DEEP-DRAFT OCEAN-GOING VESSELS.—The tax imposed by subsection (a) shall not apply with respect to any vessel designed primarily for use on the high seas which has a draft of more than 12 feet.

"(2) PASSENGER VESSELS.—The tax imposed by subsection (a) shall not apply with respect to any vessel used primarily for the transportation of persons.

"(3) USE BY STATE OR LOCAL GOVERNMENT IN TRANSPORTING PROPERTY IN A STATE OR LOCAL BUSINESS.—Subparagraph (B) of subsection (d)(1) shall not apply with respect to use by a State or political subdivision thereof.

"(4) USE IN MOVING LASH AND SEABEE OCEAN-GOING BARGES.—The tax imposed by subsection (a) shall not apply with respect to use for movement by tug of exclusively LASH (Lighter-aboard-ship) and SEABEE ocean-going barges released by their ocean-going carriers solely to pick up or deliver international cargoes.

"(d) DEFINITIONS.—For purposes of this section—

"(1) COMMERCIAL WATERWAY TRANSPORTATION.—The term 'commercial waterway transportation' means any use of a vessel on any inland or intracoastal waterway of the United States—

"(A) in the business of transporting property for compensation or hire, or

"(B) in transporting property in the business of the owner, lessee, or operator of the vessel (other than fish or other aquatic animal life caught on the voyage).

"(2) INLAND OR INTRACOASTAL WATERWAY OF THE UNITED STATES.—The term 'inland or intracoastal waterway of the United States' means any inland or intracoastal waterway of the United States which is described in section 206 of the Inland Waterways Revenue Act of 1978.

"(3) PERSON.—The term 'person' includes the United States, a State, a political subdivision of a State, or any agency or instrumentality of any of the foregoing.

"(e) DATE FOR FILING RETURN.—The date for filing the return of the tax imposed by this section for any calendar quarter shall be the last day of the first month following such quarter.".

(b) TECHNICAL AMENDMENT.—Section 4293 of such Code (relating to exemption for United States and possessions) is amended by striking out "chapters 31 and 32" and inserting in lieu thereof "section 4041, chapter 32".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 31 of such Code is amended by adding at the end thereof the following new item:

"SEC. 4042. Tax on fuel used in commercial transportation on inland waterways.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1980.

SEC. 203. ESTABLISHMENT OF INLAND WATERWAYS TRUST FUND

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Inland Waterways Trust Fund" (hereinafter in this title referred to as the "Trust Fund"), consisiting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section.

(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—

(1) IN GENERAL.—There are hereby appropriated to the Trust Fund amounts determined by the Secretary of the Treasury (hereinafter in this section referred to as the "Secretary") to be equivalent to the amounts of the taxes received in the Treasury under section 4042 of the Internal Revenue Code of 1954 (relating to tax on fuel used in commercial transportation on inland waterways).

(2) METHOD OF TRANSFER.—The amounts appropriated by paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the amounts referred to in paragraph (1) received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c) MANAGEMENT OF TRUST FUND.—

(1) REPORT.—It shall be the duty of the Secretary to hold the Trust Fund, and to report to the Congress each year ending on or after September 30, 1981, on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the fiscal year and the next 5 fiscal years after the fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2) INVESTMENT.—

(A) IN GENERAL.—It shall be the duty of the Secretary to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired (i) on original issue at the issue price, or (ii) by purchase of outstanding obligations at the market price.

(B) SALE OF OBLIGATIONS.—Any obligation acquired by the Trust Fund may be sold by the Secretary at the market price.

(C) INTEREST; PROCEEDS FROM SALES AND REDEMPTIONS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

SEC. 204. TRUST FUND AVAILABLE FOR EXPENDITURES FOR NAVIGATIONAL CONSTRUCTION AND REHABILITATION PROJECTS ON INLAND WATERWAYS

(a) IN GENERAL.—Amounts in the Trust Fund shall be available, as provided by appropriations Acts, for making construction and rehabilitation expenditures for navigation on the inland and intracoastal waterways of the United States described in section 206 of this Act. No amount may be appropriated out of the Trust Fund unless the law authorizing the expenditure for which the amount is appropriated explicitly provides that the appropriation is to be made out of the Trust Fund.

(b) EXPENDITURES MUST BE OTHERWISE AUTHORIZED BY LAW.—Nothing in this section shall be deemed to authorize any program, project, or other activity not otherwise authorized by law.

SEC. 205. STUDY WITH RESPECT TO INLAND WATERWAY USER TAXES AND CHARGES.

(a) STUDY DIRECTED.—The Secretary of Transportation and the Secretary of Commerce, in consultation with the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Energy, the Attorney General of the United States, the Secretary of the Army, the Chairman of the Water Resources Council, and the Director of the Office of Management and Budget, shall—

(1) make a full and complete study with respect to inland waterway user taxes and charges, and

(2) make findings and policy recommendations with respect thereto.

Such study shall include (but shall not be limited to) a consideration of the matters listed in subsections (b), (c), (d), (e), and (f) of this section.

(b) Considerations Relating to the Taxing Mechanism.—

(1) The extent to which the Federal Government should seek to recover some or all of Federal expenditures for the benefit of inland waterway transportation from the users of the facilities for which such expenditures are made.

(2) The various forms of inland waterway user taxes and charges which could be established.

(3) The various methods of collecting inland waterway user taxes and charges, and the administrative costs of such taxes and charges.

(4) The classes and categories of users and other persons on whom inland waterway user taxes and charges should be imposed.

(5) The waterways of the United States (including the Great Lakes, deep draft channels, and coastal ports) which should be included in any system of user taxes and charges, together with the economic effects of such taxes and charges.

(6) The use of revenues derived from inland waterway user taxes and charges, including consideration of changes in, or alternatives to, the trust fund mechanism.

(c) CONSIDERATIONS RELATING TO ECONOMIC EFFECTS.—The economic effects of waterway user taxes and charges on—

(1) CARRIERS AND USERS.—On—

(A) carriers and shippers using the inland waterways, and

(B) users (including ultimate consumers) of commodities which are transported on the inland waterways.

(2) REGIONS, ETC.—On—

(A) existing investment in industrial plants, agricultural interests, and commercial enterprises, and on related employment, in regions of the country served by inland water transportation directly or in combination with other modes, and

(B) future economic growth prospects in such regions, including anticipated shifts of industry and employment to other areas together with an evaluation of effects on regional economies and their development, including consistency with Federal policies as set forth in other legislation.

(3) Small business and industrial concentration and competition.—On—

(A) small business, enterprise, and

(B) Industrial concentration and competition, both within the transportation industry and in any line of commerce (within the meaning of the antitrust laws).

(4) COMPETITORS.—On the freight rates charged by other modes of transportation and the extent of short-term and long-term diversion of traffic from the inland waterways to such other modes. In considering such diversion of traffic, there shall also be considered the effects of such diversion on—

(A) the development of alternative sources of supply and on alternative modes of transportation and alternative routing to market,

(B) the comparative safety of the handling and transportation of hazardous materials, and

(C) the comparative energy efficiency of the modes and routes of the transportation involved.

(5) PRICES.—On prices of commodities shipped by inland waterways and by competing modes, including the costs of energy materials and the effects on electric power rates.

(6) BALANCE OF PAYMENTS.—On the balance of payments of the United States based on our international trade.

(d) Considerations Relating to Economic Feasibility of Waterway Improvement Projects; Level of Benefits From Waterway Expenditures.—

(1) The effects of inland waterway user taxes and charges on the economic feasibility of inland waterway improvement projects.

(2) The comparative levels of benefits received from Federal expenditures on inland waterways for—

(A) commercial uses, and

(B) other uses, including (but not limited to) recreation, reclamation, water supply, low-flow augmentation, fish and wildlife enhancement, hydroelectric power, flood control, and irrigation uses.

(e) Considerations Relating to Federal Assistance.—

(1) The extent of past, present, and expected future Federal assistance to the several modes of freight transportation. Such consideration shall include an evaluation and comparison of the public benefits resulting from such assistance to each of the several transportation modes in terms of adequacy, efficiency, and economy of service, safety, technological progress, and energy conservation. The Federal assistance considered under this paragraph shall include all forms of such assistance, such as tax advantages, direct grants, rate adjustments for improvement purposes, assumption of pension fund liabilities, loans, guarantees, capital participation, revenues from land grants, and provision of right-of-way operation, maintenance, and improvement.

(2) The competitive effects of past, present, and expected future Federal expenditures on inland waterways on competitive modes of transportation.

(3) The need for Federal assistance to agricultural, industrial, and other interests affected by inland waterway user taxes and charges.

(f) CONSIDERATIONS RELATING TO POLICY AND FUTURE DEVELOPMENT.—The effects of inland waterway user taxes and charges on—

(1) The achievement of the objectives of the National Transportation Policy as set forth in the preamble to the Transportation Act of 1940.

(2) The expansion and improvement of the inland waterways determined to be necessary by the Secretary of the Army under section 158 of the Water Resources Development Act of 1976 (Public Law 94-587) or estimated to be necessary under paragraph (3).

(3) The requirements of the Nation through the year 2000 for transportation service, the portion thereof which should be provided by inland waterway carriers, and an estimate of the expansion and improvement of inland waterway capacity necessary to meet such requirements.

(g) INLAND WATERWAY USER TAXES AND CHARGES DEFINED.—For purposes of this section, the term "inland waterway user taxes and charges" means taxes imposed on the use of the inland and intracoastal waterways of the United States and all alternatives to such taxes.

(h) REPORT.—Not later than September 30, 1981, the Secretary of Transportation shall transmit to Congress a final report of the study required by this section, together with his findings and recommendations (including necessary legislation) and the findings and recommendations of the Secretary of Commerce, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Energy, the Attorney General of the United States, the Secretary of the Army, the Chairman of the Water Resources Council, and the Director of the Office of Management and Budget.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated from time to time to the Secretary of Transportation such sums, not to exceed $8,000,000 in the aggregate, as may be necessary to carry out the study required by this section.

SEC. 206. INLAND AND INTRACOASTAL WATERWAYS OF THE UNITED STATES.

For purposes of section 4042 of the Internal Revenue Code of 1954 (relating to tax on fuel used in commercial transportation on inland waterways) and for purposes of section 204 of this Act, the following inland and intracoastal waterways of the United States are described in this section:

(1) Alabama-Coosa Rivers: From junction with the Tombigbee River at river mile (hereinafter referred to as RM) 0 to junction with Coosa River at RM 314.

(2) Allegheny River: From confluence with the Monongahela River to form the Ohio River at RM 0 to the head of the existing project at East Brady, Pennsylvania, RM 72.

(3) Apalachicola-Chattahoochee and Flint Rivers: Apalachicola River from mouth at Apalachicola Bay (intersection with the Gulf Intracoastal Waterway) RM 0 to junction with Chattahoochee and Flint Rivers at RM 107.8. Chattahoochee River from junction with Apalachicola and Flint Rivers at RM 0 to Columbus, Georgia, at RM 155; and Flint River, from junction with Apalachicola and Chattahoochee Rivers at RM 0 to Bainbridge, Georgia, at RM 28.

(4) Arkansas River (McClellan-Kerr Arkansas River Navigation System): From junction with Mississippi River at RM 0 to port of Catoosa, Oklahoma, at RM 448.2.

(5) Atchafalaya River: From RM 0 at its intersection with the Gulf Intracoastal Waterway at Morgan City, Louisiana, upstream to junction with Red River at RM 116.8.

(6) Atlantic Intracoastal Waterway: Two inland water routes approximately paralleling the Atlantic coast between Norfolk, Virginia, and Miami, Florida, for 1,192 miles via both the Albemarle and Chesapeake Canal and Great Dismal Swamp Canal routes.

(7) Black Warrior-Tombigbee-Mobile Rivers: Black Warrior River System from RM 2.9, Mobile River (at Chickasaw Creek) to confluence with Tombigbee River at RM 45. Tombigbee River (to Demopolis at RM 215.4) to port of Birmingham, RM's 374–411 and upstream to head of navigation on Mulberry Fork (RM 429.6), Locust Fork (RM 407.8), and Sipsey Fork (RM 430.4).

(8) Columbia River (Columbia-Snake Rivers Inland Waterways): From The Dalles at RM 191.5 to Pasco, Washington (McNary Pool), at RM 330, Snake River from RM 0 at the mouth to RM 231.5 at Johnson Bar Landing, Idaho.

(9) Cumberland River: Junction with Ohio River at RM 0 to head of navigation, upstream to Carthage, Tennessee, at RM 313.5.

(10) Green and Barren Rivers: Green River from junction with the Ohio River at RM 0 to head of navigation at RM 149.1.

(11) Gulf Intracoastal Waterway: From St. Mark's River, Florida, to Brownsville, Texas, 1,134.5 miles.

(12) Illinois Waterway (Calumet-Sag Channel): From the junction of the Illinois River with the Mississippi River RM 0 to Chicago Harbor at Lake Michigan, approximately RM 350.

(13) Kanawha River: From junction with Ohio River at RM 0 to RM 90.6 at Deepwater, West Virginia.

(14) Kaskaskia River: From junction with the Mississippi River at RM 0 to RM 36.2 at Fayetteville, Illinois.

(15) Kentucky River: From junction with Ohio River at RM 0 to confluence of Middle and North Forks at RM 258.6.

(16) Lower Mississippi River: From Baton Rouge, Louisiana, RM 233.9 to Cairo, Illinois, RM 953.8.

(17) Upper Mississippi River: From Cairo, Illinois, RM 953.8 to Minneapolis, Minnesota, RM 1811.4.

(18) Missouri River: From junction with Mississippi River at RM 0 to Sioux City, Iowa, at RM 734.8.

(19) Monongahela River: From junction with Allegheny River to form the Ohio River at RM 0 to junction of the Tygart and West Fork Rivers, Fairmont, West Virginia, at RM 128.7.

(20) Ohio River: From junction with the Mississippi River at RM 0 to junction of the Allegheny and Monongahela Rivers at Pittsburgh, Pennsylvania, at RM 981.

(21) Ouachita-Black Rivers: From the mouth of the Black River at its junction with the Red River at RM 0 to RM 351 at Camden, Arkansas.

(22) Pearl River: From junction of West Pearl River with the Rigolets at RM 0, to Bogalusa, Louisiana, RM 58.

(23) Red River: From RM 0 to the mouth of Cypress Bayou at RM 236.

(24) Tennessee River: From junction with Ohio River at RM 0 to confluence with Holstein and French Rivers at RM 652.

(25) White River: From RM 9.8 to RM 255 at Newport, Arkansas.

(26) Williamette River: From RM 21 upstream of Portland, Oregon, to Harrisburg, Oregon, at RM 194.

Mr. LONG. Mr. President, this amendment has four principal objectives:

First. To authorize replacement of locks and dam 26 on the Mississippi River;

Second. To provide for development of a management plan for the Upper Mississippi River system;

Third. To provide for imposition of an excise tax on fuel used by commercial cargo vessels on specified inland waterways, together with establishment of an inland waterways trust fund; and

Fourth, To provide for a comprehensive study with respect to inland waterway user taxes and charges, to be submitted to the Congress.

LOCKS AND DAM 26

The amendment authorizes replacement of locks and dam 26 at Alton, Ill., with a new dam and single lock, at an estimated cost of $421 million. An identical provision was passed by both the House and Senate as part of H.R. 8309.

In addition, this amendment, following the Senate version of H.R. 8309, authorizes the replacement of certain wildlife habitat flooded as a result of constructing the new dam and lock, and also authorizes certain project-related recreation development in a specified surrounding area.

UPPER MISSISSIPPI MASTER PLAN

The amendment provides for a master plan to be developed by the Upper Mississippi River Basin Commission for the management of the Upper Mississippi River system. The plan is to be submitted to the Congress by January 1, 1982, and will become effective only if approved by an act of Congress.

Until congressional approval of a master plan, the Secretary of the Army is prohibited from undertaking any replacement, construction, or rehabilitation of locks, dams, or channels which would expand the navigation capacity of the upper Mississippi River system, except for replacement of locks and dam 26 and except for necessary operating and maintenance activities.

The amendment authorizes appropriations of $12 million to the commission to prepare the master plan. This authorization is intended to be for the plan required under the amendment, and not for any other activities in which the commission may now be engaged.

FUEL EXCISE TAX AND TRUST FUND

Both the House and Senate versions of H.R. 8309 impose a retailers excise tax on diesel and other liquid fuels used by commercial cargo vessels on those inland or intracoastal waterways of the United States which are specified by name and description in the legislation.

Under this amendment, the tax begins October 1, 1980, at 4 cents per gallon for 1 year, and then increases to 6 cents per gallon beginning October 1, 1981. After 2 years at the 6-cent rate, the tax rises to 8 cents per gallon beginning October 1, 1983. Two years later, beginning October 1, 1985, the tax increases to 10 cents per gallon.

The waterways fuel tax under the amendment is estimated to produce revenue collections of $30 million in fiscal year 1981, $58 million in fiscal year 1982, and rising to $101 million in fiscal year 1985.

The operation of the fuel tax provision can be briefly summarized as follows. In the case of a commercial cargo vessel, only fuel consumed on the specified inland waterways is subject to tax. The 26 waterways listed in the amendment include the Mississippi River upstream from Baton Rouge, the Mississippi's tributaries, and the gulf and Atlantic intracoastal waterways. These waterways are primarily used by commercial shallow-draft vessels and generally involve substantial and recurring Federal expenditures for navigation improvement.

This tax will not apply to deep-draft, oceangoing vessels, which generally do not make substantial use of the inland waterways. Also, the tax will not apply to recreational vessels, most of which are already subject to gasoline or other fuel taxes, or to noncargo vessels such as passenger vessels and fishing boats.

In addition, this amendment, like the Senate version of H.R. 8309, exempts from tax the use of fuel by tugs in moving LASH and Seabee oceangoing barges carrying international cargoes. This exemption is necessary to avoid imposition of foreign taxes with respect to these barges moving U.S. goods on inland waterways of other countries.

The amendment also establishes an inland waterways trust fund, to be managed by the Secretary of the Treasury. Revenues from the new excise tax will be transferred periodically to the trust fund.

The amendment provides that amounts in the trust fund will be available—but only as provided by authorization and appropriation acts—for making construction and rehabilitation expenditures for navigation on the inland waterways which are the subject of the tax. The amendment does not authorize any expenditures for projects not otherwise authorized by law.

USER CHARGE STUDY

This amendment requires the Secretaries of Transportation and Commerce, in consultation with the heads of other specified agencies, to conduct a comprehensive study with respect to inland waterway user taxes and charges. Both the House and Senate versions of H.R. 8309 call for such a comprehensive study. The final report of the study is to be submitted to the Congress by September 30, 1981. The amendment authorizes appro-

priations of up to $8 million to carry out the study.

Mr. President, I believe that every group that has been very much interested in this matter—the navigation people, the administration, the environmentalists—has been consulted, and I believe this is about as complete a compromise as we could work out.

Mr. DANFORTH. Mr. President, I yield 3 minutes to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, last night I objected to a unanimous consent request to call up a compromise proposal to resolve the locks and dam 26 controversy. I objected to this so-called compromise, because I wanted an opportunity to study it very carefully. As many of my colleagues know, this particular issue has a history of cropping up at the strangest times and places and in a number of curious guises. Just a week ago Saturday, the Senate accepted an amendment to the Export-Import Bank bill that would authorize construction of a new locks and dam 26 without any user fee provisions at all. I wanted to be sure that this version was not equally deficient.

This new compromise is not as bad as last week's amendment to the Ex-Im Bank bill. It does at least provide some relief to the taxpayers. But it falls far short of the standards originally proposed by Senator DOMENICI last year.

I fully supported the Domenici proposal which coupled authorization of a new locks and dam 26 with strong user charges for those who benefit from the Nation's inland waterway system. That was a fair compromise. Locks and dam 26 does not need to be replaced. Replacing the existing structure with a new facility will cost the Nation's taxpayers more than half a billion dollars by the time construction is completed. The existing structure could be rehabilitated at far less cost and with much greater efficiency. Nevertheless I agreed that the Domenici compromise justified my grudging support of the locks and dam 26 authorization. That compromise, which passed the Senate in June of 1977, would have recovered 100 percent of the cost of operating and maintaining the inland waterway system and 50 percent of capital costs of future construction on the system.

Unfortunately, last May the Senate reversed itself and rejected the Domenici approach in favor of a much weaker fuel tax supported by my good friend (Mr. LONG). The Long amendment divorced user fees from any meaningful relationship to the cost of future capital construction on the waterway system. It provided only for yet another study of realistic user fees and imposed a token 12-cent-per-gallon fuel tax on waterway users. The House has passed a 6-cent-per-gallon fuel tax which is even less impressive than the Senate provision. Neither the Senate nor the House bills would recover even 25 percent of the Federal costs of the inland waterway system, costs which now exceed half a billion dollars per year.

Mr. President, the latest compromise before the Senate would impose a 10-cent-per-gallon fuel tax on waterway users, far less than is needed to recover a reasonable share of the cost of the free ride the taxpayers have given the commercial barge industry up until now. I realize that this new compromise does provide that the user fees collected will be funneled into a trust fund from which allocations for future waterway construction will be made. The hope is that the trust fund is designed in such a way as to restrain future capital expenditures. Good luck. As I am sure my colleagues know, we will be up here year after year fighting the battle for fiscal restraint as pressures mount to step up expenditures beyond the level available from the trust fund. In my judgment we should fight that battle now and resolve the issue in the taxpayers' favor once and for all. At the same time it is clear to me that the administration has moved behind this compromise and that holding up the resolution of the locks and dam 26 controversy and longer would be a futile exercise.

Nevertheless, Mr. President, I do want to register my opposition both to reconstruction of locks and dam 26 and to the weakened user fees provided in the compromise before the Senate today. We may be hoping to buy improved transportation on the Mississippi, but we are selling the taxpayers down the river.

Mr. President, I still have great reservations about this compromise. The heart of it is that it would provide for a user fee, but a user fee that is much too small to cover the cost. As a matter of fact, our best judgment is that it would not cover 25 percent of the cost involved here. Nevertheless, it is a step in the right direction.

For the first time, we shall have a user fee on the waterways. We have not had that in the past. The general taxpayer has had to pay a tax which, it seems to me, is unfair and I think user fees applied in other transportation areas, particularly highways, have worked and worked well.

I am very hopeful that, having established this precedent, even though the fee is grossly inadequate, we shall be able to provide for a fee that will cover costs fully in the future. So, although I have great reluctance about compromising at such a low level, I am willing to accept this amendment. I do so with reluctance and I want to be recorded as voting no.

Mr. DANFORTH. Mr. President, I yield 5 minutes to the Senator from New Mexico.

Mr. SCHMITT. Mr. President, I compliment the Senators from Louisiana, West Virginia, Missouri, New Mexico, and everyone else who has worked so hard to reach this compromise. I speak now on behalf of my senior colleague (Mr. DOMENICI) and ask unanimous consent that his statement on this compromise on waterway user charges be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR DOMENICI

WATERWAY USER CHARGES

I wish to express my support for the adoption of this compromise on waterway user charges, and to commend the Senator from Louisiana (Mr. Long), the Senator from West Virginia (Mr. Randolph), the Senator from Missouri (Mr. Danforth), and others for their work in bringing this proposal before the Senate. In addition, I commend Transportation Secretary Adams and his staff, as well as the President, for their work to create a framework for resolving this issue.

My colleagues know of my great interest in this issue, and the importance I attach to it. Waterway user charges will create a better balance in national transportation policy, thus making it more efficient and less in need of taxpayer subsidies to all modes.

But I believe that a strong need exists to resolve this issue now, and get on with other tasks. It is for that reason that I am supporting this compromise, for I do not view it as the complete solution.

This compromise will do little to balance the inequities created by the prodigious subsidies given the inland barge industry. It will not rectify the possible need for bigger and bigger subsidies to the railroads. It will not mean that the beneficiaries, to any great degree, rather than the taxpayers, will be paying for the benefits they receive.

But it is a start. Let me briefly elaborate on what I see as the advantages of the compromise.

(1) It brings to an end a 3-year debate on the topic, while setting the stage for future Congressional consideration that will insure that the barge industry will eventually pay their full fair share.

(2) The compromise has the ingredients of a positive first step. In the absence of hard data on the economic effects of a charge, the waterway industry has been able to resort to speculative, but spectacular, horror stories of the economic consequences of a charge. Under this compromise, enough data should become available by the time of the study's completion that the scare tactics of the barge industry will be put to rest. Future studies such as those authorized under this amendment will have the benefit of real world data on which to base policy recommendations. It is my firm conviction that such data will show that the barge industry can afford to shoulder a larger share of the financial burden for building the inland waterway system than they have been willing to under this compromise.

(3) The compromise implicity endorses the concept of cost recovery. Although the barge industry has fought this concept tooth and nail because it will diminish their ability to raid the federal treasury at will, a Trust Fund by its very nature implies cost recovery. If one examines the operation of other trust funds, such as the highway trust fund and the airport trust fund, it becomes clear that funds can be spent only as a portion of a given project's cost. Admittedly, the compromise leaves the exact percentages on specific projects to future Congresses, but this is the price of compromise. The compromise also allows general revenue funds to be used for the entire cost of a new project. But I find it difficult to believe that my colleagues will ask the American taxpayer to shoulder the full burden for new waterway projects when a trust fund with contributions from the barge industry is available to ease the general taxpayers' burden. In addition it is worth stressing that new projects must receive authorization from the Environment and Public Works Committee, and that Committee under this compromise has the right to attach as a condition of authorization that funds come from the Trust Fund.

One closing point is worth making: commencement of the tax is not dependent on initiation of construction of Locks and Dam 26. I realize some Senators feel that such a linkage is needed. I, for one, do not. One of the basic selling points of the compromise has been initiation of the tax on a date certain. This "date certain" approach is con-

sistent with earlier versions in both Houses. Equity to the American taxpayer demands no less. The American taxpayer is already paying close to $500 million a year for building, operating and maintaining the inland waterway system. I consider a 10-cent fuel tax that will raise approximately one-fifth of this annual sum from the industry, as but a small downpayment owed the American taxpayer. Moreover, the price tag for the inland system will reach $1 billion a year sometime in the 1990's. Certainly, the taxpayer is entitled to some fiscal relief, no matter how modest, and regardless of whether the lock is under construction or not.

I support adoption of the amendment.

Mr. SCHMITT. Mr. President, on behalf of Senator DOMENICI, I want to propound three questions to the distinguished floor managers of this bill if they have a moment to respond to those questions.

Mr. LONG. Yes.

Mr. SCHMITT. Speaking for Senator DOMENICI, is he correct that the waterways tax authorized in this bill is to be deposited in the trust fund, and that the authorizing committees of the Congress—in this case the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation—will determine that portion of the trust fund that is to be utilized for a particular waterway project, and that the Appropriations Committee would then be free to appropriate according to that formula, if such an authorization would become law? Of course, the Congress would also be free to ignore the trust fund and authorize a project without it, although that is not anticipated on projects not presently authorized.

Mr. LONG. That was the intent of the amendment. The amendment provides that amounts in the trust fund will be available for making construction and rehabilitation expenditures for navigation on the specified inland waterways. The authorizing law on a new project will establish if and how available trust fund moneys will be spent, if appropriated on that project.

Mr. SCHMITT. I appreciate that.

It is correct, is it not, that the bill authorizes locks and dam 26, and that even if that project is not initiated—for example, if moneys are not appropriated—that the tax comes into effect anyway on October 1, 1980, just as it would have under either the previous House or Senate versions in H.R. 8309?

Mr. LONG. That is correct, that under the amendment the tax comes into effect beginning October 1, 1980.

Mr. DANFORTH. Perhaps not on the Senator's time, but I should like to have a more elaborate answer to that question, because clearly, in the proceedings to date with respect to locks and dam 26 and the user fee question, the two have been linked together. While, as a technical matter, the tax comes into effect in 1980, I should hope that if there is no progress and no immediate prospect of progress toward construction of locks and dam 26, Congress would, at the appropriate time, reopen the exact time in which the tax would be imposed.

Mr. SCHMITT. I appreciate that expanded answer. I think the Senator from Missouri is entirely correct. Congress very likely will reopen the issue if, in fact, locks and dam 26 is not funded.

The final question is several previous laws have imposed a limitation against tolls on the waterways of the United States. It is correct, is it not, that this provision would supercede those limitations and take effect despite those limitations?

Mr. LONG. Yes. This tax is not a toll. Because this involves a subsequent act of Congress, those limitations will have no effect on this amendment.

Mr. SCHMITT. I thank the distinguished and able managers for their cooperation. I know that my colleague, Senator DOMENICI, thanks the Senators also and wishes he could be here. However, other circumstances have intervened.

Mr. LONG. I wish he were here. I am happy we were able to work out the differences and resolve the matter.

Mr. DANFORTH. Mr. President, I would like to exchange comments with Senator LONG, and I believe Senator EAGLETON would like to participate in this.

I would like the chairman to respond to this: I think it is fair to say that the question of the construction of locks and dam 26 and the imposition of user fees has been tied together in the minds of Members of Congress.

Mr. LONG. That is right.

Mr. DANFORTH. As I understood Senator DOMENICI's strategy, it was to tie the question of user fees into the construction of locks and dam 26, so that the effect of it was that if we were to get locks and dam 26, we would have to go along with the user fees. Is that correct?

Mr. LONG. That is right.

Mr. DANFORTH. I was disturbed this past Saturday to read an opinion of Judge Richey, which was just handed down Wednesday of last week, I believe, indicating that with respect to a lawsuit filed by certain railroads and environmental groups, he intends to hold expanded evidentiary hearings with respect to the adequacy of the environmental impact statement.

My concern really is twofold: First, that Congress expressly has addressed itself to the question of the environmental consequences of locks and dam 26, and this has been raised in hearings and has been raised on the floor of the Senate; and, having considered that, we have made the legislative decision that locks and dam 26 should be built.

However, what concerns me is that the prospect now has been opened for what appears to be very extended, protracted litigation with the railroad intervenors in the lawsuit, conducting extensive discovery, taking depositions, and so forth. What concerns me is the possibility that the construction of locks and dam 26 will be delayed for a substantial period of time because of this litigation.

It seems to me not to be in keeping with the will of Congress if a user fee were imposed, beginning October 1980, and at that time locks and dam 26 was nowhere in sight.

Mr. LONG. I would hope that if it worked out that way, we might persuade Congress to postpone the tax. But there is no commitment to that in this amendment. Personally, I would vote for it and urge that, in view of the fact that the agreement was that we would go along with the tax, in order to go forward with the needed improvements of the waterways, locks and dam 26 being the key item, if we do not get locks and dam 26, the tax should be postponed. But that is not in this amendment. That is the chance we will have to take.

Mr. DANFORTH. It is not in the bill, but there is nothing in the bill which would preclude us from coming back at some later date—it would be up to Congress, of course, to do it—and perhaps to delay the imposition of the tax until locks and dam 26 were underway.

Mr. LONG. That would be a decision of Congress. We certainly have the right to urge Congress to make that decision.

Mr. EAGLETON. Mr. President, will the Senator from Missouri yield me 3 minutes?

Mr. DANFORTH. I yield.

Mr. EAGLETON. Mr. President, I should like to make a brief statement on this subject, taking off at the point of discussion between my distinguished colleague from Missouri and the distinguished chairman, the Senator from Louisiana.

As we know, this bill authorizes the imposition of a user fee on inland waterway traffic beginning on a date certain—to wit, October 1, 1980.

There is, of course, no comparable date for the completion or indeed for the initiation of construction on locks and dam 26, although the urgency to build this project is clearly the driving force behind this bill and the driving force behind the user fee that this will create.

So I concur with my distinguished colleague from Missouri, that, although there is no automatic mechanism in the bill before us for the postponement of the user fee, nevertheless, the indispensable linkage in this bill between locks and dam 26 and user fees is there.

Let us assume that because of either an environmental suit or other unforeseen circumstances, we again here contemplate this—let us say work had not even begun on locks and dam 26—I think there are many of our colleagues who would say, "Well, it is a bit unfair to start imposing a user fee that was connected with a project that has not even been initiated, much less completed."

I think that is the point my colleague from Missouri was making.

Although the Senator from Louisiana is correct in his response with respect to the phraseology of the bill, he thinks, at least, that we would have a pretty good case in equity to come back to our colleagues if no work had been done on it and say, "Nothing has been started on this, and we think perhaps these user fees ought to be postponed for a period of time, until work is completed or initiated on locks and dam 26."

Mr. LONG. I would definitely support that position. As the Senator well knows,

the administration simply was unwilling to settle for an arrangement whereby the tax would not go into effect unless we got what we thought was our end of the bargain, that Lock and Dam 26 was to be replaced. But I think implicit in this is an agreement on the part of the administration that they will do their best to proceed as expeditiously as good judgment would dictate. This, as everyone knows, is a bottleneck on that entire waterway system.

Mr. EAGLETON. I thank the Senator.

Several Senators addressed the Chair.

Mr. DANFORTH. Mr. President, what is the pending business?

The PRESIDING OFFICER. The amendment of the Senator from Louisiana.

Mr. LONG. Mr. President, it will take only a moment or two to dispose of this matter, if the Senators will let us dispose of it before they bring up other matters.

Mr. SCHMITT. Mr. President, will the Senator yield?

Mr. DANFORTH. I yield 5 minutes to the Senator from New Mexico.

Mr. SCHMITT. Mr. President, I will not take that long. I think it will just be important for me on behalf of Senator DOMENICI to make a few points in response to the previous colloquies that he would probably make if he were here.

One, with respect to the court case of Judge Richey, that case has basically two components or two hurdles that need to be surmounted. One was the lack of authorization of locks and dam 26 and two was the adequacy of the environmental impact statement on locks and dam 26.

The bill at least clears the initial hurdle, that is, a lack of authorization of the facility. The Department of Transportation has in addition said that it will do all it can to expedite the decision on the second hurdle. So I believe that at least we have taken a step in the right direction.

Mr. DANFORTH. That is a very valuable point to make. This does, of course, authorize locks and dam 26. The point is that as I understand it, I did speak last Saturday on the telephone with Secretary Adams and he assured me that the administration would be doing everything it could do to facilitate a termination or expeditious handling of this litigation. It would, I think, be a real setback to the will of Congress if certain parties who were very anxious to delay the construction of locks and dam 26 were able through the device of endless discovery, endless depositions and various dilatory tactics to be able to postpone the construction of locks and dam 26 which Congress has addressed and is authorizing.

Mr. SCHMITT. I believe the Senator is absolutely correct.

The additional point that I make, that is much more general, is that without locks and dam 26 taxpayers are still spending one half billion dollars a year on inland waterways and the tax in this measure even in 1985 will raise only a fraction, probably about one fifth of that total spending. So just for a matter of record I will make that point for the Senator from New Mexico.

I thank the Senator for his courtesy.

Mr. STEVENSON. Mr. President, let us vote on the amendment and then if the Senator will yield, I shall make a statement.

Mr. LONG. Let us vote.

The PRESIDING OFFICER. Does the Senator from Illinois wish to be recognized?

Mr. STEVENSON. Just vote.

Mr. DANFORTH. Senator BAKER asked to be notified before this matter came to a vote.

Mr. ROBERT C. BYRD. I can assure the Senator that I know why Mr. BAKER wants to be notified. It is not because of this bill. It is because of the next item and I will protect the Senator on that.

Mr. DANFORTH. Fine.

Let us vote.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. DANFORTH. I yield.

Mr. DOLE. Mr. President, I am glad to see that, in the final days of the 95th Congress, the Senate has been able to reach a compromise on the question of inland waterway user charges that will permit the construction of a replacement for the Alton locks and dam.

There is no doubt that the fuel tax imposed by this measure will add to the economic burden of the Nation's farmer by increasing transportation costs on both the goods needed for production and on grain and other commodities moved from the farm for domestic use an overseas export.

But further delay in authorizing the Alton barge facility is simply unacceptable. Movements of grain downstream as well as shipments of fuel and fertilizer to farmers are seriously hampered by the present condition of this vital waterway facility. The existing structure continues to deteriorate and the lock capacity is inadequate to handle the ever-increasing river traffic.

Mr. President, although today we are setting a new and undesirable precedent—charging fees for the use of the Nation's navigable waterways—this compromise is necessary to keep farm supplies and commodities moving.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment was agreed to.

Mr. SCHMITT. I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. STEVENSON. Mr. President, this bill as amended and if approved by Congress and the President will make the intent of Congress unmistakable, and the intent is that the replacement in this locks and dam should proceed.

That intent of Congress will be made unmistakably clear. Therefore, I assume that it will not be necessary to reconsider the user fee issue, although, of course, after the study that this bill requires is concluded that issue will be back before Congress.

Mr. President, I commend all Senators who have struggled for a long time for this measure, going back to then-Senator MONDALE with whom I introduced the first bills to authorize replacement of locks and dam 26.

I especially commend Senator DOMENICI for his stubborn fight to make users pay their share and also Senator LONG for the skill and extraordinary ingenuity which brought us all close tonight to victory.

I again thank Senator LONG for his assurances to me on the Senate floor that he would seek a revenue bill on which the Senate might act to authorize replacement of the locks and user fees. He kept his word and was instrumental in fashioning this compromise.

Mr. President, locks and dam 26 might be replaced. The amendment offered by the Senator from Louisiana authorizes its replacement, and it also resolves the user fee question in a manner that most parties involved should find acceptable.

Briefly, the amendment:

Authorizes the construction of a new locks and dam 26 with a single 1,200-foot lock to eliminate the bottleneck at that essential facility;

Directs the Upper Mississippi River Basin Commission to prepare a master plan for the management of the Upper Mississippi River system. The plan is to be submitted to the Congress by January 1, 1982, and will take effect when approved by the Congress. No expansion of navigation capacity can take place—aside from the replacement of locks and dam 26—until the plan is approved;

Imposes a tax on all fuel used by commercial cargo vessels on the inland waterway system starting at 4 cents per gallon in 1980 and rising in steps to 10 cents per gallon in 1985;

Creates an Inland Waterway Trust Fund. Receipts from the fuel tax would be placed in the trust fund. Trust fund balances would be available on making construction and rehabilitation expenditures for the inland waterway system; and

Directs the Secretaries of Transportation and Commerce in consultation with other relevant agencies, to conduct a study of waterway user charges.

Mr. President, this is a compromise amendment. It offers a chance, perhaps the only chance, of getting the authorization for a new locks and dam 26 and user charges enacted this year.

The dam is structurally unsound, and its capacity is inadequate already. Ten years ago the Corps of Engineers first recommended replacing locks and dam 26. Construction of a new locks and dam 26 will take between 8 to 10 years more, and already barges are backed up for miles above and below the dam. More commerce passes through this facility each year than through the Panama Canal. And before it is replaced it could go out, or be closed for lengthy repairs. This amendment will finally authorize the new locks and dam; it will finally establish fees for the commercial use of

the inland waterway system. And it is about time.

While I never agreed that the Midwest should be held hostage to the imposition of user charges, I have always believed that waterway user charges were an essential element of a rational transportation policy. The provisions in this bill impose waterway user charges. The study to be conducted by the Departments of Transportation and Commerce will aid the Congress in determining what level and form of waterway user charges is appropriate for the long term.

Mr. President, I have testified in committee and have stood in the Senate many times pressing for authorization of a new locks and dam 26. Already our delay may injure the most highly developed region in the world—and all who depend upon it for markets and supplies, including food. I urge the Senate to approve this amendment without more delay.

Mr. NELSON. Mr. President, I am pleased to be a cosponsor of H.R. 8533, a bill which will finally resolve the four-year-old dispute over the replacement of locks and dam 26. I am pleased to join with Senators LONG, STEVENSON, DOMENICI, and the administration in drafting a compromise that will: First, provide a new locks and dam at Alton, Ill., and second, establish an environmental master planning process to protect the priceless ecological values of the Upper Mississippi River.

This compromise is the result of a series of negotiations between the administration, the House Public Works Committee, the House Ways and Means Committee and the various Senators and Senate committees which have a direct interest in this issue. This bill is a compromise. It comes to the Senate in the last week of this session of Congress and it is clear that if this compromise is not accepted any chance to remedy this most serious problem will be lost until next year.

This legislation consists of three basic parts.

First, Congress specifically authorizes the replacement of the existing facility near Alton with a new dam and single 1,200-foot lock. This language resolves a major legal obstacle that has blocked replacement of the structure over the past 4 years.

Second, the bill contains my environmental master planning language. This is essentially the same Senate environmental planning language that has been contained in every locks and dam 26 bill over the last two Congresses. Simply put, it provides that the Upper Mississippi River Basin Commission shall undertake a series of economic and environmental studies to determine the optimum balanced use of the river with appropriate consideration to all interests including commerce, recreation, and wildlife habitat. The master plan is to be completed by 1982 and submitted to Congress for approval. This is a major precedent-setting action. For the first time the affected States and Federal agencies will work together to develop a balanced transportation program for the upper Midwest.

Third, the compromise establishes a modest fuel tax beginning October 1, 1980 at 4 cents per gallon and rising 2 cents per year to 10 cents per gallon. A wide range of economic impact studies will be undertaken to determine whether the level of the tax is at an appropriate level compared with taxes levied on competing modes of transportation.

Lock and dam 26 is a critically important issue for Wisconsin. Since 1974 almost every fact has been in dispute. Congress has wrestled with a very difficult technical engineering problem. In the course of the argument, the question of user charges has arisen and this legislation resolves both issues in the national interest. The required congressional authorization for a new structure is granted. The upper Mississippi environment is protected and users of the Mississippi River system will begin to pay a very modest amount toward the subsidy that the Federal Treasury will provide in terms of operation, maintenance, and capital investment of a major portion of the inland navigational system.

Section 101(e)(2) calls on the Commission to undertake four economic studies. I think it is clear that the Department of Transportation acting through its Policy Analysis Division, should be the lead Federal agency in all four studies. The Commission is directed to undertake the studies but there should be no mistake that the job of balancing transportation policies and programs rests with the Department of Transportation, not the Corps of Engineers. Again, the corps has particular expertise that must be taken into account, but these studies seek to develop a strong balanced transportation program in the upper Midwest and that is the job of the U.S. Department of Transportation. That is the reason why Congress created such a Department in the mid 1960's.

Third, section 101(g) authorizes $12 million to be spent by the Commission on the upper Mississippi River master planning. The $12 million should be enough for the Commission to do its job if funding is not diverted from this program to other competing efforts. This $12 million should not be viewed as a backdoor funding approach for the Great II effort. The $1 million is designed to fund the most comprehensive economic and environmental study ever undertaken on a major river system.

Mr. PERCY. Mr. President, I express my deep appreciation to Senator LONG and to the majority and minority leaders for making possible consideration of lock and dam 26 tonight as an amendment to the House-passed bingo bill. The compromise worked out between Senator DOMENICI, my distinguished colleague (Mr. STEVENSON) and Senators EAGLETON and DANFORTH, is fair to all parties. They should be highly commended for their work.

Passage of this bill is crucial to the effort to move ahead rapidly on the construction of lock and dam 26. It is essential to the economy of the Midwest and the entire Nation. Approval of this measure will be a giant step forward. I thank my distinguished colleagues and the leadership for their cooperation.

TAXATION OF BINGO PROCEEDS

Mr. ANDERSON. Mr. President, the amendment I am offering today is designed to correct a flaw in our tax law which unfairly penalizes organizations which run bingo games to finance charitable and other not-for-profit purposes. Among the groups which will benefit significantly from the amendment are the Veterans of Foreign Wars, the Disabled American Veterans, the American Legion, and the Knights of Columbus.

Mr. President, under the present law, groups such as these, which are otherwise tax exempt, must pay Federal income taxes on the proceeds from bingo games, which are presently taxed as unrelated business income.

This requirement was originally enacted because taxpaying businesses complained of unfair competition by nonprofit, tax-exempt organizations involved in business activities separate from their primary functions. Since the operation of bingo games by otherwise tax exempt organizations does not compete with commercial activities, taxing their proceeds is outside the original intent of the law.

This provision continues to hamstring some very important charitable activities on the part of the organizations involved. In Minnesota, for example, a great portion of bingo proceeds are used for equipment purchases and expenses for youth sports activities. If we are not successful in lifting this unfair tax burden, many of these activities will be sharply curtailed.

The bill would only apply to games which are not prohibited by State or local law. In addition, the operation of the games could not be in competition with profitmaking businesses. The exempted proceeds would also have to come from bingo games which usually have the wagers placed, the winners determined and the prizes or other property distributed in the presence of all persons placing wagers in the game.

Mr. President, veterans and members of other affected organizations have been working to change this provision for years, and I hope the Senate will have good news for them today. This legislation will enable them to pursue their good work unhampered by an unfair tax, and I strongly urge its favorable consideration.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. LONG. I yield back the remainder of my time.

Mr. DANFORTH. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The bill, having been read the third time, the question is, Shall it pass?

The bill (H.R. 8533), as amended, was passed.

Mr. ROBERT C. BYRD. Mr. President,

I move to reconsider the vote by which the bill was passed.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, if I may have the attention of Senators, some few days ago I discussed with the distinguished minority leader the calling up of the Humphrey-Hawkins bill. I indicated to the distinguished minority leader that it would be my intention to call up that bill at some point, and he and I have been discussing this matter off and on since that time.

The distinguished minority leader and I have also discussed the possibility of negotiating a time agreement on the bill. At his request and at my request, our colleagues on both sides of the aisle who are closest to this legislation met today in an effort to work out a time agreement and to exchange views and to see where the problems lie among the various viewpoints.

That meeting, I think, was a good meeting from the reports that I have received from it. I stayed out of the meeting and he stayed out of the meeting. We thought it best just to let the Members on his side and Members on my side who have worked with this legislation in one committee or another for so long a time to sit down and be able to discuss it among themselves.

I think there is a reasonably good prospect of those Members resolving their problem, and I would hope that they could do that. Only yesterday on the floor I stated that it was my intention upon the disposition of the tax bill to take up the Humphrey-Hawkins bill.

I have kept the distinguished minority leader apprised of my intentions all along, and we have discussed time agreements. He has certainly cooperated in every way to attempt to work out a time agreement on his side of the aisle. The distinguished Republican whip has done the same. I have discussed this with Mr. STEVENS on numerous occasions, going back over a period of several days.

So far as the leadership on the other side of the aisle is concerned, I want to say I have had excellent cooperation in the effort to arrive at an understanding with respect to the Humphrey-Hawkins bill.

This legislation is of tremendous importance to millions of Americans, and I stated back in January that, so far as I was concerned, this was a priority item, and I felt it was a priority item insofar as the Senate was concerned.

So the record will show that many, many months ago it was the desire of the leadership to make this bill a priority, and the intention of the leadership to make every effort to try to get the legislation up before the Senate.

I shall shortly ask unanimous consent to proceed to the consideration of Calendar Order No. 1169, which is a House bill. If I can get that bill up through unanimous consent tonight, it would not be my intention to file a cloture motion on that measure tonight and, as a matter of fact, I would not offer a cloture motion on it tomorrow until very late in the hope that Senators who are actively and in good faith on both sides negotiating in the effort to work out a common approach might be able to do that.

So with that assurance that I will not offer a cloture motion on the matter tonight if it can be called up by unanimous consent—and I hope I will not have to offer one tomorrow because I believe that agreement can be reached somehow which will provide for the action by the Senate on this legislation in a reasonably short period, and I would give those assurances—I, therefore, based on those assurances and the facts I have laid out, with the understanding that the distinguished minority leader will reserve the right to object and will want to make some comments, Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1169.

Mr. BAKER. Mr. President, reserving the right to object—and I thank the Chair—the majority leader has correctly stated the state of affairs as it exists at this moment, and I, for one, am pleased that we have reached this point.

I think we have come a long way in the dispute over a piece of legislation that offered a great potential for divisiveness and conflict. We have not quite yet reached a consensus, but I think we have come a long way from Humphrey-Hawkins, as it was originally suggested, to the place where we find ourselves today.

Mr. President, the majority leader has asked unanimous consent to proceed to the consideration of a House-passed bill. I know that he knows—and this is no surprise to him to say it—that that bill in that form would be, I believe, totally unacceptable to the Members on this side of the aisle.

But I think that is not what we are dealing with. I think we are dealing instead with a vehicle, a House-passed vehicle, than can be used to try to effectuate either an accord, an agreement, between the parties or the will of Senate as represented in one of the two bills reported by the Senate committees on this subject. I refer to S. 50 and to the companion bill which was reported from the Human Resources Committee, either of which, I believe, is vastly superior to H.R. 50, which is serving now or is proposed to be the vehicle identified by the majority leader.

So I think we have come a long way. As a matter of fact, Mr. President, I think—and I told the majority leader this earlier today—that in the process that has gone on this far, we are very, very close to an agreement, and I find that, frankly, startling that we find ourselves in this position. But I think we are very close to an agreement, and I express my appreciation to the majority leader for arranging the sequence of events so that we preserve that possibility, and that we do on tomorrow still have the opportunity to explore the basis for an understanding and an agreement and maybe resolve and dispose of this issue without the great cataclysmic political confrontation that many had expected on this subject.

I will not prolong these remarks and this reservation unduly, but I am sure no one will dispute the assertion that there is no monopoly on one side of the aisle or the other on the ambition for full employment. The question is how and on what basis and how does it relate to our attempt to control the ravages of inflation as well, and other socially important matters.

Mr. NELSON addressed the Chair.

Mr. BAKER. This morning, Mr. President, if I may just have a word, it was my privilege to meet with the President of the United States on another matter, which is unrelated. It had to do with the appointment to fill a vacancy on the Federal Election Commission, and may I say parenthetically I expressed my appreciation to the President of the United States for accepting the recommendation of the joint Republican leadership of the House and Senate in that appointment or nomination which was announced today of Max Friedersdorf. But in the course of that conversation with the President today we had a brief discussion on this subject, and I later learned that the White House had indicated that "Senator BAKER would not try to prevent this bill from being brought up."

Shortly after that time—and I attach no criticism to the White House for making that statement, because it is true—shortly after that I went to see the majority leader in his office and, to paraphrase a little in the candor with which he and I communicate, I told him if he thought well of the idea of trying to explore the possibility of compromise that I thought there was a reasonable chance we could work something out. We constituted an ad hoc committee of Members on both sides of the aisle to explore that possibility, which met on two separate occasions today. I think they will meet again tomorrow.

I am encouraged to think, and I encourage them to think, that on tomorrow we can find a way to bridge the remaining differences, and that we can find a bipartisan statement of policy which will reflect our mutual ambition to eliminate the evils of unemployment and to contain the ravages of inflation.

With that explanation, Mr. President, I will say on this reservation that it is not my intention to object to the procedure outlined by the distinguished majority leader but rather instead to commend him for negotiating in good faith on this subject, and to bring him to this point and to say I will continue to counsel and confer with him tomorrow.

If I may say one additional word, I see our distinguished colleague, Senator HUMPHREY, on the floor. These remarks under this reservation would be incomplete if I were not to say that it was at least in part because of the respect and veneration we have for her and for our former colleague, her husband, that impels those of us on this side to try if we can to reach an accord on the only piece of legislation, I believe, which would bear his name.

So with that, Mr. President, I do not object to the request made by the majority leader.

Mr. ROBERT C. BYRD. Before the Senator yields on his reservation, may I say I noted the story in the afternoon's newspaper with some surprise because I have had several discussions with the distinguished minority leader before today, several days before today, and he never at any time indicated to me—and he would have done so had he felt that way—he never indicated at any time to me that he had ever an intention whatsoever of personally impeding the calling up of the bill or the throwing of any roadblock in its way.

So I was somewhat taken by surprise at that story that he had said he would—something to the effect that he had no intention of impeding the calling up or of setting up a roadblock. This was something I knew days ago, but I am glad the White House learned about it today. [Laughter.]

Several Senators addressed the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. SCHMITT. Mr. President, reserving the right to object——

Mr. NELSON. Mr. President, I send to the desk——

Mr. ROBERT C. BYRD. No, no.

Mr. SCHMITT. Mr. President, reserving the right to object——

Mr. DOLE. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I shall not object because I share the views expressed by both the distinguished majority and minority leaders.

As one of the informal group who met this afternoon to try to work out some agreement, I think it is fair to say we are very close to some agreement that could resolve the differences and speed up the passage of this legislation. At issue, of course, is the inclusion of a specific numerical goal for the reduction of inflation. The Banking Committee adopted an amendment of Senator SCHMITT calling for zero inflation by 1983, and Senator PROXMIRE and others a 3-percent goal. That is one of the matters at issue.

Others are with reference to a Federal balanced budget, reduction of the Federal budget to 20 percent of the GNP, and I think all these areas can be agreed to, so we might work out some agreement early tomorrow morning and then proceed to the passage of this bill, and we might then go on to the passage of the sunset legislation sponsored by 52 of us, including the distinguished chairman of the Budget Committee.

But it seems to me that if we have an opportunity tomorrow morning under the good will and leadership of the majority and minority leaders, that those of us who were given, I think, the privilege of trying to work out some agreement can put it together.

But I would stress, as the distinguished majority leader has, that there is certainly nothing but willingness to cooperate on this side, and we hope we can make some resolution.

I would hope we might include a little something for the farmers in that final version—maybe a hope that we might achieve 100 percent of parity sometime. I just happen to have a little amendment to draw on that we might be able, at the appropirate time, to approve.

The PRESIDING OFFICER. Is there objection?

Mr. SCHMITT. Mr. President, reserving the right to object, I am intrigued by sense of comity that is arising this evening, and I might say that began, at least for this Senator, many weeks ago in the Banking Committee, when a truly bipartisan group of Senators within the Banking Committee, realizing that the basic intent of the Humphrey-Hawkins bill, full employment, was obviously an intent with which all of us could identify, but also realizing that to truly implement full employment we needed a balanced approach to the fiscal and monetary policy of the United States, we went to work to craft a bill that I think we all feel is such a balanced approach.

The distinguished Senator from Kansas has listed some of the items included in that bill, and there will be more discussion of that, I am sure, on the morrow.

However, I do think it is important to realize that that was the intent and is the intent of most of the Republicans on this side of the aisle. It certainly was the intent with the Banking Committee to create the kind of balanced approach in our committee that is necessary if we are ever going to come even close to what is called a full employment economy.

So I shall not object. I think the approach that has been discussed here of continuing to search for that agreement is very important to take. I think it can be reached. As the author of the apparent bone in the throat at that time of the concept of zero rate of inflation growth, I am sure it can be reached, and all of us will be satisfied.

I do hope, however, that no procedural or other acts will be taken to in some way torpedo this effort to do what I think all of us want to do, to see that it is truly a bill to seek full employment, which all of us want to do, but also to damage no other aspects of the economy, because if we do that, we will not have full employment long. I think that is clear to all Senators, at least on this side of the aisle.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Mr. President, reserving the right to object, I think in the euphoria of this situation, with the feelings which the minority leader has expressed toward the distinguished Senator from Minnesota (Mrs. HUMPHREY) and her late husband, whom I think we all loved, I think there is a reasonable chance that this matter could be worked out, and I personally will work hard to try to do so.

On the other hand, I do not think there should be any feeling that it is already done, because it is not. There is going to have to be a lot of work between the people who are involved in this matter, and I believe every good faith effort will be made to solve the present problems which exist.

I also share in the belief that nobody here in the Senate wants the House bill. As a matter of fact, if that were the bill before us, we could never come to an agreement. There are many good features in the Senate Banking Committee version, and this may be the point where we begin.

But I think this is a very important bill. It deserves good consideration. It means that we cannot just agree on the basis of emotions; we are going to have to agree based upon facts and based upon good, effective work together. If we can do that, then perhaps we can do something about these two problems of inflation and unemployment that are pervading our country. I personally am very much concerned about the 37.1 percent of young blacks in our society that are presently unemployed. I do not believe the House version would help them to get jobs or employment.

What I want to do is make sure that if we have a compromise here, we have an approach that could give these kids an opportunity to have the self-esteem that comes from working. I pledge myself to a good faith effort to try to resolve this matter, but I think we ought also to make it quite clear that we are not completely together on the problem, that we have many difficulties to resolve, that some of the people involved have not even read the various bills and, frankly, that we are all going to have to work hard to try to resolve these difficulties.

Based on what the distinguished majority leader has said here this evening, and his good approach to this matter, and also that of the distinguished minority leader, I believe it may be possible to resolve it.

Mr. RIEGLE. Mr. President, reserving the right to object, and I will not object, either——

Mr. ROBERT C. BYRD. Then could we get it before the Senate, before the Senator proceeds?

Mr. RIEGLE. All right.

The PRESIDING OFFICER. Is there objection?

Mr. DECONCINI. Mr. President, reserving the right to object, and I shall not object, I would just like to ask if there will be any more votes this evening.

Mr. ROBERT C. BYRD. I wish the Senator could stand in position just once, until the matter is laid before the Senate.

The PRESIDING OFFICER. Is there objection?

Mr. BELLMON. Mr. President, reserving the right to object, and I do not intend to object, is the form of the bill the form that would be covered by the budget waiver?

Mr. ROBERT C. BYRD. The House bill would presumably be called up, and the Senate could offer any such amendments.

Mr. BELLMON. And the bill as brought up would be subject to a waiver?

Mr. ROBERT C. BYRD. The bill would be the House bill.

Mr. BELLMON. Which is subject to a waiver?

Mr. ROBERT C. BYRD. I believe that is correct.

Mr. NELSON. Mr. President, may I say I intend to offer a substitute with a

change in title III which will not be subject to a waiver.

Mr. BELLMON. Is it the intent of the amendment of the Senator from Wisconsin that the waiver language that would be covered by the budget waiver would be to delete title III?

Mr. NELSON. The staff worked out the amendment in consultation with the staff of the Budget Committee.

Mr. BELLMON. I think if the Senator will check he will find that is not the case.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, will the Senator yield to me for a moment?

Mr. BELLMON. Be happy to yield.

Mr. BAKER. Mr. President, if the formulation the majority leader suggested, that is to say, the use of H.R. 50 as a vehicle for the Senate to restore title III, whether in the form of a compromise or some other way, then we can cross that bridge when we come to it; but I agree with the Senator from Oklahoma that this bill, either H.R. 50 or whatever we enact, would be subject to the restraints of the budget resolution.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. BAKER. I yield.

Mr. MUSKIE. If the Senator will recall, the Budget Committee did act on a waiver which was reported to the floor and which, of course, is thus debatable, consistent with the requirements of the Budget Act.

Subject to that, there has been discussion between members of the staff of the Budget Committee and some members of the Budget Committee, as well as Senator NELSON and his staff and Senator CRANSTON and his staff, to try to come up with language which reflected the aims contained in the waiver resolution to the satisfaction of everyone concerned.

Now, that process has not been completed to the satisfaction of all members of the Budget Committee. I understand, if I correctly understood what has been said here this evening, that there is a continuing process underway now to accommodate the various Senators who are involved.

In any case, the waiver resolution reported out of the Budget Committee is still before the Senate, and, as I understand, it must still be disposed of by the Senate, and may conceivably be disposed of by whatever compromise is being worked out at the present time, as I understand the statements of the majority leader and the minority leader.

Am I correct in that, may I ask the minority leader?

Mr. BELLMON. May I respond before the minority leader answers?

Mr. BAKER. Go ahead.

Mr. BELLMON. As I understand, the Budget Committee did agree on an amendment, or did issue a waiver. Any negotiations since that time have not involved the minority. The compromise, so-called, I have before me has back in it title III, the removal of which was the main thrust of the action taken in the Senate Budget Committee.

It seems to me what we have done here ad hoc is to undo what was done before it went to the Budget Committee.

Mr. BAKER. If my colleague will yield, the compromise the Senator was referring to cannot be the compromise I was speaking of because those negotiations are still underway. The ad hoc committee, consisting of Senator DOLE, Senator HATCH, Senator LUGAR, Senator JAVITS, and Senator PERCY on the Republican side are still trying to explore the possibility of working out some sort of report.

Mr. BELLMON. But they are not on the Budget Committee.

Mr. BAKER. I understand. If there develops tomorrow some basis for compromise, most certainly the Budget Committee should be involved in that effort. But the effort so far has been to see if people want to compromise and if there is a realistic possibility of doing so. I really do not see any danger with the action already taken by the Budget Committee or any threat to their jurisdiction. I would hope that the senior Senator from Oklahoma, or whoever he designated, would be fully involved tomorrow when they resume negotiations in an effort to bring this to a satisfactory conclusion.

The PRESIDING OFFICER. Is there objection?

Mr. MUSKIE. Will the Senator yield again?

Mr. BELLMON. I am happy to yield.

Mr. MUSKIE. I cherish my relationship with the Senator from Oklahoma, as he knows. I do not want there to be a misunderstanding as to what was going on. I was present at some of the discussions and it was clearly understood that the possible compromise language was not a commitment on anybody's part or the Budget Committee. The Budget Committee was not being represented as such. So the Budget Committee's position is reflected by the waiver resolution reported to the Senate. Whether or not the members of the Budget Committee who participated in drafting the waiver resolution can be satisfied by a compromise language which has been put together here is a question yet to be determined.

I have not sought to bind the Senator from Oklahoma, nor any other member of the Budget Committee. I have expressed my own personal view of the language being drafted. It was hoped at some point, if we ever get to that point—and it looks as though that possibility exists—when Humphrey-Hawkins would be on the floor for consideration that the langauge that would be developed would be a satisfactory resolution of the Budget Committee's problems. That decision has not yet been made. I would like to have my good friend from Oklahoma understand that.

Mr. BELLMON. Mr. President, I appreciate the reassurance the distinguished chairman of the Budget Committee has given. I am not sure members of the committee realize what violence this bill as the House sent it to us would do to the budget process that we have been attempting to establish here in the Congress. I hope Members will realize that this bill is far more than the title might suggest. It is much different than a full employment and balanced growth act. I wanted the Senate to be on notice that unless there are significant changes made in this act, there is no way I could support it.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, I will assure the Senator from Oklahoma that I have no intention, so far as this Senator is concerned, of willingly seeing H.R. 50 become the action of the Senate. I indicated earlier that it was chosen as a vehicle, and I have no objection to that. But I personally think it would have a devastating effect on the economy of this country if H.R. 50 was enacted into law.

However, I do feel that there is a basis for agreement far short of H.R. 50 and much closer to, I believe, the point of view of the Senator from Oklahoma and my own than even the two Senate bills that are now on the calendar. I apologize to the Senator from Oklahoma for not involving him in the negotiations today as a representative of the Budget Committee. That is my fault. I acknowledge that.

Mr. DOLE. If the Senator will yield, it was understood in our meeting that we would have to satisfy any objections from either Senator BELLMON or Senator MUSKIE.

Mr. BAKER. I thank the Senator.

Mr. President, may I propound a parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. Am I correct in saying that if the unanimous-consent request is granted as propounded by the majority leader, that nothing in that order as far as its present formulation would change, alter, or extinguish any rights or opportunities of the Budget Committee in respect of that act?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. I thank the Chair.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 50) to translate into practical reality the right of all Americans who are able, willing, and seeking to work to full opportunity for useful paid employment at fair rates of compensation; to assert the responsibility of the Federal Government to use all practicable programs and policies to promote full employment, production, and real income, balanced growth, adequate productivity growth, proper attention to national priorities, and reasonable price stability; to require the President each year to set forth explicit short-term and medium-term economic goals; to achieve a better integration of general and structural economic policies; and to improve the coordination of economic policymaking within the Federal Government.

The PRESIDING OFFICER. The Senator from Wisconsin.

UP AMENDMENT NO. 2048

(Subsequently numbered amendment 4532)

(Purpose: Translate into practical reality the right of all Americans willing, and seeking to work to full opportunity for useful paid employment at fair rates of compensation; to assert the responsibility of the Federal Government to use all practicable programs and policies to promote full employment, production, and real income, balanced growth, adequate productivity growth, proper attention to national priorities, and reasonable price stability; and for other purposes)

Mr. NELSON. Mr. President, I send to the desk a substitute amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin, Mr. NELSON (for himself, Mrs. HUMPHREY, Mr. WILLIAMS, Mr. JAVITS, Mr. CRANSTON, and Mr. KENNEDY), proposes an unprinted amendment numbered 2048.

Mr. NELSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. This act and the following table of contents may be cited as the "Full Employment and Balanced Growth Act of 1978".

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Sec. 401. Nondiscrimination.
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GENERAL FINDINGS

SEC. 2. (a) The Congress finds that the Nation has suffered substantial unemployment and underemployment, idleness of other productive resources, high rates of inflation, and inadequate productivity growth, over prolonged periods of time, imposing numerous economic and social costs on the Nation. Such costs include the following:

(1) The Nation is deprived of the full supply of goods and services, the full utilization of labor and capital resources, and the related increases in economic well-being that would occur under conditions of genuine full employment, production, and real income, balanced growth, a balanced Federal budget, and the effective control of inflation.

(2) The output of goods and services is insufficient to meet pressing national priorities.

(3) Workers are deprived of the job security, income skill development, and productivity necessary to maintain and advance their standards of living.

(4) Business and industry are deprived of the production, sales, capital flow, and productivity necessary to maintain adequate profits, undertake new investment, create jobs, compete internationally, and contribute to meeting society's economic needs. These problems are especially acute for smaller businesses. Variations in the business cycle and low-level operations of the economy are far more damaging to smaller businesses than to larger business concerns because smaller businesses have fewer available resources, and less access to resources, to withstand nationwide economic adversity. A decline in small business enterprises contributes to unemployment by reducing employment opportunities and contributes to inflation by reducing competition.

(5) Unemployment exposes many families to social, psychological, and physiological costs, including disruption of family life, loss of individual dignity and self-respect, and the aggravation of physical and psychological illnesses, alcoholism and drug abuse, crime, and social conflicts.

(6) Federal, State, and local government budgets are undermined by deficits due to shortfalls in tax revenues and in increases in expenditures for unemployment compensation, public assistance, and other recession-related services in the areas of criminal justice, alcoholism and drug abuse, and physical and mental health.

(b) The Congress finds that:

(1) High unemployment may contribute to inflation by diminishing labor training and skills, underutilizing capital resources, reducing the rate of productivity advance, increasing unit labor costs, and reducing the general supply of goods and services.

(2) Aggregate monetary and fiscal policies alone have been unable to achieve full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance, and reasonable price stability, and therefore must be supplemented by other measures designed to serve these ends.

(3) Attainment of these objectives should be facilitated by setting explicit short-term and medium-term economic goals, and by improved coordination among the President, the Congress, and the Board of Governors of the Federal Reserve System.

(4) Increasing job opportunities and full employment would greatly contribute to the elimination of discrimination based upon sex, age, race, color, religion, national origin, handicap, or other improper factors.

(c) The Congress further finds that an effective policy to promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance, and reasonable price stability should (1) be based on the development of explicit economic goals and policies involving the President, the Congress, and the Board of Governors of the Federal Reserve System, with maximum reliance on the resources and ingenuity of the private sector of the economy, (2) include programs specifically designed to reduce high unemployment due to recessions, and to reduce structural unemployment within regional areas and among particular labor force groups, and (3) give proper attention to the role of increased exports and improvement in the international competitiveness of agriculture, business, and industry in providing productive employment opportunities and achieving an improved trade balance.

(d) The Congress further finds that full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability are important national requirements and will promote the economic security and well-being of all citizens of the Nation.

(e) The Congress further finds that the United States is part of an interdependent world trading and monetary system and that attainment of the requirements specified in subsection (d) is dependent upon policies promoting a free and fair international trading system and a sound and stable international monetary system.

TITLE I—ESTABLISHMENT OF GOALS AND GENERAL ECONOMIC POLICIES

STATEMENT OF PURPOSE

SEC. 101. It is the purpose of this title—

(1) to declare the general policies of this title;

(2) to provide an open process under which economic goals and policies are proposed, reviewed, and established;

(3) to provide for yearly review of national economic policies to insure their consistency with these goals to the maximum extent possible; and

(4) to strengthen and supplement the purposes and policies of the Employment Act of 1946.

DECLARATION OF POLICY

SEC. 102. Section 2 of the Employment Act of 1946 is amended to read as follows:

"SEC. 2. (a) The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means, consistent with its needs and obligations and other essential national policies, and with the assistance and cooperation of both small and larger businesses, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions which promote useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased

exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability as provided in section 105(b) of this title.

"(b) The Congress further declares and establishes as a national goal the fulfillment of the right to full opportunities for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work.

"(c) The Congress further declares that inflation is a major national problem requiring improved government policies relating to food, energy, improved and coordinated fiscal and monetary management, the reform of outmoded rules and regulations of the Federal Government, the correction of structural defects in the economy that prevent or seriously impede competition in private markets, and other measures to reduce the rate of inflation.

"(d) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to improve the coordination and integration of the policies and programs of the Federal Government toward achievement of the objectives of such Act through better management, increased efficiency, and attention to long-range as well as short-range problems and to balancing the Federal budget.

"(e) The Congress further declares that, although it is the purpose under the Full Employment and Balanced Growth Act of 1978 to seek diligently and to encourage the voluntary cooperation of the private sector in helping to achieve the objectives of such Act, no provisions of such Act or this Act shall be used, with respect to any portion of the private sector of the economy, to provide for Federal Government control of production, employment, allocation of resources, or wages and prices, except to the extent authorized under other Federal laws.

"(f) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to maximize and place primary emphasis upon the expansion of private employment, and all programs and policies under such Act shall be in accord with such purpose. Toward this end, the effort to expand jobs to the full employment level shall be in this order of priority to the extent consistent with balanced growth—

"(1) expansion of conventional private jobs through improved use of general economic and structural policies, including measures to encourage private sector investment and capital formation;

"(2) expansion of private employment through Federal assistance in connection with the priority programs in such Act;

"(3) expansion of public employment other than through the provisions of section 206 of this title; and

"(4) when recommended by the President under section 206 of this title and subject to the limitations in such section, the creation of employment through the methods set forth in such section.

"(g) The Congress further declares that trade deficits are a major national problem requiring a strong national export policy including improved Government policies relating to the promotion, facilitation, and financing of commercial and agricultural exports, Government policies designed to reduce foreign barriers to exports through international negotiation and agreement, Federal support for research, development, and diffusion of new technologies to promote innovation in agriculture, business, and industry, the elimination or modification of Government rules or regulations that burden or disadvantage exports and the national and international competitiveness of agriculture, business, and industry, the reexamination of antitrust laws and policies when necessary to enable agriculture, business, and industry to meet foreign competition in the United States and abroad, and the achievement of a free and fair international trading system and a sound and stable international monetary order.

"(h) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to achieve a balanced Federal budget as is consistent with the achievement of the medium-term goals specified in section 4."

ECONOMIC REPORT OF THE PRESIDENT AND SHORT-TERM ECONOMIC GOALS AND POLICIES

SEC. 103. (a) The heading preceding section 3 and section 3(a) of the Employment Act of 1946 are amended to read as follows:

"ECONOMIC REPORT OF THE PRESIDENT AND SHORT-TERM ECONOMIC GOALS AND POLICIES

"SEC. 3. (a) The President shall transmit to the Congress during the first twenty days of each regular session, with copies transmitted to the Governor of each State and to other appropriate State and local officials, an economic report (hereinafter in this Act referred to as the 'Economic Report') together with the annual report of the Council of Economic Advisers submitted in accord with section 11(c) of this Act, setting forth—

"(1) the current and foreseeable trends in the levels of employment, unemployment, production, capital formation, real income, Federal budget outlays and receipts, productivity, international trade and payments, and prices, and a review and analysis of recent domestic and international developments affecting economic trends in the Nation;

"(2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, and prices for the calendar year in which the Economic Report is transmitted and for the following calendar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, price stability, achievement of an improved trade balance, and proper attention to national priorities; and

"(B) annual numerical goals as specified in subparagraph (A) for the three successive calendar years, designated as medium-term goals;

"(3) employment objectives for certain significant subgroups of the labor force, including youth, women, minorities, handicapped persons, veterans, and middle-aged and older persons; and

"(4) a program for carrying out the policy declared in section 2, together with such recommendations for legislation as he may deem necessary or desirable.".

(b) Section 3 of the Employment Act of 1946 is amended by adding the following:

"(d) For the purposes of the Full Employment and Balanced Growth Act of 1978, the percentage rate of unemployment at any given time shall be the rate of unemployment as a percentage of the civilian labor force as set forth by the Bureau of Labor Statistics in the Department of Labor as computed under the procedures in effect as of the date of enactment of this Act.

"(e) For the purpose of the Full Employment and Balanced Growth Act of 1978, the terms 'inflation', 'prices', and 'reasonable price stability' refer to the rate of change or level of the consumer price index as set forth by the Bureau of Labor Statistics, United States Department of Labor.".

FULL EMPLOYMENT AND BALANCED GROWTH: MEDIUM-TERM ECONOMIC GOALS AND POLICIES

SEC. 104. The Employment Act of 1946 is amended by redesignating sections 4 and 5 as sections 11 and 12, respectively, and by inserting a new section 4 as follows:

"FULL EMPLOYMENT AND BALANCED GROWTH: MEDIUM-TERM ECONOMIC GOALS AND POLICIES

"SEC. 4. (a) In each Economic Report after enactment of the Full Employment and Balanced Growth Act of 1978, the President shall incorporate (as part of the five-year numerical goals in each Economic Report) medium-term annual numerical goals specified in section 3(a)(2)(B), and in each President's budget submitted immediately prior thereto, the President shall incorporate the programs and policies the President deems necessary to achieve such medium-term goals and a balanced Federal budget and to achieve reasonable price stability as rapidly as feasible as provided for in section 5(b) of this Act.

"(b) The medium-term goals in the first three Economic Reports after enactment of the Full Employment and Balanced Growth Act of 1978 shall include (as part of the five-year goals in each Economic Report) the interim numerical goals of reducing unemployment among Americans aged twenty and over in the civilian labor force to not more than 3 per centum and to reduce unemployment among the entire civilian labor force aged sixteen and over to not more than 4 per centum within a period not extending beyond the fifth calendar year after the first such Economic Report, counting as the first calendar year the year in which such Economic Report is issued. Upon achievement of the 3 and 4 per centum goals as specified above, each succeeding Economic Report shall have the goal of achieving full employment and a balanced Federal budget as soon as practicable and maintaining full employment and a balanced budget after it has been reached.

"(c) In the third and any succeeding Economic Report after enactment of the Full Employment and Balanced Growth Act of 1978, the President shall review the numerical goals and timetables for the reduction of unemployment and the goal of balancing the Federal budget, and report to the Congress on the degree of progress being made, and, in the President's Budget submitted immediately prior thereto in such year, the President shall report on the programs and policies being used, and any obstacles to their achievement, and if necessary propose corrective economic measures toward achievement of such goals and timetables: *Provided*, That beginning with the third Report and in any subsequent reports, if the President finds it necessary, the President may recommend modification of (1) the timetable provided for in subsection (b) for the reduction of unemployment to the interim 3 and 4 per centum goals specified in such subsection by setting forth the year in which, in the opinion of the President, the 3 and 4 per centum goals should be achieved and (2) the annual numerical unemployment goals to make them consistent with the modified timetable, and the Congress may take appropriate action.

"(d) If, after achievement of the 3 and 4 per centum goals specified in subsection (b), the unemployment rate for a year, as set forth pursuant to section 3(d) of this Act, is more than 3 per centum among individuals aged twenty and over or 4 per centum among individuals aged sixteen and over, the next Economic Report after such rate is set forth and each succeeding Economic Report shall include (as part of the five-year goals in each Economic Report) the interim numerical goals of reducing unemployment to not more than the levels specified in subsection (b) as soon as practicable but not later than the fifth calendar year after the first such Economic Report, counting as the first calendar year the year in which such Economic Report is issued: *Provided*, That, if the President finds it necessary, the President may, under the authority provided in subsection (c), recommend modification of

the timetable provided for in this subsection for the reduction of unemployment, and for the purposes of section —04 of the Full Employment and Balanced Growth Act of 1978, such a recommendation by the President shall be treated as a recommendation made under subsection (c) of this section.

"(e)(1) In taking action to reduce unemployment in accord with the numerical goals and timetable established under section (b), every effort shall be made to reduce those differences between the rates of unemployment among youth, women minorities, handicapped persons, veterans, middle-aged and older persons and other labor force groups and the overall rate of unemployment which are caused by any improper factors with the ultimate objective of removing such differentials to the extent possible.

"(2) Insofar as the differences specified in the preceding paragraph are due to lack of training and skills, occupational practices, and other relevant factors, the Secretary of Labor shall—

"(A) take such action as practicable to achieve the objectives of this subsection;

"(B) make studies, develop information, and make recommendations toward remedying these differences in rates of unemployment, and include these in the annual Employment and Training Report of the President required under section 705(a) of the Comprehensive Employment and Training Act of 1973 (hereinafter in this Act referred to as 'CETA'); and

"(C) make recommendations, as deemed necessary, to the Congress related to the objectives of this paragraph.

"(f)(1) The term 'middle-aged and older persons' as used in this section includes any individual forty-five years of age or older.

"(2) For purposes of this subsection, the term 'veterans' shall mean the same as defined in section 2011(1) or (2)(A) of title 38, United States Code.

PROVISIONS APPLICABLE TO SHORT-TERM AND MEDIUM-TERM GOALS

SEC. 105. The Employment Act of 1946 is amended by adding a new section 5 as follows:

"PROVISIONS APPLICABLE TO SHORT-TERM AND MEDIUM-TERM GOALS

"SEC. 5. (a) To aid in determining the short-term and medium-term goals for employment, production, real income, and prices, analysis shall be presented in the Economic Report with respect to major aspects of the appropriate composition or structure of each goal, and as to the appropriate apportionment of total national production among its major components (private investment, consumer expenditures, and public outlays) as affected by relative income flows and other factors, in order to promote balanced growth and a balanced Federal budget, reduce cyclical disturbances, and achieve the other purposes of this Act and the Full Employment Balanced Growth Act of 1978.

"(b) In choosing means to achieve the goal for the reduction of unemployment and choosing means to achieve the goal of reasonable price stability, those means which are mutually reinforcing shall be used to the extent practicable."

NATIONAL PRIORITY POLICIES AND PROGRAMS REQUIRED FOR FULL EMPLOYMENT AND BALANCED GROWTH

SEC. 106. The Employment Act of 1946 is amended by adding a new section 6 as follows:

"NATIONAL PRIORITY POLICIES AND PROGRAMS REQUIRED FOR FULL EMPLOYMENT AND BALANCED GROWTH

"SEC. 6. (a) To contribute to the achievement of the goals under the Full Employment and Balanced Growth Act of 1978, the President's Budget for each fiscal year beginning after the date of enactment of the Full Employment and Balanced Growth Act of 1978 shall include priority policies and programs, which shall be set forth in sufficient detail to furnish an integrated perspective of the needs and capabilities of the Nation and as a long-run guide to relevant national economic policies and programs.

"(b) The national policies and programs included in each President's Budget as provided for in subsection (a) of this section shall include to the extent the President deems appropriate—

"(A) development of energy sources and supplies, transportation, and environmental improvement;

"(B) proper attention to the problems and needs of smaller businesses including (i) the availability of investment capital, management and technical expertise, and technology and labor needs, (ii) analysis of economic and social trends which may affect smaller businesses, (iii) government policies and programs (including agency regulations and excessive paperwork requirements) that may create undue hardship for or reduce the competitiveness of smaller businesses, and (iv) other policies and programs to remove barriers to competition and to strengthen and promote the creation and growth of smaller businesses;

"(C) development of a comprehensive national agriculture policy that assures—

"(i) production levels adequate to meet the nutritional needs of all Americans and respond to rising food requirements throughout the world;

"(ii) farm and ranch income at levels that will improve opportunities for farm families, encourage production, and provide for essential capital investment in farming;

"(iii) renewed commmitment to the protection and conservation of rural land and water through support for improved conservation practices and research, and attention to agricultural land use in the formulation of plans for energy, water and mineral resources, transportation, and commercial, industrial, and residential development; and

"(iv) support for programs and public services designed to respond to the unique economic and social conditions of rural communities;

"(D) proper attention to the relationship between Federal programs and policies and the problems and needs of urban areas, including inner cities and the employment problems of their residents, especially youth;

"(E) proper attention to the quality and quantity of health care, education and training programs, child care and other human services, and housing, essential to a full employment economy and to moving toward their availability for all individuals at costs within their means;

"(F) policies concerning Federal aid to State and local governments, especially for public investment and unemployment related costs;

"(G) national defense and other needed international programs;

"(H) proper attention to the relationship between Federal grants, contracts, and procurement, and the closure of military bases and other Federal facilities and the distribution of jobs and income among different regions of the Nation, and among urban, suburban, and rural areas;

"(I) proper attention to balancing the Federal budget;

"(J) proper attention to the dislocation of jobs caused by Federal laws, regulations, and policies;

"(K) policies and programs designed to increase exports and improve the international competitive position of agriculture, business, and industry, including measures to promote a free and fair international trading system, a sound and stable international monetary system and innovation in agriculture, business, and industry; and

"(L) such other priority policies and programs as the President deems appropriate.".

THE PRESIDENT'S BUDGET

SEC. 107. The Employment Act of 1946 is amended by inserting a new section 7 as follows:

"THE PRESIDENT'S BUDGET

"SEC. 7. (a) The President's Budget shall recommend levels of outlays and receipts which shall be consistent with the short-term economic goals of section 3(a)(2)(A) and the medium-term goals of section 4(b) and the program and policies which the President deems necessary to achieve the goals and objectives of paragraphs (2) and (3) of this subsection, and to achieve reasonable price stability as rapidly as feasible as provided for in section 5(b) of this Act.

"(b) The President's Budget shall provide five-year projections of outlays and receipts consistent with the medium-term goals of section 4(b).

"(c) The basic elements in the President's Budget shall be set forth briefly in each Economic Report, toward the end of making clear the relationship between the President's Budget and the goals and policies set forth in such Economic Report. Both the expenditure and revenue elements of the President's Budget, as set forth briefly in the Economic Report, shall be developed to promote the purposes, policies, and goals of the Full Employment and Balanced Growth Act of 1978. The size of the President's expenditure and revenue proposals, and the relationships between such proposals, shall be determined in a manner which gives consideration to the needs of the economy and the people in the priority areas set forth in section 6, and the relationship between the President's expenditure and revenue proposals shall be guided accordingly.".

MONETARY POLICY

SEC. 108. (a) Section 2A of the Federal Reserve Act is amended by striking out the second and third sentences and inserting in lieu thereof the following: "In furtherance of the purposes of the Full Employment and Balanced Growth Act of 1978, the Board of Governors of the Federal Reserve System shall transmit to the Congress, not later than February 20 and July 20 of each year, independent written reports setting forth (1) a review and analysis of recent developments affecting economic trends in the Nation; (2) the objectives and plans of the Board of Governors and the Federal Open Market Committee with respect to the ranges of growth or diminution of the monetary and credit aggregates for the calendar year during which the report is transmitted, taking account of past and prospective developments in employment, unemployment, production, investment, real income, productivity, international trade and payments, and prices; and (3) the relationship of the aforesaid objectives and plans to the short-term goals set forth in the most recent Economic Report of the President pursuant to section 3(a)(2)(A) of the Employment Act of 1946 and to any short-term goals approved by the Congress pursuant to title III of the Full Employment and Balanced Growth Act of 1978. In addition, as a part of its report on July 20 of each year, the Board of Governors shall include a statement of its objectives and plans with respect to the ranges of growth or diminution of the monetary and credit aggregates for the calendar year following the year in which the report is submitted. The reports required under the two preceding sentences shall be transmitted to the Congress and shall be referred in the Senate to the Committee on Banking, Housing, and Urban Affairs, and in the House of Representatives to the Committee on Banking, Finance and Urban Affairs. The Board shall consult with each such Committee on the reports and, thereafter, each such Committee

shall submit to its respective body a report containing its views and recommendations with respect to the Federal Reserve's intended policies. Nothing in this Act shall be interpreted to require that the objectives and plans with respect to the ranges of growth or diminution of the monetary and credit aggregates disclosed in the reports submitted under this section be achieved if the Board of Governors and the Federal Open Market Committee determine that they cannot or should not be achieved because of changing conditions: *Provided*, That in the subsequent consultations with the aforesaid Committees of the Congress pursuant to this section, the Board of Governors shall include an explanation of the reasons for any revisions to or deviations from such objectives and plans.".

(b) The amendment made by subsection (a) takes effect on January 1, 1979.

OVERCOMING INFLATION

SEC. 109. The Employment Act of 1946 is amended by inserting a new section 9 as follows:

"OVERCOMING INFLATION

"SEC. 9. (a) The Congress hereby determines that the objective of achieving reasonable price stability as soon as feasible, as set forth in section 3(a)(3) and section 4(a), shall be pursued by the methods and subject to the requirements of section 5(b).

"(b) The Congress finds that sole dependence upon fiscal or monetary policies or both to combat inflation can exacerbate both inflation and unemployment. The Congress finds that the coordinated use of fiscal and monetary policies in conjunction with specific targeted policies are necessary to combat inflation.

"(c) The President shall initiate specific policies to reduce the rate of inflation, including recommendations to the Congress where necessary, and include recommendations within the Economic Report to the extent practicable. Structural policies to reduce the rate of inflation may include—

"(1) an effective information system to monitor and analyze inflationary trends in individual economic sectors, so that the President and Congress can be alerted to developing inflation problems especially those caused by bottlenecks inhibiting the flow of goods and services;

"(2) programs and policies for alleviating shortages of goods, services, labor, and capital, with particular emphasis on food, energy, and critical industrial materials to and in stabilizing prices;

"(3) the establishment of stockpiles of agricultural commodities and other critical materials to help stabilize prices, meet emergency needs, and promote adequate incomes to producers;

"(4) encouragement to labor and management to increase productivity within the national framework of full employment through voluntary arrangements in industries and economic sectors;

"(5) recommendations to increase competition in the private sector and to improve the economic climate for the creation and growth of smaller businesses, including recommendations to strengthen and enforce the antitrust laws, the patent laws, and the internal revenue laws and regulations;

"(6) removal or proper modification of such Government restrictions and regulations as add unnecessarily to inflationary costs; and

"(7) such other administrative actions and recommendations for legislation as the President deems desirable to promote reasonable price stability.".

COUNCIL OF ECONOMIC ADVISERS

SEC. 110. (a) Section 11 of the Employment Act of 1946 (as redesignated by section 104 of this Act) is amended—

(1) in the second sentence of subsection (a), by inserting "full" immediately after "promote";

(2) in subsection (c)(4), by inserting "including small and larger business" immediately after "enterprise" and by inserting "full" immediately after "maintain";

(3) in subsection (e)(1), by inserting immediately before the semicolon a comma and the following: "and shall consult with the board or boards established under section 10"; and

(4) in subsection (e), by inserting after paragraph (2) the following:

"In its work under this Act and the Full Employment and Balanced Growth Act of 1978, the Council is authorized and directed to seek and obtain the cooperation of the various executive and independent agencies in the development of specialized studies essential to its responsibilities.".

ADVISORY BOARD OR BOARDS

SEC. 111. (a) The Employment Act of 1946 is amended by inserting a new section 10 as follows:

"ADVISORY BOARD OR BOARDS

"SEC. 10. (a) An advisory board or boards (including regional advisory boards) may be established as the President deems appropriate, to advise and consult periodically with one or more of the following: The President, the Council of Economic Advisers, and such other departments and agencies of the executive branch of the Federal Government as the President shall determine.

"(b) Such advisory board or boards shall include appropriate representation of labor, small and larger businesses and industries, agriculture, consumers, State and local officials, and the public at large, and shall advise and consult with respect to matters related to this Act, the Full Employment and Balanced Growth Act of 1978, and other appropriate matters related to national economic programs and policies. The President shall, in accordance with applicable processions of law, take the steps necessary to provide appropriate compensation to the members of such advisory board or boards."

TITLE II—STRUCTURAL ECONOMIC POLICIES AND PROGRAMS, INCLUDING TREATMENT OF RESOURCE RESTRAINTS

STATEMENT OF PURPOSE

SEC. 201. The Congress recognizes that general economic policies alone have been unable to achieve the goals set forth in this Act related to full employment, production, and real income, balanced growth, adequate growth in productivity, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry and achievement of reasonable price stability as provided for in section 5(b) of the Employment Act of 1946. It is, therefore, the purpose of this title to require the President to initiate, as the President deems appropriate, with recommendations to the Congress where necessary, supplementary programs and policies to the extent that the President finds such action necessary to help achieve these goals, including the goals and timetable for the reduction of unemployment. Insofar as feasible without undue delay, any policies and programs so recommended shall be included in the Economic Report.

COUNTERCYCLICAL EMPLOYMENT POLICIES

SEC. 202. (a) Any countercyclical efforts undertaken to aid in achieving the purposes of section 201 shall consider for inclusion the following programmatic entities:

(1) accelerated public works, including the development of standby public works projects;

(2) public service employment;

(3) State and local grant programs;

(4) the levels and duration of unemployment insurance;

(5) skill training in both the private and public sectors, both as a general remedy and as a supplement to unemployment insurance;

(6) youth employment programs as specified in section 205;

(7) community development programs to provide employment in activities of value to the State, local communities (including rural areas), and the Nation;

(8) Federal procurement programs which are targeted on labor surplus areas; and

(9) augmentation of other employment and training programs which would help to reduce high levels of unemployment arising from cyclical causes.

(b) In any countercyclical efforts undertaken, the President shall consider a triggering mechanism which will implement the program during a period of rising unemployment and phase out the program when unemployment is appropriately reduced, and incorporate effective means to facilitate individuals assisted under programs developed pursuant to this section to return promptly to regular private and public employment as the economy recovers.

COORDINATION WITH STATE AND LOCAL GOVERNMENT AND PRIVATE SECTOR ECONOMIC ACTIVITY

SEC. 203. (a) As an integral part of any countercyclical employment policies undertaken in accord with section 202, the President shall, to the extent the President deems necessary, set forth programs and policies, including recommended legislation where needed, to coordinate economic action among the Federal Government, regions, States and localities and the private sector to promote achievement of the purposes of this Act and the Employment Act of 1946 and an economic environment in which State and local governments and private sector economic activity and employment will prosper. In considering programs and policies related to the private sector, full consideration shall be given to promoting the growth and well-being of small businesses.

(b) In any efforts under this section, the President shall endeavor to meet criteria that establish programs which are funded to take account of the fiscal needs and budget conditions of the respective States and localities and their own efforts, with special attention to the rates of unemployment in such States and localities.

REGIONAL AND STRUCTURAL EMPLOYMENT POLICIES

SEC. 204. (a) To the extent deemed appropriate by the President in fulfillment of the purposes of section 201, the President shall initiate, and recommend legislation to the Congress if necessary, regional and structural employment policies and programs.

(b) In formulating the regional components of any such programs, the President shall encourage to the extent the President deems necessary, new private sector production and employment to locate within depressed localities and regions with substantial unemployment and to aid in stabilizing their economic base. To the extent feasible, such policies and programs shall foster the establishment and growth of smaller businesses in such localities and regions. Any regional employment proposal of the President shall also include an analysis of the extent to which Federal tax, expenditure (including procurement of goods and services), defense, transportation, energy, natural resources and employment policies have influenced the movement of people, jobs, and small and larger business and industries from chronic high unemployment regions and areas, and proposals designed to correct Federal policies that have an adverse economic impact upon such regions and areas.

YOUTH EMPLOYMENT POLICIES

SEC. 205. (a) The Congress finds and declares—

(1) That serious unemployment and economic disadvantage of a unique nature exist among youths even under generally favorable economic conditions;

(2) that this group constitutes a substantial portion of the Nation's unemployment, and that this significantly contributes to crime, alcoholism and drug abuse, and other social and economic problems; and

(3) that many youths have special employment needs and problems which, if not promptly addressed, will substantially contribute to more severe unemployment problems in the long run.

(b) To the extent deemed necessary in fulfillment of the purposes of this Act, the President shall improve and expand existing youth employment programs, recommending legislation where required. In formulating any such program, the President shall—

(1) include provisions designed to fully coordinate youth employment activities with other employment and training programs;

(2) develop a smoother transition from school to work;

(3) prepare disadvantaged and other youths with employability handicaps for regular self-sustaining employment; and

(4) develop realistic methods for combining training with work.

JOB TRAINING, COUNSELING AND RESERVOIRS OF EMPLOYMENT PROJECTS

SEC. 206. (a) Further to promote achievement of full employment under this Act and the Employment Act of 1946, the President, through the Secretary of Labor, shall develop policies and procedures and, as necessary, recommend programs for providing employment opportunities to individuals aged 16 and over in the civilian labor force who are able, willing, and seeking to work but who, despite serious efforts to obtain employment, remain unemployed.

(b) In meeting the responsibilities under subsection (a), the Secretary of Labor shall, as appropriate, fully utilize the authority provided under CETA and other relevant provisions of law to—

(1) assure the availability of counseling, training, and other support activities necessary to prepare persons willing and seeking work for employment (including use of section 110 of CETA when necessary);

(2) refer persons able, willing, and seeking to work to job opportunities in the private and public sectors through the existing public employment placement facilities and through the United States Employment Service of the Department of Labor, including job opportunities in any positions created under programs established pursuant to sections 202, 204, and 205 of this Act; and

(3) encourage flexi-time and part-time jobs for persons who are able, willing, and seeking employment but who are unable to work a standard workweek.

(c)(1) To the extent that individuals aged sixteen and over and able, willing, and seeking to work are not and in the judgment of the President cannot be provided with private job opportunities or job opportunities under other programs and actions in existence, in accord with the goals and timetables set forth in the Employment Act of 1946, the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of CETA and other existing employment and training projects or through such new programs as are determined necessary by the President, or through both such projects and such programs.

(2) New programs as may be authorized by law after the date of enactment of this Act referred to in paragraph (c)(1)—

(A) shall not be put into operation earlier than two years after the enactment of this Act, nor without a finding by the President, transmitted to the Congress, that other means of employment are not yielding enough jobs to be consistent with attainment of the goals and timetables for the reduction of unemployment set forth in the Employment Act of 1946;

(B) shall be designed so that no workers from private employment are drawn into the reservoir projects thereunder;

(C) shall be useful and productive jobs;

(D) shall be mainly in the lower ranges of skills and pay, and toward this end the number of reservoir jobs under such new programs shall, to the extent practicable, be maximized in relationship to the appropriations provided for such jobs;

(E) shall be targeted on areas of high unemployment and on individuals who are structurally unemployed;

(F) shall be phased in by the President as necessary, in conjunction with the employment goals under sections 3(a)(2) and 4(b) of the Employment Act of 1946.

(d) The Secretary, in carrying out the provisions of this section, shall establish regulations providing for—

(1) an initial determination of the job seeker's ability to be employed at certain types and duration of work, so that such individual may be appropriately referred to jobs, training, counseling, and other supportive services;

(2) compliance with the nondiscrimination provisions of this Act in accordance with section 401;

(3) appropriate eligibility criteria to determine the order of priority of access of any person to any new programs under subsection (c) as may be authorized by law including but not necessarily limited to (A) household income duration of unemployment (not less than five weeks), and the number of people economically dependent upon such person; and (B) denial of access to any person refusing to accept or hold a job except for good cause, as determined by the Secretary of Labor, including refusal to accept or hold a job subject to reference under subsection (b) paragraph (2), in order to seek a reservoir project under subsection (c); and

(4) such administrative appeal procedures as may be appropriate to review the initial determination of the abilities of persons willing, able, and seeking to work under paragraph (1) of this subsection and the employment need and eligibility under paragraph (3) of this subsection.

CAPITAL FORMATION—PRIVATE AND PUBLIC

SEC. 207. (a) The Congress finds that—

(1) promotion of full employment and balanced growth is in itself a principal avenue to high and sustained rates of capital formation;

(2) high rates of capital formation are necessary to ensure adequate rates of capacity expansion and productivity growth;

(3) an important goal of national policy shall be to remove obstacles to the free flow of resources into new investment, particularly those obstacles that hinder the creation and growth of smaller businesses because national programs and policies to aid and stimulate private enterprise are not sufficient to deal with the special problems and needs of smaller businesses; and

(4) while private business firms are, and should continue to be, the major source of investment, the investment activities of the Federal, State, and local governments play an important role in affecting the level of output, employment, and productivity and in achieving other national purposes.

(b) The Economic Report shall, as appropriate, review and assess existing Federal Government programs and policies which affect business investment decisions, including, but not necessarily limited to, the relevant aspects of the tax code, Federal expenditure policy, Federal regulatory policy, international trade policy, and Federal support for research, development, and diffusion of new technologies. In addition, the Economic Report shall assess the effect of the overall economic policy environment and the rate of inflation on business investment. The President shall recommend, as appropriate, new programs or modifications to improve existing programs concerned with private capital formation.

(c) The Economic Report referred to in subsection (b) shall review and assess Federal policies and programs which directly, or through grants-in-aid to State and local governments, or indirectly through other means, affect the adequacy, composition and effectiveness of public investments, as a means of achieving the goals of this Act and the Employment Act of 1946. The President shall recommend, as appropriate, new programs and policies or modifications to improve existing Federal programs affecting public investment.

TITLE III—POLICIES AND PROCEDURES FOR CONGRESSIONAL REVIEW

STATEMENT OF PURPOSE

SEC. 301. (a) The purposes of this title are to establish procedures for congressional review and action with respect to the Economic Report of the President (hereafter in this title referred to as the "Economic Report"), the report of the Board of Governors of the Federal Reserve System, and the other policies and provisions of this Act and the Employment Act of 1946.

(b) To provide for comprehensive national policies to meet the objectives of this Act and the Employment Act of 1946, and to provide the Congress with guidance on these matters, the appropriate committees of the Congress shall review and, to the extent deemed desirable, recommend revision of the economic goals, priorities, policies, and programs proposed under such Acts by the President and the Board of Governors of the Federal Reserve System, and the Congress shall consider the implications of the short-term goals and related policies so proposed and so revised.

(c) The Congress shall initiate or develop such legislation as it deems necessary to implement proposals and objectives pursuant to this Act and the Employment Act of 1946 after such modification in such proposals as it deems desirable. Nothing in this title shall be construed to prevent the Congress or any of its committees from considering or initiating at any time legislative action in furtherance of the goals and purposes of this act.

(d) On or before March 15 of each year, a majority of the members of the Joint Economic Committee shall submit a report to the Committees on the Budget of the Senate and the House of Representatives.

COMMITTEE REVIEW

SEC. 302. (a) In conjunction with its review of the Economic Report, and the holding of hearings on the Economic Report under the Employment Act of 1946, the Joint Economic Committee shall review and analyze the short-term and medium-term goals set forth in the Economic Report pursuant to sections 3(a)(2) and 4(b) of the Employment Act of 1946 (as amended by sections 103 and 104 of this Act).

(b) The Joint Economic Committee shall hold hearings on the Economic Report for the purpose of receiving testimony from Members of the Congress, and such appropriate representatives of Federal departments and agencies, the general public, and interested groups as the joint committee deems advisable. The joint committee shall also consider the comments and views on the Economic Report which are received from State and local officials.

Within thirty days after receipt by the Congress of the Economic Report, each standing committee of the Senate and House of

Representatives, each other committee of the Senate and House of Representatives which has legislative jurisdiction, and each joint committee of the Congress may submit to the Joint Economic Committee, for use by the Joint Economic Committee in conducting its review and analysis under subsection (a), a report containing the views and recommendations of the submitting committee with respect to aspects of the Economic Report which relate to its jurisdiction.

(d) On or before March 15 of each year, a majority of the members of the Joint Economic Committee shall submit a report to the Committees on the Budget of the Senate and the House of Representatives. Such report shall include findings, recommendations, and any appropriate analyses with respect and in direct comparison to each of the short-term and medium-term goals set forth in the Economic Report.

REVIEW OF ECONOMIC REPORT AS PART OF CONGRESSIONAL BUDGET PROCESS

SEC. 303. (a) Section 301(c) of the Congressional Budget Act of 1974 is amended—

(1) by inserting after the first sentence the following new sentences: "Each of the recommendations as a short-term and medium-term goals set forth in the report submitted by the members of the Joint Economic Committee under subsection (c) may be considered by the Committee on the Budget of each House as part of its consideration of such concurrent resolution, and its report may reflect its views thereon, and on how the estimates of revenues and levels of budget authority and outlays set forth in such concurrent resolution are designed to achieve any goals it is recommending."; and

(2) by inserting "also" after "shall" in the last sentence.

(b) Section 305(a) of such Act is amended—

(1) by inserting before the period at the end of the first sentence of paragraph (2) a comma and "plus such additional hours of debate as are consumed pursuant to paragraph (3)";

(2) by redesignating paragraphs (3) through (6) as paragraphs (6) through (9) respectively; and

(3) by inserting after paragraph (2) the following new paragraphs:

"(3) Following the presentation of opening statements on the first concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the House, there shall be a period of not more than four hours for general debate on the economic goals and policies recommended in the Economic Report of the President, the report of the Joint Economic Committee (as provided for in section 302(d) of the Full Employment and Balanced Growth Act of 1978), and the report of the Committee on the Budget of the House on such resolution (as provided for in section 301(d)). The time shall be equally divided between, and controlled by, the chairman and ranking minority member of the Committee on the Budget of the House.

(4) Only if a concurrent resolution on the budget reported by the Committee on the Budget of the House sets forth the economic goals (as described in sections 3(a)(2) and 4(b) of the Full Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.".

(c) Section 305(b) of such Act is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (6) and (7), respectively; and

(2) by inserting after paragraph (2) the following new paragraphs:

"(3) Following the presentation of opening statements on the first concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, there shall be a period of not more than four hours for debate on the economic goals and policies recommended in the Economic Report of the President, the report of the Joint Economic Committee (as provided for in section 302(d) of the Full Employment and Balanced Growth Act of 1978), and the report of the Committee on the Budget of the Senate on such resolution (as provided for in section 301(d)). The time shall be equally divided between, and controlled by, the chairman and ranking minority member of the Committee on the Budget of the Senate.

"(4) Only if a concurrent resolution on the budget reported by the Committee on the Budget of the Senate sets forth the economic goals (as described in sections 3(a)(2) and 4(b) of the Employment Act of 1946), which the estimates, amounts, and levels (as described in section 301(a)) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.".

MODIFICATION OF TIMETABLE FOR ACHIEVING UNEMPLOYMENT GOALS

SEC. 304. (a) Section 301(a) of the Congressional Budget Act of 1974 is amended—

(1) by striking out "and" at the end of paragraph (5); and

(2) by renumbering paragraph (6) as (7) and inserting after paragraph (5) the following new paragraph:

"(6) if required by subsection (e), the calendar year in which, in the opinion of the Congress, the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946 should be achieved; and".

(b) Section 301 of such Act is amended by adding at the end thereof the following new subsection:

"(e) ACHIEVEMENT OF GOALS FOR REDUCING UNEMPLOYMENT.—

"(1) If, pursuant to section 4(c) of the Employment Act of 1946, the President recommends in the Economic Report that the goals for reducing unemployment set forth in subsection (b) of section 4 of such Act be achieved in a year after the close of the five-year period prescribed by such subsection, the first concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress shall set forth the year in which, in the opinion of the Congress, such goals can be achieved.

"(2) After the Congress has expressed its opinion pursuant to paragraph (1) as to the year in which the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946, as amended, can be achieved, if, pursuant to section 4(c) of such Act, the President recommends in the Economic Report that such goals be achieved in a year which is different from the year in which the Congress has expressed its opinion that such goals should be achieved, either in it action pursuant to paragraph (1) or it most recent action pursuant to this paragraph, the first concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress shall set forth the year in which, in the opinion of the Congress, such goals can be achieved.

"(3) It shall be in order to amend the provision of such resolution setting forth such year only if the amendment thereto also proposes to alter the estimates, amounts, and levels (as described in section 301(a)) set forth in such resolution in germane fashion in order to be consistent with the economic goals (as described in sections 3(a)(2) and 4(b) of the Employment Act of 1946)) which such amendment proposes can be achieved by the year specified in such amendment.".

EXERCISE OF RULEMAKING POWERS

SEC. 305. (a) The provisions of this title and the amendments made by such provisions are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House), at any time, in the same manner and to the same extent as in the case of any other rule of such House.

TITLE IV—GENERAL PROVISIONS

NONDISCRIMINATION

SEC. 401. (a) No person in the United States shall on the ground of sex, age, race, color, religion, national origin or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded pursuant to the implementation of this Act, including membership in any structure created by this Act.

(b) Whenever the Secretary of Labor determines that a recipient of funds made available pursuant to this Act has failed to comply with subsection (a), or an applicable regulation, the Secretary shall notify the recipient of the noncompliance and shall request such recipient to secure compliance. If within a reasonable period of time, not to exceed sixty days, the recipient fails or refuses to secure compliance, the Secretary of Labor may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); or

(3) take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever the Attorney General has reason to believe that a recipient is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in the appropriate United States district court for any and all appropriate relief.

(d) To assist and evaluate the enforcement of this section, and the broader equal employment opportunity policies of this Act, the Secretary of Labor shall include, in the annual Employment and Training Report of the President provided under section 705(a) of CETA, a detailed analysis of the extent to which the enforcement of this section achieves positive results in both the quantity and quality of jobs, and for employment opportunities generally.

LABOR STANDARDS

SEC. 402. (a) Any new program enacted and funded pursuant to the implementation of this Act shall, subject to any limitations on maximum annual compensation as may be provided in the law authorizing such programs, provide that persons employed are paid equal wages for equal work, and that such policies and programs create a net increase in employment through work that

would not otherwise be done or are essential to fulfill national priority purposes.

(b) Any person employed in any reservoir project enacted and funded pursuant to the implementation of section 206(c)(1), or in any other job created pursuant to implementation of this Act, shall, subject to any limitations on maximum annual compensation as may be provided in the law authorizing such programs, be paid not less than the pay received by others performing the same type of work for the same employer, and in no case less than the minimum wage under the Fair Labor Standards Act of 1938. No person employed in any reservoir project enacted and funded pursuant to implementation of section 206(c)(1) shall perform work of the type to which the Davis-Bacon Act (40 U.S.C. 276a—276a-5) applies, except as otherwise may be specifically authorized by law.

(c) Any recommendation by the President for legislation to implement any program enacted pursuant to the provisions of this Act, requiring the use of funds under this Act, and submitted pursuant to the requirements of this Act, shall contain appropriate wage provisions based upon existing wage standard legislation.".

REPORT

SEC. 3. Not later than one year after the date of enactment of this Act, the Committee on Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives each shall conduct a study and submit a report, including findings and recommendations, to the Committee on Rules and Administration of the Senate and the Committee on Rules of the House, respectively, on the subject of establishing a full employment goal in connection with the provisions of this Act.

Mr. NELSON. Let me say very briefly, Mr. President, that this substitute addresses the question raised by the distinguished Senator from Oklahoma in title III. It may not address it adequately. What has been going on has proceeded over a period of days. Once the objection was raised to title III, the staffs have been looking at title III and discussing it back and forth, and everyone has been very busy in trying to settle questions. The attempt was made to try to settle the questions raised by that title with the Budget Committee. The distinguished minority leader and the majority leader have both made it clear that none of this is in final form.

What we have done is to take part of the Banking Committee suggestions, most of them, and combined them with the Human Resources Committee, leaving out some things. The bill is open to amendment. We have done the best we could without having a full opportunity for all parties to get together and discuss it.

It is not H.R. 50 by any stretch of the imagination. I think in fact the committee did an excellent job and made several additions to the bill that I think are very good as it came out of Human Resources Committee. I might mention that it came out of Human Resources Committee bipartisan with everybody on the committee voting for it, save two members.

It is open to amendment. I think title III has to be cleared up. I certainly agree with the Senator from Oklahoma and the Senator from Maine. I am sure that once they address it, after looking at it carefully, they will come up with the right suggestions to clarify whatever problems may be there. I would certainly endorse that.

Let me say to the majority and minority leaders, I believe they have done a superb job in negotiating over a period of days. I must say, as one of many who have participated in discussions, I have been impressed with the genuine willingness of those who have been serious critics of Humphrey-Hawkins to work out accommodations, amendments, so that we could bring the bill up and act upon it. I have every hope that we will reach an agreement on it. I would not want a dispute starting here in which there were big divisions because there will not be any bill at all if, in fact, that should happen. I yield the floor.

SEVERAL SENATORS. Mr. President?

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. I am happy to yield to my distinguished colleague from Maine.

Mr. MUSKIE. So that Senators may be apprised of the actions of the Budget Committee, I ask unanimous consent that the text of the waiver resolution and the report of the Budget Committee be printed in the RECORD at this point so they will be available to all Senators to identify the particular concerns of title III.

There being no objection, the report and budget waiver were ordered to be printed in the RECORD, as follows:

PURPOSE OF THE RESOLUTION

Section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution which directly or indirectly authorizes the enactment of new budget authority for a fiscal year unless that bill or resolution is reported in the House or Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

Section 403 of S. 50 authorizes appropriations for "such sums as may be needed to carry out the provisions of this act." S. 50 was reported on September 6, 1978. Section 403 authorizes appropriations in 1979 and thereafter. Since S. 50 was reported after May 15, 1978 and authorizes appropriations for fiscal year 1979, it is subject to a point of order under Section 402 of the Budget Act, unless S. Res. 570 is adopted waiving application of that provision under the Budget Act.

Since S. Res. 570 was introduced by Senators Williams and Proxmire consistent with their generic right as senators to introduce legislation, its consideration by the Budget Committee is not constrained by the provisions of Section 402(c) of the Budget Act. Accordingly, the resolution is amendable and not subject to a limitation on debate. Moreover, the Committee will not be discharged from further consideration at the end of 10 days.

In reporting favorably on the waiver resolution, the Budget Committee is also recommending an amendment to S. 50 to maintain existing procedures for the review of economic matters within the Congress and to maintain traditional relationships among Senate Committees on such questions. If the Senate adopts S. Res. 570 with the Committee amendment, the provisions of S. 50 described in the Committee amendment must be stricken from the bill for its consideration to be in order. The effect of adopting the waiver resolution is to amend the bill to the effect set forth in the waiver resolution.

Prior to reference of S. Res. 570 on September 27, 1978, the Budget Committee had no opportunity to consider S. 50, even though that bill makes very significant amendments to the Budget Act, rewrites provisions of existing Senate rules relating to the appropriate jurisdiction of and relationships between Senate committees, and institutes a new procedure in which the Congress would be required to vote for economic "goals", including inflation and employment. A vote on such goals would be required in the event that the President changed the date for achieving the goals in Title I.

The Committee notes that notwithstanding these significant changes in Senate procedures, S. 50 had not previously been referred to the Budget Committee or to the Committee on Rules. The bill had not, therefore, received thorough scrutiny applied in the formulation of the Budget Act which S. 50 would amend substantially.

THE COMMITTEE AMENDMENT

The Committee believes the Budget Process should be allowed an opportunity to work before piecemeal amendment of it is made. The radical revisions of the Budget Process contained in S. 50 should not be undertaken without more thorough study than has been given them.

No case has been made which justifies disruption of the traditional procedure within the Congress for reviewing economic matters. The Committee notes that when the House counterpart of S. 50 was considered an amendment comparable to that being proposed by the Committee amendment in this case was adopted by a vote of 259 to 156.

The Committee amendment would have the effect of striking the provisions of Title II of the bill which revise the Congressional Budget and Impoundment Control Act of 1974. The amendment also preserves the existing relationships between the Joint Economic, Budget and other Committees by eliminating the provisions of Title III which would radically revise those relationships. The Committee amendment also deletes the provisions of Title III which would force Congress to vote in favor of unemployment "goals" and inflation "goals" in a new Congressional process which substantially amends existing Senate and House rules and procedures.

The Committee amendment also deletes Section 106, which would have included new matters in the Economic Report of the President which would result in intrusion by the Joint Economic Committee in its review of that report into the jurisdiction of the standing committees of the Congress and duplicate the existing jurisdiction of the Budget Committee and the other standing committees over budget programs and priorities.

Under current law, the Economic Report is transmitted to the Congress and referred to the Joint Economic Committee, which is required to submit its findings and recommendations with respect to the President's report to the Congress no later than March 1. In addition, the JEC is required to submit a report to the Budget Committees of both Houses with its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946.

Under S. 50, as reported by the Human Resources and Banking Committees, the scope of the President's Economic Report is expanded to include not only short-term and medium-term economic goals and policies, but also identification of priority policies and programs.

Section 106 would have required that the Economic Report must develop priorities

even in areas such as energy, small business, agriculture, military base relocation, health care and national defense. S. 50 would have authorized the JEC to report to the Congress by March 1 on these new program areas and thereby invade the jurisdiction of the Committees on Agriculture, Energy, Small Business, Armed Services, Appropriations, Banking, Commerce, Public Works, Finance, Foreign Relations, Governmental Affairs, Human Resources, Judiciary, Rules and Veterans Affairs.

Mr. MUSKIE. In addition, S. 50 would have permitted the JEC to offer a privileged amendment to the budget resolution to reflect these programmatic priorities. Without the deletion of section 106, the orderly procedures of the Congressional fiscal and budget process would have been disrupted.

The amendment leaves intact all of the provisions of title I relating to short and medium-term economic goals, and leaves intact the itemization of employment-creating programs in title II.

The Budget Committee does not recommend against enactment of S. 50. It reports favorably on the waiver of section 402, necessary for the bill to be considered by the Senate. The Committee amendment makes the waiver of section 402 contingent, however, on the removal of the provisions described in this report.

That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to consideration of S. 50, the Full Employment and Balanced Growth Act of 1978, provided that the following provisions are changed:

On page 68, lines 3 and 4, strike "by the method set forth in title III of the Full Employment and Balanced Growth Act of 1978."

Strike page 70, line 8 through page 73, line 21 and renumber the following sections accordingly.

On page 90, strike line 23 through line 25.

On page 91, strike lines 1 through 9 and renumber the following section accordingly.

On page 91, line 23, delete "the priorities, policies and program and"

On page 92, strike from "who are" on line 23 through "Senate" on line 2, page 93.

On page 93, line 3, strike from "specifying whether and to what" through "1946" on line 14, and insert in lieu thereof "and the House of Representatives."

On page 93, lines 17 and 18, strike "and the programs and policies related thereto."

On page 93, strike line 20 through line 25 on page 102.

On page 105, strike lines 20 through 25.

On page 121, lines 9 through 11, strike "by the method set forth in title III of the Full Employment and Balanced Growth Act of 1978."

Strike page 124, line 4 through 128, line 17 and renumber the following sections accordingly.

On page 147, strike line 20 through line 25.

On page 148, strike lines 1 through 6 and renumber the following section accordingly.

On page 148, line 20, strike "the priorities, policies and programs and"

On page 149, strike from "who are" on line 20 through "Senate" on line 24.

On page 149, on line 25, strike "specifying whether" and insert in lieu thereof "and the House of Representatives."

On page 150, strike lines 1 through "1946" on line 12.

On page 150, on lines 15 and 16, strike "and the programs and policies related thereto".

On page 150, strike line 17 through line 10 on page 160.

On page 16, strike lines 7 through 12.

Mr. MUSKIE. I thank my good friend from Illinois.

Mr. PERCY. Mr. President, I should like to make a comment on Humphrey-Hawkins, then ask my distinguished colleague a question.

Mr. PROXMIRE. Will the Senator yield very briefly before he does that? It will take me just a minute.

Mr. PERCY. Of course, I am happy to yield.

Mr. PROXMIRE. I want to announce that the principal differences between what the Human Resources Committee and the Banking Committee finally agreed on and what we would like to offer are two amendments that I can describe very quickly. One is an amendment that would limit Federal spending to 21 percent of gross national product by 1981 and 20 percent by 1983. We are very hopeful that that amendment will be accepted and adopted.

The second is an inflation amendment which set as a goal of the country, on a par with the unemployment amendment, an inflation goal of 3 percent by 1983. I expect to call up both these amendments as soon as the bill is before this body.

I think that both these amendments are desirable. They provide a far more balanced bill, a bill which I think will provide economic policies for this country that will permit us to proceed in a stable way as well as working to get the kind of growth and reduce unemployment that we all would like to do.

I thank my good friend from Illinois.

Mr. PERCY. Mr. President, I thank my distinguished colleague for his comments and his great contribution.

I was very concerned about Humphrey-Hawkins originally. I had long talks with our distinguished colleague from Minnesota, Mr. Humphrey, about it and subsequently, with Mrs. HUMPHREY. The concerns the Senator from Illinois had involved, first of all, an unrealistic promise in focusing on unemployment as the sole problem. Unemployment is not the only problem we face. George Meany has said inflation is a greater problem. Inflation obviously is exacerbated by a huge mounting Federal deficit which finally, now, we are reversing. I think principally as a part of determination, but also as a part of the budget process that has now been worked out that gives us a lid, a ceiling, and a target toward which we can shoot.

I have been extraordinarily concerned about the growing take from the gross national product of our Federal taxation system. As we crept up beyond 20 to 21 and 22 percent and so forth, getting total local, State, and Federal taxes up to almost a third, we were approaching the catastrophic levels that Great Britain has reached. Certainly, if we are at the one-third level, it must be reversed. The amendment being offered by the Senator from Wisconsin to the Humphrey-Hawkins bill, reversing that trend and coming back down to a 20-percent level of taxation as against gross national product by 1983, is a worthy and noble goal, I believe.

I ask the distinguished Senator from Wisconsin a question on another concern the Senator from Illinois has had. That is a concern he also shared with Senator Humphrey.

Senator Humphrey was deeply concerned about the lack of capital formation, the emphasis that was being laid on public-sector jobs as against private-sector jobs, which are not dead-end streets, but actually make a person a responsible taxpayer who feels that he is standing on his own two feet and not having the concern they have in public service jobs.

The Senator from Illinois has worked out language now which embodies the spirit of the Humphrey Investment Policy Act of 1977, which the Senator from Illinois cosponsored. The Senator from Illinois will be offering that amendment. I believe it has been considered by my distinguished colleague, who will be the manager of the bill. I wonder if he could give us some preliminary indication at this time as to the acceptability of that amendment, if he has made a judgment on it.

Mr. NELSON. Let me say to the distinguished Senator from Illinois that there will be several managers of the bill on both sides of the aisle, since it is a bill with jurisdiction in the Banking Committee.

Let me say there are several committees with jurisdiction, so there will be several managers of the bill, not just the junior Senator from Wisconsin.

The Senator from Illinois prepared an amendment which I have looked at that addresses itself to the question of capital accumulation. The Senator knows, perhaps better than anyone else in this body, what an important question that is. I have heard him discuss it on the floor of the Senate any number of times.

I think it is very important that we address ourselves to capital accumulation, not only for some of the major industries, but for a very large number of growing small companies that need capital so that they can grow and expand.

Mr. PERCY. I thank my distinguished colleague.

Is there any clarification as to what figure will be put in for inflation as a target? Is that still subject to discussion?

Mr. NELSON. No, that is one of the issues that is subject to discussion. It is a very important issue to some Members on both sides of the aisle. There has been no agreement, no understanding on it. I hope that we can reach some agreement on that in the next 24 hours.

In any event, the bill is open to amendment, for anybody with any amendment on any inflation proposal.

Mr. PERCY. The Senator from Illinois indicates that he will most enthusiastically support a target goal figure that is reasonable and achievable and, I think, a figure that has been discussed at 3 percent as a target figure. If we could achieve that level within a reasonable number of years—hopefully in 2 or 3 years—we would have this economy, as long as we would have full employment, as each of us would define it, and a growing economy, that target figure of 3 percent inflation, I think, would be a realistic figure.

I have heard discussion of zero inflation, as was discussed in the Banking

Committee bill. That would be, obviously, a highly desirable goal if it is possible to achieve it, but I do not see that that is achievable, probably not in our lifetime. As they used to say in the adage, if you reach for a star, you may not ever reach it, but you do not end up with a handful of mud. I would say that is a realistic goal.

Mr. NELSON. I have good reason to believe that my senior colleague from Wisconsin will give the Senator from Illinois an opportunity to vote on precisely that goal.

Mr. PERCY. He has conditioned his support of Humphrey-Hawkins on a goal toward which we can reach in bringing down Federal taxation, inflation, and the factor of capital formation.

I commend both the majority and minority leaders for working out an arrangement whereby we can bring this measure to the floor and, hopefully, have a vote on it very soon.

Mr. RIEGLE. Mr. President, I rise in support of the Humphrey-Hawkins bill. I want briefly to make several comments that I think are important to include in the RECORD this evening for my colleagues who will be reading this RECORD tomorrow morning.

Mr. President, the Senator from Illinois (Mr. PERCY) just raised and addressed an important question with respect to capital formation. I think it is important, having raised that issue, to acknowledge that the tax bill we have just finished approving here is unique in recent history, in terms of being a tax bill that, as much as anything, is aimed at the issue of capital formation. It has in it reductions of capital gains tax rates, accelerated depreciation treatment for business of various sorts, rehabilitating buildings, as well as new investments. It has lower corporate tax rates for large corporations which would earn an amount greater than $100,000 a year, and it has steps of reduced tax rates for the first $1,000 of the income of companies to enable them to have more capital that they can retain and use to expand their companies.

So, in a sense, the important issue before the country, of capital formation, in large measure, has been addressed by the tax bill that has just been handled here.

While Humphrey-Hawkins, in my opinion, has some bearing on capital formation, that is really not—as it should not be—its central focus. I think its central focus is to help the country devise a strategy to make sure there are enough jobs to go around. It is based on the premise that work is good and proper and that the private sector should be the place where jobs are created, off welfare.

So the Humphrey-Hawkins bill is really a strategy to figure out how best to make sure there are enough jobs to go around for all the ablebodied people in this country who are willing and able to work.

I think it is also important to note at the outset that both Senator Hubert Humphrey and Senator MURIEL HUMPHREY really have been the leaders in the effort to try to focus this issue and bring it to our attention as an item of critical national importance and need, and to help us think through and struggle with the question of how we can devise the best strategy to make sure there are enough jobs to go around.

I know some people across the country have a concern about Humphrey-Hawkins, have a concern about the first version of Humphrey-Hawkins, which goes back some years ago.

If one were to keep track of the successive versions of Humphrey-Hawkins as it has gone through a variety of modifications, I daresay that the version we are dealing with now, the issue that is before us with the suggested amendments submitted by the Senator from Wisconsin (Mr. NELSON), is that we are really looking at version No. 10. We have gone through all the versions to what I think of as version No. 10, in terms of our efforts to refine and modify and improve Humphrey-Hawkins in a way that it could win broad support of people across the entire spectrum, who are united in the realization that we have to do more to deal with the fact that we do not have enough jobs to go around in this country.

So I hope our colleagues will not reach rapid adjudgments based on some outdated version of Humphrey-Hawkins but, instead, will look at what has been produced by, first, the Human Resources Committee and, second, the Senate Banking Committee. I am fortunate to serve on both committees, as does Senator CRANSTON. Those of us who have had occasion to serve on both committees and go through the hearings and the markup process in both committees have been able to see these modifications as they have taken place. I think it is fair to say that a number of suggestions that have been made by Republican Members, especially on the Banking Committee, have been incorporated in the modifications that have been offered here tonight.

I hope that colleagues who have concern about Humphrey-Hawkins will read these modifications very carefully because, as I say, they incorporate the ideas of a number of people on both sides of the aisle. I think that is why we are close to a point where we can work out a time agreement tomorrow.

I know that the Senator from Utah, who is in the Chamber, has some concern about it, because he has been tied up on the tax bill and other matters and has not yet had an opportunity to look at the bill we finally have produced and the modifications we have put forward here. My hope is that when he has had a chance to look at it, he will find that it is a reasonable proposition. We may not agree in the end on each and every issue. It may be that we will have to have a vote on the difference between, say, a 3-percent inflation goal versus a 0-percent inflation goal. But I do not think that is an unreasonable issue to put before the Senate and let the Senate, as a whole, settle it, if we cannot settle it in terms of a private agreement beforehand.

In any event, I think that what we have before us is a version that is quite new, quite different, profoundly reasonable, and something that the country needs to have.

I conclude by saying this: It is essential to people who basically have been locked out of our economic system and who are isolated on deadend streets, lacking job skills and lacking opportunities for meaningful employment—it is essential that they understand that we are concerned with their situation and that we want to respond to it in a positive way.

It is significant that in this bill there is no provision for the Government to serve as an employer of last resort. The entire thrust of the bill that is before the Senate now has to do with creating jobs in the private sector rather than the public sector. This is a private enterprise bill from beginning to end but it is essential that we commit ourselves to making the free enterprise system work in a way in which there are enough jobs to go around. For us to step back and ignore the unemployment problem that faces people who are structurally unemployed and to say, "Tough luck—there is no way we can deal with your problem," is not a responsible answer.

I think our answer can be different. What we are laying out here is a process by which we can search for a strategy. The executive branch and the legislative branch together, over a period of years, can develop a strategy to make sure that we develop enough jobs in the private sector so that there is one for each person in this society. It seems to me that is an eminently reasonable goal, and I hope it is one we will be able to agree upon.

I think that if people take the time to examine what we have here and not confuse it with the first, second, or third versions of Humphrey-Hawkins, they will find that there are very small differences remaining to bridge, and my hope is that we will be able to bridge those conditions.

Mr. PROXMIRE. Mr. President, I congratulate the Senator from Michigan on the statement he has made.

It is important for us to realize that this is not the same version that originally was proposed. As he stated, the fundamental point is that it is a free enterprise bill. Too few people realize that. As he said, the Government is no longer the employer of the last resort. While I think many people regret that, and understandably so, because that would mean we would virtually insure a job for everyone willing to work, the inflationary aspects in the original bill would have been great and the amount of spending could have been immense. That represents a perfectly enormous concession. To those of us who feel that we needed a more moderate statement, it is one that should not be overlooked.

Mr. President, the Full Employment and Balanced Growth Act of 1978 is a significant piece of legislation. It establishes economic goals and general economic policies by amending the Employment Act of 1946 to bring it more up to date with our current economic problems.

Mr. President, the Employment Act of 1946 has stood as the cornerstone of economic policymaking in the United States for the last 32 years. The act established the Council of Economic Advisers to advise the President on economic policy; it requires the President to submit to the

Congress an annual economic report; it establishes the Joint Economic Committee to review the economic report; and it declares as a continuing national policy the responsibility of the Federal Government to promote "Maximum Employment, production and purchasing power."

The enactment of the Employment Act of 1946 was in response to the severe depression of the 1930's and the determination by the Congress to establish a permanent Federal role in maintaining a fully employed economy. Although the act has served us reasonably well for many years, the economic problems facing the Nation in the 1970's and 1980's are far different than those which faced us in the immediate post World War II environment.

The problem of achieving and maintaining a fully employed economy has proven to be far more intractable than what was envisioned by the drafters of the 1946 act. Today there is a greater appreciation of the structural causes of unemployment, the problems caused by a continually changing composition of the labor force and the need for microeconomic as well as macroeconomic policies to combat unemployment.

Inflation is also a much more pervasive problem today than it was in 1946. In fact, many consider inflation to be our No. 1 domestic economic problem. However, aside from the ambiguous reference to "maximum purchasing power", the Employment Act of 1946 contains no analysis of the nature of the inflationary problem or the methods for containing it.

The international position of the United States has also changed radically over the last 32 years. Following World War II, the economies of Western Europe and Japan were dormant and the United States stood virtually unchallenged in international trade. Under the fixed exchange rate system agreed to at Bretton Woods, the dollar became the dominant currency in international trade and finance. The United States operates in a world economy—we are not isolated from foreign economic conditions. Today we find the dollar has come under increased attack, foreign imports have penetrated many of our domestic markets, U.S. exporters are faced with increasingly tough competition from abroad, and record trade deficits are not being incurred. The Employment Act of 1946 is silent on matters related to the international position of the U.S.

Since 1946, there has also been a change in thinking regarding the importance of monetary policy compared to fiscal policy. Whereas the Employment Act of 1946 looked primarily to the President and the Congress for the conduct of economic policy, today it is clear that monetary policies adopted by the Federal Reserve System can have profound and sometimes decisive effects on our economy.

Another important change has been the recent resurgence of the Congress within our constitutional system of checks and balances. Following the enormous increase in Presidential power during the depression of the 1930's and World War II, Congress for many years thereafter was content to legislate broad general principles while giving the executive branch substantial freedom to interpret the law and to carry out its mandate. Today, the Congress is inclined to be more specific in its guidance to the executive branch.

When measured against contemporary standards of congressional oversight, the Employment Act of 1946 is badly out of date. While it establishes a general goal of "maximum employment, production and purchasing power," the act contains no quantitative definitions of those goals; nor does it establish any specific timetables for reaching those goals; nor does it contain any procedure for systematically involving the Congress in determining specific adjustments to the goals.

Finally, there has been a gradual shift in our views regarding the relative roles of the Government and the private sector in promoting economic growth. To a large extent, the legislative history of the Employment Act of 1946 reflects the views of economists of that era, who like John Maynard Keynes, believed the private sector was prone to chronic underemployment and that the key to full employment lay in compensatory government spending. Indeed, the first version of the Employment Act of 1946 as reported by the Senate Committee on Banking and Currency on September 22, 1945 (Senate Report 79–583), mandated the President to propose the amount of compensatory Federal spending needed each year to maintain full employment.

Today there is far more concern over the total level of Government spending and its impact on economic growth and inflation. To be sure, many Government programs contribute to economic growth or provide essential services to our citizens. However, at some point, additional governmental spending can reach a point of declining marginal benefit compared to the benefits that could be obtained from the private sector investment it displaces. While a consensus has not been reached as to when this point occurs, there is some evidence that we may have already reached it. Indeed, President Carter has announced a goal of reducing Federal spending to 21 percent of GNP by 1981 compared to a current rate of almost 23 percent.

For all of these reasons the Banking Committee believes the Employment Act of 1946 needs to be substantially rewritten and updated so as to address itself to the economic problems and concerns we as a nation will face over the next generation. In particular, the committee believes: First, the statement of goals needs to be expanded to reflect contemporary economic concerns; second, the annual economic reporting process needs to be more sharply focused on specific numerical goals; third, greater emphasis needs to be placed on structural and microeconomic policies for achieving our economic objectives, both with regard to unemployment and inflation; fourth, a loser connection needs to be established between the formulation of economic goals and the annual budget process; fifth, a closer relationship needs to be established between the setting of economic goals and the conduct of monetary policy; and sixth, greater congressional participation in formulating economic goals is needed.

THE NEED FOR AN UNEMPLOYMENT GOAL

All versions of the Full Employment and Balanced Growth Act of 1978 establish a statutory goal for reducing the overall rate of unemployment to 4 percent by 1983. The Banking Committee supports the need for a statutory unemployment goal. Setting numerical targets helps to focus our efforts and provides a more disciplined approach to economic policy. A statutory goal for reducing unemployment will serve as a continuing reminder to the Congress and the President and the Federal Reserve Board that we as a nation cannot rest until useful and productive employment opportunities are provided to every American able and willing to work. Our excessively high rate of unemployment has been a national tragedy, not only in terms of lost income but, more importantly, in terms of the loss in human dignity and self-respect on the part of those who have been systematically denied an opportunity to participate in productive work.

The establishment of any goal by the Government involves a balance between aspirations and achievability. If the goal is set too low, it will not spur the additional efforts needed to realize our aspirations. If it is set too high, it raises false expectations and undermines confidence in the ability of Government to deliver on its promises.

The Banking Committee believes the 4-percent unemployment goal can be achieved by 1983 with the right mixture of economic policies. However, while there is nearly universal agreement on the desirability of reducing unemployment to 4 percent or lower by 1983, there is not a consensus on how to reach that goal. Whether we achieve the 4-percent goal will depend upon the specific programs and policies adopted by the President, the Congress, and the Federal Reserve System over the next 5 years, and whether those programs and policies are in harmony with one another.

Thus, the passage of the Full Employment and Balanced Growth Act will set a goal for reducing unemployment but it will not by itself provide a single new job. Nor will it guarantee that any unemployed person will ultimately find a job. Setting a goal is easy; achieving it is far more difficult. Those who have struggled over the years to realize full employment should not relax their efforts with the passage of this legislation. An unemployment goal will be useful to guide our efforts; however, it should not be oversold as a panacea that will cure all our economic ills.

SUMMARY OF THE LEGISLATION AS APPROVED BY THE BANKING COMMITTEE

Mr. President, I would like to summarize title I of the substitute bill approved by the Committee on Banking, Housing and Urban Affairs by voice vote on June 28, 1978. It contains the following major provisions:

1. INCREASES IN THE NUMBER OF ECONOMIC GOALS TO BE PURSUED

The Employment Act of 1946 establishes three key goals of economic policy to be pursued by the Federal Government. They are maximum employment, maximum production, and maximum purchasing power. These three goals would be retained in section 102 of S. 50 as approved by the Banking Committee although the goal of "maximum purchasing power" would be clarified to read "reasonable price stability", and the adjective "full" would be substituted for "maximum" with respect to employment and production. In addition, the Banking Committee substitute to S. 50 provides for seven additional goals to be pursued through Federal economic policy. These are:

First, increased real income; second, balanced growth; third, adequate productivity growth; fourth, proper attention to national priorities; fifth, achievement of an improved trade balance; sixth, a balanced Federal budget; and seventh, a gradual reduction in the share of our gross national product accounted for by Federal outlays.

2. INCLUSION OF NUMERICAL GOALS IN THE ECONOMIC REPORT

The Employment Act of 1946 requires the President to submit an annual economic report to the Congress. Section 103 of the substitute to S. 50 as approved by the Banking Committee requires the President to include in his annual economic report yearly numerical goals for the next 5 years for employment and unemployment, production, real income, productivity, and prices.

3. STATUTORY ECONOMIC GOALS

The 5-year numerical goals included in the President's Economic Report must be consistent with the statutory numerical goals contained in section 104 of the substitute to S. 50 as approved by the Banking Committee. These are:

First, an adult unemployment rate no greater than 3 percent and an overall unemployment rate no greater than 4 percent by 1983; second, a zero percent inflation rate by 1983; and third, a reduction in Federal outlays to not more than 21 percent of our gross national product by 1981 and not more than 20 percent by 1983.

4. MODIFICATION OF STATUTORY GOALS

Under section 104 of the Banking Committee substitute to S. 50, the President can recommend changes in the statutory numerical goals for unemployment and inflation or the timetable for reaching these goals in his first economic report for 1979. Section 104 further provides that Congress can modify those changes by the methods set forth in title III of S. 50. The Human Resources Committee substitute to S. 50 and H.R. 50 provide that the President cannot recommend a change in a statutory goal until he submits his third economic report in 1981.

5. CONSISTENCY BETWEEN THE GOALS AND THE PRESIDENT'S BUDGET

Section 107 of the Banking Committee substitute to S. 50 requires that the levels of outlays and receipts contained in the President's budget be consistent with the 5-year numerical goals contained in the President's Economic Report. The Human Resources Committee substitute requires consistency with the Economic Report's numerical goals for the first 2 years, and that 5-year projections of outlays and receipts be consistent with the 5-year numerical goals in the Economic Report.

6. OVERSIGHT OF MONETARY POLICY

Under current law (sec. 2A of the Federal Reserve Act) the Federal Reserve reports its money supply targets for the next 12 months at quarterly hearings alternately held by the House and Senate Banking Committees. Under section 108 of the Banking Committee substitute to S. 50, this reporting procedure would be revised as follows:

First, concurrent hearings would be held before the two Banking Committees twice a year as opposed to alternate hearings four times a year.

Second, the Federal Reserve would report its numerical monetary targets for a fixed calendar year rather than a constantly rolling 12-month period. The first Federal Reserve report in February would cover the current calendar year. The second report in July would cover the remainder of the year and the next calendar year.

Third, the Federal Reserve would be required to relate its current year monetary growth targets to the short-term economic goals contained in the President's economic report or to any revisions to those goals approved by the Congress.

Fourth, both the House and the Senate Banking Committees would be required to submit to their respective bodies a report on the Federal Reserve's monetary plan.

The Human Resources Committee substitute to S. 50 and H.R. 50 would impose a new annual reporting procedure upon the Federal Reserve in addition to the quarterly reporting procedure already in effect under section 2A of the Federal Reserve Act. The new procedure would call for a statement of intended policies but does not specify the disclosure of numerical monetary and credit aggregate growth targets.

7. ANTI-INFLATION PROGRAMS

Section 109 of the Banking Committee substitute to S. 50 contains a list of anti-inflationary programs and policies that the President may consider using or recommending, including stockpiling, antitrust enforcement and the elimination of anticompetitive or costly Government regulations. A similar list of programs and policies is contained in the Human Resources Committee's substitute to S. 50. However, the Banking Committee's substitute includes three anti-inflationary measures not contained in the Human Resources Committee substitute to S. 50. These are:

First, encouragement to labor and management to decelerate wages and prices simultaneously; second, increasing exports and improving the international competitive position of agriculture, business, and industry; and third, appropriate incomes policies.

8. DEFINITION FOR THE TERMS "INFLATION" "PRICES," AND "REASONABLE PRICE STABILITY"

In order to clarify the meaning of the various goals relating to "inflation," "price," and "reasonable price stability," the Banking Committee substitute to S. 50 indicates that these terms shall be interpreted to refer to the Consumer Price Index as set forth by the Bureau of Labor Statistics, U.S. Department of Labor. In debating this amendment the Banking Committee felt that common reference was needed and that the Consumer Price Index was the most widely known and watched index of price developments.

The Consumer Price Index is not the only measure of "prices" nor is it necessarily the best index of prices in all situations or for every purpose. At times this index may be distorted by certain components—such as farm products or petroleum or other imported goods—to a greater degree than other indices. The Consumer Price Index was adopted by the Banking Committee as the measure for inflation with the recognition and understanding that both the GNP implicit price deflator and the producer price index (formerly the wholesale price index) should also be considered as measures of prices and inflation and they should be considered in the analysis of inflationary developments and prospects in the Economic Report of the President and in the formulation of economic policies to achieve the goals of the Full Employment and Balanced Growth Act of 1978.

H.R. 50 and the other versions of S. 50 do not indicate what price index is referred to by "inflation," "prices," and "reasonable price stability".

9. BALANCED FEDERAL BUDGET

The Banking Committee adopted a series of amendments to establish a balanced Federal budget as a national goal. These amendments set forth a determination by Congress that a balanced budget is an important goal to both unemployment and inflation. The Banking Committee's amendments direct the President to make a balanced budget a key element of his economic package and to include in his report to the Congress a program to balance the budget.

These amendments do not establish a timetable for balancing the budget. Thus a balanced Federal budget is established as a general goal, with implementation of the goal left to later decisions by the Congress and President. Moreover, flexibility is given to the President to modify the balanced budget goal if it becomes a matter of necessity to do so. The Banking Committee recognized that a balanced budget may be counterproductive at times; for example, during periods of recession, or in times of national emergency such as when there is a need for new and expanded military expenditures. There may also be times when a budget surplus would be both desirable and necessary. The Banking Committee agreed that in times of national emergency, such as wars or other

events, there may be good reason for the balanced budget goal to be set aside temporarily.

The balanced budget goal is added to the bill in such a way as to make a balanced Federal budget consistent with the achievement of the medium-term goals specified within the bill.

Mr. President, in addition to the amendments I have just discussed, there are two more very important amendments that the Banking Committee made in its substitute bill. The first would establish a specific numerical goal for reducing the proportion of GNP accounted for by Federal outlays. The second would establish a specific numerical goal for reducing inflation. I would like to indicate the need for each of these amendments.

NUMERICAL GOAL TO REDUCE THE SHARE OF GNP ACCOUNTED FOR BY FEDERAL OUTLAYS

The Banking Committee's amendment to S. 50 establishes as a general goal of economic policy a gradual reduction in the share of our GNP accounted for by Federal spending so as to rely principally on the private sector to lead economic expansion and to create new jobs for the growing labor force. In recent years the proportion of Federal outlays to gross national product has increased from 20 percent or less 10 years ago to 22.5 percent in the current budget year.

In addition, the Banking Committee's amendment would require the President to incorporate into each Economic Report 5-year numerical goals for Federal outlays consistent with the gradual reduction of the share of gross national product accounted for by those outlays to 21 percent or less by 1981 and 20 percent or less by 1983 and thereafter. It was noted by the Banking Committee in adopting this amendment that President Carter has already indicated in the fiscal year 1979 budget message that he has the same goal for 1981.

Recently, Chairman Miller of the Federal Reserve Board indicated that he believed it would be constructive if the Federal Government competition with the private sector for resources would be reduced. He said:

> In my view the task of reducing the Federal share of GNP should begin now. A careful, systematic review must be undertaken to reduce or eliminate those Federal programs that are ineffective or that have outlived their usefulness. We also need to recognize the limits on Government resources when considering alternative spending proposals.
>
> I believe that we should strive to reduce the Federal Government's share of GNP from more than 22 percent at present to 20 percent or so over a period of 5 to 7 years. Such a reduction would not fully return the Government proportion to that of the early 1960's.
>
> As spending is brought under tighter control, government will become less prominent as a borrower in credit markets. A lower government profile will facilitate the flow of credit to the housing sector where it is becoming scarce, and to the business sector where it can be put to use in rebuilding our currently inadequate stock of fixed capital.

The Banking Committee recognized in adopting this amendment to reduce Federal outlays as a percentage of GNP that the goal would have to be flexible, especially in cases of national emergency or other type of cataclysmic event. It was agreed that if the goal becomes counterproductive such as might happen during the time of a national emergency then it certainly would not and should not be followed.

NUMERICAL GOAL FOR REDUCING INFLATION

The Banking Committee substitute to S. 50 contains a numerical goal for reducing inflation to zero percent within 5 years. While there was some disagreement within the committee as to the appropriateness of the zero-percent target a majority of the committee felt that the principle of having some numerical anti-inflation goal is of paramount importance. I personally would prefer a 3-percent target. The principle of establishing a numerical inflation goal was strongly supported by the Board of Governors of the Federal Reserve System.

The committee believes a numerical anti-inflation goal is important for three reasons:

First, one, policies and programs for combating inflation have not been very effective over the last several years and a greater sense of determination to arrest inflation needs to be declared; two, inflation is now considered by most people, including some prominent labor leaders, to be our No. 1 domestic economic problem; and three, legislation establishing a numerical goal for reducing unemployment without an equivalent numerical goal for reducing inflation would imply that Congress considers the goal of reducing unemployment to be more important than the goal of reducing inflation, whereas the Banking Committee believes that there must be a comparable numerical goal for curbing inflation.

When the Humphrey-Hawkins bill was first introduced in 1976, the rate of unemployment for that year averaged 7.7 percent whereas the consumer price index increased by only 4.8 percent. Currently, the unemployment rate for the first half of 1978 averaged 6.1 percent whereas the annual rate of increase in consumer prices averaged 8.8 percent. Although unemployment today is still far too high, significant progress in reducing unemployment has been made since the introduction of the Humphrey-Hawkins bill. On the other hand, the rate of inflation has nearly doubled. Accordingly, the assumptions and concepts underlying the original Humphrey-Hawkins bill are no longer applicable. Inflation, and not unemployment, is our No. 1 domestic economic problem.

There is no doubt that the American people now consider inflation to be our most serious problem. A recent poll taken by NBC in June revealed that 55 percent of the people consider combating inflation to be the most important problem facing the economy; 33 percent said finding jobs is the most important; 10 percent said both; and 2 percent were unsure.

Likewise, in early May, George Meany, president of the AFL-CIO, appearing on Issues and Answers said:

> Well, I want to repeat that I agree with the President that inflation is our No. 1 domestic problem at the present time. A few months ago I may have said that unemployment is the problem. Unemployment has come down. It is encouraging. It has come down a little bit at a time. It is now down to 6 percent. On the other hand, inflation is certainly on the rise. According to the latest figures we are running at a rate maybe close to 9 percent or maybe a little over 9 percent if you take the last few months' figures.
>
> We certainly want to cooperate with the President in fighting inflation. I want to make it clear that I don't agree with some of the critics that the President is responsible for the present inflationary situation. That is not true. The inflationary problem, the President inherited the inflationary problem. It was bad when he took office and it has gotten worse and I certainly am not going to take the position that he is responsible for that. It is his problem. It is a problem he as President has got to meet. It is his No. 1 domestic problem.

ARGUMENTS AGAINST INFLATION GOAL ARE WEAK

The Banking Committee rejects the arguments against an inflation goal advanced by the supporters of the original Humphrey-Hawkins bill and by others.

First, it has been argued that S. 50 is primarily a jobs bill and, therefore, is the wrong vehicle for an anti-inflation goal. This view can be dispelled by even the most cursory reading of the bill. All versions of the Humphrey-Hawkins bill extensively amend the Employment Act of 1946 which establishes broad goals for economic policy including production, employment, and purchasing power. These amendments add important new anti-inflationary dimensions to the Employment Act including a far more direct and forceful declaration of policy with respect to reducing inflation; a requirement that the President establish annual numerical goals for reducing inflation for the next 5 years; and a list of anti-inflationary measures and programs to be considered by the President. Given these anti-inflationary provisions already in the original versions of Humphrey-Hawkins, it is absurd to argue that the addition of a specific statutory goal for reducing inflation is somehow not germane to the central aims of the bill.

It has also been argued that the establishment of a numerical statutory goal for reducing inflation might frustrate the achievement of the 4-percent unemployment goal. Those who hold this view argue that the existence of a statutory goal for inflation might serve as an excuse for economic policymakers to back away from pursuing vigorous policies to achieve full employment. This argument implicitly revives the so-called "Phillips curve" assumption of a fixed tradeoff between unemployment and inflation.

Many economists now question whether there is a rigid tradeoff between unemployment and inflation and argue that both can be reduced through highly targeted programs aimed at their structural causes. Indeed, many of the supporters of the Humphrey-Hawkins bill share this view. If there is no irreconcilable conflict between reducing inflation and unemployment, it is difficult to see how the mere existence of a statutory goal for reducing inflation would somehow create a conflict.

It is also important to note that the amendments approved by the Banking Committee specifically provide that the "policies to achieve the inflation goal shall be designed so as not to impede the achievement of the unemployment goals." This proviso would prevent the inflation goal from being used as an excuse for not achieving the unemployment goal. I would also discourage the use of counterproductive economic policies that in the past have been only marginally successful in curbing inflation although they have had a drastic effect on employment. Thus the Banking Committee anti-inflation amendments, when read in their entirety actually strengthen the policy objectives of the supporters of the Humphrey-Hawkins bill.

Another argument is that the establishment of a statutory inflation goal will inevitably lead to price and wage controls. By the same line of reasoning, one might argue that the establishment of an unemployment goal might lead to a total governmental regimentation of the economy, soaring budget deficits and rampant inflation. The Banking Committee believes both fears are ill-founded. There is no reason to assume that the mere establishment of a goal will cause the President and the Congress to take leave of their senses by adopting programs or policies that are inimical to our economic and political system. Indeed, the legislation as reported by both committees contains specific language indicating that no provision of the bill shall be used to authorize price or wage controls except to the extent authorized under other Federal laws. The Banking Committee would strongly oppose the use of wage or price controls to control inflation.

Still another argument is that while the Federal Government has a reasonable degree of control over the level of unemployment, it does not have the same degree of control over inflation. Those who hold this view argue that external events beyond the Government's control can have a major impact on inflation. These might include an OPEC oil price increase or a worldwide crop shortage.

While there may be some validity to this view, it does not follow that Congress should not establish a specific goal for reducing inflation. First, there are many factors beyond the Government's control affecting the rate of unemployment including strikes, actions by foreign governments, and changes in the composition of the labor force or the labor force participation rate. Second, even though there are some determinants of inflation beyond governmental control, the Government still has powerful means to affect the price level through the level of deficit spending and through monetary policy.

It should also be noted that both the House version and the Human Resources Committee version of S. 50 require the President to establish 5-year numerical goals for reducing inflation. Accordingly, these two versions of the legislation also reject the notion that inflation is so beyond the control of the Government that meaningful goals cannot be established. The only real difference between the Banking Committee substitute to S. 50 compared to the Human Resources Committee and House versions of the bill is over who would set the numerical inflation goal—the President or the Congress.

The Banking Committee sees no reason why the establishment of a numerical inflation goal should be delegated to the President, especially when all versions of the legislation call upon the Congress to establish a numerical goal for reducing unemployment. If Congress is competent to establish a goal for reducing unemployment, it should be equally capable of establishing a goal for reducing inflation.

A statutory goal for reducing inflation, as contained in the Banking Committee substitute to S. 50, also gives the Congress greater control through the congressional veto procedures provided in title III of the legislation. Any Presidential recommendation to modify a statutory goal would be subject to a prompt and automatic vote in both Houses under expedited procedures to prevent delays. On the other hand, permitting the President to set the inflation reduction goal in his economic report, as provided in the Human Resources Committee and the House versions of the legislation, would make it more difficult for the Congress to challenge the President if it disagreed with his goal. Either a new law would have to be passed to countermand the President's goal or an amendment to the annual budget resolution would have to be obtained. In either case, procedural obstacles could prevent an up or down vote on the President's goal.

Another argument against an inflation goal is that there are times such as the period following the great depression of the 1930's when inflation or "reflation" might be in order and that this possibility should not be inhibited by a statutory inflation goal. The Banking Committee rejects the concept that more inflation might sometimes be useful. Instead, the Banking Committee believes a gradual and steady reduction in the rate of inflation should be a continuing aim of economic policy for the foreseeable future. Should extraordinary conditions develop to alter this judgment, Congress would always be free to make appropriate changes in the statutory inflation goal.

An argument has also been made that the zero-percent inflation goal approved by the Banking Committee cannot be achieved by 1983 given our present level of inflation. While it is true that no country has been able to achieve a zero-percent inflation rate in the recent past, it does not follow that the goal is unattainable. There have been sustained periods in the economic history of our country as well as other countries when prices were level or even declining.

In any event, the substitute bill approved by the Banking Committee does provide the President with adequate flexibility in the event he can make a convincing case that a somewhat higher inflation goal would be a more realistic target for 1983. Under the Banking Committee's substitute bill, the President would be able to recommend an increase in the zero-percentage target in his economic report for 1979. This increase would become effective unless vetoed by both Houses of Congress pursuant to the procedures provided under title III as described elsewhere in this report. Thus the committee believes the zero-percent target will force the President and his economic advisers to undertake a systematic review of our inflationary situation and to present a realistic program with specific timetables to the Congress early next year.

Finally, it has been argued that the establishment of a 4-percent unemployment goal by 1983 already implicitly takes into account the adverse impact that a lower employment goal might have on inflation. Those who hold this view argue that since the 4-percent unemployment goal already subsumes an implicit inflation goal, it is unnecessary and in some sense unfair, to establish an explicit inflation goal.

It is difficult to understand this reasoning. If there is indeed an implicit inflation goal consistent with the subsumed under the 4-percent unemployment goal, why keep it a secret from the public. Implicit legislative goals ought to be made explicit wherever possible in order to contribute to an informed debate by the Congress.

All these objectives are incorporated into the bill which the Banking Committee has reported, and it obviously is a monumental and vital piece of legislation in many ways the most important economic legislation that Congress will have acted on since the action on the Employment Act some 32 years ago.

I think it is a remarkable achievement by our distinguished majority leader that he has been able to achieve the opportunity to have this immensely controversial bill, which is so vigorously contested by people who have differing views, before the Senate under these circumstances. I think that most competent observers would have said that there would be no way to do it.

I think great credit goes to the minority here. I know that many Republican Members of the Senate have the deepest kind of reservations about this legislation. At the same time I think they share our desire for lower unemployment as well as for price stability.

The fact that they have been willing to agree to accommodate those of us who favor this bill I think is a great tribute to not only their economic wisdom but also their sense of fairness. I express that gratitude.

Mr. President, I wished to make these statements because the Banking Committee has jurisdiction over the Employment Act of 1946.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator for his kind remarks.

Mr. PROXMIRE. I appreciate that, and I mean them from the heart.

The Banking Committee has jurisdiction over the Employment Act of 1946. We take it very seriously. That was, I say, a very, very important economic declaration of policy, and this will push us forward into where we should be 32

years after we have adopted the Full Employment Act of 1946, and we have recognized the strengths of that proposal and the weaknesses of it.

Mr. President, I yield the floor.

● Mr. JAVITS. Mr. President, as the ranking minority member of both the Human Resources Committee and the Subcommittee on Employment, Poverty, and Migratory Labor, I rise to support the Full Employment and Balanced Growth Act of 1978.

The time has come for Congress to enact the Humphrey-Hawkins bill—to proclaim across the land its firm commitment to achieving the goal of full employment through indicative policy planning and coordinated action.

The Fully Employment and Balanced Growth Act has traversed a long and arduous road to arrive finally at the point today of Senate floor consideration. That the bill is before us is a tribute to the legislative process here in the Senate, which has separated the wheat from the chaff in respect of S. 50. Senate consideration of S. 50, which covers a period of at least 4 years and three separate Congresses—the 93d, 94th, and 95th—demonstrates that the legislative process, like the mills of the gods may turn slowly but grind exceedingly fine.

Earlier versions of the bill, particularly those introduced in 1976 and 1977, contained provisions which many found unacceptable because of their possible inflationary consequences. Large new Federal job creation programs with mandated prevailing wage rates could have been authorized by those earlier versions, and many—including this Senator—were justifiably concerned that failure to reach the bill's numerical goal for full employment in accordance with the timetables established in the bill would trigger on the new jobs program. I had many reservations about the 1976 bill, but agree to cosponsor the bill as an expression of my personal commitment to its goals. When the 1977 version was introduced, however, I was not a cosponsor because I felt that it was necessary for me to deal directly with the bill's deficiencies in committee before I could give my support to it.

In general, my own view has been that we needed to have a "process" bill; a bill that would give us both a blueprint for achieving balanced economic growth and full employment and a planning process through which systematically we could formulate and coordinate national economic policymaking. I have always sought to have a bill that would establish the targets and put into place the planning process through which we could chart our course to achieve them.

Indeed, this was the thrust of the bill Senator Humphrey and I introduced in May 1975, the Balanced Growth and Economic Planning Act. Our 1975 bill—S. 1795—proposed to establish a coordinated process within Congress and the executive branch for the systematic consideration and formulation of national economic goals, including the goals of full employment, price stability and balanced economic growth. Senator Humphrey and I felt that once the planning process was put in place, we would have a framework in which economic goals could be proposed, debated and established, and any needed legislative initiatives could be recommended and implemented by Congress.

What we have before us today—introduced early in 1978 by Mrs. HUMPHREY and modified considerably by the Human Resources Committee and even further by the Banking Committee—is principally a goal-setting bill; one that would give us the framework we so desperately need for charting our course and for coordinating national economic policy. And the original Humphrey-Javits Balanced Growth and Economic Planning Act of 1975 is its genesis.

Because S. 50 has been reshaped to conform more closely with the thrust of our original 1975 bill and because it has been so streamlined—all of the excess baggage has been jettisoned—the Humphrey-Hawkins bill should be enacted and I urge all my colleagues to give us their support.

Mr. President, so many misconceptions surround S. 50, and this is completely understandable since there have been so many different versions of it, that I feel it would be helpful for me to outline for my colleagues what the bill does not purport to do.

First, with respect to the question of new programs, we should all be clear that not a single new program of any kind is authorized in this bill. It is true that even in the form in which it was introduced this year, S. 50 did contain at several places certain ambiguities that might be construed as authorizing either new programs or the appropriations necessary for expansion of existing programs.

During the subcommittee markup of S. 50 I raised objections to the ambiguous language of the bill specifically at pages 27, 28, 29, 30, 31, 41, and 43 of the committee print and obtained an agreement on inserting new language that in each instance makes crystal clear the fact that no new authorizations are expressed or implied in S. 50. For example, at section 206(c) (1) and (2) which describes the circumstances under which the President would propose establishment of reservoir job projects for the unemployed, the committee agreed to language specifying that such job projects shall be established, either through existing program expansion or through new programs, only "as may be authorized by law." Congress must authorize and appropriate in a subsequent act any program designed to implement any provision of S. 50. The action of the Human Resources Committee in clarifying this and other similar ambiguities on the subject of new programs in the bill should dispel any notion that S. 50 creates new programs.

On this point we have no less an authority than the President himself, who said on November 14, 1977, in reference to title II:

> Title II of the bill sets out consideration to guide the President and the Congress in the event that new programs and appropriations are needed to fight unemployment. This feature of the bill does not authorize such programs, but commends them for use, if necessary, to implement the goals of the legislation.

Related to this concern, Mr. President, is the misconception of some that enactment of S. 50 would intensify already severe inflationary pressures. Those who express this view base it upon any one of three points, to wit: one, that the bill mandates prevailing wages for public service jobs created pursuant to the implementation of S. 50; two, that the bill does not include comparable goals for price stability; and, three, that the 4 percent unemployment rate targeted for 1983 is unrealistic and, therefore, that efforts to hit it will outstrip the productive capacity of the economy. Each of these concerns deserves to be dealt with so that our colleagues can understand that enactment of the Humphrey-Hawkins bill will not worsen U.S. inflation.

First, with respect to wages, I obtained agreement in committee to language in section 402 (a) and (b) which makes clear that legislation considered subsequent to enactment of S. 50 for the purpose of creating a new job program—and this includes legislation to implement the provisions of 206(c)(1)—shall provide that persons employed are paid equal wages for equal work, "subject to any limitations on maximum annual compensation as may be provided in the law authorizing such programs." This means that in passing S. 50 we are not locking ourselves into any particular wage standard—prevailing or otherwise—and that Congress retains its flexibility to consider this matter in detail when and if the authorizing legislation comes before it. Those who are familiar with the history of S. 50 will pay special attention to section 402 because they will recall that it was the mandated prevailing wage provisions of the earlier versions of the bill that caused then-Brookings economist, now-Council of Economic Advisers Chairman Charles Schultze to testify that S. 50 would unleash tremendous cost-push inflation pressures. The Committee on Human Resources, at my suggestion, has eliminated this concern and, of course, Chairman Schultze has testified in favor of the bill and has satisfied himself that inflationary pressures would not be intensified.

In addition, and this brings me to point No. 2, in committee the Senator from Rhode Island (Mr. CHAFEE) and I argued for and obtained language including "prices" and "price stability" in the section 103 list of short term and medium term economic goals to be included in the President's Economic Report. The bill introduced by Mrs. HUMPHREY in January did not contain such a requirement but in the end, the committee was persuaded that it was important to establish 2- and 5-year price goals which are consistent with the longer term objective of achieving the goal of price stability.

The inclusion of this mandate, coupled with the more general language on overcoming inflation provided for in section 109, should serve to reassure our colleagues that S. 50 is not soft on inflation; that the President will include a price goal in each Economic Report, and

under the provisions for congressional review in title III, this goal will be considered in detail by the Joint Economic Committee and the Budget Committee in the preparation of the First Budget Resolution.

A third misconception about S. 50, Mr. President, is that the provisions in section 108 would undercut the independence of the Federal Reserve System in the conduct of monetary policy. I wish to assure my colleagues that this was another of my deep concerns about the earlier versions of S. 50, to wit: that at a time like this, when credit demands are rising so rapidly and inflationary pressures are heating up, the Fed must be free "to lean against the wind" to maintain orderly conditions in credit markets and to insure that the supply of money and credit is consistent with stable monetary conditions domestically and a strong dollar internationally.

For this reason, I sought in committee to have modified the original language of the bill which I felt threatened the Fed's independence. The committee agreed that the language requiring the Fed to explain the relationships between its intended policies and the medium term (5-year) goals of the President's Economic Report was beyond the Fed's own forecasting capabilities and that the language which I called an "engraved invitation," mandating that Congress take whatever action it deems necessary to conform monetary policy to the goals and purposes of the act was unwise. These provisions have been amended considerably, so that now section 108 describes a relationship of comity between the Congress and the Fed in furtherance of the purposes of the act. There is to be coordination as much as possible, and consultation between the Federal Open Market Committee and the Board of Governors and the Congressional Banking Committees. While the language of our two reported bills is somewhat different, the intent is the same in each and, in any event, will not compromise the flexibility the Fed must have to carry out its responsibilities.

Mr. President, having said all this about what S. 50 does not purport to do, I wish to address the subject of what S. 50 would accomplish. In brief, the Humphrey-Hawkins bill proposes to make the achievement of full employment the principal objective of U.S. economic policy. S. 50 is a promise that we will set our sights high and keep them fixed upon the goal of equal employment opportunity for all Americans. S. 50 gives us a purpose—and the planning process for coordinating our activities. Right now we do not have a single goal; we do not have a clear purpose, other than a sort of fuzzy wish to have "prosperity."

Symptomatic of this desultory approach is the fact that the United States does not have a coherent employment policy either. We have not yet come to grips with the fact that persistent joblessness is becoming a normal condition for some 6 million Americans.

The persistence of this scourge—and that is exactly what the endemic unemployment of 6 million Americans is—indicates that the United States has entered a whole new epoch; one in which the unemployment threshold associated with unacceptably high inflation is itself far too high. We suffer from the worst of both worlds; a Hobson's choice where anything done to alleviate the former intensifies the latter and vice versa.

Let's face it, Mr. President, the U.S. economy is in very deep trouble. Unemployment remains too high, inflation is intensifying rapidly, and the current expansion is almost due to drop into low gear, at best. We cannot get the unemployment rate down much lower and a recession or worse next year, precipitated by virulent inflation, could very well send the United States into a condition of both double-digit unemployment and inflation.

In this new context, therefore, we need an expression of our commitment to full employment: not one that implies we are soft on inflation or on unemployment, but one that demonstrates the strength of our faith in the American way of life, to wit: equality of employment opportunity for all.

This is why I tend not to favor including in S. 50 a precise numerical goal for inflation; it would dilute this expression of our commitment to full employment.

If there is one lesson we have all learned in this decade it is that full employment cannot be reached, much less maintained, unless we have stable prices; severe inflation will prevent our ever achieving sustainable full employment—that's why the bill is called the Full Employment and Balanced Growth Act. So why write in the goal?

The Humphrey-Hawkins bill is a promise: "we want to reach full employment," period; not, "we want to reach full employment, if it is consistent with price stability." The question of price stability is not relevant to an expression of commitment; if S. 50 were a jobs bill, if it authorized specific new programs, et cetera, then of course we would have to be concerned about the inflationary effects of tight labor markets and rising unit labor costs. But S. 50 is not a jobs bill; it does not authorize a single new program—I nailed down that question in Committee myself. S. 50 says simply that we are for reaching full employment by the end of 1983, and we will do all that we can prudently do to hit the target and maintain that goal. Of course we are not going to pursue it so myopically that we will ignore such things as inflation, the trade deficit, high interest rates, et cetera, regardless of what S. 50 does or does not provide for in the way of a numerical inflation goal and timetable.

A numerical goal and timetable for inflation in this bill will make absolutely no difference as a practical matter we have said it time and again in legislation—but it will dilute the strength of our promise. We all realize that price stability is an important first step—but first we must make the commitment. What do we stand for? What are we here for? What should be the focus of our efforts in this body? The answer is full employment—and this is what we proclaim by passing S. 50.

So I say to my colleagues who wonder why we in the Human Resources Committee were satisfied with writing in the goal of "price stability," instead of a numerical goal and timetable, that we are for an unhedged promise; we are for a clear expression of our priority—and that is jobs.

In addition to being a proclamation of our intent to do all we can to reach the goal on full employment by the end of 1983, S. 50 also contains a strategy for helping us reach that goal—a strategy whose progenitor is the Humphrey-Javits balanced growth and economic planning bill of 1975.

S. 50 is landmark legislation, Mr. President, not just because it gives us a numerical goal and timetable for reducing unemployment, but because it gives us a new policy planning process; a framework for the consideration and formulation of national economic goals—particularly full employment goals—and for coordinating economic policies to achieve them. The goal of 4 percent unemployment in the bill is crucial; it gives us a focus; a needed reference point by which to measure our success; but in addition the process by which economic goals are proposed by the President and formulated by the Congress working through the Joint Economic Committee and in conjunction with the established Budget procedures, is critically important.

This planning process will enable us to design the blueprint for economic policymaking for the 2-year period immediately ahead and for 3 years thereafter—so-called short term and medium term goals. Then we will have a clearer plan for getting where we want to be in terms of jobs, prices, growth, and so forth, instead of the haphazard ad hoc approach that too often has characterized U.S. policymaking and which I believe has contributed to such things as periodic recessions, bursts of unacceptable inflation, energy shortages and, most recently, the collapse of the dollar, the deteriorating U.S. trade position, and stagnant productivity. Once the planning process has enabled us to formulate our strategy for the upcoming years, Congress and the Executive will be able to coordinate systematically and with as much foresight as possible national economic and social policies and to design and implement programs needed to achieve the agreed-upon goals.

Now, Mr. President, I want to make it clear that the process outlined in S. 50 is an indicative and prospective planning process; that is, goals are established and other policies and programs are to be thereafter authorized and appropriated for to plan to reach those goals. Nothing is immutable or mandatory or imposed from on high, as in a centralized State planning system. On the contrary, the road we wish to follow is set forth and the emphasis is upon foresight and policy.

Indeed, we have in mind for the U.S. Government what just about every well-run business in the United States is expected to do, to wit: to plan for the

future; to anticipate what is likely to be encountered in the years ahead and to guide the company in its day-to-day operations. This, in my view, is the most significant quality in the Humphrey-Hawkins bill and is deserving of the support of our colleagues.

Mr. President, I hope S. 50 will be approved by the Senate. It has been modified considerably from earlier versions which troubled me greatly and I am now satisfied that we have a good bill; an important bill which will give our country the promise of full employment and the planning process for seeking to reach it through balanced economic growth.●

CONSUMER PRODUCT SAFETY COMMISSION

Mr. FORD. Mr. President, the President sent the name of Samuel D. Zagoria to the Senate on Friday, September 29, 1978, and a hearing to consider this nomination to be a Commissioner on the Consumer Product Safety Commission was announced that day. A hearing was held by the Committee on Commerce, Science, and Transportation, which I chaired, on Thursday, October 5, at which time Mr. Zagoria answered questions as to his qualifications. The committee has studied his financial holdings and background in detail.

Mr. President, the nomination of Samuel D. Zagoria to be a Commissioner for the remainder of the term expiring October 26, 1978, of John Byington and for a term of 7 years from October 27, 1978, has been reported from the Committee on Commerce, Science, and Transportation. I understand that the nomination has been cleared with the minority.

As in executive session, I ask unanimous consent that the Senate immediately proceed to consider this nomination.

There being no objection, the Senate proceeded to consider the nomination, which had been reported earlier today.

The PRESIDING OFFICER. The nomination will be stated.

The legislative clerk read the nomination of Samuel D. Zagoria, of Maryland, to be a Commissioner.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, this nomination has been considered rather quickly due to the intent to adjourn this week. I was pleased to call up this nomination so that the Consumer Product Safety Commission could be operating at full capacity. It is now operating with three Democratic members and one Republican and Mr. Zagoria will fill another Republican seat.

BUDGET ACT WAIVER

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1206.

The PRESIDING OFFICER. The resolution will be stated.

The legislative clerk read as follows:

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act waived with respect to the consideration of S. 3392. Such waiver is necessary because the bill originally introduced in the House of Representatives, H.R. 12505, was not passed until June 22, 1978, after the required May 15th reporting date. Also, action by the Committee on Energy and Natural Resources has been delayed because of the priority consideration which had to be given to the President's energy program proposals and to the Alaska National Interest Lands legislation.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the resolution (S. Res. 566) was considered, order to be engrossed for a third reading, was read the third time and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was passed.

Mr. MATSUNAGA. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SOLAR PHOTOVOLTAIC ENERGY RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1186, S. 3392.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 3392) to provide for an accelerated program of research, development, and demonstration of solar photovoltaic energy technologies leading to early competitive commercial applicability of such technologies to be carried out by the Department of Energy, with the support of the National Aeronautics and Space Administration, the National Bureau of Standards, the General Services Administration, and other Federal agencies.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978".

FINDINGS AND POLICY

SEC. 2. (a) The Congress hereby finds that—

(1) the United States of America is faced with a finite and diminishing resource base of native fossil fuels, and as a consequence must develop as quickly as possible a diversified, pluralistic national energy capability and posture;

(2) the current imbalance between supply and demand for fuels and energy in the United States is likely to grow for many years;

(3) the early demonstration of the feasibility of using solar photovoltaic energy systems for the generation of electricity could help to relieve the demand on existing fuel and energy supplies;

(4) the national security and economic well-being of the United States is endangered by its dependence on imported energy supplies which are subject to resource limitations, artificial pricing mechanisms which do not accurately reflect supply and demand relationships, and supply interruptions;

(5) the early development and widespread utilization of photovoltaic energy systems could significantly expand the domestic energy resource base of the United States, thereby lessening its dependence on foreign supplies;

(6) the establishment of sizable markets for photovoltaic energy systems will justify private investment in plant and equipment necessary to realize the economies of scale, and will result in significant reductions in the unit costs of these systems;

(7) the use of solar photovoltaic energy systems for certain limited applications has already proved feasible;

(8) there appear to be no insoluble technical obstacles to the widespread commercial use of solar photovoltaic energy technologies;

(9) an aggressive research and development program should solve existing technical problems of solar photovoltaic systems; and, supported by an assured and growing market for photovoltaic systems during the next decade, should maximize the future contribution of solar photovoltaic energy to this Nation's future energy production;

(10) it is the proper and appropriate role of the Federal Government to undertake research, development, and demonstration programs in solar photovoltaic energy technologies and to supplement and assist private industry and other entities and thereby the general public, so as to hasten the general commercial use of such technologies;

(11) the high cost of imported energy sources impairs the economic growth of many nations which lack sizable domestic energy supplies or are unable to develop these resources;

(12) photovoltaic energy systems are economically competitive with conventional energy resources for a wide variety of applications in many foreign nations at the present time, and will find additional applications with continued cost reductions;

(13) the early development and export of solar photovoltaic energy systems, consistent with the established preeminence of the United States in the field of high technology products, can make a valuable contribution to the well-being of the people of other nations and to this Nation's balance of trade;

(14) the widespread use of solar photovoltaic energy systems to supplement and replace conventional methods for the generation of electricity would have a beneficial effect upon the environment;

(15) to increase the potential application of solar photovoltaic energy systems in remote locations, and to minimize the need for backup systems depending on fossil fuel, programs leading to the development of inexpensive and reliable systems for the storage of electricity should be pursued as part of any solar photovoltaic energy research, development, and demonstration program;

(16) evaluation of the performance and reliability of solar photovoltaic energy technologies can be expedited by testing of prototypes under carefully controlled conditions;

(17) commercial application of solar photovoltaic energy technologies can be expedited by early commercial demonstration under practical conditions;

(18) photovoltaic energy systems are currently adaptable on a life cycle, cost-justified basis for certain of the energy needs of the Federal Government, and will find additional applications as continued refinements improve performance and reduce unit costs;

(19) the Federal Government can stimulate innovation and economic efficiency in the production of photovoltaic energy systems through the development and implementation of policies to promote diversity and maximum competition between firms engaged in the research, manufacture, installation, and/or maintenance of these systems;

(20) innovation and creativity in the development of solar photovoltaic energy components and systems can be fostered through encouraging direct contact between the manufacturers of such systems and the architects, engineers, developers, contractors, and other persons interested in utilizing such systems; and

(21) it is contemplated that the ten-year program established by this Act will require the expenditure of $1,500,000,000 by the Federal Government.

(b) It is therefore declared to be the policy of the United States and the purpose of this Act to establish during the next decade an aggressive research, development, and demonstration program involving solar photovoltaic energy systems and in the long term, to have as an objective the production of electricity from photovoltaic systems cost competitive with utility-generated electricity from conventional sources. Further, it is declared to be the policy of the United States and the purpose of this Act that the objectives of this research, development, and demonstration program are—

(1) to double the production of solar photovoltaic energy systems each year during the decade starting with fiscal year 1979, measured by the peak generating capacity of the systems produced, so as to reach a total annual United States production of solar photovoltaic energy systems of approximately two million peak kilowatts, and a total cumulative production of such systems of approximately four million peak kilowatts by fiscal year 1988;

(2) to reduce the average cost of installed solar photovoltaic energy systems to $1 per peak watt by fiscal year 1988; and

(3) to stimulate the purchase by private buyers of at least 90 per centum of all solar photovoltaic energy systems produced in the United States during fiscal year 1988.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) a "solar photovoltaic energy system" is a system of components which generates electricity from incident sunlight by means of the photovoltaic effect, and which shall include all components, including energy storage devices where appropriate, necessary to provide electricity for individual, industrial, agricultural, or governmental use;

(2) the term "solar photovoltaic energy system" may be used interchangeably with the term "photovoltaic system";

(3) a "hybrid solar photovoltaic energy system" is a system of components that generates electricity from incident sunlight by means of the photovoltaic effect and, in conjunction with electronic and, if appropriate, optical, thermal and storage devices, provides electricity, as well as heat and/or light for individual, commercial, industrial, agricultural, or governmental use;

(4) "photovoltaic effect" refers to the physical phenomenon exhibited under certain circumstances by some materials in which a portion of the light energy striking the material is directly converted to electrical energy;

(5) "facility" means any building, agricultural, commercial or industrial complex or other device constructively employing photovoltaic systems; and

(6) "Secretary" means the Secretary of Energy.

RESEARCH, DEVELOPMENT, AND DEMONSTRATION OF SOLAR PHOTOVOLTAIC ENERGY SYSTEMS

SEC. 4. The Secretary is directed to establish immediately and carry forth such research, development, and demonstration programs as may be necessary to meet the objectives of this Act as set forth in section 2(b), and as a part of any such program shall—

(a) conduct, and promote the coordination and acceleration of, research, development, and demonstrations relating to solar photovoltaic energy systems and components thereof, and

(b) conduct, and promote the coordination and acceleration of, research, development, and demonstrations for systems and components to be used in applications that are dependent for their energy on solar photovoltaic energy systems.

SEC. 5. (a) In carrying out the provisions of section (4), the Secretary is authorized—

(1) to establish procedures whereby any public or private entity wishing to install solar photovoltaic components and systems in any new or existing facility may apply for Federal assistance in purchasing and installing, in such facility, photovoltaic components or systems;

(2) to select, as soon as he deems it feasible, a number of the applicants under paragraph (1) and enter into agreements with them for the design, purchase, fabrication, testing, installation, and demonstration of photovoltaic components and systems. Such selection shall be based on the need to obtain scientific, technological, and economic information from a variety of such systems under a variety of circumstances and conditions; and

(3) to arrange, as part of any agreement entered into under paragraph (2), to provide up to 75 per centum of the purchase and installation costs of photovoltaic components or systems, taking into account relevant considerations involving the relative stage of consumer and industry interest and development at the time of the financial assistance action. Such arrangements shall be contingent upon terms and conditions prescribed by the Secretary, including an express agreement that the entity with whom the agreement is entered into shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary or his agents to observe and monitor) the performance and operation of such system for a period of five years, and that such entity (including any subsequent owner of the property) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(b) The Secretary shall, as he deems appropriate, undertake any projects or activities (including demonstration projects) to further the attainment of the objectives of this section.

SEC. 6. (a) The Secretary is authorized to select on the basis of open competitions—

(1) a number of readily available photovoltaic components and systems;

(2) a number of design concepts for various types of applications which demonstrate adaptability to the utilization of photovoltaic components and systems; and

(3) a number of designs for applications selected under paragraph (2), so that each design includes specific provisions for the utilization of solar photovoltaic components and systems selected under paragraph (1).

(b) The Secretary, in accordance with the applicable provisions of sections 7, 8, and 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.) and with such program guidelines as the Secretary may establish, shall—

(1) enter into such contracts and grants as may be necessary or appropriate for the development for commercial production and utilization of photovoltaic components and systems, including any further planning and design which may be required to conform with the specifications set forth in any applicable criteria;

(2) select, as being compatible with the design concepts chosen under subsection (a) (2) of this section, a reasonable number of photovoltaic components and systems; and

(3) enter into contracts with a number of persons or firms for the procurement of photovoltaic components and systems, including adequate numbers of spare and replacement parts for such systems.

(c) The Secretary is authorized to award contracts for the design integration between the application concepts and the photovoltaic systems procured by the Secretary under subsection (b)(3), and for the demonstration of prototype solar photovoltaic systems, and, when appropriate, for the utilization of such systems in existing facilities. Title to and ownership of the facilities so constructed and of photovoltaic systems installed hereunder may be conveyed to purchasers of such facilities under terms and conditions prescribed by the Secretary, including an express agreement that any such purchaser shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary to observe and monitor) the performance and operation of such systems for a period of five years, and that such purchaser (including any subsequent owner) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(d) The Secretary, in consultation with the Administrator of General Services or the Secretary of Defense or both (as may be appropriate) shall enter into arrangements with appropriate Federal agencies concurrently with the conduct of the programs under this section and section 7 of this Act, to carry out such projects and activities (including demonstration projects), with respect to Federal buildings and facilities, as may be appropriate for the demonstration of photovoltaic systems suitableand effective for use in such applications.

(e) The Secretary shall, as he deems appropriate, undertake any projects or activities (including demonstration projects) to further the attainment of the objectives of this secetion.

TEST PROCEDURES AND PERFORMANCE CRITERIA

SEC. 7. (a) The Secretary shall conduct a testing program for photovoltaic systems to assist in the development and demonstration of prototype photovoltaic systems, including collectors, controls, power conditioning, and energy storage systems.

(b) Data obtained from the testing program under subsection (a) shall be evaluated and used in establishing performance criteria. These performance criteria shall be used in the demonstration program described in sections 4, 5, and 6 of this Act.

(c) The Secretary shall determine, prescribe, and publish in the Federal Register, at a time which he determines to be feasible and justified—

(1) performance criteria for photovoltaic components and systems to be used in appropriate applications, and procedures whereby manufacturers of photovoltaic components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under this paragraph; and

(2) revised performance criteria for photovoltaic components and systems to be used in appropriate applications, and procedures whereby manufacturers of photovoltaic components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under this para-

graph. Such criteria may be annually revised by the Secretary, as he deems appropriate.

(d) Any photovoltaic component or system procured or installed by the Federal Government or procured or installed with Federal assistance under section (5) or section (6) shall meet appropriate performance criteria prescribed under this section, if such performance criteria have been prescribed.

COORDINATION MONITORING, AND LIAISON

SEC. 8. (a) The Secretary, in coordination with such Government agencies as may be appropriate, shall—

(1) monitor the performance and operation of photovoltaic systems installed under this Act;

(2) collect and evaluate data and information on the performance and operation of photovoltaic systems installed under this Act; and

(3) from time to time carry out such studies and investigations and take such other actions, including the submission of special reports to the Congress when appropriate, as may be necessary to assure that the programs for which the Secretary is responsible under this Act effectively carry out the policy of this Act.

(b) In the development of the performance criteria and test procedures required under section 7 of this Act, the Secretary shall work closely with the appropriate scientific, technical, and professional societies and industry representatives in order to assure the best possible use of available expertise in this area.

(c) The Secretary shall also maintain continuing liaison with related industries and interests, and with the scientific and technical community, during and after the period of the programs carried out under this Act, in order to assure that the projected benefits of such programs are and will continue to be realized.

SOLAR PHOTOVOLTAIC ENERGY ADVISORY COMMITTEE

SEC. 9. (a) There is hereby established a Solar Photovoltaic Energy Advisory Committee, which shall study and advise the Secretary on—

(1) the scope and pace of research and development with respect to solar photovoltaic energy systems;

(2) the need for and timing of solar photovoltaic energy systems demonstration projects;

(3) the need for change in any research, development, or demonstration program established under this Act; and

(4) the economic, technological, and environmental consequences of the use of solar photovoltaic energy systems.

(b) The Committee shall be composed of thirteen members, including eleven members appointed by the Secretary from industrial organizations, academic institutions, professional societies or institutions, and other sources as he sees fit, and two members of the public appointed by the President. The Chairman of the Committee shall be elected from among the members thereof.

(c) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Committee in carrying out the requirements of this section, and shall furnish to the Committee such information as the Committee deems necessary to carry out this section.

(d) Section 624 of the Department of Energy Organization Act shall be applicable to the Committee, except as inconsistent with this section.

DISSEMINATION OF INFORMATION AND OTHER ACTIVITIES TO PROMOTE PRACTICAL USE OF SOLAR PHOTOVOLTAIC TECHNOLOGIES

SEC. 10. (a) The Secretary shall take all possible steps to assure that full and complete information with respect to the demonstration and other activities conducted under this Act is made available to Federal State, and local authorities, relevant segments of the economy, the scientific and technical community, and the public at large, both during and after the close of the programs under this Act, with the objective of promoting and facilitating to the maximum extent feasible the early and widespread practical use of photovoltaic energy throughout the United States. Any trade secret or other proprietary information shall be exempted from such mandatory disclosure, as otherwise specified in law applicable to research, development and demonstration programs of the Department of Energy, including, but not limited to, section 17 of the Federal Non-Nuclear Energy Research and Development Act of 1974, Public Law 93–577, as amended.

(b) The Secretary shall—

(1) study the effect of the widespread utilization of photovoltaic systems on the existing electric utility system at varying levels of photovoltaic contribution to the system;

(2) study and investigate the effect of utility rate structures, building codes, zoning ordinances, and other laws, codes, ordinances, and practices upon the practical use of photovoltaic systems;

(3) determine the extent to which such laws, codes, ordinances, and practices should be changed to permit or facilitate such use, and the methods by which any such changes may best be accomplished; and

(4) determine the necessity of a program of incentives to accelerate the commercial application of photovoltaic technologies.

(c) The Secretary is authorized and directed, within one year of the date of enactment of this Act, to make recommendations to the President and to the Congress for Federal policies relating to barriers to the early and widespread utilization of photovoltaic systems in order to realize the goals set forth in section 2. These recommendations shall include but not be limited to—

(1) the potential for integration of electricity derived from photovoltaic energy systems into the existing national grid system, including the potential of photovoltaic-generated electricity to meet the peak-load energy needs of electric utilities, load management and reliability implications of the utilization of photovoltaic electricity by utilities, the implications of utility ownership of photovoltaic components leased to others primarily for decentralized applications, the impacts of utility use of electricity derived from photovoltaic energy systems on utility rate structures, and the potential for reducing or obviating the need for energy storage components for photovoltaic energy systems through utility interface;

(2) the extent of competition between firms currently engaged in the fabrication and installation of photovoltaic components and systems as it affects the character and growth potential of the American photovoltaics industry, and the likelihood that small photovoltaic firms will have reasonable opportunities to compete and participate in the various programs authorized by this Act;

(3) the need to identify legal alternatives to ensure access to direct sunlight for photovoltaic energy systems, the appropriate methods of encouraging the adoption of such alternatives, and the implications of widespread utilization of photovoltaic energy systems for land use and urban development;

(4) the availability of private capital at reasonable interest rates for individuals, businesses and others desiring to establish commerical enterprises to manufacture, market, install, and/or, maintain photovoltaic components and systems, or purchase and install such systems for private, industrial, agricultural, commercial or other uses;

(5) the need for industry-wide warranty and reliability standards for photovoltaic energy components and systems for private sector applications, and, if appropriate, the mechanisms for establishing such standards; and

(6) the attainability of the goals specified in subsection 2(b), and any modification of such goals which the Secretary proposes for consideration by Congress, with supporting analyses.

(d) In carrying out his functions under this section, the Secretary shall consult with the appropriate government agencies, industry representatives, and members of the scientific and technical community having expertise and interest in this area. The Secretary also shall ensure that any study or report prepared pursuant to this section is fully coordinated with and reflective of any analyses or reports prepared pursuant to the requirements in section 208 of the Department of Energy Act of 1978—Civilian Applications, Public Law 95–238, and in the President's Solar Energy Domestic Policy Review. The Secretary, as appropriate, may merge any continuing or on-going studies under section 208 or the Domestic Policy Review with those required by this section or avoid any unnecessary duplication of effort or funding. The separate report requirements of section 208 and this section, however, shall remain in force.

INTERNATIONAL PARTICIPATION AND COOPERATION

SEC. 11. (a) Within one year after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of State, the Administrator of the Agency for International Development, the Director of ACTION, the Director of the Export/Import Bank and other appropriate Federal officials, shall submit to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources a plan for demonstrating applications of solar photovoltaic energy systems and facilitating their widespread use in other nations, especially those with agreements for scientific cooperation with the United States.

(b) The Secretary is authorized to encourage, to the maximum extent practicable, international participation and cooperation in the development and maintenance of programs established under this plan. The Secretary, in consultation and cooperation with the Federal officials specified in subsection (a), shall insure to the maximum extent possible that the plan submitted under subsection (a) and any other international activities under this section are consistent with and reflective of any similar activities or requirements under any other Federal statute, specifically including any of the several programs under other agencies and Departments involving United States international cooperation and assistance in nonnuclear energy technology, and will not duplicate activities under such programs. The plan required in subsection (a) shall specifically identify all such programs and statutes and describe how the activities under this section will be consistent with such programs, will be coordinated with them, and will avoid duplication of activities under such programs.

ENCOURAGEMENT AND PROTECTION OF SMALL BUSINESS

SEC. 12. In carrying out his functions under this Act, the Secretary shall take steps to assure that small-business concerns will have realistic and adequate opportunities to participate in the programs under this Act to the maximum extent practicable, and the Secretary is directed to set aside at least 10 per centum of the funds authorized and appropriated for the participation of small business concerns.

PRIORITIES

SEC. 13. The Secretary shall set priorities as far as possible consistent with the intent

and operation of this Act, in accordance with the following criteria:

(1) The applications utilizing photovoltaic systems which will be part of the research, development, and demonstration program and testing and demonstration programs referred to in sections 4, 5, 6, and 7 shall be located in a sufficient number of different geographic areas in the United States to assure a realistic and effective demonstration of the use of photovoltaic systems and of the applications themselves, in both rural and urban locations and under climatic conditions which vary as much as possible.

(2) The projected costs of commercial production and maintenance of the photovoltaic systems utilized in the testing and demonstration programs established under this Act should be taken into account.

(3) Encouragement should be given in the conduct of programs under this Act to those projects in which funds are appropriated by any State or political subdivision thereof for the purpose of sharing costs with the Federal Government for the purchase and installation of photovoltaic components and systems.

SEC. 14. Nothing in this Act shall be construed to negate, duplicate, or otherwise affect the provisions of title IV (Federal Initiatives), subtitle D (Use of Advanced Photovoltaic Energy Devices in Federal Buildings), National Energy Conservation Policy Act, H.R. 5037, 95th Congress, if and when that Act becomes enacted by the Ninety-fifth Congress, and such subtitle D shall be exempted fully from the provisions of this Act and any regulations, guidelines, or criteria pursuant thereto.

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1979, $125,000,000, inclusive of any funds otherwise authorized, (1) to carry out the functions vested in the Secretary by this Act, (2) to carry out the functions in fiscal year 1979, vested in the Secretary by subtitle D of title IV of H.R. 5037, 95th Congress, if enacted by the 95th Congress, and (3) for transfer to such other agencies of the Federal Government as may be required to enable them to carry out their respective functions under this Act. Funds appropriated pursuant to this section shall remain available until expended: *Provided*, That any contract or agreement entered into pursuant to this Act shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Authorizations of appropriations for fiscal years after fiscal year 1979 shall be contained in the annual authorization for the Department of Energy.

UP AMENDMENT NO. 2049

(Purpose: Technical Amendments to S. 3392)

Mr. MATSUNAGA. Mr. President, I have technical amendments to offer, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Hawaii (Mr. MATSUNAGA) proposes an unprinted amendment numbered 2049:

Page 41, line 4, delete "IV" and insert in lieu thereof, "V".

Page 41, lines 5 and 6, delete "subtitle D (Use of Advanced Photovoltaic Energy Devices in Federal Buildings)" and insert in lieu thereof, "part 4 (Federal Photovoltaic Utilization)".

Page 41, line 9, delete "subtitle D" and insert in lieu thereof, "part 4".

Page 41, line 16, after "thorized" insert "for photovoltaic programs".

Page 41, line 18, delete "subtitle D of title IV" and insert in lieu thereof, "part 4 of title V".

Page 42, line 6, delete the "." and insert, "except for those funds authorized for fiscal years 1930 and 1981 contained in part 4 of title V of H.R. 5037, 95th Congress, if enacted by the 95th Congress."

● Mr. MATSUNAGA. Mr. President, the pending measure, S. 3392, establishes in the Department of Energy a 10-year research, development, and demonstration program for the photovoltaic energy conversion technology. Its purpose is to stimulate the terrestrial use of this promising technology, which converts solar radiation directly into electricity.

Mr. President, the basic scientific principles of photovoltaic conversion are well known, and have been applied for many years in providing reliable power for our space vehicles. In harnessing the energy from the sun, this technology utilizes an inexhaustible source of energy available throughout the world. It is pollution free, requires no moving parts, and possesses a long life with little maintenance.

Morever, energy production through photovoltaic conversion is not limited by scarcity of material, since the necessary devices can be made from silicon, the second most abundant element in the Earth's crust.

While there is no doubt as to the technical feasibility of generating electricity through photovoltaic conversion, this technology has not attained widespread use because it is still too expensive in comparison with other energy systems which use conventional fuels. But progress in reducing costs has been so rapid during recent years that serious consideration can be given to using photovoltaic equipment to generate large quantities of electricity in the relatively near future.

The cost of photovoltaic cells was approximately $200 per peak watt as recently as 1974, but are now down to around $10 per peak watt, a twentyfold reduction in just 4 years. Furthermore, it is technically possible to reduce costs to the range of $1 to $2 per peak watt within the next 3 to 5 years, without any additional scientific breakthroughs. At this level of cost, sales of photovoltaic equipment should increase rapidly. However, cost of production must drop to about $0.50 per peak watt before an explosive growth of the market can be expected. It is the objective of the pending bill to do just that. When this happens photovoltaic electricity will then become competitive with residential and commercial electricity rates in many parts of the country. Ultimately, this technology could produce electricity on a competitive basis with conventional utility power most anywhere.

The photovoltaic industry today is characterized by about a score of relatively small but highly technologically oriented companies with a solid record of technical accomplishments to date, and with the talent, imagination and determination to meet difficult but attainable goals established for the industry. The industry also faces a number of uncertainties which must be cleared up before its objectives can be fully realized.

These uncertainties relate primarily to the future direction this technology must take, and to the development of market demand necessary to sustain industry growth.

With respect to the former, it is not yet clear which of several emerging technologies will provide the next generation design, and private enterprise is understandably reluctant to assume large financial risks involved in adopting any option without further development of the process.

With respect to the marketplace, we know that the demand for photovoltaic devices exists at a large range of prices, and that the unique characteristics of these systems can lead to new markets where no market now exists.

But we do not understand very well where the markets will actually be and how they will grow. Foreign markets, especially in lesser developed countries where no utility grid exists, appear especially promising and need to be thoroughly explored. Here at home, integrating this power system with existing utilities could create technical and institutional problems which would hinder domestic market growth.

Just as we have experienced with other new technologies, the photovoltaics industry will outlive its growing pains and eventually play a significant role in providing energy for the country. Left to its present pace, however, several decades may pass before the industry reaches maturity.

The energy crisis we face today, demands that every effort be made to speed up the process of development and commercialization of this important energy source in order to reduce our reliance upon foreign oil. An important part of this effort must include the active participation of the Federal Government.

In seeking Federal participation, industry representatives have made it clear that the most important contribution that Government can make is to provide a sense of direction and a long-term commitment to the orderly growth of this technology. Government emphasis initially can support high-risk, but high-payoff, research and development efforts to achieve cost reductions through technical improvements.

It can shift its focus to support of demonstration projects and market studies as the program evolves towards commercialization. Finally, its role would fade away as the commercial market becomes established and private enterprise take over.

Mr. President, the bill before us is a carefully drafted document intended to define the proper role of the Federal Government, in a broad range as described above, in order to maximize the future contribution of solar photovoltaic energy to the Nation's domestic energy production.

The bill establishes an aggressive, 10-year research, development, and demonstration program for this technology, setting forth very specific objectives, in order to make the production of electricity from photovoltaic systems cost competitive with utility-generated electricity from conventional sources.

To achieve this ultimate goal, it anticipates that the production of photovoltaic systems must be doubled each year during the next decade, that in-

stalled costs must be reduced to $1 per peak watt by 1988, and that 90 percent of all purchases must be made by the private sector during the last year of the program.

The bill authorizes to be appropriated to the Department of Energy the sum of $125 million in fiscal year 1979, identical to the amount proposed in the 1979 DOE authorization bill. Authorizations for future years would be subject to the normal annual review process, although the bill contemplates the expenditure of $1.5 billion by the Federal Government over the ten-year life of the program.

Mr. President, I would like to point out that due credit should be given to Congressmen McCORMACK, TEAGUE, and GOLDWATER, who jointly authored a similar bill in the House where it was passed on June 28, 1978 by a vote of 385 to 14.

The Senate Committee on Energy and Natural Resources, by a unanimous vote of 17 to 0 on September 21, 1978, recommended passage of this bill by the Senate. I urge unanimous approval of this legislation by the Senate.

Mr. MARK O. HATFIELD. Mr. President, I rise in strong support of S. 3392, the Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978. At the outset, Mr. President, I wish to commend the Senator from Hawaii, Mr. MATSUNAGA, for his dogged perseverance in bringing this bill through the Energy Committee to the floor of the Senate for its consideration at this time. Were it not for that determination, the Senate today would not have this opportunity to pass and return to the other body this important solar energy legislation. As a cosponsor of this legislation, with Senator DOMENICI and Senator MATHIAS also from this side of the aisle, I am greatly appreciative of Senator MATSUNAGA's efforts in moving this legislation at the end of this Congress.

Mr. President, it is my pleasure to be floor manager of the Solar Photovoltaic Energy Research and Development bill because this bill represents an additional step toward the development of solar power on a level that is practical for the consumer and competitive with conventional electrical power peaking systems. As you know, the development of solar photovoltaic cells was first began in the 1950's and they were used as a power source by the U.S. space program. However, these photovoltaic cells were neither practical for the consumer nor competitive with conventional systems. It was necessary to handcraft the cells from very pure crystals of silicon at a cost that approached $200 per peak watt in 1959.

During the past decade, research and advancement in the development in solar photovoltaic cells has been outstanding. Techniques used to manufacture the cells has developed and advanced beyond expectations, leading to a consummate drop in the price to $13 per peak watt today. Congress reacted to the advancements made in the solar photovoltaic industry in 1975 by dramatically increasing the funding for solar photovoltaic systems research, development, and demonstration, and funding for the program has been increased each year with successively higher authorization levels. The objective at that time was to reach commercialization sometime after the year 2000. However, the cooperative efforts of the solar photovoltaic industry and the Energy Research and Development Administration—ERDA—surpassed the 1977 cost reduction goal as set out in the ERDA photovoltaic plan. This progress gave impetus to the possibility that the cost of photovoltaic systems could be reduced to a competitive level with conventional electrical systems and that commercialization could be possible ahead of schedule.

Commercialization generally requires 30 years before penetration can be made in the energy technology market. This is the consequence of the need for a variety of systems to be developed to meet a variety of end uses, with various short-term and long-term markets requiring identification and development. The DOE plan prescribes the conditions and initiatives necessary to carry out this plan, but it requires a number of years to be realized. However, it was the feeling of the committee that an aggressive research, development, and demonstration program could shorten this period and bring commercialization of solar photovoltaic cells to fruition in the near future.

Based on information from the Department of Energy, an acceptable program for development leading to commercialization would require a long term commitment by the Government. The Federal Government, under this program, would accept the costs of the high-risk research and development phases of the program and the cost of producing and demonstrating early systems in a wide variety of end uses. It was estimated that this effort would cost the Federal Government approximately $1.5 billion and the solar photovoltaic industry approximately $200 million over 10 years. The Solar Photovoltaic Energy Research Development and Demonstration Act of 1978 establishes the 10-year program as defined by the Energy and Natural Resources Committee.

This bill would embark the Federal Government on a program to double the production of solar photovoltaic energy systems each year beginning in 1979, with the 10-year objective being an annual U.S. production of solar photovoltaic systems of approximately 2 million peak kilowatts and a total cumulative of such systems of approximately 4 million peak kilowatts by 1988. The average cost of installed solar photovoltaic systems will be reduced to $1 per peak watt by 1988, with the goal of stimulating private industry to purchase 90 percent of all solar photovoltaic systems produced in the United States in fiscal year 1988.

The bill encourages cooperation between the Federal Government and any private or public entity in the purchasing and installation of the photovoltaic components of systems at a level of 75 per centum of the costs of purchase and installation. In an effort to check the progress of these photovoltaic systems and components, the Secretary of Energy is required to receive reports for a period of 5 years.

Testing will also be conducted by the Federal Government to assist in establishing performance criteria for the purposes of certifying systems and their conformance to the prescribed standards. The Secretary shall also study the widespread effect of photovoltaic systems on the existing electric utility systems at various levels of contribution, and determine the effects that these systems will have on utility rate structures, building codes and zoning laws. Lastly, the bill encourages cooperation with other nations with the objective of facilitating the widespread use of this technology by other nations.

The sun is an infinite resource which is sending 12 quadrillion kilowatt hours of energy to the earth annually. This energy represents approximately one trillion tons of coal, or the equivalent of all the U.S. coal reserves. Another way of looking at this is that the amount of solar energy that falls on Lake Erie equals the total amount of energy in use in the entire country at any given time. This represents a tremendous energy resource for this country and this bill represents a significant step in realizing that goal.

Mr. President, this legislation responds to a very critical need in our solar energy program to establish the required goals, planning, and procedures for the further development of solar photovoltaic energy and its eventual commercialization in our economy. Our hearings in the Energy and Natural Resources Committee, and those in the House Science and Technology Committee, established clearly the absence of the required goals, planning and procedures to insure that the continued research, development, demonstration and commercialization activities by the Department of Energy and other Federal agencies move this technology into the marketplace at the maximum possible speed. It was a similar reason which led us to the conclusion that action was necessary in the conservation portion of The National Energy Act which was passed by the Senate yesterday, containing the Federal purchase program for photovoltaic energy devices for Federal buildings. The further consideration of this problem which has occurred over the last year, since we first acted to add the Federal photovoltaic purchase program to The Conservation Act last year, has led to the collective conclusion that Congress should act now to establish the overall program structure necessary to move this technology forward. Additionally, the various private and Federal studies which have been done in the recent past, such as the August 25, 1978, Presidential status report on the solar energy domestic policy review, has concluded that photovoltaic energy applications can make a significant contribution to the energy supply of the United States by the end of this century. Consequently, Mr. President, I am convinced that we have every justification in moving the legislation before the Senate today.

Mr. President, S. 3392, takes several significant actions of importance to our national solar energy effort. Perhaps most

importantly, section 2(b) of this bill establishes a set of goals and objectives for the solar photovoltaic program over the next 10 years. Subsection 2(b) establishes as the policy of the United States that we reach a total annual U.S. production of solar photovoltaic energy systems of approximately 2,000,000 peak kilowatts by 1988, that we reach the average cost of installed solar photovoltaic energy systems of $1 per peak watt by 1988 and that we stimulate the purchase by private buyers by at least 90 percent of all domestically produced solar photovoltaic energy systems in 1988. Subsection 2(a) also states the congressional contemplation that the 10-year program between now and 1988 will involve the expenditure of $1.5 billion by the Federal Government to achieve these goals and objectives. I should note, Mr. President, that this Senate bill introduces a degree of flexibility in the established goals and objectives, by some wording changes to make them more approximate in nature, and also by incorporating specific directions in procedures for the Secretary of Energy to evaluate these goals and objectives and inform the Congress if they will not be achievable or would unbalance the appropriate program focus.

The remainder of S. 3392, provides the statutory framework for the conduct of the Solar Photovoltaic Research, Development, and Demonstration programs required to meet the goals and objectives of the bill. While most if not all of these authorities are included in other statutory authority now vested in the Secretary of Energy, this bill focuses specific authorities and program approaches on the particular problems associated with the further development, demonstration and commercialization of solar photovoltaic energy systems. Test procedures and performance criteria are provided for. Appropriate coordination and liaison with other Federal agencies and with interested private parties is established in a Solar Photovoltaic Energy Advisory Committee and provision is made for the dissemination of program information to promote solar photovoltaic technologies. The bill also specifies procedures to insure an international participation and cooperation focus in our development program, since many commentators have concluded that there is a large international market overseas for these photovoltaic energy systems. The bill also includes procedures to encourage and protect small business participants in the photovoltaic industry and for the establishment of priorities within the program.

Mr. President, as I mentioned earlier, the Federal purchase program of photovoltaic energy devices for Federal buildings is included in subtitle (d) of title IV of the National Energy Conservation Policy Act, H.R. 5037, part of the National Energy Act. The Senate passed the conference report on H.R. 5037 and as we all know, the house is preparing to act on the full conference report later this week. In order to avoid any confusion with regards to these two companion programs, the Energy Committee added a new section 14 which will statutorily exempt the subtitle (d) program in the National Energy Conservation Policy Act from the provisions of this bill. Also, the committee amended the section 15 authorization of appropriations to make clear that the total of $125,000,000 authorized for this program in fiscal year 1979 will support the subtitle (d) program in the National Energy Conservation Policy Act. The committee amendment of a technical nature which will be offered on the floor at this time will further clarify that result.

Mr. President, I believe that it is important to note the changes which have been made in this bill since it was passed by the House. Perhaps most importantly, the committee amendments remove a more restrictive, somewhat regulatory, approach to the establishment and application of performance criteria in the selection of technology over the life of the program under this bill. The bill passed by the other body would have required the establishment, at times certain, of interim and final performance criteria developed under Administrative Procedure Act-type procedures, and then applied with limited flexibility throughout the remainder of the program.

Testimony received from both the administration and industry criticized this more rigid, somewhat inflexible approach and recommended strongly that the committee consider increasing the flexibility of the statutory scheme included in the bill. Also, there were concerns expressed that the more rigid house approach could impede the development of advanced photovoltaic technologies by "freezing" the technology at more primitive stages over the next several years. The committee made a series of additional changes in the bill which are described adequately in the committee report beginning at page 10. The remainder of the changes generally perfect the provisions of the House-passed bill to insure that this bill would be consistent with other statutory authorities contained in existing law.

Mr. President, I hope that the Members of the other body who have worked most closely with this legislation of the past year, will find the Senate amendments to be consistent with their policy objectives and the purposes of the House-passed legislation, and will ultimately accept the Senate amendments. Those of us who have worked on this legislation over the past months appreciate fully the sincere and good faith interest which the Members of the other body have in enacting legislation which will affirmatively and positively move the development and commercialization of photovoltaic technology forward in the decade to come. Certainly, those Members should be commended for their leadership in passing the bill and presenting the Senate with this opportunity to enact a balanced and well-reasoned bill which achieves that objective. Again, I hope that, upon further review and reflection of the Senate amendments contained in this bill, the House will be persuaded to accept these amendments and send the bill to the President.

Mr. President, I urge the support of all Senators for this bill.●

● Mr. DOMENICI. Mr. President, just yesterday this body approved the National Energy Conservation Act which provided for the procurement of solar photovoltaic systems for Federal buildings. This action will certainly aid in driving down the costs of this proven technology by encouraging mass production. I am gratified by the action of the Senate in passing the Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978 today. This act complements our substantial commitment to solar technologies and promises to bring solar photovoltaics systems to a point where they are competitive with present energy technologies.

This act not only bolsters our research efforts in the laboratory but provides for the study of the economic and environmental consequences of the deployment of photovoltaic systems. Thus, we may look forward to new cost-reducing technological advances and the practical demonstration of their economic feasibility. In undertaking these steps toward commercialization we have not usurped the role of the private sector as some have argued; we have simply made that role easier to fulfill. We have helped small businesses by taking the most difficult and costly steps along the road to commercialization. Furthermore, this act specifically provides for the protection of small businesses by assuring their participation in the programs initiated under this act and by prohibiting the unnecessary disclosure of proprietary information supplied by these small businesses.

In providing for the study of the restrictive impacts of present utility rate structures, zoning ordinances, and building codes on solar photovoltaic system usage we have provided for the eventual integration of solar technologies into our present energy delivery systems in a smooth and timely fashion.

With the passage of this act today, we have continued to build the bridge between the laboratory and the marketplace for a technology which promises to be both a viable and important energy source in the near future. We cannot afford to overlook any potential energy resource. It is essential that each option be thoroughly examined and when appropriate, pursued. In approving this act we have acknowledged that solar photovoltaic systems are an appropriate energy technology and we have demonstrated our desire to broaden our energy base.●

Mr. DURKIN. Mr. President, will the Senator from Hawaii yield?

Mr. MATSUNAGA. I am happy to yield to the Senator from New Hampshire.

Mr. DURKIN. I thank my friend from Hawaii.

Mr. President, even though it is late at night and not many people are around, this is a very, very important piece of legislation.

I commend the Senator from Hawaii (Mr. MATSUNAGA) for his literally tireless efforts in the committee and in the Chamber trying to get this up because without his dedication and efforts not only would we lose the bill this year but we would be at least a year behind in the race with some of our overseas com-

petitors for what promises to be a very, very lucrative overseas market and a lucrative market here in the United States for photovoltaics or solar cells.

Mr. President, photovoltaics, or solar cells, are a technology which provides a decentralized source of electricity. Yet, according to a recent article in Science Magazine, "We probably know only slightly more about generating energy from photovoltaic devices than James Watt knew about producing mechanical energy from steam." The purpose of the Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978 is to accelerate the contribution which this promising, environmentally benign, solar energy resource can make to areas of the Nation like New Hampshire which are heavily dependent on imported oil.

Some of the data which have been published on photovoltaics illustrate its great potential. According to the excellent Office of Technology Assessment report entitled "Application of Solar Technology to Today's Energy Needs," photovoltaic arrays which produce electricity costing about $1.50 to $2 per kilowatt-hour today could be reduced as much as 20 times—down to 10 cents per kilowatt-hour—during the next 3 to 5 years. According to a Council on Environmental Quality report released last April, this could mean a savings of the equivalent of nearly 1.5 billion barrels of oil per year.

But the statistics alone do not fully convey the potential importance of this technology. Photovoltaics offers the promise of permitting towns or even individual families to become more self-reliant. For example, one witness testified at the Senate Energy and Natural Resources Committee hearings on this bill that photovoltaic cells could be mounted on small hydropower dams of the type common to New England to provide year round reliable power. Thus, an accelerated photovoltaics program, in combination with the small hydropower loan program which I introduced and which has become title IV of the Public Utility Regulatory Policies Act of 1978, could help provide New Hampshire and New England with a new method of restoring some of our most valued traditions of Yankee independence.

This bill is a good start at the comprehensive effort that photovoltaics deserves. This bill directs the Secretary of Energy to establish immediately a photovoltaics program to perform research and development functions, as well as to permit Federal procurements of solar cells for appropriate use by the Government. While this bill involves no new budget authorizations or appropriations, it contemplates the need for a 10-year program whose goals are to double photovoltaic production, and reduce costs tenfold. I believe that this bill will enable those goals to be accomplished and I am convinced that the time is ripe to make this commitment.

Section 12 of the bill deserves particular attention. That section directs the Secretary of Energy to take steps to assure that small business can participate in the photovoltaics program and requires that the Secretary set aside a minimum of 10 percent of all funds authorized and appropriated for this purpose. I introduced this amendment in committee because the testimony taken during hearings revealed that the photovoltaics industry could be swallowed up by large corporations. It is essential not only to assure that the creativity characteristic of small business be preserved in the photovoltaic industry, but also to prevent these huge companies from controlling our solar energy in the same fashion that they already control much of our fossil energy. I consider this provision essential to my support of this bill.

My work in the 95th Congress has concentrated on helping New Hampshire to become as independent as possible from high-cost and unreliable sources of energy. The time has passed when the citizens of my State can afford to be at the mercy of foreign countries when the cold winds of January blow. This bill will help them achieve the economic and social self-sufficiency which has been the hallmark of New England since the revolution.

Mr. MATSUNAGA. I agree fully with the statement made by my colleague, Senator DURKIN, and I wish especially to commend him for his contribution in getting the bill through the committee. I emphasize the need he pointed out for the 10 percent small business setaside which was incorporated in committee in section 12 of the bill.

Only through a continued and vigorous small business role can photovoltaic technology develop to its full potential in the public interest. Senator DURKIN'S amendment to assure this is critical to my support of the photovoltaic program and of this bill.

Mr. DURKIN. Mr. President, I thank the Senator from Hawaii for his generous comments.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Hawaii.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment, as amended, in the nature of a substitute.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of H.R. 12874 and that the Senate proceed to the immediate consideration of that bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 12874) to provide for an accelerated program of research, development, and demonstration of solar photovoltaic energy technologies leading to early competitive commercial applicability of such technologies to be carried out by the Department of Energy, with the support of the National Aeronautics and Space Administration, the National Bureau of Standards, the General Services Administration, and other Federal agencies.

The PRESIDING OFFICER (Mr. RIEGLE). Without objection, the Senate will proceed to its immediate consideration.

Mr. MATSUNAGA. Mr. President, I move to strike all after the enacting clause of House Report 12874 and substitute therefor the text of S. 3392, as amended.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that further consideration of S. 3392 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATSUNAGA. Mr. President, I ask for a third reading of the bill.

The PRESIDING OFFICER. The question is on the engrossment of the Senate amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass?

The bill, as amended, was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMEND THE IMMIGRATION AND NATIONALITY ACT

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of House Report 12509 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the bill by title.

The legislative clerk read as follows:

H.R. 12509, an act to amend the Immigration and Nationality Act to exclude from admission into, and to deport from, the United States all aliens who persecuted any person on the basis of race, religion, national origin, or political opinion, under the direction of the Nazi Government of Germany, and for other purposes.

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 2050

(Purpose: to amend the Indochina Migration and Refugee Assistance Act of 1975, as amended, to continue full funding of the Indochina Refugee Assistance Program, subject to limitations, and for other purposes)

Mr. CRANSTON. Mr. President, I send to the desk an unprinted amendment in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) for himself, Mr. KENNEDY, and Mr. HAYAKAWA proposes an unprinted amendment numbered 2050.

Mr. CRANSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I

SEC. 101(a) Section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182 (a)), relating to general classes of aliens ineligible to receive visas and excluded from admission, is amended—

(1) by striking out the period at the end of paragraph (32) and inserting in lieu thereof a semicolon; and

(2) by adding immediately after paragraph (32) the following new paragraph:

"(33) Any alien who during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

"(A) the Nazi government in Germany,

"(B) any government in any area occupied by the military forces of the Nazi government of Germany,

"(C) any government established with the assistance or cooperation of the Nazi government of Germany, or

"(D) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion."

Sec. 102. Section 212(d)(3) of such Act (8 U.S.C. 1182(d)(3)), relating to waiver of exclusions for certain non-immigrants, is amended by striking out "(27) and (29)" and inserting in lieu thereof "(27), (29), and (33)" each place it appears.

Sec. 103. Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1251(a)), relating to general classes of deportable aliens, is amended—

(1) by striking out "or" at the end of paragraph (17);

(2) by striking out the period at the end of paragraph (18) and inserting in lieu thereof "; or"; and

(3) by adding immediately after paragraph (18) the following new paragraph:

"(19) during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

"(A) the Nazi government of Germany,

"(B) any government in any area occupied by the military forces of the Nazi government of Germany,

"(C) any government established with the assistance or cooperation of the Nazi government of Germany, or

"(D) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion."

Sec. 104. Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)), relating to withholding of deportation, is amended by inserting "(other than an alien described in section 241(a)(19))" after "The Attorney General is authorized to withhold deportation of any alien".

Sec. 105. Section 244(e) of the Immigration and Nationality Act (8 U.S.C. 1254(e)), relating to voluntary departure of aliens under deportation proceedings, is amended by striking out "or (18)" and inserting in lieu thereof "(18), or (19)".

TITLE II

Sec. 201. Section 2(b) of the Indochina Migration and Refugee Assistance Act of 1975 is amended to read as follows:

"None of the funds authorized to be appropriated by subsection (a) may be available for obligation after September 30, 1979."

Sec. 202. The amendments made by this title shall take effect on October 1, 1978.

Mr. CRANSTON. Saturday, September 30 at midnight Federal participation in the Indochina refugee assistance program dropped from 100 percent to 75 percent. As a result of the requirement that States and counties fund 25 percent of the assistance, a number of States and counties are contemplating an end to the refugee program. Since refugees normally are not eligible for regular welfare, these actions mean they will be receiving no assistance in adjusting to life in the United States.

I with my colleague from California (Mr. HAYAKAWA) and Senators KENNEDY, MOYNIHAN and HUMPHREY, introduced legislation last July to meet this problem, as well as to provide assistance to 25,000 new refugees being admitted this year. Subsequently, a revised proposal was worked out with the administration to provide 100 percent Federal assistance for all refugees during each individual refugee's first 36 months in the United States. Under this proposal beginning September 30, 1979, those individuals who have been in the United States 36 months will be terminated. Thus, someone who came in June 1975 will be dropped from IRAP assistance on September 30, 1979, and an individual arriving in December 1977 will continue to receive assistance until December 1980, assuming such assistance is required.

However, in order to obtain expedited action due to the lateness of the session, I have agreed as have by colleagues to a 1 year extension of the program with a repeal of the 4-year phase-out, now provided in current law. It was decided by the Human Resources Committee with the concurrence of Foreign Relations Committee that the phase-down was unworkable from an administrative point of view at the local level. Our action tonight makes imperative an over-all review of U.S. refugee policy early next year.

Mr. President, title I remains the same as the original bill. The second part of the amendment relates to the fact that on September 30 at midnight Federal participation in the Indochina refugee assistance program dropped from 100 percent to 75 percent as a result of the requirement that States and counties fund 25 percent of the assistance, and a number of States and counties are contemplating an end to the refugee program, which is very important in terms of assisting these people as they adjust to life in our country.

I want to thank Senator KENNEDY for his long and hard work on this bill, and Senator STROM THURMOND for his cooperation in enabling us to bring this to the floor in a modified version, and I thank Senator HAYAKAWA, my colleague, for his good support.

The PRESIDING OFFICER (Mr. MATSUNAGA). Are there further amendments? If not, the question is on agreeing to the amendment of the Senator from California.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read the third time and passed.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 1167 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORIZATION TO HOLD VARIOUS BILLS AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as they are received in the Senate, the following measures be held at the desk pending further disposition: H.R. 13719, H.R. 13892, House Joint Resolution 1147, House Joint Resolution 1157, H.R. 13500, and H.R. 4727.

The PRESIDING OFFICER. Without objection, it is so ordered.

ANNUAL AND SICK LEAVE

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1626.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1626) entitled "An Act to clarify the status of the Librarian of Congress under subchapter I of chapter 63 of title 5, United States Code, relating to annual and sick leave", do pass with the following amendments:

Strike out all after the enacting clause, and insert: That section 6301(2) of title 5, United States Code, is amended—

(1) by striking out "or" at the end of clause (xi);

(2) by striking out the period at the end of clause (xii) and inserting "; or" in lieu thereof; and

(3) by adding at the end thereof the following new clause:

"(xiii) an officer in the legislative or judicial branch who is appointed by the President.".

SEC. 2. Sections 5551(b), 6302(e), and 6306 (b) of title 5, United States Code, are each amended by striking out "section 6301(2) (x)-(xiii)" each place it appears and inserting "section 6301(2)(x)-(xiii)" in lieu thereof.

SEC. 3. Section 8339(m) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "For the purpose of this subsection, in the case of

any such employee who is expected from subchapter I of chapter 63 of this title under section 6301(2)(x)–(xiii) of this title, the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was expected from such subchapter.".

SEC. 4. (a) The amendments made by the first section and section 2 of this Act shall take effect beginning on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act.

(b) The amendment made by section 3 of this Act shall apply only with respect to employees who retire or die on or after the date of the enactment of this Act.

Amend the title so as to read: "An Act to clarify the status of certain legislative and judicial officers under the provisions of title 5, United States Code, relating to annual and sick leave, and for other purposse.".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate concur in the House amendments en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOVERING REPLACEMENT COSTS OF FEDERAL MOTOR POOL VEHICLES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be discharged from further consideration of the House bill (H.R. 13767) to amend the Federal Property and Administrative Services Act of 1949 to permit the recovery of replacement costs of motor vehicles and other related equipment and supplies and I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the bill by title.

The legislative clerk read as follows:

H.R. 13767, an act to amend the Federal Property and Administrative Services Act of 1949 to permit the recovery of replacement costs of motor vehicles and other related equipment and supplies.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The question is on the third reading of the bill.

The bill was ordered to be read a third time, was read the third time and passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NUCLEAR REGULATORY COMMISSION AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, ask that the Chair lay before the Senate a message from the House of Representatives on S. 2584.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2584) entitled "An Act to authorize appropriations to the Nuclear Regulatory Commission for fiscal year 1979, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2017), and section 305 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5875), for the fiscal year 1979 to remain available until expended $332,107,000 which includes $14,285,000 for contracts encompassing research, studies, and technical assistance on domestic safeguards matters, to be allocated as follows:

(1) for "Nuclear Reactor Regulation", $47,162,000 of which an amount not to exceed $2,350,000 is authorized to accelerate the effort in gas-cooled thermal reactor preapplication review;

(2) for "Inspection and Enforcement", $38,760,000;

(3) for "Standards Development", $14,480,000;

(4) for "Nuclear Material Safety and Safeguards", $26,885,000;

(5) for "Nuclear Regulatory Research", $163,470,000, of which an amount not to exceed $3,900,000 is authorized to accelerate the effort in gas-cooled thermal reactor safety research;

(6) for "Program Technical Support", $13,400,000;

(7) for "Program Direction and Administration", $27,950,000.

(b) Of the total amount authorized under section 1(a), the Commission may reprogram among program activities specified in subsection (a) an amount not exceeding $10,000,000 except that the amount transfered from any of the major program activities specified in subsection (a) shall not exceed 15 per centum of the amount so specified. Prior to any reallocation of an amount in accordance with the provisions of this subsection, where such an amount is in excess of $500,000, the Commission shall inform the appropriate congressional committees. Such reallocation may be made notwithstanding the limitations of subsection (a).

(c) No amount authorized to be appropriated by this Act may be used by the Commission to enter into any contract, providing funds in excess of $20,000 encompassing research, study, or technical assistance on domestic safeguards matters except as directed by the Commission, by majority vote, following receipt by the Commission of a recommendation from the Executive Director for Operations supporting the need for such contract.

SEC. 2. Moneys received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

SEC. 3. Transfers of sums from salaries and expenses may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred.

SEC. 4. Section 201(a)(1) of the Energy Reorganization Act of 1974 is amended by inserting the following new sentence after the sixth sentence thereof: "The presence requirement for quorum purposes and for taking action shall be waived in the case of any action of the Commission if all members of the Commission (whether or not present) have indicated in writing, in such form and manner as may be prescribed by the Commission, that they agree to such waiver with respect to such action and are unanimous with respect to the approval, or disapproval, as the case may be, of the proposed action.".

SEC. 5. Section 209 of the Energy Reorganization Act of 1974 is amended by adding the following new subsection at the end thereof:

"(d) The Executive Director shall prepare and forward to the Commission an annual report (for the calendar year 1978 and each succeeding calendar year) on the status of the Commission's programs concerning domestic safeguards matters including an assessment of the effectiveness and adequacy of safeguards at facilities and activities licensed by the Commission. The Commission shall forward to the Congress a report under this section prior to February 1, 1979, as a separate document, and prior to February 1 of each succeeding years as a separate chapter of the Commission's annual report (required under section 309(c) of the Energy Reorganization Act of 1974) following the calendar year to which such report applies.".

SEC. (a) Chapter 14 of the Atomic Energy Act of 1954 is amended by adding the following new section at the end thereof:

"SEC. 170A. CONFLICTS OF INTEREST RELATING TO CONTRACTS AND OTHER ARRANGEMENTS.—

"a. The Commission shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation, under this Act or any other law administered by it for the conduct of research, development, evaluation activities, or for technical and management support services, to provide the Commission, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Commission, bearing on whether that person has a possible conflict of interest with respect to—

"(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or

"(2) being given an unfair competitive advantage. Such person shall insure, in accordance with regulations prescribed by the Commission, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontractor for more than $10,000.

"b. The Commission shall not enter into any such contract agreement or arrangement unless it finds, after evaluating all information provided under subsection a. and any other information otherwise available to the Commission that—

"(1) it is unlikely that a conflict of interest would exist, or

"(2) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement; except that if the Commission determines that such conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Commission may enter into such contract, agreement, or arrangement, if the Commission determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

"c. The Commission shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code (without regard to subsection (a)(2) thereof) as soon as practicable after the date of the enactment of this section, but in no event later than 120 days after such date.".

(d) The table of contents for such chapter 14 is amended by adding the following new item at the end thereof:

"Sec. 170A. Conflicts of interest relating to contracts and other arrangements.".

SEC. 7. Notwithstanding any other provision of this Act, no authority to make pay-

ments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

Amend the title so as to read: "An Act to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.".

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate disagree to the amendments of the House to S. 2584 and request a conference on the disagreeing votes of the two houses, and that the Presiding Officer be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. HART, Mr. RANDOLPH, and Mr. DOMENICI conferees on the part of the Senate.

CORRECTIONS IN THE ENROLLMENT OF S. 2640

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a concurrent resolution directing the Secretary of the Senate to make corrections in the enrollment of S. 2640 and I ask that it be stated by the clerk.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 110) directing the Secretary of the Senate to make corrections in the enrollment of S. 2640.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate proceeded to consider the concurrrent resolution.

Mr. ROBERT C. BYRD. Mr. President, the concurrent resolution makes only technical and conforming corrections to the conference report on the bill. The nature of the resolution is entirely technical.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 110) was agreed to as follows:

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 2640), to reform the civil service laws, the Secretary of the Senate shall make the following corrections:

(1) In section 101(a), in the proposed section 2301(b)(9)(A), insert "any" before "law,".

(2) In section 101(a), in the proposed section 2301(b)(9)(B), strike out "or" the first place it appears.

(3) In section 101(a), in the proposed section 2302(a)(2)(C), insert a comma after "Courts".

(4) In section 101(a), in the proposed section 2302(b)(1)(C), strike out "by" and insert "under".

(5) In section 101(a), in the proposed section 2302(b)(8)(A), strike out "law or" and insert "law and".

(6) In section 101(a), in the proposed section 2303(a), insert a comma after "such authority" and insert "(A)" after "section 2302(a)(2)".

(7) In section 101(a), in the proposed section 2303(b), insert "such" before "a personnel action".

(8) In section 101(a), in the proposed section 2305, strike out "(78 Stat.)." and insert "(78 Stat. 168; 50 U.S.C. 831–835).'."

(9) In section 201(a), in the proposed section 1101, insert a comma after "official seal" and after "judicially noticed".

(10) In section 201(a), in the proposed section 1103(b)(2)(A), insert "of this subsection" after "paragraph (1)".

(11) In section 201(b)(3), strike out "(122) of such title is amended to read as follows:" and insert "of such title is amended by inserting after paragraph (121) the following:".

(12) In section 202(a), in the proposed section 1205(e), strike out "its" in paragraph (1) thereof, and strike out "paragraph" in paragraph (3)(B) thereof and insert "subsection".

(13) In section 202(a), in the proposed insert "law and", and strike out the comma after "information".

(14) In section 202(a), in the proposed section 1206(b)(3)(A), strike out "section" and insert "subsection".

(15) In section 202(a), in the proposed section 1206(b)(5)(A) and (7), strike out "subparagraph" and insert "paragraph", strike out the comma after "been" in paragraph (7).

(16) In section 202(a), in the proposed section 1207(a)(5), insert a comma after "date".

(17) In section 202(a), in the proposed section 1208(c), strike out "paragraph" and insert "subsection".

(18) In section 202(a), in the proposed section 1209(b), strike out "action" and insert "actions".

(19) In section 203(a), in the proposed section 4303(f)(1), insert "or manager" after "supervisor".

(20) In section 205, in the proposed section 7701(b), strike out "experienced appeals officer" and insert "employee experienced in hearing appeals".

(21) In section 205, in the proposed section 7701(e)(2), strike out "regulations" and insert "regulation".

(22) In section 205, in the proposed section 7701(g)(1), insert "a" before "prohibited".

(23) In section 205, in the proposed section 7701(g)(2), strike out "706k" and insert "706(k)".

(24) In section 205, in the proposed section 7701(i)(2), strike out "the prior" each place it appears and insert "that".

(25) In section 205, in the proposed section 7702, insert "or applicant" after "employee" each place it appears (other than the first place it appears in subsection (a)(1) and each place it appears in subsection (d)(4) and (5)).

(26) In section 205, in the proposed section 7702(a)(2)(A), strike out "subsection (a)(1)(A) of this section" and insert "paragraph (1)(A) of this subsection".

(27) In section 205, in the proposed section 7702()a(2)(B), strike out "an" and insert "any", and strike out "subsection (a)(1)(B) of this section" and insert "paragraph (1)(B) of this subsection".

(28) In section 205, in the proposed section 7702(c), strike out "Commission" the fifth place it appears and insert "Board".

(29) In section 205, in the proposed section 7702(d)(1), strike out "section." and insert "subsection.", and strike out "any Board" and insert "the Board".

(30) In section 205, in the proposed section 7702(d)(3), strike out "(1)" and insert "(2)", and insert "to the Board" after "subsection".

(31) In section 205, in the proposed section 7702(d)(5), strike out "subsection" the third place it appears and insert "section".

(32) In section 205, in the proposed section 7702(e)(1), strike out "an employee" and insert "the employee", insert "to the same extent and" after "civil action", and insert "section" before "15(c)".

(33) In section 205, in the proposed section 7702(e)(2), insert a comma after "If".

(34) In section 308(d), redesignate the proposed subsection (d) as subsection (e).

(35) In section 308(g)(3), strike out "service" and insert "services", and strike out "paragraph (1)" and insert "paragraph (2)".

(36) In section 402(a), strike out "307(a)" and insert "307(b)".

(37) In section 402(a), in the proposed section 3131, strike out "(a)".

(38) In section 402(a), in the proposed section 3131(6) strike out "benefits".

(39) In section 402(a), in the proposed section 3132(a)(1)(B), strike out "any positions" and all that follows down through "2425),".

(40) In section 402(a), in the proposed section 3132(a)(2), strike out "(other than" and all that follows down through "title)".

(41) In section 402(a), in the proposed section 3132(b)(3)(B), strike out the comma after "law".

(42) In section 402(a), in the proposed section 3133(a), strike out "odd" and insert "even".

(43) In section 402(a), in the proposed section 3133(c), strike out "subsection (b)" and insert "subsection (a)".

(44) In section 402(a), in the proposed section 3135(a)(8), strike out "appointees" and insert "reserved positions".

(45) In section 404(b), in the proposed section 3594(c)(1)(B), strike out "higher" and insert "highest".

(46) In section 405(a), in the proposed section 4313(4), insert "performance" before "quality".

(47) In section 405(a), in the proposed section 4314(c)(3), strike out "(2)" and insert "(1)".

(48) In section 413(d), strike out "section 3393 (c) and (d)" and insert "section 3393 (b)–(e)".

(49) In section 601(a), in the proposed section 4703 (f) and (g), strike out "section 7111" and insert "chapter 71", and strike out "subsection (b)" and insert "subsection (a)".

(50) In section 701, add at the end of the proposed section 7105(d) the following new sentence: "The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.", and strike out the last sentence in the proposed section 7105(e)(2).

(51) In section 701, in the proposed section 7105(g)(2), strike out "section 7133" and insert "section 7132".

(52) In section 701, in the proposed section 7111(b), insert "supervise or" before "conduct".

(53) In section 701, in the proposed section 7114, strike out "provisions negotiated by" in subsection (a)(5) thereof and insert "procedures negotiated under", and strike out "high" in subsection (c)(4) thereof and insert "higher".

(54) In section 701, in the proposed section 7117(b)(1), strike out "matters" and insert "matter".

(55) In section 701, in the proposed section 7119(c)(5)(A)(ii), insert "the impasse" before "through".

(56) In section 701, in the proposed section 7119(c)(5)(B)(ii), strike out "section 7133" and insert "section 7132".

(57) In section 701, in the proposed section 7121(d), strike out "7701 of this title".

(58) In section 701, in the proposed section 7121(f), strike out "section 7702" and insert "section 7703".

(59) In section 701, insert "or" at the end of the proposed section 7122(a)(1).

(60) In section 701, in the proposed section 7123(d), strike out "or restraining order" and insert "(including a restraining order)".

(61) In section 703(a)(1), strike out "section 312" and insert "section 310".

(62) In section 703, redesignate paragraph (2) of subsection (b) as subsection (c)(1), and redesignate subsection (c)(1) as paragraph (2) of subsection (c).

(63) In section 703(a)(3), in the proposed section 7211, strike out "individual" and insert "individually".

(64) In section 906(c)(2)(A), strike out the period and insert the following: "and inserting in lieu thereof 'chapter'.".

(65) In section 906(c)(4), insert a comma after "Code".

(66) In section 906(c)(5), strike out "chapter 34" and insert "chapter 33".

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZATION FOR PRINTING H.R. 8533

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent that H.R. 8533 as passed by the Senate be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the following nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. This would mean, Mr. President, that all nominations on the Executive Calendar with the exception of the nominations under Federal Election Commission, the one nomination under Department of State, Calendar Order No. 338, a nomination under the Judiciary, Calendar Order 344, and the nomination under Rural Electrification Administration, all nominations will be considered with the exception of those four.

Mr. BAKER. Mr. President, reserving the right to object only for the purpose of advising the majority leader, that the items on the Executive Calendar identified are cleared on our calendar as well, and we have no objection to proceeding with the nominations.

UNITED NATIONS

The legislative clerk read the nomination of Richard W. Petree, of Virginia, a Foreign Service officer of class 1 to be the Alternate Representative of the United States of America for Special Political Affairs in the United Nations, with the rank of Ambassador.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF STATE

The legislative clerk read the nominations of Marshall W. Wiley, of Florida, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Sultanate of Oman and Goodwin Cooke, of Connecticut, a Foreign Service officer of class 2 to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Central African Empire.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed.

DEPARTMENT OF ENERGY

The legislative clerk read the nomination of Thomas Williamson, Jr., of the District of Columbia, to be Deputy Inspector General of the Department of Energy.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The legislative clerk read the nomination of Armando M. Rodriguez, of California, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1983; and J. Clay Smith, Jr., of the District of Columbia, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1982.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

THE JUDICIARY

The legislative clerk read the nomination of B. Avant Edenfield, of Georgia, to be a U.S. district judge for the southern district of Georgia.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

NATIONAL MEDIATION BOARD

The legislative clerk read the nomination of George S. Ives, of Maryland, to be a member of the National Mediation Board for the term expiring July 1, 1981.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

NATIONAL COMMISSION OF LIBRARIES AND INFORMATION SCIENCE

The legislative clerk read the nomination of Charles William Benton, of Illinois, to be a member of the National Commission on Libraries and Information Science for the remainder of the term expiring July 19, 1980.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

NOMINATIONS ON THE SECRETARY'S DESK IN THE DIPLOMATIC AND FOREIGN SERVICE

The legislative clerk proceeded to read sundry nominations placed on the Secretary's desk in the diplomatic and Foreign Service.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to move en bloc to reconsider the vote by which the various nominees were confirmed.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I make that motion.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. I ask that the President be immediately notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business.

The PRESIDING OFFICER. Without objection, the Senate is now in routine morning business.

Is there morning business?

MESSAGES FROM THE HOUSE

At 6:22 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced with profound sorrow the death of the Honorable RALPH H. METCALFE, a Representative from the State of Illinois.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as follows:

EC-4424. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report on programs conducted under titles II and III of public Law 480; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4425. A communication from the Executive Director, National Center for Productivity and Quality of Working Life, transmitting, pursuant to law, a report on exceeded travel limitations; to the Committee on Appropriations.

EC-4426. A communication from the Assistant Secretary of the Navy (Manpower, Reserve Affairs, and Logistics), reporting,

pursuant to law, of a settlement agreement settling the outstanding claims against the Navy by Newport News Shipbuilding and Dry Dock Co. as well as other open issues; to the Committee on Armed Services.

EC–4427. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to impose service obligations on graduates of the U.S. Merchant Marine Academy; to the Committee on Commerce, Science and Transportation.

EC–4428. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to amend section 6 of the Maritime Academy Act of 1958; to the Committee on Commerce, Science, and Transportation.

EC–4429. A communication from the Secretary of Transportation, reporting, pursuant to law, that no transactions were negotiated under the authority of section 303(e) of the Federal Aviation Act of 1958, as amended; to the Committee on Commerce, Science, and Transportation.

EC–4430. A communication from the Secretary of Energy, transmitting, pursuant to law, performance standards for demonstrations of electric and hybrid vehicle research development, and demonstration project; to the Committee on Energy and Natural Resources.

EC–4431. A communication from the Assistant Secretary of the Interior, transmitting, pursuant to law, proposed drafts of three temporary water service contracts between the United States and the Westlands Water District for water service in 1979; to the Committee on Energy and Natural Resources.

EC–4432. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "GAO Work Involving Title V of the Energy Policy and Conservation Act of 1975," October 4, 1978; to the Committee on Energy and Natural Resources.

EC–4433. A communication from the Acting Director of Congressional Affairs, Department of Energy, transmitting, pursuant to law, the quarterly report on private grievances and redress as issued by the Office of Administrative Review; to the Committee on Energy and Natural Resources.

EC–4434. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report of GAO reports for the month of August 1978; to the Committee on Governmental Affairs.

EC–4435. A communication from the Assistant Secretary for Administration, Department of the Treasury, reporting, pursuant to law, a correction to a Bureau of Engraving and Printing System of Record printed in the Federal Register on August 10, 1978; to the Committee on Governmental Affairs.

EC–4436. A communication from the Inspector General, Office of the Secretary, Department of Health, Education, and Welfare, transmitting, pursuant to law, a report on Matching System; to the Committee on Human Resources.

EC–4437. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, reporting, pursuant to law, withdrawal of a case of deportation; to the Committee on the Judiciary.

EC–4438. A communication from the Administrator, Veterans' Administration, transmitting, pursuant to law, a report of the provisions for Veterans Vocational Rehabilitation; to the Committee on Veterans' Affairs.

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM–825. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance:

"ASSEMBLY JOINT RESOLUTION No. 83

"Whereas, There has long been state and national concern over rising health care costs, and there is a continuing search for methods of containing such costs; and

"Whereas, The President's Commission on Mental Health and many other groups and individuals have expressed concern about providing long term mental health care in skilled nursing facilities intended for other uses; and

"Whereas, There is a longstanding debate about how mental health services may be covered by a national health insurance program; and

"Whereas, The State of California and the California county governments have operated a special mental health medical assistance program since 1972, known as the Short-Doyle/Medi-Cal Program; and

"Whereas, The Short-Doyle/Medic-Cal Program offers great promise of resolving some of the broad state and national concerns about financing and delivering mental health services in a cost-effective manner; and

"Whereas, The Short-Doyle/Medi-Cal Program contains the following innovative features:

"(a) All expenditures are limited by budget allocations.

"(b) Services can be organized and developed in areas where they would not otherwise be available.

"(c) New modes of services are provided which may be more appropriate and effective.

"(d) Increased flexibility in staffing permits use of less costly personnel; and

"Whereas, California has other innovative peer review and psychiatric utilization models in operation which also promise to achieve some of the economies sought in resolving the state and national cost control issues; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California requests the federal government to grant the State of California special project status with accompanying waivers of federal Medicaid regulations, for the following purposes:

"(a) To examine the costs and benefits of the Short-Doyle/Medi-Cal Program in comparison with the fee-for-service Medi-Cal system and other models of utilization review and cost containment;

"(b) To implement and test a continuum of residential treatment alternatives, using the funds spent in one or more counties under the federal Medicaid program for acute, intermediate, and skilled nursing care for the mentally disordered; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the President's Commission on Mental Health, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States and to the Secretary of Health, Education, and Welfare."

POM–826. A joint resolution adopted by the legislature of the State of California; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION No. 105

"Whereas, During the Second World War, 3,505 members of the United States Navy Submarine Service lost their lives in the service of this country; and

"Whereas, From the early, darkest days of this country's struggle in that war, submariners held the line, and carried out decisive action to the very shores of the enemy homeland; and

"Whereas, Time, with other changes it may bring, cannot obscure the devotion to duty and the coverage of the men of the submarine service; and

"Whereas, These submariners were joined by unique bonds of fellowship to their crew and to their service which continued beyond their years of active duty and endure today; and

"Whereas, Many of these former shipmates have banded together into the United States Submarine Veterans of World War II, a national organization; and

"Whereas, Congress is presently considering legislation to incorporate the United States Submarine Veterans of World War II; and

"Whereas, This federal charter would provide long-due recognition and benefit to the brave men who stood fast for their country in a time of peril; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact legislation to incorporate the United States Submarine Veterans of World War II; and, be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM–827. A resolution adopted by the legislature of the State of Pennsylvania; to the Committee on Human Resources:

"RESOLUTION

"Whereas, The Federal Government through its Community Services Administration, has established a one-time grant program to help low income families meet their unpaid energy and utility bills, including expenses for warm clothing, blankets, emergency house repairs, temporary shelter and health services needed because of the energy emergency; and

"Whereas, This program is limited to moneys being available only for unpaid bills; and

"Whereas, Such a policy could deter an individual or family from making payments with respect to reimbursable areas in order to comply with a future program; and

"Whereas, Such a policy and program discriminates against the low income family who may have experienced undue hardship in order to pay its current bills, being ineligible under this program for reimbursement; therefore be it

"Resolved, The Senate of Pennsylvania memorializes the President of the United States, Congress, the Department of Health, Education and Welfare and the Community Services Administration to issue proper regulations in order to avoid the possibility of such a program's discriminatory effects; and be it further

"Resolved, That copies of this resolution be transmitted to the President of the United States, and to the presiding officer of each House of Congress of the United States and to each Senator and Representative from Pennsylvania in the Congress of the United States and to the Department of Health, Education and Welfare and the Community Services Administration."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LONG, from the Committee on Finance, with an amendment and an amendment to the title:

H.R. 9434. An act to amend the Social Security Act to increase the dollar limitations and Federal medical assistance percentages

applicable to the medicaid programs of Puerto Rico, the Virgin Islands, and Guam (Rept. No. 95–1310).

H.R. 10848. An act to amend title VI of the Social Security Act to provide them an individual who applies for supplemental security income benefits on the basis of disability shall be considered presumptively disabled if he has received social security or supplemental security income benefits as a disabled individual within the preceding five years (Rept. No. 95–1311).

By Mr. LONG, from the Committee on Finance, with an amendment:

H.R. 12972. An act to amend title XVI of the Social Security Act to remove certain work disincentives for the disabled under the supplemental security income benefits program (Rept. No. 95–1312).

By Mr. LONG, from the Committee on Finance, with amendments:

H.R. 11711. An act to improve the operation of the adjustment assistance programs for workers and firms under the Trade Act of 1974 (Rept. No. 95–1313).

By Mr. STEVENSON, from the Select Committee on Ethics:

Special report on Korean influence inquiry (Rept. No. 95–1314).

By Mr. SPARKMAN, from the Committee on Foreign Relations, without amendment, but with a preamble:

S. Res. 582. An original resolution expressing the sense of the Senate with respect to the situation in Lebanon.

AGRICULTURE TRADE ACT OF 1978—CONFERENCE REPORT

Mr. STONE, from the committee of conference, submitted a report on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3447) to strengthen the economy of the United States through increased sales abroad of American agricultural products (Rept. No. 95–1315).

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

H.R. 8389. An act authorizing the President of the United States to present a gold medal to the widow of Robert F. Kennedy (Rept. No. 95–1316).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Richard A. Ericson, Jr., of California, to be Ambassador Extraordinary and Plenipotentiary of the United States to Iceland.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

POLITICAL CONTRIBUTIONS STATEMENT

Nominee: Richard A. Ericson, Jr.
Post: Ambassador to Iceland.
Contributions, amount, date, and donee.—
1. Self, None.
2. Spouse, Elizabeth W. Ericson, None.
3. Children and Spouses, Richard A III, Martha E, William W, Kristin M, Charlotte A, None.
4. Parents, Col. Richard A. Ericson, none.
5. Grandparents, deceased.
6. Brothers and spouses, Eric N and Janice Walker Ericson, none.
7. Sisters and spouses, Robert T. and Coral E. Bly, none.

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Richard B. Parker, of Kansas, to be Ambassador Extraordinary and Plenipotentiary of the United States to the Kingdom of Morocco.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

POLITICAL CONTRIBUTIONS STATEMENT

Nominee: Richard B. Parker.
Post: Morocco.
Contributions, amount, date, and donee.—
1. Self, none.
2. Spouse, none
3. Children and spouses, Jeff and Nancy Parker, none.
Allison and Kimbrou Kenway, none.
Richard J. Parker, son; Jill Parker, daughter, none.
4. Parents: Roscoe S. Parker and Marguerite B. Robinson, none.
5. Grandparents, deceased.
6. Brothers and spouses, David S. and Betty Parker, none
7. Sisters and spouses, none.

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Henry David Owen, of the District of Columbia, to be Ambassador at Large.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

POLITICAL CONTRIBUTIONS STATEMENT

Contributions, amount, date, and donee.—
Nominee: Henry Owen.
1. Self, $100, 1974 election, Senator John Culva (Citizens for Culva).
2. Spouse, none.
3. Children and spouse, none.
4. Parents, none.
5. Grandparents, none.
6. Brothers and spouses, none.
7. Sisters and spouses, none.

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Samuel Rhea Gammon, of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States to Mauritius.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

POLITICAL CONTRIBUTIONS STATEMENT

Nominee: Samuel Rhea Gammon.
Post: Ambassador to Mauritius.
Contributions, amount, date, and donee.—
1. Self, none.
2. Spouse, none.
3. Mary R. Gammon, spouse, no children, none.
4. Parents, S. R. Gammon, Sr., Ellen Rothe Gammon, deceased, none.
5. Grandparents, all deceased prior to 1949.
6. Brothers and spouses, deceased prior to 1947.
7. Sisters and spouses, none.

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Herbert S. Okun, of Maryland, for the rank of Minister during the tenure of his assignment as the State Department SALT Representative at Geneva, Switzerland.

(The above nomination from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

POLITICAL CONTRIBUTIONS STATEMENT

Nominee: Herbert S. Okun.
Post: Minister.
Contributions, amount, date, and donee.—
1. Self, none.
2. Spouse, none.
3. Children, Jennifer, Elizabeth, Alexandra, none.
4. Parents, father, Irving J. Okun, deceased 1956; mother, Ida L. Okun, none.
5. Grandparents, all deceased.
6. Brothers and spouses, none.
7. Sisters and spouses:
1. Mr. and Mrs. Warren M. Freedgood (sister: Gloria), none to best of my knowledge.
2. Mr. and Mrs. Raymond Schefman (sister: Selma), none to best of my knowledge.

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Jane Cahill Pfeiffer, of Connecticut, to be a member of the General Advisory Committee of the U.S. Arms Control and Disarmament Agency.

J. Bruce Llwellyn, of New York, to be President of the Overseas Private Investment Corporation.

(The above nominations from the Committee on Foreign Relations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Jane Cahill Pfeiffer, of Connecticut, to be a member of the General Advisory Committee of the U.S. Arms Control and Disarmament Agency.

(The above nominations from the Committee on Foreign Relations was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. SPARKMAN, from the Committee on Foreign Relations:

The following-named persons to be Representatives and Alternative Representatives of the United States to the Twentieth Session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

REPRESENTATIVES

John E. Reinhardt, of Maryland;
Esteban Edward Torres, of Virginia;
Hale Champion, of the District of Columbia.
Sarah G. Power, of Michigan; and
William Attwood, of Connecticut.

ALTERNATE REPRESENTATIVES

Mathilde Krim, of New York;
Joseph D. Duffey, of the District of Columbia;
Maurice A. Ferre, of Florida;
Arthur K. Solomon, of Massachusetts; and
Leila Fraser, of Wisconsin.

(The above nominations from the Committee on Foreign Relations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation:

Samuel D. Zagoria, of Maryland, to be a Commissioner of the Consumer Product Safety Commission, for the remainder of the term expiring October 26, 1978.

Samuel D. Zagoria, of Maryland, to be a Commissioner of the Consumer Product Safety Commission for a term of 7 years from October 27, 1978 (reappointment).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. PEARSON:

S. 3585. A bill for the relief of Robinson J. Munoz, M.D.; to the Committee on the Judiciary.

By Mr. ANDERSON:

S. 3586. A bill for the relief of Maria Elena Rodriguez; to the Committee on the Judiciary.

By Mr. DANFORTH:

S. 3587. A bill for the relief of Dr. Herman Sardjono and his wife, Erlanda Sardjono; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 3385

At the request of Mr. CHURCH, the Senator from Kentucky (Mr. FORD), the Senator from New Hampshire (Mr. McINTYRE), the Senator from Arizona (Mr. DECONCINI), the Senator from Vermont (Mr. STAFFORD), the Senator from Florida (Mr. STONE), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Washington (Mr. JACKSON), the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Michigan (Mr. RIEGLE), the Senator from Delaware (Mr. BIDEN), the Senator from Arizona (Mr. GOLDWATER), the Senator from South Dakota (Mr. McGOVERN), the Senator from South Carolina (Mr. THURMOND), the Senator from New Hampshire (Mr. DURKIN), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Hawaii (Mr. INOUYE), the Senator from Wyoming (Mr. WALLOP), the Senator from Rhode Island (Mr. PELL), and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 3385, a bill to amend the Internal Revenue Code of 1954 with respect to the exclusion from income of gain from the sale of an individual's principal residence.

S. 3425

At the request of Mr. HATHAWAY, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 3425, the Community Mental Health Assistance Act.

SENATE RESOLUTION 582—ORIGINAL RESOLUTION REPORTED WITH RESPECT TO THE SITUATION IN LEBANON

Mr. SPARKMAN, from the Committee on Foreign Relations, reported the following original resolution, which was ordered to be placed on the calendar:

S. RES. 582

Whereas the Syrian presence in Lebanon was introduced in 1976 as part of an Arab League force with the approval of the Government of Lebanon to help end the tragic civil strife in Lebanon;

Whereas the continued presence of Syrian troops in sections of Lebanon on what was considered to be a peace-keeping mission would appear in view of the continuing conflict no longer to serve the attainment of peace in that country under the Government of Lebanon; and

Whereas the presence of a dispassionate peace-keeping force in these sections of Lebanon would serve the interests of peace.

Now, therefore,

Be it resolved that the Senate commends the Administration for its initiative in urging the UN Security Council to bring about a ceasefire in Lebanon. The Senate urges that all factions of the Lebanese people should in good faith use the occasion presented by the ceasefire to support the efforts of the Lebanese Government to promote national reconciliation and consensus and should exercise full restraint in the use of arms in private hands,

Be it further resolved that it is the sense of the Senate that the United Nations should consider the placement of a peace-keeping force in the sensitive sections of Lebanon in order to strengthen the status of the existing cease-fire and in order to endorse and assist in the return of diplaced Lebanese citizens to their homes in Lebanon.

Resolved,

That the President of the Senate is directed to forward a copy of this resolution to the President of the United States, the Ambassador of the Government of the United States to the United Nations and the Secretary General of the United Nations.

AMENDMENTS SUBMITTED FOR PRINTING

CONSTITUTIONAL RIGHTS OF INSTITUTIONALIZED PERSONS—S. 1393

AMENDMENTS NO. 4520 AND 4521

(Ordered to be printed and lie on the table.)

Mr. DANFORTH submitted two amendments intended to be proposed by him to S. 1393, a bill to authorize actions by the Attorney General to redress deprivations of constitutional and other federally protected rights of institutionalized persons.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT—S. 3072

AMENDMENT NO. 4522

(Ordered to be printed and lie on the table.)

Mr. ROTH submitted an amendment intended to be proposed by him to S. 3072, a bill to amend the Marine Protection, Research, and Sanctuaries Act to authorize appropriations for titles I and II for fiscal years 1979 and 1980.

ALASKAN NATIONAL INTEREST LANDS ACT—H.R. 39

AMENDMENT NO. 4523

(Ordered to be printed and to lie on the table.)

Mr. NELSON (for himself, Mr. BROOKE, Mr. DURKIN, Mrs. HUMPHREY, Mr. McINTYRE, Mr. PELL, and Mr. PROXMIRE) submitted an amendment intended to be proposed by him to H.R. 39, an act to designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, Wild and Scenic Rivers and National Wilderness Preservation Systems, and for other purposes, as amended by the Committee on Energy and Natural Resources.

● Mr. NELSON. Mr. President, I send to the desk an amendment I intend to offer to H.R. 39, the revised "Alaskan National Interest Lands Act" just reported by the Committee on Energy and Natural Resources.

The purpose of my amendment is to more fully protect the wilderness character of key federally owned lands in Alaska which are subject to this bill. There are two elements to the amendment:

First, whereas the Energy Committee's proposed bill would extend formal wilderness designation to 34 million acres (out of the more than 100 million acres involved in this legislation), my amendment would give this statutory protection to 62 million acres of these lands. This is the same acreage already designated as wilderness in the House-passed bill, and follows the House-approved boundaries.

Second, whereas the Energy Committee's proposed bill would require a wilderness review for only a limited range of the other lands included in the bill, my amendment proposes to require a formal wilderness review for all the Federal land units established or enlarged by the bill. This does not involve actual designation of the areas, but assures that the Congress will receive study reports and have an opportunity to reach its own wilderness determinations and boundary decisions before the wilderness character of these lands is adversely impacted.

By adopting my amendment, the Senate will simply come up to the acreage of immediate wilderness designation already approved by the House, and we will assure that all categories of Federal land units created by the bill are subject to the routine and standard "wilderness review" procedures.

For the information of my colleagues, I include in the RECORD at this point a tabular comparison of the immediate wilderness designation proposed in the House-passed bill and in the amended version now reported by our Committee on Energy and Natural Resources:

COMPARISON OF WILDERNESS ACREAGE

Proposed wilderness unit	Acreage: Energy committee bill	House bill and Nelson amendment
Aniakchak wilderness	(1)	290,000
Bering Land Bridge wilderness	(1)	700,000
Denali wilderness (Mt. McKinley)	1,900,000	5,410,000
Gates of the Artic wilderness	4,801,000	8,050,000
Glacier Bay wilderness	2,770,000	2,820,000
Katmai wilderness	3,473,000	3,630,000
Kobuk Valley wilderness	(1)	1,140,000
Lake Clark wilderness	2,470,000	2,620,000
Noatak wilderness	5,413,000	6,080,000
Wrangell-St. Elias wilderness	8,700,000	9,570,000
Yukon-Charley wilderness	(2)	1,040,000
Alaska maritime wilderness, Aleutian Island wilderness, Unimak wilderness, and Semidi wilderness (total)	2,460,000	2,910,000
Arctic wilderness	(1)	13,130,000
Becharof wilderness	(1)	400,000
Innoko wilderness	(1)	1,240,000

COMPARISON OF WILDERNESS ACREAGE—Continued

Proposed wilderness unit	Acreage: Energy committee bill	House bill and Nelson amendment
Izembek wilderness	300,000	300,000
Kanuti wilderness	(1)	300,000
Kenai wilderness	1,350,000	1,413,000
Selawik wilderness	240,000	240,000
Total	34,067,000	61,623,000

[1] None.
[2] Study.

SEVEN BASIC POINTS

Mr. President, in order to answer a number of common misconceptions about the effect of wilderness designation, I want to briefly cover seven basic points about this amendment and its implications. Each of these points answers a "myth" of the kind which has been raised in earlier discussions of the question of wilderness within the Alaska lands bill:

First. The only lands affected by the amendment are federally owned lands. Under the terms of the 1964 Wilderness Act, which will govern these areas, the protective and restrictive provisions of that law cover only Federal lands. States, Native, or privately owned land within the boundaries proposed in my amendment (and there is very little such land), will not be subject to the provisions of the Wilderness Act. As section 701 of my amendment says explicitly, wilderness designation for these lands is "* * * subject to valid existing rights * * *." There is no "States rights" issue involved in this amendment, for it deals only with the designation of federally owned lands in Alaska.

Second. Designation of these wilderness areas will not interfere with any right of access to inholdings. Where there are State, Native, or private inholdings within a wilderness area, including valid mining claims or other valid occupancies, section 1108 of the committee bill provides that the owner or occupier "shall be given by the Secretary such rights as may be necessary to assure adequate access for economic and other purposes to the concerned land," and this right shall pass to their successors in interest.

Third. These wilderness areas do not "lock-up" Alaska, nor choke off visitor accessibility and use of these lands. In each case the boundaries of the wilderness area have been carefully located so as to protect the basic wilderness resource, but also, where desirable, so as to exclude lands which may be necessary for development of facilities or visitor access. Under provisions of the Wilderness Act, these areas will be accessible by airplane, which is the established pattern of access to Interior Alaska. Each of these proposed wilderness areas is referenced to a particular boundary map, these being the same maps referenced in H.R. 39, as passed by the House.

Fourth. In Alaska, there is a need for certain provisions to clarify the management of wilderness areas in relation to special Alaskan conditions. These special management provisions concern new and existing public use cabins in wilderness areas and aquaculture and fisheries research activities within wilderness areas. The Energy Committee bill provides for these special needs is a series of provisions found in title XIII of the bill, in section 1313. My amendment leaves those provisions intact, just as the committee approved them.

Fifth. An argument sometimes heard against new wilderness areas is that provisions of the Clean Air Act require so stringent an air quality regulation around wilderness areas that development in adjacent areas would be stymied. This is false. As the House Interior Committee report states:

CLEAR AIR ACT

During consideration of the bill, questions were raised about the effect of the Clean Air Act's air quality standards relating to "significant deterioration" on the development of mining operations or other developments in or near areas designated as wilderness. However, wilderness designations contained in this legislation would not preclude such development. Indeed, the areas contained in the legislation (like all newly-designated wilderness) would be classified under that Act as "Class II," which allows for considerable growth in development. Furthermore, the areas could not be changed to the more restrictive Class I designation except by the initiative of the State of Alaska.

Six. There is no issue here of excluding hunting. As my colleagues know, the 1964 Wilderness Act expressly provides that nothing in that act in any way alters the situation with hunting or management jurisdiction over fish and wildlife on lands designated as wilderness. If the land management unit is open to hunting, then the wilderness area within that land management unit is open to hunting. If the land management unit is closed, then the wilderness area within that unit is closed. Whatever decisions are made in the bill, my amendment will in no way alter these as regards hunting.

Seven. Wilderness designation does not conflict with subsistence hunting, nor with established means of access for such subsistence use. Under the provisions of section 812 of this bill, the use of snowmobiles, motorboats, and other means of surface transportation which have been traditionally employed by local residents may continue for purposes of subsistence uses of fish and wildlife, notwithstanding any other provision of law. Thus, access for subsistence users would be assured notwithstanding the wilderness classification.

A GREAT DIVERSITY OF NATURAL AREAS IS PROTECTED

Mr. President, Alaska is a vast land, and the wilderness amendment I am introducing spans the whole range of Northern ecosystems.

Northwest Alaska has huge and undisturbed natural landscapes, from the rugged peaks of the Brooks Range, to the highly unusual Kobuk Sand Dunes, to the deserted coasts of the Arctic ocean. A number of the areas in my amendment lie in this part of the State, and I would like to include for the RECORD the appropriate descriptions of these areas that were produced by the House Committees that came up with these boundaries:

Bering Land Bridge Wilderness consists of approximately seven hundred thousand acres in Imuruk Basin portion of the Bering Land Bridge National Preserve. Generally the wilderness follows the Continential Divide from the western boundary of the monument to Skeleton Butte. From Skeleton Butte the wilderness line follows a point-to-point line to Asses Ears, and then follows the drainage between Cottonwood Creek and Magnet Creek to the point it intersects the monument boundary.

The wilderness includes the geologically important features associated with the Imuruk lava flows, the botanical communities associated with Imuruk Lake, and the surrounding terrain. The wilderness ensures that a presentative sample of the tundra plant continuum from mountain to lowlands will be preserved on the Seward Peninsula.

A portion of the area is currently used for reindeer herding, which includes the use of snowmachines. It is the intent of the Committee that such uses will be allowed to continue and that subsistence uses also will be allowed to continue within the area.

The Bering Land Bridge area is rich in archeology, paleontology, and other remains of earlier times in North America. The Congress in establishing other National Park System wilderness has established a precedent for continued exploration and excavation of archeological and similar sites. It is the intent of the Committee that archeological research, including the construction of temporary shelters which serve to protect such sites, may be allowed within the wilderness.

GATES OF THE ARCTIC WILDERNESS

Gates of the Arctic Wilderness contains about eight million and fifty thousand acres in Gates of the Arctic National Park. It is the intent of the Committee that the entire park area, but not the preserve, be managed as wilderness. This is the last chance that this Nation has to protect an entire ecosystem such as the central Brooks Range as a national park wilderness, the highest form of protection available.

While the Committee recognizes that the mandate of the National Park System is to preserve habitats while also serving to provide for visitor use, it is not the intent that every park must have an identical mixture of values. There are units of the National Park System, including some of the areas located near Anchorage that will provide excellent opportunities for high quality and active visitation.

Likewise the Committee feels that the essence of the National Park System is well-represented by having a single large area, as the Gates of the Arctic, as an entire wilderness. While it is recognized that some small-scale development may be necessary such development should be provided on Native lands wtihin the boundaries in cooperation with Native Corporations. The Federal lands should be free of all developments, except for those minor facilities required for public safety and which are compatible with wilderness designation.

KOBUK VALLEY WILDERNESS

Kobuk Valley Wilderness consists of two separate units which together total about one million one hundred and forty thousand acres within Kobuk Valley National Park. Wilderness designation and national park designation are keys to the preservation of the critical habitat for the caribou which migrate through mountain passes each year and for other wildlife which depend on the natural habitat of the area. Wilderness status will insure that the subsistence lifestyle of the local individuals in this area can be maintained.

The northern wilderness unit within the park includes all lands from the edge of the foothills to the northern park boundary in the Baird Mountains. This includes the scenic bankdrop for the core of the park,

the watershed of the Salmon River, and mountain passes used by the Arctic caribou herd.

The southern wilderness unit includes essentially most of the lands south of the Kobuk River, including the Kobuk Sand Dunes. An area along the Kobuk River, which is a working river for local individuals and is where most park uses will be located, was not designated as wilderness. The Secretary, in designating landing sites for access to the wilderness is expected to take into consideration the designation of an appropriate landing site for access to the Salmon River for float trips.

NOATAK WILDERNESS

Noatak Wilderness consists of about six million and eighty thousand acres within the Noatak National Preserve. The designation of the Noatak wilderness ensures that the basic purposes for the establishment of the area will be achieved. The scientific values that make the Noatak National Preserve unique relate to its being the largest untouched Arctic watershed in North America. Thus the area serves as major contributor to the gathering of benchmark data about the natural environment of the Arctic. The Noatak Valley is crossed twice annually by the Arctic caribou herd, whose migration routes must be protected.

Included within the wilderness is the watershed of the Kelly River and all lands from that point upstream to the Gates of the Arctic National Park boundary. The watersheds of the Eli and Agashashok Rivers are also designated wilderness from their sources to where the valley opens into the Noatak flats. The lower portion of the Noatak is to be studied for wilderness.

The designation of the Noatak as a Biosphere Reserve adds to the merits of wilderness protection for the area and underlines the Committee decision that the Noatak should be closed to mineral exploration. The Committee rejected the concept of a transportation corridor through Howard Pass, because the value of inclusion of this area in wilderness far outweighs the benefits that might someday be obtained by a transportation corridor through this biologically unique valley. The Committee left out of wilderness sufficient lands for the development of a western corridor between Noatak National Preserve and Cape Krusenstern National Monument connecting the north slope with the interior of the State.

SELAWICK WILDERNESS

The proposed Selawick Wilderness is located in the eastern part of the Selawick National Wildlife Refuge and encompasses about 240,000 acres. The area lies adjacent to the sand dunes of the Kobuk Valley National Park Wilderness. All of the upper wooded plains lying adjacent to the wilderness area support fish and wildlife populations that have been virtually untouched by man and portions of the area are used by portions of the Western Arctic caribou herd during their migration. Grizzly bear, wolf, and wolverine are also present.

Because the extensive permafrost and severe climate of the area limit plant regeneration in the proposed refuge, the Committee feels that any kind of environmental disturbance will only compound problems in maintaining natural wildlife habitat and that wilderness designation for this area would be the appropriate management tool to conserve this critical habitat. Wilderness designation will also lend resource protection to the watershed values of the unit.

The Committee recognizes that part of the wilderness area is used extensively by area residents for subsistence.

In the Northeast corner of the State lies a vast wildlife region, including the rich Arctic National Wildlife Range. It is also an area of great wilderness scenery, as is highlighted in the proposed Yukon-Charlie National Preserve:

YUKON-CHARLEY RIVERS WILDERNESS

Yukon-Charley Wilderness consists of about one million and forty acres in the Yukon-Charley National Preserve. The Committee is convinced that of all the wild rivers in the State of Alaska, the Charley River is the most outstanding and the Committee designates the river and its watersheds as wilderness. Wilderness classification of this area is essential for the preservation of critical habitat for the peregrine falcon, numerous other raptors that inhibit the area, and other wildlife species depending on a natural condition for survival. Designation of the Yukon-Charley wilderness is consistent with regional planning for this portion of the State.

There are several wild river candidates in eastern interior Alaska with such streams as Birch Creek and the Forty-Mile offering opportunities for fairly high-density recreation. The designation of the Charley River as wilderness strikes a balance within the system of rivers and offers the opportunity to protect this watershed in its pristine state. It is the Charley's outstanding qualities, which rise above all other rivers, which are also the reason for its inclusion in the National Park System.

The Yukon River corridor has been excluded from wilderness. It is here that most of the visitor use of the preserve and wilderness is expected to occur. The Secretary should take into consideration the designation of a suitable landing location or locations within the Yukon-Charley for the purposes of public access to the river.

ARCTIC WILDERNESS

The Arctic Wilderness covers about 13,130,000 acres (70 percent) of the Arctic National Wildlife Refuge established in section 304(a)(3). It includes the entire existing Wildlife Range and about 4,300,000 acres of the newly added public lands. It does not include Native selected lands and certain former DEW-line stations on the coast.

The existing range was established in 1960 "For the purposes of preserving unique wildlife, wilderness and recreational values." The environmental impact statement which accompanied Secretary Morton's d-2 recommendations to the Congress in December 1973 made clear that: as required by the wilderness Act . . . the Arctic National Wildlife Range has been studied to determine its suitability for inclusion in the National Wilderness Preservation System. Findings indicated the entire wildlife range has high wilderness values, but an Act of Congress is necessary to redesignate the range as a wilderness area.

Both Secretary Andrus and President Carter recommended wilderness designation in September 1977.

The Committee concurred in the administration's recommendation. It found that such designation was the only certain way to protect the Porcupine caribou herd, which today constitutes about half of this country's remaining caribou, from the adverse effects of human activity related to oil and gas exploration and development. The Committee's findings in this respect are amplified in the discussion of the Arctic National Wildlife Refuge, supra.

While industrial development on the Arctic coastal plain can be expected to have its most pronounced environmental impact on the caribou herd, it would also adversely affect the millions of waterfowl, seabirds and shorebirds that utilize the area as a migration corridor. The coastal plain is an important nesting and molting area for waterfowl, and large flocks congregate in relatively confined areas during some critical parts of their life cycle. Contamination of the lakes which are used for nesting and feeding, or physical disturbance of the important coastal beaches, bars and spits could have a cumulative adverse effect which would inevitably lead to a progressive decline in some bird populations. This area is also the fall staging area for the internationally significant snow geese, which in some years number in the hundreds of thousands. This species is highly sensitive to human presence, noise and aircraft. Disturbance of these birds during the critical period during which they are in this region could disrupt their feeding patterns and could mean that some snow geese might not have the stamina to complete their southward migration. For such species the designation of wilderness is the soundest type of wildlife management.

The Arctic Wildlife Refuge is an arctic and subarctic wilderness of incredible beauty. The rich and varied ecosystem of 18.7 million acres is inhabited by thriving populations of plants and animals. This wilderness has come down through the ages, and it is a heritage that future generations, living in an industrial world even more complex than ours, will surely cherish.

Although the interior heartland of Alaska is dominated by Mount McKinley, the continent's highest peak, it also contains rich and productive lowland wildlife habitat. Much of this area should be protected in a wilderness condition, and my amendment does just that:

DENALI WILDERNESS

Denali Wilderness, consisting of about five million four hundred and ten thousand acres, is located in both the existing national park and additions, as well as in a portion of the new national preserve established on the north side of the park. Within the existing Denali National Park, essentially all of the park is designated wilderness, except for existing developments. Along the existing highway through the park, the wilderness boundary begins 150 feet on either side of the center line of the road and 150 feet back from the edge of all existing turn outs and parking areas. The wilderness boundary is situated 300 feet from the edge of existing visitor centers, campgrounds, and management structures along the highway. Some 210,000 acres are excluded from the wilderness surrounding the Kantishna mining area within the preserve.

An area north of the Kantishna River has been excluded from wilderness in order to allow consideration in the development plan for possible visitor facilities in the northwest portion of the park, specifically relating to Lake Chilchukabena and the Lake Minchumina area. An area of 150 feet on either side of the Stampede Trail has been left out of wilderness from the park boundary to Stampede. It is the intent of the Committee that the trail not be extended into Kantishna, and the Committee has included in wilderness the lands between Kantishna and Stampede.

On the south side of the park, the Committee has left out of wilderness lands adjoining Denali State and near Chelatna Lake. The Committee recognizes that the south side is the best location for the construction of new visitor facilities, but did restrict the size of the exclusions proposed by the Administration on the south. The area excluded from wilderness still is more than adequate to accomplish any development plans that might be contemplated.

INNOKO WILDERNESS

Innoko Wilderness contains about one million two hundred and forty thousand acres within the Innoko National Wildlife Range.

Located principally in the southern portion of the wildlife range, the wilderness preserves a core wetland and adjoining uplands with their associated high populations of wildlife. The Innoko River is the western boundary and the Iditarod River snakes a course through the middle of the wilderness.

The south central basin of the wildlife range, within the wilderness has the greatest concentration of fish and wildlife. The high wildlife densities speak of an area at or approaching its carrying capacity. Thus wilderness designation becomes an appropriate tool for maintaining the high productivity of the area. This central basin is also the primary source of subsistence resources. The area is considered by local inhabitants to be their "lifeline" since the bulk of their food supply is located in the wilderness.

Thus wilderness designation not only protects natural habitat conditions essential for continued fish and wildlife utilization, but provides the means for survival of rural residents as well. The core wetland area is an excellent representative sample of the type of Interior Alaska ecosystem not otherwise included in the National Wilderness Preservation System.

KANUTI WILDERNESS

Kanuti Wilderness consists of about three hundred thousand acres in the Kanuti National Wildlife Range.

Compared to other interior basins, wetlands in the Kanuti National Wildlife Range are more fragile, due to their more northern location. The terrain is very complex, with stunted spruce and alpine tundra uplands scattered among the wetland areas.

The most important and critical wildlife habitats, which in turn support downstream subsistence users, are found along the upper Kanuti River. The wilderness encompasses this specific area and the watersheds leading into it and is considered an appropriate management tool for protection of these resource values. Also included in the wilderness is Sithylemenkot Lake, a highly scenic lake which scientists believe was formed by the impact of a large meteor.

The great southern sweep of Alaska extends in a broad arc from the Aleutian Islands to the deep forests of Southeast. Being somewhat closer to the centers of the State's population, many of the national interest areas in this part of the State are relatively accessible. It is urgent that representative landscapes be preserved here, and I believe that my amendment strikes a good balance between wilderness and potential development:

ANIAKCHAK WILDERNESS

Aniakchak Wilderness is located within Aniakchak National Monument and consists of about two hundred and ninety thousand acres. Aniakchak Monument is established as a unit of the National Park System for its prime scientific importance, unique geological features, and wild river recreation opportunities. Low-intensity but high quality recreational opportunities do exist, primarily associated with the Caldera and the Aniakchak Wild River. This is an area that is not well suited for more intensive visitor use. Low key wilderness type recreation will continue in the area, and access to the Caldera and the river would be allowed through aircraft landings on Surprise Lake. Scientific research, which has centered upon the works of volcanism and the process of plant and animal succession, would continue in the wilderness under such regulations as the Secretary deems appropriate.

None of the Aniakchak National Preserve is being proposed for wilderness at this time. Most of the preserve is subject to the ownership of oil and gas by the Koniag Regional Corporation. It is the intent of the Committee that the preserve be studied for any potential wilderness that could be designated should at any time in the future the Koniag Corporation desire to trade or otherwise convey ownership of subsurface rights to the Federal Government.

GLACIER BAY WILDERNESS

Glacier Bay Wilderness consists of about two million eight hundred and twenty thousand acres within Glacier Bay National Park. Almost all of the park, including submerged land, will be managed as wilderness, in both the existing area and the proposed northern addition. Excluded from wilderness are those sites, existing and potential, that the park master plan has identified for development, as described in the current park plan and in the Administration's wilderness proposal for the area. The Committee adopted the established Interior Department policy concerning enclaves and included them in the wilderness.

Designation of submerged lands as wilderness will have no effect on the use of motorboats or ships on the water surface. For those areas where the water columns have been included in wilderness, the provisions of the Wilderness Act shall apply in that the Secretary may authorize the continuation of valid existing uses of the waters under such regulations as he deems appropriate.

KATMAI WILDERNESS

Katmai Wilderness consists of about three million six hundred and thirty thousand acres within Katmai National Park. The Committee included wilderness designation within both the existing area and most of the national park additions. The Committee did not make any wilderness proposal for the preserve at this time, leaving that area for future wilderness study. Within the existing national park, the wilderness is basically that as proposed by the Administration with minor changes. There was a slight expansion of the Bay of Island wilderness, due to the fragile nature of this rich biological resource. The entire Savonski River and the lower part of Lake Grosvenor were included within wilderness. The Committee recognized that the river and lake are periodically utilized by motorized boats for the administrative purposes of transporting supplies and equipment to Grosvenor Camp. The Committee considers that this is a valid and established existing use that should be continued within this wilderness.

The wilderness boundary starts 300 feet from either side of the mid-point of the highway connecting Brooks Camp and the Valley of Ten Thousand Smokes. The Committee also included Brooks Lake within the wilderness. In the reports submitted to the Committee from the Department of the Interior, it was stated that Brooks Lake was occasionally used for the landing of aircraft when wind conditions on Naknek Lake prohibit that lake's use. Brooks Lake is also used for the landings of aircraft for the purposes of access to that portion of the park and for administrative purposes. The Committee believes that all of these uses, which are limited, should be allowed within wilderness. The Secretary can and should designate the lake as a designated landing spot for the purposes of access. There are no plans for large boat use on Brooks Lake, as is possible on Naknek Lake. The Committee adopted the two wilderness exclusions that the Department of the Interior proposed along the coast, at Kukak Bay and Geographic Harbor. The exclusions had been proposed in the park master plan as possible future development sites.

Nonvianuk Lake and the lower 10 percent of Kulik Lake were left out of wilderness for the purposes of utilizing this area for new park development and visitor use areas.

KENAI FJORDS WILDERNESS

Kenai Fjords Wilderness consists of about three hundred forty thousand acres within Kenai Fjords National Park. Most of the park is designated wilderness, leaving out these key exclusions that may be involved in future visitation of the area. A portion of the icefield has not been designated as wilderness since that part of the icefield near Seward has the potential for intensive visitor use and types of facilities which could conflict with wilderness designation. Other potential visitor-use sites within the park, including a portion of the Aialik Peninsula near Three Hole Bay, Agnes Cove and Bear Cove, and at Pederson Lagoon on the Harris Peninsula are excluded. Also excluded are the lands within Resurrection River Valley where the existing road comes into the park up the base of Exist Glacier.

Wilderness designation is essential to the preservations of critical wildlife habitats. Thus, the wilderness exclusions have been drawn to protect the delicate balance between park use and habitat preservation. The result insures excellent potential for visitor use of the area with minimal adverse impacts on the local environment.

LAKE CLARK WILDERNESS

Lake Clark Wilderness consists of about two million six hundred and twenty thousand acres within Lake Clark National Park and Preserve. The wilderness includes most of the lands within the national park except for the following areas: the Chakachamna Lake Watershed, the lower end of Lower Twin Lake, most of Lake Clark, Crescent Lake, Hickerson Lake, and Native selected lands on the east side of the park. Most of the Stony River Watershed, Lachbuna Lake, Telequana Lake and Two Lakes areas within the Lake Clark Preserve are designated as wilderness.

Lake Clark has some of the best potential for recreation in the State, because of its easy access from Anchorage. The Secretary is expected to designate sufficient points within the park for the purposes of access to the wilderness, some of the lakes within the area provide ideal potential for access having minimum impact upon the environment. The designation as wilderness of the mountainous core area and some of the key lowland areas ensures that there will be a balance between higher density recreation on the fringes of the area and high quality wilderness public use in the heart of the park and preserve.

The Committee reduced some of the wilderness exclusions recommended by the Administration but left out of wilderness sufficient lands for development of recreational sites.

ALASKA MARITIME WILDERNESS, ALEUTIAN ISLANDS WILDERNESS, UNIMAK WILDERNESS AND SEMIDI WILDERNESS

These wilderness units are all administered as part of the Alaska Maritime National Wildlife Refuge and contain a total of about two million nine hundred and ten thousand acres. The wilderness units contain the highest density of wildlife per acre of any unit of the National Wildlife Refuge System in Alaska, due largely to their inaccessibility to predators and the absence of the modifying effects of man's activities. Seabirds and sea mammals are the principal wildlife species utilizing the areas.

These huge populations of wildlife require a natural wilderness condition for survival. Wilderness classification will assure that the land part of their habitat requirements is protected from pressures for development of oil facilities, transportation and similar incompatible intrusions—and that this unique aspect of Alaskan wildlife habitats will be represented in the National Wilderness Preservation System.

BECHAROF WILDERNESS

The Becharof Wilderness contains about four hundred thousand acres within the southern and eastern part of Becharof National Wildlife Range.

In order to assure the preservation of unique brown bear populations and their denning and feeding habitats, it will be necessary to keep development and disturbance

to a minimum. Much of the wildlife range is upland habitat, especially on the mountainous east side. The land area and islands on the east side of Becharof Lake and located in the wilderness, represent key, high density brown bear denning and feeding areas. Wilderness designation also protects watersheds for red salmon spawning in Becharof Lake. These indigenous salmon populations are critical to maintenance of the bear populations.

The area within the wilderness is rated among the highest quality fish and wildlife habitats on the Alaska Peninsula. Incompatible developments, which wilderness designation precludes, could have far-reaching and long-lasting effects on wildlife populations over a large area of the Peninsula.

IZEMBEK WILDERNESS

Izembek Wilderness is located within the Izembek National Wildlife Range on the extreme tip of the Alaska Peninsula, near the town of Cold Bay. A small part of the wilderness is located within an isolated peninsula of the Aleutian Islands National Wildlife Refuge.

Containing about three hundred thousand acres, the wilderness possesses outstanding scenery, some of the highest densities of unaltered age and sex ratios of brown bear, caribou, and other wilderness wildlife. Access to the world-renowned eelgrass beds of Izembek Lagoon, utilized by millions of waterfowl for migration and wintering purposes, are protected by wilderness classification.

Izembek National Wildlife Range was established in December, 1960, so it is one of the areas in Alaska to which the mandatory review requirements of the Wilderness Act applied. Public hearings were held on May 16, 1970 in Anchorage and May 19, 1970 in Cold Bay. The President transmited a favorable recommendation to the Congress on April 28, 1971.

KENAI WILDERNESS

The proposed Kenai Wilderness is located within the Kenai National Wildlife Range and consists of about 1.413 million acres in four distinct units—Canoe Lakes, Indian Creek, Andy Simons, and Mystery Creek.

The wilderness is a diverse area of scenic mountains, glaciers, lowlands lakes, forests, muskegs, and rivers that supports thousands of big game animals, numerous smaller mammals, a wide variety of birds and an abundance of fish. It was this multitude of scenery and wildlife that caused George Shiras III to write of his 1911 travels—

Were all of Alaska erased from the map except Kenai Peninsula and its immediate adjacent waters, there would yet remain in duplicate that which constitutes the more unique and that which typifies the whole of this wonderful country.

Designation of the region as wilderness will provide added protection to the watershed values of these areas.

Once entirely wilderness, the range is now bisected by the Sterling Highway and other transportation routes which provide access to recreation facilities and commercial developments.

Much of the wildlife range remains as pristine wilderness, however, and the wilderness units have been carefully drawn to preserve significant portions of the area for wildlife and public benefit. The wildlife range with its diversity of scenery, wildlife, fishery and water resources offers unusual opportunities for high-quality recreation which the wilderness is designed to perpetuate.

The region is one of the most important outdoor recreational areas in Alaska for fishing, hunting, camping, scenic driving, wildlife observation, photography, berry picking, hiking, canoeing, boating and cross-country skiing activities. The proposed wilderness area contains what is probably the best canoe trail system in the State, if not the country.

WRANGELL-ST. ELIAS WILDERNESS

Wrangell-St. Elias Wilderness consists of approximately nine million five hundred and seventy thousand acres within Wrangell-St. Elias National Park and Preserve. Most of the national park has been designated wilderness by the Committee with the following exceptions: the Copper and Tenada Lakes area on the north side of the areas has been excluded from wilderness for potential visitor development sites; the Kuskulana drainage into the Chitina Valley has been excluded for similar reasons, as has the Nikoli Pass-Sourdough Hill area in the Chitina Valley.

Substantial acreage has been designated as wilderness within the Wrangell-St. Elias National Preserve. These areas were considered by the Committee for National Park status. The Committee adopted the preserve designation for these lands in order to allow for the continuation of Dall sheep hunting (65% of the sheep in the Wrangells). The Committee strongly felt that the lands in question should not be open to the mineral process or mineral development. As wilderness, hunting can continue, but mining, except for valid existing rights, would not take place.

The Committee reduced or eliminated a few exclusions which the Administration recommended as enclaves in the wilderness but which the Committee included in the wilderness. In so doing, the Committee believed that there are nonetheless sufficient opportunities for intensive developments within the Chitina Valley, and in the wilderness exclusion lands to the north. In a consistent approach to recent National Park development concepts, the Committee believes that the Wrangells are a classic example of where developments can effectively occur on the fringes of the area on adjacent Native lands in cooperation with Native corporations, and in the Chitina Valley. In order to reserve some of the lowland habitats in their natural state, the Committee included the Tebay Lakes and the White River region in wilderness.

WILDERNESS: TO PROTECT LAND AND WILDLIFE

Let me emphasize an important point about this amendment. I share the widespread disappointment in the Senate over many elements of the committee's version of the Alaska lands bill. It is unfortunate that the committee saw fit to downgrade national park units and national wildlife refuge units into smaller, fragmented subunits, with split jurisdiction, under less protective provisions. I will be supporting efforts to correct that situation, so that the Senate may produce a bill with full-status national parks and national monuments, and full-status National Wildlife Refugees.

However, this wilderness amendment is not affected by nor does it affect those overall land classification decisions. Whatever the overlying Federal land management classification may be—park, monument, preserve, conservation area, recreation area, forest, or whatever (or even no special classification at all)—my amendment simply assures that the land itself, and its wildlife, are protected by designation as wilderness under the 1964 Wilderness Act.

Let me point out that this is precisely the approach contemplated in the 1964 Wilderness Act itself. That act established our National Wilderness Preservation System as a multijurisdictional system. Designation as wilderness occurs within a whole variety of Federal land units, under a number of different management jurisdictions. Designation as wilderness does not alter the classification or jurisdiction, it simply adds a special management mandate to assure the wilderness character of the land itself is preserved.

Section 2(b) of the Wilderness Act states this policy clearly:

The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress.

My amendment does not alter any classification or jurisdiction for the affected land. Whatever classification the bill ultimately gives these units will stand, but the land itself will be assured statutory protection under the terms of the Wilderness Act. My concern here is not the niceties of differentiation between various Federal land classifications, nor the petty squabbles between management agencies over jurisdiction and "turf." My concern is the land: To see that these vast expanses of wild, undeveloped, natural landscape in Alaska, with their wildlife roaming free, are preserved by the highest form of protection this Congress can provide, which is designation of the land itself as wilderness.

This, after all, is the whole point of having the Wilderness Act, and it is certainly a major part of the point of having an Alaskan National Interest Lands Conservation Act. In Alaska we have our finest, wildest, greatest, most expansive wilderness. It would be tragic if we failed to use the best and strongest tools at our command to preserve this "best of the best" of our original, untrammeled American land.

It will be helpful to my colleagues in considering this amendment to review the management directives of the Wilderness Act, so that the purpose of this wilderness designation is made clear.

The objective of wilderness preservation is set forth in section 2(a) of the Wilderness Act:

In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness . . . .

Section 4(b) of the Wilderness Act implements this congressional policy by

mandating preservation of the wilderness character of the land, regardless of the land classification or management jurisdiction involved:

Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

The problem with the Energy Committee's Alaska land bill, as I see it, is that it simply does not go far enough in extending this highest form of statutory protection to the great and unsurpassed wilderness values of our Federal lands in Alaska. The committee bill does not designate as much land for full wilderness protection as was recommended by the administration. It proposes only about half as much wilderness acreage as was approved so overwhelmingly by the House of Representatives. Indeed, an effort on the House floor to cut back the acreage of wilderness in the House bill to about the same level as proposed in the Senate Committee bill was rejected by the House in a 2-to-1 vote, 240 to 119, on May 18.

Wilderness is what so much of the parkland and wildlife habitat of Alaska is all about. We cannot improve upon this wilderness and its natural wildlife community. It is the very finest, wildest we have. All we can do is choose to preserve it, bringing into play the strongest tools at our command. The Wilderness Act provides the tools, but the committee bill falls far short of the level of application I believe is needed. The American people want their wilderness heritage on their own lands in Alaska preserved, and my amendment is intended to fulfill their dream.

Let me give an example of the improved protection which occurs through wilderness designation. Of course, the areas so designated receive the general protections provided for by the Wilderness Act. However, many provisions of the committee Alaska bill also affect these lands, and areas with wilderness designation receive a higher standard of protection under those provisions than nonwilderness lands. A good example of this is the so-called "Transportation Process" in title XI of the bill. This provides an expedited procedure for approving transportation corridors. Under section 1103(g), transportation corridors may be approved across various Federal land classifications in Alaska by a simple decision of the Secretaries of the Interior and Transportation, but portions of those areas which are designated as wilderness are expressly removed from this authorization. These wilderness areas (along with most units of the National Park System) are subject instead to section 1103(h), which requires a Presidential decision on transportation corridor applications, and ultimate approval by a joint resolution of the Congress under an expedited procedure. This is a significantly higher grade of protection, for it elevates the decision to Congress. It is desirable to extend that greater level of protection to the additional lands which my amendment designates as wilderness.

My amendment does not "lock-up" all of Alaska, nor even all of the "national interest lands" which are being established in this legislation. It is selective, extending full wilderness protection to those portions of our Federal lands in Alaska which merit and need full preservation, now. These 62 million acres of wilderness will draw a firm line on development, for this portion of the land. Future decisions can be made about possible wilderness protection for additional lands. Similarly, future decisions can be made about possible development within these 62 million acres. The whole point is that we will have set a baseline, and written in strong protection for this portion of the land, so that future decisions will not be made piecemeal, but with full deliberation and full congressional review.

Mr. President, it must be emphasized that these wilderness boundaries I propose in this amendment have been very carefully refined. They represent a very great compromise. That compromise resulted from the sequence of thorough reviews which the House made in reaching its decision on wilderness in the Alaska bill. First, let me quote the chairman of the House Committee on Interior and Insular Affairs, Representative MORRIS K. UDALL, who described the work of the Alaska Subcommittee, chaired by Representative JOHN SEIBERLING:

What ensued has been the most complete, most thorough review any conservation bill has ever received. Commensurate with the scale and reach of the Alaskan lands issue, the Seiberling subcommittee set out to build a record in depth, not only on the details of each proposal and of the many special administrative questions involved, but also on the views of the people of Alaska and the American people who, in common, are the owners and trustees of these Federal lands in Alaska.

In all, the Seiberling subcommittee spent 25 days in Alaska, and individual members made additional trips as well. Day-long public hearings were held in five regional centers across the "lower 48 States," in Washington, D.C., in Chicago, in Atlanta, in Denver, and in Seattle. About 1,000 witnesses were heard. Every shade of opinion was expressed, but the overwhelming weight of opinion (4 to 1) favored our original bill, H.R. 39.

On the basis of this unprecedented effort at broad public participation and on-the-ground review by the subcommittee members themselves, the House Interior and Insular Affairs Committee produced a series of refinements and compromises. In particular, they cut the acreage of wilderness designation in half, from 146 million acres of wilderness in H.R. 39 as introduced (and supported 4 to 1 by witnesses at the hearings) to 74 million acres.

Again, let me quote Chairman UDALL'S recital of the history of the bill in the House:

I introduced this bill at the beginning of this Congress, and we had 146 million acres of instant wilderness included.

When we got through in the Committee on Interior and Insular Affairs, we did not have 146 million acres; we had 74 million acres. We had cut the wilderness in half. The request for total wilderness was cut in half.

When the Committee on Merchant Marine and Fisheries got through with this bill, we were not at 146 million acres, we were not at 74 million acres, but we were down to 65.5 million acres.

The point, Mr. President, is that the wilderness boundaries so thoroughly refined in this long and careful review of H.R. 39 by two committees of the House of Representatives are very much compromise boundaries. It is those boundaries which I propose in this amendment. Let me just re-emphasize again that the House itself agreed that the cutting down of wilderness in this bill had gone far enough, for it rejected a further cut by the very strong vote of 119 to 240, a 2-to-1 margin.

Now, we should not get so lost in these acreage figures that we fail to bear in mind the purpose of this whole legislation. Let me quote the House Alaska Subcommittee chairman, JOHN SEIBERLING:

The most important and unique feature about Alaska is its wilderness character. It has wilderness on a scale that we do not find anywhere else in this country, and it is an experience that is so amazing and unique that those Members who have not had it do not know what they are missing. But it is the kind of experience that the pioneers and the discoverers of America must have had when they came upon this vast, unspoiled, pristine land, teeming with magnificent wildlife.

During the House floor debate, Chairman SEIBERLING quoted another House Member, Representative WILLIAM WHITEHURST, who had spoken eloquently of the importance of wilderness in this legislation:

Wilderness is not only the magnificent wildlife and scenery, of course, but also the many unique forms and special quality of the Alaskan landscape that grip the minds of all who visit there. Robert Marshall, writing about his explorations in the Alaskan wilds, said: "No comfort, no security, no invention, no brilliant thought which the modern world had to offer could provide half the elation of the days spent in the little-explored, uninhabited world of the arctic wilderness.

That is what is at stake in the amendment I will offer. The House faced the test of whether to cut the wilderness in this bill from 65 million acres, in half to 33 million acres—and they decided overwhelmingly against doing that. Now, the Energy Committee recommends that the Senate limit the acreage of wilderness in this bill to the figure the House would have ended up with had they passed that amendment. The House met its test by refusing to cut wilderness. Our test, unfortunately, is the other way around: We must decide to increase the wilderness to the House level, and that is what my amendment proposes to do.

GENERAL WILDERNESS REVIEW

The new section 702 which is proposed in my amendment provides for "wilderness review" of the balance of the lands involved in this bill. This is the standard wilderness study mechanism which we have routinely applied to other new national park and refuge lands over the past 14 years. The procedures to be followed will be the standard procedures of

the Wilderness Act, with full public notice and public hearings, and with careful consultation with the State of Alaska. No final decisions would be made in these reviews; the information gathered and the views of the public and the State would be reported to the Congress for any future decision to designate additional lands as wilderness. This is all routine and standard practice.

The difference between my amendment and the committee bill on this score is that the committee bill limits the application of the wilderness study provision to only national parks, national monuments, and national wildlife refuges. Since the committee bill designates so much of the "national interest land" in Alaska under other, less protective classifications, much of the land is excluded from the wilderness review requirement.

Why should we not have the benefit of a full and standard wilderness review for national preserve lands? We have required such reviews for the national preserves we have already established in the "lower 48" States, such as the Big Cypress National Preserve in Florida. So why this special exception for Alaska? There is no good rationale.

Why should we not have the benefit of a full and standard wilderness review for national recreation areas? We have required such reviews as a matter of routine in national recreation areas we have established in the "lower 48" States (such as the Hells Canyon National Recreation Area in Oregon and Idaho, and the Ross Lake and Lake Chelan National Recreation Areas in Washington State) so why this special exception for Alaska? There is no good rationale.

Why should we not have the benefit of a full and standard wilderness review for the new "Porcupine National Forest" which the committee bill proposes? We have wilderness reviews for all undeveloped areas in our other national forests, as a matter of routine. So why this special exception for Alaska? Again, there is no good rationale. Indeed, under the House bill the area of this proposed new national forest would be, instead, a part of a unified national wildlife refuge complex, and as such it would be fully subject to the wilderness review procedure. But by the device of changing its classification and then applying the limited wilderness review requirement in section 1314, the committee removes these millions of acres of fragile, wild land from any wilderness study at all.

Let me make it clear, Mr. President, that I oppose most of these downgraded classifications which the committee has included in place of full national park and national wildlife refuge units in Alaska. I intend to support amendments to correct those classifications on the Senate floor. But whatever the result of that, we should not allow important potential wilderness areas to slip out from under the routine and standard wilderness review requirement through the simple device of a downgraded classification. Indeed, as Secretary of the Interior Andrus has pointed out, to the degree the land classifications are downgraded and less protective, the importance of wilderness consideration is increased if the land is to be adequately protected.

My amendment also requires that the Secretary of Agriculture conduct a standard wilderness review of the "special management areas" on the Tongass National Forest which are established under section 705 of the committee bill. These areas are specifically set up as "no cut" areas, which will be reserved from possible timber harvest for a minimum of 10 years and then would be opened to logging only upon a special request by the Secretary, followed by approval through a concurrent resolution of the Congress. At the time that any such request to open such an area were to be sent to Congress it only makes sense to also assure that we have the information from a routine wilderness study in order that we in the Congress can weigh and reach a well-informed and balanced decision. This study requirement does not prejudge the issue of cutting or not cutting in these areas. That decision, under the terms of the committee bill, will only be made after 10 years and only then upon specific approval of the Congress. The sole effect of my amendment is to utilize the 10-year "no cut" period to also conduct a full, routine wilderness study so that when and if we face such a decision, we have all the facts before us in a balanced way.

EASTERN WEST CICHAGO-YAKOBI

Mr. President, my amendment does add one additional "special management area" in the Tongass National Forest in southeast Alaska. This is the 155,000-acre Eastern West Chichagof-Yakobi area, which is contiguous to the West Chichagof-Yakobi Wilderness which is designated by section 703 of the committee bill. This area is a part of the larger total wilderness area designated by the House-passed bill. In order to assure that this area is given further, more detailed consideration by the Congress, I believe we should at least add it to the "no cut" zones for the 10-year period provided in the committee bill. In this way, we shall have time to further evaluate the area and, under my amendment, it will receive wilderness review equally along with consideration for future timber harvest.

I want to stress that including this area in the "special management" category does not prejudge the question of timber harvest. The timber in this area will continue to be accounted for in the calculation of timber harvest levels in southeast Alaska during the study period. This area is within an overall area subject to long-term timber harvest commitments, but the bill approved by the committee, and the House-passed bill, both provide explicitly for substitution of timber should such an area be designated as wilderness. That is not a decision I propose to make now, in this amendment. The timber sale commitment can be met through use of other timber lands within the much larger contract area, for there is only a comparatively minor volume of timber in the area I propose in this amendment.

The purpose of the amendment is more limited: It simply places this area over which there is substantial public concern and interest in the "no cut" special management category the committee has devised. This will assure that it will receive greater consideration during the 10-year no-cut period, and that the ultimate fate of this area will be determined, after that study period, by a later specific decision of the Congress under procedures laid out in the committee bill. I include in the RECORD at this point, an excerpt from the report of the House Committee on Interior and Insular Affairs, describing the values of the overall West Chicagof-Yakobi Island area:

West Chichagof-Yakobi Islands are within the Alexander Archipelago, a long string of islands extending from Dixon Entrance to the Canadian border north of Lynn Canal. The West Chichagof-Yakobi Island wilderness occupies the extreme northwest portion of the Alexander Archipelago of southeastern Alaska The West Chicagof portion comprises the western third of the Chicagof Island, and fronts on the broad and oftentimes turbulent North Pacific. On the leeward side of 3,000-foot peaks, the large, protected waters of Lisianski Inlet and Hoonah Sound lie in peaceful contrast to the outer coast. Slopes of the eastern exposure are typical of a larger part of the southeastern Alaska landscape: a dark green rainforest, interspersed with muskeg areas, blankets these mountains from sea level to approximately 2,400 feet. On Yakobi Island, a gradual sloping plain rises southeastward to 2,500-foot peaks near-Lisianski Inlet. Somewhat in contrast, high peaks on West Chichagof rise abruptly from the seashore and slope to the east. The wilderness encompasses a total of about 420,000 acres.

The West Chichagof-Yakobi wilderness includes, in relative abundance, nearly all major land types and associated ecosystems characteristic of southeast Alaska and some which are uncommon to the region as a whole.

Most dramatic is the 65-mile-long stretch of rugged Pacific coastline extending from Salisbury Sound to Cape Bingham and characterized by exposed offshore islands and rugged, blocky highlands. Behind the stout headlands, barrier islands, rocks, and reefs of the outer coast lie the quiet waters of the inside passage, honeycombed with bays, inlets and lagoons. Rising abruptly from the ocean is the mountainous backbone of the area, a satellite of the great coast range batholith. Peaks rise to 3,600 feet, often from water's edge. The eastern slope of the unit, particularly the Hoonah Sound area, is typical of the landscape that dominates the extreme inner core of the Alexander Archipelago.

Fish are among the most important wildlife resources of the area. Four species of salmon are found in the lakes and streams and a total of 144 streams are viewed as potential fish producers. Nineteen of the 98 known producers are considered excellent. While most streams are short and originate in relatively small watersheds, the larger systems include Black River, Surge Lake, Lisiansik River, Patterson River, Ushk and Deep Bays and Fick Cove.

Other important wildlife species include Sitka deer and brown bear. Furbearers are abundant. The area is remarkable for its large numbers of migrating waterfowl and large populations of sea mammals including sea otter, sea lions, and seals.

CONCLUSION

Mr. President, this is an important amendment. I believe it will be one of the key votes on this legislation, for the question of wilderness is of fundamental importance, and more so in Alaska land

decisions than elsewhere. I am pleased to say that my amendment has very strong public support. In the first place, it incorporates provisions which were supported on the floor of the House last May, 240–119. Moreover, the many conservation, environmental, civic, and labor groups which are supporting a strong Alaska lands bill have expressed to me their very strong and high priority support for the amendment I am introducing today.

Perhaps Secretary Andrus has best captured the importance of this decision. As we choose between the limited wilderness proposals and review requirements of the committee bill and my amendment, I hope Senators will reflect on these words of Secretary Andrus:

This legislation is a test of our maturity as a civilization. Have we learned anything from the mistakes of the past? Will we continue to squander our resources and then bemoan our losses when it is too late to recoup them? Are we willing to let our desire for economic gain deprive our descendants of the opportunity to make some of the decisions? Does this generation think we are so smart that we can make all the irrevocable decisions? I would hope not, and I think the American people have already made clear that they have learned from the past and chosen to leave a significant natural heritage in Alaska for future generations.

Mr. President, I ask unanimous consent that the text of the amendment be printed in the RECORD at this point.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 4523

On page , line , insert the following: Resources,

In Title I, section 101,—"Purposes"—insert a new subsection 101(d), as follows:

"(d) WILDERNESS PRESERVATION FOR CERTAIN PUBLIC LANDS IN ALASKA. Wilderness is a principal distinguishing characteristic and value of federal lands in Alaska, affording an unrivaled opportunity for experiencing vast areas of land essentially unaltered by man's activities. Specific areas of public land in Alaska merit and need full statutory protection as wilderness. Under the policy established in Section 2(b) of the Wilderness Act (78 Stat. 890), public lands may be designated as wilderness by the Congress regardless of the land classification or particular federal land management jurisdiction over those lands, thereby avoiding disruption of existing classification patterns or jurisdictions, while providing a Congressional mandate that management of the lands shall be consistent with the preservation of the wilderness character of the lands. It is the purpose of this Act, and particularly of Title VII hereof, to assure wilderness preservation of critical public lands in Alaska, regardless of the land classification of federal management jurisdiction determined for those lands."

TITLE VII

In Title VII, strike sections 701 and 702 and insert in lieu thereof the following:

"DESIGNATION OF WILDERNESS AREAS WITHIN FEDERAL LAND UNITS IN ALASKA

SEC. 701. In furtherance of the purposes of the Wilderness Act and subject to valid existing rights, the following lands are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System, with nomenclature as indicated:

(1) ANIAKCHAK WILDERNESS. Certain lands which comprise approximately two hundred and ninety thousand acres, as generally depicted on a map entitled "Aniakchak National Monument and Preserve", dated March 1978.

(2) BERING LAND BRIDGE WILDERNESS. Certain lands which comprise approximately seven hundred thousand acres, as generally depicted on a map entitled "Bering Land Bridge National Preserve," dated March 1978.

(3) DENALI WILDERNESS. Certain lands which comprise approximately five million four hundred and ten thousand acres, as generally depicted on a map entitled "Denali National Park and Preserve", dated March 1978.

(4) GATES OF THE ARCTIC WILDERNESS. Certain lands which comprise approximately eight million fifty thousand acres, as generally depicted on a map entitled "Gates of the Arctic National Park", dated March 1978.

(5) GLACIER BAY WILDERNESS. Certain lands which comprise approximately two million eight hundred and twenty thousand acres, as generally depicted on a map entitled "Glacier Bay National Park", dated March 1978.

(6) KATMAI WILDERNESS. Certain lands which comprise approximately three million six hundred and thirty thousand acres, as generally depicted on a map entitled "Katmai National Park and Preserve", dated March 1978.

(7) KENAI FJORDS WILDERNESS. Certain lands which comprise approximately three hundred and forty thousand acres, as generally depicted on a map entitled "Kenai Fjords National Park", dated March 1978.

(8) KOBUK VALLEY WILDERNESS. Certain lands which comprise approximately one million one hundred and forty thousand acres, as generally depicted on a map entitled "Kobuk Valley National Park", dated March 1978.

(9) LAKE CLARK WILDERNESS. Certain lands which comprise approximately two million six hundred and twenty thousand acres, as generally depicted on a map entitled "Lake Clark National Park and Preserve", dated March 1978.

(10) NOATAK WILDERNESS. Certain lands which comprise approximately six million eighty thousand acres, as generally depicted on a map entitled "Noatak National Preserve", dated March 1978.

(11) WRANGELL-ST. ELIAS WILDERNESS. Certain lands which comprise approximately nine million five hundred and seventy thousand acres as generally depicted on a map entitled "Wrangell-Saint Elias National Park and Preserve", dated March 1978. Use of previously existing primitive fish camp sites and use of motorized vehicles in furtherance of local commercial fishing operations shall be permitted to continue subject to such reasonable regulations as the Secretary deems desirable to maintain the wilderness character, water quality, and fish and wildlife values of the area.

(12) YUKON-CHARLEY WILDERNESS. Certain lands which comprise approximately one million and forty thousand acres, as generally depicted on a map entitled "Yukon-Charley National Preserve", dated March 1978.

(13) ALASKA MARITIME WILDERNESS, ALEUTIAN ISLANDS WILDERNESS, UNIMAK WILDERNESS, AND SEMIDI WILDERNESS. Certain lands which comprise, in total, approximately two million nine hundred and ten thousand acres, as generally depicted on a map entitled "Alaska Maritime National Wildlife Refuge", dated April 1978, with names as depicted on said map.

(14) ARCTIC WILDERNESS. Certain lands which comprise approximately thirteen million one hundred and thirty thousand acres, as generally depicted on a map entitled "Arctic National Wildlife Refuge", dated April 1978. In all federal maps, documents, and publications pertaining to this area, it shall be prominently stated that the Arctic Wilderness has been designated by the Congress of the United States to honor the accomplishments in wildlife research and wilderness preservation of Dr. Olaus J. Murie.

(15) BECHAROF WILDERNESS. Certain lands which comprise approximately four hundred thousand acres, as generally depicted on a map entitled "Becharof National Wildlife Refuge", dated April 1978.

(16) INNOKO WILDERNESS. Certain lands which comprise approximately one million two hundred and forty thousand acres, as generally depicted on a map entitled "Innoko National Wildlife Refuge", dated March 1978.

(17) IZEMBEK WILDERNESS. Certain lands which comprise approximately three hundred thousand acres, as generally depicted on a map entitled "Izembek National Wildlife Refuge", dated April 1978.

(18) KANUTI WILDERNESS. Certain lands which comprise approximately three hundred thousand acres, as generally depicted on a map entitled "Kanuti National Wildlife Refuge", dated April 1978.

(19) KENAI WILDERNESS. Certain lands which comprise approximately one million four hundred and thirteen thousand acres, as generally depicted on a map entitled "Kenai National Wildlife Refuge", dated April 1978. Those fish incubator sites identified on the map of Kenai Wilderness as "Potential Wilderness Areas" are designated as wilderness effective ten years after the date of enactment of this Act, unless during the ten-year period the Secretary authorizes development of a fish incubator in any such potential wilderness area. The Secretary shall manage each such area pursuant to the Wilderness Act until he authorizes such development or until the end of the ten-year period specified in the preceding sentence. Any fish incubator authorized for any such area shall be constructed, managed, and operated in a manner that minimizes any adverse impacts on the wilderness character of the adjacent wilderness.

(20) SELAWIK WILDERNESS. Certain lands which comprise approximately two hundred and forty thousand acres, as generally depicted on a map entitled "Selawik National Wildlife Refuge", dated April 1978.

GENERAL WILDERNESS REVIEW PROVISION

SEC. 702. (a) In furtherance of the purposes of the Wilderness Act and in accordance with the provisions of section 3(d) of that Act relating to public notice, public hearings, and review by State and other agencies, the Secretary shall review, as to suitability or nonsuitability for preservation as wilderness, all lands within the federal land units established or expanded by this Act, other than those areas designated as wilderness by this Act and except lands within the Chugach and Tongass National Forests as modified by this Act. With respect to those areas identified in section 705 of this Act, the Secretary of Agriculture shall conduct such reviews in accordance with the provisions of this section.

(b) The Secretary and the Secretary of Agriculture shall conduct their reviews, and the President shall advise the United States Senate and House of Representatives of his recommendations, in accordance with the provisions of sections 3(c) and (d) of the Wilderness Act. The Secretary of the Interior shall complete his reviews and the President shall advise the Congress of his recommendations with respect to no less than approximately one-half of the total acreage required to be reviewed by the Secretary of the Interior within five years after the date of enactment of this Act and with respect to the other one-half within seven years after such date of enactment. The Secretary of Agriculture shall complete his reviews and the President shall advise the Congress of his recommendations with respect to those areas no later than fifteen years after the date of enactment of this Act or, for any individual area, at the time of any transmittal by the Secretary of Agriculture for such area or portion thereof in ac-

cordance with section 706(d) of this Act. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the addition as wilderness of any contiguous area of federal land predominantly of wilderness value. The appropriate Secretary shall give at least ninety days advance public notice of any hearing or other public meeting concerning such areas. Any recommendation of the President to the effect that such area or a portion thereof should be designated as wilderness shall become effective only if so provided by an Act of Congress."

In Title VII, section 708, strike out the words "and 702".

In Title XIII, strike out the caption "General Wilderness Review Provision" and all of section 1314, and renumber the subsequent sections accordingly.

CONSTITUTIONAL RIGHTS OF INSTITUTIONALIZED PERSONS—H.R. 9400

AMENDMENTS NOS. 4524 AND 4525

(Ordered to be printed and to lie on the table.)

Mr. DANFORTH submitted two amendments intended to be proposed by him to H.R. 9400, an act to authorize actions for redress in cases involving deprivations of rights of institutionalized persons secured or protected by the Constitution or laws of the United States.

MEDICAID PROGRAMS OF PUERTO RICO, THE VIRGIN ISLANDS, AND GUAM—H.R. 9434

AMENDMENT NO. 4526

(Ordered to be printed and to lie on the table.)

Mr. HANSEN submitted an amendment intended to be proposed by him to H.R. 9434, an Act to amend the Social Security Act to increase the dollar limitation and Federal medical assistance percentages applicable to the medicaid programs of Puerto Rico, the Virgin Islands, and Guam.

● Mr. HANSEN. Mr. President, it has now been over 5 years since Congress enacted title XI of the Social Security Act, the Professional Standards Review Organization (PSRO) program.

This program, which was originally authorized under Public Law 92–603, was established to assure, through the utilization of peer review procedures that health care services for which payment is made under medicare, medicaid, and maternal and child programs, would conform to the appropriate professional standards of quality and necessity.

Although the original congressional mandate of the PSRO statute included a strong reliance on the concept of peer review—that is, health care practitioners responsible for reviewing services rendered by their own professional colleagues, the PSRO program in its development and implementation has limited participation and membership solely to licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery, even though the services of other health professionals, such as dentists, have been subject to the PSRO review process.

Over the past few years I have recognized this basic inconsistency between the concept of peer review and the exclusion of practitioners who perform services that are reviewable under the PSRO program. In fact, in the 94th Congress, I introduced a legislative proposal, S. 153, which was designed to expand the essential role of dentists in the PSRO program.

Today I am offering another amendment which does not provide for the full participation that will be necessary if the program is eventually expanded to include all ambulatory health services covered under medicare and medicaid programs, but does provide for some representation in an advisory capacity for dentists and nurses who currently are significantly involved in providing covered health services in hospitals and other institutional settings. Thus, the amendment is not open to the argument that it would in any way distort or interfere with the ongoing program.

First, my proposal would amend the present PSRO membership requirements to allow local PSROs to invite as members other health care practitioners who hold independent hospital admitting privileges. Such an amendment would allow such health professionals, such as dentists, to review health care services already being provided under medicare, medicaid, and maternal and child health at the local level in institutional settings.

Second, this amendment would require expanded participation of other health care practitioners in the policy making bodies of the PSRO program at the State and National levels. Specifically, my amendment would mandate the inclusion of one dentist and one registered nurse to the advisory groups to statewide PSRO Councils. In addition, under my proposal, the National Professional Standards Review Council would be expanded to include a dentist, a registered nurse, and one other health care practitioner. With the inclusion of these representatives on the advisory groups and the National Council, these health care practitioners will at least have a voice in the peer review process.

Finally my bill would establish an advisory committee to the National Professional Standards Review Council composed of nonphysician health professionals who are not represented on the National Council. This advisory committee, which has already been successfully implemented on a temporary basis by the Department of Health, Education, and Welfare, would, like the addition to dentists and nurses to the National Council, provide for greater participation of other health care practitioners in the PSRO program.

Mr. President, I would submit today that the present PSRO law with its current exclusion of nonphysician health care professionals is clearly discriminatory and wholly contrary to any rational understanding of the prime objective of the PSRO program—namely, peer review of health care services. I believe that my proposed amendment will not disrupt or distort the ongoing implementation of the PSRO program; in fact, if adopted, it would improve the ability of the peer review system to assure quality and cost-effective health care. It has the support of the Department of Health, Education, and Welfare, which has been administering, through the Health Standards and Quality Bureau, the PSRO program. It has the support of every health care professional association connected with its development. It will not appreciably add to the costs of the PSRO program. A companion bill, H.R. 13817, has been recently passed by the House of Representatives by a vote of 359–40.

The PSRO program is of major significance to the success of the Social Security Act health programs. It cannot work without the respect and cooperation of those health care professionals whose services are being subjected to its peer review process. I respectfully ask you for your support for my amendment which would allow these health care professionals to have a better stake in the success of this program.

Mr. President, I ask unanimous consent that the text of my amendment to H.R. 9434 be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 4526

At the end of the bill, add the following new section:

AMENDMENTS RELATED TO PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 3. (a) Section 1152 (b)(1)(A) of the Social Security Act is amended—

(1) by inserting "and of other health care practitioners engaged in the practice of their professions in such area who hold independent hospital admitting privileges and who are invited to become members by the organization," after the comma in clause (ii); and

(2) by inserting "(except as otherwise provided under section 1155 (c))" after "does not" in clause (vi).

(b) Section 1162 (e)(1) of the Social Security Act is amended by inserting "(including at least one registered professional nurse and at least one doctor of dental surgery)" after "representatives".

(c)(1) Section 1163(a)(1) of the Social Security Act is amended by inserting "one doctor of dental surgery, one registered professional nurse, and one other health practitioner (other than a physician as defined in **section 1861 (r)(1))" after "physicians,".**

(2) Section 1163(a)(2) of such Act is amended by striking out "four members" and inserting "five members" in lieu thereof.

(3) Section 1163(a)(3) of such Act is amended by inserting "physician" after "the".

(4) Section 1163(b) of such Act is amended by striking out "Members" and inserting in lieu thereof "Physician members".

(5) Section 1173 of such Act is amended by striking out "(except sections 1155(c) and 1163)" and inserting in lieu thereof "(except section 1155(c))".

(d) Section 1163 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f)(1) The Council shall be advised and assisted in carrying out its functions by an advisory committee (of not less than seven nor more than fifteen members) which shall be made up of representatives of health care practitioners (other than physicians) for whose services payment may be made (in whole or in part) under any program established by or pursuant to this Act.

"(2) The Secretary shall by regulations provide the manner in which members of such advisory committee shall be selected and the terms of service.

"(3) The expenses reasonably and neces-

sarily incurred, as determined by the Secretary, by such committee in carrying out its functions shall be considered to be expenses necessarily incurred by the National Professional Standards Review Council.".●

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978—H.R. 50 AND S. 50

AMENDMENT NO. 4527

(Ordered to be printed and to lie on the table.)

Mr. HARRY F. BYRD, JR., submitted an amendment intended to be proposed by him to S. 50, the Full Employment and Balanced Growth Act of 1978.

AMENDMENT NO. 4528

(Ordered to be printed and to lie on the table.)

Mr. HARRY F. BYRD, JR., submitted an amendment intended to be proposed by him to H.R. 50, the Full Employment and Balanced Growth Act of 1978.

● Mr. HARRY F. BYRD, JR. Mr. President, I am today submitting an amendment to S. 50 and H.R. 50, the Full Employment and Balanced Growth Act of 1978.

The purpose of the amendment is to provide a more realistic basis for the computation of the unemployment rate, as it is used in this legislation, by disregarding short-term fluctuations.

Mr. President, I ask unanimous consent that the amendments be printed in the RECORD.

There being no objection, the amendments were ordered to be printed in the RECORD, as follows:

AMENDMENT No. 4527

On page 66, line 8, after "Labor" strike the punctuation, replace it with a comma and insert "reduced by not counting as unemployed those unemployed less than five weeks.".

AMENDMENT No. 4528

On page 65, line 8, after "Labor" strike the punctuation, replace it with a comma and insert "reduced by not counting as unemployed those unemployed less than five weeks.".●

AMENDMENTS NOS. 4529 AND 4530

(Ordered to be printed and to lie on the table.)

Mr. PROXMIRE submitted two amendments intended to be proposed by him to amendment No. 2048 intended to be proposed to H.R. 50, supra.

CONVEYANCE OF CERTAIN LAND—H.R. 7971

AMENDMENT NO. 4531

(Ordered to be printed and to lie on the table.)

Mr. CRANSTON submitted an amendment intended to be proposed by him to H.R. 7971, an act to validate the conveyance of certain land in the State of California by the Southern Pacific Transportation Co.

ADDITIONAL STATEMENTS

THE BACKFIRE BOMBER IN THE SALT II DELIBERATIONS

● Mr. CURTIS. Mr. President, recent reports of the SALT II negotiations have aroused increased interest in the provisions of the emerging treaties. Now that most of the substantive issues have already been agreed upon, the reported versions of the accords should be examined to determine the likely effect on American national security interests. If the proposed treaty appears to ratify an unfavorable balance of forces between the superpowers, then the Senate must not hesitate to reject the relevant provisions. Close analysis indicates there are several items in the reported agreement which should encourage the Senate to do just that.

Any upcoming SALT II treaty must provide strong incentives for each side not to initiate nuclear conflict. Neither side can be allowed to acquire a force posture that could enable it to gain a significant military advantage through a nuclear first strike. Yet Soviet planners are striving to obtain that capability; the Kremlin's military leaders have attempted to develop strategic forces that will free the U.S.S.R. from its mutual hostage relationship with the United States that presently insures a stable mutual deterrence. In the context of the SALT II deliberations, Soviet negotiators have made persistent—and apparently somewhat successful—efforts to assure the exclusion of several weapons systems that will forward their objectives.

One of the most dangerous and destabilizing of these is the new Soviet Tupolev–26 V/G multipurpose aircraft, the so-called Backfire bomber, which poses a serious and direct threat to the security of the free world. The emerging SALT II treaty fails to restrict the production, deployment, or use of this weapon; any constraints imposed would be enumerated in a unilateral executive pledge by General Secretary Leonid Brezhnev.

The Soviets have repeatedly insisted that the new multipurpose aircraft should not be counted in the proposed limits on strategic weapons, and there is considerable debate over what exactly constitutes a strategic weapon. Nevertheless, a bomber with the ability to strike targets in the continental United States must clearly be regarded as such. The Backfire, which carries a payload of up to 20,000 pounds, has a potential range of over 6,000 miles and is similar to the Myasischev-4 Bison, a bomber included in the SALT II ceilings on strategic weapons. The administration's willingness to overlook these disturbing attributes is cause for serious concern.

The Backfire's ability to fly intercontinental missions can be further enhanced by using either of two range-extending techniques. Recovery in a third country friendly to the Soviet Union is one possibility. Recent Soviet-Cuban joint ventures should leave little doubt that the U.S.S.R.'s Caribbean surrogate would serve as an excellent base for Backfires after their completion of bombing missions flown over the North American continent. In this regard, a parallel can be drawn between the Backfire and the American B–52's. Many B–52's are also slated to land in third countries—Turkey, for example, yet this has not prompted the United States to argue that the B–52 is not a strategic weapon. It is thus both misleading and inconsistent to assert that the Backfire's alleged inability to return to its home base base after striking targets in the continental United States justifies its exclusion from the SALT II restrictions on long range nuclear forces.

At the same time, the very assertion that the Backfire cannot make such a round trip is incorrect. Soviet development of the aircraft's inflight refueling capability has made this an available option. The Backfire's ability to accommodate aerial tankers has been confirmed by intelligence photographs, which show a refueling probe located just above the nose cone. Other recent modifications also suggest a Kremlin interest in an expanded range.

The round trip option thus depends on the size of the Soviet aerial tanker fleet. The current wing consists of 44 Myasischev–4 Bison aircraft converted from heavy bombers to tankers. In addition to the possible expansion of this fleet, the Soviet Union is reportedly developing a new tanker based on the IL–76 Candid jet transport. The threat created by these efforts was noted in a Heritage foundation study on the Backfire's capabilities. National security analyst John G. Behuncik concluded:

> Deployment of substantial numbers of the IL–76 Candid in an aerial tanker mode would insure that the Backfire retained an intercontinental capability, and would make academic any disputes about the bomber's range. Moreover, the Soviets would be provided with the option of augmenting their strategic bomber force through reconfiguration of those Bison aircraft presently serving as tankers.

From this evidence, it can be seen that the Backfire bomber is undeniably a weapon with intercontinental capabilities and that the strategic implications of its characteristics warrant the Backfire's inclusion in any SALT II agreement.

This is not to imply that the Backfire is a destabilizing weapon solely because of its intercontinental capability. In its tactical and medium range roles, the plane can be equipped with either of two advanced air-to-surface missile systems. One of these, the Soviet AS–6 Kingfish missile, can strike priority targets with particularly high degrees of accuracy. Deployed in conjunction with the ever increasing Soviet contingent of both surface ships and submarines, Backfire bombers equipped with these missiles could interdict naval routes vital to the economic well-being of Western Europe and our allies in East Asia.

The potential dangers to Allied shipping were noted in a Pentagon summary of a National Security Council analysis conducted in 1976. The introduction of Backfire bombers fitted with these air-to-surface missiles would, it warned, "give the Soviets the capability to threaten a much greater area of the oceans than ever before." More recently, Adm. James L. Holloway III, former Chief of Naval Operations, indicated his concern that antiship cruise missiles, delivered by Soviet nuclear powered submarines and supersonic Backfire bombers, have "dramatically increased the vulnerability of U.S. surface ships."

The Backfire is truly a multipurpose aircraft, and in its reconnaissance role, it poses still more threats to allied maintenance of open sea lines-of-communication and even to the stable balance of strategic forces. Since it can cover a far greater area of the oceans than the planes currently being used, the Backfire would markedly improve Soviet ability to track and target American surface ships. From the U.S. point of view, this makes accelerated development and procurement of more advanced surface-to-air missiles such as the Aegis imperative. A danger of a far greater magnitude will materialize if the Soviets achieve breakthroughs in antisubmarine warfare technology; the Backfire could then imperil the most invulnerable leg of the U.S. strategic triad, our fleet of Polaris and Poseidon submarines.

We are forced to conclude, then, that the Backfire aircraft is indeed a dangerous and destabilizing weapons system. It increases the vulnerability of allied shipping, improves Soviet ability to target Western military forces, and adds an element to the Soviet strategic arsenal that will be uniquely exempt from the limitations placed on other strategic weapons. If the Backfire's production, deployment, and use is not properly restricted, American security interests may be severely compromised.

In an attempt to allay legitimate American concerns about the Backfire's exclusion from the impending treaty, the Soviet leadership is reportedly willing to make a unilateral executive pledge not to increase the current production rate of the aircraft or to deploy Backfires in a manner "potentially threatening to the United States." There are two main problems with an agreement of this form. First, Soviet compliance with the understanding would be extremely difficult to monitor. U.S. estimates put current Backfire production at anywhere between two and five a month. We cannot determine exactly how many are being produced, and Soviet officials have so far refused to provide actual figures or even to confirm U.S. estimates. Future verification is likely to be seriously hampered by this lack of Soviet cooperation in exchanging data about strategic systems. Efforts to monitor compliance may be further impeded by reported Soviet advances in technology designed to hinder verification by national technical means, such as its "blinder" satellites. It is entirely possible, therefore, that an executive pledge to restrain production and development of the Backfire could be circumvented without detection for quite some time.

The second area of concern centers around the possibility that an executive pledge may be nullified, either by Brezhnev or a successor, without incurring the consequences that would likely result from abrogation of the SALT treaty. While a treaty is backed by legal force, Soviet leaders may at a later date contend that an executive pledge is a voluntarily imposed restraint which they wish to cancel. Termination of such an agreement would present U.S. leaders with a serious dilemma: should the United States accept this renunciation without complaint, since it does not violate the SALT II treaty itself, or should we contemplate withdrawing from the accords, regarding the Soviet announcement as an abrogation of the SALT agreement?

Either course of action may invite undesirable reaction from the world community. Choosing to ignore Soviet evasion of the pledge would be viewed as a sign of increasing American weakness and declining military effectiveness. On the other hand the United States might appear to be the principal threat to world peace and arms control if we reacted by withdrawing from the SALT II treaty. Inclusion of the Backfire bomber in the limits placed on strategic weapons would eliminate the possibility that the United States would ever be forced to make such a decision. An executive pledge, however sincere, is simply not an adequate means of controlling such an important weapons system as the Backfire.

It is difficult to foresee all of the consequences of ratifying a SALT II treaty that did not include the Backfire bomber in the aggregate total of strategic weapons limited. Obviously, the Soviet Union would continue to upgrade its bomber force, currently the weakest element of its strategic triad. About 100 Backfires have already been deployed and it has been reliably reported that the Carter administration is willing to permit the Soviets to construct at least 200 additional Backfire aircraft. By contrast, the current Soviet heavy bomber force included in the SALT aggregate totals limited by mutual agreement numbers 135. The SALT II agreement would thus exempt 70 percent of the U.S.S.R.'s long range aircraft from the restrictions. The Backfire bomber could potentially alter the balance of strategic forces, and must not be excluded from an accord that supposedly maintains that balance. Omission of the Backfire aircraft from the limits imposed in a SALT II treaty would undermine the concept of stable deterrence through parity of strategic forces, help to foster the notion that the United States will accede to Soviet demands under pressure, and sets a dangerous precedent for future negotiations.●

BOUNDARY WATERS CANOE AREA

● Mrs. HUMPHREY. Mr. President, I am pleased that the Senate has passed the BWCA bill, and I am hopeful that further necessary action by the House can be accomplished without delay. Passage of this bill will provide a comprehensive and reasonable solution to this long-standing and divisive issue in the State of Minnesota.

I wish to extend my congratulations to Senator ANDERSON for earnestly pursuing this action during the past few months despite its controversial nature, and express special thanks to Senator ABOUREZK for accepting the compromise achieved in this bill as the best possible means of enacting legislation reflecting the views of a broad majority of the people of Minnesota and by the most democratic means available.

I believe that this bill, which I was pleased to join in sponsoring, represents the best possible solution to this issue which is of vital importance to Minnesota and the Nation.

It has been very clear that people from across our Nation place high importance upon the preservation of this vital natural resource, the Boundary Waters Canoe Area. One of my primary objectives was to support a measure insuring the use and enjoyment of the BWCA for generations to come. I am confident that this objective has now been accomplished. I believe that we have established a multiple use precedent for the rest of the Nation to follow.

The final disposition of this legislation will now be determined by the House. Senator ANDERSON and I have worked closely with the Minnesota delegation, the Senate and House committees, and the administration in carefully addressing all facets of the problems for which this bill endeavors to provide a fair solution.

I urge the House of Representatives to take expeditious action on the Senate amendments to the original House bill, H.R. 12250. I appeal to the Members of the Minnesota delegation in the House, to do everything possible to help achieve this action. Acceptance of these amendments is essential if we are to establish a long-term plan for achieving the two goals of providing for the reasonable multiple use of the BWCA and assuring its adequate environmental protection.

It would be a serious error to assume that a delay of action will enable the subsequent development of legislation that is closer to one or the other of the above-cited goals. After many years we have finally reached a point where a reasonable agreement can be signed into law, and we must not let this opportunity slip through our hands.●

● Mr. CLARK. Mr. President, I am pleased that the Senate has considered and passed the Boundary Waters Canoe Area compromise bill. It is extremely important that action be taken on this bill this year, and I have been much concerned over the delay.

As a supporter of the original Fraser bill, I would have preferred a more protective BWCA bill than the one reported by the Energy and Natural Resources Committee. I know, however, that this whole issue has been very controversial in Minnesota and I am happy that a compromise could be reached. It is far preferable to no action at all.

Mr. President, it is past time for us to provide more complete protection for our only lakeland wilderness area. The BWCA is the largest wilderness area east of the Rockies and the most visited wilderness in the United States. It is especially important to Iowans because it is the only such area close to our State. I have received hundreds of letters and petitions with thousands of names calling for more protection for the BWCA so that Iowans and others can go on enjoying the unique experience they have found there.

The compromise bill expands the Boundary Waters into a 1,075,000-acre wilderness, restricts mining, sharply cuts the number of lakes where motorboating

is permitted, permits snowmobiling on five routes, with three to be phased out by 1984, prohibits logging, and provides special assistance to resort owners.

This bill is a reasonable compromise of a very difficult issue, and I am glad the Senate has acted on it favorably.

The Des Moines Register has been consistent in its support of the Boundary Waters. I submit for the RECORD the Register's October 9 editorial on the BWCA.

The editorial follows:

COMPROMISE ON BWCA

Prospects for a compromise agreement on the Boundary Waters Canoe Area appeared bleak after Representative Donald Fraser (Dem., Minn.) was defeated in a primary election contest with Robert Short, Minneapolis businessman. Fraser was the chief architect of the agreement, which cleared the House in June.

But Senator Wendell Anderson (Dem., Minn.), who had not shown much enthusiasm for Fraser's efforts, has moved on the offensive. Facing a tough election campaign of his own this year, Anderson at first tried to mollify the northeastern Minnesota resort owners, outfitters, tourist groups and merchants who were upset by attempts to restrict activity on and near the Boundary Waters.

The primary election results apparently convinced Anderson that he could count on little support from voters near the BWCA. Since the primary, at least one group in the area has reproached him for not backing a weaker BWCA plan.

Anderson's push for action by the Senate began when he presented a compromise proposal worked out by environmental groups and local interests around Ely, Minn. Their proposal differs mainly from the House-passed bill on management of motorized recreation. Several key House members reacted favorably to Anderson's version after it received quick approval by the Senate Energy and Natural Resources Committee.

The measure advanced to the full Senate provides that 23 lakes comprising 24 percent of the BWCA water surface would be open to motorboats indefinitely, it would designate five trails for snowmobiles for five years, then only two trails thereafter.

Under present management policies, 124 of the BWCA's 1,060 lakes—62 percent of the water surface—are open to outboard motors. Snowmobiles were banned in 1976.

The proposal adopts, except for a few minor changes, the House prohibitions on logging and mining in the area.

Anderson's measure will please environmental groups more than the commercial interests that regard the BWCA as income producing property. But the proposed has not eliminated all motorized recreation in the area. It is a reasonable proposition that should be approved this year so that protection for a major wilderness area is not needlessly delayed.●

S. 1566—CONFERENCE REPORT

● Mr. MATHIAS. Mr. President, finally our prolonged effort to provide clear statutory guidelines for the use of electronic surveillance in foreign intelligence cases has come to a successful conclusion. It is a victory for the rule of law.

In the 94th Congress, I joined with a bipartisan group of Senators and Representatives in sponsoring S. 3197, the Foreign Intelligence Surveillance Act of 1976. S. 3197 was the first bill ever supported by a President and an Attorney General which would require judicial warrants in foreign intelligence cases. S. 1566 is the successor to that bill.

President Ford and his Attorney General, Edward Levi, deserve high praise for breaking with previous executive practice and backing legislation requiring a court order for national security wiretaps when they submitted S. 3197 to Congress. President Carter and Attorney General Griffin Bell too should be given credit for fulfilling their pledges to support S. 1566 forcefully. Senators KENNEDY, BAYH, THURMOND, and GARN also deserve our thanks for seeing this important legislation to a successful conclusion.

Enactment of S. 1566 will be a milestone in our Nation's history. It will be a ringing affirmation of America's commitment to the fundamental liberties embodied in our Constitution. Above all, it will insure that electronic surveillance in foreign intelligence cases will be conducted in conformity with the principles set forth in the fourth amendment. It would require an impartial magistrate outside the executive branch and intelligence community to authorize such wiretaps. And, it will be an important step toward restoring the balance between the legislative and executive contemplated in the Constitution. Regrettably, for the past several decades Congress has abdicated its responsibility to establish by law the framework within which the executive power is to be discharged. Enactment of S. 1566 will correct that situation.

It is a source of great personal satisfaction to me to have played a part in this important bipartisan effort. I believe that passage of this bill will ultimately be seen as one of the most significant achievements of the 95th Congress.●

BAYH NOTES FARBER INCARCERATION

● Mr. BAYH. Mr. President, a few days ago the U.S. Supreme Court turned down Myron Farber's request for a stay in the execution of his sentence for contempt of court. In a short while, therefore, Myron Farber will again go to jail. He will be incarcerated because, as a reporter, he refused to divulge his notes and files to a court in the process of a criminal prosecution of a doctor for murder. Both the Farber case and the underlying criminal prosecution are, of course, still under consideration by the courts and I would not in any way want to imply that the ultimate determination of these matters should be resolved in one way or the other. However, we should still recognize that this is a sad event, one which should rightly disturb us in its implications for the future. It is another indication of a growing problem in this country which we must face squarely and soon—the increasing conflict between the press and the courts.

Mr. President, the jailing of a reporter who has committed no crime at all should be disturbing not only to those who support a free and vigorous press but also to the entire judicial structure and our country as a whole. It is a monument to our failure to provide a rational means of solving a difficult problem involving competing social interests. I am disturbed that Farber's incarceration is based on an area of the law that is a sea of confusion, contradiction and fluctuation. I am concerned that we have simply not given enough thought to developing ways of insuring both the freedom of the press and the legitimate needs of the courts.

The Farber case is only one of several cases in this country which have the potential for chilling the full exercise of the freedom of the press. This summer the Supreme Court handed down its decision in the case of Zurcher against Stanford Daily which held that the police could, forcibly and without notice, search a newsroom for evidence of a crime even when there was no indication that the newspaper or any of its employees were in any way suspected of criminal activity. The Subcommittee on the Constitution, which I have the honor to chair, has already held 3 days of hearings on the privacy and press problems raised by the Stanford Daily decision. I would hope that early next session we would be able to move quickly to enact the Citizen's Privacy Protection Amendment to the Civil Rights Act which would require a less intrusive subpena process rather than surprise searches when seeking evidence from innocent third parties.

Mr. President, the problems raised by the competing interests of a free press and a fair trial are even more difficult to resolve than those presented by searches of innocent third-party premises.

I do not believe, however, that we should be forced to choose between different amendments of the Bill of Rights. I do not believe that the only way we can insure a criminal defendant's sixth amendment right to a fair trial is to dilute our first amendment right to a free press. The amendments to the Constitution are to be read in conjunction not in the alternative.

Mr. President, several times in the past the Congress has attempted to fashion a remedy for this problem, but has failed to forge a comprehensive solution which had the support of the various parties involved in this controversy. Early next session I intend to hold a series of hearings on ways in which we might develop a Federal law which will provide protection for a reporter's confidential sources. While I do not at present have a simple solution to this constitutional dilemma I believe we must begin to seek the answers. As I noted before, previous attempts to resolve these issues have failed because of our inability to agree on a solution. We cannot again allow the difficulty of the challenge to prevent us from beginning the process of meeting it. Myron Farber is scheduled to go to jail partly because we failed to resolve the different viewpoints on this issue. We should not wait for another reporter to face such a dilemma before we act. We must resolve to provide a procedure so that we do not have to rely on the incarceration of reporters in order to conduct the judicial business of this country.●

NICARAGUA

● Mr. CURTIS. Mr. President, coverage to date of the situation in Nicaragua has been very one-sided and sensationalistic, focusing on alleged excesses by government troops but saying little about the behavior of the Communist Sandinista rebels.

Eyewitness accounts are beginning to filter back, however, giving a glimpse of the atrocities which the terrorists have been committing against average citizens living in Nicaragua.

Earlier this month Managua-based U.S. businessman Lester Lesavoy witnessed Sandinistas masquerading as National Guardsmen firing into the cars of innocent passers-by. As he himself lay in a ditch, his leg riddled with Sandinista bullets, the terrorists pointed guns at his head, shouting, "Die Somoza. Die Gringo."

Ironically, it was the much maligned National Guard that saved Lesavoy's life by engaging the Sandinistas.

As Lesavoy waited to be picked up he observed the subsequent actions of the guerrillas. "The terrorists were calmly lighting these Molotov cocktails and tossing them out in the streets," he recalls. "At the same time, I saw this terrorist running by with an armful of food * * * Here they were running up and down the streets * * * shooting into people's houses and one of them was tossing bread in through windows at the same time, like they were helping the people."

It is interesting to speculate how many murders attributed to the National Guard may have been committed instead by Sandinistas disguised in the manner witnessed by Lesavoy. His account indicates that blame has frequently been placed on the guard in an indiscriminate manner.

At the same time, it is unfortunate that little mention has been made of terrorists coolly shooting and bombing private homes, as such actions reveal the Sandinistas to be terrorists insensitive to the welfare of the Nicaraguan people.

Mr. President, the United States will be a participant in the mediation talks on Nicaragua's future due to start shortly. If we are to have a direct say on the future of that nation it is crucial for us to have a realistic understanding of its political picture. We must see General Somoza in the proper perspective. We must particularly understand the nature of the Sandinistas. They are not the saviors of the nation, but violence-oriented radicals.

I ask that the September 14 Miami Herald article, "'Die Somoza, Die Gringo': American Caught in the Middle," from which I have taken the information above, be printed in the RECORD.

The article follows:

[From the Miami Herald, Sept. 14, 1978]

"DIE SOMOZA, DIE GRINGO": AMERICAN CAUGHT IN MIDDLE

(By Morris S. Thompson)

For four years, Lester Lesavoy had a pleasant working relationship with Nicaragua. He made blue jeans in his textile factory. Politics wasn't his business.

Then, last Saturday, driving home from work in Managua, Lesavoy learned first-hand about an uprising he had done his best to ignore. The lesson nearly killed him.

"I couldn't believe it was happening," he said Wednesday from his bed in Miami's Jackson Memorial Hospital. "It didn't seem close to reality. It was remote, like you're in Miami and hear about an explosion in Louisiana."

Lesavoy, 31, became the first U.S. civilian casualty of Nicaraguan trauma because of a law-abiding blunder. He stopped for what he thought was a routine check.

"I saw two National Guard guys ahead of me, at a stopped car. As I pulled up behind, I saw them firing into the car with machine guns.

"That's when I saw that they were just dressed like the Guardia: They were wearing the red-and-black masks of the Sandinista guerrillas."

The guerrillas shot out his tires. They ordered him from the car, hands above his head.

"They told me to start running toward some houses. I did. They started firing. I felt my whole leg shatter and I fell into a ditch.

They came over and pointed the guns at my head and I thought it was all over," Lesavoy said. "They shouted, 'Die Somoza! Die Gringo!' "

Lesavoy said his life was saved when real National Guardsmen arrived and engaged the guerrillas. While bullets whirled above his head, Lesavoy—only 10 feet away from the combatants—tied his shirt around his leg as a tourniquet.

"I lay in that ditch about an hour and a half. I thought I was going to bleed to death. My leg was flopping around—I found out later that both bones in my lower leg were shattered."

"I was only six feet from these houses and I was yelling for help," he said. "These people wouldn't come out and it really freaked me out. Every once in a while, the Sandinistas would look over at me, and I was afraid that they were going to come over to finish me off."

"The terrorists were calmly lighting these Molotov cocktails and tossing them out in the streets. At the same time, I saw this terrorist running by with an armful of food.

"It was really funny to me: Here they were running up and down the streets of this barrio shooting into these people's houses and one of them was tossing bread in through windows at the same time, like they were helping the people."

Eventually—it seemed an eternity—Lesavoy heard someone shouting "There's a wounded man in there." Then came Red Cross medics, waving a white flag and carrying a stretcher.

For nearly six hours, Lesavoy lay in Managua's Occidental Hospital while doctors first cared for those with more serious wounds. About 3 a.m. Sunday, surgeons removed two bullets from Lesavoy's right leg.

Later that day, Lesavoy's brother, Malcolm, a plastic surgeon in Los Angeles, arranged for a jet ambulance to Miami. Jackson surgeons removed two more bullets.

Lesavoy moved to Nicaragua from Costa Rica four years ago to get closer to the source of the denim fabric his factory uses. He has 300 employees, whom he said he pays an average wage of $40 to $50 a week, about 2½ times the Nicaraguan minimum wage. He said his workers were happy and so was he.

He said he and his workers didn't pay much attention to the developing storm against President Anastasio Somoza and didn't realize the extent of the terrorist organization, or its professionalism.

Lesavoy concluded that the guerrillas who shot him were trained professionals.

"I've been in the service, and I know. They were trying to get kids to come out and fight with them, to make it look like a children's army. But it isn't."●

STATES URGENTLY NEED INCREASE IN SOCIAL SERVICES FUNDING

● Mrs. HUMPHREY. Mr. President, I am pleased that the Senate has passed Senator MORGAN's amendment No. 3851 which raises the title XX social services ceiling to $2.9 billion. As my colleagues know, in 1972, Congress imposed a $2.5 billion ceiling on social services spending. It is a well-known fact that many States have reached their title XX expenditure ceiling. Minnesota is one such State. Without an increase in the title XX ceiling, social services programs in Minnesota and other States will suffer severe cutbacks. As a matter of fact, these cutbacks have already been planned in Minnesota and are ready for implementation. I would like to describe just one example.

Hennepin County is the largest county in the State of Minnesota. The title XX allocation for this county for fiscal year 1978–79 was $13.462 million. Unless there is an increase in title XX funds, allocations for Hennepin County will be decreased by approximately 10 percent each year for the next 2 years. Similar cutbacks are planned for other counties throughout Minnesota.

Title XX funds are used for a wide range of programs, including family planning, day activity centers for mentally retarded children, foster care, meals-on-wheels for the homebound, homemaker services for the elderly or handicapped, and alcoholism and drug abuse. In Minnesota, the present $2.5 billion ceiling on title XX funds has impeded the State's social services planning capability. The current focus of title XX planning has been finding new ways to maintain present levels of service or to plan for curtailment of services to stay within funding limits. There has been little opportunity to plan for expanded or innovative services.

The crucial nature of the proposal being considered today is exemplified by the situations facing the handicapped, and specifically the mentally retarded, people requiring social services. In Minnesota, title XX moneys are being used to support the developmental achievement center program which provides services to low-functioning mentally retarded adults and mentally retarded preschool-age children. Currently, there are over 100 of these centers providing continuing educational programs, early intervention services, and counseling services. Title XX also funds information and referral services for mentally retarded persons, homemaker services, and supportive social services for mentally retarded individuals living in foster care homes, group homes, and semi-independent living situations.

The State of Minnesota is committed to its plan to avoid institutionalizing its handicapped citizens. This effort is being severely hampered by the lack of increases in title XX funds and the inability of title XX administrators to plan ahead. Group homes cannot be licensed

because there are no funds available for the day programs and other social services required by the residents. Programs providing specialized services for severely mentally retarded persons with maladaptive behavior patterns cannot be implemented. Consequently, many such persons are institutionalized.

A Minnesota program of which I am particularly proud provides monthly payments from State funds to parents who choose to keep their severely mentally retarded child at home. This program has, by necessity, been limited to 50 families because of insufficient title XX funding to provide the necessary supportive services for these families. It is estimated that, with adequate social services available, as many as 500 families could take advantage of this program. Without these services many of these families will place their child in an institution at great expense to America's taxpayer, not to mention the extraordinary social and emotional costs to the families. It is far better to spend thousands of social services dollars to retain handicapped individuals in the community than to spend tens of thousands of medicaid dollars on institutional care.

The $2.9 billion increase in title XX ceiling is modest. This is a significant decrease in the amounts requested in two proposals I cosponsored earlier this year. I am fully supportive of the House-passed legislation, H.R. 12973, which calls for increases in the title XX ceiling from the $2.5 billion level fixed in 1972 to $2.9 billion in fiscal year 1979, $3.15 billion in fiscal year 1980, and $3.45 billion in fiscal year 1981.

I also would like to stress that, if title XX dollars are to be spent wisely, States must be able to plan ahead. The Senate Finance Committee's 1-year only increase of $2.9 billion does not allow for necessary social services planning. Senator MORGAN's amendment will provide at least the minimum funding base for program maintenance and project planning.

Mr. President, I would like to include with my remarks a copy of correspondence I have received from the Minnesota Department of Public Welfare Commissioner, Edward J. Dirkswager, Jr., supporting the title XX ceiling increase. I ask that the following letter be printed in the RECORD:

STATE OF MINNESOTA,
DEPARTMENT OF PUBLIC WELFARE,
St. Paul, Minn., October 4, 1978.

Hon. MURIEL H. HUMPHREY,
U.S. Senator, Dirksen Building, Washington, D.C.

DEAR SENATOR HUMPHREY: I strongly urge your support and sponsorship of H.R. 12973 in the Senate. This bill increases the ceiling on Title XX Social Services from the $2.5 billion level fixed in 1972 to $2.9 billion in FY '79, $3.15 billion in FY '80, and $3.45 billion in FY '81.

Minnesota has fully utilized its Title XX allotment each year since July 1, 1973. Due to the ceiling on these funds, the state, and particularly county welfare departments administering social services have found it necessary to levy additional local taxes in order just to maintain social services at the level established in 1973. If the inflationary factor has averaged ten percent (10%) each year for the past five years, then the $2.5 billion fixed in 1972 is in today's society $1.25 billion in former purchasing power.

Looking at Minnesota's Comprehensive Annual Services Program Plan for the past four federal fiscal years is revealing. The federal title XX allocation has slightly reduced in dollar amount and has gone from being 46% of budgeted expenditures to 30%. State monies have increased in dollar amount and in percentage terms. Heavy demands are made on local funding arrangements. County share was 44% in FY '76, and is now 57%, as the following table illustrates:

From 10/1/75 to 9/30/76:		
Title XX	$46,500,000	(46%)
State	10,534,505	(10%)
Local	44,122,189	(44%)
Total	$101,156,694	(100%)
From 10/1/78 to 9/30/79 (Estimate):		
Title XX	$46,178,000	(30%)
State	18,888,836	(13%)
Local	85,026,006	(57%)
Total	$150,092,842	(100%)

The preceding reflects not only inflationary costs, but some minor gains in expanded social services. The Comprehensive Annual Services Program Plan in federal FY '76 indicated that 791,272 persons would receive a social service during that year. The plan for federal FY '79 indicates that 805,524 persons will be served, or an increase of 1.8% for the four year period.

We thank you for your support and continued leadership.

Sincerely,

EDWARD J. DIRKSWAGER, Jr.,
Commissioner.●

COLUMBUS DAY

● Mr. WILLIAMS. Mr. President, yesterday the people of this country celebrated the discovery of America by the great Italian navigator and explorer, Christopher Columbus.

His accomplishment was the result of great personal courage, a deep religious faith, and scientific determination to prove a theory which the great majority of his peers thought foolish. Thanks to the generosity and support of Queen Isabella I, who financed his voyage, Columbus became the first European to set foot on this "undiscovered continent." His adventure drew the New World into the mainstream of world history and led to the tremendous westward migration of European populations.

Whole new communities developed in the New World based on social, political, and religious experiments, and soon the Americas became a magnet for explorers and entrepreneurs alike. Columbus, like those explorers who followed in his footsteps, was an individualist, a man of conviction. His dedication and willingness to tempt fate in the pursuit of a dream won him this place in history.

Columbus Day is a time to reflect on the contributions that other Italian-Americans have made to this country's growth and stature in world history. They joined countless immigrants who chose to transplant their cultures in a foreign land, and blend old traditions with the new ways demanded by a new world. LaGuardia, Toscanini, Sirica, Andretti, Fermi, DiMaggio; the great names and the less famous have left their mark on all aspects of American life and in doing so have enriched all our lives.

The same drive that brought Columbus across an uncharted ocean, and the same conviction that led the first settlers to this untamed country, are the qualities that have marked our development as a nation and as a people. We are a nation of immigrants; we are a nation of individualists. When we celebrate Columbus Day, we not only salute the man for his achievements, but we salute the spirit which animated him as well. Let us hope the same spirit can be focused on the challenges facing this Nation in the years ahead.●

EDITORIAL FAREWELL FOR SENATOR ABOUREZK

● Mr. McGOVERN. Mr. President, in the next few hectic days, time will be taken to say the traditional farewells to those colleagues who will be leaving our ranks in the Senate. Each one will be missed in some special way, but, in my case, the absence of my colleague from South Dakota, JIM ABOUREZK, will be acutely felt.

While it is difficult to say good-bye at all, it is impossible to think of offering a "traditional farewell' to someone, like JIM, who is so enviably free from the restrictions of orthodoxy and timidity.

The Watertown Public Opinion has published an editorial comment on a few of the reasons Senator ABOUREZK will be missed when he leaves the South Dakota delegation and the Senate. I ask that the editorial be printed in the RECORD.

[From the Watertown (S.D.) Public Opinion, Oct. 5, 1978]

UNIQUE PERSONALITY TO LEAVE U.S. SENATE SOON

A personality unique in modern South Dakota politics will depart the U.S. Senate scene next January when James Abourezk retires after only one term in the Senate—an act which in itself sets him apart from the common political mold.

He is one of an unusual number of senators and representatives who will voluntarily bid farewell to the Washington scene and go home this year, most of them tired and disillusioned. But traditionally, the average lawmaker fights tooth and nail to stay as long as the voters will let him . . . or her. And for one to leave after only one term is relatively unheard of.

But in one respect, at least, this is the measure of Abourezk, a Democrat by label but an independent by philosophy, a free thinker and often a nonconformist known for the unexpected and his articulate expression of it.

Example: For years he has defied the popular and predominant viewpoint in this country by supporting the Arab cause in the Middle East conflict, emerging as the Arabs' No. 1 spokesman and supporter in Congress—a stand to which he brought a particular edge for he is Lebanese with relatives still living in that volatile eastern Mediterranean country, a key nation on the Arab side of the controversy.

Almost alone in this country, it was Abourezk who last week dissented from the Camp David accords, asserting the agreements "sold the Palestinians down the river."

And it has been Abourezk alone among the state's congressional delegation who has opposed the Oahe irrigation project in South Dakota, going against a large and vocal segment of public expression. To him, he said in South Dakota, "it's a public works pork bar-

rel," but one he supported as long as it appeared to him that the farmers in the project area were behind it. His change of mind was climaxed by an Abourezk bill calling for its deauthorization.

He found Senate service heavily larded with "flattery and ego-building exercises," an example of the Abourezk rhetoric which tends to puncture pomposity and often borders on the politically irreverent. It has been a major factor in his being branded a congressional maverick.

For himself, Abourezk told a recent interviewer, he is "counting the days until I'm out of the Senate."

When he leaves, a lot of tart political flavor will leave with him.●

AIDING THE ELDERLY

● Mr. BIDEN. Mr. President, on October 7, the Senate agreed to the Older Americans Act conference report.

I believe that this legislation represents another major step forward for our senior citizens. Among the major provisions of this bill are:

An expansion of the community service employment programs. Title V employment programs will now allow individuals with incomes of up to 125 percent of the poverty guidelines to be employed.

The establishment of a separate authorization for home delivered meals. This will enable thousands of needy elderly and handicapped who cannot leave their homes to receive important nutrition services.

A 3-year extension of older Americans volunteer programs (RSVP, foster grandparents, and senior companions). The bill also recognizes the need to increase the stipend level received by senior citizens from $1.60 an hour to $2 an hour. The stipend level has been frozen since 1968. I hope that the Appropriations Committee does fully fund this valuable provision.

I am pleased to note that the conference committee reaffirmed the valuable role that senior citizen centers play in delivering services to the elderly. The committee now allows senior centers to use Federal funds to staff senior centers. Formerly, grants could only be used for alteration, renovation and new construction of such facilities.

The conference report also requires that each State provide an ombudsman program to monitor the rights of the elderly in nursing homes.

The bill makes a number of other improvements in the Older Americans Act.

I am still concerned about the requirement that 50 percent of all title III social services be allocated to in-home, access and legal services. While it is very important that these services be provided, I still do not believe it wise to set an arbitrary percentage level of 50 percent on title III allocations. Some States will not require half of their funds to adequately provide these services. I hope that the Secretary of HEW will take a liberal view toward allowing States to waive this 50 percent requirement.

Mr. President, the Older Americans Act will not solve all the health, income and social problems of senior citizens in America. But it does make significant improvements in the way which these services are delivered. I am pleased that the Senate approved this legislation.●

SALUTING 300TH ANNIVERSARY OF THE ORANGES

● Mr. WILLIAMS. Mr. President, 300 years ago a handful of settlers from Newark, or "Ye Towne on Ye Passaick River" as it was called then, crossed the river at the foot of the Watchung Mountains to set up homesteads in the fertile valley. This was the beginning of the settlement we now call the Oranges: the cities of East Orange and Orange, the Town of West Orange, and the Village of South Orange.

According to "The Oranges and Their Points of Interest," published in 1890, a party of Newarkers formed this nucleus of the "Mountain Society" in 1679.

Not satisfied with grants of the land from the Lords Proprietors of New Jersey, who then owned, or claimed to own, the whole of the State, the high-minded and God-fearing men who founded Orange were not willing to disregard the claims of the Indians, and all the land that was acquired by them was duly purchased of the original owners of the soil. True it is that in these days the price paid does not seem very large, and it is probably equally true that it was not exorbitant in those primitive times, for the whole tract now covered by Orange, East, West and South Orange, was purchased from the Aborigines for a small sum of money, a quantity of gun powder, a lot of lead, some old guns, brass buttons and two anchors of liquor.

The settlement was off to a good start. The rich soil was ideal for orchards, especially apple orchards, and before long the area could boast a profitable and even international cider trade. Thousands of barrels of cider, made from the Canfield and Harrison apples grown in the area, were shipped to the South and other parts of the country and exported to Europe.

The area's economy prospered and its population swelled to such a point that the Mountain Society decided to split away from Newark and become a self-governing community. The state legislature approved the incorporation of Orange, as the first settlement came to be called, in 1806. In later years, as the population increased even further, the three communities called East, West, and South Orange were incorporated as well, paving the way for the Oranges as we know them today.

On October 22, 1978, the 187,000 residents of the Oranges will celebrate the 300th anniversary of the original settlement. The residents and elected officials have revived the brotherhood spirit between the four communities, and are developing historical societies to preserve the records of their unique and fascinating past. I want to take this time to commend their efforts and strongly encourage them to continue this tricentennial spirit to preserve their community heritage.●

REVENUE ACT OF 1978

The tables ordered to be printed in the RECORD, upon request by Mr. HART, at page 34797 of the proceedings of October 9, 1978, are as follows:

TABLE 1—MAJOR ECONOMIC INDICATORS, PRODUCT AND INDUSTRIAL

	1978	1979	1980	1981	1982	1983
GNP—Gross national product (billions of dollars):						
Current	2,101.4	2,292.6	2,513.1	2,800.3	3,091.9	3,398.8
MBL	2,101.4	2,299.2	2,509.2	2,741.1	2,994.2	3,267.3
Percent difference	−0.00	−0.29	0.16	2.16	3.26	4.02
Actual difference	−0.0	−6.6	3.9	59.2	97.7	131.4
GNP—Gross National Product (billions of dollars):						
Current	1,381.1	1,411.7	1,461.0	1,538.5	1,607.7	1,670.6
MBL	1,381.1	1,415.4	1,458.2	1,507.8	1,565.0	1,623.8
Percent difference	0.00	−0.26	0.19	2.04	2.73	2.88
Actual difference	0.0	−3.7	2.7	30.8	42.7	46.8
XIFM—Industrial Product Index (total, 67=100):						
Current	143.9	146.6	153.2	165.7	176.5	185.7
MBL	143.9	147.1	151.7	159.1	166.9	174.9
Percent difference	−0.00	−0.34	0.93	4.15	5.74	6.21
Actual difference	−0.0	−0.5	1.4	6.6	9.6	10.9
XIFM—Industrial Product Index (mfg, 67=100):						
Current	144.1	146.6	153.4	166.3	177.3	186.9
MBL	144.1	147.1	151.9	159.1	167.2	175.5
Percent difference	−0.00	−0.37	1.02	4.51	6.04	6.47
Actual difference	−0.0	−0.5	1.5	7.2	10.1	11.4

	1978	1979	1980	1981	1982	1983
DZ—Consumption (billions of dollars):						
Current	1,337.1	1,467.7	1,608.9	1,784.0	1,960.0	2,147.2
MBL	1,337.2	1,469.1	1,601.2	1,736.9	1,883.3	2,040.9
Percent difference	−0.01	−0.09	0.48	2.71	4.07	5.21
Actual difference	−0.1	−1.3	7.7	47.1	76.6	106.3
CDZ—Consumption and durable goods (billions of dollars):						
Current	195.6	211.4	236.2	265.6	292.4	318.4
MBL	195.7	211.9	232.3	249.6	271.8	295.5
Percent difference	−0.02	−0.27	1.67	6.40	7.59	7.76
Actual Difference	−0.0	−0.6	3.9	16.0	20.6	22.9
CNDZ—Consumption and nondurable goods (billions of dollars):						
Current	525.0	572.9	619.8	680.2	738.7	797.7
MBL	525.0	573.3	617.8	664.5	709.8	759.3
Percent difference	−0.00	−0.07	0.33	2.36	4.07	5.06
Actual difference	−0.0	−0.4	2.0	15.7	28.9	38.4
DSZ—Consumption and services (billions of dollars):						
Current	616.5	683.5	752.9	838.3	928.8	1,031.1
MBL	616.5	683.9	751.2	822.8	901.7	986.2

TABLE 1—MAJOR ECONOMIC INDICATORS, PRODUCT AND INDUSTRIAL—Continued

	1978	1979	1980	1981	1982	1983
DSZ—Consumption and services—Continued						
Percent difference	−0.01	−0.06	0.24	1.88	3.01	4.56
Actual difference	−0.1	−0.4	1.8	15.5	27.1	45.0
NPCS—New passenger car sales (millions):						
Current	11.3	10.5	11.4	12.6	13.1	13.4
MBL	11.3	10.6	11.0	11.2	11.7	12.1
Percent difference	−0.03	−0.69	4.48	12.53	12.32	10.20
Actual difference	−0.0	−0.1	0.5	1.4	1.4	1.2
IZ—Investment, gross private domestic (billions of dollars):						
Current	344.9	362.0	406.5	481.5	551.0	621.2
MBL	345.0	365.2	403.0	452.5	503.7	560.2
Percent difference	−0.02	−0.88	0.86	6.41	9.40	10.88
Actual difference	−0.1	−3.2	3.5	29.0	47.4	61.0
IFZ—Investment, total fixed (billions of dollars):						
Current	325.7	347.1	385.4	450.5	513.6	579.7
MBL	325.8	349.0	384.3	428.7	476.3	528.4
Percent difference	−0.02	−0.54	0.29	5.08	7.83	9.71
Actual difference	−0.1	−1.9	1.1	21.8	37.3	51.3
IPZ—Investment, nonresident (billions of dollars):						
Current	221.2	244.1	271.0	322.5	373.1	426.8
MBL	221.2	245.5	270.9	304.5	340.4	381.1
Percent difference	−0.00	−0.56	0.02	5.93	9.60	11.99
Actual difference	−0.0	−1.4	0.1	18.0	32.7	45.7
IPSZ—Investment, nonresident structure (billions of dollars):						
Current	76.2	88.5	101.4	124.4	144.6	166.3
MBL	75.2	89.0	102.5	115.5	128.6	144.5
Percent difference	−0.01	−0.62	−1.11	7.64	12.44	15.13
Actual difference	−0.0	−0.5	−1.1	8.8	16.0	21.9
IPEZ—Investment, equipment (billions of dollars):						
Current	145.0	155.6	169.6	198.2	228.5	260.4
MBL	145.0	156.5	168.4	189.0	211.9	236.6
Percent difference	−0.00	−0.54	0.72	4.88	7.87	10.06
Actual difference	−0.0	−0.8	1.2	9.2	16.7	23.8
IHZ—Investment, resident structure (billions of dollars):						
Current	104.6	103.0	114.4	127.9	140.5	152.9
MBL	104.6	103.5	113.4	124.8	135.8	147.3
Percent difference	−0.04	−0.48	0.91	3.02	3.41	3.82
Actual difference	−0.0	−0.5	1.0	3.7	4.6	5.6
IIZ—Change inventories (billions of dollars):						
Current	19.2	14.9	21.1	31.1	37.5	41.5
MBL	19.2	16.3	18.7	23.8	27.4	31.8
Percent difference	−0.07	−8.14	12.71	30.28	36.62	30.39
Actual difference	−0.0	−1.3	2.4	7.2	10.0	9.7
IHS—Total housing starts (millions):						
Current	1.89	1.69	1.86	1.95	2.07	2.12
MBL	1.89	1.71	1.83	1.87	2.04	2.04
Percent difference	−0.20	−1.02	1.72	4.44	1.81	4.21
Actual difference	0.00	−0.02	0.08	0.08	0.03	0.09
NEXZ—Net exports, goods plus services, (billions of dollars):						
Current	−13.2	−9.3	−10.2	−8.9	−10.9	−14.9
MBL	13.2	−9.5	−9.1	−3.8	−1.0	−1.1
Percent difference	0.01	−1.98	11.38	148.10	966.73	999.99
Actual difference	−0.0	0.2	−1.0	−5.3	−9.8	−13.9
EXZ—Exports, goods plus services (billions of dollars):						
Current	200.8	227.0	252.3	286.3	320.8	355.3
MBL	200.8	227.1	252.3	285.6	319.5	353.5
Percent difference	0.00	−0.02	0.03	0.25	0.40	0.48
Actual difference	−0.0	−0.1	0.1	0.7	1.3	1.7
IMZ—Imports, goods plus services (billions of dollars):						
Current	214.1	236.3	262.5	295.2	331.7	370.1
MBL	214.1	236.6	261.4	289.2	320.5	354.6
Percent difference	0.00	−0.10	0.43	2.08	3.47	4.39
Actual difference	−0.0	−0.2	1.1	6.0	11.1	15.5
GZ—Government purchases, goods plus services (billions of dollars):						
Current	432.6	472.1	507.9	543.6	591.8	645.5
MBL	432.6	474.4	514.2	555.3	608.4	667.3
Percent difference	0.00	−0.48	−1.23	−2.10	−2.73	−3.28
Actual difference	0.0	−2.3	−6.3	−11.6	−16.6	−21.9
GFZ—Federal government purchases, goods plus services (billions of dollars):						
Current	154.2	167.4	177.2	186.8	197.5	209.4
MBL	154.2	169.7	183.5	198.4	214.1	231.3
Percent difference	0.00	−1.33	−3.45	−5.87	−7.76	−9.45
Actual difference	0.0	−2.3	−6.3	−11.6	−16.6	−21.9
GFDZ—Federal government defense purchases including components (billions of dollars):						
Current	101.0	108.4	113.9	118.2	124.8	132.0
MBL	101.0	110.0	118.5	126.9	136.6	147.1
Percent difference	0.00	−1.52	−3.91	−6.87	−8.66	−10.26
Actual difference	0.0	−1.7	−4.6	−8.7	−11.8	−15.1
GFNDZ—Federal government nondefense purchases including components (billions of dollars):						
Current	53.2	59.1	63.3	68.6	72.7	77.4
MBL	53.2	59.7	65.0	71.6	77.5	84.2
Percent difference	0.00	−1.00	−2.63	−4.10	−6.18	−8.05
Actual difference	0.0	−0.6	−1.7	−2.9	−4.8	−6.8
GSLZ—S. + L. Government purchases, goods plus services (billions of dollars):						
Current	278.3	304.7	330.7	356.9	394.3	436.0
MBL	278.3	304.7	330.7	356.9	394.3	436.0
Percent difference	0.00	0.00	0.00	0.00	−0.00	0.00
Actual difference	0.0	0.0	0.0	0.0	−0.0	0.0
GFDEF—Federal Government surplus or deficit (billions of dollars):						
Current	−38.2	−42.8	−50.7	−21.9	−8.5	13.9
MBL	−38.2	−50.2	−51.7	−34.5	−27.1	−19.5
Percent difference	−0.20	−14.79	−1.82	−36.43	−68.59	−171.26
Actual difference	0.1	7.4	0.9	12.6	18.6	33.4
PIZ—Personal income (billions of dollars):						
Current	1,705.8	1,866.6	2,037.2	2,234.4	2,455.7	2,692.5
MBL	1,705.7	1,869.2	2,037.3	2,208.8	2,402.6	2,611.7
Percent difference	0.00	−0.14	−0.01	1.16	2.21	3.09
Actual difference	0.1	−2.7	−0.1	25.5	53.0	80.7
DIZ—Disposable personal income (billions of dollars):						
Current	1,454.4	1,596.7	1,757.5	1,931.0	2,127.3	2,325.0
MBL	1,454.4	1,599.8	1,741.2	1,882.5	2,043.1	2,214.4
Percent difference	−0.00	−0.20	0.94	2.58	4.12	4.99
Actual difference	−0.0	−3.1	16.4	48.5	94.2	110.6
PRZ—Corporate profits before tax without IVA (billions of dollars):						
Current	195.9	202.8	221.1	252.9	279.2	302.7
MBL	195.8	204.7	219.6	238.3	260.9	281.6
Percent difference	0.03	−0.94	0.68	6.11	7.01	7.49
Actual difference	0.0	−1.9	1.5	14.6	18.3	21.1
CRAT—Corporate profits after tax (billions of dollars):						
Current	115.2	120.9	131.2	149.8	165.9	180.5
MBL	115.2	127.4	138.0	149.6	163.9	177.0
Percent difference	−0.01	−5.04	−4.92	0.14	1.20	2.00
Actual difference	−0.0	−6.4	−6.8	0.2	2.0	3.5
CP—Index of capacity utilization (mfg):						
Current	84.21	82.34	82.79	85.75	87.22	87.84
MBL	84.22	82.67	82.09	82.10	82.39	82.85
Percent difference	−0.00	−0.40	0.85	4.45	5.87	6.02
Actual difference	−0.00	−0.33	0.70	3.65	4.84	4.99
UN—Employment rate (percent):						
Current	6.12	6.60	6.80	5.72	4.81	4.09
MBL	6.11	6.51	6.75	6.68	6.34	5.83
Percent difference	0.07	1.41	−0.73	−14.37	−24.25	−29.85
Actual difference	0.00	0.09	−0.05	−0.96	−1.54	−1.74
SAVRAT—Personal savings rate (percent):						
Current	5.7	5.7	6.1	5.3	5.6	5.4
MBL	5.7	5.8	5.7	5.4	5.5	5.5
Percent difference	0.17	−1.69	7.71	−1.75	1.30	−2.72
Actual difference	0.0	−0.1	0.4	−0.1	0.1	−0.2

* Compare T1.2 with MBL.

T1.2—MAJOR ECONOMIC INDICATORS, PRICE AND MON.

	1978	1979	1980	1981	1982	1983
PGNP—Imp. defl. and gross national product (72=100):						
Current	152.1	162.4	172.0	182.0	192.3	203.4
MBL	152.1	162.4	172.0	181.8	191.3	201.2
Percent difference	0.00	−0.02	−0.03	0.12	0.52	1.11
Actual difference	0.0	−0.0	−0.1	0.2	1.0	2.2
PCIUS—Consumer Price Index (U) (67=100):						
Current	195.3	209.0	221.3	234.2	247.1	260.9
MBL	195.2	208.9	221.3	234.2	246.3	258.3
Percent difference	0.01	0.02	0.01	−0.01	0.33	0.99
Actual difference	0.0	0.0	0.0	−0.0	0.8	2.5
PWIT—WPI and all commodities (67=100):						
Current	208.5	221.4	233.8	247.9	262.6	278.7
MBL	208.5	221.4	233.8	247.1	260.6	275.2
Percent difference	−0.00	−0.03	0.01	0.31	0.77	1.26
Actual difference	−0.0	−0.1	0.0	0.8	2.0	3.5
PWIIND—WPI and industrial commodities (67=100):						
Current	208.9	222.6	235.7	251.4	267.7	285.0
MBL	208.9	222.6	235.6	250.3	265.3	281.0
Percent difference	0.00	−0.04	0.03	0.43	0.94	1.42
Actual difference	0.0	−0.1	0.1	1.1	2.5	4.0

T1.2—MAJOR ECONOMIC INDICATORS, PRICE AND MON.—Continued

	1978	1979	1980	1981	1982	1983
M1—Money supply wo. time dep. (billions of dollars):						
Current	351.1	374.0	398.4	428.2	461.5	498.8
MBL	351.1	373.9	396.2	420.8	447.6	478.0
Percent difference	−0.00	0.04	0.55	1.75	3.00	4.35
Actual difference	−0.0	0.1	2.2	7.4	13.8	20.8
M2—Money supply w. time dep. excl. cds. (billions of dollars):						
Current	844.4	915.0	989.9	1,074.3	1,168.4	1,273.5
MBL	844.4	914.9	987.4	1,061.6	1,138.9	1,225.7
Percent difference	−0.00	0.01	0.25	1.19	2.59	3.90
Actual difference	−0.0	0.1	2.5	12.7	29.5	47.8
MA—Money supply w. time dep. incl. cds. (billions of dollars):						
Current	930.7	1,012.6	1,096.6	1,189.4	1,289.8	1,401.6
MBL	930.7	1,012.5	1,094.1	1,176.7	1,260.3	1,353.8
Percent difference	−0.00	0.01	0.22	1.08	2.34	3.53
Actual difference	−0.0	0.1	2.5	12.7	29.5	47.8
RFF—Federal funds rate (percent):						
Current	7.43	6.97	6.27	6.61	6.97	6.78
MBL	7.42	6.98	6.31	6.31	5.95	5.34
Percent difference	0.16	−0.27	−0.74	4.82	17.09	26.96
Actual difference	0.01	−0.02	−0.05	0.30	1.02	1.44
RTB—Yield, 3-mo treasury bills (percent):						
Current	6.69	6.23	5.85	5.39	5.60	5.26
MBL	6.69	6.41	5.93	5.30	5.05	4.71
Percent difference	0.13	−2.85	−1.41	1.68	10.97	11.79
Actual difference	0.01	−0.18	−0.08	0.09	0.55	0.55
RCP—Rate, prime commercial paper, 4 to 6 mo (percent):						
Current	7.42	7.01	6.49	6.49	6.82	6.63
MBL	7.40	7.09	6.56	6.30	6.05	5.63
Percent difference	0.23	−1.19	−0.94	3.03	12.75	17.94
Actual difference	0.02	−0.08	−0.06	0.19	0.77	1.01
RPCB—Rate, prime commercial bank loan (percent):						
Current	8.65	8.45	7.93	7.88	8.18	8.05
MBL	8.62	8.47	7.94	7.68	7.46	7.08
Percent difference	0.40	−0.27	−0.13	2.58	9.75	13.71
Actual difference	0.03	−0.02	−0.01	0.20	0.73	0.97
RAAU—Rate, new issue AA utility bonds (percent):						
Current	9.03	8.85	8.61	8.67	8.90	8.97
MBL	9.02	8.84	8.56	8.46	8.26	7.89
Percent difference	0.10	0.12	0.55	2.48	7.65	13.59
Actual difference	0.01	0.01	0.05	0.21	0.63	1.07

*Compare T10.1 with MBL.

T10.1—FEDERAL GOVERNMENT RECEIPTS AND EXPENDITURES

	1978	1979	1980	1981	1982	1983
TF—Federal Government receipts (billions of dollars):						
Current	422.5	456.6	483.4	543.9	590.7	648.0
MBL	422.4	451.8	491.2	549.8	600.2	652.7
Percent difference	0.01	1.07	−1.60	−1.08	−1.58	−0.72
Actual difference	0.0	4.8	−7.9	−6.0	−9.5	−4.7
TPF—Federal personal tax receipts (billions of dollars):						
Current	187.7	197.9	199.5	212.5	226.8	252.6
MBL	187.7	197.4	216.0	236.4	259.9	285.4
Percent difference	−0.00	0.27	−7.64	−10.12	−12.71	−11.50
Actual difference	−0.0	0.5	−16.5	−23.9	−33.0	−32.8
TCF—Federal corp profit taxes (billions of dollars):						
Current	68.8	69.1	75.7	86.8	95.0	101.9
MBL	68.8	64.5	67.5	73.1	79.5	85.3
Percent difference	0.08	7.09	12.19	18.74	19.46	19.40
Actual difference	0.1	4.6	8.2	13.7	15.5	16.6
TBF—Federal indirect business taxes, (billions of dollars):						
Current	27.5	29.4	31.4	33.3	35.2	37.2
MBL	27.5	29.4	31.4	33.3	35.2	37.2
Percent difference	0.00	0.00	0.00	0.00	0.00	00.0
Actual difference	0.0	0.0	0.0	0.0	0.0	0.0
SOCF—Federal receipts, social insurance contribution (billions of dollars):						
Current	138.5	160.2	176.8	211.3	233.7	256.3
MBL	138.5	160.5	176.4	207.0	225.6	244.8
Percent difference	−0.02	−0.17	0.23	2.06	3.57	4.73
Actual difference	−0.0	−0.3	0.4	4.3	8.1	11.6
GFEXZ—Federal Government expenditures, (billions of dollars):						
Current	460.6	499.4	534.1	565.8	599.2	634.1
MBL	460.6	502.0	542.9	584.3	627.3	672.1
Percent difference	0.00	−0.52	−1.61	−3.16	−4.48	−5.66
Actual difference	0.0	−2.6	−8.7	−18.5	−28.1	−38.1
GFZ—Federal Government purchases, goods and plus services (billions of dollars):						
Current	154.2	167.4	177.2	186.8	197.5	209.4
MBL	154.2	169.7	183.5	198.4	214.1	231.3
Percent difference	0.00	−1.33	−3.45	−5.87	−7.76	−9.45
Actual difference	0.0	−2.3	−6.3	−11.6	−16.6	−21.9
GFDZ—Federal Government Defense purchases, including components (billions of dollars):						
Current	101.0	108.4	118.9	118.2	124.8	132.0
MBL	101.0	110.0	118.5	126.9	136.6	147.1
Percent difference	0.00	−1.52	−3.91	−6.87	−8.66	−10.26
Actual difference	0.0	−1.7	−4.6	−8.7	−11.8	−15.1
WDEF—Compensation defense workers (billions of dollars):						
Current	45.9	49.4	53.2	56.4	60.1	64.0
MBL	45.9	49.4	53.2	56.4	60.1	64.0
Percent difference	0.00	0.00	0.00	−0.00	−0.00	−0.00
Actual difference	0.0	0.0	0.0	−0.0	−0.0	−0.0
GFDPZ—Federal defense purchases excl. comp. (billions of dollars):						
Current	55.15	58.95	60.69	61.71	64.71	68.03
MBL	55.15	60.62	45.32	70.46	76.54	83.11
Percent difference	0.00	−2.75	−7.09	−12.36	−15.45	−18.15
Actual difference	0.00	−1.67	−4.63	−8.71	−11.83	−15.09
GFNDZ—Federal Government nondef. purchases inc. comp. (billions of dollars):						
Current	53.2	59.1	63.3	68.6	72.7	77.4
MBL	53.21	59.7	65.0	71.6	77.5	84.2
Percent difference	0.00	−1.00	−2.63	−4.10	−6.18	−8.05
Actual difference	0.0	−0.6	−1.7	−2.9	−4.8	−6.8
WND—Compensation, nondefense workers (billions of dollars):						
Current	25.5	27.4	29.4	32.2	34.6	37.5
MBL	25.5	27.4	29.4	32.2	34.6	37.5
Percent difference	0.00	0.00	0.00	0.00	0.00	−0.00
Actual difference	0.0	0.0	0.0	0.0	0.0	−0.0
GFNDPZ—Federal Government nondefense purchases exc. comp. (billions of dollars):						
Current	27.7	31.7	33.9	36.5	38.1	39.9
MBL	27.7	32.3	35.6	39.4	42.9	46.7
Percent difference	0.00	−1.85	−4.81	−7.45	−11.17	−14.51
Actual difference	0.0	−0.6	−1.7	−2.9	−4.8	−6.8
TRGF—Federal transfer payments (billions of dollars):						
Current	185.5	203.2	220.2	234.8	250.4	266.7
MBL	185.5	203.2	221.9	240.6	260.0	279.1
Percent difference	0.00	0.03	−0.80	−2.41	−3.70	−4.46
Actual difference	0.0	0.1	−1.8	−5.8	−9.6	−12.4
TRGP—Federal Government transfers to persons (billions of dollars):						
Current	181.9	199.4	215.9	230.3	245.6	261.6
MBL	181.9	199.3	217.7	236.1	255.2	274.1
Percent difference	0.00	0.03	−0.81	−2.46	−3.77	−4.54
Actual difference	0.0	0.1	−1.8	−5.8	−9.6	−12.4
TRFFRN—Federal transfer payments, foreigners (billions of dollars):						
Current	3.6	3.9	4.3	4.6	4.8	5.1
MBL	3.6	3.9	4.3	4.6	4.8	5.1
Percent difference	0.00	0.00	0.00	0.00	0.00	0.00
Actual difference	0.0	0.0	0.0	0.0	0.0	0.0
GIA—Federal Government grants-in-aid (billions of dollars):						
Current	76.4	81.0	85.0	89.9	96.8	105.2
MBL	76.4	81.0	85.0	89.9	96.8	105.2
Percent difference	0.00	0.00	0.00	0.04	0.04	0.04
Actual difference	0.0	0.0	0.0	0.0	0.0	0.0
GFINT—Net interest paid by Federal Government (billions of dollars):						
Current	35.3	38.9	42.1	43.8	43.5	41.1
MBL	35.3	39.3	42.8	44.9	45.4	44.9
Percent difference	0.04	−1.00	−1.47	−2.39	−4.18	−8.45
Actual difference	0.0	−0.4	−0.6	−1.1	−1.9	−3.8
GFSLS—Subsidies—Current surplus, Federal Government (billions of dollars):						
Current	9.1	8.9	9.7	10.5	11.1	11.6
MBL	9.1	8.9	9.7	10.5	11.1	11.6
Percent difference	0.00	0.00	0.00	0.00	0.00	0.00
Actual difference	0.0	0.0	0.0	0.0	0.0	0.0
GFDEF—Federal Government surplus or deficit (billions of dollars):						
Current	−38.2	−42.8	−50.7	−21.9	−8.5	13.9
MBL	−38.2	−50.2	−51.7	−34.5	−27.7	−19.5
Percent difference	−0.20	−14.79	−1.82	−36.43	−68.59	−171.26
Actual difference	0.1	7.4	0.9	12.6	18.6	33.4

MBL=Standard long-term forecast made in September 1978.
Current=Hart amendment provisions for spending restraint and tax cuts.

Source: Congressional Research Service—Analysis using Chase Economics Inc. Economic Model. (Hart program of October 9, 1978, with no corporate tax cuts.

TRIBUTE TO JOHN SPARKMAN

● Mr. BAYH. Mr. President, it is with as much sadness as affection that I offer this tribute to a beloved statesman whose record of service in the U.S. Congress began in 1937. JOHN SPARKMAN of Alabama will be missed by all of us who benefited from his wise counsel and unstinting fairness. Those of us on the majority side of the aisle remember JOHN SPARKMAN both for his legislative accomplishments—his work as an able and distinguished chairman of the Senate Banking Committee and later chairman of the Foreign Relations Committee—and his own political achievements. In 1952 it was JOHN SPARKMAN who ran with Adlai Stevenson and gave us a faithful preview of the "new South" which we know today and which has given us a President committed to the twin goals of peace and security for which Senator SPARKMAN has worked so hard over the past 42 years.

Yes, the world is a very different place since JOHN SPARKMAN took his first congressional oath of office as a Member of the House of Representatives in 1937. However, his own prescription for progress through belief in the basic goodness of the people he represents and the acceptance of social change endures as a reliable formula for us all even as we are beset by the bewildering complexity of the contemporary world's perplexing problems.

During all my years of service in the Senate, one of the greatest privileges I have been fortunate enough to enjoy has been to work with a man whose reputation for civility and charm preceed him. JOHN SPARKMAN has helped to make my work here in the Senate an enjoyable experience and I know my colleagues have likewise been able to serve their own constituents just a bit better because of the senior Senator from Alabama. We will all miss him.●

THE U.S.S.R. AND THE THIRD WORLD

● Mr. McGOVERN. Mr. President, judged by the alarm it has inspired here, one might conclude that the Soviet ambition to gain influence in developing countries has been an unmitigated success.

The reality is less frightening. At considerable expense—nearly $10 billion in economic support in 1961 to a single country—the Soviet Union has been able to sustain a close relationship with Cuba. It is worth noting that in that particular endeavor they have also had considerable help from us, since our effort to isolate and embargo Cuba made it impossible for that country to maintain any independence even if it so desired.

On the whole, however, the Soviet Union has no extraordinary influence in the Third World. Even those countries which are thought to have been subject to Soviet penetration tend to behave or misbehave according to their own judgments of self-interest and not according to outside dictation. And of course, there have been some stunning setbacks—China, Egypt, Somalia, Indonesia, and Ghana to mention just a few.

The Soviet approach to the Third World has been described in some detail by William H. Luers of the Department of State in a paper prepared for the series of seminars on "The U.S.S.R. and the Sources of Soviet Policy" sponsored by the Kennan Institute of the Wilson Center and the Council on Foreign Relations last April and May. Mr. Luers does not minimize Soviet aspirations—indeed, he singles out Ethiopia as a case where the Soviets may hope to parallel their relationship with Cuba. However, I think anyone who reads this comprehensive assessment must conclude that the United States is in a strong relative position with respect to developing countries.

Mr. President, I ask that the paper I have described, including several appended tables, be printed in the RECORD. The material follows:

THE U.S.S.R. AND THE THIRD WORLD

This paper is designed as a briefing on Soviet policy toward the Third World. In compiling this brief review I have tried to accomplish four things:

To describe a few of the Soviet experiences that have shaped the diverse Soviet policies and involvements in the Third World.

To discuss Soviet economic and military programs in the Third World.

To discuss briefly the recent Soviet/Cuban involvement in the Horn of Africa; and

To draw some conclusion as to the nature of current Soviet policy toward the Third World.

I have not addressed U.S. relations with the Third World or attempted to describe an appropriate U.S. response to Soviet activities.

PAST SOVIET EXPERIENCES WITH THE THIRD WORLD

Soviet policy toward and engagement in the Third World has roots in Russian imperial history and in the early Soviet period. Ideology and State interests have competed for dominance in determining the course of Soviet policies. But it is not within the scope of this study or my competence to search in Russian history for clues to Soviet motives for projecting power into the Third World. Instead, I shall consider the manner in which Soviet experiences in the Third World since the mid-1950s might have conditioned Soviet policies of today.

After World War II the Soviets sought opportunities to take advantage of the dissolution of the colonial empires. Lenin had led them to expect not only an embrace from the former colonies but a significant trembling in the metropoles. The first major Soviet efforts in the Third World were eminently "Krushchevian"—innovative, personalized, ideologically justified, ill-conceived and ultimately failures. The Soviets' successful entry into Nasser's Egypt coincided with the new opportunities that emerged from the Bandung Conference (1955). Khrushchev recognized these opportunities at the 20th Party Congress (1956) saying that "the disintegration of the imperialist colonial system is a postwar development of world historical significance." In the next decade Khrushchev professed to see the emergence of "national democratic states," mainly in Africa and Asia, headed by "progressive" or "revolutionary democratic" leaders who were not yet socialist but were perceived to be on the track toward socialist development. These charismatic leaders were honored in Moscow and their nations received the first significant Soviet economic assistance and military aid.

In the 1960s the Soviets received one disappointment after another: from the Congo crisis, to the disintegration of the "Casablanca bloc" (Guinea, Chana, Mali, Morocco, and the UAR) and the ouster or shift in orientation of most of the "revolutionary democrats." Moreover, Soviet aid paled before programs of the U.S. and the former "metropoles". Their first parries into the Third World were inept and based on naive premises. The Soviets—like the U.S.—learned that the course of events in post colonial Africa and Asia was unpredictable, that their own ability to transform assistance into influence was limited, and that nationalism, economic and political underdevelopment and residual Western traditions in these new societies imposed major obstacles to Soviet objectives.

The second major experience that shaped Soviet policies toward the Third World was the split with China. As the break with Peking developed, Moscow sought to buttress its relations in the rest of Asia. India eventually became the centerpiece of that strategy after the Soviet split with China. During 20 years a relationship has developed with India that has been useful to both countries. By far the largest recipient of Soviet aid and one of the largest buyers of Soviet arms, India has managed effectively its dealings with the Soviets, who have grown to live with India's independence. The Soviets not only failed to promote Communism in India, but they have come to prefer an independent, non-aligned India to another giant Communist competitor on the Asia continent. If the break with Peking led Moscow to establish a balanced state-to-state relationship with India, it also gave impetus to Soviet efforts to compete with China nearly everywhere else in the Third World. The containment of Chinese influence has been one of the major objectives and motivating factors in determining Soviet policy toward the Third World.

The third set of experiences that shaped the Soviet view of the future arose from Soviet involvement in Cuba and Vietnam. Like Korea in an earlier period, the threat or reality of U.S. military engagement in both cases imposed special constraints on Moscow. Indeed, the prospect or the actuality of U.S. military action was perhaps the critical factor in the Soviet approach to such "national liberation struggles." At the same time, the experiences in Cuba and Vietnam underlined for Moscow the fact that their only effective tool for gaining influence in the Third World was probably military assistance and arms transfer.

From more than fifteen years' contact with Castro, Moscow must have derived at least two important lessons:

(1) that large scale military support to a revolutionary regime that is under fire can bring significant political influence, but the sustenance of such a regime can be costly in economic terms (over $9.9 billion since 1961).

(2) that the revolutionary and ideological zeal of a client Communist state can both be troublesome for Soviet policy (*Fidelismo* in Latin America and the missile crisis in the 1960s) and supportive (in Africa and the non-aligned in the 1970s) of it.

Whatever problems have existed in the relationship, it is clear that Cuba over the past decade and a half has unlocked a number of doors for the Soviets in the Third World. Cuba became the first and only major revolutionary/Communist regime in the Third World and received full Soviet support for the development of its socialist programs. Moreover, it became an effective and consistent supporter for the Soviets in the non-aligned movement through which many key decisions in international organizations are influenced and even determined. Finally, Cuba helped reactivate Soviet participation in African affairs and, most important, provided the combat troops to make the military involvement effective. Clearly, then, the Soviets would like to find and support a few more Cubas; not too many, however, since it is understood in Moscow that such ventures can be costly.

The Soviets probably had the cost of the

Cuban experience in mind when they moved so cautiously with the Allende Government in Chile. By the time Allende became President of Chile (November 1970), the Soviets had dropped their pretension to being the guiding force and guarantor of Communist parties or the radical left in Latin America. Allende needed economic assistance on a large scale to survive. His quandary offered the Soviets a unique opportunity to demonstrate that Marxist parties could come to power peacefully and yet would be supported by Soviet economic might.

Yet for all this, Soviet economic aid to Allende was minimal. Nor did the Soviets embrace him ideologically, choosing to refer only to Chile's "revolutionary renovation" or "radical reconstruction" rather than to its "socialist transformation."

The final irony of the Soviet decision not to support the *Unidad Popular* was that during the very year (1973) that Allende was overthrown by Pinochet, the Soviets were preparing to embrace warmly the return of Juan Peron as president of Argentina. No contemporary figure so epitomized the Latin American strong man of the Right. But the Soviets clearly saw in Peron a man with whom they could work, and one who could give them a role in one of the potentially wealthiest nations of the Third World. Peron, after all, had a reputable background of independence from the U.S., and presented no ideological challenge to Soviet policy. It was not surprising, therefore, that he sought Soviet help in establishing an economic and trade relationship between Argentina and the USSR. Within a short time, Soviet offers of credits and cooperation to Argentina exceeded those offered by the USSR to Allende. Indeed, Argentina under Peron became the largest recipient of Soviet aid in the Western Hemisphere after Cuba.

The fourth complex of experiences that has given a special cast to Soviet policies has been the Middle East. If the major Soviet security concerns lay to the East and West, the major area for the expansion of political and economic influence and for superpower competition in the Third World has been the Middle East. In the 1973 war, the Soviets were able to respond to Arab requests with an airlift of supplies and arms that compared favorably in terms of speed and dependability with what the United States could have done. Over 800 military support flights were flown to Egypt and other Arab nations. This was a new, more muscular manifestation of the Soviet Union's capacity and readiness to behave like the other superpower.

Finally, the most important factor in the development of Soviet attitudes toward the Third World has been the United States. The initial Soviet thrust into the Third World was trade in order to prevent the U.S. from drawing these newly emerging states into a system of anti-Soviet alliances. The Soviets developed a large scale navy that was intended, in the first instance, to counter U.S. attack carriers and nuclear submarines. By the late 1960s, however, the expanding navy had taken on an additional rationale and had become an important factor in the Soviet presence in the Third World. More important, the entire shape of Soviet programs for developing countries increasingly resembled U.S. bilateral programs—lucrative arms sales to steady customers, selectivity in bilaterial economic assistance and emphasis on trade opportunities.

One aspect of Soviet economic policy toward the Third World that has not developed along the lines of U.S. policy is in the area of multilateral and institutional ties. The most remarkable phenomenon of the past decade has been the degree to which international financial institutions (IMF, IBRD, UNDP and regional banks), multinationals (banks and corporations) and international organizations (OPEC, UNCTAD, GATT, WHO, FAO, commodity groups, etc.) have dominated the outlook energies and development of the Third World. The non-warring Third World states whose borders are relatively stable deal with the dominant issues of the day (food, energy, development, trade, technology, health, education) not bilaterally with the superpowers but through an expanding international network in which the Soviet Union is inactive and largely irrelevant.

If the Soviets failed to follow the U.S. lead toward the internationalization of development programs and if they failed to commit significant resources to Third World economic development, they perhaps learned too well from our military sales and assistance programs. The most disturbing aspect of Soviet relations with the Third World today is their readiness to transfer significant quantities of military equipment buttressed by advisers and, in two recent cases, Cuban combat troops. It is in this area that Soviet policy has become most threatening and destabilizing.

SOVIET PROGRAMS AND PRESENCE IN THE THIRD WORLD

One method of gauging Soviet involvement in the Third World is to measure the expansion of Soviet diplomatic relations, the increase in military and economic assistance, and the growing number of technicians placed in developing countries. This "penetrationist" school of Sovietology holds that the growth of Soviet presence has resulted in a comparable increase in Soviet influence and power. What the "penetrationists" do not usually measure, however, is the comparable growth in the presence of other powers or the increasing capacity of Third World states to control Soviet inputs and manage or mismanage their own affairs.

Rather than present such statistics, let us look instead at the cumulative totals of Soviet economic and military assistance over the last ten to twenty-five years. Between 1954 and 1976 the USSR extended a total of $11,800 billion in economic assistance, $6.7 billion of it in the last ten years (Table I). From a base of $291 million in 1967, the value of Soviet aid commitments peaked at $1.2 billion in 1971 and again in 1975, but dropped to $390 million by 1977. Actual drawdowns on these agreements have remained remarkably constant for a decade: between $300–$700 million *per annum*. Of the nearly $12 billion in Soviet aid extended since 1954, only about $7 billion has actually been used by recipient countries. (Cuba has received $10 billion since 1961.)

Compare these modest figures to the scale of international lending. In 1977 alone, loans to less developed countries were as follows: World Bank, $7.3 billion; other regional banks (ADF, ADB, and IADB), $2.83 billion; U.S. commercial banks, $52.3 billion; and U.S. bilateral assistance, $5.6 billion. As the resource flow to the Third World has expanded enormously over the last decade buttressed by the increased wealth of the oil exporting states, Soviet participation in this growth has been marginal and, except in a few countries, unnoticed.

Although instructive, these overall figures do not answer the fundamental question of just how much influence the ruble has bought. Excluding Cuba, Vietnam and North Korea, a look at the top 20 recipients of the Soviet economic assistance since 1954 gives an indication of the relationship between lasting friendship and the ruble (Table II). Among the first five recipients, India is nonaligned, while Egypt, Turkey and Iran have close ties with the United States. Afghanistan to now has maintained a non-aligned policy—it is too soon to judge whether Afghanistan's new leadership will desire to preserve their country's balanced approach to international affairs. Algeria (6), Iraq (7) and Syria (9) have good relations with Moscow, but could hardly be considered Soviet pawns. No. 11 is Argentina, which stands ahead of Chile (12) for the various reasons discussed earlier. Other countries on the list, such as Somalia (14), Indonesia (15), and Ghana (40), are symbolic of traumatic reverses in Soviet relations with the developing world.

What is most evident in the pattern of recent Soviet economic assistance, however, has been the emphasis on developing closer economic ties with neighboring countries or countries in the near periphery, particularly in South Asia and the Arab World. Similarly, the role of ideology in economic ties has been deemphasized over the past decade. At the 25th CPSU congress in 1976, Kosygin announced that Soviet cooperation with developing countries should take the form of a "stable and mutually advantageous division of labor." The purpose of such a policy was not just to win political and ideological influence. It was to establish long-term economic relations and broaden the base of Soviet economic relations with the world.

The Soviets have learned that economic investments in nations with ideologically compatible leaders does not always prove effective. Moreover, the proximity to the USSR of some nations offered opportunities for longer term, more stable economic relations even when those states were capitalist-oriented. At the same time, it is clear that the Soviets also hope that by establishing more stable economic relations with such countries as India, Afghanistan, Iran, Pakistan, etc., hostilities could eventually be diminished and perhaps greater political (even ideological) compatibility achieved.

While Soviet economic assistance has been a relatively minor and stable factor in the evolution of Soviet efforts to seek influence in the Third World, their military programs and arms transfers have expanded steadily. Table 3 indicates that the value of Soviet military agreements have increased progressively over the past decade from $525 million in 1967 to over $4 billion last year. The value of arms deliveries grew from $500 million to $3 billion over the same period. The record of Soviet arms transfers is a reliable measure for determining the USSR's relationship with developing states. Out of the top 20 recipients of Soviet arms over the past decade (Table IV), the obvious candidates—Vietnam (1), Cuba (9), and North Korea (8) all appear in the top ten. Others in the group, including Syria (3), Iraq (4), Libya (6) and Algeria (10), have close relations with Moscow and generally support Soviet positions. Only Egypt (2), India (5) and Iran (7) have either non-aligned or have closer ties with the United States.

In the second group of ten, the list of recipient countries presents a more varied picture. Among these are China (11), Somalia (13), Peru (14), Nigeria (17), Sudan (18), Uganda (19) and Guinea (20), most of which have distanced themselves from the Soviet Union. Only Angola (12), North Vietnam (15) and perhaps now Afghanistan (10), could be said to be close to the Soviets.

In 1976, the Soviet bloc had over 10,000 military technicians in Third World countries, less than 10 percent of these were from Eastern Europe—the rest from the Soviet Union. Most of these technicians were concentrated in Iraq, Syria, Algeria and Somalia. Increasingly, military personnel from Third World countries are receiving training in the Soviet Union. In 1976 over 4,000 persons were so trained, the largest group of them coming from the countries indicated above, plus Libya and Tanzania.

Soviet arms agreements in 1977 were up considerably over 1976. A major increment, of course, came from Soviet sales to Addis Ababa of over $800 million, but lucrative agreements were reached also with Algeria, India, Libya and Syria—deals which together came to nearly three and one-half billion dollars. The main recipients of Soviet military assistance have been in the Middle East, South Asia and, more recently, sub-Saharan

Africa. The only significant recipient of Soviet military assistance in Latin America has been Peru, where the Soviets continue to emphasize military sales at a time when Peru is practically bankrupt and needs economic support which it can seek only in the West.

SOVIET INVOLVEMENT IN THE HORN OF AFRICA

Angola was the first example of the most recent Soviet tactic in the Third World. There, the Soviets—together with the Cubans—dramatically shifted the balance of power in 1975 by providing significant material and combat support for Neto's MPLA. In less than two months the combination of Cuban troops and heavy Soviet military aid turned the tide in favor of Neto and permitted him to establish control in most of that country.

We next saw the Soviet-Cuban formula applied in Ethiopia: a development which needs to be seen, however, against the complex background of the Soviet presence and role in Somalia. Over a decade, the Soviet Union provided more than a billion dollars worth of weapons and technical assistance in Somalia, in the process creating the military force which enabled Siad Barre to prepare and carry out the infiltration and subsequent invasion of the Ogaden. After 1976, however, the Soviets thought that the Mengistu revolutionary regime in Ethiopia might be added to Somalia as a client in the Horn. Mengistu's Ethiopia was ideologically attractive to the Soviets, perhaps reminding them of Castro's Cuba after the fall of Batista. After all it presented the picture of a revolutionary leader preparing to reconstruct the social order of his country along radical lines using military force, and in an atmosphere of seige.

Somali irredentism over the Ogaden, however, had been a source of tension for decades, and ultimately proved to be the stumbling block for Soviet policy in Somalia. Late in the summer of 1977, the Soviet government tried to dissuade the Somalis from large scale incursions into Ethiopia and sought to reduce the chances for open military conflict between the two countries.

This tardy Soviet effort failed. After having been ejected from Somalia, the Soviets turned their full support to Ethiopia which had broken its military relationship with the U.S. In responding to Mengistu's plea for assistance against invasion from Somalia, the Soviets abandoned for the moment any hopes of retaining a presence in both countries. In the latter part of 1977, the Soviets supported the government of Ethiopia with a large scale air and sea lift, sustained over a period lasting several months This operation, which involved more than a billion dollars' worth of sophisticated military equipment and tanks, together with an infusion of 10–15,000 Cuban combat troops turned the tide of the military campaign. A notable feature of the effort (not seen in Angola) included the establishment of a Soviet command structure to coordinate the logistics and possibly the tactical movements of both ground and air elements of the Cuban and Ethiopian forces.

So much has been written about the aggressiveness of Soviet policy in the Horn of Africa that any further recitation here will add little. Soviet involvement in Ethiopia was not uninhibited adventurism, however. Indeed, it can be said that Soviet policy displayed some self-limiting elements. The Soviet government did apparently seek to dissuade the Somalis from invading the Ogaden. Moreover, the Soviets did not encourage and may have counseled against Ethiopian and Cuban troops crossing the border into Somalia. Also, large scale retribution against the Somali population in the Ogaden has not yet taken place, although we do not know whether Soviet advice in any way responsible for this. Finally, the Soviets and the Cubans thus far seem to be reluctant to commit their own personnel to military operations in Eritrea, and have called for a political solution to the secession problem there. The Soviets will probably not restrain their Ethiopian clients, but the question is whether they and the Cubans will choose to remain aloof.

There is some evidence that Soviet policy in black Africa operates under a loose Organization of African Unity constraint in the sense that it aims for, and is perhaps limited by, the need to establish legitimacy in the eyes of other regional powers. Hence, the Soviets have deliberately sought to avoid involvements which would open them to the charge of participating in the adjustment of African boundaries by force. Naturally, then, the Soviets follow closely the lead of the front line states on the Zimbabwe and Namibia issues.

To conclude, looking at Soviet objectives and intentions in the region, one can draw certain tentative conclusions:

(1) As early as 1976, the Soviets had seen in the Mengistu revolutionary government an ideologically promising regime which might help establish their presence in Africa.

(2) Once the USSR was ejected from Somalia, Soviet support for Ethiopia was kept within limits consistent with OAU policies on territorial intergrity and the inviolability of borders.

(3) Soviet operations in Ethiopia vividly demonstrate their possession of a logistical force and command structure which, in conjunction with Cuban manpower, can be used to intervene in politico-military disputes far from the Soviet homeland. This indicates to the U.S. and others that the Soviet Union regards itself as a superpower and is prepared to enjoy the prerogatives of a superpower whose interests are far flung and which must be accommodated in the resolution of regional conflicts its deems important to its own interests.

(4) The Soviet and Cubans now appear to be determined to retain a large military presence in Ethiopia in order to serve as a prop for the Mengistu government, and presumably to help in shaping the course of Ethiopia's internal development, as they have been doing in the case of Angola. Conceivably, as noted above, the Soviets hope to develop a relationship with Ethiopia rather like that which they have had for so long with Cuba. Yet it must be stressed that the Mengistu is not Fidel, and the size, diversity, and massive needs of Ethiopia will present the Soviet leadership with a formidable and perhaps overwhelming challenge.

CONCLUSIONS—CURRENT SOVIET POLICY

Several conclusions appear justified from the foregoing:

The diverse, opportunistic and erratic character of Soviet involvement in the Third World suggests no basic commitment to Third World development or to a comprehensive engagement with Third World problems.

The force driving the projection of Soviet power into the Third World flows from Soviet state interests in a secure periphery and in assuming both the role and image of a superpower. In Africa the Soviets are responding to perceived opportunities to expand their influence.

Ideology, too, is a factor. The generally opportunistic approach of the USSR to the Third World and failure to engage in the "North-South dialogue" seems conditioned in part by Lenin's predictions that the crisis of imperialism arises out of the breakdown of relations between colonies and the metropoles. Naturally, then, the Soviets do not see themselves as party to this and hence that they have a relatively free hand. It is worth stressing that in such cases as Cuba, Vietnam and perhaps Ethiopia, where the state and ideological interests of the USSR coincide and reinforce one another, Soviet commitment and activity is apt to be particularly high.

The Soviet decision to remain outside the major international financial and trade institutions and programs for resource transfers severely limits the capacity of the USSR to influence and shape events in much of the Third World. This is particularly true in the Middle East, Latin America, and Asia. Although the Soviets may find it in their economic and political interests to become involved bilaterally in developmental and trade questions, as they have with India and some nations near their borders, they seem disinclined and economically ill-equipped to participate in most international institutions. They must sit out the North-South dialogue because it is precisely in that setting where they are economically outclassed and impeded by their ideology.

The most troublesome aspect of Soviet behavior in the Third World has been, and is likely to continue to be, their efforts to seek influence by stressing arms transfers, military relations and, on occasion, facilitating the introduction of Cuban or other forces into regional conflicts. At least in the short term, military power translates into political influence in parts of Africa. Mugabe and Nkomo, for example, are likely to be more intransigent when bolstered by the formidable and tested Soviet/Cuban force. For the same reason, Neto and Mengistu are likely to become more difficult neighbors. Most serious is the specter of deep racial conflict in Southern Africa in a situation where the front line states are backed by Soviet might. In a crisis situation, moreover, the presence or potential of Soviet power could again play an important, possibly critical, role in the Middle East.

There are also some limits and constraints on Soviet power in the Third World. In those parts of the Third World where economic issues dominate and where borders and regions are relatively stable, Soviet military power is marginal or irrelevant. In Africa, the Soviets are likely to try to be seen as working within political limits which make difficult the development of an OAU consensus against their involvement. To the extent that the Soviet presence became increasingly divisive within the OAU or the use of their power exceeds African tolerance, they risk expulsion or rejection from important regions in Africa. Most important, the great powers have consistently underestimated the capacity of countries in the Third World to assert themselves effectively against outsiders and to preserve their own national integrity. The developing Arab, non-aligned, and Western concerns over Soviet behavior are likely also to give the Soviets pause.

The Middle East remains for the Soviets the most critical area of interest in the Third World and the one where the potential for superpower confrontation is highest. Indeed, their adventures in Africa, in part, flow from their frustration in not playing a major role in the Middle East. There is a certain logic to the return of Soviet attention to Africa since it is the part of the world in greatest flux. But there is also a paradox in the Soviet return to Africa since it is the scene of the greatest debacles of Soviet policy. Such a volatile environment is likely to cause further setbacks.

An important test for future Soviet effectiveness in Africa will be in Ethiopia. Here, too, the Soviets face a dilemma. Should they be effective in assisting the consolidation of Mergistu's power and the establishment of a Soviet client state on the Cuban model, the Soviets and a revolutionary client will further alarm Ethiopia's neighbors, including Black Africa. The Soviets could become not only a more controversial and feared intruder but they could also find a high cost in assuming some of Ethiopia's economic burden.

Should the Soviets not make a major commitment to Ethiopia and seek instead to enlarge their role in Southern Africa they could find themselves in unmanageable conflicts and racial wars and in the process could risk losing their footing in Ethiopia.

In the ebb and flow of conflict and stability in the Third World it is often the perception of the power balance that is as important as the actual application of power or the importance of the conflicts themselves. Soviet perceived successes in the recent years in Angola, Ethiopia and possibly Afghanistan may be ephemeral. But these successes give encouragement to foreign adventures by a conservative Soviet leadership troubled at home and feeling the need to legitimize its ideological credentials abroad; at the same time, they will cause concern among America's allies and friends who are, or consider themselves to be, threatened by Soviet power; moreover, they bring into question the value and terms of detente between the superpowers.

TABLE I: *Soviet economic aid to less developed countries*

(*US dollars in millions*)

Year	Extended	Drawn
1954–1976	11,769	6,560
1967–1976	6,704	4,315
1967	291	310
1969	494	355
1970	198	385
1972	802	430
1975	1,229	485
1976	875	420
1977 (prelim)	390	500

TABLE II: Soviet economic aid to developing countries 1954–1976*

(By order to total value of aid extended)

Total $11,769 million.

Country	*Value*
1. India	1,943
2. Egypt	1,300
3. Afghanistan	1,251
4. Turkey	1,180
5. Iran	750
6. Algeria	715
7. Iraq	699
8. Pakistan	652
9. Syria	467
10. Bangladesh	300
11. Argentina	245
12. Chile	238
13. Guinea	201
14. Somali	154
15. Indonesia	114
16. Ethiopia	105
17. North Yemen	98
18. Morocco	98
19. Sri Lanka	95
20. Ghana	93
3. Syria	2,015
4. Iraq	1,795
5. India	1,365
6. Libya	1,005
7. Iran	611
8. North Korea	480
9. Cuba	355
10. Algeria	315
11. People's Republic of China	191
12. Angola	190
13. Somalia	181
14. Peru	165
15. Yemen (Aden)	151
16. Afghanistan	100
17. Nigeria	70
18. Sudan	65
19. Uganda	65
20. Guinea	50

*Cuba, Vietnam and North Korea are not listed because of their special relationship to the Soviet Union.

TABLE II: *Soviet economic aid to developing countries 1954–1976**

(US$ million)

Year	Agreements	Deliveries
1955–1977	24,875	20,215
1967–1977	20,375	16,640
1967	525	500
1969	350	450
1970	1,150	1,000
1972	1,600	850
1975	2,000	1,685
1976	2,450	2,190
1977 (prelim)	4,000	3,000

TABLE IV: *Soviet military arms transfers to developing countries, 1967–76*

(By order of total value of transfers)

Total $17,972 million, US$ millions.

Country	*Value*
1. Vietnam	2,481
2. Egypt	2,365

MAX FRIEDERSDORF

● Mr. BAKER. Mr. President, I wish to commend President Carter for his selection of Max Friedersdorf to serve on the Federal Election Commission. Max has an intimate knowledge of both the political and substantive policymaking aspects of Government and would make an outstanding member of the Federal Election Commission.

He has been a newspaper reporter, a staff member in both the House and Senate, as well as a top advisor to recent Republican Presidents. That is why Max Friedersdorf was one of several individuals recommended by House minority leader JOHN RHODES and me for membership on the FEC.

The President's willingness to pick a name off a list submitted by the Republican leadership in the Congress is significant because it marks the end of an unfortunate disagreement over the appointment of Republicans to the FEC. There is no board or commission which is more politically sensitive than the FEC. It affects the destiny of every Member of Congress, which is why it is so important to maintain a partisan balance on the Commission in the interest of equity and fair play. The President's selection of Max Friedersdorf has helped maintain that balance.●

WORDS FOR THE WORLD'S POOREST

● Mr. KENNEDY. Mr. President, one of the most important aspects of our Nation's commitment to human rights throughout the world is the fulfillment of that most basic of all human rights—the right to food, to the minimum level of nutrition, as well as to better health and education. It has been in support of these basic human rights to which the World Bank and its president have strongly committed throughout the world.

In recent meetings of the World Bank in Washington, Robert McNamara has eloquently stated the word of the World Bank in behalf of the world's poorest. Since the creation of the World Bank at the Bretton Woods Conference in 1944, one of its primary objectives has been to help nations by channeling financial resources from developed countries to the developing world.

While the World Bank has financed infrastructure projects, such as roads, railways, and power facilities, its present development strategy concentrates on investments which directly affect the well-being of the poorest of the poor.

It is to the commendable efforts of the World Bank, and to the greater role our country can play in support of them, that I call to the attention of the Senate an article written by Robert McNamara, entitled "Words for the World's Poorest" from the Baltimore Sun.

Mr. President, I ask that the text of this excellent article be printed in the RECORD.

WORDS FOR THE WORLD'S POOREST

(By Robert S. McNamara)

There appears to be a deep misunderstanding in the United States about aid to less developed countries.

Few appreciate the devastating poverty which exists in the world's poorest nations. The World Bank recently published a comprehensive analysis of the economic and social progress in the developing world. The most shocking conclusion of this "World Development Report" is that, even with appreciable economic progress and advancement by the developing nations, about 600 million persons will still be trapped in absolute poverty in the year 2000.

The current figure is about 800 million. These individuals live in conditions that are unimaginable to people in the industrialized countries. In the least developed countries, life expectancy is only 44 years. It is 71 years in the United States; 21,000 persons are served by one doctor, compared with 610 in the United States, and only 1 in 4 has access to safe drinking water.

Depressing as these figures are, there has been dramatic progress in the developing countries in recent years. Since 1950, incomes per capita have risen at an average rate of almost 3 per cent, which compares favorably with the 2 per cent growth by the developed countries during their industrialization process in the last century.

Most of the burden of attacking the problem of poverty falls on the shoulders of the developing countries themselves. Already about 80 to 85 per cent of development financing is derived from their domestic savings. However, their effort to further increase those savings, to raise agricultural productivity, to develop essential infrastructure and to stimulate exports must continue to grow. But these efforts must be supplemented by increased help from the industrialized countries.

1. International trade must be expanded and protectionist pressures resisted. As it is, developing countries only supply a minute portion—less than 2 per cent—of the manufactured goods sold in developed countries.

2. The flow of private capital to the middle-income developing countries needs to be sharply increased, and

3. We must step up the level of concessional assistance from the developed nations to the poorest countries.

The World Bank's role in this effort is a vital one. The bank is not a welfare agency. Our efforts are geared toward attacking poverty through making the poor more productive. While we still make loans for traditional infrastructure projects (power plants, roads, ports, etc.), the emphasis is now on agriculture and rural development because most of the world's poorest people depend on agriculture.

In a speech to the bank's governors in Nairobi, Kenya, in 1973, I set a target for the World Bank's lending for agriculture of $4.4 billion in real terms, over a five-year period. I also proposed that 70 per cent of agricultural loans contain a component to help the small farmer.

Five years later we have exceeded our $4.4 billion target by about 35 per cent, and at least 7 per cent of the 363 agricultural projects approved contain some small-farmer element. Nineteen million farm families—or 115 million individuals—will see a substantial increase in their incomes as a result of these projects.

We are already seeing practical results. I recently visited a project in northern Nigeria which was approved about a year after the Nairobi meeting. A $29 million loan there is increasing production of food and cash crops by small-scale farmers living in a 3,000-square-mile area. About 400,000 persons—most of them living on the margin of life—are expected to gain from the project. In 1974 their per capita incomes were $100. They are already up to $150 and, by 1980, they should increase to $200. When I visited this project recently, my associates and I were literally mobbed by farmers wishing to express their thanks and demanding that the project be expanded to benefit others in the area.

Although the bank's efforts to assist the urban poor are at a much earlier stage, we expect to meet or exceed our target set two years ago of financing 50 urban projects during 1976–1980. Cities in the developing world are expanding at a runaway pace. High natural population growth, combined with accelerating migration from the countryside, will add over a billion people to the urban labor pool by the end of the century. Developing countries must make massive investments if these individuals are to find productive employment.

Some have criticized the bank for making loans to countries where violations of human rights are alleged to have occurred, but the most basic of human rights is the right to a minimum level of nutrition and the right to health and education. The beneficiaries of bank loans are the people who do not have those basic rights. They are not the alleged violators of human rights.

In appraising projects and controlling disbursements we insure that bank funds really do reach the projects—and the impoverished people—for which they are intended.

The staff of the bank itself insures the most efficient use of development funds to improve the well-being of the world's poor. No one country dominates the bank by imposing its own foreign policy on our loan decisions. As a result we have been remarkably free of the political disputes that have hampered the work of other international organizations.

By its articles of agreement the World Bank may only take economic considerations into account in determining where loans should be made. Some of the amendments to this year's foreign aid appropriations bill would have altered this position. The bank would have been weakened and the credibility of the entire development effort undermined.

These restrictive amendments were defeated, as were the more sweeping attempts to cut the size of the appropriations. Nevertheless, the level of Official Development Assistance (ODA) from the United States and the other major industrialized countries must be increased if we are to do more than scratch the surface of world poverty.

The internationally accepted target for ODA of 0.7 percent of a donor country's gross national product (GNP) is far from being achieved. In 1976, United States ODA was 0.25 percent of GNP, while the average of the nations of Western Europe, Japan and North America as a group was one-third more.

The arguments for U.S. support for the World Bank—and development assistance in general—are strong on purely humanitarian grounds, but they are equally telling from the standpoint of economic self-interest.

The economic advantage to the United States is illustrated by the fact that one-third of this country's exports go to developing countries. Economic growth in the developing world has a major locomotive effect on export expansion—and job creation—in the United States.

United States exports to developing markets are greater than those to Western Europe, Eastern Europe, the Soviet Union and China combined.

In addition, World Bank projects generate substantial contracts for companies in industrialized countries. Last year alone U.S. companies won $447 million worth of orders for World Bank projects. Maryland alone received orders worth several million dollars.

Operating expenses of the World Bank in the United States, combined with payments to American investors in World Bank bonds, add to the benefits accruing to the United States from World Bank activities.

Benefits to both the donor country and the recipient country are not mutually exclusive. The world's economies are so closely interlocked that the case for development assistance can legitimately be made by the humanitarian seeking to alleviate poverty as well as by the businessmen looking for export orders.

How much does support for the World Bank cost the American taxpayer?

Since its establishment in 1945, the World Bank has received $841.4 million in paid-in capital from the U.S., while total U.S. contributions to the International Development Association since its creation in 1960 have amounted to $4.8 billion. The total U.S. contribution to the World Bank and IDA, therefore, has been a little more than $5.6 billion over a period of 33 years—on average, 94 cents per capita a year.

Because of the enormous size of its economy, the continued and increased support of the United States in the overall development effort is essential if the numbers of the world's absolute poor are to be substantially reduced.●

NEW YORK CITY 92D STREET "Y" AND ARTS ENDOWMENT CHALLENGE GRANT

● Mr. JAVITS. Mr. President, the National Endowment for the Arts announced on Tuesday the recipients of its 1978 Challenge Grant awards. These awards comprise a "self-help" program for cultural institutions which are struggling against inflation and a shortage of resources and need financial stimulus to build a sound funding base. To generate private and community support for the arts, each Federal grant dollar must be matched by $3 of new or increased private donations. In 1976, I authored the legislation which established the Challenge Grants at both the Arts and Humanities Endowments. Under the chairmanship of Livingston Biddle, the National Endowment for the Arts' administration of the Challenge Grant program has produced a most exciting and productive means of encouraging private individuals, corporations, and communities across the Nation to increase their support of cultural activities.

Outstanding cultural institutions in my State have received significant new support from Challenge Grants under the Arts and Humanities Endowments. Among the most highly deserving grantees is an institution in which I take a deep personal interest: The 92d Street Young Men's and Young Women's Hebrew Association. The 92d Street Y uniquely integrates an extensive program of cultural activities—over 220 events a year—with a full program of social and recreational activities. While the Y has been a rich source of cultural stimulation in New York for decades, with the renovation and reopening of the beautiful Kaufmann Concert Hall it became a major cultural center for the entire New York City area, serving 120,000 people annually. The blossoming events at the Y are making an enormous contribution to the economic, as well as the cultural, vitality of the city, drawing growing numbers of concert-goers to the upper East side.

The National Endowment's Challenge Grant will help music, children's entertainment, dance, film, theater, and poetry events flourish at the 92d Street Y. The $375,000 award will be used to establish a cultural presentation endowment fund to be devoted exclusively to the support of such activities. By thus promoting a solid fiscal foundation for a performing arts series of the highest quality, this award fulfills the Challenge Grant program's objective of achieving long-term stability and independence for valuable cultural institutions.●

TRIBUTE TO DEWEY BARTLETT

● Mr. BAYH. Mr. President, there is a letter inscribed on an old church wall in Baltimore, Md., which admonishes the reader to "go placidly amid the noise and haste." That refers to an inner strength, quiet yet vibrant and full of confidence and purpose. Senator DEWEY BARTLETT of Oklahoma typifies the spirit of that epistle. In a single term of service in the U.S. Senate, DEWEY BARTLETT has tackled some of the toughest and most intractable problems associated with national security policy. He has shown a real sensitivity to the plight of the American Indian, over 90,000 of whom he has represented during the past 6 years. His committee assignments have allowed him full input in shaping a national energy policy and he has become particularly expert in those problems involving stimulating production of fossil fuels to meet a growing energy demand.

While I do not find myself voting with DEWEY BARTLETT on a great majority of issues, I do find a colleague who presents his position with characteristic fairness and a mind open to constructive criticism. Especially in the field of national defense, his tenure on the Armed Services Committee has, I believe, enhanced the work of that committee and provided us with balanced assessments by which we can more expertly determine what programs will be in our near- and long-term national security interests.

A fundamental understanding of the physical world provided by his formal education with a degree in geological engineering as well as experience won in aerial combat during World War II with the U.S. Marine Corps have enabled DEWEY BARTLETT to make valuable contributions of service both to his constituents and his colleagues. I now join with my colleagues to offer a farewell salute to DEWEY BARTLETT, to wish him well and to thank him for the shining inspiration his courage has provided for us all.●

EX-SANDINISTA LEADER ADMITS GUERRILLAS ARE MARXISTS

Mr. HELMS. Mr. President, Congress recently had a chance to hear from an individual closely linked to the Marxist Sandinista Front his perspective on the Nicaraguan situation. Arturo Cruz, an International Development Bank economist and until recently a member of the Group of Twelve, spoke here October 5 at the invitation of Congressman THOMAS DODD.

The Group of Twelve is commonly regarded as the political arm of the FSLN. Cruz describes it instead as a group of citizens serving as go-between to the guerrillas and the democratic forces. He acknowledges, however, that the ties between his group and the guerrillas is close; and although emphasizing that he himself is not a Marxist, he admits the presence of Marxist elements in his organization.

Not surprisingly, Cruz describes the opposition to Somoza in Nicaragua as being virtually total, and emphasizes that no political solution excluding the FSLN would be feasible. At the same time, he made a number of statements which, coming from a member of the Nicaraguan opposition, are particularly significant.

"The hard core of the Sandinistas is Marxists. You should not kid yourself about it," he declared candidly, adding that Americans reluctant to see a Marxist takeover of Nicaragua had every reason to worry about the Sandinistas. This contrasts to some extent with the State Department's apparent position. State correctly distinguishes between three different FSLN factions, but concludes on the basis of its intelligence that the largest faction—and the one apparently responsible for the recent fighting—cannot be labeled Marxist. Asked if the Tendencia Insurreccionaria faction indeed represented a broad gamut of political ideology, however, Cruz repeated:

> The hard core of the Frente is Marxist. That includes all three factions. It includes the Tendencia Insurreccionaria.

Mr. President, the United States belongs to the mediation team which will determine to a great extent Nicaragua's fate. Given the influence we will exercise, nothing is more basic than for us to understand the various elements of the Nicaraguan political scene. All too many times we have given support to, or withheld opposition from, political figures through a misinformed judgment of their ideology. Our failure to acknowledge that Fidel Castro was a Communist is perhaps the classic, though not the only, example.

Consequently, I hope that full weight will be given to Arturo Cruz' statement. There may well be non-Marxists in the rank and file of the Tendencia Insurreccionaria; it is, in fact, entirely probable. But clearly those in control of this and the other FSLN factions are Communists prepared to implant their philosophy on the nation should they ever gain power.

It is known that the Tendencia Insurreccionaria has agreed to take part in a democratic solution for Nicaragua. Why? Cruz provides an answer. Fidel Castro, he explains, has urged this as the guerrillas' best course of action at the present juncture. Again Cruz' information provides valuable insight; the guiding principle in the rebels' decision is clearly not moderation, but simply tactical considerations. That the faction would dispense with democracy as soon as its control over the country made this practicable, we can safely assume, is also part of Castro's scenario.

Interestingly, Cruz is not sanguine about peaceful FSLN cooperation with a government it did not significantly control. The guerrillas will be in no hurry to dismantle their forces, he admits, and there is every possibility that some future democratically elected government will have to defend itself at gunpoint against the guerrillas.

What would be the outcome of such a clash? Cruz optimistically predicts the government would be able to control the rebels, whose popular sympathy would have been automatically reduced with the accession of democracy. At the same time, he admits that if the national guard were to disappear tomorrow, little could prevent the Frente from taking over.

This last statement indirectly supports the concern of many of us that Nicaragua is not ready at this time for a change in government. While there is no shortage of nonviolent political factions (if anything, it is their multiplicity that presents a problem), there is no one group or person at this point that commands significant national following. Between the positions represented by the government and that of the rebels there exists a political vacuum. While there is reason to think that credible leaders will emerge with time, it is evident these do not exist now. This plain fact, as well as Arturo Cruz' belief that only the army loyal to Somoza can keep communism at bay at this time, must be carefully considered by the United States.

Mr. President, nothing less than the fate of Nicaragua hangs in the balance. The United States must not let itself be deluded on the nature of the FSLN or the intentions of its leaders; it cannot afford to optimistically miscalculate the strength of the nonviolent opposition. In exerting the vast influence it will have on Nicaragua's future, in summary, it must not let this country join the list of those which have perished as a result of our diplomatic ineptitude.

THE U.S.S.R. AND THE U.S.A.

● Mr. McGOVERN. Mr. President, in connection with the seminars earlier this year on "The U.S.S.R. and the Sources of Soviet Policy" sponsored jointly by the Council on Foreign Relations and the Kennan Institute for Advanced Russian Studies of the Woodrow Wilson Center, Mr. William Hyland of the Center for Strategic and International Studies of Georgetown University prepared a most useful summation of some of the factors which have influenced Soviet policy in the era of detente.

Mr. Hyland notes in particular the seriousness with which the Soviets regard their rivalry with China. He points out that,

> * * * the Soviets have felt during this period that they were confronted on two fronts, both East and West, and that their problems in the West were related to their problems in the East.

I found Mr. Hyland's description of the present confusion in U.S.-Soviet relations to be especially perceptive. He notes that on virtually every aspect of the relationship—trade, human rights, arms control, and the Soviet involvement in the third world, particularly Africa—we have been exhibiting an ambivalence or uncertainty which is confusing to both us and to the Soviets.

Mr. Hyland, who worked closely with Secretary of State Kissinger during his tenure and who was intimately associated with all of the critical U.S.-Soviet negotiations during that period, is one of the country's top authorities on this vitally important subject. I commend his observations to my colleagues' attention, and I ask that his short paper be printed in the RECORD.

The article follows:

THE U.S.S.R. AND THE U.S.A.

(By William G. Hyland)

Let me begin with an historical review of U.S.-Soviet relations rather than plunge into such immediate questions as Shaba province and Ethiopia. In considering the appropriate point at which to begin such a review, I think it best to restrict ourselves primarily to the Brezhnev period, beginning in 1964, since the main features of the present situation date from that era. When Brezhnev's regime, or the collective leadership, came to power, it faced four problems: first, the new problem of China and the threat that that country posed to the Soviet Union; second, the more traditional problem of relations with the Western powers, including the United States; third, the problem of military inferiority in the strategic realm; and fourth, the economic weaknesses of the Soviet Union and their impact upon Soviet foreign policy, primarily through the issue over the importation of technology and the establishment of economic credit.

It is well to begin our review with the China problem, because we cannot evaluate Soviet-American relations without reference to it. They do, after all, evolve in a geopolitical context, and one of the primary features of that context is the military and territorial vulnerability of the Soviet Union along its border with China.

One of the chief characteristics of Brezhnev's regime and of Brezhnev himself is that they have taken this problem seriously. They have accepted the split in ideology and the split between the two parties; they have treated China as a rival power rather than a contending Communist party. In fact, they have taken China so seriously that in the dissident literature both Amalrik and Solzhenitsyn felt compelled to warn the Soviet leaders of the dangers of what they perceived to be a policy that was obsessed by China and which in fact could lead to a war. Indeed, a main feature of Brezhnev's policy has been a persistent build-up of Soviet military power opposite China. Soviet strength has been roughly quadrupled from about 12 understrength divisions to around 48 divisions of varying strength. This represents an enormous change from 1964. By 1969 this improvement in the Soviet military capability became a part of Soviet diplomacy.

It is worth remembering that the present border talks that were agreed upon in 1969 grew out of the crisis of that summer, which some people believe involved the possibility of a serious clash of arms, if not outright and deliberate Soviet military intervention in China. The point I want to make is that

the Soviets have felt during this period that they were confronted on two fronts, both East and West, and that their problems in the West were related to their problems in the East. Recently Brezhnev, in his address in Vladivostok during his Far Eastern tour, said: "It is no secret that both to the West and to the East of our frontiers there are forces which are interested in the arms race and in working up an atmosphere of fear and hostility." What I find rather intriguing about that remark is that it links together these two separate forces to the East and West as if they were, in effect, one strategic problem. Surely, I believe, one of the nightmares of Brezhnev's foreign policy has been the possibility that a coalition or combination of forces would be achieved between his two principal opponents, the Chinese on the one hand and the United States and Western Europe on the other.

This leads us to the second aspect of Soviet diplomacy in this period between 1964 and roughly 1974: the settlement that the Soviet Union achieved in Europe by means of the treaties signed with Willy Brandt. If we had to pick a period for the beginning of detente, it would not be, in my view, the Nixon summit, but August 12, 1970, and the signing of the Soviet-West German treaty. The language of this treaty still seems striking, when we consider that from about 1946 until 1970 the Soviets devoted a great deal of their attention and energy to demanding that the West recognize the results of the Second World War, or as they would often say, to draw a line under it. That treaty included the following provisions, among others: "[The parties] undertake to respect without restriction the territorial integrity of all states in Europe within their present frontiers. They declare that they have no territorial claims against anybody nor will they assert any such claims in the future. They regard today and shall in the future regard the frontiers of all states in Europe as inviolably such as they are on the date of signature of the present treaty."

Viewed in historical perspective, this document was quite an accomplishment for Soviet diplomacy. The treaty said in effect that the division of Germany is legitimate; that the division of Europe, at least as far as the territorial questions were concerned, would be permanent. The effect of this 1970 treaty was to make it incumbent upon the three Western powers to reach some kind of agreement with the USSR on Berlin, because the West German government had applied a linkage in which the ratification of the Soviet treaty could be achieved only if it were to be preceded by a Berlin agreement. That Berlin agreement, the first phase of which was reached in September, 1971, had an interesting aspect: the breakthrough in those negotiations occurred in August of 1971, which was one month after the visit of Henry Kissinger to Peking. I simply make the point that the two strands of Soviet foreign policy were to some degree coordinated in this period leading to the onset of what might be called "detente."

It is also interesting that it was at this time, in the summer of 1970, that the Soviets made the proposal, which was not accepted, that the United States join with the Soviet Union in an agreement to prevent accidental and provocative attacks by third powers. The anti-Chinese thrust of this proposal was obvious.

There seems to be a fairly clear trend in Soviet strategy in this period, e.g., to achieve some quiescence on the Western frontier while simultaneously improving the military situation, and at the same time engaging in a dialogue of some kind of the Eastern frontier, so as to assure that the USSR was involved in the triangular diplomacy that had begun in 1971.

Two other aspects ought to be mentioned about Soviet policy in this period. First, the economic aspect. It has almost always been one of the theories of American policy that economics would provide some key to the evolution of Soviet-American relations. In fact, there have been two contending views on this. The first view held that economic relations should precede political settlements so as to soften the Soviet attitude and to create an atmosphere in which political settlements could be negotiated. The second view held that economic relations should be held out as a carrot, a reward to be conferred after a political settlement had been reached. It was this second view that the Nixon administration adopted. Having done so, it then discovered that it could not deliver the promised carrot when the time came. Indeed, the resulting backlash represented by the Jackson-Vanik Amendment and the Stevenson Amendment proved to be the first of several setbacks to the line that was being pursued by Henry Kissinger on the one hand and by Brezhnev on the other.

Events since then have created a major paradox. The U.S. went into this period of detente with the views that economics could be used as an incentive or reward. Even though the particular economic carrot has now been withdrawn by the U.S., the Soviets have continued to draw economic benefits from a political detente in Europe to such a degree that it has now become as important to Western economies as it is to the Soviet Union. The following lines from Helmut Schmidt's Alastair Buchan Lecture to the ISS indicate this: "In 1975, for instance, due to the world recession, German exports dropped by almost four percent in nominal terms, whereas the exports to the Soviet rose by 46 percent, thus making a valuable contribution towards improved use of capacities and a better employment situation in my country." So we have reached a point where it is no longer clear whether it is the West or the East that benefits most from the economic relation or whether it gives either side any particular leverage vis a vis the other.

Let us turn now to the military aspect of our relations with the USSR. Despite many warnings over the period of the late 1960s and early 1970s that we were approaching or had already entered a period of strategic parity, it seems to me that this period actually resulted in some disorientation and confusion. First, we witnessed at that time a lashing out against the SALT agreements, which were scarcely the heart of the problem. Second, we witnessed a lashing out at the internal character of the Soviet regime, and especially its internal repression. The idea that we would reward Moscow with economic credits became less and less acceptable to Congress and to the public at large. Added to this was the belief (which I do not consider well founded) that the Soviets had somehow instigated the Middle East war of 1973 or had at least deliberately failed to warn the U.S., and thus violated one of the principles that had been signed at the summit in 1972.

In any case, the military dimension of the relationship has come increasingly to the fore so that at present it has become the predominant problem to many observers. The curious phenomena is that from the Soviet viewpoint many of the aspects of this military "problem" are the results of unilateral American decisions rather than Soviet-American agreements or Soviet deeds. For example, the gap in megatonnage and the gap in missile throw-weight is usually cited as an example of disparities. But this is in fact a result of decisions made by Secretary McNamara long before the Soviet program began to take shape.

The Soviets would argue that, despite these indicators, if one considers the trend in warheads and deliverable weapons since 1969, the United States has in fact increased its lead enormously. Moreover, the complaints about the imbalance in Central Europe, which the Russians regard in part at least as a political issue stemming from their own special position in that region, must sound strange to the Soviets when they consider the fact that the gross national product of the NATO countries is vastly greater than the gross national product of the Warsaw Pact nations. Even in military manpower NATO and Warsaw Pact forces are roughly equal. Nonetheless, there are implicit limits on the number of U.S. troops stationed in Europe, just as there are on the size of the West German army, and on the number of British forces that are stationed or could be stationed in Germany. Similarly, the French position contains several aspects that are vexing to the U.S. Again, the Soviets remind us that these are Western problems not totally created by the Soviet Union.

Even in naval forces, the Russians must feel a certain puzzlement. They might reasonably claim that comparisons of the number of ships that do not take into account that the USSR in coming years will face the same problem of bloc obsolescence that we did. Hence, they feel, the simple comparison does not accurately reflect the balance of power.

Nevertheless, there has been a relentless increase in Soviet military power, and the Soviet view is that they were entitled to this build-up, that it is a right that comes with being a superpower and also that the imbalances that have been created are not totally of their own making. Indeed, if we take the CIA analysis of military spending by the United States and the Soviet Union in dollars over the last ten years, the amounts are almost exactly the same. The difference, of course, is that a large share of our resources went into Vietnam. But again, from the Soviet viewpoint, this is not a situation which the USSR created.

This brings me to a final factor and one that is difficult to evaluate, namely the lack of consensus in the West on how to deal with the Soviet Union and the benefits that Soviet diplomacy has gained from this lack of consensus. Indeed, there seems to be a schizophrenia in the West. On the one hand, there is considerable alarm about the Soviet military position, but on the other hand, there seems to be a reluctance to engage in a counter buildup of military power, or even to limit the export of the relevant technology. There is certainly a desire to implement the provisions of the Helsinki agreement, both in letter and spirit, but there is also a reluctance to press such issues very hard. There is support for SALT in the United States and Europe, but there also seems to be about an equal concern that SALT will somehow compound our own strategic problems and lead to a change in the military balance. Finally, there is some sense of alarm over Africa, but there is no accepted strategy on how to deal with it. In short, the present seems to be a very confusing period.

In the United States, we thave no sure sense of what we wish to accomplish in our relations with the Soviet Union. On the Soviet side there must also be uncertainties compounded by the certain knowledge that there will be a change of leadership in the not-too-distant future. Moreover, these Soviet uncertainties about their own leadership may be matched by Soviet apprehensions over the U.S. In the six years since the 1972 summit, they have dealt with three different Presidents. President Nixon could not deliver on the economic agreement that was struck after the 1972 summit. President Ford could not deliver on the Vladivostok agreement of 1974. And then in 1977, with a new administration, the Soviets were given indications that the U.S. was embarking on a different approach to U.S.-Soviet relations, first, in its new emphasis on human rights, and second, in its attitude towards SALT.

Let me conclude by saying what I think the

current prospects are, given all these uncertainties. The choices that are available to the United States seem to me to be four. First, we always have the choice to do nothing. In listing this I do not mean to be sarcastic. This may in fact be the preferred option. There is something to be said for a deliberate policy of watching and waiting on account of the Soviet leadership problem.

Second, we could return to a more aggressive pursuit of détente, that is, push ahead with the SALT agreement with or without a summit meeting. A strong argument for such a policy at this time is that it might be more prudent to reach agreements that could be signed and sealed with Brezhnev rather than to wait and gamble on the attitude of his successor.

Third, we could move toward a more confrontational posture. The argument that is often made in defense of this possibility is that we cannot deal with the Soviet Union except from a position of strength, and that strength has been waning and must be rebuilt if we are to have a reasonable relationship.

Finally, there is the most likely outcome, which is a mix of all of these, with elements of confrontation coexisting with elements of a relaxation of tension. But in the longer term it seems to me that we have to deal with the problem of what we would gain should we be forced or should we choose to go into a new phase of military competition with the Soviet Union. I would like to conclude this presentation by asking what would we expect to get out of such a policy *vis a vis* the USSR if it were actually adopted? Would we be back to the proposition that began these meetings, or at least the original view of George Kennan, that over a period of time Soviet policy can be contained? Could we then expect any evolution in Soviet thinking, and if so, what?

I believe that this remains the central question that we must ask: whether the U.S. should seek a policy of détente, a policy of confrontation, or some mixture of the two.●

ISSUES UNDER DISCUSSION IN TOKYO ROUND OF MTN

● Mr. ROTH. Mr. President, as the ranking minority member of the Senate International Trade Subcommittee, I want to call the attention of this body to some issues under discussion in the critically important Tokyo round of multilateral trade negotiations (MTN).

Since these negotiations have been underway for almost 4 years and since the issues seem highly technical and abstruse, they have not commanded a great deal of public or even congressional attention. Yet these negotiations will have a very significant impact on our Nation's international trading position, and thus the overall prosperity of our economy, through at least the end of this century.

The Tokyo round is a unique round of trade negotiations. It continues a series of periodic negotiations reducing tariffs that has gone on for 40 years, and many experts believe it will be the last in this series. At the same time, it represents the first effort since the late 1940's by the international community to restructure some of the more fundamental rules of international trade and to negotiate substantial reductions in nontariff barriers (NTB's)—now the most significant obstacles to market access abroad. Just as the negotiations in 1947 that culminated in the general agreement on tariffs and trade (GATT) have had a lasting effect on the trade rules since that time, the new international codes now under negotiation will, if approved, create a new framework of rules for international trade for the next two or three decades.

I believe the United States made some mistakes in agreeing to certain provisions of the GATT. We must insure that no similar mistakes are made during the Tokyo round. It is essential that Congress approve the new codes only if they are in the national interest.

Codes are being considered in such areas as subsidies and countervailing duties, Government procurement practices, customs valuation, product standards, and safeguards against excessive imports. The United States has potentially much to gain from these codes and other aspects of the MTN if we can nullify foreign government subsidies that hurt our overseas markets, increase foreign government procurement of American goods and services, improve market access for our agricultural and manufactured goods, and prevent further proliferation of NTB's agents against our exports. Like any negotiation, however, the MTN involves both give and take. What we in the Congress will have to weigh is whether the benefits we receive justify the concessions we make.

To ensure congressional control, the Trade Act of 1974 requires the codes and implementing legislation to be approved by an affirmative vote of both Houses under a special procedure. Our role, however, is not simply to sit on the sidelines and wait for the final package to come in, but to offer advice and guidance and to identify our concerns and interests during the negotiating process. For this reason, Senator RIBICOFF, chairman of our subcommittee, I, and a number of other Senators both on and off the committee, have been closely monitoring these negotiations. I have spoken to our trade negotiators regarding a number of areas of special concern to me, such as chemicals, textiles, poultry, and livestock. At this time, I want to emphasize some issues arising in the context of the nontariff barrier codes which must be addressed during the closing months of these negotiations.

First, our negotiators should bear in mind the purposes that the trade agreements must serve. Section 2 of the Trade Act of 1974 states that among other objectives, the agreements should:

First. Afford mutual benefits;

Second. Foster economic growth and full employment in the U.S.;

Third. Harmonize, reduce, and eliminate barriers to trade on a basis which assures substantially equivalent competitive opportunities for U.S. commerce; and

Fourth. Establish fairness and equity in international trade relations, including reform of GATT.

These standards are reference points against which the agreements will be judged. If they are not met, the trade interests of this Nation are not met, and therefore, the agreements cannot be approved.

A question of extreme importance in this negotiation focuses on the concept of conditional most-favored-nation treatment. Conditional MFN may occur by the denial of benefits of the nontariff measure codes to nonsignatories which are contracting parties to GATT. For example, if the United States signs the import licensing code, we may subject the imports of a nonsignatory to different and perhaps more rigorous import licensing procedures than those imposed on imports of signatories of the code. The effect would be that GATT members which did not sign the code would not be given the same treatment and benefits as other GATT members which did sign. This outcome seems appropriate because nonsignatories should not be able to acquire the benefits of a code without assuming any of its obligations and duties. However, we must not ignore the effect that the conditional application of the codes will have on the general MFN principle. That principle has served as the cornerstone of the GATT for over 30 years. The principle, however, has been eroded by the increasing use of nontariff barriers. Whether the principle is effectively applied, should be more strenuously asserted, or should be revised in light of customary practice are questions that I think should be addressed in Finance Committee hearings next year. At this time, however, our MTN negotiators must work to rationalize the application of the nontariff barrier codes within the framework of the GATT.

Another issue that must be given close scrutiny is the force and effect that the codes will have in U.S. domestic law. The United States participates in the GATT pursuant to the protocol of provisional application of the general agreement on tariffs and trade which was signed in 1947. At that time, it was decided to adhere to the GATT on a provisional basis because our negotiators were not specifically authorized to enter into nontariff barrier agreements, and Congress was not closely involved in the negotiations. However, by the terms of the Trade Act of 1974, Congress is now more closely involved in the negotiation of the nontariff barrier agreements, and our negotiators are authorized to enter into such agreements which may bind this country under international law if Congress approves.

However, the force and effect of the codes in the context of our domestic law is unclear. Will the terms of a code, if approved by Congress, have the legal effect of a treaty in our domestic law, or will the code only have the force and effect in our domestic law that the accompanying implementing legislation gives it? It will be seeking an answer to this question before we begin drafting relevant implementing legislation for the codes because the answer will dictate the form and substance of the legislation.

Dispute settlement is possibly the most important issue pervading the negotiation of the codes. The codes will mean nothing unless we can effectively assert our rights under them. In the post, international dispute settlement in the GATT has proven cumbersome, drawn-out and at times too political for the technical trade questions involved. The negotiation of the codes affords an opportunity to build a meaningful procedure by which

the rights and duties of the signatories will be enforced. I support every effort our negotiators can make to ensure that an effective and objective dispute settlement process is established for each code and/or for all GATT-related disputes. Specifically, I endorse a system which encourages resolution through consultations between the interest parties, to be followed, if necessary, by consultations and deliberations by an objective panel of experts. Such a system must be subject to strict time constraints. It must also require objective fact-finding and recommendations which take into account the functional nature of the code and the trade usage and common standards related to the disputed trade activity.

The tendency to politicize issue resolutions, as we have seen in other international forums, must be restricted. Finally, there must be an effective follow-through on the part of the code signatories to ensure that the resolution is lasting and not circumvented.

Our negotiators should be placing greater emphasis on working with the less-developed countries (LDC's) at this stage of the negotiations. The Tokyo Declaration, which sets the framework and goals of the current MTN, emphasized the need to address issues with the special needs of the LDC's in mind. In May of this year, Senator RIBICOFF and I met with our negotiators and urged them to begin the process of actively involving the LDC's in the code work. Now in September, the negotiations have progressed to the point where it is essential that the special needs of the LDC's be discussed and integrated in the codes where feasible. To delay this hard task any further will only make it more difficult to bring the LDC's into the codes and could jeopardize their future effectiveness. Certainly it is within our trade interests to concentrate on this problem when, in 1977, developing countries accounted for approximately 36 percent of our exports and 46 percent of our imports.

Finally, the subsidy/countervailing duty code raises two issues on which I am compelled to comment. The first issue pertains to an injury test in the code. Ambassador Strauss stated in his presentation to the Trade Subcommittee of the House Ways and Means Committee on July 18 that the United States will accept an injury test as a prerequisite to our use of countervailing duties.

At this time I am not prepared to unequivocally accept an injury test, particularly when I have yet to see what benefits we will glean from such an important concession. However, if any injury test is adopted in the code, it should take into account long-standing U.S. legislative precedent on the subject. A review of this matter reveals that a simple injury test has been maintained in U.S. antidumping and countervailing duty law despite contrary international directives. Thus, the International Antidumping Code was overridden by provisions of the Renegotiation Amendments Act, 1968, and the material injury test of GATT article VI was not adopted in the 1974 Trade Act amendments to our countervailing duty law.

The other subsidy/countervailing duty code issue that should be highlighted is whether our outstanding countervailing duty determinations will have to be reconsidered in light of the new criteria, such as an injury test, which would be required in the code. If redeterminations will be called for, I submit that the consequent removal of any outstanding countervailing duty should be treated as a concession for which the United States must be adequately compensated.

I realize that domestic issues are swarming around us as this legislative session draws to a close. However, we are deeply involved in a historic international trade negotiation. In the 93d and 94th sessions, Congress established the basic guidelines by which this country would participate in the Tokyo Round. In this, the 95th session, we have attempted to give general direction and comments to our negotiators. What we have to look forward to in the 96th session is the final and most difficult task. Next year, we will be required to determine whether the trade agreements emanating from the Tokyo round meet the requirements of the Trade Act of 1974 and whether the agreements accompanied by implementing legislation will serve the best interests of our country. The wisdom of those decisions will depend upon our ability to maintain a sound perspective and the energy that we devote now to preparing for those decisions.●

EXPANDED CIVILIAN USE OF REMOTELY SENSED DATA

Mr. STEVENSON. Mr. President, at the Congressional Space Medal of Honor ceremony, President Carter in his remarks acknowledged for the first time "the fact of" U.S. military photo reconnaissance satellites. In briefing the press, Press Secretary Jody Powell emphasized the importance of this acknowledgement in evaluating the verification process that would accompany arms control agreements reached by the United States and the Soviet Union in the SALT II negotiations.

There is, however, another dimension to President Carter's acknowledgement. It may now be possible to arrange for public dissemination and use of photographic data obtained from military reconnaissance satellites. Although much of this material must necessarily remain classified, there is also nonsensitive material which can be used for civilian purposes, such as mapmaking, mineral exploration, forest and range management, agriculture, and pollution control.

This data will complement remotely-sensed information already being gathered by civilian satellites managed by the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration. This week I am introducing the Earth Data and Information Service Act of 1978 to establish an operational remote-sensing system in NASA. One important aspect of such an operational system will be the capacity to use the full resources of the U.S. Government—military and civilian—in developing useful data on Earth resources and the environment. While this process must necessarily be a careful one, the potential is great for beneficial civilian applications of this data.

Mr. President, the importance of these developments is indicated in a recent editorial, "Archiving Remotely Sensed Data," by Christopher L. Hamlin and Ward H. Goodenough, University of Pennsylvania museum, that appeared in the October 6, 1978, issue of Science magazine. As Hamlin and Goodenough point out:

> Since World War II an immense body of data has been obtained by remote sensing techniques. Although intended primarily for military intelligence, these data are an unprecedented resource for systematically studying how human action is changing the earth's environments in a time when these effects are increasing and are often irreversible. Processes of great interest to social and biological scientists and crucial for environmental policy cannot be effectively studied without the synoptic, ongoing records of change these data provide. They are, therefore, a precious and irreplaceable resource.

The authors also note that preservation of detailed strategic intelligence files is not often accomplished. Public appeals for their maintenance are awkward, since they are calls for the retention of some things whose existence is not acknowledged. President Carter's announcement has removed this barrier. It is now the responsibility of Congress and the Executive to develop procedures for making these data available for civilian users. Mr. President, I ask that the editorial, "Archiving Remotely Sensed Data," be printed in full at this point in the RECORD.

ARCHIVING REMOTELY SENSED DATA

Since World War II an immense body of data has been obtained by remote sensing techniques. Although intended primarily for military intelligence, these data are an unprecedented resource for systematically studying how human action is changing the earth's environments in a time when these effects are increasing and are often irreversible. Processes of great interest to social and biological scientists and crucial for environmental policy cannot be effectively studied without the synoptic, ongoing records of change these data provide. They are, therefore, a precious and irreplaceable resource.

Deserts, for example, spread as a result of the complicated interplay of a number of processes, including various kinds of human activity. These processes and the ways in which human activity affects them are imperfectly understood. Their study requires repeated observations of such things as vegetation, soils, water, and human settlement and other activity for a large sample of localities. Monitoring for this purpose is now being implemented under the auspices of the United Nations, but its success will depend on the continued accumulation and preservation of the data base derived from remote sensing.

Many other modifications of the biosphere are proceeding rapidly also, with unknown long-term consequences. Long stable ecosystems are being affected in a variety of ways by progressive deforestation, the paving of significant areas of urban watersheds, and the industrialization of agriculture. The problems for which remotely sensed data will be invaluable are proliferating.

A serious threat to this data source arises from the rate at which remotely sensed data are themselves accumulating. The question is now arising of how or whether to preserve them. If thoughtfully drawn plans are not

made and implemented soon, this data resource may be destroyed needlessly once its military use has been exhausted.

The problem has two aspects. First, some of the data are in the public domain. Their preservation for future use requires funding, which has not yet been provided, and careful plans for archiving. Second, the greater part of existing remotely sensed data are not in the public domain. The strategic importance of these classified records diminishes with time and will eventually reach the vanishing point. When they become declassified, these data will provide the bulk of the information on which this unparalleled opportunity to study environmental processes rests.

The record suggests that preservation of detailed strategic intelligence files is not often accomplished. Public appeals for their maintenance are awkward, since they are calls for the retention of something whose existence is not acknowledged.

We have arrived at a point, however, where the threats to national and even human existence are no longer largely military in nature. They are coming more and more from the increasing expenditure of energy for peaceful human purposes. What once were long-term processes subject to natural evolutionary constraints are now accelerating rapidly, and natural constraints have been, and continue increasingly to be, altered by human intervention. The vast body of remotely sensed data accumulated since World War II, in both the public and classified domains, is the most important new data source we have for monitoring these processes. Deliberate steps must be taken to ensure that potential benefits vital to our national interest are not wiped out by shortsighted destruction of this burgeoning record.●

UNITED STATES-SOVIET RELATIONS: A PLEA FOR UNDERSTANDING

● Mr. McGOVERN. Mr. President, I rise to urge that the Congress and the country heed some words of wisdom from a number of prominent Americans, among them:

The most difficult and the most important issue which will confront the American people during the next decade concerns our relations with the Soviet Union. It dwarfs all others, because the Soviets as well as Americans are captive of an arms race which is out of control, a race which no one can win, a race in which increasingly exotic means of mutual and total destruction outrun diplomacy and can destroy the perspective and effectiveness of leadership in both nations.

So wrote former Senator Fulbright in the foreword to the book, "Common Sense in U.S.-Soviet Relations."

Soviet Russia has been on our minds—a virtual obsession—for exactly sixty years. During these sixty years, far more has changed in the Soviet Union, and in the world, than in our perceptions and ideas.

These are the words of Dr. Stephen F. Cohen, director of the Russian studies program at Princeton University.

The subject of American-Soviet relations is one that invites the worst tendencies in our political literature—apocalyptic vision, the elaborately torrid phrase, discovery of deeply sinister motive . . . the issues under discussion are, all too literally, ones of life and death.

Thus spoke John Kenneth Galbraith before the Soviet-American Conference in Washington in 1977.

Thirty years after the start of the cold war, the United States and the Soviet Union still live in a state of uncertainty and insecurity.

Writes George Kistiakowsky, former assistant to President Eisenhower for science and technology. This condition of uncertainty, he continues:

Has been attributed from the start to the aggressiveness of Soviet communism, which is seen as striving for world hegemony and bent on the destruction of its principal obstacle, the United States. In Moscow, just as consistently, the guilt has been assigned to the evil designs of American militarism and imperialism.

Donald Kendell, chairman of Pepsi Co., continually tells the American people—

Why I feel that it is in America's best interests—and in the interests of world peace—for us to increase our trade and commerce with the Soviet Union.

A prominent international lawyer, Samuel Pisar, wrote in 1977:

The direction President Carter takes in his dealings with the Kremlin will predetermine the state of American-Soviet relations—and hence the lot of mankind—for a decade ahead.

These thoughtful Americans are addressing a subject with which we in the Congress tend to deal in only a piecemeal fashion—despite our knowledge that the answer to the question of how the United States and the Soviet Union get along during the next decade will affect our economy, our military expenditures, our constitutional system and, indeed, our very survival.

In many respects, relations between the United States and the Soviet Union today are worse than at any time since the Cuban missile crisis. Despite the appearance of progress in some areas, there has been a steady deterioration since the pinnacle of détente in 1972.

Yet we in the Senate, which in moments of rapture we describe as the greatest deliberative body in the world, have not undertaken to examine the totality of our relationships with the only power as capable of destroying us as we of them. The Senate, no less than the White House and the press, tends to treat our relationships with the Soviet Union on a piecemeal basis. Tit-for-tat is no policy, yet that seems to intrigue us more than an analysis of the fundamental misperceptions which can make a dangerous relationship explosive.

Aside from the ideologs who interpret every Soviet move as part of a grand strategy to do us in, we discuss the role of the Soviet Union in Africa, or the Middle East, or SALT, or trade, or human rights without consideration of the totality of our relationships. We seem as incapable of understanding the Soviets as they of us.

In 1963 President Kennedy spoke of the need to reexamine the American view of the cold war. He said:

I also believe that we must examine our own attitude as individuals and as a nation—for our attitude is as essential as theirs.

Robert Kennedy, in his account of the Cuban missile crisis, wrote:

The final lesson of the Cuban missile crisis is the importance of placing ourselves in the other country's shoes.

This we have not done. Yet it is especially important to do it now.

In a few months we will debate whether to give our consent to ratification of the second strategic arms agreement (SALT II) with the Soviet Union. We will discuss numbers of missiles, verification, throw-weight, cruise missiles, the Backfire bomber, and on and on.

But underlying the technicalities of the debate will be the fundamental question, "Can we trust the Russians?" The technical answer of supporters of SALT II will be that we do not need to trust the Russians because our own technical means of verification will make it possible for us immediately to know if the Russians are cheating. But for many the technical answer will not be enough. They can never respond sufficiently to the widespread belief that the Russians or their leaders inevitably are cheaters.

It is most unlikely that anyone will ask, "Can the Russians trust the Americans?" A question which presumably does occur to Soviet strategists from time to time. As a matter of fact, the record shows that the United States has formally protested alleged Soviet violations of SALT I seven times, while the Russians for their part have protested alleged U.S. violations of SALT five times. Protests from each side were eventually resolved when facts replaced the misperceptions stimulated by the suspicions which each party had of the other.

In this connection, former Senator Fulbright recently made some characteristically acute observations on the forthcoming SALT debate and the subject of United States-Soviet relations. He wrote:

Much of the discussion on SALT will center on esoteric technical deails. . . . and the contending theologies of nuclear strategists. Pertinent through these may be, the more fundamental and decisive question is that of our attitudes toward the Soviet Union, and our ability to distinguish between those which are solidly rooted in facts and experience and those which are the product of myth and unwarranted fear.

In foreign as in personal relations, our inferences are shaped as much by how we look at a person or situations as by what we actually see. There are few foreign countries of which we do not have certain preconceptions—as to their good or ill intentions—and these exert a powerful influence on our evaluation of their specific acts or policies.

Preconceptions undoubtedly affect a person's judgment. Thus many Americans perceive the Soviet Union as a godless nation committed to world revolution in support of communism. I am sure that many Russians honestly perceive the United States as an imperialist power dedicated to the overthrow of communism to make the world safe for capitalist exploitation.

It is no wonder that these conceptions exist because the media as well as the leadership in each society find it more newsworthy or patriotic to publicize the evils and dangers of an "enemy," rather than dwelling on the possible faults of one's own society.

It is one of the ironies of our time that in a world in which communication of words or images is instantaneous, misperceptions not only persist but are exaggerated. The propensity of the media to dwell on the spectacular or the unusual, and to report promptly thereon, increases misperceptions while the basic

realities remain less noted because they are not deemed newsworthy. Hence frictions are exposed and exaggerated; areas of détente or peaceful coexistence go unreported. As a consequence, the possibilities of misunderstanding and, in turn, misjudgments are increased.

Another irony of our time is that if nuclear weapons are used, more people will be destroyed than ever before in the history of the world, yet the decision to use such weapons nevertheless can be made by a half dozen or so individuals in Washington or Moscow. In the words of Richard Barnet:

> They are . . . like chess players in the dark, absorbed in a game they can barely see. Each player depends on the other not to upset the table. Since neither quite knows what is happening on the board, each imputes to the other a master plan that tends to be a mirror image of his own. It is a dangerous game. . . .

Dangerous, indeed. The provision of the Constitution that the Congress shall have the power to declare war is devoid of meaning in the nuclear realm.

At 11:30 p.m. on October 24, 1973, after a half-hour meeting in the White House attended by four or five individuals, the first U.S. worldwide military alert since 1962 was ordered. The alert was based on a perceived Soviet threat of intervention in the Middle East, which later turned out to be a misreading of Soviet intentions. The 6th Fleet patrolling the Mediterranean was put on DefCon 2. Defense Condition 1 is war.

So it is that if the Senate is to discuss the relationships between the superpowers that could lead to a nuclear exchange, the time to do so is now. If confrontation comes, it will be too late to talk.

It is one of the most difficult tasks for members of the Senate to distinguish myth from reality in our relations with the Soviet Union. Yet to fail to do so, and to base policy on myth, poses dangers to the security of both superpowers. It is incumbent on us as Senators to do our level best to understand the Russians, and on the leaders of the Soviet Union to do their level best to understand Americans. We can do this only if we know more about each other.

Former Ambassador George Kennan has given impetus to the task which we must undertake. Last fall, November 22, 1977, Ambassador Kennan noted that despite the availability of more information about the Soviet Union than ever before, current debates over Soviet intentions and policy often produce more heat than light. At his suggestion, the Council on Foreign Relations and the Kennan Institute for Advanced Russian Studies at the Woodrow Wilson Center, Smithsonian Institution, conducted a series of seminars on the "Sources of Soviet Policy." The expert papers produced for these sessions explored the Soviet domestic economy and its relationship to the world economy. Factual information was studied on Soviet military capabilities, population trends in the U.S.S.R., and current and prospective Soviet attitudes and values, to name a few.

These papers prepared for use by opinion leaders and policymakers in the United States should be carefully studied by those of us who have a tendency to pontificate on the basis of preconceptions, rather than facts. I intend to ask consent from time to time, beginning today, that these studies be printed in the CONGRESSIONAL RECORD.

As one of the leading American authorities on Soviet attitudes and values, Prof. Alexander Dallin of Stanford University has noted in one of these studies:

> Changes do occur and will continue to occur in Soviet society: the widespread myth of the immutable nature of Russian attitudes and behavior tells us more about our preconceptions and about our previous difficulties observing the Soviet scene than about present realities.

I also want to note that the Foreign Relations Committee has undertaken an effort similar to that prompted by Ambassador Kennan. We have authorized a comprehensive staff study on the overall nature of the Soviet Union and our relationship with that country. In my view this will be an extremely important element in our consideration of any new strategic arms limitation agreement next year. I think we all agree that the context will be every bit as important as the text. I hope the committee study, together with these other papers, will help us to bring a much better understanding of the Soviet Union to the ratification process.

I would hope that specialists in the Soviet Union would make a similar effort to shed their biases and speak and formulate policy toward the United States on the basis of facts about us, not by the myths they propagate as readily about us as we do about them.

While on the subject of the need to examine our preconceptions, I strongly recommend a small book, "Common Sense in U.S.-Soviet Relations," published by the American Committee on East-West Accord. It is an excellent antidote available for citizens who have been victimized by massive computerized mailings of the one-sided, know-nothing, well-financed publications of the American Security Council, the Committee on the Present Danger, their spinoff affiliates, and even the National Republican Senatorial Committee.

The distinguished physicist, Dr. Bernard Feld, editor of the Bulletin of Atomic Scientists, has described the Committee on the Present Danger as itself being the present danger.

That group, among many others, is subjecting the American public to a well-coordinated, well-financed propaganda campaign which denigrates the strength of the Armed Forces of the United States. It has gone so far as to inspire the Secretary of Defense to protest:

> If we keep saying we're weak, the Russians may believe it.

Proponents of the concept that the United States is a weak, helpless giant have even incorporated large segments of Russian Armed Forces propaganda footage into what is alleged to be a documentary film, "The Price of Peace and Freedom." Its purpose is to increase our military expenditures. In the process it brands as simple-minded at best, and appeasers at worst, those Americans who question the wisdom of some of our military expenditures.

One of the greatest burdens we in the Senate must carry in trying objectively to analyze and understand our perceptions of the Soviet society, and their perceptions of us, is to be called soft on communism. We ought to proceed bearing in mind the observation of John Kenneth Galbraith who has identified two great fears that have pervaded our political life:

> One is the fear of communism; the other is the fear of being thought soft on Communism.

No American with confidence in our form of government, which has survived for over 200 years, should fear communism; no Senator who fails to speak his mind because of the fear of being thought soft on communism deserves the support of his constituents.

Of course, if these allegations of U.S. military weakness were true, the blame should be placed on every President since World War II and their Secretaries of Defense for not asking for enough money for the American military establishment.

But they are not true. Secretary of Defense Brown has described as "simplistic" the extremist views being broadcast these days by alarmists who in their attacks on the state of U.S. military preparedness ignore such fundamental facts as that a quarter of the Soviet nonnuclear capability is on the Chinese frontier and that the United States has more, stronger, and more reliable allies than the Soviets.

I say to those alarmists who downgrade the Armed Forces of the United States that they also do a disservice to efforts to bring the arms race under control.

Would they trade our 8,500 nuclear warheads, ready to fire from the land, the sea, and the air, for the 4,000 warheads of the Soviet Union, many of which must be targeted on China?

Would they trade our unarmed frontier with Canada for the Russian frontier with China? Our frontier with Mexico for their frontiers with Poland, Romania, East Germany, and Finland?

Would they trade our allies for those of the Soviet Union? Our worldwide military bases for Russian bases? Our access to the seas for Russian access through the Dardanelles, the Baltic, or the Sea of Japan?

Would they trade our Air Force for the Soviet Air Force? Our Tridents for their subs?

Simply to ask these questions is to underline some of the weaknesses of the Soviet Union in the military area and to emphasize the difference between their military problems and those of the United States.

These problems of perception of a nation's weaknesses, or strengths, illustrate the need for looking at the realities of our relations with the Soviet Union. We must stop reacting on the basis of what we feel rather than what we know.

The stark reality of the next decade is that the Soviets must get along with us, and we must get along with them.

That does not mean we must learn to love the Soviet system, nor they ours. What it does mean is that we must live together on a planet which will be destroyed if we permit our animosities, our differences, and our misperceptions to bring on a confrontation which can be settled only by military means—settlement by annihilation.

There are two alternatives: Either we live together in peace or we die together. Buckminster Fuller put it precisely when he said:

Either war is obsolete or men are.

In September 1945 General MacArthur put it this way:

Men since the beginning of time have sought peace. Military alliances, balances of power, leagues of nations, all in turn have failed, leaving only the path (to peace) to be by way of the crucible of war. The utter destructiveness of war now blots out this alternative. We have had our last chance. . . . If we will not devise some greater and more equitable system, Armageddon will be at our door.

Fortunately, the advocates of a new cold war are few in number, though loud in thunder. Every significant public opinion poll of the last few years has shown that between 70 and 80 percent of the American people recognize that our security depends more on reaching agreement to limit the nuclear arms race than on an all-out arms race.

The American people show no disposition for military adventurism. They realize that confrontations are to be avoided because in confrontations someone must back down. What proud nation will do that more than once?

In the 1830's Alexis de Tocqueville wrote:

What struck me in the United States was the difficulty experienced in getting an idea, once conceived, out of the head of the majority. . . .

De Tocqueville's observation is as true today as it was 150 years ago. It is hard to get an idea, once conceived, out of a Russian head as out of an American head. The central idea conceived and widely believed in the United States about the Soviet Union, and in the Soviet Union about the United States, is that we are mortal enemies who will have confrontations which, if not resolved by peaceful means, will be resolved by war.

De Tocqueville added.—

Once conceived, only experience can get such ideas out of the head of the majority and experience must sometimes be repeated.

Neither we nor the Russians will ever be able to repeat the experience of a nuclear exchange; there will be hardly anyone left to learn from such experience.

What we must do is to multiply and repeat our experiences of working together, not only to control the transcendent danger of nuclear war, but the other common dangers bearing on the relationship of man to nature—the depletion of energy reserves, the problems of population, pollution, food shortages, and growing threats to our common ecology.

If the United States and the Soviet Union can keep their relationship on an even keel for another decade while we learn more about each other, it is just barely possible that we will be on the path of survival, not of suicide, and that our children and theirs will live out their natural lives.●

THE FUTURE OF BUSINESS

Mr. ROTH. Mr. President, it is my pleasure to draw the attention of my distinguished colleagues of the Senate to the important work on the future of business, now being conducted in depth by the Georgetown Center for Strategic and International Studies. This program, in which I have participated extensively, is a year and a half old and this has been a good year and a half.

Georgetown University's Center does not claim to have discovered the close linkage between business and international affairs, but it has made significant progress toward getting many of our top leaders in both industry and Government to focus on the mid- and long-term implications of current trends.

I had the honor to be one of the program's opening speakers. Dr. Henry Kissinger was the other principal speaker. Dr. Kissinger, who is the counselor to the center, has chaired numerous future of business seminars.

That first meeting at the Kennedy Center set the tone and laid out the broad outlines for the future of business program. Over 100 of America's most respected business leaders attended that night, and most—if not practically all—have been back to the center several times in the past 18 months for follow-up sessions. I have been back as a participant, speaker, and observer, and I look forward to returning regularly.

In the past year and a half, the future of business program has brought together in forums, in panels for speeches, and as authors, scores of American and foreign business leaders. They have addressed a wide variety of burning issues including the nature of business-government relations; materialism versus humanism; and technology and the future of business.

The center will soon publish essays on these and other such challenging topics as "Changing Demographics and How They Will Affect the Future of Business," and "How and Why Business Has So Often Failed To Explain Itself."

President Sadat and Prime Minister Begin have separately sent to the center large delegations of their economic and political leaders—in each case including Cabinet Ministers—to discuss the future of private enterprise in their countries. These meetings brought together a high level business delegation, excellent representation from the Congress, and academic leaders. Similar meetings are planned to study the economies and the future of business in such countries as Mexico, Brazil, France, and the United Kingdom.

Just recently, the Georgetown Center joined with Oxford University to provide 3 weeks of intensive study for a score of rising young executives who carried out their meetings in Washington, Oxford, and Brussels. This is a most attractive program, and like other center activities, it will be repeated in future years.

In early September, 21 of the world's most respected business executives from Europe, North America, South America, the Middle East, Japan, and Hong Kong spent 2 days at the center examining the problems of declining growth rates. This group of international business councillors, chaired by Dr. Kissinger, is the principal advisory body of the future of business program. It includes such notables in the business world as the chief executives of Toyota, Philips Electronics, Bank Leumi, Sony, Alcoa, Olivetti, Thyssen, Goldman Sachs, International Nickel, Beau Brummel Ltd., Concerie Italiane Riunite, Alcoa, Gentrol, Inc., IBM, Philip Gloeilampenfabrieken, Kuhn Loeb Lehman Bros., Booz Allen Hamilton, Inc., and Westinghouse. Their private discussions are projected far forward into problems of capital formation, the situation for the American dollar in the years ahead, government and industry relationships, uncertainties due to the future of oil supplies, political trends in Europe as they affect business, declining growth and investment rates.

A highlight of the meeting for these business leaders was a luncheon here on Capitol Hill with the distinguished senior Senator from Louisiana, RUSSELL LONG, as the host. This meeting lasted over 2 hours and it was attended by Senators LLOYD BENTSEN, MIKE GRAVEL, CLIFFORD T. HANSEN, H. JOHN HEINZ III, ERNEST F. HOLLINGS, ROBERT B. MORGAN, BOB PACKWOOD, WILLIAM V. ROTH, and PATRICK J. MOYNIHAN; and Representatives JOHN B. ANDERSON, CLARENCE J. BROWN, ELFORD A. CEDERBERG, and BARBER B. CONABLE. Candid conversation was the order of the day, and that order was certainly carried out. Afterward, you can be certain that our congressional delegation had a better understanding of world business problems and approaching problems, and at the same time the business leaders had a better understanding of the workings of the Congress and the United States. I know that I profitted greatly for having attended.

I also want to discuss briefly another conference, the annual Quadrangular Conference the center held last May devoted to a specific and, you will agree, a most important problem: the question of energy, specifically looking forward on what may happen in the last two decades of this century. It was chaired by Congressman AL ULLMAN and cochaired by myself. The center assembled for this 3-day affair an impressive array of some 300 scholars, businessmen, congressional leaders, representatives of the administration and members of the diplomatic community.

Several panels were formed. One, chaired by Representative CLARENCE J. BROWN of Ohio, focused on the dire need to find alternatives to imported oil and searching for answers for the likely unanswerable question: what decisions will be made in the Middle East?

A second panel, headed by Nathaniel Samuels, former Under Secretary of State, was asked the crucial question:

from where and how can the world's oil needs be met? It found that while petroleum reserves may be sufficient for the next several decades, incentives must be offered for the exploration of new petroleum sources.

Another panel, with Congressman MIKE MCCORMACK of Washington in the chair, discussed the fundamental changes affecting international politics of nuclear energy and declared that there is need for a new international consensus because the old rules no longer apply.

One panel, chaired by former Under Secretary of State William D. Rogers, dealt with the economics of the energy problem in view of the shaky economic balance, a worldwide phenomenon, and the extreme need for continued economic growth.

The next panel, chaired by former Senator Albert Gore of Tennessee, discussed the role of coal in the energy problem. In this respect, the United States is in an enviable situation, but only if we could satisfy certain basic requirements of the environmentalists. Coal comprises 90 percent of the U.S. energy reserves, yet it provides only 18 percent of our present energy supply. At current consumption rates, a 600-year supply is assured.

Another panel, headed by HARRISON H. SCHMITT, the distinguished Senator from New Mexico, explored the new frontiers in energy technology, discussing, one by one, the prospects of solar energy, hydroelectric and wind power, and others.

The final panel, chaired by Dr. Amos Jordan, executive director of resources programs at the center, investigated the security dimensions of the energy problem, meaning on the one hand the government's justified concern to store adequate supply of energy for emergencies, and on the other, the equally justified concern of importing nations about the stability in the oil-producing regions, especially the Middle East.

Summing up, the conference was for me, and I feel sure for all participants, a most instructive exercise. As I said at the opening night of the future of business conference, ". . . the energy problem challenges the ability of this Nation to survive. At the root of the issue is the haunting question: does America have the creativity and determination to develop new sources of practical, economical energy in the next two decades?"

These and other center conferences and programs approach the same vital questions with candor, timeliness, and scholarly objectivity. For having done so, it and its able chairman, David M. Abshire, deserve high commendation and the attention of us throughout the Congress.

MINORITY BUSINESS DEVELOPMENT LEGISLATION

● Mr. NUNN. Mr. President, I stand before you today to speak in support of H.R. 11318, the first minority business development legislation ever reported to the Congress by House and Senate conferees. I commend the excellent and diligent work of my fellow conferees from both the House and the Senate. Without a superb effort on their part, this bill could never have been reported to this body.

The differences between the House and Senate bills, in many areas, were substantial. Both Small Business Committees have devoted considerable time and study to this important measure, and strong opinions and convictions were carried into conference on both sides. I want to therefore commend Congressman Addabbo, leader of the House conferees, for his strong leadership and his firm belief in the ability of the conferees to reach agreement on this bill.

I believe that the true spirit of compromise was able to prevail in conference due in large part to Congressman Addabbo's dedication to the overriding purpose of this legislation. Together with his colleagues from the House Small Business Committee, he helped to provide an environment in which differences were capable of being resolved. It was a pleasure to work with him and his distinguished fellow conferees.

Primarily, this bill provides a legislative basis and design for the Small Business Administration's section 8(a) business development program. This program is supposed to develop business ownership among disadvantaged persons. Extensive review by committees in both the House and the Senate found the existing program to be a failure—a serious disappointment to all of us who recognize the vital importance of this program's mission of business and economic development for minorities and other disadvantaged individuals. After letting approximately $2.5 billion worth of contracts to over 3,600 participating firms, only 33 have survived to be competitive outside the protective environment of 8(a).

One of the primary reasons for this poor performance was that SBA has focused almost exclusively on the placement of contracts. Generally, there were no business development services—management and technical assistance and the like—available to 8(a) contractors.

Without any business development services available to 8(a) firms, it was not difficult to understand why 8(a) created 100 times as many business failures as successes. The 8(a) program, as it was administratively designed, offered a promise of success that could not be met. Rarely has any Federal program been directly responsible for dashing the hopes of so many people.

In light of this circumstance, the Senate bill focused on a major upgrading of business development services for 8(a) firms. It created a small business and capital ownership development program to provide complete business development services to 8(a) participants. No firm could receive an 8(a) contract unless it participates in this business development program.

This provision is identical to S. 3179 which I introduced earlier this year, and I am therefore particularly pleased that the conference version adopts this measure totally. It also adopts other Senate initiated changes in management and technical assistance for disadvantaged small businesses. One part that I believe deserves special attention is the creation of an advisory committee composed of five high level officers from five U.S. businesses, and five representatives of minority small business appointed by the President. The purpose of this committee will be to help monitor and encourage both the placement of subcontracts by the private sector with minority small businesses, as well as the incentives and assistance needed by the private sector to help in the training and upgrading of such minority firms. I believe that private sector involvement in the development of minority small business is essential if lasting progress is to be made in this regard. Furthermore, I believe that a Presidentially appointed committee to foster this participation will provide a strong incentive for SBA to implement existing provisions of law whereby SBA can provide incentives and assistance to businesses who are willing to place such subcontracts.

Another important part of the Senate bill gave programmatic responsibilities to SBA's Associate Administrator for Minority Small Business. This measure represented the first time that the Associate Administrator was given more than advisory functions to manage. The conference version renamed the Associate Administrator's slot the Associate Administrator for Minority Small Business and Capital Ownership Development. It also gave this new Associate Administrator the important additional responsibility of administering SBA's 8(a) program. 8(a) had been administered by SBA's procurement division which often was indifferent to the needs of disadvantaged firms. The Senate and House conferees believe that the Associate Administrator for Minority Small Business and Capital Ownership Development will bring both sensitivity and sense to the administration of 8(a).

The conferees also established an eligibility rule for the 8(a) program. I am pleased that the Senate philosophy in this area prevailed. The House bill created a presumption of social and economic disadvantage for blacks and Hispanics that would have made all blacks and Hispanics eligible for 8(a) assistance. It also established a rule for all others that would have made it most difficult for nonblacks and non-Hispanics to receive help through 8(a). If a person is a black or Hispanic, the burden of proof was on SBA to establish that the person was not eligible for 8(a). For those who are not black or Hispanic, the burden of proof was on the applicant to demonstrate why admission was proper.

The Senate bill called for a case-by-case evaluation of social and economic disadvantage for each applicant. In each case, the burden of proof was on the applicant to demonstrate why he or she should be admitted.

The conference version adopts the case-by-case determination of social and economic disadvantage for 8(a) eligibility. The burden of proof is always on the individual to prove economic and social disadvantagement. While the conferees intend that the primary beneficiaries of this program will continue to be

minorities, the authorities given SBA pursuant to this subsection will now be used solely for economic and business development and not merely to channel contracts at a random pace to a preconceived group of eligibles for the sake of social or political goals.

The conference version states that socially disadvantaged persons are those who have been subject to racial or ethnic prejudice or cultural bias (regardless of their individual qualities or personal attributes) because they have been identified as a member of certain groups that have generally suffered from prejudice or bias.

Because of present and past discrimination many minorities have suffered social disadvantagement.

However, the conferees realize that other Americans may also suffer from social disadvantagement because of cultural bias. For example, a poor Appalachian white person who has never had the opportunity for a quality education or the ability to expand his or her cultural horizons, may similarly be found socially disadvantaged, provided that the conditions leading to such disadvantagement are beyond the ability of the person to control.

With respect to economic disadvantage, the conferees agree that an economically disadvantaged person is one who is socially disadvantaged and whose ability to compete in the economy is impaired, due to lack of capital and credit, as compared to others in the same business area who are not socially disadvantaged. According to the substitute language a person must be found socially disadvantaged before a determination of economic disadvantage can be made. The conferees intend that the assets and net worth of the applicant will be evaluated along with other factors, on the basis of the applicant's business as compared to others in the same field who are not suffering from social impediments.

As it relates to the economic status of the applicant, the SBA shall develop standards, along major industry lines, which recognize the historic past discrimination of minorities in their efforts to participate in the free enterprise system. The standards must not deny admission to the 8(a) program to applicants merely because they have managed to acquire a quality education. Indeed, such an education may be a prerequisite for the development of a viable business. Nor shall past or present employment by itself be used as criteria for denial of an applicant's admission to the program. Applicants who have managed in this manner to prepare themselves to successfully participate in the free enterprise system should not be denied admission to the 8(a) program for business development for having done so.

In addition to determining social and economic disadvantage the conferees agree that no one be found eligible for the program unless the SBA determines that it has the requisite contract, financial, and management assistance to promote the competitive viability of the firm within a reasonable period of time and that with such assistance, the firm does have the potential to successfully complete the program. The conferees recognize that not all persons will make successful business persons, with or without SBA assistance.

The Senate bill did not include the House proposed changes for 8(a) contracting authority. The Senate believed that SBA did not have the present capability to manage the House changes, which would require any Federal agency to negotiate the terms of any contract SBA wanted set-aside for 8(a). The House and Senate did agree on a limited 2-year pilot program, which gives SBA the increased 8(a) authority in the House bill for any contract requirement in one agency chosen by the President. Through this limited approach, it is hoped that SBA will develop the competence required to use this increased authority effectively.

The House bill also authorized SBA to waive surety bond requirements for any 8(a) contractor. The Senate believed this approach simply masked the problems inherent in the private sector that make it difficult for all small firms to procure surety bonds. Thanks to the hard work and dedication of Senator BARTLETT, the Senate bill included reforms in SBA's surety bond guarantee program. The creation of a special surety bond technical assistance program to improve the bonding environment for 8(a) firms was also provided.

The Senate recognized, however, that new businesses, ones with no business history, would have special problems in procuring a surety bond. Therefore, the conference version establishes a 2-year pilot program where SBA can waive all Federal bonding requirements for its 8(a) contractors who are startups and in the program for 1 year or less and provided the following conditions are met: First, the firm cannot secure the requisite bond needed for the job with or without an SBA guarantee of the bond; second, SBA will take such steps as may be appropriate to protect suppliers and laborers of the 8(a) firm; third, SBA determines that the firm has the potential of becoming bondable if assisted for a limited period of time by the bond waiver.

The Conferees intend that this authority be sparingly used as a business development tool and only then with the expressed concurrence of the Administrator. Further, every situation where a bond is waived should be thoroughly documented to include, but not be limited to, the precise reasons why a surety has refused to grant the bond in question. The agency should then commit itself to such reasonable actions as may be necessary to overcome the reasons for the denial received by the small firm benefiting from the waiver.

SBA should promulgate regulations to define a "startup" small business. SBA should be especially careful to ensure that an 8(a) firm simply does not reorganize, reincorporate, or reform under a new name to claim it is a new business and thus eligible for the waiver. This authority is meant for 8(a) firms that have been operating under any name for less than 1 year.

The conference version also adopts important Federal contract requirements for small and disadvantaged business subcontracting plans. The conferees agreed with the Senate approach, which minimized paperwork requirements for Federal prime contractors. For formally advertised contracts, only the low bidder submits a subcontracting plan, which reflects the prime's "best efforts." The low bidder can be denied contract award only if it refuses to submit the plan. For negotiated procurements, only the apparent successful offeror submits a subcontracting plan. The procuring agency negotiates the plan's final form, which is to represent the prime's maximum practicable ability to subcontract with small and disadvantaged businesses. In both cases, the quality of the plan cannot be used to evaluate the responsibility of the prime. However, the prime's compliance with previous plans can be evaluated to determine its responsibility.

Mr. President, this bill includes many important measures for development of minority and other disadvantaged businesses. The Congress has never before legislated in this area, and today we all have a chance to send a message around the country that economic and business development for minorities is a major national goal. I, therefore, ask for full support of H.R. 11318.●

NEED FOR CREDIT UNION CENTRAL LIQUIDITY FACILITY

● Mr. BROOKE. Mr. President, title IV of S. 3499, the regulation Q bill recently reported out of the Banking Committee, authorizes the establishment of a central liquidity facility to be administered by the National Credit Union Administration. This facility, whose capital will be provided by credit unions themselves, will provide funds to participating credit unions which need funds to meet temporary liquidity demands.

During the past several years, the need for a central liquidity facility has been pronounced. Perhaps the most obvious example of the need for this facility is apparent from the fact that many credit unions are often associated with one employer. If an employer lays off workers or closes a plant, such events can have a disastrous impact on the ability of affected employees to make deposits or loan payments to their credit unions. Without some type of national credit facility to tide a credit union over such occurrences, the credit union would be compelled to restrict its activities, or even close, causing substantial hardships to its members.

Another, but less well known, example of the need for a liquidity facility is the student Federal credit union located at the University of Massachusetts at Amherst. The University of Massachusetts Student Federal Credit Union, which is the only financial institution on the Amherst campus, has experienced liquidity problems when the summer months approach, due to students withdrawing funds from their share accounts for use during the summer vacation period. Compounding this problem is the significant increase in automobile loans made in late spring to graduates and others

who have need for auto transportation in their summer or permanent jobs. The value of the University of Massachusetts student credit union is quite evident to its approximately 5,000 members, who receive reasonable loans from it and use the credit union's deposit taking, check cashing, and other financial services. In addition to providing such services to its members, the credit union provides an active and invaluable educational training ground for its student members who have helped manage and operate the credit union.

The University of Massachusetts credit union and other credit unions which have experienced unusual seasonal or other liquidity problems need a central liquidity facility to help insure their continued vitality. Commercial banks have access to the Federal Reserve's discount window for short-term credit loans, and savings and loan associations may use the credit facilities of the Federal home loan banks to satisfy their temporary credit needs. It is time that we provide a comparable opportunity to credit unions which, as self-help organizations, have provided low-cost financial services and excellent financial benefits to millions of credit union members. In view of the need for and merit of this legislation, I would urge my fellow Senators to accomplish its consideration and passage in an expeditious manner before Congress adjourns.●

THE BOUNDARY WATERS CANOE ACT

● Mr. CULVER. Mr. President, the Senate took a great step forward to protect one of our outstanding landscapes by passing H.R. 11250, the Boundary Waters Canoe Act, late last night.

As chairman of the Resource Protection Subcommittee, I have long had a commitment to assuring the preservation of our unique wildlife and wilderness areas. One of the Nation's most outstanding wilderness areas is the 1-million-acre Boundary Waters Canoe Area (BWCA) in Minnesota. One-half of it is unlogged and in pristine condition and represents a valuable scientific and wildlife resource that demands maximum protection. The BWCA is also the closest natural wilderness area to my own State, and many Iowans enjoy its 1,076 lakes and the spiritual refreshment it affords.

When this area was officially designated a wilderness area in 1964, it alone among other wilderness areas was left open to both logging and motorboat activities. H.R. 11250 prohibits, with minor exceptions, logging in the Boundary Waters Canoe Area and substantially reduces the acreage that will be opened to motorized boats. While I would have preferred complete wilderness status for the BWCA, which would have eliminated all logging and motorboat activities within the 1 million acres, I am pleased that the Senate has approved this legislation before adjourning. Without this action, the existing moratorium on commercial logging could have lapsed, and 10,000 acres of forest could have been opened to harvest. H.R. 11250 resolves many of the issues that have surrounded the Boundary Waters during the last 14 years and assures that most of the area will be maintained in its natural state with minimal disruption by man.

Mr. President, an editorial in the October 9, 1978 Des Moines Register succinctly summarizes the issues involving past legislation and the need for Senate passage of H.R. 11250. As the editorial states, H.R. 11250 will prohibit motorboat use on over three-quarters of the BWCA's water surface and "is a reasonable proposition that should be approved this year so that protection for a major wilderness area is not needlessly delayed."

I request that this editorial be printed in the RECORD at the end of my statement.

Thank you, Mr. President.

The article follows:

[From the Des Moines Register, Oct. 9, 1978]

COMPROMISE ON BWCA'S

Prospects for a compromise agreement on the Boundary Waters Canoe Area appeared bleak after Representative Donald Fraser (Dem., Minn.) was defeated in a primary election contest with Robert Short, Minneapolis businessman. Fraser was the chief architect of the agreement, which cleared the House in June.

But Senator Wendell Anderson (Dem., Minn.), who had not shown much enthusiasm for Fraser's efforts, has moved on the offensive. Facing a tough election campaign of his own this year, Anderson at first tried to mollify the northeastern Minnesota resort owners, outfitters, tourist groups and merchants who were upset by attempts to restrict activity on and near the Boundary Waters.

The primary election results apparently convinced Anderson that he could count on little support from voters near the BWCA. Since the primary, at least one group in the area has reproached him for not backing a weaker BWCA plan.

Anderson's push for action by the Senate began when he presented a compromise proposal worked out by environmental groups and local interests around Bly, Minn. Their proposal differs mainly from the House-passed bill on management of motorized recreation. Several key House members reacted favorably to Anderson's version after it received quick approval by the Senate Energy and Natural Resources Committee.

The measure advanced to the full Senate provides that 23 lakes comprising 24 percent of the BWCA water surface would be open to motorboats indefinitely. It would designate five trails for snowmobiles for five years, then only two trails thereafter.

Under present management policies, 124 of the BWCA's 1,000 lakes—62 percent of the water surface—are open to outboard motors. Snowmobiles were banned in 1976.

The proposal adopts, except for a few minor changes, the House prohibitions on logging and mining in the area.

Anderson's measure will please environmental groups more than the commercial interests that regard the BWCA as income-producing property. But the proposal has not eliminated all motorized recreation in the area. It is a reasonable proposition that should be approved this year so that protection for a major wilderness area is not needlessly delayed.●

EQUITY FOR ARTISTS

● Mr. GRIFFIN. Mr. President, under our estate tax laws, many artists cannot afford to live—and they cannot afford to die. Because of this situation, I introduced a bill—S. 3015—on April 27 of this year to remedy an inequity in our tax laws.

Today, I would like to offer an amendment to the pending tax bill. However, I understand that the Chair has ruled my amendment to be nongermane to the bill.

I shall not press for an appeal of the Chair's ruling; however, I wish to take this opportunity to discuss the plight in which many artists find themselves. Further, I urge the Chairman of the Finance Committee to schedule hearings on this matter at a very early date in the next session.

Under the current law, when an artist dies, all of his unsold works are included in his gross estate and valued at "fair market value."

Unfortunately, this often means that the estate of the deceased artist—and thus the estate's tax liability—is unrealistically swollen. As a result, the surviving spouse and family members of the artist are forced to sell off the unsold works in order to pay the estate taxes. In many cases, even those art pieces that the family might have wished to keep as mementos and reminders of the deceased have to be sold to satisfy the tax collector's appetite.

There is a real irony in this situation.

Under so-called tax "reforms" enacted nearly 10 years ago, artists are forbidden from claiming fair market value deductions on their income taxes if they donate works of art to nonprofit organizations. For example, if an artist gives a painting—perhaps worth hundreds or thousands of dollars—to a charity auction, the only tax deduction he can claim is for the cost of his materials, perhaps $25 for canvas and paints.

But when an artist dies, the IRS rules change drastically—so that an unsold work is no longer worth just the cost of materials, but many times that amount in "fair market value" subject to Federal estate taxes of up to 50 percent.

Perhaps one of the saddest cases concerns the widow of cartoonist Walter Kelly, creator of the well-known and much enjoyed "Pogo" cartoon strip. At Mr. Kelly's death, his wife was left with a great many of her husband's sketches—and an astronomical bill for estate taxes. In attempting to meet these tax obligations, Mrs. Kelly lost the entire estate and had to declare bankruptcy.

One unhappy solution, which some artists have found, is simply to destroy their works before they die—thereby sparing their family and heirs from the heavy estate tax burden.

Such destruction, of course, results not only in a net revenue loss to the Government from potential future sales of these works, but also in an incalculable cultural loss to this and future generations.

I understand that Arizona painter Ted DeGrazia has burned hundreds of his works to protest this capricious discrimination against artists—and that a group of Michigan artists plan a public "burn-in" of their works in the middle of Kennedy Square in downtown Detroit this week. One of the paintings slated for the flames is a portrait of former Mich-

igan Governor and HUD Secretary George Romney, valued at $5,000.

If our national policy is to foster pride in artistic and cultural achievements and to encourage such endeavors in the future, the estate tax law clearly is counterproductive.

The amendment I am introducing provides a less sensational, but certainly more appealing, remedy than wholesale destruction of works of art. This bill—a companion measure to legislation (H.R. 7896) pending in the House of Representatives—would simply change the estate tax laws so that unsold artworks would be valued in an artist's estate on a "cost of materials" basis—just as unsold works are valued now for deductible income tax purposes during an artist's lifetime.

This would allow an artist's survivors to decide for themselves whether to keep or sell inherited works—rather than forcing them, as is now too often the case, to pay a heavy penalty.

The bill would apply equally to copyrights and to literary and musical manuscripts as well as to the visual arts.

It should be emphasized that this bill would not allow the survivors to slip through a tax loophole. If the works were later sold, any income realized from the sale would then be fully taxable as personal income. The bill simply allows the heirs to be taxed when—and if—the income is actually realized.

Of course, the estate tax problem facing artists is only part of a much larger complex problem facing most taxpayers.

To be sure, this is a small step toward equity and reform. But it would be a very significant step for artists, and it would go a long way toward encouraging creative activity in the arts.

I ask that the text of the amendment be printed in the RECORD.

H.R. 13511

At the appropriate place in the bill, insert the following:

That (a) part III of subchapter A of chapter 11 of the Internal Revenue Code of 1954 (relating to gross estate) is amended by inserting after section 2032A the following new section:

"SEC. VALUATION OF CERTAIN ITEMS CREATED BY THE DECEDENT.

"(a) GENERAL RULE.—If the decedent was (at the time of his death) a citizen or resident of the United States, then, for purposes of this chapter, the value of qualified creative property shall be determined under subsection (b).

"(b) VALUE OF QUALIFIED CREATIVE PROPERTY.—For purposes of subsection (a), the value of qualified ceative property of the decendent shall not include any amount which would not have been capital gain if such property had been sold by the decedent at its fair market value (determined at the time of the valuation of the gross estate of the decedent).

"(c) QUALIFIED CREATIVE PROPERTY DEFINED.—For purposes of this section, the term 'qualified creative property' means any copyright, any literary, musical, or artistic composition, any letter or memorandum, or any similar property—

"(1) which was held by the decedent at the time of his death, and

"(2) which was created by the personal efforts of the decedent.".

(b) The table of sections for such part III is amended by inserting after the item relating to section 2032A the following new item:

"Sec. 2032B. Valuation of certain items created by the decedent.".

(c) Subsection (f) of section 1023 of such Code (relating to special rules and definitions) is amended by adding at the end thereof the following new paragraph:

"(6) PERSONAL OR HOUSEHOLD EFFECT.—For purposes of this section, the term 'personal or household effect' shall not include any qualified creative property (as defined in section 2032B(c)).".

SEC. 2. The amendments made by the first section of this Act shall apply to estates of decendents dying on or after January 1, 1977.●

U.S. LOSING EDGE TO U.S.S.R.?

● Mr. SCHMITT. Mr. President, the Soviet Union shocked the world in October of 1957 by launching Sputnik 1. This catalytic event challenged the technological imagination of the people of the United States, resulting in a national effort to become a world leader in space technology.

Today we are once again being challenged by the Soviet Union and soon by other countries who are developing space programs with equal enthusiasm. The October 9 edition of Aviation Week and Space Technology printed an article entitled, "Soviets Plan Larger Space Assemblies." I request that this article be printed in the RECORD.

SOVIETS PLAN LARGER SPACE ASSEMBLIES

(By Craig Covault)

WASHINGTON.—Soviet Union plans to expand its single Salyut space station activities soon by docking multiple Salyuts or large sections of them in orbit to form space stations much larger than that occupied by two cosmonauts since June 17.

"It is expedient to provide an orbital scientific Salyut laboratory with a minimum of seven or eight docking ports," according to spacecraft designer and former cosmonaut Konstantin Feoktistov. Salyut 6 has two docking ports, one forward and one aft.

"Priority development in the near future will be the modular construction of orbital stations," he said. "In the future, modules will be docked to allow specialized research [in areas such as] geophysics, astrophysics and technology."

Cosmonauts Vladimir Kovalenok and Alexander Ivanchenkov will have passed the 115-day mark if they remain in space through Oct. 9. There is no question that the mission is scheduled to continue for a significant time since the Soviets launched the Progress 4 tanker/transport Oct. 4 to dock with Salyut 6. This is the third Progress vehicle to resupply the current Salyut 6/Soyuz 29 mission. Progress 4 was launched from Tyuratam at 2:09 a.m. Moscow time and was scheduled to rendezvous with Salyut 6 on Progress 4's 33rd earth revolution.

U.S. space officials are extremely interested in learning the results of medical experiments on the 96-day Soyuz 26 crew and the current longer flight. A group of about 10 NASA scientists will have their first chance to obtain the data when they meet in Leningrad this week as part of a U.S./Soviet working group on space medicine (aw&st Oct. 2, p. 13).

"In a sense, we are studying the margin between difficult and impossible," Salyut 6 flight director and former cosmonaut Alexei Yeliseyev said of the long-duration objectives.

"One thing is already clear. The Salyut 6 flight has confirmed that we have all the technical facilities and experience for making piloted expeditions practically continuous if necessary," he added.

Emphasis of the Salyut 6 mission has been on space processing and orbital photography. The Soviets have processed more than 30 materials in the zero g environment experiments that should give them a solid technology background on which to base more extensive space processing, such as the near-term use of such materials in electronics and other industries.

In the earth photography area, the current Salyut 6 crew has taken about 18,000 pictures of earth.

Recent activities by the cosmonauts have involved:

GLACIER OBSERVATIONS

The cosmonauts have studied and photographed glaciers and other snow-covered areas in the Pamir Mountain Range in the Tadzhik Soviet Socialist Republic near its border with Pakistan.

TRIPLE MATERIAL PROCESSING

Semiconductor materials consisting of germanium, antimony and sulphur were processed into a new substance on the space station. Additional unspecified materials processing has been carried out during the last two weeks, much of it involving the Salyut in a gravity gradient stabilized mode so thruster firings would not exert forces on the materials being melted and solidified.

CRYOGENICALLY COOLED BST-1M TELESCOPE

The largest instrument on the space station has been used to study earth's ozone layer by watching the star Beta-Centaurus set through earth's atmospheric horizon, then measuring the amount of ultraviolet light from the star absorbed by the upper reaches of earth's atmosphere.

As the two cosmonauts continued to work on board Salyut 6, the Soviets last week returned an earth resources/reconnaissance spacecraft to earth, launched a designated earth resources mission and discussed preparations to launch two new space science missions in the future. The flights involve:

COSMOS 1,032

The spacecraft was launched Sept. 19 and recovered by the Soviets Oct. 2. Orbital parameters of the satellite indicated that it was a film reconnaissance spacecraft, but possibly on an earth resources mission. The spacecraft flew in a 249 × 218-km. (154 × 135-mi.) orbit inclined 81.4 deg.

COSMOS 1,033

The Soviets identified this film reconnaissance satellite as an earth resources spacecraft. Cosmos 1,033 was put into an orbit nearly identical to that of Cosmos 1,032. The new spacecraft's initial parameters involved 268 × 223-km. (166 × 138-mi.) altitudes at an 81.4-deg. inclination.

LIFE SCIENCES SPACECRAFT

New Soviet biological spacecraft to be launched in early 1980 will carry some U.S.-supplied experiments in addition to a Soviet experiment in which Japanese quail eggs will be incubated in zero g conditions. The spacecraft will be returned to earth just before the eggs hatch.

PROGNOZ

A new Soviet Prognoz solar/magnetospheric spacecraft will be launched soon carrying both Soviet and French instruments. The French instruments will be gamma ray detection devices. The gamma ray data from the Prognoz will be compared with data from similar French instruments on Venera 11 and 12.●

OLDER AMERICANS ACT AMENDMENTS

● Mr. HATHAWAY. Mr. President, I am delighted that the Senate has passed H.R. 12255, the Older Americans Act Amendments of 1978. This legislation revises and extends for 3 years authorizations for programs under the Older

Americans Act of 1965. As an early supporter of that law, I view with great pleasure the present renewal of the commitment of Congress to provide a variety of services to our senior citizens to assist them in living full, independent, and dignified lives.

The legislation renews and revises authorities for social services, nutrition programs, multipurpose senior centers, training, research and model projects, and the community service employment program. It attempts to increase local determination while setting broad national goals.

Each area agency on aging is required to allocate at least 50 percent of its funds to three priority service areas: Access, that is transportation, outreach, information and referral; in-home services, including homemaker-home health aid, visiting and telephone reassurances and chore maintenance; and legal services. The 50-percent targeting requirements ma be amended, however, for an area agency which can demonstrate that the need for one or more of the priority services is being met.

To simplify administration of Older Americans Act programs, the 1978 amendments consolidate the existing titles 3, 5, and 7—the State and community grants programs, multipurpose senior centers, and nutrition programs—into a single title 3 under one administrative structure. All social services programs are under one authorization with the exception of nutrition services, where authorizations are made for congregate site meals and home-delivered meals. I am pleased that the conference report includes the provision which I offered on the floor to allow congregate site funds to be used to increase the number of home-delivered meals when necessary.

The fact that there is no longer a separate authorization for multipurpose senior centers is in no way intended to imply that this program be eliminated. It is simply an indication of congressional intent to allow the local area to determine what is best for the locality. This is particularly important in rural areas where multipurpose senior centers are not always the most appropriate means of serving the elderly. To assist rural areas, however, which desire senior centers but have no existing facilities suitable for conversion, the 1978 amendments allow for construction of new facilities in these situations. The need for flexibility with respect to senior centers was made quite clear at hearings of the Subcommittee on Aging, which I cochaired with Senator EAGLETON in Portland, Maine, this summer.

Mr. President, the older Americans conference report is particularly pleasing to me because it increases the focus on the special needs of older Americans residing in rural areas. Specifically, it allows for mobile senior centers, improves outreach and information programs, emphasizes alternatives to institutional care, and requires a special study on the needs of the rural elderly. It also provides for greater flexibility in the senior community service employment program by specifying that individuals with incomes up to 125 percent of the poverty level may participate in the program. Most of these provisions and several additional ones were part of S. 2935, the Rural Elders Assistance Act, which I introduced on April 18, 1978. I am delighted that they were included in the conference report.

In addition to the need for increased focus to rural needs, I have been concerned that we pay greater attention to the need to find alternatives to institutionalization. Consequently, I offered amendments to the Senate bill during its consideration by the Human Resources Committee to authorize model projects for long-term care. At the same time, I believe that we must take care of those individuals who must be placed in institutions to ensure that their human and civil rights are respected. Therefore, I also offered a committee amendment, which I modified on the floor, to require states to have long-term care ombudsman programs. To ensure that these programs are meaningful, the Senate bill provided that states must spend a minimum of $20,000 or 1 percent of their title III social services allotments, whichever is greater, on the ombudsman program. I am pleased that the Conference Committee adopted these important provisions.

Mr. President, this bill represents a significant step forward in our efforts to serve our senior citizens. I commend my colleagues for their fine work in the passage of this bill, and look forward to its prompt signing by the President.●

EXTENSION OF INDOCHINESE REFUGEE ASSISTANCE

● Mr. KENNEDY. Mr. President, I am pleased to join with my distinguished colleague from California (Mr. CRANSTON) in sponsoring, and in expediting consideration today, this important legislation extending the Indochina refugee assistance program (IRAP), as authorized under the Indochina Migration and Refugee Assistance Act of 1975.

I believe the compromise bill we are offering, as reported out of the Human Resources Committee, and worked out in consultation with members of the Judiciary Committee—which has responsibility for all legislation relative to the admission of refugees—will fulfill our Nation's commitment to help Indochinese refugees build new lives in America.

Like many Americans, Mr. President, I have watched the remarkable progress Indochinese refugees have made in becoming contributing and productive members of their adopted communities all across our land. But the resettlement process is still in motion for many, and additional refugees are still arriving from Indochina.

This requires continuing Federal support for the resettlement program, especially the efforts of the voluntary and community agencies involved in helping the refugees help themselves. A reduction in Federal support at this time would also work undue hardship on several States, as well as deny full assistance to the additional refugees who are coming to our shores over the coming year—many to join family and friends already here.

The legislation we have before us will fulfill this continuing Federal responsibility by assuring 100 percent support for all refugees this fiscal year. This is a compromise, and next year we will look at providing 100 percent support for 3 more years for all new refugees—only new refugees—entering the United States after next year. So it has a built-in cutoff date of 1 year for all current refugees, so there will be no risk of a Cuban-type program which has continued unnecessarily for so many years—becoming "impact aid" for certain counties in Florida, rather than genuine assistance to refugees.

In addition, Mr. President, the legislation we are offering contains a specific authorization for "special projects" administered primarily by the voluntary resettlement agencies—to help the refugees gain the skills and knowledge and confidence necessary to start life anew. These programs help them become self-sufficient at the outset, rather than wait to help them later, after they are on the welfare rolls.

Mr. President, this legislation continues the record of support the Congress has properly given to State and local agencies, and to church groups and voluntary agencies, in helping them in their work with the refugees from Indochina. It is urgently needed legislation, since the current authorization for 100 percent financing ended last week.

For the record—and to elaborate on the need for this legislation—I submit for the RECORD the testimony offered by Mr. Wells Klein, executive director of the American Council for Nationalities Service, and spokesman for the American Council for Voluntary Agencies at our hearings.

The statement follows:

STATEMENT OF WELLS C. KLEIN

Mr. Chairman: My name is Wells C. Klein. I serve as Vice Chairman of the Committee on Migration and Refugee Affairs of the American Council of Voluntary Agencies for Foreign Service. I am also the Executive Director of the American Council for Nationalities Service. The resettlement agencies joining me in testimony this morning are: American Council for Nationalities Service;

American Fund for Czechohlovak Refugees; Church World Service; HIAS; International Rescue Committee; Luthern Immigration and Refugee Service; Migration and Refugee Services, United States Catholic Conference;

Tolstoy Foundation.

The voluntary resettlement agencies support the Cranston-Kennedy Bill to extend the Indochina Migration and Refugee Assistance Act for an additional year at its current level of 100% reimbursement to the states for the costs of public assistance and related services. We take this position mindful of our earlier support for a "phase down" of Indochinese refugee assistance. We believe, however, that the new flow of Indochinese refugees to the United States requires continued federal support, and, lacking a comprehensive, coherent and equitable refugee policy, we urge favorable consideration of S3502.

Mr. Chairman, we would like to go on record as viewing S3502 as an interim measure to assure continuity of service. Under-

lying our support for this legislation is our deep conviction that this nation is not organizing or allocating its resources effectively to assist refugees achieve self-sufficiency. We would define self-sufficiency not only in terms of not having to utilize public assistance, but also as earning sufficient income to enjoy a reasonably satisfactory quality of life, and as having achieved sufficient social and emotional adjustment to participate in American life.

In supporting the continuation of 100 percent reimbursement to the states for public assistance and associated costs, we hope and trust that the Administration and the Congress, the States, and the private sector will be able to delineate and implement, through the legislative process, a national refugee policy within the coming year.

The voluntary resettlement agencies also support the provision in S3502 to remove time limitations on the adjustment of status for Indochinese refugees, so that those arriving in the United States after January 1, 1979 can adjust to their status after two years without charge to numerical limitations. We also support the provision to increase special project funding from the present $25,000,000 authorized to $40,000,000. Finally, we urge that the Committee amend to S3502 the provision from the Administration's proposal dealing with unaccompanied minors. The resettlement agencies have been working closely with the State Department and HEW to establish appropriate systems to deal with the relatively small number of unaccompanied minors currently in the refugee caseload or projected over the next year. There are two issues: One is the question of guardianship. This is not a federal matter, but HEW has agreed to work with the resettlement agencies and the States on this question, so that legal guardianship for unaccompanied minors can be established as soon as possible after their arrival in the United States. The other issue is funding for adequate care and supervision of unaccompanied minors until they reach the age of 18. The provision in the Administration's proposal is essential for providing such funding and we therefore strongly urge its adoption.

We would like to point out, Mr. Chairman, that the Indochinese refugees were not traditionally a dependent population in their own countries and, with effective resettlement planning, the vast majority of the refugees should achieve self-sufficiency in their new homeland. In fact, the Indochinese refugees have come a long way in achieving self-sufficiency. Some statistics which bear on this observation may be of interest to the Committee.

In August of 1977, Indochinese refugee unemployment was 5.5 percent of the workforce as compared with a national unemployment rate of 6.9 percent. Extrapolating from these figures to the present, we would estimate Indochinese refugee unemployment at under 5 percent—a very low figure.

We are all aware, however, that the number of Indochinese refugees receiving some form of cash assistance, mostly supplemental assistance, has been consistently very high. This reflects underemployment and a great deal of entry-level employment with insufficient income to support large families. As of May 1, 1977, 36% of the refugees were receiving some form of cash assistance. However, as of May 1, 1978, despite the influx of 14,000 new refugees, the percentage of refugees receiving some form of cash assistance dropped to 29.6%. This is a significant reduction in refugee reliance on public assistance. Although it is difficult to establish a direct cause and effect relationship, we believe this record of significant achievement over a short period of time supports the continuation and strengthening of special projects programming.

Mr. Chairman, as you are aware, the appropriation for special projects for FY–1978 was ten million dollars. In view of the effectiveness of this program as well as the influx of new refugees anticipated in FY–1979, the resettlement agencies had assumed that the Administration would request funding for the continuation of special projects at the same level for the coming year. However, last spring, we learned that the Administration's budget proposal calls for only five million dollars for Special Project funding in FY–1979. Mr. Chairman, I would like to submit for the record a copy of a letter dated May 5, 1978, from the voluntary resettlement agencies to the Secretary of HEW on this subject. It seems to us that there is a significant lack of communications, and understanding of intent, between the Congress and the Administration on this subject. At the very time the Congress is considering increasing the authorization for special project funding, the Administration is recommending a 50% reduction in the appropriation for special projects. It is our hope, Mr. Chairman, that you would raise this issue with the Administration, or with the Appropriations Committee, so that special projects will be funded at an adequate level.

Mr. Chairman, on behalf of the resettlement agencies, I would also like to raise some of our concerns with regard to the way in which special projects are being implemented. In a letter dated May 9, 1978, the resettlement agencies expressed their concerns on this subject to the Acting Commissioner of Social Security, and I would like to submit a copy of this letter for the record. The resettlement agencies hope that the "history" of the legislation currently being considered, particularly the increase in the authorization for special project funding, will reflect our concerns with the way in which such funding is allocated.

Finally, Mr. Chairman, the resettlement agencies have another serious concern which, though not directly within the immediate purview of this Committee, bears directly on the achievement of refugee self-sufficiency and on the cost-effective use of federal funds. I refer to the resettlement grants made available to the voluntary agencies to supplement contributions from the private sector. In 1975, the resettlement grant was at $500 per capita. In the summer of 1977, and for reasons we do not fully understand, the resettlement grant was reduced to $300 per capita. We anticipate that the resettlement grant level will be $350 in FY–1979. Our contracts with the Department of State refer to "reception and placement." However, all of the resettlement agencies—each in its own manner and through its own consistency or network of resettlement offices, endeavors to work with "its" refugees, until they achieve self-sufficiency. This process goes beyond "reception and placement" and each of the agencies relies heavily on financial support and support-in-kind from the private sector to assist with refugee resettlement. The resettlement grant, however, is critical in meeting the immediate "front end" costs of securing resettlement opportunities, of initial placement, and of professional staff to counsel and work with the refugees. Also, an adequate grant is critical to securing or stimulating contributions from the private sector—it operates as seed money. The $350 per capita resettlement grant currently projected is simply insufficient to adequately supplement private agency resources in achieving effective resettlement. Thus, each agency, in its own manner, is forced to rely more heavily on public assistance than it would like, or than would otherwise be necessary. This is not a cost-effective use of public funds—it simply results in more refugees going on public assistance for a longer period of time with far greater expense to the federal government and the American taxpayer.

In this regard, I would like to submit for the record, the letter dated April 18, 1978 from the voluntary resettlement agencies to the Department of State together with the reply from the Department of State dated May 10, 1978. The reduction in the resettlement grant from $500 in 1975 to $350 today, despite interim inflation, is a matter of very serious concern to the resettlement agencies and our broad constituencies. While we will certainly continue with Indochinese refugee resettlement, we know that we cannot do as effective a job as we would like, or should, without an adequate resettlement grant, and that the present allocation of resources with too little "front end" emphasis on the resettlement process is probably wasteful of public funds.

Finally, Mr. Chairman, on behalf of the resettlement agencies, I would like to express our appreciation for the opportunity to testify before the Committee this morning. Much as we appreciate the opportunity to express our concerns, we hope that this will not become an annual affair, and we look forward to working with the Congress and the Administration in developing a long-range refugee policy which will provide effectiveness and continuity to all of our efforts on behalf of refugees.

AMERICAN COUNCIL OF VOLUNTARY
AGENCIES FOR FOREIGN SERVICE, INC.,
New York, N.Y., May 5, 1978.

Hon. JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education and Welfare, Washington, D.C.

DEAR MR. SECRETARY: I am writing on behalf of the refugee resettlement agencies associated with the American Council of Voluntary Agencies for Foreign Service, to express our concern with the way in which we understand the Administration proposes to budget for "special projects" as authorized in PL 95–145. Our national structures have resettled the vast majority of Indochinese refugees coming to the United States and we continue to serve in the same capacity. The success or failure of the resettlement process depends in large part on our efforts, and the coordination of these efforts with federal and state programs.

PL 95–145 calls for a four-year phase-down of the Indochinese Migration and Refugee Assistance Act of 1975. Included in the authorization is $25 million for "special projects" designed to deal with generic factors inhibiting the achievement of economic self-sufficiency on the part of the refugees. Of the authorized $25 million, $10 million was appropriated for FY–78. We understand, however, that the Administration has proposed an authorization of only $5 million for FY–79, with the implicit assumption that $5 million will be requested for each of the subsequent two years.

In our opinion, based on extensive work with the Indochinese refugee population, the plan to "string out" the remaining authorized funds over a three-year period reflects a lack of appreciation of the resettlement process and the need to focus resources to assist the refugees achieve self-sufficiency. We also question whether the present budget proposal accurately reflects the intent of Congress in authorizing the "special project" funding.

The purpose of the "special projects" is to deal with factors inhibiting refugee self-sufficiency, or put negatively, resulting in a high refugee caseload utilizing public assistance. As you are aware, a number of special projects were started prior to FY–78. With the $10 million appropriated for FY–78, a majority of these projects have been extended and additional projects are, or will be, funded to assist refugees in attaining self-sufficiency. If only $5 million for FY–79 is appropriated, it will require the discontinuation of many projects at the very time they can be expected to be achieving significant results. Such an eventuality would be most unfortunate from the point of view of our shared objective of assisting

refugees to achieve self-sufficiency. It would "string out" the process of effective resettlement over an unnecessarily long period, and it would result in greater expenditures for public assistance on the part of federal and state governments than we believe would otherwise be required.

Therefore, as those agencies which the federal government has asked to resettle the Indochinese refugees, we in turn request the government to review its approach to "special project" funding. It is our urgent recommendation that the Administration request an appropriation of $10 million for special projects in FY–79 with the remaining $5 million budgeted for FY–80. This will bring maximum funding to bear in the immediate future when it is most needed.

We would greatly appreciate your bringing our concern to the attention of the appropriate offices so that the Administration's FY–79 Budget request will reflect a $10 million line-item for "special projects" as authorized in PL 95–145.

Thank you very much for your consideration.

Sincerely yours.

JOHN E. MCCARTHY,
Chairman Committee on Migration and Refugee Affairs.

AMERICAN COUNCIL OF VOLUNTARY AGENCIES FOR FOREIGN SERVICE, INC.,
New York, N.Y., May 9, 1978.

MR. DON WORTMAN,
Acting Commissioner of Social Security, Department of Health, Education, and Welfare, Baltimore, Md.

DEAR DON: I am writing on behalf of the refugee resettlement agencies associated with the American Council of Voluntary Agencies to express some of our concerns regarding the allocation of "special projects" funds as authorized in P.L. 95–145.

Section 2(c) of P.L. 95–145 states that special projects and programs are to be ". . . administered in whole or in part by State or local public agencies or by private voluntary agencies participating in the Indochinese Refugee Assistance Program . . ."

The resettlement agencies are fully in agreement with this statement. We are also aware that the legislative history of P.L. 95–145—specifically remarks by Senator Kennedy—emphasizes the intent that special projects be carried out "particularly" by private voluntary agencies participating in Indochinese refugee resettlement. Needless to say, we are in accord with this emphasis on the private sector.

It is our firm belief, however, that special project funding to assist Indochinese refugees achieve self-sufficiency should be carried out through whatever institutional structures are best equipped to achieve this objective, regardless of whether they are public or private entities. With this consideration in mind, we would urge that three basic guidelines be followed in the allocation of special projects funds.

1. That funding go only to those agencies (public or private) which have significant previous experience in working with the Indochinese refugee population.

2. That funding go only to those agencies (public or private) which have direct access to the refugee population. There should be no need to recruit a caseload as in some past instances.

3. That funding go to those agencies (public or private) which will actually be providing services or, in the case of a consortium, to the agency which will act in a fiduciary capacity for the consortium.

With reference to the last recommended guideline, we would draw your attention to those situations in which State and local public agencies are proposing to act as the umbrella for special project funding and then sub-contracting to the operating agencies. In these umbrella situations, it is our experience that contracting agencies tend to retain much of the administrative money, leaving the agencies providing direct services with little or no funds to carry out administration and supervision of the program. In addition, the contracting agency is often at some distance from the client caseload and program considerations, and thus is not in a position to provide effective program administration. While we recognize the need for coordination in planning and implementing special projects, we believe that such coordination can be carried out without the need for a multi-tiered structure.

Also, in some instances (notably California), where the State becomes the contracting agency and sub-contracts program implementation, the State is either unwilling or legally unable to provide advance funding for the projects. Thus, the small private agency actually delivering the services is forced to underwrite the program from its own funds for a number of months before reimbursement can be secured from the State.

We are taking the liberty of bringing our concerns to your attention in advance of the actual allocation of funds and thus, on the basis of apprehension rather than fact. However, if we were to wait until the dust settles, allocation of FY–78 funds would have been completed and, if our apprehensions are warranted, this would be to the detriment of effective resettlement and the legitimate interests of our local structures.

Sincerely yours,

JOHN E. MCCARTHY,
Chairman, Committee on Migration and Refugee Affairs.

AMERICAN COUNCIL OF VOLUNTARY AGENCIES FOR FOREIGN SERVICE, INC.,
New York, N.Y., April 18, 1978.

MR. JAMES L. CARLIN,
Deputy Assistant Secretary for Humanitarian Affairs, Washington, D.C.

DEAR MR. CARLIN: Recent developments in the Indochinese refugee filed have stimulated a review of the voluntary agency capabilities in terms of sponsorship and financial resources. The voluntary agencies are ready to undertake the humanitarian endeavor of resettling substantially increased numbers of refugees. But they will need increased supplementary financial support to discharge this responsibility in a professonal manner, particularly over an extended period of time.

Our acceptance of the reduction in the Indochinese per capita resettlement grant last year from $500 to $300 was based on the expectation of a limited program for a short period of time with strong emphasis on family reunion. In addition, we realized that only limited funds were available to the Department of State without a supplemental appropriation which was impractical at the time. Faced, however, with the need to find new resettlement opportunities for substantial groups of newcomers in an open-ended program, we believe that to maintain a professional level of resettlement requires a return to the $500 per capita grant to supplement the contribution made by and through the resettlement agencies. We note that, due to inflation, $500 today has the purchasing power of approximately $400 in 1975. Thus, even at the $500 level in 1978, we are, in effect requesting significantly less than was available to work with in the earlier program.

We believe that an adequate resettlement grant such as that we are requesting, used effectively by the resettlement agencies, will be cost-effective to the government in terms of helping the newly-arrived refugees achieve self-sufficiency. Whenever possible, we would like to avoid the necessity of relying on public assistance as part of the resettlement process.

Inflationary pressures, higher costs of rent and living expenses, as well as necessary salary adjustments and the need to hire additional professional staff, are all reasons for the rise in resettlement costs. We have also found that the composition of the new caseload calls for higher expenditures than during our earlier Indochinese resettlement experience.

Even if the time interval between arrival and economic self-sufficiency can be reduced to as little as, say, six weeks on the average, the present $300 grant is patently insufficient to supplement expenditures by the resettlement agencies for Care and Maintenance, to say nothing of the cost of securing resettlement opportunities as well as essential expenditures for casework, counselling, and administrative costs.

The lengthy stay of the Cambodian and Laotian refugees in camps in Thailand has also taken its toll in terms of physical deterioration and emotional strain. Because of the long stay in camp, many of these people will have special needs, and will require more attention and more time before they can be successfully resettled.

As we are going into a new phase of what is to be a long-range program, we believe a sober evaluation of the support structures is needed and will fully justify acceptance of the request expressed in this letter.

Sincerely,

JOHN E. MCCARTHY,
Chairman, Committee on Migration and Refugee Affairs ●

PROPOSITION HOLOCAUST

Mr. THURMOND. Mr. President, I rise in support of H.R. 12509 which makes it clear this country is not a haven for Nazi war criminals.

The extinction of millions of people on the grounds of race was indeed a tragic example of man's inhumanity to man. This country fought for 4 long years to end this atrocity. I was indeed privileged and honored to be a part of the allied force entering at Normandy which struck a great blow toward ending the killing and destruction of the Jewish race.

This year has been referred to many times as the year of proposition 13; but it is also the year of the reawakening to the holocaust endured by a strong people against all odds. H.R. 12509 is an expression of that reawakening and a commitment not to grant asylum in any manner to those who are in fact war criminals of the worst kind.

WORSENING INFLATION AND DEFICIT SPENDING

Mr. THURMOND. Mr. President, the subject of inflation is not new to us here in the Senate and the damaging results of inflation are felt every day by Americans all across the land. We see the trend of spiraling prices that continue upward at a faster and faster rate. We hear much talk about the administration's efforts to curb inflation, but, as of this date, they have proved ineffective. These efforts have been appropriately labeled "cosmetic" since they have failed to deal with the critical underlying pressures of inflation.

An editorial, titled, "Carter Inflation Is Worst Yet," in the Greenville News, Greenville, S.C., September 25, 1978, directs our attention once again to this worsening inflation, particularly during

the last 18 months. It points out the lack of economic sense in following programs that add inflationary pressures through costly Federal spending and deficit financing, numerous new Federal regulatory programs, and high tax rates that restrict capital investment.

The points are well made and, hopefully, will be received and acted upon very soon. Our Nations' citizens should not have to live under this ever-increasing weight of inflation.

Mr. President, another related and excellent article, titled, "Deficit Spending Brings Inflation," was in the same issue of the Greenville News. The article by Prof. Holley H. Ulbrich of Clemson University provides a most interesting and informative treatment of the subject, including some unique and useful insights into interested aspects of the public and private sectors.

Professor Ulbrich's presentation leads the reader through a step-by-step explanation of citizen-Government involvement and responses to Government spending and inflation. Near the end of the article, she states that:

The real villian is in Washington, and its name is deficit-created inflation.

Mr. President, in order to share this editorial and this article with my colleagues, I ask unanimous consent that they be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

CARTER INFLATION IS WORSE YET

The nation's continuing and worsening bout with inflation as the Carter administration nears the mid-term mark puts the Carter label on this round of the fever. It's definitely President Carter's inflation now.

Furthermore, the current rate—about 11 percent annually, according to the government's latest figures—underscores the disturbing fact that the Carter inflation is the worst in memory. A comparison of the average annual inflation rates of past federal administrations since President Roosevelt's death in 1945 came out as follows:

President Truman, 5.3 percent; President Eisenhower, 1.4 percent; President Kennedy, 1.2 percent; President Johnson, 2.8 percent; President Nixon, 6.3 percent; President Ford, 6.7 percent; President Carter (after 1.5 years), 8 percent.

The Carter record makes little economic sense. The nation long since shed the inflationary pressure caused by heavy military spending on the Vietnam War. Supposedly the economy had digested the costly pressures added by the Great Society federal spending programs enacted during the Johnson administration. In addition the nation was supposed to have adjusted to the terrible costs of the foreign oil price increases which hit during the Nixon and Ford years. What happened to make inflation even worse under President Carter?

For one thing, the nation has not digested those costly federal spending programs and the oil price hikes. The great Society spending spree continues to cause heavy deficit financing, a sure-fire inflation producer. The oil price increases raised the cost of producing goods and delivering services and set off wage demands which still add pressure to the inflation spiral. In addition the cost of numerous new federal regulatory programs—OSHA, environmental protection and many others requiring red tape as well as large outlays for new equipment and new procedures—have driven production costs sky high. The impact has hit production of energy hard. That has affected the cost of producing just about everything else.

The high tax rate continues to burden the economy, making formation of job-producing capital extremely difficult, and cutting drastically into the ability of producing Americans to make ends meet.

In the final analysis the socialistic "transfer of income" or "transfer of wealth" policy emphasized by Congress in recent years and by the Carter administration is taking an inevitable toll upon the so-called free economy and the ability of people to live on the fruits of their own earnings.

President Carter has begun to "talk tough" about fighting inflation. He says he will ask for "sacrifices" from all elements of the American society. His program is awaited with interest.

Nothing much will work unless and until the federal spending and regulatory monster and the inhibiting federal tax rates are brought under strict control.

DEFICIT SPENDING BRINGS INFLATION

(By Holley H. Ulbrich)

In June the voters of California sent a message to the state and local government which has had as many aftershocks around the country as we might anticipate from the long-expected California earthquake. The message, to echo the news commentator in the movie "Network," was: "I'm mad as hell and I'm not going to take it anymore."

Everyone offers his own interpretation of that message from California and the imitation Proposition 13s in other states. Public Opinion magazine finds that much of the anger against the growth of state and local spending is really anger deflected from a larger target—the growth of federal spending. Some readers of the entrails see a backlash against social services to the poor. Others find frustration with schools which spend more and—according to college entrance tests and employers of new high school graduates—teach less.

Whatever the particular complaint, taxpayers seem to be saying that the division between public and private spending has been changing too rapidly and in the wrong direction. While both public and private spending have grown, from 1965 to 1977 total public spending has increased its share of GNP slightly, from 20 percent to 21 percent. During the same period, state and local government spending grew from 10.3 percent of GNP to 13.2 percent of GNP.

There are two ways in which the public sector can grow relative to the private sector. One way is the creation of new or expanded public goods and services—schools, roads, defense, social services, parks, or whatever. The other is for government to find itself with unplanned extra revenue and to use it to expand existing programs or create new ones.

The first growth path, resulting from added demand for services, is limited by the citizens' willingness and ability to pay for those services through taxes. The more we pay in taxes for public services, the less remains available to us for private spending on food, clothing, housing, cigarettes, vacations, or whatever else may strike our fancy. These taxes serve a useful function in constraining the growth of government. But the federal government has found a way to make an end run around tax resistance by financing new programs with deficits. Deficits tax us indirectly through inflation, and because the connection between service and payment is more indirect, the resistance by citizens is weaker.

State and local governments, however are less willing and/or able to finance a substantial share of programs with deficits. So it would appear, at first glance, that state and local government is expanding relative to the private sector for the first reason—because citizens are demanding more parks, better schools, and an expansion of a variety of other state and local services. To some extent this may be true. But what has happened in California indicates that the second, more insidious force is at least partly to blame.

During periods of prolonged inflation, such as we have experienced during the last 10 years, individuals try to protect themselves financially by investing in real assets whose value will at least keep pace with inflation. One asset which is particularly appealing for this purpose is real estate—land, houses, and apartments.

The increase in demand for such assets relative to other goods and services drives up their prices even more rapidly than the rate of inflation. As the prices of land, houses, and apartments rise, so does the assessed value. Since property tax collections depend directly on the assessed value of real property, property tax collections will also rise more rapidly than the rate of inflation in those areas where property is reassessed regularly and promptly.

What we see is a passive growth of local government revenues, not in response to demand for public services, but as a by-product of inflation. In areas where housing demand is high and assessors keep their books current, local governments find themselves with unexpected additional revenues. Local officials, being human, respond by spending the "windfall" on additional local public services. This has apparently been the case in California.

The connection is obvious. Greater federal spending, financed by deficits, creates inflation. Seeking to protect themselves from inflation, individuals invest in real estate, driving up the price and indirectly driving up the revenues of local government faster than inflation.

If this is indeed the case, then Proposition 13 is attacking the wrong culprit. The real villain is in Washington, and its name is deficit-created inflation. Only by cutting off inflation as the source of passive growth of property tax revenues can we effectively reassert our preferences as citizens with respect to the division of output between the public sector and private choice.

SERMON PREACHED BY REVEREND JAMES WILLIAM TAYLOR

Mr. THURMOND. Mr. President, it was my privilege to hear recently, an inspiring sermon by the Reverend James William Taylor. Reverend Taylor's sermon, "One Witness in One World," was certainly a fine message, and one which people across the country should hear.

Mr. President, in order to share this sermon with my colleagues, I ask unanimous consent that it be printed in the RECORD.

There being no objection, the sermon was ordered to be printed in the RECORD, as follows:

THEME: ONE WITNESS IN ONE WORLD

"He is before all things and in him all things hold together." Col. 1–17

It is trite to remind you that we are living in a troubled world. Men are disturbed and frustrated, so much uncertainty, despair and in much of the world hopelessness. This is not the only time when the world has been in trouble, and man distressed, defeated, beaten and baffled. As a matter of fact, our Christian faith was born at such a time.

As Jesus came into the picture, the whole world was unsettled. Greece was looking back at her pristine glory and greatness to a glory and golden age, dead and gone forever. The days of Pericles, Sophocles, Euripidies, glorious as they were in all their golden splendor, were gone, and the leaders of those days left

no incentive for men to improve upon their performance.

Judaism, with an apathetic hope for a Messiah, folded her hands and paid no particular regards to the individual requirement of a nobler higher living, hoping that a Messiah would come and do the things they should have done.

Rome, tottering already on her not too sure foundation, though she dominated the world, and had made Roman pond of the Mediterranean, stamped her brand upon the civilized peoples of the world. It was a hopeless and dark world. But out yonder, on the fringe of civilization on a calm night we call the "Holy Night"; a new idea came into being. A new concept of the value of man. Man made in the image of God.

St. Paul says in the text: "That God has given the world someone to hold the world together." Writing to the Colossian Church, St. Paul warned of the type of teaching being set up, mixed with a philosophy which placed knowledge more important than Faith. This is God's world. He is its creator and sustainer. He has not abdicated His throne, nor turned the world to any other power. Let us remember this our Father's world and He holds all of us in His hands.

Today in this 20th Century, when the church is much stronger and Christians more numerous, we don't seem to possess such daring faith as they had in the early Church.

First, we live in ONE WORLD. Wendell Willkie, who ran for President many years ago and was defeated, wrote a book, the title being One World. He said: no matter where a man was born or lived, his destiny was tied up with every man in the world.

How small this globe has become in our life time. Centuries ago, it took a man almost three years to sail around the world. In the 1930's a man sailed around the globe in about three days. Today man orbits the earth in a matter of minutes, and the end is not yet. Today the whole world is reduced to a neighborhood. The miracle of modern communication and transportation brought the far places of the world near one another. The development of the transcontinental and transoceanic airplane put almost every spot on earth within less than forty-eight hours of every other, while the radio reduced to seconds or less the time required to whisper across the ocean.

The nearness of everyone to everyone else on earth was accentuated by a corresponding dependence of everyone upon everyone else: Industry and commerce tied the laborers on the rubber plantations of Malaya to the American people who ride in their cars on tires made of the rubber produced in Malaya, and the people of England were tied to people of India who wore the cotton goods made on the looms of Birmingham. So interrelated have we all become that almost a score of nations contributed to every meal we ate and to every gadget we utilized and enjoyed. Never before in the history of man had there been such a global neighborhood, such opportunity for mutual helpfulness, such interchange of culture, such common advance in civilization. Here, indeed, in these crowning miracles of the first half of the twentieth century, was world neighborhood—God's setting for world brotherhood.

But something slipped somewhere. The half century that achieved such annihilation of time and space, bringing every part of the world near to every other part and every person potentially within speaking distance to everyone else, saw the world in a mess.

The second thing I want to say: The world today seems to be like a "Mad House"—In a mess.

This has been a great disappointment to us. We thought such progress in our world in this point and time would have resulted in good for us. We forget that some time our greatest problems arise because people live too close to each other. We church people are ashamed some times to admit that ugliness exists between members in the same household.

So, we find that our space barriers are down but no unity of heart and mind. Someone wrote a book entitled, A Whole Person In A Broken World.

My nephew, who has made a career in the military service of our Country, visited me recently, having spent many years in different places in our world. He was telling me about the Berlin Wall, a great city, divided by two Nations, two ideologies, two sets of values. People getting killed trying to escape from one side to the other, simply to join loved ones, and to be free. How ridiculous in our day.

In our land, we are in the midst of a struggle for liberties promised by the Constitution from the beginning. We are living in times of extremism, violence in our streets, and disorders all about us.

A reporter from the New York Times some years ago wrote a little book concerning a young woman, a Miss Catherine Genovese, who was stabbed to death on Austin Street in Queens. I think the title of the book was the "Witness of the Thirty Eight", who heard her cry for help, no one responded, saying they did not want to become involved.

There was one nearly two thousand years ago, going down from Jerusalem to Jericho, falling among thieves, but there was a Samaritan to help him. Today in a crowded city—there is not a Samaritan. This reminds me of Sodom and Gomorrah, evil so entrenched.

Can a few righteous men be found?

The Third Thing I want to say: We have One Faith, One Lord. One Commitment. We must lay that Faith on the Line . . . We are not going to be united on the basis of bigger and better business, our shopping centers, selling more cars, good highways, etc. These do not destroy prejudice, hatred and arrogance.

Our only hope is in a common faith, and a sense of a common destiny. St. Paul saw this clearly, when he dared to announce that Jesus Christ is the one who could hold us together and keep this world from flying apart.

Finally, there is only one answer, Jesus is the answer for the world today. There is none above him, he is the way. Someone wrote, "nothing is real until it becomes local." Brethren, the local church must make a strong commitment of its faith in the lives of its members.

Let us pray.

SALT II

Mr. THURMOND. Mr. President, an outstanding article entitled, "The SALT Sellers Try Again" by Phyllis Schlafly appeared in the October 1978 issue of the Daughters of the American Revolution magazine.

Mrs. Schlafly's article included a review of the SALT I agreement, Soviet intentions as evidenced by their continued military strategic buildup and the issues of SALT II.

The conclusions of this outstanding editorial zero in on the findings of many of us who are concerned about U.S. strategic policy and concessions which aim more toward obtaining a SALT II agreement than assuring the United States a position of strength.

Mrs. Schlafly's findings fully justify procurement of an advanced U.S. bomber, the B-1, and moving ahead rapidly in development and procurement of the MX mobile missile. She also argues against placing artificial range limits on U.S. cruise missiles.

Mr. President, I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Daughters of the American Revolution (magazine), October 1]

THE SALT-SELLERS TRY AGAIN

(By Phyllis Schlafly)

The most dramatic news event of the last decade is not the presidential election, not exchange visits of foreign heads of state, not Watergate, not space flight, not the Vietnam War, not even New York's financial default. It is the shift in the strategic balance of power from the United States to the Soviet Union.

Fifteen years ago, the United States had nuclear superiority over the Soviet Union of eight to one. Today, the Soviets have clear superiority. Russia even has a navy with twice the combat ships we have.

Yet, despite its overriding importance to our political independence and economic future, the dramatic decline in American military power is treated as a non-event by the national news media. Even the unmentionable escalation in venereal disease rates is more discussed than the new American military inferiority. The question is, why don't we hear, see, or read about in the news?

Although some people explain this silence in terms of an alleged anti-defense, pro-disarmament bias of the press, there are other causes.

The first explanation is the compulsion of the news media to report only news that happened today—not yesterday, not last week, and certainly not last year. The media are highly competitive in reporting the latest scoop, and they hate stale news. However, the shift in the strategic balance is not reportable as something that happened in a day or a week. The long lead-times of sophisticated weapons make it an event that can be seen only from the long view of a year or five years or ten years.

If you were to plot on a graph the statistics of the steady, 15-year U.S. decline and the consistent 15-year Soviet increases in nuclear striking power, you would find that they pattern into two straight lines which form a big X. Time is on the side of those who use it, and the record shows that the Soviets are using it.

The second reason is the way Defense Secretaries use bureaucratic doubletalk to conceal their failure to keep up with the Soviets. For example, their favorite phrase "we have retained the option" translates into "we are doing nothing now and won't even make a decision until some time in the future."

The third explanation is that our news gathering facilities are geared to report what *is* happening—and they do not easily adapt to the challenge of reporting what is *not* happening.

The big news about the shift in the strategic balance is that we have *not* added ICBMs or nuclear submarines or long-range bombers to keep pace with the Soviet building program. How do you report on missiles and submarines and bombers that are *not* built? Non-productions and non-launchings simply don't make good pictures on television.

The result is that the American people are left in almost total ignorance of the most important news event of the decade—the shocking change in the relative strength of the two nuclear super-powers.

SALT SECRECY

Will the American people find out the truth of what is really going on during the

SALT II negotiations? Will reporters have the courage to tell us what they discover?

When William Beecher, then a senior military reporter for *The New York Times*, accurately reported what was going on during the SALT I negotiations on the front page of his paper of July 23, 1971, the White House retaliated by wiretapping his telephone. "National security" was the grand rationale for this and the other illegalities connected with Watergate.

But Mr. Beecher didn't give away any designs or blueprints of how our nuclear weapons were made. He merely published a truthful account of what kind of deal our SALT diplomats were offering the Russians. It wasn't what he revealed to the enemy that made Henry Kissinger press the panic button, but what Mr. Beecher revealed to the American people.

I can personally testify to the paranoiac secrecy of those SALT I negotiations. In Vienna in 1971, when I tried to interview anyone connected with SALT, I found that the entrance was sternly guarded by an American soldier armed with a gun and a host of evasive answers that gave no information whatsoever. When he noticed that my eyes lingered on a floor plan of the building posted in the vestibule, he asked me to wait outside in the cold for my taxicab, instead of in the building paid for by the American taxpayers.

The first good look the American people had at the SALT I Agreement was when the television cameras photographed the trays of champagne carried in to celebrate the signing of May 26, 1972.

Keeping the American people in the dark about U.S.–U.S.S.R. agreements has long been standard operating procedure for our State Department. Senator Margaret Chase Smith, then the senior Republican on the Senate Armed Services Committee, gave this warning in 1972 about the Moscow Nuclear Test Ban Treaty of 1963:"The American people still have not been told the whole story about how the Treaty worked to the Russians' tremendous advantage and to our own vast detriment. . . In reality, it was a disaster for the American people and a great victory for the Russians who, with their superior nuclear technology, were soon embarked on a military buildup that has no parallel."

If you were negotiating an agreement on medicine, it would seem only logical to have doctors present. If you were negotiating an agreement on construction, it would be essential to have some engineers advising you. If you were negotiating an agreement on legal practice, you surely would need some lawyers at your side.

But somehow, in our military and weapons negotiations with the Soviet Union from 1969 to 1977, U.S. officials never had a military adviser present. Henry Kissinger would not permit it. The Joint Chiefs and their representatives were "included out," to borrow a favorite Sam Goldwynism.

The Soviets clearly outwitted U.S. negotiators in the SALT I Agreements of 1972. They insisted on cleverly crafted one-way loopholes that only the Soviets could exploit.

First, the SALT I Agreement restricted only *new fixed-base* ICBM launchers. The Soviets adamantly refused to include *mobile* ICBM launchers. Within several months of the SALT I signing, the Soviets began testing their new SS–16 mobile ICBMs and now have their mobile SS–20s. The United States has no mobile missiles, not even under development.

Second, the SALT I prohibition against a more-than-15-percent enlargement of ICBM silo dimensions was supposed to be a "safeguard" against converting "light" missiles into "heavy" missiles. But it wasn't. Immediately after the SALT I signing, the Soviets started testing three new types of ICBMs, all far more powerful than the older missiles they replaced.

Third, SALT I restricted merely the number of *launchers*, not the number of missiles, thereby putting no restraint on reloads. Immediately after SALT I was signed, the Soviets unveiled their new "cold-launch" or "pop-up" technique which makes reloads practical to stockpile. Since we have no cold-launch-type ICBMs and are not developing any, we cannot use reloads.

The Soviets are obviously stalling on SALT II until they can devise a new series of one-way loopholes to bind us, but not them.

PAUL WARNKE NOMINATION

It's probably a good thing that Paul C. Warnke was appointed our chief arms negotiator for the SALT II Agreements. His record of opposition to our building strategic weapons is so clear that it makes suspect any agreement he might conclude and provides an excellent basis for our Senate's rejecting it out of hand.

Although at the Senate hearings on his nomination Warnke said he opposes the "concept of unilateral disarmament," his published writings clearly prove the contrary. In the spring of 1975, Warnke wrote an article for the magazine *Foreign Policy* called "Apes on a Treadmill." In it he argued that we should go beyond "formal agreements" with the Soviet Union on arms control and "try a policy of restraint while calling for matching restraint from the Soviet Union."

At the Senate hearings, Warnke restated his notion of "reciprocal" or "parallel" restraint in weapons building.

When the Senators questioned Warnke about such statements, as well as about his opposition to most of our major nuclear weapons including the B–1 bomber, the cruise missile, MIRVs, the ABM, the Trident, and improvements to our Minuteman, he arrogantly replied: "I cannot defend today everything I may have said in the past, and I won't try."

The reason Warnke cannot defend his statement about "restraint" is that no informed person could rationally believe that unilateral military restraints by the United States will result in reciprocal restraints by the Soviet Union.

In the fall of 1958, the United States adopted a major weapons restraint. We unilaterally announced a moratorium on all nuclear tests and stopped our nuclear development. We continued to negotiate in good faith in Geneva to reach a formal agreement.

In September 1961 the Soviets abruptly terminated the nuclear test ban talks and began the largest series of nuclear tests in history. They cheated "big" and ultimately exploded more than 90 bombs, including one that former Defense Secretary Robert S. McNamara said would "weaponize" at 10 megatons. Since it took at least six months to prepare for these explosions, the Soviets were obviously cheating during the moratorium, and the Geneva talks were a farce and a trap.

Or, take the restraint shown by the Kennedy Administration in the months preceding the Cuban Missile Crisis in suspending our U–2 surveillance of Cuba. The Soviets did not respond with reciprocal restraint. Instead, the Soviets devoted that year to manufacturing nuclear missiles, transporting them by land and sea halfway around the world, and setting them up on launching pads in Cuba where they were targeted at most major U.S. cities.

Or, take the restraint the United States tried again during the negotiations for SALT I. For two and a half years, we maintained a policy of voluntarily and unilaterally remaining in a weapons freeze while we negotiated in good faith in Helsinki and Vienna. We did not add a single ICBM or a single nuclear-firing submarine to our forces during those years.

The Soviets used those same years to build their margin of superiority over the United States so that, when SALT I was finally signed in 1972, the agreement froze the superior Soviet numbers then existing, namely, 1,618 ICBMs to our 1,054, and 62 nuclear-firing submarines to our 41.

Anyone who truly believes that a U.S. "policy of restraint" will result in "reciprocal restraints by the Soviet Union" is of too limited intelligence or has too little knowledge of history to be entrusted with a post of responsibility.

HAWKISH-DOVISH

The present Secretary of Defense is Harold Brown, a former Secretary of the Air Force and a former president of California Institute of Technology. When he took office, the military hardliners were critical of him because of his soft stance toward the Soviets during two and a half years of SALT I negotiations in Helsinki and Vienna. The military softliners were critical of Brown because of his hawkish support of the Vietnam War.

Contrary to popular assumption, these two policies are not contradictory but complementary. These two attitudes are the identifying characteristics of most of the leading defense and foreign policy-makers of the Johnson and Nixon Administrations, including former Defense Secretary Robert S. McNamara, former Secretary of State Dean Rusk, former National Security Advisers McGeorge Bundy and Walt W. Rostow, and former Secretary of State Henry Kissinger.

These are the same leaders who have been telling us since 1961 that our security should be based on U.S.-Soviet agreements and U.S. restraint in weapons-building instead of on U.S. military superiority.

This was the group that prolonged the eight-year war in Vietnam by a policy of creeping escalation. The proof is spelled out in the secret *Pentagon Papers* that Daniel Ellsberg turned over to *The New York Times* and *The Washington Post*, and in the way Henry Kissinger pressed the panic button to try to plug the Ellsberg leak. The *Pentagon Papers* laid bare how the McNamara Defense Department prolonged the Vietnam War. The Kissinger policies on Vietnam were essentially the same.

Being hawkish on Vietnam and dovish on SALT is a wholly compatible position because the Soviet Union profited from both policies.

The United States squandered 55,000 lives and $140 billion on a war that was lost, on an ally that has been crushed, and on weapons that were destroyed or captured by the enemy. During the same period of time, the Soviets spent a comparable amount of money to build the mightiest and most modern strategic force the world has ever seen.

The SALT I negotiations lasted for two and a half years and culminated in the Moscow Summit of May 1972. The U.S. negotiating team, of which Harold Brown was a member, was backed up by a large staff of experts and all the facilities of the National Security Council, the Defense and State Departments, and the U.S. Disarmament Agency.

Yet the result was a document shot through with loopholes that benefit the Soviets and spell out our inferiority by a ratio of 3 to 2. Even the mechanics of the drafting were so defective that it was necessary to issue four different official interpretations.

The best summary of the SALT I Agreements was given by Senator Henry Jackson: "Simply put, the agreements give the Soviets more of everything: more light ICBMs, more heavy ICBMs, more submarine-launched missiles, more submarines, more payload, even more ABM radars. In no area covered by the

agreements is the United States permitted to maintain parity with the Soviet Union."

Harold Brown was one of Defense Secretary Robert McNamara's principal lieutenants in conducting the Vietnam tragedy that McNamara once said he would be glad to have known as "McNamara's war." Harold Brown was one of Henry Kissinger's principal lieutenants in negotiating the SALT I agreements.

The Vietnam War made it financially impossible to build strategic weapons to stay ahead of the Soviets because our defense dollars were diverted into a bottomless pit in Southeast Asia. The SALT I agreements made it legally impossible to build strategic weapons even to maintain parity with the Soviets.

There are no constradictions or inconsistencies in Harold Brown's record. His actions mark him as a man who should be called "Secretary of Unilateral Disarmament" instead of Secretary of Defense.

SOVIET INTENTIONS?

Defense Secretary Harold Brown stated recently that the Soviets are building four new types of intercontinental ballistic missiles, but he doesn't know "*why* the Soviets are pushing so hard to improve their strategic nuclear capabilities."

At a Congressional hearing in February 1969, Defense Secretary Melvin Laird was asked *why* the Soviets were engaged in a massive buildup of strategic weapons, especially their huge 25-megaton SS–9 supermissile. He responded with a valid and commonsense explanation: "The Soviets are going for a first-strike capability. There is no question about that."

Our nation's top policy makers, who were then President Richard Nixon and Henry Kissinger, did not agree with Melvin Laird's assessment of Soviet intentions. No one has ever revealed what sort of reprimand was administered behind closed doors, but shortly thereafter Laird changed his tune. The next time he was asked the same question, he meekly replied that it was not his function to interpret Soviet intentions.

If it is not the function of the Secretary of Defense to interpret the meaning of a huge buildup by the Soviets of nuclear weapons that are capable of incinerating scores of millions of Americans, than whose is it?

President Nixon and Henry Kissinger admitted that the answer was beyond them. In the 1972 State of the World Report, issued under Nixon's name but admittedly written by Henry Kissinger, they "made it perfectly clear" with an unambiguous assertion: "We cannot know the intentions of Soviet leadership."

The evidence is overwhelming that Laird was correct in his original explanation of *why* the Soviets are building huge strategic weapons. The megatonnage of their missile force is now estimated as at least ten times greater than ours. The Soviet SS–9, for example, has 25 times the megatonnage of our Minuteman missile.

But assuming that Defense Secretary Brown is truthful when he says he doesn't know *why* the Soviets are building four new ICBMs, then the only rational U.S. course of action is to base our defense on Soviet capabilities rather than on their intentions. That means building a defense posture superior to Soviet weapons, rather than speculating as to how they intend to use them.

The four new ICBMs that the Soviets are building all have a greater throw-weight than those they are replacing. Three have MIRV warheads. Yet the U.S. response has been to ignore Soviet capabilities as well as intentions. Secretary Brown halted production of our Minuteman III ICBM and terminated a related program to improve the accuracy of our Minuteman II. President Carter cancelled the B–1 bomber and the neutron bomb. Our Navy today has fewer ships than at the time of the Pearl Harbor attack, and there are no plans for any significant additions.

To the Founding Fathers, it was self-evident that some values are worth fighting and dying for, and that among these are freedom and independence. With the advent of the nuclear age, however, a contrary assumption came into vogue, namely, that war is now unwinnable, and that the winners, if any, will be no better off than the losers. The trouble with this is that it takes two to tango, and there is no evidence that the other super-powers believe it.

SALT I CHEATING

While Secretary of State Cyrus Vance is busy trying to persuade the Soviets to sign a SALT II treaty, former Secretary of Defense Melvin R. Laird is charging that "the evidence is incontrovertible that the Soviet Union has repeatedly, flagrantly and indeed contemptuously violated" SALT I.

Laird further charges that the overriding passion for detente has been so intense that our government has either suppressed or minimized the intelligence of what the Soviets are doing. Here are some of the Soviet violations.

SALT I prohibits the development, testing and deployment of any mobile parts of an anti-ballistic missile system. But the Russians have been doing just that.

SALT I expressly forbids tests aimed at upgrading an anti-aircraft missile system to an ABM system. But the Russians made such tests at least five times.

SALT I prohibits replacement of existing intercontinental missiles with substantially larger ones. The Russians produced two new large missiles, the SS–16 and the SS–20. Because they are mobile and concealed, the United States cannot use the "national technical means of verification" approved by SALT I in order to check on these new Russian missiles.

SALT I gave the Soviets a 3-to-2 lead over the United States in land-based and submarine-based intercontinental ballistic missiles. Not satisfied with that, the Russians have hidden, with giant tarpaulins, their new submarine construction at the Severodvinsk and Khabarovsk construction yards. Mr. Laird writes that, in order "to gain decisive military superiority over the United States," the Russians "have been willing to dishonor their most fundamental agreements with us."

It makes no sense to play a giant ostrich, bury our nation's head in the sand, and pretend the Soviets aren't violating SALT I when former Secretary Laird presents convincing evidence that they are. It makes even less sense to sign SALT II while closing our eyes to the history of SALT I.

SALT II PROSPECTS

American Presidents are somehow convinced that it is politically helpful to go to Russia and bring back an agreement, no matter how one-sided, signed by the Soviet dictator. President Roosevelt did that with Stalin at Teheran in 1943 and at Yalta in 1945. Even President Nixon apparently believed that the SALT I agreement he signed in May 1972 helped him to defeat George McGovern decisively.

President Carter has made unnecessary and dangerous concessions in order to produce a SALT II agreement. First, he cancelled production of the best bomber in the world, the B–1. For this he neither received nor even requested any concessions from the Soviets.

Then President Carter announced that he would rely on our old B–52s to carry cruise missiles. However, he then agreed to limit the range of our cruise missiles. Soviet MIG–25 Foxbat interceptors, using tanker aircraft to refuel, could keep our slow-flying B–52 carriers more than 600 miles away from the Soviet Union. That's too far away to hit most of the Soviet ICBM fields with cruise missiles.

Then the Defense Department ordered the production of our Minuteman III missiles stopped. Ten Minuteman contractors were later asked if they could resume some limited production. Such off-again, on-again production is not only very hard on the skilled employees, but very expensive in time and money.

Meanwhile the Soviets are producing one new supersonic bomber, the Tupolev Backfire, four new intercontinental land missiles, the SS–17, SS–18, SS–19, and SS–20, one new submarine ballistic missile, and a new satellite killer weapon. The Soviet SS–20 missile is mobile and therefore cannot be effectively targeted. The United States has no mobile missiles and no satellite killer weapons.

As stated by one Defense Department official to the highly respected *Aviation Week and Space Technology:* "There is now a clear strategic weapons advantage by the Soviets over the U.S."

Mobile missiles were not limited by the SALT I agreement, and the Soviets have taken full advantage of this loophole by going ahead with deployment of their SS–20. One of the most constructive and peace-stabilizing actions the United States could take would be to do likewise. The Soviets' stockpile of mobile missiles gives them a great advantage. Because mobile missiles can be easily moved and camouflaged, it is estimated to require about 20 warheads to destroy a single mobile-based missile.

SALT II "EQUALITY?"

Flushed with "victory" in putting over the surrender of the U.S. Canal to a small-time dictator, Administration lobbyists and propagandists are trying to put over another treaty-surrender to a big-time dictator.

The Administration's SALT negotiators have made many concessions to the Soviet Union in order to produce an agreement to limit each side to 2,250 missiles and bombers. In the Newspeak of the accommodation artists, this is called "arms control," but it is really a cynical numbers game.

Because of public reaction to the humiliating inferiority of the 1972 SALT I Agreement, under which the United States is permitted to have only two land-based and sea-launched intercontinental nuclear missile launchers for every three that the Soviets have, the Administration knows it has no chance of approval for any treaty unless it sounds equal. So the proposed SALT II agreement will limit strategic delivery vehicles to an equal number for each side. The joker is that it will not limit the carrying capacity of either the individual vehicles or the total missile force.

According to the proposed agreement, both sides have agreed not to develop, test or deploy ICBMs with a launch-weight greater than the heaviest ICBM each has deployed on the date the treaty is signed. This agreement will limit the United States to a throw-weight of 8,000 pounds (the weight of the Titan missile, of which we have only 54), while the U.S.S.R. will be allowed a throw-weight of 16,000 pounds (the weight of the SS–18).

Most of our land-based missiles are the Minuteman ICBMs. Their throw-weight is classified, but is probably no more than 2,000 pounds. In any event, the Minuteman III, our latest and most powerful model, carries three MIRV warheads of only 170 kilotons each (a kiloton is 1/1,000 of a megaton).

Thus the SALT II "equality" is like saying that two transcontinental freight-moving firms are equal when each one has 2,250 "delivery vehicles," but one firm has all 50-ton tractor-trailers operational, and the other has nothing larger than half-ton pick-up trucks.

Just as the throw-weight of an individual missile is the measure of what it can do, the total throw-weight of a missile force is the measure of what the entire force can accom-

plish. If your missiles have sufficient throw-weight, such as the Soviets' giant SS-18, you have the option of either delivering a single 50-megaton warhead (the equivalent of 50 million tons of conventional explosive power), OR delivering to separate targets eight MIRV warheads of more than three megatons each.

The SALT I numbers inferiority was put over on us in 1972 on the rationale that we didn't need to worry about the Soviets' large numbers of missile launchers, their far greater throw-weight, and their vastly greater megatonnage, because U.S. missiles were more accurate.

Aviation Week & Space Technology reported in April 1978 that the Soviets have tested ICBMs accurate enough "to impact less than 600 feet from target, providing a hard-target kill capability" against our Minuteman force.

Another joker in the proposed SALT II agreement is that the Soviets have silo-reload capability and we do not. We have only as many missile launchers as we have silos. The Soviets have an unknown number of reloads concealed near their silos, which they can use because of their cold-launch pop-up technique.

Do you wonder why our President does not reject Soviet SALT II demands or do anything to stop Soviet conquests of Afghanistan and much of Africa? With Soviet submarines prowling our long coastlines, with Soviet missiles on their gigantic unsinkable missile carrier named Cuba, with many more powerful ICBMs in Russia well defended against our subsonic bombers and small Minuteman warheads, our President dosn't dare.

Instead of freezing the present Soviet weapons advantage in SALT II, President Carter should order a go-ahead on the B-1 bomber, assure the continued production of Minuteman III missiles, remove the artificial limits on the range of our cruise missiles, and start production of mobile missiles.

BILL KOSTER: A MAN OF INDOMITABLE HEART

Mr. BROOKE. Mr. President, death may be the great equalizer, our universal fate, but it cannot overcome unique accomplishments. Lives endowed with singular purpose still stand out. Men and women of unselfish dedication still arouse the admiration of their brethren, and inspire those who remain behind to redouble their own efforts to bring about a day when goodness will be its own reward.

Bill Koster was such a man. Death for him could not be avoided, but neither could it triumph over his extraordinary lifetime of giving. Words are of little consolation at such a time. But they at least make known our sense of loss, and our admiration for the life now closed. Bill gave to the children of New England a sign of hope in the ancient struggle against the scourge of cancer. He gave to their parents an almost saintly symbol of what was good and humane and decent in our society.

Bill Koster was a founder of the Jimmy Fund. Because of him and the work he inspired, Jimmy is still alive. Because of Bill Koster, more than $52 million has gone to the war, ceaseless and single minded, to make cancer a plague of the past, and free our children forever from its horrible threat.

As president of the Variety Club of New England and executive director of the Jimmy Fund, Bill came in contact with the famous and the celebrated. He was a close friend to many of Boston's most honored names, whether they played for the Red Sox or patrolled our streets as members of the Massachusetts Chiefs of Police. He was immensely proud of the Sox and they reciprocated. It was typical of both Bill and the players that rare days off usually found them visiting a supermarket, shopping center, or Knights of Columbus Hall—anywhere Bill Koster could get across his humanitarian message. But it was not Bill Koster's desire to travel among the well-known or familiar names. He was a man who knew that cancer respected no station in life, and must be combatted in the trenches, on the streets, wherever two persons of good will could be persuaded that here was a cause that demanded their attention and support.

The late Cardinal Cushing of Boston called the Jimmy Fund the little man's charity. He was right, in a sense. But in another way, Bill Koster's campaign made of little men great heroes. By enlisting them in a cause so close to God's heart, he lifted them above workaday worries and common crises. He gave them a touch of divinity, albeit democratic divinity.

We admired him for his tireless work. We loved him for his indomitable heart. We cherished him for his personal warmth and total lack of pretension. We shared his pride in his remarkable wife, Rae, and in Steven, the son who only recently joined the Massachusetts bar. We know now that we, like they, have lost a remarkable fighter in the cause of human progress. We are made poorer by that loss. But we have more than our memories of Bill to cling to in this sad hour. We have an example of courage and faith. We have a life ultimately triumphant, and an unfinished agenda that cries out for completion. We have it in our power to do the job that Bill Koster started, to support the work he made his own, to share in his crusade against cancer.

We can move beyond words in the days ahead. We can support our sentiments with dollars, as America's doctors and researchers continue their vital research into the causes of cancer and possible cures.

That would be a memorial better than stone, far better than mere eulogies. That is the message that Bill Koster's life compels. Much as he will be missed we are grateful for what he started and what we will continue.

CAMP DAVID AND MIDDLE EAST REALITIES

Mr. BROOKE. Mr. President, the violence that has occurred in Lebanon is a sobering reminder that the achievements of Camp David, while exceeding our expectations, have not ushered in an era of peace in the Middle East.

While I share the intense hope that the "Framework for Peace" does herald a dramatic turn of events, my understanding of the Middle East situation argues against any conclusion that peace in the true sense of that word, is in the offing. There are far too many difficult issues left unresolved and far too much leeway for radical elements in the Arab world and their supporters to undercut Camp David to justify anything but cautious optimism as we look to the future.

The soberness of my perspective is not meant, in any way, to detract from the accomplishments of the Camp David meetings. I am proud of the role that President Carter played in behalf of the American people as he encouraged with wisdom and perseverance the substantive, face-to-face negotiations without preconditions between Israel and Egypt. And I marvel at the courage and vision displayed by Prime Minister Begin and President Sadat. History has produced all too few statesmen able to settle disputes at the negotiating table rather than the battlefield. These men truly merit the title of "peacemakers." But Prime Minister Begin and President Sadat, being the realists they are, know, as I know, that many dangerous obstacles loom ahead as they try to navigate together the treacherous waters of Middle East politics.

The most evident corrective to any excess euphoria generated by Camp David is the tragic events in Lebanon. Syrian forces, supposedly in that country as a peacekeeping element, have sought to crush the Christian community. What was once conceived to be a mission to keep the peace has taken on the characteristics of a vendetta against the Christians.

I was appalled by the indiscriminate Syrian attacks on civilian areas of the Christian community. Those attacks are an ominous portent of future violence in the Middle East. Even more sinister is the possibility that the Syrians, encouraged by other Arab radicals in the area, saw the attack on the Christians as a means of short-circuiting the peace negotiations between Israel and Egypt. It is conceivable that Syria will still seek to provoke an Israel reaction in defense of the Christian community in Lebanon in order to pressure President Sadat to refuse to finalize the process begun at Camp David. And it is perfectly understandable, in fact, commendable for the Israelis, for humanitarian as well as security reasons, to oppose the dismemberment of the Christian community; for such an event would open the way to a permanent Syrian dominance of Lebanon, with all that such a dominance would entail for Israeli security and the hope for peace in the area.

It is also possible that Syria assumes that the United States will prevent Israel from intervening and thus may believe it has a free hand in Lebanon. I cannot imagine that our Government would stand idly by and acquiesce to continued Syrian assaults on the Christians. Nevertheless, one cannot discount the possibility that such a perception has existed in Damascus.

In order to dispel any illusions in Syria, I have encouraged the President to bring the matter of Lebanon before the U.N. Security Council as a threat to international peace. I am gratified that he has done so. In addition, I believe that our actions on a bilateral basis should clearly indicate our opposition to Syrian dominance of Lebanon. Under

no conditions should we seek to preclude legitimate efforts to forestall the destruction of the Christian community in that country.

As I said, Lebanon is a sobering illustration of the difficulties that lie ahead. Lest we allow the euphoria of Camp David to cloud our vision, we need only survey the Middle Eastern landscape to find:

Lack of any indication that the status of Jerusalem, an issue that stirs great passion and is viewed from seemingly intractable positions can be agreed upon in a way satisfactory to all parties.

The continued difficulty in achieving secure defensible borders for Israel, even if a peace agreement is signed between Israel and Egypt. Such borders are imperative if Israel is truly to find peace. Particularly critical in this regard would be satisfactory resolutions of security questions related to the West Bank and the Golan Heights. And, if Syria should achieve dominance of Lebanon, a further extremely difficult dimension would be added to the "secure defensible borders" issue.

The future of the West Bank settlements is another issue on which no consensus exists or appears likely in the offing. These settlements are a matter of even greater dispute than those in the Sinai which were accommodated for by the Knesset vote only after much political and emotional strain.

The lack of any substantive evidence that Jordan and Saudi Arabia are prepared to give positive support to the Camp David accords is also a disturbing obstacle. A failure of these two countries to endorse the "Framework of Peace" could jeopardize the entire peace process. So far, U.S. efforts to elicit the necessary support from Jordan and Saudi Arabia have been to no avail. I am not heartened, as some are, by the fact that they have not totally rejected Camp David, for I believe their "fence sitting" if it continues, will lead to a loss of momentum and eventual drift back to the stagnation of prior years that led to warfare.

The potential for disruption of peace efforts by the PLO, the radical Arab States and their superpower supporter, the Soviet Union, has not been checkmated by Camp David. It is only prudent to assume that these elements will mount extensive efforts to destroy the "Framework for Peace." The Lebanese situation is an ominous indication of the extent they are willing to go to do so. It will take a great deal of effort and clear-headed thinking to effectively counteract the inevitable disruptive efforts of these avowed opponents of the Camp David agreements.

I point out these harsh realities, not to dampen spirits, but to encourage a balanced realistic approach in the weeks, months, and years ahead. I am personally convinced that the one real hope for a prolonged period of relative peace lies in the formation of an alinement of states in the Middle East, including Israel, Egypt and, hopefully, Jordan and Saudi Arabia, commanding sufficient resources and power to deter the radicals and the Soviet Union from undertaking widespread aggressive acts of violence. Before Camp David such an alinement appeared somewhat farfetched. In the aftermath of the summit, it appears to be the only feasible way to cement the achievements of Camp David and to prevent the summit's opponents from achieving their ends.

As we pursue the "alinement option," as I deeply hope that we will, there will be an even greater need for strong U.S. support of Israel and for those in the Arab world willing to make the courageous transition to peace with her. We should make clear that it is those who are willing truly to make peace with Israel that will receive our support and our backing in their efforts to achieve security for themselves and a better life for their people. We should have no illusions about the difficulties that such an approach will entail for us and our true friends in the Middle East. But we should not hesitate to accept those difficulties as the reasonable price to pay for a more stable and peaceful environment in that area of the world.

It was once said that "international arbitration may be defined as the substitution of many burning questions for one smoldering one." That is what President Carter has accomplished at Camp David. Now, we must turn to the task of finding answers to those questions. I pray that we will.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. MATSUNAGA). Is there further morning business? If not, morning business is closed.

ORDER FOR RECESS UNTIL 8:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 8:30 a.m. tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. The Chair advises that there are no such orders.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. PROXMIRE. Mr. President, could I have 5 minutes tomorrow?

SPECIAL ORDERS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders are recognized under the standing order on tomorrow Mr. PROXMIRE be recognized for 5 minutes and that he be followed by Mr. BROOKE for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978

The Senate continued with the consideration of H.R. 50.

Mr. ROBERT C. BYRD. Mr. President, what is the pending measure before the Senate?

The PRESIDING OFFICER. The pending business is H.R. 50.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. BAKER. Mr. President, on the matter of further proceedings on H.R. 50, I recall that in the colloquy that the majority leader and I had earlier in the evening, both of us indicated, I believe, that the ad hoc group to consider further negotiations in the matter would be meeting again tomorrow. I wonder if the majority leader has a time and place set for that consultation.

Mr. ROBERT C. BYRD. Yes; I have discussed this with Mr. NELSON, Mr. PROXMIRE, and Mr. HATCH, and they are meeting in the morning at 9 o'clock in my office.

Mr. BAKER. I thank the majority leader. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS FOLLOWING THE COMPLETION OF SENATOR THURMOND'S REMARKS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the completion of the remarks of Mr. THURMOND, if no other Senator seeks recognition, the Senate then stand in recess until the hour of 8:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. And, to show my full and complete confidence in the majority, I leave the Senate in the hands of the minority, Senator PELL, and Senator MATSUNAGA.

Mr. BAKER. Mr. President, it would appear that everyone will leave here shortly. I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Will the Senator withhold that?

Mr. BAKER. I do withhold it.

Mr. ROBERT C. BYRD. Now, Mr. President, I depart from the floor and leave the floor to the distinguished minority leader, the distinguished Senator from South Carolina (Mr. THURMOND), and the distinguished Senator from Hawaii (Mr. MATSUNAGA).

Mr. BAKER. Mr. President, I assure the Chair the Senate will be in good hands in this brief interim.

The PRESIDING OFFICER (Mr. MATSUNAGA). The Chair has no doubt of that.

The Senator from South Carolina is recognized.

(At the request of Senator THURMOND and by unanimous consent his remarks are printed elsewhere in today's RECORD.)

RECESS UNTIL 8:30 A.M. TOMORROW

Mr. BAKER. Mr. President, I move, in accordance with the previous order, and pursuant to the provisions of Senate Resolution 583, as a further mark of respect to the memory of the deceased Honorable Ralph H. Metcalfe, late a Representative from the State of Illinois, that the Senate stand in recess until 8:30 a.m. tomorrow.

The motion was agreed to; and at 9:35 p.m., the Senate recessed until tomorrow, Wednesday, October 11, 1978, at 8:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate, October 10, 1978:

CIVIL AERONAUTICS BOARD

Marvin S. Cohen, of Arizona, to be a member of the Civil Aeronatics Board for the remainder of the term expiring December 31, 1979.

UNITED NATIONS

Richard W. Petree, of Virginia, a Foreign Service officer of class 1, to be the Alternate Representative of the United States of America for Special Political Affairs in the United Nations, with the rank of Ambassador.

DEPARTMENT OF STATE

Marshall W. Wiley, of Florida, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Sultanate of Oman.

Goodwin Cooke, of Connecticut, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Central African Empire.

DEPARTMENT OF ENERGY

Thomas S. Williamson, Jr., of the District of Columbia, to be Deputy Inspector General of the Department of Energy.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Armando M. Rodriguez, of California, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1983.

J. Clay Smith, Jr., of the District of Columbia, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1982.

NATIONAL MEDIATION BOARD

George S. Ives, of Maryland, to be a member of the National Mediation Board for the term expiring July 1, 1981.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Charles William Benton, of Illinois, to be a member of the National Commission on Libraries and Information Science for the remainder of the term expiring July 19, 1980.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

DIPLOMATIC AND FOREIGN SERVICE

Foreign Service nominations beginning Jesse Walter Lewis, Jr., to be a Foreign Service officer of class 3, a Consular Officer, and a Secretary in the Diplomatic Service of the United States of America, and ending Eric A. Kunsman, to be a Foreign Service officer of class 7, a Consular Officer, and a Secretary in the Diplomatic Service of the United States of America, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 22, 1978.

Foreign Service nominations beginning Anthony C. Albrecht, to be a Foreign Service officer of class 1, and ending Larry L. Woodruff, to be a Foreign Service officer of class 7, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 22, 1978.

THE JUDICIARY

B. Avant Edenfield, of Georgia, to be U.S. district judge for the southern district of Georgia.

CONSUMER PRODUCT SAFETY COMMISSION

Samuel D. Zagoria, of Maryland, to be a Commissioner of the Consumer Product Safety Commission for the remainder of the term expiring October 26, 1978.

Samuel D. Zagoria, of Maryland, to be a Commissioner of the Consumer Product Safety Commission for the remainder of the term of 7 years from October 27, 1978.

EXTENSIONS OF REMARKS

COAST GUARD HONORS PHILADELPHIA CLEAN WATER EFFORTS

HON. JOSHUA EILBERG

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. EILBERG. Mr. Speaker, just recently the Philadelphia Water Department and two of its engineers who track down stream polluters were honored by the U.S. Coast Guard.

I would like to comment on this for the RECORD, because I know that the work of the department and these two employees will be of interest to my colleagues from city's which share Philadelphia's intense interest in clean water efforts.

In a ceremony in Mayor Frank Rizzo's reception room, Capt. Kenneth Wiman, captain of the Port of Philadelphia, cited the water department and the two engineers for "notable services" in the investigation of pollution spills.

He presented "Certificates of Merit" to Thomas Kulesza, chief, and Thomas Healey, assistant chief, of the Water Department's industrial wastes section. At the same time, Water Commissioner Carmen F. Guarino received a certificate from Captain Wiman honoring the department itself.

The certificates cited the recipients for "voluntary participation and exceptional cooperation" with the Coast Guard in enforcing pollution control standards on the Delaware and Schuylkill Rivers.

Noting that the Coast Guard is responsible for enforcing such standards, Guarino said that Kulesza and Healey have traced an average of at least one significant oil or chemical spill each month for that agency. As part of their work, the engineers check sewer outfalls from boats, walk through sewers for considerable distances, dye test tanks at industries, interview industrial sources, and, when necessary, place booms around stream spills until the Coast Guard can bring in its own cleanup equipment.

The Coast Guard awards honored the water department and the two engineers for:

Providing invaluable knowledge about local sewers and hazardous substances;

Assisting the captain of the port in preventing further pollution discharge and in identifying the parties culpable of existing spills;

Participating in "numerous oil spill investigations," thus aiding the Coast Guard in enforcing the Federal Water Pollution Control Act;

Helping the Coast Guard recover "substantial amounts of Federal contingence funds, both from reimbursement for cleanup expenditures and receipt of assessed fines from the guilty parties"; and

Devotion to a high environment standard which reflects great credit upon the department and its employees.

Kulesza, of 10159 Ferndale Street, is a sanitary engineer IV (civil services) and is a veteran of 10 years' service with the water department. He is a graduate of Villanova University, 1967, with the degree of bachelor of chemical engineering, and has taken graduate courses in his field at Villanova.

Healey, of 10733 Albermarle Lane, is a sanitary engineer III (civil service) and has been with the water department for 9 years. He graduated from Manhattan College with the degree of bachelor of engineering and majored in chemical engineering. He has taken graduate courses in his field at Villanova University.●

A REMARKABLE BREAKTHROUGH

HON. GUY VANDER JAGT

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. VANDER JAGT. Mr. Speaker, I am exceedingly proud to bring to the attention of this Congress the brilliant accomplishments of two dedicated professors from one of this Nation's most prominent liberal arts colleges—Hope College in Holland, Mich.

Dr. Jack Schubert, professor of environmental health sciences, and Dr. S. Krough Derr, assistant professor of biology, have produced an unparalled breakthrough in the treatment of metal poisoning. They have succeeded in completely removing plutonium from the bodies of animals, and greatly furthered the treatment of non-radioactive metal poisoning.

This remarkable scientific achievement substantiates both the expertise and abilities of Drs. Schubert and Derr, and the excellence of the educational opportunities offered by Hope College.

I submit for the informational benefit of my colleagues the following Hope College news release, and editorial commentary from the Holland Sentinel:

TREATMENT OF METAL POISONING

HOLLAND, MICH.—An "impossible" feat—the complete removal of radioactive plutonium, one of the most poisonous substances known, from the bodies of animals, has been achieved by scientists at Hope College.

This unprecedented accomplishment includes equally successful treatment of poisoning from non-radioactive metals such as cadmium, which pose serious environmental and industrial hazards.

As reported in the September 28 issue of *Nature*, the prestigious international science journal, Hope professors Jack Schubert and S. Krogh Derr, with support from the United States Department of Energy, applied a new treatment for metal poisons based on concepts developed previously by Dr. Schubert called mixed ligand chelate (MLC) therapy.

Mixed ligand chelate therapy opens a new era in the treatment of metal poisoning, according to Drs. Schubert and Derr. They also stress the importance of MLC formation in many areas of fundamental importance—the transport of metals from soils to food; the role of metals in health and disease; and the mechanism of cancer induction by radioactive isotopes.

"Serious environmental and industrial hazards associated with the release of radioactive and nonradioactive metals are becoming an increasing threat to mankind and up to now there have been no satisfactory treatments for metal poisoning," said Dr. Schubert.

"Our research to date has resulted in hitherto unparalleled achievements using MLC treatment, namely complete removal of tissue deposits of plutonium and prevention of mortality in animals given lethal doses of cadmium."

One component of the revolutionary new treatment includes salicylic acid, the active ingredient of aspirin.

Current treatment for plutonium and other metal poisons utilizes molecules called chelating agents which seize and hold a metal ion in a clawlike grip (Chele from the Greek meaning claw). The stronger the grip, the more effectively the chelating agent removes metal from tissues. In mixed ligand chelate therapy a selected combination of two chelating agents are chosen so that both grip the same metal together forming a single unit. This results in an astonishing increase, sometimes in the trillions, in the strength with which the metal is held compared to chelating agents such as EDTA and DTPA which are currently used to treat people.

Two of the most effective mixed ligand chelate systems tested by Drs. Schubert and Derr are combinations of EDTA plus salicylic acid for cadmium, and DTPA plus salicylic acid for plutonium. In one of their experiments, Drs. Schubert and Derr injected mice with a solution of a plutonium salt. Three days later they began treatment twice weekly by injecting the mice with a solution containing a mixture of DTPA plus salicylic acid. Within four weeks, all of the plutonium in the bone and liver had been removed and then eliminated in the urine and feces. This result has never been attained or approached by any other treatment.

In experiments with non-radioactive elements, mice were given 100% lethal doses of salts or metals such as cadmium, nickel, iron and copper. The animals given currently-recommended chelating agents all died, while all those given ligand chelate treatment survived.

Dr. Schubert joined Hope College in 1977 as Professor of Environmental Health Sciences where he is a member of both the biology and chemistry departments. He is internationally known for his scientific accomplishments in radiation chemistry and radiation biology and in the theory and practice of chelation treatments for metal poisons. A native of Chicago, he received his B.S. and Ph.D. degrees in chemistry at the University of Chicago.

Dr. Derr, Assistant Professor of Biology, is an authority on environmental contamination, especially by PCB and PBB and their action on reproductive processes. He received his B.S. degree at Purdue University and the Ph.D. degree in toxicology at Michigan State University. He has held positions with environmental laboratories in Massachusetts and Michigan before assuming his present appointment at Hope in 1977.

Hope College is a four-year undergraduate liberal arts institution with a strong academic tradition of high quality science education and research in the natural sciences. With a current enrollment of nearly 2,400 students, it is one of the few undergraduate institutions where students carry out sophisticated research. Numerous research publications are produced each year by students in collaboration with faculty. The research was carried out in the new Peale Science Center on the Hope campus.

Among the Hope College students who have or are participating in this research are Jack Dekker, a 1978 graduate from Grandville, Mich. who is currently a graduate student in toxicology at the University of Cincinnati; Sandra D. Wiederhold, a senior from Valhalla, N.Y.; and P. Matthais Scheer, a senior from Hamburg, West Germany.

THE FRUITS OF EXCELLENCE

Thursday's announcement of the scientific breakthrough by two Hope College professors dramatically emphasizes the value of the small liberal arts college.

The discoveries by Drs. Jack Schubert and S. Krogh Derr were the results of a moderate-cost ($88,500) 18-month grant, conducted in Hope College's Peale Science Center, with the assistance of undergraduate students.

Dr. Gordon Van Wylen emphasized that this scientific milestone was achieved by two men whose primary responsibility is the education of undergraduate students in an undergraduate college, not members of a graduate school faculty or researchers subsidized by a billion-dollar foundation.

The results of this discovery that a combination of chelating agents produces a quantum leap in removal of radioactive plutonium and other metals from the body has implications that can only be understood in the light of the horror which we feel when contemplating the effects of a nuclear explosion.

Up to now, certain death, sooner or later, was the price paid for exposure to radioactivity. After today, treatment of metal toxicity, even from radioactive metals, will soon be a simple matter of ingestion by mouth, or twice weekly injections.

Industries using metals in processes dangerous to humans will be able to "immunize" their employees working in areas where cadmium and other metal fumes have led to emphysema and cancer. The implications of this in terms of workmen's compensation and insurance costs to industry are boundless.

The effect of certain toxins used in industry have only just begun to be known, and the news has oftentimes been bad. Every new process has seemed to carry a high price in environmental pollution.

Drs. Schubert and Derr have lifted a cloud hanging over the world's industrial nations.

The fact that they made this discovery here in Holland, at Hope College, should make us realize the debt we owe to pure scientific research, "ivory tower stuff," in discoveries that have life-saving and life-enhancing results.

Hope College has long had an enviable reputation in academia for its excellent science programs, especially its premedical courses. The result of this pursuit of excellence has borne fruit.

We are proud of Hope College and happy for our part in this historic event.●

THE AMERICAN TAX REDUCTION ACT OF 1979

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. DORNAN. Mr. Speaker, today, I had the distinct honor and privilege of introducing legislation inspired and promoted by Mr. Howard Jarvis, co-originator of California's proposition 13. The bill, entitled "The American Tax Reduction Act of 1979" represents a bipartisan effort to lift the intolerable level of taxation off the backs of the American people, place a limit on Federal spending, and restore our Republic to the vision of our Founding Fathers of Government deriving its authority from the consent of the governed. I herewith enclose my remarks to the press in the official RECORD:

THE SPIRIT OF '76

(Speech of Representative ROBERT K. DORNAN)

Ladies and gentleman of the press, this is a momentous day in the 202 year old history of our celebrated yet troubled Republic. As a people, we are about to take a memorable and historic step, a step that involves a paradox: we must go back in order that we may go forward. We must go back to the spirit and vision that vivified our Founding Fathers, a spirit of liberty and the vision of a nation of freemen engaged in the noble experiment of self-government, of government that derives its authority from the consent of the governed. It is a vision of a grand Republic, of a unity in diversity, of a delicately balanced union between liberty and authority, between federal government and state governments. Without such a guiding vision, as the Book of Proverbs tells us, the people perish. It is, therefore, altogether appropriate and symbolic that Mr. Howard Jarvis, co-originator of California's Proposition 13, is present here at our nation's Capitol, at the age of 76 years. For, indeed, it is the spirit of '76 that animates Mr. Jarvis and breathes life into our present proceedings.

Ladies and gentlemen, Mr. Chief Justice John Marshall observed in 1819 "that the power to tax involves the power to destroy." For one hundred and twenty-three years, from 1789 to 1913, the world's most wondrous experiment in the art of selfgovernment, the American Republic, did not deem it necessary or just to impose upon itself the burden of a limitless federal income tax. In those one hundred and twenty-three years, guided by the moral virtues of discipline and hard work, frugality and foresight, and always utilizing that level of government closest to them, the citizens of the Republic became the economic marvel of the modern world. But under current interpretations of the 16th amendment, the federal income tax is an open-ended income tax, permitting the federal government to impose income taxes without limit. Thus, it drastically tilts the tenuous balance between liberty and authority, between state and federal governments, clearly in favor of federal authority. As a result, the opening wedge is inserted whose end-result is confiscatory, progressive taxation and that power to destroy of which Chief Justice Marshall prophetically warned.

Today, the philosophy of open-ended, progressive taxation coupled with the Keynesian assumption that government, unlike an individual, can borrow and spend indefinitely without fear of bankruptcy, have yielded their bitter fruits: (1) we American taxpayers work from January 1st to the end of March only to turn our income to the federal

government; in addition, we work through April into early May only to turn our total income to state and local governments. On an average, then, more than four months out of every citizen's year of labor is being confiscated by the government; (2) the share of the Gross National Product eaten up by government at all levels is inflating feverishly. In 1930 spending by government (at all levels) accounted for 12 percent of the GNP. By 1976 it was 36 percent. If this trend continues, it will hit 60 percent by the year 2000; (3) federal spending increased 232 percent from 1961 to 1975. The federal government is spending more than a billion dollars a day with a projected budget of $503 billion for fiscal 1979; (4) from 1965 to 1975 the national debt soared from $313 billion to $533 billion; the interest on the federal debt alone in 1977 was $38 billion. Interest on the debt has nearly tripled in a decade and become the third largest item in the federal budget after Income Security (137 billion in 1977) and Defense (97.5 billion in 1977); (5) the President's Council of Economic Advisors estimated in 1975 that regulation on the part of burgeoning federal regulatory agencies costs the taxpayer $130 billion a year; (6) one out of every five workers is employed by government—federal, state and local; (7) the tax bill—federal, state and local—is rising more rapidly than the cost of living. While the cost of living had climbed about 40 percent from 1969 to 1973, the tax bill had increased 65 percent; (8) nearly $4 out of every $10 dollars in national income goes for taxes and other government receipts; (9) people on public payrolls draw $244 billion in pay and fringes; and (10) government spending at all levels totals $656 billion a year. Outlays now equal 41 percent of national income.[1]

In short, all across this great land of ours, the No. 1 concern among voters, without exception, is the intolerable level of taxation. It is, therefore, my great honor and privilege, on this historic day, to have been asked by Mr. Howard Jarvis to introduce a new bill. The American Tax Reduction Act of 1979, which seeks to lift that heavy burden of taxation off the backs of the American people. Let me also add that this bill would not have been possible were it not for the tireless and unrelenting efforts of one of California's retiring Representatives, Del Clawson, a real fighter who provided certain vital portions of this important legislation. This bill will stand as a testimonial to Congressman Clawson's long fight against burgeoning bureaucracy, reckless Federal spending any heavy taxation. The message of this bill is loud and clear: the American tax rebellion, in the soul-stirring spirit of 1776, has come to Washington!

Let the government once again derive its authority from the consent of the governed!

The American Tax Reduction Act of 1979 provides for structural, comprehensive, and gradually phased-in changes in current tax policy. It encompasses the following provisions:

TITLE I

Income Tax Reduction: 25 percent reduction of tax rates in all categories over a 4 year period: 1979 through 1982.

TITLE II

Capital gains:

(1) Lower alternative rate to 15 percent maximum;

(2) Remove capital gains as a tax preference item;

(3) Remove limitation on deductibility of capital losses;

(4) Inclusion of once in a life-time $100,000 tax break for capital gains sale of a home.

TITLE III

Indexation of individual and corporate tax brackets and capital gains. Each year tax brackets will be increased by amount of increase in Consumer Price Index for preceding year. Indexation of Federal gift and estate tax.

TITLE IV

Federal Spending Limit: reduction of federal spending from approximately 22 percent to 18 percent of GNP over a period of 4 years (1980–1983).

TITLE V

Each year apply 2 percent of national budget to reduce Federal debt.

The key provision of the bill, of course, is Title IV which limits federal spending. As the Nobel Prize-winning economist, Milton Friedman, has noted: "As long as high government spending remains, we shall have the hidden tax of inflation. The only true tax-cutting proposal would be a proposal to cut government spending", (Policy Review, Summer, 1978). And that is precisely what this bill does. It puts a permanent lid on federal spending at 18 percent of GNP in 1983.

Government spending by means of federal deficits and inflationary spending is very much like drug addiction. The Federal Government keeps running to the printing press for a quick fix to keep up its habit. But just as parents of addicted children show their love and concern for them by disciplining them, so too must the citizens of our troubled Republic, who have the welfare of their country at heart, exact discipline and self-restraint on the part of the Federal Government. That is why it is both appropriate and highly significant that the American Tax Reduction Act of 1979 is a bi-partisan effort, an all-out effort to put the reins of government once more into the hands of the governed and finally kick the self-destructive habit of addiction.

Ladies and gentlemen of the press: there are today two forces in the world, two opposing systems, which seek to captivate the hearts of men: the forces of collectivism which seek to enslave and those of free enterprise which seek to liberate the spiritual energies of free men. One envisions man as made for the State; the other envisions the State as made for man. And both have their spokesmen. V. I. Lenin, a spokesman for collectivism, correctly indicated that the way to destroy a society based on free enterprise is to debauch its currency. The current instability of the U.S. dollar on world-markets, due to inflation and intolerable levels of federal spending, lends credence to Lenin's remarks, and is a dire warning to the nations of the free world. Our third President, Thomas Jefferson, perhaps best summed up the case for the free market economy when he said in his first inaugural address: "Let us, then, with courage and confidence, pursue our own federal and republican principles—our attachment to union and representative goverment. . . . Still, one thing more, fellow citizens: A wise and frugal government which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvements, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government." The choice is clear, ladies and gentlemen: the road to serfdom or the restoration of our Republic. The "Spirit of '76" leads the way in 1978!●

[1] Facts and figures from William Simon's "A Time For Truth," pp. 89–92 and U.S. News & World Report, June 26, 1978.

STATES MAKE LEGISLATIVE VETO WORK

HON. ELLIOTT H. LEVITAS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. LEVITAS. Mr. Speaker, when the House of Representatives recently debated the FTC conference report and whether it should contain a legislative veto provision, one of the arguments raised against such a provision was that it would overburden the House to review all the regulations spewing forth from the bureaucracy. This argument is faulty for two reasons:

First, the Congress is responsible for the laws of the land. Allowing unelected bureaucrats to write those laws and taking the position that there is nothing to be done about them, no matter how badly conceived or written, is to shirk our duty as legislators.

Second, the Congress will not need to review every single regulation that comes down the pike, only those that appear to have contravened the legislative intent or to have carried the intent to illogical conclusions.

What has been overlooked in these debates is the experiences of the State legislatures. Thirty-four States have some form of legislative veto and they are providing a proving ground for the concept.

The National Journal recently ran an article on the successes of the legislative veto concept as the various States are applying it which I bring to the attention of the Members:

THE SPECTER OF THE LEGISLATIVE VETO

(By Richard E. Cohen)

The legislative veto may be neither the hobgoblin nor the savior that congressional antagonists contend. That's the view of several state legislators who have seen it work.

The debate over permitting one or both chambers of Congress to kill a proposed action or regulation by an executive agency has become emotional at times. On one side, agency officials and some of their friends in Congress have raised the specter that its constant use would come close to toppling the delicate systems of checks and balances between the two branches. On the other, the assertion is made that the legislative veto will make the bureaucracy more responsive to congressional intent—whatever that may be.

As is often the case, the arguments on both sides may be exaggerated. A group of state legislators said during a recent meeting with reporters that the legislative veto is a reasonable use of power that has had a salutary, though sometimes modest, effect on the operations of their governments back home.

As co-chairman of the Wisconsin Legislature's Joint Committee for Review of Administrative Rules, Sen. David Berger said that he reads reports describing the effects of every proposed rule. The same reports are sent to the chairmen of the standing commitees with jurisdiction over the agencies proposing the rules. "We're able to identity red flags," said Berger. "This makes the agencies more circumspect."

Rep. William Strada, a member of the Connecticut legislature's Joint Regulations Review Committee, rejected the argument that the legislative veto amounts to mere second-guessing. "Agencies adopt rules with the full force of law that nobody knows about. What we as legislators are talking about is accountability. We're the advocates of the people."

"If the rules can't be explained adequately, they should not go into effect," said Rep. Kurt Kiser of the Florida Legislature's Joint Administrative Procedures Committee. "If we can't understand a rule, how's the public going to understand?"

The legislators' comments came on the eve of a House vote on a hotly disputed proposal to give Congress a veto over Federal Trade Commission rules but to permit the

President to veto the congressional veto. Congress, in turn, would have the right to override the President's veto. The House earlier had approved a tougher veto provision that did not allow for a presidential veto. (For an earlier report on the legislative veto, see NJ, 8–6–77, p. 1228.)

The congressional debate is likely to continue next year, meanwhile, the states are providing important laboratory evidence on the use of the legislative veto. The National Conference of State Legislatures concluded in a recent report, "Restoring the Balance," that 34 states have some form of legislative veto, most of them adopted in the past few years. The conference has campaigned aggressively for all legislatures to establish procedures for reviewing agency rules and recommends that a single joint committee be designated by each legislature to conduct the reviews.

According to the report, the states have a wide variety of procedures, but most seem to be relatively broad in scope. All but two of the 34 states give the reviewing committee authority to review all rules, usually within a specified time limit. Ten states permit the committee to suspend or delay a rule.

In 21 of the states, the review committee must be sustained by the legislature before the veto becomes effective. In the 13 other states, the committee has the final word.

The report acknowledges that state officials have launched a constitutional attack against the veto in many states. Just as the White House and the Justice Department have pressed for judicial review of the congressional veto, so have several governors asked the supreme courts of their states to review such issues as the separation of powers and the delegation of legislative authority to a committee. The results have been mixed, and the U.S. Supreme Court's refusal to consider several legislative veto cases has not helped to clarify the legal questions.

Rep. Elliott H. Levitas, D-Ga., and Sen. Harrison (Jack) Schmitt, R-N.M., junior Members who have become leading advocates of the legislative veto, contend that the experience on the state level will win over the congressional skeptics. Levitas, who said many of his colleagues think the idea is "like Bolshevism," added that the state experience "demonstrates the federal system works." Schmitt told the state legislators, "You are doing a lot of our homework."

If they are right, extension of the legislative veto will become a major component of the growing congressional emphasis on legislative oversight of federal agencies. Along with the "sunset" proposal for compulsory review of all agency programs on a regular basis and a renewed call for more rigorous committee review of how well executive agencies enforce the law, the legislative veto device has been cited by some Members of Congress bombarded by voters' complaints about taxes and government regulations as evidence that they are working to discipline a sometimes unresponsive or uncontrollable bureaucracy. Already, some Members are referring to the Congress that convenes next January as the "oversight Congress."

However, the state legislators raised cautionary flags about their experience. Rep. Stephen Cobb of the Tennessee legislature's House Government Operations Committee said the quality of his panel's work is "not yet at the level it can be" and conceded that there have been examples of "crude politics" in which affected interest groups have sought relief from agency rules.

Kiser cited as a worthwhile consequence in Florida the fact that the review committee has begun to "re-educate our legislators to clean up their act and be more specific with the statutes to get rid of the vagueness."

For lobbyists and frustrated bureaucrats who often receive little more explanation about a provision in a new law than that "it speaks for itself," the legislative veto ultimately may prove most useful in encouraging Congress to clean up its own act—by being more precise in its statutory mandate and redirecting agencies that it believes have gone astray. The results may prove illuminating on all sides.●

HEW TASK FORCE ANNOUNCES FINDINGS ON DES

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. WAXMAN. Mr. Speaker, I would like to take this opportunity to praise HEW Secretary Joseph A. Califano, Jr., for his decisive administrative actions to trace and treat Americans adversely affected by the use of DES.

DES, diethylstilbestrol, is a synthetic estrogen that was once widely prescribed in the United States for the prevention of miscarriages. An estimated 4 to 6 million persons are believed to have been exposed to DES prescribed for this purpose. Those suffering ill effects are the women who took the drug while pregnant, and their daughters and sons, who during gestation were exposed to DES in utero. Widespread use of DES was common between 1945 and 1955, but in a number of cases, it was still being prescribed to prevent miscarriage as late as 1970.

When HEW Secretary Califano was alerted to the health hazards posed by DES by Dr. Sidney Wolfe of the Health Research Group here in Washington, D.C., Secretary Califano established an HEW Task Force in February 1978 to determine if DES caused cancer in women using it during pregnancy or in their offspring.

Secretary Califano announced the findings of the HEW Task Force last Wednesday. The task force concluded that while the overwhelming majority of those exposed in the past to DES prescribed during pregnancy will suffer no serious long-term health effects, some will have serious health problems.

DES turns out not to be a "wonder drug," and the history of its use in this country is a perfect example of why we must keep the efficacy requirement in our food and drug law. Before 1962, not all drugs had to be proven effective to be marketed. This was how it was possible for DES to be marketed in the 1940's and 1950's without any significant evidence that DES effectively prevented miscarriages. Indeed, nearly all the published studies boasting of DES ability to prevent miscarriages were conducted without scientific control groups. The women in these studies were not given placebos—a standard procedure in medical testing for efficacy—to see if the rate of miscarriage differed in the placebo group as contrasted to the women taking DES. When controlled studies were carried out in later years, almost all showed that DES was not effective in preventing miscarriages.

The real tragedy of the DES episode is that the vast majority of women who took DES were misinformed about its possible benefits, and were not warned of its possible dangers. We now know that DES is a carcinogen. However, since it takes even a potent carcinogen often from 5 to 20 years after exposure to show the development of cancer in humans, the full scope of this tragedy is just beginning to be understood.

For the children of women who took DES during pregnancy, the effects are even more draconian. In 1971, researchers at Boston's Massachusetts General Hospital discovered a startling upsurge in the occurrence of an extremely rare kind of vaginal and cervical cancer among teenage girls. These teenagers had one thing in common in their medical histories: their mothers had all used DES during pregnancy to prevent miscarriage. More than 200 cases of this unusual form of cancer have now occurred in the United States in girls and women between the ages of 8 to 28. More than 10 percent of these victims have died of that cancer.

Risks are not confined to the female offspring of women who took DES during pregnancy. The HEW task force found an excessive number of abnormalities in the reproductive and urinary systems of many young men whose mothers used DES during pregnancy. Further study will be needed for definitive findings on the increased risk of testicular cancer and possible abnormal sperm forms in DES sons.

I close my remarks by having reprinted in the CONGRESSIONAL RECORD Secretary Califano's announcement of the steps he will take to inform physicians and those exposed to DES of the health risks associated with its use when prescribed to prevent miscarriage. It is my hope that this will be the beginning of a long-term effort to scientifically evaluate the health effects of synthetic hormones on our population.

STATEMENT BY JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE

An HEW Task Force has just completed a new examination of the health effects of DES (diethylstilbestrol), a synthetic estrogen that was once widely prescribed for the prevention of miscarriages. An estimated 4 million to 6 million persons—the women who took the drug while pregnant and their danghters and sons—are believed to have been exposed to DES that was prescribed for this purpose, chiefly between 1945 and 1955 but, in a number of cases, as recently as 1970.

The Task Force—which was established at my request by Dr. Julius B. Richmond, the Surgeon General of the United States in February, 1978—has submitted a report indicating that, while the overwhelming majority of those exposed in the past to DES prescribed during pregnancy will suffer no serious or long-term health effects, some will have serious health problems.

As part of my responsibility to promote and protect the public health, I am today announcing steps to inform physicians and those exposed to DES, when it was used to prevent miscarriages, of the health risks associated with that use.

Based on what is currently known, DES mothers, their daughters and their sons, face different health problems.

For daughters of mothers who used DES to prevent miscarriages, the Task Force found that there was a clear link between exposure to DES before birth and an increased risk of vaginal or cervical cancer. Although previous studies have demonstrated that there is such

a link, the Task Force concluded that the risk is not as high as originally feared. It is currently estimated that no more than 1.4 DES daughters per 1,000 exposed to the drug will develop cancer (clear cell adenocarcinoma) of the vagina or cervix. The rate may be as low as 1.4 per 10,000. Based on the currently available data, there does not seem to be additional risk of other types of cancer.

For women who used DES to prevent miscarriages, the Task Force concluded that a relationship between DES exposure during pregnancy and the risk of breast or gynecologic cancer "is not established". However, the Task Force said that, based on the studies done so far, there is "sufficient cause for serious concern over the drug's carcinogenic potential."

For sons of mothers who used DES during pregnancy the Task Force found "an access of abnormalties" in the genital, and possibly urinary tracts, but "did not find firm evidence of an association" with testicular cancer.

As for possible effects on fertility or the next generation, the Task Force concluded that "no evidence is available to suggest that children borne by DES daughters have birth defects or other abnormalities" and that there is "no definite information" suggesting any effect on the fertility of DES sons.

As a result of these findings, the Task Force concluded that full disclosure of information concerning DES use in a past pregnancy is essential to protect the health of the patient and her children. This information is necessary so that affected individuals can seek prompt medical examinations and, if appropriate, prompt treatment.

We are today taking two major steps to implement this recommendation.

First, we will begin a major program to alert physicians and other health professionals to the findings and recommendations of the DES Task Force.

The first step will be to send a Surgeon General's advisory to the 400,000 physicians in the United States. This advisory will include statements urging physicians to notify women for whom they prescribed DES of their exposure and the need for follow-up medical care for these women and for their offspring.

The Task Force suggests that doctors should check their records carefully—even if it requires searching through medical records which date back 20 years or more—in order to identify exposed women and notify them of the need for follow-up medical care for themselves or their offspring.

The advisory urges physicians to provide this service without charge.

This advisory will also be published in medical journals. And we will take whatever additional steps may be necessary to inform medical professionals.

Second, we will develop a public awareness program targeted at exposed individuals. This program will emphasize the importance of early detection in improving the possibility of successful treatment of cancer and other abnormalities that may result from DES exposure.

We will, within 30 days, develop a detailed public information campaign aimed at reaching exposed individuals who may not be informed by their doctors either because the doctors are no longer in practice or because medical records have been destroyed or because of other reasons.

In broad outline, both physicians and exposed individuals will be told the following:

Daughters should begin periodic screening examinations at age 14 or at the onset of menses, whichever occurs earlier.

Mothers should advise their physicians that they were exposed and should follow a system of regular examinations.

Sons will be urged to see a physician for an examination to determine if they have genital abnormalities associated with DES exposure.

It is prudent for all DES-exposed women—mothers or daughters—to avoid any further use of DES or other estrogens because the carcinogenic effects may be cumulative.

In addition to undertaking the information efforts aimed at both health professionals and the public. I am asking the Surgeon General to develop a detailed research plan for further scientific studies that will be needed, both in the near and long-term, to further explore the precise dimensions of the risk presented by DES use—both in the past and in the present, both from use to prevent miscarriages and from other uses (mostly related to health problems involving the female reproductive system).

Although there is still much scientific work to be done, we know enough about possible DES health problems to warrant the actions I am announcing today. As further information is developed, we will take additional, appropriate measures.

These actions are a prudent yet expeditious response to a sensitive public health issue.●

PUBLIC CONCERNS OF IMMUNIZATION

HON. GEORGE M. O'BRIEN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. O'BRIEN. Mr. Speaker, I am happy to announce a forthcoming symposium, Public Concerns of Immunization, to be held at the Department of Commerce Auditorium in Washington, D.C. on October 25 and 26, 1978. The conference will be sponsored by the International Center for Interdisciplinary Studies of Immunology at Georgetown University. I am pleased to state this center is one of four which has been recently funded under the new Centers for Interdisciplinary Research in Immunologic Diseases (CIRIDS) programs of the National Institute of Infectious Diseases, a program which I had the honor of sponsoring in the House last year.

The symposium will fulfill one of the primary objectives of the interdisciplinary concept by enhancing public awareness and will help clarify and lead to a better understanding of some of the current issues concerned with immunization. This is particularly timely in light of the administration's current immunization initiative for the country. The proceedings of the symposium will be published in the journal Pediatric Research.

It gives me a great deal of pleasure to announce this symposium today, on this, the birthday of my cochairman of the event, Miss Helen Hayes, the first lady of the American stage. I would ask the Congress to join me in wishing her a most joyous and blessed birthday.●

FULL EMPLOYMENT AS A NATIONAL ECONOMIC POLICY

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. HAWKINS. Mr. Speaker, I want to direct your attention and the attention of my colleagues to an editorial response to the Washington Post which I have cosigned with Senator MURIEL HUMPHREY and other supporters of the Full Employment and Balanced Growth Act. This legislation has been historically maligned by gross misinterpretations of the bills' true substance and purpose. To this end, I wish to share with my colleagues a clarification of these issues as they are articulated in the editorial response:

EDITORIAL RESPONSE

DEAR SIR: We are writing this letter as concerned Members of the Congress who want to clarify the true issues facing enactment of the Humphrey-Hawkins Full Employment Bill. We were very disappointed in your editorial of October 4th because you took a very simplistic and erroneous interpretation of Humphrey-Hawkins and failed to realize the many larger implications of the bill. In some instances, you completely ignored or misrepresented the controlling facts in the performance of the American economy over many years.

The Humphrey-Hawkins bill is like an iceberg with a large visible mass—the issue of unemployment—and an even larger partially submerged mass—the issue of how to improve the Federal Government's economic policy decision-making.

We cannot even begin to solve the problems of intolerably high inflation, unemployment, and other idle resources until we provide the mechanisms for the President and the Congress, acting together, to define root causes, establish acceptable goals to be reached, and agree on the means of achieving them. Until we do this, national economic decisions will continue to be haphazard, uncoordinated, and wasteful.

Humphrey-Hawkins is as much an "anti-inflation" bill as it is an "anti-unemployment" bill. Inflation has not been effectively dealt with by the current or any recent Administration. We do not now have a sufficiently complete and meaningful action plan nor alternative possibilities for dealing with inflation on an ongoing and coordinated basis. It is time that we exhibit the courage to say what the true causes of inflation are, develop workable cures, and put them vigorously into effect. Humphrey-Hawkins requires this approach in a comprehensive policy-setting framework.

Since World War II, the general trend has been for inflation to rise during times of stagnant or low economic growth accompanied by high levels of unemployment and underutilized plant capacity, and to fall under conditions of fuller resource use. The trends from the 1973–74 recession are, in general, strong evidence of this. Yet, the Post editorial concludes that to reduce unemployment from 5.9 percent in August 1978 to 4 percent by mid-1983 would be "wildly inflationary". This is tantamount to discarding forever the goal of even moderately low unemployment, which is as economically shallow as it is morally unjust.

The editorial, in effect, imports that unemployment should never be reduced below 5.5 percent (although in 1953 it was 3.0 percent and in 1966 it was 3.8 percent with very stable prices) on the ground that this would generate disastrous wage-induced inflation. Actual developments in the past refute this fear. Every successful effort to achieve stable prices has treated the reduction of inflation and the reduction of unemployment as inseparable goals—not "traded-off" one for the other.

Furthermore, we are trying to reduce unemployment because it is socially debilitating. Unemployment destroys families, promotes crime, and erodes individual self-respect. In addition, continuing to let unemployment exist at high rates is financially and economically absurd. Each one percentage point drop in unemployment (almost one million people) is equivalent to a $25 billion

saving to our country, through reduction of government payments for unemployment insurance, food stamps, welfare, and other programs and through the addition of new income taxes being paid into the Federal treasury by employed people and by expanded businesses. In economic terms, idle labor means the nonproduction of goods and services. Every day an able man, woman, or young person does not work, the potential wealth they can create is lost forever.

The editorial states that Humphrey-Hawkins is mainly the concern of black leadership and imports that it would benefit primarily the black Community. This statement is both biased and inaccurate. The absolute amount of unemployment among whites is many times higher than among blacks, and more than 225 million people are seriousy hurt by the deficient economic performance of which high unemployment is but one index.

As to who is concerned with and supports Humphrey-Hawkins, more than 82 national organizations—white and nonwhite, labor, religious, minority, and many others including some business leaders—have been working continuously and openly for enactment of the bill for 4 years.

Objection is made to the goal of a zero rate of inflation as "absurd". But only one Congressional Committee of the three reporting the bill favorably, and that one by a vote of 8–7, has favored the zero rate. We deem it absurd to excoriate a bill because one version of it has an unworkable amendment which should and can be removed.

Very truly yours,

Senator MURIEL HUMPHREY,
(*D-Minn.*)

Congressman AUGUSTUS F. HAWKINS,
(*D-Calif.*)

The following Members of Congress have stated their agreement with this letter:

John Conyers, D-Mich.
Paul McCloskey, Jr., R-Calif.
Richard L. Ottinger, D-N.Y.
Paul Simon, D-Ill.
Ted Weiss, D-N.Y.●

WILLIAM LEARY AND JOSEPH SESTO, JR., "MEN OF THE HOUR"—VANDENBERG AIR FORCE BASE

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. LAGOMARSINO. Mr. Speaker, great honor will be awarded to William Leary and Joseph Sesto by Vandenberg Air Force Base military personnel on Saturday, October 21, 1978, at the "Men of the Hour" banquet. Four hundred friends from the military and civilian communities of Lompoc and Santa Maria, Calif., will be in attendance. This auspicious occasion is appreciation to them for their inspiring leadership over the past years. Each man has established his individual record of service which greatly contributed to the present success of a productive relationship between the military base and civilian communities.

Bill Leary, a Lompoc resident and special assistant to the manager of the Martin Marietta Corp., located on Vandenberg Air Force Base, was a former naval officer. He has served as chairman of the military Affairs Committee of the Lompoc Chamber of Commerce for 10 years and is cochairman of the quarterly awards ceremony selecting the outstanding airman on the base. He completes his second year as president of the Robert H. Goddard Chapter of the Air Force Association which is now recognized as one of the strongest and most active chapters in the country. Bill is known for his loyal support of the United Services Overseas. In addition, Bill is a representative of the Vandenberg Big Brother program which captured the coveted Bruce K. Holloway Award in 1976. Also, included among his varied activities is serving as emcee of the Big V Golf Tournament held at Vandenberg AFB. Bill has served for the past 10 years on the ISTRAD Commanders Advisory Board.

Joe Sesto, president of the Sesto & Co. insurance firm, is equally well identified with Air Force activities over a long period of years. He has been presented numerous awards from the Air Force which includes recognition for outstanding contributions to the USAF. In 1975, he received the Air Force Association Citation from the president of the Robert H. Goddard Chapter of the AFA for "the individual in the community who most supported the goals of the association and the USAF." Joe is completing his 17th year as president of the Santa Maria Chamber of Commerce Military Affairs Committee. He was selected to participate in the 24th Annual National Security Forum held at Maxwell AFB, Ala., and was nominated by Secretary of the Air Force John Stetson, to the Department of Defense Joint Civilian Orientation Course held in 1978. Joe has served on the ISTRAD Advisory Council since 1962.

Each man, in addition to his military activities, has gained recognition for his notable community endeavors and achievements. Quite appropriately, Joe Sesto and Bill Leary have indeed earned this great honor bestowed upon them on this special occasion. Their tireless dedication to the U.S. Air Force over the past years is justly recognized.●

THE 100TH ANNIVERSARY OF GENERAL ELECTRIC

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. SCHULZE. Mr. Speaker, I would like to take my colleagues on a journey in time. Let us close our eyes and imagine the year is 1879. The scene is a room with a young man seated in front of a table, staring bleary-eyed after some 40 hours, at a brightly glowing loop of carbonized thread. This young genius, Thomas Alva Edison, is looking at the invention that will shortly launch one of the greatest experiments in free enterprise that the world will ever know. The electric light not only led the world out of darkness, it was the beacon which guided the General Electric Co. down the road to success.

Let us open our eyes and come back to the present and look at this company today. One hundred years later, almost half a million men and women around the world have contributed a wealth of products for the betterment of mankind. Every facet of our lives has a General Electric product in it. General Electric products have defended our country, bolstered our economy, increased the productivity of our factories, made our school and hospitals more effective, our homes more convenient, and our communities more efficient. General Electric products have enhanced our lives for a hundred years.

As GE prospered in the marketplace, we prospered as a people. Their social awareness, in conjunction with their financial success, resulted in a sense of responsibility in this company rarely seen today. Over the years this social awareness has resulted in GE's continued efforts to improve our standard of living, and to make America a better place for everyone to live and work. General Electric has utilized its resources to tackle tough environmental and energy problems and to make our domestic lives easier and more pleasant.

General Electric is but one of the finest examples of what can be accomplished within our free enterprise system. As GE celebrates its 100th birthday I would like to reflect for a moment on the benefits of the free enterprise system. General Electric's phenomenal success is proof that a company, when allowed to compete in the marketplace without the encumbrances of Federal regulation, can provide the jobs and the resources to make our economy prosper. Despite the many roadblocks the Federal Government has provided to try and impede the growth of GE and other private corporations, General Electric has risen above and I wish them a happy birthday, and more, another hundred years of even greater success.●

INCREASED AIR TRAVEL FROM LOWERING AIR FARES: ANOTHER CASE SUPPORTING THE VALIDITY OF THE LAFFER CURVE AND ENACTMENT OF KEMP-ROTH

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. KEMP. Mr. Speaker, John D. Lofton, Jr., the nationally syndicated columnist, has brought to the attention of the country a specific and current economic phenomenon which buttresses the case for enactment of the Kemp-Roth bill. I wish to bring it to the attention of my colleagues.

Kemp-Roth, the Tax Rates Reduction Act, would bring about a 30-percent across-the-board reduction in individual income tax rates over the next 3 years. The reason that should be done is to restore greater shares of the reward received by workers, savers and investors for their incentive, a greater share because the Government's share—taxes—would be reduced. The reason that must be done is to restore the economy through increased production and lessened inflation.

During the House debate on the Kemp-

Roth legislation it was argued by its opponents that there was no reason to believe that lowering the tax rates would result in greater economic activity. Even though it makes commonsense to every taxpayer that by taxing something less, there will be more of it, it didn't make sense to a majority in the House. Thus, it was denied that lower costs—and taxes are a cost—would mean greater demand, which when all the costs and all the demands taken as a whole would mean greater economic activity. This is the point addressed by Mr. Lofton.

During the consideration of the first round on airlines fare deregulation, it was argued that there was no reason to believe that fare deregulation would mean lower prices. It was argued that there was no reason to believe that even if lower prices did result, that it would mean increased ridership, increased revenues, increased profits, thus more jobs in the building, servicing and flying of planes, the operation of airports, and the travel and tourist industry in general.

But removing the cost of regulation, in direct and indirect terms, has resulted in a boom in the airlines industry. Fares are down—and are going even further down. Ridership is up and points toward ever increasing volumes. Planes taken out of service are being returned. New orders are being placed.

There are two things to look at in this Lofton column. The first is how many in Congress and most in the industry said what has happened would not happen. The second is the effect what has happened has had on the economics of the industry. Profits are up, yet fares are down, to the mutual advantage of business and consumer.

This excellent, perspective column follows:

KEMP-ROTH DOOM-MONGERING AND A SENSE OF DEJA VU

(By John Lofton)

WASHINGTON.—There is a strong sense of deja vu concerning the apocalyptic criticism of the Kemp-Roth proposal which urges a cut in Federal taxes of 33 percent over three years.

Denouncing the idea that a tax slash of this size would so stimulate the economy that revenues would come pouring in, the Baltimore Sun labels such a notion a "pie-in-the-sky panacea" and "a fraud" for which there is no "proof." Business Week magazine, ordinarily a beacon of reasonableness, has gone ape, editorializing that Kemp-Roth would add $100 billion to the deficit and this would "touch off an inflationary explosion that would wreck the country and impoverish everyone on a fixed income."

But, we've heard this kind of doom-mongering before. And we've heard it very recently. Remember what the opponents of airline de-regulation were saying in 1975 and 1976? Remember what was predicted if there was increased competition among the airlines and air fares were drastically reduced?

"There would be chaos," Harding Lawrence, the president of Braniff told a House Aviation Subcommittee confidently. Albert Casey, president of American Airlines, foresaw "grave and possibly irreparable damage" to the airlines as a result of de-regulation. Charles Tillinghast, chairman of Trans World Airlines, blasted the arguments of those favoring de-reg as built on "story book" assumptions. He said that the promise of better air service at lower fares was an "illusion" encouraged by "politicians playing the old game of currying favor by . . . promising the impossible" and by "academic economists who pilot theoretical models."

The former head of the Civil Aeronautics Board (CAB) Robert Timm, feared that airline de-reg would take a carefully built air transport system "down the drain;" Capt. John O'Donnell, head of the Airline Pilots Association, said that it would cause service to "deteriorate" and fares to "increase;" Francis O'Connell, legislative director of the Transport Workers Union, worried about de-reg meaning "jobs will be lost" in the airline industry; and an Eastern Airline pilot, in a letter-to-the-editor to the New York Times, declared that de-reg would cause much public suffering and, like Humpty Dumpty, once the airline system was "taken apart" it could not be put back together again.

Well, during the past 15 months, under the reign of CAB Chairman Alfred Kahn, the airline industry has experienced what might be called de facto de-regulation, the outcome of which has been increased competition and greatly reduced air fares. Now, if the economic reasoning of the Kemp-Roth critics were correct, these reduced fares should have had no positive economic feedback effects. What should have happened is that the number of passengers taking planes should now be the same as when fares were higher with the result being massive revenue losses to the airlines, right? Not exactly.

In a talk last week in London, before the Financial Times Conference on International Transport, CAB Chairman Kahn told how passenger traffic on certified carriers is presently running about 20 percent above the already record levels of 1977, with well over 40 percent of these people traveling at discount rates. From 1968 to 1975, he pointed out, the major airlines earned a miserable 4.9 percent profit on invested capital, whereas the ratio for the year ending this June 30, was 12.3 percent and earnings on equity after taxes was 18 percent. As a result of this increased activity, the airlines are hiring more ticket clerks, putting in more phone lines, and cautiously adding to their fleets.

Kahn calls all this "a story of success beyond anyone's most wildly optimistic expectation," observing that the services being offered by the airlines, and particularly the prices they are charging, have been "immeasurably improved," millions of passengers have benefited, and carriers have prospered.

A national survey of 5,000 families, conducted for the Conference Board, shows that in the next 6 months 13 percent plan to travel by air, the highest figure in the 10-year history of the Board's survey. Barbara Clark, an analyst in the CAB's Bureau of Pricing and Domestic Aviation, says: "When we started approving all these low fares, the carriers said, 'O.K. we'll put them in and then we'll go bankrupt. We'll show you.' They showed us, all right. They showed us they can make a lot of money with more competition."

Richard Ferris, president of United Airlines, put it a little more colorfully. He says: "If someone had told us in June of 1977 that we would have a travel growth of 25 percent this year, we would have put a straitjacket on him and locked him away. The growth has been explosive and no one saw it coming." United earned $105 million on its airline operations the first half of this year compared to a $6.8 million loss in 1977. At the end of June, for the first time in its history, United flew over one million passengers more than one billion passenger miles in a week.

Ferris is not the only one flabbergasted by the current boom in air travel. Frank Borman, the former astronaut who heads Eastern Airlines, admits: "It has been above our wildest expectation. We have become mass transit, and this may be as revolutionary as the introduction of the jet engine itself."

The Kemp-Roth tax cut bill would be a jet engine for our economy. The sooner the Congress fires it up, the better.●

CONGRESSIONAL SALUTE TO PATERSON LODGE NO. 60, BENEVOLENT AND PROTECTIVE ORDER OF ELKS, UPON THE CELEBRATION OF ITS 90TH ANNIVERSARY

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. ROE. Mr. Speaker, on Saturday, October 14, the people of my congressional district and State of New Jersey will join with the distinguished members of the Benevolent and Protective Order of Elks at a gala celebration commemorating the 90th anniversary of the founding of our most prestigious Elks Lodge No. 60 in Paterson, N.J.

Mr. Speaker, at the outset let me commend to you the diligence, foresight, and hard work that has been extended by the esteemed officers and members of Paterson Elks 60 who throughout these past nine decades have extended the highest standards of excellence—always giving willingly and unselfishly of their time in helping to bring happiness and contentment to others through their benevolence and understanding, promulgating a spirit of brotherhood and goodwill throughout our community, State, and Nation. The current roster of these exemplary community leaders and highly reputable citizens which comprise the executive committee of Paterson Elks 60 is, as follows:

PATERSON ELKS 60

OFFICERS FOR THE YEAR 1978–79

The Honorable:
William J. Shoemaker, Exalted Ruler.
Nicolas D'Ascheberg, Esteemed Leading Knight.
George Dunn, Esteemed Loyal Knight.
Lawrence Fisher, Esteemed Lecturing Knight.
Anthony Gustus, Secretary.
Joseph J. Wallace, Treasurer.
Robert Ramaglino, Esquire.
John Golon, Chaplain.
Frank Strassner, Inner Guard.
Joseph La Spada, Tiler.
Edward Fedush, Organist.
Howard McNeil, Trustee.
Michael P. Strassner, Trustee.
Albert Capone, Trustee.
Edward Ries, Trustee.
Thomas J. Ryan, Trustee.
William J. Rosenberg, Justice of the Forum.
Robert Verhasselt, Chairman, Paterson Elks 60—90th Anniversary Committee.

Mr. Speaker, BPOE Paterson Lodge No. 60 was founded in 1888 with a charter membership of 33 but it is important to note that its early beginnings emanated in 1887 through the organizational efforts of three outstanding citizens, Hon. Harry Stone, his good friend, Hon. David Boyle, and Hon. James McCormick of baseball fame, who conceived the idea, consulted with New York Elks' Lodge No. 1 and Newark Elks' Lodge No. 21, and duly instituted Paterson Elks Lodge No. 60 on Sunday, January 30, 1887.

For the first half century the Elks clubhouse stood in a stately building on Ellison Street, off Colt Street, in downtown Paterson. It was moved in 1958 to McLean Boulevard at East 34th Street,

Paterson, where it is presently headquartered.

Today, BPOE Paterson Elks 60 is comprised of a membership of 700 and is lauded as one of, if not, the oldest fraternal organization in the oldest industrial city of America, the city of Paterson. Their charitable and benevolent activities span the needs and concerns of all of our people—young and adults alike—and we are especially proud of their generous contributions to God's special children who are physically handicapped and their national foundation benefits to local area students. They truly have brought an added quality of life and way of life to the people of the city of Paterson.

Mr. Speaker, with the deepest respect and admiration, I know you will want to join with me in extending our warmest greetings and felicitations to the members of BPOE Paterson Lodge 60 for their many achievements and outstanding good works on behalf of our people. They have labored in the vineyard with other community leaders and our veterans in many, many social, civic, and charitable endeavors which have truly enriched our community, State, and Nation. We do indeed salute the officers and members of Paterson Lodge No. 60 of the Benevolent and Protective Order of Elks upon the celebration of their 90th anniversary observance.●

THE UNIVERSITY AND THE CITY

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. FORD of Michigan. Mr. Speaker, last year I introduced legislation to establish a Federal program of grants to urban universities to encourage a cooperative effort with the city in combating problems of the urban area in which they are located. The Urban Grant University Act, sponsored by 59 Members, has been the subject of several hearings in this Congress.

The hearing process has established that there is a natural partnership between urban universities and the cities and that there is an appropriate Federal role in encouraging and expanding a cooperative attack on urban problems.

I was pleased, Mr. Speaker, to have brought to my attention a commencement address given by the Secretary of the Department of Housing and Urban Development entitled "The University and the City." Secretary Patricia Roberts Harris discusses the mutual obligations and goals of universities and the cities and endorses the concept of the legislation which I hope to see enacted in the next Congress.

Therefore, Mr. Speaker, I ask unanimous consent that the text of her address be printed in the RECORD at this point with the hope that my colleagues will consider her thoughts.

THE UNIVERSITY AND THE CITY

(By Patricia Roberts Harris)

President Meyerson, Provost Stellar, Chairman Regan, Trustees, distinguished guests, degree recipients, and friends.

I am honored to be the speaker at the two hundred and twenty second Commencement of the University of Pennsylvania.

In 1888, the University's Provost, William Pepper, delivered an address on higher education and women. He concluded:

It does not concern us of this generation that at some distant day the franchise may be extended to women. This question cannot now be regarded as a practical one ... Nor does it concern us that at some distant day, when this continent is densely peopled, the struggle for existence may be all the more keen and severe because our women have been trained, as far as may prove possible, to be the intellectual peers of men.

But six years later, in 1894, Sara Yorke Stevenson became the first woman to receive an honorary degree at Penn. I am happy to follow in that tradition today.

The first educational institution to be called a "university" is a fitting place for the Secretary of the Department of Housing and Urban Development and a former educator to share thoughts about the university and the city.

At the turn of the eighteenth century, the Bishop of Cloyne set down his standards for selecting a site on which to nourish a university in the American colonies:

It should be in good air, in a place where provisions are cheap and plenty; where there is no great trade, which might tempt the Readers and Fellows of the College to become merchants, to the neglect of their proper business; where there are neither riches nor luxury to divert or lessen their application, or to make them uneasy and dissatisfied with a homely frugal subsistence; lastly, where the inhabitants, if such a place may be found, are noted for innocence and simplicity of manners.

The Bishop of Cloyne concluded that Bermuda was the ideal location.

Pre-Revolutionary Philadelphia hardly could qualify.

There already was a wealthy and proper class of life. Digby Baltzell's Philadelphia Gentleman was not simple and not innocent.

By contrast, the city also held great poverty. Edward Potts Cheney tells us that:

The overseers of the poor were always busy. We hear of widespread suffering and of special collections being made when there was an unusually hard winter. There was much disorder ... Crimes and misdemeanors were numerous and punishments were harsh.

Slaves were sent to the Court House at Second and Market Streets by their owners to be whipped for their misdemeanors.

Yet into such a community Benjamin Franklin brought his belief in higher education, energetic action, practical wisdom and generous humanity.

It was a good choice. Such a community remains characteristic of the city today. A distillation of all that is rich and all that is mean in the spirit of American society.

Over its history, the University of Benjamin Franklin has helped in the human and economic development of the city.

The first graduate department of city and regional planning was established at Pennsylvania in 1951—as the political reform and physical renaissance of Philadelphia began to flower. The staff of the department worked closely with the newly formed Philadelphia City Planning Commission.

To assist in reversing the tide of neighborhood decline, the West Philadelphia Corporation was established in 1959. As University City was created, the Corporation worked hand-in-hand with city authorities, community groups, business, and industry to revitalize the community—its housing, education, health and recreation.

The Wharton School's Human Resources Center has developed individual and community potential over the last fourteen years. It has done major work on neighborhood abandonment and the effectiveness of the City Urban Homesteading Act in promoting residential stability.

Beginning in the early 1970's, the University-sponsored Community Leadership Seminar has improved the skills and increased the knowledge of leaders in indigenous Philadelphia communities.

Community leaders and organizations now are operating a number of projects which began under the aegis of Penn. The West Philadelphia Community Mental Health Consortium and the West Philadelphia Free School are good examples.

The University is the largest private employer in Philadelphia—providing almost 17,000 jobs, more than half held by non-academic personnel.

Over recent years, President Meyerson reinforced the already established strengths of urban and regional studies; economic, social and political science; policy studies; and related inquiries which bear on the city.

The University's example has been followed. In the early 1960's, there were only about two dozen urban research centers in places of higher education across the nation. Today, there are two hundred.

But far more can be done. The great urban universities of this nation have not approached their potential for enriching and learning from the cities which host them.

During the nineteen forties and fifties, it was typically the urban university which made its resources available to fulfill our nation's commitment to help rebuild the cities of underdeveloped countries. Now it is only appropriate for our urban universities to broaden their commitment to people and cities in distress here at home.

The Carter Administration, as you know, has presented to Congress a national urban policy. The time is right to challenge the urban universities to take stock—to expand and refine their commitment to the city.

I challenge the Urban universities of America to direct more work and study toward their immediate communities.

Urban universities particularly must take in more of the poor and minorities as students. Despite the gnashing of teeth and breast beating, despite the dential of admission to competent persons who happen to be poor, we have found that 70th and 75th percentile performers can compete and benefit from a college education, even at Penn.

This in no way diminishes the special welcome to those 99th percentile performers who are every teacher's dream.

The urban university must work more closely with City Hall. I assure you that City Hall is one of the best laboratories for learning the reality of human interaction that can be found. Mr. Dooley knew more about the political process than did ever a V. O. Key.

There is today an appalling lack of socially relevant research and writing. It seems as though most academic commentators have become naysayers and ante-poor. It seems as though they have become more strident in condemning government action than the most radical activist anarchist.

Scholars have devoted too little attention to the roots of problems within their immediate environment.

It often is easier to obtain university support for exotic studies far removed in time, space, and social distance than to gain the means for serious work among people within walking distance of urban teaching centers.

A sense of reality about the inner city must be maintained—without studying it to death by sending in cohorts of youthful colonists armored in noblessee oblige. And without displacing the poor when the university expands.

Urban universities must serve the community as they learn from the community. More student lawyers should be securing experience as helpers in legal aid for consumer groups, the poor and other underrepresented people—of whom President Carter recently

spoke. Student architects need to work as interns to create space more defensable against crime in public housing.

There are still day-care centers that need starting and staffing, illiterates who need to be taught, addicts who can benefit from encounter therapy, and neglected children who need a friendly voice and hand.

The city is itself a university without walls. Indeed, the Latin root, universitas meant, "all together, the whole . . ." That is the city—people together, the whole of creative human interaction.

But even as the university goes to the city for learning and service, more of the community must be let into the university. It is reassuring to know that Penn is moving in the right direction by providing the community access to university facilities and by opening non-credit programs.

The formal admission of members of disadvantaged minorities must continue to advance, large numbers of blacks, hispanics and native Americans have not received educational opportunities commensurate with their ability and citizenship status.

Whether this is the fault of racial discrimination or inadequate educational services and financing is, or should be, a moot issue for the purpose of setting national goals. Today, four years at even this University cost less than four years in prison.

Our future as a nation may very well rest upon our ability to educate and advance large numbers of underprivileged youngsters. To fail to do so will be to perpetuate permanent underclasses whose members have no stake in the preservation of a democratic society that has failed them.

The universities can provide the intellectual background for the political dialogues of the disadvantaged. By so doing, the universities can develop creative leadership for the achievement of change in a democratic system.

American universities must work just as closely with local elected leadership. Many federal programs now are decentralized. This largely is the case for community development, manpower training and law enforcement. The opportunities for funding to universities from local and state government are great.

The HUD sponsored Urban Observatory Program was an innovative model of such cooperation. It was designed to establish a practical working relationship between the university, with all of its training, technical assistance, and research resources, and the city, with all of its problems and needs for analysis.

The program helped overcome the tendency of academicians to pursue their interests without regard to the needs of the real world. And it corrected the tendency of city officials to concern themselves with the practical problems of the day without regard to the larger urban crisis.

It now is up to the cities and universities to carry on such demonstrated successes.

Policy-making demands knowledge. Knowledge is arrived at through research. The universities are our primary research laboratories.

But many researchers are not asking the right questions. Their analytical skills simply are not being applied to the urban questions that matter most.

One welcome exception has been evaluation research. Government programs need to be scientifically assessed, not just bureaucratically monitored. The respectability of evaluation research has developed in the academic community as its sensitivity to urban programs has grown.

Last month, the Department of Housing and Urban Development was pleased to grant $4 million to the University for an evaluation of the multi-billion dollar Community Development Block Grant program. The impact of the program on the nation's low- and moderate-income families will be assessed.

Despite these activities of the academy, the fact remains that some urban researchers and writers have in recent years replaced old myths with new ones.

The urban neglect of the early 1970's was underwritten intellectually by such urban researchers. They told us that not much could be done with an unheavenly city populated by a minority underclass obsesssed with immediate gratification. We were to idle benignly until demographic currents played themselves out. That is academic jargon for forgetting the poor until they disappear.

Of course, the government cannot solve all problems, set all goals, or define vision. But let us also remember that there are many ills that can be only remedied by Federal government action.

Certainly, without the Federal government, most blacks would still be slaves, would still ride in the back of the bus, and take their meals behind the curtain, if at all.

Whatever problems with Federal Social Security, without it, "over the hill to the poor house" would be more than an aphorism.

We do not need urban myth makers to look down antiseptically from the library stacks. We need trained and sensitive observers to build information inductively from the mean streets.

I do not deify the notion of detached scholarship in isolation from the hurly-burly of reality.

But there is no conflict between the use of objective and quantitative methods, on the one hand, and the identification of appropriate social goals, on the other.

Thirty years ago, Gunner Myrdal framed his classic study of race in the United States with a sense of national purpose. His responsibility to humanity is no less acceptable today.

Mannheim's admonition that scholars recognize the values and biases which frame any inquiry still must be heeded. Nonetheless, a search for social facts without a sense of social principle is both mindless and sterile.

Academe has had the historic role of developing both fact and ideal. From the Greek philosophers to Kierkegaard and Chardin, fact and ideal have been embraced in assessing man's behavior and society's goals.

Hubert Horatio Humphrey, the commencement speaker of 1977, would not have it any other way, "Before the fact is the dream." This he wrote in his autobiography.

But even as a dreamer, Hubert Humphrey would have warned against seeking utopias now—rather than approximations of utopias that fit the inevitable compromises of political life

He would ask us to get things done, even if they were not all the things we wished done.

Similarly, the urban university has an obligation to sensitize not only its research but also its teaching to the demands of real-world problems and the needs of decision makers who seek to solve them.

Banjamin Franklin would have agreed. His utilitarianism and the influence of the Scottish enlightment created a tradition of the applied at Penn. Yet, over the years, there has been a creative interplay at the university between the practical and the theoretical. This process needs to be learned at many other major institutions.

It is not surprising, therefore, that most graduate students in this country are taught to write in a style suitable for academic journals. The dictates of academia traditionally have given more value to scientific writings than to popularly oriented works, even though the content of the latter may have significant social import.

A well-written Sunday New York Times piece can still retain scientific integrity and will also influence many more decision makers than an article in a specialized academic journal.

Unfortunately, few students are taught to write for top decision makers as part of government service. Decisions affecting thousands of human beings cannot and should not be on the basis of a clever and enigmatic journal essay.

A tough, pragmatic, insightful action document is required that facilitates making hard choices in a world of incomplete information and unremittant pressure. Options must be presented for and against contemplated action. There must be an understanding of the substantive issues, but also a deep sensitivity to budget constraints, administrative and congressional politics, communication, and timing. All must be woven into the fabric of analysis so that rational and wise decisions can be made.

Schools of law and business schools have prepared students for such analyses, and the graduate departments in other fields can profit by their example.

I would also urge more exposure to real world policy makers. Students must learn first hand about the difficulties of implementing noble ideas in the political marketplace. Their preparation must be psychological, as well as intellectual.

To accomplish all of this, there needs to be a better method for organizing the myriad talents on a university campus and directing them at the urban crisis.

In contrast to many other urban institutions the university is anchored in the community. It has a vested interest in the life of the city. A university cannot sell its assets and move its operations elsewhere. A symbiotic relationship exists between a city and its urban universities. If the city fails, the universities within it will surely suffer the same fate.

To insure survival, the response of the urban university cannot be superficial, dominated by public relations type programs.

It is the role of historically strong urban universities, like Pennsylvania, to lead the way in response to my challenges today. I ask for a fresh look at the academic response to the urban scene—discrimination, unemployment, inadequate housing, crime, and all the other problems we know so well.

A group of distinguished universities, including Penn, already has been formed to dea' with such issues—and the role of the university in the President's national urban policy. This is an encouraging development that has my full support.

The institutional self-renewal I hope for can help promote the self-actualization of the students and graduates of the universities. I look forward to a creative blend of the professionalism of the seventies and the social consciousness of the sixties.

The universities of this nation can help reverse the decline of deteriorating cities, and provide the theoretical anchor for a new era of vitality in our urban areas.

The world of ideas, the world of the university, has always been the basis for action.

Action requires boldness. Boldness commonly is perceived as a quality of politicians—but it really lies in the domain of the intellect.

The intellectuals of the university always have known that boldness has genius, power and magic in it.

Let us recapture such intellectual boldness and transform the cities of this nation with it.●

JOSEPH G. HURLEY

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. WAXMAN. Mr. Speaker, on Thursday. November 9, 1978, the North Hollywood Chamber of Commerce will hold its 64th annual installation of officers dinner dance. Joseph G. Hurley is

completing his second term as president and will be the honored guest of the chamber on this occasion. His contributions to his community are many. He has served as president and organizer of Operation Getaway, a nonprofit corporation which launched the North Hollywood redevelopment project, served for several years as a chamber officer and director, and was chairman of the chamber's planning and redevelopment committee. Mr. Hurley conducted shopper surveys of over 100 retail and food service establishments, produced the largest factbook and buyer's guide to date, expanded the North Hollywood map to include a tourist guide, and developed the Golden Jubilee of North Hollywood Park with arts, crafts, a trade fair and entertainment, which is now an annual event. He originated the dedication of one chamber breakfast annually to the fireman and the policeman of the year.

A trial lawyer for over 25 years, Mr. Hurley is a member of the subcommittee on International Trade Development of the Los Angeles City Economic Advisory Council, Pacific Rim Task Force, opening export markets for his community's businesses. He is a member of the executive committee of the citizens unit for participation in housing and community development, city of Los Angeles, bringing initial funds to North Hollywood to get the community redevelopment project underway. Mr. Hurley was president, during 1978–79 of Fernando Award, Inc., a prestigious civic award presented within the San Fernando Valley. He has served as regional chairman, professional division of the United Way. In 1977, he was special gifts chairman of the Lankershim District Boy Scouts of America. Mr. Hurley has also actively participated in his legal associations as a member of the Board of Governors of the California State Bar, trustee of the Los Angeles County Bar Association, president of the Burbank Bar Association and San Fernando Valley Bar Association trustee and a diplomate of the American Board of Trial Advocates. In addition, he serves as a director of the San Fernando Valley Business and Professional Association, vice-chairman of the St. Joseph Medical Center Advisory Board Community and Government Affairs Committee, an advisory board member of Providence High School, president of the Ralph M. Parsons Charitable Foundation, legal counsel to the North Hollywood Police Activities League Supporters (PALS), and a member of the East Valley Police Community Council.

I ask the Members to join with the North Hollywood Chamber of Commerce in honoring Joseph G. Hurley.●

CHILDREN IN NEED

HON. TIM LEE CARTER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. CARTER. Mr. Speaker, later this week my distinguished colleagues will have an opportunity to vote for the Child Health Assurance Act, H.R. 13611. This measure is designed to improve health care—particularly preventive health care—for our Nation's low-income children and pregnant women. I strongly support this proposal and I urge the House to give it very careful consideration. In that regard, I would like to insert in the RECORD an article from the Saturday October 7 Washington Post which urges passage of this legislation.

CHILDREN IN NEED

Study after study has documented the fact that millions of poor children in America receive inadequate health care or, in too many cases, no health care at all. Studies also have shown that the lack of early health care reduces the chance that those children will do well in school and go on to become productive members of society. That was what prompted the creation a decade ago of the federal Early Periodic Screening, Diagnosis and Treatment Program. Its purpose was to provide, through state health agencies, checkups and care to 13 million children eligible under the Medicaid program.

From the beginning, however, the program worked poorly. According to government officials, nationally fewer than a quarter of the eligible children are checked for childhood diseases and for other health problems. In Maryland, Virginia and the District, the number of children examined varies from 9 to 20 percent of those eligible. Yet the program's limited achievements, it seems to us, only underscore the compelling need to improve and broaden the effort.

Congress can do that quickly by passing a child health assessment bill before it recesses. Such a bill would do more than change the name of the federal effort. It would extend the program's benefits to an additional million children. The appropriate House and Senate committees, after a lengthy review, have produced somewhat different measures. Either is preferable to the current program. Both require states to serve more poor children by enrolling more doctors, hospitals and health clinics in the program. Both would channel more federal money to the states. And both contain regulations intended to improve federal administration of the program. The proposed changes would increase the current program's $200 million budget by half. In our view, that is a small price to pay for the benefits this program could bring to children in need.●

REUTHER ALTERNATIVE HIGH SCHOOL FIRST ALTERNATIVE HIGH SCHOOL IN WISCONSIN

HON. LES ASPIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. ASPIN. Mr. Speaker, a milestone in the Wisconsin public education system was achieved recently which I would like to bring to the attention of my colleagues.

This milestone was the accreditation of Reuther High School as the first alternative high school in the State of Wisconsin to meet the standards of other public secondary schools in the State. This is no little accomplishment for an institution that began in 1971 as a night school to provide high school diplomas for Vietnam-era veterans who dropped out before completing their education. The rest of the student body was composed of high school dropouts and students who, either by choice or financial need, held full-time jobs by day. Today, the enrollment at Reuther has doubled to 700 students and operates from 8 a.m. to 9 p.m.

The most fascinating aspect of this school is its educational philosophy which stresses the importance of the individual student. At Reuther, students play close, personal roles in planning, assuming, and mastering their curriculums. Individualized approaches, tailored to the needs of the students, are paramount in course content, teaching techniques, and class scheduling. A special technique receiving particular emphasis is the use of the resources of the local community and close-by metropolitan areas to enhance classroom studies.

One example of this field seminar approach by Reuther was a trip to Washington earlier this year to bring meaning and perspective to their social studies subjects. A story that appeared in the Kenosha News late last year describes Reuther Alternative High School, its philosophy and the purpose of the trip to the Nation's Capital. In my view, the accomplishments of Reuther High School, as described in this news story, may provide insights to other public education systems whose approach to learning generally may often place more value and emphasis on grades than on the realistic accomplishments of the individual student.

Mr. Speaker, I would like to share the full text of the Kenosha News article with my colleagues:

REUTHER GETS IT ON (AS IN "ROAD TO DISTRICT OF COLUMBIA")

(By Diana DeHaven)

(Kenosha's enterprising alternative high school again shows its pizazz: this time, in a program reducing politics to the gut-level.)

Reuther Alternative High School is just what the name implies, an alternative to tradition. And Pat Moran's social studies program is a reflection of that alternative.

"From our perspective at this school, the kids are turned off by tradition," Moran said, "So instead of reading about history or about politics, we get the figures, the personalities, to tell us firsthand what is going on."

The response so far has been positive, especially this year. We started off with Joan Haubrich from the school board and she explained what the board is all about. Then we had State Sen. John Maurer and he talked about state government. We discussed everything from the decriminalization of marijuana to how taxes are distributed. Talk show host Phil Donahue was our third speaker, and we'll have the governor and District Attorney John Banda here next month."

The program winds up in February with a six-day trip to Washington, D.C.

"We started this program last year with a forum of labor and political leaders in the city," Moran said. "People think of Reuther as the illegitimate child of the school system. We have no sense of community, like the other schools. When Bradford goes to Europe there is a real sense of unity and it is good for the system, for the community. This program and this trip are good things for the system, too."

The program has met with a favorable response from students and teachers. Donahue recently spoke to a capacity audience of

students, teachers and parents, all of whom reacted enthusiastically.

"We could bring in one of the most popular rock groups in the country and here would still be some kids who wouldn't like it," Moran said. "But so far it has really been positive."

Moran is especially excited about the Washington trip.

"At first, nobody took us seriously about this trip. They thought maybe, if we were lucky, we would get 15 kids to sign up. So far, 60 have signed up. I think that is great."

He feels the response has been good because Reuther students like to do things in a different way. "Most of the kids that come here are not in the jock syndrome, or they are not out to be cheerleaders or prom queens," Moran said.

"A lot of them have never had the chance to blossom out. These are the kids who weren't important at other schools. The fact that they are actually going on this trip and are going to accomplish something is important.

"These kids are different and they know it. Even though they are different they can still contribute in a constructive way. This is what they are starting to realize."

The trip is being organized by Wayne Smith, a former Kenoshan who has a public relations firm in Washington. While in Washington, students will visit the Washington Post, AFL-CIO Building, Justice Department, Executive Office Building, HEW and the Defense Department.

They will attend mini-seminars at the Congressional office building with Wisconsin representatives and hopefully will attend a performance at the Kennedy Center for the Performing Arts. Funds for the trip are being raised through students' efforts.

"If this trip works out it likely to be an annual thing," Moran said. "We are fortunate to be here and to have the flexibility to do this. I try to approach history from a contemporary perspective. It means nothing to the kids if they can't relate to it now. If this trip makes the kids better people then that is what counts.

"Next year we plan to initiate a program with Maurer, the mayor and Joe Andrea and take students to Madison for a week and let them see the workings behind state government. All this is important. I want the students to learn this."●

HOW SOVIETS PERSECUTE WORKERS

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. DERWINSKI. Mr. Speaker, too often, Americans hear only of a few aspects of Soviet life. As a result of this, many illusions have been created. Unfortunately, the suffering of innocent people behind the Iron Curtain has not ended, and many injustices continue to exist.

In his October 5 column, "Blue-Collar Views," Chicago Tribune's Mike LeVelle comments on the plight of the average Russian worker in his attempt to organize and join trade labor unions. I wish to insert his column at this time:

[From the Chicago Tribune, Oct. 5, 1978]

BLUE-COLLAR VIEWS—HOW THE SOVIET UNION PERSECUTES WORKERS

(By Mike LeVelle)

The Wagner Act in 1935 gave American workers the right to organize and join labor unions. Workers in the Soviet Union and other Communist countries still do not have that right.

A recent report from Amnesty International, a worldwide watchdog agency on human rights, tells of the attempts of some Russian workers to form the "Association of Free Trade Unions of Workers in the Soviet Union."

According to the report, workers who have attempted to form the union are being fired from their jobs and then sentenced to prison terms on charges of "parasitism."

Parasitism is defined under the Soviet criminal code as "shirking socially useful labor." It's sort of a Russian Catch 22 whereby the worker is fired from his job and then sent to jail for the crime of being unemployed.

One of the spokesmen for the workers' group is Vladimir Klebanov, who for 16 years was a foreman in a coal mine in the Ukraine. Klebanov was fired in 1968 for refusing to force his men to work overtime and for not sending them into mine areas which he thought were unsafe.

Klebanov wrote a letter to the authorities complaining about the high accident and fatality rate at the mine. He was ruled mentally ill and confined to a maximum security special psychiatric hospital from 1968 to 1973.

Klebanov has been arrested about five times since 1973.

According to Amnesty International, the new workers' group was formed last January and now claims to have about 200 members in the Soviet Union.

Members of the group seem to be constantly abused by Soviet police. By February, 10 of the workers who signed the manifesto declaring the existence of the union were arrested, four were confined to psychiatric hospitals, and seven others were reported missing.

The trade union association charges that dozens of workers have been put in psychiatric hospitals in recent years for protesting against working conditions. The workers have sent appeals to the United Nations and to the International Labor Organization [ILO] in Geneva.

Considering the "socialist" makeup of the UN and the ILO, the appeals probably will be tabled unto infinity.

What can American labor leaders do to help their Russian brethren or at least save them from further punishment and possible death sentences? [Considering the resurrection of Stalinism in the Soviet Union, death sentences are not out of the question.]

Labor could do a number of things. Among them is to put some pressure on our UN ambassador, Andrew Young, to speak up at his various podiums concerning the plight of those workers in Russia. Labor could also make it plain that Russian visitors to the United States calling themselves trade unionists are in fact government-appointed stooges.

Those "trade unionists" ought to be questioned sharply at every union office or hall that they enter. They ought to be shamed or shunned wherever they have the nerve to show their faces.

There are some American left-wing labor leaders who will continue to gush over these fakers and call any sharp questioning of them a return to the Cold War. Such American labor leaders should be held in the same contempt as the fakers.

International understanding is not advanced by those who would play deaf, mute, and blind. Until the Soviet Union allows some decent measure of freedom to Soviet workers, their visiting "trade unionists" ought to be treated as we would treat an appointed trade unionist from a fascist country.

The Amnesty International report on the "Association of Free Trade Unions of Workers In the Soviet Union" is available from Amnesty International, 2112 Broadway, New York, N.Y. 10023.●

WILLARD AND RITA CHOTINER AND THE BRANDEIS-BARDIN INSTITUTE

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. WAXMAN. Mr. Speaker, on November 5, 1978, Willard and Rita Chotiner will receive the Shlomo Bardin Award, given annually by the Brandeis-Bardin Insitute. The Chotiners' association with Brandeis-Bardin began more than 25 years ago. Willard and Rita Chotiner have both contributed a significant portion of their lives to the growth and development of the institute and to numerous other Jewish concerns in the community.

The Brandeis-Bardin Institute was founded in 1941 by the late Dr. Shlomo Bardin at the urging of the late Supreme Court Justice Louis D. Brandeis. The Brandeis-Bardin Institute conducts programs and special activities for college age youth, community leaders, children, and the House of the Book Association for Adults. The Chotiners have been deeply involved in every aspect of the institute's work. They have dedicated themselves to the institute's ideal; living a Jewish life which is joyous, satisfying, and provides a full ethical framework for Jews and non-Jew alike.

Willard Chotiner has served on the Brandeis-Bardin board since 1954 and has been intimately involved in virtually every aspect of the institute. He served as president of the House of the Book in its infancy, and was president of the institute from 1962 to 1965 and also in 1977, the critical transitional year after Shlomo Bardin's passing. A member of the Jewish Federation Council Board since the late 1950's, Willard Chotiner has been an officer since 1970 and vice president of the planning department for the past 3½ years.

Mrs. Rita Chotiner, a Brandeis-Bardin board member since last year, has worked continuously through the years on numerous projects—from planning the early tree planting festivals and co-chairing the institute's first public fundraiser, through last year's award dinner. She was instrumental in developing the library to its present size and quality, and served as librarian for more than 15 years. Mrs. Chotiner is currently a board member of the Jewish Federation Council, and serves on the Los Angeles Bureau of Jewish Education. She is also a member of the executive board of the American Jewish Committee and the Women's Conference. In addition, both of the Chotiners have been intensely involved with the Soviet Jewry movement.

The Chotiners, both residents of Los Angeles since their youth, have two children, Harry and Renee.

I ask the Members to join with me in extending congratulations to Willard

and Rita Chotiner as recipients of the Shlomo Bardin Award, and good wishes for the continuing good work of the Brandeis-Bardin Institute.●

THE OLYMPIC SPORTS BILL

HON. WILLIAM L. ARMSTRONG

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. ARMSTRONG. Mr. Speaker, there has been much comment and inquiry about the olympic sports bill. My own views on the desirability of this bill are well known and I believe its passage will be seen by history as one of the important accomplishments of the 95th Congress. It will mark a new era in amateur athletics in the United States.

Yet, despite my own strong feelings about this bill, I realize that there has been much misinformation and misunderstanding concerning it. At this time, therefore, I want to place in the RECORD a letter to the editor of the Washington Star, written by Representative BOB MICHEL. In his usual clear and frank way, BOB sets the record straight on the sports bill.

[From the Washington Star, Saturday, Oct. 7, 1978]

WE FIRED ON FRIENDLY TROOPS!

(By Robert H. Michel)

Your editorial, "Deserved defeat" (Sept. 28), concerning the Olympic Sports bill of which I am a co-sponsor, contains the kind of rhetorical flourishes I usually applaud: "Statist athletic establishment . . . hollering for federal aid . . . perverse bill . . ." How often in 21 years as a Republican congressman in a Democrat-controlled Congress have I not razzed the opposition in similar terms? There is nothing I enjoy more than a full-throated roar of conservative outrage against a bill that will enable the government to interfere in areas it ought to stay out of.

There is only one thing wrong with your editorial—it directs its admirable wrath against a bill that is in no way statist, involves no "hollering" for federal aid and is anything but perverse. When Bob Michel and Jack Kemp—just to mention two of the cosponsors who are not known as statist flunkies—join forces, it sought to be self-evident that no wild-eyed liberal skullduggery is afoot.

The point of the bill is not, as you suggest, to make American amateur athletics imitate the "ungentle regimes like East Germany where sport, like every other function, is rigidly controlled to the greater glory of the State." Quite the contrary, our bill, created along the lines suggested by a presidential commission on sports of which I was a member, will help to keep the federal government out of amateur athletics.

As you know, such distinguished Americans as the late Gen. Douglas MacArthur and Sen. Robert F. Kennedy tried—and failed—to bring some common sense and organizational structure to the crazy-quilt of conflicting jurisdictions that has for so long hindered the progress of amateur athletics in the United States. Our bill can and will do exactly that, without setting up a statist establishment.

The U.S. Olympic Committee is not now and never has been a federally controlled organization. It does operate under a federal charter and it is this charter which our bill seeks to amend in order to make the Olympic Committee the sole determining body for amateur athletics in the United States.

Let me attempt to answer some of the points raised in your editorial:

Is this bill, as the Star suggests, just the start of federal funding for amateur athletes in the United States? No, indeed. Those of us who have sponsored the bill seek to do the opposite. We wish to make this a single, "one-shot" bill with a limited, specific purpose. This is not "a foot in the door." In fact, if anyone should misconstrue the limited purpose of this bill and try to use it as a means for continuing federal support for amateur athletic activities, I would have to fight such a move with all the resources at my command, and I am confident the co-sponsors of the legislation feel the same way.

Are the bill's sponsors satisfied as to the way in which the money will be spent? Will this be a taxpayer rip-off to pad the payrolls of USOC executives? In a letter to Chairman Danielson of the subcommittee on administrative law and government relations of the Judiciary Committee, Executive Director F. Don Miller of the USOC outlined in considerable detail the way in which the money will be spent, and the USOC is obligated under the legislation to report this to the president and the Congress.

One of the worst things I can think of would be for the federal government to take over amateur athletics. If we ran our Olympic teams the way we run the Postal Service, our marathon runner would finish three days later than everyone else. No, this bill in no way gives the government either the power or any good reason to dictate the conditions under which amateur athletic programs will be run.

I applaud *The Star's* good intentions, and I want you to know that although your barrage was accidently aimed at friendly troops, I look forward to joining you when a real statist threat emerges.●

WASHINGTON BUREAUCRACY OUT OF CONTROL

HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. COLLINS of Texas. Mr. Speaker, there is a great deal of talk going around our country today about the necessity to increase productivity. Of special interest to us in Washington should be the productivity of our Washington bureaucrats. Today, I would like to discuss the importance of the Civil Service Reform bill. One of the substantial amendments which was passed in September was one of my own, which preserved essential collective bargaining between labor and management, upheld management's policymaking powers, assured union bargaining rights on personal issues, established a new Federal labor relations authority, forbids strikes and prohibits picketing that interferes with the conduct of Government. It is essential that the free market operate in the private sector as well as Government so that productivity over the broad range of activities that occur in our country can be increased.

Also, I feel it is especially important to note that we cannot permit productivity to be hindered by unwarranted political and bureaucratic interference.

Productivity in America is being thwarted through the ever-expanding tentacles of Federal regulation. For instance, the Library of Congress has provided me with figures that indicate that since 1960 the Code of Federal regulations (CFR) has expanded from 22,876 pages to over 74,000 pages for a 226 percent increase. Similarly, over the same period, the annual size of the Federal Register has increased some 349.8 percent, that is to say that in 1977 alone there were 65,129 pages updated. The chart below illustrates the constant expansion of the printed record of these regulations.

Year	Code of Federal Regulations		Federal Register	
	Percent change	Pages	Percent change	Pages
1977	226.25	74,634	349.81	65,129
1976	219.76	73,149	294.17	57,072
1975	211.71	71,307	315.91	60,221
1970	138.16	54,482	38.37	20,036
1965	56.58	35,821	18.70	17,187
1960	Base	22,876	Base	14,479

Source: Library of Congress, 1978.

Over the same period since 1960, approximately 400,000 employees have been added to the Federal payrolls, and we must assume that this approximate 20 percent increase in Federal civilian employment is in some way attributable to the need to manage these extra regulations. The most alarming point about the increase in Federal employees is the increase in Federal payrolls. The monthly Bulletin of Federal Civilian Work Force Statistics produced by the Civil Service Commission shows that Federal civilian employment payrolls between 1960 and 1977 have increased 252.97 percent to a current level of $46.74 billion, even though over the same period, the number of Federal civilian employees increased only 16.9 percent.

FEDERAL CIVILIAN EMPLOYMENT AND PAYROLLS, 1960 TO 1970

Item	1960	1965	1970	1975	1976	1977	Percent change base 1960
Total employment (thousands)	2,430	2,539	2,928	2,882	2,879	2,841	16.9
Total payroll (millions of dollars)	13,243	18,020	28,562	40,699	42,259	46,744	252.97

Source: Civil Service Commission, Federal civilian work force statistics.

Surely, Mr. Speaker, it must be evident that if the salary of the marginally larger Federal work force has increased by 250 percent, our bureaucrats are being handsomely rewarded for overloading the American economic system with this even more pervasive regulation.

Total direct spending at all levels of government rose from $79.7 billion in fiscal year 1946, to $626.1 billion in fiscal year 1976, for an increase of almost eightfold. Furthermore, the Department of Commerce's Bureau of Economic Analysis has supplied me with data that illustrates in the chart below that between 1960 and 1977 the amount of Government spending expressed as a percent of the national income has increased from 33.1 to 41.0 percent.

GOVERNMENT SPENDING AS A PERCENT OF NATIONAL INCOME

[Dollar amounts in billions]

Year	Total government sector	National income	Percent
1977	$621.8	$1,515.3	41.0
1976	575.4	1,348.4	42.65
1975	530.8	1,207.6	43.95
1970	311.9	798.4	39.07
1965	187.8	566.0	33.18
1960	136.4	412.0	33.11

Source: Department of Commerce, Bureau of Economic Analysis, July 1978 Survey of Current Business.

The significance of the increase in the percentage of Government spending must be viewed in relation to the total productive capacity of our country, in that Government sector spending "freezes out" growth that would otherwise be available to the private sector. What all this means is that expansionary Government spending policies can be related in some way to the decline in overall industrial productivity in America. That is to say that our out-of-control bureaucracy is limiting the amount of resources that at any one time can be put to otherwise productive uses. A more direct example of expansionary spending and regulatory policies is that General Motors Corp. publicly acknowledges that for the past 4 years they have had to spend approximately $1 billion a year to cope with Federal regulations. That was $1 billion a year which could have been invested in productive uses.●

ILLEGAL IMMIGRATION VI

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. SISK. Mr. Speaker, the Los Angeles District's outgoing immigration chief, Joe Sureck, was the subject of a recent Los Angeles Times article by Bob Williams. The article speaks for itself:

INS CHIEF CALLS ALIEN INVASION A TRAGEDY

(By Bob Williams)

Joe Sureck, Los Angeles district's outgoing immigration chief, paused in the midst of packing the cardboard boxes scattered over the floor of his office in the Federal building downtown and offered a visitor "the views of a departing bureaucrat" on the subject of illegal aliens

"What I think we're witnessing," he began, "is the strange spectacle of the world's most powerful nation passively accepting a massive intrusion by foreign nationals . . .

"Somehow the American public must be confronted with the fact that there has been a real breakdown in our (immigration) system.

"They should know that the government is making only a token effort to control a situation that is rapidly assuming tragic dimensions, both for us and the people who are flooding across our borders."

He shrugged. "I don't know what can be said. There is a lot of discouragement when every day we practice the same exercise in futility . . .

"But let me say this: I think it's incredible—just unbelievable—that the United States, through its inaction and total lack of a coherent national policy, would give up its sovereign right to control its own borders. But that is what we've done."

Sureck, a soft-spoken, scholarly looking man with 38 years in the U.S. Immigration and Naturalization Service, often has been at the center of a growing controversy over illegal aliens during his four years as district director.

His insistence on "balancing public service with vigorous enforcement of our immigration laws" has drawn the wrath of pro-immigrant groups, which consider him unsympathetic to the problems of immigrants trying to settle in this country.

Last year, he clashed with Brown Administration officials, accusing them of "ignoring and disregarding federal and state laws and policies" designed to curb illegal immigration. He urged the state to enforce the Dixon Arnett Act which would penalize employers who hired illegal workers.

Now Sureck has been reassigned as district director of the INS office in Hong Kong. He was scheduled to leave today for the Far East with his wife, Grace. They have sold their Highland Park home.

Sureck, 64, said he has asked for the reassignment "after four back-breaking years in this office" and planned to serve out his preretirement years in the Hong Kong post.

Other officials in the Lost Angeles office were reluctant to believe that "Joe is leaving entirely of his own volition." They said that Sureck has been on INS Commissioner Leonel Castillo's "hit list" of senior officials who oppose his "liberal" immigration policies.

"If Joe says he made the decision (to take the Hong Kong post) without pressure, we have to believe him," said one official, who asked that his name not be used.

"But you can bet that Mr. Castillo and his advisers heaved a sigh of relief, because now they have a chance to get someone in here who will toe the mark."

The official said Sureck's successor would be required to speak fluent Spanish—a new requirement for the Los Angeles post.

"What that means to a lot of us," the official said, "is that Castillo wants to get a Latino activist like himself in here to head up our operations.

"Then we can forget completely about law enforcement and concentrate more of our efforts on serving the illegals—and I'll be damned if I'll call them 'undocumented workers'."

(Castillo has instructed INS employes to use "undocumented immigrants" in place of the traditional term, "illegal aliens." Sureck and other INS officials, while carefully using the new official term in public, have charged that is a "euphemism designed to downplay the fact that these people are here in violation of our laws.")

Sureck's deputy Omer G. Sewell, has been in active charge of the Los Angeles office in recent weeks, while Sureck wound up his personal affairs and took a crash course in Cantonese.

Last week the Los Angeles City Council unanimously passed a resolution, introduced by Councilman Arthur K. Snyder, commending Sureck for his "brilliant professional leadership, fairness and firmness . . . during a period of acute immigration problems."

In the interview with The Times, Sureck sought to detach himself from the resentment that other officials have expressed against Castillo.

Castillo, a 39-year-old Mexican-American and former Houston city controller, was appointed by President Carter to the top INS post last year, replacing Leonard F. Chapman, a hard-line advocate of immigration law enforcement.

"Actually, Mr. Castillo is a fine gentleman and I kind of like him," Sureck said, adding after a pause. "Of course, he does have these conflicts."

He declined to elaborate on Castillo's "conflicts," but presumably referred to the commissioner's public record in Texas as a Chicano activist before his federal appointment and his reported difficulties in satisfying either side in the illegal alien controversy.

"Let me say that I'm not against giving the public better service," Sureck said. "We have made important strides in that direction, but still it's an unfortunate fact that people who come to us with legitimate inquiries have to wait an inordinate time.

"At the same time, we must not lose sight of the fact that inadequate enforcement is creating many of these problems by permitting—even encouraging—more and more people to come into the country . . .

"Now Mr. Castillo has been fairly firm about stopping people at the border, but he seems to have little concern about locating and removing the undocumented immigrants once they get into the interior of the country."

In the two-hour interview, Sureck returned repeatedly to his theme of "respect for the law."

"That's where the system is breaking down," he said. "Every day I see this wholesale violation of the law. I hear people saying that illegal entry and residence in this country is merely a socio-economic violation.

"But would you be willing to excuse a stranger, however likeable and eager to please he might be, if he came uninvited into your house and made himself to home—then a little while later, invited all his friends and relatives to join him?

"No, you wouldn't like that and you would call the police or the sheriff and demand that they remove these law violators. But what if they and everybody else said these people now have a right to live in your home because they are trying to improve their lot?"

Sureck leafed through a manual of INS regulations and slipped it into one of the cardboard boxes.

"What I've been saying, over and over again," he said, "is that Congress has given us immigration laws and we should enforce them. If the people want unrestricted immigration, if they feel that any person in the world has the right to live and work in this country, then let's change the law to conform with what we're actually doing.

"But let's not continue to cheapen the prize of U.S. citizenship and spread disrespect for the law."

Sureck's regard for the law fits his background. A native of Oklahoma City, he received his law degree from the University of Oklahoma and practiced law until entering the immigration service in 1940.

During World War II, he commanded a B-24 training squadron at what is now Edwards Air Force Base. He returned to the INS in 1946 and served in a variety of legal positions in Detroit, Washington, D.C., Hawaii

and San Pedro before being promoted to district director in Los Angeles in 1974.

In the last two years, Sureck stepped up his schedule of public speaking engagements, offering to appear at any forum on immigration.

"In almost all of these meetings," he said, "I found myself a minority of one . . . but afterward some people did come up to me and say they agreed with my position.

"But they are afraid to speak out in public because they feel intimidated by these very vocal spokesmen for the undocument immigrants."

He said "at least half of the people in the Mexican-American community—and probably many more—want immigration controls, because they are being hurt by this loss of jobs (to illegal aliens)."

Sureck disputed claims that illegal aliens take only low-paying, menial jobs that no one else wants.

"We have dealt with employers (of illegal aliens) who were able to fill their job openings with U.S. citizens and legal residents, once they offered a decent, living wage," he said.

Chapman, the former INS commissioner, reported that 40 percent of illegal aliens apprehended in the Southwest were working in the construction industry and that "it was not at all uncommon to find illegal workers in skilled trades or even the professions."

"So were talking about hundreds of thousands of jobs that are not available to legally qualified workers," Sureck said. "These people must look elsewhere or go on the unemployment and welfare rolls."

Sanctions against employers of illegal aliens is the only way of drying up the jobs that attract foreign workers, Sureck said, "but there is powerful opposition against even that basic step."

Another measure "fiercely opposed" by pro-immigration groups, he said, is a change in federal laws which would empower local law enforcement officials to arrest illegal aliens.

"If a person is violating any law of our country," Sureck said, "then any law officer should be able to arrest him for that violation."

Until national leaders agree on an immigration policy, Sureck said, the INS "must struggle to keep its head above a rising flood of paperwork," much of which is generated by pro-immigrant groups "which harass us constantly and try to delay (the deportation) of people who have no recourse under the law—and they know it."

He said some militant groups are motivated by "humanitarian concerns that we all share. Or they have a feeling of kinship with people in their own native lands, and many of these sympathizers admit that they or their parents once entered the country illegally.

"We also know activists who have a political motivation. They see the presence of a large population of undocumented immigrants as a base for a great and important political force in the future. And I can tell you that their influence has already become very great."

Sureck gazed reflectively out the window of his eighth-floor office, looking for what he called "the bottom line."

"Some employers will continue to reap the short-term benefits from having a large pool of cheap labor at their disposal," he said.

"Many average Americans would prefer to stand aloof from this problem because they have not yet felt the impact in their own pocketbooks. . .

"And there are many who congratulate themselves on their generous sympathies. . .

"But this country cannot absorb an unlimited number of the world's poor people, and in the long run we will all pay a price—a very terrible price—for abandoning our sovereign rights and failing to uphold our own laws."●

HOLLYWOOD'S DIAMOND JUBILEE

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. WAXMAN. Mr. Speaker, there is scarcely a place in the world or a person in it that has not been touched by the magic of Hollywood—the birthplace of moving pictures, talking pictures, and most TV programs. On November 14, 1978, Hollywood will celebrate its 75th anniversary with a special on CBS–TV—Pierre Cossette's "Hollywood Diamond Jubilee." The network has scheduled this salute in recognition of Hollywood's contributions to the entertainment industry and the Hollywood community's role in rebuilding the historic hillside "Hollywood" sign which symbolizes Hollywood throughout the world.

Thanks to the CBS special, tens of millions of people will be enabled to witness the formal unveiling of the famous landmark, rebuilt in exactly the same spot and with letters of exactly the same size as before—each one being about 50 feet high and 30 feet wide. It is the largest sign in the world. Each letter will require the service of helicopters to be raised to the top of Mt. Lee and set into place.

Costing $27,700 each, public donations were sought, and a number of eminent citizens within and without the film industry underwrote the cost of the individual letters. Rock star Alice Cooper contributed the cost of a letter in memory of Groucho Marx. Warner Brothers Records, Andy Williams, Gene Autry in conjunction with KTLA, Terrence Donnelly, publisher, and Dennis Lidtke of Gribbitt Graphics all contributed letters. Hugh Hefner and Playboy Enterprises hosted a star-studded party at the Playboy Mansion West, and Hollywood Chamber of Commerce Jack Foreman was able to announce that $45,000 collected at the party would be used to rebuild the "Y," and only two letters remained to be sponsored. Italian movie producer Giovanni Mazza, who is moving his production company to the United States donated the cost of a letter, and when Les Kelley, originator of the Kelley Blue Book contributed $27,700 for the ninth letter, the cost of the sign was fully pledged. Public contributions will be used to establish a permanent maintenance fund.

No one would have guessed from Hollywood's early days that the area was destined to have a prominent place in the history of entertainment. On November 14, 1903, 165 registered residents in Hollywood voted 88 to 77 to incorporate Hollywood as a separate city. Like all places located in semi-desert areas, Holywood was perplexed with the need of supplying its growing population with water. The local supply being grossly inadequate, the only alternative seemed to be to join with the booming city of Los Angeles, and this was done in 1910. In a fairly short time pioneers of a new industry looking for a suitable place for their work began to build the Hollywood known around the world. The forerunners of the motion pictures found the climate of southern California very well suited to their needs. In 1907 the first picture was made in the area by Col. William Selig, and in 1910. David Horsley leased a corner at Gower and Sunset for his Nestor Co. studio—the first Hollywood studio. Before the end of the year, 15 movie companies had located close by.

The first full-length picture was created in 1913 when Cecil B. DeMille, Jesse Lasky, and Samuel Goldwyn produced "The Squaw Man" in a barn just a block from Hollywood and Vine.

It is impossible to recount the enormous growth of Hollywood step by step—its satellite industries—clothes, wardrobes, sets, props, film processors, camera manufacturers, lighting and sound equipment and technical services are only a few. With the advent of sound, in spite of temporary and cyclical setbacks the industry grew by leaps and bounds. During World War II there was an insatiable demand for films which the industry could scarcely supply.

With the coming of commercial television, the film industry had grown soft from the ready demand for their product, and suddenly found that people by the millions preferred to stay home and watch their television screens. While many theaters closed down and there is no longer a market for hundreds of films each year, Hollywood has again adjusted. Films have changed from quantity to quality and old-time motion picture studios now specialize in TV production. The sound stages are all booked and busy.

To the various guilds, to all the businesses and studios and production companies, to the chamber of commerce and to all the citizens of Hollywood, my warm congratulations upon your 75th birthday. I am proud and honored to present the Hollywood community in Congress. I look forward to celebrating your 100th anniversary.●

THE ANTI-INTELLIGENCE LOBBY AND MORTON HALPERIN'S "CAMPAIGN TO STOP GOVERNMENT SPYING"

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. McDONALD. Mr. Speaker, Congress continues to be the target of a well-funded special interest lobby that has spent the past 4 years working to cripple America's domestic and foreign intelligence-gathering capability. The leadership of the anti-intelligence lobby is a small group. Its members include associates of the Institute for Policy Studies (IPS), a Marxist think tank, who have ties to Communist governments and their intelligence services; a group of lawyers, many of whom have worked for and within Communist governments and international front organizations; some old-time Communist Party, U.S.A. (CPUSA) members; and a handful of disgruntled former public officials who

supported the Communist aggressors in Indochina.

The anti-intelligence lobby leaders work through a number of interlocking organizations including the American Civil Liberties Union (ACLU) and Center for National Security Studies (CNSS). The ACLU proclaimed its hostility to intelligence gathering in its 1970–71 annual report which said:

> The ACLU has made the dissolution of the Nation's vast surveillance network a top priority. * * * The ACLU's attack on the political surveillance is being pressed simultaneously through a research project, litigation, and legislative action.

The goals of the CNSS are equally extreme, and belie Morton Halperin's efforts to appear as reasonable as possible during his frequent Capitol Hill appearances to urge still greater congressional restrictions on the FBI and CIA. In answer to its own rhetorical question, "Should the U.S. Government continue to engage in clandestine operations," CNSS responds:

> We at the Center for National Security Studies believe that the answer is "No."

Therefore, it is to be expected that Morton Halperin's "grassroots" lobby, the Campaign to Stop Government Spying (CSGS), has as its goal "to insure an end to all domestic political surveillance and covert operations abroad."

Halperin is typical of the disgruntled former Government officials who have attached themselves to the anti-intelligence lobby. He was a senior member of the National Security Council from 1969 to 1972, and from 1967 to 1969 was a Deputy Assistant Secretary of Defense. Halperin recently won a damages award, because he was the subject of a warrentless national security wiretap. Halperin has released only carefully selected excerpts of the files and transcripts maintained by the Federal investigatory agencies during the investigation, and he has tried to present himself in the most innocent light. Actually the wiretap and investigation of Halperin were precipitated, because he was one of those in part responsible for setting up the conditions under which Daniel Ellsberg was able to steal the Pentagon papers and leak our codes and secrets to our enemies.

In the more recent past, Halperin has associated himself with the notorious Counter-Spy magazine, formerly published by the Organizing Committee for a Fifth Estate which revealed the CIA identity of Athens station chief, Richard Welch, assassinated shortly after a Greek newspaper reprinted the news. Halperin's CSGS has taken over the old Counter-Spy magazine speakers bureau; members of the Counter-Spy advisory board and its contributors staff the CNSS, and former members of the Organizing Committee for a Fifth Estate (OC–5) work for the CSGS and the related Project on Government Surveillance of the American Friends Service Committee (AFSC).

But Morton Halperin's collaboration with CIA defector, Philip Agee, a self-styled "revolutionary socialist" whose continuing associations with Communist-bloc intelligence personnel in Western Europe have resulted in his expulsion from England, France, the Netherlands, and Belgium continues. For example in January 1977 Halperin flew to London to assist Agee in his activities and told the press that he was trying to arrange a campus speaking tour for Agee should he return to the United States.

Following his expulsion from the Netherlands, Agee moved to Italy where he worked on his latest "hit list"—a new book, "Dirty Work: The CIA in Europe" (Lyle Stuart: New York, $24.95), with Louis Wolf now a Washington, D.C., resident. This publication contains some 300 pages of dreary reprints of anti-CIA articles, and some 400 pages claiming to be a compilation of the identities of U.S. CIA officers working overseas under diplomatic cover.

The articles in the Agee "nonbook" include diatribes authored by such persons as CNSS anti-CIA project director, John Marks; by CIA defector, Victor Marchetti, who tried to follow in Agee's footsteps last year by attempting to destabilize the Government of Norway and influence the September 1977 parliamentary elections with an Agee-style CIA expose; Paul Jacobs, a long-time Communist Party, U.S.A. member and fellow of the Institute for Policy Studies/Transnational Institute, now deceased; Mark Hosenball, one of Agee's "leg men" in London and son of the general counsel to the National Aeronautics and Space Administration (NASA); and by NACLA associates, Steve Weissman and Nicole Szulc.

It will be recalled that both Steve Weissman and Nicole Szulc have had long associations with Agee; Weissman, a veteran of the Free Speech Movement in Berkeley, Calif., and of Ramparts magazine, as an assistant in the production of the Agee book, and Nicole "Nickie" Szulc, as a contributor by way of a "New Left" Spanish magazine "Cambio 16." Miss Szulc, who received complements from Agee for her assistance in his earlier book, "Inside the Company," is the daughter of journalist Tad Szulc and worked for the North American Congress on Latin America (NACLA), a Castroite group that collects information both overtly and by its covert sources on the U.S. Government and on the major corporations. It will be recalled that among the papers of the late Chilean KGB agent of influence, Orlando Letelier, was a letter from NACLA staffer, Elizabeth Farnsworth, identifying a Treasury Department economist, Richard Feinberg, as a NACLA covert contact. Feinberg is currently working for the policy planning staff of the State Department headed by Anthony Lake, who doubtless coincidentally participated in a panel discussion with Morton Halperin and Richard Holbrooke at the first Center for National Security Studies conference on Capitol Hill in September 1974, a conference organized by Nickie Szulc, then on the CNSS staff.

And, Mr. Speaker, it is not surprising that Agee chose to reprint a Morton Halperin's article, from the Washington Post, on alleged CIA "news management" by which Halperin means saying true things in public about the responsibility of the Counter-Spy magazine/OC–5 group for the murder of Richard Welch in Athens.

THE CAMPAIGN TO STOP GOVERNMENT SPYING

The Center for National Security Studies had announced at its first public conference in September 1974, that its priorities included the organization and coordination of a "Citizens' Project on National Security" to develop the illusion of a widespread anti-intelligence agency movement against both local and Federal agencies. Nevertheless, matters of funding and staff delayed formation of the grassroots anti-intelligence front until early last year when the leaders of the anti-intelligence lobby held a "National Conference on Government Spying," January 20–23, 1977, at Northwestern University in Chicago. (For a detailed report on the meeting see "Conference Against Intelligence-Gathering, parts I and II, CONGRESSIONAL RECORD, January 31 and February 1, 1977.) Although many of the ordinary street activists opposed formation of a centralized, Washington-based organization to direct what was supposed to be a "grassroots" movement, the anti-intelligence elite went forward with the Campaign To Stop Government Spying under Morton Halperin's directorship. (A report on the debut of the Campaign To Stop Government Spying appeared in the CONGRESSIONAL RECORD, April 27, 1977, under the title, "Campaign To Outlaw U.S. Foreign and Domestic Intelligence.")

According to the Campaign To Stop Government Spying (CSGS), its goal is "to insure an end to all domestic political surveillance and covert operations abroad." The CSGS goal is no more extreme than that of its parent, the Center for National Security Studies, which in answer to its own rhetorical question, "Should the U.S. Government continue to engage in clandestine operation," responded:

> We at the Center for National Security Studies believe that the answer is "No."

CSGS staff include Peggy Shaker, coordinator; Hal Candee, coordinator for the speakers bureau and campus anti-intelligence organizing; Linda Lotz, editor of the monthly CSGS newsletter, Organizing Notes, and in charge of public information; Damu Smith, CSGS field organizer and representative at the 11th World Youth Festival, sponsored by two Soviet fronts, the World Federation of Democratic Youth (WFDY) and the International Union of Students (IUS). The 11th World Youth Festival featured a "Youth Accuses Imperialism" tribunal in which Cuban intelligence officers and representatives of a number of Marxist terrorist organizations joined with CIA defectors including Philip Agee in denouncing the CIA.

Halperin's Campaign to Stop Government Spying remains closely linked to the successor to the OC–5 and its Counter Spy magazine, the newly formed Counter-Watch (CW), with CSGS assisting in the distribution of CW's publication, the Covert Action Information Bulletin, to which I alerted my colleagues

on August 1 of this year in the CONGRESSIONAL RECORD, pages 23799–23801.

The CSGS is directed by an executive committee led by its founder and "chairperson," Morton Halperin. Other members of the CSGS executive committee include Margaret Van Houten, a former member of the OC–5/Counter-Spy who has left the CSGS staff to work with the American Friends Service Committee (AFSC) in its anti-intelligence program; Jerry Berman, ACLU; Robert L. Borosage, director of the Institute for Policy Studies and former codirector of CNSS; Dorothy Samuels of the Committee for Public Justice (CPJ), another anti-intelligence group affiliated with the ACLU and headed by former CPUSA member Lillian Hellman; Jimmy Durham, International Indian Treaty Council (IITC) of the American Indian Movement (AIM); and Esther Herst, formerly active with CPUSA's Young Workers Liberation League (YWLL) in Chicago and now Washington, D.C., organizer for the National Committee Against Repressive Legislation (NCARL), a CPUSA front.

Other organizations represented on the CSGS executive committee include:

Women's International League for Peace and Freedom (WILPF)—an organization thoroughly penetrated by the Communist Party, U.S.A. and which works intimately with the USSR's international fronts, particularly the World Peace Council (WPC) and the Women's International Democratic Federation (WIDF), in providing political support for terrorist "national liberation movements" while encouraging disarmament of the West.

National Conference of Black Lawyers (NCBL)—a spinoff from the National Lawyers Guild (NLG) and like the NLG, a U.S. affiliate of the Soviet lawyers front, the International Association of Democratic Lawyers (IADL).

Clergy and Laity Concerned (CALC)—an organization formed from the National Council of Churches in 1966 which became the principal support group for the Vietcong in the U.S. religious community, participating in meeting organized by the Soviet World Peace Council attacking U.S. support for South Vietnam. CALC director Don Luce was one of nineteen persons who signed a New York Times ad on January 30, 1977, praising the Vietnamese Communists for imprisoning 40,000 South Vietnamese in concentration camps.

National Alliance Against Racist and Political Repression (NAARPR)—a Communist Party, U.S.A. front active in the prison movement headed by CPUSA Central Committee member Charlene Mitchell.

Puerto Rican Socialist Party (PSP)—a Castroite Marxist-Leninist organization that is the parent of a number of terrorist cadres including the Armed Commandos of Liberation (CAL) and the more recent FALN.

Additional organizations represented on the CSGS executive committee include La Raza Unida Party (LRUP), a militant organization whose leaders maintain ties with Mexican and Cuban revolutionaries; a Ralph Nader organization, the Citizens Energy Project/Center for Science in the Public Interest; the National Organization for Women (NOW) in which a number of U.S. revolutionary groups are active; and the United Church of Christ Office for Church in Society, a bureaucracy whose work with the associates of Philip Agee has never been put to a vote of the members of UCC congregations.

The CSGS also has a steering committee of representatives of its affiliated groups, in addition to those on the executive committee. The organizations on the steering committee include:

Afrikan People's Party (APP).

Americans for Democratic Action (ADA)—an organization noted for anti-anticommunism and its opposition to intelligence gathering and investigation of violence-prone and subversive organizations.

Assassination Information Bureau (AIB)—whose function appears to be to whitewash Communist involvement with Lee Harvey Oswald while publicizing bizarre conspiracy theories.

Black Panther Party (BPP)—an organization whose lengthy involvement in extortion, robbery, murder, and terrorism doubtless is the reason for its opposition to intelligence gathering.

Center for Constitutional Rights (CCR)—a litigation group of National Lawyers Guild members involved in several anti-intelligence lawsuits and in providing support for foreign and domestic terrorist groups ranging from the Baader-Meinhof gang in West Germany to the Weather Underground and FALN.

Church of Scientology—an organization that has 11 of its leaders under Federal indictment for alleged burglary, obstruction of justice, wiretapping, theft of Government property and conspiracy. The Scientology Commission on Law Enforcement and Social Justice has organized rallies and demonstrations against law enforcement intelligence gathering in collaboration with similar cults including Synanon.

Commission on Social Action for Reform Judaism.

Committee for Justice for Huey P. Newton and the Black Panther Party—a BPP fund raising front for BPP leader Huey Newton, recently convicted of illegal possession of a gun and still facing a trial for the murder of a 17-year-old prostitute.

Counter-Spy—the now defunct publication of the Organizing Committee for a Fifth Estate which became notorious for its publication of "hit lists" of alleged CIA agents.

Environmental Policy Center.

Federation of American Scientists.

Friends of the Earth.

Friends Committee on National Legislation (FCNL)—a lobbying group that urges a cutoff of U.S. assistance to free world countries fighting Communist subversion and terrorism and the provision of aid to Vietnam and other Communist bloc countries.

Fund for Constitutional Government (FCG)—a Washington, D.C., based conduit for funding antiintelligence projects. Recently the FCG received $5,000 from the Ottinger Charitable Trust for the Military Audit Project (MAP), a group involved in Freedom of Information Act demands and related litigation to obtain the details of the intelligence agency budgets and operations. The Fund for Constitutional Government received $15,000 from the Field Foundation, one of the prime sources of money for anti-intelligence projects, designated for continuing support of investigations of the U.S. intelligence community.

Grand jury project—a project run by members of the National Lawyers Guild and the Westher Underground Organization network that provides advice and propaganda support to persons resisting grand jury investigations of U.S. terrorist organizations.

The Leonard Peltier Defense Group—supporters of American Indian Movement leader Leonard Peltier, convicted of murdering two FBI agents who had attempted to serve a fugitive warrant.

Middle East Research and Information Project (MERIP)—a research and propaganda organization in support of the Palestine Liberation Organization and various Marxist revolutionary organizations in the Middle East. In addition to PLO members, MERIP's core cadre is composed of staff and associates of the Institute for Policy Studies and its Transnational Institute (TNI), formerly run by KGB agent Orlando Letelier and now headed by an admitted Castroite propagandist, Saul Landau.

National Committee to Reopen the Rosenberg Case (NCRRC)—a CPUSA-dominated propaganda and disinformation operation designed to whitewash the crimes of convicted Soviet atom spies Julius and Ethel Rosenberg.

National Emergency Civil Liberties Committee (NECLC)—a CPUSA legal support and propaganda front.

National Indian Youth Council, Inc.

National Jesuit Apostolate.

National Lawyers Guild (NLG)—a working coalition of Communist Party members and supporters, Castroites, and miscellaneous New Left lawyers, law students and legal workers. The NLG provides a front line of defense for apprehended and fugitive members of several U.S. terrorist groups. NLG activists who are plaintiffs and attorneys in anti-intelligence litigation have been identified in a recently declassified FBI report as members of the Weather Underground Organization.

National Student Association (NSA)—a group that has been trying to live down its "taint" from CIA subsidies in the early 1960's by taking extreme left positions.

People's Business Commission (PBC), formerly the People's Bicentennial Committee—a Marxist group of anticapitalist propagandists formed by associates of the Institute for Policy Studies. The PBC attempted to organize a demonstration to disrupt the celebration of the U.S. Bicentennial in Washington on July 4, 1976.

Puerto Rican Solidarity Committee (PRSC)—a support front for the Puerto

Rican Socialist Party and the FALN composed of Weather Underground supporters, CPUSA members, and assorted other New Left revolutionaries.

Supporters of Silkwood (SOS)—a spinoff from the National Organization for Women (NOW) led by Kitty Tucker.

United Methodist Church Department of Law, Justice, and Community Relations of the Board of Church and Society—another small bureaucracy whose actions in affiliating with CSGS were never approved by a vote of members of congregations of the UMC.

United Church of Christ, Commission for Racial Justice.

Urban Policy Research Institute, Washington, Office.

United Presbyterian Church, U.S.A.—as above, an affiliation without vote of the church members.

Women Strike for Peace (WSP)—the twin sister of the WILPF, thoroughly dominated by the CPUSA.

CSGS PRESS CONFERENCE

To generate publicity for its conference, the CSGS held a press conference on September 23, 1978, at the Detroit Press Club. The focus of the press conference was the Law Enforcement Intelligence Unit (LEIU), a private organization of law enforcement officers involved in criminal investigations. CSGS attached photocopies of eight LEIU information cards to its press release attacking LEIU and said that it had been given the cards by plaintiffs in the lawsuit against the Chicago Police Department brought by a number of defendants, including Communist Party fronts and members of the Weather Underground Organization, Alliance to End Repression, et al. against James O'Grady, et al.

In the interests of accuracy, the LEIU cards and the excerpts released for use in the CSGS press release require some comment.

One of the eight cards was for Michael F. Lerner, born February 7, 1943, in Newark, N.J. CSGS's press release cited only the LEIU card notation, "political activist—present at many demonstrations." In fact, the card notes that Mike Lerner was arrested in riots during April 1970, that he was a leader of the Seattle Liberation Front (an organization controlled at that time by the Weathermen). Lerner's leadership in organizing riots in Seattle on the day after convictions were handed down in the Chicago trial of persons who had organized the 1968 riots at the Democratic National Convention resulted in his indictment as one of the "Seattle Eight."

Another card was for Leland K. Lubinsky, born November 2, 1947, in California. CSGS draws attention only to the section of the LEIU card describing him as a "recognized leader in peace movements * * * He organizes meetings and arranges financing." But LEIU's interest was that he "organizes draft evasion counseling," which is conspiracy to break the Federal selective service laws.

Then came Richard Henry, alias Imari Abubakari Obadele, founder and leader of the Republic of New Africa (RNA), a militant, violence-oriented organization that, as the LEIU card noted, "is attempting to take five Southern States to form a black nation with a Chinese Communist-oriented government." Henry has a long arrest record and is currently serving a life sentence on charges stemming from a shootout in Jackson, Miss., in which a police officer was killed. For CSGS, the key phrase to quote is that "Henry has no arrest record in New Orleans," and to state that he has been "recognized as a political prisoner" by Amnesty International. However, since Amnesty International has recognized a number of violent American criminals and has appointed the well-known Australian Communist Derek Roebuck, a member of the IADL observer team at the kangaroo court lynching of U.S. professional soldiers who had fought and trained anti-Soviet guerrilla forces in Angola, to head its research division, Amnesty International designations hold little credibility nowadays .

Michael Zinzun, alias Michael Ornelas, born February 14, 1949, in Chicago, a plaintiff in an anti-intelligence lawsuit against the Los Angeles Police Department.

CSGS gave credence to Zinzun's statement that by November 5, 1973, the date the LEIU card was typed, he had already quit the Black Panther Party. It does not contradict the LEIU card's notations that Zinzun was arrested six times between December 1965 and September 1972 for such offenses as stealing a car, interfering with a police officer, resisting arrest, and disturbing the peace, along with two arrests for not paying his traffic tickets.

Regarding Anne McCarty Braden, the CSGS press release pointed out as LEIU's interest that she "has assisted in organizing many radical groups and publications in southern United States." CSGS omits accurate notation that Anne Braden is a "long-time Communist Party member; and that she has an arrest record for charges ranging from teaching criminal syndicalism in 1954 to parading without a permit in Louisville. Anne Braden and her late husband, Carl, were identified in sworn congressional testimony as the principal recruiters for the Communist Party in the South. Carl Braden served the Communist Party as an agent provocateur in stirring up race hatred. Braden sold a house to a black family and then set it on fire to make it look as if white extremists were guilty.

Of Clyde and Vernon Bellecourt, two leaders of the American Indian movement, CSGS claimed LEIU had named them "as burglars and robbers, based on charges arising from the Wounded Knee occupation." That is not so. The criminal convictions of the Bellecourts dates back to the 1950's and is a matter of public record.

Among those who participated in the press conference were Morton Halperin; Linda Valentino, staff director of the Los Angeles surveillance project of the AFSC and a member of the Citizens Commission on Police Repression (CCOPR) whose "subgroup," the Coalition Against Police Abuse (CAPA), is seeking access to LEIU cards held by the Los Angeles Police Department; Rick Gutman, an attorney for the Alliance to End Repression lawsuit against the Chicago Police Department which made the LEIU cards it had obtained available to CSGS; David Power, a law student who received FBI files on LEIU under a Freedom of Information Act request; Michael Zinzun; Howard Simon, director of the ACLU of Michigan and member of the Michigan Coalition to End Government Syping, the local CSGS group; and Daniel Sheehan, a manic motormouth of an attorney who represents the family of the late Karen Silkwood in a multimillion-dollar lawsuit against the Kerr-McGee Co. in Oklahoma.

Dan Sheehan elaborated on the Silkwood case later during the CSGS conference to those interested in the CSGS working group on nuclear power and civil liberties. Materials on the security activities regarding threats posed by terrorists and violence-oriented antinuclear power groups to nuclear generating plants of utility companies such as the Pacific Gas & Electric Co. and Georgia Power Co., on the concern of local and State law enforcement intelligence agencies with possible threats to nuclear power facilities, and on private security companies such as Research West and Wackenhut were discussed.

Much of the material had been obtained and evaluated by CSGS as a part of pretrial discovery activity in Sheehan's lawsuit for the Silkwood Estate.

CSGS, many of whose member organizations and activists are also involved in the disarmament and antinuclear coalitions, the Coalition for a New Foreign and Military Policy (CNFMP) and the Mobilization for Survival (MFS), both of which collaborate with the Soviet World Peace Council, opposes nuclear power development on the grounds that nuclear energy necessitates the growth of an intelligence gathering operation to protect the nuclear facilities.

CSGS states:

> * * * as opposition to nuclear power grows, so will the intelligence network's response. The result * * * is an increasingly heavy burden on all Americans who choose to exercise their political rights, one which may lead to a complete curtailment of those rights.

This argument was first put forward at the November 1974 Critical Mass Conference in Washington organized by Ralph Nader.

CSGS NATIONAL CONFERENCE

According to CSGS, some 250 persons representing approximately 150 groups and organizations participated in its National Organizing Conference to Stop Government Spying, held in Ann Arbor, Mich., September 22 to 24, 1978. The conference was an attempt to inject more energy into the flagging effort to organize a "grassroots movement" against the State and local law enforcement intelligence agencies and against private security firms, particularly those who provide services to nuclear powered generating plants owned by private utilities, and against the security sections of those utilities.

With a registration fee of $13, the conference generated only some $2,600—not a success by fundraising standards. Funds are expected to be generated from the new CSGS organizing film, "The Intelligence Network," a 30-minute color film produced by Chris Bedford of Washington, D.C. The film purports to be a

study of "spying" on "women's groups, black groups, pacifists, and environmentalists." However, the film, typically propagandistic, does not report that the women's groups under surveillance by the FBI included members of the terrorist Weather Underground Organization's fugitive support network or persons working at the direction of foreign powers like the terrorist Fourth International or the Soviet Union; that groups like the Black Panther Party spawned their own terrorist cadres and had members with lengthy records for vicious violent crimes; that allegedly "pacifist" groups like the War Resisters League cooperate closely with the agencies of the Soviet Union and that they support Soviet- and Cuban-backed terrorist "national liberation" groups, and have engaged in rowdy and disruptive demonstrations involving organized mass lawbreaking; or that a number of so-called "environmentalist" groups include members with records for violence, including sabotage directed against nuclear powerplants.

The close association of the CSGS and CNSS leaders with revolutionary violence was demonstrated by a panel presentation that was moderated by Perry Bullard, a Michigan State representative active with the Institute for Policy Studies' political machine-building arm, the National Conference on Alternative State and Local Public Policies. The members of the panel included John Trudell, a leader of the American Indian Movement (AIM) who was named in sworn testimony before the U.S. Senate as having planned a terrorism campaign to disrupt the 1976 Bicentennial celebrations; Lewis Myers who represented the National Conference of Black Lawyers (NCBL), one of the U.S. affiliates of the Soviet KGB-controlled legal front, the International Association of Democratic Lawyers (IADL); Morton Halperin, director of both CSGS and CNSS; and Mario Cueto, who served 11 months in prison for contempt rather than answer questions to a Federal grand jury relating to Carlos A. Torres, a fugitive member of the terrorist Fuerzas Armadas de Liberacion Nacional (FALN) with whom she had worked on the National Hispanic Commission of the Episcopal Church.

Among the workshops of interest were:

Journalists and Organizing—whose "facilitator" was John Demott of the Temple University School of Journalism in Philadelphia. The workshop provided those attending with ideas for placing anti-intelligence stories and maintaining press interest in the topic.

Labor and Government Surveillance—whose "facilitator" was Pat Tobin, Washington, D.C., representative of the International Longshoremen's and Warehousemen's Union (ILWU) who was identified in sworn congressional testimony in 1953 and 1960 as a CPUSA member. Those attending included members of the Letter Carriers Union, United Auto Workers (UAW), American Federation of State, County and Municipal Employees (AFSCME), and United Electrical Workers (UE). It was made plain to those attending that no union was officially represented, but that those present would report back to their leadership seeking support for CSGS programs. Discussion centered around the infiltration of the labor movement by Government and private investigators from the days of the Molly Maguires in the 1880's onwards, particularly the problems caused to "progressives" by "Cold War" policies during the "McCarthy era."

A Saturday afternoon presentation, "Utilizing the Freedom of Information Act to Organize," produced one enthusiastic CSGS organizer saying:

> This is a very important law to us. We have used it to obtain government documents on such matters as the counter-intelligence programs, and the different kinds of surveillance. We have obtained just tons of information. * * * These government documents tell us exactly what the agencies did; how they planned; how they carried out their plans; what they responded to [in initiating the investigation]; and what information they obtained and by what means . . . it's been critical to our fight.

Spying on Environmentalists/Anti-Nuclear Groups—Dan Sheehan.

National Legislative Strategy—Bob Borosage, IPS director; joined by Jerry Berman, Esther Herst, Morton Halperin and Dorothy Samuels.

Grand Jury Harassment—Linda Backiel.

Inside the CIA: Fundamentals of Covert Operations—K. Barton Osborn, formerly with the OC-5 and CounterSpy.

Red Squads: An Historical Overview—Frank J. Donner, former general counsel of the United Electrical Workers Union (UE) who was identified in sworn testimony before congressional committees on three occasions as a CPUSA member. Donner has been teaching at Yale Law School for several years since his UE retirement and has headed the ACLU's anti-intelligence project. In January 1978, the Field Foundation provided a $23,500 grant to the ACLU Foundation for a study of "urban police intelligence" operations under Donner's supervision.

Spying by the Private Sector—Linda Valentino, AFSC Los Angeles surveillance project.

Litigation Workshops and Organizing—NLG attorney George Corsetti of Detroit, joined by Mark Lynch, ACLU and former counsel for the joint ACLU/CNSS Project on National Security and Civil Liberties, and Rick Gutman, an attorney for the Alliance To End Repression against the Chicago Police Department. It is noted that in January 1978 the Field Foundation provided a $35,000 grant to the ACLU Foundation for the ACLU/CNSS Project on National Security and Civil Liberties which "challenges domestic surveillance through legal action; uses Freedom of Information Act to contest governmental secrecy; conducts seminars; and undertakes public information on these issues."

Developing Strategy to Check Surveillance by the Immigration and Naturalization Service—Ed Voci.

The CSGS conference activities and focus indicated that the anti-intelligence lobby intends to expand its local organizing efforts in a number of major urban areas with assistance from local American Friends Service Committee chapters. These will include antipolice intelligence programs of litigation and agitation in Los Angeles, Seattle, Philadelphia, and New York. The lawsuits will be used to obtain police intelligence files under pretrial discovery. Carefully selected and highly distorted versions of police intelligence activities will then be fed to reporters, for as one of the workshop leaders noted:

> Reporters have deadlines and always use just a material in the release. * * * The main thing is to sell them the concept that spy headlines sell papers.

The anti-intelligence lawsuits are to be expanded to include the LEIU and security departments of utilities. CSGS leaders noted that there was a pattern of police departments sharing information about alleged threats to company property and executives with the company security departments and that this may provide the lever needed. Strategies for these suits are already being developed by the National Lawyers Guild's National Police Crimes Task Force (protection of private property is a "crime" to the NLG's Marxists) which is headed by G. Glint Taylor, a longtime Weather Underground associate, whose offices are at 343 S. Dearborn, suite 1607, Chicago, Ill. 60604.

Another CSGS project will be to support the revolutionary Iranian Students Association (ISA) against intelligence gathering and surveillance despite its open association with internationally active terrorist groups and its violent activities in the United States.

The CSGS campus project will continue to organize both individual and institutional Freedom of Information Act requests for CIA files and documents relating to recruitment and other projects relating to U.S. colleges and universities.

In the legislative area, CSGS will provide pressure for the Center for National Security Studies and American Civil Liberties Union campaign for highly restrictive Federal intelligence agency charters, and on the local level to press for local statutes restricting or ending police intelligence operations.

Mr. Speaker, this report once again brings into sharp focus the activities of a small group of people whose prime aim is to destroy this country's foreign and domestic intelligence agencies. Many of these people have openly supported Soviet, Cuban, and Red Chinese-sponsored terrorist movements in the Third World and revolutionary movements at home. In judging the activities of their anti-intelligence lobby we should not only be aware of their public record, but we should also ask "Who benefits from the activities?" It is certainly not the citizens of the United States who look to the intelligence community for protection from revolutionary violence.●

MIDDLE EAST PEACE

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. LAGOMARSINO. Mr. Speaker, I would like to call the attention of my

colleagues to the following article by Dial Torgerson on the prospects for peace in the Middle East which have arisen as a result of the 1973 Yom Kippur War. Mr. Torgerson includes the paragraph:

"The Camp David agreements are actually a continuation of the work done by Kissinger, although no one seems to be giving him the credit for it."

YOM KIPPUR'S LEGACY: AN OPEN ROAD TO PEACE

(By Dial Torgerson)

JERUSALEM.—Five years ago this past Friday, on Oct. 6, 1973, Egypt stormed across the Suez Canal to launch what Israelis call the Yom Kippur War, and Egyptians, the October War.

It ended 19 days later in disaster, of one sort or another, for both sides. But in the very disaster it created it also opened the way for peace, one which would not have been possible without the lessons of 1973. If a peace treaty is actually signed this winter between Israel and Egypt, it will be because of what happened five years ago.

Peace treaties usually follow wars, of course. But Israel and Egypt had fought wars in 1948, 1956 and 1967 without any sign of a peace treaty being even a remote possibility.

In 1973, things ended differently. U.S. Secretary of State Henry A. Kissinger was able to bring the two sides to the disengagement agreements of 1974 and 1975, which have now proved to be the forerunners of the 1978 Camp David summit pacts. Said a Jerusalen political scientist:

"The Camp David agreements are actually a continuation of the work begun by Kissinger, although no one seems to be giving him the credit for it."

The big lesson of the 1973 war was that as a war it didn't work.

Egypt launched a surprise attack on Yom Kippur, when Israelis were observing Judaism's holiest day. They caught the Israeli defense forces unprepared. The attack was coordinated with a powerful drive by the Syrians across the Golan Heights. The Egyptians unleased new tactics which stunned the Israelis, including the use of Russian-made missiles that knocked out substantial numbers of Israeli tanks and aircraft.

With all these advantages, plus an overwhelming superiority in numbers, Egypt ended up 20 days later with the 20,000 men of the Egyptian Third Army trapped by the Israelis east of the Suez Canal, facing death by thirst or gunfire, and with Israeli tanks 101 kilometers (60 miles) from Cairo, where no Egyptian forces remained to defend the capital.

Israel ended the war on both the road to Cairo and the road to Damascus, but was forced by the big powers and the United Nations to halt before it could deliver a really crushing blow. For Israel, which lost 2,600 men—an enormous loss for a country of 3.5 million—the victorious end to the war failed to make up for the ignominious and costly setbacks of the first few days.

Egypt learned that, with the optimum possible conditions—surprise, collaboration with the Syrians, new weapons, vast manpower—it could still lose a war, militarily, to little Israel.

Israel learned that the Arab nations it had humiliated in earlier wars could fight well, inflict heavy losses on the Israeli Defense Force, and make even a brief war incredibly expensive. The war cost Israel the equivalent to a year's gross national product.

After the war ended, a different picture resulted: the political side.

Kissinger persuaded Israel to give up territory for international guarantees, and Israel pulled back across the Suez Canal and away from the plain leading up to it. As the United Nations took up patrols in a buffer area on the east bank of the canal, Egypt, with U.N. help, reopened it.

Egypt may have lost the battles but it won the political war: For attacking Israel, it had won the canal back.

In the aftermath, the Egyptians came to look upon the war as a great victory. After years of looking across the canal at the Bar-Lev Line, Egypt had crashed through it and driven the Israelis back deep into the Sinai. Said an Egyptian commander: "After the first three days, it didn't matter what happened. We had shown we could break the Bar-Lev Line."

The Bar-Lev Line had been the symbol of Israel's military might. It turned out to be Israel's version of France's 1939 Maginot Line. The Egyptian army had, after three defeats, shown it could make Israelis retreat.

"Up until then, no Arab nation could have possibly talked peace with Israel," said an Israeli official this past week. "Arab pride would not have allowed Sadat to approach Israel about peace from a position of weakness, as a loser."

Although other Arab nations protested vehemently, Sadat nevertheless negotiated with the Israelis through Kissinger's famous shuttle diplomacy, setting the precedent for the Camp David meeting.

The lessons of the 1973 war were not wasted on the United States and the Soviet Union, either.

When the Arabs advanced into Israeli-held territory in the first few days of the war, the United States mounted a massive airlift of weapons and ammunition. When the Israelis began their counterattacks, the Soviets began an airlift and sea shipments of similar supplies to the Arab side.

The ceasefire was enforced on the combatants by the big powers when it looked like the World War III might be just over the horizon. The United States said that it had detected atomic weapons in Soviet ships passing through the Dardanelles en route to Egypt. Israel, it was suspected, also had its own home-developed atomic bomb. The Middle East, it was clear, could explode into an atomic war which might involve the primary participants' sponsors as well.

The Yom Kippur-October War was, then, a brief but bloody event that showed that war can be too expensive to be profitable. Egypt won the canal back because it broke the Bar-Lev Line, but Sadat and his generals know what would happen if they tried to challenge Israel's armored forces in the vastness of the Sinai.

"Sadat knows that he could never do better than he did in 1973," said an Israeli official, "and he just barely survived that one. He learned that he could only succeed by pressure on Israel politically, and by negotiations. The process of change, from war to peace, began on Yom Kippur in 1973."●

TWO CULTURES IN COMBAT

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. MICHEL. Mr. Speaker, Patrick Buchanan, nationally syndicated columnist, is well known for his incisive commentary on important political and social issues. Recently he wrote a column about the "two cultures" in the United States, the "traditional" culture and the "adversary" or "counterculture." This column examines the struggle between two different views of life for the "soul and destiny of a Nation." It is a thought-provoking and stimulating analysis of the current political, intellectual and social conflicts in our Nation.

At this time, I want to insert in the RECORD, "America's Two Cultures in Combat" by Patrick Buchanan, from the Chicago Tribune, October 10, 1978:

AMERICA'S 2 CULTURES IN COMBAT

WASHINGTON.—In the aftermath of the Bicentennial, the United States seems a more tranquil, united nation than the America of a decade ago, convulsed over riots, assassinations, and war.

Yet, beneath the surface calm of public life, there is taking place a historic struggle between separate, competing, and hostile cultures.

The great stakes in that conflict are not positions of political power. They are the soul and destiny of a nation. It would not be an exaggeration to compare this struggle with the clash in Imperial Rome between paganism and Christianity.

This struggle divides parties and pulpits, universities, and generations. It is carried on in magazines and books, in film and theater. It is a cultural war, a Kulturkampf, and the issues upon which it is being fought are among the most fundamental.

One area is personal morality. With respect to the traditional culture, for example, there is no need to name a presidential commission to determine if pornography is evil and injurious to youth. Filthy books and magazines should be censored, outlawed, driven back under the counter—and their authors and distributors are fit subjects for the horsewhip.

The competing adversary culture, or counterculture, however, believes that Masters and Johnson and "The Joy of Sex" are preferable guides to personal behavior to the New or Old Testament. One ought not to get hung up about matters of sex; indeed, the teaching of birth control methods to public school children would make ours a more progressive society than would an overemphasis upon a Bible which belongs in the church and home, not public education.

To the traditionalist, patriotism, nationalism and religion offer guidelines to the good life. The martial virtues, celebrated in films like "Patton," are to be emulated. To the counterculture, patriotism and nationalism are the source of many of mankind's woes. Established religion is the incubator of superstition, division, and bigotry, against which an enlightened man will wage endless war.

Abortion is a central battlefield. What one side sees as the final liberation of women from the tyranny of biology, the other sees as the slaughter of the innocents, an offense against nature and against God.

Looking back over his country's history, the traditionalist sees a pantheon of heroes, the inexorable march of a superior civilization, the building of the "greatest nation on earth." He does not look upon the Iroquois as a "noble savage," but as an ignoble savage, whose culture had nothing to offer, and who was an impediment to the advance of Western values.

At the local theater, however, the acolytes of the adversary culture will cheer the Sioux, while the rest of us anxiously await the arrival of the Seventh Cavalry.

The counterculture would eliminate legal sanctions against prostitution, massage parlors, homosexuality, and marijuana.

The root cause of crime, its proponents contend, is poverty. To the traditional culture, the root cause of crime is criminals, some of whom have become so vicious that they should be dispatched at once to the judgment Seat of God—their trip expedited by a few thousand volts, courtesty of the state.

While the traditional man may not have voted for JFK, he would find no fault with Kennedy's observation that history has made America the "watchman on the walls of freedom." To him, the United States remains the best hope of mankind, the final bulwark against a tide of barbarism represented by the Communism of the Second World, and the depotism of the Third.

Andrew Young is the quintessential political expression of the counterculture. While

he may not subscribe altogether to Susan Sontag's depiction of the white race as the "cancer of human history," he finds as much to admire in Tanzania and Nigeria as he does in the United States.

In matters of economic and social policy, the Andrew Youngs believe that government has a duty to redistribute the nation's income, that equality of opportunity is meaningless if it does not guarantee equality of result.

Books could be written, have been written, on this cultural collision.

Suffice it to say that we are dealing in areas where there is little room or desire to compromise on matters where one side views the other not as wrongheaded, but as morally reprehensible or morally blind.

Not in the arena of weapons, but in the arena of ideas, beliefs, customs, values, traditions, morals, and ideals. America is at war with itself—the outcome of which conflict will determine the future of our civilization.●

THANKSGIVING

HON. PAUL SIMON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. SIMON. Mr. Speaker, Thanksgiving is traditionally a time when Americans express gratitude for our many blessings. It seems appropriate that this should also be a day for expressing that gratitude in some practical way.

When Senator Hubert Humphrey and I introduced this resolution calling for a voluntary practice of "thankful giving," it was our hope that families all across the country would, on Thanksgiving, spend some time thinking about the serious problem of world hunger and ways to solve the problem. The practical expression of that concern would be through personal donations to the charity of their choice, either religious or secular.

Since then, the major relief and development agencies of the Catholic, Jewish, and Protestant faiths have joined forces to conduct a public education and fundraising program for the Thanksgiving Day weekend to help relieve the hunger of mankind. The united effort is being chaired by Bob and Dolores Hope and they will be joined by schools, clubs, labor organizations, businesses, and media to help promote the concept of "thankful giving."

The original idea for "thankful giving" came from Ms. Marsha Hunt, an actress and trustee of the American Freedom from Hunger Foundation. Her concern during the 1971 Bangladesh emergency prompted her effort to help Americans act on the compassion they feel. Her suggestions and hard work have brought the "thankful giving" resolution to the floor of the House.

I believe that the practice of "thankful giving" could enrich the celebration of Thanksgiving for all Americans while providing significant help to the relief organizations that deal daily with the problems of hunger around the world. I am pleased to have the cosponsorship of 219 House Members for the resolution. They are as follows:

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215. William Ford.
216. Marty Russo.
217. William Moorhead.
218. Ike Andrews.
219. Mary Rose Oakar.●

RED CHINA'S AMERICAN LOBBY: THE U.S. CHINA PEOPLE'S FRIENDSHIP ASSOCIATION (PART I)

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. McDONALD. Mr. Speaker, the Communist regime in China which has been responsible for the deaths of an estimated 60 million people in famine, hardship, and executions, and in the campaign of genocide being still carried out against the conquered people of Tibet, has a 10,000-member lobby in the United States, the United States-China People's Friendship Association (USCPFA). This organization has a front here in Washington, the Center for United States-China Relations, which has held several receptions on Capitol Hill for legislators and their staff at which members of the PRC mission were in attendance.

The USCPFA is run by a group of veteran Marxist-Leninists who appear to have their own direct lines to Peking, and by members of the Communist Party, Marxist-Leninist (CPML)—the former October League—which is the official Peking-line Communist Party in the United States. The purpose of the USCPFA is to lobby for policies that aid the Peking regime, which are at present to press for "normalization" of U.S. relations with the PRC and a simultaneous abandonment of our long-time and reliable ally, the Republic of China based on Taiwan.

I know that a number of my colleagues are particularly interested in the Peking regime in light of certain big business and Government officials' proposals that this country help build up and modernize the Communist Chinese industrial and military capability as a possible counter to the Soviet Union. This, I am convinced, would be a grave mistake, for the Sino-Soviet quarrel can be mended whenever the two dictatorships decide it is in their interest.

Since we are doubtless going to be seeing more activity of the USCPFA, I am offering for the attention of my colleagues a report on the USCPFA published in a recent edition of the Information Digest, a newsletter on U.S. political and social movements. It should be noted that the USCPFA is incorporated as a nonprofit "educational" organization, and is not registered as a foreign agent with the Department of Justice. It should be still further noted that the U.S. Marxist-Leninist newspaper, The Guardian, circulated a letter last year stating that because of a quarrel with the People's Republic of China, the newspapers subsidy of several thousand paid subscriptions from PRC agencies had been cut off; and the paper had also lost its lucrative "China Tours" business. Currently, the USCPFA appears to have a total monopoly on travel to Red China via arrangement with the PRC Government.

The article follows:

UNITED STATES-CHINA PEOPLE'S FRIENDSHIP ASSOCIATION

A reported 1,200 people attended the fifth annual national convention of the U.S.-China People's Friendship Association (USCPFA) held at the prestigious Jack Tar Hotel in San Francisco, September 1-4, 1978. The convention, like the USCPFA covertly (but almost overtly) aided by the People's Republic of China (PRC), was termed by several veteran participants as the "most exciting" of the organization's national conventions, featuring a wide range of workshops, some "distinguished" guests and a number of significant reports and decisions including:

A report on the rapid growth of the USCPFA;

The explusion of the Revolutionary Communist Party;

The development of plans for national campaigns around (a) the "normalization" of U.S.-PRC relations, and (b) the admittance of the PRC to the 1980 Olympics.

USCPFA BACKGROUND AND ORGANIZATION

The USCPFA originated in the summer of 1971 in a series of public meetings in San Francisco and New York organized by Maoist former members of the Communist Party, U.S.A (CPUSA), Maoist activists and assorted China travellers who had ignored the U.S. State Department ban in the 1950s and 1960s to travel and live in Red China. These included William Hinton, who was a member of the Chinese Communist Party during the time he lived in China; Frank Pestana and Jean Kidwell; Vicki Garvin; Ann Tompkins; Hugh Deane; Susan Warren; Richard Pastor; Esther Gollobin; Helen and Sam Rosen; Robert Coe and Jim Nesi. Also involved in the USCPFA formation were various U.S. Maoist political groups such as the October League (OL) [now the Communist Party, Marxist-Leninist (CPML)] and the Revolutionary Union (RU) [now the Revolutionary Communist Party (RCP)], and former missionaries and religious activists who "sought fellowship around common feelings for the people of new China."

Following the development by these cadre groups of regional USCPFA organizations in the Midwest and on the East and West coasts, a provisional national steering committee was selected and the national USCPFA officially established as a 1974 convention in Los Angeles.

Incorporated as a nonprofit educational organization whose stated purpose is "to promote friendship and understanding between the American and Chinese people," the USCPFA states, "We endorse the principles of the Joint Communique issued by President Richard Nixon and Premier Chou En-lai on February 28, 1972: respect for sovereignty and territorial interity; non-aggression; non-interference in the internal affairs of other states; equality and mutual benefits; and peaceful coexistence." USCPFA continues, "[We] neither advocate nor oppose the policies of the PRC. We seek to report contemporary developments there so that the American people can gain a better understanding."

Until the summer of 1977, USCPFA was organized by volunteer effort. However, at the Atlanta national convention that year a resolution was passed establishing paid positions for a field staff and setting up a number of information centers and offices as follows:

National Office—635 S. Westlake Avenue, Room 202, Los Angeles, CA 90057 (213/483-5810). Executive Secretary, Ann Ferguson; Assistant Executive Secretary, Rick Keir; Comptroller, Barbara Bisnar; National Tours Director, Ann Jenkins Perry; Assistant Tours Directors, Ralph Rapoport and Helen Ewer; Tour Publicity, Lisa Lubow; Receptionist, Katherina Turnage.

Center for U.S.-China Relations—422 C Street, NE, Washington, DC 20002 (202/547-0040). Coordinator, Elaine Budd.

Center for Teaching About China—407 S. Dearborn, Room 685, Chicago, IL 60605 (312/663-9608). Coordinator, Mary Kay Hobbs.

Field Organizers—East: Bill McCart, 114 Bedford Avenue, No. 4R, Brooklyn, NY 11211; South: John McCray, 1115 W. 11th St., Austin, TX 78743; Midwest: Carolyn Swinney, 5507 W. Evergreen, Chicago, IL 60651; West: Northwest subregion: Andy Ferguson, 1870½ E. 27th Street, Eugene, OR 97403; Northern California subregion: Anne Tompkins, 1168 W. Sexton Road, Sebastopol, CA 95472.

China Study Tours Organizers—East: Aileen Clifford, P.O. Box 707, Stony Brook, NY 11790 (516/331-9058); South: Carolyn Money, P.O. Box 6218, Ft. Myers Beach, FL 33931 (813/463-5955); Midwest: Stu Dowty, P.O. Box 793, Detroit, MI 48232 (313/868-0082); West: Ethel Pass, 635 S. Westlake Avenue, Room 204, Los Angeles, CA 90057 (213/483-6060).

Additionally, the USCPFA subsidizes New China, a nationally-distributed magazine, and an internal newsletter, the U.S. China Review. New China staff members include Peggy Seegar, general manager; Peter Schmidt, business manager; and Paula Holland, subscriptions manager.

Reports submitted to the San Francisco convention indicate an increase in USCPFA membership during 1977 of about 2,500 with a total membership of 9,373. These members are scattered across the U.S. and do not include those as yet not accepted into local USCPFA memberships but who are involved through organizing committees.

The membership pattern, which now includes many "mainstream" people as opposed to the initial heavy concentration of Maoist cadre, is as follows:

EASTERN REGION

Total 1978 membership: 2,904.

Albany, N.Y., 14; Baltimore, Md., 123; Binghampton, N.Y., closed; Boston, Mass., 258; Buffalo, N.Y., closed; Burlington, Vt., 27; Central N.J., 50; Columbia, 15; Ct. Valley, 60; Fairfield, Vt., 62; Ithaca, N.Y., 14; Metropolitan N.J., 81; Nassau County, N.Y., 148; New Haven, Conn., 41; New York City, 881; North Jersey, closed; Philadelphia, 279; Pittsburgh, 40; Plattsburgh, N.Y., 26; Providence, R.I., 13; Richmond (Station Island), 54; Stony Brook, N.Y., 55; Storrs, Conn., 10; Upper Valley, Vt., 25; Washintgon, D.C., 331; Westchester County, N.Y., 201.

Subtotal of members in chapters above: 2,808.

Eastern region organizing committees are

operating in Amherst, Mass.; Charlottesville, N.C.; Keene, N.H.; Mid Hudson area; Montpelier, Vt.; Northshore; Orono, Maine; and the Raritan Valley, N.J.

SOUTHERN REGION

Total 1978 membership: 1,744.

Atlanta, Ga., 194; Austin, Tex., 102; Birmingham, Ala., 31; Charlotte, N.C., 43; Dallas, Tex., 35; Gainesville, Fla., 19; Houston, Tex., 109; Knoxville, Tenn., 13; Louisville, Ky., 28; Memphis, Tenn., 47; Miami, Fla., 215; Nashville, Tenn., 62; New Orleans, 72; N.C. Triangle, 87; Palm Beach County, 115; Sarasota, Fla., 87; Tampa, Fla., 18; Tuscaloosa, Ala., 21.

Subtotal of members in chapters above: 1,298.

Southern region organizing committees are operating in Aiken, Ga.; Chattanooga, Tenn.; Eutaw, Ala.; Jacksonville, Fla.; Mobile, Ala., and in the Suncoast region.

MIDWEST REGION

Total 1978 membership: 1,774.

Ann Arbor, Mich., 57; Carbondale, Ill., 11, Central Ind., 36; Champaign-Urbana, 16; Chicago, 445; Cincinnati, 28; Columbus, Ohio, 32; Dekalb, Ill., 34; Detroit, 304; Greater-Lansing, 102; Iowa City, 7; Kansas City, 73; Madison, 25; Mansfield, Ill., 12; Milwaukee, 40; Minneapolis, 369; Mt. Pleasant, Mich., 25; North Prairie area, 22; NW Indiana, 24; St. Louis, 61; Yellow Springs, Ohio, 20; Marquette, Mich, 13 (Upper Peninsula).

Subtotal of members in chapters above: 1,754.

Midwest region organizing committees are active in Des Moines, Iowa; Oberlin, Ohio; Columbia, Mo.; Grand Rapids, Mich.; Lafayette, Ind.; and Toledo, Ohio.

WESTERN REGION

Total 1978 membership: 3,417.

Albuquerque, N. Mex., 14; Bellingham, Wash., 18; Big Island, 30; Denver, Colo., 97; East Bay of Calif. 199; Eugene, Oreg., 16; Fresno, Calif., Hawaii 23; Honolulu, 671; Humboldt County, Calif., 10; Long Beach, Calif., 106; Los Angeles, 528; Marin County, 28; Maui, Hawaii, 12; Mid-Peninsula area, 135; North Bay area, 52; Olympia, Wash., 33; Orange County, 101; Pasadena, Calif., 47; Phoenix, Ariz., 45; Pomona Valley, closed; Portland, Oreg., 121; Reno, Nev., 28; Sacramento, Calif., 21; Salem, Oreg., 18; San Diego, 160; San Francisco, 266; Santa Barbara, 65; Sonoma County, 56; South Bay area, 48; Tucson, Ariz., 102; Taos, N. Mex., 23; Westside, Los Angeles, 174.

Subtotal of member in chapters above: 3,247.

Western region organizing committees are active in Chico, Calif.; Kauai, Hawaii; Las Vegas, Nev.; Monterey, Calif., Rogue Valley area, Oreg.; Santa Fe, N. Mex.; and Seattle, Wash.

It should be noted that since the split between the "Gang of Four" supporting RCP and the present Peking leadership, the USCPFA has demoted to "organizing committee" status or disolved a number of chapters controlled by the RCP, most recent being the June demotion of the Seattle USCPFA chapter. However, the USCPFA appears to have no objections to working with the anti-Gang of Four split from the RCP, the Revolutionary Workers Headquarters (RWH) led by Mickey Jarvis, Nick Unger and William Hinton.●

COPING WITH SEWAGE SLUDGE

HON. JOHN W. WYDLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. WYDLER. Mr. Speaker, on September 20, my distinguished colleague from New Jersey, the Honorable EDWIN B. FORSYTHE, was good enough to insert some correspondence I had with EPA into the RECORD. One of the major items which was mentioned in my exchange of letters with EPA was that of the disposal of sewage sludge. This is a major problem on Long Island since ocean dumping of sludge is forbidden after December 31, 1981, as mandated by the Congress.

The General Accounting Office (GAO), released a report last week titled "Sewage Sludge—How To Cope With it?" focusing on this problem. It is clear that EPA must take a lead in coping with sewage sludge and the agency role cannot be simply a regulatory one. The report points out that technical demonstration of energy conversion methods has not been accomplished and a national policy is required which emphasizes the use of sludge as a resource. EPA must develop a policy and fund programs which will insure that technical and economic feasibiilty of new methods are proven.

I recommend the report to my colleagues. The report follows:

DIGEST

The Nation must change its attitude toward sludge use and disposal if it is to cope with rapidly increasing volumes. Solutions to the problem of sludge disposal must be developed and carried out. The Federal Government, particularly the Environmental Protection Agency, must take the lead in this. The best solution is to use sludge as a resource.

In the past, sludge had been treated primarily as a waste to be disposed of as inexpensively as possible. Now, while sludge volumes are increasing (about 5 million tons annually and expected to double by 1987), generally accepted methods for its disposal are being phased out or subjected to more and more regulations and increased restrictions on use. Landfill sites are dwindling, use of incineration is being restricted because of air pollution standards and fuel shortages, and ocean dumping has endangered human and marine life and will be phased out by December 1981. The question is: How will we dispose of sludge in the future as safely, economically, and beneficially as possible?

Sludge has many beneficial qualities which have been generally disregarded. It contains essential plant nutrients (phosphorus and nitrogen) which make it suitable as a land conditioner or fertilizer, and it can be converted to energy in several ways. However, some pitfalls to this solution exist. Sludge also contains disease-causing bacteria and varying amounts of toxic substances which limit its use on agricultural lands. Further, the technical and economic feasibility of some energy conservation methods have not been conclusively proven.

Nevertheless, sludge use as a resource appears to be the most viable solution currently available. This use, however, has not been widely accepted because Federal and State authorities cannot agree and guidance was lacking for some time on the safe uses of sludge as a land conditioner and fertilizer. Compounding the problem are institutional, political, and legal barriers which often discourage and sometimes prohibit sludge use on agricultural and nonagricultural lands. Furthermore, sludge use as an energy source in pyrolysis and copyrolysis (in combination with solid waste) systems has been demonstrated in small-scale pilot projects but not in large-scale operations needed for most communities. Local officials do not believe that energy conservation systems, particularly copyrolysis systems, will be considered locally because the related costs and risks are too great for communities to bear without substantial Federal support.

In GAO's opinion, the principal reasons sludge has not been used as a resource are (1) such use was not encouraged, (2) guidance was lacking, and (3) a comprehensive national sludge disposal policy does not exist. As a result, full advantage has not been taken of many opportunities to use sludge as a resource.

GAO recommends that the Administrator, Environmental Protection Agency, develop a national sludge management policy emphasizing sludge use as a resource. Such a policy should, at a minimum, discuss agricultural and nonagricultural land uses, sales and giveaways of sludge, and the feasibility of thermal combustion systems. Also, the Agency should

Fund full-scale demonstration projects if the engineering consensus within the Agency is that the feasibility of thermal combustion cannot be determined on the basis of current demonstration projects,

Communicate the results of successful demonstrations to interested communities, and

Monitor the growth and development of systems which have been successfully demonstrated to determine the need, if any, for additional Federal support of these systems.

AGENCY COMMENTS

The Environmental Protection Agency fully concurred with GAO's conclusions and recommendations.●

● Mr. EDGAR. Mr. Speaker, the House is expected to vote on H.R. 12370, "The Health Services Amendments of 1978," in the very near future. Considerable controversy has emerged over that section of the bill providing for voluntary family planning efforts. The United Methodist Church is vigorously opposed to efforts to scuttle through amendment the family planning section of the bill, and Dr. George H. Outen, general secretary of the Board of Church and Society, the United Methodist Church, has clearly and concisely outlined the church's position on this issue. I am certain that my colleagues will find Dr. Outen's statement of interest, and I commend his remarks to their attention:

STATEMENT OF DR. GEORGE H. OUTEN

As concerned member of the religious community, I would like to express the strong opposition of my agency to proposed amendments to the Health Services Amendments of 1978, H.R. 12370, which will seriously affect the family-planning efforts of this nation.

The United Methodist Church has long supported the principle of responsible parenthood. As a statement on that subject adopted by the General Conference of the United Methodist Church in 1976 states:

"Each couple has the right and the duty prayerfully and responsibly to control conception according to their circumstances. As developing technologies have moved conception and reproduction more and more out of the category of a chance happening and more closely to the realm of responsible choice, the decision whether or not to give birth to children must include acceptance of the responsibility to provide for their mental, physical, and spiritual growth, as well as consideration of the possible effect on quality of life for family and society."

In order to make such responsible decisions, individuals and couples must have access to information, education, counseling and services. It was in light of that need that the Board of Church and Society of the United Methodist Church, along with many other Protestant and Jewish groups, actively supported passage of the first national legislation authorizing public family-planning services. Since initiation of those programs,

we have watched with increasing pride and pleasure as they grew increasingly effective in enabling millions of women to plan for the children they want.

Accordingly, we view with deep concern the apparent intention of some Representatives to offer amendments which could alter the thrust and even cripple the effectiveness of the current program. We are equally distressed that these efforts could mark a step backward in assuring the right of full medical care and counselling to millions of American women.

We fear that the tragic result will be an increase in unplanned and unwanted pregnancies and thus a rise—rather than a decrease in the incidence of abortion. If the goal of all of us is—and I believe it is—to reduce the number of abortions in our society, then surely the way to go about it is not to weaken the family planning efforts now going forward so successfully.

Our denomination is well aware that there is strong division in Congress over the abortion issue. The United Methodist has adopted the position that "Our belief in the sanctity of unborn human life makes us reluctant to approve abortion. But we are equally bound to respect the sacredness of the life and well-being of the mother, for whom devastating damage may result from an unacceptable pregnancy. In continuity with past Christian teaching, we recognize tragic conflicts of life with life that may justify abortion."

It is in that context that we also speak out against those amendments which would adversely affect access of referral and counselling on abortion. This legislation already specifically prohibits abortion as a means of family planning. Beyond that, we believe every woman has the right to information concerning the full range of options available to her in the event of an unwanted pregnancy. In fact, a physician dealing with such a case has the responsibility to make clear all her medical choices, just as would be made clear to a patient facing any other medical situation.

We hope that concern over the abortion issue will not lead Congress to accept amendments which will ultimately threaten the effectiveness of the family planning programs. The damage of such action would be felt in the quality of life for thousands of women and their families. The statement on Responsible Parenthood adopted by our denomination states that "To support the sacred dimensions of personhood, all possible efforts should be made by parents and the community to insure that each child enters the world with a healthy body, and is born into an environment conducive to realization or his or her full potential".

Achieving this goal requires strong family planning programs of information, counselling on a full range of options, and services. We hope the House of Representatives will remember what the ultimate goal is, and urge them to oppose all amendments which will seriously threaten the present federal effort.●

SALUTE TO THE REPUBLIC OF CHINA

HON. JOHN T. MYERS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. JOHN T. MYERS. Mr. Speaker, we are a great and powerful country, and great and powerful countries often have trouble making and keeping friends. For that reason we should be all the more careful of those we do have. Instead, we seem to observe a certain tendency to bully those of our friends who do not measure up to some super standard of moral and political purity, and who cannot do us any particular and immediate damage. I could list quite a number of actions which the United States has taken toward the Republic of China on Taiwan over the last few years which would indicate that we take a certain pleasure in humiliating our friends. Despite that, however, the Republic of China has remained our friend, and it is on that fact which I would like to dwell briefly today.

When the Government of the Republic of China was driven to Taiwan from the mainland after years of civil and international war, the country was prostrate. But the Republic of China Government at least learned from the disaster which had overtaken it, and set out to do better on that portion of Chinese territory which was left to it. It was at first, of course, an underdeveloped country which sought and received American aid. Unlike many other recipients of American aid, however, it set out to develop to the point where it would no longer need such aid, despite the fact that a large percentage of Taiwan's area is spectacularly mountainous and unsuited for industry or agriculture. And it succeeded, for in 1965 it reached the point which it could manage without American aid, and since that time it has been economically on its own.

Mr. Speaker, over the past few years the Republic of China has achieved a remarkable growth rate, largely because of the enlightened economic policies pursued by the Government. The Government controls a large portion of the island's economic life, but it also recognizes the energies which private enterprise can bring to economic development. As a result, it attempts to create favorable conditions under which private enterprise can thrive, and even relinquishes control of enterprises which it has started to private hands. It understands the importance of a balanced budget, economic stability, and a sound currency. I wish it were always possible to say the same of the Government of this country.

The Republic of China is not only grateful for what the United States has helped it to achieve. It has also taken specific steps to assist us when it saw areas in which it could be helpful. For instance, when it became concerned about the imbalance in trade between our two countries, in this year 1978 the Government of the Republic of China decided to send three separate purchasing missions to the United States to contract for extensive deliveries of agricultural and industrial products. There are cynics who say that the Chinese would have made most of those purchases anyway. Perhaps they would, but the important thing is that they did it in such a manner as to boost our morale. How many other countries are there in this world who would behave in similar fashion?

Taiwan is not perfect. However, its economic performance has demonstrated the unquestionable superiority of a relatively free economy over the rigidly regimented economy which prevails on the mainland. Taiwan is a bone which sticks in Peking's throat. But Taiwan is a friend to the United States, and the American people in their vast majority understand what it means to have a friend in the international arena. So we salute the Republic of China on Taiwan on this October 10, the anniversary of the founding of the Republic. May the Republic of China progress and prosper.●

THE DECLINE OF THE DOLLAR

HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. COLLINS of Texas. Mr. Speaker, it concerns me very deeply how much the American consumer is being hurt by the spiraling decline of our American dollar. The decline of our dollar in relation to the value of other world currencies, such as the French franc, the German mark, the Japanese yen, and the Swiss franc is a truly alarming phenomenon that is robbing every consumer in America today. One of the great facts of American life is that we revel in allowing an almost unlimited range of products to be sold in our markets.

Unfortunately, we now see that due to the erosion of our dollar in relation to the currencies of our major trading partners Americans who do desire to buy imported products are having to do so at ever-increasing prices. The value of the currencies of France, Germany, Japan and Switzerland, since 1965, have increased an average of 93.3 percent. Respectively, in relation to our dollar since 1965, their currencies have appreciated 11.42 percent, 101.95 percent, 85.71 percent and an incredible 174.12 percent.

It is imperative at this time to realize that the primary cause of this incipient decline has been the continued expansion of Government spending. The total Federal debt outstanding has more than doubled since 1970, adding some $415 billion which the Government has had to borrow as well as pay interest upon. During the same period, Congress has approved Federal budgetary outlays which have resulted in deficits for 8 straight years amounting to some $286.4 billion.

Furthermore, over the same period, Americans have had to endure an average annual increase in the consumer price index of 7.74 percent. To every man, woman and child in America, this means that on an annual basis due to the ravages of inflation their dollar has bought 7.74 percent less every year.

I have included the following chart to illustrate the alarming trends toward higher, Federal deficits and total Federal debt outstanding as well as unrelenting inflation. And this does not include the staggering $5.9 trillion in actuarial deficient Government pension reserves.

ANNUAL FEDERAL GOVERNMENT FINANCING AND INFLATION

Year	Surplus of deficit (billions)	Percent change in CPI	Total Federal debt outstanding
1970	−2.8	+5.5	382.6
1971	−23.0	+3.4	409.5
1972	−23.2	+3.4	437.3
1973	−14.3	+8.8	468.4
1974	−4.7	+12.2	486.2
1975	+45.1	+9.14	544.4
1976	−66.5	+5.8	631.9
1977	−45.0	+6.5	716.7
1978 (estimate)	−61.8	+7.2	785.0
1979 (estimate)	−60.6		

Current estimate.

Source: Library of Congress, Department of Treasury.

It is equally upsetting to note the increase in the indexes of spot primary market prices as computed by the U.S. Bureau of Labor Statistics. The following table illustrates that everything but metals has approximately doubled in the past 8 years:

INDEXES OF SPOT PRIMARY MARKET PRICES, 1970 TO 1978

[Base 1967=100]

Item and number of commodities	1970 (6–16)	1971 (6–15)	1972 (6–13)	1973 (6–12)	1974 (6–11)	1975 (6–24)	1976 (6–29)	1977 (6–28)	1978 (6–13)
All commodities (22)	113.6	108.2	119.5	171.3	221.5	189.9	210.9	206.7	229.2
Food stuffs (9)	112.2	111.2	113.3	172.7	211.5	215.3	213.7	210.6	240.5
Raw industrials (13)	114.4	106.1	124.0	170.2	228.5	174.1	208.9	204.0	221.5
Livestock and products (5)	123.6	116.6	143.9	222.6	190.1	240.8	224.4	234.6	277.6
Metals (5)	125.2	103.1	114.9	145.6	261.4	166.8	215.4	203.0	219.9

Source: U.S. Bureau of Labor Statistics.

The significance of these measurements of Federal Government financing, inflation, and spot primary market prices is that when foreign governments observe these internal inflationary trends in the American economy, they perceive the strength of our dollar as being significantly diminished when used for the purposes of an international reserve currency. The end result of this pervasive irresponsibility in Government spending and fiscal management is that the American consumer ends up biting the bullet for the ivory-tower decisions made in Washington, all done in the name of bigger and better Government.

America today needs less Government. Congress desires to provide more services. But the average American wants less services with less taxes and less Government.●

SENATE—*Wednesday, October 11, 1978*

(Legislative day of Thursday, September 28, 1978)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Eternal Father, the same yesterday, today, and forever, we do not know why forgiveness is so costly, why progress comes by way of sacrifice. We only know that "without the shedding of blood, there is no remission." We know the crimson cord runs from creation to the throne of God, from the crib to the grave, from the beginning of life to life again. Life is through death, exaltation through renunciation, and the law "whoever will save his life must lose it" is in the very structure of the universe. We would know Thy forgiveness, the wiping out of sin, reconciliation with Thee and our fellowman. Grant us a new beginning. Make us participants in the atonement Thou has opened for all mankind. Then may we find our way into Thy higher kingdom. And to Thee we offer our thanksgiving. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 11, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable QUENTIN N. BURDICK, a Senator from the State of North Dakota, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. BURDICK thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Wisconsin, and I yield him my time.

THE JOURNAL

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

HUMPHREY-HAWKINS

Mr. PROXMIRE. Mr. President, last evening, the Humphrey-Hawkins bill, the Unemployment and Balanced Growth Act, was laid before the Senate. I introduced two amendments to that bill. I am very hopeful both amendments will carry. It will make this a more balanced and attractive bill. It will provide for a program which I think the overwhelming majority of Americans can support.

The difficulty with the bill in the form it was introduced, without the amendments, is that it provides a goal for unemployment which I think all of us favor, but no goal for inflation balancing that. One of my amendments would provide for an inflation goal. That inflation goal, I think, is realistic. It provides for a goal matching the 4 percent unemployment goal we should achieve in 1983 and an inflation goal of 3 percent.

I might point out, Mr. President, that few people realize how stable prices were in this country up until 1968. As a matter of fact, that 3 percent goal is a very modest goal, based on our historic experience, even in the post-World War II period. Before that, of course, price stability was a matter of economic fact in American life, except during war periods when we would have serious inflation.

But take the period after World War II. I think few people realize that in 1949 we actually had a drop in the price level. That was not a depression, it was a slight recession, but there was a drop of 1 percent. In 1955, which was a pretty good year, prices actually declined. In 1955 they went down. But more important is that during all those years in the fifties prices went up, with the single exception of 1951, at a very moderate pace. Oh, how we would love to have that slow pace of price stability that we had at that time, to have that now.

In 1950, for instance, prices went up 1 percent; in 1952 they went up 2 percent; in 1953, 1 percent; in 1954, 2 percent; in 1955, as I said, they actually dropped; in 1956, 2 percent; in 1958 they went up 1 percent; in 1959, 1 percent; in 1961, 1 percent; in 1962, 1 percent; in 1963, 1 percent, and so on. As a matter of fact, during the period from 1952 until 1965 they averaged between 1 and 2 percent. That was the increase in prices.

To provide for a goal of 3-percent inflation in 5 years is not at all unrealistic. It is a moderate, limited objective.

The second amendment that I am proposing is an amendment to provide a limitation on spending. It is the same limitation that President Carter has indicated he wants to achieve. It is a limitation on spending that would reduce Federal spending as a percentage of the gross national product from the present approximately 22 percent to 21 percent in 1981, and 20 percent in 1983.

UKRAINIAN GENOCIDE: A TIME TO REMEMBER

Mr. PROXMIRE. Mr. President, last week my distinguished colleague from Ohio (Mr. GLENN) spoke of the 60th anniversary of the Ukrainian independence. He praised these brave and noble people who number 50 million in the Ukraine today. Over 2 million Ukrainians live in the United States and, I am pleased to say, several hundred families live in Wisconsin.

But as these proud people celebrate the memory of a short and cherished independence, 1918–20, a gruesome part of history clouds their happiness.

The independence they sought was crushed in 1920 by the Soviet Union. But the clouds grow even darker.

Mr. President, between the years of 1931 and 1933, 5 million Ukrainian peasants perished, victims of Soviet genocide under the leadership of Joseph Stalin. The Central Committee of the Communist Party ordered the liquidation of the "Kulak" class in order to force collective farming.

Professor Vasyl Plyushch, in his book "The Genocide of the Ukrainian People," expresses what this meant quite succintly:

> This was an order calling for the extermination of all Ukrainian peasants, that is, an order of conscious genocide.

The liquidation process was executed by a barbaric scheme. The Communist government devised an artificial famine by confiscating almost all the food produced in the Ukraine. Mass starvation, deportation, and political terror crushed the resistance of the peasants.

In the end, this repression was successful.

Even now as Ukrainians celebrate something joyful, memories of these horrors must weigh heavily upon their minds. Why this pensive mood? Because as millions of first-, second-, and third-generation Ukrainian-Americans celebrate, the United States still has failed to ratify the Genocide Convention.

I could not agree more with the Senator from Ohio when he spoke of the Ukrainian-Americans, "who love the United States, but who also want the world to know that those who live in their homeland have not been forgotten."

Mr. President, can we ever allow ourselves to forget historical examples such as that horrifying experience?

How can Ukrainian-Americans, as well as Jewish-Americans, and Armenian-Americans ever understand U.S. support for "human rights," but not the Genocide Convention?

We must never forget, nor remain silent on the issue of genocide. We must clarify our position on human rights with a total commitment to the most basic of all human rights—the right to live.

Mr. President, we can celebrate with our fellow Ukrainian-Americans. And we will honestly do so when we ratify the Genocide Convention.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. PROXMIRE. I yield to the leader. Will the leader yield very briefly?

ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in adjournment for 2 seconds.

The ACTING PRESIDENT pro tempore. Without objection——

Mr. PROXMIRE. Will the Senator withhold that for a moment? May I ask the Chair to inform us what will be the order of business?

Mr. STEVENS. Mr. President, reserving the right to object, it is my understanding nothing will come over under the rule.

Mr. ROBERT C. BYRD. That is correct.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

There being no objection, at 8:40 a.m., on Wednesday, October 11, 1978, the Senate adjourned until 8:40:02 a.m., the same day.

AFTER ADJOURNMENT

WEDNESDAY, OCTOBER 11, 1978

The Senate met at 8:40:02 a.m., pursuant to adjournment, and was called to order by Hon. QUENTIN N. BURDICK, a Senator from the State of North Dakota.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection. it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that morning business be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, what is the business before the Senate?

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1977

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will continue with the consideration of H.R. 50.

The Senate continued with the consideration of the bill.

Mr. PROXMIRE. Mr. President, what is the pending business?

The ACTING PRESIDENT pro tempore. The pending business is H.R. 50.

Mr. PROXMIRE. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

DISTINGUISHED GUESTS TO VISIT SENATE CHAMBER

Mr. STEVENS. Mr. President, on behalf of the minority leader, I wish to take notice that the Honorable Roger Shipton and the Honorable Gordon Bryant, members of the Australian Parliament and Delegates to the United Nations, will appear on the floor during their visit to Washington today. They are entitled to appear on the floor under the rule.

Mr. Shipton is a member of the Liberal Party and chairman of the Foreign Affairs and Defense Committee. Mr. Bryant is a member of Parliament from the Labor Party. We are honored to have these distinguished gentlemen with us today, and I hope the Members of the Senate will welcome them to the floor as they visit the Senate in their official capacity.

ALLOCATION OF TIME

Mr. STEVENS. Mr. President, does the Senator from Massachusetts wish me to yield to him the remainder of the leader's time?

Mr. BROOKE. Yes, I would be very pleased, and I can begin now.

Mr. ROBERT C. BYRD. Mr. President, I yield any remaining time I have if the Senator from Wisconsin does not need it.

Mr. PROXMIRE. No, I do not.

Mr. ROBERT C. BYRD. I yield that time to the Senator from Massachusetts also.

Mr. STEVENS. I also yield the remainder of the minority leader's time.

Mr. BROOKE. I thank the Senators for yielding time of the majority and minority leaders.

SPECIAL ORDER

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is now recognized, with the additional time, for a period of not to exceed 31 minutes.

CONCERNS OF AMERICAN PEOPLE

Mr. BROOKE. Mr. President, we have been deliberating tax measures for many long days and evenings. And I have sensed a feeling of deep unease in the Senate about the meaning of the so-called tax revolt and the significance of a "proposition 13 fever" that is said to grip the land. Thus, I just wish to share with my colleagues some very deep

convictions I have about what the concerns of the American people really are today. As I have been campaigning for reelection, I have been rewarded by that most valuable experience which politicians should always cherish, the opportunity to listen to people. And I am completely convinced that people are not looking for a cutrate government but rather, that people are looking for efficient, effective, nonwasteful, noncorrupt, and most of all responsive government.

Now, that is not the impression you would get from some who have talked on this floor and around the country. Mr. President, there are candidates stumping the countryside calling for unthinking, general cuts in government services regardless of the human consequences.

These politicians are not offering leadership, Mr. President. Rather, they are offering seduction. They are tempting us to take care of ourselves, to watch out for No. 1. They have fallen prey to the slick sociological theorizing that this is the "me-generation," that the "politics of selfishness" is the will of the people. Theirs is a new siren song. They lure with the prospect of impossible tax cuts and the fallacy of cheap government.

Mr. President, I have not met anyone in an entire campaign season who really expects cheap government. What I have met are thousands who demand good government. Indeed, a recent Washington Post survey reiterates the findings that surveys in Massachusetts and in other States have shown before. It shows that seven out of eight Americans are more concerned about the way our tax moneys are spent than about the amount of taxes that are collected.

The American people have not abandoned their tradition of concern for one another. They still hold with our sacred tradition that we have established a more perfect union to secure to all Americans the blessings of liberty and that this means that we unite to help one another. Politicians who play to and encourage the politics of selfishness do a disservice to the American voter. It is an insult to the American people to imply that they do not care about friends and neighbors, that they are willing for them to do without food, without shelter, without clothing, without jobs without medical care, without education. I do not believe that for 1 minute. I believe that the American people do care about each other and are willing to share with one another, to help one another.

I believe that those of us who are still young or middle aged do care about the elderly. They are not strangers; they are our mothers and fathers, grandparents, uncles, and aunts. They deserve decent medical care. They deserve decent housing. They deserve to be treated with dignity.

Nor do I believe that the American people are ready to turn their back on our public schools by drastically cutting the taxes that support these schools. It would be a strange irony if, after our efforts to bring black children and white children together in the classrooms of America, we then decide to abandon our concern for quality education. I do not believe that. I believe that everyone wants a good education for all American children and is willing to pay a fair share of the costs.

And I believe that those who are fortunate enough to be healthy and able to work do care about those who cannot work because they are blind or disabled, or because they are alone with small children. Americans still believe government should make sure that those people should have a decent income, that those mothers should not be made to choose between being forced to go to work and neglect their children or allowing those children to go hungry.

I believe that those of us who have jobs care about those who cannot find work. Of course we worry about keeping our own jobs. Of course we want to guard the rights of working people that labor in America has struggled so long to achieve. But people know young people, who are in training programs, deserve to have jobs and the dignity of work. And they feel government must make sure that these young people join us in the work force. The politics of selfishness and cheap government is to get those who have jobs and those who do not fighting with one another. The politics of good government is to make sure that every American who can work has the opportunity to do so.

Mr. President, the American people want good government that works for them and brings all of us together. And I find Americans rejecting the notion of cheap government together with cheap promises and those who make them.

But there is no question that a deep sense of frustration about managing the mammoth resources of the Federal Government pervades the land. And so far they have had no good way to communicate to their elected officials how badly the system is failing to produce the return they expect on the tax dollar they invest. And they have had no medium to send the message that the tax system is unfair to the low- and middle-income wage earner and must be changed. So we see the dramatic phenomenon of a proposition 13 or all the State versions of proposition 13. This does not represent a precise prescription for politicians to follow blindly. Rather, it is a directive which says: you are the professional government official, so find a way to make this work and lead the way for us all.

The challenge for all of us is not how fast we can scurry for the shelter of the crowd which is milling about without direction, the challenge is how fast we blaze the trail and lead the way to a more efficient, more fair way to collect and spend the people's money, and how we ensure that we are not overwhelmed by the size of our Government nor by its growth.

Mr. President, just as I am not about to abandon my lifelong faith in the American people's sense of community and compassion, I am not about to abandon the fight for some of the reforms I think are most important. Our new congressional budget control process is just beginning to work and must be strengthened. We must manage the Federal deficit far more stringently than in the past. We have to introduce greater justice in the tax system. We must promote real training for real jobs. And we have to insure that Government does not, through the tax system, eat up larger and larger shares of hard-won wage increases. And we must make sure that there is efficient management in the distribution of the human services of the Government.

And finally, the fat in Government must go—the dams that benefit a few wealthy farmers, the price supports for tobacco, the useless consultant studies, the billion dollars that is skimmed off yearly to help inefficient oil refineries, the absurd waste of money to pay bureaucrats to regulate small business and thus raise prices, the subsidies to rerefined lubricating oil dealers or to barge owners, and the hundreds of millions that get "misplaced" in defense budgets cannot continue to dribble away.

The people are sending a message that says, Take the lead. Stand up to those who would divide us. Represent all Americans in a competent and honorable way. Mr. President, the so-called tax rebellion is not a mandate for us to follow the crowd, it is a cry for us to offer a new vision and to see to it that the vision becomes reality. I believe that for those who wish to heed that call, the public support, and even the public acclaim, necessary to do the job will be ready and overwhelming.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. NELSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MORGAN). Without objection, it is so ordered.

AMENDMENT OF SMALL BUSINESS ACT

Mr. NELSON. Mr. President, I ask the Chair to lay before the Senate a message from the House on H.R. 13418.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, will the Senator put a time limitation on it—whatever he wants?

Mr. NELSON. Two minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives on H.R. 13418, to amend the Small Business Act by transferring thereto those provisions of the Domestic Volunteer Service Act of 1973 affecting the operation of volunteer programs to assist small business, to increase the maximum allowable compensation and travel expenses for experts and consultants, and for other purposes.

The PRESIDING OFFICER. Without objection, the bill will be considered to have been read twice by its title, and the Senate will proceed to its immediate consideration.

Mr. NELSON. Mr. President, in 1975, President Ford transferred all functions

for two SBA volunteer counselor programs from ACTION to the Small Business Administration (SBA). The governing legislation, the Domestic Volunteer Service Act of 1973, splits responsibility between the two agencies. The SBA programs are the Service Corps of Retired Executives (SCORE) and the Active Corps of Executives (ACE).

This bill transfers those provisions of the Domestic Volunteer Service Act governing the operation of SCORE and ACE to the Small Business Act. The bill also authorizes the SBA to compensate experts and consultants at the same rate as other agencies. In addition, the bill makes the following changes in the volunteer programs:

Provides that ACE and SCORE volunteers will be covered by the workers' compensation program benefits at the level of GS–11.

Authorizes reimbursement of volunteers for the cost of malpractice insurance.

Authorizes the SBA to accept money or property as a gift, devise, or bequest.

Clarifies SBA authority to hire clerical assistance for the volunteer programs, to publicize the programs, and to maintain volunteers in SBA headquarters to help administer the programs.

Furthermore, this legislation, which passed the House under suspension on September 25, 1978, will not become effective until October 1, 1979, the start of fiscal year 1980.

The bill was requested by the administration, and is noncontroversial.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was ordered to a third reading, read the third time, and passed.

Mr. NELSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978

Mr. PROXMIRE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is H.R. 50, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 50) to translate into practical reality the right of all Americans who are able, willing, and seeking to work full opportunity for useful paid employment at fair prices of compensation, and so forth.

Mr. PROXMIRE. Mr. President, I understand that the pending question is on agreeing to the Nelson amendment (No. 4532) to H.R. 50, is that correct?

The PRESIDING OFFICER. The Senator is correct.

UP AMENDMENT NO. 2051

(Purpose: To make the reduction of Federal outlays to the GNP a national economic goal)

Mr. PROXMIRE. Mr. President, I send to the desk a perfecting amendment to the pending amendment, and ask for its consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE) proposes a perfecting amendment to amendment No. 4532, to be designated unprinted amendment No. 2051:

At the end of section 2 of the Employment Act of 1946, as amended by section 02 insert the following:

Mr. PROXMIRE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of section 2 of the Employment Act of 1946, as amended by section 02, insert the following:

"(1) The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to rely principally on the private sector to lead the expansion of economic activity and to create new jobs for a growing labor force. Toward this end, the Congress further declares and establishes as a national goal the gradual reduction of the share of the Nation's gross national product accounted for by Federal outlays.".

In section 3(a)(2)(A) of the Employment Act of 1946, as amended by section 03, after "balanced growth," insert "the reduction of the share of our gross national product accounted for by Federal outlays,".

Before the last sentence of section 4(b) of the Employment Act of 1946, as amended by section 04, insert "In each Economic Report and in each President's Budget submitted immediately prior thereto, the President shall incorporate, as part of the five-year numerical goals, annual goals for Federal outlays consistent with the gradual reduction of the share of the Nation's gross national product accounted for by Federal outlays to 21 percent or less by 1981 and 20 percent or less by 1983 and thereafter.".

In section 4(c) of the Employment Act of 1946, as amended by section 04, after "unemployment" the first place it appears, insert "and the reduction of the share of the Nation's gross national product accounted for by Federal outlays".

In section 4(c) of the Employment Act of 1946, as amended by section 04, before "specified in such subsection" insert "and the reduction of the share of the Nation's gross national product accounted for by Federal outlays."

In section 4(c) of the Employment Act of 1946, as amended by section 04, after "annual numerical employment goals" insert "and the reduction of the share of the Nation's gross national product accounted for by Federal outlays".

In the text of section 301(e) of the Congressional Budget Act of 1974, as added by section 04, after "unemployment" both places it appears, insert "or the reduction of the share of the Nation's gross national product accounted for by Federal outlays".

Mr. PROXMIRE. Mr. President, very briefly, this is an amendment that would provide as a goal, along with the unemployment and inflation goals, that we put in a limit on spending. President Carter has indicated that he very much wants us to limit spending as a percentage of the gross national product. This amendment would provide limits on spending, by 1981, to 21 percent of the gross national product, and by 1983 to 20 percent of the gross national product.

That does not mean, of course, that there will be a reduction in spending. We expect the economy to grow, and grow substantially. It is based on the principle and the strong conviction that Government has grown too big in relation to the economy. The cost of Government is now close to 23 percent of the gross national product.

I think this is a moderate, sensible amendment. It is, as I have stated, one that President Carter has proposed, and I think is one that certainly makes this a more moderate, fiscally responsible bill that I believe most Americans will be responsive to.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 10 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 10 a.m.

There being no objection, at 9:12 a.m. the Senate took a recess until 10:02 a.m., whereupon the Senate reassembled when called to order by the Presiding Officer (Mrs. HUMPHREY).

The PRESIDING OFFICER. The Chair, in her capacity as a Senator from the State of Minnesota, suggests the absence of a quorum. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). Without objection it is so ordered.

RECESS UNTIL 10:44 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 10:14 a.m., recessed until 10:44 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. HARRY F. BYRD, JR.).

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, this being a new legislative day, without any measures coming over under the rule or without any automatic call of the calendar just that statements may be inserted in the RECORD; bills, resolutions, petitions, and memorials may be introduced; and reports of committees may be entered.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there morning business?

If not, morning business is closed.

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978

The Senate continued with the consideration of H.R. 50.

Mr. ROBERT C. BYRD. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business before the Senate is H.R. 50.

Mr. ROBERT C. BYRD. I thank the Chair.

RECESS UNTIL 11:15 A.M.

Mr. ROBERT C. BYRD. Mr. President, if no Senators seek recognition now, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 10:45 a.m., recessed until 11:15 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. McGOVERN).

PROCEDURE DISCUSSION

Mr. ROBERT C. BYRD. Mr. President, while the Members on both sides of the aisle are attempting to work out their problems in connection with the Humphrey-Hawkins bill, I hope that it will be possible to call up the sunset legislation under a time agreement. With the distinguished minority leader on the floor, I propose that he and I see if we can work together to develop a time agreement that will allow the sunset legislation to be called up and debated and disposed of. I would not, of course, want anything that would interfere with the Humphrey-Hawkins measure, which is now before the Senate. If a time agreement could be worked out that would allow the sunset legislation to be disposed of within a reasonable length of time, with the understanding that, at any time a Senator wished to discuss the Humphrey-Hawkins measure or offer an amendment to it or take any action on it whatsoever, the sunset legislation would be set aside for that purpose, then it seems to me we would be utilizing the time of the Senate most effectively.

Mr. BAKER. If the majority leader will yield to me for a moment, I am sure he knows, surely the distinguished sponsor of the bill knows, I am a cosponsor of the sunset bill. I am certainly predisposed to move it. I must say that, as I understand it, I do not support the Glenn amendment. I wonder what the majority leader or the distinguished Senator from Maine could say about the form of a proposal that might take account of the complications posed by the Glenn amendment.

Mr. MUSKIE. If the Senator will yield, it is my understanding that the Glenn amendment will not be offered. Senator GLENN had a vote on a very limited form of his amendment yesterday. I understand that although that does not satisfy him, he accepts it and he is willing now to let me have a vote on the sunset principle on the spending side.

There are three or four amendments that will be offered that I think, by and large, probably can be accepted, but that the sponsors will want to discuss. There is a Percy amendment and a Bentsen amendment. Both of those have to do with regulatory reform.

Senator PERCY has another amendment he calls his accountability amendment, and I think there is a Culver amendment, in addition, All of those, I think, will take very little time. I know of no other amendments. I think the agreement might well include a prohibition against nongermane amendments, aside from those that are named. It is my feeling that a 2-hour overall limit may be adequate. I am in the process of checking with Senator ROTH, who is the principal cosponsor on the Republican side, and with the sponsors of these amendments. I have no doubt in my own mind that, within a 2-hour timeframe, we might be able to get an up or down vote.

May I say, in addition, that if, without blocking anybody else's legislative objectives, the Senate support of sunset proves to be very strong, and if there were a way to send it over to the House so that the House would have an opportunity to act on it, I would not be averse to that. But I am not going to try to throw a monkey wrench into somebody else's legislative vehicle at this point. I think it is important to get a vote on sunset so we know whether or not there is strong support. If there is, and if there is a convenient way to get House reaction to it, I would welcome that, but I shall not try to force it on the Senate in any way. It is in that spirit that I think this might be a useful way to use up some time today.

Mr. BAKER. Mr. President, I thank the Senator from Maine.

I am disposed, Mr. President, to respond favorably to the majority leader's request. I shall inquire on my side of the aisle what amendments might be in mind for the bill.

I do think that the suggestion that we provide against nongermane amendments is a good one.

It is even possible, I suppose, to identify the amendments on both sides and to try to provide that no other amendments would be in order. I am willing to do that, I think.

If the majority leader will give me a few minutes before he officially makes the request, I will see if we can put something together.

Mr. ROBERT C. BYRD. I appreciate that.

I thank the distinguished minority leader and the distinguished Senator from Maine. I agree that there should be no opening for nongermane amendments at this most critical period in the session. I hope we can work out an agreement.

Mr. MUSKIE. I thank the majority leader and the minority leader.

RECESS UNTIL 12 NOON

Mr. ROBERT C. BYRD. Mr. President, if no Senator seeks recognition on the Humphrey-Hawkins measure, I ask unanimous consent that the Senate stand in recess until 12 noon.

There being no objection, the Senate at 11:20 a.m., recessed until 12 noon; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. DECONCINI).

VISIT TO THE SENATE BY MEMBERS OF THE AUSTRALIAN PARLIAMENT

Mr. PEARSON. Mr. President, we are indeed delighted to have with us today two visiting members of the Australian Parliament. It is my great pleasure to announce that Mr. Roger Shipton, chairman of the Foreign Affairs and Defense Committee, Liberal Party, and Mr. Gordon Bryant, member of Parliament, Labor Party, of the Australian Parliament are with us today.

[Applause.]

UNANIMOUS-CONSENT AGREEMENT—S. 2

Mr. BAKER. Mr. President, if I could invite the attention of the majority leader and distinguished Senator from Maine, we have now inquired of the Members on this side and I believe it is possible to get a unanimous-consent order on this side of the aisle on the sunset bill. If I may, I shall describe the general terms that we have been able to clear here.

First, that there be a reasonable time limitation on the bill itself; second, that only amendments that are specified in the unanimous-consent order will be eligible and considered; and third, that there be a reasonable time for the consideration of the amendments themselves.

That is the general outline, Mr. President, of an agreement that we shall be willing to work out. If the majority leader cares to try to formulate such a request, I feel fairly sure it will be agreed to.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader.

I ask unanimous consent that, at such time as Calendar Order No. 912, S. 2, the sunset bill, is called up and made the pending business before the Senate, there be a time limitation for debate thereon of 2 hours to be equally divided between Senator MUSKIE and Senator PERCY, that there be a time limitation on any amendment of 30 minutes; a time limitation on any debatable motion, appeal or point of order if such is submitted to the Senate for its discussion of 20 minutes; that the agreement be in the usual form; that the following amendments be specified as qualifying: an amendment by Mr. ROTH, which would add cost-effectiveness criteria to program evaluation reports; an amendment by Mr. PERCY, which would be a revision of S. 600, regulatory reform; an amendment by Mr. PERCY, which provides for program accountability as a new title; an amendment by Mr. BENTSEN, which requires OMB to report under section 504 to identify conflicts in regulatory policies; an amendment by Mr. CULVER, which provides new program evaluation

criteria on future trends relating to the program.

It is understood, Mr. President, that this agreement, being in its usual form, would obviate and preclude nongermane amendments, with the exception of the specified amendments if, indeed, any of them are offered.

Mr. MUSKIE. Can the majority leader tell me the overall time limitation?

Mr. ROBERT C. BYRD. Overall time is 2 hours.

Mr. MUSKIE. Does the agreement specify a time for a final vote on this? I take it it will be around 6 o'clock, because Members want a rollcall vote.

Mr. ROBERT C. BYRD. Mr. President, I add to the unanimous-consent request this provision: That if the sunset bill is before the Senate at a given moment and any Senator wishes to proceed with the Humphrey-Hawkins bill—if any Senator wishes to proceed to discuss, debate, offer any amendments or motions in relation to the Humphrey-Hawkins bill—the sunset bill be laid aside temporarily for that purpose.

The PRESIDING OFFICER (Mr. BUMPERS). Is there objection?

Mr. BAKER. Reserving the right to object, I think the suggestion of the majority leader as to times and other provisions is good and conforms to the presentation we made to Members on this side in order to clear it for unanimous consent. There is one point I would like to clarify.

I did not understand fully whether or not this agreement would preclude any amendments except the specified amendments, or whether it would simply exclude nongermane amendments. I had hoped that the agreement would provide that no amendment other than those specified in the order would be considered.

Mr. ROBERT C. BYRD. Very well. The way I presented the order, it would not preclude other amendments that are not germane. If that be the wish of the principals, I shall modify my request accordingly.

Mr. MUSKIE. Reserving the right to object, and I shall not—I simply state my desires—may I say I have been trying to get Senator GLENN on the phone since we talked earlier. He is on the phone now and I want to give him the courtesy of telling him what we are doing before we nail this down finally. Could we suspend for 30 seconds or a minute? I think there is no problem, but I want to be sure.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator from Connecticut will continue to yield momentarily, with the understanding that the time is not being charged to him, I should like to get a response from Mr. MUSKIE on the request now pending.

Mr. MUSKIE. Mr. President, the agreement as outlined is agreeable to us. Senator GLENN understands it. It is agreeable to him, so we should have no difficulty with it.

Mr. ROBERT C. BYRD. If I may have the attention of the distinguished minority leader, no amendments other than those amendments that have been specified would be in order, with the exception of amendments to the amendments, provided the amendments to the amendments are germane to the amendments.

Is that agreeable?

Mr. BAKER. Mr. President, that is satisfactory.

As I understand it, the bill will be subject to a 2-hour time limitation. There will be certain specified amendments, which the majority leader has identified, which will be eligible; that there be a time limitation of 30 minutes on them and 20 minutes on amendments to the amendments or debatable motions or appeal, if the same are submitted to the Senate.

Mr. ROBERT C. BYRD. That is correct.

Mr. BAKER. And that amendments to the amendments would be in order only if they were germane to the subject matter of amendment.

Mr. ROBERT C. BYRD. That is right. And no other amendments would be in order.

Mr. BAKER. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I further ask unanimous consent that if the bill is called up today and any rollcall votes are ordered thereon, such rollcall votes not occur until 6 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Connecticut (Mr. WEICKER) and the distinguished Senator from Maine (Mr. MUSKIE) for their courtesy in yielding at this time. I also thank the minority leader and Mr. MUSKIE and all Senators for their cooperation in arranging the agreement.

Mr. MUSKIE. I thank the majority leader and the minority leader for their cooperation in enabling me to get to this point.

TIME LIMITATION AGREEMENT—H.R. 11445

Mr. ROBERT C. BYRD. Mr. President, I understand that Mr. WEICKER and Mr. MUSKIE are prepared to call up the conference report on H.R. 11445. I ask unanimous consent that there be a 1-hour overall time limitation on that conference report, and that the unfinished business be temporarily laid aside for the purpose of considering that conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

SMALL BUSINESS ADMINISTRATION PROGRAMS AND AUTHORIZATIONS—CONFERENCE REPORT

Mr. WEICKER. Mr. President, I submit a report of the committee of conference on H.R. 11445 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. DECONCINI). The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11445) to amend the Small Business Act and the Small Business Investment Act of 1958, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1978.)

The Senate proceeded to consider the conference report.

Mr. WEICKER. Mr. President, I rise to support the conference report on H.R. 11445. This report represents a year and a half of work by both House and Senate Small Business Committees. This omnibus small business legislation consists of five separate titles. I would like to highlight some of the most significant provisions adopted by the conferees.

Title I of the legislation authorizes funding for the programs administered by the Small Business Administration through fiscal year 1982. Although the conferees adopted multiyear authorizations, this committee intends to closely monitor SBA's activities and alter these program authorization levels, should it deem appropriate.

I would like to draw the attention of my colleagues to the steps the conferees have taken in changing the direction and priorities of the SBA.

The conferees adopted Senate provisions earmarking funding levels for specific SBA nonlending activities in the next 4 fiscal years. These line item authorizations are consistent with funding categories approved in the SBA appropriations bill (H.R. 12934) for fiscal year 1979. Specifically, the conference report mandates that SBA place a greater emphasis in the following areas: advocacy, economic research, procurement assistance, management and technical assistance, minority small business, and data management.

In the past, SBA has acted principally as a lending institution. By adopting line-item authorizations, Congress had directed SBA to allocate a greater portion of their personnel and resources toward their advocacy, economic research, and business development functions.

As ranking member of both the Authorization Committee and Appropriation Subcommittee, I intend to vigorously pursue this effort to order priorities within SBA.

The Small Business Committee, and this Senator particularly, have long held the belief the SBA must become a more effective advocate for small businesses, which are struggling to survive and remain competitive in our economic system. Regulatory burdens, continuing economic uncertainties coupled with inflation pressures, energy shortages, tax disadvantages, are cited as causes of their problems. Yet, all too often, the concerns of small businesses are an afterthought in the legislative and regulatory process.

Title III of H.R. 11445 clearly enumerates the duties and responsibilities of the Chief Counsel for Advocacy.

The specific statutory duties are:

1. Serving as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the Administration and any other Federal agency which affects small businesses;

2. Counseling small businesses on how to resolve questions and problems concerning the relationship of small business to the Federal Government;

3. Developing proposals for changes in the policies and activities of any agency of the Federal Government which will better fulfill the purposes of the Small Business Act and communicate such proposals to the appropriate Federal agencies;

4. Representing the views and interests of small businesses before other Federal agencies whose policies and activities may affect small business; and

5. Enlisting the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services.

The conferees agreed to a marked increase in the authorization level for the Office of Advocacy. Therefore, it is expected that SBA will have the necessary funds to become an effective advocate for the small business community.

The conferees also agreed to have SBA compile a statistically reliable small business data base so that economic trends with small business can be more accurately determined. The conferees did delete a Senate provision which placed with the advocate the sole responsibility to perform this task. Instead, the administrator has been granted the authority.

Mr. President, in response to the concerns expressed by the Budget Committee, the conference report makes some important changes in SBA's disaster loan interest rates. Existing law provides low interest rates for physical disaster that occurred from July 1, 1976 to October 1, 1978. Under these provisions homeowners pay 1 percent for the first $10,000 and 3 percent for the next $400,000. Business loans are 3 percent for the first $250,000.

For disaster occurring after October 1, 1978, the conferees agreed to raise these interest rates. Homowners would pay 3 percent on the first $55,000 and business would pay 5 percent for the first $250,000.

The committee is well aware of the unprecedented demand on the disaster loan program. The program levels have skyrocketed from $400 million in fiscal year 1977 to over $2.4 billion in fiscal year 1978. Although, as I made clear in conference, I am extremely disappointed that the conferees did not adopt the Senate position of raising the interest rate to the cost of money, I believe the compromise that was reached does make some constructive changes in the program.

Title II of the conference substitute authorizes a 4-year pilot program for establishing small business development centers to provide management and technical assistance to small businesses. The conferees adopted the House provision calling for a 50–50 matching grant and adopted a formula based on population, which limits any one State's share of the program. The State plan and SBA evaluation provisions of the Senate bill were also adopted. The conferees agreed to authorize the program at the following levels for the next 4 years:

$8 million, fiscal year 1979.
$18 million, fiscal year 1980.
$20 million, fiscal year 1981.
$22 million, fiscal year 1982.

Title IV of the conference substitute authorizes SBA to license a new category of small business investment companies which would provide venture-type investments in small business concerns. These newly licensed companies must have at least $1 million in private capital. The SBA can guarantee or purchase debentures of up to 300 percent of the private capital; SBA would put up $3 for each $1 of private money—up to a maximum of $35 million per company—at a 4-percent interest rate. The maximum interest rate that could in turn be charged by any of these companies to a small business would be 9 percent. The SBA would be entitled to 15 percent of any capital gain realized by these companies.

This title was passed in an effort to assist small businesses obtain the equity capital which they needed for growth. Hearings held by the Select Committee on Small Business have disclosed that the Nation's smaller corporations are starring for equity. However, rejuvenation of the SBIC program alone will not solve the problem. Numerous other reforms, in areas such as tax and securities laws, must be enacted.

It became obvious during the conferees discussion of this title that the SBIC program has not been as successful as had been expected when the Small Business Investment Act was passed in 1958. The program enacted under this title, and the SBIC program in general, must be closely examined to ascertain whether it has been efficacious. I am confident that the Small Business Committee will closely examine this issue in the next session.

Title V provides for a framework and funding for the recently announced White House Conference on Small Business. Following regional and State conferences the major conference will take place in Washington no later than June 30, 1980.

Finally, Mr. President I would like to address the OSHA amendment. During floor debate, the Senate adopted the Bartlett amendment which would exempt from OSHA regulations those small businesses with 10 or fewer employees, provided that the two digit Standard Industrial Classification Code industry group to which the firm belongs has an injury/illness record of 7 percent or below per hundred full time employees.

After extensive debate, the conferees agreed to a compromise proposal offered by Senator NELSON. This amendment codifies language previously included in the Labor-HEW Appropriations legislation protecting small businesses employing 10 or less from citations for 10 or less nonserious first instance violations.

Furthermore, the Nelson amendment would provide that no employer who has 10 or fewer employees shall be required to maintain the log of occupational injuries and illnesses, supplementary records, nor annual summary required by part 1904 of title 29 of the Code of Federal Regulations, except when the employer has been notified in writing that he has been selected to participate in a statistical survey of occupational injuries and illnesses, and shall be required to maintain the log of occupational injuries and illnesses.

The conferees also directed the Secretary of Labor to conduct a study of the collection and analysis of statistics dealing with work related injuries and illnesses, and to, no later than 12 months after the effective date of this subsection, submit his study to the President of the Senate and the Speaker of the House of Representatives. Such study shall include the Secretary's evaluation of the effectiveness and accuracy of such procedures in determining the rate of incidence of work related injuries and illnesses, especially with regard to employers of 10 or fewer individuals.

Mr. President, this comprehensive legislation is a product of extensive deliberation between the House and Senate. Many objectionable provisions were deleted and in many cases, workable compromises were developed. I believe this report will provide the Congress and SBA with a sound legislative base to pursue its efforts to assist small businesses in this Nation.

I urge my colleagues to support this conference report.

Mr. BAKER. Mr. President, reserving the right to object, I do not have a clearance list with me. Has this been cleared on our side of the aisle?

Mr. WEICKER. Yes, it has been.

Mr. BAKER. I thank the Senator.

● Mr. NUNN. Mr. President, I rise in support of the conference report on H.R. 11445. It represents several days of lengthy conference consideration, and I am convinced that the compromises that are contained in this measure are generally sound, and will provide important direction support to the Small Business Administration for the greater strengthening of our Nation's vital small business community.

I want to speak briefly to title IV of this measure, in which I have a particular interest.

Title IV of H.R. 11445, as passed by the Senate, authorizes the licensing of a new category of small business investment company (SBIC), which would provide venture capital to small business concerns. The House version of this omnibus bill had no comparable provisions for the creation of these new venture capital investment companies. I am pleased that the Senate was able to prevail in conference on this important measure, and that the bill before us today reflects the Senate Small Business Committee's commitment to the critical value and vital role of venture capital to small business and the American economy.

Mr. President, the January 1977 report of SBA's task force on venture and equity capital for small business concluded, after an extensive study, that:

Venture and expansion capital for new and growing small businesses has become almost invisible in America today.

The implications this has for our Nation's economy are unfortunately all too

clear. As I have reminded by colleagues before, new businesses and young businesses create jobs much more rapidly than mature and older companies. Risk capital—or venture capital, if you will—is required in order to finance new companies and venture capital is the component that is missing today. Since 1970, the number of individual investors in the United States has decreased by 20 percent from 30 to 25 million. In 1969, there were 698 new stock offerings totalling $1.4 billion by companies with a net worth under $5 million. In 1975, there were four such offerings totalling $16 million. These figures have improved somewhat in 1976 and 1977, but remain substantially below our experience in the late 1960's.

There are many suggested reasons for this difficulty in obtaining venture and equity financing. In testimony before the Senate Select Committee on Small Business earlier this year, which I had the privilege of chairing, Patricia M. Cloherty, Deputy Administrator of the SBA, outlined several of these as follows:

Changes in federal laws and regulations over the years have tended to make equity financing unattractive from an investor's standpoint.

The adoption of the Employee Retirement Income Security Act (ER'SA) and its "prudent man" rule has blocked virtually all pension fund and institutional flows of capital to small and medium size firms.

Federal securities law requirements, and the cost of floating securities had the effect of drying up public sources of equity capital for small firms.

Federal tax laws have made it increasingly unattractive for taxpayers who would like to invest in small business ventures to risk their money in equity investments.

Particularly in periods of high interest rates and inflation, the investment community tends to invest in debt securities rather than equity—in order to be assured a return flow of funds within a given time frame. The higher risk element of investing has therefore been reduced to a narrow spectrum of situations.

Since the SBIC program is the only venture capital program sponsored by the Federal government and one which is basically a private sector investing vehicle, we believe SBICs are an excellent vehicle to address the venture capital and capital formation problems of small business in this country.

Mr. President, the Small Business Committee realizes that many of the serious problems in this area are outside our jurisdiction to deal with. However, the only Federal Government-supported program facing up to the critical situation that these factors have contributed to is the small business investment company program authorized by the Small Business Investment Act of 1958.

Unfortunately, after several days of hearings before the Small Business Committee, it has become clear that SBIC's are not providing true equity to small businesses. Their financing are increasingly taking the form of loans, or quasi-equity with some fixed repayment features, with the result that the basic intent of Congress in authorizing the SBIC program—providing long-term growth capital for small firms—is not being satisfactorily accomplished.

At this point, I want to commend the SBA for their recognition of this problem and for their willingness to propose to the Congress innovative methods with which to deal with the crucial task of providing small firms with access to venture and equity financing as they develop and grow.

As Ms. Cloherty testified:

Since the SBIC program is the only venture capital program sponsored by the Federal government and one which is basically a private sector investing vehicle, we believe SBICs are an excellent vehicle to address the venture capital and capital formation problems of small business in this country.

In addition, this unique investing vehicle has an experience factor of 19 years which can serve as a foundation for moving forward in the total venture capital area.

Title IV of the Senate version of H.R. 11445 was the result of these recommendations. I am pleased that, in conference, the House agreed with the general concept contained in the Senate bill. After careful consideration of the details of the Senate proposal, several constructive changes were adopted. I believe that the resulting compromise represents a sound program which will provide important incentives for venture capital formation to our small business community, while providing the maximum practicable protection to the Federal Government and to the taxpayer.

The conference substitute authorizes the licensing of new category of SBIC's which would provide venture-type investments in small business concerns. These "venture-type investments" would be limited to pure equity—common stock, preferred stock, limited partnerships, or similiar equity interests—and unsecured, subordinated debt which is either convertible into equity or has equity purchase rights. In addition, all such debt instruments will have no part amortized during the first 5 years, and must involve the right to purchase at least 10 percent of the equity of the small business concern at the time of the initial financing.

Finally the total of all such debt instruments may not exceed 50 percent of the total portfolio at the end of each fiscal year.

These newly licensed SBIC's—venture capital investment companies or VCIC's—must have at least $1 million in combined private capital and surplus at the time of licensing. SBIC's could contribute marketable portfolio securities to the capital of a VCIC, but not more than one-third of the VCIC's private capital could consist of such securities. These securities would be valued at one-half of their value for purposes of capitalizing the VCIC. If transferred securities later prove to be worth less than the original valuation or if they are not sold within 10 years of transfer, the transferor company could be required to make an additional payment to the VCIC.

SBA would be authorized to guarantee or purchase debentures of VCICs up to 300 percent of their capital and surplus, but not to exceed $35 million; except that if the VCIC has one or more SBICs as a parent, the licensee and its parent company(s) combined could not receive more than $55 million. The VCIC debentures would be issued for terms up to 10 years and bear interest at 4 percent per annum.

The VCIC would be limited to a 9 percent fixed return on its investments. That is, 9 percent would be the maximum interest rate that a VCIC could charge to a small business when providing equity type debt financing.

In order to provide a quid pro quo for the Government's participation in downside risk of loss, VCIC's would be required to provide the Government a participation in upside gains by paying to SBA 15 percent of any capital gain realized on portfolio securities. If the VCIC exchanges a portfolio security for another security at a gain, SBA would be entitled to receive 15 percent of any dividends or interest received by the VCIC which are attributable to these securities.

As SBA has noted, "conceivably, the Government could, on an overall industry basis, generate sufficient revenues from the profitable segment of this industry to cover the interest differential cost, plus some "profits" which could be reinvested in specific national purpose venture capital objectives."

Finally, if the VCIC does not use all of the proceeds of the federally purchased or guaranteed debentures to make venture type investments in small concerns, it would be required to reimburse SBA for the interest subsidy received on such unused proceeds.

Mr. President, I do not pretend that this new approach should be the final word for another 19 years in Congress attempts to address the problems of venture financing for the small business community. I fully intend to give this program's implementation my most careful scrutiny. However, I do believe that this is an important step in the right direction.

I urge my colleagues to adopt the conference report.●

● Mr. BELLMON. Mr. President, when the Senate considered the Small Business Act amendments a month ago, I joined the distinguished Senator from Maine (Mr. MUSKIE) in offering an amendment to strike the low disaster loan interest rate provisions from the Senate bill. The Senate voted to approve that amendment. The effect of the amendment was to allow SBA disaster loan interest rates to revert to the average cost of Government borrowing in fiscal year 1979. I considered this action to a be a fiscally responsible one—a first attempt to control spending under the program and limit the program abuse invited by artificially low interest rates.

Unfortunately, the conference report we are asked to approve today does not uphold the Senate position with regard to SBA disaster loan interest rates. For disasters occurring from October 1, 1978, until October 1, 1982, the conference version provides that the interest rate be set at 3 percent on the first $55,000 for homeowner natural disaster loans and at 5 percent on the first $250,000 for all other natural disaster loans. Only for disaster loans exceeding these limitations would the interest rate be set at a rate equal to the Government's cost of money.

These low-interest rates represent the continuation of a Federal subsidy, with its attendant high costs to the Federal Treasury. The Senate position would have helped to reduce costs by allowing

the rates to return to what they were a year ago, before the law was temporarily changed in response to severe flooding conditions in various parts of the country.

This is not a new issue, Mr. President. This body has faced a number of supplemental appropriation requests this session as fiscal year 1978 program costs have jumped from the $115 million initially contemplated to $2.5 billion—over a twentyfold increase. Each time, the Senate has been warned that the 3-percent interest rate, combined with other factors—such as the eligibility of farmers experiencing crop loss due to drought and the large number of disaster occurrences in fiscal year 1978—have driven loan demand and created a runaway spending program.

Further, artificially low interest rates in the current economic environment of higher rates and tight money have created numerous instances of abuse. They are a "sweet" deal for the eligible borrower. A deal any smart businessman would take advantage of.

The Committee on Small Business is aware of these problems, but has ignored the need to examine and coordinate all Federal disaster loan programs. This need remains. However, the Senate position dropped in conference would provide some interim relief.

Mr. President, this body recently approved the second budget resolution for fiscal year 1979. The spending ceilings we approved as part of that resolution for function 450, community and regional development, assume that the interest rate for the SBA disaster loan program will revert to the Government's cost of money in fiscal 1979. The low disaster loan interest rates contained in this conference report, without any other conditions imposed on obtaining loans, invite further program abuse. They will place upward pressure on the function 450 totals and on our overall spending ceiling for the 1979 fiscal year. Not only will we face this problem in fiscal 1979, but the conference agreement has generously extended these low-interest rates through 1982. As a result, they will drive spending in future years as well.

I am sorry that the Senate conferees did not recognize the importance of this issue and hold out for the Senate position in conference. The first step necessary to control spending under the SBA disaster loan program is now missing. It is for this reason, Mr. President, that I am unable to support this measure.

I would also urge my colleagues to oppose this conference report. No existing small business program would be jeopardized as a result of such action. These programs have the necessary authorization for fiscal year 1979. In fact, we have already enacted the fiscal year 1979 appropriations for these programs.●

Mr. GARN. Mr. President, I wish to register my opposition to the low disaster loan interest rate provisions contained in this conference report. When this body considered the Small Business Act Amendments of 1978, it agreed to an amendment offered by Senators MUSKIE and BELLMON. That amendment struck the low disaster loan interest rate from the bill, allowing these rates to return to the Government's cost of money in fiscal 1979. I voted in support of that amendment. Now, I find that the Senate conferees have not only accepted the lower interest rates, but extended them for 4 additional fiscal years—through fiscal 1982.

Mr. President, the SBA disaster loan interest rates were lowered in fiscal year 1978 on a temporary, emergency basis. As a result of these federally subsidized interest rates and other factors—including the number of disaster occurrences and the eligibility of farmers experiencing crop loss due to drought—we have invited program abuse and runaway spending. A program which normally costs the taxpayer a couple of million dollars in any one fiscal year costs the taxpayer $2.5 billion in fiscal year 1978 alone. To allow these Federal interest rate subsidies to continue is to be fiscally irresponsible.

Clearly, we need a thorough evaluation of our disaster loan programs. There appears to be much waste and duplication. I cannot understand, for example, why farmers should be served under both the Farmers' Home and SBA programs. Hopefully, a comprehensive review of these programs can produce the legislative and administrative changes necessary to provido evenhanded relief to those whose lives have been truly disrupted as a result of a natural disaster.

In the meantime, Mr. President, we can take care of one factor which has contributed to increased loan demand and program abuse in the past fiscal year. By opposing this conference report, we can discontinue the Federal interest subsidy, allowing the interest rate on SBA disaster loans to return to the Government's cost of money in fiscal year 1979.

Mr. NELSON. Mr. President, I urge adoption of the conference report on H.R. 11445. The conferees met on five occasions to iron out their differences on this measure.

The conference substitute is, I believe, a landmark piece of legislation. No single piece of small business legislation has ever been considered by the Congress which has a greater impact.

Mr. President, at this time I would like to briefly explain the bill agreed to by the conference.

SBA PROGRAM LEVELS—FISCAL YEAR 1979

I wish to point out that most of these authorizations are for Federal Government guarantees of loans, debentures and bonds and for some direct financial assistance to small business concerns. Although the direct financial assistance—primarily loans—results in Federal Government spending in the year in which it is made in the aggregate over 90 percent of these loans will be repaid in subsequent years and thus results in income to the Federal Government in later years. In addition, SBA programs provide other benefits to the Federal Government such as the ability to obtain high quality goods and services at reasonable, competitive prices. Also, SBA loans are often used to create new jobs in the borrower's business and to expand the business. Such uses of loan proceeds, naturally, will result in additional tax revenue being received by the Federal, State and local governments.

Mr. President, I want to emphasize that the fiscal year 1979 authorizations provided include a reserve for payment of losses or claims in future years, not just for payments in the current year. For example, the reserve for regular business guaranteed loans provided is 15 percent of the program level. This percentage is the rate used until the administration submitted its fiscal year 1979 budget, which reflected a 1.5 percent reserve to enable repurchases for losses occurring only in fiscal year 1979. The repurchase reserve calculation amounts to a difference of some $400 million in fiscal year 1979 authorizations as compared to the administration's request.

The conferees note that there is no difference in the program cost. The conference substitute merely authorizes budget authority for all anticipated repurchases of guaranteed loans made in fiscal year 1979, even if the repurchases do not occur until later years.

AMENDMENTS TO FISCAL YEAR 1979 SALARY AND EXPENSE AUTHORIZATIONS

Of the total salaries and expenses for fiscal year 1979 the conference substitute allocates $133.673 million for 10 specific functions:

First, $17,000,000 shall be available for procurement assistance, of which amount no less than $962,000 shall be used to employ 35 additional procurement center representatives; no less than $192,000 shall be used to employ seven additional industrial specialists; no less than $962,000 shall be used to employ 40 additional procurement generalists; no less than $220,000 shall be used to employ additional clerical personnel; and no less than $2,500,000 shall be used to pay for the development of a procurement automated source system;

Second, $23,385,000 shall be available for management assistance, of which amount no less than $2,000,000 shall be used for direct SCORE/ACE program costs; no less than $2,500,000 shall be used for direct small business institute program costs; and no less than $14,385,000 shall be used to employ existing and additional management assistance personnel;

Third, $2,172,000 shall be available for technical assistance, of which amount no less than $192,000 shall be used to employ additional technical assistance personnel;

Fourth, $2,300,000 shall be available for the execution of advocacy functions, of which not less than $600,000 shall be used to employ additional advocacy assistance personnel;

Fifth, $5,000,000 shall be available for economic research, of which amount no less than $600,000 shall be used to pay for retabulation of existing data from the U.S. Department of Commerce or other Federal department, agency or instrumentality, for developing a small business economic data base; no less than $950,000 shall be used to pay for modification of existing surveys from the U.S. Department of Commerce or other Federal department, agency or instrumentality, for developing a small business economic data base; no less than $250,000 shall be used to pay for special surveys to be carried out by the U.S. Department of Commerce or other Federal department,

agency or instrumentality, for developing a small business economic data base; and no less than $500,000 shall be used to pay for other costs of developing and maintaining a small business economic data base;

Sixth, $660,000 shall be available for public communications;

Seventh, $4,500,000 shall be available for internal administration data management, of which amount no less than $1,000,000 shall be used to pay for development of an indicative small business data base comprised of names and addresses and related information of small concerns; $450,000 shall be used to pay for development of an automated internal administration management data base; and no less than $110,000 shall be used to pay for enhancement of the administration's document tracking system and for installation of terminals in administration field offices;

Eighth, $17,000,000 shall be available for minority small business, including management and technical assistance;

Ninth, $53,000,000 shall be available for finance and investment functions, of which amount no less than $6,600,000 shall be used to employ additional personnel for such functions; and

Tenth, $8,000,000 shall be available for grants to small business development centers, and an additional $650,000 shall be available for the administration of the small business development center program.

The conference substitute also provides that the amount which may be transferred from any of the 10 functions is 10 percent of the amount specified; however, none of these functions may be increased by more than 20 percent.

The conferees intend that the $1 million for development of an indicative small business data base as required by paragraph (7) is to enable SBA to compile a list of basic data developed partially by utilizing existing Government and private sources; but it probably will require additional independent research and compilation by SBA. Such a data base would include pertinent information on the small business such as its name and address, type of business, number of employees, et cetera. This information could then be used by SBA to selectively communicate with the small business community as to programs which might help the small business or to advise it of proposed regulations and solicit small business input. The conferees expect SBA to adhere to the provisions of the Privacy Act of 1974 with respect to the dissemination of this information.

AVAILABILITY OF UNEXPECTED FUNDS

The conference substitute establishes the following program levels for fiscal year 1980:

7(a)	*Millions*
Business	$4,125
Direct and immediate participation	495
Guaranteed	3,630
Handicapped	33
Direct and immediate participation	22
Guaranteed	11
7(l)	
EOL	166
Direct and immediate participation	73
Guaranteed	93
Development companies	160
Direct and immediate participation	50
Guaranteed	110
Investment company assistance	250
Direct and immediate participation	25
Guaranteed	225
7(l)	
Solar and energy conservation	75
Direct and immediate participation	30
Guaranteed	45
Total BLIF	4,809
Direct and immediate participation	695
Guaranteed	4,114
Disaster:	
Physical	[1]
Surety bond guarantees (SBA share of program levels)	2,700
Pollution control bond guarantees	100

[1] Open ended.

To carry out fiscal year 1980 program levels, the conference substitute authorizes $1,616 million. Of this amount, $42 million is to be available to carry out the surety bond guarantees program; $4 million to pay claims on prior guarantees on the defunct lease guarantees program; and $232 million for salaries and expenses.

SALARY AND EXPENSE AUTHORIZATIONS FOR FISCAL YEAR 1980

Of the total salaries and expenses for fiscal year 1980, the conference substitute earmarks 10 specific functions:

First, $18,700,000 shall be available for procurement assistance;

Second, $27 million shall be available for management assistance of which amount no less than $2,200,000 shall be used for direct SCORE/ACE program costs; no less than $3 million shall be used for direct small business institute program costs; and no less than $17 million shall be used to employ existing and additional management assistance personnel;

Third, $2,400,000 shall be available for technical assistance;

Fourth, $2,500,000 shall be available for the execution of advocacy functions;

Fifth, $5,500,000 shall be available for economic research, of which amount no less than $600,000 shall be used to pay for the retabulation of existing data from the U.S. Department of Commerce or other Federal department, agency or instrumentality; for developing a small business economic data base; no less than $950,000 shall be used to pay for modification of existing surveys from the U.S. Department of Commerce or other Federal department, agency, or instrumentality, for developing a small business economic data base; no less than $250,000 shall be used to pay for special surveys to be carried out by the U.S. Department of Commerce or other Federal department, agency or instrumentality, for developing a small business economic data base; and no less than $500,000 shall be used to pay for other costs of developing and maintaining a small business economic data base;

Sixth, $725,000 shall be available for public communications;

Seventh, $7,400,000 shall be available for internal administration data management, which shall be used to pay for development of an automated internal administration management data base, development and installation of terminals, telecommunications and appropriate central site computer capability, and reprograming of major portions of the existing data management system, of which amount no less than $1,100,000 shall be used to pay for development of an indicative small business data base comprised of names and addresses and related information;

Eighth, $17,200,000 shall be available for minority small business, including management and technical assistance;

Ninth, $58,300,000 shall be available for finance and investment functions; and

Tenth, $18,000,000 shall be available for grants to small business development centers, and an additional $650,000 shall be available for the administration of the small business development center program.

The conference substitute also permits up to 10 percent of the amounts specified to be transferred from any of the 10 functions; however, none of the functions may be increased by more than 20 percent.

SBA PROGRAM LEVELS—FISCAL YEAR 1981

The conference substitute establishes the following program levels for fiscal year 1981:

7(a)	*Millions*
Business	$4,545
Direct and immediate participation	545
Guaranteed	4,000
7(h)	
Handicapped	37
Direct and immediate participation	25
Guaranteed	12
7(l)	
EOL	184
Direct and immediate participation	81
Guaranteed	103
Development companies	175
Direct and immediate participation	55
Guaranteed	120
Investment company assistance	278
Direct and immediate participation	28
Guaranteed	250
7(l)	
Solar and energy conservation	75
Direct and immediate participation	30
Guaranteed	45
Total BLIF	5,294
Direct and immediate participation	764
Guaranteed	4,530
Disaster:	
Physical	[1]
Nonphysical	242
Surety Bond guarantees (SBA share of program level)	3,500
Pollution control bond guarantees	110

[1] Open ended.

To carry out fiscal year 1981 program levels, the conference substitute authorizes $1,607 million. Of this amount $59 million is to be available to carry out the surety bond guarantees program; $4 million to pay claims on prior guarantees on the defunct lease guarantee program; and $254 million for salaries and expenses.

SALARY AND EXPENSE AUTHORIZATIONS FOR FISCAL YEAR 1981

Of the total salaries and expenses for fiscal year 1981, the conference substitute earmarks 10 specific functions:

First, $20,600,000 shall be available for procurement assistance;

Second, $30,500,000 shall be available for management assistance of which amount no less than $2,400,000 shall be used for direct SCORE/ACE program costs; no less than $3,600,000 shall be

used for direct small business institute program costs; and no less than $19,000,000 shall be used to employ existing and additional management assistance personnel;

Third, $2,500,000 shall be available for technical assistance;

Fourth, $2,800,000 shall be available for the execution of advocacy functions;

Fifth, $6,100,000 shall be available for economic research, of which amount no less than $600,000 shall be used to pay for retabulation of existing data from the U.S. Department of Commerce or other Federal department, agency or instrumentality, for developing a small business economic data base; no less than $950,000 shall be used to pay for modification of existing surveys from the U.S. Department of Commerce or other Federal department, agency or instrumentality, for developing a small business economic data base; no less than $250,000 shall be used to pay for special surveys to be carried out by the U.S. Department of Commerce or other Federal department, agency or instrumentality, for developing a small business economic data base; and no less than $500,000 shall be used to pay for other costs of developing and maintaining a small business economic data base;

Sixth, $800,000 shall be available for public communications;

Seventh, $8,000,000 shall be available for internal administration data management, which shall be used to pay for development of an automated internal administration management data base, development and installation of terminals, telecommunications and appropriate central site computer capability, and reprograming of major portions of the existing data management system, of which amount no less than $1,200,000 shall be used to pay for development of an indicative small business data base comprised of names and addresses and related information;

Eighth, $17,400,000 shall be available for minority small business, including management and technical assistance;

Ninth, $64,300,000 shall be available for finance and investment functions; and

Tenth, $20,000,000 shall be available for grants to small business development centers, and an additional $650,000 shall be available for the administration of the small business development center program.

The conference substitute also permits up to 10 percent of the amounts specified to be transferred from any of the 10 functions; however, none of the functions may be increased by more than 20 percent.

SBA PROGRAM LEVELS—FISCAL YEAR 1982

The conference substitute establishes the following program levels for fiscal year 1982:

7(a)	*Millions*
Business	$5,000
Direct and immediate participation	600
Guaranteed	4,400
7(h)	
Handicapped	42
Direct and immediate participation	28
Guaranteed	14
7(l)	*Millions*
EOL	204
Direct and immediate participation	90
Guaranteed	114
Development companies	191
Direct and immediate participation	61
Guaranteed	130
Investment company assistance	306
Direct and immediate participation	31
Guaranteed	275
7(l)	
Solar and energy conservation	75
Direct and immediate participation	45
Total BLIF	5,818
Direct and immediate participation	840
Guaranteed	4,978
Disaster:	
Physical	(1)
Nonphysical	267
Surety bond guaranteed (SBA share of program level)	4,000
Pollution control bond guarantees	125

[1] Open ended.

To carry out fiscal year 1982 program levels, the conference substitute authorizes $1,943 million. Of this amount, $69 million is to be available to carry out the surety bond guarantees program; $4 million to pay claims on prior guarantees on the defunct lease guarantee program; and $278 million for salaries and expenses.

SALARY AND EXPENSE AUTHORIZATIONS FOR FISCAL YEAR 1982

Of the total salaries and expenses for fiscal year 1982, the conference substitute earmarks 10 specific functions:

First, $22,600,000 shall be available for procurement assistance;

Second, $33,300,000 shall be available for management assistance, of which amount no less than $2,600,000 shall be used for direct SCORE/ACE program costs; no less than $4,200,000 shall be used for direct small business institute program costs; and no less than $21,000,000 shall be used to employ existing and additional management assistance personnel;

Third, $2,800,000 shall be available for technical assistance;

Fourth, $3,100,000 shall be available for the execution of advocacy functions;

Fifth, $6,700,000 shall be available for economic research of which amount no less than $600,000 shall be used to pay for retabulation of existing data from the U.S. Department of Commerce or other Federal department, agency or instrumentality, for developing a small business economic data base; no less than $950,000 shall be used to pay for modification of existing surveys from the U.S. Department of Commerce or other Federal department, agency or instrumentality, for developing a small business economic data base; no less than $250,000 shall be used to pay for special surveys to be carried out by the U.S. Department of Commerce or other Federal department, agency or instrumentality, for developing a small business economic data base; and no less than $500,000 shall be used to pay for other costs of developing and maintaining a small business economic data base;

Sixth, $880,000 shall be available for public communications;

Seventh, $9,200,000 shall be available for internal administration data management, which shall be used to pay for development of an automated internal administration management data base, development, purchase, and installation of terminals, telecommunications and appropriate central site computer capability, and reprograming of major portions of the existing data management system, of which amount no less than $1,300,000 shall be used to pay for development of an indicative small business data base comprised of names and addresses and related information;

Eighth, $17,600,000 shall be available for minority small business, including management and technical assistance;

Ninth, $70,700,000 shall be available for finance and investment functions; and

Tenth, $22,000,000 shall be available for grants to small business development centers, and an additional $650,000 shall be available for the administration of the small business development center program.

The conference substitute also permits up to 10 percent of the amounts specified to be transferred from any of the 10 functions; however, none of the functions may be increased by more than 20 percent.

INVESTMENT OF TEMPORARILY IDLE FUNDS IN GUARANTEE PROGRAMS

The conference substitute repeals section 412 of the Small Business Investment Act of 1958, disallowing the investment of temporarily idle funds in the surety bond guarantees fund in bonds or guarantees; and amends section 405 of the Small Business Investment Act of 1958 to allow temporarily idle funds in the pollution control bond guarantees fund—that is, a reserve for future losses—to be invested in bonds or guarantees.

PRODUCT DISASTER LOANS

The conference substitute amends SBA's product disaster loan program by clarifying that small business concerns which suffer substantial economic injury as a result of being unable to process or market a product due to disease or toxicity in the product from natural or other causes, are eligible for loan assistance.

LOAN POOLING

The conference substitute authorizes banks and private dealers to form a pool of any type of SBA guaranteed loans and to issue certificates of beneficial ownership in such pools. The certificates will be guaranteed by SBA in advance of their issuance and sale by the private dealer or bank. Also, this is a pilot program which will automatically expire on January 1, 1980, unless extended by the Congress. Finally, SBA is required to report to the Small Business Committees of both the Senate and the House on the implementation of this program by September 30, 1979, so that the committees can evaluate its operation.

The conferees note that there should be no additional cost to the Federal Government for this program. A default on the certificates which would be the subject of a claim against SBA would be in the same dollar amount for which SBA would already be obligated under their guarantee on the loans which comprise the pool.

The conference substitute is intended to govern SBA "pooling" and the secondary market for the guaranteed portions of SBA guaranteed and deferred participation loans. It permits the continuation of direct sales of guaranteed interests in SBA loans from lenders to dealers or investors as those sales have been conducted in the past.

Conferees intend that banks and private dealers in SBA guarantee portions, rather than SBA acting directly or through a fiscal agent, should be the issuers of certificates of beneficial ownership in SBA guaranteed loan portions. Such certificates may represent fractional, undivided interests in an underlying pool.

The certificates are to be sold freely in the open market rather than to SBA or other Federal agencies. Each bank or dealer should administer its own pools and perform or provide for payments and other administrative functions under competitively determined, individual costs, rather than through arrangements and pricing fixed by SBA.

Certificates of beneficial ownership, as well as the guaranteed loan portions underlying them, are to be guaranteed by SBA in a manner consistent with their banking by the full faith and credit of the United States, thus insuring that certificates would be exempted securities under the Securities Act of 1933 and that the pools would be exempt from registration under the Investment Company Act of 1940. The certificates shall be proportionately prepaid upon prepayments of the underlying loans or upon defaults.

In structuring the means by which banks and private dealers are permitted to provide for timely payment of principal and interest on certificates, it is intended that SBA should have broad authority to develop a workable framework in which this would be accomplished; provided that sufficient funds which could otherwise be retained by the bank or dealer, or its fiduciary agent, from the cash flow of each respective pool are allocated by the bank or dealer to pay for the interest costs SBA reasonably anticipates would be incurred in connection with timely payment over the life of the pool and that such funds be regularly set aside, in trust, for this purpose. Nothing in the language of this section would prohibit SBA from directly guaranteeing advances for timely payment purposes; the repayment of such funds would have already been previously guaranteed by SBA. Provided that funds to pay the interest costs associated with timely payment are set aside, it is not intended that banks and private dealers should be required to assume an additional contingent liability for interest payments that SBA does not reasonably anticipate will be required.

SBA should implement this program as quickly as practicable and should speed the processing of the underlying guarantees. To safeguard the interests of the Federal Government, any bank or dealer issuing certificates should be required, for example, to make arrangements to escrow with a responsible, financially stable, and unaffiliated bank or trust company all original documents representing the underlying guaranteed loan portions and, directly upon receipt, all funds payable in connection with the underlying guaranteed loans portions that are due to be paid to the certificate holders, until the time such funds are actually to be paid.

To safeguard investors and the Federal Government, SBA should institute proper internal controls and affix its seal to certificates guaranteed; no guarantee would be effective until the SBA seal has been affixed by SBA.

SBA shall not discriminate against small banks or dealers desiring to issue certificates merely on the basis of size or financial resources provided that SBA determines that appropriate safeguards can be provided for both private investors and the Federal Government.

Authority to guarantee new pools will automatically expire on January 1, 1980, unless extended. However, pools formed prior to that date will remain in full force and effect.

LOCAL DEVELOPMENT COMPANY DEBENTURES

The conference substiute provides for the formation of local development companies that have: First, a full-time professional staff; second, adequate accounting, legal, and business servicing capabilities; and third, an active board of directors, which meets on a regular basis and is actively involved in loan decisions and loan servicing. In addition to SBA's authority to make loans of up to $500,000 to the local development company for each small business being assisted by the company, SBA would be authorized to purchase, or guarantee, debentures issued by local development companies with the above three capabilities.

This new type of assistance is limited to SBA guarantees of debentures issued by an eligible development company—either State or local. Furthermore, the amount of the debentures to be guaranteed may not exceed one-half of the project cost. The remaining one-half of the project cost would be required to be supplied from other sources.

PROCUREMENT ASSISTANCE FOR ORGANIZATIONS OF HANDICAPPED

The conference substitute extends the authority of nonprofit organizations of handicapped individuals to participate in small business procurement set-asides, but restricts the participation to fiscal years 1979 and 1980 and limits it to not more than $100 million per year. In addition, it requires SBA to monitor and evaluate the program; directs the Administrator to require every Federal agency and department having procurement authority to take such actions as the Administrator deems appropriate if the Administrator and the Executive Director of the committee for the purchase from the blind and severely handicapped find that the participation of such organizations of handicapped individuals has or may cause severe economic injury to for-profit small businesses; and delays until not later than January 1, 1980, the requirement that SBA prepare and transmit to the Small Business Committees of both the Senate and the House a report on the impact on for-profit small businesses of contracts awarded to such organizations of handicapped.

PAYMENT OF DISASTER LOAN INTEREST DIFFERENTIAL BY SBA TO TREASURY

The conference substitute removes the requirement that SBA pay interest on the outstanding cash disbursements from the disaster loan fund.

ECONOMIC INJURY DISASTER LOANS

The conference substitute amends section 7(b)(8) of the Small Business Act to clarify the intent that energy shortage loans be made available to those small businesses injured by any type of an energy shortage, provided that those small concerns which suffer an energy shortage due to strikes, embargoes, or boycotts directly against them are ineligible.

SMALL BUSINESS EXEMPTION FROM OSHA

The conference substitute provides that:

First, no civil penalty shall be proposed or assessed for any first-instance safety or health violation if the employer cited for such violation has 10 or fewer employees and if the inspection which led to the citation of such first-instances violation resulted in the citation of such employer for less than 10 violations of an other than serious nature.

I want to correct a technical error in the statement of the managers of this conference report with respect to the OSHA amendment. The explanatory statement in the conference report implies that in counting violations for the purpose of applying the amendment, only nonserious violations are to be counted. This is not correct. As is apparent from reading the language of the amendment, all violations, including serious, willful, repeat, failure to abate, and other violations, except "de minimis" violations, are to be counted in determining whether or not a small business employer is eligible for the exemption.

Second, no employer who has 10 or fewer employees shall be required to maintain the log of occupational injuries and illnesses, supplementary records, or annual summary required by part 1904 of title 29 of the Code of Federal Regulations, except when the employer has been notified in writing that he has been selected to participate in a statistical survey of occupational injuries and illnesses, and shall be required to maintain the log of occupational injuries and illnesses; and

Third, the Secretary of Labor is directed to conduct a study of the collection and analysis of statistics dealing with work related injuries and illnesses, and to, no later than 12 months after the effective date of this subsection, submit his study to the President of the Senate and the Speaker of the House of Representatives. Such study shall include the Secretary's evaluation of the effectiveness and accuracy of such procedures in determining the rate of incidence of work related injuries and illnesses, especially with regard to employers of 10 or fewer individuals.

SMALL BUSINESS DEVELOPMENT CENTERS

The bill provides for a statutory 4 year pilot program whereby small business development centers can be established to provide management, technical, and technological assistance to small businesses.

The bill authorizes SBA to make matching grants directly to any qualifying State government or agency thereof, any regional entity, any State-chartered development credit or finance corporation, any land-grant college or university, junior or community college, any college or school of business, engineering, commerce, or agriculture, or to any entity formed by two or more of the above to provide management, technical, and technological assistance to small business.

Grant applicants would be required to obtain matching funds on a 50–50 basis from non-Federal sources and would be entitled to a maximum grant based on the percent of the population to be served as compared to the total population of the United States.

The matching funds from non-Federal sources could not include any fees from small business, but they could include indirect costs or waived overhead for up to one-half of the contribution and the balance would have to be in cash.

The bill also provides that in order to participate in the small business development center program, a State must submit to SBA for approval a plan setting forth the budget, the region to be served, the services to be rendered, how such services will be delivered by each participant, and any other assurances that SBA may, in its discretion, require.

SBA would make the decision on which applicants are eligible to participate in the State plan.

It also provides that centers must assist small businesses in solving problems concerning operations, manufacturing, engineering, technology exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, business strategy development, and other matters needed by small business for growth and expansion, innovation, increased productivity and management improvement, and for decreasing industry concentration.

A center must make its services available as close as possible to small businesses by providing extension services and utilizing satellite locations and State and Federal small business related programs whenever possible.

A full-time staff, including a director, business analyst, technology transfer agents, information specialists, and part-time professional people must be provided by a center. The center also shall have access to laboratory and adaptive engineering facilities.

Services of a center shall include: one-on-one counseling; assisting in technology transfer; maintaining information pertaining to Federal, State, and local regulations and providing technology development to assist small concerns with regulatory compliance; conducting and coordinating research into technical and general small business problems; providing a library containing current information and data needed by local small businesses; maintaining a working relationship with private consultants, the financial and investment communities; and small business groups; and conducting surveys for local small business groups to develop information pertaining to the local economy and the status of small business in that locality.

A center shall continue to modify and upgrade its services in order to be responsible to the changing needs of the small business community.

Laboratories operated and funded by the Federal Government shall provide services and make their facilities available to centers on a reimbursable cost basis.

National Science Foundation funded innovation centers are authorized and directed to cooperate with small business development centers in their activities. The National Science Foundation shall submit an annual report to Congress concerning the performance of these innovation centers, with recommendations for their expansion and improvement.

It also authorizes SBA to appoint a National Advisory Board consisting of nine members, three of whom would be representatives of universities and six of whom would be representatives of the small business community. The Board would advise SBA on the operation of the program.

The bill also authorizes either SBA or a firm retained by SBA to evaluate the small business development center program to measure quantitatively and qualitatively the impact on small businesses and the socioeconomic base of the regions served.

This program is established on a pilot basis during fiscal years 1979 through 1982. It would be funded with grants of $8 million, $18 million, $20 million, and $22 million to the centers in each of those fiscal years, respectively, and in addition SBA would be authorized $650,000 per year for administration of the program.

SBA ORGANIZATION

The conference substitute directs the Administrator to appoint six Associate Administrators as follows:

First, an Associate Administrator for Finance who shall be responsible to the Administrator solely for the development, execution, and administration of all loan programs except disaster loans;

Second, an Associate Administrator for Procurement Assistance who shall be responsible to the Administrator solely for the development, execution, and administration of the procurement assistance programs and activities;

Third, an Associate Administrator for Minority Small Business who shall be responsible to the Administrator solely for the formulation of policy and conduct of programs which provide assistance to minority small business concerns;

Fourth, an Associate Administrator for Investment who shall be responsible to the Administrator solely for the development, execution, and administration of the small business investment company program;

Fifth, an Associate Administrator for Management and Technical Assistance who shall be responsible to the Administrator solely for the development, execution and administration of management assistance, export development and technical assistance programs; and

Sixth, an Associate Administrator for Disaster Loan Administration who shall be responsible to the Administrator solely for the development, execution, and administration of all physical and non-physical—(economic injury)—loan programs.

ADVOCACY AND ECONOMIC RESEARCH

The conference substitute incorporates title II of Public Law 94–305 in the Small Business Act as a new section 22.

The Chief Counsel for Advocacy would continue to have five basic, statutory duties:

First, serving as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the administration and any other Federal agency which affects small businesses;

Second, counseling small businesses on how to resolve questions and problems concerning the relationship of small business to the Federal Government;

Third, developing proposals for changes in the policies and activities of any agency of the Federal Government which will better fullfill the purposes of the Small Business Act and communicate such proposals to the appropriate Federal agencies;

Fourth, representing the views and interests of small businesses before other Federal agencies whose policies and activities may affect small businesses; and

Fifth, enlisting the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services.

In addition, the Chief Counsel would be required to transmit annually to the Congress and to the President a comprehensive report containing findings and specific recommendations.

In carrying out the statutory duties, the conference substitute authorizes the Chief Counsel, after consultation with and subject to the approval of the Administrator, to:

First, employ and fix the compensation of not more than 10 additional staff personnel at any one time, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the highest rate for a GS–17;

Second, consult with experts and authorities in the fields of small business investment, venture capital, investment and commercial banking, and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, and including members of the academic community, and individuals who generally represent the public interest;

Third, utilize the services of the National Advisory Council established pursuant to the provisions of section 8(b)(13) of the Small Business Act and in accordance with the provisions of such act to appoint such other advisory boards or committees as are reasonably appropriate and necessary to carry out the provisions of this section; and

Fourth, hold hearings and sit and act at such times and places as he may deem advisable.

By incorporating into the Small Business Act parts of Public Law 94–305 that pertain to advocacy, I want to underscore the importance of the post of Chief Counsel for Advocacy for the benefit of the Small Business Administration, the Executive Office of the President—particularly the Office of Management and Budget, the Office of Federal Procurement Policy, and the Office of Science and Technology, the cabinet departments, and the independent regulatory agencies. I expect from all of them their fullest cooperation with the Chief Counsel in bringing about visible, substantive changes in Federal policy toward small business.

I further expect the fullest, frankest reporting by the Chief Counsel for Advocacy about the degree of cooperation received.

With regard to SBA, I am encouraged by Administrator Weaver's repeated expressions of support for expanded duties for the Chief Counsel for Advocacy. The Administrator is urged to use his best efforts to eliminate within the agency any remaining bureaucratic resistance or lack of cooperation to accomplish the statutory advocacy mission. Additionally, it is expected that the Administrator will be diligent in preventing any duplication or dispersion of responsibility of the Chief Counsel for Advocacy within SBA.

In carrying out the statutory duties and responsibilities, the conferees expect the Chief Counsel for Advocacy to address the following subject areas:

First, study the ability of financial markets and institutions to meet the debt and equity capital needs of small businesses;

Second, examine the role of small business in the American economy and the contribution which small businesses can make in improving competition, encouraging economic and social mobility for all citizens, restraining inflation, spurring producton, expanding employment opportunities, increasing productivity, promoting exports, stimulating innovation and entrepreneurship, and providing an avenue through which new and untested products and services can be brought to the marketplace;

Third, recommend specific measures for creating an environment in which all small businesses will have the opportunity to compete effectively and expand to their full potential, and to ascertain the common reasons, if any, for small business successes and failures;

Fourth, develop proposals for changes in the policies and activities of any department, agency, and instrumentality of the Federal Government which will better fulfill the purposes of this act and communicate such proposals on a timely basis to the appropriate departments, agencies, and instrumentalities of the Federal Government, the Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives;

Fifth, measure the direct costs and impact of Federal regulations and policies in small businesses, and make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations on small businesses and communicate such proposals on a timely basis to the Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives;

Sixth, analyze proposed and pending legislation as to its impact on small businesses and propose additions, corrections, or deletions to such legislation, if needed, to minimize any potential harmful impact on small businesses; such impact studies and proposals shall be transmitted on a timely basis to the President, and the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives;

Seventh, develop and maintain a set of rational, objective criteria to be used to define small businesses for use by the administration and each department, agency and instrumentality of the Federal Government;

Eighth, evaluate the efforts of departments, agencies and instrumentalities of the Federal Government, and business and industry to assist minority businesses;

Ninth, make such other recommendations as may be appropriate to assist the development and strengthening of minority and other small businesses;

Tenth, serve as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the administration and any other department, agency, and instrumentality of the Federal Government which affect small businesses;

Eleventh, counsel small business on how to resolve questions and problems concerning the relationship of small businesses to the Federal Government;

Twelfth, represent the views and interests of small businesses before other departments, agencies, and instrumentalities of the Federal Government, whose policies and activities may impact on small businesses;

Thirteenth, enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses and information on how small businesses can participate in or participate in or make use of such programs and services; and

Fourteenth, provide on behalf of small businesses, in those cases deemed appropriate, written or oral testimony, statistical data, studies or other information in any Federal agency or department rulemaking or adjudication conducted pursuant to the provisions of sections 553, 556, or 557 of title 5, United States Code, which may have a substantial effect on a significant number of small businesses.

Finally, the conference substitute assigns to the SBA Administrator the responsibility for establishing and maintaining an economic data base on small business and for annually publishing a report giving a comparative analysis and interpretation of the historic trends of the small business sector as reflected by such data. The required report would include, but need not be limited to data on:

First, employment, layoffs, and new hires;

Second, number of business establishments and the types of such establishments such as sole proprietorships, corporations, and partnerships;

Third, number of business formations and failures;

Fourth, sales and new orders;

Fifth, back orders;

Sixth, investment in plant and equipment;

Seventh, changes in inventory and rate of inventory turnover;

Eighth, sources and amounts of capital investment, including debt, equity, and internally generated funds;

Ninth, debt to equity ratios;

Tenth, exports;

Eleventh, number and dollar amount of mergers and acquisitions by size of acquiring and acquired firm;

Twelfth, concentration ratios; and

Thirteenth, comparative analysis and interpretation of the historical trends of the small business sector as reflected by the data acquired.

DECLARATION OF SMALL BUSINESS ECONOMIC POLICY

The conference substitute provides for a Small Business Economic Policy Act of 1978. The first part states that the Federal Government has an obligation to address the needs of small business on a continuing basis. The Federal Government is directed to use all practical means to implement and coordinate all Federal policies, programs and goals to protect the economic interests of small business. An aim of this policy is to reduce the concentration of economic resources and to provide an opportunity for entrepreneurship and inventiveness.

There also is declared a policy establishing a national goal to preserve a competitive free enterprise system with private sector incentives that will help provide adequate, reasonably priced capital for small enterprises.

PRESIDENT'S REPORT ON SMALL BUSINESS AND COMPETITION

The second section of the Small Business Economic Policy Act of 1978 requires that each January the President submit a "Report on Small Business and Competition," focusing on the economic issues that affect the strength of the small business sector, the efficiency of the Nation's markets, and the state of competition in the economy. This report would examine the current role of small business in the economy; present a current and historical perspective of the economic variables influencing small business; identify economic trends affecting small business and the state of competition; examine the effects of, and problems caused by, policies, programs and activities of the Federal Government on small business and competition and recommend legislative and administrative solutions to such problems; and recommend a program for carrying out the small business economic policy.

In addition, the conference substitute provides that the report shall examine the role of small business in the economy on an industry-by-industry basis. The

conferees recognize the value of this information. If data on a particular industry is not available, every effort should be made to collect it. Also, the report is expanded to include information, by agency and department, on the total dollar value of all Federal contracts exceeding $10,000 and all subcontracts exceeding that same amount which are awarded to small, minority-owned and female-owned businesses.

EXECUTIVE LEVELS FOR SBA OFFICIALS

The conference substitute establishes the Chief Counsel for Advocacy at Executive Level IV and establishes the two new Associate Administrators at Executive Level V. It makes no change in the Executive Level of the Administrator or Deputy Administrator.

STUDY OF SMALL BUSINESS CREDIT NEEDS

The conference substitute directs, as part of the "Small Business Economic Policy Act of 1978," that the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, in consultation with the SBA Administrator and the Bureau of the Census, study the credit needs of small business to determine the extent to which commercial banks are meeting these needs. The results of these studies are to be reported to Congress no later than October 1, 1979, and shall include views as to the feasibility of surveying the number and dollar amount of loans made to small businesses by commercial banking institutions.

VENTURE CAPITAL SMALL BUSINESS INVESTMENT COMPANIES

The conference substitute authorizes the licensing of a new category of SBIC's which would provide venture-type investments in small business concerns. These newly licensed SBIC's—for reference designated as Venture Capital Investment Companies or VCIC's—must have at least $1,000,000 in combined private capital and surplus at the time of licensing. The conference substitute authorizes SBA to guarantee or purchase debentures of VCIC's up to 300 percent of their capital and surplus, but not to exceed $35 million, except that if the VCIC has one or more SBIC's as a parent, the licensee and its parent company(s) combined could not receive more than $55 million. The VCIC debentures would be issued for terms up to 10 years and bear interest at 4 percent per annum. SBA would be authorized to pay to the holders of such debentures the difference between 4 percent and the cost of money to the Federal Government. The VCIC would be limited to a 9 percent fixed return on its investments, and would be required to pay to SBA 15 percent of any capital gain realized on portfolio securities. If the VCIC exchanges a portfolio security for another security at a gain, SBA would be entitled to receive 15 percent of any dividends or interest received by the VCIC which are attributable to these securities.

Also, the conference substitute permits SBIC's to contribute marketable portfolio securities to the capital of a VCIC, but not more than one-third of the VCIC's private capital could consist of such securities. These securities would be valued at one-half of their value for purposes of capitalizing the VCIC. If transferred securities later prove to be worth less than the original valuation or if they are not sold within 10 years of transfer, the transferor company could be required to make an additional payment to the VCIC.

Finally, if the VCIC does not use all of the proceeds of the federally purchased or guaranteed debentures to make venture-type investments in smal concerns, it would be required to reimburse SBA for the interest subsidy received on such unused proceeds.

SBIC IDLE FUNDS

The conference substitute permits SBIC's to place idle funds in institutions whose deposits are insured by the Federal Savings and Loan Insurance Corporation without limiting the amount of the investment.

BANK INVESTMENTS IN SBIC'S

The conference substitute increases the allowable investment of banks in small business investment companies—SBIC's—from 5 percent of a bank's capital and surplus to 10 percent.

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Citation of act.

The conference substitute provides that title V may be cited as the White House Conference on Small Business Act.

Authorization of conference.

The conference substitute also contains an authorization for the conference and requires that it be held prior to June 30, 1980. It also specifically authorizes regional and State conferences prior to the Washington conference.

Purposes of the conference.

The conference substitute provides that the purpose of the conference shall be to increase public awareness of the essential contribution of small business; to identify the problems of small business, including new small and family enterprises; to examine the status of minorities and women as small business owners; and to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate for maintaining and encouraging the economic viability of small business and, thereby, the Nation.

Conference participants.

The conference substitute provides that in order to carry out the purposes specified, the conference shall bring together individuals concerned with issues relating to small business and expressly provides that no small business concern may be denied admission to any State or regional meeting.

Conference planning and administration.

The conference substitute authorizes and directs all Federal departments and agencies to provide such support and assistance as may be necessary to facilitate the planning and administration of the conference.

Reports by the conference.

The conference substitute requires that not more than 1 year from the date on which the conference is convened, a final report of the conference shall be submitted to the President and the Congress. The report shall include the findings and recommendations of the conference as well as proposals for any legislative action necessary to implement the recommendations of the conference. The final report of the conference shall be made available to the public.

Follow-up actions.

The conference substitute provides that the Small Business Administration shall report to the Congress annually during the 3-year period following the submission of the final report of the conference on the status and implementation of the findings and recommendations of the conference.

Reimbursement for cost.

The conference substitute authorizes and directs the Administrator of SBA to reimburse participants in the national conference for all reasonable and necessary costs of the conference, including cost for travel, meals, accommodations, and support for other activities necessary to carry out their functions concerning the conference. It also requires the Administrator to:

First, provide such financial and other assistance as may be necessary, for the organization and conduct of conferences at the regional and State levels;

Second, provide for the preparation of background materials for use by participants in the conference, as well as by participants in regional and State conferences; and

Third, make grants to, and enter into contracts with, public agencies, private organizations, and academic institutions to carry out the provisions of this title.

It also authorizes the President to appoint and compensate an Executive Director and other personnel for the conference.

Authorization for appropriation.

The conference substitute authorizes the appropriation of $5 million for fiscal year 1979 and provides that such appropriations shall remain available until expended. Any funds remaining unexpended at the termination of the conference shall be made available to the Administrator. It also prohibits SBA from funding the conference except from this appropriation.

Mr. President, I want to address two specific matters relating to SBA's disaster loan program.

During the floor debate on H.R. 11445 on August 2, there was some discussion regarding the provisions in the Small Business Committee bill that dealt with SBA's disaster loan interest rates.

Public Law 95–89 established the following disaster loan interest rates for disasters declared between July 1, 1976, and September 30, 1978:

HOMEOWNER PHYSICAL DISASTER LOANS

One percent for the first $10,000 worth of damage; 3 percent for the next $30,000 worth; and average cost of Federal borrowing for any damage in excess of $40,000.

BUSINESS PHYSICAL DISASTER LOANS

Three percent for the first $250,000 worth of damage, and: average cost of Federal borrowing for any damage in excess of $250,000.

The Senate/House conferees on H.R. 11445 agreed upon the following interest

rates for disasters occurring between October 1, 1978, and September 30, 1982:

HOMEOWNER PHYSICAL DISASTER LOANS

Three percent for the first $55,000 worth of damage, and: average cost of Federal borrowing for any damage in excess of $55,000.

BUSINESS PHYSICAL DISASTER LOANS

Five percent for the first $250,000 worth of damage, and average cost of Federal borrowing for any damage in excess of $250,000.

By way of review, section 111 of H.R. 11445, as reported by the Small Business Committee, extended the Public Law 95–89 homeowner disaster loan interest rates for 1 more year, or until October 1, 1979. Business disaster loan interest rates were increased to 5 percent for the first $250,000 and the average cost of Federal borrowing for any amount in excess of $250,000.

A floor amendment was adopted by a vote of 54 to 41 deleting section 111, thereby causing all physical disaster loan interest rates to rise to the average cost of Federal borrowing as of October 1 of this year. That rate is currently 6⅝ percent.

The House-passed version of House Resolution 11445 extended the Public Law 95–89 interest rates for homeowners through fiscal year 1982. Business disaster loan interest rates were increased for the next 4 fiscal years to 5 percent for the first $250,000 worth of damage.

When considering the Muskie disaster loan interest rate amendment on August 2, it was suggested that there is a direct correlation between the level of demand and the interest rates charged on disaster loans. Common sense would dictate that lower interest rates should be a factor in causing an increased demand for disaster loans. However, no one to date has been able to empirically demonstrate such a direct correlation. An SBA letter to the Small Business Committee dated October 6, 1978 speaks to that very point. I wish to quote a portion of that letter:

> There is not presently available within the Small Business Administration any empirical data that supports any direct correlation between the interest rate charged the borrower and the demand for loans available through the Physical Disaster Loan Program.

When the report on H.R. 11445 was written in July, the committee was under the impression that the drought disaster loans, coupled with low interest rates, were the principal causes for an unprecedented demand for physical disaster loans. Since that time SBA has reevaluated its disaster loan activity for fiscal year 1978. The agency's findings, I believe, are most interesting. Based on the first 11 months of activity, it can be determined that less than half of all business disaster loans were made for drought relief assistance. In other words, over half of all business loans were made to both large and small concerns suffering from nondrought physical disasters such as floods, blizzards, and tornadoes.

Another factor contributing to an increase in disaster loan outlays was the unusually high number of physical disasters that occurred in fiscal year 1978. Never in SBA's history have so many disasters been declared which affected such a large portion of the country's population. Extreme climatic conditions in virtually every region of the country simply wreaked havoc in dozens of States. In short, we experienced among the most destructive winters and springs on record.

SBA also tells us the disaster loan demand has significantly increased because of increased publicity and marketing of the program brought about by Members of Congress and State and local officials. The populace is simply much more aware of the availability of the type of assistance offered by SBA.

Also, inflation has increased the cost of virtually any repair or replacement of property destroyed by a disaster. Loans to cover such costs, therefore, have increased concomitantly.

I have reviewed all of these factors which caused SBA to disburse the largest number of disaster loans in its history because I believe it should be made clear that interest rates are not the sole, or even necessarily the primary cause of higher disaster loan program levels.

The Congress has for years unfailingly concluded that disaster victims should be given every benefit possible. Compared to disaster interest rate formulas that have been in effect in previous years, the rates contained in the conference version of H.R. 11445 are indeed modest. There are several past instances when loan recipients were forgiven anywhere from $1,500 to $5,000 of the total loan amount and interest rates were 1 percent for the entire loan.

I should add that the interest rate levels contained in the conference bill were not easily agreed to. The conferees spent a considerable amount of time considering the interest rate question. After protracted debate the conferees from both bodies agreed to the rates I outlined earlier. I believe these rates are both moderate and equitable and represent a satisfactory compromise.

There has also been some concern expressed that SBA will no longer be accountable for the spread between that charged the disaster loan borrower and SBA's cost of money.

For accounting purposes, any Federal agency that makes loans to the public at subsidized interest rates pays the U.S. Treasury the full cost of Federal borrowing. In this way, the cost of the interest subsidy is allocated to the agency that offers the subsidy to the public.

The physical disaster loan program in SBA provides a unique case, however. Because of the similarities in administering small business loan and disaster loan programs, SBA is responsible for all Federal private disaster lending. The SBA has been commended regularly for its excellent performance in this area, but it must be recognized that disaster loans are made to all homeowners, property owners, and to all businesses—large or small. As such, costs incurred by SBA in the disaster loan area have almost nothing to do with Federal assistance to small business. And, therefore, when SBA absorbs interest subsidy allocation costs for disaster lending, people misconstrue that as a cost of small business assistance.

It is not. Disaster lending is a Government-wide responsibility. As a civilized people living in a Nation of incomparable wealth, Americans have an absolute moral responsibility to help rebuild the communities and the personal lives that are crushed by hurricanes, earthquakes, floods, and the like. SBA administers the disaster loan programs, and, of course, bears that cost. But it is unreasonable for SBA also to bear the costs of interest subsidies that rightfully should be borne by the U.S. Treasury for the whole Government.

Before closing, I want to speak to one other matter which gave rise to some discussion when House Resolution 11445 was considered by the full Senate on August 2.

There was some concern as to whether the small business development center program provided for in title II was duplicative of other Federal programs. An amendment to title II was agreed to by the Senate requiring that SBA coordinate the SBDC program with the Department of Commerce so as to avoid any overlap or duplication of services.

The conference version places the SBDC statutory language in the Small Business Act as a new section. This distinction is important for the Senate passed version of House Resolution 11445 made title II a third and separate act to be administered by SBA. By incorporating the SBDC program within the Small Business Act, there was no need to retain the so-called duplication amendment because section 18 of the Small Business Act prohibits SBA from duplicating the work or activity of any other department or agency of the Federal Government.

The requirements that there be a GAO study of the SBDC program was also deleted at the insistence of the House conferees as GAO wrote to both Small Business Committees opposing the Senate provision. The conference report, nevertheless, states that it is the intent of the chairmen of both committees to request such a GAO study after the program has been in place for a reasonable period of time.

Mr. President, this measure is by far the most comprehensive small business bill considered in years. I urge all of my colleagues to support its adoption.

Mr. MUSKIE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The conference report on H.R. 11445 is the pending business.

Mr. MUSKIE. Mr. President, this is the SBA conference report. I will not ask for a rollcall vote.

Mr. President, I object to the report, for reasons that I will try to outline briefly, because I think they are serious reasons and it is important that we made a record.

At the outset, I say to my good friend from Connecticut, Senator WEICKER, that I understand that, in the conference, he fought the good fight on the principal

issue in this bill. What I have to say about that issue here is not a reflection upon his efforts, because I understand that he was in total sympathy with what I have tried to do with this SBA report. So I do not want him to take what I am about to say as a personal criticism at all.

Mr. President, I must rise in protest against this legislation. In its present form the bill is inconsistent with the fiscal 1979 second budget resolution, and would establish in permanent law a costly and wasteful policy for disaster loans.

If the bill as reported from conference passes the Congress, I will strongly urge the President to veto it. SBA programs are already authorized for fiscal 1979, so a veto would not interrupt any existing SBA program, including the disaster loan program.

Mr. President, what has come back from conference is a bill much worse than the bill the Senate passed several weeks ago. There are numerous features of the conference agreement that are objectionable, but I am particularly disappointed and disturbed that a key Senate provision on disaster loans was given up on the very first day of the conference.

Mr. President, this is not a time when it is particularly prudent for the Senate and the Congress to support legislation that encourages inefficiency in Federal programs and wastes the taxpayers' money. Yet that is exactly what the controversial disaster loan provision of this bill does. In view of this, there is only one explanation I can think of for the action of the conference in abandoning a provision that was approved by a specific vote of the Senate. The explanation is that a majority of the conferees, excluding my good friend from Connecticut, simply did not understand or appreciate the issue involved. Rather, it seems that they viewed the issue as one that is basically trivial in its significance to anvone not directly concerned with the Federal budget.

Mr. President, I wish the issue were trivial. If it were, then I would not have to be here now protesting the conferees' report.

Because there is an obvious lack of understanding of the issue, I would like to take a little time here today to explain it in more detail than has been discussed in the past. Even if this particular piece of legislation is enacted—and I hope it is not—the issue will not go away. I therefore feel it is worthwhile to set forth for the Senate an explanation of why the issue is significant and must at some point be dealt with in a responsible manner.

I will begin by explaining what the issue is not. This too is apparently necessary, because I have found that whenever disaster assistance programs are discussed in the Senate, there is a tendency for Members to immediately describe the plight of a family that has lost everything in a tornado or an earthquake, or the problems of a community whose essential businesses have been destroyed by an unforeseeable disaster. The issue here is definitely not whether Federal assistance should be available under these circumstances. That kind of disaster assistance is a proper expression of our compassion as a Nation. I have said before that it is the purpose of the budget process to allocate scarce resources to real needs such as these. I have consistently voted for assistance to disaster victims before, and I fully expect to continue to do so. That is not the issue.

Mr. President, the real issue is whether we are to have responsible legislative design of Federal disaster assistance programs. During my career in public office, I have become convinced that most waste in Government comes from programs that are intended to address a legitimate need, but are designed in such a careless way that spending is much higher than really necessary, benefits go to many who are not really in need, and tax dollars go for purposes that are not really essential. It is poor design that I strongly object to in our present disaster loan programs. And that is the issue here.

Mr. President, the conference agreement now before us would continue deeply subsidized interest rates on Federal disaster loans for at least 4 more years. The agreement would establish interest rates for damage to homes or personal property at only 3 percent for the first $55,000, and would permit amounts above that to be loaned at only 6⅝ percent. The conference report would also keep rates on loans for losses to business property from rising above 5 percent for the first $250,000.

While these provisions would drive up the costs of SBA's disaster loan program, another provision would hide some of those costs from the public. Section 111 of the agreement would remove from the law the requirement that the SBA disaster loan fund pay interest to the Treasury for outstanding loans. That means that the budget for SBA would no longer show the costs of financing its own program. An estimated $0.3 billion of the SBA costs would be shifted to the accounts of the Treasury.

This gimmick, of course, would not save one dime of the taxpayers' money. Its only effect would be to make it more difficult for Congress and the public to learn the true cost of this program.

Mr. President, I will now explain my reasons for opposing the disaster loan interest rate provisions. The first reason is that deep interest subsidies would drive up demand for disaster loans and would very likely lead to a major breach of the fiscal 1979 second budget resolution ceilings for function 450, community and regional development. As was made very clear when the second resolution was considered in the Senate, the budget ceilings assume that SBA disaster loans in fiscal 1979 will be provided at the Government's cost of capital, as is provided in existing law.

If the interest rate is reduced for fiscal 1979, as provided by this conference report, then we can expect the budget ceilings in function 450 to be exceeded by at least $0.2 billion.

Mr. President, there is an element of irony in this legislative invitation to bust the function 450 budget ceilings. It has been only 2 weeks since the Senate and House finally managed to reach a conference agreement on the second budget resolution, after being deadlocked for days on the question of the function 450 ceilings. The specific issue was whether an allowance could be provided in function 450 to fund the so-called soft public works initiative. The House conferees finally accepted the Senate's figure, an amount which reflected CBO's estimate of the expected cost of disaster assistance in fiscal 1979 assuming existing law, and which left no room for a public works initiative.

The House budget conferees agreed to the Senate's figure only because they were convinced that legislative reforms of disaster loan programs would reduce the expected costs of those programs substantially below the levels estimated by the CBO. In anticipation of these savings—savings that have now vanished—the House of Representatives then assumed that there could be enough extra room in the Senate's function 450 ceilings to accommodate funding of a new local public works initiative in fiscal 1979.

Now we find that, far from proposing cost-saving reforms, the Small Business conferees are recommending legislation that would make the disaster loan program even more costly than would be expected under existing law. If there were any remaining question in anvone's mind as to whether the congressional budget could accommodate the President's proposed public works program, that question is now answered. And the answer is "No." The only question now is which programs can be cut below the assumptions of the budget resolution in order to accommodate this new extravagance in the disaster loan program.

Mr. President, the second reason I oppose this conference agreement is that it makes a major break with past disaster loan policy by establishing extremely deep interest subsidies as a continuing, permanent feature of Federal disaster assistance.

The history of disaster loan interest rates should be kept in mind. When the Farmers Home emergency loan program was enacted in 1949, interest rates were set at 3 percent at the time, 3 percent was a rate that was substantially above the Government's cost of money.

The SBA disaster loan program was initiated in 1953, with interest rates also set at 3 percent, but at that time it was a rate calculated to be above the Government's cost of money.

Through the mid-1960's, the interest rate on both Farmers Home and SBA disaster loans remained very close to the Government's cost of money.

Throughout this period, therefore, the subsidies to the borrowers and the costs to the taxpayers of operating the program were extremely low.

In the late 1960's, private market interest rates rose sharply, and the fixed 3 percent disaster loan interest rates began to provide very attractive benefits to borrowers and heavy costs to the Government.

To correct problems resulting from

that situation, and to reestablish desired disaster loan policy, the Disaster Relief Act of 1970 raised the Farmers Home emergency loan rates, beginning in 1972, to a rate again close to the Government's cost of money. In 1973, the interest rates on both SBA and FmHA disaster loans were raised to 5 percent. In 1975, the SBA's rates were further raised to equal the Government's rising average borrowing cost.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a fact sheet (exhibit 1) that compares SBA interest rates with the Government's borrowing cost since fiscal 1953.

There being no objection, the fact sheet was ordered to be printed in the RECORD, as follows:

EXHIBIT 1

DISASTER LOAN INTEREST SUBSIDIES ARE AT RECORD HIGH LEVELS

When the SBA Disaster Loan program was established in 1953, disaster loan rates were set higher than the Government's cost of money. The policy was to provide disaster victims with a ready source of credit at reasonable rates that reimbursed the Government for its borrowing and other costs.

However, this policy changed as the Government's borrowing costs increased over time, but disaster loan rates remained fixed by law. As a result, since fiscal 1957, disaster loans have provided Government subsidies, which have fluctuated at generally increasing levels.

The Federal subsidy rate hit record high levels in fiscal year 1978, as shown in the following table:

DIFFERENCE BETWEEN INTEREST RATES ON U.S. GOVERNMENT BORROWING AND SBA DISASTER LENDING, 1953–78

[In percent]

Fiscal year	Interest rate on SBA disaster loans (A)	Government borrowing cost [1] (B)	Government's rate of gain (+) or subside (−) (C=A−B) (C)
1953	3	2.85	+0.15
1954	3	2.59	+.41
1955	3	2.56	+.44
1956	3	2.96	+.04
1957	3	3.44	−.44
1958	3	3.38	−.38
1959	3	3.89	−.89
1960	3	4.46	−1.46
1961	3	3.82	−.82
1962	3	3.96	−.96
1963	3	3.94	−.94
1964	3	4.13	−1.13
1965	3	4.19	−1.19
1966	3	4.57	−1.57
1967	3	4.89	−1.89
1968	3	5.56	−2.56
1969	3	5.94	−2.94
1970	3	7.31	−4.31
1971	3	6.64	−3.64
1972	1	6.14	−5.14
1973	5	6.52	−1.52
1974	5	7.14	−2.14
1975	5	7.81	−2.81
1976 and transition quarter	6.625	7.92	−1.30
1977	6.625	7.32	−.70
1978 [2]	1	8.14	−7.14
1978 [2]	3	8.14	−5.14
1978 [2]	6.625	8.14	−1.52

[1] "Government borrowing cost" is the average annual yield on marketable U.S. Government securities with 10 yr to maturity.
[2] In 1978, the interest rate on SBA 7(b)(1) physical disaster loans for homes is 1 percent on the first $10,000 of the loan, 3 percent on the next $30,000 and 6⅝ percent on additional amounts up to a total of $55,000. The interest rate on disaster loans to businesses is 3 percent on the first $250,000 and 6⅝ percent on larger amounts.

Mr. MUSKIE. Mr. President this sheet demonstrates clearly that congressional policy generally has been to keep disaster loan interest rates close to the Government's cost of borrowing to finance them.

There have been only two striking instances when Congress did not follow that approach, and in both cases the deviation produced some extremely undesirable results.

Deep disaster loan subsidies were intentionally enacted in 1972 and again in 1978. In 1972 low interest rates, loan forgiveness, and other benefits were enacted in response to Hurricane Agnes. However, the heavy loan demand and the widespread program abuses that resulted led Congress rather quickly to increase loan rates and tighten the program in other ways.

In 1978, deep subsidies were again enacted, but only as a temporary, emergency response to disaster, in this case major flooding. At the same time, widespread drought and the resulting strains in the agricultural credit markets brought pressure that resulted in crop damage being declared eligible for SBA disaster loans. As we now know, in consequence of these changes SBA disaster loan volume shot up from an annual average of $0.2 billion to a record $2.5 billion for fiscal 1978. Farmers Home emergency loan volume also rose precipitously, from an average annual level of about $0.7 billion to $3.4 billion for fiscal 1978. That is a total of $5.9 billion for the two disaster loan programs, more than a sixfold increase that no one had anticipated and that caused enormous problems for our efforts to reduce the Federal deficit and achieve a balanced budget.

In the wake of runaway spending in a program under their jurisdiction, the Small Business Committees of the House and Senate have refused to lead the Congress in a careful, thorough, and effective review of disaster loan legislation. They have made no effort to tighten control, no effort to sharpen program objectives, no effort to reduce costs, and no effort to target aid on those really in need.

Instead, they now propose to extend on a permanent basis the deep interest subsidies which have caused problems in the past. Interest subsidies to businesses would be extended at a level that has been higher in only 4 years since the program's inception. Interest rates on large loans to homeowners would actually be reduced below the deeply subsidized levels of fiscal 1978.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a second fact sheet (exhibit 2) showing the interest subsidies that would result in fiscal 1979 from enactment of this bill.

There being no objection, the fact sheet was ordered to be printed in the RECORD, as follows:

EXHIBIT 2

THE CONFERENCE AGREEMENT ON H.R. 11445 WOULD MAINTAIN FEDERAL SUBSIDIES ON SBA DISASTER LOANS AT VERY HIGH LEVELS RELATIVE TO PAST PRACTICE

Under the conference agreement on H.R. 11445, the Government's subsidy rate on disaster loans to businesses is projected to be at a level that has been exceeded in only four years since the program's inception in 1953. On home loans, the subsidy is projected to be higher than in any year since the program's inception, except fiscal 1978.

PROJECTED FISCAL YEAR 1979 DIFFERENCE BETWEEN SBA DISASTER LOAN INTEREST RATES AND THE GOVERNMENT'S BORROWING COST

[In percent]

Type of loss	Interest rate on SBA disaster loans (A)	Government's projected borrowing cost [1] (B)	Government's rate of gain (+) or subsidy (−) (C)
Homes and personal property	3	8.4	−5.4
Business property	5	8.4	−3.4

[1] The Government's projected borrowing cost is the mean of the projections of a panel of financial experts surveyed by the Senate Budget Committee staff.

Further, the conference agreement on H.R. 11445 would reduce interest rates on large disaster loans to homeowners below the deeply subsidized levels of 1978. Thus, in fiscal 1978 a homeowner borrowing $55,000 under the SBA Disaster Loan program would have paid 1 percent on the first $10,000 (18% of the loan), 3 percent on the next $30,000 (55% of the loan), and 6⅝ percent on the remaining $15,000 (27% of the loan) for an effective interest rate on the whole loan of 3.6 percent, as shown below.

Percent of loan		Interest rate charged		Effective rate
0.18	×	0.01	=	0.0018
55	×	.03	=	.0165
.27	×	.06625	=	.0179
1.00				[1] .0362

[1] Or 3.6 percent.

Note: In comparison, the conference agreement would permit the entire loan to be made at only 3 percent in fiscal year 1979.

Mr. MUSKIE. Mr. President, I am certain that no one in this Chamber would argue against providing Federal assistance to help needy victims recover from the effects of unforeseeable natural disasters. However, I am convinced that fixed, deeply subsidized interest rates are precisely the wrong way to offer that aid, and I would like to highlight a few of the reasons that is so.

First, at any given volume of Federal loans, the lower the interest rates, the more the public has to pay. Some would have us overlook the cost of these programs by claiming that the money is just being loaned and will be repaid. In fact, however, deeply subsidized loans are very costly. The SBA disaster loans made in fiscal year 1978 alone involve Federal subsidy grants of about $550 million. Mr. President, I ask unanimous consent that a fact sheet and table analyzing disaster loan subsidies be printed in the RECORD at this point (exhibit 3).

There being no objection, the fact sheet and table were ordered to be printed in the RECORD, as follows:

EXHIBIT 3

In FY 1978, SBA Disaster Loan volume will reach a record high of $2.5 billion, which involves record high interest subsidies equivalent to about $0.6 billion in outright Federal grants.

A subsidized loan actually combines a loan and a grant. In a true loan, a lender exchanges funds for an equally valuable financial asset, a note in which the borrower promises to pay the lender at a rate that fully reimburses the lender's costs. When the government makes a subsidized loan, however, it receives a promissory note that is worth less than the funds given the borrower. Wealth is thus transferred from the taxpayers to the

borrower when a subsidized loan is disbursed, and part of the loan proceeds is in effect an outright Federal grant.

The subsidy grant can be calculated for each subsidized loan based on the Government's cost of borrowing, the interest rate charged the borrower, and the loan's size and term to maturity. For example, when the private market is willing to lend the U.S. Government funds for ten years at 8.1 percent, a Federal agency could make a ten-year loan at 8.1 percent and sell the note in the private market at full face value, if the government continued to bear the risks of default and costs of administering the loan. Thus, the note on a $55,000 loan would be worth $55,000. However, if the Federal agency loaned the funds at only 5 percent interest, no private investor would buy the note for more than $47,873. The government has thus given the borrower, as a subsidy grant, $7,127 more than his low interest note was worth.

The following table shows SBA disaster loan volumes and subsidy grants for selected years since inception of the program.

[In millions of dollars]

Fiscal year	Loans for homes: SBA share of disaster loans	Loans for homes: Federal subsidy grants [1]	Loans for businesses: SBA share of disaster loans	Loans for businesses: Federal subsidy grants [1]	Total, Federal subsidy grants [1]
1955	1.5	0	6.2	0	0
1960	1.2	.1	3.4	.2	.3
1965	18.5	1.0	57.6	3.2	4.2
1970	101.3	18.2	75.3	13.5	31.7
1973 [2]	905.7	207.6	682.1	156.3	363.9
1975	43.0	5.1	191.1	22.6	27.7
1976	68.3	3.8	110.3	6.1	9.9
Transition quarter	58.1	3.2	52.5	2.9	6.1
1977	105.7	3.2	253.0	7.7	10.9
1978 [3]	350.9	92.0	2,197.7	459.0	551.0

[1] The subsidy grant is the present value of the interest rate subsidy at the time it is provided by the Federal Government. The calculation of the subsidy grants for each year reflects the Treasury Department's estimate of the Government's cost of issuing a 10-year security in that year.

[2] Fiscal year 1973 is chosen because, prior to fiscal year 1978, the record SBA loan volume and deepest subsidies were experienced in that year.

[3] The totals for fiscal year 1978 are projections by SBA as of Sept. 26, 1978. The subsidy grant for home loans reflects an SBA estimate that 75 percent of the funds in fiscal year 1978 were lent at 1 percent.

Mr. MUSKIE. Mr. President, that table shows that the costs of the loan subsidies exploded in fiscal 1978 to a record level—a level that is 50 percent greater than the previous record that hit the fiscal 1973 budget and 30 times greater than the average level experienced in recent years. Moreover, interest subsidies are only part of the direct costs of this lending. When the costs of program administration and normal default losses are properly taken into account, this program is seen to have involved the outright spending of more than $650 million of Federal funds in fiscal 1978 alone. I do not believe we can continue to sustain such costs, for the drain they make on scarce budgetary resources cannot but reduce the funding available for other pressing national priorities.

Second, such subsidies drive up the volume of Federal lending. Excessive Federal disaster benefits build pressure on public officials to have a wider range of unfortunate occurrences declared Federal disasters. Deep subsidies also encourage many to apply for disaster loans who do not really need them. The deep subsidies create strong incentives for those eligible, especially those who ordinarily use credit, to borrow as much as possible under a Federal disaster program. And why not? Subsidized loans provide the borrower with the equivalent of loan forgiveness grants. And the subsidies proposed by the Small Business conferees would provide very substantial subsidy grants indeed.

Just as an example, under the proposed conference agreement, a $55,000 10-year loan at a 5-percent interest rate would provide the borrower with the equivalent of an outright forgiveness grant of over $7,000. A similar loan at a 3-percent interest rate would involve a Federal grant of more than $11,000. And a private business receiving a $250,000 10-year loan at 5 percent would receive the equivalent of a Federal grant of over $32,000.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a factsheet (exhibit 4) describing the forgiveness grant equivalent of an interest rate subsidy.

There being no objection, the factsheet was ordered to be printed in the RECORD, as follows:

EXHIBIT 4

Federal loans with subsidized interest rates provide borrowers with the equivalent of outright Federal grants.

Congress has in recent years refused to authorize loan forgiveness as a provision of disaster loan programs. Under loan forgiveness, a portion of a loan is considered to be a grant, and only the remainder needs to be repaid with interest. Authorizing committees have learned that loan forgiveness is a bad form of assistance that provokes widespread abuse. Borrowers who did not really need assistance applied for loans just to get the grants.

In fact, the same argument should be made against loans with subsidized interest rates. These loans are virtually the equivalent of loans with forgiveness grants. The equivalent outright grant increases directly with increases in the size of the loan, the depth of the interest subsidy and the length of the loan term.

Consider two cases. Firm A receives a loan with a forgiveness provision. The firm keeps a portion of the loan as a grant from the government and repays only the remainder in monthly installments over ten years at an interest rate equal to the rate the government has to pay to borrow those funds for ten years (about 8.1% in 1978). Firm B receives a loan of an equal amount, all of which is to be repaid over the same period at an interest rate of 5%.

As shown below, if Firm A had $7,127 of its loan forgiven, then the real cash flows—the initial receipt from the government and the monthly repayments—would be identical for the two firms. That is, receiving a $55,000 loan at 5% is the equivalent of receiving a $55,000 loan at the government's cost of capital but having $7,127 of the loan forgiven or provided as an outright Federal grant. Only the bookkeeping conventions differ in these two cases, with the accounting approach used for Firm A explicitly showing the Federal subsidy at the time the loan is made.

	Loan amount received from the Federal Government	Less: Portion of loan counted as a forgiveness grant	Equals: Amount to be repaid at indicated interest rate	Repayment: The firm would pay 120 monthly installments of—
Firm A: Receives 8.1 percent loan with forgiveness	$55,000	$7,127	$47,873 at 8.1 percent	$583.
Firm B: Receives 5 percent loan	$55,000	0	$55,000 at 5.0 percent	$583.

The conference agreement on the SBA Amendments of 1978 (H.R. 11445) would authorize 3% loans for homes and personal property in amounts up to $55,000. One $55,000 loan would provide the equivalent of an outright Federal grant of $11,417.

The conference agreement would also authorize 5% loans for businesses in amounts up to $250,000. One $250,000 loan would provide the equivalent of an outright Federal grant of $32,397.

Mr. MUSKIE. Mr. President, obviously, at 3 percent or 5 percent any eligible borrower could make money by borrowing under the disaster loan program and putting the proceeds in his local bank. No wonder one expert said anyone would be a very poor businessman if he did not find ways to borrow as much as he could from the Government, for as long as he could, at those rates, The Government should not create that kind of incentive for abuse, and the taxpayers should not be asked to pay for it.

Third, Mr. President, I believe that fixed interest rates on disaster loans make little sense whatever their level. This is because there can be no unchanging interest rate that will always be the right rate. A particular interest rate may make a loan program consistent with congressional intent under one set of economic conditions. But then, as changing economic conditions bring a change in market rates of interest, that fixed interest rate will produce erratic changes in benefits provided to borrowers. And these in turn will be translated into both incentives and disincentives that Congress did not intend.

As an example, for a number of years SBA disaster loans have been made at a fixed rate of 3 percent. In June of 1956 that rate equalled the Government's cost of capital and thus provided no Federal subsidy to a borrower. However, in December, just 6 months later, the Government's cost of money rose and that same rate suddenly provided a subsidy grant equal to 3 percent of every loan.

With changing economic conditions, the subsidy provided by a 3 percent rate has changed erratically. In 1960, the subsidy grant was up to 7 percent of every loan. The following year it fell to 4 percent. In 1967 the subsidy grant was back up to 8 percent of every loan. Just 3 years later, in 1970, it had risen to 18 percent. The next year the subsidy grant fell back to 15 percent. None of those

changes reflected changing congressional intent. Today, the subsidy grant on a loan with a 3 percent interest rate stands at an all time high of 28 percent of the face value of the loan.

Clearly, the benefits provided with tax dollars should reflect congressional intent. Therefore, the rates charged on Federal loans should vary in response to changing economic expectations. A strong case can be made that disaster loans should be made at an interest rate equal to the Government's changing cost of money. It should be remembered that the rate at which the Federal Government borrows is much lower than the rate at which private parties must borrow. So Federal loans made at the Government's cost of money still provide very substantial benefits to borrowers.

The Administration estimates that those eligible for SBA disaster loans may have to pay about 14 percent interest on comparable loans from private lenders. If the Government made 10-year disaster loans at 8.1 percent, or the same rate the Government now pays to borrow funds for 10 years, a private borrower would be provided with substantial savings—on a $10,000 loan those benefits are equivalent to a grant of $2,150 or 22 percent of the loan. Borrowing at a 3-percent interest rate provides savings over private lending equal to a striking 38 percent of every loan.

Mr. President, I point out that President Carter has already taken a leadership role on this issue. He has proposed a reasonable framework that deserves but has not received serious consideration by Congress.

He has proposed to reform disaster loan policy so that SBA and Farmers Home disaster loans carry comparable terms, and so that only Farmers Home makes loans for crop damage. Under the President's proposal, loans to repair or replace damaged homes or personal property would be made at 5 percent with no "credit elsewhere" test. Loans for income producing property would be made only to borrowers who do not have access to credit elsewhere, and they would be made at a rate equal to the Government's own cost of money.

Mr. President, on October 1, existing law returned disaster loan interest rates to the Government's average borrowing costs. I believe that existing law should remain in effect until a full review and revision of disaster loan programs can be completed along the lines proposed by the President. I believe it would be irresponsible and wasteful to enact the permanent subsidies included in this conference report.

Finally, Mr. President, I conclude by saying that our recent experience points to the need for a comprehensive, long-term national disaster policy—a policy whose costs the taxpayers can bear. Congress and the administration must give these issues much more attention than has been provided thus far.

First, we must determine more precisely the conditions that justify Federal disaster assistance. There has been a disturbing tendency to consider a growing number of unfortunate occurrences to be national disasters requiring Federal spending. National policy should identify the responsibilities of State and local governments, as well as those of the private sector, toward victims of disasters.

Second, we must develop ways to target aid on those individuals who have the greatest need and on those purposes that really involve a national interest. Eligibility requirements have been drawn in a way that makes disaster programs seem unfair. National policy should focus aid on those losses that threaten public health and viable community life.

Third, we must determine how interest rates, credit elsewhere tests and other elements of program design alter the effects of disaster loan programs. Typically, over the years, disaster assistance programs have been hastily designed. They have been ad hoc, emergency responses to the plight of those hit by major catastrophies. National policy should carefully tailor these programs so that changing economic conditions do not create unintended incentives to abuse the programs.

Fourth, we must more fully understand how disaster assistance programs can affect economic decisions in the private sector. Our national economy is shaped by millions of individuals and firms making decisions based on calculations of the risks and opportunities facing them. When Federal policies bring ill-considered distortions to those calculations, the result can be unacceptable impacts on both the budget and the economy. National disaster policy should make certain that the Federal Government does not assume risks that should be inherent in particular economic activities.

Fifth, we must bring to light unnecessary competition and overlapping of responsibilities among disaster assistance agencies. State and local governments, individuals and firms in many instances have been able to "shop around" for disaster assistance. This makes it difficult for individual agencies to enforce reasonable conditions on disaster aid, and it tends to force all programs to adopt the most generous provisions in each even if they are unreasonable. National disaster policy should allocate responsibility among Federal agencies so that well-defined purposes can be carried out effectively, efficiently and without undue abuse.

Mr. President, if the Congress sets its mind to accomplish these tasks, then we can have a rational disaster loan program that helps those who are truly in need and does not unnecessarily soak the taxpayers. I am convinced, however, that enactment of this conference report would frustrate the legislative review that is necessary to reform this program, as well as greatly increase the strain on the fiscal 1979 second budget resolution. That is why I am so strongly opposed to this conference agreement.

I harbor no illusions about the outcome of the coming vote. To mount a serious challenge to a small business conference report this close to election time is essentially impossible, as I am sure the conferees are aware. Nonetheless, I will vote against the conference agreement in order to underscore my dissatisfaction. Should the President veto the bill, which I encourage him to do, I will do what I can to help sustain his veto.

Beyond that, I look forward to continued involvement with these issues in the next Congress. I remain hopeful that the authorizing committee will recognize its responsibilities to the taxpayers and the Senate. Because the budgetary impacts are so great, I intend to make my own requests to the GAO and the CBO so the Congress can assess which reforms in the disaster loan program are most desperately needed.

With that, Mr. President, I yield the floor, and again I thank my good friend from Connecticut for the support that he gave to the actions of the Senate—and I suppose indirectly to me—earlier this year with respect to the interest subsidy issue.

Mr. WEICKER. Mr. President, with the exception of the distinguished Senator from Maine's opposition to the conference report, I want to associate myself with the remarks of the Senator from Maine. I might add that, although perhaps not stated as eloquently, they were the thrust of my arguments in the conference.

So I really have nothing in the way of rejoinder, except to remind the Senator from Maine that numbers are what prevail in conferences; and whereas I think the logic of his argument, as well as the facts of it, should have prevailed, the numbers were otherwise.

Therefore, we have the result before us, which was to raise, in some small measure, both the interest rate on homeowners' loans and the interest rate on business loans. But this in no way meets head-on the problems and issues raised by the Senator from Maine.

There is no question as to how this disaster loan program has grown. There is no question but that it requires a thorough review. There is no question but that the costs of the program are hidden the way the situation now stands.

I would hope that during the course of the next year this matter will be thoroughly ironed out, prior to the next conference.

I admire the courage of the Senator from Maine. It is very easy to step up and demagog an issue. We are in this program giving ease to those caught in the unfortunate maws of disaster. That is not, of course, what the Senator from Maine is attacking. But what he is saying, and I agree with him, is that if we are going to make this kind of commitment, we should understand what the price tag is. I am not sure that for most of us that is the situation.

I still think the distinguished Senator from Wisconsin and the Senate conferees did the best job they could on the overall bill, and even made some headway on the interest rate problem. But that in no way derogates the force of the arguments of the distinguished Senator from Maine.

Even in the light of his arguments, I hope the conference report will be agreed to.

Mr. MUSKIE. Mr. President, over a year ago, the conference report H.R. 692, the Small Business Amendments of 1977, on page 20 stated that the small busi-

ness committees of the House and the Senate planned to conduct a broad study of Federal disaster assistance.

A searching review is certainly needed, and I would hope that will be done in the next year. I trust that the Senator from Connecticut will support that kind of endeavor, because he has demonstrated that kind of commitment. I am sorry it was not possible to do it this year in the broad sense I think is needed, but I hope we can put this together.

Mr. President, I do not know whether we ought to have a quorum call before the voice vote, or vote now.

Mr. WEICKER. Mr. President, I am prepared now to go forward and request the adoption of the conference report.

The PRESIDING OFFICER. Do the Senators yield back their time?

Mr. MUSKIE. I yield back the remainder of my time.

Mr. WEICKER. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the conference report.

The conferenc report was agreed to.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATE CONCURRENT RESOLUTION 111

Mr. WEICKER. Mr. Prsident, I send to the desk a concurrent resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The concurrent resolution will be stated.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 111) directing the clerk of the House of Representatives to make corrections in the enrollment of H.R. 11445.

Mr. WEICKER. I ask unanimous consent that further reading of the concurrent resolution be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WEICKER. Mr. President, this concurrent resolution is needed to correct omissions and printing errors in the enrolled bill (H.R. 11445). It makes no changes to the substances of the conference report, which has been approved by the conferees and to which the House gave overwhelming approval.

Mr. MUSKIE. Mr. President, is that a part of this conference report?

Mr. WEICKER. That is correct. The resolution is necessary to correct omissions and printing errors.

Mr. MUSKIE. Fine; I have no objection.

Mr. WEICKER. I move the adoption of the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 111) was considered and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 11445) to amend the Small Business Act and the Small Business Investment Act of 1958 the Clerk of the House of Representatives shall make the following corrections:

(1) In section 20(1)(5) of the Small Business Act as proposed to be added by section 102 of the bill, insert a comma after the phrase "Federal department, agency or instrumentality" the first time it appears.

(2) In section 503(a)(4) of the Small Business Act as proposed to be added by section 117(a) of the bill, strike the comma after the words "guarantee is made under this subsection".

(3) In section 117(b) of the bill, insert a period at the end of the sentence.

(4) In section 118 of the bill, strike "(a)" after "amended—" and insert in lieu thereof "(1)".

(5) In section 118 of the bill, strike "(b)" and insert in lieu thereof "(2)".

(6) In section 118 of the bill, strike "(c)" and insert in lieu thereof "(3)".

(7) In section 118 of the bill, insert "(a)" after "Sec. 118.".

(8) In section 5(b)(12) of the Small Business Act as proposed to be added by section 118 of the bill, strike the comma after the phrase "banks and private dealers" the first time it appears.

(9) In section 5(b)(12) of the Small Business Act as proposed to be added by section 118 of the bill, strike the words "the Small Business Act" and insert in lieu thereof "this Act".

(10) In section 5(b)(12) of the Small Business Act as proposed to be added by section 118 of the bill, strike the period at the end of the last sentence and insert in lieu thereof "; and".

(11) In section 118, add a new subsection as follows:

"(b) Section 4(c)(1) of the Small Business Act is amended by inserting "5(b)(12)," between "sections" and "7(a)".

(12) In section 21(a)(1) of the Small Business Act proposed to be added by section 201 of the bill, strike the words "community colleges or junior colleges" and insert in lieu thereof "community college or junior college".

Mr. WEICKER. I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. MUSKIE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOUSE CONCURRENT RESOLUTION 739

Mr. WEICKER. Mr. President, I ask the Chair to lay before the Senate the message from the House of Representatives on House Concurrent Resolution 739, and that the Senate proceed to its immediate consideration.

The Presiding Officer laid before the Senate a concurrent resolution (H. Con. Res. 739) to correct an error in the enrollment of H.R. 11318, a bill to amend the Small Business Act in the Small Business Investment Act of 1958.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. WEICKER. This is to accompany the conference report on H.R. 11318, which the Senate passed yesterday. It is a House-passed concurrent resolution making a technical reference change in the enrollment of the conference report on H.R. 11318. There is no substantive change made in the legislation.

I move the adoption of the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 739) was considered and agreed to.

Mr. WEICKER. I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. MUSKIE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WEICKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Humphrey-Hawkins bill be laid aside temporarily while the Senate proceeds to the consideration of S. 2, as modified.

The PRESIDING OFFICER. Is there objection? If not, it is so ordered.

Mr. ROBERT C. BYRD. This is with the understanding, of course, that if any action on Humphrey-Hawkins is necessary, if any Senator wishes to speak on Humphrey-Hawkins, wishes to offer a statement in relation thereto, or wishes to offer an amendment in relation thereto, the sunset bill will be set aside for that purpose.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM REAUTHORIZATION AND EVALUATION ACT OF 1978

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of S. 2, which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 2) to require Government authorizations of new budget authority for Government programs at least every 5 years, to provide for review of Government programs every 5 years and for other purposes.

The Senate proceeded to consider the bill which was reported from the Committee on Governmental Affairs, with an amendment, and which was reported from the Committee on Rules and Administration, with an amendment.

That this Act may be cited as the "Program Evaluation Act of 1977".

SEC. 2. (a) The Congress finds—

(1) that public confidence in the legislative and executive branches of the Federal Government has declined in recent years;

(2) that this decline in confidence is due largely to the public perception that the Government is not as effective, responsive, or orderly as it should be in serving the public interest;

(3) that in recent years the Congress has taken major steps, in such areas as budget reform and open meetings, to reform its operations and make them more responsive to the public interest;

(4) that budget reform, in particular, has for the first time given the Congress an effective, systematic method for making broad policy decisions about the way it spends the taxpayers' money through the Federal budget which is this country's most important statement of national priorities;

(5) that in spite of progress made under

budget reform, the Congress has failed to exercise sufficient control over the individual programs which it has enacted over the years and which constitute the building blocks of national priorities;

(6) that given the rapidly increasing demands on the Federal budget, if the Congress is to pursue major new legislative initiatives to respond to changing national needs, it is essential that existing Federal programs be reviewed on a regular, systematic basis to determine whether such programs serve a useful purpose;

(7) that the accountability of Congress will be enhanced and public confidence in that body strengthened if the Congress demonstrates a determination to pursue such a course by the adoption of a mandatory, systematic process for reviewing on a regular basis the results of past legislative work in light of changing national priorities; and

(8) that such a congressional course will not only strengthen and rationlize congressional oversight responsibilities but also will complement and contribute to the success of executive branch efforts to reorganize and reform its own operations.

(b) The purposes of this Act are—

(1) to provide a comprehensive and systematic process through which the Congress can exercise greater control over the results of its legislative work;

(2) to make available, through the use of such process, Federal resources to meet new problems and changing national needs and to insure a greater return to the taxpayer on their tax dollars;

(3) to provide a neutral procedure for the reexamination and reauthorization of necessary Federal programs; and

(4) to assure a more effective Federal Government at all levels of operation, including protection of fundamental rights and liberties without jeopardizing the implementation or enforcement of basic civil rights guaranteed by the Constitution or laws of the United States.

SEC. 3. (a) For purposes of this Act—

(1) The term "budget authority" has the meaning given to it by section 3(a)(2) of the Congressional Budget Act of 1974.

(2) The term "outlays" has the meaning given to it by section 3(a)(1) of the Congressional Budget Act of 1974.

(3) The term "permanent budget authority" means budget authority provided for an indefinite period of time or an unspecified number of fiscal years which does not require current action by the Congress, but does not include budget authority provided for a specified fiscal year which is available for obligation or expenditure in one or more succeeding fiscal years.

(4) The term "Comptroller General" means the Comptroller General of the United States.

(5) The term "agency" means an executive agency as defined in section 105 of title 5, United States Code, except that such term includes the United States Postal Service and the Postal Rate Commission but does not include the General Accounting Office.

(6) The term "sunset review" means, with respect to any Government program, consideration by the committees of the Senate and the House of Representatives which have legislative jurisdiction over the program, as to whether the merits of the program justify its continuation rather than termination, its alteration, or its continuation at a level less than, equal to, or greater than the existing level.

(b) For purposes of this Act, functional and subfunctional categories are those set forth in the Budget of the United States Government, Fiscal Year 1979. All off-budget programs shall be assigned to functional and subfunctional categories by the Director of the Office of Management and Budget in consultation with the Committees on Appropriations and the Budget of the Senate and the House of Representatives. Each committee of the Senate or the House of Representatives which reports any bill or resolution which authorizes the enactment of new budget authority for a new program shall include, in the committee report accompanying such bill or resolution, a statement from the Committees on Appropriations and the Budget of its House as to the functional and subfunctional category in which such program will be included.

(c) For purposes of titles I, II, III, and V of this Act, the review date applicable to a program is the date specified for such program under section 101(a).

TITLE I—AUTHORIZATIONS OF NEW BUDGET AUTHORITY

SEC. 101. (a) The first review date applicable to a Government program is the date specified in the following table, and each subsequent review date applicable to a program is the date six years following the preceding review date.

Programs included within subfunctional category, and first review date:

052 Military Assistance
053 Atomic Energy Defense Activities
253 Space Flight
254 Space Science, Application and Technology
255 Supporting Space Activities
301 Water Resources and Power
303 Recreational Resources
352 Agriculture and Research Services
403 Other Advancement and Regulation of Commerce
451 Community Development
501 Elementary, Secondary and Vocational Education
505 Other Labor Services
554 Health Planning and Construction
703 Veterans' Hospital and Medical Care
753 Federal Correctional and Rehabilitative Activities
754 Law Enforcement Assistance
803 Central Fiscal Operations
805 Central Personnel Management
851 General Revenue Sharing, September 30, 1982
051 Department of Defense—Military
152 Conduct of Foreign Affairs
153 Foreign Information and Exchange Activities
251 General Science and Basic Research
306 Other Natural Resources
351 Farm Income Stabilization
404 Ground Transportation
407 Other Transportation
453 Disaster Relief and Insurance
506 Social Services
551 Health Care Services
552 Health, Research and Education
602 Federal Employee Retirement and Disability
604 Public Assistance and Other Income Supplements
701 Income Security for Veterans
801 Legislative Functions
802 Executive Direction and Management
806 Other General Government
901 Interest on the Public Debt
902 Other Interest, September 30, 1984
054 Defense Related Activities
151 Foreign Economic and Financial Assistance
155 International Financial Programs
302 Conservation and Land Management
304 Pollution Control and Abatement
305 Energy
401 Mortgage Credit and Theft Insurance
402 Postal Service
405 Air Transportation
406 Water Transportation
452 Area and Regional Development
502 Higher Education
503 Research and General Education Aids
504 Training and Employment
553 Prevention and Control of Health Problems
601 General Retirement and Disability Insurance
603 Unemployment Insurance
702 Veterans' Education, Training and Rehabilitation
704 Veterans' Housing
705 Other Veterans' Benefits and Services
751 Federal Law Enforcement and Prosecution
804 General Property and Records Management
852 Other General Purpose Fiscal Assistance, September 30, 1986

(b)(1) No new budget authority (including permanent budget authority) which is provided for a program for a fiscal year beginning after the review date applicable to such program as provided in section 101(a) may be obligated or expended unless the enactment of such new budget authority is authorized by provisions of a law enacted after the date of the enactment of this Act, including a sunset reauthorization bill enacted under the procedure provided for in section 505.

(2) Except as provided in this Act, no new budget authority for a program shall be authorized for a period to exceed six fiscal years or for an indefinite number of fiscal years. Nothing contained in this Act shall be construed to require the authorization of new budget authority for a program for a period of six fiscal years. In any case in which it is determined necessary or desirable to authorize new budget authority for a program on an annual basis or for a period of less than six fiscal years, such new budget authority may, subject to the provisions of section 102, be authorized for the period so determined.

(3) Paragraph (1) shall not apply to new budget authority initially provided for a program for a fiscal year beginning before the review date applicable to such program which is available for obligation or expenditure in a fiscal year beginning after such date.

(4) Paragraph (1) shall not apply to programs which are included within functional category 900; or are funded through trust funds and which are included within subfunctional categories 551 (health care services), 601 (Federal retirement and disability insurance), or 602 (Federal employee retirement and disability).

(5) Paragraph (1) shall not apply to the authorization, obligation, or expenditure of budget authority for civil or criminal litigation, or the implementation or enforcement of judgments resulting from such litigation, involving civil rights guaranteed by the Constitution of the United States.

SEC. 102. (a) It shall not be in order in either the Senate or the House of Representatives to consider any bill (including a sunset reauthorization bill) or resolution (or amendment thereto)—

(1) which authorizes the enactment of new budget authority for a program for a fiscal year beginning after the next review date applicable to such program; or

(2) which changes significantly (or has the effect of changing significantly) budget authority for or outlays under any program which is included within the provisions of section 101(b)(5) or within functional category 900, or within subfunctional category 551, 601, or 602 and which is funded through a trust fund, if such change is to take effect after the next review date applicable to such program,

unless a sunset review of such program, in the scope and detail the committee or committees having jurisdiction deem appropriate, has been completed during the Congress in which the program is scheduled for review and the report accompanying such bill or resolution includes, but is not limited to, the following:

(A) an identification of the problems, needs, or missions that the program is intended to address; and a statement, to the extent practicable in quantitative and qualitative terms, of the objectives of such programs and its past achievements and shortcomings and its anticipated accomplishments;

(B) an identification of any other programs having similar, or potentially conflicting or duplicative objectives, and justification of the need for the program in light of such findings;

(C) a comparison of amounts authorized for the program in each of the previous four fiscal years, and the amounts of new budget authority provided in each such year.

(b) It shall not be in order in either the Senate or the House of Representatives to consider any bill (including a sunset reauthorization bill) or resolution, or amendment thereto, which authorizes the enactment of new budget authority for a program for a fiscal year beginning after the next review date applicable to such program which has been selected for comprehensive evaluation under section 302, unless a report on such evaluation required by section 304(c) has been submitted during the Congress during which the program is scheduled for review.

SEC. 103. (a) It shall not be in order in either the Senate or the House of Representatives to consider any bill (including a sunset reauthorization bill) or resolution, or amendment thereto, which provides new budget authority for any program for any fiscal year beginning after the review date applicable to such program, unless the provision of such new budget authority is specifically authorized by law.

(b) Subsection (a) shall not apply in the Senate or the House of Representatives with respect to new budget authority for a program if no budget authority was available for the program in the preceding fiscal year and the committee report in that House accompanying the bill or resolution which provides such new budget authority states that the provision of such new budget authority is necessary because of an emergency and sets forth the conditions which caused such emergency.

(c) Subsection (a) shall not apply in the Senate or the House of Representatives with respect to new budget authority for a program for the first fiscal year after the review date for such program if—

(1) the provision of such new budget authority is authorized by a bill or resolution which has been passed by either the Senate or the House or has been reported by a committee in the Senate or the House; and

(2) new budget authority was available for such program for the preceding fiscal year.

SEC. 104. Not later than one year after each review date, the Director of the Congressional Budget Office, in consultation with the Director of the Congressional Research Service, shall compile a list of the provisions of law related to all programs subject to such review date for which new budget authority was not authorized. The Director of the Congressional Budget Office shall report her finding to the Senate and the House of Representatives, and the committees with legislative jurisdiction over the affected programs shall study the affected provisions and report their recommendations with regard to such provisions to the Senate and the House of Representatives.

SEC. 105. (a) All proposed legislation, messages, petitions, memorials, and other matters relating to changes in the review dates applicable to programs under this title and titles II, III, and V shall be referred in the Senate to the Committee on the Budget of the Senate, and shall be referred in the House of Representatives to the Committee on the Budget of the House, and each such committee shall have jurisdiction to report to its House, by bill or otherwise, proposed changes in such dates.

(b) Notwithstanding the provisions of subsection (a), and except as otherwise provided in subsection (c), any committee of the Senate or the House of Representatives may report bills and resolutions changing the review date applicable to any program under its legislative jurisdiction. Any such bill or resolution so reported shall then be referred to the Committee on the Budget of its House, which shall report such bill or resolution to its House within thirty days after such bill or resolution is referred to it (not counting any day on which its House is not in session), beginning with the day following the day on which such bill or resolution is so referred, accompanied by its recommendations. If the Committee on the Budget does not report such bill or resolution to its House within such thirty-day period, it shall automatically be discharged from further consideration of such bill or resolution and it shall be placed on the appropriate calendar of the Senate or the House of Representatives, as the case may be.

(c) Any bill or resolution proposing a change in the review schedule reported by a committee of the Senate or House of Representatives before June 1, 1980, shall be referred in the Senate to the Committee on the Budget of the Senate and in the House of Representatives to the Committee on the Budget of the House. Each Budget Committee shall report an omnibus bill or resolution containing its recommendations regarding the proposed changes by July 1, 1980, and the Congress shall complete consideration of such bill or resolution not later than August 1, 1980. The provisions of sections 1017 (c) and (d) of the Impoundment Control Act of 1974, insofar as they relate to rescission bills, shall apply in the House of Representatives and the Senate, respectively, to the consideration of bills proposing schedule changes reported pursuant to this subsection, amendments thereto, motions and appeals with respect thereto, and conference reports thereon.

(d) A bill or resolution reported pursuant to subsection (c) may not propose a review date for a program later than September 30, 1986.

(e) It is the sense of the Congress that all programs should be authorized in program categories which would constitute major areas of legislative policy. Such authorizations should be for sufficient periods of time to foster greater oversight and enhanced opportunities for program analysis, evaluation, and review.

TITLE II—PROGRAM INVENTORY

SEC. 201. (a) Not later than July 1, 1979, the Director of the Congressional Budget Office, in cooperation with the Comptroller General and the Director of the Congressional Research Service, shall compile an inventory of Federal programs (hereafter in this title referred to as the "program inventory"), and submit a report thereof to the Senate and House of Representatives. The report shall set forth for each program whether the new budget authority provided for such program is—

(1) authorized for a definite period of time;

(2) authorized without limit of time;

(3) not specifically authorized; or

(4) permanently provided.

(b) The program inventory shall also include for each program—

(1) the legislation authorizing the program;

(2) the committees of the Senate and the House of Representatives which have legislative or oversight jurisdiction over the program;

(3) a brief statement of the purpose or purposes to be achieved by the program;

(4) the committees which have jurisdiction over legislation providing new budget authority for the program, including the appropriate subcommittees of the Committees on Appropriations of the Senate and the House of Representatives;

(5) the amounts of new budget authority authorized and provided for the program for each of the preceding four fiscal years;

(6) the Federal budget function and subfunction in which the program is classified;

(7) the appropriation account in which budget authority is provided for the program;

(8) the agency and, if applicable, the subdivision thereof responsible for administering the program;

(9) the grants-in-aid, if any, provided by such program to State and local governments;

(10) the next review date for the program; and

(11) a unique identification number which links the program and functional category structure.

(c) In the report to be submitted under this title, the Director of the Congressional Budget Office may group together programs in related program areas: Provided, That such groupings shall identify program areas in a manner which—

(1) classifies each program in only one functional and only one subfunctional category;

(2) provides, to the maximum extent feasible, that each program is administered by only one agency of the Government or subdivision thereof;

(3) is consistent with the structure of national needs, agency missions, and basic programs developed pursuant to section 201(1) of the Budget and Accounting Act, 1921;

(4) is consistent with the appropriation account structure of the United States Government; and

(5) to the extent appropriate, classifies related authorizations within a single program.

SEC. 202. The General Accounting Office and the Congressional Research Service shall provide the Congressional Budget Office with available information in their possession which would aid in the compilation of the program inventory.

SEC. 203. The Congressional Research Service, the General Accounting Office, the Office of Management and Budget, and the executive agencies and subdivisions thereof shall, to the extent necessary and possible, provide the Congressional Budget Office with any assistance requested by the Director of the Congressional Budget Office in the compilation of the program inventory.

SEC. 204. Each committee of the Senate and House of Representatives shall review the program inventory as submitted under section 201 and not later than October 1, 1979, shall report to the Director of the Congressional Budget Office any revisions in the composition or identification of programs which it considers advisable. After considering the reports of all such committees, the Director in consultation with the Budget Committees of the Senate and House of Representatives shall report, not later than December 31, 1979, a revised program inventory to the Senate and the House of Representatives.

SEC. 205. (a) The Director of the Congressional Budget Office, after the close of each session of the Congress shall revise the program inventory and report the revisions to the Senate and the House of Representatives. Such revisions shall indicate, with respect to each program included in such inventory and each program established by law during such session, the amount of new budget authority authorized and the amount of new budget authority provided for the current fiscal year and each of the five succeeding fiscal years. If new budget authority is not authorized or provided or is authorized or provided for an indefinite amount for any of such five succeeding fiscal years with respect to any program, the Director shall make projections of the amounts of such new budget authority necessary to be authorized or provided for any such fiscal year to maintain a current level of services.

(b) The Director of the Congressional Budget Office shall issue periodic reports keeping score of the progress of congressional

action on bills and resolutions authorizing budget authority for programs in the inventory. The reports shall include an up-to-date tabulation for the fiscal year beginning October 1 and the succeeding four fiscal years of the amounts of budget authority (1) authorized by law, (2) proposed to be authorized in any bill or resolution reported by any committee of the Senate or House of Representatives, or (3) if budget authority is not authorized or proposed to be authorized for any of the five fiscal years, the amounts necessary to maintain a current level of services.

SEC. 206. The Director of the Congressional Budget Office shall submit periodic reports to the Congress on the adequacy of the functional and subfunctional categories contained in section 101(a) for grouping programs of like missions or objectives. The first such report shall be submitted by September 30, 1979. Subsequent reports shall be submitted every two years thereafter.

TITLE III—PROGRAM EVALUATION

SEC. 301. A number of program areas among those subject to review pursuant to title I, shall be selected by the Senate and House of Representatives for comprehensive evaluation. The selection of program areas and the preparation of evaluations shall involve the participation of the executive branch and the Congress in accordance with the procedures set forth in this title.

SEC. 302. (a) Not later than March 15 of the first session of the Ninety-seventh Congress and of each succeeding Congress, each committee of the Senate and House of Representatives having jurisdiction to authorize new budget authority shall submit to the Committee on the Budget of its House a statement identifying specific program areas from among those scheduled for review in such Congress pursuant to title I, which the committee intends to make the subject of evaluation under section 303. The committees may include their statements in the submission of views and estimates as required by section 301(c) of the Congressional Budget Act of 1974.

(b) In selecting program areas for evaluation each committee shall consider such factors as, the extent to which substantial time has passed since a program has been in effect; the extent to which a program area appears to require significant change; the resources of the committee with a view toward undertaking such evaluation across a broad range of program areas; and the desirability of examining related programs in depth in the same year: *Provided,* That in the event that no program areas are selected for evaluation by a committee, the committee shall indicate in its statement prepared pursuant to this subsection, the reasons for such a decision.

(c) The President shall recommend specific program areas for evaluation under this title from among those scheduled for review in the particular Congress pursuant to title I. Such recommendations shall be included in the annual budget message submitted, as provided in section 201 of the Budget and Accounting Act, 1921, to the first session of the Ninety-seventh Congress, and to the first session of each succeeding Congress.

(d) The Budget Committees of the Senate and the House of Representatives shall incorporate without substantive change all of the statements submitted, as provided in subsection (a), by the committees of its House in a resolution for consideration by such House. Each such resolution shall be reported without recommendation not later than April 15 of the first session of each Congress, beginning with the Ninety-seventh Congress.

(e)(1) Following Senate adoption of the first concurrent resolution on the budget, the Senate shall proceed to the consideration of the resolution reported pursuant to subsection (d).

(2) Debate in the Senate on any such resolution, including all amendments to, and debatable motions and appeals in connection with, such resolution shall be limited to not more than ten hours. Amendments shall be limited to additions or deletions to the particular program areas which shall be the subject of evaluation under section 303. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any amendment to such resolution shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the resolution. Debate on any amendment to an amendment, to such a resolution, and debate on any debatable motion or appeal in connection with such a resolution shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of such resolution shall be received. Such leaders, or either of them, may, from the time under their control on the passage of such resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(4) A motion to further limit debaate is not debatable. No motion to recommit such resolution is in order.

SEC. 303. Each evaluation of a program area designated in the resolution agreed to pursuant to section 302 shall include, but not be limited to—

(1) an identification of the objective intended for the program and the problem or need which the program was intended to address;

(2) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

(3) an assessment of alternative methods of achieving the purposes of the program;

(4) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

(5) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis which the committee determines to be appropriate to the type or character of the program;

(6) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

(7) a statement of the number and types of beneficiaries or persons served by the program;

(8) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(9) an assessment of the impact of the program on the Nation's health and safety;

(10) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the department or agency executing the program, meet the objectives of the Congress in establishing the program;

(11) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives; and

(12) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level.

SEC. 304. (a) If more than one committee of the Senate or the House of Representatives has legislative jurisdiction over a program, the committees having such jurisdiction may conduct the evaluation jointly or may determine which committee shall conduct the evaluation for its House.

(b) The committees of the Senate and the House of Representatives having legislative jurisdiction over a program may also conduct the evaluation jointly or determine which committee shall conduct the evaluation for both Houses.

(c) Each committee conducting an evaluation of a program under this title shall submit a report together with its recommendations, to the Senate or the House of Representatives, or both, as the case may be, during the Congress in which occurs the review date for such program and not later than May 15 of the year in which occurs the review date for such program. Such report shall be published as an official report of the appropriate House, and, in the case of an evaluation conducted as provided in subsection (b), such report shall be published as an official report of both Houses. Evaluations for all programs within the same functional or subfunctional budget category shall, to the maximum extent feasible, be submitted in a single report or in a manner consistent with section 201(i) of the Budget and Accounting Act, 1921.

(d) A report submitted pursuant to this section shall be deemed to satisfy the sunset review requirements of title I.

SEC. 305. Not later than December 31 of the first session of the Ninety-seventh Congress, and of each succeeding Congress, the President shall submit to the Congress his evaluation and recommendations with respect to each program area specified in the resolutions agreed to as provided in section 302. Such evaluation and recommendations shall include all of the information required in section 303.

TITLE IV—CITIZENS' COMMISSION ON THE ORGANIZATION AND OPERATION OF GOVERNMENT

SEC. 401. There is established, as an independent instrumentality of the United States, the Citizens' Commission on the Organization and Operation of Government (hereafter in this title referred to as the "Commission").

SEC. 402. It is hereby declared to be the policy of the Congress to promote economy, efficiency, and improved service in the transaction of the public business in the departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government.

SEC. 403. (a) The Commission shall conduct a nonpartisan study and investigation of the organization and methods of operation of all departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government, and shall make such recommendations as it determines necessary to—

(1) increase the effectiveness of Government services, programs, functions, and activities by changing the structure and execution of administrative responsibilities;

(2) improve delivery of services through elimination of needless duplication or overlap, consolidation of similar services, programs, activities, and functions, and termination of such services, programs, activities, and functions which have outlived their intended purpose;

(3) maintain expenditures at levels consistent with the efficient performance of essential services, programs, activities, and functions;

(4) simplify and eliminate overlaps in

agency regulatory functions by review of the laws, regulations, and administrative reports and procedures; and

(5) determine the appropriate responsibilities of each level of government, the manner and alternative means for each level of government to finance such responsibilities, the forms and extend of intergovernmental aid and assistance, and the organization required for proper balance and division of respective Federal, State, and local government roles, responsibilities, and authorities.

(b) The Commission shall submit to the President and to the Congress such interim reports as it deems advisable, and, not later than July 1, 1981, shall submit a final report together with its findings and recommendations.

(c) At least once every year for two years after the submission of the final report, the Comptroller General shall report to the Congress on the status of actions taken on the Commission's final report.

SEC. 404. (a) The Commission shall be composed of eighteen members appointed from among individuals with extensive experience in or knowledge of United States Government as follows:

(1) Eight members shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Five members shall be appointed by the President pro tempore of the Senate, three upon recommendation of the majority leader and two upon recommendation of the minority leader of the Senate.

(3) Five members shall be appointed by the Speaker of the House of Representatives, three upon recommendation of the majority leader and two upon recommendation of the minority leader of the House.

(b)(1) Two members appointed under subsection (a)(1) shall be appointed to serve as chairman and vice chairman (as provided in paragraph (2) of this subsection) and shall not engage in any other business, vocation, or employment. Such two members shall not be of the same political affiliation.

(2) The member described in paragraph (1) who is not of the same political affiliation as the President shall serve as Chairman of the Commission and the other member shall serve as Vice Chairman of the Commission.

(c) Of the members appointed under subsection (a)(1) other than the members to whom subsection (b) applies, not more than three shall be of the same political affiliation.

(d) any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) Ten members of the Commission shall constitute a quorum, but the Commission may establish a lesser number to constitute a quorum for the purpose of holding hearings.

SEC. 405. (a) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Commission or such subcommittee or member may deem advisable.

(b)(1) Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by him and shall be served by any person designated by the Chairman or such member. Any member of the Commission may administer oaths or affirmation to witnesses appearing before the Commission.

(2) The provisions of section 1821 of title 28, United States Code, shall apply to witnesses summoned to appear at any such hearing. The per diem and mileage allowances to witnesses summoned under authority conferred by this section shall be paid from funds appropriated to the Commission.

(3) Any person who willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or to produce any evidence in obedience to any subpena duly issued under the authority of this section shall be fined not more than $500, or imprisoned for not more than six months, or both. Upon the certification by the Chairman of the Commission of the facts concerning any such willful disobedience by any person to the United States Attorney for any judicial district in which such person resides or is found, such attorney may proceed by information for the prosecution of such person for such offense.

(c) The Commission is authorized to secure directly from the head of any department agency, independent instrumentality, or other authority of the executive branch of the Government, available information which the Commission deems useful in the discharge of its duties. All departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government shall cooperate with the Commission and furnish all information requested by the Commission in accordance with existing law.

SEC. 406. (a) Subject to such rules and regulations as may be adopted by the Commission, the Commission shall have the power—

(1) to appoint and fix the compensation of an Executive Director, and such additional staff personnel as it deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but—

(A) in the case of the Executive Director, at a rate equal to that for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(B) in the case of all other personnel, at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(2) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title, 5, United States Code.

(b) The Commission is authorized to enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of the General Services Administration.

SEC. 407. (a) The Chairman of the Commission shall receive compensation at a rate equal to the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the Vice Chairman shall receive compensation at a rate equal to the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) All other members of the Commission who are not officers or employees of the Federal Government shall receive compensation at the rate of $200 for each day such member is engaged in the performance of the duties vested in the Commission.

(c) Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with their activities as members of the Commission.

SEC. 408. The provisions of this title shall take effect on October 1, 1978.

SEC. 409. The Commission shall cease to exist ninety days after the submission of its final report.

SEC. 410. There is authorized to be appropriated, without fiscal year limitations, the sum of $12,000,000 to carry out the provisions of this title.

SEC. 411. The Commission shall be subject to the Federal Advisoty Committee Act.

TITLE V—MISCELLANEOUS

SEC. 501. Section 206 of the Budget and Accounting Act, 1921, is amended by inserting immediately before the period a comma and "or at the request of a committee of either House of Congress presented after the day on which the President transmits the budget to the Congress under section 201 of this Act for the fiscal year".

SEC. 502. (a) Nothing in this Act shall require the public disclosure of records which are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order, or which are otherwise specifically protected by law.

(b) Nothing in this Act shall require the committees of the Senate or House of Representatives to publicly disclose records described in subsection (a) except as otherwise provided by the rules of the respective House.

SEC. 503. The provisions of this section and sections 102, 103, 105, 302 (a), (b), (d), and (e), 304, and 504 of this Act are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

SEC. 504. (a) To assist in the review or evaluation of a program, the agency which administers such program and any other agency, when requested, shall provide to each committee of the Senate and the House of Representatives which has legislative jurisdiction over such program such information and assistance as the committee may request.

(b) Not later than six months prior to the first review date specified for a program in section 101(a), the head of the agency which administers such program and any other agency, when requested by a committee of the Senate or House of Representatives, shall conduct a review of the regulations currently promulgated and in use by that agency and submit his report to the Senate or House of Representatives, as the case may be, setting forth the regulations that agency intends to retain, eliminate or modify if the program is reauthorized and stating the basis for its decisions including, but not limited to, the language to be proposed by that agency with respect to any modifications in its regulations. The report provided for by this subsection shall be submitted for any program included in a resolution adopted by the Senate or the House of Representatives pursuant to section 302.

(c) On or before October 1 of the year preceding the Congress in which occurs the review date for a program, the Comptroller General shall furnish to each committee of the Senate and the House of Representatives which has legislative jurisdiction over such program the results of prior audits and reviews of such program completed during the preceding six years.

(d) Consistent with the discharge of the

duties and functions imposed by law on them or their respective Offices or Service, the Comptroller General, the Director of the Congressional Budget Office, and the Director of the Office of Technology Assessment, and the Director of the Congressional Research Service shall furnish to each committee of the Senate and the House of Representatives such information, analyses, and reports as the committee may request to assist it in conducting reviews or evaluations of programs.

SEC. 505. (a) For purposes of this section and title I, the term "sunset reauthorization bill" means only a bill which authorizes the enactment of new budget authority for a program for one or more fiscal years beginning after the next review date for such program (but not more than six fiscal years) and before the succeeding review date for such program in an amount which does not exceed, for any fiscal year, the amount of new budget authority provided for such program for the fiscal year in progress on the date on which such bill is reported by the committee of the Senate or the House of Representatives to which it is referred under subsection (c) or the date from which such committee is discharged from further consideration under subsection (d)(1).

(b) It shall not be in order in either the Senate or the House of Representatives to consider a sunset reauthorization bill for a program except during the Congress in which occurs a review date for such program. It shall not be in order in the Senate to consider a sunset reauthorization bill unless the Senate has had under consideration for not less than fifty hours, a bill authorizing enactment of new budget authority for the same program, amendments to such bill, and motions in connection with such bill (including motions to proceed to the consideration thereof). If it is in order to consider a sunset reauthorization bill under this paragraph, the provisions in section 402(a) of the Congressional Budget Act of 1974 shall not apply.

(c) A sunset reauthorization bill relating to a program introduced in, or received by, the Senate or the House of Representatives shall be referred to the appropriate committee of that House.

(d)(1) After May 15 of the year in which occurs the reveiw date for a program, if a committee has not reported a sunset reauthorization bill relating to such program which has been referred to it for at least fifteen calendar days (not counting any day on which its House is not in session), it is in order to move either to discharge the committee from further consideration of the bill or to discharge the committee from further consideration of any other sunset reauthorization bill relating to the same program which has been referred to the committee.

(2) A motion to discharge may be made only by an individual favoring the sunset reauthorization bill, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate, except that it may not be made after the committee has reported, or been discharged from further consideration of, a sunset reauthorization bill relating to the same program; and debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between those favoring and those opposing the bill, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(3) Notwithstanding the provisions of paragraph (1), a motion to discharge a committee from further consideration of a sunset reauthorization bill may be made in the Senate only if the consideration of such bill is in order under subsection (b).

(e) The provisions of sections 1017 (c) and (d) of the Impoundment Control Act of 1974 insofar as they relate to rescission bills shall apply in the House of Representatives and the Senate, respectively, to the consideration of sunset authorization bills, amendments thereto, motions and appeals with respect thereto, and conference reports thereon.

(f) Terms used in this section have the meaning given to them for purposes of title I of this Act.

SEC. 506. The provisions of this Act shall not apply until January 1, 1987, to the following agencies: Civil Aeronautics Board, Interstate Commerce Commission, Federal Maritime Commission, Federal Communications Commission, Occupational Safety and Health Administration, Equal Employment Opportunity Commission, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, National Credit Union Administration, Federal Savings and Loan Insurance Corporation, International Trade Commission, Securities and Exchange Commission, Commodity Futures Trading Commission, Energy Regulatory Board, Nuclear Regulatory Commission, Consumer Product Safety Commission, Federal Aviation Administration, Food and Drug Administration, National Highway Traffic Safety Administration, Federal Trade Commission, or to the regulatory activities of the Environmental Protection Agency, Federal Housing Administration, and the Board of Governors of the Federal Reserve System.

The amendment of the Committee on Governmental Affairs is to strike all after the enacting clause and insert the following:

The title was amended so as to read:

A bill to require authorizations of new budget authority for Government programs at least every six years, to provide for review of Government programs every six years, and for other purposes.

The amendment of the Committee on Rules and Administration is to strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Program Reauthorization and Evaluation Act of 1978".

SEC. 2. (a) The Congress finds that—

(1) public confidence in the legislative and executive branches of the Federal Government has declined in recent years;

(2) this decline in confidence is due largely to the public perception that the Government is not as effective, responsive, or orderly as it should be in serving the public interest;

(3) in recent years the Congress has taken major steps, in such areas as budget reform and open meetings, to reform its operations and make them more responsive to the public interest;

(4) budget reform, in particular, has for the first time given the Congress an effective, systematic method for making broad policy decisions about the way it spends the taxpayers' money through the Federal budget which is this country's most important statement of national priorities;

(5) in spite of progress made under budget reform, the Congress has failed to exercise sufficient control over the individual programs which it has enacted over the years and which constitute the building blocks of national priorities;

(6) given the rapidly increasing demands on the Federal budget, if the Congress is to pursue major new legislative initiatives to respond to changing national needs, it is essential that existing Federal programs be reviewed on a regular, systematic basis to determine whether such programs serve a useful purpose;

(7) the accountability of Congress will be enhanced and public confidence in that body strengthened if the Congress demonstrates a determination to pursue such a course by the adoption of a mandatory systematic process for reviewing on a regular basis the results of past legislative work in light of changing national priorities; and

(8) such a congressional course will not only strengthen and rationalize congressional oversight responsibilities but also will complement and contribute to the success of executive branch efforts to reorganize and reform its own operations.

(b) The purposes of this Act are—

(1) to provide a comprehensive and systematic process through which the Congress can exercise greater control over the results of its legislative work;

(2) to make available, through the use of such process, Federal resources to meet new problems and changing national needs and to insure a greater return to taxpayers on their tax dollars;

(3) to provide broader coverage to congressional procedures for review and reauthorization of necessary Federal programs; and

(4) to assure a more effective Federal Government at all levels of operation, including protection of fundamental rights and liberties without jeopardizing the implementation or enforcement of basic civil rights guaranteed by the Constitution or laws of the United States.

SEC. 3. (a) For purposes of this Act—

(1) The term "budget authority" has the meaning given to it by section 3(2) of the Congressional Budget Act of 1974.

(2) The term "outlays" has the meaning given to it by section 3(1) of the Congressional Budget Act of 1974.

(3) The term "permanent budget authority" means budget authority provided for an indefinite period of time or an unspecified number of fiscal years which does not require current action by the Congress, but does not include budget authority provided for a specified fiscal year which is available for obligation or expenditure in one or more succeeding fiscal years.

(4) The term "Comptroller General" means the Comptroller General of the United States.

(5) The term "agency" means an executive agency as defined in section 105 of title 5, United States Code, except that such term includes the United States Postal Service and the Postal Rate Commission but does not include the General Accounting Office.

(b) For purposes of this Act, functional and subfunctional categories are those set forth in the Budget of the United States Government, fiscal year 1979. All off-budget programs shall be assigned to functional and subfunctional categories by the Director of the Office of Management and Budget in consultation with the Committees on Appropriations and the Budget of the Senate and the House of Representatives and with the committees of the Senate and the House of Representatives which have legislative jurisdiction over the programs. Each committee of the Senate or the House of Representatives which reports any bill or resolution which authorizes the enactment of new budget authority for a new program shall include, in the committee report accompanying such bill or resolution, a recommendation as to the functional and subfunctional category in which such program will be included.

(c) For purposes of titles I, II, III, and V of this Act, the reauthorization date applicable to a program is the date specified for such program under section 101(a).

TITLE I—REAUTHORIZATIONS OF NEW BUDGET AUTHORITY

SEC. 101. (a) The first reauthorization date applicable to a Government program is the date specified in the following table, and each subsequent reauthorization date applicable to a program is the date ten years following the preceding reauthorization date:

Programs included within subfunctional category and first reauthorization date:

254 Space, Science, Applications and Technology.
272 Energy Conservation.
301 Water Resources.
352 Agriculture and Research Services.
371 Mortgage Credit and Thrift Insurance.
376 Other Advancement and Regulation of Commerce.
501 Elementary, Secondary, and Vocational Education.
601 General Retirement and Disability Insurance.
602 Federal Employment and Retirement Disability.
703 Hospital and Medical Care for Veterans.
806 Other General Government.
851 General Revenue Sharing, September 30, 1982.
051 Department of Defense—Military.
053 Atomic Energy Defense Activities.
154 Foreign Information and Exchange Act.
251 General Science and Basic Research.
306 Other Natural Resources.
351 Farm Income Stabilization.
401 Ground Transportation.
502 Higher Education.
553 Education and Training of Health Care Work Force.
701 Income Security for Veterans.
752 Federal Litigative and Judicial Activities.
802 Executive Director and Management.
803 Central Fiscal Operations, September 30, 1984.
054 Defense Related Activities.
152 Military Assistance.
155 International Financial Programs.
253 Space Flight.
255 Supporting Space Activities.
274 Emergency Energy Preparedness.
302 Conservation and Land Management.
304 Pollution Control and Abatement.
407 Other Transportation.
504 Training and Employment.
506 Social Services.
554 Consumer and Occupational Health and Safety.
704 Veterans Housing.
751 Federal Law Enforcement Activities.
801 Legislative Function.
852 Other General Purpose Fiscal Assistance, September 30, 1986.
153 Conduct of Foreign Affairs.
271 Energy Supply.
303 Recreational Resources.
402 Air Transportation.
505 Other Labor Services.
551 Health Care Services.
604 Public Assistance and Other Income Supplements.
702 Veterans Education, Training, and Rehabilitation.
753 Federal Correctional Activities.
805 Central Personnel Management.
902 Other Interest, September 30, 1988.
151 Foreign Economic and Financial Assistance.
276 Energy Information, Policy and Regulation.
372 Postal Service.
403 Water Transportation.
451 Community Development.
452 Area and Regional Development.
453 Disaster Relief and Insurance.
503 Research and General Education Aids.
552 Health Research.
603 Unemployment Compensation.
705 Other Veterans Benefits and Services.
754 Criminal Justice Assistance.
804 General Property and Record Management.
901 Interest on the Public Debt, September 30, 1990.

(b)(1) No new budget authority (including permanent budget authority) which is provided for a program for a fiscal year beginning after the reauthoriztaion date applicable to such program as provided in section 101(a) may be obligated or expended unless the enactment of such new budget authority is authorized by provisions of a law enacted after the date of the enactment of this Act, including a current services reauthorization bill enacted under the procedure provided for in section 505.

(2) Except as provided in this Act, no new budget authority for a program shall be authorized for a period to exceed ten fiscal years or for an indefinite number of fiscal years. Nothing contained in this Act shall be construed to require the authorization of new budget authority for a program for a period of ten fiscal years. In any case in which it is determined necessary or desirable to authorize new budget authority for a program on an annual basis or for a period of less than ten fiscal years, such new budget authority may, subject to the provisions of section 102, be authorized for the period so determined.

(3) Paragraph (1) shall not apply to new budget authority initially provided for a program for a fiscal year beginning before the reauthorization date applicable to such program which is available for obligation or expenditure in a fiscal year beginning after such date.

(4) Paragraph (1) shall not apply to—

(A) programs included within functional category 900 (Interest);

(B) programs funded through trust funds which are included within subfunctional categories 551 (Health care services), 601 (General retirement and disability), or 602 (Federal employee retirement and disability);

(C) any Federal programs, activities, or efforts to give effect to civil rights guaranteed by the Constitution of the United States, including but not limited to the investigation of violations of civil rights, civil or criminal litigation or the implementation or enforcement of judgments resulting from such litigation, and administrative activities in support of the foregoing;

(D) retirement pay and retired pay of military personnel on the retired lists of the Army, Navy, Marine Corps, and the Air Force, including the reserve components thereof, retainer pay for personnel of the Inactive Fleet Reserve; and payments under section 4 of Public Law 92–425 of chapter 73 of title 10, United States Code (survivor's benefits), classified in the fiscal year 1979 budget in subfunctional category 051 (Department of Defense—military);

(E) retirement pay and medical benefits for retired commissioned officers of the Coast Guard, the Public Health Service Commissioned Corps, and the National Oceanic and Atmospheric Commissioned Corps and their survivors and dependents, classified in the fiscal year 1979 budget in subfunctional category 551 (Health care services);

(F) retired pay of military personnel of the Coast Guard and Coast Guard Reserve, members of the former Lighthouse Service, and for annuities payable to beneficiaries of retired military personnel under the retired serviceman's family protection plan (10 U.S.C. 1431–1446) and survivor benefit plan (10 U.S.C. 1447–1455), classified in the fiscal year 1979 budget in subfunctional category 403 (Water transportation);

(G) payments to the Central Intelligence Agency Retirement and Disability Fund, classified in the fiscal year 1979 budget in subfunctional category 054 (Defense-related activities);

(H) payments to the Civil Service Retirement and Disability Fund for financing unfunded liabilities, classified in the fiscal year 1979 budget in subfunctional category 805 (Central personnel management);

(I) payments to the Foreign Service Retirement and Disability Fund, classified in the fiscal year 1979 budget in subfunctional category 153 (Conduct of foreign affairs);

(J) payments to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds, classified in the fiscal year 1979 budget in various subfunctional categories;

(K) administration of the retirement and disability programs set forth in this paragraph;

(L) compensation, pensions, readjustment benefits, insurance and indemnities, medical care, and medical and prosthetic research for veterans, classified in the fiscal year 1979 budget in subfunctional categories 701 (Income security for veterans), 702 (Veterans education, training, and rehabilitation), or 703 (Hospital and medical care for veterans); and

(M) programs which are related to the administration of the Federal judiciary and which are included within subfunctional category 752 (Federal litigative and judicial activities).

SEC. 102. (a) It shall not be in order in either the Senate or the House of Representatives to consider any bill (except a current services reauthorization bill as set forth in section 505) or resolution, or amendment thereto, which auhorizes the enactment of new budget authority for a program for a fiscal year beginning after the next reauthorization date applicable to such program, unless a reauthorization review of such program, in the scope and detail the committee or committees having jurisdiction deem appropriate, has been completed during the Congress in which the program is scheduled for reauthorization and a report accompanies such bill or resolution which includes sufficient information to permit a determination as to whether the program or the laws affecting such program should be continued without change, continued with modifications, or terminated, and includes where feasible and appropriate, the following:

(1) information and analysis on the organization, operation, costs, results, accomplishments, and effectiveness of the program which is sufficiently complete to permit the Congress to determine whether the program is being implemented and is performing in accordance with the objectives and intent of the Congress;

(2) an identification of any other programs having similar objectives, and justification of the need for the program in light of findings that the other programs are potentially conflicting or duplicative;

(3) an identification of the objectives intended for the program, and the problems or needs which the program is intended to address, including an analysis of the performance estimated to be acheived, based on the bill or resolution as reported;

(4) requirements for information and analyses to be developed and provided by Federal instrumentalities for use in the effective legislative review of such program, including a subsequent reauthorization review of such program; and

(5) a comparison of amounts authorized for the program in each of the previous four fiscal years and the amounts of new budget authority provided in each such year.

(b) It shall not be in order in either the Senate or the House of Representatives to consider a bill or resolution which authorizes the enactment of new budget authority for a program for which there has previously been no authorization unless the legislation is accompanied by a report which sets forth, to the extent feasible and appropriate, the information specified in subsection (a) (2), (3), and (4) of this section.

(c) It shall not be in order in either the Senate or the House of Representatives to consider a bill or resolution reported by a committee of conference which authorizes the enactment of new budget authority for a program unless such report is accompanied by a statement of the managers which sets forth the objectives intended for the program and the problems or needs which the program is intended to address, and the performance estimated to be achieved, based on the bill or resolution as recommended in such conference report.

SEC. 103. (a) It shall not be in order in either the Senate or the House of Representatives to consider any bill (except a current services reauthorization bill as set forth in section 505) or resolution, or amendment thereto, which authorizes the enactment of new budget authority for a program for a fiscal year beginning after the next reauthorization date applicable to such program which has been selected for comprehensive review and evaluation under title III, unless a report on such review and evaluation required by section 305 has been submitted during the Congress during which the program is scheduled for reauthorization.

(b) It shall not be in order in either the Senate or the House of Representatives to consider any bill (except a current services reauthorization bill as set forth in section 505) or resolution, or amendment thereto, which authorizes the enactment of new budget authority for a program which is not required to be reauthorized pursuant to section 101(b)(1) unless a report on a comprehensive review and evaluation of such program satisfying the requirements of section 305 has been submitted to the Senate or the House of Representatives during the same Congress in which the authorization is considered.

(c) Notwithstanding the provisions of subsection (b) of this section, it shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which changes significantly, or has the effect of changing significantly, a program which is not required to be reauthorized pursuant to section 101(b)(1) unless a report on a comprehensive review and evaluation of such program satisfying the requirements of section 305 has been submitted to the Senate or the House of Representatives during the Congress during which such measure is offered for consideration but not more than one report shall be required to be submitted during any ten-year period.

(d) It shall not be in order in the Senate or the House of Representatives to consider any measure covered by subsection (a), (b), or (c) which is reported by a conference committee unless the report is accompanied by a statement of the managers which sets forth a statement of the objectives intended to be accomplished by the program and the problems or needs which the program is intended to address, based on the bill or resolution as recommended in such conference report.

SEC. 104. (a) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which provides new budget authority for any program for any fiscal year beginning after the reauthorization date applicable to such program, unless the provision of such new budget authority is specifically authorized by law.

(b) Subsection (a) shall not apply in the Senate or the House of Representatives with respect to new budget authority for a program if no budget authority was available for the program in the preceding fiscal year and the committee report in that House accompanying the bill or resolution which provides such new budget authority states that the provision of such new budget authority is necessary because of an emergency and sets forth the conditions which caused such emergency.

(c) Subsection (a) shall not apply in the Senate or the House of Representatives with respect to new budget authority for a program for the first fiscal year after the reauthorization date for such program if—

(1) the provision of such new budget authority is authorized by a bill or resolution which has been passed by either the Senate or the House or has been reported by a committee in the Senate or the House; and

(2) new budget authority was available for such program for the preceding fiscal year.

SEC. 105. Not later than one year after each authorization date, the Director of the Congressional Budget Office, in consultation with the Comptroller General and the Director of the Congressional Research Service, shall compile a list of the provisions of law related to all programs subject to such reauthorization date for which new budget authority was not authorized. The Director of the Congressional Budget Office shall report his findings to the Senate and the House of Representatives, and the committees with legislative jurisdiction over the affected programs shall study the affected provisions and report their recommendations with regard to such provisions to the Senate and the House of Representatives.

SEC. 106. (a) It is the sense of the Congress that all programs should be considered and reauthorized in program categories which constitute major areas of legislative policy. Such authorizations should be for sufficient periods of time to foster greater oversight and enhance opportunities for program analysis, evaluation, and review.

(b) All proposed legislation, messages, petitions, memorials, and other matters relating to changes in section 101(a) or 101(b)(4) shall be referred in the Senate to the Committee on Rules and Administration and such committee shall have jurisdiction to report to the Senate, by bill or otherwise, any such proposed changes.

(c) In exercising its responsibilities under this section, the Committee on Rules and Administration shall request that the Comptroller General, the Director of the Congressional Budget Office, and the Director of the Office of Management and Budget report to the committee in a timely fashion on—

(1) the effect the proposed change would have on the functional and subfunctional categories of the budget;

(2) the effect the proposed change would have on the jurisdictional and reauthorization responsibilities of the authorizing committees of Congress; and

(3) any suggested grouping of similar programs which would further the goals of this Act to make more effective comparisons between programs having like objectives.

(d) Notwithstanding the provisions of subsection (b), and except as otherwise provided in subsection (e), any committee of the Senate may report bills and resolutions proposing changes in section 101(a) or 101(b)(4) to any program under its legislative jurisdiction. Any such bill or resolution so reported shall then be referred to the Committee on Rules and Administration of the Senate, which shall report such bill or resolution to the Senate within thirty days after such bill or resolution is referred to it (not counting any day on which the Senate is not in session), beginning with the day following the day on which such bill or resolution is so referred, accompanied by its recommendations. If the Committee on Rules and Administration does not report such bill or resolution to the Senate within such thirty-day period, it shall automatically be discharged from further consideration of such bill or resolution and it shall be placed on the calendar of the Senate.

(e) Any bill or resolution proposing a change in section 101(a) or 101(b)(4) which has been reported by a committee of the Senate before June 1, 1980, shall be referred in the Senate to the Committee on Rules and Administration. Such committee shall report an omnibus bill or resolution containing its recommendations regarding the proposed changes by July 1, 1980, and the Senate shall complete consideration of such bill or resolution not later than August 1, 1980. The provisions of section 1017 (c) and (d) of the Impoundment Control Act of 1974, insofar as they relate to rescission bills, shall apply in the Senate, to the consideration of bills proposing changes reported pursuant to this subsection, amendments thereto, motions and appeals with respect thereto, and conference reports thereon.

(f) A bill or resolution reported pursuant to subsections (d) or (e) may not propose a reauthorization date for a program beyond the next reauthorization date.

TITLE II—PROGRAM INVENTORY

SEC. 201. (a) The Comptroller General and the Director of the Congressional Budget Office, in cooperation with the Director of the Congressional Research Service, shall share responsibility as provided in this title for providing information for the preparation of an inventory of Federal programs (hereafter in this title referred to as the "program inventory").

(b) The purpose of the program inventory is to support the scheduling, planning, and execution of the reauthorization and review requirements of titles I and III, and to maintain the necessary information linkages between the reauthorization and review process and the budget process. The Comptroller General is to compile and maintain the inventory for support of the oversight process and the Director of the Congressional Budget Office is to provide budgetary information for inclusion in the inventory.

(c) Not later than July 1, 1979, the Comptroller General, after consultation with the Director of the Congressional Budget Office and the Director of the Congressional Research Service, shall submit the program inventory to the Senate and House of Representatives.

(d) In the report submitted under this section, the Comptroller General, after maximum consultation and cooperation with and consideration of the views and recommendations of the Director of the Congressional Budget Office, shall group together programs in related program areas appropriate for the exercise of the review and evaluation requirements of this Act. Such groupings shall identify program areas in a manner which—

(1) to the extent appropriate, classifies related authorizations within a single program or group of programs appropriate for the exercise of the review and evaluation requirements of this Act;

(2) classifies each program in only one functional and only one subfunctional category;

(3) provides to the maximum extent feasible, that each program is administered by only one agency of the Government or subdivision thereof;

(4) is consistent with the structure of national needs, agency missions, and basic programs developed pursuant to section 201(1) of the Budget and Accounting Act, 1921; and

(5) is consistent with the appropriation account structure of the United States Government.

(e) The program inventory shall set forth for each program—

(1) the legislation authorizing the program;

(2) the committees of the Senate and the House of Representatives which have legislative or oversight jurisdiction over the program;

(3) a brief statement of the purpose or purposes to be achieved by the program;

(4) the committees which have jurisdiction over legislation providing new budget authority for the program, including the appropriate subcommittees of the Committees on Appropriations of the Senate and the House of Representatives;

(5) the agency and, if applicable, the subdivision thereof responsible for administering the program;

(6) the grants-in-aid, if any, provided by such program to State and local governments;

(7) the next reauthorization date for the program;

(8) a unique identification number which links the program and functional category structure;

(9) the year in which the program was originally established and, where applicable, the year in which the program expires; and

(10) where applicable, the year in which new budget authority for the program was last authorized and the year in which current authorizations of new budget authority expire.

(f) The inventory shall contain a separate tabular listing of programs which are not required to be reauthorized pursuant to section 101(b)(1).

(g) The report also shall set forth for each program whether the new budget authority provided for such programs is—

(1) authorized for a definite period of time;

(2) authorized in a specific dollar amount but without limit of time;

(3) authorized without limit of time or dollar amounts;

(4) not specifically authorized; or

(5) permanently provided,

as determined by the Director of the Congressional Budget Office.

(h) The program inventory also shall incorporate for each program grouping information prepared by the Director of the Congressional Budget Office indicating—

(1) the amounts of new budget authority authorized and provided for the program for each of the preceding four fiscal years and, where applicable, the four succeeding fiscal year;

(2) the Federal budget function and subfunction in which the program is presently classified and was classified under the fiscal year 1979 budget; and

(3) the appropriation account in which budget authority is provided for the program.

SEC. 202. The General Accounting Office, the Congressional Research Service, and the Congressional Budget Office shall permit the mutual exchange of available information in their possession which would aid in the compilation of the program inventory.

SEC. 203. The Congressional Research Service, the Congressional Budget Office, the Office of Management and Budget, and the executive agencies and subdivisions thereof shall, to the extent necessary and possible, provide the General Accounting Office with assistance requested by the Comptroller General in the compilation of the program inventory.

SEC. 204. Each committee of the Senate and the House of Representatives, the Director of the Congressional Budget Office, and the Director of the Congressional Research Service shall review the program inventory as submitted under section 201 and not later than October 1, 1979, shall report to the Comptroller General any revisions in the composition or identification of programs and groups of programs which they consider advisable. After full consideration of the reports of all such committees and officials, the Comptroller General in consultation with the committees of the Senate and House of Representatives shall report, not later than December 31, 1979, a revised program inventory to the Senate and the House of Representatives.

SEC. 205. (a) The Comptroller General, after the close of each session of the Congress, shall revise the program inventory and report the revisions to the Senate and the House of Representatives.

(b) After the close of each session of the Congress, the Director of the Congressional Budget Office shall prepare a report, for inclusion in the revised inventory, with respect to each program included in the program inventory and each program established by law during such session, which includes the amount of the new budget authority authorized and the amount of new budget authority provided for the current fiscal year and each of the five succeeding fiscal years. If new budget authority is not authorized or provided or is authorized or provided for an indefinite amount for any of such five succeeding fiscal years with respect to any program, the Director shall make projections of the amounts of such new budget authority necessary to be authorized or provided for any such fiscal year to maintain a current level of services.

SEC. 206. The Comptroller General and the Director of the Congressional Budget Office shall submit periodic reports to the Congress on the adequacy of the functional and subfunctional categories contained in section 101(a) for grouping programs of like missions or objectives. The first such report shall be submitted by September 30, 1979. Subsequent reports shall be submitted every two years thereafter.

SEC. 207. The Director of the Congressional Budget Office shall issue periodic reports keeping score of the progress of congressional action on bills and resolutions authorizing budget authority for programs in the inventory. The reports shall include an up-to-date tabulation for the fiscal year beginning October 1 and the succeeding four fiscal years of the amounts of budget authority (1) authorized by law or proposed to be authorized in any bill or resolution reported by any committee of the Senate or the House of Representatives, or (2) if budget authority is not authorized or proposed to be authorized for any of the five fiscal years, the amounts necessary to maintain a current level of services.

TITLE III—PROGRAM REVIEW AND EVALUATION

SEC. 301. A number of programs among those subject to review pursuant to title I, or groups of programs designated pursuant to subsection 201(d), shall be selected by the Senate and House of Representatives for comprehensive review and evaluation. The selection of programs and groups of programs and the preparation of reviews and evaluations shall involve the participation of the executive branch and the Congress in accordance with the procedures set forth in this title.

SEC. 302. (a) On or before November 10 of the second session of each Congress, beginning with the Ninety-sixth Congress, the Comptroller General, the Director of the Congressional Budget Office, and the Director of the Congressional Research Service shall each submit a report to the Congress containing their recommendations with respect to programs and groups of programs which should be considered by the committees of the House and the Senate for review and evaluation under the provisions of this title.

(b) The President shall recommend specific programs or groups of programs for evaluation under this title from among those scheduled for review in the particular Congress pursuant to title I. Such recommendations shall be included in the annual budget message submitted, as provided in section 201 of the Budget and Accounting Act, 1921, to the first session of the Ninety-seventh Congress, and to the first session of each succeeding Congress.

SEC. 303. (a) Not later than March 15 of the first session of the Ninety-seventh Congress and of each succeeding Congress, each committee of the Senate and the House of Representatives having jurisdiction to authorize new budget authority shall submit to the Committee on Rules of the House of Representatives and the Committee on Rules and Administration of the Senate, an oversight statement which shall identify specific programs or groups of programs from among those scheduled for reauthorization in such Congress pursuant to title I, which the committee intends to make the subject of review and evaluation in such Congress pursuant to this title. In the Senate, each committee may incorporate its oversight statement in the appendix of materials provided with its annual funding resolution.

(b) In selecting programs and groups of programs for evaluation each committee shall consider such factors as—

(1) the extent to which substantial time has passed since the program or group of programs has been in effect;

(2) the extent to which a program or group of programs appears to require significant change;

(3) the resources of the committee with a view toward undertaking reviews and evaluations across a broad range of programs; and

(4) the desirability of examining related programs in the same year.

In the event that no program or group of programs are selected for review and evaluation by a committee, the committee shall indicate in its statement prepared pursuant to this section the reasons for such a decision.

SEC. 304. (a) The Committee on Rules and Administration of the Senate shall incorporate without substantive change all of the statements submitted under subsection (a) by the committees of the Senate in a resolution on oversight for consideration by the Senate. Each such resolution on oversight shall be reported not later than April 15 of the first session of each Congress, beginning with the Ninety-seventh Congress.

(b) In the Senate, consideration of the resolution on oversight must begin immediately after disposition of the annual funding resolutions for committees of the Senate, or after any Senate action taken in lieu of considering such funding resolutions, and in any event consideration shall begin not later than May 15.

(c) Debate in the Senate on any such resolution on oversight including all amendments to, and debatable motions and appeals in connection with such resolutions, shall be limited to not more than ten hours. Amendments shall be limited to additions to or deletions from the particular programs or groups of programs which shall be the subject of review and evaluation under section 305, the designation of additional criteria and questions to be included in the review and evaluation of a program or groups of programs, and the completion dates. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(d) Debate in the Senate on any amendment to such resolution shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the resolution. Debate on any amendment to an amendment, to such a resolution, and debate on any debatable motion or appeal in connection with such a resolution shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority

leader or his designee. No amendment that is not germane to the provisions of such resolution shall be received. Such leaders, or either of them, may, from the time under their control on the passage of such resolution allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(e) A motion in the Senate to further limit debate is not debatable. No motion to recommit such resolution is in order.

SEC. 305. (a) Each review and evaluation of a program or group of programs designated in a resolution on oversight agreed to pursuant to section 304 shall be designed to provide quantitative and qualitative information from surveys, evaluation studies, field research, economic analyses, and other sources on the conditions, circumstances, and effectiveness of the program or group of programs which is sufficiently complete to permit the Congress to determine the necessity or desirability of enacting new, additional, or modified legislation and repealing provisions of existing legislation to enable—

(1) more effective achievement of the intended purposes of the program or group of programs;

(2) the elimination of needless duplication or overlap in the program or group of programs;

(3) the consolidation of similar functions and activities in the program or group of programs;

(4) the termination of the program or group of programs or portions of the program or group of programs not serving a useful purpose; and

(5) appropriate modification of the Federal role in the program or group of programs in relation to other levels of Government and the private sector.

(b) Each review and evaluation of a program or group of programs designated in a resolution on oversight agreed to pursuant to section 304 shall include, but not be limited to—

(1) an identification of the objectives intended for the program or group of programs and the problem or need which the program or group of programs was intended to address;

(2) an identification of any other program or group of programs having similar or potentially conflicting or duplicative objectives;

(3) an assessment of the effectiveness of the program or group of programs and the degree to which the original objectives of the program or group of programs have been achieved, expressed in terms of the performance, impact, or accomplishments of the program or group of programs, and of the problem or need which it was intended to address;

(4) an assessment of the relative merits of alternative methods which the committee suggests should be considered for achieving the purposes of the program or group of programs; and

(5) information on the regulatory, privacy, and paperwork impacts of the programs or group of programs.

(c) Each review and evaluation under this title, if considered appropriate or if designated in the resolution on oversight, may include, but need not be limited to, one or more of the following evaluation criteria—

(1) an assessment of the costs and accomplishments of the program or group of programs since the last previous review compared with the results anticipated at the time of that review;

(2) a statement of the number and types of beneficiaries or persons served by the programs or group of programs;

(3) an assessment to the extent practicable of the effect of the program or group of programs on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(4) an assessment, if applicable, of the impact of the program or group of programs of the Nation's health and safety;

(5) an assessment of the degree to which the overall administration of the program or group of programs, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the agency executing the program or group of programs, meet the objectives of the Congress in establishing the program or groups of programs;

(6) a projection to the extent practicable of the anticipated costs to accomplish the objectives of the program or group of programs, including if applicable an assessment of the date on which, and the conditions under which, the program or group of programs may fulfill such objectives;

(7) the relation of other Government and private programs dealing with the objectives of the program or group of programs;

(8) results of studies of public perceptions of the need for or success of the program or group of programs or of activities of the type contained in the program or group of programs to provide a measure of public need; and

(9) an examination of the adequacy and appropriateness of the formulas used to allocate Federal funds under the program or group of programs.

SEC. 306. (a) To assure that each review and evaluation is effective in meeting the review and evaluation objectives of the Congress, each committee responsible for the review and evaluation of a program or group of programs shall discuss with the responsible agency the information and analyses which the committee may require to enable the committee to complete the review and evaluation reports required under this title.

(b) Not later than December 31 of the first session of the Ninety-seventh Congress, and of each succeeding Congress, the President shall submit to the Congress his evaluation and recommendations with respect to each program or group of programs specified in the resolutions agreed to as provided in section 304. Such evaluation and recommendations shall include all of the information required in section 305.

SEC. 307. (a) If more than one committee of the Senate or the House of Representatives has legislative jurisdiction over a program or group of programs the committees having such jurisdiction may conduct the review and evaluation jointly or may determine which committee shall conduct the review and evaluation for its House.

(b) The committees of the Senate and the House of Representatives having legislative jurisdiction over a program or group of programs may also conduct the review and evaluation jointly or determine which committee shall conduct the review and evaluation for both Houses.

(c) Each committee conducting a review and evaluation of a program or group of programs under this title shall submit a report together with its recommendations, to the Senate or the House of Representatives, or both, as the case may be, during the Congress in which occurs the reauthorization date for such program and not later than May 15 of the year in which occurs the reauthorization date for such program unless a later date is so specified in the resolution on oversight to provide time for a sufficiently complete review and evaluation of the program or group of programs. Such report shall be published as an official report of the appropriate House, and, in the case of a review and evaluation conducted as provided in subsection (b), such report shall be published as an official report of both Houses. Reviews and evaluations for all programs within the same subfunction as provided in title I shall, to the maximum extent feasible, be submitted in a single report, or in a manner consistent with section 201(1) of the Budget and Accounting Act, 1921.

(d) A report submitted pursuant to this section shall be deemed to satisfy the reauthorization review requirements of title I.

TITLE IV—CITIZENS' COMMISSION ON THE ORGANIZATION AND OPERATION OF GOVERNMENT

SEC. 401. There is established, as an independent instrumentality of the United States, the Citizens' Commission on the Organization and Operation of Government (hereafter in this title referred to as the "Commission").

SEC. 402. It is hereby declared to be the policy of the Congress to promote economy, efficiency, and improved service in the transaction of the public business in the departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government.

SEC. 403. (a) The Commission shall conduct a nonpartisan study and investigation of the organization and methods of operation of all departments, agencies, independent instrumentalities, and authorities of the executive branch of the Government in the context of the following major policy areas:

(1) International affairs and defense.
Functions:
050—National defense.
150—International affairs.

(2) Resources and technology.
Functions:
250—General science, space, and technology.
270—Energy.
300—Natural resources and environment.

(3) Economic development.
Functions:
350—Agriculture.
370—Commerce and housing credit.
400—Transportation.
450—Community and regional development.

(4) Human resources.
Functions:
500—Education, training, employment, and social services.
550—Health.
600—Income security.
700—Veterans benefits and services.

(5) General Government.
Functions:
750—Administration of justice.
800—General Government.
850—General purpose fiscal assistance.
900—Interest.

The Commission shall make such recommendation as it determines necessary to—

(1) increase the effectiveness of Government services, programs, and activities by changing the structure and execution of administrative responsibilities;

(2) improve delivery of services through elimination of needless duplication or overlap, consolidation of similar services, programs, activities, and functions, and termination of such services, programs, and activities which have outlived their intended purpose;

(3) maintain expenditures at levels consistent with the efficient performance of essential services, programs, activities, and functions;

(4) simplify and eliminate overlaps in agency regulatory functions by review of the laws, regulations, and administrative reports and procedures; and

(5) determine the appropriate responsibilities of each level of government, the manner and alternative means for each level of government to finance such responsibilities, the forms and extent of intergovernmental aid and assistance, and the organization required for proper balance and division

of respective Federal, State, and local government roles, responsibilities, and authorities.

(b) The Commission shall submit to the President, the Committee on Governmental Affairs of the Senate, and the Committee on Government Operations of the House of Representatives such interim reports as it deems advisable, and, not later than July 1, 1983, a final report together with its findings and recommendations. The final report of the Commission shall include the comments of the appropriate congressional committees.

(c) At least once every year for two years after the submission of the final report, the Comptroller General shall report to the Congress on the status of actions taken on the Commission's final report.

SEC. 404. (a) The Commission shall be composed of eighteen members appointed from among individuals with extensive experience in or knowledge of United States Government as follows:

(1) Eight members shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Five members shall be appointed by the President pro tempore of the Senate, three upon recommendation of the majority leader and two upon recommendation of the minority leader of the Senate.

(3) Five members shall be appointed by the Speaker of the House of Representatives, three upon recommendation of the majority leader and two upon recommendation of the minority leader of the House.

(b)(1) Two members appointed under subsection (a)(1) shall be appointed to serve as Chairman and Vice Chairman (as provided in paragraph (2) of this subsection) and shall not engage in any other business, vocation, or employment. Such two members shall not be of the same political affiliation.

(2) The member described in paragraph (1) who is not of the same political affiliation as the President shall serve as Chairman of the Commission and the other member shall serve as Vice Chairman of the Commission.

(c) Of the members appointed under subsection (a)(1) other than the members to whom subsection (b) applies, not more than three shall be of the same political affiliation.

(d) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) Ten members of the Commission shall constitute a quorum, but the Commission may establish a lesser number to constitute a quorum for the purpose of holding hearings.

SEC. 405. (a) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Commission or such subcommittee or member may deem advisable.

(b)(1) Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by him and shall be served by any person designated by the Chairman or such member. Any member of the Commission may administer oaths or affirmation to witnesses appearing before the Commission.

(2) The provisions of section 1821 of title 28, United States Code, shall apply to witnesses summoned to appear at any such hearing. The per diem and mileage allowances to witnesses summoned under authority conferred by this section shall be paid from funds appropriated to the Commission.

(3) Any person who willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or to produce any evidence in obedience to any subpena duly issued under the authority of this section shall be fined not more than $500, or imprisoned for not more than six months, or both. Upon the certification by the Chairman of the Commission of the facts concerning any such willful disobedience by any person to the United States attorney for any judicial district in which such person resides or is found, such attorney may proceed by information for the prosecution of such person for such offense.

(c) The Commission is authorized to secure directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information which the Commission deems useful in the discharge of its duties. All departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government shall cooperate with the Commission and furnish all information requested by the Commission in accordance with existing law.

SEC. 406. (a) Subject to such rules and regulations as may be adopted by the Commission, the Commission shall have the power—

(1) to appoint and fix the compensation of an Executive Director and such additional staff personnel as it deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but—

(A) in the case of the Executive Director, at a rate equal to that for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(B) in the case of all other personnel, at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

(2) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

(b) The Commission is authorized to enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of the General Services Administration.

SEC. 407. (a) The Chairman of the Commission shall receive compensation at a rate equal to the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the Vice Chairman shall receive compensation at a rate equal to the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) All other members of the Commission who are not officers or employees of the Federal Government shall receive compensation at the rate of $200 for each day such member is engaged in the performance of the duties vested in the Commission.

(c) Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with their activities as members of the Commission.

SEC. 408. The provisions of this title shall take effect on October 1, 1979.

SEC. 409. The Commission shall cease to exist ninety days after the submission of its final report.

SEC. 410. There is authorized to be appropriated until September 30, 1983, without fiscal year limitations, the sum of $12,000,000 to carry out the provisions of this title.

SEC. 411. The Commission shall be subject to the Federal Advisory Committee Act.

TITLE V—MISCELLANEOUS

SEC. 501. Section 206 of the Budget and Accounting Act, 1921 (31 U.S.C. 15), is amended by inserting immediately before the period a comma and "or at the request of a committee of either House of Congress presented after the day on which the President transmits the budget to the Congress under section 201 of this Act for the fiscal year".

SEC. 502. Nothing in this Act shall require the public disclosure of matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order, or which are otherwise specifically protected by law. In addition nothing in this Act shall require any committee of the Senate to disclose publicly information the disclosure of which is governed by Senate Resolution 400, Ninety-fourth Congress, or any other rule of the Senate.

SEC. 503. The provisions of this section and sections 102, 103, 104, 106, 303, 304, 305, 307, 505, and 506 of this Act are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

SEC. 504. (a) To assist in the review or evaluation of a program, the head of an agency which administers such program and the head of any other agency, when requested, shall provide to each committee of the Senate and the House of Representatives which has legislative jurisdiction over such program such studies, information, analyses, reports, and assistance as the committee may request.

(b) On or before November 10 of the second session of each Congress, the head of each agency administering a program which is not required to be reauthorized pursuant to section 101(b)(1) shall submit a brief report to the Congress summarizing for each such program or groups of programs a few key indicators of conditions including (1) funding levels, (2) related social and economic conditions, (3) workload, performance, and accomplishments, including comparisons of costs and accomplishments between the program set forth in the authorizing legislation and other governmental and nongovernmental programs having similar or related objectives. Reports may also contain such additional information on costs, accomplishments, and deficiencies as the head of the administering agency may deem appropriate.

(c) Not later than six months prior to the first reauthorization date specified for a program in section 101(a) the head of the agency which administers such program and the head of any other agency, when requested by a committee of the Senate or House of Representatives, shall conduct a review of the regulations currently promulgated and in use by that agency and submit a report to the Senate or the House of Representatives as the case may be, setting forth the regulations that agency intends to retain, eliminate, or modify if the program is reauthorized and stating the basis for its decision including, but not limited to, the language to be proposed by that agency with respect to

any modifications in its regulations. The report provided for by this subsection shall be submitted for all programs included in a resolution on oversight agreed to under section 304.

(d) On or before October 1 of the year preceding the Congress in which occurs the reauthorization date for a program, the Comptroller General shall furnish to each committee of the Senate and the House of Representatives which has legislative jurisdiction over such program the results of prior audits and reviews of such program completed during the preceding six years.

(e) Consistent with the discharge of the duties and functions imposed by law on them or their respective Offices or Service, the Comptroller General, the Director of the Congressional Budget Office, the Director of the Office of Technology Assessment, and the Director of the Congressional Research Service shall furnish to each committee of the Senate and the House of Representatives such information, analyses, and reports as the committee may request to assist it in conducting reviews or evaluations of programs.

SEC. 505. (a) For purposes of this section and title I, the term "current services reauthorization bill" means only a bill which authorizes the enactment of new budget authority for a program for not more than two fiscal years beginning after the next reauthorization date for such program and before the succeeding reauthorization date for such program in an amount which does not exceed, for each fiscal year, the amount of new budget authority provided for such program for the fiscal year in progress on the date on which such bill is reported by the committee of the Senate or the House of Representatives to which it is referred under subsection (c) or the date from which such committee is discharged from further consideration under subsection (d)(1).

(b) It shall not be in order in either the Senate or the House of Representatives to consider a current services reauthorization bill for a program except during the Congress in which occurs a reauthorization date for such program. It shall not be in order in the Senate to consider a current services reauthorization bill unless the Senate has had under consideration for not less than fifty hours, a bill authorizing enactment of new budget authority for the same program, amendments to such bill, and motions in connection with such bill (including motions to proceed to the consideration thereof). If it is in order to consider a current services reauthorization bill under this subsection, the provisions in section 402(a) of the Congressional Budget Act of 1974 shall not apply.

(c) A current services reauthorization bill relating to a program introduced in, or received by, the Senate or the House of Representatives shall be referred to the appropriate committee of that House.

(d)(1) After May 15 of the year in which occurs the reauthorization date for a program, if a committee has not reported a current services reauthorization bill relating to such program which has been referred to it for at least fifteen calendar days (not counting any day on which its House is not in session) it is in order to move either to discharge the committee from further consideration of the bill or to discharge the committee from further consideration of any other current services reauthorization bill relating to the same program which has been referred to the committee.

(2) A motion to discharge may be made only by an individual favoring the current services reauthorization bill, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate, except that it may not be made after the committee has reported, or been discharged from further consideration of, a current services reauthorization bill relating to the same program; and debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between those favoring and those opposing the bill, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to recommit or to reconsider the vote by which the motion is agreed to or disagreed to.

(3) Notwithstanding the provisions of paragraph (1), a motion to discharge a committee from further consideration of a current services reauthorization bill may be made in the Senate only if the consideration of such bill is in order under subsection (b).

(e) The provisions of section 1017 (c) and (d) of the Impoundment Control Act of 1974 insofar as they relate to rescission bills shall apply in the House of Representatives and the Senate, respectively, to the consideration of current services authorization bills, amendments thereto, motions and appeals with respect thereto, and conference reports thereon.

SEC. 506. The Committees on Governmental Affairs and on Rules and Administration of the Senate and the Committees on Government Operations and on Rules of the House of Representatives shall review the operation of the procedures established by this Act, and shall submit a report not later than December 31, 1986, and each five years thereafter, setting forth their findings and recommendations. Such reviews and reports may be conducted jointly.

SEC. 507. Any provision of sections 102, 103, 104, 106, 303, 304, 305, 307, 505, and 506 of this Act may be waived or suspended in the Senate by a majority vote of the Senators voting, a quorum being present, or by unanimous consent of the Senate.

SEC. 508. There are hereby authorized to be appropriated through fiscal year 1990 such sums as may be necessary to carry out the review requirements of titles I and III and the requirements for the compilation of the inventory of Federal programs as set forth in title II.

AMENDMENT NO. 3658, AS MODIFIED

Mr. MUSKIE. Mr. President, I send a revised sunset amendment to the desk and ask unanimous consent that it be substituted for the bill at the desk as original text for the purposes of amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maine (Mr. MUSKIE), for himself, Mr. ROBERT C. BYRD, Mr. CRANSTON, Mr. ROTH, Mr. GLENN, Mr. RIBICOFF, Mr. PERCY, Mr. BIDEN, Mr. PELL, Mr. ANDERSON, Mr. BELLMON, Mr. BENTSEN, Mr. BURDICK, Mr. HARRY F. BYRD, JR., Mr. CHAFEE, Mr. CHILES, Mr. CHURCH, Mr. CLARK, Mr. CULVER, Mr. DOLE, Mr. DOMENICI, Mr. DURKIN, Mr. EASTLAND, Mr. GRIFFIN, Mr. HART, Mr. HASKELL, Mr. HATCH, Mr. MARK O. HATFIELD, Mr. PAUL G. HATFIELD, Mr. HATHAWAY, Mr. HEINZ, Mrs. HUMPHREY, Mr. KENNEDY, Mr. LEAHY, Mr. LUGAR, Mr. MATHIAS, Mr. MATSUNAGA, Mr. MCINTYRE, Mr. METZENBAUM, Mr. MORGAN, Mr. NUNN, Mr. RIEGLE, Mr. SASSER, Mr. SCHWEIKER, Mr. STAFFORD, Mr. STONE, Mr. TOWER, Mr. WILLIAMS, Mr. HUDDLESTON, Mr. BAYH, Mr. MCGOVERN, Mr. MOYNIHAN, and Mr. FORD proposes an amendment numbered 3658, as modified.

Mr. MUSKIE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following: "That this Act may be cited as the 'Sunset Act of 1978'.

"SEC. 2. The purposes of this Act are—

"(1) to require that most Government programs be reauthorized according to a schedule at least once every ten years;

"(2) to limit the length of time for which Government programs can be authorized to ten years;

"(3) to bar the expenditure of funds for Government programs which have not been provided for by a law enacted during the ten-year sunset reauthorization cycle; and

"(4) to encourage the reexamination of selected Government programs each Congress.

"SEC. 3. (a) For purposes of this Act:

"(1) The term 'budget authority' has the meaning given to it by section 3(2) of the Congressional Budget Act of 1974.

"(2) The term 'permanent budget authority' means budget authority provided for an indefinite period of time or an unspecified number of fiscal years which does not require recurring action by the Congress, but does not include budget authority provided for a specified fiscal year which is available for obligation or expenditure in one or more succeeding fiscal years.

"(3) The term 'Comptroller General' means the Comptroller General of the United States.

"(4) The term 'agency' means an executive agency as defined in section 105 of title 5, United States Code, except that such term includes the United States Postal Service and the Postal Rate Commission but does not include the General Accounting Office.

"(5) The term 'sunset reauthorization cycle' means the period of five Congresses beginning with the Ninety-seventh Congress and with each sixth Congress following the Ninety-seventh Congress.

"(b) For purposes of this Act, each program (including any program exempted by provision of law from inclusion in the Budget of the United States) shall be assigned to the functional and subfunctional categories to which it is assigned in the Budget of the United States Government, fiscal year 1979. Each committee of the Senate or the House of Representatives which reports any bill or resolution which authorizes the enactment of new budget authority for a program not included in the fiscal year 1979 budget shall include, in the committee report accompanying such bill or resolution (and, where appropriate, the conferees shall include in their joint statement on such bill or resolution), a statement as to the functional and subfunctional category to which such program is to be assigned.

"(c) For purposes of titles I, II, III, and V of this Act, the reauthorization date applicable to a program is the date specified for such program under section 101(b).

"TITLE I—REAUTHORIZATIONS OF GOVERNMENT PROGRAMS

"SEC. 101. (a) Each Government program (except those listed in section 103) shall be reauthorized at least once during each sunset reauthorization cycle during the Congress in which the reauthorization date applicable to such program (pursuant to subsection (b)) occurs.

"(b) The first reauthorization date applicable to a Government program is the date specified in the following table, and each subsequent reauthorization date applicable to a program is the date ten years following the preceding reauthorization date:

"Programs included within subfunctional category and first reauthorization date:

254 Space, Science, Applications and Technology.

272 Energy Conservation.

301 Water Resources.

352 Agriculture and Research Services.
371 Mortgage Credit and Thrift Insurance.
376 Other Advancement and Regulation of Commerce.
501 Elementary, Secondary, and Vocational Education.
601 General Retirement and Disability Insurance.
602 Federal Employment Retirement and Disability.
703 Hospital and Medical Care for Veterans.
806 Other General Government.
851 General Revenue Sharing, September 30, 1982.
051 Department of Defense—Military.
053 Atomic Energy Defense Activities.
154 Foreign Information and Exchange Act.
251 General Science and Basic Research.
306 Other Natural Resources.
351 Farm Income Stabilization.
401 Ground Transportation.
502 Higher Education.
553 Education and Training of Health Care Work Force.
701 Income Security for Veterans.
752 Federal Litigative and Judicial Activities.
802 Executive Director and Management.
803 Central Fiscal Operations, September 30, 1984.
054 Defense Related Activities.
152 Military Assistance.
155 International Financial Programs.
253 Space Flight.
255 Supporting Space Activities.
274 Emergency Energy Preparedness.
302 Conservation and Land Management.
304 Pollution Control and Abatement.
407 Other Transportation.
504 Training and Employment.
506 Social Services.
554 Consumer and Occupational Health and Safety.
704 Veterans Housing.
751 Federal Law Enforcement Activities.
801 Legislative Function.
852 Other General Purpose Fiscal Assistance, September 30, 1986.
153 Conduct of Foreign Affairs.
271 Energy Supply.
303 Recreational Resources.
402 Air Transportation.
505 Other Labor Services.
551 Health Care Services.
604 Public Assistance and Other Income Supplements.
702 Veterans Education, Training, and Rehabilitation.
753 Federal Correctional Activities.
805 Central Personnel Management.
902 Other Interest, September 30, 1988.
151 Foreign Economic and Financial Assistance.
276 Energy Information, Policy and Regulation.
372 Postal Service.
403 Water Transportation.
451 Community Development.
452 Area and Regional Development.
453 Disaster Relief and Insurance.
503 Research and General Education Aids.
552 Health Research.
603 Unemployment Compensation.
705 Other Veterans Benefits and Services.
754 Criminal Justice Assistance.
804 General Property and Record Management.
901 Interest on the Public Debt, September 30, 1990.

"(c)(1) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which authorizes the enactment of new budget authority for a program for a period of more than ten fiscal years, for an indefinite period, or (except during the Congress in which such next reauthorization date occurs) for any fiscal year beginning after the next reauthorization date applicable to such program. Notwithstanding the preceding sentence, it shall be in order to consider a bill or resolution for the purpose of considering an amendment to the bill or resolution which would make the authorization period conform to the requirement of such sentence.

"(2)(A) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which provides new budget authority for a program for any fiscal year beginning after the first (or any subsequent) reauthorization date applicable to such program under paragraph (b), unless the provision of such new budget authority is specifically authorized by a law which constitutes a required authorization for such program.

"(B) For the purposes of this subsection, the term 'required authorization' means a law authorizing the enactment of new budget authority for a program, which complies with the provisions of paragraph (1) and is enacted during the Congress in which the reauthorization date for such program occurs, or during a Congress after such date and prior to the Congress in which the next reauthorization date for such program occurs.

"(3) No new budget authority may be obligated or expended for a program for a fiscal year beginning after the last fiscal year in a sunset reauthorization cycle unless a provision of law providing for the continuation of such program has been enacted during such sunset reauthorization cycle.

"(4) Any provision of law providing permanent budget authority for a program shall cease to be effective (for the purpose of providing such budget authority) on the first reauthorization date applicable to such program.

"(5) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which provides new budget authority for a program unless the bill or resolution, or amendment thereto, (or the report which accompanies such bill or resolution) includes a specific reference to the provision of law which constitutes a required authorization for such program. Notwithstanding the preceding sentence, it shall be in order to consider a bill or resolution for the purpose of considering an amendment which provides such reference to the appropriate provision of law.

"SEC. 102. (a) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which has been reported by a committee and which authorizes the enactment of new budget authority for a program for a fiscal year beginning after the next reauthorization date applicable to such program, unless a reauthorization review (to the extent the committee or committees having jurisdiction deem appropriate) of such program has been completed during the Congress in which the reauthorization date for such program occurs (or during a subsequent Congress when such required authorization is considered), and the report accompanying such bill or resolution includes a separate section entitled 'Reauthorization Review' recommending, based on such review, whether the program or the laws affecting such program should be continued without change, continued with modifications, or terminated, and also includes, to the extent the committee or committees having jurisdiction deem appropriate, each of the following matters:

"(1) Information and analysis on the organization, operation, costs, results, accomplishments, and effectiveness of the program.

"(2) An identification of any other programs having similar objectives, and a justification of the need for the proposed program in comparison with those other programs which may be potentially conflicting or duplicative.

"(3) An identification of the objectives intended for the program, and the problems or needs which the program is intended to address, including an analysis of the performance expected to be achieved, based on the bill or resolution as reported.

"(4) A comparison of the amount of new budget authority which was authorized for the program in each of the previous four fiscal years and the amount of new budget authority provided in each such year.

"(b) It shall not be in order in either the Senate or the House of Representatives to consider a bill or resolution, or amendment thereto, which authorizes the enactment of new budget authority for a program for which there previously has been no such authorization unless the report accompanying such bill or resolution sets forth, to the extent that the committee or committees having jurisdiction deem appropriate, the information specified in subsection (a)(2) and (3).

"(c) Each committee have legislative jurisdiction over a program included in section 103 shall conduct a review of such program of the type described in subsection (a) at least once during each sunset reauthorization cycle, during the Congress in which the reauthorization date applicable to such program occurs, and shall submit to the Senate or the House of Representatives, as the case may be, a report containing its recommendations and other information of the type described in subsection (a) to the extent that the committee deems appropriate. It shall not be in order to consider a bill or resolution reported by the committee having legislative jurisdiction which authorizes the enactment of new budget authority for such program unless such report accompanies such bill or resolution, or has been submitted during the Congress in which the reauthorization date for such program occurred as provided in section 101(b), whichever first occurs.

"SEC. 103. (a) Section 101(c) shall not apply to the following:

"(1) Programs included within functional category 900 (Interest).

"(2) Any Federal programs or activities to enforce civil rights guaranteed by the Constitution of the United States or to enforce antidiscrimination laws of the United States, including but not limited to the investigation of violations of civil rights, civil or criminal litigation or the implementaton or enforcement of judgments resulting from such litigation, and administrative activities in support of the foregoing.

"(3) Programs which are related to the administration of the Federal judiciary and which are classified in the fiscal year 1979 budget under subfuctional category 752 (Federal litigative and judicial activities).

"(4) Payments of refunds of internal revenue collections as provided in title I of the Supplemental Treasury and Post Office Departments Appropriation Act of 1949 (62 Stat. 561), but not to include refunds to persons in excess of their tax payments.

"(5) Programs included in the fiscal year 1979 budget in subfunctional categories 701 (Income security for veterans), 702 (Veterans education, training, and rehabilitation), 704 (Veterans housing), and programs for providing health care which are included in such budget in subfuctional category 703 (Hospital and medical care for veterans).

(6) "Social Security and Federal employee retirement programs including the following:

"(A) Programs funded through trust funds which are included with subfunctional categories 551 (Health care services), 601 (General retirement and disability insurance), or 602 (Federal employee retirement and disability).

"(B) Retirement pay and retired pay of military personnel on the retired lists of the Army, Navy, Marine Corps, and the Air Force, including the Reserve components thereof, retainer pay for personnel of the Inactive

Fleet Reserve; and payments under section 4 of Public Law 92-425 and chapter 73 of title 10, United States Code (survivor's benefits), classified in the fiscal year 1979 budget in subfunctional category $51 (Department of Defense-military).

"(C) Retirement pay and medical benefits for retired commissioned officers of the Coast Guard, the Public Health Service Commissioned Corps, and the National Oceanic and Atmospheric Commissioned Corps and their survivors and dependents, classified in the fiscal year 1979 budget in subfunctional category 551 (Health care services) or in subfunctional category 306 (other natural resources).

"(D) Retired pay for military personnel of the Coast Guard and Coast Guard Reserve, members of the former Lighthouse Service, and for annuities payable to beneficiaries of retired military personnel under the retired serviceman's family protection plan (10 U.S.C. 1431-1446) and survivor benefit plan (10 U.S.C. 1447-1455), classified in the fiscal year 1979 budget in subfunctional category 403 (Water transportation).

"(E) Payments to the Central Intelligence Agency Retirement and Disability Fund, classified in the fiscal year 1979 budget in subfunctional category 054 (Defense-related activities).

"(F) Payments to the Civil Service Retirement and Disability Fund for financing unfunded liabilities, classified in the fiscal year 1979 budget in subfunctional category 805 (Central personnel management).

"(G) Payments to the Foreign Service Retirement and Disability Fund, classified in the fiscal year 1979 budget in subfunctional category 153 (Conduct of foreign affairs).

"(H) Payments to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds, classified in the fiscal year 1979 budget in various subfunctional categories.

"(I) Administration of the retirement and disability programs set forth in this section.

"(b) If a question is raised in the Senate with respect to the application of any paragraph of subsection (a) to any bill, resolution, or amendment, or to any provision of law, the Presiding Officer shall submit the question to the Senate for decision.

"SEC. 104. (a) It is the sense of the Congress that all programs should be considered and reauthorized in program categories which constitute major areas of legislative policy. Such authorizations should be for sufficient periods of time to enhance oversight and the review and evaluation of Government programs.

"(b) The reauthorization schedule contained in section 101(b) may be changed by concurrent resolution of the two Houses of the Congress (except that changes in the schedule affecting permanent appropriations may be made only by law).

"(c) All messages, petitions, memorials, concurrent resolutions, and bills proposing changes in section 101(b) and all bills proposing changes in section 103(a), shall be referred first to the committee with legislative jurisdiction over any program affected by the proposal and sequentially to the Committee on Rules in the House of Representatives or to the Committee on Rules and Administration in the Senate as provided for in subsection (d).

"(d) Except as provided in subsection (f), the Committee on Rules in the House of Representatives or the Committee on Rules and Administration in the Senate shall report any concurrent resolution or bill referred to it under the provisions of subsection (c) and which previously has been reported favorably by a committee of legislative jurisdiction within thirty days (not counting any day on which the Senate or the House of Representatives is not in session), beginning with the day following the day on which such resolution or bill is so referred, with its recommendations.

"(e) The recommendations of the Committee on Rules or the Committee on Rules and Administration pursuant to subsection (d) or (f) shall include a statement on each of the following matters:

"(1) The effect the proposed change would have on the sunset reauthorization schedule.

"(2) The effect the proposed change would have on the jurisdictional and reauthorization responsibilities and workloads of the authorizing committees of Congress.

"(3) Any suggested grouping of similar programs which would further the goals of this Act to make more effective comparisons between programs having like objective.

"(f) Any concurrent resolution or bill proposing a change in section 101(b) or 103(a) which has been reported by a committee before June 1, 1980, shall be referred in the House to the Committee on Rules and in the Senate to the Committee on Rules and Administration. Such committee shall report an omnibus concurrent resolution or bill containing its recommendations regarding the proposed changes by July 1, 1980, and consideration of such bill or resolution shall be highly privileged in the House of Representatives and privileged in the Senate. The provisions of subsections c and d of section 1017 of the Impoundment Control Act of 1974, insofar as they relate to consideration of rescission bills, shall apply to the consideration of concurrent resolutions and bills proposing changes reported pursuant to this subsection, amendments thereto, motions and appeals with respect thereto, and conference reports thereon.

"(g) It shall not be in order in the Senate or the House of Representatives to consider a bill or resolution reported pursuant to subsection (b), (c), (d), or (f) which proposes a reauthorization date for a program beyond the final reauthorization date of the sunset reauthorization cycle then in progress. Notwithstanding the preceding sentence, it shall be in order to consider a bill or resolution for the purpose of considering an amendment which meets the requirements of this subsection.

"TITLE II—PROGRAM INVENTORY

'SEC. 201. (a) The Comptroller General and the Director of the Congressional Budget Office, in cooperation with the Director of the Congressional Research Service, shall prepare an inventory of Federal programs (hereafter in this title referred to as the program inventory').

"(b) The purpose of the program inventory is to advise and assist Congress in carrying out the requirements of titles I and III. Such inventory shall not in any way bind the committees of the Senate or the House of Representatives with respect to their responsibilities under such titles and shall not infringe on the legislative and oversight responsibilities of such committees. The Comptroller General shall compile and maintain the inventory, and the Director of the Congressional Budget Office shall provide budgetary information for inclusion in the inventory.

"(c) Not later than July 1, 1979, the Comptroller General, after consultation with the Director of the Congressional Budget Office and the Director of the Congressional Research Service, shall submit the program inventory to the Senate and House of Representatives.

"(d) In the report submitted under this section, the Comptroller General, after consultation and in cooperation with and consideration of the views and recommendations of the Director of the Congressional Budget Office, shall group programs into program areas appropriate for the exercise of the review and re-examination requirements of this Act. Such groupings shall identify program areas in a manner which classifies each program in only one functional and only one subfunctional category and which is consistent with the structure of national needs, agency missions, and basic programs developed pursuant to section 201(i) of the Budget and Accounting Act, 1921.

"(e) The program inventory shall set forth for each program each of the following matters:

"(1) The specific provision(s) of law authorizing the program.

"(2) The committees of the Senate and the House of Representatives which have legislative or oversight jurisdiction over the program.

"(3) A brief statement of the purpose or purposes to be achieved by the program.

"(4) The committees which have jurisdiction over legislation providing new budget authority for the program, including the appropriate subcommittees of the Committees on Appropriations of the Senate and the House of Representatives.

"(5) The agency and, if applicable, the subdivision thereof responsible for administering the program.

"(6) The grants-in-aid if any, provided by such program to State and local governments.

"(7) The next reauthorization date for the program.

"(8) A unique identification number which links the program and functional category structure.

"(9) The year in which the program was originally established and, where applicable, the year in which the program expires.

"(10) Where applicable, the year in which new budget authority for the program was last authorized and the year in which current authorizations of new budget authority expire.

"(f) The inventory shall contain a separate tabular listing of programs which are not required to be reauthorized pursuant to section 101(c).

"(g) The report also shall set forth for each program whether the new budget authority provided for such programs is—

"(1) authorized for a definite period of time;

"(2) authorized in a specific dollar amount but without limit of time;

"(3) authorized without limit of time or dollar amounts;

"(4) not specifically authorized; or

"(5) permanently provided,

as determined by the Director of the Congressional Budget Office.

"(h) For each program or group of programs, the program inventory also shall include information prepared by the Director of the Congressional Budget Office indicating each of the following matters:

"(1) The amounts of new budget authority authorized and provided for the program for each of the preceding four fiscal years and, where applicable, the four succeeding fiscal years.

"(2) The functional and subfunctional category in which the program is presently classified and was classified under the fiscal year 1979 budget.

"(3) The identification code and title of the appropriation account in which budget authority is provided for the program.

"SEC. 202. The General Accounting Office, the Congressional Research Service, and the Congressional Budget Office shall permit the mutual exchange of available information in their possession which would aid in the compilation of the program inventory.

"SEC. 203. The Office of Management and Budget, and the Executive agencies and the subdivisions thereof shall, to the extent necessary and possible, provide the General Accounting Office with assistance requested by the Comptroller General in the compilation of the program inventory.

"SEC. 204. Each committee of the Senate

and the House of Representatives, the Congressional Budget Office, and the Congressional Research Service shall review the program inventory as submitted under section 201 and not later than October 1, 1979, each shall advise the Comptroller General of any revisions in the composition or identification of programs and groups of programs which it recommends. After full consideration of the reports of all such committees and officials, the Comptroller General in consultation with the committees of the Senate and the House of Representatives shall report, not later than December 31, 1979, a revised program inventory to the Senate and the House of Representatives.

"SEC. 205. (a) The Comptroller General, after the close of each session of the Congress, shall revise the program inventory and report the revisions to the Senate and the House of Representatives.

"(b) After the close of each session of the Congress, the Director of the Congressional Budget Office shall prepare a report, for inclusion in the revised inventory, with respect to each program included in the program inventory and each program established by law during such session, which includes the amount of the new budget authority authorized and the amount of new budget authority provided for the current fiscal year and each of the five succeeding fiscal years. If new budget authority is not authorized or provided or is authorized or provided for an indefinite amount for any of such five succeeding fiscal years with respect to any program, the Director shall make projections of the amounts of such new budget authority necessary to be authorized or provided for any such fiscal year to maintain a current level of services.

"(c) Not later than one year after the first or any subsequent reauthorization date, the Director of the Congressional Budget Office, in consultation with the Comptroller General and the Director of the Congressional Research Service, shall compile a list of the provisions of law related to all programs subject to such reauthorization date for which new budget authority was not authorized. The Director of the Congressional Budget Office shall include such a list in the report required by subsection (b). The committees with legislative jurisdiction over the affected programs shall study the affected provisions and make any recommendations they deem to be appropriate with regard to such provisions to the Senate and the House of Representatives.

"SEC. 206. The Comptroller General and the Director of the Congressional Budget Office shall include in their respective reports to the Congress pursuant to sections 202(f) and 702(e) of the Congressional Budget Act of 1974 an assessment of the adequacy of the functional and subfunctional categories contained in section 101(b) for grouping programs of like missions or objectives.

"SEC. 207. (a) The Director of the Congressional Budget Office shall tabulate and issue an annual report on the progress of congressional action on bills and resolutions reported by a committee of either House or passed by either House which authorize the enactment of new budget authority for programs.

"(b) The report shall include an up-to-date tabulation for the fiscal year beginning October 1 and the succeeding four fiscal years of the amounts of budget authority (1) authorized by law or proposed to be authorized in any bill or resolution reported by any committee of the Senate or the House of Representatives, or (2) if budget authority is not authorized or proposed to be authorized for any of the five fiscal years, the amounts necessary to maintain a current level of services for programs in the inventory.

"(c) The Director of the Congressional Budget Office shall issue periodic reports on the programs and the provisions of laws which are scheduled for reauthorization in each Congress pursuant to the reauthorization schedule in section 101(b). In these reports, the Director shall identify each provision of law which authorizes the enactment of new budget authority for programs scheduled for reauthorization and the title of the appropriation bill, or part thereof, which would provide new budget authority pursuant to each authorization.

"TITLE III—PROGRAM REEXAMINATION

"SEC. 301. (a) Each committee of the Senate and the House of Representatives periodically shall provide through the procedures established in section 302, for the conduct of a comprehensive reexamination of selected programs or groups of programs over which it has jurisdiction.

"(b) In selecting programs and groups of programs for reexamination, each committee shall consider each of the following matters:

"(1) The extent to which substantial time has passed since the program or group of programs has been in effect.

"(2) The extent to which a program or group of programs appears to require significant change.

"(3) The resources of the committee with a view toward undertaking reexaminations across a broad range of programs.

"(4) The desirability of examining related programs concurrently.

"SEC. 302. (a)(1) The funding resolution first reported by each committee of the Senate in 1980, and thereafter for the first session of each Congress, shall include a section setting forth the committee's plan for reexamination of programs under this title. Such plan shall include each of the following matters:

"(A) The programs to be reexamined and the reasons for their selection.

"(B) The scheduled completion date for each program reexamination: *Provided*, That such date shall not be later than the end of the Congress preceding the Congress in which the reauthorization date applicable to a program occurs as provided in section 101(b), unless the committee explains in a statement in the report accompanying its proposed funding resolution the reasons for a later completion date, except that reports on programs scheduled for reauthorization during the 97th Congress and selected for reexamination in a committee's plan adopted in 1980 may be submitted at any time until February 15, 1982.

"(C) The estimated cost for each reexamination.

"(2) The report accompanying the funding resolution reported by each committee in 1980 and thereafter for the first session of each Congress, shall with respect to each reexamination include in its plan both the following matters:

"(A) A description of the components of the reexamination.

"(B) A statement of whether the reexamination is to be conducted (i) by the committee, or (ii) at the request and under the direction of or under contract with, the committee, as the case may be, by one or more instrumentalities of the legislative branch, one or more instrumentalities of the executive branch, or one or more nongovernmental organizations, or (iii) by the combination of the foregoing.

"(3) It shall not be in order to consider a funding resolution reported by a committee of the Senate in 1980, and thereafter for the first session of a Congress unless—

"(A) such resolution includes a section containing the information described in paragraph (1) and the report accompanying such resolution contains the information described in paragraph (2); and

"(B) the report required by subsection (c) with respect to each program reexamination scheduled for completion during the preceding Congress by such committee has been submitted for printing.

"(4) It shall not be in order to consider an amendment to the section of a funding resolution described in paragraph (1) reported by a committee for a year—

"(A) if such amendment would require reexamination of a program which has been reexamined by such committee under this section during any of the five preceding years;

"(B) if such amendment would cause such section not to contain the information described in paragraph (1) with respect to each program to be reexamined by such committee; or

"(C) if notice in writing of intention to propose such amendment has not been given to such committee and the Committee on Rules and Administration in the Senate not later than January 20 of the calendar year in which such year begins or the first day of the session of the Congress in which such year begins, whichever is later. The notice required by this subparagraph shall include the substance of the amendment intended to be proposed and, if such amendment would add one or more programs to be reexamined, shall include the information described in paragraphs (1) and (2) with respect to each such program. This subparagraph shall not apply to amendments proposed by such committee or by the Committee on Rules and Administration, as the case may be.

"(b) In order to achieve coordination of program reexamination each committee shall, in preparing each reexamination plan required by subsection (a), consult with appropriate committees of the Senate or appropriate committees of the House of Representatives, as the case may be, and shall inform itself of related activities of and support or assistance that may be provided by (1) the General Accounting Office, the Congressional Budget Office, the Congressional Research Service, and the Office of Technology Assessment, and (2) appropriate instrumentalities in the executive and judicial branches.

"(c) Each committee shall prepare and have printed a report with respect to each reexamination completed under this title. Each such report shall be delivered to the Secretary of the Senate not later than the date specified in the resolution and printed as a Senate document. To the extent permitted by law or regulation, such number of additional copies as the committee may order shall be printed for the use of the committee. If two or more committees have legislative jurisdiction over the same program or portions of the same program, such committees may reexamine such program jointly and submit a joint report with respect to such reexamination.

"(d) The report pursuant to subsection (c) shall set forth the findings, recommendations, and justifications with respect to the program, and shall include to the extent the committee deems appropriate, each of the following matters:

"(1) An identification of the objectives intended for the program and the problem it was intended to address.

"(2) An identification of any other program having potentially conflicting or duplicative objectives.

"(3) A statement of the number and types of beneficiaries or persons served by the program.

"(4) An assessment of the effectiveness of the program and the degrees to which the original objectives of the program or group of programs have been achieved.

"(5) An assessment of the relative merits of alternative methods which could be considered to achieve the purpose of the program.

"(6) Information on the regulatory, privacy, and paperwork impacts of the program.

(e) A report submitted pursuant to this section shall be deemed to satisfy the reauthorization review requirements of title I.

"SEC. 303. Each department or agency of the executive branch which is responsible for the administration of a program selected for reexamination pursuant to this title, shall, not later than six months before the completion date specified for reexamination reports pursuant to section 302(a)(1)(B), submit to the Office of Management and Budget and to the appropriate committee(s) of the Senate and the House of Representatives a report of its findings, recommendations, and justifications with respect to each of the matters set forth in section 302(d), and the Office of Management and Budget shall submit to such committee(s) such comments as it deems appropriate.

"SEC. 304. For the purposes of this title:

"(1) The term 'funding resolution' means, with respect to each committee of the Senate, the first authorization resolution reported by such committee for a year under section 133(g) of the Legislative Reorganization Act of 1946, or any action taken in lieu of such funding resolution, which in any event shall occur not later than May 15.

"(2) An amendment to a funding resolution includes a resolution of the Senate which amends such funding resolution.

"TITLE IV—CITIZENS' COMMISSION ON THE ORGANIZATION AND OPERATION OF GOVERNMENT

"SEC. 401. There is authorized to be established, as an independent instrumentality of the United States, the Citizens' Commission on the Organization and Operation of Government (hereinafter in this title referred to as the 'Commission').

"SEC. 402. It is hereby declared to be the policy of the Congress to promote economy, efficiency, and improved service in the transaction of the public business in the departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government.

"SEC. 403. (a) The Commission shall conduct a nonpartisan study and investigation of the organization and methods of operation of all departments, agencies, independent instrumentalities, and authorities of the executive branch of the Government in the following major policy areas:

"(1) International affairs and defense.

"Functions:

"050—National defense.

"150—International affairs.

"(2) Resources and technology.

"Functions:

"250—General science, space, and technology.

"270—Energy.

"300—Natural resources and environment.

"(3) Economic development.

"Functions:

"350—Agriculture.

"370—Commerce and housing credit.

"400—Transportation.

"450—Community and regional development.

"(4) Human resources.

"Functions:

"500—Education, training employment, and social services.

"550—Health.

"600—Income security.

"700—Veterans benefits and services.

"(5) General Government.

"Functions:

"750—Administration of justice.

"800—General Government.

"850—General purpose fiscal assistance.

"900—Interest.

The Commission shall make such recommendation as it determines necessary to—

"(1) increase the effectiveness of Government services, programs, and activities by changing the structure and execution of administrative responsibilities;

"(2) improve delivery of services through elimination of needless duplication or overlap, consolidation of similar services, programs, activities, and functions, and termination of such services, programs, and activities which have outlived their intended purpose;

"(3) maintain expenditures at levels consistent with the efficient performance of essential services, programs, activities, and functions;

"(4) simplify and eliminate overlaps in agency regulatory functions by review of the laws, regulations, and administrative reports and procedures; and

"(5) determine the appropriate responsibilities of each level of government, the manner and alternative means for each level of government to finance such responsibilities, the forms and extent of intergovernmental aid and assistance, and the organization required for proper balance and division of respective Federal, State, and local government roles, responsibilities, and authorities.

"(b) The Commission shall submit to the President, the Committee on Governmental Affairs of the Senate, and the Committee on Government Operations of the House of Representatives such interim reports as it deems advisable, and, not later than four years after the appointment and qualification of a majority of the Commission Members, a final report setting forth the Commission's findings and recommendations. The final report of the Commission shall include the comments of the appropriate congressional committees.

"(c) At least once every year for two years after the submission of the final report, the Comptroller General shall report to the Congress on the status of actions taken on the Commission's final report.

"SEC. 404. (a) The Commission shall be composed of fifteen members appointed from among individuals with extensive experience in or knowledge of United States Government as follows:

"(1) Five members appointed by the President by and with the advice and consent of the Senate.

"(2) Five members appointed by the President pro tempore of the Senate, three upon recommendation of the majority leader and two upon recommendation of the minority leader of the Senate.

"(3) Five members appointed by the Speaker of the House of Representatives, three upon recommendation of the majority leader and two upon recommendation of the minority leader of the House.

"(b)(1) Two members appointed under subsection (a)(1) shall be appointed to serve as Chairman and Vice Chairman (as provided in paragraph (2) of this subsection) and shall not engage in any other business, vocation, or employment. Such two members shall not be of the same political affiliation.

"(2) The member described in paragraph (1) who is, when appointed, not of the same political affiliation as the President shall serve as Chairman of the Commission and the other such member shall serve as Vice Chairman of the Commission.

"(c) Of the members appointed and qualified under subsection (a)(1) other than the members to whom subsection (b) applies, not more than two shall be of the same political affiliation.

"(d) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

"(e) Eight members of the Commission shall constitute a quorum, but the Commission may establish a lesser number to constitute a quorum for the purpose of holding hearings.

"SEC. 405. (a) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Commission or such subcommittee or member may deem advisable.

"(b)(1) Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by him and shall be served by any person designated by the Chairman or such member. Any member of the Commission may administer oaths or affirmation to witnesses appearing before the Commission.

"(2) The provisions of section 1821 of title 28, United States Code, shall apply to witnesses summoned to appear at any such hearing. The per diem and mileage allowances to witnesses summoned under authority conferred by this section shall be paid from funds appropriated to the Commission.

"(3) Any person who willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or to produce any evidence in obedience to any subpena duly issued under the authority of this section shall be fined not more than $500, or imprisoned for not more than six months, or both. Upon the certification by the Chairman of the Commission of the facts concerning any such willful disobedience by any person to the United States attorney for any judicial district in which such person resides or is found, such attorney may proceed by information for the prosecution of such person for such offense.

"(c) The Commission is authorized to secure directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information which the Commission deems useful in the discharge of its duties. All departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government shall cooperate with the Commission and furnish all information requested by the Commission in accordance with existing law.

"SEC. 406. (a) Subject to such rules and regulations as may be adopted by the Commission, the Commission shall have the power—

"(1) to appoint and fix the compensation of an Executive Director and such additional staff personnel as it deems necessary in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, and chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, and—

"(A) in the case of the Executive Director, at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5, United States Code; and

"(B) in the case of not more than three additional staff members, at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

"(2) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

"(b) The Commission is authorized to enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of the General Services Administration.

"SEC. 407. (a) The Chairman of the Commission shall receive compensation at a rate equal to the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the Vice

Chairman shall receive compensation at a rate equal to the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) All other members of the Commission who are not officers or employees of the Federal Government shall receive compensation at the rate of $200 for each day such member is engaged in the performance of the duties vested in the Commission.

"(c) Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with their activities as members of the Commission.

"SEC. 408. The Commission shall cease to exist ninety days after the submission of its final report.

"SEC. 409. There is authorized to be appropriated until September 30, 1983, without fiscal year limitations, the sum of $4,000,000 to carry out the provisions of this title.

"SEC. 410. The Commission shall be subject to the Federal Advisory Committee Act.

"TITLE V—MISCELLANEOUS

"SEC. 501. Section 206 of the Budget and Accounting Act, 1921 (31 U.S.C. 15), is amended by inserting immediately before the period a comma and 'or at the request of a committee of either House of Congress presented after the day on which the President transmits the budget to the Congress under section 201 of this Act for the fiscal year'.

"SEC. 502. Nothing in this Act shall require the public disclosure of matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order, or which are otherwise specifically protected by law. In addition nothing in this Act shall require any committee of the Senate to disclose publicly information the disclosure of which is governed by Senate Resolution 400, Ninety-fourth Congress, or any other rule of the Senate.

"SEC. 503. (a) The provisions of this section and sections 101(a), 101(b), 101(c)(1), 101(c)(2), 101(c)(5), 102, 103(b), 104(a), 104(c), 104(d), 104(e), 104(f), 104(g), title III (except section 303) section 505, and section 506 of this Act are enacted by the Congress—

"(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

"(b) In the Senate, paragraphs (2) and (5) of section 101(c) shall also be treated as amendments to rule XVI of the Standing Rules of the Senate.

"(c) Any provision of this Act which is enacted as an exercise of the rulemaking power of the Senate may be waived or suspended in the Senate by a majority vote of the Members voting.

"SEC. 504. (a) To assist in the review or reexamination of a program, the head of an agency which administers such program and the head of any other agency, when requested, shall provide to each committee of the Senate and the House of Representatives which has legislative jurisdiction over such program such studies, information, analyses, reports, and assistance as the committee may request.

"(b) Not later than six months prior to the first reauthorization date specified for a program in section 101(b) the head of the agency which administers such program or the head of any other agency, when requested by a committee of the Senate or House of Representatives, shall conduct a review of those regulations currently promulgated and in use by that agency which the committee specifically has requested be reviewed and submit a report to the Senate or the House of Representatives as the case may be, setting forth the regulations that agency intends to retain, eliminate, or modify if the program is reauthorized and stating the basis for its decision.

"(c) On or before October 1 of the year preceding the Congress in which occurs the reauthorization date for a program, the Comptroller General shall furnish to each committee of the Senate and the House of Representatives which has legislative jurisdiction over such program a listing of the prior audits and reviews of such program completed during the preceding six years.

"(d) Consistent with the discharge of the duties and functions imposed by law on them or their respective Offices or Service, the Comptroller General, the Director of the Congressional Budget Office, the Director of the Office of Technology Assessment, and the Director of the Congressional Research Service shall furnish to each committee of the Senate and the House of Representatives such information, analyses, and reports as the committee may request to assist it in conducting reviews or evaluations of programs.

"SEC. 505. (a) For purposes of this section and title I, the term 'required authorization waiver resolution' means only a resolution of the Senate or the House of Representatives—

"(1) which is introduced by the chairman of a committee pursuant to subsection (b);

"(2) which waives the provisions of subsection 101(c)(2) of this Act for the purpose of allowing consideration of a bill or resolution providing new budget authority for a program for not more than one fiscal year in an amount which does not exceed the amount of new budget authority required to maintain the current level of services being provided during the fiscal year preceding the fiscal year for which new budget authority would be provided; and for purposes of this section, such current level of services shall be determined initially from the report submitted to the Congress pursuant to section 605 of the Congressional Budget Act of 1974 and shall be certified by the Director of the Congressional Budget Office; and

"(3) the matter after the resolving clause of which is as follows: 'That it is in order in the Senate (House of Representatives) to consider a bill (resolution) providing new budget authority for for the fiscal year in an amount not to exceed $.'

(with the first blank space being filled with identification of the program; the second blank space being filled with the fiscal year for which the new budget authority would be provided; and the third blank space being filled with the amount of new budget authority necessary to maintain the current level of services for such program for the fiscal year preceding the fiscal year for which such new budget authority would be provided).

"(b) The chairman of the committee of the Senate or the House of Representatives having legislative jurisdiction over a program or programs shall introduce a required authorization waiver resolution for such program or programs not later than the fifth day (not counting any day on which the Senate or the House, as the case may be, is not in session) following the occurrence of either of the following:

"(1) A bill authorizing the enactment of new budget authority for the same program or programs has been under consideration for not less than fifteen hours, including debate on the motion to consider the authorization bill, and no limitation of debate has been agreed to; or

"(2) A bill authorizing the enactment of new budget authority for the same program or programs has been vetoed by the President and such veto has been sustained by either the Senate or the House of Representatives.

"(c) A required authorization waiver resolution relating to a program introduced in, or received by, the Senate or the House of Representatives shall be referred to the appropriate committee of the Senate or the House of Representatives, as the case may be; except that any resolution introduced, received after September 1 of the second session of a Congress shall immediately be placed on the appropriate calendar. With respect to any resolution still pending before a committee on September 1, of the second session of a Congress, the committee shall be automatically discharged and the resolution placed on the appropriate calendar.

"(d) The provisions of section 912 of title 5, United States Code, relating to the consideration of resolutions of disapproval of reorganization plans shall apply in the House of Representatives and the Senate to the consideration of required authorization waiver resolutions.

"SEC. 506. The Committees on Governmental Affairs and on Rules and Administration of the Senate and the Committees on Government Operations and on Rules of the House of Representatives shall review the operation of the procedures established by this Act, and shall submit a report not later than December 31, 1986, and each five years thereafter, setting forth their findings and recommendations. Such reviews and reports may be conducted jointly.

"SEC. 507. There are hereby authorized to be appropriated through fiscal year 1990 such sums as may be necessary to carry out the review requirements of titles I and III and the requirements for the compilation of the inventory of Federal programs as set forth in title II.".

The PRESIDING OFFICER. Without objection, the amendment will be agreed to as original text for the purpose of further amendment.

Mr. STEVENS. Mr. President, it will become the bill, as modified, which is the subject of the time agreement?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. The time agreement, as originally specificated, will apply to the modified version.

The PRESIDING OFFICER. Without objection, the Senator's request is so ordered.

Mr. ROBERT C. BYRD. I thank the Chair.

The PRESIDING OFFICER. The Chair seeks clarification. The bill was originally referred to two committees and two substitutes were reported by those committees.

Is it the intent of the Senator's amendment in the nature of a substitute to wipe out those two committee substitutes?

Mr. MUSKIE. That is my intent.

Mr. STEVENS. It is my understanding that that becomes the pending legislation, S. 2, the version to be considered by the Senate under the time agreement.

The PRESIDING OFFICER. The amendment is to be considered as origi-

nal text for the purposes of amendment. The Chair just wanted to clarify that the other two amendments in the nature of substitutes have been wiped out by the Senator offering this amendment.

Mr. MUSKIE. Yes.

RECESS UNTIL 1 P.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 1 p.m. today.

There being no objection, the Senate, at 12:45 p.m. recessed until 1 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ZORINSKY).

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the call for a quorum which I am about to request will be equally charged against both sides on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. MUSKIE. Mr. President, I yield 2 minutes to the Senator from North Carolina.

Mr. HELMS. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

HIS MAJESTY KING KHALID

Mr. CANNON. Mr. President, I wish to make note today of the presence in our country of His Majesty King Khalid Bin Abdul Aziz Al-Saud of Saudi Arabia.

As Members of this body doubtless know, His Majesty King Khalid has been in this country for several weeks with his family and members of his court to receive very delicate medical treatment and is currently recuperating from surgery in the Cleveland Clinic where he has been a patient in the past.

It may be timely to note that the King of Saudi Arabia has been and is a great supporter of the United States and through His Majesty's honorable and able statesmanship in the councils of OPEC nationals, the world oil crisis has generally remained within manageable limits.

Moreover, he has exercised wisdom in the enlightened appreciation of his country of the importance of Mideast peace and its meaning for the security of the free world.

I hope that King Khalid will have a full and speedy recovery and trust that the excellent capabilities of U.S. medical science will serve him well so that he will enjoy good health, a long life, and happiness.

KING KHALID

Mr. GRIFFIN. Mr. President. I am pleased to join in wishing his Majesty, King Khalid of Saudi Arabia, a speedy recovery.

As we know, the King is here in the United States to receive medical treatment, and he is accompanied by members of the royal family.

King Khalid has been a friend to the United States; he has great influence in matters that are important to the United States and to the free world.

Saudi Arabia has often been a voice of moderation in the Arab world, and has been a stabilizing influence in the volatile politics of the Middle East.

Without doubt, King Khalid will play an important role in the continuing effort to achieve peace in the Middle East. We wish him good health so that he may continue in that effort to bring about a just and lasting peace in the Middle East.

THE RECOVERY OF KING KHALID

Mr. JACKSON. Mr. President, I want to express my deep satisfaction at the news of the good recovery from heart surgery of His Majesty, King Khalid of Saudi Arabia. His friends here in the Senate extend best wishes for His Majesty's early return to full activity as statesman-leader of his great country.

As all of us know, Saudi Arabia has a vital part to play in the stabilization and defense of the Middle East.

Saudi Arabia was a moderating factor at recent meetings of OPEC, acting as a restraining influence on other members of the cartel who have sought even more dramatic escalations in oil prices than have occurred in recent years.

And there is now an historic opportunity for Saudi Arabia to play a crucial part in the new Middle East peace efforts. The potential is there for cooperation and parallel action to contribute to the mutual security of the countries in the region.

We look forward to His Majesty's early return to the helm of state where he can bring his judgment to bear on the promising opportunities for peace and economic development for Arabs and Israelis alike.

THE ENERGY DILEMMA: A FREE ENTERPRISE SOLUTION

Mr. HELMS: Mr. President, there is a fine young man named Lyle Barlow, an honor student at East Carolina University in Greenville, N.C. He is a 23-year-old senior majoring in accounting. Upon graduation, Lyle hopes to be able to attend graduate school.

This intelligent young man recently submitted an excellent paper at a symposium on "Coping with the Energy Dilemma" sponsored by East Carolina University and the Honor Society of Phi Kappa Phi. The emphasis of his paper is on broad principles rather than narrow issues. Nevertheless, I commend it to my colleagues. I believe we all could learn something from the ideas expressed by Lyle Barlow.

Mr. President, I ask unanimous consent that the paper entitled "The Energy Dilemma: A Free Enterprise Solution," by Lyle Barlow be printed in the RECORD.

There being no objection, the paper was ordered to be printed in the RECORD, as follows:

THE ENERGY DILEMMA: A FREE ENTERPRISE SOLUTION

(By Lyle Barlow)

Energy is the life-giving force of an industrialized nation. As the most industrialized of nations, the United States consumes about thirty-four percent of the world's total energy production. The United States appears to be engulfed by an energy dilemma—a problem seemingly incapable of satisfactory solution. A dilemma, by definition, is a situation involving the perplexing choice between equally unsavory alternatives. The purpose of this paper is to set forth certain principles which will clarify, simplify, elucidate, and solve the energy crisis now beseiging the United States.

According to U.S. Senator Jesse Helms, "For all its faults, the free enterprise system of the United States has produced a higher standard of living, more innovations and conveniences and miracles of technology, more culture, more leisure, and a higher degree of religious freedom than is found anywhere else in the world today. We should stop and ponder the fact that in this country we define poverty at an income level higher than the median income in that worker's paradise, the Soviet Union." [1] If it is true that free enterprise has brought Americans the highest standard of living in the world, then it is true that free enterprise can maintain that standard of living. Therefore, a solution to the nation's energy woes must employ the principles of free and private enterprise. The first question for consideration thus becomes a delineation of the concept of free enterprise. Once this concept is well-defined, it will be possible to discuss the true and proper role of government.

Ayn Rand defines capitalism (or free enterprise) as a social system "based on the recognition of individual rights, including property rights, in which all property is privately owned." In Rand's view, capitalism's uniqueness resides within its answer to the following question. "Is man a sovereign individual who owns his person, his mind, his life, his work and its products—or is he the property of the tribe (the state, the society, the collective) that may dispose of him in any way it pleases, that may dictate his convictions, prescribe the course of his life, control his work and expropriate his products?" [2] Capitalism asserts that man has inherent value; he has the right to exist for his own sake.

Free enterprise is not only a social system, but also an economic system. In the market economy, the consumer is supreme. The consumer casts dollar-votes. The market adjusts the efforts of producers to the wishes of consumers; i.e., it subjects production to consumption. As Professor Ludwig von Mises has noted, it is fallacious to assume that a non-socialistic economy has no plan. The "plan" (really, the central assumption) of a market economy is private ownership of the means of production.[3] The free market runs on the fuel of the profit motive, the individual initiative. The profit incentive can be retarded only to the extent that government confiscates the fruits of one man's labor in order to transfer those fruits to someone else. Therefore, it is useful to explore the proper role of government in a market economy.

Ayn Rand asserts that government's only function is to protect man's rights—not to provide for all of his needs. All social systems

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besides capitalism are based on what Rand calls "the tribal premise" or what John Kenneth Galbraith calls "the public purpose." In non-capitalistic social systems, government is an instrument of "the public purpose." Rand proposes that "the common good" is meaningless unless regarded as the sum of the good of all the individual men involved. Else, man becomes that which fits economic equations. The "common good" comes to mean that the good of some men takes precedence over the good of others. To really grasp the proper role of government in a capitalist economy, the notion of "the common good" (or "the tribal premise") must be challenged.[4]

Political and economic liberty are inextricably bound. According to Milton Friedman, capitalism not only provides economic liberty directly, but also promotes political liberty. Capitalism presupposes a separation between economic and political power. Friedman postulates: "Economic arrangements play a dual role in the promotion of a free society. On the one hand, freedom in economic arrangements is itself a component of freedom broadly understood, so economic freedom is an end in itself. In the second place, economic freedom is also an indispensable means toward the achievement of political freedom." [5]

In Friedman's view, the problem of social organization reduces itself to the coordination of the economic activities of large numbers of people. Two alternatives present themselves. "One is central direction involving the use of coercion—the technique of the army and of the modern totalitarian state. The other is voluntary cooperation of individuals—the technique of the marketplace." Exchange allows coordination without coercion; hence, the concept of a "free private enterprise exchange economy." In such an economy, governmental activity is limited to such functions as maintaining law and order, defining property rights, enforcing contracts, and providing a monetary framework. Activities which would be outside the proper scope of government include governmental control of output, legal minimum wage rates, legal maximum prices, detailed regulation of industries, social security programs, and public housing.[6]

Frederic Bastiat, a French economist and statesman, lived during a period in the nineteenth century when France was turning to socialism. He asserted that life, liberty, and property are God-given rights. They precede all man-made legislation and are superior to it. Life, liberty, and property do not exist because men legislate; they are not given by government. Bastiat asks: "What, then, is law? It is the collective organization of the individual right to lawful defense." Law is the replacement of individual forces by a common force. Government is force. The law "is to do only what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the right of each, and to cause justice to reign over us all." The law cannot rightly be used to destroy the person, liberty, or property of individuals. The law cannot rightly be used to confiscate the fruit of a man's labor.[7]

What happens when government exceeds its proper functions? The law is used to nullify the justice it was supposed to maintain, to limit and destroy the rights it was designed to protect. The law converts plunder into a right. Plunder appears just and sacred because it has been sanctioned by law. Legal plunder develops into a system. How can legal plunder be identified? Bastiat reasons: "Quite simply. See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime." The person who benefits from legal plunder will claim that the state is obliged to defend his acquired rights.[8]

Can free enterprise function under a policy of gradual government interventionism? Professor von Mises believes that interventionism replaces the market economy by a system of planned economy (i.e., socialism). Interventionism serves to substitute governmental pressure for the choice of the consumer. In the planned economy, the planner substitutes his own plan for the plans of his fellowmen. Therefore, the planner is a potential dictator. If interventionists measures fail to achieve the results expected, the interventionists ask for more and more government intervention. Interventionism is not a "middle-of-the-road" position. Von Mises postulates two alternatives: "Men must choose between the market economy and socialism." If men opt for production to be regulated by authoritarian decree, and these decrees concern only isolated segments of the economic structure, then these decrees will fail to achieve the desired results. Advocates of government intervention will insist on regulation of more segments of the economy until totalitarian socialism is fully instituted.[9]

The limited form of government which embodies the true role of government in a market economy is the republic. A republic is neither a democracy nor an autocracy, but rather the mean between the two. The autocracy and democracy are extremes. The Founding Fathers—especially Hamilton and Madison, the spokesmen and interpreters of the work of the Constitutional Convention—made a clear distinction between the terms "republic" and "democracy." A republic by their definition is ". . . a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. . . . The true distinction between these forms is that in a democracy the people meet and exercise the government in person. In a republic they assemble and administer it by their representative agents." [10]

According to Constitutional scholar Harry Atwood, the United States Constitution embraces four elements: "(1) An executive and (2) a legislative body, who, working together in a representative capacity, have all power of appointment, all power of legislation, all power to raise and expend money, and who are required to do just two things: (3) to create a judiciary to pass upon the justice and legality of their governmental acts and (4) to recognize certain inherent individual rights." [11] These elements are like the four wheels of a car. A car with less than four wheels is unstable; a car with more than four wheels is awkward to maneuver. No one of the four elements is more important than the element of individual, God-given rights. The Constitution also establishes a system of checks and balances. In place of direct popular rule, the people vote for electors and members of Congress.

Congress has the responsibility of originating policy. When policy is stated in general terms, an administrative agency may be formed to carry out or administer that policy. This departure from a republic leads to an administrative form of government. The executive branch becomes an administrative superdistrict comprised of agencies which combine legislative, executive, and judicial powers. According to Professors Anderson and Kumpf: "The modern administrator has the power to make the laws that regulate the segment of life or industry entrusted to his care. There once was a great reluctance to accept the fact that the administrator made the law, because by our constitutional doctrine only the lawmaker, the Congress or the state legislature, can make laws. It therefore seemed an improper transfer or delegation of power for the lawmaker to set up a separate body or agency and give to it the power to make the laws." [12]

The administrative form of government is tantamount to government by bureaucracy. It is government by charter and executive order, not by constitution. Administrators are appointed, not elected. This form of government is, according to Maine State Senator Hayes Gahagan, the most expensive form of government ever devised. The Administrative Procedures Act of 1946 gives federal bureaus the power to make regulations, to post them in the Federal Register, and (after specified conditions have been met) to administer these regulations as law. Although these regulations control spending and policy, they are not true laws. In a true sense, they are "non-laws." [13]

What is a true law? As stipulated in Article VI of the Constitution, the Constitution is the supreme law of the land. All other laws must be made "in pursuance thereof." According to American Jurisprudence, an unconstitutional law confers no rights, creates no office, and bestows no power or authority on anyone.

To summarize, the republic and the free enterprise system go hand in hand. The predominance of the administrative form of government in the United States today can be attributed to a failure to operate the republican, or representative, form. The viewpoints of such men as von Mises, Friedman, Atwood, and Bastiat have been presented here for two reasons. First, their ideas deserve a serious hearing. Second, their profound analyses establish the theoretical foundation necessary to appreciate a free enterprise solution to the energy crisis.

"Government," asserts the *California Mining Journal*, "is no longer the grand solution to problems that so many Americans once thought it could become—it's now a major part of the problem." [14] In the past, government officials in the United States have harassed private industry until it could not function properly, then condemned it for improper functioning. Indeed, the causes of the energy crisis are government-related.

One's view of the energy crisis is, to a great extent, conditioned by one's philosophical orientation. John Kenneth Galbraith is an advocate of the centrally-planned economy. In his opinion, the energy crisis is the result of the unequal growth of various industries. This disparate growth causes some industries to demand more than others can supply. The full magnitude of the demand for petroleum was not foreseen. Nor was it envisioned that the building of the needed pipelines, refinery capacity, and offshore docking facilities (for supertankers) would involve "irreconcilable environmental conflicts." When planning by one industry requires more than another industry can apply, the state must intervene. The state can supply a reliable means for coordinating the planning by different industries. "And government machinery must then be established to anticipate disparity and to ensure that growth in different parts of the economy is compatible. The latter on frequent occasion will require conservation—measures to reduce or eliminate the socially least urgent use. On other occasions, it will require public steps to expand output." [15]

Galbraith's analysis suggests a solution which would necessitate the joining of economic and political power. The nemesis of political freedom is the power to coerce—and government is force. Milton Friedman notes: "The preservation of freedom requires the elimination of such concentration of power to the fullest possible extent and the dispersal and distribution of whatever power can-

Footnotes at end of article.

not be eliminated—a system of checks and balances. By removing the organization of economic activity from the control of political authority, the market eliminates this source of coercive power. It enables economic strength to be a check to political power rather than a reinforcement." [16] Galbraith's analysis fails to recognize the possibility that the very state which is called upon to intervene has its foot on the energy supply hose. The establishment of "government machinery" would invoke the administrative form of government and thereby depart from the representative form (with the various checks and balances stipulated in the Constitution).

At least four government-related causes have served to effect an artificially-induced energy crisis: (1) governmental suppression of information on known reserves of energy resources, (2) legislation which favors the ecology lobby, (3) regulation of the price of natural gas, and (4) inflation caused by deficit spending. Each of these causes will be subsequently examined at length.

The U.S. Geological Survey is one of nine divisions of the Department of the Interior. As of 1977, Dr. Vincent McKelvey would have been Director of the Geological Survey for a sixth consecutive year. (He had been employed by the U. S. G. S. for thirty-six years.) His career was abruptly ended when he revealed that the United States has an estimated 60,000–80,000 trillion cubic feet of natural gas in zones underlying the Gulf Coast. That estimate, according to The Wall Street Journal, was 3000–4000 times the amount of natural gas the United States was estimated to consume in 1977. Dr. McKelvey's removal demonstrates that the Carter Administration will not permit alternative points of view to endanger the Carter Energy Plan.

A group within the Energy Research and Development Administration estimated enormous reserves of natural gas at a wellhead price of $2.50 per thousand cubic feet. That group was eliminated. A series of ERDA booklets recounting the advantages of the breeder reactor program was eliminated. It would seem that a systematic program of information suppression is underway.[17]

The National Environmental Policy Act, enacted by Congress at the end of 1969, has had five noteworthy side effects. It has curtailed the building of nuclear power plants, oil exploration on the outer-continental shelf, oil production in fields already explored and tapped, the leasing of federally-held oil-shale lands, and the production of coal. Signed by President Nixon on New Year's day, 1970, NEPA committed the federal government "to create and maintain conditions under which man and nature can exist in productive harmony." Implementation of NEPA has resulted in unproductive disharmony between man and government.

NEPA's definition of "environment" is so vague that federal courts can veto the actions of federal agencies. No business can engage in a major activity without first going to a federal agency to obtain a permit, license, right-of-way lease, land lease, and so on. Environmentalists can bring a court action against a governmental agency by alleging that it failed to file an adequate E'S, or environmental-impact statement (in accordance with NEPA), before granting permission for a major business activity. Environmentalists then demand a court injunction to halt the business activity until the agency files an adequate E'S and suggest an alternative approach. By the end of 1971, the ecology lobby had over 160 cases pending in federal courts.

NEPA established the President's Council on Environmental Quality to assist the President in formulating an annual report on the environment. The Council made its first annual report on August 10, 1970. This report urged Congress to pass Nixon's anti-pollution bills, thus providing incentive for passage of the Clean-Air Amendments Act of 1970 and the Clean-Water Act of 1972. These two acts, coupled with NEPA, enabled the ecology lobby to use federal power against business.[18]

NEPA was followed by 1970, the "Year of the Environment." Presidential messages and international conferences on pollution, the public protest on "Earth Day" (April 22, 1970), and the attention given in political campaigns to ecological issues symbolized the influence commanded by the ecology lobby. On December 2, 1970, the Environmental Protection Agency was established. EPA was a merger of the Federal Water Quality Administration (2,669 employees; $650-million budget; formerly in the Department of the Interior), the National Air Pollution Control Administration (1,141 employees; $107-million budget; formerly in the Department of Health, Education, and Welfare), and the Bureau of Solid Waste Management (206 employees; $15-million budget; formerly in HEW). Also established in 1970 was the National Oceanic and Atmospheric Administration (within the Department of Commerce).[19]

The net effect of legislation favoring the ecology lobby has been to make the law an instrument of legal plunder. Congress, according to the Constitution, has the power to restrict the jurisdiction of federal courts. However, these courts have in general become the playground of the ecology lobby.

The formation by Presidential Executive Order of the Environmental Protection Agency in 1970 exemplifies the gravitation toward the administrative form of government. Congress delegates powers vested in it by "We the People" to various administrative agencies—which then generate more regulations. When the legislation of Congress is not specific, the courts and the agencies have to figure out how to implement it. The President, who is not empowered by the Constitution to originate policy, does so anyway by Executive Order. The courts engage in judicial lawmaking, whereas the Constitution only grants them the power of judicial review.

Since 1969, one law predicated upon the idea of legal plunder has blossomed into a whole system. NEPA and its legislative offspring benefit one group of citizens—the ecology lobby—at the expense of other citizens. These laws have extended federal jurisdiction until the federal government is becoming the master with few restrictions and the people are becoming its slaves.

If President Nixon's monument to government reorganization was the Environmental Protection Agency, then President Carter's is the Department of Energy. This new department has a fiscal 1978 budget of $10.6 billion; it will employ 19,767 people. According to U.S. Representative William Archer, this budget exceeds both the 1975 capital and exploration expenditures by the entire petroleum industry and the 1974 profits of the seven largest oil companies (profits which Carter termed "obscene"). President Carter also endorsed a proposed trans-Canada pipeline which could not possibly deliver natural gas to the United States at a lower price than $3.00 per thousand cubic feet (mcf). "Yet," observes U.S. Representative Jack Kemp, "President Carter refused to support natural gas decontrol on the grounds that it is too expensive, despite the fact that the unregulated interstate price is only about $2.10 per mcf—compared to the present controlled price of $1.45." [20]

The regulation of natural gas prices is an attempt to substitute the "visible hand" of the federal government for the "invisible hand" of the marketplace. Decontrol of natural gas prices would provide—as Mr. Carter himself said prior to the 1976 election—an incentive for production and a hedge against the possibility of shortages. The Carter Energy Plan calls for public utilities to convert from gas boilers to coal—with an estimated cost of $50 billion. (Regulation allocates shortages. Shortages led to more government intervention.) During the winter of 1976–1977, 1.2 million workers lost $60 million in wages while they were idled by gas shortages due to the federally frozen price. According to U.S. Representative Clarence Brown, the American Gas Association predicts that the cost of substitutes needed "to fill in for natural-gas shortages at current regulated prices will total $30 billion in the next eight years."

What is regulation of gas prices doing to free enterprise? Ken Martin, president of Martin Exploration Company of Louisiana, has this to say: "Our once bold and magnificent oil and gas industry is today emasculated in complete chaos. Producers are scared. It is impossible to plan. We are afraid to drill because our production might be confiscated through taxation, price rollbacks or contract intervention. Today's grand plans are tomorrow's waste-basket trash as new rules and regulation control, delay, inhibit and destroy." [21]

Thus far, three government-related causes of the energy dilemma have been enumerated: suppression of information by the Carter Administration, open-ended legislation which favors the ecology lobby, and regulation of natural gas prices. It should be noted here that decontrol of gas prices alone, like energy conservation alone, will not prove sufficient to resolve the energy crisis. It is unfair to fire a broadside at government and blame "the government" for all economic ills. That is not the purpose of this paper.

The energy dilemma is more than a shortage of gasoline at the pumps—more than a debate over deregulation of natural gas. At the very crux of the whole dilemma is this straightforward, unsophisticated, foundational question: Is man the sovereign owner of his work and its products, or may his production be confiscated to serve the purposes of conservation, balanced growth, and societal satisfaction? Man's liberty—his power to choose, together with the attendant blessings of that liberty—hangs in the balances. Therefore, free enterprise must be allowed to solve the energy crisis.

A fourth government-related cause which has served to induce the energy crisis is the federal budget deficit. The gap between government spending and government receipts must be bridged by borrowing. The Federal Reserve funds the debt by injecting additional reserves into the banking system. These additional reserves create new money which has less purchasing power. Inflation is the result.[22]

The energy industry is capital-intensive. Inflation discourages saving and the investment of capital, thereby having a corrosive effect on energy production by the private sector. When additional money is printed and pumped into the economy, the value of money already in circulation is diminished. U. S. Senator Jesse Helms illustrates it this way: "To make a homely analogy, consider a pot of soup. Add a gallon of water and you will have a lot more soup, but it will take a good many more bowls of it to make a nourishing meal." Inflating the currency is yet another example of what Bastiat called legal plunder. Senator Helms calls it "tantamount to theft." [23]

Prior to 1930, spending by the federal government never exceeded five per cent of national income (net national product minus sales, excise, and property taxes) except during or just after major wars (War of 1812, the Civil War, World War I). By 1936, the New Deal had caused federal spending to reach thirteen percent of national income. By 1972, federal spending amounted to over twenty-six per cent of national income. Between 1789 and 1930, aside from major wars, American citizens never spent more than fif-

Footnotes at end of article.

teen per cent of their personal income on local, state, and federal expenses of government. As of 1972, this proportion had reached forty per cent. What is the rationale behind this trend of inflation-spawning, profligate government spending? Milton Friedman notes: "Until 1930, citizens of the U. S. viewed the federal government primarily as a keeper of the peace and an umpire. Today, we view it as responsible for treating every social and personal ill, as the source from which all blessings flow." A great many Americans seem to believe—or have been conditioned to accept—the concept of an unlimited, omnipotent, beneficent government.[24]

It is now possible, with the foundation of principles that has been laid, to discuss the steps which must be taken to effect a free enterprise solution to the energy dilemma. The principles of free enterprise, coupled with a knowledge of the cause-and-effect relationships involved, allow this dilemma to be reduced to a problem which can be solved.

The first step toward a free enterprise solution is an inner recognition by Americans of the true role of government in a capitalist economy. Milford Bowen has noted: "We must always accept freedom in our minds regardless of the conditions around us. We must always reject bondage, imprisonment and restrictions, regardless of our status politically." Mr. Bowen also observes: "The government was never given the right to give permission to anyone to do anything. The people, through a limited Constitution, gave the government permission to exist and perform its duties within the framework of that Constitution."[25]

Before any great change in a system can occur, people within that system must change. Such a change can genuinely be effected only on an individual-by-individual basis. Each man, by the dictates of his own heart and by the exercise of his own freedom of will, must accept the responsibility that accrues with freedom. Senator Jesse Helms has stated: "Today many of our people will go to great lengths to avoid responsibility. 'Give us security, give us mammoth government to superintend our affairs, and we shall be content.' The Divine Providence on which our forefathers relied has been supplanted by the Providence of the All-Powerful State."[26]

On October 27, 1977, President Carter remarked that the debate in Congress over his energy proposals was "a test of our national will."[27] He was unknowingly correct in his assessment of the energy debate. Can the men and women who now sit in Congress muster the will needed to operate the limited representative form of government? Can the American people muster the will to recognize the proper role of government as specified by the Constitution? Such an inner recognition and summoning of willpower will not be easy. As A. V. Dicey has said, "The beneficial effect of State intervention, especially in the form of legislation, is direct, immediate, and so to speak, visible, whilst its evil effects are gradual and indirect, and lie out of sight." The national will is being undermined by an internal force. Milton Friedman speaks of this threat from within: "It is the internal threat coming from men of good will and good intentions who wish to reform us. Impatient with the slowness of persuasion and example to achieve the great social changes they envision, they are anxious to use the power of the state to achieve their ends and confident of their own ability to do so."[28]

The second step toward a free enterprise answer to the energy question is to get the federal government out of regulating almost every aspect of private enterprise. Such a step would greatly reduce deficit spending, reduce the upward pressure on prices of compliance with government regulations and repeal laws by which Congress has delegated almost unlimited authority to the regulatory agencies. Congressman John H. Rousselot (R.-California), has composed a model piece of legislation to accomplish these ends. It is called the Regulatory Agency Abolition Act (H.R. 2832), and Representative Charles Whitley (D.-North Carolina) is a cosponsor. This proposal is much more far-reaching than mere decontrol of natural gas prices. The bill has two purposes: "It is the purpose of this Act to (1) abolish within three years of enactment, certain Federal regulatory agencies which the President and Congress determine have inadequately promoted the public welfare, and (2) to cause the self-destruct of those remaining agencies, their successors, or new regulatory agencies established after the date of enactment of this Act, which are determined to have failed to accomplish such purposes three years after enactment, depending on how long such agencies have been in existence."[29]

The third step toward a free enterprise solution to the energy crisis is to make full use of nuclear power generation. (This proposal is not intended to mean that all research on other forms of power generation should be stopped.) It is not within the scope of this paper to completely examine all the pros and cons of nuclear power; it does, however, seem appropriate to make mention of the wide diversity of opinion on the topic. The arguments against nuclear power plants are presented by John Gofman and Arthur Tamplin in Poisoned Power: The Case Against Nuclear Power Plants.[30] The two author-scientists take an environmentalist approach toward the issue.

Petr Beckman, an electrical engineer, scientist, and statistician, advocates an alternative point of view in The Health Hazards of Not Going Nuclear. Rather than comparing the benefits of nuclear power to its risks (an approach which "sooner or later runs into the question of how many dollars a human life is worth"), Beckman compares the risks of nuclear power to the risks of other forms of energy conversion (coal, oil, and solar). Although no form of energy conversion is totally and absolutely "safe" nuclear power is the safest.[31]

Washington Governor Dixy Lee Ray asserts: "It is essential, not only for our nation, but for the world as a whole, for the United States to reconsider its position on nuclear energy. We need the reprocessed fuel, and we need to utilize the breeder technology. We should ask our President to listen to the voices of reason and common sense, and to look, in a practical way, at what energy really means to the economy of our nation."[32] Nuclear power conversion would seem the most direct way to deliver the American economy from its vulnerability to demands made by the Organization of Petroleum Exporting Countries (OPEC) and striking coal miners.

The emphasis of this paper has been on principles—not on issues. The vital question under consideration has been, "Does man have worth intrinsically or extrinsically?" If he has intrinsic worth, then he does not exist to serve government. As Jesus Christ said, the worth of one soul is more than all the wealth of the world; capitalism is a social and economic system based upon that premise. If man has extrinsic worth, then his value is determined by his contribution to the collective.

It is interesting to note that the Founding Fathers did not elevate themselves and their plans above their fellow citizens. That is why the first three words of the Preamble are "We the People." The Founding Fathers had a clear perception of the purpose of government—to "secure the Blessings of Liberty to ourselves and our posterity." In the Declaration of Independence, one of the self-evident truths is that men "are endowed by their Creator with certain unalienable Rights." Furthermore, "Governments are instituted among Men, deriving their just powers from the consent of the governed." The Founding Fathers were willing to alter or abolish a form of government which did not recognize unalienable (God-given) rights. George Washington said, "It is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favor." Therefore, the Founding Fathers relied upon God—not government—as the meeter of needs and the giver of unalienable rights.

If the Founding Fathers saw a need to alter or abolish the form of government which did not meet the criteria they set forth in the Declaration and the Constitution, then Americans must see that need today. The administrative form of government must be abolished, and the representative form instituted. Americans must exercise the representative form of government, or the administrative form will prevail. The visible hand of the federal government must be replaced by the invisible hand of the marketplace. America is at a crossroads in this matter of how to cope with an artificial energy dilemma, and there are only two alternatives—the road to freedom and the road to serfdom. Abraham Lincoln once described the road to freedom: "And having thus chosen our course, let us renew our trust in God and go forward without fear and with manly hearts. That this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from the earth."

FOOTNOTES

[1] Jesse Helms, *When Free Men Shall Stand* (Grand Rapids, Michigan, 1976), p. 34.

[2] Ayn Rand, *Capitalism: The Unknown Ideal* (New York, 1966), p. 11.

[3] Ludwig von Mises, *Planned Chaos* (Irvington-on-Hudson, New York, 1947), pp. 25, 29.

[4] Rand, pp. 7, 12–13.

[5] Milton Friedman, *Capitalism and Freedom* (Chicago, 1962), pp. 8–9; hereafter cited as *Capitalism*.

[6] Friedman, *Capitalism*, pp. 12–13, 34–36.

[7] Frederic Bastiat, *The Law* (Irvington-on-Hudson, New York, 1950), pp. 6–7.

[8] Bastiat, pp. 9, 21.

[9] Von Mises, pp. 24–34.

[10] Harry Atwood, *Our Republic* (Merrimac, Massachusetts, 1934), pp. 27–31.

[11] Atwood, pp. 54–59.

[12] Ronald Anderson and Walter Kumpf, *Business Law: Principles and Cases* (Cincinnati, 1975), pp. 89–90.

[13] Hayes Gahagan, Maine Citizens (Augusta, Maine, 1976), p. 29.

[14] Marian Probert Welch, "'Tis Passing Strange," *The Review of the News*, XIII (August 31, 1977), 39; hereafter cited as *TROTN*.

[15] John Kenneth Galbraith, *Economics and the Public Purpose* (Boston, 1973), pp. 210, 317–318.

[16] Friedman, *Capitalism*, p. 15.

[17] William P. Hoar, "The Right Answers," *TROTN*, XIII (October 5, 1977), 59–60.

[18] Smoot, pp. 133–139.

[19] Andrew L. Newman, "Environment," *The 1971 World Book Year Book* (Chicago, 1971), p. 319.

[20] Hoar, "A Capital Report," *TROTN*, XIII (November 2, 1977), 49.

[21] Hoar, "The Right Answers," *TROTN*, XIII (August 3, 1977), 60.

[22] Fred D. Kalkstein, "Money, Money, Money," *Barron's* (October 24, 1977), 9.

[23] Helms, pp. 59–60.

[24] Milton Friedman, *There's No Such Thing as a Free Lunch* (LaSalle, Illinois, 1975), pp. 99–101.

[25] Milford Bowen, *America's Hope* (St. Mary's Ohio, 1977), pp. 7–8, 13.
[26] Helms, pp. 113–114.
[27] Susan Huck, "The News," *TROTN*, XIII (November 9, 1977), 5.
[28] Friedman, *Capitalism*, p. 201.
[29] Marian Probert Welch, "A Capital Report," *TROTN*, XIII (May 11, 1977), 51, 53.
[30] John Gofman and Arthur Tamplin, *Poisoned Power: The Case Against Nuclear Power Plants* (Emmaus, Pa., 1971), p. 93.
[31] Petr Beckmann, *The Health Hazards of Not Going Nuclear* (Boulder, Colorado, 1976), pp. 32–34.
[32] Marian Probert Welch, "'Tis Passing Strange," *TROTN*, XIII (October 26, 1977), 25.

Mr. HELMS. Mr. President, I thank the Chair and I thank the Senator from Maine for yielding to me.

PROGRAM REAUTHORIZATION AND EVALUATION ACT OF 1978

The Senate continued with the consideration of S. 2.

Mr. MUSKIE. Mr. President, what is the pending business?

The PRESIDING OFFICER. S. 2.

Mr. MUSKIE. I thank the Chair.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. MUSKIE. Mr. President, I am well aware of the many demands on our legislative schedule this week, but we seem to have a most appropriate window in the schedule today for the purpose of considering the proposed legislation, which has been the subject of comment and reference and controversy, especially on the tax expenditure side, for at least 1 or 2 weeks. So I am not sure that I can say anything at this point that would further enlighten either Senators or the press or the public as to what this bill is all about.

Nevertheless, I think it is appropriate that we make a record in the context of this afternoon, when we hope we will act finally on the bill—when Senators will have an opportunity to vote for or against it on the record—when we finally reach a determination as to whether or not the Senate supports this concept so I will now include a discussion of the bill, so that there will be continuity between the vote and the rationale for the bill.

As I have said several times, I can think of few more important acts that this body can take in the waning days of the 95th Congress than to demonstrate solid commitment to curbing inflation by bringing Federal spending under control, and to respond in a thoughtful, reasoned way to the public concern that Government today is not working as well as it should.

That, as I see it, is what sunset is all about. It is a most important idea, with great potential for change. It is not new to public debate. Indeed, we have been talking about sunset for nearly 3 years.

Mr. President, I have introduced this measure in several forms over the years with Senator ROTH, who is the ranking Republican on the Senate Subcommittee on Intergovernmental Affairs, as an original and continuing cosponsor; with Senator GLENN, whose particular interest has been the tax expenditure amendment, which is not part of the proposed legislation, which we will consider today; with the distinguished majority leader, the distinguished majority whip, and 49 other of my colleagues.

It often has been said in jest that when a bill has that many cosponsors in the Senate, its prospects for passage are pretty dim. I hope in this case that the number of cosponsors, together with the unsolicited support I have received on every hand in the Senate during the past 2 weeks, augurs an overwhelming support of the Senate this afternoon.

This amendment represents the latest of many refinements in this sunset legislation, as we attempt to fashion the best and most workable bill possible to bring to the Senate floor.

The sunset legislation has gone through 13 days of hearings in the Governmental Affairs Committee, with more than 50 witnesses commenting on its every provision. It has twice been favorably reported by that committee. It has twice been considered by the Rules Committee, and just 2 months ago was favorably reported by that committee as well. Virtually every committee of the Senate has been consulted as this bill has moved along.

Subsequent to that action by the Rules Committee 2 months ago, there have been informal discussions designed to deal with other questions raised by other Senators in connection with this legislation.

I cannot think of another piece of legislation over which I have had any jurisdiction in the 20 years I have been in the Senate, that has been refined and polished and rerefined and repolished as this one has been for 3 years. So if ever a piece of legislation has been the product of deliberate, rational, thoughtful, comprehensive consideration, this bill is it.

From the very beginning, the sunset bill has been well received. It is cosponsored by more than half the members of this body, and by well over a hundred members of the House. Groups as diverse as common cause and the chamber of commerce support it as an essential step in further strengthening congressional spending control.

After almost 3 years of debate, I believe the public now deserves a decision on this promising idea, and the Senate needs to make that decision without any further delay.

I am delighted that we are now going to have a chance to give my colleagues an opportunity to vote on the bill. I hope my colleagues will decide to give sunset a try. The reasons for doing so are numerous and sound.

When I first introduced sunset legislation almost 3 years ago, I was moved by three principal concerns.

First, as chairman of the Senate Budget Committee, I was concerned that budget reform notwithstanding, the Federal budget was increasingly beyond firm congressional control. Indeed, in 1975, we had a much smaller portion of the budget at our discretion than we did a decade before. In 1965, almost half of all Federal spending was controllable, through the regular reauthorization and appropriations processes. By 1975, that figure had shrunk to only 25-percent.

Second, I was troubled by growing evidence that we would create an array of programs so complex they were unable to do the job. GAO report after GAO report documented waste of the taxpayers' money, simply because one arm of the Government did not know what all the others were doing, and with fragmented agency and committee jurisdiction; Congress had no established mechanism for addressing the kinds of problems the GAO reports highlighted so well.

Third, I was concerned that poll after poll showed public confidence in Government going steadily down. More and more Americans seemed to feel that Government was not working well.

Three years ago, sunset seemed a reasonable and imaginative response to these concerns.

In its provision for the regular reauthorization of virtually all Federal programs, sunset offered a way to bring the Federal budget back under systematic congressional control.

By requiring the review of similar programs at the same time, sunset provided an opportunity to consider all of Federal policy in one area at once—with an eye toward eliminating wasted resources which could be put to better use.

And by demonstrating a firm commitment to the difficult task of making government more effective, sunset seemed an excellent way to demonstrate to the public that we in Congress are doing our job.

Today, these arguments for sunset are stronger than ever.

In 1978, although the proportion of uncontrollable spending in the budget has stabilized, it has not declined. We seriously debate national priorities each year, with only a fraction of the budget at our command. Three-quarters of Federal spending decisions are made whether Congress acts or not.

In 1978, we have made little, if any, progress in streamlining and simplifying the many programs on the books. Committee reform helped. But we still have overlapping programs scattered all over downtown and Capitol Hill.

State and local governments continue to cite excessive program fragmentation and red tape as a major obstacle to effective policy. And the GAO continues to churn out evidence of wasted dollars because of a program structure which has grown needlessly complex.

And in 1978, public concern over ineffective government reached a new high, with proposition 13 in California and its offspring in other States.

Three years ago, I was convinced that these conditions argued persuasively for the kind of change sunset would entail. I am even more convinced today.

But Mr. President, today, there is an additional argument for sunset, more compelling than all the rest. That argument is the resurgence of inflation—public enemy No. 1—viewed by 80 percent of the public as the most serious problem our Nation faces.

What has sunset to do with inflation?

In the public's view, clearly a great deal. According to the latest Harris survey, 76 percent of the American people view Federal spending as the principal cause of inflation. And a look at the projections for future budgets argues the case for the public's concern.

As part of its 5-year projections for the first budget resolution for fiscal year 1979, the Budget Committee calculated the potential cost of 31 new programmatic initiatives likely to come before the Congress between now and 1983. The list was by no means exhaustive. But it did include such major items as national health insurance and additional defense expenditures which would result from a failure of the SALT talks, and many, many more.

The committee found that between 1980 and 1983, these 31 initiatives could cost as much as $416 billion in new spending. The committee also found, as did CBO, that with a moderate rate of growth between now and then, we could expect only about $120 billion in additional revenues to pay for these new demands, if they are considered and enacted into law.

These numbers pose a very sobering problem, Mr. President.

Some of those initiatives may well be justified, and the public may support them, and there will undoubtedly be others before the next decade is out. After all, the agenda for our country is a continuing one as new and unanticipated needs arise to compete with the established programs and resource allocation.

Yet with the economy approaching full capacity, as it is, with inflation on the rise, spending increases of the magnitude projected by these numbers are clearly out of the question.

Under today's economic conditions, massive Federal deficits like we have known in recent years will succeed only in making inflation worse.

The numbers tell us we can afford new programs only if we can justify them in one of four ways: By running massive deficits and sending inflation through the roof; by raising taxes substantially to pay for new demands; by across-the-board cuts in spending, as many have proposed; or by selective cuts in programs we now have but which we may not need.

The first two of these options would be both economic and political suicide.

The third option would make room in the budget—but in an irresponsible and indiscriminate way.

The final option would be difficult, but doable. And, in my view, it is the most responsible of the four.

It would require a commitment from every one of us in Congress and outside Congress to put our favorite programs to the test—to see if they are still needed, or if they are working well. This is not a prospect likely to warm a politician's heart. But given our other options, I suggest we have no choice.

And whether we like it or not, the initiative must come first from us.

It is Congress which sets national policy, through the programs we enact. If those programs have grown unresponsive and ineffective, it is we who must bear much of the blame, for it is our job not just to initiate new programs, but also to insure that the old programs are working as well as they should and that they are still needed.

More importantly, it is Congress which has ultimate control over Federal spending, through our power of the purse. If that power is substantially eroded by decisions made in the past. we have an obligation to reassess those decisions so that new initiatives can be pursued.

Today, I think we are failing to meet our responsibility on both counts. And that is why an idea like sunset is so important at this time.

Mr. President, I want there to be no misunderstanding of my motives on this matter. I take a back seat to no one in support of the many worthy goals we have sought to achieve through Federal initatives in recent years. And I believe that Congress must continue to play an active role in shaping government as a positive force in our society.

But I am concerned that we in Congress are increasingly unable to do an effective job of legislating for the future because our hands are so bound by the past.

As a result, we are limiting both present and future budgets—and the priorities they define.

We are denying our constitutents an effective return on the tax dollars they pay.

And, in 1978, we are inviting the specter of Government spending driving inflation out of sight.

For all these reasons, I have been pushing sunset legislation for the last 3 years. For all these reasons, I urge Senate passage of sunset now.

Sunset offers us a unique opportunity to provide the extra spending discipline that we need.

It will not do so overnight, nor in a very exciting way.

But over the long haul, it is the only responsible vehicle I see which can help free up scarce resources to direct to new problems as they arise and to give the taxpayer needed relief.

And given the dwindling budget options available to us, I can think of few more positive steps we can take.

Mr. President, at the outset of my remarks, I noted that sunset, although untried, is not new to public debate. Nevertheless, there remains much confusion as to precisely what it is.

In its most general sense, a sunset law is one which states that certain specified activities of government will come to an end—the Sun will set—unless specifically continued by the legislative branch of Government. Within this broad definition, however, the term "sunset" can take many different shapes. Sunset laws have been adopted in several States to date, in widely differing forms.

The sunset bill I have proposed is keyed very specifically to the way Congress works. It seeks to remedy a congressional problem by building upon existing congressional processes and to use those processes more fully to help us do a better job. The approach taken is very simple indeed.

Title I sets out a 10-year, 5-Congress schedule for the review and reauthorization of all Federal programs, with only a few exceptions. Within this schedule, programs are grouped by budget function and subfunction, in order to encourage review of programs with related purposes during the same period of time.

The bill requires that all programs, save the few exceptions—including those now permanent—be specifically reauthorized in accordance with the schedule. To enforce this requirement, title I also provides that a point of order will lie against consideration of an appropriation for any program not so reauthorized.

These two provisions—the reauthorization requirement and the schedule for review—are, taken together, the essence of the sunset bill. Either provision without the other would leave the process incomplete. Reauthorization without a schedule of orderly groupings of programs would require Congress to make a decision—but offers no guarantee that such decision will be made with a view of the forest as a whole. Without the reauthorization requirement, there is no guarantee that the decision will be made at all.

Mr. President, there is obviously a great deal more in this bill than the two provisions I have just described. But by and large, the rest of the bill is aimed at supporting Congress and its committees in meeting the procedures of title I. The program inventory in title II, for example, is intended to give Congress the best possible information on what all the programs are. The waiver provision in title V is provided to insure that the reauthorization requirements of sunset are not used to frustrate the majority will.

In formulating this legislation, Mr. President, we had two very simple goals in mind. We wanted to force a regular congressional decision on all programs on the books. And we wanted those decisions to be made in a broader context than that in which they are made today.

To promote these goals, we sought a process as flexible as possible—a framework in which Congress could continue to do what it does best—to make political judgments and decisions about public policy.

We worked from the assumption that no reform, no matter how well intentioned or conceived, will work unless Congress wants it to—that better decisionmaking cannot be legislated, it can only be encouraged and facilitated.

In the amendment now before us, we have a bill which meets this test. It establishes a limited, explicit process. But beyond a minimal threshold it does not dictate how that process should be carried out.

I stress this point, Mr. President, because of concerns I have heard that sunset is too heavyhanded an approach. Many people seem to think that sunset seeks to accomplish many things which it, in fact, does not.

For example, sunset does not suggest that future spending priorities be changed. It is completely neutral where

specific areas of spending are concerned.

Nor is sunset a disguised version of the old meat-axe approach. Program termination is not a stated goal. The so-called termination mechanism—the reauthorization requirement—is a means to an end, not an end itself. Its sole purpose is to force a decision on the continuation of each program, at least once every 10 years.

On this point, I would like to emphasize, Mr. President, that the sunset mechanism is not radical or new. It is nothing more than the reauthorization process we now use every day of our legislative lives.

Precisely because this mechanism is not new, the sponsors of sunset have rejected the idea of a sunset pilot test. Congress does not need to test the reauthorization process—we already know how it works. What we do need is to apply that process more comprehensively. And that is what sunset would do.

Finally, this bill does not dictate how programs should be reviewed. Contrary to widespread opinion, this is not an evaluation bill. To be sure, title III is specifically concerned with the comprehensive reexamination of a few programs every year. This provision is an important complement to the basic reauthorization requirements of title I. But it is, in my view, largely incidental to the basic sunset process.

Mr. President, there is probably more confusion on this one issue than on any other aspect of the legislation. I ask that a lengthy but enlightening quote from the Governmental Affairs Committee report on S. 2 be printed in the RECORD at this point in my remarks.

The basic purpose of sunset is to compel Congress to reconsider its past program enactments. All that sunset requires is that Congress take positive action to reauthorize the programs which it wishes to continue. The thrust in sunset is reconsideration, not reevaluation. Nothing in the sunset concept would require Congress to embark on a wholesale evaluation of all programs scheduled for termination. When it reconsiders an expiring program, Congress can decide on the most appropriate course of action.

Sometimes it will decide to extend a program without any change whatsoever. It will be satisfied that the program is doing the job for which it was established. Sometimes, however, Congress will want to consider major changes in an existing program. In its search for program improvements, Congress will take its cues and clues from a variety of sources. It might look to the ballot box and its constituency for political guidance. It might examine budgetary data for information on the cost of the program. It might conduct hearings to enable those affected by the program to tell their side of the story. It might commission a large-scale evaluation by its own staff or by outside experts. But Congress alone will decide on the scope and type of review to be undertaken. Sunset thus opens to Congress a full range of options, only one of which is the formal evaluation of programs.

Evaluation ought never to be more than one of a number of methods available to Congress when it reconsiders programs. . . . Letters from back home, newspaper editorials, testimony at hearings, on-site visits, and cost-benefits analyses—all are grist for the legislative mill.

Even when it applies evaluative findings to programs under review, Congress is much more the consumer than the doer of evaluations. . . . In the division of labor between the legislative and executive branches, most program evaluations are conducted by the executive. Evaluation has become a billion-dollar industry in the United States, with thousands of evaluations completed each year by government agencies, think tanks, and private organizations. . . .

When it reconsiders programs, Congress can dip into the pool of available evaluations and apply the findings to the authorization decisions it must make. Congress does not have to evaluate de novo, as if nothing of value has been done by others. Sometimes, however, Congress will take a fresh look, either because other evaluations are not available or because it wants to apply different criteria to the decision at hand. In such circumstances, title III of the bill provides for Congress to formally select some programs for evaluation.

This is a lengthy quote, but it makes an important point—relevant not just to the evaluation question but to the entire tone of this bill.

It is not the purpose of sunset to impose an arbitrary discipline to tell Congress what to do.

It is very much the intent of sunset that Congress and its committees be in charge—but at the same time, have greater opportunities to do a better job.

Under the bill now before us, opportunities would be available which I think we badly need; A chance to look back at all the baggage we have accumulated through the years; a chance to renew and strengthen our commitment to those past efforts which continue to fill a need; and a chance to shift resources and energy away from those which have lost their usefulness, in order to free up resources for needs which lie ahead.

These opportunities exist today—but only where one quarter of the budget is concerned. If nothing else, sunset promises to close that gap, and make our options more complete.

Mr. President, there is one other issue in the sunset debate which has prompted widespread concern. That issue is the additional workload which sunset would entail.

The workload issue is the most persistent and difficult we have faced in working on this bill. The legislation has been revised and refined in countless ways to respond to this very real concern.

Among other changes, we lengthened the review cycle from 4 years in the original proposal to 10 in the current amendment. We dropped the cumbersome program review guidelines, and left virtually all decisions about the scope and depth of review to the authorizing committees themselves.

In the context of the workload debate, it is important to keep in mind a point I made earlier—that sunset is not a program evaluation bill. To require Congress to evaluate, in depth, one-fifth of all programs every 2 years would clearly be an undoable task. But that task is not even contemplated in the provisions of this bill.

This is not to say that the requirements of sunset will not add to our work. Obviously, they will. For example, programs which are now permanent would have to be reviewed and reauthorized at least once every 10 years. On the other hand, programs now reauthorized at more frequent intervals may be stretched out to a longer life span.

On the whole, sunset, in its present form, would involve what I believe is a manageable workload. But for those who would like a precise answer to this question, there is no way I can oblige.

Trying to project workload is a very difficult thing to do. What one committee considers a single program, another committee considers only a part.

Moreover, we have no way of knowing how future Congresses will act. For example, there is evidence of a growing trend toward omnibus authorization bills. Whether this trend will continue, we have no idea today.

My own response to the workload argument is that a great many people have labored on this bill to make it as workable as we could. Having done so, I would argue that whatever the workload demands of sunset, there is a job that needs to be done. To suggest that we cannot review the entire Federal budget in a space of 10 years is to say that a process like sunset is long overdue.

Mr. President, many other questions have been raised about sunset over the course of the bill's 3-year life. I have commented on those which I feel are most important. I urge my colleagues to raise any other concerns they may have, so that we can discuss them here today.

Before going on to discuss the specific provisions of the bill, I would like to make one remaining point.

The legislation now before us has come a long way in the past 3 years. Those of us who have worked on it have learned a great deal about the nature of the Federal program structure. Through this learning process, many who were once skeptical have been convinced that the need for sunset is real.

In an important way, this increased awareness is what sunset is all about—having at our disposal the knowledge to make informed decisions concerning legislation we enact.

This is no mean accomplishment, as we know from budget reform. Whatever specific fiscal impact the budget process has had, its greatest contribution has been in increased awareness of how the daily decisions we make affect the budget as a whole.

Sunset offers us the same kind of opportunity. It is an opportunity we dare not let slip away.

Mr. President, sunset is a complex piece of legislation. I would not be in the position to offer this amendment today had it not been for the hard work of a number of Senators and their staff.

I particularly want to note the contribution of the senior Senator from Delaware (Mr. ROTH), who has joined me in introducing this legislation for the past 3 years. As the ranking Republican member of the Subcommittee on Intergovernmental Relations, which cooriginated sunset legislation, Senator ROTH has not only made his mark on the sunset measure but he has also labored with me to guide this legislation through two committees and onto the Senate floor.

I want to thank two other members of the Intergovernmental Relations Sub-

committee, Senator GLENN and Senator CHILES, for their persistent efforts on behalf of sunset and the enormous contributions they have made to the legislation.

Though he is not a member of my subcommittee, the junior Senator from Delaware (Mr. BIDEN) has played a major role in the sunset debate. Senator BIDEN has introduced his own sunset bill during the past two Congresses. He was our first witness in support of sunset in this Congress. And many of the ideas in his bill have been incorporated into the amendment I am offering today.

Mr. President, as I indicated earlier, sunset has been considered by two committees. And I would be remiss in not mentioning the efforts of Senator RIBICOFF, the chairman of the Committee on Governmental Affairs, and Senator PERCY, the ranking Republican on that committee, Senator PELL, chairman of the Committee on Rules and Administration, Senator MARK O. HATFIELD, ranking Republican on that committee, and Senator CLARK, a member of the Rules Committee, in helping sunset through those two committees.

In addition, I want to thank the distinguished majority leader (Mr. ROBERT C. BYRD), and the distinguished majority whip (Mr. CRANSTON), for the personal time they devoted to the sunset bill.

Mr. President, I would also like to thank the members of the staff representing all of the Senators I have mentioned for their work on this measure. In particular, I would like to acknowledge the efforts of Al From, Jim Davidson, David Johnson, and Lee Lockwood of the staff of the Subcommittee on Intergovernmental Relations, who have spent long hours working on this legislation. And I would like to thank Joan McEntee of Senator ROTH's staff, Ron Hicks of the Rules Committee staff, Dick Andrews with Senator BIDEN, Jonathan Steinberg with Senator CRANSTON, Dennis Thelen with Senator BYRD, and Mike Stern and Joe Humphreys of the Finance Committee staff, all of whom contributed to this legislation.

Finally, Mr. President, I would like to pay special tribute to Dr. Allen Schick, a senior specialist at the Congressional Research Service. Dr. Schick has advised me and my subcommittee on sunset legislation from the very beginning. His wise counsel has been invaluable throughout—just as it was, I might add, during our consideration of the Congressional Budget Act in the 93d Congress.

Mr. President, inasmuch as our time is limited I yield at this point to my good friend and distinguished cosponsor, an original cosponsor of this bill, the Senator from Delaware (Mr. ROTH), so that he may make his opening statement.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. MUSKIE. Mr. President, will the Senator yield just a moment?

Mr. ROTH. I yield.

Mr. MUSKIE. I ask unanimous consent that Al From of the Intergovernmental Relations Subcommittee staff have the privilege of the floor during the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Delaware.

Mr. ROTH. Mr. President, this is in many ways the most important initiative that the Senate can take in the direction of bringing more efficiency into Government. I congratulate our distinguished colleague from Maine. We are finally having the opportunity to discuss sunset legislation on its merits, and have the opportunity for the Senate to vote it up or down.

There is no question in my mind, but that this legislation will be adopted by an overwhelming majority, because it results from a bipartisan effort, particularly of the distinguished senior Senator from Maine as well as myself, to adopt procedures that will have the effect of providing better services for the taxpayers and constituents at home, at less cost.

I would say, Mr. President, that in many ways this legislation has become even more important than 2 days ago, because the Senate has made a number of commitments to the American people. Recently in the Senate a coalition amendment to the tax cut measure was adopted by a vote of 3 to 1 that made a commitment, that we were going to cut taxes over a period of years for the American people, provided that we lower the percentage of gross national product that was spent in the public sector.

In my judgment, the only way we can achieve these goals in an intelligent manner is by a systematic overview of all programs already on the books. Although the adoption of this legislation today would not mean that all hundreds of programs would be reviewed by 1983, we would be taking the right first step in that direction.

I think the reason that this legislation has garnered such support on both sides of the political aisle, from those who are liberal and from those who are conservative, is that we can all agree that the purpose of a program is to solve a problem and that we have not devoted enough attention to how our programs are working.

It is a fact of life that in recent years no program was ever done away with, irrespective of its need and irrespective of its effectiveness. What we are proposing today is that, all programs, with a few exceptions, will be periodically reviewed on a systematic basis, to determine whether or not they are serving a national need.

Certainly this is something that conservatives, liberals, and moderates can agree upon as an approach. I would hope that if the Senate is successful in adopting this legislation today, as I believe it will be, we can get the House to take similar action. We cannot afford to delay the first step in putting this program to work.

Mr. MUSKIE. Mr. President, will the Senator yield on that point?

Mr. ROTH. I am happy to yield.

Mr. MUSKIE. That is my hope, out of today's action. The prospect that this bill itself can move to the House and get action on the House side may be quite remote, although I have reason to believe there is strong support for it in the House. But if we can get an overwhelming vote for sunset this afternoon here in the Senate, it may well be that we might find another legislative vehicle, one that must be acted upon in the House and to which we could attach this bill as a rider, to give the House a chance to express itself.

I would be amazed if a substantial majority of House members, most of whom are running for re-election this year, and seeking votes from an electorate increasingly upset about Government spending did not vote overwhelmingly for this bill.

Since we are up to bat, we hope our Senate colleagues will stay with us. This is something that Congress ought to approve this year.

Mr. ROTH. I thank the Senator from Maine. It is encouraging to see the possibility that within the 3 or 4 remaining days of this week we can see the sunset legislation put into operation. I would agree with the Senator that I find it hard to believe that any individual of any political persuasion would oppose this legislation. Its need is great. The fact is that the American people have indicated in many ways that they are weary of the redtape and the Government programs that are not achieving their goals. More importantly, if we are going to have new initiatives to meet today's problems, we have to get rid of the old programs that may once have done an excellent job, but are no longer necessary. We must make room for new initiatives to meet problems in the months and years ahead and to meet the new problems involved in a constantly expanding and increasingly complex Federal Government.

For example, according to the Institute of Socioeconomic Studies, there are approximately 182 different income transfer programs in existence today. These 182 programs account for $248 billion of Federal expenditures each year.

The problem is that there are so many of these programs, and their size is so great, that it is nearly impossible to keep track of them, making it much easier for those who would defraud the Government and waste tax dollars.

As a matter of fact, it has just come to my attention, I would point out to the Senator from Maine, that there is one company, the Instant Learning Co. of New York, that sells a book which is guaranteed to allow a purchaser to "qualify for a minimum of $500 in Government checks this year alone, or you don't pay us a penny."

If true, that is a sad commentary, because the purpose of Federal programs is not to make $500 available to everyone, but to satisfy some basic needs of this country; and, of course, in the case of income transfer programs, we are trying to help those who are without, and not to help those who are interested in exploiting Government programs.

Federal assistance to State and local governments is a very big part of Federal program expenditures, and it has become very important to the health of our Federal system.

There are presently almost 450 funded categorical grants, five block grants, and the general revenue sharing programs, all of which were designed to give Federal assistance to State and local governments for many different purposes. These grants will add up to over $80 billion worth of Federal expenditures

this year or a tenfold increase since 1960. Nearly 2,000 substate regional bodies, over 18,000 school districts, more than 25,000 local governments, 3,000 counties, and 50 States are affected by our Federal assistance system.

I think it is fair to say that we cannot continue to rely on the existing haphazard congressional oversight process to deal with a system as complex and crucial to American federalism.

The sunset bill has as one of its underlying premises the assertion that the American taxpayer has a right to know how his tax dollars are being spent.

When I was elected to the House I compiled a catalog of all the Federal assistance programs operated by the Federal Government. This was the first attempt to compile such a list and it forms the basis for later efforts to improve the information provided by the Government to its citizens. Following on these initial efforts I introduced the Federal Information Act and worked on the sunshine reforms. All of these initiatives were designed to improve the information and expose more fully the operations of the Federal Government to its citizens.

Sunset will give the Congress an improved and systematic evaluation of programs. It will make us ask the administrators of programs not just, "How and where did you send your money?" but also, "How well did you spend your money and in what way did you achieve the goals your programs were designed to fulfill?"

In other words, the Muskie-Roth sunset bill would end the unspoken rule that moneys spent on a program in 1 year must be continued or increased in the following year. The Muskie-Roth sunset legislation will provide a means of identifying overlapping, conflicting, or poorly administered jobs.

One of the most valuable aspects of the sunset legislation is that it intends to require similar programs to be reviewed at the same time so that the Congress will be evaluating these different programs to determine which are better achieving the goals and which are less effective. Then we can get rid of the inefficient programs and can concentrate on those that are doing the role that we intended them to.

Currently many Government programs absorb huge amounts of available funds in administrative costs and overhead. For example, grant programs, such as a water supply research grant, absorb almost 28 percent of available funds in administrative costs. Only through a sunset process can such wasteful and inefficient programs be identified and improved.

I think it is worthwhile once again to emphasize that we are really trying to give better services for the taxpayers' dollars. We are not trying to deprive or eliminate those programs that are fulfilling their purpose, but we are trying to make the Federal Government more efficient in meeting the problems of today.

Presently it has to be admitted that many programs are reviewed rarely if at all by the Congress. Because of the lack of periodic review, fraud is more likely to occur. Estimates of the amount of money lost through fraud, waste, or theft are as high as $25 billion a year, and the public is becoming increasingly impatient at the failure of Congress to do something about this problem.

I should point out that $25 billion, whether one believes the Federal Government should be spending it or whether it should return to the taxpayer, is a very sizable fund of money and we cannot sit back and say, "Well, it only amounts to 4 or 5 percent, why worry about it?" Muskie-Roth sunset legislation will force the Congress to look at virtually every Federal program on a regular basis. This review will reduce the waste, fraud and theft.

Mr. President, earlier this week, I included a fairly comprehensive statement on the sunset legislation which details in large part how the legislation would work and why it is necessary. I shall not reread that statement but ask that it be printed in its entirety as part of the RECORD at this point.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT

Mr. President, there are few more pressing needs facing this Congress than to strengthen the control we exercise over spending for federal programs. The American public deserves and will be satisfied with nothing less than careful scrutiny over every program expenditure. I am convinced that we must adopt procedures to assure that the operations of the federal government be periodically reviewed and measured against tough standards of performance. The taxpaying citizens of this nation are demanding stronger controls over our vast national budget and expanding national debt and I believe that the carefully crafted processes we have set forth in S. 2 will help us to exercise such control.

More than two years ago, I authored a proposal with Senator Muskie to confront the need for tighter control over our national budget. Several years ago our bill—S. 2925—became known as the Sunset bill because, under the procedures in the legislation, the "Sun" would set on outmoded, inefficient or poorly functioning government programs. The authorizations for nearly every government program would automatically terminate after ten years unless a convincing case was made that the program was satisfying its objectives at reasonable cost. No longer would some government programs be continued with a wink of the eye and a pat on the head from the gentle Congressional father.

The Sunset process is meant to insure that the Congress exercises its oversight responsibilities in a tough and thorough manner.

Mr. President, the Congress must recognize the urgent need to restore fiscal responsibility to government spending. In a scant ten years, our federal budget has increased from $158 billion to nearly $500 billion. Interest alone on the national debt will cost over $54 billion dollars next year. In the Department of Health, Education & Welfare, over $500 million is spent each day. In fact, the federal government has become so complex that it takes more than a scorecard to tell the players apart and to keep a close watch on each one. It takes a well designed and carefully balanced system, such as that proposed in S. 2, to follow the players in the complex federal establishment.

The real complexity of the federal government can be clearly seen by taking a look at the federal assistance and grants process, particularly federal grants to state and local governments. The federal grants system is one with which I am very familiar and it is an area in which I have worked for many years.

As of January 1, 1976, there were 441 funded categorical grants, 5 block grants and the general revenue sharing program, all of which were designed to give federal assistance to state and local governments for many different purposes. These grants will add up to over $80 billion worth of federal expenditures this year—a tenfold increase since 1960. As a percentage of the federal budget, federal aid has more than doubled—from 7.6% in 1960 to an estimated 17.4% in fiscal year 1978. Federal aid accounts for about 25% of state budgets and an even larger share of local budgets. In short, federal assistance to state and local governments is a big part of federal expenditures and is extremely important to the health of our federal system.

And yet, the system of budgetary checks and balances to administer and control the expenditure of these funds is woefully antiquated. Without a continual and systematic examination of these many grant programs, how can the Congress expect to eliminate the waste and overlap which occurs in such areas as pollution control in which there are 23 different grant programs or elementary, secondary and vocational education where 78 separate grant programs are to be found? How can the federal assistance system, which affects 2,000 substate regional bodies, over 18,000 school districts, more than 25,000 local governments, 3,000 counties and 50 states, be rationalized and improved without the functional and subfunctional comparisons which S. 2 provides? Can we continue to rely on the existing haphazard Congressional oversight process to deal with a system as complex and crucial to our American federalism as this? Only with the procedures provided for in the Sunset bill can we ever hope to begin to grapple with the overlap, duplication and confusion existing in our federal grants system as well as in other areas of federal expenditure.

Let me review for a moment more fully the case for comprehensive spending reform. The sunset bill which we are considering today is familiar to most of my colleagues. During the last Congress, 58 Senators endorsed the government economy and spending reform act of 1976 in principle and agreed to co-sponsor the legislation. More than half of my colleagues again co-sponsored the successor to that bill, S. 2. It is clear that many here in Congress recognize the need for the adoption of a systematic and comprehensive oversight system and have supported S. 2 as the means of providing such a system.

The reforms contained in the Sunset Act of 1978 follow on the efforts begun by the passage of the "Sunshine" reforms and together these reform efforts represent a major breakthrough in the methods by which the government conducts its business. The basis of these reforms is that all areas of government business ought to be open to full public scrutiny as a matter of right. The sunshine reform was a first effort to win acceptance of the principle that meetings in the departments, agencies and the Senate itself should be open to the public as a general rule. The taxpayers have a basic right to know how their elected representatives and their agents in the departments take care of the public's business.

The Sunset bill before us today carries the reforms made under Sunshine still further and establishes the principle that every government program must be open for review at least once every ten years and prove its worth before being continued. Not one dollar of federal spending should be sealed from

public scrutiny. There should not be any "Sacred Cows" when it comes to showing the effectiveness of federal programs. In short, the Senate bill, when added to the reforms made under the Sunshine Act, makes the Congress more accountable to the citizens for the spending habits of the federal government. And with a bureaucracy as large as that at the federal level, real accountability is often lacking.

The Sunset bill is also consistent with the reforms in fiscal management and the budget process which we developed with the Budget Reform and Impoundment Control Act of 1974. The budget process establishes a procedure to set national spending totals and to keep outlays for spending functions within that ceiling.

However, the budget process provides no fiscal control over the many separate parts of the budget. Congress cannot maintain adequate discipline over the budget as a whole unless it can exert control over spending among the pieces and segments.

The heart of the Sunset process is a careful review of spending for programs grouped together by function and subfunction to assure that effective programs will continue and that ineffective programs are terminated.

The reforms mandated by the Budget Act gave us a better look at total federal spending. Sunset will give us an improved and systematic evaluation of program effectiveness. It will make us ask the administrators of programs not just "How and where did you spend your money?" but also "How well did you spend your money and in what ways did you achieve the goals your programs were designed to fulfill?"

S. 2 would drastically change many of the assumptions made about the way Congress spends the tax dollars of our citizens. It would end the unspoken rule that money spent on a program in one year must be continued or increased in the following year. There would be no permanent budget authority for spending which places government programs effectively beyond thorough periodic review. A new rule of program spending would be adopted: Only after a program is shown to be cost-effective and achieving its objections, will it be renewed.

There is always the risk, of course, that the proposed Sunset process will be too rigid. The termination and review cycle in S. 2, however, provides a firm schedule for review, yet retains flexibility for Congressional Committees in the performance of their oversight role. The Sunset process we have devised establishes an action forcing mechanism that demands periodic review but permits committees to exercise considerable discretion in the manner in which such reviews are carried out.

Another concern raised regarding S. 2 is the increased workload it may thrust upon Congress. While it is true that the Sunset Bill will force Congress to work harder to fulfill its oversight role, the argument that the procedures mandated by Sunset will overburden Congress is a tacit admission that there have been too many conflicting, confusing and overlapping programs enacted for Congress to keep track of. The concern over work load argues even more forcefully for adoption of a systematic and continual oversight process, such as that contained in S. 2.

Mr. President, it is evident that public confidence in the federal government is very low. Recent polls indicate that Americans believe that the Federal Government is the most wasteful in its spending habits of all the levels of government. With evidence that nearly $50 billion is lost each year in federal programs through mismanagement and fraud, it is hardly surprising that the taxpayers feel this way.

Public attitude surveys have consistently shown a slowly declining confidence in government among our citizens. There is widespread concern that government over-promises, and then fails to deliver. And there is a general perception that Washington mismanages and spends irresponsibly.

Mr. President, the Congress must implement changes in its oversight procedures to enable it to meet head-on the problems of a federal government which has become incredibly complex and which spends more money each year than any nation in the world, except Russia, produces in GNP.

Our failure to manage our budget resourcefully to achieve program goals is a serious national failing. The Congress must fulfill its responsibility to the American people by confronting this problem and narrowing the gap between government performance and public expectation. The public has a right to expect its government to be wise and frugal with its tax dollars.

The unmet promises of government programs reduce the credibility of Congress and the confidence of our citizens in their government. I urge my colleagues to enact the procedures contained in the Sunset Bill for only when we accept the responsibilities mandated by S. 2 can we hope to restore the people's trust in their government and their faith in our nation's future.

Mr. ROTH. Mr. President, I would close my remarks by just reemphasizing that what we seek to do here is to provide better services at less cost. We have a proposal that I strongly believe can be supported by people of all political persuasions, because what we are seeking to achieve is efficient solutions to the problems of today.

I yield to the Senator from Maine.

Mr. MUSKIE. At this point I yield to my good friend from Texas (Mr. BENTSEN), who is the sponsor of one of the amendments referred to in the unanimous-consent agreement.

I know the Senator is tied up in conference and I am delighted to yield to him at this point to bring up his amendment.

Mr. BENTSEN. I thank the distinguished Senator from Maine for his courtesy in accommodating to the task I have in chairing a conference that is taking place with the House.

The PRESIDING OFFICER. The Senator from Texas.

UP AMENDMENT NO. 2052

Mr. BENTSEN. Mr. President, I send to the desk the amendment I am offering and I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN) proposes an unprinted amendment numbered 2052.

Mr. BENTSEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In section 504—

(1) insert "(1)" immediately after "(a)";

(2) redesignate subsections (b), (c), and (d) as paragraphs (2), (3), and (4), respectively; and

(3) add the following new subsection at the end thereof:

"(b)(1) On or before October 1 of the year preceding the Congress in which occurs the reauthorization date for a program, the President, with the cooperation of the head of each appropriate agency, shall submit to the Congress a "Regulatory Duplication and Conflicts Report" for all such programs scheduled for reauthorization in the next Congress.

"(2) Each such regulatory duplication and conflicts report shall—

"(A) identify regulatory policies, including data collection requirements, of such programs or the agencies which administer them, which duplicate or conflict with each other or with rules or regulations or regulatory policies of other programs or agencies, and identify the provisions of law which authorize or require such duplicative or conflicting regulatory policies or the promulgation of such duplicative or conflicting rules or regulations;

"(B) identify the regulatory policies, including data collection requirements of such programs which are, or which tend to be, duplicative of or in conflict with rules or regulations or regulatory policies of State or local governments;

"(C) contain recommendations which address the conflicts or duplications identified in subsections (A) and (B).

"(3) The regulatory duplication and conflicts report submitted by the President pursuant to this subsection shall be referred to the committee(s) of the House of Representatives and the Senate with legislative jurisdiction over the programs affected by the reports."

Mr. BENTSEN. Mr. President, the amendment I am offering today is based upon S. 3263 which I introduced on June 29, 1978, and which has five cosponsors, Senators HUMPHREY, GARN, HAYAKAWA, INOUYE, and PAUL HATFIELD. This legislation is the result of extensive hearings which my Subcommittee on Economic Growth and Stabilization of the Joint Economic Committee held in April to investigate the impact of the explosion of Federal rules and regulations on American business, consumers, and taxpayers.

The hearings uncovered numerous outrageous examples of businessmen, particularly small businessmen, who confront the impossible situation where complying with one regulation requires violating another. This problem serves to diminish entirely what little credibility the Federal Government has left in our country.

My amendment is designed to help eliminate the irrationality of conflicting or overlapping regulatory policies.

Today, we have some $105 billion worth of costs that are passed on to the American consumers. That is $500 for every man, woman, and child in this country.

Mr. Bosworth, of the Council of Wage and Price Stabilization Commission, stated we have at least another $37 billion worth of those regulations in the pipeline.

Now, what this legislation does is complement the very fine job done by the Senator from Maine in crafting an excellent piece of legislation, sunset legislation.

This has been drawn to mesh with his program.

Under the proposed legislation, the President is required to prepare and submit a regulatory duplication and conflects report to Congress for each program at the time it is subject to congressional review and reauthorization under S. 2.

The report shall:

First. Identify regulatory policies which result in duplicative or conflicting rules or regulations within the same or other programs.

Second. Identify Federal regulatory policies which result in rules or regulations which duplicate or conflict with those of State and local governments.

Third. Identify the provisions of Federal law which authorize or require such duplicative or conflicting regulatory policies.

Fourth. Make recommendations to resolve conflicts between regulatory policies.

Fifth. Make recommendations to resolve or eliminate duplication between those policies.

Sixth. The President's recommendations are scheduled to be available to congressional committees when they are subjecting Federal agencies and programs to reauthorization as provided in S. 2.

My amendment would help to insure that the congressional committees which are charged with the responsibility of reauthorizing Federal programs will focus on the regulatory implications of those programs to eliminate overlapping or conflicting regulatory policies in the process of renewing them. Certainly, one index of the value of a Government program is whether it has produced Federal rules or regulations which run head-on into or overlap with other rules or regulations of other Federal or State and local programs.

My amendment is carefully crafted to complement the process established by the historic legislation drafted by the very able Senator from Maine and his distinguished colleagues. It is intended to put an end to absurd situations like that described by the president of a small food processing firm who testified during our hearings that—

The United States Department of Agriculture requires that our kitchen floors be washed repeatedly for sanitary purposes, yet the Occupational Safety and Health Administration rules require that floors must always be dry. What is a man to do?

That is the kind of issue which the Congress should be forced to address as it decides the litmus tests a program must pass in order to be continued—my amendment is designed to see to it that Congress does indeed address the issue of conflicting and overlapping regulatory policies as an integral part of the process of deciding whether or not to give a Federal program a new lease on life.

There really is not much sense in offering programs unless we understand the impact and the conflicts that are going to be set up and what is going to happen to people who try to comply with them.

We had the situation of one man who testified before our committee, who said that the U.S. Department of Agriculture requires that the kitchen floors of his small food processing establishment be washed regularly, daily. He said, on the other hand, that the Occupational Safety and Health Administration rules require that his floors remain dry all the time. He said:

What is a law-abiding citizen supposed to do in this kind of circumstance?

This is what we are trying to do: We are trying to assist the private citizen in knowing what the regulation is, to try to avoid the conflicting regulations, and cut back on some of the redtape.

Mr. MUSKIE. Mr. President, I know that the Senator has pursued this objective a long time. He introduced separate legislation to that end, and we have worked with him closely in working out this amendment so that it would conform to the context of the sunset legislation.

I am delighted to accept the amendment. There is no disagreement with it on the part of anyone on the committee.

Mr. BENTSEN. I thank the distinguished Senator and the leader for the minority in accepting this proposal.

The PRESIDING OFFICER. Is all time yielded back?

Mr. MUSKIE. I yield back the remainder of my time.

Mr. BENTSEN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, Senator Percy, who has two amendments to the bill, is on his way to the floor.

Pending his arrival, I yield to Senator ROTH.

The PRESIDING OFFICER. The Senator from Delaware.

UP AMENDMENT NO. 2053

Mr. ROTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Delaware (Mr. ROTH) proposes an unprinted amendment numbered 2052.

Mr. ROTH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 29, insert the following: a new paragraph (5) and on page 29, line 1, renumber "(5)" to "(6)" and on line 4 renumber "(6)" to "(7)". The new paragraph is as follows:

"(5) An assessment of the cost effectiveness of the program, including where appropriate, a cost-benefit analysis of the operation of the program."

Mr. ROTH. Mr. President, I am submitting this amendment to strengthen the requirements of the in-depth program reexamination.

My amendment will force the appropriate committees to report on the effectiveness and benefits of the program in terms of dollars.

The assessment of cost-effectiveness will require the committees to ascertain which of alternative methods of achieving a given goal is the least costly.

The cost-benefit analysis of a program will show its aggregate costs and its benefits to the economy, the taxpayer, and the society.

In essence, my amendment will make the committees analyze how well the money for a program is being used.

Mr. MUSKIE. Mr. President, we have, of course, discussed this amendment together. It is, I think, a very valuable addition to the bill. I am willing to accept it. I yield back the remainder of my time.

Mr. ROTH. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MUSKIE. I yield to the distinguished junior Senator from Iowa to call up his amendment.

UP AMENDMENT NO. 2054

(Purpose: To add a foresight provision to the program re-examination procedures)

Mr. CULVER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. CULVER) proposes an unprinted amendment numbered 2054:

On page 29, after line 2, insert the following:

(2) An identification of any trends, developments, and emerging conditions which are likely to affect the future nature and extent of the problems or needs which the program is intended to address and an assessment of the potential primary and secondary effects of the proposed program.

On page 29, renumber paragraphs (2) through (6) as paragraphs (3) through (7), respectively.

Mr. CULVER. Mr. President, this amendment would add a "foresight provision" to the procedures in the sunset legislation for periodic, comprehensive reexamination by congressional committees of programs under their jurisdiction. The report required by these procedures now must include, to the extent deemed appropriate, such items as the objectives intended for the program, an estimate of the number and types of persons served by the program, and an assessment of the relative merits of alternative approaches which might achieve the same purposes.

Mr. President, my amendment would add to that list of requirements an identification of any trends, developments, and emerging conditions which may affect the future nature and extent of the problems or needs which the programs are intended to address. It would also ask committees to assess the potential primary and secondary effects of the programs under review.

Mr. President, the purpose of this amendment is to sensitize Congress in general, and in particular the committees with jurisdiction over various subject areas, to the necessity of anticipating future technological, social, economic and other changes and of preparing to deal with approaching problems before they grow into emergencies.

It is clear to me after 14 years in

Congress, that on the one hand, we have not done a decent job in fulfilling our oversight responsibilities, on the other hand with very, very few exceptions, we have not done any job at all in terms of anticipating future needs and requirements for public policy. More often than not, when a public policy problem comes to our attention, it strikes us from the blind side; we are constantly reacting to emergency conditions. We often are reacting with obsolete data by the time we act. We get it too late, we never look to see how it is working, and we develop constituencies that keep up doing the wrong thing indefinitely.

Mr. President, we live in a time of unprecedented, accelerated change. Our margin of error is not what it once was, our resources are finite, not infinite, and there are interdependent ramifications of whatever we do. So I think it is increasingly imperative that when we consider legislation, we try to recognize trends and developments to the extent possible, and try to make available data as to the long-term consequences and implications of various problems and policy options.

This amendment, then, would add to that list of requirements in the bill an identification of any trends, developments and emerging conditions which may affect the future nature and extent of the problems or needs which the programs are intended to address.

Mr. President, if we take just the example of the baby boom in America, suddenly, we wake up and see we have a population explosion. So suddenly, we decide to start building schools and training teachers. We continue building all these schools and training all these teachers and nobody notices that demographics no longer dictate those activities at that level. But we build up such a head of steam that we do not slow down until we have ourselves mortgaged to the hilt.

It is just like the apple going down the neck of the ostrich. We miss it when we talk about building schools, we miss it when we talk about building job opportunities for the cohort of increased population when it is eligible for the work force. We do not anticipate that need. And when we do react, we maintain our efforts after they have ceased to be useful and create new problems.

We build too much; we have no plans for cutting back or adjusting. Now we should ask, in the mid-1990's, when this population is in the middle age, what will we have done to prepare for that stage of this population bulge.

Mr. President, the accelerating rate of change in recent years has too often thrust upon us problems ranging from the energy crisis to urban unrest before we were capable of responding to them. In addition we have learned that our own society and the world as well are characterized by the increasingly interrelated nature of problems. Decisions which we make today in transportation or agriculture, for example, will impact not only on those areas but may also affect the shape and safety of the communities in which future generations will live and even life and death in distant lands.

I am hopeful, Mr. President, that when we involve ourselves in such an exercise of trying to better anticipate long-term policy requirements, we have the appropriate coordination among our overlapping functional jurisdictions to avoid tunnel vision. We need to be alert to one policy decision overlaps and impacts on neighboring ones.

This amendment will thus encourage the Senate to look ahead—to the extent that it is feasible to do so, in order to get in front of the curve and take timely action on these and other matters, we cannot afford simply to rush into the future, looking into a rearview mirror.

It is altogether appropriate that the Senate should take this action. In so doing, this body would only be acknowledging the value of developing a capacity which is routinely utilized by most other modern institutions. Business corporations and major universities regularly forecast and plan for developments in their areas of concern in order to have the most advantageous competitive position. In my own State of Iowa, at least 10 other States, and a number of localities, citizens have organized groups to choose the kind of future in which they wish to live and to initiate steps to achieve it.

We got it started in our own State as a result of an initiative I proposed in January 1972, to set up a conference on the future for our State. It has been going every year since. We have had about 50,000 citizens participating in it, setting goals and objectives for our State so we can better help shape and choose the kind of future in which we want to live, to initiate the necessary steps as to how we get there from here.

In addition, the Office of Science and Technology of the National Conference of State Legislatures has called foresight an "interlocking function" with both oversight and sunset and is studying additional possibilities for action. The House of Representatives as part of its rules, since 1974, has assigned to its standing committees the responsibility of undertaking "futures research and forecasting on matters within (their) jurisdiction".

As a Member of the House in 1972 and 1973, when we studied committee jurisdictions, this foresight provision was one which I proposed that was accepted by the House of Representatives. At least a score of other nations—of all political philosophies—have formed "futures" organizations, ranging from small advisory groups to powerful departments to assist them in forecasting and planning functions.

Mr. President, the idea that the Senate should improve its capacity to anticipate problems is not mine alone. The Commission on the Operation of the Senate, after its studies of the issue, recommended that we act to make improvements in this crucial institutional capability.

I believe that adding this future-oriented requirement to the sunset bill—which already requires committees to evaluate the past performance of Federal programs and to assess their present merits—is a logical corollary to this important legislation.

I thank the floor managers of this bill for affording me the opportunity to present this amendment. I hope they find it possible to accept it.

Mr. MUSKIE. Mr. President, before we proceed further, may I ask for the yeas and nays on passage of the bill?

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MUSKIE. Mr. President, in response to the amendment offered by the distinguished Senator from Iowa, I have had a chance, of course, to study it. I find it a most appropriate addition to the six review elements in the bill which any committee must follow in conducting an in-depth examination of a program. I know that Senator CULVER has made a theme, in his career in the Senate, of the objective of getting ahead of the curve and anticipating changing conditions before they become emergencies. That is an important objective. I could not agree with him more that, all too often, we are looking in the rearview mirror instead of ahead and, oftentimes, we are looking down at the floor of the car instead of at what lies ahead.

That is because of the pressure of problems arising out of the past with which we are still dealing. It is to hopefully refocus our attention on the need to try to anticipate the future that he has offered this amendment.

I am delighted to accept it. I have no objection to it.

Mr. CULVER. I thank the distinguished chairman.

Mr. ROTH. Mr. President, I, too, congratulate the distinguished Senator from Iowa for offering this amendment.

I think it is important that we spell out with particularity that in evaluating programs we look ahead to attempt to determine what the future needs and impact will be.

For that reason, I am pleased to accept the proposed amendment by the Senator from Iowa.

Mr. MUSKIE. I will yield back the remainder of my time.

Mr. CULVER. Mr. President, if I could just express my own admiration for their dedication to the sunset approach to both the floor manager of this legislation and to the distinguished minority floor manager.

I have been privileged to be a cosponsor under the leadership of the Senator from Maine of this legislation. I cannot think of anything more important to the more effective operation of this institution than to strengthen and increase our ability to perform responsibly, both oversight, and foresight functions. I think it is crucial to more effective performance of our responsibilities.

I want to express my admiration to him and to the Senator from Delaware for their persistence in insisting that this is far too important for Congress to ignore any longer, and for the long, hard fight that led to this day and, I hope, favorable action on the matter.

Mr. MUSKIE. I yield back the remainder of my time.

Mr. ROTH. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Iowa.

The amendment (UP No. 2054) was agreed to.

Mr. MUSKIE. Mr. President, the distinguished Senator from Nevada, as a former chairman of the Rules Committee, has had occasion to study this whole idea extensively over the past 3 years.

He has been most considerate of our attempts to get hearings when he was almost overwhelmed by the work of the Rules Committee.

I am most appreciative of it. At this time I am happy to yield for whatever statement he wishes to make.

Mr. CANNON. I thank the Senator for yielding.

Mr. President, I have closely followed the development of this legislation through its hearings before the Governmental Affairs and Rules Committees, and I appreciate and share Senator MUSKIE's objectives in his work on this bill. I have been, and continue to be, a supporter of the principle behind sunset—that is, that our programs should be working to fulfill their objectives and the needs of the American public. We should eliminate unnecessary waste and needless expenditure of our citizens' tax dollars.

I expressed strong opposition to the bill in the form which was reported by the Senate Rules Committee because I believed that it contained serious deficiencies which would have resulted in the abrogation of congressional responsibilities to the executive branch; that it would have served to wrest responsibilities for programs from the authorizing committees, to which the congressional system has delegated such responsibilities; and that procedural aspects of the bill were too burdensome.

I believe that the emphasis of the Congress in acting on this "sunset" concept ought to be one of review and reauthorization, rather than termination. We need to evaluate our programs to see where their deficiencies lie. If indeed a program has outlived its usefulness, then we should consider ending the program. More likely than this prospect, however, is that a program needs some fine tuning to bring it to the realization of its goals.

As I understand it, Mr. President, this substitute to S. 2 requires that all Government programs (with a limited number of exceptions) be reviewed and reauthorized at least once every 10 years, according to a schedule. There must be such an authorization for the program before funds could be appropriated. There would no longer be permanent appropriations or authorizations. In conjunction with its reauthorization activity, each congressional committee would review all programs under its jurisdiction, and submit a review report to the Congress. So as to help a committee identify and keep track of the programs under its jurisdiction, a program inventory will be established and maintained.

Along with this ongoing review of programs, a committee shall select particular programs for comprehensive review, and will submit its plans for intensive review together with its funding resolution in the first session of each Congress. Finally, the substitute provides simplified procedures which will help insure against inadvertent termination by continuing a program for an additional year in the event that procedural or other considerations have delayed the statutory reauthorization.

The action-forcing mechanism in the bill continues to create problems for me. I fear that automatic termination is a dangerous approach. It assumes that a program is invalid—that is, that a program must be revalidated in order to continue, rather than reviewed and reauthorized.

The mechanism raises questions regarding the soundness of the congressional process, since beginning with a "negative" posture and then making that stance positive seriously questions the initial congressional decision, and may produce distrust of future congressional enactments. This is certainly not what review and reauthorization are intended to accomplish.

Automatic termination may reawaken old policy issues, so that the question under discussion in Congress would not be the merits or current operation of a program, but rather the actual existence of a program—a battle which had already been fought and won.

Additionally, automatic termination could mean inadvertent termination. Even with the significant changes in the substitute before us—and I believe the substitute does reduce the danger of inadvertent termination—a program might not be able to be considered for a variety of reasons, including dilatory or strategic maneuvers, thereby perhaps ending the life of a very worthwhile and productive program. I am concerned about this mechanism and its implications.

In my dissenting views to the Rules Committee report on this bill, I stated that I was not convinced that the "emergency" procedures in title V of the bill adequately addressed my concerns that procedural floor games might prevent a bill from being considered.

There were no provisions that insured that a measure would come to the floor, and a filibuster or protracted debate could have ended a program. Fortunately, I am pleased to see that the substitute goes far in answering my concerns in this area. The provisions regarding consideration of this emergency measure are substantially tightened. The 50 hours of debate on the regular authorization measure required by S. 2 before introduction of an emergency reauthorization has here been reduced to 15 hours, a much more satisfactory requirement. Also, streamlined measures have been incorporated to help assure that such an emergency reauthorization will be considered by the Senate prior to termination. Although I have reservations as to whether any procedures can adequately insure against the possibility of inadvertent termination, I am pleased that this section has been streamlined so as to make it far more workable than it was.

In another area, Mr. President, S. 2, as reported, contained language which indicated that the review which a committee was to perform had to contain information sufficient "to permit a determination as to whether the program or the laws affecting such program should be continued without charge, continued with modifications, or termination." I thought that this language could have negated an earlier amendment, which had allowed an authorizing committee to determine the nature of its review. Under the language of the bill, as reported, the Parliamentarian would have been in a posture of deciding what was "sufficient."

I am pleased to note in this substitute that the Parliamentarian need only certify the inclusion in the committee's report accompanying an authorization for new budget authority of a section containing the committee's recommendations regarding the program. The authorizing committee's position is strengthened by this amendment, and I support this change.

I was also apprehensive that the title II inventory provisions of S. 2, as reported, might somehow be construed as dictating to a committee how and in what manner of groupings its reviews were to be done. Under the reported bill, this inventory of programs within a committee's jurisdiction was to be compiled by the General Accounting Office, and appeared to direct the manner by which committees would conduct their review processes. The substitute makes a substantial clarification of title II in S. 2, for it specifies that this inventory is only to be a working document for a committee, not a binding document to which a committee must adhere.

Since the purpose of the inventory always has been to let a committee know what programs it has under its jurisdiction, and to assist a committee in its review functions, I am glad to see that the language of section 201(b) now specifically states that:

> The purpose of the program inventory is to advise and assist the Congress in carrying out the requirements of titles I and III. Such inventory shall not in any way bind the committees of the Senate or the House of Representatives with respect to their responsibilities under such titles and shall not infringe on the legislative and oversight responsibilities of such committees.

Another aspect of S. 2, as reported, which troubled me was the inflexibility of the review schedule. This schedule could only be changed by the enactment of a law—which ran the risk of a Presidential veto. Under S. 2, as reported, such a veto could have imposed on an authorizing committee a schedule which both the committee and the Senate did not believe to be desirable. I support the change which appears in this substitute, except for the Percy amendment, namely, that—except for changes affecting permanent appropriations—the schedule can be changed by concurrent resolution, and thereby can avoid the danger of a Presidential veto. This should allow the Congress to evaluate and review the schedule for review and reauthorization which we have imposed on ourselves.

In summary, Mr. President, I support the changes which have been made in this amended version of S. 2. I believe that these improvements go a long way toward resolving my concerns. They recognize the expertise and jurisdiction of the authorizing committees of the Congress in a way in which S. 2 did not. The prospect of termination through procedural delays has at least been ameliorated. The authorizing committees now will perform the review to the extent which they determine necessary; this seems only logical, since Congress has vested in its committees the responsibility for the day-to-day oversight of its enactments. While I continue to have serious questions and doubts about the advisability of the termination mechanism, I believe that the Congress needs to improve its own review procedures. If automatic termination turns out to be as dangerous as I fear, then we of course will come back and amend this statute. However, at this time I will reluctantly support this version, and to maintain a vigil over its enforcement, except, Mr. President, for the Percy amendment, which I understand may be offered, and it seems to me it goes too far.

I am hopeful that it will result in more effective decisionmaking on our part, and it is toward that end that I will vote to support S. 2 as amended—mostly because of its move in the direction of review, and not so much because of its approach.

Mr. MUSKIE. Mr. President, I thank my good friend from Nevada.

Mr. President, I yield to the ranking Republican member of the full Governmental Affairs Committee. Senator PERCY has followed this legislation closely, as a cosponsor, and an original sponsor of a similar piece of legislation dealing with regulatory reform.

I yield to him for whatever statement he wishes to make and for the purpose of calling up amendments which he has to the bill.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, I thank my distinguished colleague and I will be offering two amendments to the bill.

UP AMENDMENT NO. 2055

(Purpose: To require a comprehensive sunset review for 16 major regulatory agencies, commencing with an analysis of regulatory need, by the President, together with his recommendations for reform)

Mr. PERCY. Mr. President, I send an unprinted amendment to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY) proposes an unprinted amendment numbered 2055.

Mr. PERCY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 39, line 10, insert the following: Redesignate title V as title VI and add the following new title V to be entitled: "Regulatory Impact."

SEC. 501 (a) The Congress finds that the Government regulation can at times be more of a burden than a benefit to American consumers, American businesses, and to the American economy as a whole.

(1) Regulatory policies often have contributed to inflation through approval of regulations not commensurate with the public interest, frequently without due consideration of the relative costs and benefits involved in such decisions, without due consideration of the competitive impact of such decisions, or without adequate provision for public participation in such decisions.

(2) Some regulatory policies harm both industry and consumers by denying businesses the chance to compete and by depriving consumers of the lower prices and diversity of services that greater competition can present.

(3) Too often, regulatory agencies have neglected critical economic issues, and failed to set clear priorities, articulate cogent policies, or to integrate planning into operational functions. As a result, certain agencies have fostered a pattern of red tape, stagnation, and waste, which has led to public frustration and confusion.

(4) Frequent use of inefficient after-the-fact case-by-case adjudication, rather than general rulemaking, by most regulatory agencies has burdened business with excessive paperwork and unreasonable delays, impaired the ability of many industries to adopt to changing market conditions and beneficial new technology, and contributed to price rises, inefficiencies, and misallocations of resources.

(5) By consistently failing to take consumer and business interests adequately into account and by arbitrarily limiting the operation of the free enterprise system, regulatory agencies too often have poorly served the public interest in disregard of their congressional mandates.

(b) (1) It is the purpose of this title to require over a period of ten years the President to submit at least once in each Congress, and to encourage the Congress to act upon, a plan designed to prevent unnecessary or harmful regulation which has led to inflationary consumer prices, a reduction of competition in the providing of important goods and services, and other economic inefficiencies that disrupt the operation of a free enterprise system without correspondingly benefiting the health, safety, or economic welfare of the Nation.

(2) It is the further purpose of this title to require that regulation by the Federal government be systematically and comprehensively reviewed and modified so as to assure that such regulation, where it is necessary, is aimed at and structured to achieve substantial benefits to the Nation exceeding the costs thereof, and toward this end, that each regulatory agency perform its mandated responsibilities in the most effective and least dilatory and costly manner so as to maximize the intended benefits to the Nation.

AGENCY REFORM PLANS

SEC. 502. (a) Not later than the first day of February in the first session of the 97th Congress, the 98th Congress, the 99th Congress, the 100th Congress, and the 101st Congress, the President shall submit an analysis containing the information required to be included under subsection (b) and the President shall submit a legislative plan containing the information called for in subsection (c) as follows:

(1) By April 1, 1981, a plan with respect to regulation of securities, trade practices, banking and finance, and communications matters by the following agencies:

(a) Securities and Exchange Commission
(b) Federal Trade Commission
(c) Office of Comptroller of the Currency
(d) Federal Deposit Insurance Corporation
(e) Federal Communications Commission

(2) By April 1, 1983, a plan with respect to regulation of surface transportation and safety matters by the following agencies:

(a) National Highway Traffic Safety Administration
(b) Interstate Commerce Commission

(3) By April 1, 1985, a plan with respect to regulation of environmental, occupational, and food and health safety matters by the following agencies:

(a) Food and Drug Administration
(b) Consumer Product Safety Commission
(c) Environmental Protection Agency
(d) Occupational Safety and Health Administration

(4) By April 1, 1987, a plan with respect to regulation of air transportation matters by the following agencies:

(a) Civil Aeronautics Board.
(b) Federal Aviation Administration

(5) By April 1, 1989, a plan with respect to regulation of energy and maritime transportation by the following agencies:

(a) Federal Maritime Commission
(b) Federal Energy Regulatory Administration
(c) Nuclear Regulatory Commission

(b) An analysis submitted by the President pursuant to subsection (a) shall contain the following information with respect to agencies or designated units thereof which are referenced in paragraphs (1) through (5) of subsection (a).

(1) the purposes for which each agency was established;

(2) significant changes which have occurred in the areas regulated by each agency, the impact of such changes on the effectiveness of the agency, and the continued appropriateness of those original purposes;

(3) the net impact of the agency and the degree to which it has accomplished its purposes;

(4) the timeliness of agency decisionmaking;

(5) the cost-effectivenes and efficiency of the operations of each agency;

(6) the extent to which agency actions may contribute to inflation; and

(7) consideration of practical atlernative approaches to achieving presently demonstrated regulatory needs.

(c) A legislative plan submitted by the President pursuant to subsection (a) shall include specific legislation following up on the analysis earlier submitted by the President with respect to agencies or designated units thereof which are referenced in paragraphs (1) through (5) of subsection (a), and may include—

(1) recommendations for the transfer, consolidation, modification, or elimination of agency functions;

(2) recommendations for organizational, structural, and procedural reforms;

(3) recommendations for the merger, modification, establishment, or abolition of agencies or their enabling legislation;

(4) recommendations for eliminating or phasing out outdated, overlapping, or conflicting agency rules and mandates;

(5) recommendations for alleviating agency delays;

(6) recommendations for increasing public participation in agency proceedings;

(7) recommendations for making agency regulation more cost * * *

(8) recommendations for increasing economic competition.

(d) The plans submitted by the President pursuant to subsections (a) and (c) shall be referred to the committee(s) of the House of Representatives and the Senate with legislative jurisdiction over the agencies affected by the plan(s).

(e) The "Reauthorization Review" required by section 102(a) shall include a new subsection (5) as follows:

(5) a comparison between the recommen-

dation of the Committee and the regulatory reform plan submitted pursuant to Part E of this Act, and the basis for the Committee recommendation, for the program or agency which would be reauthorized by the legislation which this report accompanies.

(f) Along with each plan submitted by the President pursuant to subsections (a) and (c), the President shall report on the cumulative impact on specific industry groupings of all Government regulatory activity reviewed to that date. The report shall include recommendations to ensure that the cumulative impact of Government regulation is in the Nation's best interests. Wherever practicable, in the formulation of each plan, the President shall give explicit consideration to the particular impact of Government regulatory activity on the following relevant industry groupings:

(1) transportation and agriculture industries;

(2) mining, heavy manufacturing, and public utilities industries;

(3) construction and light manufacturing industries; and

(4) communications, finance, insurance, real estate, trade, and service industries.

LEGISLATIVE AGENCY REVIEW

SEC. 503. (a) The Comptroller General of the United States and the Director of the Congressiional Budget Office shall submit, contemporaneously with the submission of the analysis required under subsection 502 (b), a report assessing each of the agencies to be included in the plan submitted by the President with respect to the same criteria set forth in that subsection.

(b) The Comptroller General of the United States and the Director of the Congressional Budget Office shall submit to the Congress not later than June 1 of each year in which a plan is submitted by the President as provided in subsections 502(a) and (c) of this title, a complete and thorough analysis of such plan.

Mr. PERCY. Mr. President, this amendment requires a comprehensive evaluation of Federal regulatory agencies within the framework of this sunset legislation. As an original cosponsor of S. 2, I strongly support its purpose, I do wish to commend Senator MUSKIE and Senator ROTH for their cooperative, innovative and resourceful thought, and for their determination and persistence that has really brought us to this point.

I know of no legislation that is better understood by the American people. For us to have gone by this session and not enacted sunset legislation would have been, I think, an absolute disregard of the wishes of the people.

One reason the American taxpayers are revolting is that they strongly believe there is not a proper mechanism for ending programs in the Government that just are not working.

What we are saying to the taxpayers today is this: We are going to establish a mechanism to allow for the periodic review of all programs and for the termination or modification of wasteful, ineffective programs.

With this sunset legislation, there is greater hope that money will be spent more effectively and efficiently, and that we can reduce overlapping and duplication. There is greater hope that when new ideas and new programs come along, they will not just be added to the myriad of Federal programs which already exist. Now we will be eliminating wasteful programs, and adding new programs only when needed. Regulatory reform fits right in with this concept.

I particularly wish to express deep appreciation to Senator MUSKIE for working with me, and to our respective staffs for working with us, to see that we integrate the sunset concept for all programs with sunset for regulatory agencies. This has been an extraordinarily important consideration to all involved, particularly to the majority leader (Mr. ROBERT C. BYRD), who, in his role as a member of the Rules Committee, as well as that of majority leader, is anxious to see that the flow of work through the Senate is manageable.

We have taken a 10-year span, looked ahead comprehensively at what the Congress and the Senate must deal with, and I think, we have worked out a balanced sunset review program.

I introduced this amendment not in any way to detract from S. 2—which I fully support—but to strengthen it and extend its scope into the area of regulatory agencies. These agencies constitute, in many senses, a branch of Government that has extensive control over the American people. They also have a deep influence on the taxpayers' pocketbook, as the estimates of the cost of regulation have ranged between $60 and $100 billion.

I am particularly pleased that our distinguished colleague from Nevada (Mr. CANNON) is on the floor at this moment. As an expert in airline transportation, he has long believed that many aspects of regulation should be lightened, and that the marketplace should be the proper regulator.

Let the consumer decide. Let the airline management make management decisions based upon consumer needs. Let us remove the role of the supposedly omniscient regulatory agency as the one to decide what citizens do in Peoria and in many other cities across the country.

Let the marketplace decide. I think we have no better indication as to the wisdom and foresight that Senator CANNON has had than what is actually happening today.

One after another, the airlines, in the light of existing circumstances and what they see happening in the marketplace, have decided that deregulation probably is one of the best things that has happened to the airline industy. Planes are full; you do not have half-empty planes. You probably have more trouble now getting a seat on a plane. The airlines are moving people around economically.

Today 85 percent of intercity traffic is by passenger-carrying vehicles, such as automobiles, trucks. With airline deregulation bringing on low-cost intercity transportation in this country, we are going to "group-ride" much more efficiently, more safely, more effectively, and at much less cost—with increasing deregulation, airline profits are rising dramatically. Even the Federal Government is benefiting, with reduced subsidies and increased revenue from air taxes.

At the start of the 95th Congress, together with my colleagues, majority leader ROBERT BYRD and ABE RIBICOFF, chairman of the Committee on Governmental Affairs, I introduced S. 600, the Regulatory Reform Act of 1977. Forty-three other Senators joined me in cosponsoring this legislation. They were: Senators Allen, Anderson, Bentsen, Burdick, Harry Byrd, Chafee, Chiles, Danforth, DeConcini, Domenici, Durkin, Eastland, Ford, Gravel, Hansen, Haskell, Hatfield, Heinz, Humphrey, Huddleston, Inouye, Johnston, Kennedy, Leahy, Lugar, Mathias, Matsunaga, Metzenbaum, Nunn, Riegle, Roth, Schmitt, Schweiker, Scott, Stafford, Tower, Zorinsky, Bartlett, Bellmon, Garn, Goldwater, McClure, and Stevens.

That sunset legislation came in response to the justifiable and highly vocal concerns of an unusual coalition of people in and out of Government—Republicans and Democrats, businesspeople, consumers, and organized labor alike—for responsible reform of Federal regulation. Now, it only seems appropriate to consider regulatory reform along with this historic measure. By enacting S. 2, we can get a handle on big Government. And concentrated, disciplined attention on regulatory agencies is an essential part of this vital reform.

Only through careful review of an agency's specific circumstances can we see if, and to what extent, regulation is really needed. Then, and only then, should we begin to consider appropriate agency functions. And lest we be destined to repeat past mistakes, even after reassessing the nature and scope of regulation, there must be periodic update and review to make sure that regulation continually adapts to changed circumstances.

Mr. President, it is exactly this sort of review procedure that we attempt to establish with this amendment. And in so doing, we will preserve the necessary aspects of regulation while helping to eliminate the policies that have fueled inflation; stifled competition, hurt the consumer; fostered redtape, waste, and confusion; disregarded congressional mandates; and have poorly served the public interest they purport to protect.

Like S. 2, this amendment establishes a 10-year review cycle. During this time, 16 major regulatory agencies, divided into five subgroups according to the industries over which they exercise control, are to be systematically and comprehensively reviewed and modified, or terminated if necessary.

This amendment begins with action on the part of the President. It would require the President to submit, by February 1 of the first session of each Congress in question, an analysis of the designated agencies—their functions and performances—to be reviewed in that Congress.

What this amounts to is a zero-based analysis of the purposes and performance of regulation. By taking this course, Congress can see how regulation pursues its desired goals, and can review for continued relevance the reasons for which an agency was established. This amendment assumes no preconceptions: The basic question to be considered in this review should be centered around whether or not regulation is necessary in each particular case. Not only have many regulatory agencies lost sight of their original purposes, but many have lost sight of who and what they are supposed to be regulating. And in some cases, the regulation may no longer be warranted.

The next step in the process will occur 2 months after the President's initial action. On April 1 of the first session of each Congress in question, the President would submit, in the form of a legislative plan, his recommendations for the agencies under consideration. These recommendations are to be the final step of the executive branch's comprehensive review, and would serve as the President's input in the review process.

The amendment requires that the first cluster of agencies be considered when the review cycle commences in 1981. The pattern of review will then proceed according to the schedule set out in the amendment. Thus, all concerned parties—the agencies themselves, the oversight committees, and the executive branch—will be well aware of the order of agencies to be studied and of the timing of the reviews far in advance of the actual reviews. This will guarantee that these parties will have adequate time to make the appropriate preparation for the reviews, and will help to insure that the studies undertaken are exhaustive, thorough, and reflect the best factual information available.

Another key element of the review process is the active involvement of the General Accounting Office (GAO) and the Congressional Budget Office (CBO). By April 1 of the first session of each Congress in question, the date by which the President must submit his review, the GAO and CBO must also submit analyses of the agencies to be studied that session. The reports of these two legislative agencies are to be comprehensive, indepth reviews intended to complement the President's report. At the same time, by adding another dimension and perspective to the review, they, too, will help to insure that the sunset process as it proceeds through the congressional committees, is as complete and impartial as possible.

And, as additional input in this process, by June 1 the GAO and CBO must present to the Congress a critique of the President's specific legislative recommendations, which will have been submitted 2 months earlier. Together with the GAO/CBO analysis submitted earlier, this critique will greatly aid these congressional committees in conducting a full review and in carrying out successful reform.

Special attention was paid in the drawing up of this plan to the number of agencies to be considered in each session. The final schedule, which takes into account the workloads of the affected committees, insures that committees occupied with regulatory reform legislation will not be so swamped as to preclude consideration of other important legislative and oversight matters.

Although this amendment is similar in purpose to the sunset legislation we consider today, it does contain some significant differences from S. 2. These variances are necessitated by the very nature of the problem with which we are dealing, the regulatory agencies. A slightly different procedure is established; otherwise, the review process—including committee review and termination mechanisms—is the same for the 16 major regulatory agencies covered by this amendment as for the departments and programs dealt with in Senator MUSKIE's amendment. In addition, these variances were worked out with Senator MUSKIE to insure that they complement his legislation, and fit in precisely with the general framework of S. 2.

I believe that this legislation is much needed, and is well warranted by the current situation in which the persuasive strong arm of Government has put a hammerlock on our economy and our society. And I also believe that the benefits brought about by regulatory reform will be many, and visible in all aspects of American life.

I urge my colleagues to adopt this important amendment.

Oddly enough, the strongest lobbies against airline deregulation were the airlines themselves. But the consumer knows that regulation is costly. Other industries should recognize, as now the airlines do, that getting the heavy hand of Government off their back and getting decisions back in the board rooms of the companies, letting them run their businesses in the free and competitive enterprise system, will be best for the consumer, and, in the end, best for them.

It is in this regard that I turn to my distinguished colleagues, the floor managers of the bill, for their response to this amendment and their reaction to it.

Mr. MUSKIE. Mr. President, the distinguished Senator from Illinois has described well and accurately the purpose and the mechanism of his amendment.

I was privileged to preside over the initial hearings on both sunset and S. 600. At that time, it was considered that the two kinds of review should be handled in separate legislation, so they were handled in separate legislation in committee. However, it has been found possible, after considerable discussion at the staff level, to mold the two, to put them together. The essential purpose is the same; and even though the mechanisms may differ slightly, they are consistent, and we have decided to marry the two. I hope it will be a happy marriage. In any case, I am delighted to accept the amendment.

I yield at this point to my good friend the Senator from Delaware.

Mr. ROTH. Mr. President, I congratulate the ranking minority member of the Governmental Affairs Committee for the leadership he has shown in providing what I call sunset provisions to the regulatory agencies.

There is no question that one of the serious problems faced by our economy today is the negative effect that these regulatory agencies have been having due to their lack of effectiveness.

As the senior Senator from Illinois has properly pointed out in many cases these agencies are not serving the interests that they were intended to serve when they were organized. I think by the adoption of this legislation we will take a very major step forward in making certain that these regulatory agencies do begin functioning in the way that was intended by their original sponsors.

I congratulate the Senator from Illinois not only for his interest and leadership in this amendment, but also in the help and assistance he has given in the basic sunset legislation.

I am happy to agree to the amendment.

Mr. MUSKIE. Mr. President, Senator CANNON has indicated his opposition to this amendment.

Mr. CANNON. Mr. President, I am opposed to this amendment for several reasons. In the first place, we are undertaking here a new set of procedures for congressional activities: We are requiring ourselves to consider various programs according to a fixed timetable; we are obligating committees to undertake reviews and to publish those reviews; and we are requiring the reauthorization of many programs which are now not being reauthorized. These are new concepts for the Congress, and it will be some years before their full results can be evaluated. Simultaneous with these changes, to impose on the Congress a procedure similar to that proposed by Senator PERCY's amendment is just too much. We already have been stunned by estimates that a 10-percent increase in staff would be required by S. 2's adoption. Now, we are asked to add to that increase a still larger number of staff people on the Hill and possibly in the executive branch simply to deal with the analysis and reviews which are coming up from downtown regarding the regulatory activities of Federal agencies.

In point of fact, Mr. President, the committees of the Congress are already charged with, and performing, oversight of regulatory agencies. The Commerce Committee, of which I am chairman, has direct responsibilities for eight of those regulatory agencies specifically named in Senator PERCY's amendment. We do review the activities of these agencies during our oversight hearings. Our staff is constantly reviewing the regulations which are promulgated by these agencies, to insure that the agencies are fulfilling their congressional mandates. This is the function of oversight: To look over what is going on pursuant to our enactments.

The greatest irony in this amendment, Mr. President, is that the executive agency will be doing an analysis of its own activities. Surely, the President's own office in the White House cannot be evaluating the activities of all Federal regulatory entities; rather, it will be the agencies themselves which will be submitting analyses of their activities to the President, who will then review them and pass them on to us. I believe that we are in a much better position to obtain a review of agency performance through oversight than we would be through the procedures outlined in this amendment.

We should receive the information which we desire and determine necessary to successful oversight, not merely that which is formulated and passed on to us. While it is true that our oversight hearings could always be improved, we should not delegate our responsibilities to the executive branch, or we may find

ourselves in the uncomfortable position of having only that information which the agencies desire us to have. That would be very dangerous, and would negate what I understand are the Senator's intentions in his amendment. We may end up with more waste, more mismanagement, more paperwork, as agencies attempt to justify their activities—whether those activities are praiseworthy or not—in order that the plans which are submitted to us reflect most favorably on the agency.

It is only human nature to present the most favorable impressior. of oneself; Congress exercises its oversight functions in part to pierce that exterior appearance and investigate deficiencies which someone might not have noticed, or might not have wanted to notice. I would be skeptical of any analysis of its own activities submitted by an executive agency, and consequently, I am afraid that this would be just another burden on our executive branch, leading to more staff increases and more paperwork.

The President can at any time suggest changes in the functioning of an executive branch agency or regulations which either the agency itself or citizens believe should be changed. I think the normal ebb-and-flow between the executive and legislative branches, with their clear divisions of responsibilites, is valuable. It is a misconception to believe that, just because something is on a timely schedule, it will be effectively evaluated. Some things just do not work according to a nice, neat plan. We should allow ourselves enough flexibility so that we do not cut off necessary changes simply because they are not scheduled. We already initiate and receive from the executive agencies recommendations regarding necessary changes. We ourselves suggest changes in regulations where we believe that they do not carry out congressional intent. I am wary of disturbing the current give-and-take between the executive and legislative branches.

Section 302(d) and section 504 of the substitute text of S. 2 provide that executive agencies will assist the Congress in providing information regarding their activities. Such assistance could, conceivably, include—where requested—a self-critique of an agency's activities, which the committee could then use in conducting its review and in formulating its recommendations regarding a program. I believe that these provisions are sufficient to insure that Congress has access to the necessary information from regulatory agencies.

I strongly oppose this amendment. It is difficult to conceive that it would be effective. It is burdensome. at the least. It is serious in its scope, because it runs the potential of altering both the authorizing committee's responsibilities and the entire interaction of executive and legislative branch entities.

Mr. MUSKIE. Mr. President, I yield back my time on the amendment.

Mr. ROTH. I yield back my time.

Mr. PERCY. The Senator from Illinois sees no necessity for a rollcall vote.

I wish to express my deep appreciation to the floor managers of the bill, and I think we are ready for a vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois.

The amendment was agreed to.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 2056

Mr. PERCY. Mr. President, I send to the desk my second and last unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY) proposes an unprinted amendment numbered 2056.

Mr. PERCY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 39, line 10, insert the following: new title and renumber accordingly:

"TITLE VI—GOVERNMENT ACCOUNTABILITY

SEC. 601. (a) At the beginning cf the ninety-sixth session of Congress and every two years thereafter the President shall submit to the Congress a report on the management of the executive branch (hereinafter called the Management Report). The Management Report shall be submitted as part of the budget on the same day as the budget is transmitted to the Congress under section 201 of the Budget and Accounting Act, 1921.

(b) It is the intent of Congress that the President shall be granted full discretion in the design of the Management Report provided that—

(1) Programs shall be—

(i) designated within each executive department and within each independent establishment, according to their relative effectiveness, as "excellent", "adequate", or "unsatisfactory", and

(ii) ranked as to their effectiveness relative to all other programs within each category in that executive department or within that independent establishment.

(2) The designation and ranking of programs as to relative effectiveness shall be determined by the degree to which each program's statutory objective is being met, which shall be based on—

(i) the clarity of the statutory design and objective upon which the program is based,

(ii) the overall design of the program as effectuated by the responsible executive department or independent establishment, and

(iii) the overall quality of the management of the program by the responsible executive department or independent establishment.

(c) The Management Report shall include the President's reasons for the program designations and rankings he has made.

(d) The Management Report shall include a list of those programs or areas the President recommends for administrative or congressional improvement during that Congress.

(e) The Management Report shall include the report of the Director of the Office of Management and Budget required under section 5 of this Act, including the President's recommendations and proposed actions pursuant to it.

SEC. 602. (a) The Director of the Office of Management and Budget (hereinafter called the Director) shall provide an evaluative report on Federal programs to the President which shall be forwarded to the Congress by the President with his Management Report.

(b) In his report the Director shall identify any programs that are contradictory to other Federal programs and recommend corrective legislation. The Director shall also recommend the termination or modification of any programs whose relative ineffectiveness no longer justifies continued Federal expenditures or only justifies a lower level of Federal expenditures.

SEC. 603. The President may from time to time submit to the Congress reports supplementary to the Management Report, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the purposes of this Act. The Director may, from time to time, submit to the President reports supplementary to the report required by section 5.

SEC. 604. (a) For the purposes of this part:

(1) The term "program" means an organized set of activities carried out pursuant to separate statutory authorization or for which Federal expenditures are specifically allocated by the Federal Government, and which can be evaluated in terms of relative effectiveness in pursuing a governmental goal, but shall not include national foreign intelligence activities.

(2) The term "executive department" shall have the meaning given it in section 101 of title 5, United States Code.

(3) The term "independent establishment" shall have the meaning given it in section 104 of title 5, United States Code, except that it includes the United States Postal Service and the Postal Rate Commission but does not include the General Accounting Office or the Independent Regulatory Agencies.

Mr. PERCY. Mr. President, there is widespread concern, greater than ever before, over how well Federal programs are functioning. We have seen this development building now for several years, and I am convinced that it is a healthy one for the Federal Government, for the economy, and for those who receive Federal services.

Back in 1974 Congress passed the Budget Control and Impoundment Act as a way for the legislative branch to have a say in how this massive Federal budget is allocated. There was considerable speculation at the time about how well this new budget process would work. It was new. It infringed on the responsibility of existing committees and, to be sure, on the prerogatives traditionally claimed by the White House. And it required discipline.

But it has worked despite the odds against it.

Parenthetically, I wish to say that while there may have been some concern as to how well Senator MUSKIE and Senator BELLMON would work together on the Budget Committee, there was no question but that they were dedicated to the principle of budgetary reform. The distinguished chairman of the Budget Committee, who has so ably carried on the fight for the principles of the budget process, participated throughout the course of hearings on this sunset legislation and worked intimately with Senator Ervin and myself to steer it through hearings and then through committee, and now through the Senate to have it adopted.

The Democratic Caucus could have chosen no one better to head the committee than Senator MUSKIE. With Senators of lesser quality, competence, and

capability, this procedure might not have worked, but it has worked remarkably well. The greatest testimony to it is the fact that when we come into the Chamber to consider an amendment appropriating or authorizing money, the most frequent and common question asked on both sides of the aisle is, "Is it in the budget?" And if it is not in the budget they know another concurrent resolution will have to be adopted, shifts will have to be made, and cuts come out of their programs. For the first time everyone in the Senate is cognizant of the fact that once we set that budget ceiling we must live within it and we must provide adequate revenue and must not add to the deficit.

That sense of discipline was missing for 200 years in Congress.

Just look at what effect it has had: The Senate is spending $36 billion less this year than the authorization committees asked for, and the deficit is $21 billion less than the deficit presented to Congress by the President.

If the people of this country realized what has been accomplished under the budgetary process alone, Congress would receive a much higher rating than it has. And as I have said, the success of the budget process is largely attributable to the work of the chairman, ranking minority member, and the members of the Budget Committee.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. PERCY. I am happy to yield.

Mr. MUSKIE. I think it appropriate to record the consistent and steadfast support that the distinguished Senator from Illinois has given not only in development of the Budget Act but also in its implementation.

I think the Senator suggested a figure of 99.44 percent support. I do not know what the other 0.56 is, but in any case he has been a steadfast supporter.

I suspect that the relationship between the Budget Committee and the Senate is more of a love/hate relationship than it is one of complete harmony. But I do share the Senator's feeling that the sense of discipline is very strong in the Senate at the present time. It does focus on the Budget Committee, but I suspect it also is a reflection of the growing awareness made possible perhaps by the budget process and the perspectives that it gives, but a growing awareness on the part of the people, the Members of this body, stimulated also by citizen reaction, that there is a limitation to our resources and that we must develop a strong sense of priority. And I hope that my assessment is correct because if it is not then the budget process may be just a passing thing, attuned to current public moods, and it might fade after the mood changes. But I hope it is a permanent thing, and if it is I express my appreciation to both Senator PERCY and Senator ROTH for their support of the process.

We may have disagreed about procedural matters and that sort of thing, but in terms of the basic discipline we have had a strong commitment from the Senator's side of the aisle as well as from mine, and I want to express my appreciation for it.

I could not find the words to express my appreciation to Senator BELLMON. If I had drawn up specifications for the ranking Republican to serve with me I could not have done as well as the good Lord did in providing me, with the help of the Republican Caucus, the services of Senator BELLMON.

Mr. PERCY. I concur with that. We all have great admiration for the teamwork that has been shown. I think it is really the Senate at its finest.

I have read books about great Senators in the past and great accomplishments in the past, but I think in retrospect this team of MUSKIE and BELLMON will be viewed as having established a process the leadership or which is extraordinarily hard to duplicate.

But I think if the Senator from Illinois has accomplished nothing else in his 12 years in the Senate and in his work through the years, he will have contributed to this important budget process. We are very gratified to have had the opportunity to work so intimately with Sam Ervin, our distinguished colleague. He believed deeply in this process. He specialized in shaping budget impoundment control end, while Senator MUSKIE and I specialized in the budgetary process. I think that the process itself is more important than any single piece of legislation that just establishes a program which meets a specific, current need. The process on the other hand, I think will live forever. I shall make just a few more comments on the budget process itself and then comment on my pending amendment.

The congressional budget process is not perfect—we know that—for it is a human institution subject to all the frailties of human character. If Senators and Representatives are of a mind to exceed the limitations in the budget resolution, they can do so. If the members of the two budget committees see fit they can simply rubber stamp the OMB budget that is sent up here each year.

We could reduce the budget process to a shambles sometime in the future if we ever wanted to. Fortunately, we have not done that to date. There are few among us who would advocate that route, and our Budget Committee has installed a much needed measure of discipline in the Congress of the United States.

(Mr. SASSER assumed the chair.)

Mr. PERCY. Without the budget process this year, for example, it is not certain that Congress would have acknowledged the role its spending plays in inflation. The cumulative deficits of the past 3 fiscal years exceed $150 billion. This year, the budget process focused Congressional attention on the effects deficits of this magnitude have on inflation. The business community even feels the deficits are the sole cause of our present high inflation rate. But whatever the causes, the deficit does indeed play a major role in inflating the economy. Due to the budget process, we were able to cut the January budget's proposed deficit by 35 percent, by over $20 billion. This is a vast improvement over the $60 billion forecast by the President in his budget message.

Sunset legislation is a companion to budget reform. Together they can function to bring Government spending under control and, as I mentioned before, even rein in the deficit.

But the budget process cannot restrain Government spending alone. Sunset legislation is essential to serve notice that the Federal Government, which is now responsible for 22 percent of our GNP, has reached its natural limits in the economy. Programs are going to have to perform well because they are going to have to compete for limited resources in ways they never have in the past.

Writing in the September issue of Dun's Review, Walter E. Hoadley, chief economist of the Bank of America, touched on this issue in the context of proposition 13. I would like to quote a brief passage from his essay:

> Since Proposition 13, there has been a freeze of state and local wages and salaries; revised tax revenue projections (lower at the city and county levels, but higher at the state and federal levels because taxpayers will have smaller real estate tax deductions); and a big debate over the magnitude of the state surplus for the year ahead that will influence how much expenditures have to be cut twelve months hence. There is also a consensus that California's overall economic growth and employment increase will be only very slightly impeded in 1978–79.

And then Mr. Hoadley hit the nail on the head:

> Seldom before have government officials had to face the hard realities of setting major spending priorities. And obviously there's more ahead.

California voters have written the word in 10-foot letters for us to read in Washington.

I am delighted that the distinguished Senator from California, the assistant majority leader (Mr. CRANSTON) is on the floor today, because he certainly can interpret for us the meaning of proposition 13 and what it would mean to this Government.

Government must begin to operate more smoothly and in a more business-like manner. Taxpayers will not stand idly by while more and more of our resources are consumed by State, local and Federal governments. Essential services, regulations for safety and health and some assistance for the needy are within governments' bounds. But if we are to avoid a curtailment of the Federal Government's role and the imposition of a rigid limit on our options, we must show the taxpayers we will act more responsibly with their money.

Sunset is a major step in that direction and I have been a supporter of it since the bill was first drafted in our Governmental Affairs Committee. It was reported by our committee only after a long series of extraordinarily good hearings, with private as well as governmental witnesses.

The necessity and urgency for this legislation is such that we can stand up and say to California, with proposition 13, and to Illinois, with its so-called Thompson proposition on the ballot, and to taxpayers' revolts all over the country. This is not an instant knee-jerk response to something that has been thrust upon us in recent months. For years Senator MUSKIE, Senator ROTH, and

others on the Governmental Affairs Committee have been working on a process, beginning with the Budget Reform Act and leading to sunset, to find a way to eliminate inefficient, duplicative, overlapping programs that simply are not cost effective for the taxpayers. If we were spending our own personal money out of our pockets, would we spend it on some of these programs? Of course, we would not.

But Federal programs develop lives of their own. No matter how inefficient or ineffective the program, there are always a few people somewhere who will support and advocate it. Where are the forces to oppose it? Who is to rise up and say, "This is not really working"?

What we lacked was a process. Sunset, as the vision Senator ROTH and Senator MUSKIE had of this principle years ago, is the process that can bring this program review about.

That is why I say to my distinguished colleagues, the managers of the bill and other members of the Governmental Affairs Committee on the floor, that it is our responsibility to find a way to see that this legislation is not passed just in the Senate today, as it will be overwhelmingly. Who can vote against this if they have listened to proposition 13, and listened to their own constituents in their own States? Who could vote against it?

But the problem is not just to get it through the Senate. Our problem is to get it through the House and have it sent to the White House as a piece of legislation that can be signed by the President, not in the next Congress, but this year. None of us is interested in just making a record by saying, "Check that off; we passed S. 2; we did our job in the Senate."

Our job should be to spur the Members of the House of Representatives to consider this bill. Every Representative would be proud to take this legislation back home in the next 3 weeks, and say to their constituents, "We have responded to your wishes; we now have adopted a mechanism for ending ineffective programs."

It is our job to see that we get this to the House and send this legislation to the President.

There is our challenge; and I say the urgency of it is very, very great indeed. Sunset is a major step in the direction of responsible and responsive Government. It must be enacted.

Senator MUSKIE, who has labored long and hard to bring a well-rounded and workable bill to the floor, has recently made revisions which I support. I feel that one element is missing from our sunset legislation, however, and I am offering an amendment today which will improve the operation of the sunset procedure.

Mr. President, my amendment incorporates much of the Government Accountability Act which I introduced earlier this year. Representative BILL STEIGER is the House sponsor of the bill. Senators LUGAR, BELLMON, and PACKWOOD are original cosponsors of this legislation.

Our bill—and this amendment—requires the President to submit to Congress a biannual report at the time he sends up his budget message. This report, which we have called the management report, will rank Federal programs by department, according to their effectiveness. All programs could not be rated in the same category. If an agency had 50 programs, it would have to list the 50 according to their relative effectiveness. Consequently, this agency would have 50 rankings. This is an important part of my amendment because all agencies would have to sort out what their most and least effective programs are. The ranking would be inevitable and the evaluations would have to be made and not avoided, as is so often the case today.

In addition to this ranking, programs would also be rated as "excellent," "adequate," or "unsatisfactory." This is a type of report card that would tell us—and the public—how Federal programs are performing.

Some of us have served on the Appropriations Committee and we all serve on authorizing committees. We all know an argument can be made to justify almost any program. But this measure will require us to do what we all must do to manage in a proper way our own affairs. It will require Congress to do what every business must do in preparing its own budget for a calendar year or fiscal year. Under this amendment, the Federal Government is going to have to list its programs by department from top to bottom, select the one that is most cost-effective and doing the most good for the money being spent, and then rank the rest of them second, third, fourth, fifth, and so on.

The ranking will be done by each agency which will base its decisions on three criteria:

First, the clarity of the statutory design and objective on which the program is based;

Second, the design of the program as the agency has implemented the law; and

Third, the quality of the program's management.

The President would have discretion in designing the management report. He is required to give his reasons for the ranking and an assessment of the programs that Congress could improve on. Aside from these specific components, we leave the form and design of the report to the President.

The second part of the amendment directs the Director of the Office of Management and Budget (OMB) to identify programs, including those of the independent regulatory agencies, that have seemingly contradictory aims or inconsistencies. In some cases, the OMB Director might find an existing but contradictory program arrangement beneficial, in which case he is required to explain the reasons for retaining the arrangement and the effect on the management of the program. In short, the burden of proof will be on the programs to prove themselves.

Mr. President, that is the long and short of my amendment. It fits in well to S. 2 and the sunset procedure. It enhances our ability to make the changes sunset promises. I would like to commend those who have generated this concept and helped bring it to our attention.

Both Representative STEIGER and I are indebted to Laurence Silberman for the nucleus of this idea. Mr. Silberman is no newcomer to the workings of the Federal Government, for he has served in the past as Ambassador, Under Secretary of Labor, and Deputy Attorney General. His article discussing the Federal bureaucracy appeared in the summer 1978 edition of the journal Commonsense.

Mr. President, I should also like to express my deep appreciation to my lifelong friend and many times colleague Dr. Robert Goldman, senior member of the American Enterprise Institute staff, for his pointing out to me early on the importance of Ambassador Silberman's persuasive essay in the Commonsense journal. He has worked with me to find a practical way to bring it into being.

I would say if the Senate adopts this amendment and S. 2 today, and we later see it passed in the House and sent to the President before the end of the week, the Government Accountability Act will probably have had one of the shortest periods of consideration in the recorded workings of the Senate. An idea this good needs to be implemented and I give full credit to those who have conceived of it. Congressman STEIGER and I worked together to implement this idea and put it into practical draft language, but we wish to pay tribute to the original author of the concept.

In his article, Mr. Silberman points out that although there is widespread agreement that the size of American Government should be brought under control, there is no similar widespread agreement on what areas should be trimmed or reorganized to be made more efficient. In short, he contends, that "since there is no uniform method of evaluating programs, generating a national political consensus as to prime targets for elimination is extremely difficult."

The sunset procedure will run up against existing interest groups in its attempt to make the Government lean and efficient. The management report will help counterbalance the effect of the interest groups.

It is highly appropriate that the management report should be included as part and parcel of S. 2. In section 302 of the bill, for example, committees will have to include with their committee funding resolutions their plans for program reexamination. In addition to estimated schedules for completion of the reviews and cost of the reexaminations, committees are required to give their reasons for selection of specific programs. The President's management report will be a sound document on which to base reexamination.

Furthermore, the executive agencies are already peripherally involved in sunset under section 303, where they are required to report to OMB and House and Senate committees with recommendations for reexamination. Under section 704, agencies are given the responsibility of providing committees with studies and

analyses which the committee may request.

My amendment is based on these premises. OMB already ranks programs for its internal purposes because it facilitates their own reviews. It is an essential part of the policy planning process and is even more important when resources are finite. Several former OMB Directors—George Shultz and Caspar Weinberger—have written me of their support for this idea and Roy Ash, also a former budget director, has told me that it is perfectly workable.

This is a final refinement of sunset and I urge my colleagues to support this amendment.

I ask unanimous consent to have printed in the RECORD a column by George Will that appeared in Sunday's Washington Post, endorsing this concept.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 8, 1978]

REPORT CARDS FOR FEDERAL PROGRAMS

(By George F. Will)

Laurence H. Silberman has a curry-seasoned temperament and a sandpapery turn of mind. He has been under secretary of labor and deputy attorney general. He was ambassador to Yugoslavia where, because of the attention he called to political persecutions, the regime considered him, to his credit, obnoxious.

Today he exemplifies one benefit the Republican Party has derived from losing the White House. He now has time to think and write about his experiences in the executive branch. And when, as is frequently the case, he has a good idea, it is his habit to share it evenhandedly with people who do, and even some who do not, express an interest in it.

His latest idea is to require presidents to submit to Congress periodic reports rating federal programs as "excellent," "adequate" or "unsatisfactory," and ranking the programs within each department. "The hard, miserable, squirmy but incontestable truth," he says, "is that . . . we Americans cannot seem to eliminate any government programs no matter how wasteful they may be. This should be of equal concern to those who wish to maintain or even expand the present level of government as well as those who believe . . . that government's share of GNP must be reduced. . . . Indeed, our reluctance to initiate new programs is surely in part attributable to the widespread realization that a program, once initiated, achieves instant immortality."

Bills embodying Silberman's idea have been introduced by Sen. Charles Percy (R-Ill.) and Rep. William Steiger (R-Wis.). These bills, designed to cause government to exercise what Silberman calls "constructive powers of self-destruction," will not pass this year, and if passed next year they will not cause the instant death of much, if anything.

The problem is the "iron triangle": the collaborative relationship among congressional committees that pass, bureaucracies that administer and constituencies that benefit from particular programs. Silberman believes that the way to weaken this "tight-knit triple alliance" is to strengthen the large but diffuse part of the public that favors reform. This part believes government should be pruned, but cannot agree on where to begin. The Percy-Steiger bills would facilitate agreement by supplying what Silberman calls "a common evaluative language."

Eventually Congress may pass something like Sen. Edmund Muskie's "sunset" bill to require most programs to be reauthorized—or liquidated—over a 10-year cycle. The Percy-Steiger bill would require the executive branch to help give shape to that system of legislative oversight. Clearly, Congress must force the issue by compelling the executive branch to act.

Already the phrase "zero-based budgeting" has joined "free coinage of silver" and other slogans in the graveyard of panaceas. The Carter administration's capacity for pruning was revealed in its "new" urban policy which, as David Broder reported, "included 160 suggestions for improving old programs left scattered in five agencies," but not one suggestion that "called for eliminating any single existing federal program—despite the almost universal acknowledgment that some of them are real losers."

To the president who once asked, "Why not the best?," Silberman says, "If not the best, at least not the worst." Unfortunately, the hard, miserable, squirmy but incontestable truth is this: A "sunset" law might merely involve reflexive reauthorization of almost everything, and a government "report card" of the sort Silberman proposes might break all records for grade inflation.

Silberman remembers the professor who confessed, tongue-in-cheek, that he had failed to devise a way to produce a class without a bottom half. But egalitarians opposed to the allocation of rewards on the basis of merit have weakened academic grading, and they have counterparts in government. However, the Percy-Steiger bill's strength is its shrewdness about the nation's psychology.

The "report card" might captivate a nation that is fond of lists and rankings, such as college football polls. The "report card" also would please journalists who are happiest when regarding public affairs as sport. Even in Washington there is more interest in elections than in government, because elections lend themselves to sports language—who is ahead, who has "momentum." Ranking of programs as "winners" and "losers" would generate public attention. That would serve the public interest, which is the object of the exercise.

Mr. MUSKIE. Mr. President, this amendment, so lucidly explained by my distinguished friend from Illinois, is certainly consistent with sunset and hopefully will strengthen the prospects for its implementation. I could wish that I had had more opportunity to explore its implications in hearings, but if difficulties develop in the course of implementing it, corrections can be made. I think the basic objective and the basic purpose are sound and consistent with the objectives of the sunset legislation.

No piece of legislation ever achieves its ultimate form to everyone's satisfaction. I think as long as we are working on sunset in an evolutionary sense, and have been for 3 years, it is appropriate to add this amendment at this point. I am prepared to accept the amendment.

Mr. ROTH. Mr. President, I would just say, Mr. President, I am happy to accept the amendment as well. It is an intriguing concept. It does offer a promise which is not in the present legislation of helping develop a consensus as to where there are areas for elimination as well as areas of concentration to move ahead. I am pleased that the Senator from Illinois has offered this amendment. I accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. PERCY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MUSKIE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, I would like at this point to express my appreciation to the distinguished majority whip who has taken his time at the end of a very busy session to help us refine this legislation. There were questions still remaining which troubled him and others. I know how busy he was at that point. But realizing how important sunset was, and from a personal point of view how important it was to me, he was willing to take that time. He so satisfied himself that the bill in its present form is sound policy that he supports it as a major cosponsor.

I am delighted to yield to him at this point for whatever comments he may wish to make.

Mr. CRANSTON. I thank the Senator from Maine very much. It has been a pleasure to work with him on this measure. That we now have it at the point of passage is a tribute to his dogged persistence and dedication. He has been fighting this fight for many years with great effect.

He was very understanding in recognizing certain problems that some of us felt we would have had with the earlier version in terms of shifting major legislative authority from the Congress to the President and a minority of either House and in aims of scheduling our time on the floor and having time to deal with new problems as well as review old problems.

The Senator from Illinois spoke of the proposition 13 vote and how this is an effective response to that vote.

This is something that predated the vote in California in June on proposition 13.

Again, it is the vision of Senator MUSKIE, Senator ROTH, Senator PERCY, and others, who long ago saw that we were going to face problems of taxpayer revolt, taxpayer concern, and taxpayer demands that led to sunset, which led to a bill which I believe now offers a useful and workable program and which makes sure that we will review programs in an appropriate way and pare down and eliminate those that no longer serve the purpose that was hoped to be met, and may well have been met, in a time when the program worked. And it does this in a way that preserves the inherent right of a majority of either House of Congress to decide to continue a program now on the books if reauthorization is frustrated by a minority of either House.

Mr. President, I believe that there are many programs that no longer work. We have a responsibility to eliminate those, and sunset will give us that opportunity. It is good news for taxpayers, good news for all citizens, good news for people in Government as well as for people out of Government, that sunset is on its way. I hope the resounding vote that it will win on the floor tonight when we vote on it will lead to a circumstance where we can attach the measure to

something that will go all the way and will become law before this year is over.

As a principal cosponsor of the pending substitute amendment, I would like to take this opportunity to speak more specifically about certain aspects of it.

This legislation represents a major effort by Congress to attain the measure of knowledgeable control over Federal programs and expenditures that it must have to fulfill its responsibilities to the American taxpayer. The passage of S. 2 as amended will, I am confident, both improve the efficiency of Government and help rebuild essential public confidence in governmental institutions.

I have always supported the basic purposes embodied in sunset legislation. However, S. 2, as reported by the Committee on Governmental Affairs and the Committee on Rules and Administration, while sound in purpose, would have overwhelmed Congress by imposing on it a totally unmanageable volume of legislative business.

In a June 22, 1977, letter to the distinguished majority leader, I outlined major concerns I had about S. 2 as reported by the Committee on Governmental Affairs. Mr. President, I ask unanimous consent that the text of this letter be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CRANSTON. Mr. President, briefly, those concerns were:

First, the bill as reported would have given the President the power to terminate the effective operation of existing laws, despite the majority will of both Houses of Congress, whenever a President could enlist one-third-plus-one Member support for a veto in either House. This provision would have unduly magnified the President's role in the law-changing process by giving him the potential ability—through the veto power—to eliminate a vast body of permanent programs.

Second, the bill as reported would have produced an unmanageable volume of legislation that would have overwhelmed the orderly conduct of business on the floors of both Houses. The additional legislative activity generated by S. 2 could have resulted in the severe compression of all legislative activity and a less orderly and deliberate consideration of all measures.

Third, the combination of the first two difficulties would have combined to give to a minority of either body a hammerlock on the continuation or the terms of continuation of numerous critical permanently authorized programs.

Fourth, the bill as reported would have made the reauthorization of worthwhile programs more difficult than the initial passage of legislation establishing certain new programs had been. In the struggle to handle the increased volume of legislation that would have been generated by S. 2 as first reported, reasoned debate might well have become impossible due to the frantic pace of legislative activity. In addition, well-organized special interest groups would have been able to continue the programs they support and kill those they oppose, while the most weakly organized constituencies, typically the most seriously disadvantaged groups including aged persons, low-income persons, and minority group persons, would have been at a serious disadvantage in gathering the resources necessary to regain the necessary congressional support for reauthorization of programs important to their welfare.

Fifth, the bill as reported would have resulted in a far more abrupt and disruptive program termination mechanism than is necessary to achieve the bill's legitimate purposes and could well have unduly frustrated citizen expectations and impair governmental planning. Many programs that would be subject to S. 2's program-termination mechanism involve joint Federal, State, and local government commitments that are built upon joint multiyear planning. The abrupt terminations possible under S. 2 would have meant severe dislocation which State and local governments might not have been able to deal with on such short notice. In addition, the sudden termination of many human-benefit programs would have resulted in real hardships and suffering for many citizens who rely on the implied promise of program continuation.

Since last fall, I have been working with Senator BYRD and Senator MUSKIE, Senator WILLIAMS, and others to resolve these problems, and I believe that the pending amendment which resulted from our efforts successfully accomplishes this. It provides a workable and desirable method for assuring that Congress can fulfill its obligations to review Federal programs and agencies and to eliminate those that are duplicative or obsolete, without imposing an unmanageable volume of legislation that would preclude the orderly conduct of business on the floors of the Senate and the House of Representatives. The substitute no longer contains numerous points of order for the Chair to rule upon based on highly subjective criteria.

Most importantly, it offers a process for doing this without enhancing the tyranny of minority rule in the Congress or shifting the practical capacity to repeal permanent programs from a majority of each House to the President plus one-third-plus-one of either House. It does this by providing that after majority will is frustrated by filibuster of a required reauthorization measure, or by a Presidential veto sustained in either House, a majority in either House may vote to make it in order to pass a current-services appropriation for such permanently authorized program—like medicaid or SSI, for example—for the next year. In effect, Mr. President, the only program that would be "terminated" by this substitute are those carried out pursuant to a permanent appropriation.

Finally, Mr. President, as chairman of the Committee on Veterans' Affairs, I have worked hard to assure that any sunset legislation would exclude from those programs subject to required reauthorization those benefits earned by and owed to our Nation's veterans as a result of their military service. Our Nation has never reneged on its obligations to those who served in time of war or national emergency, and, under the provisions of this legislation, it will not do so now. By requiring that veterans' benefits be fully subject to the sunset review process, while exempting those programs from the reauthorization process, we continue to fulfill our Nation's obligations to those men and women who have earned these benefits in service to our country. In my view, their contributions to our national security and well-being have created permanent obligations on our Federal Government just as weighty and binding as those for the payment of interest on the national debt and Federal contributory retirement programs—which have long been exempted under sunset.

Mr. President, I am very grateful that my view in this regard was agreed to by the distinguished Senator from Maine (Mr. MUSKIE).

Mr. President, I set forth my concerns on this point in a September 7, 1977, letter to the majority leader, which I ask unanimous consent be printed in the RECORD, at the conclusion of my remarks following the letter inserted earlier.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. CRANSTON. Mr. President, I would like to express my thanks to the distinguished majority leader for his help in resolving this issue and to the members of the staff working group who have worked so hard to come up with a workable "sunset" bill.

EXHIBIT 1

WASHINGTON, D.C.,
July 22, 1977.

HON. ROBERT C. BYRD,
Majority Leader, U.S. Senate,
Washington, D.C.

DEAR BOB: I spoke to you the other day about my concerns that the Sunset Act would cause colossal problems in Senate activities. This letter spells out those concerns.

S. 2 (the Sunset Act of 1977) as reported by the Committee on Governmental Affairs, is, in my judgment, radically defective in a most fundamental way. If we hope to get workable "sunset" legislation enacted and if we are to avoid the Senate and House being overwhelmed by a totally unmanageable volume of legislative business, basic changes must be made in the reported version of S. 2.

Below are some of the ramifications of the bill that particularly trouble me, along with a suggestion on how they might be rectified. I'd like to get your reaction.

There are four major problems, and they all derive from the fact that S. 2's "enforcement mechanism" requires the automatic termination (through a total shut-off of funding) of Federal programs for which reauthorizing legislation is not enacted at least once every six years. All of these problems could be alleviated by revising the bill to delete the automatic termination provision and substituting a requirement that there be a majority vote of both Houses, subject to Presidential veto, before a permanent program (or tax expenditure, if the decision should be to restore tax expenditure coverage) can be terminated or reduced. A vote on termination could be made mandatory by petition by one-third (or perhaps one-

fourth) of either House—and so meet the spirit of a full sunset review.[1]

Here are the four problems:

(1) Under the bill as written, the President—supported by one-third-plus-one in either House—could by veto terminate a permanent program which a majority in both Houses had just voted to continue.

This would reverse 188 years of Constitutional practice under which only a majority of the Congress has had the power to repeal existing Federal law, and a President's participation in the law-changing process has been limited to vetoing particular bills which would alter or repeat existing laws.

If S. 2 were enacted in its present form, a President's role would be magnified to include the potential ability—through the veto power—to eliminate a vast body of permanent programs. This expanded role would have three significant dimensions. First, the Executive Branch would be given the power to terminate the effective operation of existing laws, despite the majority will of both Houses of Congress, whenever a President could enlist in either House one-third-plus-one-member support for a veto. Second, S. 2 would add to the maze of Congressional-Executive Branch relationships countless individual legislative matters—the thousands of permanent programs subject to "sunset" termination. Third, given the enormous increase in legislative activity which S. 2 would engender, it is foreseeable that many bills would be passed during the closing days of each Congress, creating many opportunities for "pocket vetos" of bills containing the requisite new authorizations. The results would be changes in existing law effected by the President alone.

By entrusting such extensive power to a President, S. 2 would invite opportunistic wielding of that power. Each Federal program subject to S. 2's action-forcing mechanism would become a bargaining chip in the hands of a President; and we would have set the stage for "government by veto" on a scale which we have never had cause to fear—and never should allow. Having so recently witnessed unprecedented abuses of power by the Executive Branch, it would be most irresponsible for the Congress to abdicate to any President such vast power to change the law of the land.

(2) S. 2 would produce an unmanageable volume of legislation that would overwhelm the orderly conduct of business on the floors of both Houses.

Due to the difficulties in identifying the number of Federal programs,[2] it is impossible to know exactly how much new legislation S. 2 would require. It does appear, however, that it probably would require action on about 2,000 or more additional bills in each Congress (unless the review process is diluted through resort to bills covering several programs in laundry-list fashion).

The results will be severe compression of legislative activity and less orderly and deliberate consideration of legislation generated by S. 2 and all other measures. In the final weeks of each Congress, a plethora of bills, many affecting extremely important Federal programs, will require action. In addition to having to deal with the reauthorization measures regularly required by S. 2, there would be a number of "sunset reauthorization bills"—a new category of privileged legislation to extend the life of a program at its current level when a filibuster has prevented action on a reauthorization bill for 50 hours.

Even the most effective floor leadership cannot assure that all of this legislative work will be conducted with the fairness and thoroughness which it deserves. It is more likely that a veritable scramble for the passage of legislation will ensue—which in turn will make it extremely difficult to manage our budget and appropriations processes in an orderly and rational manner. As Senator Jackson has stated:

"To cynically legislate deadlines for the renewal of . . . critical programs in the expectation that the Congress will somehow take care of whatever irrational situation may develop at deadline time, is irresponsible in the extreme. This kind of situation could invite pro forma action at best or provide opportunities for legislative blackmail at worst.

(3) The reauthorization of worthwhile permanent programs would be more difficult than the initial passage of laws establishing certain new programs have been.

S. 2 would produce what has been called "a Darwinian struggle" among programs. In this struggle for reauthorization, reasoned discourse and thoughtful compassion could be among the first casualties of the predictably frantic pace of legislative activity. In the crush of business, the competitive edge would belong to powerful special interests to continue the programs they support and to kill the programs they dislike. The programs in greatest peril would be those having the most weakly organized constituencies, typically the most seriously disadvantaged groups including aged persons, low-income persons, minority group persons, and physically and mentally handicapped persons. They would be the ones least likely to have the financial resources needed to reforge the coalitions which, only after several years of effort in most cases, were able to gain enactment of continuing human-benefit programs in such fields as health care, rehabilitation, employment and training, equal opportunity, and education. Merit alone does not ensure passage and enactment of legislation to continue worthwhile programs. Can we reasonably expect that these coalitions can, every six years, reconstruct the alliances and support that would be needed to regain the necessary Congressional (and Presidential) support for reauthorization?

Senator Long, who opposes "the enforcement mechanism of automatic repeal", has stated in this regard:

"Permanent legislation is a tool which Congress has found valuable in the past—to protect important provisions from the dangers of lapsing through scheduling inadvertencies, or from being held hostage by a President or by a determined minority interest against the will of the majority of Congress.

* * * * *

"Among the types of provisions which are appropriately enacted on a "permanent" basis are those which may have an impact on persons over a protracted number of years, for example . . . unemployment compensation provisions."

(4) S. 2's program-termination mechanism is far more abrupt and disruptive than necessary to achieve the bill's legitimate purposes and would unduly frustrate citizen expectations and impair intergovernmental planning.

S. 2's program-termination mechanism would jeopardize entire programs as each Congress would attempt to consider more than a thousand [3] potential terminations together with all other legislation.

Many affected programs involve joint Federal-State and local government commitments. Obviously the success of these programs is built upon joint multi-year planning. The abrupt terminations possible under S. 2 would mean severe dislocations which our states and cities might not be able to deal with on such short notice. The manifest economic perils of such an approach could mean real disaster for some of our cities.

Additionally, many human-benefit programs cause citizens to act or not to act in reliance on the implied promise of program continuation. Sudden terminations would not only frustrate the reasonable expectations of millions of citizens in some cases, but also would inflict real hardship and suffering on many.

Bob, any proposal which could so radically affect the orderly and equitable deliberations of the Senate requires our most thorough and careful consideration. I am not sure that the predictable consequences of S. 2 on our deliberative process have had the careful analysis required.

Cordially,

ALAN CRANSTON.

FOOTNOTES

[1] To have a truly neutral, meaningful review of existing Federal programs and the laws by which they operate, the review process cannot give any intrinsic advantage to the proponents of repeal or other change. Existing laws are entitled to a presumption of validity until that presumption is reversed by a majority vote of the Congress. Recognizing such a presumption does no more than honor the action of previous Congresses in enacting our present laws, as well as the constitutional processes by which those laws were established.

The alternative action-forcing mechanism I am suggesting would work as follows: Following the deadline for a required committee report, one-third (or perhaps one-quarter) of the membership of either House could, by petition, demand a vote on the termination of a specific permanent program (or continuation at a reduced level of funding, or a phasing-out over a period of years). The filing of such a petition would insure a vote not later than a fixed number of days, say 60, after filing, including provision for limited debate on the question. The termination (or reduction or phase-out) measure would, like any other piece of legislation, be required to have majority support and would be subject to veto. Thus, it would insure a vote on all such programs or expenditures as to which there was substantial Congressional doubt regarding the wisdom of continuation (or of current funding levels), but it would also insure that existing permanent law would not be overturned without a majority vote in both Houses of the Congress to that effect.

[2] Last year the Committee on Rules and Administration, in its Report on S. 2925, stated that there might be "as many as 40,000, 50,000 or 100,000" federal programs. In a September 10, 1976, letter, the Chairman of the Committee on Appropriations indicated to the Chairman of the Committee on Rules and Administration that there may be 5,000 to 6,000 federal programs. The actual number of programs (there are obviously thousands) remains a mystery. In fact, S. 2 fails to define the term "program." Rather, in Title II, the bill empowers the Congressional Budget Office to establish a listing of programs to be used for all sunset purposes.

[3] See note 2 above.

EXHIBIT 2

WASHINGTON, D.C.,
September 7, 1977.

Hon. ROBERT C. BYRD,
Majority Leader,
U.S. Senate,
Washington, D.C.

DEAR BOB: I would like to take this opportunity, as Chairman of the Committee on Veterans' Affairs, to comment on S. 2, the proposed "Sunset Act of 1977", as the Committee on Rules and Administration undertakes consideration of this legislation.

INTRODUCTION

Before discussing the relationships between S. 2 and veterans programs under the jurisdiction of our Committee, I would like to indicate my strong support for the basic

purposes embodied in the "sunset" bill. During the past several years Congress has acted in many significant ways to restore public confidence in our national government and in the Congress itself. Sunshine legislation, impoundment control, budget reform, Senate committee-system reorganization, and ethical standards codification have all been aimed at enhancing the effectiveness, responsiveness, and accountability of our government. These measures will, I am confident, both improve the efficacy of governmental action and help rebuild essential public confidence in governmental institutions.

The Subcommittee on Intergovernmental Relations and the Committee on Governmental Affairs have recognized that an additional major effort is needed to improve still further the management of the public business in Congress. In reporting favorably S. 2, they have evidenced a concern, which I share, that continuing efforts are needed for the Congress to attain the measure of knowledgeable control over federal programs and expenditures that it must have to fulfill its responsibilities to the American taxpayer.

Thus, I offer the following comments for the purpose of assisting you in the development of the most effective approach toward meeting our obligations to the taxpayers to weed out unneeded duplicative, and obsolete government programs and functions. I am convinced that the fundamental concept of thorough, periodic Congressional reviews of federal programs and agencies is a sound one that must be implemented.

I note that several aspects of S. 2 represent significant improvements over S. 2925 from the 94th Congress. For example, section 201(b) of S. 2 now contemplates that each committee will exercise discretion in the scope and detail of its "sunset" review of the programs under its jurisdiction. Also, among several other substantial modifications made during the past year, an amendment to subsection 101(b)(2) added functional category 900, interest on the national debt, to the programs exempt from periodic "sunset" reviews. That change acknowledges the unshakeable commitment of the Federal Government to meet its contractual obligations.

VETERANS PROGRAMS

Improvements such as these are the results of the application of two fundamentally sound principles: First, no review and evaluation process should jeopardize or call into question the clear obligations of the national government to meet its accrued debts. Second, the "sunset" process, necessarily a massive undertaking, should not be burdened by needless "paper" reviews of programs, and activities that are certain to be approved at or above current spending levels. Such thinking obviously led to the inclusion in the original version of the bill, S. 2925, as introduced on February 3, 1976, exemptions from termination for programs which guarantee future benefits to individuals who have made payments into trust funds for that purpose. Thus, no version of the pending legislation ever proposed that certain human-benefit programs such as Social Security and civil service retirement should be subject to termination.

On the basis of the same two principles of fulfilling prior commitments and avoiding needless "paper" reviews, I recommend that all programs providing benefits to which veterans are entitled by statute as a result of military service* be exempt from the "sunset" termination mechanism. I make this recommendation as to already earned entitlements now on the books, continuation of those benefits for new recruits, and new program initiatives of the same nature.

First are programs in existence when the veteran served on active military duty which were part of the benefits package for which military service qualified him or her. Such entitlement must, in any fair appraisal, be seen as earned entitlements and national obligations as fully and actually as payments from the Old-Age and Survivors Insurance Trust Fund and payments of interest on the national debt.

It should also be noted that, consistent with the approach reflected in section 101(b)(2) of S. 2, programs funded under the General Operating Expense account under Subfunction 705 would not be exempt. Under section 101(b)(2), a cash-transfer program, such as civil service retirement, would be exempt but the program under which Civil Service Commission employees calculate and process retirement benefits (along with the Treasury Department programs under which that Department's employees prepare and mail the checks) would not be exempt, even though it is clear that some minimum number of such employees is an indispensable part of the retirement pay system. Thus, by not exempting the General Operating Expense account for the VA, a similarly anomalous situation would be created; for example, the disability compensation program would be exempt but the programs under which the employees who determine, process, and pay benefits would not.

Recognizing the difficulties inherent in allowing the sun to set on employees who are indispensable to an exempt program, I would not recommend extending such an approach to programs by which employee's salaries and expenses are paid when the benefit itself consists of the services of those employees. Therefore, I recommend exemption of programs under the Subfunction 703 Medical Care account under which VA hospital personnel are employed.

Moreover, if the Committee on Rules and Administration should decide to exempt employees essential to the operation of exempt programs, it is obvious that the Committee should also exempt expenditures for the salaries and expenses of essential employees paid from the Subfunction 703 Medical and Miscellaneous Operating Expenses account and the Subfunction 705 General Operating Expenses account.

Just as prospective Social Security benefits are "purchased" through the civilian's contribution to trust funds and the government bond holder's right to interest payments is earned through investment of money, so a veteran's entitlement to, for example, compensation for a service-connected disability, readjustment assistance, and income-maintenance assistance after service, have been earned through the contribution of military service and, in many cases, through the contribution of sight, limbs or health. Exempting interests on the national debt and benefits programs to which individuals have made financial contributions, while failing to exempt entitlements earned through military service and service-connected disability, would be a strange recompense for the contribution of those whose service and sacrifices have kept our nation free and strong.

But this nation has never reneged on its obligations to those who served in time of war or national emergency, now numbering 26.5 million, including two million with service-connected disabilities. To begin to act now as though it might do so would be either idle or capricious. Certainly there is no expectation whatsoever that Congress will withdraw any existing entitlement from those who have served or are serving in this nation's Armed Forces, and an elaborate review aimed at considering that prospect would serve no purpose. An exemption of such benefits is, therefore, essential both to avoid the false impression that they might be terminated or substantially reduced and to avoid automatically requiring a costly, "paper" review of whether they should be. This exemption would also spare millions of deserving veterans, survivors and dependents great and unnecessary anxiety as to whether their means of existence, health care, and education might be cut off or curtailed.

For somewhat different reasons, an exemption is also necessary for veterans' benefits for those who will enter military service in the future. At the time of recruitment and swearing-in, the nation cannot say to the new Armed Forces member that his or her veterans' benefits might or might not be available when they are needed. These entitlements must be guaranteed. Otherwise, we can predict a most unfortunate, negative impact on the recruiting efforts which are the very life blood of the "All-Volunteer Army". I believe that you can envision the impact on recruitment if posters and literature had to be couched in tentative terms of possible, but uncertain, veterans' benefits because an exemption from termination was not provided for them. ("Join today! You might receive the following benefits".) I would think the Congress would not want to take any steps which might so substantially impair retention of all-volunteer Armed Forces.

That benefits are a major factor in recruitment is well illustrated by the views of top Department of Defense officials and other defense experts on the one program that has (prospectively) been allowed to expire or been changed at certain times since World War II—G.I. Bill benefits. In 1976 the Defense Manpower Commission concluded, in its report, to the President and the Congress, that "[t]he G.I. Bill probably was the major reason for the relative recruiting success in the active forces during 1974 and 1975"; and the Department of Defense in its 1976 annual report, submitted to the Congress by then Secretary Donald Rumsfeld, states, "The prospective loss of G.I. Bill educational benefits for new enlistees is expected to have an adverse impact on our ability to recruit high-potential personnel. . . ." Likewise a June 1973 Brookings Institute report submitted to the Senate Committee on Armed Services, entitled "All Volunteer Armed Forces, Progress, Problems and Prospects," stated that "data suggests that for a large number of potential enlistees, a paid school option might well have greater appeal than high pay." Surely, no such significance would attach to benefits which could not be unconditionally guaranteed to those considering military service.

Finally, with respect to the establishment of any new veterans' benefits, it seems to me that the Congress can, if it wishes, include in those benefits when they are established, cut-off dates whereby persons entering military service after such dates would be ineligible unless the benefit programs are extended. It would seem appropriate in this regard for the legislation to require that, in the report accompanying any new veterans' benefit legislation, the authorizing Committee must call attention to the fact that the entitlement in question would be, under my recommendation in a category exempt from automatic termination under the "sunset" law. If a more formal mechanism is deemed necessary, a "sunset" law could require that any bill establishing any such new benefit

*These programs would include all those under Subfunctions 701 (Income Security for Veterans), 702 (Veterans' Education, Training and Rehabilitation), and 704 (Veterans' Housing), and the Medical Care appropriation account under Subfunction 703 (Hospital and Medical Care for Veterans). They would not include, among others, any programs for which there are authorizations of appropriations for a limited period of years, construction programs already fully subject to the annual appropriations process, and certain programs within Function 700 not under the jurisdiction of the Veterans' Administration.

include an explicit section providing that such a benefit is being provided on a permanent or time-limited basis.

Therefore, I would strongly urge the inclusion in S. 2 of an exemption of veterans' benefits programs.* Based on the fiscal year 1977 outlay figures appended to the Report of the Committee on Rules and Administration on S. 2925 last year, I estimate that the exemption of such programs would add approximately 3.6 percent to the 35 percent of Federal budget outlays represented by exempt programs under the current version of S. 2. This recommendation, therefore, would leave programs consuming more than 60 percent of the Federal Budget subject to periodic "sunset" review.

In making this recommendation, I can assure you of the full cooperation of the Veterans' Affairs Committee in accomplishing any oversight, evaluation, analysis, and periodic program review of the veterans programs that the Congress deems desirable. Our Committee can and will discharge such responsibilities without the threat of program terminations.

CONCLUSION

Thank you for giving me this opportunity to comment on this extremely important matter. I would like to reiterate my support for a sensible, workable solution to the problems of proliferating Federal programs and effective Congressional review and management of the Federal budget, the thousands of Federal programs, and the multitude of tax expenditures. I pledge to you whatever assistance the Committee on Veterans' Affairs or I can provide.

As I've indicated to you previously, there are important issues, in addition to those raised in this letter, which I believe warrant serious consideration in your review of S. 2.

Sincerely,

ALAN CRANSTON,
Chairman.

Mr. CRANSTON. I congratulate the three Senators now on the floor and Senator JOHN GLENN for their work on this very important measure.

Mr. MUSKIE. I thank the Senator for his support and his hope—which we hope will be more than a hope—that a strong vote this afternoon may carry this bill even further in the session.

Mr. President, Senator GLENN had to leave the floor, but wishes to make a statement on this bill. So, if there are no other Senators seeking recognition at this time, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I know that the distinguished Senator from Tennessee, who is a supporter of this legislation, has a question he wishes to put at this time. I shall be glad to entertain it and shall be glad to respond to it.

Mr. SASSER. Mr. President, I thank the distinguished Senator from Maine.

As I interpret this bill, it would not apply to the electric power system of the Tennessee Valley Authority. The bill would, of course, clearly apply to those TVA programs which are supported through Federal funds.

The reason I raise this question is that I am concerned about the effect of this bill on the cost and availability of electricity to Tennessee citizens and businesses, many of whom rely on TVA for electricity. Before voting in favor of this bill, which I intend to do, I want to assure myself and my constituents that they will not be adversely affected.

As the Senator knows, for the past 19 years, the TVA electric power system has been entirely self-supporting financially. All of TVA's power funds come from consumers who buy its electricity, either directly through electric rates or indirectly through its sale of bonds, which are ultimately secured by the electricity consumers themselves. The TVA power system receives no Federal funds, and, in fact, each year the power system pays back to the Treasury, with interest, part of the congressional appropriations it got in earlier years before enactment of its self-financing authority.

I think it is important to make sure that this bill does not apply to TVA's electric power system because even the mere threat of termination or any uncertainty about TVA's ability to sell bonds or to enter into economical long-term contracts could seriously harm consumers in my area. Any uncertainty caused by S. 2 could mean that TVA would have to purchase power system material through less economical short-term contracts or would have to include costly early-cancellation provisions in its contracts. In any case, electricity consumers in my area would pay for the uncertainty.

Therefore, Mr. President, I simply restate my interpretation of this bill to be that the TVA electric power system is not covered by this legislation.

Mr. MUSKIE. Mr. President, I concur in the Senator's interpretations of the bill. It would not apply to the TVA power system or to any borrowing or contracting authority used in connection with that program. It would apply to those TVA programs that receive Federal funds, and only to those.

Mr. SASSER. Mr. President, I thank the distinguished sponsor of the bill.

I am a strong supporter of S. 2, the "sunset" bill.

This legislation has been carefully considered by the Senate Committee on Governmental Affairs in the last two sessions of Congress, and it is time for Congress to take favorable action on it. It is an idea whose time has indeed come.

I wish to praise the distinguished sponsor of S. 2 (Mr. MUSKIE) for his tireless efforts to insure this bill's passage. As chairman of the Subcommittee of Intergovernmental Relations, on which I serve, Senator MUSKIE chaired the hearings and the markups and used his considerable powers of persuasion to overcome the differences of opinion among Senators. He worked with the Committee on Rules and with the Senate leadership to fashion the substitute amendment we have before us today.

Mr. President, the Muskie substitute, in my judgment, preserves all of the sunset principles we have worked in committee to keep in the bill. Specifically, the legislation insures that there will be an automatic termination mechanism for programs which do not receive congressional reapproval. That termination will take place only after systematic reviews by Congress with the assistance of other support agencies.

Mr. President, the sunset legislation is especially important and timely today. We find, in State after State, that people are tired of their tax money being used to support programs that do not work. Many of these programs just continue on, year after year, at great expense to the taxpayers of the country.

I personally believe that voters are not expressing their dissatisfaction with legitimate public programs—they are angry about wasteful expenditures that drive up taxes without providing services. In my judgment, voters do not prefer the meat-axe approach to cutting Government spending; they would rather see careful review of each program, with automatic termination of those that do not meet the test.

We know that if Congress does not act responsibly to curb wasteful spending, the taxpayers will take matters into their own hands. That is why sunset legislation is so crucial today. If we are ever going to get the budget under control, and if we are ever going to be responsive to the citizens who are tired of Government waste, we must enact this sunset legislation.

Again, I commend the distinguished Senator from Maine for his tireless efforts in fashioning and shaping this legislation and bringing it to the floor today.

Mr. MUSKIE. I thank my good friend from Tennessee, not only for what he has said today, but for the support he has given us in his service on the Intergovernmental Relations Subcommittee. The vigor that younger Senators can bring to our work is of great support to those of us who are running out of energy.

Mr. President, I ask unanimous consent that Senator JAVITS be added as a cosponsor to the bill.

The PRESIDING OFFICER (Mr. PAUL G. HATFIELD). Without objection, it is so ordered.

Mr. MUSKIE. I yield to my good friend, who I hope is still my good friend, the Senator from Alaska (Mr. STEVENS), who descends from a long line of Scotsmen.

Mr. STEVENS. It is the Scots blood and not Scotch blood.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I do want to join those who are commending the Senator from Maine for his aggressive action with regard to the sunset legislation. I am pleased to be one of the cosponsors of this legislation.

I think it will be known in the future as sort of the Muskie rule, that we have to look over what we have done and be certain that the Government can justify continuing to spend taxpayers' money before further reauthorization for Federal programs.

It is a most salutary approach to government, in my opinion. I am pleased to be associated with him. I am delighted that, for once, we could be totally in agreement, along with my good friend from Delaware who has worked with the

* See prior footnote.

Senator from Maine for so long on this proposition.

Mr. MUSKIE. I thank my good friend.

May I say, appearances to the contrary notwithstanding, it is always a much greater pleasure to be associated with him, on the same side of an issue, than on the other side.

Mr. MATSUNAGA. Will the Senator yield?

Mr. MUSKIE. I yield to my good friend from Hawaii.

Mr. MATSUNAGA. I thank the Senator for yielding.

Mr. President, I wish to join with my other colleagues in congratulating and commending the Senator from Maine for having succeeded in bringing before the Senate the so-called sunset bill. In the past 2 weeks, he has made enormous efforts and this, I believe, is the culmination of that effort and its success, indeed.

I am a member of the Finance Committee. Although because of my position on the Finance Committee I had to vote against the Senator in some cases relative to germaneness, relative to cloture, on the sunset bill, as it was applied to the tax measure, as a cosponsor of the measure introduced by the Senator from Maine I am delighted to join in support of the measure.

I wish to associate myself with the statement made by the Senator from Maine. This will, indeed, be a living memorial to the Senator—of course, even while he is alive, and I hope he stays alive a long time and serves in this body a long time yet to come—but this will, indeed, be a monument to the Senator from Maine.

I am sure that as time goes on, this one measure will prove to be a measure which brought economy to the Federal Government.

Mr. MUSKIE. I thank my good friend from Hawaii.

I understood fully the other votes, to which he referred. I never doubted for a moment his commitment to this bill and its principle and objectives, and for that I am most appreciative.

Mr. President, at this point I ask unanimous consent that Mr. STEVENS, who is listed as a cosponsor on original versions of this bill, be made a cosponsor of this bill. Through inadvertence, he is not listed on the sponsorship list, and I want to be sure he is because he has been a cosponsor for some time.

Mr. STEVENS. I would like to be listed as a cosponsor. I am on the one introduced January 10, 1977. Are there others who have been left out on the second version?

Mr. MUSKIE. I will check.

But I ask unanimous consent that all Senators who have been cosponsors of this legislation in any form be included as cosponsors on this one, and my staff will make certain to insure their inclusion.

I think there are at least 52 at this point, and there may be more.

Mr. STEVENS. I thank the Senator.

Mr. MATSUNAGA. If the Senator from Maine will yield again, I do hope I am listed as a cosponsor.

Mr. MUSKIE. The Senator is.

Mr. MATSUNAGA. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, the so-called "termination" provision has been the central issue of controversy since we began discussing sunset legislation 3 years ago.

The termination provision is the mechanism in the bill that would bring a program to an end unless Congress acted positively to keep it going.

At present, many Federal programs contain their own termination provisions. These are programs which have short-term authorizations. As of the date their authorization runs out, these programs would terminate unless Congress reauthorized them.

However, many other Federal programs do not have their own termination provisions. These are programs which are permanently authorized or permanently appropriated. It is on these programs that the termination provision in sunset will have the greatest impact—by terminating them unless Congress specifically acts to continue them.

As the sunset concept has evolved, we have explored a number of termination mechanisms to force Congress to act affirmatively on every program it chooses to continue.

Under S. 2925—94th Congress—the sunset bill terminated all provisions of law that authorized the enactment of appropriations unless they were reenacted by their reauthorization date in the sunset schedule. To enforce that termination provision, S. 2925 also provided that consideration of an appropriation for any program was not in order in either House unless it was specifically authorized. Thus, an appropriation to continue a program not reauthorized would have been blocked from being considered unless the rules of both Houses were suspended.

The S. 2925 termination provision was discarded because it created an extremely serious problem. That is that it did not make clear which provisions of law it actually terminated. It was unclear whether it terminated just the section of law which actually read "there is hereby authorized" or entire statutes authorizing programs. That problem was particularly troublesome in the case of older programs which did not have specific authorization sections in their authorizing legislation.

As a result, the S. 2925 termination provision threatened to terminate not only authorization provisions but also a large body of underlying Federal law. The only way to prevent that from happening was to list every section of law to which the termination provision was to apply in the sunset bill. And that would have been impossible.

Under S. 2, the termination provision was revamped. The S. 2 termination provision prohibited the President from obligating or expending funds for a program which was not specifically reauthorized by its sunset reauthorization date. To enforce that termination provision, S. 2 relied on a provision in the rules identical to that in S. 2925 making it out of order for either House to consider an appropriation for a program not authorized.

The S. 2 termination provision solved the problem in S. 2925. Since it terminated no law, it could not terminate the law underlying any program. While that termination provision was an improvement over the provision in S. 2925, to some degree, it had the liability of overpromising. That was because the enactment of a subsequent appropriation for a program not reauthorized would continue that program. As a result, the effectiveness of the S. 2 termination provision depended on the enforcement of the rules in both Houses.

In the substitute amendment, we once again modified the termination provision. The substitute amendment has, in effect, two termination mechanisms—one for permanent appropriations and the other for permanent authorizations. For programs funded by permanent appropriations, the substitute amendment provides that unless the program is reauthorized by its scheduled reauthorization date, the permanent appropriation ceases to have effect for the purpose of providing funds. That is the cleanest and simplest way to terminate such a program.

For programs funded by permanent authorizations, the termination provision in the substitute amendment is somewhat of a cross between the provisions in S. 2925 and S. 2. Like S. 2, it depends heavily on the rules of the two Houses, but those rules have been written much more tightly than in any of the previous versions of the bill. And like in S. 2925, the termination provision in the substitute has the effect of voiding the authorization provision for any program not reauthorized in accordance with the sunset procedures.

The substitute amendment establishes a new category of authorizations—"required authorizations." A required authorization is an authorization enacted in accordance with sunset procedures. That means it must be enacted in the Congress during which the program is scheduled for reauthorization under sunset, must be for less than 10 years and must not extend past the next reauthorization date for that program.

The substitute further provides that an appropriation for any program for which there is no required authorization would not be in order in either House. As a result, a program with a permanent authorization that is not reauthorized in accordance with sunset procedures would not have a required authorization—and an appropriation for it would be out of order. From a practical perspective, that has the same effect as terminating the section of law authorizing the program.

In order to assist the Senate in enforcing that rule, the substitute amendment also provides that an appropriations measure is out of order in both Houses unless it or the report accompanying it cites the required authorization for every program it proposes to fund.

As a fail-safe mechanism, the substitute also includes a bar against obligating or expending funds for any program not specifically re-enacted—by reau-

thorization or appropriation—at any time during a sunset reauthorization cycle. That bar would go into effect at the end of the cycle.

In my view, as a practical matter, there is no difference between the way the termination provision in the substitute and that in S. 2 would work. In either case, the process would depend on the willingness of Congress to live by and enforce its rules. To give you a better idea of why I feel that way, lets take the example of medicaid. Medicaid is permanently authorized but is funded by an annual appropriation. For purposes of this discussion, lets assume that the reauthorization date for medicaid is 1984. In addition, lets assume that Congress did not reauthorize medicaid in 1984.

Under S. 2, the President could not spend any money for medicaid after September 30, 1984 and an appropriation for medicaid after that date would be out of order. Assuming Congress abides by its own rules and does not appropriate funds for the medicaid program, the program would terminate. If Congress, on the other hand, decides to discard its rules and to appropriate funds anyway, the program would continue because the appropriation would be an action of Congress subsequent to the enactment of sunset.

Under the substitute amendment, if medicaid were not reauthorized by September 30, 1984, it would be out of order to consider an appropriation to fund it further because the medicaid law would not longer be a required authorization for the purpose of appropriating against. Again, assuming that Congress abides by its rules and does not appropriate further for medicaid, the program would terminate, just as under S. 2. If, however, Congress chooses to disregard its rules and appropriate funds for medicaid anyway, that program would continue just as it would under S. 2 under the same circumstances.

Under either version, in order to continue the medicaid program, Congress would either have to reauthorize it or willingly disregard its rules to appropriate for it. And if Congress chooses to take the latter course there is really nothing under either version to be done to stop the program from continuing.

The weakness in the termination provision in the substitute is the same as the weakness in that provision in every version of sunset—that the provision can be overridden by any subsequent act of the Congress, even if that subsequent act is a regular appropriation. Thus, a program can be continued, even without reauthorization, if the Congress continues to appropriate for it. That was the case in S. 2925 and S. 2, and it is the case with the substitute amendment.

The advantage of the substitute on that score is that better than any of the previous versions, it highlights the failure to reauthorize a program.

Mr. President, I ask unanimous consent that a statement by the President a couple of weeks ago in support of sunset be printed in the RECORD. He also indicates support of the sunset review for tax expenditures, which, of course, is irrelevant to our debate today, but I have no objection to having that part of the statement in the RECORD, as well.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY THE PRESIDENT

The Senate is expected to vote this week on sunset legislation. I have long supported the sunset idea, and I urge favorable action on this bill.

The bill will assure that we take a hard look at most Federal programs at least once a decade. Based on those reviews, inefficient and outmoded programs will be changed or eliminated. To assure that the process works, programs will be terminated unless affirmatively re-enacted.

Too many Federal programs have been enacted and then allowed to continue indefinitely, without further thought. The country's needs and priorities change, and we must assure that government programs change with them. Zero-based budgeting is one mechanism to force such changes. Sunset is a vital complement to ZBB—it assures that reviews go beyond the budget to the underlying laws that establish the programs. Sunset will help hold down government spending and increase government effectiveness.

In addition to the overall bill, the Senate will vote on an amendment to provide sunset review for tax expenditures. I support such reviews. In effect, tax expenditures involve spending public money for social and economic purposes, and they need regular review just as much as other programs.

I congratulate Senator Muskie and other Senate leaders for bringing this important legislation to a vote.

Mr. MUSKIE. Mr. President, at this point I am delighted to yield to another Senator who has been a cosponsor of this bill since he came to the Senate, but before that, I yield to my good friend from Kansas (Mr. DOLE), who is also a supporter.

Mr. DOLE. Mr. President, as everyone else has done, very properly, I commend the distinguished chairman, Senator ROTH, and others, who have reached this point. I hope it goes even further before we adjourn Saturday. I know the distinguished Senator from Maine hopes the same.

Mr. President, the Senator from Kansas has been a longtime supporter of sunset legislation—as author of my own sunset bill, as cosponsor of the Muskie bill, and as cosponsor of the compromise substitute which we are considering today.

Those of us who support sunset have been looking forward to the consideration of this measure by the full Senate for some time. It has taken a long time to work out this compromise because, while the principle behind sunset is simple, the concrete plans for implementation are, by necessity, rather complicated.

For a long time I have felt that the sunset principle had great promise. I hope that his compromise will deliver on that promise.

THE SENATE MANDATE

The sunset principle mandates that programs shall cease unless reauthorized, and it implies that Congress will eliminate some of the wasteful and low priority Federal spending at reauthorization time.

By requiring reauthorization of similar programs at the same time, Congress will be encouraged to compare similar programs and eliminate those that suffer by comparison. Certainly, it is obvious that the Federal Government continues to fund programs which have little reason for continuing other than inertia. Until now, inertia has often been the most important driving force behind waste and inefficiency in the Federal Government. Hopefully, this bill will help remedy that.

The American taxpayer labors to support hundreds of programs, many of which would not survive under the scrutiny of periodic analysis. Hopefully this bill will help remedy the burden.

FISCAL ORDER OUT OF BUREAUCRATIC CHAOS

In addition to the many simply wasteful programs, the Federal Government has many programs which are intended to accomplish nationally recognized objectives with which few of us would disagree. However, many of these programs operate in a fragmented and disorderly way because they are not considered in concert with similar programs which may overlap or even interfere. By encouraging roughly simultaneous consideration of different programs dedicated to the same purpose, this legislation can serve to bring fiscal order out of bureaucratic chaos.

S. 2515, a sunset bill which I introduced on October 9, 1975 included provisions requiring uniform analysis of various programs. It was felt that such a requirement would facilitate the comparison of various programs and the elimination of the less effective ones. Likewise, early versions of S. 2 included requirements that the committee analysis be done in parallel fashion—on a more or less uniform basis.

I recognize that these provisions have been deleted from this compromise in favor of much looser reporting requirements. However, I hope that committees will still feel that they have a mandate to thoroughly study programs as a part of the sunset process.

THE LIMITS OF SUNSET

Of course, it is important that we recognize the limits of sunset. Even with the strictest requirements and standards, this legislation would be substitute for frugality on the part of legislators.

This legislation will not bring back fiscal responsibility by itself. The Senate can make as many structural changes as we wish, but the only thing that will really curb Federal spending is to start voting against increases in the cost of Government, and start voting in favor of cuts in areas where cuts are needed—to eliminate poorly conceived, poorly administered, or plainly outmoded programs. Structural changes and changes in the process will not cause the bullet to be bitten, we must bite the bullet ourselves.

Passing this bill, but refusing to cut out waste in Government will not satisfy the public spirit of proposition 13, nor should it.

Nevertheless, the procedural changes mandated by S. 2 will give us a tool for cutting back on the size of Government if we wish to. I hope that the Senate will use that tool effectively in the future

and I am pleased to support the legislation.

Mr. MUSKIE. I thank the Senator from Kansas, who has been a supporter for a long time.

Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 2.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. Will the Senator yield?

Mr. MUSKIE. Yes. I promised to yield to Senator GLENN, who was out looking for his spectacles. But I yield to my good friend from Florida at this time, who has been such a staunch supporter of the budget process, as a member of the Budget Committee, as a member of the Governmental Affairs Committee, and a cosponsor, he has contributed to the development of sunset as well.

I am grateful for that, and I yield to him at this point.

Mr. CHILES. I thank the distinguished Senator from Maine.

I want to associate myself with the remarks he has made on this bill and to compliment him for the work he has been doing, the yeoman's work over the past 3 years, and it probably goes back even longer than that in the development and the genesis of this legislation.

Mr. President, I have long been a supporter of sunset. I think it is sort of a natural follow-on to sunshine. If we are going to have sunshine, then we need to have sunset. I think that the American people are strongly for this.

I have found since I have come to the Senate, that if there has been a weakness in our legislative responsibility, it has been in our oversight responsibility.

It is easy to understand how that happens. It is easy to understand that we have sort of become geared to a function in which we address ourselves to a new problem and we put all of our time and attention, we put all of our expertise, in trying to address a problem that faces the people, and we come up with a legislative solution many times for that problem and we assign that to an agency. Then it is time for us to focus on the next new problem and we go through the same cycle again.

That has been happening for a number of years. I guess, clearly, since World War II as the technological age has hit the world. Certainly, in this country, those problems seem to have come faster and faster and have involved more and more of Congress time.

Therefore, with our attention continually focused on the future, we have had very little time to look back to see how those agencies were handling those problems, that assignment we had given them.

I think all one would have to do would be to look at the role that is being played by an agency we created in past years, and see what powers they have assumed by virtue of their rule- and regulation-making power, to understand the growth there has been in the bureaucracy, how they go into many areas that Congress never contemplated they would go into. In many instances, the real need for that function that we created has long since passed, but we never got around to finding that out or pruning off that function.

Continually, we are talking about Government that grows and grows and how much we need it to grow, but we would have room for some new programs and room for new growth if we could prune those that are ineffective and inefficient or that long since have outlived their usefulness.

This particular view has been my reason for supporting sunset for a long time. Recently, a much stronger focus or an additional reason has come to my mind, and that is the situation involving the GSA frauds. We find in this area that this has been going on for 25 years. We find that there are these self-service stores in GSA, some of them created to try to help the Government in its purchasing. Some of them had not been audited in up to 12 years.

Why in the world did this happen? That is what everybody asks me, and I asked myself that when I first saw it. How could this go on for 25 years without its coming to someone's attention. I think Congress has to share in that, because certainly had we been going through the kind of oversight process we would be required to go through in sunsetting GSA and the functions of GSA, we would have picked this up.

There is no way we could not have picked it up. Not only would we have picked it up, but also the GSA management would have picked it up, as they started preparing for these hearings.

So it appears to me that in addition to those programs that are outright ineffective, in addition to those areas in which some executive agencies have gone far beyond their charter by virtue of their rule- and regulation-making power, we have the further impetus where there is outright fraud and tremendous waste and corruption going on in that agency.

The General Accounting Office has issued a very interesting report—I hope every Member of Congress reads it—in which they say that the very scandal we are now having in GSA, the practices of fraud that are going on in GSA, are going on in every agency of Government. The difference is that they have not been discovered as yet, because the management and the thinking of management over the years has become that of, "I'm responsible for just carrying out my No. 1 function. If I am to give out grants, I am to give them out as fast as I can. If I am to purchase, I am to purchase as fast as I can. If I am to repair buildings, I am to repair them at any cost."

No one in that management level is thinking about trying to design a program that protects against fraud, that has the ability to discover fraud when it occurs; nor will they go out and prosecute after it is discovered.

We can say the same for waste and inefficiency, because the same mentality is there. That manager does not feel that he really has to be concerned with having a very effective and efficient program.

The reward system has been based on getting the job done, not getting it done in an efficient manner, not getting it done in a fraud-free manner. What is the reward for the whistle blowers who talked about the fraud that was happening in GSA? The reward was that they got fired or they got demoted, or perhaps they were just shipped out to Timbuktu and were given some very insignificant post until they withered on the vine. What is the reward for those people who were sort of a part of the scheme? They were promoted. So it went up the ladder. The same is true for waste and inefficiency.

I see sunset putting the gun to the head of Congress, requiring us to do the kind of oversight job that is central to our being a complete legislative body.

Somehow, all our thrust and attention go to handling the new problem on the block, but we never get around to handling the oversight. This certainly makes us have to do that.

Many people will say we do not have enough time. That is like people saying in the budget process we do not have enough money. Somehow we have to allocate the resources we have, and right now we probably do not have enough time. None of us feels that we have enough hours in the day to try to handle all the problems that face us, but we are not allocating even those hours that we have to do any kind of job on oversight, and this bill would require us to do that.

When we consider the confidence that people have in this Government, we see it continually go down, especially as it regards Congress. This bill really will strike a blow at that.

In 1970, when I was campaigning for the U.S. Senate, I heard a constant theme. When I crossed my State, I started on the Alabama-Florida line, and I went down to the Keys. As you go across my State, you find a mix of people, and they come from all over the country. I can cite the area where there are people who come from Ohio, people who come from Michigan, people who come from the Northeast.

One theme that was sort of central as I walked across the State was the feeling that there is no way to get Government's attention any more. No one in Government will listen to me, a citizen. There was the feeling that I do not get a chance to vote for the person who governs my life. My life is governed by someone who does not change, whether the parties change. The major force is this bureaucracy. They are there. They are going to continue. I have tried to listen to this fellow and to the problems of the other, and nothing changes. That is because we put this force out there and give them the right to issue these rules and regulations.

We in Congress know how hard it is—almost impossible—for us to get any attention of the bureaucracy. If you happen to have his budget at a particular time, he will answer your phone call. Otherwise, you can say what you want as a Member of Congress, but you do not get much attention from this agency, because they are going to continue. They really have legislative authority by their rule- and regulation-making power.

Sunset certainly is going to help us to have some kind of control over these agencies that we created.

In a way, it is like Dr. Frankenstein's monster. We have created it, but we do

not know how to stop it. We do not know how to slow it down. We do not know how to change the path. At least, we are going to get a chance to start looking at its arms and legs when we review these functions, to see what needs to be pruned, what needs to be watered, what needs to be fertilized, or what needs budding, and have an opportunity to do something about it.

I think this bill can speak very strongly—if we can pass it and get it into effect—to the disenchanted populace out there who have the feeling that there is no one in control, that Congress cannot do anything about these agencies which are never terminated. They see thousands started, and they read the stories about people who sit in their offices and listen to a Victrola play because they no longer have something to do, but they continue to draw their checks all the time. This bill speaks to that, and I think it speaks very strongly.

For those and many of the other reasons that have been cited by many other Members, I hope we can pass this bill. I am delighted that we have an opportunity to get it before the Senate. If it does not become law this year, I assure the Senator from Maine that I will stand with him next year, to start it very early, very quickly, and to see that we can get it out of this body and to the other body as quickly as possible next year.

I say to the Senator from Maine that the one concern I have with this bill now is that it deals with a 10-year period of time for the cycle to run. That disturbs me, because, by virtue of the time it is going to take to look at it, we are not going to have sufficient opportunity. Does the Senator from Maine have any feeling in that regard?

Mr. MUSKIE. I think the principal reason that the time frame was stretched out, from the original 5 years, is the feeling that we might be overloading ourselves and our committees to the point where the review process might become less meaningful, because it would be under such pressure.

I have the feeling that as we learn to live under it, we will find ways to allocate our time, to use the Senator's expression, more effectively, and that we can pick up momentum and conceivably even shorten the time frame.

As we acquire expertise in handling the workload, I have an idea that committees will develop perhaps even enthusiasm for doing the work more expeditiously and more rapidly, to speed up the schedule. This gives us a beginning. He and I, and others who believe in this process, can keep the prod on as we go along to try to accelerate the review process. I have a feeling that will happen.

Mr. CHILES. Granted that, and I know some people share real concern about the fact that we would overload the circuits and they would break down if we tried to make the timeframe too short, would there be some merit as we are looking at this bill in the future in saying maybe the timeframe, in the first go-round, needs to be longer but after that it should be shortened? In other words, once we go through the first pass we should be able to prune out an awful lot of dead wood and we should be able to consolidate or see some programs consolidated and terminated so that it would be easier and we would be more geared as to how to go through the process after that. I just kind of hate to see us have legislation that says we are only going to look at a program every 10 years.

Mr. MUSKIE. I agree that is worthwhile.

I will say to the Senator after you have been here 20 years, as I have, 10 years is not as long a time as it appeared to be the first year that I was here.

Mr. CHILES. Not having been here that long——

Mr. MUSKIE. That is not to discourage the Senator's objective, but time has a way of catching up with you pretty fast around here. It may be we can get this bill enacted this year in both Houses. I still have not relinquished that possibility.

Mr. CHILES. I compliment the Senator from Maine for his initiative and his tenacity. He stays on the floor and he stays behind this bill, certainly in the closing days to get this bill up, and I am delighted to be a cosponsor with him.

Mr. MUSKIE. I thank the Senator.

At this point I have almost run out of time, but I think between us, Senator Roth and I can provide the time for another principal cosponsor, Senator GLENN, whose particular interest has been the tax expenditure side. That interest is not before us this afternoon. I would be surprised if he did not refer to it, but in any case whatever he wants to say I am happy to yield time to him at this point.

I might say that the majority leader asked me to see if we could conclude this business as soon as possible because he has other business he wishes to take up this afternoon. I say that not to inhibit the Senator from Ohio, but I would hope that to accommodate the majority leader we might conclude discussion at a reasonably early time. With that in mind, and with his own sense of restraint as a guide, I yield to my good friend from Ohio.

Mr. GLENN. I thank the distinguished floor manager of the bill very much, and as he has indicated my previous interest, it would be my natural bent today to rise and perhaps send to the desk an amendment including a tax expenditure provision on this bill, but in light of having been up that mountain and down that mountain several times over the past few legislative days, I will certainly not do that today.

I think we have had emphasis on Government in the sunshine. We now have emphasis on Government sunset legislation. I think had we had that tax expenditure provision included and enacted into law, perhaps we might even have reviewed taxes with regard to moonshine. And I say that with passage of this particular legislation I think we will even include a sunrise, because we will have a new day, as I see it, in Government responsibility and in our efforts to control what many people regard as a runaway Federal bureaucracy.

I wish to compliment the authors of the bill, those with whom I have worked very closely over the past 3 years, Senator MUSKIE, Senator ROTH, and the others who have worked on this legislation because it has gone through a lot of changes over the past several years in making it more acceptable.

We had some 50 witnesses appear before the committee when we were considering this legislation in the first instance. These considerations of this legislation have gone on over a 3-year period.

The PRESIDING OFFICER. The time of the Senator from Maine has expired.

Mr. ROTH. How much time does the Senator from Ohio wish to have yielded to him?

Mr. GLENN. Ten minutes. How much time does the Senator have available?

Mr. ROTH. I am happy to yield 10 minutes or such time as he may desire.

Mr. GLENN. Make it 15 minutes.

Mr. ROTH. I yield 15 minutes.

In yielding I wish to pay my respects to the role the Senator from Ohio has played in bringing about this legislation. He has been a strong forceful advocate of this act.

I have not always agreed with all his proposals, but I think we can all agree that this legislation would not be here today had it not been for his valued contributions.

I yield him 15 minutes.

Mr. GLENN. I thank the distinguished minority floor manager of the bill very much for his very generous comments.

Mr. President, if there is one thing that the people of this country and the people of my State of Ohio are concerned about, it is our Federal budget, whether it is out of control, whether we can ever possibly get any control over inflation or not, and I think the jury is still out on answering that particular program.

Certainly I wish to pay special compliment to Senator MUSKIE, the distinguished floor manager of the bill on the majority side today, for the efforts he has made in this regard day after day after day sitting in the Chamber in his role as chairman of the Budget Committee. If there has ever been one forceful voice for reason with regard to our budgeting processes and a monitor that they not escape from us any further than they already have, and that we somehow will be able to get them back under control again, he has been the most forceful advocate and most forceful single Senator, I would say, in that regard in getting inflation and our budgeting process under control.

There are a number of arguments that, when we had this matter before us in committee, were brought up and a number of objections. One of the major ones was that this review process would be extremely complex, and I say that that is right.

It will be complex, and I think to deny that it will be complex is a mistake. But we have a highly complex Government. If you just look at the structure of Government as outlined on even the master chart of Government organization it almost defies imagination that the whole thing somehow hangs together and somehow works.

If we are to ever get control of this

monstrosity, it is indeed going to be a complex process. I, too, questioned in committee whether we were ever going to be able to do this in the original 4-year proposal that was set out. That was then put to 5 years and is now out to 10 years.

But I submit if we cannot in this Government somehow review the processes of Government that have flowed from this Congress and the supplementing administrative branches, agencies, and committees that have followed from the executive branch, if we cannot review that over a 10-year period on an orderly review basis, then we will have to stand in judgement before the people in this country and say that we have truly and in fact lost control of this U.S. Government.

God help us where we go from there, if we have to admit that this thing is a runaway monstrosity that we can no longer control.

I think we can do this, and I would hope we can shorten up that time period, as the distinguished Senator from Maine mentioned a few moments ago in reply to the Senator from Florida. I would hope we could shorten up that process once we get into it, so it does not have to consume a 10-year time period, a decade of time just to review the process we have created in the Federal Government. Surely we can review them more often than that.

Mr. President, I wish I could stand here before you today and say this sunset bill is a stupid waste, why add to the bureaucracy, that it is going to add more people to what we have already, and that all it will do is increase the bureaucracy.

I would say if every committee in Congress was doing its oversight function thoroughly and religiously, year in and year out, we would not need this kind of review process. But the sunset legislation is one thing pure and simple: It is a way of holding our feet to the fire, to see that we perform that oversight function, under the threat of termination of those functions if we do not do it. That is the reason why we need this sunset legislation.

We have tremendous Federal agency policy and organizational overlapping in our Federal Government. So when Senators say that any review process may be complex, so we should be wary of it, I would say it is bound to be complex if we get into addressing ourselves to all of these areas where Federal policy and Federal organization overlap; and it goes to some extent beyond the Federal Government. How do we review State and Federal overlap? How do we cut out some of that? That has to be reviewed. How do we cut out a review of every overlap? How do we cut out the myriad requirements in existence in Federal law, with committees, commissions, boards, and agencies we have created? How do we cut out redtape for the businessman, if we never get into this kind of sunset review process?

I really am conscious, when I go back to Ohio and meet with business groups, about the extensive redtape that they have to undergo for even the most simple procedures in dealing with the Federal Government. Yet, these things just grow and grow into monstrous proportions, and we never get around to really reviewing them.

These, in turn, have their impact on inflation for every single person, because when the businessman has to put up with that, it increases his expenditures, the cost of his products goes up, and the cost of buying his products is impacted, with inflation, into every single pocketbook in this country. So I say reviewing this Federal policy does have a direct impact on the pocketbook of every single American.

There are some things that this bill does not do. It does not change our priorities. It does not say that we have to give a priority to HEW over DOD, or vice versa, over Agriculture, or over the proposals from the Department of Commerce with regard to business, or any other of the overlaps and interjurisdictions that we have from one Federal agency to another. This bill does not mandate that those priorities be changed.

What it does say is that we will review these things to see the overlaps, and where there are overlapping and inconsistencies, we will try to straighten those things out and sunset those that overlap improperly into other areas. That is just commonsense.

This bill does not tell Congress what to decide in this area; it just says that in fact there will be a review process to consider these things. It does not dictate how each committee will review these matters. It does not dictate how they will report to the Senate specifically. But it does state the areas they must concern themselves with, and the areas in which they must come back with recommendations for either continuing the same level of a certain agency or function, or increasing its effectiveness by maybe expanding that agency, if it is doing a good job and should have incorporated within it certain functions that other agencies have been performing; or, short of that, just to have it stop those functions that should be terminated, that should be sunsetted.

It seems to me that is so commonsense that I do not see how anyone could vote against it.

Concern was expressed when we had this matter before the committee also regarding certain specific functions of Government that probably should be exempted from a sunset review procedure, and I agreed with those after conducting some of the hearings myself, and sitting in the others where these matters were considered. Let me raise a few examples of that, so that those who are concerned about these areas will not think we are trying to sunset them out of existence.

What would you do, for instance, about sunsetting certain provisions of civil rights? Would we terminate those functions on a different basis? I am sure there would not be a single Senator on this floor, nor staff member nor person in the galleries, who would agree that we should automatically terminate provisions for civil rights and civil rights enforcement in this country. Certainly we should look at the agencies that are trying to work on civil rights problems and make certain there is not unnecessary overlap, and make the streamlining apply to civil rights agencies as well as any other function of the Government, but there would be no effort made to sunset and eliminate civil rights protections now written into law, which we all agree are good.

How about interest on the national debt? Would we say we would sunset that, and no longer provide for that? Of course not. That would be foolish. Railroad retirement, social security provisions, insurance for the disabled, medicare, veterans benefits—we would not sunset those. Those would be exempted and set aside. These matters were all discussed in great detail in the committee consideration of this measure, as well as some functions with regard to the judicial branch that we felt were probably not best to include in a sunset provision.

So, Mr. President, I think this has been very well considered legislation as it is now brought to the floor. As the Senator from Maine indicated, I am sorry it does not have the sunset tax expenditure still hooked onto it. He stuck with me through thick and thin on that over the last few days, and beyond any duty he had as far as his word went to me; and I appreciate his efforts in that respect. We went up the hill and down again as a unit on that one, and I appreciate his support, and want to give credit where credit is due to his support on that, to the point that his basic sunset bill which we are considering today was endangered in the process; but he believed in what he was doing and stood with me, even perhaps at the expense of getting this bill disapproved in this session of Congress. I certainly pay tribute to his sticking with me on that, because it was certainly not an easy policy, as I am sure he will agree.

There will be other days and other policies on that issue in the Senate, because, as I said yesterday, I think that is an item whose time has come, and that the review process will sometime extend to other areas of the Government not included in this particular bill.

But that bill is behind us, and I did not rise today to start that argument all over again on this particular bill. I support this sunset bill fully. I think it is one of the most well-considered bills, with the longest hearing record behind it, of anything I know of that has come to the Senate floor for some time. I am extremely pleased that the Senate will now have an opportunity to vote on this measure. I think it will go a long way in helping restore confidence in the ability of Congress to control our Federal Government, and giving Americans the feeling that we will somehow, one of these days, after we have gone through this process, have made the Government more efficient, sufficiently so that Americans will feel they are getting more of their money's worth for the average 20 percent of each paycheck they send to the Federal Treasury now. I think it gives us a great chance to get the Government in line, to hold the line on Federal

spending, to cut out duplication and waste, and perhaps one of these days to reduce the really and truly massive Federal budget deficit which has become a commonplace matter in recent years. In fact, it is a rare year in which we do not have a Federal budget deficit in the last few years.

I would hope the sunset process will force into review mechanisms to the point that we will cut out enough in Federal spending that we will at least have a hope of getting the Federal budget in balance. I think it is far better to do it with this process than to do it, in effect, with mirrors, as we have been trying to do on this floor for the last couple of days. When we say there is going to be a great tax cut of $142 billion for the people of this country, we raise a great hope in the hearts of the taxpayers of this country.

But then down in the fine print we say, "Well, that is just going to occur if we somehow make corresponding Federal spending reductions in the same amount."

To me, that does things with mirrors. Let us do the first thing first. Let us make Federal Government more efficient. Let us cut out Federal expenditures. Then we can go to the people straightforwardly and say, "Now we have made these reductions. Now we can give you a tax reduction and there are no mirrors involved. There are no if clauses in the bottom of this. There is no fine print of which we have to be aware before you actually realize this tax cut."

The next morning after that vote on the floor I received an early-morning call from a reporter in Ohio asking me in what time period did I think the people of Ohio could expect that tax cut.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GLENN. Will the Senator yield 2 additional minutes?

Mr. ROTH. I yield 2 additional minutes.

The PRESIDING OFFICER. The Senator from Ohio is recognized for 2 additional minutes.

Mr. GLENN. I had to tell that reporter from Ohio, "Do not look for any tax cut in the near future despite what was cut," because the "if" on the bottom of that was that it had to be tied to reducing Federal spending by a comparable amount.

I am all for reducing that Federal spending by a comparable amount, so I do not fault the proponents of that measure which passed on the Senate floor. But I say the best way of making that a reality is to enact this sunset bill. Let us get on with streamlining the Federal Government and making this Government work like the people of the United States want it to work and as I think it can work if we pass this legislation.

Once again I highly compliment the Senator from Maine for his efforts in this regard. He is the very soul of fiscal responsibility on the floor of the Senate these days. I believe we all need to heed his advice, not only in his role as chairman of the Budget Committee but also in the role as prime sponsor and prime author of this sunset legislation, which I am honored and glad to support. I thank the distinguished floor manager.

Mr. MUSKIE. I thank the Senator for his comments and his support. It was a privilege to work with him on his project.

Mr. ROTH. Mr. President, I am happy to yield 5 minutes to my distinguished junior colleague from Delaware.

Mr. BIDEN. I thank the Senator very much.

Mr. President, I would just like to emphasize two points that I made last week during the debate of sunset. They both relate to the need for adopting a sunset proposal.

One problem in demonstrating the need for better review of Federal spending is that there are so many programs, managed by so many agencies that it is an overwhelming job to master the data and present a comprehensible statement of the problem. I think the best job I have seen is that done by the Government Operations Committee in studying sunset in 1976.

The Government Operations Committee's findings presented in August of 1976 are so definitive in my opinion that as far as I know no one else has tried to do the job since. We have had this information before us for 2 years and now we are ready to act on it finally.

I would just like to summarize a few of the committee's fundings:

In grant programs, there are 1,930 programs, administered by 52 Federal agencies, serving nearly 80,000 units of local government.

In the Department of Defense, extensive duplication and underutilization of military maintenance facilities.

Uncoordinated health service programs and underutilized clinics.

Fifty separate programs to aid the handicapped, most in HEW and virtually all uncoordinated.

Dramatic growth in uncontrollable Federal spending that places over 75 percent of Federal spending beyond the ready reach of anybody—virtually automatic spending.

Over 15 years, 329 Government agencies created, only 126 abolished.

The list goes on, but I am sure everyone here knows the detail and substance of it. It clearly demonstrates the need for an orderly and disciplined means of reviewing the multitude of Federal programs.

Equally important, I think is the attitude of millions of taxpayers and citizens across the country. As I indicated elsewhere, I think the message the voters are trying to get to us is not just "cut our taxes." The complete message, the real message is "get Government off my back."

The message is well summarized in some remarks made by Ted Van Dyk of the Weyerhaeuser Corp., as quoted in the Wall Street Journal on August 31. In his remarks, he summed up his interpretation of the present climate as follows:

> Proposition 13, in my judgment, was a cry by California voters saying not just "cut our taxes." It was a clear message that "we've been sending you politicians messages for some time now. But you haven't been listening. So, right now, we're taking things into our own hands. Listen to us. Give us our money's worth. And, above all, offer us something other than more government, more bureaucrats, more taxes and more least-common denominator politics and promises. Offer us competence."

That is what this legislation is designed to do. I do not mean it as a cure all that will miraculously create competence throughout the Government. But it is a good, responsible tool for moving in that direction. If we do not get the whole message, if we just cut taxes and do not improve Government, we will not have achieved the purpose the taxpayer's revolt is designed to achieve.

Our best chance to do this, our best chance to bring some competence into Government at this point is to pass this sunset legislation.

One last thing, Mr. President. I said in a statement in support of the amendment of the Senator from Ohio several days ago—it seems hours have been running into hours and days into days here so I am not sure when it was—that I thought that the one thing that should be noted in this legislation that is not spoken to very much is that it seems to me it is one of the first pieces of legislation in a long time that has come along and considered what I would call the human factor.

It changes the burden, it shifts the burden. It allows the elected officials in the House and the Senate, and the President of the United States, for that matter, to be able to respond in a different way.

In the past every one of these agencies I have mentioned, when we considered doing something to them, let alone abolishing them, marched up on the Hill, marched up with their interest groups, marched up with their cadre of support. They look like they have a great deal of support. It is hard to marshal countervailing support from our constituents at home who do not have time to worry about every one of these things. The pressure is put on at pressure points.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. ROTH. I yield 1 additional minute.

The PRESIDING OFFICER. The Senator from Delaware is recognized for an additional 1 minute.

Mr. BIDEN. It is hard for an elected official to say to all those people, "No, I am not going to vote for your continuance, when it automatically comes up on the floor."

It would be a lot easier to say, "You know, you are automatically terminated. If somehow or in some way the matter gets to the floor, if it gets through committee and if there is strong support and justification on the floor, I will support you then."

It is not a small point. It enables an individual Senator to share the responsibility with the remainder of his colleagues, and an individual House Member to share that responsibility, rather than being isolated on small points, with pressure points being applied very effectively.

None of us on this floor have to be told how effective single issue constituencies have become. This, in my opinion, is a

fundamental conceptual change in the way we approach doing something about the growth of Government.

Mr. President, as I said earlier, I rise today to support the adoption of the sunset proposal before us. I am a longtime advocate and supporter.

I first started working on this idea in the fall of 1974. I introduced my sunset bill in the 94th Congress. My friend from Maine introduced a different version in that same Congress. Now we have joined forces with one proposal which I believe has great merit.

When adopted, it will provide Congress with an essential tool for reviewing the need for Federal programs; controlling the growth of Federal spending; alleviating the over kill of regulatory activity; and restraining the sprawling Federal bureaucracy. I know that is a lot to claim for one proposal. But I have been working on this idea for years—as has my friend and colleague from Maine—and I am convinced it can lead to more effective and responsible congressional control over our Government, without sacrificing a single essential Government service. In fact, it should enhance the provision of truly necessary government services.

This is a great moment for me. It is one I have looked forward to for years. It is also a moment I have feared might never come. The fact that this amendment is before us today is testimony to the perseverance of my distinguished chairman on the Budget Committee and colleague here in the Senate, Senator MUSKIE. He has sought the passage of sunset, or spending control legislation for years now. He has most effectively used his chairmanship of the Subcommittee on Intergovernmental Relations to research the need for such legislation and to demonstrate that need to the Senate. He has argued persuasively for such legislation long before the Nation ever heard of proposition 13. During my tenure in the Senate, I have seen him secure passage of many bills of importance to the welfare of the Nation over heavy opposition. I think he is about to do it here again today. It has been my pleasure to stand with him during this fight and to work toward the common goal we have sought for years.

I want to focus my remarks on several of the questions that are so often asked about sunset legislation:

What is this proposal—what will it require and how will it work?

Is this not a radical proposal that will threaten essential government services?

Do we know enough about how sunset will work? Do we not need more study?

Why is it important that we consider this now—in the last minute jam of a session?

Is this really important? Is it not just another set of rules and procedures that Congress will ignore?

How does this tie in with the congressional budget process? Is not that process enough to control Federal spending?

The distinguished Senator from Maine has described the pending proposal in some detail. I need not do it again. Simply stated the bill would terminate most Federal spending programs automatically on a regular schedule. Then, after a careful review by the appropriate Senate committee, the Senate and the Congress would decide whether to continue the program—or modify it—or terminate it. The two parts go together—the possibility of termination forces a review—and the review assures that the decision to continue or not continue the program will be a rational one. It is really a very simple mechanism—like all good mechanisms. It is also good because it builds on the existing practice of reauthorization.

The congressional budget process has shown what a good procedure can do. It has held down the total budget—billions of dollars below what the aggregate proposals of all committees would have been. It has sorted out national priorities. But by its nature it deals in setting those major priorities. It cannot and should not examine programs in detail. Thus it can determine that there is need for allocating additional national resources for defense. But it cannot examine all the ingredients of an effective national defense. This sunset proposal builds on the budget process to be certain that when Congress allocates money for an important national objective like defense, that money will be well used to meet the objectives. Waste makes no useful contribution to defense or any other function.

Mr. President, in listing the subjects that I wanted to review today, I suggested that we should discuss the need for sunset legislation. Actually, I do not really think we should have to discuss it.

However, starting with the most important reason first, we need legislation of this kind because the American people know we are not doing our job of stemming the tide of Government growth in this country. They know we are not doing our best to provide effective programs to meet their needs, but are choosing the easy way of trying to overwhelm problems with a multitude of duplicative programs. This is clear from my constituent mail. I think the perennially low performance ratings that Congress gets shows this. So I have felt for a long time that Congress should act to control government before the electorate forces action upon us.

In this connection, there appeared on August 24 a lead story in the Wall Street Journal headlined "Proposals to Restrict Expenditures or Taxes Are Picking up Steam." Well they certainly are and I could not be happier. As I indicated, both my chairman and I proposed bills to control Federal spending before it became a popular national issue. And for that reason I was particularly interested in the comment by John Shannon of the Advisory Commission on Intergovernmental Relations that "They are all realizing that the fat boy on the block is Uncle Sam." The article then goes on to state that in a recent poll ". . . 62 percent of the respondents said the biggest waster of their tax money was the Federal Government."

I am sure this does not come as a surprise to the distinguished Senator from Maine nor is it a surprise to me. We have both been seeking responsible solutions to Federal waste for many years. The need is to pass responsible, workable solutions like those before us today before we are forced to take drastic, perhaps unwise, action. I hope my colleagues will recognize the need to put our own house in order. The real need for this legislation lies in the citizens demand for it.

Mr. President, there were a number of other important points in the Journal article and I ask unanimous consent that it be printed in full at this point in the RECORD for the information of my colleagues.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Aug. 24, 1978]

PROPOSALS TO RESTRICT EXPENDITURES OR TAXES ARE PICKING UP STEAM

(By James M. Perry)

SEATTLE.—State Rep. Ellen Craswell works her way down the port side of the Walla Walla, a ferryboat making the 5:15 rush-hour run from Seattle to Winslow, and collects signatures for Initiative 62.

"Would you sign our petition to limit the growth of state government?" Mrs. Craswell asks an elderly gray-haired woman who is seated alone reading a Gothic novel. "I will," the woman says, "but I'll tell you this: Your proposal doesn't go far enough."

Mrs. Craswell, an enthusiastic Ronald Reagan Republican, shakes her head in mock despair. A year ago, in her first year in the legislature, she introduced a bill similar to Initiative 62, which would slow the rate of spending by the state. And her colleagues laughed at her. Too "radical," she was told. Now she is a "moderate."

But if the legislators wouldn't listen a year ago, the people certainly are listening now. Mrs. Craswell and the co-chairman of her group, State Rep. Ron Dunlap, expect to collect more than 700,000 signatures for Initiative 62. That would be a record for the State of Washington, eclipsing the 699,600 signatures that were picked up a few years ago on petitions to roll back salary increases that members of the legislature had voted for themselves. That one went on to a smashing victory in a general election. Most people think Initiative 62 will do the same, although it wouldn't go on the ballot until November 1979.

A NATIONAL MOVEMENT

"I've been in a lot of compaigns," Mr. Dunlap says, "but I've never seen anything like this. This is the most significant policy question before our state—maybe ever. And it's becoming the most significant policy question before the whole country."

Indeed, all across the country from Washington to Maine, people like Ellen Craswell and Ron Dunlap are buttonholing citizens with their petitions and collecting signatures by the thousands for various kinds of initiatives, propositions and constitutional amendments that would limit state taxes and spending. The clipboard has become the political symbol for 1978.

The success they have achieved at the state level is whetting their appetite for the ultimate battle—constitutional or statutory restrictions on spending by the federal government.

This so-called tax rebellion is personified by three people: Howard Jarvis, the father of California's famous Proposition 13; Lewis Uhler, president of the National Tax Limitation Committee; and John Shannon, an assistant director of the Advisory Commission on Intergovernmental Relations in Washington, D.C.

AVOIDING THE "MEAT AX"

It was Mr. Jarvis, with his tax-cutting Proposition 13, who turned Ellen Craswell from a "radical" to a "moderate."

Proposition 13, Mrs. Craswell says, disapprovingly, "is a meat ax. We tell people you can have a meat ax or you can have the moderate, reasonable solution we believe Initiative 62 to be."

Proposition 13, passed overwhelmingly by California voters June 6, says property can't be taxed at more than 1% of its estimated 1966 market value, that assessments can't be increased by more than 2% in any year unless the property is sold, and that no taxes can be increased and no new taxes added without the approval of two-thirds of the voters.

Mrs. Craswell's Initiative 62 says the growth rate of general state tax revenues (including the sales tax and property taxes collected by the state) cannot exceed the average growth rate of total state personal income over the three preceding years. "In other words," Mrs. Craswell explains, "state taxes won't increase faster than our pocketbooks."

JARVIS AND UHLER

Mrs. Craswell's patron is Mr. Uhler, former chairman of Ronald Reagan's tax-reduction task force and now president of the National Tax Limitation Committee. Mr. Uhler's group is seeking to put initiatives like 62 on the ballot in dozens of states.

The crusty Mr. Jarvis is contemptuous of Mr. Uhler's efforts. "Those expenditure limitations," he says, "don't cut spending; they give in to it. We aren't interested in slowing the rate of growth; we want government to operate with less money."

The lines will be drawn this fall between Mr. Jarvis' proposal and Mr. Uhler's.

Initiatives like Proposition 13 almost surely will be on the ballot Nov. 7 in four states—Michigan, Oregon, Nevada and Idaho. "It's the best we could do," Mr. Jarvis says. "We only had two months to put this together. I don't think getting on the ballot in four states is bad. This thing isn't like instant coffee. It's taken 15 long, lousy years to get where we are today."

Initiatives like Washington's 62 will be on the ballot this fall in at least four states also—in Michigan, cheek by jowl with a Proposition 13, and in Colorado, Texas and Arizona. Maine and Hawaii are possibilities.

A similar initiative was proposed in California but wasn't approved by the state legislature in time to be placed on the November ballot. The proposal was supported by Gov. Edmund G. Brown Jr. as a supplement to Proposition 13. The same Gov. Brown who once said Proposition 13 would be disastrous now says it gives Californians "a once-in-a-lifetime opportunity to reduce government growth."

"Wow!" says Mr. Javits. "Did you ever see a U-turn like that?"

"The transformation in public opinion over the last five years has been incredible," Mr. Uhler says. "People were satisfied with the way things were then. Now they are issuing demands for cuts. The result is that we have emerged as moderate and responsible people, supported by most of the politicians."

Mr. Shannon and his colleagues at the Advisory Commission on Intergovernmental Relations, an agency created by Congress 20 years ago to monitor the operation of the American federal system, continue to preach moderation. In a way, they are what is left of the "liberal" solution.

END OF THE "BULL MARKET"?

"For 30 years," Mr. Shannon says, "state and local finance has been a bull market. But now there is clear evidence that an increasing number of citizens no longer want the state-local sector to keep growing at a faster clip than the growth in their own income."

Even before Proposition 13, he says, some states had been making strides in cutting the growth in spending. At least 14 states had placed restrictions on the power of local officials to raise property taxes. At least five states had taken steps to control the rate of growth in state spending. And most states had turned to special tax exemptions and tax deferrals to help overburdened homeowners.

Reluctantly, Mr. Shannon accepts constitutional amendments that restrict state spending increases to real growth in the state's economy. He also favors indexing personal income taxes to prevent inflation from pushing taxpayers into higher brackets. (With indexing, adjustments are made to relieve people of having to pay taxes on that part of their income that reflects higher prices rather than increased purchasing power.) And he backs various measures to strengthen political accountability for the public officials responsible for new spending programs and higher taxes.

Colorado, he notes, already has indexed personal income taxes. Arizona passed a law indexing its deductions, credits and exemptions. And Gov. Brown, riding the crest of the taxpayers' rebellion, has proposed indexing in California.

But to "hard fiscal conservatives," Mr. Shannon concedes, all of this is "weak tea." "There is blood on their teeth," Mr. Shannon says, and he suspects the focus of the tax rebellion is switching from the states to the federal government. "They are all realizing that the fat boy on the block is Uncle Sam."

AN EYE ON THE "FAT BOY"

The results of a number of recent polls suggest that Americans are beginning to look at the "fat boy." In polls commissioned by Mr. Shannon's agency prior to the adoption of Proposition 13, respondents said they got the most for their tax money from the Federal Government. But in polls taken by Gallup, NBC and CBS after Proposition 13, the Federal Government dropped all the way from first to last. And in one of the polls, 62% of the respondents said the biggest waster of their tax money was the Federal Government.

So Mr. Jarvis and Mr. Uhler are switching targets right now. A committee of Mr. Uhler's National Tax Limitation Committee met July 26 to begin drafting an amendment to the U.S. Constitution that would put a squeeze on federal spending. "The time is ripe for it," Mr. Uhler says. "We have the momentum."

The amendment that the committee will draft will be more detailed than an amendment Rep. Philip Crane, an Illinois Republican and announced presidential candidate, already has introduced. The Crane amendment would limit total outlays by the federal government to one-third of the average national income for the three prior calendar years, with escape provisions for wars and national emergencies.

Mr. Jarvis isn't impressed. "It would take 20 years to pass a constitutional amendment," he says. "The country don't have that long. We'd all be in our graves."

So, he says, he will push for a national Proposition 13. Last week in Fort Worth, Texas, he announced a "freedom-for-taxpayers" plan that calls for Congress to cut federal taxes by $50 billion; this would be accomplished by reducing income taxes 20% across the board and by eliminating capital-gains taxes. The plan, which also would require that federal spending be slashed by $100 billion over a four-year period, is designed to limit the amount of money that the government collects.

"If they can't collect it," he says, "they can't spend it."

Mr. BIDEN. Whenever sunset legislation is discussed around the Senate, the question of whether there really is a problem comes up. After all, it is said, congressional committees conduct oversight hearings on programs all the time. Many programs are reauthorized periodically and receive annual appropriations and can be reviewed then. So why do we need a review process?

That issue was well addressed by Harry Havens of the General Accounting Office in his testimony before the Rules Committee on June 8 of this year. He listed four broad deficiencies that were cited as the need for sunset reform proposals of some kind. These were:

Incomplete coverage of the reauthorization process,

Inadequate attention to broad policy subjects,

Incomplete review coverage of Federal programs and activities, and

Lack of clarity and specificity in statements of the objectives of programs and activities.

In other words, we do not know what programs are supposed to do; our reviews of programs are incomplete; and we cannot see the forest for the trees, as the saying goes.

Of course, the GAO has been pushing for effective program review for a long time.

What did the staff working group on S. 2 and S. 1244 have to say about need? Stated clearly in one sentence on page 1 of its report the group said:

> . . . the staff working group concluded that . . . improvements in the program authorization and review process were desirable. . . .

I could not say it more clearly myself. (Admittedly the group differed on the mechanism to achieve the goal.)

One problem in demonstrating the need for better review of Federal spending is that there are so many programs, managed by so many agencies that it is an overwhelming job just to master the data and present a comprehensible statement of the problem. I think the best job I have seen is that done by the Government Operations Committee in studying sunset in 1976. Its findings presented in August 1976, are so definitive that as far as I know no one else has tried it since. Yet we have had this information before us for 2 years and only now are ready to act on it.

I ask unanimous consent that excerpts from the 1976 report of the Committee on Government Operations be printed in the RECORD to fully document the need for legislation of this kind.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

EXCERPTS

THE PROLIFERATION OF FEDERAL PROGRAMS

The 1976 Catalog of Federal Domestic Assistance lists 1030 programs administered by 52 Federal agencies. In Fiscal Year 1976, these programs provided an estimated $59.8 billion to the 50 states and nearly 80,000 units of local government, for a total of almost 25 percent of Federal domestic outlays and an estimated 25.2 percent of all State and local government expenditures.

In the health field alone, there are 302 different programs, administered by 11 separate Federal agencies. Under the broad category of community development, there are 259.

(NOTE.—The numbers in this section are taken from the Catalog of Federal Domestic

Assistance and, therefore, are based on different assumptions than the numbers used elsewhere in the report that were compiled from GAO or CBO data.)

As the program category is narrowed, the number of programs is no less bewildering. The 1976 Federal Catalog lists 39 different programs under the Veterans category, with another 28 under the heading Veterans Medical Facilities and Services. Under the category of Vocational Education, there are 27 different programs listed. The reader is referred to the Job Training Subcategory of the Employment, Labor and Training Category for other programs in this area. Under the heading of Transportation, there are 45 separate entries.

A GAO study on health services in outpatient health centers in the District of Columbia, found seven different programs—administered by HEW and OEO. Coordination was so lacking, the GAO found, that one neighborhood had eight clinics, several of which were badly underutilized.

Another GAO study of the use of military maintenance facilities found extensive duplication and underutilization of these facilities because of the emphasis each service placed on developing its own facilities rather than sharing existing facilities of other services. The study concluded that substantial long-range savings could be realized through greater inter-service maintenance, but that despite repeated encouragement from the Department of Defense, the individual services had continued to circumvent both the spirit and intent of such policy.

An HEW study found over 50 Federal programs providing some type of service to handicapped youth. Most of these programs were administered by HEW—by 14 separate units within that department. A GAO study of the HEW study found no point within HEW at which all these efforts were coordinated.

Finally, a study by the Joint Economic Committee found 62 separate programs involved in providing aid to the needy and social insurance, at a projected cost in fiscal year 1975 of $142 billion.

Note: Since 1966 the importance of categorical programs in the total Federal aid picture has lessened. In 1960, categoricals comprised 98 percent of total Federal aid. By 1975, they comprised about 75 percent, with block grants and general support aid (revenue sharing, e.g.) accounting for the difference.

THE GROWTH OF PERMANENT PROGRAMS

Side-by-side with the growth in the number of Federal programs over the last 10 years has been a dramatic increase in the amount of Federal funds spent on programs with permanent appropriations—funds spent without any review by Congress. From 1966 to 1976, these programs have become the fastest growing component of the Federal budget, tripling from $55 billion in 1966 to $165 billion in 1976.

In a different category, but representing a similar problem are the very large number of programs with permanent authorizations—programs enacted with authorizations stating "such sums as may be necessary" and containing no termination date.

A review of programs under the jurisdiction of the Senate Agricultural Committee (chosen because such a list had been prepared by the GAO at that Committee's request), showed 277 programs operating under permanent legislative authority. Only 65 programs were based on legislation which provided fixed termination dates. The 277 permanent programs represented a total year 1977. The 65 programs subject to periodic reauthorization compromised $6.8 billion in fiscal year 1977 budget requests.

What these two examples point out is that there is a significant segment of the Federal budget which escapes congressional review on a regular cycle.

THE GROWTH IN UNCONTROLLABLE SPENDING

The cost of continuing all 1976 programs in the 1977 budget was estimated at approximately $45–$50 billion higher than last year's spending level. Thus, despite targeted program cutbacks, the first budget resolution for fiscal year 1977 set spending at $413 billion, about $40 billion above the final budget figure for FY 1976.

Most of this growth is attributable to the increase in "uncontrollable" spending, which in 1967 accounted for about 59 percent of that year's budget but which in 1977 will take up roughly 77 percent of all Federal spending. Thus, uncontrollable spending is, in the words of one witness, "bleeding" the controllables. This witness, Dr. Allen Schick of the Congressional Research Service, testified further, that: "If we compared the 1966 and 1976 budgets, we would find dozens of major programs which were funded then, but not now. We would find dozens more which have grown less than inflation. And we would find dozens in which there is a significant and growing gap between the amount authorized and the amount actually appropriated."

Thus every year the uncontrollables are reducing the policy options open to the Congress in determining priorities for Federal spending.

THE GROWTH IN GOVERNMENTAL AGENCIES

In addition to the proliferation of programs administered by the Federal government, there has also been an extraordinary growth in the number of Federal agencies, commissions, bureaus and the like. According to the Library of Congress, from 1960 to 1974, 329 such governmental bodies were created, while only 126 were abolished. Of the 329 themselves, only 63 had been abolished by 1974. In 1974 alone, 85 separate governmental bodies were created.

THE GROWTH OF FEDERALLY MANDATED LAYERS OF GOVERNMENT

The last decade has seen not only a rapid growth in the activities of the Federal government, but also a mushrooming of new layers of government mandated or spawned by Federal programs.

At the highest level, there are 10 Federal Regional Councils, promoted by the Nixon administration as part of its New Federalism efforts to decentralize Federal activities.

Far more significant in terms of numbers and confusion are the single and multipurpose districts required or spawned by various Federal grant-in-aid programs.

According to a study by the Advisory Commission on Intergovernmental Relations on substate regionalism, released in 1974, over 4,000 geographic program areas had been recognized under 24 different Federal programs involving 11 Federal agencies. These included 481 Law Enforcement Planning regions, 957 Community Action agencies, 419 Cooperative Area Manpower Planning System Councils, 247 Air Quality Regions, 195 Comprehensive Areawide Health Planning agencies, and 165 Resources Conservation and Development districts, among others.

Mr. BIDEN. Some people seem concerned that this legislation is a threat to effective Government action. That is not so. A major concern is the requirement for periodic reauthorization of Federal programs, or automatic termination as it is often called. The feeling is that this is too abrupt or radical a change. Or that it will threaten the continuation of many worthwhile programs now on the books.

This proposal threatens only bad or wasteful programs. All it does is to bring programs out for a public review by the entire Congress. The concept of reauthorization, or automatic termination, is not new. Many programs are periodically renewed right now. Many programs are studied right now. All this proposal does is to adopt already existing congressional procedures, perfect them and extend them to virtually all programs.

There do not seem to be any really reliable figures as to what percentage of programs are subject to periodic reauthorization. The scope of programs that are reauthorized regularly ranges from defense to health to education to aid to the elderly to revenue sharing. This periodic review is not now regarded as a threat, but as an opportunity. An opportunity by proponents of these programs to improve them. So I really see little reason why the reauthorization process should be looked upon as a threat to some other programs, unless they are really not worthwhile. The other half of this proposal, the concept of program evaluation and review is certainly not new. I have not attempted a complete review of congressional oversight, but it is easily traceable to 1946 in the Legislative Reorganization Act which provides:

In order to assist the Congress in—

(1) its analysis, appraisal, and evaluation of the application, administration, and execution of the laws enacted by the Congress, and

(2) its formulation, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation, as may be necessary or appropriate,

each standing committee of the Senate and the House of Representatives shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee.

There it is, program evaluation and review. Nothing new or radical about it.

The only thing radical and new about this proposal is the new, more effective use it would make of old tried and true congressional processes. It takes the concept of reauthorization, requires it for most programs, and then says that before you reauthorize there must be an evaluation on which to base the decision about continuing the program.

The section of the Legislative Reorganization Act of 1946 cited above did not work very well, because nothing forced the study and the review. Reauthorization has not worked as well as it might, because reauthorization was not always accompanied by a careful study of the program. So tie the two together and require periodic reauthorization as well as a study of the program before you consider reauthorization.

That is a combination that could achieve good results. It will force committees to look more carefully at their programs. It will give Members of the House and Senate a chance to look at every program and to have some basis for judging its merit.

As is often the case with good ideas, this one is not really new. Certainly it is not radical or threatening.

Another issue that always arises is the question of further study, although I just

cannot imagine why it should have to be discussed. The ideas behind sunset as discussed earlier, are not new or difficult to understand. Sunset proposals have been pending before the Senate at least since I introduced my bill in July 1975, 3 years ago. They have been studied by two committees and a staff study group representing all committees.

The history of sunset in the Senate is a rather long one. It is a history filled with lengthy study and hearings, but also, unfortunately, with delays which killed it in 1976. I do not see how there can be further profitable study of this proposal. Rather it is time for the full Senate to dispose of the issue.

Two sunset bills were introduced in the 95th Congress. I introduced my sunset bill, S. 2067, in July 1975. Senator MUSKIE introduced his bill, S. 2925, in February 1976. The Subcommittee on Intergovernmental Relations of the Governmental Operations Committee then held 7 days of hearings on the bill and eventually it was reported favorably. The bill was then referred to the Committee on Finance and the Committee on Rules and Administration. The latter committee held important hearings on the bill. The bill was finally placed on the Calendar on September 20, 1976, too late to receive consideration in the 94th Congress.

In the spring of 1977 both Senator MUSKIE and I introduced new sunset bills, both drafted to take account of comments on earlier legislation and particularly the hearings on the Committee on Rules and Administration. The Intergovernmental Relations Subcommittee then held 6 days of hearings on S. 2 and a revised version of it was reported favorably. It was then referred to the Committee on Rules and Administration where my bill, S. 1244, had already been referred.

The Rules Committee then took a significant step. Following hearings on the two bills, Chairman CANNON asked the chairman of each standing committee to appoint the staff director (or designee) of his committee to a study group to review S. 2 and S. 1244 and recommend whatever modifications seemed necessary. This was most appropriate since the workload of a sunset bill inevitably falls upon the committees and their staff. While one would have expected an eager response to this opportunity, with a few notable exceptions the response was poor. I had a representative at the meetings, yet seldom, if ever, were a majority of the committees represented. Most were represented below the level of staff director. While the staff working group did indeed draft a new proposal, it could hardly be said to represent the concentrated efforts of the Senate committee staffs. This is not to derogate the efforts of those who did attend meetings and work diligently. Some of their proposals are incorporated in the modified proposal before us today.

Following this staff study, the Rules Committee met again and, after hearing from the General Accounting Office, Chairman PELL asked that representatives of Senator MUSKIE and myself meet with the GAO and try to come up with a mutually acceptable version. This was done and a bill emerged that I believe blends the best features of all of the proposals. Since then, other changes have been made to achieve the widest possible support.

I have reviewed the history of sunset to show that this proposition has been long and carefully considered. Any Senator with any real interest or concern has had an opportunity to be heard and, indeed, to participate in drafting legislation. I see no reason for delaying final action any longer.

Is this legislation really so important? What is so urgent about it that we are considering it now, right at the end of a session? I would answer that in two ways.

Sunset is of concern right now because of the bleak outlook for Federal finances over the next few years. In July the Director of OMB appeared before the Budget Committee to present the administration's forecast of Federal spending for the fiscal years 1980 and 1981. The projections showed what the administration called the unacceptable prospect of a $100 billion increase in Federal spending over the next 2 fiscal years. It is one thing to call such figures unacceptable. It is something else to do something about them. If we are not to remain in a deficit position forever, it is essential that we develop the tools to restrain spending. Four years of work has convinced me that sunset legislation is an essential tool. With the present rate of Federal spending we cannot get it too soon.

I thank the Senator from Delaware for yielding me this time.

Mr. ROTH. Mr. President, I yield 5 minutes to the senior Senator from Rhode Island.

Mr. PELL. I thank my colleague from Delaware.

Mr. President, I strongly commend the senior Senator from Maine, the driving force behind this idea and this legislation. I think he thought that the Committee on Rules was going to be the morgue for it. I tried to assure him that I would do my best to make sure it was not the morgue and that he would have an opportunity for a vote if we could help. I am glad to say that the good judgment of the Committee on Rules overwhelmingly supported the concept of the sunset legislation and that it did not live up to the criticism of it by various citizens groups, who were rather critical of it. If they did not use the word "morgue" to describe it, they certainly inferred that that is what its function was with regard to this legislation.

I really congratulate the Senator from Maine on his leadership and the fact that he has pressed many of us to be more active than we would have otherwise. If anybody deserves credit, he really does.

Mr. MUSKIE. May I interrupt just to thank the distinguished Senator from Rhode Island? He ascended to the chairmanship of the Rules Committee in February and found himself overwhelmed by the accumulated work of that committee as well as the necessities of an election year. Notwithstanding those pressures, he did cooperate to work on this legislation and bring it to the floor.

I should like to say "thank you," for the record.

Mr. PELL. In behalf of my fellow Members, we are delighted at those words. I thank the Senator very much. We all thank him.

Mr. President, the argument for passage of sunset legislation is simple and compelling. We in Congress must do a better job of controlling Government spending. We must do a better job of making certain that every dollar taken from the taxpayers is spent wisely, prudently, and with maximum effectiveness.

We cannot tolerate continuation of Government programs that are nonessential or of low priority. We cannot tolerate continuation of Government programs that sputter along on three cylinders instead of running smoothly on all six, or even all eight.

We cannot tolerate such programs, because of the absolute necessity to restrain Government spending, to reduce the Federal Government deficit, and to combat inflation. If we are going to achieve those objectives, we must reexamine every Government program and ask whether it is necessary, effective, and efficient, or low-priority, duplicative, and wasteful.

The sunset legislation simply gives Congress the ability to do the job that it should in examining all of these Government programs.

Mr. President, there are a number of objections raised by those who oppose passage of sunset legislation. One objection is that all of this reexamination of Government programs imposes a heavy workload on Congress and that it will be very difficult to do. It does, but it is our job to measure up to it.

Another objection is that the bill is unnecessary, because the Congress already carefully reexamines most Federal Government spending programs through periodic reauthorization bills.

Obviously, these objections are contradictory. But let us treat them individually on their merits. I agree that, in many cases, Congress does an excellent job of reviewing existing Government programs. In this regard, I am most familiar, as chairman of the Senate Subcommittee on Education, with the work that we do to periodically review Federal Government education programs. In that subcommittee, we limit authorizations of programs, as a matter of policy, to 5 years at the most, and during reauthorization, we make a concerted effort to reexamine each program.

I think it is clear that we can do a better job of examining Government programs for efficiency, effectiveness, and relative need.

I agree that making a really thorough periodic examination of Government programs will mean more work, harder work for Congress. But it is a job that should be done, and I, for one, do not intend to tell the people of my State that this job is one that should be done, but we will not do it, because it is too

difficult. The work must be done to bring Government programs under effective control.

I recognize, Mr. President, that there have been strong concerns expressed over the specific requirements of this legislation—concerns over the impact on Senate committees and their ability to function effectively within the framework of the proposed sunset legislation.

Those concerns have been thoroughly heard and examined, and I believe changes made in the legislation adequately address those concerns while preserving the essential features of sunset procedures.

This legislation was first considered and reported by the Committee on Governmental Affairs. The legislation was then referred, last year, to the Committee on Rules and Administration, where an initial hearing was held last fall under the able chairmanship of Senator CANNON. As a result of that hearing, Senator CANNON established a staff working group, with representatives from each of the Senate committees, to find workable solutions to those concerns.

This year, after I had assumed the chairmanship, the committee continued its work on the bill. More hearings were held and at my request, a compromise bill was drafted with the cooperation of the General Accounting Office, and the staffs of the Rules Committee and the Committee on Governmental Affairs.

Legislation, in essentially that form, was reported to the Senate by the Committee on Rules and Administration.

Subsequently, to further accommodate Senators who continue to have concerns about specific provisions Senator MUSKIE offered an amendment in the nature of a substitute. That is the proposal we are considering today. So this is not hastily drafted legislation. It has been very carefully considered, and I think it fair to say that every effort has been made to meet the concerns expressed an the impact of the legislation on the working procedures of the Senate.

In conclusion, I strongly support this legislation. I believe it is a necessary and important step that must be taken to assure prudent use of taxpayers' dollars.

Mr. President, I yield the floor.

Mr. MUSKIE. Mr. President, I think we have concluded, for all practical purposes, discussion of the bill. All Senators, so far as I know, who wished to speak on it have had that opportunity. As I understand it now, we shall vote on the bill, with a rollcall vote at 6 o'clock.

I should like to express my appreciation to all Senators who have spoken. I want to pay particular tribute to my colleague (Mr. ROTH) and express my thanks for the privilege it has been to work with him over these 3 years on this bill. As I recall some of the discouraging moments, it is rather amusing to note the popularity that has accumulated behind this idea. I hope that popularity is fully expressed in the rollcall vote that we shall have at 6 o'clock this afternoon.

I thank my good friend.

Mr. ROTH. Mr. President, I join the distinguished Senator from Maine in hoping that we have a historic vote at 6 o'clock on this monumental piece of legislation. I want to thank him for the leadership role he has played.

I also pay my respects to the staff of the Intergovernmental Relations Subcommittee, both on the majority and minority side, who have played a key role in developing this legislation.

I should say, as I listened to the hope and promise that this legislation is to bring about, I hope that we do not find, ourselves, as happens in some cases, that the program falls short of its goal so that, 10 years later, we decide the only thing to do with sunset is to sunset it. In contrast, I hope that, as Senator GLENN said, it is the beginning of sunrise.

Mr. MUSKIE. Mr. President, may I move third reading of the bill at this point?

The PRESIDING OFFICER. Is there further debate?

Mr. ROTH. Before that, before I yield back my time, I make the point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. PACKWOOD. Mr. President, the message is clear to all of us. Our constituents are angry. They are angry about the unnecessary growth of Government, they are angry about Government waste, and they are angry about Government programs that are costly, conflicting, and ineffective. The programs go on, because there is no constituency in this country to get rid of any Government programs, good or bad. The effect is very simple. We have seen it in this Congress—our ability to institute any new programs—no matter how good is severely limited by legitimate budgetary considerations. We must find a way to get rid of what does not work if we are ever to have a chance to try what does work.

The bill that we have before us today goes a long way toward giving us this ability. Sunset legislation offers a significant and positive response to the public's concern about inadequate Government performance and crippling Government waste. It establishes a 10-year timetable for review of virtually all Government programs unless they are periodically evaluated and reestablished by Congress. The amendment introduced by a colleague from Illinois gives us a workable system for evaluating these programs. This legislation will tie the politicians' rhetoric to the discipline of competitive reality.

Why not a report card for Government programs? What could be simpler than asking the executive branch to rank all programs in order of effectiveness—from best to worst. Those programs which consistently rank as the worst will be the prime candidate for cutting. They should be—if they do not work let us get rid of them. But, let us give ourselves the tools with which to do this fairly and effectively. This bill as amended does exactly that and I for one am delighted to support it wholeheartedly.●

Mr. ROTH. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and was read the third time.

Mr. ROBERT C. BYRD. Mr. President, has the order been entered for——

The PRESIDING OFFICER. The yeas and nays have been ordered, but the vote is not to come until after 6 o'clock.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote, which will be a rollcall vote, on this bill occur at the hour of 6:15 p.m., with paragraph 3 of Rule XII waived.

The PRESIDING OFFICER (Mr. HODGES). Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, furthermore, that no further debate, motions, points of order, et cetera, be in order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I yield back all time.

The PRESIDING OFFICER. All time has already been yielded back.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the rollcall vote on the sunset bill begin at 6:05 p.m., that it be a 20-minute rollcall vote, and that the warning bells be sounded after the first twelve one-half minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, what is the pending business?

The PRESIDING OFFICER. The Senate will now resume consideration of H.R. 50, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 50) to translate into practical reality the right of all Americans who are able, willing, and seeking to work to full opportunity for useful paid employment at fair rates of compensation; to assert the responsi-

bility of the Federal Government to use all practicable programs and policies to promote full employment, production, and real income, balanced growth, adequate productivity growth, proper attention to national priorities, and reasonable price stability; to require the President each year to set forth explicit short-term and medium-term economic goals; to achieve a better integration of general and structural economic policies; and to improve the coordination of economic policymaking within the Federal Government.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the pending business be temporarily set aside for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar orders numbered 1195 and 1202.

The PRESIDING OFFICER. Without objection, it is so ordered.

REPEAL OF LIMITS ON RELIGIOUS LAND HOLDINGS

The Senate proceeded to consider the bill (S. 3371) to repeal certain provisions of law establishing limits on amount of land which certain religious corporations can hold in any territory of the United States, which had been reported from the Committee on Energy and Natural Resources with an amendment on page 2, beginning with line 1, insert the following:

SEC. 2. This repeal may not be considered or construed as endorsement, support, or permission for any development on or other use of any land in any territory or possession of the United States; nor shall it be evidence of congressional or other intent to confirm title to any lands in said territories or possessions claimed by any association, corporation, or other entity for religious or charitable purposes.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1890 of the Revised Statutes of the United States (48 U.S.C. 1480), section 26 of the Act entitled "An Act to amend an Act entitled 'An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes' approved March twenty-second, eighteen hundred and eighty-two" (48 U.S.C. 1480a), and the Act of September 22, 1950 (448 U.S.C. 1480b), are hereby repealed.

SEC. 2. This repeal may not be considered or construed as endorsement, support, or permission for any development on or other use of any land in any territory or possession of the United States; nor shall it be evidence of congressional or other intent to confirm title to any lands in said territories or possessions claimed by any association, corporation, or other entity for religious or charitable purposes.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read:

A bill to repeal certain provisions of law establishing limits on the amount of land certain religious corporations may hold in any Territory of the United States.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-1275), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT

PURPOSE OF THE MEASURE

The purpose of S. 3371 is to repeal provisions of three acts which restrict the ability of religious institutions to own property in any Territory of the United States.

BACKGROUND AND NEED

In 1851, prior to statehood, the Church of Jesus Christ of Latter-Day Saints established a provisional government in Utah under the name of the State of Deseret and was granted an ordinance of incorporation. Congress had previously adopted an organic act establishing a territorial government in Utah, but that government was not organized until after the passage of the Church charter. Subsequent to its organization, the territorial government twice passed measures which, in effect, validated the church's charter.

At that time, polygamy was a sanctioned religious doctrine of the Mormon faith—one that was not only practiced, but encouraged. This led Congress to adopt strong antipolygamy statutes. The first of these was enacted in 1962 and is entitled, "A bill to punish and prevent the practice of polygamy in the territories of the United States and other places, and disapproving certain acts of the legislative assembly of the territory of Utah".

Section 1 defines polygamy as "bigamy" and provides for both prison terms and fines for a violation. Section 2 repeals the ordinance incorporating the church. Section 3 prohibits any religious organization from owning land worth in excess of $50,000 in any Territory of the United States. Real estate acquired or held contrary to this limitation must be forfeited and escheat to the United States. This provision was modified by Section 26 of the act of March 3, 1887, which excludes land held for house of worship, parsonages, and burial grounds. Subsequent measures refined the antipolygamy statutes; however, the land holding prohibitions were retained except for Alaska which was exempted in 1950 (64 Stat. 905). The intent of the 37th Congress in enacting the Statute was expressed by Senator Bayard in support of the bill in June 1862:

"I am satisfied there is great danger in that Territory [Utah], under its present government, that ecclesiastical institutions which prevail there will ultimately become the owners in perpetuity of all the valuable land in that Territory, and so afford a nucleus for the permanence of their general institutions, unless a stop be put to it by act of Congress."

The constitutionality of this provision was challenged in 1890 in the cases of *The Late Corporation of the Church of Jesus Christ of Latter-Day Saints* v. *United States* and *Romney* v. *United States* (136 U.S. 1). In upholding the statute, the Supreme Court reaffirmed the plenary power of Congress over U.S. territories, and sustained the repeal of the incorporation of the Mormon Church. Citing precedents in the general law of charities, the Court determined that all lands of the church devolved to the United States and were to be disposed of by the Secretary of the Interior in a manner which best reflected the needs of the residents of the Territory of Utah.

The church renounced the doctrine of polygamy in 1890, and in 1893 Congress passed a Joint Resolution (28 Stat. 980) returning to the church, from the hands of the receiver who had been appointed by the courts, all personal property and money then in his hands.

In 1896, Congress passed a joint resolution returning to the church the real property then in the hands of the receiver (29 Stat. 758).

Since that time the statute has not been exercised. While the constitutionality of the statute was upheld in 1890, there is some question as to whether it would withstand challenge now under Article I, section 9, clause 3 as a bill of attainder (see *United States* v. *Lovett*, 328 U.S. 303 (1946)) under the First Amendment both on the free exercise and establishment of religion grounds since a statute which results in the diminution of a religion is just as suspect as one which may work to establish religion (Opinion of the Justices, 109 N.H. 578, 258 A 2d 343 (1969); *Paul* v. *Dade County*, Fla. App. 1967, 202 So. 2nd 833, cert. den. 390 U.S. 1041).

LEGISLATIVE HISTORY

S. 3371 was introduced on August 2, 1978, and was considered by the full committee on September 21, 1978, and ordered favorably reported with an amendment. S. 3371 is cosponsored by Senators DeConcini, Church, Cannon, and McClure.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SANTA CRUZ DAM AND RESERVOIR, N. MEX.—RECLAMATION FEASIBILITY STUDY

The Senate proceeded to consider the bill (S. 3158) to authorize the investigation to study the feasibility of the Santa Cruz Dam and Reservoir, Santa Cruz Irrigation District, N. Mex., and for other purposes, which had been reported from the Committee on Energy and Natural Resources with an amendment on page 1, line 3, after "Interior" insert a comma and "after October 1, 1979," so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of the Interior, after October 1, 1979, shall make a full investigation and study to determine the feasibility of carrying out a project to rehabilitate and improve the existing Santa Cruz Dam and Reservoir, Santa Cruz Irrigation District, New Mexico, including—

(1) repairing and stabilizing the face of the dam;

(2) enlarging spillway capacity to insure the safety of the dam; and

(3) raising the dam to increase the storage capacity of Santa Cruz Reservoir.

(b) In carrying out the investigation and study authorized by subsection (a) the Secretary shall give full consideration to the potential for developing the Santa Cruz Dam and Reservoir as a unit or part of the San Juan-Chama project.

(c) The Secretary shall submit to the President and the Congress as soon as practicable the results of such investigation together with his recommendations.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this bill.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1283), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT

PURPOSE OF THE MEASURE

The purpose of S. 3158 is to authorize the Secretary of the Interior to undertake a feasibility investigation of the potential for rehabilitating and improving the existing Santa Cruz Dam, N. Mex., while giving consideration to including the project as a unit of the San Juan-Chama project, also in New Mexico.

BACKGROUND AND NEED

The Santa Cruz Dam and Reservoir were completed in 1929. The original storage capacity of the reservoir was 4,615 acre-feet providing water for approximately 4,600 acres of cropland. Since project completion, siltation has reduced the amount of storage capacity in the reservoir by 1,200 acre-feet with a resultant reduction in water supply.

This irrigation storage facility is of critical importance to the farmers in the area, as it has made possible a relatively reliable water supply in most years. District farmers have been able to concentrate farming activities on fruit orchards and other crops with relatively high income potential. Lands served by the facility are held in relatively small tracts by approximately 1,700 owners.

In 1975, the Santa Cruz Irrigation District requested a $50,000 grant from the New Mexico water research, conservation, and development fund to make an engineering investigation of the Santa Cruz Dam to determine its stability and the feasibility of raising the structure to increase storage capacity. The New Mexico Interstate Stream Commission approved the grant.

The district contracted with the Department of the Interior's Bureau of Reclamation for two studies, "Appraisal Study Raising Santa Cruz Dam, New Mexico" and "Geologic Report Santa Cruz Dam, Santa Cruz Irrigation District, New Mexico." Both studies have been completed. Analysis of the studies indicate that further investigation is merited to examine the feasibility of raising the dam so that additional storage is provided and also provision of increased spillway capacity and rehabilitation to insure the safety of the structure.

Three options for repair of the deteriorated downstream face of the dam and increasing the spillway capacity were studied. Two of the options also involve raising the dam to increase storage capacity. The three options and the estimated construction costs at 1976 prices are as follows:

1. Repair the downstream face of the dam and provide a 185 foot spillway to pass the design storm (43,000 cubic feet per second). Cost $1,450,000.

2. Same as No. 1 and raise the dam 13 feet to recover lost storage capacity. Cost $3,500,000.

3. Same as No. 1 and raise the dam 23.5 feet to recover lost storage capacity and provide for anticipated additional capacity loss to sediment through the year 2030. Cost $3,800,000.

LEGISLATIVE HISTORY

S. 3158 was introduced on May 26, 1978, by Senator Domenici. It has long been the custom of the committee to not require hearings preparatory to reporting legislation authorizing feasibility investigations by the Secretary of the Interior.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTIONS IN THE ENROLLMENT OF H.R. 12255

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House on House Concurrent Resolution 730.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (H. Con. Res. 730) directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 12255.

Mr. ROBERT C. BYRD. Mr. President, the House-passed resolution makes a technical reference change in the enrollment of the concurrent resolution on H.R. 12255. There is no substantive change made in the legislation.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution (H. Con. Res. 730) was considered and agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session for not to exceed 5 minutes; that for that purpose, the pending unfinished business be temporarily laid aside. The reason I make this request is to consider the second treaty shown on the Executive Calendar and to consider certain nominations which I will specify.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the treaty.

PROTOCOL AMENDING THE INTERNATIONAL CONVENTION FOR THE HIGH SEAS FISHERIES OF THE NORTH PACIFIC OCEAN

The Senate, as in Committee of the Whole, proceeded to consider Executive J. 95th Congress, 2d session, the protocol amending the International Convention for the High Seas Fisheries of the North Pacific Ocean.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the protocol be considered as having passed through the various parliamentary stages up to and including the presentation of the resolution of ratification.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution of ratification will be stated.

The legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol signed at Tokyo April 25, 1978, Amending the International Convention for the High Seas Fisheries of the North Pacific Ocean, Together with Related Agreed Minutes and Two Memoranda of Understanding (Ex. J, 95–2) without reservation.

Mr. GLENN. Mr. President, the International Convention for the High Seas Fisheries of the North Pacific Ocean (INPEC) agreement between the United States, Japan, and Canada, has since 1953 served to insure maximized long-term productivity and conservation of North Pacific fishery resources. The Congress then passed in 1976 the Fishery Conservation and Management Act (FCMA), the most comprehensive fishery law in American history. FMCA made it a duty of the Federal Government to actively conserve and manage the abundant fishery resources found within 200 miles of America's coasts. This act also directs the Secretary of State to initiate promptly the renegotiation of any treaty which is inconsistent with the purposes, policy, or provisions of the FCMA as they pertain to the U.S. fishery conservation zone, or for anadromous species beyond that zone.

The International Convention for the High Seas Fisheries of the North Pacific Ocean was found inadequate and, after negotiations between Japan, Canada, and the United States the Protocol amending the Convention was agreed to. Since the renegotiated agreements are not entirely consistent with the terms of a governing international fisheries agreement, as stipulated by our fisheries law, the President has submitted this Protocol for the Senate's advice and consent. As chairman of the Senate Foreign Relations Subcommittee on East Asian and the Pacific Affairs. I wish to speak today in support of ratification.

Some have questioned whether the United States has the right to impose limitations on international salmon fishing. When it is recalled that America spends large sums of money each year to stock its streams, the salmon of U.S. origin must be viewed as an American investment which warrant protection. Moreover, Japanese fishermen have been fishing for salmon with nets that entangle salmon by their gills. Such techniques are nondiscriminatory and wasteful, unable to differentiate between old and young salmon, and result in incidental mortality of other marine life, notably fur seals, sea lions, porpoises, and seabirds. Of growing concern is this incidental killing of Dall porpoises, a marine mammal that is the most common victim of Japanese drift gillnet operations. Estimates of Dall porpoises abundance in the north Pacific are not available and calculations of incidental killing of these mammals by the Japanese fleet range as high as 19,700 in 1977.

Addressing these issues are a series of joint research programs which are spelled out in a United States-Japan memorandum of understanding. This memorandum, an integral section of the renegotiated agreements, provides for the exchange of statistical information, specified sighting surveys, and coopera-

tive research initiatives providing reliable scientific information to determine the effects of Japanese salmon fishing on marine mammal populations.

In addition, the United States and Japan will join in gear modification research and development efforts aimed at the reduction of incidental mortality. The opportunity is therefore available to creatively join with Japan to gain necessary data on Dall porpoises as well as other incidental victims of drift gillnet fishing and eventually develop the technological sophistication essential for marine conservation initiatives.

Over and above the aforementioned provisions of the renegotiated treaty is a protocol, setting forth the restrictions to Japanese fishing under the amended convention. Under the 1952 convention, Japan refrained from fishing for salmon east of 175 degrees west longitude. Estimates, however, reveal that even with this abstention line some 2,551,000 salmon of American origin are intercepted annually by Japanese fishing. If the United States had abandoned the treaty and strictly enforced the 200-mile zone as provided in the FCMA, this would have given Japan access to American salmon in the Gulf of Alaska. Without violation of the 200-mile coastal constrictions the Japanese fleet would have been able to harvest 16 million North American salmon per year.

Under the terms of the renegotiated treaty, however, Japanese vessels may fish for salmon in a 70,000 square mile area within the U.S. 200-mile zone while agreeing not to fish for salmon in 775,000 square miles outside of the U.S. zone. In order to accomplish this, the revised convention moves the abstention line 10 degrees further westward to 175 east longitude. The cumulative effect of these stipulations is to reduce Japan's catch of North American salmon to only 400,000—668,000 per year. At the low end of the spectrum, this would be about an 85-percent reduction in annual interceptions. Maximum protection of U.S. salmon is thus afforded with the renegotiation of the convention.

The revised INPFC is a strong and necessary addition to America's fisheries conservation efforts. Crucial enforcement and innovative scientific research provisions, and the various fishing restrictions are consistent with the spirit of the Fishery Conservation and Management Act of 1976.

The original 1952 convention has been effective in most aspects but has not served us well in regards to salmon fishing. U.S. fishermen have contended that the line beyond which the Japanese agreed not to fish for salmon be moved farther west. Under the renegotiated Convention this has been accomplished with an estimated annual reduction in Japanese salmon catches of at least 265,000 U.S. origin salmon.

Mr. President, I wish to congratulate the American negotiating team for this valuable document. It is an outstanding accomplishment. I would also like to commend the Japanese Government for making some short-term sacrifices in the harvesting of a natural resource to insure a longer-term abundance of salmon for future generations. They have respected the right and responsibility of the U.S. Government to manage these salmon that spawn and breed in America's rivers and streams. The Japanese Diet has already given its approval to this treaty and I look forward to the valuable information that will come from the cooperative efforts of Japanese and American scientists. It is in this spirit that I give my support to this unique opportunity to protect America's resources while exploring with another nation, environmentally sound methods of high sea salmon fishing.

JOINT STATEMENT

Mr. STEVENS. Mr. President, the Senate today is considering the revised International North Pacific Fisheries Convention (INPFC).

The United States and Japan negotiated the new treaty last spring. The new agreement will result in an estimated 90-percent reduction of Alaska salmon currently being taken by the Japanese.

As a result of a previous joint Stevens/Magnuson amendment to the enabling legislation there are four U.S. commissioners on the INPFC Commission: a representative from the Federal Government, two from the State of Alaska, and one from the State of Washington.

The new INPFC treaty limits the areas in which Japanese high seas fishing efforts may take place, limits the number of days the areas are open, and the number of vessels Japanese fishermen may use in their fishing effort. The Japanese high seas salmon fishery is very wasteful. immature fish are often caught, dead fish drop out of gill nets and whole nets break loose killing fish for many years.

Our Russian neighbors have high-seas salmon which are caught by the Japanese. They are also substantially reducing the allowable Japanese catch. The independently applied pressure by the United States and the Soviet Union upon the Japanese high-seas salmon fishery will some day in the near future make this fishery economically feasible. I believe this agreement marks the beginning of the end of this wasteful fishery.

The residents of southwestern Alaska are still greatly concerned that some of their salmon, particularly stocks from the Alaska-Yukon/Kuskokwim area, are being intercepted by the Japanese. We want to assure these people that we will do everything possible to eliminate the Japanese interceptions of their stocks.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that immediately following the vote on the sunset bill, the Senate go into executive session for the purpose only—without any motion point of order, amendment or reservation, and so forth—of voting upon the resolution of ratification; that upon the disposition of the vote, the Senate immediately return to legislative session and to the resumption of consideration of the Humphrey-Hawkins bill.

Mr. STEVENS. Mr. President, reserving the right to object—and I shall not object—I believe that we should add to the request that the chairman of the Appropriations Committee be duly notified. It has been the Senator from Washington who has been pushing us almost every hour to get this matter done, and I am indebted to the distinguished majority leader, and I want to make certain that our good friend from Washington knows that this has been arranged at his request.

I do not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. We will have a rollcall vote, Mr. President, this being a treaty.

NOMINATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of nominations on the Executive Calendar, with the exception of one nomination under "Judiciary," one nomination under "Rural Electrification Administration," and one nomination under "Federal Election Commission."

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, if it is agreeable to the distinguished minority whip, I ask unanimous consent that the nomination be considered and confirmed en bloc.

Mr. STEVENS. Mr. President, reserving the right to object—and I shall not object—my understanding is that Calendar Numbers 301, 344, and 346 will not be included in this request.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. STEVENS. I have no objection.

The PRESIDING OFFICER. It is so ordered.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF STATE

Donald K. Petterson, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Somali Democratic Republic.

Henry David Owen, of the District of Columbia, to be Ambassador at Large.

Richard B. Parker, of Kansas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

Richard A. Ericson, Jr., of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Iceland.

Samuel Rhea Gammon, of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mauritius.

Herbert S. Okum, of Maryland, a Foreign Service officer of class 1, to be Minister during the tenure of his assignment as the State Department SALT representative at Geneva, Switzerland.

OVERSEAS PRIVATE INVESTMENT CORPORATION

J. Bruce Llewellyn, of New York, to be President of the Overseas Private Investment Corporation.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Jane Cahill Pfeiffer, of Connecticut, to be a member of the General Advisory Committee of the U.S. Arms Control and Disarmament Agency.

UNITED NATIONS

Sundry nominations to the United Nations.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to move en bloc to reconsider the

votes by which the various nominations were confirmed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I make that motion.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978

The Senate continued with the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. The business before the Senate is H.R. 50.

FIFTEEN-MINUTE RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 15 minutes.

There being no objection, the Senate, at 4:15 p.m., recessed until 4:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. MELCHER).

CONTINUING RESOLUTION FOR THE EXPORT-IMPORT BANK

Mr. HOLLINGS. Mr. President, pending leadership attendance on the floor here, maybe we can dispose of other matters.

House Joint Resolution 1157 is a continuing resolution for the Export-Import Bank. We had passed one, Mr. President, that continued the authorization until December 31 of this year; and now I see I can address the distinguished majority leader on this score.

House Joint Resolution 1157 was passed on yesterday. Last evening, unbeknownst to me, a unanimous-consent agreement was entered into where it would be held at the desk when it came over to this side.

Mr. President, it would be my intent, and I hope if I could be notified that when it does come over to this side I would be present, because unless I can offer an amendment which was overwhelmingly adopted by the U.S. Senate relative to imports and exports, specifically about textiles, on Friday last—unless I can offer that amendment I am going to have to object to its being taken up.

I understand parliamentarily that unanimous consent would be required in order to take up that continuing resolution. I have conferred with the distinguished chairman who is handling the bill, the Senator from Illinois (Mr. STEVENSON); I personally asked him last evening, if anything came before the Senate that affected that particular bill, that I be notified; and I am just making this record at this time so that we will be here and will be available in the Chamber at the proper time when the Senate again considers the Eximbank bill that has already been acted on and several amendments adopted and otherwise, and was set aside for the tax reform bill on last weekend. Whether that is called back again, as I understand, will be up to the majority leader.

Senator STEVENSON said he would make every attempt to have it called up, or in lieu thereof the continuing resolution; and I do not want to be obstructionist, in a sense, but I still want to protect the rights of the Senate, which deliberated, and voted on this overall measure on last Friday.

Mr. ROBERT C. BYRD. The Senator has my assurance that he will be informed and he will be on the Senate floor before I will allow any action on either of these measures.

Mr. HOLLINGS. I thank the distinguished majority leader.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

(Mr. HOLLINGS assumed the Chair.)

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I have been asked by Mr. EASTLAND and Mr. THURMOND to call up two nominations which were reported earlier today by the Judiciary Committee. I am informed by the chairman (Mr. EASTLAND) that there is no opposition to the nominations, and I am also informed to that effect by the distinguished Senator from South Carolina (Mr. THURMOND).

At the request of Mr. EASTLAND and Mr. THURMOND, and I believe this has been cleared on the Republican side—is that correct, may I ask Mr. THURMOND?

Mr. THURMOND. Yes, that is correct.

Mr. ROBERT C. BYRD. There are two nominations: Henry S. Dogin, of New York, to be Deputy Administrator for Policy Development of the Law Enforcement Assistance Administration; and Homer F. Broome, Jr., of California, to be Deputy Administrator for Administration of the Law Enforcement Assistance Administration.

I have been asked by Mr. EASTLAND within the last 15 minutes to call up these two nominations. He told me there was no opposition to them. Mr. THURMOND wants very much to call up the nominations.

If there is no objection, I ask unanimous consent that the Senate go into executive session for not to exceed 5 minutes——

Mr. THURMOND. Mr. President, I think 2 minutes would be sufficient.

Mr. ROBERT C. BYRD (continuing). For not to exceed 5 minutes, after which it return to legislative session and the resumption of the Humphrey-Hawkins bill, for the purpose of considering the two nominees whose names I have just read, if this is agreeable to Mr. THURMOND.

Mr. THURMOND. It is agreeable.

Mr. ROBERT C. BYRD. I know it is agreeable to Mr. EASTLAND. He wants it done.

The PRESIDING OFFICER. Without objection, it is so ordered. The first nomination will be stated.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

The second assistant legislative clerk read the nomination of Henry S. Dogin, of New York, to be Deputy Administrator for Policy Development of the law Enforcement Assistance Administration.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

The second assistant legislative clerk read the nomination of Homer F. Broome, Jr., of California, to be Deputy Administrator for Administration of the Law Enforcement Assistance Administration.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. THURMOND. Mr. President, I am pleased to add my support to the rest of the members of the Senate Judiciary Committee who have ordered reported favorably without opposition, the nomination of Henry S. Dogin to be Deputy Administrator for Policy Development for the Law Enforcement Assistance Administration.

Mr. Dogin comes to this very important position with qualifications that are almost unmatched and which make him uniquely qualified to assume the position for which he has been named. Mr. Dogin was for several years a prosecutor in New York State having done his law work at Columbia University School of Law. In 1971, when the New York Regional Office of LEAA was established, Mr. Dogin became the Deputy Regional Administrator and served there for 2 years with distinction. In 1973, he was called to the Justice Department where he became Deputy Assistant Attorney General in the Criminal Division for Administration and among other responsibilities, was in charge of the Organized Crime Task Forces. In 1975, he was the Acting Administrator of the Drug Enforcement Administration at the Justice Department. He served during troubled times in that agency and was able to make very significant contributions to the organizational effectiveness and efficiency of DEA.

Since 1976, he has served as the State Planning Agency Director of the LEAA program in New York State. This is the State agency, funded with LEAA funds,

that administers the LEAA block grant program. New York State, of course, receives LEAA funds according to the population formula as do all States. This means that New York receives the second largest allocation of these funds, second only to California. In this capacity, Mr. Dogin has had a major responsibility in the administration of the LEAA program.

Mr. President, this unique combination of criminal justice and administrative experience makes Mr. Dogin an excellent choice to be the Deputy for Policy Development. He also will be exceptionally qualified to assume the responsibilities of the Office of the Administrator of LEAA. It now appears that Mr. Carter's nominee to be Administrator, Mr. Norval Morris, will not be confirmed by the Senate this year since Mr. Morris' nomination is still pending in the Senate Judiciary Committee. At this late date in the session, it seems highly unlikely that Mr. Morris' nomination, which has proved to be quite controversial, will emerge from the committee.

If Mr. Dogin is confirmed and if Mr. Morris is not, then it is my view that the LEAA law enabling legislation provides that Mr. Dogin shall serve as Acting Administrator until such time as a new administrator is nominated and confirmed by the Senate. My view is based on the review of the legislative history of the 1973 LEAA amendments, which are contained in the Crime Control Act of 1973. I am particularly mindful of the conference report on this legislation which says in part:

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

The House bill provided for the abolition of the two positions of Associate Administrator and vested all administrative and policy authority in the Administrator of LEAA. The bill created a position of Deputy Administrator to assist the Administrator by delegation and to serve as Administrator in the absence or incapacity of the Administrator. The Senate amendment also provided for all authority to be vested in the Administrator, but provided for two Deputy Administrators to be appointed by the President by and with the advice and consent of the Senate. One deputy would assist the Administrator in the areas of policy and operations and would act for him in his absence or incapacity, and the second deputy would be responsible for administrative management functions. The conference substitute adopts the Senate amendment.

Mr. President, I want to underscore the provision of the report language which states that, "one Deputy would assist the administrator in the areas of policy and operations and would act for him in his absence or incapacity, and the second deputy would be responsible for administrative management functions." This report language is consistent with my understanding of the situation that would obtain. Mr. Dogin, as Deputy for Policy Development, would automatically assume the role "Acting Administrator." I further understand that the previous LEAA Administrator issued an order of succession which incorporates this concept into a policy which LEAA has followed since that time. In fact, the present Acting Administrator, Mr. James Gregg, has been acting pursuant to that order.

Mr. President, I also am supporting Homer F. Broome, Jr. to be Deputy Administrator for Administration of the LEAA. Although I do not have the same personal knowledge of Mr. Broome, it appears that he is well qualified for this position. He answered all questions presented to him during his nomination hearings in a straightforward manner which was entirely satisfactory to me. I am confident that he can discharge his responsibilities in a professional manner.

Mr. President, Mr. Dogin and Mr. Broome, his fellow Deputy Administrator, have great challenges and opportunities ahead of them. I wish them well and will do all that I can to support their effort to insure a viable and effective LEAA program.

Mr. President. I ask unanimous consent that the résumés of Messrs. Dogin and Broome be inserted in the RECORD at this point and also the LEAA Instruction on Designation of an Acting Administrator.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HENRY S. DOGIN

Born: December 26, 1934, Brooklyn, New York.

Legal residence: New York.

Marital status: Married.

Education: 1956, Cornell University, B.A.; 1961, Columbia School of Law, LL.B.

Bar: 1962, New York.

Experience: 1961–1967, Assistant District Attorney County of New York; 1967–1971, Assistant Counsel, Waterfront Commission of New York Harbor; 1971–1973, Deputy Regional Administrator New York Regional Office, LEAA; 1973–1975, Deputy Assistant Attorney General, Criminal Division U.S. Department of Justice; 1975–1976, Acting Administrator, DEA U.S. Department of Justice; 1976–1977, Deputy Commissioner, New York State Division of Criminal Justice Services; 1977–Present, First Deputy Commissioner New York State Department of criminal Justice Services.

Military: 1956–1958, U.S. Navy, Active Duty.

Office: New York State Division of Criminal Justice Services, 270 Broadway, Room 807, New York, New York 10007, Telephone Number: (212) 488–4868.

Home: 28 Long Pond Road, Armonk, New York 10504.

To be Deputy Administrator for Policy Development, Law Enforcement Assistance Administration.

HOMER F. BROOME, JR.

Born: June 23, 1931, Los Angeles, California.

Legal Residence: California.

Marital Status: Married, two children.

Education: Spring, 1956, Los Angeles City College; 1957–1958, California State University, B.A.; 1958–1959 and 1959–1962, California State University; 1972–1973, Pepperdine University, M.B.A.

Experience: 1961–1965, Officer in Charge, Special Operation, Community Problems Unit, Juvenile Division, Los Angeles Police Department (LAPD) (Sergeant I); 1966–1967, Watch Commander, 77th Street Division, LAPD (Lieutenant I); 1967–1969, Officer in Charge, Community Relations Unit, 77th Street Division, LAPD (Lieutenant I); 1969–1973, Commanding Officer, Southwest Division, LAPD (Captain I and II); 1973–1975, Commanding Officer, East Los Angeles Area, LAPD (Captain III); 1975–1976, Investigative Assistant, Opeartions-West Bureau, LAPD (Commander of Police); September 1975–January 1976, Acting Commanding Officer, Operations-West Bureau, LAPD (Commander of Police); 1976–Present, Commanding Officer, Commission Service Group, Board of Police Commissioners, LAPD (Commander of Police).

Military: 1952–1954, United States Army.

Office: 150 North Los Angeles Street, Parker Center, Room 150–A, Los Angeles, California 90012, Telephone Number: (213) 485–3299.

Home: 4111 Terrazo Drive, Los Angeles, California 90008.

To be Deputy Administrator for Administration, Law Enforcement Assistance Administration.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION INSTRUCTION

Subject: Designation of an acting administrator, LEAA.

1. Purpose. The purpose of this Instruction is to designate an Acting Administrator, LEAA.

2. Scope. This Instruction is of interest to all LEAA personnel.

3. Cancellation. This Instruction cancels LEAA Instruction I 1310.18, Designation of an Acting Administrator, LEAA, dated January 16, 1974.

4. Background. This Instruction Authorizes an Acting Administrator to exercise the administrative powers of the Administration in the absence of the Administrator or Administrator and Deputy Administrator(s) to ensure continuity of the administrative process.

5. Definitions:

a. The absence of the Administrator or the Administrator and Deputy Administrator(s) shall result only from:

(1) Official travel outide the Metropolitan Washington area in excess of 24 hours.

(2) Incapacitation and/or

(3) Vacancy of position(s)

b. The commencement and duration of official travel by the Administrator outside the Metropolitan Washington area in excess of 24 hours shall be evidenced by the execution of Statement of Absence, LEAA Form 1310/1, which shall be executed by the Administrator or his secretary at his direction.

c. The incapacitation of the Administrator or the Administrator and Deputy Administrator(s) shall be determined only by the Attorney General, Department of Justice.

d. Vacancy of position(s) shall occur upon resignation or death.

6. Action. This Instruction designates the following as Acting Administrator.

a. The Deputy Administrator for Policy Development is delegated the authority and responsibility to exercise the administrative powers of the Administration during the absence of the Administrator.

b. The Deputy Administrator for Administration is delegated the authority and responsibility to exercise the administrative powers of the Administration during the concurrent absence of the Administrator and the Deputy Administrator for Policy Development.

c. The Assistant Administrator, Office of Planning and Management, is delegated the authority and responsibility to exercise the administrative powers of the Administration during the concurrent absence of the Administrator, the Deputy Administrator for Policy Development, and the Deputy Administrator for Administration.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to move to reconsider the votes by which the nominees were confirmed en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the votes by which the nominees were confirmed.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978

The Senate continued with the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, what is the business now before the Senate?

The PRESIDING OFFICER. H.R. 50, the Full Employment and Balanced Growth Act of 1978.

Mr. ROBERT C. BYRD. I thank the Chair.

Does any Senator seek recognition?

Mr. President, the ad hoc committee, comprised of members from both sides of the aisle, has been meeting from time to time today in an effort to work out some kind of an agreement on the Humphrey-Hawkins bill. That ad hoc committee is going to meet again, I believe at 5 p.m. in my office.

Mr. President, I suggest the absence of a quorum.

Mr. CLARK. Mr. President, will the Senator withhold that?

Mr. ROBERT C. BYRD. I do.

Mr. CLARK. Mr. President, I ask unanimous consent that Karen Stuck, of my staff, be granted the privilege of the floor during the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CLARK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 5:30 P.M.

Mr. ROBERT C. BYRD. Mr. President, I want to give the ad hoc committee an opportunity to work further without interruption on a possible agreement on the Humphrey-Hawkins bill. I, therefore, ask unanimous consent that the Senate stand in recess until 5:30 p.m. today.

There being no objection, the Senate, at 4:54 p.m., recessed until 5:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CHURCH).

UNANIMOUS-CONSENT REQUEST

(The following proceedings occurred later and are printed at this point by unanimous consent:)

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the message from the House of Representatives on S. 2566, the Pennsylvania Avenue Development Corporation bill, is called up and made the pending business before the Senate, there be a time limitation thereon as follows:

A 20-minute time limitation on the bill, to be equally divided between and controlled by the Senator from Wyoming (Mr. HANSEN) and the Senator from South Dakota (Mr. ABOUREZK);

A limitation of 8 minutes on each amendment, to be equally divided;

A limitation of 10 minutes on any debatable motion, appeal, or point of order, if such is submitted to the Senate;

With the further understanding that the agreement be in the usual form, which means that no nongermane amendments can be offered.

Mr. GOLDWATER. Mr. President, reserving the right to object, might I inquire, what is this legislation we are talking about?

Mr. ROBERT C. BYRD. This is the Pennsylvania Avenue Development Corporation bill.

Mr. GOLDWATER. Pennsylvania Avenue?

Mr. ROBERT C. BYRD. The Pennsylvania Avenue Development Corporation bill.

Mr. BROOKE. Mr. President, reserving the right to object, and I do not intend to object, so that I may understand what the floor situation would be, as I understand it now, the pending business is still the Humphrey-Hawkins bill.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. BROOKE. And that at the hour of 6:05, we will vote on the sunset amendment by unanimous-consent agreement.

Mr. ROBERT C. BYRD. That is correct.

Mr. BROOKE. And that following that vote, there will be a vote on the treaty which the majority leader will propose.

Mr. ROBERT C. BYRD. The Senator is again correct.

Mr. BROOKE. It is my further understanding that at the conclusion of that vote, the Senate will then revert back to the Humphrey-Hawkins bill.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. BROOKE. It is my understanding that the pending question then before the Senate will be the amendment which the Senator from Massachusetts has just introduced.

Mr. ROBERT C. BYRD. Well, I am not familiar with the amendment, as to whether his amendment is to the substitute or amends the bill. It just depends on what the amendment is attached to.

The PRESIDING OFFICER (Mr. CULVER). The amendment by the Senator from Massachusetts is an amendment to the bill, and would be the pending business.

Mr. BROOKE. And would be the pending business?

The PRESIDING OFFICER. Yes.

Mr. BROOKE. It is my further understanding that nothing in the unanimous-consent agreement now propounded by the distinguished majority leader would in any way tamper with the present parliamentary situation.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. ABOUREZK. Mr. President, reserving the right to object, may I make a parliamentary inquiry?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. The Senator will state it.

Mr. ABOUREZK. On the question of nongermaneness, my understanding is that the Pennsylvania Avenue development measure came out of the Energy and Natural Resources Committee, the Parks Subcommittee. There will be a couple of other amendments that deal with national parks.

Are those considered germane or nongermane in this bill?

The PRESIDING OFFICER. The Chair would have to have an opportunity to look at the amendments before ruling on that issue.

Mr. ROBERT C. BYRD. Mr. President, I temporarily withdraw the request.

The Senator from Massachusetts had the floor. Without imposing on the Senator, I withdraw my request.

(Then, later during Mr. BROOKE's remarks, the following occurred:)

TIME-LIMITATION AGREEMENT—S. 2566

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the message from the House on S. 2566, the Pennsylvania Avenue Development Corporation, is called up and made the pending business before the Senate, there be a time agreement thereon as follows: 20 minutes on the measure, equally divided between Mr. ABOUREZK and Mr. HANSEN; 8 minutes on each amendment, debatable motion, appeal, or point of order, if such is submitted to the Senate for its discussion; that the agreement be in the usual form, which rules out nongermane amendments; but that the following amendments qualify in any event: Amendments dealing with the San Antonio missions, Mar-A-Lago Park, Indiana Dunes, and Cross-Florida Barge Canal.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object, and I understand there is no objection, the Senator from Wyoming is here. I understand it meets with his approval.

Mr. HANSEN. Mr. President, if I could, because there is a possibility that the bill may contain provisions that would put me in an embarrassing position, I ask unanimous consent that Senator HATFIELD, of Oregon, if he is available, handle the time on my side.

Mr. ROBERT C. BYRD. Very well. I modify my request accordingly.

Mr. HANSEN. If I may be heard further, Mr. President, I say to the distinguished majority leader that it will be necessary for us to try to reach him. If he is not available, then we may want to substitute someone else. Would that be all right?

Mr. ROBERT C. BYRD. Absolutely.

Suppose I leave it like this: That the time on the measure be equally divided between Mr. ABOUREZK and the minority leader or his designee.

Mr. HANSEN. Very good.

Mr. ROBERT C. BYRD. Reserving the right to object, Mr. President, has this been cleared with Mr. Chiles?

Mr. CHILES. Yes.

Mr. ROBERT C. BYRD. Has it been cleared with Mr. BAYH?

Mr. ABOUREZK. Yes.

Mr. ROBERT C. BYRD. Has it been cleared with Mr. GRAVEL?

Mr. ABOUREZK. Yes.

Mr. ROBERT C. BYRD. Has it been cleared with Mr. MELCHER?

Mr. ABOUREZK. Yes.

Mr. ROBERT C. BYRD. With Mr. JACKSON?

Mr. ABOUREZK. Yes.

Mr. ROBERT C. BYRD. With Mr. ABOUREZK?

Mr. ABOUREZK. Yes.

Mr. ROBERT C. BYRD. With Mr. STEVENS?

Mr. STEVENS. So long as it is in the usual form.

Mr. ROBERT C. BYRD. It is in the usual form.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ORDER OF PROCEDURE ON S. 791

Mr. STEVENS. Mr. President, S. 791 is also at the desk. We are trying to get that cleared out. I wonder if the Senator from South Dakota could indicate when we might be able to get a time agreement on this?

Mr. ABOUREZK. On 791, I am ready to do so right now or any other time, except that there are a number of Senators who indicated that they want to be consulted. I would appreciate it if perhaps the Policy Committee could round them up and have them come up on the floor and hash out their objections.

Mr. STEVENS. I think that would be helpful. There was a little comment last night about my holding up that bill. I am not holding up that bill. I want to make sure the record shows that.

Mr. ROBERT C. BYRD. Very well.

SENATE CONCURRENT RESOLUTION 112—CORRECTIONS IN ENROLLMENT OF S. 555

Mr. RIBICOFF. Mr. President, I submit a concurrent resolution directing the Secretary of the Senate to make corrections in the enrollment of S. 555 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The legislative clerk read as follows:

A resolution (S. Con. Res. 112) directing the Secretary of the Senate to make corrections in the enrollment of S. 555.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I shall not object, but I want to place a time limitation on this of 2 minutes.

Mr. RIBICOFF. That is more than enough.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHMITT. Mr. President, reserving the right to object, and I most certainly will not object, will the Senator clarify that these are just corrections to the enrollment of the Senate-passed bill?

Mr. RIBICOFF. That is right. We have cleared it with Senator PERCY, and also with Senator STEVENS and Mr. Hildenbrand.

Mr. President, this concurrent resolution is necessary to correct errors in the conference report on S. 555. I move its adoption.

The PRESIDING OFFICER The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 555) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) In section 101(c)—

(A) strike out "presently" and insert after "legislative branch" the following: "upon assuming such position"; and

(B) strike out "102(a)" and insert in lieu thereof "102(b)".

(2) In section 101(e) insert a comma after "Office of the Attending Physician".

(3) In section 101(f)—

(A) strike out "Senate Committee" and insert in lieu thereof "committee of the Senate", and

(B) strike out "House Committee" and insert in lieu thereof "committee of the House of Representatives".

(4) In section 102(a)(1)(B)—

(A) insert a comma after "capital gains"; and

(B) strike out the dash and insert in lieu thereof a colon.

(5) In section 102(a)(2)(B) strike out "and unless" and insert in lieu thereof a period and the following: "A gift need not be so aggregated if".

(6) In section 102(a)(4), in the first sentence strike out "exceeds" before "$10,000 at any time" and insert in lieu thereof "exceed".

(7) In section 102(a)(4)(B) insert a comma after "furniture".

(8) In section 102(a)(5) insert a comma after "purchase, sale".

(9) In section 102(a)(6) strike out "and" before "any educational" and insert in lieu thereof "or".

(10) In section 102(b), insert "of subsection (a)" after "paragraph (1)".

(11) In section 102(e)(1), strike out "of his dependent children" and insert in lieu thereof "dependent child".

(12) In section 102(e)(2)—

(A) in subparagraph (B)(i), strike out "of his dependents," and insert in lieu thereof "dependent child, and";

(B) strike out clause (ii) of subparagraph (B) and insert in lieu thereof the following:

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

(C) strike out "or his dependents" and insert in lieu thereof "or any dependent child"; and

(D) strike out "section 102(a)(1)(B)" and insert in lieu thereof "subsection (a)(1)(B) of this section".

(13) In section 102(e)(3), strike out "of his dependents" and insert in lieu thereof "dependent child".

(14) In section 102(e)(3)(A)(iii) strike out "(as defined in section 107(2))".

(15) In section 102(e)(3)(C)—

(A) in clause (v) strike out "section 102(a)(1)(B) of this title" and insert in lieu thereof "subsection (a)(1)(B) of this section"; and

(B) in clause (vi)(II) strike out "and" after "holding an asset" and insert in lieu thereof a comma.

(16) In section 102(e)(3) strike out subparagraph (D) and insert in lieu thereof the following:

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office. For purposes of this subsection "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 78 of title 15, United States Code; and "supervising ethics office" means the designated committee of the House of Representatives for those who file their reports required by this title with the Clerk and the designated committee of the Senate for those who file the reports required by this title with the Secretary.

(17) In section 102(e)(4), strike out "28" and insert in lieu thereof "18".

(18) In section 102(e)(5)(A)(ii) and (B) strike out "section 102(c)(1)" each place it appears and insert in lieu thereof "subsection (c)(1) of this section".

(19) In section 102(e)(5)(C)(ii)—

(A) insert "with such office" after "file";

(B) strike out "with his supervising ethics office"; and

(C) insert "of this section" after "subsection (c)".

(20) In section 102(e)(6)(A), in clauses (i) and (iii) insert "paragraph (3) of" before "this subsection".

(21) In section 102(e)(6)(B), insert "of this subsection" after "paragraph (3)(C)".

(22) In section 102(e)(7)(C), strike out the comma after "interested party" and insert "of this subsection" after "paragraph (5)".

(23) In section 103(a) strike out "of" after "Resident Commissioner" and insert in lieu thereof "from".

(24) In section 103(c) strike out ", as amended".

(25) Strike out subsection (f) of section 103 and insert in lieu thereof the following:

"(f) In order to carry out responsibilities under this title—

"(1) the Clerk shall, after consultation with the designated committee of the House of Representatives, and

"(2) the designated committee of the Senate shall

develop reporting forms and may promulgate rules and regulations."

(26) In section 104(a)—

(A) in the first sentence strike out "Within" and insert in lieu thereof "Except as provided in the second sentence of this subsection, within"; and

(B) in the second sentence strike out "within 15 days of" and insert in lieu thereof "within fifteen calendar days after".

(27) In section 104(b)—

(A) in the first sentence strike out "Within" and insert in lieu thereof "Except as provided in the second sentence of this subsection, within"; and

(B) by inserting immediately after the first sentence the following new sentence: "With respect to reports required to be filed by May 15 of any year, such reports shall be made available for public inspection within fifteen calendar days after May 15 of such year.".

(28) In section 105(a), strike out "Committee" each place it appears and insert in lieu thereof "committee".

(29) In section 105(b)—

(A) strike out "Act" each place it appears and insert in lieu thereof "title"; and

(B) in the second sentence strike out "paragraph" and insert in lieu thereof "subsection".

(30) In section 107—

(A) in paragraph (2) strike out the period at the end thereof and insert in lieu thereof a semicolon;

(B) in paragraph (3)(C) strike out the comma after "State", strike out "enterm-tainment" and insert in lieu thereof "entertainment", strike out the colon and "or" after "subdivisions thereof", and strike out the semicolon after "country" and insert in lieu thereof a comma;

(C) in paragraph (4) strike out "the same meaning as the term has when used in the Federal Election Campaign Act of 1971." and insert in lieu thereof "the meaning given such term in the Federal Election Campaign Act of 1971;";

(D) in paragraph (9) strike out ", as amended"; and

(E) in paragraph (16) strike out "'or the Senate'" and insert after "'Representatives'" the following: "and 'designated committee of the Senate'".

(31) In section 201(c) insert "in a calendar year" after "becoming a candidate".

(32) In section 201(e)—

(A) strike out "as termination of employment in such position, file a report"; and

(B) insert "(a)" immediately after "202".

(33) In section 202(a)(1)(B) strike out the dash and insert in lieu thereof a colon.

(34) In section 202(a)(2)(B) strike out "and unless," and insert in lieu thereof a period and the following: "A gift need not be so aggregated if".

(35) In section 202(a)(4), in the first sentence strike out "exceeds" before "$10,000 at any time" and insert in lieu thereof "exceed".

(36) In section 202(a)(4)(B) insert a comma after "furniture" and insert a comma after "appliances".

(37) In section 202(a)(5) insert a comma after "purchase, sale".

(38) In section 202(a)(6)(A)—

(A) strike out "and" before "any educational" and insert in lieu thereof "or"; and

(B) strike out "This paragraph" and insert in lieu thereof "This subparagraph".

(39) In section 202(a)(6)(B) strike out "(1)" and "(2)" and insert in lieu thereof "(i)" and "(ii)", respectively.

(40) In section 202(b), strike out "title" and insert "of subsection (a)" after "paragraph (1)".

(41) In section 202(c) strike out "of this title".

(42) In section 202(d)(2) in the first sentence strike out "(d)" immediately before the period.

(43) In section 202(f)(1)—

(A) insert a comma after "(b)"; and

(B) strike out "of his dependent children" and insert in lieu thereof "dependent child".

(44) In section 202(f)(2)—

(A) in subparagraph (B)(i), strike out "of his dependents," and insert in lieu thereof "dependent child, and";

(B) strike out clause (ii) of subparagraph (B) and insert in lieu thereof the following:

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

(C) strike out "or his spouse, or his dependent child" and insert in lieu thereof ", his spouse, or any dependent child"; and

(D) strike out "section 202(a)(1)(B) and insert in lieu thereof "subsection (a)(1)(B) of this section".

(45) In section 202(f)(3), strike out "of his dependents" and insert in lieu thereof "dependent child".

(46) In section 202(f)(3)(C)(vi)(II) strike out "and" after "holding an asset" and insert in lieu thereof a comma.

(47) In section 202(f)(3) strike out subparagraph (D) and insert in lieu thereof the following:

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office. For purposes of this subsection, "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 78 of title 15, United States Code; and "supervising ethics office" means the Office of Government Ethics.

(48) In section 202(f)(4)(A) strike out "28" and insert in lieu thereof "18".

(49) In section 202(f)(4)(B)—

(A) strike out "A" after "subparagraph" and insert in lieu thereof "(A)".

(B) insert "child" after "dependent";

(C) in subparagraph (B)(i)(V) strike out "act" and insert in lieu thereof "Act" and strike out "requirement" and insert in lieu thereof "requirements"; and

(D) in subparagraph (B)(ii) strike out "take advantage of" and insert in lieu thereof "comply with".

(50) In section 202(f)(5)(C)(ii)—

(A) insert "with such office" after "file";

(B) strike out "with his supervising ethics office"; and

(C) insert "of this section" after "subsection (d)".

(51) In section 202(f)(6)(A), in clauses (i) and (iii) insert "paragraph (3) of" before "this subsection".

(52) In section 202(f)(6)(B), insert "of this subsection" after "paragraph (3)(C)".

(53) In section 202(f)(7)(C), strike out the comma after "interested party" and insert "of this subsection" after "paragraph (5)".

(54) In section 204(b)—

(A) strike out "and the Director of the Office of Government Ethics" and insert in lieu thereof "or the Director of the Office of Government Ethics, as the case may be,"; and

(B) strike out "they have" and insert in lieu thereof "he has".

(55) In section 205(a) insert "by the" before "Secretary concerned".

(56) In section 205(b) strike out the first sentence and insert in lieu thereof the following: "Each agency shall, within fifteen days after any report is received by the agency under this title, permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy.".

(57) In section 205(d) in the first sentence strike out "part" and insert in lieu thereof "title".

(58) In section 206(b)(2)(B) insert immediately before the period "with such laws and regulations".

(59) In section 206(b)(3) in subparagraphs (B) and (C) strike out the period and insert in lieu thereof a comma.

(60) In section 207(a), strike out "Section 202 (a), (b), and (d)" and insert in lieu thereof "Subsections (a), (b), and (d) of section 205".

(61) In section 209—

(A) in paragraph (2) strike out the period at the end thereof and insert in lieu thereof a semicolon;

(B) in paragraph (4) strike out "the same meaning as the term has when used in the Federal Election Campaign Act of 1971." and insert in lieu thereof "the meaning given such term in the Federal Election Campaign Act of 1979;".

(62) Insert the following after section 209 of the bill:

OUTSIDE EARNED INCOME

SEC. 210. Except where the employee's agency or department shall have more restrictive limitations on outside earned income, all employees covered by this title who are compensated at a pay grade in the General Schedule of grade 16 or above and who occupy nonjudicial full-time positions appointment to which is required to be made by the President, by and with the advice and consent of the Senate, may not have in any calendar year outside earned income attributable to such calendar year which is in excess of 15 percent of their salary.

(63) In the section immediately following the heading "EFFECTIVE DATE" in title II of the bill, strike out "Sec. 210." and insert in lieu thereof "Sec. 211.".

(64) In section 301(b) strike out "Committee" and insert in lieu thereof "committee".

(65) In section 301(d) strike out "section 301(c)" and insert in lieu thereof "subsection (c) of this section".

(66) In section 301(e) strike out "by" after "established" and insert in lieu thereof "pursuant".

(67) In section 302(a)(1)(A), insert "(other than income referred to in subparagraph (B))" immediately after "income".

In section 302(a)(1)(B) of the bill strike out "(other than income referred to in subparagraph (B))".

(68) In section 302(a)(2)(B) strike out "and unless," and insert in lieu thereof a period and the following: "A gift need not be so aggregated if".

(69) In section 302(a)(4), in the first sentence strike out "exceeds" before "$10,000 at any time" and insert in lieu thereof "exceed".

(70) In section 302(a)(4)(B) insert a comma after "furniture" and insert a comma after "appliances".

(71) In section 302(a)(6) strike out "and" before "any educational" and insert in lieu thereof "or".

(72) In section 302(b), insert "of subsection (a)" after "paragraph (1)".

(73) In section 302(d)(2) in the first sentence strike out "(d)" immediately before the period.

(74) In section 202(f)(1)—

(A) insert "of this section" after "subsections (a), (b), and (c)"; and

(B) strike out "of his dependent children" and insert in lieu thereof "dependent child".

(75) In section 302(f)(2)—

(A) in subparagraph (B)(i), strike out "of his dependents," and insert in lieu thereof "dependent child, and";

(B) strike out clause (ii) of subparagraph (B) and insert in lieu thereof the following:

(ii) the holding or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

(C) strike out "or his dependent child" and insert in lieu thereof "or any dependent child"; and

(D) strikes out "section 302(a)(1)(B)" and insert in lieu thereof "subsections (a)(1)(B) of this section".

(76) In section 302(f)(3), strike out "of his dependents" and insert in lieu thereof "dependent child".

(77) In section 302(f)(3)(C)(vi)(II) strike out "and" after "holding an asset" and insert in lieu thereof a comma.

(78) In section 302(f)(3) strike out sub-

paragraph (D) and insert in lieu thereof the following:

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

For purposes of this subsection "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 78 of title 15, United States Code; and "supervising ethics office' means the Judicial Ethics Committee.

(79) In section 302(f)(5)(C)(ii)—

(A) insert "with such office" after "file";

(B) strike out "with his supervising ethics office"; and

(C) insert "of this section" after "subsection (d)".

(80) In section 302(f)(6)(A), in clauses (i) and (iii) insert "paragraph (3) of" before "this subsection".

(81) In section 302(f)(6)(B), insert "of this subsection" after "paragraph (3)(C)".

(82) In section 302(f)(7)(C), strike out the comma after "interested party" and insert "of this subsection" after "paragraph (5)".

(83) In section 303(b) strike out the comma after "he sits".

(84) In section 305(b) strike out the first sentence and insert in lieu thereof the following: "The Committee shall, within fifteen days after any report is received by the Committee under this title, permit inspection by or furnish a copy of such report to any person requesting such inspection or copy.".

(85) In section 307(b) insert a comma after "disclosure".

(86) In section 308—

(A) in paragraph (2) strike out the period at the end thereof and insert in lieu thereof a semicolon;

(B) in paragraph (4) strike out "the same meaning as the term has when used in the Federal Election Campaign Act of 1971." and insert in lieu thereof "the meaning given such term in the Federal Election Campaign Act of 1971;"; and

(C) in paragraph (9) insert "United States" before "court of appeals" and "district courts, including".

(87) In section 402(b)(3) strike out "such statements" and insert in lieu thereof "financial statements filed pursuant to such title".

(88) In section 402(d) immediately before the period strike out "Act" and insert in lieu thereof "title".

(89) In section 405(l) insert "and" after the semicolon.

(90) In the heading for section 207 of title 18 United States Code, as amended by section 501 of the bill, strike out the colon and insert in lieu thereof a semicolon.

(91) In section 207 (a) of title 18, United States Code, as amended by section 501 of the bill—

(A) insert a comma immediately after "otherwise represents";

(B) insert a comma immediately after "(except the United States)"; and

(C) strike out "written or oral communication" and insert in lieu thereof "oral or written communication".

(92) In section 207 (b) of title 18, United States Code, as amended by section 501 of the bill—

(A) in clause (ii), insert "and" immediately after "having been so employed"; and

(B) in paragraph (3), insert a comma immediately after "such responsibility".

(93) In section 207 (c) of title 18, United States Code, as amended by section 501 of the bill—

(A) strike out "government" and insert in lieu thereof "Government";

(B) strike out "employed in the Executive Branch" and insert in lieu thereof "so employed and";

(C) insert a comma immediately after "knowingly acts as agent or attorney for";

(D) insert a comma immediately after "or otherwise represents";

(E) insert a comma immediately after "anyone other than the United States"; and

(F) strike out "Shall" and insert in lieu thereof "shall".

(94) In section 207 (d) of title 18, United States Code, as amended by section 501 of the bill—

(A) in paragraph (1), strike out "or" the fourth time it appears;

(B) in paragraph (2), strike out "or" the fourth time it appears; and

(C) in paragraph (2), insert a comma immediately after "supervisory responsibility".

(95) In section 207 (e) of title 18, United States Code, as amended by section 501 of the bill, insert a comma immediately after "agencies".

(96) In section 207 (f) of title 18, United States Code, as amended by section 501 of the bill, insert a comma immediately after "technical discipline".

(97) In section 207 (g) of title 18, United States Code, as amended by section 501 of the bill—

(A) strike out "in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee" and insert in lieu thereof "in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee"; and

(B) insert "for" immediately after "imprisoned".

(98) In section 207(h) of title 18, United States Code, as amended by section 501 of the bill, insert a comma immediately after "oath".

(99) In section 207(i) of title 18, United States Code, as amended by section 501 of the bill, strike out "the former officer" the first time it appears therein and insert in lieu thereof "a former officer".

(100) In section 502 of the bill, strike out "pursuant subsection (d) of section 207, title 18, United States Code" and insert in lieu thereof "pursuant to section 207(d) of title 18, United States Code".

(101) In section 591(b)(3) of title 28, United States Code, as added by section 601 of the bill, strike out "the rate provided for" and insert in lieu thereof "the annual rate of basic pay provided for".

(102) In section 591(b)(4) of title 28, United States Code, as added by section 601 of the bill, strike out "the rate provided for" and insert in lieu thereof "the annual rate of basic pay provided for".

(103) In section 591(b)(4) of title 28, United States Code, as added by section 601 of the bill, strike out each of the semicolons with the exception of the semicolon at the end thereof and insert in lieu thereof a comma.

(104) In section 592(c)(2) of title 28, United States Code, as added by section 601 of the bill, strike out the semicolon and insert in lieu thereof a comma.

(105) In section 594(a)(7) of title 28, United States Code, as added by section 601 of the bill, strike out the comma immediately following "6005".

(106) In section 594(a)(8) of title 28, United States Code, as added by section 601 of the bill, strike out "section 6103 of title 26" and insert in lieu thereof "section 6103 of the Internal Revenue Code of 1954".

(107) In section 594(b) of title 28, United States Code, as added by section 601 of the bill, strike out "the rate of pay" and insert in lieu thereof "the annual rate of basic pay".

(108) In section 594(c) of title 28, United States Code, as added by section 601 of the bill, insert a comma immediately after "duties" the second time it appears.

(109) In section 595(a) of title 28, United States Code, as added by section 601 of the bill—

(A) strike out the comma immediately after "Congress"; and

(B) strike out "that" and insert in lieu thereof "such".

(110) In section 595(b)(2) of title 28, United States Code, as added by section 601 of the bill, strike out "prosecutor" the third time it appears and insert in lieu thereof "prosecuted".

(111) In section 595(e) of title 28, United States Code, as added by section 601 of the bill, strike out "a judiciary committee" and insert in lieu thereof "the Committee on the Judiciary".

(112) In section 596(a)(2) of title 28, United States Code, as added by section 601 of the bill, strike out "judiciary committees" and insert in lieu thereof "Committees on the Judiciary".

(113) In section 596(a)(3) of title 28, United States Code, as added by section 601 of the bill, strike out the opening quotation marks immediately before "judicial review".

(114) In section 529 of title 28, United States Code, as added by section 601 of the bill, strike out "public Integrity Section" and insert in lieu thereof "Public Integrity Section".

(115) In section 604 of the bill, strike out the comma immediately after "title 28" the first time it appears.".

(116) In section 701(a)(4) of the bill—

(A) strike out "rate of pay for level III" and insert in lieu thereof "rate of basic pay for level III"; and

(B) strike out "rate of pay for level IV" and insert in lieu thereof "rate of basic pay for level IV".

(117) In section 701(b)(1) strike out "rate of pay for level V" and insert in lieu thereof "rate of basic pay for level V".

(118) In section 702(b)(3) of the bill, strike out "Judiciary Committee" and insert in lieu thereof "Committee on the Judiciary".

(119) In section 703(b) of the bill, strike out "section Joint Leadership Group or" and insert in lieu thereof "section 705 only when directed to do so".

(120) In section 703(d)(2) of the bill, insert "an" immediately before "affirmative vote".

(121) In section 704(a)(1) of the bill—

(A) insert a comma immediately after "political subdivision thereof";

(B) insert a comma immediately after "taken by"; and

(C) insert a comma immediately after "officer" the third time it appears.

(122) In section 704(a)(2) insert a comma immediately after "officer" the second time it appears.

(123) In section 705(a) of the bill, strike out "title 23 of the United States Code" and insert in lieu thereof "title 28 of the United States Code".

(124) In section 705(b) of the bill, strike out "with in" and insert in lieu thereof "within".

(125) In section 705 of the bill, strike out

"(e) The extent to which a report filed pursuant to subsection (c)(2) is in compliance with such subsection shall not be reviewable in any court of law."

and insert in lieu thereof

"(e) A report filed pursuant to subsection (c)(2) shall not be reviewable in any court of law to the extent such report is in compliance with such subsection.".

(126) In section 1364(b) of title 28, United States Code, as added by subsection (f)(1) of section 705 of the bill, strike out "an entity or person refusing or failing, or threatening to refuse or not to comply, with

a subpena" and insert in lieu thereof "an entity or person refusing, or failing to comply with, or threatening to refuse or not to comply with a subpena".

(127) In section 1364(b) of title 28, United States Code, as added by subsection (f)(1) of section 705 of the bill—

(A) strike out "refusing or failing, or threatening to refuse or not to comply, resides" and insert in lieu thereof "refusing, or failing to comply, or threatening to refuse or not to comply, resides";

(B) strike out "an subpenas for witnesses who are required to attend" and insert in lieu thereof "and subpenas for witnesses who are required to attend".

(128) In section 1364(e) of title 28, United States Code as added by subsection (f)(1) of section 705 of the bill, insert a comma immediately after "section".

(129) In section 705 of the bill, strike out "(e) Nothing in this section shall limit the discretion of—"

and insert in lieu thereof

"(g) Nothing in this section shall limit the discretion of—".

(130) In section 707 of the bill, strike out "district court to issue and order" and insert in lieu thereof "district court to issue an order".

(131) In section 708 (a)(4) of the bill, insert a comma immediately after "officer" the second time it appears.

(132) In section 708(a)(5) of the bill, insert a comma immediately after "Parliamentarian of the Senate".

(133) In section 708 (b) of the bill—

(A) strike out "Memoranda" and insert in lieu thereof "memoranda"; and

(B) strike out "information or a confidential" and insert in lieu thereof "information of a confidential".

(134) In section 709 (7) of the bill, insert "the" immediately before "Congress".

(135) In the section that immediately follows the heading "CONFLICT OF INCONSISTENCY" strikes out "Sec. 10." and insert in lieu thereof "Sec. 710.".

(136) In subsection (b) of the section that immediately follows the heading "CONFLICT OR INCONSISTENCY" strike out "recipt" and insert in lieu thereof "receipt".

(137) In section 711 (a)(2) of the bill, insert a comma immediately after "section 703 (a)".

(138) In section 711 (b) of the bill, insert "and" immediately before "special committees".

(139) In section 712 (b) of the bill, insert "section" immediately before "706".

(140) In section 714 (d) of the bill, strike out the comma immediately after "March 3, 1875".

(141) In section 715 of the bill, insert "of" immediately after "If any provision of any part of this title or".

(142) In section 715 of the bill, insert "of" immediately after "the provisions of other parts and".

(143) In section 104 (b) of the bill strike out "grandfather" and insert in lieu thereof "Secretary".

(144) In section 107 (15) strike out "means and individual" and insert in lieu thereof "means an individual".

(145) In section 201 (f)(3) of the bill strike out "rate of basis" and insert in lieu thereof "rate of basic".

(146) In section 202 (a) of the bill strike out "with respect the" and insert in lieu thereof "with respect to the".

(147) In section 209 (2) of the bill strike out "grandfather" and insert in lieu thereof "grandfather".

(148) In section 107 (8)(A) of the bill, insert "the District of Columbia, or any State or political subdivision thereof" immediately after "United States Government."

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Conclusion of earlier proceeding.)

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978

The Senate resumed the consideration of H.R. 50.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 5 minutes.

Mr. BROOKE. I thank the majority leader.

Mr. ROBERT C. BYRD. I am sorry; I did not know the Senator wished to speak.

Mr. BROOKE. No, I know; that is all right.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

UP AMENDMENT NO. 2057

Mr. BROOKE. Actually, Mr. President, I wanted to send to the desk an amendment and ask for its immediate consideration.

Mr. ROBERT C. BYRD. Mr. President, what is this amendment?

Mr. BROOKE. This is an amendment to the pending bill.

Mr. ROBERT C. BYRD. The Humphrey-Hawkins bill?

Mr. BROOKE. The Humphrey-Hawkins bill. I thought we could do it now instead of wasting time. If we are bringing it up later, we might as well do it now.

Mr. ROBERT C. BYRD. Go ahead and state it.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. BROOKE) for himself, Mr. GLENN, Mr. CLARK, Mr. RIBICOFF, Mr. PERCY, and Mr. ABOUREZK, proposes an unprinted amendment numbered 2057:

Mr. BROOKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. To what?

Mr. SARBANES. Reserving the right to object, to what?

The PRESIDING OFFICER. The Senator from Massachusetts has asked that further reading of the amendment be dispensed with.

Mr. ROBERT C. BYRD. No, I do not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 50, line 9, insert the following:

TITLE V—LEE METCALF FAIR EMPLOYMENT RELATIONS RESOLUTION

PURPOSE

SEC. 501. It is the purpose of this title to implement the provisions of rule L of the Standing Rules of the Senate, which will become effective on January 3, 1979, by establishing a Senate Fair Employment Relations Board, a Senate Fair Employment Relations Office, and procedures for hearing and settling complaints alleging violations of rule L by Members, officers, and employees of the Senate.

DEFINITIONS

SEC. 502. For purposes of this title, the term—

(1) "Board" means the Senate Fair Employment Relations Board established by section 503;

(2) "Office" means the Senate Fair Employment Relations Office established by section 508;

(3) "Director" means the Director of the Senate Fair Employment Relations Office established by section 508;

(4) "employee of the Senate" means any individual who is an employee of the Senate, or is treated as an employee of the Senate, for purposes of the Senate Code of Official Conduct;

(5) "complainant" means an employee of the Senate or other individual who applies for a position in the Senate and who files a complaint under section 512;

(6) "respondent" means a Member, officer, or employee of the Senate against whom a complaint is filed under section 512;

(7) "office of the Senate" includes the office of a Senator;

(8) "rule L" means rule L of the Standing Rules of the Senate; and

(9) "supervisor" has the meaning given to it by paragraph 12 of rule XLV of the Standing Rules of the Senate.

FAIR EMPLOYMENT RELATIONS BOARD

SEC. 503. (a) There is established an office of the Senate to be known as the Senate Fair Employment Relations Board. The Board shall consist of six members, selected from among individuals in the private sector, who have a demonstrated commitment to fair employment relations—

(1) three of whom shall be appointed by, and may be removed by, the Majority Leader of the Senate with the approval, by majority vote, of the Conference of the Majority; and

(2) three of whom shall be appointed by, and may be removed by, the Minority Leader of the Senate with the approval, by majority vote, of the Conference of the Minority.

No individual who has served as a Member, officer, or employee of the Senate or the House of Representatives or as an officer or employee of the Congress may be appointed as a member of the Board during the three-year period following the termination of his or her service as such a Member, officer, or employee.

(b) Each member of the Board shall be appointed for a term of four years commencing with the day after the expiration of the term of his or her predecessor, except that of the members first appointed—

(1) one member appointed by the Majority Leader and one member apponted by the Minority Leader (as designated by the respective Leaders) shall be appointed for a term of two years commencing on the day on which this title is agreed to; and

(2) two members appointed by the Majority Leader and two members appointed by the Minority Leader (as designated by the respective Leaders) shall be appointed for a term of four years commencing on such day.

Any member appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed only for the unexpired portion of such term. Any member serving at the expiration of a term may continue to serve until his or her successor is appointed.

(c) The Board shall elect one of its members to serve as Chairperson.

(d) A quorum of the Board shall consist of four members, but no action of the Board in performing the functions and duties specified in paragraphs (1) and (3) of section 506(a) or in appointing or removing the Director under section 508 may be taken except with the concurrence of a majority of the members holding office.

(e) The Board is authorized to delegate to the Chairperson or any other member of

the Board the authority to approve on behalf of the Board those actions of the Director which require approval of the Board under sections 508, 509, and 510.

COMPENSATION

SEC. 504. Each member of the Board shall receive compensation equal to the daily equivalent of the salary of the Secretary of the Senate for each day on which the member is engaged in performing his or her duties as a member of the Board and in traveling from or to his or her home to attend meetings of the Board. Each member shall also be entitled to reimbursement for transportation costs and actual travel expenses while so traveling in the same amounts as are payable to employees of the Senate.

MEETINGS; ADMINISTRATIVE SERVICES

SEC. 505. (a) The Board shall meet at least once every three months and shall also meet upon call of the Chairperson or of a majority of the members holding office. Notice of any meeting of the Board shall be given to all members at least three days prior to such meeting.

(b) All necessary administrative services required by the Board shall be furnished by the Office.

FUNCTIONS AND DUTIES

SEC. 506. (a) It shall be the function and duty of the Board—

(1) to establish and publish policies and guidelines for the implementation and enforcement of rule L;

(2) to supervise the actions of the Director and the operations of the Office through the Director; and

(3) to hear and determine complaints alleging violations of rule L in accordance with sections 511 through 521.

(b) In order to carry out its functions and duties under sections 511 through 521, the Board is authorized to appoint and fix the compensation (subject to applicable limitations imposed by or pursuant to law on the salaries of employees of the Senate) of such number of hearing examiners as may be necessary. Any such hearing examiner may be appointed on a temporary (not to exceed one year) or intermittent basis and any hearing examiner so appointed may be paid, for each day on which he or she performs services, not in excess of the daily equivalent of the highest salary which may be paid to a hearing examiner appointed on a permanent basis.

(c) The Board may adopt such regulations as it determines necessary to carry out its duties and functions.

PAYMENT OF EXPENSES

SEC. 507. The expenses of the Board (including compensation of members of the Board and hearing examiners) shall be paid from the contingent fund of the Senate pursuant to appropriations made to the contingent fund for such purpose. Until funds are first so appropriated, such salaries and expenses shall be paid from the contingent fund out of funds appropriated for "Miscellaneous Items". Such salaries and expenses shall be paid out of the contingent fund upon vouchers approved by the Chairperson, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SENATE FAIR EMPLOYMENT RELATIONS OFFICE

SEC. 508. (a) There is established an office of the Senate to be known as the Senate Fair Employment Relations Office. The Office shall be headed by a Director who shall be appointed by, and shall serve at the pleasure of, the Board. The Director shall receive compensation at an annual rate fixed by the Board but not in excess of the highest rate of compensation which may be paid to an employee of a committee of the Senate under section 105(e)(3)(A) of the Legislative Branch Appropriations Act, 1968, as amended and modified (2 U.S.C. 61–1).

(b) The Director, with the approval of the Board, shall appoint and fix the compensation (subject to applicable salary limitations imposed by or pursuant to law on the salaries of employees of the Senate) of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties.

(c) In carrying out the functions and duties of the Office, the Director, with the approval of the Board, may procure the temporary (not exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or, in the case of individual experts or consultants, by employment at rates of pay not in excess of the daily equivalent of the highest rate of compensation which may be paid to employees of the Office appointed on a permanent basis.

(d) The Director may prescribe the duties and responsibilities of the personnel of the Office, and delegate to them authority to perform any of the functions and duties imposed on the Office or on the Director, with the exception of the submission of reports under sections 512 (b) and (c).

FUNCTIONS AND DUTIES

SEC. 509. (a) In addition to the functions and duties imposed on it by sections 511 through 521, the Office shall (1) develop procedures to implement the policies and guidelines of the Board to encourage full compliance with rule L by all Members, officers, and employees of the Senate and (2) perform such other functions as may be prescribed by the Board.

(b) The office shall gather and maintain information with respect to each category of employees and individuals who are afforded equal employment opportunity by rule L, including, to the extent possible, information relating to individuals who apply for positions on the staffs of committees and offices of the Senate. The Office shall also gather and maintain information with respect to the employment practices of committees and offices of the Senate. Each year the Director, with the approval of the Board, shall submit to the Senate a report with respect to the information gathered under this subsection. Each report after the first report shall contain a comparison and evaluation of the data contained in such report with the data contained in prior reports.

(c) Upon the request of any committee or office of the Senate, the Office shall submit to such committee or office its recommendations for improvements in the employment practices of such committee or office. The Office shall assist the placement office with the development of procedures to collect and disseminate applications submitted by individuals from categories which are afforded equal employment opportunity by rule L.

(d) The Office shall review the procedures and practices for receiving, hearing, and settling complaints of alleged violations of rule L under sections 511 through 521 and made recommendations regarding the continuation or improvement of such procedures. Not later than January 3, 1981, the Director, with the approval of the Board, shall submit to the Senate the results of such review, together with his or her recommendations. Such report shall be referred to the appropriate committee or committees of the Senate which, within one hundred and eighty days after the date of referral, shall submit their recommendations on the report to the Senate.

SUPPLIES; PAYMENTS OF EXPENSES

SEC. 510. (a) The Director is authorized to procure such books, stationery, and other supplies as may be necessary for the proper performance of the functions and duties of the Office. The Architect of the Capitol and the Sergeant at Arms of the Senate shall furnish the Office such furniture and office equipment as may be necessary.

(b) The expenses of the Office (excluding salaries) shall be paid from the contingent fund of the Senate pursuant to appropriations made to the contingent fund for such purpose. Until funds are first so appropriated, such salaries and expenses shall be paid from the contingent fund out of funds appropriated for "Miscellaneous Items". Such salaries and expenses shall be paid out of the contingent fund upon vouchers signed by the Director, and approved by the Board, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

COUNSELING AND ASSISTANCE

SEC. 511. (a) Any employee of the Senate, or other individual who applies for a position in the Senate, who believes that he or she is being or has been discriminated against in violation of rule L may make a request to the Office for counseling and assistance. The Director shall designate employees of the Office to serve as counselors. Counselors shall advise employees and other individuals as to their rights under rule L and furnish such other advice and assistance as may be requested with respect to the application of rule L. No written statement shall be required for an employee or other individual to receive counseling and assistance under this section.

(b) Counseling under this section must be requested within sixty days of the action giving rise to the alleged discrimination, unless the Director authorizes counseling after such sixty-day period or unless the alleged discrimination is based upon a continuing practice or policy.

INFORMAL COMPLAINTS AND CONCILIATION

SEC. 512. (a) Any employee of the Senate, or other individual who applies for a position in the Senate, who believes that he or she is being or has been discriminated against in violation of rule L may, within twenty days after counseling is requested under section 511, file an informal complaint with the Director. Such an informal complaint may be filed only against an individual whom the complainant believes actually participated in the alleged violation or the individual who has authority to remedy the alleged violation, or both. Such an informal complaint shall consist of a brief written statement of the alleged violation. The Director shall furnish a copy of such informal complaint to the respondent and, if the respondent is an officer or employee, shall furnish a copy of such informal complaint to the respondent's supervisor.

(b) Upon the filing of an informal complaint under subsection (a), the Director shall collect information concerning the alleged violation. Within forty-five days after the date of filing, the Director shall submit a report to the Board with respect to such informal complaint and shall furnish copies of such report to the complainant and respondent and, if the respondent is an officer or employee, shall furnish a copy of such report to the respondent's supervisor.

(c)(1) If as a result of the information collected under subsection (b), the Director determines that there is no reason to believe that a violation of rule L may have occurred, he or she shall so state in the report submitted pursuant to such subsection, together with his or her reasons for such determination.

(2) If as a result of the information collected under subsection (b), the Director determines that there is reason to believe a violation of rule L may have occurred, he or she shall attempt to resolve such violation by informal means. If an informal agreement between the complainant and respondent is reached, the Director shall so state in the report submitted pursuant to such subsection. If an informal agreement between the

complainant and the respondent is not reached, the Director shall include his or her findings in the report submitted pursuant to such subsection.

FILING OF FORMAL COMPLAINTS

SEC. 513. (a) If the report of the Director under section 512 with respect to an informal complaint sets forth the Director's determination that there is reason to believe that a violation of rule L may have occurred but no agreement has been reached between the complainant and the respondent, then the complainant may, within thirty days after the date on which such report is submitted to the Board, file a formal complaint with the Board. A formal complaint shall be under oath and shall be in such form and set forth the basis of the complaint in such detail as the Board may prescribe by rule or regulation.

(b) If the report of the Director under section 512 sets forth the Director's determination that there is no reason to believe that a violation of rule L may have occurred, the complainant may request the Board to review such determination. Such request shall be in writing and shall be made within thirty days after the date on which such report is submitted to the Board. The Board shall complete its review within thirty days after such request is made and if it determines that there is reason to believe that a violation of rule L may have occurred, the complainant may, within thirty days after the date of the Board's determination, file a formal complaint under subsection (a).

HEARINGS

SEC. 514. (a) Each complaint filed under section 513 shall be assigned by the Board (or by such individual as the Board may designate) for a hearing by a hearing examiner appointed under section 506(b). The hearing examiner shall cause a copy of the complaint to be served on the respondent and, if the respondent is an officer or employee, shall furnish a copy of the complaint to the respondent's supervisor. The respondent shall be enttiled to file, within ten days after such service, or within such longer time as the Board may permit, a formal answer to such complaint. A formal answer shall be under oath and shall be in such form as the Board may prescribe by rule or regulation.

(b) The hearing on a complaint shall be conducted expeditiously with a record in transcript form. Upon conclusion of the hearing, the hearing examiner shall submit to the Board a report containing his or her findings and recommendations (if any) for remedial action.

DECISIONS BY THE BOARD

SEC. 515. (a) The Board shall review the transcript and the findings and recommendations of the hearing examiner with respect to each complaint filed under section 513. If the Board finds that the hearing is incomplete, it may remand the case to the hearing examiner. The Board shall render a decision in each case within sixty days after the filing of the formal complaint, unless prior thereto the complainant and the respondent reach an agreement disposing of such case.

(b) If the Board determines in any case that there is or has been a violation of rule L, its decision shall include an order for such remedial action as it determines appropriate, except that no remedy may be ordered which the Board determines would result in undue benefit or undue hardship to the complainant or the respondent.

RULES; PROCEDURE

SEC. 516. The Board shall prescribe such rules or regulations as it determines proper to carry out the provisions of section 513 through 516, including rules or regulations relating to the conduct of hearings and proceedings under sections 513 through 516 and the rights and privileges of complainants and respondents in such hearings and proceedings. The Board shall publish all rules and regulations which it proposes to prescribe under this section and shall give interested persons an opportunity to comment thereon.

APPEALS TO SELECT COMMITTEE ON ETHICS

SEC. 517. (a) A complainant or respondent who is aggrieved by a decision or order of the Board under section 15 may, within thirty days after the decision or order is issued, appeal the decision or order to the Select Committee on Ethics.

(b) Within sixty days after an appeal is filed under subsection (a), the Select Committee on Ethics shall render its decision with respect to such appeal. Such decision may affirm the decision or order of the Board, reverse such decision or order in whole or in part, or remand the case to the Board for further proceedings. In any case in which the select committee reverses a decision or order of the Board in whole or in part, if the select committee determines that there is or has been a violation of rule L, it may order such remedial action as it determines appropriate, except that no remedy may be ordered which the select committee determines would result in undue benefit or undue hardship to the complainant or the respondent.

PROCEDURE

SEC. 518. The Select Committee on Ethics shall prescribe such rules or regulations as it determines proper to carry out the provisions of section 517.

REMEDIES

SEC. 519. (a) The remedial actions which may be specified in an order issued by the Board under section 515 or by the Select Committee on Ethics under section 517 include, but are not limited to—

(1) if the discrimination is failure or refusal to hire an individual, a requirement that such individual be employed within a specified period of time, or the payment of a specified sum to such individual, or both;

(2) if the discrimination is discharging an individual, a requirement that such individual be reemployed within a specified period of time, or the payment of a specified sum to such individual, or both;

(3) if the discrimination is with respect to the promotion or compensation of an individual, a requirement that such individual be promoted to or compensated at a specified level within a specified period of time, or the payment of a specified sum to such individual, or both; and

(4) if the discrimination is with respect to terms, conditions, or privileges of employment of an individual, a requirement that such terms, conditions, or privileges be changed within a specified period of time, or the payment of a specified sum to such individual, or both.

(b) Any payment ordered to be made to an individual under an order issued by the Board or the Select Committee on Ethics shall be made out of the contingent fund of the Senate upon a voucher signed by the Chairperson of the Board or the chairman of the select committee, as the case may be.

(c) No complainant or witness in a proceeding under sections 511 through 521 shall be subject to any reprisal, interference, intimidation, or coercion by any Member, officer, or employee of the Senate as a result of filing such complaint or appearing as such a witness.

RECORDS; CONFIDENTIALITY OF INFORMATION

SEC 520. (a) The records, files, and papers relating to each informal complaint filed under section 512, each formal complaint filed under section 513, and each appeal taken under section 517 shall constitute papers of the Senate and shall be retained for at least five years. All such information, including the existence of a case, shall be maintained on a confidential basis, and, except as provided in subsection (b) or as otherwise ordered by the Senate, such information shall not be disclosed to any person (other than the complainant and the respondent) and shall not be available for inspection other than by the Board, the Director and employees of the Office, and, with respect to any appeal taken under section 517, the Select Committee on Ethics.

(b) Decisions and orders of the Board under section 515 and decisions and orders of the Select Committee on Ethics under section 517 shall be made public.

COOPERATION BY COMMITTEES AND OFFICES

SEC. 521. Each committee and office of the Senate shall cooperate with the Board, the Office, and the Select Committee on Ethics in order that the functions and duties imposed on them by this title may be properly and effectively carried out.

SEC. 522. This title is enacted—

(1) as an exercise of the rulemaking power of the Senate, and as such it shall be considered as part of the rules of the Senate, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with the full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner, and to the same extent as in the case of any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

This title shall be deemed to be a resolution of the Senate and shall take effect upon the date that the Senate agrees to this title. This title shall be cited as the "Lee Metcalf Fair Employment Relations Resolution".

Mr. BROOKE. Mr. President, the amendment I have sent to the desk is Senate Resolution 431, the Lee Metcalf fair employment resolution.

In the closing days of the 95th Congress, I believe it is imperative that the Senate give its full attention to the issue of equal employment opportunity on Capitol Hill. Regrettably, several studies in the past few years have demonstrated that job discrimination on the basis of sex, race, age, or national origin does exist in the Halls of Congress. Last year the Obey Commission documented a pattern of sex and racial discrimination in salaries and hiring in the House of Representatives. The survey showed that whites and males generally receive higher salaries than their female and black counterparts and that relatively few nonwhites are hired and given top policymaking positions.

Unfortunately, similar practices exist in the Senate. Indeed, a Capitol Hill Women's Caucus study revealed that the overall median salary for females in the Senate was $10,260, as contrasted to $17,670 for males. And for those employees earning $18,000, or more, the figures were $22,627 for females and $28,091 for males.

These studies and others make it abundantly clear that substantial job discrimination exists on Capitol Hill. And under normal circumstances the evidence that has been presented would be a cause of action under title VII of the 1964 Civil Rights Act or the Equal Pay Amendments Act of 1963.

But Congress has exempted itself from these two landmark acts. And, consequently, congressional employees have no administrative recourse for remedying denials of equal employment opportunity.

This is a regrettable and intolerable situation.

Rather than explicitly excluding itself from Federal statutes to protect its employees, the Congress should be setting an example. Our system of Government rests in the end on the trust between the Government and the governed. The very least that our females and older citizens and the members of minority groups should expect, if they are to be asked to remain faithful to the principles of a free society, is that our leaders show themselves to be faithful to those same principles.

Mr. President, the present situation jeopardizes the constitutional rights of thousands of congressional employees. Just because a person accepts employment on Capitol Hill does not mean that that individual accepts second-class citizenship. That individual is still entitled to due process and equal protection of the law.

In the case of Davis against Passman which was heard by the Fifth Circuit Court of Appeals, the court recognized that discriminatory acts by Members of Congress create "a conflict of transcendental importance between the rights of the individual and the rights of a representative." However, the court concluded that—

> Although Members of Congress have some insulation not wrapped around ordinary mortals, the conflicting interest must be harmonized not dichotomized.

The Senate has not been totally insensitive to these issues and has responded to some of the legitimate criticisms that have been raised. During the consideration of Senate Resolution 110, the Senate Code of Official Conduct, the Senate adopted Senate rule 50. The rule expressly prohibits the Senate from employment discrimination on the basis of "race, religion, sex, national origin, age, or state of physical handicap."

The language of rule 50, prohibiting employment discrimination in the Senate is taken from a resolution (S. Res. 89) introduced by our late colleague, Senator Lee Metcalf. Although the Senate did not act on the Metcalf proposal during the 94th Congress, a similar resolution offered by Senator Mike Mansfield was approved by unanimous consent September 8, 1976. The intent of the Senate is clear. However, it is now necessary to approve the amendment before us as a test of our commitment to the principles of equal employment opportunity and to demonstrate to the public that the Senate is no longer above those laws it approves for the rest of the country.

Indeed, Senate rule 50 can only be viewed as a beginning. For in essence, the Senate has now created a right for its employees, but has not yet established procedures that would enable those employees to remedy violations of that right. And let us not deceive ourselves, "a right without a remedy is like a bell without a clapper—hollow and empty." I cannot overstate the importance of this issue. For without effective procedures, the passage of rule 50 will be meaningless.

Pending before us now is what I consider to be the necessary complement to rule 50. It underscores the Senate's commitment to civil rights for not only workers in the public and private sectors but for our own employees. The fair employment relations amendment represents an extensive study by the Governmental Affairs Committee for over a year on how the Senate should comply with rule 50. The committee's recommendations were unanimously approved April 7, 1978. Senate Resolution 431 was subsequently referred to and reported by the Human Resources Committee May 9, 1978.

Senate Resolution 431 establishes a mechanism to give employees an opportunity for due process with respect to discrimination complaints. The resolution is designed to insulate this procedure from political abuse.

Its main provisions are:

First. Fair Employment Relations Board: The Board would consist of six members appointed from the private sector by the Senate majority and minority leaders, with the approval of the respective conferences. The Board would decide any discrimination complaints which could not be resolved informally, and would supervise the Fair Employment Relations Office.

Second. Fair Employment Relations Office: The Office would investigate and seek the informal resolution of discrimination complaints. The Office would also study Senate personnel practices, including the compilation of a statistical data, and work with any Senate offices which requested assistance in improving their personnel policies.

Third. Complaints procedure—Counseling: The Office would provide counseling to any employee or job applicant who felt that he or she had been discriminated against.

Informal complaint: If a resolution could not be achieved through counseling, an informal complaint could be filed. The Director would investigate the complaint and prepare a report.

If the Director found no evidence of discrimination, the case would be closed unless the Board determined that the complainant should be allowed to file a formal complaint.

Formal complaint: A hearing examiner would be assigned to hear the case and submit recommendations to the Board. The Board would then render a decision including appropriate remedial action.

Appeal to the Ethics Committee: Either party could appeal the Board's decision to the Ethics Committee.

Fourth. Time limits: Cases of alleged discrimination would generally not be eligible for consideration under the above procedure unless the individual sought counseling within 60 days of the alleged discriminatory act or unless the alleged abuse were of a continuing nature. Specific time limits are established for each stage of the complaint handling process.

Fifth. Remedies: The Board would be authorized to order remedies whenever it determined that discrimination had occurred. The remedies could include actions such as hiring or reinstatement, as well as monetary awards to be paid by the Senate. No remedy would be ordered which would cause undue hardship or benefit to either party.

Sixth. Confidentiality: The Board and Office could not release any information concerning the existence or status of a case other than final decisions of the Board and the Ethics Committee on formal complaints and appeals.

The recommendations of the fair employment relations amendment are modest. The objective of the amendment is simply to give similar equal employment protection to Senate employees who have had this basic due process denied to them in the past.

I also point out that those of us who do support the amendment before us today are cognizant of the very special nature of each Senator's offices, recognizing the need to have flexibility in hiring a person on the basis of political and geographical preference. The amendment takes into account these factors and recognizes the uniqueness of the Senate.

With the passage of the fair employment relations amendment, the Senate will be granting administrative remedies to its over 6,000 employees and will not be jeopardizing the checks and balances inherent in our Federal system. Neither will the amendment destroy a Senator's capability to hire on the basis of philosophical and geographical desirability. In fact, the Ethics Committee report on rule L takes into consideration the need for latitude in selecting a compatible staff. The report states:

> Rule L is not to be construed as limiting in any way a Member's traditional prerogative to hire persons of a particular political affiliation from a particular geographic region. Neither is Rule L to be construed as limiting, in any way, employment practices aimed at rewarding or penalizing an individual on the basis of competence or any criteria other than those specifically referred to in the Rule (P. 53, Rep. 95-49).

Mr. BAYH. Mr. President, I rise in support of S. 431, the affirmative action resolution pertaining to the U.S. Senate. I take this action, because I feel it is awfully important that this distinguished body take the lead in the field of fair and equal employment. It is only through setting an example of equality in the Senate, that we can expect the rest of the country to follow.

Mr. President, I make these remarks with a clear understanding that every Senator must have a great deal of flexibility in deciding who should be on his staff. After all, there are few closer relationships than that of Senator and staff. They are in fact our right arm and we would oftentimes be lost without them. However, that does not exclude the necessity for all of us to exercise fairness and equity in our hiring and promotion policy. How can we possibly face our minority communities and tell them that we are fighting their cause when in fact some of our Senate colleagues do not have blacks, Chicanos or other members of the minority community, working for them in a professional capacity? How can we tell our governmental agencies, as well as private industry doing business with the Government that they should and must have an effective affirmative

action program, when we fail to practice what we preach?

For these reasons, Mr. President, I think each and every Member of this body should vote in the affirmative. To do less would be to tell the entire Nation that the U.S. Senate is not serious about implementing equal opportunities for all Americans. To do less would signal the beginning of an era in which our country turns its back on its minority communities. I am sure that not one U.S. Senator wants to see that happen. Therefore, I am hopeful that this resolution will pass by an overwhelming margin in this fair, just, and equal body.

Mr. BROOKE. Mr. President, without losing my right to the floor, I yield to the distinguished Senator from Iowa.

Mr. CLARK. Mr. President, join with my colleague from Massachusetts in supporting this resolution. I think the purpose of the amendment has been clearly stated—to establish a mechanism for hearing and deciding employment discrimination complaints in the Senate.

This is not a new issue for the Senate. We have been facing it for 1½ years now. Unfortunately, however, we have been giving the impression lately that we would like to sweep this issue under the rug.

It is, obviously, a matter that many Members of the Senate wish would go away. That is because it involves the establishment of rules to govern Members of the Senate—the same type of rules that we have established to govern the private sector.

Mr. President, it was April 1 of last year when we enacted the Code of Official Conduct for the Senate.

Included in the code was a provision I authored—rule 50—which prohibits discrimination in hiring, firing, or compensating employees on the basis of race, color, religion, sex, national origin, age, or state of physical handicap. It is a very concise provision setting out for the first time, protections for Senate employees.

The Code of Official Conduct directed the Senate Government Affairs Committee to study and recommend a mechanism for implementing rule 50.

The committee spent nearly a year studying the issue, holding hearings and developing a proposal that was embodied in Senate Resolution 431, the so-called Lee Metcalf fair employment relations resolution. The resolution was subsequently referred to the Human Resources Committee, which discharged it without recommendation, and it was then placed on the Senate Calendar.

I think it would be a serious mistake for the Senate to fail to address this issue, and that is why we are proposing today to amend the text of Senate Resolution 431 to the pending legislation.

We are at this point because the Congress is not covered by the Civil Rights Act or the Equal Pay Act, and as a result, the employees of the Congress do not enjoy the rights and protections of the employees in the rest of the Federal Government and the private sector.

The Senate has, in the past, indicated its concern about this matter, although we have never gone so far as to establish the machinery that would actually insure these rights to our employees.

In the last Congress, the Senate approved Senate Resolution 534, sponsored by the majority and minority leaders and cosponsored by myself and Senators ABOUREZK, BROOKE, James Allen, Tunney, BAYH, JAVITS, MCGOVERN, PERCY, RIBICOFF, and STEVENSON. That resolution urged Members of the Senate not to discriminate against employees, and to encourage the hiring of more women and minorities at all staff levels.

Mr. RIBICOFF. Will the Senator yield at that point?

Mr. CLARK. I do yield.

Mr. RIBICOFF. Mr. President, I support the distinguished Senator from Massachusetts and the distinguished Senator from Iowa.

This mandate was given to the Governmental Affairs Committee by the Senate. Senator GLENN spent more than a year trying to work out a mechanism to give employees an opportunity for due process with respect to discrimination complaints.

It also was designed in such a way as not to impinge in any way upon a Senator's flexibility to hire an employee for geographical or political reasons, or other nondiscriminatory criteria.

The Senate gave the Governmental Affairs this charter. They mandated us to bring this forth, we worked so hard on it—and Senator GLENN—and we now bring it to the Senate. I hope the full body will undertake to pass what the Senate asked us to pass under rule L.

Mr. President, as a cosponsor and supporter of the Lee Metcalf fair employment relations resolution, I urge swift passage of Senate Resolution 431.

This resolution is the result of the Governmental Affairs Committee's mandate from the new Ethics Code to study and make recommendations on the handling of discrimination complaints in the Senate. The committee study was done in order to provide rule L (50), the prohibition against employment discrimination in the Senate, with an adequate procedure for the actual disposition of discrimination complaints. It is the result of the committee's findings which represent over a year's study.

As part of our study, the committee solicited comments from all Senators requesting their ideas on how the Senate should best establish a system for processing employment discrimination complaints in conjunction wtih rule L (50). The committee also requested comments from 58 private organizations. In addition, it held 2 days of hearings on the resolution in which various interest organizations, Members of Congress, and congressional employees testified.

The purpose of the resolution is to establish a procedure for the handling of discrimination complaints in the Senate. Throughout our consideration, one main question was, "How does the Senate maintain its ability to be flexible in hiring a staff that is politically and geographically compatible while at the same time giving Senate employees basic protection that has been denied in the past?" Senate Resolution 431 would continue to allow Senators to have broad latitude in hiring on the basis of geographical or political compatibility—rule 50 specifically addressed discrim nation on the basis of an individual's race.

The resolution is sensitive to the unique characteristics of the Senate. It encourages flexibility in assessing each situation on a case-by-case basis. It strikes a balance between provisions of due process for Senate employees or job applicants and at the same time protects Senators from politically charged complaints. The procedure has a built-in mechanism which allows the large majority of complaints to be resolved in a conciliatory manner during the counseling period or during the informal stage long before a complaint reaches a formal stage. Members are protected from frivolous or inappropriate complaints, and confidentiality is preserved.

The procedure also provides for objectivity in the appeals stage by providing for an outside Board; however, the Board's final recommendations are subject to review by the Ethics Committee. Thus, the resolution allows a preliminary decision to be made by an independent, bipartisan Board, but still preserves the Senate as the ultimate judge of its own Members. Also, the resolution does not legislate additional jurisdiction to the courts, and thus, does not upset the checks and balances inherent in our federal system.

It has been over 15 years since the Congress passed sweeping legislation to guarantee full civil and constitutional rights for our citizens—all citizens except our own employees. These same protections must also apply to Senate employees. The Senate can no longer be insulating itself from the antidiscrimination laws that it has approved for workers in the private sector and the Federal Government. The Senate recently gave voter representation in the Congress to over 750,000 residents of the District of Columbia. The Senate has now granted an extension for the States to consider the equal rights amendment. The Senate must now recognize the need to give its 6,000 workers due process for their employee-related grievances—to do otherwise sadly perpetuates this body's "last plantation" image.

Mr. LEAHY. Will the Senator yield?

Mr. CLARK. I agreed to yield to the Senator from Illinois prior to yielding further.

Mr. PERCY. Mr. President, I join with my distinguished chairman in commending Senator BROOKE and the distinguished Senator from Iowa (Mr. CLARK) for their work in this field.

Mr. President, in January of next year rule 50 of the Code of Official Conduct will come into force, prohibiting employment discrimination in the Senate on the basis of "race, religion, sex, national origin, age, or state of physical handicap." It is imperative that the Senate act now to create a mechanism to handle the discrimination cases which will arise under rule 50. Such a mechanism must provide meaningful protection for Senate employees and job applicants, and at the same time be sensitive to the unique concerns of the Senate. This amendment,

which reflects the work of the Governmental Affairs Committee over a period of many months, would accomplish just that.

There can be no question that there is a need for such a mechanism. Recent statistics demonstrate that congressional hiring and pay practices have often resulted in unequal treatment. I believe that much of this discrimination is actually unintentional, resulting from antiquated hiring procedures and a lack of awareness. But even if we did not have statistical evidence that discrimination exists in the Senate, it would still be our duty to provide for fair consideration of each case in which an individual believes that he or she has been a victim of discrimination.

Senate employees and job applicants are now treated as second-class citizens in this regard. Virtually all other employees in our society—in both the private and public sectors—are covered by civil rights laws which enable them to seek redress in the courts. The Congress has determined that it would be inappropriate to simply extend these statutes to cover the legislative branch, and in drafting this proposal the Governmental Affairs Committee respected that decision. But it would be unconscionable to refuse to provide a meaningful internal procedure which would compensate for the denial of judicial due process.

In addition to protecting the rights of Senate employees, this amendment has been painstakingly drafted to protect Senators. It provides for confidentiality so that even the existence of a case will not be released until a final decision is reached—and then only if informal resolution could not be achieved. In addition, under this amendment most complaints would be resolved through conciliation with the help of experienced counselors, and frivolous complaints would be rejected. It is important to note that if we choose to ignore this problem the Senate will still have to deal with discrimination complaints, but without the benefit of these protections. Finally, the amendment fully protects the right of Senators to hire on the basis of political and geographical preference.

The Congress has been severely criticized for failing to act on this measure. In light of the double standard which our inaction has condoned, it is really not surprising that such a negative image has developed. If the Senate fails to approve this amendment, that criticism will be more justified than ever.

Mr. CLARK. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER (Mr. BAYH). The Senator will state it.

Mr. CLARK. Following the two votes that have been ordered, do I retain the floor?

Mr. ROBERT C. BYRD. Only by unanimous consent.

The PRESIDING OFFICER. The Senator must have unanimous consent.

Mr. CLARK. I ask unanimous consent.

Several Senators addressed the Chair.

Mr. CLARK. I ask unanimous consent.

Mr. BROOKE. Will the Senator yield?

Mr. CLARK. I do yield.

Mr. BROOKE. I asked earlier, before the Senator from Iowa was on the floor, what the pending business would be after the vote on the Senate bill and the vote that would follow on the treaty.

It was the opinion of the majority leader and the opinion of the Chair, as I recall, that the pending busines would be the Humphrey-Hawkins bill, with this amendment to the bill pending.

Since I have yielded the floor to the distinguished Senator from Iowa, it is my understanding that the Senator from Iowa would have the floor, if we have unanimous consent for that purpose.

So I ask unanimous consent that, at the conclusion of the vote on the treaty, the Senator from Iowa be recognized.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I will object, I do not know what may happen at that point. I may want recognition myself.

But I assure the Senator from Iowa that at that time I will try to help him get the floor. I have no reason to object to his having the floor.

Mr. HARRY F. BYRD, JR. Will the Senator yield that I might put a question to the Senator from Massachusetts?

Mr. ROBERT C. BYRD. Well, the time for the vote has occurred.

The PRESIDING OFFICER. There is an order to vote 2 minutes ago.

There was a unanimous-consent request made by the Senator from Massachusetts that the Senator may at that——

Mr. ROBERT C. BYRD. I did object.

The PRESIDING OFFICER. Objection is heard.

PROGRAM REAUTHORIZATION AND EVALUATION ACT OF 1978

The Senate continued with the consideration of S. 2.

Mr. HUDDLESTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUDDLESTON. Mr. President, I support Senator MUSKIE's substitute amendment to S. 2. I am pleased to be a cosponsor of this amendment; it has been possible to refine the original concept of sunset legislation in order to produce a practical method of reviewing and evaluating the growing number of Federal programs. With a few necessary exceptions, Federal programs would be automatically terminated under the provisions of this legislation, unless specifically reauthorized by Congress.

Such legislation is long overdue. Congress is hearing these days from more—and angrier—taxpayers who feel that Government is expanding much too fast and is costing far too much. The movement against the growth of Government and the taxes necessary to support it has been growing over the past few years. It seems very unlikely that the people will relent in their demands for lower taxes and reduced Federal spending even with the tax cut legislation planned for this year.

Part of the problem is that new projects become part of the growing bureaucracy almost immediately. The budget is increased by a series of add-ons, one program at a time, one agency at a time, one commission at a time, often with little relation to other programs. Every Government program or agency develops its own constituency, its own bureaucracy and its own built-in spending increases, making it difficult to eliminate or even alter any program once it gets started. As existing Government becomes larger and more unwieldy, requiring greater and greater allocations of scarce Federal funds, Congress becomes progressively less able to respond to the changing needs of the people.

Larger spending cuts now take the form of across-the-board cuts in authorization bills. These cuts are essential in order to bring down spending, but because they establish no priorities they do not necessarily do anything at all to reduce waste—that "fat" we have all heard so much about. We have probably all been exposed to our constituents' anger and frustration at high taxes and rising inflation. But taxpayers really feel their trust has been betrayed by the creation of what they perceive as "big Government": a complicated, nearly incomprehensible conglomeration of Federal programs which defies rational analysis and whose most significant function is to absorb vast quantities of tax dollars. The people do not want to eliminate Government or Government services; but they do want—and deserve—efficient, effective, responsive Government.

Congress must begin to exercise the same discipline with respect to individual programs as it now does with respect to the budget as a whole. Legislation providing for periodic review and reauthorization would give Congress the opportunity to consolidate, revise, eliminate, or add new programs through a comprehensive and systematic review of related programs in a broad functional area. Congress could also assess overall goals, thus enabling us to see that essential services are maintained without waste, duplication, or overlap. The sheer complexity of a Government which has grown by bits and pieces now makes such a review process necessary.

We must develop a balanced and rational approach to the problem of uncontrolled growth in Federal programs. We should not be swayed by extravagant, deceptively "simple" across-the-board, tax-cutting or budget-cutting proposals. Government spending reform should favorably affect the efficiency of Government and the size of the budget deficit, while at the same time making larger tax cuts feasible. Procedures established by this amendment will give Congress an excellent opportunity to show that we can bring big Government back under control and pass the benefits along to the taxpayers.

● Mr. DECONCINI. Mr. President, one of the first and most important legislative proposals that I had the privilege of cosponsoring was S. 2, before us today as the Sunset Act of 1978.

If there has ever been a demand by the citizens of this country, it has been

for efficiency in Government. There is a very clear and unanimous insistence that elected officials and representatives of the people regain control of the indefinable mass of Federal programs that threaten to overwhelm and consume the countryside like some mythical cinema monster.

As a member of the Appropriations Committee, I have become acutely aware of the need for the discipline, as well as the kind of information that this legislation will create.

Mr. President, I wish to congratulate the Senator from Maine (Mr. MUSKIE) for his dedication in developing a practical and functional process of re-examing the myriad of Federal programs, and for his persistence in bringing this matter before the Senate for a vote.●

● Mr. BELLMON. Mr. President, I support the Sunset Act of 1978. As a cosponsor of this bill, I believe it is another important step toward congressional control of waste in Federal spending. The 1974 Budget Act took us a long way down that road. But we have since learned that the budget process, while vitally important, cannot identify and eliminate wasteful or unnecessary programs without active and vigorous oversight by authorizing committees.

I have found in my 4 years on the Budget Committee that one of the biggest remaining obstacles to real control over Federal spending is the reluctance of Congress to undertake orderly qualitative review of existing Federal programs.

As the American people have been insisting, many Federal tax dollars could be saved through effective efforts to end waste and inefficiency. While the budget process can help with overall spending ceilings and broad priority decisions, it was neither designed nor equipped to deal with the magnitude of details involved in solving this problem. There are several reasons why this is true.

First. The Budget Committee is not a line-item committee. It neither mandates nor restricts spending for particular programs. This is the responsibility of the authorizing committees.

Second. The Budget Committee does not have nor does it desire the staff necessary to undertake such an effort. The same is true of the Appropriations Committee. Also it is unrealistic to expect a bureaucrat to voluntarily come in and say that the agency has no worthwhile work to do and that the appropriation should be reduced or eliminated.

Third. It is inappropriate for the Budget Committee to infringe upon the jurisdiction of authorizing committees, which have responsibility for the working details of their respective programs.

Unfortunately, responsibility for discovering and eliminating waste and inefficiency is all too often wrongly assigned to the Budget Committee by some Senators who advocate spending restraint but seem unable or unwilling to suffer the inevitable disadvantages of or put forth the effort through the oversight process to accomplish that objective. As we all know, waste and inefficiency are not self-identifying or self-correcting. To assume this task, a Senator must expend a great deal of time and effort and may also run the risk of losing the political support of the program's constituents.

Mr. President, sunset legislation would force members of the appropriate committees to examine the programs within their legislative jurisdictions, and to reauthorize only those programs that prove warranted, cost-effective, and not duplicative of other programs. Too often, programs are established in perpetuity without regard to changing national priorities and often continue long after the problems they were created to solve have disappeared. This bill would also facilitate the elimination or alteration of ill-suited programs by forcing proponents of the program to establish its value.

Sunset processes will also provide taxpayers direct orderly opportunities to express their views regarding wasteful Federal spending without resorting to excessive measures.

We have been told that sunset legislation is new, revolutionary and imaginative. I doubt that it is all of these things. Present laws and procedures, if rigorously applied, could accomplish the same objective as sunset legislation. The pace of other business, the lack of adequate staff, and a failure to understand the danger of unchecked growth in Government, have allowed a system to develop under which Congress normally examines only new spending requests the agencies make. We rarely examine closely the operation of ongoing programs. We have no orderly system of reviewing the performance of the agency nor of reviewing the need for its continued existence.

The only reviews which are normally made are sporadic undertakings by the GAO. These are on a hit-or-miss basis and rarely provide the kind of guidance Congress needs to know whether or not an agency or a program has met its objective and completed its task.

The fact that we are considering sunset legislation is persuasive evidence that current oversite methods have failed.

Congress creates these agencies and activities. We have the ultimate responsibility to see that they continue to serve the national interest, to terminate them when their mission is accomplished or to redirect their efforts if national needs change.

In a more nearly perfect world, Congress could assume that laws passed and programs created by congressional action would deal effectively with the problems we are trying to solve. We could further assume that the executive branch, in the administration of these programs, would remain faithful to original legislative mandates. Finally, we could hope that a combination of recurrent executive oversite and enlightened management would yield real solutions and at the appropriate time Government officials would come before the Congress and recommend program curtailment or termination. In the real world of Government, we know this has not happened. Bureaucracies build loyalties that rival tribal fidelity or the self-protective instincts of the clan.

In practice a bureaucracy is not a temporary means of accomplishing an end, rather it is a monument to immortality. The economic survival of bureaucrats depend upon the expansion, not the termination, of the programs they administer. Programs grow regardless of need and over the years, Congress tends to lose control. Our original purposes become diffused, distorted, and difficult to recognize.

Sunset legislation is a rational response to the real problems we face. It demands that program managers determine a set of goals and objectives toward which they will work and for which they will allocate necessary resources. It further requires that all those involved, including Congress, be held strictly accountable for the results of their stewardship. Sunset assumes that there is a continuum of governmental needs which should be addressed. It requires that we recognize when a task is completed, in order to free resources for the other more pressing tasks at hand.

Mr. President, I have now served 6 years as a member of the Appropriations Committee. During this time, I have attended scores of appropriations hearings. I have heard dozens of Government officials come before the committee to plead for more money for expanding their programs. To this day, I have never heard a single official say "I have accomplished my mission, my task is done, you don't need me or my agency any more. Cut off my money and put me out of business." I doubt if any member of the committee has heard such testimony.

Also, the only information the Appropriations Committee normally has available comes from the agency itself. There is a great need for informed neutral witnesses to also appear periodically so the committee can have a balanced view. What is needed is a team of witnesses who can say "What the agency did not tell you is * * *" and be able to back up their position with facts. Sunset legislation provides the mechanism so this balance can be achieved.

A case in point is the Civil Defense Agency. This bureaucracy was created back during the "fraidy hole" days of the 1950's. Its job was to identify and stock underground fallout shelters so that in the event of a nuclear exchange American citizens would have a better possibility of survival.

Congress has never consciously changed the mission of the Civil Defense Agency. However, international tensions have relaxed, the danger of nuclear exchange has been significantly reduced and the "fraidy hole" mentality has matured into a more stable psychology.

While Congress has never consciously changed the mission of the Civil Defense Agency neither have we ever acted to put them out of business. Civil Defense became a bureaucracy without a reason to exist. Acting on its own, the agency abandoned its earlier charter. It now spends its time watching for tornados, earthquakes, hurricanes, or floods. Never mind that the National Guard, the State

Highway Patrol, local police, and fire departments, as well as dozens of military units are on hand with the know-how, the equipment, the communications capability and the dedication to warn and protect the general public. The original mission of the Civil Defense Agency disappeared but the agency did not. It is still with us to the tune of $90 million a year. Undoubtedly, dozens of other examples could be given that are equally shocking.

As a member of the Senate Budget Committee, I am constantly made aware of the extent of the unmet and legitimate needs which exist in our society. At the same time I am made painfully aware of the limited resources which Federal and State and local governments have at their disposal. This perpetual imbalance between needs and resources will not be erased by sunset legislation. However, such legislation will help insure that the resources which are available are used efficiently and that they are periodically redirected, flowing away from ineffective programs and toward new or ongoing efforts which are in close harmony with the Nation's highest priority needs.

An orderly periodic review, within the context of this legislation, should result in more effective management of resources at the agency level. Sunset legislation tells program managers that programs are not permanent. They must deliver a needed service or be replaced by more essential activities.

In passing the 1974 Budget and Impoundment Control Act, Congress established a workable method of determining national priorities and allocating resources to areas of greatest need. To accomplish this objective it is essential that Congress establish a system of regularly ascertaining that established resource allocations are proper.

Sunset legislation is the next logical step. It would, in short, permit displacement budgeting rather than incremental budgeting. It is my belief that an ability to displace existing programs and redirect funds to other higher priority purposes is a necessary second step toward achieving the purposes Congress envisioned when the Budget Act was passed.

Mr. President, the establishment of this procedure should be especially effective when applied to the 70 percent of Federal spending often referred to as "uncontrollable." This term—far from accurate—is often employed merely as a convenient device to exempt those spending programs from congressional scrutiny. I submit, Mr. President, that there are no programs beyond the ability of Congress to revise and improve. There is no such thing as an "uncontrollable" spending program.

Mr. President, we all know that Federal spending restraint is not easy but is in all our best interests to undertake. This bill will help those efforts. In fact, it might be said, Mr. President, that this sunset can be the start of a new day of Federal fiscal responsibility.

Congress creates every spending program. Sunset will assure orderly review and termination of spending programs which are wasteful or outdated. Congress creates every bureaucracy. Sunset will assure orderly review of the activity of the bureaucracy and pruning of deadwood.●

RESERVATIONS ON SUNSET LEGISLATION

● Mr. HATCH. Mr. President, I wonder if sunset legislation will really do what we think it will do and would like for it to do, or whether it will have an unintended effect that we have not considered. It seems to me that this legislation could serve simply to get the Budget Committee off the hook and work against Senators who propose expenditure cuts in budget resolutions.

The net effect of sunset legislation may be to reduce the efforts to put some kind of lid on spending increases, because the big spenders can say that the budget resolution is not the time or place to consider cutting outlays or budget authority for the various programs.

They can say that the programs are coming up in a year or two for review under the sunset law, and that the Senate should abide by the timetable for review and not try to cut programs in the budget resolutions. Sunset law will let the big spenders claim that they are reviewing expenditures.

Senators, of course, are not going to have time to go through Federal programs looking for ones to terminate. Staff will do it, and they will pick programs that do not have large, noisy constituencies. Annually, staff will have to come up with some helpless bit to terminate in order to prove that sunset is working.

The subtractions, however, will be less than the additions. Cuts will always be promised sometime in the future when the programs are scheduled for review, and this will take the pressure off to cut programs in the budget resolutions. For this reason I have serious reservations about sunset legislation.●

The PRESIDING OFFICER. The question is, Shall the bill, S. 2 pass? The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Colorado (Mr. HASKELL) and the Senator from New Hampshire (Mr. MCINTYRE) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), the Senator from New York (Mr. JAVITS), the Senator from Idaho (Mr. MCCLURE), the Senator from Kansas (Mr. PEARSON), the Senator from Virginia (Mr. SCOTT), and the Senator from Texas (Mr. TOWER) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. DOMENICI) and the Senator from New York (Mr. JAVITS) would each vote "yea."

The PRESIDING OFFICER. Have all Senators voted?

The result was announced—yeas 87, nays 1, as follows:

[Rollcall Vote No. 479 Leg.]

YEAS—87

Abourezk	Goldwater	Metzenbaum
Anderson	Gravel	Morgan
Bartlett	Griffin	Moynihan
Bayh	Hansen	Muskie
Bellmon	Hart	Nelson
Bentsen	Hatch	Nunn
Biden	Hatfield, Mark O.	Packwood
Brooke	Hatfield, Paul G.	Pell
Burdick	Hayakawa	Percy
Byrd, Harry F., Jr.	Heinz	Proxmire
Byrd, Robert C.	Helms	Randolph
Cannon	Hodges	Ribicoff
Case	Hollings	Riegle
Chafee	Huddleston	Roth
Chiles	Humphrey	Sarbanes
Church	Inouye	Sasser
Clark	Jackson	Schmitt
Cranston	Johnston	Schweiker
Culver	Kennedy	Stafford
Curtis	Laxalt	Stennis
Danforth	Leahy	Stevens
DeConcini	Long	Stevenson
Dole	Lugar	Stone
Durkin	Magnuson	Talmadge
Eagleton	Mathias	Thurmond
Eastland	Matsunaga	Wallop
Ford	McGovern	Weicker
Garn	Melcher	Williams
Glenn		Young
		Zorinsky

NAYS—1

Bumpers

NOT VOTING—12

Allen	Hathaway	Pearson
Baker	Javits	Scott
Domenici	McClure	Sparkman
Haskell	McIntyre	Tower

So the bill (S. 2) was passed, as follows:

S. 2

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Sunset Act of 1978".

SEC. 2. The purposes of this Act are—

(1) to require that most Government programs be reauthorized according to a schedule at least once every ten years;

(2) to limit the length of time for which Government programs can be authorized to ten years;

(3) to bar the expenditure of funds for Government programs which have not been provided for by a law enacted during the ten-year sunset reauthorization cycle; and

(4) to encourage the reexamination of selected Government programs each Congress.

SEC. 3. (a) For purposes of this Act:

(1) The term "budget authority" has the meaning given to it by section 3(2) of the Congressional Budget Act of 1974.

(2) The term "permanent budget authority" means budget authority provided for an indefinite period of time or an unspecified number of fiscal years which does not require recurring action by the Congress, but does not include budget authority provided for a specified fiscal year which is available for obligation or expenditure in one or more succeeding fiscal years.

(3) The term "Comptroller General" means the Comptroller General of the United States.

(4) The term "agency" means an executive agency as defined in section 105 of title 5, United States Code, except that such term includes the United States Postal Service and the postal Rate Commission but does not include the General Accounting Office.

(5) The term "sunset reauthorization cycle" means the period of five Congresses beginning with the Ninety-seventh Congress and with each sixth Congress following the Ninety-seventh Congress.

(b) For purposes of this Act, each program (including any program exempted by provision of law from inclusion in the Budget of the United States) shall be assigned to the functional and subfunctional categories to which it is assigned in the Budget of the United States Government, fiscal year 1979. Each committee of the Senate or the House of Representatives which reports any bill or resolution which authorizes the enactment of new budget authority for a program not included in the fiscal year 1979 budget shall include, in the committee report accompanying such bill or resolution (and, where appropriate, the conferees shall include in their joint statement on such bill or resolution), a statement as to the functional and subfunctional category to which such program is to be assigned.

(c) For purposes of titles I, II, III, and V of this Act, the reauthorization date applicable to a program is the date specified for such program under section 101(b).

TITLE I—REAUTHORIZATIONS OF GOVERNMENT PROGRAMS

SEC. 101. (a) Each Government program (except those listed in section 103) shall be reauthorized at least once during each sunset reauthorization cycle during the Congress in which the reauthorization date applicable to such program (pursuant to subsection (b)) occurs.

(b) The first reauthorization date applicable to a Government program is the date specified in the following table, and each subsequent reauthorization date applicable to a program is the date ten years following the preceding reauthorization date:

Programs included within subfunctional category		First reauthorization date
254	Space, Science, Applications and Technology.	
272	Energy Conservation.	
301	Water Resources.	
352	Agriculture and Research Services.	
371	Mortgage Credit and Thrift Insurance.	
376	Other Advancement and Regulation of Commerce.	
501	Elementary, Secondary, and Vocational Education.	
601	General Retirement and Disability Insurance.	
602	Federal Employment Retirement and Disability.	
703	Hospital and Medical Care for Veterans.	
806	Other General Government.	
851	General Revenue Sharing	September 30, 1982.
051	Department of Defense—Military.	
053	Atomic Energy Defense Activities.	
154	Foreign Information and Exchange Act.	
251	General Science and Basic Research.	
306	Other Natural Resources.	
351	Farm Income Stabilization.	
401	Ground Transportation.	
502	Higher Education.	
553	Education and Training of Health Care Work Force.	
701	Income Security for Veterans.	
752	Federal Litigative and Judicial Activities.	
802	Executive Director and Management.	
803	Central Fiscal Operations	September 30, 1984.
054	Defense Related Activities.	
152	Military Assistance.	
155	International Financial Programs.	
253	Space Flight.	
255	Supporting Space Activities.	
274	Emergency Energy Preparedness.	
302	Conservation and Land Management.	
304	Pollution Control and Abatement.	
407	Other Transportation.	
504	Training and Employment.	
506	Social Services.	
554	Consumer and Occupational Health and Safety.	
704	Veterans Housing.	
751	Federal Law Enforcement Activities.	
801	Legislative Function.	
852	Other General Purpose Fiscal Assistance	September 30, 1986.
153	Conduct of Foreign Affairs.	
271	Energy Supply.	
303	Recreational Resources.	
402	Air Transportation.	
505	Other Labor Services.	
551	Health Care Services.	
604	Public Assistance and Other Income Supplements.	
702	Veterans Education, Training, and Rehabilitation.	
753	Federal Correctional Activities.	
805	Central Personnel Management.	
902	Other Interest	September 30, 1988.
151	Foreign Economic and Financial Assistance.	
276	Energy Information, Policy and Regulation.	
372	Postal Service.	
403	Water Transportation.	
451	Community Development.	
452	Area and Regional Development.	
453	Disaster Relief and Insurance.	
503	Research and General Education Aids.	
552	Health Research.	
603	Unemployment Compensation.	
705	Other Veterans Benefits and Services.	
754	Criminal Justice Assistance.	
804	General Property and Record Management.	
901	Interest on the Public Debt	September 30, 1990.

(c)(1) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which authorizes the enactment of new budget authority for a program for a period of more than ten fiscal years, for an indefinite period, or (except during the Congress in which such next reauthorization date occurs) for any fiscal year beginning after the next reauthorization date applicable to such program. Notwithstanding the preceding sentence, it shall be in order to consider a bill or resolution for the purpose of considering an amendment to the bill or resolution which would make the authorization period conform to the requirement of such sentence.

(2)(A) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which provides new budget authority for a program for any fiscal year beginning after the first (or any subsequent) reauthorization date applicable to such program under paragraph (b), unless the provision of such new budget authority is specifically authorized by a law which constitutes a required authorization for such program.

(B) For the purposes of this subsection, the term "required authorization" means a law authorizing the enactment of new budget authority for a program, which complies with the provisions of paragraph (1) and is enacted during the Congress in which the reauthorization date for such program occurs, or during a Congress after such date and prior to the Congress in which the next reauthorization date for such program occurs.

(3) No new budget authority may be obligated or expended for a program for a fiscal year beginning after the last fiscal year in a sunset reauthorization cycle unless a provision of law providing for the continuation of such program has been enacted during such sunset reauthorization cycle.

(4) Any provision of law providing permanent budget authority for a program shall cease to be effective (for the purpose of providing such budget authority) on the first reauthorization date applicable to such program.

(5) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which provides new budget authority for a program unless the bill or resolution, or amendment thereto (or the report which accompanies such bill or resolution), includes a specific reference to the provision of law which constitutes a required authorization for such program. Notwithstanding the preceding sentence, it shall be in order to consider a bill or resolution for the purpose of considering an amendment which provides such reference to the appropriate provision of law.

SEC. 102. (a) It shall not be in order in either the Senate or the House of Representatives to consider any bill or resolution, or amendment thereto, which has been reported by a committee and which authorizes the enactment of new budget authority for a program for a fiscal year beginning after the next reauthorization date applicable to such program, unless a reauthorization review (to the extent the committee or committees having jurisdiction deem appropriate) of such program has been completed

during the Congress in which the reauthorization date for such program occurs (or during a subsequent Congress when such required authorization is considered), and the report accompanying such bill or resolution includes a separate section entitled 'Reauthorization Review' recommending, based on such review, whether the program or the laws affecting such program should be continued without change, continued with modifications, or terminated, and also includes, to the extent the committee or committees having jurisdiction deem appropriate, each of the following matters:

(1) Information and analysis on the organization, operation, costs, results, accomplishments, and effectiveness of the program.

(2) An identification of any other programs having similar objectives, and a justification of the need for the proposed program in comparison with those other programs which may be potentially conflicting or duplicative.

(3) An identification of the objectives intended for the program, and the problems or needs which the program is intended to address, including an anlysis of the performance expected to be achieved, based on the bill or resolution as reported.

(4) A comparison of the amount of new budget authority which was authorized for the program in each of the previous four fiscal years and the amount of new budget authority provided in each such year.

(b) It shall not be in order in either the Senate or the House of Representatives to consider a bill or resolution, or amendment thereto, which authorizes the enactment of new budget authority for a program for which there previously has been no such authorization unless the report accompanying such bill or resolution sets forth, to the extent that the committee or committees having jurisdiction deem appropriate, the information specified in subsection (a) (2) and (3).

(c) Each committee having legislative jurisdiction over a program included in section 103 shall conduct a review of such program of the type described in subsection (a) at least once during each sunset reauthorization cycle, during the Congress in which the reauthorization date applicable to such program occurs, and shall submit to the Senate or the House of Representatives, as the case may be, a report containing its recommendations and other information of the type described in subsection (a) to the extent that the committee deems appropriate. It shall not be in order to consider a bill or resolution reported by the committee having legislative jurisdiction which authorizes the enactment of new budget authority for such program unless such report accompanies such bill or resolution, or has been submitted during the Congress in which the reauthorization date for such program occurred as provided in section 101(b), whichever first occurs.

SEC. 103. (a) Section 101(c) shall not apply to the following:

(1) Programs included within functional category 900 (Interest).

(2) Any Federal programs or activities to enforce civil rights guaranteed by the Constitution of the United States or to enforce antidiscrimination laws of the United States, including but not limited to the investigation of violations of civil rights, civil or criminal litigation or the implementation or enforcement of judgments resulting from such litigation, and administrative activities in support of the foregoing.

(3) Programs which are related to the administration of the Federal judiciary and which are classified in the fiscal year 1979 budget under subfunctional category 752 (Federal litigative and judicial activities).

(4) Payments of refunds of internal revenue collections as provided in title I of the Supplemental Treasury and Post Office Departments Appropriation Act of 1949 (62 Stat. 561), but not to include refunds to persons in excess of their tax payments.

(5) Programs included in the fiscal year 1979 budget in subfunctional categories 701 (Income security for veterans), 702 (Veterans education, training, and rehabilitation), 704 (Veterans housing), and programs for providing health care which are included in such budget in subfunctional category 703 (Hospital and medical care for veterans).

(6) Social Security and Federal employee retirement programs including the following:

(A) Programs funded through trust funds which are included with subfunctional categories 551 (Health care services), 601 (General retirement and disability insurance), or 602 (Federal employee retirement and disability).

(B) Retirement pay and retired pay of military personnel on the retired lists of the Army, Navy, Marine Corps, and the Air Force, including the Reserve components thereof, retainer pay for personnel of the Inactive Fleet Reserve; and payments under section 4 of Public Law 92–425 and chapter 73 of title 10, United States Code (survivor's benefits), classified in the fiscal year 1979 budget in subfunctional category 051 (Department of Defense-military).

(C) Retirement pay and medical benefits for retired commissioned officers of the Coast Guard, the Public Health Service Commissioned Corps, and the National Oceanic and Atmospheric Commissioned Corps and their survivors and dependents, classified in the fiscal year 1979 budget in subfunctional category 551 (Health care services) or in subfunctional category 306 (other natural resources).

(D) Retired pay of military personnel of the Coast Guard and Coast Guard Reserve, members of the former Lighthouse Service, and for annuities payable to beneficiaries of retired military personnel under the retired serviceman's family protection plan (10 U.S.C. 1431–1446) and survivor benefit plan (10 U.S.C. 1447–1455), classified in the fiscal year 1979 budget in subfunctional category 403 (Water transportation).

(E) Payments to the Central Intelligence Agency Retirement and Disability Fund, classified in the fiscal year 1979 budget in subfunctional category 054 (Defense-related activities).

(F) Payments to the Civil Service Retirement and Disability Fund for financing unfunded liabilities, classified in the fiscal year 1979 budget in subfunctional category 805 (Central personnel management).

(G) Payments to the Foreign Service Retirement and Disability Fund, classified in the fiscal year 1979 budget in subfunctional category 153 (Conduct of foreign affairs).

(H) Payments to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds, classified in the fiscal year 1979 budget in various subfunctional categories.

(I) Administration of the retirement and disability programs set forth in this section.

(b) If a question is raised in the Senate with respect to the application of any paragraph of subsection (a) to any bill, resolution, or amendment, or to any provision of law, the Presiding Officer shall submit the question to the Senate for decision.

SEC. 104. (a) It is the sense of the Congress that all programs should be considered and reauthorized in program categories which constitute major areas of legislative policy. Such authorizations should be for sufficient periods of time to enhance oversight and the review and evaluation of Government programs.

(b) The reauthorization schedule contained in section 101(b) may be changed by concurrent resolution of the two Houses of the Congress (except that changes in the schedule affecting permanent appropriations may be made only by law).

(c) All messages, petitions, memorials, concurrent resolutions, and bills proposing changes in section 101(b) and all bills proposing changes in section 103(a), shall be referred first to the committee with legislative jurisdiction over any program affected by the proposal and sequentially to the Committee on Rules in the House of Representatives or to the Committee on Rules and Administration in the Senate as provided for in subsection (d).

(d) Except as provided in subsection (f), the Committee on Rules in the House of Representatives or the Committee on Rules and Administration in the Senate shall report any concurrent resolution or bill referred to it under the provisions of subsection (c) and which previously has been reported favorably by a committee of legislative jurisdiction within thirty days (not counting any day on which the Senate or the House of Representatives is not in session), beginning with the day following the day on which such resolution or bill is so referred, with its recommendations.

(e) The recommendations of the Committee on Rules or the Committee on Rules and Administration pursuant to subsection (d) or (f) shall include a statement on each of the following matters:

(1) The effect the proposed change would have on the sunset reauthorization schedule.

(2) The effect the proposed change would have on the jurisdictional and reauthorization responsibilities and workloads of the authorizing committees of Congress.

(3) Any suggested grouping of similar programs which would further the goals of this Act to make more effective comparisons between programs having like objective.

(f) Any concurrent resolution or bill proposing a change in section 101(b) or 103(a) which has been reported by a committee before June 1, 1980, shall be referred in the House to the Committee on Rules and in the Senate to the Committee on Rules and Administration. Such committee shall report an omnibus concurrent resolution or bill containing its recommendations regarding the proposed changes by July 1, 1980, and consideration of such bill or resolution shall be highly privileged in the House of Representatives and privileged in the Senate. The provisions of subsections (c) and (d) of section 1017 of the Impoundment Control Act of 1974, insofar as they relate to consideration of rescission bills, shall apply to the consideration of concurrent resolutions and bills proposing changes reported pursuant to this subsection, amendments thereto, motions and appeals with respect thereto, and conference reports thereon.

(g) It shall not be in order in the Senate or the House of Representatives to consider a bill or resolution reported pursuant to subsection (b), (c), (d), or (f) which proposes a reauthorization date for a program beyond the final reauthorization date of the sunset reauthorization cycle then in progress. Notwithstanding the preceding sentence, it shall be in order to consider a bill or resolution for the purpose of considering an amendment which meets the requirements of this subsection.

TITLE II—PROGRAM INVENTORY

SEC. 201. (a) The Comptroller General and the Director of the Congressional Budget Office, in cooperation with the Director of the Congressional Research Service, shall prepare an inventory of Federal programs (hereafter in this title referred to as the "program inventory").

(b) The purpose of the program inventory is to advise and assist the Congress in carrying out the requirements of titles I and III. Such inventory shall not in any way bind the committees of the Senate or the House of

Representatives with respect to their responsibilities under such titles and shall not infringe on the legislative and oversight responsibilities of such committees. The Comptroller General shall compile and maintain the inventory, and the Director of the Congressional Budget Office shall provide budgetary information for inclusion in the inventory.

(c) Not later than July 1, 1979, the Comptroller General, after consultation with the Director of the Congressional Budget Office and the Director of the Congressional Research Service, shall submit the program inventory to the Senate and House of Representatives.

(d) In the report submitted under this section, the Comptroller General, after consultation and in cooperation with and consideration of the views and recommendations of the Director of the Congressional Budget Office, shall group programs into program areas appropriate for the exercise of the review and re-examination requirements of this Act. Such groupings shall identify program areas in a manner which classifies each program in only one functional and only one subfunctional category and which is consistent with the structure of national needs, agency missions, and basic programs developed pursuant to section 201(i) of the Budget and Accounting Act, 1921.

(e) The program inventory shall set forth for each program each of the following matters:

(1) The specific provision(s) of law authorizing the program.

(2) The committees of the Senate and the House of Representatives which have legislative or oversight jurisdiction over the program.

(3) A brief statement of the purpose or purposes to be achieved by the program.

(4) The committees which have jurisdiction over legislation providing new budget authority for the program, including the appropriate subcommittees of the Committees on Appropriations of the Senate and the House of Representatives.

(5) The agency and, if applicable, the subdivision thereof responsible for administering the program.

(6) The grants-in-aid, if any, provided by such program to State and local governments.

(7) The next reauthorization date for the program.

(8) A unique identification number which links the program and functional category structure.

(9) The year in which the program was originally established and, where applicable, the year in which the program expires.

(10) Where applicable, the year in which new budget authority for the program was last authorized and the year in which current authorizations of new budget authority expire

(f) The inventory shall contain a separate tabular listing of programs which are not required to be reauthorized pursuant to section 101(c).

(g) The report also shall set forth for each program whether the new budget authority provided for such programs is—

(1) authorized for a definite period of time;

(2) authorized in a specific dollar amount but without limit of time;

(3) authorized without limit of time or dollar amounts;

(4) not specifically authorized; or

(5) permanently provided,

as determined by the Director of the Congressional Budget Office.

(h) For each program or group of programs, the program inventory also shall include information prepared by the Director of the Congressional Budget Office indicating each of the following matters:

(1) The amounts of new budget authority authorized and provided for the program for each of the preceding four fiscal years and, where applicable, the four succeeding fiscal years.

(2) The functional and subfunctional category in which the program is presently classified and was classified under the fiscal year 1979 budget.

(3) The identification code and title of the appropriation account in which budget authority is provided for the program.

SEC. 202. The General Accounting Office, the Congressional Research Service, and the Congressional Budget Office shall permit the mutual exchange of available information in their possession which would aid in the compilation of the program inventory.

SEC. 203. The Office of Management and Budget, and the Executive agencies and the subdivisions thereof shall, to the extent necessary and possible, provide the General Accounting Office with assistance requested by the Comptroller General in the compilation of the program inventory.

SEC. 204. Each committee of the Senate and the House of Representatives, the Congressional Budget Office, and the Congressional Research Service shall review the program inventory as submitted under section 201 and not later than October 1, 1979, each shall advise the Comptroller General of any revisions in the composition or identification of programs and groups of programs which it recommends. After full consideration of the reports of all such committees and officials, the Comptroller General in consultation with the committees of the Senate and the House of Representatives shall report, not later than December 31, 1979, a revised program inventory to the Senate and the House of Representatives.

SEC. 205. (a) The Comptroller General, after the close of each session of the Congress, shall revise the program inventory and report the revisions to the Senate and the House of Representatives.

(b) After the close of each session of the Congress, the Director of the Congressional Budget Office shall prepare a report, for inclusion in the revised inventory, with respect to each program included in the program inventory and each program established by law during such session, which includes the amount of the new budget authority authorized and the amount of new budget authority provided for the current fiscal year and each of the five succeeding fiscal years. If new budget authority is not authorized or provided or is authorized or provided for an indefinite amount for any of such five succeeding fiscal years with respect to any program, the Director shall make projections of the amounts of such new budget authority necessary to be authorized or provided for any such fiscal year to maintain a current level of services.

(c) Not later than one year after the first or any subsequent reauthorization date, the Director of the Congressional Budget Office, in consultation with the Comptroller General and the Director of the Congressional Research Service, shall compile a list of the provisions of law related to all programs subject to such reauthorization date for which new budget authority was not authorized. The Director of the Congressional Budget Office shall include such a list in the report required by subsection (b). The committees with legislative jurisdiction over the affected programs shall study the affected provisions and make any recommendations they deem to be appropriate with regard to such provisions to the Senate and the House of Representatives.

SEC. 206. The Comptroller General and the Director of the Congressional Budget Office shall include in their respective reports to the Congress pursuant to sections 202(f) and 702(e) of the Congressional Budget Act of 1974 an assessment of the adequacy of the functional and subfunctional categories contained in section 101(b) for grouping programs of like missions or objectives.

SEC. 207. (a) The Director of the Congressional Budget Office shall tabulate and issue an annual report on the progress of congressional action on bills and resolutions reported by a committee of either House or passed by either House which authorize the enactment of new budget authority for programs.

(b) The report shall include an up-to-date tabulation for the fiscal year beginning October 1 and the succeeding four fiscal years of the amounts of budget authority (1) authorized by law or proposed to be authorized in any bill or resolution reported by any committee of the Senate or the House of Representatives, or (2) if budget authority is not authorized or proposed to be authorized for any of the five fiscal years, the amounts necessary to maintain a current level of services for programs in the inventory.

(c) The Director of the Congressional Budget Office shall issue periodic reports on the programs and the provisions of laws which are scheduled for reauthorization in each Congress pursuant to the reauthorization schedule in section 101(b). In these reports, the Director shall identify each provision of law which authorizes the enactment of new budget authority for programs scheduled for reauthorization and the title of the appropriation bill, or part thereof, which would provide new budget authority pursuant to each authorization.

TITLE III—PROGRAM REEXAMINATION

SEC. 301. (a) Each committee of the Senate and the House of Representatives periodically shall provide through the procedures established in section 302, for the conduct of a comprehensive reexamination of selected programs or groups of programs over which it has jurisdiction.

(b) In selecting programs and groups of programs for reexamination, each committee shall consider each of the following matters:

(1) The extent to which substantial time has passed since the program or group of programs has been in effect.

(2) The extent to which a program or group of programs appears to require significant change.

(3) The resources of the committee with a view toward undertaking reexaminations across a broad range of programs.

(4) The desirability of examining related programs concurrently.

SEC. 302. (a)(1) The funding resolution first reported by each committee of the Senate in 1980 and thereafter for the first session of each Congress, shall include a section setting forth the committee's plan for reexamination of programs under this title. Such plan shall include each of the following matters:

(A) The programs to be reexamined and the reasons for their selection.

(B) The scheduled completion date for each program reexamination: *Provided*, That such date shall not be later than the end of the Congress preceding the Congress in which

the reauthorization date applicable to a program occurs as provided in section 101(b), unless the committee explains in a statement in the report accompanying its proposed funding resolution the reasons for a later completion date, except that reports on programs scheduled for reauthorization during the 97th Congress and selected for reexamination in a committee's plan adopted in 1980 may be submitted at any time until February 15, 1982.

(C) The estimated cost for each reexamination.

(2) The report accompanying the funding resolution reported by each committee in 1980 and thereafter for the first session of each Congress, shall with respect to each reexamination include in its plan both the following matters:

(A) A description of the components of the reexamination.

(B) A statement of whether the reexamination is to be conducted (i) by the committee, or (ii) at the request and under the direction of or under contract with, the committee, as the case may be, by one or more instrumentalities of the legislative branch, one or more instrumentalities of the executive branch, or one or more nongovernmental organizations, or (iii) by a combination of the foregoing.

(3) It shall not be in order to consider a funding resolution reported by a committee of the Senate in 1980, and thereafter for the first session of a Congress unless—

*(A) such resolution includes a section containing the information described in paragraph (1) and the report accompanying such resolution contains the information described in paragraph (2); and

(B) the report required by subsection (c) with respect to each program reexamination scheduled for completion during the preceding Congress by such committee has been submitted for printing.

(4) It shall not be in order to consider an amendment to the section of a funding resolution described in paragraph (1) reported by a committee for a year—

(A) if such amendment would require reexamination of a program which has been reexamined by such committee under this section during any of the five preceding years;

(B) if such amendment would cause such section not to contain the information described in paragraph (1) with respect to each program to be reexamined by such committee; or

(C) if notice in writing of intention to propose such amendment has not been given to such committee and the committee on Rules and Administration in the Senate not later than January 20 of the calendar year in which such year begins or the first day of the session of the Congress in which such year begins, whichever is later. The notice required by this subparagraph shall include the substance of the amendment intended to be proposed and, if such amendment would add one or more programs to be reexamined, shall include the information described in paragraphs (1) and (2) with respect to each such program. This subparagraph shall not apply to amendments proposed by such committee or by the Committee on Rules and Administration, as the case may be.

(b) In order to achieve coordination of program reexamination each committee shall, in preparing each reexamination plan required by subsection (a), consult with appropriate committees of the Senate or appropriate committees of the House of Representatives, as the case may be, and shall inform itself of related activities of and support or assistance that may be provided by (1) the General Accounting Office, the Congressional Budget Office, the Congressional Research Service, and the Office of Technology Assessment, and (2) appropriate instrumentalities in the executive and judicial branches.

(c) Each committee shall prepare and have printed a report with respect to each reexamination completed under this title. Each such report shall be delivered to the Secretary of the Senate not later than the date specified in the resolution and printed as a Senate document. To the extent permitted by law or regulation, such number of additional copies as the committee may order shall be printed for the use of the committee. If two or more committees have legislative jurisdiction over the same program or portions of the same program, such committees may reexamine such program jointly and submit a joint report with respect to such reexamination.

(d) The report pursuant to subsection (c) shall set forth the findings, recommendations, and justifications with respect to the program, and shall include to the extent the committee deems appropriate, each of the following matters:

(1) An identification of the objectives intended for the program and the problem it was intended to address.

(2) An identification of any trends, developments, and emerging conditions which are likely to affect the future nature and extent of the problems or needs which the program is intended to address and an assessment of the potential primary and secondary effects of the proposed program.

(3) An identification of any other program having potentially conflicting or duplicative objectives.

(4) A statement of the number and types of beneficiaries or persons served by the program.

(5) An assessment of the effectiveness of the program and the degrees to which the original objectives of the program or group of programs have been achieved.

(6) An assessment of the cost effectiveness of the program, including where appropriate, a cost-benefit analysis of the operation of the program.

(7) An assessment of the relative merits of alternative methods which could be considered to achieve the purposes of the program.

(8) Information on the regulatory, privacy, and paperwork impacts of the program.

(e) A report submitted pursuant to this section shall be deemed to satisfy the reauthorization review requirements of title I.

SEC. 303. Each department or agency of the executive branch which is responsible for the administration of a program selected for reexamination pursuant to this title, shall, not later than six months before the completion date specified for reexamination reports pursuant to section 302(a)(1)(B), submit to the Office of Management and Budget and to the appropriate committee(s) of the Senate and the House of Representatives a report of its findings, recommendations, and justifications with respect to each of the matters set forth in section 302(d), and the Office of Management and Budget shall submit to such committee(s) such comments as it deems appropriate.

SEC. 304. For the purposes of this title:

(1) The term 'funding resolution' means, with respect to each committee of the Senate, the first authorization resolution reported by such committee for a year under section 133 (g) of the Legislative Reorganization Act of 1946, or any action taken in lieu of such funding resolution, which in any event shall occur not later than May 15.

(2) An amendment to a funding resolution includes a resolution of the Senate which amends such funding resolution.

TITLE IV—CITIZENS' COMMISSION ON THE ORGANIZATION AND OPERATION OF GOVERNMENT

SEC. 401. There is authorized to be established, as an independent instrumentality of the United States, the Citizens' Commission on the Organization and Operation of Government (hereinafter in this title referred to as the "Commission").

SEC. 402. It is hereby declared to be the policy of the Congress to promote economy, efficiency, and improved service in the transaction of the public business in the departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government.

SEC. 403. (a) The Commission shall conduct a nonpartisan study and investigation of the organization and methods of operation of all departments, agencies, independent instrumentalities, and authorities of the executive branch of the Government in the following major policy areas:

(1) International affairs and defense.
Functions:
050—National defense.
150—International affairs.
(2) Resources and technology.
Functions:
250—General science, space, and technology.
270—Energy.
300—Natural resources and environment.
(3) Economic development.
Functions:
350—Agriculture.
370—Commerce and housing credit.
400—Transportation.
450—Community and regional development.
(4) Human resources.
Functions:
500—Education, training, employment, and social services.
550—Health.
600—Income security.
700—Veterans benefits and services.
(5) General Government.
Functions:
750—Administration of justice.
800—General Government.
850—General purpose fiscal assistance.
900—Interest.

The Commission shall make such recommendation as it determines necessary to—

(1) increase the effectiveness of Government services, programs, and activities by changing the structure and execution of administrative responsibilities;

(2) improve delivery of services through elimination of needless duplication or overlap, consolidation of similar services, programs, activities, and functions, and termination of such services, programs, and activities which have outlived their intended purpose;

(3) maintain expenditures at levels consistent with the efficient performance of essential services, programs, activities, and functions;

(4) simplify and eliminate overlaps in agency regulatory functions by review of the laws, regulations, and administrative reports and procedures; and

(5) determine the appropriate responsibilities of each level of government, the manner and alternative means for each level of government to finance such responsibili-

ties, the forms and extent of intergovernmental aid and assistance, and the organization required for proper balance and division of respective Federal, State, and local government roles, responsibilities, and authorities.

(b) The Commission shall submit to the President, the Committee on Governmental Affairs of the Senate, and the Committee on Government Operations of the House of Representatives such interim reports as it deems advisable, and, not later than four years after the appointment and qualification of a majority of the Commission Members, a final report setting forth the Commission's findings and recommendations. The final report of the Commission shall include the comments of the appropriate congressional committees.

(c) At least once every year for two years after the submission of the final report, the Comptroller General shall report to the Congress on the status of actions taken on the Commission's final report.

SEC. 404. (a) The Commission shall be composed of fifteen members appointed from among individuals with extensive experience in or knowledge of United States Government as follows:

(1) Five members appointed by the President by and with the advice and consent of the Senate.

(2) Five members appointed by the President pro tempore of the Senate, three upon recommendation of the majority leader and two upon recommendation of the minority leader of the Senate.

(3) Five members appointed by the Speaker of the House of Representatives, three upon recommendation of the minority leader of the House.

(b)(1) Two members appointed under subsection (a)(1) shall be appointed to serve as Chairman and Vice Chairman (as provided in paragraph (2) of this subsection) and shall not engage in any other business, vocation, or employment. Such two members shall not be of the same political affiliation.

(2) The member described in paragraph (1) who is, when appointed, not of the same political affiliation as the President shall serve as Chairman of the Commission and the other such member shall serve as Vice Chairman of the Commission.

(c) Of the members appointed and qualified under subsection (a)(1) other than the members to whom subsection (b) applies, not more than two shall be of the same political affiliation.

(d) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) Eight members of the Commission shall constitute a quorum, but the Commission may establish a lesser number to constitute a quorum for the purpose of holding hearings.

SEC. 405. (a) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings and sit and act at such times and places, administer such oath, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Commission or such subcommittee or member may deem advisable.

(b)(1) Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by him and shall be served by any person designated by the Chairman or such member. Any member of the Commission may administer oaths or affirmation to witnesses appearing before the Commission.

(2) The provisions of section 1821 of title 28, United States Code, shall apply to witnesses summoned to appear at any such hearing. The per diem and mileage allowances to witnesses summoned under authority conferred by this section shall be paid from funds appropriated to the Commission.

(3) Any person who willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or to produce any evidence in obedience to any subpena duly issued under the authority of this section shall be fined not more than $500, or imprisoned for not more than six months, or both. Upon the certification by the Chairman of the Commission of the facts concerning any such willful disobedience by any person to the United States attorney for any judicial district in which such person resides or is found, such attorney may proceed by information for the prosecution of such persons for such offense.

(c) The Commission is authorized to secure directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information which the Commission deems useful in the discharge of its duties. All departments, agencies, independent instrumentalities, and other authorities of the executive branch of the Government shall cooperate with the Commission and furnish all information requested by the Commission in accordance with existing law.

SEC. 406. (a) Subject to such rules and regulations as may be adopted by the Commission, the Commission shall have the power—

(1) to appoint and fix the compensation of an Executive Director and such additional staff personnel as it deems necessary in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, and chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, and—

(A) in the case of the Executive Director, at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(B) in the case of not more than three additional staff members, at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

(2) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

(b) The Commission is authorized to enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of the General Services Administration.

SEC. 407. (a) The Chairman of the Commission shall receive compensation at a rate equal to the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the Vice Chairman shall receive compensation at a rate equal to the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) All other members of the Commission who are not officers or employees of the Federal Government shall receive compensation at the rate of $200 for each day such member is engaged in the performance of the duties vested in the Commission.

(c) Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with their activities as members of the Commission.

SEC. 408. The Commission shall cease to exist ninety days after the submission of its final report.

SEC. 409. There is authorized to be appropriated until September 30, 1983, without fiscal year limitations, the sum of $4,000,000 to carry out the provisions of this title.

SEC. 410. The Commission shall be subject to the Federal Advisory Committee Act.

TITLE V—REGULATORY IMPACT

SEC. 501. (a) The Congress finds that the Government regulation can at times be more of a burden than a benefit to American consumers, American businesses and to the American economy as a whole.

(1) Regulatory policies often have contributed to inflation through approval of regulations not commensurate with the public interest, frequently without due consideration of the relative costs and benefits involved in such decisions, without due consideration of the competitive impact of such decisions, or without adequate provision for public participation in such decisions.

(2) Some regulatory policies harm both industry and consumers by denying businesses the chance to compete and by depriving consumers of the lower prices and diversity of services that greater competition can present.

(3) Too often, regulatory agencies have neglected critical economic issues, and failed to set clear priorities, articulate cogent policies, or to integrate planning into operational functions. As a result, certain agencies have fostered a pattern of red tape, stagnation, and waste, which has led to public frustration and confusion.

(4) Frequent use of inefficient after-the-fact case-by-case adjudication, rather than general rulemaking, by most regulatory agencies has burdened business with excessive paperwork and unreasonable delays, impaired the ability of many industries to adopt to changing market conditions and beneficial new technology, and contributed to price rises, inefficiencies, and misallocations of resources.

(5) By consistently failing to take consumer and business interests adequately into account and by arbitrarily limiting the operation of the free enterprise system, regulatory agencies too often have poorly served the public interest in disregard of their congressional mandates.

(b)(1) It is the purpose of this title to require over a period of ten years the President to submit once in each Congress, and to encourage the Congress to act upon, a plan designed to prevent unnecessary or harmful regulation which has led to inflationary consumer prices, a reduction of competition in the providing of important goods and services, and other economic inefficiencies that disrupt the operation of a free enterprise system without correspondingly benefiting the health, safety, or economic welfare of the Nation.

(2) It is the further purpose of this title to require that regulation by the Federal Government be systematically and comprehensively reviewed and modified so as to assure that such regulation, where it is necessary, is aimed at and structured to achieve substantial benefits to the Nation exceeding the costs thereof, and toward this end, that

each regulatory agency perform its mandated responsibilities in the most effective and least dilatory and costly manner so as to maximize the intended benefits to the Nation.

AGENCY REFORM PLANS

SEC. 602. (a) Not later than the first day of February in the first session of the 97th Congress, the 98th Congress, the 99th Congress, the 100th Congress, and the 101st Congress, the President shall submit an analysis containing the information required to be included under subsection (b) and the President shall submit a legislative plan containing the information called for in subsection (c) as follows:

(1) By April 1, 1981, a plan with respect to regulation of securities, trade practices, banking and finance, and communications matters by the following agencies:

(A) Securities and Exchange Commission
(B) Federal Trade Commission
(C) Office of Comptroller of the Currency
(D) Federal Deposit Insurance Corporation
(E) Federal Communications Commission

(2) By April 1, 1983, a plan with respect to regulation of surface transportation and safety matters by the following agencies:

(a) National Highway Traffic Safety Administration

(b) Interstate Commerce Commission

(3) By April 1, 1985, a plan with respect to regulation of environmental, occupational, and food and health safety matters by the following agencies:

(a) Food and Drug Administration
(b) Consumer Product Safety Commission
(c) Environmental Protection Agency
(d) Occupational Safety and Health Administration

(4) By April 1, 1987, a plan with respect to regulation of air transportation matters by the following agencies:

(a) Civil Aeronautics Board
(b) Federal Aviation Administration

(5) By April 1, 1989, a plan with respect to regulation of energy and maritime transportation by the following agencies:

(a) Federal Maritime Commission
(b) Federal Energy Regulatory Administration
(c) Nuclear Regulatory Commission

(b) An analysis submitted by the President pursuant to subsection (a) shall contain the following information with respect which are referenced in paragraphs (1) through (5) of subsection (a)—

(1) the purposes for which each agency was established;

(2) significant changes which have occurred in the areas regulated by each agency, the impact of such changes on the effectiveness of the agency, and the continued appropriateness of those original purposes;

(3) the net impact of the agency and the degree to which it has accomplished its purposes;

(4) the timeliness of agency decisionmaking;

(5) the cost-effectiveness and efficiency of the operations of each agency;

(6) the extent to which agency actions may contribute to inflation; and

(7) consideration of practical alternative approaches to achieving presently demonstrated regulatory needs.

(c) A legislative plan submitted by the President pursuant to subsection (a) shall include specific legislation following up on the analysis earlier submitted by the President with respect to agencies or designated units thereof which are referenced in paragraphs (1) through (5) of subsection (a), and may include—

(1) recommendations for the transfer, consolidation, modification, or elimination of agency functions;

(2) recommendations for organizational, structural, and procedural reforms;

(3) recommendations for the merger, modification, establishment, or abolition of agencies or their enabling legislation;

(4) recommendations for eliminating or phasing out outdated, overlapping, or conflicting agency rules and mandates;

(5) recommendations for alleviating agency delays;

(6) recommendations for increasing public participation in agency proceedings;

(7) recommendations for making agency regulation more cost-effective; and

(8) recommendations for increasing economic competition.

(d) The plans submitted by the President pursuant to subsections (a) and (c) shall be referred to the committee(s) of the House of Representatives and the Senate with legislative jurisdiction over the agencies affected by the plan(s).

(e) The "Reauthorization Review" required by section 102 (a) shall include a new subsection (5) as follows:

(5) a comparison between the recommendation of the Committee and the regulatory reform plan submitted pursuant to Part E of this Act, and the basis for the Committee recommendation, for the program or agency would be reauthorized by the legislation which this report accompanies.

(f) Along with each plan submitted by the President pursuant to subsections (a) and (c), the President shall report on the cumulative impact on specific industry groupings of all Government regulatory activity reviewed to that date. The report shall include recommendations to ensure that the cumulative impact of Government regulation is in the Nation's best interests. Wherever practicable, in the formulation of each plan, the President shall give explicit consideration to the particular impact of Government regulatory activity on the following relevant industry groupings:

(1) transportation and agriculture industries;

(2) mining, heavy manufacturing, and public utilities industries;

(3) construction and light manufacturing industries; and

(4) communications, finance, insurance, real estate, trade, and service industries.

LEGISLATIVE AGENCY REVIEW

SEC. 503. (a) The Comptroller General of the United States and the Director of the Congressional Budget Office shall submit, contemporaneously with the submission of the analysis required under subsection 502 (b), a report assessing each of the agencies to be included in the plan submitted by the President with respect to the same criteria set forth in that subsection.

(b) The Comptroller General of the United States and the Director of the Congressional Budget Office shall submit to the Congress not later than June 1 of each year in which a plan is submitted by the President as provided in subsections 502 (a) and (c) of this title, a complete and thorough analysis of such plan.

TITLE VI—GOVERNMENT ACCOUNTABILITY

SEC. 601. (a) At the beginning of the ninety-sixth session of Congress and every two years thereafter the President shall submit to the Congress a report on the management of the executive branch (hereinafter called the Management Report). The Management Report shall be submitted as part of the budget on the same day as the budget is transmitted to the Congress under section 201 of the Budget and Accounting Act, 1921.

(b) It is the intent of Congress that the President shall be granted full discretion in the design of the Management Report provided that—

(1) Programs shall be—

(i) designated within each executive department and within each independent establishment, according to their relative effectiveness, as "excellent", "adequate", or "unsatisfactory", and

(ii) ranked as to their effectiveness relative to all other programs within each category in that executive department or within that independent establishment.

(2) The designation and ranking of programs as to relative effectiveness shall be determined by the degree to which each program's statutory objective is being met, which shall be based on—

(i) the clarity of the statutory design and objective upon which the program is based,

(ii) the overall design of the program as effectuated by the responsible executive department or independent establishment, and

(iii) the overall quality of the management of the program by the responsible executive department or independent establishment.

(c) The Management Report shall include the President's reasons for the program designations and rankings he has made.

(d) The Management Report shall include a list of those programs or areas the President recommends for administrative or congressional improvement during that Congress.

(e) The Management Report shall include the report of the Director of the Office of Management and Budget required under section 5 of this Act, including the President's recommendations and proposed actions pursuant to it.

SEC. 602. (a) The Director of the Office of Management and Budget (hereinafter called the Director) shall provide an evaluative report on Federal programs to the President which shall be forwarded to the Congress by the President with his Management Report.

(b) In his report the Director shall identify any programs that are contradictory to other Federal programs and recommend corrective legislation. The Director shall also recommend the termination or modification of any programs whose relative ineffectiveness no longer justifies continued Federal expenditures or only justifies a lower level of Federal expenditures.

SEC. 603. The President may from time to time submit to the Congress reports supplementary to the Management Report, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the purposes of this Act. The Director may, from time to time, submit to the President reports supplementary to the report required by section 5.

SEC. 604. (a) For the purposes of this part:

(1) The term "program" means an organized set of activities carried out pursuant to separate statutory authorization or for which Federal expenditures are specifically allocated by the Federal Government, and which can be evaluated in terms of relative effectiveness in pursuing a governmental goal, but shall not include national foreign intelligence activities.

(2) The term "executive department" shall have the meaning given it in section 101 of title 5, United States Code.

(3) The term "independent establishment" shall have the meaning given it in section 104 of title 5, United States Code, except that it includes the United States Postal Service and the Postal Rate Commission but does not include the General Accounting Office or the Independent Regulatory Agencies.

TITLE VII—MISCELLANEOUS

SEC. 701. Section 206 of the Budget and Accounting Act, 1921 (31 U.S.C. 15), is amended by inserting immediately before the period a coma and "or at the request of a committee of either House of Congress presented after the day on which the President transmits the budget to the Congress under section 201 of this Act for the fiscal year".

SEC. 702. Nothing in this Act shall require the public disclosure of matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order, or which are otherwise specifically protected by law. In addition nothing in this Act shall require any committee of the Senate to disclose publicly information the disclosure of which giverned by Senate Resolution 400, Ninety-fourth Congress, or any other rule of the Senate.

SEC. 703. (a) The provisions of this section and sections 101(a), 101(b), 101(c)(1), 101(c)(2), 101(c)(5), 102, 103(b), 104(a), 104(c), 104(d), 104(e), 104(f), 104(g), title III (except section 303) section 705, and section 706 of this Act are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(b) In the Senate, paragraphs (2) and (5) of section 101(c) shall also be treated as amendments to rule XVI of the Standing Rules of the Senate.

(c) Any provision of this Act which is enacted as an exercise of the rulemaking power of the Senate may be waived or suspended in the Senate by a majority vote of the Members voting.

SEC. 704. (a)(1) To assist in the review or reexamination of a program, the head of an agency which administers such program and the head of any other agency, when requested, shall provide to each committee of the Senate and the House of Representatives which has legislative jurisdiction over such program such studies, information, analyses, reports, and assistance as the committee may request.

(2) Not later than six months prior to the first reauthorization date specified for a program in section 101(b) the head of the agency which administers such program or the head of any other agency, when requested by a committee of the Senate or House of Representatives, shall conduct a review of those regulations currently promulgated and in use by that agency which the committee specifically has requested be reviewed and submit a report to the Senate or the House of Representatives as the case may be, setting forth the regulations that agency intends to retain, eliminate, or modify if the program is reauthorized and stating the basis for its decision.

(3) On or before October 1 of the year preceding the Congress in which occurs the reauthorization date for a program, the Comptroller General shall furnish to each committee of the Senate and the House of Representatives which has legislative jurisdiction over such program a listing of the prior audits and reviews of such program completed during the preceding six years.

(4) Consistent with the discharge of the duties and functions imposed by law on them or their respective Offices or Service, the Comptroller General, the Director of the Congressional Budget Office, the Director of the Office of Technology Assessment, and the Director of the Congressional Research Service shall furnish to each committee of the Senate and the House of Representatives such information, analyses, and reports as the committee may request to assist it in conducting reviews or evaluations of programs.

(b)(1) On or before October 1 of the year preceding the Congress in which occurs the reauthorization date for a program, the President, with the cooperation of the head of each appropriate agency, shall submit to the Congress a "Regulatory Duplication and Conflicts Report" for all such programs scheduled for reauthorization in the next Congress.

(2) Each such regulatory duplication and conflicts report shall—

(A) identify regulatory policies, including data collection requirements, of such programs or the agencies which administer them, which duplicate or conflict with each otheror with rules or regulations or regulatory policies of other programs or agencies, and identify the provisions of law which authorize or require such duplication or conflicting regulatory policies or the promulgation of such duplicative or conflicting rules or regulations;

(B) identify the regulatory policies, including data collection requirements, of such programs which are, or which tend to be, duplicative of or in conflict with rules or regulations or regulatory policies of State or local governments; and

(C) contain recommendations which address the conflicts or duplications identified in subsections (A) and (B).

(3) The regulatory duplication and conflicts report submitted by the President pursuant to this subsection shall be referred to the committee(s) of the House of Representatives.

SEC. 705. (a) For purposes of this section and title I, the term "required authorization waiver resolution" means only a resolution of the Senate or the House of Representatives—

(1) which is introduced by the chairman of a committee pursuant to subsection (b);

(2) which waives the provisions of subsection 101(c)(2) of this Act for the purpose of allowing consideration of a bill or resolution providing new budget authority for a program for not more than one fiscal year in an amount which does not exceed the amount of new budget authority required to maintain the current level of services being provided during the fiscal year preceding the fiscal year for which new budget authority would be provided; and for purposes of this section, such current level of services shall be determined initially from the report submitted to the Congress pursuant to section 605 of the Congressional Budget Act of 1974 and shall be certified by the Director of the Congressional Budget Office; and

(3) the matter after the resolving clause of which is as follows: "That it is in order in the Senate (House of Representatives) to consider a bill (resolution) providing new budget authority for for the fiscal year in an amount not to exceed $." (with the first blank space being filled with identification of the program; the second blank space being filled with the fiscal year for which the new budget authority would be provided; and the third blank space filled with the amount of new budget authority necessary to maintain the current level of services for such program for the fiscal year preceding the fiscal year for which such new budget authority would be provided).

(b) The chairman of the committee of the Senate or the House of Representatives having legislative jurisdiction over a program or programs shall introduce a required authorization waiver resolution of such program or programs not later than the fifth day (not counting any day on which the Senate or the House, as the case may be, is not in session) following the occurrence of either of the following:

(1) A bill authorizing the enactment of new budget authority for the same program or programs has been under consideration for not less than fifteen hours, including debate on the motion to consider the authorization bill, and no limitation of debate has been agreed to; or

(2) A bill authorizing the enactment of new budget authority for the same program or programs has been vetoed by the President and such veto has been sustained by either the Senate or the House of Representatives.

(c) A required authorization waiver resolution relating to a program introduced in, or received by, the Senate or the House of Representatives shall be referred to the appropriate committee of the Senate or the House of Representatives, as the case may be; except that any resolution introduced, received after September 1 of the second session of a Congress shall immediately be placed on the appropriate calendar. With respect to any resolution still pending before a committee on September 1, of the second session of a Congress, the committee shall be automatically discharged and the resolution placed on the appropriate calendar.

(d) The provisions of section 912 of title 5, United States Code, relating to the consideration of resolutions of disapproval of reorganization plans shall apply in the House of Representatives and the Senate to the consideration of required authorization waiver resolutions.

SEC. 706. The Committees on Governmental Affairs and on Rules and Administration of the Senate and the Committees on Government Operations and on Rules of the House of Representatives shall review the operation of the procedures established by this Act, and shall submit a report not later than December 31, 1986, and each five years thereafter, setting forth their findings and recommendations. Such reviews and reports may be conducted jointly.

SEC. 707. There are hereby authorized to be appropriated through fiscal year 1990 such sums as may be necessary to carry out the review requirement of titles I and III and the requirements for the compilation of the inventory of Federal programs as set forth in title II.".

Mr. MUSKIE. I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REQUEST FOR COMMITTEE MEETING

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Rules Committee may meet during the remaining hours of the session of the Senate today.

Mr. STEVENS. Mr. President, reserving the right to object, may we know the purpose of that meeting?

Mr. ROBERT C. BYRD. Mr. President, I withdraw the request.

EXECUTIVE SESSION—PROTOCOL AMENDING THE INTERNATIONAL CONVENTION FOR THE HIGH SEAS FISHERIES OF THE NORTH PACIFIC OCEAN

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to vote on Executive J, 95th Congress, 2d Session, Protocol Amending the International Convention for the High Seas Fisheries of the North Pacific Ocean.

The resolution of ratification will be read for the information of the Senate.

The resolution of ratification was read, as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol signed at Tokyo April 25, 1978, Amending the International Convention for the High Seas Fisheries of the North Pacific Ocean, Together with Related Agreed Minutes and Two Memoranda of Understanding (Ex. J, 95-2) without reservation.

The PRESIDING OFFICER. The question is on agreeing to the resolution of ratification on Executive J, 95th Congress, 2d Session, the Protocol Amending the International Convention for the High Seas Fisheries of the North Pacific Ocean.

Mr. ROBERT C. BYRD. Mr. President. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? The Chair perceives a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the resolution of ratification. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alabama (Mrs. ALLEN), the Senator from Colorado (Mr. HASKELL), the Senator from Maine (Mr. HATHAWAY), the Senator from New Hampshire, (Mr. MCINTYRE) and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee, (Mr. BAKER), the Senator from Nebraska (Mr. CURTIS), the Senator from New Mexico (Mr. DOMENICI), the Senator from New York (Mr. JAVITS), the Senator from Idaho (Mr. MCCLURE), the Senator from Oregon (Mr. PACKWOOD), the Senator from Kansas (Mr. PEARSON), the Senator from Virginia (Mr. SCOTT) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The yeas and nays resulted—yeas 86, nays 0, as follows:

[Rollcall Vote No. 480 Ex.]

YEAS—86

Abourezk	Goldwater	Metzenbaum
Anderson	Gravel	Morgan
Bartlett	Griffin	Moynihan
Bayh	Hansen	Muskie
Bellmon	Hart	Nelson
Bentsen	Hatch	Nunn
Biden	Hatfield,	Pell
Brooke	Mark O.	Percy
Bumpers	Hatfield,	Proxmire
Burdick	Paul G.	Randolph
Byrd,	Hayakawa	Ribicoff
Harry F., Jr.	Heinz	Riegle
Byrd, Robert C.	Helms	Roth
Cannon	Hodges	Sarbanes
Case	Hollings	Sasser
Chafee	Huddleston	Schmitt
Chiles	Humphrey	Schweiker
Church	Inouye	Stafford
Clark	Jackson	Stennis
Cranston	Johnston	Stevens
Culver	Kennedy	Stevenson
Danforth	Laxalt	Stone
DeConcini	Leahy	Talmadge
Dole	Long	Thurmond
Durkin	Lugar	Wallop
Eagleton	Magnuson	Weicker
Eastland	Mathias	Williams
Ford	Matsunaga	Young
Garn	McGovern	Zorinsky
Glenn	Melcher	

NAYS—0

NOT VOTING—14

Allen	Hathaway	Pearson
Baker	Javits	Scott
Curtis	McClure	Sparkman
Domenici	McIntyre	Tower
Haskell	Packwood	

The PRESIDING OFFICER. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution of ratification was agreed to.

Mr. EAGLETON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Without objection, the Senate will return to legislative session.

The Senate resumed the consideration of legislative business.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I shall shortly yield the floor. I want to protect Mr. CLARK.

Mr. President, I do not mean to keep the floor, but I do have a few requests I want to get taken care of before I yield.

I yield, with the understanding that I not lose my right to the floor, to Mr. EAGLETON.

Mr. STEVENS. May we have order?

HOSPITAL COST CONTAINMENT

Mr. EAGLETON. Mr. President, as we look back on this second session of the 95th Congress, Mr. President, we can take pride in some important achievements. However, we also must acknowledge some failures, and one of these is our failure to act on an issue of burning economic interest to every American, hospital cost containment.

In 1965, $41 bought a day's stay in the average American hospital. Today, just 13 years later, that amount buys a patient less than 6 hours of hospitalization. The rising cost of medical care commands increasing public attention, and it makes the general inflation of our economy look like small change.

The statistics on hospital costs have been often repeated, but I think they are worth going over again. Since 1950, the total amount of money we spend on health care has gone up 15-fold, outpacing the general inflation rate 7 times over. The percentage of our gross national product comprised of health care expenditures has risen from barely 5 percent in 1960 to almost 9 percent today—no small increase considering the 13-digit dimensions of the GNP. Health care now consumes about 15 percent of the average family's budget. Forty percent of that health care expenditure pays for inpatient and outpatient care in hospitals.

But the story of runaway health costs is not just one of dry statistics. More importantly, Mr. President, it is the story of human suffering. Consider just a few of the case histories I have come across recently. Consider, for example, the case of a man in Oklahoma who died after being hospitalized for just 1 day. His wife received a bill for $6,587.78 for that 1 day's care.

Or how about the young man treated in a Maryland hospital after an automobile accident? He spent 3 days, running up a hospital bill of $31,507.46, plus physicians' fees of $1,865. More than $33,000 for just 3 days.

Another man—this one from my home State of Missouri—was hospitalized in Arizona for 1 day, and went home owing $1,560.

A woman in Georgia had premature twins. One baby was hospitalized for 1½ months, the other for more than 4 months. As you can imagine, the bill was staggering. More than $60,000 for a family which had no health insurance.

Every one of my colleagues can recount similar stories of constituents devastated by outrageous medical costs. Despite these individual horror stories, however, the health care cost spiral has had a surprisingly minimal direct impact on most consumers. This is because for most health care, private or Government insurance programs do pay the bill, a situation which is both good and bad. It is good, because with the cost of health care so high very few individuals can afford to pay the bills alone. But it is bad because the third-party payment system provides little or no incentive for physicians, hospitals, or patients to control costs.

This is not to say that the health care industry is blithely unconcerned with the continuing spiral. Quite the contrary, the industry in recent years has taken some commendable actions to lasso runaway costs. In response to the introduction of

cost containment legislation, the Federation of American Hospitals, the American Hospital Association and the American Medical Association announced a joint "voluntary effort" to curb increases in hospital costs. The goal of this voluntary effort is to reduce the rate of inflation of hospital costs by 2 percentage points in 1978, by 4 percentage points in 1979, and to hold cost inflation below the 1979 rate thereafter.

The American Hospital Association estimated the 1977 inflation rate at 15.6 percent, which would mean targets for the voluntary effort of 13.6 percent in 1978 and 11.6 percent in 1979 and thereafter. Labor Department statisticians now believe that the total hospital cost inflation for 1978 may be less than 13 percent, so the industry effort appears to be ahead of schedule.

I am very pleased by this splendid progress, and I think the industry deserves to be commended for its effort. However, I am not prepared to leave well enough alone. While I realize that economic self-regulation and voluntary restraint almost always are better than Government-imposed controls, I also realize that it was not until the industry faced the very real specter of compulsory cost containment that they made any real progress on curbing cost increases. Furthermore, it should be noted that the most dramatic decreases in hospital cost inflation have come in the 9 States which already have some form of cost containment law. In the remaining 41 States, hospital cost increases still average about 16 percent per year.

For this reason, I feel it is necessary that the Federal Government take some action to insure continued progress on the cost containment front, and I think the most effective and reasonable such action was embodied in an amendment prepared by my colleague from Wisconsin, Senator GAYLORD NELSON. The Nelson amendment encourages the hospital industry to continue its voluntary cost containment program. As long as that program meets with success, the Nelson amendment would allow it to proceed without Government interference. Should the hospital cost inflation rate rise back above the program's stated goals, however, the Nelson amendment would impose compulsory cost containment.

An amendment such as Senator NELSON's is not perfect, of course—and as a cosponsor, I can say that with no disrespect for my colleague. However, I think such an amendment blends the best of all possible approaches. It recognizes both the need for Government action to bring runaway costs under control, while at the same time acknowledging the advantages of pursuing this goal through self-regulation and voluntary restraint. More importantly, it insures that total health care spending would be reduced by $34 billion, and that the Federal health care budget would be trimmed by $12 billion.

I think that the eventual adoption of legislation such as the Nelson amendment is inevitable; indeed, the need for this sort of legislation already is acute, and it grows more critical every day. I am sorry that we did not have an opportunity to vote on such an amendment in these closing hours of the 95th Congress, and I look forward to debate on such legislation early in the 96th.

TIME-LIMITATION AGREEMENT—H.R. 10587 AND HOUSE CONCURRENT RESOLUTION 740

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the conference report on H.R. 10587, the Public Rangeland Improvement Act, there be a time limitation overall on that conference report of 10 minutes, to be equally divided between Mr. CHURCH and Mr. LAXALT; provided further that included in the 10-minute overall limitation be House Concurrent Resolution 704, which, as I understand it, is for the purpose of making some technical corrections. I understand from Mr. CHURCH that there is no opposition on this matter; he expects to do it by voice vote. I ask unanimous consent for that time agreement and, in addition thereto, that I be recognized after Mr. CHURCH has disposed of that matter.

Mr. FORD. Reserving the right to object, Mr. President, has the majority leader checked with both sides of the aisle?

Mr. ROBERT C. BYRD. I thank the Senator. I get the point.

The PRESIDING OFFICER. Is there objection?

The Chair hears none. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield for that purpose now, Mr. President.

PUBLIC RANGELANDS IMPROVEMENT ACT OF 1978—CONFERENCE REPORT

Mr. CHURCH. Mr. President, I submit a report of the committee of conference on H.R. 10587 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. BAYH). The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10587) to improve the range conditions of the public grazing lands, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 6, 1978.)

Mr. CHURCH. Mr. President, in general, the committee of conference on H.R. 10587, the Public Rangeland Improvement Act of 1978, agreed to the Senate version of this legislation. The one exception was the issue of wild horse and burro management on the public range. In that instance, the conferees agreed to accept an amended version of section VII of the House-passed bill.

The wild horse and burro amendments agreed to by the conference committee will make the Wild and Free-Roaming Horses and Burros Act of 1971 more workable and, in my opinion, more humane. Those amendments allow the transfer of title of up to four animals per individual per year, following a 1 year adoption; mandate the removal of excess wild horses and burros so as to maintain the ecological balance of the range and prevent its destruction by overpopulations of these animals; and authorize the Secretary of the Interior to contract for studies on wild horse and burro population dynamics and the role of these animals in the natural system comprising the public rangelands.

Mr. President, rather than go into great detail about the changes in H.R. 10587 which were agreed to by the conference committee, I ask unanimous consent that the joint statement of managers be printed at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

JOINT STATEMENT OF THE COMMITTEE OF CONFERENCE ON H.R. 10587

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10587) to provide for a program to improve the condition of the public rangelands, and for other purposes, submit the following joint statement in explanation of the effect of the language agreed upon by the managers and recommended in the accompanying conference report.

Explanation of Actions Taken (by section):

Section 1—Title.

Both bills title the bill "The Public Range Lands Improvement Act of 1978".

Section 2—Findings and Policy.

The findings and policy sections of both bills are virtually identical. The Senate version was accepted by the conferees as it contains several minor wording and technical changes to conform the findings and policy to the version of the bill ultimately agreed upon. As the conferees agreed to incorporate a section dealing with wild horses and burros, the House findings and policy on horses and burros were accepted.

Section 3—Definitions.

Most of the definitions in both bills were identical or similar, but the conferees accepted the Senate version. The major change involved deletion of the House definitions of "environment impact improvements" and "nonenvironment impact improvements". The conferees agreed with the Senate and the Administration that these definitions, although designed to facilitate the initiation of range improvements, might actually result in unnecessary confusion and possible litigation. Clearly, it is the desire of both the House and the Senate, that range improvements which will not have adverse environmental impacts, be allowed to proceed expeditiously. The conferees trust that this desire will be communicated to the field level, and feel the Department of Interior's guidelines of December 12, 1977, are very helpful in this regard.

Although the conferees discarded the House's definitions, the conferees support the similar guidelines which are outlined on page 10 of the Senate's report on H.R. 10587 (Senate Report 99-1237). The conferees further agree with the language at page 15 of the House Report (95-1122) which indicates fencing along highways to protect the public health and safety, and fencing to mark boundaries, to prevent against livestock trespass, and to protect riparian habitat are also

in the category of range improvements which the Senate report indicates should be initiated to "facilitate the environmentally sound management of the range". Of course, even with these guidelines, considerable discretion and latitude on the question of the environmental impact of range improvements remains with the Secretary of Interior. Given the mandate of the National Environmental Policy Act, this result cannot be avoided. Any attempts to delineate hard and fast rules as to exactly those improvements which would, 100 percent of the time, involve either significant or insignificant environmental impacts, would be arbitrary. The impacts of improvements must be judged on a case-by-case basis, and that is exactly what the National Environmental Policy Act and H.R. 10587 require.

The conferees also agreed to the Senate bill's revision of several definitions which streamline the definitions section and add a definition of "range improvement". The Senate's definitions also apply various provisions of the bill to the states of North Dakota, Kansas and Oklahoma—states that were not covered in the House version. This brings the total number of states covered by the bill to 16. While very little acreage is involved in these three states, the conferees agreed with the Administration that grazing problems in these states are similar to those in the eleven Western States, South Dakota and Nebraska, and saw no objection to their inclusion in the bill.

Section 4—Rangelands Inventory and Management.

Both bills had identical sections except for two technical conforming amendments in the Senate bill which were accepted by the conferees.

Section 5—Range Improvement Funding.

Under both bills, $360 million is allocated to range improvements over the next 20 years. The need for such moneys is discussed in detail in both Committee Reports, and the conferees would only repeat the request for a Civil Service Commission review of the job qualification and training of range managers which appear on page 13 of the House Report.

The conferees accepted the Senate language on funding which reflects the Administration's revised drafting to insure the full $360 million is authorized for appropriation. However, because the Senate deleted fiscal year 1979 funding to overcome possible Budget Act problems, the conferees agreed to extend the funding so that it terminates in fiscal year 1999 instead of 1998. The net effect is to authorize appropriations of $365 million instead of the original $360 million.

The conferees also agreed to the Senate deletion of subsection (4)(c) of the House bill which would have required the President to fully request the funding in the bill, or, if not, to indicate whether a lesser level was suggested or dictated by the Office of Management and Budget. The Administration found this language strongly objectionable. The conferees expect, however, that this Administration, and future Administrations, will see the wisdom of utilizing the full level of funding authorized by H.R. 10587.

The conferees further agreed to the Senate's dropping of subsections (4)(f-h) of the House bill. This conforms the provisions of section 5 with the previously discussed deletion of the terms "environment impact improvements" and "nonenvironment impact improvements".

Section 6—Grazing Fees.

Apart from a technical amendment to apply section 6 to the 16 Western States, the bills are identical. Subsections 5 (c) and (d) of the House bill have been transferred to a new section (section 12) and are discussed at that point in this report.

Section 7—Grazing Leases and Permits.

Both bills are identical except for a Senate technical amendment applying the provision to the 16 Western States.

Section 8—Allotment Management Plans.

The Senate language was adopted to clarify that the incorporation of existing allotment management plans in grazing permits or leases need not await completion of a court ordered environmental impact statement. This is consistent with the amended final judgment of *NRDC* v. *Andrus*.

The background and need for section 8 is fully explained on pages 23-25 of the House Report.

Section 9—Appropriations.

The bills are identical, and this section complies with section 401(a) of the Congressional Budget Act of 1974 by limiting all authority for entering into cooperative agreements in the bill to such extent or in such amounts as are provided in advance in appropriations acts.

Section 10—Grazing Advisory Boards.

The conferees agreed to the Senate version so that the 16 Western states are covered.

Section 11—National Grasslands Exemptions.

Both bills contain identical language excluding all National Grasslands from the provisions of H.R. 10587.

Section 12—Experimental Stewardship Program.

The Senate version was agreed to, and places subsections 5(c) and (d) of the House bill in a new section. In so doing, it eliminates the specific House reference to lower grazing fees as one of the options to provide an incentive for good stewardship of the range. While lower grazing fees are an option that may be pursued by the Secretaries to encourage good stewardship, the conferees did not wish to place undue emphasis on lower grazing fees as opposed to other options or combinations of options. The conferees note that the Senate Report contains detailed instructions and suggestions as to how this program should be implemented, and the conferees request the Secretaries to pay close attention to the Senate Report language.

Section 13—Advisory Councils.

The conferees adopted section 13 of the Senate bill which mandates the establishment of multiple-use advisory councils. These councils were made discretionary under section 309(a) of the Federal Land Policy Management Act of 1976, and, unfortunately, have not been established. The conferees strongly believe in the value of these multiple-use councils, and expect the Secretary of Interior to establish them as soon as possible, preferably on a district or management unit level.

Section 14—Wild Horses and Burros.

The conferees agreed to an amended version of section 7 of the House bill dealing with wild horses and burros. In particular, a limit of 4 animals per individual per year was placed on horses and burros which may be placed for adoption, unless the Secretary makes a written finding that an adopting party is capable of humanely caring for more than 4 animals. The limit of 4 animals was chosen because most horse trailers hold no more than 4. In addition, the number of adopted animals to which title can be transferred after a one-year holding period is reduced from five to four.

Mr. CHURCH. The conferees further agreed to retain the House bill's mandate to the Secretaries to remove excess wild horses and burros from the public lands. However, to insure that the data upon which a determination of excess number is calculated is as accurate as possible, the conferees added language authorizing the Secretary to contract for research and studies by individuals whom the National Academy of Sciences recommends as having scientific expertise and special knowledge of wild horse and burro problems. Consultation with such individuals is also mandated, and the conferees expect that this consultation will be taken seriously, and will carefully consider the views of the experts recommended by the National Academy of Sciences, as well as other experts the Secretary may identify.

To increase the level of scientific information concerning wild horses and burros currently available to assist the Secretary in determining appropriate herd size and management levels, Subsection 14(b)(3) requires the Secretary to contract with individuals independent of Federal and State government for a wild horse and burro research study. Such contractors would be recommended by the President of the National Academy of Sciences.

The conferees intend that the purpose of the research program shall be to:

1) Develop data on the biology of wild horses and burros, including the population dynamics of wild horse and burro herds;

2) Identify principles and procedures for managing populations of wild horses and burros in accordance with the policies and objectives of this Act;

3) Develop information concerning the availability and use of forage and water resources, dietary and habitat overlaps, and other factors relevant to the determination of the number of wild free-roaming horses and burros that a herd area can sustain; and

4) Provide the Secretaries of Interior and Agriculture with scientific information upon which to make the determination as to excess animals required by this Act.

The conferees intend that the research program should be conducted over at least two breeding seasons in order to obtain a valid study. The conferees also intend that the National Academy of Sciences appoint a panel to design the research program. Such panel should be comprised of persons representative of those interests and parties directly and presently concerned with the status of wild horses and burros, including wild horse and burro protection associations, humane societies, wildlife protection groups, the Bureau of Land Management, the Forest Service, and such other individuals or organizations.

The conferees intend that the study shall be submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives no later than January 1, 1983.

In summary, the conferees agreed that excess numbers of wild horses and burros must be removed from the range, but that caution must be exercised in determining what constitutes excess numbers. The ongoing inventories of range soil, vegetation and water conditions, and the information contained in court ordered environmental impact statements should be particularly helpful in this regard. As is explained on page 23 of the House Report, the culling of horses and burros on the range may comprise the most humane manner of eliminating excess numbers. However, although the bill refers to culling in the most "cost efficient manner possible", the conferees direct that it not be accomplished in an indiscriminate manner using airplanes, helicopter gunships, or from vehicles. Rather culling should be accomplished by Federal personnel or state game officials in a selective fashion, with close attention to maintaining a stable and viable breeding population of animals that are not in excess of appropriate management levels. The goal of wild horse and burro management, as with all range

management programs, should be to maintain a thriving ecological balance between wild horse and burro populations, wildlife, livestock, and vegetation, and to protect the range from the deterioration associated with overpopulation of wild horses and burros.

HOUSE CONCURRENT RESOLUTION 740—CORRECTIONS IN ENROLLED BILL H.R. 10587

Mr. CHURCH. Mr. President, in connection with consideration of this bill, some technical corrections were made in the text separately by the House and are contained in House Concurrent Resolution 740. I ask unanimous consent to call House Concurrent Resolution 740 up for its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will state it.

Mr. CHURCH. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Chair has one himself.

The Senator will state it.

Mr. CHURCH. Under these circumstances, would it be the proper procedure to proceed first to a vote on the conference report and afterward to a vote on House Concurrent Resolution 740?

The PRESIDING OFFICER. The conference report and the resolution are the same. Something happened to it on its way to the Senate. The Chair is consulting with the Parliamentarian to see what that is. It is a point well made by the Senator from Idaho.

The Chair advises the Senator from Idaho that the paper problem has been expedited and he is in full command of the Senate at this moment.

The clerk will state the concurrent resolution.

Mr. CHURCH. I thank the Chair.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 740) authorizing corrections in the enrolled bill H.R. 10587.

Mr. CHURCH. Mr. President, the cosponsor of this legislation, the distinguished Senator from Nevada, would like to say a few words before the Senate acts. For that purpose, I yield the floor to him.

Mr. LAXALT. I thank the Senator from Idaho.

Mr. President, this conference report reflects legislation which I think has had more value in the western grazing situation than any we have had since the inception and adoption of the Taylor Grazing Act of 1932.

For that success, I thank my colleague from Idaho (Mr. CHURCH) and my senior colleague from Nevada (Mr. CANNON).

This time, I yield a few moments to the Senator from Wyoming to be heard on this.

Mr. HANSEN. Mr. President, I congratulate the senior Senator from Idaho (Mr. CHURCH) and the junior Senator from Nevada (Mr. LAXALT), and all others, as well as the senior Senator from Nevada, for the excellent work that has been done in bringing this piece of legislation to its present state of fruition.

I think it is almost an understatement to say that this truly is a landmark bill insofar as the effective and wise administration of the public grazing lands in the West are concerned.

I compliment them for the good job they have done, having in mind the benefits which will flow to the livestock industry of the West, and to the counties and municipalities which are dependent upon a healthy livestock economy.

I think, at the same time, while these benefits will flow to other livestock men, the good that will come in the way of increased job opportunities, and general overall healthy economy, will far exceed the bounds that would be otherwise contained in an agricultural community.

I thank them and express my appreciation to them.

Mr. GOLDWATER. Will the Senator yield for a question?

Mr. LAXALT. Yes.

Mr. GOLDWATER. Mr. President, as we know, we have a very serious situation in the Grand Canyon in my State with too many burros. I am wondering what effect this legislation might have on our efforts to remove these burros.

Mr. LAXALT. I think it will indicate we now have a formula which will work toward the removal of excess burros within the definition of the act.

I can assure the Senator from Arizona, our principal concern in going to conference really was reconciling and adopting a formula for the harvesting of excess animals, both horses and burros. I think if the Senator will familiarize himself with the report, he will be satisfied.

Mr. WALLOP. Will the Senator yield?

Mr. LAXALT. Yes.

Mr. WALLOP. I thank my colleague from Nevada.

I add my congratulations and thanks to everybody who worked so hard on this.

I point out the relief that must be about to spread through the livestock industry on gaining some kind of predictability in their relationship with the Government. That has to be good both for the country and people's faith in the operation of the Government that they work with.

I thank them both and congratulate them both.

Mr. CHURCH. I appreciate the Senator's remarks.

I yield to the Senator from Nevada.

Mr. CANNON. Mr. President, I want to join in congratulating the chairman, my colleague from Nevada, and the other conferees on this.

I think it goes a long way toward providing an equitable fee for grazing benefits that occur on the public lands.

In addition to that, it very fortunately has taken some action with respect to the wild horse and burro problem.

I am happy to see they have taken what I believe will be action to require management processes to take over and be sure to bring under control the rampant range destruction that is going on with excess wild horses and burros as a result of previous legislation.

Mr. CHURCH. I thank the Senator very much for his remarks.

Mr. President, I move the adoption of the conference report on H.R. 10587.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOUSE CONCURRENT RESOLUTION 740—AUTHORIZING CORRECTIONS IN THE ENROLLED BILL H.R. 10587

Mr. CHURCH. Mr. President, in accordance with the unanimous consent previously entered into, I move the adoption of House Concurrent Resolution 740, which merely involves technical corrections.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (H. Con. Res. 740) authorizing corrections in the enrolled bill H.R. 10587.

Without objection, the Senate proceeded to consider the concurrent resolution.

Mr. CHURCH. Mr. President, I move the adoption of House Concurrent Resolution 740.

The PRESIDING OFFICER. The question is on agreeing to House Concurrent Resolution 740.

The resolution (H. Con. Res. 740) was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. ROBERT C. BYRD. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. CHURCH. I thank the majority leader.

EXTENSION OF TIME FOR FILING CONFERENCE REPORT ON S. 2570

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senator NELSON may have until midnight this date to file the conference report on S. 2570, the CETA bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO HOLD BILL AT DESK—H.R. 13903

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 13903 be held at the desk pending further disposition.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

BILL HELD AT DESK—H.R. 13500

Mr. RIBICOFF. Mr. President, I ask unanimous consent that H.R. 13500, a bill relating to Presidential papers and records, be held at the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

SENATE RESOLUTION 587—AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON GOVERNMENTAL AFFAIRS FOR INQUIRIES AND INVESTIGATIONS

Mr. ROBERT C. BYRD. Mr. President, I yield now to the distinguished Senator from Florida with the understanding

that the matter which he will call up have a time limitation thereon of 3 minutes, overall, and that I retain my right to the floor.

Mr. STEVENS. I would say this matter has been cleared with the minority, both on the Government Affairs Committee and the other committee.

We have no objection.

Mr. ABOUREZK. Mr. President, may we know what the item is?

Mr. CHILES. Mr. President, I send to the desk a resolution.

Mr. ROBERT C. BYRD. Mr. President, I ask that no amendments to the resolution be in order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 587) authorizing additional expenditures by the Committee on Governmental Affairs for inquiries and investigations.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the resolution.

Mr. CHILES. Mr. President, what this is is to provide some additional funds for my subcommittee in carrying out the GSA investigation.

Because of the time problem, we are not able to get a meeting of the Rules Committee, so it has been cleared by the majority and minority on the Rules Committee, on the Governmental Affairs Committee.

Senator HEINZ is the ranking member of my subcommittee. So I would yield to Senator HEINZ for that clearance.

Mr. HEINZ. I thank the Senator for yielding.

The Senator knows I support his investigation into the GSA scandals. I support his request for the additional funds here contained to make that investigation a totally effective investigation.

I have spoken with Senator PERCY, the ranking Republican, within the last few minutes. Senator PERCY, the ranking Republican on the Governmental Affairs Committee, feels equally strongly and joins me in asking the Senate to approve our request.

Mr. CHILES. I thank the Senator.

Mr. President, I ask unanimous consent it be in order for the resolution to be considered at this time and for its passage.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the resolution.

The resolution (S. Res. 587) was agreed to, as follows:

S. RES. 587

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Governmental Affairs is authorized from March 6, 1978, through February 28, 1979, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $115,227.29, of which amount (1) not to exceed $94,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $1,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1979.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agree to.

TIME-LIMITATION AGREEMENT— S. 3447

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as it is called up and made the pending business before the Senate, there be a time limitation of 10 minutes overall on the conference report on S. 3447, the Agricultural Trade Export Act, the time to be equally divided between Senator DOLE and Senator STONE.

Mr. STEVENS. I have no objection. I understand that is Senator DOLE's request, also.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. May we have order in the Senate, please?

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978

The Senate continued with the consideration of H.R. 50.

Mr. ROBERT C. BYRD. Mr. President, the ad hoc committee which was appointed by me and by the distinguished minority leader to consider working out whatever problems exist, and I suppose there are a good many on the Humphrey-Hawkins bill, and hopefully to arrive at a time agreement thereon, has very diligently attempted to perform the duties assigned to that ad hoc committee.

The ad hoc committee has met a number of times on yesterday and today in my office, and it is my understanding that there is another meeting scheduled, perhaps, for tomorrow morning.

The ad hoc committee has been unable up to this point to resolve all the problems and to report back to the two leaders.

I have no alternative at this time but to file a cloture motion on the Humphrey-Hawkins bill. This is without any aspersions on the ad hoc committee. To the contrary, I have to say again that the ad hoc committee has dutifully tried to work out the problems and is still making the effort. But today is Wednesday. We hope that the Senate can adjourn sine die on Saturday, at the conclusion of business. That is not assured as yet, by any means. But if I should wait until tomorrow to file the cloture motion, that would mean that it would be Saturday before the cloture motion would be voted on, under rule XX.

Consequently, I have no alternative, and I do this with apologies to the ad hoc committee. I have no alternative but to file the cloture motion at this time on that bill, which, if adopted on Friday, will rule out nongermane amendments and will provide for the time limitations prescribed under rule XX.

Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. ROBERT C. BYRD. I yield for a question.

Mr. GOLDWATER. If the Senator files the cloture motion now, when would that motion be voted on?

Mr. ROBERT C. BYRD. Under the rule, it would be voted on Friday. Under the rule, 1 hour after the Senate convenes on that particular day, a quorum must be established. The clerk will call the roll to establish the presence of a quorum, upon which the Senate will proceed immediately to vote on the cloture motion.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. STEVENS. Mr. President, on behalf of the minority leader, I join the majority leader in commending the ad hoc committee—Senator HATCH, Senator NELSON, and the others—who are trying to get this matter resolved so that it can be handled with dispatch on the floor of the Senate.

We understand the statement of the majority leader—he has informed us—we understand that there is no alternative but to file this cloture motion. We hope an agreement will be reached and that we can proceed without it. I say that that is the majority leader's wish as well as the minority leader's wish, and we will be happy to try to work it out.

Mr. ROBERT C. BYRD. I thank the distinguished minority whip.

Mr. LUGAR. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. LUGAR. I appreciate the majority leader yielding.

As one member of the ad hoc committee, I state that we understand completely the position of the majority leader in filing the cloture motion. We have made outstanding progress, and we feel that we will be able to present a bill on which the Senate will come to agreement.

I simply want to make that report as one who has been involved in these conversations, and I think I reflect the consensus of the group when I say that when we meet tomorrow morning at 9 o'clock, we will be able to come to an agreement.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. DOLE. As a member of that group, I share the view expressed by the Senator from Indiana. I was not here for the other statement.

It seems to many of us that we can work it out. I understand the majority leader reserving whatever rights he has as the leader of this body.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Kansas, who is also a member of the ad hoc committee.

CLOTURE MOTION

Mr. ROBERT C. BYRD. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on H.R. 50, a bill to translate into practical reality the right of all Americans who are able, willing, and seeking to work to full opportunity for useful paid employment and for other purposes.

Robert C. Byrd, Abraham Ribicoff, Mike Gravel, Daniel Patrick Moynihan, Henry M. Jackson, John Durkin, William Proxmire, Jennings Randolph, Edmond S. Muskie, James Abourezk, John C. Culver, Muriel Humphrey, Dennis DeConcini, Spark M. Matsunaga, Paul G. Hatfield, Patrick J. Leahy, Donald W. Riegle, Jr.

(Mr. LEAHY assumed the chair.)

Mr. ROBERT C. BYRD. Mr. President, I now yield to the Senator from Iowa, who had sought unanimous consent, prior to the vote, that he be recognized immediately after the vote, to which request I was forced to object. I explained to the distinguished Senator from Iowa why I had to object.

Mr. CLARK. I thank the distinguished majority leader for yielding.

Mr. President, prior to a series of votes, we were discussing the fair employment practices in the Senate.

Mr. President, it was April 1 of last year when we enacted the Code of Official Conduct for the Senate.

Included in the code was a provision I authored—rule 50—which prohibits discrimination in hiring, firing or compensating employees on the basis of race, color, religion, sex, national origin, age, or state of physical handicap. It is a very concise provision setting up, for the first time, protections for Senate employees.

The Code of Official Conduct directed the Senate Government Affairs Committee to study and recommend a mechanism for implementing rule 50.

Members of the Senate at that time met. The Governmental Affairs Committee held several days of hearings and reported a resolution that was then considered by the Human Resources Committee, which then, in turn, reported it to the floor.

The significance of that resolution, and of rule 50, lies in the recognition that the Senate cannot continue to operate in a class by itself. We have managed to set ourselves apart from other employers—upon whom Congress has seen fit to impose rules governing employment practices.

Congress took giant steps in the protection of individual rights with passage of the Civil Rights Act and the Equal Pay Act. But the exclusion of Congress from those laws left a loophole allowing Members of Congress exceptional latitude in hiring, firing, paying and promoting employees. The result of all this freedom from regulation has been that women working on Capitol Hill earn less than men and are often shut out entirely from top staff positions. Members of minority groups, likewise, are underrepresented and underpaid.

If we believe that the Civil Rights Act and the Equal Pay Act are good laws, and that the executive branch and private industry should comply with them, then how can we justify the failure to set similar standards for ourselves?

Senate Resolution 431, which is embodied in the amendment before the Senate now, establishes an enforcement procedure that is fair to all parties involved—protecting employees of the Senate against discriminatory employment practices, and protecting Members of the Senate as well against frivolous and unfounded complaints. It is a procedure that, above all, demonstrates to the public that we are not going to continue living by a standard different from that we have imposed on them.

I know that some members of this body are concerned that this proposal will interfere with what they consider to be the unique situation in the Senate with regard to the hiring of staff.

In that regard, I quote from Senate Report 95–49, on the Code of Official Conduct:

Rule L is not to be construed as limiting in any way a member's traditional prerogative to hire persons of a particular political affiliation or from a particular geographic region. Neither is Rule L to be construed as limiting, in any way, employment practices aimed at rewarding or penalizing an individual on the basis of competence or any criteria other than those specifically referred to in the rule.

Clearly then, the intent of the Senate when the Code of Official Conduct was passed, was to leave open the prerogative of Members to hire people on the basis of their geographical and political background. This would be entirely allowable under rule 50 and under the amendment before us.

The purpose of rule 50 is to prohibit Members of the Senate from hiring and compensating employees on a basis unrelated to their ability to perform the job—that is, on the basis of their race, color, religion, sex, national origin, age, or state of physical handicap.

I have every appreciation of my colleagues' concerns about hiring people from their State or from their political party. Indeed, it would be very difficult for Members to function effectively if we did not have this prerogative. But our need for this special consideration certainly does not absolve the need for the Senate to operate on the principles of fairness and equal opportunity in its employment practices.

It has also been suggested to the Senate that since rule 50 exists within the Code of Official Conduct that there is no need for an enforcement procedure separate from the Ethics Committee.

My response to my colleagues is: Where were these suggestions 18 months ago when we passed the code and directed the Government Affairs Committee to recommend an enforcement procedure?

Where were these suggestions when the committee held hearings on this issue on August 3, 1977, and on February 9, 1978? At those hearings, not one person appeared to suggest that the course of action under consideration—an enforcement procedure outside the purview of the Ethics Committee—was not the correct course of action.

Now that this proposal has advanced to the Senate Calendar, however, we hear that perhaps it needs further study.

I commend the Government Affairs Committee for its excellent work on developing a procedure which I think accomplishes several laudable purposes.

First, it establishes an independent board to decide discrimination complaints, thereby removing the hypocrisy of having Senators judge themselves.

Second, it provides ample opportunity for informal resolution of complaints, increasing the likelihood that many of them will be settled before reaching the formal process.

Finally, it provides for an appeal to the Ethics Committee, if either party is not satisfied with the ruling of the fair employment relations board.

Mr. President, in our deliberations on this amendment, we should remember one very important point. We are public creatures. We are elected by the public and paid by the public to serve the public. As such, we have a very strong responsibility to the public to treat our employees fairly, and to spend the public dollars we are allotted for staff allowances in a nondiscriminatory manner.

Earlier, I submitted for the RECORD, editorials from the Washington Post and the Washington Star on Senate Resolution 431. Another newspaper that has long held an interest in this issue is the Des Moines Register, one of the Nation's most respected papers. I ask unanimous consent that their editorial of September 28, 1978 be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

BIAS ON CAPITOL HILL

The U.S. Senate's reputation as one of the nation's "last plantations" was confirmed last week when the Democratic Policy Committee kept from the Senate floor a measure to protect Senate employees from employment discrimination.

Congress has exempted itself from virtually every law passed to protect American workers against abuse and discrimination on the job.

The vulnerability of congressional employees to discrimination is illustrated by the case of Shirley Davis, a woman who was being groomed to become a key aide to Rep. Otto Passman (Dem., La.), when he was still in Congress (he was defeated in 1976). In 1974 her dreams were crushed when Passman fired her with a letter that said in part, "On account of the unusually heavy work load in my Washington office, and the diversity of the job, I concluded that it was essential that the understudy to my administrative assistant be a man."

Davis sued Passman, but the U.S. Fifth Circuit Court of Appeals threw out her case earlier this year, partly on the grounds that congressional employees are not legally protected against employment discrimination.

The bill shelved by the Democratic Policy Committee would set up a procedure for enforcing a ban against employment discrimination in the Senate.

The bill would establish a Fair Employment Relations Office in the Senate to hear and investigate complaints of discrimination. If the office failed to resolve the problem, it could be taken to a six-member board composed of private citizens. The board would have the power to order such remedies as monetary damages, reinstatement in a job or a promotion.

The bill would be a major start toward overcoming discrimination in the Senate.

Aides to Senators Dick Clark (Dem., Ia.) and John Glenn (Dem., Ohio), both vigorous supporters of the bill, say they hope to find another way to bring the measure before the Senate. But they will have to work hard, given the opposition from some powerful senators and the crowded Senate schedule for the remaining days of the session.

Congress should be an example to the nation in promoting equal opportunity in employment. An essential first step is passage of the bill opposed by the Democratic Policy Committee.

Mr. CLARK. Mr. President, I yield to the distinguished Senator from Ohio.

Mr. GLENN. Mr. President, this particular amendment has been considered in committee for a great length of time. I am only sorry that it had to be brought up in this fashion as an amendment to another bill because I feel that it was justified in being considered on the floor and for a straight up or down vote on its own merits, without being attached to anything else.

As the distinguished Senator from Iowa has so clearly delineated, this is a bill that was considered in committee. The Governmental Affairs Committee was charged with recommending ways to fully and effectively implement rule L of the approved Code of Official Conduct which prohibits employment discrimination on the basis of "race, religion, sex, national origin, age, or state of physical handicap." That will go into effect. Rule L goes into effect on January 3, 1979, whether we do anything at this point or not.

And complaints will be filed formally with the Ethics Committee which will then not have some of the protections and some of the informal procedures that we provide in this bill.

I wish at the outset of this discussion to compliment the distinguished Senator from Massachusetts, Senator BROOKE, for the long interest and work that he has put into this particular effort. I am sure he can recall with me the efforts of the late Senator Lee Metcalf who was interested in this particular issue of unfair hiring practices in the Senate and felt that we had gone on far too long after passing laws back some years ago in passing needed legislation which was supposed to wipe out discrimination in this country. Yet here we are some 15 or 16 years later just getting around to consider the passing of an act and amendment here only now wrestling with the problem of creating a means of extending those same civil rights concepts to ourselves.

I think it certainly is ironic for Congress to be the articulator of principles of equal opportunity while its own houses have historically exempted themselves from those principles. To me it is a double standard.

It is not surprising that this has contributed, at least in some measure, to the American people having a negative image of Congress as an institution.

Lest we think that this is some specious argument that we are making on this issue, I cite that in the RECORD of December 19, 1974, the late Senator Metcalf, whom I was honored to be on the committee with when we considered these things, documented 48 cases—this is in 1974—48 cases of exclusionary preferences submitted by Members of Congress to the Congressional Placement Office. And a majority of those cases expressed the exclusionary preferences based on race, and these are direct quotes in 1974 from the Congressional Placement Office where Members of Congress had submitted a listing of the type of people they needed in their office and along with the qualifications they had placed such things as this, and this is 1974.

"No blacks."

That is a quote.

Or another one: "Whites or Caucasians only."

And a number of the other cases had preferences against "minorities."

Another quote: "No Catholics."

Another one: "No individuals with Southern accents."

Another one was "No persons born under the water signs of the zodiac," whatever that may be.

And another one did not want anybody hired in his office or included in his list for the particular job for which he was asking someone be sent to him who wears "pantsuits."

It would be hard to find a more compelling example of the need to provide strong protections to congressional employees.

Mr. President, these are not the early 1900's. This is not 1920's requests over there. These requests were filed with the Congressional Placement Office as late as 1974.

When I joined with Lee Metcalf on the committee and knew of his interest on this, we started holding hearings on this and we did hold extensive hearings with all those of interest in this on what procedure we would come back to the Senate with as our method of implementing rule L; we heard people of every persuasion with regard to that particular rule.

So when we came back, this amendment as it is now, was done not just off the tops of our heads, and not just in a perfunctory manner. It was done after a great deal of thought and after hearing a great number of witnesses.

The Metcalf resolution was considered and as reported by the Governmental Affairs Committee directed the committee to study "the subject of handling employment discrimination complaints," and to report its recommendations to the Senate within 180 days.

As reported the resolution would establish an internal bipartisan board to provide Senate employees with an opportunity for due process in discrimination complaints.

I stress, Mr. President, that there is nothing in the resolution or the proposed board's power that dictates in any way or prescribes in any way specific hiring practices within an office in the form of affirmative action plans, goals, quotas, guidelines, or any similar devices.

The board's only function is to provide for informal, first, and then if it is necessary formal complaint procedures with appeal to the Ethics Committee beyond the board's recommendation. Proceedings are confidential and only final appeal decisions would be public.

The resolution fully recognizes and protects a Senator's ability to hire persons who are geographically and politically compatible, and it merely prohibits decisions based solely, and I repeat solely on race, color, religion, sex, national origin, age or state of physical handicap.

I feel that adopting this resolution would provide a mechanism to protect Senators, not to put them on the pan, but to protect Senators from frivolous publicity-seeking charges. Passage would also demonstrate that Congress itself adheres to the spirit of the law as we enact and prescribe for all of our citizens and businesses.

Mr. President, I have a number of proposed questions and answers here. I know the Senator from Vermont wishes to make a short statement on this. I yield for whatever question or short comment he may have.

Mr. LEAHY. Mr. President, I just wanted to state that I wholeheartedly concur with what the Senator from Ohio has said. I know how diligently he has worked on this subject, and I intend to support him.

Earlier this year, Mr. President, I introduced a series of measures, mainly because of this: We made a study and found that Congress, in its infinite wisdom, had subjected most of the country to a number of pieces of legislation, many of which I support, everything from antidiscrimi-

nation laws, fair employment laws, OSHA, to social security, and so forth.

In every one of them, however, we have carefully carved out exceptions for Congress.

I have had business people talk to me about this in terms of OSHA, and I know full well there is virtually not a single Senator's office that would pass an OSHA inspection around here.

Yet we have told the rest of the country that passing these laws is good for them.

No Senator is subject to fair employment laws, and yet we pass them and tell the rest of the country it is good for them.

No Senator's office is subject to the antidiscrimination laws; yet we pass them, and tell the rest of the country it is good for them.

Mr. President, I think we have created a double standard. Ideally, this year, although I know realistically it is not going to happen, I would like to see my whole package of legislation passed, applying all these laws to Congress, thus ending what I see as a hypocritical double standard.

I see the measure before us as a very substantial start in that direction, the direction I think we ought to take. I do not see how we can stand here and say these are laws that are good for the rest of the country, are reasonable for the rest of the country, are balanced for the rest of the country, but for some reason they do not apply to 100 Senators and 435 Members of the House, that somehow we can carve out exceptions for ourselves, perhaps because of the purity of our souls and the nobility of our motives.

Mr. President, I applaud the purity of our souls and the nobility of our motives, but I do like the idea of a law that may focus our attention should our minds stray somewhat from such purity, or should we be distracted, in the rush and pellmell of legislative matters, from the motives we all hold near and dear to our hearts.

The legislation the Senator from Ohio favors would focus our attention, and focus it in a most constructive fashion. For that reason, I support it, and I thank the Senator for yielding to me. I yield back to him.

Mr. GLENN. I thank the Senator from Vermont for his comments.

Mr. President, I would proceed by propounding to myself some questions that have been raised to me in the past regarding this legislation. I am sure they have been addressed to the distinguished Senator from Massachusetts (Mr. BROOKE) many time also; and we could proceed to answer some of these questions that are most commonly raised about this bill.

The first question is, Under Senate Resolution 431, would not a Senator's ability to hire a staff which is geographically and politically compatible be impaired?

The answer to that is, No, it would not." Both political compatibility and geographic ties are legitimate criteria a Senator may consider. Decisions based on race, color, religion, sex, national origin, age, or state of physical handicap are prohibited, as they are for businesses and other organizations across the country.

Another question: Would not a charge of discrimination be an effort to discredit a Senator by would-be opponents at election time?

That is one that strikes at the heart of everyone here. The answer to that question, once again, is, "No." Even without a procedure, a Senator is subject to charges of discrimination. The establishment of a procedure would eliminate frivolous or unsubstantiated complaints. Complaints would be settled in an expeditious and fair manner. Complainants would have an opportunity to actually air grievances in a conciliatory manner, rather than having no other recourse but to complain publicly. Moreover, under Senate Resolution 431, confidentiality is mandated. Only final decisions are made public.

Confidentiality is mandated through all these informal procedures we provide under Senate Resolution 431. If there is a formal complaint, it must be filed directly with the Ethics Committee, which will be the case if we do nothing with this resolution, and if rule 50–L goes into effect, then formal complaints will be filed with the Ethics Committee, and I do not think anyone running for office would be in favor of restricting complainants to going through the Congressional Ethics Committee, rather than the informal process provided by this legislation.

Another question: How much flexibility does the procedure allow for?

The answer to that: Each Senate office is a separate entity. Staff preferences and needs differ from office to office. The committee report recommends broad latitude in deciding each complaint on a case-by-case basis. Thus, decisions regarding discrimination are made by considering whether there is evidence of unequal treatment within an office.

Another question: Would a complainant be allowed to enter his or her case in a court of law as a result of this procedure?

The answer to that is "No." The ability to seek Federal jurisdiction in court over a case must be granted by statute. Senate Resolution 431 is an internal Senate procedure. It does not have the force of law, nor does it have any court standing. An individual would only be able to enter court on existing constitutional grounds, and this procedure would not interfere with those constitutional grounds.

Another question: Should not a body outside the Senate make final decisions with respect to discrimination?

The answer to that, Mr. President, is that if this is done, there might be a violation of the separation of powers doctrine of the Constitution. Senators themselves delegate authority to the Board. Both the complainant and respondent have a final appeal to the Ethics Committee which is composed of Senators.

Another question: What laws has Congress specifically exempted itself from, and why?

Well, I am not sure I can give all the whys, Mr. President, but the answer to that, with some specific examples, is that we have exempted ourselves from the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Fair Labor Standards Act, the Age Discrimination Act, the Freedom of Information Act, and the Occupational Safety and Health Act, among others.

I am not here this evening to try to argue the merits of each one of those, nor to criticize that we have exempted ourselves from some of those areas. But just to show that there is a policy here of exempting ourselves quite often from things that apply to other people in the country. Virtually all of these laws were enacted prior to the time that I arrived in Congress, but I understand the arguments have followed two very general basic themes: No. 1, that the nature of congressional business is special and unique, requiring so much ideological loyalty and compatibility that Members of Congress must have freedom in employing ideologically loyal and compatible persons.

I do not quarrel with that, Mr. President. I think there must be considerable ideological loyalty and compatibility, but not based on race or creed or color.

The second argument is that the doctrine of separation of powers would be violated if any executive branch agency policed congressional practices.

I think that the second argument is weaker than the first, especially with respect to civil rights, because we can very easily preserve the separation of powers by delegating enforcing authority to an independent or quasi-independent, nonexecutive branch agency. Separation of powers is just not a valid reason for doing nothing at all.

Now, as to the special-needs-of-Congress argument: I am sympathetic to that, but I do think it has been greatly exaggerated.

Congressional employees are increasingly highly trained and skilled, and that should be the criteria for their hiring, their skill, their training to do the job. To presume that someone's ideology and loyalty is based upon their race or sex is to me a repugnant idea.

We in Congress have said to General Motors, General Electric, to every businessman in this country, that they can choose skilled managers and employees who are compatible, who are comfortable in those offices, and who agree with the principles of the management. But we have also said that they cannot discriminate based on race or sex. It seems to me that is so basic that at the very least we should be able to apply that same concept to ourselves.

I think there has been much progress in this area, but I sometimes think we are in the hardest days of the civil rights struggle and the equal opportunity struggle. Perhaps those days of Martin Luther King and trying to get a seat at the lunch counter, trying to move to the front of the bus, were physical things, that in some respects were certainly not easy, were maybe easier to accomplish with masses of people than against the

problems that we face today. Today we are trying to move into the most difficult time of all.

Mr. BROOKE. Will the Senator yield for the yeas and nays?

Mr. GLENN. I yield.

Mr. BROOKE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. GLENN. Perhaps this is the most difficult time of all in this struggle because now is the time when these laws have to be put into effect in men's and women's hearts all over this country.

It is a time when we must really, truly put the civil rights struggle into our thousand-and-one daily decisions—decisions in all the many complex areas of hiring, of business, of living together in a truly free society.

So, Mr. President, perhaps this is the most difficult time of all. I would say that the Senate would be wise in this particular time period to take a leadership role, and not be forced into what I think we are going to ultimately come to anyway by January of next year if we permit these formal complaints to be filed directly with the Senate Ethics Committee.

With this resolution, which is now in the guise of an amendment to this bill, we will, in fact, take the lead in providing an informal process and providing a process of counseling, a process that protects the offices in the Senate from possibly irresponsible procedures that might come to pass, if this is not passed. The complaint process will go directly to the Ethics Committee come January 1979 with formal proceedings which would, in each instance, I feel, be far more onerous to the Senator involved than will the informal and counseling procedures with which we start off, and which precede any formal proceedings.

Mr. President, I urge acceptance of this amendment. I think it establishes for the first time a fair hiring practice in the Senate. We have been much criticized for not instituting such practices in the past. As I said, I would have much preferred this be brought up on its own, debated on its own merits, and not just attached to another bill. But in the waning days of this session, that is the parliamentary situation we face.

Mr. STEVENS. Does the Senator yield the floor?

Mr. GLENN. No, I do not. I reserve the right to the floor.

Mr. STONE. Will the Senator yield the floor to the Senator from Florida to call up a conference report on the Agricultural Trade Act of 1978?

Mr. GLENN. Without yielding my right to the floor.

Mr. STONE. Without yielding his right to the floor. We will get unanimous consent.

Mr. GLENN. Reserving my right to the floor, Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GLENN. Is it possible to yield——

The PRESIDING OFFICER. The Senator from Ohio could yield by unanimous consent to the Senator from Florida, as the Senator from Florida has suggested, and still retain his right to the floor.

Mr. GLENN. I will not give up my right to the floor at this point. If I had to yield my right to the floor to accomplish the purposes for which the Senator rose, I would not want to agree with that.

I yield for a question to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Ohio.

Mr. President, I ask unanimous consent that the distinguished Senator from Florida (Mr. STONE) may proceed to call up a conference report on which there is a 10-minute time limitation.

Mr. DOLE. They have not found it yet.

Mr. ROBERT C. BYRD. At such time as the papers are found I ask unanimous consent that Mr. STONE may call up the conference report on which there is a time limit of 10 minutes without any prejudice to the Senator from Ohio, who will then be holding the floor, if he desires at that point to yield.

Mr. GLENN. I did not hear the Senator.

Mr. ROBERT C. BYRD. I asked unanimous consent that at such time as the distinguished Senator from Ohio is willing to yield to the Senator from Florida, the Senator from Florida may call up the conference report on which there is a 10-minute time limitation without any prejudice to the rights of the Senator from Ohio.

Mr. STONE. We will wait about 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. DURKIN. Reserving the right to object—I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. The Senator from Ohio has enough material to go on all night. However I should be happy to yield at the appropriate time under the agreement the majority leader just propounded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STONE. I thank the distinguished Senator from Ohio and the distinguished majority leader.

AGRICULTURAL TRADE ACT OF 1978—CONFERENCE REPORT

Mr. STONE. Mr. President, I submit a report of the committee of conference on S. 3447 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3447) to strengthen the economy of the United States through increased sales abroad of American agricultural products, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the proceedings of the House of Representatives.)

Mr. STONE. Mr. President, I ask for unanimous consent that Nancy Foster of my staff, Bill Motes of Senator CLARK'S staff, and the following staff members of the Committee on Agriculture, Nutrition, and Forestry be granted the privilege of the floor during consideration of the conference report on S. 3447: Carl Rose, Phil Fraas, Nelson Denlinger, Bill Lesher, and Bill Taggart.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STONE. Mr. President, S. 3447 is designed to strengthen the Nation's economy and improve the income of our agricultural producers by providing means for increasing export sales of U.S. agricultural commodities. It will also benefit the Nation's balance of payments and provide much needed strength for the dollar.

Mr. President, I ask unanimous consent that there be printed at this point in the RECORD a summary of the major provisions of S. 3447, as approved by the committee of conference.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF S. 3447

S. 3447, as approved by the committee of conference, authorizes several new Commodity Credit Corporation credit programs to expand export sales of U.S. agricultural commodities, authorizes the appointment of agricultural counselors to serve as representatives of the Department of Agriculture in U.S. diplomatic missions abroad, authorizes the establishment of U.S. agricultural trade offices in foreign nations, and creates the position of Under Secretary of Agriculture for International Affairs and Commodity Programs.

The bill would—

(1) Authorize the Commodity Credit Corporation (the "CCC") to finance export sales of U.S. agricultural commodities out of CCC and private stocks on "intermediate" credit terms (in excess of 3 years, but not more than 10 years) to—

(a) develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities without displacing normal commercial sales; or

(b) otherwise improve the capability of the importing nation to purchase and use, on a long-term basis, U.S. agricultural commodities.

Intermediate credit financing could be used for the following purposes—

(a) For the establishment of reserve stocks,

(b) For the export sale of breeding animals (including freight costs),

(c) To establish handling and related facilities, and

(d) To meet credit competition for agricultural export sales.

Intermediate credit financing could not be used to encourage credit competition, or for the purpose of foreign aid or debt rescheduling. Intermediate credit would carry the same interest rate, as nearly as practicable, as that charged by the CCC for short-term export credit (sec. 101);

(2) Require the Secretary of Agriculture, with respect to CCC intermediate credit sales, to obtain, wherever feasible, commitments from purchasers to prevent resale or transshipment of the purchased goods to other nations. No agreement to finance export sales for the establishment of reserve stocks would become effective until 30 days after notification to the agriculture committees of Congress accompanied by a Presidential determination that such financing is not adverse to the interests of U.S. farmers (60 days if the notification is transmitted when Congress is not in session) (sec. 101);

(3) Provide that the cargo preference laws are not to apply to CCC intermediate credit sales (sec. 101);

(4) Authorize the Secretary to provide "short-term" CCC financing (not to exceed 3 years) to exporters of U.S. agricultural commodities who wish to provide their customers such short-term deferred payment terms to meet sales competition from other nations or to make additional export sales. This financing would be available only for export sales to nations that are eligible for direct CCC short-term financing and the People's Republic of China (sec. 201);

(5) Notwithstanding any other provision of law, authorize the CCC to provide direct short-term credit and deferred payment short-term credit for commercial sales of U.S. agricultural commodities to the People's Republic of China (sec. 202);

(6) Provide that the Department of Agriculture representative in the U.S. diplomatic mission at each of the major foreign agricultural posts (in no event less than 10 such representatives) will be given the title of "Agricullttural Counselor" (sec. 301);

(7) Require the Secretary to establish not fewer than 6 nor more than 25 United States agricultural trade offices in foreign nations to conduct foreign market development programs (sec. 401);

(8) Authorize agricultural counselors, agricultural attachés, and agricultural trade officers to receive representation allowances (sec. 401);

(9) Upgrade the position of Assistant Secretary of Agriculture for International Affairs and Commodity Programs to Under Secretary, and upgrade the salary level to Level III of the Executive Schedule (sec. 501);

(10) Require the Secretary to report to Congress annually on the Department of Agriculture's foreign market development activities (sec. 602);

(11) Require the Secretary to submit to the agriculture committees of Congress, by January 3, 1979, a report on the effectiveness of the export sales reporting requirements of section 812 of the Agricultural Act of 1970, including legislative recommendations for improvements (sec. 603); and

(12) Require the Secretary to submit a report to Congress within 6 months after the date of enactment of the bill on the effect on American agriculture of title IV of the Trade Act of 1974 and to make a recommendation for amendment or repeal of such title (sec. 604).

PROVISIONS FOR EXPANDED CREDIT

Mr. STONE. S. 3447 will provide a number of authorities for the Commodity Credit Corporation of the Department of Agriculture to increase sales of U.S. agricultural products abroad.

The CCC would be authorized to provide intermediate credit financing (credit terms of not less than 3 years nor more than 10 years) for export sales of agricultural products to—

First, develop, expand, or maintain importing nations as foreign markets, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities without displacing normal commercial sales; or

Second. Otherwise improve the capability of importing nations to purchase and use, on a long-term basis, U.S. agricultural commodities.

Intermediate export credit could be made available for four uses consistent with the foregoing provisions as follows:

First. To establsh reserve stocks consistent with international commodity agreements or other stock building plans acceptable to the United States;

Second. The export sale of breeding animals (including, but not limited to, cattle, swine, sheep, and poultry), including the cost of freight;

Third. For the establishment of facilities in importing nations to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities (through the use of local currency generated from the import and sale of U.S. agricultural commodities to finance all or part of the facilities); and

Fourth. To meet credit competition for agricultural export sales.

Intermediate export credit could not be used to encourage credit competition, or for the purpose of foreign aid or debt rescheduling.

Mr. President, the intermediate export credit section was narrowed slightly over the Senate-passed bill to reflect the concern of the conferees that this authority be used with care. Nonetheless, it should be a useful tool for export promotion.

The conference committee agreed to a provision to protect the interests of U.S. farmers with respect to sales of commodities to establish reserve stocks that are made with intermediate export credit. The President would be required to review proposed agreements for credit to establish reserves and make a determination that the agreement would not be adverse to the interests of our producers. This determination and a detailed summary of the proposed agreement would have to be submitted to the agriculture committees of Congress prior to the agreement becoming effective.

The conferees agreed that the provisions of the cargo preference laws would not apply to CCC intermediate export credit. This credit is basically an expansion of the existing CCC commercial short-term credit program rather than concessional assistance such as under Public Law 480. Further, the extra cost of applying the cargo preference laws could well prevent the intermediate credit program from being used.

The conferees also adopted the Senate provision specifically authorizing short-term CCC credit—credit terms not to exceed 3 years—for exporters who offer deferred payment terms. Some nations prefer to deal directly with an exporter rather than a Government agency such as the Commodity Credit Corporation. This program would provide another option to enable the United States to be competitive with other exporting nations.

In addition, under S. 3447, the People's Republic of China would become eligible for CCC credit under the deferred payment sales program and the existing 3-year CCC commercial credit program.

PROVISIONS FOR EXPORT TRADE PROMOTION

S. 3447 also provides for the establishment of from 6 to 25 agricultural trade offices by the Secretary of Agriculture, in consultation with the Department of State, in nations or regions where there are major U.S. trade interests. The establishment of U.S. agricultural trade offices will serve as a catalyst for aggressive export trade promotion and the consolidation of Department of Agriculture-financed export promotion activities.

The legislation also raises the level of our agricultural representation abroad from agricultural attaché to agricultural counselor at the more important posts. Under the bill, at least 10 senior representatives of the Secretary of Agriculture are to be appointed as counselors within 3 years after the date of enactment of the bill. However, the conferees intend that 10 counselors, as a minimum, be appointed within one year after the enactment of the bill. Raising the level of our agricultural representation abroad is designed to match our competitors in gaining access to key foreign government officials.

The conferees agreed that the Department of State must concur in the designation of counselors, and the assignment abroad of the staff for the agricultural trade offices. We expect the Secretary of State to cooperate fully with the Secretary of Agriculture in the appointment of counselors and the establishment of the agricultural trade offices, as well as in implementing the other provisions of S. 3447.

We also expect prompt and effective use of the tools provided in S. 3447. In this connection, I believe it is important to note that the export promotion program recently announced by the President reflects important provisions contained in S. 3447.

The conferees also adopted the provision in the House amendment establishing the position of Under Secretary of Agriculture for International Affairs and Commodity programs.

COSTS AND BENEFITS OF THIS LEGISLATION

It is anticipated that this legislation could result in outlays by the Commodity Credit Corporation approximating $100 million per year. However, the repayment record for CCC loans has been very good. In addition, the loans will bear interest at rates above the cost of money to the Government. Thus, after a few years, we would expect to have a net inflow of funds to the Government.

At the same time we would expect the program to be helpful in opening new markets for U.S. agricultural commodities.

Increased exports will undoubtedly mean improved farm prices, thereby saving the Treasury in terms of deficiency payments under the Food and Agriculture Act of 1977. An increase in the average market prices of 10 cents a bushel for wheat and corn and 10 cents a pound for cotton, as a result of increased export sales, could result in annual savings to the Treasury of about $1.3 billion on deficiency payments.

Agricultural export sales, which this year may exceed $26 billion, have been

shown to have a multiplier effect of almost two. And about 70 percent of the added economic activity takes place in the nonfarm part of the economy.

We also should note, with regard to employment, that an estimated 1.2 million full-time civilian jobs were related to our agricultural exports in 1974. Of this, around 500,000 U.S. farmworkers—14 percent of the U.S. farm labor force—were required to produce the agricultural commodities exported in 1974.

In addition, more than 650,000 nonfarm jobs were directly or indirectly related to the assembling, processing, and distribution of agricultural commodities for export.

THE IMPORTANCE OF AGRICULTURAL EXPORTS

Mr. President, this Nation has reason to be proud of its record in agricultural exports with their value increasing from $6.3 million in 1968 to $24 million in 1977. In recent years the annual net favorable agricultural export balance has been in the $10.2 to $12.6 billion range.

As a result of this trend, agricultural exports have become extremely important to the U.S. balance of payments. An unfavorable nonagricultural trade balance of $40.1 billion in 1977 was reduced to a deficit of $29.9 billion as a result of our agricultural export sales.

The size and significance of our agricultural export markets are finally beginning to be recognized by policymakers in both the legislative and executive branches. S. 3447 is clear evidence of a new commitment on the part of the Government to protect and develop our agricultural export trade. In the face of growing competition from other agricultural exporting nations, S. 3447 lays the groundwork for a stronger effort to maintain and expand our export markets.

In conclusion, I wish to express my thanks to the distinguished House conferees led by Chairman FOLEY of the House Agricultural Committee and Chairman ZABLOCKI of the International Relations Committee. I am grateful also for the hard work of my colleagues on the Senate Committee on Agriculture, Nutrition, and Forestry under the capable leadership of our distinguished chairman, Senator HERMAN E. TALMADGE.

Mr. DOLE. Mr. President, I share the views of the distinguished Senator from Florida (Mr. STONE) on this important bill, and I commend him for his dedication and work. Generally, I am pleased with the compromise represented in the joint conference committee report and urge its prompt approval.

FIVE MAJOR PROVISIONS

This legislation contains five major provisions to maintain and expand our agricultural export markets. They are:

First. The establishment of an intermediate export credit program in the USDA's Commodity Credit Corporation. This will permit longer term financing to foreign customers in order to offer comparable credit to what competing nations are offering.

Second. The extension of credit to exporters that offer deferred payment terms: A concept that is being considered one of the most important provisions in this bill as a means to expand our exports.

Third. The extension of Commodity Credit Corporation credits to nations that promise to become significant new commercial markets and this includes the People's Republic of China.

Fourth. Upgrading the status of our major foreign agricultural representatives from "agricultural attaché" to "agricultural counselor.";

Fifth. The establishment of agricultural trade offices in nations where significant market opportunities exist.

The bill directly addresses areas that will increase the export of U.S. agricultural commodities. The cost of the bill in the years ahead will be minimal and far less than the benefits.

The growing deficit in our balance of trade makes this legislation even more urgent. Agriculture has been one of the few bright spots in our balance-of-payments situation in recent years. The new provisions of this bill will enable us to more aggressively pursue more exports by being able to meet credit being offered by our competitors for these sales.

The decline in net farm income to just under $20 billion in 1977 provides a further incentive to increase our export sales and reduce stocks to more manageable levels.

This is why the Agricultural Export Trade Expansion Act ranks high on our list of legislative priorities for the 95th Congress, and I urge my colleagues to approve the joint conference report.

I certainly commend the distinguished chairman of the subcommittee. Also, the Presiding Officer has worked very hard on this legislation as have all other members of our committee, including my colleague from Indiana.

I urge adoption of the conference report.

Mr. STONE. Mr. President, I thank the distinguished Senator from Kansas.

I yield 1 minute to the Senator from Iowa.

Mr. CLARK. Mr. President, I want to compliment particularly Chairman STONE on his work in the committee and in conference, as well as thank the distinguished minority Member. We had a conference over a 2-day period in a very healthy spirit. I think this legislation is going to make a very, very significant difference in our ability to export grain. I compliment the chairman on his fine work on this legislation.

Mr. STONE. I thank the distinguished Senator from Iowa, whose work and prework on this were invaluable.

● Mr. TALMADGE. Mr. President, as chairman of the Committee on Agriculture, Nutrition, and Forestry, I strongly support the conference report on S. 3447—the Agricultural Trade Act of 1978. This bill will maintain and stimulate the growth of export markets for our agricultural commodities and merits the support of all Senators.

The conferees worked diligently to resolve the differences between S. 3447, as passed by the Senate, and the version of the bill passed by the House. The conference substitute contains the best features of both bills.

BENEFITS OF AGRICULTURAL EXPORT TRADE

High farm incomes hinge on agricultural exports. In recent years almost 20 percent of U.S. farm income was provided by export sales. We presently export over half of our wheat, soybeans, and hides each year, roughly 40 percent of our cotton, nearly a third of our tobacco and over a fourth of our rice and corn. In all, our farmers devote over 100 million acres each year to production for export—almost one acre in three that are harvested.

A high level of agricultural exports yields positive benefits to our economy in several ways. As the demand for our agricultural commodities is strengthened through export sales, commodity prices are bolstered, lower Federal outlays for agricultural support programs are made, and reduced deficit spending and lower taxes are the results. In addition, our balance-of-trade deficit is reduced by agricultural exports. In 1977 our balance-of-trade deficit was reduced by over $10 billion because of a favorable agricultural trade balance.

THE NEED FOR THIS LEGISLATION

There is no doubt that agricultural exports are essential to our farmers and the Nation's prosperity, especially in years—such as is predicted for 1978—when we have bumper crops. However, there are indications that we could lose ground concerning our share of the agricultural export trade—for several reasons.

There is evidence that we do not offer as flexible credit terms as other nations. More flexible credit terms are extremely important to increased agricultural trade—especially in the long run.

Granting intermediate-term credit to encourage the purchase and export of breeding livestock, for example, will eventually mean that more nations will shift from a primarily grain diet to one that includes more meat. As personal taste and preferences change and the demand for meat increases, this will generate an even greater demand for our corn and other grains to feed the livestock.

Intermediate-term credit that allows the importing nation indirectly to finance the construction of facilities for handling, processing, storage, and distribution of agricultural imports will increase the capacity of the importing nation to buy more from us for years to come since these facilities would be in operation for several decades.

It also appears that other exporting nations spend relatively larger amounts of money than the United States to promote export sales in terms of trade offices and other sales efforts. It seems that other nations regard agricultural trade as more important to their economy since their foreign agricultural representatives are given higher rank than ours.

MAJOR PROVISIONS

Five major provisions to maintain and expand our agricultural export markets are included in this bill. They are: First,

the establishment of an intermediate export credit program; second, the authorization for Commodity Credit Corporation credit to exporters that offer deferred payment terms; third, the authorization for CCC credits to the People's Republic of China; fourth, upgrading the title of our major foreign agricultural representatives from "Agricultural Attaché" to "Agricultural Counselor;" and fifth, the establishment of agricultural trade offices in nations where significant market opportunities exist.

Mr. President, this bill addresses areas that will increase the export of U.S. agricultural commodities. The cost of the bill in the years ahead will be minimal and far less than the benefits. Increased agricultural exports will increase domestic agricultural commodity prices, raise farm incomes, reduce our balance-of-trade deficit, create jobs, strengthen the dollar abroad, and reduce Government support payments to farmers. In the long-term, the bill could save the American taxpayer millions of dollars.

I commend my distinguished colleague from Florida, Senator STONE, for his efforts to bring this important bill to the floor of the Senate. As chairman of the Subcommittee on Foreign Agricultural Policy and chairman of the Conference Committee on S. 3447, Senator STONE worked long and hard to develop this legislation. Also, I commend the other Senators from the Committee on Agriculture, Nutrition, and Forestry—Senators DOLE, CLARK, ZORINSKY, HODGES, BELLMON, and LUGAR—who have spent many hours working on this important bill.

In addition, Chairman FOLEY of the House Agriculture Committee and Chairman ZABLOCKI of the House International Relations Committee, as well as other distinguished Members of the House of Representatives, are to be thanked for their outstanding efforts in the development of this legislation.

Mr. President, I urge the adoption of the conference report.●

● Mr. CLARK. Mr. President, I rise in support of the conference report on S. 3447—the Agriculture Export Trade Expansion Act 1978. I hope my colleagues will join me in approving it so that we can send it to the President for signature.

I particularly want to commend my colleague, Senator STONE, for his work on this bill, and for the work of his Foreign Agricultural Policy Subcommittee. This is a subcommittee bill. We all have worked on it. Many of its provisions were in my bill, S. 2958. Others were added in committee, and others in the Senate-House Conference. Senator STONE and other Members of the subcommittee have worked especially hard on this bill, and I appreciate their efforts.

This legislation is important, not only to Iowa farmers, but to the Nation. It will help improve agricultural exports. And, it will help improve our balance of trade.

My own State of Iowa depends heavily on farm exports. Iowa is always either first or second in corn production, and first or second in soybean production. Our dependence on these crops means that production from one of every three acres in Iowa depends on overseas markets. Clearly, the growth and development of overseas markets is essential for a major share of the income of Iowa farmers—and for farmers across the Nation.

It is now a specific policy of our Government to depend on agricultural exports for both a major share of U.S. farm income, and for the almost $13 billion foreign exchange surplus we enjoy from agricultural trade.

Our grain and livestock prices are very competitive in foreign markets, but competitive prices are not enough. If we are to have strong overseas markets, we must systematically work at developing and maintaining them. We must strengthen our market development programs for agriculture and make them more effective in finding new markets and hanging onto the customers we now have.

Other nations spend more of their revenue from exports on developing markets than we do, and they are threatening to beat us out of some markets.

It is the purpose of this bill to strengthen our agricultural market development program; to give it more visibility and status: to give our exporters some new tools to work with; and to help the program move outside the walls of the U.S. Embassy and into those cities where more of the agricultural trade takes place.

All too often, Mr. President, our policy toward our agricultural market development programs seems to reflect the attitude that they are not really important. When there are shortages around the world, we seem to take the view that it is unnecessary to improve the basis for our agricultural trade, because we have so much of the available supply.

When there are surpluses here and around the world, our policy seems to reflect the view that either increases in foreign trade cannot be accomplished, or if they can, they will not be enough to do any real good.

As a result of these policies, our foreign market development programs have been turned on and off several times since World War II. They have never been a central component of our agricultural policy. They have been peripheral, operating in the shadow of other efforts.

It is my view that we can no longer consider the foreign trade component of our agricultural policy as secondary in importance. This is not because our domestic production or price policies are less important. It is because the success of our domestic policies now depend so heavily on the success of our foreign policies and programs.

The importance of our export policies and programs has increased dramatically since 1973. A change in economic circumstances and in world weather converted U.S. agriculture to an export orientation almost overnight. Almost overnight, we came to depend on foreigners for markets for more than half of our soybean production and a quarter of our corn production.

And, we have a very positive balance of trade in agriculture—almost $13 billion in 1978. Clearly, our negative overall balance of trade would have been very much worse without the agricultural exports.

The factors that moved us to an export oriented agriculture were worldwide economic trends and weather, rather than a conscious change in our policy. Because we did not design the policy change, our system of efforts to maintain the increase of our overseas markets has not kept pace. It is important that we upgrade these efforts, make them more visible and more effective, and that we insure that they are commensurate with the important role they play in maintaining and increasing the prosperity of American farmers.

Each of the provision of S. 3447 would help meet that goal.

I believe the intermediate credit provisions of the bill are the most important. They are additions to the current program. We have short term—up to 3 years—commercial credits available from CCC at market rates, and we have very long term credit under Public Law 480 that permits repayment over a 10- to 40-year period. However, for those purchasers who need somewhat better terms than the current 3-year CCC loans, but now do not need or who cannot qualify for the concessional sales provisions under Public Law 480 long-term programs, there is now no adequate source of credit.

And, this bill opens our short-term CCC credit programs somewhat to help us sell grain in China.

Many countries that are potential markets for U.S. commercial exports do not have adequate facilities to handle or store these products. In many cases, these countries lack adequate credit to permit the construction of such facilities. S. 3447 would permit loans for such facilities.

The second feature of this bill is to establish U.S. Agricultural Trade Offices in a number of countries. We now have only one such office, in London. Elsewhere, the management of U.S. market development activities is but one of the large number of responsibilities agricultural attaches must carry out, working from U.S. Embassy offices. Because the attaches' attention must be divided and because cooperators, and private trade representatives frequently cannot conduct business on the same premises as the attaches, coordination and consolidation of activities are greatly hindered. Furthermore, many nonresident exporters are discouraged by the lack of facilities and services at their disposal for market development activities.

This bill would permit trade offices to be located outside embassies. They would be headed by an Assistant Agricultural Attaché and staffed by local nationals for professional and clerical help.

The offices would provide the data for the strategic planning activities needed to formulate long-term market development programs and policies. They would be responsible for the implementation and coordination of all USDA export market promotion activities within each country. They would assist visiting U.S.

business representatives and nonresident cooperator personnel in their market development tool for U.S. agricultural markets.

These offices would also provide assistance for exhibits, sales teams, the trade opportunity referral system, and assist in developing the industry support for removing trade barriers that inhibit U.S. agricultural exports.

In addition, this bill would upgrade the position of certain officials attached to the diplomatic missions of the United States from "Attaché" to "Counselor."

These are technical changes in structure, but they are important in making this program more visible and in making it work better.

The fact is, the rank of attaché is too low to permit agricultural representatives access to many of the meetings and functions they need to attend. It significantly reduces the effectiveness of these representatives. Increasing the status of these officials should help upgrade our program of expanding agricultural exports and make it more visible both here and abroad.

Mr. President, I have no illusions that these changes would instantly raise prices in our export markets. They would not. They are mainly technical changes, designed to make our system of export activities work better over the long term. They are not costly, and would far more than pay for themselves over the long run. I believe they are improvements that are long overdue.●

● Mr. LUGAR. U.S. exports of agricultural products have increased greatly since 1972. The value of our exports rose from $9.4 billion in 1972 to $24 billion in 1977, and it has been estimated that the value of 1978 U.S. agricultural exports will exceed $26 billion.

As a result of this trend, agricultural exports have become extremely important to the U.S. balance of trade. For example, in 1973 a trade deficit of $8 billion in nonagricultural trade was offset by a $9.2 billion surplus in agricultural trade which resulted in an overall trade surplus of $1.2 billion. In 1976, a $20.7 billion deficit in nonagricultural trade was offset by a $12 billion surplus in agricultural trade resulting in an overall trade deficit of $8.7 billion. Similarly, in 1977 the overall trade imbalance was $29.9 billion. Without agricultural trade the deficit would have been over $40 billion.

Agricultural exports are an important factor in the market for farm products. Nearly 1 acre in every 3 that is harvested goes into the export market. Presently about 60 percent of U.S. wheat production, about 40 percent of U.S. cotton production, about one-third of U.S. soybean production, and about one-fourth of U.S. corn and rice production, are exported. About 20 percent of U.S. farm income is provided by export sales.

The benefits of agricultural export sales are not limited to the farm sector of the economy. A great many nonfarm jobs are dependent on the income accruing from export sales. Thousands of jobs in industries supplying agricultural inputs and marketing agricultural products would be nonexistent in the absence of export sales.

While the growth in U.S. agricultural exports has been impressive and is the only bright spot in a very dark U.S. export situation, the need for increasing U.S. agricultural exports has never been greater.

Farm income declined in 1977 to $19.3 billion, the lowest level since 1964 when adjusted for inflation. Farm income will probably rise in 1978, but once again due to inflation—rising prices of practically all farm inputs, real income will increase very little.

The United States is faced with its second consecutive bumper crop. It is estimated by USDA that corn production in the United States this year will be 6.8 billion bushels, up from last year's record 6.4 billion bushels. Soybean production is estimated to be a record 1.8 billion bushels, upon from 1.7 billion bushels last year. USDA has estimated ending stocks of corn this year to be 1.3 billion bushels, the highest level in years. Add this 1.3 billion bushels of corn left over to the 6.8 billion bushels of corn produced and the United States has a staggering 8.1 billion bushel supply of corn. Add this corn to the record soybean crop, plus a wheat crop estimated to be 1.8 billion bushels, plus over 1 billion bushels of wheat carried over from the previous year, and we know that the United States has a tremendous amount of agricultural products to consume domestically or to export. I have not even mentioned the huge supplies of many other agricultural products such as cotton and rice.

Any increase in agricultural exports will strengthen farm prices. Farmers will then be able to receive more of their income from the marketplace instead of the Federal Treasury. An increase in exports that would keep market prices above target prices would save the many millions of dollars otherwise expended for deficiency payments promised to farmers.

The United States is currently faced with the biggest balance-of-trade deficit in its history. This trade imbalance is responsible for the continuing decline of the U.S. dollar. This situation of a trade deficit and declining dollar have exacerbated the inflation problem here in the United States. It is really very simple. If the United States is going to import huge quantities of petroleum, automobiles, and other manufactured goods, then the United States must export something to pay for these imports. An increase in agricultural exports would be most beneficial in correcting this unfortunate situation.

In January, I introduced a bill, S. 2045, that would have provided for intermediate term credit for purposes of financing the sale to foreign buyers of U.S. agricultural products. I am very happy that the concept of intermediate term credit as expressed in my original bill has become a major part of this legislation.

This legislation would allow for the extension of CCC credit to foreign purchasers of U.S. agricultural products for a period of time greater than 3 years, but not more than 10 years at an interest rate equal to the cost of CCC funds. 3 years financing of exports is currently available under conventional short term CCC credit.

This 3- to 10-year intermediate term credit would be available only for uses consistent with developing, expanding, or otherwise improving the capability of the importing nation to purchase and use, on a long term basis, U.S. agricultural products. More specifically, this intermediate term financing could be used for the export of breeding livestock, the establishment of facilities in the importing nation to improve the handling, marketing, processing, storage, or distribution of imported agricultural commodities. For example, the money could be used for the construction of port facilities, grain elevators, processing plants, and so forth.

I mention this simply to indicate that we are not borrowing from current sales. We are looking toward legitimate purposes of establishing an intermediate term credit situation. The important point is that funds used for these purposes will serve to increase the long term demand for U.S. agricultural products in foreign countries.

The other major provisions of this legislation are: First, CCC financing of deferred payment sales of U.S. agricultural commodities, second, establishment of U.S. Agricultural Trade Offices in the major foreign markets for agricultural commodities, and third, upgrading of agricultural attachés in a number of countries to the diplomatic rank of counselor.

CCC financing of deferred payment sales was originally embodied in S. 2504 introduced by Senator DOLE. This type of financing will provide U.S. exporters the opportunity to negotiate a deferred payment sale and then to borrow money from the CCC in order to finance the sale. For example with this type of financing an exporter could negotiate a sale at a particular price with one-third of the payment due the first year, one-third of the payment due the second year, and one-third of the payment due the third year. Some sales financed in this manner have been made by the Canadians. The availability of this type of financing to American exporters will make them more competitive and more aggressive in negotiating sales with foreign buyers.

The establishment of trade offices to promote the sale of U.S. agricultural products and the upgrading of agricultural attaches to the rank of counselor in order to permit these people better access to high officials in foreign governments were provisions originally embodied in a bill introduced by Senator CLARK. Both of these provisions are positive steps in undertaking a policy of actively promoting the sale of U.S. agricultural exports in foreign countries.

I strongly urge passage of this measure to promote export sales of U.S. agricultural products. This legislation would provide a step toward increasing farm income, reducing the need for Government deficiency payments to farmers, reducing the trade deficit, and strengthening the economy of this country.

I would like to thank all of the con-

ferees, Senators HODGES, ZORINSKY, STONE, CLARK, DOLE, BELLMON, and Representatives MATHIS, FOLEY, POAGE, ZABLOCKI, DE LA GARZA, JONES, WAMPLER, FINDLEY, SEBELIUS, FASCELL, BINGHAM, PEASE, and CAVANAUGH, for their efforts in bringing this legislation to fruition.●

Mr. STONE. Mr. President, I move adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. DURKIN. I move to reconsider the vote by which the conference report was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. DURKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio, by a unanimous-consent agreement, has the floor.

Mr. GLENN. Reserving my right to the floor, I yield to the distinguished majority leader.

Mr. DURKIN. Will the Senator from Ohio yield to me so I can ask the majority leader a question?

Mr. GLENN. I yield, without losing my right to the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized to ask the majority leader a question.

Mr. DURKIN. Mr. President, there is a rumor abroad that the energy tax conference report is going to be brought up tonight. Some of us who have a vital interest in that have not had an opportunity to take a look at it. That is of some concern, inasmuch as it may have a severe impact on the economic vitality of New Hampshire, New England, and the Northeast. I was wondering if that is in the works tonight.

Mr. ROBERT C. BYRD. The distinguished Senator from Louisiana (Mr. LONG) indicated to me earlier that he had hoped it might be possible to call it up tonight. It is a privileged matter and could be called up. Of course, the Senator could be present to discuss it, and ask any questions he wishes. I assure the Senator that if it is called up, I shall see to it that the Senator is on the floor.

Mr. DURKIN. If we do not get a chance to read it, I am afraid we are going to have to ask the clerk to read it.

Mr. DOLE. I might say to the distinguished Senator from New Hampshire that I shall be happy to get him a summary of it right now.

Mr. DURKIN. That is a start.

Mr. METZENBAUM. This Senator from Ohio also has an interest in this matter and would also object unless he had time to study it.

Mr. ROBERT C. BYRD. Mr. President, a conference report can be brought up by unanimous consent. If there is an objection, it can be moved, of course. That motion does—I am so tired, I cannot remember whether that motion is debatable or not. I do not believe it is.

Mr. METZENBAUM. I say to the majority leader that I recognize a conference report is a privileged matter. The majority leader is also aware of the fact that we do have unlimited debate on the Senate floor.

Mr. ROBERT C. BYRD. Oh, I learned that a long time ago. If anybody knows that, I do.

The PRESIDING OFFICER. If the Senators will suspend for a moment, the Chair points out that a motion to proceed to a conference report is not debatable. The conference report itself, of course, is.

Mr. ROBERT C. BYRD. That is right. I had in mind the motion to proceed.

Mr. DURKIN. How many pages is the conference report and how long? They still have to waive the objection to dispense with reading.

The PRESIDING OFFICER. The Chair does not know.

Mr. METZENBAUM. Has the conference report been filed at the desk?

Mr. ROBERT C. BYRD. Mr. President, the conference report is not going to be called up at the moment. I have assured the Senator from New Hampshire and I assure the Senator from Ohio that if the Senator from Louisiana decides to call it up, it is a privileged matter, and he is the manager. I shall notify them so they can be present.

Mr. METZENBAUM. I thank the majority leader.

Mr. DURKIN. I thank the majority leader.

Mr. GLENN. Mr. President, I have no further discussion on this amendment that has been proposed by the Senator from Massachusetts. I believe we have laid out the case here. We can move to a vote. The yeas and nays have been ordered. I see the distinguished Senator from Massachusetts has returned to the floor.

Mr. ROBERT C. BYRD. Is the Senator going to yield the floor?

Mr. GLENN. I should be happy to propose that we go ahead and move the amendment.

Mr. ROBERT C. BYRD. If the Senator yields the floor, I seek recognition.

Mr. STEVENS. I, too, seek recognition.

Mr. BROOKE. Will the Senator yield?

Mr. GLENN. I yield to the Senator from Massachusetts.

THE ALASKA LANDS BILL

Mr. BROOKE. Mr. President, I was pleased yesterday to join my distinguished colleague from Wisconsin in offering an amendment to the Alaska lands bill to substantially increase the amount of land which would be placed under the wilderness designation.

There are many shortcomings in the Alaska lands bill as reported out of the Senate Energy and Natural Resources Committee. The bill evades the obligations of the Senate as set forth under the 1971 Alaska Native Claims Settlement Act (ANCSA), defers to special interests concerned more with resource development and exploitation than with sensible management practices, and, in some instances, abrogates the Federal Government's responsibility to fully manage certain public lands. The bill disrupts the integrity of fragile ecosystems, endangers the welfare of various wildlife populations, and scatters administrative responsibility among sundry Federal agencies. And, it also excludes over 20 million acres of important migratory bird and wildlife habitat from national wildlife refuge protection and downgrades 7 million acres of national parks and monuments to national preserves and national recreation acres which will be open, in varying degrees, to sport hunting and mining.

But perhaps the single most important item which has been jeopardized in the committee bill is the "wilderness" designation. In the 1964 Wilderness Act, the Congress defined wilderness as "an area where the Earth and its community of life are untrammeled by man." We need to retain such areas in Alaska. Under my amendment, 62 million acres would receive the "wilderness" designation. While this level is less than the 82 million acres included under the Alaska lands bill—S. 1500/amendment 2176—I originally cosponsored in the Senate, it is still considerably more than the 35 million acres recommended in the committee-passed bill.

The committee bill is deficient in several respects. No wilderness protection is provided for the critical wildlife habitats of the existing 8.9-million-acre Arctic Wildlife Refuge. And, jurisdiction over the range is divided among the Bureau of Land Management, the State, Forest Service and Fish and Wildlife Service. The 8-million-acre Gates of the Arctic National Park and Wilderness would be divided into two wilderness park fragments, a national preserve and two recreational units open to both mining and road construction. A 1.4 million acre section of the Wrangell-St. Elias park/preserve complex was designated as a "national recreation area" to allow mining.

Mr. President, we cannot allow this proposal to become effective. Additional Federal lands must be placed under the "wilderness" designation. The designation is not a separate land category but, rather, a supplemental management directive from the Congress. In effect, this directive makes plain Congress' view that the land be protected against needless development.

The amendment I am cosponsoring does not prohibit hunting and guiding. It allows limited motorized access for subsistence purposes and for certain other reasons to areas where such access was a fact prior to the establishment of the wilderness area. It provides for the maintenance of existing public-use cabins. And, unlike in other States, it allows compatible fisheries enhancement facilities—except in national park areas. The amendment lives up to the intent of the 1964 Wilderness Act by providing for the continuation of existing human activities, while preserving wilderness values in accordance with sound conservation management standards.

Under the conservation management program, road construction would not take place and recreational and commercial development would be strictly prohibited.

At the present time, only 75,000 acres in Alaska are under the "wilderness" designation. Consequently, there is no comprehensive plan for protecting entire Alaskan ecosystems. By placing new and existing portions of our national parks, wildlife refuges and forests within and expanded wilderness network, we would establish, for the first time, a cohesive program for protecting wildlife and for insuring that representative samples of all ecosystems and landscapes in Alaska would remain undisturbed. Much of Alaska's precious and, in some instances, fragile ecosystem is particularly well-suited for such distinction.

The areas which would be designated as wilderness under my amendment include 8 million acres in the Gates of the Arctic Park, the name assigned to two majestic mountains located up the North Fork of the Koyukyk River—Boreal and Frigid Crags—and an area containing a wide variety of land forms and wildlife, from awesome mountains and clear alpine lakes to Dall sheep and golden eagles; 9.52 million acres in the Wrangell-St. Elias National Park, an essential resting place for birds migrating the length of the Pacific Coast; and 13.1 million acres in the Arctic National Wildlife Range, a large area needed to protect the far-ranging Porcupine caribou herd which travels as far as 800 miles from its southern wintering area and calving grounds to the North Slope, and also to protect arctic terns from Antarctica, whistling swans from the Chesapeake Bay, and golden plovers which fly as far as South America and Hawaii for the winter.

The American people support a comprehensive management program with a "wilderness" designation over a sufficient acreage of land. In an industry poll conducted by the Opinion Research Corporation of Princeton, N.J., only 7 percent of the people interviewed said there was "too much" wilderness and 32 percent said there was "too little" wilderness in the original Alaska Lands bill. And, in response to a survey conducted in Alaska by the Steering Council for Alaska Lands, 61 percent of those interviewed stated "Yes" to the question: "Do you feel certain public lands in Alaska deserve receiving permanent protection as national parks or wildlife refuges even though you may not be able to visit all of them?"

Mr. President, the Alaska lands bill represents the most significant land and wildlife conservation plan ever presented to the American people. We must not foresake our obligation to implement a thorough and ecologically sound plan. And, unless we place sufficient amounts of land under the "wilderness" designation, we will not succeed in accomplishing that goal.

I will fight as hard as I can to pass this amendment when and if the bill passed by the Senate Energy Committee is considered before the full Senate in the remaining legislative sessions of this Congress. I urge my colleagues to join me in passing this important provision.

TO KNOW HIM WAS TO LOVE HIM

Mr. BROOKE. Mr. President, to know him was to love him. And literally hundreds of thousands did.

Herbert Loren Jackson was not only my friend, but also my inspiration. He charted a new course in American politics. He proved that a black person could be elected by a white constituency on the basis of individual merit and potential.

Blessed with a wonderful family, a devoted and truly remarkable wife, Doris, beautiful and talented daughters, Gail and Lee, a fine son who bears his father's name, his grandchildren of whom he was so proud and their father, David Van Allen, with whom he was so very close, Herb, or Herbie as he was affectionately called by his host of friends, was a happy man. He went about his private business with his cherished brother, Louis, and about his public and fraternal business with a song in his heart and in his voice. And he performed great service for, and brought joy and happiness to, others; to the elderly, the disadvantaged, the sick and infirm. He was a good politician and an effective and committed public official, always ready to listen to his constituents and to act in their best interests.

At his funeral, one could not help but think that a very unusual man had left us with a legacy of love. One could not have failed to be moved by the service itself and especially the song, "Everything Must Change," sung beautifully and courageously by his daughter, Gail.

His native city of Malden, which he loved so much and which loved him, was as kind and generous to him in death as it had been in life.

In death, he looked as handsome and as impeccable as he did in life. If Herb had to go he went as he would have wanted.

May the God of us all grant him peace.

Mr. President, I ask unanimous consent that an editorial that appeared in the Malden Evening News entitled, "Jackson's Example Proudly Remembered," and which I am sure was written and influenced by the paper's distinguished editor-in-chief and publisher, David Brickman, and his dear wife, Estelle, who were Herb's close personal friends, be printed in the RECORD following my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

JACKSON'S EXAMPLE PROUDLY REMEMBERED

As a member of the old common council, as a state legislator, as a member and president of the new one-branch city council, and as a citizen whose every fibre bespoke his abiding concern for his community, the name of the late Herbert Loren Jackson, who passed away Wednesday, will stand as a shining monument to his devoted service in the public interest.

As much as he was a credit to his home city of Malden and was honored by its citizens, so was the community itself, by electing him, in turn honored for choosing him for public office. A few decades ago Malden placed Herbert Jackson—husband, father, citizen, public servant, legislator at the State House and leader in the Malden City Council—in the forefront of history by electing him each time he ran for office as the first black in the city ever to be so chosen. And all of this came to pass at a time when hardly few dozen black families made their homes in Malden, the city where Herbert Jackson's own father established his tailoring business, to which the son succeeded, and where the same Herbert Jackson, the grandson of a slave, made his home, raised his family, and carried on countless good works for the people who looked to him for assistance and service, in and out of public office.

The name of Herbert Jackson and the city of Malden were flashed across the land when he was easily elected to his first term as a local public official. The event was cited because he was, in truth, the first of his race so honored by a heavily predominant white constituency. Herbert Jackson never demeaned any office he held, never failed to meet the highest standards of public service, and proved time and again that character and integrity know no limits in terms of color, race or creed.

While he has gone from among us, his achievements and impact on local affairs will live far beyond his mortal term. When he retired from the city council as its president only a few years ago, his colleagues paid him a tribute that will be remembered as long as the new civic center stands. They voted to dedicate the council hall as the Herbert Loren Jackson Council Chamber, and to erect identifying bronze plaques, both at its entrance and inside the area. Plans were going forward to conduct a formal dedication next month, with the honored guest present and appropriate ceremonies arranged. Herbert Jackson unfortunately did not live to see this event occur; but the dedication will take place, nevertheless, in his memory, in the presence of countless admirers and friends, as well as his widow, children and grandchildren.

The people of Malden wrote a proud chapter in their history when they repeatedly elected Herbert Jackson to public office. He bore his responsibilities with humility, good humor and graciousness. Now he is gone from us, and he will be missed. He has left a legacy few could match, and as well taught a lesson in civic awareness and public service others may well emulate.

FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978

The Senate resumed consideration of the bill (H.R. 50).

UP AMENDMENT

Mr. BROOKE. Mr. President, I had hoped that the Senate would vote on this matter tonight. It is a matter that has really been before the Senate for a long period of time. I brought this matter up at the beginning of this Congress, together with my distinguished colleague from Iowa (Mr. CLARK). This matter went to the Committee on Governmental Affairs, where Senator GLENN, Senator RIBICOFF, the chairman, and Senator PERCY, the minority ranking member, did a lot of work on this subject. They worked on it for practically a year and a half, it is my understanding. They spent a lot of their time and their energy in an attempt to work out a mechanism to enable the Senate to live under the rules which the Senate has applied to all other

departments and agencies of the Federal Government, as well as to American business.

Title VII of the Civil Rights Act and the Equal Pay Amendments Act of 1963 applied to just about everyone else, but Congress has exempted itself from these two landmark acts. Mr. President, I cannot understand how we, in good conscience, can hold ourselves apart from the people we serve. How can we make demand upon them that we do not make upon ourselves? How can we say to them that they must employ women and give them equal salaries, employ the handicapped and give them equal salaries, give them promotions like they do others—how can we say to them that they must employ the elderly if, when it comes to us, we say, "Well, we are exempt; we do not have to do that, it does not apply to us. The law applies to you, but it does not apply to us."

In this country we have always believed that the law applies to all or it applies to none.

That is how we govern. We govern by the consent of the governed.

Here we are telling the governed that there are certain standards applicable to them, but different standards applicable to us. This, Mr. President, as I have said, is a regrettable and intolerable situation.

It seems to me that just the reverse should be true, that the Congress of the United States should really be setting the example for the rest of the Nation to follow.

Here we are not only setting the example, we do not even want to follow that which we have established for the rest of the Nation.

I know this is sort of the waning days of this 95th Congress. We have an important piece of legislation on the floor—the Humphrey-Hawkins bill, the bill we have been wrestling with for years.

In the committee on which I served, the Banking, Housing, and Urban Affairs Committee, and in the Human Resources Committee, there has been great deliberation.

It is an important piece of legislation, but is has been watered down and watered down until it is almost now more of a symbol than anything else.

It establishes certain goals for employment in this country. It is almost like motherhood. No one can vote against motherhood. No one should.

Yet, in a time when we take this bill up, and because we have not even been able to get the U.S. Senate to agree to a vote on that bill, we have been literally spinning our wheels and wasting valuable time of the U.S. Senate while we attempt to get agreement on a vote on Humphrey-Hawkins.

So, while we were spinning our wheels, Mr. President, I thought it was appropriate and introduced this amendment, together with my colleagues from Iowa (Mr. CLARK), from Ohio (Mr. GLENN), from Illinois (Mr. PERCY), from Vermont (Mr. LEAHY), and others, and there are many Senators in this body who know that our cause is right and who, if given an opportunity, would vote for this amendment.

This amendment in no way jeopardizes the Humphrey-Hawkins bill. If I had for a moment thought that it would, I would never have called this amendment up at this time.

This amendment stands on its own merits, and it should. In effect, it is a resolution.

Even if the Humphrey-Hawkins bill is passed, and I pray that it shall pass, and would go to conference, as the majority leader will tell us, this amendment would not go to conference with it. This would stay here. It would be a resolution affecting the U.S. Senate only.

(Mr. MOYNIHAN assumed the chair.)

Mr. ROBERT C. BYRD addressed the Chair.

Mr. BROOKE. Yes.

Mr. ROBERT C. BYRD. I am sorry to have to say that is not the case.

Mr. BROOKE. I would like to be corrected.

Mr. ROBERT C. BYRD. All right.

I will, very respectfully, say to the Senator that if his amendment is a part of this Humphrey-Hawkins bill and the Humphrey-Hawkins bill goes to conference, that amendment is a part of the bill that goes to conference and, therefore, the House has a crack at it and, of course, it puts it in the hands of the President to veto it or sign it, even though it would deal only with the Senate, if I did not misunderstand the Senator.

Mr. BROOKE. I do not ever like to disagree with my distinguished majority leader. He is certainly one of the most able, if not the most able parliamentarian in the U.S. Senate.

But while we are discussing that, perhaps I should ask for a rule by the Parliamentarian, because I have been given information to the contrary.

As I understand it, and I point this out, if I might have the majority leader's attention, this title shall be deemed to be a resolution of the Senate and shall take effect upon the date that the Senate agrees to this title, this title shall be cited as the Lee Metcalf Fair Employment Relations Resolution.

Now, that is the language that is contained in the amendment that the Senator from Massachusetts introduced and sent to the table earlier this evening.

It was my intention at the time, and it was my belief, that the Parliamentarian's ruling that, therefore, the amendment, as previously stated and believed that the majority leader agreed to, would not be a part of Humphrey-Hawkins if it did pass and, therefore, have to go to the House and conference and be signed by the President, as the majority leader has so stated.

Mr. ROBERT C. BYRD. Well, Mr. President, if I may——

Mr. GLENN. Reserving my right to the floor.

Mr. ROBERT C. BYRD. That is a very strangely worded amendment. I have not read it. I would like to read the amendment.

Before I can read that amendment, I cannot be too sure as to whether or not what I said was true.

It would be my offhand feeling, however, that if it is an amendment to the bill, it goes to conference.

I would like to read the language thereof before I reach a judgment on that.

The Parliamentarian may be able to advise the Chair at the moment as to the precise status of the amendment if it is adopted, but, even so, I would want to be convinced in my own mind, after researching the precedents and talking with the Parliamentarians, that the Senator from Massachusetts' contention is correct.

I do not challenge that contention at the moment, now that the Senator has stated the contents of his resolution.

Mr. BROOKE. If the Senator will yield, I would just like to say that it is the Senator's opinion that even if Humphrey-Hawkins did not pass, and this amendment passed, this amendment would be the law.

I would just like to cite a precedent, and I think it is a very recent one. It is like the Abourezk amendment on the Senate Indian Committee, which I think we passed recently, and it did not become a part of the bill itself.

But I do not know that we are serving any great purpose by a parliamentary discussion. It is very interesting and enlightening, but it does not go to the heart of the merits of the amendment which I have introduced tonight.

However, I still believe, from the language that I have read to the distinguished majority leader—namely, that this title shall be deemed to be a resolution of the Senate and shall take effect upon the date the Senate agrees to this title—that obviously it would indicate to me that the amendment, if agreed to, would not be subject to a conference with the House of Representatives.

Mr. ROBERT C. BYRD. Mr. President, I have not discussed this with the Chair, but I can say this: If that is the ruling of the Chair, it will be contested, because this would be doing by indirection what cannot be done by direction. The Senate rules cannot be changed without prior notice being given in writing. If this is going to constitute prior notice, then I think all Senators should know it; because if this is the way of changing the rules of the Senate, then we all had better be very careful.

If one can say that to add an amendment to a Senate bill, even though the Senate may not act on the bill, that by action on the amendment, changing the rules of the Senate, the Senate has thereby changed the rules of the Senate and has done by indirection what it cannot do directly, then we had better know about it.

I have to say this: I am not going to the merits of the bill in saying this.

Mr. BROOKE. I understand that.

Mr. ROBERT C. BYRD. If that is the case, Mr. President, we are going to have

the Senate decide that matter on the point of order which I would raise.

Several Senators addressed the Chair.

Mr. GLENN. Mr. President, I have the floor, and I make this inquiry of the majority leader: It seems to me that this is an already-existing Senate rule, and we were given the task of implementing that rule. We are not passing a new Senate rule with this amendment. The Governmental Affairs Committee was given the task of fleshing this out, of coming back with a procedure to carry out that rule. It had been our impression that this would be implemented whether Humphrey-Hawkins carried or not.

Mr. President, a parliamentary inquiry——

The PRESIDING OFFICER. The Senator will state it.

Mr. GLENN. The inquiry is whether Senate Resolution 431, if adopted in the present parliamentary situation, would in fact be binding on the Senate, or would it go down if Humphrey-Hawkins went to conference and it was stripped off in conference? That is the basic question.

Mr. ABOUREZK. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Parliamentarian informs the Chair that, in the final analysis, the question the Senator from Ohio raises is one which must be decided by the Senate; but the language of the resolution is such that it would take effect immediately upon the date that the Senate agrees to this title.

Mr. BROOKE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BROOKE. Is this not the implementation of the rule rather than the change of a rule?

The PRESIDING OFFICER. The Senator is correct.

Mr. BROOKE. A further inquiry, Mr. President: Is there not recent precedent in the Abourezk amendment, the Indian matter, which was agreed to recently—I think last week? Is this amendment the same parliamentary situation that applied then?

The PRESIDING OFFICER. The Senator is correct. There was an amendment to the Export-Import Bank Act which extended the life of the Select Committee on Indian Affairs, and this is exactly the same matter.

Mr. ROBERT C. BYRD. Mr. President, I do not agree with that—1,000 percent. That bill passed the Senate, did it not?

The PRESIDING OFFICER. The Senator——

Mr. ROBERT C. BYRD. The bill is still on the calendar.

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I voted to table that amendment, so I am on sound ground. I saw the problems that were going to be created in offering an amendment that dealt with the Senate rules, which should be done by Senate resolution, or by concurrent resolution if the rules of the two Houses are being changed, rather than attaching it to a bill. I voted to table that.

Not only will I vote to table this, but also I will move to table this, if it has to be done. I am not talking about the merits of this amendment. My argument does not go against the merits of the amendment. But I am just against this business of changing the Senate rules by implementing them, or whatever, by offering what should be done in a vehicle that does that, rather than offering it to a bill or resolution to which it is not germane.

I must say that if that is going to be the ruling of the Chair, Mr. President, I am going to oppose this amendment in every way I know. I am sorry to say that to the Senator. I regret to say that.

Mr. BROOKE. Mr. President, I would hope that the because the Chair has ruled——

The PRESIDING OFFICER. Will the Senator from Massachusetts allow the Chair to make a statement?

Mr. BROOKE. Yes.

The PRESIDING OFFICER. The Chair has not ruled. The Chair merely has stated what the Chair's understanding is of what the Senate has done.

Mr. BROOKE. That is understood.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. If I have been careless in saying the Chair ruled that, I am sorry. But if that becomes the ruling of the Chair at any point, I am going to oppose that ruling. I must say that this is not the way to go about establishing the goal that the Senator seeks to establish. It opens up a can of worms.

Mr. ABOUREZK. Mr. President, will the Senator yield?

Mr. CLARK. Mr. President, will the Senator yield?

Mr. GLENN. I yield to the Senator from South Dakota.

Mr. ABOUREZK. I only want to say this about the rule change matter: If the rule itself, offered as an amendment, says that it shall take effect upon agreement by the Senate, and if the Senate agrees to it, I do not know what is left.

The second point I want to make is that the distinguished majority leader is now standing on his feet, objecting to a rule change by majority vote of the Senate, rather than a two-thirds vote of the Senate. It is the very same point I tried to make to the majority leader last year, during the so-called natural gas filibuster; and I have tried to make the point a time or two since then: that every time the majority leader, the leadership, wanted to shut off debate and they could not shut it off under the rules, they would appeal the ruling of the Chair or get the Chair to make some sort of ruling, and then win it on majority vote, by appeal and, therefore, change the rules of the Senate by a simple majority vote—the very thing the majority leader is denouncing at this point.

I think it would behoove the Senate to be consistent in this matter, one way or the other. Either we are going to change the rules by two-thirds vote, as is required under the rules, or we are going to do it by majority vote each and every time.

I do not know how the majority leader stands on this discrimination amendment. I am for it; I am a cosponsor. I think it is time that we had some kind of implementing mechanism to implement antidiscrimination rules in the Senate. It is long overdue.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ABOUREZK. I am not finished yet.

It is long overdue. Whether or not the majority leader supports it, I think the Senate is entitled to an up and down vote on the antidiscrimination measure.

The Senator talked about the Indian committee extension. We had to do it by amendment on that—I preferred not to—but we could not get the bill called up on the Calendar. We could not get it called up. I do not have the power to call it up. I have the power, as a Senator, as Senator GLENN does, to call up an amendment. If we do not have that, we are absolutely shut out, and there is no way we are going to get it done.

So I appeal to the distinguished majority leader, as an eminently fair man, to allow a vote on this as a separate matter, if nothing else, rather than try to beat it down with a procedural motion.

I know that if the leader gets up and says it is a leadership motion to table, it probably will carry. I think a lot of Members are looking for an excuse to vote against it, anyhow, and that would give them a doubly good excuse.

I appeal to the fairness of the majority leader: Let us not tamper with the rules situation. Let us vote on it up and down.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. ABOUREZK. I think it will be fair.

Mr. ROBERT C. BYRD. Mr. President, will the Senator allow me to respond?

Mr. GLENN. Mr. President, reserving the right to the floor, I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, the Senator from South Dakota has a point. He has a separate resolution on the Calendar that would extend the life of the Indian Affairs Committee. The proper way to go about acting on that is for that resolution to be called up. The Senator has talked to me about calling up that resolution and I indicated to him that there were several Senators who had holds on the resolution.

The Senator offered his amendment to the Export-Import Bank. I never said a word, I never said a word, although I was opposed to approaching it in that way, because I felt the Senator had wanted his resolution up and I felt that he should have a vote on it. I voted to table it, but I never said a word, never opposed it for the reason that if I had thought for a moment that a majority vote on that amendment itself was self-executing, then I would have had to oppose it.

I never dreamed that a majority vote of the Senate on an amendment which changes the rules of the Senate offered to a bill would ipso facto if adopted constitute the Senate rules change regard-

less of what happened to that bill, and that bill is right on the Calendar at this moment.

Now I am told that by majority vote of the Senate that amendment was adopted even though the bill may never again see the light of day, and I am not saying it will not see the light of day. But I would have opposed the amendment had I known that.

Let me tell Senators what kind of can of worms this opens.

If I may have the attention of the Senate, Mr. President, if I may have the attention of all Senators.

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. May I have the attention at the desk also?

The PRESIDING OFFICER. Will Senators take their seats or retire from the Chamber?

Mr. ROBERT C. BYRD. Let me point out to Senators what this will do. Lend me your ears.

If this is the case, any time we get a unanimous-consent agreement on a bill if we do not also include in that unanimous-consent agreement that nongermane amendments will not be in order, watch out because if this is going to stand, let me say to Senators on the minority side there are some rules I want changed, and if this is going to be upheld by the Senate, we are going to get some rules changed and it will be by majority vote, because the first time next—maybe even this year, the first time that we get a time agreement—I do not guess we will get one now that I am telling Senators what is going to happen—the first time we get a time agreement on a bill and it is not in the usual form and no nongermane amendments are excluded, I will simply offer an amendment to that bill.

Let us say we have a bill up here and we have a 30-minute time limitation, 10 minutes on any amendment, and no one says a word about nongermane amendments. All right. I will just put in a self-executing amendment that will change the rules and in 10 minutes by majority vote this Senate will have changed the rules and, by golly, we will have cloture by majority vote and something else. We will provide that a motion to proceed is not debatable. That is a motion I have been wanting to see around here a long time. I want to be able to move to proceed to take up a bill or a resolution. And I do not want that motion to be debatable. I do not like this 3-day rule being invoked on me all the time.

So it will be a very simple matter, I say to Senators. I sort of like this. By the way, I am beginning to like this the more I listen to it.

Mr. BROOKE. Is the majority leader going to vote for it?

Mr. ROBERT C. BYRD. The more I listen to this procedure, the more I like it.

Mr. DURKIN. Is it amendable?

Mr. ROBERT C. BYRD. All I needed to do is get a time agreement, Mr. President, that lets nongermane amendments come in. I can offer a nongermane amendment, make it self-executing and change the rules of the Senate by majority vote. Whether the bill dies, whether the bill goes back on the calendar, no matter what happens to the bill, the rules have been changed. Now that is what Senators are doing. That is what is going to happen if we allow this procedure.

Mr. SCHMITT. Mr. President, will the Senator yield?

Mr. ABOUREZK. Mr. President, will the Senator from Ohio yield?

Mr. GLENN. Mr. President, I wish to make a comment. The ground rules we thought we were playing under here, after having talked to the Parliamentarian, were that this was not a change of the Senate rules. The Senate rule has already been changed, and what we were doing here, what the Senator from Massachusetts proposed, was really carrying out what we had been directed to carry out. We bring back to the Senate only an implementation of a prior rule change which would in itself require only a majority vote. It would not be a formal rule change. The rule change has already been made.

Mr. SCHMITT. Mr. President, will the Senator yield on that point?

Mr. GLENN. The Parliamentarian indicated that was also his interpretation of this. It was not the rule change which the majority leader points out. I would agree with him in that, if this were a rule change. We do not want to change the rules of the Senate frivolously or with little debate or consideration.

None of us who are proponents of this were proposing to do that.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. GLENN. But we were laboring under the impression that the Parliamentarian's ruling was that this is an implementation of the requirement under the previous rule change which the Governmental Affairs Committee was given to carry out. We were told that Senate approval would, in fact, require a majority vote, and the amendment would be detachable from Humphrey-Hawkins if it went to conference. We would be implementing the Ethics Code which we were given the task of implementing for the Senate and which we have tried faithfully to execute.

I do not know whether there is a difference here or not, but that was the impression we had from the Parliamentarian and that is the rule we have been operating under.

Reserving my right to the floor, I yield to the distinguished Senator from Massachusetts.

Mr. BROOKE. Mr. President, I just want to say as strongly as I can that what the Senator from Ohio has said is gospel truth. We had no intention of changing the Senate rules. This language that we are discussing was drawn by legislative counsel. He checked this out with the Parliamentarian. The Parliamentarian has already given what his opinion was. I do not think the Parliamentarian saw this as a change in the Senate rules. I think it was only an implementation of the rules. So it was not a matter of trying to change the rules or to take advantage of any parliamentary weakness or any opening that we saw to jump in at all.

We thought all we were doing was bringing up an amendment, which, in effect, was a resolution, to the Humphrey-Hawkins bill, and we had every reason to believe that if this were passed by the Senate, that would take effect immediately and that it would not bog down Humphrey-Hawkins if we had to go to conference.

So obviously we were not trying to impede Humphrey-Hawkins or anything that the majority leader has been doing in all good faith today in an attempt to work out some agreement.

If ever I had believed that by bringing up this amendment that would have caused the majority leader problems in working out an agreement, which he has been working on very diligently all day and with others, my own Senator HATCH here, and others, I would not have brought the amendment up at this time. But as Senators know we have been spinning our wheels. At the time I brought it up, we were having recess after recess. I thought it was an appropriate time before the Senate went home to pass this amendment, this resolution, which would put us in a position we should have been in a long time ago.

And those are the merits and I do not want to get back on that, and I am sorry we really got off on this whole parliamentary procedure, but as the majority leader said in the beginning, he liked it, I had hoped he was beginning to like the amendment better than the procedural debate.

Mr. ABOUREZK. Mr. President, will the Senator yield?

Mr. GLENN. I have the floor. I yield to the Senator from South Dakota.

Mr. ABOUREZK. For one brief comment.

Mr. ROBERT C. BYRD. Yes.

Mr. ABOUREZK. I believe, I say to the majority leader, that I am in error. I want to admit it. I want to verify whether I am in error first. I want to ask a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ABOUREZK. What percentage of the Senate is required to change the Senate rules? What kind of a majority?

The PRESIDING OFFICER (Mr. MOYNIHAN). Without consulting the Parliamentarian the Presiding Officer would say a majority.

Mr. ABOUREZK. A simple majority; well, I am in error, Mr. Leader.

So, even if this were a rule change, and I am advised it is not, we would still be within the Senate rules in voting by a majority vote.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me again?

Mr. GLENN. Reserving my right to the floor, I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Massachusetts, of course, has sought in the utmost good faith to accomplish an objective here to which he is very dedicated. He has not sought to impede the Humphrey-Hawinks bill by any means. I have

never implied to the Senator that I am against his amendment on its merits.

But, Mr. President, this approach is a real can of worms.

Let me elaborate further: They say this is just an implementation of a rule. The amendment that the distinguished Senator from South Dakota offered the other day was a rules change, and I had no idea that we were going to be told, although the Chair has not ruled—I have not discussed this with the Parliamentarian—I had no idea, or I would not have slept a wink between that time and this, if I had known that. I would have taken the floor and urged the Senate to table that amendment; but I did not say a word, for the reason that I have already stated.

Now I find that we may have had offered an amendment which they say is only the implementation of a rule, but does not change the rule.

That is not the point. If this can be done to implement a rule, a rules change can be brought about in the same way; and I am told that a rules change was brought about the same way the other day, simply by offering an amendment to a bill—an amendment that is not germane to the bill—and that if that amendment is adopted, ipso facto, depending on the way it is written, ipso facto that amendment, if so written, upon being adopted by a majority of the Senate, ipso facto changes the rules, no matter what happens to the bill.

In that case, the Export-Import bill has not been passed; it is still on the calendar, but the amendment that was offered to it changing the Senate rules—does it not change the Senate rules? It extends the life of a committee, the life of which had expired. It is saying that committee is going to be in existence next year.

That is a change in rules, in my book. And by offering that amendment—I did not read the amendment—if it can be so written that the amendment is automatically given life by a majority of the Senate, even though the vehicle to which it is attached dies, then we have found a new way to change the rules, and believe you me, here is one Senator that is going to take advantage of that, and some Senators will rue the day, because it is not going to work to their advantage.

Mr. BROOKE. Will the Senator yield?

Mr. ROBERT C. BYRD. If I may just continue, let me say something else.

To invoke cloture on a rules change requires two-thirds of the Senate—not 60 votes, not three-fifths, but two-thirds of the Senate.

Let me tell you something else: A motion can be made during the morning hour, after morning business is closed, and before the morning hour expires, or after the first hour expires; if morning business is closed before the end of the first hour, a motion can be made to proceed to any bill on the calendar, and that motion is not debatable. But not so with a rules change. That motion, if made during the morning hour, to change the rules, is debatable.

After all of that, to say how this Senate has sought to protect its rule against changes—it has girded about the rules a chain that is not so easily broken, and I am saying to Senators: Stop, look, and listen before you proceed to vote this amendment up.

I do not argue with the distinguished Senator who says it is for the implementation of a rule. It is self-executing, no matter what happens to Humphrey-Hawkins. Self-executing, once the Senate adopts it by majority vote; am I correct on that?

Mr. BROOKE. Correct.

Mr. ROBERT C. BYRD. If we can do that in implementation, we can do it on a change in the rules, and I do not want to do it that way.

So for that reason I have to oppose the amendment.

Mr. BROOKE. Will the Senator yield?

Mr. ROBERT C. BYRD. And I am sorry I have to do it.

Mr. BROOKE. Just on that point, will the Senator yield?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair reminds Senators that the Senator from Ohio has the floor.

Mr. GLENN. Mr. President, reserving my right to the floor, I yield first to the Senator from Iowa and then to the Senator from Illinois.

Mr. BROOKE. Mr. President, may I point out just one point? This is internal Senate business.

Mr. ROBERT C. BYRD. Yes.

Mr. BROOKE. The amendment itself is internal Senate business, and so it effects a change in the Senate rules. It has no outside effect at all.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. GLENN. Reserving my right to the floor, I yield first to the Senator from Iowa and then to the Senator from Illinois.

Mr. CLARK. Mr. President, having been involved in this rules controversy for about a year and a half, I would like to give about 3 minutes of background information, and then a suggestion as to how this can be resolved.

First of all, let us remember that the Senate, in the Code of Ethics, passed rule L. At that time we tried to get this implementation procedure put in the Code of Ethics.

At that time we were told, no, that is not the place to put it, that we ought to do this more systematically, and not in such a hurried fashion, and refer it to the Governmental Affairs Committee.

After considering the matter, we agreed to do that. That was with the reservation that it would come back before the Senate on a date definite, and the Governmental Affairs Committee took its responsibility seriously; we held hearings, as far as I remember we never had one Member of the U.S. Senate come before that committee and make the slightest objection, and when the Governmental Affairs Committee reported, it was determined it had to be referred to the Human Resources Committee.

It was referred there, and reported back without recommendation to the floor.

That was May 11. Five months ago, this particular resolution was reported to the Senate floor. Why has it not come up in 5 months? If that is the proper procedure for it to come up, why has it not come up?

Mr. BROOKE. And it was unanimously passed by that committee. Unanimously.

Mr. CLARK. That is correct. Now, I say this. If it cannot come up in 5 months, how are we to bring it up by some proper procedure?

I make this suggestion, if the majority leader will give me his attention. If the majority leader will give me his attention, I make this suggestion: Since we have waited 5 months—it has been on the calendar for 5 months—why do we not get a unanimous-consent agreement on a time limitation right now to vote either tonight or tomorrow, and we will take it up by the appropriate procedure? That is all we have been trying to do for 5 months, to take it up as a separate resolution under normal procedures, and get an up or down vote. If the Members of the Senate do not want this resolution, vote it down.

Why can we not resolve this matter of procedure by simply getting a time agreement to vote on it at a time certain and we will withdraw the amendment? I do not know whether I can speak for the Senator from Massachusetts, but I assume I can.

Mr. BROOKE. The Senator certainly can. The Senator is very correct. I would be very agreeable to that. If we can get a time agreement to bring it up for an up or down vote, that is all we want. We want no more than that. But we have been waiting, and here the Congress is about to adjourn on Saturday.

We had a unanimous vote in the committee. There has been a lot of work on the thing. Nobody ever objected to it. Here we are about to adjourn without addressing it. If the majority leader can give us a way, I think the Senator from Iowa has recommended a reasonable and proper manner in which we can get this matter before the Senate for an up or down vote. That is all we ask. We ask for no more but we want no less.

Mr. ROBERT C. BYRD. Does the Senator want me to respond?

Mr. CLARK. I do.

Mr. ROBERT C. BYRD. Mr. President, I, ROBERT C. BYRD, am willing to vote right now on the Senate resolution, up or down, but I am only one Senator. We have before the Senate the Humphrey-Hawkins bill. I have been advised by the Parliamentarian that the amendment by Mr. ABOUREZK would not constitute a change in the Senate rule. I had not read it until now.

What I am saying is that the same argument I made is still 100 percent on course, that if this can be done, any Senator here can concoct the kind of language that is self-executing, which will change the rules, and offer it to a bill on which there is a unanimous-consent agreement limiting time on the bill and

on amendments, but with no provision against nongermane amendments, and if the Senate, by a majority vote, adopts that amendment, if it is so worded as to become self-executing, the Senate will have changed the rules by a majority vote.

Many of us often walk in here and vote on an amendment not having read that amendment. Even though the Abourezk amendment was not a change in the Senate rules, I just want to alert Senators that if this proposal carries, I think all of us had better be more watchful in the future as to amendments that may change the Senate rules. This will be a way in which the Senate can change its rules by a majority vote.

Mr. CLARK. It was not my suggestion that we continue to vote on this. It is my suggestion that we get a time agreement now to vote on it later tonight or tomorrow and we will withdraw the amendment and go by the regular procedure.

Mr. ROBERT C. BYRD. Mr. President, we are going to go by the regular procedure. We are going by the regular procedure. When the Humphrey-Hawkins bill is disposed of if I can get a time limitation on this resolution, I will do it.

Mr. CLARK. Can we get a time agreement right now?

Mr. ROBERT C. BYRD. I do not propose to get one right now. I will be glad to discuss it with the Senator and with the Senator from Massachusetts and try to work out an agreement.

Mr. CLARK. We have been trying to discuss it since May 11 and have not been able to vote on it.

Mr. ROBERT C. BYRD. And a lot of others have been on the calendar and they will die on the calendar. We discussed the Panama Canal treaties for 8 weeks and labor reform for 4 weeks. That was 3 months out of the year. We hope to be out for 3 months before we come back. We cannot call up everything. There have been holds on this resolution. I have tried to honor holds as long as I could, not only on this measure but on others. That is not an unusual thing, for the majority leader to honor holds. I cannot do it from here on out, because we only have 3 days after today. I will not be able to honor holds. The Senator knows that, that if he has a hold on a bill I will try to honor that hold for a reasonable length of time.

There are so many other things that have cried out for action in this Congress we just could not do everything. Besides, we have rule 50 which is a rule of the Senate against discrimination, and that rule can be enforced. The complaint procedures are there for everybody who wants to take a matter to the Ethics Committee involving discrimination. We have rule 50. What I am saying is that the Senate has——

Mr. CLARK. I was not aware that any Senator had a hold. I am interested in knowing that. We never had one word of objection to this bill in the committee, from the floor, or from any other point. I was not aware of it.

Mr. ROBERT C. BYRD. The reason the Senator has not heard objection is that the Senators who favor this amendment have been holding the floor. But I happen to know that there are Senators ready to take the floor to speak their piece on this amendment. I am simply talking about the procedures, not the merits. I am saying also that we have rule 50 which prohibits discrimination on the basis of sex, race, color, age, or physical handicap, or whatever.

We also have procedures for applying to the Ethics Committee, for making complaints to the Ethics Committee.

The Senate can censure Members for violating the rules. It can exclude Members from membership in the Senate for violating the rules if it wants to, but it has to do it by a two-thirds vote.

What I am saying is we have something now and we have had so many issues that have been crying out for attention—the Department of Education, energy legislation, civil service reform, ERA, District of Columbia representation, economic stimulus, the National Emergency Energy Act. You name it; we have had it. We cannot call up everything.

It is not because I am against the resolution, but it is for the reasons I have stated. I am not afraid of that resolution. But I do feel I have a responsibility to try to uphold the procedures around here, and this procedure gives me some concern.

There is nobody who is wanting to change some rules around here I suppose as badly as I am, because I have been victimized by a few rules here. They have been utilized properly for the most part but in some cases I think have been abused.

I am just warning the Senate that if we proceed in this way we can change the rules by a majority vote, and we can change them in 10 minutes. We do not have to give advance notice in writing, no advance notice in writing. We can just change them in 10 minutes, and in 10 minutes we can change them back again. I thank the Senator.

Mr. GLENN. Before I yield to the distinguished Senator from Illinois, as I promised to do, I would agree with Senator CLARK in his frustrations on this, because we on the Governmental Affairs Committee did not ask for this job.

Mr. ROBERT C. BYRD. That is right.

Mr. GLENN. We know the feelings that run rampant in this Senate any time you bring up something that involves civil rights, discrimination, or anything like that. We know they are heartfelt, they are not going to be erased overnight. I am not making any charges at anybody, but we were given this job to do and we, by heaven, took it on. We had witness after witness after witness and we tried to do the very best we knew how to do in this regard. We have now come back. We had it back on the Senate Calendar within the 180-day time limit within which the Senate mandated us to come in.

We did our best and now we cannot get the Senate to say, "You did a good job," "a lousy job," "a cotton pickin' poor job." We do not know what we did. We cannot get it considered, because of a lot of rules and stuff we have not been able to overcome. To say this will go on the list with everything else, when we were given a mandate to come back in 180 days, I say if this goes over to a new Congress, for heaven's sake do not give it back to us again. Give it to somebody else, but do not give it to us, because we labored long on this and did our level best. Now we cannot even get anybody to say yes or no.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. GLENN. I yield to the Senator from Illinois.

Mr. ROBERT C. BYRD. Will the Senator from Illinois yield?

Mr. STEVENSON. I yield.

Mr. ROBERT C. BYRD. What the Senator from Ohio says is true. The committee was mandated to do what he said, and it was a labor of love. The Senator and other Senators have done their work, they have done it well, they did what they were mandated to do.

Mr. GLENN. Now we are castigated for having done it.

Mr. ROBERT C. BYRD. No, I am not castigating the Senator from Ohio or any Senator. I am just troubled by this approach. And I do not castigate the Senator from Massachusetts. But I have suddenly become alert to what the Senator is trying to do about using this procedure. I do not complain about the merits of the resolution.

Mr. RIBICOFF. Mr. President——

Mr. STEVENSON. Will the Senator yield?

Mr. GLENN. Reserving my right to the floor——

Mr. HOLLINGS. I object, Mr. President, to his reserving the right. I have been here for an hour and a half listening to that. We have been beleaguered by that side. No one says a word against him.

Just do not reserve the right and be the Presiding Officer.

Mr. GLENN. Let me say to the Senator from South Carolina that earlier this evening, the distinguished majority leader asked me to maintain the floor here. I told him I would. I continued on with that. I have no right to the floor now unless he wishes me to maintain it. I am glad to give that up.

Mr. STEVENSON. Mr. President, who does have the floor?

Mr. GLENN. I reserve my right to the floor until I fulfill my commitments to these two Senators.

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. The Chair wishes to state that objection having been heard, the Senator from Ohio must either address the subject before the Senate or yield the floor.

Mr. GLENN. I reserve my right to the floor and yield first——

Mr. HOLLINGS. I object.

Mr. GLENN. Let me finish. I yield for a question to my distinguished chairman.

Mr. STEVENSON. The Senator from Ohio had already yielded to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Ohio is in order in yielding for a question.

Mr. RIBICOFF. Let me say to the distinguished Senator from Ohio, is it not true that the Governmental Affairs Committee has had a very busy, constructive, and successful year?

Mr. GLENN. It certainly is.

Mr. RIBICOFF. And it is not true that whenever there is a tough problem to be solved which no one wants to handle, the Governmental Affairs Committee will take it up?

Mr. GLENN. It is certainly true.

Mr. RIBICOFF. Is it not true that when the majority leader has asked us to take one on, we have taken it on?

Mr. GLENN. That is true.

Mr. RIBICOFF. Is it not true that this task was given to the Senator from Ohio?

Mr. GLENN. That is certainly true.

Mr. RIBICOFF. Not because he wanted it, but because the chairman of the committee asked the Senator from Ohio to handle it?

Mr. GLENN. That is true.

Mr. RIBICOFF. And the Senator from Ohio has had extensive hearings on this particular proposition.

Mr. GLENN. That is true.

Mr. RIBICOFF. Is it not true that the entire committee, in markup, worked hour after hour to try to get a fair rule to protect the rights of the Senate, completely aware of the unique position of a U.S. Senator in trying to fulfill the office that he holds?

Mr. GLENN. That is correct.

Mr. RIBICOFF. As a result, we were able to work out a committee bill, reported unanimously, from the committee?

Mr. GLENN. That is correct.

Mr. RIBICOFF. Is it not true that if the Senate keeps treating the work that the committee has done this way, that from now on, we may ask the majority leader to give these tough chestnuts to some other committee to be treated the same way?

Mr. GLENN. I would certainly agree with that last question.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield for a question?

Mr. GLENN. Reserving the right to the floor, I yield for a question.

Mr. ROBERT C. BYRD. I took advantage of the Senator from Illinois a moment ago. Will the Senator from Ohio yield to the Senator from Illinois for a question?

Mr. GLENN. I yield to the Senator from Illinois for a question.

Mr. STEVENSON. Mr. President, I thank the Senator for yielding and the Senate for sharing all its frustrations with the Senate Ethics Committee. I also extend my condolences to the Senator from Connecticut, who serves not only as chairman of the Governmental Affairs Committee, but also on the Ethics Committee. He gets it both ways.

Mr. President, I ask unanimous consent that I may be permitted just 2 minutes without answering a question to lay before the Senate some facts.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Illinois.

Mr. STEVENSON. I thank the distinguished majority leader.

Mr. President, as the majority leader has said, to suggest that any Senator could offer a change of rules and have it adopted by a majority on any bill that came before the Senate would be an extremely dangerous precedent, one that could undermine the very processes and procedures by which the Senate operates. That is one issue.

The other issue is the resolution reported by the Committee on Governmental Affairs. The Senate, contrary to public impressions and perhaps some impressions within this body, has already, as the majority leader mentioned, under rule L of the Code of Conduct, adopted an unequivocal prohibition against any kind of discrimination in any kind of employment practice. The only issue in the amendment offered by the Senator from Massachusetts, which is the Glenn resolution reported by the Governmental Affairs Committee, is a procedural issue. It is a question of how to implement a prohibition which is already in the rules of the U.S. Senate and will take effect on January 3 of next year.

We are arguing about very little, because there are procedures established in the code of conduct already. Those procedures, as the Senators realize, and I believe and hope the public realizes now, lead to a process which guarantees its integrity.

The same procedures would apply with respect to any complaints of discrimination that arise in the future under rule L. The Ethics Committee, without additional resolutions, and I am not opposing a resolution, could establish, just as this resolution suggests, procedures for conciliation and mediation. Failing those procedures, it would, under existing procedures, have to follow the initial review, the investigation, and the further procedures that are contemplated and required in those rules. As I believe the Senators know, those procedures routinely lead, when conciliation, moderation, mediation, and so on, have failed, to the initial review, and then appointment of outside counsel—independent counsel, every bit as independent as the board that would be created by this resolution.

This board would be followed by an appellate review in the Ethics Committee. Under the procedures already in the rules and that would be supplemented by the Ethics Committee without this resolution, we would have substantially the same procedure—mediation, conciliation, initial review, counsel outside of committee, and then, in effect, an appeal to the Ethics Committee. So, try as I can—and the staff of the Ethics Committee has been working on this, the members have been considering it—I believe my distinguished vice chairman would agree, there is very little difference in what is being put before the Senate today and what it already has. The main difference and the main objection that I have heard to the Glenn resolution is that it would require a new agency of the Senate—not a committee—but a board, an EEOC for the Senate, and without any experience to indicate whether or not we need it.

With the procedure now that, I believe, is capable of accommodating whatever complains rule L would give rise to, the Ethics Committee might have to add a little staff, but it already has the overhead, has the physical facilities. This responsibility on the Ethics Committee would not require a new office.

Mr. President, I hasten to add on behalf of myself and, I believe, on behalf of all the members of the Ethics Committee, that we are not volunteering for any more frustrations. We have more than enough frustrations already. What I am suggesting is that, contrary to some public impressions, we are really not debating much one way or the other. There are going to be procedures in place for the enforcement of the same prohibition, no matter what the Senate does on the Glenn resolution.

I think, Mr. President, that in these circumstances and without much to debate, because it is just one procedure or another procedure and little difference that I can detect, it should not take very long on an up-or-down vote to resolve this issue. Then we could avoid establishing what could be an extremely dangerous precedent; namely, amending rules on bills before the Senate, so I think the Senator from Iowa makes a suggestion that all Members ought to seriously consider.

The majority leader and all Senators should recognize that there is not much at stake here, and, that being so, not delay action on Humphrey-Hawkins, a result that would be ironic and paradoxical. So, Senators should consider a time agreement, act one way or another on the Glenn resolution and, hopefully, without impairing or preventing action on Humphrey-Hawkins.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. I have the floor.

The PRESIDING OFFICER (Mr. HODGES). The Senator from West Virginia has the floor.

Mr. BROOKE. Will the Senator let me answer the question?

Mr. ROBERT C. BYRD. I yield for that purpose, Mr. President, retaining my right to the floor. I do not intend to hold the floor long.

Mr. BROOKE. I agree with all the distinguished Senator—if I may have his attention.

I agree with what the distinguished Senator from Illinois has said. But I would also want to point out and ask him, under the resolution, as I understand it, that came from the Governmental Operations Committee, there is more than just enforcement procedure. There is informal procedure to assist and aid and improve the hiring of the handicapped, minorities, the elderly, and women in the U.S. Senate.

Does the Ethics Committee have that kind of mechanism in place? Because the resolution itself goes beyond just the enforcement powers.

I can see maybe the Ethics Committee

would have the enforcement power, but I can see it, as an appellate board, which it is under this resolution, but the appellate board, is one thing. But to actually go out and try to act as a counsel, and all that, that is implied in this resolution, is more than I think is established in the Ethics Committee, nor do I think the Ethics Committee wants to do that, nor should it.

Mr. STEVENSON. Mr. President, if I may respond——

Mr. ROBERT C. BYRD. I yield for that purpose, Mr. President. I yield for that purpose.

Mr. STEVENSON. I thank the Senator for yielding.

No, of course, the Ethics Committee does not have any such capacity now because rule 50 has not come into effect. But the rules do require the Ethics Committee to implement the code of conduct. So just as soon as rule 50 does come into effect in January, the Ethics Committee would not have a choice. Even without that mandate in the rules, I believe it would have the authority and, in fact, is planning for it now, to implement the conciliation, the mediation procedures, acquire the necessary resources which the Senator is suggesting, but without taking on all the overhead, that permanent structure, the office space, and so on, that this resolution seems to require.

I am not opposing the amendment, but the Ethics Committee could, and I believe with the adoption of rule L and without the adoption of the amendment, would be required to do basically what the Senator is suggesting in his amendment.

The Ethics Committee is here to serve the Senate. It will do whatever the Senate requires of it, to the best of its ability.

I believe the rule already in effect as of January 3, would require us to do what the Senator is suggesting be done in the amendment, and we are planning to do that.

Mr. SCHMITT. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. SCHMITT. Not for a question, but for support of my distinguished colleague from Illinois, the chairman of the Ethics Committee.

As the vice chairman, the Senator from New Mexico concurs in, I think, all aspects except possibly one of what the Senator from Illinois has said.

There is no question that on January 1 a rule goes into effect which would require us to do almost everything that this resolution would do, although I must say I think I am sympathetic to the mechanism of the resolution far more than burdening, an additional burden on the Ethics Committee, additional staff, and other problems we faced in many different types of issues in the last 2 years.

I would, though, be concerned, as the very distinguished majority leader is, about whether or not this is a rule change.

I realize the original code of conduct resolution, Senate Resolution 110, required the Governmental Affairs Committee to provide implementation procedures, and that is the language, I believe, of the rule.

However, if what we have talked about here is merely implementation, this Senator, for one, is very concerned, because by putting that kind of language in a previous rule change, we then have provided for rule changes much in the same way that the Senator is concerned.

So I hope that the distinguished majority leader does not yet admit to the fact that we may not be dealing with a rule change.

Let me say once again that I am sympathetic to the amendment. I hope we can get some kind of agreement to vote up or down on it. But I am also tremendously concerned about the picture the majority leader has painted of what may happen if we do allow a rule change in this way.

When we establish a new agency of the Senate under the guise of implementation of a rule, then I think we are changing the rules, whatever implementation may mean. We are doing by indirection what we generally say we cannot do by direction, as the Senator has already said.

So I hope the Senate will consider this very carefully before it acts. I will support the majority leader on this wholeheartedly because I think it would be the wrong way to change the rules. He and I will probably disagree on what rules should be changed, but I think we better follow long-established procedures of the Senate to do that.

At the same time, I think we have to realize that we have mandated ourselves to take on this matter of discrimination head on and do something about it and stop the procedures by which that is done in the fairest, most efficient, most equitable manner possible.

If nothing is done, I assure the Senator as long as I am associated with the Ethics Committee, rule L, will be implemented.

However, I think that the procedure outlined by the distinguished Senator from Massachusetts, as coming from the distinguished Senator from Ohio (Mr. GLENN), is probably a much superior procedure than what we would do under the existing rules and procedures and regulations of the Ethics Committee.

I commend the Senator for bringing it up at this time. However, I am tremendously concerned about the precedents the majority leader mentioned in handling it the way it has been proposed.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virignia.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator.

I will be very brief and then I will be finished.

Mr. President, it can be argued that, at the beginning of a new Congress, the majority of the Senate can change the Senate rules, or can adopt new rules, and can do so without adhering to the old rules.

I have always taken a position against that viewpoint. I am not so sure that I will continue to take that position against that viewpoint.

But I see far more than that here. Far more than the matter of the majority of the Senate voting to change the rules.

Whether or not the Senator's amendment constitutes a change in the Senate rule, there are those who argue it does and those who say it does not, whether or not the amendment by Mr. ABOUREZK constitutes a change in the rules, there are those who say it did and those who say it did not.

Even so, Mr. President, if we proceed to adopt this amendment, I think it will set a precedent whereby the Senate not only can change the rules by majority vote, but also can do so without advance notice in writing, can do so without a two-thirds vote, can do so under a time agreement that imposes a time limitation of 1 minute, 10 minutes, 30 minutes, or 1 hour on amendments, so long as that agreement does not preclude nongermane amendments.

The thing that disturbs me greatly is that if this procedure is going to be agreed upon by the Senate, then an amendment to the rules can be so concocted as to be self-executing. The moment the Senate votes by majority vote to adopt that amendment, that amendment is self-executing, regardless of what happens to the vehicle to which it is offered. The vehicle may never pass the Senate. The vehicle itself may be tabled. The vehicle itself may go back on the calendar. But the amendment is self-executing.

Senators will walk in here and they will say, "Who offered the amendment?" "So and so offered the amendment." "What does it do?" "It does this and that."

They do not realize that they are voting for a change in the Senate rules.

I thought all the time that the amendment by Mr. ABOUREZK would have to go to conference. I did not read the amendment. That was my fault. I thought it would have to go to conference.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. ROBERT C. BYRD. I still think it should go to conference. If it went to conference, I thought the President would be given a voice in changing the Senate rules.

Let us take for granted that it was not changing the Senate rules. If that is the case now, I am told that amendment was self-executing. The bill is on the calendar. I am told that that amendment was self-executing. It will not go to conference. That amendment is alive, regardless of the bill.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. ROBERT C. BYRD. May I just finish?

So that means, Mr. President, that we will be going light years beyond adopting new rules at the beginning of a new Congress, without proceeding under the old rules.

This will be the easy way, simply to draw up an amendment so concocted, so adroit that it is self-executing.

With a bill on which there is a time agreement of 20 minutes, 5 minutes on any amendment, and the agreement does not exclude nongermane amendments,

within 5 minutes the Senate can write itself a whole book of new rules.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. ROBERT C. BYRD. I yield.

Mr. LONG. Would it not be possible for the manager of the bill just to stand there, managing his bill, without many people on the floor, and send up an amendment to the bill? People think he knows what he is doing, and he has their confidence to proceed in a proper fashion. So he just sends it up and asks that it be agreed to. I have seen it happen many times. Then, it having been agreed to, he can move to reconsider, then move to lay on the table the motion to reconsider—and I have seen that happen here, too. Then, when the Senators find out what happened and they all come in to protest, even though the bill itself is defeated—at that point, the bill is a nullity.

Mr. ROBERT C. BYRD. Still on the calendar.

Mr. LONG. Would it not be so, on the argument that the Senator has made—a new rule for the Senate, and the Senate is bound by it, even though nobody knew except him what it was? And when they find out what it was, they completely wipe the bill off the record.

Mr. ROBERT C. BYRD. Yes—kill the bill.

Mr. LONG. I have seen some strange things and silly arguments, but that one takes the cake.

[Laughter.]

Mr. ROBERT C. BYRD. Yes, that takes the cake.

Mr. President, I will endeavor, as I always try to endeavor, to see if I can work out a time agreement on Senate Resolution 431. I do not know that I can. I am pretty sure there will be objection to it. But I always, in good faith, make the effort to see if I can get a time agreement.

If the Senator will withdraw his amendment to this bill, I will do everything I can to strive to get a time agreement. Is that a fair offer?

Mr. BROOKE. I am sorry, I did not hear the Senator.

Mr. ROBERT C. BYRD. If the Senator will withdraw his amendment, I will try to work out a time agreement, and I will try to call up the resolution.

Mr. BROOKE. Will the distinguished majority leader give me 5 minutes? I would like to talk this over with the Senator from Iowa, the Senator from Illinois, and the Senator from Ohio.

Mr. ROBERT C. BYRD. Surely. I yield the floor in the meantime.

The distinguished Senator from South Carolina has been trying to get the floor for a long time. I hope he will get the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished majority leader. I hate to see him battling on this particular point in reference to the rules.

I really rise with a great deal of trepidation, because I have more commonsense than to get involved in something I have not studied very closely but only have a gut feeling about. Just this minute, when the matter was raised, I began reading hurriedly through this resolution.

I have heard comments, Mr. President, with relation to the creation of an "EEOC" for the U.S. Senate. The fact is that this was referred to the Governmental Affairs Committee, and it was brought before—well, it was a formal or perhaps informal meeting of the Policy Committee. My memory does not serve me as to whether or not the chairman was there. But it was a kind of policy luncheon that we had when we considered this.

It was overwhelmingly decided that this should be put off until we got through with certain other things that would take time. I think we had in mind the ERA and Humphrey-Hawkins—some of the other bills. On this particular one, it would be put off, and we thanked the distinguished Senator from Ohio for his able service in the Governmental Operations Committee.

I say very forthrightly—and I do not mean to say it in a rude fashion—but I would hope that the distinguished majority leader would have sense enough next time to refer this to a committee that has sense enough to keep it there.

[Laughter.]

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HOLLINGS. I yield. I am just getting started.

[Laughter.]

Mr. ROBERT C. BYRD. I want the Senator to keep going, but will he yield?

Mr. HOLLINGS. I yield.

Mr. ROBERT C. BYRD. The majority leader did not refer this to the committee.

Mr. HOLLINGS. I apologize to the majority leader.

Mr. ROBERT C. BYRD. The Senate referred it to the committee, and the Senator from South Carolina's vote was part of that referral. I do not know whether there was a rollcall vote, but it was an order of the Senate. It was not referred by the majority leader. I say that most respectfully.

Mr. HOLLINGS. I stand corrected.

I know this: Grown men should not act that way. We should not engage in fratricide, brother against brother, start tearing the institution apart.

Let it be said that there are many pleasures and distinctions to serving in the U.S. Senate. I think that one of the reasons for the tremendous accomplishments that come to our attention immediately is the fact that we can have differences and differ in an agreeable rather than a disagreeable fashion.

Practically every Senator has voted differently from the way I have, and vice versa. Yet, we learn over the years to give and take, to respect each other. It is not the kind of body that lends itself to the set rules and regulations of laws and never has been and never will be.

I can go into great length here, in just a little while, as to the chaos that can result from a situation of this kind. But I could not let the Senator from Massachusetts sit over there—wherever he has gone—and say, "How could we, in good conscience, not favor this bill?" I was taking down notes as he was speaking.

I answer quickly: I can, in good conscience, oppose it.

And the Senator from Iowa over there was saying that in this great struggle no one said anything against this. They do not hear a word. They know they are playing to the media because a lot of words have been said, talking as we do amongst each other, considering measures of this particular kind. A lot of words have been said. So what the Senator from Iowa has said is "Why don't you come out publicly and say something about it?" That is what the Senator is saying because, do not say, I say to the Senator, that he never heard anything against this.

And I will say this to the Senator from Ohio, that he gave that same pleading at that policy meeting, and he did not want to hear any more about it. Now he has changed his mind. But at that particular time he said he had done his job and he was only reporting like a good soldier and he did not want to hear any more about this thing and do not give him any more of those tasks. But that did not satisfy him either.

We heard a lot about it. So, let us hear something about it.

In the first place, public office does not afford the general requirements of employers. God knows, on overtime, I have two staff members here on the back bench and they are not going to get overtime either. There is no use for them to ask for it.

And it just does not apply when proponents of this measure say: "Why the double standard? Why do you require of the various, say, the executive department or industry those things that you do not require of yourself?"

The fact of the matter is as to that EEOC, that Equal Employment Opportunity Commission, fair pay and all these other things were established within the electorate and within the system long before any administrative board institutionalized them, because whether we run over on the House side every 2 years or every 6 years on the Senate side we gear up to sort of a supreme appeals committee, or commission, or board, or court, or however one wishes to characterize it, and that is to the people themselves. And that good fourth estate up there—the media—does not let anything pass, and that is to their credit.

Old Thomas Jefferson said as between a free press and a free government he would choose the former. I never could understand it, but as I serve longer in public office, I do. The media is there, and they inform, if you please, the public as to whether you have a discriminatory Senator, an abusive one, one who does not like women or discriminates against blacks, or discriminates against those who wear pantsuits. I never heard of such ridiculousness, bringing them before the Senate saying that they went to some kind of placement office and saw complaints about the signs of the Zodiac and pantsuits. We should appoint two doctors and commit those who put those kinds of things down.

[Laughter.]

Mr. HOLLINGS. And if the Senator from Illinois is correct, why not just go

ahead and vote right quickly because we have all of this anyway? We have it all anyway. Then hurry up and take that list and start hearings before the Ethics Committee. Do not come around here and tell us about it. Do the job.

Just go ahead and grab all of those discriminating on pantsuits and signs of the Zodiac for being unethical. Of course, the Senator knows differently. He knows differently.

We just cannot establish civil service standards. For example, suppose we had civil service standards that we require. We just had a civil service reform law. Suppose I came to office and there is that crowd that is always hollering—Common Cause. My good friend Dave Broder is hung up on incumbency. I hope he can hear and I hope he will remember it. That is how I got here. I beat the incumbent. I know how to beat an incumbent.

This thing goes right to the heart of one way to do it, I say to the Senator. It is not difficult. I can tell him that right now. Remember the Senator said he never heard of a word of objection. He heard one Senator who said the Senator's bill was purgatory. And he is right. He never heard a word against it? One particular Senator said this would reduce us to purgatory and institutionalizing a court wherein automatically we would be defendants.

It is getting almost unpleasant, in a sense, to serve all these long hours, with the grind and everything else, and now to be put on trial at every particular turn. Go to civil service standards and come into office. Defeat somebody, then they look at you and say, "I've got job security because we do not have a double standard. What we required of the executive department we require of ourselves."

Absolute nonsense. The Senator knows that and I know that. We cannot keep the other fellow's crowd on, and there are some women or blacks there. There are 23 Senators who are either retiring one way or the other around here come November, in another month. That is 23 staffs with an average of 30 employees per Senator, some 700 coming around here with 15 years' service on legislative matters saying, "I have been a lawyer for a Senator for 15 years or 25 years."

I do not want them. Do not come to me. I can tell Senators that right now. I know how to find good staff. I have a good staff and I have women on my staff and I have blacks on my staff. So go ahead and hunt up the record. We do not mind about that.

Someone has to talk a little bit of sense on this particular resolution. Put in civil service standards and come and succeed someone. Now pass this thing and have 600-and-some immediately present themselves to all the new Senators. And if they ever got elected and got to Washington they would say, "I didn't know you got that kind of trouble up there. I can't get organized. I am in court. I have hearings. Look at all these hearings and rules and regulations. How do you get started?"

That is the trouble with President Carter today. We were just discussing it a little while ago on the park bill. Do Senators know how many he employs in the National Park Service? Zero, I say to Senators. Zero, because all of them got dumped in under civil service. So the man selected by the people to institute a new policy, a new day, and a new frontier cannot carry it out because he cannot get his hands on the Government.

We will put it so a Senator cannot get his hands on the office. He has a limited time so he cannot get his hands on the office itself because we have a double standard and we have to have civil service standards. We have to have OSHA.

There is the Senator from Vermont, if he will come back. That bothered him, that double standard on OSHA.

We should all just get some striped suits, I say to Senators, and go off to jail. OSHA has found in the executive department they need 127 square feet per employee in the executive branch, and Senators know they only have 64 square feet. So we have to have it.

I brought it up here in the Chamber. We tried to buy 400 North Capitol. We showed what a great investment it was. The owner said he will rent it to us. We went over there with our computers. We go over there with Amtrak. We have all of these offices the Senate is renting. They do not write that. They write about the marble palace under Philip Hart.

But give us OSHA. We just could not have everyone with all these interns. My distinguished colleague brings them in 35 at a time. Where are we going to put them in the office, plus the regular staff? We just do not have the room.

And they know that we cannot exact these kinds of requirements. They say it is unsafe. Yes. Let us make it unsafe. Maybe Common Cause and Dave Broder would like that, to learn we have unsafe offices, that the incumbents do have a burden to carry.

But the whole point is there is no longevity. Senators are voted out and all of their employees are out, and they know it and they understand it.

This is not the common ordinary executive department employee or career service through the Government because your career is pitted on the office holder's career and his is pitted on the Equal Employment Opportunity Commission of the State of South Carolina. My senior colleague will face that Equal Employment Opportunity Commission come 1 month from now and yes, they have tried to charge him with various things. He is going to stand there and the people are going to either vote him back in or reject him, one way or the other. But he has an Equal Employment Opportunity Commission, and I will have one 2 years from now I say to Senators. There is no double standard. They are just catching up in other employment with the same standards the Senator and I have been standing for.

We have a harsher one when we go to our EEOC back in South Carolina. We pay for it if we have discriminated. They throw us out of office. Then they get rid of all those discriminatory practices.

I think you get my point. I do not think that this is a wise type of resolution, given the circumstances and the rule and the procedure. We never have been able to try to reduce, or should not really reduce, the public trust to regular employees in America. There is a higher duty and a higher service. And when you begin institutionalizing all these things with a board—don't tell me about that crowd. Once they hire a director, then the director puts out rules and regulations, then he puts out comparisons—all of these things apply. The distinguished majority leader ought to see the regulations. That is going to change the Senate rules.

Look at the rules and regulations that this board can put out, that will affect Senators and Members. Oh, they will say, "Then you go ahead and appeal to the Ethics Committee, and what have you." But once you start an office of this kind it knows no reason. Counsel is furnished just on a verbal complaint. You walk in, and you get a lawyer, and he counsels; he gets assigned to you and everything else.

If you run against an incumbent, I know how to find a couple of good black friends to apply, and a couple of good women friends to apply out there, and I will keep that fellow busy in the hearings. Then he will run to the media, then he will run back to the hearing, then he will run to the media—that is fair play; it will drive him nuts, that is what it will do. That is what is going to occur.

Then let the 600-and-some who are going to lose their jobs one way or the other, all of a sudden, demand "because of our experience." Now they come by here—and that shows the hand of the particular group—and they plead with you to adopt this particular resolution. I wish I could have had it phrased exactly, but "the establishment," the Senator says of the procedure, that "nothing dictates affirmative action, nothing dictates guidelines."

Then, I ask the Senator from Ohio, why the double standard? If you have got guidelines in executive employment, if you have guidelines in private employment, then why not guidelines?

If you have affirmative action programs, and the Congress continues to pass them, why not affirmative action programs for Senators? You are not playing it straight across the board. Let us look at it for what it is, and what is intended, and what it is going to result in.

I can tell you here and now that could be one of the greatest mistakes we ever made.

I know how the media will respond, about privilege and discrimination and everything else. I just could not let it be said that these considerations have not been given full attention. The Senators involved know they have been given full attention, and they know that they brought it before the Policy Committee, and they know the action taken there, and they insist now on putting it on a bill that goes over to the House and goes to the President of the United States for signature. We are now going to start passing Senate rules with the approval of the House and the signature of the President of the United States, which shows

disregard for the precepts of the U.S. Senate itself.

Oh, they are determined. I am afraid of a crowd that is determined. I am scared of them. They say, "We're not scared of them." The Senator from West Virginia said he was not. I am scared, because I can see the terrible discord and disruption, harassment, and really the breaking down of the procedures in the Senate. We could go to many other things that you have touched on. I guess maybe you could do away with patronage, Senator.

I do not have one of these pages that patronage permits. I guess I could. Maybe I have been here long enough. Frankly it worried me; I had the pages' school, and those in young years, and the Senator from Mississippi and I worried about the lack of supervision in that school, and getting off late at night, and then some mother would call you, and then the boy is smoking marihuana, and how could he get in early in the morning to work and late at night for work, and what kind of hours, and everything else of that kind.

That is one of the misgivings I had about it. But you might as well forget about the assignment of particular ones. I used patronage for my black brethren from South Carolina. Many went to Howard University, and I have been working a lot of them through there. And I can tell you about a lot of doctors and dentists and lawyers who could not go through college on that $7,000.

But the Senate is not to be treated that way, if we are going to do that. If we are going to have OSHA, and have civil service, and have qualification, and all these other things, and once they have been selected they stay in office and they do not change. If we are going to have all of those things under the argument that we are not going to have a double standard, and do not understand that we have a higher standard, and do not understand that a public office is a public trust, and the public is there ruling on you at every particular turn, and you do not wait for the complaint to be made and the person to be counseled, and the form to be filled in, and the hearing to be had; you get it instantly, ipso facto, whenever and however anyone has a feeling that you are discriminatory, that you have not treated an employee fairly, or anything else. And that is the way it should be. But to try to put in this kind of a nit-picking little bill, with rules and regulations and comparisons and all those other things—well maybe if you had your own business, and invested your own money and everything else like that it would be appropriate.

If we did not have a civil service in Government, that would be a different thing. But you come up here, and the people understand the job that you have to do; they are beginning to understand it more and more every day.

In good conscience I oppose this. I just think it would be a bad, bad mistake for us not to let the folks back home understand that there is not a double standard, and what has been done in the days since I have been up here in the Senate—we started under the old Bobby Baker days, with wheeling and dealing; and then, under Vietnam, we went to the fairness doctrine, because it eased our conscience. We could not explain all that war in Vietnam. Then we started this draft law affair, and the tax law affair, and Government in the sunshine. And now I just voted for sunset; and I hope next year some of you will go along with me on the early morning freeze on spending. That is something we need, a freeze along with all these other climate controls and changes we are going through.

But the point is, it is an open Government, which is readily observable, and I say to the chairman of the Ethics Committee, if there is unfair employment, or whatever it is, employees can go there now and complain, but not another board, not another bureau, and not another director.

It is insulting to say they have had no consideration. Some of us were talking in the Policy Committee when this was considered. Do not say it never was considered. Like John Pastore—I wish we had him here now—I frankly have been watching around to get the bills through. My Eximbank bill—I legitimately had passed an amendment, and now they are going to try to hold that bill and to illegitimately pass a thing to continue Eximbank and not let my amendment get over to the House. That is why I was tarrying around and listening to this debate.

But Mr. John, if he were here, or someone like that, who had some feeling for the institution, and understood not only Senate offices, but the committees—incidentally, this applies to committees too—he would speak. If you are a committee chairman, they are going to drive you nuts with this, because they have all the boards and commissions to insure it.

You have all this experience up here, and any woman or minority can place their credentials and immediately a complaint and be given counsel. You will have the darndest bureaucracy. You cannot do your work around here now much less began to deal with all this other nonsense. It is nonsense. I say that advisedly. They know that. They know that. You cannot just treat the Senate like this.

I will continue to talk, and I will object to any kind of unanimous consent. I want an amendment with civil service rights, so there will be no double standard; I want an amendment on here with an Occupational Safety and Health Act so we will put the fire extinguishers on the wall at the right level, and all those other funny things. We will have to open up the elevator because that is congested. We will have to knock out the walls at the Capitol so movement of people can come through, 30,000 of them. I want the amendment on here for longevity and everything else to protect the employees if we are going to sell ourselves that nonsensical idea about the double standard.

We have a higher standard. That is my point. We have a higher standard. Public office is a public trust. They are here through loyalty. None of them mention overtime and all of these other things. If they did, we would get a new staff. We have no time to fool around with their complaints. I can tell you that right now. I have work to do, hearings to be held. There are 3,000 items in the Defense appropriation bill to be marked up in the last few days. The distinguished chairman has us working day in and night out, night out and day in, getting the people's work done.

Institutionalize it, give it boards, appeals, bring in lawyers, that is what this is. It is totally impossible. This is ridiculous.

Mr. GLENN. Will the Senator yield?

Mr. HOLLINGS. I will yield for a question—I learned this from the Senator from Ohio—without losing my right to the floor.

Mr. GLENN. Will the Senator yield?

Mr. HOLLINGS. Yes; without losing my right to the floor.

Mr. GLENN. Without losing the right to the floor. Whether we agree or not it is always a pleasure to hear the Senator from South Carolina.

I would bring the discussion back to what the exact situation is. It is not a question whether we will or will not abide by a code of official conduct in the U.S. Senate. Those rules and that code now applies.

We were given the task of bringing back implementing legislation for that already applicable rule change. Absent this implementing legislation, on January 3, 1979, any complaints on race, religion, sex, national origin, age, or state of physical handicap go directly to the Ethics Committee.

There is no protection on that as far as press or anything else when it goes unimpeded to the Ethics Committee.

What this amendment does, is puts some cushioning steps in there. It is actually a protection for the Senators right now from what is going to happen anyway on January 3, just about 3 months from now.

What this amendment provides is really protection for Senators. We wrote into this rule implementation the provision for counseling. The office would provide counseling to any employee or job applicant who felt that he or she had been discriminated against. Counseling would try to dissuade the complainant, to suggest alternatives.

Are you sure you have a case? Are you sure you want to go ahead with this? Are you sure you are not just mad at the moment?

Then they say, "No, I want to push this thing." They cannot be talked out of it.

They then can file an informal complaint. The amendment also says then if a resolution could not be achieved through counseling, an informal complaint could then be filed and the director of this office would investigate the complaint and prepare a report.

If the director found no evidence of discrimination, then the case would be closed. The board also decides whether they can file a formal complaint. So there are two steps that protect the Senator from what would happen under existing rules.

The Senator from South Carolina has

been talking as though we were suddenly deciding whether to put this burden on the Senator or not. The burden is already there, I would say. It is there. It is just how we are going to handle it.

I have discussed the counseling and informal complaint steps. If the board determines that the complainant should be allowed to file a formal complaint, at that point, then, a formal complaint can be filed and a hearing examiner would be assigned to hear the case and submit recommendations to the board. The board would then render a decision, including appropriate remedial action.

Only at that point, if the complainant at that point felt that he still had not had a fair shot at this thing, could he then complain to the Ethics Committee, which is the exact step that will be taken now if we do not pass anything else. That is the point the disinguished Senator from Illinois made.

I presented a very lengthy statement earlier. I will not try and repeat that for the Senator from South Carolina. I would say that our resolution protects Members from frivolous complaints because it gives employees an opportunity to file a complaint confidentially rather than run to the press.

Mr. MAGNUSON. Will the Senator yield?

Mr. GLENN. I do not have the floor. Let me finish and then I will yield.

The impartial process established by the resolution is of protective value in the informal resolution of the complaint. So these are protections for Senators over what is in existing rules right now. These are cushioning steps. But, if the Senate wills otherwise, so be it. I yield.

Mr. HEINZ. What was the question?

Mr. HOLLINGS. Mr. President, if we are going to have cushioning steps, if we are going to protect the Senators, I cannot get in my mind whether the sponsors of this particular measure want to be with a double standard or not with a double standard. I thought this was in the name of not having a double standard. Now they are saying, "Look, let us adopt this because what we need is special treatment and special protection for the Senators."

Now they are making me feel like I am back in the Bobby Baker days again, that we are going to look out for each other this way, where over in the executive branch and industry they have a regular board to go to.

We are going to cushion it for you. We are going to talk them out of it. We are going to talk them out of it and we are going to cushion it.

I do not know how else to tell them how to get rid of it.

Do not give me that. I will tell you right now, I think you are weakening your case doing anything in the world to get this on the books, to get these employees, to get the directors, to get the staff that you cannot keep up with. I am having a hard time keeping up with the ethics staff. That goes to leaks, the operation, everything being confidential. I have heard parties interested in the proceedings that the Ethics Committee have held and they have told me leaks directly out of the Ethics Committee. So do not tell me about a government bureau or body and their not being any leaks or things, and things are confidential.

Mr. GLENN. Will the Senator yield?

Mr. HOLLINGS. Do you want a double standard or not? Will you cushion me and give me special protection? Do not let me be protected. Treat me like everybody else and just withdraw your amendment.

Mr. GLENN. Does the Senator——

Mr. HOLLINGS. I do not want to be cushioned. I will have a hard time when I go back to my superboard of equal employment opportunity. They will say, "Senator, did you vote for a cushioning process? You have done something special for yourself and we are going to get rid of you."

Mr. GLENN. Will the Senator let me reply?

Mr. HOLLINGS. Yes.

Mr. GLENN. When we were given this job on the Governmental Affairs Committee, it was with the concern that Senators were in a special position. They are particularly vulnerable and we should take cognizance of that and still try to adhere as closely as possible to what were the provisions which apply to the Senate under rule 50L. That was a job we were given to make sure that in the peculiarly sensitive position that Senators are in, we devise some mechanism to give the protections we are talking about. That is exactly what we did by putting these cushioning steps in here to make sure these frivolous complaints were dealt with. That is what we did, not say whether there will or will not be discriminatory practices in the Senate on the basis of race, sex, color, religion, national origin, age, or state of physical handicap.

The question is what will it be? Will it go directly to the Ethics Committee or will there be these cushioning steps which were built in to protect Senators, exactly the way the concern of the Senator from South Carolina has been expressed here this evening. We have it. How do we want it, with cushioning or without? That is the basic question.

Mr. BURDICK. Will the Senator yield for a question?

Mr. HOLLINGS. Yes.

Mr. BURDICK. Does this legislation apply to Members of the House or that membership?

Mr. HOLLINGS. I do not think it does.

Mr. BURDICK. Does it apply to Members of the Supreme Court or the inferior courts?

Mr. HOLLINGS. No, sir, I do not believe it does. We are not going to give them a cushion.

Mr. BURDICK. Does it apply to the White House or the executive branch in any way?

Mr. HOLLINGS. They need a cushion.

Mr. BURDICK. The answer is no?

Mr. HOLLINGS. The answer is no.

The truth is the managers of the bill—I do not want to call on bad memory, but he was not totally aware, to be as judicious as I can in my comment. I doubt that the Senator from Wisconsin knew. I said, where did all these lists come from? He said, that was not in the bill, was it?

There have been more things in other bills and I never knew, in all honesty, that when we passed one bill it would bring out some kind of rule or regulation about the number of "I's" that you can use in a newsletter. They said that was another rule.

But they are the ones that started enforcing it. I never heard of such a thing. It has been very difficult, in a way, to keep up with them and we tried to raise that point and I think in the beginning of the year, we are going to raise several other points so we understand exactly what it is.

To try to sum up, because I know the distinguished leader has some other important matters we are ready to discuss and debate, I could go on down here about the verbal things and it will just scare you. I can tell you right now, the distinguished leader said he is not scared; I am scared.

The board shall prescribe rules and regulations as it determines proper. That is affecting Senators. You are worried about the rules that they are passing now? Wait till this crowd meets. They have all kinds of rules in here: such remedial action as it determines appropriate. Even the judiciary handles things with a definite sentence, whatever it is. They can come up with anything they determine appropriate.

Any kind of remedial action they deem appropriate. It is a group of outsiders and you cannot bring in anybody who has an appreciation for the institution, who ever served here or otherwise.

And, of course, all of them have to make records. All of them are going to make records, "How I cleaned up the Senate," and write a book. Cannot you see them? Anybody getting a job—I would like to get a job on this board, I say to the distinguished Senator from Washington. We could write a book could we not? "I sat there and listened."

When he is promoted, by the way—an individual has to be promoted. Now we get to pay. The staff back there will not complain, but that is all right now. I know they want some more money, Mr. President. They are always coming for a little bit more money.

I return some to the Treasury. That may be a bad mistake.

Mr. MAGNUSON. I did, too.

Mr. HOLLINGS. Then the Senator is going to get a rash of requests under this, because someone did not get promoted, or because some man in the office got promoted, but some woman did not.

See what I mean? There you go, down the line, all these different procedures. Bureaucracy and everything else institutionalized on the basis of, look, we are going to get it anyway in January.

I shall take my chances now with the Senators on the Ethics Committee and what we have now and hope we do not embellish that any more and start any more domestic hearings and everything else before the Ethics Committee.

Mr. LONG. Do I understand that under this procedure, any time one person gets a pay raise, everybody else will be entitled to come in and go through all this proceeding with us on the theory that they should have had a pay raise

that we gave others rather than this person?

Mr. HOLLINGS. We have to argue them out of it. If they do not argue them out of it and the cushion does not work, yes, sir, that is the way it works. So there is another cushion.

Mr. MAGNUSON. Will the Senator yield for a question?

Mr. HOLLINGS. Yes, sir.

Mr. MAGNUSON. I want to ask the Senator from Ohio: We are running against time. There are going to be thousands of Federal employees without paychecks. Can I get a simple answer? Why do you want to put this thing on this bill now and tie us up? What is the priority for this? Do you have any priority on this?

Mr. GLENN. No, let me clarify.

Mr. MAGNUSON. I may be with you, but why do you tie up the whole Senate when we are running against time? We have appropriations bills, we have everything we should be doing, and you people come along and want to tie us up over this.

Mr. GLENN. Let me clarify this.

Mr. MAGNUSON. No, answer my question: Why?

Mr. GLENN. Will the Senator let me reply?

Mr. MAGNUSON. Yes; I shall let you reply.

Mr. GLENN. Senator BROOKE put this on. I did not put it on. [Laughter.]

Mr. MAGNUSON. Let me ask Senator BROOKE. Who today——

The PRESIDING OFFICER. The Senators will suspend.

This Senate will be in order. The galleries will be in order. This is not a circus, this is the U.S. Senate. The appropriate procedure for a Senator is to address the Chair, whether it be a question or any other procedure. We have loosely organized the proceeding here in order to accommodate the Senators. I ask the Senators to suspend, please.

Mr. MAGNUSON. I asked the Senator——

The PRESIDING OFFICER. The galleries are to be in order and so is the Senator. I suggest the procedure to be utilized is to address the Chair. If a Senator has a question of another Senator, the procedure, as I understand it, and I stand to be corrected by the Parliamentarian, is to address the Chair and ask if the Senate will yield for a question, not to the Senator but to the Chair. I suggest that that procedure be followed so we might orderly proceed.

Mr. HOLLINGS. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina yields the floor. Who seeks recognition?

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia, the majority leader, is recognized.

Mr. MAGNUSON. I asked the Senator from South Carolina to yield so I could ask the Senator from Ohio a question.

The PRESIDING OFFICER. The majority leader sought recognition. The majority leader has preference for recognition. The majority leader is recognized.

Mr. ROBERT C. BYRD. Mr. President, the Senator yielded the floor. It is about time for us to call it a day. I want to say one or two things.

Mr. STENNIS. Will the Senator yield to me for a comment?

Mr. ROBERT C. BYRD. Mr. President, yes, I yield to the Senator from Mississippi.

Mr. STENNIS. I thank the majority leader.

The reason I asked to be recognized, Mr. President, is our friend here from South Carolina has made an argument and presentation in behalf of this institution. That is what it is for. He was not talking about the Members of this body, anything to favor them or protect them. He was basically talking about this great institution that does not have the esteem just now that it once had, but that cloud will pass. It can be built back. It is on the principles that the Senator was talking about that it can be built back and it will be built back that way. But it will not be built back by someone who comes here demanding that all of this change. I have not heard any Senators—not much, anyway—wanting a change.

We are not talking about Senators, we are talking about this body of men sent here by whom—who is the boss under our system—by the people. That is who they are responsible to. It will be a fateful day of regret and mourning if those Senators would turn over the running of their affairs and their offices to some outsider.

A man can go before the Ethics Committee and he goes before his peers, he goes before a group that has been elected as he has been elected, that knows the pulse of the people and feels responsible to the people.

I shall never submit to any kind of rule or regulation or limitation of any kind that puts a rope around the neck, so to speak, or puts the clutch on a Senator trying to perform his duty.

He comes here from the people. He is clothed with the power, the tools of his trade, his trade as a legislator.

The law provides him a staff of his selection and he is responsible for those staff members, and if anyone does not like it, they can resign.

I know one of the great moments of this body—the Senator from Louisiana may remember it, and I will not call any names and I know he will not—but a man stood before this body formally charged with an offense by his peers. I remember his dramatic plea. He said:

> Members of this body, the staff that I had committed these wrongs, but I am responsible. I am responsible for what they did.

Now, one of the goals of this resolution, whatever it is, the glory of being responsible for what we do, we will have a defense for anything that happens in our office or our staff.

I think that the fundamentals are here. I want to be heard further here. I have exceeded 2 minutes. You have stirred me up and made me look at this resolution.

I want to be heard further on it, Mr. Leader, at some time. I want to be heard on the burdens of carrying on this office, and the burden of being chairman of a committee, or a subcommittee, and the burden of proceeding this way with the staff, selecting all the staff that I am directed to have.

It cannot be done. It will not. It will go to nothing. And then in that regard, the Senator comes along with it now. It cannot be done unless he has control over his helpmates.

I hope the Senator will speak again, and I want to later.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the bill before this Senate is the Humphrey-Hawkins bill. I hope that the passage of that bill will not be jeopardized by this amendment.

Mr. President, I will be brief. I hope that I may have the attention of the Senators.

The PRESIDING OFFICER. The Senator is correct. This Senate will be in order.

The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, this amendment jeopardizes the Humphrey-Hawkins bill, in my opinion, and I do not say that to cast any reflection on any Members who oppose this amendment or support it. They do it in good faith and I respect them for that. But this has already created a lot of confusion.

We have Senators who say they want to speak on this amendment, and I know that they want to speak, and I know they will speak on this amendment, and I respect that.

So one can see that this Senate tomorrow is not going to vote on this amendment, because there are Senators who are going to speak on it, and this Senate will not act on the appropriations continuing resolution, because Senators are going to speak on this amendment, and we are not going to get any amendments to Humphrey-Hawkins adopted, because they are going to be speaking on this amendment.

I see great danger in this amendment, because of the procedure that is used here.

Mr. President, I make a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ROBERT C. BYRD. Let us say there is nothing before the Senate.

Mr. President, I call up an amendment. Is it in order for me to call an amendment up to nothing?

The PRESIDING OFFICER. It is not in order.

Mr. ROBERT C. BYRD. The Chair is correct.

Mr. President, under the Senate rules, can one do indirectly what he cannot do directly?

The PRESIDING OFFICER. The Senator is correct. The Senator may not do indirectly what he cannot do directly.

Mr. ROBERT C. BYRD. I thank the Chair.

Well, then, this is what we are doing. We are offering an amendment to a vehicle. A vehicle dies. The vehicle is voted

down. The bill is voted down, killed. Or the bill is tabled, or the bill goes back on the calendar.

If this procedure is upheld, one can so draw an amendment that will change the Senate rules and do indirectly that which he cannot do directly.

He can offer the amendment, get it adopted, and in that one-millionth of a second he has changed the Senate rule.

The bill can be laid on the table. The bill can be left on the calendar. But he has called up an amendment, gotten it adopted, and it affects the Senate's internal rules no matter what happens to the bill.

Mr. President, that is a very, very dangerous procedure.

Mr. President, let me say one other thing about this. I will ask the Chair this question.

If the substitute for the bill is adopted, does that not wipe out, ordinarily, if amendments are offered to a bill and are adopted and, in the final analysis, the substitute is agreed to, does that not wipe out all of the action in adopting amendments to the bill?

The PRESIDING OFFICER. Ordinarily, the Senator is correct.

Mr. ROBERT C. BYRD. All right.

Now, Mr. President, this amendment is offered to the bill.

Now, what we are being told is if this amendment in this case is adopted, to the bill, and the Senate later adopts the substitute, which ordinarily would wipe out amendments to the bill, in this instance it will not wipe out the amendment to the bill, because the amendment is self-executing and went into effect the moment the Senate adopted it by majority vote.

I would like to leave these questions with the Members of the Senate overnight and, in the meantime, I would do, as I often do when Members want bills called up, and resolutions called up, because they are interested, I ask them to work out a time agreement for me.

So I would ask Mr. CLARK and others—I say Mr. CLARK, because he was very frank and candid in laying it on the majority leader for not calling this resolution up that is on the Calendar and in saying:

> Well, if the majority leader will get a time agreement, we will withdraw the amendment.

I will ask the Senator and others who are interested, likewise, in the amendment, to do what I often ask Senators to do, get me a time agreement.

I cannot go around getting agreements all the time on every bill called up here. I want help.

So, I ask the Senator from Iowa to work with other Senators, get me an agreement and I will propound it, and it suits me fine, we will vote up or down. But get me an agreement.

Mr. STEVENS. Will the Senator yield?

Mr. ROBERT C. BYRD. And then I will propound it.

Otherwise, take heed, this amendment is jeopardizing Humphrey-Hawkins. It has got the matter so confused that there will be Senators who will vote against cloture on Humphrey-Hawkins, because they know that once cloture is invoked this amendment will be ruled out of order, because it is not germane.

Of course, if it is adopted before then, according to this new theory that has just been exploded on the Senate floor today, the amendment lives on forever, until changed again.

So it is confusing. It is going to cause Senators to vote against cloture, because they do not want cloture to wipe out this nongermane amendment and they are going to kill the Humphrey-Hawkins bill.

Now, I have stood up here and I have tried to help Senators who wanted ERA, and I used the rules. I did not abuse them. I used the rules to get ERA. And the Senate invoked cloture. I used the rules to get District of Columbia representation up. I did not abuse the rules; I used the rules to get District of Columbia representation up. These were measures that were not supposed to pass. They were going to be filibustered, we were told.

Now they want Humphrey-Hawkins. We have it up. We have a cloture motion in on it.

To those of you who are dedicated to this amendment—and I have not argued the merits or demerits of the amendment tonight, and I do not propose to—I say that the Senate should act on Humphrey-Hawkins before it goes home—up or down, but act on it. It should act on the appropriations resolution, and it should act on the conference report on the energy tax, and there are numerous other measures that have to be acted upon.

If this amendment is not withdrawn, Senators can stand on this floor all day tomorrow and debate this amendment, and nobody can get the floor to do anything else, and it will jeopardize the Humphrey-Hawkins bill. I cannot believe that the Senator from Massachusetts (Mr. BROOKE) wants to jeopardize Humphrey Hawkins. I do not believe he wants to do that. I do not believe the other Senators who join him want to do that. I do not believe Mr. CLARK wants to do that. I do not believe any Senator wants to do that. They are supremely dedicated to this amendment, but they also are dedicated to Humphrey-Hawkins.

Now, as we enter into the last 72 hours of this Congress, hopefully we can adjourn sine die at the close of business Saturday. But I will tell you this: If this amendment is not withdrawn, we will not adjourn sine die at the close of this week, because we will not be able to get the other work done.

The Senate is going to talk about this amendment all day tomorrow. We already have heard that, and we would not be able to complete the other work. We want to adjourn sine die. That may not be the most important thing in the world, but if that continuing resolution is not adopted, there will be a lot of people who will be without paychecks.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. MAGNUSON. I was going to suggest to the Senator that in 48 hours, unless we act on important matters, priority matters, there will not be any paychecks for practically everybody in the Government. All this is doing is delaying the whole thing. I just want to warn you that by 42 hours from now, nobody in the Government will get a paycheck unless we act.

Mr. ROBERT C. BYRD. Exactly.

Mr. MAGNUSON. This is something I might be for—I do not know—but it has no priority with respect to the important things that are going on.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I will yield shortly. We will have all day tomorrow to debate this.

Mr. President, I said earlier—if I may have the attention of the Senate for a few more minutes, and then I will move to recess—I said earlier that I would move to table this amendment at some point, if necessary. I am not so sure I will do that, and I will tell you why.

If I move to table and it is not tabled, it is still before the Senate. If I move to table and it is tabled, every Senator who votes to table that amendment may be wrongly judged on his vote. I would be wrongly judged.

If I move to table, it will be said that Senator BYRD is for discrimination. I have blacks on my staff. I was one of the first Senators to appoint blacks to the Capitol Police Force. I have had blacks on my staff, Catholics on my staff. My administrative assistant is a woman. She has been with me 22 years. She was with me in the House. She is a Catholic. I have Catholics on my staff. I have Jews on my staff. I never ask anybody their religion. I never ask anybody any question about their religion or even the political party to which they belong.

I am interested in quality work. I am interested in merit, and I make my promotions on the basis of merit. I fire and hire on that basis.

So, Mr. President, the man who moves to table is going to be labeled automatically as a man who is against this amendment. That is unfair. It will be said that any Senator who votes to table is against this amendment.

Of course, Senators may be against it, and they have spoken out and said so, and I admire them for that. But it is unfair to Senators to move to table this amendment.

If cloture is invoked on Humphrey-Hawkins, it will be automatically ruled out of order, because it is not germane, and that in itself may kill Humphrey-Hawkins; because if we do not get cloture on Humphrey-Hawkins Friday, you tell me how we are going to get cloture on Humphrey-Hawkins on Saturday and how we are going to pass Humphrey-Hawkins this week.

So I plead to Senators who are supporting this amendment to withdraw the amendment tomorrow, and let us get on with Humphrey-Hawkins and pass that bill. We can always deal with the internal problems of the Senate, but we cannot always pass Humphrey-Hawkins.

I make that plea, Mr. President.

The Senate will come in tomorrow morning at 9 o'clock——

Mr. GLENN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield. The Senator was kind enough to yield to me.

Mr. GLENN. I see that the Senator from Massachusetts just returned. I was going to rise to defend him to some extent, because I think, as he pointed out earlier—and all Senators should be aware—he brought this up this afternoon only when there was a lull, only when there were repeated quorum calls, only when there was no delay to the Senate by bringing this up. He hoped we could get it taken care of very rapidly, and he so stated. So I think the charge that he has been delaying is not a fair charge.

Mr. ROBERT C. BYRD. Mr. President, I have the floor. I did not charge the Senator——

Mr. GLENN. The Senator from Washington was concerned about why there was delay for this particular item, and that is the reason I was replying to that, because I think the Senator from Massachusetts was being unfairly criticized for delaying Humphrey-Hawkins. He brought this up when there were delays and quorum calls and when he thought there would be no delay to anything else. He has returned to the floor, and he will speak for himself.

Mr. ROBERT C. BYRD. I hope the Senator from Ohio is not saying that I charged the Senator with delay.

Mr. GLENN. I do not say that.

Mr. BROOKE. Mr. President, I think the majority leader knows the facts. He knows we have been here at times we were having recesses because of negotiations going on for Humphrey-Hawkins. We brought this amendment up at a time when the Senate was doing nothing but spinning its wheels. I did it with no attempt to take advantage of any parliamentary opportunity but because the Senate, I thought, should act on this matter.

I think the Senator knows that I acted in good faith in bringing up this amendment. It is an amendment I have supported strongly and for which I worked at the beginning of this Congress. I need not recite the whole history of what has happened to it in the Governmental Affairs Committee.

At any rate, I said to the distinguished majority leader that I would not have brought it up if I though that in any way it would hurt the chances for the passage of Humphrey-Hawkins. But, as I interpret it, from what I heard from the Parliamentarian and the Chair, this amendment would stand on its own, that it would not go to conference if the Humphrey-Hawkins bill did end up in conference with the House.

So I thank the majority leader for making clear that it is not his position that the Senator from Massachusetts in any way tried to impede Humphrey-Hawkins. Quite the contrary. I want Humphrey-Hawkins. I think we should pass it. I think it has been emasculated. I think it is really now more symbolic than it is substantive. Nevertheless, symbolism has some place, and I would not want to be one responsible in any way for impeding its passage.

I thank the distinguished majority leader for giving me an opportunity to make my position clear to the Members of the Senate.

Mr. STEVENS. Mr. President, will the Senator yield to me?

Mr. ROBERT C. BYRD. Shortly.

Mr. President, I merely plead to the distinguished Senator from Massachusetts to think overnight about withdrawing this amendment. He does not want to do anything that would hurt the chances of getting enactment of Humphrey-Hawkins. It has had a long and tortuous path as it is. I am concerned that this could impede the passage or prevent the passage of Humphrey-Hawkins.

I think it is possible that it could prevent invoking of cloture. I do not know that it would, but there is that possibility.

I hope that we will not further confuse this situation, and it is already confused too much, and if this amendment stays up before the Senate and has to be voted on, or tabled, I am just afraid that Senators will be persuaded one way or another in their vote on cloture if this amendment stays before the Senate.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. MAGNUSON. Why do we not vote on this right now?

Mr. ROBERT C. BYRD. Mr. President, one other thing, it was said——

Mr. MAGNUSON. Let us vote.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order. The Senator is correct. The Senate is not in order.

Mr. ROBERT C. BYRD. Mr. President, there are those who say why do we not vote on it right now? Of course, that is obvious. The Senate is not going to vote on it right now. As far as I am concerned it can vote. But I have heard Senators say that they want to talk some more on it. Under the Senate rules they can talk. The Senate is not going to vote while the Senate is on its feet on this amendment.

The amendment by Mr. ABOUREZK. came out of the Rules Committee. It came out of the Rules Committee, did it not? I ask the chairman of the Rules Committee if that is not true?

Mr. PELL. That is correct.

Mr. ROBERT C. BYRD. It seems to be some indication there. The fact that it went to the Rules Committee, was reported out of the Rules Committee, is some indication there that the Committee on Rules had some jurisdiction over that matter.

Now we are told that it was not a change in the Senate rule. Whether or not it was, the Rules Committee had some jurisdiction over it for a while.

This amendment has not been to the Rules Committee. So, there are just too many arguments, Mr. President, against proceeding with this amendment as a procedure at this particular time. I hope that Senators will think about it and I hope no other Senator will ask me to yield because I want to move to recess.

The Senate will come in at 9 in the morning.

Mr. President, are there any orders for the recognition of Senators in the morning?

The PRESIDING OFFICER. There are some orders.

Mr. BAYH addressed the Chair.

Mr. JACKSON. What time did the Senator say?

Mr. ROBERT C. BYRD. Will the Senators wait? We may have another piece of business here.

Mr. President, I continue to hear Senators say why do we not vote tonight. We cannot vote tonight. Senator HOLLINGS wants to speak again. Senator STENNIS said he wants to speak again. Other Senators have not had a chance to air their views.

Mr. MAGNUSON. Senator HOLLINGS does not want to speak again.

Mr. ROBERT C. BYRD. Senator STENNIS does.

Mr. MAGNUSON. He does not.

Mr. ROBERT C. BYRD. Other Senators do.

Mr. MAGNUSON. No one else wants to speak.

Mr. ROBERT C. BYRD. The Senator has been around here longer than I have and he knows we cannot vote up and down on the matter as long as a Senator wants to speak on it. The Senator knows that.

Mr. MAGNUSON. Senator HOLLINGS just told me he did not want to speak.

[Laughter.]

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to Public Law 84–689, appoints the following Senator to attend the North Atlantic Assembly, to be held in Lisbon, Portugal, November 26–30, 1978: the Senator from Texas (Mr. BENTSEN).

UNANIMOUS-CONSENT REQUEST—H.R. 9937

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may proceed to call up Calendar Order No. 1217, H.R. 9937, an act to amend the Bank Holding Company Act Amendment of 1970, that there be a time limit of 10 minutes on the bill, to be equally divided between——

Mr. STEVENS. Mr. President, reserving the right to object.

Mr. ROBERT C. BYRD. I am being importuned to call this bill up.

Mr. STEVENS. The report is not in. It is subject to the 3-day rule, and there is no agreement, I am sorry to report to my friend.

Mr. ROBERT C. BYRD. Mr. President, there is an objection. Is there objection to calling this up?

Mr. STEVENS. I am afraid there is. It is subject to a 3-day rule. The report is not in, and we have a request to see the report.

Mr. ROBERT C. BYRD. Is there objection to even calling it up without an agreement?

Mr. STEVENS. There is an objection

to calling it up on the basis of the 3-day rule.

Mr. MAGNUSON. Mr. President, reserving the right to object.

Mr. ROBERT C. BYRD. It is already objected to.

Mr. MAGNUSON. Reserving the right to object, I only interject myself into the proposition that we vote tonight.

Mr. ROBERT C. BYRD. Yes.

H.R. 50

Mr. MAGNUSON. I do not think anyone can say any more tomorrow than has been said tonight. But what I am concerned about is that we are wasting time, and what the Senator from Massachusetts should be concerned about, and it is that we have only a few hours to get our appropriations bill done, and if we keep talking about this thing which does not belong on this bill at all to begin with, and the Senator knows that, it does not belong on this bill, hundreds of thousands of Federal employees are not going to be paid.

Mr. THURMOND. Millions.

Mr. MAGNUSON. Yes.

Let us vote on this and get it over with and get back to the appropriations bills which are all ready. The defense bill is going to be ready tomorrow. We have a continuing resolution on the HEW bill. We finished the foreign aid bill. And if we do not do something people are not going to be paid.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. MAGNUSON. Let me finish.

Mr. ROBERT C. BYRD. I have the floor.

Mr. MAGNUSON. No; let me finish.

Mr. ROBERT C. BYRD. I yield to the Senator from Washington.

Mr. MAGNUSON. And I do not know why we have to get in the position that we do not do the first things first.

Mr. LEAHY. Mr. President, may we have order?

Mr. MAGNUSON. The first thing is get the appropriation bills done and then Senators can stay here all next week and argue about this thing. This has no priority with me at all.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. MAGNUSON. And no priority with most of the Members of the Senate. The Humphrey-Hawkins bill does, and I am going to vote for it. But why clutter it up with this sort of thing?

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. MAGNUSON. I do not yield. I did not have the floor.

Mr. BROOKE. I wish to respond to the Senator.

Mr. STEVENS. He did not have the floor.

Mr. ROBERT C. BYRD. I yield.

Mr. BROOKE. I have listened to what the Senator has said and certainly I am ready to vote and want to vote tonight.

The Senator was within his rights. He could move to table. He could move to table right now if he wishes. He could move to table the amendment of the Senator from Massachusetts and get the yeas and nays on that if he wishes to do it tonight. That is his own right. That is his prerogative. It is not debatable if he wishes to move to table the amendment. I feel very strongly about the amendment as many other Senators do, and I think that is our right. I certainly will not withdraw this amendment tonight, nor has the distinguished majority leader asked me to do that. I think he asked me to sleep on it if I remember.

Mr. MAGNUSON. I yield for a question.

Mr. ROBERT C. BYRD. Mr. President, I have the floor. I yield to the Senator.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, I have the floor. Is that correct?

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. ROBERT C. BYRD. I have yielded to the Senator from Washington.

The PRESIDING OFFICER. Without objection, the Senator from West Virginia yielded to the Senator from Washington and the Senator from Washington was yielding for a question.

Mr. ROBERT C. BYRD. And I yield to the Senator from Massachusetts so that the Senator from Washington may ask him a question.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. MAGNUSON. The only thing I am talking about is that in the closing days of the Senate there are priorities and we have to establish them. Everyone wants a fair advantage to get his bills, or propositions up, which the Senator is talking about. They all cannot have it. But unless we get going tomorrow on appropriations bills, we are all going to be sorry, and to clutter it up with something that does not have, in my opinion, the same priority, and I understand what the Senator is talking about. I would like to have some priorities around here also.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. MAGNUSON. I have a lot of priorities that I would like to get done.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. MAGNUSON. Yes. I yield.

Mr. BROOKE. The Senator very well knows that I serve on the Appropriations Committee with him.

Mr. MAGNUSON. And the Senator is a very valuable member.

Mr. BROOKE. I thank the Senator very much. I am very pleased to hear that. It is very generous of the Senator.

Mr. MAGNUSON. Send that up to Massachusetts tonight.

Mr. BROOKE. I think the Senator knows that I want to get the appropriations bills out as much as he does, and I do not want to see legislation on appropriations bills. We have been through that.

We have been through that. All I am saying to the Senator tonight is that if he wants to expedite that matter, all he has to do now is move to table my amendment. I am asking you, move to table the amendment.

Mr. ROBERT C. BYRD. The Senator cannot move to table, because I have the floor. I do not yield for that purpose.

Mr. STEVENS. Mr. President, will the Senator yield to me, provided it is not for the purpose of moving to table?

Mr. ROBERT C. BYRD. Without objection, I yield to the Senator from Alaska.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I would say to my friend from Massachusetts——

Mr. MAGNUSON. Mr. President, have I lost the floor?

The PRESIDING OFFICER. You never have had it.

Mr. MAGNUSON. Well, I hope I made my point about getting things done. We have only got about 42 hours before nobody in the Government will be paid their salaries.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Alaska.

Mr. STEVENS. Mr. President, my good friend from Washington, whom I have the greatest respect for, is like that 10,000 pound canary, you know he sings whenever he wants, but when he does, Senators listen.

The distinguished Senator from Massachusetts has stated that no one has asked him to withdraw his amendment. I ask him to withdraw it.

Mr. BROOKE. My answer is "No."

Mr. STEVENS. I want the Senator to understand that I oppose the Humphrey-Hawkins bill. I am trying to be honest and fair in terms of attempting to expedite the work of the Senate. If the minority leader were here, I believe he, too, would ask the Senator to withdraw the amendment. We are trying to finish this Humphrey-Hawkins bill without waiting for cloture, but I assure the Senator that there will be no time agreement regarding this amendment. Without a time agreement, we must wait until the cloture vote, and if cloture is invoked, this amendment will be ruled nongermane and, therefore, out of order.

I repeat to the majority leader, this matter never went to the Rules Committee. It should have gone to the Rules Committee. There is no way to get rid of it unless the sponsor withdraws it, or finds himself in a cloture situation where the amendment will be ruled nongermane.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, I decline to yield further.

Mr. President, the distinguished assistant minority leader has put his finger right on the matter. We have had an ad hoc committee working since yesterday, trying to work out an agreement on this bill, and the minority leader says if this amendment is not withdrawn, we will not have any agreement on Humphrey-Hawkins.

Mr. President, I ask unanimous consent that the Senate now have a period for the transaction of routine morning business, with statements therein limited to 3 minutes each, the period not to extend beyond 30 minutes.

Mr. ABOUREZK. Mr. President, reserving the right to object, may I have a short quorum call to discuss the matter?

Mr. ROBERT C. BYRD. Mr. President, I do not yield for that purpose.

Mr. ABOUREZK. Mr. President, objection.

The PRESIDING OFFICER. Objection is heard.

FULL EMPLOYMENT AND BALANCED GROWTH ACT

● Mr. RIBICOFF. Mr. President, over three decades ago the Congress passed the Employment Act of 1946. At that time we supposedly established a national goal of assuring an opportunity for a gainful and productive job to every American seeking work. As yet, the elusive goal of full employment has not been attained. We have not even come close. The lowest unemployment rate in the last 10 years, for example, was during the fourth quarter of 1968 at which time the overall jobless rate was 3.4 percent.

In spite of the impressive gains made by the Carter administration in reducing the level of unemployment, more than 6 million Americans are without work. This figure fails to include the millions more who have despaired of finding employment and have forsaken the search for a job or those other millions who are only working part time or are underemployed even though they are on the job 8 hours or more.

While substantial progress has been made to find employment opportunities for many jobless citizens, the unemployment rate for black Americans is still more than twice the rate for whites. For women, joblessness is still at crisis levels—1 out of 10 women who heads a household was unable to find work to support herself and her dependents. The level of unemployment among teenagers and young people is approaching depression levels.

Mr. President, the right to a job is a basic human right. This great Nation must adopt as a national policy—as a national commitment—the goal of full employment. We must assure employment for all those who are willing and able to work. We must adopt those policies and programs necessary to achieve this objective.

Full employment is an economic and social imperative. In our society people clearly need work. Employed persons are able to maintain their pride and self-respect by supporting their dependents and themselves. Wage earners have a spirit of independence which is impossible to achieve when on welfare. Working Americans contribute to the economy and to the national well-being.

New initiatives and more affirmative action must be taken if we are to effectively deal with the longstanding unemployment crisis. The Humphrey-Hawkins bill represents an important tool in the effort to deal with this grave problem. This legislation makes the achievement of full employment the central priority of economic life and creates a comprehensive framework for a focused, yet flexible, attack on joblessness. The Full Employment and Balanced Growth Act sets priorities for the Nation's economic life, specific goals, and a timetable for reducing unemployment. The measure before us sets up a comprehensive process of planning and coordinating economic policy. Rather than deal with the problem in a haphazard, piecemeal fashion, there will be a planning and program development process designed to reach full employment with price stability.

Mr. President, I was pleased to cosponsor the perfecting amendment introduced by Senator MURIEL HUMPHREY in February. I believe this legislation will give new hope to millions of Americans and will assure full and equal participation in the economic and social life of the Nation by all citizens. I urge that we enact this bill without further delay, free of weakening amendments, as a clear sign that this Congress will work with the administration in bringing an end to joblessness in America.●

UNEMPLOYMENT: AN INTOLERABLE WASTE

● Mr. MATHIAS. Mr. President, one of the most troubling aspects of life in our society today is the rate of unemployment, an enduring problem, and one that often affects those who are least prepared to cope with it.

High unemployment diminishes the lives and aspirations not only of the unemployed and their families, but of all Americans. The Nation is poorer by virtue of the lack of goods and services which the unemployed could have produced; and by social problems, including vandalism and crime, which accompany high unemployment.

Statistics tend to be cold, and sometimes they defy understanding. But the jobless numbers are harshly real: They are men and women who want to work, who are looking for work, and who need an income to put food on the table for their families. They are also disillusioned young people, many of minority groups, unable to find a job, denied an opportunity to prove what they can contribute to this country.

We should look at unemployment for its harmful effect on individuals and our society. It is a waste of creativity, and a waste of our most precious national resource—our people.

There are two ways to approach this problem. One is to tolerate the human, economic, and social waste of unemployment in the hope of reducing inflation. The other is to adopt as our primary objective the development of policies aimed at providing a productive job for every person able and willing to work; at the same time constantly monitoring and reviewing these policies to avoid overheating the economy and precipitating a new recession. I opt for the second course.

The United States must not continue to condemn millions of its citizens to enforced idleness, poverty, and isolation. The commitment to provide a useful and productive job for every American who wants to work carries an obligation of broadening access to educational, training, and advancement opportunities to all individuals. We must eliminate any and all policies that restrict entry to jobs and trades.

The achievement of a full employment economy requires coordination among economic, manpower, welfare, and education policies and improved cooperation between public and private sectors. Commitment to full employment is not enough. Implementation of full employment must be our real goal.

Attaining full employment requires a mix of policies, including stimulating the growth of the economy; special efforts directed at speeding the absorption of young people into productive work, enhancing the employability of the hard-to-employ; strengthening work incentives; improving the manpower system so that it can be more responsive to the challenges of a dynamic economy; and enlarging the options that people have with respect to the uses of time for work, education, family life, and leisure. Continued and rapid improvement in general economic conditions should be a precondition for reaching the Nation's goal of full employment.

In short, we must do all in our power to encourage the development of jobs. The private sector must be the arena where these jobs are created if we are to have truly lasting relief from the hardship of unemployment. That means that each and every Member of this body must search for solutions which will enhance the prospects for all Americans in the job market. For, as Martin Luther King, Jr. said, it is a cruel joke to tell a man to lift himself up by his bootstraps when he has no shoes.●

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate——

Mr. BAYH. Mr. President, will the Senator yield me 60 seconds to make a brief statement on an unrelated subject?

The PRESIDING OFFICER. Is there objection? Without objection, the Senator yields without losing his right to the floor for 60 seconds.

CONSTITUTIONAL RIGHTS OF INSTITUTIONALIZED CITIZENS

Mr. BAYH. Mr. President, I will not impose on my colleagues for over 60 seconds, but I would not feel right with myself if I did not say that, with all the business that the Senate has considered, I feel that there is a most important piece of legislation which we have not taken up.

Mr. President, S. 1393, a bill to authorize actions by the Attorney General to redress deprivations of constitutional and other federally protected rights of institutionalized persons, which has been on the Senate Calendar since late July, will not be considered in this session of the 95th Congress by the Senate despite its strong bipartisan support—support reflected clearly by the 254-to-69 vote on the House companion bill and the 11-to-6 vote in the Senate Judiciary Committee.

This bill could have been a major instrument to insure humane and constitutional living conditions for over 1 million citizens residing in institutions, unable to fend for themselves and protect their own enjoyment of these most fundamental rights the rest of us so often take for granted.

There were a few who said that this bill would have been an unwarranted intrusion on the part of the Federal Government into the business of the States.

Mr. President, if a woman is confined in a straitjacket for 9 years and loses the use of both of her arms; if a retarded child is fed from a common bowl of gruel at such speed that the child chokes to death; if juveniles confined to reformatories are sent to homosexual dormitories as punishment; and if the State puts forth no effort to right such horrendous wrongs; then, Mr. President, I believe and many other people in this Nation believe, it is not only the business of the Federal Government, but the duty of the Federal Government to intervene to protect the rights of its citizens under our Federal Constitution.

Legitimate concerns for States rights were fully protected in this bill to the satisfaction of a number of Senators who take great pride in their defense of State's rights, including Senators HATCH, WALLOP, DOLE, and myself. In the end we must realize that the doctrine of States' rights does not include an unbridled right to ignore the Federal constitutional rights of human beings and to subject them to conditions that should not even be tolerated for animals.

To even attempt to imagine what it must be like to live every day in filth; to know nothing but hunger, deprivation, fear and neglect and to have no way to end such a living nightmare must make all of us just a little sick at our performance on this legislation. We cannot continue to allow such unconscionable treatment of our fellow human beings who, in many cases, must suffer such day to day existence only because they have had the great misfortune of being born retarded or of suffering from mental illness or of growing old, which we all must face.

Mr. President, I consider it a travesty of justice that this bill was not taken up this session; that we came so close to truly helping the most helpless of our people and were stopped just short of our goal. This bill was killed not by the majority of the Members of this body but by a few Senators who, upon deciding that they opposed this legislation, did not say, "I will work to win over the necessary votes to my side and let the Senate work its will," but rather said, "the Senate will vote against my position so I will obstruct this body in its deliberations and see that the Senate cannot vote on the entire issue." To win in this fashion on a piece of legislation designed specifically to relieve the suffering of those few of our fellow citizens who suffer the most is an affront to this great body. Such victories over the will of the Senate have occurred on other legislation, but, somehow in this instance, I have to feel that an even greater injustice has been done than is the usual case in the use of such tactics.

AUTHORITY FOR LATE FILING OF A CONFERENCE REPORT

Mr. CRANSTON. Mr. President, I ask unanimous consent that the Veterans' Committee have until midnight tonight to file a conference report on H.R. 10173, the veterans' benefits bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I am awaiting the arrival of a Senator on the floor. If the Chair will indulge me, I would like to hold the floor for a moment.

ORDER THAT H.R. 14279 BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that H.R. 14279 be held at the desk pending further disposition.

The PRESIDING OFFICER (Mr. METZENBAUM). Without objection, it is so ordered.

SUNSET LEGISLATION—(S. 2)

Mr. JAVITS. Mr. President, because of the holiday, of my faith, I was not able to be here at the time of the vote, but I did wish to make clear my intention had I been here to vote on the sunset bill, of which I had been the original cosponsor and in which I have a very deep feeling and very deep views.

Mr. President, I was pleased to be a cosponsor of this new version of sunset legislation currently before us. I was a cosponsor of the earlier version reported by the Governmental Affairs Committee, and have supported sunset's basic purpose to improve congressional procedures and activities for fulfilling its traditional oversight responsibilities. This latest version, however, makes significant improvements to sunset procedures, and I am pleased to support it.

Perhaps the most important feature of this legislation is its recognition of the authority and responsibility of authorizing committees to implement sunset's review and re-examination procedures. The appropriate responsibility of authorizing committees for programs under their jurisdiction is integrated within this version. It is incumbent on our authorizing committees to fulfill this responsibility, and meet the intended purposes of the sunset concept.

These purposes are both timely and necessary. We get a handle on overall Federal income and spending, and to assure that our people's tax funds are used in a manner that effectively delivers intended Federal services, and does so with efficiency. Moreover, changing economic conditions as well as the impact on the economy of the Federal budget makes it imperative that the Congress take every effort to review and examine as fully as possible its decisions respecting Federal funding and programs, and to assure that these decisions weigh carefully the Federal Government's responsibility to respond to national needs, choose wisely among numerous competing priorities for Federal services and activities, and achieve the delicate balances necessary to help maintain sound economic conditions and stable economic growth.

The concept of sunset legislation is important to the future of our Government and our Nation. The legislation before us has undergone rigorous scrutiny and revision, and represents a useful and workable sunset approach for the Federal Government. I believe this legislation, can significantly improve the Federal Government's activities, and its contributions to our people.

ROUTINE MORNING BUSINESS

(The following routine morning business was transacted today.)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON PROGRESS OF VIETNAM-ERA VETERANS—MESSAGE FROM THE PRESIDENT—PM 229

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which was referred to the Committee on Veterans' Affairs:

To the Congress of the United States:

I am submitting this Message to report on the progress of Veterans of the Vietnam-era, and to describe the actions I will take to respond to the special problems a number of these Veterans still face.

Veterans of World War I, World War II and Korea have received the recognition and gratitude they deserve. They are honored and remembered as men and women who served their country. This has not always been the case for those who served during the War in Vietnam. In many ways, their service was more painful than in other eras: the selection process was often arbitrary; the war was long and brutal; the changes in warfare and innovations in medicine meant that fewer soldiers were killed than in other wars, but a far greater percentage survived with disabling injuries.

Because the war did not have the full backing of the American public, neither did those who fought in Vietnam. Many civilians came to confuse their view of the war with their view of those who were called upon to fight it. They confused the war with the warrior. Yet I know that all Americans join me in stating that the courage and patriotism of those who served in Vietnam have earned them full measure of honor and respect.

It is a tribute to the caliber of those who served that most Vietnam-era Veterans have already adjusted very successfully to civilian life. Still, in many ways, the effects of the war in Vietnam linger on. We have only begun to understand the full impact of the conflict. As part of healing its wounds, we have rec-

ognized our obligation to forget many harsh words and rash acts, and to forgive those who resisted the war. Of even greater importance is our determination to recognize those who did serve and to show our appreciation for the sacrifices they made.

I have directed the Secretary of Defense to honor the memory of all those who fought and died as well as those who are missing in action in Southeast Asia in ceremonies this fall at Arlington Cemetery.

As for those who did return, our review has found their personal and family median incomes are substantially higher than similar-aged non-Veterans, and their unemployment rates have been lowered. For the third quarter of 1978, Vietnam-era Veterans aged 20–34 had a 4.7 percent unemployment rate as compared to a 6.7 percent rate for the third quarter of 1977. Although rates vary from month to month, it is fair to say that most Vietnam-era Veterans have moved into the main-stream of economic life. Vietnam-era Veterans are making comparable or better use of their Veteran benefits than Veterans of previous wars. To date, nearly 65 percent have utilized their GI bill benefits, which is far greater than under the World War II or Korean programs. We should not fail to recognize the hard work and determination that typify most Vietnam-era Veterans who have been successful in their military to civilian transition.

But for many Veterans—especially minority and disadvantaged Veterans—the transition to civilian life has led to unemployment, poverty and frustrations. The key to making our Veterans' programs successful—and efficient—is to target them carefully on those who continue to need help. By using our resources more skillfully and coordinating our efforts more closely, we can aid those ex-servicemen and women who are most in need of government assistance.

In my written State of the Union message to you last January, I indicated that my Administration would undertake a government-wide review of the status of the Vietnam-era Veterans and the programs designed to serve them. Since that time, the Veterans Administration, the Department of Labor, the Department of Defense, the Department of Justice, the Department of Health, Education, and Welfare, the Community Services Administration, the Council of Economic Advisors, the Office of Management and Budget, and the Domestic Policy Staff have reviewed the status of these ex-servicemen and women and have prepared recommendations for improved government performance. On the basis of that policy review, I have ordered improvements in four areas of Veteran affairs:

Employment opportunities.
Educational opportunities.
Other veterans services and benefits.
Military status.

In order to implement my decisions in these areas and improve delivery of services to veterans, I have established an interagency Veterans Federal Coordinating Committee, composed of representatives of eight agencies, operating under the direction of the Executive Office of the President.

I am also conferring upon the Veterans' Administration the status of a Cabinet Agency, for the purpose of attending Cabinet meetings. The Veterans' Administration is a large and important part of our government. Its presence at Cabinet meetings will be useful for other departments with overlapping responsibilities, and for the Veterans' Administration itself, which will have a stronger voice.

To better understand some of the issues that will continue to confront the Vietnam-era Veteran, I am instituting a survey of public attitudes toward those Veterans. This study will help us identify the real areas of concern, as well as accurately portray the public's overall support of Veterans' benefit programs generally.

I. EMPLOYMENT OPPORTUNITIES

Most Vietnam-era veterans are now doing better economically than non-veterans of the same age and background. In 1977, Vietnam-era Veterans aged 20–39 had median personal incomes of $12,680 compared to $9,820 for similar-aged non-veterans. When compared by family income, the figures are $15,040 and $12,850 respectively. For Vietnam-era Veterans aged 20-34, the unemployment rate of 7.4% for September one year ago declined to 4.9% in September, 1978. As in all other sectors, unemployment rates for Veterans are substantially lower than they were when this Administration took office. We have hired nearly 98,000 Vietnam-era Veterans in public service jobs as part of the Administration's Economic Stimulus Package. Jobs and training assistance for Veterans became a top domestic priority when the Administration took office; the results are now clearly visible.

But if the overall employment picture for Vietnam-era Veterans is encouraging, the unemployment problems of minority, disabled, and disadvantaged Vietnam-era Veterans are cause for continued concern and attention. Black Vietnam-era Veterans, a significant percentage of whom saw active combat, face unemployment rates of 11.2% for the third quarter of 1978 compared to 15.9% for the third quarter of 1977. For the more seriously disabled Veterans, the unemployment rate is estimated to range as high as 50%. We have made great strides in every area of employment since the beginning of my Administration, but these jobless rates are still far too high. There is a clear need to better coordinate employment and employment assistance programs so that they are targeted on those Veterans most in need.

With that in mind, I have ordered a comprehensive review of the overall system for delivery of employment services to veterans. The review will yield further suggestions for improvement, but I have already initiated action to:

improve the participation of Veterans in all Comprehensive Employment and Training Act (CETA) programs. We have designed a number of ways of making sure CETA prime sponsors take account of the special needs of Veterans. They include: inspecting grant plans and monitoring local prime sponsor systems to assure consideration of the Vietnam-era Veterans and seeking to have better Veterans representation on prime sponsor councils.

continue operation of a national Help Through Industry Retraining and Employment (HIRE) program at a $40 million level, and supplement it with a $90 million HIRE II program, paid for with carry-over funds from the original HIRE effort. HIRE I is a national contract program operated through State Employment Services across the country, and through the National Alliance for Business. It hires and trains Veterans, members of Veterans' families eligible for Veterans' preference, and disadvantaged non-veteran youth for jobs in the private sector. HIRE II will decentralize sponsors to contract for and operate it in cooperation with State Employment Security agencies. HIRE II will be available exclusively for Veterans. Participants will also have access to all of the training, public employment and outreach services available through other CETA programs.

secure from Congress authority to spend in Fiscal 1979 HIRE funds appropriated in 1977. Without this extension the unobligated funds would have reverted to the Treasury.

continued support will be given for the special outreach programs for Veterans operated by the National Alliance for Business and selected community organizations. One of the most important contributions government can make to Vietnam-era Veterans is to support outreach programs. They extend Veterans services to those who are unaware of the availability of assistance or intimidated by the idea of seeking it. We have extended our outreach efforts through HIRE II program and Veterans organizations. The National Alliance for Business and 13 other private programs funded by the Department of Labor must have continued backing.

maintain current funding levels for the Disabled Veterans Outreach Program (DVOP). DVOP was originally funded as part of the economic stimulus package, but the program deserves to continue at its current level of $30 million. DVOP employs 2.000 disabled Veterans to help find jobs for other disabled Veterans. So far, 26,000 disabled veterans have found work through the program and it continues to be targeted at those Veterans with the severest employment problems.

improve coordination between Department of Labor and Veterans Administration employment programs. These programs will become more efficient as departmental policy links are clarified by a new high-level joint committee appointed by the Secretary of Labor and the Veterans Administrator. Money-wasting duplication of effort will be ended.

order all Federal agencies to make greater use of the Veterans Readjustment Appointment (VRA) authority to bring Vietnam-era Veterans, especially the disabled, into government service. I have already submitted legislation to liberalize and extend the authority to

June 30, 1980. The bill has passed both Houses of Congress and is now in conference.

II. EDUCATIONAL OPPORTUNITIES

Vietnam-era Veterans are in the process of becoming the best educated group of Veterans in our history. Already, 65% of Vietnam-era Veterans have taken advantage of the GI Bill. That compares to a final rate of some 51% for World War II Veterans and 43% for Veterans of the Korean War. The Nation has spent nearly $25 billion on the GI Bill for Vietnam-era Veterans compared with $14 billion for those who served in World War II and $4.5 billion for Veterans of the Korean conflict.

But these readjustment assistance benefits often have not been utilized by those Vietnam-era Veterans who need them the most. Many members of minority groups and those lacking a high school diploma have not taken full advantage of the GI Bill. For them, outreach efforts must be intensified and eligibility expanded. At present, eligibility for most benefits under the GI Bill generally ends ten years after discharge. Although these provisions are more liberal than for Veterans of previous wars, we will:

—submit legislation to the Congress that would extend eligibility beyond ten years for these Veterans the Veterans Administration defines as in need or educationally disadvantaged.

—continue a VA program called "Operation Boost" designed to seek out Veterans who are unaware of the time limit that is fast approaching for many of them.

III. OTHER VETERANS SERVICES AND BENEFITS

In general, Veterans benefits have been generous for Vietnam-era Veterans, but these and other benefits to which they are entitled need to be targeted better on those who really need them. Among those benefits and services requiring improvement are ones relating to:

Disabled Veterans.

Incarcerated Veterans.

Readjustment counselling and substance abuse treatment.

DISABLED VETERANS

Individuals with service-connected disabilities are especially in need of greater assistance from the government. That is particularly true for Vietnam-era Veterans, who suffered a 300 percent greater loss of lower extremities than Veterans of any other war. Altogether, 512,000 have sustained some kind of disability.

Our vocational rehabilitation programs must reflect our paramount concern for those Veterans who have service-connected disabilities. The current VA program is based on a 1943 model and requires major updating. I will submit legislation to the next Congress that will modernize and improve that program.

READJUSTMENT COUNSELING AND SUBSTANCE ABUSE TREATMENT

The frequent image of the Vietnam Veteran as unbalanced, unstable and drug-dependent is simply not borne out by available information. Most Veterans have adjusted well and the incidence of drug abuse, although greatly increased while in service, has for the most part declined to pre-Vietnam levels or lower. Nevertheless, there is evidence that suggests a significant minority of Vietnam Veterans have experienced problems of readjustment which continue even today.

Vietnam-era Veterans under age 34 have a suicide rate 23 percent higher than non-Veterans of the same age group. The number of hospitalized Vietnam Veterans identified as alcoholics or problem drinkers more than doubled from 13 percent in 1970 to 31 percent in 1977. And, although the drug abuse problem has declined, Vietnam-era Veterans account for 39 percent of all inpatients and 55 percent of all outpatients being treated by the VA for drug dependence problems.

The government is addressing these concerns, but more must be done:

—The Administration has already proposed legislation which would authorize psychological readjustment counseling to Vietnam-era Veterans and their families. The proposal is aimed at those Veterans who are not classified as mentally ill but nevertheless need some kind of counseling. I urge Congress to enact this proposal prior to adjournment.

The Administration also requested legislative authority to contract for halfway houses in the treatment of Vietnam-era Veterans with substance abuse problems. This authority, together with the activation of 20 new VA substance abuse treatment units in this coming fiscal year, should provide needed resources to treat those with continuing alcohol and drug abuse problems.

—Finally, more research needs to be done into the problems of Vietnam-era Veterans. I am directing both the Veterans Administration and the National Institute of Mental Health to initiate studies in this area. A major study contracted for by the Veterans Administration to be submitted next year should enable us to better identify the nature and extent of problems being experienced by Vietnam-era Veterans.

INCARCERATED VETERANS

Like Veterans of all wars, a certain percentage of Vietnam-era Veterans end up in prison after returning home. Available data suggest that there are about 29,000 Vietnam-era Veterans in State and Federal prisons. Many of these Veterans received discharges which entitle them to VA benefits. Unfortunately, we lack comprehensive information about imprisoned Veterans.

I have directed the Law Enforcement Assistance Administration (LEAA) to compile accurate data about incarcerated Veterans. I have also asked the LEAA and the Bureau of Prisons to develop an information dissemination program for criminal justice system officials aimed at informing Veterans of the benefits available to them.

IV. MILITARY STATUS

Ninety-seven percent of all Vietnam-era Veterans received discharges under honorable conditions after completing service. It is only fair that those few individuals with discharges under other than honorable conditions be presented with the fullest possible justification for the action taken against them. Because of the serious harm such a discharge can do to a Veteran seeking a responsible place in society, the government must assure that discharge review is readily available to insure fair and humane treatment.

In this connection the Administration will:

—grant assistance to Veterans seeking discharge review. The Department of Defense has agreed to provide indices of discharge review/correction board cases to selective regional offices of the VA.

—submit legislation to modify the provisions of PL 95–196 which automatically barred VA benefits for combat Veterans discharged because of unauthorized absences of 180 days or more.

CONCLUSION

No steps we take can undo all the damage done by the war. There is no legislation that can bring those who died back to life, nor restore arms, legs, eyes to those who lost them in service. What we can do is to acknowledge our debt to those who sacrificed so much when their country asked service of them, and to repay that debt fully, gladly, and with a deep sense of respect.

JIMMY CARTER.

THE WHITE HOUSE, *October 10, 1978.*

PRESIDENTIAL APPROVALS

A message from the President of the United States reported that on September 30, 1978, he approved and signed the following acts:

S.J. Res. 165, Joint resolution to provide for a temporary extension of certain Federal Housing Administration mortgage insurance and related authorities, of the national flood insurance program, of the crime insurance and riot reinsurance programs, of certain rural housing authorities, and for other purposes.

S. 1678, An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

S. 1896, An act to amend the Harzardous Materials Transportation Act to authorize appropriations for fiscal year 1979.

S. 2391, An act to extend the Commodity Exchange Act, and for other purposes.

S. 2701, An act to amend the Water Resources Planning Act (79 Stat. 244, as amended).

S. 3002. An act to modify a portion of the south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes.

S. 3069, An act to provide that members of the Sisseton-Wahpeton Sioux Tribe may request the Secretary of the Interior to acquire certain lands, and to provide that the tribe shall have a preference right to purchase certain lands held in trust by the United States for tribal members.

S. 3271. An act to amend the pilot project workfare provisions of the Food Stamp Act of 1977.

S. 3468, An act to amend the Agricultural Act of 1949 to insure that the interest rates on price support loans for upland cotton are not less favorable to producers than the interest rates for such loans on other commodities.

The message also announced that the President, on October 2, 1978, approved and signed the following acts:

S. 3272. An act to amend the Packers and Stockyards Act, 1921, and for other purposes.

S. 3375. An act to amend title 28 of the United States Code to make certain changes in the places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines.

The message further announced that the President, on October 5, 1978, approved and signed the following acts:

S.J. Res. 154. Joint resolution authorizing the President to invite the States of the Union and foreign nations to participate in the International Petroleum Exposition to be held at Tulsa, Okla., from September 10, 1979, through September 13, 1979.

S. 1265. An act to amend chapter 21 of title 44, United States Code, to include new provisions relating to the acceptance and use of records relating to the acceptance and use of records transferred to the custody of the Administrator of General Services.

S. 2507. An act to authorize the Smithsonian Institution to acquire the Museum of African Art, and for other purposes.

S. 3040. An act to amend the Rail Passenger Service Act to extend the authorizations of appropriations for an additional fiscal year, to provide for public consideration and implementation of a rail passenger service study, and for other purposes.

S. 3342. An act to name a lake which has been completed as part of the Papillion Creek basin project as the "Standing Bear Lake."

The message also announced that the President, on October 10, 1978, approved and signed the following acts:

S. 286. An act to repeal certain requirements relating to notice of animal and plant quarantines, and for other purposes.

S. 409. An act to designate the Meat Animal Research Center located near Clay Center, Nebr., as the "Roman L. Hruska Meat Animal Research Center."

S. 425. An act to authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Lt. Gen. Ira C. Eaker, U.S. Air Force (retired).

S. 1267. An act to amend sections 3303a and 1503 of title 44, United States Code, to require mandatory application of the General Records Schedules to all Federal agencies and to resolve conflicts between authorizations for disposal and to provide for the disposal of Federal Register documents.

S. 2946. An act to authorize the Secretary of Agriculture to relinquish exclusive legislative jurisdiction over lands or interests under his control.

S. 2951. An act to authorize the Secretary of Agriculture to accept and administer on behalf of the United States gifts or devises of real and personal property for the benefit of the Department of Agriculture or any of its programs.

S. 3036. An act to amend the Coinage Act of 1965 to change the size, weight, and design of the one-dollar coin, and for other purposes.

S. 3045. An act to amend the Farm Credit Act of 1971 to extend the term for production credit association loans to producers or harvesters of acquatic products.

S. 3067. An act to extend the Commission on Civil Rights for 5 years, to authorize appropriations for the Commission, to effect certain technical changes to comply with changes in the law, and for other purposes.

S. 3092. An act to amend the Federal Meat Inspection Act to require that meat inspected and approved under such act be produced only from livestock slaughtered in accordance with humane methods, and for other purposes.

S. 3274. An act to designate the U.S. Department of Agriculture's Bee Research Laboratory in Tucson, Ariz., as the "Carl Hayden Bee Research Center."

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 12:02 a.m., a message from the House of Representatives was delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1081. An act to amend certain laws relating to the Osage Tribe of Oklahoma, and for other purposes;

S. 2358. An act to declare that the United States holds in trust for the Pueblo of Zia certain public domain lands;

S. 2588. An act to declare that the United States holds in trust for the Pueblo of Santa Ana certain public domain lands;

S. 2640. An act to reform the civil service laws;

S. 3259. An act to authorize the permanent establishment of a system of Federal information centers; and

S. 3486. An act to authorize appropriations for fiscal year 1979 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and for research, development, test and evaluation of the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for civil defense, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. EASTLAND).

The message also announced that the House has passed the following bills, without amendment:

S. 3373. An act to amend title 10, United States Code, to authorize the Secretary of Defense to provide transportation to the Girl Scouts of the United States of America in connection with International World Friendship Events or Trips on Foreign Soil meetings, and for other purposes; and

S. 2411. An act to amend chapter 315 of title 18, United States Code, to authorize payment of transportation expenses for persons released from custody pending their appearance to face criminal charges before that court, any division of that court, or any court of the United States in another Federal judicial district.

The message further announced that the House agrees to the amendments of the Senate to the amendment of the House to the amendment of the Senate to H.R. 8200, an act to establish a uniform law on the subject of bankruptcies.

The message also announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 1147. A joint resolution authorizing and requesting the President to designate the seven-day period beginning on May 28, 1979, as "Vietnam Veterans Week".

The message further announced that the House has passed S. 1835, an act requiring the Secretary of Agriculture to conduct a study of the adequacy of the Nation's transportation system to meet the needs of American agriculture and rural development, and for other purposes, with amendments in which it requests the concurrence of the Senate.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 730. A concurrent resolution directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 12255; and

H. Con. Res. 739. A concurrent resolution to correct an error in the enrollment of H.R. 11318, a bill to amend the Small Business Act in the Small Business Investment Act of 1958.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 10:30 a.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

H.R. 7843. An act to provide for the appointment of additional district and circuit judges, and for other purposes;

H.R. 12255. An act to amend the Older Americans Act of 1965 to provide for improved programs for older persons, and for other purposes;

H.R. 12556. An act for the relief of Batavia Turf Farms, Inc.;

H.R. 12932. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1979, and for other purposes;

H.R. 13803. An act to terminate the authorization of the navigation project on the Columbia Slough, Oreg.; and

H.J. Res. 638. Joint resolution extending the deadline for the ratification of the equal rights amendment.

The enrolled bills were subsequently signed by the President pro tempore (Mr. EASTLAND).

The message also announced that the House has passed the following bills, without amendment:

S. 1185. An act to regulate interstate commerce with respect to parimutuel wagering on horseracing, to maintain the stability of the horseracing industry, and for other purposes; and

S. 1318. An act to permit the State of Hawaii to use the proceeds from the sale, lease, or other disposition of certain real property for any public purpose.

The message further announced that the House agrees to the amendments of the Senate to House Joint Resolution 685, to designate October 7, 1979, the Sunday of Fire Prevention Week as "Firefighters' Memorial Sunday."

The message also announced that the House agrees to the amendments of the Senate to H.R. 8755, an act to make specific provisions for ball or roller bearing pillow block flange, take-up, cartridge, and hanger units in the Tariff Schedules of the United States.

The message further announced that the House agrees to the amendments of the Senate to H.R. 12165, an act to extend until the close of June 30, 1981, the existing suspension of duties on certain metal waste and scrap, unwrought metal, and other articles of metal.

The message also announced that the House agrees to the amendment of the Senate numbered 1 to H.R. 10161, an act for the relief of Eastern Telephone Supply & Manufacturing, Inc.; that the

House disagrees to the amendment of the Senate No. 2 to the bill; and that the House agrees to the amendment of the Senate to the title of the bill.

The message further announced that the House has passed S. 491, an act to amend the act entitled "An act to authorize establishment of the Fort Union Trading Post National Historic Site, North Dakota, and Montana, and for other purposes", approved June 20, 1966 (80 Stat. 211), and for other purposes, with an amendment in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to H.R. 10587, an act to improve the range conditions of the public grazing lands.

At 1:25 p.m., a message from the House of Representatives delivered by Mr. Hackney, announced that the House agrees, without amendment, to Senate Concurrent Resolution 110, directing the Secretary of the Senate to make correction in the enrollment of S. 2640.

The message also announced that the House agrees to the amendment of the Senate to H.R. 11686, an act to authorize appropriations for the Department of Energy for national security programs for fiscal year 1979, and for other purposes.

The message further announced that the House has passed S. 990, an act to amend title 5, United States Code, to provide special allowances to certain physicians employed by the United States in order to enhance the recruitment and retention of such physicians, with amendments in which it requests the concurrence of the Senate.

The message also announced that the House has passed S. 3336, an act to enable the Department of Justice and the Administrative Office of the U.S. Courts to provide services and special supervision to drug dependent Federal offenders in an efficient and effective manner, with amendments in which it requests the concurrence of the Senate.

The message further announced that the House agrees to Senate Concurrent Resolution 32, relating to broadening the observance of Thanksgiving to an occasion of sharing our plenty with the hungry of other lands, with an amendment in which it requests the concurrence of the Senate.

The message also announced that the House disagrees to the amendment of the Senate to H.R. 12250, an act to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area Mining Protection Area, and for other purposes; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. PHILLIP BURTON, Mr. UDALL, Mr. KASTENMEIER, Mr. SEIBERLING, Mr. VENTO, Mr. SKUBITZ, and Mr. SEBELIUS were appointed managers of the conference on the part of the House.

At 4:20 p.m., a message from the House of Representatives delivered by Mr. Hackney, announced that the House has passed S. 3412, an act to provide for cost-of-living adjustments in the annuity of a retired Comptroller General, and for other purposes, without amendment.

The message also announced that the House agrees to the amendments of the Senate to H.R. 6900, an act to amend the National Trails System Act of 1968 (82 Stat. 919), as amended, to designate the Oregon National Historic Trail and Travelway as a unit of the National Trails System, with amendments in which it requests the concurrence of the Senate.

The message further announced that the House insists upon its amendments to S. 2534, an act to revise and extend the provisions of title XIII of the Public Health Service Act relating to health maintenance organizations, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. STAGGERS, Mr. ROGERS, Mr. SATTERFIELD, Mr. PREYER, Mr. SCHEUER, Mr. CARTER, and Mr. BROYHILL were appointed managers of the conference on the part of the House.

The message also announced that the House insists upon its amendments to S. 2466, an act to amend the Public Health Service Act to extend and revise the assistance programs for health services research and health statistics; to establish the Office of Health Technology, and for other purposes, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. STAGGERS, Mr. ROGERS, Mr. SATTERFIELD, Mr. PREYER, Mr. SCHEUER, Mr. CARTER, and Mr. BROYHILL were appointed managers of the conference on the part of the House.

The message further announced that the House insists upon its amendment to S. 2416, an act to amend title VIII of the Public Health Service Act to extend for 2 fiscal years the program of assistance for nurse training, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon; and that Mr. STAGGERS, Mr. ROGERS, Mr. SATTERFIELD, Mr. PREYER, Mr. SCHEUER, Mr. CARTER, and Mr. BROYHILL were appointed managers of the conference on the part of the House.

The message also announced that the House agrees to the amendments of the Senate numbered 1, 2, 3, 4, and 6 to H.R. 9911, an act to continue until the close of June 30, 1981, the existing suspension of duties on certain forms of zinc; that the House disagrees to the amendment of the Senate numbered 7 to the bill; that the House agrees to the amendment of the Senate to the title of the bill; and that the House agrees to the amendment of the Senate numbered 8 to the bill, with an amendment in which it requests the concurrence of the Senate.

The message further announced that the House agrees, without amendment, to Senate Concurrent Resolution 108, authorizing the printing of the prayers of the Chaplain of the Senate during the 95th Congress as a Senate document.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 3185. An act to amend the act commonly known as the Miller Act to raise the dollar amount of contracts to which such act applies from $2,000 to $25,000;

H.R. 7201. An act to amend subsection (a) of section 2737 of title 10, United States Code, and for other purposes;

H.R. 8696. An act relating to the income tax treatment of an individual who receives a retroactive determination of eligibility for disability compensation from the Veterans' Administration;

H.R. 12532. An act to amend the Internal Revenue Code of 1954 to provide that the use of the zero bracket amount will not reduce the benefits of income averaging;

H.R. 12592. An act to extend for an additional period the existing tax treatment of certain activities of certain private foundations;

H.R. 13092. An act to amend the Internal Revenue Code of 1954 to extend the optional small tax case procedures to additional taxpayers, and to make certain changes relating to the authority of commissioners of the Tax Court;

H.R. 13500. An act to amend title 44 to insure the preservation of and public access to the official records of the President, and for other purposes;

H.R. 14279. An act to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions; and

H.J. Res. 747. Joint resolution to consent to an amendment of the constitution of the State of New Mexico to provide a method for executing leases and other contracts for the development and operation of geothermal steam and waters on lands granted or confirmed to such State.

At 5:54 p.m., a message from the House of Representatives delivered by Mr. Hackney, announced that the House agrees to the amendments of the Senate numbered 1, 2, 3, 4, and 5 to H.R. 7320, an act to revise miscellaneous timing requirements of the revenue laws, and for other purposes; that the House agrees to the amendment of the Senate numbered 6 to the bill, with an amendment in which it requests the concurrence of the Senate; that the House agrees to the amendment of the Senate numbered 8 to the bill, with an amendment in which it requests the concurrence of the Senate; and disagrees to the amendment of the Senate numbered 7 to the bill.

The message also announced that the House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 3553. An act to amend the Internal Revenue Code of 1954 to provide tax counseling for the elderly, and for other purposes;

H.R. 4727. An act to amend the Federal Rules of Evidence to provide for the protection of the privacy of rape victims;

H.R. 13719. An act to offset the loss in tax revenues incurred by Guam and the Virgin Islands by reason of certain Federal tax reductions;

H.R. 13750. An act to implement the International Sugar Agreement, 1977, between the United States and foreign countries, to protect the welfare of consumers of sugar and of those engaged in the domestic sugar industry, and for other purposes;

H.R. 13892. An act to amend title 28 of the United States Code to provide that the requirement that each U.S. attorney and U.S. marshal reside in the district for which he is appointed shall not apply to an individual appointed to such a position for the Northern Mariana Islands if such individual is at the

same time serving in the same capacity in another district;

H.R. 13903. An act to amend title 10, United States Code, to provide that a member of the Board of Regents of the Uniformed Services University of the Health Sciences whose term of office has expired shall continue to serve until a successor is appointed;

H.R. 14279. An act to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions;

H.J. Res. 1157. A joint resolution to amend section 8 of the Export-Import Bank Act of 1945.

The message further announced that the House has agreed to House Concurrent Resolution 740, authorizing corrections in the enrolled bill, H.R. 10587, in which it requests the concurrence of the Senate.

The message also announced that the House has agreed to House Congressional Resolution 742, providing for the printing of prayers offered by Rev. Edward Gardiner Latch during the 94th and 95th Congresses, in which it requests the concurrence of the Senate.

HOUSE BILLS AND JOINT RESOLUTION HELD AT THE DESK

The following bills and joint resolution were read by their titles and held at the desk, by unanimous consent:

H.R. 4727. An act to amend the Federal Rules of Evidence to provide for the protection of the privacy of rape victims;

H.R. 13500. An act to amend title 44 to insure the preservation of and public access to the official records of the President, and for other purposes;

H.R. 13719. An act to offset the loss in tax revenues incurred by Guam and the Virgin Islands by reason of certain Federal tax reductions;

H.R. 13892. An act to amend title 28 of the United States Code to provide that the requirement that each U.S. attorney and U.S. marshal reside in the district for which he is appointed shall not apply to an individual appointed to such a position for the Northern Mariana Islands if such individual is at the same time serving in the same capacity in another district;

H.R. 13903. An act to amend title 10, United States Code, to provide that a member of the Board of Regents of the Uniformed Services University of the Health Sciences whose term of office has expired shall continue to serve until a successor is appointed;

H.R. 14279. An act to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions; and

H.J. Res. 1157. Joint resolution to amend section 8 of the Export-Import Bank Act of 1945.

HOUSE BILLS AND JOINT RESOLUTION REFERRED

The following bills and joint resolution were read twice by their titles and referred as indicated:

H.R. 3553. An act to amend the Internal Revenue Code of 1954 to provide tax counseling for the elderly, and for other purposes; to the Committee on Finance.

H.R. 7201. An act to amend subsection (a) of section 2737 of title 10, United States Code, and for other purposes; to the Committee on Armed Services.

H.R. 8696. An act relating to the income tax treatment of an individual who receives a retroactive determination of eligibility for disability compensation from the Veterans' Administration; to the Committee on Finance.

H.R. 12532. An act to amend the Internal Revenue Code of 1954 to provide that the use of the zero bracket amount will not reduce the benefits of income averaging; to the Committee on Finance.

H.R. 12592. An act to extend for an additional period the existing tax treatment of certain activities of certain private foundations; to the Committee on Finance.

H.R. 13092. An act to amend the Internal Revenue Code of 1954 to extend the optional small tax case procedures to additional taxpayers, and to make certain changes relating to the authority of commissioners of the Tax Court; to the Committee on Finance.

H.R. 13750. An act to implement the International Sugar Agreement, 1977, between the United States and foreign countries, to protect the welfare of consumers of sugar and of those engaged in the domestic sugar industry, and for other purposes; to the Committee on Finance.

H.R. 14279. An act to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions; to the Committee on Banking, Housing, and Urban Affairs.

H.J. Res. 747. A joint resolution to consent to an amendment of the constitution of the State of New Mexico to provide a method for executing leases and other contracts for the development and operation of geothermal steam and waters on lands granted or confirmed to such State; to the Committee on Energy and Natural Resources.

HOUSE BILL PLACED ON THE CALENDAR

The following bill was read by title and placed on the calendar:

H.R. 3185. An act to amend the act commonly known as the Miller Act to raise the dollar amount of contracts to which such act applies from $2,000 to $25,000.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, October 11, 1978, he presented to the President of the United States the following enrolled bill:

S. 2640. An act to reform the civil service laws.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MAGNUSON, from the Committee on Appropriations, with amendments:

H.J. Res. 1139. A joint resolution making continuing appropriations for the fiscal year 1979, and for other purposes (Rept. No. 95-1318).

By Mr. MAGNUSON, from the Committee on Appropriations:

Report on Allocation to Subcommittee on Budget Totals from the second concurrent resolution for fiscal year 1979 (Rept. No. 95-1318).

By Mr. PELL, from the Committee on Rules and Administration, without amendment:

S. Res. 585. An original resolution relating to the purchase of calendars (Rept. No. 95-1319).

S. Res. 586. An original resolution to pay a gratuity to Mary R. Cothran.

By Mr. SCHMITT, from the Select Committee on Ethics, without amendment:

S. Res. 584. An original resolution amending the Standing Rules of the Senate to allow the defraying of office expenses incurred in connection with official duties from funds derived from certain political committees (together with minority views) (Rept. No. 95-1320). Referred to the Committee on Rules and Administration.

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

H.R. 4533. An act for the relief of Gary Daves and Marc Cayer (Rept. No. 95-1321).

By Mr. CULVER, from the Committee on the Judiciary, with an amendment and an amendment to the title:

S. 1974. A bill to amend section 553 of title 5, United States Code, to improve Federal rulemaking practice by creating procedures for regulatory issuance in two or more parts (Rept. No. 95-1322).

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

H.R. 9075. An act for the relief of John F. Johnson (Rept. No. 95-1323).

ENERGY TAX ACT OF 1978—CONFERENCE REPORT

Mr. LONG, from the committee of conference, submitted a report on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5263) to suspend until the close of June 30, 1980, the duty on certain bicycle parts (Rept. No. 95-1324).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Henry S. Dogin, of New York, to be Deputy Administrator for Policy Development of the Law Enforcement Assistance Administration.

Homer F. Broome, Jr., of California, to be Deputy Administrator for Administration of the Law Enforcement Assistance Administration.

(The above nominations from the Committee on the Judiciary were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By RANDOLPH, from the Committee on Environment and Public Works:

Col. John Miley Adsit, to be a Member of the California Debris Commission.

Richard Merrell Freeman, of Illinois, to be a Member of the Board of Directors of the Tennessee Valley Authority.

(The above nominations from the Committee on Environment and Public Works were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

ADDITIONAL COSPONSORS

S. 1706

At the request of Mr. LUGAR, the Senator from Utah (Mr. GARN), the Senator from Kansas (Mr. DOLE), the Senator from Texas (Mr. TOWER), the Senator from Idaho (Mr. MCCLURE), the Senator from California (Mr. HAYAKAWA), and the Senator from Nebraska (Mr. CURTIS) were added as cosponsors of S. 1706, a bill to regulate and remove certain impediments to the flow of interstate commerce by establishing certain standards for the determination of liabilities arising from product-related injuries, and for other purposes.

SENATE JOINT RESOLUTION 155

At the request of Mr. ZORINSKY, the Senator from Colorado (Mr. HART) was added as a cosponsor of Senate Joint Resolution 155, to increase the price support for milk, wheat, corn, soybeans, and cotton to not less than 90 per centum of the respective parity prices therefore, and for other purposes.

SENATE CONCURRENT RESOLUTION 68

At the request of Mr. CURTIS, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of Senate Concurrent Resolution 68, expressing the sense of the Senate on the Baltic States question.

AMENDMENTS NOS. 3581 THROUGH 3584

At the request of Mr. SCHWEIKER, the Senator from Wyoming (Mr. WALLOP) was added as a cosponsor of amendments No. 3581 through 3584, intended to be proposed to H.R. 5285, the tariff treatment of film, sheets, and plates of certain plastics or rubber.

SENATE RESOLUTION 584—ORIGINAL RESOLUTION REPORTED AMENDING THE STANDING RULES OF THE SENATE

Mr. SCHMITT, from the Select Committee on Ethics, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 584

Resolved, That paragraph 1(c) of rule XLVI of the Standing Rules of the Senate is amended to read as follows:

"(c) funds derived from contributions (as defined in section 301(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(e)) to—

"(1) the Member's principal campaign committee (as defined in section 301(n) of such Act (2 U.S.C. 431(n));

"(2) the Democratic Senatorial Campaign Committee and the National Republican Senatorial Committee; and

"(3) the national committee of a political party and the State committee of a political party with which the Member is affiliated; and".

SENATE RESOLUTION 585—ORIGINAL RESOLUTION REPORTED RELATING TO PURCHASE OF CALENDARS

Mr. PELL, from the Committee on Rules and Administration, reported the following original resolution, which was placed on the calendar:

S. RES. 585

Resolved, That the Committee on Rules and Administration is authorized to expend from the contingent fund of the Senate, upon vouchers approved by the chairman of that committee, not to exceed $47,840 for the purchase of one hundred and four thousand calendars. The calendars shall be distributed as prescribed by the committee.

SENATE RESOLUTION 586—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY

Mr. PELL, from the Committee on Rules and Administration, reported the following original resolution, which was placed on the calendar:

S. RES. 586

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Mary R. Cothran, mother of Mary R. Cothran, an employee of the Senate at the time of her death, a sum equal to ten and one half months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 588—SUBMISSION OF A RESOLUTION WITH RESPECT TO PAROLLING A NUMBER OF LEBANESE REFUGEES

Mr. McGOVERN (for himself and Mr. DOLE) submitted the following resolution, which was referred to the Committee on the Judiciary:

S. RES. 588

Resolved, That it is the sense of the Senate that the Attorney General of the United States should use his authority under the Immigration and Nationality Act to parole into the United States such number of refugees from Lebanon as the Secretary of State recommends to him.

SEC. 2. The Secretary of the Senate shall transmit copies of this resolution to the Secretary of State and the Attorney General of the United States.

AMENDMENTS SUBMITTED FOR PRINTING

DEEP SEABED MINERAL RESOURCES ACT—S. 2053

AMENDMENT NO. 4533

(Ordered to be printed and to lie on the table.)

Mr. McGOVERN submitted an amendment intended to be proposed by him to S. 2053, a bill to promote the orderly and environmentally sound exploration for and commercial recovery of hard mineral resources of the deep seabed, pending adoption of an international regime relating thereto.

ADDITIONAL STATEMENTS

SAVING THE CITIES: FOR WHOM?

● Mr. DECONCINI. Mr. President, several Federal and private urban renewal efforts are having positive effects in many neighborhoods of this nation. These new signs of city renaissance are welcome, but redevelopment activities can create new problems for existing neighborhood residents—and particularly for elderly homeowners and renters, who are least able to adjust to forced relocation or to cope with rising rents, property taxes, and maintenance costs.

Mr. Rolf Goetze, director of Housing Revitalization at the Boston Redevelopment Authority, sums up the peril and promise of the new neighborhood efforts in a recent report prepared for the Department of Housing and Urban Development (HUD), "Stabilizing Neighborhoods: A Fresh Approach to Housing Dynamics and Perceptions," He states:

Most know of the baby bulge, the large number of children born between 1940 and 1965 . . . At each turn, accommodating this bulge has strained the system.

But even more drama is in store for the period from 1975 to the year 2000, because during this period 16 percent more than normal will seek to come to roost. The stresses this will cause are hard to visualize in advance. Those who have spent the last twenty years fighting blight will be unprepared.

When the tidal move of new households engulfs urban areas, most of the existing housing supply will be brought into play because the nation simply cannot produce enough housing in the next fifteen or twenty years to meet the new demand.

For policymakers, the implications should be clear. The last twenty years can be characterized as the period when problems of urban blight caused special stress; and the coming twenty years as the period of rediscovery, speculation, and dislocation. Lest we confuse this with the Biblical image of lean years followed by years of plenty, we must realize that coming events can bring with them a full measure of trauma, particularly for existing residents.

Revitalizing neighborhoods offer an unprecedented opportunity to maintain diversity if appropriate public policies are pursued . . . public policies must actively foster a better partnership with the residents and the private sector.

Shortcomings in available data leave us unable to accurately gage the nationwide extent of neighborhood revitalization activities and their long-term prospects, but growing anecdotal evidence suggests that such activity is on the rise nationwide. The National Urban Coalition's August 1978 report, "Displacement: City Neighborhoods in Transition," said its 44 city survey showed:

A combination of circumstances . . . has created an uneven but definite in-migration of middle-class homeowners and renters who are taking up residence in city neighborhoods that they and financial institutions once shunned. . . . The benefits of a strengthened tax base and of some gains in residential and commercial revitalization are clashing with the deprivation, frustration and anger of those who are becoming the new urban nomads. . . .

The elderly are the most often displaced.

Mr. President, Chairman FRANK CHURCH and other members of the Senate Committee on Aging have decided to look deeper into the subject of "Older Americans in the Nation's Neighborhoods." Our inquiry will focus not only on the serious problems which confront the elderly, but on the many examples of community-based programs which are combining Federal tools with private initiatives to demonstrate that neighborhood stabilization and improvement need not result in the massive displacement of existing residents. In addition to shelter issues, we will also explore efforts to link neighborhood upgrading to crime prevention and social service delivery activities. And the committee will also take a look at new housing options and neighborhood forms which can permit tomorrow's elderly the freedom to choose the living arrangement that best suits individual needs, resources, and preferences.

Neighborhood revitalization and its effects was recently the subject of Public Television's MacNeil/Lehrer report. I commend the transcript of this broadcast to my colleagues' attention and direct them to certain observations made in the program:

The desire of long-term neighborhood

residents to remain in place, and of many new residents for diversity, are complementary rather than incompatible.

Those features which make revitalizing neighborhoods attractive to newcomers —public transit, stores within walking distance, and special local character— are the same features which make these locales ideal for elderly residence.

The issues of displacement, speculation, and property taxes cut across racial and economic lines.

Federal actions are intimately connected to neighborhood dynamics.

Rethinking is also needed both in the public and private sector if market dynamics are to benefit whole cities rather than select areas.

Despite real problems stemming from revitalization activities, they are nonetheless a positive development for America's cities.

Mr. President, I request that the transcript of the September 22 MacNeil/Lehrer report be printed in the RECORD following my statement:

"SAVING THE CITIES: FOR WHOM?"

ROBERT MACNEIL. In older neighborhoods all over the country you can hear the same thing: The sounds of the middle class industriously fixing up old houses. It's happening here in Queen Village in Philadelphia. And it's happening in city after city: The return of the middle class to the urban center. Will this movement save the cities, or is it creating a whole new set of problems?

Good evening. For years it's been the conventional wisdom that to save our decaying cities, you had to attract the middle classes. Now, it's happening. Young people are moving into old neighborhoods, and fixing them up to the delight of mayors and urban planners.

But a lot of poor and working people are not delighted. They're being priced out of their own neighborhoods, and by the trendy newcomers; or, as the urban sociologists put it: Centrification, the coming of the gentry, means dislocation.

Tonight. Saving the cities: For whom?

Jim.

JIM LEHRER. Robin, there's no better example of the situation than Queen Village, an historic waterfront area in Philadelphia. Once an ethnic working class neighborhood, it's now changing; young professionals are moving in, cleaning up, and fixing up, causing property values to rise; and older residents to move out.

Charlayne Hunter Gault visited Philadelphia, and here is her report.

CHARLAYNE HUNTER GAULT. Wilma Johnson is one of the newcomers to Queen Village. She and her husband Don, a hospital administrator have lived in the neighborhood for four years. The Johnsons bought this house for twenty-five thousand dollars, and have spent all this time fixing it up, mainly by themselves, and figures they'll finish alterations in two more years, if they hire a contractor.

MAN. Mark, what are you up to?

GAULT. Meanwhile, they've started a family. Eight month old Mark and two and a half year old (inaudible) in nursery school. Wilma used to work as a salary analyst at an insurance firm, but now is a full-time housewife.

Wilma and Don, can you tell me why you decided to move to this community?

DON. I see us as people that are excited about coming into a city. We're originally from a large city. We like big cities, coming into a city that is coming back, which is exciting; but we did it for what I think is sound economic reasons, we got quite a bit of house for a reasonable price.

WILMA. It can be a very exciting experience. We forget how exciting it is, until we bring people back, who have visited us, perhaps a year ago; and who walk around the neighborhood, and say, "Wow, all these buildings have been revived." And Saturday morning there are a lot of people out fixing up their homes.

It's a kind of an experience that can be shared by very few people; and the people that have it are very lucky.

GAULT. What made you so confident that this is the community you want to put your roots down in?

DON. Touring various neighborhoods in the city, this one gave us a feeling of resurgence, renaissance, whatever you'd like to call it. We saw houses being rehabilitated that hadn't been rehabilitated; and we had spoken to some of our friends; and we felt there was a good chance that this community would be a fullblown neighborhood, a community again.

WILMA. If we were to buy a home in the suburbs, a four bedroom home, I think most of our neighbors would be exactly like we are—a young couple with two children; because that's the kind of home they could afford. And we were just talking about this the other day. It's as if Matthew is surrounded by grandparents all the time, and he gets a different focus of life than he would if he were just in a community in the suburbs; and I think it's great; I really think it's a positive value for him.

DON. I thought (inaudible).

GAULT. What do you think you like best about the neighborhood?

WILMA. I like the fact, one thing, that we only need one car, that I can do everything I want to do with the children or with myself by walking, and often by taking a bus, but more frequently by walking around. I can go to the stores. I can go to the park. Whatever I want to do, I can walk to it. And that's really a benefit for me.

DON. And it just makes you feel so good, because if our car dies, or if we no longer have it, we have no problem. I take public transportation to my job. We have little corner stores, as they call them in Philadelphia, local grocery stores, whatever, supermarkets close by; we can walk to church; we can walk to the playground; that's a great life style as far as I'm concerned. We don't have to use wheels, wherever we go.

GAULT. Herman Berkowitz has had his poultry shop in the neighborhood for 23 years; so he's seen the area through its decline and its current revival. Wilma is one of his customers.

HERMAN BERKOWITZ. They were talking about making the crosstown expressway at one time. The neighborhood went down completely. It was in such flux. People didn't know whether to stay, or whether to go. The neighborhood really went down completely.

Then, they took it off the boards; that crosstown expressway, and it was unbelievable, you know, I just—in a few years, it just started to come up; and it just started to bloom; and now it's unbelievable; it's come around a complete circle, and it's really—this is a place. This is the place.

GAULT. This rebirth of Queen Village began in the late 1950s. It followed in the wake of a massive, urban renewal program that transformed neighboring Society Hill into Philadelphia's most fashionable residential area.

The first newcomers to Queen Village were those who had been displaced by the rehabilitation of Society Hill.

Then came the young couples, like the Johnsons, who couldn't afford the high prices of houses there. Now, Queen Village has earned a reputation in its own right, as one of the areas to live in in Philadelphia.

A man who has kept track of the fast-moving real estate market here is Bud Plummer, a local realtor.

BUD PLUMMER. One of the first properties that was redone back in 1966, for instance, the local neighborhood organization, a non-profit group, rehabilitated a house in the 100-block of 6 Water Street, which we sold for ten thousand, five hundred dollars. We had extreme difficulty in financing that with local banking institutions. Today, the same house, if it was offered for sale, would probably be in the seventy thousand dollar range.

GAULT. And that's generally true all around?

PLUMMER. Yes. I would have to assume that prices have escalated to that area for a rehabilitated house.

GAULT. How do you feel about what's happened to the neighborhood?

PLUMMER. It's just remarkable that the amount of rehabilitation that's taken place, the new construction, new people coming in the area, and just so completely reversing itself, that I'm just overjoyed at it. It's made me a believer that people will come back to live in the city.

GAULT. There's another side to the real estate book in Queen Village, the side of the long-time resident, the dramatic rise in real estate values in the area has displaced many people.

The first to go were the low income renters, and many of them were black. In 1970 about forty percent of the seven thousand people who lived in the area were black. Now, fewer than one-quarter are. The black population is continuing to move away, because they can't afford the rising rent.

The traditional line, dividing blacks and whites has been Third Street. East of Third Street has been the home of Eastern Europeans, who traditionally found work on the waterfront. Today's residents are the descendants of those immigrants, who arrived in the late 19th Century. At one time this area was one of the great melting pots in this country. But the oldtimers are under pressure.

Doris's Luncheonette is a hangout for longshoremen, and other long-time residents of the area. Doris Boyle, the owner, still lives in the neighborhood. Her sister, Janet Steele, works part-time at Doris's, when things get busy.

Janet, what was it like growing up in this neighborhood?

JANET STEELE. Everybody knew each other. Everybody was friendly. Everybody—all the kids—all their fathers were longshoremen, and you know, it's just a close community.

GAULT. What kinds of things happened? I mean, did you—like I noticed a lot of stoops on the older houses.

STEELE. In the summertime everybody would sit out at night, and like late, and you know, you'd walk down the street, you knew everybody; you know, everybody was friendly; it was just a nice place, you know; it's some place you always wanted to live.

GAULT. But you don't live here anymore.

STEELE. No.

GAULT. What happened?

STEELE. I couldn't afford it. My landlady said her son wanted the place. So, I had to, you know, get out; and so, like, I start looking; and the homes were unbelievable. Eighty-five thousand, you know; and we just couldn't afford it.

GAULT. How does this make you feel?

STEELE. I resent it. I really do, because okay, I'm young; but these older people, they're not; and where are they going to go?

GAULT. Mrs. Kubiak, I understand that you're having some problems with your property taxes. Tell me about that.

Mrs. KUBIAK. Well, my place was there, with the taxes low, and now that they've come in, fixing these homes, the taxes are raised, and four years, four times.

GAULT. (unclear) I mean how long have you lived in this neighborhood?

KUBIAK. In that neighborhood, in that one house, we lived 68 years. And I'm on a set income. I'm a widow. And I can't see this price raising. I can't see why I have to pay the same as the one next door, that just restored the house, that's worth about a hundred thousand dollars, and I don't see why they can compare me with him.

GAULT. Who do you think is to blame for—

KUBIAK. Well, the thing that I think is to blame is these people are coming in. They have more money than we have. And they're fixing up. And they're buying all this property. And fixing it. That's all well and good. I think it's nice.

But why make us older people that's lived here all our life, and kept our homes? We keep them nice. Now, we're afraid to fix the front, or do anything, because the tax would go up.

GAULT. Soaring taxes are not just worrying oldtimers in the neighborhood. Newcomers like Dom Palazzo are becoming concerned too.

DOM PALLAZZO. I bought my house about three years ago, and when I bought the house, taxes were approximately three hundred and seventy dollars a year. In three years they've gone up to seven hundred and twenty—and now, to nine hundred and seventy-two dollars a year. And the assessors on the street just above me, and I'm afraid I'm going to get stuck again with a tax.

The reason I'm concerned about this issue is it's a disincentive. Taxes is—the way the system is set up—is a disincentive to rebuilding the cities, and it's a disincentive in light of the way the taxes are forcing out the older people in the neighborhood out. I came to this neighborhood, because it's a community; it's made up of all different types of people, with different types of income, and that's why I came here. And now, that's as you force that people out, with fixed incomes, because of the high prices, and you force out the black person, who's a low income person, you're destroying the neighborhood.

GAULT. One of the leaders in the fight against rising tax assessments is Marge Cherni. Marge is a former President of the Queen Village Neighborhood Association. She's the fifth generation of her family to live in the area, and she wants to preserve the character of the neighborhood she loves.

What's your tax situation?

MARGE CHERNI. I'm a full-time working mother. That's what's happening to me. We need two salaries in order to pay the tax assessment.

GAULT. Who do you think is to blame for all this?

CHERNI. I blame the system. It's the present tax system. And our politicians are doing absolutely nothing to help us. And it has been brought to their attention many times. Now, they surely have a political base in a neighborhood like mine, and they should do something about the problem, to mainthat that political base. It's just, I think, common sense, because they are losing a political base in this community. The can change it. They can revise the present system—and they're not.

MACNEIL. The concerns about dislocation we heard in Charlayne's report are shared by the Queens Village Neighborhood Association. Its President is Conrad Wiler, political science professor at Temple University. Professor Wiler has been making a study of this process in a number of cities.

Professor Wiler, very simply put, why is it bad to let market forces determine who lives where?

Professor WILER. Well, essentially, if we're really interested in saving the cities, I think that the market forces have shown that they're coming in from a position of fear; and they tend to pile up, thinking that the city is a dangerous place, and a bad place, at best, and so, they tend to let one person take the risk, and then pile up into that neighborhood; so that, in effect, we're really creating a bottleneck.

If we really want to get the middle class people back into the city, let's open it up, and let the people know that there are lots of neighborhoods that need this reinvestment.

MACNEIL. You mean, the concentration in one neighborhood, out of fear, is aggravating problems of dislocation, or anything else. Is it?

WILER. Well, yes. It increases the problem of dislocation in that neighborhood, but it denies other neighborhoods that really do need the people to come back the opportunity; and even the average middle class person can no longer afford Queen Village. So, really, the market is in a sense defeating itself, and defeating the purpose of saving the city.

MACNEIL. Now, what can be done about that?

WILER. Well, I would say that what we really need is, first of all for the neighborhood, but then also for the government at all levels to admit that the era of the dying cities is past; and that the era is now the era of trying to have a humane, safe city—how to save the city for everybody, and not do it at the expense of the people that live there all their lives, and the average working people—but yet, also, to make a good place for people to come back to.

MACNEIL. And you think there are practical ways that can be done?

WILER. Definitely. I think the message has to go down from HUD in Washington, all the way down to the city planning commissions, that there's a new ballgame. Reinvestment and displacement are things that are happening. Sure, there's still the problems of urban decline. Sure, there's still housing problems. In fact, they're going to increase in the suburbs.

But we've got to get the message across: Plan ahead. If we don't plan ahead, it's too late by the time it happens; a neighborhood by itself can't handle the problem once it overwhelms them. It has to be planned in advance.

MACNEIL. All right. We'd like to pursue that in a moment.

Jim.

LEHRER. Yes. The federal government has both policies and programs concerning the revitalization of old neighborhoods, and the displacement problems it may cause.

Robert Embry, Assistant Secretary of Housing and Urban Development is in charge of administering them.

Mr. Secretary, has the era of dying cities passed?

ROBERT EMBRY. Unfortunately, no. There are still, I wouldn't say dying cities, but cities that are—most cities are losing population, most cities have a fiscal crunch, but some cities, and some areas of cities, like the picture that was just seen by your viewers, are experiencing a movement back in; it's a trend which we're hopeful will continue.

LEHRER. You're encouraging that as a matter of policy.

EMBRY. Very much. Very much. But Conrad's point is certainly well taken—that in those cities where it is beginning to happen, we have to make sure that it doesn't happen at the expense of the low income people in those cities.

LEHRER. But it is, in fact, happening at their expense. Is it not?

EMBRY. It is in some instances. Now, the person who is able to sell the house, the homeowner, who otherwise would have no market for that house, is able to sell it at a higher price, who would otherwise want to sell, benefits from it. Those people in the neighborhood who see better trash collection, less crime, and so forth, benefit from it. The general populace benefits from higher taxes, revenues from these people who are moving back. But there are people who are hurt by it. The tenant, who is forced to move out, or the elderly homeowner, who wants to stay, and sees her, his, or her property taxes go out of sight, is forced to sell the house.

LEHRER. Well, Mr. Secretary, all social change involves balancing pros and cons, or usually balancing cons, I guess; in this case, balancing the good that comes from the middle class moving back to the city versus those who are—the problems caused by the displacement it caused—where do you come down?

EMBRY. Well, if I had to chose, I would chose the side of the low income person, and make sure that they don't pay the price, which they usually do in our society, when there is this conflict.

But you really don't have to choose, because the tools do exist, if a city uses them, to have both middle class movement back in, and permit the lower income, or working class, or lower income person to stay in the neighborhood, who wants to.

LEHRER. To stay in the neighborhood?

EMBRY. To stay in the neighborhood. And most people who are middle class, who are moving in, are like the gentleman who was on that film, move in, because they like the diversity of the city neighborhood, and they don't want to create another suburb, where everybody is the same class and the same race.

LEHRER. The tools exist, you say, for these people to stay. Give me an example of the kind of tools that are available.

EMBRY. Well, there are many; but the city, for instance, Philadelphia, which was cited, gets over sixty million dollars a year in community development money, and that can be used to buy houses in neighborhoods that are beginning to change back, and to rent them out to low income persons, or to sell them at a written-down price to owner occupants, with a condition that if they are resold, they have to be sold back to the city.

LEHRER. So, to humanize it for a moment, the woman that Charlayne was talking to in the film, who expressed resentment over what had happened in her neighborhood, she moved out, she can't find a place to live—under that program, she should be able to have some assistance in paying her rent. Is that correct?

EMBRY. That assistance exists, and she can get it. The tools are available, and we are requiring, as Professor indicated we should be doing, we are requiring cities that receive community development money to come up with a strategy, to utilize these tools to prevent this dislocation.

LEHRER. All right. Thank you.

Robin.

MACNEIL. Let's turn to a man with a somewhat different perfect. Bernard Meltzer is a Philadelphia real estate developer, with projects actually under construction in Queen Village. Mr. Meltzer is also a former Chairman of the City Planning Commission, and the host of a very popular radio talk show in Philadelphia that's also now heard in New York, I believe.

BERNARD MELTZER. Thank you.

MACNEIL. Mr. Meltzer, does the displacement—as a citizen, and a former member of the Planning Commission, and as a real estate developer, does the displacement problem concern you?

MELTZER. Well, I was Chairman of the Planning Commission.

MACNEIL. Chairman, I beg your pardon.

MELTZER. Actually, as I saw the film unveiling, I didn't recognize what was happening—for one reason: My recollection is that the last time we studied in the planning commission, Philadelphia consisted of about a hundred and sixty neighborhoods, district neighborhoods, of which seventy, or eighty were going downhill.

The displacement was from middle class

to lower income. In about five, or six, the displacement was lower income to higher income.

MACNEIL. How recent was that situation?

MELTZER. Say, a year or two ago. So, I don't quite understand what we're talking about here. We're talking about five, or six neighborhoods in a city of Philadelphia, which our displacement is from lower to higher; there's at least seventy, or eighty, the displacement is from higher to lower, and for every middle class family that's moving into the city, there's about ten moving out. Right now.

So, I don't understand where this problem arises that we have to, let's say, worry about housing in one distinct area, because we've got to think of the city as a whole.

MACNEIL. So, you're not worrying about the problem that we're discussing—

MELTZER. I'm worried about it from the standpoint of the individual. But from the standpoint of the city as a whole this is no problem.

MACNEIL. Okay.

MELTZER. Because the number of houses available for lower income families in Philadelphia is increasing.

MACNEIL. But come back to the areas that we're talking about, where the so-called gratification process is happening. What should be done, if anything, do you think, to ease the pressure on the poorer people being displaced?

MELTZER. See, one of the problems we've had—one of the ways we've ruined our cities, by government action, and by planning, is by planning and government action, we've destroyed the balance.

The cities historically have been the place for all kinds of people to live, low, moderate, high, affluent, poor. With the programs we've had, and you just have something like that, I've watched us now for over thirty years; we've destroyed the balance, and we're trying to have problems always for not the middle class families; there's no government money involved in all this; the programs destroy the balance of the city; and the city becomes a poorhouse, whether it's new brick, or old brick; it's still a poorhouse that can't support itself.

MACNEIL. Your message would be: Tell the government to stay out of it.

MELTZER. Well, in housing—by the way, I've often said, the area we're talking about, from South Street to Washington Avenue, from river to river is an area about two hundred blocks. It has been a slum in the past; and I've always said that if the market is let go, this will become a middle class residential area. The only way to keep it a slum is with plenty of planning, and plenty of government money, and plenty of projects. If you don't put a lot of government money into this, it's going to escape from you, and become a middle class area.

MACNEIL. Let's follow these ideas out. Jim.

LEHRER. Yes. First, back to you, Dr. Wiler, on the first point that Mr. Meltzer made, that actually there's no real problem at all, that for every ten who are moving, or for every one middle class family that's moving into the city, ten are moving out.

WILER. Well, those figures are clearly wrong. It's partly the question of: Is the glass half full, or is the glass half empty?

The rate of white people from the suburbs moving back into the city is increasing dramatically in the last four years, using annual survey data. The rate of black people moving from the city to the suburbs in four years increased fifty-two percent. There is definitely massive population shifts occurring in urban area, and it is certainly in Philadelphia, more than four or five neighborhoods in which this is occurring. It depends on how you look.

LEHRER. Mr. Secretary, what's the national picture on that? Do you take the Wiler, or the Meltzer position?

EMBRY. Well, both are correct, I think.

LEHRER. They can't both be correct.

EMBRY. They are. Mr. Wiler said there's been a tremendous increase, Dr. Wiler, in the movement of blacks into the suburbs, a great percentage increase; that's certainly true. But in absolute numbers, Mr. Meltzer is certainly correct, that the migration from cities throughout the country of the middle class exceeds the—migration out exceeds the migration in by a dramatic—I don't know whether it's ten to one. But it's certainly much greater than those people moving back in.

LEHRER. All right. While I have your attention, Mr. Secretary, the second point that Mr. Meltzer made, which was, in effect: Federal government stay out, you cause more problems than you solve.

EMBRY. Well, I don't know that it's limited to the federal government. I'm sure Mr. Meltzer would extend that to the city government of Philadelphia, and other government levels.

The government does have a heavy hand; but I believe the area immediately adjacent to the neighborhood we're talking about, Society Hill, had a substantial infusion of public money at the request of the city and resulted in a large number of middle, and upper middle class people moving in. I would imagine, and these gentlemen are much more expert on Philadelphia than I am, gave rise to some of the middle income pressure on this adjoining neighborhood.

So, urban renewal money, federal money has often been used to encourage middle class development, and should be; I don't mean to condemn it. But it is done at the choice of the city, and what I was talking about earlier, these tools that exist are tools that are available to cities like Philadelphia to use, as they see fit.

LEHRER. Dr. Wiler, what is your experience there, in terms of what the government's role in this has been? Either to encourage, or to not encourage gentrification, or turning things into slums, which is the alternative Mr. Meltzer just laid out?

WILER. Well, very quickly, I would agree with Secretary Embry. But I would add to it that the twenty-five, thirty years of urban renewal is just beginning to pay off in a massive reconstruction of the job base in center city. It's virtually entirely service sector, professional, white collar jobs that are providing the perfect haven for middle class people who want to move back in the city, and that was done with ninety percent federal money.

LEHRER. Do you agree with that?

EMBRY. Well it wasn't ninety percent. But it was a large percentage. Yes. And that's true throughout the United States. That's not unique to Philadelphia.

LEHRER. Mr. Meltzer, back to you, finally. You just don't see this as a very serious problem at this point. Is that correct?

MELTZER. I disagree on that. It is a serious problem. But the problem is the fact, how do you keep the balance in the city?

Now, Society Hill, yes, was an urban renewal project. But Society Hill is a freak of the 1950s that can no longer be duplicated. It's impossible under current regulations to duplicate Society Hill. Society Hill comes back from the days of the 1949 Urban Renewal Act, when we thought our cities should be rebuilt as a place to live, work, and play for all groups.

LEHRER. Mr. Meltzer, our time to work and play tonight is over.

Robin.

MACNEIL. We have to end it there. I'm sorry. Thank you very much, Mr. Secretary. Good night, Jim.

LEHRER. Good night, Robin.

MACNEIL. Thank you, Mr. Meltzer, Dr. Wiler. That's all for tonight. We'll be back on Monday night. I'm Robert MacNeil. Good night.●

WATERWAY USER CHARGES: SAGA OF A SENATE BILL, PART III

● Mr. SCHMITT. Mr. President, The Washington Post in recent months has carried a number of additional articles by T. R. Reid as a part of that newspaper's continuing series of the "saga" of the waterway user charges legislation. Another article appeared today. Because of the interest in this legislation and the importance of the transportation issues it raises, I request that these articles be printed at this point in the RECORD.

The series of articles follow:

[From the Washington Post, April 28, 1978]

WATERWAY TOLL BILL NEARS FINAL ROUND

(By T. R. Reid)

The bell, to use one of Sen. Mike Gravel's favorite metaphors, was about to ring for the 15th round.

"The whole Senate's getting tired of this waterway fight," the Alaska Democrat said impatiently. "It's time to slug it out and get a decision. These guys have been dancing in their corners long enough."

In some ways, the prize fight metaphor was a good one for the Senate's extended battle over S. 790, the waterway user charge bill. After months of preliminary sparring, there was a general feeling that the time had come for the main event—a vote on the Senate floor.

There was only one problem with the boxing analogy, the two main fighters were still reluctant to enter the ring.

Although their colleagues were pushing for a final resolution, neither Sen. Pete Domenici (R-N.M.), the sponsor of the waterway bill, which would require barge lines to pay the government for their use of federally maintained waterways, nor Sen. Russell B. Long (D-La.), the bill's leading opponent, was quite ready at the start of this week to take the issue to the floor.

Neither man was sure he had the votes to prevail.

Domenici had won a major victory last time when the Senate voted for a relatively high user charge on the waterways. It was the first time in history that either house had approved a waterway toll, making the vote a considerable coup for a first-term Republican like Domenici.

But the House had subsequently passed a much lower fee, and the whole question was back in the Senate.

All this spring, while the full Senate was debating the Panama Canal treaties, Long and Domenici, with assorted kibitizers from the executive branch and various lobbying groups, were holding their own informal debates on domestic canals.

In light of the House vote, Domenici had to admit that he would have trouble getting the Senate to vote again for the heavy toll it approved last June. And Long had to admit that he would have to settle, after all, for some level of waterway charge. So both were in a mood to compromise.

But two problems stood in their way.

First, there was a basic difference of principle. Domenici wanted the waterway charge to be set at some percentage of the government's annual expenditure on the waterways; that way, he figured, the bargemen might be less inclined to push for expensive new federal water projects. But Long was opposed to any linkage between the government's costs and the tolls it could charge.

At one point, the two men had seemed to reach a settlement on that issue, but then

the second problem became manifest: the kibitzers. Both Long and Domenici were representing multi-faceted constituencies on the waterway issue, and these groups' infighting made it next to impossible for the senators to settle anything.

Domenici had the support of the Carter administration, but the administration seemed to be of several minds. Lobbyists from the Department of Transportation were urging him to accept almost anything that Long offered, while the White House domestic issues staff told him to hold out for more.

Long was confronted with a constantly changing roster of lobbyists representing separate factions of the waterway freight industry. Some were willing to compromise with Domenici; others told Long he should not give an inch.

When it became clear that he would not reach common ground with Long, Domenici sought out Sen. Adlai Stevenson (D-Ill.), who has held to a middle ground in the barge fee debate. By midweek, though, there was still no sign of a breakthrough.

This made Gravel and numerous other senators indignant. The user charge legislation had been attached to an omnibus water resources authorization bill that included federal projects in 34 states. With elections coming up, the senators wanted the bill passed so they could go home and crow about those projects.

Gravel and his colleagues started pushing the majority leader, Robert C. Byrd (D-W. Va.), to put the waterway vote on the calendar. Byrd was anxious to dispose of it, too—the bill includes a big flood control project in his home state—but as the custodian of the Senate's work schedule, Byrd had another worry: if the bill came up, Long and Domenici could debate it until doomsday.

In the House, there would have been no such problem, because most bills are assigned a specific period for debate before they reach the House floor. But Senate rules provide for maintained waterways, nor Sen. Russell B. Long (D-La.), the bill's leading opponent, was quite ready at the start • • • like Domenici.

By midweek, though, Byrd could hardly go out on the Senate floor without being badgered about that waterway bill. So the majority leader gave Long and Domenici a stern warning. If they couldn't agree on the substance of the bill, they had better agree, at least on a time limit for floor debate.

On that, the two senators could agree: a day and a half on the floor should do nicely. Byrd scratched down the details on one of the scraps of paper stuffed in his coat pocket, and went off to inform the others.

At long last, the waterway toll bill was scheduled to reach the Senate floor next Wednesday—with a final vote set for Thursday afternoon.

[From the Washington Post, May 2, 1978]

A Deft Maneuver by Barge Fee Backer

(By T. R. Reid)

For nearly a month, Harry Cook had been looking nervously over his shoulder.

Cook, the Washington lobbyist for an association of water freight companies, knew that S. 790, the waterway user charge bill, was coming up this week for a final Senate vote. And Harry Cook knew, he just knew, that Pete Domenici would try to pull a fast one before the vote.

Over the past 18 months Cook had been battling Sen. Domenici (R-N.M.) over Domenici's user charge bill, which would force water shippers to pay the government for their use of federally maintained inland waterways.

With adroit parliamentary strategy and help from the White House, Domenici had won the first round last June, when the Senate approved a tough waterway fee. But Cook and his allies recouped somewhat last fall, when the House passed a much weaker version of the bill. Now the issue was back in the Senate.

All this spring Domenici and Sen. Russell Long (D-La.), the waterway bill's chief opponent in the Senate, had carried on extended negotiations in an effort to find a compromise. But they could not overcome one basic difference.

Domenici wanted the waterway fee to be linked to the government's annual expenditure on water projects: the more federal money spent, the higher the barge fee. Such a link, he figured, might limit the barge industry's appetite for expensive new water projects.

But Long and his allies in the barge industry adamantly opposed that linkage.

When it became clear that Long and Domenici could not agree, they told Majority Leader Robert C. Byrd (D-W. Va.) that he might as well bring the bill up on the floor for a final confrontation. Byrd scheduled the debate for this week.

That was when Harry Cook got worried.

In a "confidential memorandum" to his association's members, Cook warned that "Sen. Domenici might pull some last-minute voting ploy. . . . Admittedly, he is crafty and resourceful. And he won last June."

How right Cook was. Within days after that confidential memo was mailed, the senator from New Mexico was indeed developing a resourceful new strategy. If he couldn't compromise with Russell Long, Domenici would find somebody else to deal with.

At the suggestion of Transportation Secretary Brock Adams, who has supported the waterway fee all along, Domenici made an overture to Sen. Adlai Stevenson (D-Ill.). Stevenson had sided with the barge industry when S. 790 came up last June, but he had also indicated that he saw some merit in Domenici's proposal.

With remarkable ease, the two reached an agreement, and they held a press conference yesterday to announce it.

Domenici would accede to Senate authorization of $430 million for a major new barge facility in Alton, Ill.—a project dear to the hearts of Sen. Stevenson and bargemen everywhere. In return, Stevenson would agree to a waterway fee, including a provision linking the fee to federal spending on water projects.

What's more, the two senators announced yesterday, their agreement had teeth. With the help of Brock Adams, they had won explicit support for their compromise from Jimmy Carter. In fact, the president said he would veto any waterway bill that didn't include the basic components of the Domenici-Stevenson package.

It was a threat to be reckoned with. The waterway bill before the Senate includes far more than the user charge: it also contains the authorization for the Alton barge project, and for another billion dollars worth of water projects in 34 states.

In short, a large number of senators, however they may have felt before, now have good reason to support the Domenici bill.

Harry Cook had seen it coming, but that didn't make the ploy any easier to take. "I don't know what we'll do now," he said sadly last night. "We've got two days until the vote, and I don't know what we'll do."

[From the Washington Post, May 3, 1978]

Waterway Bill and Pork Barrel Day

(By T. R. Reid)

The Senate began debate yesterday on the waterway bill, and for the senators it was an important occasion. This was pork barrel day. All day long the members came trooping into the chamber to get their share.

John C. Culver (D.-Iowa) offered an amendment authorizing $224,000 for a bikeway along the Mississippi at Clinton, Iowa. The amendment was approved by "unanimous consent," a shortcut procedure that eliminates the need for debate or a vote.

J. Bennett Johnston (D-La.) asked for $2.2 million for a flood wall near New Orleans; approved by unanimous consent. Paul S. Sarbanes (D-Md.) wanted $379,000 to deepen the Choptank River; approved. Warren G. Magnuson (D-Wash.) wanted $18 million to dig a channel and raise a bridge at Tacoma Harbor; approved.

It was not unusual. In the Senate, where mutual back-scratching is an honored tradition, members rarely raise questions about one another's additions to the annual bill authorizing waterway construction projects.

But this year Democratic requests had particularly clear sailing, because the Republican who was on the floor to challenge them, Sen. Pete Domenici (N.M.), was actually pleased with each new piece of "pork." It was all part of the strategy.

Domenici is the sponsor of controversial legislation that would establish for the first time, a user charge for barge lines using inland waterways built and maintained by the federal government. The user charge legislation, S. 790, has been attached to the overall water projects bill, and that is the heart of his plan.

Although his proposal has been opposed by some of Senate's most senior Democrats, the New Mexico Republican has garnered an important Democratic ally in his fight to pass the waterway fee: Jimmy Carter.

At a press conference Monday, Domenici announced that the president had threatened to veto the overall water projects bill if it did not include a waterway user charge close to the one Domenici had been seeking.

Thus Domenici sat in the Senate chamber yesterday smiling like a schoolboy who got five gold stars on his spelling test. Each new pork barrel amendment meant one more senator who would want to see the water bill signed into law. To make sure that happened, the senators would have to vote for Domenici's waterway fee.

"The more goodies we get in this bill, the more people who will be afraid of the veto," the amiable New Mexican said late yesterday. "The way it looks now, if the president sticks tough on the veto threat, we're going to win."

It looked that way as well to a despondent group of barge industry lobbyists and river-state senators who have been battling Domenici on the issue for more than a year.

As the barge lobbyists saw it, they had been sabotaged at every turn in the long fight over the user charge.

"Last spring, when Domenici first came up with this, we were against anything at all," recalled John Connolly, one of the barge industry's legislative strategists. "Then we said 'okay, we'll agree to something.' Then Domenici wanted more. Now he wants even more, and the president says the Senate has to go along. It's just not reasonable."

But there was still time before tomorrow's vote on the user charge, and the barge interests were not yet ready to give up.

Some opponents of the waterway fee were preparing amendments to Domenici's proposal that would make it unattractive to particular elements of the Senate. Sen. John C. Danforth (R-Mo.) for example, planned to introduce a plan extending the user charge to ports and harbors as well as inland routes.

Danforth could argue that what was fair for inland routes was fair for coastal shipping too. If his amendment passed, Domenici would lose dozens of votes from coastal-state senators.

Some of Domenici's adversaries placed their hopes instead on Sen. Russell B. Long, the Louisiana Democrat who had led the opposition to the user charge all along. Long was famous for getting his way in the Senate, maybe he could still do something, the bargemen hoped, to get his way on the waterway fee.

[From the Washington Post, May 4, 1978]

SENATE VOTES WEAKER BARGE TOLL OVER VETO THREAT

(By T. R. Reid)

The Senate set up a head-to-head confrontation with President Carter yesterday by passing a weakened version of the waterway user charge bill—a version that Carter has explicitly pledged to veto.

Despite a day-long lobbying blitz by a large team of administration aides—and personal telephone calls from the president to Democratic senators—the Senate defeated, by 43 to 47, the waterway bill sponsored by Sen. Pete Domenici (R-N.M.), which Carter had endorsed.

Thereafter, the senators easily approved an alternative offered by Russell B. Long (D-La.). In a letter to the Senate Monday, the Carter administration said the president "will not sign" the Long bill.

Since the House has already passed a waterway toll bill, yesterday's Senate action means that some form of waterway fee will win final congressional approval this year. That marks a fundamental change in federal waterway policy; the government has never imposed any fee on the barge lines which use the multimillion-dollar system of inland waterways built and maintained with federal funds.

But what will happen after the bill leaves Congress is not clear. Transportation Secretary Brock Adams said after yesterday's vote that "this means the bill will be vetoed." But Long predicted the president was likely to sign the measure despite the veto threat. "I don't think he's as adamant as that letter makes him sound," Long said with a gentle grin.

The bill the Senate approved would impose a federal tax on the diesel fuel used by barges on the inland waterways. The tax would go into effect, at a rate of 4 cents per gallon, when construction starts on Lock and Dam 26, a major barge facility on the Mississippi at Alton, Ill., or in 1982, whichever is earlier.

It would increase to 12 cents per gallon eight years later.

The Senate's 12-cent-per-gallon tax would be twice as high as the waterway fee that the House passed last year. But it is smaller than the fee Domenici and the administration had been pushing.

The Domenici bill would have established, in addition to the diesel fuel tax, a separate set of charges linked to the government's annual expenditure for waterway construction. By forcing the barge lines to pay part of the government's construction costs, Domenici argued, the Senate would make the bargemen think twice before lobbying for expensive new water projects.

In the administration's letter Monday, Adams told the Senate that the administration too, backed this "cost recovery" concept, and that Carter would veto the bill if it were not included.

If Carter carries out that threat, he would irritate a considerable segment of Congress.

The waterway bill includes more than the user charge provision and the authorization for the Alton barge facility. It also contains about $2 billion in "pork barrel" projects for 34 different states. These are projects that incumbent members of Congress love to boast about on the campaign trail.

Long and his allies were telling senators before yesterday's vote that Carter would probably back down and sign the bill even without the "capital recovery" addition to the waterway fee. Several members said last night that they agreed.

"The senators just did not believe that the president would go to the mat on this bill," said Sen. John Danforth (R-Mo.), who worked with Long to defeat the administration-backed proposal. "We have given him a substantial waterway charge, and most of us don't think the president will really insist on more."

Domenici had been fairly sure of victory ever since he heard last week that the administration would back him with an explicit veto threat.

But by noon yesterday he realized that his version of the bill was in trouble.

It was simply a matter of clout. Long, the chairman of the Senate Finance Committee, had recruited Sen. John Stennis, (D-Miss.), the Armed Services Committee chairman, and Sen. James Eastland (D-Miss.) to lobby their committee members in support of the weaker version of the bill.

It was too much firepower for Domenici, a first-term Republican whose senior committee slot is ranking minority member of the Subcommittee on the Outer Atmosphere, to overcome.

The Senate's five-hour floor debate on the waterway bill was desultory, but the atmosphere was electric in the reception room just off the floor, where barge industry lobbyists kept colliding with their adversaries from the administration in their efforts to buttonhole senators for one last attempt at persuasion.

The floor was a sea of confusion during the vote. Several senators seemed uncertain about what was happening. Sen. John Heinz (R-Pa.), a Long supporter, voted for Domenici's version by mistake, but Danforth rushed over and led Heinz by the elbow back to the tally sheet to get the Pennsylvanian's vote in the right column.

[From the Washington Post, May 5, 1978]

BEHIND SEN. LONG'S CONTENTED SMILE: A VICTORY WHATEVER CARTER DOES

(By T. R. Reid)

"Frankly, there were times when I thought we might lose that roll call," the senior senator from Louisiana said, trying hard to keep a straight face. "You know, the president was working hard on this waterway bill. He was calling senators from that airplane, that Air Force One. I mean, he was pressuring these boys."

Try as he might, Sen. Russell Long (D) could not hold back a contented smile yesterday as he recalled his victory Wednesday night when the waterway toll bill had come up for a final vote on the Senate floor. But the memory of that vote was sweet, and Long's smile grew broader the longer he talked about it.

In a pitched parliamentary battle with the Carter administration, Long had convinced the Senate to approve his own relatively mild version of the waterway fee, a new federal tax to be imposed on barge lines hauling freight on federally maintained inland waterways. Yesterday the Senate easily passed the full Navigation Development Act and sent it to House-Senate conference.

In backing Long, the senators had rejected a stiffer fee proposal offered by Sen. Pete Domenici (R-N.M.). They had done so even though President Carter had worked hard on Domenici's behalf—and even though Carter had threatened to veto the entire water projects bill, a measure filled with authorizations for senators' pet construction projects.

The president's intervention had worried Long somewhat, and for a few hours Wednesday morning he had thought he might lose. But in the end, the personal persuasion of Long and some of his senior Democratic colleagues had proven more potent than the president's veto threat.

"I talked to some senators on this, sure," Long said yesterday. "And we had some [committee] chairmen on our side, and they talked to their [committee] members. But still, it's hard when you're up against the president."

Long overcame the presidential push by telling his colleagues that Carter was asking for too much—

"I think the senators know that we've come a long way on this waterway fee," Long explained. "You know, last year, I didn't want to give up one penny. Now we're agreeing to almost everything Sen. Domenici asked for. I just told the Senators that the White House should be happy with what we've given them.

"Anyway, this whole issue, you know, it's really a fight between the barge lines and the railroads. The railroads want this barge tax so it will hurt their competition. But I kept telling people that wasn't fair . . ."

By defeating the president on the Senate floor, however, Long set himself up for what could be a tougher battle; convincing Carter to sign a bill he has explicitly promised to veto. In the flush of victory yesterday, the easy-going senator seemed to think that would be easy.

"Now, why won't he sign it? He said he wanted a capital tax recovery tax, and we didn't vote for his capital recovery tax. That's right. But we passed a tax—sure, it was less than he wanted—and maybe we could just give our tax a new name, we'll call it a capital recovery tax, and then he can sign this bill."

Long, of course, would be a winner in any case. If Carter does sign the bill, Long, will get the credit for limiting the waterway fee. If Carter vetoes it, there will be no waterway fee at all—which would suit Long even better.

At the thought of that, the Louisiana smile grew broader that ever.

[From the Washington Post, June 21, 1978]

PORK BARREL CARGO FATTENS WATERWAYS TOLL BILL IN HOUSE

(By T. R. Reid)

Wearing a new name, a new number, and grown fat with age, the waterway toll bill surfaced anew in a House subcommittee yesterday.

After being lost in the Capitol Hill shuffle since the Senate approved it last month, the bill suddenly lurched ahead on its seemingly endless path to passage.

When it was introduced, as the "Inland Navigation Improvement Act" (S. 790), at the start of this 95th Congress, the waterway bill was a relatively lean piece of legislation.

Although the bill would make a historic change in federal transportation policy—imposing, for the first time, a fee for commercial barge lines using federally maintained waterways—its sponsor, Sen. Pete Domenici (R-N.M.), had needed only five pages of legalese to set forth its provisions.

But then, for strategic reasons, Domenici had attached his proposal to a separate bill, the "Navigation Development Act," which is catch-all legislation authorizing dozens of the local water projects that members of Congress would like the federal government to construct in their districts.

Domenici believed this collection of "pork barrel" projects was the perfect vehicle for his waterway toll, because the pork provisions were favorites of the very members who most strongly opposed the toll idea.

Domenici turned out to be right.

When the "Navigation Development Act" finally came up for Senate passage last month, the measure had grown to 127 pages and was chock full of pork projects from southern Maine to Northern Mariana Island. To get all those projects, the Senate accepted a waterway toll as well (although a smaller toll than Domenici had pushed for).

But then the process had to start all over again in the House.

Although House members were willing to accept almost every water project authorized in the Senate bill, they considered it essential to pass a separate pork barrel bill of their own.

Some members were pushing for projects not included in the Senate bill. But even for projects the Senate had already approved separate votes were wanted, so that each House member could boast to constituents of having personally won approval of some favorite local levee or canal.

Accordingly, the water resources subcommittee of the House Public Works Committee yesterday opened four days of hearings to let the members file in and make their pleas for the projects on their shopping lists.

The committee has developed a complex formula to weigh the economic, environmental and engineering aspects of proposed projects, but yesterday's session suggested that loyalty to the overall pork barrel program can be important as well.

When Nick Joe Rahall (D-W. Va.) stepped up to ask for a $100 million flood control project that cannot be justified under normal cost-benefit analysis, the subcommittee's ranking Republican, Don Clausen of California, told Rahall not to worry.

"We appreciate," Clausen told the young Democrat, "that you've maintained a voting record in support of other projects in other districts. We can probably help you."

As a result, the roster of water projects appended to the waterway toll bill seems sure to grow considerably by the time it reaches the House floor next month.

And that could improve considerably the bill's chance for enactment into law.

The waterway bill is in danger because President Carter is dissatisfied with the relatively mild tolls in the Senate version. In a press conference three weeks ago, Carter said he would veto the whole package, both toll and pork, unless the fee level is increased.

But congressional opposition to waterway fees in general is so strong that any significant increase seems unlikely. Thus many members are already counting on a veto—and counting the votes available to override it.

Each new pork project added to the bill means one additional member who might be willing to vote to override.

"I'm not all that worried about a veto," said Rahall after he made the pitch for his flood control project. "I think there's a good chance we'll override it. The committee's got—how many?—three more days of hearings. That's a lot more projects. And that's a lot more votes on our side."

[From the Washington Post, Oct. 4, 1978]

IN A NEAR-DESERTED CHAMBER, SENATOR STEVENSON STAGES COUP

(By T. R. Reid)

It was late Saturday afternoon, and the United States Senate, or, more precisely, the handful of senators who couldn't come up with an excuse to be away—was still in session. The few senators on the floor were inattentive and irritated that the majority leader had called the Saturday session to accommodate the rush of last-minute legislation.

It was, Adlai E. Stevenson realized, the perfect setting for an end-of-session coup.

Stevenson, a Democrat from Illinois, was present because he was floor manager of the pending business, a routine bill extending the life of the Export-Import Bank. The coup Stevenson had in mind, however, had nothing to do with the bank.

At any other time, such a transparent ploy would have died instantly. But in the confusion of a Congress that is about to close, such coups slip through by the dozen.

Stevenson sent to the desk a lengthy amendment he had prepared, then launched into a brief speech explaining that it dealt with a dam in his native state. When Sen. Ted Stevens (R-Alaska) looked up with a quizzical eye. Stevenson went over to set him straight.

Stevens, the assistant minority leader, was present to protect Republican interests on a day when most of his GOP colleagues were off on the campaign trail. He merely wanted assurance that Stevenson's complicated amendment wouldn't upset any minority senators.

No problem, Stevenson said. The amendment was not at all controversial. It was "virtually identical" to a bill that had passed the Senate before, he said, and no Republicans would mind if it went through again. With that guarantee, the Republicans let Stevenson's amendment pass by voice vote.

That voice vote, which was far more consequential than Stevenson had let on, threw another obstacle into the complicated congressional path of S. 790, the waterway user charge bill, which had finally seemed to be nearing the end of its long odyssey through Congress.

Stevenson's amendment guaranteed authorization of funds to rebuild Lock and Dam 26, a major facility for commercial barge lines on the Mississippi River at Alton, Ill. Since the start of the 95th Congress, that authorization has been one of the most controversial public works projects in the nation because it has been tied to S. 790, the bill that would impose, for the first time in history, fees for barges using inland waterways built or maintained with federal funds.

The linkage between the Alton Dam and the waterway fee was the parliamentary brainchild of Sen. Pete V. Domenici (R-N.M.) the sponsor of S. 790, and it has served his purposes beautifully.

Although the barge industry, which has never paid a penny for its use of the government's multibillion-dollar waterway network, is devoutly opposed to any waterway fee, it is also devoutly behind the effort to rebuild the Alton Dam. By linking the two measures, Domenici had forced his bill's strongest opponents to lobby, if reluctantly, for its passage.

Stevenson's coup on Saturday, while Domenici was in Albuquerque running for a new term, torpedoed the New Mexican's strategy. For Stevenson's amendment authorized the Alton Dam without imposing a waterway fee. In effect, it disconnected the motor that was driving S. 790 toward final passage.

Domenici was furious when he heard about Stevenson's ploy, but he couldn't be entirely surprised. Trick plays and oblique angle shots are common in the hurly-burly of a Congress that is about to close.

Members who have failed over the past two years to win passage for their pet bills now have only 10 days left to do so. As a result, they are on the alert for any vehicle that might pull the bills into law.

In the Senate, the Export-Import Bank authorization is an almost irresistible target. The bill has already passed the house, and seems sure of presidential approval. There is no time limit for debate on the measure, and thus no requirement that amendments have any logical connection with the basic bill.

As a result, the bank authorization has turned into the last "Christmas Tree" bill of the 95th Congress. It has been ornamented with proposed amendments ranging from textile trade and Indian affairs to a sweeping revision of the Internal Revenue Code.

When a group of senators wanted a resolution condemning wage and price controls. they stuck it on the Export-Import Bank bill. When Sen. Edmund S. Muskie (D-Maine) decided on one last try this year to pass his "sunset" bill to phase out federal agencies, the bank authorization was waiting there for him.

All of this extraneous material has come up when senators have other things on their minds. There are elections to win and vacations to start and junkets to plan, and there still remain to be considered some of the most important bills of the 95th Congress.

In that setting, Stevenson could perhaps be excused for fudging things somewhat when he brought up his amendment to the bank bill late Saturday. Although he assured the others present that a "virtually identical" amendment had passed the Senate previously, in fact, a virtually identical amendment proposed by Stevenson in June of 1977 was defeated by a 51-to-44 vote.

Stevenson's coup added more confusion to the confused parliamentary history of S.790. Domenici headed back to Washington determinded to reverse it. His fellow Republicans resolved to see that Domenici did.

There were only 10 days left for the 95th Congress, and the fate of the waterway fee was still unclear.

[From the Washington Post, Oct. 11, 1978]

WATERWAY MEASURE HEADING FOR HOME

(By T. R. Reid)

Propelled by an 11th-hour compromise and one last piece of legislative legerdemain by Sen. Russell B. Long (D-La), the waterway toll bill was passed—again—by the Senate last night and sent—again—to the House, in a final race against adjournment.

Positioned this time as a rider to a bill on bingo games, the waterway legislation, which would impose a user charge on barge lines hauling freight on federally maintained inland waterways, seemed likely to win House passage and move on to the White Houe before the 95th Congress calls it quits Saturday.

If that happens, the waterway bill will become a waterway law. For the Carter administration—in a turnabout that made possible the compromise bill the Senate passed last night—has agreed to the legislation even though it lacks a provision the president last summer called a prerequisite to his approval.

Last night's voice vote marked the third time the Senate has passed a waterway fee bill.

The previous two versions though, ran into hopeless parliamentary and political snares. Last night's bill was a compromise version worked out last weekend by congressional staff aides, administration lobbyists and the barge industry's lawyers.

When the negotiators had agreed on their compromise, they realized that the plan needed a vehicle to carry it to final passage this year. If the compromise were introduced now as a new bill, they knew, it would simply die in the chaos that surrounds the last week of a Congress.

The negotiators took their problem to Long, who is famous for finding last-minute vehicles for favored amendments. "I've always got a few little bills back in the office," Long said, and he found one. He made the waterway compromise a rider to an obscure tax bill exempting certain bingo game operators from federal taxation.

The compromise version of the waterway bill is roughly similar to the bill that passed the Senate in May.

It would establish a federal tax on the diesel fuel barges burn to pay part of the federal government's expenditures for waterway construction and maintenance.

As a sweetener to the barge industry, it contains, as well, authorization for construction of Lock and Dam 26, near Alton, Ill., the 26th barge facility down the Mississippi from Minneapolis, a project dear to the hearts of the industry's leaders.

But the compromise does not contain a "capital recovery" clause, which would bring automatic increases in the waterway fee whenever the government's waterway spending increased. Last May the Carter administration had promised to veto any user charge bill that lacked this feature.

But the closer Congress got to adjournment, the more Transportation Secretary Brock Adams realized that insistence on "capital recovery" was a major obstacle to passage.

Adams decided that the administration would do better to get the credit for establishing some waterway fee than to stand firm and get nothing. Early this fall Adams convinced the White House that compromise made sense and authorized his aides to get down to hard bargaining with the bargemen.

The barge industry did well for itself in the final negotiations. Barge operators will pay about $40 million in 1980, when the fee takes effect, and about $100 million annually after it reaches its maximum rate in 1985, while the government will spend $432 million on the Alton facility and more than $500 million annually on other waterway work. Still, some factions of the industry held out to the end against paying a cent for their use of the waterways.

On the other side, environmental groups and the railroad industry, the barge lines' arch competitor, complained that the compromise was a giveaway to the barge operators.

Under prodding from aides to Long, Adams and Sen. Pete V. Domenici (R-N.M.), the original sponsor of the waterway toll bill, both sides finally agreed that the compromise was the best they could do.

The waterway bill seemed once more to be cruising on course.●

THE SOVIET UNION AND CHINA

● Mr. McGOVERN. Mr. President, the long-term tension between the Soviet Union and the People's Republic of China is a matter of interest to everyone who follows our foreign relations. Unquestionably this bitter conflict has a significant bearing on Soviet investments in military programs—the same programs which many American feel are directed against the United States.

Klaus Mehnert of the Technical University at Aachen has suggested recently that the dispute may not be intractable. In a paper prepared for the seminars on "The U.S.S.R. and the Sources of Soviet Policy" sponsored earlier this year by the Council on Foreign Relations and the Kennan Institute for Advanced Studies, Mr. Mehnert advanced his view that the major ideological sources of the conflict have died with Chairman Mao, and that his successors are far less disenchanted with the hierarchical structure of the Soviet system. He wrote further:

It is likely, then, that among the new people are those who say that if the first priority is to build up the country, why should China be kicking the Soviets in the shins every morning and evening? Why should millions of armed Chinese soldiers be kept on the border at enormous expense when the means for developing the country are so limited? Such people could reasonably ask why China should not improve relations with the USSR so that these resources could be directed toward modernizing the country.

There is, of course, no evidence of any abatement in China's hostility toward the Soviet Union. Further, we can only speculate on what a rapprochement might mean for the United States. If it would remove a so-called "China card" from our foreign policy deck, for example, it might also cause a slowdown in Soviet military expenditures and thereby lessen some of our anxiety on questions of national security.

In any event, Mr. Mehnert has raised some intriguing notions which deserve consideration in any serious attempt to evaluate Soviet priorities. Hence, I ask that his paper be printed at this point in the RECORD.

The article follows:

THE U.S.S.R. AND RULING COMMUNIST PARTIES

I would like to present a word of warning, rather than of encouragement. I would ask you to imagine that one day you read in the evening news that Brezhnev and Hua Kuo-feng have met somewhere in Siberia and agreed to coordinate the policies of their two countries.

Vladivostok, whose very name "Ruler of the East" has angered the Chinese for a century has been renamed "Friendship City"; Seoul has been captured by assault; a road has been cut to the Indian Ocean across Afghanistan, which is now part of the Soviet empire; Finland has been occupied; and other lightning events have taken place within the past twenty-four hours.

This may well seem wildly improbable to you, but I would urge you not to exclude such a possibility. Forty years ago the possibility of a Hitler-Stalin pact seemed equally remote, yet such a pact was reached. Again, during the late 1950's it took us a long time to accept the fact that the Soviet and Chinese were quarreling, just as now it seems equally improbable that someday they might overcome their differences again. Such abrupt changes of direction are not impossible, and must be actively considered if we are not to neglect our responsibilities.

It is not necessary for me to repeat the history of the Sino-Soviet quarrel. You know that between 1949 and 1957 the Soviet Union gave assistance to the Chinese effort to build up that country, but that beginning in 1957 they began to drift apart. By the following year the Chinese had committed themselves to their own style of Communism and the quarrel intensified, climaxing in 1969 with the border fights along the Amur. Sino-Soviet relations have remained more or less on that plateau to the present. The recent news of further border tension thus fits the longer pattern.

Chinese fear of the USSR's presence along their 7,500 kilometer border caused them to turn to the United States in 1971–2. I was among those who were delighted by President Nixon's announcement that Mr. Kissinger had just returned from China and that soon he, the President, was going to visit China, which he did in February, 1972. But since then, much has changed. Now Mao's hatred of the Soviet Union was deep. It arose not so much because of the length of their common border—after all, there are other long borders in the world—but because of Mao's conviction that the Russians had reverted in many respects to what he called "capitalist ways". He probably understood that the industrial manager in the USSR probably enjoys more power over his workers than did his pre-revolutionary predecessor, since the former has the trade union on his side, fighting for management rather than the worker.

Mao, with his fanatical dedication to the idea of equality, was offended by the continuing hierarchical organization of Soviet society. Mao believed that no man should rule another, and that this goal could actually be accomplished through an unending series of revolutions. He believed that the Soviet Union had abandoned this idea in favor of the bureaucratic state, the hierarchical state managed by a self perpetuating new class. The possibility that a similar evolution could occur in other Communist states, including China, no doubt hardened Mao's determination to resist it. Hence his hostility to the USSR.

Mao's attitude dominated Chinese down to his death in September, 1976. Since then, a new group of men has come to power, bringing with them an outlook that is very far indeed from Mao's. The insistence on creating a new man and the insistence that revolution must come before production was thrown overboard. Chou En-lai's view, expressed in his last great speech in early 1975, that China must become a fully modern industrial nation by the year 2000, is repeated again and again. The old idealism has given way to a new belief in discipline. Exams, which were formerly considered repressive, have been reintroduced into the universities. A red heart is no longer enough. Practically every field is being changed to reflect the new outlook, and even the wage structure is being brought into line.

The new leaders are doers. They want to build a new country. In their own view they are Communists, of course, but they insist on the need to make socialist China powerful, both economically and politically. Hence they are not primarily interested in ideology, which is still important but taken for granted.

All these changes remove the main reason for hating the Soviet Union. It is likely, then, that among the new people are those who say that if the first priority is to build up the country, why should China be kicking the Soviets in the shins every morning and evening? Why should millions of armed Chinese soldiers be kept on the border at enormous expense when the means for developing the country are so limited? Such people could reasonably ask why China should not improve relations with the USSR so that these resources could be directed toward modernizing the country.

To be sure, there are many reasons why this decision has not been taken and why it is not likely to happen today or tomorrow. One could speak of the feud over the islands in the Amur and the Ussuri, and the question of the so-called Kazakevich Channel. There is also the Sino-Soviet competition in the Third World, where the Soviet and Chinese model of socialism are in direct conflict. True, one could imagine the two of them dividing the world much the way the Portuguese and Spaniards did at the end of the 15th century with the help of the Pope, establishing spheres of influence that are still evident on the map of South America.

In spite of these differences, the view that these two world powers, China and the USSR, could not agree to get together again is unwarranted. Surely it would be difficult, given their conflicting ambitions, but we have seen that dramatic shifts can in fact occur. Even if the legacy of the Sino-Soviet split is deep, the primary causes of the schism have been removed. On its side, the Soviet Union has tried for years to patch up its quarrels with China. The document that *Pravda* published on March 21, 1978, reviewing the various Soviet efforts to settle the problems with China is indicative of this. They have good reason for which to alleviate what they consider to be the Yellow peril on their border. From Brezhnev down to the last worker, fear of China has become virtually a trauma in Soviet life. They remind us that "we" (e.g., the USSR) are standing guard for *you*, Germans, Americans, everybody—but they would prefer to deal with the problem by improving relations if at all possible.

Mao taught his comrades from the beginning that one must identify who is enemy number one at any given time, and then try to unite with all others against that enemy. When Mao was fighting the Japanese, they were enemy number one and hence he cooperated with Chiang Kai-shek. There were problems, of course, but it should be remembered that it was Mao, acting through Chou En-lai, who freed Chiang Kai-shek in 1936 when he was captured by his own lieutenants. This was not done out of love for Chiang Kai-shek but because Mao was willing to make common cause with him against enemy number one, Japan. The minute

Japan was defeated, the enemy number one became Chiang Kai-shek. No sooner was Chiang Kai-shek out of the country than America became the prime enemy with the outbreak of the Korean war. During those years Mao willingly united with anyone who was opposed to the United States. But by the end of the war in Vietnam America had ceased to be the threat that it had been earlier.

Who is China's primary enemy today? In Number 45 of the *Peking Review* (1978) one finds 35 pages on the evils of the Soviet Union. But as I have noted, this could change, and if it does China's attitude toward America, toward NATO, toward Europe toward all other countries, will also change.

I find it regrettable that Soviet attitudes toward America have changed so much over the years, since we have to live with them, after all. But all honeymoons must end, meanwhile, America's relations with China are perhaps not on so firm a footing either. Earlier I thought that the United States and China could reach some compromise on the question of Taiwan. Now, however, I feel that a compromise is out of the question. The United States is not going to abandon Taiwan and the Chinese are not about to abandon their claim either. It is not likely that a new relationship could be established with this problem in cold storage, as it were. One step that could usefully be taken would be to abandon the policy of benign neglect that the Chinese feel the U.S. has adopted. It costs little to pay attention. You are dealing with very sensitive people, who have been pushed around for a hundred years by the imperialist powers and had pieces of their country torn away and turned into semicolonies. Their sensitivities are understandable, and can be met by taking the Chinese seriously. On your side, you would benefit from knowing which of your policies cause hurt and which do not.

The decisive point regarding the Chinese attitude toward the United States is whether this country is a tiger, as they thought in 1971 and 1972, or a paper tiger, as they are beginning now to suspect. In no other country will you find so much discussion and criticism of every indication of American weakness as in China. The B–1 bomber decision and various other measures have strengthened the Chinese suspicion that America is a paper tiger, that offers nothing to build upon when the chips are down. China originally made its approach to the United States out of a desire to balance the power of the U.S.S.R. Since making this approach, however, the Chinese have come to feel that the weight of the U.S. as reflected in its international determination and prestige is diminishing. Angola, Ethiopia, Somalia, and other events have convinced the Chinese that America is no longer what she was in 1971–2.

My great fear is that at some point the Chinese might conclude the following: "We're being spat upon by the whole world for courting the Americans and yet are getting nothing in return. We have not acquired the counterweight to the U.S.S.R. that we hoped for. Under the circumstances, is it not better to improve our relations with the Soviet Union?" This could be easily accomplished. The Soviets are stretching out their hands, even to the point virtually of apologizing for the most recent border incident. They would like nothing better than to rid themselves of the terrible trauma on their border. The minute the two parties decide to improve their relations, they could readily sort out their differences in North Korea and even Vietnam and Cambodia, where they could simply declare that the former will look toward Moscow and the latter to Peking. The minute that China and the U.S.S.R. agree to improve their relations with one another, such issues will be readily resolved, I am confident.●

THE HUMAN SIDE OF INTELLIGENCE

● Mr. GOLDWATER. Mr. President, in recent days, a disturbing trend has become evident as to the future course of our intelligence efforts. Whether this trend is the result of fascination with "gee-whiz" technology or whether it represents the selling of SALT II does not matter. What does matter, however, is that our intelligence effort is based on a Triad concept not unlike that of our regular armed forces, and if we are not careful, we may end up crippling the human leg of the Triad. In this regard, the Baltimore Sun recently published an article which sought to downplay the valuable role that the human element has in our intelligence gathering process. Coming as it did on the heels of President Carter's acknowledgement that the United States uses photographic satellites, it might be interesting to speculate just why the article was written.

In the Sun article, entitled "Satellites Have Made Cloak, Dagger Passe," the major conclusion was that since we have all of this super, gee-whiz technology, our human intelligence has become an outdated relic of the past. It is this basic conclusion with which I am in fundamental disagreement. Let me outline some of the reasons why not only is the conclusion wrong but that this type of article is a disservice to the realities of the intelligence world.

In those areas of foreign intelligence such as counterintelligence, counterterrorism, and counterespionage, our satellites can give us little or no help. It would be useless to ask our technical systems to give us information on who are the hostile agents and what are their plans and targets. In these areas as well as the illegal narcotics problem, it requires humans to be in the right place at the right time which is often a long, tedious, and dangerous process. Can you imagine asking a satellite to tell us who, where, when, and how the next terrorist bomb will explode in this country?

The second point that should be made is directly opposite of the Sun article which states that "(space reconnaissance) also means inferring intentions of an enemy." Mr. President, this is exactly what our satellites can not do. Our satellites, for all their sophistication, can only tell us what is in a quantitative sense—in other words, how many missiles, how many submarines, et cetera, does the enemy have?

But, to be able to say what the enemy will do with his armament is completely beyond the satellites' capabilities. It is this what which constitutes the basic reason for having a strong human intelligence effort. And, in this age of nuclear uncertainty, knowing the intentions of our enemies becomes more and more critical if we are to hold our slight edge in this area.

Third, overreliance on our technical systems could ultimately deprive us of our third alternative in world affairs, namely covert operations and/or paramilitary training. If we limit ourselves to diplomatic responses or all-out military intervention, we would be needlessly depriving this country of a tool to influence world opinion. And, without going into details, I can assure my colleagues that there have been many times over the years when this option provided our Nation with the abiltiy to help ourselves as well as our allies. Unfortunately, however marvelous these satellites may be, they simply cannot provide us with that third option.

In the article, the author also quotes a "knowledgeable observer" as saying "covert intelligence operations, if not obsolete, are obsolescent. A satellite circling the world in 45 minutes will pick up more information in a day than the espionage service could pick up in years."

For myself, I do not know who this "knowledgeable observer" happens to be but my only comment would be that whoever it is, he is most certainly not knowledgeable. While the statement may have some truth concerning the vast quantity of information which a satellite can amass, that statement is based on the old, quantity-versus-quality argument which may be fine in selling newspapers but it does not and should not fit the intelligence analysis process. As any intelligence professional can tell you, "hard intelligence" becomes that only after having been checked and corroborated against other intelligence sources.

In this same vein, let us not forget that however good these satellites may be, they are still susceptible to technical countermeasures as well as deception. And, if we are going to protect these highly technical systems in order that they can do their job, one of our best protections is a strong human intelligence effort.

Mr. President, not only is the basic thrust of the article off base, but it does a definite disservice to those hundreds of men and women who have dedicated their lives to insure the safety of our Nation. Just as in modern warfare we have all sorts of fancy new technical systems, it ultimately comes down to the human eyes and ears as well as the human mind to make the judgmental decisions which thousands of computers can never make. We must, if we are to maintain a successful intelligence service, keep a proper balance between man and technology.

Mr. President, I submit the article for the RECORD.

The article follows:

[From the Baltimore Sun, Oct. 4, 1978]

SATELLITES HAVE MADE CLOAK, DAGGER PASSE

(By Albert Sehlstedt, Jr.)

The space age, which began 21 years ago today, has produced a maturing generation of reconnaissance satellites which, it is said, can spot a pack of cigarettes from 100 miles in orbit.

These officially secret instruments of intelligence have been the silent partners in a series of highly publicized space achievements that began October 4, 1957, with the launching of the Soviet Union's Sputnik 1.

Now, President Carter, speaking at Cape Canaveral, Fla., Sunday, has referred to satellite reconnaissance publicly, something no other chief executive has done in the last two decades.

In that time, the capabilities of these instrumented spacecraft, which the United States and the Soviet Union have orbited by

the score, have been sharpened to a point that they have revolutionized the business of gathering intelligence.

Sea Power, official publication of the Navy League of the United States, quoted one knowledgeable observer in its September issue as saying:

"Covert intelligence operations, if not obsolete, are obsolescent. . . . A satellite circling the world in 45 minutes will pick up more information in a day than the espionage service could pick up in years."

While professional intelligence people in the United States and the Soviet Union would likely take exception to that, it is apparent that the precise instruments aboard spy satellites have recorded an untold story of an amazing genre.

President Johnson, addressing a small audience of educators in 1967, said satellite reconnaissance alone had justified spending 10 times the money the nation had already spent on space, then about $35 billion.

Because of this reconnaissance, he said, "I know how many missiles the enemy has."

Doubtless, the art has improved in the last 11 years.

However, space reconnaissance means much more than adding up numbers. It also means inferring intentions of an enemy, a capability beyond price in military preparedness.

For example, a Soviet cruiser operating off the East Coast of Africa may move across the Indian Ocean toward Indonesia. Why?

That sort of question, based on a single bit of information from a satellite, can start wheels turning in the intelligence community. The answer may be important, or unimportant, but the question might not have been asked two decades ago.

The United States took its first step into the reconnaissance satellite business in 1960 with the launching of a series of spacecraft designed to keep this country alerted to an enemy attack.

The Defense Department's Advanced Research Projects Agency and the Air Force were quick to recognize the potential of a satellite circling the globe at 18,000 miles an hour.

After a string of failures, which seemed almost inevitable in those days, the space engineers and scientists began to get things to work right.

Midas 2, launched May 24, 1960, and designed to warn the nation of enemy missile launchings, was the first American satellite of this type to achieve orbit.

Midas, an acronym for missile defense alarm system, carried instruments sensitive to heat, ultraviolet light and X-rays, and was sent aloft to look out for nuclear explosions and spot missile exhausts.

Discoverer 13, launched in August of that year, carried a photographic package that was ejected from the orbiting spacecraft and was recovered from the ocean.

With the launching of Discoverer 14, a week later, the Air Force did even better and recovered the satellite package in mid-air with a trailing line from a cargo plane.

Photographs were and are a valued form of intelligence information because of their clarity.

Samos 2, designed for photographic and electronic observations, was launched in January, 1961, and was the first United States satellite of that type to attain orbit. Samos was an acronym for satellite and missile observation system.

The Air Force was open about these matters until the Kennedy administration decided the entire subject of satellite reconnaissance should be a secret.

The names, Midas, Samos and Discoverer were later dropped from the military lexicon, and in 1963, the American spy-in-the-sky system began working full-time.●

IRS IN VIOLATION OF INVESTMENT ANNUITY LAW

● Mr. HATCH. Mr. President, my remarks to the Senate on October 9, 1978, pertaining to UP amendment 2031 referred to yet another irrational, unaccountable act of the IRS that cost the insurer $2 million. For purposes of completeness of the documented record, I add as an exhibit to my remarks a letter dated January 24, 1978, from the respected Coopers & Lybrand, certified public accountants, to the Internal Revenue Service. This letter expresses the firm's disagreement with the IRS position. Coopers & Lybrand find no grounds for the IRS' position in the legislative history, the applicable provisions of the code and the regulations thereunder. Furthermore, they find that: first, the IRS' position conflicts with the treatment consistently afforded taxpayers for the last 20 years; second, noted tax authorities are in agreement with and fully support the taxpayers' position; and third, any reasonable person would come to the same conclusions as the taxpayers. It is the firm's further conclusion that any changes of the type being considered should be effected by new legislation and that the industry be heard from prior to taking final action.

I submit the letter to the IRS from the respected firm of Coopers & Lybrand for the RECORD:

FIRST INVESTMENT ANNUITY CO. OF AMERICA
RULING REQUEST DATED OCTOBER 14, 1977

PHILADELPHIA, PA.,
January, 24, 1978.

Assistant Commissioner JOHN L. WITHERS,
Office of the Assistant Commissioner, Technical, Internal Revenue Service, Washington, D.C.

DEAR MR. WITHERS: On behalf of the above-named taxpayer, hereinafter FIAC, we submit the following additional data, lines of reasoning, precedents, etc. in accordance with Section 7.04 of Rev. Proc. 72–3 relating to the rulings requested by FIAC on October 14, 1977. The sole issue being addressed in this letter is whether the consideration being paid by Safeco Life Insurance Company (SAFECO) to FIAC in connection with a reinsurance arrangement, which hereinafter will be referred to as a ceding commission, is deductible by SAFECO in the year paid or accrued.

In our previous letter of December 19, 1977 to Mr. Arthur P. Hartel, Jr. relating to this matter, we addressed the question of the nature of the reinsurance arrangement, i.e., whether it was indemnity reinsurance or assumption reinsurance. It is our understanding that representatives of the Service are in agreement with us that we are dealing with indemnity reinsurance.

It is also our understanding that the current unpublished position of the Service is that ceding commissions which are reimbursements of commissions paid after the effective date of a reinsurance agreement are deductible by the reinsurer whereas ceding commissions which are reimbursements of commissions paid prior to the effective date should be capitalized and amortized by the reinsurer over the actuarial life of the policies reinsured.

We are in disagreement with this position and find no grounds for it in the legislative history, the applicable provisions of the Code and the Regulations thereunder. Furthermore we find that this position conflicts with the treatment consistently afforded taxpayers for the last twenty years.

We will break down our discussion of the issue into the following sections:

(1) The Law and Interpretations:
(a) Committee Reports.
(b) Applicable Code Sections and Regulations.
(c) Revenue Rulings.
(d) Court Decisions.
(2) Difference in Treatment of Assumption and Indemnity Reinsurance:
(a) Differences in the Business Risks and Rewards Associated with Various Types of Reinsurance.
(b) Annual Statement Treatment.
(c) Policy Considerations of IRS Position.
(d) Noted Tax Authorities Opinions on the Current State of the Tax Law.
(3) Non-retroactivity of Proposed Revenue Ruling:
(a) Reliance on Previously Published Positions.
(b) Chronology of Events Leading to Consummation.
(c) Request for Non-retroactive Application.

1. THE LAW AND INTERPRETATIONS

(a) *Committee Reports:* The taxation of life insurance companies is set forth in Code Sections 801 through 820 which were promulgated by the Life Insurance Company Income Tax Act of 1959. Indemnity and assumption reinsurance transactions were familiar to the drafters of the Act and were distinguished in Sections 806, 809, 817 and 820.

The Senate Report on the bill (C.B. 1959–2, 798) contains the following discussion of the various forms of reinsurance:

"Modified coinsurance is a form of indemnity reinsurance (as contrasted to assumption reinsurance) to indemnify an insurer against a risk it has assumed. Hence, as distinct from assumption reinsurance, the initial risk in this case remains with the insurer but he covers this risk by reinsuring part or all of a contract with another insurance company (referred to here as the reinsurer). Three forms of this indemnity reinsurance have been developed. The first of these, called coinsurance, calls for the premium with respect to the insurance reinsured to go to the reinsurer, with the result that *the reinsurer, with respect to this insurance, is treated substantially in the manner he would be if he had issued the insurance policy (or part thereof) directly. Any expenses incurred by the initial insurer with respect to the policy are reimbursed by the reinsurer. This form of indemnity reinsurance presents few special tax problems.*" (Emphasis supplied.)

The intent of Congress is clear. In indemnity reinsurance the reinsurer is treated as if it had issued the policy and therefore any expenses incurred by the reinsured and reimbursable by the reinsurer are deductible by the reinsurer. Since the reinsurer was to be treated in the same fashion with respect to the policies as the reinsured, the Senate was able to conclude that there would be "few special tax problems" associated with indemnity reinsurance.

The Senate refers to the expenses "incurred" by the initial insurer with respect to the policies. Since "incurred" denotes something that has happened, we interpret such to mean that the expenses, both past and present, are to be treated as deductible by the reinsurer if he is to be treated "substantially in the manner he would be if he had issued the insurance policy". If not deductible currently, the reinsurer would not be treated as if it had issued the policies and a special tax treatment would be accorded this item. No special treatment was provided or even discussed in the Committee Reports.

(b) *Applicable Code Sections and Regulations:* Section 806 requires certain adjust-

ments to assets and reserves in an assumption reinsurance transaction. These adjustments only impact Phase I (taxable investment income) and normally are of little tax consequence to either the reinsured or reinsurer. The adjustments have no overall tax consequences as the adjustments to the reinsured are offset by the adjustments to the reinsurer. Only in the case of determination of qualification as a life insurance company could Section 806 have any real tax impact.

Section 809 calls for differing treatment in the computation of premiums by the reinsured under assumption and indemnity reinsurance transactions. However, this difference is exactly offset by the deduction under Section 809(d)(7). The tax treatment of the change in reserves under Section 809 is exactly the same under indemnity and assumption reinsurance. Regulations under Section 809 define both types of reinsurance.

Code Section 817 no longer refers to reinsurance transactions but it did prior to the deadwood provisions contained in the Tax Reform Act of 1976. Regulation 1.817-4(d) describes appropriate accounting treatment for assumption reinsurance transactions and contains five examples detailing the accounting. The main thrust of this Regulation is that consideration paid by the reinsurer to the reinsured must be capitalized and amortized over the estimated life of the policies. Although it is abundantly clear that Reg. 1.817-4(d) is only applicable to assumption reinsurance, the Service indicated in the conference held on December 21, 1977 that it intended to apply the rationale of this Regulation to the FIAC-SAFECO transaction.

Section 820, which applies only to indemnity reinsurance, describes the tax treatment to be accorded certain modified coinsurance contracts. Since Section 820 is applicable in the instant case (FIAC and SAFECO intend to make the consent provided by Section 820(a)(2)) one must examine the provisions of this section to determine the proper accounting for the ceding commission.

Section 820(c)(4) describes the tax treatment of expenses in a modified coinsurance arrangement as follows:

"The expenses (to the extent reimbursable by the reinsurer) *incurred* with respect to the policy reinsured and with respect to the assets referred to in paragraph (3) shall be treated as incurred by the reinsurer and not by the reinsured." (Underlining supplied.)

Regulation 1.820-3(a)(6)(1) amplifies this prescribed treatment as follows:

"The expenses (to the extent reimbursable by the reinsurer) *incurred* with respect to the policy reinsured which relate to the determination of gain or loss from operations under Section 809(b) shall be treated as incurred by the reinsurer and not by the reinsured." (Underlining supplied.)

Section 820(c)(4) and Reg. 1.820-3(a)(6)(1) reflect the intent of Congress set forth in the Committee Reports in that the reinsurer is to be treated as if it had issued the policies originally. If it had issued the policies originally the expenses incurred would have been deductible currently. The language of the Code section and Regulation deal with expenses as having been incurred and there is nothing that distinguishes expenses incurred prior to the effective date of the reinsurance agreement with those incurred after the effective date of the reinsurance agreement.

Section 2 of Article 1 of the FIAC-SAFECO Modified Coinsurance Agreement dated October 1, 1977 provides in part that:

"SAFECO will reimburse FIAC for 90% of the commissions payable by FIAC on its retained share of additional APCs and pay . . . an Expense Allowance of $6,172,000, representing a portion of FIAC's previously incurred commissions and other expenses on reinsured contracts."

It is abundantly clear that under Reg. 1.820-3(a)(6)(1) the expenses incurred by FIAC with respect to the reinsured policies and which relate to the determination of gain or loss from operations under Section 809(b) must be treated as having been incurred by SAFECO. The expenses incurred by FIAC with respect to the reinsured policies, which were clearly deductible under Section 809 in determining its gain from operations, exceed the amount reimbursable by SAFECO. Therefore, the deduction currently allowable to SAFECO is the amount it is deemed to have originally incurred or $6,172,000.

(c) *Revenue Rulings:* Revenue Ruling 70-552 (C.B. 1970-2, 141) deals with the appropriate tax treatment of ceding commissions retained by the reinsured from premiums paid to a reinsurer on casualty insurance business "in force, issued, or renewed while the treaty is in effect". Although the ruling addresses itself to Sections 831 and 832 it does go to the heart of the matter at hand which is whether a reinsurer can in effect deduct expenses incurred by the reinsured in acquiring business in an indemnity reinsurance transaction and it is applicable to business in force at the time of the reinsurance transaction. The ruling holds in part that:

"The payment of the ceding commission is an amount which the taxpayer is required to pay in order to obtain the reinsurance business from the primary insurer.

"Accordingly, it is held that in the instant case the taxpayer is entitled to a deduction for commission expense equal to the amount of the ceding commission due the primary insurer as an ordinary and necessary business expense incurred under Section 832(c)(1) of the Code, in the taxable year in which the reinsurance coverage becomes effective."

Section 832(c)(2) allows a deduction for all "ordinary and necessary expenses incurred, as provided in Section 162 (relating to trade or business expenses)".

The counterpart of Section 832(c)(1) for life insurance companies is Section 809(d)(11) which provides deductions currently with certain modifications for "all other deductions allowed under this subtitle for purposes of computing taxable income to the extent not allowed as deductions in computing investment yield". It is under this section that commission expense is allowable to a life insurance company. *Federal Life Ins. Co. v. U.S.* USTC 76-1.

The basis for the deduction allowed by Rev. Rul. 70-552 is that under Reg. 1.461-1(a)(2) expenses for accrual basis taxpayers "are deductible . . . for the taxable year in which all events have occurred that determine the fact of the liability and the amount thereof can be determined with reasonable accuracy".

SAFECO is an accrual basis taxpayer, the all events tests has been met, the amount of the liability has been determined and Rev. Rul. 70-552 provides that a ceding commission in an indemnity reinsurance transaction is an ordinary and necessary business expense under Section 162.

No other revenue rulings could be located dealing with this issue which leads one to the conclusion that the matter has been well settled to date.

(d) *Court Decisions:* To our knowledge, all court decisions dealing with ceding commissions have concerned assumption reinsurance. Most recently, *Kentucky Central Life Insurance Co.* 57 TC 482 (1972), *Mutual Saving Life Insurance Co. vs. U.S.*, 74-1 USTC (1974), *International Life Ins. Co. vs. U.S.*, 70-1 USTC (1970), and *Southwestern Life Insurance Co. vs. U.S.* No. 75-2675 (5th Circuit 1977).

We must conclude from the absence of court decisions on this issue in indemnity reinsurance transactions that in fact, upon IRS examination, reinsurers have been treated substantially as if they had issued the policies reinsured and consequently the ceding commissions are being allowed as current deductions. This is in accordance with legislative intent as previously discussed.

2. DIFFERENCE IN TREATMENT OF ASSUMPTION AND INDEMNITY REINSURANCE

We have previously discussed the general provisions of Sections 806, 809 and 817 as they relate to assumption and indemnity reinsurance. We concluded that the net tax effect of Section 806 was minimal. We also determined that Section 809 had no impact absent a ceding commission. Consequently, the only Section which results in more than a nominal difference in the tax liability for the two types of reinsurance is Section 817 which describes the proper accounting for an assumption transaction. If the ceding commission is also to be capitalized and amortized under an indemnity reinsurance arrangement, such conclusion results in a meaningless statutory interpretation of the specific language used by the drafters of the 1959 Act. Obviously, the drafters required different treatment under Sections 806, 809 and 817. As such, to conclude that a similar result is warranted in connection with the tax treatment of a ceding commission in an assumption versus indemnity reinsurance situation is tantamount to creating a difference without a distinction in the interpretation of the above Sections.

Notwithstanding the imperfections of statutory construction, however, it is our opinion that significant factors exist to warrant a difference in tax treatment of assumption versus indemnity reinsurance. These factors will be discussed under separate headings as follows:

(a) Differences in the business risks and rewards associated with various types of reinsurance;

(b) Annual statement treatment;

(c) Policy considerations of the IRS position; and

(d) Noted tax authorities opinions on the current state of the tax law.

(a) *Differences in the Business Risks and Rewards Associated with Various Types of Reinsurance:* One distinguishing characteristic between assumption and indemnity reinsurance is the continuing interest of the primary insurer in indemnity reinsurance. In connection with the carryover of the tax attributes throughout the Code, of course, the continuity of interest doctrine is often cited as the criteria to be employed in distinguishing certain transactions. This is especially prevalent in the reorganization area. For example, if in a reorganization there is a continuity of interest by those who have borne the risks and rewards of a business enterprise, Section 381 requires the continuation of all tax attributes including accounting methods. On the other hand, when new shareholders are taking over control Section 381 generally does not apply and the old business enterprise is deemed to terminate for tax purposes and a new one commences.

One can draw an analogy from this doctrine to the issue at hand. In assumption reinsurance there is a termination. A new taxpayer takes over by purchasing life insurance policies. It must allocate purchase price as in any taxable transaction where there is no continuity of interest. It must apply its own acounting methods in determining the gain or loss from the business. On the other hand, in indemnity insurance there is a continuity of interest. The primary insurer remains solely liable. It still shares in the risks and rewards. Accounting methods applicable to the policies are required to be used by the reinsurer except in certain instances. In modified coinsurance accounting methods of the reinsured are used by the

reinsurer even if the reinsurer used different methods. Accordingly, commissions relating to the business must continue to be deducted as there is no purchase of assets and there is a continuity of interest.

(b) *Annual Statement Treatment*: Section 818(a) requires all life insurance companies to use an accrual method of accounting combined with special methods of accounting for particular items of income and expenses as permitted under Chapter L of the Code. Additionally, to the extent there is no conflict with the foregoing "all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners" (NAIC).

It has long been settled that the costs to the primary insurer of acquiring new business such as commissions are deductible for both tax and statutory reporting in the year paid or accrued despite the fact that such expenditures create an asset whose value will be realized over future years. Since there are no special provisions in the Code that deal specifically with acquisition costs and since the deduction for such is not true accrual accounting treatment, one must assume that the Service is following the Section 818 provision that calls for NAIC treatment. As indicated, NAIC requires a current deduction for commissions. Similarly, under an indemnity reinsurance agreement, NAIC requires that the commission paid by the reinsurer be reported as a current expense. Since we are dealing with the same expense, i.e., the cost of acquiring insurance business and since there are no other accounting provisions in Sections 801 through 820 which call for different treatment in an indemnity reinsurance transaction, we see so justification for inconsistent tax treatment.

It has been alleged that the reinsurer has actually purchased an asset for the amount of the commission and such payment should therefore be capitalized. Under a modified coinsurance arrangement the reinsurer has no more purchased an asset than has the reinsured. It has merely taken the place of the reinsured and has reimbursed it for deductible expenses incurred to acquiring the business. Section 820 provides that these expenses shall be treated as having been incurred by the reinsurer. As such, they should be deductible by the reinsurer.

In an assumption reinsurance transaction "the reinsurer normally puts any statutory gains or loss on the transaction through the surplus account leaving the gain from operations unchanged in the year of takeover (though there appears to be no prohibition in letting it flow through the Summary of Operations)." Proceedings of Insurance Accounting and Statistical Association, P. 263 (1977). The NAIC therefore recognized the difference between the two types of reinsurance and calls for different accounting treatment. We also have a diversion between statutory and tax accounting for assumption reinsurance. This may be what necessitated Reg. 1.817-4(d) which requires capitalization and amortization in an assumption transaction.

In summary, a current deduction is required by the NAIC for a ceding commission in indemnity reinsurance. In assumption reinsurance the reinsurer can either deduct the ceding commission currently or charge it to surplus. In any event, in assumption reinsurance tax and statutory accounting diverge and there is a special income tax provision to deal with this divergence. No such provision has been set forth to deal with a divergence in statutory and tax accounting for indemnity reinsurance. One must conclude, therefore, that no such divergence exists.

The Supreme Court has recently based its decisions in both *Standard Life and Accident Ins. Co.*, 77-2 USTC 9480 and *Consumer Life Ins. Co.*, 77-1 USTC 9364 on annual statement or statutory accounting treatment stressing that such treatment reflects the spirit of the Code as embodied in Section 818(a). We agree with the Supreme Court's interpretation of Section 818(a) and feel it applies to this issue.

(c) *Policy Considerations Associated With the IRS Position:* As in the case of the FIAC–SAFECO transaction, many indemnity reinsurance arrangements are entered into to strengthen the surplus of the reinsured. A newly emerging company which is writing new business may unexpectedly find itself toward year-end unable to meet statutory surplus requirements. This arises because premiums from new business are not sufficient to cover acquisition costs plus reserves. Consequently, rather than limit the new business to that which existing surplus can withstand, coinsurance is obtained which provides for a reimbursement of the acquisition costs, at a later date when the reinsured can withstand a surplus drain, it will take back the business. This arrangement has worked in the past partially because reinsurers were willing to "lend" their surplus to share in the anticipated profitability of the business. One of the economic features to the reinsurer is the deductibility of the ceding commission although this reverses itself when the business is taken back. The attractiveness of this feature is illustrated quite dramatically in the instant transaction in that SAFECO has indicated that it will reduce its commission by one-third if it cannot deduct the commission currently.

Small emerging companies will be hit hard by the proposed change in the Service's position, whereas the larger companies with excess surplus will reap a substantial benefit by getting more for less. This result has never been intended by the life insurance tax laws. The small business deduction allowed by Section 802(b)(3) and the ten year loss carry-forward provision for new life companies of Section 812(b)(1) are two examples of congressional intent to assist the small emerging company through tax legislation.

Let us turn now to the end result of capitalizing and amortizing ceding commissions in indemnity reinsurance arrangements. In most transactions, there are recapture provisions that enable the reinsured or reinsurer to terminate the reinsurance. At such time, the reinsured will normally reimburse the reinsurer for a portion of the original ceding commission. Should this payment then be capitalized by the reinsured who is the original insurer? Under the new theory proposed by the Service, this would seem necessary. Such a result would substantially change the economics of reinsurance transactions and have a devastating impact upon the newer and weaker insurance companies; that is, a portion of their commission payments would eventually become capitalized rather than currently deductible. This result can only be translated into slower growth for the small insurance companies or to remain uncompetitive during its maturation period as higher premiums will have to be charged to bear the increased cost of maintaining surplus.

Since the historical tax treatment of the ceding commission has been taxable income to the reinsured and a corresponding tax deduction to the reinsurer there is no tax abuse. But it has enabled the small companies to stay in business, grow and foster competition which we feel is certainly in keeping with congressional intent.

(d) *Noted Tax Authorities Opinions on the Current State of the Tax Law:* In light of the questions on statutory construction and the policy considerations cited above, one source of insight as to the current state of the law in connection with the tax treatmen of ceding commissions in reinsurance situation is expert commentary. In this connection, we cite a recent article titled *Federal Income Tax Aspects of Reinsurance*, 1977 Proceedings of the Insurance Accounting and Statistical Association, P. 274, and authored by a noted authority on the taxation of life insurance companies, Dennis P. Van Mieghem of Peat, Marwick, Mitchell & Co. In the article Mr. Van Mieghem points out the two major differences between coinsurance (indemnity reinsurance) and assumption reinsurance as follows:

"The ceding commission or acquisition cost is entirely deductible in the taxable year the coinsurance contract is effective. The ceding commission or acquisition cost in an assumption reinsurance contract must be amortized over the actuarial life of the contracts assumed."

The other major difference relates to the Section 806 adjustments in determining whether the taxpayers qualify as life insurance companies and in most situations is not relevant.

All other life insurance tax experts consulted on this matter including William B. Harman, Jr., Esquire, General Counsel, American Life Convention, are in agreement with Mr. Van Mieghem's conclusion which fully supports the taxpayers' position.

3. NONRETROACTIVITY OF PROPOSED REVENUE RULING

(a) *Reliance on Previously Published Positions:* FIAC and SAFECO were informed at their conference of right that the Service is proposing to issue a Revenue Ruling on the ceding commission issue. They were also told that a private letter ruling had been issued several years ago but were not informed of the facts or the conclusion of the ruling. Neither taxpayers nor their advisors were aware of either the proposed ruling or the private letter ruling when the reinsurance transaction was entered into on October 1, 1977. Even today, neither the taxpayers or their advisors know of the content or conclusions of the proposed ruling or the private letter ruling.

The deductibility of the ceding commission was taken for granted by both parties if the Service agreed with the taxpayers that the transaction constituted modified coinsurance and not an assumption. Any reasonable person would have come to the same conclusion for the reasons discussed hereinabove but which bear summarization.

(1) The Life Insurance Tax Act of 1959 has been in effect for twenty years and during that period the IRS, in its examinations of many transactions of this kind, has to our knowledge never disallowed a deduction for a ceding commission. This represents in our minds tacit approval by the IRS of such a deduction.

(2) The Committee Reports of the 1959 Act indicate that the reinsurer is to be treated as if he had issued the insurance policies. If the ceding commission was to be treated differently than the original commission or counterpart to Reg. 1.817-4(d) for indemnity reinsurance would have been promulgated or, by now, there would be a published revenue ruling on the issue.

(3) The Code and Regulations go to great lengths to distinguish assumption and indemnity reinsurance but the only significant difference in tax treatment boils down to the deductibility or capitalization of the ceding commission.

(4) In a modified coinsurance arrangement Section 820(c)(4) provides that the expenses incurred by the reinsured that were deductible by the reinsured shall betreated as having been incurred by the reinsurer.

(5) We were able to locate one Revenue Ruling dealing with ceding commissions on indemnity reinsurance. That ruling, Rev.

Rul. 70–552, leads any reasonable taxpayer to believe that a ceding commission is currently deductible.

(6) There has been many court decisions addressing the issue as regards assumption reinsurance but none to our knowledge deal with indemnity reinsurance.

(7) The NAIC requires that the ceding commission in indemnity reinsurance be charged currently to operations by the reinsurer. Although there are differences in NAIC and tax accounting, after twenty years any major differences should be well known by taxpayers.

(8) Allowance of such a deduction does not result in an abuse. What is a deduction on one hand is income on the other. Reversal of this treatment would create a hardship on taxpayers who are already struggling for surplus.

(9) Noted authorities in the field of life insurance taxation are in agreement that a ceding commission is deductible in an indemnity reinsurance transaction. One has even pointed out in an article that this represents a major tax advantage of indemnity reinsurance over assumption reinsurance.

(10) None of the aforementioned interpretations distinguish commissions that were incurred by the reinsured before the effective date of the reinsurance transaction from those incurred after the reinsurance transaction.

Despite the foregoing, if a Revenue Ruling is issued we feel it should not apply to this transaction. FIAC and SAFECO relied on what they understood the Service's published position to be in structuring and consummating the transaction, in particular Reg. 1.820–3(a) (6) (1), Reg. 1.817–4(d), Rev. Rul. 70–552 and twenty years of tacit approval on examination. A review of the events will show that based upon a reasonable and full belief that it would receive a ceding commission, approximately $6,000,000, FIAC made major corporate decisions that were for all practical purposes irreversible.

(b) *Chronology of Events Leading to Consummation*: Due to the suspension of new business revenues resulting from the issuance of Rev. Rul. 77–85, FIAC was suffering a severe drain on its capital. The suspension of new sales also created an additional risk that FIAC accounts would transfer to other companies having annuities which enjoyed favorable tax treatment. FIAC's independent actuaries had advised that it was unwise to attempt to run off a closed block of business. Even today persistency remains an unknown factor due to the unusual circumstances surrounding the Investment Annuity.

Therefore, in order for FIAC to develop a business plan it was necessary to stabilize its financial condition by strengthening its capital position and to reduce the ongoing risks associated with the contracts in force. The reinsurance arrangements are the normal business methods by which insurance companies achieve this result. FIAC had entered into a number of previous reinsurance agreements, one of which was the subject of a letter ruling dated March 26, 1975. Of several possible reinsurance transactions, SAFECO's was the most favorable and the companies entered into the agreement as of October 1, 1977 and submitted a request for a ruling on October 14, 1977. Because it was a modified coinsurance agreement with the reserves remaining with FIAC and because of the confusion surrounding the taxation of Investment Annuity contracts, the ruling was requested. However, the agreement was conditioned upon several factors including the receipt of the ruling requested by December 1, 1977. The ruling process was delayed by the requirements of Section 6110 and resubmitted November 4, 1977. The review was delayed beyond December 1, 1977 and SAFECO extended the date.

Accordingly, an early conference with the Service was requested and it was held on December 21, 1977. At that conference, it was discovered that the Service was proposing to issue a Revenue Ruling that ran contrary to the position that FIAC and SAFECO had relied on in structuring the transaction. Additionally, the taxpayers were advised that, under the theory about to be proposed by the Service, there was nothing they could do to alter the reinsurance agreement so that the ceding commission would be deductible. They were, however, asked to submit additional information as to why the commission should be deductible.

As SAFECO was interested in consummating the transaction in 1977, it offered to amend the coinsurance agreement to reduce the commission and expense allowance paid to FIAC to give effect to the Service's proposed tax treatment.

In light of the conference, SAFECO proposed a $2,000,000 reduction in the ceding commission unless a favorable ruling could be obtained by February 28, 1978. FIAC regretfully conceded to the revisions and the transaction was consummated on December 30, 1977. At this time SAFECO was the only remaining company interested in reinsuring the business. A decision had been made to sell FIAC to Life Insurance Company of North America (LINA) because of the uncertainties associated with the resumption of its Investment Annuity business. Unless the reinsurance was placed, the sale to LINA would not occur. FIAC had made its decision to unwind and could only realize the full $6,000,000 if it went ahead with the transaction as proposed by SAFECO.

(c) *Request for Non-retroactive Application:* In summary, FIAC and SAFECO relied reasonably upon the Service's previously discussed published positions to enter into the transaction. FIAC has also consummated the transaction based upon these positions. Accordingly, any conflicting Revenue Ruling that will modify or revoke these positions should be prospective only.

Ordinarily taxpayers have recourse to the Courts when a Revenue Ruling is issued which seemingly conflicts with the Internal Revenue Code, the Regulations and the intent of Congress. That is not the case for the shareholders of FIAC. It is expected that the sale of FIAC and the liquidation of IA will take place in 1978. There is no legal provision which would allow FIAC to contest the Revenue Ruling prior to the liquidation.

The taxpayers who would really be harmed by an adverse ruling are the shareholders of IA whose proceeds on liquidation would be reduced by $2,000,000 or approximately 20 percent of the estimated liquidation proceeds. Most of them have already seen their investment substantially reduced (from $5 to $1) as a result of the Service's attack on the investment annuity.

We feel the Service's present position is a modification of its prior position as expressed in its regulations and Revenue Ruling and as interpreted by the leading experts in the field of insurance taxation. It is also inconsistent with twenty years of enforcement and legislative intent. Therefore, any change should be effected by new legislation. In view of the many types of indemnity reinsurance arrangements it is hard to imagine how a Revenue Ruling could be effective in resolving this issue. The industry must be heard from prior to taking final action.

Based upon all of the foregoing, we feel both in law and equity the Service should grant a favorable ruling to FIAC and SAFECO. If the Service decides it is justified in its position, it should seek legislation to resolve the issue. At the very least, it should issue proposed regulations setting forth the new rules to enable taxpayers to comment. Finally, if the Service intends to follow its indicated course of action, its Revenue Ruling should only apply to transactions issued after its publication where all the facts and circumstances indicate that it is dealing with a transaction that is more in the nature of assumption reinsurance than indemnity reinsurance.

We respectfully request a conference in the event you intend to rule adversely on this matter.

Very truly yours,

COOPERS AND LYBRAND.●

PENSION PROGRAMS FOR VETERANS AND SURVIVORS

● Mr. BELLMON. Mr. President, when the Senate first considered the veterans pension bill (H.R. 10173) this year, I introduced an amendment to require a study and report to Congress by the executive branch on the relationship between veterans pension programs and various other benefit programs such as supplemental security income and social security. My amendment required an analysis of existing administrative relationships among these programs, as well as of the way the benefits interrelate. Under my amendment, the report to be submitted to Congress was to include recommendations for legislation which might improve these relationships and correct inequities in the benefits under these programs.

The conferees agreed that this type of study is needed, although they considered it unnecessary to specifically require it in the legislative language itself. Instead, the conferees agreed that the authorizing committees in both Houses will join in a request to the General Accounting Office to make the type of study my amendment calls for, with the study to be conducted in conjunction with the Director of the Office of Management and Budget.

Mr. President, I want to thank the Senate conferees for securing the House's agreement to this type of study. Now that we have the joint support of both Houses, I am sure that we will get a useful report from the General Accounting Office which will be helpful to the Congress in its future consideration of these programs. While I had proposed that the study be conducted by the executive branch, it is certainly acceptable to me that it be done by the General Accounting Office. I will look forward to the opportunity next fall to review the results of this study and to discuss the recommendations that flow from it with the members of the Veterans' Affairs Committee.●

THE SOVIET MILITARY'S INTERNAL ROLE

Mr. McGOVERN. Mr. President, it is undisputed that the military plays a much more pervasive role in Soviet society than in ours. We have tried to sustain a constitutional guarantee that the military will be answerable to civilian rule, and we seek to limit—not always successfully—the application of military doctrines to the remainder of our society. No such fine lines exist in the Soviet Union. Rather, the armed forces

have assumed broad authority for maintaining uniformity, discipline, and ideological orthodoxy throughout the Russian populace. The military has strong influence as well in the upper reaches of governmental power, and military leaders have not hesitated to rebuke civilian leaders whom they feel are too inattentive to military priorities.

This, it should be noted, is not a phenomenon of recent vintage. A preoccupation with defense predates the Russian revolution by hundreds of years. It was also true under the Czars that the armed forces formed the linkage between the central government and the widely scattered population.

Roman Kolkowicz of the Center for Arms Control and International Security of the University of California in Los Angeles has addressed the current internal role of the Soviet military in a paper prepared for the seminars earlier this year on "The U.S.S.R. and the Sources of Soviet Policy" held in Washington under the auspices of the Council on Foreign Relations and the Kennan Institute for Advanced Russian Studies at the Wilson Center. The Soviet military itself, Mr. Kolkowicz suggested,

> . . . sees its internal role as a conservative, nationalistic, and disciplined force, pursuing institutional interests that coincide and support those of the Party and the country.

At the same time, he notes the remarkable growth of the Soviet Union's military arsenal which, he believes, is—

> . . . apparently uninfluenced by the policies and fantasies of detente and arms control. The military and its vast armory seem to be in search of a purpose, a goal that would go beyond the static balances and inertias of deterrence.

Mr. President, because I think it will be of interest to my colleagues in preparation for the forthcoming debates on strategic arms control, I ask that this paper be printed in the RECORD.

The material follows:

THE INTERNAL ROLE OF THE SOVIET MILITARY

The Founding Fathers of Marxism-Leninism had only a vague notion about the role of the military in a post-revolutionary society. Although Marx, Engels and Lenin contemplated differing roles for revolutionary army forces, they were in agreement on one fundamental axiom: "In a communist society no one will even think about a standing army. Why would one need it?" After all, to Lenin "a standing army was an army that is divorced from the people." The idea of a massive, professional, standing army in a post-revolutionary society was considered anathema, a heretical concept that violated fundamental aspects of revolutionary ideology.

The erstwhile revolutionary "heresy" has become the orthodoxy of Soviet politics. Indeed, the Soviet military today is a vast and complex institution whose interests strongly influence and shape much of the country's social, economic and even political life. The military has become a state within a state: it is a primary consumer of scarce resources, of skilled manpower and scientific-technological talent; the military runs a vast educational network that parallels and often excels that of the civilian sector; the military has become a visible and pervasive presence in society through its control of a network of mass voluntary, para-military youth organizations, military preparedness and civil-defense training activities. The military is also strongly represented in the highest decision-making bodies of the Party, the government and economic-planning bodies.

What are the implications of this steady growth of the military's role and influence in the Soviet Union? Does it perhaps suggest an eventual militarization of the Communist Party and government? Is this evidence of a concerted program for war-preparedness and offensive intentions? Are we witnessing the emergence of a garrison state, a nation-in-arms, a modern Sparta in Marxist tunics? Whether our perceptions of internal Soviet political processes were shaped by Cold-War antagonisms or the more benign perceptions and fantasies of detentism, we have rarely concerned ourselves with such questions regarding the military's internal role and influence. We have seen the Red Army essentially as metal eaters, weapon carriers and trigger pullers for the Party. To be sure, several theories and models of Party-military relations had gained some renown in the West. Rather than rehash these rather parochial and scholastic debates, however, I will instead put forth a statement on which most experts agree, namely, that the Soviet military is a vast, powerful institution. On this basis, I shall then proceed to describe some of the roles it plays in the internal life of the state.

The Soviet Union is in many ways an ideal country for the fostering of military values, interests and goals, and for the military to play a vital internal role. The history of Imperial Russia and of the Soviet Union is a tale of conquest, invasions, wars, violence. It is therefore understandable that Russian leaders place a great trust in their military and rely on it to defend the country from foreign aggression. However, while the military's role as the defender of the country has been clearly understood by one and all, there is much less understanding in the West of the important internal roles of the military. The vast size, the geographic/linguistic/ethnic/racial diversity of Russia had perennially presented administrative and political problems for Moscow, and led to a strong reliance on the military for the maintenance of internal stability, national coherence and the legitimacy of Moscow's authority. The military was considered to be loyal to the center and able to provide the necessary instrument for bureaucratic and political control. The replacement of the imperial autocracy with Bolshevik authoritarianism or totalitarianism did not significantly alter the military's role under communist rule. It was not without effect, however. The military's roles, internal and external, continued to develop and grow, initially in a tacit, subterranean manner suitable to the Stalinist regime; and subsequently in a more open manner, with the military assuming public, social and political roles commensurate with its position in the state.

SOME INTERNAL ROLES OF THE MILITARY

The logic and political dynamics of modern "mobilizational" (totalitarian) political systems like the Soviet Union, create overriding preferences for the:

Centralization of political, institutional, economic and military authority;

Standardization of rules, processes, laws, producer/consumer habits and distribution patterns;

Eradication of deviances, diversities and idiosyncracies that inhibit and constrain standardization-centralization objectives;

Integration of the diverse political, economic and social entities under the ruling Party's banner.

The military had been seen early on by Party leaders as an excellent instrument for the systematic and rapid execution of these primary objectives. Stalin and his successors considered the military an institution that could help eradicate some of the pernicious, entrenched remnants of the bourgeois/imperial past, inculcate desirable habits and patterns in new generations of young people, and assist in a swift integration of the diverse Russian society. Thus, to the evils of ethnicity, regionalism/parochialism, separatism, and traditionalism, the military could counterpose, by means of training, and discipline, the values and policies of Russification, patriotism, communization, centralization, integration and modernization. In other words, the army with its national network of installations, schools, and bases would serve as a school for Communism, and would thus in a short time create the New Soviet Man. And it would achieve all this as a by-product of its primary mission, the defense of the country, and do it economically at that.

The Soviet military indeed performed many of these vital integrative and modernizing functions in the early decades of Soviet history. In recent years the military has expanded both the scope and direction of this educational function by taking a leading role in the inculcation of patriotic and military values among the masses.

THE "MILITARIZATION" OF SOCIETY

There are several ways in which the Soviet population becomes exposed to military discipline and war preparedness.

1. Pre-induction military training: The Soviet army combines the advantages of a volunteer army with compulsory military service. The Soviet military establishment encompasses over 3.5 million men in direct active duty, to which we may add other military and para-military components (such as Command Staff, Training Cadres, KGB/MVD militarized units, DOSAAF cadres, etc.) that would bring the total to above 5 million. About one-third of the manpower in the armed forces consists of career officers and NCO's, and the other two-thirds is made up of conscripts under the universal military service law of 1967. Since only about one-half of the 18-year-olds in the manpower pool are inducted into the army, the military seeks to prepare the non-inductees for military/war contingencies through various programs.

The military preparation of the young begins at age 10–15 through the Young Pioneers programs, embracing about 16 million. Members of the next older group are organized through the *Komsomol* into permanent military detachments of Eaglets (*Orlenok*) constituting a quasi-militia of 16–18 year-olds. They receive compulsory military training at their secondary schools and through mass-volunteer organizations of DOSAAF. The latter comprises about 40 million people, distributed in about 300,000 primary organizations. The vast majority of instructors in these para-military training programs consists of reserve officers who teach on a full or half-time basis. Some of the training is quite advanced, including piloting jet planes, operating radars, parachuting, sentry duty, etc. The performance standards are rather uneven and vary from organization to organization.

2. Civil defense: This program embraces the whole Soviet population. It is directed by a senior general in the Defense Ministry, and has been expanding in scope and intensity in recent years. Through the civil defense programs, the military fosters and maintains a war-preparedness attitude, certain kinds of discipline, and para-military habits in the populace. The programs have received more serious attention from the Party and the military lately and have subsequently beeen expanded and intensified. In 1971, civil defense training was extended downward from the fifth to the second grade of primary schools and made mandatory in technical and higher institutes of learning. The population has been increasingly incorporated into civil defense formations with specialized functions. These formations in-

creasingly cooperate with regular army units, and thus serve as quasi-military units, providing intensive training and exercises for the most efficient evacuation of populace and placing increasingly more intensive psychological/indoctrinational pressures on the populace to adapt to a war-preparedness milieu.

THE "MILITARIZATION" OF THE ECONOMY, SCIENCE, TECHNOLOGY

The defense establishment has enjoyed a preferential position in the planning of economic and scientific goals and priorities in the Soviet Union. This special treatment of the military goes back to the early years of the Soviet state, when the expectations of a world revolution failed to materialize and the Soviet Union found itself to be the only socialist country, encircled and isolated within a hostile environment. Stalin then radically transformed Soviet agriculture and manufacturing in order to develop rapidly a modern defense industry that was to serve as the basis for a large and powerful military establishment. Economic planning under the Stalinist Five-Year Plans was built around the needs and demands of defense, and was described by a western economic expert as follows:

"First, allocate to the military establishment the resources (labor, materials, capital) needed to fulfill strategic requirements . . . Second, maximize the flow of resources into the heavy industrial sector. Third, distribute residuals of unrequired and unsuitable resources among other sectors, such as agriculture and light industry."

The current economic planning in Russia is not quite as rigidly pro-defense; nor does it follow the stilted and arbitrary Stalinist models. However, the defense establishment remains the favorite institution, whose interests and demands are usually defined by the Politburo as the highest priorities within the state. Recent Western estimates generally agree that the defense sector continues to absorb a large share of the GNP (11–13% vs. US 6%). It is estimated that Soviet defense expenditures grew at an annual rate of 10% in the period 1958–70, and at 8–10% in the period 1971–75, and that the share of the Soviet GNP allocated to defense was 10–12% in 1955, 8% in 1958, 12% in 1970, and 14–15% in 1975; further projections see an 18% in 1980. Recent estimates of the defense budget of the Soviet Union show a constant upward movement from 110 billion in 1974, to about 127 billion in 1976, to projections of 140+ billion in 1978–79.

The defense establishment has clearly established its primacy in the economy as well as in the research and development, scientific and educational sectors of the state. The Soviet defense industry forms a separate sector of the economy. It enjoys "first priority in the allocation of materials, engineering-technical personnel, who along with the workers are better paid than those in the civilian economy." The Ministry of Defense enjoys a special position in the economic-technological sectors of the state. It has what David Holloway has called "consumer sovereignty—the ability to impose its wishes and preferences on the whole production process—an economic privilege possessed by no other group. The military also dominates the planning and priorities of the scientific and research and development sectors of the state.

The military educational system contains 125 military higher schools (13% of all higher schools in the country) leading to an observation by Colonel William Odom that one in every seven college-level institutions in the USSR is an officer-commissioning school roughly analogous to West Point, Annapolis, and Colorado Springs. A large military intelligentsia has been created in what is the most extensive and intensive officer educational system in the world.

The military has jealously guarded its special position in the society and economy. Military spokesmen have at times publicly defended this position by sharply attacking even leading Party members. Thus military leaders levelled vitriolic criticism against Khrushchev shortly after this ouster because Khrushchev had tried to curb the escalating defense budgets and reduced the wasteful practices that defense industry establishments were hiding under the veil of secrecy. The military openly accused Khrushchev of dangerous and harebrained advocacy of the "primacy of the stomach" and "goulash communism." What had Khrushchev actually done? In 1964 he had maintained that "the tasks of the defense industry could be solved more successfully with less expenditures" and that "we are now considering the possibility of a further reduction in the size of our armed forces . . . to reduce military expenditures next year" because "the defense of the country is at suitable levels."

Khrushchev's successors were eager to go on record as rejecting these anti-defense ideas, and asserted that "the Communist Party continues to believe that it is its sacred duty to strengthen the defense of the USSR." Later, Brezhnev gingerly sought to remind the military that "the national economy must develop harmoniously, it must serve to achieve . . . a constant rise in the people's living standards." He concluded that "further development of heavy industry must be subordinated to the requirement . . . of the whole economy." For these statements the Party leader received a public reminder from the Chief of the General Staff, Marshall Zakharov, who used the device of an attack on the fallen Khrushchev to serve notice to the new political leaders. Zakharov asserted that "subjectivism (arbitrary interference by political amateurs in matters of defense) is particularly dangerous in military affairs . . . and it is the sacred duty of the military cadres to protect these military sciences from everything that detracts from their authority." And to drive his point home with particular authority, he cited Lenin in support of the primacy of defense interests in economic planning for the country: "The Soviet people have in the past not for a moment failed to carry out V. I. Lenin's legacy: 'always be on the alert, protect the defense capabilities of the country and our Red Army like the apple of our eye'."

It may be instructive to recall that a decade before Khrushchev's ouster, Party leader and prime minister Malenkov earned the military's undying hostility because he argued that "our main task is to ensure the further improvement in the material well-being of all Soviet people, (which makes it) necessary to increase significantly investment of resources for the projection of consumer goods." The military and its supporters attacked Malenkov, arguing in the secret organ of the General Staff that "heavy industry is the foundation of foundations of our socialist economy" and that the main priority for the Soviet Union was "the further development of heavy industry."

CONCLUSIONS

Even this brief account of the internal role of the military conveys a picture of its pervasive presence, institutional interpenetration and expanding social economic and political weight within the state. How can one account for these developments?

1. The expanding scope of Soviet foreign and defense policies: Starting from a rather vulnerable, defensive and contained position, the Soviet Union has in the past two decades broken into the global arena, on land, oceans and in space, having in the process sharply expanded its interests and commitments abroad. The primary vehicle for this expression has been the defense establishment: Soviet arms, military technology, military experts and advisors have become the most effective export and influence-building commodities of the Kremlin. The Soviet military has benefited from these developments. Much of the momentum for the extensive arms production and political expansion programs came in the aftermath of the Cuban missile fiasco in 1962. The trauma of Cuba had deeply scared the military and the Party, and established the primacy of arms production as necessary to catch up with the West and to reestablish Soviet military credibility. The slogan "No More Cubas" conveys the Soviet intent never again to be humiliated by American military might, and a new willingness to flex the military muscle of the USSR in the Third World. By contrast, the slogan "No More Vietnams" reflects our own national resolve not to remain the gendarme of the world and reflexively oppose communist/revolutionary challenges as in the past. Thus, America's contraction and Soviet expansion in the international arena leave the Soviet military with an even greater role.

2. The ossification of the Party and the waning of revolutionary elan: Over the years the CPSU has become a vast managerial bureaucracy that oversees a complex, industrial/urban society whose citizens ritualistically recite the old revolutionary slogans but who in fact crave consumer amenities. The Party leadership is old, routinized, and consensus-minded. It is a leadership that is rooted in the status quo and intent on postponing important decisions regarding a variety of challenges—from the ethnic minorities, from the various sectors of the government, from the several corners of the larger Socialist commonwealth. In looking for sources of loyalty to the Party and its ruling elites, the leaders clearly are aware that the military has a record of being reliable, conservative, Russified/nationalistic and loyal; and therefore, in the final analysis the Party's oligarchy's potential protector against the excessive pressures and demands for change.

3. Problems of transition and succession: In periods of transition, the military emerges as a powerful, silent arbitrator of succession arrangements and choices. The Party leaders undoubtedly remember that it was Malenkov's denial of the military's budgetary and of its economic and political interests in the aftermath of Stalin's death, Khrushchev's "harebrained" policies of economizing and his advocacy of consumerism that unified the military against the then-Party leaders and thus helped bring about their eventual ouster from power.

Political-bureaucratic interpenetration of Party and government: The military and the defense-industrial sector are represented directly in a number of important Party and governmental policy-making bodies. There they can substantially advocate special interests and participate in vital decisions affecting the whole system. In the post-Stalinist leadership, participation in the collective, consensus-based policy-making process conveys power. The following indicators are revealing of the military's position in this respect:

The defense establishment has about 45 representatives on the Central Committee of the Party (12%).

It is represented in the highly important Defense Council (formerly Higher Military Council) where Party, government and military leaders deal with the most vital matters of defense policy.

The defense sector is heavily represented in the Council of Ministers, where it sprawls over eight separate ministries, ranging from the Ministry of Defense to the Ministry of

Medium Machines (euphemism for nuclear programs building).

And of course, until Marshal Grechko's death, the military had a professional officer representing it in the Politburo. Since then, the man who speaks for the military has been a civilian—Ustinov—but one with a lifetime involvement with defense matters.

We ought to therefore ask what is the military seeking, now that it has gained such powerful influence within the Soviet Union? Are we likely to see significant changes in the military's relationship to the Party? If the military's role under Stalin was one of unchallenged dependency, and if current Party-military relations are based on inter-dependency, are we likely to see a military bid, in the foreseeable future, toward independence from Party control? My guess would be negative—the military is not likely to embark upon Bonapartist adventures or palace coups. The military and the current Party leadership have established a modus vivendi that suits both partners. The Brezhnev policy line appears to be one of controlled expansion into the Third World, of normalization of relations with the industrial world, and of controlled consumerism at home. To a considerable degree it is in the interest of the military to support these three policy lines: expansion abroad legitimizes the steady growth of the defense establishment; detente does not threaten military interests and gives them access to western technologies; and the controlled consumerism and its attendant threat of embourgeoisment give the military the important role of spartan educator and keeper of the nation's patriotic and revolutionary ideals.

The Soviet military sees its internal role as a conservative, nationalistic, disciplined force, pursuing institutional interests that coincide with and support those of the Party and the country. However, the Soviet military has also accumulated a vast arsenal of modern weapons, skilled soldiers, and advanced technology based in a society that has been indoctrinated in the need for war-preparedness. This vast arsenal is growing at a remarkable rate, apparently uninfluenced by the policies and fantasies of detente and arms control. The military and its vast armory seem to be in search of a purpose, a goal that would go beyond the static balances and inertias of deterrence.●

CZECHOSLOVAK SOCIETY MEETS IN CLEVELAND

● Mr. GLENN. Mr. President, on October 26–29, Cleveland will host a significant gathering, the Ninth World Congress of the Czechoslovak Society of Arts and Sciences in America. I want to call the Senate's attention to this meeting for several reasons.

First, I am pleased to note that Eugene Cernan, a long-time friend of mine from days we both shared in the manned space program, who has distinguished himself in so many ways, will receive the society's award. This is not the first time that Gene has come to Ohio to be honored by nationality groups. He is a very respected person, and as one who has known Gene for many years I am delighted that the society will be honoring him.

The second reason why Ohio is pleased to host the World Congress is the importance of this year's meeting. It marks two anniversaries—as will be noted below—and comes at a critical time. Cleveland State University hosts this month's sessions, which I am sure will be very useful not just to Czechs but to all those who are interested in Eastern European cultures and their relationship with the United States.

Mr. President, the society recently sent me an announcement of the Ninth World Congress and included a statement of the organization's history and aims. It is an excellent summary and I request that the statement be printed in the RECORD.

The statement follows:

CZECHOSLOVAK SOCIETY OF ARTS AND SCIENCES CONGRESS MEETS IN CLEVELAND

The Czechoslovak Society of Arts and Sciences in America will hold its Ninth World Congress at the Cleveland State University from October 26 through October 29, 1978. The Congress will celebrate two important occasions: one is the twentieth anniversary of the Society's foundation; the other is the sixtieth anniversary of the declaration of independence of the Czechoslovak Republic on October 18, 1918, in which Woodrow Wilson played an important part.

The members of the Society, who are mostly college professors, researchers, artists, musicians and writers, come from the ranks of political refugees who escaped from Czechoslovakia after the Nazi occupation of 1939, after the Communist coup of 1948, or after the invasion of the Warsaw pact powers in 1968. Many of them came to the United States and other countries of the Western world to regain their basic human rights. They joined together in the Society for the purpose of advancing Czechoslovak culture, research and scholarship in an atmosphere of freedom which is conducive to such pursuits. They were joined in their efforts by American-born artists and scientists and scholars of other nationalities who share a genuine interest in Czechoslovak culture and traditions. The present World Congress will devote special sessions to the history of the Society and will pay homage to the founders of the free and independent Czechoslovak Republic of 1918.

The first Czech refugees from religious persecution by the Hapsburg counter-reformation during the Thirty Years War of 1618–1648 arrived in New York, then New Amsterdam. The most prominent among them was Augustin Herman, later known as Lord of Bohemia Manor. During the 18th century many Moravian Brethren immigrated to this country and established the Moravian Brethren Church of America, with centers in Bethlehem, Pa., and in Winston-Salem, N.C. Starting from the 1860's, many Czech and Slovak immigrants came to settle in America, looking for a better life in the New World, but before 1939 it was rare for a university professor, writer or artist to leave Czechoslovakia for permanent settlement abroad.

Then came World War II. The Nazi onslaugh precipitated the emigration or escape of some 20,000 persons. Among these exiles at least one fourth were intellectuals. At the end of the war, some returned to Czechoslovakia. Many, however, remained in the United States, Canada, England, France and other Western countries. A still greater exodus began in 1948 after the February Communist coup in Czechoslovakia. In the decade following that coup, over 60,000 people escaped to the West. It is estimated that about one tenth of these emigres, some 6,000, were intellectuals, scholars and professional people. Most of them found their way to the United States, Canada and Australia, while a few hundred established themselves in Western Europe and various countries in Central and South America, Asia and Africa. In the 1950's it became increasingly difficult for Czechs and Slovaks to emigrate from Czechoslovakia, either legally or by illegal crossing of the border, and the influx of Czech and Slovak refugees into the United States was reduced to a trickle. The situation changed again in August 1968 after the liberalized Dubcek regime was crushed by the invasion of the powers of the Warsaw pact. Another large exodus followed, largely consisting of intellectuals, some of whom were admitted to the United States or Canada. Only this time a majority of the refugees staved in Western Europe.

During the fifties, intellectuals who had managed to leave Czechoslovakia and gain permanent residence in the United States, increasingly felt the need to maintain and further develop Czechoslovak culture. In Czechoslovakia, history was being rewritten as if Orwell's "1984" had been advanced by 30 years, and the writing of past and present Czech and Slovak authors were on the proscribed lists. In 1958, a group of scholars, led by the late Prof. Vaclav Hlavaty, a mathematician at the University of Indiana, and Dr. Jaroslav Němec of the National Library of Medicine, began to organize these intellectuals throughout the world into the Czechoslovak Society of Arts and Sciences in America.

The Society is known among Czechs and Slovaks as SVU, an abbreviation of its name in the Czech and Slovak languages. Those living in the Western world welcomed its establishment enthusiastically and have supported it loyally for the last twenty years. Comments in the controlled press of Czechoslovakia range from outright condemnation to reluctant acknowledgment of the Society's significance. From its inception the Society has maintained its nonpolitical character and refused to become an instrument of the so-called cold war. The membership, of course, is opposed to any totalitarian ideology of either the left or of the right, being fully aware that culture and freedom are inseparable.

The organization from the beginning embarked upon an ambitious publishing program. Also, the Society held its first nationwide congress in April 1962 in Washington, D.C. Since that time, the Society's congresses have become worldwide and have been held biannually at Columbia University, New York University, Georgetown University, George Washington University and now Cleveland State University. Interim congresses have been held in Switzerland and in Ottawa, Canada.

The present membership in the Society exceeds 1,500. Miloslav Rechcigl, Jr., of the Agency for International Development, is president. He is assisted by five vice presidents: Dr. Alexej Borkovec of the U.S. Department of Agriculture; Dr. Jan Gavora of the Animal Research Institute of Ottawa; Dr. Milos Sebor of Eastern Kentucky University; Dr. Josef Skvorecky, a well-known Czech writer and publisher of Toronto; Dr. Ernest Sturc of the International Monetary Fund. Secretary General of the Society is Prof. Vera Z. Borkovec of The American University in Washington, D.C. Dr. Frank Meissner of the Inter-American Development Bank is Treasurer of the Society. Dr. Jiri Skvor, known under the pen name Pavel Javor, a well-known Czech poet associated with Radio Canada International in Montreal, is chief editor of the Society's literary quarterly Promeny. The Society has local chapters in Washington, D.C.; New York City; Albany-Schenectady-Troy, NY; Cleveland, OH; Chicago, IL; Los Angeles, CA; Montreal, Toronto, Edmonton, Vancouver and Ottawa, Canada; London; Zurich, Bern and Geneva, Switzerland; Munich and Stuttgart, West Germany; Sydney and Melbourne, Australia; and Wellington, New Zealand. Apart from its biannual congresses in the United States, the Society held its first European Conference at Horgen near Zurich in June 1970; a second European conference was held at Interlaken, Switzerland, September 17–19, 1976; an interim conference was held October 7–9, 1977 in Ottawa, Canada.

Members of the Society are teaching at about 100 colleges and universities in the United States and Canada, as well as in Western Europe.●

A TRIBUTE TO RALPH METCALFE

● Mr. BAYH. Mr. President, on Monday, October 9, our country lost one of its great citizens. For it was on that day that Congressman RALPH METCALFE passed away in his hometown of Chicago, Ill.

In his 68 years on this Earth, Congressman METCALFE served his country well as an athlete, as a scholar, and as a statesman. His accomplishments would take several pages of the CONGRESSIONAL RECORD. Therefore, let me list the most outstanding ones. In 1929, he was the national collegiate champion of the 100- and 200-yard dash, and in 1932 and 1936, he was a member of the U.S. Olympic track team. No one can ever forget how proud we all were of that fine 1936 Olympic team which represented America so well in the face of considerable adversity. RALPH METCALFE certainly epitomized the true championship spirit of that team.

Not only was Congressman METCALFE an achiever in the field of athletics, but also in the area of education. He received a Ph. D from Marquette University and a Ph. D. degree from the University of Southern California. He successfully merged his athletic and educational achievements when he served as the track coach and professor of political science at Xavier University from 1936 to 1942. During that period, many young men were touched by the greatness and wisdom of this wise man.

By 1942, Congressman METCALFE had already served his country to a greater degree than most Americans do in an entire lifetime. But he refused to rest on his past accomplishments. In 1942, a time of considerable crisis in the history of our country, Congressman METCALFE rose to the occasion. He served in the U.S. Army as a first lieutenant, and received the Legion of Merit Award during that time.

After the war RALPH METCALFE observed a country in which his people were still being treated as second-class citizens. To right this wrong, he realized his best approach would be through the political arena. From 1952, when he was first elected as a Democratic committeeman in the Third Ward of Chicago, until Monday, October 9, when he passed away, Congressman METCALFE actively pursued his goals of achieving equality for all Americans through the political system. In 1956, 1960, 1964, and 1968, he was reelected alderman from the Third Ward in Chicago. Finally in 1970, he was elected to the U.S. House of Representatives, and honorably served in the 92d, 93d, 94th, and 95th sessions of the U.S. Congress. It was in his role as a Congressman that he achieved the reputation of being one of the greatest advocates and fighters for full equality for all Americans.

Finally, Mr. President, let me say that we all are indebted to this man who represented so many things to so many people. To black America as well as white America, he shall be remembered not only as a great athlete, scholar, and statesman, but most importantly as a great human being and Christian man who gave so much to his country because he believed that someday we all shall overcome. Let us not forget this most important legacy which is the essence of the life of Congressman RALPH METCALFE.●

EPA REGULATIONS IMPACT ENERGY EFFORTS

● Mr. HANSEN. Mr. President, it is important that we are aware of proposed actions on the part of the Environmental Protection Agency relative to the Clean Air Act Amendments of 1977.

Implementation of those amendments is central to discussion of the coal conversion and conservation issues since a number of provisions of the Clean Air Act may affect the attainment of our national energy objectives.

On September 12, EPA published draft regulations which would prescribe significant reduction in the amount of SO_2 emitted by fossil fuel-fired electrical generating plants regardless of the sulfur content of the fuel burned. Under section III of the Clean Air Act, as amended by the Congress in 1977, the Administrator of the Environmental Protection Agency is required to set standards reflecting "the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which * * * the Administrator determines has been adequately demonstrated." It is important to note that the Administrator is also required to consider "cost, nonair quality, health and environmental impact" as well as "energy requirements." After an examination of EPA's draft regulations I have concluded that the Administrator has ignored these three factors.

There can be no question but that as a result of the accord reached during the conference on the Clean Air Act Amendments, the Administrator is permitted to deviate from a nationally uniform percentage reduction requirement by setting a range of SO_2 reduction requirements that reflects varying fuel characteristics.

It seems clear that the intent of Congress was to achieve a balance which would recognize the need to maximize use of all coal while not giving a substantial advantage to coal from one region.

Unfortunately, EPA appears intent on dictating national coal policies through its own very narrow interpretation of the Clean Air Act and on ignoring the clear intent of Congress with respect to discriminating against coal from any region.

While this Congress attempts to resolve America's energy crisis, EPA continues to advocate a severe SO_2 emission restriction on new electric generating plants applicable even to those using low sulfur coal. Ironically, EPA is persisting in its position despite the fact that massive computer studies undertaken jointly by EPA and DOE, as well as the utility industry, have shown that coal production will increase in all regions under many alternative SO_2 strategies.

Thus, DOE has strongly disagreed with EPA's proposed regulation and has argued that a sliding scale based on the sulfur content of the fuel burned should be used rather than the uniform 85-percent reduction which EPA has proposed.

Mr. President, it is absolutely necessary to understand that EPA's SO_2 emission regulations may, in the final analysis, determine whether the energy conservation program and coal conversion program will be successful to the degree that Members of Congress expect. One of our national energy goals is to convert existing utility and large industrial boiler consumption from oil to coal. It is this conversion which will determine the success or failure of the mainstay of our national energy plan. Similarly, it will be EPA's regulations on SO_2 emissions which will determine whether or not utilities and industrial oil users will be capable of converting to coal.

The regulation that EPA favors would require 85 percent SO_2 removal on a daily basis with a continuation of the current ceiling of 1.2 pounds of sulfur dioxide per million Btu's (pounds/MBTU) and the creation of 0.2 pounds/ MBTU floor.

EPA's proposed regulation ignores the inherent benefits of low sulfur coal and would thereby penalize its use by requiring a more stringent emission limitation on sulfur emission from a utility burning low sulfur coal than a utility burning high sulfur coal. It is for this reason that the EPA approach is opposed by the Department of Energy and the utility industry.

Overall, the EPA proposal, if adopted, would cause increased use of oil, higher electrical costs, abandonment of new technologies to clean coal and a postponement of coal generating plant construction.

Thus, EPA's insistence on requiring maximum scrubbing on all coals yields a national policy directly contrary to the intent of Congress.

Although the computer modeling used by DOE and EPA to study the issue of coal scrubbing is highly complex and based on a number of assumptions, a few of the selected results will, I am sure, be interesting to my colleagues since the results of the computer models do not justify the conclusions EPA has reached regarding its proposed standard.

The results of the modeling will also put to rest the fears expressed by Senators from Eastern and Midwestern States during debate regarding local coal use.

In fact, the studies should convince Members who support local, Eastern and Midwestern coal that EPA has gone too far in its proposed standard and that an approach which calls for partial scrubbing and recognition of the inherent benefits of low sulfur coal better balances our national environmental and energy objectives.

The modeling results show that under any alternative emission strategy coal production will increase significantly in every coal production region while less coal and more oil will be used under the approach favored by EPA.

In tables prepared by EPA to display the results of the computer models and the impact of alternative emission strategies, Appalachian coal production is shown to be higher under two more liberal SO_2 limitations than the EPA approach, and would significantly increase under all approaches.

Similarly, Midwestern production doubles under nearly all emission strategies while Midwestern coal consumption would drop by one-third as a result of the proposed EPA standards. Overall, comparative reductions in emissions on a percentage basis are almost insignificant under the EPA standard and remain about the same in 1995 regardless of whether the strict EPA approach is used or the sliding scale advocated by DOE is implemented.

In conclusion, Mr. President, I would ask my fellow Members to study fully the consequences of the EPA proposal and to communicate with EPA Administrator Douglas Costle their concern that the intent of Congress with respect to discrimination against low sulfur coal not be subverted through EPA's regulations.●

A LESSON IN MODERN AMERICAN AGRICULTURE

● Mr. LUGAR. Mr. President, as a member of the Senate Agriculture Committee, I have spoken on many occasions about the importance of a strong agricultural sector to the economy of our Nation, and of my native State of Indiana. Recently, when the Senate passed legislation to encourage and expand farm exports, I noted that sales of agricultural products abroad are crucial to our Nation's balance-of-trade situation, and I have proposed legislation to better enable this country to share the abundance of its farms with other countries facing emergency food shortages.

It must be noted that America's undisputed world leadership in agriculture, and agriculture's key role in the American economy, are products of thousands of efficient, knowledgeable farmers and of an agricultural economy that promotes innovation and productivity.

In the September 25, 1978, issue of the Wall Street Journal, reporter Meg Cox focused on the farms of Steve and Stan Sickafoose near South Whitley, Ind., as an excellent lesson in modern American agriculture. I congratulate the Sickafoose family on the success they have achieved through hard work and skillful planning, and I commend this excellent article to the attention of my colleagues.

I ask that the Wall Street Journal article be printed in the RECORD.

The article follows:

FARMING THESE DAYS IS A LOT LIKE RUNNING A SMALL CORPORATION

(By Meg Cox)

SOUTH WHITLEY, IND.—"Farming is like sitting down to a game of Monopoly," says Steven Sickafoose. "You've got the same weather, the same markets, as the next guy. You've got to play your variables better than he does."

That isn't the way farmers used to talk. But as Mr. Sickafoose, a 33-year-old college economics graduate and hog grower, would be the first to tell you, farmers can't farm the way they used to either.

Mr. Sickafoose and his twin brother, Stanley, cultivate 1,500 acres of the heavy clay-like soil of northeastern Indiana. Besides corn, soybeans and wheat, they raise 4,000 hogs a year and 33,000 laying hens. Efficient, large-scale operators, they are among the biggest 17% of American farmers, a group responsible for 80% of U.S. agricultural sales.

Steve and Stan Sickafoose talk of productivity, of the cost of labor, of return on investment. They know exactly how much it costs them to grow a bushel of corn or put a pound on a hog, and they hedge their bets in the future market. They are educated, incorporated and profitable. And their methods indicate what it takes in skill, capital and equipment to operate a modern family farm.

FAVORABLE PROSPECTS

Despite the well-publicized protests of last winter, agriculture for producers like the Sickafooses is a rewarding pursuit. The economic-research division of Chicago's Continental Illinois National Bank & Trust forecasts a rise of at least 13% in net farm income this year to $23 billion or more. Prices of livestock have been sharply higher for the year and those for most grains moderately higher, partly because of a farm program that will result in Federal payments to farmers of $2.5 billion to $3 billion, up from $1.8 billion last year. Crop weather through much of the Midwest this summer has been ideal.

This isn't to say all farmers are doing well. Many who raise only grain complain that prices, while stronger than those that stirred strike sentiment last fall, still don't offer them a reasonable return. This is particularly true for those who have bought the bulk of their land at the swollen prices of the past two or three years.

But D. Gale Johnson, an agricultural economist at the University of Chicago, says that while family farmers "have gone through a difficult time, paying for their prosperity in 1973, 1974 and even 1975, the next several years should be relatively favorable for them."

To Dennis Burch, an agricultural-loan officer at a bank near the Sickafooses, it appears that "the family farmer has never been stronger."

STARTED AS SALESMEN

This strength helped draw the Sickafooses, who grew up on their father's farm, into full-time farming themselves. After graduating from college, both took jobs as salesmen for Central Soya, an agribusiness concern, and Steve managed a local grain elevator. The experience of visiting many farm clients proved valuable: "We saw that agriculture was profitable," says Stan, "and we benefited from mistakes made on other operations."

By 1972 both twins, whose round faces, rosy cheeks and broad grins give them a vague resemblance to Billy Carter, were farming full time. They quickly set out to get big enough to buy materials and equipment straight from distributors when possible, saving the middleman's margin. Acquiring at least one piece of land between them each year, they built their holdings to about 1,000 acres, plus 500 that are rented. "The growth rate has been tremendous," Steve notes.

The men live on separate farms, owning the biggest pieces of equipment jointly but keeping separate books. Thus, if Stan runs out of corn for his hogs and gets some from Steve, it is a sale of inventory.

A HALF MILLION OF DEBT

With the help of surging land prices, the Sickafooses' combined net worth has swiftly climbed to an estimated $1.6 million. Their debt has mounted too, to more than a half million dollars, but apparently according to plan. Steve recalls one lesson in particular from his off-farm work: "It taught me to be more aggressive and not afraid to spend big money like other businessmen do," he says.

Large-scale operation has done little to shorten the farmer's workday. Six a.m. finds Steve in his big farrowing house, feeding and looking after sows that are about to give birth or recently have.

On one wall is a cartoon poster drawn by his wife, Beth Ann, portraying sows in T-shirts that read "on strike." As hog farmers, the Sickafooses are no better able to go on strike than the hogs are. "There are always pigs to castrate, shots to give, manure to haul," Steve says.

Though the pigs begin life in the farrowing house, at weaning a few weeks later they are moved to a separate building for fattening. There, fed a mixture of corn, soybean meal, vitamins and minerals, the pigs grow to market weight of 220 pounds or so in less than half a year. Despite their well-known preference for mud, these hogs live their entire lives on concrete.

Such a "confinement" operation, as it is called, has its drawbacks. With the animals penned so close together, for one thing, any disease problems are magnified. But the hogs grow rapidly and efficiently, as they can be fed a controlled ration and they don't run their weight off in a pasture as in days past. The Sickafooses calculate they can bring a hog to market on eight to 10 bushels of feed, compared with the 20 bushels it took their father four decades ago.

The Sickafooses are equally systematic in their approach to crops. Steve rattles off a list of chemicals used to grow an acre of corn the way some men recite baseball statistics: two quarts of grass killer, at $5.45 an acre; 13 pounds of insecticide, at $7.28; two pounds of broadleaf-weed herbicide, costing $5.30. This year, because of a problem with Western Corn Beetles, 40 percent of the crop also had to be sprayed with another chemical, at a cost of $6.50 an acre.

To do the most good, of course, the chemicals have to be applied at the right time. The herbicide Steve sprayed on his soybeans gave "disappointing" results because it requires moisture to work, and for some time after planting there was no rain. And this season some of the soybeans have been afflicted with root rot, a condition no spray will cure.

SEVEN KINDS OF SEED CORN

Then there is fertilizer. The Sickafooses applied 200 pounds of potash per acre of corn, 190 pounds of "row starter" (a blend of phosphorous, nitrogen and potash) and about 640 pounds of a 28 percent nitrogen solution.

Selection of seed corn offers another opportunity for a farmer to "play his variables better." Some corn varieties mature earlier, an advantage in a cool year with a short growing season, while some can withstand Midwestern summer dry spells better. The Sickafooses minimize risk by using seven varieties from two seed companies. "I have no strict faith in anyone," Steve explains. "If one has a problem, this gives us an alternative."

The Sickafooses coordinate the size of their corn crop and their hog production so they don't have to buy extra corn for feed. And they try to grow enough soybeans each year to cover the cost of soybean-meal protein supplement, which must be bought at a local grain elevator. A modest wheat crop provides straw to cover the concrete floors of hog barns.

With the many fixed costs of raising a crop, plus the ever-present risk of disastrous weather or prices, the Sickafooses constantly strive to control expenses. Their bargain-hunting instincts are finely honed. At a farm bankruptcy sale they picked up a barely used International Harvester six-row combine for $30,000—half the list price.

CHORES FOR EVERYBODY

Being self-sufficient helps, too. The Sickafooses do most of their own repair work, spending rainy or snowy days in a well-equipped workshop. And Stan estimates they save $18,000 a year in feed-grinding costs on

a $5,000 investment in their own grinder-mixer.

Another trick is to hire as little outside labor as possible, and to this end modern farms preserve a venerable rural tradition: Everybody has to pitch in. The twins' father, and uncle and Stan's father-in-law all help with field work; Steve's 10-year-old son, Jeffery, and Stan's 10-year-old, Mark, both have regular chores; both men's wives help with inoculating baby pigs, driving trucks or whatever else needs doing.

The women, both former school teachers, concede they would sometimes rather return to teaching than do farm chores. "I believe in women's lib and all that," Stan's wife, Barbara, comments. "But it takes two to make the farm work."

The twins' 23-year-old sister, Diane, largely runs the chicken operation, with part-time help from an elderly man. The families take turns gathering eggs on Sundays.

CHICKEN INCORPORATED

The poultry business, housed in two long, white buildings, has been incorporated to minimize income taxes and simplify eventual estate transfer. As with the majority of farm corporations, the only shareholders are immediate family members—Steven and Stan, their father and Stan's father-in-law. Only 1 percent of farmers are incorporated, according to a 1977 study, but they sell 14 percent of farm products.

As for the men, their work doesn't stop when they leave their boots at the back door of the house. Steve estimates it takes three hours a week to keep up the paper work the farm operation generates. For the Sickafooses, almost as much a part of the farm cycle as harvest is the annual hedging strategy session, at which they decide whether to trade eggs, soybean meal, corn or hogs in the futures market.

If, for example, hogs are trading at a price well above the Sickafooses' production costs, they may hedge the animals with futures contracts to deliver the hogs at a higher price. Later they haul them to market and simultaneously buy futures to cancel the delivery contracts. Cash and futures prices generally move together, so if prices drop the Sickafooses make enough money on the futures transaction to offset the lower cash prices. If prices rise, cash-market profits make up for futures-market losses.

All these management techniques seem to be paying off. The Sickafooses say they've averaged a healthy 10 percent return on investment for the past three years, compared with 3 to 5 percent for some local farmers who raise only grain and haven't benefited from recent strong livestock prices. But because of investment credits and depreciation of equipment, Steve says his operation has shown a loss at tax time for two of the past five years.

MARKET OUTLOOK

This year the Sickafooses expect to average about 46 cents a pound for the hogs they will market—far above their break-even price of 32 cents a pound. They should do all right on soybeans, too, with a big crop ready for harvest and a local elevator offering 80 cents a bushel above their break-even figures. After losing several cents a dozen on eggs earlier in the year, they're making a cent or two a dozen now. Steve predicts that "margins should be getting better in the future, with feed costs so low."

As the scale of their operations grows, farmers seem to be becoming increasingly independent and aware of their economic power. "Young farmers today don't have any affiliation," says James Bollenbacker, manager of the Farmer's Co-op grain elevator here. "They say, 'I'll listen to what you say, but I won't belong to you.' They won't do business with me just because their dad did, but only if it will do something for them."

In addition, Steven Sickafoose believes that "young farmers are a lot more bitter than the earlier generation," partly because they have had more and thus expect more from life. They are more likely, for instance, to be well educated and well traveled.

"Our generation goes and goes," says Stan Sickafoose. "We go to the university for short courses; we go to specialists; we go fishing, hunting and water skiing. Our dad stayed at home and visited his neighbors."

For now, Steve and Stan plan to keep on doing better and getting bigger. But, whereas their father, Gale, says he would just as soon die sitting on his tractor, the twins want to enjoy the fruits of their work before they're old. As she cleans up after her 18-month-old son, Steve's wife Beth Ann confides, "when we're 40, we're going to travel all over the world."●

MARYLAND'S FARM QUEEN

● Mr. MATHIAS. Mr. President, recently an outstanding young woman, Mary Streett, was selected by the Maryland Farm Bureau to be Maryland's 1978 Farm Queen.

Ms. Streett is from Fallston in Harford County and a student at John Carroll School in Bel Air.

For the past 8 years, she has been active in the 4–H and has won many awards for the beef cattle she raises. In addition, Mary helps her veterinarian father at his clinic in Churchville. Normally, this would be enough to occupy any active teenager, but Mary also pulls her share of chores at the family farm and manages to be an A-minus to B-plus student.

As Farm Queen, Ms. Streett will represent the Farm Bureau at many agricultural and community functions throughout Maryland in the coming year.

I know Maryland is proud of this remarkable young woman and that she will be an excellent ambassador for the State's farming community.

Mr. President, I ask to submit an article about this fine Marylander from Northeast Agriculture for the RECORD.

The article follows:

INSIGHT TO 1978 MARYLAND FARM QUEEN

Mary Streett of Fallston, Harford County, is not "average", even though she greets you with a gracious, but humble air of confidence.

Slender, attractive, poised—with a touch of shyness—and in tune with her surroundings . . . this 17-year-old will represent Maryland Farm Bureau at many functions during the next year. These include a special flag day at the Maryland Science Center, the Maryland Farm Bureau convention in December, and the AFBF convention in January.

This year's queen is as comfortable in the barn, halter-breaking her steer project, or trimming around shrubbery, as she is doing chores in the house. Her bedroom shelves are filled with trophies won by her beef animals in numerous 4–H shows.

During the past eight years, Mary has spent much of her spare time in 4–H work. In addition to her beef, she has had clothing, photography, gardening, food, public speaking, junior leadership and veterinary science projects.

Since her father is a veterinarian, she spends the remainder of her spare time working in his vet clinic in Churchville. There she is a technician "doing anything from cleaning cages, filing, to preparing animals for operations and running lab tests or taking x-rays."

"I would really like to be a large animal vet," Mary stated, "but too many farmers don't think a female can do it so it's difficult for a woman vet to get started."

Her second choice is animal research, but this will follow college at either Penn State or VPI.

The daughter of Dr. and Mrs. Spencer Streett, she has one sister and two brothers. When Dr. Streett gave the family the choice of a camper or a barn, eight years ago, the decision to go with the barn started Mary toward her current ambitions.

"Mornings and evenings—no matter what—we have to take care of our animals," Mary said matter-of-factly, "Dad says it's our responsibility if we want beef projects."

"We do all the work on the animals and around in the barn, but sometimes in the evening Dad will act as a judge . . . and he can tell who has worked on his animal and who has not."

Mary says she hasn't had much time for dates, but the Harford County 4–H Livestock Club has a lot of activities, and "we do a lot of things together." She has been president of the club, in addition to holding other 4–H offices."

When asked how she got involved in the Queen contest, Mary said, "A lot of my friends urged me to enter, and my girlfriend asked me to enter with her because she didn't want to go by herself."

"I knew all the girls in the county contest . . . and this made it hard because we're all friends. In different ways, they all deserved to win."

Mary feels that her public speaking training in 4–H was a great help in both the county and state contest. Walking up the aisles in high heels was the hardest task. She felt the state contest was a "little more scary" because she didn't know any of the other girls and the surroundings were new to her.

"But there was a large cheering section from Harford County and as soon as I walked up on the stage they started cheering . . . this made me smile and then I relaxed."

In spite of all of her 4–H activities, Mary is a B–plus to A minus student at John Carroll School in Bel Air. She expects to give more concentration to studies in college since she won't have so many 4–H projects.

Mary Streett . . . her parents, 4–H friends, Harford County Farm Bureau and Maryland Farm Bureau can be proud of her.●

MINORITY BANK DEPOSIT PROGRAM

● Mr. LUGAR. Mr. President, I am pleased to support passage of Senate Resolution 411, which I introduced on March 8, 1978, along with Senators BROOKE, MCINTYRE, PROXMIRE, RIEGLE, SCHMITT, and TOWER as original cosponsors. The purpose of this resolution is to express the sense of the Senate that further efforts be made by Federal departments and agencies to channel additional deposits to minority-owned commercial banks.

In 1970, the Treasury Department initiated a minority bank deposit program in order to assist and encourage the development of commercial banks which are established with the active participation of minority individuals. This program encourages the deposit of Federal moneys with these institutions in order to provide them with additional sources of funds. The minority bank deposit program recognizes the financial needs of the institutions involved, which serve a vital function in their communities by making credit available and accessible

at a reasonable cost to all credit-worthy persons, including blacks, Hispanic-Americans, and other minorities.

Treasury Department figures demonstrate a relatively consistent increase in total minority bank deposits from June 30, 1972, to the present:

Quarterly figures reflecting increasing Federal deposits in minority banks

Quarter ended:	*Amount*
June 30, 1972	$84.0
June 30, 1973	86.6
June 30, 1974	74.0
June 30, 1975	72.3
June 30, 1976	89.2
June 30, 1977	99.8
June 30, 1978	[1] 145.0

1. All figures in millions.
2. Figures for quarter ending date listed.

[1] Approximate.

Source: U.S. Department of Treasury.

Treasury Department policy requires the 24 Federal departments and agencies that deposit Federal funds in commercial bank accounts to observe a variety of cash management procedures. Several departments and agencies have implemented cash management procedures whereby commercial banks must engage in competitive bidding for Federal Government deposits. If used exclusively, this process, which is intended to achieve more efficient cash management, could ignore as a factor the important role played by minority banks.

Senate Resolution 411 encourages all Federal departments and agencies to make every effort to channel additional deposits under their control or administration into minority financial institutions. The resolution states that in determining where Federal deposits are placed, agencies and departments must give consideration to the role these institutions play in their respective communities and how that role can be fostered through the receipt of additional financial resources, consistent with the application of good cash management policies.

The current minority bank deposit program includes financial institutions which are under the ownership or majority control of blacks, Hispanic-Americans, Indians, and women. Although only commercial banks now are recognized for participation in the program, the resolution expressly refers to savings and loan associations as well. In the past, savings and loan associations have been precluded from participating in the direct deposit program, because of their inability to maintain demand deposits. In Public Law 95-147, the Congress made savings and loan associations eligible for the first time to act as Treasury tax and loan account depositories. This change in Federal law indicates that Congress supports generally the concept of equal participation in Federal deposit programs by savings and loan associations. The resolution, as reported by the committee, recognizes that the Treasury already has the authority to include minority savings and loan associations in the minority bank deposit program.

I urge adoption of Senate Resolution 411.●

INDEPENDENT LOCAL NEWSPAPER ACT OF 1978

● Mr. SCHMITT. Mr. President, I am pleased to join with the distinguished Senator from North Carolina, Senator MORGAN, in cosponsoring S. 3441, the Independent Local Newspaper Act of 1978.

The public is slowly awakening to the fact that the independent local newspaper is becoming an endangered species. This applies to daily as well as weekly newspapers, which are being bought up at an ever-increasing pace by newspaper chains, communications conglomerates, and public corporations. Each year for the past several years, 40 to 60 daily newspapers have left the ranks of the independents and are merged into chains, whose corporate headquarters are hundreds or thousands of miles away. At the present rate, in another few years, there will virtually be no independents left remaining. At this time, there are just over 600 independent dailies, but each week, another one or two are bought by the chains.

This bill allows the owners of an independent local newspaper to establish an advance estate tax payments trust, to be funded by corporate earnings with not more than 50 percent of pretax income of the newspaper in any year. The contributions to and income of the trust may be invested solely in obligation of the United States. Excess funding of the trust is expressly prohibited. The funds accumulated in the trust may be used only to pay the estate taxes of the owners of the newspaper.

In addition, the bill provides for an extension of the time for payment of estate tax where the estate includes the interests in an independent local newspaper. Such extensions would be subject to payment of interest as now provided under the tax laws.

These provisions will permit the owners of independent newspapers to prepare far in advance for their estate taxes, and will thus permit more small, family-owned newspapers to be passed from generation to generation, as they have been since the days of our country's founding.

The Congress should do everything it can to encourage the continued existence of strong and healthy independent newspapers.

I agree with the words of Thomas Jefferson in this regard. He wrote:

> Were it left to me to decide whether we should have a government without newspapers or newspapers without government, I should not hesitate a moment to prefer the latter.

Freedom of expression is fundamental to our national life. It is the strongest bastion that exists to guard against encroachment upon the personal freedoms of our people. As Napoleon observed:

> Four hostile newspapers are more to be feared than a thousand bayonets.

I am hopeful that we will always have a good many papers that are hostile and critical to the activities of the Government. This appears to be the best means available to keep it on the straight and level.

We need as many organs of expression in this Nation as possible, representing the full spectrum of opinion on the issues, and I am, therefore, pleased to cosponsor and enthusiastically support this legislation.

Mr. President, I ask that a list of the independent newspapers in New Mexico be printed in the RECORD.

The list follows:

Alamogordo News; Albuquerque Journal; Artesia Press; Farmington Times; Gallup Independent; Grants-Milan Beacon; Las Vegas Optic; Los Alamos Monitor; Lovington Leader; Portales News-Tribune; Raton Range; Roswell Record; Silver City Press and Independent; and Tucumcari News.●

CEREMONY HELD TRANSFERRING THE DEED FOR THE SOUTH BRANCH RAIL LINE FROM THE CHESSIE SYSTEM TO THE STATE OF WEST VIRGINIA

● Mr. RANDOLPH. Mr. President, today it was my privilege to participate in an unprecedented event, the transfer of the deed for a major section of rail line by the Chessie System to the State of West Virginia.

The donation of this 51.4-mile section of rail line, newly named the South Branch Valley Railroad, operates in the West Virginia counties of Hampshire, Hardy, and Grant. The transfer of this property allows for the continued operation of a vitally needed transportation system in a growing eastern area of our State.

I commend all parties who have been involved in this concerted effort. The Chessie System for their generous donation and the cooperative spirit they have shown in West Virginia through the years. The West Virginia Railroad Maintenance Authority, the Grant County Development Authority, the Boise Cascade Kitchen Cabinet Division, the Rockingham Poultry Marketing Cooperative, and most particularly the West Virginia Agriculture Producer, have been helpful.

Participating in the presentation were Gov. John D. Rockefeller IV, Senator ROBERT C. BYRD, Representative HARLEY O. STAGGERS, Commissioner Virginia Mae Brown of the Interstate Commerce Commission and a native of West Virginia, Hays T. Watkins, chairman and president of the Chessie System, and C. Elwood William, chairman of the Board, West Virginia Railroad Maintenance Authority. Among those attending were John T. Kolloran, executive director, WVRRMA; Roy Green, planner, WVRRMA; Frank McKenna, legal counsel, WVRRMA; Charles Van Horn, Washington Representative, Chessie System; I. J. Warren, director of Real Estate and Industrial Development, Chessie System; Peter Shutz and Ray Adams, Chessie System; Don Moyer, director, Governor's Office of Economic and Community Development, Clifford Elkins, National Conference of State Highway and Transportation Officials; Bradley Nash, member, WVRRMA Board and former mayor of Harpers Ferry and Assistant Secretary of Commerce in the

administration of President Eisenhower; Terry Flaherty, member, WVRRMA Board; Calvin Germoth, general manager, Rockinghom Poultry Marketing Cooperative; Donald Baker, Hardy County coordinator for industrial and community development, and George Payne.●

CHERRY POINT NARF SETS PRODUCTIVITY RECORDS—AGAIN

● Mr. HELMS. Mr. President, North Carolina's contribution to the defense and security of our Nation has always been a source of great pride to me; and it is with special pleasure that I take this opportunity to commend the personnel at the Naval Air Rework Facility at Cherry Point, N.C., for recently achieving their finest overall production performance ever.

Statistics just released for the third quarter of fiscal year 1978 demonstrate again that the Cherry Point Naval Air Rework Facility had the highest level of efficiency of any of the six air rework facilities in the naval command for that quarter. Their record has been consistently outstanding over the years; and I believe the dedicated employees there should be commended for their remarkable success and for their most recent accomplishment.

The reasons for their success are easy to trace. The management and employees of the NARF know that the taxpayers have a right to expect their best efforts; and they know that maintenance of a strong defense capability is essential for the survival of our freedom. Without their outstanding performance and productivity, the Navy and the Marine Corps would not be as able to perform their missions and our country could suffer dearly.

And, the people at the Cherry Point NARF are also realists. They understand the tremendous demands upon limited defense dollars. They so believe in the importance of their mission and the work they do, that they constantly strive to justify and to give the best possible cost-benefit ratio to the funds expended at their facility. Because of the special efforts and tremendous dedication of the employees at Cherry Point, I do not know of a better "buy" for the taxpayers than that NARF facility; and it is for that reason that I want my colleagues to better understand their important mission.

MISSION

The Naval Air Nework Facility at Cherry Point was established in 1943 as the assembly and repair department of the Marine Corps Air Station. Since 1967 it has operated as a separate command of the Naval Air Systems Command. Its mission is to provide a complete level of depot maintenance on assigned aircraft, engines, helicopters, and support systems for Naval and Marine Corps aircraft—and they provide similar support for the Coast Guard, the Army, the Air Force, NASA, and the National Science Foundation plus similar organizations of many allied nations.

Cherry Point is the east coast rework point for the F-4 Phantom and the CH-46 Sea Knight helicopter. It is the only rework point in the Continental United States for the OV-10 Bronco used by the Marine Corps, Navy, and Air Force, and the only U.S. rework point for the AV-8A Harrier. All of these are front-line aircraft, and all are categorized as mission essential.

Much of the maintenance engineering, tooling, and equipment for the Harrier was designed and manufactured at Cherry Point. Large savings are realized by eliminating the necessitv of transporting airframes and engines to and from the United Kingdom for service. The personnel of this facility are intensely interested in this new program, because of its close connection with the Marine Corps and the future of Marine Corps aviation. Mr. President, this is only one example of the ability of the Cherry Point NARF to adapt to changing needs of the defense capabilities of the Nation, and I believe it demonstrates just how important this NARF is to that capability.

This special project is just one of the many services it provides. In the components and equipment program, Cherry Point has the skills, equipment, and facilities to rework over 9,000 component parts. Included in these are the special capabilities for a broad range of pneumatic components such as cockpit air-conditioning and pressurization units, ram air dropout turbines, turbine drives, air starters, and many more.

Other special capabilities at NARF Cherry Point, unique to the east coast NARF's include the rework and dynamic testing of helicopter main rotor blades and aircraft pneumatic components. Without the ability of Cherry Point to provide technical and artisan assistance to Marine Corps operating units, those fighting forces would have a less rapid response available for field emergency repairs and modification programs. Such programs include combat essential ground support equipment repair and calibration, fuel and oil analyses, and many other services essential to the carrying out of combat missions.

In large measure the tremendous success of the Cherry Point NARF is directly attributable to the highly competent work force there. The 2,500 civilian employees constitute a reservoir of technical expertise, ability, and experience that is a tremendous asset to the Navy, the Marine Corps, and other services, and most certainly to the country. Fifty-five percent of those employed there have been with the facility for 10 years or more, which speaks for their dedication, loyalty and, indeed, for their outstanding performance.

IMPORTANCE OF CONTINUED FUNDING

Mr. President, when the public thinks of national defense, the first thought picture that most often comes to mind is one of America's fighting forces standing vigilant to protect us from foreign threats. But without the logistics support provided by the NARF and other similar elements, America's fighting forces just could not function. In addition to being absolutely essential to the combat capability of our fighting forces, the NARF, of course, makes it possible to achieve greater utilization of each piece of assigned military equipment—in this instance very costly and very scarce aircraft and components.

Now, it is no secret that many of us in the Congress feel that our fighting forces are facing serious budgetary problems. Of course, the immediate cause is the spiraling inflation which makes the cost of performing the sort of services done at the NARF more and more costly each year—and those inflationary costs will continue to increase until the Congress becomes more responsible in its fiscal policies overall.

Because the threat from the continuously growing capability of the Soviet fleet is directed primarily against the United States, we cannot allow our Nation's defenses—including the important logistic support provided by the NARF at Cherry Point to—fall behind if our military forces are to remain a credible deterrent to Soviet designs.

To maintain a modern, efficient depot, a continuous infusion of money for facilities, equipment replacement, and modernization is required. The Navy currently supports equipment replacement and modernization at a level that is regarded as adequate. If we are to expect the NARF's around the country to provide the support for which they should be capable financial support must be provided for military construction.

One frame of reference to illustrate this point is the comparison of the private aircraft industry's investment in new construction at their facilities. Private industry invests about $1 for new structures for every $4 of new equipment purchased, while the Navy's investment is about half that, or $1 for every $8 of new equipment.

This shortfall in necessary construction is coming at a time when the NARF's are being required to assume workloads requiring much more sophisticated technology; for example, F-14 aircraft with a predominantly titanium structure and helicopter dynamic components with extreme loads and criticality. A lopsided modernization program will not permit the full benefits of improved effectiveness and efficiency that a coordinated, planned program would.

Mr. President, I believe it is absolutely vital to the ability of the Navy to carry out its mission that the Naval Air Rework Facilities receive the attention and support necessary to permit them to continue to provide outstanding logistic support for the air arm of the U.S. Fleet and to the U.S. Marine Corps. I urge every Senator to carefully weigh the consequences of our failure to provide adequate, long-term funding for the NARFs, and believe that it will serve the Nation's interest best if the budget process takes into consideration the necessity for a balanced program that emphasized the improvement of the NARF as well as new equipment.●

H.R. 50

Mr. ROBERT C. BYRD. Mr. President, on tomorrow it is hoped that the Senate

can—Mr. President, while the distinguished Senator from Massachusetts (Mr. BROOKE) is on the floor, I would urge him to do one of two things, if at all possible, one being—if the staff members will get out of the well of the Senate—Mr. President, I would suggest to the distinguished Senator that he try to confer with Mr. CLARK on getting a time agreement on the resolution to deal with the matter of discrimination, and if he could work out a time agreement, which means that those who are opposed would have to agree to it also, I would like to propound such an agreement to the Senate; and failing that, I would hope he would seriously consider withdrawing the amendment.

Mr. President, the issue is not going to go away. If it is of so serious a nature that it needs action, it is not going to go away with the sine die adjournment of this Congress. It is not going to go away.

I know it is not the Senator's intention, but I am concerned that it might be the result, that it would jeopardize the passage of Humphrey-Hawkins at this very, very late hour in the session. I wish he would think overnight about withdrawing his amendment.

Mr. BROOKE. Mr. President, let me assure the distingnished majority leader that I am very mindful of the parliamentary problems that confront him in an effort to have the Senate adjourn sine die by Saturday night.

Mr. ROBERT C. BYRD. I beg the Senator's pardon. I did not hear him.

Mr. BROOKE. I will repeat. I want to assure the distinguished majority leader that I understand fully the parliamentary problems which face the distinguished majority leader in his attempt to have the Senate adjourn sine die by Saturday night.

I also want to assure him of my strong support and desire that Humphrey-Hawkins be passed.

But I also want the distinguished majority leader to know that I think one of the great priorities of this session of the Congress, or many Congresses, is for the U.S. Senate to grant full and equal employment opportunities for women, minorities, the elderly, and the handicapped. I think that is a great priority, and I believe it is something to which we should have addressed ourselves long ago. We have not prevailed.

I would hate to see this Congress adjourn without having done so, without having lived up to that responsibility.

I also will assure the Senator that I will give consideration to his request. Tomorrow morning I will meet with Senator CLARK and others in an attempt to work out some time agreement for this bill and then make a judgment call as to what further action to take.

Mr. ROBERT C. BYRD. I thank the Senator for that assurance. I am confident that the Senator will do everything in his power to be of assistance to me in this regard.

May I say to the Senator—Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. Will Members of the Senate please take their seats? Will members of the staff go to the back of the Chamber?

Mr. ROBERT C. BYRD. Mr. President, I am not just saying that which I could get printed in the RECORD by unanimous consent. I am saying it tonight, because I think it is vital that it be said. I intend to vote for that resolution that is on the calendar. I make no bones about that. But I am very concerned about this procedure, and I have stated why.

No. 1, I am afraid that it opens up a way to amend the Senate rules that no Senator here wants to approve, wants to condone, countenance. Basically, that is what I am very concerned about.

Second, I am very concerned that this amendment is going to jeopardize Humphrey-Hawkins.

I know Senators in this body who will not vote for cloture, because they realize if they vote for cloture this amendment is wiped out, because it is not germane. I do not know how many, but 1 vote, if we get 49 votes—we are just going to have 1 cloture vote on Humphrey-Hawkins. That is all. If we get 49 votes, who knows? Who here can stand and say that that other vote would not have been cast for cloture if it had not been for this amendment.

I would rather not gamble on it.

January is only 3 months away, February is only 4 months away, and the Senate will be here, the Republic will still stand. If there is a wrong that is to be addressed, the Senate can address it in the next session.

I say, let us not take a chance here on killing Humphrey-Hawkins, a chance that will also not result in what the Senator hopes to achieve.

This amendment is not going to be adopted, in my judgment.

Mr. BROOKE. Does the Senator mean as an amendment to Humphrey-Hawkins or in any form?

Mr. ROBERT C. BYRD. No, I do not mean the latter. I mean as an amendment to Humphrey-Hawkins, this amendment will not be adopted. That is my honest judgment.

Mr. GLENN. Will the Senator yield?

Mr. ROBERT C. BYRD. Finally, the Senator is going to put me in the position of opposing it; he is going to put other Senators in the position of opposing the amendment. I do not want to be put into the position of opposing the substance, but I have to oppose the procedure. Other Senators——

Mr. BROOKE. Does the Senator understand that on January 1, 1979, this is going into effect, that this has already been passed by the Senate?

Mr. ROBERT C. BYRD. I understand that.

Mr. BROOKE. So many Senators do not. I think they believe they are acting on something new, that this is something they can stop at this time. But it only means that the Ethics Committee, without the proper mechanism, is going to be burdened with these problems that do not rightfully belong with the Ethics Committee.

I think if more Senators really understood what was involved, they are really not going to stop the rule against discrimination against employees of the Senate based on race, sex, age, the handicapped. They are not going to be able to stop that. They are only thwarting us in our attempt to carry out the magnificent work that was done, and everyone agrees, and unanimously passed by the Governmental Operations Committee, work primarily done by the distinguished Senator from Ohio (Mr. GLENN). That is what we are talking about.

Mr. ROBERT C. BYRD. Mr. President, I said that rule will prevent that. I went through all of that. So why at this late hour in the session persist in an effort that is going to fail—as of now it is going to fail—and, more than that, it could possibly carry with it—and I do not know if it will but it possibly could—something that will not go into effect next January, and that is Humphrey-Hawkins.

More than that it will be a bad precedent, I think, to set a procedure for changing the rules, even though there are those who say it will not change the rules. It is a precedent by which changes in the rules can be similarly brought about.

For all of these reasons, I urge the Senator to think about it overnight. I respect him for his dedication. I am not going to press it any further.

Mr. BROOKE. I do interpret the Senator's remarks as still being that he encourages the Senator from Massachusetts to try work out a time limit; is that correct?

Mr. ROBERT C. BYRD. That is correct.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. May I yield to the Senator from Ohio, but first may I yield to the Senator from Maryland (Mr. MATHIAS)?

Mr. President, I yield to the Senator from Ohio.

Mr. GLENN. I thank the Senator for yielding.

Mr. President, I want to make one last remark, following on the remarks of the distinguished Senator from Massachusetts (Mr. BROOKE) with regard to misconceptions surrounding the discussion this evening, we had worked on long and hard in the Governmental Affairs Committee on this matter.

I was somewhat shocked this evening to hear some of this discussion, because it sounded like we were arguing over whether these rights should be protected.

It sounded like the civil rights discussions of 1964 and the equal rights discussion of 1954; I share the views of the Senator from Massachusetts that there is much misunderstanding surrounding this thing.

It is not a question will these criteria now be applied to the U.S. Senate. That will, in fact, be done by Senate rule L. The question is how it will be imposed? It is that simple.

It is not whether they will occur, as the Senator from South Carolina was talking about back here, as though we had an option as to whether these things will occur. The only question we have before us and that I hope becomes clear in

the debate tomorrow morning is how this is going to occur. Will it be via the Ethics Committee or will it be with the cushioning functions we built into this resolution?

I think if we could just get enough people to understand that that is the choice and nothing more than that, perhaps we could still get this amendment to a vote and pass it.

The problem is this: If we do nothing, then the decision is made; that is final. There will not be a decision possible on this after the first of the year. The Ethics Committee will have direct responsibility. This option will have been lost to us. So we cannot just put it over until the first of the year, as I see it. If we are going to take this option, it has to be done by working out a time agreement tomorrow and getting people to understand what the options are here.

It is not a matter of whether we are going to reargue the Civil Rights Act of 1964; it is whether we are going to do this by what I consider a far harsher process within the Ethics Committee, or by a much more controlled process with the resolution as we devised it.

I thank the majority leader.

Mr. ROBERT C. BYRD. The Senator from Ohio has carried out a responsibility that was placed on him, placed on the Governmental Affairs Committee, by the Senate. It has been a thankless task. He has been most dedicated in his efforts to carry out the orders that were placed upon his committee and upon the subcommittee, which he chaired. I respect him and admire him for it.

I do hope, however, that unless a time agreement can be gotten on the resolution itself which will allow it to be called up and disposed of in a very short time, with a vote up or down, unless that can be done, I hope the amendment will be withdrawn.

Tomorrow is Thursday. We have much yet to do. If cloture is invoked on Humphrey-Hawkins on Friday morning, then we cannot bring up any conference report; nothing else can be brought up until that business has been completed. Humphrey-Hawkins will have to be disposed of.

So we have tomorrow in which, hopefully, we can do the continuing resolution on appropriations, we can do the energy tax conference report, we can do the omnibus parks bill, possibly the regulation Q extension, the sugar stabilization bill, and there are scores of House messages and conference reports, other conference reports, and bills that need to be called up and disposed of.

We have had a shining example of what will happen tomorrow in the Senate just by what has happened tonight. We have been talking now for, I suppose, 3 hours or longer, 5 hours, maybe, on this amendment, and we have gotten nowhere. If this amendment stays up tomorrow, we shall be here tomorrow night at 11 o'clock and still be on this amendment unless somebody moves to table it. I do not think that is a fair disposition of this matter, a motion to table.

Mr. GLENN. Will the Senator yield for 30 seconds on this?

Mr. ROBERT C. BYRD. Yes.

Mr. GLENN. I am sure the Senator knows it was not my decision to bring this up. I did not wish to encumber Humphrey-Hawkins with this, but once it was on the floor, with our interest in it, I felt it was not only my duty but, since I do believe this is right and correct, and I firmly believe this, I felt I should argue it as hard as I could.

It is not up to me to withdraw it; it is up to Senator BROOKE. He proposed it.

Mr. ROBERT C. BYRD. I do not question the Senator's sincerity in any way.

Mr. President, in the final analysis, I want to do what is in the interest of getting on with the Senate business and do it in orderly fashion. I shall retain my option in moving to table. I hope the amendment will be withdrawn, because, as I say, a vote on a tabling motion is not an accurate reflection of how Senators feel about this matter. I do not want to see the Senate tied up all day tomorrow, as it has been tied up tonight, with other amendments of this nature on the Humphrey-Hawkins bill. I want to put all Senators on notice that I may move to table this amendment tomorrow. I hope it will be withdrawn and save everyone misconceptions that may be drawn from the votes on the tabling motion.

But I do not want to see Humphrey-Hawkins jeopardized and I do not want to see the Senate held up a day in a wrangle that, in my judgment, is not going to result in the hoped-for goal of those who are pressing the amendment.

We have other matters that have to be disposed of, I just stated them, that need to be disposed of quickly.

PROGRAM—SPECIAL ORDERS

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at 9 o'clock tomorrow morning. I ask unanimous consent that Mr. BAYH be recognized for not to exceed 15 minutes immediately following the two leaders, and that he be followed by Mr. PROXMIRE for not to exceed 5 minutes.

Mr. President, I revise that. I ask unanimous consent that Mr. PROXMIRE be recognized after the two leaders for not to exceed 5 minutes, and that I be recognized for not to exceed 15 minutes; that Mr. MATHIAS be recognized for not to exceed 15 minutes; and that the Senate then resume its consideration of the unfinished business.

The PRESIDING OFFICER. Is there objection?

Mr. BROOKE. Mr. President, reserving the right to object, what would be the unfinished business?

Mr. ROBERT C. BYRD. The unfinished business would be the Humphrey-Hawkins bill.

Mr. BROOKE. What would be the pending question?

Mr. ROBERT C. BYRD. The pending question would be on the adoption of the amendment by the distinguished Senator from Massachusetts.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? Without objection, it is so ordered.

ORDER TO VITIATE SPECIAL ORDER

(Later the following occurred:)

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the recognition of Senator MATHIAS on tomorrow morning be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEATH OF REPRESENTATIVE GOODLOE E. BYRON

Mr. MATHIAS. Mr. President, I am grateful to the distinguished majority leader for yielding.

I have asked him to do so with a great deal of regret, because I find it my painful duty to announce to the Senate the death of our colleague from Maryland, Representative GOODLOE BYRON. He was a young man. He was in the best of health, as far as we knew. He was, in fact, a health enthusiast, a great jogger. Death came to him in an hour of sport, in a place he loved in his native Washington County, while he was jogging on the C. & O. Canal towpath this afternoon about 6:30.

He was a very strong force in our Maryland delegation. He was enormously concerned with the problems of people in his district. I do not think any Member of the entire Congress paid more attention to the personal concerns of individual citizens than he. Whenever we had a problem which affected all of the interests of the State of Maryland, he closed ranks without regard to any partisan considerations. He was a very strong force to advance the interests of the people of Maryland.

He came from a distinguished family. Both his father and his mother were Members of the House of Representatives. Other members of his family served in Congress. But I say this: No Member of Congress in his family set a higher mark than did GOODLOE BYRON. My heart tonight goes out to Mrs. Byron and their children. Mrs. Mathias and I share with them a great sense of shock and sorrow and loss.

Mr. SARBANES. Will the majority leader yield?

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Maryland (Mr. SARBANES).

Mr. SARBANES. Mr. President, I want to join my senior colleague from Maryland in expressing my shock and deep sorrow at the death of our good friend and colleague, GOODLOE BYRON. He was only 49 years old.

He served in Congress since his election in November of 1970 with extraordinary integrity and dedication. He represented the people of his district with great commitment and understanding. In doing that, he reflected his family's distinguished tradition of public service.

Both his father and his mother had served in the House of Representatives, representing the people of what now comprises the Sixth Congressional District. GOODLOE served in the Maryland State Legislature, both in the house of delegates from 1962 to 1966, and in the Maryland State Senate from 1966 to

1970. I know I speak for all of his colleagues in the Maryland delegation when I say that he was one of our finest Members. His loss is really a great loss to the people of our State; indeed, to the Nation. I extend my very deepest sympathies to his wife and to his three children at this moment of their tragedy.

Mr. JAVITS. Will the Senator yield to me on that subject?

Mr. ROBERT C. BYRD. Yes.

Mr. JAVITS. I happened to know GOODLOE BYRON and he did, at my request, a very wonderful deed, giving employment to a person in his office as a volunteer, where it could do an enormous amount of good.

I found him a thoroughgoing, delightful gentleman in every way—high-spirited and patriotic. I wish to join both my Maryland colleagues in a sense of real loss and in conveying to his family Mrs. Javits and my deepest condolences.

RECESS TO 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9 o'clock tomorrow morning.

The motion was agreed to; and at 11 p.m., the Senate recessed until tomorrow, Thursday, October 12, 1978, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 11, 1978:

U.S. ADVISORY COMMISSION ON INTERNATIONAL COMMUNICATION, CULTURAL AND EDUCATIONAL AFFAIRS

Lewis Manilow, of Illinois, to be a member of the U.S. Advisory Commission on International Communication, Cultural and Educational Affairs for a term of 3 years (new position).

NATIONAL COMMISSION ON SOCIAL SECURITY

The following-named persons to be members of the National Commission on Social Security for terms of 2 years (new positions):

James J. Dilliman, of Wisconsin.
Milton S. Gwirtzman, of Massachusetts.
David H. Rodgers, of Washington.

CORPORATION FOR PUBLIC BROADCASTING

Howard A. White, of New York, to be a member of the Board of Directors of the Corporation for Public Broadcasting for the remainder of the term expiring March 26, 1980, vice W. Allen Wallis, resigned.

LEGAL SERVICES CORPORATION

The following-named persons to be members of the Board of Directors of the Legal Services Corporation for terms expiring July 13, 1981:

F. William McCalpin, of Missouri, vice Roger C. Cramton, term expired.

Michael Kantor, of California, vice Glee S. Smith, Jr., term expired.

Robert J. Kutak, of Nebraska (reappointment).

Revius O. Ortique, Jr., of Louisiana (reappointment).

Howard R. Sacks, of Connecticut, vice J. Melville Broughton, Jr., term expired.

Ramona Toledo Shump, of Kansas, vice Glenn C. Stophel, term expired.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 11, 1978:

DEPARTMENT OF STATE

Donald K. Petterson, of California, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Somali Democratic Republic.

Henry David Owen, of the District of Columbia, to be Ambassador at Large.

Richard P. Parker, of Kansas, a Foreign Service officer of the class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

Richard A. Ericson, Jr., of California, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Iceland.

Samuel Rhea Gammon, of Texas, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mauritius.

Herbert S. Okun, of Maryland, a Foreign Service officer of class 1, for the rank of Minister during the tenure of his assignment as the State Department SALT Representative at Geneva, Switzerland.

OVERSEAS PRIVATE INVESTMENT CORPORATION

J. Bruce Llewellyn, of New York, to be President of the Overseas Private Investment Corporation.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Jane Cahill Pfeiffer, of Connecticut, to be a member of the General Advisory Committee of the U.S. Arms Control and Disarmament Agency.

UNITED NATIONS

The following-named persons to be Representatives and Alternate Representatives of the United States of America to the Twentieth Session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

Representatives:

John E. Reinhardt, of Maryland.
Esteban Edward Torres, of Virginia.
Hale Champion, of the District of Columbia.
Sarah G. Power, of Michigan.
William Attwood, of Connecticut.

Alternate Representatives:

Mathilde Krim, of New York.
Joseph D. Duffey, of the District of Columbia.
Maurice A. Ferre, of Florida.
Arthur K. Solomon, of Massachusetts.
Leila Fraser, of Wisconsin.

DEPARTMENT OF JUSTICE

Homer F. Broome, Jr., of California, to be Deputy Administrator for Administration of the Law Enforcement Assistance Administration.

Henry S. Dogin, of New York, to be Deputy Administrator for Policy Development of the Law Enforcement Assistance Administration.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

HOUSE OF REPRESENTATIVES—*Wednesday, October 11, 1978*

The House met at 10 a.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Forgive us our trespasses as we forgive those who trespass against us.—Matthew 6: 12.

Almighty God, our heavenly Father, once again we join our Hebrew friends in setting aside this day for fasting, prayer, and self-denial. Like all Your children, we have failed to live up to Your high expectations. Again and again we have fallen short of Your purposes for our lives and have not used wisely the gifts You have given us. Humbly we make our confession and sincerely we open our hearts to You for Your forgiveness. Create in us clean hearts, O God, and renew a right spirit within us. Strengthen us to live a better life, to trust You more fully, and to deal with our fellows more justly and more kindly. Thus, may we serve our country fairly and fully and come to the end of the day unashamed and unafraid.

With deep sorrow we learn of the death of our beloved friend RALPH H. METCALFE, We think of his high integrity, his sound character, his friendly spirit, his strong faith, and his devotion to his district and to our country. Comfort his family with Your presence and bless them and us with the memory of a great and a good man.

In Your holy name we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 13167. An act to amend the Internal Revenue Code of 1954 to insure that the deduction for contributions to a black lung benefit trust be allowed for any such contributions which are made for the purpose of satisfying unfunded future liability, and for other purposes; and

H.R. 13767. An act to amend the Federal Property and Administrative Services Act of 1949 to permit the recovery of replacement cost of motor vehicles and other related equipment and supplies.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 11318) entitled "An act to amend the

Small Business Act and the Small Business Investment Act of 1958."

The message also announced that the Senate agrees to the amendments of the House to a bill of the Senate of the following title:

S. 1626. An act to clarify the status of the Librarian of Congress under subchapter I of chapter 63 of title 5, United States Code, relating to annual and sick leave.

The message also announced that the Senate had passed a resolution of the following title:

S. RES. 583

Resolved, That the Senate has heard with profound sorrow the announcement of the death of the Honorable RALPH H. METCALFE, late a Representative from the State of Illinois.

Resolved, That a committee of two Senators be appointed by the Presiding Officer to join the committee appointed on the part of the House of Representatives to attend the funeral of the deceased Representative.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased Representative.

The message also announced that the Senate had passed with amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 8533. An act to amend the Internal Revenue Code of 1954 to provide that income from the conducting of certain bingo games by certain tax-exempt organizations will not be subject to tax.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 2584) entitled "An act to authorize appropriations to the Nuclear Regulatory Commission for fiscal year 1979, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HART, Mr. RANDOLPH, and Mr. DOMENICI to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 2774. An act to extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes; and

S. Con. Res. 110. Concurrent resolution directing the Secretary of the Senate to make correction in the enrollment of S. 2640.

CREATING ASSISTANT CHIEF TELEPHONE OPERATOR POSITION AND ABOLISHING FIVE TELEPHONE OPERATOR POSITIONS

Mr. ANNUNZIO. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 1280) to create an additional position of assistant chief telephone operator and to abolish five telephone operator positions, and for other purposes, and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1280

Resolved, That (a) subject to the provisions of subsection (b), effective August 1, 1978, there shall be an additional employee in the Office of the Clerk, to perform duties in connection with the operation of the Capitol Telephone Exchange as Assistant Chief Telephone Operator.

(b) The rate of compensation for the individual employed under subsection (a) shall be established at $15,036 annually and until otherwise provided by law such compensation as may be necessary shall be paid from the contingent fund of the House.

(c) Effective immediately, five telephone operator positions authorized by Public Law 82–168, dated October 11, 1951, in the Office of the Clerk are hereby abolished.

Mr. ANNUNZIO (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the resolution be dispensed with, and that it be printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, can the gentleman from Illinois explain what this is?

Mr. ANNUNZIO. If the gentleman will yield, Mr. Speaker, this resolution was adopted unanimously by the Committee on House Administration and merely establishes one additional position of assistant chief telephone operator at a starting salary of $15,036, while five telephone operator positions at $11,814 each annually are abolished.

As the gentleman knows, the telephone exchange is a joint operation with the Senate. The House currently has authorized 1 assistant chief operator and 30 operators.

The additional assistant chief telephone operator will be assigned to the night shift to provide adequate supervision after normal working hours, and whenever the House and Senate are in a late-night session. The reduction in numbers of telephone operators is possible through use of the electronic switching equipment of the Centrex system.

The enactment of this legislation will represent an annual savings of $44,000.

Mr. ROUSSELOT. Further reserving the right to object, Mr. Speaker, that certainly is a new direction, so I compliment the committee.

Mr. Speaker, I withdraw my reservation of objection.

Mr. ANNUNZIO. I thank the gentleman.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ANNUNZIO. I have no requests for time, Mr. Speaker, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ANNUNZIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resoution just agreed to, House Resolution 1280.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

VACATING PROCEEDINGS ON CONCURRENCE IN SENATE AMENDMENT TO HOUSE AMENDMENT TO S. 2093, EXCHANGE STABILIZATION FUND AMENDMENTS ACT OF 1978

Mr. BARNARD. Mr. Speaker, I ask unanimous consent to vacate the proceedings whereby the House concurred in the Senate amendment to the House amendment to the Senate bill (S. 2093) to provide that the Exchange Stabilization Fund shall not be available for payment of administrative expenses; and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, will the gentleman explain the necessity for this procedure?

Mr. BARNARD. Mr. Speaker, if the gentleman will yield, these unanimous consent requests are necessary to make clear that the House accepts two of the Senate amendments to the House amendment. These are minor amendments to the reporting and authorization sections of the bill and should be acceptable to the House.

However, the amendment I propose to the Senate amendment is necessary to conform the bill to the recently passed Civil Service Reform Act. The amendment I propose today restores the language of the House as it relates to the Government-wide pooling of supergrade positions. Under S. 2093 some 60 positions are created to replace those non-civil-service positions abolished by this legislation. The Senate amendment would assign these permanently to the Treasury Department, while the House language assigns them to a Government-wide pool. Under the House language these positions will be initially assigned to the Treasury; though they may be reassigned if that is deemed appropriate.

I understand that the Senate and the Treasury now agree to this language and that the Senate will act on this legislation promptly.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, I appreciate the gentleman's explanation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Georgia (Mr. BARNARD) to vacate the proceedings whereby the House concurred in the Senate amendment to the House amendment to the Senate bill, S. 2093?

There was no objection.

EXCHANGE STABILIZATION FUND AMENDMENTS

Mr. BARNARD. Mr. Speaker, I ask unanimous consent to take from the

Speaker's desk the Senate bill (S. 2093) to provide that the Exchange Stabilization Fund shall not be available for payment of administrative expenses; and for other purposes; with Senate amendments to the House amendment thereto, concur in Senate amendments numbered 2 and 3, and concur in Senate amendment numbered 1 with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments to the House amendment, as follows:

Page 2, of the House engrossed amendment, strike out all after line 13 over to and including line 21 on page 3 and insert:

SEC. 3. (a) The Secretary of the Treasury is authorized, without regard to the standards and procedures of section 3324 and chapter 51 of title 5, United States Code, to fill a total of 61 positions in the Department of the Treasury (in addition to any positions which may be allocated to the Department of the Treasury presently or in the future at the discretion of the Civil Service Commission from those authorized under section 5108 (a) of title 5, United States Code) at GS–16, GS–17, and GS–18, to carry out the international affairs functions of the Department of the Treasury:

Provided, however, That a person may be appointed to a position placed at GS–16, GS–17 or GS–18 under the authority of this subsection only if such person, immediately before the effective date of this Act, held a position or had reemployment rights to a position the duties of which were comparable to those of the position to which he is to be appointed and for which the compensation was derived from the fund established under section 10 of the Gold Reserve Act of 1934 (31 U.S.C. 822a).

(b) If no individual held or had reemployment rights to a position provided for in subsection (a) of this section, or the person who has first filled such a position leaves such position, the standards and procedures of section 3324 and subchapter 51 of title 5, United States Code, shall be applied in filling the position.

(c) For the purpose of this section, the aggregate number of positions authorized to be established by section 5108(a) of title 5, United States Code, shall be increased to reflect the 61 positions created by this section.

Page 4, of the House engrossed amendment, strike out all after line 16 over to and including line 18 on page 5 and insert:

SEC. 5. There are authorized to be appropriated not to exceed $24,000,000 for fiscal year 1979, including sums for official functions and reception and representation expenses, to carry out the international affairs functions of the Department of the Treasury.

SEC. 6. Section 10(b) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(b)) is amended by inserting "(1)" immediately after "(b)" and by adding at the end thereof the following:

"(2) Within 30 days after the close of each calendar month beginning after the effective date of this paragraph, the Secretary of the Treasury shall provide to the Committee on Banking, Finance, and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a detailed financial statement of the fund respecting all agreements entered into or renewed, all transactions occurring during such month, and all liabilities projected to occur.".

Page 5, lines 21, 22, and 23, of the House engrossed amendment, strike out "Act, except that the amendments made by section 6 shall take effect on the date of enactment of this Act." and insert "Act.".

The Clerk read the House amendment to the Senate amendment numbered 1, as follows:

Strike the text of Senate amendment (1) and insert in lieu thereof the following:

SEC. 3. (a)(1) Subject to the provisions of chapter 51 of title 5, United States Code, but notwithstanding the last two sentences of section 5108(a) of such title, the Secretary may place at GS–16, GS–17, and GS–18, no more than 61 positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title.

(2) A person may be appointed to a position placed at GS–16, GS–17, or GS–18 under the authority of paragraph (1) only if such person, immediately before the effective date of this Act, held a position or has reemployment rights to a position—

(A) the duties of which were comparable to those of the position to which he is to be appointed; and

(B) for which the compensation derived from the stabilization fund established under section 10 of the Gold Reserve Act of 1934 (31 U.S.C. 822a).

Appoints made under this paragraph may be made without regard to the provisions of section 3324 of title 5, United States Code, relating to the approval by the Civil Service Commission of appointments to GS–16, GS–17, and GS–18.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to such position under paragraph (2) leaves such position.

(b) The first sentence of section 5108(a) of title 5, United States Code, is amended by striking out "3301", and inserting in lieu thereof "3362".

(c) For purposes of determining the aggregate number of positions which may be placed in GS–16, GS–17, or GS–18 under sections 5108(a) of title 5, United States Code, a position established under subsection (a) shall be deemed a GS–16 position.

Mr. BARNARD (during the reading). Mr. Speaker, I ask unanimous consent that the House amendment to the Senate amendment numbered 1 be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Georgia (Mr. BARNARD)?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, so what this now does is require that the administrative costs will be required to go through the regular budget in the appropriation process; is that true?

Mr. BARNARD. Mr. Speaker, that is true.

Mr. ROUSSELOT. Mr. Speaker, I appreciate the gentleman's explanation, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Georgia?

There was no objection.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON S. 3447, AGRICULTURAL EXPORT TRADE EXPANSION ACT OF 1978

Mr. MATHIS (on behalf of Mr. FOLEY, Chairman of the Committee on Agriculture) filed the following conference report and statement on the Senate bill (S. 3447) to strengthen the economy of the United States through increased sales abroad of American agricultural products:

CONFERENCE REPORT (H. REPT. NO. 95–1755)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3447) to strengthen the economy of the United States through increased sales abroad of American agricultural products, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Agricultural Trade Act of 1978".

TITLE I—INTERMEDIATE CREDIT

SEC. 101. Section 4 of the Food for Peace Act of 1966 is amended to read as follows:

"SEC. 4. (a) Commercial export sales of agricultural commodities out of private stocks on credit terms of not to exceed three years may be financed by the Commodity Credit Corporation under its export credit sales program.

"(b)(1) Export sales of agricultural commodities out of Commodity Credit Corporation and private stocks on credit terms in excess of three years, but not more than ten years, may be financed by the Commodity Credit Corporation.

"(2) No export sale may be financed under this subsection unless the Secretary of Agriculture determines that the sale will—

"(A) develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for the commercial sale and export of United States agricultural commodities without displacing normal commercial sales; or

"(B) otherwise improve the capability of the importing nation to purchase and use, on a long-term basis, United States agricultural commodities.

"(3) Consistent with the provisions of paragraph (2) of this subsection, intermediate credit financing under this subsection may be made available for the following uses:

"(A) to establish reserve stocks consistent with international commodity agreements or other stock building plans acceptable to the United States;

"(B) the export sale of breeding animals (including, but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations;

"(C) where determined feasible, for the establishment of facilities in the importing nation to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities (through the use of local currency generated from the import and sale of United States agricultural commodities to finance all or part of such facilities); and

"(D) to meet credit competition for agricultural export sales.

"(4) Intermediate credit financing under this subsection may not be used to encourage

credit competition, or for the purpose of foreign aid or debt rescheduling.

"(5) The terms of credit for export sales financed under this subsection shall include the following terms:

"(A) Repayment shall be in dollars with interest at a rate equal, as nearly as practicable, to the rate charged by the Commodity Credit Corporation for financing under the Corporation's short-term export credit sales program.

"(B) The Secretary may, if the Secretary deems such action appropriate to protect the interests of the United States, require an initial payment from the purchaser at the time of sale or shipment of the agricultural commodity.

"(6) The Secretary shall, wherever feasible, obtain commitments from purchasers that will prevent resale or transshipment to other nations of agricultural commodities purchased with financing provided under this subsection.

"(7)(A) Agreements to finance export sales of agricultural commodities entered into under this subsection, except agreements to finance export sales for the establishment of reserve stocks, shall be subject to such other terms and conditions as the Secretary may deem necessary or appropriate and shall be subject only to review by the National Advisory Council on International Monetary and Financial Policies.

"(B) Agreements to finance export sales of agricultural commodities under this subsection for the establishment of reserve stocks shall be subject to such other terms and conditions as the Secretary may deem necessary and appropriate. No such agreement may become effective or be carried out until the expiration of thirty days following the date on which a detailed summary of such proposed agreement, together with a determination by the President that such financing is not adverse to the interests of United States producers of agricultural commodities, is transmitted by the Secretary to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives, if transmitted while Congress is in session, or sixty days following the date of transmittal if transmitted while Congress is not in session.

"(8) The provisions of the cargo preference laws shall not apply to export sales financed under this subsection.

"(9) The authority provided under this subsection shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

"(C) The term 'agricultural commodity' as used in this section includes any agricultural commodity or product thereof.".

TITLE II—COMMODITY CREDIT CORPORATION FINANCING OF DEFERRED PAYMENT SALES; CREDIT SALES TO THE PEOPLE'S REPUBLIC OF CHINA

COMMODITY CREDIT CORPORATION FINANCING OF DEFERRED PAYMENT SALES

SEC. 201. (a) To develop new market opportunities for the sale of United States agricultural commodities and to maintain and expand existing foreign markets for such commodities, the Secretary of Agriculture may provide Commodity Credit Corporation financing to exporters of such commodities who wish to provide deferred payment terms to buyers in other nations in order to meet sales competition from other nations or to make additional export sales. Except as otherwise provided in section 202 of this title, financing under this section shall be available only with respect to sales to those nations that are eligible for financing under the short-term export credit sales program conducted by the Commodity Credit Corporation.

(b) Exporters who are willing to sell United States agricultural commodities to foreign buyers on deferred payment terms of not to exceed three years and who must provide such deferred payment terms in order to meet sales competition from other nations, or to make additional export sales, may apply to the Commodity Credit Corporation for financing such sales. Financing under this section shall not be provided by the Corporation until the applicant's export sales plan has been approved by the Corporation and the applicant has established to the satisfaction of the Corporation that exports have been made in accordance with the approved plan.

(c) Repayment to the Commodity Credit Corporation shall be made in dollars by the exporter in accordance with the terms and at interest rates contained in the approved export sales plan. Interest rates on such financing shall be no higher than those charged for financing under the short-term export credit sales program conducted by the Corporation.

(d) The Secretary may, if the Secretary deems such action appropriate to protect the interests of the United States, require a performance guarantee from the exporter at the time of the sale.

(e) Financing agreements with exporters entered into under this section shall be subject to such other terms and conditions as the Secretary may deem necessary or appropriate and shall be subject only to review by the National Advisory Council on International Monetary and Financial Policies.

(f) The authority provided under this section shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

CREDIT SALES TO THE PEOPLE'S REPUBLIC OF CHINA

SEC. 202. Notwithstanding any other provision of law, in order to expand and develop markets for United States agricultural commodities, the Commodity Credit Corporation may provide financing for commercial sales of agricultural commodities out of private stocks on terms of not to exceed three years to the People's Republic of China under (1) the short-term export credit sales program conducted by the Corporation, and (2) the deferred payments sales program for exporters established under section 201 of this title.

DEFINITION

SEC. 203. The term "agricultural commodity" as used in this title includes any agricultural commodity or product thereof.

TITLE III—AGRICULTURAL COUNSELORS

SEC. 301. Title VI of the Act of August 28, 1954 (68 Stat. 908–910, as amended; 7 U.S.C. 1761–1768), is amended by—

(1) amending the title designation to read as follows:

"TITLE VI—FOREIGN MARKET DEVELOPMENT";

(2) inserting immediately before section 601 the subtitle designation as follows:

"Subtitle A—General Provisions; Agricultural Counselors and Agricultural Attachés";

(3) in section 601, striking out "agricultural products" wherever that phrase appears therein and inserting in lieu thereof "agricultural commodities", and striking out "said products" and inserting in lieu thereof "such commodities";

(4) in sections 602(a), 602(e), 604, and 605, striking out "this title" wherever that phrase appears therein and inserting in lieu thereof "this subtitle";

(5) amending section 602(b) to read as follows:

"(b) Officers or employees assigned or appointed to posts abroad under this subtitle shall have the designation of Agricultural Counselor, Agricultural Attaché, or such other titles or designations that shall be agreed to by the Secretary of State and the Secretary of Agriculture, and shall be accorded the same rank and privileges as those of other counselors or attachés in United States embassies. An Agricultural Counselor shall be appointed in any nation—

"(1) to which a substantial number of governments with which the United States competes directly for agricultural markets in such nation assign agricultural representatives with the diplomatic status of counselor or its equivalent; or

"(2) in which—

"(A) the potential is great for long-term expansion of a market for United States agricultural commodities, and

"(B) competition with other nations for existing and potential agricultural markets is extremely intense.

Not less than ten Agricultural Counselors shall be appointed within three years after the date of enactment of the Agricultural Trade Act of 1978."; and

(6) adding at the end of section 604 a new subsection (c) as follows:

"(c) Upon the request of the Secretary of Agriculture, each Federal agency may make its services, personnel, and facilities available to officers and employees appointed and assigned to a post abroad under this subtitle in the performance of the functions of such officers and employees. The Secretary of Agriculture may reimburse or advance funds to any such agency for services, personnel, and facilities so made available.".

TITLE IV—ESTABLISHMENT OF UNITED STATES AGRICULTURAL TRADE OFFICES

SEC. 401. Title VI of the Act of August 28, 1954, as amended by title III of this Act, is further amended by—

(1) adding immediately after section 605 a new subtitle B as follows:

"Subtitle B—United States Agricultural Trade Offices

"SEC. 605A. (a) For the purpose of developing, maintaining, and expanding international markets for United States agricultural commodities, the Secretary of Agriculture, after consultation with the Secretary of State, shall establish not less than six nor more than twenty-five United States Agricultural Trade Offices in other nations.

"(b) Each United States Agricultural Trade Office shall be directed and administered by an Agricultural Trade Officer who by reason of training, experience, and attainments is qualified to carry out the purposes of this subtitle. Such Officer shall be appointed by the Secretary of Agriculture.

"(c) Each Agricultural Trade Officer may be appointed without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that no Agricultural Trade Officer (1) may be paid basic pay at a rate in excess of the maximum annual rate of basic pay payable for GS–17 of the General Schedule under section 5332 of such title, or (2) may be paid at a rate in excess of the highest rate paid to an Agricultural Counselor or Attaché, as the case may be, who is appointed under subtitle A of this title to the nation in which such Officer is to serve.

"(d) Each Agricultural Trade Officer shall, through the Agricultural Counselor or At-

taché or other senior representative of the Secretary of Agriculture in each nation in which the Untied States Agricultural Trade Office administered by such Officer exercises its functions, keep the Chief of the United States diplomatic mission fully and currently informed with respect to all activities and operations of such Office.

"(e) Each Agricultural Trade Officer shall be responsible for the exercise of the functions of the United States Agricultural Trade Office, and shall have the authority to direct and supervise all personnel and activities thereof.

"(f) To carry out the functions of United States Agricultural Trade Offices, the Secretary of Agriculture may appoint such other personnel as the Secretary determines to be necessary and may, with the concurrence of the Secretary of State, assign such personnel abroad and employ local nationals for necessary professional and clerical help.

"(g) No employee of any United States Agricultural Trade Office may engage in any business, vocation, or other employment, or have other interests, that are inconsistent with official responsibilities.

"(h) Upon the request of the Secretary of Agriculture, the Secretary of State shall request for Agricultural Trade Officers and personnel of United States Agricultural Trade Offices diplomatic privileges and immunities equivalent to those enjoyed by Foreign Service personnel of comparable rank and salary.

"SEC. 605B. The functions of each United States Agricultural Trade Office shall be to—

"(1) increase the effectiveness of agricultural export promotion efforts through consolidation of activities, providing services and facilities for foreign buyers and United States trade representatives, and coordination of market development activities sponsored by the Department of Agriculture;

"(2) establish goals by nation or region and agricultural commodity for developing, expanding, and maintaining markets for United States agricultural commodities;

"(3) initiate programs to achieve the export marketing goals approved by the Department of Agriculture;

"(4) maintain facilities for use by nonresident cooperators, private trade groups, and other individuals engaged in the import and export of United States agricultural commodities where the use of such facilities would aid in the conduct of market development activities, and cooperate, to the maximum extent practicable, with such cooperators, groups, and individuals to expand the level of United States agricultural exports;

"(5) develop and maintain a current listing of trade, government, and other appropriate organizations for each agricultural commodity area and make such listing available to persons with a bona fide interest in exporting or importing United States agricultural commodities;

"(6) originate and provide assistance for exhibits, sales teams, and other functions for the promotion of United States agricultural commodities;

"(7) provide practical assistance for the use of the programs under the Agricultural Trade Development and Assistance Act of 1954, the export credit sales program, the export incentives program, and related programs of the United States Government where use of such programs will serve as a market development tool for United States agriculture;

"(8) supervise project agreements with United States cooperators, coordinate the activities of the United States Agricultural Trade Office with those of the cooperators, and submit annual recommendations to the Secretary of Agriculture on the efficacy of cooperator programs;

"(9) publicize the services offered by the United States Agricultural Trade Office through advertisements in trade journals or by other appropriate means; and

"(10) perform such other functions as the Secretary of Agriculture, in consultation with the Secretary of State, determines to be necessary and proper for achieving the purposes of this subtitle.

"SEC. 605C. Each United States Agricultural Trade Office shall carry out its functions under section 605B in the nation where the United States Agricultural Trade Office is located and in such other nations as the Secretary of Agriculture, in consultation with the Secretary of State, may prescribe in order to carry out the purposes of this subtitle.

"SEC. 605D. Upon the request of the Secretary of Agriculture, the Secretary of State may use the authorities contained in the Foreign Service Buildings Act, 1926, to acquire sites and buildings, including living quarters, for the purpose of establishing United States Agricultural Trade Offices.

"SEC. 605E. United States Agricultural Trade Offices shall be centrally located in the cities of assignment to facilitate foreign trade meetings and foreign trade reliance on such offices for assistance in marketing activities.

"SEC. 605F. Upon the request of the Secretary of Agriculture, each Federal agency may make its services, personnel, and facilities available to a United States Agricultural Trade Office in the performance of its functions. The Secretary of Agriculture may reimburse or advance funds to any such agency for services, personnel, and facilities so made available.

"SEC. 605G. The provisions of section 604 (a) of this title shall apply with respect to personnel appointed and assigned under this subtitle.";

(2) redesignating section 606 as section 606A and inserting immediately after new section 605G, as added by this section, the subtitle designation and new section 606 as follows:

"Subtitle C—Representation Allowances, Regulations, General Provisions, and Authorization for Appropriations

"SEC. 606. Any Agricultural Trade Officer and the senior representative of the Secretary of Agriculture assigned to a nation under subtitle A of this title may, under regulations prescribed by the Secretary of Agriculture, be entitled to receive a representation allowance in an amount determined by considering (1) the extent to which such Agricultural Trade Officer or senior representative can effectively use such funds to further the purposes of this title, (2) travel and entertainment expenses customary in the private trade for persons of comparable rank and salary, and (3) customs and practices in the nation where such Agricultural Trade Officer or senior representative is assigned.";

(3) redesignating sections 602(d), 602(f), and 603 as sections 606B, 606C, and 606D, respectively, and inserting the redesignated sections immediately after section 606A, as redesignated by paragraph (2) of this section;

(4) in section 606C, as redesignated by paragraph (3) of this section, striking out "subsection" wherever that word appears therein and inserting in lieu thereof "section";

(5) redesignating section 602(e) as 602 (d); and

(6) adding at the end thereof a new section 609 as follows:

"SEC. 609. The term 'agricultural commodity' as used in this title includes any agricultural commodity or product thereof.".

TITLE V—REORGANIZATION

SEC. 501. (a) There is hereby established in the Department of Agriculture the position of Under Secretary of Agriculture for International Affairs and Commodity Programs to be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary of Agriculture for International Affairs and Commodity Programs is authorized to exercise such functions and perform such duties related to foreign agriculture and agricultural stabilization and conservation, and shall perform such other duties, as may be required by law or prescribed by the Secretary of Agriculture.

(b) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof a new paragraph (69) as follows:

"(69) Under Secretary of Agriculture for International Affairs and Commodity Programs.".

(c) The designation of "Assistant Secretary of Agriculture for International Affairs and Commodity Programs" shall not be used after the date of enactment of this Act.

TITLE VI—GENERAL PROVISIONS AND REPORTS

IMPLEMENTATION OF THIS ACT; REGULATIONS

SEC. 601. (a) The Secretary of Agriculture shall implement the provisions of this Act as expeditiously as possible consistent with the efficient and effective administration of the programs established under this Act and their integration with related foreign agricultural programs.

(b) The Secretary may issue such regulations as may be necessary to carry out the provisions of this Act.

ANNUAL REPORT ON EXPORT PROMOTION

SEC. 602. The Secretary of Agriculture shall submit to Congress each year a report providing a comprehensive statement of the activities and accomplishments of the Department of Agriculture, including specifically those of the United States Agricultural Trade Offices, in developing, maintaining, and expanding foreign markets for United States agricultural commodities.

INTERAGENCY TASK FORCE ON EXPORT SALES REPORTING

SEC. 603. The Secretary of Agriculture shall appoint an interagency task force within the Department of Agriculture for the purpose of analyzing the effectiveness of the export sales reporting provisions of section 812 of the Agricultural Act of 1970. The Secretary shall submit, not later than January 3, 1979, a report of the findings of the task force, including legislative recommendations for improving such reporting provisions, to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives.

REPORT ON TITLE IV OF THE TRADE ACT OF 1974

SEC. 604. Within six months after the date of enactment of this Act, the Secretary of Agriculture shall submit to Congress a report detailing the effect on United States agriculture of title IV of the Trade Act of 1974, including a recommendation as to whether the provisions of such title should be repealed or amended.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same with an amendment as follows:

In lieu of the amendment of the House, amend the title to read as follows: "An Act to strengthen the economy of the United

States through increased sales abroad of United States agricultural commodities.".

And the House agree to the same.

THOMAS S. FOLEY,
W. R. POAGE,
E DE LA GARZA,
ED JONES,
DAWSON MATHIS,
WILLIAM C. WAMPLER,
KEITH G. SEBELIUS,
CLEMENT J. ZABLOCKI,
DANTE B. FASCELL,
JONATHAN B. BINGHAM,
DONALD J. PEASE,
JOHN J. CAVANAUGH,
WILLIAM S. BROOMFIELD,
PAUL FINDLEY,
Managers on the Part of the House.

HERMAN E. TALMADGE,
DICK CLARK,
RICHARD STONE,
EDWARD ZORINSKY,
KANEASTER HODGES, Jr.,
ROBERT DOLE,
HENRY BELLMON,
RICHARD G. LUGAR,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3447) to strengthen the economy of the United States through increased sales abroad of American agricultural products, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report. The differences between the Senate bill and the House amendment and the substitute agreed to in conference are noted in the following outline, except for conforming, clarifying, and technical changes:

(1) DECLARATION OF POLICY AND PURPOSE

The Senate bill contains a declaration of congressional policy that, in order to raise farm income, create a more favorable balance of trade for the United States, and promote the general economic welfare, the United States Government, in concert with private enterprise, is to engage in a systematic program to expand international markets for United States agricultural commodities.

It also states that the purpose of the bill is to provide the means for the development and implementation of such program.

The House amendment contains no comparable provision.

The conference substitute deletes the Senate provision. The conferees intend, however, that U.S. policy on agricultural trade be guided by the policy statement in the Senate bill.

(2) INTERMEDIATE COMMERCIAL CREDIT—LIMITS ON ITS AVAILABILITY

A. The Senate bill provides that intermediate commercial credit for export sales of U.S. agricultural commodities will not be made available by the Commodity Credit Corporation unless the Secretary of Agriculture determines that the sale will (1) develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for U.S. agricultural exports without displacing normal commercial sales; or (2) otherwise improve the capability of the importing nation to purchase and use, on a long-term basis, U.S. agricultural commodities.

The House amendment contains no comparable provision.

The conference substitute adopts the Senate provision. (The conference substitute defines the term "agricultural commodity" to include products thereof, and such term is considered to include lumber, plywood, and similar wood products.)

B. The Senate bill provides that intermediate commercial credit will be available for any use consistent with the limits described in paragraph A, including, but not limited to, the following uses:

(1) To establish reserve stocks consistent with international commodity agreements or other stockbuilding plans acceptable to the United States;

(2) The export sale of breeding animals (including, but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations;

(3) Where feasible, for the establishment of facilities in the importing nation to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities. (Handling and related facilities could be either directly financed or financed under arrangements whereby the local currency generated from the resale in the importing nation of the agricultural commodity is used during the repayment period to finance the establishment of the facility.); and

(4) To meet credit competition for agricultural export sales.

The House amendment provides that such credit may be extended only for—

(1) the sale to another nation of grain necessary to establish or maintain a reserve stock of the grain pursuant to that nation's obligations under any international grain agreement, or

(2) the sale of breeding livestock, including the cost of export freight.

The conference substitute adopts the Senate provision, with amendments to (1) provide that intermediate credit may be made available only for the four uses specified in the Senate bill, and (2) clarify that intermediate credit can be used for the indirect financing (through local currency), but not the direct financing, of facilities. The conferees intend that intermediate credit that is made available "to meet credit competition for agricultural export sales" should be used only to respond to credit competition, not to initiate a credit war.

C. The Senate bill provides that intermediate commercial credit may not be used to encourage credit competition, or for the purpose of foreign aid or debt rescheduling.

The House amendment contains no comparable provision.

The conference substitute adopts the Senate provision.

(3) INTERMEDIATE COMMERCIAL CREDIT—TERMS AND CONDITIONS

A. The Senate bill provides that intermediate commercial credit sales agreements must include the following terms:

(1) Repayment is to be in dollars with interest at a rate that is, as nearly as practicable, equal to the rate charged by the Commodity Credit Corporation for financing under its short-term export credit sales program, and

(2) The Secretary of Agriculture, as appropriate, to protect the interests of the United States, may require an initial payment from the purchaser at the time of sale or shipment of the agricultural commodity.

The House amendment contains no comparable provision.

The conference substitute adopts the Senate provision.

B. The Senate bill provides that the Secretary must obtain commitments from purchasers of agricultural commodities under the intermediate export credit sales program that will prevent resale or transshipment to other nations of the agricultural commodities purchased with intermediate commercial credit.

In addition, with respect to export sales for the establishment of reserve stocks and for which intermediate commercial credit is extended, the Secretary is required to obtain the following commitments from purchasers:

(1) If there is an international reserve agreement governing the commodity involved that has been adopted with the advice and consent of the Senate (whether or not the purchasing nation has adopted the agreement), the purchaser must agree not to sell or distribute the reserve stocks domestically except in a manner consistent with the agreement; and

(2) If no such agreement exists, the purchaser must agree not to sell or distribute the reserve stocks domestically, except as needed for emergency relief required by a crop shortfall or other natural disaster.

If the purchaser fails to comply with any of these required commitments, the full amount outstanding under financing arrangements entered into by the purchaser under the intermediate export credit sales program will become immediately due and payable. Further, the purchaser will become ineligible for further credit or credit guarantees from any agency of the Department of Agriculture until payment in full of the amount due has been made.

The House amendment contains no comparable provision.

The conference substitute requires the Secretary of Agriculture to obtain, to the degree feasible, commitments from purchasers of agricultural commodities under the intermediate export credit sales program that will prevent resale or transshipment to other nations of the agricultural commodities purchased with intermediate credit.

C. The Senate bill provides that agreements for intermediate commercial credit (except for agreements involving sales for the establishment of reserve stocks) will be subject only to review by the National Advisory Council on International Monetary and Financial Policies.

The House amendment requires the Secretary of Agriculture, prior to extending intermediate commercial credit for export sales, to consult with the Secretary of State concerning the proposed agreement to provide credit.

The conference substitute adopts the Senate provision.

D. The Senate bill provides that no intermediate commercial credit agreement to finance the export sale of commodities for the establishment of reserve stocks may become effective or be carried out until the expiration of 30 days after a detailed summary of the proposed agreement is transmitted to the agriculture committees of Congress, or 60 days if the summary is transmitted while Congress is not in session.

The House amendment contains no comparable provision.

The conference substitute adopts the Senate provision, with an amendment requiring that the submission to the agriculture committees of the detailed summary of the proposed agreement be accompanied by a determination by the President that such financing is not adverse to the interests of U.S. producers of agricultural commodities.

(4) INTERMEDIATE COMMERCIAL CREDIT—CARGO PREFERENCE LAWS

The Senate bill provides that the provisions of the cargo preference laws will not apply to export sales financed with Commodity Credit Corporation intermediate commercial credit.

The House amendment contains no comparable provision.

The conference substitute adopts the Senate provision.

(5) INTERMEDIATE COMMERCIAL CREDIT—ADDITIONAL AUTHORITY

The Senate bill provides that the authority for intermediate commercial credit added by the bill will be in addition to, and not in place of, any authority granted to the Secretary of Agriculture or the Commodity Credit Corporation under any other provision of law.

The House amendment contains no comparable provision.

The Conference substitute adopts the Senate provision.

(6) CCC FINANCING OF DEFERRED PAYMENT SALES

The Senate bill provides that, in order to develop new markets and maintain and expand existing markets for U.S. agricultural commodities, the Secretary of Agriculture shall provide Commodity Credit Corporation short-term financing (repayment in 3 years or less) to certain exporters of U.S. agricultural commodities. Financing will be made available to exporters who must provide deferred payment terms of not to exceed 3 years to buyers in other nations in order to meet sales competition from other nations or to make additional export sales.

CCC financing of deferred payment sales will be available only with respect to sales to (a) nations that are eligible for short-term financing under the Corporation's export credit sales program, and (b) the People's Republic of China.

CCC financing of deferred payment sales will be contingent upon the Corporation's approval of the exporter's proposed export sales plan and proof of export in accordance with that approved plan.

Repayment to the Corporation must be made by the exporter in dollars.

The interest rate under any financing agreement for deferred payment sales may be no higher than that rate charged by the Corporation for financing under its short-term export credit sales program.

The Secretary of Agriculture may, if he deems such action appropriate to protect the interests of the United States, require a performance guarantee from the exporter at the time of sale.

Financing agreements for deferred payment sales will be subject to such terms and conditions as the Secretary of Agriculture deems necessary or appropriate. These agreements will be subject only to review by the National Advisory Council on International Monetary and Financial Policies.

The authority provided under this provision will be in addition to, and not in place of, any authority granted the Secretary of Agriculture or the Corporation under any other provision of law.

The House amendment contains no comparable provision.

The conference substitute adopts the Senate provisions, with an amendment providing that the Secretary "may," rather than "shall," provide financing for deferred payment sales by exporters.

(7) TRADE WITH NONMARKET ECONOMY NATIONS

The Senate bill provides (notwithstanding any other provision of law) that, in order to expand and develop markets for U.S. agricultural commodities, the Commodity Credit Corporation may provide short-term financing (repayment in 3 years or less) for commercial sales of United States agricultural commodities out of private stocks to the People's Republic of China under—

(1) the Corporation's short-term export credit sales program; and

(2) the deferred payment sales program for exporters established under section 201 of the Senate bill.

The House amendment provides that, subject to certain specified limitations, nonmarket economy nations may be eligible to participate in the Commodity Credit Corporation programs (other than the Public Law 480 programs) under which credit, credit guarantees, or investment guarantees, not to exceed 3 years, are extended, directly, or indirectly. This extension of eligibility would be notwithstanding any other provision of law denying nonmarket economy nations eligibility to participate in programs of the U.S. Government.

The House amendment establishes limitations to the extension of short-term credit to nonmarket economy nations as follows:

(1) Credit may be extended only for that quantity of any U.S. agricultural commodity purchased during a year in excess of the average amount of the commodity purchased annually by the nation during calendar years 1975, 1976, and 1977:

(2) The Corporation must receive reasonable assurances from the nation of repayment in accordance with the terms of the credit agreement; and

(3) Short-term credit could not be extended to nations not considered to be friendly countries under section 103(d)(1) of Public Law 480.

The conference substitute adopts the Senate provision.

(8) AGRICULTURAL COUNSELORS

A. The Senate bill contains congressional findings that the Department of Agriculture officials attached to the diplomatic missions of the United States play an important role in developing, maintaining, and expanding markets for U.S. agricultural commodities, and that their position and responsibilities should be at a level commensurate with the magnitude and importance of the objectives they are assigned to accomplish.

The House amendment contains no comparable provision.

The conference substitute deletes the Senate provision.

The conferees intend, however, that the appointment of Counselors and other Department of Agriculture officials attached to the diplomatic missions of the United States be guided by the policy statement in the Senate bill.

B. The Senate bill provides that the senior Department of Agriculture representative in each of the major foreign agricultural posts (as determined by the Secretary of Agriculture after consultation with the Secretary of State)—in no case less than 16 representatives—is to be designated "Agricultural Counselor", and that the designation of the 16 representatives as "Agricultural Counselors" must be completed within 3 years after the date of enactment of the bill.

The House amendment provides that an Agricultural Counselor must be appointed in any nation—

(1) to which a substantial number of our competitors for agricultural export markets assign agricultural representatives with the diplomatic status of counselor or its equivalent; or

(2) in which (i) there is great potential for long-term expansion of a market for U.S. agricultural commodities, and (ii) competition with others for the existing and potential agricultural markets is extremely intense.

The conference substitute adopts the House criteria for the appointment of counselors, provides that the minimum number of counselors is to be ten, and adopts the Senate provision that the designation of the ten representatives as counselors must be completed within three years after the date of enactment of the bill.

The conferees intend that ten counselors, as a minimum, be appointed within one year after the enactment of the bill. (Under the conference substitute, the designation of persons to serve as counselors must be agreed to by the Secretary of State and the Secretary of Agriculture.)

C. The Senate bill provides that agricultural counselors and agricultural attachés will be accorded the same rank and privileges as those of other counselors or attachés in U.S. embassies.

The House amendment contains no comparable provision.

The conference substitute adopts the Senate provision.

D. The Senate bill provides that, in order to effectuate review of the worldwide supply, demand, and price of agricultural commodities and promote understanding of problems involved in selling U.S. agricultural commodities to other nations, agricultural counselors and agricultural attachés must submit annual reports to the Secretary of State and the Secretary of Agriculture (who is to transmit the reports to the chairmen of the agriculture committees of Congress) detailing the agricultural situation in the nation or area to which the counselor or attaché is assigned. The reports will include—

(1) a summary of the supply, demand, and prices of each major agricultural commodity in the nation or area;

(2) present and projected imports and exports of agricultural commodities for the nation or area;

(3) unusual patterns, changes, or distortions in the trade and consumption of agricultural commodities in the nation or area;

(4) trade barriers in the nation or area affecting United States imports;

(5) governmental and other impediments to domestic food production in the nation or area; and

(6) other matters considered appropriate by the Secretary of Agriculture.

Information from these reports will be compiled periodically, organized in a format suitable for a general audience with an interest in foreign agriculture, and made available at a reasonable price to the public.

The House amendment contains no comparable provision.

The conference substitute deletes the Senate provision.

The conferees note that similar reports are currently made and intend that they be continued. The reports should include the items contained in the Senate provision, and copies are to be sent to the agriculture committees of Congress.

E. The Senate bill provides that each Federal agency, at the request of the Secretary of Agriculture, must make its services, personnel, and facilities available to the agricultural counselors and agricultural attachés and U.S. Agricultural Trade Offices in the performance of their functions.

The House amendment contains the same provision except that Federal agencies are authorized, rather than required, to assist the counselors and attachés and Agricultural Trade Offices.

The conference substitute adopts the House provision.

The conferees intend, however, that each Federal agency make its services, personnel, and facilities available to these officials and Offices to the greatest extent practicable.

(9) U.S. AGRICULTURAL TRADE OFFICES—FINDINGS AND DECLARATION OF POLICY

The Senate bill contained congressional findings that—

(1) United States Government assistance in developing foreign markets for agri-

cultural commodities is declining in real terms and in relation to total agricultural exports;

(2) other major agricultural exporting nations are opening new markets through aggressive market development programs larger in scope than those of the United States; and

(3) the economic strength of U.S. agriculture depends on developing, maintaining, and expanding international markets for U.S. agricultural commodities.

The Senate bill also contains a statement of congressional policy that foreign market development programs are to be reviewed periodically for their cost effectiveness and that Federal spending for these programs is not to be increased unless the benefits of such increased spending will be reasonable in relation to the costs to the U.S. taxpayer.

The House amendment contains no comparable provision.

The conference substitute deletes the Senate provision.

The conferees intend, however, that the Agricultural Trade Offices be established in accordance with the policy statement in the Senate bill.

(10) U.S. AGRICULTURAL TRADE OFFICES—ESTABLISHMENT AND PERONNEL

A. The Senate bill requires the Secretary of Agriculture, for the purpose of developing, maintaining, and expanding international markets for U.S. agricultural commodities, after consultation with the Secretary of State, to establish not less than 6 nor more than 25 U.S. Agricultural Trade Offices in other nations.

The House amendment requires the Secretary of Agriculture to establish abroad not less than 6 nor more than 16 U.S. Agricultural Trade Offices at locations where the Secretary, with the concurrence of the Secretary of State, determines that such establishment could contribute significantly to the development, maintenance, and expansion of international markets for U.S. agricultural commodities.

The conference substitute adopts the Senate provision.

B. The House amendment provides that the Secretary of Agriculture is to appoint the persons who will administer Agricultural Trade Offices (the United States Agricultural Trade Officers), and that agricultural counselors and agricultural attachés may also serve as Agricultural Trade Officers.

The Senate bill contains no comparable provision.

The conference substitute adopts only the provision in the House amendment that the Secretary of Agriculture is to appoint the Agricultural Trade Officer.

C. The House amendment provides that no Agricultural Trade Officer may be paid at a rate in excess of that paid to the agricultural counselor or agricultural attaché assigned to the nation in which the Officer is to serve.

The Senate bill contains no comparable provision.

The conference substitute adopts the House provision.

D. The Senate bill provides that Agricultural Trade Officers are to report directly to the senior representative of the Secretary of Agriculture in the nation of concern or to such other person as the Secretary may designate.

The House amendment provides that each Agricultural Trade Officer is to keep the chief of the U.S. diplomatic mission in each nation in which the Agricultural Trade Office administered by the Officer exercises its functions fully and currently informed of the activities and operations of the Office through the agricultural counselor or attaché attached to the diplomatic mission in each nation.

The conference substitute combines the House and Senate provisions.

E. The Senate bill provides that the authority of the Agricultural Trade Officer to direct and supervise the personnel and activities of the Office will be subject to the approval of the Secretary's senior representative in the nation of concern and guidance from the Administrator of the Foreign Agricultural Service.

The House amendment contains no comparable provision.

The conference substitute deletes the Senate provision.

F. The Senate bill provides that the Secretary of Agriculture must consult with the Secretary of State prior to appointment of staff personnel for Agricultural Trade Offices.

The House amendment provides that the Secretary of Agriculture must obtain the concurrence of the Secretary of State for the assignment of such staff personnel abroad and the employment of local nationals in the Office.

The conference substitute adopts the House provision.

The conferees intend that the Secretary of State cooperate fully with the Secretary of Agriculture in assigning abroad the personnel necessary for the effective functioning of the Agricultural Trade Offices.

(11) U.S. AGRICULTURAL TRADE OFFICES—ACTIVITIES

A. The Senate bill, in listing the functions of the Agricultural Trade Offices, provides that these activities will be subject to approval and guidance from the Administrator of the Foreign Agricultural Service and the senior representative of the Secretary of Agriculture in the nation of concern.

The House amendment contains no comparable provision.

The conference substitute deletes the Senate provision.

B. Both the Senate bill and House amendment list a number of functions for Agricultural Trade Offices.

The Senate bill includes the following functions for the Offices not included in the Houso amendment—

(1) To establish goals by nation or region and agricultural commodity for developing, expanding, and maintaining markets for U.S. agricultural commodities;

(2) Under the direction of the General Sales Manager, to provide practical assistance for the use of Public Law 480 programs, the export credit sales program, the export incentive program, and related Government programs where use of the programs will help market develooment: and

(3) To submit annual recommendations to the Administrator of the Foreign Agricultural Service on the efficacy of cooperator programs, including statements as to whether project agreements should be extended, amended, cancelled, or allowed to expire.

The House amendment, but not the Senate bill, provides that a function of the Offices will be to cooperate, to the maximum extent practicable, with nonresident cooperators, private trade groups, and others involved in the U.S. export trade to expand the level of U.S. agricultural exports.

The conference substitute adopts the House and Senate provisions, with technical modifications deleting the references to the General Sales Manager and the Administrator of the Foreign Agricultural Service.

C. The Senate bill provides that Agricultural Trade Offices are to perform such other functions as the Secretary of Agriculture determines necessary and proper.

The House amendment gives the Secretary of Agriculture authority to designate, in consultation with the Secretary of State, other functions for the Offices.

The conference substitute adopts the House provision.

D. The House amendment provides that each Agricultural Trade Office is to carry out its specified functions in the nation where the Office is located and in such other nations as the Secretary of Agriculture, in consultation with the Secretary of State, may prescribe.

The Senate bill contains no comparable provision.

The conference substitute adopts the House provision.

(12) U.S. AGRICULTURAL TRADE OFFICES—A DOMESTIC U.S. OFFICE

The Senate bill authorizes the establishment of one Agricultural Trade Office in the United States if this would help develop, maintain, and expand international markets for U.S. agricultural commodities.

The House bill contains no comparable provision.

The conference substitute deletes the Senate provision.

(13) U.S. AGRICULTURAL TRADE OFFICES—GENERAL PROVISIONS

A. The Senate bill authorizes the Secretary of Agriculture, in consultation with the Secretary of State, to rent or lease (for periods of less than 10 years), and make payments in advance for, offices, buildings, grounds, and living quarters necessary for the Agricultural Trade Offices, and to maintain, improve, repair, and furnish water and utilities for these properties.

The House amendment authorizes the Secretary of State, upon the request of the Secretary of Agriculture, to use the authorities contained in the Foreign Service Buildings Act, 1926, to acquire sites and buildings, including living quarters, for the purpose of establishing Agricultural Trade Offices.

The conference substitute adopts the House provision.

The conferees intend that the Secretary of State cooperate fully in acquiring the offices, buildings, and living quarters that are required by the Agricultural Trade Offices.

B. The Senate bill requires that Agricultural Trade Offices be centrally located in the cities of assignment, but prohibits the colocation of Offices with U.S. embassies.

The House amendment provides that Agricultural Trade Offices shall be centrally located, but does not prohibit colocation of Offices with embassies.

The conference substitute adopts the House provision.

The conferees intend, however, that Agricultural Trade Offices and Embassies will not be colocated except where it is necessary and appropriate.

C. The Senate bill (1) requires that Agricultural Trade Officers, agricultural counselors, and agricultural attachés be given representation allowances, and (2) provides that the amount of the allowance is to be determined by the extent to which it is at a level commensurate with the representational and promotional efforts of other major exporting nations competing in the market involved.

The House amendment (1) authorizes, but does not require, such representation allowances, and (2) provides that the amount of the allowance is to be determined by considering (a) travel and entertainment expenses customary in the private trade for persons of comparable rank and salary and (b) customs and practices in the nation to which the person is assigned.

The conference substitute adopts the House provision.

D. The House amendment provides that reports and dispatches of Agricultural Trade Officers are to be made available to the De-

partment of State and other interested Government agencies.

The Senate bill contains no comparable provision.

The conference substitute adopts the House provision.

(14) GENERAL PROVISIONS

A. The Senate bill provides that appropriations made available to perform foreign agriculture related functions within the Department of Agriculture will be available to implement the provisions of the bill.

The House amendment contains no comparable provision.

The conference substitute deletes the Senate provision.

The conferees note that agricultural funding provisions in current appropriations acts are sufficiently general to permit the use of existing funds for the purposes of the bill.

B. The Senate bill prohibits the exclusion of persons from participation in, denial of the benefits of, or discrimination under, any program or activity funded under the bill, on the ground of sex, age, race, color, religion, handicap, or national origin.

The House amendment contains no comparable provisions.

The conference substitute deletes the Senate provision.

(15) REPORTS

A. The House amendment provides that the Secretary of Agriculture's annual report on foreign market development must specifically include a statement of the activities and accomplishments of the U.S. Agricultural Trade Offices.

The Senate bill contains no comparable provision.

The conference substitute adopts the House provision.

B. The House amendment requires the Secretary of Agriculture to appoint an interagency task force within the Department of Agriculture to analyze the effectiveness of the export sales reporting provisions of section 812 of the Agricultural Act of 1970. The Secretary must submit, no later than January 3, 1979, a report of the findings of the task force, including legislative recommendations for improving such reporting provisions, to the agriculture committees of Congress.

The Senate bill contains no comparable provision.

The conference substitute adopts the House provision.

C. The House amendment provides that, within 6 months following the enactment of the provision, the Secretary of Agriculture must submit to Congress a report detailing the effect on American agriculture of title IV of the Trade Act of 1974, including a recommendation as to whether the provisions of such title should be repealed or amended.

The Senate bill contains no comparable provision.

The conference substitute adopts the House provision.

(16) AUTHORITY OF THE SECRETARY OF STATE

The House amendment provides that nothing in the bill is to be construed to diminish the authority of the Secretary of State, or any chief of a U.S. diplomatic mission, under any other provision of law.

The Senate bill contains no comparable provision.

The conference substitute deletes the House provision. However, in taking this action, the conferees emphasize that nothing in the conference substitute alters the general authority of United States Ambassadors—acting under the direction of the President and Secretary of State—to coordinate the activities and operations of all United States Government officers and employees in foreign nations.

(17) MINIMUM LEVELS OF EXPORTS UNDER PUBLIC LAW 480

The Senate bill amends Public Law 480 by adding a new provision setting minimum levels for Public Law 480 exports of U.S. farm commodities. This provision requires that, in order more adequately to meet the food requirements of needy people in the developing nations while at the same time providing additional export outlets for U.S. farmers, a minimum average quantity of 7 million metric tons of U.S. farm commodities must be exported annually under titles I, II, and III of Public Law 480 in fiscal years 1979, 1980, 1981, and 1982. This requirement does not affect the minimum export levels set for title II by section 201(b) of that Act—those levels would become part of the total minimum level for all titles set by the bill.

The 7 million metric ton annual minimum level of exports must be met unless (1) export supplies are not available as determined under section 401(a) of Public Law 480, or (2) food needs of developing nations do not merit that quantity as gauged by (a) a lack of request for food assistance by these nations, or (b) a determination by the Food and Agriculture Organization of the United Nations that unfilled food requirements of the developing nations are less than 7 million metric tons during the fiscal year involved. If a quantity less than the minimum level is exported during any year, the President is to report to the appropriate committees of Congress the specific reasons for the shortfall.

The House amendment contains no comparable provision.

The conference substitute deletes the Senate provision.

(18) REORGANIZATION

A. The House amendment states that it is the policy of Congress to emphasize the importance of commodity programs and international affairs and to upgrade these functions in the administrative structure of the executive branch.

The Senate bill contains no comparable provision.

The conference substitute deletes the House provision.

B. The House amendment establishes in the Department of Agriculture the position of Under Secretary of Agriculture for International Affairs and Commodity Programs to be appointed by the President, by and with the advice and consent of the Senate. It provides that the Under Secretary (1) may exercise the functions and perform the duties related to foreign agriculture and agricultural stabilization and conservation that are now handled by the Assistant Secretary of Agriculture who is designated Assistant Secretary of Agriculture for International Affairs and Commodity Programs, and (2) shall perform such other duties as may be required by law or prescribed by the Secretary of Agriculture. It provides that the salary of the new Under Secretary is to be at level III of the Executive Schedule. Also, it abolishes the designation of "Assistant Secretary of Agriculture for International Affairs and Commodity Programs".

The Senate bill contains no comparable provision.

The conference substitute adopts the House provision.

The conferees intend that the Under Secretary of Agriculture be appointed as expeditiously as possible. The designation of "Assistant Secretary of Agriculture for International Affairs and Commodity Programs" shall not be used after the date of enactment of the bill. However, until the appointment and qualification of the Under Secretary, the Assistant Secretary exercising the functions and performing the duties related to foreign agriculture and agricultural stabilization and conservation may continue to exercise and perform such functions and duties.

THOMAS S. FOLEY,
W. R. POAGE,
E DE LA GARZA,
ED JONES,
DAWSON MATHIS,
WILLIAM C. WAMPLER,
KEITH G. SEBELIUS,
CLEMENT J. ZABLOCKI,
DANTE B. FASCELL,
JONATHAN B. BINGHAM,
DONALD J. PEASE,
JOHN J. CAVANAUGH,
WILLIAM S. BROOMFIELD,
PAUL FINDLEY,
Managers on the Part of the House.

HERMAN E. TALMADGE,
DICK CLARK,
RICHARD STONE,
EDWARD ZORINSKY,
KANEASTER HODGES, Jr.,
ROBERT DOLE,
HENRY BELLMON,
RICHARD G. LUGAR,
Managers on the Part of the Senate.

PERMISSION FOR MANAGERS TO FILE CONFERENCE REPORT ON H.R. 13635, DEFENSE APPROPRIATION ACT, 1979

Mr. MAHON. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 13635) making appropriations for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, could the distinguished chairman of the Committee on Appropriations explain why this action is necessary in this manner?

Mr. MAHON. Mr. Speaker, if the gentleman will yield, we need to send the defense appropriation bill to the White House as soon as possible. Therefore, we settled it in conference last night. We want to call it up and get it passed as soon as possible, because some of the servicemen, hundreds of thousands of them, might have a payless payday if we do not get expeditious action.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

AUTHORIZING PRINTING OF PRAYERS OF THE CHAPLAIN OF THE HOUSE AS A HOUSE DOCUMENT

Mr. MAHON. Mr. Speaker. I send to the desk a concurrent resolution (H. Con. Res. 742) and ask unanimous consent for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 742

Resolved by the House of Representatives (the Senate concurring), That the prayers offered by the Chaplain, the Reverend Edward Gardiner Latch, D.D., L.H.D., at the opening of the daily sessions of the House of Representatives of the United States during the Ninety-fourth and Ninety-fifth Congresses, be printed, with appropriate illustration, as a House document, and that three thousand additional copies be printed and bound for the use of the House of Representatives, to be distributed by the Chaplain of the House of Representatives.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

ANNOUNCEMENT OF SPECIAL ORDER IN TRIBUTE TO THE LATE HONORABLE RALPH H. METCALFE

(Mrs. COLLINS of Illinois asked and was given permission to address the House for 1 minute.)

Mrs. COLLINS of Illinois. Mr. Speaker, I rise to advise my colleagues of the fact that I have requested a special order for the close of business today to honor the memory of our late, beloved, and respected colleague, the Honorable RALPH H. METCALFE.

RALPH was a symbol of the changing times which his 68 years spanned. By sheer individual effort, determination, and an unbending commitment to the achievement of excellence, he rose from the ranks of a people whose lives were smitten by poverty and discrimination to heroic proportions that will long be remembered. His natural gifts as an athlete were complemented by a keen intellect and an ever-present sense of competitiveness which coupled with sound judgment allowed him to attain maximum effectiveness.

His unexpected passing yesterday is a severe blow and a tremendous loss for all of us who value the things that RALPH exemplified and stood for. I know that many of my colleagues will wish to join me in a special order in tribute to RALPH METCALFE who ran the distance for his fellow man.

DEPARTMENT OF ENERGY NATIONAL SECURITY AND MILITARY APPLICATIONS OF NUCLEAR ENERGY AUTHORIZATION ACT OF 1977

Mr. PRICE. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 11686) to authorize appropriations for the Department of Energy for national security programs for fiscal year 1979, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

Strike out all after the enacting clause and insert: That this Act may be cited as the "Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1979".

TITLE I—NATIONAL SECURITY PROGRAMS

OPERATING EXPENSES

SEC. 101. Funds are hereby authorized to be appropriated to the Department of Energy (hereinafter in this title referred to as the "Department") for fiscal year 1979 for operating expenses incurred in carrying out national security programs, including scientific research and development in support of the armed services, strategic and critical materials necessary for the common defense, and military applications of nuclear energy as follows:

(1) For Weapons Activities, $1,237,194,000;

(2) For Special Materials Production, $514,500,000;

(3) For Inertial Confinement Fusion, $104,000,000;

(4) For Naval Reactor Development, $265,600,000;

(5) For Defense Intelligence and Arms Control, $32,600,000;

(6) For Nuclear Materials Security and Safeguards, $45,089,000; and

(7) For Program Direction and Management Support Related to National Security Programs, $47,151,000.

PLANT AND CAPITAL EQUIPMENT

SEC. 102. Funds are hereby authorized to be appropriated to the Department for fiscal year 1979, for plant and capital equipment, including planning, construction, acquisition, or modification of facilities (including land acquisition), and for acquisition and fabrication of capital equipment not related to construction, necessary for national security programs, as follows:

(1) For weapons activities:

Project 79-7-a Tonopah Test Range upgrade, Phase II, Sandia Laboratories, Albuquerque, New Mexico, $4,000,000.

Project 79-7-b, fire protection improvements, Los Alamos Scientific Laboratory, Los Alamos, New Mexico (A-E and long lead procurement only), $2,000,000.

Project 79-7-c, proton storage ring, Los Alamos Scientific Laboratory, Los Alamos New Mexico, $5,000,000.

Project 79-7-d, water cooling station upgrade, Lawrence Livermore Laboratory, Livermore, California, $2,300,000.

Project 79-7-e, production and assembly facilities, Plantex Plant, Amarillo, Texas, $10,000,000.

Project 79-7-f, stockpile quality evaluation facility, Y-12 Plant, Oak Ridge, Tennessee, $2,300,000.

Project 79-7-l, Systems R&D Lab, Sandia Laboratories, Albuquerque, New Mexico (A-E), $1,000,000.

Project 79-7-m, Weapons Materials Analytical Lab, Pantex Plant, Amarillo, Texas, $1,500,000.

Project 79-7-n, utility systems restoration, Y-12 Plant, Oak Ridge, Tennessee, $2,200,000.

Project 79-7-o, universal pilot plant, high explosives, Pantex Plant, Amarillo, Texas, $3,500,000.

Project 79-7-p, facilities for new modern strategic bomb, various locations, $28,000,000.

(2) For special production:

Project 79-7-h, utilities replacement and expansion, Idaho Chemical Processing Plant, Idaho National Engineering Laboratory, Idaho Falls, Idaho, $10,500,000.

Project 79-7-i, transmission and distribution systems upgrading, Richland, Washington, $7,000,000.

Project 79-7-j, pollutant discharge elimination, Savannah River, South Carolina, $9,000,000.

(3) For defense waste management:

Project 79-7-k, waste management facilities, Savannah River, South Carolina, $25,000,000.

(4) For project 79-6, general plant projects—

(A) for weapons activities, $26,400,000;

(B) for special materials production, $15,250,000.

(C) for naval reactor development, $3,000,000; and

(D) for waste management, $5,950,000.

(5) For project 79-8, plant engineering and design—

(A) for special materials production, $1,500,000;

(B) for defense waste management, $12,000,000;

(C) for military application, $32,000,000; and

(D) for inertial confinement fusion, $1,000,000.

(6) For capital equipment not related to construction—

(A) for weapons activities, $86,400,000;

(B) for special materials production, $32,000,000;

(C) for waste management, $8,000,000;

(D) for inertial confinement fusion, $8,200,000;

(E) for naval reactor development, $22,000,000;

(F) for nuclear material security and safeguards, $3,000,000; and

(G) for program direction and management support, $300,000.

ADDITIONAL AUTHORIZATIONS FOR PREVIOUSLY AUTHORIZED PROJECTS

SEC. 103. Funds are hereby authorized to be appropriated to the Department for fiscal year 1979, for national security projects previously authorized by law, as follows:

(1) For project 74-1-b, replacement ventilation air filter, F Chemical Separations Area, Savannah River, South Carolina, $2,100,000; for a total authorization of $7,300,000.

(2) For project 75-7-c, intermediate-level waste management facilities, Oak Ridge National Laboratory, Oak Ridge, Tennessee, $1,000,000; for a total authorization of $11,500,000.

(3) For project 77-13-a, fluorinel dissolution process and fuel receiving improvements, Idaho Chemical Processing Plant, Idaho National Engineering Laboratory, Idaho Falls, Idaho, $50,000,000; for a total authorization of $65,000,000.

(4) For project 77-13-f, waste isolation pilot plant, Delaware Basin, southeast New Mexico, $40,000,000; for a total authorization of $68,000,000.

(5) For project 77-13-g, safeguards and security upgrading, production facilities, multiple sites, $3,800,000; for a total authorization of $20,200,000.

(6) For project 78-4-a, a high energy laser facility (NOVA), Lawrence Livermore Laboratory, Livermore, California, $187,000,000; for a total authorization of $195,000,000.

(7) For project 78-16-c, high explosive flash radiography facility, Lawrence Livermore Laboratory, Livermore, California, $5,900,000; for a total authorization of $10,900,000.

(8) For project 78-16-d, weapons safeguards, various locations, $9,000,000; for a total authorization of $26,000,000.

(9) For project 78-16-g, radioactive liquid waste improvement, Los Alamos Scientific Laboratory, Los Alamos, New Mexico, $5,700,000; for a total authorization of $6,300,000.

(10) For project 78-16-i, laboratory support complex, Los Alamos Scientific Laboratory, Los Alamos, New Mexico, $14,000,000; for a total authorization of $16,000,000.

(11) For project 78-17-a, production com-

ponent warehouse, Plantex Plant, Amarillo, Texas, $2,550,000; for a total authorization of $2,800,000.

(12) For project 78-17-c, core facilities office building, utilities and roads, Lawrence Livermore Laboratory, Livermore, California, $11,000,000; for a total authorization of $12,300,000.

(13) For project 78-17-d, steam plant improvements, Y-12 Plant, Oak Ridge, Tennessee, $7,000,000; for a total authorization of $10,000,000.

(14) For project 78-18-a, high level waste storage and waste management facilities, Richland, Washington, $9,000,000; for a total authorization of $27,000,000.

(13) For project 78-18-c, environmental, safety and security improvements to waste management and materials processing facilities, Richland, Washington, $13,000,000; for a total authorization of $28,500,000.

TITLE II—GENERAL PROVISIONS

REPROGRAMMING

SEC. 201. Except as otherwise provided in this Act—

(1) no amount appropriated pursuant to this Act may be used for any program in excess of the amount actually authorized for that particular program by this Act, and

(2) no amount appropriated pursuant to this Act may be used for any program which has not been presented to, or requested of, the Congress,

unless a period of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a certain) has passed after the receipt by the appropriate committees of Congress of notice given by the Secretary of Energy (hereinafter in this title referred to as the "Secretary") containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or unless each such committee before the expiration of such period has transmitted to the Secretary written notice to the effect that such committee has no objection to the proposed action.

PROJECT COST VARIATION PROVISION

SEC. 202. (a) No project for which appropriations are authorized in section 102 (1), (2), or (3) may be started if the current estimated cost of such project exceeds by more than 25 percent the amount authorized for such project.

(b) At any time the current estimated cost of any such project under construction exceeds by more than 25 percent the total amount authorized by law for such project, the Secretary shall (1) promptly notify the appropriate committees of the Congress of such fact and include in the notification an explanation for the increased cost of the project and the revised current estimated cost figures for such project, and (2) not proceed with such project unless and until additional funds for such project are authorized by law.

(c) The provisions of this section shall not apply to any project which has a current estimated cost of less than $5,000,000.

LIMITS ON GENERAL PLANT PROJECTS

SEC. 203. The Secretary is authorized to start any project set forth under section 102 (4) only if—

(1) the then maximum currently estimated cost of such project does not exceed $750,000 and the then maximum currently estimated cost of any building included in such project does not exceed $300,000, except that the building cost limitation may be exceeded if the Secretary determines that it is necessary to do so in the interest of efficiency and economy; and

(2) the total cost of all projects undertaken under such section does not exceed the estimated cost set forth in such section by more than 25 percent.

AVAILABILITY OF FUNDS

SEC. 204. Subject to the provisions of appropriations Acts, amounts appropriated pursuant to sections 101 and 102 of this Act for policy and management activities, for general plant projects, and for plant engineering and design are available for use, when necessary, in connection with all national security programs of the Department of Energy.

AUTHORIZATION TO PERFORM CONSTRUCTION DESIGN SERVICES

SEC. 205. The Secretary is authorized to perform construction design services for any construction project of the Department of Energy in support of national security programs which have been presented to, or requested of, the Congress in amounts not in excess of the amount specified in section 102(5). In any case in which the estimated design cost for any project is in excess of $300,000, the Secretary shall notify the appropriate Committees of Congress in writing of the estimated design cost for such project at least 30 days before any funds are obligated for design services for such project.

ADJUSTMENTS FOR PAY INCREASES

SEC. 206. Appropriations authorized by this Act for salary, pay, retirement, or other benefits for Federal employees may be increased by such amounts as may be necessary for increases in such benefits authorized by law.

RESTRICTIONS ON THE B43 BOMB

SEC. 207. No funds authorized to be appropriated by this Act may be used for the testing, modernization, rebuilding, or replacement of any component of the B43 bomb, except that such funds may be used for quality and reliability testing of such bomb and for the replacement of limited-life components of such bomb.

FUTURE REQUESTS OF AUTHORIZATIONS FOR APPROPRIATIONS

SEC. 208. The Secretary shall submit to the Congress for fiscal year 1980, and for each subsequent fiscal year, a single request for authorizations for appropriations for all programs of the Department of Energy involving scientific research and development in support of the armed forces, military applications of nuclear energy, strategic and critical materials necessary for the common defense, and other programs which involve the common defense and security of the United States.

STUDY OF CAPITAL INVESTMENT REQUIREMENTS

SEC. 209. (a) The Secretary shall conduct a study of the status of all Government-owned, contractor-operated, plant, capital equipment, facilities, and utilities which support the United States nuclear weapons program and submit the results of such study to the Congress at the same time that the Department of Energy authorization request for fiscal year 1980 is submitted to the Congress.

(b) The Secretary shall include in such report—

(1) an analysis of the measures required to restore the nuclear weapons complex of the United States to a satisfactory condition, and

(2) a plan containing proposed schedules for carrying out and funding any restoration found to be necessary.

REQUIREMENT FOR MILITARY PERSONNEL DETAILED TO THE DEPARTMENT OF ENERGY TO BE INCLUDED IN AUTHORIZED END STRENGTHS

SEC. 210. Section 625(b) of the Department of Energy Organization Act (91 Stat. 598) is amended by striking out the second sentence.

RESTRICTIONS ON SM-2 WARHEAD

SEC. 211. None of the funds authorized to be appropriated by this or any other Act may be obligated or expended for the development of a nuclear warhead for the SM-2 standard missile until an arms control impact statement for such warhead has been filed with the Congress.

Mr. PRICE (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, could the distinguished chairman of the Committee on Armed Services please explain this action and the Senate amendment so mentioned? Could the gentleman explain how this amendment is different from the House version?

Mr. PRICE. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Illinois.

Mr. PRICE. Mr. Speaker, the Senate took up and passed H.R. 11686, the Department of Energy authorization for national security programs for fiscal year 1979, on September 30, 1978. In taking its action, the Senate struck out all after the enacting clause and substituted an amended bill which is very close to H.R. 11686 as that bill was passed by the House.

The differences between the House version and the Senate amendment are not great. For example, the major money difference in the "operating expenses" category is the Senate provision of funds to give the President the option to proceed with a modern strategic bomb to replace the obsolete B-43 gravity bomb. Approximately $4.2 million was added to the intelligence and arms control line item to accelerate work on test detection monitors. Five million dollars was added to the nuclear materials security and safeguards line item to provide a better system for accounting for special nuclear materials at the Savannah River plant.

In addition to the three money differences in "operating expenses," there are only three differences in the "plant and capital equipment" category.

The Senate amendment would fully authorize the President's request for one construction project which the House bill partially authorized. A second project authorized by the Senate amendment, but not by the House bill, is for facilities for a modern strategic bomb. The remaining difference is the Senate addition of $1 million to begin work on an electron beam fusion facility this year.

The Senate amendment is a substitute for the House bill. In addition to the three money differences I have just discussed, there are several language differences in the Senate substitute. Most of these are merely drafting differences.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, could the gentleman explain the so-called Culver amendment?

Mr. PRICE. Mr. Speaker, in the general provisions of H.R. 11686 as amended by the Senate, section 211 imposed a restriction on the development of a nuclear warhead for the SM–2 standard missile until an arms control impact statement was filed with the Congress. I would like to report that the required arms control impact statement was filed with the House and Senate on October 6, 1978.

The Department of Energy has not objected to any of the changes made by the Senate.

There are so few differences between the House bill and the Senate amendment to H.R. 11686 that a conference is not required. In my opinion, the changes made by the Senate serve to strengthen the bill by reflecting requirements which have emerged since the bill was passed by the House in May.

I recommend that the House concur in the Senate amendment to H.R. 11686. This will clear the bill for the President.

Mr. ROUSSELOT. Mr. Speaker, I thank the gentleman from Illinois (Mr. PRICE) for his explanation, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Illinois (Mr. PRICE) that the Senate amendment be considered as read and printed in the RECORD?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Illinois?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. PRICE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment to the bill, H.R. 11686.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

FBI—A GREAT AMERICAN INSTITUTION

(Mr. COLLINS of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Speaker, the FBI does an outstanding job for our country. With so many agencies overloaded with redtape and inefficient bureaucratic procedures, the FBI stands as a government model in showing excellent results.

The average citizen does not realize just how effective the FBI really is. The FBI makes no press statements during the time it is solving a crime. At all times it is very reserved in any public comment. But let us look at the record. Last year they solved 72 percent of the crimes that were reported to them.

During fiscal year 1977, 4,776 violations of the Federal bank robbery statute were reported. This includes bank robberies, bank burglaries, and bank larcenies.

The Federal bank robbery statute was enacted in 1934. The first full year after enactment violations totaled 114. Last year they totaled 4,776. The most interesting observation is that in 1935 this country was in the middle of a very severe depression and people had very little money. Many did not have a job. But with the privations and suffering of the depression, we had a most honest and law abiding average citizen.

Today we are living in an affluent society where a person on relief is comfortable. Yet, we have a 4,000-percent increase in violations of bank crimes. This proves it is not the poor who commit crimes but it is the person who has lost his moral values.

Let us take another FBI record. Look at their responsibilities under the bank fraud and embezzlement statute. In 1941 the FBI had 506 investigations pending and in July of 1978 the FBI had investigations pending in 3,287 cases.

What has happened to America to-honesty, integrity and belief in God on which this country was established? Has Government done so much for people that they no longer feel individual responsibility to do things for themselves. Have people lost respect for private property where they do not work to earn it but will go out and steal it from others? Back in the depression there were 114 in a year and now we have 5,000 bank robbery cases a year.

We all know the record of the FBI in kidnapping cases. It is good to know that the FBI is the silent partner who is protecting the security of the honest American citizen. As crime has increased, it is encouraging to know that the effectiveness and follow through of the FBI is greater than ever.

THE 77TH BIRTHDAY OF F. EDWARD HÉBERT, DEAN EMERITUS OF THE LOUISIANA CONGRESSIONAL DELEGATION

(Mr. LIVINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LIVINGSTON. Mr. Speaker, tomorrow is the 77th birthday of the last of the titans, F. Edward Hébert, and I would like to take this opportunity to congratulate him on that occasion and to wish him well in the years to come.

As dean emeritus of the Louisiana congressional delegation, Mr. Hébert taught us well how to serve Louisiana. His constant vigilance on her behalf, and on behalf of his country, is an ideal we all try to reach.

The Grey Ghost of Louisiana, as he has recently referred to himself, is now retired. I hold the seat he once held with such distinction. However, he is not idle. He continues to offer his advice and counsel to me and to other members of the delegation. And he continues to take an active hand in Louisiana's affairs. At 77, F. Edward Hébert is still fighting, still serving the people and still vitally concerned about the future of our country.

I am confident that I speak for all the Members of this House in wishing Mr. Hébert, our distinguished former colleague, a happy birthday and many active years ahead.

● Mr. BOB WILSON. Mr. Speaker, I am happy to join in birthday salutes to my old friend and comrade, Hon. H. Edward Hébert, who was my chairman on the Armed Services Committtee for years and a colleague on that committee with me for over 20 years.

I have admired Eddie Hébert, primarily for his frankness—you always knew where he stood and his word was always good. Eddie's comeback from death's doorway was a miraculous thing many months ago. As his friends know, he was given the last rites. He told me later that he looked around and saw the Grim Reaper standing there in his beard and carrying a sickle and decided he was not going to let that old boy catch up with him. Perhaps he never will.

Eddie is the only person I know of who gets younger at each birthday. He is truly a remarkable man and Shirley and I join his host of friends in wishing him another happy birthday and send greetings to his beloved wife, Gladys, as well.●

● Mr. MONTGOMERY. Mr. Speaker, I would like to join my colleagues in wishing Eddie Hébert a happy birthday today. He was a great Member of the House of Representatives.

I had the privilege of serving on the House Armed Services Committee when Eddie was chairman, and I learned to love and respect him as both a fine person and a very capable leader.

I am pleased to hear that his health is improving and join my colleagues in looking forward to wishing Eddie many more happy birthdays.●

CHILD HEALTH ASSURANCE ACT OF 1978

Mr. ROGERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 13611) to strengthen and improve the early and periodic screening, diagnosis, and treatment program, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 13611, with Mr. MURTHA in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule,

the first reading of the bill is dispensed with.

Under the rule, the gentleman from Florida (Mr. ROGERS) will be recognized for 30 minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Chairman, I yield myself such time as I may need.

Mr. Chairman, the legislation before us today is H.R. 13611, the Child Health Assurance Act of 1978.

This bill represents an important commitment to bring better health coverage to poor children and low-income pregnant women in the United States. It is long overdue.

Focusing prevention and comprehensive health care on children and providing adequate prenatal care to low-income women have the greatest potential for reducing morbidity and mortality, for preventing future disability, and for increasing the length and quality of life.

Yet despite the extensive coverage by private health insurance for many of our citizens, and despite the existence of the medicaid program, large numbers of poor American children are today without adequate health care coverage, and receive virtually no preventive care. Estimates indicate that at least 5 million children receive no dental care, and an even larger number receive no health care. As many as 20 million children below the age of 15 are inadequately protected against the major childhood diseases. As many as one-fourth of mothers under 15 years of age receive no prenatal care during the course of their pregnancy.

One could go on with these statistics. We are all familiar with them. But the essential point is this: Medicaid is supposed to be a program to provide health care to the poor. But it has been limited in its success because:

In many States, children are not covered unless they come from a broken family; if the father is in the household, no matter how poor the family, the children often aren't eligible for medicaid;

Many States do not cover even most of the poor; of the 24 million children under 21 living in families whose income is less than 150 percent of the poverty line, nearly half are not covered under medicaid;

Many pregnant women, particularly young mothers bearing their first child, find they are not eligible for medicaid until after the baby is born, because medicaid does not cover single people or childless couples. The result: no prenatal care;

Even for those covered under medicaid, unless they have access to preventive services and continuing care, many health problems are undetected and untreated. Children go without glasses or hearing aids or basic dental care. Over 50 percent of children screened under medicaid now—children who have medicaid eligibility—have health problems needing treatment.

This legislation can be a very significant step toward remedy of this situation. First, it assures coverage for needy children, regardless of whether they come from a broken or a complete family.

Second, it establishes a minimum income standard for medicaid eligibility for children. If we pass this bill, we can say to all our citizens in every State—if a family of 4 has an income of less than $4,200, their children will have health care coverage. This income limit is only two-thirds of the poverty level. It is not excessively generous. But it is a reasonable first step.

Third, it covers low-income pregnant women for necessary prenatal and postnatal care. Studies have shown this can reduce the incidence of premature birth by nearly three-quarters, and with it the conditions associated with premature birth—mental retardation, birth defects, and high infant mortality.

Fourth, it establishes incentives to encourage States to make the child health assurance program a successful, fully implemented part of their medicaid program, through higher Federal matching for services for children who have been given good, timely health assessments; through making funds available for outreach and followup; and through several administrative reforms of the program.

Finally, it makes medicaid more accessible to migrants, to children in foster care who today often are not adopted because they have some health problem which raises the specter of high medical costs for the adopting family, and to children who are detained in public institutions.

I also want to note an additional provision in this bill which is not a part of the child health care program, but which does address another severe shortcoming of the current medicaid program which has long been crying out for correction; it protects low-income citizens who receive railroad retirement or veterans benefits, or social security, from losing their medicaid because of a cost-of-living increase in their checks. Earlier legislation had provided some protection for social security recipients, but unfortunately only for people who were actually receiving a welfare payment, which many people in nursing homes were not; so elderly persons in nursing homes lost their medicaid eligibility. This amendment corrects this, and extends the protection to people receiving railroad retirement and VA as well.

This legislation is estimated to result in additional Federal matching expenditures under medicaid of slightly less than $300 million in fiscal year 1979, of $800 million in fiscal year 1980, the first full year of the program, with an eventual additional cost of approximately $1.6 billion in fiscal year 1983. No one would deny that these expenditures are significant, but we should remember that even in fiscal year 1983, these additional expenditures represent less than 5 percent of the projected cost of the medicaid program. These dollars will bring better preventive and basic health care to 13½ million children who are already eligible for medicaid, 2½ million children who gain coverage for the first time under this bill, and the 100,000 pregnant women who will become entitled to medicaid coverage for prenatal care. Perhaps even more importantly, these dollars will primarily be spent for ambulatory and preventive care for children. They will have a significant positive future impact in the form of reduced hospitalization, reduced disability, healthier and more productive citizens.

This is a measure which deserves the support of every Member of this body. I urge its adoption.

I would direct the Members' attention to the editorial which appeared in the Washington Post this last Saturday, October 7, which I am inserting in the RECORD at this point:

CHILDREN IN NEED

Study after study has documented the fact that millions of poor children in America receive inadequate health care or, in too many cases, no health care at all. Studies also have shown that the lack of early health care reduces the chance that those children will do well in school and go on to become productive members of society. That was what prompted the creation a decade ago of the federal Early Periodic Screening, Diagnosis and Treatment Program. Its purpose was to provide, through state health agencies, checkups and care to 13 million children eligible under the Medicaid program.

From the beginning, however, the program worked poorly. According to government officials, nationally fewer than a quarter of the eligible children are checked for childhood diseases and for other health problems. In Maryland, Virginia and the District, the number of children examined varies from 9 to 20 percent of those eligible. Yet the program's limited achievements, it seems to us, only underscore the compelling need to improve and broaden the effort.

Congress can do that quickly by passing a child health assessment bill before it recesses. Such a bill would do more than change the name of the federal effort. It would extend the program's benefits to an additional million children. The appropriate House and Senate committees, after a lengthy review, have produced somewhat different measures. Either is preferable to the current program. Both require states to serve more poor children by enrolling more doctors, hospitals and health clinics in the program. Both would channel more federal money to the states. And both contain regulations intended to improve federal administration of the program. The proposed changes would increase the current program's $200 million budget by half. In our view, that is a small price to pay for the benefits this program could bring to children in need.

Mr. Chairman, I reserve the balance of my time.

Mr. CARTER. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Chairman, I appreciate my ranking member yielding me this time. I wanted to rise again in raising the issue of just how much money we are going to spend on America's health, and does this spending really obtain all the results we hope for.

As we sit in our committee, there is always a reticence and a definite reluctance to speak against bills on health. Perhaps it is because they are so well named. This bill is, anyway. It is called, "Child Health Assurance Act." If there is anything we would all desire, it would be that the children of America would be given good health. But, I am not sure that just by providing more medical facilities we are doing that. Many times we are told that the basic problem of our health is what the children eat at home, all the junk food. It might be that they do not get enough sleep. I am amazed at how many of them are still watching television at 11 o'clock at night.

But, here we are going to try to solve it all by what we do in the way of providing extra medical facilities. This is the same committee that sought for 3 months to try to mandate hospital cost containment, tried to freeze the cost of expenses in a hospital—which is an impossible price control mechanism. Yet, Congress goes forward to spend more and more money.

I wonder if the chairman of the committee or our ranking minority member could tell me just how this bill compares financially with exactly what we have appropriated in the past. I understand this is an authorization, but on the other hand, since we have only 3 days before the authorization and appropriation are acted on together, what we authorize could well be the appropriation. How much have we paid in the past for child health assurance?

Mr. ROGERS. Mr. Chairman, would the gentleman yield?

Mr. COLLINS of Texas. I yield, and I would appreciate the gentleman's response.

Mr. ROGERS. Medicaid costs for children in 1976 were about $2.7 billion.

Mr. COLLINS of Texas. What are we authorizing in this bill for next year?

Mr. ROGERS. We do not have specific authorization.

Mr. COLLINS of Texas. We do not have an open-ended bill?

Mr. ROGERS. It is somewhat open-ended because actual expenditures depend on what the States do. This is a matching program, as is the rest of medicaid. For 1977, we spent about $3 billion to cover about 13 million children. For 1978, it is estimated to be about $3.5 billion. That is State and Federal cost together.

Mr. COLLINS of Texas. Do we authorize many bills where they are open-ended, unlimited?

Mr. ROGERS. It is not unlimited. But the specific amount spent depends on what the State does, as the gentleman knows.

Mr. COLLINS of Texas. There is a limit on how much a State can do? A State can do anything as long as it receives 10 percent.

Mr. ROGERS. The State programs operate within specific eligibility rules and matching requirements. I am sure the gentleman knows how entitlement programs, like social security and medicare, and matching program like medicaid work. These programs come from legislation that was originally written by the Ways and Means Committee.

Mr. COLLINS of Texas. This law before us has not been written by the Ways and Means Committee.

Mr. ROGERS. Medicaid was originally written by the Ways and Means Committee.

Mr. COLLINS of Texas. But we are the ones that are authorizing.

Mr. ROGERS. We now have jurisdiction over medicaid, that is correct.

Mr. COLLINS of Texas. Is there any way we could specify any kind of practical limit as a guideline?

Mr. ROGERS. I think we have done that through the services that are covered and the limitations on who is eligible for them. It is done that way.

Mr. COLLINS of Texas. What type of limits do we have here, if I could ask?

Mr. ROGERS. We have limits on income eligibility, for example. Only the welfare population and about two-thirds of poor children are covered. If people have higher income, they do not get services.

Mr. COLLINS of Texas. We read yesterday about a welfare case that was drawing these flagrant amounts. How do they check on these people?

Mr. ROGERS. The States do that. As the gentleman knows, the State of Texas has a program where they do it.

Mr. COLLINS of Texas. The State of Texas does a good job, but what about the State of New York and some others that abuse it?

Mr. ROGERS. Each State runs its own program, as I am sure the gentleman would prefer. But New York has a very active antifraud unit. And all the States have programs to get ineligible people off the welfare rolls.

Mr. COLLINS of Texas. What would the gentleman anticipate we would spend on this program during 1979?

Mr. ROGERS. In 1979?

Mr. CARTER. Mr. Chairman, if the distinguished gentleman would yield, the cost of the CHAP program for fiscal year 1979 is $299 million.

Mr. COLLINS of Texas. It will be about $4 billion, will it not?

Mr. CARTER. No, sir. In 1979 it is $299 million. I think if the gentleman will refer to page 40 of the report he will see it. That estimate is a half-year estimate.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. COLLINS of Texas. Could I have just 1 additional minute so I can clarify this?

Mr. CARTER. I yield the gentleman from Texas 2 additional minutes.

Mr. COLLINS of Texas. Mr. Chairman, I thought this total appropriation was larger than that.

Mr. CARTER. I am sorry the distinguished gentleman was in error about that. It plainly states $299 million for fiscal year 1979. It is $1 million less than $300 million.

Mr. COLLINS of Texas. Is that the understanding of the gentleman from Florida?

Mr. ROGERS. That is the total increase caused by this legislation. That is correct. Of course, total program expenditures for all services to the 13.5 million children covered are much higher.

Mr. CARTER. I do not want to disagree with the gentleman, but the total outlay for the CHAP bill is $299 million for 1979. That is a half-year estimate. In 1980 it increases to $789.1 million. That is the way it is, sir.

Mr. COLLINS of Texas. This complete bill will run only $299 million?

Mr. CARTER. No, sir. The gentleman did not ask me that. He asked what it was in 1979.

Mr. COLLINS of Texas. That is the complete cost in that year?

Mr. CARTER. The complete cost for fiscal year 1979 is $299 million for CHAP.

Mr. COLLINS of Texas. Is that the understanding of the gentleman from Florida?

Mr. ROGERS. That is the cost of this legislation.

Mr. COLLINS of Texas. But the amount in this bill, what we normally spend, is this an increase or the total?

Mr. CARTER. This is the total outlay for 1979 for this bill.

Mr. COLLINS of Texas. I thank my good friend.

Mr. CARTER. I am pleased it is much less than my distinguished friend from Texas thought.

Mr. COLLINS of Texas. I thank the gentleman.

Mr. CARTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today we are considering the so-called Child Health Assurance Program, H.R. 13611, formerly called the Child Health Assessment Program, but I really like the new title better. It starts out with poor youngsters. They are given health screening tests at regular periods of time. The income for families of four must be $4,200 per year or less. At regular intervals these youngsters are examined in the following respects: vision, hearing, tests for anemia, sickle cell tests, tuberculin tests, and urine screening. By these means we find out if the youngster needs glasses or if he needs medical treatment for an ear problem or a hearing aid. Through these assessments we find out if he does not have normal blood. We find out if he is a victim of sickle cell anemia or carries the gene. We find out if he has tuberculosis, and provide treatment as needed. We check for lead poisoning. We make an assessment of the child's nutritional status. We see if he is one of those poor underdeveloped children who have never had enough food or sufficient nutrition to keep them healthy and strong, in the way that most middle-income Americans are able to keep their children healthy and strong.

But there are some 2 million children in the United States who never see a dentist and some 5 million who never see a physician. This "CHAP" legislation is aimed at these children in order to help them to be stronger so that they may

live better lives. In the long run, it will save money for the taxpayers of this country.

In addition, my friends, there is an assessment of whether the child has been immunized for diphtheria, pertussis, or whooping cough. Under the bill, many immunizations will be given against polio. We have already seen billions of dollars saved by these immunization programs for the taxpayers of our great country.

Not only that, if we would just look backward and reflect a little bit, we can remember the number of children who each year had polio in this country. Last year we only had one. Just think of the number of children we save from being crippled by this disease.

We want to continue these immunization programs for this group of needy youngsters, who are among the poorest in our country. The present rate of immunization among these children is considerably lower than it is for the sons and daughters of the affluent. This legislation has as its purpose screening of these youngsters, identification of their health needs, and then providing necessary treatment. If a youngster has congenital heart disease, the program would cover treatment for that condition and surgery if necessary. If a youngster should have a hernia, then that could be corrected. Those youngsters then could live better, stronger, and more productive lives, and this would cost the taxpayers of this country of ours a great deal less.

Mr. Chairman, I strongly support this legislation. I urge my colleagues to vote for it as a matter of compassion and feeling for the youngsters of our country who need assistance and who are not receiving it at this time.

Mr. Chairman, I reserve the balance of my time.

● Mr. DORNAN. Mr. Chairman, I think that we in this Chamber need to have an accounting to the American people concerning the expenditure of title X funds in a number of areas. I want to draw a very firm wall of separation between legitimate provision of family planning services on the one hand, and abortion and bigotry on the other.

I have offered a series of constructive amendments which are designed to protect constructive family planning programs from a backlash because of abuses perpetrated by some grantees. My amendments have been published elsewhere in the CONGRESSIONAL RECORD. They simply would place title X programs on a foundation acceptable to sensitive and conscientious Americans.

The amendment prohibiting any money from going to grantees that perform, refer, or counsel for abortion is no more than an explicit restatement of what we in Congress thought was the law. Family planning is not abortion or abortion referral, or abortion counseling. The Government should not be in the business of promoting abortion. Nowhere will anyone find that Congress has authorized abortion or its promotion. Those here who wish to destroy reputable family planning services need only link abortion or its promotion with the provision of family planning services.

We need this wall of separation to protect bona fide services.

I also think that organizations that deliver the education necessary to learning about natural family planning should be able to receive title X funds. If that is all they wish to concentrate on well and good. In a pluralistic society why try to force contrary values on such groups? HEW uses teaching materials from one such organization, although this very organization is not eligible to receive title X funding because they wish to concentrate only on natural family planning and not be involved in referring for other services. To exclude such groups would be most prejudicial to couples and the very groups that have perfected such natural family planning programs. I congratulate Congressmen ROGERS and SCHEUER for including natural family planning services explicitly in this bill. I just would like to see NFP organization be eligible to provide their services without coercion from the population bureaucrats at HEW.

Furthermore, if this is to be a bill that truly is an alternative to abortion which we all seek, I think it is fitting that "birthright-like" organizations be allowed to receive title X grants without the current crop of HEW imposed preconditions involving referral of young pregnant girls in a distressful pregnancy. These groups can assist in such pregnancies.

I also think that Congress should take some measures to see that irreverent and offensive material is not distributed with Federal funds. Some of the film and literature that HEW has made available to young teenage girls and boys has got to be seen to be believed.

Most parents would probably not recommend that their young teenage daughters read "Masturbation Techniques for Women." However, these wonderful folks over at HEW have different ideas. The above booklet is only one the bizarre publications and films recommended in an official 1975 HEW publication, "Practical Suggestions for Family Planning Education," all of which may be used by the educational components of federally funded family planning grantees under title X of the Public Health Service Act.

Some of the HEW recommended material includes: "The Joy of Birth Control" title X HEW grant No. 04–H 000311–04–0, Georgia Department of Human Resources, written by Stephanie Mills, who describes herself as having "an antimaternal instinct." Ms. Mills' booklet contains an interview with planned parenthood physician Harvey Caplan. Caplan states,

> If, however, you have separated your sex and love needs and realize that a close relationship involves a lot more than just sex, and you're doing the sexual number for whatever reason it interests you, it's fun, it's in keeping with your values, then you could have a hundred partners and still be a perfect candidate for a good close relationship later on.

With that kind of "advice" no one need wonder why there is a pandemic rate of VD and pregnancy among teens. But do not fret, taxpayer, you also get to pay the cost for VD treatment and detection. Oh, by the way, Dr. Caplan was a contributor to the HEW "Practical Suggestions" booklet.

"The View From Our Side" by Tom Zorabedian cites the "positive" aspects of masturbation, that is, "relieves tension," is "free and always available," "increases forearm strength." On abortion: "The legal ones are safer than childbirth or having your tonsils out." On homosexuality: "I killed forty men, and they gave me a medal; I loved one and they gave me a dishonorable discharge." Also, citing Rev. Jim Snow from the Metropolitan Community Church of Atlanta:

> Like apple pie, football, and marriage, homosexuality has been, is now, and will continue to be, a part of the American culture—and should be accepted as such.

Move over Pompeii. Step aside Sodom.

"Abortive Eve" by Nanny Goat Publications. This one starts off by referring to unplanned pregnancies as a "dread affliction" and "malignant plague." The contents detail the status of legal abortion along with a few anti-Catholic/anti-Christian remarks. The back page has a sick picture depicting Mary, the Mother of Christ, as pregnant with a "Mad" magazine Alfred E. Neuman face.

"Practical suggestions" is a potpourri of misinformation and insult. The HEW manual indicates that pregnancy starts roughly 7 to 9 days after union of sperm and ovum. This means that humans, unlike every other creature under the sun, start off as a multi-cellular being. The HEW manual lists two curious sources under Publishers and Suppliers of Family Planning Material: Multi Media Resources of San Francisco and the Georgia Gay Liberation Front in Atlanta.

I have seen the Multi Media catalog containing films, cassettes, pictures and books glorifying any kind of sexual activity involving one or more persons, both with and without devices. They are promoted with title X family planning money. Take for example one of the milder Multi Media films, "Orange," recommended by San Diego Planned Parenthood for high school audiences. The Multi Media catalog describes "Orange" as "a sensual macro-study of the hidden universes within a fruit * * * (it) can produce a peak of excitement when shown to a primed audience. It is one of the best erotic films made * * *"

How the Georgia Gay (translate that "Sad") Liberation Front fits in with "family planning" is one of those mysteries explainable only by the gnostic bureaucrats that haunt HEW. There are only two contributors to the HEW's Practical Suggestions from Georgia—Felicia Guest and Dr. Robert Hatcher—both from the Family Planning Program at Atlanta's Emory University. Hatcher is co-author of a "family planning" book, "Women in Need," for which a then lit-

tle known Governor wrote a "foreword"—Jimmy Carter.

INFORMATION SUPPRESSED

When the 1-year extension of title X was before the House Interstate and Foreign Commerce Subcommittee on Health and the Environment in February of 1977, Robert Marshall, testifying for the U.S. Coalition for Life tried to get the Multi Media catalog inserted into the hearing record—minus some of the pictures. The answer came on March 15, 1977 from chief counsel for the subcommittee, Stephen E. Lawton, who said:

I find attachment 2 (Multi Media catalog excerpts) inappropriate for publication under the auspices of the Subcommittee on Health and the Environment * * *

I can see why Mr. Lawton did not want to put the catalog into the record. It brings the entire title X program under grave suspicion, and provides all the fuel parents rights groups ever needed to oppose secular humanistic sex-ed courses. As some of the film descriptions are definitely lurid, I will spare my colleagues. Suffice it to say that the Multi Media catalog indicates that high school audiences have viewed their product.

HOW DID IT HAPPEN?

The Family and Population Control Act of 1970 was former Joe Tydings' baby. The great HEW leap into the bedroom was justified by a study undertaken by the Technical Assistance Division of Planned Parenthood—World Population—in 1968 using Office of Economic Opportunity funds (contract No. B89-4588). The study assumed that "below poverty line" families wanted no more than three children. This was then used to project the universe of "need" for subsidized family planning which, of course, Planned Parenthood was willing to serve with your money.

Title X is the "mother lode" for Planned Parenthood. According to PP's 5-year plan (1976-80), the PP Federation must raise one-half billion dollars or more in the next 5 years. "We must count on almost 1 out of 3 dollars to come from private sources." You, dear taxpayer, will pay the other 2 out of 3 dollars largely through title X. In their apocalyptic preface to "plan" they state in part:

The Federation believes that 'universal reproductive freedom' is a most essential, if not the most essential step in providing our civilization the opportunity to solve the most critical problems of hunger, deprivation, and the homelessness of poverty as well as the deterioration of our water, air and land . . .

The proposed title X reauthorization for fiscal year 1979-81 is $1,072,400,000 for "family planning" research and development—a great chunk of which will go to the HEW's teen antipregnancy program. Most people think that the money is spent solely for low and marginal income persons. Not so. Planned Parenthood and HEW will be roaring into the high schools after the fashion of the Garadene Swine. In times past, supplying kids with the "tools of the trade" would have been stopped under the contributing to the delinquency of minors statutes. Not so now.

A planned parenthood sex-ed manual put out by PP, Syracuse, N.Y., called "Sex Facts", furnished to me by Dr. Carolyn Gerster, president of the national right to life committee, explains how sodomy and "free love" are a "matter of choice" for young teens.

MARGARET SANGER

The patron saint of Planned Parenthood is Margaret Sanger, who, in the words of the late Dr. Alan Guttmacher, Planned Parenthood president, provided the "moral standards" for Planned Parenthood. In "Women and the New Race," Sanger wrote:

In savage life as well as in barbarism and civilization has woman's instinctive urge to freedom and wider development asserted itself in an effort to control her family. * * * When a traveler reproached the women of a South American tribe for the practice of infanticide, he was met by the retort "Men have no business to meddle in women's affairs." * * * The most merciful thing that a large family does to one of its infant members is to kill it.

This is hardly the kind of moral tone a so-called family service organization should follow. Most planned parenthood clinics that I am aware of refer for abortions and a number actually perform them. The "official" hands-off policy on abortion changed in 1968 when the Planned Parenthood World Population Medical Committee recommended:

* * * the abolition of existing statutes and criminal laws regarding abortion, and the recognition that advice, counseling, and referral with regard to abortion is an integral part of medical care.

So much for the ancient oath of Hippocrates.

Planned Parenthood's "Family Planning Perspectives" published an article by an OEO doctor in January of 1971 entitled (now get this) "Is Pregnancy Really Normal?" Dr. Hern concludes:

The foregoing discussion should allow us to abandon the erroneous assumption that pregnancy is per se a normal and desirable state, and to consider instead a more accurate view that human pregnancy is an episodic, moderately extended chronic condition with a definable morbidity and mortality risk to which females are uniquely though not uniformly susceptible and which: when not prevented, is the individual result of a set of species specific bio-social adaptations with a changing significance for species survival; may be defined as an illness requiring medical supervision through (a) cultural traditions, functional or explicit, (b) circumstantial self-definition of illness or (c) individual illness behavior; may be treated by evacuation of the uterine contents * * *; has an excellent prognosis for complete, spontaneous recovery if managed under careful medical supervision. Accordingly, the open recognition and legitimation of pregnancy as an illness would be consistent with the individual self-interest of those experiencing pregnancy, good standards of medical practice, and the continued survival of human and other species.

Or how about this brochure put out by Planned Parenthood of Pittsburgh which has a picture of a family with four girls and a boy and starts off in big bold letters "so you finally had a boy?"

The only thing you can be congratulated on is your perseverance. You can't be congratulated on your morality or unselfishness. Adding three "extra" children to a world already reeling under its population load can't be called either moral or unselfish. You can't be congratulated on your fertility. After all, any clam, chicken, or small furry animal can beat you at that.

ENOUGH IS ENOUGH IS ENOUGH

We have seen irreverent cartoons being pushed by tax subsidized family planning grantees. I think the American people have had enough. It is bad enough that we have bigotry. But to fuel it with tax dollars is absolutely a self-defeating public policy.●

● Mr. STAGGERS. Mr. Chairman, I strongly support H.R. 13611, the Child Health Assurance Act.

This bill will significantly extend health care coverage for poor children and low-income pregnant women in this country. It will direct medicaid dollars to preventive and ambulatory care. It will increase the proportionate share of Federal support for these services.

I particularly want to note a provision of the legislation which will protect the medicaid eligibility of our senior citizens whose veterans benefits, social security, or railroad retirement checks increase to cover the increases in the cost of living. It is shameful that many of these citizens have found in the past that when their checks include a cost-of-living increase, they lose their health care benefits under medicaid. Correction of this problem is long overdue.

I urge the Members to support the bill.●

Mr. STOKES. Mr. Chairman, I rise in support of H.R. 13611, the Child Health Assurance Act of 1978 which will replace the early periodic screening, diagnosis, and treatment program (EPSDT), that is administered under medicaid, with a new child health assurance program (CHAP).

A health care crisis for poor children currently exists in this country. Millions of low-income minority as well as white children, regardless of geographic location, do not have access to vital health services necessary to improve their health status and the quality of their lives. This bill addresses this problem by expanding and improving the delivery of health care services to poor children throughout this country.

Statistics dictate that the medicaid-medicare programs have been successful in increasing access to medical care for the poor. This bill expands medicaid eligibility for all individuals under 18 years of age who are financially eligible under the state welfare or medicaid standard, or who have income of less than $4,200 a year for a family of four, regardless of whether they are members of an intact family or not. Additionally, it allows States the option of covering all financially eligible individuals up to the age of 21.

Second, the bill expands medicaid eligibility for all pregnant women who are financially eligible under the State welfare or medicaid standard, or who have an income of less than $3,000 a year. I am particularly happy with this feature of the bill. It is a well known fact prenatal care is essential for maternal and infant well-being. Though it has been proven that care during pregnancy will directly affect the development of the child, poor women have consistently lacked adequate access to medical services and therefore have experienced a higher maternal and infant mortality rate than middle and high income women. This bill, I believe, will help alleviate the incidence of health problems for the duration of the pregnancy and the first 2 months following birth.

Third, the legislation allows States an option to provide medicaid coverage to adopted children who have been in foster care, and who are hard-to-place for adoption because of a handicap or medical condition requiring medical care, regardless of the income level of the adopting family.

And fourth, the legislation will increase the accessibility of medicaid coverage to migrants, allows children who are inmates of public institutions to remain eligible for medicaid if they were eligible before entry into the facilities, and makes basic dental care for children a required service under the medicaid program.

Mr. Chairman, the Child Health Assurance Act, addresses the delivery of health care to the poor children of this country. If this bill is not passed, millions of medically needy people will suffer. I urge my colleagues to join me in supporting this bill.

● Mr. PREYER. Mr. Chairman, I rise in support of the Child Health Assurance Act (CHAP). It has been my sense that the Congress is extremely concerned about disease prevention. In fact, I think we would all endorse the belief that the best remedy against disease is preventing the illness before it starts.

This is a particularly important bill, because it focuses attention on our most precious resource—the children of America. By providing support for poor children through age 18, we are supplying the sort of consistent outreach and treatment that will serve children for the rest of their lives.

The bill also recognizes the need for coverage of pregnant women, by mandating eligibility during the entire pregnancy and for 2 months following birth. Furthermore, coverage is extended to many important areas of basic and primary care, such as mental health, developmental disabilities, and dental care. The CHAP bill is comprehensive and represents a significant step forward for millions of Americans.

CHAP is a sound, thoroughly considered proposal. The President has spoken about the need for more emphasis on child health and he proclaimed October 2 as Child Health Day. Many organizations have spoken on its behalf.

Given the serious need for the program and the strong support it has engendered, I believe we should pass it. Poor children desperately need the benefits of CHAP, and their eyes are upon us today.●

Mr. ROGERS. Mr. Chairman, I have no further requests for time.

Mr. CARTER. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. ROGERS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

Mr. ROGERS. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker pro tempore (Mr. HOLLAND) having assumed the chair, Mr. MURTHA, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee, having had under consideration the bill (H.R. 13611) to strengthen and improve the early and periodic screening, diagnosis, and treatment program, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill H.R. 13611, just under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

HEALTH SERVICES AMENDMENTS OF 1978

Mr. ROGERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12370) to amend the Public Health Service Act and related health laws to revise and extend the programs of financial assistance for the delivery of health services, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. ROGERS).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 12370, with Mr. MURTHA in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Florida (Mr. ROGERS) will be recognized for 30 minutes, and the gentleman from Kentucky (Mr. CARTER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the legislation before us today is H.R. 12370, the Health Services Amendments of 1978. This bill would amend the Public Health Service Act and related laws to revise and extend programs of financial assistance for the delivery of several important public health services, and create for the purpose of an 18-month study, a select panel for the promotion of child health.

Mr. Chairman, this bill contains revisions and extensions of several public health services programs authorized by the Congress in the past and has the overwhelming support of the Committee on Interstate and Foreign Commerce.

Briefly, the health services amendments revise and extend expiring authorities for grants to States for comprehensive public health services; hypertension programs; disease control programs, including immunization, venereal diseases, rodent control and lead-based paint poisoning prevention; family planning programs; genetic disease programs; sudden infant death syndrome programs; hemophilia programs; and home health care projects. In addition, amendments are made to the emergency medical services programs which will allow all authorities under that program to be considered for renewal simultaneously next year.

With the short time remaining in this Congress, and the significant differences between the House and Senate versions of the health services amendments—which can and must be reconciled—expeditious action by the House is crucial if we are to continue, in a responsible fashion, the more than 20 program authorities addressed by this legislation.

I am aware that there are those who seek to convince my colleagues that the simple extension of the voluntary family planning program constitutes a pro-abortion vote. Nothing could be further from the truth. In fact, a vote for this bill is a vote against abortion. Title X is the only national program which will actually prevent the condition which could lead to a request for abortion. Since its initial enactment in 1970, the title X program has contained the following prohibition:

SEC. 1008. None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

The conferees on that legislation wisely stated:

It is, and has been, the intent of both Houses that funds authorized under this legislation be used only to support preventive family planning services, population research, infertility services, and other related medical, informational, and educational activities. The conferees have adopted the language contained in section 1008, which prohibits the use of such funds for abortion, in order to make clear this intent. The legislation does not and is not intended to interfere with or limit programs conducted in accordance with State or local laws and regulations which are supported by funds other than those authorized under this legislation.

This is still the case today. There is no evidence that a single abortion has been performed with title X funds.

We must not lose sight of the fact that this bill also addresses many other vital public health programs in addition to the voluntary programs of family planning, and that it has the support of literally hundreds of organizations including the American Colleges of Preventive Medicine, Pediatrics, and Obstetricians and

Gynecologists; the National Foundation; the Association of Schools of Public Health; the American Public Health Association; the city, county, and State health officials; and the Governors and State legislatures, among others.

In general, Mr. Chairman, this proposal contains 3-year extensions for the specific service programs I have already outlined. The significant revisions included in this bill are:

First, the replacement of the old 314 (d) program of grants to States for comprehensive public health services with a program of health incentive grants. This new program is designed to continue the progress achieved under 314(d), and to provide an incentive to State and local governments to increase their own support of public health programing.

Second, a change from a formula grant program for hypertension to a project grant program which will provide for greater accountability of the use of hypertension funds.

Third. The establishment of an applied technology program for genetic diseases which will include (1) disease surveillance and (2) epidemiologic assessment to define the scope and extent of genetic diseases and the need for specific programs, and provide assistance in (3) program management techniques and (4) laboratory technology;

Fourth. Increases in authorization levels especially for family planning services and research, in part to meet the needs of adolescents and of those couples with infertility problems;

Fifth. A 1-year authorization for a program of voluntary high risk influenza immunization; and

Sixth. The establishment, for an 18-month study, of a Select Panel for the Promotion of Child Health.

Mr. Chairman, more specifically, section 2 of H.R. 12370 extends the current 314(d) program for 1 year, and then replaces it with a new program, the "Health Incentive Grant."

Since fiscal year 1970, $90 million has been appropriated each year in support of State and local health programs under section 314(d). Congressional support for public health services under section 314 (d) has been based upon a positive record of performance by the States. Because of the continuing need to support vital public health programing at a realistic level of funding, and in an attempt to encourage greater State and local government participation in meeting community health needs, H.R. 12370 would extend the existing authority for the 314(d) program for 1 year, and then replace this "entitlement" formula program with a new approach, termed the "Health Incentive Grant."

Beginning in fiscal year 1980, States would receive a minimum of $1 per capita to assist them in meeting the costs of providing comprehensive public health services. States would be eligible to receive up to a maximum of $1.50 per capita to assist in providing such services. The actual grant award to any State (between $1 and $1.50 per capita) would be determined by the amount of direct State and local support for public health programs in that State.

For formula grants to States for comprehensive public health services, H.R. 12370 would authorize $103.5 million for fiscal year 1979. For formula grants to States for hypertension programs, H.R. 12370 would authorize $25 million for fiscal year 1979. For health incentive grants to states for comprehensive public health services, H.R. 12370 would authorize $250 million for fiscal year 1980; $275 million for fiscal year 1981; and $300 million for fiscal year 1982.

Section 3 of H.R. 12370 would extend, essentially unchanged, programs of childhood immunization, rodent control, and general disease control authority for 3 fiscal years. In addition, a new program of voluntary high-risk influenza immunization is authorized for one fiscal year. For immunization programs, H.R. 12370 would authorize $51 million for fiscal year 1979 (including the influenza program); $40.25 million for fiscal year 1980; and $46.28 million for fiscal year 1981.

For rodent control, H.R. 12370 would authorize $15 million for fiscal year 1979; $17.3 million for 1980; and $19.9 million for fiscal year 1981. For other disease control activities, H.R. 12370 would authorize $5.8 million for fiscal year 1979; $6.7 million for fiscal year 1980; and $7.7 million for fiscal year 1981.

Section 4 of H.R. 12370 would renew, for 3 fiscal years, programs for the control of venereal diseases. Two existing authorities: First, VD demonstration, clinical research and training, and second, VD surveillance and casework would be combined as a single authority VD control. In addition, H.R. 12370 would repeal an existing provision of the Public Health Service Act which would allow the Secretary to use up to 50 percent of the appropriated venereal disease control funds for other disease control purposes. For venereal disease control, H.R. 12370 would authorize $45 million for fiscal year 1979; $53 million for fiscal year 1980; and $62 million for fiscal year 1981.

Section 5 of H.R. 12370 would provide a simple 3-year extension for programs of family planning service, research, training, and information and education materials. Increases have been proposed in sexually active young adults, the estimated 3.5 million low-income women who still have no access to programs of voluntary family planning services, and to assist those individuals and couples with problems of infertility and sterility. H.R. 12370 would authorize for family planning services $200 million for fiscal year 1979; $230 million for fiscal year 1980; and $264.5 million for fiscal year 1981. The bill would authorize for family planning training $3.1 million for fiscal year 1979; $3.6 million for fiscal year 1980; and $4.1 million for fiscal year 1981. The proposal would authorize for family planning information and education and education materials $0.7 million for fiscal year 1979; $0.805 million for fiscal year 1980; and $0.926 million for fiscal year 1981. Finally, it would authorize for family planning research $105 million for fiscal year 1979; $120.8 million for fiscal year 1980; and $138.9 million for fiscal year 1981.

Section 6 of H.R. 12370 would extend for 3 years programs of genetic diseases, hemophilia, and sudden infant death syndrome. Sudden infant death syndrome programs, blood separation centers, and hemophilia programs would be extended without substantive change. H.R. 12370 would authorize for programs of sudden infant death syndrome $3.5 million for fiscal year 1979, $4 million for fiscal year 1980, and $5 million for fiscal year 1981. The bill would authorize for hemophilia programs $3.5 million for fiscal year 1979, $4 million for fiscal year 1980, and $5 million for fiscal year 1981. The proposal would authorize for blood separation centers $2.5 million for fiscal year 1979, $3 million for fiscal year 1980, and $3.5 million for fiscal year 1981.

As indicated earlier, H.R. 12370 would amend the genetic diseases program authority to require the Secretary to establish an applied technology program which would include: First, disease surveillance; second, epidemiologic assessment to define the scope and extent of genetic diseases and the need for specific programs, and assistance in; third, program management techniques; and fourth, laboratory techniques. H.R. 12370 would authorize for genetic diseases $20 million for fiscal year 1979; $23 million for fiscal year 1980; and $26.5 million for fiscal year 1981.

Section 7 of H.R. 12370 would incorporate the existing home health services program into the Public Health Service Act and extend that program, without change, for 3 years. The bill would authorize for initial operations and expanded services costs for home health services $14 million for fiscal year 1979; $16.1 million for fiscal year 1980; and $18.5 million for fiscal year 1981. It would also authorize for training of professional and paraprofessional personnel to provide home health services $2 million for fiscal year 1979; $2.5 million for fiscal year 1980; and $3 million for fiscal year 1981.

Section 8 of H.R. 12370 would replace the existing program of formula grants for hypertension control programs with a project grant program beginning in fiscal year 1980. This change will provide for greater accountability of hypertension funds, and provide more significant and uniform program data than has been available in the past. H.R. 12370 would authorize for hypertension programs $28.8 million for fiscal year 1980; $33 million for fiscal year 1981; and $38 million for fiscal year 1982.

Section 9 of H.R. 12370 would transfer titles I and II of the Lead-Based Paint Poisoning Prevenion Act to the Public Health Service Act and extend, without substantive change, programs of lead-based paint poisoning prevention for 3 years. For programs of lead-based paint poisoning prevention, H.R. 12370 would authorize $14 million for fiscal year 1979; $16.1 million for fiscal year 1980; and $18.5 million for fiscal year 1981.

Section 10 of H.R. 12370 would require the Secretary of HEW to conduct a long term study of the effects of various blood lead levels on child development. No specific funds are authorized for this purpose.

Section 11 of H.R. 12370 incorporates a series of amendments to the existing emergency medical services amendments to allow all authorities in that program to expire and be considered simultaneously for renewal early in the 96th Congress.

Section 12 of H.R. 12370 would require the Secretary of Health, Education, and Welfare to establish within his office a Select Panel for the Promotion of Child Health. That Panel would be charged with: First, formulating specific goals with respect to the health status of children and expectant mothers in the United States; second, developing a comprehensive national plan for achieving these goals and otherwise promoting the health of children in the United States; and, third, making a report within 18 months to the Secretary and the Congress detailing a comprehensive national plan with its recommendations for legislation, and other actions it deems appropriate to implement this plan.

The Panel would be authorized for a 18-month program life and H.R. 12370 would authorize $1 million for its operations.

When the House first considered H.R. 12370, the Health Services Amendments of 1978, I engaged in a colloquy with my distinguished colleague, the gentleman from Michigan, Mr. DINGELL, relative to the authorization contained in this bill for the program of voluntary, high-risk influenza immunization. That exchange of remarks appeared in the CONGRESSIONAL RECORD of September 25, 1978 (pp. 31249 and 31250). Today, I would reaffirm my concurrence in the need for the safeguards desired by the gentleman from Michigan and agreed to by the Secretary of HEW.

The discussion of September 25, was as follows:

Mr. ROGERS. Mr. Speaker, I yield such time as he may consume to my distinguished colleague, the gentleman from Michigan (Mr. DINGELL), who is a member of the full committee and has done an excellent job in oversight and on the influence of the program and is very concerned about it.

(Mr. DINGELL asked and was given permission to revise and extend his remarks and to include extraneous material.)

Mr. DINGELL. Mr. Speaker, I rise for the purpose of discussion with the chairman of the Health and Environment Subcommittee, the Honorable PAUL ROGERS, my colleague and friend on the House Interstate and Foreign Commerce Committee. We have previously addressed the point I am about to make and we are in agreement.

My remarks are on behalf of my colleagues, the Honorable JOHN E. MOSS, the Honorable ALBERT GORE, and the Honorable HENRY WAXMAN, of our committee, who have shared with me the serious concerns regarding flu immunization programs and the safeguards we deem mandatory and essential to the safety of the public under the immunization program that the legislation before us now, H.R. 12370, the Health Service Amendments of 1978, authorizes for fiscal year 1979.

Under section 3 of the bill, disease control program, there is authorized $16 million for the fiscal year 1979 flu immunization program.

It is to this flu immunization program that my remarks are addressed. I am sure our colleagues will recall that we previously, on the supplemental appropriations bill for fiscal year 1978, secured on August 17, 1978, agreement on the House floor from the Honorable DANIEL FLOOD, chairman of the House Appropriations Subcommittee on Labor, Health, Education, and Welfare, that certain public health safeguards and warnings I requested from the Secretary of Health, Education, and Welfare, the Honorable Joseph Califano, be a part of the legislative history in connection with the fiscal year 1978, $8.2 million, program.

At that time, in a letter to me, August 16, Secretary Califano committed HEW to these safeguards for the public. It is our intention today to secure concurrence by the chairman of the Health and Environment Subcommittee, Mr. ROGERS, that these safeguards shall be a part of the congressional intent on this bill, H.R. 12370.

These public health safeguards in essence, as agreed to by Secretary Califano, include HEW's determination and reporting to Congress that the flu vaccine to be administered is effective and safe, and has undergone clinical trial. The safeguards include that the Secretary has properly informed the States, and the States, in turn, the public, about the information of the flu vaccine program which includes warnings about possible side effects. These safeguards additionally include numerous reports by HEW to the Congress regarding the results of the fiscal year 1978 and 1979 flu immunization program.

I enclose for the RECORD at this point the August 16, 1973, letter from Secretary Califano to me which enumerates HEW's commitment to these safeguards, and the additional letter dated today, September 25, 1978, from Secretary Califano noting HEW's further commitment to the safeguards for the fiscal year 1979 flu program along with the Secretary's report to me, which I am enclosing, that the requirements of our intent have been and will be met. I additonally enclose from the Secretary the information statement, warning and consent form, provided to recipients of flu vaccine.

With the concurrence of Chairman ROGERS and my colleagues in the House, I ask that this information be included in the legislative discussion on the Health Services Amendments of 1978:

WASHINGTON, D.C.,
August 16, 1978.

Hon. JOHN DINGELL,
House of Representatives,
Washington, D.C.

DEAR JOHN: In response to several concerns that have been raised about the supplemental appropriation for the influenza immunization program, I want to assure you that Fiscal Year 1978 funds for this program will not be expended by HEW after the end of FY 1978. In addition, this program will not be carried out until the following requirements have been satisfied:

(1) We have determined—and we will provide that determination to the Congress—that the vaccines to be used have been proven safe and effective by extensive clinical trials.

(2) We have proved full and complete warning to the public and to the States of the potential risks of side effects by providing an informed consent form to the Senate for distribution to those receiving immunization (a copy of this form will be provided to the Congress):

(3) We have identified the potential risks of injury in the program and listed those in the informed consent form:

(4) We will promptly report to the Congress on side effects recorded in the program and will make necessary recommendations to the States to protect the public health;

(5) We will report to the Congress every 60 days on the progress of the program, including reports from the States on the number of individuals immunized, the benefits the States estimate have been realized from the program, and State reports on any serious side effects that are the result of immunizations provided by the program.

(6) We will report to the Congress on June 30, 1979—which is approximately 60 days after the close of the flu season—on the program's experience. At that time we will also make recommendations with respect to the future needs of influenza immunization and provide to the Congress any reports compiled on the safety and effectiveness of the vaccine and other experience during the 1978–79 program.

Let me finally stress that liability of the Federal government under our proposed program is wholly and totally different from that under the swine flu program. The Federal government is not assuming blanket liability as it did under the swine flu program. Rather, we have proposed that the issue of liability be handled on a State-by-State basis under State law—the same way liability is handled under our very successful childhood immunization program. There is little possibility that the Federal government could face a financial obligation similar to the one that arose in the swine flu program.

As far as State liability is concerned, under the childhood immunization program preliminary checks indicate that only two lawsuits are pending as far as we know against States under that program.

I hope this responds to your concerns.

Sincerely,

JOSEPH A. CALIFANO, Jr.

WASHINGTON, D.C.,
September 25, 1978.

Hon. JOHN D. DINGELL,
House of Representatives,
Washington, D.C.

DEAR JOHN: In my letter of August 16 (enclosed), which was placed in the record during the debate on the FY 1978 Second Supplemental Appropriations Bill, I assured the Congress that several requirements would be satisfied before HEW's influenza immunization program was carried out.

I am writing today to report that these requirements have been met:

(1) Safety and effectiveness of vaccine:

The clinical trials conducted in 1978 are among the most extensive ever undertaken. Based on this data, experts from the Public Health Service's advisory committees have devised vaccine formulations and recommendations for use of the vaccine for persons from six months of age to twelve years and for persons thirteen years of age and older. The Recommendations for the use of vaccine appeared in the August 11 and September 15 issues of the Center for Disease Control's Morbidity and Mortality Weekly Report. Copies are enclosed.

In addition, I convened a conference in Washington on July 26 which brought together influenza and immunology experts from around the country to consider our proposed immunization program and the preliminary findings of the Department's technical advisory committees. That conference concluded that the vaccine trials had demonstrated that currently recommended dosage of this year's vaccine induced significant levels of antibodies in approximately 70–90 percent of the participants aged thirteen and above. Moreover, the conference concluded that side reactions with the recommended dosages were not statistically more frequent than those observed in control subjects who received a saline placebo. That conference also arrived at a consensus that the recommendations of the Department's technical advisory committee on dosage and on use were appropriate.

Based on the findings of both the July 26 conference and the recommendations of HEW's advisory committees, the Department has concluded that this year's flu vaccine is safe and effective against the three strains of influenza which have already caused disease in the United States.

Based upon the clinical trial data, the July

26 conference also concluded that the immediate side effects of the 1978–79 influenza vaccine are expected to be mild and infrequent in persons of any age group or health status. Again, based on the July 26 conference and the reports of the advisory committees, the Department has concluded that the benefits of influenza immunization—particularly for the high-risk population group for which flu shots have been recommended—far outweigh any potential risks.

(2) Full and complete information:

I enclose a copy of the information statement (consent form) which the States will provide to those receiving immunization in public programs. It summarizes the risks and benefits of vaccination based on the 1978 clinical trials and other data which have been accumulated in recent years.

(3) Identification of recent risks:

The enclosed information statement identifies and lists the potential risks of injury involved.

(4) (5) (6) Reporting requirements:

In my letter of August 16, 1978, I assured the Congress that three reporting requirements would be met during the coming flu season. We have established those reporting systems. We will provide the first report to Congress on the progress of the program on December 31, 1978. Our report will include information from the States on the number of individuals immunized, on the benefits the States estimate have been realized from the program, and on any serious side effects that are the result of immunizations provided by the programs.

We are proceeding to provide funds to the States to operate programs that will provide influenza immunization shots to those persons most likely to suffer serious complications if they become sick with influenza. In most cases, we anticipate that these shots will be made available to persons who seek them but who have not been able to afford protection in the past.

We will keep you informed of the progress of this important public health program.

Sincerely,

JOSEPH A. CALIFANO, Jr.

IMPORTANT INFORMATION ABOUT INFLUENZA AND INFLUENZA VACCINE, 1978–79

What is influenza ("flu")? It is an illness caused by influenza viruses. It generally affects people of all ages. Typically, people with influenza have fever, chills, headache, cough, and muscle aches and may be sick for several days to a week or so. Most people recover fully. A small proportion of cases are particularly severe, and patients may develop pneumonia or other complications. In some past epidemics, about one case out of every thousand was fatal. The risk of complications and death from influenza is highest for people with chronic health problems like diabetes; diseases of the heart, lungs, or kidneys; severe anemia; or chronic illness (or medications) which lower the body's resistance to infection. It is also high for older persons generally—particularly those about 65 years old or older.

Influenza viruses frequently undergo changes in their chemical makeup. These changes make it possible to catch influenza even though immunity (antibodies) may have been developed against previous strains of influenza. Thus, having had influenza or influenza vaccine in past years may not prevent getting influenza again.

Although influenza epidemics are unpredictable, some influenza occurs each year. In very large epidemics as much as ⅓ of the population have become sick and thousands have died.

Influenza vaccine: Influenza vaccine is composed of killed influenza viruses and is given by injection. The influenza vaccine to be distributed in the fall of 1978 has been updated to offer protection against three influenza strains which recently caused disease (A/USSR, A/Texas, B/Honk Kong). One shot should produce protective levels of antibody against these three strains in 68 to 89 percent of adults 26 years of age or older. Two shots about 1 month apart are necessary to achieve the same level of antibodies in people 6 months through 25 years of age. Influenza vaccine does not provide protection against other viral illnesses such as the common cold.

Who should get influenza vaccine? Because influenza is usually mild and most people recover fully, routine vaccination of healthy children and adults is not usually emphasized. However, people of any age with the chronic conditions described in the first paragraph, and the elderly, should consider vaccination each year because they are at a greater risk of complications or death if they catch influenza.

Possible side effects from the vaccine: The 1978–79 vaccine has been tested in more than 2,000 volunteers. There were no side effects from the vaccine in most people, although some had a sore arm for 2-4 days. Less than 4 percent of the people developed fever, chills, headaches, or muscle aches during the first 48 hours after vaccination. As is true with any vaccine or drug, there is a possibility that allergic or other more serious reactions or even death could occur.

[Continuation:]

Mr. Speaker, I now yield to my distinguished friend, the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I know of the gentleman's interest in assuring the best possible immunization program; all of us share his interest. Also, I certainly concur with the safeguards desired by my distinguished colleague, the gentleman from Michigan (Mr. DINGELL), and wish to note that the Secretary of HEW has agreed to these safeguards as well.

Mr. DINGELL. Mr. Speaker, I thank my distinguished friend, the gentleman from Florida (Mr. ROGERS), and I yield back the balance of my time.

Mr. Chairman, H R. 12370 is important legislation. The programs supported by the provisions of this bill are of critical importance to the health and welfare of all Americans. The majority of the health services programs extended by this legislation are designed to prevent illness (such as immunization) or to allow informed decisionmaking about one's own health status (such as home health care services) or to provide early diagnosis and treatment (such as hypertension programs or venereal disease control) before far more costly secondary or tertiary care may be needed. The cost-benefit ratios of such services are clear. H.R. 12370 offers a significant opportunity to lower the economic and social costs of disease as well as to lower the incidence of the specific diseases addressed.

Mr. Chairman, this is a measure which deserves the support of every Member of this body, and I urge its adoption.

Mr. CARTER. Mr. Chairman, I yield 5 minutes to my good friend, the distinguished gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. I thank the gentleman from Kentucky for yielding.

I wish that we had more of our friends here to discuss this important bill but because of the press of business, as we are closing out this session, to have an opportunity to express themselves on these House bills. It is unfortunate that these bills are not brought up during days of the regular session because there is so much money involved in them. There is so much of our basic budget that is involved in this health situation that we really should evaluate it much, much closer.

With this particular bill, I take definite exception. It is known as the health services amendments, but what we have done to increase the expenditures is overwhelming. For instance, the authorization for 1979 is $614 million. It goes to $819 milion in 1980, $932 million in 1981, for a total of $2.74 billion.

Just to listen to those figures does not mean much, but we have gone up 25 percent, 67 percent, and 90 percent more than we had in 1978. To add it up, if you look further at the appropriations and remember that the appropriations are going to follow 1 or 2 days from now, we ought to take a hard line on these authorizations. The appropriations have gone up 53.9 percent, 105 percent, and 133 percent. Appropriations have even risen more dramatically than the authorization levels. In other words, what we are talking about is, on these so-called health amendments, increasing these by something like 100 percent. It just does not make sense.

I certainly believe that everybody in America should choose the religion of their choice, but as I keep seeing these health bills come up, I cannot help but think that I wish Christian Scientists were as evangelistic as the Baptists, because we need more people in this country learning how to take care of themselves. We cannot do everything in the world through public medicine, and Congress is trying to. If we have not got people under one plan, we have them under another. As I understand it, the health and also in what they call the broad social income fields include one-half of the total budget. America is not going to be able to live under it. In other words, we talk about what we are doing to provide for people's health. What we are doing is providing for a nationalized state in America, and this has further impacts.

I was impressed with social security to hear that over in England they only get $50 a month. An annuitant gets $50 a month on social security. If we keep spending and spending and spending on health and every other thing we spend on, we will not be able to substantiate the social security reserves, the benefits for the older people of America. We are giving so much health to America that we will not be able to live in a country existing under this overspent economic situation.

I think this bill should be looked at very, very hard. I think we would do well when it comes up on the floor to only extend it 1 year and come back and appropriate the matter very carefully at a future date.

Mr. Chairman, it is a well-known fact that the giant bureaucracy of HEW lost some $7.4 billion last year through fraud, waste and abuse. This money can never be retrieved. Yet, Congress continues to pour vast amounts of dollars back into an agency that has a reputation for wasting the taxpayers' money. H.R.

12370, the Health Services Amendments of 1978, will provide a total of $2.704 billion for 13 ongoing HEW health programs. Hypertension programs will almost triple in expenditures, rising from $12.7 million in 1978 to $38 million in 1982. Family planning receives double its 1978 funding in 1981, increasing from $208.75 million to $408.4 million.

It is easy to see why our health problems are increasing. Deficit spending and higher taxes are enough to make anyone's blood rise, and this bill is a major example of Federal overspending. The authorization for fiscal year 1979 is $614.6 million; reaches $819.955 million in fiscal year 1980; and skyrockets to $932.306 million by fiscal year 1981 for a total of $2.74 billion.

In fiscal year 1978, the appropriations for these programs were $399.3 million out of an authorization of $484 million. The fiscal year 1979, 1980 and 1981 authorizations are approximately 25 percent; 67 percent; and 90 percent greater than the fiscal year 1978 authorization. The increases above the appropriation rise even more dramatically by 53.9 percent; 105.3 percent; and 133.5 percent in authorization levels for the same 3 years.

Mr. Chairman, it is interesting to see that those who call most loudly in the Interstate and Foreign Commerce Committee for cost control for the private hospitals found a way to take one health bill and divide it into two bills. This increased the spending level by $1.252 billion when they finished. The original bill, H.R. 10533, was divided during the committee markup when they found that so much money had been added on that it could not all fit into one piece of legislation. The single bill became 12370, which we are now discussing, and H.R. 12460, the Health Centers Amendments of 1978. The original bill contained authorizations of $3.436 million. Its offspring contain authorizations of $2.704 billion and $1.984 billion respectively, for a grand total of $4.689 billion.

Mr. Chairman, at a time when our Federal deficit has reached inconceivable proportions of $65 billion, Congress is discussing a bill which will spend 133 percent more 3 years from now. In light of HEW's ability to mismanage funds, we need to look harder at the effectiveness of its programs before we increase the agency's budget by such extraordinary amounts.

SEPARATE VIEWS OF MR. COLLINS OF TEXAS, H.R. 12370, HEALTH SERVICE AMENDMENTS OF 1978

The purpose of these separate views is not to address the efficacy of the various programs extended by H.R. 12370 Health Service Amendments of 1978. Though the programs are far from being immune to justifiable criticism, we propose only to draw attention to the excessive authorization levels contained therein.

We are not impressed with the sophistry of those who hew to the line that because this is not an appropriation bill the high figures in it represent merely enlightened levels of expectation. On the contrary, authorizations are supposed to be reasonable judgments pegged to budgetary realities if they are to serve any meaningful purpose as guidelines for subsequent appropriations. Further, in consideration of the enormous fiscal year 1979 deficit which looms over us, we have a special obligation to be fiscally vigilant. Unfortunately, the amount of dollars in H.R. 12370 represents an exercise in economic fantasy.

Specifically, this legislation provides for authorizations for fiscal year 1979 of $614.6 million, for fiscal year 1980 of $819.955 million, and for fiscal year 1981 of $932.306 million. Furthermore, the bill even has some fiscal year 1982 authorizations of $338 million for hypertension programs and health incentive grants. Therefore the total authorizations in H.R. 12370 are $2.704861 billion (see attached table).

By contrast, the fiscal year 1978 authorization was $484.68 million and the fiscal year 1978 appropriation was 81.5 percent of that or $399.3 million. Hence, the fiscal year 1979, fiscal year 1980 and fiscal year 1981 authorizations are approximately 25.5 percent, 67.5 percent, and 90.4 percent respectively greater than the fiscal year 1978 authorization. Further, the fiscal year 1979, fiscal year 1980, and fiscal year 1981 authorizations exceed the fiscal year 1978 appropriation by about 53.9 percent, 105.3 percent, and 133.5 percent, respectively.

In accord with the aphorism that some times a page of history is worth a volume of logic, an examination of the background of this legislation is particularly instructive. Legislation addressing the programs embodied in this bill was introduced on January 25, 1978 by Representative Paul Rogers as H.R. 10553. Hearings were held on H.R. 10553 on February 21, 22, and 23, 1978 before the Subcommittee on Health and the Environment. Afterwards, in consideration of the virtually certain prospect that mark-up would result in a bill of expanded scope and much higher authorizations, the decision was made to spin out the programs which it encompassed into two separate committee prints. Both of these prints were ordered reported from the Subcommittee as clean bills on April 24, 1978. One of these bills was H.R. 12370, Health Services Amendments of 1978, which was introduced on April 25, 1978. The other bill was H.R. 12460, Health Centers Amendments of 1978, which was introduced on May 1, 1978.

The original bill, H.R. 10553, contained authorizations of $3.4364 billion (see attached explanation). However, its progeny, H.R. 12370 and H.R. 12460, have authorizations of $2.704861 billion and $1.9843 billion, respectively, for a grand total of $4.689161 billion. Thus, the fiscal sensitivities of the House are protected by consideration of the programs in two separate bills whose sum is $1.252761 billion more (36.5 percent greater) than that contained in their precursor.

We cannot resist the temptation of pointing out that it is bizarre that some of the more ardent proponents of governmental controls over escalating health care costs in the private sector are devoted, paradoxically, to the vastly increased health spending targets in this bill.

Lastly, we must confess to much skepticism about the ability of the Department of Health, Education, and Welfare to wisely manage the increasingly vast sums which we entrust to it. Indeed, that department was obliged recently to announce that it had lost at least some 6.3 to 7.4 billion dollars last year alone through fraud, waste, and abuse.

H.R. 12370.—HEALTH SERVICES AMENDMENTS OF 1978, FISCAL DATA

[In millions of dollars; fiscal years]

Programs—Public Health Service Act	1978 authorization	1978 appropriation	1979	1980	1981	1982
312(a)(5)—Home health services (demonstration)	8	5	14.0	16.1	18.5	
312(b)(4)—Home health services (training)	4	1	2.0	2.5	3	
313(g)—Hypertension programs [1]				28.8	33	38
314(d)(7)(A)—Formula grants to States	106.75	90	103.5			
314(d)(7)(B)—Hypertension programs	12.68	11	25.0			
314(d)(6)(A)—Health incentive grants				250	275	300
315(g)—Lead-based paint poisoning prevention	14	10.25	14.0	16.1	18.5	
317(g)(1)(A)—Immunization programs	23.5	23	51.0	40.25	46.28	
317(g)(1)(B)—Rodent control	14.5	13	15.0	17.3	19.9	
317(g)(1)(C)—Other disease control	5	0	5.8	6.7	7.7	
318(b)(2)—VD research, demonstration, training	7.6	0				
318(c)(2)—VD surveillance, casework	43.5	32				
318(d)(1)—Venereal disease control [2]			45.0	53	62	
1001(c)—Family planning services	136.4	[3] 135	200.0	230	264.5	
103(b)—Family planning training	3		3.1	3.6	4.1	
1005(b)—Family planning information and education materials	.6		.7	.805	.926	
1004(b)(1)—Family planning research	68.5	65.3	105.0	120.8	138.9	
1101(b)—Genetic disease programs	30	7.75	20.0	23	26.5	
1121(b)(5)—Sudden infant death syndrome	3.65	3	3.5	4	5	
1131(f)—Hemophilia programs	4.55	3	3.5	4	5	
1132(e)—Blood separation centers	3.45	0	2.5	3	3.5	
Select Panel for the Promotion of Child Health			1.0			
Total	489.68	399.3	614.6	819.955	932.306	338

[1] Fiscal year 1978 authorizations and appropriations and fiscal year 1979 authorizations for hypertension programs were made under sec. 314(d)(7)(B).

[2] Beginning in fiscal year 1979, VD authorizations for research, demonstration and training; and surveillance and casework are combined into a single authorization (VD control).

[3] The fiscal year 1978 appropriation of $135,000,000 includes the services, training, and information and education materials authorizations.

EXPLANATION—H.R. 10553—HEALTH SERVICES AMENDMENTS OF 1978 (FORERUNNER OF H.R. 12370 AND H.R. 12460)

1. Programs extended for one year only (fiscal year 1979)

[In millions]

	1978	1979
(a) Comprehensive health service grants to States	$106.75	$103.5
(b) Hypertension	12.68	12.7
(c) Immunizations	23	35.0
(d) Rodent control	14.5	15.0
(e) Venereal disease research	7.6	8.7
(f) Venereal disease service	43.5	36.8
(g) Other disease control programs	5	5.8
(h) Family planning services	136.4	151.3
(i) Family planning training	3	3.1
(j) Family planning research	68.5	75.0
(k) Family planning education materials	$0.6	$0.7
(l) Genetic disease counseling	30	9.0
(m) Sudden infant death syndrome counseling	3.65	3.5
(n) Hemophilia treatment	4.55	3.5
(o) Home health services demonstrations	8	5.8
(p) Home health training	2	1.2
(q) Lead-based paint poison prevention	14	11.8
Total	483.73	482.4

2. Programs revised and funded for fiscal year 1980 through fiscal year 1982:

The items c, d, e, f, g above: and other preventive health services to be designated by the Secretary—

	Millions
Fiscal year 1980	$150
Fiscal year 1981	175
Fiscal year 1982	200

3. Adds to the program for Comprehensive Public Health Services a health incentive grants program. Funds will be provided under a formula arrangement—

	Millions
Fiscal year 1980	$250
Fiscal year 1981	275
Fiscal year 1982	300

4. The Community Health Centers program is combined with the Migrant Health program and procedural refinements included—

a. Community Health Centers:

	Millions
Fiscal year 1979	$315
Fiscal year 1980	375
Fiscal year 1981	450

(1978 authorization was $240 million.)

b. Migrant Health Centers:

	Millions
Fiscal year 1979	$40.0
Fiscal year 1980	45.5
Fiscal year 1981	52.5

(1978 authorization was $36.31 million.)

NOTE.—These new authorizations begin with the coming fiscal year.

5. Community Mental Health Centers allows starting a center with five basic services and a plan to phase in the rest. Mental Health Planning is integrated into overall Health Planning.

Authorizations, including those now in place for fiscal year 1978, are—

[In millions]

	1978	1979	1980	1981
Planning grants	$1.93	$1	$1	$1
Initial operations	38.89	30	35	40
Education grants	15	13	14	15
Financial distress	13.5	25	25	25

Note: These new authorizations begin with the coming year.

6. Rape Prevention Programs (authorized):

	Millions
Fiscal year 1978	$7.088
Fiscal year 1979	8.0
Fiscal year 1980	9.0
Fiscal year 1981	10.0

7. Provides grants for Mental Health Services which combines past support under Sec. 314(d) with planning money.

	Millions
Fiscal year 1979	$21
Fiscal year 1980	25
Fiscal year 1981	28

8. Totals—(in millions):

a. 1979—$935.4 (Items 1, 4, 5, 6, 7).

b. 1980—$929.5 (Items 2 through 7).

Figures for 1980 do not include future extensions of the Comprehensive Health Services detailed in Item 1.

c. 1981—$1,071.5 (Items 2 through 7).

Figures for 1981 do not include future extensions of the Comprehensive Health Services detailed in Item 1.

d. 1982—$500—two programs are extended through 1982 (Items 2 and 3).

e. Total for whole bill—$3,436.4. Assuming, however, that Item 1 costs remained at about $500 million for each of fiscal year 1980 and 1981, those years would cost $1,429.5 and $1.571.5 respectively, which added to 1979 total of $935.4 equals $3,936.4.

Mr. CARTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in the first place we do not spend half of our Nation's budget on health. The gentleman's statement is in error. But actually how could we better spend our money than to improve the health of our people throughout the country?

Let us just look at what our expenditures on health have done in the past few years. There was one terrible venereal disease many years ago that struck our country and caused a crisis. This disease is sometimes called "softening of the brain" or tabes dorsalis.

Through the use of drugs today and a massive program, that disease has almost disappeared from the face of the Earth. It was called Lues by physicians, and syphilis by others. This disease is almost gone. I am glad to see it gone, although as Dr. Osler said, it mimics almost every other disease and is an intriguing and interesting condition. It is surprising to know how many men of great stature in history are supposed to have had this dread disease; but a few years ago a cure was found for it and now one rarely sees the initial stages of Lues or syphilis any more.

Someone said there was a young man from Cathay
Who thought his Lues had all gone away
But now he has tabes and saber-skinned babies
And thinks he is Queen of the May.

Now we have obliterated this disease over the years. No longer will we see much congenital Lues, I hope, in the time to come.

Now, about health expenditures. Let us look at some other areas. I do want my distinguished friend, the gentleman from Texas, my good Christian friend down there, who is a deacon in one of the largest churches in the city of Dallas, to be on my side and on the side of good, against sickness and death. I would like just to remind the gentleman that by this legislation about which we are talking, 23 million people have been found to have hypertension, high blood pressure. That figure represents over 10 percent of the population of this country of ours. Through this program, 8 million cases of hypertension have been controlled. That means their blood pressure has been brought down to within normal limits. Not only that, there have been 6 million cases added to this list, which previous to this time had never been diagnosed. So by controlling hypertension or high blood pressure in 8 million people throughout our country, look at the vast savings this program brings to us. Look at what it would cost if those cases progressed, if each of these individuals had strokes and were hospitalized at $200 a day in a hospital and later on in a nursing home at $1,000 or $1,100 a month. We have saved millions and millions of dollars right here in one program. I expect we have saved the cost of this legislation this year.

I would like very much to clear the motes from the eyes of my good friends, so that they could really see the value of this legislation and be a help to their less fortunate brothers.

Now, in addition, the number of cases of measles or rubella, mumps, polio, has been greatly diminished. This legislation provides immunization for all these diseases, and we have already saved a great deal of money. For example, the national measles immunization program cost $108 million from 1966 to 1974. As a result of that program over $1 billion has been saved. We rarely see measles any more. That disease has almost disappeared, just as smallpox has almost disappeared from the face of the Earth. Through efforts like this, immunizations and vaccinations, this legislation has been and will continue to save money and improve health. We are spending a little to save a lot. How can we be penny-wise and pound-foolish in this important field?

Mrs. FENWICK. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I am happy to yield to the distinguished gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Chairman, I am impressed today, as indeed I was yesterday, with the good sense and clear explanation the gentleman from Kentucky (Mr. CARTER) has given us, but I am struck by the enormous job ahead of us.

It hardly seems possible that we would go to more than double in 1979 and 1980. It is more than 100 percent.

Is it possible that money can be wisely spent?

I notice there are more modest increases in 1981, as compared to 1980, but we are not talking about being penny-wise. We are talking about $319 million and going to $718 million, more than double. Why is that?

Mr. CARTER. That is because we have increased services and assistance, particularly to our State public health departments. The inflationary factor also helps to cause this increase.

Mrs. FENWICK. As far as I can see, the only new program is the health incentive grants, and they were apparently grants that were formerly made to the States in the past. That program gives us a new impact of $250 million, which does, of course, account for a lot of the increase.

Am I correct in thinking, therefore, that this $250 million would have been spent in some other program, and that, therefore, the jump is not as enormous as we might think, so that we can vote for this in good conscience?

Mr. CARTER. Mr. Chairman, I will assure the gentlewoman from New Jersey (Mrs. FENWICK) that she has, of course, touched on one of the greatest increases right there. That is $250 million for health incentive grants to provide for comprehensive public health services in every State. It is quite true, that is a large increase, but this also helps support preventive public health efforts which can result in saving costs over the long run. It builds on the current law's 314(d) programs which we have had for many years.

Mrs. FENWICK. Yes.

Mr. CARTER. Now, let us just think of this: I will refer my good friend, the gentlewoman from New Jersey, to the fact that we have found 23 million hypertensives, and of that number 8 million have had their diseases controlled.

Mrs. FENWICK. I know. The gentleman told us that yesterday, and I am very impressed.

Mr. CARTER. Mr. Chairman, I would emphasize to the distinguished gentlewoman from New Jersey that that in itself shows the great benefits received as a result of this expenditure, even at the increased level.

Mrs. FENWICK. Mr. Chairman, I notice that the amount for hypertension is modest, although it goes from $12 million to $25 million. It is double. But it is quite possible the big advances that have been made could be built upon in some more prudent way.

One big jump, for example, comes in the family planning, and another one comes in the immunization program. That is more than double. We had a very unfortunate experience with the flu vaccine, and I wonder if it is wise to jump in so heavily in that field.

Mr. CARTER. Actually we are not jumping in heavily in that field.

Mrs. FENWICK. It is more than double.

Mr. CARTER. In fact, the Appropriations Committee has approved $8.2 million for 1978 and our bill authorizes $16 million for a voluntary high-risk influenza program in fiscal year 1979.

Mrs. FENWICK. It goes to $23 million.

Mr. CARTER. Actually that $16 million is included with all immunization programs for a total of $51 million in 1979. I understand the Senate bill has omitted funds for influenza which I do not think is correct.

Mr. ROGERS. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I am happy to yield to my distinguished friend, the gentleman from Florida.

Mr. ROGERS. Mr. Chairman, of the $50 million, $35 million goes for the childhood immunization program. This is for children, for instance, when they have to go to school.

These programs have been very effective in doing away with polio, with measles, with the mumps, and other diseases. These programs have to be carried on, otherwise these diseases would recur. I am sure the gentlewoman from New Jersey (Mrs. FENWICK) is supportive of these programs.

Mrs. FENWICK. Absolutely.

Mr. ROGERS. So I do not think we are being unreasonable in these costs.

Mrs. FENWICK. No, I am not saying that. I am just asking this question:

Can we safely absorb such very large increases in one year?

I notice that the amount for family planning is going to go up by $100 million. I am in favor of family planning, but I am wondering if that can be properly absorbed in a short time.

Mr. ROGERS. Yes. As a matter of fact, two committees worked on this. The committee that has gone into the problems of overpopulation made a strong report, and its members came to testify before our committee on the need to do something in this field.

Here is the reason for it: we are trying to deal with the adolescent problem as well.

Mrs. FENWICK. Yes.

Mr. ROGERS. We sometimes forget, if the gentleman will yield further and if I may continue for just one moment, what we are now spending on welfare programs to take care of those households where the adolescent has had a child.

Mrs. FENWICK. I know.

Mr. ROGERS. And it is $4 billion—not million—$4,650,000,000.

Mrs. FENWICK. I know.

In my State, we had a 14-year-old delivered of her third child, and I know the problem.

Mr. ROGERS. So $200 million is nothing compared to the cost you have to spend on welfare. And we can avoid those by doing this.

Mrs. FENWICK. I would like to ask the chairman this question: Am I correct in thinking—I hope I am—that this $250 million which is here shown for 1980, a new program, Health Incentive Grants, would that otherwise have been spent elsewhere?

Mr. ROGERS. Actually, this is replacing 314(d).

Mrs. FENWICK. That is right.

Mr. ROGERS. A current program.

Mrs. FENWICK. I see.

Mr. ROGERS. So it is not a new program as such.

Mrs. FENWICK. New under this category?

Mr. ROGERS. Under this category, that is correct.

Mrs. FENWICK. I thank the gentleman.

Mr. COLLINS of Texas. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I am pleased to yield to the distinguished gentleman from Texas.

Mr. COLLINS of Texas. Mr. Chairman, as I understand it, we are talking about family planning in this.

Mr. CARTER. Yes.

Mr. COLLINS of Texas. It would seem to me that it is time that this Congress recommended to these unwed mothers with these large families of children that they start combining their efforts and let one mother stay at home and take care of three families of children and let the other mothers go to work. I am disturbed and appalled about these unwed mothers who continue to have larger and larger families. I think part of the problem is that they have too much time to spend sitting around home.

Mr. CARTER. I would like to say that certainly I deplore the fact that some women are unmarried and have illegitimate children. I regret it as much as the gentleman from Texas does. Actually, the gentleman makes an excellent argument for family planning, for giving to these people some method to prevent conception so that they will not have children. This is where we are failing today, and that is why the expenditure is increasing. We are trying to control pregnancies in teenage children and to control pregnancies in others. Certainly we deplore the fact that these pregnancies occur and are increasing.

Mr. ROGERS. Mr. Chairman, will the gentleman yield?

Mr. CARTER. I yield to the gentleman from Florida.

Mr. ROGERS. I thank the gentleman for yielding.

Mr. Chairman, I think the concern of the gentleman from Texas (Mr. COLLINS) would compel him to support this bill strongly. Where there are large numbers of unwanted children because young mothers have not been counseled or have not been encouraged to do family planning, then the costs do mount in the welfare program, which is what the gentleman is complaining about. He says, "Get them out to work." That is welfare. That is not this program. What we are trying to do here is prevent unwanted pregnancies which do contribute to the welfare rolls.

Mr. CARTER. Mr. Chairman, I thank the distinguished gentleman from Florida.

And I am pleased to see that the gentleman from Texas (Mr. COLLINS) is alarmed and aroused at this terrible increase in the pregnancy rate, particularly among our teenage children. I am glad to see he is interested in this, and I am sure he will be willing, because of that, to do something to stem the tide,

to stop pregnancies by contraceptive methods. I think, surely, the gentleman would want to do that. By spending just a little money we will save the country a whole lot and it will save these mothers from having illegitimate children.

Mr. COLLINS of Texas. If the gentleman will yield further, I have been told that in China they are encouraging their families to remain two to a family, and that includes wedded mothers. But in regard to American unwed mothers, one reason they are successful in China is because they keep people busy and their work is hard. I understand China encourages people to work 10 hours a day, 6 days a week. These American adolescent children and unwed mothers should not spend idle time at home waiting for men friends. In China they would have kept them busy so that they would not have time for these recreational activities leading into pregnancy.

Mr. CARTER. If I may reclaim my time to respond to that, I think China is a wonderful country. It is a Communist country, of course, but it is quite a great country.

I am surprised to see my conservative friend in such high praise of this area of the world. Of course, we all have our opinions. As far as I am concerned, I am a great believer in this democracy of ours.

Mr. COLLINS of Texas. I could not agree more in opposition to communism, but even from the Communists we can learn something. I hope we have learned something here, and that is the benefit of hard work. People on welfare should go to work.

I also wanted to talk about this matter of vaccination shots, as the Federal Government is going more and more into it. The gentleman mentioned smallpox. As I understand it, smallpox vaccinations started under private medicine. My mother took me down to our private doctor for it, and if he could not do it, the local city doctor did it. The only time I have seen Congress get into a big national drive was on this crazy flu program where we had everyone vaccinated for a disease that did not exist and still does not exist. The program killed a lot of people and the U.S.A. probably has $400 million in claims pending.

Mr. CARTER. I have to reclaim my time in order to respond to the distinguished gentleman. I would say that all the deaths that were due to this immunization program against the flu epidemic occurred, not as a result of the immunization itself, but rather because of Guillain-Barré. We really do not know the cause of the Guillain-Barré syndrome which took away many of these people. We know it is associated with virtually any immunization.

I want to say further that the gentleman is greatly wrong about the immunization and the disappearance of smallpox. That was not done through private physicians. That was done through the county health officers throughout the country. I was one of them, and the children came there and they were not charged a cent for care. That program was carried out all through our country, in every county and every State. As a result, we have had only one or two cases this year, and they have occurred because of mishaps in the laboratory. That disease is gone, and the money which was used for immunization—or vaccinations, in this case—was well spent.

I want to tell the gentleman this: If we do not provide funds for influenza, we are liable to have, or we may well have, a serious epidemic of one of the serious types of flu which are bound for our country now. I do not want to take a chance on that.

Mr. COLLINS of Texas. I am so proud to hear the gentleman from Kentucky say that he was a county health officer, because time and again we find that the best government which occurs in this country is at the local level, the county level, the city level. The biggest ideas of expenditures and grandiose dreams of regulations occur at the Federal level. Washington is too confused about the health of America. The more we decentralize Government, the better off we would be in the United States.

Mr. CARTER. I would agree with the gentleman, and that is what we are doing with this money. We are putting it back to the States so that they can use it at the county level, so that county health officers and nurses can use it. I am delighted that the gentleman believes in this concept, and I trust that he will vote for the bill.

Mr. Chairman, I enclose my prepared statement on this legislation for the RECORD.

Mr. Chairman, I support this legislation, H.R. 12370, the Health Services Amendments of 1978.

This proposal would extend for 3 years authorizations for the following important health services programs:

Family planning; venereal disease; lead-based paint poisoning prevention; home health services; genetic diseases; and other disease control programs.

This bill also revises the existing program of comprehensive public health services grants to the States—after a simple 1-year extension.

The new program significantly upgrades the role of State and local public health authorities—and provides incentives for increased State and local participation in public health efforts.

It should do a great deal to enhance the activities and responsibilities of our Nation's public health departments which I regret have gone downhill over the years.

Under this new "health incentive grant" proposal, all which is authorized for 3 years, States would receive between $1 and $1.50 per capita to assist in meeting the costs of providing comprehensive public health services.

Also, after a simple 1-year extension, this bill would revise the hypertension program into a project grant program to the States. The major effect of the change would be to increase accountability as to how hypertension funds are spent.

Mr. Chairman, as you know, approximately 23 million Americans have hypertension, and many of them do not even know they have it.

This legislation continues authority to help screen and identify those individuals with hypertension and refer them for appropriate treatment.

Only in very exceptional cases, where all other potential sources of funds have proven unavailable, would this program pay for the costs of treatment.

Mr. Chairman, this legislation also extends for 3 years family planning programs and population research.

As a sponsor of the original family planning legislation, I can testify to the importance of this program.

Over the years, because of the availability of voluntary family planning services, many, many unwanted births have been averted, and many social and emotional costs have been avoided.

But in addition to social, emotional, and health benefits derived from effective family planning. There is also an economic benefit.

It has been estimated that for every Federal dollar invested in family planning in a single year, almost $2 in Government expenditures is saved the following year by avoiding the costs associated with medical care and public assistance for unwanted pregnancies and births.

Mr. Chairman, this year we have amended the family planning authority to include a focus on adolescents to address the problem of teenage pregnancies.

We have also included an emphasis in the committee report on increased funding for population research including the problems relating to sterility and fertility.

I strongly support continuation of this program.

Finally, this bill includes authority for HEW to assist the States in funding an influenza immunization program for individuals at high risk.

Under this program, about 9 million individuals will be reached in addition to another 9 million who would be reached under existing State programs.

I believe this authority is well worth the $16 million we have authorized, since it is a preventive effort, with benefits clearly outweighing the risks. And, we have only authorized funds for fiscal year 1979.

Mr. Chairman, in conclusion, I strongly support these health service programs and I urge that H.R. 12370 be adopted.

Mr. ROGERS. Mr. Chairman, I yield such time as he may consume to the distinguished chairman of the full Committee on Interstate and Foreign Commerce, the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I rise in support of this bill. I think it is a very much needed bill, designed to provide preventive health services. This is where we should have been years ago. We are coming to it now. If we prevent the disease, we prevent the costs that go with it and the misery and anguish associated with it.

I would like to say to my good friend, the gentleman from Texas, that I think that this is money well spent. I think the time has come to strengthen preventive medicine all over America.

It reminds me of a story of the city council that argued about a great pit which was in their city and every year many people would fall into it. They argued about whether they would get an ambulance to pick them up and take them into the hospital, or whether they would build a fence to keep them from falling over. Certainly, it is more reasonable to believe that they would build a fence.

That is what we are trying to do here, build a fence to keep people from falling over and getting into serious trouble.

I think the greatest Nation on earth can certainly make an effort to protect those who cannot protect themselves, and make a better way of life in this land.

Mr. Chairman, I wholeheartedly endorse this legislation because it provides support for the continuation of vitally needed preventive health services programs.

The major programs of H.R. 12370 have been approved by Congress before, and they deserve our continued support. They have proved to be successful.

The health services programs extended by this legislation are designed to prevent illness, to allow informed decisionmaking about one's own health status, and to provide early diagnosis and treatment before far more costly care may be needed. Clearly the advantages of such a preventive approach are apparent.

I urge all Members to join me in supporting this important legislation.

Mr. Chairman, I would like to say that I commend the subcommittee chairman (Mr. ROGERS) for the diligent and hard work he has put in through the years in bringing the health care of this Nation to the point that it is today, and to pay tribute to my friend from Kentucky (Mr. CARTER) because I think that he certainly has done a great job working in teamwork with Mr. ROGERS in trying to assure a healthier America. He is a learned man, a kind man, a compassionate man.

The gentleman from Texas is also a kind, learned, and compassionate man. I have known him since he has been in Congress. I must reemphasize, however, that this is where our money ought to be—in prevention. This is exactly what this bill does.

Again I want to pay tribute to the gentleman from Kentucky, Dr. CARTER, and the gentleman from Florida, Mr. PAUL ROGERS.

Mr. ROGERS. First may I say I appreciate the kind comments of the chairman. He has been a great chairman to work with over the years. I think the health of the Nation has benefited from the legislation brought forth from his committee.

Mr. Chairman, I yield to the gentleman from Connecticut (Mr. MOFFETT).

Mr. MOFFETT. Mr. Chairman, I appreciate the gentleman yielding.

I had not planned to speak on this bill and I will not speak on this bill except to say that sitting here I realize the gentleman from Florida is perhaps managing his last batch of bills, if I am not mistaken. Is that correct?

Mr. ROGERS. Yes.

Mr. MOFFETT. I am struck by how much this Member will miss the gentleman from Florida on the committee, as I am sure all Members will miss him. We have benefited greatly from his leadership. I feel extremely sorry that so many of our Members are retiring, but particularly the gentleman from Florida who has been a leader especially for the younger Members on the Commerce Committee and throughout this Congress, and he has joined with us on many occasions, as has the distinguished chairman of the full committee, to fight for the consumers and policies that are right.

I want to extend best wishes to the gentleman.

Mr. ROGERS. I thank the gentleman.

Mr. CARTER. Mr. Chairman, will the distinguished gentleman yield?

Mr. ROGERS. Certainly, I yield to the gentleman from Kentucky.

Mr. CARTER. Mr. Chairman, as I see it, this may well be our last discussion in general debate on any legislation coming before the House. I want to take this opportunity to say that it has been an honor and a pleasure and a high privilege to serve with the distinguished gentleman from Florida, who is a congenial and learned gentleman, who has at heart the health of the American people. Just to have worked with him and to have had a relationship which was not fettered by political ties, but rather was guided by the desire to help the people in our country has been so rewarding. I am thankful, as well as for having had the opportunity to serve as the ranking member of the subcommittee with the distinguished chairman.

Furthermore, I want to commend the chairman of the full committee, who has been kind to me over the years and been such a good friend all the way, the tremendously good man from the great State of West Virginia (Mr. STAGGERS).

I thank the distinguished gentleman for yielding.

Mr. ROGERS. I thank the gentleman for his kind remarks. He knows I reciprocate the feeling he has expressed, because he has been a stalwart for these great programs which I think are helping and have helped the American people. I thank him for his leadership and willingness to stand up and speak out for things that he believes in and knows to be right. It has been most encouraging for us, not only for me but also for the Congress, and I salute the gentleman.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from Kansas.

Mr. SKUBITZ. Mr. Chairman, I thank my distinguished friend for yielding. I would say to the gentleman from Florida that, like old soldiers, Congressmen never die; they just sort of fade away.

But, Mr. Chairman, I do not think that PAUL ROGERS will fade away. He has initiated and carried through the Congress of the United States so much legislation for the benefit of mankind and for the benefit of our people that I feel that, although no material monument may be raised for you, Paul, in this city, or any other city, that there is and will be a monument to you in the hearts of the people of this country who have benefited and will benefit because of the legislation you have sponsored and carried through this House and the Congress of the United States which was signed by the President of the United States.

Mr. ROGERS. Mr. Chairman, I thank the gentleman from Kansas (Mr. SKUBITZ) for his most generous and kind remarks. I know the gentleman from Kansas also is leaving. As he says, we are both about to fade away, but certainly the great work he has done here will always stand in our memories, as well as his willingness to consider and work for programs that have benefited this Nation. The gentleman has performed a great service for the Congress and for the country and we wish him the very best.

Mr. CARTER. Mr. Chairman, if the distinguished gentleman from Florida (Mr. ROGERS) will yield further, the gentleman from Kansas (Mr. SKUBITZ) over the years has been a tremendously good friend of ours and a supporter of those things which are right for this great country. A strong friendship has existed between the two of us over the years and I am proud of it. It has been my good fortune to have traveled with him in various parts of the world, also even where one of his ancestors it is said was under the British Parliament one time—the name of the gentleman was Guy Fawkes—and I believe he attempted to blow up the Parliament but, of course, Joe has no such intentions. He is a very fine man. It has been a great privilege to have served with him.

Again, I thank the gentleman for yielding.

● Mr. STAGGERS. Mr. Chairman, I wholeheartedly endorse this legislation because it provides support for the continuation of vitally needed preventive health service programs.

The major programs of H.R. 12370 have been approved by Congress before, and they deserve our continued support. They have proved to be successful.

The health services programs extended by this legislation are designed to prevent illness, to allow informed decisionmaking about one's own health status, and to provide early diagnosis and treatment before far more costly care may be needed. Clearly the advantages of such a preventive approach are apparent.

I urge all Members to join me in supporting this important legislation.●

Mr. STOKES. Mr. Chairman, I rise in support of H.R. 12370, the Health Services Amendments of 1978, which would extend authorization of appropriations for 3 fiscal years for several very important and very necessary public health programs. H.R. 12370 would revise and amend the Public Health Services Act and related health laws to extend programs of financial assistance for delivery of health services.

Mr. Chairman, this bill is essential to the maintenance of Federal effort in the health services delivery area. It revises and extends expiring grants to States for comprehensive public health services; disease programs, including immunization, venereal disease control, rodent control, and lead-based paint poisoning

prevention; hemophilia programs; home health care; family planning programs; and genetic disease programs. Amendments are also made to the emergency medical services programs.

Among the improvements that this bill presents to the American people, is the creation of a new program that provides health incentive grants designed to provide incentives to State and local governments to increase their own support of public health programs.

This bill establishes an applied technology program for genetic diseases which includes disease surveillance, epidemiologic assessment to determine the need for specific programs and to provide assistance in program management techniques and laboratory technology. It authorizes a 1 year program of voluntary high-risk influenza immunization.

It also increases funding levels for family planning services and research, especially services to help couples with infertility problems, and adolescents.

Mr. Chairman, probably the most controversial aspect of this bill deals with title 10, the principle funding source for the family planning program. Many claim that this part of the legislation condones and even authorizes money for abortions. Quite to the contrary. There is no evidence that money from title 10 has ever gone to the funding of abortions.

No one prefers abortion as an end. Title 10 goes straight to the source of the problem, working to prevent the need for an abortion. These funds are used to support preventive family planning, avoiding pregnancy when children are not wanted.

Mr. Chairman, I rise in support of H.R. 12370 because I believe that these programs have worked in the past and will continue to work. From these programs a method of detecting hypertension was developed. Hypertension affects 23 million young and old citizens. Through this detection method we have been able to control the disease in 8 million, diminish the number of strokes by 20 percent and heart attacks by 10 percent.

Because of these programs tetanus, diptheria, and whooping cough have been practically eliminated. Typhoid is practically eradicated and by 1982, according to Joseph Califano, Secretary of the Department of Health, Education, and Welfare, through proper immunization, measles will have disappeared from the United States.

These programs are very important to the health and welfare of our Nation. I urge my colleagues to join me in supporting the Health Services Amendments of 1978. These funds are essential to State and local governments to supplement their funds for comprehensive public health services.●

Mr. OTTINGER. Mr. Chairman, as a member of the Subcommittee on Health and the Environment, I rise in strong support of H.R. 12370, the Health Services Amendments of 1978, as reported by the Commerce Committee. This legislation reauthorizes a variety of public health services and its enactment is essential if these services are to continue.

Among the provisions of this legislation is the extension of the National Genetic Diseases Act. This legislation, originally enacted in 1976, provides for a voluntary national program of research, health services, such as testing and counseling for the diagnosis, control, and treatment of genetic diseases, and for information and education programs with respect to genetic diseases.

I am well aware of the vital importance of this legislation to millions of Americans. I have met with Mrs. Doris Tulcin, national president of the Cystic Fibrosis Foundation and a resident of my congressional district, to discuss the needs of children with cystic fibrosis and their families. In addition, the headquarters of the National Foundation March of Dimes is located in White Plains, N.Y. Both of these groups are deeply involved in genetic services and have written to all Members of Congress to point out the urgent need to enact H.R. 12370.

According to the Cystic Fibrosis Foundation, more than 12 million Americans suffer the consequences of disease due wholly or partly to defective genes or chromosomes, and at least 40 percent of all infant mortality results from genetic factors.

In addition, many forms of blindness, deafness, and crippling disorders are passed through the genes from one generation to another. It is crucial that we realize that inherited diseases involve the whole family. In some cases these diseases may strike multiple members of a family simultaneously inflicting terrible financial and mental burden.

In many cases, heredity diseases are susceptible to early detection and treatment. This can improve not only the life of those afflicted, but also will allow parents at risk to bear healthy children. I firmly believe that all persons in need should have access to genetic services. And I urge all Members of the House to support this vitally needed legislation.

● Mrs. SCHROEDER. Mr. Chairman, I rise in support of H.R. 12370, the health services amendments. In particular, I wish to express my support for section 5, the family planning provisions of the bill.

Title X programs are one of the true success stories in Federal health planning. They have provided millions of women—especially women of moderate means—with valuable counseling and family planning services that might otherwise be unavailable. The success of title X is based on preventive medicine: by offering accurate birth control information and alternatives, the program enables women to decide how they can best care for themselves and their children.

Given the success of this program, I am surprised to hear all the fuss and furor about the bill. A vote for title X is really a vote against abortion. By offering family planning information, title X may prevent unwanted pregnancy—and so, eliminate the need for abortions.

Title X language is quite clear: no money is to go to any program which encourages abortion. Since its initial enactment in 1970, the title X program has contained the following prohibition:

Section 1008. None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

So we have a program which not only provides alternatives to abortions, but which expressly prohibits abortion as a method of birth control or family planning.

The House has voted several times this session to limit the Federal role in providing abortions. That is all the more reason to support title X. We cannot denounce abortion on the one hand, removing it as an option for women, and at the same time fail to provide counseling and other services which will prevent unwanted pregnancies. To do so is to turn our backs on the women of this country: We expect women to regulate their pregnancies, and then deny them the means to do so.

Title X counseling is especially important for young women, who are most likely to be recipients of misinformation, and who, statistically, have more than their share of unwanted pregnancies. The numbers here are startling: Each year, more than 1 million teenagers become pregnant. Title X addresses itself to this problem by emphasizing family planning for adolescents. While not condoning or encouraging teenage pregnancy, the program faces up to the problem in a responsible fashion, and provides a means of curtailing its frequency.

In short, in title X, we have a program which has proven its value to the women and families of this country. The committee version of title X services is a good one, and it should pass without amendment.●

● Mrs. COLLLINS of Illinois. Mr. Chairman, I rise in support of H.R. 12370, Health Services Amendments of 1978, to impress upon my colleagues the urgent need for this very important 3-year, $2.7 billion authorization for grants to Government and private health agencies for a variety of public health programs which support family planning services plus detection, treatment, prevention and research programs for hypertension, immunization for childhood diseases and flu, hemophilia, venereal disease, rat infestation, and other public health problems.

Section 5 of H.R. 12370, formerly known as title X of the Public Health Service Act, provides for a 3-year extension of the title X family planning program and for authorization levels of $200 million for services of this nature and $105 million for human reproduction and population research. If funds are authorized and appropriated at these levels, the family planning clinic network will be able to expand services to an additional 900,000 low and marginal income women and teenagers. Further, the national research program will be able to step up its search for safer, more effective and more acceptable methods of contraception.

As a member of the Select Committee on Population, I participated in 9 days of hearings that were held last February and March during which all aspects of the title X program were carefully considered. The testimony received by the committee members covered all points of view on the many sensitive

issues involved and convinced my colleagues and myself that title X is certainly one of the most beneficial and cost-effective Federal health programs

The family planning program is based entirely on voluntary participation and allows participants to choose from a variety of effective methods including "natural" family planning. The program's purpose is humanitarian; it will help couples achieve the number and spacing of children that will allow them to provide each of their children with the love and support he or she deserves. Mis-timed and unwanted pregnancies have been associated consistently with lower educational attainment among women, a higher probability of divorce among married couples and a greater likelihood of economic poverty and welfare dependence. Since its creation in 1970, the Federal family planning program has been of invaluable assistance in helping couples avert 1.1 million unwanted pregnancies between 1970 and 1975. In my view, a vote for this bill is a vote against abortion. Family planning is the only national program which will actually prevent the condition which could lead to a request for abortion.

As my colleagues are aware, H.R. 12370 was brought to the floor several weeks ago under suspension and failed to obtain the necessary two-thirds majority required under this procedure. Although some have objected to this legislation because of its price tag I believe H.R. 12370 is actually an economy measure because the programs included in this bill will help prevent more serious—and therefore, more costly—medical conditions. Deaths from hypertension, for example, has dropped by 34 percent as a result of the ongoing hypertension program.

Mr. Chairman, although there have been spectacular advances in the provision of family planning services to low-income women and teenagers since 1970, there is still a substantial gap in meeting the needs of these two groups. For example, 250,000 to 300,000 married women each year have unwanted births—a disproportionate number of these are low and marginal income; one million women younger than age 20—10 percent of all teenage women—became pregnant each year and 600,000 give birth; and, nearly 1 million couples are infertile and unable to have the babies they want. With this in mind, I advocate expeditious passage of this invaluable legislative remedy.●

Mr. ROGERS. Mr. Chairman, I have no further requests for time.

Mr. CARTER. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. ROGERS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

Mr. ROGERS. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. EVANS of Colorado) having assumed the chair, Mr. MURTHA, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee, having had under consideration the bill (H.R. 12370) to amend the Public Health Service Act and related health laws to revise and extend the programs of financial assistance for the delivery of health services, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the subject of the bill just under consideration, H.R. 12370.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

GENERAL LEAVE

Mr. LIVINGSTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my earlier announcement of the 77th birthday of our beloved former colleague, the Honorable F. Edward Hébert.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

PERMISSION FOR MANAGERS TO FILE CONFERENCE REPORTS ON H.R. 12467, S. 2570, AND H.R. 7577

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file the conference reports on the bills H.R. 12467, Comprehensive Rehabilitation Services Amendments of 1978; S. 2570, Comprehensive Employment and Training Act Amendments of 1978; and H.R. 7577, Economic Opportunity and Community Services Amendments of 1978.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 12250, BOUNDARY WATERS CANOE AREA WILDERNESS

Mr. UDALL. Mr. Speaker. I ask unanimous consent to take from the Speaker's table the bill (H.R. 12250) to designate the Boundary Waters Canoe Area Wilderness, to establish the Boundary Waters Canoe Area National Recreation Area, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. ASHBROOK. Reserving the right to object, Mr. Speaker, I wonder whether I could ask my colleague whether all the diverse interests from Minnesota have been contacted with respect to this matter.

Mr. UDALL. If the gentleman will yield, Mr. Speaker, I understand that the objection made yesterday has been withdrawn. There was some objection by the Minnesota delegation. I was advised, however, that it has been withdrawn.

I did show this to my colleague, the gentleman from Minnesota (Mr. OBERSTAR), who is on our side, part of the leadership on our side.

Mr. LIVINGSTON. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Louisiana.

Mr. LIVINGSTON. Mr. Speaker, I had interposed the objection yesterday. I have not been in touch with members of the committee this morning, and until I am able to do that, I will have to interpose an objection.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I talked with Members on the other side, and my understanding is that there is now no objection from the gentlemen who lodged the objection yesterday.

Mr. LIVINGSTON. Mr. Speaker, if the gentleman will yield further, the gentleman assures me that there are no objections?

Mr. VENTO. From that source, that is correct.

Mr. LIVINGSTON. Mr. Speaker, in that event, I will not object.

Mr. ASHBROOK. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona? The Chair hears none, and, without objection, appoints the following conferees: Messrs. PHILLIP BURTON, UDALL, KASTENMEIER, SEIBERLING, VENTO, SKUBITZ, and SEBELIUS.

There was no objection.

DIRECTING THE SECRETARY OF THE SENATE TO MAKE CORRECTIONS IN ENROLLMENT OF S. 2640

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 110) directing the Secretary of the Senate to make corrections in the enrollment of S. 2640, and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 110

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 2640), to reform the civil service laws, the Secretary of the Senate shall make the following corrections:

(1) In section 101(a), in the proposed section 2301(b)(9)(A), insert "any" before "law,".

(2) In section 101(a), in the proposed section 2301(b)(9)(B), strike out "or" the first place it appears.

(3) In section 101(a), in the proposed section 2302(a)(2)(C), insert a comma after "Courts".

(4) In section 101(a), in the proposed section 2302(b)(1)(C), strike out "by" and insert "under".

(5) In section 101(a), in the proposed sec-

tion 2302(b)(8)(A), strike out "law or" and insert "law and".

(6) In section 101(a), in the proposed section 2303(a), insert a comma after "such authority" and insert "(A)" after "section 2302(a)(2)".

(7) In section 101(a), in the proposed section 2303(b), insert "such" before "a personnel action".

(8) In section 101(a), in the proposed section 2305, strike out "(78 Stat.)." and insert "(78 Stat. 168; 50 U.S.C. 831–835).".

(9) In section 201(a), in the proposed section 1101, insert a coma after "official seal" and after "judicially noticed".

(10) In section 201(a), in the proposed section 1103(b)(2)(A), insert "of this subsection" after "paragraph (1)".

(11) In section 201(b)(3), strike out "(122) of such title is amended to read as follows:" and insert "of such title is amended by inserting after paragraph (121) the following:".

(12) In section 202(a), in the proposed section 1205(e), strike out "its" in paragraph (1) thereof, and strike out "paragraph" in paragraph (3)(B) thereof and insert "subsection".

(13) In section 202(a), in the proposed section 1206(b)(1), strike out "law or" and insert "law and", and strike out the comma after "information".

(14) In section 202(a), in the proposed section 1206(b)(3)(A), strike out "section" and insert "subsection".

(15) In section 202(a), in the proposed section 1206(b)(5)(A) and (7), strike out "subparagraph" and insert "paragraph", strike out the comma after "been" in paragraph (7).

(16) In section 202(a), in the proposed section 1207(a)(5), insert a comma after "date".

(17) In section 202(a), in the proposed section 1208(c), strike out "paragraph" and insert "subsection".

(18) In section 202(a), in the proposed section 1209(b), strike out "action" and insert "actions".

(19) In section 203(a), in the proposed section 4303(f)(1), insert "or manager" after "supervisor".

(20) In section 205, in the proposed section 7701(b), strike out "experienced appeals officer" and insert "employee experienced in hearing appeals".

(21) In section 205, in the proposed section 7701(e)(2), strike out "regulations" and insert "regulation".

(22) In section 205, in the proposed section 7701(g)(1), insert "a" before "prohibited".

(23) In section 205, in the proposed section 7701(g)(2), strike out "706k" and insert "706(k)".

(24) In section 205, in the proposed section 7701(i)(2), strike out "the prior" each place it appears and insert "that".

(25) In section 205, in the proposed section 7702, insert "or applicant" after "employee" each place it appears (other than the first place it appears in subsection (a)(1) and each place it appears in subsection (d)(4) and (5)).

(26) In section 205, in the proposed section 7702(a)(2)(A), strike out "subsection (a)(1)(A) of this section" and insert "paragraph (1)(A) of this subsection".

(27) In section 205, in the proposed section 7702(a)(2)(B), strike out "an" and insert "any", and strike out "subsection (a)(1)(B) of this section" and insert "paragraph (1)(B) of this subsection".

(28) In section 205, in the proposed section 7702(c), strike out "Commission" the fifth place it appears and insert "Board".

(29) In section 205, in the proposed section 7702(d)(1), strike out "section." and insert "subsection.", and strike out "any Board" and insert "the Board".

(30) In section 205, in the proposed section 7702(d)(3), strike out "(1)" and insert "(2)", and insert "to the Board" after "subsection".

(31) In section 205, in the proposed section 7702(d)(5), strike out "subsection" the third place it appears and insert "section".

(32) In section 205, in the proposed section 7702(e)(1), strike out "an employee" and insert "the employee", insert "to the same extent and" after "civil action", and insert "section" before "15(c)".

(33) In section 205, in the proposed section 7702(e)(2), insert a comma after "If".

(34) In section 308(d), redesignate the proposed subsection (d) as subsection (e).

(35) In section 308(g)(3), strike out "service" and insert "services", and strike out "paragraph (1)" and insert "paragraph (2)".

(36) In section 402(a), strike out "307(a)" and insert "307(b)".

(37) In section 402(a), in the proposed section 3131, strike out "(a)".

(38) In section 402(a), in the proposed section 3131(6) strike out "benefits".

(39) In section 402(a), in the proposed section 3132(a)(1)(B), strike out "any positions" and all that follows down through "2425),".

(40) In section 402(a), in the proposed section 3132(a)(2), strike out "(other than" and all that follows down through "title)".

(41) In section 402(a), in the proposed section 3132(b)(3)(B), strike out the comma after "law".

(42) In section 402(a), in the proposed section 3133(a), strike out "odd" and insert "even".

(43) In section 402(a), in the proposed section 3133(c), strike out "subsection (b)" and insert "subsection (a)".

(44) In section 402(a), in the proposed section 3135(a)(8), strike out "appointees" and insert "reserved positions".

(45) In section 404(b), in the proposed section 3594(c)(1)(B), strike out "higher" and insert "highest".

(46) In section 405(a), in the proposed section 4313(4), insert "performance" before "quality".

(47) In section 405(a), in the proposed section 4314(c)(3), strike out "(2)" and insert "(1)".

(48) In section 413(d), strike out "section 3393(c) and (d)" and insert "section 3393(b)–(e)".

(49) In section 601(a), in the proposed section 4703(f) and (g), strike out "section 7111" and insert "chapter 71", and strike out "subsection (b)" and insert "subsection (a)".

(50) In section 701, add at the end of the proposed section 7105(d) the following new sentence: "The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.", and strike out the last sentence in the proposed section 7105(e)(2).

(51) In section 701, in the proposed section 7105(g)(2), strike out "section 7133" and insert "section 7132".

(52) In section 701, in the proposed section 7111(b), insert "supervise or" before "conduct".

(53) In section 701, in the proposed section 7114, strike out "provisions negotiated by" in subsection (a)(5) thereof and insert "procedures negotiated under", and strike out "high" in subsection (c)(4) thereof and insert "higher".

(54) In section 701, in the proposed section 7117(b)(1), strike out "matters" and insert "matter".

(55) In section 701, in the proposed section 7119(c)(5)(A)(ii), insert "the impasse" before "through".

(56) In section 701, in the proposed section 7119(c)(5)(B)(ii), strike out "section 7133" and insert "section 7132".

(57) In section 701, in the proposed section 7121(d), strike out "7701 of this title".

(58) In section 701, in the proposed section 7121(f), strike out "section 7702" and insert "section 7703".

(59) In section 701, insert "or" at the end of the proposed section 7122(a)(1).

(60) In section 701, in the proposed section 7123(d), strike out "or restraining order" and insert "(including a restraining order)".

(61) In section 703(a)(1), strike out "section 312" and insert "section 310".

(62) In section 703, redesignate paragraph (2) of subsection (b) as subsection (c)(1), and redesignate subsection (c)(1) as paragraph (2) of subsection (c).

(63) In section 703(a)(3), in the proposed section 7211, strike out "individual" and insert "individually".

(64) In section 906(c)(2)(A), strike out the period and insert the following: "and inserting in lieu thereof 'chapter'.".

(65) In section 906(c)(4), insert a comma after "Code".

(66) In section 906(c)(5), strike out "chapter 34" and insert "chapter 33".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

REQUIRING CONRAIL TO MAKE PREMIUM PAYMENTS UNDER CERTAIN MEDICAL AND LIFE INSURANCE PLANS

Mr. ROONEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 5646) to amend the Regional Rail Reorganization Act of 1973 to require ConRail to make premium payments under certain medical and life insurance policies, to provide that ConRail shall be entitled to a loan under section 211(h) of such act in an amount required for such premium payments, and to provide that such premium payments shall be deemed to be expenses of administration of the respective railroads in reorganization, with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 3, line 11, strike out all after "graph." down to and including "1976," in line 16 and insert "For the purposes of section 211(h), amounts required for such premium payments shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of April 1, 1976, if the district court having jurisdiction over such railroads in reorganization determines that such premiums and benefits were contractual obligations,".

The Clerk read the House amendment to the Senate amendment, as follows:

In lieu of the matter inserted by the Senate amendment, insert the following:

Page 3, line 11, strike out "For purposes" and all that follows through "administration of" and line 14 and insert in lieu thereof "For purposes of section 211(h)(4)(A)(iii), amounts required for the payment of such premiums and benefits shall be deemed to be valid administrative claims against".

Page 4, immediately after line 5, insert the following:

SEC. 2. The conferring of administrative

claim status on amounts paid for the insurance premiums and benefits described in the amendment made by the first section of this Act shall be effective solely for purposes of meeting the conditions set forth in section 211(h)(4)(A)(iii) of the Regional Rail Reorganization Act of 1973 with respect to which obligations of the estate of a railroad in reorganization may be paid pursuant to such section 211(h), and shall not be construed—

(1) as affecting the jurisdiction of the district court having jurisdiction over such a railroad in reorganization to determine whether such insurance premiums and benefits constitute enforceable contractual obligations of the estate of such a railroad for purposes of reimbursement under such section 211(h); or

(2) as establishing or reordering any priority which a claim against the estate of such a railroad for reimbursement for the amounts paid for such insurance premiums and benefits may or may not have under the provisions of the Bankruptcy Act or any other law.

SEC. 3. Notwithstanding any other provision of law, any corporation which, pursuant to a plan of reorganization under section 77 of the Bankruptcy Act, is the successor in interest to a railroad in reorganization shall have standing to assert, in any judicial or administrative proceeding, any claim or defense available to such railroad in reorganization with respect to whether the insurance benefits and premiums described in the amendment made by the first section of this Act constitute enforceable contractual obligations of the estate of such railroad in reorganization. For purposes of this section, the term "railroad in reorganization" has the meaning given such term in paragraph (14) of section 102 of the Regional Rail Reorganization Act of 1973.

Mr. ROONEY (during the reading). Mr. Speaker, I ask unanimous consent that the House amendment to the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

Mr. ASHBROOK. Reserving the right to object, Mr. Speaker, I take that reservation for the purpose of asking my colleague as to what had transpired here, whether there is anything involved with respect to any nongermane matter. I think we all know that late in the session sometimes these things happen.

Just for the record, Mr. Speaker, I want to ask my colleague and friend, the gentleman from Pennsylvania, to explain the bill.

Mr. ROONEY. If the gentleman will yield, Mr. Speaker, this bill, you will recall, authorizes the U.S. Railway Association to loan funds to ConRail for the purpose of making premium payments or medical and life insurance policies and paying benefits for noncontract, preconveyance retirees of the Northeast railroads which were reorganized into ConRail.

The retirement program for these retirees provided that these insurance benefits would be continued by the railroad after their retirement. This bill, therefore, merely provides that this provision in their retirement program be carried out. These persons worked and retired with the understandings that these benefits would be continued to be paid by the railroad after retirement.

Provision for paying these premiums was included in the Railroad Transportation Improvement Act of 1976. Unfortunately, however, there was a deficiency in the drafting of this provision. The estate of one of the bankrupt railroads went to court contending that it should not continue to pay these benefits, because the premiums were not administrative expenses for purposes of the Regional Rail Reorganization Act of 1973 now under principles of bankruptcy law. This bill, therefore, is designed to overcome the deficiencies outlined by the Sixth Circuit Court of Appeals case, in the matter of *Erie Lackawanna Railway Co., appeal of Noncontract Retirees*, 548 F. 2d 621 (6th cir. 1977)

The House overwhelmingly passed this bill in January. The Senate amended the bill, because it believed additional language was required to make it clear that the Congress does not intend to restructure or alter the priority of creditors during an ongoing bankruptcy proceeding, thereby avoiding a constitutional infirmity. The Senate amendment provides that the premium for these insurance benefits should be considered as an administrative expense for loan purposes, but not for the purpose of changing priorities in the bankruptcy proceedings.

I am informed, however, that the Senate's drafting of this amendment does not carry out the intended purpose. The amendment that I am offering is therefore merely technical in nature to give us every assurance that the provision is legally, technically sufficient.

Section 3 of my amendment gives the successor to a railroad in reorganization standing in a proceeding to assert a claim or defense which was available to the railroad in reorganization, with respect to whether the insurance benefits and premium described in the first section of this act constitute enforceable contractual obligations of the estates of such railroad in reorganization. I am informed, for example, that the Penn Central should complete its reorganization process in the near future.

You should recall that this bill provides no additional authorization to the USRA as ample funds are already available. Moreover, you should recall that these funds are to be loaned to the estates, and there is every expectation that the Government will be repaid in full, if the payment of the premium is held to be a valid contractual obligation. Also, it should be remembered that the bill does nothing more than has already been done for contract employees and all preconveyance retirees with regard to their pensions. These benefits are part of the pension plan and should be considered in the same way in the act. Finally, it should also be understood that in no way would this bill impose a financial burden on ConRail. ConRail merely administers the program for convenience sake since it has administrative personnel whereas the estates no longer maintain such offices.

I urge your support for this very important bill.

Mr. ASHBROOK. I thank my colleague for his enlightened explanation. There is nothing in the Senate amendment, I might ask under my reservation, that would be nongermane for the purpose of the bill; is that correct?

Mr. ROONEY. That is correct. As I said, I am informed the Senate amendment provides that the premium for these insurance benefits should be considered as an administrative expense for loan purposes, but not for the purpose of changing priorities in bankruptcy proceedings.

Mr. ASHBROOK. It does not alter basically the bill as passed?

Mr. ROONEY. That is correct.

Mr. ASHBROOK. Under my reservation of objection, I would also direct the attention of my friend and colleague to the article that was in the Star last night indicating that the Nation's railroads are likely to fall $16.2 billion shy of their needs. I might ask my colleague how much short is this, and how much will this contribute to that $16.2 billion shortfall?

Mr. ROONEY. This bill provides no funding at all. The gentleman is referring to the Department of Transportation's recent report prepared by the direction of the 4–R Act in 1976. The report will be thoroughly considered by my subcommittee during the next Congress. Suffice it to say today that this bill—H.R. 5646—pertains to responsibilities of bankrupt estates and not to operating railroads.

Mr. ASHBROOK. I thank my colleague for that explanation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Pennsylvania?

Mr. SKUBITZ. Reserving the right to object, as I understand it, the purpose of this amendment is simply to correct a hardship that now exists that affects certain employees of the bankrupt railroads that were not under union contract; is this correct?

Mr. ROONEY. If the gentleman will yield, that is correct.

Mr. SKUBITZ. And these employees had a number of medical and life insurance policies with their company which they had received as a part of their employment with the bankrupt railroads; is that not correct?

Mr. ROONEY. That is correct.

Mr. SKUBITZ. What we are actually trying to do here is to give these people the same rights under section 211 as all of the union employees have. There is not any payment of money to be made because, although they are protected, as soon as the bankrupt railroads reach their agreement and receive their money for the railroads that they turned over to the receiver, that money will be taken out of their funds; is this not correct?

Mr. ROONEY. We anticipate that not only will ConRail be reimbursed for these loans and administrative expenses but also the Government will be reimbursed with interest.

Mr. COLLINS of Texas. Mr. Speaker, will the gentleman yield?

Mr. SKUBITZ. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. I thank the gentleman for yielding.

I concur in this piece of legislation. It is my understanding that we passed this same or a similar bill before, and the other body added an amendment which was not practical and did not work out, and that this present legislation provides equity for everyone and is desirable; is that right?

Mr. SKUBITZ. That is correct.

Mr. Speaker, last January 30 the House passed H.R. 5646 and sent the bill on to the Senate.

The Senate considered the legistion and passed it August 2 with amendment.

Simply stated, the bill corrects a hardship which was created through the reorganization of the Northeast railroads into ConRail.

That hardship was one that affected certain employees of the bankrupt railroads who were not under union contract.

Those employees had a number of medical and life insurance policies as part of their employment with the bankrupt railroads.

Now, under the Railroad Revitalization and Regulatory Reform Act of 1976, there was a provision whereby the U.S. Rail Association could make loans to ConRail for ConRail to pay certain debts incurred by the bankrupt railroads.

Under that authority, in section 211, a number of creditors, including contract employees, who had coverage under health or life insurance plans, could be protected through the use of the immediate loan mechanism to ConRail which in turn would be compensated when the estates of the bankrupt railroads were settled.

At that time it was an oversight which omitted a similar protection for employees having almost identical situations except for the fact that they were not contract employees; that is, members of labor unions.

The amendment proposed in lieu of the Senate amendment makes it clear that the claims involved for noncontract employees shall be considered as claims of administration solely for the purposes of eligibility under paragraph 4(a) of section 211(h) of the 4–R Act.

The amendment also makes it clear that any defenses to the claim by the bankrupt estates shall be preserved for successor companies.

Mr. Speaker, I urge the adoption of the amendment—so that the bill can be returned to the Senate—where I have been assured it will be accepted.

Mr. SKUBITZ. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Pennsylvania?

There was no objection.

A motion to reconsider was laid on the table.

CONRAIL AUTHORIZATION ACT

Mr. ROONEY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12161) to amend the Regional Rail Reorganization Act of 1973 to authorize additional appropriations to the U.S. Railway Association for purposes of purchasing securities of the Consolidated Rail Corporation.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. ROONEY).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 12161, with Mr. BURLESON of Texas in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Pennsylvania (Mr. ROONEY) will be recognized for 30 minutes, and the gentleman from Kansas (Mr. SKUBITZ) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. ROONEY).

Mr. ROONEY. Mr. Chairman, I yield myself such time as I may consume.

This bill would authorize an additional $1.2 billion to the U.S. Railway Association for the purpose of purchasing additional stock of ConRail. This additional capitalization is required for the modernization, rehabilitation, and maintenance of ConRail's rail properties and for the acquisition of additional equipment.

Congress authorized $2.1 billion for the capitalization of ConRail in the Railroad Revitalization and Regulatory Reform Act of 1976. It has now been determined that this amount of Federal funding is inadequate.

After a year of operating experience it became evident that ConRail would require substantial additional funding to achieve the goals of the final system plan. ConRail had been beseiged with problems from inception. Some of these problems were the sult of outside forces, such as a general economic downward trend, severe winters, and coal, iron ore, and longshoremen strikes. Also, some of the problems were inherited from its predecessor railroads. The equipment and facilities conveyed from the bankrupt railroad were in considerably worse condition than indicated in the USRA final system plan. Moreover, ConRail was aware at inception that there would be a shortfall in its funding because it was required to take over property originally designated to be taken over by the Southern Railway and the Chessie system.

ConRail's original capitalization contained a so-called margin of safety amounting to about $250 million based on a recommendation by USRA. In short, it was believed that there should be an allowance for any errors in the justifications for needed funding since there were so many contingencies in the final system plan. It turned out that the margin of safety funding was required immediately since ConRail inherited a physical plant which was in considerably worse condition than originally envisioned in the final system plan. Unfortunately, this funding could not be used for its intended purpose. Instead it was eliminated at the outset when the unified ConRail system had to be effectuated at the last minute, rather than the smaller system provided in the original final system plan.

At the time Congress was deliberating the amount of capitalization that would be needed, considerable testimony was received indicating that the amount should be considerably larger than the $2.1 billion recommended in the final plan. Moreover, the dangers of undercapitalization were emphasized. In brief, it was pointed out that any company with inadequate capitalization will not survive. We are now aware that ConRail is seriously undercapitalized. In view of the alternative to a viable ConRail, I want to assure that it is given every opportunity to prove itself. The amounts requested in this bill is considerably less than the amounts that would be needed for any of the alternative concepts and I believe it deserves our support.

ConRail has made significant progress in renewing its physical assets, but admittedly considerable work remains to be done. For example, ConRail projects that in the next 5 years, it must repair nearly 55,000 revenue box cars and 3,600 locomotives. ConRail's plan envisions a capital investment in physical plant of $9.5 billion, of which nearly $3.9 billion will be expended on maintenance of equipment including the overhaul of locomotives and freight cars.

Approval of the $1.2 billion additional capital funding is essential at this time, not only to satisfy its capital needs, but also in order to attract $959 million of private sector financing. The Government's commitment to further assistance to ConRail will bolster the confidence of the private sector in this railroad. It is anticipated that less than $300 million of this financing will be required in 1979. The balance of the funds will be required through 1982.

This bill has received broad support from the administration, USRA, labor, and a number of other interested parties which testified during our 3 days of hearings.

I urge your support.

Mr. Chairman, I yield to the gentleman from Connecticut (Mr. MOFFETT).

Mr. MOFFETT. Mr. Chairman, I intend to offer a series of amendments to the upcoming ConRail Authorization Act (H.R. 12161), one of which will be

to reduce the total funding from $1.2 billion to $700 million.

I do so with no illusions that $700 million will suffice for continued ConRail operations: I expect that ConRail will return with requests for additional funding. The purpose of my amendment is simply to put ConRail on a shorter leash. We need to be able to scrutinize these public expenditures, to determine just how ConRail is using these taxpayer-provided dollars. We should not rely solely on ConRail's statements as to how much money they will need.

Mr. Chairman, I think it is important to note that the GAO, the investigatory arm of the Congress, has just issued a report on ConRail. Joined by other agencies, GAO has been critical of certain aspects of ConRail's operations. The report, requested by Mr. EVANS of Indiana, Mr. MAGUIRE, and me, cites degradation of service, failure to adhere to the plan upon which Congress based its mandate to ConRail, and the unlikelihood that the hoped for growth in ConRail's freight traffic, so crucial to the economic well-being of the East and the Midwest, will occur in the near future, if at all.

Ironically, ConRail itself cites that hoped for growth in freight volume for its predictions of turning a profit some day soon. And they say that, in order to reverse the long-term decline in freight hauling—in order to move toward "profitability"—they need this latest appropriation.

The fact is, though, that we do not see such "profitability" on the horizon.

Both the Department of Transportation and the U.S. Railway Association are considering rail alternatives. They have indicated that they will have some recommendations by the end of 1979, as to what should be done with this mammoth, 17-State system.

In the interim, I urge this body to authorize the $700 million stipulated in my amendment, rather than more than $1 billion. There exists no evidence to show that ConRail cannot operate through most of next year with a $700 million subsidy.

Unfortunately, recent history in this body indicates that ConRail has the upper hand. When they come here and say that "rail service will deteriorate," or "rail service will be nonexistent if you do not give us this money," they generally get their way.

I suspect that my colleagues outside the Northeast are particularly tired of voting for more and more money for ConRail and not seeing the needed improvements. As one who represents an area in the Northeast, I fully realize that we do indeed need good service, that we do need improvements in rail transportation. But, as a Northeast Representative, I also feel that we cannot continue to go to our colleagues in other parts of the country and say, "Just vote for this $1.2 billion again, and everything will be all right."

Although I have not taken a formal count, I do not think we have the votes in this body to pass this bill for the full amount. Admittedly, I may be mistaken. But I think my amendment to cut the authorization to $700 million is a very reasonable alternative; it may ultimately mean success or failure for this entire bill. I simply do not believe that the Members of the House are prepared to vote for a billion-dollar investment without seeing any evidence of change.

I readily acknowledge that ConRail faces a tremendous task, that they were left with an enormous burden when they took over the Penn Central and other bankrupt lines in the East and Midwest. They have made major improvements, for example, in tracks and roadbeds in the Northeast. They have made new purchases of locomotives. These important strides toward improvement should not be belittled.

But this is an issue of public accountability. Is this Congress going to hand over the money to ConRail without some method to insure accountability, and without this opportunity to short-leash them? This is the only weapon we have right now to obtain the kind of accountability that we so sorely need.

Mr. Chairman, I thank the chairman of the subcommittee for yielding to me.

Mr. MURPHY of New York. Mr. Chairman, will the gentleman yield?

Mr. ROONEY. I will be happy to yield the gentleman from New York.

Mr. MURPHY of New York. Mr. Chairman, the primary freight rate problem facing the Port of New York-New Jersey is the present railroad rate structure on movements of containers inbound from vessels or destined for outbound movement on vessels. Over 70 percent of the port's waterborne general cargo is now moving in these large intermodal containers. The present rail rate structure unduly favors the Port of Baltimore and this has contributed to that port's position of handling approximately three-quarters of the movements of these containers to and from the Midwest. The problem is not restricted to New York inasmuch as the other North Atlantic ports are also adversely affected by Baltimore's rate advantage.

As a result of a Supreme Court decision in 1963, rates between all the North Atlantic ports and the Midwest were equalized as to freight moving in conventional rail cars. When steamship containers began moving to and from inland points in quantity in the late sixties, however, railroads applied a mileage rate scale which had been applicable to domestic truck-trailer-on-flatcar movements. Thus, the principle of the Supreme Court's decision—that ports should be able to compete equally in handling the country's waterborne commerce—has been deliberately circumvented by the action of the railroads.

The disparity has been compounded by general rate increases. For example, in 1967 on Peoria, Ill., movements, Baltimore had an advantage of $81.28 on movements of two containers over New York; right now Baltimore's advantage is $141 for two containers, due to general rate increases, an increase of 74 percent. ConRail's 5-year business plan projects a 6.7 percent rate increase per year and at this rate Baltimore's advantage will be nearly $200 by 1983. Comparable disparities exist on movements throughout the Midwest. The ports of Boston, Philadelphia, and Hampton Roads have also seen their disadvantage vis-a-vis the Port of Baltimore increase as rates have gone up generally.

The present percentage of the general cargo moving through New York which is containerized (70 percent) can also be expected to increase as more and more trade routes go to containerships. Unless something is done about the rates we can expect more of the cargo presently moving via New York or other North Atlantic ports to move through Baltimore.

When ConRail was formed in 1976, efforts were made to create a competitive system for the Northeast. However, this has not been successful and now to all intents and purposes ConRail has a monopoly position. As a monopoly, we feel they have a special responsibility to keep the ports it serves competitive with each other. However, they are not doing this, and there are many indications that they are showing preference to Baltimore. Since the States adversely affected by ConRail's policy are substantial contributors through Federal taxes to the huge amount of Federal funds going to ConRail, we feel that no preference should be given to any port served by ConRail.

Since December 1976 ConRail management has been repeatedly requested to take action to equalize the container rates to and from New York on waterborne traffic but nothing has been done. It is clear to us that ConRail will not move on their own to equalize rates. The Port of New York and New Jersey, as well as the other ports which are adversely affected, need immediate assistance to get ConRail to do something for port equalization, and to do it promptly.

As of the end of June 1978 the total Federal investment in ConRail will be $1.572 billion. ConRail has recently announced that it will require at least $1.3 billion more in Federal funds. We believe that because of their monopoly position in the Northeast they must be required, prior to or as a condition to any such Federal funding, to correct this serious and worsening problem. This is a matter of vital importance to the people of the New York-New Jersey area and the other northeast port areas which are being adversely affected by the present ConRail rate structure.

Every ton of waterborne cargo moving through a port means work, not only for longshoremen, but for freight forwarders, bankers, truckmen, railroads, warehousemen, packers, cargo inspectors, and on and on. Historically, such cargo represents a major part of the economic base of any port area. Ports should have a right to compete for such cargo without rate differentials, particularly rate differentials imposed by a federally funded monopoly carrier.

We believe that the attached proposed legislation will, when enacted, produce equal competitive opportunity for all the North Atlantic ports by eliminating the present discriminatory rate practices of ConRail.

I include an exchange of correspondence from our hearings on this subject, with other material, as follows:

SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
Washington, D.C., April 21, 1978.

Mr. PETER C. GOLDMARK, Jr.,
Executive Director, Port Authority of New York/New Jersey, World Trade Center, New York, N.Y.

DEAR MR. GOLDMARK: As you may recall, during the Conrail funding hearings held on April 17, 1978, Congresswoman Mikulski mentioned that she had further questions she would like answered for the record. I would appreciate it if you would answer the following questions which will become part of the hearing record.

(1) How is the inter-port rate disparity, largely a result of geography, of such national consequence and importance that all cargo shippers to North Atlantic ports and consumers they serve should pay higher freight rates and product costs to remedy it?

(2) Please provide the statistics and sources for your statement on pg. 2-3 of your testimony that ¾ of container movements to/from the Midwest come through the Port of Baltimore.

(3) Please provide the legal basis for your statement on page 7 that Baltimore has "inequitable" freight rates and on page 9 that the freight rates to/from the Port of New York are "discriminatory".

(4) Is inter-port rail rates "disparity" the only cause of shippers leaving the Port of New York, or do other items such as higher labor costs, pilferage, loading and unloading delays and high charges for such services contribute to your cargo loss?

Thank you again for taking the time to appear before the Subcommittee.

With best wishes,

Sincerely,

FRED B. ROONEY, *Chairman.*

MAY 5, 1978.

Hon. FRED B. ROONEY,
Chairman, Subcommittee on Transportation and Commerce, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN ROONEY: This will acknowledge your letter of April 21 in which you included questions which Congresswoman Mikulski wanted to have answered for the record in connection with the Con-Rail funding hearings held on April 17, 1978. My replies are noted below:

1. The inequitable rail rates on container traffic moving in import-export trade between the Midwest and the Ports of Boston, New York and Hampton Roads are not an accident of geography as your question suggests but rather a deliberate avoidance by Conrail of the spirit of the 1963 Supreme Court decision on the equalization of rail rates. The North Atlantic Ports which have been adversely affected by Conrail's policy have not demanded that Conrail implement a specific program of equalization that would have a detrimental effect on either shippers or consumers, but on the contrary have urged a policy of equalization that is consistent with the national policy announced as early as 1935 and which we believe will be to the benefit of not only the shippers and consumers but the economy of the Northeast.

Conrail, without the benefit of supporting data has insisted that for revenue reasons equalization would have to be on the New York basis. It is our belief, however, that equalization can be accomplished on a basis somewhere between the New York and Baltimore rates which would result in minor increases in Baltimore rates with little or no diversion to motor carriers. Such rates would have a negligible effect on consumer prices and would still return the railroads a profit. In addition, one cannot underestimate the benefits that equalization will present to shippers, including but not limited to the opportunity of availing themselves of the most advantageous steamship sailings and benefiting from the more efficient service that competition promotes.

The national importance of the struggle of the Ports of Boston, New York and Hampton Roads to obtain equitable rail rates and to reestablish the Supreme Court approved rate equalization in export-import traffic is manifest when one considers the effect that the combination of inflation and Conrail policy has had in improving the competitive position of the Port of Baltimore vis a vis the other North Atlantic ports. General percentage rate increases have taken place ten times since March, 1974. At Peoria, Illinois, home of Caterpillar Tractor Company, the largest export manufacturer in the United States, Baltimore's advantage has jumped from $89 on two trailers/containers at that time to its present $141, an increase in four years of 62 per cent. This same result, i.e., rate disparity increase, occurred throughout the Midwest. Is it proper national policy that the Port of Baltimore should be granted the protection and advantage of an ever growing monopolization of Midwest import-export container traffic by the application of inequitable freight rates by a federally subsidized railroad?

This growing concentration of Midwest traffic at Baltimore is directly contrary to the policy of Congress, adopted in 1935, when it amended Section 3(1) of the Interstate Commerce Act expressly to bring within the Act the rates applying to and from ports. This policy adopted at that time and maintained since was stated by the House Committee on Interstate and Foreign Commerce in its Report No. 1512, 74th Congress, First Session, dated July 12, 1935 on S. 1633, as

"In recommending that this bill be passed the committee does so with the idea in mind that by amending section 3 of the Interstate Commerce Act as thus contemplated it will encourage and promote the freedom of movement of export, import and coastwise commerce through the ports of the country. The committee considers that it is to the interest of the public that such commerce be permitted to move freely through as many available ports as the governing circumstances will reasonably permit, and that no restrictions upon and impediments to the free movement thereof should be imposed that are not clearly shown to be sound or economically justified. The recommendation of the committee that this bill be enacted is intended to afford competing ports a forum in which to complain of rate adjustments which tend to concentrate the movement of the traffic through one port or a limited number of ports and to deprive other ports of an opportunity to handle a part of such traffic. The committee believes that such a diffusion of the traffic which moves through the ports will redound to the benefit of the producer and consumer in the interior by whom in the last analysis the transportation charges levied both for the transportation thereof and for the use of the facilities at the ports are ultimately borne."

2. Conrail has never been able to provide conclusive statistics as to the inland origin and destination of container movements by rail or for that matter by truck. My statement related to estimates that have been made by our Port Authority staff based on our own figures and those Conrail and other railroads serving the North Atlantic Ports provided. These figures suggest that ¾ of the import-export container movements to and from the Midwest are handled by the Port of Baltimore. This estimate is also confirmed by the information obtained by the Port Authority's Trade Development Office staffs in Chicago and Cleveland who call regularly on shippers and receivers of cargo and apparently is undisputed by Conrail. Subsequent to my testifying to this effect on March 30 at a Public Hearing before a New York State Assembly Task Force on the Port of New York and the Waterfront, James R. Sullivan, Conrail's Assistant Vice President when questioned as to the accuracy of my estimate of 75% responded "he's probably right."

3. Your question inquires what the legal basis is for what is essentially a factual assertion. As I explained in my response to Question No. 1, Conrail's present rates on import-export container traffice which unreasonably favors the Port of Baltimore discriminates against the other North Atlantic Ports. Conrail's refusal to apply to container traffic the same policy of equalization that applies to general box car traffic is an obvious avoidance of the import of the Supreme Court's decision in Interstate Commerce C *Commission* v. *Boston & Maine*. In addition, the policy presently being pursued by Conrail is contrary to the policy stated by Congress as early as 1935 at the time of the amendment of Section 3 of the Interstate Commerce Act.

4. Inland Freight rate discrimination is a major cause though not the sole cause for the diversion of cargo from the Port of New York. The poor service offered by Conrail, especially the delays in handling container trains during the past winter is another major contributing factor motivating the diversion by certain shippers.

Pilferage is not a factor in the diversion of traffic from the Port of New York. There is no statistical indication that pilferage is a greater or less problem than the pilferage problem in the Port of Baltimore. Actually door-to-door movements in containers have virtually eliminated pilferage as a port problem.

As you are aware I'm sure, the ocean carrier rates to and from North Atlantic ports are equalized hence variance in port costs are not significant. We have no indications that railroad costs in operating piggyback/container ramps vary to any degree as between ports. Hence one must conclude that the two major factors causing a diversion of cargo from the Port of New York are Conrail's rate policy and the poor quality of service rendered.

Sincerely,

PETER C. GOLDMARK, Jr.,
Executive Director.

The proposed equalization of railroad export and import rates on movements of cargo in containers between midwestern points and the North Atlantic ports between Norfolk and Boston (inclusive) will not have an adverse effect on midwestern shippers and receivers. It will work to their advantage to have a wide range of ports available so that they can take advantage of favorable steamship sailings and other service factors.

Under present conditions shippers and receivers at all points in Illinois, Michigan, Indiana, Ohio, and adjacent States, with the exception of Chicago and East St. Louis (where equalized rates are available on lots of 10, 30, and 60 containers), are faced with a railroad rate structure on container movements which more and more makes it necessary for them to route their export-import freight via the Port of Baltimore unless they are willing to pay an even increasing cost penalty to utilize another North Atlantic port.

This means that in many cases the shipper will be limited in the availability of satisfactory steamship service to many parts of the world. Baltimore is rarely either first-port-in or last-port-out,

which offer time advantages to importers and exporters, respectively. Several steamship lines which list Baltimore as a port of call actually provide only feeder vessels or barges between Baltimore and Hampton Roads or New York where containers are transshipped to transocean vessels. This causes a substantial increase in overall transit time. Further, in some trade routes steamship service via Baltimore is sporadic or nonexistent. Under equalization the shipper or receiver would have the ability to select the port which could give him the best overall service.

Rates of ocean conferences disregard distance in order to provide equal rights at all ports within the North Atlantic range, Hampton Roads to Maine inclusive. Boston, for example, is 450 miles closer to Europe than Baltimore; New York is 269 miles closer than Baltimore. Still ocean rates are equal. Via ConRail's route the Port of New York's portside yard is only 60 miles farther distant from Indianapolis, Ind. than Baltimore, an insignificant difference.

It has been stated that any equalization of rates at the North Atlantic ports on container traffic would have to be "on the high side." In other words, lower Baltimore rates would have to be raised to the New York level, and that this would be a burden on Midwest shippers and would result in the loss of rail traffic currently moving via Baltimore to motor carriers. Our analyses have shown that equalization could well be achieved with only a small increase above the Baltimore level, and that it would not result in significant loss of traffic to motor carriers, and the very minor increase in cost to Midwest shippers and receivers would be offset by the advantage to those shippers and receivers of equalized cost at a whole range of ports.

The following exhibits demonstrate the problem:

PORT OF NEW YORK'S COMPETITIVE SHARE OF NORTH ATLANTIC AND U.S. GENERAL CARGO TRADE

Year	New York volume (long tons)	New York percentage of— North Atlantic	New York percentage of— United States	Year	New York volume (long tons)	New York percentage of— North Atlantic	New York percentage of— United States
1959	13,092,000	60.7	24.7	1969	15,086,000	50.7	13.1
1960	13,737,000	59.2	23.2	1970	15,954,000	48.9	12.9
1961	12,994,000	57.2	21.4	1971	14,458,000	46.9	12.3
1962	13,092,000	59.3	22.6	1972	14,883,000	46.1	11.3
1963	13,499,000	55.1	19.8	1973	16,231,000	46.8	11.3
1964	13,838,000	53.4	18.1	1974	16,735,000	42.4	11.3
1965	13,988,000	52.7	17.7	1975	14,090,000	46.8	11.0
1966	15,436,000	NA	NA	1976	15,331,000	47.3	10.6
1967	15,184,000	52.8	16.1	1977	14,284,993	46.2	9.3
1968	16,369,000	51.4	14.5				

	Total general cargo									
	Philadelphia		New York		Baltimore		Norfork		Boston	
	Total (long tons)[1]	Percent of N.A. total	Total (long tons)[2]	Percent of N.A. total	Total (long tons)	Percent of N.A. total	Total (long tons)	Percent of N.A. total	Total (long tons)	Percent of N.A. total
1958	2,391,205	12.2	12,081,121	61.7	2,468,349	12.6	1,272,338	6.5	1,357,786	6.9
1959	2,906,277	13.5	13,092,000	60.7	2,365,737	11.0	1,510,103	6.9	1,701,893	7.8
1960	2,977,883	12.8	13,737,000	59.2	3,025,177	13.0	1,617,820	7.0	1,858,625	8.0
1961	3,460,079	15.2	12,994,000	57.2	2,828,541	12.5	1,626,097	7.1	1,793,950	7.9
1962	3,152,648	13.5	13,902,000	59.3	2,866,912	12.2	1,766,523	7.5	1,746,459	7.4
1963	3,598,575	14.7	13,499,000	55.1	3,495,019	14.2	1,980,564	8.1	1,916,965	7.8
1964	3,921,789	15.1	13,838,000	53.4	4,089,364	15.8	2,122,011	8.2	1,954,965	7.5
1965	4,427,803	16.7	13,988,000	52.7	3,977,844	15.0	2,233,970	8.4	1,927,860	7.3
1966	4,608,644	16.1	15,436,000	53.8	3,947,722	13.8	2,797,465	10.0	1,916,544	6.7
1967	4,783,756	16.7	15,184,000	52.8	3,955,420	13.8	2,730,618	9.5	2,084,702	7.3
1968	5,367,265	16.9	16,369,000	51.4	4,771,377	15.0	3,148,116	9.9	2,193,051	6.9
1969	4,915,142	16.5	15,086,000	50.7	4,788,586	16.1	3,029,352	10.2	1,940,407	6.5
1970	5,414,465	16.6	15,954,000	48.9	5,984,798	18.4	3,051,519	9.4	2,204,948	6.8
1971	5,601,164	18.2	14,458,313	46.9	5,332,814	17.3	3,271,808	10.6	2,149,522	7.0
1972	5,991,745	18.5	14,883,429	46.1	5,530,390	17.1	3,755,027	11.6	2,160,623	6.7
1973	6,477,023	18.7	16,231,087	46.8	5,731,913	16.5	4,293,770	12.4	1,966,176	5.7
1974	7,702,324	22.2	16,734,773	42.4	7,586,604	19.2	5,073,283	12.9	2,349,776	6.0
1975	5,212,414	15.0	14,090,404	46.8	5,251,033	17.4	4,163,729	13.8	1,422,576	4.7
1976	5,441,509	15.7	15,331,243	47.3	5,406,895	16.7	4,440,461	13.7	1,819,845	5.6
1977	5,639,460	16.3	14,284,994	46.1	5,330,247	17.2	3,841,763	12.4	1,862,929	6.0

[1] Philadelphia Customs District (includes Wilmington, Del.).
[2] New York-New Jersey Customs District.

Source: Bureau of the Census.

CONTAINER MOVEMENTS—NORTH ATLANTIC PORTS, 1972–77[1]

[In TEU—20 ft equivalents]

	New York[2]	Philadelphia	Baltimore	Virginia ports[3]		New York[2]	Philadelphia	Baltimore	Virginia ports[3]
1977	1,660,000	112,350	429,000	(4)	1974	1,630,000	106,084	376,000	168,705
1977/76 (percent)	+2.4	+4.9	+4.1		1974/73 (percent)	+81.2	+13.2	+55.2	+13.4
1976	1,620,000	107,100	412,000	141,324	1973	899,398	93,643	242,000	148,714
1976/75 (percent)	−1.8	+11.7	+10.7	+10.5	1973/72 (percent)	+54.3	+110.9	+14.6	+32.6
1975	1,650,000	91,317	372,000	127,846	1972	582,731	44,384	211,000	212,101
1975/74 (percent)	+1.2	−13.9	−1.0	−24.2					

[1] Estimate.
[2] 1972 and 1973 are actual containers handled without regard to size.
[3] Actual number of containers; no breakdown available.
[4] No estimate available.

Note: This covers all container movements irrespective of inland origin or destination.

Source: Transport 2000.

[Chart not printed in RECORD.]

TOFC/COFC PLAN II ½ FREIGHT ALL KINDS RATES IN THE PERIOD JANUARY 1974 THROUGH JUNE 1978 2 TRAILERS, 80,000 LB.—Continued

[In dollars per shipment; increases, dates, and percentages]

	New York to New Jersey			Philadelphia			Baltimore			Baltimore advantage over Philadelphia			Baltimore advantage over New York to New Jersey		
	Jan. 1, 1974, base rate	Nov. 30, 1977, 5 percent	June 8, 1978, 4 percent[1]	Jan. 1, 1974, base rate	Nov. 30, 1977, 5 percent	June 8, 1978, 4 percent[1]	Jan. 1, 1974, base rate	Nov. 30, 1977, 5 percent	June 8, 1978, 4 percent[1]	Jan. 1, 1974	Nov. 30, 1977	June 8, 1978	Jan. 1, 1974	Nov. 30, 1977	June 8, 1978
Chicago	718	1,095	1,139	662	1,008	1,048	642	980	1,019	20	28	29	76	115	120
Cincinnati	599	916	953	540	824	857	502	769	800	38	55	57	97	147	153
Detroit	533	815	848	537	820	853	512	782	813	25	38	40	21	33	35
East St. Louis	820	1,254	1,304	758	1,157	1,203	710	1,085	1,128	48	71	75	120	169	176
Indianapolis	651	995	1,035	599	916	953	548	837	870	51	79	83	103	158	165
Peoria	779	1,190	1,238	728	1,112	1,156	692	1,055	1,097	36	57	59	87	135	141
Toledo	560	856	890	508	775	806	494	755	785	14	20	21	66	101	105

[1] Present rate.

ESTIMATES OF RAIL CONTAINER TRAFFIC TO AND FROM ILLINOIS, INDIANA, MICHIGAN, AND OHIO—NEW YORK-NEW JERSEY VERSUS BALTIMORE

[1st 6 mo, 1977]

	Eastbound	Westbound
New York-New Jersey:		
ConRail[1]	8,857	8,306
N. & W.-D. & H.[2]	3,916	3,618
Total	12,773	11,924
Percent of total	45.6	48.2
Baltimore:		
ConRail[1]	8,566	6,025
N. & W.-WM[2]	2,573	3,886
Chessie[2]	4,085	2,869
Totsl	15,224	12,780
Percent of total	54.4	51.8

RAIL CONTAINER TRAFFIC TO AND FROM INDIANA, ILLINOIS, MICHIGAN, OHIO, EXCLUDING CHICAGO TRAFFIC

[1st 6 mo 1977]

	Eastbound	Westbound
New York-New Jersey:		
ConRail	4,072	3,411
N. & W.-D. & H.[3]	274	325
Total	4,346	3,736
Percent of total	31.5	26.8
Baltimore:		
ConRail[1]	5,295	4,792
N. & W.-WM[4]	1,590	3,089
Chessie[4]	2,525	2,280
Total	9,410	10,161
Percent of total	68.5	73.2

[1] From Dec. 16 letter of Richard Steiner, vice president, ConRail.
[2] Obtained from confidential source.
[3] Per Reebie Report D. & H. January 1977 TOFC traffic (excluding Welland, Lacolle-Montreal and Mini-bridge) Chicago represented 93.6 percent of eastbound traffic, 91.1 percent of westbound. Therefore, figures for non-Chicago traffic have been estimated by using 7 percent eastbound and 9 percent westbound of total traffic.
[4] N. & W.-WM and Chessie traffic to and from Midwest has been arbitrarily divided between Chicago and non-Chicago on the same percentage basis as ConRail traffic as reported by Mr. Steiner: 61.8 percent of eastbound and 79.5 percent westbound estimated to be non-Chicago.

RAIL FREIGHT RATE EQUALIZATION ON EXPORT-IMPORT TRAFFIC HAS HAD FAVORABLE RESULTS FOR THE PORT OF PHILADELPHIA

First. In 1953 the Pennsylvania Railroad proposed to establish import rates on iron ore from Philadelphia to steel plants in western Pennsylvania and Ohio which were equal to the rates already in effect from Baltimore to the same destinations. The Philadelphia port interests, led by the Delaware River Port Authority, supported the Pennsylvania Railroad proposal. The New York Central Railroad then filed for equal rates from New York and Boston to the same destinations; this proposal was opposed by the Philadelphia interests. After lengthy litigation before the Interstate Commerce Commission (Docket No I. & S. 6074) and the courts, equalization of Philadelphia rates with Baltimore was authorized, and in 1964, New York, but not Boston, was also equalized. Philadelphia has since that time handled substantial imports of iron ore (6,500,000 long tons in 1977); New York, however, in spite of its equalized rates has handled insignificant quantities.

Second. In 1955 the New York and Boston railroads (New York Central, Erie, Lackawanna, Boston & Maine, et cetera) filed tariffs equalizing inland export and import rates on all traffic in box cars and open cars between their ports and the Midwest with rates applicable via Baltimore and Hampton Roads ports. At that time, New York and Boston rates were equal; Philadelphia was 40 cents per ton less, and Baltimore and Hampton Roads were 60 cents per ton under New York. The New York railroads' action was opposed by the Baltimore & Ohio Railroad, the Norfolk & Western Railway, Chesapeake & Ohio Railway and by the Norfolk and Baltimore port interests. Equalization for New York and Boston was also opposed by the Delaware River Port Authority and other Philadelphia interests—even though their port suffered from a disadvantage vis-a-vis Baltimore. After lengthy litigation before the ICC and the courts, the Supreme Court in 1963 approved a lower court decision permitting the equalization of rates at all North Atlantic ports.

The attached statement (attachment A) clearly indicates that during the period between 1963 when rates were equalized and 1970 (at which time cargo was beginning to move heavily in containers on nonequalized rates), the Port of Philadelphia's percentage share of the total general cargo tonnage of the North Atlantic ports increased from 14.7 to 16.6 percent, while New York's percentage, in spite of the rate equalization, dropped from 55.1 to 48.9 percent. Philadelphia benefited substantially by securing equalization with Baltimore.

THE PRESENT SITUATION, WHERE PHILADELPHIA HAS RATES ON CONTAINERS HIGHER THAN BALTIMORE BUT LOWER THAN NEW YORK, HAS NOT HELPED PHILADELPHIA CAPTURE ANY SIGNIFICANT VOLUME OF INLAND CONTAINER TRAFFIC

Statistics furnished by ConRail (attachment B) indicate that the Port of Philadelphia is handling a very small percentage of the total moving via that carrier between the Midwest and ConRail's three ports (New York, Philadelphia, and Baltimore). Of a total of 32,786 containers moving via all three ports in the first 6 months of 1977, only 1,032 moved via Philadelphia—about 3 percent. Baltimore, per ConRail's figures, handled nearly half of the balance. The substantial traffic moving via the other Baltimore railroads (Chessie system and Western Maryland) is not included in these figures.

At present, rates on containers to and from Philadelphia are higher than Baltimore but lower than New York. However, whenever railroads receive general rate increases the Baltimore advantage increases, as can be seen from the attached statement (attachment C). Since 1974, Baltimore's advantage versus the other ports has increased by 62 percent. Equalization with Baltimore would permit Philadelphia to share in the handling of traffic which presently goes to Baltimore due to inland rate savings. At the same time, the container traffic now moving through Philadelphia appears to be largely captive to that port, and would not be subject to diversion to New York.

EQUALIZATION MEANS EQUAL OPPORTUNITY FOR ALL PORTS TO COMPETE FOR CARGO ON THEIR ABILITY TO SERVE THE CUSTOMER

Knowledgeable shippers will not put "all their eggs in one basket" and will use all ports based on overall service and cost considerations. Continuation of the present situation means that as inflation forces rates up more and more of the available container cargo will be monopolized by the port of Baltimore, to the detriment of all other North Atlantic ports including Philadelphia.

Ocean rates of steamship conferences are equalized at all North Atlantic ports, in spite of the greater steaming distance involved in most trade routes in serving the port of Baltimore via Chesapeake Bay or the Chesapeake and Delaware Canal. The attached statement (attachment D) clearly demonstrates that to most overseas destinations, Baltimore's steaming distance is significantly greater than New York, Norfolk, or Boston. If equalization of conference ocean rates at port ranges, which was required by provisions of the Merchant Marine Act of 1936, is proper public policy, then equalization of inland railroad rates also appears necessary in order to provide for freedom of competition between the ports for the traffic of America's industrial heartland. The Congress of the United States in 1935 declared:

> In recommending that this bill be passed the committee does so with the idea in mind that by amending section 3 of the Interstate Commerce Act as thus contemplated it will encourage and promote the freedom of movement of export, import and coastwise commerce through the ports of the country. The committee considers that it is to the interest of the public that such commerce be permitted to move freely through as many available ports as the governing circumstances will reasonably permit, and that no restrictions upon and impediments to the free movement thereof should be imposed that are not clearly shown to be sound or economically justified.[4]

[4] House of Representatives Report No. 1512, 74th Congress, First Session dated July 12, 1935.

ATTACHMENT A

PORT OF NEW YORK AND PHILADELPHIA COMPETITIVE SHARES OF NORTH ATLANTIC GENERAL CARGO TONNAGE

	Total general cargo			
	Total Philadelphia (long tons)[1]	Philadelphia percentage of North Atlantic total	Total New York (long tons)[2]	New York percentage of North Atlantic total
1957	2,418,246	10.7	12,937,109	57.4
1958	2,391,205	12.2	12,081,121	61.7
1959	2,906,277	13.5	13,092,000	60.7
1960	2,977,883	12.8	13,737,000	59.2
1961	3,460,079	15.2	12,994,000	57.2
1962	3,152,648	13.5	13,902,000	59.3
1963	3,598,575	14.7	13,499,000	55.1
1964	3,921,789	15.1	13,838,000	53.4
1965	4,427,803	16.7	13,988,000	52.7
1966	4,608,644	16.1	15,436,000	53.8
1967	4,783,756	16.7	15,184,000	52.8
1968	5,367,265	16.9	16,369,000	51.4
1969	4,915,142	16.5	15,086,000	50.7
1970	5,414,465	16.6	15,954,000	48.9

[1] Philadelphia Customs District (includes Wilmington, Del.).
[2] New York-New Jersey Customs District.

Source: Bureau of the Census.

ATTACHMENT B

	Estimated ConRail container traffic 1st 6 mo 1977			
	New York	Baltimore	Philadelphia	Total
Export:				
Chicago	4,785	3,271	222	8,278
Other than Chicago	4,072	5,295	312	9,679
Total	8,857	8,566	534	17,957
Import:				
Chicago	4,895	1,233	298	6,426
Other than Chicago	3,411	4,792	200	8,403
Total	8,306	6,025	498	14,829

Source: Furnished by R. D. Steiner, ConRail, Dec. 16, 1977.

ATTACHMENT C

TOFC/COFC PLAN II ½ FREIGHT ALL KINDS RATES IN THE PERIOD JANUARY 1974 THROUGH JUNE 1978, 2 TRAILERS, 80,000 LB

[In dollars per shipment; increases, dates, and percentages]

	New York to New Jersey			Philadelphia			Baltimore			Baltimore advantage over Philadelphia			Philadelphia advantage over New York to New Jersey		
	Jan. 1, 1974, base rate	Nov. 30, 1977, 5 percent[1]	June 17, 1978, 4 percent	Jan. 1, 1974, base rate	Nov. 30, 1977, 5 percent[1]	June 17, 1978, 4 percent	Jan. 1, 1974, base rate	Nov. 30, 1977, 5 percent[1]	June 17, 1978, 4 percent	Jan. 1, 1974	Nov. 30, 1977	June 17, 1978	Jan. 1, 1974	Nov. 30, 1977	June 17, 1978
Chicago	718	1,095	1,139	662	1,008	1,048	642	980	1,019	20	28	29	56	87	91
Cincinnati	599	916	953	540	824	857	502	769	800	38	55	57	59	92	96
Detroit	533	815	848	537	820	853	512	782	813	25	38	40			
East St. Louis	820	1,254	1,304	758	1,157	1,203	710	1,085	1,128	48	72	75	62	97	10
Indianapolis	651	995	1,035	599	916	953	548	837	870	51	79	83	52	79	82
Peoria	779	1,190	1,238	728	1,112	1,156	692	1,055	1,097	36	57	59	51	78	82
Toledo	560	856	890	508	775	806	494	755	785	14	20	21	52	81	84

[1] Present rate.

General rate increases will continue to widen the Port of Baltimore's advantage over Philadelphia. For example, where Baltimore now has an advantage of $57 on two trailers moving to or from Cincinnati, if rates increase by 6.7 percent annually as ConRail predicts in its 5-year plan, the advantage of Baltimore will become $69 by 1983.

ATTACHMENT D

NAUTICAL MILES BETWEEN VARIOUS U.S. NORTH ATLANTIC PORTS AND FOREIGN PORTS

	New York[1]	Boston[1]	Philadelphia[1]	Baltimore[1]	Norfolk[1]		New York[1]	Boston[1]	Philadelphia[1]	Baltimore[1]	Norfolk[1]
Capetown	6,786	6,707	6,861	6,912	6,790	Havre	3,294	3,133	3,437	3,563	3,442
Colon	1,974	2,157	1,946	1,901	1,779	Rotterdam	3,488	3,327	3,631	3,757	3,636
Genoa	4,078	3,917	4,221	4,347	4,226	Southampton	3,254	3,093	3,397	3,523	3,402
Gothenburg	3,739	3,578	3,882	4,008	3,887	Rio de Janeiro	4,770	4,739	4,817	4,844	4,723
Hamburg	3,749	3,588	3,892	4,018	3,897						

[1] Marine distance and speed table, Edward W. Sweetman Co., New York, N.Y. 1970.

Note: Sweetman's difference in nautical miles Baltimore versus New York to foreign ports: Capetown, +126 miles from Baltimore; Colon, −73 miles from Baltimore; Genoa, +269 miles from Baltimore; Gothenburg, +269 miles from Baltimore; Hamburg, +269 miles from Baltimore; Havre, +269 miles from Baltimore; Rotterdam, +269 miles from Baltimore; Southampton, +269 miles from Baltimore; and Rio de Janeiro, +74 miles from Baltimore.

Amendments Offered by the Honorable John M. Murphy

AMENDMENT NO. 1

To amend H.R. 12161, Regional Rail Reorganization Act of 1973: Page 2, after line 6 insert the following and renumber the remaining paragraphs as appropriate.

"Sec. II, Section 3 of the Interstate Commerce Act (49 U.S.C. 3) is amended by adding at the end thereof the following new paragraph:

"(6)(a) It shall be the duty of any Class I common carrier by railroad which handles or controls more than 75 per centum of the rail freight traffic to and from a port to establish and maintain equal rates, charges, tariffs, and classifications to and from all points served by rail within such port, and to establish and maintain equal joint routes, rates, charges, tariffs, and classifications for all types of rail freight traffic with all connecting rail carriers to and from all points served by rail within the port. It shall be the duty of each such Class I common carrier by railroad establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation and providing for reasonable compensation to those entitled thereto, and, in case of joint rates, charges, or tariffs, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any participating carrier.

"(b) Any person who is injured in his business or property by reason of a violation of subdivision (a) of this paragraph may sue therefor in any district court of the United States in the district where the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of the suit, including a reasonable attorney's fee.

"(c) Notwithstanding the provisions of section 16 of the Clayton Act (15 U.S.C. 26), any person who shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of subdivision (a) of this paragraph, when and under the same conditions and principles as injunctive relief against conduct or threatened conduct that will cause loss or damage is granted by courts of equity under the rules governing such proceedings. In any such action, a preliminary injunction may issue upon the execution of a proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate. In any action under this subdivision in which the plaintiff substantially prevails, the court shall award the plaintiff the cost of suit, including a reasonable attorney's fee.

"(d) Nothing in this paragraph shall be construed to affect the authority and responsibility of the Commission to guarantee the equalization of rates within the same port, pursuant to section 202(f)(4) of the Railroad Revitalization and Regulatory Reform Act of 1976 or any other provision of law.".

AMENDMENT NO. 2

To amend H.R. 12161, Regional Rail Reorganization Act of 1973.

Page 2, after line 6 insert the following and renumber the remaining paragraphs as appropriate.

"Sec. II. Section 3 of the Interstate Commerce Act (49 U.S.C. 3) is amended by adding at the end thereof the following new paragraphs:

"(6) It shall be unlawful for any common carrier by railroad subject to this part serving a North Atlantic port to maintain, assess, apply, or participate in rates which are applied to waterborne export, import, or domestic offshore traffic handled by it moving to or from origins or destinations, in the states served by the Consolidated Rail Corporation, more than 300 miles from the nearest North Atlantic port if such rates are greater than the rates of the same or any other common carrier by railroad subject to this part with respect to such traffic between the same interior origin or destination and any other North Atlantic port. For the purpose of this paragraph, the 'North Atlantic port' means any port on the Atlantic Ocean in any state between Maine and Virginia, inclusive."

Mr. SKUBITZ. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of this bill and will support Chairman ROONEY's amendment to substitute the text of the Senate bill so that a conference can be avoided.

Simply stated, this bill authorizes $1.2 billion to USRA for ConRail. It would be nice if the original $2.1 billion authorized under the 4R Act for ConRail had been sufficient for ConRail to become self-supporting. It was not because the property taken over by ConRail turned out to be in far worse condition than anticipated, and revenues at ConRail have continued to slide.

As I have often pointed out, ConRail is primarily an asset to the Northeast part of the United States. Nevertheless, I realize that the rest of the country depends upon having reliable railroad service in the Northeast if the business of the Nation is to be conducted in a reasonable manner.

All of us who work to establish a viable railroad system in the Northeast considered a number of options to ConRail. Quite frankly, ConRail was the best of all the alternatives available in 1976. Since it began operation, ConRail has had to overcome almost insurmountable problems. The first and most obvious problem was that virtually all of the railroad companies in the Northeast has been in bankruptcy for some time. Their equipment had been literally held together with baling wire and rubber bands. Their service had been haphazard, to say the best. Morale of employees was as low as Death Valley.

ConRail began operations April 1, 1976, and it soon became apparent that we had underfunded this gigantic undertaking. As the largest railroad in the United States, ConRail undertook to begin a lifesaver operation. Some of us had hoped that its workforce could be trimmed at a faster pace, but political pressures made that extremely difficult. It also has been extremely difficult to eliminate unnecessary and duplicative track and branch lines.

Mr. Chairman, that brings me to the fact that $1.2 billion is authorized under this bill than a lesser amount. Nearly 12 months ago, it became clear that ConRail would need more money it it were to achieve its goal of self-support by 1982. At that time some people suggested providing less money than is authorized under this bill. The chairman of the subcommittee and other members of the committee determined that such a course of action would be unwise because it would simply create the situation whereby ConRail would always be returning to Congress for small handouts. Such a practice would not only make ConRail dependent forever on Federal funds but would also increase the temptation for all of us to try to run ConRail in a political manner. Strangely enough, the Office of Management and Budget completely agreed with those of us who believed we should give ConRail the money that was needed for them to achieve their goal rather than dish it out on a piecemeal basis. Consequently this bill, providing $1.2 billion addition authorization, will make it possible for ConRail to behave like a business rather than like a political ward heeler.

Mr. Chairman, as you know, this is my last session of Congress. I wish that ConRail were already a profitable corporation and that the Northeast United States had the kind of rail service which it and the Nation deserves. Unfortunately, it will take several more years to determine whether or not ConRail is the best solution to Northeast rail service. I know that Chairman ROONEY and other members of the committee will continue to oversee ConRail's operations and provide the Congress with informed judgment as to the best course of action for the future. In the meantime, I ask you and my fellow colleagues to provide ConRail with this additional financial support so that it can have a chance at becoming a self-supporting corporation. ConRail's importance to the Northeast and the rest of the United States cannot be overstated.

Mr. MOFFETT. Mr. Chairman, will the gentleman yield?

Mr. SKUBITZ. I yield to the gentleman from Connecticut.

Mr. MOFFETT. Mr. Chairman, I am rather surprised, because of the gentleman's really glowing record of not supporting wasteful kinds of things, that the gentleman feels $1.2 billion is necessary. What, in the gentleman's view, what changes are going to result from the $1.2 billion that would not result from a lesser amount.

We have, for example, the DOT and Interstate Commerce Commission saying that it will probably take $3 billion more. USRA says that it will probably take $3.8 billion more. Does the gentleman see this $1.2 billion as the magic figure? Where did it come from?

Mr. SKUBITZ. No, I do not see it as the magic figure. I say that it gives to ConRail an opportunity to do its job as it has been doing. As I pointed out, ConRail has cut down the number of unions it has to deal with from 140 to 13. It has changed the crew consist from five to two, which may establish a pattern on some of the other lines. It has identified areas where it could make money and where it is losing money. Penn Central never could do that.

But, it is going to give them enough leverage, enough money to operate without having to come back to this body—and I will not be in it next year—to have pressures put upon it to build this bridge or to do something else and this sort of thing. I think this is a good thing.

Mr. MOFFETT. What does the gentleman foresee as happening after we give them the $1.2 billion? Even though the gentleman will not be here—and that disappoints me—the only thing we are going to have is for them to come back again and again and again for more taxpayers' money.

Mr. SKUBITZ. I visualize that this may be possible, but as an old schoolteacher I used to give high marks when I saw that a kid was improving, and give him an opportunity to get ahead. It seems to me that ConRail, at least, is working to do some of the things it should do. I do not want them to be hamstrung to the point where they have got to come back here and agree to certain political pressures. They are going to come back here, there is no doubt in my mind, but let us give them a chance.

Mr. MOFFETT. I said, as the gentleman may have heard, that I think they have done some things right and we should give them credit for that, but to use the gentleman's analogy, I do not see how we can give them much more than a D-plus or a C-minus just by looking at the recent GAO report which said, "Yes, they have done some things right, but they continue to have poor service and have not made yard and terminal changes," and so forth and so on.

The thing that bothers me as one Member, and I am sure bothers the gentleman, is that increasingly we are voting to spend taxpayers' dollars on things over which we have very little control. It is not as though it is a Federal agency I feel we get the worst of both worlds. On the one hand, this is supposed to be a profitmaking corporation, and we spend this money; on the other hand, I cannot go to my constituents, nor can many of the other Members, and say that we paid this money but we do have this control. I think we have neither.

I think we have to get a lot shorter leash on these projects.

I am sympathetic with the gentleman's point that we cannot have political influences. I am not saying that they should not pare the system down. I do not think they have to bow down every time a Member wants to save this or that little line. But, this figure of $1.2 billion is a ConRail figure. It is not the gentleman's figure and not the USRA figure.

Mr. SKUBITZ. Let me say to my colleague that the very fact that the gentleman started the debate and has even raised ConRail's grade to D-plus or C-minus, I think should encourage it. I can never understand why it is that this gentleman from Kansas, who has less interest in ConRail than anybody on this floor, has to go back and explain to his constituency so much more than my colleague, who is quite interested in the Poughkeepsie Bridge. Maybe that is one place we can save some money.

I think we ought to vote out this bill. I think ConRail will come back again and again and again for more money, but this is going to give them a short breather, an opportunity to move ahead without coming back as soon as the new Congress convenes and say, "We need some more money."

Mr. MOFFETT. Will the gentleman yield further?

Mr. SKUBITZ. I do not want to use all my time.

Mr. MOFFETT. I would not want the gentleman from Texas to not be able to speak, because I think he might agree with some of the things I have said. But, if I could just make this point, I am from the Northeast and I have received a call from my friend, the Secretary of Transportation, saying, "My God, don't offer your amendment to cut ConRail because you will hurt your region."

The fact of the matter is—and I asked the gentlewoman from New Jersey be-

cause I saw her shaking her head when I was speaking before—it seems to me that people from the Northeast like myself who have been going to Members from other parts of the country, such as the gentleman from Texas and others, have been saying, "Please vote for this; we need it for our region."

We have to take the lead to say that we are not just going to take this magic figure as given, and we can cut it down, and let them come back and show us whatever progress they have made.

I thank the gentleman for yielding me this time.

Mr. SKUBITZ. I think this is something like the Poughkeepsie Bridge, something that has got to be studied. My point is just this, that unless we give them this $1.2 billion they are going to be back here anyway. They have made some progress along the lines I had hoped they would make it. The fact is now they are really starting to improve their track and roadbeds which is necessary. They have entered into better labor contracts in an area where I did not think they could break the ground for years yet. I think we ought to give them the room to move forward without forcing them into change.

Mr. MOFFETT. I thank the gentleman.

Mr. SKUBITZ. Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. COLLINS), and I will yield additional time if he is going to need it, because I always feel he supports our case.

Mr. COLLINS of Texas. Mr. Chairman, I appreciate the gentleman from Kansas yielding.

I regret to say I cannot support the case of a continuing ConRail. I want to say this first. The remarks of the gentleman from Connecticut (Mr. MOFFETT) were well placed.

In the growth and progress of New England, I am reminded so much about an old proverb we have down home about one bad apple in a barrel. They have a barrel of good apples in the Northeast and they have one bad apple. The bad apple is ConRail, and the gentleman's district and all of America is going to be better off when ConRail gets on the right track.

Mr. Chairman, I rise in opposition to this bill because I believe that ConRail was a mistake and the sooner we recognize that mistake, the fewer tax dollars will be thrown down the drain for a hopeless cause.

ConRail was established under the 4–R Act in February of 1976. It began operations April 1, 1976 and took over six bankrupt railroads in the Northeast. Advocates for a large ConRail at that time had argued that ConRail would be able to improve labor relations, eliminate unnecessary service and bring modern management techniques to a disaster which had bankrupted six other railroads. The U.S. Railway Association sent to the Congress a final system plan which projected year by year the improved scenario we were to expect. Under the final system plan, we were told that ConRail not only could achieve its goals with a one-shot Federal investment of $2.1 billion, but also that ConRail would begin to make a profit and repay about half of that $2.1 billion. After 2 years of operation, it is abundantly clear that ConRail can do none of these things.

In the first place, ConRail management wasted the opportunity it had to substantially reduce its employment. It began operations with around 95,000 employees and it still has close to 90,000 employees. Where are the efficiencies which we had expected from the consolidated management of six bankrupt railroads? They seem to have vanished into thin air. We were told that ConRail would begin to attract new business so as to increase its chances at profitability. In every quarter since its commencement of operations, ConRail has failed to meet the projections in the final system plan. As a matter of fact, for the last 3 quarters, ConRail has continued to lose business rather than gain business. What has been the solution for ConRail management? They have simply come to Congress to ask us for another $1.2 billion. What is worse, Mr. Chairman, everyone in this body knows that $1.2 billion will not be enough.

The Comptroller General in his report prepared for the Government Operations Committee indicates that the additional Federal subsidy figure could run as high as $4 billion.

Mr. Chairman, I hardly think that the final few days of the 95th Congress is the appropriate place or time to give ConRail additional money. It is my understanding that if we do nothing, ConRail will be able to continue its operations—as haphazard as they may be—well into the fall of next year. There is no crisis in this particular legislation. If we vote down this bill, ConRail will not stop, but it will give us time to stop and think about what sort of solution there should be for rail service in the Northeast United States. I would suggest, Mr. Chairman, that the time has come to sell everything we can in ConRail to railroads —the private railroads of America—who do know how to attract business and provide good service. I believe the time has come for us to acknowledge the fact that ConRail is saddled with many employees that it does not need and cannot afford. I believe the time has come for us to acknowledge the fact that every town and hamlet in the Northeast does not require a mainline rail operation producing expenses but no revenues.

I urge my colleagues to vote against this authorization bill.

Anytime a committee tries to rush through a piece of legislation, there is a tendency for that legislation to "miss the mark" no matter what its goal. H.R. 11979 was moved through subcommittee in 1 day and brought to the full committee the next day. The process invited costly provisions, but fortunately many of those provisions were dropped by the full committee.

The presumed purpose of H.R. 11979 was to adjust the branch line subsidy provisions of the Railroad Revitalization and Regulatory Reform Act of 1976 so that those provisions would be more workable. The bill as it came from subcommittee went far beyond its purpose and attached many of the trimmings of a Christmas tree.

In my judgment, the bill reported by the full committeee approved the subcommittee bill to the extent that the more costly of the Christmas tree provisions were deleted. For example, the subcommittee bill contained in title II a major railroad rate readjustment for recyclable materials. Not only would that provision have been complicated to administer, but it also contained a $30 million authorization to be used to subsidize certain railroads which would be required to lower their rates on recyclable materials. No matter how meritorious it might be to encourage the use of recyclable materials, it seems needlessly bureaucratic to provide subsidies to railroads in order to benefit dealers in recyclable materials for the purpose of making recyclable materials more competitive with virgin materials. It also represents naive economic manipulation. The marketplace itself will better determine the demand for utilizing recyclable material over the long run.

The full committee on voting to strike this provision from H.R. 11979 was also persuaded by the fact that the matter of railroad rates for recyclable materials is already in the process of being decided by the courts and the Interstate Commerce Commission. On August 2 of this year, as a matter of fact, the court of appeals, directed the Interstate Commerce Commission to redo their original study which had been required by the Railroad Revitalization and Regulatory Reform Act of 1976. While it may be frustrating that the Commission did not do its job properly in the first place, it nevertheless makes more sense for the ICC to carefully study this complicated matter of rates rather than having the Congress establish an indirect and cumbersome method of subsidy.

On my motion, another provision of the bill was struck which would have invited an all-out raid on the taxpayer's pocketbooks. Title III of the bill as reported by the subcommittee put the Government in the business of providing catastrophic liability insurance for branchline rail operations using ConRail as a conduit. As drafted, the provision contained no limitation as to the Government's ultimate liability. Moreover, in providing $50 million in coverage for damages arising out of a single accident of more than $50 million, the provision placed the Government in the position of encouraging extraordinarily high judgments throughout the country.

Fortunately, the committee approved my amendment to delete the provision from the bill. While the bill has been improved enough for me to accept its basic provisions. I am still troubled by several provisions in the bill which time did not permit us to closely examine. For example, the bill amends title V of the 4–R Act with respect to distribution of money order under the redeemable preference share provisions. The 1976 act authorized $600 million to be used for redeemable preference shares which are in effect 30-year low-interest notes to railroads. The 1976 act specified that no more than $100 million could be used for the purpose of trustee certificates which are those financing instruments issued by the court for the purpose of keeping

bankrupt railroads in business. The bill as reported by committee eliminates that $100 million restriction and completely changes the law so that preference will be given to bankrupt railroads. Among other items, the provision also makes such trustee certificates repayable only after a number of other claims are paid by a bankrupt estate. In short, this provision would make a grant program out of what heretofore had been a loan program and it would further make that program primarily of value for bankrupt railroads rather than being used to strengthen good railroads. Certainly a simple branchline subsidy bill is no place for such a massive change in public policy.

Between now and the time this bill reaches the House floor, every Member should give it careful scrutiny. While the stated purpose of strengthening the branchline subsidy program is a noble one, the haste with which this legislation has been drafted has left it prey to many unwise and unwarranted provisions.

Mr. SKUBITZ. Mr. Chairman, I ask my colleague, the gentleman from Texas (Mr. COLLINS) to yield for one observation, and that is that ConRail has decreased the number of people on the lines from 95,000 to almost 83,000.

Second, I am sure that ConRail will continue to decrease the number of people employed because of new labor contracts they have entered into which is going to make this possible.

There has been a reduction, and I am looking at the 12,000 they have already reduced, and I believe that there could be another reduction of close to 12,000 more.

ConRail has been bound by some of these old labor contracts.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SKUBITZ. Mr. Chairman, I yield 1 additional minute to the gentleman from Texas so that I may continue what I was saying.

May I say to my colleague, and I am sure the gentleman will agree with me, being a businessman, that we ought to do something to free ConRail, if it is going to continue to operate. Give ConRail some room to maneuver so that it will be able to operate without having to kowtow to congressional pressure.

Will the gentleman agree with me?

Mr. COLLINS of Texas. I certainly would.

Mr. Chairman, would the gentleman yield me 5 minutes more so that I can call on the chairman of the committee for some explanation of some of the ConRail labor practices?

Mr. SKUBITZ. I will yield the gentleman 2 additional minutes.

Mr. COLLINS of Texas. I appreciate the gentleman yielding me the additional time.

Mr. Chairman, I would like to refer to some questions I have that relate to the labor measures.

The distinguished chairman, the gentleman from Pennsylvania (Mr. ROONEY) certainly shows such commonsense and a strong realization of the basic facts that confront this railroad situation, but there simply has not been a curtailment of the labor costs that ought to be done. The gentleman mentioned one step forward that they have made the other day. What was that step that was made? Just exactly how much will it involve, as to what the railroads have done in the way of reducing the crews toward what is needed to do the job?

Mr. ROONEY. If the gentleman will yield, it is anticipated ConRail will save over $400 million during the next 5 years as a result of the contract it recently entered into with the United Transportation Union.

Mr. COLLINS of Texas. The gentleman is referring to the amendment that takes the fourth man out of the crew and reduces the crew to three men?

Mr. ROONEY. In some instances. In some instances the crew is reduced to two men. The precise crew size depends on the length of individual trains and certain local agreements.

Mr. ROONEY. Yes.

Mr. COLLINS of Texas. What about the work rule of 8 hours or an average of 150 miles constituting a day's work? Have they gotten down to that? You know, with a train moving 50 miles per hour they can make 150 miles in 3 hours. Why have they not changed that situation and brought the rules into the current world we live in?

Mr. ROONEY. That is a matter of collective bargaining I do not agree that Congress should involve itself in collective bargaining.

I met with the rail union representatives several months ago, along with the gentleman from Kansas (Mr. SKUBITZ) and they came into my office, and they wanted legislation pertaining to a number of matters such an designated terminals, hours of service, train lengths, bullet proof glass, and strobe lights. I told these representatives that they had some legitimate requests but that I did not believe the matters should be considered by the Congress. I am not going to write matters such as these into law, I am not going to write labor law in my committee.

Mr. COLLINS of Texas. The gentleman from Pennsylvania (Mr. ROONEY) is one of the most capable men I have ever seen in being able to see both sides. He is open-minded and he is fair. I sincerely appreciate your comprehensive consideration. What we have done, when we come to this bill, will be to write into it added money and then the management is automatically bound to convey all of this subsidy money over whether a full days work is preformed or not.

Why is it that the yard engines commence work only between the hours of 6:30 and 8 a.m. in the morning or at 2:30 and 4 p.m. and also 10:30 and 12 midnight; and regardless of when an engine is needed, it must be started during these periods, a situation which not only wastes fuel, but crew hours as well?

Mr. ROONEY. I say to the gentleman that again you are dealing with collective bargaining which should not be a matter of concern to Congress.

Mr. COLLINS of Texas. Mr. Chairman, severe problems have crippled the railroad system. Let us start with the basic labor rules which all railroads must run under. There are some variations in technicalities, but the rules listed here are standard for railroad union contracts.

Basis of pay rule: 8 hours or an average of 150 miles constitutes a day's work. This mileage figure varies with the area in which the train runs, so, in populated areas where stops are frequent, the 8-hour period may only cover 100 miles. Under this system, if mileage for the 8-hour day runs even slightly over the set mileage limit, another day's pay is involved.

Crew consist requirements: According to the rules of each railroad, normally an engineer, conductor, and two trainmen must be used on each train or engine, regardless of whether they are actually needed to safely and efficiently perform the work required.

Starting time rule: Yard engines commence work only between the hours of 6:30 and 8 a.m., and 2:30 and 4 p.m., and 10:30 and 12 midnight. Thus, regardless of when an engine is needed, it must be started during those periods, a situation which not only wastes fuel, but crew hours as well.

Road and yard separation: Rules segregating road and yard crews restrict yard engines from spotting cars at, or switching at any location in excess of 4 miles beyond the switching limits of a yard. Therefore, if a plant or industry located 5 miles from a switching yard, the railroad is restricted from having yard crews perform the switching at the plant, but must perform this service with their own crews, greatly reducing the amount of service the railroad can offer its customers. Except in certain limiting situations, the same rules prohibit road crews from performing work in yards or terminals.

Running Outside Assigned Limits: Crews have bulletined assignment limits determined by the railroad who owns the track on which the train runs. If operation necessitates use of a crew beyond these assigned limits, then that crew receives an additional day's pay for doing so, even if only a few hours time is so consumed. The alternative to this is to leave off one railroad's crew and take on another at the point where the ownership of the track changes, which still result in extra pay for one run of the train. Negotiations, called "Run-through Agreements" are underway in various locations and with various railroads, but because they involve layoffs or at the very least, decreases in hours for many trainmen, success is limited.

Car Scale: The number of cars handled in each run determines the pay scale received by the engineer and trainmen. This could become problematic, particularly when extra cars are put on trains, but the less-than-usual freight or passenger turnout causes them to travel empty. In winter months or in hot weather, these cars are a drain on the heating and airconditioning power, since they are partially, if at all, filled with cargo or passengers.

Fireman Pay: Engineers working without firemen on locomotives on which firemen would have been used under the former National Diesel Agreement receive an additional $4 per basic day.

Pick Up Or Set Out Locomotives: Engineers receive up to three 30-minute arbitraries per day, in addition to their regular pay for the trip, when required to pick up, set out, or exchange diesel locomotives while enroute between initial and final terminals, including turnaround points and turning service.

Hostling engines: EPA standards for fuel handling have cost an estimated $50 million per fiscal year in transportation expense to meet the new requirements. Engineers required to move their engines to or from the engine tie-up point to refuel them receive added pay, with a minimum of 30 minutes for the time engaged in such hostling even though they are already on duty and under pay for the road or yard service. It has and/or will cost an estimated ¼ billion dollars per fueling point to set up equipment to comply with EPA standards. I do not wish to contest the standards themselves; such precautions may indeed be necessary. But I see no need to rely on Federal funds to meet these expenses.

We are wasting countless billions of taxpayers' dollars on these labor rules which are applied in each case without consideration of the specifics involved. The dollars represented by compliance with these work rules is a staggering figure already, and we should not give the situation our blessing by increasing the inflated budget.

● Mr. MADIGAN. Mr. Chairman, I rise in support of the bill authorizing funds for ConRail as it will be amended by the chairman of the subcommittee. It is my understanding that at the appropriate time the chairman of the subcommittee will move to substitute the text of the Senate bill in order to avoid the necessity of a conference with the other body.

Mr. Chairman, as you know, ConRail was established under the 4–R Act to take over operations of six bankrupt railroads operating in the Northeast United States. The operations included 17 States, one of which is my State of Illinois. For example, in the State of Illinois, ConRail operates over 867.89 route miles and 1,619.77 track miles in Illinois. It employs 3,676 people with an annual payroll of $57,691,942.32 in 1977. ConRail accrued a 1977 tax liability of $2,067,625.83 to State and local governments in Illinois.

In Illinois, ConRail has laid 22.9 miles of new welded rail, installed 241,208 new cross ties and resurfaced 629.7 miles of roadbed from April 1, 1976 to December 31, 1977. ConRail expects to lay 20.3 more miles of new welded rail, install 118,388 more new crossties and resurface 200.2 more miles of roadbed in 1978. The estimated expenditure for this rehabilitation work from 1976 to 1978 in Illinois is $23.0 million.

In addition, ConRail has made other capital investments in Illinois. From April 1, 1976 to December 31, 1977 ConRail spent $900,187 improving other of its facilities in Illinois. Another $6,323,574 is programed for 1978.

From April 1, 1976 to June 30, 1978, ConRail has made purchases in Illinois amounting to $192,514,303, which have had a positive impact on the State's economy.

Between April 1, 1976 and April 1, 1978, 37 new businesses located on ConRail lines in Illinois, employing 916 people, and representing an estimated plant investment of $22,794,000.

The importance of rail freight service to the Midwest and Northeast United States cannot be understated. Nearly half of all the freight in the United States travels by rail and most of that travels in the Northeast United States. The northeastern part of our country relies heavily on intercity rail freight service.

When ConRail began operations on April 1, 1976, it had before it a herculean task. We asked it to assume the operations of six bankrupt railroads, to organize those operations, and to become profitable within a period of 5 years. The final system plan projected that in order to obtain that goal, $2.1 billion would be needed. The 4–R Act authorized $2.1 billion, about half of which was in the form of loans. the other half was in the form of preferred shares. It soon became apparent that USRA had overestimated the revenue ConRail would receive and underestimated the amount of money it would take to rehabilitate the plant and equipment inherited by ConRail.

I ask unanimous consent, Mr. Chairman, that an article which appeared in last week's Wall Street Journal be inserted in the RECORD imediately following remarks. That article accurately characterized the problems that have beseiged ConRail and the current state of affairs.

Some might argue that we would provide ConRail with far less than the amount contained in this bill so that Congress can have a better control over ConRail operations. I am convinced, Mr. Chairman, that that would be exactly the wrong solution to the problems facing railroad service in the Northeast. In 1976, we were careful to make ConRail a for-profit corporation because we knew that unless it was run in a businesslike fashion, it would have no chance of success. I realize that there is a strong temptation to make ConRail into a political animal similar to Amtrak. That also would be a disaster.

Both the Department of Transportation and the Office of Management and Budget favor this $1.2 billion authorization so that ConRail can free itself from political pressure and behave in a more businesslike fashion. If we as Members of Congress do not leave ConRail alone, we will soon find ourselves debating whether or not each little station on ConRail's vast system should be repainted or parking lots should be repaved.

You will recall, Mr. Chairman, that when the Amtrak bill was under consideration, I introduced a number of amendments which have the effect of distinguishing Amtrak from ConRail. The reason for my actions was that I am convinced ConRail can succeed as a for-profit corporation. I am equally convinced that our policies affecting Amtrak will tend to evolve in a manner other than treating Amtrak strictly as a business. This does not mean that every effort should not be undertaken to stop Amtrak from losing huge sums of money. It does mean that we should be very careful to keep politics out of ConRail.

Mr. Chairman, I urge the adoption of this bill and assure the members of this body that I will do all that I can to see that ConRail spends the money wisely and takes the necessary steps to become self-supporting within the next 2 years.

[From the Wall Street Journal, October 6, 1978]

TO END CONRAIL LOSSES, FEDERAL OFFICIALS STUDY A REGULATORY CUTBACK

(By Albert R. Karr)

WASHINGTON.—Federal officials are about convinced that Consolidated Rail Corp., the government-sponsored railroad, is highballing down the track to permanent financial dependence on Uncle Sam. So they are starting to lay plans for drastic alternative actions.

The plans are far from jelling, but they are expected to add up to a major attempt to turn the big, money-losing Northeast railroad into a profitable operation by freeing it from many federal regulatory strings. Also under consideration are wide-ranging—though politically difficult—actions such as sharply paring Conrail's track network, perhaps to half its current 17,000 miles. And Conrail is likely to offer its own plan for trimming its operations.

Meantime, as the fear grows that Conrail will be indefinitely on the federal dole, a clamor for partial or total nationalization of the big road seems certain to rise on Capitol Hill. Though the administration doesn't want any federal takeover, the idea is likely to gain favor with those in Congress who think that if the government has to keep supporting Conrail it ought to control it.

INITIAL EXPECTATIONS

Conrail wasn't expected to be a moneymaker the first few years after it was formed in 1976 to take over the deficit-ridden operations of the Penn Central and five other bankrupt Northeast railroads. And administration policy makers haven't entirely given up hope that an initial infusion of huge federal subsidies will get the company on the track to the financial self-sufficiency that Conrail officials still envision.

But the feeling is growing that, without radical changes, Conrail is doomed to be an "eternal hemorrhage of the Treasury," one administration official says. The prospect of Conrail in its present form becoming profitable is "unlikely—that's my charitable assessment," he adds. Any government plan to remove federal shackles from Conrail's operations would have important implications for the railroad industry in general because it probably would go well beyond Conrail.

A major reason for the gloomy evaluation of Conrail's prospects is the conclusion, being reached by government analysts and Conrail officials alike, that the hoped-for growth in Conrail's freight-traffic market isn't going to occur. Since Conrail is thought more likely to face a continued decline in that market, getting rid of money-losing traffic is seen as being all the more imperative. Conrail must become smaller and leaner it is argued.

"SOME REAL ALTERNATIVES"

So next spring, when the administration starts looking at its budget for fiscal 1980, which starts Oct. 7, 1979, "we will definitely throw some real alternatives onto the table," the administration policy maker says. Some of these ideas on how to shrink Conrail's operations are already beginning to get con-

sideration, and they go far beyond plans to merely eliminate duplicate trackage.

Among the broader notions is to sell off portions of Conrail's 17-state system to other railroads or to governmental bodies. (Recently, New Jersey bought about 375 miles of track—mostly Conrail freight and commuter-line track—in the state to preserve the right-of-way for public transportation.) Another idea would be to put certain money-losing operations on the congested Eastern Seaboard under government control or subsidy and to let Conrail try to make a profit on the rest of the system.

The proposal getting the most attention for the shorter term, however, is to allow Conrail to operate with fewer restrictions by the Interstate Commerce Commission. This plan would include at least a push for legislation to give Conrail considerably more freedom to raise or lower rates, to pull out of red-ink operations, such as those on the Eastern Seaboard, and to haul goods by truck. The U.S. Railway Association, Conrail's federal banker, has begun analyzing the cost and profit-or-loss picture of each Conrail line to see which ones ought to be kept and which dropped from its system.

TRAILING PROJECTIONS

The conviction that drastic action is necessary is increasing because Conrail is rapidly showing that it probably can't reverse the years of losses that it inherited. In February, the company issued a new five-year plan that, while setting more modest goals than the original federal proposals, calls for the company to move towards profitability. But Conrail already is falling short of those projections. It reported a first half loss of $277 million, 10% wider than projected in its plan. So instead of narrowing losses, which Conrail is supposed to be doing, the deficit is growing.

Moreover, Conrail has about used up its original $2.1 billion federal subsidy, and Congress is in the process of acting on the company's request for another $1.2 billion in aid. (The Senate has approved the request, and the House is considering it.) But by most government analyses, Conrail, as presently formed, is almost certain to require more subsidizing.

The ICC and the Transportation Department figure that up to another $2.9 billion might be needed, depending on how Conrail's freight business goes. Under the most pessimistic forecast developed by the U.S. Railway Association, Conrail would need $3.8 billion more in the five years * * *

If any of Conrail's five-year predictions of big revenue gains and cost savings aren't realized, which they might well not be, "Conrail's ability to become financially self-sustaining will be severely jeopardized," the USRA says.

Yesterday, the General Accounting Office, Congress's investigative arm, added its voice to warnings about Conrail. The GAO said in a report requested by a House committee that Conrail could need "substantially" more federal funds than the sum being considered by Congress, and that even the additional government financing "may not assure profitability." Instead of the cumulative $35 million in losses that Conrail has forecast through 1982, "if past (freight) traffic trends continue," that combined deficit could reach $3 billion, the GAO said.

President Carter has made it clear that he is against funneling to Conrail more than the additional $1.2 billion that the company is currently seeking. Once the figure begins to exceed that level, an administration official says, federal aid will move away from paying for rehabilitating track and rolling-stock into the bottomless-pit area of operating subsidies. If Conrail clearly isn't heading for profit country, and off the federal dole, "we will still want to get out of the railroad business," he warns.

It should be noted that after two years of floundering since operations began on April 1, 1976, Conrail is beginning to show some progress. Large sums of money have been poured into improving the track. A severe shortage of usable locomotives—a shortage that paralyzed Conrail freight service during its first two winters—apparently has been largely overcome in recent months by a stepped-up program of engine purchases and repairs. And Conrail recently reached an agreement with labor unions that the company says will significantly reduce the work force.

But many serious difficulties remain. Conrail's freight-car fleet is still in bad shape. The company's management has been severely criticized by USRA and others for moving to slowly to develop a system to move rail cars more efficiently. The road also suffers from a bloated and inefficient network of rail lines, old terminal yards and an obligation to haul considerable boxcar traffic—the movement of general merchandise in boxcars is the biggest money-loser in Conrail freight operations. And even with the train-crew reduction involved in the recent labor agreement, Conrail is expected to be plagued for some time with an excessive work force and with work rules and featherbedding problems that have long hampered efficiency.

The most-imposing long-term problem, however, is a continued decline in overall freight traffic. Because the Northeast suffers from a sluggish economy and because railroads in the region have their own problems—a steady loss of business to trucks, for example—Conrail's market prospects are gloomy. That's an acute problem because Conrail needs solid traffic gains to cover its special handicaps.

Indeed, Conrail had counted on turning around its long-term decline in freight hauling as a major method for reaching the profits that its five-year plan boldly said would be attained starting in 1980. But lately, Conrail executives are becoming convinced that any solid traffic turnaround isn't in the cards. And without sizable traffic gains by 1982, Conrail's hopes of getting into the black and turning off the federal financing spigot will be dashed, both Conrail and federal planners say.

If Conrail were to fall 10% short of its ambitious five-year goal of amassing nearly $19 billion in revenues, close to still-another $2 billion in new federal financing would be needed. But missing the revenue target by 10% "isn't a question of more (federal) money—it's a question of a new solution," says Edward Jordan, Conrail chairman. There would be a need to "drastically change the size of the company," to a much-smaller railroad, he adds.

CONRAIL'S OWN PLANNING

Conrail already is moving ahead on its own planning and next winter could propose a drastic solution before the federal policy suggestions emerge. Conrail executives, close to throwing in the towel when it comes to relying on sharp gains in traffic in the next several years, instead may well opt to go for a smaller railroad that concentrates on proven money-making operations.

After its studies are completed, Conrail may propose that it be allowed to drop considerable red-ink service; trim costly track, terminals and yards tied to that unwanted service; raise freight rates substantially where money-losing operations are kept, and switch to its own trucking service when that is more economical than running trains. Like some of the federal planners' ideas, most of this unshackling effort would require legislation, slashing ICC powers to regulate Conrail operations and those of other railroads. Conrail is expected to tell federal officials of its plans to seek legislation rolling back ICC regulation.

"Conrail has a fighting chance to survive if it is able to make changes" free of federal regulation, Stanton Sender, recently confirmed by the Senate as a director of the USRA, said during his confirmation hearing. Otherwise, "as a permanent ward of the government, or as a government corporation, its fighting days will be over," said Mr. Sender, transportation counsel of Sears, Roebuck & Co.

At Conrail, Carter administration support for this approach is thought to be a strong possibility, given the President's wish to avoid costly subsidies to Conrail and other roads. But Federal planners and Conrail alike face some rugged political obstacles to any such plan. The government policy makers must consider whether dropping red-ink service to some areas robs them of essential rail service.

Local opposition to dropping service that Conrail considers unneeded is already fierce; Conrail is fighting such resistance in trying to abandon a Buffalo-New York City main line through Scranton, Pa., and faces more than 50 local demands to add or keep dubious projects, official say. Recently, the Senate tacked an amendment on to Conrail's $1.2 billion authorization bill that would force the road to resume using a burned-out bridge across the Hudson River at Poughkeepsie, N.Y. Conrail says that no one needs the service and that using the bridge would incur $29 million in capital costs and $10 million in annual operating losses.

Congressional critics such as Rep. Toby Moffett, a Connecticut Democrat, says they will oppose any plan for even wider service reductions. Cutbacks already planned by Conrail show that "when left alone to act like a business," the railroad "will invariably put the average consumer and rail shipper last on the list of priorities," Rep. Moffett charges.

Conrail's commuter-rail operations, however, aren't likely to suffer from any cutbacks in the railroads system. Conrail is paid by state and local governments, often using some federal money, to run commuter trains, and it hasn't any plans to drop commuter service. Similarly, the inter-city trains that Conrail runs for Amtrak aren't expected to be affected by any Conrail retrenchment because that service already is financed by the federal government.

If Conrail isn't able to turn a profit with limited federal funds and isn't allowed to shrink in size to become more efficient, then inevitably the question will be raised of "the government taking over and operating the railroad," Conrail's Mr. Jordan warns.

TALK OF NATIONALIZATION

There's already some talk of nationalization. Sen. Birch Bayh, chairman of the Senate subcommittee that handles Conrail appropriations, says one "possibility" to consider is that "if the public is spending money for the railroad, it ought to own the railroad." That way, there would be no "subterfuge" of federal funds going for a supposedly private-enterprise operation, the Indiana Democrat says.

Even such usual rail-takover foes as William Dempsey, president of the Association of American Railroads, and J. R. Snyder, national legislative director of the United Transportation Union, say nationalization might be the only ultimate alternative if Conrail doesn't make it as a for-profit company. But other railroad officials fear a government takeover of Conrail: Some believe that they couldn't compete with a big, federally funded railroad. Others worry that once the government nationalized Conrail, that could be the first step toward takeovers

of other troubled railroads. And the Carter administration fears that nationalization would be far costlier in both takeover price and political demands for subsidies than doling out money to a private Conrail.

That's why lots of other alternatives are being considered. "We'd like to find a mix of changes that will minimize the government's exposure and, in the long run, eliminate our involvement entirely," an administration transportation policy man says.●

● Mr. CONABLE. Mr. Chairman I rise in support of the ConRail authorization bill, H.R. 12161, not because I am so enamored by the kind of service ConRail has thus far rendered, and certainly not because I like to spend Federal money, but because—at this point in time—there is absolutely no alternative to our continuing support of the "ConRail concept," as it might be called.

The massive economic dislocations caused in just a few days by the unfortunate rail strike we had a week or so ago, dramatically illustrated just how essential to the smooth/running of our economy is our national rail-freight system—and I would remind my colleagues from other parts of the Nation that ConRail is an equally essential, and very large, link in that chain of railroads.

Now, as the committee members have told us, it may well be true that, even with the authorization of this additional Federal investment in ConRail, it may not be able to turn the corner to profitability. But, considering all the troubles and obstacles ConRail has faced in its short 2½ year life, I would submit it is too soon to give up on that prospect.

ConRail's critics—for too many of whom it has become a favorite sort of whipping-boy because they have not been able to bend it to their will—now urge that we cut back the authorized investment of $1.2 billion recommended by the committee, so we can "take another look" at it. But what they gloss over is the fact that ConRail is very carefully monitored by DOT, by USRA—which serves as its banker—by GAO and, of course by the authorizing and appropriating committees having jurisdiction in both Houses of Congress, so that this authorization we are considering is clearly no "blank check" to ConRail.

In addition, as this authorization is drawn down, through the normal budgeting and appropriation processes, over the next few years, Congress retains all its options—whatever they may be—for putting something other than ConRail in place to run the vital Northeast rail-freight system.

But even ConRail's sharpest critics do not seem to have, Mr. Chairman, a "something other than ConRail" ought to be.

So I suggest to the rest of my colleagues that, while we look for an alternative—if, in fact, we ever need one—we go on giving ConRail a reasonable opportunity to show what it can do, knowing that, in the meantime, the moneys derived from this authorization will be used to maintain and to go on improving that Northeast rail system we have all previously decided is essential not just to the economy of the Northeast, but to the economy of the entire Nation.●

● Mr. GILMAN. Mr. Chairman, I rise in support of this legislation on which our colleagues labored so diligently. However, I will be submitting an amendment at the appropriate time calling for the repair and revitalization of the Poughkeepsie Railroad Bridge. A similar amendment was adopted this summer by the Senate under the able leadership of the senior Senator from the State of Connecticut (Mr. RIBICOFF). It requires ConRail to repair and maintain the railroad bridge spanning the Hudson River at Poughkeepsie, N.Y., which, although a vital rail link, has been closed since May 1974 due to a fire that destroyed approximately 600 feet of roadbed.

The final Rail Systems Plan, submitted to Congress by the U.S. Railway Association, in 1975, clearly called for the restoration of this vital rail link.

The Departments of Transportation of the States of New York, Connecticut, and Pennsylvania, have all called for the repair of the Poughkeepsie rail bridge. So has the Tri-States Planning Agency, the Federally designated Metropolitan Planning Agency for the tri-State region.

And yet, incredibly, ConRail has brazenly refused to repair the bridge, despite a spate of public hearings held in our region and here in Washington, at which ConRail was presented with facts and figures by numerous witnesses proving that the repair of the bridge is cost effective and is vital to the economic well-being of the Northeast.

We submitted to ConRail over 400 pages of testimony taken at the ad hoc hearings sponsored in August 1977 by myself, my colleagues from New York (Mr. FISH and Mr. MCHUGH) and my colleague from Connecticut (Mr. MOFFETT). But even that overwhelming testimony was scoffed at by the arrogant, self-serving hierarchy at ConRail.

This bridge is the only rail link between New England and points south. It is the shortest route between southern New England, Metropolitan New York, and the rest of the Nation.

Mr. Chairman, this bridge is a major gateway to New England for coal, beef, and other vital goods.

The fact that the only bridge currently open to rail traffic, at Selkirk, 150 miles north of New York City, is the only existing usable bridge across the Hudson virtually invites tragedy in the event of a natural disaster, sabotage, or national emergency.

The Selkirk yards are overcrowded, with boxcars being delayed for days on end, when they are not lost completely. Moreover, the Selkirk route, because of its northerly position, is often closed due to inclement weather.

Mr. Chairman, I have noted the intensity with which Conrail has been urging our colleagues to oppose this amendment. I can not help but question if this opposition is not engendered in good part by the fact that the reopening of this bridge would permit connection to be made by other rail carriers to provide competitive rail service to New York and southern New England.

Mr. Chairman, we are all united in our concern to make our environment suitable for our children and grandchildren. We all know that rail traffic is the least harmful mode of transportation to our environment. And yet, we are treated to the spectacle of ConRail openly encouraging the shippers of the most densly populated region of our Nation to ship their goods by other means.

ConRail, in their arguments refuting the need for repair of this bridge, has not mentioned the fact that the bridge, although under their ownership, has been neglected by ConRail for the past 4½ years to the point where pieces of the bridge have literally begun to rain down upon the residents of Poughkeepsie, N.Y., and into the river below. I would like to know what ConRail's intent is regarding the bridge they own. We know they have no intention of repairing it; many of our colleagues are not aware that the main power lines of the Central Hudson Gas and Electric Company span the river via the bridge; thus rendering demolition of the structure probably more expensive than repair. If the bridge were owned by a private individual, would the Government tolerate 4½ years of neglect causing a public safety hazard?

I can understand the hesitancy of some of our colleagues about interfering in the management of ConRail. However, we realistically have to face the fact that ConRail—which is now approaching Congress hat in hand to subsidize their evermounting deficits—has not only been dead wrong in this instance, but is even refusing to listen to the facts.

In creating ConRail, Congress created a monster. The Poughkeepsie Bridge is more than a major rail link. it is a living symbol of ConRail's refusal to show restraint or competence. The passage of this bridge repair amendment would be a first step toward bringing this arrogant agency back onto the road of responsibility.

Mr. Chairman, many organizations and individuals from New York, Connecticut, and the Northeast have contacted me expressing support for this issue. Among them is the South Western Regional Planning Agency of Rowayton, Conn.

The arguments brought forth by this planning agency are so eloquent that I request unanimous consent to have their communications inserted into the RECORD at this point:

SOUTH WESTERN REGIONAL
PLANNING AGENCY,
Rowayton, Conn., September 22, 1978.

Dear Congressman: The purpose of this letter is to reiterate our strong and urgent support for the Gilman Amendment to HR 12161 Railroad Association Amendments Act 1978, which would provide an additional 9 million dollars to Conrail—fully enough to repair the Poughkeepsie Bridge and restore immediately adjacent main line trackage for high speed freight usage.

The real issue here is not just the repair of one bridge and some track, but whether the Northeastern Seaboard of the United States will have fast overnight (13–14 hours) rail freight service, or whether we shall continue to have to be content with the slow and uncompetitive 63 hour third morning delivery presently provided by Conrail.

Conrail says that if Congress passes the Gilman Amendment, it will constitute an

interference with a "private management decision", and that further funding requests for other projects will result.

We totally disagree.

First, restoration of the bridge is part of the 1975 Final System Plan, as part of the Conrail system. This Plan might be characterized as the official public management plan for Conrail. Surely this is a unique case, and Congress easily can attach guidelines for future appropriations, if any are requested.

Conrail also says that the United States Railway Association Study concluded that the bridge would only produce a low return on investment. But the Tri-State Regional Planning Commission (who refuted these claims in its May 1976 report and again in a letter dated August 4, 1977), estimated a return on investment on the order of 18–20 percent. Tri-State * also calculated that 7–8 freight trains per day of conventional freight would use the bridge, and this is a conservative estimate, because additional T.O.F.C. (Trailer on Flatcar) trains would use the bridge as well. Anyone who has travelled the crowded Interstate 95 knows how much we need fast trains which can compete with trucks.

This is no ordinary project. It has been endorsed by the official transportation planning agency for the Tri-State Region (Connecticut, New York, and New Jersey) and by the Department of Transportation of Pennsylvania.

It has the support of the Northeast/Midwest Economic Coalition, which includes Congressmen from 16 states, New England to Iowa. Many shippers, public officials and citizens have also expressed their support at many hearings.

The enclosed map tells the story eloquently. For some strange and unknown reason, Conrail refuses to provide fast freight service in a north-south direction. Incredibly, it takes Conrail as long (if not longer) to go from Boston to Washington as it does for them to from Boston to Chicago and St. Louis. Simply put, on the Northeast Seaboard, it takes Conrail twice as long to go half as far.

We urge your strongest support for the Gilman Amendment.

Thank you.

Very truly yours,

RICHARD BODKIN,
Chairman.

SOUTH WESTERN REGIONAL
PLANNING AGENCY,
Rowayton, Conn., October 3, 1978.

To: Connecticut Congressional Delegation
From: Richard C. Carpenter, Executive Director
Subject: Answering Conrail's arguments

This is a further supplement to the letter of September 22, 1978 from our Chairman, Richard E. Bodkin.

Conrail recently distributed a memo to Congress, citing four reasons to oppose the Gilman amendment to H.R. 12161. As one who has followed this debate since the bridge fire over four years ago. I would like to offer some answers to Conrail's views:

1. Conrail says repair of the bridge is not cost effective, and cites the 1970 U.S.R.A. Study.

Repair of the bridge and approaching tracks is cost effective. One of the participants, the Tri-State Regional Planning Commission (who was not consulted by the United States Railway Association when it rushed its report to completion in the late summer of 1976) has stated that in all cases examined, the return on investment ranges from 11.4 percent to 22.3 percent!

Also, by mutual agreement of all parties, the Study was conservative in approach. Accordingly, Trailer on Flatcar (T.O.F.C.) service was not included in estimated traffic, nor was freight to and from eastern Massachusetts. In fact, the speeds made possible by using the combination of the bridge and the Northeast Corridor can only be favorable to its use by fast, lightweight T.O.F.C. service, and thus add even more to the estimated return on investment by generating new business for Conrail.

Also, the U.S.R.A. Study assigned costs to the bridge cases for projects that might well be constructed, even without using the bridge.

2. Conrail says repair of the bridge is premature until completion of a U.S.R.A./New England Regional Commission Study in the Fall of 1979.

Action on the bridge, rather than being premature, is in fact, long overdue! Repairs should begin on the bridge immediately. Because of the irresponsibility of the owners (Penn Central and now Conrail), parts of the bridge have been falling onto the heads of the people of Poughkeepsie, as well as into the Hudson River, which are navigable waters for ocean-going freighters.

Conrail needs the new business that this bridge will generate. The public at large needs some relief now from the night and day convoys of heavy trucks on Interstate 95. Restoration of the Poughkeepsie Bridge short-cut to the south is too important to be deferred until completion of yet another study.

3. Conrail says the Gilman amendment unduly injects the Federal government into Conrail management.

Not so. Conrail has failed to follow the 1975 Final System Plan, and has failed to provide competitive service in a north-south direction along the entire Northeast Corridor.

Selkirk, described by Conrail as an "efficient" yard, has "dwell times" that average 21 hours. This results in the Washington to Boston service that takes longer than Boston to Chicago and St. Louis rail freight service!

Public funds have been, and are being, appropriated to Conrail. Surely Congress should be expected to exercise some oversight of Conrail management decisions.

Also, in approving funds for this unique case, Congress can attach safeguards to preclude unreasonable interference with Conrail management.

4. Conrail says the repair of the Poughkeepsie Bridge is not necessary for the transportation of Northeastern energy requirements, in that coal for New England and New York City will be moved by water from Newport News, Virginia to New England ports.

Does this mean that Conrail does not want even the coal hauling business to New England? Also, what happens when the harbors freeze over? It's really hard to understand Conrail's reasoning here.

CONCLUSION

We hope these arguments are hopeful. If you have questions, please call us at (203) 866–5543.

Very truly yours,

RICHARD C. CARPENTER,
Executive Director.●

● Mr. FISH. Mr. Chairman, I rise in support of H.R. 12161, the ConRail authorization bill, with the hope of having it amended to insure the reconstruction and restoration of the Poughkeepsie Railroad Bridge.

Beyond that amendment, I intend to oppose any attempts to reduce the authorization, thereby limiting ConRail's chances for providing viable rail service.

Mr. Chairman, I fully appreciate how very essential the maintenance of the rail freight and commuter services that ConRail provides is to the economy of the Northeast, as well as the entire Nation. There are encouraging signs of improvement in the quality of ConRail service—perhaps the most salient of which was the announcement by William Hennessey, commissioner of New York State's Department of Transportation, that he was terminating a formal investigation of the quality of ConRail freight service to New York State.

As Commissioner Hennessey stated, "We have been able to satisfactorily resolve all problems regarding service," and went on to add that "ConRail's complete cooperation and demonstrated willingness to provide the best possible service," had dispelled the State's original concern that New York shippers might suffer due to ConRail's exclusive situation in providing rail freight service in the region.

In addition to the importance of its freight services, it should be remembered that ConRail is the equally essential operator of certain commuter services—in 1977, nearly 41 million passengers utilized ConRail's metropolitan region trains in and out of New York City. This utilization—up 11.4 percent in the last 4 years—contributes not only to reduced highway congestion and an improved environment. The continuation and improvement of such services is a vital cog, as well, in the ongoing efforts to lift the threat of economic disaster from New York City.

Fares have increased on the ConRail commuter trains, but ridership has increased as well. A 6-percent gain was realized in the first 2 months of this year over the first 2 months of 1977. This increase in patrons is not derived from off-peak or half-fare customers, but from regular commuters. It is due, in part, to better equipment as provided by local authorities and the improvement of ConRail's ontime performance to a rate of 89.9 percent.

These are two important signs of ConRail's progress in recent years. There has also been significant progress elsewhere in the ConRail operation. Since its inception, ConRail has been able to attract nearly 40 cents of private sector money to finance its own equipment acquisitions for every dollar of Federal money invested in this endeavor. I think we should all be concerned that outward signs of dwindling congressional support—such as a cutback of this authorization—may limit ConRail's access to that private sector money and result in an even greater taxpayer investment.

Mr. Chairman, this authorization is necessary for the fiscal health of the Northeast and the entire Nation. I urge my colleagues to cast their vote in favor of this authorization and insure quality commuter and freight rail service in the future.●

● Mrs. MEYNER. Mr. Chairman, I rise in support of this legislation, and especially of the amendment which will be offered by the gentleman from New York (Mr. GILMAN).

It is inconceivable to me that ConRail continues to ignore this vital rail link

*Based on subsequent studies since the U.S.R.A. study that include projected traffic to and from southern New England.

and I urge my colleagues to demonstrate sound judgment to support repair of the Poughkeepsie Bridge—a move that would ensure speedy rail freight service in the northeast and help to bolster the economy of our area.

Over a dozen firms in Sussex County, N.J. are dependent on rail transportation for their industry. They are entitled to fast, efficient freight service—and they have not been getting it. The South Western Regional Planning Agency in Connecticut says that "for some strange reason, ConRail refuses to provide fast freight service in a north-south direction." What should be an overnight trip, under the present Selkirk detour, too often becomes an uncompetitive 63 hour delivery.

At least one firm in my district has indicated that it will soon be shipping by truck as a result of excessive rail delays.

ConRail argues that the cost of rebuilding the Poughkeepsie Bridge will be prohibitive. Not so. As my colleagues have pointed out, the $9 million figure bandied about by ConRail is the absolute maximum for repairs. In reality, a railroad consultant had put the cost at a much lower figure. Also, I understand that New York and Connecticut agreed to put up over $900,000 and the insurance settlement after the bridge burned in 1974 would have provided another $359,000 for repairs. This means that ConRail had $1.3 million at its disposal for repair of the bridge at a time when actual restoration would have cost little more than that.

In addition, estimates are that effective use of the Poughkeepsie Bridge will save ConRail over $3 million annually in track rental charges now paid to Amtrak. Therefore, even if we accept ConRail's high $9 million repair bill, reconstruction of the Poughkeepsie Bridge would pay for itself in 3 years.

Mr. Chairman, I have a copy of a telegram from Govenor Byrne of New Jersey urging acceptance of the Gilman amendment. It says that the Poughkeepsie Bridge "is vital to a number of industries in the New Jersey area" and ". . . important to the national rail network between New England and New Jersey . . . and other parts of the country."

I urge all of my colleagues to vote for restoration of the Poughkeepsie Bridge. I urge a favorable vote on this amendment when it is presented at the appropriate time.●

● Mr. BOLAND. Mr. Chairman, I rise in support of this legislation, H.R. 12161, which would authorize an additional Federal investment in ConRail, and I do so as much as anything else because of the confidence I have in the combined good judgment of the gentleman from Pennsylvania (Mr. ROONEY), and the gentleman from Kansas (Mr. SKUBITZ).

Mr. Chairman, these two gentlemen have worked on this railroad problem far longer, and lived with it far more intimately, than any of the rest of us. I am sure that if either of them thought there was any other answer, at the moment, than this bill, they would have told us so—and I think the support of the gentleman from Kansas is particularly significant in that it illustrates the fact that this is a national problem, not a problem for the Northeast, alone. The economic dislocation that spread so rapidly, and into every part of the Nation, as a result of that brief rail strike we had a week or two ago, was a clear indication of how closely our economy is tied to a national rail-freight system—and that is what this legislation is all about.

Now, Mr. Chairman, some of the opponents of this bill—particularly those who would cut the authorization on the grounds that ConRail is failing or has failed—have short memories. They have forgotten that the so-called 4–R Act, which authorized the initial Federal investment in ConRail, had to be revamped in the last Congress and the authorized investment sharply cut back in order to obtain the approval of the prior administration. They have forgotten the warnings from committee members at the time that, as a result, ConRail was probably seriously under-capitalized, and they have forgotten USRA's advising us that, with the Federal investment thus approved there was no "margin-of-safety"—none at all—for the kind of contingencies ConRail might run into and, in fact, has since run into such as that protracted coal strike, a disastrous flood in Pennsylvania, the decline of the steel industry, two of the harshest winter seasons in recent memory and, of course as we in New England know all too well, the continuing sluggish nature of the economy of the Northeast.

So, it should be a surprise to no one that ConRail is back, and in need of more help to see if it can turn that corner to profitability. None of us know for sure if it can but, by the same token, none of us can yet claim—in light of what I have just called to your memory—that it has failed.

Mr. Chairman, I have had my own troubles with, and doubts about, ConRail and my own run-ins with ConRail management. But, with the help of its employees, there have been enough encouraging signs recently that things are getting better to convince me that ConRail still deserves a reasonable opportunity to show what it can do, before we begin to look at other possible solutions, whatever they might be.

This is why I hope this legislation can be enacted promptly, and why I urge its support by my colleagues.●

Mr. ROONEY. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. SKUBITZ. Mr. Chairman, I yield back the balance of my time.

Mr. ROONEY. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. EVANS of Colorado) having assumed the chair, Mr. BURLESON of Texas, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 12161) to amend the Regional Rail Reorganization Act of 1973 to authorize additional appropriations to the United States Railway Association for purposes of purchasing securities of the Consolidated Rail Corporation, had come to no resolution thereon.

RAILWAY SAFETY AUTHORIZATION ACT

Mr. ROONEY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12577) to amend the Federal Railroad Safety Act of 1970 to authorize additional appropriations, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. ROONEY).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 12577, with Mr. KREBS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Pennsylvania (Mr. ROONEY) will be recognized for 30 minutes, and the gentleman from Kansas (Mr. SKUBITZ) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. ROONEY).

Mr. ROONEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the urgent need for improved railroad safety has attracted national attention this year. During one week in February, there were serious derailments of railroad cars carrying hazardous materials in Waverly, Tenn., and Youngstown, Fla. These accidents resulted in the tragic loss of many lives and many millions of dollars in property damage. Unfortunately, in the months that followed, it seems that derailments of tank cars carrying hazardous materials have become almost a daily event. Even in instances where derailments of tank cars carrying hazardous materials do not result in heavy losses of life or property, there is a natural fear that such losses can occur. Thousands of people are continually being evacuated from their homes because of the imminent danger which can result from such derailments. In 1977, 11,780 such evacuations were reported.

This bill provides an authorization to the Federal Railroad Administration in the amount of $37,725,000 for the purpose of administering the railroad safety program. This amount represents an increase of $2,725,000 over the amount authorized for this purpose for the past 3 fiscal years.

The additional funds are required to increase the number of railroad inspectors by 100. For the last 3 fiscal years, Congress has authorized a total of 500 inspectors, whereas this bill authorizes 600.

Unfortunately, the FRA has never

hired what the committee considered to be a sufficient number of inspectors to adequately perform this most important safety duty. During our hearings, the Administrator testified that, not counting supervisory inspectors, there were only 194 inspectors onboard of which only 54 inspect the tracks. He further stated that he hopes to increase this number of inspectors substantially, if qualified personnel can be located. I believe that it is essential that the funds necessary for this increase of the number of inspectors be provided at this time.

The committee fully recognizes that the funds provided by this bill should not be considered as a panacea to the safety problem. Although there have been improvements in some areas of railroad safety, such as the reduction in the number of fatalities at highway grade crossings, the total number of train accidents remains at an unacceptable level of about 10,000 per year.

Although the accident in Tennessee was caused by a broken wheel and the accident in Florida was caused by sabotage, the principal cause of most accidents is defects in rights-of-way or structures. These defects were the result of deferred maintenance which is prevalent for a number of railroads in the industry because of the very poor rate of return on investment. It has been reported that the rate of return after taxes on railroad investment amounted to less than 2 percent for the past 3 years. Consequently, railroads are unable to obtain or generate the necessary capital to properly maintain the rights-of-way. Thus, the committee is aware that in order to correct railroad safety, there must be comprehensive railroad legislation. Congress provided $1.6 billion in the 4–R Act in the form of loans and loan guarantees for the purpose of assisting railroads. It was understood that a large portion of this money would be used to improve roadbeds and faulty equipment. Only about one-half of this money for redeemable preference shares has been made available as of September 30, 1978. The committee intends to continue in its efforts to have this assistance money made available to the railroads in a more expeditious manner. In addition, it is our intention to continually monitor the Federal Railroad Administration to assure that it is adequately administering the rail safety program and that the number of railroad accidents is reduced to a more acceptable level.

Mr. SKUBITZ. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 12577 as it will be amended by the chairman of the subcommittee. Let me take a few minutes to bring this Committee up to date on the background of this legislation and the compromise which has been reached with respect to it.

In early May, the Committee on Interstate and Foreign Commerce reported this bill which provided an authorization for carrying out the Federal Railroad Safety Act of 1970; the definition of the term "designated terminal" as used in the Hours of Service Act, and a provision for two studies relating to train size and length and Government ownership of railroad rights-of-way.

At that time, I filed supplemental views as part of the committee report because of two major reservations I had concerning the bill as reported by committee. First of all, I was disappointed that this Congress did not take the opportunity to completely revise our Federal railroad safety laws so that they could do a better job. Earlier in the year, I had introduced H.R. 11491, the Railroad Safety Incentive Act of 1978 which presented a new approach toward achieving railroad safety by drawing heavily upon the report by the Office of Technology Assessment on the subject of railroad safety.

You may recall that in 1976, we had requested the Office of Technology Assessment to evaluate the entire matter of railroad safety and make recommendations to us as to ways that we could achieve better railroad safety. I am confident that in the next Congress, this body will have an opportunity to again consider the basic question of whether or not the present Federal railroad safety law utilizes the right approach for achieving better accident prevention.

Today, I have reintroduced H.R. 11491 with changes incorporated in it resulting from careful consideration of the bill by the Safety System Society. Mr. MADIGAN, the next ranking minority member of the Subcommittee on Transportation and Commerce, has joined me as cosponsor of this bill. I hope that the period of time between now and the next Congress will be used by all the parties concerned to seriously consider the provisions of that bill so as to overcome some of the problems highlighted by the Office of Technology Assessment in their report on railroad safety.

I might also add, Mr. Chairman, that the chairman of the subcommittee, Mr. ROONEY and myself, have requested the Office of Technology and Assessment to do an additional study comparing the way the Canadian Government addresses railroad safety with our own. That study is now underway and will be available to the Congress by the end of the year. I am hopeful that this supplemental study by OTA will further demonstrate that we should reassess some of the basic premises we have been operating under with respect to the Government's role in fostering railroad safety.

The second matter I addressed in my supplemental views concerns the definition of the term "designated terminal." Ever since the Hours of Service Act was amended in 1969, the meaning of the term "designated terminal" has been the subject of much controversy between railroad management and railroad labor. When the committee considered the bill, Mr. MADIGAN and most of my colleagues on the Republican side of the aisle, were convinced that the time had come to clarify this term. Much credence was given this point of view by virtue of the fact that significant differences in interpretation existed between the various Federal courts of the United States.

Once the bill was reported by committee, railroad labor and railroad management began to seriously negotiate to find a definition which would clarify once and for all what was meant by "designated terminal." I am happy to report that the parties have reached an agreement in this very important area.

Mr. Chairman, I will insert a statement characterized as exhibit 1 in the RECORD immediately following my remarks which spells out the agreement of the parties.

Finally, Mr. Chairman, the amendment to be offered by the subcommittee chairman also clarifies the goals intended for study provisions contained in the bill.

The final matter concerning this bill which should be mentioned is that the Senate-passed version of the bill contained a 2-year authorization, while the bill reported by the Committee on Interstate and Foreign Commerce contained a 1-year authorization. The amendment to be offered by the subcommittee chairman will contain a 2-year authorization with the understanding that this will in no way discourage the committee from carefully reviewing railroad safety legislation in the first session of the next Congress.

I hope all my colleagues will join me in voting for the subcommittee chairman's amendment to H.R. 12577, the Federal Railroad Safety Authorization Act of 1978 so that the other body can promptly consider the bill and avoid the necessity of a time-consuming conference.

Exhibit 1 follows:

EXHIBIT 1

The amendment to be offered to H.R. 12577 has been agreed upon by rail labor and the Association of American Railroads.

The amendment is designed to clarify the meaning of the term "designated terminal" as used in the Hours of Service Act. The amendment achieves this goal by providing a specific definition of the term.

The Hours of Service Act establishes limitations on the number of hours during which certain classes of railroad employees may remain on duty. The Act specifies that "time on duty" shall include "interim periods available for rest at other than a designated terminal." The 1969 amendments to the Act did not define "designated terminal." Uncertainty about the term's meaning has generated considerable litigation. FRA has stated that because of the different interpretations given by the Courts, it will be forced to decline enforcement of additional alleged violations involving certain improper points of release until Congress defines the term.

To correct this situation and to prevent further litigation the amendment provides that a place shall be considered a designated terminal only if that place is the "home" or "away from home" terminal for the particular crew assignment involved. However, it is the intent of the amendment to permit, but not require, the carrier and employee representatives to mutually agree upon other release points as "designated terminals." To be valid, any such agreement would, of course, have to clearly indicate that the parties intended to establish the point in question as a "designated terminal" for purposes of the Hours of Service Act.

The amendment permits employees to be released for rest periods of four hours or more at points which are not designated terminals only if (1) such a point has suitable food and lodging available, and (2) the employees are prevented from reaching their "designated terminal" within the time requirements of this Act by act of God, track obstruction, casualty, derailment or major disabling equipment failure. The "act of

God, track obstruction, casualty, derailment, or major disabling equipment failure" are the only conditions which permit carriers to release crews at other than a designated terminal. That is, the railroads under this amendment may release a crew at interim points under the following circumstances for four or more hours and it shall not be counted as time on duty:

Track obstruction, such as that caused by a highway grade crossing accident, but not other traffic ahead of the train (unless that traffic is itself affected by a cause identified in the amendment, such as a derailment);

Casualties;

Act of God which is intended to include floods, washouts, snowstorms, hurricanes, etc.;

Derailments;

Major disabling equipment failures, which are intended to include conditions such as broken wheels, engine failures, journal failures, broken rail which halts traffic, track which is out of alignment and halts traffic, complete signal or electrical system failure, and other conditions where corrections cannot be made in time for the crew to complete its trip to the designated terminal within the time requirements of the Act. This provision does not include minor malfunctions such as broken air hoses, pulled drawbars, train separations, slow orders or individual signal [or electrical] failure. Also, yard congestion is not a condition which would permit the railroad to release the crew at an interim release point under this amendment.

Furthermore, a derailment or major disabling equipment failure will justify releasing an employee between designated terminals only if it is the result of a cause not known to or foreseeable by the carrier or its officer or agent in charge of the employee at the time that employee left the designated terminal. Title 45 U.S.C. 64 a(d) contains a similar requirement.

The above five conditions are the only ones under which a carrier could release a crew at other than a designated terminal. Under all circumstances, if a condition can be corrected, and the crew can reasonably be expected to reach the designated terminal within the time requirements of the Act, then the carrier shall not relieve the crew at the interim release point.

Some of the terms in the amendment are similar to terms employed in 45 U.S.C. § 64a(d). But the purpose of the latter section—total lifting of the requirements of the Hours of Service Act—is quite different from the much more limited purpose of the new paragraph 1(b)(4). It is the intent that the new paragraph 1(b)(4) be given a common sense interpretation geared to its purpose and that it be interpreted independently of the decisions construing Section 64a(d). Thus, for example, whereas some court decisions have held that Section 64a(d) does not come into play where a relief crew can be dispatched, that consideration would not be relevant to the application of paragraph 1(b)(4).

The phrase "a place where suitable facilities for food and lodging are available" at other than a designated terminal requires as a minimum,

1. Where reasonably available, single occupancy sleeping rooms, containing adequate furniture and accessories, temperature controls and toilet and shower facilities.

2. Transportation will be furnished where lodging is located an unreasonable walking distance from the on and off duty points and will also be furnished to a restaurant if no restaurant is within reasonable walking distance from the lodging facility. Provisions defining reasonable distance in the respective collective bargaining agreements will govern where applicable. Otherwise, reasonable distance takes into consideration not only distance per se, but such factors as time, location, weather and safety.

If the release point is at a "designated terminal" for other crews, the lodging facilities accepted as suitable for such other crews will likewise be considered as suitable for interim rest periods. Transportation will be furnished as provided for such other crews.

Finally, this amendment is not intended in any way to affect the other provisions of the Hours of Service law relating to maximum hours an employee may be on duty.

● Mr. MADIGAN. Mr. Chairman, it was nearly 90 years in 1893 that the Congress passed the first major railroad safety legislation. There have been considerable improvements made in accident prevention on railroads since that time. Nevertheless, accidents still continue on an unacceptable level causing unnecessary injury, loss of life, and property. In 1976, the last year for which total statistics are available, there were over 10,000 train accidents. In the last 2 years, there have been a total 3,215 deaths resulting from railroad accidents, about half of which have been caused at railroad grade crossings.

Mr. Chairman, I think far more can and should be done to eliminate railroad accidents. The report by the Office of Technology Assessment cited two major reasons why we have not done better in achieving railroad safety. First, OTA pointed out, a lack of a systematic approach for accident prevention. Second, OTA cited a lack of cooperation between railroad labor, railroad management, and Government agencies. The next Congress should do all in its power to alleviate these apparent roadblocks toward lowering the level of risk in the operation of railroad trains for both railroad employees and the public at large.

The so-called designated terminal issue arising out of defining that term in the Hours of Service Act is a good example, where much time and effort is spent by both railroad management and railroad labor in arguing, rather than in cooperating. When the bill was before the full committee, I and most of my Republican colleagues joined with the chairman of the full committee to provide a small majority for placing into the bill a clear definition of the term "designated terminal." My purpose in supporting such an amendment was to clarify the meaning of the term so as to get all parties out of the courts and back to the business of running railroads. Fortunately, the effect of our action was to force railroad management and railroad labor to sit down

I am pleased that both parties have nailed down the meaning of the term "designated terminal." Not only will the public benefit from this positive action, but the parties themselves will be saved needless litigation and confusion.

Mr. Chairman, railroad safety is too important an issue to be bogged down in problems of legislative procedure. Therefore, I intend to support an amendment in the nature of a substitute which will be offered by the chairman of the subcommittee, thereby enabling this legislation to become law without necessity for conference.●

Mr. ROONEY. Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

Mr. SKUBITZ. Mr. Chairman, I have no further requests for time. I yield back the remainder of my time.

Mr. ROONEY. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. PRICE) having assumed the chair, Mr. KREBS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 12577) to amend the Federal Railroad Safety Act of 1970 to authorize additional appropriations, and for other purposes, had come to no resolution thereon.

LOCAL RAIL SERVICE ASSISTANCE ACT

Mr. ROONEY. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11979) to amend section 5 of the Department of Transportation Act, relating to local rail service assistance.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. ROONEY).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 11979, with Mr. KREBS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Pennsylvania (Mr. ROONEY) will be recognized for 30 minutes, and the gentleman from Kansas (Mr. SKUBITZ) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. ROONEY).

Mr. ROONEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, at the time we were deliberating the problem of the bankrupt railroads in the Northeast, it became clear that one of the causes for the multiple bankruptcies was a surplus of branch lines. A proposal, made by the U.S. Railway Association, to help alleviate this problem was for the elimination of approximately 6,000 miles of branch lines in the Northeast. It was further believed that in order to prevent economic and social disruption which would be caused by the sudden abandonment of this large amount of trackage, was for the Federal Government to provide an operational subsidy program. This program was designed to give shippers and communities time to make alternative arrangements in lieu of the customary rail service. Thus, the Railroad Revitalization and Regulatory Reform Act of 1976 provides for a subsidy program lasting 5 years whereby the railroad is compensated for operational losses. The amount of subsidy is 100 percent of such losses paid by the Federal Government in the first year, and a sliding scale to 70 percent Federal, 30 percent State

funding, in the fifth year. The 4–R Act also provides for an operational subsidy for branch lines outside of the Northeast region. The two programs merged into one after 2 years.

After 2 years of experience in administering the 4–R Act, it is now recognized that it is not completely effective. In the States outside of the Northeast region, there will be no sudden abandonment of branch lines. Therefore, it is questioned why an operational subsidy should be provided for a branch line which everyone has long believed should be abandoned and apparently has little chance of being revitalized. This bill provides emphasis on rehabilitation of branch lines before it becomes necessary to abandon them, rather than providing operational subsidies. The committee is convinced this would be a much more prudent use of Federal funds.

Another significant change made to the branch line subsidy program is that it is placed on a permanent basis with an 80 percent/20 percent Federal-State cost sharing. By making the program permanent, it is believed there can be an elimination of precipitous action to place a branch line in the program before a specific expiration date.

On the other hand, the operational subsidy program is established as a 3-year program with the Federal share being 80–70–70 percent. This is the same as was originally provided for the last 3 years of the program. Importantly, it should be noted that no additional funding is provided in this bill.

There are a number of other important amendments to the 4–R Act contained in this bill.

For example, the 4–R Act provides that railroads could increase or decrease rates by as much as 7 percent without Interstate Commerce Commission approval, provided the railroad does not have market dominance. The Commission interpreted the "market dominance" condition in such a way that the railroads, in the opinion of the committee, were unable to utilize this provision to the degree anticipated by the committee when the 4–R Act was enacted.

The Commission interpreted this restriction so as to practically negate the effectiveness of the rate flexibility. It is the intention of the committee to scrutinize this interpretation during the next Congress. Nevertheless, the committee does believe that this rate flexibility should be permitted to continue. Under the 4–R Act, this provision expired in February 1978. This bill provides an extension of this rate flexibility until July 1, 1980.

Another important amendment to the 4–R Act contained in this bill pertains to the railroad assistance program in the form of redeemable preference shares. The 4–R Act provides that railroads could receive assistance for specified approved projects in the form of redeemable preference shares which would be purchased by the Federal Government. The 4–R Act authorizes $600 million for this program. To date, only about $320 million has been committed. The 4–R Act provided that this program should expire on September 30, 1978. This bill provides for the continuation of this program for 1 year. The committee is convinced that this program is most worthwhile and should be extended until the previously authorized funds are committed.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. ROONEY. I am happy to yield to the gentleman from Kansas.

Mr. SKUBITZ. Mr. Chairman, I would ask the chairman of the subcommittee whether the amendment the gentleman says he will propose will include an amendment by the distinguished Representative from the State of Kentucky, Dr. CARTER.

Mr. ROONEY. Yes, that is correct. The amendment I will propose at the appropriate time will take care of his problem, as we discussed in the full committee markup.

The amendment would give the N. & W. our immediate consideration, and I intend fully support it.

Mr. SKUBITZ. Mr. Chairman, if the gentleman will yield further, this is the amendment that will help the small independent coal operators get cars; is that correct?

Mr. ROONEY. Yes, that is correct.

Mr. SKUBITZ. Mr. Chairman, with that I rise in support of this legislation which builds upon the experience gained under the 4–R Act for rationalizing light density and unprofitable railroad branchline service. Before the 4–R Act in 1976, all of us fought to preserve every mile of railroad track in America without any regard for economic reality or improved service to shippers in communities throughout the country. Every railroad abandonment proceeding at the ICC became a shouting match between railroads and politicians. With the subsidy provisions of the 4–R Act, the shouting contest over railroad abandonments was at least partially put aside in favor of some measure of reason and logic and cooperation between railroads, shippers, States, and the communities involved.

The primary purpose of this bill is to give additional flexibility to State railroad officials so that common sense and reason will have a greater chance to prevail in finding solutions to low-density, unprofitable railroad service. I urge my colleges to support this legislation which represents another step forward in both revitalizing and rehabilitating railroad freight service in this country. I do not promise any overnight miracles as a result of this bill, but I am convinced that we are headed in the right direction and I am pleased that most States, including my own, have seriously undertaken a rational assessment of their own railroad needs.

Mr. ROONEY. Mr. Chairman, I have no further requests for time.

Mr. SKUBITZ. Mr. Chairman, I yield 4 minutes to my colleague, the gentleman from Texas (Mr. COLLINS).

Mr. COLLINS of Texas. Mr. Chairman, I thank the gentleman from Kansas (Mr. SKUBITZ), and our ranking Member.

Mr. Chairman, this bill was not reported by the committee until August 18, and the Senate did not act on the bill until 3 weeks ago on September 23. What exactly does the bill do? Quite frankly it is hard to tell because the provisions of the bill have been changing so fast that not even members of the committee can keep up with the changes that have been made.

It is my understanding now that again we will be faced with the situation where virtually a new bill will be proposed on the House floor in the nature of a substitute in an effort to avoid a conference with the other body. Mr. Chairman, that is an efficient method of operation but not always a wise one. Such efficiency usually ends up costing the taxpayer a great deal of money.

Title A to the 4–R Act, passed in February of 1976, contained a provision which subsidized local branch line rail service versus railroads. The reason for this payoff was to permit railroads to get rid of branch line service without having it blocked by labor unions or local communities. About $67 million a year has been appropriated for this venture and used by the States either for planning purposes or to subsidize unprofitable branch line service.

There are two things wrong with the basic approach of this kind of subsidy. First of all, if the service is not making money, in all probability it is not needed and should be allowed to be discontinued without artificially keeping it alive. Only in Washington do wo accept the notion that Government subsidies can refute the laws of the marketplace.

Further, this particular subsidy is a waste of taxpayer dollars because in almost every abandonment case there are alternate means of transportation. The Local Rail Service Assistance Act of 1978 beefs up this Government giveaway and attempts to make it a program so attractive that State government officials will continue to fight for its perpetual survival.

Now is the time to draw the line and save the taxpayers some money. I urge all my colleagues to join with me and vote against this 11th-hour raid on a treasury already reeling from deficit spending.

Mr. SKUBITZ. Mr. Chairman, I yield 3 minutes to my colleague, the gentleman from Illinois (Mr. MADIGAN).

Mr. MADIGAN. Mr. Chairman, in the 94th Congress, the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 marked a significant change in Government policy toward railroads. At that time, all of us recognized that there was a need for a more positive program by the Federal Government with respect to regulation of and assistance to our Nation's railroads.

Mr. Chairman, during this Congress, those of us on the Transportation Subcommittee have carefully evaluated the changes that have been brought about by the Railroad Revitalization and Regulatory Reform Act of 1976. For the most part, the act has begun a process of railroad revitalization. There are, however, areas such as rate regulation which have been a disappointment. One of the areas which has been a success involves State participation in developing a rational

rail system with particular emphasis on branch line utilization.

As a direct result of the 4-R Act, nearly every State has established an office of railroad planning and has developed State railroad officials who are dedicated to rationalizing and improving railroad service within their States. A creative and cooperative effort has developed for dealing with unprofitable but often necessary railroad service serving thousands of both large and small communities. Commonsense and reason has been given an opportunity to supplant emotion and rigidity when it comes to abandonments of unprofitable branch lines.

H.R. 11979 contains provisions which will improve cooperative roles between the Federal Government, States, railroads, shippers, and communities. My own State of Illinois has been a leader in showing what a creative and cooperative effort can produce in the way of better ad more economic railroad service. For example, a line running from Decatur to Paris, Ill. used to be a constant problem for shippers throughout its 63 mile territory. Today, a major railroad supplier operates that line under subsidy from the State but with the clear indication that the line will become profitable as the subsidy is phased out. There were three other lines operating within the State which also show promise of being revitalized and will eventually be operated on a self-supported basis. Prior to the 4-R Act, all of these lines would have been involved in contentious abandonment proceedings creating uncertainty for shippers and communities alike.

This bill in giving greater flexibility to the State will make it possible for some lines to receive the assistance before that point in time when they have deteriorated to the level of de facto abandonment. In addition, the States will be given additional flexibility in using their money to build connecting lines in order to consolidate certain rail lines which had grown up as a result of historical railroad competition.

As you know, Mr. Chairman, money is allocated to the States on the basis of a formula which relates to the number of abandoned lines within a State plan. This bill modifies the formula to provide more equitable distribution of the funds within the future. It also will permit the Department of Transportation to reallocate funds unused by States which do not have a need for such funds. As a result, I do not foresee any harm coming to any State presently receiving funds. What I do see is a long-term rational basis for fund distribution. I would also hope that the Department of Transportation would request additional funds when it appears before appropriations committees next Congress. To date, less than half of the available money which was authorized under the 4–R Act has been used for this program.

For rehabilitation projects, funds will now be available on the same basis as highway funds or urban mass transport funds, namely, on a 80/20 basis. For operating subsidy, the first year subsidy can be paid on a 80/20 basis with the following 2 years paid on a 70/30 basis. Under this bill, a railroad line receiving subsidy will be entitled to such operating subsidy for no more than 3 years.

Title II of the bill merely gives the State of New Jersey additional time to consider permissible changes in commuter service contracts under the 4–R Act.

Title III simply extends the date for operation of the title V program.

Title IV of the bill simply reinstates the so-called "yo-yo" provision in ratemaking which will permit railroads to increase or decrease their rates by 7 percent without having the rate suspended. That provision expired in February of this year without really having been given an opportunity to be tested.

Mr. Chairman, I urge enactment of this bill which in my judgment reflects the kind of fine-tuning which will be necessary in order to assure the full utilization of the 4–R Act.

Mr. ROONEY. Mr. Chairman, I yield back the balance of my time.

Mr. SKUBITZ. Mr. Chairman, I yield back the balance of my time.

Mr. ROONEY. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PRICE) having assumed the Chair, Mr. KREBS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 11979) to amend section 5 of the Department of Transportation Act, relating to local rail service assistance, had come to no resolution thereon.

AMATEUR SPORTS ACT OF 1978

Mr. DANIELSON. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill (S. 2727) to promote and coordinate amateur athletic activity in the United States, to recognize certain rights for U.S. amateur athletes, to provide for the resolution of disputes involving national governing bodies, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. DANIELSON).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill, S. 2727, with Mr. KREBS in the chair.

The Clerk read the title of the Senate bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California (Mr. DANIELSON) will be recognized for 30 minutes, and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. DANIELSON).

Mr. DANIELSON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is the general debate on the bill S. 2727, known as the Amateur Sports Act of 1978.

I have mentioned that this is perhaps the only controversial portion of the bill, and I repeat that. The practice in America has been that amateur sports were to be truly amateur; they were to be supported by contribution from whoever would like to contribute. Many of our corporations and business entities have made generous contributions to the support of our Olympic committee and Olympic athletes. Individuals have done the same. Many times, an exhibition or contest is held where the net profits go to it. We have had a truly grassroots support for our athletic endeavors through the Olympic committee.

In this bill, however, we are for the first time providing a grant of tax money to the Olympic committee. The purpose is to enable the Olympic committee to do a better job of reorganizing itself in order to carry out its new role of being the coordinating body for amateur sports, and also to develop some athletic facilities in which athletes will be able to practice their skills, their athletic prowess, and become better able to represent us in the Olympic and pan-American games.

A point of illustration is appropriate at this point. I mentioned earlier that we are a country with a highly developed commercial sports athletic activity. Take baseball, with the world's series going on today. Baseball is a very successful sport, and as a result one will find scarcely any village or city in America that does not have a baseball diamond of one type or another. We have got the Little League and other small folks facilities for playing baseball. As a result young people, children, young people, have ample opportunities in the United States to practice their skills in baseball.

They have got the incentive of some day getting on the Dodgers, for example, and being able to beat the Yankees. This is a great incentive, and as a result many young people are called into baseball and develop their skills. We have magnificent players and facilities available to them.

Football is the same. Nearly every college and high school has a football field. Young people can learn how to play football. The same is true of basketball. That also is a profitable sport, but when we get down to track and field it is a little different.

I have never heard of a professional 100-yard dash team, a sprinting team, or a shotput team. However, these are simple sports, and any farm boy can run down the road to get the mail and learn how to sprint, and run into town and pick up distance running, and just throw a big steel or lead ball and learn how to put the shot.

But, when we get into some of the more esoteric sports such as speed skating, facilities are only available in the major cities. As a result, we need some facilities to enable people to develop skills in sports for which facilities are not available in the average city or town.

Take tobogganing; I do not suppose there is a town in the Middle West that has a toboggan run, but if we are going

to win a medal in that, we have to have a facility for young people to obtain some practice.

That is the reason for the controversy in this bill, and I am sure at the time of the 5-minute rule we will have ample time to debate it further. I shall not spend more time on general debate. I have touched on the main points of the bill.

The bill has tremendous support from most fields interested in athletics. The AAU is less than enthusiastic in its support, but generally speaking, I can say that the bill has broad support.

Mr. Chairman, I will reserve the balance of my time.

Mr. KINDNESS. Mr. Chairman, this legislation is back before the House because it failed to receive the requisite two-thirds vote in the House under suspension of the rules. S. 2727 raises some fundamental issues about the appropriate role of the Federal Government in amateur sports in our country and, so, the limitations of the suspension procedure were viewed by many of us as too restrictive to allow an adequate resolution of these issues.

Primarily, the bill is a rewrite of the Federal Charter of incorporation of the U.S. Olympic Committee. In this context, the legislation aims to bring about certain reforms in amateur sports. Specifically, the bill attempts to deal with the disorganization and factional disputes which plague amateur sports in our country. Using the USOC Charter as the vehicle for change, the intent is to make that organization: First, the principal coordinator of amateur sports in the United States—particularly, with respect to international competition; second, the major policymaker in U.S. amateur athletics; and third, the forum for the settlement of disputes involving an athlete's right to compete in international events or involving amateur sports organizations—such as the NCAA and AAU—over jurisdiction or the sanctioning of events.

The bill significantly expands the purposes and powers of the U.S. Olympic Committee. In addition, the USOC is granted broadened "exclusive use" protection with respect to the Olympic symbol, emblem, and name. The bill also reflects recent changes made in the USOC constitution with regard to an athlete's right to compete in international events. Importantly, the USOC is granted the power to recognize which amateur sports organization is to be the "national governing body" for each Olympic and pan-American games sport. These NGB's establish policy and sanction international competitions in their particular sport.

Consequently, what we are talking about here are major changes in how amateur sports in this country govern themselves and how disputes which arise among the various factions might be resolved. There was considerable concern in our committee about possible unintended, adverse side effects on amateur sports competitions which exclusively involve high schools, colleges, or athletes in the military. As a result, language has been added to the bill to make it clear that such "restricted competitions" are not to be affected by this bill.

Now, I come to the most controversial provision in this legislation. S. 2727 contains a section 211 on "financial assistance," authorizing a Federal grant of $30 million to the USOC. Many question whether or not the Federal Government ought to get directly involved—in a financial sense—with the USOC and the Olympics. Others, including myself, are concerned about the breadth of the language in the committee bill, since it leaves open ended the question of how taxpayer funds can be used by the USOC.

By the admission of its own advocates, $8 million of this is "earmarked for the reorganization of the amateur sports bureaucracy." The bulk of the money is frankly intended to go for staff, salaries, administrative costs, consultants, computers, and so forth. This money is not limited to the USOC but could be passed on to its various members or to organizations not formally associated with the Olympic Committee. Even part of the remaining $12 million was earmarked in the bill produced by the other body to go for so-called "feasibility studies" regarding the selection of permanent, national training centers. There really is nothing to "study" * * * three of the sites for the training centers have already been selected.

I cannot, and will not, support funding to the USOC for such "purposes." While administrative and overhead costs are part and parcel of any large organization, one has to question whether they are the best purpose for a "one-time" Federal grant to assist the development of amateur sports.

Therefore, during the 5-minute rule, I will offer an amendment to give the Members of this House a compromise alternative to a redtape authorization or the seemingly harsh choice of no funding at all.

My amendment would authorize $30 million to go to the USOC solely for the construction and operation of national training centers.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. KINDNESS. I am happy to yield to the gentleman from Massachusetts (Mr. DRINAN).

Mr. DRINAN. Mr. Chairman, I thank the gentleman for yielding.

I am wondering if the position of the gentleman from Ohio (Mr. KINDNESS) is different today from his position as quoted in the Washington Star of September 28, in an editorial very favorable to the gentleman from Ohio (Mr. KINDNESS) in which the Washington Star on that date said that Congressman KINDNESS was exactly correct the other day in his opposition to the Senate passed bill that would in effect create a federally financed athletic fiefdom.

I wonder if the position of the gentleman has been modified subsequent to that editorial?

Mr. KINDNESS. Mr. Chairman, I am happy the gentleman from Massachusetts (Mr. DRINAN) has raised that question. No, my position has not been modified, but I do face the reality that there is tremendous support for funding in this bill. Under the circumstances that exist, I certainly want to urge that there at least be a direction of that money toward the training centers and not for computer hardware, administrative salaries and overhead.

Mr. DRINAN. Is the gentleman capitulating then to the demand of $30 million?

And I congratulate the gentleman once again for his victory the other day when, on suspension of the rules, the gentleman and some others of us were successful in defeating the alleged one time Federal grant money.

Do I understand now that the gentleman from Ohio concedes the fact that those who want the $30 million do have the votes for that?

Mr. KINDNESS. The gentleman is correct in that respect. I am able to count votes. I saw the votes that were there. And while there were a sizable number who opposed the money, especially under the suspension of the rules, I believe the votes are there.

Mr. DRINAN. If the gentleman will yield for one last time, since that time when this was defeated on suspension of the rules, many of our colleagues have felt particularly the very adamant opposition to this bill which is pouring in in telegrams to every Member of this House. And I have here, from high executives of the amateur athletic community in America, very vigorous opposition to this particular bill.

Consequently I hope the gentleman from Ohio (Mr. KINDNESS) will reconsider his position and rejoin those of us who feel that this bill should not have $30 million involved in it.

Mr. KINDNESS. The gentleman from Massachusetts (Mr. DRINAN) speaks well of the alternatives, but reaches different conclusions than I reach.

I assure the gentleman from Massachusetts (Mr. DRINAN) that the position that I will maintain is that if we do not have the tying down of these funds in a way that directs those funds toward the training centers and the real help to the athletes, I will be voting for the amendment that will strike the funds altogether, which I understand will be offered.

Mr. DRINAN. Mr. Chairman, I thank the gentleman for the support and perhaps in order to defeat the $30 million I would vote against the gentleman's amendment to reorganize this whole package.

Mr. KINDNESS. Mr. Chairman, I thank the gentleman from Massachusetts (Mr. DRINAN) for his contribution.

Mr. Chairman, USOC has already committed itself to a program of developing such multipurpose sports facilities on a regional basis throughout the United States. My idea is to allow USOC one-time Federal funding for such sports "hardware"—tangible, visible and justifiable expenditures. Then USOC is free to defray its administrative costs with the funds it raises from private sources. If USOC has made commitments to the national governing bodies or other amateur sports organizations with respect to how the Federal funds will be allocated, this Congress should

not have its hands tied by such agreements. How the Federal taxpayer's money is spent is our business, and I urge our colleagues to give serious consideration to my amendment. Should my amendment fail, I intend to support the amendment to strike all the money from the bill.

As this bill went to the floor under suspension of the rules, I do not feel that most of the Members of this House appreciated the scope, importance and potential impact of S. 2727. The Members of the House now are allowed to make a separate decision on whether Federal money should be authorized for the purposes described. If we make this decision in the affirmative, then we should spell out exactly where the Federal dollars are going, for what purposes, and why.

Mr. Chairman, I would like to ask the gentleman from California (Mr. DANIELSON) whether he would respond, by way of colloquy, to some questions of interpretation of a portion of the bill.

Mr. DANIELSON. If the gentleman will yield, Mr. Chairman, I would be most pleased to respond.

Mr. KINDNESS. Mr. Chairman, I thank the gentleman.

Under paragraph 201(c)(1) of the bill, the national governing bodies recognized as such by the USOC on the date of enactment are considered to be the national governing bodies for their respective sports. Do I correctly understand that as such, they are entitled, by virtue of such recognition, to be members of the USOC in such capacity?

Mr. DANIELSON. The gentleman is correct. Upon enactment of the bill, those national governing bodies so recognized by the USOC would be members of the USOC, pursuant to the membership standards set forth in paragraph 106(b)(1), that is, those amateur sports organizations recognized by the USOC as national governing bodies.

Mr. KINDNESS. And if, under subsections 205 (b) (c), an amateur sports organization successfully, by way of hearing before the USOC or by way of arbitration, gained status as the national governing body, it would also be entitled to such membership?

Mr. DANIELSON. That is correct. The arbitration provisions to which you refer are designed to resolve disputes as to national governing body status and membership in the USOC for the various Olympic and Pan American sports. I understand that the present USOC constitution provides that a successful challenger in the arbitration automatically becomes the USOC "Group A" member for that sport, consistent with the intent of the bill.

Mr. KINDNESS. I thank the gentleman for that clarification. And, if the USOC does not accord that membership, it would be violating the spirit of its charter, would it not?

Mr. DANIELSON. The gentleman is absolutely correct.

Mr. KINDNESS. Mr. Chairman, I thank the gentleman from California (Mr. DANIELSON) for responding to those questions and clarifying that point, which is a point I had mentioned in the debate on the bill the other day. I would hope that the USOC would be guided by that clarification.

Mr. CHAIRMAN, I reserve the balance of my time.

Mr. DANIELSON. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Chairman, I thank my colleague, the gentleman from California, for yielding to me.

Mr. Chairman, I intended to vote against this bill when it came up under suspension, and a good friend of all of us talked to me on this floor and persuaded me that I was going to vote wrong. That person was someone who had a deep interest in this legislation, Congressman RALPH METCALFE.

Mr. Chairman, I learned over the weekend that RALPH METCALFE prepared what has turned out to be his final speech, a speech in behalf of this legislation.

Mr. Chairman, I would like to have that speech inserted in the RECORD at this point. I do not claim to be an expert in this area at all. However, no one took a greater interest in the Olympics and in all of this than did our distinguished late colleague, RALPH METCALFE.

Mr. Chairman, at this point I insert in the RECORD the speech of Congressman METCALFE.

The speech referred to follows:

Mr. METCALFE. Mr. Chairman, I rise in support of S. 2727, the Amateur Athletics Sports Act of 1978, a bill which I co-sponsored in the House.

On September 26, 1978, this bill came up on the floor of the House for vote under suspension of rules. Unfortunately, S. 2727 did not receive the necessary two-thirds vote required for passage under suspension.

At that time, some of those who opposed this legislation advanced a number of arguments against the bill. I will address some of those concerns here today.

When S. 2727 came up under suspension of the rules, a number of my colleagues, sympathetic to the purposes of this legislation, voted against it on procedural grounds. They suggested that it was inappropriate for such a bill to come up for a vote under suspension. This bill is now before the House under an open rule.

Some colleagues voiced concern that they did not have enough time to become acquainted with this legislation before the vote. They opposed S. 2727 on this ground. I trust that with the passage of time, this point will no longer be raised.

Some members of this body expressed concern that this legislation would result in Federal entanglement in amateur sports. This simply would not be the case. Such a result did not come about when, in 1964, the 88th Congress passed legislation establishing and incorporating the U.S. Olympic Committee. Such a result will not come about with passage of this bill. For essentially what it does is change the U.S. Olympic Committee's mandate. The main purpose of S. 2727 is to restructure the U.S. Olympic Committee by amending the charter given it by the 88th Congress, thereby making it the central coordinating body for all amateur athletics.

Now I do not intend to stand here before you and suggest that there is no connection between this bill and amateur sports—there is. S. 2727 is Federal legislation and concerns amateur sports. In the 88th Congress, concern for amateur sports was real, but congressional legislation in this area was modest and unobstrusive. So is the case here, today, respecting this bill. Our interest in promoting amateur athletics is real. Our interest in finally seeing a resolution to the decades of squabbling among sports organizations is real. With this legislation, we honor the spirit and intent, so apparent in the 88th Congress, to further amateur athletic activities without substantive Federal involvement.

Congressman JACK KEMP, Congressman BOB MICHEL, Congressman NORMAN MINETA and I served on the President's Commission on Olympic Sports, which was established in 1975. This commission came into being because it was obvious to anyone even remotely acquainted with amateur sports that incessant, petty disputes among sports bodies were severely hampering our athletes performances in the Olympics and other international competition. Our declining performances in international competition does not reflect well for the image this country has abroad. Our prestige in the Olympic arena is waning, while the prestige of countries which subsidize their athletes is beginning to surpass ours.

Concern has been expressed about the one-time only $30 million authorization contained in this bill. This one-time only $30 million authorization is inseparable from the purposes of this bill. Without this money, the bill is rendered meaningless. Without this modest amount, the delicately achieved compromises worked out among rival sports bodies will unravel and be lost.

$18 million of this money would be used for comprehensive reorganization and reform of the U.S. Olympic Committee. $12 million of this money will be used to implement a sports medicine information system and to help finance the operation and maintenance of training centers.

Frankly, these monies will by no means be sufficient for the U.S. Olympic Committee to carry out its expanded mandate. However, at least the monies will give the U.S. Olympic Committee a start. I, therefore, urge my colleagues to oppose any amendments to delete or reduce this critical one-time funding.

My distinguished colleagues: This is a landmark bill for the development and improvement of amateur sports in our country. For the first time in over 50 years, we are presented with the opportunity to end the bitter jurisdictional disputes among rival sports organizations. These disputes have hurt the innocent party, the amateur athlete, and have resulted in declining performances by our athletes in Olympic and other international amateur competition.

Furthermore, this bill would encourage and expand athletic participation of minorities, women, the handicapped and sports novices. In other words, this bill would benefit all Americans.

This is a good bill, and I urge every Member of this esteemed body to vote for its passage.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I am pleased to yield to the gentleman from Massachusetts if I have the time.

Mr. DRINAN. I appreciate the sentiments concerning our late and lamented colleague, the gentleman from Illinois (Mr. METCALFE). I did discuss this matter at length and on several occasions with the gentleman from Illinois (Mr. METCALFE) but I wonder if the gentleman from Illinois (Mr. SIMON) has any question about the advisability of yielding to this organization, a private group, some $30 million of taxpayers' money.

Mr. SIMON. In response to the gentle-

man's questions, let me simply say I do not pretend to be an expert in this area, and I am not equipped at this point to provide the answer the gentleman is seeking.

Mr. DRINAN. If the gentleman would yield once again, I would appreciate his assistance, therefore, on the amendment which I and others will offer at the appropriate time tomorrow or the next day deleting the funding from this bill but allowing the reorganization of the corporation to move forward. Serving on the Committee on the Judiciary, we had very, very little evidence as to how the $30 million would be spent. Furthermore, the entire subcommittee of the House Committee on the Judiciary did not approve of the $30 million, and when it was raised in the full Committee on the Judiciary, it passed 18 to 13. As the gentleman from Illinois knows, it was defeated here on September 26 on suspension by a vote of 244 to 158.

I would, therefore, ask the gentleman's support and the support of the other Members of the House for a reasoned decision saying that in the dying days of this Congress we should not authorize $30 million, with no knowledge of where this money is going, in an unprecedented move giving this to a private group. If this were to be given to a public group controlled by some municipality or controlled by the Federal Government, if this were similar to the National Science Foundation or the National Endowment for the Humanities, I would not be raising this question, but this is for a private group. Furthermore, as the gentleman knows, the Amateur Athletic Union, the AAU, is opposed to this, saying this will not achieve the objective for which this bill is here today, namely, the alleged reorganization of sports.

I thank the gentleman for yielding.

Mr. SIMON. I thank the gentleman from Massachusetts. I assume his opposition to funds for private groups includes Tufts University which was here some time ago when we had some appropriation for that organization. But I am really not equipped to respond to the gentleman from Massachusetts. I yield back the remainder of my time to the gentleman from California.

Mr. DANIELSON. Mr. Chairman, I yield 4 minutes to the gentleman from Massachusetts (Mr. DRINAN).

Mr. DRINAN. Mr. Chairman, aside from the statistics that I have already cited, I think that the gravest concern that we could raise today is over the advisability of providing for this unprecedented intrusion by the Federal Government into the arena of amateur sports.

Many of the bill's advocates would have us believe that this is a simple measure that is needed to implement the recommendations of the President's Commission on Olympic Sports. That Commission which met between 1975 and 1977, had as its task the reorganization of amateur sports by the establishment of a framework for resolving the conflicts in this area. Yet no persuasive case was made before the Committee on the Judiciary for just how this particular legislation would resolve these long-standing disputes.

I note once again that the Amateur Athletic Union of the United States, which is the world's largest amateur sports organization, having 371,000 registered athlete members, strongly opposes this particular measure. It is unclear why this legislation has been advanced as a panacea for the internal problems which have plagued the amateur sports community. Many of the recommendations of the President's Commission have already been implemented, and I assume that any further administrative cleanup could be accomplished without this legislation.

The crux of this particular bill, Mr. Chairman, is not the reorganization of amateur athletics but the $30 million authorization. I would urge once again that we postpone the funding in the amount of $30 million until the next Congress. There will be no appropriation of this sum, consequently, that is another reason for deferring the authorization. We were told over and over again that this $30 million would be a one-time expenditure. However, we are all too familiar with the difficulty of weaning any project from Federal money once Federal money has been granted to a particular organization, and I see no reason to believe that the sports community will react any differently than all the other organizations that we have seen.

In conclusion, Mr. Chairman, I urge my colleagues to vote against the authorization of $30 million, but vote in favor of this bill if they so desire. The American public, both amateur athletes and spectators like, will be better served by our continued reliance on voluntarism to support amateur athletics.

Mr. Chairman, I yield back the remainder of my time.

Mr. KINDNESS. Mr. Chairman, by leave of the leisure lovers, I yield to the lovable gentleman from Illinois (Mr. MICHEL) such time as he may consume.

Mr. MICHEL. Mr. Chairman, I could not begin any discussion of this bill today without making first appropriate reference to our departed friend, the gentleman from Illinois, Mr. RALPH METCALFE, who served with us on the President's Commission on Olympic Sports. He will be greatly missed by the membership of this body, his district, as well as by all those athletes he worked so hard on behalf of. He brought to the Commission the expertise and experience of having competed and won silver and bronze medals in the 1932 Olympics, in the 100- and 200-meter dash. And in the 1936 Olympics, he came in second only to Jesse Owens, winning another silver medal and a gold medal in the relays.

The gentleman from Illinois, Mr. RALPH METCALFE, surely would have been here supporting with all his might this legislation. I regret that his untimely death yesterday forecloses his being here to participate. It might very well be that passage of this legislation could be a memorial to the memory of our dear departed friend, RALPH METCALFE.

Mr. Chairman, I am not going to repeat what I said during consideration of the bill when it was considered under suspension of the rules. Members will recall that the vote was 244 to 158 and is indicative of the strong sentiment in this House in favor of this legislation. Unfortunately, this bill was only 24 votes short of the necessary two-thirds when it was considered last September 26. I feel confident that when all the facts are in and all Members are aware of the real intent and purpose of this legislation, there will be a large number of Members voting for it under this procedure, where only a simple majority is required.

I call Members' attention to the remarks I made earlier on the bill on pages 31661 to 31667 of the CONGRESSIONAL RECORD dated September 26, 1978.

Mr. Chairman, I would like to touch just very briefly today on some of the background and specifically the AAU role during the development of this legislation. I would say at the very outset that I have long admired the Amateur Athletic Union and all those people who have been members of it and what they have contributed to amateur sports. But, my friends, "the times, they are a-changing."

The Amateur Athletic Union is probably one of the largest and leading sports organizations in the field of amateur athletics. In terms of overall power, they probably have the most to lose by enactment of this legislation, because under the 35 sports that are considered "Olympic and Pan American sports," they controlled until recently 8 of the 35. Having had to relinquish control of wrestling they now have seven, still in command of the largest block of "Olympic and Pan American sports" and in fact are the only organization governing more than one of these sports.

The gentleman from Massachusetts (Mr. DRINAN) makes reference to several mailgrams or telegrams, not from the thousands of amateur athletes that happen to be members of the AAU, but the executive director and some of the officers of that organization, who want to keep control as they have for so many years. There has not been one telegram or letter sent to my knowledge, from any athlete in opposition of this bill.

The reason we had a Presidential Commission was to try once and for all to get under one roof those warring factions of the AAU and the NCAA and all the rest. The quarreling between the various sports organizationss has resulted in the denial of participation by athletes in certain competitions, as well as preventing the sports community the opportunity to broaden its base of participation.

I might make specific reference, as a matter of fact, to the U.S. Wrestling Federation case. In accordance with the provisions of the constitution of the USOC, the UWWF, in the summer of 1977, filed a demand with the American Arbitration Association for arbitration, whether it or the wrestling division of the AAU was better qualified to be the national governing body for amateur wrestling. The AAU never thought they would lose this case. Following a lawsuit in which the wrestling division of AAU unsuccessfully attempted to prevent the arbitration from going forward, the American Arbitration Association proceedings were commenced earlier this year, and on September 7, the arbitrators

entered their unanimous decision which stated that the U.S. Wrestling Federation had established its claim for recognition as the national governing body for wrestling to replace the AAU wrestling division.

The AAU was shocked. They did not believe this could happen, but it did. Now we see them, or at least a few of their officials, once again opposing the legislation, stating there were not enough hearings and that the bill should be reconsidered. They testified and testified, and the bill has been subject to public hearings and debate in both Houses. It is interesting that vocal opposition from the AAU did not occur until after they lost the wrestling franchise. I might add, that the arbitration through which the AAU lost its right to govern wrestling is the procedure to which the AAU agreed and voted to make a part of the USOC constitution. This bill does no more than codify and strengthen that constitution and provide the funding to realize such a reorganization and allow the USOC to develop a broader participation for minorities, women, and the handicapped, as well as all Americans, in amateur sports.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. Mr. Chairman, if I might just make one more point first; reference has been made to the funding in the legislation. I have no quarrel with those who would want to take a close look at $30 million. I stand behind this one-shot proposition, because when he served on the President's Olympic Commission, we argued time and time again against having the Federal Government controlling amateur athletics in this country. That is the last thing we wanted to have happen.

We are restructuring these national governing bodies now under one umbrella, and if we are to do that immediately and get revved up for the 1980 Olympics, we cannot do it 2 and 3 years from now. It has got to be done now, and there is not the kind of time necessary to solicit from private sources the kind of money needed for that restructuring of these national governing bodies under that one umbrella.

With all due respect for my friend, the gentleman from Ohio (Mr. KINDNESS), who says we ought to have the money only for national training centers, I would point out that those centers are not going to be built for quite some time. This money requirement is one of immediate necessity, and we should get these national governing bodies with their expanded grassroots participation established under the U.S. Olympic Committee before we can consider the full development of national training centers.

Mr. DRINAN. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I wonder if the gentleman would explain the contents of a letter I have here from Mr. Francis Rull, the secretary-treasurer of the New England Amateur Athletic Union. He is in opposition to this, as are 21,000 amateur athletes. They say this now creates "an almost impossible situation * * *."

If I may have the gentleman respond to what he is suggesting here, Mr. Rull says this bill "will greatly restrict the ability of all national governing bodies to carry out their obligations with respect to the rules and regulations that govern international competitions."

Mr. MICHEL. Mr. Chairman, I know that the AAU has heretofore entered into contracts with sports federations of foreign governments in anticipation of their athletes competing in those countries, but I am sorry to say there has not been the kind of openness that we had hoped for. The rules and regulations that govern international sports was thoroughly researched by the PCOS and the language of the bill is the result of the recommendations of the PCOS and would in no way infringe or prevent national governing bodies in the United States from complying with such international regulations.

I would ask the gentleman from Massachusetts (Mr. DRINAN) if he knows, for example, just how those international agreements are negotiated and what the specifics are.

Mr. DRINAN. No.

Mr. MICHEL. That is what the American people and all the athletes who are participating in this country ought to know.

Mr. DRINAN. Mr. Chairman, the purpose of this bill, as alleged in the Committee on the Judiciary, was somehow to bring order and peace and happiness into the national community of sports. I see this bill, with or without the $30 million, providing a divisive element in the world of sports.

So as Mr. Rull says once again, "We request you to let the decisions involving amateur sports rest in the hand of the knowing, dedicated volunteer citizens who do the work."

And those are the ones who have done the work for 85 years.

Mr. Rull says, "We urge you to reject" this bill.

So how does the gentleman suggest we bring harmony into this world when, even before the enactment of this bill, these people are more adamant on the subject than they ever had been before?

Mr. MICHEL. Mr. Chairman, under the provisions of the bill, each individual sport will have its own national governing body, and it will run its own affairs under the umbrella of the U.S. Olympic Committee. As I said earlier, that telegram just speaks for one man and not the 21,000 athletes he alleges are opposed to the bill.

What the gentleman is reading there again demonstrates the reluctance on the part of those who are controlling more than one sport now to give up that control. It is understandable that a few of those persons in that executive director role would be reluctant to relinquish that control, because each individual sport would have its members choosing for themselves who they want to govern their sport and represent them on the Olympic Committee.

Mr. DRINAN. If the gentleman will yield for one last time, does the gentleman have before him or can the gentleman suggest to me any precedent that would be similar to what is proposed here?

This is an entirely private group. It is not even quasi-governmental or quasi-public.

Mr. MICHEL. The Olympic Committee has a Federal charter. That is what we are amending here.

Mr. DRINAN. The Olympic Committee has a Federal charter, like the Boy Scouts or the Girl Scouts, but it is essentially and fundamentally a private group. Can the gentleman suggest any time in our entire history where we have given $30 million of taxpayers' money to what is essentially a private organization?

Mr. MICHEL. We are giving private universities every day hundreds of millions of dollars.

Mr. DRINAN. I mean in this area.

Mr. MICHEL. I am not sure. I have not gone back and researched that in the history of this country, but what I am saying is that the last thing I want to do is to give the Federal Government a continuing supportive role for amateur athletics in this country. That is not my goal. I want to bring, once and for all, under one roof a good, coordinated effort for amateur athletics, so that we can field our best teams in the Olympics, surely, in 1980 and beyond.

As the gentleman knows, this bill goes beyond the elitest athlete and covers the wide range of amateur athletics in this country, so that even the handicapped, minorities, and women will be better treated as a result of the enactment of the provisions of this bill. I submit it is a good bill.

Mr. DRINAN. I thank the gentleman for yielding.

Mr. DANIELSON. Mr. Chairman, I have no further requests for time, and I reserve the balance of my time.

Mr. KINDNESS. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois (Mr. MCCLORY).

Mr. MCCLORY. Mr. Chairman, I commend the committee for recommending this legislation to the House. I rise in strong support of the legislation.

Mr. KINDNESS. Mr. Chairman, I have no further requests for time.

Mr. DANIELSON. Mr. Chairman, I yield back the balance of my time, and I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. MURTHA) having assumed the chair, Mr. KREBS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the Senate bill (S. 2727) to promote and coordinate amateur athletic activity in the United States, to recognize certain rights for United States amateur athletes, to provide for the resolution of disputes involving national governing bodies, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill S. 2727, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

CONFERENCE REPORT ON S. 555, PUBLIC OFFICIALS INTEGRITY ACT OF 1977

Mr. DANIELSON submitted the following conference report and statement on the Senate bill (S. 555) to establish certain Federal agencies effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 95–1756)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 555) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment to the text of the bill, insert the following:

That this Act may be cited as the "Ethics in Government Act of 1978".

TITLE I—LEGISLATIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

COVERAGE

SEC. 101. (a) Each Member in office on May 15 of a calendar year shall file on or before May 15 of that calendar year a report containing the information as described in section 102(a).

(b) Any individual who is an officer or employee of the legislative branch designated in subsection (e) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information as described in section 102 (a).

(c) Within thirty days of assuming the position of an officer or employee designated in subsection (e), an individual other than an individual presently employed in the legislative branch shall file a report containing the information as described in section 102 (a) unless the individual has left another position designated in subsection (e) within thirty days prior to assuming his new position. This subsection shall take effect on January 1, 1979.

(d) Within thirty days of becoming a candidate in a calendar year for any election for the office of Member, or on or before May 15 of that calendar year, whichever is later, but in no event later than seven days prior to the election, and on or before May 15 of each successive year the individual continues to be a candidate, an individual shall file a report containing the information as described in section 102(b).

(e) The officers and employees referred to in subsections (b) and (c) are—

(1) each officer or employee of the legislative branch who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS–16 of the General Schedule; and

(2) at least one principal assistant designated for purposes of this section by each Member who does not have an employee compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS–16 of the General Schedule.

(f) Reasonable extensions of time for filing any report may be granted by the designated Senate Committee with respect to those filing with the Secretary and by the designated House Committee with respect to those filing with the Clerk but in no event may the extension granted to a Member or candidate result in a required report being filed later than seven days prior to an election involving the Member or candidate. If the day on which a report is required to be filed falls on a weekend or holiday, the report may be filed on the next business day.

(g) Notwithstanding the dates specified in subsection (d) of this section, an individual who is a candidate in calendar year 1978 shall file the report required by such subsection not later than November 1, 1978, except that a candidate for the Senate who has filed a report as of such date pursuant to the Rules of the Senate need not file the report required by subsection 101(d) of this section.

CONTENTS OF REPORTS

SEC. 102. (a) Each report filed pursuant to subsections (a) and (b) of section 101 shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $100 or more in value.

(B) The source and type of income which consists of dividends, interest, rent, and capital gains received during the preceding calendar year which exceeds $100 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within—

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000, or

(vii) greater than $100,000.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph and unless, in an unusual case, a publicly available request for a waiver is granted.

(C) The identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any depcsits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual cr his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture or appliances which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6) The identity of all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, and any educational or other institution other than the United States. This paragraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed pursuant to subsections (c) and (d) of section 101 shall include a full and complete statement with respect to the information required by paragraphs (3), (4), (6), and (in the case of reports filed pursuant to subsection (c) of section 101) (7) of subsection (a), as of a date, specified in such report, which shall be not more than thirty-one days prior to

the date of filing, and the information required by paragraph (1) for the year of filing and the preceding calendar year.

(c)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4) and (5) of subsection (a) are as follows:

(A) not more than $5,000;

(B) greater than $5,000 but not more than $15,000;

(C) greater than $15,000 but not more than $50,000;

(D) greater than $50,000 but not more than $100,000;

(E) greater than $100,000 but not more than $250,000; and

(F) greater than $250,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection.

If the current value of any item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(d)(1) Except as provided in the last sentence of this paragraph, each report shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and, with respect to a spouse or dependent child, all information required to be reported in subsection (a)(1)(B) with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gift which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment or a brief description and the value of other gifts.

(C) In the case of any reimbursement which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of the reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(e)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a) and (b) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any of his dependent children.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(a) any qualified blind trust (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any of his dependents,

(ii) with respect to which such individual, his spouse, and any of his dependents have no knowledge of the holdings or sources of income of the trust, and

but such individual shall report the category of the amount of income received by him, his spouse, or his dependents from the trust under section 102(a)(1)(B).

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any of his dependents has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, or a broker, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative (as defined in section 107(2)) of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by section 102(a)(1)(B) of this title, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset and which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee shall be approved by the reporting individual's supervising ethics office. For purposes of this paragraph, (i) "interested parties" means a reporting individual, his spouse, and dependents if the reporting individual, his spouse, or dependent has a beneficial interest in the principal or income of a qualified blind trust, (ii) "broker" is used as defined in section 78 of title 15, United States Code, and (iii) "supervising ethics office" means the designated committee of the House of Representatives for those who file their reports required by this title and with the Clerk and the designated committee of the Senate for those who file the reports required by this title with the Secretary.

(4) An asset placed in trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 28, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such

asset has been disposed of, or has a value of less than $1,000.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under section 102(c)(1).

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under section 102(c)(1).

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (c) of each such asset with his supervising ethics office.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 104, and the provisions of that section shall apply.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics ofice within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under this subsection: (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by this subsection or the trust agreement; or (vi) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C), or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(ii) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $1,000.

(7) Any trust which is in existence prior to the date of the enactment of this Act shall be considered a qualified blind trust if—

(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party, and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold is filed and made available to the public as provided under paragraph (5).

(f) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

FILING OF REPORTS; DUTIES OF CLERK AND SECRETARY

SEC. 103. (a) The reports required by section 101 of Representatives, Delegates to Congress, the Resident Commissioner of Puerto Rico, officers and employees of the House, candidates seeking election to the House, and officers and employees of the Architect of the Capitol, the Botanic Gardens, the Congressional Budget Office, the Government Printing Office, and the Library of Congress shall be filed with the Clerk.

(b) The reports required by section 101 of Senators, officers and employees of the Senate, candidates seeking election to the Senate, and officers and employees of the General Accounting Office, the Cost Accounting Standards Board, the Office of Technology Assessment, and the Office of the Attending Physician shall be filed with the Secretary.

(c) A copy of each report filed by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk or Secretary, as the case may be, to the appropriate State officer as designated in accordance with section 316(a) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 439(a)) of the State represented by the Member or in which the individual is a candidate, as the case may be, within the seven-day period beginning the day that the report is filed with the Clerk or Secretary.

(d)(1) A copy of each report filed under this title with the Clerk shall be sent by the Clerk to the designated committee of the House of Representatives within the seven-day period beginning the day that the report is filed.

(2) A copy of each report filed with the Secretary shall be sent by the Secretary to the designated committee of the Senate.

(e) In carrying out their responsibilities under this title, the Clerk and the Secretary shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

(f) In order to carry out their responsibilities under this title,

(1) the Clerk may, after consultation with the Committee on Standards of Official Conduct of the House of Representatives, and

(2) the Select Committee on Ethics of the Senate shall develop reporting forms and may promulgate rules and regulations.

ACCESSIBILITY OF REPORTS

SEC. 104. (a) Within fifteen calendar days after a report is filed with the Clerk under this title, the Clerk shall make such report available for public inspection at reasonable hours. With respect to reports required to be filed by May 15 of any year, such reports shall be made available for public inspection within fifteen days of May 15 of such year. A copy of any such report shall be provided by the Clerk to any person upon request.

(b) Within fifteen days after a report is filed with the Secretary under this title, the Secretary shall make such report available for public inspection at reasonable hours. A copy of any such report shall be provided by the Secretary to any person upon request.

(c) Any person requesting a copy of a report may be required to pay a reasonable fee to cover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined by the Clerk or Secretary that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public.

(d) Any report filed under this title with the Clerk or Secretary shall be available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(d) and was not subsequently elected, such reports shall be destroyed one year after the individual is no longer a candidate for election to the office of Member unless needed in an ongoing investigation.

(e)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

REVIEW AND COMPLIANCE PROCEDURES

SEC. 105. (a) The designated Committee of the House of Representatives and the designated Committee of the Senate shall establish procedures for the review of reports sent to them under section 103(d)(1) and section 103(d)(2) to determine whether the reports are filed in a timely manner, are complete, and are in proper form. In the event a determination is made that a report is not so filed, the appropriate committee shall so inform the reporting individual and direct him to take all necessary corrective action.

(b) In order to carry out their responsibilities under this Act the designated committee of the House of Representatives and the designated committee of the Senate. have power, within their respective jurisdictions, to render any advisory opinion interpreting this title, in writing, to persons covered by this title. Notwithstanding any other provisions of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of the advisory opinion, acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act,

be subject to any sanction provided in this Act.

FAILURE TO FILE OR FALSIFYING REPORTS

SEC. 106. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

No action may be brought under this section against any individual with respect to a report filed by such individual in calendar year 1978 pursuant to section 101(d).

DEFINITIONS

SEC. 107. For the purposes of this title, the term—

(1) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; net and gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual.

(3) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by State and local governments, or political subdivisions thereof, or by a foreign government within a foreign country; or by the United States Government;

(D) food and beverages consumed at banquets, receptions, or similar events;

(E) consumable products provided by home-State businesses to a Member's office for distribution; or

(F) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

(4) "honoraria" has the same meaning as the term has when used in the Federal Election Campaign Act of 1971.

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(9) "candidate" means an individual, other than a Member, who seeks nomination for election, or election, to the Congress whether or not such individual is elected, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, (A) if he has taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) if he or his principal campaign committee has taken action to register or file campaign reports required by section 304(a) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434(a));

(10) "Clerk" means the Clerk of the House of Representatives;

(11) "Secretary" means the Secretary of the Senate;

(12) "Member" means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) "election" means (A) a general, special, primary, or runoff election, or (B) a convention or caucus of a political party which has authority to nominate a candidate; and

(14) "officer or employee of the House" means any individual, other than a Member, whose compensation is disbursed by the Clerk;

(15) "officer or employee of the Senate" means any individual, other than a Senator or the Vice President, whose compensation is disbursed by the Secretary; and

(16) "designated committee of the House of Representatives or the Senate" means the committee of the House or Senate, as the case may be, assigned responsibility for administering the reporting requirements of this title.

OTHER LAWS

SEC. 108. The provisions added by this title, and the regulations issued thereunder, shall supersede and preempt any State or local law with respect to financial disclosure by reason of candidacy for Federal office or employment by the United States Government.

GENERAL ACCOUNTING OFFICE STUDY

SEC. 109. (a) Before November 30, 1980, and regularly thereafter, the Comptroller General of the United States shall conduct a study to determine whether this title is being carried out effectively and whether timely and accurate reports are being filed by individuals subject to this title.

(b) Within thirty days after completion of the study, the Comptroller General shall transmit a report to each House of Congress containing a detailed statement of his findings and conclusions, together with his recommendations for such legislative and administrative actions as he deems appropriate. The first such study shall include the Comptroller General's findings and recommendations on the feasibility and potential need for a requirement that systematic random audits be conducted of financial disclosure reports filed under this title, including a thorough discussion of the type and nature of audits that might be conducted; the personnel and other costs of audits; the value of an audit to Members, the appropriate House and Senate committees, and the public; and, if conducted, whether a governmental or nongovernmental unit should perform the audits, and under whose supervision.

TITLE II—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

PERSONS REQUIRED TO FILE

SEC. 201. (a) Within thirty days of assuming the position of an officer or employee designated in subsection (f), an individual shall file a report containing the information described in section 202(b) unless the individual has left another position designated in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position.

(b) Within five days of the transmittal by the President to the Senate of the nomination of an individual (other than an individual covered by section 301(b) or an individual nominated for appointment to a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code, is 0–6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 202(b). Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(c) Within thirty days of becoming a candidate for nomination or election to the office of President or Vice President, as determined by the Federal Election Commission, or on or before May 15 of that calendar year, whichever is later, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President or Vice President shall file a report containing the information described in section 202(b).

(d) Any individual who is an officer or employee designated in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 202(a).

(e) Any individual who occupies a position designated in subsection (f), shall on or before the thirtieth day after termination of employment in such position, file a report as termination of employment in such position, file a report containing the information described in section 202 covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of that calendar year up to the date the individual left such office or position, unless such individual has accepted employment in another position designated in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are—

(1) the President;

(2) the Vice President;

(3) each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, whose position is classified at GS–16 or above of the General Schedule prescribed by section 5332 of title 5, United States Code, or the rate of basic pay for which is fixed (other than under the General Schedule) at a rate equal to or greater than the minimum rate of basic pay fixed for GS–16; each member of a uniformed service whose pay grade is at or in excess of O–7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined by

the Director of the Office of Government Ethics to be of equal classification;

(4) each employee appointed pursuant to section 3105 of title 5, United States Code;

(5) any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government;

(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS–16; and

(7) the Director of the Office of Government Ethics and each designated agency official.

(g) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the Director of the Office of Government Ethics established by title IV of this Act, but the total of such extensions shall not exceed ninety days.

CONTENTS OF REPORTS

SEC. 202. (a) Each report filed pursuant to section 201(d) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $100 or more in value.

(B) The source and type of income which consists of dividends, rent, interest, and capital gains, received during the preceding calendar year which exceeds $100 in amount or value, and an indication of which the following categories the amount of value of such item of income is within—

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000, or

(vii) greater than $100,000.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph and unless, in an unusual case, a publicly available request for a waiver is granted.

(C) The identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificates of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture or appliances which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any institution other than the United States. This paragraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of $5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report under this title, the individual shall include in the report—

(1) the identity of each source of such compensation; and

(2) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed pursuant to subsections (a), (b) and (c) of section 201 title shall include a full and complete statement with respect to the information required by paragraphs (3), (4), (6), and (7) of subsection (a), as of a date, specified in such report, which shall be not more than thirty-one days prior to the date of filing, and the information required by paragraph (1) for the year of filing and the preceding calendar year.

(c) In the case of any individual described in section 201(e) of this title, any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4) and (5) of subsection (a) are as follows:

(A) not more than $5,000;

(B) greater than $5,000 but not more than $15,000;

(C) greater than $15,000 but not more than $50,000;

(D) greater than $50,000 but not more than $100,000;

(E) greater than $100,000 but not more than $250,000; and

(F) greater than $250,000.

(2) For the purposes of paragraph (3) section (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection (d). If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by subsection (a), (b), or (c) shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the

spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and with respect to his spouse or dependent child, all information required to be reported in subsection (a)(1)

(B) with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gift which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment or a brief description and the value of other gifts.

(C) In the case of any reimbursement which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of the reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any of his dependent children.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any of his dependents,

(ii) with respect to which such individual, his spouse, and any of his dependents have no knowledge of the holdings or sources of income of the trust, and

but such individual shall report the category of the amount of income received by him or his spouse; or his dependent child from the trust under section 202(a)(1)(B).

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any of his dependents has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, or a broker, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1)(B) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset and which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee shall be approved by the reporting individual's supervising ethics office. For purposes of this paragraph, (i) "interested parties" means a reporting individual, his spouse, and dependents if the reporting individual, his spouse, or dependent has a beneficial interest in the principal or income of a qualified blind trust, (ii) "broker" is used as defined in section 78 of title 15, United States Code, and (iii) "supervising ethics office" means the Office of Government Ethics.

(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 28, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(B) The provision of subparagraph A shall not apply with respect to a trust created for the benefit of a reporting individual appointed to office by the President, by and with the consent of the Senate, or the spouse, dependent or minor child of such person, if—

(i) the Director of the Office of Government Ethics, in concurrence with the Attorney General, finds that——

(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraph (3)(C)(iii) and (iv) of this subsection, from making public or informing any interested party of the sale of any securities;

(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established prior to the effective date of this act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirement of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); and

(ii) the reporting individual (other than an individual who is in such an office at the time of enactment of this Act and has an existing trust which is a good faith attempt to create a blind trust) has informed the Congressional committee considering his nomination at the time his financial disclosure statement is filed with the Committee of his intention to take advantage of this paragraph.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d).

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics

office of the identity of each such asset and the category of value of each asset as determined under subsection (d).

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of each such asset with his supervising ethics office.

(D) Documents filed under subparagraph (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 205 and the provisions of that section shall apply.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C), or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(ii) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $1,000.

(7) Any trust which is in existence prior to the date of the enactment of this Act shall be considered a qualified blind trust if—

(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold is filed and made available to the public as provided under paragraph (5).

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

FILING OF REPORTS

SEC. 203. (a) Except as otherwise provided in this subsection, the reports required under this title shall be filed by the reporting individual with the designated agency official at the agency by which he is employed or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

(b) The President and the Vice President shall file reports required under this title with the Director of the Office of Government Ethics.

(c) Copies of the reports required to be filed under this title by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency officials, candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.

(d) Reports required to be filed under this title by the Director shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this part.

(e) Each individual identified in section 201(c) shall file the reports required by this title with the Federal Elections Commission.

(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

(g) The Office of Government Ethics shall develop and make available forms for reporting the information required by this title.

FAILURE TO FILE OR FALSIFYING REPORTS

SEC. 204. (a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information that such indivdual is required to report pursuant to section 202. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(b) The head of each agency, each Secretary concerned, and the Director of the Office of Government Ethics shall refer to the Attorney General the name of any individual they have reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.

(c) The President, the Vice President, the Secretary concerned, the head of each agency, and the Civil Service Commission, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

CUSTODY OF AND PUBLIC ACCESS TO REPORTS

SEC. 205. (a) Each agency shall make each report filed with it under this title available to the public in accordance with the provisions of subsection (b) of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved (if available) which shall be added to such report by such individual's designated agency official or Secretary concerned, except that this section does not require public availability of the report filed by any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. In addition, such individuals may be authorized, notwithstanding section 204(a), to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds that such filing is necessary in the national interest.

(b) The agency shall permit inspection by or furnish a copy of the report to any requesting person within fifteen days after the report is received by the agency. The agency may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(c)(1) It shall be unlawful for any person to obtain, or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1) of this subsection. The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report filed with an agency, or transmitted to the Director of the Office of Government Ethics, pursuant to this part shall be retained by such agency or the Office of Government Ethics, or both, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 201(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 201(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President unless needed in an ongoing investigation.

REVIEW OF REPORTS

SEC. 206. (a) Each designated agency official or Secretary concerned shall make provisions to ensure that each report filed with him under this title shall be reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports transmitted to him under this title within sixty days after the date of transmittal.

(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, Secretary concerned, or designated agency official, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

(2) If the Director of the Office of Govern-

ment Ethics, Secretary concerned, or designated agency official, after reviewing any report under subsection (a)—

(A) believes additional information is required to be submitted, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford him a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance.

(3) If the Director of the Office of Government Ethics, Secretary concerned, or designated agency official reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, he shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in his opinion be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

(A) divestiture,

(B) restitution,

(C) the establishment of a blind trust,

(D) request for an exemption under section 208(b) of title 18, United States Code, or

(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such regulations as the Director of the Office of Government Ethics or a Secretary concerned, as the case may be, may prescribe.

(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position (other than in the uniformed services), appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the uniformed services, the Secretary concerned shall take appropriate action.

(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee the matter shall be referred to the head of the appropriate agency for appropriate action; except that in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken.

(7) For purposes of assisting employees in avoiding situations in which they could not be in compliance with applicable laws and regulations, each Secretary concerned and designated agency official (including the President in the case of the individuals employed in the Executive Office of the President) shall maintain a list of those circumstances or situations which have resulted or may result in noncompliance with such laws or regulations. Such list shall be periodically published, and shall be furnished to those individuals employed within the agency who are required to file reports under this title. The absence of any situation or circumstance from such a list shall not be construed as an indication that an individual in such circumstance or situation would be in compliance with such laws or regulations.

(8) The preceding provisions of this subsection shall not apply in the case of the President or Vice President, or a candidate or nominee for such office.

ADDITIONAL REQUIREMENTS

SEC. 207. (a) The President may require officers and employees in the executive branch (including the United States Postal Service and members of the uniformed services) not covered by this title to submit confidential reports in such form as is required by this title. Section 202 (a), (b), and (d) shall not apply with respect to any such report.

(b) The Director of the Office of Government Ethics may by rule require disclosure in the reports filed pursuant to subsections (a) and (c) of section 202, of gifts received by a dependent child of a reporting individual if the information required to be disclosed does not exceed that which must be reported by a spouse of a reporting individual under this title.

(c) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

(d) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, or regulation.

AUTHORITY OF COMPTROLLER GENERAL

SEC. 208. The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.

DEFINITIONS

SEC. 209. For the purposes of this title, the term—

(1) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; net and gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual.

(3) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government;

(D) food and beverages consumed at banquets, receptions, or similar events; or

(E) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

(4) "honoraria" has the same meaning as the term has when used in the Federal Election Campaign Act of 1971.

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(9) "Secretary concerned" has the meaning set forth in section 101(8) of title 10, United States Code, and, in addition, means—

(A) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

(B) the Secretary of Health, Education, and Welfare, with respect to matters concerning the Public Health Service; and

(10) "designated agency official" means an officer or employee who is designated to administer the provisions of this title within an agency.

EFFECTIVE DATE

SEC. 210. The provisions made by this title shall take effect on January 1, 1979, and the reports filed under section 201(d) on May 15, 1979, shall include information for calendar year 1978.

TITLE III—JUDICIAL PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

PERSONS REQUIRED TO FILE

SEC. 301. (a) Within thirty days of assuming the position of a judicial employee, an individual shall file a report containing the information described in section 302(b).

Within five days of the transmittal by the President to the Senate of the nomination of an individual to be a judicial officer, such individual shall file a report containing the information described in section 302(b). Nothing in this Act shall prevent any Congressional Committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(c) Any individual who is a judicial officer or employee during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 302 (a).

(d) Any individual who occupies a position as a judicial officer or employee shall on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 302(a) covering the preceding calendar year if the report required by section 301(c) has not been filed and covering the portion of that calendar year up to the date the individual left such office or position, unless such

individual has accepted employment in another position as a judicial officer or employee.

(e) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the Judicial Ethics Committee established by section 303(a) of this title (hereinafter in this title referred to as the "Committee"), but the total of such extensions shall not exceed ninety days.

CONTENTS OF REPORTS

SEC. 302. (a) Each report filed under pursuant to section 301(c) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $100 or more in value.

(B) The source and type of income which consists of dividends, rent, interests, and capital gains received during the preceding calendar year which exceeds $100 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within—

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000, or

(vii) greater than $100,000.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph and unless, in an unusual case, a publicly available request for a waiver is granted.

(C) The identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value, and received during the preceding calendar year.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture or appliances which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6) The identity of all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, and any educational or other institution other than the United States. This paragraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to: (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed pursuant to subsections (a) and (b) of section 301 shall include a full and complete statement with respect to the information required by paragraphs (3), (4), (6), and (7) of subsection (a), as of a date, specified in such report, which shall be not more than thirty-one days prior to the date of filing, and the information required by paragraph (1) for the year of filing and the preceding calendar year.

(c) In the case of any individual described in section 301(d) of this title, any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), and (5) of subsection (a) are as follows:

(A) not more than $5,000;

(B) greater than $5,000 but not more than $15,000;

(C) greater than $15,000 but not more than $50,000;

(D) greater than $50,000 but not more than $100,000;

(E) greater than $100,000 but not more than $250,000; and

(F) greater than $250,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value. But such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a categroy of value pursuant to paragraph (1) of this subsection (d). If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assesed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by subsection (a), (b), or (c) shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and all information required to be reported in subsection (a)(1)(B) with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gift which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment or the value of other gift.

(C) In the case of any reimbursement which is not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of the reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligation of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)(1) Except as provided in paragraph (2),

each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any of his dependent children.

(2) A reporting individual other than a judicial officer of the United States need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any of his dependents,

(ii) with respect to which such individual, his spouse, and any of his dependents have no knowledge of the holdings or sources of income of the trust, and

but such individual shall report the category of the amount of income received by him, his spouse, or his dependent child from the trust under section 302(a)(1)(B).

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any of his dependents has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, or a broker, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1)(B) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset and which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee shall be approved by the reporting individual's supervising ethics office. For purposes of this paragraph, "interested parties" means a reporting individual, his spouse, and dependents if the reporting individual, his spouse, or dependent has a beneficial interest in the principal or income of a qualified blind trust. The term "broker" is used as defined in section 78 of title 15, United States Code. The term "supervising ethics office" means the Judicial Ethics Committee.

(4) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 25, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office. file with such office a copy of —

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d).

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d).

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of each such asset with his supervising ethics office.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 305 and the provisions of that section shall apply.

(B) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by this subsection or the trust agreement; or (vi) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C), or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraphs (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(ii) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $1,000.

(7) Any trust which is in existence prior to the date of the enactment of this Act shall be considered a qualified blind trust if—

(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party, and the category of value of each such asset at the time it was placed in tl e trust, and a list of assets previously placed in the trust by an interested party which have been sold is filed and made available to the public as provided under paragraph (5).

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

FILING OF REPORTS

SEC. 303. (a) The Judicial Conference of the United States shall establish a Judicial Ethics Committee which shall be responsible for developing the forms for reporting the information required by this title and for receiving and making available, in accordance with the provisions of this title, the reports described in section 301.

(b) Each judicial officer and judicial employee shall file the report required by this title with the Committee and shall file a copy

of such report as a public document with the clerk of the court on which he sits, or serves.

(c) In the performance of its functions under this title, the Committee, with the approval of the Judicial Conference of the United States, shall—

(1) develop the necessary forms and promulgate such rules and regulations as may be necessary;

(2) monitor and investigate compliance with the requirements of this title;

(3) provide for the availability of reports as required by section 305;

(4) conduct, or cause to be conducted, the reviews required by section 306;

(5) cooperate with the Attorney General in enforcing the requirements of this title;

(6) submit to the Congress and the President recommendations for legislative revision of this title;

(7) perform such other functions as may be assigned by the Judicial Conference of the United States.

(d) The Committee shall, within one hundred and twenty days after the date of enactment of this Act, develop and, with the approval of the Judicial Conference of the United States, promulgate a regulation establishing a method or methods for readily determining, without the necessity for expert appraisal, the fair market value of assets required to be disclosed by this title.

FAILURE TO FILE OR FALSIFYING REPORTS

SEC. 304. (a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information that such individual is required to report pursuant to section 302. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(b) The Committee shall refer to the Attorney General the name of any individual the Committee has reasonable cause to believe has willfully failed to file a report or has willfully falsified or failed to file information required to be reported.

CUSTODY OF AND PUBLIC ACCESS TO REPORTS

SEC. 305. (a) The Committee shall make each report filed with it under this title available to the public in accordance with subsection (b) of this section.

(b) The Committee shall permit inspection by or furnish a copy of the report to a requesting person within fifteen days after the report is received by the Committee. The Committee may require the requesting person to pay a reasonable fee in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(c)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

(d) Any report received by the Committee shall be held in its custody and be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 301(b) and was not subsequently confirmed by the Senate, such reports shall be destroyed one year after the individual is no longer under consideration by the Senate unless needed in an ongoing investigation.

COMPLIANCE PROCEDURES

SEC. 306. (a) The Committee shall establish procedures for the review of reports filed with it under this title to determine whether the reports are filed in a timely manner, are complete, and are in proper form. In the event a determination is made that a report is not so filed, the Committee shall so inform the reporting individual and direct him to take all necessary corrective action.

(b) Such procedures shall include provisions for conducting a review each year of financial statements filed in that year by judicial officers and employees to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review.

ADDITIONAL REQUIREMENTS

SEC. 307. (a) Nothing in this title shall be construed to prevent the Committee, with the approval of the Judicial Conference of the United States, from requiring officers or employees of the judicial branch not covered by this title to submit confidential financial statements.

(b) The Committee, with the approval of the Judicial Conference, may require disclosure in the reports filed pursuant to subsections (a) and (c) of section 302, of gifts received by a dependent child of a reporting individual if the information required to be disclosed does not exceed that which must be reported by a spouse of a reporting individual under this title.

(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law or regulation.

(d) The provisions of this title requiring the reporting of information shall not supersede the requirements of section 7342 of title 5, United States Code.

DEFINITIONS

SEC. 308. For the purposes of this title, the term—

(1) "income means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; net and gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual.

(3) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government;

(D) food and beverages consumed at banquets, receptions, or similar events; or

(E) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

(4) "honoraria" has the same meaning as the term has when used in the Federal Election Campaign Act of 1971.

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government;

(B) required to be reported by the reporting individual under section 7342 of title 5; United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(9) "judicial officer" means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the courts of appeals; district courts, including the district courts in the Canal Zone, Guam, and the Virgin Islands; Court of Claims; Court of Customs and Patent Appeals; Customs Court; courts of the District of Columbia; and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior; and

(10) "judicial employee" means any employee of the judicial branch of the Government, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who receives compensation at a rate at or in excess of the minimum rate prescribed for grade 16 of the General Schedule under section 5332 of title 5, United States Code.

EFFECTIVE DATE

SEC. 309. This title shall take effect on January 1, 1979, and the reports filed under section 301(c) on May 15, 1979, shall include information for calendar year 1978.

TITLE IV—OFFICE OF GOVERNMENT ETHICS

OFFICE OF GOVERNMENT ETHICS

SEC. 401. (a) There is established in the Office of Personnel Management, an office to be known as the Office of Government Ethics.

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate.

AUTHORITY AND FUNCTIONS

SEC. 402. (a) The Director shall provide, under the general supervision of the Office of Personnel Management, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code.

(b) The responsibilities of the Director shall include—

(1) developing and recommending to the Office of Personnel Management, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Office of Personnel Management pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title II of this Act;

(2) developing and recommending to the Office of Personnel Management, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Office of Personnel Management pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigating compliance with the public financial disclosure requirement of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available such statements;

(4) conducting a review of financial statements to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;

(6) interpreting rules and regulations issued by the President or the Office of Personnel Management governing conflict of interest and ethical problems and the filing of financial statements;

(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases;

(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(9) ordering corrective action on the part of agencies and employees which the Director deems necessary;

(10) requiring such reports from executive agencies as the Director deems necessary;

(11) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;

(12) evaluating, with the assistance of the Attorney General, the need for changes in rules and regulations issued by the Office of Personnel Management and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(12) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code; and

(13) providing information on and promoting understanding of ethical standards in executive agencies.

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult when appropriate with the executive agencies affected and with the Attorney General.

(d) Pursuant to the Director's responsibilities under subsection (b)(1), the Director shall, within one hundred and twenty days after the date of enactment of this Act, develop and recommend to the Office of Personnel Management and the Office of Personnel Management shall promulgate a regulation establishing a method for readily determining, without the necessity for expert appraisal, the fair market value of assets required to be disclosed by this Act.

ADMINISTRATIVE PROVISIONS

SEC 403. Upon the request of the Director, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

SEC. 404. In promulgating rules and regulations pertaining to financial disclosure, conflict of interest, and ethics in the executive branch, the Office of Personnel Management shall issue rules and regulations in accordance with chapter 5 of title 5, United States Code. Any person may seek judicial review of any such rule or regulation.

AUTHORIZATION OF APPROPRIATIONS

SEC. 405. There are authorized to be appropriated to carry out the provisions of this title, and for no other purpose—

(1) not to exceed $2,000,000 for the fiscal year ending September 30, 1979;

(2) not to exceed $2,000,000 for each of the four fiscal years thereafter

SEC. 406. Section 5316 of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(146) Director of the Office of Government Ethics.".

TITLE V—POST EMPLOYMENT CONFLICT OF INTEREST

SEC. 501. (a) Section 207 of title 18, United States Code, is amended to read as follows:

"§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees.

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents any other person (except the United States) in any formal or informal appearance before, or, with the intent to influence, makes any written or oral communication on behalf of any other person (except the United States) to—

"(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

"(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents, or aids, counsels, advises, consults, or assists in representing, any other person (except the United States) concerning any formal or informal appearance before—

"(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

"(3) which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility or in which he participated personally and substantially as an officer or employee; or

"(c) Whoever, other than a special government employee who serves for less than sixty days in a given calendar year, having been employed in the Executive Branch as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for or otherwise represents anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States to—

"(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

"(2) in connection with any judicial, rulemaking, or other proceedings, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

"(d) Subsection (c) of this section shall apply to a person employed—

"(1) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority; or

"(2) in a position for which the basic rate of pay is equal to or greater than the basic rate of pay for GS–17 of the General Schedule prescribed by section 5332 of title 5,

United States Code, and who has significant decision-making or supervisory responsibility as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned; or

"(3) on active duty as a commissioned officer of a uniformed service assigned to a pay grade of 0–7 or above as described in section 201 of title 37, United States Code; or

"(4) in a position designated by the Director of the Office of Government Ethics. Within twelve months from the date of enactment of this subsection, the Director of the Office of Government Ethics shall designate positions, which are not included under paragraph (2) of this subsection and which involve significant decision-making authority, or other duties which are substantially similar to those exercised by persons covered by paragraph (2) of this subsection. On an annual basis, the Director shall review the position designated pursuant to this paragraph, making additions and deletions as are necessary to satisfy the purposes of subsection (c). Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in exercising his responsibilities under this paragraph.

"(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

"(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

"(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath or from making statements required to be made under penalty of perjury.

"(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by the former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

"(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States District. Court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.".

(b) The item relating to section 207 in the table or sections at the beginning of chapter 11 of title 18, United States Code, is amended to read as follows:

"207. Disqualification of former officers and employees; disqualification of partners of current officers and employees.".

APPLICABILITY

SEC. 502. The amendments made by section 501 shall not apply to those individuals who left Government service prior to the effective date of such amendments or, in the case of individuals who occupied positions designated pursuant subsection (d) of section 207, title 18, United States Code, prior to the effecive date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation.

EFFECTIVE DATE

SEC. 53. The amendments made by section 501 shall become effective July 1, 1979.

TITLE VI—AMENDMENTS TO TITLE 28, UNITED STATES CODE

SPECIAL PROSECUTOR

SEC. 601. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 37 the following new chapter:

"Chapter 39.—SPECIAL PROSECUTOR

"Sec.
"591. Applicability of provisions of this chapter.
"592. Application for appointment of a special prosecutor.
"593. Duties of the division of the court.
"594. Authority and duties of a special prosecutor.
"595. Reporting and congressional oversight.
"596. Removal of a special prosecutor; termination of office.
"597. Relationship with Department of Justice.
"598. Termination of effect of chapter.

"§ 591. Applicability of provisions of this chapter

"(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives specific information that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense.

"(b) The persons referred to in subsection (a) of this section are—

"(1) the President and Vice President;

"(2) any individual serving in a position listed in section 5312 of title 5;

"(3) any individual working in the Executive Office of the President and compensated at a rate not less than the rate provided for level IV of the Executive Schedule under section 5315 of title 5;

"(4) any individual working in the Department of Justice and compensated at a rate not less than the rate provided for level III of the Executive Schedule under section 5314 of title 5; any Assistant Attorney General; the Director of Central Intelligence; the Deputy Director of Central Intelligence; and the Commissioner of Internal Revenue;

"(5) any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President; and

"(6) any officer of the principal national campaign committee seeking the election of the President.

"§ 592. Application for appointment of a special prosecutor

"(a) The Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title has engaged in conduct described in section 591 (a) of this title, shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate.

"(b)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court specified in section 593(a) of this title, and the division of the court shall have no power to appoint a special prosecutor.

"(2) Such notification shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

"(3) Such memorandum shall not be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

"(c)(1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or prosecution, or if ninety days elapse from the receipt of the information without a determination by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation or prosecution, then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor.

"(2) If—

"(A) after the filing of a memorandum under subsection (b) of this section, the Attorney General receives additional specific information about the matter to which such memorandum related; and

"(B) the Attorney General determines, after such additional investigation as the Attorney General deems appropriate, that such information warrants further investigation or prosecution,

then the Attorney General shall, not later than ninety days after receiving such additional information, apply to the division of the court for the appointment of a special prosecutor.

"(d)(1) Any application under this chapter shall contain sufficient information to assist the division of the court to select a special prosecutor and to define that special prosecutor's prosecutorial jurisdiction.

"(2) No application or any other documents, materials, or memorandums supplied to the division of the court under this chapter shall be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

"(e) The Attorney General may ask a special prosecutor to accept referral of a matter that relates to a matter within that special prosecutor's prosecutorial jurisdiction.

"(f) The Attorney General's determination under subsection (c) of this section to apply to the division of the court for the appointment of a special prosecutor shall not be reviewable in any court.

"§ 593. Duties of the division of the court

"(a) The division of the court to which this chapter refers is the division established under section 49 of this title.

"(b) Upon receipt of an application under section 592(c) of this title, the division of the court shall appoint an appropriate special prosecutor and shall define that special prosecutor's prosecutorial jurisdiction. A special prosecutor's identity and prosecutorial jurisdiction shall be made public upon request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such special prosecutor would be in the best interests of justice. In any event the identity and prosecutorial jurisdiction of such prosecutor shall be made public when any indictment is returned or any criminal information is filed.

"(c) The division of the court, upon request of the Attorney General which may be incorporated in an application under this chapter, may expand the prosecutorial jurisdiction of an existing special prosecutor, and such expansion may be in lieu of the appointment of an additional special prosecutor.

"(d) The division of the court may not appoint as a special prosecutor any person who holds or recently held any office of profit or trust under the United States.

"(e) If a vacancy in office arises by reason of the resignation or death of a special prosecutor, the division of the court may appoint a special prosecutor to complete the work of the special prosecutor whose resignation or death caused the vacancy. If a vacancy in office arises by reason of the removal of a special prosecutor, the division of the court may appoint an acting special prosecutor to serve until any judicial review of such removal is comp'eted. Upon the completion of such judicial review, the division of the court shall take appropriate action.

"§ 594. Authority and duties of a special prosecutor

"(a) Notwithstanding any other provision of law, a special prosecutor appointed under this chapter shall have, with respect to all matters in such special prosecutor's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

"(1) conducting proceedings before grand juries and other investigations;

"(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such special prosecutor deems necessary;

"(3) appealing any decision of a court in any case or proceeding in which such special prosecutor participates in an official capacity;

"(4) reviewing all documentary evidence available from any source;

"(5) determining whether to contest the assertion of any testimonial privilege;

"(6) receiving appropriate national security clearances and, if necessary, contesting in court (including where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005, of title 18, exercising the authority vested in a United States attorney or the Attorney General;

"(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of title 26, and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General; and

"(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case in the name of the United States.

"(b) A special prosecutor appointed under this chapter shall receive compensation at a per diem rate equal to the rate of pay for level IV of the Executive Schedule under section 5315 of title 5.

"(c) For the purposes of carrying out the duties of the office of special prosecutor, a special prosecutor shall have power to appoint, fix the compensation, and assign the duties of such employees as such special prosecutor deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS–18 of the General Schedule under section 5332 of title 5.

"(d) A special prosecutor may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such special prosecutor's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such special prosecutor's duties.

"(e) A special prosecutor may ask the Attorney General or the division of the court to refer matters related to the special prosecutor's prosecutorial jurisdiction. A special prosecutor may accept referral of a matter by the Attorney General, if the matter relates to a matter within such special prosecutor's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the special prosecutor shall notify the division of the court.

"(f) A special prosecutor shall, to the extent that such special prosecutor deems appropriate, comply with the written policies of the Department of Justice respecting enforcement of the criminal laws.

"§ 595. Reporting and Congressional Oversight

"(a) A special prosecutor appointed under this chapter may make public from time to time, and shall send to the Congress, statements or reports on the activities of such special prosecutor. These statements and reports shall contain such information as that special prosecutor deems appropriate.

"(b)(1) In addition to any reports made under subsection (a) of this section, and before the termination of a special prosecutor's office under section 596(b) of this title, such special prosecutor shall submit to the division of the court a report under this subsection.

"(2) A report under this subsection shall set forth fully and completely a description of the work of the special prosecutor, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such special prosecutor which was not prosecuted.

"(3) The division of the court may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as the division deems appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a report under this section available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may in the discretion of such division be included as an appendix to such report.

"(c) A special prosecutor shall advise the House of Representatives of any substantial and credible information which such special prosecutor receives that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

"(d) The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any special prosecutor appointed under this chapter, and such special prosecutor shall have the duty to cooperate with the exercise of such oversight jurisdiction.

"(e) A majority of majority party members or a majority of all nonmajority party members of a judiciary committee of either House of the Congress may request in writing that the Attorney General apply for the appointment of a special prosecutor. Not later than thirty days after the receipt of such a request, or not later than fifteen days after the completion of a preliminary investigation of the matter with respect to which the request is made, whichever is later, the Attorney General shall provide written notification of any action the Attorney General has taken in response to such request and, if no application has been made to the division of the court, why such application was not made. Such written notification shall be provided to the committee on which the persons making the request serve, and shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgement prejudice the rights of any individual.

"§ 596. Removal of a Special Prosecutor; Termination of Office

"(a)(1) A special prosecutor appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for extraordinary impropriety, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such special prosecutor's duties.

"(2) If a special prosecutor is removed

from office, the Attorney General shall promptly submit to the division of the court and the judiciary committees of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, delete or postpone publishing any or all of the report. The division of the court may release any or all of such report in the same manner as a report released under section 595(b)(3) of this title and under the same limitations as apply to the release of a report under that section.

"(3) A special prosecutor so removed may obtain judicial review of the removal in a civil action commenced before the division of the court and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief. The division of the court shall cause such an action to be in every way expedited.

"(b)(1) An office of special prosecutor shall terminate when (A) the special prosecutor notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such special prosecutor or accepted by such special prosecutor under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions and (B) the special prosecutor files a report in full compliance with section 595(b) of this title.

"(2) The division of the court, either on its own motion or upon suggestion of the Attorney General, may terminate an office of special prosecutor at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the special prosecutor or accepted by such special prosecutor under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of termination, the special prosecutor shall file the report required by section 595(b) of this title.

"§ 597. RELATIONSHIP WITH DEPARTMENT OF JUSTICE

"(a) Whenever a matter is in the prosecutorial jurisdiction of a special prosecutor or has been accepted by a special prosecutor under section 594(e) of this title, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d) of this title, and except insofar as such special prosecutor agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

"(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which a special prosecutor participates in an official capacity or any appeal of such a case or proceeding.

"§ 598. TERMINATION OF EFFECT OF CHAPTER

"This chapter shall cease to have effect five years after the date of the enactment of this chapter, except that this chapter shall continue in effect with respect to then pending matters before a special prosecutor that in the judgment of such special prosecutor require such continuation until that special prosecutor determines such matters have been completed.".

(b) The tables of chapters for title 28 of the United States Code and for part II of such title 28 are each amended by inserting immediately after the item relating to chapter 37 the following new item:

"39. Special prosecutor.".

(c) There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any special prosecutors appointed under chapter 39 (relating to special prosecutor) of title 28 of the United States Code in the carrying out of functions under such chapter.

ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT SPECIAL PROSECUTORS

SEC. 602. (a) Chapter 3 of title 28 of the United States Code is amended by adding at the end the following:

"§ 49. ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT SPECIAL PROSECUTORS

"(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing special prosecutors.

"(b) Except as provided under subsection (f) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

"(c) In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.

"(d) The Chief Justice of the United States shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.

"(e) Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.

"(f) Except as otherwise provided in chapter 39 of this title, no member of such division of the court who participated in a function conferred on the division under chapter 39 of this title involving a special prosecutor shall be eligible to participate in any judicial proceeding concerning a matter which involves such special prosecutor while such special prosecutor is serving in that office or which involves the exercise of such special prosecutor's official duties, regardless of whether such special prosecutor is still serving in that office.".

(b) The table of sections for chapter 3 of title 28 of the United States Code is amended by adding at the end the following item:

"49. Assignment of judges to division to appoint special prosecutors.".

DISQUALIFICATION OF OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF JUSTICE AND ANNUAL REPORT OF ATTORNEY GENERAL

SEC. 603. (a) Chapter 31 of title 28 of the United States Code is amended by adding at the end the following:

"§ 528. DISQUALIFICATION OF OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF JUSTICE

"The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

"§ 529. ANNUAL REPORT OF ATTORNEY GENERAL

"Beginning on June 1, 1979, and at the beginning of each regular session of Congress thereafter, the Attorney General shall report to Congress on the activities and operations of the Public Integrity Section or any other unit of the Department of Justice designated to supervise the investigation and prosecution of—

"(1) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a Federal Government officer, employee, or special employee, if such violation relates directly or indirectly to such individual's Federal Government position, employment, or compensation;

"(2) any violation of any Federal criminal law relating to lobbying, conflict of interest, campaigns, and election to public office committed by any person, except insofar as such violation relates to a matter involving discrimination or intimidation on grounds of race, color, religion, or national origin;

"(3) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a State or local government officer or employee, if such violation relates directly or indirectly to such individual's State or local government position, employment, or compensation; and

"(4) such other matters as the Attorney General may deem appropriate.

Such report shall include the number, type, and disposition of all investigations and prosecutions supervised by such Section or such unit, except that such report shall not disclose information which would interfere with any pending investigation or prosecution or which would improperly infringe upon the privacy rights of any individual.".

(b) The table of sections for chapter 31 of title 28 of the United States Code is amended by adding at the end the following:

"528. Disqualification of officers and employees of the Department of Justice.

"529. Annual report of Attorney General.".

EFFECTIVE DATE

SEC. 604. Except as provided in this section, the amendments made by this title shall take effect on the date of the enactment of this Act. The provisions of chapter 59 of title 28 of the United States Code, as added by section 601 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 591 of such title 28, if the Attorney General determines that—

(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of the enactment of this Act; or

(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act.

TITLE VII—SENATE LEGAL COUNSEL

ESTABLISHMENT OF OFFICE OF SENATE LEGAL COUNSEL

SEC. 701. (a)(1) There is established, as an office of the Senate, the Office of Senate Legal Counsel (hereinafter referred to as the "Office"), which shall be headed by a Senate Legal Counsel (hereinafter referred to as the "Counsel"); and there shall be a

Deputy Senate Legal Counsel (hereinafter referred to as the "Deputy Counsel") who shall perform such duties as may be assigned to him by the Counsel and who, during any absence, disability, or vacancy in the position of the Counsel, shall serve as Acting Senate Legal Counsel.

(2) The Counsel and the Deputy Counsel each shall be appointed by the President pro tempore of the Senate from among recommendations submitted by the majority and minority leaders of the Senate. Any appointment made under this paragraph shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any person appointed as Counsel or Deputy Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

(3)(A) Any appointment made under paragraph (2) shall become effective upon approval by resolution of the Senate. The Counsel and the Deputy Counsel shall each be appointed for a term of service which shall expire at the end of the Congress following the Congress during which the Counsel or Deputy Counsel, respectively, is appointed except that the Senate may, by resolution, remove either the Counsel or the Deputy Counsel prior to the termination of any term of service. The Counsel and the Deputy Counsel may be reappointed at the termination of any term of service.

(B) The first Counsel and the first Deputy Counsel shall be appointed, approved, and begin service within ninety days after the effective date of this title, and thereafter the Counsel and Deputy Counsel shall be appointed, approved, and begin service within thirty days after the beginning of the session of the Congress immediately following the termination of a Counsel's or Deputy Counsel's term of service or within sixty days after a vacancy occurs in either position.

(4) The Counsel shall receive compensation at a rate equal to the annual rate of pay for level III of the Executive Schedule under section 5314 of title 5 of the United States Code. The Deputy Counsel shall receive compensation at rate equal to the annual rate of pay for level IV of the Executive Schedule under section 5315 of title 5 of the United States Code.

(b)(1) The Counsel shall select and fix the compensation of such Assistant Senate Legal Counsels (hereinafter referred to as "Assistant Counsels") and of such other personnel, within the limits of available funds, as may be necessary to carry out the provisions of this title and may prescribe the duties and responsibilities of such personnel. The compensation fixed for each Assistant Counsel shall not be in excess of a rate equal to the annual rate of pay for level V of the Executive Schedule under section 5316 of title 5 of the United States Code. Any selection made under this paragraph shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any individual selected as an Assistant Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during his term of service. The Counsel may remove any individual appointed under this paragraph.

(2) For purposes of pay (other than the rate of pay of the Counsel and Deputy Counsel) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as employees of the Senate.

(c) In carrying out the functions of the Office, the Counsel may procure the temporary (not to exceed one year) or intermittent services of individual consultants (including outside counsel), or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(i) of the Legislative Reorganization Act of 1946 (21 U.S.C. 72a (i)).

(d) The Counsel may establish such policies and procedures as may be necessary to carry out the provisions of this title.

(e) The Counsel may delegate authority for the performance of any function imposed by this title except any function imposed upon the Counsel under section 706(b) of this title.

(f) The Counsel and other employees of the Office shall maintain the attorney-client relationship with respect to all communications between them and any Member, officer, or employee of the Senate.

ACCOUNTABILITY OF OFFICE

SEC. 702. (a) The Office shall be directly accountable to the Joint Leadership Group in the performance of the duties of the Office.

(b) For purposes of this title, the Joint Leadership Group shall consist of the following Members:

(1) The President pro tempore (or if he so designates, the Deputy President pro tempore) of the Senate.

(2) The majority and minority leaders of the Senate.

(3) The Chairman and ranking minority Member of the Judiciary Committee of the Senate.

(4) The Chairman and ranking minority Member of the committee of the Senate which has jurisdiction over the contingent fund of the Senate.

(c) The Joint Leadership Group shall be assisted in the performance of its duties by the Secretary of the Senate.

REQUIREMENTS FOR AUTHORIZING REPRESENTATION ACTIVITY

SEC. 703. (a) The Counsel shall defend the Senate or a committee, subcommittee, Member, officer, or employee of the Senate under section 704 only when directed to do so by two-thirds of the Members of the Joint Leadership Group or by the adoption of a resolution by the Senate.

(b) The Counsel shall bring a civil action to enforce a subpena of the Senate or a committee or subcommittee of the Senate under section 705 only when directed to do so by the adoption of a resolution by the Senate.

(c) The Counsel shall intervene or appear as amicus curiae under section 706 only when directed to do so by a resolution adopted by the Senate when such intervention or appearance is to be made in the name of the Senate or in the name of an officer, committee, subcommittee, or chairman of a committee or subcommittee of the Senate.

(d) The Counsel shall serve as the duly authorized representative in obtaining an order granting immunity under section 707 of—

(1) the Senate when directed to do so by any affirmative vote of a majority of the Members present of the Senate; or

(2) a committee or subcommittee of the Senate when directed to do so by affirmative vote of two-thirds of the Members of the full committee.

(e) The Office shall make no recommendation with respect to the consideration of a resolution under this section.

DEFENDING THE SENATE, A COMMITTEE, SUBCOMMITTEE, MEMBER, OFFICER, OR EMPLOYEE OF THE SENATE

SEC. 704. (a) Except as otherwise provided in subsection (b), when directed to do so pursuant to section 703(a), the Counsel shall—

(1) defend the Senate, a committee, subcommittee, Member, officer, or employee of the Senate in any civil action pending in any court of the United States or of a State or political subdivision thereof in which the Senate, such committee, subcommittee, Member, officer, or employee is made a party defendant and in which there is placed in issue the validity of any proceeding of, or action, including issuance of any subpena or order, taken by the Senate, or such committee, subcommittee, Member, officer or employee in its or his official or representative capacity; or

(2) defend the Senate or a committee, subcommittee, Member, officer, or employee of the Senate in any proceeding with respect to any subpena or order directed to the Senate or such committee, subcommittee, Member, officer or employee in its or his official or representative capacity.

(b) Representation of a Member, officer, or employee under subsection (a) shall be undertaken by the Counsel only upon the consent of such Member, officer, or employee.

INSTITUTE A CIVIL ACTION TO ENFORCE A SUBPENA

SEC. 705. (a) When directed to do so pursuant to section 703(b), the Counsel shall bring a civil action under any statute conferring jurisdiction on any court of the United States (including section 1364 of title 28 of the United States Code, as added by subsection (f)(1) of this section), to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened failure or refusal to comply with, any subpena or order issued by the Senate or a committee or a subcommittee of the Senate authorized to issue a subpena or order.

(b) Any directive to the Counsel to bring a civil action pursuant to subsection (a) of this section in the name of a committee or subcommittee of the Senate shall, for such committee or subcommittee, constitute authorization to bring such action within the meaning of any statute conferring jurisdiction on any court of the United States.

(c) It shall not be in order in the Senate to consider a resolution to direct the Counsel to bring a civil action pursuant to subsection (a) in the name of a committee or subcommittee unless—

(1) such resolution is reported by a majority of the members voting, a majority being present, of such committee or committee of which such subcommittee is a subcommittee, and

(2) the report filed by such committee or committee of which such subcommittee is a subcommittee contains a statement of—

(A) the procedure followed in issuing such subpena;

(B) the extent to which the party subpenaed has complied with such subpena;

(C) any objections or privileges raised by the subpenaed party; and

(D) the comparative effectiveness of bringing a civil action under this section, certification of a criminal action for contempt of Congress, and initiating a contempt proceeding before the Senate.

(d) The provisions of subsection (c) are enacted—

(1) as an exercise of the rulemaking power of the Senate, and, as such, they shall be considered as part of the rules of the Senate, and such rules shall supersede any other rule of the Senate only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change such rules (so far as relating to the procedure in the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

(e) The extent to which a report filed pursuant to subsection (c)(2) is in compliance with such subsection shall not be reviewable in any court of law.

(f)(1) Chapter 85 of title 28 of the United States Code is amended by adding at the end thereof the following new section:

"§ 1364. Senate actions

"(a) The United States District Court for the District of Columbia shall have original jurisdiction, without regard to the amount in controversy, over any civil action brought by the Senate or any authorized committee or subcommittee of the Senate to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal or failure to comply with, any subpena or order issued by the Senate or committee or subcommittee of the Senate to any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof. This section shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpena or order issued to an officer or employee of the Federal Government acting within his official capacity.

"(b) Upon application by the Senate or any authorized committee or subcommittee of the Senate, the district court shall issue an order to an entity or person refusing or failing, or threatening to refuse or not to comply, with a subpena or order of the Senate or committee or subcommittee of the Senate requiring such entity or person to comply forthwith. Any refusal or failure to obey a lawful order of the district court issued pursuant to this section may be held by such court to be a contempt thereof. A contempt proceeding shall be commenced by an order to show cause before the court why the entity or person refusing or failing to obey the court order should not be held in contempt of court. Such contempt proceeding shall be tried by the court and shall be summary in manner. The purpose of sanctions imposed as a result of such contempt proceeding shall be to compel obedience to the order of the court. Process in any such action or contempt proceeding may be served in any judicial district wherein the entity or party refusing or failing, or threatening to refuse or not to comply, resides, transacts business, or may be found, and subpenas for witnesses who are required to attend such proceeding may run into any other district. Nothing in this section shall confer upon such court jurisdiction to affect by injunction or otherwise the issuance or effect of any subpena or order of the Senate or any committee or subcommittee of the Senate or to review, modify, uspend, terminate, or set aside any such subpena or order An action, contempt proceeding, or sanction brought or imposed pursuant to this section shall not abate upon adjournment sine die by the Senate at the end of a Congress, if the Senate or the committee or subcommittee of the Senate which issued the subpena or order certifies to the court that it maintains its interest in securing the documents, answers, or testimony during such adjournment.

"(c) In any civil action or contempt proceeding brought pursuant to this section, the court shall assign the action or proceeding for hearing at the earliest practicable date and cause the action or proceeding in every way to be expedited. Any appeal or petition for review from any order or judgment in such action or proceeding shall be expedited in the same manner.

"(d) The Senate or any committee or subcommittee of the Senate commencing and prosecuting a civil action or contempt proceeding under this section may be represented in such action by such attorneys as the Senate may designate.

"(e) A civil action commenced or prosecuted under this section may not be authorized pursuant to the Standing Order of the Senate 'authorizing suits by Senate Committees' (S. Jour. 572, May 28, 1928).

"(f) For the purposes of this section, the term 'committee' includes standing, select, or special committees of the Senate established by law or resolution."

(2) The table of sections of such chapter 85 is amended by adding at the end thereof the following new item:

"1364. Senate actions.".

(e) Nothing in this section shall limit the discretion of—

(1) the President pro tempore of the Senate in certifying to the United States Attorney for the District of Columbia any matter pursuant to section 104 of the Revised Statutes (2 U.S.C. 194); or

(2) the Senate to hold any individual or entity in contempt of the Senate.

INTERVENTION OR APPEARANCE

SEC. 706. (a) When directed to do so pursuant to section 703(c), the Counsel shall intervene or appear as amicus curiae in the name of the Senate, or in the name of an officer, committee, subcommittee, or chairman of a committee or subcommittee of the Senate in any legal action or proceeding pending in any court of the United States or of a State or political subdivision thereof in which the powers and responsibilities of Congress under the Constitution of the United States are placed in issue. The Counsel shall be authorized to intervene only if standing to intervene exists under section 2 of article III, of the Constitution of the United States.

(b) The Counsel shall notify the Joint Leadership Group of any legal action or proceeding in which the Counsel is of the opinion that intervention of appearance as amicus curiae under subsection (a) is in the interest of the Senate. Such notification shall contain a description of the legal action or proceeding together with the reasons that the Counsel is of the opinion that intervention or appearance as amicus curiae is in the interest of the Senate. The Joint Leadership Group shall cause said notification to be published in the Congressional Record for the Senate.

(c) The Counsel shall limit any intervention or appearance as amicus curiae in an action or proceeding to issues relating to the powers and responsibilities of Congress.

IMMUNITY PROCEEDINGS

SEC. 707. When directed to do so pursuant to section 703(d), the Counsel shall serve as the duly authorized representative of the Senate or a committee or subcommittee of the Senate in requesting a United States district court to issue an order granting immunity pursuant to section 201(a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6005).

ADVISORY AND OTHER FUNCTIONS

SEC. 708. (a) The Counsel shall advise, consult, and cooperate with—

(1) the United States Attorney for the District of Columbia with respect to any criminal proceeding for contempt of Congress certified by the President pro tempore of the Senate pursuant to section 104 of the Revised Statutes (2 U.S.C. 194);

(2) the committee of the Senate with the responsibility to identify any court proceeding or action which is of vital interest to the Senate;

(3) the Comptroller General, the General Accounting Office, the Office of Legislative Counsel of the Senate, and the Congressional Research Service, except that none of the responsibilities and authority assigned by this title to the Counsel shall be construed to affect or infringe upon any functions, powers, or duties of the aforementioned;

(4) any Member, officer, or employee of the Senate not represented under section 704 with regard to obtaining private legal counsel for such Member, officer or employee;

(5) the President pro tempore of the Senate, the Secretary of the Senate, the Sergeant-at-Arms of the Senate, and the Parliamentarian of the Senate regarding any subpena, order, or request for withdrawal of papers presented to the Senate which raises a question of the privileges of the Senate; and

(6) any committee or subcommittee of the Senate in promulgating and revising their rules and procedures for the use of congressional investigative powers and with respect to questions which may arise in the course of any investigation.

(b) The Counsel shall compile and maintain legal research files of materials from court proceedings which have involved Congress, a House of Congress, an office or agency of Congress, or any committee, subcommittee, Member, officer, or employee of Congress. Public court papers and other research memoranda which do not contain information of a confidential or privileged nature shall be made available to the public consistent with any applicable procedures set forth in such rules of the Senate as may apply and the interests of the Senate.

(c) The Counsel shall perform such other duties consistent with the purposes and limitations of this title as the Senate may direct.

DEFENSE OF CERTAIN CONSTITUTIONAL POWERS

SEC. 709. In performing any function under this title, the Counsel shall defend vigorously when placed in issue—

(1) the constitutional privilege from arrest or from being questioned in any other place for any speech or debate under section 6 of article I of the Constitution of the United States;

(2) the constitutional power of the Senate to be judge of the elections, returns, and qualifications of its own Members and to punish or expel a Member under section 5 of article I of the Constitution of the United States;

(3) the constitutional power of the Senate to except from publication such parts of its journal as in its judgment may require secrecy;

(4) the constitutional power of the Senate to determine the rules of its proceedings;

(5) the constitutional power of Congress to make all laws as shall be necessary and proper for carrying into execution the constitutional powers of Congress and all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof;

(6) all other constitutional powers and responsibilities of the Senate or of Congress; and

(7) the constitutionality of Acts and joint resolutions of Congress.

CONFLICT OR CONSISTENCY

SEC. 710. (a) In the carrying out of the provisions of this title, the Counsel shall notify the Joint Leadership Group, and any party represented or person affected, of the existence and nature of any conflict or inconsistency between the representation of such party or person and the carrying out of any other provision of this title or compliance with professional standards and responsibilities.

(b) Upon receipt of such notification, the members of the Joint Leadership Group shall recommend the action to be taken to avoid or resolve the conflict or inconsistency. If such recommendation is made by a two-thirds vote, the Counsel shall take such steps as may be necessary to resolve the conflict or inconsistency as recommended. If not, the members of the Joint Leadership Group shall cause the notification of conflict or inconsistency and recommendation with respect to resolution thereof to be published in the Congressional Record of the Senate. If the Senate does not direct the Counsel within fifteen days from the date of publication in the Record to resolve the conflict in another manner, the Counsel shall take such action

as may be necessary to resolve the conflict or inconsistency as recommended. Any instruction or determination made pursuant to this subsection shall not be reviewable in any court of law.

(c) For purposes of the computation of the fifteen day period in subsection (b)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which the Senate is not in session because of an adjournment of more than three days to a date certain are excluded.

(d) The Senate may by resolution authorize the reimbursement of any Member, officer, or employee of the Senate who is not represented by the Counsel for fees and costs, including attorneys' fees, reasonably incurred in obtaining representation. Such reimbursement shall be from funds appropriated to the contingent fund of the Senate.

PROCEDURE FOR CONSIDERATION OF RESOLUTIONS TO DIRECT THE COUNSEL

SEC. 711. (a)(1) A resolution introduced pursuant to section 703 shall not be referred to a committee, except as otherwise required under section 705(c). Upon introduction, or upon being reported if required under section 705(c), whichever is later, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. A motion to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion is agreed to.

(2) With respect to a resolution pursuant to section 703(a) the following rules apply:

(A) If the motion to proceed to the consideration of the resolution is agreed to, debate thereon shall be limited to not more than ten hours, which shall be divided equally between, and controlled by, those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to the resolution shall be in order. No motion to recommit the resolution shall be in order, and it shall not be in order to reconsider the vote by which the resolution is agreed to.

(B) Motions to postpone, made with respect to the consideration of the resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(C) All appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to the resolution shall be decided without debate.

(b) For purposes of this title, other than section 703, the term "committee" includes standing, select, special committees of the Senate established by law or resolution.

(1) as an exercise of the rulemaking power of the Senate, and, as such, they shall be considered as part of the rules of the Senate, and such rules shall supersede any other rule of the Senate only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

ATTORNEY GENERAL RELIEVED OF RESPONSIBILITY

SEC. 712. (a) Upon receipt of written notice that the Counsel has undertaken, pursuant to section 704(a) of this title, to perform any representational service with respect to any designated party in any action or proceeding pending or to be instituted, the Attorney General shall—

(1) be relieved of any responsibility with respect to such representational service;

(2) have no authority to perform such service in such action or proceeding except at the request or with the approval of the Senate; and

(3) transfer all materials relevant to the representation authorized under section 704(a) to the Counsel, except that nothing in this subsection shall limit any right of the Attorney General under existing law to intervene or appear as amicus curiae in such action or proceeding.

(b) The Attorney General shall notify the Counsel with respect to any proceeding in which the United States is a party of any determination by the Attorney General or Solicitor General not to appeal any court decision affecting the constitutionality of an Act or joint resolution of Congress within such time as will enable the Senate to direct the Counsel to intervene as a party in such proceeding pursuant to section 706.

PROCEDURAL PROVISIONS

SEC. 713. (a) Permission to intervene as a party or to appear as amicus curiae under section 706 of this title shall be of right and may be denied by a court only upon an express finding that such intervention or appearance is untimely and would significantly delay the pending action or that standing to intervene has not been established under section 2 of article III of the Constitution of the United States.

(b) The Counsel, the Deputy Counsel, or any designated Assistant Counsel or counsel specially retained by the Office shall be entitled, for the purpose of performing his functions under this title, to enter an appearance in any proceeding before any court of the United States or of a State or political subdivision thereof without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this subsection shall not apply with respect to the admission of any such person to practice before the United States Supreme Court.

(c) Nothing in this title shall be construed to confer standing on any party seeking to bring, or jurisdiction on any court with respect to, any civil or criminal action against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of a House of Congress, any office or agency of Congress, or any officer or employee of a House of Congress or any office or agency of Congress.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 714. (a) Section 3210 of title 39 of the United States Code, is amended—

(1) by striking out "and the Legislative Counsels of the House of Representatives and the Senate" in subsection (b)(1) and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Senate Legal Counsel"; and

(2) by striking out "or the Legislative Counsel of the House of Representatives or the Senate" in subsection (b)(2) and inserting in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or the Senate Legal Counsel".

(b) Section 3216(a)(1)(A) of such title is amended by striking out "and the Legislative Counsels of the House of Representatives and the Senate" and inserting in lieu thereof "the Legislative Counsels of the House of Representatives and the Senate, and the Senate Legal Counsel".

(c) Section 3219 of such title is amended by striking out "or the Legislative Counsel of the House of Representataives or the Senate" and insert in lieu thereof "the Legislative Counsel of the House of Representatives or the Senate, or, the Senate Legal Counsel".

(d) Section 8 of the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes," approved March 3, 1875, (2 U.S.C. 118), shall not apply to officers of the Senate.

SEPARABILITY

SEC. 715. If any part of this title or any amendment made by this title, is held invalid, the remainder of the title and any amendment made by this title shall not be affected thereby. If any provision of any part of this title or any amendment made by this title, or the application thereof to any person or circumstance is held invalid, the provisions of other parts and any amendment made by this title and their application to other persons or circumstances shall not be affected thereby.

CONTINGENT FUND

SEC. 716. The expenses of the Office shall be paid from the contingent fund of the Senate in accordance with the paragraph under the heading "UNDER LEGISLATIVE", relating to the contingent fund of the Senate, the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68), and upon vouchers approved by the Counsel.

EFFECTIVE DATE

SEC. 717. This title shall take effect on January 3, 1979.

And the House agree to the same.

That the House recede from its amendment to the title of the bill.

GEORGE E. DANIELSON,
RICHARDSON PREYER,
PAT SCHROEDER,
SAMUEL STRATTON,
(except for Title VI),
DAVID R. OBEY,
HERBERT E. HARRIS,
JAMES R. MANN,
R. L. MAZZOLI,
BOB ECKHARDT,
BENJAMIN A. GILMAN,
CARLOS J. MOORHEAD,
BILL FRENZEL,
ROBERT W. KASTENMEIER,
Managers on the Part of the House.

ABE RIBICOFF,
HENRY M. JACKSON,
EDMUND S. MUSKIE,
CHARLES H. PERCY,
JACOB K. JAVITS,
Managers on the Part of the Senate.

JOINT EXPLANATION STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 555) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report: The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House witn an amendment which is a substitute for the Senate bill and the House amendment. The House recedes from its amendment to the title of the bill.

The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—LEGISLATIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

This title is based upon Title I of S. 555 as passed by the House (formerly H.R. 1) and title III of S. 555 as passed by the Senate. The provisions of the House and Senate bills were very similar. The principal explanation of these provisions can be found in the report submitted to the House on this title (95–574) and the report submitted to the Senate on S. 555 (No. 95–170) and the floor debates in the House and the Senate on this legislation. The principal substantive differences between the House and Senate provisions on Legislative Personnel Financial Disclosure Requirements are described below.

S. 555 as passed by the Senate contained one title (title III) covering financial disclosure for officers and employees of all three branches of the government. The Senate agreed to the House bill's format providing for separate titles covering financial disclosure for officers and employees of each branch of the Federal government.

The Senate bill required a disclosure report to be filed within thirty days after a Member, officer or employee of the legislative branch left the position in the legislative branch covered by the financial disclosure requirements. This report would cover the portion of the calendar year up to the date the individual left such position and a report would be required covering the previous calendar year if the person held his position for 60 days or more in that year and no disclosure report had yet been filed covering that year. The House bill had no comparable provision. The Senate receded to the House and the Conferees decided to leave the issue of the filing of reports upon leaving the legislative branch to be resolved in the House and Senate rules as each body sees fit.

The House bill provided for a statutory advisory opinion process. The Senate bill had no comparable provision although the Senate rules contain such a procedure. The Senate receded to the House on this issue.

The House bill required the disclosure of the value of income over $100 received by a reporting individual. The Senate bill had an identical provision with respect to earned income but permitted the reporting of unearned income by use of categories of value. This was done because the assets from which the unearned income is derived were reported by category of value. The House receded to the Senate on this issue with an amendment replacing the term "unearned income" with the phrase "dividends, interest, rent and capital gains."

The conferees intend that, whenever the use of a category of value is permitted, a reporting individual is not prohibited from reporting the exact value or any other additional information the reporting individual desires. Thus when reporting a liability, the reporting individual, in order to accurately reflect his financial position, may want to indicate that the loan was paid off prior to the end of the calendar year. Such information is not required by this legislation but is permissible.

The Senate bill contained authority for the committee of the House and Senate administering the financial disclosure requirements to grant a waiver of the requirements of reporting gifts other than food, lodging, transportation or entertainment which exceed $100 in value. Such a waiver could only be granted in an unusual case. The House bill had no comparable provision. The House receded to the Senate with an amendment providing that the request for the waiver and the waiver itself must be publicly available.* * *

The Senate bill had a provision permitting a reporting individual to subtract the value of gifts he gave to a particular source from the value of gifts he received from that source in the same calendar year in determining whether he had received reportable gifts from that source. This was to cover normal relationships where friends exchange gifts of over $100 which are of comparable value. In such a case, the reporting individual has not financially benefitted from the receipt of a gift from that source. The House bill had no comparable provision. The Senate receded to the House on this issue. The conferees intend that the type of situation covered by this Senate provision could be taken care of by the granting of a waiver as described above.

The Senate bill required the disclosure of all interests in real property with a fair market value in excess of $1,000. This would cover a personal residence. The House bill required disclosure of an interest in property (including real property) only if it is held in a trade or business, or for investment or the production of income. This would require reporting of all real property except a personal residence. Under the House bill, if a reporting individual rented a portion of a personal residence for any period of time, the residence would be used for the production of income and would have to be reported. Because it is highly unlikely that a personal residence would create a conflict of interest and because considerable information about the value of a personal residence is a matter of public record, the Senate receded to the House on this issue. A reporting individual who wished to report his personal residence would, of course, be permitted to do so.

The Senate bill provisions with respect to the reporting of assets, loans and transactions covered such items whether held directly or indirectly. The House bill had no such language. The Senate receded to the House on this issue because the conferees agreed that their intent was to cover each asset, liability or transaction of a reporting individual even if the asset is not in the individual's name. If a partnership is made up of a reporting individual and his spouse as partners, and a series of securities and items of real property are held by the partnership, it would not be sufficient to just report ownership of the partnership. Each of the assets, liabilities and transactions of the partnership would have to be reported. However, if the partnership is active in a trade or business, such as running a store, individual assets or liabilities of the partnership need not be reported. There will be many situations which fall between these examples. The conferees intend to leave the task of further interpretation to the committees of the House and Senate administering the financial disclosure provisions.

The Senate bill required reporting of liabilities owed over $2,500 to any source other than a relative at any time during the calendar year. The House required disclosure of liabilities of over $5,000 as of the close of the calendar year to any source other than a relative, except for certain mortgages on a personal residence, and a loan secured by a personal motor vehicle or household furniture or appliances. The Senate receded to the House with an amendment changing the threshold to $10,000 but covering loans held at any time during the calendar year.

There are several exceptions to this rule. A revolving charge account would be valued at the close of the calendar year. Loans secured by household furniture or appliances and a loan secured by a personal motor vehicle would not have to be reported if it was limited in amount to the purchase price of the vehicle, furniture, or appliance. The maximum amount of the loan during the calendar year would be reported. A reporting individual would be free to add additional information if he so desired, such as the fact that the loan had been paid off in the calendar year.

The conferees intend that the exception for a mortgage secured by real property which is a personal residence is also limited to mortgages which do not exceed the fair market value of the residence.

The Senate bill required the disclosure of the identity of certain positions held during the year covered by the financial disclosure report. The House legislative branch disclosure provisions had no comparable provision. The House receded to the Senate with an amendment eliminating the reporting of positions held as an agent and adding labor organizations as entities covered by this provision. Positions solely of an honorary nature would be excluded from this provision.

The conferees do not intend to require reporting of the fact that a reporting individual is honorary chairman of some organization. However, if the individual is on the board of directors and attends director's meetings or has operational responsibilities for the organization, the position must be reported. A position would still be honorary and therefore not covered by this provision if the individual was honorary chairman of an organization and simply went to a banquet given by the organization. Such a situation does not contain the active participation which the conferees intend be present in order for reporting to be required under this provision.

The Senate bill had categories of value for reporting assets, liabilities and transactions going as high as $5,000,000. The highest category of value in the House bill was $100,000 or over. The Senate receded to the House with an amendment adding one additional category of value to the House provision so that the highest category of value is $250,000 or more.

The Senate bill required disclosure of the source of earned income and certain gifts received by dependents. The House bill had no comparable provision. The Senate receded to the House on this issue. The conferees believe that a gift to a dependent child could be used as a means of giving things of considerable value to the family of a reporting individual with the intent of influencing the reporting individual. However, the conferees believe that existing House and Senate rules which flatly prohibit Members, officers, and employees from accepting gifts valued at over $100, directly or indirectly (e.g., through a dependent child), from any individual or organization with a direct interest in legislation before the Congress, addresses this problem. The conferees believe that this issue should be dealt with in the rules of the Senate and the House in future Congresses, as each body determines is appropriate.

The Senate bill contained permissible methods of valuing certain reportable holdings. The House bill had no comparable provision. The House receded to the Senate on this issue. As is made clear in the definition of "value" found in this title, no one is required to use any of the methods of valuation permitted by this paragraph. The term "value" is defined as a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable. It is always acceptable for an individual to use a good faith estimate of the value of an item if the exact value is not known nor easily obtainable.

The Senate bill contained detailed provisions with respect to the use of blind trusts. The House bill contained a more general provision on this subject. The House receded to the Senate on this issue.

The House bill's definition of "gift" excluded food, lodging, transportation or entertainment provided by a state or local government. The Senate bill had no such provision. The Senate receded to the House on this issue.

The House bill excluded from the definition of "gift" consumable products provided

by home-state businesses to a Member's office for distribution. The Senate bill had no comparable provision. The Senate receded on this issue. This provision is intended to cover an item such as peanuts or oranges given by a home-state business to a Member for general distribution to the public in a Member's office. This is not intended to cover gifts of liquor or prepared foods to be used at receptions or on other occasions.

The Senate bill provided for periodic random audits by the General Accounting Office of financial disclosure statements filed under this Act. There was no comparable provision in the House bill. The Senate recedes to the House on this issue. Whether or not random audits would be performed would be left to the Senate and the House in their respective rules. In addition, the Senate receded to the House and accepted the House provision requiring the General Accounting Office to study the desirability of conducting such audits and the proper way to conduct them if they are desirable. The conferees are aware that the Senate Rules presently contain a provision requiring such audits. While S. 555 does not bar the Senate from deciding to conduct such audits, the conferees believe it would be fair and appropriate if the random audits under the Senate rule were suspended until early next year when the full Senate will have a chance to conform its financial disclosure rules to this statute and consider the desirability of random audits in light of the final action taken on this legislation. The conferees believe it would be appropriate for the Senate Ethics Committee to consider such action.

Nonincumbent candidates for the office of Member in the 1978 general election are required to file a disclosure statement under this Act prior to the election. However, in recognition of the short period of time for candidates to comply with the disclosure requirement, the conference agreement provides that candidates will not be subject to any sanction under the Act for failure to file this year. Senate candidates who have already filed this year under the Senate Rules do not have to file a statement under this Act this year.

TITLE II—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

This title is based upon title II of S. 555 as passed by the House (formerly H.R. 1) and title III of S. 555 as passed by the Senate. The provisions of the House and Senate bills were very similar. The principal explanation of these provisions can be found in the reports submitted to the House on this title (95–800; 95–642 (parts I & II)) and the report submitted to the Senate on S. 555 (No. 95–170) and the floor debates in the House and Senate on this legislation. The principal substantive differences between the House and Senate provisions on Executive Personnel Financial Disclosure Requirements are described below.

S. 555 as passed by the Senate contained one title (title III) covering financial disclosure for officers and employees of all three branches of the government. The Senate agreed to the House bill's format providing for separate titles covering financial disclosure for officers and employees of each branch of the Federal government.

The House bill required public disclosure reports to be filed by all political appointees, even if they earn less than the equivalent of a person at the GS–16 level, unless the Director of Government Ethics exempts them from the filing requirement. The Senate had no comparable provision. The Senate receded on this issue.

The House bill directs that the description of a reporting individual's official position (if available) be put on the financial disclosure statement. The Senate bill had no comparable provision. The Senate receded on this issue. The Conferees believe that the official position need not be described if such a description by itself would create problems for our intelligence agencies which might result in no public report being filed.

The provision in this title permitting extensions of time for the filing of required reports by nominees is not intended to in any way limit the Congressional committee considering the nominee's confirmation. If that committee wants the information prior to the time the Director of Ethics gets the report due to the granting of an extension, the committee can require the report earlier or require any other information it deems appropriate.

The review of reports provided in this title is not intended by the conferees to in any way interfere with the authority of the Justice Department to enforce those laws dealing with conflict of interests. This provision provides a systematic review to identify problems and resolve them as best as possible. However, this review procedure is in no way a condition precedent to taking action to enforce any law or regulation.

The conferees intend that the reviewing of these reports can be delegated by the officials assigned the responsibility to conduct the review to other officials in their office under their direct supervision.

The Senate bill had a provision providing an exemption from disclosure for undercover intelligence agents. The House bill had a similar but somewhat broader provision. The Senate receded to the House provision with an amendment. The resulting limited exemption would be used for those individuals who are or may be undercover and whose identity as an intelligence officer must remain confidential. This authority would also allow the President to make a determination that certain reports shall not be made public under circumstances where disclosure of the report for other reasons would reveal sensitive information about our intelligence agencies which he believes should not be public.

In addition, this section provides authority for the President to authorize the filing of additional reports by intelligence officers in those instances where this is necessary to protect their cover status; in such cases, of course, the officers—if subject to the bill's reporting requirements—would file full reports with their agency.

Finally, the conferees intend that any outside review of confidential reports filed by officers in intelligence agencies would be under security procedures determined by the relevant intelligence agency and approved by the President.

The provisions defining the contents of financial disclosure statements are virtually identical to the corresponding provisions for the legislative branch contained in title I of the Conference Report. Reference should be made to the portion of the Statement of Managers explaining those provisions for an explanation of the changes made in the contents of the disclosure reports to be filed by officers and employees of the executive branch.

The Senate bill contained detailed provisions with respect to the use of blind trusts. The House bill contained a more general provision on this subject. The House receded to the Senate with an amendment proposed by the Administration to deal with a particular problem faced by political appointees in the executive branch who have high level responsibility covering relatively broad subject areas. For a full explanation of the blind trust provisions reference should be made to the report submitted by the Senate Governmental Affairs Committee to the Senate explaining the blind trust provisions in the Senate bill (S. Rept. 95–639).

The conferees felt that the blind trust provisions contained in the Senate bill, provided that an asset placed in a blind trust is covered by section 208 of title 18 until the reporting individual is told that asset has sold, would be a practicable means of handling the situation where an individual who is appointed by the President to a high-level position has a large number of well-diversified assets and the President would like to appoint him to a high level position which will involve decisions touching on a broad range of issues affecting a large number of subject areas.

The amendment agreed to by the conferees provides limited relief from the coverage of section 208 when such an individual establishes a blind trust subject to the provisions in this amendment. Nevertheless, the individual has to meet all the requirements provided for the independence of the trustee, and the specific provisions required to be put into the trust document, which requirements are set forth in detail in the Senate provision on blind trusts which was accepted by the conferees.

The conferees believe that the key to this provision being effective is the close scrutiny by the congressional committee considering the confirmation of the nominee. Therefore, the intent to use this device, and the decision by the Director of the Office of Government Ethics in concurrence with the Attorney General that the proposed blind trust meets the requirements of this provision, must be made available at the time the Congressional committee considers the individual's confirmation. The conferees intend the Congressional committee to closely examine the proposed arrangement to make sure that the trust portfolio is adequately diversified, that there are not investments in the trust in entities having substantial activities in the area of the reporting individual's primary area of responsibility.

With respect to an existing blind trust held by a present member of the executive branch, that trust must be conformed upon the effective date of this statute to meet all the requirements of the blind trust provisions. The trust document would have to be altered or a written agreement entered into to meet all the requirements, and the trust document and the identity of the trustee would have to be approved by the Director of the Office of Government Ethics. The only difference provided for an incumbent executive branch official having an existing blind trust is that that arrangement need not be submitted to a Congressional committee since there is no confirmation procedure ongoing. However, the conferees intend that the official would consult with the committee which handled his confirmation to inform it of his intentions to take advantage of this section.

This provision is not intended to cover every device which has been called a blind trust by a government official. The conferees intend for the Director of the Office of Government Ethics and the Attorney General to closely examine any such instruments that exist and determine whether there has been a good faith effort to establish a blind trust. Arrangements which contain one asset which is unlikely to be disposed of but is to be managed by a trustee are desirable means for a government official to provide for someone else to handle his time-consuming business affairs while he is performing his government duty. However, such an arrangement is not a blind trust. Such an arrangement should be permitted and encouraged but the assets contained in that trust or arrangement would have to be disclosed each year and would still be subject to section 208. Only in situations where there is the diversification referred to in this amendment and, therefore, the real possibility of the trust becoming blind, would this provision apply.

The House bill contained a provision limiting the outside earned income of presidential appointees to 15 percent of their gov-

ernment salary. The Senate bill had no comparable provision. The conferees believe that existing laws and agency regulations currently prohibit or severely restrict outside earned income by high-level officials of the Executive Branch. The conference agreement does not include this House provision.

TITLE III—JUDICIAL PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

This title is based upon title III of S. 555 as passed by the House (formerly H.R. 1) and title III of S. 555 as passed by the Senate. The provisions of the House and Senate bills were very similar. The principal explanation of these provisions can be found in the report submitted to the House on this title (No. 95–800) and the report submitted to the Senate on S. 555 (No. 95–170) and the floor debates in the House and the Senate on this legislation. The principal substantive differences between the House and Senate provisions on Judicial Personnel Financial Disclosure Requirements are described below.

S. 555 as passed by the Senate contained one title (title III) covering financial disclosure for officers and employees of all three branches of the government. The Senate agreed to the House bill's format providing for separate titles covering financial disclosure for officers and employees of each branch of the Federal government.

The Senate bill covered judges sitting on the courts of the District of Columbia. The House had no comparable provision. The House receded to the Senate on this issue.

The provisions defining the contents of financial disclosure statements are virtually identical to the corresponding provisions for the legislative branch contained in title I of the Conference Report. Reference should be made to the portion of the Statement of Managers explaining those provisions for an explanation of the changes made in the content of the disclosure reports to be filed by judges and employees of the judicial branch.

This title, while containing blind trust provisions similar to those in titles I and II, does not permit the use of a blind trust by a judicial officer. The conferees did not want to in any way alter the application of the Judicial Disqualification Act. Therefore, only judicial employees could use the blind trust provisions.

TITLE IV—OFFICE OF GOVERNMENT ETHICS

The provisions in the House and Senate bills creating the Office of Government Ethics were essentially identical. Two provisions in the Senate bill, to provide for audits of financial disclosure statements and to establish a formal advisory opinion service under the control of the Director of the Office of Government Ethics, were not in the House bill. One provision, to require rules and regulations pertaining to financial disclosure, conflict of interest and ethics in the Executive Branch to be promulgated in accordance with chapter 5 of title 5, United States Code, and to give standing to "any person" to seek judicial review of any such rule or regulation, was not in the Senate bill.

The House accepted the Senate provision for advisory opinions. The Senate accepted the House provision concerning rules and regulations and standing for judicial review. The Senate receded on its provision requiring audits.

A technical change, to reflect changes made by Executive Reorganization Plan No. 2 of 1978, was adopted. All references to the Civil Service Commission were changed to the Office of Personnel Management to reflect this reorganization, which transfers the functions of the Civil Service Commission (redesignated as the Merit Systems Protection Board under this reorganization plan) with regard to ethical conduct and financial disclosure to the Office of Personnel Management. Reference to the Office of Personnel Management, including the power of the Office of Personnel Management to take personnel actions, is not intended to preclude use of those authorities and powers which rest with the Merit Systems Protection Board and its Special Counsel under the Reorganization Plan or under the Civil Service Reform Act of 1978.

TITLE V—POST-EMPLOYMENT CONFLICT OF INTEREST

Title V is a revision of 18 U.S.C. 207, which is the major statute concerning restrictions on post-service activities by officials and employees of the Executive Branch. The conference report contains four major subsections.

Subsection (a) and (b) establish restrictions based upon the degree of personal knowledge and association a former official or employee had with a particular matter: a lifetime ban for certain matters in which the official participated personally and substantially while in office; and a two year ban for certain matters under the officer's official responsibility during the last year of government service. The length of those prohibitions are unchanged from present law, except for increasing the "official responsibility" prohibition from one to two years. The more intimate and extensive the involvement of the official, the greater the restriction is on the official's later involvement in those matters after leaving government service, on behalf of private parties.

Subsection (c) prohibits a former high-ranking officer or employee from contacting his former department or agency, for a period of one year, on matters of business pending before that department or agency, regardless of the nature of that proceeding or the degree of association the official had with that matter. Subsection (g), concerning partners of current Federal officials, is unchanged in substance from the present law.

Title V also contains criminal sanctions, and a provision allowing an administrative remedy, for violations of its provisions.

The major differences between the Senate bill and the House amendment were as follows—

(1) Prohibition under 18 USC 207(a) (lifetime ban):

The two elements of the House amendments on 18 USC 207(a) were that a former official—

(a) "knowingly acts as agent or attorney . . . or otherwise represents . . . in any formal or informal appearance before,";

(b) "or, with the intent to influence, make any written or oral communication . . . to . . ."

The Senate bill provision on 18 USC 207 (a) stated that a former official may not knowingly "aid, assist or represent" on certain matters.

The conference adopted the House provision. It is understood that the two elements of the House language, as set forth above, are each independent of the other for the purposes of a violation of any subsection in which those terms appear. It is also understood that the terms, "agent or attorney, or otherwise represents", as used in subsections (a), (b), and (c), are intended to include appearances in any professional capacity, whether as attorney, consultant, expert witness, or otherwise.

2. Two year "aiding and assisting" provision 18 USC 207(b)(ii):

The House amendment established a two year restriction against a former official who "aids or assists in representing . . . in any formal or informal appearance before" an agency or department on certain matters.

The comparable provision in the Senate bill (mentioned in 1 above) was a lifetime ban.

The conference provided, in subsection (b)(ii), for a two year restriction against a former official who "knowingly represents, or aids, counsels, advises, consults, or assists in representing any other person (except the United States) concerning any formal or informal appearance before . . . ". It is the intention of the conference that this provision will prohibit a former officer or employee from subsequent consultation on a matter, in which he was personally and substantially involved while in office, even though he is not representing a party in that matter.

3. Prohibition under 18 USC 207(c) (one year "no contract"):

The two elements of the House amendment on 18 USC 207(c) were that a former official—

(a) "knowingly acts as agency or attorney . . . or otherwise represents . . . in any formal or informal appearance before,";

(b) "or, with the intent to influence, make any oral or written communication . . . to . . ."

The Senate bill covered any former official, who "knowingly—(1) makes any appearance or attendance before, or (2) makes any written or oral communication to, and with the intent to influence the action of . . ."

The Senate bill also included in 18 U.S.C. 207(c) those matters "pending" before the former agency. The House amendment had the same language, but also prohibited contact with the former agency on any matters "in which such department or agency has a direct and substantial interest . . ."

The conference adopted the House prohibition, with the modification that 18 U.S.C. 207(c) will include self-representation. The conference also adopted the House language, contained in subsection (c)(3), to prohibit contact by a former official with his former agency, either on matters pending before that agency or on matters in which the former agency has a direct and substantial interest. Thus contact is proscribed, even though the matter is pending elsewhere and not before the agency itself, provided that the agency has a "direct and substantial interest" therein.

4. Coverage under 18 U.S.C. 207(c):

A. The House amendment would have applied subsection (c) to those Federal employees, GS–16 and above, who are in positions "excepted from the competitive service by reason of being of a confidential or policy-making character . . ."

The Senate bill would have applied to all Federal employees who are classified GS–16 and above.

B. The House amendment would have authorized the Director of the Office of Government Ethics to expand the coverage of 18 U.S.C. 207(c) to include any other officer or employee "who has a role in the formulation of agency policy that is substantially similar to that exercised" by those positions expressly enumerated.

The Senate bill had no comparable provision.

The conference adopted the House provision on coverage, but with the following modification in subsection (d)(4):

"Within twelve months from the date of enactment of this Act, the Director of the Office of Government Ethics shall designate positions, which are not included under paragraph (2) of this subsection and which involve significant decision-making authority, or other duties which are substantially similar to those exercised by persons covered by paragraph (2) of this subsection. On an annual basis, the Director shall review the positions designated pursuant to this paragraph, making additions and deletions as are necessary to satisfy the purposes of subsection (c). Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in exercising his responsibilities under this paragraph."

It is the intention of the conference that the Director of the Office of Government Ethics must classify positions, as subject to subsection (c), which involve significant decision-

making authority, or other duties substantially similar to the class of positions automatically included under subsection (d)(2). It is emphasized that this paragraph is intended to be independent of the other paragraphs in subsection (d). Thus the Director of the Office of Government Ethics is thereby authorized to classify any Executive Branch positions which, in his judgment, involve significant decision-making authority, or other duties substantially similar to those positions covered by subsection (d)(2). In that classification the Director is not limited by grade levels, nor is he limited by consideration of whether the position is or is not included within the competitive service.

Also on the coverage issue, the conference adopted a new subsection (d)(2), which is discussed in point 6, infra.

5. Exceptions under 18 USC 207:

A. Subsection (i) of the House amendment excepted from coverage, under 18 USC 207(a), (b), (c) and (g), "testimony under oath" or "statements required to be made under penalty of perjury." The House bill also excepted from coverage any "testimony", "statement" or "communication" if no compensation is received therefore.

The Senate bill, for the purposes of 18 USC 207(c) only, any appearance or attendance by former employees "concerning matters of a personal and individual nature, such as personal income taxes or pension benefits . . ."

The conference adopted the House provision, excepting from 18 U.S.C. 207(a), (b) and (c) "testimony under oath" and "statements required to be made under penalty of perjury." For the purposes of subsection (c), the conference also adopted the Senate provision excepting contact concerning "matters of a personal and individual nature", and, as modified, the exception in the House amendment for statements, based on the former official's special knowledge, for which no compensation is received.

B. Subsection (f) of the House amendment excepted from coverage, under 18 USC 207 (a), (b), and (c), "the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned with the particular matter . . ."

The Senate bill had no comparable provision.

The conference adopted the House provision. It is understood that this provision applies to communications that are made "solely for the purpose of furnishing scientific or technological information" and without the intent to influence.

6. Exception to 18 USC 207(c) for Licensed Professionals:

The House amendment provided that 18 USC 207(c) shall not apply to a "person who is a member in good standing before, and is licensed or certified to practice in a profession by, any Federal or State licensing or certifying authority for such profession," provided that certain conditions are met.

The Senate bill had no comparable provision.

The conference substitute provided, as a new subsection (d)(2), the following:

"(2) in a position for which the basic rate of pay is equal to or greater than the basic rate of pay for GS–17 of the General Schedule prescribed by section 5332 of title 5, United States Code, and who have significant decision-making or supervisory responsibility as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned; or"

It is the intention of the conference that the designation required by this paragraph shall occur no later than 12 months of the date of enactment of this subsection.

7. Waiver provisions under 18 USC 207:

Subsection (f) of the House amendment modified the waiver standard to include an officer or employee who has "outstanding qualifications in a scientific, technological, or other specialized discipline" and required that waivers be issued by agencies in consultation with the Director of the Office of Government Ethics.

The Senate bill did not contain the language on "other specialized discipline", and would not have required consultation with the Office of Government Ethics.

The conference adopted the requirement that agencies consult with the Director of the Office of Government Ethics in issuing waivers, and added to the waiver standard the words, "other technical discipline". It is the intention of the conference that waivers not be issued on the grounds of outstanding qualifications in law, economics, political science, or other nontechnical discipline.

8. Administrative Remedy:

The Senate bill provided an administrative procedure for violations of 18 USC 207. The Senate bill provided that, after notice and opportunity for a hearing, the head of an agency or department, in which the former official served, may make a finding that such person has violated either subsection (a), (b) or (c) of the statute. Upon such finding, the agency or department head may prohibit that person from making any appearance or attendance before that department or agency for a period not to exceed five years, or may take other appropriate disciplinary action.

The House amendment contained no comparable provision.

The conference adopts the Senate provision, with a modification that such disciplinary action shall be subject to review in a U.S. District Court.

9. Effective Date and Applicability:

The House amendment had an effective date of July 1, 1979. The Senate bill provisions on 18 USC 207 took effect upon adoption.

The conference adopted the House provision. It is noted that officers and employees, who leave office prior to the effective date of the act, are subject to the former provisions of 18 USC 207.

TITLE VI—AMENDMENTS TO TITLE 28, UNITED STATES CODE

The Senate bill, in title I, provided a mechanism for the appointment of temporary special prosecutors on an ad hoc basis in appropriate, limited circumstances. While the House amendment contained no similar provisions, there is legislation pending before the House, H.R. 9705, which contains substantially the same provisions as title I of the Senate bill. H.R. 9705 was reported favorably by the House Committee on the Judiciary on June 19, 1978, by a vote of 24–6.[1]

The conferees have agreed to provide a mechanism for the appointment of temporary special prosecutors. Title VI of the Conference Report establishes a mechanism that is substantially the same as title I of the Senate bill and H.R. 9705. When the Attorney General receives specific information that a specified individual may have violated a Federal criminal law, the Attorney General conducts a preliminary investigation of the matter, which may last for up to 90 days. If the Attorney General concludes at the end of the preliminary investigation that further investigation, or prosecution, is warranted, the Attorney General must apply to a special division of the Court of Appeals for the District of Columbia, which is established by this legislation, for the appointment of a special prosecutor. However, if the Attorney General concludes at the completion of the preliminary investigation that the matter is so unsubstantiated that it warrants no further investigation, the Attorney General need take no further action and no special prosecutor would be appointed.

The individuals covered by this legislation are (1) the President and Vice President; (2) Cabinet and Cabinet-level officials (someone serving in a position listed in section 5312 of title 5, United States Code); (3) high-ranking White House officials (someone working in the Executive Office of the President who is compensated at a rate not less than the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code); (4) high-ranking Justice Department officials, such as an assistant attorney general and the Director of the FBI, as well as the Director and Deputy Director of Central Intelligence and the Commissioner of Internal Revenue; (5) any individual who held any of the above-mentioned offices during the incumbency of the President or the previous President, if that President was of the same political party; and (6) any officer of the principal national campaign committee seeking the election or reelection of the President.

A special prosecutor, when appointed, serves only until completion of the investigation or prosecution he was appointed to handle. The special prosecutor is given full authority to investigate and prosecute the matter, thereby ensuring independence of judgment. At the same time, however, a special prosecutor is required to file periodic reports with Congress and cooperate with the oversight jurisdiction of the House and Senate Judiciary Committees, thereby insuring accountability. The special prosecutor can be removed from office by the personal action of the Attorney General, but only for extraordinary impropriety, physical disability, mental incapacity or another condition substantially impairing the performance of his duties. The Attorney General's removal power is not unchecked; a removed special prosecutor is entitled to contest his removal in a civil action heard by the appointing court.

The Senate bill had listed among the individuals covered by the legislation "a national campaign manager or chairman of any national campaign committee seeking the election or reelection of the President." The Justice Department expressed the concern that this provision could be construed to cover individuals chairing any one of the hundreds of campaign committees which spring up during a national campaign ("Youth for Carter," "Doctors for Ford," etc.). This result was unintended, and the conference amended this provision to cover only the officers of the principal national campaign committee seeking election or reelection of the President.

The Senate bill was written so as to take effect immediately upon enactment. The Conferees recognized, however, that such a provision might, in some circumstances, lead to the appointment of a special prosecutor where it would be unduly disruptive to the orderly and efficient handling of an ongoing case. The conferees believe that the provisions should take effect upon enactment of the legislation, but they decided to provide limited exceptions in a narrow range of circumstances. Since these exceptions are designed to accommodate a rather brief transitional period, and since the provision uses the term "directly related" and "related", the conferees intend and expect that the exceptions will be narrowly construed to accommodate the transitional period.

The first situation is where the Attorney General determines that the specific information he receives is directly related to a prose-

[1] See House Report No. 95–1307. The provisions of title I of the Senate bill are discussed in Senate Report No. 95–170.

cution already pending.[2] In this context, the use of the term "directly related" to a pending prosecution requires that the information furnished to the Attorney General concerning an individual covered by the legislation would relate to a prosecution then pending against that individual.

The second situation is where the Attorney General determines that the specific information is related to a matter which has been presented to a grand jury, if the information is received by the Attorney General within one hundred and eighty days of the date of enactment. The third situation is where the Attorney General determines that the specific information is related to a pending investigation, if the information is received within ninety days of the date of enactment.

In the context of exceptions (2) and (3), the conferees intend that the term "related" be given a more liberal construction. In those cases, information concerning a covered individual could be "related" to a matter before the grand jury or to a matter under investigation if it pertained to the same incidents or transactions or course of conduct being investigated.

The Senate bill included a provision to establish an Office of Government Crimes within the Department of Justice. The House amendment contained no comparable provision. The conferees agreed to delete this provision and to add instead a provision requiring that the Attorney General report annually to the Congress about the activities of the Public Integrity Section of the Justice Department's Criminal Division.

The investigation and prosecution of violations of Federal criminal law involving the integrity of public officials and government officers and employees is a matter of great importance. The Attorney General has charged the Public Integrity Section of the Justice Department's Criminal Division with the responsibility for supervising such investigations and prosecutions. The conferees support the Attorney General in the priority and emphasis that the Justice Department is giving to law enforcement activities with respect to corruption and misconduct by public officials and government officers and employees. The conferees urge the Attorney General to maintain the Public Integrity Section and to continue such law enforcement activities in a vigorous manner.

Because of the importance of such law enforcement activities, the conferees believe that it would assist the Congress in its oversight function to require the Attorney General to report annually on the efforts of the Department of Justice to investigate and prosecute Federal offenses involving the integrity of public officials and government officers and employees. While this provision does not require that the Attorney General centralize in one section or unit all of the Justice Department's law enforcement activities in this area, the conferees expect the Attorney General to consult with the Judiciary Committees of both Houses of Congress before substantially altering the scope of authority or mandate of the Public Integrity Section of the Criminal Division.

TITLE VII—OFFICE OF SENATE LEGAL COUNCIL

The Senate bill establishes an Office of Congressional Legal Counsel to defend the Constitutional powers of Congress in proceedings before the courts and confers jurisdiction on the courts to enforce Congressional subpoenas. The managers on the part of the House recede and concur in an amendment of the Senate which establishes an Office of Senate Legal Counsel and confers jurisdiction on the courts to enforce Senate subpoenas.

The appropriate committees in the House have not considered the Senate's proposal to establish a joint, House-Senate Office of Congressional Legal Counsel. The Senate has twice voted to establish a joint office. Because the House is not prepared to agree to a Joint Office at this time, the Senate desires to establish its own Office of Senate Legal Counsel to defend its interests in court. The managers agree that the Senate Legal Counsel should, whenever appropriate, cooperate and consult with the House in litigation matters of interest to both houses.

The appropriate committees in the House also have not considered the Senate's proposal to confer jurisdiction on the courts to enforce subpoenas of House and Senate committees. The Senate has twice voted to confer such jurisdiction on the courts and desires at this time to confer jurisdiction on the courts to enforce Senate subpoenas.

GEORGE E. DANIELSON,
RICHARDSON PREYER,
PAT SCHROEDER,
SAMUEL STRATTON,
DAVID R. OBEY,
HERBERT E. HARRIS,
JAMES R. MANN,
R. L. MAZZOLI,
BOB ECKHARDT,
BENJAMIN A. GILMAN,
CARLOS J. MOORHEAD,
BILL FRENZEL,
ROBERT W. KASTENMEIER,
Managers on the Part of the House.

ABE RIBICOFF,
HENRY M. JACKSON,
EDMUND S. MUSKIE,
CHARLES H. PERCY,
JACOB J. JAVITS,
Managers on the Part of the Senate.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 14104, ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. MEEDS, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1757) on the resolution (H. Res. 1423) providing for the consideration of the bill (H.R. 14104) to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 11153, RECLAMATION SAFETY OF DAMS ACT OF 1978

Mr. MEEDS, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1758) on the resolution (H. Res. 1424) providing for consideration of the bill (H.R. 11153) to authorize the Secretary of the Interior to construct, restore, operate, and maintain new or modified features at existing Federal reclamation dams for safety of dams purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 11274, MIDDLE-INCOME STUDENT ASSISTANCE ACT

Mr. MEEDS, from the Committee on Rules, submitted a privileged report (Rept. No. 95–1759) on the resolution (H. Res. 1425) providing for consideration of the bill (H.R. 11274) to amend title IV of the Higher Education Act of 1965 to increase the availability of assistance to middle-income students and to amend section 1208 of such act, which was referred to the House Calendar and ordered to be printed.

AUTHORIZING CLERK TO MAKE TECHNICAL CHANGES IN ENGROSSMENT OF H.R. 13750

Mr. STEIGER. Mr. Speaker, I ask unanimous consent that the Clerk be authorized in the engrossment of H.R. 13750 to strike out "(not to exceed 15 cents per pound raw value)" in headnote 2(b)(i) of the headnotes to subpart A of part 10 of schedule 1 of Tariff Schedules of the United States, as added by section 210(2) of the bill.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Wisconsin?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, that is all very interesting, but what does it do?

Mr. STEIGER. Mr. Speaker, if the gentleman will yield, it is a technical correction because of the adoption of the Steiger amendment. In the way it was offered. I did not strike out of the main part of the bill that portion which is being stricken by this resolution. Therefore, the Sugar Act cannot go to conference until it is corrected to conform to what the House did. It has been cleared by the chairman of the subcommittee.

Mr. ROUSSELOT. I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

APPOINTMENT OF CONFEREES ON S. 2416, NURSE TRAINING AMENDMENTS OF 1978

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2416) to amend title VIII of the Public Health Service Act to extend for 2 fiscal years the program of assistance for nurse training, with a House amendment thereto, insist on the House amendment, and agree to a conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, could the gentleman give us some kind of explanation of what this is?

Mr. STAGGERS. It is the Nurse Training Amendments of 1978. We want to go to conference. The Senate passed it and we have passed it.

Mr. ROUSSELOT. Why does the gentleman have to ask unanimous consent? Why could he not just go to conference.

Mr. STAGGERS. That is the rule.

Mr. ROUSSELOT. I thank the gentleman, and Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there

[2] A "prosecution" cannot be "pending" until an indictment is returned or an information is filed.

objection to the request of the gentleman from West Virginia? The Chair hears none, and without objection appoints the following conferees: Messrs. STAGGERS, ROGERS, SATTERFIELD, PREYER, SCHEUER, CARTER, and BROYHILL.

There was no objection.

APPOINTMENT OF CONFEREES ON S. 2466, NATIONAL INSTITUTES OF HEALTH CARE RESEARCH ACT OF 1978

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2466) to amend the Public Health Service Act to extend and revise the assistance programs for health services research and health statistics; to establish the Office of Health Technology, and for other purposes, with a House amendment thereto, insist on the House amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia? The Chair hears none, and without objection, appoints the following conferees: Messrs. STAGGERS, ROGERS, SATTERFIELD, PREYER, SCHEUER, CARTER, and BROYHILL.

There was no objection.

APPOINTMENT OF CONFEREES ON S. 2534, HEALTH MAINTENANCE ORGANIZATION AMENDMENTS OF 1978

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2534) to revise and extend the provisions of title XIII of the Public Health Service Act relating to health maintenance organizations with a House amendment thereto, insist on the House amendment and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia? The Chair hears none, and without objection, appoints the following conferees: Messrs. STAGGERS, ROGERS, SATTERFIELD, PREYER, SCHEUER, CARTER, and BROYHILL.

There was no objection.

AMENDING NATIONAL TRAILS SYSTEM ACT OF 1968

Mr. PHILLIP BURTON. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 6900) to amend the National Trails System Act of 1968 (82 Stat. 919), as amended, to designate the Oregon National Historic Trail and Travelway as a unit of the National Trails System, with Senate amendments thereto, and concur in the Senate amendments with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert: That the National Trails System Act (82 Stat. 919; 16 U.S.C. 1241), as amended, is further amended as follows:

(1) In section 2(a) after "promote" insert "the preservation of,"; and after "outdoor areas" insert "and historic resources".

(2) In section 2(a) delete "(ii)" and the remainder of the sentence and insert "(ii) secondarily, within scenic areas and along historic travel routes of the Nation, which are often more remotely located.".

(3) In section 2(b) delete "and scenic" in insert ", scenic and historic".

(4) In section 3 redesignate subsection "(c)" as "(d)", and insert a new subsection (c) as follows:

"(c) Historic routes designated as National Historic Trails pursuant to section 5 of this Act, shall follow the original trails or routes of travel as closely as possible and practicable. Such trails shall have as their purpose the identification and marking of an historic route and its historic remnants and artifacts for public use and enjoyment. While such designation shall commemorate an entire route along its historic alinement, only those selected land and water based components of an historic trail which are on federally owned lands and which meet the national historic trail criteria established in this Act, are established as initial components of a national historic trail. The appropriate Secretary may subsequently designate other lands as segments of an historic trail upon application from State or local governmental agencies or private interests involved in such segments meet the national trail criteria established in this Act and such criteria supplementary thereto as the appropriate Secretary may prescribe, and are administered by such agencies or interests without expense to the United States.".

(5) In the new section 3(d) delete "or national scenic" and insert ", national scenic or national historic".

(6) Change the title of section 5 to read "National Scenic and National Historic Trails".

(7) In section 5(a), insert in the first sentence after the word "scenic" the words "and national historic" and change the second sentence to read: "There are hereby established the following National Scenic and National Historic Trails:".

(8) In section 5(a)(1), in the first sentence, after the word "Appalachian", insert "National Scenic", and in section 5(a)(2), in the first sentence, after "Pacific Crest", insert "National Scenic".

(9) In section 5(a), delete paragraph (3) and insert in lieu the following new paragraphs:

"(3) The National Historic Oregon Trail, a route of approximately two thousand miles extending from near Independence, Missouri, to the vicinity of Portland, Oregon, following a route as depicted on maps identified as 'Primary Route of the Oregon Trail 1841–1848', in the Department of the Interior's Oregon Trail study report dated April 1977.

"(4) The National Historic Mormon Pioneer trail of approximately one thousand three hundred miles from Nauvoo, Illinois, to Salt Lake City, Utah, following the primary route of the Historic Mormon Trail depicted on a map, identified as, 'Vicinity Map, Mormon Pioneer Trail' in the Department of Interior Mormon Trail study report dated June 1978.

"(5) The National Historic Lewis and Clark Trail, a trail of approximately three thousand seven hundred miles, extending from Wood River, Illinois, to the mouth of the Columbia River in Oregon, following the outbound and inbound routes of the Lewis and Clark Expedition depicted on maps, identified as, 'Vicinity Map, Lewis and Clark Trial' study report dated April 1977.

"(6) The National Historic Iditarod Trail, a route of approximately two thousand miles extending from Seward, Alaska, to Nome, Alaska, following the routes as depicted on maps identified as 'Seward-Nome Trail', in the Department of the Interior's study report entitled 'The Iditarod Trail (Seward-Nome Route) and other Alaskan Gold Rush Trails' dated September 1977;".

(10) In section 5(b) after "national scenic" wherever it appears insert "or national historic"; delete the third sentence; and delete that portion of the fourth sentence which precedes the numerical listing, and insert in lieu the following: "The studies listed in subsection (c) of this section shall be completed and submitted to the Congress, with recommendations as to the suitability of trail designation, not later than three complete fiscal years from the date of enactment of their addition to this subsection, or from the date of enactment of this sentence, whichever is later. Such studies when submitted, shall be printed as a House or Senate document, and shall include, but not be limited to:".

(11) In section 5(b)(3) after the semicolon add "and in the case of national historic trails the report shall include the recommendation of the Secretary of the Interior's National Park System Advisory Board as to the national historic significance based on the criteria developed under the Historic Sites Act of 1935 (49 Stat. 666; 16 U.S.C. 461);".

(12) In section 5(b)(8) delete the word "and" at the end of the sentence; in section 5(b)(9) change the period at the end of the sentence to a semicolon; and at the end of section 5(b) add the following new paragraphs:

"(10) the anticipated impact of public outdoor recreation use on the preservation of a proposed national historic trail and its related historic and archeological features and settings, including the measures proposed to insure evaluation and preservation of the values that contribute to their national historic significance; and

"(11) to qualify for designation as a national historic trail, a trail must meet all three of the following criteria:

"(A) It must be a trail or route established by historic use and must be historically significant as a result of that use. The route need not currently exist as a discernable trail to qualify, but its location must be sufficiently known to permit evaluation of public recreation and historical interest potential. A designated trail should generally follow the historic route, but may deviate somewhat on occasion of necessity to avoid difficult routing through subsequent development, or to provide some route variation offering a more pleasurable recreational experience. Such deviations shall be so noted on site. Trail segments no longer possible to travel by trail due to subsequent development as motorized transportation routes may be designated and marked onsite as segments which link to the historic trail.

"(B) It must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, migration and settlement, or military campaigns. To qualify as nationally significant, historic use of the trail must have had a far-reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included.

"(C) It must have significant potential for public recreational use or historical interest based on historic interpretation and appreciation. The potential for such use is generally greater along roadless segments developed as historic trails, and at historic sites associated with the trail. The presence of recreation potential not related to historic appreciation is not sufficient justification for designation under this category.".

(13) In section 5 delete subsection (d), and insert a new section 5(d) to read as follows:

"(d) The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic

trail to the System, and within sixty days of the enactment of this sentence for the Appalachian and Pacific Crest National Scenic Trails, establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail. The members of each advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

"(i) a member appointed to represent each Federal department or independent agency administering lands through which the trail route passes, and each appointee shall be the person designated by the head of such department or agency;

"(ii) a member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;

"(iii) one or more members appointed to represent private organizations, including corporate and individual landowners and land users, which in the opinion of the Secretary, have an established and recognized interest in the trail, and such appointments shall be made from recommendations of the heads of such organizations: *Provided*, That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and

"(iv) the Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.".

(14) In section 5 add new subsections (e) and (f) as follows:

"(e) Within two complete fiscal years of the date of enactment of this subsection for the Pacific Crest and Appalachian Trails, the responsible Secretary shall, after full consultation with affected States, and the Appalachian Trail Conference in the case of the Appalachian Trail, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items:

"(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of anticipated cooperative agreements to be consummated with other entities, and an identified carrying capacity of the trail and a plan for its implementation;

"(2) an acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired;

"(3) general and site-specific development plans, including anticipated costs.

"(f) Within two complete fiscal years of the date of enactment of legislation (including this Act) designating a trail as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to section 5(d) of this Act, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:

"(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national recreational trails an identified carrying capacity of the trail and a plan for its implementation; and

"(2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(d) of this Act.".

(15) In section 6 in the first sentence delete "or national scenic" and insert ", national scenic or national historic", and in the second sentence delete "or scenic" and insert ", national scenic, or national historic".

(16) Delete all of section 7 and insert a new section 7 as follows:

"ADMINISTRATION AND DEVELOPMENT

"SEC. 7. (a) Pursuant to section 5(a), the appropriate Secretary shall select the rights-of-way for National Scenic and National Historic Trails and shall publish notice thereof in the Federal Register, together with appropriate maps and descriptions: *Provided*, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

"(b) After publication of notice in the Federal Register, together with appropriate maps and descriptions, the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (1) such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles. *Provided*, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

"(c) National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, and which are currently allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of the trail. The use of motorized vehicles by the general public along any national scenic or national historic trail shall be prohibited within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: *Provided*, That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber right: *Provided further*, That private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary.

"(d) The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation, national scenic, and national trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies who shall erect and maintain them in accordance with the standards established by the Secretary.

"(e) Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. No land or site located along a designated national historic trail shall be subject to the provisions of section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)) unless such land or site is deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.

"(f) Within the exterior boundaries of areas under their administration that are included in the rights-of-way selected for the Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange.

"(g) Where the lands included in Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail rights-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail rights-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of those trails: *Provided*, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the rights-of-way is published the appropriate Secretary may (i) enter into

such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (g) of this section. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purposes for which they are acquired: *Provided,* That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner or his heirs or assigns shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

"(h) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the rights-of-way of the Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

"(i) For the Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail, the appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interest therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: *Provided,* The condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of one hundred and twenty-five acres per mile.

"(j) The Secretary charged with the administration of a national recreation, national scenic, or national historic trail shall provide for the development and maintenance of such trails within federally administered areas or on federally owned lands and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of a national scenic or national historic trail either within or outside a federally administered area. Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this Act.

"(k) The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation, national scenic, or national historic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment.".

(17) In section 8 in the first sentence of subsection (a) after "establishing park, forest, and other recreation" insert "and historic" and after "administered by States, and recreation" insert "and historic"; and at the end of the first sentence insert the following: "The Secretary is also directed to encourage States to consider, in their comprehensive statewide historic preservation plans and proposals for financial assistance for State, local, and private projects submitted pursuant to the Act of October 15, 1966 (80 Stat. 915), as amended, needs and opportunities for establishing historic trails.".

(18) In section 10, strike "(a)(1)" and insert instead "(a)"; strike "the subsequent fiscal year" and insert instead, "subsequent fiscal years"; strike the paragraph numbered "(2)" in its entirety; and add a new "subsection (c)" as follows:

"(c) There is hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this Act relating to the trails designated by paragraphs 5(a) (3), (4), (5) and (6): Provided, That no such funds are authorized to be appropriated prior to October 1, 1979.

Amend the title so as to read: "An Act to establish a National Historic Trails Category within the National Trails System, to designate certain historic routes as National Historic Trails, and for other purposes.".

The Clerk read the House amendment to the Senate amendments, as follows:

Strike out all after the enacting clause, and insert:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "National Parks and Recreation Act of 1978".

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TITLE VII—WILD AND SCENIC RIVERS ACT AMENDMENTS

Subtitle A—Addition of Segments

Sec. 701. Addition of Pere Marquette Segment.
Sec. 702. Addition of Rio Grande Segment.
Sec. 703. Addition of Skagit Segments.
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Sec. 721. Designation of the Kern River (North Fork) for study.
Sec. 722. Designation of the Loxahatchee River for study.
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Sec. 726. Designation of the San Francisco River for study.
Sec. 727. Designation of Fish Creek for study.
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Sec. 729. Designation of the Sheepscott River for study.
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Sec. 731. Designation of the Escatawpa River for study.
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Sec. 761. Technical amendments.
Sec. 762. Federal lands; cooperative agreements.
Sec. 763. Miscellaneous technical amendments.
Sec. 764. Lease of Federal lands.

TITLE VIII—RECOGNITION OF THE HONORABLE WILLIAM M. KETCHUM

Sec. 801. Recognition of the Honorable William M. Ketchum.

TITLE IX—JEAN LAFITTE NATIONAL HISTORICAL PARK

TITLE X—URBAN PARK AND RECREATION RECOVERY PROGRAM

TITLE XI—NEW RIVER GORGE NATIONAL RIVER

TITLE XII—FORT SCOTT NATIONAL HISTORIC SITE DEFINITION

SEC. 2. As used in this Act, except as other wise specifically provided, the term "Secretary" means the Secretary of the Interior.

AUTHORIZATION OF APPROPRIATIONS

SEC. 3. Authorizations of moneys to be appropriated under this Act shall be effective on October 1, 1978. Notwithstanding any other provision of this Act, authority to enter into contracts, to incur obligations, or to make payments under this Act shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

TITLE I—DEVELOPMENT CEILING INCREASES

SPECIFIC INCREASES

SEC. 101. The limitations on funds for development within certain units of the National Park System and affiliated areas are amended as follows:

(1) Agate Fossil Beds National Monument, Nebraska: Section 4 of the Act of June 5, 1965 (79 Stat. 123), is amended by changing "$1,842,000" to "$2,012,000".

(2) Andersonville National Historic Site, Georgia: Section 4 of the Act of October 16, 1970 (84 Stat. 989), is amended by changing "$1,605,000" to "$2,205,000 for development.", and by deleting "(March 1969 prices), for development, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuation in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein.".

(3) Andrew Johnson National Historic Site, Tennessee: Section 3 of the Act of December 11, 1963 (77 Stat. 350) is amended by changing "$266,000" to "$286,000".

(4) Biscayne National Monument, Florida: Section 5 of the Act of October 18, 1968 (82 Stat. 1188), is amended by changing "$2,900,000" to "$6,565,000".

(5) Capitol Reef National Park, Utah: Section 7 of the Act of December 18, 1971 (85 Stat. 739), is amended by changing "$1,052,700 (April 1970 prices)" to "$1,373,000 for development.", and by deleting "for development, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein.".

(6) Carl Sandburg Home National Historic Site, North Carolina: Section 3 of the Act of October 17, 1968 (82 Stat. 1154), is amended by changing "$952,000" to "$1,662,000".

(7) Cowpens National Battleground Site, South Carolina: Section 402 of the Act of April 11, 1972 (86 Stat. 120), is amended by changing "$3,108,000" to "$5,108,000".

(8) De Soto National Memorial, Florida: Section 3 of the Act of March 11, 1948 (62 Stat. 78), as amended, is further amended by changing "$175,000" to "$292,000".

(9) Fort Bowie National Historic Site, Arizona: Section 4 of the Act of August 30, 1964 (78 Stat. 681), is amended by deleting "$550,000 to carry out the purposes of this Act.", and inserting in lieu thereof: "$85,000 for land acquisition and $1,043,000 for development".

(10) Frederick Douglass Home, District of Columbia: Section 4 of the Act of September 5, 1962 (76 Stat. 435), is amended by changing "$413,000" to "$1,350,000".

(11) Grant Kohrs Ranch National Historic Site, Montana: Section 4 of the Act of August 25, 1972 (86 Stat. 632) is amended to read as follows: "Sec. 4. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, but not to exceed $752,000 for land acquisition and not to exceed $2,075,000 for development."; the additional sums herein authorized for land acquisition may be used to acquire the fee simple title to lands over which the United States has acquired easements or other less than fee interests.

(12) Guadalupe Mountains National Park, Texas: Section 6 of the Act of October 15, 1966 (80 Stat. 920), is amended by changing "$10,362,000" to "$24,715,000", and by adding the following new sentence at the end of the section: "No funds appropriated for development purposes pursuant to this Act may be expended for improvements incompatible with wilderness management within the corridor of the park leading to the summit of Guadalupe Peak.".

(13) Gulf Islands National Seashore, Florida-Mississippi: Section 11 of the Act of January 8, 1971 (84 Stat. 1967), is amended by changing "$17,774,000" to "$24,224,000", and by deleting the phrase "(June 1970 prices) for development, plus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering costs indices applicable to the types of construction involved herein.", and inserting in lieu thereof "for development.".

(14) Harper's Ferry National Historical Park, Maryland-West Virginia: Section 4 of the Act of June 30, 1944 (58 Stat. 645), is amended further by changing "$8,690,000" to "$12,385,000".

(15) Hubbell Trading Post National Historic Site, Arizona: Section 3 of the Act of August 28, 1965 (79 Stat. 584), is amended by changing "$952,000" to "$977,000".

(16) Indiana Dunes National Lakeshore, Indiana: Section 10 of the Act of November 5, 1966 (80 Stat. 1312), is amended by changing "$8,500,000" to $9,440,000".

(17) John Muir National Historic Site, California: Section 3 of the Act of August 31, 1964 (78 Stat. 753), is amended by striking out "$300,000 for land acquisition and restoration of the buildings thereon." and inserting in lieu thereof "$224,000 for land acquisition and $1,285,000 for development".

(18) For the preservation and protection of certain lands in Prince Georges and Charles Counties, Maryland: Section 4 of the joint resolution of October 4, 1961 (75 Stat. 783) is amended by inserting "(a)" after "SEC. 4." and by adding the following new subsection (b) at the end thereof:

"(b) In addition to such other sums as have been appropriated for such purposes, there is authorized $2,000,000 for development.".

(19) Longfellow National Historic Site, Massachusetts: Section 4 of the Act of October 9, 1972 (86 Stat. 791), is amended by changing "$586,000 (May 1971 prices)" to "$682,000 for development.", and by deleting "of the area, plus or minus such amounts, if any, as may be justified by rea-

son of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein.".

(20) Pecos National Monument, New Mexico: Section 3 of the Act of June 28, 1965 (79 Stat. 195), is amended by changing "$500,000" to "$2,375,000".

(21) Perry's Victory and International Peace Memorial, Ohio: Section 4 of the Act of October 26, 1972 (86 Stat. 1181), is amended by changing "$5,177,000" to "$9,327,000".

(22) San Juan Island National Historical Park, Washington: Section 4 of the Act of September 9, 1966 (80 Stat. 737), is amended by changing "$3,542,000" to "$5,575,000".

(23) Sitka National Monument, Alaska: Section 3 of the Act of October 18, 1972 (86 Stat. 904), is amended by changing "$691,000 (June 1971 prices)" to "$1,571,000", by changing the comma following "development" to a period, and by deleting the remainder of the sentence following said period.

(24) Statue of Liberty National Monument, New York-New Jersey: Section 1 of the joint resolution of August 17, 1965 (79 Stat. 543), is amended by changing "$6,000,000" to "$24,000,000".

(25) Thaddeus Kosciuszko Home National Historic Site, Pennsylvania: Section 3 of the Act of October 21, 1972 (86 Stat. 1046), is amended by changing "$592,000" to "$742,000".

(26) Tuskegee Institute National Historic Site, Alabama: Section 104(e) of the Act of October 26, 1974 (88 Stat. 1463), is amended by changing "$2,722,000" to "$2,862,000".

(27) Whiskeytown-Shasta-Trinity National Recreation Area, California: Section 10 of the Act of November 8, 1965 (79 Stat. 1295), is amended by changing "$22,700,000" to "$24,649,000".

(28) William Howard Taft National Historic Site, Ohio: Section 3 of the Act of December 2, 1969 (83 Stat. 273), is amended by changing "$318,000" to "$1,888,000".

(29) Wilson's Creek National Battlefield, Missouri: Section 3 of the Act of December 16, 1970 (84 Stat. 1441), is amended by changing "$2,285,000 (March 1969 prices)," to "$5,640,000." and deleting the remaining portion of the sentence following the period.

TITLE II—ACQUISITION CEILING INCREASES

ACQUISITION CEILINGS

SEC. 201. The limitations on appropriations for the acquisition of lands and interests therein within certain units of the National Park System are amended as follows:

(1) Big Cypress National Preserve, Florida: Section 8 of the Act of October 11, 1974 (88 Stat. 1258), is amended by changing "$116,000,000" to "$156,700,000".

(2) Buffalo National River, Arkansas: Section 7 of the Act of March 1, 1972 (86 Stat. 44), is amended by changing "$30,071,500" to "$39,948,000".

(3) Cumberland Island National Seashore, Georgia: Section 10 of the Act of October 23, 1972 (86 Stat. 1066), is amended by changing "$10,500,000" to "$28,500,000".

SAWTOOTH NATIONAL RECREATION AREA

SEC. 202. Section 13 of the Act of August 22, 1972 (86 Stat. 612), is amended by changing "$19,802,000" to "$47,802,000".

TITLE III—BOUNDARY CHANGES

REVISION OF BOUNDARIES

SEC. 301. The boundaries of the following units of the National Park System are revised as follows, and there are authorized to be appropriated such sums as may be necessary, but not exceed the amounts specified in the following paragraphs for acquisitions of lands and interests in lands within areas added by reason of such revisions:

(1) Bent's Old Fort National Historic Site, Colorado: to add approximately six hundred and twenty-two acres as generally depicted on the map entitled "Boundary Map, Bent's Old Fort National Historic Site, Colorado", numbered 417-80,007-A, and dated June 1976: $842,000.

(2) Cape Cod National Seashore, Massachusetts: To add approximately thirteen acres and to delete approximately sixteen acres as generally depicted on the map entitled "Cape Cod National Seashore Boundary Map", numbered 609-60,015 and dated February 1978.

(3) Chiricahua National Monument, Arizona: To add approximately four hundred and forty acres as generally depicted on the map entitled "Boundary Map, Chiricahua National Monument, Arizona", numbered 145-80,002, and dated August 1977: $294,000.

(4) Coronado National Memorial, Arizona: To add approximately three thousand and forty acres and delete approximately twelve hundred acres as generally depicted on the map entitled "Land Status Map 01, Coronado National Memorial, Cochise County, Arizona", numbered 8630/80,001, and dated October 1977: $1,410,000.

(5) Eisenhower National Historic Site, Pennsylvania: To add approximately one hundred ninety-five and eighty-three one-hundredths acres as generally depicted on the map entitled "Boundary Map, Eisenhower National Historic Site, Adams County Pennsylvania", numbered 446-40,001B, and dated April 1978: $166,000.

(6) Fort Caroline National Memorial, Florida: To add approximately ten acres as generally depicted on the map entitled "Boundary Map, Fort Caroline National Memorial, Florida", numbered 5310/80,000-A, and dated April 1978: $170,000.

(7) George Washington Birthplace National Monument, Virginia: To add approximately eighty-two and twenty-five one-hundreths acres as generally depicted on the map entitled "Boundary Map, George Washington Birthplace National Memorial, Virginia", numbered 332-30,000-B and dated September 1978: $450,000.

(8) Great Sand Dunes National Monument, Colorado: To add approximately one thousand one hundred and nine acres as generally depicted on the map entitled "Boundary Map, Great Sand Dunes National Monument, Colorado", numbered 140-80,001 A, and dated November 1974: $166,000.

(9) Gulf Islands National Seashore, Mississippi-Florida: To add approximately six hundred acres as generally depicted on the map entitled "Boundary Map, Gulf Islands National Seashore, Mississippi-Florida", numbered 20,006, and dated April 1978: $300,000.

(10) Hawaii Volcanoes National Park, Hawaii: To add approximately two hundred and sixty-nine acres as generally depicted on the map entitled "Boundary Map, Hawaii Volcanoes National Park, Hawaii", numbered 80,000, and dated August 1975: $562,000.

(11) John Day Fossil Beds National Monument, Oregon: To add approximately one thousand four hundred and eleven acres, and to delete approximately one thousand six hundred and twenty acres as generally depicted on the map entitled "Boundary Map, John Day Fossil Beds National Monument, Oregon", numbered 177-30,000-B, and dated May 1978: $3,500,000. The Act of October 26, 1974 (88 Stat. 1461), which designates the John Day Fossil Beds National Monument is amended by deleting the second proviso of section 101(a)(2). Furthermore, notwithstanding any other provision of law to the contrary, the Secretary may, if he determines that to do so will not have a substantial adverse affect on the preservation of the fossil and other resources within the remainder of the monument, convey approximately 69 acres acquired by the United States for purposes of the monument in exchange for non-Federal lands within the boundaries of the monument, and, effective upon such conveyance, the boundaries of the monument are hereby revised to exclude the lands conveyed.

(12) Monocacy National Battlefield, Maryland: To add approximately five hundred and eighty-seven acres as generally depicted on the map entitled, "Boundary Map, Monocacy National Battlefield", numbered 894-40,001, and dated May 1978: $3,500,000.

(13) Montezuma Castle National Monument, Arizona: To add approximately thirteen acres, and to delete approximately five acres as generally depicted on the map entitled "Montezuma Castle National Monument, Arizona", numbered 20,006, and dated April 1978.

(14) Oregon Caves National Monument, Oregon: To add approximately eight acres as generally depicted on the map entitled "Oregon Cave, Oregon", numbered 20,000, and dated April 1978: $107,000.

(15) Salem Maritime National Historic Site, Massachusetts: To add approximately fifteen one-hundredths of an acre as generally depicted on the map entitled "Salem Maritime National Historic Site Boundary Map", numbered 373-80,010, and dated February 1978: $67,500.

(16) Theodore Roosevelt National Memorial Park, North Dakota: To add approximately one hundred and forty-six acres, and delete approximately one hundred and sixty acres as generally depicted on map entitled "Boundary Map Theodore Roosevelt National Memorial Park-North Unit McKenzie County /North Dakota" numbered 387/80020, and dated July 1977.

(17) Tumacacori National Monument, Arizona: To add approximately seven acres, and delete approximately eleven-hundredths of an acre as generally depicted on the map entitled "Boundary Map, Tumacacori National Monument, Arizona", numbered 311-80,009-A, and dated March 1978; $24,000.

(18)(A) Tuzigoot National Monument, Arizona: To add approximately seven hundred and ninety-one acres as generally depicted on the map entitled "Master Proposal, Tuzigoot National Monument", numbered 378-30,000D, and dated January 1973; $1,350,000.

(B) The Secretary is authorized to acquire by donation, purchase with donated or appropriated funds, exchange or otherwise and subject to such terms, reservations, conditions applied to the acquired lands as he may deem satisfactory, the lands and interest in lands that are included within the boundaries of the Tuzigoot National Monument as revised by this paragraph. When so acquired, they shall be administered in accordance with provisions of law generally applicable to units of the National Park System, including the Act of August 25, 1916 (39 Stat. 535).

(C) In exercising his authority to acquire such lands and interests in lands by exchange, the Secretary may accept title to any non-Federal property within the boundaries of the national monument and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction in the State of Arizona. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(19) White Sands National Monument, New Mexico: To add approximately three hundred and twenty acres, and delete approximately seven hundred and sixty acres as generally depicted on the map entitled "Boundary Map, White Sands, National Monument, New Mexico", numbered 142/20,010-A, and dated November 1973.

(20) William Howard Taft National Historic Site, Ohio: To add approximately three acres as generally depicted on the map entitled "Boundary Map, William Howard Taft

National Historic Site, Ohio", numbered 448–40,021, and dated January 1977.

(21) Wind Cave National Park, South Dakota: To add approximately two hundred and twenty-eight acres as generally depicted on the map entitled "Boundary Map, Wind Cave National Park, South Dakota", numbered 108–80,008, and dated July 1977: $227,000.

MAPS AND DESCRIPTIONS

SEC. 302. Within twelve months after the date of the enactment of this Act, the Secretary shall publish in the Federal Register a detailed map or other detailed description of the lands added or excluded from any area pursuant to section 301.

ACQUISITION AND DISPOSAL OF LANDS

SEC. 303. (a) Within the boundaries of the areas as revised in accordance with section 301, the Secretary is authorized to acquire lands and interests therein by donation, purchase with donated or appropriated funds, exchange, or transfer from any other Federal agency. Lands and interests therein so acquired shall become part of the area to which they are added, and shall be subjected to all laws, rules, and regulations applicable thereto. When acquiring any land pursuant to this title, the Secretary may acquire any such land subject to the retention of a right of use and occupancy for a term not to exceed twenty-five years or for the life of the owner or owners. Lands owned by a State or political subdivision thereof may be acquired only by donation.

(b) (1) Lands and interests therein deleted from any area pursuant to section 301 may be exchanged for non-Federal lands within the revised boundaries of such area, or transferred to the jurisdiction of any other Federal agency or to a State or political subdivision thereof, without monetary consideration, or be administered as public lands by the Secretary, as the Secretary may deem appropriate.

(2) In exercising the authority contained in this section with respect to lands and interests therein deleted from any such area which were acquired from a State, the Secretary may, on behalf of the United States, transfer to such State exclusive or concurrent legislative jurisdiction over such lands, subject to such terms and conditions as he may deem appropriate, to be effective upon acceptance thereof by the State.

(c) It is the established policy of Congress that wilderness, wildlife conservation, and part and recreation values of real property owned by the United States be conserved, enhanced, and developed. It is further declared to be the policy of Congress that unutilized, underutilized, or excess Federal real property be timely studied as to suitability for wilderness, wildlife conservation, or park and recreation purposes. To implement this policy, the Secretary, the Administrator of General Services, and the Director of the Office of Management and Budget shall establish a system with appropriate procedures to permit the Secretary full and early opportunity to make such studies and propose appropriate recommendations to disposing agencies for consideration in connection with determinations of further utilization or disposal of such property under existing law. Each affected executive agency is authorized and directed to provide to the Secretary such advice and information relating to such studies as the Secretary may request.

OTHER AUTHORITIES

SEC. 304. The authorities in this title are supplementary to any other authorities available to the Secretary with respect to the acquisition, development, and administration of the areas referred to in section 301.

NAME CHANGE; CITY OF REFUGE NATIONAL HISTORICAL PARK

SEC. 305. The Act of July 21, 1955 (69 Stat. 376) is hereby amended to redesignate the City of Refuge National Historical Park as the Puuhonua o Honaunau National Historical Park.

BLACK HAMMOCK ISLAND

SEC. 306. The lot on Black Hammock Island, identified by warranty deed numbered 70–56903, recorded among the land records of Duval County, Florida, on November 23, 1970, owned by the Federal Government, shall, pursuant to the Act of December 18, 1967 (81 Stat. 656; 16 U.S.C. 19g, 19h), be deeded to the National Park Foundation to be sold at fair market value. The proceeds of such sale shall be remitted to the National Park Service for land acquisition and development of the Fort Caroline National Memorial.

ALLEGHENY PORTAGE RAILROAD NATIONAL HISTORIC SITE AND JOHNSTOWN FLOOD NATIONAL MEMORIAL

SEC. 307. (a) The Secretary is authorized to revise the boundaries of the Allegheny Portage Railroad National Historic Site and the Johnstown Flood National Memorial in Pennsylvania to add approximately five hundred and twenty-six acres and sixty-seven acres respectively. Sections 302 and 303 of this Act shall be applicable to such boundary revision.

(b) In addition to amounts otherwise available for such purposes there are authorized to be appropriated not more than $2,743,000 for land acquisition and $4,280,000 for development to carry out the purposes of this section.

FORT LARAMIE NATIONAL HISTORIC SITE

SEC. 308. (a) The first section of the Act entitled "An Act to revise the boundaries and change the name of the Fort Laramie National Monument, Wyoming, and for other purposes", approved April 29, 1960 (74 Stat. 83), is amended to read as follows: "That in order to preserve the sites of historic buildings and roads associated with Fort Laramie, the boundaries of the Fort Laramie National Historic Site shall hereafter comprise the area generally depicted on the map entitled 'Boundary Map, Fort Laramie National Historic Site', numbered 375–90,001, and dated September 1977. The map shall be on file and available for public inspection in the office of the National Park Service, Department of the Interior".

(b) The first sentence of section 2 of such Act is amended by inserting between the words "boundary" and "described" the phrase "as depicted on the map.".

FORT UNION TRADING POST NATIONAL HISTORIC SITE

SEC. 309. (a) The first section of the Act entitled "An Act to authorize establishment of the Fort Union Trading Post National Historic Site, North Dakota and Montana, and for other purposes", approved June 20, 1966 (80 Stat. 211), is amended by deleting "located in Williams County, North Dakota, and such additional lands and interests in lands in Williams County, North Dakota, and Roosevelt County, Montana," and inserting in lieu thereof "located in the States of North Dakota and Montana," and by deleting "400 acres" and inserting in lieu thereof "570 acres as generally depicted on the map entitled 'Fort Union Trading Post, Montana-North Dakota', numbered 436–80,025, and dated February 1977".

(b) Section 4 of such Act is amended by deleting "$613,000 for the acquisition of lands and interests in lands and for the development" and inserting in lieu thereof "$280,000 for the acquisition of lands and $4,416.000 for development". *"Provided further,* That the Secretary is directed to study the possible reconstruction of the historic remains of Ft. Union, and the Secretary is further directed to transmit to the Congress, within one year of the enactment of this bill, a recommendation on the reconstruction of the Fort based on historic documentation."

ADDITION OF DORCHESTER HEIGHTS TO THE BOSTON NATIONAL HISTORICAL PARK

SEC. 310. (a) Section 2(a) of the Boston National Historical Park Act of 1974 (88 Stat. 1184) is amended—

(1) in paragraph (6) by striking out "and" at the end thereof;

(2) in paragraph (7) by striking out the period and inserting in lieu thereof (", and"; and

(3) by inserting at the end thereof the following new paragraph:

"(8) Dorchester Heights, Boston.".

(b) Section 3(a) of such Act is amended—

(1) in paragraph (3) by inserting "and" after the semicolon;

(2) by striking out "(4) Dorchester Heights; and"; and

(3) by striking out "(5)" and inserting in lieu thereof "(4)".

(c) There are authorized to be appropriated such sums as may be necessary for the acquisition of lands or interests in lands designated by subsection (a) of this section as a component of the Boston National Historical Park, and for the development of such component.

(d) Section 2(d) of such Act is amended by deleting the period at the end of the last sentence and inserting: "and the Secretary is authorized to grant, in accordance with such terms and conditions as he deems necessary and consistent with the purposes of this Act, easements and rights-of-way to the Commonwealth of Massachusetts or any political subdivision thereof including the Boston Redevelopment Authority for purposes of the vehicular, pedestrian and utility access to that portion of the Boston Navy Yard outside the boundaries of the Park. Such grants of easements and rights-of-way shall be upon the express condition that the grantee convey to the United States the property known as Building No. 107, being a part of the Boston Navy Yard and owned by the Boston Redevelopment Authority.".

FORT CLATSOP NATIONAL MEMORIAL

SEC. 311. Section 2 of the Act of May 29, 1958 (72 Stat. 153; 16 U.S.C. 450mm–1), is amended to read as follows:

"SEC. 2. The Secretary of the Interior shall designate for inclusion in Fort Clatsop National Memorial land and improvements thereon located in Clatsop County, Oregon, which are associated with the winter encampment of the Lewis and Clark Expedition, known as Fort Clatsop, including the site of the salt cairn (specifically, lot number 18, block 1, Cartwright Park Addition of Seaside, Oregon) utilized by that expedition and adjacent portions of the old trail which led overland from the fort to the coast: *Provided,* That the total area so designated shall contain no more than one hundred and thirty acres."

ADAMS NATIONAL HISTORIC SITE, MASSACHUSETTS

SEC. 312. (a) In order to preserve for the benefit, education, and inspiration of present and future generations the birthplaces of John Adams and John Quincy Adams, the Secretary is authorized to accept the conveyance, without monetary consideration, of the property known as the John Adams Birthplace at 133 Franklin Street, and the property known as the John Quincy Adams Birthplace at 141 Franklin Street, in Quincy, Massachusetts, together with such adjacent real property as may be desirable, for administration as part of the Adams National Historic Site in Quincy, Massachusetts. Together with, or following such conveyance, the Secretary is authorized to accept the conveyance without monetary consideration, of furnishings and personal property relating to such birthplaces, after consultation with appropriate officials of the city of Quincy

and with the owner or owners of such furnishings and personal property.

(b) The Secretary shall administer the properties acquired pursuant to subsection (a) of this section as part of the Adams National Historic Site in accordance with this section and the provisions of law generally applicable to national historic sites, including the Act of August 25, 1916 (39 Stat. 535) and the Act of August 21, 1935 (49 Stat. 666).

ADDITION OF EPPES MANOR TO PETERSBURG NATIONAL BATTLEFIELD

SEC. 313. (a) The Secretary is authorized to acquire the historic Eppes Manor, and such other lands adjacent thereto, not to exceed twenty-one acres, for addition to the Petersburg National Battlefield, as generally depicted on the map entitled "Petersburg National Battlefield, Virginia", numbered APMA 80,001, and dated May 1978.

(b) There are hereby authorized to be appropriated not to exceed $2,200,000 to carry out the purposes of this section.

ADDITION OF MINERAL KING VALLEY TO SEQUOIA NATIONAL PARK

SEC. 314. (a) It is the purpose of this section to—

(1) assure the preservation for this and future generations of the outstanding natural and scenic features of the area commonly known as the Mineral King Valley and previously designated as the Sequoia National Game Refuge and

(2) enhance the ecological values and public enjoyment of such area by adding such area to the Sequoia National Park.

(b)(1) In order to add to the Sequoia National Park (hereinafter in this section referred to as the "park") a certain area known as Mineral King Valley possessing unique natural and scenic values, there is hereby established as part of such park all lands, waters, and interests therein, constituting approximately sixteen thousand two hundred acres designated before the date of the enactment of this Act as the Sequoia National Game Refuge and as depicted on the drawing entitled "Boundary Map, Sequoia-Kings Canyon National Park", numbered 102–90,000 and dated April 1975. A copy of such drawing shall be on file and available for public inspection in the office of the Director, National Park Service, Department of the Interior. After advising the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate in writing, the Secretary is authorized to make minor revisions of the boundaries of the park when necessary by publication of a revised drawing or other boundary description in the Federal Register.

(2) The Sequoia National Game Refuge is hereby abolished and the Secretary of Agriculture shall transfer, without consideration, to the administrative jurisdiction of the Secretary, the area constituting such refuge, and any unexpended funds available for purposes of management of the refuge shall be available for purposes of management of the park.

(c)(1) Within the boundaries of the area added to the park pursuant to this section, the Secretary may acquire lands and interests in lands by donation, purchase with donated or appropriated funds, exchange, or transfer from other Federal departments or agencies.

(2) Where the private use of any property acquired pursuant to this subsection would, in the judgment of the Secretary, be compatible with the purposes of this section, the Secretary may, as a condition of such acquisition, permit the owner or owners of such property to retain for themselves and their successors or assigns rights of use and occupancy. Such rights of use and occupancy shall be for not more than twenty-five years or for a term ending at the death of the owner or his or her spouse, whichever is later. The owner shall reserve such rights and elect the term to be reserved on the date of acquisition of the property. Except for so much of the property as is donated, the Secretary shall pay to the owner the fair market value of the property on the date of its acquisition, less the fair market value on that date of the right retained by the owner.

(3) A right of use and occupancy retained pursuant to paragraph (2) may be terminated by the Secretary upon his determination that the property or any portion thereof is being used in a manner which is incompatible with the purposes of this section. Such right shall terminate by operation of law upon notification by the Secretary to the holder of the right of such determination and tendering to him the amount equal to the fair market value of that portion which remains unexpired as of the date of such tender. In the case of any property which was used for noncommercial purposes during the ten calendar years immediately preceding the enactment of this Act, the commercial use of such property subsequent to the enactment of this Act shall be treated as incompatible with the purposes of this section. In the case of any property which was used for commercial purposes at any time during the ten calendar years immediately preceding the enactment of this Act, any substantial change or expansion of such commercial use subsequent to the enactment of this Act without the express approval of the Secretary shall be treated as incompatible with such purposes.

(4) In exercising his authority to acquire property under this section, the Secretary shall give prompt and careful consideration to any offer made by an individual owning property within the park to sell such property if such individual notifies the Secretary that the continued ownership of such property is causing, or would result in, undue hardship. Nothing in this section, or in any other provision of law, shall prevent the Secretary from exercising his authority to acquire property referred to in this subsection at any time after the date of the enactment of this Act.

(5) If any individual tract or parcel of land acquired is partly inside and partly outside the boundaries of the park the Secretary may, in order to minimize the payment of severance damages, acquire the whole of the tract or parcel.

(6) If the management plan prepared under subsection (e) provides for improved access to the area added to the park under this section, the Secretary is authorized to acquire, by donation, purchase with donated or appropriated funds, exchange or transfer from other Federal departments or agencies, the area comprising the road from State Route 198 to, and within, the Mineral King Valley together with a right-of-way for such road of a width sufficient to include improvements to the road and all bridges, ditches, cuts, and fills appurtenant thereto, but not exceeding a maximum average width of two hundred feet. Property, acquired from the State or any political subdivision thereof may be acquired by donation only. With regard to routes of access to and within the Mineral King Valley, the Secretary shall take such measures as are necessary to protect against the effects of silation on the ecosystem of the park.

(7) The Secretary shall report to the committees of the Congress named in subsection (b)(1) the action taken by him pursuant to this subsection. Such report shall contain information sufficient to inform such committees of—

(A) the acquisition made by him pursuant to this subsection during the period covered by such report;

(B) his reasons why all of such property authorized to be acquired and not so acquired as of the date of such report, if any, have not been acquired; and

(C) his schedule of a timetable for the acquisition of such property referred to in subparagraph (B).

Such report shall be submitted before the expiration of the second fiscal year beginning after the date on which the comprehensive management plan is submitted to the committees of Congress pursuant to subsection (e).

(d)(1) The area added to the park by this section shall be administered in accordance with this section and the provisions of law generally applicable to units of the National Park System including the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. and following) and the Act of September 25, 1890 (26 Stat. 478; 16 U.S.C. 41 and following). Any other statutory authority available to the Secretary for the conservation and management of wildlife, wildlife habitat, and natural resources may be utilized to the extent he finds such authority will further the purposes of this section.

(2)(A) Except in the case of a lease or permit which the Secretary determines to be incompatible with the administration of the park pursuant to this section, may lease or permit on Federal land within the area added to the park under this section which is in effect immediately before the enactment of this Act shall continue in effect pursuant to its terms and conditions following the expansion of the park under this section.

(B) In the case of a lease or permit which is continued under subparagraph (A), upon notice to the Secretary by the lessee or permittee of his intention to seek renewal or extension of such lease or permit, the lease or permit shall be reviewed by the Secretary, and may be renewed or extended for an additional period of five years. Any such lease or permit shall be reviewed at the end of such renewal or extension period and may also be renewed or extended in the same manner for additional five-year periods thereafter. Any renewals or extensions of leases or permits shall be granted only to those persons who were lessees or permitees of record on the date of enactment of this Act, and any such lease or permit shall provide that the lease or permit may be terminated by the Secretary at any time if the Secretary determines that such lease or permit is incompatible with the administration of the park pursuant to this section or that the land is needed for park purposes.

(3) The Act of December 14, 1974 (88 Stat. 1660) is amended by inserting the following new section after section 4:

"SEC. 5. Notwithstanding any other provision if law, any federally owned lands incorporated within the boundaries of Sequoia National Park subsequent to the date of enactment of this Act, which entail project works, developments, lands, or facilities which are components of Federal Power Commission Project Numbered 298, shall be subject to all provisions of this Act.".

(e)(1) Within two years from the date of enactment of this Act, the Secretary, in cooperation with the State of California, shall develop and submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, a comprehensive management plan for the area added to the park under this section. In the preparation of such plan, the Secretary shall give appropriate consideration to the need for the development of additional recreational opportunities and other public uses which are consistent with sound environmental management of the area and the policies of the National Park Service.

(2)(A) In preparing the comprehensive management plan required by this subsection and in preparing any subsequent revision of

such plan, the Secretary shall provide for full public participation and shall consider the comments and views of all interested agencies, organizations, and individuals.

(B) For purposes of insuring such full public participation, the Secretary shall provide reasonable advance notice to State and local governments, interested Federal agencies, private organizations, and the general public of hearings, workshops, meetings, and other opportunities available for such participation. Such notice shall be published in newspapers of general circulation in the localities affected by the development and management of the park; published in the Federal Register, and communicated by other appropriate means. The Western Regional Advisory Committee of the National Park Service (or a subcommittee thereof) shall also be utilized for purposes of facilitating public involvement.

(C) The Secretaries or Directors of all Federal departments, agencies, and commissions having a relevant expertise are hereby authorized and directed to cooperate with the Secretary in his development of such plan and to make such studies as the Secretary may request on a cost reimbursable basis.

(D) In preparing the comprehensive management plan required by this subsection, the Secretary shall consider technical information and other pertinent data assembled or produced by field studies or investigations conducted separately or jointly by the technical and administrative personnel of the Federal and State agencies involved in order to insure the permanent conservation of wildlife within the area added to the park by this section. Except in emergencies, rules and regulations pertaining to the management of wildlife within the area added to the park by this section shall be put into effect only after consultation with the State of California.

(f) There are hereby authorized to be appropriated such sums as may be necessary for the acquisition of land and interests therein described in this section.

(g) Effective upon the transfer referred to in subsection (b)(2), Public Law 85–648 (72 Stat. 604; 16 U.S.C. 45a–3) and section 6 of the Act of July 3, 1926 (44 Stat. 821; 16 U.S.C. 688) are hereby repealed. The repeal of such section 6 shall not be construed to prohibit or prevent the Secretary from exercising any authority applicable to the national parks respecting the protection of birds, game, or other wild animals.

(h) At such time as Walt Disney Productions shall agree to transfer title to any lands owned by the corporation within Mineral King Valley, and to hold the United States permanently free from any liability under or associated with the permit issued to it on January 10, 1966, as amended and revised, (i) the Secretary of Agriculture shall terminate the permit, and (ii) the Secretary of the Treasury is authorized to pay Walt Disney Productions not to exceed $1,200,000 as full reimbursement of funds expended by it under the terms of the permit, including costs incurred for land acquisition within Mineral King Valley. Nothing in this subsection or any payment made hereunder shall constitute an admission or acceptance of any liability on the part of the United States. The Congress recognizes that the Mineral King Valley area has outstanding potential for certain year-round recreational opportunities, but the development of permanent facilities for downhill skiing within the area would be inconsistent with the preservation and enhancement of its ecological values.

CUYAHOGA VALLEY NATIONAL RECREATION AREA

SEC. 315. (a) Section 2(a) of the Act of December 27, 1974, entitled "An Act to provide for the establishment of the Cuyahoga Valley National Recreation Area" (88 Stat. 1784) is amended by striking out "Boundary Map, Cuyahoga Valley National Recreation Area, Ohio, numbered 90,000–A, and dated September 1976," and inserting in lieu thereof "Boundary Map, Cuyahoga Valley National Recreation Area, Ohio, numbered 90,001–A and dated May 1978,".

(b) Section 6(a) of such Act is amended by striking out "$41,100,000" and inserting in lieu thereof "$70,100,000".

(c) The first sentence of section 6(b) of such Act is amended to read as follows: "For the development of the recreation area, including improvements of properties acquired for purposes of this Act, there is authorized to be appropriated not more than $13,000,000".

(d) Section 2(e) of such Act is amended by adding the following at the end thereof: "In applying this subsection with respect to lands and interests therein added to the recreation area by action of the Ninety-fifth Congress, the date 'January 1, 1978', shall be substituted for the date 'January 1, 1975,' in each place it appears.".

(e) Section 4(f) of such Act is amended by inserting "(or intergovernmental organization)" after "local government" in each place it appears and by adding the following new sentence at the end thereof: "Assistance under this subsection may include payments for technical aid.".

(f) Section 2(a) is further amended by striking the period at the end thereof and adding the following, ": Provided, That with respect to the property known as the Hydraulic Brick Company located in Independence, Ohio, the Secretary shall have the first right of refusal to purchase such property for a purchase price not exceeding the fair market value of such property on the date it is offered for sale. When acquired such property shall be administered as part of the recreation area, subject to the laws and regulations applicable thereto.".

DELAWARE WATER GAP NATIONAL RECREATION AREA

SEC. 316. Section 2(a) of the Act entitled "An Act to authorize establishment of the Delaware Water Gap National Recreation Area, and for other purposes", approved September 1, 1965 (79 Stat. 612) is amended by adding the following at the end thereof: "Beginning on the date of the enactment of the National Parks and Recreation Act of 1978, the Secretary of the Interior is authorized to acquire for purposes of the recreation area established under this Act all lands and interests therein within the exterior boundaries of the area depicted on the drawing referred to in this subsection (including any lands within such exterior boundaries designated for acquisition by the Secretary of the Army in connection with the project referred to in this subsection). In exercising such authority, the Secretary of the Interior may permit the retention of rights of use and occupancy in the same manner as provided in the case of acquisitions by the Secretary of the Army under subsection (d). On the date of enactment of the National Parks and Recreation Act of 1978, the acquisition authorities of any other Federal agency contained in this subsection shall terminate and the head of any other Federal agency shall transfer to the Secretary of the Interior jurisdiction over all lands and interests therein acquired by said agency under the authority of this Act, or any other authority of law which lands are within the exterior boundaries of the area depicted on the drawing referred to in this subsection. On the date of enactment of the National Parks and Recreation Act of 1978, all unexpended balances available to any other Federal agency for acquisition of land within the exterior boundaries referred to in the preceding sentence shall be transferred to the Secretary of the Interior to be used for such purposes. In carrying out his acquisition authority under this section the Secretary shall give priority to the following:

"(1) completion of acquisition of lands for which condemnation proceedings have been started pursuant to the authorization of the project referred to in this subsection;

"(2) acquisition of lands of beneficial owners, not being a corporation, who in the judgment of the Secretary would suffer hardship if acquisition of their lands were delayed;

"(3) acquisition of lands on which, in the judgment of the Secretary, there is an imminent danger of development that would be incompatible with the purposes of the recreation area;

"(4) acquisition of lands of beneficial owners, not being a corporation, who are willing to sell their lands provided they are able to continue to use it for noncommercial residential purposes for a limited period of time which will not, in the judgment of the Secretary, unduly interfere with the development of public use facilities for such national recreation area, pursuant to the authorization of such area;

"(5) acquisition of scenic easements when, in the judgment of the Secretary, such easements are sufficient to carry out the purposes for which such national recreation area was authorized; and

"(6) acquisition of lands necessary to preserve the integrity of the recreation area.".

GOLDEN GATE NATIONAL RECREATION AREA

SEC. 317. (a) Subsection 2(a) of the Act of October 27, 1972 (86 Stat. 1299), as amended (16 U.S.C. 459), is further amended to read as follows: "(a) The recreation area shall comprise the lands, waters, and submerged lands generally depicted on the map entitled 'Revised Boundary Map, Golden Gate National Recreation Area', numbered NRA–GG–80,003–k and dated October 1978. The authority of the Secretary to acquire lands in the tract known as San Francisco Assessor's Block number 1592 shall be limited to an area of not more than one and nine-tenth acres. Notwithstanding any other provision of this Act, the Secretary shall not acquire the Marin County Assessor's parcels numbered 199–181–01, 199–181–06, 199–181–08, 199–181–13, and 199–181–14, located in the Muir Beach portion of the recreation area.".

(b) Section 3(i) of such Act is amended to read as follows:

"(i) New construction and development within the boundaries described in section 2(a) on lands under the administrative jurisdiction of a department other than that of the Secretary is prohibited, except that improvements on the lands which have not been transferred to his administrative jurisdiction may be reconstructed or demolished. Any such structure which is demolished may be replaced with an improvement of similar size, following consultation with the Secretary or his designated representative, who shall conduct a public hearing at a location in the general vicinity of the area, notice of which shall be given at least one week prior to the date thereof. The foregoing limitation on construction and development shall not apply to expansion of those facilities known as Letterman General Hospital or the Western Medical Institute of Research.".

(c) Subsection 3(j) of such Act is amended to read as follows:

"(j) The owner of improved residential property or of agricultural property on the date of its acquisition by the Secretary under this Act may, as a condition of such acquisition, retain for himself and his or her heirs and assigns a right of use and occupancy for a definite term of not more than twenty-five years, or, in lieu thereof, for a term ending at the death of the owner or the death of his or her spouse, whichever is later. The owner shall elect the term to be reserved. Unless the property is wholly or partly donated to the United States, the Secretary shall pay to the owner the fair market value of the property on the date of acquisition minus the fair market value on that date of the right retained by the owner. A right retained pursuant to this section shall be subject to termi-

nation by the Secretary upon his or her determination that it is being exercised in a manner inconsistent with the purposes of this Act, and it shall terminate by operation of law upon the Secretary's notifying the holder of the right of such determination and tendering to him or her an amount equal to the fair market value of that portion of the right which remains unexpired. Where appropriate in the discretion of the Secretary, he or she may lease federally owned land (or any interest therein) which has been acquired by the Secretary under this Act, and which was agricultural land prior to its acquisition. Such lease shall be subject to such restrictive covenants as may be necessary to carry out the purposes of this Act. Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land or who was a leaseholder thereon immediately before its acquisition by the United States.".

(d) In subsection 3(k) of such Act, following "June 1, 1971," insert "or, in the case of areas added by action of the Ninety-fifth Congress, October 1, 1978,"; and at the end of the subsection, add the following new sentence: "The term 'agricultural property' as used in this Act means lands which are in regular use for agricultural, ranching, or dairying purposes as of January 1, 1978, together with residential and other structures related to the above uses of the property as such structures exist on said date."

(e) Section 3 of such Act is amended by adding the following at the end thereof:

"(n) The Secretary shall accept and shall manage in accordance with this Act, any land and improvements adjacent to the recreation area which are donated by the State of California or its political subdivisions. The boundaries of the recreation area shall be changed to include such donated lands.

"(o) In acquiring those lands authorized by the Ninety-fifth Congress for the purposes of this Act, the Secretary may, when agreed upon by the landowner involved, defer payment or schedule payments over a period of ten years and pay interest on the unpaid balance at a rate not exceeding that paid by the Treasury of the United States for borrowing purposes."

(f) Section 4 of such Act is amended by adding the following at the end thereof:

"(e) No fees or admission charges shall be levied for admission of the general public to the recreation area except to portions under lease or permit for a particular and limited purpose authorized by the Secretary. The Secretary may authorize reasonable charges for public transportation and, for a period not exceeding five years from the date of enactment of this legislation, for admission to the sailing vessel Balclutha.

"(f) Notwithstanding any other provisions of law, in the administration of those parcels of property known as Haslett Warehouse, Cliff House properties and Louis' Restaurant, the Secretary shall credit any proceeds from the rental of space in the aforementioned properties to the appropriation, if any, bearing the cost of their administration, maintenance, repair and related expenses and also for the maintenance, repair and related expenses of the vessels and the adjacent piers comprising the National Maritime Museum, for major renovation and park rehabilitation of those buildings included in the Fort Mason Foundation Cooperative Agreement, and for a coordinated public and private access system to and within the recreation area and other units of the national park system in Marin and San Francisco Counties: *Provided*, That surplus funds, if any, will be deposited into the Treasury of the United States: *Provided further*, That notwithstanding any other provision of law, in the administration of said parcels the Secretary may, if he deems appropriate, enter into a contract for the management of said parcels of property with such terms and conditions as will protect the Government's interest with excess funds being used as set forth above.".

(g) Section 5(b) of such Act is amended by changing the word "fifteen" to "seventeen".

POINT REYES NATIONAL SEASHORE

SEC. 318. (a) Section 2(a) of the Act of September 13, 1962 (76 Stat. 538), as amended (16 U.S.C. 459), is further amended as follows:

"SEC. 2. (a) The Point Reyes National Seashore shall consist of the lands, waters, and submerged lands generally depicted on the map entitled 'Boundary Map, Point Reyes National Seashore', numbered 612–80,000–E and dated May 1978.

"The map referred to in this section shall be on file and available for public inspection in the Offices of the National Park Service, Department of the Interior, Washington, District of Columbia. After advising the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate in writing, the Secretary may make minor revisions of the boundaries of the Point Reyes National Seashore when necessary by publication of a revised drawing or other boundary description in the Federal Register.".

(b) Section 5(a) of such Act is amended to read as follows:

"SEC. 5. (a) The owner of improved property or of agricultural property on the date of its acquisition by the Secretary under this Act may, as a condition of such acquisition, retain for himself and his or her heirs and assigns a right of use and occupancy for a definite term of not more than twenty-five years, or, in lieu thereof, for a term ending at the death of the owner or the death of his or her spouse, whichever is later. The owner shall elect the term to be reserved. Unless the property is wholly or partly donated to the United States, the Secretary shall pay to the owner the fair market value of the property on the date of acquisition minus the fair market value on that date of the right retained by the owner. A right retained pursuant to this section shall be subject to termination by the Secretary upon his or her determination that it is being exercised in a manner inconsistent with the purposes of this Act, and it shall terminate by operation of law upon the Secretary's notifying the holder of the right of such determination and tendering to him or her an amount equal to the fair market value of that portion of the right which remains unexpired. Where appropriate in the discretion of the Secretary, he or she may lease federally owned land (or any interest therein) which has been acquired by the Secretary under this Act, and which was agricultural land prior to its acquisition. Such lease shall be subject to such restrictive covenants as may be necessary to carry out the purposes of this Act. Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land or was a leaseholder thereon immediately before its acquisition by the United States.".

(c) In subsection 5(b) of such Act, following "September 1, 1959," insert "or, in the case of areas added by action of the Ninety-fifth Congress, May 1, 1978,"; and at the end of the subsection, add the following new sentence: "The term 'agricultural property' as used in this Act means lands which were in regular use for, or were being converted to agricultural, ranching, or dairying programs as of May 1, 1978, together with residential and other structures related to the above uses of the property.".

(d) Section 5 of such Act is amended by adding the following new subsection (c) to read as follows:

"(c) In acquiring those lands authorized by the Ninety-fifth Congress for the purposes of this Act, the Secretary may, when agreed upon by the landowner involved, defer payment or schedule payments over a period of ten years and pay interest on the unpaid balance at a rate not exceeding that paid by the Treasury of the United States for borrowing purposes.".

(e) Section 8 of such Act is renumbered section 9 and the following new section is inserted after section 7:

"SEC. 8. The Secretary shall cooperate with the Bolinas Public Utilities District to protect and enhance the watershed values within the seashore. The Secretary may, at his or her discretion, permit the use and occupancy of lands added to the seashore by action of the Ninety-fifth Congress by the utilities district for water supply purposes, subject to such terms and conditions as the Secretary deems are consistent with the purposes of this Act.".

ANTIETAM NATIONAL BATTLEFIELD

SEC. 319. (a) In furtherance of the purposes of the Act entitled "An Act to provide for the protection and preservation of the Antietam Battlefield in the State of Maryland", approved April 22, 1960 (74 Stat. 79), and other Acts relative thereto, the Secretary is hereby authorized to acquire only scenic easements over the additional lands generally depicted on the map entitled "Boundary Map Antietam National Battlefield, Washington County, Maryland," numbered 302–80,005–A and dated June 1977.

(b) The Antietam National Battlefield Site established pursuant to such Act of April 22, 1960, including only scenic easements acquired pursuant to subsection (a) of this section, is hereby redesignated the "Antietam National Battlefield". The boundaries of such battlefield are hereby revised to include the area generally depicted on the map referenced in subsection (a) of this section, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

CHESAPEAKE AND OHIO CANAL NATIONAL HISTORICAL PARK

SEC. 320. Section 8(b) of the Act of January 8, 1971 (84 Stat. 1978) is amended by changing "$20,400,000" to "$28,400,000". The boundaries of the park are revised to include approximately 600 additional acres: *Provided, however*, That such additions shall not include any properties located between 30th Street and Thomas Jefferson Street in the northwest section of the District of Columbia.

ALIBATES FLINT QUARRIES AND TEXAS PANHANDLE PUEBLO CULTURE NATIONAL MONUMENT

SEC. 321. (a) The first section of the Act of August 31, 1965 (79 Stat. 587) is amended by adding at the end thereof the following: "The national monument shall comprise the area generally depicted on the map entitled 'Boundary Map, Alibates Flint Quarries', numbered 432–80,021, and dated November 1976. Minor boundary adjustments may be made from time to time by the Secretary.".

(b) Section 3 of such Act is amended by deleting "$260,000" and inserting "$4,291,000" in lieu thereof.

(c) The Act of August 31, 1965 (79 Stat. 587) is hereby amended to redesignate the Alibates Flint Quarries and Texas Panhandle Pueblo Culture National Monument as the Alibates Flint Quarries National Monument.

FIRE ISLAND NATIONAL SEASHORE

SEC. 322. (a) Subsection 1(b) of the Act of September 11, 1964 (78 Stat. 928), as amended, is further amended to read as follows:

"(b) The boundaries of the national seashore shall extend from the easterly boundary of the main unit of Robert Moses State Park eastward to Moriches Inlet and shall include not only Fire Island proper, but also such islands and marshlands in the Great South Bay, Bellport Bay, and Moriches Bay

adjacent to Fire Island as Sexton Island, West Island, Hollins Island, Ridge Island, Pelican Island, Pattersquash Island, and Reeves Island and such other small and adjacent islands, marshlands, and wetlands as would lend themselves to contiguity and reasonable administration within the national seashore and, in addition, the waters surrounding said area to distances of one thousand feet in the Atlantic Ocean and up to four thousand feet in Great South Bay and Moriches Bay and, in addition, mainland terminal and headquarters sites, not to exceed a total of twelve acres, on the Patchogue River within Suffolk County, New York, all as delineated on a map identified as 'Fire Island National Seashore', numbered OGP-0004, dated May 1978. The Secretary shall publish said map in the Federal Register, and it may also be examined in the offices of the Department of the Interior.".

(b) Section 7(b) of such Act is amended by striking the phrase "Brookhaven town park at", and inserting in lieu thereof: "Ocean Ridge portion of".

(c) Section 10 of such Act is amended by striking "$18,000,000", and inserting in lieu thereof "$23,000,000".

CUMBERLAND ISLAND NATIONAL SEASHORE

SEC. 323. Section 1 of the Act of October 23, 1972 (86 Stat. 1066), is amended by changing the phrase "numbered CUIS–40,000B, and dated June 1971,", to read "numbered CUIS 40,000D, and dated January 1978,".

TITLE IV—WILDERNESS

DESIGNATION OF AREAS

SEC. 401. The following lands are hereby designated as wilderness in accordance with section 3(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132(c)), and shall be administered by the Secretary in accordance with the applicable provisions of the Wilderness Act:

(1) Buffalo National River, Arkansas, wilderness comprising approximately ten thousand five hundred and twenty-nine acres and potential wilderness additions comprising approximately twenty-five thousand four hundred and seventy-one acres depicted on a map entitled "Wilderness Plan, Buffalo National River, Arkansas", numbered 173–20,036–B and dated March 1975, to be known as the Buffalo National River Wilderness.

(2) Carlsbad Caverns National Park, New Mexico, wilderness comprising approximately thirty-three thousand one hundred and twenty-five acres and potential wilderness additions comprising approximately three hundred and twenty acres, depicted on a map entitled "Wilderness Plan, Carlsbad Caverns National Park, New Mexico," numbered 130–20,003–B and dated January 1978, to be known as the Carlsbad Caverns Wilderness. By January 1, 1980, the Secretary shall review the remainder of the park and shall report to the President, in accordance with section 3 (c) and (d) of the Wilderness Act (78 Stat. 891; 16 U.S.C. 1132 (c) and (d)), his recommendations as to the suitability or nonsuitability of any additional areas within the park for preservation as wilderness, and any designation of such areas as wilderness shall be accomplished in accordance with said subsections of the Wilderness Act.

(3) Everglades National Park, Florida, wilderness comprising approximately one million two hundred and ninety-six thousand five hundred acres and potential wilderness additions comprising approximately eighty-one thousand nine hundred acres, depicted on a map entitled "Wilderness Plan, Everglades National Park, Florida," numbered 160–20,011 and dated June 1974, to be known as the Everglades Wilderness.

(4) Guadalupe Mountains National Park, Texas, wilderness comprising approximately forty-six thousand eight hundred and fifty acres, depicted on a map entitled "Wilderness Plan, Guadalupe Mountains National Park, Texas", numbered 166–20,006–B and dated July 1972, to be known as the Guadalupe Mountains Wilderness.

(5) Gulf Islands National Seashore, Florida, and Mississippi, wilderness comprising approximately one thousand eight hundred acres and potential wilderness additions comprising approximately two thousand eight hundred acres, depicted on a map entitled "Wilderness Plan, Gulf Islands National Seashore, Mississippi, Florida", numbered 635–20,018–A and dated March 1977, to be known as the Gulf Islands Wilderness.

(6) Hawaii Volcanoes National Park, Hawaii, wilderness comprising approximately one hundred and twenty-three thousand one hundred acres and potential wilderness additions comprising approximately seven thousand eight hundred and fifty acres, depicted on a map entitled "Wilderness Plan, Hawaii Volcanoes National Park, Hawaii", numbered 124–20,020 and dated April 1974, to be known as the Hawaii Volcanoes Wilderness.

(7) Organ Pipe Cactus National Monument, Arizona, wilderness comprising approximately three hundred and twelve thousand six hundred acres and potential wilderness additions comprising approximately one thousand two hundred and forty acres, depicted on a map entitled "Wilderness Plan, Organ Pipe Cactus National Monument, Arizona", numbered 157–20,001–B and dated October 1978, to be known as the Organ Pipe Cactus Wilderness.

(8) Theodore Roosevelt National Memorial Park, North Dakota, wilderness comprising approximately twenty-nine thousand nine hundred and twenty acres, depicted on maps entitled "Theodore Roosevelt National Memorial Park, North Dakota" (North Unit and South Unit) numbered 387–20,007–E and dated January 1978. to be known as the Theodore Roosevelt Wilderness.

MAP AND DESCRIPTION

SEC. 402. A map and description of the boundaries of the areas designated in this title shall be on file and available for public inspection in the office of the Director of the National Park Service, Department of the Interior, and in the Office of the Superintendent of each area designated in this title. As soon as practicable after this Act takes effect, maps of the wilderness areas and descriptions of their boundaries shall be filed with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, and such maps and descriptions shall have the same force and effect as if included in this Act: *Provided*, That correction of clerical and typographical errors in such maps and descriptions may be made.

CESSATION OF CERTAIN USES

SEC. 403. Any lands which represent potential wilderness additions in this title, upon publication in the Federal Register of a notice by the Secretary that all uses thereon prohibited by the Wilderness Act have ceased, shall thereby, be designated wilderness. Lands designated as potential wilderness additions shall be managed by the Secretary insofar as practicable as wilderness until such time as said lands are designated as wilderness.

ADMINISTRATION

SEC. 404. The areas designated by this act as wilderness shall be administered by the Secretary of the Interior in accordance with the applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and, where appropriate, any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

SAVINGS PROVISIONS

SEC. 405. Nothing in this title shall be construed to diminish the authority of the Coast Guard, pursuant to sections 2 and 81 of title 14, United States Code, and title 1 of the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221), or the Federal Aviation Administration to use the areas designated wilderness by this Act within the Everglades National Park, Florida; and the Gulf Islands National Seashore, Florida and Mississippi for navigational and maritime safety purposes.

TITLE V—ESTABLISHMENT OF NEW AREAS AND ADDITIONS TO NATIONAL TRAILS SYSTEM

Subtitle A—Parks, Seashores, Etc.

GUAM NATIONAL SEASHORE

SEC. 501. (a) The Secretary, through the Director of the National Park Service, shall revise and update the National Park Service study of the Guam National Seashore and, after consultation with the Secretary of the Department of Defense and the Governor of Guam, shall transmit the revised study within two years to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives including his recommendations and a series of options for congressional consideration each of which—

(1) will encompass the area from Ajayan Bay to Nimitz Beach including Cocos and Anac Islands and extending inland as far as the Fena Valley Reservoir and Mount Sasalaguan, and

(2) if implemented, will afford protection to the natural and historic resources of the area as well as providing visitor access and interpretive services.

(b) The Secretary, and the Secretary of the Department of Defense, shall take such actions as they may deem appropriate within their existing authorities to protect the resource values of the submerged lands within the area of the study referred to in subsection (a) of this section.

PINE BARREN AREA, NEW JERSEY

SEC. 502. (a) For the purposes of this section—

(1) The term "Pine Barrens" means the area within the State consisting of approximately nine hundred and seventy thousand acres, described by the "Land and Water Line" appearing at Plate D of the 1976 Burau of Outdoor Recreation Report (Department of the Interior) entitled "New Jersey Pine Barrens: Concepts for Preservation" (referred to hereinafter in this section as the "1976 BOR Report").

(2) The term "State" means the State of New Jersey.

(b) The Secretary shall prepare and, after appropriate public hearings (at least one of which shall be held within the Pine Barrens), submit to Congress within eighteen months after the date of enactment of this Act, a plan to conserve the natural resource values of the Pine Barrens. Congress shall have the power to disapprove such plan within one hundred and eighty days of its submission. If the Governor of the State notifies the Secretary in writing that the State wishes to participate in the preparation of the plan, the Secretary and such officers or citizens of the State as the Governor may designate shall jointly prepare the plan. If the State does not so participate, the Secretary shall consult with the Governor during the preparation of the plan.

(c) The plan shall—

(1) Provide for a resource assessment which determines the overall carrying capacity of the Pine Barrens. Such resource assessment shall include but not be limited to—

(A) water supply and water quality;

(B) natural hazards, including fire;

(C) endangered, unique, and unusual plants, animals, fish, and biotic communities;

(D) ecological factors relating to the production and enhancement of blueberry and cranberry production and other agricultural activity;

(E) air quality;

(F) scenic, esthetic, and open space resources of the Pine Barrens together with a determination of the overall policies required to maintain and enhance these resources;

(G) the outdoor recreation resources and potentials together with a determination of policies required to utilize, protect, and enhance these resources and potentials; and

(H) existing land use patterns throughout the Pine Barrens, as well as alternative beneficial uses of the Pine Barrens.

(2) Propose boundaries for the following areas, which shall be based upon the assessments referred to in subparagraphs (A) through (H) of paragraph (1) of—

(A) the overall Pine Barrens region, with due consideration given the "Land and Water Line" of the 1976 BOR Report, which should be comprehensively managed so as to conserve, protect, or enhance the ecological, wildlife, historical, agricultural, scenic, recreational, cultural, and educational resources of the Pine Barrens, and

(B) those subareas within such region which are of critical ecological importance and with respect to which immediate actions should be taken by the State or the Federal Government, or both, in order to protect such subareas from uses which are incompatible with the conservation, protection, and enhancement of the natural resources of such subareas.

(3) Recommend State and Federal actions which should be implemented to conserve, protect, and enhance the natural resource values of the Pine Barrens.

(d) There are authorized to be appropriated not to exceed $1,000,000 to the Secretary for the purposes of carrying out the planning activities required under subsection (c). From amounts so appropriated, the Secretary shall reimburse the State for reasonable costs incurred by the State in participating in the joint preparation of the plan.

(e) Pursuant to the intent of this section, the Secretary shall acquire certain lands within the Pine Barrens which are manifestly of critical ecological importance. Such lands shall include, but not be limited to, the area known as "the Plain" and described on pages 2 and 21 of the 1976 BOR Report, and may be acquired prior to the completion of the plan. Any lands so acquired shall be managed by the Secretary in a manner appropriate to conserve, protect, and enhance the natural resource values of the land until such time as he believes it in the best interest of proper ecological management to transfer such land to a qualified State or multijurisdictional Pine Barrens management agency having the authority and capability to plan for and manage land comprehensively in the Pine Barrens region. If the Secretary wishes to make such a transfer of any land acquired under this section, he shall make such transfer conditional upon appropriate ecological management practices, enforceable by a right of reverter to the United States.

(f) For the purposes of acquiring land described in subsection (e), there are authorized to be appropriated not to exceed $25,000,000.

EDGAR ALLAN POE NATIONAL HISTORIC SITE

SEC. 503. (a) In recognition of the literary importance attained by Edgar Allen Poe, there is hereby authorized to be established the Edgar Allen Poe National Historic Site.

(b) The Secretary is authorized to acquire by donation, purchase or exchange the lands and buildings within the area described in subsection (c). The lands and buildings acquired by the Secretary under this section shall comprise the Edgar Allan Poe National Historic Site and shall be administered by the Secretary through the National Park Service. The Secretary shall administer, maintain, protect, and develop the site subject to the provisions of law generally applicable to national historic sites.

(c) The lands and buildings specified in subsection (b) comprise that area of Philadelphia, Pennsylvania, known as the Poe House complex and includes the house at the rear of 530 North Seventh Street, the adjoining three-story brick residence on the front of the land backing up to and including the building at 532 North Seventh Street, and the North Garden of approximately seven thousand and eighty square feet and the South Garden of approximately nine thousand three hundred and fifty square feet.

(d) As soon as the Secretary finds that a substantial portion of the acquisition authorized under subsection (b) has been completed, he shall establish the Edgar Allan Poe National Historic Site by publication of notice thereof in the Federal Register.

(e) There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this section.

SAINT PAUL'S CHURCH, EASTCHESTER

SEC. 504. (a) In order to preserve and protect Saint Paul's Church, Eastchester, in Mount Vernon, New York, for the benefit of present and future generations, the Secretary may accept any gift or bequest of any property or structure which comprises such church and any other real or personal property located within the square bounded by South Columbus Avenue, South Third Avenue, Edison Avenue, and South Fulton Avenue, in Mount Vernon, New York, including the cemetery located within such square and any real property located within such square which was at any time a part of the old village green, now in Mount Vernon, New York.

(b) Any property acquired under subsection (a) shall be administered by the Secretary acting through the National Park Service, in accordance with this section and provisions of law generally applicable to units of the National Park System, including the Act approved August 25, 1916 (16 U.S.C. 1 and following) and the Act approved August 21, 1935. The Secretary, in carrying out the provisions of such Acts (i) shall give particular attention to assuring the completion of such structural and other repairs as he considers necessary to restore and preserve any property acquired in accordance with this section, and (ii) may enter into cooperative agreements with other public or private entities for the management, protection, development, and interpretation, in whole or in part, of the property so acquired.

KALOKO-HONOKOHAU NATIONAL HISTORIC PARK

SEC. 505. (a) In order to provide a center for the preservation, interpretation, and perpetuation of traditional native Hawaiian activities and culture, and to demonstrate historic land use patterns as well as to provide a needed resource for the education, enjoyment, and appreciation of such traditional native Hawaiian activities and culture by local residents and visitors, there is established the Kaloko-Honokohau National Historic Park (hereinafter in this section referred to as the "park") in Hawaii comprising approximately one thousand three hundred acres as generally depicted on the map entitled "Kaloko-Honokohau National Historical Park", numbered KHN-80,000, and dated May 1978, which shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

(b) Except for any lands owned by the State of Hawaii or its subdivisions, which may be acquired only by donation, the Secretary is authorized to acquire the lands described above by donation, exchange, or purchase through the use of donated or appropriated funds, notwithstanding any prior restriction of law.

(c) The Secretary shall administer the park in accordance with this section and the provisions of law generally applicable to units of the national park system, including the Act, approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 461–467), and August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.), and generally in accordance with the guidelines provided in the study report entitled "Kaloko-Honokohau" prepared by the Honokohau Study Advisory Commission and the National Park Service, May 1974, GPO 690–514.

(d)(1) In administering the park the Secretary may provide traditional native Hawaiian accommodations.

(2) The Secretary shall consult with and may enter into a cooperative management agreement with the State of Hawaii for the management of the submerged lands within the authorized park boundary, following the marine management policies of the State of Hawaii.

(3) Commercial, recreational, and subsistence fishing and shoreline food gathering activities as well as access to and from the Honokohau small boat harbor by motor boats and other water craft shall be permitted wherever such activities are not inconsistent with the purposes for which the park is established, subject to regulation by the Secretary.

(4) The Secretary shall consult with and may enter into agreements with other governmental entities and private landowners to establish adequate controls on air and water quality and the scenic and esthetic values of the surrounding land and water areas. In consulting with and entering into any such agreements, the Secretary shall to the maximum extent feasible utilize the traditional native Hawaiian Ahupua'a concept of land and water management.

(e) In carrying out the purposes of this section to the Secretary is authorized and directed, as appropriate, to employ native Hawaiians. For the purposes of this section, native Hawaiians are defined as any lineal descendants of the race inhabiting the Hawaiian Islands prior to the year 1778.

(f)(1) There is hereby established the Kaloko-Honokohau Na Hoa Pili O Kaloko-Honokohau (The Friends of Kaloko-Honokohau), an Advisory Commission for the park. The Commission shall be composed of nine members, appointed by the Secretary, at least five of whom shall be selected from nominations provided by native Hawaiian organizations. All members of the Commission shall be residents of the State of Hawaii, and at least six members shall be native Hawaiians. Members of the Commission shall be appointed for five-year terms except that initial appointment(s) shall consist of two members appointed for a term of five years, two for a term of four years, two for a term of three years, two for a term of two years, and one for a term of one year. No member may serve more than one term consecutively.

(2) The Secretary shall designate one member of the Commission to be Chairman. Any vacancy in the Commission shall be filled by appointment for the remainder of the term.

(3) Members of the Commission shall serve without compensation. The Secretary is authorized to pay the expenses reasonably incurred by the Commission in carrying out its responsibilities under this section on vouchers signed by the Chairman.

(4) The Superintendent of the park, the National Park Service State Director, Hawaii, a person appointed by the Governor of Hawaii, and a person appointed by the mayor of the county of Hawaii, shall serve as ex officio nonvoting members of the Commission.

(5) The Commission shall advise the Director, National Park Service, with respect to the historical, archeological, cultural, and interpretive programs of the park. The Com-

mission shall afford particular emphasis to the quality of traditional native Hawaiian culture demonstrated in the park.

(6) The Commission shall meet not less than twice a year. Additional meetings may be called by the Chairman.

(7) The Advisory Commission shall terminate ten years after the date of enactment of this Act.

(g) There are hereby authorized to be appropriated not to exceed $25,000,000 for acquisition and $1,000,000 for development.

PALO ALTO BATTLEFIELD NATIONAL HISTORIC SITE

SEC. 506. (a) In order to preserve and commemorate for the benefit and enjoyment of present and future generations an area of unique historical significance as one of only two important battles of the Mexican War fought on American soil, the Secretary is authorized to establish the Palo Alto Battlefield National Historic Site in the State of Texas.

(b) For the purposes of this section, the Secretary is authorized to acquire by donation, purchase, or exchange, not to exceed fifty acres of lands and interests therein, comprising the initial unit, in the vicinity of the site of the battle of Palo Alto, at the junction of Farm Roads 1847 and 511, 6.3 miles north of Brownsville, Texas. The Secretary shall complete a study and recommend to the Congress such additions as are required to fully protect the historic integrity of the battlefield by June 30, 1979. The Secretary shall establish the historic site by publication of a notice to that effect in the Federal Register at such time as he determines that sufficient property to constitute an administrable unit has been acquired. Pending such establishment and thereafter, the Secretary shall administer the property acquired pursuant to this section in accordance with this section and provisions of law generally applicable to units of the National Park System, including the Act of August 25, 1916 (39 Stat. 535) and the Act of August 21, 1935 (49 Stat. 666).

(c) There are authorized to be appropriated such sums as may be necessary for lands and interests in lands and $200,000 for development to carry out the provisions of this section.

SANTA MONICA MOUNTAINS NATIONAL RECREATION AREA

SEC. 507. (a) The Congress finds that—

(1) there are significant scenic, recreational, educational, scientific, natural, archeological, and public health benefits provided by the Santa Monica Mountains and adjacent coastline area;

(2) there is a national interest in protecting and preserving these benefits for the residents of and visitors to the area; and

(3) the State of California and its local units of government have authority to prevent or minimize adverse uses of the Santa Monica Mountains and adjacent coastline area and can, to a great extent, protect the health, safety, and general welfare by the use of such authority.

(b) There is hereby established the Santa Monica Mountains National Recreation Area (hereinafter referred to as the "recreation area"). The Secretary shall manage the recreation area in a manner which will preserve and enhance its scenic, natural, and historical setting and its public health value as an airshed for the Southern California metropolitan area while providing for the recreational and educational need of the visiting public.

(c) (1) The recreation area shall consist of the lands and waters and interests generally depicted as the recreation area on the map entitled "Boundary Map, Santa Monica Mountains National Recreation Area, California, and Santa Monica Mountains Zone", numbered SMM–NRA 80,000, and dated May 1978, which shall be on file and available for inspection in the offices of the National Park Service, Department of the Interior, Washington, District of Columbia, and in the offices of the General Services Administration in the Federal Office Building in West Los Angeles, California, and in the main public library in Ventura, California. After advising the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, in writing, the Secretary may make minor revisions of the boundaries of the recreation area when necessary by publication of a revised drawing or other boundary description in the Federal Register.

(2) Not later than ninety days after the date of enactment of this Act, the Secretary, after consultation with the Governor of the State of California, the California Coastal Commission, and the Santa Monica Mountains Comprehensive Planning Commission, shall commence acquisition of lands, improvements, waters, or interests therein within the recreation area. Such acquisition may be by donation, purchase with donated or appropriated funds, transfer from any Federal agency, exchange, or otherwise. Any lands or interests therein owned by the State of California or any political subdivision thereof (including any park district or other public entity) may be acquired only by donation, except that such lands acquired after the date of enactment of this section by the State of California or its political subdivisions may be acquired by purchase or exchange if the Secretary determines that the lands were acquired for purposes which further the national interest in protecting the area and that the purchase price or value on exchange does not exceed fair market value on the date that the State acquired the land or interest. Notwithstanding any other provision of law, any Federal property located within the boundaries of the recreation area shall, with the concurrence of the head of the agency having custody thereof, be transferred without cost, to the administrative jurisdiction of the Secretary for the purposes of the recreation area.

(3) The Administrator of the General Services Administration is hereby authorized and directed to transfer the site generally known as Nike Site 78 to the Secretary for inclusion in the recreation area: *Provided*, That the county of Los Angeles shall be permitted to continue to use without charge the facilities together with sufficient land as in the determination of the Secretary shall be necessary to continue to maintain and operate a fire suppression and training facility and shall be excused from payment for any use of the land and facilities on the site prior to the enactment of this Act. At such time as the county of Los Angeles, California, relinquishes control of such facilities and adjacent land or ceases the operation of the fire suppression and training facility, the land and facilities shall be managed by the Secretary as a part of the recreation area.

(d) (1) Within six months after the date of enactment of this Act, the Secretary shall identify the lands, waters, and interests within the recreation area which must be acquired and held in public ownership for the following critical purposes: preservation of beaches and coastal uplands; protection of undeveloped inland stream drainage basins; connection of existing State and local government parks and other publicly owned lands to enhance their potential for public recreation use; protection of existing park roads and scenic corridors, including such right-of-way as is necessary for the protection of the Mulholland Scenic Parkway Corridor; protection of the public health and welfare; and development and interpretation of historic sites and recreation areas in connection therewith, to include, but not be limited to, parks, picnic areas, scenic overlooks, hiking trails, bicycle trails, and equestrian trails. The Secretary may from time to time revise the identification of such areas, and any such revisions shall become effective in the same manner as herein provided for revisions in the boundaries of the recreation area.

(2) By January 1, 1980, the Secretary shall submit, in writing, to the committees referred to in subsection (c) and to the Committees on Appropriations of the United States Congress a detailed plan which shall indicate—

(A) the lands and areas identified in paragraph (1),

(B) the lands which he has previously acquired by purchase, donation, exchange, or transfer for the purpose of this recreation area,

(C) the annual acquisition program (including the level of funding) recommended for the ensuing five fiscal years, and

(D) the final boundary map for the recreation area.

(e) With respect to improved properties, as defined in this section, fee title shall not be acquired unless the Secretary finds that such lands are being used, or are threatened with uses, which are detrimental to the purposes of the recreation area, or unless each acquisition is necessary to fulfill the purposes of this section. The Secretary may acquire scenic easements to such improved property or such other interests as, in his judgment are necessary for the purposes of the recreation area.

(f) For the purposes of this section, the term "improved property" means—

(1) a detached single-family dwelling, the construction of which was begun before January 1, 1976 (hereafter referred to as "dwelling"), together with so much of the land on which the dwelling is situated as is in the same ownership as the dwelling and as the Secretary designates to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures necessary to the dwelling which are situated on the land so designated, and

(2) property developed for agricultural uses, together with any structures accessory thereto as were used for agricultural purposes on or before January 1, 1978.

In determining when and to what extent a property is to be treated as "improved property" for purposes of this section, the Secretary shall take into consideration the manner of use of such buildings and lands prior to January 1, 1978, and shall designate such lands as are reasonably necessary for the continued enjoyment of the property in the same manner and to the same extent as existed prior to such date.

(g) The owner of an improved property, as defined in this section, on the date of its acquisition, as a condition of such acquisition, may retain for herself or himself, her or his heirs and assigns, a right of use and occupancy of the improved property for noncommercial residential or agriculture purposes, as the case may be, for a definite term of not more than twenty-five years, or, in lieu thereof, for a term ending at the death of the owner or the death of her or his spouse, whichever is later. The owner shall elect the term to be reserved. Unless the property is wholly or partially donated, the Secretary shall pay to the owner the fair market value of the property on the date of its acquisition, less the fair market value on that date of the right retained by the owner. A right retained by the owner pursuant to this section shall be subject to termination by the Secretary upon his determination that it is being exercised in a manner inconsistent with the purposes of this section, and it shall terminate by operation of law upon notification by the Secretary to the holder of the right of such determination and tendering to him the amount equal to the fair market value of that portion which remains unexpired.

(h) In exercising the authority to acquire

property under this section, the Secretary shall give prompt and careful consideration to any offer made by an individual owning property within the recreation area to sell such property, if such individual notifies the Secretary that the continued ownership of such property is causing, or would result in, undue hardship.

(i) The Secretary shall administer the recreation area in accordance with this Act and provisions of laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.). In the administration of the recreation area, the Secretary may utilize such statutory authority available for the conservation and management of wildlife and natural resources as appropriate to carry out the purpose of this section. The fragile resource areas of the recreation area shall be administered on a low-intensity basis, as determined by the Secretary.

(j) The Secretary may enter into cooperative agreements with the State of California, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and fire preventive agencies.

(k) Notwithstanding any other provision of law, the Secretary is authorized to accept donations of funds, property, or services from individuals, foundations, corporations, or public entities for the purpose of land acquisition and providing services and facilities which the Secretary deems consistent with the purposes of this section.

(l) By January 1, 1981, the Santa Monica Mountains National Recreation Area Advisory Commission, established by this section, shall submit a report to the Secretary which shall—

(1) assess the capability and willingness of the State of California and the local units of government to manage and operate the recreation area,

(2) recommend any changes in ownership, management, and operation which would better accomplish the purposes of this section, and

(3) recommend any conditions, joint management agreements, or other land use mechanisms to be contingent on any transfer of land.

(m) The Secretary, after giving careful consideration to the recommendations set forth by the Advisory Commission, shall, by January 1, 1982, submit a report to the Committees referred to in subsection (c) which shall incorporate the recommendations of the Advisory Commission as well as set forth the Secretary's recommendations. Such report shall—

(1) assess the benefits and costs of continued management as a unit of the National Park System,

(2) assess the capability and willingness of the State of California and the local units of government to manage and operate the recreation area, and

(3) recommend any changes in ownership, management, and operation which would better accomplish the purposes of this section.

(n)(1) The Secretary shall request the Santa Monica Mountains Comprehensive Planning Commission to submit a comprehensive plan, prepared in accord with this section and title 7.75 of the California Government Code (commencing with section 67450), for the Santa Monica Mountains Zone generally depicted on the map referred to in subsection (C) of this section for approval.

(2) The comprehensive plan shall include, in addition to the requirements of California State law—

(A) an identification and designation of public and private uses which are compatible with and which would not significantly impair the significant scenic, recreational, educational, scientific, natural, archeological, and public health benefits present in the zone and which would not have an adverse impact on the recreation area or on the air quality of the south coast air basin;

(B) a specific minimum land acquisition program which shall include, but not be limited to, fee and less than fee acquisition of strategic and critical sites not to be acquired by the Federal Government for public recreation and other related uses; and a program for the complementary use of State and local authority to regulate the use of lands and waters within the Santa Monica Mountains Zone to the fullest extent practicable consistent with the purposes of this section; and

(C) a recreation transportation system which may include but need not be limited to existing public transit.

(3) No plan submitted to the Secretary under this section shall be approved unless the Secretary finds the plan consistent with paragraph (2) and finds that—

(A) the planning commission has afforded adequate opportunity, including public hearings, for public involvement in the preparation and review of the plan, and public comments were received and considered in the plan or revision as presented to him;

(B) the State and local units of government identified in the plan as responsible for implementing its provisions have the necessary authority to implement the plan and such State and local units of government have indicated their intention to use such authority to implement the plan;

(C) the plan, if implemented, would preserve significant natural, historical, and archeological benefits and, consistent with such benefits, provide increased recreational opportunities for persons residing in the greater Los Angeles-southern California metropolitan area; and

(D) implementation of the plan would not have a serious adverse impact on the air quality or public health of the greater Los Angeles region.

Before making his findings on the air quality and public health impacts of the plan, the Secretary shall consult with the Administrator of the Environmental Protection Agency.

(4) Following approval of the plan with respect to the Santa Monica Mountains Zone, upon receipt of adequate assurances that all aspects of that jurisdiction's implementation responsibilities will be adopted and put into effect, the Secretary shall—

(A) provide grants to the State and through the State to local governmental bodies for acquisition of lands, waters, and interests therein identified in paragraph (2)(B), and for development of essential public facilities, except that such grants shall be made only for the acquisition of lands, waters, and interests therein, and related essential public facilities, for park, recreation, and conservation purposes; and

(B) provide, subject to agreements that in the opinion of the Secretary will assure additional preservation of the lands and waters of the zone, such funds as may be necessary to retire bonded indebtedness for water and sewer and other utilities already incurred by property owners which in the opinion of the Secretary would if left outstanding contribute to further development of the zone in a manner inconsistent with the approved plan developed by the planning commission.

No grant for acquisition of land may be made under subparagraph (A) unless the Secretary receives satisfactory assurances that such lands acquired under subparagraph (A) shall not be converted to other than park, recreation, and conservation purposes without the approval of the Secretary and without provision for suitable replacement land.

(5) Grants under this section shall be made only upon application of the recipient State and shall be in addition to any other Federal financial assistance for any other program, and shall be subject to such terms and conditions as the Secretary deems necessary to carry out the purposes of this section. Any jurisdiction that implements changes to the approved plan which are inconsistent with the purposes of this section, or adopts or acquiesces in changes to laws regulations or policies necessary to implement or protect the approved plan, without approval of the Secretary, may be liable for reimbursement of all funds previously granted or available to it under the terms of this section without regard to such additional terms and conditions or other requirements of law that may be applicable to such grants. During the life of the planning commission, changes to the plan must be submitted by the planning commission to the Secretary for approval. No such application for a grant may be made after the date five years from the date of the Secretary's approval of the plan.

(o) The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in the lands and waters within the Santa Monica Mountains Zone, generally depicted on the map referred to in subsection (c), and the head of any Federal agency having authority to license or permit any undertaking in such lands and waters shall, prior to the approval of the expenditure of any Federal funds on such undertaking or prior to the issuance of any license or permit, as the case may be, afford the Secretary a reasonable opportunity to comment with regard to such undertaking and shall give due consideration to any comments made by the Secretary and to the effect of such undertaking on the 'findings' and purposes of this section: *Provided*, That no such expenditure shall be approved nor shall any such license or permit be issued which, in the judgment of the Secretary, would be inconsistent with the purposes of this section or the comprehensive plan approved by the Secretary.

(p) The Secretary shall give full consideration to the recommendations of the California Department of Parks and Recreation; the Santa Monica Mountains Comprehensive Planning Commission, and the California Coastal Commission.

(q)(1) There is hereby established the Santa Monica Mountains National Recreation Area Advisory Commission (hereinafter referred to as the "Advisory Commission"). The Advisory Commission shall terminate ten years after the date of establishment of the recreation area.

(2) The Advisory Commission shall be composed of the following members to serve for terms of five years as follows:

(A) one member appointed by the Governor of the State of California;

(B) one member appointed by the mayor of the city of Los Angeles;

(C) one member appointed by the Board of Supervisors of Los Angeles County;

(D) one member appointed by the Board of Supervisors of Ventura County; and

(E) five members appointed by the Secretary, one of whom shall serve as the Commission Chairperson.

(3) The Advisory Commission shall meet on a regular basis. Notice of meetings and agenda shall be published in local newspapers which have a distribution which generally covers the area. Commission meetings shall be held at locations and in such a manner as to insure adequate public involvement. Such locations shall be in the region of the Santa Monica Mountains and no more than twenty-five miles from it.

(4) Members of the Commission shall serve without compensation as such, but the Secretary may pay expenses reasonably incurred in carrying out their responsibilities under this Act on vouchers signed by the Chairperson.

(5) The Secretary, or his or her designee,

shall from time to time but at least semi-annually, meet and consult with the Advisory Commission on matters relating to the development of this recreation area and with respect to carrying out the provisions of this section.

(r) There are authorized to be appropriated such sums as may be necessary for acquisition of lands and interests in land within the boundaries of the recreation area established under this section, but not more than $15,000,000 for fiscal year 1979, $40,000,000 for fiscal year 1980, $45,000,000 for fiscal year 1981, $10,000,000 for fiscal year 1982, and $15,000,000 for fiscal year 1983, such sums to remain available until expended. For grants to the State pursuant to subsection (n) there are authorized to be appropriated not more than $10,000,000 for fiscal year 1979, $10,000,000 for fiscal year 1980, $5,000,000 for fiscal year 1981, and $5,000,000 for fiscal year 1982, such sums to remain available until expended. For the authorizations made in this subsection, any amounts authorized but not appropriated in any fiscal year shall remain available for appropriation in succeeding fiscal years.

(s) For the development of essential public facilities in the recreation area there are authorized to be appropriated not more than $500,000. The Congress expects that, at least until assessment of the report required by subsection (t), any further development of the area shall be accomplished by the State of California or local units of government, subject to the approval of the Director, National Park Service.

(t) Within two years from the date of establishment of the recreation area pursuant to this section, the Secretary shall, after consulting with the Advisory Commission, develop and transmit to the Committees referred to in subsection (c) a general management plan for the recreation area consistent with the objectives of this section. Such plan shall indicate—

(1) a plan for visitor use including the facilities needed to accommodate the health, safety, education and recreation needs of the public;

(2) the location and estimated costs of all facilities;

(3) the projected need for any additional facilities within the area;

(4) any additions or alterations to the boundaries of the recreation area which are necessary or desirable to the better carrying out of the purposes of this section; and

(5) a plan for preservation of scenic, archeological and natural values and of fragile ecological areas.

EBEY'S LANDING NATIONAL HISTORICAL RESERVE

SEC. 508. (a) There is hereby established the Ebey's Landing National Historical Reserve (hereinafter referred to as the "reserve"), in order to preserve and protect a rural community which provides an unbroken historical record from nineteenth century exploration and settlement in Puget Sound to the present time, and to commemorate—

(1) the first thorough exploration of the Puget Sound area, by Captain George Vancouver, in 1792;

(2) settlement by Colonel Isaac Neff Ebey who led the first permanent settlers to Whidbey Island, quickly became an important figure in Washington Territory, and ultimately was killed by Haidahs from the Queen Charlotte Islands during a period of Indian unrest in 1857;

(3) early active settlement during the years of the Donation Land Law (1850–1855) and thereafter; and

(4) the growth since 1883 of the historic town of Coupeville.

The reserve shall include the area of approximately eight thousand acres identified as the Central Whidbey Island Historic District.

(b) (1) To achieve the purpose of this section, the Secretary, in cooperation with the appropriate State and local units of general government, shall formulate a comprehensive plan for the protection, preservation, and interpretation of the reserve. The plan shall identify those areas or zones within the reserve which would most appropriately be devoted to—

(A) public use and development;

(B) historic and natural preservation; and

(C) private use subject to appropriate local zoning ordinances designed to protect the historical rural setting.

(2) Within eighteen months following the date of enactment of this section, the Secretary shall transmit the plan to the President of the Senate and the Speaker of the House of Representatives.

(c) At such time as the State or appropriate units of local government having jurisdiction over land use within the reserve have enacted such zoning ordinances or other land use controls which in the judgment of the Secretary will protect and preserve the historic and natural features of the area in accordance with the comprehensive plan, the Secretary may, pursuant to cooperative agreement—

(1) transfer management and administration over all or any part of the property acquired under subsection (d) of this section to the State or appropriate units of local government;

(2) provide technical assistance to such State or unit of local government in the management, protection, and interpretation of the reserve; and

(3) make periodic grants, which shall be supplemental to any other funds to which the grantee may be entitled under any other provision of law, to such State or local unit of government for the annual costs of operation and maintenance, including but not limited to, salaries of personnel and the protection, preservation, and rehabilitation of the reserve except that no such grant may exceed 50 per centum of the estimated annual cost, as determined by the Secretary, of such operation and maintenance.

(d) The Secretary is authorized to acquire such lands and interests as he determines are necessary to accomplish the purposes of this section by donation, purchase with donated funds, or exchange, except that the Secretary may not acquire the fee simple title in any land without the consent of the owner. The Secretary shall, in addition, give prompt and careful consideration to any offer made by an individual owning property within the historic district to sell such property, if such individual notifies the Secretary that the continued ownership of such property is causing, or would result in, undue hardship.

Lands and interests therein so acquired shall, so long as responsibility for management and administration remains with the United States, be administered by the Secretary subject to the provisions of the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented, and in a manner consistent with the purpose of this section.

(e) If, after the transfer of management and administration of any lands pursuant to subsection (c) of this section, the Secretary determines that the reserve is not being managed in a manner consistent with the purposes of this section, he shall so notify the appropriate officers of the State or local unit of government to which such transfer was made and provide for a ninety-day period in which the transferee may make such modifications in applicable laws, ordinances, rules, and procedures as will be consistent with such purposes. If, upon the expiration of such ninety-day period, the Secretary determines that such modifications have not been made or are inadequate, he shall withdraw the management and administration from the transferee and he shall manage such lands in accordance with the provisions of this section.

(f) There is hereby authorized to be appropriated not to exceed $5,000,000 to carry out the provisions of this section.

FRIENDSHIP HILL NATIONAL HISTORIC SITE

SEC. 509. (a) The Secretary is authorized to establish the Friendship Hill National Historic Site in the State of Pennsylvania, including the former home of Albert Gallatin, as depicted on the map entitled "FRHI–80000" dated February 1978. Said map shall be on file and available for public inspection in the offices of the Director, National Park Service, Washington, District of Columbia. The Secretary is authorized to acquire such land, improvements, and any personal property of cultural and historical value thereon by donation, purchase with donated or appropriated funds, or exchange.

(b) Pending establishment of the site and thereafter the Secretary shall administer property acquired pursuant to this section in accordance wtih the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4), as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461–467), as amended.

(c) (1) There are hereby authorized to be appropriated from the Land and Water Conservation Fund, such sums as may be necessary to carry out the purposes of this section.

(2) For the development of essential facilities there are authorized to be appropriated for the fiscal year ending September 30, 1980, and for succeeding fiscal years, such sums as may be necessary to carry out the purposes of this section, but not to exceed $100,000. Within three years from the effective date of this section, the Secretary shall develop and transmit to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate a general management plan for the use and development of the site consistent with the purposes of this section, indicating—

(A) the lands and interests in lands adjacent or related to the site which are deemed, necessary or desirable for the purposes of resource protection, scenic integrity, or management and administration of the area in furtherance of the purposes of this section and the estimated cost thereof;

(B) the number of visitors and types of public use within the site which can be accommodated in accordance with the protection of its resources; and

(C) the location and estimated cost of facilities deemed necessary to accommodate such visitors and uses.

THOMAS STONE NATIONAL HISTORIC SITE

SEC. 510 (a) The Secretary is authorized to acquire by donation, exchange, or purchase with donated or appropriated funds, the Thomas Stone home and grounds, known as Habre-de-Venture, located on Rose Hill Road near La Plata in Charles County, Maryland, for establishment as the Thomas Stone National Historic Site.

(b) The national historic site shall be established by the Secretary by the publication of notice to that effect in the Federal Register at such time that he determines he has sufficient ownership to constitute an administrable unit. After such publication, the site shall be administered by the Secretary pursuant to the provisions of this section and the provisions of the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented (16 U.S.C. 1 et seq.), and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461–467).

(c) To carry out the purposes of this section, there is hereby authorized to be appropriated not to exceed $600,000 for the acquisition of lands and interests therein and not to exceed $400,000 for development.

MAGGIE L. WALKER NATIONAL HISTORIC SITE

SEC. 511. (a) The Secretary is authorized to establish the Maggie L. Walker National Historic Site (hereinafter in this section referred to as the "historic site") in the city of Richmond, Virginia.

(b) The historic site shall comprise the area extending east from the western boundary of the Maggie L. Walker House at 113 East Leigh Street in Richmond, Virginia, to Third Street and extending north from an east-west line which coincides with the front property line of such house to an east-west line which coincides with the north side of the alleyway immediately at the rear of such house. Following timely notice in writing to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate of his intention to do so, the Secretary may make minor revisions in the boundaries of the historic site by publication of a map or other revised boundary description in the Federal Register.

(c) Within the boundaries of the historic site, the Secretary may acquire lands and interests therein by donation, purchase with donated or appropriated funds, exchange, or transfer from any other Federal agency. Any property within such boundaries owned by the State of Virginia or any political subdivision thereof may be acquired only by donation.

(d) When the Secretary determines that lands and interests therein have been acquired in an amount sufficient to constitute an administrable unit, he shall establish the historic site by publication of a notice to that effect in the Federal Register. Pending such establishment and thereafter, the Secretary shall administer the historic site in accordance with the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented (16 U.S.C. 1. 2–4), and the Act of August 21, 1935 (49 Stat. 666), as amended (16 U.S.C. 161 et seq.). Funds available for the historic site shall be available for restoration and rehabilitation of properties therein in accordance with cooperative agreements entered into pursuant to section 2(e) of the Act of August 21, 1935, supra.

(e)(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, but not more than $795,000 for acquisition of lands and interests in land and not more than $500,000 for the development of essential facilities.

(2) Within three complete fiscal years from the date of enactment of this section, the Secretary shall develop and transmit to the Committees referred to in subsection (b) a general management plan for the historic site consistent with the purposes of this section. Such plan shall indicate—

(i) facilities needed to accommodate the health, safety, and educational needs of the public;

(ii) the location and estimated cost of all facilities; and

(iii) the projected need for any additional facilities.

CROW CREEK VILLAGE ARCHEOLOGICAL SITE

"SEC. 512(a) The Secretary shall prepare and transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives within two years from the date of enactment, a feasibility/suitability study of the Crow Creek Village archeological site, Buffalo County, South Dakota, as a unit of the National Park System. The study shall include cost estimates for any necessary acquisition, development, operation and maintenance, as well as any feasible alternatives for the administration and protection of the area, including, but not limited to, Federal financial and technical assistance to the State of South Dakota, Buffalo County or other suitable entity.

(b) Notwithstanding any other provision of law, the Secretary of the Army is directed to take such actions as may be necessary to preserve and protect such site from any adverse impact on the site and to refrain from any activities which might cause such impact until two years from the date of submission of the study by the Secretary."

Subtitle B—Trails

SEC. 551. The National Trails System Act (82 Stat. 919; 16 U.S.C. 1241), as amended, is further amended as follows:

(1) In section 2(a) after "promote" insert "the preservation of,"; and after "outdoor areas" insert "and historic resources".

(2) In section 2(a) delete "(ii)" and the remainder of the sentence and insert "(ii) secondarily, within scenic areas and along historic travel routes of the Nation, which are often more remotely located.".

(3) In section 2(b) delete "and scenic" and insert ", scenic and historic".

(4) In section 3 redesignate subsection "(c)" as "(d)", and insert a new subsection (c) as follows:

"(c) National historic trails, established as provided in section 5 of this Act, which will be extended trails which follow as closely as possible and practicable the original trails or routes of travel of national historical significance. Designation of such trails or routes shall be continuous, but the established or developed trail, and the acquisition thereof, need not be continuous onsite. National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment. Only those selected land and water based components of an historic trail which are on federally owned lands and which meet the national historic trail criteria established in this Act, are established as initial Federal protection components of a national historic trail. The appropriate Secretary may subsequently certify other lands as protected segments of an historic trail upon application from State or local governmental agencies or private interests involved if such segments meet the national historic trail criteria established in this Act and such criteria supplementary thereto as the appropriate Secretary may prescribe, and are administered by such agencies or interests without expense to the United States.".

(5) In the new section 3(d) delete "or national scenic" and insert ", national scenic or national historic".

(6) Change the title of section 5 to read "NATIONAL SCENIC AND NATIONAL HISTORIC TRAILS".

(7) In section 5(a), insert in the first sentence after the word "scenic" the words "and national historic" and change the second sentence to read: "There are hereby established the following National Scenic and National Historic Trails:".

(8) In section 5(a)(1), in the first sentence, after the word "Appalachian", insert "National Scenic", and in section 5(a)(2), in the first sentence, after "Pacific Crest", insert "National Scenic".

(9) In section 5(a), delete paragraph (3) and insert in lieu the following new paragraphs:

"(3) The Oregon National Historic Trail, a route of approximately two thousand miles extending from near Independence, Missouri, to the vicinity of Portland, Oregon, following a route as depicted on maps identified as 'Primary Route of the Oregon Trail 1841–1848', in the Department of the Interior's Oregon Trail study report dated April 1977, and which shall be on file and available for public inspection in the office of the Director of the National Park Service. The Trail shall be administered by the Secretary of the Interior.

"(4) The Mormon Pioneer National Historic Trail, a route of approximately one thousand three hundred miles extending from Nauvoo, Illinois, to Salt Lake City, Utah, following the primary historical route of the Mormon Trail as generally depicted on a map, identified as, 'Mormon Trail Vicinity Map, figure 2' in the Department of the Interior Mormon Trail study report dated March 1977, and which shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, D.C. The trail shall be administered by the Secretary of the Interior.

"(5) The Continental Divide National Scenic Trail, a trail of approximately thirty-one hundred miles, extending from the Montana-Canada border to the New Mexico-Mexico border, following the approximate route depicted on the map, identified as 'Proposed Continental Divide National Scenic Trail' in the Department of the Interior Continental Divide Trail study report dated March 1977 and which shall be on file and available for public inspection in the office of the Chief, Forest Service, Washington, D.C. The Continental Divide National Scenic Trail shall be administered by the Secretary of Agriculture in consultation with the Secretary of the Interior. Notwithstanding the provisions of section 7(c), the use of motorized vehicles on roads which will be designated segments of the Continental Divide National Scenic Trail shall be permitted in accordance with regulations prescribed by the appropriate Secretary.

"(6) The Lewis and Clark National Historic Trail, a trail of approximately three thousand seven hundred miles, extending from Wood River, Illinois, to the mouth of the Columbia River in Oregon, following the outbound and inbound routes of the Lewis and Clark Expedition depicted on maps identified as, 'Vicinity Map, Lewis and Clark Trail' study reported dated April 1977. The map shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, D.C. The trail shall be administered by the Secretary of the Interior.

"(7) The Iditarod National Historic Trail, a route of approximately two thousand miles extending from Seward, Alaska, to Nome, Alaska, following the routes as depicted on maps identified as 'Seward-Nome Trail', in the Department of the Interior's study report entitled 'The Iditarod Trail (Seaward-Nome Route) and other Alaskan Gold Rush Trails' dated September 1977. The map shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, D.C. The trail shall be administered by the Secretary of the Interior.".

(10) In section 5(b) after "national scenic" wherever it appears insert "or national historic"; in the first sentence after the phrase "Secretary of the Interior," insert "through the agency most likely to administer such trail,"; delete the third sentence; and delete that portion of the fourth sentence which precedes the numerical listing, and insert in lieu the following: "The studies listed in subsection (c) of this section shall be completed and submitted to the Congress, with recommendations as to the suitability of trail designation, not later than three complete fiscal years from the date of enactment of their addition to this subsection, or from the date of enactment of this sentence, whichever is later. Such studies, when submitted, shall be printed as a House or Senate document, and shall include, but not be limited to:".

(11) In section 5(b)(3) after the semicolon add "and in the case of national historic trails the report shall include the recommendation of the Secretary of the Interior's National Park System Advisory Board as to the national historic significance based on the criteria developed under the Historic Sites Act of 1935 (49 Stat. 666; U.S.C. 461);".

(12) In section 5(b)(8) delete the word "and" at the end of the sentence; in section

5(b)(9) change the period at the end of the sentence to a semicolon; and at the end of section 5(b) add the following new paragraphs:

"(10) the anticipated impact of public outdoor recreation use on the preservation of a proposed national historic trail and its related historic and archeological features and settings, including the measures proposed to ensure evaluation and preservation of the values that contribute to their national historic significance; and

"(11) to qualify for designation as a national historic trail, a trail must meet all three of the following criteria:

"(A) It must be a trail or route established by historic use and must be historically significant as a result of that use. The route need not currently exist as a discernible trail to qualify, but its location must be sufficiently known to permit evaluation of public recreation and historical interest potential. A designated trail should generally accurately follow the historic route, but may deviate somewhat on occasion of necessity to avoid difficult routing through subsequent development, or to provide some route variation offering a more pleasurable recreational experience. Such deviations shall be so noted on site. Trail segments no longer possible to travel by trail due to subsequent development as motorized transportation routes may be designated and marked on site as segments which link to the historic trail.

"(B) It must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, migration and settlement, or military campaigns. To qualify' as nationally significant, historic use of the trail must have had a far-reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included.

"(C) It must have significant potential for public recreational use or historical interest based on historic interpretation and appreciation. The potential for such use is generally greater along roadless segments developed as historic trails, and at historic sites associated with the trail. The presence of recreation potential not related to historic appreciation is not sufficient justification for designation under this category.".

(13) In section 5(c), add the following at the end thereof:

"(20) Overmountain Victory Trail, extending from the vicinity of Elizabethton, Tennessee, to Kings Mountains National Military Park, South Carolina."

(14) In section 5 delete subsection (d), and insert a new section 5(d) to read as follows:

"(d) The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trail to the System, and within sixty days of the enactment of this sentence for the Appalachian and Pacific Crest National Scenic Trails, establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trial. The members of each advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

"(i) a member appointed to represent each Federal department or independent agency administering lands through which the trail route passes, and each appointee shall be the person designated by the head of such department or agency;

"(ii) a member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;

"(iii) one or more members appointed to represent private organizations, including corporate and individual landowners and land users, which in the opinion of the Secretary, have an established and recognized interest in the trail, and such appointments shall be made from recommendations of the heads of such organizations: *Provided*, That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and

"(iv) the Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.".

(15) In section 5 add two new subsections (e) and (f) as follows:

"(e) Within two complete fiscal years of the date of enactment of legislation designating a national scenic trail, except for the Continental Divide National Scenic Trail, as part of the system, and within two complete fiscal years of the date of enactment of this subsection for the Pacific Crest and Appalachian Trails, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, the relevant advisory council established pursuant to section 5(d), and the Appalachian Trail Conference in the case of the Appalachian Trail, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items:

"(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved (along with high potential historic sites and high potential route segments in the case of national historic trails), details of anticipated cooperative agreements to be consummated with other entities, and an identified carrying capacity of the trail and a plan for its implementation;

"(2) an acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired; and

"(3) general and site-specific development plans, including anticipated costs.".

"(f) Within two complete fiscal years of the date of enactment of legislation designating a national historic trail, or the Continental Divide National Scenic Trail, as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to section 5(d) of this Act, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:

"(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national recreational trails an identified carrying capacity of the trail and a plan for its implementation; and

"(2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(c) of this Act.".

(16) In section 6 in the first sentence delete "or national scenic" and insert ", national scenic or national historic", and in the second sentence delete "'or scenic" and insert ", national scenic, or national historic".

(17) In section 7(a) in the first sentence delete "National Scenic Trails" and insert "national scenic and national historic trails"; in two instances in subsection (b), and in the first sentence of subsection (c), after "scenic", insert "or national historic"; in subsection (c) in the second proviso, after "recreation" delete "or scenic" and insert ", national scenic, or national historic"; and in the fifth sentence after "recreation" delete "and scenic" and insert ", national scenic, and national historic"; in subsection (d) after "recreation" delete "or scenic" and insert ", national scenic, or national historic"; in subsection (e) after "scenic" in both instances where it appears insert "or national historic"; in subsection (h) in the first sentence after "recreation" delete "or scenic" and insert ", national scenic, or national historic", and in the second sentence after "scenic" insert "or national historic"; in subsection (i) after "recreation" delete "or scenic" and insert ", national scenic, or national historic".

(18) In section 7(c) at the end of the fourth sentence insert the following: "Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. Notwithstanding any other provision of this Act, with respect to the Continental Divide National Scenic Trail and those national historic trails established by action of the 95th Congress, other uses along such trails, which will not substantially interfere with the nature and purposes of such trails, and which are currently allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of each such trail.".

(19) In section 7(e), in the first proviso, delete "within two years".

(20) In section 7(g), delete the second proviso entirely.

(21) At the end of subsection 7(g) add the following new sentences: "For national historic trails, direct Federal acquisition for trail purposes shall be limited to those areas indicated by the study report or by the comprehensive plan as high potential route segments or high potential historic sites.

"No land or site located along a designated national historic trail or along the Continental Divide National Scenic Trail shall be subject to the provisions of section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)) unless such land or site is deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.".

(22) In section 8 in the first sentence of subsection (a) after "establishing park, forest, and other recreation" insert "and historic" and after "administered by States, and recreation" insert "and historic"; and at the end of the first sentence insert the following: "The Secretary is also directed to encourage States to consider, in their comprehensive

statewide historic preservation plans and proposals for financial assistance for State, local, and private projects submitted pursuant to the Act of October 15, 1966 (80 Stat. 915), as amended, needs and opportunities for establishing historic trails.".

(23) In section 10, strike "(a)(1)" and insert in lieu thereof "(a)"; strike "the subsequent fiscal year" and insert in lieu thereof "subsequent fiscal years"; strike the paragraph numbered "(2)" in its entirety; and add a new "subsection (c)" as follows:

"(c) There is hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this Act relating to the trails designated by paragraphs 5(a)(3), (4), (5), (6), and (7): *Provided*, That no such funds are authorized to be appropriated prior to October 1, 1979: *And provided further*, That notwithstanding any other provisions of this Act or any other provisions of law, no funds may be expended for the acquisition of lands or interest in lands for the Continental Divide National Scenic Trail, the Oregon National Historic Trail, the Mormon Pioneer National Historic Trail, the Lewis and Clark National Historic Trail, and the Iditarod National Historic Trail.".

TITLE VI—MISCELLANEOUS PROVISIONS

FACILITIES AT YELLOWSTONE NATIONAL PARK

SEC. 601. (a) The Secretary is hereby authorized to acquire and upgrade the concession facilities owned by the Yellowstone Park Company at Yellowstone National Park in the State of Wyoming.

(b) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

RIDGELANDS AREA STUDY

SEC. 602. (a) In order to consider preserving in their natural condition appropriate segments of the Ridgelands east of San Francisco Bay for protection of the area's unique ecology and topography and for public outdoor recreation, the Secretary shall study, investigate, and formulate recommendations on the feasibility and desirability of establishing such area as a unit of the National Park System. The Secretary shall consult with the Secretary of Agriculture, the Chief of Engineers, Department of the Army, and any other appropriate Federal agencies, as well as with the East Bay Regional Park District, the Association of Bay Area Governments, and other State and local bodies and officials involved, and shall coordinate the study with applicable local and State plans and planning activities relating to the Ridgelands. Federal departments and agencies are authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to furnish such statistics, data, reports, and other material as the Secretary may deem necessary for purposes of the study.

(b) The Secretary shall submit to the President and the Congress of the United States, within one year after the date of enactment of this Act, a report of his findings and recommendations. The report of the Secretary shall contain, but not be limited to, findings with respect to—

(1) the scenic, scientific, historic, natural, and outdoor recreation values of the Ridgelands, including their use for walking, hiking, horseback riding, bicycling, swimming, picnicking, camping, forest management, fish and wildlife management, educational exhibiting, and scenic and historic site preservation;

(2) the type of Federal, State, and local programs that are feasible and desirable in the public interest to preserve, develop, and make accessible for public use the values identified;

(3) the relationship of any recommended national park, recreation area, or wilderness area to existing or proposed Federal, State, and local programs to manage in the public interest the natural resources of the entire San Francisco Bay area;

(4) alternative means of restoring and preserving the value inherent in the area under present ownership patterns; and

(5) the development of public land policies consistent with the protection of private open space land.

(c) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

PRESERVATION OF HISTORICAL AND ARCHAEOLOGICAL DATA

SEC. 603. (a) The Act of June 27, 1960 (74 Stat. 220) as amended May 24, 1974 (88 Stat. 174, 176; 16 U.S.C. 469) is amended as follows:

(b) In section 7(b), delete the "and" following "1977;", change the period at the end of the sentence to a semicolon; and add the following words: "$500,000 in fiscal year 1979; $1,000,000 in fiscal year 1980; $1,500,000 in fiscal year 1981; $1,500,000 in fiscal year 1982; and $1,500,000 in fiscal year 1983.".

(c) In section 7(c), delete the "and" following "1977;", change the period at the end of the sentence to a semicolon, and add the following words: "$3,000,000 in fiscal year 1979; $3,000,000 in fiscal year 1980; $3,500,000 in fiscal year 1981; $3,500,000 in fiscal year 1982; and $1,000,000 in fiscal year 1983.".

(d) Add the following new subsection "(d)" to section 7:

"(d) Beginning fiscal year 1979, sums appropriated for purposes of section 7 shall remain available until expended.".

NEW AREA STUDIES, GENERAL MANAGEMENT PLANS, AND CONTRACTS

SEC. 604. The Act entitled "An Act to improve the administration of the National Park System by the Secretary of the Interior, and to clarify the authorities applicable to the System, and for other purposes" (84 Stat. 825) is amended as follows:

(1) At the end of section 8 add the following: "For the purposes of carrying out the studies of potential new Park System units and for monitoring the welfare of those resources, there are authorized to be appropriated annually not to exceed $1,000,000. For the purposes of monitoring the welfare and integrity of the national landmarks, there are authorized to be appropriated annually not to exceed $1,500,000.".

(2) In section 9, change "eleven" to "twelve".

(3) Delete section 12(b) and insert in lieu the following:

"(b) General management plans for the preservation and use of each unit of the National Park System, including areas within the national capital area, shall be prepared and revised in a timely manner by the Director of the National Park Service. On January 1 of each year, the Secretary shall submit to the Congress a list indicating the current status of completion or revision of general management plans for each unit of the National Park System. General management plans for each unit shall include, but not be limited to:

"(1) measures for the preservation of the area's resources;

"(2) indications of types and general intensities of development (including visitor circulation and transportation patterns, systems and modes) associated with public enjoyment and use of the area, including general locations, timing of implementation, and anticipated costs;

"(3) identification of and implementation commitments for visitor carrying capacities for all areas of the unit; and

"(4) indications of potential modifications to the external boundaries of the unit, and the reason therefor.".

(4) In section 12(c) delete "or exceeding five years" and insert "or of five years or more".

OAK CREEK CANYON AND CHIRICAHUA NATIONAL MONUMENT STUDIES

SEC. 605. (a) In recognition of the need for and desirability of protecting the Oak Creek Canyon, Yavapai, and Soldiers Wash-Mormon Canyon areas in Arizona as a unit or units of the National Park System, the Secretary, in cooperation with the Secretary of Agriculture where national forest lands are involved, shall conduct a study to determine a suitable boundary for such unit or units of the System, including the areas referred to herein together with such lands as may be appropriate to provide for their protection and administration as a national monument or other unit of the National Park System. Such study shall be conducted in consultation with appropriate units of local government concerned and the Sedona-Oak Creek Canyon Interagency Task Force. Such study shall take into account existing patterns of use and activities in the area and the possible adverse impacts a National Monument designation in the area would have on multiple use activities important to the local economy.

(b) The Secretary, in cooperation with the Secretary of Agriculture where national forest lands are involved, shall conduct a study of the boundary of Chiricahua National Monument, Arizona, to determine the appropriate location of a boundary line for additions to the monument which includes such highly scenic features as Cochise Head and which is located to the extent practicable on natural topographic features.

(c) A report of each study conducted pursuant to subsection (a) and (b) of this section shall be submitted by the Secretary to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than one year following the date on which funds are appropriated for the purpose of the study. Each report shall include a map or other description of the boundary determined as a result of the study, a description of the natural, scenic, and cultural features within the boundary, and the recommendation of the Secretary with respect to such further legislation as may be appropriate.

LAND AND WATER CONSERVATION FUND ACCOMPLISHMENTS REPORTING DATE

SEC. 606. (a) The first sentence of section 6(f)(7) of the Land and Water Conservation Fund Act (78 Stat. 897) is amended by inserting ", so as to be received by the Secretary no later than December 31," after the word "transmit".

(b) The third sentence of such section 6(f)(7) of such Act is amended by striking out the period and inserting in lieu thereof "by no later than March 1 of each year.".

HELLS CANYON NATIONAL RECREATION AREA

SEC. 607. The words "September 1975" in section 1(b) of the Act of December 31, 1975 (Public Law 94-199), are deleted and replaced with the words "May 1978," to clarify that the boundary between Saulsberry and Freezeout Saddles is the hydrologic divide.

IRVINE COAST-LAGUNA, CALIFORNIA STUDY

SEC. 608. (a) In order to consider preserving in its natural condition, the Irvine Coast-Laguna area, California from Newport Beach to Laguna Beach as generally depicted on the map entitled "Irvine Coast-Laguna Study Area", numbered IRV-90,000, and dated June 1978, and in order to consider protection of the area's unique ecology and topography, its watershed and marine environment, and public outdoor recreation opportunities, the Secretary shall study, investigate, and formulate recommendations on the feasibility and desirability of establishing such area as a unit of the National Park System, such as a park, recreation area, or seashore. The Secretary shall consult with other appropriate

Federal agencies, as well as with the appropriate State and local bodies and officials involved, and shall coordinate the study with applicable local and State plans and planning activities relating to the area. Federal departments and agencies are authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to furnish such statistics, data, reports, and other material as the Secretary may deem necessary for purposes of the study.

(b) The Secretary shall submit to the President and the Congress of the United States, within six months after the date of enactment of this section, a report of his findings and recommendations. The report of the Secretary shall contain, but not be limited to, findings with respect to—

(1) the scenic, scientific, natural, and outdoor recreation values of the Irvine Coast-Laguna area;

(2) the type of Federal, State, and local programs that are feasible and desirable in the public interest to preserve, develop, and make accessible for public use the values identified; and

(3) the relationship of any recommended national park, recreation area, or seashore area to existing or proposed Federal, State, and local programs to manage in the public interest the natural resources of the entire Irvine Coast-Laguna area.

(c) There is hereby authorized to be appropriated $50,000 to carry out the provisions of this section.

THEODORE ROOSEVELT INAUGURAL NATIONAL HISTORIC SITE

SEC. 609. The first section of the Act entitled "An Act to provide for the acquisition and preservation of the real property known as the Ansley Wilcox House in Buffalo, New York, as a national historic site", approved November 2, 1966 (Public 89-708), is amended by striking out "at no expense to the United States" and inserting in lieu thereof "at no direct operating expense to the Department of the Interior,".

THEODORE ROOSEVELT NATIONAL PARK

SEC. 610. The area formerly known as the "Theodore Roosevelt National Memorial Park," established by the Act of April 25, 1947 (61 Stat. 52), shall henceforth be known as the "Theodore Roosevelt National Park".

BADLANDS NATIONAL PARK

SEC. 611. The area formerly known as the "Badlands National Monument", established by Presidential Proclamation of January 25, 1939 (53 Stat. 2521), shall henceforth be known as the "Badlands National Park".

ALBERT EINSTEIN MEMORIAL

SEC. 612. The Secretary of the Interior is authorized to convey for nominal consideration to the National Academy of Sciences, United States Reservation 332A, located on the south side of Square Numbered 88 between 21st Street, 22d Street and Constitution Avenue in the District of Columbia to erect and maintain a Memorial to Albert Einstein. The title to said property shall remain with the National Academy of Sciences so long as the property is used for access. At such time as the property is no longer used for memorial purposes or public access is restricted, title to said property shall revert to the United States.

PEARSON-SKUBITZ BIG HILL LAKE

SEC. 613. The project for flood protection on Big Hill Creek, Kansas, authorized by the Flood Control Act of 1962, Public Law 87-874, shall hereafter be known and designated as the "Pearson-Skubitz Big Hill Lake". Any reference in a law, map, regulation, document, or record, or other paper of the United States to such project shall be held to be a reference to the "Pearson-Skubitz Big Hill Lake".

ADVISORY COUNCIL ON HISTORIC PRESERVATION

SEC. 614. Section 212(a) of the Act of October 15, 1966 (80 Stat. 915), as amended (16 U.S.C. 470), is further amended by adding the following at the end thereof:

"There are authorized to be appropriated not to exceed $2,250,000 in fiscal year 1980."

SEC. 615. The Pennsylvania Avenue Development Corporation Act of 1972 (Public Law 92-578; 86 Stat. 1266), as amended, is further amended as follows:

(1) By striking:

(a) in paragraph (c) of section 3: "(6) The Commissioner of the District of Columbia;" and by substituting in lieu thereof "(6) The Mayor of the District of Columbia;"; and by inserting "The Mayor" in lieu of "The Commissioner" of the District of Columbia, wherever it occurs in this Act;

(b) in paragraph (c) of section 3: "(7) The Chairman, District of Columbia Council;" and by inserting in lieu thereof "The Chairman, Council of the District of Columbia";

(c) in paragraph (g) of section 3: "(8) The Chairman of the District of Columbia Redevelopment Land Agency." and by inserting in lieu thereof "(8) The Director of the District of Columbia Department of Housing and Community Development.";

(d) in paragraph (a) of section 4: "subchapter 53" and by inserting in lieu thereof "subchapter III of Chapter 53";

(e) in paragraph (f) of section 5: "The District of Columbia government, and the District of Columbia Redevelopment Land Agency." and by inserting in lieu thereof "and the District of Columbia government.";

(f) in paragraph (b) of section 8: "Redevelopment Land Agency" wherever it occurs and by inserting in lieu thereof "government."

(2) By striking in paragraph (10) of section 6 the figure "$50,000,000" and inserting in lieu thereof "$100,000,000" and by striking in that paragraph the following sentence: "The authority of the Corporation to issue obligations hereunder shall expire June 3, 1980, except that obligations may be issued at any time after the expiration of said period to provide funds necessary for the performance of any contract entered into by the Corporation, prior to the expiration of said period." and inserting in lieu thereof "The authority of the Corporation to issue obligations hereunder shall remain available without fiscal year limitation.".

(3) By redesignating paragraphs "(19)" through "(22)" in section 6 as paragraphs "(21)" through "(24)" and by inserting the following new paragraphs:

"(19) shall request the Council of the District of Columbia, when required for implementation of the development plan, to close any street, road, highway, alley, or any part thereof in the development area. If the title to the street, road, highway or alley so closed is in the United States, the Mayor of the District of Columbia shall convey the title to the land on behalf of the United States to the Corporation, without cost, except that the Corporation shall reimburse the District of Columbia for the administrative expenses of the action. If the title to the street, road, highway or alley so closed is not in the United States, the Mayor shall convey title to the land on behalf of the District of Columbia to the Corporation, without cost, except that the Corporation shall reimburse the District of Columbia for the administrative costs of the action; *Provided*, That if the land would have reverted to a private abutting property owner under otherwise applicable law of the District of Columbia, the Corporation shall pay such owner the fair market value of the land that would have reverted to him.

"(20) may tranfer title to, interests in, or jurisdiction over real property which has been acquired by the Corporation and is to be devoted to public uses under the development plan, to any agency of the United States or the District of Columbia. Agencies of the United States or the District of Columbia may accept such transfers under this paragraph, and shall thereafter administer and maintain the property in accordance with the development plan and the terms of any transfer agreement. The Director of the National Park Service transfer title to or interest in public reservations, roadways, spaces, or parks under his jurisdiction within the development area to the Corporation to facilitate implementation of the development plan; and, notwithstanding any other provision of law, the Corporation may utilize such transferred property for any public or private development consistent with the plan."

(4) By striking in subsection 17(a) all after the word "Corporation" and inserting in lieu thereof "$3,000,000 for the fiscal year ending September 30, 1979; $3,200,000 for the fiscal years ending September 30, 1980 and September 30, 1981; and, $3,500,000 for the fiscal years ending September 30, 1982 and September 30, 1983."; and, by adding to subsection 17(b) after the amount "$38,800,000," the following: "for fiscal year 1979, $15,000,000, for fiscal year 1980, $35,000,000, for fiscal year 1981, $25,00,000, for fiscal year 1982, $30,000,000, and, for fiscal year 1983, $35,000,000."; and, by striking the following, "to remain available without fiscal year limitation through September 30, 1990;" and, by inserting in lieu thereof: "For the authorizations made in this subsection, any amounts authorized but not appropriated in any fiscal year shall remain available for appropriation in succeeding years. Any amounts appropriated under this subsection shall remain available without fiscal year limitation.".

TITLE VII—WILD AND SCENIC RIVERS ACT AMENDMENTS

Subtitle A—Addition of Segments

ADDITION OF PERE MARQUETTE SEGMENT

SEC. 701. Section 3(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(61) PERE MARQUETTE, MICHIGAN.—The segment downstream from the junction of the Middle and Little South Branches to its junction with United States Highway 31 as generally depicted on the boundary map entitled 'Proposed Boundary Location, Pere Marquette Wild and Scenic River,'; to be administered by the Secretary of Agriculture. After consultation with State and local governments and the interested public, the Secretary shall take such action as is provided for under subsection (b) with respect to the segment referred to in this paragraph within one year from the date of enactment of this paragraph. Any development or management plan prepared pursuant to subsection (b) shall include a provision for the dissemination information to river users and (b) such regulations relating to the recreational and other uses of the river as may be necessary in order to protect the area comprising such river including lands contiguous or adjacent thereto) from damage or destruction by reason of overuse and to protect its scenic, historic, esthetic and scientific values. Such regulations shall further contain procedures and means which shall be utilized in the enforcement of such development and management plan.

For the purposes of carrying out the provisions of the Act with respect to the river designated by this paragraph, there are authorized to be appropriated not more than $8,125,000 for the acquisition of lands or interests in lands and $402,000 for development.".

ADDITION OF RIO GRANDE SEGMENT

SEC. 702. Section 3(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(17) RIO GRANDE, TEXAS.—The segment on the United States side of the river from river mile 842.3 above Mariscal Canyon downstream to river mile 651.1 at the Terrell-Val Verde

County line; to be administered by the Secretary of the Interior. The Secretary shall, within two years after the date of enactment of this paragraph, take such action with respect to the segment referred to in this paragraph as is provided for under subsection (b). The action required by such subsection (b) shall be undertaken by the Secretary, after consultation with the United States Commissioner, International Boundary and Water Commission, United States and Mexico, and appropriate officials of the State of Texas and its political subdivisions. The development plan required by subsection (b) shall be construed to be a general management plan only for the United States side of the river and such plan shall include, but not be limited to, the establishment of a detailed boundary which shall include an average of not more than 160 acres per mile. Nothing in this Act shall be construed to be in conflict with—

"(A) the commitments or agreements of the United States made by or in pursuance of the treaty between the United States and Mexico regarding the utilization of the Colorado and Tijuana Rivers and of the Rio Grande, signed at Washington, February 1944 (59 Stat. 1219), or

"(B) the treaty between the United States and Mexico regarding maintenance of the Rio Grande and Colorado River as the international boundary between the United States and Mexico, signed November 23, 1970.

For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated such sums as may be necessary, but not more than $1,650,000 for the acquisition of lands and interests in lands and not more than $1,800,000 for development.".

ADDITION OF SKAGIT SEGMENTS

SEC. 703. Section 3(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(18) SKAGIT, WASHINGTON.—The segment from the pipeline crossing at Sedro-Woolley upstream to and including the mouth of Bacon Creek; the Cascade River from its mouth to the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the boundary of the Glacier Peak Wilderness Area at Milk Creek; the Sauk River from its mouth to its junction with Elliott Creek; the North Fork of the Sauk River from its junction with the South Fork of the Sauk to the boundary of the Glacier Peak Wilderness Area; as generally depicted on the boundary map entitled 'Skagit River—River Area Boundary; all segments to be administered by the Secretary of Agriculture. Riprapping related to natural channels with natural rock along the shorelines of the Skagit segment to preserve and protect agricultural land not to be considered inconsistent with the values for which such segment is designated. After consultation with affected Federal agencies, State and local government and the interested public, the Secretary shall take such action as is provided for under subsection (b) with respect to the segments referred to in this paragraph within one year from the date of enactment of this paragraph; as part of such action, the Secretary of Agriculture shall investigate that portion of the North Fork of the Cascade River from its confluence with the South Fork to the boundary of the North Cascades National Park and if such portion is found to qualify for inclusion, it shall be treated as a component of the Wild and Scenic Rivers System designated under this section upon publication by the Secretary of notification to tha effect in the Federal Register. For the purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph there are authorized to be appropriated not more than $11,734,000 for the acquisition of lands or interests in lands and not more than $332,000 for development.".

ADDITION OF UPPER DELAWARE SEGMENT; SPECIAL PROVISIONS

SEC. 704. (a) Section 3(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(19) UPPER DELAWARE RIVER, NEW YORK AND PENNSYLVANIA.—The segment of the Upper Delaware River from the confluence of the East and West branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York, as depicted on the boundary map entitled 'The Upper Delaware Scenic and Recreational River', dated April 1978; to be administered by the Secretary of the Interior. Subsection (b) of this section shall not apply, and the boundaries and classifications of the river shall be as specified on the map referred to in the preceding sentence, except to the extent that such boundaries or classifications are modified pursuant to section 705(c) of the National Parks and Recreation Act of 1978. Such boundaries and classifications shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph there are authorized to be appropriated such sums as may be necessary.".

(b)(1) Notwithstanding any requirement to the contrary contained in section 6(c) of the Wild and Scenic Rivers Act, within one hundred and eighty days after the date of enactment of this Act, the Secretary shall publish in the Federal Register general guidelines for land and water use control measures to be developed and implemented by the appropriate officials of the States of New York and Pennsylvania (hereinafter referred to as the "directly affected States"), by the local political subdivisions, and by the Delaware River Basin Commission (hereinafter referred to as the "Commission"). The Secretary shall provide for participation in the development of the said general guidelines by all levels of State, county, and local government, and concerned private individuals and organizations, and also shall seek the advice of the Upper Delaware Citizens Advisory Council established in subsection (f) (hereinafter referred to as the "Advisory Council"). In each of the directly affected States, prior to publication of such general guidelines, public hearings shall be conducted by the Secretary or his designee, in the region of the Upper Delaware River designated by subsection (a) (hereinafter in this section referred to as the "Upper Delaware River").

(2) The Secretary may from time to time adopt amended or revised guidelines and shall do so in accordance with the provisions of paragraph (1) hereof.

(c)(1) Within three years from the date of the enactment of this Act, the Secretary, in cooperation with the Commission, the Advisory Council, the directly affected States and their concerned political subdivisions and other concerned Federal agencies, shall develop, approve, and submit to the Governors of the directly affected States a management plan (hereinafter in this section referred to as the "management plan" or "the plan") for the Upper Delaware River which shall provide for as broad a range of land and water uses and scenic and recreation activities as shall be compatible with the provisions of this section, the Wild and Scenic Rivers Act, and the general guidelines for land and water use controls promulgated by the Secretary under the provisions of subsection (b).

(2) The plan shall apply to the Upper Delaware River and shall set forth—

(A) a map showing detailed final landward boundaries, and upper and lower termini of the area and the specific segments of the river classified as scenic and recreational, to be administered in accordance with such classifications;

(B) a program for management of existing and future land and water use, including the application of available management techniques;

(C) an analysis of the economic and environmental costs and benefits of implementing the management plan, including any impact of the plan upon revenues and costs of local government;

(D) a program providing for coordinated implementation and administration of the plan with proposed assignment of responsibilities to the appropriate governmental unit at the Federal, regional, State, and local levels; and

(E) such other recommendations or provisions as shall be deemed appropriate to carry out the purposes of this section.

(3) Immediately following enactment of this Act, the Secretary, through the National Park Service or such other designee, shall develop and implement such interim programs as he shall deem necessary and appropriate to protect the Upper Delaware River and its environs and to protect the public health and safety. Such interim programs shall include provisions for information to river users, education and interpretation activities, and regulation of recreational use of the river.

(4) To enable the directly affected States and their political subdivisions to develop and implement programs compatible with the management plan, the Secretary shall provide such technical assistance to the said States and their political subdivisions as he deems appropriate.

(5) The Secretary shall promote public awareness of and participation in the development of the management plan, and shall develop and conduct a concerted program to this end. Prior to final approval of the management plan, the Secretary shall hold two or more public hearings in the Upper Delaware region of each directly affected State.

(6) Upon approval of the management plan by the Secretary, it shall be published in the Federal Register and shall not become effective until ninety days after it shall have been forwarded to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. The plan shall be administered by the Secretary in accordance with the provisions of this section and the Wild and Scenic Rivers Act. The Secretary is hereby granted such authority as may be required to implement and administer said plan.

(d) Notwithstanding any provision of the Wild and Scenic Rivers Act, the Secretary may not acquire more than a total of four hundred and fifty acres of land and interests in land for access, development sites, the preservation of scenic qualities, or for any other purposes: *Provided*, That the Secretary may acquire additional land and interests in land for such purposes not in excess of one thousand acres if such additional acquisition is recommended and provided for in the management plan as finally approved by the Secretary. The limitations contained in this section shall not apply under the circumstances set forth in subsection (a)(4) of this section. Prior to acquisition of any land or interests in land which has been used for business purposes during the annual period immediately preceding the date of the enactment of this Act, the Secretary shall first make such efforts as he deems reasonable to acquire easements or restrictive covenants, or to enter into any other appropriate

agreements or arrangements with the owners of said land, consistent with the purposes of this section.

(e)(1) For the purpose of protecting the integrity of the Upper Delaware River, the Secretary shall review all relevant local plans, laws, and ordinances to determine whether they substantially conform to the approved management plan provided for in subsection (c) and to the general guidelines promulgated by the Secretary pursuant to subsection (b). Additionally, the Secretary shall determine the adequacy of enforcement of such plans, laws, and ordinances, including but not limited to review of building permits and zoning variances granted by local governments, and amendments to local laws and ordinances.

(2) The purpose of such reviews shall be to determine the degree to which actions by local governments are compatible with the purposes of this section. Following the approval of the management plan and after a reasonable period of time has elapsed, but not less than two years, upon a finding by the Secretary that such plans, laws, and ordinances are nonexistent, are otherwise not in conformance with the management plan or guideline, or are not being enforced in such manner as will carry out the purposes of this section (as determined by the Secretary), the Secretary may exercise the authority available to him under the provisions of paragraph (4) hereof.

(3) To facilitate administration of this section, the Secretary may contract with the directly affected States or their political subdivisions to provide, on behalf of the Secretary, professional services necessary for the review of relevant local plans, laws, and ordinances, and of amendments thereto and variances therefrom, and for the monitoring of the enforcement thereof by local governments having jurisdiction over any area in the region to which the management plan applies. The Secretary shall notify the appropriate State or local officials as to the results of his review under this section within forty-five days from the date he receives notice of the local governmental action.

(4) In those sections of the Upper Delaware River where such local plans, laws, and ordinances, or amendments thereto or variances therefrom, are found by the Secretary not to be in conformance with the guidelines or the management plan promulgated pursuant to subsections (b) and (c) of this section, respectively, or are not being enforced in such manner as will carry out the purposes of this section (as determined by the Secretary), the Secretary is hereby authorized to acquire land or interests in land in excess of the acreage provided for in subsection (d) of this section. Land and interests in land acquired pursuant to this subsection shall be restricted to the geographical area of the local governmental unit failing to conform with the said guidelines or management plan, and shall be limited to those lands clearly and directly required, in the judgment of the Secretary, for protection of the objectives of this Act. The total acreage of land and interests in land acquired pursuant to this subsection shall not in any event exceed the limitations contained in section 6(a) of the Wild and Scenic Rivers Act. This subsection shall apply notwithstanding the first sentence of section 6(c) of the Wild and Scenic Rivers Act. Notwithstanding any limitation on amounts authorized to be appropriated for acquisition of land and interests in land which is contained in section 3(a)(21) of the Wild and Scenic Rivers Act or in any other provision of law, there are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(f)(1) At the earliest practicable date following enactment of this Act, but no later than one hundred and twenty days thereafter, there shall be established an Upper Delaware Citizens Advisory Council. The Advisory Council shall encourage maximum public involvement in the development and implementation of the plans and programs authorized by this section. It shall report to the Commission and the Secretary from time to time during preparation of the management plan. Following completion of the management plan, it shall report to the Secretary and the Governors of the directly affected States no less frequently than once each year its recommendations, if any, for improvement in the programs authorized by this Act, or in the programs of other agencies which may relate to land or water use in the Upper Delaware River region.

(2) Membership on the Advisory Council shall consist of seventeen members appointed as follows: there shall be—

(A) six members from each of the directly affected States appointed by the Secretary from nominations submitted by the legislatures of the respective counties and appointed such that two members shall be from each of Orange, Delaware, and Sullivan Counties, New York, and three members shall be from each of Wayne and Pike Counties, Pennsylvania (at least one appointee from each county shall be a permanent resident of a municipality abutting the Upper Delaware River);

(B) two members appointed at large by each Governor of a directly affected State; and

(C) one member appointed by the Secretary.

The Secretary shall designate one of the aforesaid members to serve as Chairperson of the Advisory Council who shall be a permanent resident of one of the aforementioned counties. Vacancies on the Advisory Council shall be filled in the same manner in which the original appointment was made. Members of the Advisory Council shall serve without compensation as such, but the Secretary is authorized to pay expenses reasonably incurred by the Advisor Council in carrying out its responsibilities under this Act on vouchers signed by the Chairman.

(g) With respect to the land and water in areas which are not owned by the United States but which are within the boundaries of the segment of the Delaware River designated as a wild and scenic river under subsection (a), the Secretary is authorized to enter into contracts with the appropriate State or political subdivisions thereof pursuant to which the Secretary may provide financial assistance to such State or political subdivision for purposes of—

(1) enforcing State and local laws in such areas, and

(2) removing solid waste from such areas and disposing of such waste.

(h) Nothing in this section shall be construed as limiting the right to fish and hunt on any of the lands or waters within the boundaries of the Upper Delaware River in the manner provided in section 13 of the Wild and Scenic Rivers Act.

(i) There are hereby authorized to be appropriated to carry out the purposes of this section such sums as may be necessary.

(j) Where any provision of the Wild and Scenic Rivers Act is inconsistent with any provisions of this section, the provision of this section shall govern. In applying the provisions of section 6(g)(3) of the Wild and Scenic Rivers Act, with regard to "improved property", the date specified therein, shall, for purposes of the river designated in this Act, be the date of enactment of this Act (rather than January 1, 1967).

ADDITION OF MIDDLE DELAWARE SEGMENT

SEC. 705. Section 3(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(20) DELAWARE, NEW YORK, PENNSYLVANIA, AND NEW JERSEY.—The segment from the point where the river crosses the northern boundary of the Delaware Water Gap National Recreation Area to the point where the river crosses the southern boundary of such recreation area; to be administered by the Secretary of the Interior. For purposes of carrying out this Act with respect to the river designated by this paragraph, there are authorized to be appropriated such sums as may be necessary. Action required to be taken under subsection (b) of this section with respect to such segment shall be taken within one year from the date of enactment of this paragraph, except that, with respect to such segment, in lieu of the boundaries provided for in such subsection (b), the boundaries shall be the banks of the river. Any visitors facilities established for purposes of use and enjoyment of the river under the authority of the Act establishing the Delaware Water Gap National Recreation Area shall be compatible with the purposes of this Act and shall be located at an appropriate distance from the river.".

ADDITION OF THE AMERICAN SEGMENT

SEC. 706. Section 3(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(21) AMERICAN, CALIFORNIA.—The North Fork from a point of 0.3 miles above Heath Springs downstream to a point approximately 1,000 feet upstream of the Colfax-Iowa Hill Bridge, including the Gold Run Addition Area, as generally depicted on the map entitled 'Proposed Boundary Maps' contained in Appendix I of the document dated January 1978 and entitled 'A Proposal: North Fork American Wild and Scenic River' published by the United States Forest Service, Department of Agriculture; to be designated as a wild river and to be administered by agencies of the Departments of Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President. Action required to be taken under subsection (b) shall be taken within one year after the date of the enactment of this paragraph; in applying such subsection (b) in the case of the Gold Run Addition Area, the acreage limitation specified therein shall not apply and in applying section 6(g)(3), January 1 of the calendar year preceding the calendar year in which this paragraph is enacted shall be substituted for January 1, 1967. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be apppropriated not more than $850,000 for the acquisition of lands and interests in land and not more than $765,000 for development.".

ADDITION OF MISSOURI SEGMENT

SEC. 707. Section 3(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(22) MISSOURI RIVER, NEBRASKA, SOUTH DAKOTA.—The segment from Gavins Point Dam, South Dakota, fifty-nine miles downstream to Ponca State Park, Nebraska, as generally depicted in the document entitled 'Review Report for Water Resources Development, South Dakota, Nebraska, North Dakota, Montana', prepared by the Division Engineer, Missouri River Division, Corps of Engineers, dated August 1977 (hereinafter in this paragraph referred to as the 'August 1977 Report'). Such segment shall be administered as a recreational river by the Secretary. The Secretary shall enter into a written cooperative agreement with the Secretary of the Army (acting through the Chief of Engineers) for construction and maintenance of bank stabilization work and appropriate recreational development. After public notice and consultation with the State and local governments, other interested organizations and associations, and the interested public, the Secretary shall take such action as is required puruant to subsection (b) within one year from the date of enactment of this section. In administering such river, the Secretary shall, to the extent, and in a manner, consistent with this section—

"(A) provide (i) for the construction by the United States of such recreation river features and streambank stabilization structures as the Secretary of the Army (acting through the Chief of Engineers) deems necessary and advisable in connection with the segment designated by this paragraph, and (ii) for the operation and maintenance of all streambank stabilization structures constructed in connection with such segment (including both structures constructed before the date of enactment of this paragraph, and structures constructed after such date, and including both structures constructed under the authority of this section and structures constructed under the authority of any other Act); and

"(B) permit access for such pumping and associated pipelines as may be necessary to assure an adequate supply of water for owners of land adjacent to such segment and for fish, wildlife, and recreational uses outside the river corridor established pursuant to this paragraph.

The streambank structures to be constructed and maintained under subparagraph (A) shall include, but not be limited to, structures at such sites as are specified with respect to such segment on pages 62 and 63 of the August 1977 report, except that sites for such structures may be relocated to the extent deemed necessary by the Secretary of the Army (acting through the Chief of Engineers) by reason of physical changes in the river or river area. The Secretary of the Army (acting through the Chief of Engineers) shall condition the construction or maintenance of any streambank stabilization structure or of any recreational river feature at any site under subparagraph (A)(i) upon the availability to the United States of such land and interests in land in such ownership as he deems necessary to carry out such construction or maintenance and to protect and enhance the river in accordance with the purposes of this Act. Administration of the river segment designated by this paragraph shall be in coordination with, and pursuant to the advice of a Recreational River Advisory Group which may be established by the Secretary. Such group may include in its membership, representatives of the affected States and political subdivisions thereof, affected Federal agencies, and such organized private groups as the Secretary deems desirable. Notwithstanding the authority to the contrary contained in subsection 6(a) of this Act, no land or interests in land may be acquired without the consent of the owner: *Provided*, That not to exceed 5 per centum of the acreage within the designated river boundaries may be acquired in less than fee title without the consent of the owner, in such instance of the Secretary's determination that activities are occurring, or threatening to occur, thereon which constitutes serious damage or threat to the integrity of the river corridor, in accordance with the values for which this river was designated. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated not to exceed $21,000,000, for acquisition of lands and interests in lands and for development.".

SEC. 708. Section 3(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(23) SAINT JOE, IDAHO.—The segment above the confluence of the North Fork of the Saint Joe River to Spruce Tree Campground, as a recreational river; the segment above Spruce Tree Campground to Saint Joe Lake, as a wild river, as generally depicted on the map entitled 'Saint Joe River Corridor Map' on file with the Chief of the Forest Service and dated September 1978: to be administered by the Secretary of Agriculture. Notwithstanding any other provision of law, the classification of the Saint Joe River under this paragraph and the subsequent development plan for the river prepared by the Secretary of Agriculture shall at no time interfere with or restrict the maintenance, use, or access to existing or future roads within the adjacent lands nor interfere with or restrict present use of or future construction of bridges across that portion of the Saint Joe designated as a 'recreational river' under this paragraph. Dredge or placer mining shall be prohibited within the banks or beds of the main stem of the Saint Joe and its tributary streams in their entirety above the confluence of the main stem with the North Fork of the river. Nothing in this Act shall be deemed to prohibit the removal of sand and gravel above the high water mark of the Saint Joe River and its tributaries within the river corridor by or under the authority of any public body or its agents for the purposes of construction or maintenance of roads. The Secretary shall take such action as is required under subsection (b) of this section within one year from the date of enactment of this paragraph. For the purposes of this river, there are authorized to be appropriated not more than $1,000,000 for the acquisition of lands or interest in lands.".

Subtitle B—Studies

DESIGNATION OF THE KERN RIVER (NORTH FORK) FOR STUDY

SEC. 721. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(59) KERN, CALIFORNIA.—The main stem of the North Fork from its source to Isabella Reservoir excluding its tributaries.".

DESIGNATION OF THE LOXAHATCHEE RIVER FOR STUDY

SEC. 722. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(60) LOXAHATCHEE, FLORIDA.—The entire river including its tributary, North Fork.".

DESIGNATION OF THE OGEECHEE RIVER FOR STUDY

SEC. 723. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(61) OGEECHEE, GEORGIA.—The entire river.".

DESIGNATION OF CERTAIN SEGMENT OF THE SALT RIVER FOR STUDY

SEC. 724. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(62) SALT, ARIZONA.—The main stem from a point on the north side of the river intersected by the Fort Apache Indian Reservation boundary (north of Buck Mountain) downstream to Arizona State Highway 288."

DESIGNATION OF THE VERDE RIVER FOR STUDY

SEC. 725. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(63) VERDE, ARIZONA.—The main stem from the Prescott National Forest boundary near Paulden to the vicinity of Table Mountain, approximately 14 miles above Horseshoe Reservoir, except for the segment not included in the national forest between Clarkdale and Camp Verde, North segment.".

DESIGNATION OF THE SAN FRANCISCO RIVER FOR STUDY

SEC. 726. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(64) SAN FRANCISCO, ARIZONA.—The main stem from confluence with the Gila upstream to the Arizona-New Mexico border, except for the segment between Clifton and the Apache National Forest.".

DESIGNATION OF FISH CREEK FOR STUDY

SEC. 727. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(65) FISH CREEK, NEW YORK.—The entire East Branch.".

DESIGNATION OF BLACK CREEK FOR STUDY

SEC. 728. Section (a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(66) BLACK CREEK, MISSISSIPPI.—The segment from Big Creek Landing in Forrest County downstream to Old Alexander Bridge Landing in Stone County.".

DESIGNATION OF THE SHEEPSCOTT RIVER FOR STUDY

SEC. 729. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(67) SHEEPSCOTT, MAINE.—The main stem from and including its headwaters to the village of Sheepscott including the West Branch.".

DESIGNATION OF THE CACAPON RIVER FOR STUDY

SEC. 730. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(68) CACAPON, WEST VIRGINIA.—The entire river.".

DESIGNATION OF THE ESCATAWPA RIVER FOR STUDY

SEC. 731. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(69) ESCATAWPA, ALABAMA AND MISSISSIPPI.—The segment upstream from a point approximately one mile downstream from the confluence of the Escatawpa River and Jackson Creek to a point where the Escatawpa River is joined by the Yellowhouse Branch in Washington County, Alabama, near the town of Deer Park, Alabama; and the segment of Brushy Creek upstream from its confluence with the Escatawpa to its confluence with Scarsborough Creek.".

DESIGNATION OF THE MYAKKA RIVER FOR STUDY

SEC. 732. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(70) MYAKKA, FLORIDA.—The entire river."

DESIGNATION OF SOLDIER CREEK FOR STUDY

SEC. 733. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following new paragraph at the end thereof:

"(71) SOLDIER CREEK, ALABAMA.—The segment beginning at the point where Soldier Creek intersects the south line of section 31, township 7 south, range 6 east, downstream to a point on the south line of section 6, township 8 south, range 6 east, which point is 1,322 feet west of the south line of section 5, township 8 south, range 6 east in the county of Baldwin, State of Alabama.".

DESIGNATION OF RED RIVER FOR STUDY

SEC. 734. Section 5(a) of the Wild and Scenic Rivers Act is amended by adding the following paragraph at the end thereof:

"(72) RED, KENTUCKY.—The segment from Highway numbered 746 (also known as Spradlin Bridge) in Wolf County, Kentucky, downstream to the point where the river descends below seven hundred feet above sea level (in its normal flow) which point is at the Menifee and Powell County line just downstream of the iron bridge where Kentucky Highway numbered 77 passes over the river."

AUTHORIZATION FOR STUDIES

SEC. 735. Paragraph (3) of section 5(b) of the Wild and Scenic Rivers Act is redesignated as paragraph (4) and is amended by striking out "$2,175,000" and substituting "$4,060,000". Such paragraph is further amended by adding the following at the end thereof: "There are authorized to be appropriated for the purpose of conducting the studies of the rivers named in subparagraphs (59) through (73) such sums as may be necessary.".

STUDY PERIOD

SEC. 736. Section 5(b) of the Wild and Scenic Rivers Act is amended by inserting

the following new paragraph after paragraph (2);

"(3) The studies of the rivers named in paragraphs (59) through (72) of subsection (a) shall be completed and reports submitted thereon not later than five full fiscal years after the date of the enactment of this paragraph. The study of rivers named in paragraphs (62) through (64) of subsection (a) shall be completed and the report thereon submitted by not later than April 1981.".

Subtitle C—Authorizations for Funding

ELEVEN POINT RIVER

SEC. 751. Section 16(a) of the Wild and Scenic Rivers Act is amended by striking out "Eleven Point, Missouri, $4,906,500" and substituting "Eleven Point, Missouri, $10,407,000".

ROGUE RIVER

SEC. 752. Section 16(a) of the Wild and Scenic Rivers Act is amended by striking out "Rogue, Oregon, $12,447,200" and substituting "Rogue, Oregon, $15,147,000".

SAINT CROIX RIVER

SEC. 753. (a) Section 16(a) of the Wild and Scenic Rivers Act is amended by striking out "Saint Croix, Minnesota and Wisconsin, $11,768,550" and substituting "Saint Croix, Minnesota and Wisconsin, $21,769,000".

SALMON RIVER

SEC. 754. Section 16(a) of the Wild and Scenic Rivers Act is amended by striking out "Salmon, Middle Fork, Idaho, $1,237,100" and substituting "Salmon, Middle Fork, Idaho, $1,837,000."

CHATTOOGA RIVER

SEC. 755. Section 3(a)(10) of the Wild and Scenic Rivers Act (relating to the Chattooga River in North Carolina, South Carolina, and Georgia) is amended by striking out $2,000,000" and inserting in lieu thereof "$5,200,000".

Subtitle D—Amendments to Public Law 90-542

TECHNICAL AMENDMENTS

SEC. 761. Section 2(a) of the Wild and Scenic Rivers Act is amended by striking out "without expense to the United States" and by adding the following at the end thereof: "Upon receipt of an application under clause (ii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (ii) shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands. For purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation Act of 1965 or any other provision of law shall not be treated as an expense to the United States. Nothing in this subsection shall be construed to provide for the transfer to, or administration by, a State or local authority of any federally owned lands which are within the boundaries of any river included within the system under clause (ii).".

FEDERAL LANDS; COOPERATIVE AGREEMENTS

SEC. 762. Section 12(a) of the Wild and Scenic Rivers Act is amended by striking out the first sentence thereof and substituting: "The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a), shall take such action respecting management policies, regulations, contracts, and plans affecting such lands, following the date of enactment of this sentence, as may be necessary to protect such rivers in accordance with the purposes of this Act. Such Secretary or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 2(a)(ii).".

MISCELLANEOUS TECHNICAL AMENDMENTS

SEC. 763. (a) Section 3(b) of the Wild and Scenic Rivers Act is amended by inserting after "one year from the date of this Act" the following: "(except where a different date is provided in subsection (a))".

(b) Section 6(g)(3) of such Act is amended by inserting after "January 1, 1967," the following "(except where a different date is specifically provided by law with respect to any particular river)".

(c) Section 16(b) of such Act is deleted in its entirety, and section 16(a) is renumbered as section 16.

LEASE OF FEDERAL LANDS

SEC. 764. The Wild and Scenic Rivers Act is amended by adding the following new section after section 14:

"SEC. 14A. (a) Where appropriate in the discretion of the Secretary, he may lease federally owned land (or any interest therein) which is within the boundaries of any component of the National Wild and Scenic Rivers System and which has been acquired by the Secretary under this Act. Such lease shall be subject to such restrictive covenants as may be necessary to carry out the purposes of this Act.

"(b) Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land immediately before its acquisition by the United States.".

TITLE VIII—RECOGNITION OF THE HONORABLE WILLIAM M. KETCHUM

SEC. 801. Within the War in the Pacific National Historical Park, Guam, and the American Memorial Park, Saipan, the Secretary, acting through the Director of the National Park Service, and in consultation with the Governor of each area, is authorized to provide in each of these parks some form of appropriate recognition of the outstanding contributions and untiring commitments of the late Congressman William M. Ketchum of California toward the needs of the people of the insular areas. Fully cognizant of sacrifices that sometimes must be made in order to preserve the basic principles of democracy, Congressman Ketchum personally experienced the devastations of war, as he served with distinction in the United States military during the Second World War in the Pacific Theater and during the Korean Conflict. Congressman Ketchum, an individual of strong principle and commitment, through his leadership and active participation in the United States Congress, made substantial and invaluable contributions to the political and economic growth, development, and well-being of American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands. In particular, he will be remembered for the key role he played in the passage of the historic Covenant to establish a Commonwealth of the Northern Mariana Islands in political union with the United States.

TITLE IX—JEAN LAFITTE NATIONAL HISTORICAL PARK

SEC. 901. In order to preserve for the education, inspiration, and benefit of present and future generations significant examples of natural and historical resources of the Mississippi Delta region and to provide for their interpretation in such manner as to portray the development of cultural diversity in the region, there is authorized to be established in the State of Louisiana the Jean Lafitte National Historical Park and Preserve (hereinafter referred to as the "park"). The park shall consist of (1) the area of approximately twenty thousand acres generally depicted on the map entitled "Barataria Marsh Unit-Jean Lafitte National Historical Park and Preserve" numbered 90,000B and dated April 1978, which shall be on file and available for public inspection in the office of the National Park Service, Department of the Interior; (2) the area known as Big Oak Island; (3) an area or areas within the French Quarter section of the city of New Orleans as may be designated by the Secretary of the Interior for an interpretive and administrative facility; (4) the Chalmette National Historical Park; and (5) such additional natural, cultural, and historical resources in the French Quarter and Garden District of New Orleans, forts in the delta region, plantations, and Acadian towns and villages in the Saint Martinville area and such other areas and sites as are subject to cooperative agreements in accordance with the provisions of this title.

SEC. 902. (a) Within the Barataria Marsh Unit the Secretary is authorized to acquire not to exceed eight thousand acres of lands, waters, and interests therein (hereinafter referred to as the "core area"), as depicted on the map referred to in the first section of this title, by donation, purchase with donated or appropriated funds, or exchange. The Secretary may also acquire by any of the foregoing methods such lands and interests therein, including leasehold interests, as he may designate in the French Quarter of New Orleans for development and operation as an interpretive and administrative facility. Lands, waters, and interests therein owned by the State of Louisiana or any political subdivision thereof may be acquired only by donation. In acquiring property pursuant to this title, the Secretary may not acquire rights to oil and gas without the consent of the owner, but the exercise of such rights shall be subject to such regulations as the Secretary may promulgate in furtherance of the purposes of this title.

(b) With respect to the lands, waters, and interests therein generally depicted as the "park protection zone" on the map referred to in the first section of this title the Secretary shall, no later than six months from the date of enactment of this Act, in consultation with the affected State and local units of government, develop a set of guidelines or criteria applicable to the use and development of properties within the park protection zone to be enacted and enforced by the State or local units of government.

(c) The purpose of any guideline developed pursuant to subsection (b) of this section shall be to preserve and protect the following value within the core area:

(1) fresh water drainage patterns from the park protection zone into the core area;

(2) vegetative cover;

(3) integrity of ecological and biological systems; and

(4) water and air quality.

(d) Where the State or local units of government deem it appropriate, they may cede to the Secretary, and the Secretary is authorized to accept, the power and authority to confect and enforce a program or set of rules pursuant to the guidelines established under subsection (b) of this section for the purpose of protecting the values described in subsection (c) of this section.

(e) The Secretary, upon the failure of the State or local units of government to enact rules pursuant to subsection (b) of this section or enforce such rules so as to protect the values enumerated in subsection (c) of this section, may acquire such lands, servitudes, or interests in lands within the park protection zone as he deems necessary to protect the values enumerated in subsection (c) of this section.

(f) The Secretary may revise the boundaries of the park protection zone, notwithstanding any other provision of law, to include or exclude properties, but only with the consent of Jefferson Parish.

SEC. 903. Within the Barataria Marsh Unit, the owner or owners of improved property used for noncommercial residential purposes on a year-round basis may, as a condition of the acquisition of such property by the Secretary, elect to retain a right of us and occupancy of such property for noncommercial residential purposes if, in the judgment of the Secretary, the continued use of such property for a limited period would not unduly interfere with the development or management of the park. Such right of use and occupancy may be either a period ending on the death of the owner or his spouse, whichever occurs last, or a term of not more than twenty-five years, at the election of the owner. Unless the property is donated, the Secretary shall pay to the owner the fair market value of the property less the fair market value of the right retained by the owner. Such right may be transferred or assigned and may be terminated by the Secretary, if he finds that the property is not used for noncommercial residential purposes, upon tender to the holder of the right an amount equal to the fair market value of the unexpired term. As used in this section, the term "improved property" means a single-family, year-round dwelling, the construction of which was begun before January 1, 1977, which serves as the owner's permanent place of abode at the time of its acquisition by the United States, together with not more than three acres of land on which the dwelling and appurtenant buildings are located which the Secretary finds is reasonably necessary for the owner's continued use and occupancy of the dwelling.

SEC. 904. In furtherance of the purposes of this title, and after consultation with the Commission created by section 7 of this title, the Secretary is authorized to enter into cooperative agreements with the owners of properties of natural, historical, or cultural significance, including but not limited to the resources described in paragraphs (1) through (5) of the first section of this title, pursuant to which the Secretary may mark, interpret, restore and/or provide technical assistance for the preservation and interpretation of such properties, and pusuant to which the Secretary may provide assistance including management services, program implementation, and incremental financial assistance in furtherance of the standards for administration of the park pursuant to section 906 of this title. Such agreements shall contain, but need not be limited to, provisions that the Secretary, through the National Park Service, shall have the right of access at all reasonable times to all public portions of the property covered by such agreement for the purpose of conducting visitors through such properties and interpreting them to the public, and that no changes or alterations shall be made in such properties except by mutual agreement between the Secretary and the other parties to such agreements. The agreements may contain specific provisions which outline in detail the extent of the participation by the Secretary in the restoration, preservation, interpretation, and maintenance of such properties.

SEC. 905. Within the Barataria Marsh Unit, the Secretary shall permit hunting, fishing, (including commercial fishing), and trapping in accordance with applicable Federal and State laws, except that within the core area and on those lands acquired by the Secretary pursuant to section 902(c) of this title, he may designate zones where and establish periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety. Except in emergencies, any regulations of the Secretary promulgated under this section shall be put into effect only after consultation with the appropriate fish and game agency of Louisiana.

SEC. 906. The Secretary shall establish the park by publication of a notice to that effect in the Federal Register at such time as he finds that, consistent with the general management plan referred to in section 908, sufficient lands and interests therein (i) have been acquired for interpretive and administrative facilities, (ii) are being protected in the core area, and (iii) have been made the subject of cooperative agreements pursuant to section 904. Pending such establishment and thereafter the Secretary shall administer the park in accordance with the provisions of this title, the Act of August 25, 1916 (39 Stat. 535), the Act of August 21, 1935 (49 Stat. 666), and any other statutory authorities available to him for the conservation and management of natural historical, and cultural resources.

SEC. 907. (a) There is established the Delta Region Preservation Commission (hereinafter referred to as the "Commission"), which shall consist of the following:

(1) two members appointed by the Governor of the State of Louisiana;

(2) two members appointed by the Secretary from recommendations submitted by the President of Jefferson Parish;

(3) two members appointed by the Secretary from recommendations submitted by the Jefferson Parish Council;

(4) two members appointed by the Secretary from recommendations submitted by the mayor of the city of New Orleans;

(5) one member appointed by the Secretary from recommendations submitted by the commercial fishing industry;

(6) three members appointed by the Secretary from recommendations submitted by local citizen conservation organizations in the delta region; and

(7) one member appointed by the Chairman of the National Endowment for the Arts.

(b) Members of the Commission shall serve without compensation as such. The Secretary is authorized to pay the expenses reasonably incurred by the non-Federal members of the Commission in carrying out their duties.

(c) The function of the Commission shall be to advise the Secretary in the selection of sites for inclusion in the park, in the development and implementation of a general management plan, and in the development and implementation of a comprehensive interpretive program of the natural, historic, and cultural resources of the region. The Commission shall inform interested members of the public, the State of Louisiana and its political subdivisions, and interested Federal agencies with respect to existing and proposed actions and programs having a material effect on the perpetuation of a high-quality natural and cultural environment in the delta region.

(d) The Commission shall act and advise by affirmative vote a majority of its members: Provided, That any recommendation of the Commission that affects the use or development, or lack thereof, of property located solely within a single parish or municipality shall have the concurrence of a majority of the members appointed from recommendations submitted by such parish or municipality.

(e) The Directors of the Heritage Conservation and Recreation Service and the National Park Service shall serve as ex officio members of the Commission and provide such staff support and technical services as may be necessary to carry out the functions of the Commission.

SEC. 908. (a) There is authorized to be appropriated, to carry out the provisions of this title, not to exceed $50,000,000 from the Land and Water Conservation Fund for acquisition of lands, waters, and interests therein and such sums as necessary for the development of essential facilities.

(b) Within three years from the date of enactment of this title, the Secretary, after consultation with the Commission, shall submit to the Committee on Interior and Insular Affairs of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate a general management plan for the park indicating—

(1) transportation alternatives for public access to the park;

(2) the number of visitors and types of public use within the park which can be accommodated in accordance with the protection of its resources;

(3) the location and estimated cost of facilities deemed necessary to accommodate such visitors and uses; and

(4) a statement setting forth the actions which have been and should be taken to assure appropriate protection, interpretation, and management of the areas known as Big Oak Island and Couba Island.

SEC. 909. The area described in the Act of October 9, 1962 (76 Stat. 755), as the "Chalmette National Historical Park" is hereby redesignated the Chalmette Unit of the Jean Lafitte National Historical Park. Any references to the Chalmette National Historical Park shall be deemed to be references to said Chalmette Unit.

SEC. 910. By no later than the end of the first full fiscal year following the date of enactment of this section, the Secretary shall submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive report with recommendations as to sites within the Mississippi River Delta Region which constitute nationally significant examples of natural resources within that region.

TITLE X—URBAN PARK AND RECREATION RECOVERY PROGRAM

SHORT TITLE

SEC. 1001. This title may be cited as the "Urban Park and Recreation Recovery Act of 1978".

FINDINGS

SEC. 1002. The Congress finds that—

(a) the quality of life in urban areas is closely related to the availability of fully functional park and recreation systems, including land, facilities, and service programs;

(b) residents of cities need close-to-home recreational opportunities that are adequate to specialized urban demands, with parks and facilities properly located, developed, and well maintained;

(c) the greatest recreational deficiencies with respect to land, facilities, and programs are found in many large cities, especially at the neighborhood level;

(d) inadequate financing of urban recreation programs due to fiscal difficulties in many large cities has led to the deterioration of facilities, nonavailability of recreation services, and an inability to adapt recreational programs to changing circumstances; and

(e) there is no existing Federal assistance program which fully addresses the needs for physical rehabilitation and revitalization of these park and recreation systems.

SEC. 1003. The purpose of this title is to authorize the Secretary to establish an urban park and recreation recovery program which would provide Federal grants to economically hard-pressed communities specifically for the rehabilitation of critically needed recreation areas, facilities, and development of improved recreation programs for a period of five years. This short-term program is intended to complement existing Federal programs such as the Land and Water Conservation Fund and Community Development Grant Programs by encouraging and stimulating local governments to revitalize their park and recreation systems and to make long-term commitments to continuing maintenance of these systems. Such assistance shall be subject to such terms and condi-

tions as the Secretary considers appropriate and in the public interest to carry out the purposes of this title:

DEFINITIONS

SEC. 1004. When used in this title the term—

(a) "recreational areas and facilities" means indoor or outdoor parks, buildings, sites, or other facilities which are dedicated to recreation purposes and administered by public or private nonprofit agencies to serve the recreation needs of community residents. Emphasis shall be on public facilities readily accessible to residential neighborhoods, including multiple-use community centers which have recreation as one of their primary purposes, but excluding major sports arenas, exhibition areas, and conference halls used primarily for commercial sports, spectator, or display activities;

(b) "rehabilitation grants" means matching capital grants to local governments for the purpose of rebuilding, remodeling, expanding, or developing existing outdoor, or indoor recreation areas and facilities, including improvements in park landscapes, buildings, and support facilities, but excluding routine maintenance and upkeep activities;

(c) "innovation grants" means matching grants to local governments to cover costs of personnel, facilities, equipment, supplies, or services designed to demonstrate innovative and cost effective ways to augment park and recreation opportunities at the neighborhood level and to address common problems related to facility operations and improved delivery of recreation service, and which shall exclude routine operation and maintenance activities;

(d) "recovery action program grants" means matching grants to local governments for development of local park and recreation recovery action programs to meet the requirements of this title. Such grants will be for resource and needs assessment, coordination, citizen involvement and planning, and program development activities to encourage public definition of goals, and develop priorities and strategies for overall recreation system recovery;

(c) "maintenance" means all commonly accepted practices necessary to keep recreation areas and facilities operating in a state of good repair and to protect them from deterioration resulting from normal wear and tear;

(f) "general purpose local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State, including the District of Columbia, and insular areas;

(g) "special purpose local government" means any local or regional special district, public-purpose corporation or other limited political subdivision of a State, including but not limited to park authorities; park, conservation, water or sanitary districts; and school districts;

(h) "private, nonprofit agency" means a community-based, nonprofit organization, corporation, or association organized for purposes of providing recreational, conservation, and educational services directly to urban residents on either a neighborhood or communitywide basis through voluntary donations, voluntary labor, or public or private grants;

(i) "State" means any State of the United States or any instrumentality of a State approved by the Governor; the Commonwealth of Puerto Rico, and insular areas; and

(j) insular areas" means Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

SEC. 1006. (a) Eligibility of general purpose local governments for assistance under this title shall be based upon need as determined by the Secretary. Within one hundred and twenty days after the effective date of this title, the Secretary shall publish in the Federal Register, a list of the local governments eligible to participate in this program, to be accompanied by a discussion of criteria used in determining eligibility. Such criteria shall be based upon factors which the Secretary determines are related to deteriorated recreational facilities or systems, and physical and economic distress.

(b) Notwithstanding the list of eligible local governments established in accordance with subsection (a), the Secretary is also authorized to establish eligibility, at his discretion and in accord with the findings and purpose of this title, to other general purpose local governments in standard metropolitan statistical areas as defined by the census: *Provided*, That grants to these discretionary applicants do not exceed in the aggregate 15 per centum of funds appropriated under this title for rehabilitation, innovation, and recovery action program grants.

(c) The Secretary shall also establish priority criteria for project selection and approval which consider such factors or—

(1) population;

(2) condition of existing recreation areas and facilities;

(3) demonstrated deficiencies in access to neighborhood recreation opportunities, particularly for minority, and low- and moderate-income residents;

(4) public participation in determining rehabilitation or development needs;

(5) the extent to which a project supports or complements target activities undertaken as part of a local government's overall community development and urban revitalization program;

(6) the extent to which a proposed project would provide employment opportunities, for minorities, youth and low- and moderate-income residents in the project neighborhood and/or would provide for participation of neighborhood, nonprofit or tenant organizations in the proposed rehabilitation activity or in subsequent maintenance, staffing, or supervision of recreation areas and facilities; and

(7) the amount of State and private support for a project as evidenced by commitments of non-Federal resources to project construction or operation.

GRANTS TO IMPLEMENT PROGRAM

SEC. 1006. (a) The Secretary is authorized to provide 70 per centum matching rehabilitation and innovative grants directly to eligible general purpose local governments upon his approval of applications therefor by the chief executives of such governments.

(1) At the discretion of such applicants, and if consistent with an approved application, rehabilitation and innovation grants may be transfered in whole or in part to independent special purpose local governments, private nonprofit agencies or county or regional park authorities: Provided, That assisted recreation areas and facilities owned or managed by them offer recreation opportunities to the general population within the jurisdictional boundaries of an eligible applicant.

(2) Payments may be made only for those rehabilitation or innovative projects which have been approved by the Secretary. Such payments may be made from time to time in keeping with the rate of progress toward the satisfactory completion of a project, except that the Secretary may, when appropriate, make advance payments on approved rehabilitation and innovative projects in an amount not to exceed 20 per centum of the total project cost.

(3) The Secretary may authorize modification of an approved project only when a grantee has adequately demonstrated that such modification is necessary because of circumstances not foreseeable at the time a project was proposed.

(b) Innovation grants should be closely tied to goals, priorities, and implementation strategies expressed in local park and recreation recovery action programs, with particular regard to the special considerations listed in section 1007(b)(2).

LOCAL COMMITMENTS TO SYSTEM RECOVERY AND MAINTENANCE

SEC. 1007. (a) As a requirement for project approval, local governments applying for assistance under this title shall submit to the Secretary evidence of their commitments to ongoing planning, rehabilitation, service, operation, and maintenance programs for their park and recreation systems. These commitments will be expressed in local park and recreation recovery action programs which maximize coordination of all community resources, including other federally supported urban development and recreation programs. During an initial interim period to be established by regulations under this title, this requirement may be satisfied by local government submissions of preliminary action programs which briefly define objectives, priorities, and implementation strategies for overall system recovery and maintenance and commit the applicant to a scheduled program development process. Following this interim period, all local applicants shall submit to the Secretary, as a condition of eligibility, a five-year action program for park and recreation recovery that satisfactorily demonstrate:

(1) systematic identification of recovery objectives, priorities, and implementation strategies;

(2) adequate planning for rehabilitation of specific recreation areas and facilities, including projections of the cost of proposed projects;

(3) capacity and commitment to assure that facilities provided or improved under this title shall thereafter continue to be adequately maintained, protected, staffed, and supervised;

(4) intention to maintain total local public outlays for park and recreation purposes at levels at least equal to those in the year preceding that in which grant assistance is sought beginning in fiscal year 1980 except in any case where a reduction in park and recreation outlays is proportionate to a reduction in overall spending by the applicant; and

(5) the relationship of the park and recreation recovery program to overall community development and urban revitalization efforts. Where appropriate, the Secretary may encourage local governments to meet action program requirements through a continuing planning process which includes periodic improvements and updates in action program submissions to eliminate identified gaps in program information and policy development.

(b) Action programs shall address, but are not limited to the following considerations:

(1) Rehabilitation of existing recreational sites and facilities, including general system-wide renovation; special rehabilitation requirements for recreational sites and facilities in areas of high population concentration and economic distress; and restoration of outstanding or unique structures, landscaping, or similar features in parks of historical or architectural significance.

(2) Local commitments to innovative and cost-effective programs and projects at the neighborhood level to augment recovery of park and recreation systems, including but not limited to recycling of abandoned schools and other public buildings for recreational purposes; multiple use of operating educational and other public buildings; purchase of recreation services on a contractual basis; use of mobile facilities and recreational, cultural, and educational programs or other innovative approaches to improving access for neighborhood residents; integration of recovery program with federally assisted projects to maximize recreational opportunities

through conversion of abandoned railroad and highway rights-of-way, waterfront, and other redevelopment efforts and such other federally assisted projects as may be appropriate; conversion of recreation use of street space, derelict land, and other public lands not now designated for neighborhood recreational use; and use of various forms of compensated and uncompensated land regulation, tax inducements, or other means to encourage the private sector to provide neighborhood park and recreation facilities and programs.

The Secretary shall establish and publish in the Federal Register requirements for preparation, submission, and updating of local park and recreation recovery action programs.

(c) RECOVERY ACTION PROGRAM GRANTS.—The Secretary is authorized to provide up to 50 per centum matching grants to eligible local applicants for program development and planning specifically to meet the objectives of this title.

STATE ACTION INCENTIVE

SEC. 1008. The Secretary is authorized to increase Federal implementation grants authorized in section 1006 by providing an additional match equal to the total match provided by a State of up to 15 per centum of total project costs. In no event may the Federal matching amount exceed 85 per centum of total project cost. The Secretary shall further encourage the States to assist him in assuring that local recovery plans and programs are adequately implemented by cooperating with the Department of the Interior in monitoring local park and recreation recovery plans and programs and in assuring consistency of such plans and programs, where appropriate, with State recreation policies as set forth in statewide comprehensive outdoor recreation plans.

MATCHING REQUIREMENTS

SEC. 1009. The non-Federal share of project costs assisted under this title may be derived from general or special purpose State or local revenues, State categorical grants, special appropriations by State legislatures, donations of land, buildings, or building materials and/or in-kind construction, technical, and planning services, but not from any Federal grant program other than general revenue sharing and the community development block grant program. Reasonable local costs of action program development to meet the requirements of section 1007(a) of this title may be used as part of the local match only when local applicants have not received program development grants under the authority of section 1007(c) of this title. The Secretary shall encourage States and private interests to contribute, to the maximum extent possible, to the non-Federal share of project costs. No grants made from appropriations pursuant to the Land and Water Conservation Fund Act (16 U.S.C. 4601) may be used in any way to meet the matching requirements of this subsection.

CONVERSION OF RECREATION PROPERTY

SEC. 1010. No property improved or developed with assistance under this title shall, without the approval of the Secretary, be converted to other than public recreation uses. The Secretary shall approve such conversions only if he finds it to be in accord with the current local park and recreation recovery action program and only upon such conditions as he deems necessary to assure the provision of adequate recreation properties and opportunities of reasonably equivalent location and usefulness.

COORDINATION OF PROGRAM

SEC. 1011. The Secretary shall (a) coordinate the urban park and recreation recovery program with the total urban recovery effort and cooperate to the fullest extent possible with other Federal departments and agencies and with State agencies which administer programs and policies affecting urban areas, including but not limited to, programs in housing, urban development, natural resources management, employment, transportation, community services, and voluntary action; (b) encourage maximum coordination of the program between appropriate State agencies and local applicants; and (c) require that local applicants include provisions for participation of community and neighborhood residents and for public-private coordination in recovery planning and project selection.

AUDIT REQUIREMENTS

SEC. 1012. Each recipient of assistance under this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of project undertakings in connection with which assistance under this title is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. The Secretary, and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1013. There are hereby authorized to be appropriated for the purposes of this title, not to exceed $150,000,000 for each of the fiscal years 1979 through 1982, and $125,000,000 in fiscal year 1983, such sums to remain available until expended. Not more than 3 per centum of the funds authorized in any fiscal year may be used for grants for the development of local park and recreation recovery action programs pursuant to sections 1007(a) and 1007(c), and not more than 10 per centum may be used for innovation grants pursuant to section 6 of this title. Grants made under this title for projects in any one State shall not exceed in the aggregate 15 per centum of the aggregate amounts of funds authorized to be apprpriated in any fiscal year. For the authorizations made in this subsection, any amounts authorized but not appropriated in any fiscal year shall remain available for appropriation in succeeding fiscal years.

Notwithstanding any other provision of this Act, or any other law, or regulation, there is further authorized to be appropriated $250,000 for each of the fiscal years 1979 through 1983, such sums to remain available until expended, to each of the insular areas. Such sums will not be subject to the matching provisions of this section, and may only be subject to such conditions, reports, plans, and agreements, if any, as determined by the Secretary.

LIMITATION OF USE OF FUNDS

SEC. 1014. No funds available under this title shall be used for the acquisition of land or interests in land.

SUNSET AND REPORTING PROVISIONS

SEC. 1015(a) Within ninety days of the expiration of this authority, the Secretary shall report to the Congress on the overall impact of the urban park and recreation recovery program.

(b) On December 31, 1979, and on the same date in each year that the recovery program is funded, the Secretary shall report to the Congress on the annual achievements of the innovation grant program, with emphasis on the nationwide implications of successful innovation projects.

TITLE XI—NEW RIVER GORGE NATIONAL RIVER

SEC. 1101. For the purpose of conserving and interpreting outstanding natural, scenic, and historic values and objects in and around the New River Gorge and preserving as a free-flowing stream an important segment of the New River in West Virginia for the benefit and enjoyment of present and future generations, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall establish and administer the New River Gorge National River. The Secretary shall administer, protect, and develop the national river in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented; except that any other statutory authority available to the Secretary for the preservation and management of natural resources may be utilized to the extent he finds such authority will further the purposes of this title. The boundaries of the national river shall be as generally depicted on the drawing entitled "Proposed New River Gorge National River" numbered NERI–20,002, dated July 1978, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

SEC. 1102. (a) Within the boundaries of the New River Gorge National River, the Secretary may acquire lands and waters or interests therein by donation, purchase with donated or appropriated funds, transfer, or exchange. Lands owned by the State of West Virginia or a political subdivision thereof may be acquired by donation only. The authority of the Secretary to condemn in fee, improved properties as defined in subsection (c) of this section shall not be invoked as long as the owner of such improved property holds and uses it in a manner compatible with the purposes of this title. The Secretary may acquire any such improved property without the consent of the owner whenever he finds that such property has undergone, since January 1, 1978, or is imminently about to undergo, changes in land use which are incompatible with the purposes of the national river. The Secretary may acquire less than fee interest in any improved or unimproved property within the boundaries of the national river.

(b) On non-federally owned lands within the national river boundaries, the Secretary is authorized to enter into cooperative agreements with organizations or individuals to mark or interpret properties of significance to the history of the Gorge area.

(c) For the purposes of this Act, the term "improved property" means (i) a detached single family dwelling, the construction of which was begun before January 1, 1977 (hereafter referred to as "dwelling"), together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures necessary to the dwelling which are situated on the land so designated, or (ii) property developed for agricultural uses, together with any structures accessory thereto which were so used on or before January 1, 1977, or (iii) commercial and small business properties which were so used on or before January 1, 1977, the purpose of which is determined by the Secretary to contribute to visitor use and enjoyment of the national river. In determining when and to what extent a property is to be considered an "improved property", the Secretary shall take into consideration the manner of use of such buildings and lands prior to January 1, 1977, and shall designate such lands as are reasonably necessary for the continued enjoyment of the property in the same manner and to the same extent as existed prior to such date.

(d) The owner of an improved property, as defined in this title, on the date of its acquisition, as a condition of such acquisition, may retain for himself, his heirs and assigns, a right of use and occupancy of the

improved property and noncommercial residential, or agricultural purposes, or the continuation of existing commercial operations, as the case may be, for a definite term of not more than twenty-five years, or, in lieu thereof, for a term ending at the death of the owner or the death of his spouse, whichever is later. The owner shall elect the term to be reserved. Unless the property is wholly or partially donated, the Secretary shall pay to the owner the fair market value of the property on the date of its acquisition, less the fair market value of the property on that date of the right retained by the owner. A right retained by the owner pursuant to this section shall be subject to termination by the Secretary upon his determination that it is being exercised in a manner inconsistent with the purposes of this title, and it shall terminate by operation of law upon notification by the Secretary to the holder of the right of such determination and tendering to him the amount equal to the fair market value of that portion which remains unexpired.

SEC. 1103. (a) Within two years from the date of enactment of this title, the Secretary shall submit, in writing, to the House Committee on Interior and Insular Affairs, the Senate Committee on Energy and Natural Resources and the Committees on Appropriations of the United States Congress, a detailed plan which shall indicate—

(i) the lands and areas which he deems essential to the protection and public enjoyment of the natural, scenic, and historic values and objects of this national river;

(ii) the lands which he has previously acquired by purchase, donation, exchange, or transfer for the purpose of this national river;

(iii) the annual acquisition program (including the level of funding) which he recommends for the ensuing four fiscal years; and

(iv) the feasibility and suitability of including within the boundaries of the national river, the section of the New River from Fayetteville to Gauley Bridge, and reasons therefor.

SEC. 1104. The Secretary shall on his own initiative, or at the request of any local government having jurisdiction over land located in or adjacent to the Gorge area, assist and consult with the appropriate officials and employees of such local government in establishing zoning laws or ordinances which will assist in achieving the purposes of this title. In providing assistance pursuant to this section, the Secretary shall endeavor to obtain provisions in such zoning laws or ordinances which—

(1) have the effect of restricting incompatible commercial and industrial use of all real property in or adjacent to the Gorge area;

(2) aid in preserving the character of the Gorge area by appropriate restrictions on the use of real property in the vicinity, including, but not limited to, restrictions upon building and construction of all types; signs and billboards; the burning of cover; cutting of timber; removal of topsoil, sand, or gravel; dumping, storage, or piling of refuse; or any other use which would detract from the esthetic character of the Gorge area; and

(3) have the effect of providing that the Secretary shall receive advance notice of any hearing for the purpose of granting a variance and any variance granted under, and of any exception made to, the application of such law or ordinance.

SEC. 1105. (a) Notwithstanding any other provision of law, no surface mining of any kind shall be permitted on federally owned lands within the boundary of the national river where the subsurface estate is not federally owned. Underground mining on such lands may be permitted by the Secretary only if—

(1) the mining operation will have no significant adverse impact on the public use and enjoyment of the national river;

(2) the mining operation will disturb the minimum amount of surface necessary to extract the mineral; and

(3) the surface is not significantly disturbed, unless there is no technologically feasible alternative.

(b) The harvesting of timber on federally owned lands within the national river boundary is prohibited, except insofar as it is necessary for the Secretary to remove trees for river access, historic sites, primitive campgrounds, scenic vistas, or as may be necessary from time to time for reasons of public health and safety.

(c) The owner of a mineral estate subject to this section who believes he has suffered a loss by operation of this section, may bring an action only in a United States district court to recover just compensation, which shall be awarded if the court finds that such loss constitutes a taking of property compensable under the Constitution.

SEC. 1106. The Secretary may permit hunting and fishing on lands and waters under his jurisdiction within the boundaries of the New River Gorge National River in accordance with applicable Federal and State laws, and he may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons of public safety, administration, fish or wildlife management, or public use and enjoyment. Except in emergencies, any rules and regulations of the Secretary pursuant to this section shall be put into effect only after consultation with the appropriate State agency responsible for hunting and fishing activities.

SEC. 1107. The Federal Energy Regulatory Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063) as amended (16 U.S.C. 791a et seq.), on or directly affecting the New River Gorge National River, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above the New River Gorge National River or on any stream tributary thereto which will not invade the area or diminish the scenic, recreation, and fish and wildlife values present in the area on the date of this section. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary, or request appropriations to begin construction on any such project whether heretofore or hereafter authorized, without advising the Secretary in writing of its intention to do so at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purpose of this section and would effect the national river and the values to be protected by it under this section.

SEC. 1108. Section 5(a) of the Act of October 2, 1968 (82 Stat. 910) is hereby amended to provide for study of three principal tributaries of the New River in West Virginia, by adding the following new paragraphs:

(73) BLUESTONE, WEST VIRGINIA.—From its headwaters to its confluence with the New.

"(74) GAULEY, WEST VIRGINIA.—Including the tributaries of the Meadow and the Cranberry, from the headwaters to its confluence with the New.

"(75) GREENBRIER, WEST VIRGINIA.—From its headwaters to its confluence with the New.".

SEC. 1109. Within three years from the date of enactment of this Title, the Secretary shall develop and transmit to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs, a general management plan for the protection and development of the national river consistent with the purposes of this Title, indicating—

(1) measures for the preservation of the area's resources;

(2) indications of types and general intensities of development (including visitor circulation and transportation patterns, systems and modes) associated with public enjoyment and use of the area, including general locations, timing of implementation, and anticipated costs;

(3) identification of and implementation commitments for visitor carrying capacities for all areas of the unit; and

(4) indications of potential modifications to the external boundaries of the unit, and the reasons therefor.

SEC. 1110. The Secretary of the Army shall cooperate with the Secretary of the Interior concerning the water requirements of the national river. The Secretary of the Army shall provide for release of water from the Bluestone Lake project consistent with that project's purposes and activities in sufficient quantity and in such manner to facilitate protection of biological resources and recreational use of the national river.

SEC. 1111. For the purposes of part C of the Clean Air Act, the State may redesignate the national river only as class I or class II.

SEC. 1112. There are hereby authorized to be appropriated such sums as may be necessary for the purposes of this title, but not to exceed $20,000,000 for the acquisition of lands and interests in lands, and not to exceed $500,000 for development.

TITLE XII—FORT SCOTT NATIONAL HISTORIC SITE

SEC. 1201. That, in order to commemorate the significant role played by Fort Scott in the opening of the West, as well as the Civil War and the strife in the State of Kansas that preceded it, the Secretary of the Interior may acquire by donation the land and interests in land, together with buildings and improvements thereon, known as Fort Scott, located in the city of Fort Scott, Bourbon County, Kansas: Provided, that the buildings so acquired shall not include the structure known as "Lunette Blair".

SEC. 2. When the site of Fort Scott has been acquired by the United States as provided in section 1 of this Act, the Secretary of the Interior shall establish such area as the Fort Scott National Historic Site, by publication of notice and boundary map thereof in the Federal Register.

SEC. 1202. The Secretary of the Interior shall administer, protect, develop, and maintain the Fort Scott National Historic Site subject to the provisions of the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535), as amended and supplemented, and the provisions of the Act entitled "An Act to provide for the preservation of historic America sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (49 Stat. 666).

SEC. 1203. Sections 3 and 4 of the Act entitled "An Act to provide for the commemoration of certain historical events in the State of Kansas, and for other purposes", approved August 31, 1965 (79 Stat. 588), as amended, are hereby repealed: Provided, That all obligations pursuant to contracts

for the development and construction of Fort Scott heretofore entered into by the city of Fort Scott to be paid with funds under the authority of section 3 of the aforesaid Act, shall be assumed by the Secretary: Provided further, That any remaining balance of funds appropriated pursuant to section 4 of the Act of August 31, 1965, as amended, shall be available for the purposes of carrying out this Act.

SEC. 1204. In addition to such sums as might be made available to the historic site by the preceding section, effective October 1, 1979, there are hereby authorized to be appropriated such sums as may be necessary for the development of the Fort Scott National Historic Site, as provided in this Act.

Mr. PHILLIP BURTON (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the House amendment to the Senate amendments.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California (Mr. PHILLIP BURTON)?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I reserve the right to object only to ask the gentleman from California a couple of questions.

I wonder if the gentleman could briefly explain the difference between this bill and the one we passed a week or so ago.

Mr. PHILLIP BURTON. This bill represents several additional deletions in the bill we sent over, including the reduction of some costs, and also it contemplates amendments that the Senate has indicated very clearly that they are going to insist upon accepting. None of those amendments represent much at all in the way of any cost. The bill we are sending over costs less than the one we sent over earlier.

Our parliamentary dilemma is this: We have reached essential agreement on 99 percent of all the issues.

Mr. LAGOMARSINO. Is it the gentleman's statement that no items have been added to the bill? The changes are deletions that have been made?

Mr. PHILLIP BURTON. No. I can give the gentleman an illustration to indicate what some of the problems are. There are the desires of some Members of the other body for instance to have some adjustment of the organ pipe cactus wilderness acreage. We have reduced in North Dakota by 70,000 acres an area about which I did not realize there was any disagreement, and we have deleted 5 lots in a 6,000-acre acquisition in the bay area.

If we could go to conference, which I would love to do, these matters would be handled, but the dilemma is we may not have enough time to go to conference.

I have resisted adding extraneous matters like the boundary waters or the Alaska bill, because everybody is trying to get into this act. I think this is the wisest step to take to protect the House and the position of the House.

Mr. LAGOMARSINO. Mr. Speaker, I thank the gentleman and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the first request of the gentleman from California (Mr. PHILLIP BURTON)?

There was no objection.

A motion to reconsider was laid on the table.

TO EXTEND AUTHORITY FOR FLEXIBLE REGULATION OF INTEREST RATES ON DEPOSITS AND ACCOUNTS IN DEPOSITORY INSTITUTIONS

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that the Committee on Banking, Finance and Urban Affairs be discharged from further consideration of the bill (H.R. 14279) to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, the gentleman from Rhode Island, Mr. ST GERMAIN, can assure us that this legislation is an extension of 1 year only for the authority for flexible regulation of interest rates on deposits and accounts in depository institutions? In other words it is a simple 1-year extension of regulation Q.

Mr. ST GERMAIN. Mr. Speaker, if the gentleman will yield, I can assure the gentleman that the amendment is merely changing the date of December 15, 1978 to December 15, 1979.

Mr. ROUSSELOT. And that whatever the Senate will send back, the House will attempt to keep the extension in this form?

Mr. ST GERMAIN. I assure the gentleman that is my intent, and I am going to ask unanimous consent later on to revise and extend my remarks in order to explain this more fully in the record.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

The Clerk read the bill as follows:

H.R. 14279

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Act of September 21, 1966 (Public Law 89-597) is amended by striking out "December 15, 1978" and inserting in lieu thereof "December 15, 1979".

Mr. ST GERMAIN. Mr. Speaker, the realities of the legislative clock make the need for this simple extension obvious. The same realities are bearing heavily on H.R. 13471 on which the House completed 13 titles last Thursday night.

Mr. Speaker, for 7 long years, those of us on the Subcommittee on Financial Institutions Supervision, Regulation and Insurance have been working to send a broad and meaningful financial regulatory bill to the President.

Those efforts finally reached the floor late last Thursday, and before the session was halted the House had approved the major provisions reported by the committee in the first 13 titles of the bill. Only 7 titles remained to be acted on and a majority of these contained noncontroversial provisions.

But, now the clock is running and it appears that the bill will not get its final hour despite the great progress of last Thursday night. However, should the Congress not adjourn sine die this weekend or should there be a postelection session, we will continue to push vigorously for completion of H.R. 13471.

Mr. Speaker, this bill was reported by the subcommittee on June 6 and by the full committee on July 18. The Rules Committee approved the rule on September 6.

We on the Banking Committee regret that the bill was not given an earlier date on the calendar and that insufficient time was allotted to bring it to a final vote. Many back-breaking hours of hard work in the subcommittee and full committee could be lost.

Mr. Speaker, these would be temporary setbacks, however. If we do not get final action this session, we will be back—early in the 96th Congress—with a full package of regulatory reforms and it will not be possible for the clock to once again defeat the committee's work.

As the votes on the floor last Thursday clearly indicated, there is broad sentiment in the House for strong reform—reform reaching all financial institutions and all financial regulatory agencies. Last Thursday's action by the House was a clear answer to those who suggested that the House would never accept anything but the most abbreviated and limited package.

In face of this consensus, it would be improper, and clearly not in the public interest, for some last-minute, gerrymandered, patched mish-mash to be put together in lieu of reform. I am not in favor of a quarter-loaf approach which leaves true reform on the cutting room floor in the rush for adjournment.

Such an approach would only serve to delude the American public into thinking there had been reform when, in reality, there was none worthy of the name. And more importantly, a quarter-loaf compromise slipped through in a last-minute parliamentary maneuver would serve as an excuse to ignore the whole issue of regulatory reform in the next Congress.

The opponents of this legislation would tell us, "We handled banking legislation in the last Congress, we can't bring it up again."

So, if we cannot have proper and complete consideration this session, the public interest is best served by leaving the entire range of issues on the burner, ready for quick action as soon as the Congress convenes in January. We would not need extensive new hearings and the legislation should move quickly.

A quarter-loaf, lowest common denominator approach would make a mockery of the years of investigations and studies by the committee, the agencies, the General Accounting Office, the thousands of pages of hearings, and the weeks of markup.

The failures of the U.S. National Bank in San Diego, the Franklin National in

New York, the Hamilton National in Tennessee, and many smaller banks in recent years and the highly publicized problems revealed in the Lance case, the Texas Rent-A-Bank schemes all point to the need for real reform, not more legislative pablum.

Many on the committee, and particularly on the subcommittee, have spent long hours on this legislation and I am reluctant to be a party to any quickie maneuver which would throw our key titles in an arbitrary manner—titles which have already been accepted by the full House. Some members of the subcommittee have worked particularly hard on individual titles and I reject any suggestion that they be ignored and their work forgotten just to have an empty title enacted.

My colleagues, we will be back—with a true reform package that meets the needs, that confronts the real problems that have been revealed in hearing after hearing.

Again, Mr. Speaker, my comments are based on the Congress continuing with its plan to adjourn this weekend. If this does not happen, however, we will urge that H.R. 13471 be given time in any extended session.

● Mr. PATTERSON of California. Mr. Speaker, I rise in support of the bill, H.R. 14279. This legislation is the product of 2 year's work by the Financial Institution Subcommittee and the full Banking, Finance and Urban Affairs Committee. It contains essential supervisory amendments, extension of current authorities, and important organizational amendments for the regulatory agencies.

In addition, the bill contains important new legislation that is essential for the protection of financial institution customers—the electronic funds transfer consumer protections and the privacy protections. The two titles are the product of lengthy study and work by the members of the Banking Committee and will, I believe, lay the groundwork for better consumer and financial institutions relations in the future.

The legislation pending is the result of essential compromise among members of your House Banking Committee and the Senate. While I would prefer that the House take action on the full 20 titles contained in the Financial Institutions Regulatory Act of 1978, I am aware of the time constraints under which we operate in these final days of the 95th Congress. This legislation, at least, wraps up important programs already approved by the full House last Thursday.

I am, however, disappointed that we were not able to include the alternative mortgage instruments title of FIRA in this bill before us today. This authority is desperately needed in a number of States and, will, I believe, be instrumental in the future in assuring housing for Americans. I am, at least, gratified at the acceptance of AMI's by the House Banking Committee and by the passage of the Cranston resolution urging approval of AMI's in the Senate Banking Committee. These actions should, I believe, enable the Chairman of the Federal Home Loan Bank Board to use currently existing authority to issue final regulations for AMI's in those States currently suffering a competitive disadvantage between the federally chartered and the State-chartered savings and loan associations. I would hope that the Bank Board will take such action.

Again, I want to make it clear that we have a good, if incomplete, bill before us. I also would like to commend my subcommittee chairman, Mr. ST GERMAIN, on his determination and skill in producing the legislation we are considering. It is indeed a pleasure to serve on the subcommittee so ably led by the gentleman.

I urge you to support this bill so that the important provisions can be signed into law and implemented as soon as is practical.●

The bill was ordered to be engrossed and read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the subject of the legislation just passed by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

EXTENSION OF CONSUMER PRODUCT SAFETY ACT

Mr. ECKHARDT. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12442) to amend the Consumer Product Safety Act to extend the authorization of appropriations contained in such Act, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. ECKHARDT).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 12442, with Mr. OBERSTAR in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Texas, (Mr. ECKHARDT) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. ECKHARDT.)

Mr. ECKHARDT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 12442 extends the authorization of the Consumer Product Safety Commission (CPSC) and provides for greater flexibility in several of the agency's rulemaking mechanisms. The 3-year reauthorization contained in this bill is supported by the administration and a similar bill has passed the Senate.

My Subcommittee on Consumer Protection and Finance and the Subcommittee on Oversight and Investigations have individually and jointly held lengthy and intensive oversight and legislative hearings evaluating the Commission's performance. Many of the witnesses who appeared before our subcommittees and the Senate Consumer Subcommittee were critical of some aspect of the Commission's performance. Notwithstanding that criticism, the overwhelming majority of those testifying supported reauthorization of the Commission. They recognized that, while the Commission has not operated effectively in some respects, to quote Mark Green and David Morelton—

> The Commission still has the potential to reduce * * *. suffering significantly, and indeed has done so in several instances to date. For example, child-resistant caps on packages containing poisonous or toxic substances, required by CPSC under the Poison Prevention Act, are estimated to have prevented 40,000 poisonings since 1973. An estimated 4,500 injuries and 175 deaths have been avoided since 1974 as a result of CPSC regulations requiring that cribs be designed to minimize the chance that infants will suffocate between the mattress and slats.

I might add to Green and Morelton's list of the Commission's accomplishments the over 7 million products which have been recalled, repaired or replaced under the Commission's recall program and the 23 other mandatory safety regulations for products ranging from bicycles to paints containing lead.

This is not to say that criticism of the agency's performance has been unfounded or should go unheeded. That this bill is before your committee today shows the opposite to be true. This legislation attempts to improve the Commission's performance by addressing those problems which are traceable to statutory defects in the Commission's enabling act.

The remaining problems identified by the committee are managerial in nature. In the committee report which accompanies H.R. 12442, the committee described with great specificity the Commission's shortcomings in the utilization of its regulatory tools. I have every confidence that, with the appointment of two new Commissioners, the reappointment of a third, and designation of a new Chairman, the new leadership at the Commission will provide better management of the agency and avoid the pitfalls cited in our committee report. I would also assure this committee that we will continue our intensive scrutiny of this agency to make certain that it achieves its life-saving potential.

Let me briefly summarize the bill for the Committee:

Section 1 of the bill authorizes appropriations of $55 million, $60 million, and $65 million for fiscal years 1979, 1980, and 1981 respectively. This level of authorization is required to enable the Commission to address several emerging, but unforseen risks of injury with respect to chronic hazards, aluminum wire, smoke detectors, home insulation, and other energy saving devices. In the chronic hazard area particularly, recent

public concern over Tris and other flame-retardant chemicals, asbestos, and benezine have highlighted the need for immediate action. Although the Commission will coordinate its activities with other Federal agencies through the Interagency Regulatory Liaison Group, CPSC will still be required to allocate substantial resources to address these problems.

Section 2 of H.R. 12442 reactivates the accountability provision in the Consumer Product Safety Act. Until this provision expired on January 1 of this year, any person injured by a misrepresentation, deceit or gross negligence on the part of CPSC could bring an action for damages. H.R. 12442 extends the life of the accountability provision through September 30, 1981. The provision appears to encourage the personnel of the Commission to act more responsibly which, in turn, provides incentive for industry to cooperate with the Commission. The Commission's limited experience with this provision warrants its reactivation on a trial basis.

Sections 3 and 4 address statutory flaws within the Commission's safety standard development authority. Presently, under a mechanism called the offeror process, the Commission must solicit some third party called an offeror to coordinate a safety standard development effort. The offeror's work product is then turned over to the Commission for review and often substantial revision. The intent of this experimental procedure was to insure effective public participation in government rulemaking. However, the experience under the offeror process has been extensive delays in standard development, poor quality standards and little meaningful public participation. The General Accounting Office recently reported that it has taken two and a half times longer to develop standards under the offeror process than Congress orginally intended. Of the three standards which have been developed under the offeror process, two were overturned in part by the courts last spring.

Section 3 and 4 address these problems by giving the Commission the option of acting as its own offeror. In other words, the Commission, instead of an offeror, would coordinate the safety standard development effort. The committee projects that this will result not only in cost savings and expedited standard development, but should also produce higher quality standards because the Commission will be working directly with interested business and consumer groups in the development of the standard.

These two sections also eliminate the 150-day deadline for an offeror to develop a standard and the 60-day deadline for the Commission to review the recommended standard submitted by an offeror. I am not aware of any other regulatory statute that imposes such time strictures. It makes little sense to require the development of a complex lawn mower standard within the same period of time as that allotted for a comparatively simple swimming pool slide standard. H.R. 12442 provides that an offeror or the Commission, depending upon which is coordinating the development effort, must specify at the outset the development period. If the CPSC does not publish the proposed standard within 45 days of that period, then it must either terminate the proceeding or publish a notice in the Federal Register stating the reasons why it did not meet the deadline and when the proposed standard will be published.

Section 6 streamlines the Commission's procedures for adopting existing voluntary standards which address unreasonable risks of injury. Under its present authority, the Commission must publish a notice soliciting any person to submit an existing standard or to offer to develop a new standard—even if the Commission has already identified an existing standard which adequately addresses the risk. This needlessly delays the Commission in carrying out its mandate to protect the American public against unreasonable risks. The agency has been further handicapped in its efforts to utilize existing standards because its authority to adopt selected provisions of an existing standard, several existing standards, or a combination of provisions from several existing standards is unclear. To avoid such unnecessary delays and clarify the agency's authority, section of 6 this bill would permit the Commission to publish as a proposed rule any existing standard, standards, or combination of provisions from several standards which adequately address an unreasonable risk.

Finally, section 5, 7, and 8 of this bill modify the Commission's authority over exports under the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act, respectively. These provisions amend those acts to authorize the Commission to ban the exportation of any product, substance, or fabric which presents an unreasonable risk of injury to persons residing within the United States.

In addition, the provisions amend those acts to require that any person exporting a product, substance or fabric which is not in compliance with a proposed or final consumer product safety standard must give the Commission 30 days advance notice of such exportation. Upon receipt of such notification, the Commission must promptly notify the involved foreign government of the shipment and publish that information in the Federal Register.

Mr. Chairman, I urge the adoption of this legislation to insure that the new CPSC Commissioners have the necessary funding and adequate statutory tools to make this agency effective.

Mr. COLLINS of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio (Mr. WHALEN).

Mr. WHALEN. Mr. Chairman, during our consideration of H.R. 12442 there has discussion of what the Consumer Product Safety Commission has done. I would like to take a few minutes to talk about something the Commission has not done.

The CPSC has not yet established any safety standards, either voluntary or mandatory, for children's playground equipment. This is despite the fact that injuries related to playground equipment consistantly appear as the fifth most common cause of hospitalization for product related injury. Also, this failure to act is in contrast to repeated requests for regulation, requests that were made by manufacturers and their trade associations and by private citizen consumers.

Obviously, the Government regulations cannot prevent a child from bumping into a pole or falling off a piece of equipment. But much can be done and should be done to assure that there are not design defects or hidden hazards in play equipment that one presumes to be safe. Every year thousands of children are needlessly injured by improperly designed playground pieces that have inherent hazards like sharp edges, unguarded moving parts, protruding nuts and bolts, and so on.

Earlier this year Congressman NEWTON STEERS and I introduced H.R. 11614, the Public Playground Equipment Safety Act. Since then, a number of our colleagues have joined us as cosponsors. Our legislation would do four things.

First, it would require that CPSC issue voluntary safety guidelines for equipment installed on public playgrounds. This would have to be accomplished within 1 year after the date of enactment.

Second, the bill would require that any playground receiving financial assistance from the Federal Government would have to assure that all new equipment purchased meets the new standards. This provision would go into effect 2 years after the date of enactment.

Third, H.R. 11614 would require that within 6 years after enactment of the law all playground equipment located on federally owned or operated facilities must meet the standards. This is the only retrofit requirement in the bill.

Fourth, the legislation would also require CPSC to do a 1-year study of playground surfacing materials and their relationship to injuries.

Mr. Chairman, this is legislation that should not have been necessary. Practically everything proposed in the bill already is well within the Commission's existing authority. Yet years have gone by without any definitive action by the CPSC.

In discussing our concern with members of the Commerce Committee's Subcommittee on Consumer Affairs, which has oversight responsibilities for the Consumer Product Safety Commission, we found that MATT RINALDO in particular shares our concern that public playground equipment should be free of hidden hazards for children. As we consider H.R. 12442 today, I wish to call special attention to the additional views that MATT entered in the committee report.

He notes that a meeting was held between representatives of the CPSC and staff members from his office and mine. The Commission's staff brought assurances that they are now working on the problem of playground equipment safety and that two studies have been initiated to get more information about product hazards and surfacing materials. We were told that the Commission should

be in a position to take action early next year.

In light of the assurances made to us at that staff meeting, we decided to not press for action on the public Playground Equipment Safety Act at this time. Instead, we will give the Commission a fair amount of time to act on its own.

However, I do wish to emphasize that we are merely adopting a wait-and-see attitude at this time. The closing lines of Mr. RINALDO's statement bear repeating. He said:

Although I support this legislation to authorize funds for CPSC for 3 years, my support should not be interpreted as a lessening of my concern for playground safety standards. If there is no substantial program in this area this year, early next session I will press for subcommittee hearings to determine not only the cause of the seeming paralysis at CPSC on playground safety, but also to assure implementation of proper safeguarding.

This accurately reflects my own views, too. And I am sure that Mr. STEERS and our cosponsors are willing to give the Commission a fair chance to deliver on their promise of action on the playground safety issue. By my comments today, I seek to remind the CPSC that we are following their actions with continuing interest.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. WHALEN. I yield to the distinguished gentleman from Texas.

Mr. ECKHARDT. I thank the gentleman for yielding.

The gentleman brings up an extremely important point. The Consumer Product Safety Commission had approximately 4 years ago published a statement inviting offerors to make a proposal with respect to playground equipment, recognizing the dangers that the gentleman has pointed out. An offeror commenced to develop a rule. However, it is my understanding that a very poor job was done on that recommended standard and that it was necessary to redo the entire standard. The Commission then again invited offers for a second attempt, and there is presently a contractor working on the matter. A recommended standard should be completed by December of this year. We hope that a proposed rule will be published by about April of next year.

I have assured the gentleman from New Jersey, Mr. RINALDO, who is most interested in this very important area and has been most helpful in the drafting of the bill we have before us, that if there is not a rule by that time, the subcommittee will go into that problem and see what can be done to expedite action in this field that the gentleman has so well pointed out as seriously requiring immediate action.

Mr. WHALEN. I am very pleased to have this information and am delighted that the subcommittee will exercise continuous vigorous oversight on this particular subject.

Mr. Chairman, I yield back the remainder of my time.

Mr. COLLINS of Texas. Mr. Chairman, I yield myself such time as I may consume. Mr. Chairman. I have often heard it said that it takes a few years for the Congress to catch up with the will of the people. As we consider this Consumer Products Safety Commission continuing authorization bill, it occurs to me that we have now before us an excellent opportunity either to prove or disprove that belief.

If we increase these CPSC bureaucrats' budget, will we thereby increase the quality of consumer products in America? Will it double the safety of the products our consumers purchase. I think most of you would agree with me that the answer to all three questions appears to be a resounding no.

The only thing connected with the CPSC that is likely to rise as a result of this bill is the costs, direct and indirect, of this Federal bureaucracy. The direct costs over the past 5 years of the CPSC have already exceeded $200 million in appropriated tax money. Yet the indirect costs to the very consumers the agency was intended to help are far more staggering. This bill will only increase these indirect costs.

Consider, for example, the estimate of the Stanford Research Institute that proposed regulations of the lawn mower industry would have cost consumers more than $470 million had they been in effect in 1976.

Or consider the results of CPSC regulations on the childrens' crib industry. Childcraft Co., makers of one of the highest quality cribs, reports that the cost of their least expensive crib increased 46 percent due to CPSC regulations designed to prevent infant deaths due to their smoking in bed.

Millions of our constituents will be buying new bicycles for their childrens' Christmas presents this year. Those bikes will all cost 10 percent more due to CPSC regulations.

These examples give one pause to reflect upon the role of this Federal agency. If only additional costs result for consumers, would it not be in their interests to withdraw authorization? Our constituents expect us to reduce unnecessary government programs and regulations.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I am glad to yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, is the gentleman aware, first that actually this bill reduces the 1979 authorization from the 1978 authorization, which was $68 million. This is $55 million. I had understood the gentleman to say there was an increase.

Mr. COLLINS of Texas. I would assume with the authorization and the appropriation following very closely together that the appropriation would tend to use all the margin they had. They would appropriate all they could.

What is the gentleman's understanding? Is the gentleman opposed to any increase this year?

Mr. ECKHARDT. The appropriation is only $40 million this year.

Mr. COLLINS of Texas. Is the gentleman opposed to any increase?

Mr. ECKHARDT. The authorization is $55 million, but that is down from the authorization of last time, which was $68 million.

Mr. COLLINS of Texas. Well, of course, as we know, Congress is working on a very, very tight time schedule. Possibly the apropriation will come in tomorrow or the following day. I would assume that they would just use whatever latitude we allowed them. That is why I oppose the authorization.

Mr. ECKHARDT. I do not believe that could happen because the appropriation has already been passed by both Houses.

Mr. COLLINS of Texas. We passed the appropriation? I was not aware of that. Was that before the authorization?

Mr. ECKHARDT. That is correct.

Mr. COLLINS of Texas. What was the appropriation?

Mr. ECKHARDT. $40 million for 1979.

Mr. COLLINS of Texas. What was the appropriation in 1978?

Mr. ECKHARDT. It was $40,651,000.

Mr. COLLINS of Texas. So we appropriated the same.

Mr. ECKHARDT. A little bit less this time.

Mr. COLLINS of Texas. Then my research is inaccurate and I appreciate the gentleman calling this to my attention.

Mr. ECKHARDT. So we are quite modest here.

Mr. Chairman, will the gentleman yield further on the question of cribs?

Mr. COLLINS of Texas. Yes. I am glad to yield to the gentleman.

Mr. ECKHARDT. Mr. Chairman, is the gentleman aware of the fact that an estimated 150 to 200 infants were killed each year by poorly constructed cribs before the enactment of the Commission's regulation? I think all it does is require that they put 16 slats instead of 13 slats in the cribs. If it saves that many lives of children, it seems to me just to put in 3 more slats is not to ask too much.

Mr. COLLINS of Texas. Before I came to the Congress I was in the life insurance business. One thing that impressed me was the tremendous mortality of children during the first 6 months. Many times those deaths are attributed to such things as cribs. During the first 6 months young children suffer their hardest experiences, due to physical defects or disease. I think many of these so-called deaths due to cribs were merely from physical problems that the baby had during the first 6 months. I cannot believe myself that cribs themselves caused 200 or more deaths.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield further?

Mr. COLLINS of Texas. I yield.

Mr. ECKHARDT. It seems to me such a simple thing to put a little closer slats in so every child's head will not go through the slats.

It seems so reasonable to require that sort of thing, if that can be a cause of death, and I think the gentleman must recognize, just looking at it as a practical person, that the problem is there.

If there are too few slats, the width or the distance between the slats may be enough to permit a child to get his head through and then not be able to get it back out. That seems so reasonable I am surprised that the gentleman raises that as a serious objection.

Mr. COLLINS of Texas. Mr. Chairman, I will tell the gentleman that my whole basic concept is oppressive with regulations and all phases of Government regulation. With the 225 million people we have in this country, we would do better to let the mothers and fathers in their own homes take care of their family, than for those of us in Congress or through our delegated agency, the Consumer Product Safety Commission, to try to take care of the safety of every home in America.

For instance, I was amazed to hear that 87 people that were killed last year from installing television sets on the roof of their home. So far we have not come up with a solution to TV installation, and I do not think we can solve every problem around the home.

As long as God made us not to live forever, something will happen to us one way or another.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield further?

Mr. COLLINS of Texas. Yes, I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I agree with the gentleman. I do not think we can take care of all these situations, and that is exactly the statement that the new chairman of the Commission herself has given. Susan King has said she intends to greatly restrict the number of areas in which the Commission moves but intends to operate within those areas precisely positively.

That is one reason we have not asked for as much money, but at the same time we intend to exercise the closest oversight possible over the Commission to see that it accomplishes the objectives that are presently necessary.

But now, to return to the subject of the cribs, let me state that I have had three children who have been raised from infancy, and I do not believe I have ever measured the width of any of their heads or the distance between the slats of their cribs. I just assumed they were built right. Maybe a parent ought not do that. Maybe we ought to build our cribs ourselves.

I thought about doing that myself once, but I was never able to find the time during the time the children were young. It would be great to go back to that wonderful old world when cribs were designed by the father, but that just does not happen today.

Mr. COLLINS of Texas. Mr. Chairman, if the gentleman would allow me to proceed, I would like to move on to another one of these consumer subjects, because, as the gentleman said, and as our research showed, they have been trying to increase regulations.

Frankly, my feeling is that we ought to "sunset" the whole bill, because it is $40 million too much. I want to go on to some of the subjects that do particularly disturb me.

I think the gentleman has taken the lead on this, and I refer to the subject of furniture and preparing furniture so that the upholstery will not burn. This is one matter that really disturbs me, because I do not smoke, my wife does not smoke, and none of our children smoke. Yet they tell me CPSC has a plan in the books where they are going to require furniture companies to make all their upholstery material in such a way that it is fireproof. The big danger and the reason they are making it fireproof is that some people smoke.

Half of America does not smoke. Why does this agency even need to do this? I would rather have it made optional. I would rather not have my furniture in any way fireproof; I would certainly rather save the 25 percent added cost or so that would be involved. Yet for a while furniture upholstery was one of their major projects.

I understand that my friend, the gentleman from Texas, my colleague from Houston, has raised this same question at some time. I understand we are going to have amendments offered on upholstery on the floor, and I wonder at this time if the gentleman could just parenthetically state that this would be a good field for the CPSC to stay entirely out of it.

Mr. ECKHARDT. Mr. Chairman, if the gentleman will yield further, the CPSC has held off on mandatory standards because the furniture industry appears to be making strong movements toward correcting the problem.

If I may say so, I agree with the gentleman that there must be an ignition point as well as a fuel before a fire occurs, and that ignition point with respect to furniture is, more frequently than any other case, a cigarette. I rather regret personally that the cigarette has been considered so sacrosanct that no one is willing to do anything, even taking the substance out of the cigarette that makes it continue to burn until it goes right to the filter.

I myself smoke cigars, and I frequently drop them on my clothes and I go to sleep; they have fallen on the edge of the chair, but they will not set anything afire because they go out.

I agree with the gentleman that something out to be done about this. I do think that the Consumer Product Safety Commission has been well-advised to give the furniture industry an opportunity to show what it can do in this area.

I understand that the gentleman from North Carolina (Mr. NEAL) will have an amendment to offer when the bill comes up for amendment which I am inclined to support. I think that whenever we can get good voluntary standards and we can get industry to address these problems, that is far better than moving in with mandatory standards. But if it were not for the Product Safety Commission and its existence, there would be little incentive for industry to move in these directions. We found that out. We found that out with the toy industry.

Mr. COLLINS of Texas. Let me just go back on this. In the first place, I do not care whether my furniture has any fireproofing on it. I actually think I prefer to have upholstery that has no fireproofing and save the 25 percent. And what I cannot understand is why in America people are not going to be given the right of choice, because even under this furniture voluntary system it is proposed that they make all of the furniture fireproof. I could care less. In fact, I would rather not have my furniture fireproof. And Americans should at least have an optional choice.

Let me go on to another point here. We talk so much in this country today about proposition 13, and I do not think this country has ever heard about proposition 1. And proposition 1 is that when this country has something we do not need, we should get rid of it. This whole Consumer Product Safety Commission is based on the theory that only through a Government agency, only through a Big Brother or through a Big Sister in Washington, whoever it may be who is giving the advice, can the consumers of America make the right decision. In other words too many people believe we have to sit around in Washington and decide for America, the poor little lady in Dubuque, Chicago, or Milwaukee, and we have to make their decisions for them. That is absolutely wrong. The American consumer has more commonsense individually than we do collectively in Congress, and certainly more than this Consumer Product Safety Commission.

I want to give the Members a detailed background on the biggest catastrophe, the poorest legislation, the worst bureaucratic nightmare that we have had in the past decade. These regulations were promulgated by the Consumer Product Safety Commission. I am talking about this sleepwear business. CPSC mandated, as all of the Members remember, that all children would have sleepwear that would not burn. I became interested in this several years ago because my grandchildren were sleeping in this chemically saturated nightwear, right up to the neck, right down here, they were scratching all the time, and I was worried about having all of these chemicals next to their skin. We had a doctor from Dallas who was also worried, because dozens and dozens of cases were being reported to him about this skin itch that was developing with children.

Let me refer to a lady who came before the Commission—and, heaven knows, she was an intelligent lady with so much good commonsense—and her name was Marsha Levy. She was president of an organization she founded called People for Choice in Children's Sleepwear. Now, is it not something that you have to ask to give mothers a choice? We did not give them a choice. She reported how many children were sleeping in either their daddy's or big brother's cotton T-shirts because that is the only way they could get a good, pure cotton fabric for the children to sleep in.

I remember we had a witness before the Commerce Committee who said he was going down to the Salvation Army because they had some old sleepwear down there and he was going to put his children in it as it was pure, without chemicals.

As we talked about different aspects of this ruling, the witness said this was an absolutely disgraceful situation. She said that housewives should be entitled to make their own decisions. She went on and on, and she called it a disgraceful

situation, as she emphasized, "Why don't we have the choice?" At that time she did not know why we put these children in these cancer pajamas. I still do not.

Let's review the agency itself, because I had talked to CPSC about sleepwear to find out what we could do. It was mentioned today how many children died from cribs.

I raised the question with the chairman of the CPSC, "How many were killed and died as a result of burning up in sleepwear?" And I got this answer, after the fact: "Last year, Chairman Simpson said, he had no idea of how many accidents were involved."

Here they were, putting all of the children in America in sleepwear that turns out to be a cancerous material, and they did not even know how many people had died from fire accidents. Lets review what we found out during the hearings.

It was proved that this cancerous material, which they had mandated on the children in America, which possibly 50 million children have slept in, was cancerous. This material had an effect and which might have a more serious later effect; we do not know how long it might be before we know the harmful damage it imposed. And here, CPSC had mandated that may possibly save the lives of 15 children at the most—15 children they had estimated might have died from these pajama burns. Yet, CPSC had put 50 million children in cloth saturated with cancerous chemicals.

It is also interesting to note that it increased the cost of sleepwear by 25 percent. That seems to be the figure they usually incur; a 25-percent increase in cost.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I will be glad to yield to my colleague from Texas.

Mr. ECKHARDT. As I recall. the gentleman was also against the Toxic Substances Control Act.

Mr. COLLINS of Texas. That is right.

Mr. ECKHARDT. Had it been in place when Tris was first manufactured, we probably would not have had the Tris problem in the first place.

Mr. COLLINS of Texas. How is that related?

Mr. ECKHARDT. Because it is a toxic substance, and the difficulty was that the toxic substance was manufactured by a manufacturer, not by the Product Safety Commission, who wanted to sell it and make some money.

Mr. COLLINS of Texas. If the gentleman will remember, the manufacturers asked Congress to run more tests, but we mandated—I say we, but leave me out—Congress mandated that sleepwear manufacturers had to act immediately, CPSC just could not wait to get into the sleepwear business and so immediate action was required.

Manufacturers wanted tests, to go into it slowly, so that it did not matter whether the Government had one agency or not. It was the strong desire to move quickly when no action was needed. This has been estimated to be a $250 million mistake, but the great tragedy of Tris is what it has done to all these children that slept for all these months in this sleepwear made of cancerous material.

We do not need this regulatory Government agency. Most parents I know would prefer to have their children in a natural sleepwear item. In fact, many of them had to sleep in their daddy's big T-shirts to get children out of this chemically-saturated pajama.

As we also consider lawnmowers, which is another field CPSC is getting into. I have had one friend who lost his finger in a lawnmower. He is a very intelligent fellow, a star pro athlete, an honor student. Do the Members know why he lost his finger? He lost it while the lawn mower motor was running and he leaned over and tried to adjust it. He said himself that is the stupidest thing he ever did. There is no way we can take care of individual stupidity as long as we let people walk up and down the streets. These consumer regulations are running up the cost of living in America.

In this week's Nation's Business I saw the lead headline which stated that there was too much Government regulation in this country. They estimated that it is costing the American family $500. They are too low. It is probably costing American families about 20 percent of their income when one figures all the cost of layer on layer on layer of regulation.

The reason I feel so strongly about this CPSC agency is because of the fact that this is regulation at its worst. Without knowing the facts, they are constantly requiring safeguard after safeguard after safeguard. America does not need these safeguards as long as the American consumers can make decisions for themselves. Americans will be better off when fewer rules are coming from Washington and Big Brother and Big Sister stop trying to decide everything for everybody.

Mr. ECKHARDT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to point out to the House that although the gentleman from Texas (Mr. COLLINS) is controlling the time, the ranking minority member on the subcommittee, Mr. BROYHILL, is not only an author, but is in strong support of the bill. I should like also to point out that the bill actually somewhat retrenches the level of authorization that existed earlier last year, last year's authorization. The Commission itself has recognized some limitations in the area in which it should move, and I think reasonably so.

But I would like to point out that in a highly mechanized society, if we can save a few lives by proper design, if we can get a few people saved from improvidently getting their fingers cut off, or even worse, getting their legs cut off at the ankle, we should do it.

More people are using more dangerous objects today. We do not want to tell them they cannot use them, but it seems to me we ought at least to have some view on whether or not manufacturers are simply making money on designs which are no cheaper than an alternative design but far more hazardous.

Actually the estimates of costs of safety devices have been greatly exaggerated. For example, the gentleman from Texas (Mr. COLLINS) was talking about the bicycle regulations. The Commission estimates that the bicycle regulations would increase the retail price of a bicycle by about $3.50. A bicycle has an average life of 7 years. I had one for 7 years; it was stolen after the 7th year, so I guess that is about correct. For this small extra cost, which means an outlay of about 50 cents a year for additional safety devices, for this small yearly outlay, youngsters are receiving a safer and possibly more durable bicycle. Other nonregulatory factors such as increased material and transportation costs have added about 6 percent to the retail prices, but it is not accurate to attribute these to Government regulations.

The Consumer Product Safety Commission estimated the manufacturing costs would increase about $1.75 per unit as a result of the regulations. If Schwinn's annual costs have increased about $728,000, a cost per unit, given an estimated annual volume of 1.5 million units, rose about 50 cents.

This is a well worked out, reasonable bill. I would urge its support.

I have no further request for time. I reserve the balance of my time.

Mr. COLLINS of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. DEVINE).

Mr. DEVINE. Mr. Chairman, I merely wanted to take the floor to confirm the remarks of the gentleman from Texas (Mr. ECKHARDT) as it relates to the position of the ranking minority member of this subcommittee, the gentleman from North Carolina (Mr. BROYHILL), who is unavoidably detained this afternoon for personal family reasons.

I would like to address an inquiry to the gentleman from Texas as it relates to the separate views by a number of the members on the committee relative to noncomplying products. The gentleman has advised those persons that have attached these separate views that he would address these problems in the next session. Is that a reasonably accurate statement?

Mr. ECKHARDT. There is an amendment prepared to strike those controversial provisions, and we would then address this issue in the next session of Congress.

Mr. DEVINE. I thank the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Chairman, I include the full report of separate views of our Commerce Committee to be made a part of our floor record:

SEPARATE VIEWS TO H.R. 12442—CONSUMER PRODUCT SAFETY COMMISSION AMENDMENTS BY MESSRS. DEVINE, BROYHILL, COLLINS OF TEXAS, LENT, STOCKMAN, PREYER, KRUEGER, AND ROGERS

Sections 6, 7, and 8 of H.R. 12442 amend the export provisions of the Consumer Product Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA), and the Flammable Fabrics Act (FFA) respectively. We believe that portions of these amendments are ill-advised and should not be included in any final legislation.

The amendments made by these sections would require an exporter to furnish notice to the Commission of his intention to export

a product which does not comply with a *proposed* or final standard, rule or ban order at least 30 days prior to export. The notice must include the date of shipment, the port of destination, the quantity of product shipped and *any other information* required by the Commission. Upon receipt of this notice the Commission is required to inform the government of the country of destination. Further, the Commission must publish in the Federal Register a statement that it has received such a notice as well as the contents of the notice.

We note that the CPSC is now embroiled in controversy over its ability to prohibit export of products originally manufactured for domestic use but which no longer comply with an applicable standard or ban. The Committee considered but rejected an amendment to clearly give the Commission authority to prohibit the export of such products. The amendments made by sections 6, 7, and 8 of the bill, consequently, do not change present law with respect to this question. However, they do make other undesirable changes in the export provisions of the three statutes and therefore we cannot support these sections of the bill in their present form.

We believe that the amendments made by these three sections are impractical for a number of reasons and raise serious constitutional questions.[1]

I. THE "PROPOSED RULE" ASPECTS OF THE AMENDMENTS ARE UNFAIR, IMPRACTICAL AND DISCRIMINATORY

As pointed out above, the amendments require reporting of export transactions merely because the goods do not comply with "proposed" standards rules or bans. The requirement to give notice where the product to be exported is subject to a proposed standard or ban is unfair and impractical for numerous reasons.

The American system is not "government by proposal," and for good reason. Proposed regulations are, by definition, preliminary views of an agency or its staff, untested by public scrutiny. If proposals were to give the effect of law, there would be no need for the notice and comment provisions of the Administrative Procedure Act [5 U.S.C. § 553 (b)]. In reality, there are frequently substantial changes made in and inordinate delays between a proposed standard or ban and its final version.

For example, the CPSC's interim rules or practice, proposed on July 23, 1974, have not been finalized. Regulations implementing the Federal preemption provision of the Flammable Fabrics Act, proposed July 29, 1976, have not been finalized. The same is true for amendments proposed to the carpet standard on March 7, 1973, and the children's sleepwear standards on October 5, 1976. In other instances, proposed rules are never finalized, but are withdrawn. For example, power cord requirements for electrically operated toys were proposed on January 23, 1974, and withdrawn on March 14, 1978. 39 F.R. 2611; 43 F.R. 10575.

From these few examples it should be obvious that requirements to report noncompliance with "proposed" standards or bans will discourage or preclude trade in many products which will never be banned or determined to be noncomplying with any standard.

Frequently, a proposed standard will contain provisions or limits which are dropped or significantly revised in the final standard. For example, the CPSC's final matchbook standard, 16 C.F.R. § 1202, does not contain a provision requiring that matchbooks be child-resistant, a key feature in the original proposed standard. The proposed standard for lawn mowers covered both walk-behind and riding mowers, and such potential hazards as stability, steering, electrical, fire and noise. The Commission has since decided to restrict the final standard to blade contact and throw objects hazards involving walk-behind mowers only. The proposed mandatory warnings for swimming pool slides were revised in the final standard.

These objections apply even where it is possible for a manufacturer to determine in a short time period whether a product proposed to be exported complies with a proposed or existing standard. However, an equally serious complication stems from the inability or the difficulty of determining whether one's products comply with a proposed standard or ban. When a ban or standard is finalized, it is typical to set forth the test method, accept/reject criteria, and the leadtime for compliance. See, e.g., Flammable Fabrics Act, Sec. 4(b), 15 U.S.C. 1193 (b); Hazardous Substances Act, Sec. 10(b) 15 U.S.C. § 1269, Consumer Product Safety Act, Sec. 9(d)(1), 15 U.S.C. § 2056. Such leadtimes give manufacturers time to develop products, secure test equipment, identify available outside test facilities, and take other actions to determine the extent to which their products comply with the standard or ban.

Another very practical difficulty with the amendments is determining their applicability. Do they apply to goods produced before the ban or standard is proposed or adopted? Do they apply to goods sold for export but not yet delivered? Do they apply to goods which remain legally saleable in the United States because of the leadtime or inventory exemption provisions in the standard or ban? These and many other serious questions remain to be answered.

Aside from the problems of obtaining notice of a proposed standard, rule or ban, and determining whether a product to be exported is subject to the provisions of the proposal, the amendment totally ignores commercial reality.

In many industries, production for export is already so complicated and risky that most firms forfeit the business. Frequently raw materials are different from those used for domestic production; finished goods may be in unusual sizes, shapes, etc. Manufacturing schedules must be set to insure delivery to port with adequate lead-time. Allowance must be made for complications in truck and/or rail transportation schedules.

In many instances, the difference between completing a transaction as originally planned and relying on alternatives is loss of all profit, or loss of the sale altogether. For example, most export transactions are financed by letters of credit. These documents have grown increasingly complex in recent years, especially due to the necessity of insuring that the transaction complies with U.S. laws relating to boycotts and blacklists. A letter of credit typically contains a specific date for performance, after which the banks are not obligated to make payment, even where the goods have been shipped!

It is not unusual for a proposed Federal standard to specify compliance with a test method which has not been previously employed by industry; or to specify limits or criteria different from the those generally in effect. The amendments, insofar as they mandate reporting of noncompliance with "proposed" standards or bans, or new standards (prior to their effective date), would abrogate the leadtime provisions in the statutes, and impose upon manufacturers an instantaneous obligation to know whether their products are complying or noncomplying! The sponsors give no hint as to how the manufacturer is to acquire such knowledge, except in those rare instances where mere visual inspection would provide the answer. It is unusual at best that a law would impose upon a manufacturer the obligation to know whether his products violate a *proposed* standard or ban.

Additionally, there is the problem of notice. While we adopted the legal fiction in this country that business people are presumed to have notice of laws and regulations published in the Federal Register, the amendments would take this fiction one step further. It imputes knowledge of "proposed rules or bans," as such it goes too far. An estimated 2.5 million manufacturers, importers, packagers, distributors, and retailers are subject to Commission jurisdiction. Who can seriously believe that the thousands of these businesspeople who engage in export transactions on a daily basis will have knowledge of the contents of proposed standards or bans, especially on the day they appear in the *Federal Register*?

At present, it is frequently necessary to have goods on the road weeks in advance of the ship's scheduled departure. Moving shipping papers through Customs, foreign consulates, financial institutions, etc., may require as much as two weeks or more following delivery of the goods to the port.

Unless these details are completed, and the goods are on board, financing is not released. Should the exporter miss these deadlines because of the requirements of the amendment, it is not just a question of putting the goods on another ship. There are limited sailing schedules. Financing arrangements for the shipment may preclude transshipments, further limiting a seller's options. The purchaser may no longer accept may require use of a conference rather than non-conference carrier, resulting in significantly increased shipping rates. The change may result in the obligation to pay port congestion fees, which at times run 70%–80% of the shipping cost.

To this already complex business the amendment would add the necessity to factor in a 30-day notice to the Government, and the possibility that the Government's activities may cause delays in completing the shipment. The effect will be to discourage manufacturers from exercising their statutory right to export by adding further uncertainty to these transactions, and almost certain financial losses.

Finally, the requirement to report intended exports of products merely because they do not comply with a proposed standard, ban or rule is discriminatory. While "noncomplying" goods made for U.S. consumption during the period before final promulgation of a standard or ban and before the effective date of a standard could be sold domestically with impunity, export transactions involving the identical goods would require notification to the CPSC, contact with foreign governments, negative publicity, and the other adverse impacts which are necessary and unfair. Under the circumstances, the amendments make no sense and should be rejected.

II. THE AMENDMENTS VIOLATE THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION

The requirement that notice be given 30 days prior to the export of a product which fails to comply with a *proposed* standard, rule, or ban can impose such substantial monetary losses to exporters as to be violative of the Constitutional principles of due

[1] We note that the sponsor of the original amendment in Committee used as an example of the need for the amendment the sale of TRIS-treated sleepwear abroad. It is important to recognize that at this time there is a significant question, in view of the Fourth Circuit District Court's decision overturning the CPSC ban, whether the export of TRIS-treated sleepwear would be affected by the amendment.

process. As we have touched on briefly above, there may well be numerous situations in which an exporter has contracted for container space on a ship scheduled to depart soon after a proposed standard appears in the Federal Register. In this situation, the amendments place him in an untenable situation—he can either violate the law or suffer immediate economic loss. An intentional violation of the law in such a situation is obviously not a viable option since such a course of action would subject the exporter to both civil and criminal sanctions. His only viable option would be to suffer the monetary loss. In this situation, we believe that the amendment may well result in a taking of property without opportunity for hearing, and, consequently, would violate the Fifth Amendment to the Constitution.

The guarantee that no one shall be "deprived of life, liberty or property without due process of law" reflects a commitment to fairness that is amendmental to our system of government. Whatever the full ramifications of the words may be, the requirements of due process in the present context are beyond dispute. As stated in *Mullane* v. *Central Hanover Trust Co.*, 339 U.S. 306, 313 (1950):

"Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by *notice and opportunity for hearing appropriate to the nature of the case.*"

To permit the Commission to impede the sale of exports prior to completion of the hearing process and promulgation of final standards, bans, or rules, will result in the deprivation of property prior to the opportunity for hearing.

In *Armstrong* v. *Manzo*, 380 U.S. 545 (1965), the Supreme Court reiterated that a fundamental requirement of due process is the opportunity to be heard. But that is not enough, for it is cold comfort to be heard after the damage has been done. The opportunity "must be granted at a meaningful time and in a meaningful manner." *Id.* at 552. It most certainly is not meaningful for an administrative agency to conduct rulemaking proceedings in which interested parties may attack the validity or substance of a proposed standard, ban, or rule, while the parties are, in the meantime, subjected to the adverse effects of the proposal as if it were law.

Interference with business relations and established commercial practices on the basis of "proposed" standards, bans, or rules such as would result from enactment of these amendments does violence to the whole notion of due process of law. It is made even more inappropriate when the firm has a statutory right to engage in the export transactions, as is the case here.

For the above reasons, we oppose these sections of the bill and ask for the support of our colleagues in striking them from the bill.

RICHARDSON PREYER.
BOB KRUEGER.
PAUL G. ROGERS.
SAMUEL L. DEVINE.
JAMES T. BROYHILL.
JAMES M. COLLINS.
NORMAN F. LENT.
DAVE STOCKMAN.

● Mr. WAXMAN. Mr. Chairman, I am delighted to rise in support of H.R. 12442, Authorization and Amendments to the Consumer Product Safety Act. I know the gentleman from Texas (Mr. ECKHARDT) has labored tirelessly on behalf of this bill and I appreciate his efforts. The success of this legislation is due in no small measure to his capable leadership as chairman of the Commerce Subcommittee on Consumer Protection and Finance.

In addition to extending the Consumer Product Safety Commission's authorization for 3 additional years, I am particularly pleased with the hazardous export notification requirements contained in sections 5, 7, and 8. These sections provide the Commission with clear authority and responsibility to notify foreign governments when they purchase U.S. exports which do not conform to U.S. product safety laws.

The bill requires that any person intending to export a noncomplying product must file a statement with the Commission 30 days prior to export. The statement must include the quantity of the product exported, country and port of destination, and date of shipment.

Upon receipt of an export filing, the Commission must swiftly notify the appropriate public health officer in the importing country. This notification must include the export filing as well as a detailed explanation of the basis for the product safety standard, regulation or rule involved. The intent of this provision is to provide the foreign government with sufficient information upon which to evaluate the hazard and make an informed judgment about whether to accept the export. To be useful, the importing country must receive this information in advance of the date of export.

In carrying out its obligations under this authority, the Commission must make every effort to provide notification directly to a nation's public health officials. Notification should be made to the officials most qualified to evaluate the risks involved. In transmitting export safety data, the Commission should utilize channels of communication independent of Department of State and Embassy personnel. Product safety is not the responsibility of the Department of State.

The need for this notification authority is clear. The United States has some of the most stringent and sophisticated product safety regulations and testing methods in the world. Many countries, particularly in the Third World, lack the resources to properly evaluate the safety of consumer products.

The United States should not arbitrarily impose its product safety standards on foreign nations. However, we do have a moral duty to share the benefits of our scientific and engineering advances. This is particularly true regarding the safety of U.S. products sold to foreign nations.

In the past, the CPSC has lacked the authority to monitor the export of products prohibited from domestic sale by our product safety laws. The Commission has been unable, therefore, to directly inform foreign governments that U.S. exports soon to be shipped to their country cannot be sold in the United States and could pose a risk of injury to their citizens.

The danger of not having this authority was recently illustrated following the CPSC's ban on the sale of children's sleepwear treated with the flame retardant Tris. Despite a prohibition on domestic sale, several million dollars worth of the cancer causing garments were exported to nations in Europe, Africa, and South America. The CPSC was unaware of these shipments until a series of national news stories called attention to the sales.

Tris exports have resulted in thousands of foreign children being unknowingly exposed to a known carcinogen. I strongly believe the United States had an obligation to inform these nations of the health risks posed in purchasing these banned products. Had they been made aware of the risks, it is unlikely the sales would have taken place. Because the CPSC lacked the authority to compel notification of intended Tris exports, these nations were summarily denied the opportunity to make an informed choice.

Mr. Chairman, I am confident these notification provisions will not be unduly burdensome on industry. In fact, I suspect this policy of disclosure will actually improve our long range export prospects by demonstrating a commitment to an international approach to product safety. Disclosing information on the safety of U.S. exports is a humanitarian gesture that will be rewarded by the increased goodwill of our trading partners.

This legislation will prevent Tris-like abuses of the U.S. export market in the future. The export of dangerous products without proper notification to the importing country is an intolerable practice. The passage of H.R. 12442 will reaffirm our Nation's commitment to human rights and the promotion of export sales premised on candor and fairness.

I urge support of the bill.●

The CHAIRMAN. Does the gentleman from Texas have further requests for time?

Mr. COLLINS of Texas. Mr. Chairman, I have no further requests for time and I yield back the balance of my time.

Mr. ECKHARDT. Mr. Chairman, I yield back the balance of my time.

Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. OBERSTAR, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 12442) to amend the Consumer Product Safety Act to extend the authorization of appropriations contained in such Act, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. ECKHARDT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of the bill just under consideration before the House.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

PROVIDING FOR FURTHER EXPENSES OF COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 1364) providing for the further expenses of the Committee on Interstate and Foreign Commerce, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1364

Resolved, That for the further expenses of investigations and studies to be conducted by the Committee on Interstate and Foreign Commerce, acting as a whole or by subcommittee, not to exceed $150,000, including expenditures for the employment of investigators, attorneys, and clerical, and other assistants, and for the procurement of services of individual consultants or organizations thereof pursuant to section 202(i) of the Legislative Reorganization Act of 1946, as amended (2. U.S.C. 72a(i)), shall be paid out of such contingent fund of the House on vouchers authorized by such committee, signed by the chairman of such committee, and approved by the Committee on House Administration.

SEC. 2. No part of the funds authorized by this resolution shall be available for expenditure in connection with the study or investigation of any subject which is being investigated for the same purpose by any other committee of the House; and the chairman of the Committee on Interstate and Foreign Commerce shall furnish the Committee on House Administration information with respect to any study or investigation intended to be financed from such funds.

SEC. 3. The authorization granted by the resolution shall expire immediately prior to noon on January 3, 1979.

SEC. 4. Funds authorized by this resolution shall be expended pursuant to regulations established by the Committee on House Administration in accordance with existing law.

Mr. DENT (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER. The gentleman from Pennsylvania (Mr. DENT) is recognized for 1 hour.

Mr. DENT. Mr. Speaker, House Resolution 1364, provides an additional $150,000 for the Committee on Interstate and Foreign Commerce. As you may know the budget for the committee was reduced from its original request of $4,005,612 to $3,200,000. The committee at that time expressed their concern over the reduction given the heavy workload of the committee with the energy bill. The committee notes in their supplemental request that they have been expending at a rate of $283,448 and given that figure was required to request the additional $150,000 to sustain the committee's activities for the remaining 4 months.

Mr. DEVINE. Mr. Chairman, will the gentleman yield?

Mr. DENT. I yield such time as he may consume to the gentleman from Ohio (Mr. DEVINE).

Mr. DEVINE. Mr. Speaker, I rise in support of the resolution for the additional funding for the Committee on Interstate and Foreign Commerce. I would point out, however, as the ranking minority member of the Committee on Interstate and Foreign Commerce, as well as being in the same capacity on the Subcommittee on Accounts of the full Committee on House Administration, that the chairman of the full Committee on Interstate and Foreign Commerce, the gentleman from West Virginia (Mr. STAGGERS) and I, have engaged in some correspondence relating to what appeared to be an inordinate number of trips by staff persons to address various trade associations, and I was assured by my esteemed colleague, the gentleman from West Virginia (Mr. STAGGERS) that in the next session of the Congress, if he continues as chairman, and we certainly fully expect him to do so, that we will, jointly, look into this situation very closely, and, additionally, the problem on whether or not such trips should be authorized by the chairman of the full committee, rather than by the subcommittee chairmen, in order to have a tighter grip on the situation. And, again, the gentleman from West Virginia (Mr. STAGGERS) has assured me by letter that these are his intentions.

I therefore support this resolution.

Mr. DENT. Mr. Speaker, I want to thank the gentleman from Ohio (Mr. DEVINE). He has been very helpful in all of the committee fundings that we have done in our committee. and has been very insistent in seeking that there be tighter strings on reporting.

Mr. DENT. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FUNDS FOR INVESTIGATIONS AND STUDIES TO BE CONDUCTED BY THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Mr. DENT. Mr. Speaker, by direction of the Committee on House Administration, I offer a privileged resolution (H. Res. 1363) to provide funds for the investigations and studies to be conducted by the Committee on Post Office and Civil Service pursuant to H. Res. 1041, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1363

Resolved, That for the further expenses of investigations and studies to be conducted pursuant to H. Res. 1041 by the Committee on Post Office and Civil Service, acting as a whole or by subcommittee, not to exceed $50,000, including expenditures for the employment of investigators, attorneys, and clerical, and other assistants, and for the procurement of services of individual consultants or organizations thereof pursuant to section 202(i) of the Legislative Reorganization Act of 1946, as amended (2 U.S.C. 72a (i)), shall be paid out of the contingent fund of the House on vouchers authorized by such committee, signed by the chairman of such committee, and approved by the Committee on House Administration. No part of the total amount provided may be used to procure the temporary or intermittent services of individual consultants or organizations thereof pursuant to section 202(i) of the Legislative Reorganization Act of 1946, as amended (2 U.S.C. 72a(i)).

SEC. 2. No part of the funds authorized by this resolution shall be available for expenditures in connection with the study or investigation of any subject which is being investigated for the same purpose by any other committee of the House; and the chairman of the Committee on Post Office and Civil Service shall furnish the Committee on House Administration information with respect to any study or investigation intended to be financed from such funds.

SEC. 3. The authorization granted by the resolution shall expire immediately prior to noon on January 3, 1979.

SEC. 4. Funds authorized by this resolution shall be expended pursuant to regulations established by the Committee on House Administration in accordance with existing law.

Mr. DENT (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER. The gentleman from Pennsylvania (Mr. DENT) is recognized for 1 hour.

Mr. DENT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1363, provides an additional $50,000 for the Committee on Post Office and Civil Service. When the committee testified before the accounts subcommittee earlier this year, they were not certain if they had allocated enough funds for the Commission on Mailing Standards, as this Commission has a heavy workload during an election year. At that time I gave my assurances to the distinguished chairman of the committee that I would consider a supplemental request if the committee fell short on funds, especially since their budget was reduced from $767,500 to $700,000.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING PRINTING OF PRAYERS OF CHAPLAIN OF THE SENATE DURING 95th CONGRESS AS A SENATE DOCUMENT

Mr. DENT. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 108) authorizing the printing of the prayers of the Chaplain of the Senate during the Ninety-fifth Congress as a Senate document and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 108

Resolved by the Senate (the House of Representatives concurring), That there be

printed with an appropriate illustration as a Senate document, the prayers by the Reverend Edward L. R. Elson, S.T.D., the Chaplain of the Senate, at the opening of the daily sessions of the Senate during the Ninety-fifth Congress, together with any other prayers offered by him during that period in his official capacity as Chaplain of the Senate; and that there be printed and bound two thousand additional copies of such document, of which one thousand and thirty shall be for the use of the Senate and nine hundred and seventy shall be for the use of the Joint Committee on Printing.

SEC. 2. The copy for the document authorized in section 1 shall be prepared under the direction of the Joint Committee on Printing.

Mr. DENT (during the reading). Mr. Speaker, I ask unanimous consent that the Senate concurrent resolution be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

PROVIDING COST-OF-LIVING ADJUSTMENTS IN ANNUNITY OF A RETIRED COMPTROLLER GENERAL

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3412) to provide cost-of-living adjustments in the annuity of a retired Comptroller General, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. ASHBROOK. Reserving the right to object, Mr. Speaker, I take this reservation for two purposes: first, to yield to my colleague so that he may give us a brief explanation of what is being done here; and second, to ask the standard question as to whether anything of a nongermane nature from the Senate is involved here.

Mr. BROOKS. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Texas for an answer to those two inquiries.

Mr. BROOKS. Mr. Speaker, I want to thank my distinguished friend, the gentleman from Ohio (Mr. ASHBROOK), and say that the bill is germane. There is no nongermaneness problem.

Mr. Speaker, S. 3412 was passed by the Senate and provides cost-of-living adjustments in the annuity of a retired Comptroller General and for other purposes. It is identical to H.R. 12196, passed by the House, except in two respects. First, S. 3412 provides that the annuity of a retired Comptroller General not exceed the salary of the incumbant Comptroller General. The Senate reasoned that because a Comptroller General retires at full pay the biannual cost-of-living increases could raise his annuity appreciably higher than the salary of his successor, whose salary increases only when statutory increases are authorized generally for high-level Federal executives.

Second, S. 3412 requires future Comptrollers General to contribute 8 percent of their salaries toward their retirement as do Members of Congress. Of the 8 percent contribution 4½ percent is to be deducted for survivor benefits as in the case of Federal judges.

Mr. Speaker, I think these are distinct improvements to the House passed bill and urge passage of the Senate bill.

Mr. ASHBROOK. Mr. Speaker, I thank my friend and colleague, the gentleman from Texas (Mr. BROOKS), for that explanation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comptroller General Annuity Adjustment Act of 1978."

SEC. 2. Section 319 of the Budget and Accounting Act, 1921, (31 U.S.C. 43b) is amended—

(1) by striking out "3" wherever it appears in subsections (b) and (c) and inserting "4½";

(2) by striking out in subsection (e)(2) beginning with "one-half" through the word "lesser" and inserting the following: "(A) $1,548, or (B) $4,644 divided by the number of children, whichever is lesser";

(3) by inserting "(A)" immediately after "equal to" in subsection (e)(3) and by striking out in such subsection beginning with "survived," through the word "year" and inserting "survived, divided by the number of children, or (B) $1,860, or (C) $5,580, divided by the number of children, whichever is the lesser"; and

(4) by striking out "the last five years of such service" in subsection (n) and inserting "the three years of service in which his annual salary was greatest", and by striking out "37½" in such subsection and inserting "40".

SEC. 3. The Budget and Accounting Act, 1921, is amended by adding after section 319 the following new section:

"SEC. 320. (a) Except as provided in subsection (b), the annuities authorized by sections 303 and 319 of this Act shall be increased as follows:

"(1) The Comptroller General shall—

"(A) on January 1 of each year, or within a reasonable time thereafter, determine the per centum change in the Consumer Price Index published for December of the preceding year over the Consumer Price Index published for June of the preceding year, and

"(B) on July 1 of each year, or within a reasonable time thereafter, determine the per centum change in the Consumer Price Index published for June of such year over the Consumer Price Index published for December of the preceding year.

"(2) If in any year the per centum change determined under either paragraph (1)(A) or (1)(B) indicates a rise in the Consumer Price Index, then—

"(A) effective March 1 of such year, in the case of an increase under paragraph (1)(A), each annuity payable under sections 303 and 319 of this Act commencing not later than such March 1 shall be increased by the per centum change computed under such paragraph, adjusted to the nearest one-tenth of 1 per centum, or

"(B) effective September 1 of such year, in the case of an increase under paragraph (1)(B), each annuity payable under sections 303 and 319 of this Act commencing not later than such September 1 shall be increased by the percentum change computed under such paragraph, adjusted to the nearest one-tenth of 1 per centum.

"(3) The per centum increase authorized by the Comptroller General under this section shall not exceed the per centum increase as authorized from time to time by the Civil Service Commission under section 8340(b) of title 5, United States Code.

"(b) The annuity authorized by section 303 of this Act shall not, by reason of the application of subsection (a), exceed the annual rate of compensation of the Comptroller General.".

SEC. 4. (a) The second paragraph of section 303 of the Budget and Accounting Act, 1921 (31 U.S.C. 43) is amended by inserting between the third and fourth sentences the following new sentence: "There shall be deducted from the salary of any person appointed to the Office of the Comptroller General after the date of enactment of this sentence as a contribution to the annuity authorized by this paragraph (1) a sum equal to 3½ per centum of his salary, in the case of a Comptroller General who has elected survivor benefits under section 319, or (2) a sum equal to 8 per centum of his salary, in the case of a Comptroller General who has not elected such survivor benefits.".

(b) The third paragraph of such section is amended by—

(1) inserting after "that Act," in the first sentence "and no deduction from his salary shall be made under the preceding paragraph,"; and

(2) adding at the end thereof the following new sentence: "Any person who is appointed to the Office of Comptroller General after the date of enactment of this sentence and who makes such an election under this paragraph shall deposit with the General Accounting Office for covering into the general fund of the Treasury as miscellaneous receipts as a contribution to the annuity authorized under the preceding paragraph (1) a sum equal to 3½ per centum, in the case of a Comptroller General who has elected survivor benefits under section 319, or (2) 8 per centum, in the case of a Comptroller General who has not elected such benefits, of the salary received by him as Comptroller General prior to the date current deductions begin from his salary, plus interest thereon at the rate of 3 per centum per annum compounded on December 31 of each year.".

(c) Such section is amended by adding at the end thereof the following new paragraph:

"Any Comptroller General who is separated from office prior to becoming eligible to receive an annuity under the second paragraph shall be entitled to a lump-sum refund of the total amount deducted from his salary in accordance with the provisions of such paragraph or deposited by him as a contribution to his annuity in accordance with the provisions of the preceding paragraph, plus interest thereon at the rate of 3 per centum per annum compounded on December 31 of each year. The lump-sum refund authorized by this paragraph shall be paid to the Comptroller General or to his survivors in the order of precedence of such survivors established in section 319(j) for survivor benefits.".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

The SPEAKER laid before the House the following communication from the chairman of the Committee on Public Works and Transportation, which was read and referred to the Committee on Appropriations:

OCTOBER 4, 1978.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Pursuant to the provisions of section 2 of the Watershed Protection and Flood Prevention Act, as amended, the Committee on Public Works and Transportation has approved the following work plans transmitted to you which were referred to this Committee:

State, project approved

Indiana: Anderson River; Exec. Comm. 3091; 94th Congress; October 4, 1978.
Alabama and Tennessee: Cypress Creek; Exec. Comm. 3670; 94th Congress; October 4, 1978.
Montana: Boulder River; Exec. Comm. 3670; 94th Congress; October 4, 1978.
Oklahoma: McKinney-Buzzard Creek; Exec. Comm. 3670; 94th Congress; October 4, 1978.
Virginia: Bush River; Exec. Comm. 3670; 94th Congress; October 4, 1978.
Virginia: Cedar Run; Exec. Comm. 3670; 94th Congress; October 4, 1978.
Virginia: Great Creek; Exec. Comm. 3670; 94th Congress; October 4, 1978.
Maine: Twenty-Five Mile Stream; Exec. Comm. 3758; 94th Congress; October 4, 1978.
Ohio: Short Creek; Exec. Comm. 3758; 94th Congress; October 4, 1978.
Washington: Goose Creek; Exec. Comm. 3758; 94th Congress; October 4, 1978.
Wisconsin: Pine River; Exec. Comm. 3758; 94th Congress; October 4, 1978.
Alabama: Dynne Creek; Exec. Comm. 4992; 95th Congress; October 4, 1978.
Alabama: Factory Creek; Exec. Comm. 4992; 95th Congress; October 4, 1978.
Arkansas: Lower Cadron Creek; Exec. Comm. 4992; 95th Congress; October 4, 1978.
Arkansas: North Fork Cadron Creek; Exec. Comm. 4992; 95th Congress; October 4, 1978.
Kansas: Middle Creek; Exec. Comm. 4992; 95th Congress; October 4, 1978.
Kansas: Wet Walnut Creek No. 2; Exec. Comm. 4992; 95th Congress; October 4, 1978.
Kansas: Wet Walnut Creek No. 3; Exec. Comm. 4992; 95th Congress; October 4, 1978.
Kansas: Wet Walnut Creek No. 5; Exec. Comm. 4992; 95th Congress; October 4, 1978.
Oklahoma: Kickapoo Nations; Exec. Comm. 4992; 95th Congress; October 4, 1978.
Oklahoma: Robinson Creek; Exec. Comm. 4992; 95th Congress; October 4, 1978.

Sincerely,

HAROLD T. (BIZZ) JOHNSON,
Chairman.

HELICOPTER PILOT TRAINING CONSOLIDATION

(Mr. SIKES asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

● Mr. SIKES. Mr. Speaker, I call attention to a detailed statement which I shall make under Extensions of Remarks on the subject of undergraduate helicopter pilot training consolidation. This long-standing controversy represents a conflict about sound procedures for helicopter pilot training. The Department of Defense wishes to consolidate all undergraduate helicopter pilot training under the guise of savings. The claims for savings are sharply disputed by opponents, including the Navy, who point to the inadequacy of Army training to meet Navy flying needs. The matter must be resolved when the conference report on the Defense appropriations bill comes to the floor on Thursday. Further delays in this matter could indefinitely delay the passage of the Defense appropriations bill.

I call attention to a statement from Secretary of Defense Harold Brown that the Department of Defense is without money to pay its personnel, both civilian and military, and that, obviously, passage of this measure without further delay is essential.

THE SECRETARY OF DEFENSE,
Washington, D.C., October 6, 1978.

Hon. GEORGE H. MAHON,
Chairman, Committee on Appropriations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Knowing that you share the deep sense of responsibility that I feel for the men and women of our armed forces, I want to express my concern about the current situation with respect to funding of the Department of Defense. I think it important to let you know how things stand now, in order that you may bring the facts to the attention of your colleagues and urge their speedy action.

Since the end of the previous fiscal year on September 30, as you know, there has been neither an appropriation act for the Department of Defense nor a joint resolution to authorize continuing expenditures of funds on an interim basis. No later than October 13 payrolls for approximately 466,000 DoD civilian employees will come due, and no later than October 15 is pay day for the first half of October for 1.5 million of the men and women in the Army, Navy, Air Force and Marine Corps. Normally there is required a lead time of several days to assure that checks are in the hands of our personnel, or are deposited in their bank accounts, on or before the due date. In contemplation of the Congress final action on the appropriation bill, I have directed that every action be taken to prepare to make the funds available with the shortest possible delay as soon as that may be done. I am concerned, however, that unless the Congress acts very early in the week of October 9 some delays in payment will be unavoidable. These, of course, will work a hardship on persons who do not have savings to tide them over a few days, and on their families. That is an eventuality I am determined to avoid—as I know you are—if it is at all possible to do so.

For this reason I hope you will express to your colleagues the great concern we share, and that you will urge them to do everything possible to bring about final action on the Defense Appropriation Bill at the earliest possible date next week. I know that you care deeply for the well-being of our personnel, a cause which you have always served with great ability and devotion. It is with that shared goal in mind that I offer any help I can provide to resolve this situation promptly.

Sincerely,

HAROLD BROWN.●

TRIBUTE TO CONGRESSMAN PAUL G. ROGERS

The SPEAKER pro tempore (Mr. BROOKS). Under previous order of the House, the gentleman from Florida (Mr. BENNETT) is recognized for 30 minutes.

Mr. BENNETT. Mr. Speaker, I rise together with other Members of Congress to pay tribute to Congressman PAUL G. ROGERS who is concluding his congressional service with the end of this session of Congress; and who has had a most distinguished career here in this body. Born in Ocilla, Ga., in 1921, son of the late Dwight L. Rogers, first Congressman of the Sixth Congressional District of Florida, he moved to Florida at a very early age, attended public schools and the University of Florida. There he was president of the university's principal honor society, Florida Blue Key, and national debate champion of Tau Kappa Alpha Debate Fraternity. There also he received a bachelor of arts degree and the degree of juris doctor from the University of Florida Law School.

He went on to practice law in West Palm Beach where he was selected "Outstanding "Man-of-the-Year" by the West Palm Beach Junior Chamber of Commerce and received the distinguished service award from the Florida Junior Chamber of Commerce. He is married to the former Rebecca Bell of Andalusia, Ala., and they have one daughter, Rebecca Laing.

Congressman ROGERS had a distinguished military career in World War II, serving in the field artillery of the U.S. Army, being a battalion commander in the European Theater and earning two battle stars and the Bronze Star Medal. He was separated with the rank of major.

Congressman ROGERS is one of the real leaders of this Congress and has sponsored and secured enactment of some of the most important legislation that Congress has enacted during his tenure, beginning January 11, 1955.

He has been particularly a great leader in the field of the improvement of the health of our country and of mankind and leaves behind him a legislative heritage in this field which is probably unequaled by any other Member of Congress in its history. His achievements have been acknowledged by the University of Florida, his alma mater which gave him an honorary degree and other institutions of higher learning which have also conferred upon him honorary degrees, notably New York Medical College, George Washington University, University of Miami, University of Maryland, Florida Atlantic University, Nova University, and Albany Medical College.

He is a steward of the United Methodist Church, member of the Kiwanis Club and has been active in all sorts of civic activity both in his community and on a nationwide basis.

Truly his career has been most distinguished. More important to all of us here in the House is the knowledge we have of his dedicated service which is always in the friendliest and most gentlemanly manner. We will truly miss this distinguished gentleman from the Halls of Congress and we all hope he will often return to visit with us.

● Mr. MANN. Mr. Speaker, it is with great pleasure that I join in this tribute to PAUL ROGERS, a man who, during his

24 years in Congress, has improved the lives of millions of Americans.

As chairman of the House Subcommittee on Health and Environment, and as a member of the Merchant Marine and Fisheries Committee, PAUL ROGERS has played a major role in the enactment of virtually every major health, conservaton and environment bill that has become law during the past couple of decades.

His legislative accomplishments are legion and include enactments such as the National Cancer Act, the National Health Planning Act, the Emergency Medical Services Act, and the Health Maintenance Organization Act—all of which are the products of his legislative genius and bear his name. In addition, he has been instrumental in the enactment of measures such as the Clean Air Act of 1970, the Sea Grant College Act, the National Environmental Policy Act, and the Endangered Species Act, as well as laws designed to control noise pollution and regulate solid waste disposal.

As the litany of his accomplishments indicates, PAUL ROGERS has proved himself to be a master of the legislative process.

His retirement from the Congress, although well earned, will leave a void that will be hard to fill.●

● Mr. YOUNG of Florida. Mr. Speaker, since first coming to Congress in 1971, I have had the distinct honor and pleasure of serving as a member of the Florida congressional delegation with Congressman PAUL ROGERS. I was shocked to hear earlier this year that he would not be seeking reelection after 23 years in the House because there is still much to be done that he can do better than anyone in the House.

PAUL's expertise in the field of health legislation is well known on the Hill and throughout the medical field. He has been instrumental in the passage of such notable health bills as the National Cancer Act, the National Health Planning and Resources Development Act, the Emergency Medical Services Act and the Health Maintenance Organization Act. PAUL authored the House version of the Clean Air Act of 1970 and amendments to it in 1974 and 1976. He has also produced laws dealing with limiting noise pollution and solid waste. PAUL has been rightly called "Mr. Health" by his colleagues and it is a title he has earned by hard work and he is well deserving of it through his efforts to produce legislative answers to the Nation's health problems.

The Florida delegation has been honored to have a member who possess the personal characteristics that PAUL ROGERS has. He has not only represented the citizens of the 11th District well, but he has become a national Congressman by his work on health matters that affect us all. Every American has PAUL ROGERS to thank for most of the important work that has been accomplished on the national health level. We will not be able to fill the vacancy left in our body by the absence of Congressman PAUL ROGERS, but the results of his work will be with us and we can continue to follow in his tradition of hard work for a noble goal. I will miss him in the delegation and in the House and wish him well in his future efforts.●

● Mr. REUSS. Mr. Speaker, the issue of health care in the United States has been one of the most important, complex, and controversial to confront the country and this House since PAUL ROGERS and I came here in 1955.

Much has been accomplished in this field, thanks to PAUL ROGERS. He has led us and educated us. He has made clear to us that which was perplexing. His mastery of his difficult subject, his fairness, his insight, and his compassion have combined to earn him and the measures he supports respect and influence on and off Capitol Hill.

PAUL ROGERS' sharp mind and wise counsel will be sorely missed. But his contribution to the American health care system has laid a firm foundation upon which we can build and a standard against which our future efforts can be measured.●

● Mr. FREY. Mr. Speaker, I would like to join with my many colleagues in thanking Congressman PAUL ROGERS for his many years of service to our country and our State.

Probably the word that first comes to mind when I think of PAUL is respect. There are not many Members of Congress who enjoy the respect of their colleagues and their adversaries as much as PAUL does. He is a tough opponent, a willing fighter, and a true friend.

As we all know, PAUL has spent a considerable amount of time and energy on his chairmanship of the Health Subcommittee. His specialization in the field is legendary—he has made his subcommittee one of the best on the Hill. Some people call that "intelligent specialization"—I call it hard work and dedication.

As a member of the Commerce Committee I have had the opportunity to see PAUL at work. I remember during the energy shortage in 1973 that PAUL was of real help to those of us in Florida whose constitutents needed fuel for their businesses. And, he was right there on the Narcotics Committee when we needed his support for our trip to southeast Florida.

It has been a pleasure to serve with PAUL and I know I speak for all Members when I say that the Commerce Committee and the State of Florida will be a little less respected without him.

Good luck and Godspeed.●

● Mr. ZABLOCKI. Mr. Speaker, our friend and colleague, Representative PAUL ROGERS, recently announced his intentions to retire from the House of Representatives. There is no doubt that he will be sorely missed by this body.

It is my hope that the qualities which PAUL ROGERS depicts and the values he consistently upheld in his 23 years in Congress will remain with us. PAUL ROGERS is honest. He is hardworking, and he has dedicated himself to the betterment of man in the fields of health and the environment.

Born in Georgia, Representative ROGERS moved to Florida at an early age. After graduating from the University of Florida, he served his country in the Army during World War II. Subsequently, he received his law degree from the University of Florida Law School, and was admitted to practice law in State and Federal courts and the U.S. Supreme Court.

After a distinguished career in law, Representative ROGERS was elected to the 84th Congress, and to each succeeding Congress. His work, particularly as chairman of the Subcommittee on Health and the Environment over the last 8 years, has made an enormous impact on this country and its future generations.

Mr. Speaker, Chairman ROGERS authored and skillfully engineered significant pieces of legislation through this House, including the Clean Air Act, the National Cancer Act, the National Health Planning and Resources Development Act, the Emergency Medical Services Act, and the Health Maintenance Organization Act. His dedication to the improvement of health of individuals and the environment in which we live is indicative of his willingness to serve mankind. Certainly, Chairman ROGERS' dedication as a public servant and legislator will remain behind.

Mr. Speaker, I join our colleagues in this tribute to Chairman ROGERS and extend my personal and sincere best wishes for a happy retirement and success in his future endeavors.●

● Mr. SATTERFIELD. Mr. Speaker, for the past 14 years I have had the privilege of serving with Paul Rogers on the Subcommittee on Health and the Environment. During those years I have learned a great deal about the gentleman from Florida and feel gratified that I can call him my friend.

By any measure, PAUL ROGERS is an outstanding Congressman and subcommittee chairman, who has served his district, State and our Nation well. That he has been exceptionally active and effective in securing the passage of major legislation is a matter of record. Indeed if it is true that politics is the art of the possible then PAUL ROGERS ranks as a major political artist, for much of the health legislation which has been enacted in recent years would not have been possible without his consummate skill and leadership. Because PAUL'S legislative accomplishments and the personal qualities of patience, persuasiveness, and determination which have led to them are so well known, I will not dwell on those attributes today. Nor is it necessary to dwell on the enviable national reputation in the health care field which PAUL has established. Suffice it to say, that when I speak to anyone or any group interested in health issues the surest way to identify for them the subcommittee on which I serve is to refer to it as the "Rogers Subcommittee." Instead, I wish to salute the gentleman from Florida for other attributes which are less well known.

Congress includes passionate advocates of many different points of view, most of whom are motivated by high ideals and deeply held convictions and that is especially true of PAUL ROGERS. It is rare, however, to find a man like PAUL who combines passionate advocacy for his beliefs with tolerance and respect for the

views of others; who is not only honorable and well intentioned but who has the grace to assume that those with whom he disagrees are equally honorable and well intentioned; and who understands the legislative process and its intricacies of accomodation and compromise. This attitude, together with his capacity for hard work, unfailing courtesy, and considerable charm, have combined to vest in him that legislative and personal temperament so essential to leadership in Congress. That this is so is abundantly demonstrated by the esteem, respect and affection in which he is held by people in every sector of the health care field.

Finally, I wish to note that PAUL has again demonstrated his strength of character by giving up a safe seat and a position of great responsibility and prestige while still at the height of his powers. Few of us have the self-assurance and energy to embark on a new career after 24 years in Congress. I am confident that the self-assurance and energy reflected in that decision to retire from Congress will serve PAUL ROGERS in his future pursuits and that he will continue to distinguish himself and achieve great success in the years to come.●

● Mr. DERWINSKI. Mr. Speaker, the retirement of our colleague, PAUL ROGERS, concludes the 24-year career of a man who has performed outstanding service to this Nation. His steadfastness and strong leadership as chairman of the Subcommittee on Health and the Environment have contributed greatly to improving health care and environmental standards in our country.

PAUL is a man of great integrity and intellectual honesty. Although we represent differing political parties, I have never known him to place party loyalty above national interest. Throughout his career, he has set the highest standard of public service, and he will long be remembered for his devotion to duty and dedication to his constituents.

His record attests to the fact that he is a diligent and skillful public servant who has been a great asset to the Congress.

Mrs. Derwinski joins me in wishing him and his wife, Becky and daughter Laing, many happy and healthy years in retirement.●

● Mr. CORRADA. Mr. Speaker, it is with the feeling of sadness that I rise today to bid farewell to our colleague PAUL ROGERS, a man that has served his constituency and Nation with great distinction.

As chairman of the Subcommittee on Health of the Committee on Interstate and Foreign Commerce, PAUL ROGERS has had a key role in shaping the health policies of this Nation and the fact that he is known as "Mr. Health" is testimony in itself to the hard and dedicated work that he has put into this very important area of congressional activity and responsibility.

PAUL ROGERS has also been a great and consistent friend of Puerto Rico and has always had time to look into the problems that we have in our island. He has always had the interest and compassion to help the people that truly need our assistance in seeing that the indigent are provided with adequate health services.

I am sure that in whatever new capacity PAUL should find himself in future years he will always be a friend to us and I hope that we will be able to count in the future with his counsel and friendship.●

● Mr. DE LA GARZA. Mr. Speaker, I rise today to pay tribute to the distguished Member from the 11th District of Florida, Hon. PAUL G. ROGERS.

This warm and forthright gentleman has served his constituents well ever since he was elected to Congress back in 1955. As my colleague on the Merchant Marine and Fisheries Committee, and the Select Committee on Narcotics Abuse and Control, Paul Rogers has distinguished himself with his diligence and hard work. I've seen first hand the dedication PAUL brings to each task he faces, and I know the entire Congress appreciates and values his great contributions.

Mr. Speaker, the next Congressman to represent the 11th District of Florida will have some very big shoes to fill. We shall all miss our good friend PAUL ROGERS.●

● Mr. LEHMAN. Mr. Speaker, today we pay tribute to that man from the Florida delegation who has become known throughout the Nation as "Mr. Public Health."

As chairman of the Subcommittee on Health and the Environment, Congressman PAUL ROGERS has made outstanding contributions toward the betterment of the health of all Americans. Landmark legislation has emerged from his subcommittee, and today we have PAUL ROGERS to thank for the cleaner air we breathe and the cleaner water we drink.

He has shown himself to be an exemplary Congressman. He has not only been an excellent legislator at the national level, but he has also maintained a deep personal concern for the well-being of his constituents. It has been my privilege to work with PAUL ROGERS on matters which affect Broward County. He has served Florida's 11th District for 24 years, and I know his constituents in Broward and Palm Beach Counties will miss him enormously. It will be hard for them to get used to not having a Congressman ROGERS to represent them.

All Members of the House will miss his fine leadership in the area of public health, and even more, we will miss his kindness and ability to really listen and understand the problems of others. Congressman PAUL ROGERS will not be soon forgotten or easily replaced.●

● Mr. MONTGOMERY. Mr. Speaker, those people in America with a deep interest in health care will be losing a real friend and staunch advocate with the retirement of PAUL ROGERS. He has rightfully been given the name of "Mr. Health" in the House of Representatives and I really think he should be known as "Mr. Health" in America.

During the 24 years of his service, PAUL ROGERS has fought for and won improvements in just about every area of the health-care field. He has been particularly successful in prodding the Government into new areas of medical research in hopes of wiping out some of the dread diseases which afflict our fellow Americans.

We shall all miss PAUL's long experience and keen knowledge of health matters, but we can only hope he will stay close to Washington so we might call upon his vast store of knowledge when needed. I wish PAUL and his lovely wife, Becky, the very best as he begins a new career.●

● Mr. VAN DEERLIN. Mr. Speaker, the word "distinguished" is used so loosely around here that it has almost lost its dictionary meaning: "separated from others by superior or extraordinary qualities."

Almost, but not quite. The original description still aptly fits our retiring colleague, PAUL ROGERS.

Having served with PAUL on the Commerce Committee for the past 16 years, seated next to him most of that time, I feel I am in a position to know something about this remarkable legislator and his myriad accomplishments.

Going back many years, top brass at the Department of Health, Education, and Welfare have always recognized that PAUL ROGERS was the person to see in order to move significant health legislation in Congress.

As an ally, in a touch parliamentary situation, PAUL is as effective as they come. By the same token, it is a formidable challenge to amend a bill he is managing on the floor, so great is the respect he enjoys among House Members.

Notwithstanding the heavy burdens he bears so capably as chairman of the Commerce Subcommittee on Health and the Environment, PAUL has remained accessible and ready to help whenever his assistance is sought by a colleague. He is unfailingly gracious, one of the true gentlemen in or outside Congress.

During his many productive years in this body, PAUL ROGERS has implemented broad new health programs, consistently in the best interest of the Nation. His departure from our midst will leave a void which it may not be possible to fill.●

GENERAL LEAVE

Mr. BENNETT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

A TRIBUTE TO MY COLLEAGUE AND FRIEND—JOHN DENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. MURTHA) is recognized for 60 minutes.

● Mr. MURTHA. Mr. Speaker, at the conclusion of this session, Congress will lose one of its most dedicated and talented members—Congressman JOHN DENT.

I want to make a few brief comments about JOHN DENT. The comments do not

need to be lengthy because this is one man whose record truly speaks for itself. When I planned these remarks, Mr. Speaker, I asked his office for a summary of the key legislation JOHN DENT has sponsored in his 20 years in Congress. In reply, I received a 24-page, single-spaced summary with hundreds of bills—that shows how involved this man has been in the key legislation of the last two decades.

Mr. Speaker, JOHN DENT has been one of the foremost Members of Congress. He has foreseen problems that faced our Nation, and has developed innovative, progressive legislation in response. Usually, he was 5 or 6 years ahead of most of us in his thinking, and we eventually came to see the correctness of his position. The first major bill in Congress I voted on in 1974 was JOHN DENT'S Retirement Income Security Act, a bill he had spent 7 years in developing.

The other key to that bill, Mr. Speaker, was that it helped people—and that was the hallmark of JOHN DENT'S career. He has always stressed legislation to help people, including black lung reform, unemployment compensation, workmen's compensation, job safety, labor law reform, trade regulations to protect jobs, and a host of additional legislation to help the working people of the United States.

I well remember last year, when JOHN DENT was sick and in the hospital—during that time, even then, he did not stop for a day working for his constituents, planning legislation to help them, and working on behalf of the Nation's workers.

As I said, Mr. Speaker, the record speaks for itself. I would like to include some items from the JOHN DENT record. First, a campaign brochure from the mid-1930's when JOHN DENT was in the Pennsylvania State Senate. Reading it you will be amazed at how many of the programs advocated then by JOHN DENT—programs tremendously progressive for their time—have become law. Second, I want to insert two articles written at the time of his retirement announcement earlier this year.

Mr. Speaker, when Congress loses JOHN DENT, we will lose one of the most dedicated spokesmen and battlers on behalf of the people of the United States ever to serve in Congress. Personally, I will lose a friend, and a man whose wisdom about Congress has been a source of constant instruction. I know I join with the Members of the House of Representatives in wishing him as great a success in the coming years as in the 43 years he has spent in the State legislature and Congress on behalf of the people of our Nation.

SUMMARY OF THE LEGISLATIVE RECORD OF THE DEMOCRATIC CANDIDATE FOR SENATE—A PROGRESSIVE FIGHTER, JOHN H. DENT. "A RECORD OF ACHIEVEMENT"

JOHN H. DENT, INTRODUCED THE FOLLOWING FAR REACHING LEGISLATION IN THE 1935 SESSION OF THE STATE LEGISLATURE

(A) H. B. No. 2680—Occupational Disease Compensation Law

This bill was designed to pay compensation for diseases common to industry. Among these diseases are the dread silica poisoning, miner's asthma, lead, aluminum and bronze poisoning. In all, 13 industrial diseases are covered. This bill passed the House of Representatives but was defeated in the Senate by the Grundyism and the Manufacturers Association.

(B) H. B. No. 2027—Anti-Injunction Law

This bill was designed to protect the workers' rights in the event of labor disputes. As the law now stands a worker takes a chance on losing his home and all his possessions if he becomes part of a strike. This law would take away from the courts the right to issue injunctions in case of a labor dispute. The history of our coal strikes in this county are sufficient proof that such a law is necessary and humane. This bill passed the House but was defeated in the Senate.

(C) H.B.—Utility service bill

This bill would force utilities to serve all the residents of a community on equal terms. As the situation is today only certain sections in a community have water and electric service. This bill would have given every resident in the community the same privileges and consideration. This bill passed the House but was defeated in the Senate.

(D) H.B. No. 1984—Cleaner election bills

This bill would give a resident in a community the same right in the Primary as he has in the General Election, the right to vote if he can prove his residence and declares his political party preference. For many years there has been a peculiar setup whereby many old residents in a community have gone to the polls and found that his or her name wasn't on the voters' list and they lost their right to vote. This law would have allowed a person to vote upon taking an oath of residence. This bill passed the House and was defeated in the Senate.

(E) H.B. No. 1815—Sanitary service bill

This bill was designed to protect the health of persons eating and drinking in public places, restaurants and hotels. This bill provided for the cleansing of all service ware in any cleansing substance that would remove the danger of infection and disease. This bill passed and was signed by the Governor.

(F) H.B. No. 174—Power plant and water works bill

This bill would allow communities to borrow over the present limit set by law for all self liquidating projects. Many communities have the desire to build their power and water works but are prevented by the limited borrowing power of the various codes controlling local government. This bill was hotly contested but passed the House by a substantial vote. The Senate killed the bill in committee.

(G) H.B. No. 1911—Legal racing bill

This bill would make legal the sport of horse racing and pari-mutuel betting under government supervision. Under the present setup the only ones who can and do enjoy the sport are the persons able to belong to expensive hunt clubs. It takes courage to face the truth and the truth is "that racing and betting is carried on in this state and the state receives no return from the privileged few who enjoy the special privilege." This bill would have opened the sport to the general public and added to our State's income. This would have been one of the "painless" taxes we need to help relieve the property owner. After much debate and argument this bill passed the House and passed third reading in the Senate but when the time for final passage came, the G. O. P. Senators balked and killed it.

(Races are being advertised in this County at Rolling Rock Club at the present time.)

(H) H. B. No. 269—Dent Retirement Pension Plan

This was the most important bill presented in the 1935 Session. The provisions of this bill have been declared the most logical and humane for the treatment of our aged citizens. Of all the problems before the Legislature, this is the most important. We must face the question of our economic setup which calls for younger men and discards the older workers who in turn become public charges. It is unreasonable to expect a working man to save enough in working years to provide for himself and family after he has been discarded. This bill would make a Statewide retirement system for all the citizens whereas today the only ones who get state pensions are the judges and state employees. This system provides payment from $25 to $100 based on the number of dependents in the family. A noted writer said of the Dent Retirement Plan, "it is the logical and reasonable solution to this important problem." John H. Dent is the chairman of a special committee named by the Speaker of the House to make a study of this question and to report to the next session.

(I) No. 1532—Liquor License Law

This bill would give the right to the licensee to sell liquor in bottles up to the amount of one quart. This would deal a serious blow to the illicit liquor trade.

(J) No. 2163—Mine Sealing Bill

This bill is designed to protect the lives of the employees and residents in and around partially or temporarily abandoned mines by sealing them to stop the flow of accumulated gases and poisoned water. This bill was classed as a purification of streams bill or anti-stream pollution legislation.

HISTORY

John H. Dent, born in the Allegheny Valley, educated in Jeannette Public Schools, Aviation Academy and Correspondence School—Member Union Rubber Workers, Jeannette; B.P.O.E., Jeannette; Moose and Fraternal Order of Eagles, Jeannette. Served 4 years in the U. S. Marine Corps Aviation. Served as Borough Councilman, Jeannette and Member of State Legislature.

SPECIAL SESSION

The most noteworthy piece of legislation introduced at the Special Session was the unemployment insurance bill. This bill was sponsored by John H. Dent of Westmoreland County and Paul C. Moomaw of Franklin County. Under the Federal Security Act every State must pass its own unemployment insurance act in order to receive the benefits set up by the Federal Government. This bill was designed to pay the maximum benefits and yet give to the employer every advantage allowed by the Federal Security Act. This bill passed the House, was amended or rather mutilated in the State Senate and killed in the Conference Committee. Unless there is a change in the Federal Act, Pennsylvania employers will lose about $20,000,000 and Pennsylvania working men and women will lose the security and benefits which are rightfully theirs. This is one of the recent examples of the attitude of the Republican controlled Senate.

It is imperative that we elect men who are fully conscious of their duty to all the people and are not the servants of the special few.

In introducing this list of bills along with six other bills John H. Dent fulfilled every campaign pledge made during his campaign. These bills are positive proof that he is a representative of the people and deserving of their serious consideration and support.

If after reading this summary you are satisfied that JOHN H. DENT is the proper type of representative then vote for him for the State Senate and let him continue his work for the people.

If you are interested in good Government, of the people, for the people and by the people vote for JOHN H. DENT, for State Senator "on his record".

DENT ENDS HALF CENTURY IN PUBLIC LIFE—VOTE COST $47 IN 1934, $60,000 NOW

(By Dave Leherr)

LATROBE.—Some of the flamboyancy seemed gone, but it was still Johnny Dent at his spirited best, mixing emotion with peppery one liners, hard nosed political talk with nostalgia.

The 20-year veteran of Congress packed it in yesterday. He announced he was ending nearly half a century of public service when his term expires at the end of this year.

The 69-year-old Democrat—who turns 70 next week—said he would not seek re-election to the 21st Congressional seat he has held since 1959.

The announcement was no surprise. It had been predicted, anticipated, virtually assured for months.

But in his own typical style, U.S. Rep. John Dent made it a historic moment.

"I think I spent $47 the first time I ran for the state House back in 1934" (it was $60,000 in his last go-around for Congress in 1976), Dent said of the escalation in campaign spending over the years.

"I have not yet been able to analyze the Carter administration, not publicly anyway; I've done it privately, but not publicly," he said.

"I have not been an outstanding member of Congress, I've been an ordinary member, but to me that's the strength of Congress," he said of his own career.

"This is a routine assignment for you, but it's a big event in my life. I'm rounding out 50 years of public life. I believe I'm the oldest living, continuous service legislator in the United States."

Actually, Dent has spent 44 years in government. Twenty years have been in the U.S. House. Before that he served in the state House for two years, and in the state Senate for 22 years. For 17 years, he was the Senate's Democratic floor leader.

Dressed in gray suit, gray vest, white shirt and red tie, Dent showed no adverse signs of the surgery last year that resulted in the removal of his left eye and which contributed to his decision to retire.

"Bear with me and then I'll answer your questions; if I can't be totally truthful, I'll try to be half," he teased before a battery of cameras and newsmen.

To his supporters and critics alike, Dent will be remembered most as a legislator who championed the cause of the working man.

Among his accomplishments were the Employee Retirement Income Security Act of 1972, the Coal Mine Health and Safety Act of 1969 and black lung legislation.

Ironically, even as he was announcing his retirement, Carter was signing into law the latest of Dent's Black Lung reform bills, expanding eligibility and streamlining standards.

Dent all but said he would support Westmoreland County Democratic Chairman Bernard Sherer as his successor in Congress.

But he shrewdly begged off the gubernatorial election. "Let me get over this first," he laughed, "I don't even know who's running, I've been away."

Dent just returned from a month and a half cruise on a tramp steamer.

REP. DENT TO RETIRE NEXT JANUARY

LATROBE, PA.—After 43 years in state and national politics, U.S. Rep. John Dent said Wednesday he will conclude his public career when his 10th term ends next January.

"There comes a time in every person's life when age and common sense dictate retirement," the Pennsylvania Democrat said in a statement issued by his office.

Dent, who will celebrate his 70th birthday anniversary this month, said he had enjoyed public service and was not eager to leave.

RELUCTANT DECISION

"I have made this decision rather reluctantly," he said in the statement, released at a press conference in the Blue Angel restaurant in this Westmoreland County community.

Dent, who appeared at the press conference, also said he might use about $50,000 in campaign funds leftover from earlier re-election efforts to finance a speaking tour if his health permits. His subject would be the economy.

"I don't believe the majority of America has any realization of the depth of the danger we face economically in this country," he said.

"We have got to pay more attention to providing production jobs upon which this country survives."

WEEKEND DECISION

Aides said Dent decided not to run over the weekend, following a lengthy ocean cruise. One of his eyes had been removed last summer when complications developed after a cataract operation.

"I leave without bitterness or remorse," the statement said. "I am leaving with a personal sense of accomplishment and pride in my chosen profession."

Dent is the second ranking member of the House Education and Labor Committee and was instrumental in the passage of several major labor reform laws as chairman of the subcommittee on labor standards.

Among his accomplishments were the Employee Retirement Income Security Act of 1972, the Coal Mine Health and Safety Act of 1969 and black lung legislation.

23 YEARS IN STATE

He was first elected to the House in 1958. Before that, he served in the state House and Senate for 23 years and was Democratic floor leader in the Senate for 17 years.

He is a resident of Jeannette, and was born in Johnetta, Pa., the son of poor Italian immigrant parents.

Dent said during his last election bid that he wanted only one more term in which to bring state and municipal pensions under federal regulation and to enact a public works employment program.

Four Democrats have already filed to run for the office Dent will be leaving, and several others have expressed interest in the job.

Dent told reporters he hopes to play a role in the choice of his successor, but has not yet decided who he will support.●

● Mr. BRADEMAS. Mr. Speaker, I take this time to join in paying tribute to our distinguished colleague and valued friend, the gentleman from Pennsylvania, the Honorable JOHN DENT, who is retiring this year after 22 years of service in Congress.

As a member of both the committees on which JOHN DENT serves—the Committee on Eduction and Labor and the Committee on House Administration, I speak from experience when I say that we will sorely miss JOHN'S warmth of spirit, his quickness of mind, and his articulate speech.

JOHN DENT has been a legislative leader in a remarkable variety of fields but he has never forgotten his commitment to serve the interests of the people of his district in Pennsylvania.

Mr. Speaker, JOHN DENT'S constituents will miss him but so, too, will those of us who had the privilege of serving with him in the House of Representatives.●

● Mr. MITCHELL of Maryland. Mr. Speaker, when the roll of the 96th Congress is called in January 1979, a distinguished American will not be present, as he was from 1958–78. I am referring to the gentleman from the Commonwealth of Pennsylvania, Congressman JOHN H. DENT, who is retiring at the conclusion of the 95th Congress.

I take pride in having served in Congress during the tenure of Congressman DENT, and I am convinced that his commitment to the improvement of the quality of human life for all Americans will be missed by those of us who will be serving in the 96th Congress, and more importantly, by the masses of American people who benefited from his service in the Congress.

Congressman DENT leaves Congress at the peak of his many years of public service in the Commonwealth of Pennsylvania and in the Congress of the United State. I am certain that the historians of this period of American life will record that Congressman DENT served with distinction as chairman of the Subcommittee on Accounts, House Administration Committee, and as chairman of the Subcommittee on Labor Standards, Education, and Labor Committee.

Congressman DENT'S contributions to the labor movement in this country are priceless, and his personal commitment to establishing quality labor standards in Pennsylvania and throughout America, will remain as a benchmark for those of us who will be Members of the 96th Congress.

I extend to the gentleman from the Commonwealth of Pennsylvania best wishes for the years to come, and I am certain that his commitment to public service will cause him to continue to pursue a better life for all Americans, even though he will not be participating in the next Congress.

The Honorable JOHN H. DENT will leave footprints in this Congress that will be a challenge to walk in.●

● Mr. SHUSTER. Mr. Speaker, it is with appreciation and gratitude that I bid a most fond farewell to my colleague and fellow Pennylvanian, JOHN DENT, upon his retirement. He has served long and well as a member of our delegation, and I will miss the years of experience and expertise he brought to everything he was involved in.

It is safe to say that all of us who have served with him will find it difficult to imagine JOHN in retirement, and the start of a new Congress without him. It is, perhaps, more accurate to say that this is the beginning of a new phase in JOHN'S life. I wish him only the best in all his endeavors. He leaves his friends and colleagues of the Pennsylvania delegation having done his job well, taking their affection and admiration for him, back to Westmoreland County.●

● Mr. NEDZI. Mr. Speaker, when I look back on the many men and women I have served with during my nine terms as a Member of Congress I must confess that I most quickly remember the more colorful, pungent, and storytelling types.

Our friend JOHN DENT is in this mold. In the course of a long career he never forgot where he came from and he stayed in touch with working men and women as he had during his union days.

He is a man of wide experience and

has a knack for drawing on that experience to make a telling point either with a phrase or with a story.

We have served together on the House Administration Committee for several years. I am next to him in seniority on that committee and we often sat together. Occasionally the subject matter would grow tedious and that is when we were especially fortunate to have JOHN DENT in our circle, for he would reduce the matter to essentials.

I am a lawyer and I have a generally high regard for lawyers, nevertheless, I am a little uneasy about the disproportionate number of lawyers in both the House and Senate. I believe we are well served, therefore, by the JOHN DENTS of the Congress who represent other professions. JOHN was with the United Rubber Workers, he was a Marine, a newspaperman, and an executive with coal companies. I venture to say that there is nobody in the House with quite that combination of experience.

He is properly recognized as one of the specialists on international trade, unemployment compensation, and coal mine safety. He is a genuine and distinctive personality and loyal friend.

And I will miss him.●

● Mr. FREY. I would like to join with my many colleagues in thanking Congressman JOHN DENT of Pennsylvania for his many years of service.

JOHN DENT has been a fighter. Over the years he has never been afraid to stand up for those things he believes in no matter what the odds. Through the years he is gained not only the respect but the affection of those people he has served with. One of the most touching displays of this respect and affection I have seen was when JOHN returned from his operation and made his first speech on the floor. There could be no question of the sincerity of the applause that greeted him. This respect and friendship was earned.

I want to wish him much happiness in the years ahead. The Commonwealth of Pennsylvania has lost an outstanding public servant.

Good luck and Godspeed.●

● Mr. MAZZOLI. Mr. Speaker, it was my pleasure and honor—upon coming to the House in 1971—to serve on the Labor Subcommittee headed by the distinguished gentleman from Pennsylvania (Mr. DENT). I served on JOHNNY DENT'S subcommittee for 4 years.

JOHN DENT'S departure from the House deprives this body and the Nation of one of the most knowledgeable, most experienced, and most effective Members ever to serve in the House of Representatives.

His departure from the House deprives the residents of the 21st District of Pennsylvania of an articulate, forceful, and compassionate voice in the Halls of Congress.

But, of most impact on me, is that JOHNNY DENT'S retirement from the House deprives me of one of the warmest, most decent, and most genuine people with whom I have ever had the honor and privilege to work.

JOHNNY DENT is a good man and a good friend. I will miss him a lot.

I join with all JOHN'S friends today in wishing him health, happiness, and fulfillment in his well-deserved retirement.

Bravo, Gianni! Ti vogliamo bene e ti desideriamo ogni bene.●

● Mr. WHITTEN. Mr. Speaker, in my many years in Congress, I have had the pleasure of serving with many able men, but none abler than my colleague from Pennsylvania JOHN DENT.

Although JOHN is leaving us to go into other fields of endeavor, his friendship and counsel will be deeply missed.

During his 11 terms here, JOHN has served his district, State, and country well and shown a capacity for hard work and understanding that has earned the respect of his colleagues.

I join with my many colleagues and his many friends throughout the Nation in wishing him the best in his future endeavors and trust that he will return often.●

● Mr. SLACK. Mr. Speaker, Congressman JOHN DENT has decided to leave the House of Representatives after 22 years of faithful service to this Nation and his 21st Congressional District in Pennsylvania. His successive reelections to the House, following his coming here in 1958, attest to the confidence which the residents of JOHN DENT'S district held in him.

Although his interests varied widely, JOHN DENT was vitally concerned with fair labor standards, unemployment, workmen's compensation laws and coal mine health and safety. This concern was certainly reflected in JOHN'S assignment to the House Education and Labor Committee and his hard work and devoted efforts as the chairman of the Labor Standards Subcommittee. Millions of American workingpeople are today employed under conditions which contain advanced safety and working stability for the individual as a result of the years of concentrated effort by our colleague. He has been, down through the years, a rallying point for those who continuously insisted upon upgrading the conditions of labor in the United States.

As JOHN DENT joins the ranks of those we honor for past contributions to the work of the House of Representatives, sincere wishes go with him for a meaningful and enjoyable retirement in the years ahead.●

● Mrs. FENWICK. Mr. Speaker, I am happy to join in honoring my friend JOHN DENT. None of us in the House will soon forget the fire and sincerity with which JOHN DENT spoke for the welfare of his constituents and the good of our country. He knew his people in every fibre of his being and conveyed to all of us the truth and urgency of their needs. He spoke for them and for a country which would care equally for all its children and insure for them equal opportunity and equal justice under law.

JOHN DENT was afraid of no one. He spoke as an independent. His voice will be missed here in the House he served so faithfully.●

● Mr. ERLENBORN. Mr. Speaker, when the Congress adjourns sine die, we will be losing one of the most dedicated, able and knowledgeable members the Committee on Education and Labor has known, JOHN DENT.

JOHN and I have been on opposite sides of most major labor issues, but he always debated his position with good grace, and good humor.

Together JOHN DENT and I served on the Pension Task Force. The primary piece of legislation coming from that task force, ERISA, provides the framework for protecting the pensions of private sector employees. It is landmark legislation.

This year we introduced PERISA, a bill which would provide some of the same protections to public employees' retirement income as ERISA did for employees in the private sector.

Most of us, Mr. Speaker, will leave this body with a few minor pieces of legislation to our credit. JOHN DENT leaves with at least one, ERISA, which will long stand as a monument to his sensitivity and concern for the working men and women of this country.

I know that JOHN DENT will miss serving in the Congress, Mr. Speaker, but not nearly as much as those of us still here will miss having him with us.●

● Mr. NIX. Mr. Speaker, from 1958 until the present there has been no piece of labor legislation that does not bear the imprint of the thought and spirit of Hon. JOHN H. DENT, Democrat of Pennsylvania. His handiwork is a blessing to the American people.

The chairman of the Subcommittee on Labor Standards will be retiring from the House at the end of this term.

The House will miss him. It will need him in the future when his help is no longer available and when such a time occurs his example and past leadership will have to serve instead of his presence.

The Committee on Education and Labor is one of the finest committees of the House. It is stronger because of JOHN DENT'S service. It will remain strong and progressive because of his past service.

Among the legislative achievements that the Nation owes a debt of gratitude to JOHN DENT is that concerning protection for private pension plans. The private pension system in the United States which has been created with such care was collapsing when Congressman DENT seized the issue and brought about protective legislation after years of hearings. Because he is not easily turned aside, American workers can today rely on the promises of a private pension system.

From his Subcommittee on Labor Standards, JOHN DENT, alone attacked the problem of a floodtide of cheap foreign imports that were washing away American jobs. For years, he brought about some legislative protection for American workers. And it was he who brought a great automobile plant to his district that at long last replaced jobs lost to foreign competition.

JOHN DENT brought great qualifications to the House of Representatives. He had been the Democratic floor leader of the Pennslyvania State Senate for 17 years, when he came to Congress in 1958. He had been both a labor leader and a businessman. The House soon felt the impact of his experience and presence and the House was a better place for it.

Institutions draw on the past greatness of its membership. The U.S. House of Representatives has become a greater legislative body because of the Honorable JOHN H. DENT. It will remain a better institution.

I congratulate, my good friend, JOHN DENT on his retirement and on behalf of the House, I want to thank his wife and family for sharing him with us for so many years. I wish him a long life and further service.●

● Mr. BENNETT. Mr. Speaker, I join my colleagues in a heartfelt tribute to Congressman JOHN DENT as he retires from Congress. He came here with a rich background of leadership earned in the Senate of Pennsylvania; and he brought great knowledge to us here from his experiences as a former leader in organized labor and in his understanding of the complexities of international trade. His legislative achievements have been outstanding; but as we wish him well in his retirement we all feel that he will be most greatly missed for his warm and easily given friendship to us all.●

● Mr. ANNUNZIO. Mr. Speaker, I rise to pay tribute to the Honorable JOHN H. DENT, chairman of the Subcommittee on Labor Standards of the House Education and Labor Committee, who is retiring at the end of the 95th Congress. I am privileged to have JOHN DENT as a personal friend, and his friendship, wise counsel, and guidance here in the House of Representatives will certainly be missed.

Chairman DENT's record of devotion and courage speaks for itself and it serves as an inspiration to his friends and fellow citizens because it is symbolic of the greatness and strength of the people of our country who dedicate their best to the high responsibilities of public service.

JOHN was first elected to the 85th Congress in 1958, and because of his dedication to the highest standards, he was reelected to every succeeding Congress until the present 95th Congress. Before he came to Washington, Congressman DENT served in the Pennsylvania State House of Representatives and also in the State Senate for almost a quarter of a century, and was the Pennsylvania Democratic floor leader in the State Senate for 17 years.

JOHN DENT has not only ably represented the interests of his district during his two decades in the Congress, but those of his State and Nation as well. He courageously initiated legislation to insure coal mine health and safety, to reform pension and welfare benefits, to improve educational opportunities, and to protect the minimum wage base for the working men and women of America. He also specializes in international trade problems and in parliamentary and legislative procedures.

During his service in Congress, JOHN has led with determination and devotion to high principles, and during those years, he has witnessed some of the greatest moments in the history of mankind and he experienced, in a very real sense, the triumphs and the tragedies of our Nation. Congressman DENT has been a dedicated Government official and with wisdom and rare insight he has dealt with the major problems of our country's trade and labor policies. As Members of the Congress, we have good reason to commend so outstanding a performance by a fellow Member, and to regret his departure from our midst.

I was privileged to serve with JOHN DENT during my 14 years in Congress, and I extend to him best wishes for a healthy and happy retirement.●

● Mr. PRICE. Mr. Speaker, I rise today to join with my colleagues in paying tribute to my good friend and colleague, Congressman JOHN DENT of Pennsylvania. As we all know, JOHN will be retiring from the House at the end of this Congress.

I am sure it is unnecessary for me to tell the Members of this House of the many services JOHN has performed in his 21 years as Representative of Pennsylvania's 21st District. His legislative ability, particularly in the fields of unemployment and workmen's compensation laws, coal mine safety, and labor standards is well-known to us and to the American workman. I need only say that his expertise and knowledge will be missed by the members of the committees on which he served and indeed by all his colleagues.

I would like to wish Congressman DENT and his family good luck and many years of continued happiness as they begin a new chapter in their lives. We in Washington will certainly miss them.●

● Mr. DE LA GARZA. Mr. Speaker, today I rise in salute of my good friend and distinguished colleague, Congressman JOHN DENT from Pennsylvania's 21st District.

The end of a Congress is always a time of happiness and regret, as you well know, Mr. Speaker. Many of us have highly prized bills still in committee, and this hurts. Presumably we also have some bills enacted into law—and this helps. But the end of the 95th Congress is particularly emotional because so many of our dear friends and colleagues will not be with us when the 96th Congress convenes next January.

JOHN DENT is one of those Members whose absence will be sorely missed. JOHN's longstanding commitment to his constituents, to hard work, and to integrity are well known to all. JOHN's fine example in all matters will be hard to replace.

The loss of the Congress, though, is the gain of Mrs. Dent and the people of Pennsylvania—and JOHN, you have my very best wishes for continued success and happiness in the future.●

GENERAL LEAVE

Mrs. COLLINS of Illinois. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the life, character, and public service of the late Honorable RALPH METCALFE.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Illinois?

There was no objection.

THE LATE HONORABLE RALPH H. METCALFE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Illinois (Mrs. COLLINS) is recognized for 60 minutes.

Mrs. COLLINS of Illinois. Mr. Speaker, I rise in tribute to our late, beloved and respected colleague, RALPH H. METCALFE, whose unexpected passing yesterday is a severe loss to all of us who are privileged to have served with him.

RALPH was a symbol of the changing times which his 68 years spanned. By sheer individual effort, determination and an unbending commitment to the achievement of excellence, he rose from the ranks of a people whose lives were smitten by poverty and discrimination to heroic proportions that will long be remembered. His natural gifts as an athlete were complemented by a keen intellect and his even temperament and sound judgment allowed him to use both to maximum effectiveness.

More than a friend and colleague, RALPH was a great inspiration whose very presence reminded us that the determined human spirit is equal to every obstacle. He was the living antithesis of defeatism of every form and he left us the lasting legacy of his optimism and triumph.

RALPH was born into a world that frowned upon and segregated him because of his race, but he was not dissuaded from the pursuit of realizing his full potential. It is perhaps a fitting irony that when black Americans were allowed to do little else but enter some forms of athletic competition, RALPH with his great determination and exemplary discipline, was not only uncommonly gifted as an athlete, but excelled at academics as well as politics.

Despite his versatility, the nature of the times in which he grew up were such that only the fact that he could run faster than others appealed to his countrymen. So he ran—right into the history books and into the consciousness of people the world over. He won national sprint championships from 1929 through 1934 and in 1932 and 1936 was a member of the U.S. Olympic team. With much of the world watching in disdainful curiosity, RALPH shored up the glorious feats of the great Jesse Owens in the 1936 Olympics, taking the silver medal in the 100 meter dash and sharing the American victory with Owens and their teammates in the 400 meter relay.

Such achievements would have been enough for one of average ambition, but there was nothing average about RALPH METCALF. He continued his commitment to sports and to the development of young people through the example he set and through what he accomplished for others. At Xavier University in New Orleans he served as track coach. While teaching political science, perhaps an early indication of his future interest and vocation. After World War II in which he served with distinction as a lieutenant and received the Legion of Merit for program planning as director of physical education, RALPH went on to become the first black Illinois State Ath-

letic Commissioner and the founder of the Ralph Metcalfe Youth Foundation devoted to athletic, health, and educational programs for young people and to the support of needy families in the community.

From crossing the finish line, RALPH went on to breaking the color line in the field of public service. In 1952, he was elected Democratic committman of Chicago's Third Ward becoming alderman in 1955. In 1969, he was elected to be the first president pro tempore of the Chicago City Council and in 1970, he became a Member of the House of Representatives.

As a Member, RALPH was active in the oversight of numerous Federal programs. He uncovered failures in health programs designed to provide medical care to school children, in housing programs designed to compensate homeowners for deficient appraisals, and in behavior modification programs in prisons.

RALPH wrote the most comprehensive antidiscrimination provisions in the history of railroad law, the Railroad Revitalization and Regulatory Reform Act. He added two antiredlining amendments to the no-fault auto accident insurance bill. He was instrumental in defeating a provision in a health manpower bill that would have prohibited special programs for minorities in medical schools.

Combined with this devotion to the spiritual and material needs of his constituents RALPH has pursued an interest in foreign affairs, which culminated in his chairmanship of the House Merchant Marine and Fisheries Subcommittee on the Panama Canal. Unafraid of the controversy engendered by this issue, RALPH combined a high-minded idealism with a realistic assessment of U.S. interests in the Canal Zone, along with the legitimate aspirations of the Panamanian people.

While we are saddened by his loss, we are all fortunate to have known RALPH. We are strengthened by his memory. During his 68 years, he ran the distance for his people. He taught us how to run with heart.

Mr. McCLORY. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. Mr. Speaker, I thank the gentlewoman for yielding. I commend her for taking this special order in order that we might eulogize and pay final tribute to our beloved colleague, Congressman RALPH METCALFE.

Mr. Speaker, all of us in the House today mourn the loss of Congressman RALPH METCALFE. He had so many attributes that are a credit to an elected public official. First, he was an eminently likeable man, a man with good relationships with his colleagues here, with his constituents, a man comfortable with himself.

Second, he certainly represented with singular loyalty his Chicago constituency. He broke with the local leadership of his own party in Chicago once over concerns about that constituency. He was a founding member of the Congressional Black Caucus. He was deeply concerned about problems of good education for those who so critically need it.

Third, RALPH METCALFE was an experienced politician, a man who came up through the political ranks in Cook County and Chicago, a man who knew where the levers of power were.

And, fourth, although he clearly was an achiever in his own life and an inspiration to many, this came over in a positive, sensitive way. No one ever forgot that RALPH METCALFE was an Olympic champion in the 1930's, but they also never forgot that the very qualities that made him successful in sports made him successful as an elected public official and, more important, as a man.

Mr. Speaker, I extend my personal sympathies and those of my wife, Doris, to RALPH'S lovely wife, Fay, to Ralph Metcalfe, Jr., and to Mr. METCALFE'S mother and stepmother. I truly grieve the loss of this man who brought honor to this House.

Moreover, Mr. Speaker, those of us in the Illinois congressional delegation, regardless of political party, have special reason to mourn. RALPH METCALFE was one of us and we were proud of it.

Mr. ECKHARDT. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Speaker, it was a terrible blow to me when I heard of RALPH'S passing. He was really my mainstay in the Subcommittee on Consumer Protection and Finance. Frequently when no one else could be found to serve as chairman when I had to be away, RALPH was always there. He was the ranking majority member next to the chairman on the subcommittee. He was sincere, capable, and I can always remember when he first came on our committee, if there was a problem that was likely to divide us, he would find some way to pull us together.

He was a person of great intellect, a gentleman, and a person who knew how to be diplomatic and knew how to press his issue and do it in a determined and able way, but with dignity, more than almost any other man—I think more than any other member of our Committee on Interstate and Foreign Commerce. When he rose, members would listen and put aside their differences. His services on that committee can never be replaced.

Mr. Speaker, I thank the gentlewoman for yielding.

Mr. SEIBERLING. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Speaker, I certainly wish to commend the gentlewoman from Illinois (Mrs. COLLINS) for taking this time to pay tribute to our late beloved colleague, RALPH METCALFE.

I had the privilege of coming to the Congress in the same year that RALPH did and of getting to know him as an individual as well as a legislator.

He was a person of great humanity, of great courage, and of great wisdom. As the gentleman from Texas (Mr. ECKHARDT) just said, he was a person who, when things got the roughest, would calm the troubled waters and bring people together. He had the rare quality of combining wisdom with simplicity. There are all too few people in public life who share this particular combination. We are, therefore, going to miss him very, very much in this body, as I am sure his community will also.

But in missing him, we will remember his gallant spirit and his wonderful achievements in a life of service to his people and his country, from the time he was a young man until the very day he died.

Mr. Speaker, I feel a deep sense of personal loss at his passing.

Mr. DEVINE. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Ohio.

Mr. DEVINE. Mr. Speaker, I commend the gentlewoman from Illinois (Mrs. COLLINS) for taking this time to pay tribute to my very good friend, RALPH METCALFE.

My relationship with RALPH was somewhat unique in the Congress. It so happens that I was a Varsity-O track man at Ohio State University back in the middle 1930's, but of considerably less talent than either RALPH METCALFE or my teammate, Jesse Owens.

I well recall the exploits of RALPH and the fact that he ran a very close second to Jesse in the 100 meters in the 1936 Olympics. The story goes that he was nipped by about 6 inches by Jesse, and had the race been 5 meters longer, RALPH would have indeed won that gold medal, as he did as a part of the 400-meter relay team. RALPH ran one leg of race and distinguished himself, as did Jesse Owens, in the 1936 Olympics.

Moreover, having served on the Committee on Interstate and Foreign Commerce with RALPH, I would like to reiterate the remarks of our friend, the gentleman from Texas (Mr. ECKHARDT), who said that he was a man who did his homework, a man who was dedicated, and a man of dignity. He was a man we could rely on.

Mr. Speaker, I join with the gentlewoman from Illinois (Mrs. COLLINS) and our other colleagues in the House in paying tribute to RALPH METCALFE and extending our deepest sympathy to the Metcalfe family.

Mr. Speaker, I thank the gentlewoman for yielding.

Mr. MURPHY of New York. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from New York.

Mr. MURPHY of New York. Mr. Speaker, all of us were shocked yesterday to hear the news of the death of our colleague and our very good friend, RALPH METCALFE. RALPH was in his lifetime a number of the things many of us would like to be: He was a savvy politician with a nationwide following and a reputation for courage; he was an athlete who was emulated around the world for his accomplishments; he was a symbol for the aspirations of people who wanted to do better, and he believed people could do better. Most importantly, in both the big and the small things, RALPH METCALFE lived the high-minded ideals he

preached—we in the House can attest to that.

RALPH METCALFE was fortunate in that he lived part of his dream during his lifetime. We have been fortunate that RALPH METCALFE has been among us, and we can carry his dreams to fulfillment.

RALPH METCALFE and I were very close both politically and personally. His chairmanship of the Panama Canal Subcommittee of my own Merchant Marine and Fisheries Committee gave that subcommittee some of its most vital and important leadership during the ongoing deliberations concerning the new treaties which turn over the Panama Canal to the Government of Panama. Indeed, his leadership will most certainly carry over in next year's hearings on implementing legislation necessary to properly accomplish this most urgent issue.

RALPH was a man who saw that the only way to accomplish a lifetime of service to the American people was. for him, through public office where his dedication and hard work could make a significant difference. Not only did he pursue the public life actively, but a brief glance at his history shows that his people believed in him, and that he was active in virtually every area where he felt he could make a difference. He was elected six times as a Democratic Committeeman in Chicago, and four times as alderman. He was president pro tempore of the Chicago City Council, and has served on innumerable boards of directors including the U.S. Olympic Committee and the NAACP.

Many of us will recall RALPH's athletic background, including berths on U.S. Olympic teams in 1932 and 1936. He had been the national intercollegiate sprinting champion in 1929, and the national 100 and 200 yard champion from 1932 to 1934, which earned him international acclaim as a true athletic hero. It is a measure of his prowess that RALPH METCALFE's running mate on those Olympic teams was the legendary Jesse Owens, who, like Ralph, has served for many years as a model for young men to follow. The Ralph Metcalfe Youth Foundation grew under his expert guidance to develop athletic, health and educational programs for youth and to support needy families in the community.

RALPH METCALFE's broad range of interests was solidly evidence in his active contributions to legislation during his tenures on such subcommittees as Transportation and Commerce, Consumer Protection and Finance, both of the Interstate and Foreign Commerce Committee, and my own Merchant Marine Subcommittee, Oceanography Subcommittee, and the Panama Canal Subcommittee, which he so ably chaired. Even with those responsibilities, he found time to be active in the Black Caucus, Democratic Steering Committee, the DSG, and numerous other important organizations.

I would like to point out some of the enduring legislative accomplishments that RALPH METCALFE made while a member of this body. It was his subcommittee that unanimously endorsed his report strongly advocating the rights of the House in the disposal of U.S. property. That report will be an historical landmark. During his tenure as Panama Canal Subcommittee chairman in the 94th and 95th Congresses, the housing, educational, and job opportunities in the Canal Zone were expanded as never before, and much of the change that we saw was at his insistence. He investigated the personnel practices of the Panama Canal organization and pushed for wide-ranging changes, and got many of them.

Outside the committee which I chair, I know that RALPH METCALFE was very interested in and sponsored the Amateur Sports Act of 1978, which the House is considering. He was very interested in reform of our penal system, and pushed legislation for that objective. He authored one of the most comprehensive antidiscrimination provisions in recent legislative history in the so-called 4–R Railroad Act of the 94th Congress.

This country would be better off if the idealism, the concern and compassion for humanity, and the wisdom that RALPH METCALFE demonstrated were more a part of all of us. I know that RALPH would hope that we could expand on his contribution, which he gave not just to the House of Representatives, but to the entire Nation and world.

The people of the great city of Chicago were particularly saddened at the passing of RALPH METCALFE, and the newspapers of that city echoed the feelings of the people.

The newspapers paid tribute to RALPH METCALFE, and in that regard, I respectfully submit for the RECORD, an editorial from the October 11 Chicago Tribune:

REP. RALPH METCALFE

U.S. Rep. Ralph Metcalfe began as a runner and ended his life still running. At 68, in failing health, he kept up a punishing schedule as a congressman that included almost weekly trips back to his South Side district. His death of a heart attack Tuesday was a grievous shock, but not wholly a surprise; we would have expected Mr. Metcalfe to meet death on the run.

Something he told a Tribune interviewer two years ago has stuck in our mind. Mr. Metcalfe—a gold medal winner in the 1936 Olympics—was talking about his emergence as a track star at Tilden Technical High School: "I was told by my coach that as a black person I'd have to put daylight between me and my nearest competitor. I forced myself to train harder so I could put that daylight behind me."

In a sense, that summed up his honorable career in politics. Mr. Metcalfe came up through the ranks of the Democratic organization in Chicago and its 1st District subgroup under the late Rep. William Dawson; he was 3d Ward alderman for 15 years and was considered a loyalist to the Daley organization. And yet there was always some daylight between himself and the Democratic machine. His first loyalty was to his constituents, not to the party leadership.

When his open split with Mayor Daley finally came over his charges of police brutality, it widened rapidly. As Mr. Dawson's successor in the 1st District, Mr. Metcalfe quickly became a strong voice for black Chicagoans who had long felt themselves ignored or short-changed by standard machine politics. He became an independent force in his own right, one who could—and often did—successfully defy the organization.

Ralph Metcalfe's energy and dedication have changed for the better the course of Chicago politics. His own word is the right one: He gave his city more daylight.

CONGRESSMAN, 68, CLIMBED THE RANKS

U.S. Rep. Ralph H. Metcalfe, 68, the former Olympic track star who rose through the ranks of the Cook County Democratic organization to become a powerful Chicago alderman and then a congressman, was found dead Tuesday in his South Side apartment.

Aides said a bodyguard went to Metcalfe's apartment at 4530 S. Michigan Av. to take the congressman to O'Hare International Airport, where he was to catch a flight to Washington, D.C.

After receiving no response to his knocks, the bodyguard obtained a key to the apartment from a neighbor and discovered Metcalfe. He was taken by ambulance to Michael Reese Hospital, where he was pronounced dead at 9:38 a.m.

Metcalfe was in Chicago for the weekend to help his son, Ralph Jr., 30, in his campaign for alderman of the 3d Ward, a position the senior Metcalfe held for 15 years.

Aides said the congressman apparently had suffered a heart attack. He had suffered a previous heart attack in 1967.

Metcalfe was a protege of U.S. Rep. William Dawson, for 40 years the undisputed boss of his South Side district. When Dawson announced his retirement in 1970, Metcalfe won his seat in Congress. Dawson died a few days after the election, before leaving office. Metcalfe won reelection three times.

Long considered a stalwart of the Democratic organization, one who had followed the route through the ranks from assistant precinct captain to ward committeeman to congressman, Metcalfe broke with the late Mayor Richard J. Daley in 1972 over the issue of police brutality.

For a while, Metcalfe was considered a potential candidate for mayor in 1975, and he later endorsed Daley's liberal challenger, former Ald. William Singer, in the Democratic primary.

In retaliation, Daley stripped Metcalfe of his patronage in the 3d Ward. But the late mayor was never able to dent Metcalfe's base of power.

Challenged by Daley aide Erwin France in the 1976 Democratic primary race for Congress, Metcalfe won handily. In an even more bitterly contested fight, he also retained his post as 3d Ward committeeman.

The most critical threat to Metcalfe's political career occurred when the Internal Revenue Service began in 1972 to scrutinize his income-tax returns from the late 1960s, a period when Metcalfe was chairman of the Chicago City Council's Building and Zoning Committee. No charges were brought against Metcalfe, who contended that the federal investigation was his punishment for breaking with Daley.

"An investigation of my rule could only prove that I have no skeletons in my closet, but I am not ruling out the possibility that facts might be rearranged, producing an indictment as punishment for my independence," Metcalfe said. "At this point, I expect the worst."

Metcalfe made a career of fighting racism, but often was reviled by more militant blacks because—until 1972—his efforts were on the personal rather than public level.

He was born in Atlanta on May 30, 1910. His father moved the family north to Chicago seeking better employment for himself and an education for his children that was free of the Southern antagonisms.

Metcalfe was educated in Chicago public schools and became a track star at Tilden Technical High School.

He went to Marquette University, was captain of the track team there, and was national collegiate champion in the 100- and 220-yard dashes from 1932 through 1934.

Metcalfe was a member of the U.S. Olympic track team in 1932 and 1936. He won individual silver medals both times, finishing second in the 100-meter dash to Jesse Owens in 1936 and second to Eddie Tolan of the University of Michigan in 1932. He shared a gold metal in the 400-meter relay in the 1936 Olympics in Berlin.

During World War II, he served as an Army first lieutenant and won the Legion of Merit for program planning as director of physical education.

Returning to Chicago, Metcalfe held a series of political posts. He was the first black appointed to the Illinois State Athletic Commission in 1949 and served as an administrative assistant to the board of examiners under former Mayor Martin Kennelly.

In 1952, Dawson engineered the ouster of State Sen. C. C. Wimpish as Democratic committeeman in the 3d Ward and installed Metcalfe in the post.

Metcalfe quit his City Hall job in 1955, one of several ward committeeman who resigned their positions to demonstrate their support of Daley as mayoral candidate. When Daley won election for his first term as mayor, Metcalfe was in the city council as a first-term alderman.

Through the years, Metcalfe was rewarded for his loyalty to Daley—first with better and better assignments on the council and then with the party's nod to take over the 1st Congressional District seat held by Dawson.

In 1969, Metcalfe became the first black elected to the post of president pro tempore of the city council.

Once in Washington, Metcalfe became a more visible spokesman for black rights—he was a member of the Black Congressional Caucus—but it was not until several close friends reported indignities at the hands of Chicago police that Metcalfe broke with Daley.

In one demonstration of his independence, Metcalfe quietly supported Republican Bernard Carey in his successful race for state's attorney against Edward Hanrahan in 1972.

Metcalfe did not make his peace with the Democratic organization until after Daley's death in 1976.

In Congress, Metcalfe served on the Merchant Marine and Fisheries Committee and the Interstate and Foreign Commerce Committee. Last month, he won a commitment from a House subcommittee to conduct hearings in Chicago on the problems of crime and security at Robert Taylor Homes housing project.

In 1976, he was elected vice-chairman of the Democratic Study Group for the 95th Congress.

He was a member of the NAACP, the Chicago Urban League, and Corpus Christi Roman Catholic Church. He was the founder of the Ralph H. Metcalfe Youth Foundation, devoted to athletic, health, and educational programs for youth and the support of poor families. He was named a member of the President's Commission on Olympic Sports in 1975.

In addition to his son, Metcalfe is survived by his wife, Madalynne Fay, whom he married in 1947. She was in Washington at the time of his death.

CHICAGO'S LEADERS PRAISE METCALFE'S SERVICE TO CITIZENS

Chicago area officials expressed shock and sorrow Tuesday when they learned of the death of Rep. Ralph Metcalfe (D., Chicago), one of the top leaders of Chicago's black community.

"We've lost a fine public servant and a dedicated Chicagoan," said Mayor Bilandic.

"He was truly admired by his colleagues," said Rep. Morgan Murphy [D., Chicago], who represents another South Side congressional district.

Murphy said that Metcalfe had been ill for a long time but "never let up his pace. As a younger member of Congress you could always go to him for advice and counsel. He was truly admired by his colleagues."

George W. Dunne, Cook County Board president and county Democratic chairman, extended condolences to Congress, Metcalfe's constituents, and his family.

Dunne said he had known Metcalfe since the 1930s when Metcalfe was an Olympic champion.

Dunne recalled that they had attended the same officers candidate school before military service in World War II.

"Later, when he got active politically, we renewed our friendship."

Both Dunn and Murphy said they didn't think Metcalfe's falling out with the late Mayor Richard J. Daley weakened Metcalfe's prestige in Washington or in his congressional district.

"It was not a serious problem," Dunne said. "I respected Ralph in all ways. His relationship with the organization [he was 3d Ward Democratic committeeman] for the past few years has been fine."

Bilandic said that he had served in the city council with Metcalfe when both were aldermen from South Side wards. He said that later, as mayor, he testified before Congressional committees for which Metcalfe was either chairman or serving as a member.

"I believe we are all better for having known Alderman and Congressman Metcalfe."

A spokesman for Clergy & Laity Concerned, 542 S. Dearborn St., said Metcalfe's death was a "great setback for the cause of peace and human rights in our society and the world."

Rep. Dan Rostenkowski [D., Chicago] described Metcalfe as "a friend long before he became a congressman" and praised him for efforts to provide federal funds for sports programs.

"When Ralph spoke on sports, everyone listened," Rostenkowski said.

Rep. Sidney Yates [D., Chicago] hailed Metcalfe as "an outstanding public servant."

Mr. RUDD. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Arizona.

Mr. RUDD. I thank the gentlewoman for yielding.

Mr. Speaker, I would like to join the gentlewoman from Illinois (Mrs. COLLINS) in support of this eulogy and in eulogizing RALPH METCALFE, a real gentleman.

Mr. Speaker, before I came to Congress, one of my colleagues, now a retired judge in Arizona, told me that as soon as I got here I should look up RALPH METCALFE, because he was a fine gentleman. He said:

You know, while we were in college, I at Notre Dame and he at Marquette, I ate his dust in every track meet we ever participated in, and he was the world's fastest human being on the track just after Jesse Owens, who had that title.

I had the privilege of joining Congressman RALPH METCALFE on a trip to Panama at the time when we were looking over the Panama Canal situation. My respect for him grew immediately to great proportions. He was a reasonable gentleman. I know our Congress and this House will be better for his membership here. Let me extend sincere sympathy to his wife and family.

Mr. FLYNT. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Georgia.

Mr. FLYNT. I thank the distinguished gentlewoman from Illinois for yielding to me in order that I may join in paying tribute to the life and memory of my good friend and beloved colleague, RALPH METCALFE. I remember when Mr. METCALFE was first elected to the House of Representatives. I remember speaking to him and taking him by the hand in the well of this House where the gentlewoman now stands. I like to think that we have been dear friends since that time.

RALPH METCALFE was a fine gentleman in every sense of the word. He was a man of his word. You could always depend upon him. His word was his bond. He was a man of great personal and political courage. I feel that my life has been enriched by being included within his circle of friends. And, Mr. Speaker, like you and our colleagues, I shall miss him very, very much. Mrs. Flynt joins me in extending to Mrs. Metcalfe and their family our heart-felt sympathy and and condolences.

Mr. MAHON. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Texas.

Mr. MAHON. I thank the gentlewoman for yielding.

Mr. Speaker, I wish to join our colleagues in paying tribute to the memory of RALPH METCALFE. I have known RALPH since he came to Congress. It so happened that RALPH and I worked together on a number of matters and I learned the type of man he was. I was excited and delighted over my visits with him from time to time—and I visited with him about something quite extensive about 4 or 5 days ago.

It is just good that we have people of his quality and stature serving in Congress. Of course, when they have gone, we sustain a great loss, just as his district and State will sustain a great loss. I just want to add my words to the words that have been spoken by many others by way of tribute and respect. RALPH METCALFE meant a lot to our Nation.

I consider it a privilege to have known RALPH METCALFE, and Helen and I extend our heartfelt sympathy to his family.

Mrs. FENWICK. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Speaker, I thank my colleague for yielding so that I may join in these moments in remembering our colleague.

Congressman METCALFE's running days were over when we met, and so were mine, and so I saw him in quite a different light. I saw him as a fine, independent and courageous legislator, an honorable politician. That is a lot to say about any human being. The respect Mr. METCALFE had in the House was something I think we all remember, and certainly his family must cherish it in his memory.

I thank my colleague for giving me this opportunity to offer my small tribute.

Mr. PHILLIP BURTON. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from California.

Mr. PHILLIP BURTON. I thank the gentlewoman for yielding.

Mr. Speaker, I, too, want to express the sadness that my wife, Sala, and I feel about the passing of a dear friend, to express what I know is in all of our hearts—that RALPH's beautiful wife Fay be given the necessary strength to bear this burden.

I first met RALPH METCALFE in 1957 when he was the ward committeeman in the 3d Ward of Chicago, and I was active in those days in the Young Democrats. The Cook County organization and its younger counterpart had many attributes, but I was especially struck with the fact that of all the wards in Chicago, the 3d Ward was the one ward that had meaningfully involved a great number of the young people in its community, young people who were obviously concerned about correcting the injustices they saw all around them. And these young people adored RALPH METCALFE and his personal qualities of leadership. I thought it was really quite remarkable that in this one ward I perceived more activity and commitment and concern and leadership than in any of the other wards put together. I found this to be very impressive.

RALPH had a great career as an athlete, and he had a great career in public life. I cannot prove that any one single factor in RALPH's life had more meaning than any other, but I must affirm that for me this gracious and decent person's lasting imprint among all the other great achievements was his strength and ability to withstand any efforts to superimpose terms on his community by a power structure that was not relevant to the needs of RALPH's constituency.

Because of RALPH's enormous courage, he was able not only to survive but to be victorious over those who sought to purge him, because he spoke for the needs and concerns and aspirations of his community. And, more importantly—and this is his legacy, or one of them—I think that large political power groupings were sent a message by RALPH, and that message as I would construe it, was that the underrepresented and the deprived political constituencies of this country as embodied in the enormous METCALFE victory in that contested primary of his a few years ago, were telling the greater community, if you will, that, "You are not coming in here and dictating terms to us about who is going to speak for us, who is going to represent us, and who is going to fight to advance our cause."

I think that message perhaps has been understood ever since, that the effort to purge from on high, if you will, in the immediate constituencies such as RALPH's and a number of the rest of our colleagues is an ancient idea whose time has long since gone and will no longer be tolerated by the poor and underrepresented of our country. And they and I shall miss this fine man.

Mrs. COLLINS of Illinois. Mr. Speaker, I yield to the gentleman from Illinois (Mr. ANDERSON).

Mr. ANDERSON of Illinois. Mr. Speaker, I thank my colleague from Illinois for yielding. I certainly want to associate myself with all of the eloquent tributes that have already been made here in the House of Representatives today to mark the passing of a dear friend and a departed colleague, RALPH METCALFE.

I brought with me the clipping that appeared in the newspaper this morning, and I was reminded again of one of the paragraphs in the article that reported just the passing of RALPH METCALFE. I was reminded of that in what was just said by the distinguished gentleman from California (Mr. PHILLIP BURTON), when he referred to the act of exemplary political courage that marked the career of this great man.

He was willing to do battle even with his own party leadership at a time when he felt they were not adequately representing the interests of his people. I quote from some remarks that are reported and that were made by RALPH at the time when he said:

> I know the political realities of what I'm doing . . . I'm willing to pay whatever political consequences I have to . . .

What a political testimonial that is for any man to leave when he leaves this body, to be remembered by his colleagues as a man of that kind of principle and courage.

He had a great career in the world of sports. He was awarded the Legion of Merit for the work that he did as a physical training director in World War II. He was a great patriot. He was a great Congressman.

I know I speak not only for myself but also for all the other members of the Illinois delegation, many of whom have expressed their own feelings, but we all feel a great loss at the passing of RALPH METCALFE.

Mrs. COLLINS of Illinois. I thank the gentleman from Illinois.

Mr. Speaker, I yield to the gentleman from New York (Mr. RANGEL).

Mr. RANGEL. Mr. Speaker, I thank the gentlewoman for yielding, for taking this special order and giving us the opportunity to share our expressions of sympathy over the death of our colleague and dear friend.

Congressman RALPH METCALFE and I were not only neighbors but we often walked together as we would see each other in speeding to get to the floor from our offices in the Longworth House Office Building. I saw him on the weekends when he was working as if the hours he put in his office in the evenings were not enough and there was still more to be done.

I join with my colleagues in paying tribute to RALPH METCALFE. In many of the careers he has pursued he has always been the first: the International Olympics, his work in Chicago before he came to the Congress, his work in the Roman Catholic Church, and the Youth Foundation. Somehow, RALPH managed to do all of these things so well. Most of us would be satisfied, when we leave this earth, to have achieved what he has, as well as he has, in so many fields. Yet, I think it was what my colleague, the gentleman from California (Mr. PHILLIP BURTON), said that really impressed me the most. I had known so little about RALPH as a person before I met him as a Member of the U.S. Congress. In reading about his background and meeting him personally, I was impressed with how distinguished a person he truly was and how gentle, calm, and soft-spoken he was.

Some years ago, I went to Chicago during the time when youngsters were at the height of displaying now militant they could be. At a time when public officials, community leaders, and the clergy had apparently lost the respect of our young people, I was pleasantly shocked and surprised to see that the youth who had been described as antisocial were now joining in youth organization in support of RALPH METCALFE. I asked them exactly what kind of attributes they, who were not considered to be part of the political structure, found in Mr. METCALFE that made him one of their champions. Then, I found out about the RALPH METCALFE that I did not know as a legislator. He had taken on not only the political power structure of Chicago but he was prepared to stand up and talk about the brutality, the insensitivity, and the lack of accountability of the police department of Chicago. Very few of us have had the experience at the local level in dealing with a strong police department and strong mayor as RALPH METCALFE did in Chicago.

So it was this type of "militant" RALPH that I looked for and found as a Member of this House of Representatives, one that fought for the rights of blacks and other minorities, one who fought for the rights of senior citizens here and in the State legislature and one who had courage to stand tall as the leader of the Panama Canal agreement in the House.

I suppose all of us would like to join with you, Mrs. COLLINS, in saying that all of us knew a little different part of RALPH METCALFE. I think all of us feels a greater need to improve upon the quality of our work; to make certain that the investment he made in us as friends and colleagues will make him proud; that we are continuing to carry on the struggle that he started so many years ago, and ended up in fighting politically to survive as the Representative of the First Congressional District in Chicago. Mrs. COLLINS, when RALPH left to go home to campaign, I quizzed him, and asked him why he thought he had to campaign so hard in an election in which he was deemed to be the victor. He said, with all seriousness, because he had to try harder, to fight harder, to win harder, because it was always a constant political struggle. I only hope that as you carry on your struggle in the adjacent district in Chicago, where the same type of problems exist, that all of the people back home—the political leaders and community leaders—will recognize the vast vacuum in civil rights and human rights that has been brought on by the passing of RALPH METCALFE. I hope they will be guided by that and send us someone who at least knows how large the void is here because we have lost our dear friend and beloved colleague, Congressman RALPH METCALFE.

Mr. SIMON. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Illinois (Mr. SIMON).

Mr. SIMON. Mr. Speaker, first of all, before our distinguished Speaker, the gentleman from Massachusetts (Mr. O'NEILL) left—he had to go to Ohio—he asked that his personal tribute be included in the RECORD at this point.

● Mr. O'NEILL. Mr. Speaker, it is with profound sadness that I join my colleagues in paying tribute to the untimely passing of one of the most decent and honorable human beings with whom I have had the privilege of serving in the House of Representatives, the Honorable RALPH METCALFE.

I will always remember our colleague, RALPH METCALFE, first and foremost, as a fine gentleman. Possessing a gracious and pleasing personality, RALPH went about his daily tasks with sincere dedication and diligence. He was kind, compassionate and deeply committed to helping his constituents of Chicago's South Side.

Quiet, low-keyed, yet persuasive and sensitive, RALPH METCALFE could be darn tough when he advocated a cause to which he was committed. RALPH METCALFE hated injustice; he hated prejudice and biogtry; he hated mistreatment and unfairness; and, he was not afraid to stand up and be counted on the side of the dignity of every human being, even when it meant going against close and personal friends.

I am deeply grateful to RALPH for his support, through the years, and for his dedicated service as a member of the Democratic Steering and Policy Committee, the leadership team in the House.

I know that RALPH'S family and all of his colleagues were proud of his athletic achievements. I remember discussing his splendid athletic career with him one day. He told me how he and Jesse Owens were great friends, yet tough, competitive rivals. "You know TIP," RALPH said, "I beat Jesse 9 out of 10 times in national and international competition, and that 10th time, the one time he won, was the famous 100-meter dash where he set the world record in the 1936 Olympics. And for that victory Jesse is remembered in the annals of sports lore, and no one remembers that I finished second to Jesse in that race; that I was the 'second fastest human' in the world." What RALPH forgot to mention to me that day was that he achieved in international track competition what no other American had ever done before or since; and that he will be remembered in the record books as one of the great stars in Olympic competition, who won a gold, two silver and a bronze medal. And that was quite an accomplishment!

RALPH METCALFE never rested on his laurels. He always wanted to use these personal triumphs to help other young people achieve their potential. Through the establishment of the RALPH METCALFE Youth Foundation, he furnished young people opportunities to channel their unbridled energies and natural athletic talents into sports, which opened up a whole new life for these young people.

As an American, a public servant, and a nationally and internationally famous athlete, RALPH METCALFE'S whole life, both public and private, represented those respected and admired values of courage and decency.

My wife, Millie, joins me in expressing our sympathy and sincere condolences to RALPH'S wife, Madalynne, and the entire Metcalfe family.●

Mr. SIMON. Mr. Speaker, I thank the distinguished gentlewoman from Illinois (Mrs. COLLINS) for yielding me this time.

I was in the small town of Metropolis, Ill., yesterday morning when Odell Korte from the radio station there came up to me as I was about to speak to the senior citizens of Metropolis, and he handed me a message that RALPH METCALFE had died.

I told the group there—and, as I recall, there probably was not a black face in the group—that their lives had not been enriched by RALPH METCALFE.

I think my colleague, the gentleman from Illinois (Mr. MCCLORY) summarized it best when he said that RALPH METCALFE was a champion in every respect. Like I suppose every one of us who is this Member's age, or older, I first learned of RALPH when hearing about him in the Olympics.

Then, about 20 years ago or so, I first got to know RALPH METCALFE.

My colleague, the gentleman from New York (Mr. RANGEL), referred to him as a "gentle man," and he was that, both one word, "gentleman," and two words, "gentle man." However, there were those who did not understand that one can be both gentle and tough, and RALPH was both of those things.

Mr. Speaker, when the problem arose about police-community relations in Chicago, as my colleague from Illinois (Mrs. COLLINS) will recall, there was a division between the mayor of Chicago, Mayor Daley, and RALPH METCALFE.

Mayor Daley contributed a great deal to the city of Chicago, but like all of us he had weaknesses and there were areas in which he lacked some sensitivities, and one of those was in the black community.

I had the privilege of working with RALPH when he became president pro tem of the Chicago City Council, which was about the same time I became Lieutenant Governor of Illinois.

In any event, as a result of the division between RALPH and Mayor Daley, we ended up with another battle of champions, something like the Jesse Owens-RALPH METCALFE battle. Incidentally, in reference to that Owens-METCALFE race, you could mention to RALPH, "I saw you on television last night." There always were reruns of that race. They used to rerun not the relay in which RALPH came in first, but they would run the 100-meter dash where he came in second to Jesse Owens.

He always laughed about that and said, "Yes, I keep coming in second."

But in the battle of champions between Mayor Daley and RALPH METCALFE, RALPH came in first; his community recognized the contribution he made.

Mr. Speaker, each of us who had the opportunity to know RALPH is richer for that experience; and the country, in a very real sense, is richer for having had the contribution of RALPH METCALFE. He served not only his congressional district, not only the city of Chicago and the State of Illinois, but he served the Nation, and his interests were beyond that. He chaired the Panama Canal Subcommittee. He got no votes back home by providing leadership on an issue like that, but he was willing to assume that responsibility.

Mr. Speaker, we are going to miss him in this House; and the Nation is going to miss him.

Mr. MADIGAN. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Speaker, I want to thank the gentlewoman from Illinois (Mrs. COLLINS) for yielding; and I congratulate her for having the initiative to take this special order today.

Mr. Speaker, the gentleman from Illinois (Mr. SIMON), who just preceded me, has referred to the town of Metropolis in his district in Illinois. As the gentlewoman from Illinois knows, that is the fictional home of Superman. While RALPH METCALFE was certainly not a superman, he might very well have been the closest thing to that which we will have in this House for a while because, as has been said here, he excelled not only in sports, not only in the service during World War II, but in both local government and the National Government.

Mr. Speaker, there is another fictional character to whom we can refer. I know the gentlewoman from Illinois will remember F. Scott Fitzgerald's Great Gatsby in which the athlete excelled in everything until the age of 21, at which time everything became anticlimactic and he was not able to do anything more.

That certainly was not the case with RALPH METCALFE because as the gentleman from New York (Mr. RANGEL) said a moment ago, he was working, and striving, and fighting to excel every moment of his life.

Mr. Speaker, just 3 weeks ago, I rode in an airplane with RALPH. We talked again, as we have many times since we have been in Congress, about our Chicago sports teams, which both of us loved so very much. We talked about athletes and about physical conditioning and especially about the heart-lung relationship which was very much on his mind that evening.

I spoke to RALPH as a friend and suggested that perhaps he might decide to take it just a little bit easier, but he talked about his son, who was a candidate for alderman in their ward in Chicago, and he spoke about his deep concern for his son's political future.

I was reminded of my own father who got up out of a sickbed to go with me the first time that I was a candidate for public office to make sure that my petitions were filed correctly.

I would say to the gentlewoman that those of us who have been preceded in politics by husbands and fathers are best consoled today by the thought that the good a man does lives after him.

I am awed by the career of RALPH METCALFE. I respected him very much,

and I am very much saddened by his death. But I am, like the gentlewoman from Illinois (Mrs. COLLINS) very much challenged by the career that he has had. I think it is an example for all of us. I again congratulate the gentlewoman on the initiative of taking this special order.

Mrs. COLLINS of Illinois. I thank the gentleman.

I yield to the gentleman from the District of Columbia (Mr. FAUNTROY).

Mr. FAUNTROY. Mr. Speaker, it is with sorrow and a deep sense of personal loss that I rise to pay tribute to a fallen legislative warrior. Death is never a welcomed visitor, though we know he is a frequent traveler among us. And though our friend and colleague had tasted all that life has to offer, the "frequent traveler" was not expected.

RALPH METCALFE was not only a trusted colleague, he was a close friend. I shall truly miss him. Our hallowed halls will be without one of our most sensitive human beings. The Congress and the American people will miss his dedication and leadership as a Member of the House of Representatives. RALPH's death is a particularly significant loss for the Congressional Black Caucus. He was chairman and guiding force for the caucus braintrust on health. His legacy of thoughtful devotion to duty and political courage will be with us always. I shall remember RALPH's selflessness in sacrificing political security to save the rights of the people he served.

He was a gifted athlete, an American hero, who used his academic and athletic skills of concentration and discipline to help shape important legislation for all the people of our country. He was indeed a congressional hero.

Death visits us at all seasons and sometimes we must say as Jonathan said to David in a moment of farewell: "Tomorrow is the new Moon, and thou shalt be missed because thy place shall be empty." We have come together here on the floor of the House of Representatives to say to our good friend RALPH METCALFE: "Tomorrow is the new Moon, and thou shalt be missed because thy place shall be empty."

Mrs. COLLINS of Illinois. Mr. Speaker, I yield to the gentleman from Illinois (Mr. DERWINSKI).

Mr. DERWINSKI. Mr. Speaker, I express my appreciation to the gentlewoman from Illinois for giving us this opportunity to eulogize our late colleague.

The gentleman from Illinois (Mr. MADIGAN) mentioned the film which was replayed on TV which showed RALPH finishing second in the Olympic 100-meter. When I was in the service, they had a special film demonstrating physical fitness and in that particular film RALPH carried the baton and came across the line first, leading the U.S. relay team. I remember that film very well.

Coming from the Chicago area, I appreciate the long years of leadership and effectiveness with which RALPH represented the people of his district. His loss is a loss to the Nation and the State, as well as to the people of his district.

I remind the Members that just a few weeks ago when we passed the civil service reform bill that RALPH METCALFE as a member of the committee was one of the most effective members in supporting the cause of good Government that that reflected.

He had a great legislative career. He was one of our most effective Members; but as so many Members have pointed out, he was also a great inspiration to us. It is that inspiration and the leadership qualities he had that we will long remember.

I join all the Members in eulogizing our colleague.

Mrs. COLLINS of Illinois. Mr. Speaker, I yield to the gentlewoman from Louisiana (Mrs. BOGGS).

Mrs. BOGGS. Mr. Speaker, I thank the gentlewoman for yielding.

I, too, would like to join, as a political widow, now a Member of this House, in thanking the gentlewoman from Illinois for arranging this beautiful tribute to our friend and also for joining with other Members who have talked so eloquently about political families, especially to the gentleman from Illinois (Mr. MADIGAN).

The other day when RALPH was talking on the floor about his bill, I had up in the gallery three young athletes from my district. They had just come back from winning a bronze medal for the United States in the Volkov Cup competition as acrobats in Russia. The reason that they had been invited to that particular competition was because even though they were the national champions of the U.S. team, they were discriminated against because they were too young to participate in the world championships as our representatives.

What a wonderful thing it was to make up for this to them. The White House was very kind about having them come there. Chip Carter had a long conversation with them. I had them here and did everything I could think of to make it a great day for them. Then by happenstance to come into the gallery with these young athletes, who had been discriminated against, these young champions, and to have them see RALPH METCALFE, their hero, on the floor speaking out for amateur athletics was a thrill, indeed. I thought, isn't that like RALPH METCALFE? Wherever discrimination can be reversed or wherever inspiration to persons or groups of persons is needed, RALPH has always been there. It was always a source of particular pride to Hale and to me that RALPH and Fay and Hale and I became good friends almost immediately upon his coming to this body, because RALPH's mother was from Shreveport, Louisiana, and Fay kept asking me to please give her some Louisiana gumbo recipes; but this is the type of human side of a wonderful leader that all of us will remember. He was a man that stood for everything that is fine in this country. We will miss him terribly here in the House.

I kept thinking when I was listening to the delegate from the District of Columbia, who is a minister, how RALPH, indeed, had lived the Christian life. It is from men such as he that perhaps some day the world will be able to sing with the psalmist that:

> Truth and beauty shall meet and justice and peace shall kiss. Truth shall spring out of the earth and justice shall rain down from heaven.

Mr. Speaker, I thank the gentlewoman.

Mr. FINDLEY. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Illinois.

Mr. FINDLEY. Mr. Speaker, it is with sadness that I think of the passing of our colleague, RALPH METCALFE. Over the years we had become close friends. He always had time to stop and chat, to talk over issues large or small.

I admired him for many things, especially his spirit of independence. But equally, I admired his thoughtful attitude toward his colleagues. He was never brusque or overbearing, always helpful, friendly.

He will be remembered by many people as a fearless legislator, and he was. By others as a great athlete, or as a black leader. But to me he will be remembered best as a considerate friend.

Mr. DANIELSON. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from California.

Mr. DANIELSON. Mr. Speaker, I thank the gentlewoman for yielding.

Mr. Speaker, all of us already miss RALPH METCALFE, although he has been gone only 1 day.

I first met RALPH in the fall of 1970. We were elected at the same time to the 92d Congress. I remember that, in our indoctrination period when we were learning what to do when we became Congressmen, we sat together and visited together and began what turned out to be a long and beautiful friendship.

I echo and join in the thoughts of our colleagues who have commented today on the fine job RALPH METCALFE did as a Member of the Congress in his official capacity. We all concur with the words of admiration that have been expressed as to his ability to perform his job on his committees, his duty to his country, and also the work that he did for his constituents, but I would like to put into this RECORD the fact that my personal recollection will always be colored most by my appreciation for the opportunity to have known and to have been a friend of RALPH METCALFE. If you knew him, if you were lucky enough to know him, you had a fast friend.

RALPH and I used to walk back and forth to our offices from the floor and visit about everything going on here in the House, and we became very much acquainted with each other's ideas.

I also frequently had my lunch down in the Member's dining room at that little triangular table in the corner—and the gentlewoman from Illinois (Mrs. COLLINS) is often there—and as we all know, we sit around the table, and as we have our tuna salad sandwich or whatever it may be, we talk about everything under the sun, about politics, about legislation, the problems of our time, and everything under the dome of the Capitol. RALPH usually had lunch there with us. We got to know each other extremely well.

Mr. Speaker, I just want to be remem-

bered as saying that knowing him and being with him for 8 years greatly enriched my life and the lives of everyone else who had the same privilege.

Mr. HAWKINS. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from California.

Mr. HAWKINS. Mr. Speaker, with the passing of my colleague and a dear friend, Congressman RALPH H. METCALFE, today, I join with others in paying final tribute to one who was a great public servant and a world-renowned figure in the athletic arena.

He served four terms as a Member of the House of Representatives from the First District of Illinois. He was chairman of the Subcommittee on the Panama Canal; and served on the Merchant Marine and Fisheries Committee and the Post Office and Civil Service Committee.

In 1936 he won the hearts of millions with his athletic prowess, and returned home the victor from that famous Olympic feat in Germany.

The world will remember him as that famous sprinter who captured their hearts; but, America will also remember him as a dedicated public servant. RALPH cosponsored more than a hundred bills, many of them have since become law. Among his major concerns and interests were: the elderly, the disadvantaged, housing, jobs, crime, energy, and consumer affairs.

Throughout RALPH's life his interest and love of sports never diminished. He was the founder of the Ralph H. Metcalfe Youth Foundation—an organization devoted to athletic, health and education programs for disadvantaged youth. He knew the value of sports, and its emphasis on fair play, which was evident in his philosophy as a dedicated legislator.

After graduation from the University of Southern California, he was a track coach and political science instructor at Xavier University of New Orleans. Many of the organizations of which he was a member involved sports, but he held in high esteem his membership in other organizations as well. He served in the United States Army from 1944 until his honorable discharge at first lieutenant in 1946.

Congressman RALPH H. METCALFE will be missed, sorely missed, but he left us a legacy. One that as we follow, we might hear his voice over our shoulders saying "just one more lap, just one more lap." To persevere would be an appropriate memorial to him. To paraphase one of my favorite expressions: "* * * it is not who makes the loudest noise, who should win our respect, but he who quitely goes about the business of changing the wrongs." That was RALPH's way.

Mr. COLLINS of Texas. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Texas.

Mr. COLLINS of Texas. Mr. Speaker, what a shocking blow to learn yesterday on the House floor about the fatal heart attack of RALPH METCALFE. Everyday I walked back and forth with RALPH to the House floor. I was so proud to have RALPH as a friend. He was warm, loyal and radiated such deep sincerity.

I remember so well our conversations last week. He had so many plans for Chicago. He had great plans for his son, Ralph Jr. Everything that RALPH talked about was vivid and full of action.

I remember back to the day that RALPH METCALFE came to Congress. I had always wanted to meet RALPH METCALFE as he had been a hero to me. Many, many years ago I was always pulling for RALPH METCALFE to win the race. Back in the days when he ran, the U.S.A. had the world's great sprinters and the great relay team. There were other great ones but the one that always stood out in my mind was RALPH METCALFE. Although I had never known him before, I found the quality and spirit that he had in the days when he was America's Olympic star had persisted through the years. He was a winner all the way.

I liked to visit with RALPH because he had such an intelligent, comprehensive view on any subject. He talked in level, measured terms. When he spoke in the Commerce Committee, it was concise and common sense.

He thought well of every man and woman with whom he came in contact. He had a deep concern for everyone that lived in his district in Chicago. He thought of his constituents as each of them being a personal friend. When we talked about problems back in Chicago, there was no small problem as everyone that had an issue knew that RALPH METCALFE would give them a good hearing.

My wife and I extend our deepest and heartfelt sympathy to Mrs. Metcalfe and all of the family. RALPH METCALFE was a man of character, intelligence, and leadership. He represented Illinois well as one of our greatest Americans. I am proud that I had an opportunity to know and serve in Congress with RALPH METCALFE.

Mr. ZABLOCKI. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Wisconsin.

Mr. ZABLOCKI. Mr. Speaker, all of us were shocked and deeply saddened upon hearing of the passing of our colleague, RALPH METCALFE.

There was much I had in common with RALPH. We both represented urban districts. Therefore, we were interested in urban problems.

Likewise, we had a common denominator in education: We both attended the same university, Marquette University, in my hometown of Milwaukee, Wis., where he got his early training as an athlete and went to law school.

We had a common interest in international affairs; most recently, on the Panama Canal issue in which, as chairman of the Merchant Marine Subcommittee on the Panama Canal, he was a leader in support of the treaties.

I deeply appreciated RALPH's counsel and advice as a friend and colleague over the years. I know we will sorely miss him. We are all the richer because our paths have crossed with RALPH's. To his wife Nasalynne and to his family in this hour of bereavement I extend my sincerest sympathy.

Mr. WAMPLER. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Virginia.

Mr. WAMPLER. Mr. Speaker, it was a sense of great personal loss that I learned of the demise of our friend and late colleague, the gentleman from Illinois (Mr. METCALFE). He and I occupied offices on the same floor in the Rayburn House Office Building, and many times during the course of a normal week we would walk back and forth together as we were coming from our offices to attend to our duties here on the floor of the House. This gave me a unique opportunity to get to know this man and to learn much of his background, of his aspirations, of his philosophy. I observed him here on the floor on more than one occasion. I came to appreciate his levelheadedness and the fact that he knew human nature. He knew that all of us were subject to certain biases, and regional prejudices. I think this man understood what made America great. I wish some words of mine would be adequate to express my personal feeling of loss on this occasion. This House is indeed a better institution for having had a man like RALPH METCALFE in our presence for the time that he served here. RALPH METCALFE was a good and noble man. I extend to his wife and family my deepest sympathy and I wish for them God's richest blessings in this troubled time.

Mr. McKAY. Mr. Speaker, will the gentlewoman yield?

Mrs. COLLINS of Illinois. I yield to the gentleman from Utah.

Mr. McKAY. Mr. Speaker, I thank the gentlewoman for yielding.

Mr. Speaker, RALPH METCALFE and I came to the Congress together, and, like the gentleman from California (Mr. DANIELSON), we met at the lunch table on many occasions. I met him in Chicago as we returned from our recesses and as we traveled back on the plane. In our conversations I remember him as a man who always, whenever there was criticism, was the first to rise or find the good points of the person talked about. Whatever the circumstances, he could always find some positive thing to say—"Well, but he has got this to consider, and you need to know that his heart was in the right place and he was doing the thing he thought was right." Those kinds of comments were prolific in his conversation. RALPH was a man, who, from my experience, and from what I knew of him, was not to be intimidated by threats of either physical or psychological intimidation. He was a man of his word, to my knowledge, which is a great credit. I would like to extend my condolences to his family. A man is not much better than his family and those who live around him, because it is people who make us what we are. Things are peripheral. People is what makes things important. And I suppose in this time of stress RALPH is relieved. The trials of mortal anxiety, whether physical or mental, are past for him.

But for those who are left behind concern, sorrow, missing are left with them. I would like to extend my condolences to those who are left, who are bereaved;

first, that the Almighty will give them some comfort in these hours of bereavement, in the solace of identity. Perhaps the poet expressed it:

Dying is like a ship a sailing.
There are those who, in the harbor, who bid her goodby
And as the sail sinks in the setting sun on yonder shores
There waves the hand to say hello.

For those who have gone on before RALPH, we trust that it may be so, and comfort will be theirs.

Mrs. COLLINS of Illinois. Mr. Speaker, I yield to the gentleman from Ohio (Mr. STOKES).

Mr. STOKES. Mr. Speaker, I thank the gentlewoman for yielding to me and providing all of us in this body an opportunity to pay tribute to one of the finest men who has ever served in this body.

I came to know RALPH METCALFE shortly after he had come to the House and worked very closely with him over the period of years that he served here in this institution. Ralph was a man who had the ability to inspire people, the type of individual who, as you came to know him, you would have to admire.

His dedication and commitment to the people he represented was something that always struck me in a way that made me admire the service that he gave to his people. I often discussed with him some of his political commitment in terms of his own particular political situation. I recall a couple of years ago when many of us who served with him in the Congressional Black Caucus went into Chicago and helped campaign with him during a period in which he had a particularly difficult political campaign. We did this because we felt that RALPH METCALFE's presence in this body meant something, that it was something that all of us could be proud of, so we went into Chicago and walked the streets with him. We went from door to door with him because RALPH METCALFE was very, very personal to all of us.

Then, of course, I had the privilege in the caucus of serving with him in the Health Brain Trust, where he and I cochaired the Congressional Black Caucus Health Brain Trust. I recall just a couple of weeks ago when on the Congressional Black Caucus weekend some 8,000 people came from all over the country to spend that weekend in the workshops, at the caucus dinner, and other festivities around that weekend, that on that Friday when RALPH METCALFE and I were chairing the Health Brain Trust his concern was about the Health Brain Trust, but he was also concerned that day about the Humphrey-Hawkins bill.

He had been over to the White House that day at an emergency meeting that had been called by the President with the members of the caucus. When he came back he said, "LOU, there is going to be a press conference on our meeting with the President at 3:30. I think it is going to be important for me to be there."

He said, "We had a great meeting with the President, and it looks as though we now are going to be able to see this bill pass, and this bill means so much to all of our people that I think I just must be at this press conference."

I said, "RALPH, what I think I will do is go with you."

So, we did leave our Health Brain Trust and walked over to the press conference that was held that afternoon with the other members of the caucus. It is this kind of dedication and commitment that RALPH had that I think will make all of us always remember him in the sense that he was a dedicated, committed, fine gentleman. All of us, I think, are a little better for having had the opportunity to have known him and to have served in this body with him.

Mr. Speaker, I thank the gentlewoman for yielding to me.

Mrs. COLLINS of Illinois. I thank the gentleman.

● Mr. RHODES. Mr. Speaker, I join my colleagues in the House in expressing our sorrow over the death of RALPH H. METCALFE. During his 18 years in the Congress, he was a tireless fighter for the causes he believed in, and accomplished much in the area of understanding through civil rights legislation. His career exemplified an uncompromising pursuit of excellence, from his days as an Olympic star, to the diligence and determination he displayed in his work in the House.

Mr. METCALFE was a man of courage, determination, and was intensely proud of his native Chicago. We regret his untimely passing, and I extend my condolences to his family.●

● Mr. BRADEMAS. Mr. Speaker, I want to join in paying my respects to the memory of our esteemed friend and distinguished colleague, the Honorable RALPH H. METCALFE of Illinois.

Like all of us, I was shocked at the news yesterday of the death of RALPH METCALFE.

We all know of RALPH's remarkable career as an athlete but those of us who served with him in the House of Representatives knew him as well as a gentle, thoughtful man who rarely raised his voice but who was vigorous in the defense of the people whom he represented in Congress.

Despite his gentle exterior, Mr. Speaker, RALPH METCALFE was a man of great courage and he fought some difficult battles to retain his seat in Congress. He was ever mindful of his fundamental commitment to the service of his fellow men and women and I count it my good fortune to have known him as colleague and friend.●

● Mr. ROGERS. Mr. Speaker, I join my colleagues in expressing my sense of loss for the Congress, the Nation, and the family and friends of RALPH METCALFE on account of his sudden and untimely death.

I had a special opportunity to come to know RALPH because we shared committee assignments on both the Interstate and Foreign Commerce and Merchant Marine and Fisheries Committees. In this working association, I came to know RALPH as a responsible knowledgeable, and hardworking legislator.

RALPH was a man of independence and integrity, qualities which enabled him to serve as an effective advocate for the needs and concerns of his constituents, but which also enabled him to play an important role on the Commerce and Merchant Marine Committees as a leader and a supporter of reasonable compromise in the national interest.

Perhaps most importantly, RALPH had great sensitivity for people and their needs, especially the poor and underprivileged, and this was reflected in his approach to every legislative decision.

Mr. Speaker, Becky and I offer our sincere and deep-felt condolences to Madalynne and Ralph, Jr. and we offer tribute to the contribution he made to better the lives of the people of the Sixth Congressional District of Illinois, and of this Nation.●

● Mr. MITCHELL of Maryland. Mr. Speaker, on Tuesday, October 10, 1978, the House of Representatives, as well as this Nation, lost one of their most eloquent examples of one whose life had been symbolized by a strive for excellence.

The death of Congressman RALPH METCALFE leaves a significant void in the continuing struggle for the attainment of equal opportunities among our Nation's citizenry.

Congressman METCALFE had excelled in two areas which are supposed to promote the concept of "fair play" during the interaction of the participants. He strove for excellence in 1932 and 1936, during his participation in the Los Angeles and Berlin Olympics, respectively, and, his performance was a reflection of his persistence and drive. Mr. METCALFE was no less diligent when he entered the political arena in 1952.

With respect to his political endeavors, it is no understatement to say that Congressman METCALFE's primary concern was for the well-being of people, and not for any political repercussions he may have suffered because of this concern. The year 1972 comes to mind when Congressman METCALFE jeopardized a compatible relationship with Mayor Daley, by joining the forces of those who vehemently opposed police brutality in Chicago. The Congressman said at that time:

I know the political realities of what I'm doing * * * I'm willing to pay whatever political consequences I have to, but frankly, I don't think there will be any.

More recently, Congressman METCALFE, who served as chairman of the House Committee on Merchant Marine and Fisheries' Subcommittee on Panama Canal, was exceptionally instrumental in impressing upon House Members the importance of the expeditious passage of the Panama Canal Treaties. Surely, Congressman METCALFE's untiring efforts in the assurance of protection for the human rights of Panamanians during the implementation of the treaties' provisions, exemplified his unlimited and unrestricted attention to human rights. While the Congressman championed the rights of the House with regards to the disposal of U.S. property, he was nonetheless steadfast in his belief that the Panama Canal treaties should be an expression of this Nation's concern for the promotion of equal opportunities within the Canal Zone.

Congressman METCALFE's concern for human rights was only surpassed by his deep displeasure with the unemployment situation among black people in this country. During the Congressional Black Caucus meetings with President Carter, Congressman METCALFE never failed to reiterate the concern he felt when he assessed our Nation's unemployment dilemma, and its particular effects on blacks. In our private conversations, I could often detect actual pain as RALPH expressed his feelings on this issue.

RALPH METCALFE will be sorely missed in this House and particularly as a member of the Congressional Black Caucus. He will also be missed within the hearts of millions of Americans.

Descriptions like "diligent," and "hard working," cannot begin to penetrate the essence of Congressman METCALFE'S attributes.

Congressman METCALFE was acknowledged, admired and respected for his prior athletic and subsequent political endeavors. But, above all, he was loved.●

● Mr. WHITTEN. Mr. Speaker, you frequently find the most able, successful and finest people to be the most modest as to their accomplishments. Certainly our late colleague, RALPH METCALFE, fits that description—a world figure, a splendid teacher, and a fine Congressman. His whole life presents an example of the best.

His untimely passing comes as a great shock to me and to his many, many thousands of friends.

I attended the public gathering only a few days ago when many of his colleagues paid oral tribute to his character and accomplishments.

Only last Friday, I had a long visit with RALPH and it is hard to realize he is gone.

We have lost a friend, and the Congress and country a valued public servant.

I extend my sincerest sympathy to his family.●

● Mr. FORD of Tennessee. Mr. Speaker, I would like to join my colleagues in the House today in paying tribute to a most dedicated public servant, the late RALPH H. METCALFE. During the time we spent together in the House and on the Congressional Black Caucus, I grew to love and respect Congressman METCALFE. He was never afraid to enter a battle as long as he believed in the war. Like David who slew Goliath, he attacked and conquered many giants during his political career. No challenge was too great that he did not rise to meet it. He was truly a great Congressman and a courageous black warrior.

My friend, Mr. METCALFE, began many years ago as a champion athlete, representing well the United States of America in foreign countries. This he did against the seemingly insurmountable odds of racism which prevailed. Mr. METCALFE later brought with him this prowess to the Congress, where he continued to champion many great causes for justice. He took an active role of overseeing the administration to insure that the numerous Federal programs be responsive to the needs of all Americans. He led to the uncovering of failures in health programs to provide preventive medical care to school children. He exposed the failure of housing programs to compensate for deficient appraisals to insure the highest quality housing available. He realized the problems with using behavior modification techniques in prisons, the inequity of subjecting incarcerated human beings to inhumane treatment and he spoke loudly against it. RALPH took great pride in his work here in the House of Representatives. He was totally dedicated and devoted to representing and serving his country. He welcomed the challenges which this job presented and met those challenges zealously. Energy, enthusiasm, and expertise always accompanied him as he carried out his vast responsibilities and duties. On the Interstate and Foreign Commerce Committee, the Merchant Marine and Fisheries Committee, the Post Office and Civil Service Committee, and on the floor of the House of Representatives, he was a statesman, a scholar, and a gentleman.

Mr. METCALFE was totally committed to the cause of insuring civil and human rights to all Americans. He sponsored and authored several measures to prohibit discrimination. He was a member of many educational, cultural, and civic organizations charged with the promotion of equality.

Just as his wife and family and the constituents of the First District of Illinois, who were well on the way to electing him for another term in office, will miss him, I shall personally miss dearly the presence of my friend, my brother, RALPH H. METCALFE.●

● Mr. SANTINI. Mr. Speaker, we were all deeply saddened by the sudden passing of one of the most admired and respected members of our hearty band, RALPH METCALFE. As a colleague of RALPH'S on the House Interstate and Foreign Commerce Committee, I was constantly amazed and inspired by the manner in which he handled himself and his work.

His legislative skills were something to behold, and his dedication to his constituents was unswerving.

Although RALPH and I did not agree on various issues, I could not help but respect his loyalty to his convictions and his competitive instincts. He was either a formidable opponent or valuable ally depending on which side of the issue you were on.

Certainly, RALPH was a winner in the truest sense of the word—as a child in Chicago, as an Olympic champion and finally as a Congressman. His lifetime accomplishments are lasting proof of just how successful he was.

But, he was more than a successful and admired professional, he was also a straightforward gentleman and warm human being. I was proud to call him a friend.

I join his many friends and colleagues in extending heartfelt sympathies to his family.

The U.S. Congress and all America will miss him.●

● Mrs. BURKE of California. Mr. Speaker, a sudden death has taken from this House our honored colleague and my good friend, RALPH METCALFE.

Although RALPH will be missed by all those who knew him, my own sadness is particularly acute. RALPH METCALFE was a man possessed of great political and physical energy, and his career in both athletics and politics reflected a level of excellence that few of us can hope to equal.

RALPH METCALFE served with distinction during his 8 years in the House. As a founding member of the Congressional Black Caucus, he worked courageously to further the interests of this country's poor and minority groups. His determination in politics was symbolized by his 1976 re-election campaign, in which he fought the machine of then-mayor Richard Daley of Chicago, and won.

Only his most recent achievements, however, were in the political arena. RALPH METCALFE perhaps will be remembered best for his accomplishments in sports arenas throughout the world. In my own congressional district in Los Angeles, he is remembered for winning medals in the 1932 Olympic Games as a sprinter. He also took part in the 1936 Olympics in Berlin, winning a gold medal on the 400-meter relay team and a silver medal for finishing second to Jesse Owens in the 100 meter dash.

A member of the President's Commission on Olympic Sports, RALPH always supported the return of the Olympics to the United States. It was only fitting that in 1984, the games will be held in Los Angeles at the site of his 1932 triumphs. No American sprinter ever won more major titles, according to the Los Angeles Times. The late Maxwell Stiles, track and field expert for the Los Angeles Examiner, devised a rating system for sprinters and judged METCALFE the greatest of all time.

As an Olympic champion, and as a lifelong champion of the rights of the underprivileged, RALPH METCALFE earned the respect of citizens throughout this country and the World. I can think of no finer legacy than his outstanding record of service and achievement.

I extend my heartfelt sympathy to his wife Madalynne, son Ralph, Jr., and their families, whose grief I share. My thoughts will be with them in the days ahead.●

● Mrs. CHISHOLM. Mr. Speaker, it is with a deep sense of sadness that I rise to pay tribute to our revered colleague, the Honorable RALPH METCALFE. This man brought a sense of pride to his constituents and to all of black America, because he stood up to the political establishment, and declared his independence from the political machinery which has so often dominated a government intended to be by the people, for the people, and of the people.

As long as I live, I will always remember 1976, and RALPH'S campaign for reelection. There was a fervor in Chicago's black community to demonstrate the independence of this community from bossism, and its right to self-determination. Many of us in the Congressional Black Caucus went to Chicago to work for RALPH, and we were all touched by the sense of excitement and enthusiasm

which characterized the overwhelming support which Congressman METCALFE received in his reelection. His victory was a sign to everyone that it was possible for a politician to stand by the people, and not lose office on account of high principles.

The loss of RALPH METCALFE from the ranks of Congress will be deeply felt, as he was a just and honest man. He came to the House of Representatives from a background as an Olympic track star, and long time public servant to the city and people of Chicago. As a legislator, RALPH distinguished himself particularly with issues and legislation affecting consumers, and his investigative work often brought problems and abuses to the light. I am sure he will be missed greatly by his colleagues on the Interstate and Foreign Commerce Committee for his expertise in this area. In addition, RALPH actively involved himself in a number of important coalition groups, which served to advance the cause of progressive democratic principles. For the past 4 years RALPH has served as a member of the Democratic Steering and Policy Committee, and he was a leading force in the democratic study group as well as the northeast midwest economic advancement coalition. These diverse involvements attest to RALPH'S strong ability to work within coalitions to bring about a common goal. He may not have captured the headlines, but it was his ability to serve as an integral part of a team that enabled many legislative accomplishments on behalf of the poor and disadvantaged in his 8-year tenure in the Congress.

There can be no question but that the Congressional Black Caucus will feel this loss the deepest, and that his passing leaves a void that will be difficult to fill. It takes time and hard work for a member of the caucus to achieve his level of seniority. It is my hope that historians will note the political courage which this fine, black man demonstrated to his people, and give him the recognition he deserves. His strength of character can serve as a model for the young people of today, and as an example of political morality and conviction overcoming obstacles thought by most to be permanent and insurmountable.●

● Mr. DRINAN. Mr. Speaker, I came to Congress with RALPH H. METCALFE in January 1971. I shared virtually all of his priorities from the first day that we served together. I came to know him well and admired him more every time I was associated with him in any common endeavor.

I spoke frequently with RALPH METCALFE about the problems of poverty in his congressional district in South Chicago. I conversed on a regular basis with him about the role in urban renewal of the Catholic Church of which RALPH was a devout follower.

RALPH METCALFE had an unusual passion for justice and an uncommon righteous anger at the social injustice which he saw all around him.

I admired RALPH METCALFE for many things but particularly for the courageous way in which he followed his conscience when his convictions were in conflict with the viewpoints held by some persons and organizations in the Democratic political structure in greater Chicago. I know personally from extensive conversations with RALPH METCALFE how much he sacrificed in order to follow the dictates of his conscience in this matter.

RALPH METCALFE will be deeply missed in the Congress of the United States. His voice and his vote were always solidly in favor of more social justice for the minorities and the poor of our country.

I and all of RALPH'S colleagues express our prayerful compassion for his wife, Madalynne, and his son, Ralph H. Jr.●

● Mr. PRICE. Mr. Speaker, I would like to join my colleagues today in expressing my sorrow at the loss suffered by this House yesterday. The untimely death of Congressman RALPH METCALFE was a shock to all of us, but particularly so to the members of the Illinois delegation. We worked with RALPH in a very close and special way and I know I speak for my colleagues when I say that his leadership will be sorely missed.

As a young sportswriter back in Illinois, I remember following RALPH'S career in track and his victories in the 1932 and 1936 Olympics. It gave me great pleasure to welcome RALPH to the delegation in 1970, when he was elected Representative from Illinois' First District. Since that time I have seen nothing to change my mind—as a statesman, as a sportsman, as a human being, RALPH METCALFE was a winner.

To RALPH'S wife and to his son I express my sincere condolences. Our loss is great, but theirs is much greater.●

● Mr. MURPHY of Illinois. Mr. Speaker, I was very shocked and saddened to learn of the death of RALPH METCALFE, an outstanding Congressman and good friend.

During his 8 years in the House, RALPH METCALFE faithfully represented his constituents in Illinois' First Congressional District, which covers much of Chicago's south side. Among RALPH'S most significant legislative contributions were his sponsoring of the Amateur Sports bill, his writing of the antidiscrimination section of the Railroad Regulatory Reform Act, and his adding of two antiredlining amendments to the No-Fault Auto Accident Insurance bill.

In addition, RALPH was active in the oversight of Federal programs, uncovering the need to provide preventive medical care to schoolchildren and compensation to homeowners for deficient appraisals. Keenly aware of housing needs, RALPH helped secure a $22 million HUD grant for the Nation's largest housing project, Robert Taylor Homes, located in his congressional district.

As an athlete, RALPH'S achievements were well recognized. In the 1932 Olympic games in Los Angeles, RALPH won the silver and bronze medals in the 100- and 200-meter sprints. A participant in the 1936 Olympic games in Berlin, RALPH again distinguished himself by winning a gold medal as a member of the 400-meter relay team and a silver medal for finishing second in the 100 meters.

RALPH METCALFE was admired not only as a fine legislator and athlete, but as a true gentleman. His door was always open for advise and guidance in matters concerning the city of Chicago. His dedication to making our city a better place to live was an inspiration to all of us representing Chicago.

RALPH METCALFE kept up a fast pace until his death, putting in a great deal of time serving his constituents as a result of the long hours the House has been in session. The fact that he fulfilled his responsibilities faithfully is a mark of the fine public servant RALPH METCALFE truly was.

All of us in the House will miss the presence of this warm and gentle man. I want to express my sympathy to his wife, Madalynne Fay; his son, Ralph, Jr.; his mother, Mayme Attaway Metcalfe; his stepmother, Effie May Metcalfe; and to his grandchild.●

● Mr. RUSSO. Mr. Speaker, the death of Congressman RALPH METCALFE has left us all shocked and saddened. I have not yet been able to understand that he will not be here—working in committee with me, taking time to say "hello" on the elevators, stopping in the hall to chat with people, bringing his insights and concerns to our congressional work.

He never dominated in order to win, nor demanded the limelight. Yet you felt his presence and his strength. In a quiet style that probably belied that strength on occasion, he got the job done—whether it was cooling down a tense situation or holding hearings on postal facilities for his district.

This man, who served with such dignity and commitment, knew more than many people could ever know the sound of applause, the awarding of medals, the attention of the world for accomplishments. He remained sincere, gentle and, above all, sensitive to others.

He was a genuine hero—not one who required the fanfare, but who in the decent and caring way in which he lived his life and did his job demonstrated the meaning of that word. He deserved to be admired and applauded.

Our State of Illinois has lost a great voice. The Nation has lost a hero. And those of us who were privileged to know him personally have lost a dear friend.●

● Mr. JONES of North Carolina. Mr. Speaker, it is indeed with a great amount of sorrow that I join with other Members of the House in paying tribute to the memory of one of the really finest gentlemen I have ever had the pleasure of knowing. I refer to the late Congressman, RALPH METCALFE.

Certainly we all remember with pride the fact that he was one of the most outstanding track athletes ever produced from this Nation. And the manner in which he represented the United States in the Olympics during the height of his athletic career stands as a shining example for all to follow.

Later he had the high honor of being elected to the U.S. Congress, and this was my first opportunity to get to know him personally, after many years of distant admiration. There are few, if any, who had any greater degree of modesty and compassion for their fellow man than did my friend, RALPH METCALFE.

He will be missed; and to his family I offer my condolences but with the

knowledge that they have many pleasant memories of his life and his contribution to his fellow man.●

● Mr. NATCHER. Mr. Speaker, may I take a moment to express my sorrow on the passing of a friend and colleague, The Honorable RALPH H. METCALFE.

Congressman METCALFE's courage and dedication brought him to the pinnacle of international competition. He was a U.S. Olympic Champion. He carried these attributes into his political career. No one can question his loyal and dedicated service to his people in the State of Illinois. He saw the needs of the people and nothing stopped him from fulfilling this need to the best of his ability.

His outstanding record in Congress speaks for itself. His energies were directed to intelligent and conscientious service. He was a hard working legislator in his committee work and on the floor of the House. He never waivered, never faltered in his devotion or his responsibility, the mark of a true champion.

Mr. Speaker, RALPH METCALFE will be sorely missed by the people of Illinois, by his fellow Members of Congress, and by me. His wife, family and friends have my deepest sympathy.●

● Mr. FREY. I would like to join with my colleagues in expressing my sorrow over the passing of our beloved colleague, the late RALPH H. METCALFE of Illinois.

RALPH has had a distinguished career in the service of his country. He first gained national prominence as one of the outstanding sprinters this Nation has ever known. His record of success, including the Olympics, is know to all.

I have had the privilege of serving with him on the Commerce Committee for many years. During this time, it has been a privilege to know him and an honor to be a friend. He was a gentleman in the real sense of the word. He would argue his points and argue them forcefully, and was most persuasive. In instances where we might not agree, he always had the consideration to respect another point of view. I liked and respected RALPH METCALFE. The people of Illinois and this country will sorely miss his leadership. He did this Nation honor. More can not be said of any individual.●

● Mr. SLACK. Mr. Speaker, I wish to join with my colleagues in expressing my sympathy to the family of Congressman RALPH METCALFE upon his untimely passing. I was saddened to hear that the 95th Congress had lost yet another colleague in such an unexpected fashion.

Prior to his first election to the House of Representatives in November of 1970, RALPH METCALFE led quite an exemplary life in terms of his pursuits and successes. I suppose that to most Americans, RALPH is best known for his membership on the U.S. Olympic Teams of 1932 and 1936. His achievements in the area of athletics has served as an inspiration to many young athletes over the years.

RALPH METCALFE's successes were not limited to athletics as his background will attest. He was much interested and very successful in the areas of civic, community, and academic affairs. His activities in health and education programs, youth programs and those programs directed toward the needy were widely praised throughout his community and the Nation.

My sympathies are extended to RALPH's family in the wake of his sudden passing; they may take comfort in the knowledge of the great respect RALPH earned from his colleagues in the Congress and the recognition that his public service will be remembered for many years.●

● Mr. VENTO. Mr. Speaker, the untimely death of our colleague, Congressman RALPH H. METCALFE, is a great loss to this 95th Congress. Congressman METCALFE had an outstanding record of public service and was internationally recognized for his leadership in the civil rights movement and his achievements as an Olympic medal winner. His life was a fine example for every young person who dreamed about being an athlete or having a career in politics. Mr. METCALFE's great personal achievements, at a time when minority persons faced incredible social, economic and political barriers, made it much easier for others to follow in his stead. In Chicago, he is regarded as one of the great leaders of the black community, respected for his commitment and his courage. The RALPH H. METCALFE Youth Foundation he established stands as a memorial to his dedication to the young people and exemplifies the principles for which he fought so hard. It was an honor to serve with Congressman METCALFE and to work with him on so many important legislative matters.●

● Miss JORDAN. Mr. Speaker, RALPH METCALFE was a man whose words and actions evidenced a willingness to confront challenges. I never heard him say "I can't." Not to try seemed never to occur to RALPH. If he had any reservations about a worthwhile request made of him, his response was "I'll try." He tried often and succeeded often.

RALPH worked his way up through the congressional ranks, achieving a subcommittee chairmanship and membership on the Democratic Steering and Policy Committee. But positions of power and influence never prompted him to forget the powerless and the less influential.

RALPH did not frequently speak on the floor of the House but when he did, we paid attention. We knew that if the issue merited his speaking, his words merited our attention. We would put aside our personal agendas to listen to RALPH METCALFE.

As an esteemed member of the Congressional Black Caucus, RALPH's calm manner often soothed troubled waters. He was soft-spoken, at times easygoing, and always tough. RALPH's life exemplified hard work, dedication to principle, and achievement. The respect of his congressional colleagues transcends party, race, age, sex, and geography. The House of Representatives and the people of the First Congressional District of Illinois have lost a good Member and a good man.●

● Mr. OTTINGER. Mr. Speaker, I rise to pay tribute to our colleague, RALPH METCALFE, who unfortunately passed away on Tuesday morning.

RALPH METCALFE was a Member of this body who walked among us in quiet ways, earning our affection and respect. In the 8 years he served in the House he demonstrated a commitment to the institution, to his colleagues and to the good of the people. He contributed greatly, of his time and of his quiet but effective personal strengths.

It has been an enormous privilege to serve with RALPH METCALFE in the House and on the Interstate and Foreign Commerce Committee. And his loss is similarly great.

RALPH METCALFE's convictions. his translation of those convictions into action, should be remembered and should serve as examples to others. His service to the public far exceeded just his presence in the Congress; he was on countless boards and committees dedicated to serving the public interest. His lifelong interest in sports, through which he himself established the RALPH H. METCALFE Youth Foundation for sporting activities and community help, and through which he has served the U.S. Olympic Committee and the President's Commission on Olympic Sports, was another stellar example of his commitment to the public.

RALPH METCALFE the runner no longer runs with us, but he made deep and lasting impressions for his depth and vision, and those impressions will remain.●

● Mr. CLAY. Mr. Speaker, I am deeply saddened by the unexpected passing of my good friend and colleague, Congressman RALPH METCALFE.

To those of us who knew him well, his kind heart, warm spirit, and strength will be a source of inspiration as we try to carry on the struggle for justice and equality without him.

Congressman METCALFE was a man of honor with deep conviction and keen vision. He was a man whose faith lived in his everyday life. I am sure that I express the sentiment of thousands when I say that the void he leaves will not be filled for many years to come. Indeed, he brings to mind the definition of a true gentleman.

Congressman METCALFE has left us with a legacy of good faith and of hope. He proudly wore the banner of concern for his fellow man. The troubles of his brothers and sisters were never too burdensome to carry. His untiring efforts on behalf of his constituency will long be remembered.

The only thing that will ever overshadow his numerous accomplishments will be the courteous and distinguished manner that characterized a brilliant career of public service.

As a member of the Congressional Black Caucus, Congressman METCALFE's devotion to the activities of the Black Caucus greatly contributed to the success of this vital organization. His wisdom and guidance will be sorely missed by all the members of the Black Caucus. RALPH METCALFE was a great man, an outstanding public servant, and a dear friend.●

● Mr. ERLENBORN. Mr. Speaker, the untimely death of my friend and colleague from Illinois, RALPH METCALFE,

has left all of us with a sense of loss and sorrow.

RALPH METCALFE was a champion in everything he did. While in college he was the national collegiate champion in the 100- and 200-yard dash. He captained the Marquette track team in 1934.

When he decided to enter politics he began as an appointed official, then was elected third ward committeeman, third ward alderman, and president pro tempore of the Chicago City Council.

In 1971, RALPH joined us here in the House of Representatives where he served with the same commitment to excellence he showed throughout his career.

Mr. Speaker, the people of the city of Chicago and the entire Nation have lost a great leader and a good man.●

● Mr. NIX. Mr. Speaker, in the passing of Congressman RALPH H. METCALFE, I have lost one of my closest friends and most valued colleagues.

He was a Congressman's Congressman. His record is written in legislation, in oversight hearings, and a standard of devotion to duty. It is a record of work done and it is an etch in the granite of this Nation's laws.

RALPH METCALFE'S life was one of ceaseless performance.

The Olympic gold medals of his youth were matched by the civic works of his maturity. His concern for those he served was like an engine that knew no rest.

During the Congress when the President of the United States sought help in obtaining a Panama Canal Treaty, he found that he could turn to RALPH METCALFE as chairman of the Panama Canal Zone Subcommittee of the House.

When the poorest citizens in Chicago needed help, they knew that RALPH METCALFE would help if he could and he did ceaselessly.

No issue which had touched RALPH METCALFE'S life was forgotten by him. Within hours the House will take up the amateur sport bill which will provide for the expansion of athletic opportunities for all, including, women, novice athletes and minorities. This was his legislation. It is a good legislation and will be a good law in an era where professional commercial spectacles dominate the American scene.

RALPH METCALFE brought to the House a knowledge of urban affairs gained by 15 years of service on the Chicago City Council where he was the chairman of the housing committee. He introduced legislation that provides for biennial audits of Federal housing programs and low interest home improvement loans. He uncovered failures in Federal programs to compensate homeowners for deficient appraisals.

His battle for health care never ceased. He uncovered failures in health programs to provide preventive medical care for school children. He defeated by his own efforts the Waxman provision in a health manpower bill which would have prohibited special programs for minorities in medical schools.

He attacked crime at its source by seeking a Federal correctional ombudsman and for the control of handguns.

He fought for minorities by attacking redlining wherever he found the practice. Through his efforts, two antiredlining amendments were added to the no fault auto insurance bill.

He also saw to it that a comprehensive nondiscrimination section was added to the Railroad Revitalization and Regulatory Reform Act.

He had to fight alone in his own community on occasions. When he had to, he did so and he won. When he had to fight alone in the House, he did so. But never did he ignore the fact, that good decisions are the goal and that compromise is the means.

St. Paul tells us that life is a long distance race. RALPH METCALFE was one of America's greatest long distance runners. The heritage he leaves us is based on the bedrock of a race well run. His record is a standard of excellence for the House, his staff is one of the finest in the House, his constituents among the best served and his family will carry on his work in Chicago and perhaps in the Nation.

We will miss him, but we know that his work will go on amongst us for years to come. My condolences are hereby forwarded to Mrs. Metcalfe, his son, Ralph Jr. and to the people of Chicago.●

● Mr. MICHEL. Mr. Speaker, the death of our Illinois colleague, RALPH METCALFE, came as a shock and a blow to all of us who have known and worked with him. It was only little more than a week ago that he stood here and eloquently defended the Olympic sports bill of which he was a chief cosponsor. On that day, as he spoke, I thought of how wonderfully varied the membership of this House is to have legislators from so many different backgrounds. Here, defending a bill that would help athletes, was someone who was not only an esteemed legislator but a former national collegiate champion in the 100- and 200-yard dash, the captain of his college track team and a medal winner of the 1932 and 1936 U.S. Olympic Teams. He spoke with his customary clarity and persuasiveness about a subject he not only knew intimately but about which he felt deeply.

His remarkable career is one that could well serve as a model for dedicated public service. Star athlete, educator, State athletic commissioner, political leader in Chicago and distinguished Congressman, RALPH METCALFE brought dignity and ability to every challenge that confronted him.

If there is one characteristic which can be said to have marked the life and the career of RALPH METCALFE, it was courage. He had the courage and the ability to pursue his dream of athletic excellence.

And, during his political career, he had the courage to be himself and to listen to the voice of his own conscience.

Mr. Speaker, RALPH METCALFE was quite a man. He will be missed around here, not only for the kind of man he was but for the kind of spirit he represented.●

● Mr. MANN. Mr. Speaker, I have been saddened by the death of a fine gentleman and colleague, the late RALPH H. METCALFE of Illinois.

RALPH was respected by all his fellow Members for the kindness, intelligence, and compassion which he brought with him to Congress. He will be remembered by his colleagues as one of the most courtly and gentlemanly figures in the House. He believed that it was his duty to appeal to the highest instincts in his fellow men.

Our colleague had a deep sense of concern for his constituents. He spent most of his weekends in Chicago, and knew his district street by street and block by block.

As chairman of the Panama Canal Subcommittee of the House Merchant Marine and Fisheries Committee, he played a vital role in recent events. RALPH was especially known for his ability to work harmoniously with both the Panamanians and the U.S. citizens who were residents of the canal. As a member of the Interstate and Foreign Commerce Committee he was especially interested in consumer affairs, where his concern for justice and the rights of individuals came into play.

Compassion and a concern for justice were qualities that characterized RALPH in every aspect of his distinguished career, from athletics, to civil rights, to politics. With the death of RALPH METCALFE, the House has suffered a significant loss.●

● Mr. ANNUNZIO. Mr. Speaker, I rise in tribute to a dear and old friend, Hon. RALPH H. METCALFE, who served almost 8 years in the House of Representatives as a distinguished Congressman from the 1st District of Illinois.

I met RALPH some 30 years ago while I was serving as a member of Chicago's Human Relations Commission. RALPH served as a field representative for the human relations commission, and in that capacity, he devoted all of his energies to the establishment of understanding between people.

RALPH was cut down in the prime of his career, and had a long and varied career of service in our city, the city of Chicago, before coming to the House at the beginning of the 92d Congress. It will be remembered that he was one of those Americans who inspired the world as a member of the U.S. Olympic Team at the Olympic Games of 1936 in Berlin, Germany, when the specter of Hitler's racist totalitarianism was taking shape to later threaten the entire world.

Mr. Speaker, with his wise experience in human affairs, RALPH METCALFE combined a deep and sympathetic understanding of human beings and of humanity itself. He had the ability to look perceptively beyond the facts and paperwork, and he had the ability to understand the hopes and fears of human beings. RALPH never forgot the power of example, and after his career of direct involvement in athletics was over, he continued to stay active in the field through service as the first black Illinois State athletic commissioner, a member of the Board of Directors of the U.S. Olympic Committee, as well as in other organizations too numerous to mention.

Most important of all, however, he founded the Ralph H. Metcalfe Youth Foundation, which was devoted to athletic, health, and educational pro-

grams for young people and provided support for needy families in the community. RALPH remained dedicated to setting the highest goals and ideals for the benefit of the youth who admired and looked up to him, and he gave his best in service to his Illinois constituents and to the people of our Nation.

RALPH METCALFE, with his experience and depth of human understanding, will be missed in the House, because it is men of this caliber who are needed in a democracy. We shall miss the ideals of RALPH METCALFE, his faith in humanity, his compassionate interest in the well-being of our youth, and his ability to understand the elements which give life and spirit to our system of government. His outstanding dedication to high standards was an inspiration to his friends and fellow citizens and his record of excellence and creative accomplishment was most commendable.

I want to extend on behalf of Mrs. Annunzio and myself our deepest sympathy to his devoted wife, Fay, and their son Ralph, Jr., in this time of great tragedy in their lives.●

● Mr. RAILSBACK. Mr. Speaker, I was saddened to learn of the sudden death of our colleague, and my friend RALPH METCALFE. Illinois has lost an outstanding Representative, and I know I speak for all when I say he will be deeply missed.

RALPH METCALFE was first elected to Congress in 1970 and has served the First Congressional District of Illinnois, which spans much of Chicago's South Side, ever since then. He was a member of the Interstate and Foreign Commerce, Merchant Marine and Fisheries, and Post Office and Civil Service Committees. He also served on the Northeast-Midwest Economic Advancement Coalition, Members of Congress for Peace Through Law, the Democratic Steering and Policy Committee, and was the vice chairman of the Democratic Study Group.

In addition, RALPH METCALFE had been a former Olympic athlete. In 1932 he distinguished himself at the Olympic Games in Los Angeles by winning silver and bronze medals in the 100- and 200-meter sprints. In 1936 he won a gold medal on the 400-meter relay team and a silver medal (finishing second to Jesse Owens) in the 100 meters at the Olympics in Berlin.

In 1949 RALPH METCALFE was the first black to be named to the Illinois Athletic Commission. And, since 1975, he had been a member of the President's Commission on Olympic Sports.

Further, he was the founder of the Ralph H. Metcalfe Youth Foundation, which provided athletic, educational, and health programs for young people. The foundation also gave support to needy families, acts of compassion which so typified RALPH METCALFE.

Yes; we have lost a good man, and to his wife, son, and family, I express my sincerest sympathies.●

● Mr. FARY. Mr. Speaker, I am shocked and deeply grieved, as are so many of my colleagues, to learn of the untimely death of our beloved and distinguished colleague, Congressman RALPH H. METCALFE.

I had known RALPH as a friend and as a coworker in the Democratic Party of Cook County for many years. He began his political career being elected alderman from the third ward of Chicago in 1958, becoming president pro tempore of the Chicago City Council in 1969, in which capacity he served until he was elected to the 92d Congress on November 3, 1970.

He had the distinct privilege of being chosen Democratic committeeman (third ward) in 1952 serving with distinction in this capacity at his passing.

While attending Marquette University he represented the United States in the 1932 and 1936 Olympics, being the winner of three medals, gold, silver and bronze. Upon the completion of his athletic career RALPH became an instructor and athletic coach at Xavier University, New Orleans, La.

He had been a member of the President's Commission on Olympic Sports from 1975 and worked diligently in steering through the present U.S. Congress legislation to provide funds to sponsor American athletes to compete in the forthcoming Olympic Games.

He loved the youth of America, and as founder of the Ralph H. Metcalfe Youth Foundation in Chicago devoted his energies to athletic, health and education programs for youths and to support needy families in the community.

Chicago was his home, and Chicago was his love. May we invoke in years to come, when tried by temper, the never failing good spirit of RALPH METCALFE, whom I never heard say an unkind word about any person, and in remembering him, there are only kind things to say.

To his beloved wife Madalynne, and his son, Ralph Jr., I extend my deepest sympathy at this time of personal grief. They can be comforted in knowing that RALPH was an outstanding Congressman, one who always "went the extra mile," and fully carried out the many burdensome duties of his office, fulfilling the trust so appropriately placed in him.

To be sure, those of us who knew RALPH and served with him are enriched by the wonderful memories we have of him, and our friendship with him.●

● Mr. KASTENMEIER. Mr. Speaker, it is with great sorrow that I rise to pay tribute to our colleague, RALPH METCALFE. His untimely passing leaves a void for many of us who knew him not only as a colleague, but as a friend.

RALPH was a man of ultimate integrity and courage who, throughout his entire life, strived for and achieved success in whatever he pursued and gained the love and admiration of those whose lives he touched.

Those of us from Wisconsin knew him early in his athletic career as a champion sprinter from Marquette University. We felt a special personal pride when he excelled at the 1932 and 1936 Olympic Games.

Not content to simply bask in the glory of his athletic successes, RALPH worked to instill in young people the pursuit of excellence through athletic and educational programs sponsored by the Ralph H. Metcalfe Youth Foundation.

He was intensely devoted to his constituents and showed us all that the rights of individuals must be placed above party loyalty. Such stands earned him the respect of friends and foes alike.

We will miss this man of courage, integrity and honesty. I extend my deepest sympathies to his family.●

● Mr. ZEFERETTI. Mr. Speaker, today, I would like to pause for a moment to express my deep sorrow at the passing of one of our most respected colleagues, Mr. RALPH H. METCALFE. For 8 dedicated years, Mr. METCALFE dutifully and honorably served in the U.S. House of Representatives, and it is proper that we praise his integrity and his personal achievements.

Mr. METCALFE's life serves as a beautiful example of the progress that black people have rightfully made in our great country. Born in Atlanta, Mr. METCALFE graduated from Marquette University where he was president of his graduating class and an athletic champion. An outstanding performer, he represented the United States in the 1932 and 1936 Olympic Games when participation by blacks in athletic competition was often objected to and ridiculed. As a humanitarian, our friend continued the struggle for civil rights when he directed the Department of Civil Rights for Commission on Human Relations, and when he served as the first black commissioner for the Illinois State Athletic Association.

More recently, he had taken deserved pride as a Representative of all people in our Nation's Congress. He had a keen insight into matters of debate and so often manifested his ability to assess the pros and cons of many critical issues. Personally, I will never forget the meaningful moments of friendship and partnership that we shared on our trip to the Panama Canal in April of 1977. His presence and his expertise were an inspiration to all. Mr. METCALFE's intelligence, diligence, fine demeanor, and willingness to serve, are laudable qualities for which we all must strive.

Mr. Speaker, I join with my distinguished colleagues in Congress, and the people of our Nation, to mourn the death of RALPH H. METCALFE, and I wish to extend my heartfelt regrets and sympathies to the Metcalfe family.●

● Mr. DE LA GARZA. Mr. Speaker, I rise in shock and grief to express my great sense of loss at the untimely death of my dear friend and colleague, Hon. RALPH H. METCALFE.

RALPH was a distinctive Member of this body, an exceptional Congressman as he was exceptional athlete and scholar, RALPH was one of those precious few who excelled in whatever enterprise he undertook, and who managed to do so with extraordinary modesty and grace.

It was an honor for me to serve with RALPH on the Committee on Merchant Marine and Fisheries—for I had the chance to see firsthand the dedication, the sound judgment, and the integrity he brought to bear on all matters before him.

And just the other day, RALPH and I rode the subway from the Capitol to the

Rayburn Building together. He seemed in the peak of good health—vibrant and alive. As I recall, we talked about the recent Yankee-Red Sox playoff game—not surprised in the light of RALPH's ongoing love of sport.

Mr. Speaker, I know the entire Congress joins me in expressing the deepest sympathy to Mrs. Metcalfe and the Metcalfe family in the wake of this terrible loss.●

● Mr. CORCORAN of Illinois. Mr. Speaker, it was certainly a shock to me to learn of the unexpected death on Tuesday of our colleague RALPH METCALFE.

RALPH served his constituency in the South Side of Chicago ably during his nearly 8 years of service in the U.S. Congress. As a member of the Interstate and Foreign Commerce Committee, the Merchant Marine and Fisheries Committee, and the Post Office and Civil Service Committee, he was a competent member and important leader. As one of the founders of the Congressional Black Caucus, he was a real asset to the Black community he served and the entire black population of this country.

But probably one of the events of his life which will be most remembered occurred in 1932 when he participated in the Olympic games in Los Angeles. During those Olympics he won silver and bronze medals in the 100- and 200-meter sprints. He also was in the 1936 Olympics in Berlin, winning a gold medal on the 400-meter relay team and a silver medal for finishing second to Jesse Owens in the 100-meter race. Later he became the first black to be named to the Illinois

Mr. Speaker, RALPH METCALFE was an member of the President's Commission on Olympic Sports.

Mr. Speaker, RALPH METCALFE was a honest and independent man. He never was afraid to differ with his colleagues and peers if he thought they were pursuing the wrong course of action. We certainly will sorely miss him in Congress. I send my most sincere sympathies to his family at this sorrowful time.●

● Mr. BIAGGI. Mr. Speaker, yesterday I lost a good friend with a suddenness I still cannot believe. I refer to RALPH METCALFE.

RALPH was a man of principle and conviction who was an inspiration to all throughout his life. His life was replete with accomplishments beginning in his college days at Marquette, where he was a national collegiate champion sprinter. RALPH participated in the 1932 Olympic games in Los Angeles where he won silver and bronze medals. Yet he will best be remembered for his performances in the 1936 Olympics when he and Jesse Owens gave the United States two of its most formidable runners ever in Olympic competition. Perhaps one of the greatest moments in sports history occurred when RALPH METCALFE and Jesse Owens raced in the 100-yard dash. Jesse Owens won but RALPH METCALFE, establishing what was to be a pattern throughout his life, gave it everything he had. He did win a gold medal in those same Olympics.

RALPH METCALFE was an inspiration for young blacks during his Olympic track days. He was an inspiration for the athlete he was, but also for the man he was. He acquired and handled world fame with ease never being overcome by it in any fashion.

RALPH in going to his final reward will be leading the way as he sprints across that great celestial track.

For the past 8 years, it has been my distinct honor and privilege not just to have worked with RALPH METCALFE but also to call him a friend. We worked closely together on the Panama Canal Subcommittee of the House where he served as chairman.

RALPH was a quiet unassuming soul, yet he earned the respect of Presidents and Members of Congress. He was a man who never flinched in the face of adversity and always pursued causes he felt to be right. One need only look back to a celebrated battle RALPH waged with the Daley machine in his hometown of Chicago. It was a battle which meeker men may not have involved themselves in. RALPH was not a meek man—he was a man committed to justice and was a consistent fighter against inequality. He was responsible for the founding of the Congressional Black Caucus which has become one of the most influential forces on the domestic scene. RALPH's last great battle was on behalf of the Humphrey-Hawkins bill where he led a delegation of Black Caucus members to the White House to plead their case. As a result the Senate today is considering this legislation and in mind, no finer tribute could be paid to RALPH than for Congress to pass and the President sign this legislation.

Throughout his life, RALPH METCALFE maintained a particular interest in the betterment of all youth. He founded the Ralph Metcalfe's Youth Foundation dedicated to athletic health and educational programs for young people.

The House is grieving today. We have lost one of our finest colleagues. We have lost a man who gave his full energies to his work, and to the cause of social equity for all. Many of us have lost a dear friend, a man who seemed so familiar to all of us. Hardly a day went by when I would not see or talk to RALPH. We strolled down the corridors of the Rayburn Building together talking about issues or people. He was a man of realistic optimism. He enjoyed his work, he especially enjoyed serving his constituents.

We are here today to honor RALPH METCALFE—but the shock that he is gone still hovers over this body like a dark cloud. We can take some solace in the fact that he lived a full life—accomplished much and never yielded in his causes and beliefs. I extend my sincerest condolences to his wife Madalynne Fay Young Metcalfe, his son Ralph as well as his mother Mayme Attaway Metcalfe. The House shares your loss. RALPH METCALFE will be missed. I will dearly miss him for he was a good man, a good friend.●

● Mr. ROYBAL. Mr. Speaker, as the House pauses today to honor the memory of a most distinguished colleague, I would like to express the deep loss shared by all those who had the privilege to know RALPH METCALFE. He was a legislator of stature and dedication who faithfully served his constituents of Chicago's South Side since his election to Congress in 1970.

A champion of many worthy causes and a full-fledged fighter for everything he believed in, he represented not only his own constituents, but national principles of the finest kind. And as any sports fan knows, his "champion" status extends well beyond the political arena. RALPH will long be remembered for his Olympic victories in the mid-1930's. I had the personal privilege to be present at the 1932 Olympics in Los Angeles when RALPH competed against the best runners in the world and brought credit to our Nation when he won silver and bronze medals.

RALPH came up the political ranks following his election to the Cook County Democratic Committee in 1952. He was a man who balked against Mayor Daley's machine without suffering political defeat, and a man who clearly placed his principles above all else. The black community has lost a true friend with the passing of Congressman METCALFE, as have all of us who had the good fortune to know, work with, and become his friend.

It is with deep sorrow that we now mark the passing of this great American who repeatedly sought to raise the quality of life for those who needed help the most. My sincerest sympathy is extended to his widow Madalynne and to his entire family.●

● Mr. FORD of Michigan. Mr. Speaker, I join with our colleagues today in mourning the untimely death of our good friend and respected fellow legislator RALPH METCALFE.

Congressman METCALFE's career, beginning in the Chicago school system as a young boy and continuing through his 8 years in the House, is a fine example of hard work, self-improvement, preseverance and dedication to many diverse interests.

I am proud to note that he graduated as president of his class in 1936 from Marquette University.

His achievements as an athlete, climaxed by his participation in the 1932 and 1936 Olympics, are known to us all. Less known, perhaps, was his lifelong dedication to civil rights, to the problems of the underprivileged, and to a host of other righteous causes.

I am proud to have worked with RALPH here in the Congress, and as a fellow member of the Post Office and Civil Service Committee, the Democratic Study Group, the Members of Congress for Peace Through Law, and the Northeast-Midwest Economic Advancement Coalition.

We will miss his courage and wisdom, his good humor and gentle courtesy. To his family I offer my condolences on the loss of a truly great human being. I know they take comfort in the knowledge that he lived a full life, and left the world better for having been a part of it.●

● Mr. UDALL. Mr. Speaker, RALPH METCALFE was a great American in every sense of that term. His career as a legislator, an outstanding scholar and an

athlete was an inspiration to millions of Americans.

I was privileged to know him as a quiet, dignified, effective legislator. He stood firm for things that were right.

We shall all miss him here in the Congress.●

● Mr. ROONEY. Mr. Speaker, I would like to join with my colleagues in expressing my deep sorrow for the death of our colleague, RALPH METCALFE. We will all remember RALPH, but in different ways and for different things. For example, I am a great sports fan, and will certainly remember him like so many others for his historic triumphs during the 1932 and 1936 Olympics. Others will remember him for his considerable contributions to local, regional and national civic organizations. Still others will remember him for his political activities in the Chicago area. As our colleague, we will all remember him for his many contributions to this body.

As chairman of the Transportation and Commerce Subcommittee, I would like to pay particular tribute to him for the many contributions he made to the subcommittee. RALPH joined the subcommittee when he first came to Congress during the 92d Congress, and was ranking Democrat during this Congress.

During my 4 years as chairman of the subcommittee RALPH made a number of substantial contributions. He was most supportive in all of the efforts of the subcommittee. I think that I will particularly remember him for his modesty while making these contributions. At no time did he desire or would he accept personal recognition for any of the assistance he rendered regarding the subcommittee's accomplishments, including major legislation considered by the subcommittee. I recall a number of instances when we were considering very controversial issues. RALPH would come up to me and offer words of encouragement, but more importantly, would always ask what could he do to help.

As I said, each of us will remember him for different things. The fact that he can be remembered for such a variety of outstanding achievements is testimony to his greatness. But lest it be overlooked at this time of his death, I believe RALPH would like most to be remembered as a Christian gentleman. I mentioned that he had the fine virtue of modesty, but it should not be overlooked that his greatest virtue was that he was an exceedingly generous man. He was generous with his time, with his material goods, and mostly with himself.

I would like to extend my deepest sympathy to his dear wife, Madalynne, and his son, Ralph, Jr., at this time of grief.●

● Mr. JOHNSON of California. Mr. Speaker, it was with shock and sadness that I greeted the news that our friend and colleague RALPH METCALFE, had died. My wife and I extend our deepest sympathies to his family.

RALPH METCALFE was a tireless legislator who was close to the people he represented. In his 8 years in the Congress, he established an outstanding record and earned the confidence and respect of his associates. He was a leader of the Black Caucus and helped to formulate its significant role in congressional affairs.

RALPH's acquaintance with fame came before he arrived in the House of Representatives. As any Olympic athlete in the 1932 and 1936 games, RALPH knew success and fame as a runner. He translated these abilities into numerous good deeds by coaching and advising several young people in the field of track. He also established the Metcalfe Youth Foundation devoted to athletic, health, and educational programs for young people.

Throughout his life, RALPH has loved people. He dedicated his life to helping people and served in many units of local government in Chicago before climaxing his career through his service in the House of Representatives. He established a record of excellence and diligence at each step on his ladder of success and has shown to us here in the House what it is to be a winner.

We will certainly miss him in this Chamber and we want his friends and family to know that he gave his duties as a Congressman his full effort, and they can be proud of the many outstanding accomplishments of RALPH H. METCALFE.●

● Mr. MIKVA. Mr. Speaker, the country lost one of its most vigorous spokesman for the rights of all the disenfranchised—the poor, the minorities, the unpowerful. With the passing of Congressman RALPH METCALFE, the country has lost a great voice. For more than 40 years, he has been in the forefront of the struggle to make the American dream a reality for all Americans.

RALPH's reputation as a black leader sometimes overshadowed his other accomplishments. He was also one of the most forceful proponents in the House of Representatives on urban issues and consumer issues. The main current to RALPH METCALFE's political philosophy was always to help those who could not carry their own cause.

It was my privilege to know RALPH as a personal friend for many years, from the time we shared constituencies on the South Side of Chicago to our more recent terms together as officers of the Democratic study group.

During our years of friendship I saw firsthand that he was gifted with more than his share of that rare combination of moral and political courage. Time and again, his voice was the first raised on behalf of those whose voices were seldom heard.

RALPH METCALFE's influence was great because he spoke out whether or not it was polite to do so. Countless people on the South Side of Chicago were the beneficiaries of his quiet help to deal with small and individual problems. Millions more throughout the Nation were helped by his determination to work for national solutions to the problems of poor housing, unemployment and urban decay.

RALPH METCALFE was a black leader, an urban leader, a Democratic leader, and a people leader. He will be missed as much in Congress as he will be in the district he served so well. And, as a friend and colleague he will be missed as a kind and kindred soul. His likes are always in short supply.●

● Mr. CONYERS. Mr. Speaker, RALPH METCALFE was a good and honorable man who served the citizens of Chicago and the Nation with distinction, 18 years as a Chicago committeeman and alderman and 8 years as Member of Congress from Illinois' First District. He leaves behind him a legacy of supreme courage, both physical and political, which millions of citizens will never forget.

Ralph had two careers which reinforced and strengthened one another. In the first part of his adult life he won fame as a great athlete, a national intercollegiate champion in sprinting during the early 1930's, a silver and bronze medal winner at the 1932 World Olympics in Los Angeles, and at the Berlin Olympics in 1936 a gold medal winner in the 400-meter relay and silver medal winner in the 100-meter, finishing second to the legendary Jesse Owens. Following upon his military service in World War II, he devoted himself to the advancement of black Americans and to the education and physical development of youth. To this end he created the Ralph H. Metcalfe Youth Foundation, which has supported over the years numerous athletic, educational, and cultural programs. He was a source of inspiration to millions of young people.

RALPH devoted his second career to public service, starting as director of Chicago's Department of Civil Rights, and later as a leading figure on the city council. In 1969 he became the council's president pro tempore, and a year later won the Cook County Democratic Party's nomination for, and election to, Congress.

Inescapably, in every public figure's life the question arises: What did he or she stand for? What did he or she leave behind? It would have been entirely appropriate and adequate if RALPH METCALFE's legacy revolved solely around his athletic accomplishments and community service. To an extent, of course, it does. But to the millions whom he represented, he will be remembered and revered for something more than even his physical courage. He will be remembered most for his political courage, following in a great tradition of struggle in behalf of equality and justice set a half-century earlier in Chicago by Debs and Darrow.

During the early 1970's the city of Chicago was overrun by police brutality. No one in the highest reaches of the political establishment addressed the issue. There was uniform and unanimous silence at city hall. At first, RALPH METCALFE sought to bring the issue before the leadership. As a reasonable man, his first course of action was an attempt to solve the police problem from within. He could not, however, elicit a response. As more and more citizens became victimized by police behavior, RALPH concluded he could no longer work effectively within the leadership and the party. His integrity demanded that he speak out as forcefully as he could on the issue that most affected the citizens whom he represented. The political establishment, that once favored him, turned against him in full fury.

For a long time RALPH METCALFE stood alone against the most powerful political

machine in the Nation. Every attempt was made to silence him, but he persevered in his conviction and his courage. He won reelection in the subsequent years, but he had paid a considerable price. His health suffered. Lifelong friendships were disrupted. He was made the object of constant attack. Nevertheless, he went on to serve in Congress with great dedication and effectiveness. He was a leader in the fields of consumer protection and health care. Against great odds, RALPH had summoned up the same courage that earlier had won him the admiration of the world for his athletic achievements. In the end, RALPH stood his ground, a moderate and reasonable man up against an immoderate and unreasonable political system. His stand in Chicago was his finest hour, for which he will always be remembered.●

● Mr. SKUBITZ. Mr. Speaker, the passing of a colleague is always a matter for sorrow. The passing of a man who through personal effort, endurance, and sacrifice against all odds raised himself to become not only the "fastest man on Earth" but also a key political figure in the turbulent politics of Chicago's southside is a great loss to the Nation as a whole.

To those of us who have had the privilege of serving on the same committee as RALPH METCALFE, his disappearance will be all the more painful. His spirit of achievement, personal energy, and perseverance insured notable contributions to the work of the Subcommittee on Transportation and Commerce. His unwavering support and grasp of the needs of minority business enterprises enabled the Subcommittee on Transportation and Commerce to enact legislation which for the first time gave minority enterprises access to major railroad revitalization projects.

RALPH'S courage, and quiet dignity will long remain examples to the Members of this body. I join my colleagues in paying tribute to a true gentleman.●

● Mr. BROOKS. Mr. Speaker, it has been a distinct privilege to have served in this House with my good friend RALPH METCALFE. For 8 years his wisdom was a great asset to this body. He spoke with force and compassion on behalf of his constituents.

Much has been made of his athletic achievements but as great as they were, they have been overshadowed by his outstanding work here in the Congress and his life of service to the people he represented. However, possibly the greatest legacy he leaves is the example he has provided for all of us—that is if one has the ability and the dedication, he can succeed in any field he enters and if one has superior abilities, there need be no limits to that achievement other than those which are self-imposed.

He was a strong and honorable man whose courage and energy will be missed by his family, his friends, and the Members of this House.●

● Mr. CORMAN. Mr. Speaker, the untimely death of our colleague RALPH METCALFE deprives this body of one of our most respected Members. It is a shock to realize that RALPH will not be coming back.

RALPH METCALFE was well known as being extremely fair and objective at all times. His constituents from Chicago's South Side certainly saw these qualities when they elected him to his first congressional term with 91 percent of the vote in 1970.

Congressman METCALFE's first political success came in 1952 when he was elected to the Cook County Democratic Committee. Three years later he was elected to the Chicago City Council where he served as president pro tem. After his 1970 election to the House of Representatives Congressman METCALFE served on the Interstate and Foreign Commerce Committee, the Merchant Marine and Fisheries Committee, and the Post Office and Civil Service Committee. He was a founding member of the Congressional Black Caucus and also belonged to the Democratic Steering and Policy Committee, the Democratic Study Group, Members of Congress for Peace Through Law, and the Northeast-Midwest Economic Advancement Coalition.

President Carter reacted to Congressman METCALFE's death by saying that the former Chicago Representative was a leader "uncompromising in the pursuit of excellence." "He always stood for equity. His political energy was invested always on behalf of his constituents, and his unexpected passing deprives his community, his colleagues, and the Nation of a staunch and honest leader."

My deepest sympathies are extended to his wife, Madalynne; son, Ralph, Jr.; and the rest of his family.●

● Mr. BINGHAM. Mr. Speaker, I want to thank our colleague from Illinois, Representative CARDISS COLLINS, for arranging this special order to pay tribute to our beloved colleague the late Representative RALPH H. METCALFE.

My wife and I were shocked and saddened by the news of his sudden death and I do want to join with RALPH'S many friends and admirers in the House in paying tribute to him.

As a young man I had admired the achievements of RALPH METCALFE in the 1936 Olympics, not only because of his ability as an athlete, but because his success represented a splendid repudiation of the racist philosophy of Adolph Hitler, who sought to make political capital from the Olympic games in Berlin.

From the time RALPH came to the House in 1971 I thoroughly enjoyed my contacts with him. He was a man of definite ideas and standards, who had the courage of his convictions, but he never sought to impose his ideas on anyone else. There was a sweetness and gentleness about him which appealed to all who knew him.

In addition, I admired his stand on the Panama Canal and on a variety of other issues.

We shall miss RALPH METCALFE a great deal. My wife and I extend to Mrs. Metcalfe and his family our deepest sympathy.●

● Mr. VAN DEERLIN. Mr. Speaker, my admiration for our late colleague, RALPH METCALFE, goes back to my high school days. As an avid sports fan, I was of course greatly interested in the career of a man then hailed as America's top collegiate sprinter.

I first met RALPH on the eve of the 1932 Olympic games in Los Angeles—in which he was expected to dominate both the 100- and 200-meter dashes. As things turned out, he may have been the unluckiest sprinter in Olympic history. He lost a disputed photo finish to countryman Eddie Tolan in the 100. Then, after he had placed third in the 200 meters, it was demonstrated that officials had improperly staggered the lanes, forcing METCALFE to run farther than his competitors around the turn of the track.

Four years later, in Berlin, METCALFE found himself on the same American team with the all-time great Jesse Owens—behind whom RALPH ran second in the 200 meters before anchoring a winning U.S. team in the 400-meter relay.

At Marquette University, RALPH METCALFE won eight AAU and six NCAA sprint titles—a record number. The late Maxwell Stiles, track expert for Hearst newspapers who devised a rating system for sprinters, adjudged RALPH the greatest of all time.

I know others will touch on our late colleague's political skills. I join in honoring his public service. Yet whenever I think back on the career of RALPH METCALFE, I will see those strong legs of his, churning the cinder surface of the Los Angeles Coliseum track 46 years ago.●

● Mr. GILMAN. Mr. Chairman, I was in New York State, on Tuesday, traveling through a rural section of Orange County when our local radio told me of some sad, tragic news about a gentleman for whom I had the utmost regard and respect.

RALPH H. METCALFE, a legendary figure from the Windy City, had passed from our midst. This great gentleman will be sorely missed.

I had, of course, heard of RALPH METCALFE long before I came to Washington as a fledgling legislator back in 1973. As a track fan, I can never forget his great athletic achievements throughout our Nation and in the 1932 and 1936 Olympic Games as a world class sprinter.

But Ralph's athletic ability was only a small portion of the many accomplishments of this well-rounded gentleman from Chicago. He served as a First Lieutenant in World War II—he was an effective City Council President—the first black Illinois State Athletic Commissioner—a brilliant statesman—an innovative Representative and a devoted family man. I came to know of RALPH'S dedication in our work together on the House Post Office Committee.

His unexpected death is a severe blow for those of us who take pride in the things that RALPH METCALFE stood for. Our heartfelt sympathy goes out to his wife, Madalynne; to his son, Ralph, Jr., and to his grandson.●

● Mr. FOUNTAIN. Mr. Speaker, when we hear of the death of a colleague, all of us feel a tragic sense of loss. However, it was with an additional special sense of sadness that I learned of the untimely death this week of my good friend and colleague from Illinois, RALPH METCALFE.

RALPH and I got to know each other on a personal basis very well during his 8 years of service in this House. On many occasions, in the cloakroom, in the House restaurant, on the floor, or elsewhere, we sat down together and engaged in informal, frank discussions and honest exchanges of ideas and insight.

At the outset of our friendship, I often expressed to RALPH my admiration of him for his many athletic accomplishments in years past. But as time went on, and as RALPH developed experience and expertise in the Congress, I found him to be an equally dedicated legislator and an extremely conscientious and articulate spokesman for the causes in which he believed so strongly. He was a great advocate and a courageous fighter against all forms of discrimination.

Mr. Speaker, RALPH represented an urban constituency; I represent a largely rural constituency. Our political philosophies and our views on the proper role of Government in our lives were oftentimes different. But we were always able to disagree agreeably while working together in arriving at a consensus on what was in the best interests of the Nation. To me, that is one characteristic of a true colleague. My respect for the man always ran high.

RALPH was a humble and reserved man who knew well his mission in life. He has rightfully earned his eternal reward. And this House notes his passing with sorrow.

Mr. Speaker, although I have had some reservations about the wisdom of enacting into law the Amateur Sports Act of 1978, which we have had under consideration on the floor, I hope this bill, if it is passed, will stand as a tribute to the memory of this decent and good man who took such a personal concern and interest in developing young minds and bodies.

Christine joins with me in extending our sympathy and our regret to the family at this difficult time.●

● Mr. BURKE of Florida. Mr. Speaker, I was saddened indeed to hear that our colleague, RALPH METCALF, had passed away. Since I was born and raised in Chicago, the name "RALPH METCALF" was well known to me long before either he or I were elected as Members of Congress. His prowess as an athlete and the title of the world's fastest human, when he attended Marquette University and when he won the silver medal for the 100-meter race in the 1932 Olympics at Los Angeles, was known to me when I was a youth.

In 1936 he won a gold and silver medal and even though Jesse Owens won 3 gold medals at Munich, RALPH METCALF showed no envy. What was so important to him was that he and Jesse Owens humbled Adolph Hitler at Munich and trampled in victory Hitler's misdirected dream of white supremacy.

Mr. Speaker, RALPH METCALF was soft spoken, but at the same time he was a true fighter for the things he knew were right. This fighting spirit was exemplified when he took on Mayor Daley and the Democratic machine in 1972 when he charged certain police officials with condoning police brutality. When he made these charges he knew that he put his political career in jeopardy. Yet it did not stop him.

Mr. Speaker, the 1930's were difficult years for all Americans, but they were even more difficult for RALPH METCALFE; he was then an outstanding American athlete and a young man during those years—but he was black. My colleagues, his road was difficult but God did endow him with outstanding athletic prowess and he used these gifts to become a real winner to all Americans, black and white, big and little.

He came to Congress in 1970 with the firm resolve to serve all. He did so because of his wish to help people.

RALPH METCALFE was a gentleman in the true sense of the word. It is with regret that I say to him in this statement. "Goodbye RALPH, thanks for what you did for your people and all Americans."

I am proud to have had the opportunity to serve with you in the Congress. I extend to RALPH'S wife, Madalynne my deepest sympathy and condolences.●

● Mr. CARNEY. Mr. Speaker, I rise in tribute to my good friend and distinguished colleague, the Hon. RALPH H. METCALFE, who died suddenly on Tuesday, October 10, 1978, after serving four terms in the U.S. House of Representatives. Both Congressman METCALFE and I were first elected to the House in 1970, and we served together on the Interstate and Foreign Commerce Committee. Therefore, it is with a deep sense of personal loss that I note his untimely death.

Congressman METCALFE will be best remembered as an honest, hard-working man who rose through the political ranks to become one of the outstanding black congressional leaders. In addition to being a founding member of the Congressional Black Caucus, he was also a member of the Democratic Steering and Policy Committee and vice chairman of the Democratic Study Group. He was also a member of the Merchant Marine and Fisheries Committee and the Post Office and Civil Service Committee. In addition, he chaired the Panama Canal Subcommittee.

A participant in the 1932 Olympic Games in Los Angeles, he won silver and bronze medals in the 100- and 200-meter dashes. He was in the 1936 Olympics in Berlin, and won a gold medal on the 400-meter relay team, and a silver medal in the 100-meter race.

This same striving for excellence certainly applied tc Congressman METCALFE'S work as a legislator. His commitment to racial equality, his understanding of and compassion for his constituents, and his dedication to the House, all served as an inspiration and encouragement to those who served with him. The most significant tribute we, his friends and colleagues, can pay to the memory of RALPH H. METCALFE is to continue striving for the high ideas to which he dedicated his life.

His many friends and colleagues in Washington, D.C., in Chicago, Ill., and throughout the Nation will certainly miss him and think of him on this day. I join my colleagues in extending my deepest sympathy to Congressman METCALFE'S bereaved family.●

● Mr. BURKE of Massachusetts. Mr. Speaker, when RALPH METCALFE died earlier this week, the Congress lost an important voice in the fight for civil rights. He was long respected as a leader of Chicago's black community and equally so as a pivotal member of our own Congressional Black Caucus.

During the 8 years he graced this Chamber, I was able to witness firsthand his personable warmth, his genteel manner. This genuine ease with people proved to be a valuable tool as a legislator. As a member of the Committees on Interstate and Foreign Commerce and Merchant Marine and Fisheries he was able to play a vital part, especially in transportation and consumer affairs. He was instrumental in the adoption of railroad revitalization, no-fault auto insurance antiredlining, and homeowners' compensation for deficient appraisals.

RALPH METCALFE'S concern for American youth was a direct result of his continual involvement in athletics. A silver medalist in the 1936 summer games, he went on to direct athletic programs for the State of Illinois, the first black in that State to do so, eventually to become a member of the U.S. Olympic Committee Board of Directors and the President's Commission on Olympic Sports. His commitment to amateur sport and to our Nation's young should be a lesson as to his high hopes for America's future. Because of Congressman METCALFE, and others like him, America can be confident that her future generation's will carry that same spirit and striving that has made us a great Nation.

I extend my sincere condolences to his wife Madalynne and son Ralph Jr. and join with my colleagues in paying tribute to this fine public servant.●

● Mr. RODINO. Mr. Speaker, I want to express my sadness at the death of a friend and colleague. RALPH METCALFE was a man of great courage who showed his determination and integrity in everything he did: Whether it was his studies at Marquette University, or winning a Gold Medal at the 1936 Olympic Games in Berlin, or in his work in this House where he was one of the founders of the Congressional Black Caucus.

To those who knew him, RALPH METCALFE was an unwaivering force for justice and human advancement, both for his Chicago constituents and for all Americans. He will be remembered as an outspoken supported of the rights of minorities and all those who have been oppressed and disadvantages.

Mr. Speaker, the people of Chicago have lost a conscientious public servant; the minorities of this country have lost a formidable leader; and the Members of this House have lost a friend and great statesman. While we are all pained by his death, we know that his shining example of dedicated public service and unquestioned integrity will be revered for a long time to come.●

● Mr. SKELTON. Mr. Speaker, I was certainly saddened to learn of the passing of Congressman RALPH H. METCALFE. Although I knew him only in the past 2 years, I highly respected him as a Congressman and as a gentleman. All of us

know of his outstanding athletic accomplishments in his earlier years. All of us will remember him as a fine Representative from the State of Illinois.

However, often, it is the little things in life that one remembers the most. Just a few weeks ago, I introduced my 12-year-old son, who is interested in track, to Congressman METCALFE. The words of advice he passed on to my son were warm and filled with encouragement. I am sure that there are many youngsters who knew him and met him that are the beneficiaries of his advice, whether on the athletic field, or on the field of life.

We will all miss him.●

● Mr. JONES of Tennessee. Mr. Speaker, I rise today to join with my colleagues in expressing our sorrow at the passing of our late colleague, RALPH METCALFE. He was man held in great honor and respect by all of us.

In looking at his record established through a long career devoted to public service, we can see a record of achievement that he brought with him to this body and a record he continued throughout his service in Congress.

RALPH METCALFE was a quiet man who went about his duties with honor and respect. His character was a character of strength, a character that he never forgot. I know that we shall miss RALPH METCALFE in these Halls. I want to express my deep regret and sorrow to his family.●

● Mr. PERKINS. Mr. Speaker, I join my colleagues in this expression of sadness at the passing yesterday of our friend, RALPH METCALFE.

To my great benefit and pleasure, I got to know Mr. METCALFE soon after his arrival in the House in January 1971. The warm regard I had from him at the beginning grew and strengthened the longer the acquaintance lasted.

The qualities that made him a great athlete in the Olympics more than 40 years ago also made him a great human being. And the humanity that he brought to the House of Representatives made itself felt in all of his relationships and all of his work here.

RALPH H. METCALFE leaves behind him a long and distinguished record of public service to his city, his State, and his country. I am sure all of the young people whose lives he touched as a teacher and as a coach are saddened by his passing, knowing, as we do, that the friends of RALPH METCALFE enjoyed a rare privilege.●

● Mr. COUGHLIN. Mr. Speaker, it is with a deep sense of personal loss that I join my colleagues in paying tribute to the late Congressman from Illinois, RALPH H. METCALFE.

For 4 years, I was fortunate to have an office in the same hallway with RALPH. He never failed to offer a pleasant smile, a brief but kind greeting, always giving some indication that there was a job to be done and that he was pleased to be able to do his best for the land he loved.

He brought to Washington the same dedication and perseverance that won him a gold, two silver, and a bronze medal in Olympic competition. If the House were to issue medals for achievement, I am sure that RALPH would, once again, be on the list of winners.

Often noted for his mild, calm, and compassionate manner, RALPH blended these admirable traits with an unrelentless quest for an end to the injustice, prejudice, and bigotry facing his constituents of Chicago's South Side. It is comforting to know that his efforts did not only benefit his constituents, but left a mark upon this entire Nation.

I extend to his wife and family my heartfelt sympathy at the passing of their loved one. I hope they may secure some measure of comfort, no matter how small, in the fact that their grief is shared by so many others.●

● Mr. LEGGETT. Mr. Speaker, each of us in this body serve with a whole host of colleagues during our tenure in office. We adjust to retirements, resignations, defeats, and deaths within our numbers because we have to carry on the tremendous burden of the country's business. But the death of RALPH METCALFE is a special loss to this House of Representatives and to the Nation, and it will require a greater compensatory adjustment.

RALPH METCALFE was an exceptional human being. He possessed an unusual quality for compassion and sincerity, and was a magnificent person. He was a man who became a legend in his own time. We all know he was the famed athlete who has been emulated around the world for many years, but I think it is especially important that he was a formidable force for the resolution of conflict in the world and in our own country.

There are several attributes that must be combined to render one person an important historical figure, and RALPH METCALFE possessed all of these attributes. He was a symbol of excellence in both athletics and politics. His reputation for excellence derived from an abiding desire to see that all people did better for themselves; he wanted to set the example. Moreover, he was known for the many courageous things he did on both a personal and political level during his lifetime. He operated on a constructive level. As President Carter said in his tribute, RALPH METCALFE's life was "generally inspiring."

The welfare of the people of the United States was a conscious and constant concern of RALPH METCALFE. He truly believed that if we appealed to the highest instincts of mankind, mankind would respond in the best way possible. But he was also a social liberal who saw government in an active role to foster the conditions that allowed for the greatest development of each person—this was the reason he backed so strongly job training and economic development programs in the domestic sphere and, on a global basis, human rights of every people.

It was my good fortune to be primarily associated with RALPH METCALFE in Panama Canal matters. All of his fine qualities to which I have previously alluded, RALPH applied to his interest in the Panama Canal. When I preceded him as chairman of the Panama Canal Subcommittee, he was the ranking majority member of the subcommittee. I leaned upon him for advice and counsel because he had traveled in Latin America during his athletic career and because he related especially well to the canal workers, especially to the black Panamanians of West Indian descent who had long been deprived of the ability to develop their full potential as human beings.

That RALPH METCALFE was very interested in th Panama Canal was evident to all of us. He passed up the opportunity to serve as chairman on other more politically rewarding subcommittees on the Committee on Merchant Marine and Fisheries and chose instead the Panama Canal Subcommittee; he delivered on May 19, 1977, what was probably the most comprehensive speech on the Panama Canal issue prior to the canal treaty debates in the Senate. He either led or was a member of many inspecting House delegations that went to the Canal Zone. The reason that he was so interested in the canal issue was that he believed the reputation of the United States around the world, and especially in Latin America, depended upon the ability of the United States to find cooperative solutions to mutual problems with Latin America. He believed the Panama Canal was a key issue, and RALPH METCALFE had a deep desire to avoid the bitterness and bloodshed which he felt would result from failure to find a cooperative approach in this instance.

As chairman of the Panama Canal Subcommittee, RALPH METCALFE conceived of his role as one for promoting a good climate for negotiations between the United States and Panama over the Panama Canal issue. One of the best means for promoting a better cooperative climate, he believed, was the expansion of equal opportunity and upward mobility programs in the Canal Zone. In fact, RALPH and I shared the belief that many of the canal and isthmian problems that have faced the United States in recent years could have been avoided if we could have shed long ago the apartheid-type mentality that had been all too prevalent in the Canal Zone.

One of the things that was especially impressive about RALPH METCALFE was his ability to produce change without bitterness, without bringing forth new divisions to replace those he wanted to heal. It would have been easy for RALPH to simply become bitter about some of the policies of years past in the Canal Zone, policies that thwarted opportunity for blacks. But RALPH, while touched deeply about the effects of those policies, exuded confidence in his belief that there were better policies, better ways to do things.

For his interest in the canal and his contribution to the efforts toward a new relationship with Panama, he was justly recognized. He represented the House of Representatives and was seated on the stage with President Carter and General Torrijos when the two chiefs of government exchanged Panama Canal Treaty instruments on June 18 of this year in the Republic of Panama. The President's statement issued upon RALPH'S death correctly called him "A visionary leader in the Panama Canal treaty ratification" struggle.

RALPH METCALFE's faith in the highest motives of mankind showed in his approach to the canal issue. He understood the attitude that many Americans had with respect to a new treaty relationship with Panama, but he felt that Americans had the wrong attitude in emphasizing differences with Panama. Taking the positive aspect, he said in his last press conference in Panama:

It has been and continues to be my view that our differences can be minimized because there is much more about the Panama Canal that brings together the U.S. and Panama than there is to divide us.

This view was based on the constant and continuing close relationship between our own people and Panamanians on the isthmus. In that same statement I referenced, METCALFE said:

The U.S. and Panamanian peoples have a history of friendship, and I am optimistic that this friendship will continue through the years.

Many of his accomplishments are worthy of being set forth on the record because they are a testament to his leadership and because they demonstrate in microcosm the kind of leader he was. What characterized his tenure as Panama Canal chairman were three initiatives: His desire to foster the best possible relationship between the United States and Panama; his backing of policies that either provided deserved benefits for canal workers or attenuated the less positive aspects of change; and his efforts to keep open the lines of communication between the various, and often disparate, elements in the canal picture.

RALPH's efforts as chairman were reflected in the new treaty relationship with Panama. Several aspects of the negotiations and portions of the treaty documents were items in which RALPH METCALFE was particularly interested and which he strongly backed; the inclusion of a labor consultant to the U.S. treaty negotiators; the extensive provisions for special benefits to canal workers affected by the new treaty relationship; and the creation of the Panama Canal Commission, which will run the canal to the year 2000, as a U.S. Government agency.

Of course, the new treaty relationship with Panama would never have come to fruition had the strident opponents of negotiations been successful in their attempts to impede or stop the talks. RALPH was one of the leaders in the House who thwarted the attempts to stop negotiations. When he spoke on the treaty issue, he spoke with authority and experience. I was happy to have been associated with his efforts in these debates. In the final debate on the so-called Snyder amendment in 1975, he said:

So, we have to make certain that we understand exactly where we are and where we are going. More importantly, I think we need to know whether or not we are going to stick our chests out and say, "we will not give up a thing" when, in fact, if we do support this amendment, what we are saying is that we are going to give up our relationship in Latin America.

Because he desired to see the change he knew was needed to have the least adverse consequences on canal workers, he constantly pressed the Executive for more information on negotiations for canal employees. He felt that the more light that was shed on negotiations, the more readily people in both the Canal Zone and the United States would accept a new relationship. In 1977 the Governor of the Canal Zone did issue informational guidelines to the workers, and a subsequent announcement amplified that information.

For all of the other things I have mentioned, there is no question but that RALPH METCALFE will be remembered best by the people on the Isthmus of Panama for his efforts to eradicate the discriminatory aspects and appearances of U.S. policy in the Canal Zone. He carried to their fulfillment some of the initiatives I and my predecessor as chairman, JOHN MURPHY, had made to promote equal opportunity. His immediate recognition of the people problem came when he visited the Canal Zone and Panama in February 1972. He issued a statement saying:

There is a wide gap in attitude and concern between the Americans and the Panamanians, especially between the third and forgotten group, the black Latin Americans, who work for the Panama Canal . . . I view the major need to be a complete reevaluation of the rights and dignity of all groups and the recognition of their needs and desires.

From that time on, in hearings, correspondence, and personal contacts he strove to see the dual housing and school systems in the Canal Zone merged and job opportunities expanded to allow for promotion of Panamanians. The major step toward all three of these objectives was taken in February 1976 by Governor Harold Parfitt. I know that as chairman, RALPH valued and was proud of these changes.

As I pointed out, he had a special ability to bring people together and getting them to think constructively and objectively about problems. During the most tense period of treaty negotiations, he applied this skill with particular frequency. He invited and encouraged labor and civic representatives to make direct and formal contributions to subcommittee deliberations. He arranged for the executive branch to hold numerous meetings with those who were to be affected by the new treaty arrangement. When a strike at the canal was contemplated in February 1978 in the midst of the Senate debate on the treaties, he exerted considerable influence on employees to think about the consequences of a job action. Fortunately, a strike was avoided. Finally, whenever he visited the Isthmus, he met with the leaders of Panama, including the President and the foreign minister, to ascertain their attitudes and to assure them of the positive feelings of people in the United States.

Although his main concern with respect to the Panama Canal were, like all his major concerns, directly related to people, Chairman METCALFE played an important historical role in several other matters less people-oriented.

He strongly defended the constitutional right of the House of Representatives to be involved in disposing of U.S. territory and property. This was his only qualification to support for passage of the Panama Canal Treaty by the Senate. His subcommittee on April 17, 1978 unanimously endorsed his report on this matter.

He also conducted most comprehensive hearings on the finances of the Panama Canal Organization. This was in response to the serious financial questions that had plagued the canal company.

He pushed implementation of the exhaustive General Accounting Office study of personnel practices, a study which was initiated under my tenure as subcommittee chairman. This report pointed toward more equity for canal workers and an end to some of the appearances of discrimination that have plagued the Canal Zone.

To some of my colleagues who have been concerned with the broader aspects of the life of RALPH METCALFE, such as the role he played in the struggle for civil rights in the United States, the points I have mentioned may seem parochial. They deserve mention however, because they relate to a matter in which he was intensely interested and because these deeds are part of his testament of public service. The Panama Canal was simply the issue that showed me, as his countless other efforts demonstrated to others, that RALPH METCALFE was an exceptional human being. Those who must deal with our relations with Latin America and those who must deal with Panama Canal matters know that his passing will be deeply felt.

RALPH showed me paradoxical qualities which are characteristic of great leaders—his desire to see cooperative solutions to big problems did not reduce his uncompromising embrace of excellence and the principles in which he believed.●

● Mr. HEFTEL. Mr. Speaker, there are a few rare persons whose achievements are so numerous and whose interests are so varied that they defy summary. RALPH METCALFE was such a person. As a fellow member of the House Post Office and Civil Service Committee, I was privileged to join with RALPH METCALFE in the pursuit of one of his interests. As a fellow Member of the Congress, I was able to observe his treatment of a wider range of issues. And as a personal admirer, I came to learn of his remarkable record of public service extending into every segment of the community he represented so ably in Washington. Clearly, I have not been alone in drawing inspiration from the dedication he brought to his work and the humaneness of his temperament. RALPH METCALFE was a competitor who wanted everyone to know, as he had known, the joys of competition

conducted without rancor and in an atmosphere of mutual respect. Rather than rest on his laurels as an athlete of international renown, he worked actively to open the same experience to the disadvantaged youth of his community, through the Ralph H. Metcalfe Youth Foundation. That is but one item on a list of accomplishments that could go on for pages, but it is indicative of the charitable spirit of a man whose presence will be missed by all who knew him, or knew of him.●

● Mr. REUSS. Mr. Speaker, the loss of RALPH METCALFE is one which will be felt keenly in this Chamber, in Chicago and Illinois, and across the country. We in Milwaukee will feel a special sense of grief for the great athlete and exemplary man who was, for a time, one of us.

A graduate of Milwaukee's Marquette University, RALPH METCALFE was one of the greatest athletes in that university's history and one of the greatest runners the world has known. His exploits on the track at the Los Angeles and Berlin Olympics and at meets around the country earned him a spot in the Wisconsin Athletic Hall of Fame.

His career in public life fulfilled the promise his early years held out. Service to the State of Illinois was followed by election to the Chicago City Council and then to the House. Here his has been a distinguished career. Those on his side, in whose company I was proud to count myself, knew him to be a staunch ally. Those whom he opposed found him a worthy adversary. All found him a good friend.

Events in Chicago put his convictions in equal justice to the test. At the risk of his career, he responded magnificently. Those who knew RALPH METCALFE knew that it was typical of him to fight the good fight, even against great odds. We also knew that it was just as typical for him to win.●

● Mr. ROSTENKOWSKI. Mr. Speaker, it is with a sense of great loss and sorrow that I address this body today to mark the passing of our colleague, the Honorable RALPH H. METCALFE. He has served the Congress of the United States with distinction for nearly 10 years and we will be poorer for his leadership.

We all know of RALPH's great achievements in the world of sports; he twice honored the United States in the Olympic Games, winning a gold medal and establishing a world record for the 400-meter relay in 1936. The perseverance and dedication that characterized his career throughout his lifetime were nowhere more clearly reflected than in his political life.

In the early 1950's the residents of Chicago's third ward recognized his talents and chose him to represent them as committeeman and alderman for almost 20 years. He did an outstanding job in serving his community and, in fact, was elected president pro tempore of the Chicago City Council in 1969 where he again distinguished himself. Chicagoans in the First District of Illinois reiterated their confidence in his abilities by electing him to the U.S. House of Representatives in 1970, returning him each term since. These close ties to his community have given him a sincere and abiding concern for community needs and problems which has been demonstrated in his work on such programs as adequate housing laws, employment security, and general economic stability for the Midwest.

During his tenure in the House, RALPH ably served as a member of both the Interstate and Foreign Commerce Committee and the Merchant Marine and Fisheries Committee. In addition, he played an active role in the House leadership as a member of the Democratic steering and policy committee and the Congressional Black Caucus.

But knowing RALPH I think he would want to be remembered most for his efforts to improve the overall social and economic well-being of all Americans. As early as 1948, RALPH was the director of the department of civil rights for commission on human relations in Chicago and his experience in this capacity gave him a deep commitment to the goal of social justice for all—not just for black Americans but for all our citizens. Not only through his athletic ties but through his early career work as a political science instructor and track coach at Xavier, La., University, he became particularly sensitive to the needs of youth—a concern which culminated in his establishment of the Ralph H. Metcalfe Youth Foundation, an organization devoted to providing athletic, health, and education programs for youth to support needy families in the community. I am told that his enthusiasm has been an inspiration to young people from all walks of life. One only need look at the long list of social organizations and types of legislation and programs he envisioned to realize RALPH's untiring commitment to and deep involvement in an endless variety of social needs and concerns. He attacked these problems with vigor and strove to cure them with fairness and compassion.

RALPH H. METCALFE—a dedicated public servant, an outstanding athlete, a leader in social justice—will be missed by us all, both in Chicago and in this Chamber.●

● Mr. MAZZOLI. Mr. Speaker, I was deeply saddened by the death of our distinguished friend and colleague, the Honorable RALPH H. METCALFE.

RALPH was an achiever. He excelled in all of his pursuits—from his sports activities to his service in the U.S. Congress.

His inspiration will be missed.

I extend my heartfelt sympathies and condolences to Mrs. Metcalfe and the entire family. We share in their deep loss.●

● Mr. CARTER. Mr. Speaker, it was with extreme regret that I learned of the sudden death of our colleague and friend, RALPH H. METCALFE.

It was my pleasure to serve with RALPH on the Interstate and Foreign Commerce Committee. He deported himself well and always as a gentleman. Kind and attentive to his duties, his life was one devoted to service, in both elective and appointive posts.

The people of his district have lost a fine Representative, and we have lost a fine friend.

Kathleen and I offer our sincere condolences to his wife and son and the rest of his family.●

● Mr. BROYHILL. Mr. Speaker, I was deeply saddened to learn of the sudden passing of my good friend, RALPH METCALFE. Since he came to Congress in 1971, we had the pleasure of serving together on the Interstate and Foreign Commerce Committee as well as on the same subcommittee. I always found him to be a hard-working and knowledgeable Member who worked harmoniously with others in the legislative arena.

RALPH was an excellent athlete and a good golfer. We had the opportunity to play together several times in the last few years and, just last August, he defeated me during the Congressional golf tournament.

Only 2 weeks ago, I was proud to attend the fundraiser given for RALPH. Even though he was a Democrat and I am a Republican, I wanted to be present on this special occasion to let him know of my admiration for him.

Several weeks ago, Mrs. Broyhill and I had dinner with RALPH and we were fascinated to hear him tell his story of his early days—his interest in track and his determination to succeed in life. He is a shining example to all people that one can overcome adversity and become successful in whatever profession he or she might choose. His life, indeed, is an inspiration to all young people throughout our Nation and we will sorely miss RALPH's wisdom and leadership in public affairs.●

● Mr. CONTE. Mr. Speaker, the flags flying at half mast outside this building and all over this Capital City out of respect for our late beloved colleague, the gentleman from Illinois, the Honorable RALPH H. METCALFE, seem to me to be particularly poignant displays for this fine man. Not only did RALPH METCALFE labor among us here in this Chamber where the Stars and Stripes are shown so prominently, but as we all know, he also carried that flag to victory in the world's most important international sports forum, the Olympics, early in his life.

We mourn today, then, a man whose indefatigable energy was known both in the world of sports and the world of Government. In both arenas he gave his all. His physical and moral courage and dignity are personal attributes that I know I will always remember and admire in this gentleman.

He was a fine representative of his people, the residents of Chicago's South Side. He was deeply committed to bettering their welfare and improving their safety. And anyone who was acquainted with RALPH METCALFE knows that these are two goals to which he dedicated himself unceasingly and unstintingly until his untimely passing.

His service on the three major committees on which he held membership, the Interstate and Foreign Commerce Committee, the Merchant Marine and Fisheries Committee, and the Post Office and Civil Service Committee, was held in high regard.

I join my colleagues today in great sadness to express my sense of personal loss at RALPH METCALFE'S death. My wife Corinne joins me in extending our deepest sympathy to the METCALFE family.●

● Mr. DUNCAN of Oregon. Mr. Speaker, I think I can express my feelings about RALPH METCALFE and his passing no better than to quote from my letter of condolences to Mrs. Metcalfe:

DEAR MRS. METCALFE: One of my most pleasant experiences in returning to Congress after an eight-year absence was to meet and become a friend of Ralph Metcalfe. We shared a mutual interest in the problems of the Canal Zone and the people, both in the Zone and Panama. We shared an interest in athletics. I admired his political courage and his gentle manner. In short, I, and legions of others share your loss.

Sincerely yours,

ROBERT B. DUNCAN.●

● Mr. STEED. Mr. Speaker, this institution and its Members, as well as the people of his district at Chicago, have sustained an untimely and heavy loss in the death of our colleague RALPH H. METCALFE.

He was known to many Americans from the days in which he performed so ably for the U.S. Olympic Team in Germany in 1936. As a public servant he impressed me often and deeply with his sagacity. He was a warm and wise man, and my last memory of him is of riding with him in an elevator here just before he was leaving for Chicago. We exchanged some pleasant jokes, some of which he planned to use in his speeches back home.

His passing is a great misfortune, and I extend deepest sympathy to his family.●

CONCURRING IN SENATE TITLE AMENDMENT ON H.R. 6900

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, earlier today, at the request of Mr. PHILLIP BURTON, the House took up the bill H.R. 6900 with a Senate amendment thereto and concurred in the Senate amendment with an amendment. Inadvertently, no action was taken on the Senate title amendment. It is my intention, on behalf of Mr. PHILLIP BURTON and myself, to ask unanimous consent to concur in the Senate title amendment with an amendment as soon as I conclude my remarks.

Mr. Speaker, I ask unanimous consent that the House concur in the Senate amendment to the title of H.R. 6900 with an amendment.

The Clerk read the title of the bill.

The Clerk read the amendment to the title as follows:

In lieu of the amendment of the Senate to the title of H.R. 6900, insert: "To provide for increases in appropriations ceilings, development ceilings, land acquisition, and boundary changes in certain Federal park and recreation areas, and for other purposes."

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, we have had about 8 shots at this bill. Is this going to be the last time we are going to hear about it?

Mr. LAGOMARSINO. I hope so.

MAKING IN ORDER TOMORROW OR ANY DAY THEREAFTER CONSIDERING IN THE HOUSE THE SENATE AMENDMENTS TO HOUSE JOINT RESOLUTION 1139, CONTINUING APPROPRIATIONS

Mr. MAHON. Mr. Speaker, I ask unanimous consent that it be in order on tomorrow or any day thereafter to consider in the House the Senate amendments to House Joint Resolution 1139, a resolution making continuing appropriations for the fiscal year ending September 30, 1979, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. ASHBROOK. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, I discussed this earlier with my friend, the esteemed gentleman from Texas, the chairman, and I take this reservation for the purpose of asking a question as to whether or not our colleague, the chairman of the Appropriations Committee, has any indication at this point how many bills will be left not passed in the appropriations area? Does the gentleman have any indication what will be covered by the continuing resolution?

Mr. MAHON. If the gentleman will yield, the public works bill is a problem the answer to which is not yet known.

The conference report has been prepared on the foreign aid appropriation bill and on the HEW appropriation bill, so I would suspect that most of these bills would be cleared and in the short period remaining that we will get these bills behind us. We hope to file the Defense bill tonight and also take that conference report up tomorrow.

Mr. ASHBROOK. Further reserving the right to object, I think we know these measures are necessary at the end of the session. I thank the gentleman for his response.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

CONFERENCE REPORT ON H.R. 7010, PAYMENT OF COMPENSATION TO PERSONS INJURED BY CRIMINAL ACTS AND OMISSIONS

Mr. MANN submitted the following conference report and statement on the bill H.R. 7010, to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 95–1762)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7010) to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Victims of Crime Act of 1978".

ADMINISTRATION

SEC. 2. (a) The Attorney General of the United States (hereinafter in this Act referred to as the "Attorney General") shall administer the provisions of this Act. The Attorney General shall not delegate primary responsibility for administering the provisions of this Act unless such delegation is made to an individual who is compensated at the rate provided for level II, III, IV, or V of the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code.

(b) There is established an Advisory Committee on Victims of Crime (hereinafter in this Act referred to as the "Committee") which shall advise the Attorney General with respect to the administration of this Act and the compensation of victims of crime. The Committee shall consist of nine members, one of whom shall be designated the Chairman, all appointed by the Attorney General. Seven members of the Committee shall be officials of States with programs qualifying under section 4. The Committee shall meet at least two times each year and at such other times as the Attorney General may direct. The term of office for each member of the Committee shall be one year. The Committee shall not come into existence until on or after October 1, 1978 and shall remain in existence until September 30, 1981.

(c) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel and transportation expenses, including per diem allowance, in the same manner and to the same extent as persons employed intermittently in the Government service are allowed travel and transportation expenses under subchapter I of chapter 57 of title 5, United States Code.

POWERS OF THE ATTORNEY GENERAL

SEC. 3. (a) Subject to the availability of amounts appropriated, the Attorney General shall make an annual grant and may make supplemental grants for compensation of victims of crime to each State program that qualifies under section 4. Except as provided in section 5, the grants made to a qualifying

State program under this Act with respect to a Federal fiscal year shall equal—

(1) 100 percent of the then current cost, as determined by the Attorney General, of paying compensation for personal injury and compensation for death for such fiscal year for qualifying crimes that are described in section 7(8)(B); and

(2) 25 percent of the then current cost, as determined by the Attorney General, of paying compensation for personal injury and compensation for death for such fiscal year for qualifying crimes that are described in section 7(8)(A).

Grants under this section may be made in advance or by way of reimbursement. The Attorney General shall not have the power to modify the disposition of any individual claim that has been processed by any State program.

(b) For the purpose of carrying out the provisions of this Act, the Attorney General is authorized to—

(1) promulgate such rules, regulations, and procedures as are necessary to carry out the provisions of this Act, including rules and regulations regarding the data to be kept by State programs receiving funds under the Act and the manner in which these data shall be reported to the Attorney General; and

(2) approve in whole or in part, or deny, any application for an annual or supplemental grant under this Act.

QUALIFICATIONS OF STATE PROGRAMS

SEC. 4. (a) A State proposing to receive payments to carry out a State program under this Act shall submit an application to the Attorney General at such time and in such form as the Attorney General shall prescribe by regulation. A State program for the compensation of victims of crime qualifies for grants under this Act if the Attorney General finds that such program is in effect in such State on a statewide basis during any part of the Federal fiscal year with respect to which grants are to be made and that such program meets the following criteria:

(1) The program offers—

(A) compensation for personal injury to any individual who suffers personal injury that is the result of a qualifying crime; and

(B) compensation for death to any surviving dependent of any individual whose death is the result of a qualifying crime.

(2) The program offers the right to a hearing with administrative or judicial review to aggrieved claimants.

(3) The program requires as a condition for compensation good faith cooperation by a claimant with appropriate law enforcement authorities with respect to the qualifying crime for which compensation is sought.

(4) There is in effect in the State a law or rule that the State is subrogated to any claim the victim, or a dependent of the victim, has against the perpetrator of the qualifying crime for damages resulting from the qualifying crime, to the extent of any money paid to the victim or dependent by the program.

(5) The program does not require any claimant to seek or accept any benefit in the nature of welfare unless such claimant was receiving such benefit prior to the occurrence of the qualifying crime that gave rise to the claim.

(6) The program requires denial or reduction of a claim if the victim or claimant contributed to the infliction of the death or injury with respect to which the claim is made.

(7) There is in effect in the State a law or rule that, in addition to or in lieu of any other penalty, a perpetrator of a crime may be required to make restitution to any victim or victim's surviving dependent for that crime.

(8) The program does not require that any person be apprehended, prosecuted, or convicted of the qualifying crime that gave rise to the claim.

(b) If a State has a crime victim compensation program in effect on the effective date of this Act which does not otherwise qualify under subsection (a), such program shall be deemed qualified for grants under this Act until the day after the close of the first regular session of the State legislature that begins after the effective date of this Act. Thereafter, only those programs which comply with the requirements of subsection (a) shall be eligible for grants under this Act.

LIMITATIONS OF FEDERAL GRANTS

SEC. 5. In computing the annual cost of a qualifying State program for the purpose of establishing the amount of Federal grants under section 3, there shall be excluded from such cost any amount for administrative expenses incurred in carrying out the program, and any amount representing State compensation awards—

(1) for pain and suffering;

(2) for property loss;

(3) to the extent the amount of any award to a victim, or the aggregate amount of any awards to the surviving dependents of a victim with respect to such victim, exceed $35,000.

(4) to any claimant who has received or who is entitled to receive compensation for personal injury or compensation for death from any source, other than from a compensation program assisted under this Act or from the perpetrator of the qualifying crime, up to the amount of that compensation;

(5) to any claimant, other than a claimant sixty-two years of age or older, whose award would be for an amount less than $100 or for lost earnings or loss of support computed on the basis of less than five working days;

(6) to the extent the amount of any award for loss of earnings to a victim, or the amount of any awards for loss of support to the surviving dependents of a victim with respect to such victim, exceeds $200 per week per individual;

(7) to any claimant who failed to file a claim under the State program within one year after the occurrence of the qualifying crime, unless good cause for such failure to file has been found by the appropriate State agency; and

(8) to any claimant who failed to report the qualifying crime to law enforcement authorities within seventy-two hours after the occurrence of that qualifying crime, unless good cause for such failure to report has been found by the appropriate State agency.

REPORT OF THE ATTORNEY GENERAL

SEC. 6. (a) Not later than one hundred and thirty-five days after the end of each Federal fiscal year in which grants were made to State programs under this Act, the Attorney General shall submit a report to the House and Senate Committees on the Judiciary. The report shall include—

(1) with regard to each qualifying State program—

(A) the number of persons compensated;

(B) a statistical presentation of—

(i) the kinds and corresponding amounts of loss compensated;

(ii) the range in monetary value of claims awarded;

(iii) the reasons for denial of claims; and

(iv) the types of crimes that resulted in claims;

(C) a description of the administrative mechanisms and procedures used in processing claims, including claims for emergency assistance if the program provides for such assistance;

(D) the time required to process claims, including claims for emergency assistance if the program provides for such assistance;

(E) efforts made to publicize the program;

(F) administrative expenses; and

(G) the number of qualifying crimes described in section 7(8)(B) that were compensated;

(2) with regard to each qualifying State program which imposes a financial means test—

(A) the number, type, and corresponding amounts of loss of claims rejected under the test;

(B) the reasons for denial of the claims;

(C) a description of the type of information and certification required of the claimant to determine eligibility under the test; and

(D) a description of the guidelines, criteria, and regulations used for evaluating claims under the test; and

(3) with regard to the activities of the Attorney General in carrying out the provisions of this Act—

(A) an itemized statement of grants and expenditures;

(B) copies of all rules made under section 3(b); and

(C) projected expenditures for the Federal fiscal year in which the report is required to be submitted.

(b) Not later than two years after the date of the enactment of this Act, the Attorney General shall survey the laws and practices of the States respecting the disposition of the profits made by criminal wrongdoers from publicity surrounding their wrongdoing and report to the Congress on the appropriateness of requiring as a condition of qualifying for grants under this Act the existence of a State law or practice preventing the criminal wrongdoer from enjoying such profits.

DEFINITIONS

SEC. 7. As used in this Act—

(1) "claim" means a written request to a State compensation program for compensation for personal injury or compensation for death made by or on behalf of a victim, or any surviving dependent of a victim, of a qualifying crime;

(2) "dependent" means, with respect to any State compensation program, any dependent as defined by such State for purposes of such program;

(3) "personal injury" means with respect to any State compensation program, personal injury occurring in such State as defined by that State for the purposes of such program;

(4) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States;

(5) "compensation for personal injury" means compensation for loss that is the result of personal injury caused by a qualifying crime including—

(A) all appropriate and reasonable expenses necessarily incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services and devices relating to physical or psychiatric care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the State;

(B) all appropriate and reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation; and

(C) loss of past and anticipated future earnings;

(6) "property loss" does not include expenses incurred for medical, dental, surgical, or prosthetic services and devices;

(7) "compensation for death" means compensation for loss that is the result of death caused by a qualifying crime, including—

(A) all appropriate and reasonable expenses necessarily incurred for funeral and burial expenses; and

(B) loss of support to any dependent of a victim, not otherwise paid as compensation for personal injury, for such period as the dependency would have existed but for the death of the victim;

(8) "qualifying crime" means—

(A) any act or omission occurring in a

State which is criminally punishable therein and which such State designates as appropriate for compensation under its program; or

(B) any act or omission that would be a qualifying crime under subparagraph (A) except for the fact that such act or omission is subject to exclusive Federal jurisdiction; and

(9) "administrative expenses" includes any fee awarded by the State agency administering a State compensation program to any claimant's attorney, if such fee is paid in addition to, and not out of, the amount of compensation awarded to such claimant.

AUTHORIZATION

SEC. 8. For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1979; $40,000,000 for the fiscal year ending September 30, 1980; and $50,000,000 for the fiscal year ending September 30, 1981.

EFFECTIVE DATE

SEC. 9. Grants may be made under this Act with respect to the fiscal year which ends September 30, 1979, and succeeding fiscal years.

And the Senate agree to the same.

PETER W. RODINO, Jr.
JAMES R. MANN,
ELIZABETH HOLTZMAN,
SAM B. HALL, Jr.,
LAMAR GUDGER,
BILLY EVANS,
HENRY J. HYDE,
Managers on the Part of the House.

EDWARD KENNEDY,
BIRCH BAYH,
JOE BIDEN,
HOWARD M. METZENBAUM,
MURIEL HUMPHREY,
STROM THURMOND,
ORRIN G. HATCH,
MALCOLM WALLOP,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two houses on the amendment of the Senate to the bill (H.R. 7010) to provide for grants to States for the payment of compensation to persons injured by certain criminal acts and omissions, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment makes a number of changes in the House version of the bill. Several of the changes are drafting, grammatical and technical in nature. The resolution of the more significant differences between the House and Senate versions of the bill are discussed below.

SECTION 1

The Senate amendment changes the short title of the legislation from the "Victims of Crime Act of 1977" to the "Victims of Crime Act of 1978". The conference adopts the Senate version.

SECTION 2

Section 2 vests the responsibility for administering the legislation in the Attorney General. An Advisory Committee on Victims of Crime is established to advise the Attorney General about the administration of the legislation.

The Senate amendment changes section 2(b) regarding who is eligible to be appointed to serve on the committee. The House version permits the Attorney General to appoint "officials of States" with qualified victim compensation programs. The Senate amendment requires the Attorney General to appoint people who are "officials of qualifying State programs."

The House version gives the Attorney General greater latitude in appointing members of the committee. It permits the Attorney General to appoint a State legislator, for exemple, if the State has a qualified crime victim compensation program. The Senate amendment limits the Attorney General to appointing only those people who are officials of the State's crime victim compensation program and would not allow the Attorney General to appoint a State legislator. The conference adopts the House version.

SECTION 3

Section 3 vests certain powers in the Attorney General with respect to administering the legislation. It authorizes the Attorney General to make grants to States that have qualified crime victim compensation programs and also gives the Attorney General certain rulemaking authority.

The Senate amendment makes only drafting, grammatical, and technical changes to section 3.

SECTION 4

Section 4 of the bill sets forth the requirements that a State crime victim compensation program must meet in order to qualify for a grant under section 3 of the legislation.

The Senate amendment adds a provision specifically requiring that a State file an application with the Attorney General in order to receive a grant. The House version contains no similar provision.

The conference adopts the Senate change.

The House version in section 4(3) provides that a State crime victim compensation program must require claimants to cooperate with law enforcement authorities in order for that program to qualify for a grant under the legislation. The Senate amendment deletes the cooperation provision as a qualification for eligibility and instead adds language to section 5 concerning cooperation with law enforcement authorities. Section 5 of the bill provides that certain expenses will not be included in the cost of the State crime victim compensation program when calculating the Federal grant. The effect of the Senate amendment, therefore, is that the State program cannot include as a part of its costs any award made to a victim who has not cooperated with law enforcement authorities.

The conferees agree that cooperation with law enforcement authorities is an important part of a crime victim compensation program. It assists in law enforcement efforts to apprehend, prosecute and convict criminal offenders by encouraging greater citizen participation in the criminal justice system. Moreover, it helps guard against fraudulent and collusive claims. The conferees also agree that the cooperation required is reasonable cooperation and that a victim should not be denied compensation because the victim failed to comply with an unreasonable request of a law enforcement official. The conferees assume that, whenever an issue is raised regarding the victim's good faith cooperation, the State program will be vigilant in ascertaining that the requests made by law enforcement authorities of the victim were reasonable.

Because making the cooperation element a qualification rather than a limitation will make it easier for the Attorney General to administer the legislation and will make the record-keeping burden lighter for State crime victim compensation programs, the conference adopts the House version.

The House version in section 4(4) requires that law enforcement agencies and officials publicize the existence of the crime victim compensation program and the procedure for applying for compensation under it. The Senate amendment deleted the provision requiring publicity.

The impact of the publicity requirement will be to increase the total cost of a State crime victim compensation program. In view of the small Federal contribution to the State program (less than 25 percent of the total cost of the program), the conferees agree that it would be unwise to increase the State program's overall costs in this manner. The conference adopts the Senate change.

The House version in section 4(5) requires that the State be subrogated to any claim that the claimant has against the wrongdoer as a result of the crime for which the claimant received compensation. The Senate amendment deletes the subrogation provision as a qualification and instead adds subrogation language to section 5. The effect of the Senate amendment, therefore, is that the State crime victim compensation program cannot include as a part of its costs, when applying for a grant under the legislation, any award for which the program has received proceeds pursuant to any right of subrogation.

The conferees agree that the right of subrogation is an important element of a State crime victim compensation program. It prevents double recovery by a victim. Moreover, since the State may be in a better position to pursue any claim against the wrongdoer, subrogation may result in the wrongdoer, rather than the State, paying at least a part of the victim's loss. The conferees recognize, however, that subrogation is unlikely to result in significant revenues for the State because too few criminals are caught and convicted, and most of those who are caught and convicted are judgment proof.

The conference adopts the House version.

The House version in section 4(8) requires that State law permit a restitution obligation to be imposed upon criminal wrongdoers. The Senate amendment deletes the restitution requirement and instead adds language concerning restitution to section 5 of the bill. The effect of the Senate amendment, therefore, is that a State crime victim compensation program cannot include as a part of its costs, when applying for a grant under the legislation, any amounts paid to a claimant who has received restitution from the criminal wrongdoer.

The conferees note that the provision in the House version is broadly drawn. A State may satisfy the restitution requirement by means of legislative enactment, either as a part of its crime victim compensation statute or elsewhere in the State's statutes, by means of administrative regulation, or by means of court decision, practice or procedure. The State may impose the restitution obligation at the time of sentencing, in addition to or in lieu of any fine or term of years imposed; the restitution obligation can also be imposed after sentencing, as a condition of parole, for example.

The conferees also note that restitution and crime victim compensation are complementary concepts. Because so few offenders are caught and convicted, and because so many of those who are caught and convicted are people of limited means, restitution will be of no help to most crime victims. Nonetheless, the conferees agree that it is important that to the extent possible criminal wrongdoers ought to help pay for the losses sustained by their victims.

The conference adopts the House version.

The House version in section 4(9) requires that the State law require that any person who contracts directly or indirectly with a person charged with or convicted of a crime for an interview, statement or article relating to the crime, must turn over to the State any money due the person charged or convicted. The State is to hold the money in escrow for a reasonable period and can use the money only to pay claims perfected by the victims, if the wrongdoer is convicted. The Senate amendment deletes this requirement.

A number of people have expressed concern that the widespread publicity surround-

ing a crime can result in the criminal wrongdoer receiving lucrative fees for books, articles, interviews and the like. These people see such income on the part of the wrongdoer as unjust enrichment and have proposed that such income be held in escrow by the State in order to pay claims made against the wrongdoer by the victims of the crimes which led to the unjust enrichment.

The reaction to such proposals among the States has been mixed. New York, on the one hand, has enacted such a proposal. California and other States, by contrast, have defeated such legislative proposals.

The conferees note at the outset that such provisions raise serious constitutional questions.[1] The conferees agree, moreover, that unjust enrichment provisions will be of little benefit to most crime victims because most victims are victims of crimes that do not gain such widespread interest as to result in the wrongdoers receiving a large amount of money for articles, interviews and the like.

Finally, the conferees note that such a provision adds little to current law. If someone receives money for articles or interviews about the crime and is then convicted of it, the court can impose a restitution obligation upon the offender and know that offender has some resources with which to meet the restitution obligation. Whether or not such a person is convicted, the victim (or the State when it pays compensation and is subrogated to the victim's claim) can bring a civil suit knowing that the wrongdoer has some resources with which to pay a judgment.

The impact of the House version of section 4(9) will be to disqualify nearly every existing State program.[2] In view of that fact and because of the serious constitutional questions about this type of unjust enrichment provision, as well as the fact that other parts of the legislation (the restitution and subrogation requirements) adequately deal with the interest that such a provision seeks to protect, the conferees have agreed not to require the States to have such a provision in their law in order to qualify for grants under the legislation. Instead, the conferees have decided to add language to section 6 of the legislation to require the Attorney General to study such provisions and recommend within 2 years whether the legislation should be amended to require the States to enact them in order to qualify for grants.

The conference adopts the Senate change.

The Senate amendment adds a new qualification in section 4—the State crime victim compensation program cannot base eligibility for compensation upon the financial impact of the offense on the claimant. The Senate amendment, therefore, would prohibit a State from utilizing a means test if that State wanted to qualify for a grant under the legislation.

Several States with crime victim compensation programs utilize what is commonly referred to as a "means test." In such States, a crime victim will not be eligible for compensation unless the crime imposes a financial hardship, variously defined, on that victim. The purpose of a means test is to hold down the cost of the victim compensation program and ensure that the limited resources available for victim compensation are spent on those crime victims who are most in need.

The conferees note that Senator Kennedy, one of the managers on the part of the Senate, believes quite strongly that States receiving funds under this Act should not impose financial means tests when determining eligibility. He believes that no innocent victim of a crime should be required to bear the economic burden of a crime, that a uniform standard of eligibility should be used nationwide, that means tests are not only arbitrary but also demeaning, that such tests may have the effect of discouraging claimants from applying for compensation, and that there has been no conclusive showing that such tests are cost effective. Therefore, Senator Kennedy would retain the language of the Senate amendment.

The conferees also note that Representative Mann, a manager on the part of the House, believes strongly that this legislation must give each State maximum freedom to shape its own victim compensation program in order to meet its own needs. He believes that a State ought to be able to decide for itself whether it will employ a means test. Consequently, each State should be free to determine for itself whether a means test discourages claimants from applying for compensation, is unduly demeaning to claimants, or is not really cost efficient. Representative Mann, therefore, would not prohibit States from utilizing means tests.

In view of the purpose of a means test, and because of the small Federal contribution to State crime victim compensation programs under the legislation (less than 25% of the total cost of the program), the conferees agree that a State program should be able, if it so decides, to utilize a means test. The conference does not adopt the Senate change. Instead, the conference has agreed to add language to section 6 of the legislation requiring the Attorney General to collect data from the States on the utilization and impact of the means test.

The Senate amendment also adds as a new qualification the requirement that the State program not require that any person be apprehended, prosecuted or convicted of the crime upon which a claim for compensation is made.

It appears to the conferees that all of the States that presently have crime victim compensation programs will be able to meet this requirement. A person is being compensated because that person has been the victim of a crime. A person's status as a crime victim does not change because the police were unable to catch the wrongdoer, or because the prosecutor decided to drop the charge against the wrongdoer as a part of a plea bargain, or because the case against the wrongdoer was dismissed on a technicality.

The conference adopts the Senate change.

The Senate amendment adds a new subsection in section 4 that gives the States that presently have crime victim compensation programs a grace period in which to meet all of the requirements of the legislation. It provides that such States have until the day after the close of the first regular session of the State legislature which begins after the effective date of the legislation in order to bring their programs into compliance with all of the requirements of the legislation. Until that date, such States will be eligible for grants under the legislation.

One of the purposes of this legislation is to give financial assistance to States that operate crime victim compensation programs. Since the times when State legislatures meet varies greatly among the various States, and in light of the conferees' decision about the effective date of the legislation, the conferees believe that a grace period for existing State crime victim compensation programs is advisable.

The conference adopts the Senate change.

The conferees believe that most of the existing State crime victim compensation programs can comply fully with the qualifications set forth in section 4. Whatever changes that are necessary in order to comply fully can be made by statute or administrative rule or regulation. The conferees expect that the Attorney General will administer the legislation so as to facilitate State compliance with the qualifications set forth in section 4.

SECTION 5

Section 5, entitled "Limitations on Federal Grants," provides that certain expenses are excluded from the cost of operating a State victim compensation program when calculating the cost of that program for the purpose of computing the Federal grant. It provides, for example, that administrative expenses are not included in calculating the cost of a State program.

The House version of section 5(3) provides that payments to a victim or the surviving dependents of a victim in excess of $25,000 are excluded from the cost. The Senate amendment raises the amount to $50,000.

The conferees have agreed to set the limit at $35,000, and the conference adopts the House version with an amendment raising the amount to $35,000.

The House version of section 5(4) provides that payments to a claimant "who has received or who is entitled to receive" compensation from a collateral source are excluded from cost. The Senate amendment deletes "who has received." Thus, the Senate amendment covers double payments only where the payment from the collateral source will take place in the future, not where it has already taken place. The conference adopts the House version.

The House version of section 5(5) provides that payments to claimants of less than $100 or for lost earnings computed on the basis of less than 5 work days are excluded from cost. The Senate amendment changes this in two ways.

First, it provides that section 5(5) shall not apply where the claimant is 62 years of age or older. Second, it refers to payments for "loss of support" computed on the basis of less than 5 work days.

The first change to section 5(5) made by the Senate amendment is a recognition of the special problems and needs of elderly crime victims. Many of our elderly citizens, because they must live on relatively low fixed incomes, live in or near relatively high-crime areas. The elderly are physically vulnerable to criminal acts, and the emotional, as well as the physical, trauma cause by crime can be quite acute. The Senate amendment is intended to encourage States to recognize the special problems and needs of the elderly crime victim.

The conference adopts the Senate change making section 5(5) inapplicable to payments made to persons 62 years of age or older.

The conferees believe that the term "loss of support," which applies in the situation where the victim has died, is the equivalent of "lost wages." Thus, the addition of the phrase "loss of support" to section 5(5) is of a clarifying nature. The conference adopts the Senate change.

The House version of section 5(6) provides that payments for lost earnings of more than $200 per week per individual are excluded from cost. The Senate amendment adds language referring to awards for loss of support.

The conferees believe that, in view of the meaning of "loss of support," this change is also of a clarifying nature. The conference adopts the Senate version with an amendment carrying forward language in the

[1] The language in the House version of section 4(9) is based upon a New York statute that was analyzed by the American Law Division of the Library of Congress' Congressional Research Service. The American Law Division concluded that "serious constitutional issues are raised by this legislation: The main constitutional issues raised concern the due process clause of the 14th amendment and the 1st amendment protection for freedom of speech and press."

[2] Even New York would not appear to meet the requirement in the House version of section 4(9), for its statute permits the use of escrowed funds to pay the legal fees of the person charged with or convicted of the crime, a use not specifically permitted by the language of the House version.

House version that the amount be determined "per individual."

SECTION 6

Section 6 requires the Attorney General to report annually on the administration of the legislation. The Senate amendment makes only drafting, grammatical and technical changes in this section.

The conferees point out that sections 6(1)(C) and (D) require that the Attorney General gather and report upon data pertaining to emergency awards of compensation. Several State programs provide for an expedited award of compensation in situations where the innocent crime victim is in great need. The Maryland statute, for example, provides for an emergency award of up to $500 if it is determined that (a) the "claim is one with respect to which an award probably will be made and (b) undue hardship will result to the claimant if immediate payment is not made . . . ." Annotated Code of Maryland Art. 26A, § 11.

The conferees, as indicated previously, are aware of the special problems and needs of the elderly victims of crime. It would appear that the elderly, many of whom live on relatively low fixed incomes which they receive in periodic payments, would particularly benefit from provisions permitting emergency awards of compensation. The conferees encourage States with qualified programs that do not provide for emergency awards of compensation to evaluate their programs to determine whether they are fully meeting the needs of the innocent victims of crime, particularly the elderly victims of crime.

The conferees, to carry out their agreement with regard to the means test, have added subsection (a)(2) to section 6 to require the Attorney General to collect data pertaining to the utilization and impact of the means test.

For reasons set forth previously, the conferees have added a new subsection requiring the Attorney General to study State laws concerning unjust enrichment of criminal wrongdoers and to recommend to Congress whether or not States should be required to have such provisions in effect in order to qualify for grants under this legislation.[3] The Attorney General's study will encompass the policy questions, as well as the constitutional issues raised by unjust enrichment proposals.

SECTION 7

Section 7 defines several terms used in the legislation.

The Senate amendment changes the definition of the term "State" to refer specifically to the Trust Territory of the Pacific Islands and to a "possession" of the United States. The conference adopts the Senate changes.

The House version and the Senate amendment agree upon the basic definition of the term "compensation for personal injury." There is a difference in the two definitions with respect to nonmedical methods of healing, such as that method practiced by Christian Scientists. The House version refers to a nonmedical method of healing "recognized by the law of the State." The Senate amendment changes this to refer to a nonmedical method of healing recognized "by the appropriate State agency."

The conferees intend that the term encompass payments for modes of nonmedical care and treatment which are rendered in accordance with a method of healing that is recognized as lawful in the State. The phrase "law of the State" as used in the House version of the definition is understood not to be limited to a State's victim compensation statute but to encompass the entire corpus of that State's law. The conference, with that intention and understanding, adopts the House version.

The House version of the definition of the term "qualifying crime" refers to "any act or omission occurring in a State which is criminally punishable therein." The Senate amendment refers to "any act or omission punishable under any statute of a State."

The conferees note that some States (such as Maryland) recognize common law crimes and that the Senate change would prevent a State from compensating the victims of a common law offense if that State decided to do so (as Maryland has). The conference adopts the House version.

The Senate amendment adds a new definition to section 7, for the term "compensation for death." The conference adopts the Senate change.

SECTION 8

Section 8 authorizes the appropriation of funds to carry out the legislation. The House version authorizes the appropriation of a total of $90 million over a 3-year period. The Senate amendment authorizes the appropriation of $150 million over a 3-year period. The conferees have agreed upon a total figure of $120 million over a three-year period—$30 million the first year, $40 million the second, and $50 million the third.

The 3-year authorization period in the House version covers fiscal years 1978, 1979, and 1980. The 3-year authorization period in the Senate amendment covers fiscal years 1980, 1981, and 1982. The conferees have agreed to authorize appropriations for fiscal years 1979, 1980, and 1981.

The conference adopts the House version with amendments to carry out the above agreements.

SECTION 9

Section 9 deals with the effective date of the legislation. The House version provides that grants under the legislation may be made with respect to fiscal year 1978 and succeeding fiscal years. The Senate amendment provides for an effective date of October 1, 1979.

Under the House version, the legislation takes effect upon its being signed into law. However, once the legislation becomes law, a qualified State program is eligible for a grant covering compensation paid to crime victims on and after October 1, 1977. Under the Senate amendment, the date would be October 1, 1979. The conferees have agreed to permit a qualified State program to receive a grant covering compensation paid to crime victims on and after October 1, 1978.

The conference adopts the House version with an amendment to carry out the above agreement.

PETER W. RODINO, Jr.,
JAMES R. MANN,
ELIZABETH HOLTZMAN,
SAM B. HALL, Jr.,
LAMAR GUDGER,
BILLY EVANS,
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STROM THURMOND,
ORRIN G. HATCH,
MALCOLM WALLOP,
Managers on the Part of the Senate.

[3] If the Attorney General recommends that States should be required to have unjust enrichment provisions, it is expected that the Attorney General will recommend the sort of provision that the States should have.

It is also expected that, in formulating the recommendation as to whether or not the States should be required to have such provisions, the Attorney General will take into account the percentage of Federal participation and other features of this legislation, as well as the information developed during the study of unjust enrichment proposals and provisions.

EXPLANATION OF MILITARY CONSTRUCTION APPROPRIATIONS SUBCOMMITTEE DENIAL OF PANAMA CANAL REPROGRAMING REQUEST

(Mr. McKAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. McKAY. Mr. Speaker, during the consideration of the military construction appropriations bill before the House in both debate on the House version of the bill and on the conference report, the issue of funding of construction related to implementation of the Panama Canal treaties was discussed. During this discussion, I agreed that the Committee on Appropriations would give consideration only to funding requests for construction required to defend the canal or provide for the safety and security of U.S. personnel. The Department of Defense submitted a request last week to the Military Construction Appropriations Subcommittee to reprogram $10,900,000 for construction for relocation of U.S. troops in Panama. No identification of what projects were to be constructed or why they were required was provided to the committee. The Department sent this request on October 4, 1978, and required a response by October 14, 1978. Furthermore, the Presidential certification which the committee required as a condition of funding did not satisfactorily establish the military urgency of the proposed construction.

For these reasons and because of these deficiencies, the committee has denied the Department's request to reprogram funds for construction related to implementation of the Panama Canal treaties. While we are aware that some temporary inconvenience may result from this denial, we do not feel it is appropriate to approve a "blank check" for the Department to do whatever it considers appropriate. Furthermore, the committee felt it was inappropriate to address a major treaty obligation of the United States with such little time to consider the many substantive and procedural issues involved. The Department and the administration have been aware of the requirements that would arise from treaty ratification for more than a year and have had ample time to prepare the material necessary for responsible congressional consideration in a timely fashion. Equally important, the committee does not believe that denial of this reprograming request will affect the ability of the United States to defend its interests in the Republic of Panama or to protect U.S. citizens.

I feel it is my obligation to keep the House of Representatives advised of the committee's actions on the Panama Canal and for that reason I have made this explanation today. I am including below the Department of Defense's request to reprogram funds and the Presi-

dential certification included with it. These documents are the only material on which we were asked to make a judgment on this $10,900,000 request.

THE SECRETARY OF DEFENSE,
Washington, D.C. October 4, 1978.

Hon. GUNN MCKAY,
Chairman, Subcommittee on Military Construction, Committee on Appropriations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In the recently concluded treaty with the Republic of Panama concerning the Panama Canal, there are certain provisions requiring the ceding of specified installations and real estate to Panama which entail a corollary requirement to relocate U.S. Forces and activities now occupying those properties. A number of these are phased over a period of several years, however there are some which in accordance with treaty provisions must be made available by October 1, 1979.

Because of the time sensitive nature of those governed by the October 1, 1979, date, and the limited construction season available in Panama for the remainder of 1978 and 1979, we have concluded that extraordinary procedures must be utilized if we are to accomplish the necessary relocation work prior to October 1, 1979. Accordingly, I have determined to utilize the contingency construction authority provided to me in Section 402 of the Defense Agencies title of the annual Military Construction Authorization Acts. I have carefully reviewed the most essential of the projects affected by the critical treaty date and determined that a total of $10,900,000 will be required to execute the necessary work.

Accordingly, and consistent with the normal procedures applicable to use of the construction contingency authority, I have determined that it is vital to the security of United States interests to proceed with these projects immediately. In recognition of the intense interest of the Congress concerning treaty-related matters, and their expressed desire to thoroughly review treaty implementation actions, I will withhold initiating the work until October 1, 1978. The work to be undertaken will be accomplished pursuant to authorization contained in Section 402 of Public Laws 94-431 and 95-82, and the work will be financed from appropriations granted in Public Laws 93-636, 94-367 and 95-101.

Further consistent with the concerted views of the House and Senate Conferees on Military Construction Appropriations expressed in House Report 95-1495, there is enclosed a certification by the President attesting that the required construction is necessary to realignment of military installations in the Canal Zone and is required to assure protection of U.S. national interests.

Sincerely,

C. W. DUNCAN, Jr.,
Deputy.

Enclosure.

THE WHITE HOUSE,
Washington, October 3, 1978.

MEMORANDUM FOR THE SECRETARY OF DEFENSE

In accordance with the requirement of the Conference of the House and Senate Committees on Appropriations as expressed in H.R. Report No. 95-1495 regarding emergency military construction required to implement the Panama Canal Treaty, I have evaluated the military and foreign policy implications regarding the necessity to proceed with certain relocation projects. On the basis of that evaluation, I hereby certify that construction of such projects in the amount of $10.9 million is essential to the national interests of the United States.

JIMMY CARTER.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., October 10, 1978.

Hon. GUNN MCKAY,
Chairman, Subcommittee on Military Construction, Committee on Appropriations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The purpose of this letter is to correct a date shown in Mr. Duncan's letter of notification regarding the use of contingency construction authority and funds in the amount of $10.9 million, for construction in Panama. The date of October 1, 1978 for initiating the work, should have read October 14, 1978.

I trust that this clarifies the October 4, 1978 letter and I will be happy to provide such additional information as you may request.

Sincerely,

PERRY J. FLIAKAS,
Deputy Assistant Secretary of Defense.

CONGRESSMAN RUDD WARNS: THE FOREIGN INTELLIGENCE SURVEILLANCE ACT WILL INCREASE THE DANGERS OF TERRORISM IN THE UNITED STATES

(Mr. ASHBROOK asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ASHBROOK. Mr. Speaker, one of the real dangers of the Foreign Intelligence Surveillance Act, as reported by the conference committee, is the way it severely restricts domestic intelligence activities against terrorists who have connections with foreign governments or organizations.

The conference committee substantially raised the requirements of the House-passed bill for conducting such intelligence against suspected terrorists—even those with known ties to terrorist organizations. It requires that monitoring or intelligence-gathering activities be based upon proof, necessary to obtain a warrant, that activities by the suspected terrorists "would be in violation" of U.S. criminal law.

Mr. Speaker, this is plainly a most unwise restriction against the necessary monitoring of those with connections to terrorist groups, for the purpose of foreign intelligence gathering.

A most informative analysis of the dangers of terrorism in the United States was included in a recent speech of our distinguished colleague ELDON RUDD, before the National Convention of the American Legion in New Orleans. Congressman RUDD has been one of the leaders in pro-American causes here in the Congress. I would like to include that speech at this point in the RECORD.

THE VITAL ROLE OF INTELLIGENCE IN COMBATING CRIME AND TERRORISM

(Remarks of Hon. ELDON RUDD, Aug. 19, 1978)

It is a privilege to be in the illustrious company of the men and women of the American Legion, for you have demonstrated your devotion to this Republic by offering to give your lives in defense of freedom.

It is a high honor to be invited to share with you my concern for the future of this nation and its people.

The American Legion is not a social, professional, or political society.

The bonds which bring us together is a mutual love of country.

The Legionnaires who helped to defend this nation in times of war recognize the need to maintain eternal vigilance—to focus attention on those destructive activities and unworthy proposals which threaten the future well-being of this nation.

The planners of this convention, in order to avoid duplication and to maximize the results of the time we spend together, have asked me to cover two areas which pose a serious threat to the future well-being of the people of this nation—illegal immigration and terrorism.

ILLEGAL IMMIGRATION

I truly believe there is no organization better informed or more alert to the magnitude of this problem than the American Legion.

You have memorialized Congress.

You have exposed the dangerous proposals offered by this Administration.

Your point of view has attracted a number of my colleagues in the Congress.

I am proud to report that I am a cosponsor of H.R. 11718 which was introduced March 22, 1978.

This legislation would establish as law most of the recommendations adopted by your 58th National Convention in Seattle, Washington, in 1976, and at your 59th convention in Denver, Colorado, in August 1977.

I shall continue to press for the passage of this legislation. As you know, it is opposed by the present Administration, which enjoys majority control in both the House and the Senate.

I grew up in Arizona, which borders the Republic of Mexico. Many of my childhood playmates and a number of my closest friends today are of Mexican ancestry.

I understand and I sympathize with the problems of the people of Mexico. But, my first loyalty is to the people of the United States of America, and I intend to honor that obligation.

It would be a waste of time for me to recite all of the reasons supporting the need for positive action. I would like to make these points. It is the prospect of superior economic opportunity which attracts illegal Mexican Nationals to the United States.

In the past two years, there have been discoveries of substantial new oil and natural gas fields in Mexico.

The Mexican government offered to sell this natural gas to the United States. The marketing of this gas would greatly improve the economic conditions in Mexico. And this new source of supply would have relieved, in part, the present natural gas shortage in this country.

The Carter Administration refused to permit the import of this new natural gas at a price of about $2.50 per thousand cubic feet. Mexico is being forced to attempt to consume this gas internally.

At the same time the Carter Administration has approved contracts with Algeria for liquified natural gas to be imported into the U.S. at a price of over $3.50 per thousand cubic feet. The Algerians are not our friends.

The Mexicans are neighbors of the United States.

The marketing of Mexican natural gas would have been a boon to both countries.

Those Mexican Nationals who could find employment in the new Mexican industry would have no reason to want to enter the United States legally or illegally.

The President has refused to permit the marketing of Mexican natural gas in the U.S.

The second point I want to make has to do with the United States Border Patrol, and one specific example reported in *The Arizona Republic* on Sunday, August 6.

At Yuma, Arizona, the Border Patrol operation is grossly handicapped by a lack of funds to keep its vehicles in repair. There is a shortage of manpower. The man Presi-

dent Carter appointed to head the U.S. Immigration and Naturalization Service, Commissioner Leonel Costillo, is aware of these conditions.

In December, 1977, Commissioner Costillo issued a memorandum ordering that additional money be spent on recreational equipment—television sets, athletic uniforms, Spanish language libraries, movie projectors. All to be installed in what we once called "Alien Detention Facilities."

These are those places where illegal aliens are detained until they can be deported.

The Commissioner has also ordered a change in the name of these centers. They are no longer to be called "Alien Detention Facilities." They are to be called "Service Processing Centers."

Let me quote one paragraph of a statement from Hugh Black, Deputy Chief of the Yuma Sector, who said—

"While all these dollars are being spent on soccer uniforms, we are over here with 26 broken-down vehicles. We do not have any spare tires for our sedans. Right now we are out of batteries. We do not have the money to buy any more."

To my mind, this illustrates the attitude of the Carter Administration.

I hope the recital of this incident will inspire the members of the American Legion to exert additional pressure on their Congressmen.

Let me report one more interesting comment from that newspaper article.

Officers in charge of these detention centers, now to be known as "Service Processing Centers," say that vandalism is so high that they are required to put the color television sets in steel cages behind the break proof glass.

I am pleased to report that Congressman Bob Stump, whose district embraces Yuma and that segment of the border, has filed a strong protest with the Commissioner of Immigration. I support this effort to bring about a change in attitude and a re-ordering of priorities.

TERRORISM

Now let me turn to the second of my assigned topics—the growing use and threat of terror in the United States.

We who served in the armed forces in times of war were confronting an identified, recognizable enemy.

They wore the uniform of the country they served, just as we wore the uniforms of the armed forces of the United States.

They carried their nation's flags into battle, just as we carried the Stars and Stripes.

That war in which I served as a proud aviator of the Air Arm of the United States Marines, ended in a victory for the forces of freedom.

We, all of us, rejoiced in that victory.

Then, as a nation, we set out to bind up the wounds of defeated enemies—to repair the ravages of war.

We hoped and prayed the nations of the world would learn to live in peace.

My friends, despite the sacrifice of those who fought and died, despite those helping hands we extended to friend and former foe alike, peace did not last.

Since the end of World War II, we have given away to other nations, in foreign aid, $325 billion.

We have shared our technological discoveries with our wartime allies and with our wartime enemies.

Since that day of surrender on the Battleship Missouri, we have fought to a bloody stalemate in Korea.

Then, for 12 long years in South Vietnam, we denied our American boys the use of the overwhelming air and sea power we possessed.

We said we did not want to lose the war—but we must not let our fighting men win the war.

I would remind you that within 12 days after President Nixon made the decision to use our air power and our sea power, to mine the Harbor of Haiphong, to bomb the City, the North Vietnamese scurried to the Paris Peace Table.

In war, there is no substitute for victory.

That treaty, which ended hostilities in Vietnam, was designed to protect the integrity of South Vietnam. The Congress, responding to the demonstrators who protested that war, denied to the President the funds necessary to enforce that peace.

Were these protestors high-minded, idealistic, peaceful young students?

Were they loyal Americans attempting in a peaceful way to correct what they conceived to be an error of judgment on the part of the Administration?

In October 1970, in San Jose, California a crowd of 2,000 demonstrators attacked the President's caravan. They broke the glass in a reporter's bus injuring a number of innocent people. They called themselves "The Peace and Freedom Party."

I suspect that if we were to interview the citizens of New Orleans today, or speak with the people in San Francisco, or Los Angeles, or New York, or Chicago, they would tell us the United States of America is at peace with the world.

Oh, yes, they know about the tensions in the Middle East.

Some would be aware of the Soviet conquest on the Continent of Africa.

Others might confess to being somewhat troubled by the existence of Castro's Communist Cuba in the Western Hemisphere.

But the shooting and the bombing and the dying is far away—and anyway, they would say, American troops are not involved.

If the absence of a shooting war involving American troops is an adequate definition of peace, it would be literally correct to conclude we are not at war.

My friends, we have been lulled into believing that myth is reality and reality is myth.

I am persuaded that the freedom and the future of the United States of America are threatened at this moment as we have never been threatened before.

That peace of 1945 we hailed with such affection was not a peace. It was a transition from one method of conflict to another.

Nazi Germany, Fascist Italy, and Imperialist Japan were defeated. There pernicious, dictatorial systems of government were destroyed.

But in their place, as the enemy of freedom, decency, and humanity, we now find a more resourceful enemy. An enemy skillfully employing both truth and falsehood to gain its objective. A cunning enemy.

In this war, which is really an old war, the enemy employs client nations to do the fighting—provides deadly weapons to unstable egomaniac rulers.

The United States, in a plodding, straightforward, oftentimes totally unsophisticated operation, provided foreign aid to promote peace.

The Communist Russians provide money and material and technology and secret information to promote conflict.

For too many of us in the United States the face of this new warfare is unrecognizable.

Out of one mouth, the Russians plead for understanding. Another Russian voice secretly encourages revolt in America.

They exploit individuals. They relax and then tighten their repression of Russian Jews. They wage a war of propaganda. They twist the aspirations of the desperately poor to force a weapon of aggression.

Underground gangs—trained to kill, to maim, to torture—are recruited, supported, directed activities of international Communism—the Red Bridgade in Italy, the Baader-Meinhof Gang of Germany, the South Moluccans in Holland, the Arab Guerrillas at Munich, the PLO in the Middle East.

In Rhodesia, trained terrorists from Mozambique carry out the programmed assassination of both blacks and whites.

In Southwest Africa, the terrorists have a hit list. They have published it. Senator Barry Goldwater has seen it. All the leaders who support a peaceful settlement to the political situation in that nation are marked for execution.

My friends, terror is the new weapon.

It is cheap. It is effective. It does not devastate the countryside.

It paralyzes the will.

Most Americans believe we are at peace at the moment, but it is my considered, informed opinion that most Americans have failed to recognize that all of these terrorist activities are related, directed, coordinated.

Oh, we remember the kids at Columbia—that horrible explosion in the laboratory in Wisconsin—the violence at Berkley.

But, I assure you there is no general understanding that all of these incidents were related.

Some, but not all of the names of the terrorist organizations are generally familiar to the American people—the Symbionese Liberation Army—the Black Panthers—the Weather Underground—the Venceremos—FALN—the New MOBE—the Red Guerrilla Family—the New World Liberation Front—the Black Liberation Army.

The American press has treated the activities of these groups as isolated incidents.

In truth, they constitute a carefully orchestrated program of terrorist activities calculated to achieve the objectives of their sponsors.

Their sponsors, my friends, are one of the four identifiable Communist organizations in this country—the Communist Party of the United States—the Progressive Labor Party—the Socialist Workers Party—and the brand new Revolutionary Communist Party, which identifies itself specifically as a Marxist-Leninist organization.

Oh, I know it is not fashionable to be anti-Communist. I know certain members of the press will ridicule what I say here.

But I seek the truth.

For too long the truth has been covered up—hushed and distorted by those who refuse to recognize the Communist determination to conquer the world.

This is the liberal leadership that, out of fear, chooses appeasement which invites defeat.

In 1920, Lenin told us—

"So long as Capitalism and Socialism remain they cannot live at peace. In the long run, one or the other will be victorious. The funeral dirge will be sounded either over the Soviet Republic or over world capitalism."

Lenin said—

'The phenomenon in which we are interested is the arms struggle. It is conducted by individuals and by small groups. Some belong to revolutionary organizations. Arms struggle pursues two different aims, which must be strictly distinguished. In the first place, this struggle aims at assassinating individuals—chiefs and subordinates in the army and the police. In the second place, it aims at the confiscation of monetary funds, both from the government and from private persons."

Now, let me give you a definition of modern

terrorism, as it was offered to a committee of the United States Senate on May 7, 1976.

The witness was a gifted, young intellectual, who had for at least four years been an active and powerful member of the Communist conspiracy in the United States.

He said—

"Terrorism is the utilization of violent means in an attempt to create chaos within a democratic state, with the hope that the result will be the downfall of that democratic state."

This witness defined chaos as meaning such things as kidnapping, bomb explosions, airplane hijackings, and similar violent actions.

The national advisory committee on criminal justice standards says—"Political terrorism may be defined, therefore, as violent criminal behavior designed primarily to generate fear in the community for a substantial segment of it for political purposes."

Congressman LARRY MCDONALD offers this definition—"Terrorism, a violent attack on a non-combatant segment of the community for the purpose of intimidation to achieve a political or military objective."

The targets of violence in this nation have been government buildings, government institutions, public employees, schools, private buildings, private corporations, and the police.

The aim of terrorists has been to seek a breakdown of law and order and overthrow of lawful government, through the people's loss of confidence in that government.

Has there been an increase in these terrorists activities in the United States? Indeed there has.

In 1965 there were 16 incidents of terrorism. In 1966, 34. In 1967, 56. In 1968, 240. In 1969, 696. And in 1970, from January to September, there were 571 acts of terrorism—politically motivated terrorism—in the United States.

Many of those organizations I named earlier boasted of their responsibility for bombings and kidnappings, and murders. Why, then, do we not apprehend and punish those responsible for this lawlessness.

The answer to that question, my friends, is to be found in the fact that in the United States of America the enemies of true freedom have formed countless organizations. They have raised billions of dollars to resist every effort we make to protect ourselves against these acts of terrorism.

These groups have all but destroyed the Federal Bureau of Investigation.

They have crippled the CIA.

Such legislation as the "Freedom of Information Act" has caused hundreds of police departments to destroy their confidential files.

Last week, I told a friend of mine in Arizona I had been invited to appear before the American Legion to discuss political terrorism in the United States. My friend is well informed.

He said—

"Oh, come on. We don't have any political terrorism compared to what they have in Italy, Germany, the Middle East, and Latin and South America."

The problem here, my friends, is that the kidnapping of Aldo Moro, the attacks on businessmen in Italy where the kneecap is deliberately shattered, have claimed all the headlines.

The American press has been far too silent about the terrorism in the United States.

Some of you probably remember the motion picture, "Seven Days In May." In that film, an egomaniacal right-wing military commander takes us to the brink of nuclear war. Only the calmness of a president saves us from a nuclear holocaust.

The lesson offered in the film was, "mistrust your generals, your admirals."

Well, of course, that was pure fiction, written and produced as an instrument of propaganda.

Let me tell you what actually happened during seven days in May. The first seven days of May in 1970.

There were 73 acts of terrorism—bombings, arson, attempted assassination. The targets were the police, the United States government, private schools and colleges, the ROTC, and private business.

These terrorists attacks were not local. They occured in Illinois, Michigan, Oregon, Connecticut, Indiana, New York, Maryland, and Pennsylvania.

In this seven-day period, 30 ROTC facilities were destroyed. Bombs were exploded, or there were arson fires on 29 college campuses.

Police were the target of eight attacks. Private business, five. Other schools and colleges, 15.

We who love this nation, who cherish freedom, can no longer keep silent.

We must label as enemies those who are now supporting a concerted effort to destroy the FBI and the CIA. We must brand as vicious and destructive those legislative acts and judicial decisions which have made it possible for the terrorists to operate.

We have got to take the handcuffs off the wrists of the FBI, the CIA, and the local police, and provide the support they need to identify and apprehend and detain every would-be terrorists in this nation.

This will not be an easy task.

We must remove those members of the Congress of the United States whose stupidity or sentimentality has contributed to the destruction of our ability to defend ourselves against terror.

I do not question their motives. They may have been well-intentioned. But in their innocence or their ignorance they are destroying our ability to protect ourselves against the terrorists.

We must enlist the help of responsible newspapermen in the United States. If we fail, this new warfare—political terrorism—may become the instrument to destroy the Republic of the United States of America.

How then can we do this?

We must call attention to the published reports of the FBI and the CIA.

There is no time to read them here, but let me summarize.

The New World Liberation Front, located in the Bay Area around San Francisco, California, defines itself as a Marxist-Leninist organization. They are also anti-Semitic, and between 1974 and September 1977 the New World Liberation Front has claimed credit for 50 acts of terrorism—bombings, assault, arson.

The Weather Underground was organized in 1969 of the most radical SDS members.

The Weather Underground since 1969 has claimed responsibility for 36 acts of terrorism. Their targets—police stations, police officers, public buildings.

They have destroyed millions of dollars in property, and are responsible for at least three deaths.

The FALN is a radical Puerto Rican organization formed in 1974.

It is a Marxist-Leninist group. And since October, 1974, this group has perpetrated 26 acts of political terrorism.

All of these organizations have received encouragement and finance and weapons and instruction from foreign governments.

Don't try to tell the Sheraton Hotel people there have been no bombings. One of their hotels in San Francisco has been bombed twice. The homes of their corporate officers have been bombed.

Don't try to tell the Standard Oil Company there is no bombing. They have been victimized.

Don't tell the members of the San Francisco Board of Supervisors there is no violence. Two of these members were targets of bomb attempts.

Don't tell the Pacific Gas and Electric there is no terrorism. Their substation at Monta Vista, California sustained more than $200,000 in damage. At Mountain View the damage was $100,000.

Don't tell the Chicago Police or the Berkeley Police there is no terrorism. Their vehicles and buildings have been destroyed.

Don't tell the widow of the San Francisco police officer who was killed by a bomb on February 16, there is no terrorism.

Don't tell the people of Marin County, California there is no terrorism. Their Hall of Justice was damaged by the Weather Underground.

The Long Island City Court House was bombed by the Weather Underground.

The Harvard University Center for International Studies was bombed by the Weather Underground.

The United States Capitol Building in Washington was bombed by the Weather Underground.

The Pentagon was bombed by the Weather Underground.

And just this year, in the Congress of the United States, there was offered a pernicious bill to make it even more difficult for the FBI and the CIA and our police to protect us from the terrorists.

This bill is scheduled for action in the House of Representatives after the Labor Day recess.

Those who favor our unilateral disarmament are fashioning the SALT II agreement, which will give great advantage in military weapons to the Soviets.

I would suggest the terrorist threat in the United States presents a greater peril even than SALT II.

As a member of the United States Marine Corps, I took an oath to defend the freedom and liberties of the American people.

As a Member of Congress, I took an oath to defend and protect the Constitution and all the rights it bestows upon our people.

As a child of God, and the inheritor of political freedom, I cannot keep silent.

Join with me. Raise your voices.

The people of America are not fools or little children afraid to face the truth.

St. Paul tells us—

"If the trumpet makes an uncertain sound, who will prepare for the battle?"

THE INDIVIDUAL PRIVACY PROTECTION ACT OF 1978

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. WHALEN) is recognized for 10 minutes.

● Mr. WHALEN. Mr. Speaker, in the 3 months since the Supreme Court announced its decision in the Zurcher against Stanford Daily case, Congress and the news media have criticized the decision as being a significant threat to the first and fourth amendment civil liberties. I share this concern with respect to the Court's holding because of its detrimental impact on the rights of both news gathering organizations and private individuals. The Court's decision enables the police to search individual citizens and their homes and offices, regardless of whether they ever have been implicated in any criminal activity.

While this holding applies directly to the news media, it also endangers the ability of lawyers, doctors, psychiatrists, priests, and other citizens to maintain in their files information regarding confidential relationships.

Because the Court has chosen not to recognize the right of innocent third parties to protection against unannounced police searches, Congress must act promptly to provide a statutory basis for such protection. The Committee on Government Operations noted in its report on the Stanford Daily decision.

The Court, in its concluding remarks in the decision, virtually invited the Congress and the Justice Department to consider additional statutory and other protection in this area.

As a long time supporter of the reporter's right to protect his confidential sources, and as a sponsor of privacy legislation in the House, I am particularly interested in measures which would overturn the Stanford Daily decision. To date, at least eight different bills with this intent have been introduced in the House and Senate. Many Members of Congress have joined as cosponsors of one or more of these proposals. These measures incorporate a wide variety of provisions designed to protect the press and other innocent third parties, and to limit unannounced searches by law enforcement officers. Each bill has points of merit which deserve consideration. However, none offers the comprehensive revision of the search and seizure law which is necessary in order to protect all citizens. Thus, today Representative GREEN and I are introducing legislation—The Individual Privacy Protection Act of 1978—which combines the best elements of other proposals and adds further provisions to assure complete protection.

This measure requires that any search which is carried out, other than in connection with a lawful arrest, be made only if authorized by a subpena duces tecum. The subject of the search must be provided an opportunity to contest the subpena in an adversary court proceeding prior to the search. A search warrant would be a sufficient basis only for a search of a person suspected of the crime to which the evidence related or if it appeared that the evidene sought would be destroyed, concealed or altered.

Our bill brings together five elements which we believe must be included in search and seizure legislation.

First, The Individual Privacy Protection Act is designed to cover State and local as well as Federal officials. Applying this legislation to Federal authorities only would be meaningless, for the vast majority of police searches are conducted by State and local authorities. Because this measure is intended to protect the fundamental rights of citizens outlined in the first and fourth amendments, we believe the 14th amendment grants Congress the authority to apply it to the States.

Second, the bill covers all third party searches, and not just those involving the news media. The Supreme Court's decision has the effect of opening up the homes and work places of all citizens to unannounced searches. Therefore, it is necessary that the legislation apply to all types of searches.

Third, this measure allows an exception to the process for obtaining authorization to make a search only if there is "probable cause" to believe that the person being searched committed the crime to which the evidence relates, or will destroy the evidence. There is general agreement that these exceptions should be included. However, the exceptions should be defined clearly so that they do not become a loophole through which law enforcement officials avoid the hearings process.

Fourth, we have provided three types of remedies in case where officials violate the law. The most important remedy is application of the exclusionary rule. This prevents law enforcement officials from using illegally obtained information in any criminal proceeding. Additionally, the bill provides criminal penalties (fine or imprisonment) as a further incentive to comply with the law. Finally, in order to provide relief for the individual whose privacy has been violated, the bill permits civil recovery of both general and punitive damages, as well as attorney's fees.

Fifth, the bill contains language to insure that it is not interpreted as an endorsement for the issuance of subpenas to reporters, or that Congress intends to preempt the States from adopting more sweeping privilege legislation. These provisions are necessary to insure that no individual right to privacy or protection of the media which already exists will be abrogated.

It is unfortunate that the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, which has jurisdiction over this type of legislation, will not be able to hold hearings as had been originally scheduled. It is important that Congress act on this matter as soon as possible so that newspaper reporters and others will be protected from indiscriminate police searches.●

PRICE CONTROLS

The SPEAKER pro tempore. Under a previous order of the House the gentleman from Texas (Mr. COLLINS) is recognized for 10 minutes.

Mr. COLLINS of Texas. Mr. Speaker, America's patriots at Valley Forge nearly starved during the bitter winter of 1776 due to price controls. Now President Carter is talking about imposing another form of controls to fight our current inflation.

Controls did not work in 1776 or any other time in America or any other place in the world at any known time. If the President would remember history, he would shun controls just as do the vast majority of Americans today. Price controls lead to shortages.

John Adams called the controls passed by the Continental Congress in 1776:

> That improvident Act for limiting prices (which) has done great injury and (which) * * * if not repealed will ruin the state and introduce a civil war.

The poor starving soldiers who could not get food because farmers were unable to sell their wares at controlled prices must have strongly agreed with Adams.

Controls on prices, wages, rent, and interest has never worked because they fail to attack the basic cause of inflation, which is Government overspending. Examples of these failures abound throughout history. Yet governments like the Carter administration always seem to resort to controls in a lastditch attempt to avoid admitting their own lack of financial planning.

In Babylon forty centuries ago, a large part of Hammurabi's Code failed because he tried to control all prices. In ancient Egypt, government controls over the grain crop led gradually to ownership of all the land by the state.

The Roman Empire also tried controls under the Emperor Diocletian, who, one contemporary historian said, "set himself to regulate the prices of all vendible things." The result? "The people brought provisions to the market no more since they could not get a reasonable price for them and this increased the scarcity."

Controls have even caused wars to be lost. During the Middle Ages, the city of Antwerp fell to the Spanish largely because no one would risk bringing food to the city's defenders. Once past the fearsome Spanish guns, sellers had to submit to the city government's controls. None submitted. The hungry city fell.

Our own modern experiences prove the futility of controls. Many parts of New York City, notably the South Bronx, became untenable due, in large part, to rent controls. Denied adequate repair funds by the controls, many owners simply abandoned their property or barely maintained it.

During President Nixon's ill-fated Wage and Price Controls program, wage earners found themselves hurt. Executives received "raises" in the form of bigger expense accounts. Workers on assembly lines were held back to small percentage raises and many economists believe such controls actually led to layoffs of higher paid workers.

And who will ever forget the sight of freezing Americans in many of our Northern States last winter? With the price of interstate natural gas controlled by the Federal Government at artificially low rates, a shortage of natural gas soon developed.

Whether it be with goods like food and energy or with wages and rents, price controls always lead to shortages. We Americans should have learned the lesson of Valley Forge. Our great revolutionary statesmen learned the lesson that controls never work. In 1778, the same Continental Congress that had passed the price controls which almost starved George Washington's brave troops at Valley Forge revoked those controls. After stopping the almost disastrous experiment, the Congress passed a resolution addressed to all the infant States which said in part:

Whereas * * * it hath been found by experience that limitations upon the prices of commodities are not only ineffectual for the purposes proposed but likewise productive of very evil consequences * * * resolved, that it be recommended to the several states to repeal or suspend all laws * * * limiting, regulating or restraining the price of any article, manufacture or commodity.

We should heed the wisdom of our original Congress in 1778 and repeal all the senseless and expensive Federal regulations which now control so much of our daily lives and work. Price controls do not work. Shortages will be our only reward if we continue to increase the controls and regulations on our private economy.

SOME POINTS UNCLEAR IN SENATE SUMMARY OF AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. GRASSLEY) is recognized for 5 minutes.

● Mr. GRASSLEY. Mr. Speaker, I am pleased that the other body was able to adopt S. 3384, the Agricultural Foreign Investment Disclosure Act, on Monday, October 2, in the same form in which it passed the House on September 26. The final version is the House bill as it was reported from the House Agriculture Committee on September 14 (House Report No. 95–1570). Thus, the need for a conference is avoided and the legislation is cleared for the President.

I must express concern, however, about some of the points made in the summary of S. 3384 which was included in the CONGRESSIONAL RECORD of October 2 on page 33064.

Establishment of congressional intent is important on any legislation, no matter how well drafted, but it can be critical when the executive branch or the courts are called upon to interpret law that is unclear or ambiguous on its face. As one of the three principal authors of this bill in the House, I worked with the other authors—the gentleman from California (Mr. KREBS) and the gentleman from Minnesota (Mr. NOLAN)—to draft the measure insofar as possible in the tightest language with the most precise meanings, and to thoroughly clarify our intent where any questions arose. When we further amended the bill in subcommittee and full committee, we tried to develop a record of discussion that would fully explain our actions and purpose on each point.

Still, if the President signs this bill into law, I am sure there will be some further questions on what exactly we meant here or there in the language. It is virtually impossible to anticipate every question that may arise later. Hence, the importance of establishing congressional intent, both in a broad way on what the bill is meant to do, and on specific items where the language of the measure leaves more than one interpretation open.

Our intent on the bill that was cleared for the President—the House bill—is spelled out in several places: in the various statements of the authors; in the record of the Family Farms Subcommittee hearing on the bill; in the record of the markup of the bill in both subcommittee and full committee; in the committee report; and finally, in the debate on the House floor on September 26.

The Senate, in passing the House bill, has also included what is, in effect, a statement of intent on the legislation, in the form of the above-mentioned summary that was inserted in the CONGRESSIONAL RECORD on October 2. Unfortunately, this statement of intent goes beyond the actual language of the bill in at least two places.

The most obvious instance is in the section of the Senate summary entitled "Reporting Requirements." The bill requires, as a part of the information to be included in reports submitted by foreign persons to whom the act is applicable, a statement as to the agricultural purposes for which such foreign person is using or intends to use the agricultural land in question. (See section 2(A)(8) and section 2(b)(7).) The Senate summary states:

It is expected that the Secretary of Agriculture will require in his regulations that the report include— . . . (b) *all* uses of the land, not just agricultural uses;".

Such a requirement would clearly go beyond the very specific language of the measure.

A second instance is in the section of the summary entitled "Civil Penalties." The bill states that a person shall be subject to a civil penalty imposed by the Secretary of Agriculture if the Secretary determines that the person: First, has failed to submit a report in accordance with the provisions of section 2; or second, has knowingly submitted a report under section 2(A) which does not contain all the information required to be in such report, or (B) which contains information that is misleading or false. The Senate summary says:

It is understood that the term "knowingly," as used in the bill, means that the person knows or has reason to know that the report is incomplete, misleading, or false.

It is my understanding that the word "knowingly" is a legal term of art. When the amendment that included this word was offered in our Family Farms Subcommittee markup of this bill, no new definition of the word was offered. It was not proposed that it mean "has reason to know." The thrust of the discussion went to knowing misrepresentation or omission of the facts. It is certainly not my understanding that it means anything else.

There may be other points that are unclear. This statement is not represented to be an exhaustive one. If further clarification is needed on any point, I would hope that those upon whom it falls to interpret this legislation would rely on the standard procedure of looking first to the actual language of the bill where, at least in these two cases, the bill says what it means.●

A TRIBUTE TO GEN. CASIMIR PULASKI

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, October 11 marks the 199th anniversary of the day on which the great Polish patriot, Count Casimir Pulaski, gave his life in order that our country might be free.

President Carter has issued a proclamation designating October 11 as General Pulaski's Memorial Day and a copy of that proclamation follows:

GENERAL PULASKI'S MEMORIAL DAY, 1978

(A proclamation by the President of the United States of America)

One hundred and ninety-nine years ago, the Polish patriot Casimir Pulaski gave his life fighting for freedom in the American Revolution.

General Pulaski, an exile from his native Poland, arrived in 1777 to join the Revolutionary Army. He fought courageously at Brandywine and in other battles, and he formed and commanded the famous cavalry unit, the Pulaski Legion, which fought nobly in the cause of American independence.

General Pulaski died on October 11, 1779 of wounds received in the Battle of Savannah two days earlier. Nearly two hundred years later we continue to pay tribute to him and to the millions of Americans of Polish descent who have played such an important part in founding our country, making it grow, and preserving its ideals.

Now, therefore, I, Jimmy Carter, President of the United States of America, do hereby designate Wednesday, October 11, 1978, as General Pulaski's Memorial Day and I direct the appropriate Government officials to display the flag of the United States on all Government buildings on that day.

I also invite the people of the United States to honor the memory of General Pulaski by holding appropriate exercises and ceremonies in suitable places throughout our Nation.

In witness whereof, I have hereunto set my hand this eighth day of August, in the year of our Lord nineteen hundred seventy-eight, and of the Independence of the United States of America the two hundred and third.

JIMMY CARTER.

This occasion is one of great significance, not only to Polish-Americans alone, but also to Americans in general. For on this day we hail the name Casimir Pulaski—hero of the democratic revolutionary cause in Poland, of his native land, and of America, the land of his adoption. It was for this reason that I introduced a bill, H.R. 10911, earlier this year "to provide for the issuance of a commemorative postage stamp in honor of Gen. Casimir Pulaski and Americans of Polish descent," and I was delighted when the U.S. Postal Service announced that a postal card in Pulaski's honor would be issued.

Count Pulaski was not himself a victim of British oppression in the year 1776. Indeed, he was at the moment far removed from oppression of any kind. Of noble birth, of wealth, and family distinction, he was free to live in peace

wherever he chose. And yet, in those difficult times peaceful complacency was not the mark of a man, and Pulaski was in truth a giant among men.

Having fought as a cavalry officer against the Russian domination of Poland, and having as a result been driven into exile, Pulaski ventured to France where he was advised of the impending American Revolution. Fired by the spirit motivating the American cause, and recognizing in our cause principles identical to his own, Pulaski offered his services to the Americans, who accepted them with gratitude.

By the summer of 1777 Pulaski was in America, ready for battle, and in September of that year took his place in the American lines, as a volunteer at Brandywine, where his conduct earned his instant recognition as an outstanding military leader.

In the battle of Germantown he was again prominent, and for his excellent service and ability, he was appointed to a cavalry command. At Trenton, in the winter of 1777, when Washington's Army began its desperate foraging compaign of that dreadful winter, once again Pulaski played a major role.

It was noted by all of his comrades-in-arms that Pulaski was a fiery spirit and a master organizer. Working well with fellow officers, he urged along the Revolutionary cause, bolstering the cavalry morale and ever-confident of victory. Primarily, however, he was a courageous example to his men in battle: a horseman of consummate skill, a swordsman of heroic effectiveness, and a leader with knowledge, intuition, and daring.

At Valley Forge, Pulaski organized the cavalry force that was to become known as Pulaski's Legion. Stationed at Baltimore for a time, Pulaski grew impatient for battle and asked for a transfer to the front lines. The request was granted and the Legion moved north, engaging the enemy in frequent battles throughout New Jersey. When once again a lull developed, Pulaski asked again for transfer, and was dispatched quickly to the South, where the British where operating effectively out of Savannah.

In several sharp encounters in northern South Carolina, Pulaski reinforced his reputation as a fighter of great courage. When the Americans moved against Savannah, Pulaski was foremost in the vanguard of the attacking columns.

Urging his men forward in the midst of withering fire, he fell, seriously wounded. Removed at once to an American ship in Savannah Harbor, he was examined by doctors, but his wounds proved fatal.

So it was for this great man, Casimir Pulaski, whose dream of freedom was to benefit millions and millions of Americans to come, including a host of immigrants from his native land and their descendants. We pay our respect to men of such caliber in the knowledge that without their insight, their fire, their courage, and their determination, we in America would enjoy far fewer sacred freedoms than we have today.

Count Casimir Pulaski is remembered and honored as a hero of two hemispheres—in one for his valiant efforts to prevent the partition of Poland—and in the other, for his outstanding contributions during America's war of independence.

This great man made the supreme sacrifice in the age-old struggle for freedom and it is with a sense of real pride that I join Americans of Polish descent in the 11th District of Illinois, which I am honored to represent, in the city of Chicago, and all over this Nation in commemorating the 199th anniversary of General Pulaski's gallant sacrifice for the noble ideals of freedom.●

HEMISPHERIC PERSPECTIVE: A SOVIET BLOC IN CENTRAL AMERICA?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. FLOOD) is recognized for 5 minutes.

● Mr. FLOOD. Mr. Speaker, in many addresses in and out of the Congress a major point that I have repeatedly stressed is that the Panama Canal situation is not a local matter between the United States and Panama but one of global geopolitical significance. The recent attempt by Red led Sandinistas to overthrow the legal Government of Nicaragua has brought that danger closer to the United States.

A brief article by L. Francis Bouchey in the current issue of West Watch, a publication of the Council for Inter-American Security of Washington, D.C., brings the Central American situation into perspective.

To make Mr. Bouchey's timely appraisal available to the Congress and Nation at large, I quote it as part of my remarks:

HEMISPHERE PERSPECTIVE: A SOVIET BLOC IN CENTRAL AMERICA?

(By L. Francis Bouchey)

Why did "Commander Zero" and his Sandinista terrorists who seized the Nicaraguan Capitol in late August take refuge in Panama? Both Venezuela and Panama sent planes and according to first reports, "Commander Zero" and his followers were headed for Venezuela.

Once in Panama "Commander Zero"—identified as Eden Pastora—made clear that Panama was chosen because it is close to Nicaragua and will give him a better base to return to Nicaragua and intensify the guerrilla war.

Landing at Panama's military airport, "Commander Zero" was picked up by the limousine of Panama's National Guard Security chief, Col. Manuel Noriega, a frequent visitor to Havana.

There has been no sign that Panama intends to impose any restraint on the *Sandinistas*. "Commander Zero" expects safe haven in Panama.

Nicaragua is only one square on the Central American political chess board, although a large and critical one. Neighboring El Salvador, Guatemala and Honduras are politically unsettled. Guerrilla groups are at work in both El Salvador and Guatemala.

Sandinista success in Nicaragua cannot fail to have an impact in El Salvador where leftist terrorist activity has intensified in recent months, shaking the foundation of that society. Since May, 4 foreign corporate business executives have been kidnapped.

The implications are unmistakeable—A Soviet-Cuban beachhead in Central America that would further expose the Panama Canal and weaken the U.S. Southern flank.

Twenty years ago no one expected that Fidel Castro could install a Soviet Colony 90 miles from the United States; or that the Communist hold on Cuba would be consolidated within 2 years.

The political situation is deteriorating rapidly in Central America and could be transformed swiftly. Nicaragua has been an anti-Communist bulwark and stabilizing force in that part of the world. It has also been a prime object of Castro's enmity since President Anastasio Somoza cooperated with the aborted U.S.—backed Bay of Pigs invasion in 1961.●

NO PUBLIC HEARINGS EVER HELD ON H.R. 14159

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. BURKE) is recognized for 5 minutes.

● Mr. BURKE of Massachusetts. Mr. Speaker, in the rush of business to close a session of Congress we should be wary of the legislative end-runs which historically take place amidst the confusion of conference committees, bills under suspension and unanimous consent requests.

I would like to draw the attention of my colleagues to a classic example of ill-considered legislation steaming pell-mell toward enactment without the benefit of a single public hearing.

The issue involves a tax forgiveness provision for taxpayers embroiled in employment-status controversies with the Internal Revenue Service. It is a problem that developed when the Internal Revenue Service began serious enforcement of the employment tax laws and found a number of individuals were being treated as independent contractors when they actually were employees.

Mr. Speaker, there may be sound reasons for forgiving taxes in this very unclear area of the law. We should not, however, act in ignorance of the consequences. Since no hearings were held no one knows how much tax liability is being forgiven, how many workers are involved, what will happen to their social security credits or how this will affect the social security trust funds.

Mr. Speaker, this legislation, H.R. 14159, may cost the trust funds $450 million or more. This is not an inconsequential sum. I strongly protest the use of the social security system as a cash register for financing this give-away. It promotes instability in the trust funds, causes anxiety amongst the elderly and its cost is ultimately borne by all other working contributors.

Mr. Speaker, I would like to include in the written record a copy of the dissenting views I filed to the committee report on H.R. 14159. I would like the members to be aware of this peculiar bill.

DISSENTING VIEWS OF THE HONORABLE JAMES A. BURKE OF H.R. 14159

I voted against this ill-considered legislation for the following reasons:

1. Because it raises a serious constitutional question concerning revenue measures originating outside the House and is, in effect, a legislative end-run at the end of a session;

2. Because it will result in a drain of a substantial yet unknown amount on the social security trust funds without any form of compensation to those funds;

3. Because it promotes instability in the trust funds and forces the elderly and other working contributors to bear the cost of social security credits for which taxes will never be paid;

4. Because the proper Subcommittees never had the opportunity to examine a bill on which not a single public hearing was held.

SERIOUS FLAW IN H.R. 14159

I voted against reporting H.R. 14159 out of Committee because it is seriously flawed in its failure to deal adequately with the issue of having social security credits granted on earnings for which no taxes will be collected. This serious flaw is compounded by the complete lack of accurate data involving the numbers of individuals who will be granted these "non-financed" credits and the eventual costs to the trust funds of future benefit payments based on those credits. These issues are central to the basic matters of coverage and financing of the programs.

The bill reported out by the Committee has two deleterious effects on the trust funds. First, it forgives assessed taxes for past periods which will result in a loss of appropriated revenues to the trust funds. Included in this loss will be actual refunds from the trust funds to the Treasury resulting from claims for refunds or credits against overpayments flowing from the bill's termination of liability.

Second, as mentioned above, the forgiveness of assessed tax liability in employment-status controversies with the Internal Revenue Service will result in the unusual circumstances of certain individuals receiving social security coverage credits for past earnings on which taxes were never paid—by anyone. The following briefly explains how this comes about:

Under the Committee bill, taxpayers will not be treated as employers under the Internal Revenue Code while their workers will be treated as employees for social security benefit and tax purposes. As a result, taxpayers will not pay employers' social security taxes, report employee earnings, or withhold and deposit employees' social security taxes. Even though the Internal Revenue Service did not collect the employees' social security taxes, the employees will get credit for the wages towards social security benefits. Conceivably, an employee could get credit for wages 6 or more years after they were earned, but the Internal Revenue Service could not collect the taxes on the wages because the time limitation on collections expired. In other cases, where evidence of the wages paid was unavailable, employees would be unable to get social security credits.

The different treatment under the Social Security Act and Internal Revenue Code of the same work will create difficult administrative problems for the Social Security Administration and the Internal Revenue Service, will result in social security credits for wages on which the taxes were not paid, and will result in lost social security coverage for some workers whose earnings are not reported.

UNDESIRABLE PRECEDENT

As a matter of tax policy I find H.R. 14159 inequitable. Refunding employer-employee contributions from the trust funds as a concession to pressures by a number of powerful business lobbies sets an undesirable precedent and forces other working contributors to the social security trust funds to bear the cost of the workers' social security credits on which employment taxes were not paid. The Committee has acted irresponsibly in reporting out this bill without ascertaining even a ballpark figure on just what cost we will be imposing upon all other workers.

LACK OF INFORMATION

The Task Force which reported out this legislation held several informal meetings and never had a public hearing or called a witness. Absent this essential groundwork, it is not surprising to find that the record is silent as to the numbers of individuals involved and the costs to the funds. The Committee literally bought a pig in a poke in reporting out this bill.

The Social Security Administration was forced to come up with a hasty and somewhat conservative estimate of 25,000 individuals affected annually by the reclassifications. If these workers earned maximum social security wages, the loss in income to the social security trust funds in cases of forgiven tax liabilities and refunds could amount to as much as $450 million. Only moments before the Committee voted on the legislation, the Treasury Department offered that the number of individuals involved could in fact be as high as 750,000. Even assuming only average social security wages for these workers, this latter figure would result in a staggering loss of trust funds income. Having only recently enacted the largest peacetime tax increase in history to put the financing of social security back on a sound basis, this latest action by the Committee seems manifestly irresponsible. I hope that Members of the 96th and subsequent Congresses will not find themselves asking the taxpaying public to absorb even greater tax increases to pay for this unquantified give-away.

INADEQUATE ADMINISTRATION OF THE LAW

The Committee bill is seriously deficient in another respect; i.e., it uses the employment tax trust funds to finance a tax forgiveness that in large part is attributable to inadequate administration of the tax laws by the Internal Revenue Service. The trust funds should not have to bear the cost of this forgiveness and some provision should have been included in the legislation which would compensate the funds for any form of lost revenues stemming from enactment of the forgiveness. The failure to protect the trust funds in this equitable manner is especially troubling insofar as the Committee and Task Force action on the legislation comes right on the heels of a recently issued General Accounting Office study which is critical of the Internal Revenue Service's monitoring of social security tax compliance.[1]

I realize that with different agencies responsible for the administration of the tax and benefit titles of these programs there will always be a degree of difficulty in coordination. This bill, I suspect, will only add to this complexity and heighten the potential for discordant treatment of tax revenues and creditable earnings.

PROCEDURAL IRREGULARITIES

Although secondary to the substantive deficiencies of H.R. 14159, the procedural issues involved are important because of the nature of those substantive flaws as well as the general magnitude of the legislation.

It is peculiar that legislation with such a direct impact upon basic program aspects such as coverage and trust fund revenues was not referred to the Subcommittees on Social Security, Health, and Unemployment Compensation. The Rules of the Committee, adopted pursuant to Rule XI of the Rules of the House of Representatives, contain no provision vesting a legislative function in anything but the enumerated Subcommittees. No authority is granted in those Rules for transferring the jurisdiction of the enumerated Subcommittees to an *ad hoc* Task Force. The creation of the Task Force on Employees/Independent Contractors complete with legislative jurisdiction over important issues ostensibly under the jurisdiction of standing Subcommittees is a serious departure from the Committee's own rules and is a further example of bad precedent.

I believe that this highly questionable and possibly improper procedure has imbued this legislation with every flaw one would expect considering its delegation to a panel not familiar with the nuances of this technical and historically complex area.

Why were no specifics with regard to costs demanded by the Task Force?

Why did the Task Force fail to deal with the important issue of gratuitous crediting and reimbursement of the trust funds?

Why did the Task Force fail to call a single public "hearing" (not meeting)?

Why were not the views and recommendations of the General Accounting Office solicited by the Task Force when in fact that agency had completed several pertinent studies in this area?

Why wasn't the issue of the fiduciary duty of the Secretary as Managing Trustee of the OASDHI funds brought to the attention of the Administration and the Congress?

Had this matter been properly referred to the appropriate legislative Subcommittees, these issues would have been explored. I will not accept and this Committee should not delude itself into thinking that time precluded proper procedure. The Subcommittees on Social Security, Health, and Unemployment Compensation are perfectly capable of action under exigent circumstances. The issue could have been referred to the proper legislative Subcommittees with strict orders from the Chairman for timely action and referral back to the full Committee.

It is ironic that the Committee can rush pell-mell towards reporting out this giveaway and not find the time to act on disability legislation reported out by the Social Security Subcommittee. Apparently, the special interest lobbyists carry more weight around here than the lame, the halt and the blind.

For the 96th Congres, it is my hope that the House will have ample opportunity to pass judgment on the permanent solution to the basic issue of covered employment on its own merits. Toward that end, the issue must be referred to the appropriate legislative Subcommittees and afforded the full panoply of the legislative process. I say this not in the interest of defending the jurisdiction of the Subcommittees. I will not be here to be a Member of either one of them in the next Congress. I say it because the basic issue involved is a matter of covered employment which can have serious ramifications affecting people's entitlement to benefits and effects on the financing of the programs.

Finally, I condemn in the strongest possible terms the atmosphere which pervaded the Committee meeting at the time this legislation was under deliberation. Never in my

[1] *Report By the Comptroller General of the United States*, GGD–78–70, August 15,

eighteen years on this fine Committee have I ever witnessed such detestable and puerile conduct on the part of special interest lobbyists. The systalic chants and cheers emanating from those faineants prompted more than one Member to protest the conditions under which the session was held. Their odious conduct lends a special and somehow appropriate aroma to this unfortunate legislation.●

PROMOTING AMERICA'S EXPORTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. ZABLOCKI) is recognized for 15 minutes.

Mr. ZABLOCKI. Mr. Speaker, the Committee on International Relations is issuing today a Library of Congress study on "Export Stimulation Programs in the Major Industrial Countries: The United States and Eight Major Competitors." The study, performed by the Congressional Research Service at committee request, describes the export promotion programs of the United States, Canada, France, West Germany, Italy, Japan, the Netherlands, Switzerland, and the United Kingdom. It offers a good factual comparison of the export incentives used by ourselves and our chief rivals in international trade. It sheds light in an area where there has been considerable confusion and debate, and I commend it to Members of Congress and the public.

I also wish to take this opportunity to offer some general observations about the state of U.S. exports and export policy. As the study notes, the United States has experienced a serious deterioration in its foreign trade balance in recent years. The huge gap between our export earnings and our imports has become one of the most worrisome problems facing our economy. Our trade deficit hit a record $27 billion in 1977. This year it will be even worse.

In bygone years, an unfavorable trade balance could be shrugged off as an irritant which affected a relatively small portion of our economy. Historically the United States, unlike most industrial nations, has produced goods largely for consumption within the United States. But in more recent times, exports have become increasingly important to us. Over the last two decades, the proportion of exports in our GNP has nearly doubled, reaching 7 percent last year. At the same time, our import bills have been climbing even faster. For example, the volume of our exports in 1977 was 2.8 percent higher than in 1975—but our imports were 35.7 percent higher.

One of the most troublesome factors underlying our deficit is the drop-off in productivity and innovation in U.S. industry compared with that of our competitors, whereas we used to be a world leader in this respect.

Obviously, this is an unacceptable situation, and one growing more serious with time. The question is, what can we and will we do about it?

As far as our private sector is concerned, I have faith that our free enterprise system and the basic economic strength of our country will rebound again as it has many times before, and that once again American competitiveness will place U.S. products in a favorable position in the international marketplace.

However our businessmen and farmers will need help of the right sort from the Government—both in active programs to promote U.S. exports, and in efforts to remove impediments to our sales abroad.

One cause of the poor U.S. export performance is government policies that serve as disincentives to exporting, either through discouraging exports or actually preventing them. These policies include: strategic export controls, nuclear nonproliferation policy, arms sales ceiling, opposition to Arab boycotts, human rights policies, Jackson-Vanik, trade embargoes, Foreign Corrupt Practices Act, and others. Each of these policies, most of which I have supported in principle, are, taken individually, sound policies which seek to further important U.S. goals. We are all opposed to nuclear proliferation, abuse of human rights, the Arab boycott of Israel, bribery, arms races, and so forth. Unfortunately, the cumulative effect of these policies is a negative impact on the U.S. export position, the dollar, and the U.S. economy. Although no accurate figures are available, it is conservatively estimated that these policies may result in the loss of some $2 to $4 billion of exports annually, and the figures could be considerably higher.

Obviously we are not going to loosen up on our strategic export controls, nor are we going to rush to reestablish trading relations with a regime such as the one in Cambodia. However, we do need to review all of these policies to determine if they effectively meet their objectives. If they are meeting their purpose of furthering a specific policy, then the economic cost may be worth the achievement of that goal. However, if the policy is not being furthered, then we should consider if the cost is justified. To a large extent the answer to this question will depend on whether other nations are following our lead and adopting similar policies. I am afraid that in many cases they are not.

I am pleased to note that in his export policy statement of September 26, 1978, the President has taken a first step toward reducing governmental barriers to exports. The statement includes a directive for all regulatory agencies and Government departments to consider the impact of regulations and U.S. foreign policy on exports and to provide clarification of the Foreign Corrupt Practices Act, the anti-trust laws, and the National Environment Protection Act requirement for environmental impact statements for certain exports. In regard to the impact of foreign policy on exports, the departments are to consider alternate sources of goods available to countries to which the United States restricts exports; such availabilities, for the most part, depend upon the extent to which other exporters follow restrictive policies similar to those of the United States.

The President's policy also includes improvement in Export-Import Bank lending and terms, greater Small Business Administration assistance to encourage small firms to export, additional funding for Government export development programs, increased assistance to promote agricultural exports, and the negotiation of an expansion of the Organization for Economic Cooperation and Development agreement restricting the use of export credits.

I commend the President for taking the initiative in developing a more vigorous export policy. I hope his policy statement is only the beginning and that the administration will expand it, possibly reviewing some of the other policies I have referred to above that discourage exports.

I also hope that the President, through his chief representative in this area, Secretary of Commerce Juanita Kreps, will take steps to impress on the various U.S. agencies the importance of this policy and the need for the thousands of individuals in the bureaucracy who implement the various policies to better their efforts to assist exporters and to minimize any disincentives to exporting. Only with the right kind of Government actions—both in positive assistance and in removing unjustified impediments—can our private enterprise system succeed in overcoming the trade deficit which is such a serious problem for our Nation today.

Congressional interest in and support for vigorous and positive efforts in behalf of American exports certainly will not be lacking. Among other actions, it should be noted that concerned Members of the House have formed an export task force which will be examining, evaluating and seeking to counter trade barriers to U.S. exports. Review will cover implementation of the President's export policy and ways in which it can be expanded. Our colleague BILL ALEXANDER of Arkansas, is to be commended for his initiative in setting up this group.

American concern about the trade deficit is long overdue, but never too late, Again, I applaud the President's export policy statement and hope it is not just pious rhetoric but will be followed by action and desired results—an increase in U.S. exports and a reversal of the balance of payments deficit.

EXPORT ADMINISTRATION ACT: AGENDA FOR REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. BINGHAM) is recognized for 10 minutes.

● Mr. BINGHAM. Mr. Speaker, on October 4, the Subcommittee on International Economic Policy and Trade, which I have the honor to chair, held a hearing on the "Export Administration Act: Agenda for Reform." At this hearing,

three expert witnesses presented their proposals for amending the Export Administration Act so as to make it more effectively serve this Nation's economic and security interests. Revising the Export Administration Act, which expires on September 30, 1979, will be a major activity for the subcommittee next year.

Of the three excellent statements presented at the hearing, one in particular struck me as an outstanding analysis of what is wrong with the act in its current form and what needs to be done to it. I refer to the statement of Prof. Fredrick W. Huszagh of the University of Georgia.

As it is currently administered, the Export Administration Act rests on the tacit assumption that we protect our technological lead by controlling technology exports. Professor Huszagh makes the seemingly paradoxical point that another way we protect our technological lead is by exporting our technology, so that our high technology industries can generate the profits required to support the research and development necessary to maintain our leadtime. The type of products where we have the best competitive edge are precisely the high technology products that we have been most concerned about denying to the Communist countries. But if we are too restrictive, those countries simply turn to Western European suppliers or their own indigenous resources, and those suppliers are enabled to generate the income needed to make further technological advances, thus closing the gap between us.

This means that our export licensing process, while continuing to restrict the export of technology with a direct military application, needs to be more attentive than it has been to two factors; product cycle, and foreign availability. We have to be prepared to decontrol us but are still a level above what the Eastern European countries have. Only by selling that level of technology can we finance the development of our next level of technology. And we have to stop our futile efforts to control technologies that our competitors are exporting, because that merely has the effect of transferring R. & D. resources to those competitors.

In this time of national debate over our export policies, I think my colleagues and the public would benefit from a careful reading of Professor Huszagh's entire analysis, which follows:

STATEMENT BY FREDRICK W. HUSZAGH

I. INTRODUCTION

Export trade has always been a vital, though small, component of the nation's financial health, but the balance of trade surpluses of the sixties, as well as our own internal growth, have allowed the federal government to pursue political and security objectives without concern for their impact on export performance. Export control structures have developed which ignore the necessities of a dynamic and competitive export trade. Our present export laws and regulations are insensitive to basic realities of export trade. They fail to recognize fundamental differences in types of products and market characteristics. They are blind to the basic business processes by which American businesses evaluate and undertake risks in pursuit of trade expansion.

In contrast, countries, reliant on export trade are sensitive to the characteristics of their exporters, products, and world markets. They can and do recognize important distinctions among product needs and market requirements. Thus, these countries insure that their export industries remain competitive in world markets.

Last spring, in testimony before the Subcommittee on International Finance of the Senate Committee on Banking, Housing & Urban Affairs,[1] I outlined the escalating conflict between elements of our "permanent government," that part of the Executive Branch which remains through changes in Presidents and administrations. With each element pursuing different policy objectives, the result not only inhibits trade directly, but also creates an environment of uncertainty dampening business interest in entering, expanding or maintaining export trade.

The Export Administration Act of 1969, as amended, is an excellent illustration of how conflicting agency objectives, supported by conflicting Congressional mandates, operate directly and indirectly to impair our export vitality. Testimony before this Subcommittee and others, indicates that the goals of export control are pursued with questionable effect and notable inefficiency. These goals are normally pursued with substantial indifference to the fundamental American commitment to free trade. Inflation and slow industrial growth require the government to act with greater effect for less cost. Legitimate government goals must be achieved with a minimum of undesired side effects. Shifts in emphasis among government goals must be accommodated continuously without repeated resort to legislative reform.

During the forthcoming legislative session, this Committee will be presented with a unique opportunity to give U.S. export trade a sharply higher priority in our national policy. I believe this can be achieved through techniques which do not impair other components of national policy and which set a model for both efficient and responsive government.

II. REFERENCE POINTS FOR REVISION OF THE EXPORT ADMINISTRATION ACT

In areas where the permanent government has become ensconced it is difficult to achieve a major change from past behavior through legislative action. The export licensing area is no exception.

The original Export Control Act of 1949 imposed limits on U.S. exports to bar military or strategic materials from communist countries. In 1962, the law was expanded to include exports of economic significance as well. These provisions resulted in administrative mechanisms and procedures which gave the highest priority to national security objectives.

In 1969, Congress sought to reduce these export restrictions by declaring that it was U.S. policy to encourage trade, to oppose restrictive trade practices fostered by foreign countries, to further U.S. foreign policies concerning international responsibilities, and to guard against short supply and abnormal foreign demand. Unfortunately, these expanded objectives have not displaced the permanent government's preference for maintaining national security as the highest priority. Further, it did not deter other elements of government from deploying these restrictive mechanisms to pursue non-security objectives which were of particular interest to them but perhaps of marginal utility to the country as a whole. Thus, past events created a mechanism that gave highest priority to restriction of exports, and no subsequent action has been able to dislodge this preference.

Federal regulation of export transactions has expanded considerably from its original concern with national security to include boycotts, sensitive payments, technology transfers, and alleged human rights violations. The complexities of these regulations and the randomness of their application make the exporting environment extraordinarily uncertain for all classes of exporters—new-to-market, new-to-export and old-to-export. These exporters are frequently unable to predict whether they will have the opportunity to amortize necessary investments in export activities.

Sound government, if it is to foster a sustained and expanding export trade, cannot be obvious to the uncertainty generated by the unpredictable pursuit of government objectives. The "black box" operation of the present regulations, especially when biased with goals that inherently restrict foreign trade, increases costs and delays without necessarily enhancing legitimate regulatory goals. These delays often result directly in loss of sales. The escalating administration costs associated with these regulations; increase the price of our exports in competitive markets. The associated confusion has made commitments to exporting too risky for new-to-export candidates. Even old-to-export companies are being forced to reconsider the nature of their commitment to export trade in areas and commodities covered by these regulations.

Legislative initiatives responsive to exporters' needs must reflect the legitimate concerns of the elements of the permanent government now involved, and balance them against the peculiar burdens imposed on export trade. There are several burdens which must be given special attention.

First, the internal procedures for considering validated licenses require a consensus among interested agencies before such a license is issued. This process delays licensing decisions and obscures these decisions from the view of those most interested in them—the exporters. These delays and the "black box" processing impede exporter negotiations with potential foreign buyers, especially those buyers who have alternative foreign sources of supply. Our export companies are at a significant competitive disadvantage in those areas where time and certainty are a component of the purchase decision.

Secondly, the lack of clarity in the criteria used to make these decisions, as well as the insertion of new criteria dealing with evolving foreign policy interests, produces an uncertainty that may directly inhibit company interest in exporting to particular markets, or exporting particular products. The Dresser case and Oshkosh Truck case as well as situations in Latin America dealing with human rights violations are vivid illustrations of how discontinuities can be created in the export licensing environment which make responsible business decisions extremely difficult and risky.

Thirdly, the current licensing procedures and proposed revisions which focus on "keystone technologies" (revolutionary technologies as compared to evolutionary technologies) may well place the greatest impediments on the very sectors of our economy which have the greatest opportunity for significant exports abroad. A number of studies have established that research and development is directly correlated to export performance.[2] Unfortunately, the American industries having the highest levels of R & D

Footnotes at end of article.

expenditures are often the industries subject to the most burdensome controls under current and proposed policies in terms of delay and uncertainty.

It is a specific objective of some participants in the licensing process to retard transfers of new technology. These technologies are likely to be the ones in which we have the greatest competitive advantage, and the opportunity to achieve dominance in foreign markets. Market dominance by the U.S. exporter reduces the market potential for a foreign competitor, making it more difficult for the competitor to amortize the R & D costs necessary to duplicate the American product. On the other hand, if we continue to retard our exports in the most dynamic areas of innovation, our own exporters will have less opportunity of amortizing their own R & D costs. This leads to a reduction of domestic R & D, and a reduction of our own technological lead. Ultimately, this vicious cycle can affect not only our economic vitality, but also our military strength.

Apart from the above national security, foreign policy, and economic aspects of our licensing policy, we believe this Committee must become concerned with the legitimacy of the process by which government controls exports. Free trade is a fundamental tenet of American philosophy, yet it must now sustain the burden of proof as against security and foreign policy interests. Those most affected by the process have minimal access to it. They must frequently endure delay in silence, without explanation, and must accept denial with a minimum of recourse. These are not conditions which may long endure if cherished elements of our constitution are to remain vital. The actions of permanent government must remain accountable to the tenets of our constitution, and it is Congress's obligation to insure that they remain so accountable. Nowhere are they less accountable than in processes like those dealing with export licensing.

III. AN OUTLINE FOR PROPOSED LEGISLATIVE REFORM

Administrative regulations promulgated under the Export Administration Act of 1969, as amended, require all commodities and manufactured items having potential strategic importance to comply with the terms of either a general or validated license. Goods on the general license list may be exported without approval, but the exporter must observe certain limitations, maintain required records, and make periodic filings. Goods on the validated license list may not be exported without specific approval by the Department of Commerce, and compliance with a variety of limitations, recordkeeping requirements, and report procedures. An analysis of our interview data, Congressional hearings, government reports and scholarly literature suggests these regulations are implemented as described below.

During the course of any year, there is considerable administrative action that moves items from the general license list to the validated license list. Less frequently are items moved from the validated license list to the general license list. The decision to impose validated license requirements on particular goods is not subject to the due process requirements associated with adjudication or rule-making in normal administrative proceedings.

Once an application for a validated license has been filed, it is evaluated by the Commerce Department staff to determine if a validated license can be issued automatically under the existing staff criteria agreed upon by all of the relevant agencies.

If this staff approval cannot be given, the matter is set for review by the Export Administration Operation Committee, composed of a chairman employed by the Department of Commerce, and representatives from the Departments of Commerce, and representatives from the Departments of Commerce, State, and Defense. Other departments such as Energy and NASA participate in the event that items come within their interest areas. This committee meets weekly and handles approximately fifteen cases per week. The chairman summarizes the important issues presented by the application, and then each department representative may make general comments. Subsequently, a tentative vote is taken, and if there is not consensus to issue a license, the Operating Committee chairman seeks to identify the reason for a lack of consensus and determines if there is a basis for resolving these difficulties. If they can be resolved, a consensus is reached and a validated license issued or denied.

In the event consensus is not reached, the matter is referred to the sub-ACEP level, which is a committee composed of deputy assistant secretaries from each of the cognizant departments. This group meets monthly and acts on consensus only. In the event consensus is not achieved at this level, there are provisions for submission to the ACEP committee composed of assistant secretaries, but in actuality this committee seldom functions. Consequently, where consensus cannot be reached at the deputy assistant secretary level, items are referred to the Export Review Administration Board, composed of cabinet level officers. Here again the group has seldom met in formal session in the past few years, but has discussed issues at meetings convened for other purposes.

In the above procedures, the lack of consensus at any level has the effect of deferring decision until a later date. Of course, if there is agreement to deny the license, this process is terminated and the applicant has limited appeal rights.

The foregoing description suggests several amendments to Title I of the Export Administration Act. At a minimum, the amendments should improve the focus of the Declaration of Policies, better define criteria for constructing the control lists, and restructure the processes for approving validated licenses.

In the Declaration of Policies, we believe that the objective of encouraging exports should be established as the paramount objective. Foreign policy, short supply, and national security objectives should be achieved at the expense of export expansion only in cases where facts indicate this is the best course of action for both the short and long term. In essence, the Declaration of Policies should place the burden of proof on those who would limit exports.

For the control lists, the Act should be amended to clearly indicate that a decision to bring items under the Act, or to move them from a general to validated license list, is a rule-making process which requires some opportunity for a hearing. If the decision to place a product on the validated list is made more formal, many of the monitoring and assessment objectives sought by the periodic reports now required will be met automatically, and the burden of proof requirements imposed on those seeking national security and foreign policy objectives can be safeguarded.

Implementing regulations for this amendment might require consideration of how additions to the list will affect the processing of other applications, and how the delay imposed by addition to the list will affect U.S. export competitiveness in various regional markets.[3] This requirement will encourage cognizant government agencies to limit their restrictions only to specific countries rather than apply them generally to broad categories. Furthermore, we would propose that the regulations should require periodic (biennial) review of all items on the validated license list. Their continuation on the list would have to be justified, and affected parties would have an opportunity to be heard on the issue.

Thirdly, the Act should be amended to specifically require that validated licenses be issued according to procedures that provide for a relative weighing of export, national security, and foreign policy objectives. The Act should also insure that decisions for approval or denial will be made within a brief period, and not continually delayed by the lack of consensus. This statutory amendment should be supported by regulatory amendments which would establish a voting process at the lowest decisional level that would insure an automatic decision by the Operating Committee. Both private and public sector parties would have the right to appeal the decision to a higher level with the burden of proof resting on those advocating export restraints. The next level would involve the Secretaries of State, Defense, and Commerce, with other departmental and White House officials participating in an advisory capacity. The appeal procedures would be streamlined and would not contain all of the safeguards provided for in the Administrative Procedure Act. Presumably, the President could personally override the decision of this cabinet level group in exceptional cases.

Overall, the procedures sought by the proposed amendment would allow most cases to be resolved at the lowest level possible. However, it would also permit agencies to use select cases to test the current relative importance of export, security, and foreign policy objectives and the concomitant distribution of power among the various agencies. Such continued review opportunities help avoid the current situation. The national security concerns that were paramount in the 1960's have been allowed to dominate export decision-making well into the 1970's, even though the national security concerns have lost much of their importance when compared to our export and balance of trade concerns.

IV. SUGGESTIONS FOR FURTHER RESEARCH

Our review of personal interviews conducted this summer, Congressional testimony, and the extensive literature on East-West trade and export licensing, makes it clear that the proposed changes are needed and feasible. However, at least four streams of research should be undertaken, and the results made available before Congress amends the Export Administration Act.

First, there should be quantitative measurement of how elements of the licensing process affect both the willingness of American companies to export and the competitiveness of American exports. This measurement should distinguish the effects according to the type of market, type of product, and the period of the product life cycle.

Second, there is a need to determine if inter-agency procedures can be adopted which properly balance evolving national interests, which provide affected private parties with safeguards concerning a fair hearing on their request, and which result in more open, efficient, and effective government.

Footnotes at end of article.

Third, extensive analysis must be made of the various parties and interests in the permanent government as well as those of elected posts, to determine if proposed interagency procedures adequately reflect the substantive and procedural interests of various agencies and individuals involved.

Fourth, there must be perceptive analysis of the constitutional standing of the various national interests affected by export controls. Administrative implementation of the Export Administration Act places the burden of proof on those seeking to export, thus, making exporting a privilege rather than a right. I feel both the evolution of case law, and the political theory underlying our government place this approach at the margins of the constitution. The priority we advocate for export trade will reverse this drift to the margins and reaffirm the basic tenets of our Constitution. Congress has become increasingly sensitive to the encroachment of government on basic freedoms. The outlined amendments are consistent with this trend, and if pursued, should stimulate government action that is efficient, effective, and proper.

V. SUMMARY

If the above-noted research discloses that current export licensing procedures do substantially impair overseas competitiveness of products where we have the greatest comparative advantage, and do inhibit companies from expanding into export markets, our adverse balance of trade requires legislative reform. If the research also discloses models for reform that adequately protect critical security and foreign policy interests without imposing significant impediments to current U.S. export trade and its future growth, legislative reform should adopt such models despite the political implications within the permanent government.

Apart from these pragmatic reasons for reform, the continued strength of our constitutional system requires Congressional action that restores the "right to trade" to a position of prominence among our fundamental rights and reaffirms that private parties substantially affected by government action have meaningful opportunities as to time, place and manner, to contribute to the decision, insuring that such action reflects a balanced assessment of all private and public interests involved. Toward these ends we recommend serious attention be given to the following types of amendments to the Export Administration Act of 1969, as amended.

First, the Act's Declaration of Policies could be clarified to stress the importance of exports and indicate the flow of exports can be limited for foreign policy and national security reasons only if there is clear demonstration that benefits of such limitations exceed the costs. Second, amendments could better define the criteria to be used for constructing the control lists for both general and validated licenses. Third, amendments could be made to insure the decisional process on actual licenses is not delayed beyond a specific period without detailed disclosure on the reasons for delay. Fourth, the Act could be amended to streamline the issuance of validated licenses so that a decision to deny or approve a license would be made in the first instance, thus permitting both public and private parties dissatisfied with the decision to commence an appeal and assume the burden of proof of overturning the initial decision. Fifth, the Act could be redesigned to assure that the licensing criteria can be changed if circumstances demand. For example, through administrative procedures, it should be possible for the parties to ignore precedent in the event there are sudden shifts in economic growth. Finally, the statute could be amended to facilitate better external monitoring and assessment of these processes by Congress, the President, and the Courts.

FOOTNOTES

[1] Hearings on Export Policy before the Subcommittee on International Finance of the Senate Committee on Banking, Housing & Urban Affairs, 95th Cong., 2d Sess., pt. 6 (1978).

[2] See V. Hirsch, The Export Performance of Six Manufacturing Industries: A Comparative Study of Denmark, Holland and Israel (Praeger: 1971); International Economic Report of the President, 120 (Washington, D.C.: U.S. Government Printing Office, 1977).

[3] Greg Conderacci, "To Have Impact on Huge U.S. Trade Gap," The Wall Street Journal, September 27, 1978, p. 2.●

THE NEED FOR POUGHKEEPSIE BRIDGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. McKINNEY) is recognized for 10 minutes.

● Mr. McKINNEY. Mr. Speaker, we will be voting within the next few days on a bill to authorize continued funding for the Consolidated Rail Corporation (ConRail). At that time we will consider an amendment offered by our colleague from New York (Mr. GILMAN) providing $9 million to replace the Poughkeepsie rail bridge and its adjacent facilities. I feel strongly that the Poughkeepsie bridge amendment, adopted by the Senate August 1, deserves the support of all Members who believe in the importance of restoring a viable, competitive link to the national rail freight system in the industrial Northeast.

An impediment to the revitalization of the freight system in the Northeast has been the lack of a southern route across the Hudson to and from New England. However, this was not always the case. Before its demise, Penn Central maintained a bridge at Poughkeepsie that was destroyed by fire almost 5 years ago. Since that time, shippers have been forced to route trains 75 miles farther north to Selkirk, N.Y., the site of the only remaining bridge across the Hudson. The subsequent 150-mile detour, combined with the time consuming delay at the Selkirk bottleneck, can more than triple the once-average transit time between Washington and the major terminus at New Haven.

More time means higher costs and in this time of stubborn inflation, I cannot believe that this situation has been allowed to persist. At the current traffic levels, the savings from a reduction in transit time and hence shipping fees created by the new bridge would be close to $2 million annually. The savings to business and consumers would exceed that $2 million figure as the rebuilt Poughkeepsie span makes shipment by rail more competitive with trucking in terms of both cost and time. The potential for increased southbound traffic is indicated by the fact that in Connecticut, 39 percent of Westward shipments, for which the Selkirk route is the most direct, goes by rail. Compare that to a mere 16 percent share of southbound shipping for rail, which must take a more circuitous route.

While I believe the arguments for a new Poughkeepsie bridge now are compelling enough, the longer term considerations are perhaps even more urgent. Freight service could be phased out on the major rail lines through Connecticut, New York City, and Long Island if Amtrak assumes control over those routes, leaving only one rail gateway to southern New England, and this would not even be owned by ConRail. The repair of the Poughkeepsie bridge would negate a large portion of the higher costs and longer transit times afflicting transportation service in the Northeast and permit connections to be made by other rail carriers to ConRail lines, providing more flexible, competitive service to New York and southern New England.

Other considerations come into play as well. In the future, would it make sense to waste the 3 million gallons of (mostly imported) fuel needed in part to carry New England's expanded coal needs through Selkirk? The new bridge could eliminate that energy waste and enhance the economics of coal consumption in New England, a region heavily dependent on high priced foreign oil, by lowering transportation charges for coal.

Unfortunately, the need for rail system improvement has not prevented ConRail's deviation from its 1975 final system plan which called for the restoration of the bridge. The Tri-State Regional Planning Commission (New York, New Jersey, and Connecticut) has refuted the low investment return claims of ConRail and found that using a conservative 7- to 8-trip per day utilization assumption, the Poughkeepsie bridge project would yield a return of 18 to 20 percent. I hope you agree that is more than adequate to justify a new bridge.

Among the backers of the bridge restoration, in addition to the Tri-State Commission, are the State Departments of Transportation for New York, New Jersey, Pennsylvania, and Connecticut, as well as the Southwestern (Connecticut) Regional Planning Agency, the Connecticut Public Transportation Authority, the Eastern Connecticut Development Council, the Connecticut Business and Industry Association, and the Connecticut Association of Rail and Bus Users.

The economic merits of the project clearly demonstrate the need for restoring the Poughkeepsie bridge. The support from such a wide range of public and private entities should further encourage you to join me in casting a favorable vote on the Gilman amendment.●

HOUSE REFORM AGENDA FOR THE 96TH CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

man from Illinois (Mr. ANDERSON) is recognized for 10 minutes.

● Mr. ANDERSON of Illinois. Mr. Speaker, today I have submitted to the House Republican Task Force on Reform my proposed "House Reform Agenda for the 96th Congress"—a set of recommendations designed to improve the oversight, openness, and accountability of the House. Our task force in turn will present its final reform proposals to the Republican conference's early organization meeting in December. Then, we are going to make an all-out effort on our side of the aisle to force consideration of the House Rules resolution under an open-amendment procedure next January.

The current practice is for the majority leader to call up a resolution adopting the rules of the previous Congress together with such recommendations for further change as have been made by the Democratic caucus. The resolution is debate for an hour and then there is an up or down vote on the whole package, with no opportunity for offering amendments from the floor. I always think it is ironic that the Democratic caucus, which boasts of all its sunshine reforms, forces the consideration of these reforms under the cloud of a gag rule. This not only offends one's sense of fairness and openness, but also one's constitutional sensitivities. The Constitution states that, "each House may determine the rules of its proceedings," and does not confine that determination to a majority of the Members of the majority party caucus. I would also point out that our rules have not always been considered under such a closed procedure. Dr. George Galloway, in his "History of the House of Representatives," notes that it was "the customary practice in postbellum days when a new House met * * * to proceed under general parliamentary law, often for several days with unlimited debate, until a satisfactory revision of former rules had been effected."

So I hope we can begin to appeal now to the opinionmakers in the media, to outside groups, and to fair-minded Democrats, to support an open consideration of our rules next January.

I have suggested that the first priority of the next Congress should be to make itself an "oversight Congress," and to further this goal we should declare a 1-year moratorium on major new spending programs, enact a "sunset" timetable for Federal programs and regulatory activities, and require every committee to create an oversight committee. I am sure there are other procedural and mechanical things we can do to strengthen our oversight capacity and I would welcome those. But we have found in the past that no matter how much we pay lipservice to oversight by passing this reform or that, it still will not get done if we do not have the will, the guts and the time to do it. The Bolling Select Committee on Committees in the 93d Congress found that our committees only spend an average of 1.1 percent of their time on oversight. That is downright scandalous.

I think the sunset approach is necessary, because it contains the action forcing mechanism of terminating a program or agency if we do not specifically renew them by a certain time. Until we get sunset legislation on the books, I think we can still accomplish a great deal in the way of oversight by making better use of existing rules and tools. Each committee is now required under our rules to set forth its oversight plans at the beginning of a new Congress, and these are to be coordinated by the Government Operations Committee. But, with a few exceptions, these tend to be perfunctory staff-level discussions at best, and the published oversight plans are little more than a restatement of the committee jurisdictions. I think this present rule could be more successfully implemented if the members of the committees, in consultation with their party leaderships and the Government Operations Committee, made a conscious effort to establish their oversight priorities and timetables at the beginning of a new Congress, and then a conscientious effort to follow that oversight timetable.

I also think the new Congress should once again make an effort at overhauling our irrational and duplicative committee jurisdictions. This was attempted in the 93d Congress but, as you know, that effort was subverted by a group of powerbrokers on the Democratic Caucus. I think many Members have since realized the errors of their ways in overturning the Bolling-Martin committee reform amendments and are now more open to some genuine committee realinement. Our energy experience alone in this Congress should be sufficient to convince us of the need for a single energy committee.

I also think that with committee jurisdictional realinement we can cut down on the number of subcommittees. I have proposed that each committee be allowed no more than six subcommittees. Our 22 standing committees have a total of 151 subcommittees or task forces. In addition we have nine select committees in this Congress with another 10 subcommittees. That all adds up to 192 committees, select committees, subcommittees, and task forces—up 33 from the equivalent units in the 93d Congress just 4 years ago. Looked at another way, we have one House unit for every 2.3 Members, or, one House unit for every 1.5 Democrats. That may help to explain why we have so many, but I do not think this proliferation of subcommittees and select committees can be justified for many other reasons.

I am again putting forward my "Open House Amendments" in the next Congress to further open up committee proceedings. These would make it possible for any Member to require a recorded vote in committee, require recorded votes on reporting measures and the publication of that rollcall in the committee report, elimination of proxy voting, and opening committee records to the public. Under present House rules a committee need only make the rollcall vote records available to public inspection.

The final three items on my House reform agenda should not be considered the least significant by any means, since I have devoted considerable attention to all three in the past. First, we must adopt a new House broadcast rule at the beginning of the next Congress. We have no rule now governing the broadcasting of House floor debates and the current resolution authorizing the Speaker to establish a House broadcast system and make it available to the public expires at the end of this session. I think it is especially important to carefully lay down the ground rules at the outset so the media will know where they stand and so Members will know where they stand. I notice for instance that the Speaker has no objection now to Members taping their floor speeches from their TV monitors, having those duplicated and sent out to their district radio stations. I think this has some very dangerous possibilities for the House when we make the video coverage available. If Members know they can easily send videotapes of their floor speeches back to their constituency broadcast stations, they may be more inclined to speak than otherwise, and this in turn could distort our procedeings, not to mention prolong them. The previous Broadcast Subcommittee I served on was insistent that Members not be allowed to distribute tapes of their floor speeches to their broadcast stations back home. That was the responsibility of the station if it wanted a clip.

The next item is reform of the suspension procedure under which bills are brought up with only 40 minutes of debate and no opportunity for amendments. This year we considered a record number of bills under suspension and defeated a record number under suspension. To me it is a sign that the procedure is being abused and overused by the leadership and I think it is time to set some conditions in our rules on which bills can be brought up under this abbreviated procedure. I have proposed that bills not be brought up under suspension unless the committee or chairman and ranking minority member of the committee of jurisdiction specifically authorizes the suspension route on a bill. Measures should not be brought up under suspension if they involve the expenditure of more than $50 million in any fiscal year, and they should not be considered under suspension if advance notice has not been given by the last legislative day of the previous week. I do have an escape valve for emergency situations and that is permitting a House majority to vote to proceed to consider a matter under suspension even if any of the conditions have been violated.

Finally, I am again asking that we reform our House ethics complaint procedure. As the rule now stands, an investigation cannot now be undertaken unless a majority of the committee so votes, even if the House has voted for such an investigation. I am proposing that the House may direct the committee to undertake an ethics investigation, that any Member who has filed a complaint calling for an investigation can call up

a privileged resolution in the House forcing an investigation if the committee does not undertake the investigation within 15 days of the filing of the complaint; and finally, my amendment would change the rules to require the Ethics Committee to file a report on any investigation it has undertaken. You may recall that we never did get a report on the so-called Wayne Hays matter, because he resigned before the investigation was completed.

Mr. Speaker, at this point in the RECORD I include four tables relating to House committees and subcommittees, plus a summary of my "House Reform Agenda for the 96th Congress":

TABLE 1.—*House committees, select committees, and subcommittees in the 95th Congress*

Committee:	*Subcommittees*
(1) Agriculture [1]	10
(2) Appropriations	13
(3) Armed Services [1]	7
(4) Banking, Finance and Urban Affairs	10
(5) Budget	8
(6) District of Columbia	3
(7) Education and Labor	9
(8) Government Operations	7
(9) House Administration	9
(10) Interior and Insular Affairs [1]	7
(11) International Relations	10
(12) Interstate and Foreign Commerce	6
(13) Judiciary	7
(14) Merchant Marine and Fisheries	6
(15) Post Office and Civil Service [1]	8
(16) Public Works and Transportation [1]	6
(17) Rules	1
(18) Science and Technology	7
(19) Small Business	6
(20) Standards of Official Conduct	0
(21) Veterans' Affairs	5
(22) Ways and Means [1]	6
Total [2]	151

[1] Denotes committees with exclusive oversight or investigations subcommittee=6.

[2] Average=7.5 subs/comm. (w/out Rules and Standards).

TABLE 2

Select committees:	*Subcommittees*
(1) Aging	4
(2) Assassinations	2
(3) Congressional Operations	0
(4) Intelligence [1]	4
(5) Energy	0
(6) Ethics	0
(7) Narcotics Abuse and Control	0
(8) Population	0
(9) Outer Continental Shelf	0
Total	10

[1] Denotes selected committees having subcommittees exclusively devoted to "oversight" or "investigations".

TABLE 3.—*House committees, select committees and subcommittees, 1974 and 1978*

	1974	1978	Percent increase
Standing and select committees	27	31	15
Standing and select subcommittees	132	161	22
Totals	159	192	21

TABLE 4

Members-per-unit	1974	1978
Democrats/unit	1.5	1.5
Republicans/unit	1.2	.76
All members/unit	2.7	2.3

SUMMARY OF "HOUSE REFORM AGENDA FOR THE 96TH CONGRESS"

I. AN OVERSIGHT CONGRESS

The 96th Congress should declare itself an "Oversight Congress;"

Congress should declare a one-year moratorium on major new spending programs to devote greater time to its oversight responsibilities;

Sunset legislation should be enacted at the outset of the new Congress imposing a specific timetable for reviewing, revising or eliminating Federal programs and regulatory activities;

Each committee should be required to establish an oversight subcommittee;

The Government Operations Committee should plan a more active role in formulating, coordinating and monitoring the oversight agendas submitted by other committees, the majority and minority Members, not staff, should be required to draft those oversight agendas in consultation with their leadership and the Government Operations Committees.

II. COMMITTEE REFORM

A select committee on committees should be formed to recommend a comprehensive overhaul of committee jurisdictions along more rational and functional lines;

Each committee (other than Appropriations) should be limited to not more than six subcommittees to permit greater focus on legislative and oversight responsibilities and fewer scheduling conflicts;

Proxy (absentee) voting in committee should be abolished;

A majority (rather than one-third) committee quorum should be restored for the conduct of business;

Committee records should be made available for public inspection;

Any Member should be able to demand a rollcall vote in committee, rollcall votes should be required on reporting a measure, and the names of those voting for and against reporting should be published in the report.

III. HOUSE FLOOR PROCEDURES

A House broadcast rule should be adopted to insure the complete, continuous, and unedited live broadcast coverage of House floor proceedings, the full access to such coverage by the broadcast media, and the prohibition on use of such coverage for partisan political or commercial purposes;

Measures should not be considered under a suspension of the rules without specific committee authorization, advance notice by the last legislative day of the previous week, or if they involve expenditures of more than $50 million in a fiscal year;

The House should be able to vote on privileged resolutions requiring the ethics committee to undertake investigations into alleged misconduct by House Members or staff, and the committee should be required to file a report on any investigation it undertakes.●

ACTION NEEDED TO ASSIST TOBACCO GROWERS FROM BEING VICTIMS OF FEDERAL REDTAPE AND CONFUSION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. WAMPLER) is recognized for 10 minutes.

● Mr. WAMPLER. Mr. Speaker, a number of tobacco growers in Virginia, Tennessee, and North Carolina stand to be the special victims of Federal redtape and confusion unless we take action in Congress to help them.

In 1975, some 144 tobacco growers in parts of Virginia, Tennessee, and North Carolina raised some nonquota Maryland Type 32 tobacco, believing this to be consistent with Federal rules and restriction then in effect. Then the merry-go-round began: First, a Department of Agriculture inspector graded the tobacco as burley. Then, as a result of a civil action, court-appointed inspectors classified the tobacco as Maryland Type 32 Finally, 3 years later in 1978, the Fourth Circuit Court of Appeals overruled the lower court and upheld the Department of Agriculture's original burley classification. The Department of Agriculture has since announced quota penalties for those with burley allotments, and cash fines for the other affected growers.

The affected growers are, in many cases, small operators who survive on very limited incomes, and for whom sanction of the type announced could mean severe financial loss. And these growers, who raised Maryland Type 32 tobacco in good faith, certainly should not be made to pay a penalty that required 3 years and involved considerable vaccilation even to define.

As ranking minority member of the House Agriculture Subcommittee on Tobacco and as one whose constituents are directly affected, I am introducing emergency legislation today to correct the problem. Mr. JONES of North Carolina, chairman of the Tobacco Subcommittee, fully endorses and has cosponsored the measure. I am also pleased to say that we are joined in sponsorship of this bill by our other colleagues in the House whose constituents would be most affected: Mr. QUILLEN and Mr. DUNCAN of Tennessee, and Mr. NEAL of North Carolina.

Mr. Speaker, let me emphasize that this legislation will have absolutely no effect on current provisions of Federal law or rules which regulate the American tobacco industry. It will have no effect on the marketplace for tobacco and tobacco products. And it will not make the American taxpayer or consumer pay a cent. It simply will prevent the Department of Agriculture from imposing sanctions against those growers who raised Maryland Type 32 tobacco 3 years ago, in good faith.

I recognize that the hour is late in the 95th Congress for the consideration of any new legislation—no matter how important. However, I very much hope that every effort can be made to schedule the measure for consideration at the earliest possible date. In the interim, I have been informed that the Department of Agriculture has agreed to administratively stay the execution of the penalties until the Congress has had time to act.●

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER pro tempore. The Chair would like to advise the Members that while we have recognized Members for unanimous consent requests during the special orders, it is without such action being considered as a precedent.

THE LIMITS OF SHARING

(Mr. BURGENER asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BURGENER. Mr. Speaker, because of the length of the article I now request be printed in the CONGRESSIONAL RECORD, I submitted it to the Government Printing Office to determine the cost to the taxpayers. The estimate provided to print this material is $1,068. I do not take an expenditure of this amount lightly but firmly believe the subject matter is of such overwhelming public importance that the printing cost is justified. The article entitled "The Limits of Sharing" was written by Garrett Hardin who is a professor of Human Ecology at the University of California at Santa Barbara. Professor Hardin's words are provocative, penetrating, and alarming. Regardless of one's views on the subject, the facts are that there is a continuing and ongoing invasion of the United States by illegal aliens from the Republic of Mexico. While the invasion is peaceful, it is nonetheless an invasion, and is illegal under our present immigration laws. The ramifications are legal, moral, ethnic, cultural, social, economic, and much, much more. The very relationship between two great neighboring countries, the Republic of Mexico and the United States of America, might well be at stake. Whatever course we take as a nation concerning this problem, I believe relatively few of our people seriously believe the situation can continue to be ignored. Professor Hardin's article follows:

THE LIMITS OF SHARING

(By Garrett Hardin)

Any nation in which action consistently runs contrary to the majority opinion would seem to be headed for trouble; this should particularly be true of a nation nominally committed to democracy. The United States is such a nation, and there is now a glaring discrepancy between the wishes of its citizens with respect to immigration and the actions of its legislators and administrative officials.

In the summer of 1977, the Roper organization took a reading of public opinion on population matters. Ninety-one percent of the sample agreed that we should make an all-out effort to stop the illegal entry of approximately 1.5 million foreigners each year. In commenting on this finding, Burns Roper remarked, "It is rare on any poll question to find such a lopsided result."

It cannot be successfully maintained that this near-unanimity is the result of media indoctrination. Until the summer of 1976, the media had little to say about immigration, though the Immigration and Naturalization Service repeatedly called attention to the rapid increase in such immigration. Residents of cities near the Mexican border had enough personal experience to be willing to bet that the situation was getting worse. Even many people in manufacturing centers in the Midwest and Northeast began to suspect what was happening. Hard data are hard to come by, but the I.N.S., under the direction of General Leonard F. Chapman, raised its estimate of illegal immigration to the 1.7 million number during the last year of the Ford Administration. (This figure should be compared with the four hundred thousand who enter legally each year.)

Of course the figures for any illegal activity are necessarily imprecise, a fact that can be used to thwart any attempt to institute corrective action. It seems so scientific to say, "Let's find out the *exact* facts before we act," but in the practical world there is no such thing as inaction. Since time has no stop, not to act is to act. As Robert Allen has said, "If you jump out of an airplane you are better off with a parachute than an altimeter." Obstructionists insist that we take an altimeter reading before buying a parachute—and then see to it that we have no altimeter. When Jimmy Carter became President he replaced General Chapman with Leonel J. Castillo. One of Commissioner Castillo's first acts was to clamp a secrecy lid on all estimates of illegal immigration.

The label "liberal" has been much overused, but I think most people feel that letting immigrants in is a liberal sort of thing to do, and that keeping them out is illiberal. It might be argued that the Roper poll merely revealed how bigoted Americans are. But the same poll revealed that only six per cent of the respondents favored the sterilization of women, after they have had three children, as an appropriate way to control population.

The nature of an opinion poll does not permit an indisputable interpretation of the public mind, but I would like to suggest one way of making sense of the Roper poll. From this and other surveys it is known that the majority of the public agrees that there is a population problem. The question is, what sort of a problem is it? Is it a world population problem, as is so often said? The results of the Roper poll imply otherwise; they imply that people—taxpayers, voters—see population as a multitude of national problems. Since each national problem is a local problem it must be handled locally. As far as we Americans are concerned we do not think the American population problem so desperate as to justify the extreme measure of compulsory sterilization. What some other country does about its possibly worse population problem is its business; but we don't want any country to export its population problem into our country. Not only do ninety-one per cent of us agree that we should try very hard to prevent illegal entry, but that same Roper poll showed that seventy-five per cent of us agree that even the legal allowance of approximately four hundred thousand immigrants per year is too high. National population problems must be handled nationally: we are not going to play patsy to the world.

That summary, I think (though I cannot prove I am right), expresses the American temper, which stands in stark contrast to conventional clichés used by media "intellectuals": world population problems—world hunger—one world—spaceship earth—the global village. Listening to the pundits of radio, television, newspapers, and the liberal magazines one would never guess that ninety-one percent of the populace does not "buy" the liberal clichés. Who is out of step—the intellectuals or the "silent majority"? I submit that the intellectuals are out of step. Since the intellectual basis for the position of the silent majority has not been adequately presented to the public, I offer such a presentation here, following which I will try to discover why so obvious a call for action is ignored.

No responsible agency has asserted that the right to migrate into a country is a fundamental human right, though the opposite right is proclaimed in Article 13, Section 2 of the United Nations Universal Declaration on Human Rights: "Everyone has the right *to leave* any country, including his own, and to *return to his country*" (italics added). To assert a person's right to enter a country not his own would be tantamount to claiming the right of invasion. That the invasion might be gradual and peaceful is only secondarily relevant to the moral question.

Let us begin by sweeping several red herrings out of the way. First, I do not assert that immigrants are inferior to citizens. The problem of innate quality is so complicated (and perhaps insoluble) that it is operationally wise to assume an innate equality between immigrants and longtime occupants of a land. The issue discussed here will be concerned with quantity, not quality.

Second, I know of no thoughtful person who would (if he could) stop *all* immigration. The benefits of variety, of periodic fresh infusions of new peoples, and new ideas are real. No adventurous, lively nation wants to forego them. But how many immigrants are needed to secure these benefits? A thousand per year? Ten thousand? Surely not more. Moreover, if the seasoning of variety is what we desire to secure by immigration, we should discriminate among immigrants, preferentially admitting those who personally embody more of the culture of their homeland rather than those who carry a lesser load: bluntly, we should discriminate in favor of the rich and against the poor. (This would, of course, raise another difficult moral issue, that of the "brain drain.")

Adding legal immigrants to the illegals, it appears that the United States is now being invaded by approximately two million immigrants per year. Of all the other sovereign countries in the United Nations, not one is subject to anything like such an invasion. In fact, yearly immigrants into the United States outnumber the immigrants into all other nations combined. To reduce the U.S. immigration rate to a fraction of its present value (as desired by more than three-quarters of our citizens) would merely be to bring our country in line with the international norm.

But we are a nation of immigrants! How can we slam the door now that we are inside?" True, America is a nation of immigrants, but we are not unique. Every country is a nation of immigrants, often many waves of them. All that varies is the stage of development. In the early stages, immigrants—working bodies—are needed to populate an open country. Ultimately there comes the time when no more bodies are needed; when indeed, further heavy immigration is destructive of national goals. At this point, the descendants of the earlier immigrants had better muster the moral courage to shut the great barn door. To meet temporary labor crises, "guest workers" might be admitted for strictly limited periods now and then; but the inflow should be no more than a trickle, and it should soon be reversed. Citizenship is rigidly rationed by almost every country except the United States. We are the victims of cliches appropriate only to an earlier stage of national development. We act immaturely.

Is this because our nation as a whole is passing through an identity crisis similar to that of adolescent individual human beings? Vietnam, Watergate, and other events of the

past fifteen years have had a destabilizing effect on the national psyche. A country that is sure of itself quite properly wants to maintain its culture as is, with only slow changes. It wants to acculturate new immigrants in approximately its own image. Large masses cannot be acculturated rapidly enough: they undermine the shared culture, they erode national unity. The fact that the United States is in an identity crisis may indeed explain our unwillingness to conserve our culture, but it hardly excuses it; rather, the crisis makes more necessary a close control of the inflow of immigrants while we work through our own problems.

There is no clearer indication of our psychological insecurity than the 1975 extension of the United States Voting Rights Act which decreed that ballots must be provided in the language of any foreign-language group that exceeds five per cent of the voters in a district. The expense of voting—one of the necessary expenses of democracy—is escalating in area after area. In San Francisco, instructional material and ballots are now being printed in English, Spanish, Chinese, Korean, and Tagalog. (Tagalog, in case you don't know, is only one of the languages spoken in the Philippines.)

The good intentions underlying this law are obvious and praiseworthy: they are to make minorities feel more welcome, to help them preserve their familiar and comforting subcultures. But of this well-intentioned act, as of all good intentions, we must ask the ecologist's question, "And then what?" As we continue to pursue this policy what will the ultimate consequences be? Plainly Babel, against which the Bible warns us. How can we achieve anything like national unity if we lack the courage to insist that the language of the majority—the vast majority be it noted—must be the only language for exercising the franchise of citizenship? We have become a people who quail at the word "minority." We have lots our common sense.

The desire to encourage widespread knowledge of other cultures is, of course, a worthy one, but it can be better served by other means. We msut distinguish between two meanings of the word "culture." As the anthropologist uses the word, every people, no matter how poor or uneducated, has culture—call it culture-A. The humanist, however, uses the word in a more value-laden sense to include knowledge and love of the arts, the literature, and the history of a particular people. Call this culture-H. It is a degree of pluralism in culture-H that we want to encourage. Immigrants who come here to escape grinding poverty bring (by definition) a standard load of culture-A, but most of them (in fact) bring precious little culture-H. They should not be blamed: this deficiency is just one of the consequences of poverty. But how much will the immigrants' retention of their culture-H, or their acquisition of a new culture-H, be furthered by excusing them from learning English? Certainly the native majority receives little benefit from the expense of the Voting Rights Act.

If we are serious about diminishing the provincialism of the native majority, let us make a working knowledge of at least one foreign language a requirement of citizenship for all. Immigrants should be able to fulfill this requirement more easily than natives. For both groups, language education should be continued until the associated culture-H can be comprehended. Without doubt, such a proposal would be dismissed as utopian. The aim of the Voting Rights Act is probably purely cosmetic. It is an expensive and deceptive cosmetic.

The case against unrestricted immigration rests on the fundamental theory of the commons.* A commons is a resource exploited according to the directive of Karl Marx: "From each according to his ability, to each according to his needs." What this means in practice, and why it leads to ruin, can be illustrated in the developing tragedy of the oceanic fisheries.

The oceans are open to fishing by all nations, each taking out whatever its abilities permit, as dictated by its needs as it sees them. There is no supranational authority to define the needs or control the actions of each nation. Two billion years of evolution have selected for organisms that define their own needs in a wholly selfish, greedy way. Any hypothetical variants that might define the needs of ego in a more altruistic way have necessarily been selected against. Associations of organisms (families, tribes, and nations) may enforce less egoistic definitions of needs. No such organization yet exists for the oceanic fisheries, however. In the absence of a management facility, these are exploited according to the pure Marxian principle. As long as the physical world was large relative to world population the unmanaged commons of the oceans worked well enough. This is no longer the case. For the past twenty years the trend of the ocean harvest has been irregularly downward, in spite of a steady upward trend in fishing effort. The reason for this developing ruin is quite simple: intemperance in individual demand (justified by "need") pays off—to the individual. Any nation that would temper its demands to the interests of all humanity would merely increase the harvest by less temperate nations. Such is the "tragedy of the commons." The only remedy is to get rid of unmanaged commons, to restrict the freedom of individuals to take from the common resources.

National territory is a fragment of the world's resources cut off from the commons. By the definition of sovereignty the territory of a nation is not freely open to exploitation by extra-nationals who might feel a need. As long as this restriction is enforced, there is the possibility that national resources may be wisely managed, leading to a steady-state economy. (They may not, of course. Among nations, as among people, there are foolish virgins.)

But a nation that fails to enforce its sovereign rights to exclude others from the exploitation of its internal resources (as by permitting uncontrolled, or insufficiently controlled, immigration) thereby converts its own resources into a commons, with the inevitable tragic ruin. Poor extranationals will seek to satisfy their needs by moving into a rich nation, sharing its wealth which it diminishes in the process of sharing. Uncontrolled immigration will not come to a halt until the wealth of the receiving country is reduced to the level of the nation supplying the immigrants, i.e., until the poor would-be immigrants perceive no more possibility of satisfying their needs by migrating. "Share the weath" is an illusory goal: only poverty can be shared.

If immigration were a one-time affair the danger of sharing might be safely ignored. But unrestrained population growth, continued indefinitely into the future, constitutes a threat without limit. Mexico is the largest source of immigrants into the United States at the moment, contributing (it is believed) about two-thirds of the inflow. (Other sources may become more important in the future. What is said here about Mexican immigration may soon be applicable, *mutatis mutandis*, to imigration from other countries.)

For the present, let us focus on the Mexican-U.S. population dynamics. As of 1977, the official population of Mexico was sixty-three million, and its rate of national increase was 3.7 per cent. This means that the yearly increase (neglecting emigration) was 2,331,000 people. The U.S. population was 224 million, and the rate of increase not counting immigration was 0.5 per cent; this yields a yearly increase of 1,120,000.

In other words, Mexico, with only twenty-eight per cent as great a population, produced 108 per cent more people in absolute numbers. Because population grows by compound interest, the disparity in population growth, in the absence of fundamental changes, will increase year by year. The potential for Mexican immigration (not to mention immigration from other sources) to overwhelm the resident U.S. population in the course of time is obvious. Tragically, impoverishing the United States cannot improve the situation in Mexico, as long as Mexican fertility remains undiminished.

In a finite world—and that is the only world we know—any rate of population increase greater than a flat zero is, ultimately, too high a rate. Population control is the greatest problem for all nations, and it is not solved by emigration—which merely encourages a nation's leaders to evade the hard issue of population control in their own territory. By resorting to emigration an overpopulated country can export its problems to any country that is foolish enough to permit uncontrolled immigration—with no long-term gain to either nation.

The foundation on which any ethical analysis of immigration must be erected is this: no policy, however amiable in intent, that produces mutual ruin in the long run can be defended on ethical grounds.

Massive immigration damages the receiving nation even in the near term. Every new baby or new immigrant imposes acculturation costs—both monetary and other—on the nurturant nation. Unless the utter disruption of the native culture-H is regarded as a matter of no moment, the public costs of acculturating immigrants and the children of immigrants is much greater than the public costs of acculturating the children of longtime residents. The present U.S. population of 224 million people with a fertility of fourteen per thousand produces 3,136,000 children in a year. If the year's inflow of immigrants (legal and illegal) is two million, this means that the load of immigrants to be acculturated is sixty-four per cent as great as the acculturation load of new babies. That estimate is based on counting only bodies. Actually, many of the new babies are born into immigrant homes and will impose an even heavier acculturation cost on the

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*The theory of the common, though it has its roots as far back as 1833, is essentially only ten years old. Because it is not widely known, a few words are in order about its literature. The seminal paper is my "The Tragedy of the Commons," *Science*, 162:1243–1248 (1968). This has been reprinted, *inter alia*, in *Managing the Commons*, Garrett Hardin and John Baden, editors (San Francisco: W. H. Freeman, 1977), a collection of articles exemplifying, developing, and criticizing the theory of the commons. The application of the theory to the immigration problem was first pointed out in my article, "Living on a Lifeboat," in *BioScience*, 24:561–568, 1974, which is also reprinted in *Managing the Commons*. A more thorough development of the ethical implications, of the theory can be found in my book *The Linuss of Altruism*, (Bloomington: Indiana University Press, 1977).

public—and next year there will be a new wave of fertile immigrants.

The total costs of acculturation imposed by immigrants is difficult to determine, but with rising immigration and falling native fertility these costs must be rising. To survive as a people every nation must produce the next generation, but doing so largely by immigration is not the most economic way, whether one understands economics in a broad sense or a narrow sense. Who would propose, as a matter of policy, that immigration be the preferred way for producing the next generation?

From the point of view of welfare economics, illuminated by human ecological insights, the case against unrestricted immigration in a crowded world is overwhelming. Common folk, outside idealistic and bemused academia, understand this perfectly well, and always have. Unfortunately those who speak in the American media are more influenced by academia than by the common folk. "Intellectuals"—more accurately described as "verbals"—are reluctant to re-examine old clichés. "A nation of immigrants," "the open door policy," "my brother's keeper," "fortress America," "isolationism," "for whom the bell tolls": these are only a few of the verbal blockages that are being imposed against independent thought.

In addition to the semantic problem there is the substantive problem of finding an effective political constituency for restrictive immigration policies. It is easy to verify that many people, as individuals, and many groups, as groups, stand to benefit by unrestricted immigration in the short run, even though, as American citizens, they (and their progeny) will lose in the long run. In a moment of cynicism John Maynard Keynes once said, "In the long run we are all dead"; unfortunately this bon mot admirably excuses shallow scholars from taking the long view. Unfortunately also, however much economists may discount the future, it is absolutely certain that it eventually gets to us.

Who, in fact, benefits by uncontrolled immigration? If it is illegal, the illegals dare not complain about being paid less than the legal minimum wage, so many employers benefit. Even if the wage offered is legal it may be too low to tempt resident Americans accustomed to the easy life, though it may be welcomed by ambitious immigrants fleeing even lower wages (or none at all) back home. Moreover, immigrants as a group are evidently willing to work harder than resident Americans, even at the same wage; immigrants may be more of a bargain for the employer than longtime citizens. Service jobs in restaurants and hotels have long been held by the latest wave of immigrants; employers maintain they could not stay in business if they had to depend on native labor. In a sense they may be right.

If we were honest with ourselves we would see that immigration reveals that we are hypocritical in our praise of the economic dogma of "the market." In a true market economy the price of a product should reflect all the costs, including labor, that go into it. If the price is high, economic demand will be less. The true cost may be greater than anyone is willing to pay, in which case the product "prices itself out of the market." (How long has it been since you bought a jar of pheasants' tongues in the supermarket?)

Growers of California lettuce have long maintained they could stay in business only if they had available low-priced "stoop labor"—illegal immigrants or "green card" holders (temporary guest workers). But there are other possibilities: the price of the product could be raised to reflect higher labor costs; in that case New Yorkers would either eat higher-priced lettuce or do without. In the latter event, lettuce farms could be devoted to growing something else.

Cheap labor, like cheap manufacturing processes, fails to internalize all the costs. The owner of a smoky factory produces a cheap product because he imposes external costs on the community at large, which must pay the bills for cleaning clothes and buildings. Air pollution can increase medical costs also: lung diseases don't come cheap. The public interest dictates that all such costs be internalized. In a total accounting a clean factory is generally more economical than a smoky one—but it takes public action to compel the internalization of costs.

What is the true cost of labor? It is not only the cost of food to fuel a laborer's muscles; it is also the cost of clothing, housing, and a modicum of luxuries—automobiles, TV sets, public parks, etc. More important, since labor will not settle for an unalterable second-class citizenship, the true cost of labor includes whatever it takes to bring the laborer and his children ultimately into a condition of full membership in the community. Many of these costs are externalized as far as the employer is concerned: schools, health services, welfare payments.

It takes a tremendous community investment—over one or more generations—to bring the immigrant and his family fully into the community. Employers pay few of these external costs. Most are paid by the citizens at large. It takes a lot of money to turn new immigrants into fully acculturated citizens. The nominal low cost of immigrant labor is an illusion; but without community action—the passage and enforcement of laws—individual business enterprisers will continue to benefit from a dishonest accounting system.

We must note that the interests of the community, though great, are diffuse. I know that I lose every time one more immigrant comes across the border. To acculturate fully one more immigrant and his family may cost my nation a hundred thousand dollars. But that cost (whatever its true magnitude) is divided among some eighty million taxpayers: my proportionate share is less than a penny. The cost of a million immigrants is, of course, much more—over a thousand dollars per taxpayer. But this cost is invisibly spread over several decades. It is only by intellectualizing the matter that we see that immigrants do not come cheap. Our direct, intuitive appreciation of this reality is almost nil. It takes imagination to see the truth.

The ones who suffer most from "cheap" immigrant labor are the residents who get the worst deal in other respects: unskilled laborers, blacks, and teenagers not in school. This is a large constituency, but not an organized one. What about well-organized, powerful labor unions? They, if any people, should be the constitutency working for restrictions on immigration. In fact, they are now taking only the first, hesitant steps. Why the apparent reluctance to pursue what is clearly in their own interest?

There is no over-all answer, but we can see a few partial answers. The United Farm Workers who, more than any other union, feel the pressure of immigrant labor, are ambivalent. The situation of their leader, Cesar Chavez, stands as a symbol for all: a native-born U.S. citizen, he has deep roots in Mexico. The typical U.F.W. member sees the need for stopping immigration, but he wants to delay any action until his cousins get in. Of course, the cousins, too, have cousins; and so on ad infinitum.

A century ago unemployed laborers who saw jobs being given to fresh immigrants reacted violently against the newcomers. Employers who benefited from cheap labor controlled the police force, which they used to repress labor's struggles to protect itself. Where did the "verbals," the journalists, stand in this fray? Most of them sided with the employers. Immigrants do not threaten to take jobs away from native "verbals," because new immigrants, particularly poor immigrants, are inept with words. It takes imagination for a "verbal" to perceive the threat an immigrant poses to native manual workers. Most journalists fail to pass this test, contenting themselves with using their verbal skills to castigate native manual workers who seek to protect their livelihood: the words "bigotry," "chauvinism," and "prejudice" fill the air. Selfrighteousness comes easy to the man whose rice bowl is not threatened.

In the days before the welfare state, if a laborer had no job he and his family were in danger of starving. All that is changed now. The welfare state has created a domestic commons into which unemployed laborers can dip. Life on unemployment and welfare payments is not as plush as it is on a weekly paycheck—reality does not yet quite live up to the Marxian ideal of "to each according to his need"—but the living is good enough to weaken the springs of action of any workers who might perceive a causal connection between immigration and unemployment. The vitality that is needed to support measures to prevent external pressures from making a commons of our land is missing, in large part because it has been weakened by the domestic commons of the welfare state.

It is unthinkingly presumed that in a nominally democratic state like ours the majority generally rules, particularly if it is an overwhelming majority. Immigration gives the lie to this presumption. Over ninety per cent of us are against illegal immigration, but we apparently are unwilling to take the steps required to reduce the inflow to a trickle. Three-quarters of us think the legal quotas are too high; but we will not combine forces to persuade our legislators to lower the quotas.

The long-term general interest in reducing immigration produces only a diffuse political power which is overwhelmed by the short-term, highly focused interests of housewives who want cheap maids, householders who want cheap gardeners, agriculturalists who want cheap stoop labor, hoteliers who want cheap chambermaids, restaurateurs who want cheap waiters, and all beneficiaries of the commons called "welfare" who would rather have slightly less income with no work than more income with hard or unpleasant work. The myopia of all these people is hidden from view by an idealistic smoke screen thrown up by the "verbals," whose jobs are not threatened, who fail to see that multiplying the behavior of the Good Samaritan a millionfold or more each year sets us up on the road to the tragedy of the commons.

At present there is no constituency in the United States powerful enough to secure the end desired by the vast majority, namely a sharp curtailment of immigration. Democracy is placed in jeopardy by its apparent inability to meet the first test of any system—survival. The constituency opposed to community control of population growth flourishes. Already there are something like ten or twelve million illegal immigrants in the country—about five percent of the population. The illegals are beginning to organize for political action to prevent the closing of the commons; they are aided and abetted in this by native political activists left over from the nineteen-sixties who apparently seek new worlds to conquer. When the army of illegal immigrants has doubled to ten percent—which can happen in less than six years at the rate things are going now—their political power in the matter of immigration may well be irresistible. When that happens the United States will have lost control of its

own destiny. Intent, perhaps, on diminishing world poverty, it will merely have become sucked into a commons that globalizes poverty.

A fate that is foreseen as clearly as this is surely not inevitable; but avoiding it will require a widespread education in the consequences of tolerating a commons in the distribution of resources in a limited world. Such an education can be achieved only if those who are masters of the media understand their role and accept their obligations in preventing catastrophe. There is still time—but not much.

REFORM REVIEW—95TH CONGRESS HOUSE REPUBLICAN TASK FORCE ON REFORM

(Mr. COUGHLIN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

● Mr. COUGHLIN. Mr. Speaker, I call to the attention of my colleagues a reform review of the 95th Congress:

REFORM HIGHLIGHTS: HOUSE REPUBLICAN TASK FORCE ON REFORM

Republicans supported measures adopted for—

Strict financial disclosure of assets and outside income.

Limitation on honorariums and outside income.

Abolition of office slush funds.

Charging calendars, agriculture yearbooks, plants and storage trunks to Members' allowances.

Identifying material inserted in CONGRESSIONAL RECORD.

Radio and television coverage of House floor proceedings.

Banning lame duck travel.

Republicans opposed Democrat efforts to—

Increase Members' yearly allowances by $5,000.

Add a $12,000 per Member yearly computer allowance.

Increase district office allowances by two-thirds.

Democrats opposed Republican efforts to—

Cut Members' allowances by fifteen percent.

Make members' and committee expense accounts fully open to public inspection.

Provide a meaningful audit of Members' and committee expense accounts.

Require a House vote on increases in expense allowances.

Require a House vote on pay increases.

Make pay increases effective only in Congress succeeding one in which enacted.

Restrict misuse of closed rules and suspensions.

Ban proxy voting in committees.

Obtain proportional minority committee staff.

Require roll call votes in committees.

Distinguish material not delivered in CONGRESSIONAL RECORD.

Provide radio and television coverage of floor proceedings under independent control.

REFORM REVIEW—95TH CONGRESS: HOUSE REPUBLICAN TASK FORCE ON REFORM

Organizational and procedural change has been a recurring theme in the history of the Congress. Over the years, reforms have been advocated in support of such goals as procedural efficiency, organizational coherence and public accountability. At the beginning of the 95th Congress, congressional reform seemed to be the highest priority of both political parties. Due to the scandals of 1976, with the detailed accounts of the misuse of official allowances, conflicts of interest and unethical conduct, it became imperative to initiate corrective measures. Scores of opinion polls showed that the public was outraged at these apparent abuses and few officials were able to escape the pervading view that our government was corrupt. In addition, Members of Congress were dissatisfied with the internal workings of the Congress. Undemocratic procedures, an obsolete committee system, and a burgeoning legislative bureaucracy were found to thwart efforts to fulfill legislative responsibilities. Unfortunately, our high expectations for the 95th Congress were never completely realized.

While all members of the House Republican Task Force on Reform might not agree with all proposals discussed in this Review, there has been very substantial agreement.

HOUSE REPUBLICAN TASK FORCE ON REFORM

Lawrence Coughlin, Chairman, John J. Rhodes, John B. Anderson, Del Clawson, Bill Frenzel, William L. Armstrong, Robert E. Bauman, M. Caldwell Butler, James C. Cleveland, Thomas B. Evans, Jr., Millicent Fenwick, Louis Frey, Jr., Henry J. Hyde, Robert W. Kasten, Jr., James A. S. Leach, Donald J. Mitchell, W. Henson Moore, Joel Pritchard, Ralph S. Regula, Newton I. Steers, Jr., William A. Steiger, and Robert S. Walker.

The House Republican Task Force on Reform has attempted to make public accountability the prime goal in instituting real reform measures and we have made definite progress in attaining this goal. With the adoption of the recommendations contained in H. Res. 287, a number of Task Force proposals were included to abolish all office "slush" funds, ban all lameduck travel, limit the outside earned income of House Members, disclose and lower the acceptable amount of honoraria, and tighten the financial disclosure rules on Members' personal finances. Regrettably, the resolution also included an unwarranted increase of $5,000 in each Member's allowance, an obvious attempt by the majority party to make the new regulations palatable to those unwilling to give up certain prerogatives of power. Moreover, Republicans were prevented from offering crucial amendments to institute audit procedures and to require the public disclosure of the financial records of the House by a prohibitive parliamentary rule. In fact, it seemed that throughout this Congress every time a reform proposal was brought to the House floor, Members could be assured of two things: that there would be an increase in our allowances and that it would be considered under a closed rule.

In addition to H. Res. 287, we suffered closed or suspended rules during consideration of the House Rules, the Select Committee of the House Rules, the Select Committee on Ethics, the House Administrative Reorganization, and the Franked Mail Act. Sweeteners added to official expense accounts included the $5,000 increase, an addition to the district office rental allowance, and an unsuccessful attempt to add $12,000 per Member for a computer allowance. To benefit Members further, the House Administration Committee consolidated nine official expense accounts into one account giving Members the opportunity to transfer funds. In the final analysis, Republican appeals for more comprehensive reform initiatives have encountered outright hostility. The majority leadership is willing to endorse only incremental changes and it is doubtful that this will change unless the present complexion of Congress is changed.

While imposing limits and disclosure requirements do not encompass the goal of public accountability, there have been some other accomplishments in this direction. For the first time the House has acted on a Task Force endorsed proposal to permit radio and television coverage of its floor proceedings. The sentiment is commendable; however, the actual operation will be controlled by the Speaker which may lead to political censorship or bias. As of March 1, 1978, the rules governing publication of the Congressional Record were amended to provide that a bullet would be used to identify statements or insertions not actually spoken on the House floor. Here again, we have instituted a half-hearted attempt to open our doors to the public. If a statement is delivered in part, and is then revised or extended, it continues to appear in the Record as if delivered in full.

During consideration of the Legislative Branch Appropriations bill, a reform amendment was adopted to reduce the fiscal year 1979 legislative appropriations by five percent, in an attempt to control the spiraling cost of operating the Congress. Included in the bill was an amendment to require Members to pay for calendars, agriculture yearbooks, Botanical Garden plants, and storage trunks out of their official office allowance. These perquisities were originally paid for by taxpayer monies and then distributed by Members "free of charge." More important, the final bill included a provision to permit an audit by the General Accounting Office of all tax funded accounts. The Task Force has long advocated this step to ensure compliance with any new reform standards and to ensure that reform does not appear as a meaningless gesture.

In addition, the House approved the Lobbying Disclosure Act to require the registration and disclosure of lobbying activities.

It is customary at the end of the session to assess the accomplishments and document the shortcomings of the session. While we have moved in the direction of public accountability, we cannot afford to pat ourselves on our collective back. The record shows no progress toward the goals of procedural efficiency and organizational coherence. Before presenting an outline listing of major Task Force recommendations and a summation of reform legislation, we would like to comment briefly on several concerns which merit the top priority to the 96th Congress.

COMMITTEE REFORM

The present committee structure is an antiquated fragmentation of overlapping jurisdictions composed of a myriad of subcommittees, ad hoc committees, and select committees. For Members, this chaotic organization results in unbalanced workloads and continual scheduling conflicts. A comprehensive realignment and rationalization of the committee structure are imperative. The committee system is in the heart of the legislative process and the defects are highly visible. The House Rules Committee is constantly forced to assume the role of referee in jurisdictional battles among committees. At other times, bills are sent to a number of different committees or are cut into sections and distributed to various panels making it futile to try to reassemble the parts. Policy integration and coordination are rarely achieved. Such major public policy issues as energy and welfare are so poorly accommodated by the present system that they must be assigned to specially created select or ad hoc units. As a result, the policymaking role of the House is needlessly fragmented and responsibility for coherent program development is so widely dispersed that any degree of rationality is lost. A first step of the next Congress should be to establish a bi-partisan group to redefine the committee system completely. Although history indicates the enormity of this task, as evidenced by the widely-praised effort of the Bolling-Martin Select Committee on Committees which was way-

laid by the Democratic Caucus, the effectiveness of our legislative role demands that we institute overall changes.

BILLION DOLLAR CONGRESS

The cost of operating the Legislative Branch of Government has escalated at an alarming rate in recent years. In addition to the continuing impact of inflation on all goods, services, and salaries, the recent costs of the legislative branch have been affected by significant increases in the staff support, physical facilities, and research and analytical services considered necessary by the Congress to cope with the expanding range and complexity of the issues confronting it. Total appropriations have increased from $128.8 million for fiscal year 1960, to $344.4 million for fiscal year 1970, and to $922.5 million for fiscal year 1979. With the Congressional budget approaching the billion dollar mark, Members have expressed concern that this rapid increase has not resulted in a more effective Congress, it has merely served to subsidize incumbents. Steps must be taken to limit legislative costs through administrative economies and the elimination of unnecessary expenses.

The alarming increase in Congressional costs is attributable in part to the expansion of House and Senate staffs. Between 1965 and 1975, standing committee and subcommittee staff in both chambers increased from 954 to 2,072; between 1967 and 1975, Members' personal staff grew from 5,804 to 8,714. This staff expansion has necessitated significant additional expenditures for benefits, office space, equipment, supplies, and support services. For example, Congressional staff now occupy all or part of six annex buildings, in addition to the five primary House and Senate office buildings and the Capitol building itself. We must avoid creating an unwieldy bureaucratic empire within our own halls. Our primary concern must be that we are accountable for our expenses and not a self-guided instrument indifferent to the people we serve.

HOUSE ALLOWANCES

As mentioned previously, it is uniquely inappropriate that each time the House considers a major reform package, provisions are included to enrich Member's personal allowances. For example:

In response to the extensive irregularities in the operation of House finances, the consolidated account system was adopted. Misunderstood by both the public and the press, the consolidated account has allowed Members to maximize the use of taxpayers' money by the unlimited transfer of funds. The Committee on House Administration further consolidated accounts by combining nine accounts into one official expense allowance.

With the adoption of the ethics resolution, H. Res. 287, each Member was provided with a $5,000 supplement for office expenses.

In September of 1977, the House voted to increase the district office rental allowance by 67 percent, giving each Member, on the average, a $7,900 boost in allowances.

Finally, in October 1977, an unsuccessful effort was made to graft a new $12,000 computer allowance onto the multitude of Congressional perquisites already available to Members.

Each new increase represents a hefty charge to the American taxpayer. The March ethics sweetener will cost more than $2 million, the district office allowance boost will cost over $3 million.

More important, each new benefit is a self-serving device which weights the scale on the side of the incumbent and discriminates against any potential challenger. There exists a fine line between providing adequate allowances to service the needs of a Congressional district and providing allowances so excessive that they fuel reelection machines and entrench incumbents. Political commentators document how the growing pool of Congressional allowances has insured incumbent re-elections and we call attention of our colleagues to an article placed by Chairman Coughlin in the Congressional Record of July 11, 1978, page 20327, regarding this matter. An attempt was made by a majority of Task Force Members during consideration of the Legislative Branch Appropriations bill to cut Members' allowances by fifteen percent. This percentage represented the above sweeteners and included a cut in the constituent communications allowance. Unfortunately, the effort was defeated. It is apparent that we need an honest appraisal and a reduction in the amounts now available.

PUBLIC DISCLOSURE OF HOUSE EXPENDITURE RECORDS

Although the official allowances of the House are derived from public tax dollars, disclosure of the manner in which these funds are utilized is quite limited. Currently, the only information available is a summary listing published by the Clerk of the House. The original vouchers for both Members and committees remain closeted from view. The accessibility of these records is central to the fundamental issue of restoring accountability.

On May 9, 1977 the Reform Task Force introduced a resolution to require the Clerk to make such records available for public inspection. The Task Force believes that the public and the press possess a valid right to know how Congress is using tax dollars in the funding of its operations. Unfortunately, this view is not shared by the leadership in Congress as the resolution remains buried in Committee.

CLOSED RULES

Closed rules have long been employed to impart an acute parliamentary advantage to the supporters of a particular bill be preventing the introduction of unwanted amendments. Naturally, such undemocratic procedures obstruct the membership of the House from participating actively in the course of deliberation. In too many cases, by excluding the possibility for judicious amendments, imperfect legislative vehicles are accorded House approval.

As mentioned previously, throughout the session, the consideration of reform legislation proceeded under undemocratic settings. For example, the ethics package and the administrative reorganization resolution were considered under what was labeled euphemistically as a "modified" closed rule. This meant that only those amendments acceptable to the House leadership were in order. More appalling, the adoption of the House Rules afforded no opportunity for amendment. Unfortunately, it is safe to assume that a Task Force sponsored resolution to prohibit closed rules will receive scant attention in the remainder of the 95th Congress.

A further note should be made of the overuse of suspensions which are, in effect, a form of closed rule. Originally, the suspension procedure was intended to facilitate the passage of bills which were uncomplicated and noncontroversial in nature. However, during the 95th Congress over 200 bills were stampeded through under suspension of the rules. The Task Force believes that such abuse is detrimental to the legislative process and that necessary corrective action should be instituted. Several reform proposals advanced by the Task Force include:

Reducing the number of suspension days,

Placing a dollar ceiling amount on bills brought up under suspension, and

Allowing a bill to be brought up under suspension only if the Chairman and Ranking Minority member of the committee so request, or unless two thirds of the committee, by recorded vote, instruct the Chairman to make such a request.

The list of necessary reforms awaiting consideration is numerous and an outline of major Task Force recommendations follows including a summary review of legislation before the 95th Congress. The Task Force maintains that real reform transcends the politics of party, personality, and ideology if we are to raise the integrity of this body and make it truly responsible to the needs of our constituents. It is our opportunity and obligation to meet this challenge and the Task Force recommends that the following proposals be promptly enacted by the House of Representatives.

OUTLINE LISTING OF THE 95TH CONGRESS REPUBLICAN REFORM TASK FORCE RECOMMENDATIONS

AUDITS

An independent, non-partisan audit of all the financial operations of the House.

Note: The Legislative Branch Appropriations bill for FY 79 includes a provision to permit an audit by the General Accounting Office of all tax funded accounts.

BROADCASTING

Adoption of complete, live radio and television coverage of House floor proceedings.

Note: The House approved H. Res. 866 to provide for radio and television coverage of House floor proceedings.

COMMITTEE REORGANIZATION

Restructure and streamline the House committee system.

COMMITTEE PROCEDURES

Ban proxy voting.

Allow any Member of a committee the right to demand a roll call vote on any question.

Require a roll call vote on reporting any measure or recommendation.

Any roll call vote should be published in the committee's report.

Recorded votes should be required on any bill or resolution reported from committee.

Require verbatim transcripts and written summaries of committee meetings and have them open for public inspection, except for such material that would endanger national security or violate any law or rule of the House

House standing committee rules apply to select, ad hoc or special committees.

Require, with some exceptions, open full and subcommittee hearings.

Require committee travel funds to be approved by a roll call vote of the committee in open session and ensure that these funds are fully itemized.

Minority to be entitled to a proportional one-third of all committee staff.

Reduction in committee staff.

CONGRESSIONAL RECORD REFORM

Materials used to extend or supplement remarks actually delivered by Members be distinguishable.

CONGRESSIONAL STAFF

Strict disclosure of nepotism statements and enforcement of anti-nepotism rules.

ETHICS REFORMS

Public accessibility to the official expenditure record of Members and committees.

Note: A number of Task Force recommendations were adopted in March 1977: to abolish all office slush funds, ban all lame-duck travel, limit outside earned income of House Members, disclose and lower the dollar limit on honoraria and strict financial disclosure rules on Members' personal finances.

HOUSE ALLOWANCES

Require a vote of the House on any proposed change in Members' official allowance.

Elimination of the consolidated account.

Note: The Task Force has opposed, unsuccessfully, two increases in House allowances—the $5,000 increase in the official expense allowance and the increase in the district office rental allowance.

HOUSE RULES

Oppose the customary use of parliamentary procedures, such as closed rules and suspension of the rules, which restrict or prohibit Members from offering amendments.

OVERSIGHT

Instruct each Congressional committee to make its first priority the review and oversight of Federal programs and agencies.

PAY RAISE

Require a recorded vote on proposed pay increases, including the automatic cost-of-living increases.

Permit salary increases to become effective only in the Congress succeeding the one in which the increase was passed.

SCHEDULING OF HOUSE BUSINESS

Publish a firm schedule of legislative business in the Congressional Record at least one week in advance of consideration.

Ensure that all bills to be considered by the House are placed on the schedule.

SUSPENSION OF THE RULES

Reduce suspension days to two a month.

Ensure that bills may not be brought up under suspension unless the chairman and the ranking minority member of the committee so request, or unless two-thirds of the committee by recorded vote instruct the chairman to do so.

Place a dollar ceiling amount on bills which may be brought up under suspension.

Provide at least three days advance notice, excluding Saturdays and Sundays, to any bill which is to be considered under suspension.

Consider all legislation which qualifies for suspension at the next suceeding suspension day or refer it to the Rules Committee.

Prohibit the consideration of bills under suspension which have been defeated under suspension or withdrawn from suspension consideration and refer such bills immediately to the Rules Committee or the originating committee.

STATUS REPORT ON REFORM LEGISLATION—95TH CONGRESS

I. LEGISLATION CONSIDERED BY THE FULL HOUSE

1. House Rules (H. Res. 5), passed on January 4, 1977—Vote: 256–142.

The House rules were adopted under a limited debate, no-amendment procedure imposed by the Democrat leadership. This precluded a serious review of rules changes and prevented the introduction of a number of Republican reform amendments. A Republican effort to open debate was defeated by a vote of 261–140.

2. Ethics Resolution (H. Res. 287), passed on March 2, 1977—Vote: 402–22.

The omnibus ethics resolution drafted by the Commission on Administrative Review to provide stricter requirements for financial conduct and disclosure was adopted under a modified closed rule. This meant that only those amendments approved by the Democrat leadership were permitted. A stronger Republican-backed measure was not considered. A Republican effort to open debate was defeated by a vote of 267–153.

3. Select Committee on Ethics (H. Res. 383), passed on March 9, 1977—Vote 410–1.

Democrats again imposed a no amendment procedure on debate. A Republican effort to open up the resolution for further debate and possible amendment was defeated by a vote of 242–175. Republican amendments sponsored by Representative John Anderson included:

Giving the Select Committee the responsibility of recommending a systematic and periodic audit of matters required to be disclosed under H. Res. 287, including the expenses and allowances of House Members, committees and officers,

Giving the Select Committee the responsibility of making recommendations for improving procedures for handling of allegations of official misconduct in the House Committee on Standards of Official Conduct, and

Permitting the House to review and disapprove any interpretive regulations proposed by the Select Committee.

4. Broadcasting of House Proceedings (H. Res. 404), passed March 15, 1977—Vote: 398–10.

This resolution authorized the House Rules Committee to evaluate the impact of television coverage of House floor proceedings after the completion of a 90 day test.

H. Res. 866, passed on October 27, 1977—Vote: 342–44.

This resolution amended the rules of the House to provide for television and radio coverage of the proceedings of the House.

5. House Administrative Reorganization (H. Res. 766), defeated October 12, 1977—Vote: 160–252.

A bi-partisan majority of Members defeated the closed rule under which this resolution was to be considered, precluding a vote on the bill. H. Res. 766 contained recommendations by the Commission on Administrative Review to change the administrative structure and the internal operations of the House. Unfortunately, the measure only added another layer of bureaucracy to the House, provided that all administrative, investigatory, and judicial functions be placed solely in the hands of the majority party, and proposed an additional bonus to Members' allowances. There were no provisions to make expense vouchers of the House available for public inspection or to restructure the committee system. In addition, the resolution included an in-house random audit under the complete control of the majority party.

6. Lobbying Reform Act (H.R. 8494), passed on April 26, 1978—Vote: 259–140.

This bill would require annual registration and quarterly reporting by major lobbying organizations as well as disclosure of grassroots lobbying activities by reporting organizations and the names and addresses of major groups contributing to reporting organizations.

7. Legislative Branch Appropriations, FY 79 (H.R. 12935), passed on June 14, 1978—Vote: 279–90.

The bill appropriates $922.5 million, less a five percent reduction in payments not required by law, for the House and related congressional agencies. In addition, the bill includes a provision to permit an audit by the General Accounting Office of all tax funded accounts. The House adopted an amendment to require Members to pay for calendars, Agriculture Yearbooks, Botanical Garden plants and storage trunks out of their official allowances.

8. Franked Mail Act of 1977 (H.R. 7792), passed by voice vote under suspension of the rules July 12, 1977.

The bill incorporates into statute the limitations on the use of the franking privilege contained in H. Res. 287. Among the principal provisions are: a 60 day cut-off on the use of the frank before elections, a limit on the permissible number of postal patron mailings, a requirement that postal patron mailings be sent at the most economical means practical, and restrictions on the frankability of condolences and laudatory material. The suspension procedure precluded the offering of a Task Force amendment to require semi-annual disclosure reports on postal patron mailings: of the number of mailings sent, the number of pieces in each mailing, date of each mailing, and sample copies. These reports would have been available for public inspection.

9. Ethics in Government Act (H.R. 1), passed the House September 27, 1978—Vote: 368–30.

This bill would require all candidates for Federal office, Members of Congress, and officers and employees of the United States to file statements with the Comptroller General with respect to their income and financial transactions. This legislation incorporated the Ethics Resolution adopted by the House in 1977 into statutory law. Enactment of the Resolution into law will subject violators to criminal penalties and permit investigations of alleged abuses by Federal law enforcement agencies. The key amendment offered during the House deliberations of H.R. 1 was a proposal to eliminate the outside earnings limitation of Members of Congress. The amendment was soundly defeated by a three-to-one margin.

The Senate has passed similar legislation, S. 555. A conference committee will be formulated to iron out the differences between the two bills.

II. LEGISLATION REPORTED FROM COMMITTEES

1. Special Prosecutor Act (H.R. 9705), reported from Judiciary Committee on June 19, 1978.

This measure would provide continuing authority for the appointment of a special prosecutor to investigate alleged violations by Federal officials involving abuse of office, fraud against the United States, obstruction of justice, or campaign financing violations.

III. REFORM RESOLUTIONS BOTTLED UP IN COMMITTEE

1. On May 9, 1977 the Republican Task Force on Reform introduced four reform resolutions which are buried in the Rules Committee. These resolutions would:

Require a vote of the House on any proposed change in official House allowances,

Require the Clerk of the House to make available for public inspection the official expenditure records of Members and committees of the House,

Require employees of the House to file a statement with the Clerk of the House disclosing the names of any Members to whom they are related,

Prohibit the use of closed rules.

2. After the imposition of the limited debate, no-amendment procedure on consideration of the House Rules, Representative John Anderson introduced a reform package of ten "Open House Amendments" which are also languishing in the Rules Committee. These resolutions would:

Permit the House to direct the Ethics Committee to investigate the alleged misconduct of any Member, officer, or employee and would require written reports on such inquiries,

Limit all House standing committees, except Appropriations, to no more than six subcommittees,

Require that the rules of House standing committees also apply to any select, ad hoc, or special committee,

Require verbatim transcripts and written summaries of committee meetings and have them open for public inspection,

Prohibit proxy voting in full and subcommittee hearings,

Require, with some exceptions, open full and subcommittee hearings,

Permit any committee Member to demand a roll call vote on any question, require a roll call vote on reporting any measure or recommendation, and require the publication in a committee's report of any roll call vote,

Require a verbatim transcript in the Congressional Record and require a clear distinction between remarks inserted in the Record and remarks actually spoken,

Prohibit the consideration of any bill under suspension of the rules unless authorized by

the committee having jurisdiction or by its chairman and ranking minority member, and

Provide for continuous radio and television broadcasting of House floor proceedings.●

GENERAL LEAVE

Mrs. COLLINS of Illinois. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include therein extraneous material on the subject of the special order today by the gentleman from Pennsylvania (Mr. MURTHA).

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Illinois?

There was no objection.

CONFERENCE REPORT ON H.R. 13635

Mr. MAHON submitted the following conference report and statement on the bill (H.R. 13635) making appropriations for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes.

CONFERENCE REPORT (H. REPT. No. 95–1764)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13635) making appropriations for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 16, 17, 23, 24, 26, 28, 29, 30, 46, 48, 56, 61, 67, 68, 69, 70, 71, 72, 73, 86, and 91.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 5, 7, 9, 11, 13, 15, 31, 32, 35, 38, 40, 41, 47, 50, 53, 62, 64, 66, and 88, and agree to the same.

Amendment numbered 3: That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$2,014,975,000"; and the Senate agree to the same.

Amendment numbered 8: That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$227,025,000"; and the Senate agree to the same.

Amendment numbered 14: That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$755,500,000"; and the Senate agree to the same.

Amendment numbered 18: That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$9,115,000,000"; and the Senate agree to the same.

Amendment numbered 19: That the House recede from its disagreement to the amendment of the Senate numbered 19, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$11,691,000,000"; and the Senate agree to the same.

Amendment numbered 20: That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$733,000,000"; and the Senate agree to the same.

Amendment numbered 21: That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$9,243,000,000"; and the Senate agree to the same.

Amendment numbered 22: That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$3,034,000,000"; and the Senate agree to the same.

Amendment numbered 25: That the House recede from its disagreement to the amendment of the Senate numbered 25, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$382,900,00"; and the Senate agree to the same.

Amendment numbered 36: That the House recede from its disagreement to the amendment of the Senate numbered 36, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$949,709,000"; and the Senate agree to the same.

Amendment numbered 37: That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$736,900,000"; and the Senate agree to the same.

Amendment numbered 39: That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$1,218,100,000"; and the Senate agree to the same.

Amendment numbered 43: That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$4,358,700,000"; and the Senate agree to the same.

Amendment numbered 45: That the House recede from its disagreement to the amendment of the Senate numbered 45, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$198,000,000"; and the Senate agree to the same.

Amendment numbered 52: That the House recede from its disagreement to the amendment of the Senate numbered 52, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$2,641,600,000"; and the Senate agree to the same.

Amendment numbered 54: That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$6,893,307,000"; and the Senate agree to the same.

Amendment numbered 55: That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$1,579,800,000"; and the Senate agree to the same.

Amendment numbered 57: That the House recede from its disagreement to the amendment of the Senate numbered 57, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "$2,362,250,000, and in addition, $37,000,000, which shall be derived by transfer from "Other Procurement, Air Force, 1978/1980", to remain available for obligation until September 30, 1981"; and the Senate agree to the same.

Amendment numbered 59: That the House recede from its disagreement to the amendment of the Senate numbered 59, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$2,635,864,000"; and the Senate agree to the same.

Amendment numbered 63: That the House recede from its disagreement to the amendment of the Senate numbered 63, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$4,131,040,000"; and the Senate agree to the same.

Amendment numbered 75: That the House recede from its disagreement to the amendment of the Senate numbered 75, and agree to the same with an amendment, as follows: Restore the matter stricken by said amendment, amended to read as follows:

SEC. 852. No appropriation contained in this Act shall be available to fund any costs of a Senior Reserve Officers' Training Corps unit—except to complete training of personnel enrolled in Military Science 4—which in its junior year class (Military Science 3) has for the four preceding academic years, and as of September 30, 1978, enrolled less than (a) seventeen students where the institution prescribes a four-year or a combination four- and two-year program; or (b) twelve students where the institution prescribes a two-year program: *Provided*, That, notwithstanding the foregoing limitation, funds shall be available to maintain one Senior Reserve Officers' Training Corps unit in each State and at each State-operated maritime academy: *Provided further*, That units under the consortium system shall be considered as a single unit for purposes of evaluation of productivity under this provision.

And the Senate agree to the same.

Amendment numbered 78: That the House recede from its disagreement to the amendment of the Senate numbered 78, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "855."

And the Senate agree to the same.

Amendment numbered 79: That the House recede from its disagreement to the amendment of the Senate numbered 79, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "856."

And the Senate agree to the same.

Amendment numbered 80; That the House recede from its disagreement to the amendment of the Senate numbered 80, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "857."

And the Senate agree to the same.

Amendment numbered 81: That the House recede from its disagreement to the amendment of the Senate numbered 81, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following "858."

And the Senate agree to the same.

Amendment numbered 82: That the House recede from its disagreement to the amendment of the Senate numbered 82, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "9,901"; and the Senate agree to the same.

Amendment numbered 83: That the House recede from its disagreement to the amendment of the Senate numbered 83, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "859."

And the Senate agree to the same.

Amendment numbered 87: That the House recede from its disagreement to the amendment of the Senate numbered 87, and agree to the same with an amendment, as follows: In lieu of the matter proposed by said amendment insert:

SEC. 862. None of the funds appropriated by this Act shall be used to pay for dependent travel entitlements to overseas areas if

such payment would increase the total number of military dependents overseas above 350,000.

And the Senate agree to the same.

Amendment numbered 90: That the House recede from its disagreement to the amendment of the Senate numbered 90, and agree to the same with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following: "$12,000,000"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 2, 4, 6, 10, 12, 27, 33, 34, 42, 44, 49, 51, 58, 60, 65, 74, 76, 77, 84, 85, and 89.

GEORGE MAHON,
ROBERT L. F. SIKES,
DANIEL J. FLOOD,
J. P. ADDABBO,
JOHN J. MCFALL,
JOHN J. FLYNT, Jr.,
R. N. GIAIMO,
BILL CHAPPELL, Jr.,
BILL D. BURLISON
(except as to certain intelligence matters),
JACK EDWARDS,
J. K. ROBINSON,
JACK KEMP,
E. A. CEDERBERG,
Managers on the Part of the House.

JOHN C. STENNIS,
WARREN G. MAGNUSON,
BILL PROXMIRE
(except amendment 50 and 51),
DANIEL K. INOUYE,
ERNEST F. HOLLINGS,
TOM F. EAGLETON,
LAWTON CHILES,
DALE BUMPERS,
BIRCH BAYH,
MILTON R. YOUNG,
CLIFFORD P. CASE,
TED STEVENS,
RICHARD S. SCHWEIKER
(except amendment No. 84 on abortion),
EDWARD W. BROOKE,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13635), making appropriations for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I—MILITARY PERSONNEL

The following items addressed by the conferees apply to more than one appropriation. Specific dollar amounts by military service will be reflected under the appropriate summary appropriation table.

Junior Enlisted Travel Allowances.—The conferees agreed to provide funds to extend junior enlisted travel and allowances for dependents in overseas areas as provided by the House, and also agreed to establish a ceiling on the number of dependents overseas as discussed under the section on General Provisions.

Up-or-out Moratorium.—The conferees agreed to provide $34,600,000 as proposed by the Senate and not prohibit the involuntary separation of officers who have been twice passed over for promotion as proposed by the House.

Professional Development and Education.—The conferees agreed to provide $277,400,000 as proposed by the Senate instead of $252,600,000 as proposed by the House. The conferees also agreed that substantial improvements are required in the management of Professional Development and Education in the Department of Defense. For fiscal year 1979 the conferees direct reductions averaging not less than 15% in inputs to all graduate degree programs, with the remaining reductions allocated by reducing inputs to all remaining Professional Development and Education programs. The reductions in input should be allocated after consideration of the guidance contained in the Appropriations Committees' reports. In addition, the conferees agreed that, of the total funds available for Army professional development institutions, not more than $200,000 shall be available for foreign travel by faculty and students for individual research and field studies.

Military Grade Growth.—The conferees agreed to provide $39,800,000 instead of $26,000,000 as proposed by the House and $53,400,000 as proposed by the Senate. The conferees believe that the Department of Defense has not developed sufficient justification for current enlisted objective force levels. The conferees direct the Department to develop realistic enlisted objective force models for use by the Appropriations Committees as an alternative to the present Congressional Budget Office model in reviewing the fiscal year 1980 budget request.

Full-time Training and Support.—The conferees agreed that the Secretary of Defense should bring additional reservists on full-time active duty as recommended by the House. However, the conferees believe that the Secretary of Defense should determine whether these reservists are brought on active duty under 10 U.S.C. 678 or 32 U.S.C. 502(f).

Veterinary Services.—The conferees agreed to provide $31,500,000 as proposed by the House instead of $33,600,000 as proposed by the Senate. It is stipulated that this reduction to the Veterinary Services' requests is based upon inadequate justification presented during the appropriations process, and is unrelated to the report requested by the House concerning a possible phaseout beginning in Fiscal Year 1980.

MILITARY PERSONNEL, ARMY

Amendment No. 1: Appropriates $9,154,325,000 as proposed by the Senate instead of $9,123,499,000 as proposed by the House.

Visiting Educator Program.—The conferees agreed to the Senate report language permitting reinstatement of the Visiting Educator Program at West Point.

Summary.—Additional items for which the conferees have provided specific guidance have been discussed elsewhere. The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference agreement
Lump-sum reenlistment bonus	80,489	61,989	80,489	78,989
Military grade growth	22,900	11,100	22,300	16,700
Missing in action		4,500		4,500
Up-or-out moratorium	15,960	160	15,960	15,960
Veterinarians	25,527	23,927	25,527	23,927
Junior enlisted travel	47,429	46,429	43,429	46,429
Professional development and education	75,006	66,006	67,306	67,306
Intelligence	100,891	100,765	100,891	100,891
Authorization reduction	15,000	15,000	7,000	7,000
Fines and forfeitures			−1,000	−1,000
Phaseout of commissary subsidy	3,600	3,600	2,400	3,600

MILITARY PERSONNEL, NAVY

Amendment No. 2: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment appropriating $6,461,600,000 instead of $6,456,450,000 as proposed by the House and $6,455,500,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Summary.—Items for which the conferees have provided specific guidance have been discussed elsewhere. The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference agreement
Lump-sum reenlistment bonus	105,230	77,830	105,230	103,730
Military grade growth	23,800	11,900	23,800	17,900
Missing in action		600		600
Up-or-out moratorium	6,700		6,700	6,700
Junior enlisted travel	10,868	8,968	4,168	8,968
Dehydrated foods	400		400	
Professional Development and education	39,900	35,500	36,400	36,400
C-118 retention		4,200		4,200
Intelligence	92,294	91,294	92,294	91,894
Authorization reduction			−34,100	−34,100
Basic allowance for quarters	432,664	432,664	431,914	431,914
Special pay, enlisted	4,758	4,758	4,658	4,658
Phaseout of commissary subsidy	14,100	14,100	9,400	14,100

MILITARY PERSONNEL, MARINE CORPS

Amendment No. 3: Appropriates $2,014,975,000 instead of $2,015,900,000 as proposed by the House, and $2,004,275,000 as proposed by the Senate.

Summary.—Items for which the conferees have provided specific guidance have been addressed elsewhere. The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference agreement
Lump-sum reenlistment bonus	12,300	9,300	12,300	12,100
Military grade growth	7,300	3,000	7,300	5,200
Missin in action		200		200
Junior enlisted travel	8,500	6,900	3,900	6,900
Recruit training	119,400	129,200	119,400	129,200
Professional development and education	21,057	20,057	20,657	20,657
Man-year adjustment			−3,780	−3,780
Subsistence-in-kind	68,191	68,191	65,446	65,446

MILITARY PERSONNEL, AIR FORCE

Amendment No. 4: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment appropriating $7,525,001,000 instead of $7,507,195,000 as proposed by the House and $7,521,081,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Physicians Assistants.—The conferees agreed to the Senate position which requires a report by December 1, 1978, but did not impose the House recommended moratorium on further commissioning of physician assistants.

Summary.—Additional items for which the conferees have provided specific guidance have been discussed elsewhere in this report. The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference agreement
Lump-sum reenlistment bonus	25,800	17,800	25,800	25,300
Missing in action		8,700		8,700
Up-or-out moratorium	12,100		12,100	12,100
Enlisted early-outs	39,200	14,200	31,200	31,200
Veterinarians	8,100	7,600	8,100	7,600
Junior enlisted travel	36,290	32,690	31,690	32,690
Professional development and education	90,000	79,300	88,400	88,400
40-hour training class week	328,275	322,275	323,275	323,275
Intelligence and intelligence related	312,493	309,863	312,493	310,513
Tactical drone operations			4,700	
Manyear adjustment			−3,500	−3,500
Permanent change of station	472,327	442,327	422,327	422,327
Subsistence-in-kind	117,592	117,592	111,548	111,548
Phaseout of commissary subsidy	5,700	5,700	3,800	5,700

RESERVE PERSONNEL, ARMY

Amendment No. 5: The conferees agreed to the insertion of the words "and expenses authorized by Section 2131 of Title 10, United States Code" into the appropriation language, as provided by the Senate, in order to allow funds for the educational assistance program to be included within this appropriation.

Amendment No. 6: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment appropriating $547,350,000 instead of $546,650,000 as proposed by the House and $541,800,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Summary.—Items for which the conferees have provided specific guidance have been discussed elsewhere in this report. The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference agreement
Junior ROTC	1,895	1,945	1,895	1,945
Pay category B to A	353,200	356,300	353,200	356,300
Full-time training and support	1,500	3,900	1,500	3,900
Recruiting and retention incentives		8,500		
Enlistment incentives			8,200	8,200
Reenlistment bonus	200	200	1,200	1,200

RESERVE PERSONNEL, NAVY

Amendment No. 7: The conferees agreed to the insertion of the words "and expenses authorized by Section 2131 of Title 10, United States Code" into the appropriation language, as provided by the Senate, in order to allow funds for the educational assistance program to be included within this appropriation.

Amendment No. 8: Appropriate $227,025,000 instead of $226,825,000 as proposed by the House and $246,800,000 as proposed by the Senate.

Naval Reserve Readiness Commands—The Conferees agreed to the House position concerning utilization of Reserve Rear Admirals as part-time commanders of Naval Reserve Readiness Commands.

Summary.—Additional items for which the conferees have provided specific guidance have been discussed elsewhere in this report. The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference agreement
Junior ROTC	1,426	1,451	1,426	1,451
Transportation services (MAC)	19,800		19,800	
Recruiting and retention incentives		1,500		
Enlistment incentives			1,500	1,500
Reenlistment bonus			200	200

RESERVE PERSONNEL, MARINE CORPS

Amendment No. 9: The conferees agreed to the insertion of the words "and expenses authorized by Section 2131 of Title 10, United States Code" into the appropriation language, as provided by the Senate, in order to allow funds for the educational assistance program to be included within this appropriation.

Amendment No. 10: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment appropriating $84,125,000 instead of $83,725,000 as proposed by the House and $83,100,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Summary.—Items for which the conferees have provided specific guidance have been discussed elsewhere in this report. The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference agreement
Junior ROTC	576	601	576	601
Recruit training	20,328	21,328	20,328	21,328
Recruiting and retention incentives		1,500		
Enlistment incentives			1,700	1,700
Reenlistment bonus			200	200

RESERVE PERSONNEL, AIR FORCE

Amendment No. 11: The Conferees agreed to the insertion of the words "and expenses authorized by Section 2131 of Title 10, United States Code" into the appropriation language, as provided by the Senate, in order to allow funds for the educational assistance program to be included within this appropriation.

Amendment No. 12: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment appropriating $186,850,000 instead of $186,325,000 as proposed by the House and $185,250,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Summary.—Items for which the conferees have provided specific guidance have been discussed elsewhere in this report. The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference agreement
ROTC scholarships	13,266	12,766	13,016	12,891
Junior ROTC	1,157	1,182	1,157	1,182
Full-time training and support		1,700		1,700
Recruiting and retention incentives		1,500		
Enlis ment incentives			1,700	1,700
Reenlistment bonus			200	200

NATIONAL GUARD PERSONNEL, ARMY

Amendment No. 13: The conferees agreed to the insertion of the words "and expenses authorized by Section 2131 of Title 10, United States Code" into the appropriation language, as provided by the Senate, in order to allow funds for the educataional assistance program to be included within this appropriation.

Amendment No. 14: Appropriates $755,500,000 instead of $788,900,000 as proposed by the House and $755,100,00 as proposed by the Senate.

Summary.—Items for which the conferees have provided specific guidance have been discussed elsewhere in this report. The con-

ference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference agreement
Improved strength levels		31,400		
Full-time training and support		400		400
Recruiting and retention incentives		10,000		
Enlisted incentives			7,000	7,000
Reenlisted bonus	300	300	1,300	1,300

NATIONAL GUARD PERSONNEL, AIR FORCE

Amendment No. 15: The conferees agreed to the insertion of the words "and expenses authorized by Section 2131 of Title 10, United States Code" into the appropriation language, as provided by the Senate, in order to allow funds for the educational assistance program to be included within this appropriation.

Amendment No. 16: Appropriates $256,477,000 as proposed by the House instead of $253,877,000 as proposed by the Senate.

Summary.—Items for which the conferees have provided specific guidance have been discussed elsewhere in this report. The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference agreement
Full-time training and support		2,700		2,600
Recruiting and retention incentive		1,500		
Enlistment incentives			1,500	1,500
Reenlistment bonus			300	300
Overseas travel			−200	−200

TITLE II—RETIRED PAY, DEFENSE

Amendment No. 17: Appropriates $10,139,838,000 as proposed by the House instead of $10,079,838,000 as proposed by the Senate.

TITLE III—OPERATION AND MAINTENANCE

The following items addressed by the conferees apply to all the Operation and Maintenance appropriations of the Department of Defense.

INFLATION

For the second year in succession, the Department of Defense included in its budget an estimate of the anticipated inflation in operation and maintenance costs. The total requested for O&M inflation was $1,498.7 million, exclusive of direct hire civilian pay raises which will be addressed in supplemental requests as in the past. The composite rate of inflation reflected in the O&M budget is 6.13 percent.

The house reduced the budget for inflation by $188.5 million for the crude oil equalization tax and $43.2 million for inflation computed on unapproved program adjustments. The Senate reduction was $618.4 million across the board.

The conferees restored $170.0 million of the Senate reduction, bringing the total reduction from the budget request including the crude oil equalization tax to $448.4 million. The conferees expect the Department of Defense and military services to make the necessary program and fiscal management decisions to assure that O&M programs are executed in a balanced manner, without resorting to, or reliance on, reprogramming requests. Thus, the Appropriations Committees expect to find that the program contained within the Fiscal Year 1979 column of the Fiscal Year 1980 budget can be executed from within the dollars provided in this Act. If a determination is made to submit a supplemental appropriations request, the justification material should specifically identify those portions of the programs that are dependent upon supplemental funding.

CONSOLIDATION OF UNDERGRADUATE HELICOPTER PILOT TRAINING (UHPT)

The Senate directed that the Department not consolidate UHPT. The House voted to permit consolidation and instructed the managers on the part of the House to support that position. In conference, the House actively sought approval of consolidation, but with the greatest reluctance, was forced to recede with respect to the funding of this program due to the adamant refusal of the Senate to compromise. A General Provision (Section 854) which prohibits consolidation or realignment of advanced or under graduate pilot training has been reported in technical disagreement (see Amendment 84).

AUDIO VISUAL ACTIVITIES

The conferees agreed that the military departments could credit transfers of military personnel out of audio-visual activities to other military functions in reaching the overall dollar reductions agreed to by both committees. Reductions made in audio-visual activities financed by other appropriations such as RDT&E and through working capital funds can also be included in meeting the overall reduction.

Automatic Data Processing Activities (ADP)

The conferees agreed that the reductions made by the Committees and agreed to by the conferees can be treated as a general reduction to ADP activities with the following exceptions: (1) no funds are to be expended for the Army's project VIABLE except for planning purposes; (2) the Air Force is not to expend funds on base level data automation systems in excess of the House allowance of $72,200,000 unless such effort is necessary as a result of normal application to software maintenance and workload changes. Expansion of the current base level data automation systems, other than the comprehensive engine maintenance control system, is not to be undertaken; and (3) the Marine Corps Source Data Automation program is to serve as a test/model for the application of general purpose ADP equipment to small unit organizations for the Department of Defense. The conferees expect that the other services will delay implementation of similar efforts pending further evidence that these systems are workable and cost effective in both garrison and field environments.

CENTRALIZED CO-OP PROGRAM

The House fully funded this program for FY 1979; however, the restriction which requires individuals to pass the appropriate exam with a score of 80 or better (or, if there is no written test, make a score of 80 or the equivalent on the appropriate rating system mechanism) was continued. The Senate also fully funded this program but removed all restrictions concerning the Professional and Administrative Career Examination (PACE) as it applies to Department of Defense cooperative education employees. The conferees agreed to continue the Co-op Program pending continued review with the understanding that all personnel will be required to take the appropriate Civil Service examinations prior to being given career appointments in the Civil Service. Individuals taking the exam need to pass it with a score which places them at the top of the register since they have, through on-the-job training, indicated their ability to perform. They should, however, complete the examination with a passing score (70). This direction should be applied to all co-op programs managed by the Department of Defense, but is not applicable to those individuals in co-op programs on October 1, 1977. This exempts those students who entered the Program in good faith prior to last year's bill with the understanding that no exam would be required.

POSTAL SERVICES

The conferees agreed to restore $21,000,000 deleted by the House for postal and related delivery services. In agreeing to this restoration, the conferees stress the need for the Department of Defense to comply with previous guidance of both committees which stressed the need for the DOD to obtain the same services from the United States Postal Service as other customers receive and thereby reduce the number of military personnel employed in postal activities. The conferees expressed the concern that little has been done to correct this situation. In fact, a recent decision to further decentralize the handling of overseas (APO) mail, in spite of studies which recommend consolidation, resulted in mail previously sorted by employees of the U.S.P.S. being sorted by military personnel. This situation should be corrected at the earliest opportunity.

LOGAIR AND QUICK TRANS

The conferees agreed that the Navy and Air Force should take steps to enhance the numbers and types of spare parts and components locally available to military units in order to reduce the overall reliance on commercial air delivery within the Continental United States in peacetime. The conferees agreed that the position taken by the House was appropriate but proceeded at too rapid a pace. Therefore, approximately two-thirds of the funds deleted by the House ($18,000,000 for the Air Force LOGAIR system and $4,000,000 for the Navy QUICK TRANS) were restored. The House bill also included additions for expendable spare parts ($13,000,000 Air Force and $3,000,000 Navy). The conferees agreed to retain these funds in the bill.

SHIPMENT OF EXCHANGE MERCHANDISE

The conferees agreed to reduce the transportation subsidy provided the Military Exchange System by $9,000,000. The budget request included about $79,000,000 for space required transportation of military exchange goods to, from, and between overseas locations. The reduction has been applied equally to the Army, Navy and Air Force. The conferees rejected a general provision (Amendment 86) which would have prohibited any subsidized transportation support for the Army and Air Force Exchange Service, the Navy Resale System or the Marine Corps Exchange. The services are to attempt to recoup this reduction to the maximum extent possible through the use of space available, as opposed to space required, on military aircraft and ships including aircraft and ships under lease or charter to the U.S. Government.

The conferees further agreed that a detailed review of this situation to include a determination if the use of space available is a feasible alternative that will not result in a price increase for exchange goods. The Senate will request the General Accounting Office to conduct this review.

COMMISSARY SUBSIDIES

The conferees rejected the proposal to phase out appropriated fund subsidies to the DoD Commissary system as required by the Senate.

REAL PROPERTY MAINTENANCE AND REPAIR

The conferees adopted the House position with respect to containing the backlog of real property maintenance and repair and intend to act accordingly in addressing any FY 1979 operation and maintenance reprogrammings that may be submitted. The military services, reserve components and Defense agencies are to calculate and report the amount of the backlog as of September 30, 1978 to the appropriations committees. These amounts will be used to establish a baseline needed to institute the containment policy. In addition, the General Ac-

counting Office will be asked to review the procedures and criteria used by the military departments in determining the backlog of real property maintenance and repair.

MATTERS ADDRESSED BY ONLY ONE COMMITTEE

The reports of both the Senate and House Committees contain numerous requests for additional studies and data including requests to cooperate and support investigations and reviews by special committee staffs and the General Accounting Office. Generally, these requests do not involve substantive changes in terms of resource allocation or operating procedures. In some instances recommendations and guidance are provided with respect to the management of programs or allocation of resources that did not involve specific dollar changes to the appropriation request. The conferees direct the Department of Defense to treat these requests as being approved by the committee of conference, unless this report clearly states that the committee of conference has not adopted or otherwise modified a request of this nature. This direction applies to all titles of the bill.

OPERATION AND MAINTENANCE, ARMY

Amendment No. 18: Appropriates $9,115,000,000 instead of $9,115,421,000 as proposed by the House and $9,031,659,000 as proposed by the Senate. *Canal Zone Cemeteries.*—The conferees agreed to defer action on the Senate proposal to include $1,703,000 for relocation of remains from Mt. Hope Cemetery, Canal Zone pending further study.

Summary.—The Conferees agreed to provide the amounts shown on the following table for all items under consideration by the Committee of Conference:

OPERATION AND MAINTENANCE, ARMY

[In thousands of dollars]

	Budget	House	Senate	Conference
Inflation	234,000	221,100	120,600	186,550
Supply/stock fund acts	1,458,468	1,408,468	1,448,468	1,428,468
Reimbursable obligations	0	−32,000	0	−16,000
Professional development education	20,132	15,032	19,832	19,832
Transportation (ALOC Korea)	3,500	300	3,500	3,500
Counselors	4,961	2,161	4,961	2,161
Tuition assistance	58,987	52,587	58,987	57,587
Medical operations	703,609	693,709	703,609	697,409
Emergency leave	5,804	1,804	5,804	5,804
Crude oil equalization tax	27,800	0	27,800	0
Contract studies analysis management support and consultants	386,097	376,097	381,097	378,597
Data processing	315,442	299,542	306,642	303,042
New POMCUS site	5,392	2,392	5,392	3,892
Movement of Weteye bomb	542	42	542	542
Flying hour program	131,674	127,174	130,574	130,574
Nike-Hercules	2,422	−1,078	2,422	
Army civilian training program	46,900	46,900	45,300	45,300
Army intelligence personnel program	102,396	101,796	102,396	101,996
Transportation (postal services)	43,119	38,119	43,119	43,119
Real property maintenance	575,066	615,066	575,066	615,066
BOQ and enlisted quarters	3,000	23,000	3,000	23,000
Junior ROTC	10,712	11,062	10,712	11,062
Recreational facilities, fish and wildlife conservation program	0	900	0	900
Computer technology for training	4,000	4,000	0	0
Training support	215,240	215,240	213,240	213,240
Helicopter pilot training consolidation	18,000	18,000	0	
Auto Sevcom	928	0	928	0
General communications reductions	372,014	368,014	368,614	368,314
MSC transportation	150,550	150,550	150,250	150,550
United States-Brazil Military Commission	531	531	187	187
Canal Zone burial relocation	0	0	1,703	0
Commissary subsidy phaseout	127,200	127,200	84,700	127,200
O'seas transportation of exchange goods	45,100	45,100	1,600	42,100
Unidentified adjustment	0	0	28,000	0

OPERATION AND MAINTENANCE, NAVY

Amendment No. 19: Appropriates $11,691,000,000 instead of $11,691,754,000 as proposed by the House and $11,573,156,000 as proposed by the Senate.

Ship Maintenance.—The conferees agreed to restore $6,000,000 of the $11,000,000 reduction made by the House for consultant efforts on the maintenance system development program and other consultant efforts related to ship maintenance and repair.

The House had also added $25,000,000 to support a Navy proposal to bring the intermediate maintenance workload up from 17,500 manyears to 20,958 manyears. This increase was to be obtained by contracting out intermediate maintenance efforts. The Office of Management and Budget had deleted the $25,000,000 included in the budget request for this purpose. In restoring the funds the House had proposed that the manyears be obtained from ships entering overhaul with the funds being used to pay for work at shipyards previously done by military personnel and to provide for spare parts, tools and other supplies to support the additional personnel at intermediate maintenance activities.

Staffing of shore-based intermediate maintenance activities has been a problem since their conception as Fleet Maintenance Assistance Groups a few years ago. The General Accounting Office has proposed that the Navy either reduce or no longer assign significant numbers of military personnel to ships undergoing depot maintenance in Navy or contractor-operated yards, but to retain these personnel in the force structure and assign them to shore-based intermediate maintenance activities. The Navy has initiated a pilot ship program to further study and evaluate the General Accounting Office report referred to above. The pilot ship program being tested by the Navy will provide an analysis of the GAO recommendations and a determination of the optimum manning of ships in overhaul. The conferees believe that the Navy could improve its intermediate maintenance activity manpower situation at a much faster rate than the budget calls for by selectively removing crew members from certain ships entering the overhaul program and retaining them at their home stations to work at intermediate maintenance facilities. Accordingly, the conferees agreed to restore $12,500,000 of the $25,000,000 reduction in order that a third pilot ship can actually be decrewed during overhaul, retaining such crew members in their home port.

Owensboro, Ky., Naval Reserve Training Center.—The conferees agreed not to prohibit the closing of the Owensboro, Kentucky Naval Reserve Training Center.

Summary.—The Conferees agreed to provide the amounts indicated in the following table for all items under consideration by the Committee of Conference:

OPERATION AND MAINTENANCE, NAVY

[In thousands of dollars]

	Budget	House	Senate	Conference
Inflation	482,541	466,541	247,541	399,148
Crude oil equalization tax	63,900	0	63,900	0
Reimbursable obligations	0	−30,000	0	−15,000
Real property maintenance	378,400	388,400	378,400	388,400
Bachelor officers quarters and enlisted quarters	0	30,000	0	30,000
Supply/stock fund activities	380,000	330,000	370,000	350,000
Ship maintenance:				
Consultant study (MSDP)	48,633	42,633	45,633	45,633
Other consulting efforts		−5,000	−2,000	−2,000
Transfer of military personnel	0	25,000	0	12,500
R. & D. funding in O. & M.:				
WLR-8/SLQ-17	0	−2,500	0	0
Ammunition fleet support	0	−1,300	0	−1,300
Transportation (postal services)	27,800	22,800	27,800	27,800
Transfer of 1st destination transportation	0	28,600	22,800	22,800
Quicktrans	25,700	19,700	25,700	23,700
Data processing (ADP):				
Navy ADP command staffing	8,180	6,880	8,180	6,880
Miscellaneous automatic data processing	3,300	0	1,300	1,300
Consolidation of ADP activities	7,285	6,085	7,285	7,285
Service support contracts	6,600	0	3,000	3,000
Logistics support services	5,100	0	1,000	1,000
Trident	142,004	118,204	133,204	125,704
Base	(73,655)	(65,955)	(73,655)	(69,850)
Operations	(66,375)	(50,375)	(57,675)	(54,025)
Contracting for: Studies, analyses, management support and consultants	191,419	181,419	186,419	183,919
Professional development and education	15,832	12,132	15,232	15,232
Junior ROTC	3,337	3,512	3,337	3,512
Intelligence reduction	176,958	175,198	176,958	175,400
Tuition assistance	2,155	3,055	2,155	3,055
Stock funded spare parts	0	3,000	0	3,000
Superintendent of shipbuilding	86,629	81,529	86,629	84,079
Recreational facilities, fish and wildlife conservation program	0	200	0	200
Helicopter pilot training consolidation	0	0	13,400	13,400
Naval Academy contract service	384	384	0	0
Phase out commissary subsidy	45,100	45,100	30,100	45,000
Shipment of exchange goods	16,272	16,272	1,272	13,272

OPERATION AND MAINTENANCE, MARINE CORPS

Amendment No. 20: Appropriates $733,000,000 instead of $733,475,000 as proposed by the House and $731,400,000 as proposed by the Senate.

Summary.—The Conferees agreed to provide the amounts indicated in the following table for all items under consideration by the Committee of Conference:

OPERATION AND MAINTENANCE, MARINE CORPS

[In thousands of dollars]

	Budget	House	Senate	Conference
Inflation	30,446	29,446	17,446	20,100
Crude oil equalization tax	1,900	0	1,900	
Real property maintenance	113,929	116,929	113,929	116,929
Bachelor officers quarters and enlisted quarters	4,000	6,000	4,000	6,000
Supply stock fund activities	144,033	141,033	143,033	142,033
Transportation (postal services)	6,775	5,775	6,775	6,775
Data processing (ADP)	21,573	20,773	21,473	21,273
Japan currency revaluation	9,989	8,489	9,989	8,489
Junior ROTC	1,185	1,360	1,185	1,360
Recruit training (mess and maintenance week)	5,900	0	5,900	
Professional development and education	1,102	602	1,102	1,102
Recreation, fish, and wildlife programs	0	200	0	200
First destination transportation	0	0	5,800	5,800
Phaseout of commissary subsidy	9,621	9,621	6,421	9,621
Shipment of exchange merchandise	979	979	179	979

OPERATION AND MAINTENANCE, AIR FORCE

Amendment No. 21: Appropriates $9,243,000,000 instead of $9,243,892,000 as proposed by the House and $9,186,267,000 as proposed by the Senate.

Summary.—The Conferences agreed to provide the amounts indicated in the following table for all items under consideration by the Committee of Conference:

OPERATION AND MAINTENANCE, AIR FORCE

[In thousands of dollars]

	Budget	House	Senate	Conference
Inflation	388,500	375,200	190,700	288,600
Crude oil equalization tax	75,500	0	75,500	0
Reimbursable obligations	0	−6,000	0	−3,000
Real property maintenance	635,300	658,300	635,300	658,300
Supply/stock fund activities	2,193,000	2,143,000	2,183,000	2,163,000
Transportation (postal services)	57,036	52,036	57,036	57,036
LOGAIR	46,500	19,500	46,500	37,500
Base level data automation system	83,200	72,200	79,300	75,550
Flying hour program: PIT/prepit consolidation	12,541	11,641	12,541	12,541
Accelerated copilot enrichment	13,505	12,905	13,205	12,905
Air Force watercraft	3,900	2,900	3,900	3,400
Contracting for: Studies, analyses, management support and consultants	3,200	−6,800	−1,800	−4,300
Air Force ground base screening	0	−4,000	0	−2,000
Professional development and education	29,291	23,991	28,491	28,491
ROTC scholarships	18,472	16,572	17,522	17,022
Junior ROTC	4,289	4,464	4,289	4,464
Air Force 40-hr class week	97,912	87,192	94,392	90,792
Miscellaneous ADP	800	0	800	400
Air Force functional transfer	0	−6,300	−2,300	−6,300
Civilian training	6,035	4,435	6,035	6,035
Tuition assistance	19,751	15,251	19,751	18,751
Stock funded spare parts	0	13,000	0	13,000
Recreational facilities, fish and wildlife conservation program	0	200	0	200
Intelligence and intelligence related (PARCS)	15,100	0	15,100	15,000
Defense dissemination program	3,828	2,028	3,828	2,528
SR-71	91,806	90,606	91,806	91,206
MSC transportation	74,195	74,195	72,695	74,195
Minuteman missile transporter roads	1,900	1,900	6,700	5,000
Loring AFB	18,900	18,900	23,700	18,900
Tactical drone operations	2,957	2,957	8,857	2,957
Commissary subsidy phaseout	133,300	133,300	8,880	133,500
Exchange goods transportation	18,393	18,393	−1,307	15,393

OPERATION AND MAINTENANCE, DEFENSE AGENCIES

Amendment No. 22: Appropriates $3,034,000,000 instead of $3,034,350,000 as proposed by the House and $3,019,495,000 as proposed by the Senate.

Amendment No. 23: Makes available only for the Defense Logistics Agency $968,600,000 and $453,500,000 for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) as proposed in the House bill from within the overall total available for all Defense agencies. The Senate bill deleted the specific limitations for CHAMPUS and the Defense Logistics Agency.

CHAMPUS.—The Senate proposed a subsection to the General Provision on CHAMPUS that would permit increasing the allowable payments to physicians from the 75th to the 80th percentile on the schedule of customary charges made for similar services in the same locality where the medical care is furnished. The Senate also added $15 million to the budget to accommodate this change. The House bill contained no provision on this matter. The conferees adopted the Senate position.

Summary.—The Conferees agreed to provide the amounts indicated in the following table for all items under consideration by the Committee of Conference.

OPERATION AND MAINTENANCE, DEFENSE AGENCIES

[In millions of dollars]

	Budget	House	Senate	Conference
Inflation	79.1	79.1	65.1	77.9
Dependent education	307.0	298.8	298.9	298.9
TRIMIS	23.6	20.0	21.6	21.6
Contracts for studies, analyses, etc	59.9	49.9	54.9	52.4
Intelligence and intelligence related	783.3	797.4	784.5	790.8
Supply stock fund (DLA)	139.7	137.7	139.7	138.7
Transportation (postal services)	5.1	.1	5.1	5.1
Establish separate defense price indixes			.4	.3
Property disposal	151.0	106.0	103.9	103.9

OPERATION AND MAINTENANCE, ARMY RESERVE

Amendment No. 24: Appropriates $416,900,000 as proposed by the House instead of $410,200,000 as proposed by the Senate.

Summary.—The Conferees agreed to provide the amounts indicated in the following table for all items under consideration by the Committee of Conference.

OPERATION AND MAINTENANCE, ARMY RESERVE

[In thousands of dollars]

	Budget	House	Senate	Conference
Crude oil equalization tax	700	0	700	0
Full-time support	142,900	140,300	142,900	140,300
Real property maintenance	28,863	34,863	28,863	34,863
Overseas travel	2,600	0	2,600	0
Inflation	11,000	11,000	4,424	10,200
Training supplies	21,200	21,200	19,400	19,400

OPERATION AND MAINTENANCE, NAVY RESERVE

Amendment No. 25: Appropriates $382,900,000 instead of $386,500,000 as proposed by the House and $365,200,000 as proposed by the Senate.

Summary.—The Conferees agreed to provide the amounts indicated in the following table for all items under consideration by the Committee of Conference.

OPERATION AND MAINTENANCE, NAVY RESERVE

[In thousands of dollars

	Budget	House	Senate	Conference
Inflation	15,774	15,774	7,574	13,774
Crude oil equalization tax	4,200	1,800	4,200	0
Continue operation of C-118 aircraft	0	15,600	0	15,600
Surface support forces	3,159	2,859	2,659	2,659
Coastal River Division 22	300	0	300	300

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

Amendment No. 26: Appropriates $19,900,000 as proposed by the House instead of $19,600,000 as proposed by the Senate.

Summary.—The Conferees agreed to provide the amounts indicated in the following table for all items under consideration by the Committee of Conference.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

[In thousands of dollars]

	Budget	House	Senate	Conference
Inflation	903	903	503	903
Crude oil equalization tax	100	0	100	0

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

Amendment No. 27: Reported in technical disagreement. The Managers on the part of

the House will offer a motion to recede and concur in the Senate amendment with an amendment appropriating $384,700,000 instead of $386,500,000 as proposed by the House and $386,700,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Summary.—The Conferees agreed to provide the amounts indicated in the following table for all items under consideration by the Committee of Conference.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

[In thousands of dollars]

	Budget	House	Senate	Conference
Full-time training support	139,600	137,800	139,600	137,800
Reconnaissance drone unit	3,200	−300	3,200	−300
Reconfiguration of C–130E aircraft	0	1,500	0	1,500
Crude oil equalization tax	3,000	0	3,000	0
Inflation	10,288	10,288	7,888	9,688
Bench stock items	25,200	25,200	24,200	24,200
Travel	3,418	3,418	3,218	3,218

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

Amendment No. 28: Appropriates $789,700,000 as proposed by the House instead of $783,700,000 as proposed by the Senate.

Summary.—The Conferees agreed to provide the amounts indicated in the following table for all items under consideration by the Committee of Conference.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

[In thousands of dollars]

	Budget	House	Senate	Conference
Crude oil equalization tax	2,400	0	2,400	0
Full-time training support	505,200	504,800	505,200	504,800
Real property maintenance	14,900	15,400	14,900	15,400
Overseas travel	0	−2,400	0	0
Inflation	23,700	23,700	13,000	21,300

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

Amendment No. 29: Appropriates $932,700,000 as proposed by the House instead of $932,000,000 as proposed by the Senate.

Summary.—The conferees agreed to provide the amounts indicated in the following table for all items under consideration by the Committee of Conference.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

[In thousands of dollars]

	Budget	House	Senate	Conference
Crude oil equalization tax	10,800	0	10,800	0
Full-time training and support	448,200	444,200	448,200	444,200
Overseas travel	0	−200	0	0
Inflation	27,500	27,500	11,800	27,300

Claims, Defense

Amendment No. 30: Appropriates $87,500,000 as proposed by the House instead of $89,500,000 as proposed by the Senate.

Court of Military Appeals, Defense

Amendment No. 31: Appropriates $1,750,000 as proposed by the Senate instead of $1,648,000 as proposed by the House.

Foreign Currency Fluctuations, Defense

Amendment No. 32: The conferees agreed to exclude the operation and maintenance portion of the Family Housing Management account from this appropriation as proposed by the Senate.

Amendment Nos. 33 and 34: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendments of the Senate which remove restrictions and limitations contained within appropriations or other provisions of law when the sole reason for the increase is to reflect downward adjustment in currency exchange rates from those used in preparing budget submissions. The Senate amendment also allows obligations to be recorded based on the currency exchange rates used in preparing budget estimates, with adjusting entries to reflect currency exchange rates when disbursements are actually made.

Amendment No. 35: Changes section number.

TITLE IV—PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

Amendment No. 36: Appropriates $949,709,000 instead of $917,401,000 as proposed by the House and $971,708,000 as proposed by the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
Helicopter, attack, AH–1S (Cobra/TOW)	136,900	116,500	136,900	116,500
Helicopter, cargo, CH–47C (Chinook)	78,400	.....	33,000	33,000
Spares and repair parts	69,200	67,601	68,508	66,909

CH–47C Chinook helicopters

The conferees agreed to provide $33,000,000 for eight CH–47C Chinook helicopters in order to enhance our tactical helicopter lift capability in Europe and not for the purpose of supporting the Korean withdrawal. The conferees were in agreement that the cost of the Korean withdrawal is to be funded as part of the Foreign Assistance Appropriation Act, and not through the Defense bill. The Army is to be appropriately reimbursed for equipment turned over to the Republic of Korea in connection with our withdrawal plans.

MISSILE PROCUREMENT, ARMY

Amendment No. 37: Appropriates $736,900,000 instead of $738,100,000 as proposed by the House and $734,000,000 as proposed by the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
U.S. Roland	200,100	200,100	165,000	165,000
TOW (BGM–71A)	42,300	28,200	42,300	42,300
Chaparral modifications	7,100	10,000	7,100	10,000
General reduction—authorization	.....	−19,800	.....	.....

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

Amendment No. 38: Appropriates $1,511,100,000 as proposed by the Senate instead of $1,528,400,000 as proposed by the House.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

Program	Budget	House	Senate	Conference
Tank, combat, Ft, 105-mm gun, M60 series	382,400	382,400	343,600	343,600
Infantry fighting vehicle XM–2 adv proc (CY)	.....	34,600	39,000	39,000
Cavalry fighting vehicle XM–3 adv proc (CY)	.....	4,000	.....	.....
Carrier conversion, M106A1 to M125A1 (mod)	1,400	1,400	.....	.....
Tank, combat, Ft, 105mm gun, M60 series (mod)	98,400	147,600	132,400	132,400
Production base support (TCV–WTCV)	162,000	92,300	87,300	87,300
Howitzer, med, towed, 155-mm, M198	32,100	26,100	28,800	28,800
M–2 machinegun	.....	.....	13,200	13,200
General reduction—authorization	.....	−26,800	.....	.....

PROCUREMENT OF AMMUNITION, ARMY

Amendment No. 39: Appropriates $1,218,100,000 instead of $1,071,456,000 as proposed by the House and $1,293,100,000 as proposed by the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
105-mm high explosive antitank ammunition	36,100	.....	36,100	21,600
Tank gun training ammunition	26,600	.....	26,600	26,600
Electronic time fuze	31,600	.....	31,600	31,600
Production base-electronic time fuze	18,400	.....	18,400	18,400
1st destination transportation	61,000	.....	46,000	.....
Productivity enhancement	1,000	500	1,000	1,000
Mississippi Army Ammunition Plant	64,600	60,556	84,600	74,600
Layaway of facilities	9,000	.....	9,000	4,500
General reduction	.....	−29,400	.....	.....

Mississippi Army Ammunition Plant

The House denied $4,044,000 budgeted for aluminum forging facilities at the Mississippi Army Ammunition Plant. The Senate restored the $4,044,000 and added an additional $20,000,000 above the budget for the metal parts facility. The conference agreement includes the $4,044,000 for aluminum forging facilities and an additional $10,000,000 above the budget for the metal parts facility.

Amendment No. 40: Transfers forward to fiscal year 1979 $30,000,000 in prior year unobligated balances as proposed by the Senate instead of $59,400,000 as proposed by the House.

Amendment No. 41: Deletes the transfer forward to fiscal year 1979 of $29,400,000 from the Procurement of Ammunition, Army 1978/80 appropriation, as proposed by the Senate.

OTHER PROCUREMENT, ARMY

Amendment No. 42: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $1,642,250,000 instead of $1,591,000,000 as proposed by the House and $1,623,800,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference		Budget	House	Senate	Conference
Tactical fire direction system	82,900	82,900	42,000	82,900	Productivity enhancement	4,900	2,400	4,900	4,900
Target designator laser	14,600	600	14,600	14,600	Family of military engineer construction equipment	24,000	12,000	24,000	18,000
Communications security equipment	108,000	96,300	108,000	102,150	Universal engineer tractor	21,200	----------	21,200	10,600
Position/azimuth determining system	12,300	----------	12,300	12,300					

AIRCRAFT PROCUREMENT, NAVY

Amendment No. 43: Appropriates $4,358,700,000 instead of $4,381,100,000 as proposed by the House and $4,287,200,000 as proposed by the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference		Budget	House	Senate	Conference
A-6E (attack), Intruder, advance procurement (calendar year)	18,200	18,200	----------	----------	AV-8A (attack), Harrier	----------	90,000	----------	----------
A-7E (attack), Corsair II	26,100	143,500	61,000	110,400	C-9 transport	----------	16,100	----------	16,100
F-18 (fighter), Hornet	311,900	433,500	429,500	429,500	Spares and repair parts	564,300	567,200	561,200	567,200
					General reduction—authorization	----------	−122,900	----------	----------

WEAPONS PROCUREMENT, NAVY

Amendment No. 44: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $1,955,600,000 instead of $1,983,800,000 as proposed by the House and $1,988,500,00 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
TOW	8,300	6,300	8,300	6,800
Torpedo MK-48	110,700	110,700	142,100	110,700
Torpedo MK-46 modification	54,800	54,800	27,800	27,800
Spares and repair parts	22,000	22,000	20,300	20,300

MK-48 torpedoes

With respect to the MK-48 torpedo program, the conferees agreed with the position of the House that if the current review of the inventory objective for this torpedo dictates that additional MK-48 torpedoes are required, the Committees will entertain a reprogramming or supplemental request to increase the fiscal year 1979 buy.

SHIPBUILDING AND CONVERSION, NAVY

Amendment No. 45: Appropriates $198,000,000 for the Trident submarine program instead of $274,800,000 as proposed by the House and $55,000,000 as proposed by the Senate.

Amendment No. 46: Deletes the $45,000,000 proposed by the Senate for the V/STOL Support Ship.

Amendment No. 47: Deletes the $2,129,600,000 proposed by the House for the CVN-71 nuclear aircraft carrier program.

Amendment No. 48: Deletes the $70,000,000 proposed by the Senate for the LHA program.

Amendment No. 49: Reported in technical disagreement. The Managers on the part of House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $69,000,000 for two T-AGOS SURTASS ships instead of $98,000,000 as proposed by the Senate for three such ships. The House had recommended no funds for the T-AGOS SURTASS ship program. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 50: Appropriates $978,400,000 for craft, outfitting, post delivery and cost growth on prior year programs, as proposed by the Senate, instead of $769,400,000 as proposed by the House for those programs. The difference between the two versions of the bill involved cost growth on prior year programs. The conferees agreed to provide an additional $209,000,000 for the settlement of shipbuilding claims as proposed by the Senate.

Amendment No. 51: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $3,759,600,000 in total for Shipbuilding and Conversion, Navy, instead of $5,688,000,000 as proposed by the House and $3,760,600,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

Program	Budget	House	Senate	Conference	Program	Budget	House	Senate	Conference
Trident (nuclear) advance procurement (calendar year)	274,800	274,800	55,000	198,000	LHA advance procurement (calendar year)	----------	----------	70,000	----------
CVN-71 nuclear carrier	----------	2,129,600	----------	----------	T-AGOS SURTASS ship	98,000	----------	98,000	69,000
LPH conversion	----------	----------	45,000	----------	Cost growth	530,100	530,100	739,100	739,100

The conferees believe that there is an urgent requirement for a comprehensive Navy shipbuilding program. Accordingly, the Department of Defense is expected to submit to the Congress a modern and viable shipbuilding program that gives consideration to all types and classes of ships, including those in the Senate version of this bill.

T-AGOS SURTASS ocean surveillance ships

With respect to the T-AGOS SURTASS ocean surveillance ship program, the conferees were uncertain as to the total number of ships required and thought it prudent to begin this new program at a more modest pace than that proposed by the Navy. The conferees further agreed that because of continuing problems in the technical and operational evaluation of the mission electronics equipment for the SURTASS ships, that the funds recommended for mission electronics equipment for the two ships may not be obligated until the Navy has certified to the Congress the successful completion of a new technical and operational evaluation of the mission electronics equipment.

Submarine and destroyer tenders

The conferees are in agreement that the Navy should reevaluate its future needs for submarine and destroyer tenders and to submit the results of this study to Congress no later than April 15, 1979.

Other Procurement, Navy

Amendment No. 52: Appropriates $2,641,600,000 instead of $2,617,150,000 as proposed by the House and $2,642,450,000 as proposed by the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
SURTASS	9,300	----------	9,300	9,300
AN/SQL-17A electronic warfare equipment	11,800	----------	11,800	11,800
Navsat receiver	----------	1,700	----------	1,700
Communications security equipment	38,800	35,100	38,800	36,950
Special activities	10,400	7,100	7,800	1,700
Productivity enhancement	3,000	1,500	3,000	3,000

SURTASS

The conferees agreed to provide $9,300,000, the budget request, for procurement of training equipment related to the SURTASS program.

PROCUREMENT, MARINE CORPS

Amendment No. 53: Appropriates $356,000,000 as proposed by the Senate instead of $349,000,000 as proposed by the House.

The conferees agreed to provide $7,000,000 for procurement of 202 deployable computers as proposed by the Senate.

AIRCRAFT PROCUREMENT, AIR FORCE

Amendment No. 54: Appropriates $6,893,307,000 instead of $6,966,507,000 as proposed by the House and $6,569,307,000 as proposed by the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
A-10	839,300	839,300	638,600	792,700
A-10, advance procurement (CY)	45,300	45,300	33,600	40,300
F-16A/B (air combat fighter)	1,311,200	1,311,200	1,191,300	1,311,200
F-16A/B, advance procurement (CY)	63,900	63,900	43,900	63,900
C-130H	----------	137,500	67,500	68,500
2 place TA-7D	----------	92,600	120,500	120,500
E-4A (AABNCP), advance procurement	----------	----------	10,000	10,000
TR-1, advance procurement (CY)	10,200	----------	10,200	10,200
EF-111	161,300	161,300	151,300	151,300
Civil Reserve Airlift Fleet (CRAF)	68,500	----------	7,500	7,500
Spares and repair parts	1,183,200	1,194,700	1,171,200	1,193,500
Other production charges	260,593	191,100	194,100	194,100

TR-1 tactical reconnaissance aircraft

The conferees agreed to provide $10,200,000 for advance procurement to begin the TR-1 tactical reconnaissance aircraft program which will provide an advanced technology reconnaissance capability to the tactical forces. The conferees agreed, however, that they are not committing themselves to a specific production program and that the Air Force should exercise especially tight control over this program because of the sole source nature of the contract.

TA-7D trainer/attack aircraft

In recommending $128,500,000 for twelve TA-7D trainer/attack aircraft for the Air National Guard, the conferees agreed to delete the House requirement that future requirements for two-place TA-7D aircraft be met through modification of currently available A-7D aircraft.

E-4A advanced airborne command post

The conferees agreed to provide $10,000,000 as proposed by the Senate to upgrade the communications capability of E-4A aircraft 1, 2, and 3 of the fleet of four Advanced Airborne Command Posts. The primary mission of the Advanced Airborne Command Post is to serve as a mobile command post in case of a national emergency.

Civil Reserve Airlift Fleet (CRAF)

The conferees agreed to provide $7,500,000 to be used with a like amount made available in fiscal year 1978, to incorporate cargo features into a new wide-body commercial passenger aircraft during its production.

The conferees are concerned about the redirection and increased cost of this program. For these reasons the conferees request that the Department of Defense reevaluate the cost-effectiveness of the CRAF program using current cost data, and recommend restructuring the size and phasing of this program in order to minimize the overall cost of the program. The results of this reevaluation and analysis should be reflected in the fiscal year 1980 budget submission.

MISSILE PROCUREMENT, AIR FORCE

Amendment No. 55: Appropriates $1,579,800,000 instead of $1,595,700,000 as proposed by the House and $1,551,800,000 as proposed by the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
ALCM-B (air-launched cruise missile)	174,900	174,900	156,900	156,900
Ground launch cruise missile (GLCM)	40,100	40,100	20,200	20,200
AIM-7F Sparrow	134,900	110,200	127,100	127,100
AGM-65A Maverick	34,500	26,900	34,500	34,500
BGM-34C, remotely piloted vehicles	----------	----------	11,000	----------
Special programs	601,200	572,700	531,200	570,200

OTHER PROCUREMENT, AIR FORCE

Amendment No. 56: Reinserts the subheading "(Including Transfer of Funds)" which was included in the House bill but stricken by the Senate.

Amendment No. 57: Transfers forward to fiscal year 1979 $37,000,000 from Other Procurement, Air Force 1978/80 and provides that the appropriation is available for obligation until September 30, 1981 as proposed by the House. Further, the amendment appropriates $2,362,250,000 instead of $2,294,750,000 as proposed by the House and $2,410,612,000 as proposed by the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
GBU-15 glide bomb	----------	----------	20,000	----------
Range improvement equipment	30,200	----------	30,200	30,200
Training support equipment	15,600	----------	15,600	15,600
Range improvement spares	5,000	----------	5,000	5,000
Productivity enhancement	3,600	1,800	3,600	3,600
Communications security equipment	26,400	21,800	26,400	26,400
Base mechanization equipment	13,400	11,800	13,400	13,400
General reduction	----------	−37,000	----------	−37,000
Intelligence reduction	----------	−31,300	−31,300	−22,600

GBU-15 glide bomb

The conferees agreed to provide no production funds for GBU-15 at this time, since further testing is required. In addition to deleting the $20,000,000 proposed by the Senate for fiscal year 1979, the conferees also agreed to transfer forward $37,000,000 in production funding provided in fiscal year 1978 to offset a general reduction in fiscal year 1979. This program is further discussed in the Air Force research and development section.

PROCUREMENT, DEFENSE AGENCIES

Amendment No. 58: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $273,800,000 instead of $266,800,000 as proposed by the House and $272,200,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
Productivity enhancement	1,000	500	1,000	1,000
Communications security reduction	----------	−2,800	----------	−1,400
Intelligence reduction	----------	−10,400	−8,300	−5,300

REPORT LANGUAGE ITEMS

Productivity enhancement programs

The budget estimate included $13,500,000 in five procurement appropriations for productivity enhancement programs. The House bill provided $6,700,000 and set forth in its report (pp. 246-47) certain guidelines to be followed in implementing productivity enhancement programs. The conferees agreed to the full budget estimate of $13,500,000. The conferees also agreed that the Department of Defense shall assure that the guidelines contained in the House report are followed.

Below threshold reprogramming

The conferees are in agreement with the direction contained in the House report (p.

245) that the Department of Defense shall notify the House and Senate Committees on Appropriations in advance of all new programs or line items proposed to be established through below threshold reprogrammings.

TITLE V—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY

Amendment No. 59: Appropriates $2,635,864,000 instead of $2,652,304,000 as proposed by the House and $2,530,197,000 as proposed by the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
Missile technology	30,126	30,126	28,726	28,726
Small caliber and fire control technology	9,473	9,473	9,448	9,448
Ballistics technology	18,309	18,309	18,009	18,009
Chemical munitions/chemical combat support	5,231	5,731	5,231	5,731
Chemical biological defense and general inventory	9,686	12,186	9,686	12,186
Army personnel manpower technology	4,392	3,000	4,000	3,000
Food technology	8,327	4,200	8,327	6,000
Nutrition research			2,000	1,852
Military facilities engineering technology	3,500	2,000	3,000	3,000
RPV supporting technology	2,375	2,375	1,100	1,100
Medical defense against chemical agents	6,027	7,027	6,027	7,027
Military environmental stress	4,552	4,552	3,000	3,000
Test measuring diagnostic equipment technology	435	435		
Military energy technology	2,200		2,200	
Classified programs	25,467	28,908	25,467	28,908
Aircraft avionics equipment	1,304	1,304	804	804
MSL/rocket components	1,344	1,344	844	844
Advanced land MOB systems concepts	22,000	20,000	15,000	15,000
Military personnel performance development	4,786	2,624	4,300	2,624
Army contemporary issues development	450	450		
Soldier support survivability	2,527	1,527	2,000	2,000
Advanced technology automatic test equipment	2,047	1,200		
Undistributed reduction		−10,000		
Ballistic missile defense system technology	114,000	114,000		114,000
NMCS wide support communications	4,600	3,500	4,600	3,500
Surface-to-surface missile rocket system	70,800	70,800	62,800	62,800
Advanced multipurpose missile	8,100	8,100	1,000	1,000
Tank gun cooperative development	8,100	8,100	35,600	35,600
Combat support equipment	8,486	6,886	8,486	7,886
Precision laser designator	12,593	12,593	9,193	9,193
Roland	22,663	32,363	22,663	22,663
Pershing II	10,111	10,111		
Viper	6,283	2,000	6,283	6,283
Forward observer vehicle	3,700		2,000	1,000
Communication engineering development	6,965	6,195	6,965	6,195
Unattended ground sensors	8,690		4,000	4,000
IFF equipment	1,000	1,000		
Command and control	7,227	7,227	14,227	7,227
Battlefield systems integration	7,000	5,000	3,000	3,000
Expendable drones		3,800		
Classified programs	79,868	73,568	68,868	67,868
Narrowband Autosevocom II		1,947		1,947
General reduction			−1,100	
Target missiles	4,000	4,000	500	500
Studies and analyses	4,460	3,500	1,700	1,700
Tradoc studies and analyses	2,600	2,600	2,000	2,000

Nutrition research

The conferees agreed to provide $1,852,000 to continue the nutrition research program of the Army for one more year. The conferees are in agreement that this shall be the last year of funding as part of the Department of Defense Appropriation Bill and that the program shall be transferred to the Department of Agriculture.

Combat support equipment

The conferees agreed to provide $7,866,000 for the combat support equipment program instead of $6,886,000 proposed by the House and $8,486,000 proposed by the Senate. The conferees agreed to the termination of the 60-ton logistics amphibian development program.

Viper

The conferees agreed to provide the budget estimate of $6,283,000 to complete the Viper antitank missile testing program, as proposed by the Senate. The conferees also agreed that the Army should conduct a comparative testing of the Swedish-built Carl Gustav recoilless rifle to determine the suitability of the Carl Gustav for Army use.

Narrowband AUTOSEVOCOM II

The conferees concur with the House position on the Automatic Secure Voice Communications System II (AUTOSEVOCOM II). This is reflected in the conference agreement on the research, development, test, and evaluation appropriations of the Army, Navy, Air Force, and Defense Agencies.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY

Amendment No. 60: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $4,468,871,000 instead of $4,463,860,000 as proposed by the House and $4,450,060,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
Strike warfare weaponry technology	30,384	30,384	29,000	29,000
Electronic device technology	21,049	21,049	20,000	20,000
Personnel support technology	3,014	3,014	2,800	2,800
Energy and environmental protection	10,944	5,086	11,244	5,386
Avionics	13,833	13,833	9,000	9,000
V/STOL developments	4,519	3,419	4,519	4,519
Aircraft propulsion (advance)	6,140	6,140	6,000	6,000
Aircraft systems (advance)	9,348	9,348	5,000	5,000
Advance arm system technology	4,973		2,500	2,500
A/A missile advance technology demos	2,917	2,917	1,600	1,600
Manpower effectiveness	3,641	3,641	2,800	2,800
Surface electromagnetic optical system	7,569	7,569	5,369	5,369
Trident II	15,000	15,000	5,000	5,000
Surface missile warhead development	9,564		9,564	9,564
Trident	265,552	265,552	273,752	273,752
ELF communications	40,549		20,000	20,000
Advanced vehicle for sea control (AVSC)	3,983	1,000	2,500	1,000
Advanced aircraft subsystems	11,657	6,657	5,000	5,000
V/STOL aircraft development	40,810	9,100	7,500	7,500
Aircraft survivability/vulnerability	3,853	2,026	3,853	2,206
Shipboard interrange combat system (SIRCS)	14,481	9,581		
Long range dual mission missile	8,133	5,133		
Air to ground weapons	7,110	7,110	3,010	3,010
Defense suppression system	1,206	1,206		
A/G standoff weapons	5,465	2,251	5,465	5,465
Within visual range air-to-air missile	6,047	1,000		
Advance submarine sonar development	52,264	52,264	47,064	47,064
Air control	3,301	3,301		
Subtactical warfare systems (advance)	22,746	22,746	22,246	22,246
Ship development (advance)	14,286	14,286	12,286	12,286
A4W/AIG nuclear propulsion plant	10,274	8,274	10,274	10,274
Advanced logistics	5,912	4,012	5,912	4,012
Command and control systems (advance)	4,504	3,617	4,504	3,617
Moored surveillance systems (MSS)	13,812	12,912	13,812	13,812
LAMPS MK III	124,491	118,391	95,000	95,000
AV-8B plus			3,000	3,000
Aircraft IR signature suppression	997	997		
ABN tactical signal exploit	1,121		600	300
Joint aircraft engine development		(15,000)		(15,000)
Aegis	14,418	22,418	25,418	25,418
Air/air missile system engineering	28,506	28,506	32,306	32,306
Ship development (engineering)	58,650	45,000	40,150	65,150
CSGN development	19,383	19,383	11,000	11,000
Naval special warfare craft	5,973	5,973		
Shipboard electronic warfare improve	4,142	4,142		
Tactical towed array sonar	25,190	20,190	25,190	25,190
Other Marine Corps development (engineering)	9,579	9,579	12,579	12,579
MC data systems (engineering)	21,214	13,214	21,214	21,214
A-6 squadrons	8,481	7,481	8,481	8,481
A-7 squadrons	1,069	1,069	800	800
Harpoon improvements	2,563	2,563	1,500	1,500
Surface effect ship (SES)		93,000	80,000	80,000
Half-length Mark 48 torpedo			3,000	
V/STOL light carrier design			25,000	
Classified programs	133,063	101,993	108,611	107,811
Arapaho			6,500	6,500
Seamod			7,700	7,700
Swath			1,000	1,000
Reserve merchant ship design			1,000	1,000
General reduction			−41,000	
Special activities	33,623	33,123	33,623	33,123
Narrowband Autosevocom II		453		453
Target Systems development	567	567		
Range Instrumentation system development	8,931	4,642	8,931	8,931
Foreign weapons evaluation	2,800	2,800	1,400	1,400
Studies and analysis support (Marine Corps)	3,040	2,408	3,040	3,040
Studies and analysis support (Navy)	6,411	5,682	6,411	6,411
Marine Corps OPNS analysis GP, CNA	1,253	1,011	1,253	1,253
Center for Naval Analysis (Navy)	9,215	8,201	9,000	9,000
(Technical adjustment—authorization)			450	
R.D.T. & E. laboratory and facility management support	43,465	43,465	49,265	43,465
Test and evaluation support	177,061	170,000	172,000	172,000

Extremely low frequency (ELF) communications

The conferees note and concur in the following language which was included in the Department of Defense Appropriation Authorization Act, 1979:

SEC. 202. None of the funds authorized to be appropriated by this Act for the development of the Extremely Low Frequency (ELF) communication system may be obligated or expended for the development of such system unless the President certifies to the Congress in writing that the use of funds for such purpose is in the national interest, that a site has been selected for the deployment of such system, and that the President has approved such site for the deployment of such system, and in no event may any of the funds authorized to be appropriated by this Act be used for full scale development or construction of another testbed facility for an Extremely Low Frequency (ELF) communication system.

The conferees have approved $20,000,000 for RDT&E only, as proposed by the Senate, for the Navy's Extremely Low Frequency (ELF) communications system. The conferees recommended this funding only after receipt of the following written assurances from the Secretary of Defense:

"The Department of Defense intends to comply fully with the intent of the Congress as expressed in the Department of Defense Appropriations Authorization Act, 1979 as reported to the House of Representatives and the Senate by the Committees on Armed Services. The language of the bill contains restrictions on expenditures pending notification to the Congress by the President of a site decision as well as a statement regarding system deployment and essentiality in the national interest. Expenditure of funds that result from FY 1979 appropriations actions will not occur until this step has been accomplished."

The $20,000,000 is recommended by the conferees in consonance with the above assurances and legal limitations.

Air-to-ground standoff weapons

The conferees agreed to provide $5,465,000, the budget estimate, for air-to-ground standoff weapon development. In doing so, the conferees direct that this program be jointly funded and carried out with the Air Force so that a single weapon suitable for both services is developed.

Ship development (engineering)

The Senate proposed $25,000,000 for V/STOL light carrier design. The conferees agreed to provide the $25,000,000 under Ship Development (Engineering). These funds may be utilized for general ship design efforts on all types and classes of ships, including those shipbuilding programs in the Senate version of the bill.

Tactical towed array sonar

The conferees agreed to provide $25,190,000, the budget estimate, for the AN/SQR-19 tactical towed array sonar (TACTAS) program. The Navy terminated the contract with the prime contractor for this program on May 8, 1978 causing a slippage in the program. The House report directed that the Navy use $5,000,000 of the amount provided to develop a quick reaction interim TACTAS capability. The conferees agreed that development of an interim system is not mandatory. The conferees also agreed that the Navy shall compete the contract for the development of the multiprocessor unit to be used in the AN/SQR-19. It is the understanding of the conferees this multiprocessor unit effort involves essentially software development to interface with existing electronic equipment already in the Navy inventory.

A-6 squadrons

The conferees agreed to provide $1,063,000 for the all-weather Standoff Attack Control System with the understanding that the system should be a competitive development program and jointly funded by the Air Force and Navy in order to satisfy the requirements of both services for an all-weather standoff attack control system.

Joint aircraft engine development program

The conferees approved the House proposal to transfer $15,000,000 from fiscal year 1977 to fiscal year 1979 so that a joint competitive Navy/Air Force effort to develop an alternative engine for the F-14 aircraft, the F-16 aircraft, and other near-term aircraft engine requirements can be undertaken. An additional $26,000,000 already appropriated remains available for this purpose. Modification of existing engines should be considered in this competition.

MK-48 half-length torpedo

The conferees agreed not to provide $3,000,000 specifically for the MK-48 half-length torpedo since the House had already recommended that this proposal should be considered as one of the options for the MK-XX advanced ASW torpedo development program.

AN/UYK-7 and AN/UYK-20 computers

With respect to the Navy's AN/UYK-7 and AN/UYK-20 general purpose computers, the conferees agreed that the Navy is not to improve or buy improvements to the central processor units of these computers in order to provide more capability, performance, or memory. Instead, the Navy is directed to competitively develop and produce the new Navy Embedded Computer System (NECS) as soon as possible.

Naval Arctic Research Laboratory

With respect to the Naval Arctic Research Laboratory (NARL), Pt. Barrow, Alaska, the conferees direct the Navy and OSD to consider a broad range of alternatives for scaling down and/or phasing out research and development funding for overhead administrative costs in support of NARL. If the $5,784,000 recommended in this bill for the NARL is insufficient to accomplish the wishes of the conferees, the Committees will entertain a subsequent reprogramming of funds, not to exceed $5,000,000, during fiscal year 1979.

PCH-1 "High Point" hydrofoil

The conferees agreed that the PCH-1 "High Point" hydrofoil ship be retained in service as a test vehicle through fiscal year 1980.

Amendment No. 61: Deletes Senate language transferring $26,000,000 from Research, Development, Test and Evaluation, Navy, 1978/1979.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE

Amendment No. 62: Deletes the subheading "(Including Transfer of Funds)", as proposed by the Senate.

Amendment No. 63: Appropriates $4,131,040,000 instead of $4,155,700,000 as proposed by the House and $4,067,600,000 as proposed by the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

Program	Budget	House	Senate	Conference
Heartline demonstration program	2,200	----------	2,200	2,200
Engine model derivative program	2,900	2,900	1,000	1,000
Undistributed reduction	----------	−10,000	−20,000	−20,000
Strategic bomber enhancement	63,300	63,300	58,300	58,300
Integrated nudets	9,100	9,100	16,100	9,100
B-1	105,500	105,500	55,000	55,000
Cruise missile carrier	41,200	41,200	20,600	20,600
Space defense system	73,000	84,000	73,000	73,000
Minuteman squadrons	54,100	54,100	56,600	54,100
Advanced B-52 defensive avionics	----------	7,000	----------	3,500
General reduction	----------	−8,800	----------	----------
Night attack aircraft	10,000	10,000	----------	----------
Adv attack weapons	28,600	8,100	11,100	11,100
Low altitude afld attack system	26,000	31,000	26,000	26,000
Other operational equipment	14,600	14,600	12,500	12,500
Improved tactical bombing	16,500	16,500	7,500	7,500
Recon/electronic warfare equipment	11,200	6,700	11,200	6,700
TAC C3 counter-measures	4,000	----------	4,000	4,000
Drone/remotely piloted vehicle system development	4,000	----------	7,400	----------
Surface def supression	26,000	26,000	14,000	14,000
Expendable drones	3,800	----------	3,800	3,800
Traffic cntrl/approach/landing system	8,600	8,600	3,700	3,700
Advanced medium stol transport (AMST)	----------	3,000	14,000	5,000
Theater ballistic missile	----------	----------	20,000	20,000
Satellite system survivability	19,200	23,200	19,200	23,200
Satellite contl sta survivability	1,000	1,000	----------	----------
Special activities	195,464	137,064	144,764	163,764
Narrowband autosevocom II	----------	340	----------	340
Preliminary design and devel	3,800	2,100	1,000	1,000
Common NATO munitions	20,200	9,900	3,000	3,000
Foreign weapons evaluation	3,500	3,500	2,000	2,000
Test and evaluation support	287,000	287,000	250,000	280,000
General reduction floor	----------	−30,840	----------	----------
GBU-15 glide bomb	----------	----------	----------	37,000

Advanced medium STOL aircraft

The Senate had recommended $14,000,000 and the House $3,000,000 for the Advanced Medium STOL (AMST) aircraft program. The conference agreement provides $5,000,000 for the completion of source selection. The fiscal year 1978 and 1979 funds are available for this purpose, and are not to be used to initiate full scale engineering development after a source selection is made. However, remaining funds should be used to continue limited engineering work. In the process of determining the future of the program—independent of source selection—the Department of Defense should consider alternative programs. It is the intent of the conferees that should the Department of Defense desire to proceed further with this tactical airlift modernization program, the Congress is to be provided with a Mission Element Need Statement (MENS) and complete justification including a full funding profile.

GBU-15 glide bomb

The conferees agreed to provide $37,000,000 in this appropriation for additional testing of the GBU-15 glide bomb. After further testing is completed and the Secretary of Defense has again approved production, the Committees will consider a reprogramming request. Any portion of the $37,000,000 not used for testing may be proposed for transfer to the procurement appropriation to begin production, subject to the approval of the appropriate committees.

Reconnaissance/electronic warfare equipment (Quick Strike Reconnaissance)

The conferees agreed with the House position in not funding the Quick Strike Reconnaissance program and deleted the $4,500,000 requested for this purpose. The con-

ferees agreed that with the approval of the TR-1 tactical reconnaissance aircraft program the Quick Strike Reconnaissance program would be duplicative and unnecessary.

Amendment No. 64: Deletes House language transferring to fiscal year 1979 $8,800,000 from Research, Development, Test and Evaluation, Air Force, 1978/1979.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE AGENCIES

Amendment No. 65: Reported in technical disagreement. The Managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $892,887,000 instead of $885,144,000 as proposed by the House and $886,638,000 as proposed by the Senate. The Managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement on items in conference is as follows:

[In thousands of dollars]

	Budget	House	Senate	Conference
Tactical technology	78,600	88,900	98,000	98,000
Uniformed Services University of Health Sciences	1,200	900	1,200	1,000
Charged particle beam technology		5,600	12,000	12,000
Undistributed reduction (DARPA)			−15,000	−15,009
Classified programs	281,809	270,266	277,709	277,409
Narrowband Autosevocom II		6,749		6,749
Technical support to D.D.R. & E./CCCI	13,759	7,559	13,759	13,759
General support for P.A. & E	3,500	1,900	3,500	3,500
General support for ISA	1,370	770	1,370	1,370
General reduction, general support for OSD			−10,900	−10,900
General support for net assessment	3,000	1,600	3,000	3,000
General support for M.R.A. & L	2,555	1,455	2,555	2,555

Uniformed Services University of the Health Sciences

The conferees agreed to provide $1,000,000 for medical research activities of the Uniformed Services University of the Health Sciences instead of $900,000 as proposed by the House and $1,200,000 as proposed by the Senate. The House report stated that fiscal year 1979 would be the last year that research funding would be provided as a separate item for the University. It stated that the University should secure research funds from other sources in the future. The conferees did not agree to this language.

TITLE VI—SPECIAL FOREIGN CURRENCY PROGRAM

Amendment No. 66: Appropriates $14,362,000 as proposed by the Senate instead of $13,092,000 as proposed by the House.

TITLE VII—GENERAL PROVISIONS

Amendment No. 67: Provide a limitation on the Overseas Dependents Education Program of $298,682,000 as proposed by the House.

Amendment Nos. 68 and 69: The Senate receded from amendment number 69 which provided for the disinterment of the remains of the United States citizens buried in the Panama Canal Zone. The Senate also receded from amendment number 68 which was technical in nature as a result of inserting amendment 69.

Amendment No. 70: The conferees agreed that the Senate recede from amendment number 70 which would have phased out appropriation support for commissary operations over a three year period.

Amendment No. 71: The House restricted the $750,000 transfer authority authorized the Secretary of Defense to funds appropriated in this Act. The Senate position would have allowed a much broader authority. The conferees agreed that the Senate should recede from its position.

Amendment No. 72: The conferees agreed to the House provision which sets a limitation on the amount of funds the Department can reimburse the Federal Employees Compensation Fund.

Amendment No. 73: The conferees agreed to delete language proposed by the Senate which would have required the Department to collect information on the amount of subcontracts by states.

Amendment No. 74: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows: In lieu of the matter stricken and inserted, insert:

(f) reimbursement of any physician or other authorized individual provider of medical care in excess of the eightieth percentile of the customary charges made for similar services in the same locality where the medical care was furnished; or (g) any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assesed or diagnosed by a physician, dentist, clinical psychologist, or certified nurse-midwife, as appropriate, except as authorized by section 1079(a)(4) of title 10, United States Code

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The Senate added a subsection to the provision on CHAMPUS which authorizes the Department to make payments to physicians at the 80th percentile on the schedule of customary charges made for similar services in the same locality where the medical care is furnished. A subsection in the Fiscal Year 1978 Defense Appropriation Act allowed payments at the 75th percentile. The conferees adopted the Senate's provision on the basis that use of the higher percentile would encourage greater participation by physicians in the CHAMPUS program.

The Senate also modified the subsection which specifies what kinds of medical practitioners are authorized direct, independent reimbursement by CHAMPUS. The Senate language amends the subsection to explicitly authorize that nursing services be reimbursable, independent of physician supervision, when provided by certified psychiatric-mental health nurse specialists, certified nurse-midwives, or other nurse practitioners. The conferees agreed that the reimbursement authority be extended to cover certified nurse-midwives, but deleted the Senate language regarding certified psychiatric-mental health nurse specialists and other nurse practitioners.

Amendment No. 75: The House reduced the number of years that an ROTC unit could be below the minimum enrollment level of 17 students in the junior class from four years, as stipulated in the FY 1978 Defense Appropriations Act, to three preceding academic years. The Senate deleted this section because the provision relies solely on enrollment as a guide to closing ROTC detachments without considering other factors. The amendment adopted by the conferees repeats the language in the Defense Appropriations Act for fiscal year 1978, providing that appropriated funds may not be used to support ROTC units which have not attained the minimum enrollment standard for the four preceding academic years.

The conferees agreed that enrollment criterion should not be the only factor in evaluating an ROTC detachment. Other criteria, such as cost per officer produced, the types of officers produced, the level of institutional support, and the retention rate of graduates by the institution, are also important considerations. While these criteria may have been considered in the past by the Department of Defense, the conferees believe that a more systematic and objective set of factors should be drawn up by the Department to evaluate the performance and cost effectiveness of ROTC detachments. Accordingly, the conferees direct the Department of Defense to submit a revision of DOD Directive 1215.8, "Policies Relating to Senior Reserve Officers' Training Corps (ROTC) Programs", to the Appropriations Committees by March 1, 1979, establishing clearly defined criteria for evaluating the performance of ROTC units and for phasing out unproductive, marginal detachments.

Amendment No. 76: Reported in technical disagreement. The managers on the part of the House offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

SEC. 853. None of the funds appropriated by this Act shall be obligated under the Competitive Rate Program of the Department of Defense for the transportation of household goods to or from Alaska or Hawaii.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 77: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

SEC. 854. (a) None of the funds appropriated by this Act or available in any working capital fund of the Department of Defense shall be available to pay the expenses attributable to lodging of any person on official business away from his designated post of duty, or in the case of an individual described under section 5703 of title 5, United States Code, his home or regular place of duty, when adequate government quarters are available, but are not occupied by such person.

(b) The limitation set forth in subsection (a) is not applicable to employees whose duties require official travel in excess of fifty percent of the total number of the basic administrative work weeks during the current fiscal year.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees agreed to exclude personnel who are in a travel status in excess of 50 percent of their working time from the requirement to occupy government quarters when these quarters are available and meet the adequacy standards set forth in the House report. This provision will ensure that employees in a student or training status, and those attending conferences, meetings, seminars, and similar functions use available government quarters while excluding personnel who are in a travel status most of the time.

Amendment Nos. 78, 79, 80 and 81: The House agreed to the Senate amendment with an amendment changing the section numbers.

Amendment No. 82: The conferees agreed that the number of full-time military personnel assigned to nonappropriated fund activities should be set at 9,901 instead of the 10,201 as proposed by the House and the 8,301 as proposed by the Senate.

The conferees agreed to a reduction of 300 military personnel in Morale, Welfare and Recreation activities instead of 1,900 as rec-

ommended by the Senate. These reductions should be allocated among the Services by the Secretary of Defense and should be made only in resale activities as discussed in the Senate report. All of the reductions should be made in resale activities within the continental United States. The conferees request the GAO to assess the financial impact of this reduction, as well as any other reduction, on the operation of the entire Morale, Welfare and Recreation system within the Department of Defense. Also, the GAO should assess the impact of this reduction on the level of service available to military personnel from these activities.

Amendment No. 83: The House agreed to the Senate amendment with an amendment changing the section number.

Amendment No. 84: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

SEC. 860. None of the funds appropriated by this Act may be used for the consolidation or realignment of advanced or undergraduate pilot training squadrons of the Navy as currently proposed by the Department of Defense.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The effect of the Senate amendment is to prohibit the consolidation of helicopter pilot training. The House had instructed its conferees not to accept the Senate amendment so that consolidation could take place. However, the Senate was adamant in its position. Therefore, the House conferees believed it prudent to take the amendment back in technical disagreement for a separate vote. The conference amendment changes the section number.

Amendment No. 85: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken by said amendment, insert:

"SEC. 861. All obligations incurred in anticipation of the appropriations and authority provided in this Act are hereby ratified and confirmed if otherwise in accordance with the provisions of this Act."

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The House language stricken by the Senate has been included in the Treasury, Postal Service, and General Government Appropriation Act, 1979.

Amendment No. 86: The conferees agreed to delete a provision proposed by the Senate which prohibited the use of appropriated funds for the direct procurement of transportation for the shipment of military exchange goods overseas.

Amendment No. 87: The conferees agreed to provide funds to extend junior enlisted travel and allowances for dependents in overseas areas as provided by the House. The conferees have also agreed to a modification of the general provision in the Senate version of the bill which establishes the policy of placing a ceiling on the number of dependents of military personnel in overseas areas. By overseas areas, the conferees exclude Alaska and Hawaii, and the U.S. administered territories and special locations such as Guam, Midway Island, Panama Canal Zone, Puerto Rico, American Samoa, Trust Territory of the Pacific and the U.S. Virgin Islands. The conferees are concerned about the large number of civilian dependents in overseas areas, especially in Europe. The conferees therefore request a detailed report from the Department of Defense by January 31, 1979, which presents the entire situation relating to the presence of large dependent populations overseas, especially in Europe, so that Congress can evaluate the extent to which military readiness and the safety of the dependent population are adversely affected by the presence of these dependents.

Amendment No. 88: The conferees agreed to the deletion by the Senate of a House provision which set a limitation on the pay and the payment of benefits to foreign national employees of the Department of Defense when those payments exceeded locally prevailing wages and practices.

The House provision was intended to correct a situation existing in several foreign countries (namely Italy, Germany, Japan, Korea, and the Philippines) in which DoD foreign national employees are receiving pay at rates in excess of those prevailing in the local economies, usually as a result of negotiated labor contracts. It was also reported that certain other practices are in effect which place unnecessary constraints on the United States and prevent assembling the most economical work force. The discrepancies between DoD pay and prevailing rates were reported by the General Accounting Office (GAO).

The conferees agreed to delete the general provision because of the adverse effect it would have on existing labor hiring arrangements, labor-management relations, employee morale, and cost sharing negotiations. However, the conferees direct the Department of Defense to actively and aggressively pursue negotiations to eliminate the causes for the disparities in wage rates and benefits reported by the GAO. These negotiations should be conducted in concert with the Department of State. Both the House and Senate Committee on Appropriations will continue to give this matter close scrutiny in future budget reviews.

Amendment No. 89: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

SEC. 863. None of funds appropriated by this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service; or except in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The language adopted by the conferees is the same as that applicable to the Departments of Labor and Health, Education, and Welfare for fiscal year 1978 and is included in the Continuing Resolution for fiscal year 1979 (H.J. Res. 1139).

TITLE IX—RELATED AGENCIES

Amendment No. 90: Provides $12,000,000 for the Intelligence Community Staff rather than $11,225,000 as proposed by the House and $12,700,000 as proposed by the Senate. The amounts provided will fund 245 positions instead of 220 positions as proposed by the House and 269 positions as proposed by the Senate. The 245 positions approved include the conversion of 21 nonreimbursable positions. Employment at the Intelligence Community Staff shall be limited to the 245 positions provided in this act, and shall not be supplemented.

The House agreed to recede from its appropriation language requiring that 20 percent of the funds appropriated be applied to activities relating to the National/Tactical Intelligence Interface and Intelligence-Related Activities. The conferees agreed, however, that the Director of Central Intelligence should continue to give significant attention to these activities and periodically report back to Congress as to what has been accomplished in this regard.

The House also agreed to recede from the requirement that 51 percent of the entire Intelligence Community Staff should be permanent cadre. The conferees agreed that in order to assure necessary independence a significant proportion of the professional staff should be permanent cadre and the Director of Central Intelligence should periodically report back to Congress on what is being done to achieve this desirable goal.

TITLE X—INTEROCEANIC CANAL STUDY COUNCIL

Amendment No. 91: The conferees agreed to delete funds included by the Senate for the Interoceanic Canal Study Council.

Consolidated telecommunications, command and control programs

For consolidated Telecommunications, Command and Control programs, which are funded in many different appropriations accounts, the conferees have agreed to a net reduction of $71,320,000 instead of reductions of $115,320,000 as proposed by the House and reductions of $67,849,000 as proposed by the Senate. This net reduction appears in various programs throughout the conference report.

Among the more significant reductions made in the communications budget this year were the following:

General Purpose Satellite Communications System	−$8,100,000
Strategic Satellite System	−13,600,000
Airborne Command Center	−1,000,000
Alternate National Military Command Center	−1,000,000
Consolidation of Communications Centers	−5,000,000
Rapid Reaction Deployable Command, Control and Communications Facility	−1,100,000

Some of these reductions will cancel programs which would have cost hundreds of millions of dollars if carried to fruition.

The conferees also agreed to two add-ons which will greatly expand the Department of Defense's communications capability:

Advanced Airborne Command Posts (AABNCP)	+$10,000,000
Automatic Secure Voice Communications System II	+5,929,000

The primary mission of the Advanced Airborne Command Posts is to serve as a mobile command post in case of a national emergency. The $10,000,000 increase is to initiate a program to upgrade the communications capability only of planes 1, 2, and 3 of the Advanced Airborne Command Post fleet, none of the funds are for planes 5 or 6 which have not yet been approved by the Congress.

The Automatic Secure Voice Communications System II add-on will provide for a less expensive and more survivable secure voice capability.

Intelligence and intelligence related activities

The conferees agreed to reductions of $98.8 million for intelligence activities instead of reductions of $133.7 million as proposed by the House and reductions of $166.7 million as proposed by the Senate.

For Intelligence Related Activities, the conferees agreed to reductions of $138.5 million instead of reductions of $241.3 million as proposed by the House and reductions of $89.3 million as proposed by the Senate. In addition, the conferees agreed to reclassification as Intelligence Related Activities of items totaling $161.2 million. These reclassifications will have no net effect on the budget

since there are offsetting decreases of comparable scope in other portions of the budget.

The reasons for the reductions and reclassifications, which are spread throughout various appropriations in order to maintain necessary security, are explained in greater detail in a classified annex to this report.

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1979 recommended by the committee of conference with comparisons to the fiscal year 1978 amount, the 1979 budget estimates, and the House and Senate bills for 1979 follow:

New budget (obligational) authority, fiscal year 1978	$112,276,158,000
Transfer from other accounts, fiscal year 1978	(358,500,000)
Total funding available, 1978	112,634,658,000
Budget estimates of new (obligational) authority, fiscal year 1979	119,300,283,000
House bill, new (obligational) authority, fiscal year 1979	119,019,278,000
Transfer from other accounts	(160,200,000)
Total funding available, 1979	119,179,478,000
Senate bill, new (obligational) authority, fiscal year 1979	116,422,972,000
Transfer from other accounts	(111,000,000)
Total funding available, 1979	116,533,972,000
Conference agreement, new (obligational) authority, fiscal year 1979	117,255,621,000
Transfer from other accounts	(122,000,000)
Total funding available	117,377,621,000
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1978	+4,979,463,000
Transfer from other accounts	(−236,500,000)
Total funding available	+4,742,963,000
Budget estimates of new (obligational) authority, fiscal year 1979	−2,044,662,000
Transfer from other accounts	(+122,000,000)
Total funding available	−1,922,662,000
House bill, new (obligational) authority, fiscal year 1979	−1,763,657,000
Transfer from other accounts	(−38,200,000)
Total funding available	−1,801,857,000
Senate bill, new (obligational) authority, fiscal year 1979	+832,649,000
Transfer from other accounts	(+11,000,000)
Total funding available	+843,649,000

GEORGE MAHON,
ROBERT L. F. SIKES,
DANIEL J. FLOOD,
J. P. ADDABBO,
JOHN J. MCFALL,
JOHN J. FLYNT, Jr.,
R. N. GIAIMO,
BILL CHAPPELL, Jr.,
BILL D. BURLISON,
(except as to certain intelligence matters),
JACK EDWARDS,
J. K. ROBINSON,
JACK KEMP,
E. A. CEDERBERG,
Managers on the Part of the House.

JOHN C. STENNIS,
WARREN G. MAGNUSON,
BILL PROXMIRE,
DANIEL K. INOUYE,
ERNEST F. HOLLINGS,
TOM EAGLETON,
LAWTON CHILES,
DALE BUMPERS,
BIRCH BAYH,
MILTON R. YOUNG,
CLIFFORD P. CASE,
TED STEVENS,
RICHARD S. SCHWEIKER,
EDWARD W. BROOKE,
Managers on the Part of the Senate.

CONFERENCE REPORT ON S. 2570

Mr. PERKINS submitted the following conference report and statement on the bill (S. 2570) to amend the Comprehensive Employment and Training Act of 1973 to provide improved employment and training services, to extend the authorization, and for other purposes.

CONFERENCE REPORT (H. REPT. NO. 95-1765)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2570) to amend the Comprehensive Employment and Training Act of 1973 to provide improved employment and training services, to extend the authorization, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Comprehensive Employment and Training Act Amendments of 1978".

COMPREHENSIVE EMPLOYMENT AND TRAINING ACT REAUTHORIZATION

SEC. 2. The Comprehensive Employment and Training Act of 1973 is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act, with the following table of contents, may be cited as the 'Comprehensive Employment and Training Act'.

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"TABLE OF CONTENTS

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"STATEMENT OF PURPOSES

"SEC. 2. It is the purpose of this Act to provide job training and employment opportunities for economically disadvantaged, unemployed, or underemployed persons which will result in an increase in their earned income, and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency by establishing a flexible, coordinated, and decentralized system of Federal, State, and local programs. It is further the purpose of this Act to provide for the maximum feasible coordination of plans, programs, and activities under this Act with economic development, community development, and related activities, such as vocational education, vocational rehabilitation, public assistance, self-employment training, and social service programs.

"DEFINITIONS

"SEC. 3. As used in this Act—

"(1) The term 'academic credit' means credit for education, training, or work experience applicable toward a secondary school diploma, a postsecondary degree, or an accredited certificate of completion, consistent with applicable State law, regulation, and policy and the requirements of an accredited educational agency or institution in a State.

"(2)(A) Except as provided in subparagraph (B), the term 'area of substantial unemployment' means any area of sufficient size and scope to sustain a public service employment program and which has an average rate of unemployment of at least 6.5 percent for the most recent 12 months as determined by the Secretary.

"(B) With respect to determinations made for fiscal year 1979, and for parts A, B, and C of title II for any fiscal year, such term means any area of sufficient size and scope to sustain such a program and which has an average rate of unemployment of at least 6.5 percent for any 3 consecutive months within the most recent 12-month period as determined by the Secretary.

"(C) Determinations of areas of substantial unemployment shall be made once each fiscal year.

"(3) The term 'artificial barriers to employment' means limitations in the hiring, firing, promotion, licensing, and other terms and conditions of employment which are not directly related to an individual's fitness or ability to perform the duties required by the employment position.

"(4) The term 'community-based organizations' means private nonprofit organizations which are representative of communities or significant segments of communities and which provide employment and training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973), agencies serving youth, union-related organizations, and employer-related nonprofit organizations).

"(5) The term 'Consumer Price Index' means the 'All Urban Consumer Index' as determined by the Secretary of Labor.

"(6) The term 'disabled veteran' means those veterans described in section 2011(1) of title 38, United States Code.

"(7) The term 'displaced homemaker' means an individual who—

"(A) has not worked in the labor force for a substantial number of years but has, during those years, worked in the home providing unpaid services for family members;

"(B)(i) has been dependent on public assistance or on the income of another family member but is no longer supported by that income, or (ii) is receiving public assistance on account of dependent children in the home but is within 6 months of no longer being eligible for such assistance; and

"(C) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

"(8) The term 'economically disadvantaged' means a person who (A) receives, or is a member of a family which (i) receives cash welfare payments under a Federal, State, or local welfare program, or (ii) had a family income during the 6-month period prior to application for the program involved which would have qualified such family for such cash welfare payments, subject to regulations of the Secretary; (B) has, or is a member of a family which has, received a total family income for the 6-month period prior to application for the program involved (exclusive of unemployment compensation and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the lower living standard income level; (C) is a foster child on behalf of whom State or local government payments are made; or (D) in cases permitted by regulations of the Secretary, is a handicapped individual living at home or

is an individual who is institutionalized or receiving services in, or is a client of, a sheltered workshop, prison, hospital, or similar institution or in community care. Except for any person who would be eligible for assistance under title V of the Older Americans Act of 1965 or a handicapped individual who is sixteen years of age or older, any person claimed as a dependent on another person's Federal income tax return under section 151(e) of the Internal Revenue Code of 1954 for the previous year shall be presumed, unless otherwise demonstrated, to be part of the person's family for the current year.

"(9) The term 'entry level' means the lowest position in any promotional line, as defined locally by collective-bargaining agreements, past practice, or applicable personnel rules.

"(10) The term 'Governor' means the chief executive of any State.

"(11) The term 'handicapped individual' means any individual who has (A) a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

"(12) The term 'Hawaiian native' means any individual any of whose ancestors were natives, prior to 1778, of the area which now consists of the Hawaiian Islands.

"(13) The term 'health care' includes preventive and clinical medical treatment, family planning services, nutrition services, and appropriate psychiatric, psychological, and prosthetic services, to the extent any such treatment or services are necessary to enable the recipient of employment and training services to obtain or retain employment.

"(14) The terms 'institutions of higher education' and 'post-secondary institutions' mean those institutions defined as institutions of higher education in section 1201(a) of the Higher Education Act of 1965.

"(15)(A) Except as provided in subparagraph (B), the term 'local educational agencies' means agencies as defined in section 195 (10) of the Vocational Education Act of 1963.

"(B) For purposes of subpart 3 of part A of title IV, such term means agencies as defined in section 1001(f) of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978.

"(16) The term 'low-income level' means $7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship to $7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest $1,000.

"(17) The term 'lower living standard income level' means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary based upon the most recent lower living family budget' issued by the Secretary.

"(18) The term 'offender' means any adult or juvenile who is or has been subject to any stage of the criminal justice process for whom employment and training services may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

"(19) The term 'project' means, for the purpose of titles II and VI, a definable task or group of related tasks which will be completed within a definable period of time, has a public service objective, will result in a specific product or accomplishment, and would otherwise not be done with existing funds.

"(20) The term 'project applicants' includes States and agencies thereof, units of general local government and agencies thereof or combinations or associations of such governmental units when the primary purpose of such combinations or associations is to assist such governmental units to provide public services, special purpose political subdivisions having the power to levy taxes and spend funds or serving such special purpose within an area served by one or more units of general local government, local educational agencies, institutions of higher education, community-based organizations, community development corporations, nonprofit groups and organizations serving Native Americans, and other private nonprofit organizations or institutions engaged in public service.

"(21) The term 'public assistance' means Federal, State, or local government cash payments for which eligibility is determined by a need or income test.

"(22) The term 'public service' includes work, including part-time work, in such fields as environmental quality, health care, education, child care, public safety, crime prevention and control, prisoner rehabilitation, transportation, recreation, maintenance of parks, streets, and other public facilities, solid waste removal, pollution control, housing and neighborhood improvements, rural development, conservation, beautification, veterans outreach, and other fields of human betterment and community improvement.

"(23) The term 'recipient' means any person, organization, unit of government, corporation, or other entity receiving financial assistance under this Act whether directly from the Secretary, or through another recipient by subgrant, contract, subcontract, agreement, or otherwise.

"(24) The term 'Secretary' means the Secretary of Labor.

"(25) The term 'State' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"(26) The term 'supportive services' means services which are designed to contribute to the employability of participants, enhance their employment opportunities, assist them in retaining employment, and facilitate their movement into permanent employment not subsidized under the Act. Supportive services may include health care, transportation, temporary shelter, child care, and financial counseling and assistance.

"(27) The term 'underemployed persons' means—

"(A) persons who are working part time but seeking full-time work; or

"(B) persons who are working full time but receiving wages below the higher of either (i) the poverty level determined in accordance with criteria as established by the Director of the Office of Management and Budget; or (ii) 70 percent of the lower living standard income level.

"(28) The term 'unemployed persons' means—

"(A) persons who are without jobs and who want and are available for work; or

"(B) except for purposes of allocation formulas—

"(i) in cases permitted by regulations of the Secretary, persons who are institutionalized in, or who have been released from a prison, hospital, or similar institution, or are clients of a sheltered workshop; or

"(ii) adults who receive, or whose families receive, supplemental security income or money payments pursuant to a State plan approved under title I, IV, X, or XVI of the Social Security Act or would, as defined in regulations to be issued by the Secretary, be eligible for such payments but for the fact that both parents are present in the home (I) who are determined by the Secretary of Labor, in consultation with the Secretary of Health, Education, and Welfare, to be available for work and (II) who are either persons without jobs, or persons working in jobs providing insufficient income to support their families without welfare assistance.

The determination of whether persons are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining persons as unemployed, but such criteria shall not be applied differently on account of a person's previous employment.

"(29) The term 'unit of general local government' means any city, municipality, county, town, township, parish, village, or other general purpose political subdivision which has the power to levy taxes and spend funds, as well as general corporate and police powers.

"(30) The term 'veterans outreach' means the veterans outreach services program carried out under subchapter IV of chapter 3 of title 38, United States Code, with full utilization of veterans receiving educational assistance or vocational rehabilitation under chapter 31 or 34 of such title 38, and the services described in section 305 of this Act.

"(31) The term 'Vietnam-era veterans' means those veterans defined in section 2011(2)(A) of title 38, United States Code, who are under 35 years of age.

"TITLE I—ADMINISTRATIVE PROVISIONS

"PART A—ORGANIZATIONAL PROVISIONS

"PRIME SPONSORS

"SEC. 101. (a) A prime sponsor under this Act shall be—

"(1) a State;

"(2) a unit of general local government which has a population of 100,000 or more persons on the basis of the most satisfactory current data available to the Secretary;

"(3) any consortium of units of general local government which includes any unit of general local government qualifying under paragraph (2);

"(4) any unit of general local government or any consortium of such units, without regard to population, which in exceptional State and local officials, is determined by the Secretary—

"(A)(i) to serve a substantial portion of a functioning labor market area, or (ii) to be a rural area having a high level of unemployment; and

"(B) to have demonstrated (i) that it has the capability for adequately carrying out programs under this Act, (ii) that there is a special need for services within the area to be served, and (iii) that it will carry out such programs and services in such area as effectively as any larger unit of general local government in the jurisdiction of which it is located or as the State;

"(5) a limited number of existing concentrated employment program grantees serving rural areas having a high level of unemployment which the Secretary determines have special capabilities for carrying out programs in such areas and are designated by the Secretary for that purpose; and

"(6) any unit of general local government previously designated as a prime sponsor under the provisions of this Act (as in effect prior to the effective date of the Comprehensive Employment and Training Act Amendments of 1978), regardless of a population decline below 100,000 persons, which the Secretary certifies has demonstrated its effectiveness in, and continues to have the capability for, adequately carrying out programs under this Act.

"(b)(1) A State shall not qualify as a prime sponsor for any geographical area within the jurisdiction of any prime sponsor described in paragraph (2), (3), (4), (5), or (6) of subsection (a) unless such prime sponsor has not submitted an approvable comprehensive employment and training plan for such area.

"(2) A larger unit of general local government shall not qualify as a prime sponsor with respect to the jurisdiction within its area of any smaller eligible unit of general local government unless such smaller unit has not submitted an approvable compre-

hensive employment and training plan for such area.

"(c) An applicant shall submit to the Secretary a notice of intent to be a prime sponsor for a fiscal year by such date as the Secretary shall prescribe. The Secretary shall designate as a prime sponsor any applicant submitting such a notice unless the Secretary determines that such applicant does not qualify under this section.

"(d) State prime sponsors shall, in coordination with units of general local government, make appropriate arrangements for appropriate area planning bodies to serve subareas within the State prime sponsor's area for the purpose of assisting in the effective planning and delivery of comprehensive employment and training programs in such subareas, in accordance with such regulations as the Secretary may prescribe.

"AUTHORITY OF SECRETARY TO PROVIDE SERVICES

"SEC. 102. In any area for which no prime sponsor has been designated or where the Secretary has taken an action under section 104 or section 106 which results in employment and training services not being provided in such area, the Secretary shall use funds allocated to such prime sponsor to make payments directly to public agencies or private nonprofit organizations as if the Secretary were the prime sponsor for that area.

"COMPREHENSIVE EMPLOYMENT AND TRAINING PLAN

"SEC. 103. (a) In order to receive financial assistance under this Act, a prime sponsor designated under section 101(c) shall submit to the Secretary a comprehensive employment and training plan. Such plan shall consist of a master plan and an annual plan. The master plan shall serve as the long-term charter under which the programs of such prime sponsor shall be operated. Such plan shall be sufficiently detailed to provide the Secretary and the prime sponsor with a thorough understanding of the economic conditions of the area and of the prime sponsor's long-term programmatic and administrative arrangements to insure that each annual program is designed and implemented in a manner best suited to such conditions and in a manner consistent with the requirements of this Act. The formulation of such plan by the prime sponsor shall involve the active participation of the prime sponsor planning council, and such plan shall—

"(1) include (A) a detailed analysis of the area to be served, including geographic and demographic characteristics of significant segments of the population to be served (with data indicating the number of potential eligible participants and their income and employment status), and (B) a comprehensive labor market analysis and assessment of the economic conditions in the area, identifying the availability of employment and training in various public and private labor market sectors in such area and the potential for job growth in such sectors;

"(2) include a statement of the long-term goals of the prime sponsor for the improvement of such labor market and economic conditions;

"(3) include a detailed description of—

"(A) the methods and institutional arrangements which will be used to involve community based organizations, educational agencies, and other deliverers of services in the development and implementation of the programs assisted under this Act; and

"(B) the methods and criteria which will be used to select such deliverers of services from an inventory of potentially available deliverers of services (which have expressed an interest in writing) maintained by the prime sponsor as records accessible to the public;

"(4) include a detailed description of—

"(A) the prime sponsor's administrative arrangements, including the procedures to be used to supervise deliverers of service (including criteria for determining that a program has demonstrated effectiveness), to select and to place individuals on the administrative staff, to evaluate and audit the operation of such programs, and to process complaints and grievances;

"(B) the methods to be used to identify and place participants in such programs, the arrangements made with respect to providing such participants with job search assistance, counseling, and other services; and

"(C) the procedures for the selection of and the arrangements made with respect to consultation with the prime sponsor planning council, the youth council, and the private industry council;

"(5) include a description of arrangements to ensure that—

(A) employment and training services, including the development of job opportunities, will be provided to those most in need of them, including low-income persons, handicapped individuals, persons facing barriers to employment commonly experienced by older workers, and persons of limited English-speaking ability, and that the need for continued funding of programs of demonstrated effectiveness is taken into account in serving such groups and persons;

"(B) nondiscrimination and equal employment opportunities are provided; and

(C) procedures are developed which will lead to skill development and job opportunities for participants in occupations traditionally limited to individuals of the opposite sex;

"(6) provide a description of appropriate arrangements with educational agencies serving youth, community-based organizations serving the poverty community which are not represented on the prime sponsor planning council, and other special target groups, for their participation in the planning of programs included in the plan;

"(7) provide for utilizing those services and facilities which are available, with or without reimbursement, from Federal State, and local agencies to the extent deemed appropriate by the prime sponsor after giving due consideration to the effectiveness of such existing services and facilities, including the State employment service, State vocational education and vocational rehabilitation agencies, State public assistance agencies, area skills centers, local educational agencies, postsecondary training and education institutions, community action agencies, other public agencies and community-based organizations, but nothing contained herein shall be construed to limit the utilization of services and facilities of private agencies, institutions, and organizations (such as private businesses, labor organizations, and private educational and vocational institutions) which can, at comparable cost, provide substantially equivalent training or services;

(8) provide (A) a description of arrangements for (i) the use of skills centers established under section 231 of the Manpower Development and Training Act of 1962, and (ii) the use of other public vocational education facilities in such area; (B) a description of arrangements to coordinate services for which financial assistance is provided under programs administered by the Secretary relating to employment and training and related services; and (C) a description of arrangements to promote maximum feasible use of apprenticeship or other on-the-job training opportunities available under section 1787 of title 38, United States Code;

"(9) provide for and include a description of arrangements made to ensure the participation of and consultation with local educational agencies, vocational education agencies, community-based organizations, Federal and State agencies, organized labor, business, and other institutions and organizations in the conduct of programs under this Act;

"(10) include a description of procedures for the consideration of any changes in the agreement required by this subsection or in the annual plan required under subsection (b), including review of such changes by the prime sponsor planning council;

"(11) include a detailed description of recordkeeping procedures (including books of account) for the expenditure of funds received under this Act which will allow the Secretary to audit and monitor the prime sponsor's programs, and will assure adequate supervision and monitoring of such programs by the prime sponsor, particularly with respect to the eligibility of participants and the propriety of participant selection procedures and practices;

"(12) include a detailed description of procedures for the monitoring and auditing of any subgrantees or subcontractors;

"(13) include a description of the methods and arrangements which will be used to ensure the fullest possible utilization, consistent with the education and training needs identified in the plan, of public vocational education facilities and programs, and of other facilities of local education agencies in the provision of instruction in basic cognitive skills and in the development and implementation of programs assisted under this Act;

"(14) provide evidence that in the development of such plan there has been a continuing process of consultation with interested groups in the area not directly represented on the prime sponsor's planning council, including local advisory councils established under section 105(a) of the Vocational Education Act of 1963 and the private industry council established under section 704 of this Act, representatives of local education agencies, and representatives of postsecondary educational agencies;

"(15) include a description of the methods for coordination between the prime sponsor and the local State employment security agencies and delineate the specific responsibilities of each in the delivery of employment and training services for participants funded under this Act and under the Wagner-Peyser Act, with the goal of maximizing the level of coordination between the prime sponsor and the local employment security agency and minimizing duplication;

"(16) include a description of the procedures concerning academic credit developed in conjunction with the appropriate local educational agency or institution of higher education and approved by the appropriate State educational agency (including State agencies responsible for postsecondary education), or, where a prime sponsor's area includes more than one local educational agency, developed in conjunction with, and approved by, the appropriate State educational agency;

"(17) include a description of recommendations of members of the prime sponsor's planning council which were not included in the plan, together with the reasons for rejecting them;

"(18) include a description of actions to ensure compliance with personnel procedures and collective bargaining agreements;

"(19) include a description of efforts to remove artificial barriers to employment;

"(20) include a description of plans and activities to coordinate, strengthen, and expand employment and training activities under this Act with economic development activities in the private sector; and

"(21) include adequate assurances of compliance with all provisions of this Act and regulations promulgated pursuant thereto;

"(b) To receive funds for any fiscal year, a prime sponsor shall submit an annual plan, which shall include—

"(1) a description of any significant changes from the information provided in the master plan;

"(2) a description of the eligible population identified by race, sex, national origin, and age, and the proposed activities and services for participants from these significant segments of the eligible population;

"(3) a description of specific services for individuals who are experiencing severe handicaps in obtaining employment, including individuals who lack credentials, require basic and remedial skill development, have limited English-speaking ability, are handicapped, are disabled or Vietnam-era veterans, are offenders, are displaced homemakers, are public assistance recipients, are 55 years of age or older, are youth, are single parents, are women, or are other individuals who the Secretary determines have particular disadvantages in the labor market;

"(4) a description of the services to be provided, the prime sponsor's performance and placement goals (including such goals as may be established with respect to the groups identified in paragraphs (2) and (3)), and the relationship of such goals to the Secretary's performance standards;

"(5) the proposed budget for the program year, including a detailed summary of the expenditures made during the preceding year, results achieved, and changes made in the annual plan for the program year;

"(6) a description of the relationship between job development and placement under this Act and other employment and training programs in the area served, and efforts made or which will be made to coordinate programs under this Act with such other programs;

"(7) a description of programs to orient and prepare the participants for their job responsibilities;

"(8) a description of efforts to be undertaken to involve the private sector;

"(9) a statement of any intention by the prime sponsor to apply for and utilize funds provided under this Act which are not allocated by formula; and

"(10) a description of wage rates or salaries and fringe benefits to be paid to persons employed in pubic service employment and a comparison with the wages or salaries and fringe benefits paid for similar public occupations by the same employer; levels of employment not supported under this Act; layoffs, and hiring and promotional freezes in each employing agency;

"(11) a description of the procedures which will be used to promote the objectives of section 121(a)(4), including the hiring, licensing, and contracting activities of the political units, subgrantees, and contractors of such prime sponsor;

"(12) the method for determining priorities for service under title II which shall be based on objective locally established criteria to assist the prime sponsor in assuring service to those most in need, such priorities shall be based on locally determined factors such as employment status, household status, level of employability development, handicap, veteran status, age, race, sex, or other criteria deemed viable by the prime sponsor;

"(13) a list of the specific contracts from the previous year with those institutions providing training programs, including information on the rate of positive placement for individuals who have completed such programs;

"(14) a summary of any evaluation conducted of the prime sponsor's programs during preceding program years and a description of any use made of such evaluation in the modification or alteration of the prime sponsor's program;

"(15) a description of an affirmative action program for outreach to and training, placement, and advancement of handicapped individuals in employment and training programs under this Act, including—

"(A) a description of the extent to which and the methods whereby the special needs of the handicapped are to be met; and

"(B) a description of the number of handicapped individuals who were served each of the preceding two years, the types of training or employment in which they were placed, and the number of such individuals who were moved into unsubsidized employment; and

"(16) a copy of all agreements made pursuant to section 203(c).

"(c) The Secretary shall establish procedures for submittal, approval, and implementation of changes in the comprehensive employment and training plan, together with any reports required under this Act, not more than once each fiscal quarter.

"REVIEW OF PLANS

"SEC. 104. (a) Each prime sponsor shall, at least 45 days before submitting its master or annual plan to the Secretary—

"(1) transmit such plan, in order to allow at least 30 days of review and comment, to—

"(A) the Governor;

"(B) the State employment and training council;

"(C) the prime sponsor planning council and the private industry council;

"(D) appropriate units of general local government in its area; and

"(E) labor organizations in the area which represent employees engaged in work similar to that proposed to be funded;

"(2) make such plan available, in order to allow for at least thirty days of review and comment, to—

"(A) each House of the State legislature for appropriate referral;

"(B) appropriate community based organizations of demonstrated effectiveness in serving significant segments of the eligible population; and

"(C) designated educational agencies and institutions,

and give written notification of its availability; and

"(3) make such plan available to the general public through such means as public hearings, newspapers, bulletins, and other media, including publications that primarily serve significant segments of the eligible population.

"(b) The prime sponsor shall consider any comments or recommendations received and shall transmit to the Secretary copies of the comments and recommendations of the Governor, the State employment and training council, and the prime sponsor planning council.

"(c)(1) The Secretary shall review each comprehensive employment and training plan to determine whether it is complete, whether it meets the requirements of this Act and the regulations promulgated under this Act and other applicable law, and whether, taking into account such factors as past performance and the recommendations made by the Governor, the State employment and training council, and the prime sponsor planning council, it is adequately designed to carry out an effective and well-administered program. The Secretary shall require the prime sponsor to take such action as the Secretary deems necessary to bring its plan and programs into conformance with the Act and the regulations promulgated under this Act or to improve the administration and effectiveness of its programs. If it is determined that such action is made necessary as a result of the Secretary's review of recommendations submitted by the Governor, the State employment and training council, or the prime sponsor planning council, the Secretary shall request an explanation of why the prime sponsor rejected such recommendations.

"(2) The Secretary shall, prior to approval of any plan, require the inclusion in such plan of specific management and accounting procedures to assure adequate supervision and monitoring of the programs to be conducted pursuant to such plan, and shall require the adoption of specific procedures (such as accrual accounting procedures), where necessary for such purpose.

"(3) The Secretary shall, prior to approval of any plan, ensure that the prime sponsor has demonstrated a recognizable and proven method of verifying eligibility of all participants. The Secretary may require modification or the adoption of specific procedures where necessary for such purposes. The Secretary shall also develop recognizable penalties and inform the prime sponsors of such penalties to be applied upon a finding of the ineligibility of any participant. In reviewing such plans, the Secretary shall insure that the plans adequately describe, and the prime sponsor demonstrates a thorough understanding of, labor market and economic conditions in the area served, that the plan is reasonably designed to respond to such conditions, that the administrative arrangements and procedures are adequate for the performance of the program and will insure that professional standards of management will be attained, and that the plans provide for adequate relationships with existing community efforts and maximize the use of existing resources.

"(4) The Secretary may disapprove all or any portion of a plan if he finds that the use of funds for a particular subcontract or subgrant provided within that portion of the plan would be grossly inefficient or fail to carry out the purposes of this Act.

"(d)(1) The Secretary shall disapprove any plan that does not fully satisfy the review under subsection (c), after a reasonable opportunity, but not less than 30 days, has been given to the prime sponsor to remedy any defect found in the plan and the prime sponsor has failed to do so.

"(2) Whenever the Secretary disapproves a plan he shall transmit a notice of disapproval to the prime sponsor and the Governor, accompanied by a statement of reason for the disapproval. The Secretary shall not disapprove a plan without first affording an opportunity for a hearing to the prime sponsor.

"(e)(1) The Secretary shall, not later than March 31 of the fiscal year preceding the fiscal year for which an annual plan is to take effect, establish a date for the submission of such annual plan. The Secretary shall make available to each prime sponsor a complete and final set of all applicable regulations and necessary application materials no later than May 15 of the fiscal year preceding the fiscal year for which such plan is to take effect. With respect to funds allocated under this Act on the basis of a formula, the Secretary shall also provide prime sponsors with a preliminary planning estimate based on the amounts available in the budget of the President or in the most recent concurrent budget resolution under the Congressional Budget Act applicable to such year. If for any reason the Secretary cannot provide a complete and final set of all applicable regulations and necessary application materials by such May 15 prior to the date established under the first sentence of this subsection, the Secretary shall extend the date for submittal of such plan to allow the prime sponsor to review such regulations and to complete such materials prior to submittal.

"(2) During the period of time between May 15 and the date for submittal of the plan, the Secretary shall not issue any regulations or guidelines or interpretations thereof that require any change in the prime sponsor's plan, which is a condition for the Secretary's approval or disapproval of the plan. If the Secretary deems that a plan change is required during this period, the Secretary shall allow at least one fiscal quarter for the prime sponsor to submit such change, except that the sponsor may at its own discretion submit the required change

as part of its plan submittal under paragraph (1).

"GOVERNOR'S COORDINATION AND SPECIAL SERVICES PLAN

"SEC. 105. (a) Any State seeking financial assistance under this Act shall submit a Governor's coordination and special services plan to the Secretary.

"(b) Governor's coordination and special services activities shall include the following—

"(1) coordinating all employment and training, education, and related services provided by the State, by prime sponsors, by State education agencies and other appropriate institutions of vocational and higher education, State and local public assistance agencies, and by other providers of such services within the State;

"(2) coordinating programs financed under the Wagner-Peyser Act and this Act, including assisting in the negotiation of any agreements (including partnership arrangements described in section 308) between prime sponsors and State employment security agencies;

"(3) assuring that comprehensive employment and training plans do not unnecessarily result in the duplication of services;

"(4) assisting the Secretary in enforcing the requirements for Federal contractors and subcontractors to list all suitable employment openings with local offices of the State employment service agencies and to take affirmative action, as required in section 2012(a) of title 38, United States Code;

"(5) assuring the promotion of prime sponsor planning that takes into account conditions prevailing in labor market areas covering more than one prime sponsor area, as well as related activities such as community development, economic development, vocational education, vocational rehabilitation, and social services;

"(6) exchanging of information between States and prime sponsors with respect to State, interstate, and regional planning for economic development, human resource development, education, and other subjects relevant to employment and training planning;

"(7) developing and providing to prime sponsors information on a State and local area basis regarding economic, industrial, and labor market conditions;

"(8) making available to prime sponsors, with or without reimbursement and upon request, appropriate information and technical assistance to assist them in developing and implementing their programs;

"(9) carrying out special model training and employment programs and related services, which may include programs for offenders similar to programs described in section 301(b)(2);

"(10) providing financial assistance for special programs and services designed to meet the needs of rural areas outside major labor market area;

"(11) providing labor market and occupational information to prime sponsors and appropriate educational agencies and institutions without reimbursement; and

"(12) facilitating and fostering the activities of the State Occupational Information Coordinating Committee established pursuant to section 161(b)(2) of the Vocational Education Act of 1963, with special emphasis on the systematic use of occupational information for prime sponsor planning as well as assisting and encouraging the development and use of career outlook information for individuals who are receiving rehabilitation services, students in local schools, and individuals using the services of prime sponsors and local offices of State employment security agencies.

"(c) A Governor's coordination and special services plan shall be approved by the Secretary only if the Secretary determines that the plan satisfactorily implements subsection (b).

"COMPLAINTS AND SANCTIONS

"SEC. 106. (a)(1) Except for complaints subject to the provision of paragraph (2), each prime sponsor receiving financial assistance under this Act or contractor or grantee under title III shall establish and maintain a grievance procedure, including provision for hearings within 30 days after the filing of a grievance, and for handling complaints about the program arising from its participants, subgrantees, contractors, and other interested persons. Hearings under such procedure shall be conducted expeditiously and decisions shall be made not later than 60 days after the filing of the grievance involved. With the exception of grievances alleging fraud or any criminal activity, the filing of a grievance must be made within one year of the alleged occurrence.

"(2) Whenever the recipient of financial assistance under this Act is an employer and the participant is an employee of that employer, the recipient shall continue to operate or shall establish and maintain a grievance procedure relating to the terms and conditions of employment.

"(b) Whenever the Secretary receives a complaint from any interested person or organization (which has exhausted the prime sponsor's grievance system under subsection (a)(1) or which has exhausted or failed to achieve resolution of the grievance under the recipient's grievance system under subsection (a)(2) or under a collective bargaining agreement within the time limits prescribed in subsection (a)(1) or in such agreement) which alleges, or whenever the Secretary has reason to believe (because of an audit, report, on-site review, or otherwise) that a recipient of financial assistance under this Act is failing to comply with the requirements of this Act, the regulations under this Act, or the terms of the comprehensive employment and training plan, the Secretary shall investigate the matter. The Secretary shall conduct such investigation, and make the final determination required by the following sentence regarding the truth of the allegation or belief involved, not later than 120 days after receiving the complaint. If, after such investigation, the Secretary determines that there is substantial evidence to support such allegation or belief that such a recipient is failing to comply with such requirements, the Secretary shall, after due notice and opportunity for a hearing to such recipient, determine whether such allegation or belief is true.

"(c)(1) The Secretary shall revoke all or any part of a prime sponsor's comprehensive employment and training plan and terminate financial assistance thereunder, if prior notice and opportunity for a hearing have been given, when the Secretary determines that the prime sponsor is maintaining a pattern or practice of discrimination in violation of section 132.

"(2) The Secretary shall have the authority to revoke a prime sponsor's comprehensive employment and training plan and terminate financial assistance thereunder, if prior notice and opportunity for a hearing have been given, when the Secretary determines that the prime sponsor is—

"(A) failing to make opportunities available equitably among the significant segments of the eligible population in the area it serves;

"(B) failing to provide participants with employment or training opportunities at levels of skill and remuneration that are commensurate with their capabilities or potential capabilities;

"(C) failing to give due consideration to the eligible population in areas of chronic or concentrated unemployment;

"(D) failing to give due consideration to funding of programs of demonstrated effectiveness;

"(E) incurring unreasonable administrative costs in the conduct of activities and programs, as determined by the Secretary pursuant to regulations under this Act;

"(F) materially failing to expend funds in a reasonable period of time; or

"(G) otherwise materially failing to carry out the purposes and provisions of this Act or the regulations promulgated pursuant to this Act.

"(d)(1) If the Secretary concludes that any recipient of funds under this Act is failing to comply with any provision of this Act or the regulations under this Act or that the recipient has not taken appropriate action against its subcontractors, subgrantees, and other recipients, the Secretary shall have authority to terminate or suspend financial assistance in whole or in part and order such sanctions or corrective actions as are appropriate, including the repayment of misspent funds from sources other than funds under this Act and the withholding of future funding, if prior notice and an opportunity for a hearing have been given to the recipient. Whenever the Secretary orders termination or suspension of financial assistance to a subgrantee or subcontractor (including operators under a nonfinancial agreement), the Secretary shall have authority to take whatever action is necessary to enforce such order, including action directly against the subgrantee or subcontractor, and an order to the primary recipient that it take such legal action, to reclaim misspent funds or to otherwise protect the integrity of the funds or ensure the proper operation of the program.

"(2) If the Secretary concludes that a public service employment program is being conducted in violation of section 121(e)(2), (e)(3), (g)(1), section 122(c), (e), or section 123(g), or regulations promulgated pursuant to such sections, the Secretary shall, pursuant to paragraph (1) of this subsection, terminate or suspend financial assistance in whole or in part, order the repayment of misspent funds from sources other than funds under this Act or other funds used in connection with programs funded under this Act (unless, in view of special circumstances as demonstrated by the recipient, the Secretary determines that requiring repayment would not serve the purposes of attaining compliance with such sections), and order such other sanctions or corrective actions as are appropriate.

"(e) In emergency situations, as determined by the Secretary, when it is necessary to protect the integrity of the funds or ensure the proper operation of the program, the Secretary may immediately terminate or suspend financial assistance in whole or in part, provided that prompt notice and opportunity for a subsequent hearing, within 30 days after such termination or suspension, are given to the recipient. The Secretary shall not delegate any of the functions or authority specified in this subsection other than to an officer whose appointment was required to be made by and with the advice and consent of the Senate.

"(f) If the Secretary determines that any recipient under this Act has—

"(1) discharged or in any other manner discriminated against a participant or against any person in connection with the administration of the program involved or against any person because such person has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding or investigation under or related to this Act, or otherwise unlawfully denied to any person a benefit to which that person is entitled under the provisions of this Act or the Secretary's regulations, or

"(2) discriminated against any person, failed to serve equitably significant segments of the eligible population, or failed to provide

employment or training opportunities at levels of skill and remuneration that are commensurate with the participant's capabilities or potential capabilities;

the Secretary shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved person, or both.

"(g) The Secretary may withhold funds otherwise payable under this Act in order to recover any amounts expended in any fiscal year in violation of any provision of this Act, any regulation promulgated pursuant to this Act, or any term or condition of assistance under this Act. In the event of any such withholding which results from fraud or abuse, the Secretary may order the prime sponsor to conduct the program as specified in the applicable plan on the basis of funds other than funds under this Act and may enforce such order by appropriate civil action, unless the prime sponsor elects to terminate participation as a grantee under this Act.

"(h) With the consent and consideration of State agencies charged with the administration of State laws, the Secretary shall be authorized, for the purpose of carrying out this section and section 133, to utilize the services of State and local agencies and their employees. Notwithstanding any other provision of law, the Secretary is authorized to reimburse, in whole or in part, such State and local agencies and their employees for services rendered for such purposes.

"(i)(1) Except as otherwise provided in subsection (e), the Secretary shall not revoke a prime sponsor's plan, in whole or in part, nor institute corrective action on sanctions against a prime sponsor under this section or any other provision of this Act, without first providing the prime sponsor with notice by the Secretary of his intended actions and the reasons upon which those intended actions are based, and also providing the prime sponsor—

"(A) with an opportunity to informally resolve those matters contained in the Secretary's notice; and

"(B) in the event that the prime sponsor and the Secretary cannot informally resolve any matter pursuant to clause (A), with a notice that (i) indicates that efforts to informally resolve matters contained in the Secretary's original notice have been unsucessful; (ii) lists those matters upon which the parties continue to disagree; and (iii) informs the prime sponsor of any sanctions, corrective action or any other alteration or modification of the prime sponsor's plan or program intended by the Secretary.

"(2) Within 10 days of receipt of the Secretary's notice under paragraph (1)(B), the prime sponsor may request a hearing, but in no event shall the Secretary proceed under this Act without first fulfilling all the requirements under this subsection.

"(j) In order to ensure compliance with the provisions of this Act and regulations promulgated under this act and to ensure conduct of programs in a manner consistent with the purposes and objectives of this Act; the Secretary may require prime sponsors to participate in unified programs established by the Secretary to provide for the audit of both prime sponsors and their respective subgrantees and subcontractors. In any such case the Secretary may require the prime sponsor to pay, from funds under this Act available to it for administrative expenses, that portion of the unified audit expenses allocable to the audit of such subgrantees and subcontractors.

"(k) Nothing in this section shall be deemed to reduce the responsibility and full liability of the prime sponsors and other recipients which receive funds directly from the Secretary.

"(l) The existence of remedies under this section shall not preclude any person, who alleges that an action of a prime sponsor or of any other recipient violates any of the provisions of the Act or the regulations promulgated under the Act, from instituting a civil action or pursuing any other remedies authorized under Federal State, or local law.

"JUDICIAL REVIEW

"SEC. 107. (a) If any prime sponsor is dissatisfied with the Secretary's final action with respect to the disapproval of its comprehensive employment and training plan under section 104, or if any recipient is dissatisfied with the Secretary's final action with respect to a sanction under section 106, or if any interested person is dissatisfied with or aggrieved by any final action of the Secretary authorized under section 106, such prime sponsor, recipient, or person may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which the prime sponsor, recipient, or person resides or transacts business a petition for review of such action.

"(b) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may, in whole or in part, set aside the findings of the Secretary or remand the case to the Secretary in whole or in part to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the previous action, and shall certify to the court the record of the further proceedings.

"REALLOCATION

"SEC. 108. (a) The Secretary is authorized to reallocate any amount of any allocation under this Act to the extent that the Secretary determines that the recipient will not be able to use such amount within a reasonable period of time.

"(b)(1) Any allocations to a prime sponsor designated under section 101(c) may be reallocated only if the Secretary has provided 30 days advance notice to the prime sponsor, to the Governor, and to the general public. During such period comments may be submitted to the Secretary.

"(2) After considering any comments submitted during such period, the Secretary shall notify the Governor and the affected prime sponsor of any decision to reallocate funds, and shall publish such decision in the Federal Register.

"(3) In reallocating any such funds, the Secretary shall give priority first to other prime sponsor areas within the same State and then to prime sponsor areas within other States.

"PRIME SPONSOR'S PLANNING COUNCIL

"SEC. 109. (a) Each prime sponsor designated under section 101(c) shall establish a planning council.

"(b) Each planning council established under subsection (a) shall consist of members who are representative of the eligible population (including significant segments thereof), organized labor, employees who are not represented by organized labor, community-based organizations, the employment service, veterans organizations, representatives of handicapped individuals, vocational education agencies, public assistance agencies, other education and training agencies and institutions, business, labor, and, where appropriate agricultural employers and workers.

"(c) The prime sponsor shall appoint the members of the planning council, designate a public member as chairperson and furnish staff to provide professional, technical, and clerical assistance to the council.

"(d) The planning council shall meet no less than 5 times per year. The meetings shall be publicly announced, and, to the extent appropriate, open to and accessible to the general public.

"(e) The council shall (1) participate in the development of, and submit recommendations regarding, the prime sponsor's comprehensive employment and training plan and the basic goals, policies, and procedures of the prime sponsor's programs and of other employment and training programs in the prime sponsor's area; (2) monitor, and provide for objective evaluation of, employment and training programs conducted in such area; and (3) provide for continuing analyses of the need for employment, training, and related services in such area, including efforts to reduce and eliminate artificial barriers to employment. Special consideration shall be given to the recommendations of the planning council, but any final decision with respect to such recommendations shall be made by the prime sponsor.

"(f) The planning council shall take into consideration any comments and recommendations of the private industry council in the development of the comprehensive employment and training plan.

"STATE EMPLOYMENT AND TRAINING COUNCIL

"Sec. 110. (a)(1) Any State which desires to receive financial assistance under this Act shall establish a State employment and training council (hereinafter in this section referred to as the 'Council'). Funding for the council shall be provided pursuant to section 202(c).

"(2) The council shall be appointed by the Governor, who shall designate one public member thereof to be chairperson. The Governor shall furnish staff to provide professional, technical, and clerical assistance to the council.

"(3) The council shall be composed of—

"(A) representatives of the units or combinations of units of general local government in such State, including those which are prime sponsors, who together shall comprise at least one-quarter of the membership of the council and shall be nominated by the chief executive officers of the units or combination of units of general local government;

"(B) representatives of organized labor, business, and agricultural employers and workers, who together shall comprise one-quarter of the membership of the council;

"(C) representatives of the eligible population (including significant segments thereof) and of the general public, who together shall comprise one-quarter of the membership of the council; and

"(D) representatives of service deliverers, who together shall comprise not more than one-quarter of the membership of the council, including at least—

"(i) one representative each of the State board of vocational education and the public employment service of such State;

"(ii) one representative of the State Advisory Council on Vocational Education created pursuant to section 105 of the Vocational Education Act of 1963;

"(iii) one representative of the State public assistance agency;

"(iv) one representative of each such other State agency as the Governor may determine to have a direct interest in overall employment and training and human resource utilization within the State;

"(v) representatives of community-based organizations;

"(vi) representatives of veterans organizations; and

"(vii) representatives of handicapped individuals.

"(4) The council shall meet at such times (but at least 5 times each year) and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

"(b) The council shall—

"(1) review continuously the operation of programs conducted by each prime sponsor, and the availability, responsiveness, and

adequacy of State services, and make recommendations to the prime sponsors, to agencies providing employment and training services, to the Governor, and to the general public with respect to ways to improve the effectiveness of such programs or services;

"(2) make an annual report to the Governor which shall be a public document, and issue such other studies, reports, or documents as it deems advisable to assist prime sponsors or to otherwise help carry out the purposes of this Act;

"(3)(A) identify, in coordination with the State Advisory Council on Vocational Education, the employment and training and vocational education needs of the State and assess the extent to which employment and training, vocational education, vocational rehabilitation, public assistance, and other programs assisted under this and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs; and

"(B) comment at least once annually on the reports of the State Advisory Council on Vocational Education, which comments shall be included in the annual report submitted by that Council pursuant to section 105 of the Vocational Education Act of 1963;

"(4) review the comprehensive employment and training plans of prime sponsors pursuant to section 104, especially with respect to nonutilization or duplication of existing services;

"(5) review plans of all State agencies providing employment, training, and related services, and provide comments and recommendations to the Governor, the State agencies and the appropriate Federal agencies on the relevancy and effectiveness of employment and training and related service delivery systems in the State; and

"(6) participate in the development of the Governor's coordination and special services plan.

"CONSULTATION

"SEC. 111. (a) The Secretary shall consult with the Secretary of Health, Education, and Welfare, with respect to arrangements for services of a health, education, or welfare character under this Act, and the Secretary of Health, Education, and Welfare shall solicit the advice and comments of appropriate State agencies with respect to health, education, and welfare services. Such services shall include basic or general education; educational programs conducted for offenders; institutional training; health care, child care, and other supportive services; and new careers and job restructuring in the health, education, and welfare professions.

"(b) The Secretary, in carrying out or supporting programs under this Act, shall consult, as appropriate, with the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Director of the ACTION Agency, the Director of the Community Services Administration, the Administrator of Veterans Affairs, and such other officials as appropriate.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 112. (a)(1) There are authorized to be appropriated such sums as may be necessary for fiscal year 1979 and for each of the three succeeding fiscal years to carry out title I.

"(2)(A) There are authorized to be appropriated $2,000,000,000 for fiscal year 1979 to carry out parts A, B, and C of title II.

"(B) There are authorized to be appropriated $3,000,000,000 for fiscal year 1979 to carry out part D of title II.

"(C) Subject to subsection (b)(1), there are authorized to be appropriated such sums as may be necessary for fiscal year 1980 and for each of the two succeeding fiscal years to carry out parts A, B, C, and D of title II.

"(3) Subject to subsection (b)(2), there are authorized to be appropriated such sums as may be necessary for fiscal year 1979 and for each of the three suceeding fiscal years to carry out title III.

"(4)(A) There are authorized to be appropriated $2,250,000,000 for fiscal year 1979 to carry out title IV.

"(B) There are authorized to be appropriated $2,400,000,000 for fiscal year 1980 to carry out title IV.

"(C) There are authorized to be appropriated such sums as may be necessary for fiscal year 1981 and for the succeeding fiscal year to carry out parts B and C of title IV.

"(5) There are authorized to be appropriated such sums as may be necessary for fiscal year 1979 and for each of the three suceeding fiscal years to carry out title V.

"(6) There are authorized to be appropriated for fiscal year 1979 and for each of the three succeeding fiscal years the amount determined pursuant to section 602 to carry out title VI.

"(7)(A) There are authorized to be appropriated $500,000,000 for fiscal year 1979 to carry out title VII.

"(B) There are authorized to be appropriated $525,000,000 for fiscal year 1980 to carry out title VII.

"(8)(A) There are authorized to be appropriated $350,000,000 for fiscal year 1979 to carry out title VIII.

"(B) There are authorized to be appropriated $400,000,000 for fiscal year 1980 to carry out title VIII.

"(C) There are authorized to be appropriated such sums as may be necessary for fiscal year 1981 and for the succeeding fiscal year to carry out title VIII.

"(b)(1) Of the amount appropriated to carry out title II for fiscal years 1980, 1981, and 1982, the amount which shall be available for part D of such title for a fiscal year shall not exceed 60 percent of the total amount appropriated for such title for such fiscal year.

"(2) Of the amount appropriated to carry out this Act for any fiscal year, not more than 20 percent of such amount (excluding any amount made available for carrying out part D of title II and title VII) shall be available for carrying out the provisions of title III. From such amount made available for title III activities, the Secretary shall transfer an amount which shall not be less than $3,000,000 and not more than $5,000,000 for any fiscal year to the National Occupational Information Coordinating Committee established pursuant to section 161(b) of the Vocational Education Act of 1963 for purposes described in section 315 of this Act.

"(c) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds appropriated to carry out this Act, which are not obligated prior to the end of the fiscal year for which such funds were appropriated, shall remain available for obligation during the succeeding fiscal year, and any funds obligated in any fiscal year may be expended during a period of 2 years from the date of obligation.

"(d)(1) For the purpose of affording adequate notice of funding available under this Act, appropriations under this Act are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are first available for obligation.

"(2) In order to effect a transition to the advance funding method of timing appropriation action, the provisions of this subsection shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

"PART B—GENERAL PROVISIONS

"CONDITIONS APPLICABLE TO ALL PROGRAMS

"SEC. 121. Except as otherwise provided, the following conditions are applicable to all programs under this Act:

"(a)(1) No person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any such program because of race, color, religion, sex, national origin, age, handicap, or political affiliation or belief.

"(2) Participants shall not be employed on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship.

"(3) Every participant, prior to entering upon employment or training, shall be informed of that individual's rights and benefits in connection with such employment or training; acceptance of family planning services shall be voluntary on the part of the individual, and shall not be a prerequisite to eligibility for, or receipt of, any benefit under the program.

"(4) Programs shall contribute, to the maximum extent feasible, to the elimination of artificial barriers to employment and occupational advancement.

"(5) Prime sponsors shall make efforts to remove architectural barriers to employment of the handicapped.

"(b)(1)(A) Employment and training opportunities for participants shall be made available by prime sponsors on an equitable basis in accordance with the purposes of this Act among significant segments of the eligible population giving consideration to the relative numbers of eligible persons in each such segment.

"(B) In the administration of programs under this Act, members of the eligible population to be served shall be provided maximum employment opportunities, including opportunities for further occupational training and career advancement. Prime sponsors shall make special efforts to recruit and hire qualified persons reflecting the significant demographic segments of the population residing in the area.

"(2)(A) The Secretary shall take appropriate steps to provide for the increased participation of qualified disabled and Vietnam-era veterans (with special emphasis on those who served in the Armed Forces in the Indochina Theatre on or after August 5, 1964, and on or before May 7, 1975) in public service employment programs and job training opportunities supported under this Act, but nothing in this Act shall authorize the Secretary to establish a hiring or participation goal for such veterans. In carrying out this paragraph, the Secretary shall consult with and solicit the cooperation of the Administrator of Veterans' Affairs. Such steps shall include employment, training, supportive services, technical assistance and training, support for community based veterans programs, and maintenance and expansion of private sector veterans employment and training initiatives and such other programs or initiatives as are necessary to serve the unique readjustment, rehabilitation, and employment needs of veterans.

"(B) Special efforts shall be made to acquaint such veterans with the employment and training opportunities available under this Act, and to coordinate efforts in behalf of such veterans with those activities authorized by chapter 41 of title 38, United States Code (relating to job counseling and employment services for veterans), and other similar activities carried out by other public agencies or organizations.

"(C) Prime sponsors shall provide such arrangements as may be appropriate to promote maximum feasible use of apprenticeship or other on-the-job training opportunities

available under section 1787 of title 38, United States Code.

"(c)(1) All persons participating in training under this Act shall receive allowances pursuant to section 124; no participant may receive allowances from funds under this Act for institutional or classroom training for more than 104 weeks in a 5-year period.

"(2) Subject to section 212(b), no individual shall participate in programs receiving financial assistance under this Act for longer than a total of thirty months in any five-year period. For purposes of this subparagraph, no period of participation prior to October 1, 1978, shall be included in the computation of such thirty months.

"(d)(1) Conditions of employment and training shall be appropriate and reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant.

"(2) Appropriate health, safety and other standards for work and training shall be established and maintained.

"(3) Household support obligations shall be taken into account, and special consideration shall be given alternative working arrangements such as flexible hours of work, work-sharing arrangements, and part-time jobs, particularly for parents of young children and for older persons.

"(4) All programs for in-school youth shall be consistent with applicable State educational standards.

"(5) Appropriate workers' compensation or equivalent protection shall be provided to all participants.

"(e)(1) The program shall result in an increase in employment and training opportunities over those opportunities which would otherwise be available.

"(2) No currently employed worker shall be displaced by any participant (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits).

"(3) No program shall impair existing contracts for services.

"(4) No funds shall be used to assist in relocating establishments, or parts thereof, from one area to another or locating new branches, subsidiaries, or affiliates unless the Secretary determines that such relocation or location will not result in an increase in unemployment in the area of original location or in any other area.

"(f)(1) All programs, to the maximum extent feasible, shall contribute to occupational development, upward mobility, development of new careers, and overcoming sex-stereotyping (including procedures which will lead to skill development and job opportunities for participants in occupations traditionally limited to the opposite sex).

"(2) No person shall be trained for an occupation which requires less than two weeks of preemployment training unless there are immediate employment opportunities available in that occupation.

"(3) All programs shall be designed, to the maximum extent practicable, consistent with every individual's fullest capabilities, to lead to employment opportunities enabling participants to increase their earned income and to become economically self-sufficient.

"(4) No person shall be referred for training unless there is a reasonable expectation of employment in the occupation for which such person is being trained. To the extent feasible, public service jobs shall be provided in occupational fields which are most likely to expand within the public or private sector.

"(5) Programs of institutional training shall be designed for occupations in which skill shortages exist.

"(g)(1)(A) No program shall substitute funds under this Act for other funds in connection with work that would otherwise be performed.

"(B) Jobs shall be created that are in addition to those that would be funded in the absence of assistance under this Act.

"(C) Funds shall be used to supplement, and not to supplant, the level of funds that would otherwise be made available from non-Federal sources for the planning and administration of programs.

"(2) Programs shall use services and facilities available (with or without reimbursement) from Federal, State, and local agencies to the extent they are deemed effective by the prime sponsor.

"(h)(1) No nongovernmental individual, institution, or organization shall be paid funds provided under this Act to conduct an evaluation of any program under this Act if such individual, institution or organization is associated with that program as a consultant or technical advisor, or in any similar capacity.

"(2) No member of any council under this Act shall cast a vote on any matter which has a direct bearing on services to be provided by that member (or any organization which that member directly represents) or vote on any matter which would financially benefit the member or the organization which the member represents.

"(i) Except as provided in section 212(b), work experience programs conducted under this Act shall not exceed a total of 1,000 hours for any individual (other than an in-school youth), for any year, and not more than 2,000 hours within a 5-year period beginning on the effective date of the Comprehensive Employment and Training Act Amendments of 1978. Work experience shall only be for persons who need assistance in becoming accustomed to basic work requirements, including basic work skills, in order to be able to compete successfully in the labor market.

"(j) Funds available for employment benefits under this Act may be used, for the duration of participation, for contributions on behalf of participants who are, prior to July 1, 1979, enrolled in retirement systems or plans. With respect to participants enrolled in retirement systems or plans on or after such date, except as otherwise provided in regulations promulgated by the Secretary, no funds under this Act may be used for contributions to retirement systems or plans unless such contributions bear a reasonable relationship to the cost of providing benefits to participants. Such regulations shall take into consideration circumstances where efforts are being made to change State or local laws or both affecting retirement coverage for individuals who are participants in activities funded pursuant to this Act. Pursuant to section 314 of this Act, the Secretary shall provide technical assistance to recipients to enable retirement systems or plans to comply with section 122(k) and this subsection.

"(k) Small and minority-owned businesses shall be provided maximum reasonable opportunity to compete for contracts for supplies and services including, where appropriate, the use of set-asides.

"(l) The Secretary shall promulgate regulations to insure that payments to employers organized for profit shall not exceed the difference between the costs of recruiting, training, and supportive services and the costs of lower productivity associated with employing an individual who lacks the requisite skills to perform the job in which the individual is placed and such costs for those otherwise employed. The length of time for which such payments may be made shall not exceed that period of time generally required for the acquisition of skills needed for a position within a particular occupation.

"(m) Prime sponsors shall provide, where employment opportunities already exist or where there is a reasonable expectation of near-term expansion of such employment potential, employment and training opportunities in the development and use of solar, geothermal, hydroelectric, and other alternative energy technologies, and conservation, especially those clean, safe, renewable resources which may assist communities in resolving energy demand problems, thereby reducing their reliance on conventional nonrenewable fuels. For purposes of this section, solar energy sources has the meaning set forth in section 3 of the Solar Energy Research, Development and Demonstration Act of 1974.

"(n)(1) No prime sponsor may use any funds received under this Act to assist or promote union organizing. Without limiting the powers otherwise granted to the Secretary, funds found by the Secretary to be in violation of this subsection shall be refunded promptly to the United States Treasury.

"(2) No individual may be required to join a union as a condition of enrolling in a program assisted under this Act in which only institutional training is provided, unless such institutional training involves individuals employed under a collective-bargaining agreement which contains a union security provision.

"(o) No funds provided under this Act shall be paid to any nongovernmental organization, association, firm or other entity for the conduct of any program or activity (other than under title VII or on-the-job training) under this Act unless—

"(1) such organization, association, firm or other entity has a meritorious written plan which has been reviewed and evaluated by the prime sponsor or, where appropriate, the Secretary, according to standards promulgated by the Secretary and is found to meet the purposes and requirements of the Act; and

"(2) such organization, association, firm or other entity is selected on the basis of merit which shall mean at least that such organization, association, firm or other entity—

"(A) has the administrative capability to perform effectively under the program;

"(B) has submitted a written plan under paragraph (1) that compares favorably to other plans; and

"(C) has not been seriously deficient in its conduct of or participation in any Department of Labor program in the past, or, is not a successor organization to one that was seriously deficient in the past, unless the Secretary in his discretion certifies after a clear, convincing, and detailed showing, that the deficiencies will be eliminated and performances substantially improved; and

"(3) a comprehensive and independent monitoring program designed to insure compliance with the plan and this Act is in effect in accordance with standards promulgated by the Secretary requiring adequate training of monitors and procedures for the prompt follow up of problems found during the monitoring process.

The Secretary shall issue regulations to achieve the objectives of this subsection for title VII and on-the-job training programs with a minimum of burden on recipients.

"(p) No recipient shall knowingly use any funds under this Act to enroll or serve any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment.

"(q) Each prime sponsor receiving funds under this Act shall establish an independent unit to monitor compliance with the requirements of this Act, the regulations issued thereunder, and the comprehensive employment and training plan. The Secretary shall annually assess the effectiveness of the units established pursuant to the preceding sentence, with particular regard to the adequacy of provisions made for funding, staffing, and insuring the independence and

objectivity of monitoring practices and methods.

"SPECIAL CONDITIONS APPLICABLE TO PUBLIC SERVICE EMPLOYMENT

"SEC. 122. Except as otherwise provided, the following conditions shall apply to all public service employment programs receiving financial assistance under this Act:

"(a) Only persons residing within the area qualifying for assistance shall be employed, and the public services provided by such jobs, to the extent feasible, shall be designed to benefit the residents of such area.

"(b)(1)(A) Public service employment under this Act is intended for eligible persons who are the most severely disadvantaged in terms of their length of unemployment and their prospects for finding employment.

"(B) Special consideration in filling public service jobs shall be given to eligible persons who are public assistance recipients or who are eligible for public assistance but not receiving such assistance.

"(2) Special consideration shall be given to eligible disabled and Vietnam-era veterans (with special emphasis on those who served in the Indochina Theatre on or after August 5, 1964, and on or before May 7, 1975) in accordance with procedures established by the Secretary, and special attention shall be given to the development of jobs which will utilize, to the maximum extent feasible, the skills which such veterans acquired in connection with their military training and service.

"(3)(A) Special emphasis in filling public service jobs shall be given to eligible members of groups specifically identified in section 301(a) as facing particular labor market disadvantages, taking into account the household support obligations of persons applying for such jobs, but nothing in this Act shall authorize the Secretary to establish hiring or participation goals for such persons.

"(B) Special efforts shall be made to acquaint such persons with the employment and training opportunities available under this Act, and to coordinate efforts in behalf of such persons with activities authorized by section 301.

"(c)(1) No person shall be employed or job opening filled (A) when any other person not supported under this Act is on layoff from the same or any substantially equivalent job, or (B) when the employer has terminated the employment of any regular employee not supported under this Act or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a public service employee.

"(2) No funds for public service employment programs under this Act may be used to provide public services, through a private organization or institution, which are customarily provided by a State, a political subdivision, or a local educational agency in the area served by the program.

"(d) No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of persons currently employed in jobs subsidized under this Act.

"(e) No public service jobs shall be substituted for existing federally assisted jobs.

"(f) The Secretary shall assure that prime sponsors have undertaken, or will undertake, analyses and reevaluations of job descriptions and, where feasible, revisions of qualification requirements at all levels of employment, including civil service requirements and practices relating thereto, in accordance with regulations prescribed by the Secretary, with a view toward removing artificial barriers to public employment (as defined in section 3) of those whom it is the purpose of this Act to assist.

"(g) Financial records relating to public service employment programs, and records of the names, addresses, positions, and salaries of all persons employed in public service jobs, shall be maintained and made available to the public.

"(h)(1) All persons participating in public service employment shall receive wages in accordance with section 124.

"(2) No participant may be paid wages from funds under this Act for public service employment for more than 78 weeks in a 5-year period.

"(3) For purposes of subparagraph (2), no more than 26 weeks of public service employment financed in whole or in part under this Act prior to October 1, 1978 shall be considered as part of the 78 weeks.

"(4)(A) The Secretary may waive the provisions of paragraph (2) or of section 121(c)(2) to provide a temporary extension of time for a limited number of persons who were originally hired in a public service employment program prior to October 1, 1978, and who continue to be so employed on September 30, 1979, in the case of a prime sponsor which the Secretary determines has faced unusually severe hardships in its efforts to transition public service employees into regular public or private employment not supported under this Act or in the case of Native American entities who operate programs authorized under section 302(c)(1) of this Act.

"(B) The Secretary may waive the provisions of paragraph (2), with respect to any area served by a unit of general local government which is eligible to be a prime sponsor (or any area served by such a Native American entity) in which the rate of unemployment is equal to or exceeds 7 percent or, in the case of a prime sponsor which is a State, any area under the jurisdiction of a unit of general local government in which the rate of unemployment is equal to or exceeds 7 percent, to provide a temporary extension of time, which shall be no greater than 12 months in duration (and which shall be subject to the provisions of section 121(c)(2)), for persons hired on or after October 1, 1978, in a public service employment program under any title of this Act in the case of a recipient which the Secretary determines has faced unusually severe hardships in its efforts to transition public service employees into regular public or private employment not supported under this Act because of high unemployment in the area of service.

"(i)(1) Funds under this Act shall not be used to pay wages to any individual employed in a public service job at a rate in excess of $10,000 per year, but such maximum shall be adjusted upward for particular areas served by recipients as determined by the Secretary, on the basis of the wage adjustment index issued in accordance with paragraph (3) of this subsection. In no case shall such maximum be increased by more than 20 percent, except that in the case of an area in which the average wage (during the calendar year preceding the beginning of the applicable fiscal year) in employment covered under Federal or State unemployment compensation laws (without regard to any limitation on the amount of such wages subject to contribution under such law) exceeds 150 percent of the national average wage in such employment.

"(2) In order to provide the maximum number of employment and training opportunities under this Act, the Secretary shall issue appropriate standards to be maintained on an area basis with respect to average federally-supported wage rates for public service jobs under this Act. Such standards shall be designed to assure that for particular areas served by recipients, as determined by the Secretary, an annual average federally-supported wage rate per public service jobholder equivalent to $7,200, as adjusted in accordance with the wage adjustment index issued in accordance with paragraph (3) of this subsection, will not be exceeded. Average wage rates established under such standards for public service jobs for each area shall be adjusted annually by the Secretary by a percentage equal to the change in average wages in regular employment not supported under this Act in such area.

"(3) The Secretary shall issue and publish annually an area wage adjustment index based upon the ratio which annual average wages in regular public and private employment in various areas served by recipients bear to the average of all such wages nationally, on the basis of the most satisfactory data the Secretary determines to be available.

"(4)(A) Except as otherwise provided in section 609, no public service employment participant may be provided wages for any public service employment job from sources other than this Act.

"(B) Notwithstanding subparagraph (A), any person in public service employment on September 30, 1978, receiving wages from sources other than this Act may continue to receive such wages.

"(j) Notwithstanding any eligibility limitation on public service employment in this Act, a person who on September 30, 1978, held a public service employment position under this Act any continue in such position subject to subsection (h) of this section.

"(k) All persons employed in public service jobs shall be provided workers' compensation, health insurance, unemployment benefits, and other benefits and working conditions at the same level and to the same extent as other employees working a similar length of time, doing the same type of work and similarly classified. Any such classification must be reasonable and must include nonfederally financed employees, but within any single classification a distinction may be made between public service employees and other employees for purposes of determining eligibility for participation in retirement systems or plans which provide benefits based on age or service or both. Nothing in this subsection or in section 121(j) shall be deemed to require a contribution to a retirement system or plan for the purpose of providing retirement benefits based on age or service, or both, to a public service employee unless funds under this Act are available, pursuant to section 121(j) to make such contribution.

"(l) The Secretary, through State employment security agencies, shall inform unemployment compensation recipients and other applicants for assistance from the employment security agency of any available public service job for which they may be eligible.

"(m) To the extent feasible, public service jobs shall be provided in occupational fields which are most likely to expand within the public and private sectors, and to the extent compatible with such objectives, shall meet community needs including but not limited to community betterment activities (including rehabilitation of public properties, assistance in the weatherization of dwellings occupied by low income families, demonstration of energy conserving measures including solar energy techniques, removal of architectural barriers to access by handicapped persons to public facilities, and neighborhood revitalization), education, health care, transportation services, crime prevention and control, and environmental quality control.

"(n) No individual shall be eligible to be employed in a public service employment position if such individual has, within 6 months prior to the determination, voluntarily terminated, without good cause, his or her last previous full-time employment at a wage rate not less than the Federal minimum wage as prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938.

"SPECIAL PROVISIONS

"SEC. 123. (a) No authority conferred by this Act shall be used to enter into arrangements for, or otherwise establish, any employment and training programs in the lower wage industries, except for those jobs (1) for which there exists a training program, approved by the Secretary, of a specified length of time designed to teach specific skills, and (2) where the rate of labor turnover does not exceed substantially the rate of labor turnover in other industries in the same area.

"(b) The Secretary shall provide for the sharing of the comprehensive employment and training plans between the prime sponsors and other recipients in the prime sponsor's area in order to assure maximum feasible coordination of activities and programs within the area and to minimize duplication.

"(c)(1) Notwithstanding any other provisions of law, employment and training furnished under this Act in connection with weatherization projects may include work on projects for the near poor, including families having incomes which do not exceed 125 percent of the poverty level as determined in accordance with the criteria established by the Director of the Office of Management and Budget, and projects approved by the Community Service Administration pursuant to section 222(a)(5) of the Economic Opportunity Act of 1964 or the Department of Energy pursuant to title IV of the Energy Conservation and Production Act of 1976.

"(2) Recipients of funds under this title shall assure an adequate number of supervisory personnel for weatherization projects, who shall be adequately trained in skills needed to carry out the project and to instruct participants in skills needed to carry out a project.

"(3) The Secretary shall facilitate and extend projects for work on the weatherization of low income housing in titles II, III, IV, and VI of this Act, so as to achieve the most efficient match of manpower funds to materials funds. The Secretary shall, in coordination with other appropriate agencies, provide technical assistance and otherwise encourage prime sponsors, serving areas where such projects would contribute to energy savings, to develop and continue weatherization projects as part of their programs under this Act to best prepare applicants for employment in energy related jobs in unsubsidized employment.

"(4) The Secretary shall issue regulations setting forth conditions under which prime sponsors, in carrying out community improvement projects, community betterment activities, and public service employment projects under this Act, may provide work for eligible participants on the rehabilitation of housing for lower-income families as defined in section 8(f)(1) of the United States Housing Act of 1937 as part of community revitalization or stabilization projects.

"(d)(1) All allocations under this Act shall be based on the latest available data and estimates satisfactory to the Secretary.

"(2) Whenever the Secretary allocates funds required to be allocated by formula under this Act, the Secretary shall publish the proposed amount to be distributed to each prime sponsor.

"(3) Whenever the Secretary utilizes a formula to allocate funds made available for distribution in the Secretary's discretion under the Act (except funds appropriated for title III), the Secretary shall, not later than 30 days prior to such allocation, publish the formula in the Federal Register for comment along with the rationale for the formula and the proposed amount to be distributed to each prime sponsor. After consideration of comments received under the preceding sentence, the Secretary shall publish final allocations.

"(e) For purposes of eligibility for participation in a program under this Act, no person shall be considered as unemployed unless such person has been unemployed for at least seven consecutive days.

"(f)(1) All funds received under any title of this Act, which are allowed to be used for administrative costs under the provisions of the title under which they were received, may be pooled by the recipient so that they may be used to administer all programs under this Act, and may be used to plan for the administration of title VI programs without regard to present funding for such programs.

"(2) Nothing in section 121 or this section shall be deemed to authorize the Secretary to pre-approve the selection of legal counsel by a prime sponsor, but the Secretary shall assure that no funds available for administrative costs under any title of this Act are used by a prime sponsor for making payments on contracts for legal or other associated services unless the prime sponsor certifies that—

"(A) the payments are not unreasonable in relation to the fees charged by other contractors providing similar services; and

"(B) the services could not be competently provided through employees of the prime sponsor or other available State or local governmental employees.

"(g) The Secretary, by regulation, shall establish such standards and procedures for recipients of funds under this Act as are necessary to assure against program abuses including, but not limited to, nepotism; conflicts-of-interest; the charging of fees in connection with participation in the program; excessive or unreasonable legal fees; the improper commingling of funds under the Act with funds received from other sources; the failure to keep and maintain sufficient, auditable, or otherwise adequate records; kickbacks; political patronage; violations of applicable child labor laws; the use of funds for political, religious, anti-religious, unionization, or antiunionization activities; the use of funds for lobbying local, State, or Federal legislators; and the use of funds for activities which are not directly related to the proper operation of the program.

"(h) Pursuant to regulations of the Secretary, income generated under any program may be retained by the recipient to continue to carry out the program, notwithstanding the expiration of financial assistance for that program.

"(i) Every recipient which receives funds directly from the Secretary shall be responsible for the allocation of such funds and the eligibility of those enrolled in the program and shall have the responsibility to take action against its subcontractors, subgrantees, and other recipients to eliminate abuse in their programs and to prevent any misuse of funds by such subcontractors, subgrantees, and other recipients. Prime sponsors may delegate the responsibility for determination of eligibility under reasonable safeguards, including provisions for reimbursement of cost incurred because of erroneous determinations made with insufficient care, provided that the Secretary has approved such an arrangement pursuant to the provisions of section 104(a).

"(j) Federal assistance under this Act shall not be used for the payment of a fee for the placement of any persons in a training or employment program under this Act. Nor may any person or organization charge a fee for the placement or referral of any person in or to such program.

"(k) The Secretary shall notify the Governor and the appropriate prime sponsor of any activity to be funded by the Secretary under this Act within the State or prime sponsor area.

"(l) The Secretary and recipients of financial assistance under this Act shall give special consideration, in carrying out programs authorized by this Act, to community-based organizations, as defined in section 126(1), which have demonstrated effectiveness in the delivery of employment and training services.

"(m) The Secretary of Labor may assist Native American entities which are eligible to receive assistance under section 302, in applying for financial assistance under the Act.

"WAGES AND ALLOWANCES

"SEC. 124. Except as otherwise provided in this Act, the following allowances and wages shall apply to all activities financed under this Act:

"(a)(1) The Secretary shall establish a basic hourly allowance for an individual receiving training for which no wages are payable at a rate which, when added to the amounts of unemployment compensation, if any, received by the trainee, shall be no less than the hourly minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938 or, if higher, under the State or local minimum wage law applicable to most employees in the State, and such basic allowances shall, in the case of an individual with dependents be increased by $5 a week for each dependent over 2 up to a maximum of 4 additional dependents.

"(2) Pursuant to regulations of the Secretary, the prime sponsor may increase, decrease, prorate, or waive the basic allowance.

"(3) Except for trainees receiving allowances under title IV, a trainee receiving public assistance, or whose needs or income is taken into account in determining such public assistance payments to others, shall receive an incentive allowance for each hour spent in training not to exceed $30 per week. Such allowance shall be disregarded in determining the amount of public assistance payments under Federal or federally assisted public assistance programs.

"(4) A trainee shall receive no allowances for hours during which the trainee fails to participate without good cause.

"(b) A person in public service employment or similar employment shall be paid wages which shall not be less than the highest of (1) the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938 (2) the minimum wage under the applicable State or local minimum wage law or (3) the prevailing rates of pay for persons employed in similar occupations by the same employer.

"(c) Persons in on-the-job training shall be compensated by the employer at such rates, including periodic increases, as may be deemed reasonable under regulations prescribed by the Secretary, considering such factors as industry, geographical region, skill requirements and individual proficiency, but in no event less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable State or local minimum wage law.

"(d) Persons in work experience shall be paid wages not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable State or local minimum wage law.

"LABOR STANDARDS

"SEC. 125. All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating of projects, buildings, and works which are federally assisted under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5). The Secretary shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 1, 1934, as

amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)).

"SECRETARY'S AUTHORITY AND PERFORMANCE STANDARDS

"SEC. 126. (a)(1) The Secretary may, in accordance with chapter 5, title 5, United States Code, prescribe such rules and regulations, including performance standards, as deemed necessary in accordance with paragraph (2). Such rules and regulations may include adjustments authorized by section 204 of the Intergovernmental Cooperation Act of 1968. For purposes of chapter 5 of such title any condition for receipt of financial assistance shall be deemed a rule to which section 553 applies. All such rules, regulations, guidelines, and other published interpretations or orders under this Act shall be published in the Federal Register at least 30 days prior to their effective date. Copies of all such rules, regulations, guidelines, and other published interpretations or orders shall be transmitted to the appropriate committees of the Congress at the same time and shall contain with respect to each material provision of such rules, regulations, guidelines, and other published interpretations or orders, citations to the particular substantive section of law which is the basis therefor.

"(2) The Secretary shall assess the adequacy of each prime sponsor's proposed performance and placement goals in accordance with performance standards which recognize that performance will vary with local conditions and the nature of employment barriers faced by the eligible population to be served. Performance standards shall provide appropriate recognition of differences associated with the degree of disadvantage or handicap of the eligible population, as well as such factors as—

"(A) the local labor market conditions, including the levels of unemployment, and the current and projected labor market demands;

"(B) the economic base of the community, including the growth or decline of industry within the community;

"(C) the distribution of available employment opportunities by industry or occupation, for persons residing within the prime sponsor's area;

"(D) the differing needs of the eligible population which will vary the costs for services and which will require setting different performance standards depending on the disadvantage, handicap, capabilities, and job readiness of the eligible population to be served; and

"(E) such other factors as the Secretary deems appropriate

"(b) The Secretary may make such grants, contracts, or agreements, establish such procedures and make such payments, in installments and in advance or by way of reimbursement, or otherwise allocate or expend funds made available under this Act, as deemed necessary to carry out the provisions of this Act, including (without regard to the provisions of section 4774(d) of title 10, United States Code) expenditures for construction, repairs, and capital improvements, and including necessary adjustments in payments on account of overpayments or underpayments.

"(c) The Secretary may delegate within the Department of Labor authority over the Office established pursuant to section 135 in order to effectively carry out the purposes of such section.

"(d) The Secretary shall, to the extent feasible, reduce the costs of compliance imposed on prime sponsors by rules and regulations issued under this Act including, but not limited to, the costs of applications, plan preparation, data collection, recordkeeping, report preparation, and other paperwork and regulatory cost burdens.

"(e) In order to reduce paperwork burdens, the Secretary is authorized to consolidate reports required by this Act. Nothing in this subsection shall be construed to reduce or eliminate the requirements established by this Act relating to the furnishing of information by the Secretary.

"(f) Notwithstanding any other provision of this Act, no authority to enter into contracts under this Act shall be effective except to such an extent or in such an amount as are provided in advance in appropriations Acts.

"REPORTS

"SEC. 127. (a) The Secretary shall make such reports and recommendations to the President as the Secretary deems appropriate pertaining to employment and occupational requirements, resources, use, and training, and the President shall transmit to the Congress a report on the same topics not later than March 1 of each year. The first such report submitted after the effective date of the Comprehensive Employment and Training Amendments of 1978 shall include recommendations with respect to necessary legislative or administrative changes required to simplify on-the-job training contracting procedures under this Act.

"(b) The Secretary and the Secretary of Health, Education, and Welfare shall report to the Congress on the extent to which social services, community colleges, area vocational and technical schools and other vocational education agencies and institutions, and vocational rehabilitation agencies are being utilized to carry out training programs supported in whole or in part under this and related Acts; the extent to which administrative steps have been taken or are being taken to encourage the use of such facilities and institutions and agencies in the carrying out of the provisions of this Act; and any further legislation that may be required to assure effective coordination and utilization of such facilities and agencies to the end that all federally supported employment and training, vocational education, and vocational rehabilitation programs can more effectively accomplish the objective of providing employment and training opportunities to all persons needing such employment and training.

"(c) The Secretary shall annually transmit to the Congress a detailed report which evaluates all programs and activities conducted under this Act, including that information derived from evaluations provided for in section 313. The Secretary shall include specific data concerning the extent to which (1) participants in such activities subsequently secure and retain public or private employment, participate in training or employability development programs, and (2) significant segments of the population of unemployed persons are provided public service employment opportunities. No later than March 1, 1980, the Secretary shall report to Congress proposals for the integration and consolidation of the programs established by part A of title IV and title VII with the program established by title II.

"(d) In order to assist the Secretary in preparing the report required by this section, the Secretary shall require as a condition of financial assistance that annual reports and evaluations be submitted in accordance with regulations. The data derived from such reports shall be compiled on a State, regional, and national basis, and shall be included in the annual report to the Congress. Such reports shall include but not be limited to the following information:

"(1) a detailed comparison of program performance with approved plan;

"(2) participant characteristics (cross-tabulated);

"(3) average cost per participant; and

"(4) the types of outcomes that participants experience after the program.

"(e)(1) In the annual report to Congress required in subsection (a), the Secretary shall make recommendations for program modification, including recommendations for the succeeding fiscal year, based upon such findings, and other legislative or administrative recommendations as the Secretary deems appropriate.

"(2) In the annual report required in subsection (a), the Secretary shall include a description of the actions, if any, which the Secretary undertook during the fiscal year for which the report is made to reduce the costs of compliance imposed on the prime sponsors by rules or regulations issued under this Act, as required under section 126(c).

"(f) In the annual report required under subsection (a), the Secretary shall report on the monitoring and auditing activities of the Department, on administrative changes made or proposed to improve such activities, and on actions taken under section 106, and shall make any necessary proposals for legislative action.

"(g) The Secretary shall transmit to the Congress, as a part of the report required by subsection (a), a detailed report on the evaluations and pilot and demonstration projects conducted with funds made available under this Act, including employment service/prime sponsor demonstration projects.

"(h) The Secretary shall, in consultation with the Director of the Office of Management and Budget, submit a report once each year to the Congress on efforts being taken to reduce paperwork and reporting and to comply with the requirements of the Federal Reports Act and management directives of the Office of Management and Budget.

"(i) Any evaluation report, or data, or information collected in preparation of such report submitted under this section or under any other provisions of this Act, or any contract which is made or information pursuant to such contract which is paid for or made with appropriated funds shall be made available upon request, within four days to the chairman or ranking minority member of the Committee on Education and Labor of the House of Representatives and the Committee on Human Resources of the Senate.

"(j) The Secretary shall report to Congress, as part of the annual report for fiscal year 1979, his recommendations for legislative changes designed to increase the representativeness and independence of the prime sponsor's planning councils, with special attention to the process for selecting council memberships.

"SERVICES AND PROPERTY

"SEC. 128. The Secretary is authorized, in carrying out functions and responsibilities under this Act, to accept, purchase, or lease in the name of the Department, and employ or dispose of in furtherance of the purposes of this Act, or any title thereof, any money or property, real, personal, or mixed, tangible on intangible, received by gift, devise, bequest, or otherwise; and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes of the United States.

"UTILIZATION OF SERVICES AND FACILITIES

"SEC. 129. (a) In addition to such other authority as the Secretary may have, the Secretary is authorized, in the performance of functions under this Act, and to the extent permitted by law, to utilize the services and facilities of departments, agencies, and establishments of the United States. The Secretary is also authorized to accept and utilize the services and facilities of the agencies of any State or political subdivision of a State, with its consent.

"(b) The Secretary shall carry out responsibilities under this Act through the utilization, to the extent appropriate, of all resources for skill development available in in-

dustry, labor, public and private educational and training institutions, vocational rehabilitation agencies, and other State, Federal, and local agencies and other appropriate public and private organizations and facilities, with their consent.

"INTERSTATE AGREEMENTS

"SEC. 130. In the event that compliance with provisions of this Act would be enhanced by cooperative agreements between States, the consent of Congress is hereby given to such States to enter into such compacts and agreements to facilitate such compliance, subject to the approval of the Secretary.

"PROHIBITION AGAINST POLITICAL ACTIVITIES

"SEC. 131. (a) The Secretary shall not provide financial assistance for any program under this Act which involves political activities.

"(b) Neither the program, the funds provided therefor, nor personnel employed in the administration thereof, shall be, in any way or to any extent, engaged in the conduct of political activities in contravention of chapter 15 of title 5, United States Code.

"NONDISCRIMINATION

"SEC. 132. (a) No person in the United States shall on the ground of race, color, religion, sex, national origin, age, handicap, or political affiliation or belief be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of or in connection with any program or activity funded in whole or in part with funds made available under this Act.

"(b) Whenever the Secretary determines that a recipient of financial assistance has failed to comply with subsection (a) or an applicable regulation, the Secretary, in addition to exercising the powers and functions provided in section 196, is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law. In any case in which the Secretary receives a complaint from any interested person or organization under section 106 with respect to an alleged violation of subsection (a) of this section, the Secretary shall make the determination referred to in the preceding sentence no later than 120 days after receiving such complaint.

"(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever the Attorney General has reason to believe that a recipient is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

"(d) In addition to other remedies, the Secretary is authorized to enforce the provisions of subsection (a) dealing with discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or political affiliation or belief, in accordance with section 602 of the Civil Rights Act of 1964. Section 603 of such Act shall apply with respect to any action taken by the Secretary to enforce such provisions of such subsection. This section shall not be construed as affecting any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program or activity receiving assistance under this Act.

"(e) No participant under this Act shall be discriminated against by reason of citizenship. Participation shall be open to citizens and nationals of the United States, lawfully admitted permanent resident aliens, and lawfully admitted refugees and parolees.

"(f)(1) The Secretary shall review, on a periodic basis, the adequacy of outreach, training, placement, and advancement practices with respect to handicapped individuals by each prime sponsor pursuant to section 103(b)(15) and shall insure that the special needs of such individuals are being met.

"(2) The Secretary shall include in each annual report pursuant to section 127(a) a complete evaluation of the conduct of and achievements in outreach, training, placement, and advancement practices with respect to handicapped individuals by prime sponsors pursuant to section 103(b)(15), including a comparison of such practices and achievements with the preceding year.

"RECORDS, AUDITS, AND INVESTIGATIONS

"SEC 133. (a) In order to assure that funds provided under this Act are used in accordance with its provisions, the following provisions shall apply.

"(1) Every recipient of funds under this Act shall make, keep, and preserve such records as the Secretary shall require with regard to each employee and each participant. Such records, including periodic reports, audits, and examinations, shall be preserved for such time as the Secretary establishes and shall be made available to the Secretary at such time and in such form, including periodic reports, audits, and examinations as the Secretary may require by regulation or order.

"(2) The Secretary may investigate such facts, conditions, practices, or other matters the Secretary deems necessary to determine whether any recipient of funds or any official of such recipient has violated any provision of this Act or of the regulations. Such investigations may include, but need not be limited to, inspecting all records of the recipient (including making certified copies thereof), questioning employees, and entering any premises or onto any site in which any part of the recipient's program is conducted.

"(3) For the purpose of any hearing or investigation authorized under this Act, the provisions of section 9 of the Federal Trade Commission Act (15 U.S.C. 49, relating to the attendance of witnesses and the production of books, papers, and documents) are made applicable to the Secretary.

"(b) The Secretary shall complete all audits of recipients of funds which he deems necessary in a timely fashion following the end of the fiscal year for which the audits are made. In the annual report required under section 128(a), the Secretary shall include a statement of the average delay between the end of each fiscal year and the audits of prime sponsors for such year, the actions, if any, taken by the Secretary to reduce the delay, and the additional funds and personnel the Secretary would need in order to carry out all audits within the 24-month period following the end of the fiscal year for which the audits are made.

"BONDING

"SEC. 134. Every officer, director, agent, or employee of a recipient of funds under this Act who handles funds or other financial assistance received under the Act shall be bonded to provide protection against loss by reason of fraud or dishonesty on such person's part directly or through conspiracy with others. The Secretary shall establish the amount and other bonding requirements by regulation.

"OFFICE OF MANAGEMENT ASSISTANCE

"SEC. 135. The Secretary shall establish, in the office of the Secretary, an Office of Management Assistance and shall assign to such office such especially qualified accountants, management specialists, and other professionals as may be necessary and available to provide management assistance to any prime sponsor—

"(1) seeking the service of such office on its own initiative to assist it in overcoming problems in the management, operation, or supervision of any program or project under this Act; and

"(2) identified, pursuant to a complaint investigation, internal audit, or audit or investigation as not being in compliance with any important requirement of this Act, of regulations issued thereunder, or of the comprehensive employment and training plan.

Services under this section may be provided on a reimbursable or nonreimbursable basis, as determined by the Secretary, and shall be allocated in a manner to assure equitable but effective distribution of such services. The Secretary shall periodically publish any proposals for corrective action made by the Office which may be useful to other prime sponsors.

"TITLE II—COMPREHENSIVE EMPLOYMENT AND TRAINING SERVICES

"PART A—FINANCIAL ASSISTANCE PROVISIONS

"PURPOSE OF PROGRAM

"SEC. 201. It is the purpose of this title to establish programs to provide comprehensive employment and training services throughout the Nation in order to ease barriers to labor force participation encountered by economically disadvantaged persons to enable such persons to secure and retain employment at their maximum capacity, and to enhance the potential for individuals to increase their earned income. Such programs shall include the development and creation of training, upgrading, retraining, education, and other services needed to enable individuals to secure and retain employment at their maximum capacities so as to increase their earned incomes.

"ALLOCATION OF FUNDS

"SEC. 202. (a)(1)(A) Eighty-five percent of the amount available for parts A, B, and C of this title in fiscal year 1979 shall be allocated as follows:

"(i) 50 percent of the amount allocated under this paragraph shall be allocated to each State on the basis of the sums received by the State under title I of the Comprehensive Employment and Training Act of 1973 for fiscal year 1978 compared to the sums received by all States under such title in that year.

"(ii) 37½ percent of the amount allocated under this paragraph shall be allocated to each State on the basis of the relative number of unemployed persons within the State as compared to the number in all States;

"(iii) 12½ percent of the amount allocated under this paragraph shall be allocated to each State on the basis of the relative number of adults in families with an annual income below the low-income level within the State compared to the total number in all States; and

"(iv) Not less than $2,000,000 shall be allocated among Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Marianas in accordance with their respective needs.

"(B) The sum allocated to each State shall be allocated by the Secretary among prime sponsors within the State on an equitable basis based upon the factors set forth in subparagraph (A).

"(2)(A) Eighty-five percent of the amount available for parts A, B, and C of this title in fiscal years 1980, 1981, and 1982 shall be allocated as follows:

"(i) two-thirds of such amount shall be allocated in accordance with the provisions of subparagraph (B) of this paragraph; and

"(ii) one-third of such amount shall be allocated in accordance with the provisions of subparagraph (C) of this paragraph.

"(B) The amount allocated under this subparagraph shall be allocated as follows:

"(i) 50 per centum of the amount allocated under this subparagraph shall be allocated on the basis of the amount allocated to the prime sponsor under this subparagraph (or under paragraph (1)) in the fiscal year prior to the year for which the determination is made compared to the amount so allocated to all prime sponsors in that year;

"(ii) 37½ per centum of the amount allocated under this subparagraph shall be allocated on the basis of the relative number of unemployed persons within jurisdiction of the prime sponsor as compared to such numbers in all such jurisdictions;

"(iii) 12½ per centum of the amount allocated under this subparagraph shall be allocated on the basis of the relative number of adults in families with an annual income below the low-income level within the jurisdiction of the prime sponsor compared to such total numbers in all such jurisdictions; and

"(iv) not less than $2,000,000 shall be allocated among Guam, the Virgin Islands, the Northern Marianas, American Samoa, and the Trust Territory of the Pacific Islands, in accordance with their respective needs.

"(C) The amount allocated under this subparagraph shall be allocated among prime sponsors in accordance with the number of unemployed persons residing in areas of substantial unemployment within the jurisdiction of the prime sponsor compared to the number of unemployed persons residing in all such areas.

"(b) Six percent of the funds available for parts A, B, and C of this title shall be available only for grants under section 204 for supplemental vocational education assistance.

"(c) One percent of the amount available for parts A, B, and C of this title shall be available to the Secretary to be allocated in the same manner as provided under subsection (a) to States for the costs of the State employment and training council incurred in carrying out the provisions of section 110, except that no State shall receive an allocation of less than $50,000. If any State does not need the amount allocated under this subsection for any fiscal year, that amount shall be available for the Governor's coordination and special services under section 105.

"(d) One percent of the amounts available for this title shall be available to the Governor of each State in the same proportion as that State's allocation under subsection (a) for encouraging coordination and establishing linkages between prime sponsors and appropriate educational agencies and institutions, and institutions providing training programs which are approved by the Secretary, and for services for eligible participants delivered jointly by employment and training agencies and appropriate educational agencies and institutions.

"(e) Four percent of the amounts available for parts A, B, and C of this title shall be available to each Governor in the same proportion as that State's allocation under subsection (a), for the Governor's coordination and special services under section 105, and, where deemed necessary by the Governor, for additional support of State employment and training councils.

"(f)(1) The remainder of the funds shall be available in the Secretary's discretion to be distributed among prime sponsors (or where a prime sponsor's comprehensive employment and training plan has not been approved, an area served by the Secretary under the authority in section 102) in accordance with the provisions of paragraph (2).

"(2)(A) The Secretary shall first utilize such funds to assure that each prime sponsor is provided with (i) an amount for fiscal year 1979 equal to 90 percent of the sum of the funds available for expenditure during fiscal year 1978 by such prime sponsor under section 103(a)(2), (f), and (g) (as in effect prior to the enactment of the Comprehensive Employment and Training Act Amendments of 1978); (ii) an amount for fiscal year 1980, equal to 90 percent of the sum of the funds available for expenditure during fiscal year 1979 by prime sponsors under subsection (a)(1); or (iii) an amount for any fiscal year beginning on or after October 1, 1980, equal to 90 percent of the sum of the funds available for expenditure during the preceding fiscal year by such prime sponsor under subsection (a)(2).

"(B) The Secretary shall next use such funds (i) to provide continued support for concentrated employment program grantees serving rural areas having high levels of unemployment, and (ii) to allocate among the prime sponsors serving areas within those standard metropolitan statistical areas and central cities for which current population surveys were used to determine annual unemployment data prior to January 1, 1978, in proportion to the extent to which such prime sponsors allocations under this subsection are reduced as a result of termination of the use of such surveys, but in no event shall such a prime sponsor receive an amount in excess of the amount of such reduction. The allocations required under clause (ii) of this subparagraph shall not be made for any fiscal year beginning on or after October 1, 1980, or until such time as the Secretary determines that current population survey data is available for use on a satisfactory basis for such areas and the remaining area of each State, whichever occurs first.

"(C) The Secretary shall next use such funds as needed to provide continued funding of programs of demonstrated effectiveness, and to encourage, after consultation with and receiving recommendations from the Governor of the appropriate State, voluntary consortia (formed under section 101(a)(3)) where the Secretary determines, pursuant to regulations, that such consortia demonstrate advantages in delivering employment and training services to substantial portions of functioning labor market areas.

"(g) Prime sponsors are authorized to use funds allocated under this section to support prime sponsor planning councils.

"CONDITIONS FOR RECEIPT OF FINANCIAL ASSISTANCE

"SEC. 203. (a) The Secretary shall not provide financial assistance for any fiscal year to a prime sponsor unless the prime sponsor submits a satisfactory comprehensive employment and training plan pursuant to section 103.

"(b) Not more than 6.5 per centum of each prime sponsor's allocation under section 202 (a) may be used for programs and activities under part C of this title.

"(c)(1) The Secretary shall not provide financial assistance under this title for any fiscal year to a prime sponsor unless the prime sponsor provides assurances that (consistent with needs identified in the prime sponsor's plan submitted under section 103 (a)) it shall make agreements with State or local educational agencies or postsecondary educational institutions for the conduct of employment and training programs, which programs may consist of—

"(A) vocational training designed to prepare individuals for employment;

"(B) instruction in basic cognitive skills necessary to obtain employment or pursue further education or training designed to prepare individuals for employment;

"(C) employment of persons in schools controlled by such agencies or in postsecondary institutions; and

"(D) such other employment and training activities as may be consistent with the purposes and provisions of this title.

"(2) Each such agreement entered into under this subsection shall describe in detail the employment opportunities and appropriate educational, training, or other services to be provided, and shall contain provisions to assure that funds utilized pursuant to the agreement will not supplant State or local funds expended for the same purpose.

"(3) In the event a prime sponsor is unable to reach agreements with the appropriate educational agencies or institutions, or in the event such agencies or institutions are dissatisfied with the utilization of their facilities proposed by the prime sponsor, either may request the Secretary to review such arrangements and the Secretary, after affording an opportunity for a hearing and taking into consideration such factors as he considers relevant, may take such action as he deems appropriate within 90 days after receiving such a request.

"SUPPLEMENTAL VOCATIONAL EDUCATION ASSISTANCE

"SEC. 204. (a)(1) From the funds available to him for this section, the Secretary shall make grants to Governors to provide financial assistance, through State vocational education boards, to provide needed vocational education services in areas served by prime sponsors, in accordance with an agreement between the State vocational education board and the prime sponsor.

"(2) The State vocational education board, prior to making any agreement with a prime sponsor as provided in paragraph (1), shall consult with and obtain the advice and comment of the designated representatives of the State agencies and councils which are required to be involved in the formulation of the five-year State plan for vocational education pursuant to section 107(a)(1) of the Vocational Education Act of 1963.

"(b) All of the sums available to carry out this section shall be allocated among the States in the manner provided for allocating funds under section 202(a).

"(c)(1) Not less than 85 percent of the funds available under this section shall be used only for providing vocational education and services to participants in programs under this title.

"(2) The remainder of the funds available under this section may be used—

"(A) to coordinate programs under this Act with existing vocational education programs;

"(B) to coordinate the utilization of funds under this Act and the Vocational Education Act of 1963 to enhance economic growth and development in the State;

"(C) to develop linkages between vocational education, education, and training programs under this Act and private sector employers;

"(D) to provide technical assistance to vocational education institutions and local education agencies to aid them in making cooperative arrangements with appropriate prime sponsors;

"(E) to provide information, curriculum materials, and technical assistance in curriculum development and staff developments to prime sponsors.

"PARTICIPANT ASSESSMENT

"SEC. 205. (a) In order to assess the appropriate mixture of training or employment services, or both, needed by each individual receiving assistance under this title, the prime sponsor shall assist each such individual to establish a personalized employability plan. In establishing such plan, prime sponsors shall take into consideration an individual's skills, interests, and career objectives, subject to the availability of services, and shall consider the barriers to employment or advancement faced by that individual in order to assist that individual to attain unsubsidized employment.

"(b) An assessment of appropriate training and supportive services shall be made at

the time of entrance to a program assisted in part or in whole by this title, which shall be reviewed periodically throughout the duration of the individual's participation in a program funded under this title. Such assessment shall be included in each individual's employability plan.

"PART B—SERVICES FOR THE ECONOMICALLY DISADVANTAGED

"DESCRIPTION OF PROGRAM

"SEC. 211. Comprehensive employment and training services may include, but need not be limited to, the following:

"(1) job search assistance, including orientation, counseling, and referral to appropriate employment and training opportunities;

"(2) outreach to make persons aware of the availability of, and to encourage them to use, employment and training services;

"(3) supported work programs or activities;

"(4) education and institutional skill training to prepare persons to enter the labor market, or to qualify for more productive job opportunities and increased earnings;

"(5) on-the-job training and training leading to self-employment in small business;

"(6) work experience programs providing employment opportunities for eligible individuals unable to attain employment with public or private sector employers, which shall be designed to increase the employability of the participants through development of work habits, occupational skills, and linkages with other training programs, or to provide temporary employment to individuals who are seeking suitable placement in classroom training, on-the-job training, public service employment, or other such employment and training opportunities;

"(7) payments of other inducements to public or private employers to expand job opportunities, in accordance with section 121(1);

"(8) services to individuals to enable them to retain employment;

"(9) supportive services, including, but not limited to, necessary health care, child care, residential support, or assistance in securing bonds, and transportation, needed to enable individuals to participate in employment and training;

"(10) development of labor market information, and activities such as job restructuring, to make the program more responsive to the needs of the eligible population;

"(11) training, employment opportunities, and related services conducted by community based organizations;

"(12) part-time, flexitime, and other alternative working arrangements for individuals who are unable because of age, handicap, or other factors to work full-time;

"(13) payment of allowances to persons in training for which they receive no remuneration, and payment of such allowances for transportation, subsistence, or other expenses incurred in training or employment; and

"(14) any programs or activities authorized by part A of title III, title IV, and title VII of this Act.

"LIMITATIONS ON USE OF FUNDS

"SEC. 212.(a) No prime sponsor may use funds allocated for parts A, B, and C for public service employment.

"(b) Work experience programs conducted under this part, except for in-school youth, shall—

"(1) be designed to lead to unsubsidized employment, and

"(2) be subject to the limitations on duration specified in section 121(c)(2),

unless the prime sponsor's plan as approved by the Secretary establishes that the lack of alternative job opportunities in the area makes such conditions and limitations impractical.

"ELIGIBILITY FOR PARTICIPATION

"SEC. 213. A person shall be eligible to participate in a program receiving financial assistance under this part only if such person is economically disadvantaged and either unemployed, underemployed, or in school.

"SERVICES FOR YOUTH

"SEC. 214. (a) Services for youth under this part shall be designed to assist eligible participants in overcoming the particular barriers to employment experienced by youth, including lack of basic educational or vocational skills, insufficient preparation for the personal adaptations necessary for labor force participation, inability to find or successfully apply for employment, financial barriers to labor force participation, and lack of appropriate job opportunities.

"(b) The Secretary shall insure that each prime sponsor's plan for serving eligible youth under this part includes—

"(1) provisions for coordinating activities under this part with activities under part A of title IV of this Act;

"(2) assurances that, to the maximum extent feasible, the activities enumerated in section 432 of this Act, except for public service employment, will be utilized to serve youth under this part; and

"(3) procedures for review of such plans by the youth council established under section 436(b) of this Act.

"SERVICES FOR OLDER WORKERS

SEC. 215. (a) Services for older workers under this part shall be designed to assist eligible participants in overcoming the particular barriers to employment experienced by older workers, including skills that are obsolete or no longer needed in the community, changing physical characteristics associated with aging, employer reluctance to hire older workers, financial barriers to labor force participation, and lack of appropriate job opportunities.

"(b) The Secretary shall insure that each prime sponsor's plan for serving eligible older workers under this part includes provisions for utilizing activities including activities described in section 308 and coordinating services for older workers under this part with programs and services provided by senior centers, area agencies on aging, and State agencies on aging (as designated under the Older Americans Act of 1965).

"SERVICES FOR PUBLIC ASSISTANCE RECIPIENTS

"SEC. 216. (a) Services for public assistance recipients under this part shall be designed to assist eligible participants in overcoming the particular barriers to employment experienced by such recipients, including lack of basic educational or vocational skills, insufficient prepartion for the personal adaptations necessary for labor force participation, in ability to find or successfully apply for employment, inability to obtain transportation to employment opportunities, medical problems, inability to obtain satisfactory child care, and lack of appropriate job opportunities.

"(b) The Secretary shall insure that each prime sponsor's plan for serving eligible public assistance recipients under this part includes provisions for coordinating services assisted under this part with other programs assisted under this Act; and with services provided by State and local public assistance agencies.

"PART C—UPGRADING AND RETRAINING

"OCCUPATIONAL UPGRADING AND RETRAINING

"SEC. 221. (a) Pursuant to regulations of the Secretary, prime sponsors may provide financial assistance to public and private employers for the costs associated with occupational upgrading programs, including supportive services, through agreements with public and private employers for the employees of such employers. Individuals eligible for such programs shall be individuals operating at less than their full skill potential, primarily those in entry level positions or positions with little normal advancement opportunities. In any program receiving financial assistance under this section—

"(1) the positions for which employees are being upgraded shall be positions not regularly available to entry level employees, and for which adequately trained persons are not available;

"(2) the selection of employees for upgrading shall be based upon potential and the lack of avilability for advancement in a normal promotional line;

"(3) the education and skill training content of the upgrading program shall provide employees with a reasonable progression resulting in qualifications for a recognized position of greater skill, responsibility, remuneration, or career advancement in the service of that employer;

"(4) the training period for upgrading shall be reasonable and consistent with periods customarily required for comparable training;

"(5) adequate personnel, attendance and progress records shall be maintained;

"(6) the program shall be designed, to the extent feasible, so that additional vacancies are created for new entry level employees;

"(7) compensation shall be paid by the employer at rates, including periodic increases, as the Secretary deems reasonable, considering such factors as industry practice, skill requirements, individual proficiency, and the geographical region, but not at rates less than that received before upgrading; and

"(8) successful completion shall be expected to result in employment with the employer in the occupation for which the employee has been upgraded and at not less than prevailing wages.

"(b)(1) Pursuant to regulations of the Secretary, prime sponsors may conduct retraining programs, including supportive services, directly or through agreements with public and private employers or other organizations or agencies.

"(2) Entry into retraining programs shall be only for individuals who have previously received a bona fide notice of impending layoff, and who are determined, pursuant to regulations of the Secretary, to have little opportunity to be reemployed in the same or equivalent occupation or skill level within the labor market area.

"(3) Retraining programs shall meet such standards as the Secretary shall establish by regulation.

"(c) If upgrading or retraining is for or from jobs covered by collective bargaining agreements, agreements with employers to carry out such programs shall have the concurrence of labor organization representing employees in such jobs.

"PART D—TRANSITIONAL EMPLOYMENT OPPORTUNITIES FOR THE ECONOMICALLY DISADVANTAGED

"STATEMENT OF PURPOSE

"SEC. 231. It is the purpose of this part to provide economically disadvantaged persons who are unemployed with transitional employment in jobs providing needed public services, and related training and services to enable such persons to move into employment or training not supported under this Act.

"FINANCIAL ASSISTANCE

"SEC. 232. (a) The Secretary shall provide financial assistance to prime sponsors for transitional public service employment for economically disadvantaged persons who are unemployed. Such employment—

"(1) shall be entry level;

"(2) shall be combined with training and supportive services if such training and services are reasonably available in the area; and

"(3) shall be designed to enable participants to move into unsubsidized employment.

"(b)(1) Not more than 10 percent of the funds allocated to a prime sponsor in accordance with the provisions of this part may be used for administrative and other allowable costs (such as supplies, materials, and equipment) incurred by the prime sponsor, program agents, project applicants, or subgrantees or contractors, in accordance with such regulations as the Secretary may prescribe.

"(2) Not less than—

"(A) 10 percent of the funds so allocated for fiscal year 1979;

"(B) 15 percent of the funds so allocated for fiscal year 1980;

"(C) 20 percent of the funds so allocated for fiscal year 1981;

"(D) 22 percent of the funds so allocated for fiscal year 1982;

shall be used only for training.

"(3) The remainder of the funds so allocated may be expended only for wages, employment benefits, training and supportive services, to persons employed in public service employment under this part.

"ALLOCATION OF FUNDS

"SEC. 233. (a) Funds made available for carrying out this part shall be allocated among prime sponsors by the Secretary in accordance with subsection (b).

"(b) The Secretary shall reserve an amount equal to not less than 2 percent of the amounts made available pursuant to section 232 for any fiscal year to enable Native American entities which are described in section 302(c)(1)(A) to carry out public service employment programs under this part. Eighty-five percent of the amounts made available pursuant to section 232 for any fiscal year shall be allocated in accordance with subsection (c).

(c)(1) Twenty-five percent of the amount allocated under this subsection shall be allocated among prime sponsors in proportion to the relative number of unemployed persons who reside in areas within the jurisdiction of each such prime sponsor as compared to the number of unemployed persons who reside in all such areas in all the States.

(2) Twenty-five percent of the amount allocated under this subsection shall be allocated among prime sponsors on the basis of the relative excess number of unemployed persons who reside within the jurisdiction of the prime sponsor as compared to the total excess number of unemployed persons who reside within the jurisdiction of all prime sponsors. For purposes of this subparagraph, the term 'excess number' means (i) the number which represents unemployed persons in excess of 4½ percent of the labor force in the jurisdiction of the prime sponsor in whose jurisdiction such persons reside, or (ii) in the case of a prime sponsor which is a State, the term 'excess number' means such number as defined in clause (i) or the number which represents unemployed persons in excess of 4½ percent of the labor force in areas of substantial unemployment.

"(3) Twenty-five percent of the amount allocated under this subsection shall be allocated among prime sponsors in accordance with the number of unemployed persons residing in areas of substatial unemployment within the jurisdiction of the prime sponsor compared to the number of unemployed persons residing in all areas of substantial unemployment.

"(4) Twenty-five percent of the amount allocated under this subsection shall be allocated on the basis of the relative number of adults in families with an annual income below the low-income level within the jurisdiction of the prime sponsor compared to such total numbers in all such jurisdictions.

"(e)(1) The Secretary shall, from the remainder of the funds made available under this part, first use such remainder—

"(A) to provide continued support for concentrated employment program grantees serving rural areas having high levels of unemployment, and

"(B) to allocate among the prime sponsors serving areas within those standard metropolitan statistical areas and central cities for which current population surveys were used to determine annual unemployment data prior to January 1, 1978, in proportion to the extent to which such prime sponsors allocations under this section and title IV are reduced as a result of termination of the use of such surveys, but in no event shall such a prime sponsor receive an amount in excess of the amount of such reduction.

The allocations required under clause (B) of this subparagraph shall not be made for any fiscal year beginning on or after October 1, 1980, or until such time as the Secretary determines that current population survey data is available for use on a satisfactory basis for such areas and the remaining area of each State, whichever occurs first.

"(2) The remainder of the amount made available under this part shall be available to the Secretary for financial assistance to prime sponsors and Native American entities described in section 302(c)(1)(A) as the Secretary deems appropriate.

"(f) For purposes of making allocations under subsections (c)(1) and (c)(2) of this section, the Secretary shall use average annual data for the most recent 12-month period for which satisfactory data are available.

"EXPENDITURE OF FUNDS

"SEC. 234. Funds available for the purposes of this part shall be utilized by prime sponsors for public service employment activities, or projects carried out by project applicants as defined in section 3, or for activities set forth in section 211.

"PRIME SPONSORS AND PROGRAM AGENTS

"SEC. 235. The provisions set forth in section 606 of this Act shall be applicable to this part.

"ELIGIBILITY

"SEC. 236. (a) An individual eligible to be employed in a position supported under this part shall be a person (1) who has been unemployed for at least 15 weeks and who is economically disadvantaged, or (2) who is, or whose family is receiving aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act, or who is receiving supplemental security income benefits under title XVI of the Social Security Act.

"(b) The provisions of section 122(h) shall apply to duration of participation under this part.

"WAGES

"SEC. 237. (a) Wages to individuals employed in public service employment under this part shall be paid in accordance with sections 122(1) and 124.

"(b) Public service employment participants under this part may not have their wages supplemented by the payment of any additional wages for such employment from any source whatever, except as provided in section 122(1)(4)(B).

"TITLE III—SPECIAL FEDERAL RESPONSIBILITIES

"PART A—SPECIAL NATIONAL PROGRAMS AND ACTIVITIES

"SPECIAL PROGRAMS AND ACTIVITIES

"SEC. 301. (a) The Secretary shall use funds available under this title to provide services authorized under all titles of this Act and for employment and training programs that—

"(1) meet the employment-related needs of persons who face particular disadvantages in specific and general labor markets or occupations, including offenders, persons of limited English language proficiency, handicapped individuals, women, single parents, displaced homemakers, youth, older workers, individuals who lack educational credentials, public assistance recipients, and other persons whom the Secretary determines require special assistance;

"(2) are most appropriately administered from the national level, such as programs sponsored by public agencies or private organizations that conduct federally assisted activities in more than one State;

"(3) foster new or improved linkages between Federal, State, and local employment and training agencies and components of the private sector, such as the business community, organized labor, and community based organizations;

"(4) provide continued support for programs of demonstrated effectiveness;

"(5) eliminate or reduce critical skill shortages in the Nation's labor force; and

"(6) serve individuals who become unemployed as a result of large-scale loss of jobs in a locality, caused by the closing of a facility, mass layoffs, natural disasters, or similar circumstances;

"(b)(1)(A) The Secretary shall make available financial assistance to conduct programs to provide employment opportunities and appropriate training and supportive services (through multipurpose projects or otherwise) to displaced homemakers. Such training and supportive services shall include, but not be limited to, job training, job readiness services, job counseling, job search, and job placement services; outreach and information services, including information on available education opportunities; and referrals (through cooperative arrangements, to the maximum extent feasible) to health, financial management, legal, public assistance, and other appropriate supportive services in the community being served. To the maximum extent feasible, activities supported under this paragraph shall be coordinated with and supplement, but not supplant, activities supported under other titles of this Act and shall emphasize training and other employment related services for participants that are designed to enhance their employability and earnings. Programs shall concentrate on creating new jobs in the private sector for displaced homemakers in order to meet identified needs within the community. To the maximum extent feasible, supervisory, technical, and administrative positions within the programs shall be filled by displaced homemakers. Priority for participation in projects supported under this paragraph shall be given to displaced homemakers who, as provided in regulations which the Secretary shall prescribe, are most in need of services by virtue of age, education, training, household support obligations, and employability.

"(B) No funds available under this section shall be used for the purchase, construction, or major rehabilitation of facilities.

"(C) For the purposes of carrying out this section, the Secretary shall reserve not more than 2 percent of the funds made available to carry out this title.

"(2) The Secretary shall make financial assistance available to conduct a program for offenders to provide employment, training and related assistance and supportive services (including basic education, drug addiction or dependency rehabilitation and health care) which will enable them to secure and retain meaningful employment. The Secretary shall support activities designed to enable offenders to secure meaningful training and employment including but not limited to those services which provide highly structured and supervised employment opportunities, such as employment and training opportunities proven effective under section 311(c). Emphasis shall be placed upon

serving offenders in contact with the criminal justice system or recently released from criminal justice custody or supervision. Services shall be comprehensive, and recipient of funds shall coordinate their activities with other providers of employment and training assistance. Grants may also be provided to the States or prime sponsors for the establishment of units for planning and evaluation of correctional employment and training assistance to offenders. The Secretary may provide for appropriate arrangements with employers and labor organizations, and appropriate parole, probationary, and judicial authorities, for the utilization of training equipment comparable to that currently used for the job for which training is furnished. To support such programs the Secretary shall develop information concerning the special needs of offenders for such services, including special studies regarding the incidence of unemployment among offenders and the means of increasing employment opportunity for offenders. As part of the reporting requirements under section 127(a), the Secretary shall also conduct an annual survey of prime sponsors and States receiving assistance under this Act for the purpose of assessing the scope and implementation of offender programs.

"(3) With respect to programs for persons of limited English-speaking ability under this Act, the Secretary shall establish appropriate procedures to ensure that participants are provided with employment and training and related assistance and supportive services (where feasible, at times designed to meet the needs of individuals unable to attend during normal working hours) designed to increase the employment and training opportunities for unemployed and underemployed persons of limited English-speaking ability, including (A) the teaching of occupational skills in the primary language of such persons for occupations which do not require a high proficiency in English, and (B) developing new employment opportunities for limited English-speaking persons and opportunities for promotion within existing employment situations for such persons, including programs for the dissemination of appropriate information, and job placement, and counseling assistance, and the conduct of training and employment programs, in the primary language of such persons, as well as programs designed to increase the English-speaking ability of such persons.

"(4) The Secretary shall make financial assistance available to conduct programs for handicapped individuals, youth, single parents, and older workers to provide employment, training and related assistance and supportive services which will enable them to secure and retain meaningful employment. Such programs shall be designed to assist in eliminating artificial and other employment barriers faced by such persons.

"(c) The Secretary shall report to the Congress not later than March 1 of each year with detailed information and analysis of the programs conducted pursuant to this section. The information required by this subsection may be included in the annual report of the Secretary under sections 127(a).

"(d) Funds allocated to recipients for purposes of this section shall be used to supplement funds which otherwise would be used for purposes of undertaking the same or similar programs and activities for such persons.

"(e) To the extent appropriate, programs financed under this part shall be coordinated with programs conducted by prime sponsors under this Act, and the Secretary shall notify such prime sponsors of the funding of an employment and training program under this part.

"(f) Notwithstanding any other provisions of this Act, eligibility requirements for programs for workers age fifty-five and older, which were established under title X of the Public Works and Economic Development Act of 1965, and which thereafter have been funded under section 304 of this Act prior to the enactment of the Comprehensive Employment and Training Act Amendments of 1978, shall be those which applied when the programs were established under title X.

"(g) The Secretary shall establish a special program for the funding of local workshops for the training of youths and other individuals who wish to pursue careers as self-employed owners and managers of small businesses. Such workshops should provide instruction in management techniques, business communication skills, motivational training, special problems in business operation, advice concerning Federal and State regulations, preparation of financial statements and loan applications, recordkeeping, development of marketing techniques, and information on beneficial resources available within the community.

"NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

"SEC. 302. (a) The Congress finds that (1) serious unemployment and economic disadvantage exist among members of Native American Indian, Alaskan Native, and Hawaiian native communities; (2) there is a compelling need for the establishment of comprehensive training and employment programs for members of those communities; and (3) such programs are essential to the reduction of economic disadvantage among individual members of those communities and to the advancement of economic and social development in these communities consistent with their goals and lifestyles.

"(b) The Congress therefore declares that, because of the special relationship between the Federal Government and most of those to be served by the provisions of this section, (1) such programs can best be administered at the national level; (2) such programs shall be available to federally recognized Native American Indian tribes, bands, and groups and to other groups and individuals of Native American descent such as, but not limited to, the Lummis in Washington, the Menominees in Wisconsin, the Klamaths in Oregon, the Oklahoma Indians, the Passamaquoddys and Penobscots in Maine, and Eskimos and Aleuts in Alaska, and Hawaiian natives; and (3) such programs shall be administered in such a manner as to maximize the Federal commitment to support growth and development as determined by representatives of the communities and groups served by this section.

"(c)(1)(A) In carrying out responsibilities under this section, the Secretary shall, wherever possible, utilize Native American Indian tribes, bands, or groups on Federal or State reservations (including Alaska Native villages or groups as defined in the Alaska Native Claims Settlement Act of December 18, 1971) and the Oklahoma Indians, having a governing body and such public agencies and private nonprofit organizations as the Secretary determines will best serve Native Americans, for the provision of employment and training services under this section. When the Secretary determines that such tribe, band, or group has demonstrated the capability to effectively administer a comprehensive employment and training program, the Secretary shall require such tribe, band, or group to submit a comprehensive plan meeting such requirements as the Secretary prescribes.

"(B) The Secretary shall arrange for programs to meet the employment and training needs of Hawaiian natives through such public agencies or private nonprofit organizations as the Secretary determines will best meet their needs.

"(2) In carrying out responsibilities under this section, the Secretary shall make arrangements with prime sponsors and organizations (meeting requirements prescribed by the Secretary) serving nonreservation Native Americans for programs and projects designed to meet the needs of such Indians for employment and training and related services.

"(d) Whenever the Secretary determines not to utilize Native American Indian tribes, bands, or groups for the provision of employment and training services under this section, the Secretary shall, to the maximum extent feasible, enter into arrangements for the provision of such services with public agencies or private nonprofit organizations which meet with the approval of the tribes, bands, or groups to be served.

"(e) The Secretary is directed to take appropriate action to establish administrative procedures and machinery (including personnel having particular competence in this field) for the administration of Native American employment and training programs authorized under this Act.

"(f) Funds available for this section shall be expended for programs and activities consistent with the purposes of this section including but not limited to such programs and activities carried out by prime sponsors under other provisions of this Act.

"(g) For the purpose of carrying out this section, the Secretary shall reserve from funds available for this title an amount equal to not less than 4.5 percent of the amount allocated pursuant to section 202(a).

"(h) No provision of this section shall abrogate in any way the trust responsibilities of the Federal Government to Native American bands, tribes or groups.

"MIGRANT AND SEASONAL FARMWORKER EMPLOYMENT AND TRAINING PROGRAMS

"SEC. 303. (a) The Congress finds and declares that—

"(1) chronic seasonal unemployment and underemployment in the agricultural industry, substantially affected by recent advances in technology and mechanization, constitute a substantial portion of the Nation's rural employment problem and substantially affect the entire national economy; and

"(2) because of the special nature of farmworker employment and training problems such programs can best be administered at the national level.

"(b)(1) The Secretary shall meet the employment and training needs of migrants and seasonal farmworkers through public agencies and private nonprofit organizations, including, but not limited to, programs and activities carried out by prime sponsors under other provisions of this Act, as the Secretary determines have an understanding of the problems of migrant and seasonal farmworkers, a familiarity with the area to be served, and a capability to administer effectively a comprehensive employment and training program for migrant and seasonal farmworkers.

"(2) Programs supported under this section shall include, but not be limited to, employment and training in traditional as well as newly developing agricultural occupations and related assistance and supportive services.

"(c)(1) In awarding a grant or contract for services administered under this section, the Secretary shall not assign any preferential weighting factor to an application therefor by virtue of the fact that the applicant holds at the time of application a prior grant or contract to provide services under this section; nor shall the Secretary assign any negative weighting factor to an application by virtue of the fact that an applicant is an instrumentality of State government.

"(2) In carrying out programs and activities under this section, the Secretary shall continue in operation any program which is in existence on the effective date of this paragraph and—

"(A) which is—

"(i) operated through the use of the fa-

cilities of any institution of higher education; and

"(ii) designed to assist migrant and seasonal farmworkers who are beyond the age of compulsory school attendance in the State in which the institution is located, through tutoring, counseling, and other similar assistance, in the completion of courses necessary to receive a high school diploma or its equivalent; or

"(B) which serves migrant and seasonal farmworkers who are enrolled in a full-time basis in the first academic year of an undergraduate program at any institution of higher education, and the dependents of migrant and seasonal farmworkers if such dependents are so enrolled, by—

"(i) aiding such individuals in carrying out the transition from secondary school to postsecondary school programs;

"(ii) generating motivation necessary for success in education beyond secondary school; and

"(iii) providing counseling, tutorial, and similar educational services designed to assist such individuals during their first academic year at such institution.

The Secretary shall continue the operation of any such program for so long as such program is consistent with the purposes of this section, as determined by the Secretary.

"(3) For the purpose of carrying out this section, the Secretary shall reserve from funds available for this title an amount equal to not less than 5 percent of the amount allocated pursuant to section 202(a).

"(e) In administering programs under this section, the Secretary shall consult with appropriate State and local officials and may enter into agreements with such officials to assist in the operation of such programs. In implementing this section the Secretary shall determine in consultation with appropriate State and local educational agencies, that no substantial duplication will exist.

"JOB SEARCH AND RELOCATION ASSISTANCE

"SEC. 304. (a) The Secretary is authorized to carry out job search and relocation assistance through agreements with States, State agencies or prime sponsors.

"(b) Job search assistance shall be available to economically disadvantaged, unemployed, and underemployed persons.

"(c)(1) Relocation assistance may be provided in the form of loans or grants, or both, subject to such standards as the Secretary establishes.

"(2) Relocation assistance shall be available only to involuntarily unemployed individuals who cannot reasonably be expected to secure fulltime employment in the community in which they reside, and have bona fide offers of employment (other than temporary or seasonal employment).

"VETERANS INFORMATION AND OUTREACH

"SEC. 305. The Secretary, in consultation and cooperation with the Administrator of Veterans Affairs and the Secretary of Health, Education, and Welfare, shall provide for an outreach and public information program utilizing, to the maximum extent, the facilities of the Departments of Labor and Health, Education, and Welfare and the Veterans' Administration to exercise maximum efforts to develop jobs and job training opportunities for disabled and Vietnam-era veterans, and inform all such veterans about employment, job-training, on-the-job training and educational opportunities under this Act, under title 38, United States Code, and other provisions of law; and inform prime sponsors, Federal contractors and subcontractors, Federal agencies, educational institutions, labor unions, and employers of their statutory responsibilities toward such veterans, and provide them with technical assistance in meeting those responsibilities.

"PROGRAMS FOR THE HANDICAPPED

"SEC. 306. (a)(1) The Congress finds and declares that due to the rapid implementation of programs to assist handicapped individuals mandated under the Education for the Handicapped Act and section 504 of the Rehabilitation Act of 1973, there is a need for people to provide the special supportive services and removal of architectural barriers required by these Acts.

"(2) The Congress further declares that the individuals to be served under this section represent a large percentage of the unemployed, and that these services will provide meaningful improvement of the lives of the handicapped individuals served.

"(b) The Secretary shall establish programs throughout the Nation which shall train personnel to work with and assist handicapped individuals. These programs may be in any areas of training or education which provide individuals with skills necessary to train or provide assistance to handicapped persons, including, but not limited to, interpreters for the deaf and aides in classrooms to assist in the education of the handicapped.

"(c) The Secretary shall take appropriate action to establish administrative procedures and machinery (including personnel having particular competence in this field) for the administration of programs authorized under this section.

"PARTNERSHIP PROGRAMS

"SEC. 307. (a) From funds available under this title the Secretary is authorized to promote the development of a partnership arrangement between prime sponsors and employment security agencies. Such partnerships shall constitute a segment of an integrated and comprehensive intake, service and placement system and shall be designed to achieve an employability plan and comprehensive program of job preparation and job search assistance for all participants under this Act. Such partnerships may also include other related public and private nonprofit agencies and organizations, including community-based organizations.

"(b) Such partnerships may result in—

"(1) the creation of a joint-planning, administrative and operational entity;

"(2) combining and colocation of staff; and

"(3) a joint data base and information system.

"(c) The Secretary is authorized to reimburse prime sponsors for costs associated with the implementation of a partnership and to provide incentives to ensure that employment security agencies may participate on an equitable basis.

"PROJECTS FOR MIDDLE-AGED AND OLDER WORKERS

"SEC. 308. (a) The Secretary shall—

"(1) develop and establish employment and training policies and programs for middle-aged and older workers which will reflect appropriate consideration of these workers' importance in the labor force and lead to a more equitable share of employment and training resources for middle-aged and older workers;

"(2) develop and establish programs to facilitate the transition of workers over 55 years of age from one occupation to another within the labor force and to facilitate the transition of such workers from non-participation to participation in the labor force including work experience, vocational education, public service employment, on-the-job training, occupational upgrading, and job search and placement, and technical assistance to employers for establishing flexi-time, job sharing, and other innovative arrangements suited to the needs of older workers; and

"(3) conduct research on the relationships between age and employment and insure that the findings of such research are widely disseminated in order to assist employers in both the public and private sectors better understand and utilize the capabilities of middle-aged and older workers;

"(4) develop and establish programs to develop methods designed to assure increased labor force participation by older workers who are able and willing to work but who have been unable to secure employment or who have been discouraged from seeking employment.

"(b) In carrying out the provisions of subsection (a) the Secretary shall provide for appropriate arrangements to be made with prime sponsors, members of the business community (including small business), labor organizations, local educational agencies, and community-based organizations as defined in section 3. Such arrangements may include, but need not be limited to—

"(1) an analysis of the local labor force on the basis of such factors as age, educational background, income, race, and sex, focusing particularly on comparative rates of labor force participation and of unemployment and underemployment among the various demographic groups studied;

"(2) an assessment of each participant's skills and work experience for purposes of formulating realistic second career objectives, including formal vocational testing instruments supplemented by such functional assessment methods and techniques to detect those skills and abilities of a participant as may be related to desired second career and occupational upgrading objectives;

"(3) second career and occupational upgrading counseling by individuals knowledgeable about the employment and training needs of middle-aged and older workers;

"(4) the establishment of second career objectives which will—

"(A) provide reasonable assurances to the participant that public and private sector demand exists for the skills developed in the second careers program; and

"(B) enable the participant to compete successfully in the job market; and

"(5) establishment of formal second careers training agreements, between participants and program sponsors, which—

"(A) set forth the career objectives of the participants and the steps required of each participant and prime sponsor to achieve these objectives;

"(B) will remain in force until its terms are fulfilled, or renegotiated or terminated according to such procedures as shall be prescribed by the Secretary; and

"(C) may be renegotiated or terminated, at any time, by the participant, or by the program sponsor for good cause.

"(c) The Secretary is hereby authorized to pay program sponsors reasonable training costs to participants in second careers programs to the extent necessary to achieve the objectives of such programs in accordance with regulations prescribed by the Secretary, but in no case shall such payment exceed the permissible maximum under section 122(i)(1). Such costs may include reasonable tuition for participants engaged in technical or other institutional training and payments to program sponsors providing on-the-job training, provided that such payments are based on the actual number of hours of such training given to the second careers program participant. The Secretary is authorized to pay for equipment, materials, and such other costs necessary for a participant to achieve the objectives of his second careers program.

"(d) Programs assisted under this section may provide for participation in employment and training programs on a part-time or flexible-time basis.

"(e) Participants in programs authorized under this section shall be individuals over the age of forty who are unemployed, underemployed, or economically disadvantaged, who have a family income (exclusive of any income received under a Federal or State welfare or unemployment program) which is not in excess of 125 percent of the poverty level established by the Director of the Office of Management and Budget.

"(f) For the purposes of carrying out this section, the Secretary shall reserve from

funds available for this title not more than 5 percent of the amount available for this title.

"(g) No provision of this section shall be construed as intending any diminution of the employment and training opportunities available to workers over forty years of age under titles II, VI, and VII of this Act.

"PART B—RESEARCH, TRAINING, AND EVALUATION

"RESEARCH

"SEC. 311. (a) To assist the Nation in expanding work opportunities and assuring access to those opportunities for all who desire it, the Secretary shall establish a comprehensive program of employment and training research utilizing the methods, techniques, and knowledge of the behavioral and social sciences and such other methods, techniques, and knowledge as will aid in the solution of the Nation's employment and training problems. The programs required by this section may include, but need not be limited to, studies, the findings of which may contribute to the formulation of employment and training policy; development or improvement of employment and training programs; increased knowledge about labor market processes, including programs designed to eliminate artificial barriers to employment; reduction of unemployment and its relationships to price stability; promotion of more effective worker development, training, and utilization; improved national, regional and local means of measuring future labor demand and supply; enhancement of job opportunities; skill training to qualify employees for positions of greater skill, responsibility, and remuneration; meeting of worker shortages; easing of the transition from school to work, from income transfer payment dependency to employment, from one job to another, and from work to retirement; testing the usefulness of sheltered employment for the difficult to employ; opportunities and services for older persons who desire to enter or reenter the labor force; and for improvement of opportunities for employment and advancement through the reduction of discrimination and disadvantage arising from poverty, ignorance, or prejudice.

"(b) The Secretary shall establish a program of experimental, developmental, demonstration, and pilot projects, through grants to or contracts with public agencies or private organizations, for the purpose of improving techniques and demonstrating the effectiveness of specialized methods in meeting employment and training problems. Nothing in this subsection shall authorize the Secretary to carry out employment programs experimenting with subsidized wages in the private sector or wages less than wages established by the Fair Labor Standards Act of 1938 for employment subject to that Act. In carrying out this subsection, the Secretary shall consult with such other agencies as may be appropriate. Where programs under this section require institutional training, appropriate arrangements for such training shall be agreed to by the Secretary and the Secretary of Health, Education, and Welfare.

(c) The Secretary is authorized to conduct supportive employment and training projects of an experimental and demonstration nature as part of, or coordinated with experimental or demonstration programs of a similar nature that the Secretary has been conducting for unemployed persons with serious problems in the labor market, such as juvenile delinquents, mentally and emotionally handicapped individuals, alcoholics, ex-addicts, ex-offenders, and recipients of aid to families with dependent children, to enable them, through temporary, highly structured and supervised work experience, to make the transition to employment or self-employment. Such programs shall provide for skill training as required to effect such transition.

"(d) The Secretary is authorized to undertake research programs to (1) investigate the applicability of job-sharing, work-sharing and other flexible work hours arrangements in various settings, and of the incentives and technical assistance required by employers to implement such alternative working arrangements; and (2) investigate the extent to which job and wage classification systems undervalue certain skills and responsibilities on the basis of the sex of persons who usually hold the positions.

"(e) The Secretary is authorized to conduct a variety of demonstration and experimental projects to test the best methods of assisting persons, who might otherwise rely on public assistance or other income assistance, to find nonfederally assisted employment in the private and public sectors, and to provide federally assisted work and training opportunities for any such persons who are unable to find nonfederraly assisted work or training opportunities. Such demonstration and experimental projects and programs are to be conducted, to the extent practicable, in rural and urban areas, in sparsely and densely populated areas, and in areas with inadequate means of transportation.

"(f) The Secretary is authorized to conduct demonstration programs and projects, which provide expanded guidance and counseling services to participants under this Act through community vocational resource centers established in economically distressed communities or areas pursuant to section 132(a)(7) of the Vocational Educational Amendments of 1976. Such programs shall provide State boards of vocational education, which establish such community vocational resource centers, with funding for up to 50 per centum of the cost of such projects. The Secretary may make such funds available to a State board of vocational education when such board reaches agreement with the prime sponsor to assist out-of-school individuals in reentering school at the secondary or postsecondary level, to take advantage of vocational skill training opportunities including cooperative education and work-study programs, and to be offered referral to other training programs, apprenticeship programs, and on-the-job training for which academic credit may be available. Projects shall include provisions for outreach to inform the economically disadvantaged of the assistance available through the community resource centers and to provide assurances that programs will be coordinated with other guidance and counseling activities of the prime sponsor, including activities under section 445(c), other in-school guidance and counseling programs in the area, State employment service offices, and the activities of the private industry councils established pursuant to title VII of this Act.

"(g) The Secretary shall conduct educational and assistance programs designed to eliminate artificial barriers to employment based upon race, sex, national origin, age, records of arrest or conviction, handicaps, marital status, or other criteria. To support such programs, information shall be developed identifying all such artificial barriers, the numbers of persons affected, the manner in which such barriers operate and how such barriers can best be eliminated. In complying with the requirements of this subsection, the Secretary shall consult with the Department of Health, Education, and Welfare, the United States Civil Rights Commission, and the Equal Employment Opportunity Commission.

"LABOR MARKET INFORMATION AND JOB BANK PROGRAM

"SEC. 312. (a) The Secretary shall develop a comprehensive system of labor market information on a national, State, local, or other appropriate basis, which shall be made publicly available in a timely fashion.

"(b) In addition to the monthly national unemployment statistics, the Secretary shall develop reliable methods, including the use of selected sample surveys, to produce more statistically accurate data on unemployment by State and local areas, and shall investigate alternative methods to produce more accurate data on underemployment and labor demand by State and local areas.

"(c) The Secretary shall develop data for an annual statistical measure of labor market related economic hardship in the Nation. Among the factors to be considered in developing such a measure are unemployment, labor force participation, involuntary part-time employment, and full-time employment at wages less than the poverty level.

"(d) The Secretary shall develop methods to establish and maintain more comprehensive household budget data at different levels of living, including a level of adequacy, to reflect the differences of household living costs in regions and localities, both urban and rural.

"(e) The Secretary shall set aside, out of sums available to the Department for any fiscal year including sums available for this title, an amount which the Secretary determines is necessary and appropriate to carry out the provisions of this section, and shall, no later than sixty days after such sums are appropriated and made available, notify the appropriate committees of the Congress of the amounts so set aside and the basis for the determination of need and appropriateness.

"(e) The Secretary shall establish and carry out a nationwide computerized job bank and matching program (including the listing of all suitable employment openings with local offices of the State employment service agencies by Federal contractors and subcontractors and providing for the affirmative action as required by section 2012(a) of title 38, United States Code) on a regional, State, and local basis, using electronic data processing and telecommunications systems to the maximum extent possible for the purpose of identifying sources of available persons and job vacancies, providing an expeditious means of matching the qualifications of unemployed, underemployed, and economically disadvantaged persons with employer requirements and job opportunities, and referring and placing such persons in jobs.

"EVALUATION

"SEC. 313. (a) The Secretary shall provide for the continuing evaluation of all programs, activities, and research and demonstration projects conducted pursuant to this Act, including their cost-effectiveness in achieving the purposes of this Act, their impact on communities and participants, their implication for related programs, the extent to which they meet the needs of persons by age, sex, race, and national origin, and the adequacy of the mechanism for the delivery of services. In conducting evaluations the Secretary shall compare the effectiveness of programs conducted by prime sponsors of the same class and of different classes, and shall compare the effectiveness of programs conducted by prime sponsors with similar programs carried out by the Secretary under the Act. The Secretary shall also arrange for obtaining the opinions of participants about the strengths and weaknesses of the programs.

"(b) The Secretary shall evaluate the effectiveness of programs authorized under this Act and part C of title IV of the Social Security Act with respect to the statutory goals and objectives, including increases in employment and earnings for participants, duration in training and employment situations, information on the post-enrollment labor market experience of program participants for at least a year following their termination from such programs, and comparable information on other employees or trainees of participating employers.

"(c) In order to reduce the paperwork burden and costs on prime sponsors, project ap-

plicants and program agents, in carrying out evaluations of the cost-effectiveness of identical or similar programs of prime sponsors, the impact of such programs on communities and agents, the implication for related programs, and the adequacy of the mechanism for the delivery of services, the Secretary shall to the maximum extent possible, consistent with the purposes of this Act, use statistical sampling techniques.

"(d) The Secretary shall prepare and submit to the Congress an annual evaluation plan, setting forth major themes for the areas of research, statistics, evaluation, experimentation, and demonstrations to be undertaken in the succeeding fiscal year, the program purposes and policy alternatives to which each such area is related and the current and proposed funding and staffing levels. The Secretary shall specify in the portions of the plan relating to experimentation and demonstrations the intended outcome of proposed major innovations and the amount of time required to test the innovations or to achieve adoption of the demonstration. The information required by this subsection may be included in the annual report of the Secretary under section 127(a).

"(e) The Secretary shall prepare and submit to the Congress an annual evaluation report for employment and training programs. Such report may be included in the annual report of the Secretary under section 127(a). The Secretary shall include in such report—

"'(1) a summary of the achievements, failures, and problems of the various programs authorized in this Act in meeting the objectives of this Act;

"(2) a summary of major findings from research, evaluation, and experiments conducted in the previous fiscal year;

"(3) recommendations for program modifications based upon analysis of such findings; and

"(4) such other recommendations for legislative or administrative action as the Secretary deems appropriate.

"(f) The Secretary shall develop an ongoing program to notify prime sponsors of experiments and demonstrations to be conducted in their States and shall disseminate to prime sponsors and Governors the results of all research, demonstrations, evaluations, and experiments of employment and training programs.

"(g)(1) The Secretary shall—

"(A) develop standard definitions of 'enrollments', 'completions', 'job placements', and 'training-related job placements' for classroom and on-the-job training programs funded under this Act;

"(B) establish procedures for the uniform reporting by prime sponsors of information on enrollments completions, job placements, and training related placements by detailed occupational or training code for classroom and on-the-job training programs funded under this Act; and

"(C) make a report to the Congress not later than March 1, 1980, and annually thereafter, containing a summary of the information described in subparagraph (B) together with such analysis and recommendations as the Secretary deems advisable.

"(2) The information required by paragraph (1)(C) may be included in the annual report of the Secretary under section 127(a).

"(3) For the purposes of this subsection, the term 'detailed occupational or training code' shall mean any occupational or training code equivalent in detail to the Standard Occupational Classification at the four-digit level.

"TRAINING AND TECHNICAL ASSISTANCE

"SEC. 314. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, or other appropriate officials, shall provide directly or through grants, contracts, or other arrangements, appropriate preservice and inservice training for specialized, supportive, supervisory, or other personnel, and appropriate technical assistance with respect to programs under this Act.

"NATIONAL OCCUPATIONAL INFORMATION COORDINATING COMMITTEE

"SEC. 315. (a) The National Occupational Information Coordinating Committee, in carrying out its responsibilities under this section, shall give special attention to the labor market information needs of youth, including activities such as, but not limited to—

"(1) assisting and encouraging local areas to adopt methods of translating national aggregate occupational outlook data into local terms;

"(2) providing technical assistance for programs of computer on-line terminals and other facilities to utilize and implement occupational and career outlook information and projections supplied by State employment service agencies and to improve the match of youth career desires with available and anticipated labor demand;

"(3) assisting and encouraging the development of State occupational information systems, accessible to local schools, including pilot programs in the use of computers to facilitate such access; and

"(4) in cooperation with State and local correctional agencies, encouraging programs of counseling and employment services for youth in correctional institutions.

"(5) in cooperation with State and local educational agencies, and other appropriate persons and organizations, encouraging programs to make available employment and career counseling to postsecondary youths; and

"(6) providing technical assistance for programs designed to encourage public and private employers to list all available job opportunities for youths with the appropriate eligible applicant conducting occupational information and career counseling programs, local public employment services offices and to encourage cooperation and contact among such eligible applicants, employers, and offices.

"(b) All funds available to the National Occupational Information Coordinating Committee under this Act, under section 161 of the Vocational Education Act of 1963 and under section 12 of the Career Education Act may be used by the Committee to carry out any of its functions and responsibilities authorized by law.

"EVALUATIONS AND INCENTIVE GRANTS

"SEC. 316. (a) Any prime sponsor may volunteer for an evaluation of its title II programs by the Department of Labor. Such evaluation may include monitoring of the rate of placement of title II enrollees after leaving the title II program, the salaries paid to such enrollees, the length of time that they remain in the job, and whatever other information that the Secretary determines, by regulation, is important in evaluating the performance of the prime sponsors. For purposes of making this evaluation, the performance of the prime sponsor shall be assessed by comparing enrollees to a comparable group of nonenrollees within the prime sponsor's area.

"(b) The Secretary shall make awards from the funds appropriated under this title to those prime sponsors which have performed well in their title II functions. The Secretary shall make awards according to a unit measurement; each such unit may consist of some degree of improvement among title II enrollees in job placement, salary, longevity, and whatever other factors the Secretary determines, by regulation, are important (each factor shall be weighed by the Secretary in a manner which best effectuates the purposes of this Act), over performance on each of the criteria set forth in this section by a comparable group of nonenrollees in the prime sponsor's area.

"VOUCHER DEMONSTRATION PROJECTS

"SEC. 317. (a) The Secretary shall establish a special voucher project to demonstrate the efficacy of providing vouchers to economically disadvantaged persons who are unemployed or underemployed. Such vouchers shall entitle private employers who provide employment with or without training to such individuals to payment in amounts equal to the value of the voucher pursuant to regulations of the Secretary.

"(b) In establishing regulations under this section, the Secretary shall establish criteria, eligibility of participants and portability of vouchers between qualifying employers, the value of vouchers, the guarantees against displacement of eligible workers, and such other factors as the Secretary deems appropriate.

"(c) Not later than March 1, 1981, the Secretary shall prepare and submit to the Congress a report evaluating the effectiveness of the demonstration projects conducted pursuant to this section, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate. The information required by this subsection may be included in the appropriate annual report of the Secretary under section 172(a).

"EMPLOYMENT AND TRAINING ACTIVITIES TO STIMULATE LOCAL PRIVATE ECONOMIC DEVELOPMENT

"SEC. 318. (a) The Secretary is authorized to carry out a special experimental program to link the employment and training activities of prime sponsors to a workable strategy for stimulating local private economic development and replacement of declining industries. Any determination concerning the nature of skills to be provided in training and retraining programs shall be made after consultation with agencies charged with fostering the growth or introduction of industries in a given labor market. This experiment may include use of vouchers as authorized in section 317.

"(b) The Secretary shall take whatever action is necessary to assure that any experimental program conducted under this section is coordinated with Federal, State, regional, and local agencies responsible for administering and receiving funds from the Economic Development Administration pursuant to sections 201 and 202 of the Public Works and Economic Development Act of 1965 and from the Small Business Investment Act of 1958. Activities under any such program shall be consistent with the overall economic development plan for the area required by section 202(b)(10) of the Public Works and Economic Development Act of 1965.

"TITLE IV—YOUTH PROGRAMS

"STATEMENT OF PURPOSE

"SEC. 401. It is the purpose of this title to provide a broad range of coordinated employment and training programs for eligible youth in order to provide effectively for comprehensive employment and training services to improve their future employability and to explore and experiment with alternative methods for accomplishing such purposes.

"DEFINITION

"SEC. 402. (a) For purposes of parts B and C, the term 'eligible youth' means an economically disadvantaged youth who is (1) either unemployed, underemployed, or in school, and (2) either age 16 to 21 inclusive, or if authorized under regulations of the Secretary, age 14 to 15 inclusive. Nothing in this section shall be construed to prohibit the provision of day care for the children of eligible youths.

"(b) For the purposes of subpart 1 of part A, the term 'eligible youth' means a youth

between the ages of 16 and 19 inclusive, the income of whose family is at or below the poverty level determined in accordance with criteria as established by the Director of the Office of Management and Budget.

"PART A—YOUTH EMPLOYMENT DEMONSTRATION PROGRAMS

"STATEMENT OF PURPOSE

"SEC. 411. It is the purpose of this part to establish a variety of employment, training, and demonstration programs to explore methods of dealing with the structural unemployment problems of the Nation's youth. The basic purpose of the demonstration programs shall be to test the relative efficacy of different ways of dealing with these problems in different local contexts, but this basic purpose shall not preclude the funding of programs dealing with the immediate difficulties faced by youths who are in need of, and unable to find, jobs. It is explicitly not the purpose of this part to provide make-work opportunities for unemployed youth; instead, it is the purpose to provide youth, and particularly economically disadvantaged youth, with opportunities to learn and earn that will lead to meaningful employment or self-employment opportunities after they have completed the program.

"Subpart 1—Youth Incentive Entitlement Pilot Projects

"ENTITLEMENT PILOT PROJECTS AUTHORIZED

"SEC. 416. (a) The Secretary shall enter into arrangements with prime sponsors selected in accordance with the provisions of this subpart for the purpose of demonstrating the efficacy of guaranteeing otherwise unavailable part-time employment, or combination of part-time employment and training, for economically disadvantaged youth between the ages of 16 and 19, inclusive, during the school year who resume or maintain attendance in secondary school for the purpose of acquiring a high school diploma or in a program which leads to a certificate of high school equivalency and full-time employment or part-time employment and training during the summer months to each such youth.

"(b) Each prime sponsor who applies for and is selected by the Secretary to carry out a pilot project under this subpart shall guarantee the employment described in subsection (a) to each such unemployed youth described in subsection (a) who resides within the area or a designated part thereof served by the prime sponsor and who applies to that prime sponsor for employment. The Secretary shall provide to each prime sponsor, from funds appropriated for carrying out this subpart, in combination with any funds made available by such prime sponsor according to an agreement made pursuant to section 418(a)(4)(F), the amount to which that prime sponsor is entitled under subsection (c).

(c) Each prime sponsor shall be entitled to receive, for each youth who is provided employment by that prime sponsor, the costs associated with providing such employment. Such costs shall take into account funds made available by such prime sponsor under section 418(a)(4)(F).

"EMPLOYMENT GUARANTEES

"SEC. 417. Employment opportunities guaranteed under this subpart shall take the form of any one of the following or any combination thereof:

"(1) Part-time employment or training or combination thereof during the school year, not to exceed an average of 20 hours per week for each youth employed, and not to last less than 6 months nor more than 9, on projects operated by community-based organizations of demonstrated effectiveness which have a knowledge of the needs of disadvantaged youth; local educational agencies; institutions of higher education; non-profit private organizations or institutions engaged in public service; nonprofit voluntary youth organizations; nonprofit private associations, such as labor organizations, educational associations, business, cultural, or other private associations; units of general local government; or special purpose political subdivisions either having the power to levy taxes and spend funds or serving such special purpose in 2 or more units of general local government.

"(2) Part-time employment on an individual basis in any of the institutions and under the same conditions provided for in clause (1).

"(3) Part-time employment on either a project or individual basis in any of the institutions and under the same conditions as provided in clause (1) which includes as part of the employment on-the-job or apprenticeship training.

"(4) Full-time employment during the summer months, not to exceed 40 hours per week for each youth employed, and not to last less than 8 weeks in any of the institutions described in clause (1).

"SELECTING PRIME SPONSORS

"SEC. 418. (a) In selecting prime sponsors to operate youth incentive entitlement projects, the Secretary shall—

"(1) select prime sponsors from areas with differing socioeconomic and regional circumstances such as differing unemployment rates, school dropout rates, urban and rural variations, size, and other such factors designed to test the efficacy of a youth job entitlement in a variety of differing locations and circumstances;

"(2) take into consideration the extent to which the prime sponsors devote funds made available under title II and part C of this title for the purpose of carrying out a youth incentive entitlement project or for supportive services;

"(3) take into consideration the extent to which new and different classifications, occupations, or restructured jobs are created for youth;

"(4) select only prime sponsors which submit proposals which include—

"(A) a description of the procedure to be utilized by the prime sponsor to publicize, consider, approve, audit, and monitor youth incentive projects or jobs funded by the prime sponsor under this part, including copies of proposed application materials, as well as examples of audit and client characteristics reports;

"(B) a statement of the estimated number of economically disadvantaged youth to be served by the prime sponsor, and assurances that only such disadvantaged youth will be served;

"(C) assurances that the provisions of sections 442 and 443 are met relating to wage provisions and special conditions;

"(D) assurances that the prime sponsor has consulted with public and private nonprofit educational agencies including vocational and post-secondary education institutions and other agencies which offer high school equivalency programs; public employers, including law enforcement and judicial agencies; State and local public assistance agencies; labor organizations; voluntary youth groups; community-based organizations; organizations of demonstrated effectiveness with a special knowledge of the needs of such disadvantaged youth; and with the private sector in the development of the plan, and assurances that arrangements are made with appropriate groups to assist the prime sponsor in carrying out the purposes of this subpart;

"(E) assurances that arrangements are made with the State employment security agencies to carry out the purposes of this subpart;

"(F) an agreement that funds available under title II for economically disadvantaged youth employment programs and funds available for the summer youth program under part C of this title for youth eligible under subsection (a) will be used in support of the project authorized under this subpart;

"(G) assurances that the employment of eligible youth meets the requirements of eligible activities under section 419;

"(H) assurances that participating youth shall not be employed more than an average of twenty hours per week during the school year and not more than forty hours per week during the summer;

"(I) assurances that a participating youth is not a relative of any person with responsibility for hiring a person to fill that job;

"(J) assurances that whenever employment involves additional on-the-job, institutional, or apprenticeship training provided by the employer, and if such training is not paid for in full or in part by the prime sponsor under any other program authorized under this Act, wages may be paid in accordance with the provisions of subsection (b) of section 14 of the Fair Labor Standards Act of 1938, and with the balance being applied to the cost of training;

"(K) assurances that arrangements have been made with the appropriate local education agency or with the institution offering a certified high school equivalency program that such youth is enrolled and meeting the minimum academic and attendance requirements of that school or education program and with employers that such youth meet the minimum work and attendance requirements of such employment and that any employment guarantee is conditioned on such enrollment;

"(L) assurances that special efforts will be made to recruit youth from families receiving public assistance, including parents of dependent children who meet the age requirement of this subpart; and

"(M) assurances that the prime sponsor will make available the data necessary for the Secretary to prepare the reports required by section 420.

"(b) In approving a prime sponsor to operate a youth incentive entitlement pilot project under this subpart the Secretary may also test the efficacy of any such project involving—

"(1) the use of a variety of subsidies to private-for-profit employers, notwithstanding the provisions of sections 417 and 419(a), to encourage such employers to provide employment and training opportunities under this subpart, but no such subsidy shall exceed the net cost to the employer of the wages paid and training provided;

"(2) arrangements with unions to enable youth to enter into apprenticeship training as part of the employment provided under this subpart;

"(3) a variety of administrative mechanisms to facilitate the employment of youths under an entitlement arrangement;

"(4) the inclusion of economically disadvantaged youths between the ages of 19 and 25 who have not received their high school diploma;

"(5) the inclusion of occupational and career counseling, outreach, career, exploration, and on-the-job training and apprenticeship as part of the employment entitlement; and

"(6) the inclusion of youth under the jurisdiction of the juvenile or criminal justice system with the approval of the appropriate authorities.

"SPECIAL PROVISIONS

"SEC. 419. (a) Employment and training under this subpart shall develop the participant's role as a meaningful member of the community, and may include employment and training in such fields as environmental quality, health care, education, self-employment, social services, public safety, crime prevention and control, transportation, recreation, neighborhood improvement, rural

development, conservation, beautification, and community improvement projects.

"(b) No funds for employment under this subpart shall be used to provide public services through a nonprofit organization, association, or institution, or a nonprofit private institution of higher education, or any other applicant, which were previously provided by a political subdivision or local educational agency in the area served by the project of where the employment and training takes place, and no funds will be used under this subpart to provide such services through such an organization or institution which are customarily provided only by a political subdivision or local educational agency in the area served by such project or where the employment and training takes place.

"REPORTS

"SEC. 420. The Secretary shall report to the Congress not later than March 15, 1979, on his interim findings on the efficacy of a youth incentive entitlement. The Secretary shall submit another report not later than December 31, 1979, concerning the youth incentive entitlement projects authorized under this subpart. Included in such reports shall be findings with respect to—

"(1) the number of youths enrolled at the time of the report;

"(2) the cost of providing employment opportunities to such youths;

"(3) the degree to which such employment opportunities have caused out-of-school youths to return to school or others to remain in school;

"(4) the number of youths provided employment in relation to the total which might have been eligible;

"(5) the kinds of jobs provided such youths and a description of the employers—public and private—providing such employment;

"(6) the degree to which on-the-job or apprenticeship training has been offered as part of the employment;

"(7) the estimated cost of such a program if it were to be extended to all areas;

"(8) the effect such employment opportunities have had on reducing youth unemployment in the areas of the prime sponsors operating a project; and

"(9) the impact of job opportunities provided under the project on other job opportunities for youths in the area.

"Subpart 2—Youth Community Conservation and Improvement Projects

"STATEMENT OF PURPOSE

"SEC. 421. It is the purpose of this subpart to establish a program of community conservation and improvement projects to provide employment, work experience, skill training, and opportunities for community service to eligible youths, for a period not to exceed 12 months, supplemental to but not replacing opportunities available under title II.

"DEFINITIONS

"SEC. 422. As used in this subpart, the term—

"(1) 'eligible applicant' means any prime sponsor qualified under section 101 of this Act, sponsors of Native American programs qualified under section 302(c)(1) of this Act, and sponsors of migrant and seasonal farmworkers programs qualified under section 303 of this Act;

"(2) 'project applicant' shall have the same meaning as in section 3(20) of this Act;

"(3) 'eligible youths' means individuals who are unemployed and, at the time of entering employment under this subpart, are ages sixteen to nineteen, inclusive; and

"(4) 'community improvement projects' means projects providing work which would not otherwise be carried out, including, but not limited to, the rehabilitation or improvement of public facilities; neighborhood improvements; weatherization and basic repairs to low-income housing; energy conservation including solar energy techniques, especially those utilizing materials, and supplies available without cost; removal of architectural barriers to access, by handicapped persons, to public facilities; and conservation, maintenance, or restoration of natural resources on publicly held lands other than Federal lands.

"ALLOCATION OF FUNDS

"SEC. 423. (a) Funds available to carry out this subpart for any fiscal year shall be allocated in such a manner that not less than 75 percent of such funds shall be allocated among the States on the basis of the relative number of unemployed persons within each State as compared to all States, except that not less than one-half of 1 percent of such funds shall be allocated for projects under this subpart within any one State and not less than one-half of 1 percent of such funds shall be allocated in the aggregate for projects in Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(b) Of the funds available for this subpart, 2 percent shall be available for projects for Native American eligible youths, and 2 percent shall be available for projects for eligible youths in migrant and seasonal farmworker families.

"(c) The remainder of the funds available for this subpart shall be allocated as the Secretary deems appropriate.

"COMMUNITY CONSERVATION AND IMPROVEMENT YOUTH EMPLOYMENT PROJECTS

"SEC. 424. The Secretary is authorized, in accordance with the provisions of this subpart, to enter into agreements with eligible applicants to pay the costs of community conservation and improvement youth employment projects to be carried out by project applicants employing eligible youths and appropriate supervisory personnel.

"PROJECT APPLICATIONS

"SEC. 425. (a) Project applicants shall submit applications for funding of projects under this subpart to the appropriate eligible applicant.

"(b) In accordance with regulations prescribed by the Secretary, each project application shall—

"(1) provide a description of the work to be accomplished by the project, the jobs to be filled, and the approximate duration for which eligible youths would be assigned to such jobs;

"(2) describe the wages or salaries to be paid individuals employed in jobs assisted under this subpart;

"(3) set forth assurances that there will be an adequate number of supervisory personnel on the project and that the supervisory personnel are adequately trained in skills needed to carry out the project and can instruct participating eligible youths in skills needed to carry out the project;

"(4) set forth assurances that any income generated by the project will be applied toward the cost of the project;

"(5) set forth assurances for acquiring such space, supplies, materials, and equipment as necessary, including reasonable payment for the purchase or rental thereof;

"(6) set forth assurances that, to the maximum extent feasible, projects carried out under this subpart shall be labor intensive; and

"(7) set forth such other assurances, arrangements, and conditions as the Secretary deems appropriate to carry out the purposes of this subpart.

"PROPOSED AGREEMENTS

"SEC. 426. (a)(1) Each eligible applicant desiring funds under this subpart shall submit a proposed agreement to the Secretary, together with all project applications approved by the eligible applicant and all project applications approved by any program agent within the area served by the eligible applicant. With its transmittal of the proposed agreement, the eligible applicant shall provide descriptions of the project applications approved by the eligible applicant and by any program agent within the area served by the eligible applicant, accompanied by the recommendations of the eligible applicant concerning the relative priority attached to each project.

"(2) The functions of a program agent shall be as set forth in section 606(b)(2) of this Act.

"(b) The proposed agreement submitted by any eligible applicant shall—

"(1) describe the method of recruiting eligible youths, including a description of how such recruitment will be coordinated with plans under other provisions of this Act, including arrangements required by section 105, of this Act, and also including a description of arrangements with school systems, the public employment service (including school cooperative programs), the courts of jurisdiction for status and youthful offenders, and a description of arrangements with public assistance agencies on the employment of youth from families receiving public assistance, including parent of dependent children,

"(2) provide a description of job training and skill development opportunities that will be made available to participating eligible youths, as well as a description of plans to coordinate the training and work experience with school-related programs, including the awarding of academic credit; and

"(3) set forth such other assurances as the Secretary may require to carry out the purposes of this subpart.

"(c)(1) In order for a project application submitted by a project applicant to be submitted to the Secretary by any eligible applicant, copies of such application shall have been submitted at the time of such application to the prime sponsor's planning council established under section 109 (or an appropriate planning organization in the case of sponsors of Native American programs under section 302 of this Act or migrant and seasonal farmworker programs under section 303 of this Act) for the purpose of affording such council (and the youth council established under section 436 an opportunity to submit comments and recommendations with respect to that application to the eligible applicant. No member of any council (or organization) shall cast a vote on any matter in connection with a project in which that member, or any organization with which that member is associated, has a direct interest.

"(2) Consistent with procedures established by the eligible applicant in accordance with regulations which the Secretary shall prescribe, the eligible applicant shall not disapprove a project applicant submitted by a project applicant unless it has first considered any comments and recommendations made by the appropriate council (or organization) and unless it has provided such applicant and council (or organization) with a written statement of its reasons for such disapproval.

"APPROVAL OF AGREEMENTS

"SEC. 427. (a) The Secretary may approve or deny on an individual basis any of the project submitted with any proposed agreement.

"(b) No funds shall be made available to any eligible applicant except pursuant to an agreement entered into between the Secretary and the eligible applicant which provides assurances satisfactory to the Secretary that—

"(1) the standards set forth in subpart 4 will be satisfied;

"(2) projects will be conducted in such manner as to permit eligible youths employed

in the project who are in school to coordinate their jobs with classroom instruction and, to the extent feasible, to permit such eligible youths to receive credit from the appropriate educational agency, postsecondary institution, or particular school involved; and

"(3) meet such other assurances, arrangements, and conditions as the Secretary deems appropriate to carry out the purposes of this subpart.

"WORK LIMITATION

"SEC. 428. No eligible youth shall be employed for more than twelve months in work financed under this subpart, except as prescribed by the Secretary.

"Subpart 3—Youth Employment and Training Programs

"STATEMENT OF PURPOSE

"SEC. 431. It is the purpose of this subpart of establish programs designed to make a significant long-term impact on the structural unemployment problems of youth, supplementary to but not replacing programs and activities available under title II of this Act, to enhance the job prospects and career opportunities of young persons, including employment, community service opportunities, and such training and supportive services as are necessary to enable participants to secure suitable and appropriate unsubsidized employment in the public and private sectors of the economy. To the maximum extent feasible, training and employment opportunities afforded under this subpart shall be interrelated and mutually reinforcing so as to achieve the goal of enhancing the job prospects and career opportunities of youths served under this subpart.

"PROGRAMS AUTHORIZED

"SEC. 432. (a) The Secretary is authorized to provide financial assistance to enable eligible applicants to provide employment opportunities and appropriate training and supportive services for eligible participants, including—

"(1) useful work experience opportunities in a wide range of community betterment activities such as rehabilitation of public properties, assistance in the weatherization of homes occupied by low-income families, demonstrations of energy-conserving measures, including solar energy techniques (especially those utilizing materials and supplies available without cost), park establishment and upgrading, neighborhood revitalization, conservation and improvements, removal of architectural barriers to access, by handicapped individuals, to public facilities, and related activities;

"(2) productive employment and work experience in fields such as education, health care, neighborhood transportation services, crime prevention and control, environmental quality control (including integrated pest management activities), preservation of historic sites, and maintenance of visitor facilities;

"(3) appropriate training and services to support the purpose of this subpart, including—

"(A) outreach, assessment, and orientation;

"(B) counseling, including occupational information and career counseling;

"(C) activities promoting education to work transition;

"(D) development of information concerning the labor market, and provision of occupational, educational, and training information;

"(E) services to youth to help them obtain and retain employment;

"(F) literacy training and bilingual training;

"(G) attainment of certificates of high school equivalency;

"(H) job sampling, including vocational exploration in the public and private sector;

"(I) institutional and on-the-job training, including development of basic skills and job skills;

"(J) transportation assistance;

"(K) child care and other necessary supportive services;

"(L) job restructuring to make jobs more responsive to the objectives of this subpart, including assistance to employers in developing job ladders or new job opportunities for youths, in order to improve work relationships between employers and youths;

"(M) community-based central intake and information services for youth;

"(N) job development, direct placement, and placement assistance to secure unsubsidized employment opportunities for youth to the maximum extent feasible, and referral to employability development programs;

"(O) programs to overcome sex-stereotyping in job development and placement; and

"(P) programs and outreach mechanisms to increase the labor force participation rate among minorities and women.

"(b) In order to carry out this subpart, a Governor or a prime sponsor may enter into contracts with project applicants (as defined in section 3(20)) or employers organized for profits, but payments to such employers shall not exceed the amounts permitted under section 121(1), or may operate programs directly if, after consultation with community-based organizations and nonprofit groups, a Governor or prime sponsor determines that such direct operation will promote the purposes of this subpart.

"ALLOCATION OF FUNDS

"SEC. 433. (a) From the sums available for this subpart—

"(1) an amount equal to 75 percent of such funds shall be made available to prime sponsors for programs authorized under section 432;

"(2) an amount equal to 5 percent of the amount available for this part shall be made available to Governors for special statewide youth services under subsection (c);

"(3) an amount equal to not less than 2 percent of the amount available for this part shall be made available for employment and training programs for Native American eligible youths (deducting such amounts as are made available for such purposes under section 423(b));

"(4) an amount equal to not less than 2 percent of the amount available for this subpart shall be made available for employment and training programs for eligible youths in migrant and seasonal farmworker families (deducting such amounts as are made available for such purposes under section 423(b)); and

"(5) the remainder of the funds available for this subpart shall be available for the Secretary's discretionary projects authorized under section 438.

"(b)(1) Amounts available for each of the purposes set forth in paragraphs (1) and (2) of subsection (a) shall be allocated among the States in such a manner that—

"(A) 37.5 percent thereof shall be allocated in accordance with the relative number of unemployed persons within each State as compared to the total number of such unemployed persons in all States;

"(B) 37.5 percent thereof shall be allocated in accordance with the relative number of unemployed persons residing in areas of substantial unemployment (as defined in section 3(2)) within each State as compared to the total number of unemployed persons residing in all such areas in all States; and

"(C) 25 percent thereof shall be allocated in accordance with the relative number of persons in families with an annual income below the low-income level (as defined in section 3(16)) within each State as compared to the total number of such persons in all States.

"(2) In determining allocations under this subsection the Secretary shall use what the Secretary determines to be the best available data.

"(3) Amounts available to prime sponsors under paragraph (1) of subsection (a) shall, out of the total amounts allocated to each State under such paragraph, be allocated by the Secretary among prime sponsors within each State, in accordance with the factors set forth in paragraph (1) of this subsection.

"(c) The amount available to the Governor of each State under paragraph (2) of subsection (a) shall be used in accordance with a special statewide youth services plan, approved by the Secretary, for such purposes as—

"(1) providing financial assistance for employment and training opportunities for eligible youths who are under the supervision of the State;

"(2) providing labor market and occupational information to prime sponsors and local educational agencies, without reimbursement;

"(3) providing for the establishment of cooperative efforts between State and local institutions, including (A) occupational and career guidance and counseling and placement services for in-school and out-of-school youth; and (B) coordination of statewide activities carried out under the Career Education Incentive Act;

"(4) providing for the establishment of cooperative efforts between State and local institutions, including occupational and career guidance and counseling and placement services for in-school and out-of-school youth;

"(5) providing financial assistance for expanded and experimental programs in apprenticeship trades, or development of new apprenticeship arrangements, in concert with appropriate businesses and labor unions or State apprenticeship councils; and

"(6) carrying out special model employment and training programs and related services between appropriate State agencies and prime sponsors in the State, or any combination of such prime sponsors, including subcontractors selected by prime sponsors, with particular emphasis on experimental job training within the private sector.

"(d)(1) Not less than 22 percent of the amount allocated to each prime sponsor under paragraph (1) of subsection (a) of this section shall be used for programs under this subsection.

"(2) The amount available to each prime sponsor under paragraph (1) shall be used for programs for in-school youth carried out pursuant to agreements between prime sponsors and local educational agencies. Each such agreement shall describe in detail the employment opportunities and appropriate training and supportive services which shall be provided to eligible participants who are enrolled or who agree to enroll in a full-time program leading to a secondary school diploma, a junior or community college degree, or a technical or trade school certificate of completion. Each such agreement shall contain provisions to assure that funds received pursuant to the agreement will not supplant State and local funds expended for the same purpose.

"(e) Programs receiving assistance under paragraph (1) of subsection (a) shall give special consideration in carrying out programs authorized under section 432, to community-based organizations (as defined in section 3(4)) which have demonstrated effectiveness in the delivery of employment and training services.

"ELIGIBLE APPLICANTS

"SEC. 434. Eligible applicants for purposes of this subpart, except section 438, are prime sponsors qualified under section 101, sponsors of Native American programs qualified under section 101, Sponsors of Native American programs qualified under section 302(c)(1), and

sponsors of migrant and seasonal farmworker programs qualified under section 303.

"ELIGIBLE PARTICIPANTS

"SEC. 435. Eligible participants for programs authorized under this subpart shall be persons who—

"(1)(A) are unemployed or are underemployed or are in school and are ages sixteen to 21, inclusive; or (B) if authorized under such regulations as the Secretary may prescribe, are in school and are ages fourteen to 15 inclusive; and

"(2) are not members of households which have current gross family income, adjusted to an annualized basis (exclusive of unemployment compensation and all Federal, State, and local income-tested or needs-tested public payments) at a rate exceeding 85 percent of the lower living standard income level, except that, pursuant to regulations which the Secretary shall prescribe, persons who do not meet the requirements of this subparagraph but who are otherwise eligible under this subpart may participate in appropriate activities of the type authorized under section 432(a).

Notwithstanding the provisions of subsection (a), 10 percent of the funds available for this subpart may be used for programs which include youths of all economic backgrounds to test the desirability of including youths of all economic backgrounds.

"CONDITIONS FOR RECEIPT OF FINANCIAL ASSISTANCE

"SEC. 436. (a) The Secretary shall not provide financial assistance to an eligible applicant for programs authorized under section 432 unless such eligible applicant provides assurances that the standards set forth in subpart 4 will be met and unless such eligible applicant submits an application in such detail as the Secretary may prescribe. Each such application shall—

"(1) describe the programs, projects, or activities to be carried out with such assistance, together with a description of the relationship and coordination of services provided to eligible participants under this subpart for similar services offered by local educational agencies, postsecondary institutions, the public employment service, the courts of jurisdiction for status and youthful offenders, other youth programs, community-based organizations, businesses and labor organizations consistent with the requirements of sections 121 and 203, and assurances that to the maximum extent feasible, use will be made of any services that are available without reimbursement by the State employment service that will contribute to the achievement of the purposes of this subpart;

"(2) include assurances that the application will be coordinated to the maximum extent feasible, with the plans submitted under title II, but services to youth under that title shall not be reduced because of the availability of financial assistance under this subpart;

"(3) provide assurances, satisfactory to the Secretary, that in the implementation of programs under this subpart, there will be coordination, to the extent appropriate, with local educational agencies, postsecondary institutions, community-based organizations, public assistance agencies, businesses, labor organizations, job training programs, other youth programs, the apprenticeship system, the courts of jurisdiction for status and youthful offenders programs, and (with respect to the referral of prospective youth participants to the program) the public employment service system;

"(4) provide assurances that in the implementation of programs under this subpart, there will be coordination, to the extent feasible, with activities conducted under the Career Education Incentive Act;

"(5) provide assurance satisfactory to the Secretary that allowances will be paid in accordance with the provisions of section 124 and such regulations as the Secretary may prescribe for this subpart;

"(6) provide assurances that the application will be reviewed by the appropriate prime sponsor planning council in accordance with the provisions of section 109;

(7) provide assurances that a youth council will be established under the planning council of such eligible applicant (established under section 109) in accordance with subsection (b) of this section;

"(8) provide assurances satisfactory to the Secretary that effective means will be provided through which youths participating in the projects, programs, and activities may acquire appropriate job skills and be given necessary basic education and training and that suitable arrangements will be established to document the competencies, including skills, education, and training, derived by each participant from programs established under this subpart;

"(9) provide assurances that the eligible applicant will take appropriate steps to develop new job classifications, new occupations, and restructured jobs;

"(10) provide that the funds available under section 433(d) shall be used for programs authorized under section 432 for in-school youth who are eligible participants through arrangements to be carried out by a local educational agency or agencies or post secondary educational institution or institutions; and

"(11) provide such other information and assurance as the Secretary may deem appropriate to carry out the purposes of this subpart.

"(b) Each youth council established by an eligible applicant shall be responsible for making recommendations to the planning council established under section 109 with respect to planning and review of activities conducted under this subpart and subpart 2. Each such youth council's membership shall include representation from the local educational agency, local vocational education advisory council, post secondary educational institutions, business, unions, the public employment service, local government and non-government agencies and organizations which are involved in meeting the special needs of youths, the community served by such applicant, the prime sponsor, and youths themselves.

"(c) No program of work experience for in-school youth supported under this subpart shall be entered into unless an agreement has been made between the prime sponsor and a local educational agency or agencies, after review by the youth council established under subsection (b). Each such agreement shall—

"(1) set forth assurances that participating youths will be provided meaningful work experience, which will improve their ability to make career decisions and which will provide them with basic work skills needed for regular employment or self-employment not subsidized under this in-school program;

"(2) be administered, under agreements with the prime sponsor, by a local educational agency or agencies or a post secondary educational institution or institutions within the area served by the prime sponsor, and set forth assurances that such contracts have been reviewed by the youth council established under subsection (b);

"(3) set forth assurances that job information, counseling, guidance, and placement services will be made available to participating youths and that funds provided under this program will be available to, and utilized by, the local educational agency or agencies to the extent necessary to pay the cost of school-based counselors to carry out the provisions of this in-school program;

"(4) set forth assurances that jobs provided under this program will be certified by the participating educational agency or institution as relevant to the educational and career goals of the participating youths;

"(5) set forth assurances that the eligible applicant will advise participating youths of the availability of other employment and training resources provided under this Act, and other resources available in the local community to assist such youths in obtaining employment or self-employment;

"(6) set forth assurances that youth participants will be chosen from among youths who are eligible participants who need work to remain in school, and shall be selected by the appropriate educational agency or institution, based on the certification for each participating youth by the school-based guidance counsel that the work experience provided is an appropriate component of the overall educational program of each youth.

"REVIEW OF PLANS BY SECRETARY

"SEC. 437. The provisions of sections 102, 104, and 107 shall apply to all programs and activities authorized under section 432.

"SECRETARY'S DISCRETIONARY PROJECTS

"SEC. 438. (a)(1) The Secretary of Labor is authorized, either directly or by way of contract or other arrangement, with prime sponsors, public agencies, and private organizations to carry out innovative and experimental programs to test new approaches for dealing with the unemployment problems of youth and to enable eligible participants to prepare for, enhance their prospects for, or secure employment in occupations through which they may reasonably be expected to advance to productive working lives. Such programs shall include, where appropriate, cooperative arrangements with educational agencies to provide special programs and services for eligible participants enrolled in secondary schools, postsecondary educational institutions, and technical and trade schools, including job experience, counseling and guidance prior to the completion of secondary or postsecondary education and making available occupational, educational, and training information through statewide career information systems.

"(2) In carrying out or supporting such programs, the Secretary shall consult, as appropriate, with the Secretary of Commerce, the Secretary of Health, Education, and Welfare, the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Director of the ACTION Agency, and the Director of the Community Services Administration.

"(3) Funds available under this section may be transferred to other Federal departments and agencies to carry out functions delegated to them pursuant to agreements with the Secretary.

"(b) The Secretary and prime sponsors, as the case may be, shall give special consideration in carrying out innovative and experimental programs assisted under this section to community-based organizations (as defined in section 3(4)) which have demonstrated effectiveness in the delivery of employment and training services.

"YOUTH EMPLOYMENT INCENTIVE AND SOCIAL BONUS PROGRAM

"SEC. 439. (a) From funds available under section 438 the Secretary, through the use of prime sponsors where feasible, shall carry out in not more than 10 areas of high youth unemployment a youth employment incentive and social bonus demonstration program in order to test the efficacy of providing incentives for private industry to establish additional employment opportunities for youth without significant previous employment experience.

"(b)(1) The Secretary shall provide a social bonus of not more than $2,500 per year, in such amount and in such manner as the Secretary shall prescribe, to each

employer who, pursuant to an agreement under this section, has employed 5 eligible youths for at least 35 hours per week for a period of not less than one year. The Secretary may allow for payment after 9 months in exceptional circumstances.

"(2) A youth is eligible if such youth is economically disadvantaged, unemployed, and has no significant previous employment, as determined by the Secretary. No youth may participate in this program for more than 18 months.

"(3) An employer may receive a social bonus for each such youth employed if—

"(A) the employer has at least 5 eligible youths in the program; and

"(B) the employer offers each youth in the program appropriate training, supportive services, and counseling.

If such training includes on-the-job training, the social bonus shall be in addition to any moneys received under the on-the-job training agreement.

"(c) In the selection of employers to carry out projects under this section, the Secretary shall give priority to urban poverty areas in which the State or local government provides for special tax treatment for any employer which locates or expands within the urban poverty area, and to any employer establishing a new facility in an urban poverty area.

"(d) No payment for a social bonus may be made under this section unless—

"(1) youth employed under this program are paid no less than the higher of the prevailing rate of pay for the occupation and job classification of individuals employed by the same employer, or the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938 or the applicable State or local minimum wage; and

"(2)(A) the conditions of this Act are followed including sections 121(g)(1)(B) (relating to maintenance of effort), 121(f)(1) (relating to meaningful training and employment), and 123(a) (relating to jobs in low wage industries); and

"(B) the employment will not result in the filling of a job opening created by the action of the employer in laying off or terminating the employment of any regular employee in anticipation of filling the vacancy so created by hiring a youth employee in order to receive such social bonus.

"(e) An employer who receives a social bonus under this section may not receive, apply for, or accept any financial advantage from the Federal Government for such employment other than as specified in this Act.

"(f)(1) The Secretary, in consultation with the Secretary of the Treasury and other appropriate Federal officials, shall assure that activities carried out under this section are coordinated with any appropriate other activities under which employers are provided incentives or credits by the Federal Government for the employment of comparably unemployed individuals.

"(2) Not later than 36 months after the date of enactment of this section the Secretary, in consultation with the Secretary of the Treasury and other appropriate Federal officials shall submit to the appropriate committees of the Congress a report on the results of activities carried out under this section in comparison to the results of such other activities.

"Subpart 4—General Provisions

"DISTRIBUTION OF FUNDS

"SEC. 441. Of the sums available for carrying out the provisions of this part—

"(1) 15 percent shall be available for subpart 1;

"(2) 15 percent shall be available for subpart 2; and

"(3) 70 percent shall be available for subpart 3.

"WAGE PROVISIONS

"SEC. 442. Rates of pay under this part shall be no less than the higher of—

"(1) the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938, but in the case of an individual who is fourteen or 15 years old, the wage provided in accordance with the provisions of subsection (b) of section 14 of the Fair Labor Standards Act of 1938;

"(2) the State or local minimum wage for the most nearly comparable employment, but in the case of an individual who is fourteen or 15 years old the wage provided in accordance with the applicable provisions of the applicable State or local minimum wage law; or

"(3) the prevailing rates of pay, if any, for occupations and job classifications of individuals employed by the same employer, except that—

"(A) whenever the prime sponsor has entered into an agreement with the employer and the labor organization representing employees engaged in similar work in the same area to pay less than the rates provided in this paragraph, youths may be paid the rates specified in such agreement;

"(B) whenever an existing job is reclassified or restructured, youths employed in such jobs shall be paid at rates not less than are provided under paragraph (1) or (2), but if a labor organization represents employees engaged in similar work in the same area, such youths shall be paid at rates specified in an agreement entered into by the appropriate prime sponsor, the employer, and the labor organization with respect to such reclassified or restructured jobs, and if no agreement is reached within thirty days after the initiation of the agreement procedure referred to in this clause the labor organization, prime sponsor, or employer may petition the Secretary, who shall establish appropriate wages for the reclassified or restructured positions, taking into account wages paid by the same employer to persons engaged in similar work;

"(C) whenever a new or different job classification or occupation is established and there is no dispute with respect to such new or different job classification or occupation, youths to be employed in such jobs shall be paid at rates not less than are provided in paragraph (1) or (2), but if there is a dispute wtih respect to such new or different job classification or occupation, the Secretary shall, within 39 days after receipt of the notice of protest by the labor organization representing employees engaged in similar work in the same area, make a determination whether such job is a new or different job classification or occupation; and

"(D) in the case of projects to which the provision of the Davis-Bacon Act (or any Federal law containing labor standards in accordance with the Davis-Bacon Act) otherwise apply, the Secretary is authorized, for projects financed under subparts 2 and 3 under $5,000, to prescribe rates of pay for youth participants which are not less than the applicable minmum wage but not more than the wage rate of the entering apprentice in the most nearly comparable apprenticeable trade, and to prescribe the appropriate ratio of journeymen to such participating youths.

"SPECIAL CONDITIONS

"SEC. 443. (a) The Secretary shall provide financial assistance under this part only if he determines that the activities to be assisted meet the requirements of this section.

"(b) The Secretary shall determine that the activities assisted under this part—

"(1) will result in an increase in employment opportunities over those opportunities which would otherwise be available;

"(2) will not result in the displacement of currently employed workers (including partial displacement such as reduction in the hours of nonovertime work or wages or employment benefits);

"(3) will not impair existing contracts for services or result in the substitution of Federal for other funds in connection with work that would otherwise be performed;

"(4) will not substitute jobs assisted under this part for existing federally assisted jobs;

"(5) will not employ any youth when any other person is on layoff by the employer from the same or any substantially equivalent job in the same area; and

"(6) will not be used to employ any person to fill a job opening created by the act of an employer in laying off or terminating employment of any regular employee, or otherwise reducing the regular work force not supported under this part, in anticipation of filling the vacancy so created by hiring a youth to be supported under this part.

"(c) The jobs in each promotional line will in no way infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public services not subsidized under this Act and no job will be filled in other than an entry level position in each promotional line until applicable personnel procedures and collective-bargaining agreements have been complied with.

"(d) Where a labor organization represents employees who are engaged in similar work in the same area to that proposed to be performed under the program for which an application is being developed for submission under this part, such organization shall be notified and shall be afforded a reasonable period of time prior to the submission of the application in which to make comments to the applicant and to the Secretary.

"(e) Activities funded under this part shall meet such other standards as the Secretary may deem appropriate to carry out the purposes of this Act.

"(f) Funds under this part shall not be used to provide full-time employment opportunities (1) for any person who has not attained the age with respect to which the requirement of compulsory education ceases to apply under the laws of the State in which such individual resides, except (A) during periods when school is not in session, and (B) where employment is undertaken in cooperation with school-related programs awarding academic credit for the work experience, or (2) for any person who has not attained a high school degree or its equivalent if it is determined, in accordance with procedures established by the Secretary, that there is substantial evidence that such person left school in order to participate in any program under this part.

"SPECIAL PROVISIONS FOR SUBPARTS 2 AND 3

"SEC. 444. (a) Appropriate efforts shall be made to ensure that youths participating in programs, projects, and activities under subpart 2 and 3 shall be youths who are experiencing severe handicaps in obtaining employment, including but not limited to those who lack credentials (such as a high school diploma), those who require substantial basis and remedial skill development, those who are women and minorities, those who are veterans of military service, those who are offenders, those who are handicapped, those with dependents, or those who have otherwise demonstrated special need, as determined by the Secretary.

"(b) The Secretary is authorized to make such reallocation as the Secretary deems appropriate of any amount of any allocation under subparts 2 and 3 to the extent that the Secretary determines that an eligible applicant will not be able to use such amount within a reasonable period of time. Any such amount may be reallocated only

if the Secretary has provided 30 days' advance notice of the proposed reallocation to the eligible applicant and to the Governor of the State of the proposed reallocation, during which period of time the eligible applicant and the Governor may submit comments to the Secretary. After considering any comments submitted during such period, the Secretary shall notify the Governor and affected eligible applicants of an decision to reallocate funds, and shall publish any such decision in the Federal Register. Priority shall be given in reallocating such funds to other areas within the same State.

"(c) The provisions of section 121(g)(1)(C) shall apply to subparts 2 and 3.

"ACADEMIC CREDIT, EDUCATION CREDIT, COUNSELING AND PLACEMENT SERVICES, AND BASIC SKILLS DEVELOPMENT

"SEC. 445. (a) In carrying out this part, appropriate efforts shall be made to encourage the granting by the educational agency or school involved of academic credit to eligible participants who are in school.

"(b) The Secretary, in carrying out the purposes of this part, shall cooperate with the Secretary of Health, Education, and Welfare to make suitable arrangements with appropriate State and local education officials whereby academic credit may be awarded, consistent with applicable State law, by educational institutions and agencies for competencies derived from work experience obtained through programs established under this part.

"(c) All activities assisted under this part, pursuant to such regulations as the Secretary shall prescribe, shall provide appropriate counseling and placement services designed to facilitate the transition of youth from participation in the project to (1) permanent jobs in the public or private sector, or (2) education or training programs.

"DISREGARDING EARNINGS

"SEC. 446. Earnings and allowances received by any youth under this part shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted programs.

"RELATION TO OTHER PROVISIONS

"SEC. 447. The provisions of title I shall apply to this part, except to the extent that any such provision may be inconsistent with the provisions of this part.

"PART B—JOB CORPS

"STATEMENT OF PURPOSE

"SEC. 450. This part establishes a Job Corps for economically disadvantaged young men and women, sets forth standards and procedures for selecting individuals as enrollees in the Job Corps, authorizes the establishment of residential and nonresidential centers in which enrollees will participate in intensive programs of education, vocational training, work experience, counseling and other activities, and prescribes various other powers, duties, and responsibilities incident to the operation and continuing development of the Job Corps. The purpose of this part is to assist young persons who need and can benefit from an unusually intensive program, operated in a group setting, to become more responsible, employable, and productive citizens; and to do so in a way that contributes, where feasible, to the development of national, State, and community resources, and to the development and dissemination of techniques for working with the disadvantaged that can be widely utilized by public and private institutions and agencies.

"ESTABLISHMENT OF THE JOB CORPS

"SEC. 451. There is established within the Department of Labor a 'Job Corps'.

"INDIVIDUALS ELIGIBLE FOR THE JOB CORPS

"SEC. 452. To become an enrollee in the Job Corps, a young man or woman must be an eligible youth who—

"(1) has attained age 14 but not attained age 22 at the time of enrollment, except that such maximum age limitation may be waived, in accordance with regulations of the Secretary, in the case of any handicapped individual;

"(2) is economically disadvantaged or is a member of a family which is economically disadvantaged, and who requires additional education, training, or intensive counseling and related assistance in order to secure and hold meaningful employment, participate successfully in regular school work, qualify for other suitable training programs, or satisfy Armed Forces requirements;

"(3) is currently living in an environment so characterized by cultural deprivation, a disruptive homelife, or other disorienting conditions as to substantially impair prospects for successful participation in other programs providing needed training, education, or assistance;

"(4) is determined, after careful screening as provided for in sections 453 and 454 to have the present capabilities and aspirations needed to complete and secure the full benefit of the Job Corps and to be free of medical and behavioral problems so serious that the individual could not adjust to the standards of conduct, discipline, work, and training which the Job Corps involves; and

"(5) meets such other standards for enrollment as the Secretary may prescribe and agrees to comply with all applicable Job Corps rules and regulations.

"SCREENING AND SELECTION OF APPLICANTS: GENERAL PROVISIONS

"SEC. 453. (a) The Secretary shall prescribe specific standards and procedures for the screening and selection of applicants for the Job Corps. To the extent practicable, these rules shall be implemented through arrangements with agencies and organizations such as community action agencies, public employment offices, professional groups, labor organizations, and agencies and individuals having contact with youths over substantial periods of time and able to offer reliable information as to their needs and problems. The rules shall provide for necessary consultation with other individuals and organizations, including court, probation, parole, law enforcement, education, welfare, and medical authorities and advisers. The rules shall also provide for the interviewing of each applicant for the purpose of—

"(1) determining whether the applicant's educational and vocational needs can best be met through the Job Corps or an alternative program in the applicant's home community;

"(2) obtaining from the applicant pertinent data relating to background, needs, and interests for determining eligibility and potential assignment; and

"(3) giving the applicant a full understanding of the Job Corps and what will be expected of an enrollee in the event of acceptance.

"(b) The Secretary shall make no payments to any individual or organization solely as compensation for referring the names of candidates for Job Corps.

"(c) The Secretary shall assure that Job Corps enrollees include an appropriate number of candidates selected from rural areas, taking into account the proportions of eligible youth who reside in rural areas and the need to provide residential facilities for such youth.

"SCREENING AND SELECTION: SPECIAL LIMITATIONS

"SEC. 454. (a) No individual shall be selected as an enrollee unless there is reasonable expectation that the individual can participate successfully in group situations and activities, is not likely to engage in behavior that would prevent other enrollees from receiving the benefit of the program or be incompatible with the maintenance of sound discipline and satisfactory relationships between the center to which the individual might be assigned and surrounding communities, and unless the individual manifests a basic understanding of both the rules to which the individual will be subject and of the consequences of failure to observe those rules.

"(b) An individual on probation or parole may be selected only if release from the supervision of the probation or parole officials is satisfactory to those officials and the Secretary and does not violate applicable laws or regulations. No individual shall be denied a position in the Job Corps solely on the basis of that individual's contact with the criminal justice system.

"ENROLLMENT AND ASSIGNMENT

"SEC. 455. (a) No individual may be enrolled in the Job Corps for more than two years, except as the Secretary may authorize in special cases.

"(b) Enrollment in the Job Corps shall not relieve any individual of obligations under the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

"(c) After the Secretary has determined whether an enrollee is to be assigned to a Job Corps Center or a Job Corps Civilian Conservation Center, the enrollee shall be assigned to the center of the appropriate type which is closest to the enrollee's home, except that the Secretary may waive this requirement for good cause, including to ensure an equitable opportunity for youth from various sections of the Nation to participate in the program, to prevent undue delays in assignment, to adequately meet the educational or other needs of an enrollee, and for efficiency and economy in the operation of the program.

"JOB CORPS CENTERS

"SEC. 456. (a) The Secretary may make agreements with Federal, State, or local agencies, including a State board or agency designated pursuant to section 104(a)(1) of the Vocational Education Act of 1963 which operates or wishes to develop area vocational education school facilities or residential vocational schools (or both) as authorized by such Act, or private organizations for the establishment and operation of Job Corps centers. Job Corps centers may be residential or nonresidential in character, or both, and shall be designed and operated so as to provide enrollees, in a well supervised setting, with education, vocational training, work experience (either in direct program activities or through arrangements with employers), counseling, and other services appropriate to their needs. The centers shall include Civilian Conservation Centers, located primarily in rural areas, which shall provide, in addition to other training and assistance, programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest. The centers shall also include training centers located in either urban or rural areas which shall provide activities including training and other services for specific types of skilled or semi-skilled employment.

"(b) To the extent feasible, Job Corps centers shall offer education and vocational training opportunities, together with supportive services, on a nonresidential basis to participants in other programs under this Act. Such opportunities may be offered on a reimbursable basis or through such other arrangements as the Secretary may specify.

"PROGRAM ACTIVITIES

"SEC. 457. (a) Each Job Corps center shall provide enrollees with an intensive, well-organized, and fully supervised program of education, vocational training, work experience, planned vocational and recreational activities, physical rehabilitation and development, and counseling. To the fullest extent feasible, the required program shall include activities to assist enrollees in choosing realistic career goals, coping with problems they may encounter in home communities,

or in adjusting to new communities, and planning and managing daily affairs in a manner that will best contribute to long-term upward mobility. Center programs shall include required participation in center maintenance work to assist enrollees in increasing their sense of contribution, responsibility, and discipline.

"(b) The Secretary may arrange for enrollee education and vocational training through local public or private educational agencies, vocational educational institutions, or technical institutes, whenever such institutions provide training substantially equivalent in cost and quality to that which the Secretary could provide through other means.

"(c) To the extent feasible, arrangements for education, both at the center and at other locations, shall provide opportunities for qualified enrollees to obtain the equivalent of a certificate of graduation from high school. The Secretary, with the concurrence of the Secretary of Health, Education, and Welfare, shall develop certificates to be issued to each enrollee who satisfactorily completes service in the Job Corps and which will reflect the enrollee's level of educational attainment.

"ALLOWANCES AND SUPPORT

"SEC. 458. (a) The Secretary is authorized to provide enrollees with such personal, travel, and leave allowances, and such quarters, subsistence, transportation, equipment, clothing, recreational services, and other expenses as he may deem necessary or appropriate to their needs. For the fiscal year ending September 30, 1979, personal allowances shall be established at a rate not to exceed $60 per month during the first 6 months of an enrollee's participation in the program and not to exceed $100 per month thereafter, except that allowances in excess of $60 per month, but not exceeding $100 per month, may be provided from the beginning of an enrollee's participation if it is expected to be of less than 6 months' duration and the Secretary is authorized to pay personal allowances in excess of the rate specified in this subsection in unusual circumstances as determined by him. For fiscal years beginning on or after October 1, 1979, such personal allowance limitations may be increased, by regulation, as the Secretary determines appropriate. Such allowances shall be graduated up to the maximum so as to encourage continued participation in the program, achievement and the best use by the enrollee of the funds so provided and shall be subject to reduction in appropriate cases as a disciplinary measure. To the degree reasonable, enrollees shall be required to meet or contribute to costs associated with their individual comfort and enjoyment from their personal allowances.

"(b) The Secretary shall prescribe rules governing the accrual of leave by enrollees. Except in the case of emergency, he shall in no event assume transportation costs connected with leave of any enrollee who has not completed at least 6-months' service in the Job Corps.

"(c) The Secretary may provide each former enrollee upon termination, a readjustment allowance at a rate not to exceed, for the fiscal year ending September 30, 1979, $100 for each month of satisfactory participation in the Job Corps. For fiscal years beginning on or after October 1, 1979, such readjustment allowance limitation may be increased, by regulation, as the Secretary determines appropriate. No enrollee shall be entitled to a readjustment allowance unless he has remained in the program at least 90 days, except in unusual circumstances as determined by the Secretary. The Secretary may, from time to time, to advance to or on behalf of an enrolee such portions of his readjustment allowances as the Secretary deems necessary to meet extraordinary financial obligations incurred by that enrollee. The Secretary is authorized, pursuant to rules or regulations, reduce the amount of an enrollee's readjustment allowance as a penalty for misconduct during participation in the Job Corps. In the event of an enrollee's death during his period of service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 5582 of title 5, United States Code.

"(d) Such portion of the readjustment allowance as prescribed by the Secretary may be paid monthly during the period of service of the enrollee directly to a spouse or child of an enrollee, or to any other relative who draws substantial support from the enrollee, and any amount so paid shall be supplemented by the payment of an equal amount by the Secretary.

"STANDARDS OF CONDUCT

"SEC. 459. (a) Within Job Corps centers standards of conduct shall be provided and stringently enforced. If violations are committed by enrollees, dismissal from the Corps or transfers to other locations shall be made if it is determined that retention in the Corps, or in the particular center, will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees.

"(b) To promote the proper moral and disciplinary conditions in the Job Corps, the directors of Job Corps centers shall take appropriate disciplinary measures against enrollees, including dismissal from the Job Corps, subject to expeditious appeal to the Secretary.

"COMMUNITY PARTICIPATION

"SEC. 460. The Secretary shall encourage and cooperate in activities to establish a mutually beneficial relationship between Job Corps centers and nearby communities. These activities shall include the establishment of community advisory councils to provide a mechanism for joint discussion of common problems and for planning programs of mutual interest. Youth shall be represented on the advisory council and separate youth councils may be established composed of enrollees and young people from the communities. The Secretary shall assure that each center is operated with a view to achieving, so far as possible objectives which shall include—

"(1) giving community officials appropriate advance notice of changes in center rules, procedures, or activities that may affect or be of interest to the community;

"(2) affording the community a meaningful voice in center affairs of direct concern to it, including policies governing the issuance and terms of passes to enrollees;

"(3) providing center officials with full and rapid access to relevant community groups and agencies, including law enforcement agencies and agencies which work with young people in the community;

"(4) encouraging the fullest practicable participation of enrollees in programs for community improvement or betterment, with appropriate advance consultation with business, labor, professional, and other interested community groups;

"(5) arranging recreational, athletic, or similar events in which enrollees and local residents may participate together;

"(6) providing community residents with opportunities to work with enrollees directly as part-time instructors, tutors, or advisers, either in the center or in the community;

"(7) developing, where feasible, job or career opportunities for enrollees in the community; and

"(8) promoting interchanges of information and techniques among, and cooperative projects involving, the center and community schools, educational institutions, agencies serving young people and recipients or funds under this Act.

"COUNSELING AND JOB PLACEMENT

"SEC. 461. (a) The Secretary shall counsel and test each enrollee at regular intervals to measure progress in educational and vocational programs.

"(b) The Secretary shall counsel and test enrollees prior to their scheduled terminations to determine their capabilities and shall make every effort to place them in jobs in the vocation for which they are trained or to assist them in attaining further training or education. In placing enrollees in jobs, the Secretary shall utilize the public employment service system to the fullest extent possible.

"(c) The Secretary shall determine the status and progress of enrollees scheduled for termination and make every effort to assure that their needs for further education, training, and counseling are met.

"(d) The Secretary shall arrange for the readjustment allowance to be paid to former enrollees (who have not already found employment) at the State employment service office nearest the home of any such former enrollee who is returning home, or at the nearest such office where the former enrollee has indicated an intent to reside. If the Secretary uses any other public agency or private organization in lieu of the public employment service system, the Secretary shall arrange for that organization or agency to pay the readjustment allowance.

"EXPERIMENTAL AND DEVELOPMENTAL PROJECTS

"SEC. 462. (a)(1) The Secretary is authorized to undertake experimental, research, or demonstration projects to develop or test ways of better using facilities, encouraging a more rapid adjustment of enrollees to community life that will permit a reduction in their period of enrollment, reducing transportation and support costs, or otherwise promoting greater efficiency and effectiveness in the program. These projects shall include one or more projects providing youths with education, training, and other supportive services on a combined residential and nonresidential basis.

"(2) The Secretary is authorized to undertake one or more pilot projects designed to involve youth who have a history of serious and violent behavior against persons or property, repetitive delinquent acts, narcotics addiction, or other behavioral aberrations.

"(3) Projects under this subsection shall be developed after appropriate consultation with other Federal or State agencies conducting similar or related programs or projects and with the prime sponsors in the communities where the projects will be carried out. They may be undertaken jointly with other Federal or federally assisted programs, and funds otherwise available for activities under those programs shall, with the consent of the head of any agency concerned, be available for projects under this section to the extent they include the same or substantially similar activities. The Secretary is authorized to waive any provision of this part which the Secretary finds would prevent the carrying out of elements of projects under this subsection essential to a determination of their feasibility and usefulness. The Secretary shall, in the annual report of the Secretary, report to the Congress concerning the actions taken under this section, including a full description of progress made in connection with combined residential and nonresidential projects.

"(b) In order to determine whether upgraded vocational education schools could eliminate or substantially reduce the school dropout problem, and to demonstrate how communities could make maximum use of existing educational and training facilities, the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, is authorized to enter into one or more agreements with State educational agencies to pay the cost of establishing and operating model

community vocational education schools and skill centers.

"ADVISORY BOARDS AND COMMITTEES

"SEC. 463. The Secretary is authorized to make use of advisory committees in connection with the operation of the Job Corps, and the operation of Job Corps centers, whenever the Secretary determines that the availability of outside advice and counsel on a regular basis would be of substantial benefit in identifying and overcoming problems, in planning program or center development, or in strengthening relationships between the Job Corps and agencies, institutions, or groups engaged in related activities.

"PARTICIPATION OF THE STATES

"SEC. 464. (a) The Secretary shall take action to facilitate the effective participation of States in the Job Corps programs, including consultation with appropriate State agencies on matters pertaining to the enforcement of applicable State laws, standards of enrollee conduct and discipline, the development of meaningful work experience and other activities for enrollees, and coordination with State-operated programs.

"(b) The Secretary is authorized to enter into agreements with States to assist in the operation or administration of State-operated programs which carry out the purpose of this part. The Secretary is authorized; pursuant to regulations, to pay part or all of the costs of such programs.

"(c) No Job Corps center or other similar facility designed to carry out the purpose of this part shall be established within a State unless a notice setting forth such proposed establishment has been submitted to the Governor, and the establishment has not been disapproved by the Governor within 30 days of such submission.

"(d) All property which would otherwise be under exclusive Federal legislative jurisdiction shall be under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement as long as a Job Corps center is operated on such property.

"APPLICATION OF PROVISIONS OF FEDERAL LAW

"SEC. 465. (a) Except as otherwise provided in this subsection and in section 8143 (a) of title 5, United States Code, enrollees in the Job Corps shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits:

"(1) For purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et eq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.) enrollees shall be deemed employees of the United States and any service performed by an individual as an enrollee shall be deemed to be performed in the employ of the United States.

"(2) For purposes of subchapter I of chapter 81 of title 5, United States Code (relating to compensation to Federal employees for work injuries), enrollees shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except—

"(A) the term 'performance of duty' shall not include any act of an enrollee while absent from the assigned post of duty of such enrollee, except while participating in an activity (including an activity while on pass or during travel to or from such post or duty) authorized by or under the direction and supervision of the Job Corps;

"(B) in computing compensation benefits for disability or death, the monthly pay of an enrollee shall be deemed that received under the entrance salary for a grade GS–2 employee, and sections 8113 (a) and (b) of title 5, United States Code, shall apply to enrollees; and

"(C) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee is terminated.

"(3) For purposes of the Federal tort claims provisions in title 28, United States Code, enrollees shall be considered employees of the Government.

"(b) Whenever the Secretary finds a claim for damages to persons or property resulting from the operation of the Job Corps to be a proper charge against the United States, and it is not cognizable under section 2672 of title 28, United States Code, the Secretary is authorized to adjust and settle it in an amount not exceeding $1,500.

"(c) Personnel of the uniformed services who are detailed or assigned to duty in the performance of agreements made by the Secretary for the support of the Corps shall not be counted in computing strength under any law limiting the strength of such services or in computing the percentage authorized by law for any grade in such services.

"SPECIAL PROVISIONS

"SEC. 466. (a) The Secretary shall immediately take steps to achieve an enrollment of 50 percent women in the Job Corps consistent with (1) efficiency and economy in the operation of the program, (2) sound administrative practice, and (3) the socioeconomic, educational, and training needs of the population to be served.

"(b) The Secretary shall assure that all studies, evaluations, proposal, and data produced or developed with Federal funds in the course of the Job Corps program shall become the property of the United States.

"(c) Transactions conducted by private for-profit contractors for Job Corps centers which they are operating on behalf of the Secretary shall not be considered as generating gross receipts.

"GENERAL PROVISIONS

"SEC. 467. The Secretary is authorized to—

"(1) disseminate, with regard to the provisions of section 4154 of title 39, United States Code, data and information in such forms as the Secretary shall deem appropriate, to public agencies, private organizations, and the general public;

"(2) collect or compromise all obligations to or held by the Secretary and all legal or equitabe rights accruing to the Secretary in connection with the payment of obligations until such time as such obligations may be referred to the Attorney General for suit or collection; and

"(3) expend funds made available for purposes of this part—

"(A) or printing and binding, in accordance with applicable law and regulation; and

"(B) without regard to any other law or regulation, for rent of buildings and space in buildings and for repair, alteration, and improvement of buildings and space in buildings rented by the Secretary, except that the Secretary shall not utilize the authority contained in this subparagraph—

"(i) except when necessary to obtain an item, service, or facility, which is required in the proper administration of this part, and which otherwise could not be obtained, or could not be obtained in the quantity or quality needed, or at the time, in the form or under the conditions in which it is needed; and

"(ii) prior to having given written notification to the Administrator of General Services (if the exercise of such authority would affect an activity which otherwise would be under the jurisdiction of the General Services Administration) of the Secretary's intention, to exercise such authority, the item, service, or facility with respect to which such authority is proposed to be exercised, and the reasons and justifications for the exercise of such authority.

"UTILIZATION OF FUNDS

"SEC. 468. Notwithstanding the limitations of title II and part C of this title, financial assistance under title II and part C this title which is used for the Job Corps program, may be used in accordance with the provisions of this part.

"PART C—SUMMER YOUTH PROGRAM

"ESTABLISHMENT OF PROGRAM

"SEC. 481. (a) The Secretary shall provide financial assistance to prime sponsors to conduct programs for eligible youth during the summer months.

"(b) Programs shall provide eligible youth with useful work and sufficient basic education and institutional or on-the-job training to assist these youths to develop their maximum occupational potential and to obtain employment not subsidized under this Act.

"PRIME SPONSORS

"SEC. 482. Prime sponsors eligible for assistance under this part shall be prime sponsors designated under section 101(c) and Native American entities described in section 302(c)(1).

"FINANCIAL ASSISTANCE

"SEC. 483. (a) In order to receive financial assistance under this part, a prime sponsor shall submit to the Secretary an annual plan purusant to section 103.

"(b) The funds appropriated for this part in any fiscal year shall be allocated according to the procedures set forth in subsection (c) except that the Secretary may reserve up to 5 percent of the appropriated funds to be used in the Secretary's discretion including allocations to Native American entities under subsection (c)(2).

"(c)(1) In allocating funds under this part, the Secretary shall add to the new appropriation the total amount of summer funds unspent in the previous year's summer program.

"(2) Funds for prime sponsors designated under section 101(c) shall be allocated as follows:

"(A)(i) 50 percent of such funds shall be allocated on the basis of each prime sponsor's proportion of the funds allocated for the previous year's summer programs;

"(ii) 37½ per centum of the funds shall be allocated based on the ratio of the annual average number of unemployment persons in the prime sponsor's area to the total annual average number of unemployed persons in the United States;

"(iii) 12½ per centum of the funds shall be allocated based on the ratio of the number of adults in low-income families in the prime sponsor's area to the total number of adults in low-income families in the United States; except that—

"(B) each prime sponsor shall receive an allocation which, when added to its unexpended allocation for the previous fiscal year, shall be at least equal to the amount available to it for its summer program in the previous fiscal year.

"(3) Funds for Native American entities described in section 302(c)(1) shall be allocated based on the ratio of the number of Native American youths 15 through 21 years of age inclusive in the eligible prime sponsor's area to the total number of Native American youths 14 through 21 years of age inclusive in all Native American entity areas, except that each Native American entity shall receive an amount of funds equal to the amount allocated to it in the previous fiscal year.

"(4) The total allocation to Guam, the Virgin Islands, American Samoa, Northern Marianas, and the Trust Territory of the Pacific Islands shall be equal to the same percentage of the funds allocated to Guam, the Virgin Islands, American Samoa, Northern Marianas, and the Trust Territory of the Pacific Islands under the previous year's summer program.

"SECRETARIAL AUTHORITY

"SEC. 484. Programs under this part shall meet such regulations, standards, and guidelines as the Secretary shall establish.

"TITLE V—NATIONAL COMMISSION FOR EMPLOYMENT POLICY

"STATEMENT OF PURPOSE

"SEC. 501. The purpose of this title is to establish a National Commission for Employment Policy which will have the responsibility for examining broad issues of development, coordination, and administration and employment and training programs, and for advising the President and the Congress on national employment and training issues.

"COMMISSION ESTABLISHED

"SEC. 502. (a) There is established a National Commission for Employment Policy (formerly known as the National Commission for Manpower Policy and hereinafter in this title referred to as the 'Commission'). The Commission shall be composed of 15 members selected as follows:

"(1) The Secretary, the Secretary of Health, Education, and Welfare, the Administrator of Veterans' Affairs, the Chairman of the Equal Employment Opportunity Commission, and the Director of the Community Services Administration.

"(2) A representative of the National Advisory Council on Vocational Education established under section 162 of the Vocational Education Act of 1963.

"(3) Nine members, appointed by the President, broadly representative of labor, industry, commerce, education (including vocational and technical education), veterans, State and local elective officials currently serving in office, community based organizations, individuals served by employment and training programs and of the general public.

"(b) In making the first appointments under clause (3) of subsection (a), the President may appoint not more than 3 individuals who are serving as members of the National Commission for Manpower Policy on the effective date of this subsection. Any such individuals shall serve for a term of 1 year.

"(c) The term of office of each member of the Commission appointed under clause (3) of subsection (a) shall be 3 years, except that—

"(1) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed, and

"(2) of the members first taking office—

"(A) 3 shall serve for terms of 1 year;

"(B) 3 shall serve for terms of 2 years; and

"(C) 3 shall serve for terms of 3 years;

as designated by the President at the time of appointment (subject to the provisions of the last sentence of subsection (b)).

"(d)(1) The Chairman shall be selected by the President from among members appointed pursuant to clause (3) of subsection (a).

"(2) The Commission shall meet not fewer than 3 times each year at the call of the Chairman.

"(3) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings. Any recommendation may be passed only by a majority of the members present. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

"(e) The Chairman (with the concurrence of the Commission) shall appoint a Director, who shall be chief executive officer of the Commission and shall perform such duties as are prescribed by the Chairman.

"FUNCTIONS OF THE COMMISSION

"SEC. 503. The Commission shall—

"(1) identify the employment goals and needs of the Nation, and assess the extent to which employment and training, vocational education, institutional training, vocational rehabilitation, economic opportunity programs, public assistance policies, employment-related tax policies, labor exchange policies, and other policies and programs under this Act and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs and achieving such goals;

"(2) develop and make appropriate recommendations (including recommendations responsive to requests made by the Committee on Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives), and develop innovative approaches, designed to meet the needs and goals described in clause (1);

"(3) examine and evaluate the effectiveness of any federally assisted employment and training programs (including programs assisted under this Act), with particular reference to the contributions of such programs to the achievement of objectives sought by the recommendations made under clause (2);

"(4) examine and evaluate major Federal programs which are intended to, or potentially could, contribute to achieving major objectives of existing employment and training and related legislation or the objectives set forth in the recommendations of the Commission, with particular attention shall be given to the programs which are designed, or could be designed, to develop information and knowledge about employment and training problems through research and demonstration projects or to train personnel in fields (such as occupational counseling, guidance, and placement) which are vital to the success of employment and training programs;

"(5)(1) identify, after consultation with the National Advisory Council on Vocational Education, the employment and training and vocational education needs of the Nation and assess the extent to which employment and training, vocational education, vocational rehabilitation, and other programs assisted under this and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs; and

"(B) comment, at least once annually, on the reports of the National Advisory Council on Vocational Education which comments shall be included in one of the reports submitted by the National Commission pursuant to this title and in one of the reports submitted by the National Advisory Council on Vocational Education pursuant to section 162 of the Vocational Education Act of 1963;

"(6) evaluate and continue to study and make recommendations to the Congress on the impact of energy shortages and new energy developments upon employment and training needs and include the findings and recommendations with respect thereto in the reports required by section 505;

"(7) study and make recommendations on how, through policies and actions in the public and private sectors, the Nation can attain and maintain full employment, with special emphasis on the employment difficulties faced by the segments of the labor force that experience differentially high rates of unemployment;

"(8) identify and assess the goals and needs of the Nation with respect to economic growth and work improvements, including conditions of employment, organizational effectiveness and efficiency, alternative working arrangements, and technological changes;

"(9) examine and evaluate the relationships between employment and training programs assisted under this Act with programs under parts A and C of title IV of the Social Security Act and related public assistance programs under the Social Security Act; and

"(10)(A) examine and evaluate the eligibility standards set forth in titles II and VI of this Act, and of the Comprehensive Employment and Training Act of 1973, to determine their impact on single heads of households (especially women and older Americans); and (ii) submit a report, not later than July 1, 1979, to the Congress, for appropriate referral, on the Commission's findings together with any proposed changes in this Act concerning the eligibility standards for such single heads of households.

"ADMINISTRATIVE PROVISIONS

"SEC. 504. (a) Subject to such rules and regulations as may be adopted by the Commission, the Chairman is authorized to—

"(1) prescribe such rules and regulations as may be necessary;

"(2) appoint and fix the compensation of such staff personnel as the Chairman deems necessary, and without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and the General Schedule pay rates, appoint not to exceed 3 additional professional personnel;

"(3) procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code;

"(4) accept voluntary and uncompensated services of professional personnel, consultants, and experts, notwithstanding any other provision of law;

"(5) accept in the name of the United States and employ or dispose of gifts or bequests to carry out the function of the Commission under this title;

"(6) enter into contracts and make such other arrangements and modifications, as may be necessary,

"(7) conduct such studies, hearings, research activities, demonstration projects, and other similar activities as the Commission deems necessary to enable the Commission to carry out its functions under this title;

"(8) use the services, personnel, facilities, and information of any department, agency, and instrumentality of the executive branch of the Federal Government and the services, personnel, facilities, and information of State and local public agencies and private research agencies, with the consent of such agencies, with or without reimbursement therefor; and

"(9) make advances, progress, and other payments necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes (31 U.S.C. 529).

"(b) Upon request made by the Chairman of the Commission, each department, agency, and instrumentality of the executive branch of the Federal Government is authorized and directed to make its services, personnel, facilities, and information (including computer-time, estimates, and statistics) available to the greatest practicable extent to the Commission in the performance of its functions under this Act.

"REPORTS

"SEC. 505. The Commission shall make at least annually a report of its findings and recommendations to the President and the Congress. The Commission may make such interim reports or recommendations to the Congress, the President, the Secretary, or to the heads of other Federal departments and agencies, and in such form, as it may deem desirable. The Commission shall include in any report made under this section any minority or dissenting views submitted by any member of the Commission.

"TITLE VI—COUNTERCYCLICAL PUBLIC SERVICE EMPLOYMENT PROGRAM

"STATEMENT OF PURPOSE

"SEC. 601. It is the purpose of this title to provide for temporary employment during periods of high unemployment. It is the intent of Congress that such employment be provided during periods when the national rate of unemployment is in excess of 4 per-

cent, and that the number of jobs funded shall be sufficient to provide jobs for 20 percent of the number of unemployed in excess of 4 percent, or 25 percent of the number of unemployed in excess of 4 percent in periods during which the national rate of unemployment is in excess of 7 percent.

"REPORT ON APPROPRIATIONS

"SEC. 602. (a)(1) On or before March 1 of each year, the President shall report to the Congress the amount that would be needed to be appropriated for the following fiscal year in order to provide jobs—

"(A) for 20 percent of the number of unemployed in excess of 4 percent; or

"(B) in fiscal years during which the President estimates that the national rate of unemployment will exceed 7 percent, for 25 percent of the number of unemployed in excess of 4 percent.

Such report shall contain the President's estimate of the unemployment rate for the following fiscal year, the number of unemployed in excess of 4 percent of the labor force, and the average man-year cost of each public service employment opportunity.

"(2) If during a fiscal year the rates of unemployment equals or exceeds 7 percent, and the President estimates that the rate of unemployment for the balance of such year will differ significantly from the rate contained in the most recent report submitted with respect to such year under this subsection or subsection (b), the President shall so report to the Congress and shall include the additional amount, if any, which would be needed to provide jobs for the applicable percentage of unemployed under paragraph (1)(A) or (1)(B). Such report shall also contain the information required by the last sentence of paragraph (1).

"(b) The President shall submit supplemental reports every three months thereafter containing any necessary revisions in the report required under subsection (a)(1) due to changes in his estimates of unemployment or the cost of providing public service jobs under this title.

"(c) The Secretary shall, as soon as practicable after submission of the report required under subsection (a), inform each prime sponsor of its estimated allocation on the basis of the amount of funds estimated in such report. Each prime sponsor's annual plan for using funds provided under this title shall contain provisions for an orderly transition from the number of jobs funded for the current year to the number of jobs which would be funded under such proposed appropriation.

"FINANCIAL ASSISTANCE

"SEC. 603. (a) Not less than 80 percent of the funds allocated in accordance with the provisions of this title which are used by a prime sponsor for public service employment programs under this title shall be expended only for wages and employment benefits to persons employed in public service jobs pursuant to this title. Not less than 10 percent of the funds allocated in accordance with the provisions of this title for fiscal year 1979, and not less than 5 percent of such funds for any fiscal year thereafter, shall be expended for providing training and employability counseling and services to persons employed under this title. The remaining funds may be used for administrative and other allowable costs (such as supplies, materials, and equipment) incurred by the prime sponsor, program agents, project applicants or subgrantees or contractors, in accordance with such regulations as the Secretary may prescribe.

"(b) In filling teaching positions in elementary and secondary schools with financial assistance under this title, each prime sponsor shall give special consideration to unemployed persons with previous teaching experience who are certified by the State in which that prime sponsor is located and who are otherwise eligible under the provisions of this title and such positions with local educational agencies shall be filled through subcontracting with the appropriate local educational agency.

"ALLOCATION OF FUNDS

"SEC. 604 (a)(1) The Secretary shall reserve an amount equal to not less than 2 per centum of the amounts made available pursuant to section 602 for any fiscal year to enable Native American entities which are eligible entities under section 606(a)(2) to carry out public service employment programs.

"(2) Not less than 85 per centum of the amounts made available pursuant to section 602 for any fiscal year shall be allocated among prime sponsors by the Secretary in accordance with the provisions of paragraph (3).

"(3)(A) Fifty per centum of the amount allocated under this subsection shall be allocated among prime sponsors in proportion to the relative number of unemployed persons who reside within the jurisdiction of each such prime sponsor as compared to the number of unemployed persons who reside in all the States.

"(B) Twenty-five per centum of the amount allocated under this subsection shall be allocated among prime sponsors in accordance with the number of unemployed persons residing in areas of substantial unemployment within the jurisdiction of the prime sponsor compared to the number of unemployed persons residing in all areas of substantial unemployment.

"(C) Twenty-five per centum of the amount allocated under this subsection shall be allocated among prime sponsors on the basis of the relative excess number of unemployed persons who reside within the jurisdiction of the prime sponsor as compared to the total excess number of unemployed persons who reside within the jurisdiction of all prime sponsors. For purposes of this subparagraph, the term 'excess number' means (i) the number of unemployed persons, residing in the jurisdiction of the prime sponsor, in excess of 4½ per centum of the labor force residing in such jurisdiction or (ii) in the case of an prime sponsor which is a State, the greater of the number determined under clause (i) or the number of unemployed persons in excess of 4½ per centum of the labor force in areas of substantial unemployment located in the jurisdiction of such prime sponsor.

"(b)(1) The Secretary shall, from the remainder of the funds made available under this title, first use such remainder—

"(A) to provide continued support for concentrated employment program grantees serving rural areas having high levels of unemployment, and

"(B) to allocate among the prime sponsors serving areas within those standard metropolitan statistical areas and central cities for which current population surveys were used to determine annual unemployment data prior to January 1, 1978, in proportion to the extent to which such prime sponsors allocations under this section and title IV are reduced as a result of termination of the use of such surveys, but in no event shall such a prime sponsor receive an amount in excess of the amount of such reduction.

The allocations required under clause (B) of this paragraph shall not be made for any fiscal year beginning on or after October 1, 1980, or until such time as the Secretary determines that current population survey data is available for use on a satisfactory basis for such areas and the remaining area of each State, whichever occurs first.

"(2) The remainder of the amount made available pursuant to section 602 shall be available to the Secretary for financial assistance to prime sponsors and Native American entities described in section 302(c)(1)(A) as the Secretary deems appropriate, taking into account changes in rates of unemployment.

"EXPENDITURE OF FUNDS

"SEC. 605. (a) Fifty per centum of the funds available to any prime sponsor under this title may be used only for employment in projects (carried out by project applicants) planned to extend for not more than 18 months from the commencement of the project. A project may be extended for an additional 18 months if, after review of the project, the prime sponsor determines that the project has demonstrated its effectiveness in meeting the purposes of this title, in accordance with regulations issued by the Secretary. Employment that is not in such projects must be at entry level.

"(b) Each project applicant shall submit a project application to the appropriate program agent or prime sponsor. Such application shall contain such information as required by the Secretary's regulations.

"(c) Funds available to a prime sponsor under the second sentence of section 603(a) (with respect to training and employability conseling and services) shall be utilized for residents of the area who are employed under this title and who the prime sponsor determines, on the basis of an assessment of the employability of the participant, requires additional training or employability counseling or services in order to obtain unsubsidized employment.

"PRIME SPONSORS AND PROGRAM AGENTS

"SEC. 606. (a) The Secretary shall provide financial assistance under this title only to—

"(1) prime sponsors designated under section 101(c) and

"(2) Native American entities described under section 302(c)(1)(A).

"(b)(1) Whenever a unit of general local government or combination of such units having a population of 50,000 or more (but less than that necessary to qualify as a prime sponsor under section 101) is within a prime sponsor's area, the prime sponsor shall, if such unit or units so desire, subgrant to such unit or units of general local government the functions of program agent with respect to the funds allocated to such prime sponsor on account of the area served by the program agent.

"(2) For purposes of this subsection, the functions of program agent include the administrative responsibility for developing, funding, overseeing, and monitoring programs within the area, but such functions shall be consistent with the annual employment and training plan and the subgrant which shall be developed by the prime sponsor in cooperation with the program agent.

"(3) Whenever two or more units of general local government qualify as program agents with respect to the same area qualifying for assistance, the provisions of section 101(b)(2) shall be applicable.

"ELIGIBILITY

"SEC. 607 An individual eligible to be employed in a position supported under this title shall be—

"(1) an individual—

"(A) who has been unemployed for at least 10 out of the 12 weeks immediately prior to a determination under this section, and

"(B) who is unemployed at the time the determination is made; and

"(2) an individual—

"(A) whose family income does not exceed 100 percent of the lower living standard income level (exclusive of unemployment compensation and all Federal, State, and local income-tested or needs-tested public payments) based on the 3-month period prior to the individual's application for participation; or

"(B) who is, or whose family is, receiving aid to families with dependent children pro-

vided under a State plan approved under part A of title IV of the Social Security Act, or who is receiving supplemental security income benefits under title XVI of the Social Security Act.

"WAGES

"SEC. 608. Individuals employed in public service employment under this title shall be paid wages in accordance with sections 122 (j) and 124.

"WAGE SUPPLEMENTATION

"SEC. 609. Public service employees (other than employees described in section 122(1)(4)(B)) receiving financial assistance under this title may have their wages supplemented by the payment of additional wages for such employment only under the following conditions:

"(1) the total amount of funds which may be used in any fiscal year to provide such supplemental wages shall not exceed a sum equal to 10 percent of such prime sponsor's allocation under this title for such fiscal year; and

"(2) the supplemental wages for any public service employee under this title may not exceed an amount equal to 10 percent of the maximum federally supported wage applicable for such prime sponsor area under section 608, except that, in the case of an area in which the average wage (during the calendar year preceding the beginning of the applicable fiscal year) in employment covered under Federal or State unemployment compensation laws (without regard to any limitation on the amount of such wages subject to contribution under such law) exceeds 125 percent, but does not exceed 150 percent, of the national average wage in such employment, the supplemental wages for any such employee may not exceed 20 percent of such federally supported wage.

"UTILIZATION OF FUNDS

"SEC. 610. Funds available under this title to a prime sponsor may be used, with respect to individuals qualifying for assistance under this title, for programs authorized under title II (other than public service employment), part A of title III, title IV, and title VII.

"TITLE VII—PRIVATE SECTOR OPPORTUNITIES FOR THE ECONOMICALLY DISADVANTAGED

"STATEMENT OF PURPOSE

"SEC. 701. It is the purpose of this title to demonstrate the effectiveness of a variety of approaches to increase the involvement of the business community, including small business and minority business enterprises, in employment and training activities under this Act, and to increase private sector employment opportunities for unemployed or underemployed persons who are economically disadvantaged. Employment and training opportunities for such eligible participants shall be made available by prime sponsors on an equitable basis in accordance with the purposes of this title among significant segments of the eligible population giving consideration to the relative numbers of eligible persons in each such segment.

"FINANCIAL ASSISTANCE

"SEC. 702. (a) The Secretary shall provide financial assistance to each prime sponsor designated under section 101(c) which includes satisfactory provisions in its annual plan for title II activities for carrying out the purposes of this title.

"(b) Ninety-five percent of the funds made available for carrying out this title shall be allocated by the Secretary on an equitable basis among such prime sponsors, taking into account the factors set forth in section 202(a). The remainder of the funds made available under this title shall be used by the Secretary to provide financial assistance to prime sponsors who join together to establish a single private industry council and to Native American entities described in sections 302(c)(1)(A) and (B) for carrying out the purposes of this title.

"CONDITIONS FOR RECEIPT OF FINANCIAL ASSISTANCE

"SEC. 703. (a) Each prime sponsor, and each entity described in sections 302(c)(1)(A) and (B), desiring to receive financial assistance under this title, as part of its plan for title II activities, shall describe its proposed private sector initiatives under this title and the integration of such initiatives with other training and placement activities under this Act. The description shall include an analysis of private sector job opportunities, including estimates by occupation, industry, and location utilizing information provided by the private industry council.

"(b) The Secretary shall provide financial assistance under this title to a prime sponsor, or an entity described in section 302(c)(1)(A) or (B), only if the Secretary determines that—

"(1) the proposed activities for which such financial assistance is to be used are consistent with the provisions of this Act and the regulations of the Secretary;

"(2) financial assistance made available under this title will be used to supplement, but not to supplant, on-the-job training and related activities carried out under other titles of this Act;

"(3) the private industry council will undertake to make an analysis of private sector job opportunities, including estimates by occupation, industry, and location;

"(4) the private industry council has provided a copy of its proposed plan for activities under this title to the prime sponsor planning council for its review and comments and the recommendations of the prime sponsor planning council were satisfactorily considered prior to the submission of the proposed plan to the Secretary;

"(5) the proposed plan for activities under this title has been made available to appropriate labor organizations, community-based organizations and educational agencies for their comments prior to submission to the Secretary; and

"(6) the prime sponsor and the private industry council have both agreed to the plan submitted to the Secretary and have provided assurances that no activity will be funded which does not have the approval of both the prime sponsor and the private industry council.

"(b) The Secretary shall establish appropriate procedures to assure that the Department of Labor will review at the national level any proposal to make payments to private for-profit employers for any activities which are not covered by regulations under section 121(1) or by regulations under other provisions of this Act, and a specific waiver by the Secretary shall be required to make payments for any such activities.

"PRIVATE INDUSTRY COUNCILS

"SEC. 704. (a)(1) Any prime sponsor receiving financial assistance under this title shall establish a private industry council. The prime sponsor shall appoint members from industry and the business community (including small business and minority business enterprises), organized labor, community-based organizations, and educational agencies and institutions to serve on such council. Other members of the private industry council may be appointed by the prime sponsor from representatives of persons eligible to participate in activities under this title. In no event shall representatives of industry and business have less than a majority on the council, and, whenever possible, at least half of such industry and business representatives shall be representatives of small business. The private industry council may consist of members of existing or newly formed organizations and members of the prime sponsor planning council. Such council may be established to cover two or more prime sponsor areas pursuant to arrangements between the prime sponsors for such areas and the council.

"(2) For purposes of this subsection, the term 'small business' means any private, for-profit enterprise employing 500 or fewer employees.

"(b) The chairman of the private industry council (or the designee of the chairman) shall serve as an ex officio, nonvoting member of the prime sponsor planning council, and the chairman of the prime sponsor planning council (or the designee of the chairman) shall serve as an ex officio, nonvoting member of the private industry council.

"(c) Such council shall participate with the prime sponsor in the development and implementation of programs under this title, and shall consult with the prime sponsor with respect to other programs under this Act. In carrying out its responsibilities, such council shall utilize, to the extent appropriate, community-based organizations, labor organizations, educational agencies and institutions, and economic development programs.

"(d) The Secretary shall not, by regulation or otherwise, require that any prime sponsor, in establishing such council, give a presumptive role to any particular organization.

"PROGRAM ACTIVITIES

"SEC. 705. (a) Prime sponsors receiving financial assistance under this title shall, consistent with section 702(b), carry out private sector initiatives to demonstrate the purposes of this title. Such activities shall augment private sector-related activities under title II, including arrangements for on-the-job training with private employers, and may include—

"(1) coordinating programs of jobs and training and education enabling individuals to work for a private employer while attending an education or training program;

"(2) developing a small business intern program to provide a practical training enabling youths and other individuals to work in small business firms to acquire first-hand knowledge and management experience about small business;

"(3) developing relationships between employment and training programs, educational institutions, and the private sector;

"(4) developing useful methods for collecting information about Federal Government procurement contracts with private employers, new and planned publicly supported projects such as public works, economic development and community development programs, transportation revitalization, alternative energy technology development, demonstration, and utilization projects, energy conservation projects, and rehabilitation of low income housing as part of a community revitalization or stabilization effort, which provide work through private sector contractors;

"(5) conducting innovative cooperative education programs for youths in secondary and postsecondary schools designed to coordinate educational programs with work in the private sector;

"(6) developing and marketing model contracts designed to reduce the administrative burden on the employer and model contracts to meet the needs of specific occupations and industries;

"(7) coordinating programs under this title with other job development, placement, and employment and training activities carried out by public and private agencies;

"(8) providing on-the-job training subsidies on a declining ratio to wages over the period of training;

"(9) providing followup services with employees placed in private employment and

employers who hire recipients of services under this Act;

"(10) encouraging employers to develop job skill requirement forecasts and to coordinate such forecasts with prime sponsors;

"(11) using direct contracts for training and employment programs with private for profit and private nonprofit organizations;

"(12) developing apprenticeship or comparable high-skill training programs for workers regardless of age in occupations where such programs do not exist presently in the area;

"(13) increasing opportunities for upgrading from entry level jobs by providing counseling and other services to employees and employers beyond initial training periods;

"(14) providing technical assistance to private employers to reduce the administrative burden of employment and training programs; and

"(15) disseminating information to private employers so that they may more fully utilize programs under this Act.

"(b)(1) The Secretary shall establish such procedures and regulations as may be necessary to assure that the total amount of administrative costs incurred by all prime sponsors in carrying out programs under this title does not exceed 20 percent of the total cost of carrying out all such programs.

"(2) The Secretary by regulation shall provide for necessary and reasonable limitations on administrative costs incurred by prime sponsors, which shall be designed to assure the effective operation of programs carried out by prime sponsors under this title, taking into account differing conditions in urban and rural areas. The administrative costs of any prime sponsor carrying out a program under this title may not exceed the limitations established by the Secretary under this paragraph, unless such excess costs are justified and documented in the approval of the prime sponsor's program.

"REPORT

"SEC. 706. (a) The Secretary shall provide to the Congress by March 1, 1980, an evaluation of the activities conducted under this title accompanied by recommendations for legislation.

"(b) The Secretary shall disseminate among prime sponsors information concerning successful programs under this title.

"TITLE VIII—YOUNG ADULT CONSERVATION CORPS

"STATEMENT OF PURPOSE

"SEC. 801. It is the purpose of this title to establish a Young Adult Conservation Corps to provide employment and other benefits to youths who would not otherwise be currently productively employed, through a period of service during which they engage in useful conservation work and assist in completing other projects of a public nature on Federal and non-Federal public lands and waters.

"ESTABLISHMENT OF YOUNG ADULT CONSERVATION CORPS

"SEC. 802. To carry out the purposes of this title, there is hereby established a Young Adult Conservation Corps to carry out projects on Federal or non-Federal public lands or waters. The Secretary shall administer this title through interagency agreements with the Secretaries of the Interior and Agriculture. Pursuant to such interagency agreements, the Secretaries of the Interior and Agriculture shall have responsibility for the management of each Corps center, including determination of Corps members' work assignments, selection, training, discipline, and termination, and shall be responsible for an effective program at each center.

"SELECTION OF ENROLLEES

"SEC. 803. (a) Enrollees of the Corps shall be selected by the Secretaries of the Interior and Agriculture only from candidates referred by the Secretary.

"(b)(1) Membership in the Corps shall be limited to individuals who, at the time of enrollment—

"(A) are unemployed;

"(B) are between the ages 16 to 23 inclusive;

"(C) are citizens or lawfully permanent residents of the United States or lawfully admitted refugees or parolees; and

"(D) are capable, as determined by the Secretary, of carrying out the work of the Corps for the estimated duration of each such individual's enrollment.

"(2) Individuals who, at the time of enrollment, have attained age 16 but not attained age 19 and who have left school shall not be admitted to membership in the Corps unless they give adequate assurance, under criteria established by the Secretary, that they did not leave school for the purpose of enrolling in the Corps and obtaining employment under this title.

"(c) The Secretary shall make arrangements for obtaining referral of candidates for the Corps from the public employment service, public assistance agencies, prime sponsors, sponsors of Native American programs described in section 302, sponsors of migrant and seasonal farmworker programs under section 303, the Secretaries of the Interior and Agriculture, and such other agencies and organizations as the Secretary may deem appropriate. The Secretary of Labor shall undertake to assure that an equitable proportion of candidates shall be referred from each State.

"(d) In referring candidates from each State in accordance with subsection (c), preference shall be given to youths residing in rural and urban areas within each such State having substantial unemployment including areas of substantial unemployment as defined in section 3.

"(e)(1) No individual may be enrolled in the Corps for a total period of more than 12 months, with such maximum period consisting of either 1 continuous 12-month period, or 3 or less periods which total 12 months, except that an individual who attains the maximum permissible enrollment age may continue in the Corps up to the 12-month limit provided in this subsection only as long as the individual's enrollment is continuous after having attained the maximum age.

"(2) No individual shall be enrolled in the Corps if solely for purposes of membership for the normal period between school terms.

"ACTIVITIES OF THE CORPS

"SEC. 804. (a) Consistent with each interagency agreement, the Secretary of the Interior or Agriculture, as appropriate, in consultation with the Secretary of Labor shall determine the location of each residential and nonresidential Corps center. The Corps shall perform work projects in such fields as—

"(1) tree nursery operations, planting, pruning, thinning, and other silviculture measures;

"(2) wildlife habitat improvements and preservation;

"(3) range management improvements;

"(4) recreation development, rehabilitation, and maintenance;

"(5) fish habitat and culture measures;

"(6) forest insect and disease prevention and control;

"(7) road and trail maintenance and improvements;

"(8) general sanitation, cleanup, and maintenance;

"(9) erosion control and flood damage;

"(10) drought damage measures;

"(11) other natural disaster damage measures; and

"(12) integrated pest management, including activities to provide the producers of agricultural commodities with information about the appropriate amount of chemical pesticides which, when used in conjunction with nonchemical methods of pest control (A) will provide protection against a wide variety of pests, (B) will preserve to the greatest extent possible the quality of the environment, and (C) will be cost effective.

"(b)(1) The Secretary of the Interior and the Secretary of Agriculture shall undertake to assure that projects on which work is performed under this title are consistent with the Forest and Rangeland Renewal Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and such other standards relating to such projects as each Secretary shall prescribe consistent with other provisions of Federal law (including the Fish and Wildlife Conservation Act; 16 U.S.C. 601).

"(2) The Secretary of the Interior and the Secretary of Agriculture shall place individuals employed as Corps members into jobs which will diminish the backlog of relatively labor intensive projects which would otherwise be carried out if adequate funding were made available.

"(c) To the maximum extent practicable, projects shall—

"(1) be labor intensive;

"(2) be projects for which work plans could be readily developed;

"(3) be able to be initiated promptly;

"(4) be productive;

"(5) be likely to have a lasting impact both as to the work performed and the benefit to the youths participating;

"(6) provide work experience to participants in skill areas required for the projects;

"(7) if a residential program, be located, to the maximum extent consistent with the objectives of this title in areas where existing residential facilities for the Corps members are available; and

"(8) be similar to activities of persons employed in a seasonal and part-time employment in agencies such as the National Park Service, United States Fish and Wildlife Service, Bureau of Reclamation, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Bureau of Outdoor Recreation, and Soil Conservation Service.

"(d)(1) The Secretary of the Interior and the Secretary of Agriculture, pursuant to agreements with the Secretary, may provide for such transportation, lodging, subsistence, medical treatment, and other services, supplies, equipment, and facilities as they may deem appropriate to carry out the purposes of this title. To minimize transportation costs, Corps members shall be assigned to projects as near to their homes as practicable.

"(2) Whenever economically feasible, existing but unoccupied or underutilized Federal, State, and local government facilities and equipment of all types shall, where appropriate, be utilized for the purposes of the Corps centers with the approval of the Federal agency, State, or local government involved.

"(e) The Secretary, is carrying out the purpose of this title shall cooperate with the Secretary of Health, Education, and Welfare to make suitable arrangements whereby academic credit may be awarded by educational institutions and agencies for competencies derived from work experience obtained through programs established under this title.

"CONDITIONS APPLICABLE TO CORPS ENROLLEES

"SEC. 805. (a) Except as otherwise specifically provided in this subsection, Corps members shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment including those regarding hours of work, rates of compensation, leave unemployment compensation, and Federal employee benefits:

"(1) For purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), Corps members shall be deemed employees of the United States and any service performed by a person as a Corps member shall be deemed to be performed in the employ of the United States.

"(2) For purposes of subchapter 1 of chapter 81 of title 5 of the United States Code, relating to compensation to Federal employees for work injuries, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in section 8101 of title 5, United States Code, and provisions of that subchapter shall apply, except that the term 'performance of duty' shall not include any act of a Corps member while absent from the member's assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from such post of duty) authorized by or under the direction and supervision of the Secretary.

"(3) For purposes of chapter 171 of title 18, United States Code, relating to tort claims procedure, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employ of the Government' as defined in section 2671 of title 28, United States Code, and provisions of that chapter shall apply.

"(4) For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, Corps members shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in that section, and provisions of that section shall apply.

"(b) The Secretary shall, in consultation with the Secretaries of the Interior and Agriculture, establish standards for—

"(1) rates of pay which shall be at least at the wage required by section 6(a)(1) of the Fair Labor Standards Act of 1938;

"(2) reasonable hours and conditions of employment; and

"(3) safe and healthful working and living conditions.

"STATE AND LOCAL PROGRAMS

"SEC. 806. (a) Consistent with interagency agreements with the Secretary, the Secretaries of the Interior and Agriculture may make grants or enter into other agreements—

"(1) after consultation with the Governor, with any State agency or institution;

"(2) after consultation with appropriate State and local officials, with (A) any unit of general local government, or (B)(i) any public agency or organization, specifically including the Federal Extension Service and the cooperative extension service of any State with respect to projects described in section 804(a)(12), or (ii) any private nonprofit agency or organization which has been in existence for at least 2 years;

for the conduct under this title of any State or local component of the Corps or of any project on non-Federal lands or waters or any project involving work on both non-Federal and Federal lands and waters.

"(b) No grant or other agreement may be entered into under this section unless an application is submitted to the Secretary of the Interior or the Secretary of Agriculture, as the case may be, at such times as each such Secretary may prescribe. Each grant application shall contain assurances that individuals employed under the project for which the application is submitted—

"(1) meet the qualifications set forth in section 803(b);

"(2) shall be employed in accordance with section 805(b); and

"(3) shall be employed in activities that—

"(A) will result in an increase in employment opportunities over those opportunities which would otherwise be available,

"(B) will not result in the displacement of currently employed workers (including partial displacement such as reduction in the hours of nonovertime work or wages or employement benefits),

"(C) will not impair existing contracts for services or result in the substitution of Federal for other funds in connection with work that would otherwise be performed.

"(D) will not substitute jobs assisted under this title for existing federally assisted jobs, and

"(E) will not result in the hiring of any youth when any other person is on layoff from the same or any substantially equivalent job.

"(c) Thirty percent of the sums appropriated to carry out this title for any fiscal year shall be made available for grants under this section for such fiscal year and shall be made on the basis of total youth population within each State.

"SECRETARIAL REPORTS

"SEC. 807. The Secretary, the Secretary of the Interior, and the Secretary of Agriculture shall jointly prepare and submit to the President and to the Congress a report detailing the activities carried out under this title for each fiscal year. Such report shall be submitted not later than February 1 of each year following the date of enactment of this Act. The Secretaries shall include in such report such recommendations as they deem appropriate.

"ANTIDISCRIMINATION

"SEC. 808. The Corps shall be open to youth from all parts of the Nation of both sexes and youth of all social, economic, and racial classifications.

"TRANSFER OF FUNDS

"SEC. 809. Funds necessary to carry out their responsibilities under this title shall be made available to the Secretaries of the Interior and Agriculture in accord with interagency agreements between the Secretary of Labor and the Secretaries of the Interior and Agriculture.".

CRIMINAL PROVISIONS

SEC. 3. (a) Section 665 of title 18, United States Code, is amended to read as follows:

"THEFT OR EMBEZZLEMENT FROM EMPLOYMENT AND TRAINING FUNDS: IMPROPER INDUCEMENT: OBSTRUCTION OF INVESTIGATIONS

"SEC. 665. (a) Whoever, being an officer, director, agent, or employee of, or connected in any capacity with any agency receiving financial assistance under the Comprehensive Employment and Training Act knowingly hires an ineligible individual or individuals, embezzles, willfully misapplies, steals, or obtains by fraud any of the moneys, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to such Act shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both; but if the amount so embezzled, misapplied, sto'en, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

"(b) Whoever, by threat or procuring dismissal of any person from employment or of refusal to employ or refusal to renew a contract of employment in connection with a grant or contract of assistance under the Comprehensive Employment and Training Act induces any persons to give up any money or thing of any value to any person (including such grantee agency) shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

"(c) Any person whoever willfully obstructs or impedes or endeavors to obstruct or impede, an investigation or inquiry under the Comprehensive Employment and Training Act, or the regulations thereunder, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than 1 year, or by both such fine and imprisonment.".

(b) The analysis of chapter 31 of title 18, United States Code, is amended by striking out the item relating to section 665 and inserting in lieu thereof the following new item:

"665. Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations.".

TRANSITIONAL PROVISION

SEC. 4. (a)(1) The Secretary of Labor (hereinafter in this section referred to as the "Secretary") may provide financial assistance, in accordance with the provisions of this section, in the same manner that such assistance was provided under the Comprehensive Employment and Training Act of 1973 (as in effect on the day before the date of the enactment of this Act), to the extent the Secretary considers necessary to provide for the orderly transition of employment and training programs carried out under such Act and to provide continued financial assistance for such programs.

(2) The authority of the Secretary established in paragraph (1) shall expire at the end of March 31, 1979.

(b) The Secretary shall take such action as may be necessary to provide, as soon as possible after the date of the enactment of this Act, for the implementation of provisions of the Comprehensive Employment and Training Act relating to the prohibition of fraud and other abuses in connection with the administration of programs under such Act.

(c)(1) The provisions of the Comprehensive Employment and Training Act relating to supplementation, maximum Federal wage rates, and eligibility shall apply to the provision of financial assistance by the Secretary after the end of the 90-day period beginning on the date of the enactment of this Act.

(2) The eligibility conditions established in section 608 of the Comprehensive Employment and Training Act of 1973 (as in effect on the day before the date of the enactment of this Act) shall apply, during the period specified in paragraph (1), with respect to any individual hired for public service employment on or after such date of enactment.

(d) The Secretary shall have authority to waive the application of any Federal law, or any regulation or other requirement prescribed or established under any Federal law, which establishes time period limitations or other requirements which relate to notice, hearings, or similar matters which otherwise would be applicable to the manner in which regulations prescribed by the Secretary may take effect, to the extent the Secretary deems such waiver necessary to carry out the provisions of subsection (b) and subsection (c).

(e) If the Secretary determines that he cannot carry out the provisions of subsection (b) and subsection (c), other than those provisions which require any amendment to comprehensive employment and training plans, at the end of the 90-day period specified in subsection (c)(1), the Secretary shall furnish notice of such determination to the Committee on Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives. Such notice shall include the reasons for such determination.

(f) The National Commission for Manpower Policy, as in existence on the day before the date of the enactment of this Act, shall continue in existence until the members of the National Commission for Employment Policy are appointed in accordance with the provisions of title V of the Comprehensive Employment and Training Act.

REPORTS

SEC. 5. (a) Not later than February 1, 1979, the Secretary shall, after consultation with appropriate State and local officials

and other interested parties, submit to the Congress a report containing recommendations and suggested legislation with respect to any necessary improvements in the Wagner-Peyser Act (29 U.S.C. 49), including such legislation as may be necessary to assure coordination between such Act and the Comprehensive Employment and Training Act.

(b) The Secretary shall develop methods to ascertain, and shall ascertain annually, energy development and conservation employment impact data by type and scale of energy technologies used. The Secretary shall present the best available data to the Secretary of Energy, the Secretary of Housing and Urban Development, and the Director of the Office of Management and Budget as part of the budgetary process and to the appropriate Committees of Congress annually.

(c)(1) On or before March 1, 1979, the Joint Economic Committee shall report to Congress on the ability of targeted structural employment and training programs to achieve and sustain (A) a decrease in unemployment rates among those segments of the labor force having special difficulties in obtaining employment and (B) a decrease in the national unemployment rate without exacerbating inflation and shall make such recommendations, as the Committee deems appropriate, for improving the ability of targeted structural employment and training programs to achieve such goals. The Joint Economic Committee shall, to the extent feasible, consult with appropriate Federal agencies, the Human Resources Committee of the Senate and the Committee on Education and Labor of the House of Representatives, the Congressional Budget Office, the National Commission or Employment and Training Policy, the Board of Governors of the Federal Reserve, and other appropriate individuals, both public and private, and obtain their assistance in preparing the report.

(2) The Joint Economic Committee, as part of the report to the Congress required under paragraph (1), is requested to include, with recommendations, if any, an analysis of the subject of incentive grants, or other assistance permissible under this Act, to private employers in reducing unemployment rates among individuals eligible for assistance under this Act, through national priority projects, including, but not limited to better housing, health care, agriculture, and transportation.

(d) The Secretary shall develop information relating to the number of individuals who have attained 16 years of age and who are members of a family with an income which is equal to or less than 70 percent, 85 percent, and 100 percent of the lower living standard income level for the jurisdiction of each prime sponsor. The Secretary shall prepare and submit as part of the annual report submitted on March 1, 1980, under section 127(a) to the President and to the Congress a report on the information required by this subsection.

ASSISTANCE TO PLANT, AREA, AND INDUSTRY-WIDE LABOR MANAGEMENT COMMITTEES

SEC. 6. (a) This section may be cited as the "Labor Management Cooperation Act of 1978".

(b) It is the purpose of this section—

(1) to improve communication between representatives of labor and management;

(2) to provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) to assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) to study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area or industry;

(5) to enhance the involvement of workers in making decisions that affect their working lives;

(6) to expand and improve working relationships between workers and managers; and

(7) to encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance to the formation and operation of labor management committees.

(c)(1) Section 203 of the Labor-Management Relations Act, 1947, is amended by adding at the end thereof the following new subsection:

"(e) The Service is authorized and directed to encourage and support the establishment and operation of joint labor management activities conducted by plant, area, and industrywide committees designed to improve labor management relationships, job security and organizational effectiveness, in accordance with the provisions of section 205A.".

(2) Title II of the Labor-Management Relations Act, 1947, is amended by adding after section 205 the following new section:

"SEC. 205A. (a)(1) The Service is authorized and directed to provide assistance in the establishment and operation of plant, area and industrywide labor management committees which—

"(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area or industry; and

"(B) are established for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

"(2) The Service is authorized and directed to enter into contracts and to make grants, where necessary or appropriate, to fulfill its responsibilities under this section.

"(b)(1) No grant may be made, no contract may be entered into and no other assistance may be provided under the provisions of this section to a plant labor management committee unless the employees in that plant are represented by a labor organization and there is in effect at that plant a collective bargaining agreement.

"(2) No grant may be made, no contract may be entered into and no other assistance may be provided under the provisions of this section to an area or industrywide labor management committee unless its participants include any labor organizations certified or recognized as the representative of the employees of an employer participating in such committee. Nothing in this clause shall prohibit participation in an area or industrywide committee by an employer whose employees are not represented by a labor organization.

"(3) No grant may be made under the provisions of this section to any labor management committee which the Service finds to have as one of its purposes the discouragement of the exercise of rights contained in section 7 of the National Labor Relations Act (29 U.S.C. 157), or the interference with collective bargaining in any plant, or industry.

"(c) The Service shall carry out the provisions of this section through an office established for that purpose.

"(d) There are authorized to be appropriated to carry out the provisions of this section $10,000,000 for the fiscal year 1979, and such sums as may be necessary thereafter.".

(d) Section 302(c) of the Labor Management Relations Act, 1947, is amended by striking the words "or" after the semicolon at the end of subparagraph (7) thereof and by inserting the following before the period at the end thereof: "; or (9) with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978".

(e) Nothing in this section or the amendments made by this section shall affect the terms and conditions of any collection bargaining agreement whether in effect prior to or entered into after the date of enactment of this section.

REPEALER

SEC. 7. Section 104 of the Emergency Jobs and Unemployment Assistance Act of 1974 (Public Law 93-567) is hereby repealed.

And the House agree to the same.

That the House recede from its amendment to the title of the bill.

CARL D. PERKINS,
AUGUSTUS F. HAWKINS,
JOHN H. DENT,
EDWARD P. BEARD,
MICHAEL O. MYERS,
JOSEPH A. LE FANTE,
TED WEISS,
W. L. CLAY,
BALTASAR CORRADA,
ALBERT H. QUIE,
RONALD A. SARASIN,
JAMES M. JEFFORDS,
CARL PURSELL,

Managers on the Part of the House.

GAYLORD NELSON,
HARRISON WILLIAMS,
EDWARD M. KENNEDY,
ALAN CRANSTON,
WILLIAM A. HATHAWAY,
DON RIEGLE,
JACOB JAVITS,
RICHARD S. SCHWEIKER,
ORRIN G. HATCH,
JOHN CHAFEE,

Manager on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2570) to amend the Comprehensive Employment and Training Act of 1973 to provide improved employment and training services, to extend the authorization, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—ADMINISTRATIVE PROVISIONS

The Senate statement of purpose includes coordination with public assistance programs. The House amendment includes self-employment training programs.

The conference agreement provides for including both provisions in the statement of purpose.

Both bills provide definitions for prime sponsor. The House amendment provides that the Secretary may make financial assistance available to a prime sponsor to enable it to carry out all or a substantial part of a com-

prehensive employment and training plan. The Senate bill has no provision relating to funding part of a comprehensive plan.

The House recedes.

Both bills provide for appropriate area planning bodies to serve subareas within each State prime sponsor's area. The Senate bill provides that arrangements for such bodies shall be done in coordination with units of general local government. The House amendment has no similar provision.

The House recedes.

Both bills provide for the prime sponsor to submit an overall plan and an annual plan. The House amendment provides that formulation of the plan shall involve the active participation of the prime sponsor planning council. The Senate bill has a similar provision in section 109.

The Senate recedes.

Both bills provide for a detailed analysis of the area to be served, including geographic and demographic characteristics. The House amendment adds a requirement for characteristics of significant segments of the population to be served (with data indicating the number of potential eligible participants and their income and employment status). The Senate bill has no similar provision.

The Senate recedes.

Both bills require a detailed description of the methods and arrangements used to involve community based organizations in the development and implementation of the programs. The Senate bill also requires the involvement of educational agencies and other deliverers of services in the development and implementation of the programs. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that the selection of deliverers of services will be from an inventory of potentially available deliverers (which have expressed an interest in writing) maintained by the prime sponsor as records accessible to the public and a description of the procedures used to place individuals on the administrative staff; the House amendment does not. The House amendment requires the plan to include the criteria for determining that a program has "demonstrated effectiveness;" the Senate bill does not.

The House and Senate each recede in part. The House recedes to the Senate provision requiring a description of the methods and criteria which will be used to select deliverers of services from an inventory of potentially available deliverers (which have expressed an interest in writing) maintained by the prime sponsor as records accessible to the public, and a description of the procedures used to place individuals on the administrative staff.

The Senate recedes to the House provision requiring the inclusion of the criteria for determining that a program has "demonstrated effectiveness", only as long as that criteria would not preclude new organizations from being so determined. When their effectiveness has been demonstrated in other service activities.

Both bills provide for a description of the procedures for the selection of and the arrangements made with respect to consultation with the prime sponsor planning council. The Senate bill includes the youth council and the private industry council. The House amendment has no similar provision.

The House recedes.

Both bills provide that employment and training services will be provided to those most in need of them. The Senate bill provides that this will be done to the maximum extent feasible; the House amendment requires a description of arrangements to insure it. The House amendment lists as those most in need low-income persons, handicapped persons, persons facing barriers to employment commonly experienced by older workers, and persons of limited English-speaking ability, and provides that the need for continued funding of programs of demonstrated effectiveness is taken into account in serving such groups and persons; the Senate bill does not.

The Senate recedes.

The Senate bill requires the plan to include procedures to assure that nondiscrimination and equal employment opportunities are provided. The House amendment has no similar provision.

The House recedes.

Both bills require arrangements with community-based organizations serving the poverty community for their participation in the planning of programs included in the plan. The Senate bill includes education agencies serving youth; the House amendment has no similar provision. The House bill includes only those community-based organizations which are not represented on the planning council; the Senate amendment does not contain that limitation.

The Senate recedes with an amendment to include appropriate arrangements with education agencies serving youth.

Both bills require a description of the utilization of services and facilities available from Federal, State, and local agencies. The Senate bill provides that the utilization of such services will be done to the extent deemed appropriate by the prime sponsor after giving due consideration to the effectiveness of such existing services and facilities. The House amendment provides that it will be based upon a written evaluation of the local effectiveness of such existing services and facilities.

The House recedes.

In addition to the agencies listed in both bills, the Senate bill includes in the list of such agencies the State public assistance agencies, postsecondary institutions, other public agencies and community based organizations. The House amendment includes postsecondary training and education institutions and community action agencies.

The House recedes with an amendment to combine the list of agencies.

Both bills authorize the use of services from private agencies, institutions, and organizations which can, at comparable cost, provide substantially equivalent training or services. The House amendment includes private employment agencies in the list of eligible agencies, and allows their use when they can aid in reducing unemployment or labor shortages; the Senate bill has no similar provision.

The House recedes.

The House amendment requires a description of arrangements (1) for the use of skill centers and other public vocational education facilities in the area, (2) to coordinate services for which financial assistance is provided under programs administered by the Secretary relating to employment and training and related services, and (3) to promote maximum feasible use of veterans apprenticeship or other on-the-job training opportunities. The Senate bill has no similar provision.

The Senate recedes.

Both bills require a description of arrangements made to assure the participation of and consultation with various agencies. The Senate bill includes designated educational agencies and institutions. The House amendment includes local educational agencies.

The Senate recedes.

Both bills require the prime sponsor to provide adequate assurances of compliance with the Act, regulations, and plan. The Senate bill requires a detailed description of record keeping procedures which will allow the Secretary to audit and monitor the prime sponsor's program, concerning eligibility of participants and propriety of participant selection procedures and practice. The House amendment requires adequate assurances that books of accounts on the expenditure of funds will be maintained in a manner sufficient to assure adequate supervision and monitoring.

The House recedes with an amendment to require that books of account on the expenditure of funds provided under this Act will be maintained.

The Senate bill includes a detailed description of procedures for the monitoring and auditing of any subgrantees or subcontractors. The House amendment does not.

The House recedes with an amendment to merge the provisions.

The Senate bill provides "and such other items the Secretary may require by regulation." The House bill has no similar provision.

The Senate recedes. The conferees, by deleting this and other similar provisions throughout the Senate bill (sections 103(a)(13), 103(b)(11), 121(x), and 122(p)), are not attempting to limit the Secretary's authority to issue regulations. Section 127 of the Senate bill and section 126 of the House amendment both authorize the Secretary to issue such rules and regulations as deemed necessary.

The House amendment requires (1) a description of the utilization of public vocational education facilities and programs and other facilities of local education agencies; (2) evidence of a continuing process of consultation with interested groups, representatives of local education agencies, and postsecondary educational agencies; (3) a description of the methods for cooperation between the prime sponsor and the State employment security agencies; (4) a description of the procedures concerning academic credit; (5) a description of recommendations of members of the prime sponsor's planning council which were not included in the plans, and why; (6) a description of actions to insure compliance with personnel procedures and collective bargaining agreements; (7) a description of efforts made to remove artificial barriers and (8) a description of plans and activities to coordinate, strengthen, and expand employment and training activities under the act with economic development activities in the private sector. The Senate bill has no similar provisions.

The Senate recedes.

Both bills require a description of the eligible population. The Senate bill requires the population to be identified by race, sex, national origin, and age and a description of the proposed activities and services for participants from these significant segments of the eligible population. The House amendment provides for the geographic and demographic characteristics of the eligible population.

The House recedes.

The Senate bill requires a description of the services for those who are experiencing severe handicaps in obtaining employment, including those who lack credentials, require basic and remedial skill development, are handicapped, disabled or Vietnam-era veterans, offenders, displaced homemakers, 55 years or older, or public assistance recipients. The House amendment requires a description of plans to provide for the needs of persons who face particular disadvantages as identified in title III.

The House recedes with an amendment to combine the Senate list with those identified in title III of the House amendment.

The Senate bill requires a description of services to be provided, the prime sponsor's performance and placement goals, and the relationship of the goals to the Secretary's performance standards. The House amendment requires a statement on any changes in the standards and goals, a summary of the results achieved and a statement on problems encountered.

The House recedes.

Both bills require the proposed budget for the program year. The House amendment

requires a detailed summary of the expenditures made during the preceding year, results achieved, and changes made in the plan for the program year. The House bill further requires: (1) the methods for determining priorities for services under title II; (2) a list of specific contracts from previous year; (3) a summary of any evaluation conducted in the prime sponsor's area; (4) a description of an affirmative action program for outreach to and training, placement and advancement of handicapped individuals in employment and training programs under the Act; (5) a copy of all agreements made pursuant to section 203(c) relating to agreements with educational agencies; and (6) the Secretary shall establish procedures for submittal, approval, and implementation of changes in the plan, together with any reports required, not more than once per fiscal quarter. The Senate bill does not.

The Senate recedes with conforming amendments and an amendment to require information on positive placements rather than job placements. Nothing in this paragraph is intended to conflict with the Secretary's authority to issue or promulgate performance standards.

Further, the conferees note that this information should be integrated in the same annual plan.

The Senate recedes.

The Senate bill requires a description of the relationship between job development and placement under the act and other employment and training programs in the area served, and efforts made, or to be made, to coordinate programs under the Act with other such programs; (2) programs to orient and prepare participants for their job responsibilities; and (3) efforts to be undertaken to involve the private sector. The House does not.

The House recedes.

Both bills require a description of wage rates or salaries to be paid persons in public service employment and a comparison with wages paid for similar public occupations. The Senate bill also requires such a comparison of fringe benefits and a description of levels of employment not supported under the Act and layoffs, and hiring and promotional freezes in each employing agency. The House bill has no comparable provision.

The House recedes with an amendment to specify public employment.

The Senate bill requires that the prime sponsor's plan be submitted to designated agencies so as to give them 30 days time for comment. The House amendment has no such provision.

The House recedes with an amendment designating the plans the master and annual plans.

The Senate bill requires that the plan be submitted to each House of the State legislature; the House amendment requires that it be transmitted to the appropriate committee of each such House.

The House recedes with an amendment to clarify that both the master and annual plans are submitted.

The House amendment specifies that no plan be disapproved solely on the basis of the proposed allocation of funds to any program or activity although a portion of a plan may be disapproved and that it contained adequate provisions for supervision and monitoring of programs. The Secretary is required to review the success of any training program which is to be refunded and to be satisfied as to the procedures for verifying eligibility. The Senate bill has no comparable provisions.

The Senate recedes with an amendment to delete the requirement that the Secretary review the success of any training program.

The Senate amendment requires the prime sponsor to consider and transmit to the Secretary any comments received from the Governor, the State employment and training council and the prime sponsor planning council. The House amendment has no comparable provision.

The House recedes.

The House amendment requires the Secretary to review the success of any training program which is to be refunded and to be satisfied that the program has achieved sufficient placement results to merit continuation. The Senate bill has no similar provision.

The House recedes.

The House amendment requires the Secretary to inform prime sponsors of the penalties to be imposed upon a finding of ineligibility of a recipient. The Senate bill has no comparable provision.

The Senate recedes with an amendment to change recipient to participation.

The House amendment requires that professional standards of management will be attained. The Senate bill has no comparable provision.

The Senate recedes.

The Senate bill requires a notice of disapproval to be transmitted to the Governor and the prime sponsor with a statement of reasons. The House amendment has no comparable provision.

The House recedes.

The House amendment provides that the Secretary shall establish a date for submission of the annual plan, and shall do so no later than March 31 of the fiscal year preceding the fiscal year in which the plan will take effect. It further requires the Secretary to provide each prime sponsor with a complete set of applicable regulations and application materials by May 15 each year, and provides that if the Secretary cannot provide a complete set of applicable regulations and necessary materials by May 15 of the fiscal year preceding the program fiscal year, the Secretary shall extend the date for the submission of the prime sponsor's annual plan. Further, if the Secretary changes or issues regulations or guidelines after the prime sponsor has submitted a plan, the prime sponsor will have at least 3 months to correct the plan. The Senate bill has no comparable provision.

The Senate recedes.

Both bills require the Governor's plan to coordinate all employment and training, education and related services provided by the State. The Senate bill provides that the coordination should extend to the State education agencies and other appropriate institutions of vocational and higher education, and State and local public assistance agencies. The House amendment has no similar provision.

The House recedes.

Both bills require coordinating programs financed under the Wagner-Peyser Act. The House amendment includes assisting in the negotiation of any agreements, including partnership agreements. The Senate bill has no similar provision.

The Senate recedes.

The Senate bill includes provisions to (1) provide labor market and occupational information; and (2) facilitate and foster the activities of the State Occupational Information Coordinating Committee. The House amendment has no similar provision.

The House recedes.

Both bills require that the Governor's plan be approved by the Secretary. The House amendment provides that approval is conditional on review by the State employment and training council. The Senate bill has no similar provision.

The House recedes.

Both bills establish within the Office of the Secretary, a divison/unit for monitoring and auditing. The House bill specifies the functions, responsibilities, duties, and powers of the unit. The Senate bill has no similar provisions.

The Conferees deleted this provision because a very similar provision will be signed into law. However, the conferees do expect the Secretary to provide, within the new Office of Inspector General, for a unit whose sole responsibility will be that of monitoring the CETA program.

The House amendment provides that the Director shall replace any undesirable performance indicators, defined as those which give an incentive not to serve the most severely disadvantaged. The Senate bill has no comparable provision.

The Senate recedes with an amendment to relocate the provision in that part of the Act outlining performance standards.

Both bills require the establishment of a grievance procedure by the prime sponsor. The House amendment provides that a hearing must be held within 30 days after the filing of a grievance. The Senate bill requires the Secretary to promulgate regulations.

The House amendment provides that, with the exception of those alleging fraud or criminal activity, grievances must be filed within 1 year of the occurrence. The Senate bill has no similar provision.

The conference agreement provides that each recipient of funds under the Act shall establish formal and informal grievance procedures for resolving complaints pertaining to the conditions and terms of employment of CETA participants employed by such recipient. Prime sponsors would establish grievance procedures for resolving complaints pertaining to the terms and conditions of employment of CETA participants employed by the prime sponsor as well as any other complaint about the program arising from its participants, subgrantees, contractors or other interested parties. Recipients of funds under the Act and national contractors would resolve a complaint within 60 days of its receipt. Upon exhaustion of local remedies, a complainant would be permitted appeal to the Secretary of Labor who would make a determination on the valdity of the complaint within 120 days of its receipt.

The Senate bill provides that the Secretary shall revoke a prime sponsor's plan for maintaining a practice or pattern of discrimination. The House amendment provides that the Secretary may revoke a prime sponsor's plan in whole or in part.

The House recedes with an amendment to provide that the Secretary shall revoke a plan in whole or in part.

The Senate bill provides that the Secretary may revoke a prime sponsor's plan if a prime sponsor fails to provide participants with employment or training opportunities commensurate with their capabilities, and for failing to give due consideration to the eligible population in areas of chronic or concentrated unemployment. The House amendment has no similar provision.

The House recedes with an amendment to delete language relating to stereotype attitudes.

Both bills provide authority to the Secretary to terminate or suspend financial assistance under the act if a recipient is failing to comply with the act or regulations. The Senate bill provides that the assistance may be withheld if a recipient has not taken appropriate action against its subcontractors, subgrantees, and other recipients. The House amendment has no similar provision.

The House bill provides that the Secretary may take whatever action is necessary against operators under a non-financial agreement. The Senate bill has no similar provision.

The conference agreement is to combine both provisions.

The Senate bill authorizes the waiving of repayment of funds improperly spent on public service employment programs if the Secretary determines that requiring payment would not serve the purposes of this section and the Secretary takes such other sanctions or corrective actions as are appropriate.

The House bill makes repayment mandatory.

The House recedes with an amendment which (1) limits the Secretary's authority to provide a waiver only to the repayment of funds, (2) that, the "special circumstances" for such waiver be demonstrated by the recipient and (3) that the waiver only be provided if repayment does not serve the purpose of enforcing the requirements of the section.

The Conferees wish to emphasize that the Secretary should grant waivers, only in the most limited circumstances and that the burden of proof for establishing "special circumstances" rests on the recipient.

Both bills provide the Secretary with authority to immediately terminate, in emergency situations, financial assistance to prime sponsors. The Senate bill requires that within 30 days of such a termination, the Secretary will provide the affected recipient with an opportunity for a hearing; the House amendment does not contain that time limit for hearings. The House amendment also provides that the Secretary shall not delegate any of his functions or authority granted by the subsection, to anyone other than an officer whose appointment required Senate confirmation. The Senate bill has no comparable limitations.

The Senate recedes with an amendment to provide an opportunity, within 30 days, for a hearing.

Both bills authorize the Secretary to take corrective actions when it has been found that a recipient has in any manner discriminated against a participant.

The Senate bill authorizes the Secretary to take corrective actions when a recipient has discriminated against any person, failed to serve equitable segments of the eligible population, or failed to provide employment and training opportunities at levels of skill and remuneration that are commensurate with the participant's capabilities or potential capabilities; the House bill does not.

The Senate bill also requires that the Secretary shall, within 30 days, take such action or order such corrective measures, as necessary; the House bill provides that the Secretary may take such actions.

The House recedes. The conferees intend that the 30 day period shall not operate as a statute of limitations.

The Senate bill provides that the existence of remedies does not preclude a person from instituting a civil action or pursuing other remedies authorized under Federal, State or local law. The House bill has no similar provision.

The House recedes.

The House amendment provides that, if the Secretary withholds funds on account of expenditures in violation of the Act, he may order the prime sponsor to carry out the plan with non-Federal funds unless the prime sponsor elects to terminate participation as a grantee under the Act. The Senate bill has no comparable provision.

The Senates recedes.

The Senate bill provides that with the consent and consideration of State agencies charged with the administration of State laws, the Secretary is authorized to utilize the services of State agencies for carrying out the provisions relating to sanctions and criminal provisions. The House amendment has no similar provision.

The House recedes.

The House bill provides that the Secretary shall not revoke a prime sponsor's plan, except in emergency situations, without first instituting informal procedures for resolving the problem. The Senate bill has no similar provision.

The Senate recedes.

The House amendment authorizes the Secretary to require prime sponsors to participate in unified audit procedures. The Senate bill has no comparable provision.

The Senate recedes.

The House amendment provides judicial review for "interested persons." The Senate bill does not.

The Senate recedes.

Both bills provide that prime sponsors shall establish a planning council and list the persons or groups to be represented on the council. The Senate bill includes representatives of handicapped individuals, public assistance agencies, and labor.

The House amendment includes organized labor and employees who are not represented by organized labor.

The House recedes with an amendment to include representatives of organized labor and employees who are not represented by organized labor.

The Senate bill provides that the prime sponsor shall provide a full-time professional, technical and clerical staff responsible for serving the council. The House amendment has no similar provision.

The House recedes with an amendment to delete the reference to full-time staff and require that the prime sponsor will provide a staff to provide professional, technical and clerical assistance to the council.

Both bills require the council to meet and have open and accessible meetings. The Senate bill requires at least 6 meetings per year; the House amendment provides for no less than 4 meetings per year.

The Senate recedes with an amendment to require that the council meet at least 5 times per year.

Both bills require the council to participate in the development of and submit recommendations regarding the prime sponsor's plan. The Senate bill provides that special consideration shall be given to the recommendations of the council. The House amendment does not.

The House recedes.

The Senate bill requires that the council take into consideration any comments and recommendations of the private industry council in the development of the comprehensive employment and training plan. The House bill has no similar provision.

The House recedes.

The Senate bill requires the Governor to provide a full-time professional, technical and clerical staff responsible for serving the State employment and training council. The House amendment has no similar provision.

The House recedes with an amendment to delete the reference to full-time staff and require that the Governor is to provide a staff to provide professional, technical and clerical assistance to the council.

The Senate bill provides that the council shall be composed of one quarter representatives of governments; one quarter representatives of business, organized labor and agricultural employers and employees; one quarter representatives of the eligible population and the general public and one quarter representatives of service deliverers. The House amendment provides that one third of the council members shall be representatives of general governments and one representative each from the State Board of Vocational Education, the State Advisory Council on Vocational Education and the State employment service; one third from organized labor, business, agricultural employers and workers, community based organizations, veterans organizations and organizations of the elderly and one third shall be representatives of the eligible population and the general public, plus such non-voting ex-officio members as the Governor may appoint.

The House recedes.

Under the Senate bill, the council shall meet at least 6 times a year. Under the House amendment, it shall meet at least 4 times a year.

The Senate recedes with an amendment to require that the council meet at least 5 times per year.

(60) Both bills require the council to assess the extent to which various programs represent a coordinated approach to meeting employment and training needs. The Senate bill includes public assistance among such programs. The House amendment does not.

The House recedes.

(61) The Senate bill requires the council to participate in the development of the Governor's coordination and special services plan. The House does not.

The House recedes.

AUTHORIZATION LEVELS

[Dollar amounts in billions]

	Fiscal year—			
	1979	1980	1981	1982
Title II:				
Senate bill	Open end	Open end	Open end	Open end.
House amendment	$4	$4.29	$4.583	$4.876.
Conference agreement:				
Parts A, B, and C	$2	Open end	Open end	Open end.
Part D	$3	Open end, but no more than 60 percent of the total appropriation for title II.		
Title III:				
Senate bill	20 percent of total minus title II–D and title VI.			
House amendment	20 percent of title II.			
The House recedes.				
Title IV:				
Senate bill:				
Part A	Open end	Open end		
Parts B and C	do	do	Open end	Open end.
Part D	do	do		
House amendment:				
Part A	do	do		
Total	$2.25	$2.4	Open end	Open end.
The Senate recedes.				
Title V:				
Senate bill	$0.003	Open end	do	Do.
House amendment	Open end	do	do	Do.
The Senate recedes.				
Title VI:				
Senate bill	do	do	do	Do.
House amendment	An amount sufficient to fund jobs for 20 percent of unemployed over 4 percent.			
Conference agreement	An amount sufficient to fund jobs for 20 percent of unemployed over 4 percent, except when unemployment reaches 7 percent, then sufficient funds for 25 percent of the unemployed in excess of 4 percent, determined according to the procedures established in sec. 602.			
Title VII:				
Senate bill	$0.4	Open end		
House amendment	$0.5	$0.525		
The Senate recedes.				
Title VIII:				
Senate bill	Open end	Open end	Open end	Open end.
House amendment	$0.35	$0.4	do	Do.
The Senate recedes.				
Labor-Management Committee:				
Senate bill	$0.01	Open end permanent.		
House amendment	No provision			
The House recedes.				

The Conferees have been informed of a recent regulation by the Department of Labor that will apply all carry-over funds to the prime sponsors in FY 79 allocations provided under new authorizations, whatever the source of these funds. This will penalize any prime sponsors who have met their plan goals and who did so at less than planned cost. The Conferees do not oppose applying these funds, but only if such carry-over results from a failure of a prime sponsor to meet their plan goals. If primes have met their goals, the Conferees expect that these funds will be available to them in addition to their regular FY 79 allocations.

(63) The Senate bill provides that participants shall not be employed in a religious program, or in an activity which is of direct financial benefit to a sectarian institution. The House amendment has no similar provision.

The Senate recedes.

(64) The Senate bill provides that no allowance may be paid for institutional or classroom training in excess of 104 weeks in a 5 year period. The House amendment provides that no allowances or wages will be paid to a person for institutional, classroom training, or work experience, in excess of 104 weeks in any 3 year period, subject to a waiver for work experience programs in areas with a lack of alternative job opportunities.

The House recedes.

(65) Both bills provide that all programs, to the maximum extent feasible, shall contribute to the occupational development, upward mobility, development of new careers, and overcoming sex stereotyping. The House amendment provides including procedures which will lead to skill development and job opportunities for participants in occupations traditionally limited to the opposite sex. The Senate bill does not.

The Senate recedes.

(66) The Senate bill provides that to the extent practicable funds shall be used to supplement and not to supplant the level of funds that would otherwise be available from non-Federal sources for the planning and administration of programs. The House amendment does not include to the extent practicable.

The Senate recedes.

(67) The House amendment provides that the effectiveness of services available from Federal, State, and local agencies shall be decided by the prime sponsor. The Senate bill has no similar provision.

The Senate recedes.

(68) The Senate bill provides that no nongovernmental individual, institution, or organization shall evaluate any program under this Act if such individual, institution, or organization is associated with that program as a consultant, technical advisor or in any similar capacity. The House amendment provides that the aforementioned shall not be paid any funds under this Act to evaluate any program under the Act if they have such connections.

The Senate recedes.

(69) The Senate bill provides that no member of any council under this Act shall vote on any matter which would financially benefit the member or the organization which the member represents. The House amendment has no similar provision.

The House recedes.

(70) The Senate bill provides that work experience shall not exceed a total of 1,000 hours for any person for any year, except in-school youth, and not more than 2,000 hours in a 5 year period, and work experience shall only be for persons who need assistance in becoming accustomed to basic work requirements, including basic work skills, in order to be able to compete successfully in the labor market. The House amendment, in section 121(c)(2)(A), provides that work experience is limited to 104 weeks in any 3 year period, and, in section 212(b)(2) that, except for in-school youth, it shall be designed to lead to unsubsidized employment and that the durational limits may be waived if the prime sponsor's plan, as approved by the Secretary, states that the lack of alternative job opportunities in the area makes such progress and duration impractical.

The House recedes.

The conferees note that the House provision contains a waiver for work experience programs in areas with a lack of alternative job opportunities.

The conferees intend that the limitations in subsection (N) are not intended to abolish programs, such as the operation mainstream program, which are intended for workers who have had work experience but who, because of their age, have no alternative job opportunities.

These limitations also would not apply to programs such as the supported work programs (currently called work experience by the Department of Labor) which involve substantially more than 1,000 hours per year.

(71) The Senate amendment provides that funds may be used, for the duration of participation, for contributions on behalf of participants who are, prior to July 1, 1979, enrolled in retirement plans or systems, and that after that date, no funds under this act may be used for such contributions unless the contribution bears a reasonable relationship to the cost of providing benefits to participants and provides technical assistance for compliance. The House amendment provides that funds may be used for contributions only on behalf of participants enrolled in retirement systems or plans prior to January 1, 1980 or to provide benefits other than retirement benefits based on age or service or both.

The House recedes.

(72) The Senate bill provides that all programs for in-school youth shall be consistent with applicable State educational standards. The House amendment has no similar provision.

The House recedes.

(73) The Senate bill provides that the Secretary shall take appropriate steps to provide for increased participation of qualified disabled and Vietnam-era veterans in public service employment programs and job training opportunities, but nothing shall authorize the Secretary to establish a hiring or participation goal for such veterans; the Secretary shall consult with and solicit the cooperation of the Administrator of Veterans' Affairs. The House amendment provides that special consideration shall be given to Vietnam veterans.

The House recedes with an amendment to give special emphasis to Vietnam-era veterans who served in the Indochina Theater (which includes Korea and such other areas in Southeast Asia as are appropriate). The conferees do not expect this provision to conflict with the ability of prime sponsors to establish a system to determine local priorities based on locally established criteria under Title II.

The House amendment defines what special consideration for veterans means. The Senate bill does not.

The Senate recedes with an amendment to change "special consideration" to "appropriate steps".

The House amendment provides that the Secretary shall carry out the responsibilities for the assignment of assistant veterans of employment representatives and for the listing of all suitable employment openings with local offices of the employment services and providing for affirmative action. The Senate bill has no similar provision.

The House recedes. The conferees believe that since this provision is already in law there is no need to restate it. However, the conferees do expect the Secretary to carry out his duties and responsibilities.

The Senate bill requires that the programs shall meet such other conditions consistent with the purposes of the act, as the Secretary may require by regulation. The House amendment has no similar provision.

The Senate recedes.

Both bills provide for a limit of 2½ years of participation in any program under the Act in any five year period. The House amendment has a waiver for work experience programs in areas with a lack of alternative job opportunities. The Senate bill has no comparable provision.

The Senate recedes.

The Senate bill provides that payments for the costs of lower productivity are those associated with employing an individual who lacks the requisite skills to perform the job in which the individual is placed, and the length for which such payments may be made shall not exceed that period of time generally required for the acquisition of skills needed for such a job. The House amendment provides that the costs of low productivity shall be defined by regulations of the Secretary.

The House recedes.

The House amendment includes geothermal in the list eligible energy technology employment and training opportunities. The Senate bill has no similar provision.

The Senate recedes.

The Senate bill provides that no prime sponsor may use funds received under this act to assist or promote union organizing. The House amendment provides that no funds under the act may be used to aid the efforts of any labor organization to organize to engage in collective bargaining, or to engage in any political activity, and that funds found by the Secretary or by a court to have been improperly expended shall be refunded promptly to the U.S. Treasury.

The House recedes with an amendment to provide that without limiting the powers otherwise granted to the Secretary, funds found by the Secretary to be in violation of this subsection shall be refunded promptly to the United States Treasury.

The Senate bill provides that no individual may be required to join a union as a condition of enrolling in a program assisted under this act in which only institutional training is provided, unless such training involves individuals employed under a collective bargaining agreement which contains a union security agreement. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that public service employment shall be designed, to the extent feasible, to enable participants to move into public or private employment or training not supported under this act. The House amendment, in section 212(b)(1) provides that public service employment under that title shall be (1) designed to lead to unsubsidized employment, (2) entry level, (3) combined with training and supportive services if they are reasonably available in the area.

The Senate recedes.

The Senate bill provides special consideration for the most severely disadvantaged in filling public service jobs. The House amendment provides for preference for such individuals.

The Senate recedes with an amendment to state that public service jobs are intended for eligible persons who are the most severely disadvantaged in terms of their length of unemployment and their prospects for finding employment.

The Senate bill provides that special consideration in filling public service jobs shall be given to eligible persons who are either eligible for or receiving public assistance. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that special con-

sideration shall be given to eligible disabled and Vietnam-era veterans, and special emphasis shall be given to the development of jobs which utilize, to the maximum extent feasible, the skills the veterans acquired in their military training and service. The House amendment has no similar provision.

The House recedes with a technical amendment and an amendment to give special emphasis to those Vietnam-era veterans who served in the Indochina Theater (which includes Korea and such other areas in Southeast Asia as are appropirate).

The Senate bill provides that special emphasis in filling public service jobs shall be given to eligible members of groups identified in section 301(a), taking into account the household support obligations of such applicants, but nothing in the act shall authorize the Secretary to establish hiring or participation goals for such persons; further, the special efforts shall be made to acquaint such persons with the employment and training opportunities available under the act, and to coordinate efforts on behalf of such persons with activities under section 301. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that the Secretary may temporarily waive the maximum time limits for a maximum of 6 months on enrollment in public service employment programs when the Secretary determines that a recipient has faced unusually severe hardships in its efforts to transition public service employees into regular public or private employment not supported under this act because of the high unemployment in the area of service. The House amendment provides that the Secretary may provide a temporary waiver for a limited number of persons who were originally hired in a public service employment program prior to April 1, 1978, and who continue to be so employed on September 30, 1979, in the case where a prime sponsor has faced unusually severe hardships in transitioning these enrollees into jobs not subsidized under this act and in the case of native American programs.

The conference agreement provides that the Secretary may provide a temporary extension of time for those persons on board prior to October 1, 1978, and who continue to be so employed on September 30, 1979, in the case of a prime sponsor which the Secretary determines has faced unusually severe hardships in its efforts to transition public service employees into regular public or private employment not supported under this Act. Further, the Secretary may provide a temporary extension, not to exceed 12 months, to either (1) a prime sponsor, or (2) units of general local government in Balance of State areas where unemployment exceeds 7% for participants residing in the area, and for which the recipient is facing unusually severe hardships in its efforts to transition public service employees into employment not subsidized under this Act because of high unemployment in the area of service.

(87) The Senate bill provides that public service employment enrollees shall not be paid at a rate in excess of $10,000 per year except that the maximum can be raised, according to a wage adjustment index, but by no more than 20 percent, except in the case of an area where the annual wage exceeds 150 percent of the national average annual wage of all such areas. The House amendment provides that the rate paid to persons in public service employment shall not exceed $10,000 per year except that with respect to any State, where the average wage in covered employment exceeds the national average in covered employment by more than 50 percent and in which government employees receive cost of living allowances, the Secretary may waive the maximum limitation on wages and establish limitations consistent with the purposes of this act.

The House recedes.

The Senate bill provides that the Secretary shall issue appropriate area wage standards to assure an annual average federally-supported wage rate per public service jobholder of $7,800. Average area wages may not exceed the national average by more than 20 percent, except where the average annual wage exceeds 150 percent of the national. The House amendment provides that the Secretary shall issue appropriate standards for the purpose of maintaining nationwide annual average federally supported wage rates in fiscal year 1979, equivalent to $7,000; average wage rates established for public service jobs in each area shall be adjusted annually by a percentage equal to the change in average wages in regular employment not supported under this act in such area.

The Senate recedes with an amendment to increase the average to $7,200.

The Senate bill requires that public service employees be provided the benefits provided to other employees similarly classified and that such classification be reasonable and include nonfederally financed employees. However, the bill permits a distinction within a classification between public service employees and others for the purpose of participation in retirement plans. Further it provides that the equal treatment requirements shall not be deemed to require a contribution to a pension plan which cannot be funded under the Act. The House amendment states that the equal treatment requirement of the section shall not be deemed to require the enrollment of any public service employee in any retirement system.

The House recedes.

The Senate bill provides that public service jobs shall meet community needs. The House amendment has no comparable provision.

The House recedes.

The Senate bill provides that no one shall be eligible for a public service employment position, if they have voluntarily terminated, without good cause, their last previous full-time employment at a wage rate no less than the Federal minimum wage. The House amendment has no similar provision.

The House recedes with an amendment providing that this provision apply only to persons who voluntarily left their job within six months of application.

The Senate bill provides that the programs shall meet such other conditions, consistent with the purposes of this act, as the Secretary by regulation may require. The House amendment, section 103(a)(18), provides that prime sponsors shall include adequate assurances of compliance with the act, regulations issued thereunder, and the comprehensive employment and training plan.

The Senate recedes.

The House amendment provides that no funds for public service employment programs may be used to provide public services, through a private organization or institution, which are customarily provided by a State, a political subdivision, or a local education agency in the area served by the program. The Senate bill has no similar provision.

The Senate recedes.

The House amendment provides that no funds will be paid to any nongovernmental organization for the conduct of program under the act unless it has a meritorious written plan, has been selected on a merit basis, and has an independent monitoring program. The Senate bill has no similar provision.

The Senate recedes but with an amendment to exclude employers under Title VII and on-the-job training contracts from the requirement of a written plan.

The House amendment prohibits the use of funds to assist any alien not lawfully admitted for permanent residence or not authorized by the Attorney General to accept employment. The Senate bill has no comparable provision.

The Senate recedes with an amendment to provide that no recipient under this Act shall knowingly use funds under this Act to employ or serve illegal aliens.

The House amendment requires each prime sponsor to establish an independent monitoring unit the adequacy of which shall be assessed annually by the Secretary. The Senate bill has no comparable provision.

The Senate recedes with an amendment to relocate the provision in the plan requirements section.

The Senate bill provides that employment and training programs may be operated in lower wage industries when (1) there exists a training program, approved by the Secretary, of a specified duration designed to teach specific skills and (2) the rate of labor turnover does not differ substantially from that on other industries in the same area. The House amendment provides that there is no authority for the arrangement of any employment and training program in low wage jobs where prior skill or training is typically not a prerequisite to hiring and where labor turnover is high. This prohibition shall be implemented by an establishment, by establishment analysis of the jobs offered.

The House recedes.

The House amendment requires that weatherization projects have an adequate number of trained supervisors. The Senate bill has no comparable provision.

The Senate recedes with an amendment to provide that recipients of funds under this Act shall assure an adequate number of supervisory personnel for weatherization projects.

The Senate bill requires the Secretary to facilitate the initiation and extension of weatherization projects. The House amendment has no similar provisions.

The Senate recedes.

The Senate bill requires that the Secretary shall issue regulations setting conditions under which the prime sponsors, in carrying out community improvement projects, community betterment activities, and public service employment projects, may provide work for eligible participants on the rehabilitation of housing for lower-income families as part of community revitalization or stabilization projects. The House amendment does not.

The House recedes.

Under the Senate bill, whenever the Secretary distributes discretionary funds by formula (except under title III), he shall publish the formula in the Federal Register and consider comments before making allocations. The House amendment has a similar provision applicable only to discretionary funds under title VI.

The House recedes.

The Senate bill requires the Secretary whenever funds are distributed by formula to publish proposed allocations in the Federal Register 30 days before the allocation and to consider comments before publishing the final allocation. The House amendment requires the publication of allocations under Title II.

The House recedes with an amendment to delete the 30 day notice requirement and comment period.

The Senate bill requires the Secretary to publish in the Federal Register any change in the method of calculating unemployment for the purpose of allocating funds under any act at least 6 months prior to the effective date of the change. The House amendment has no similar provision.

The conferees intend that, in the event the Bureau of Labor Statistics proposes to make any substantial change in the method

of calculating unemployment statistics that is likely to affect the amount of money allocated to any area on the basis of such statistics, due notice will be provided and the proposed change will be published in a timely fashion in order to allow an opportunity for comment prior to becoming effective.

The Senate bill provides that the Secretary shall use discretionary funds that he has available under titles II, III, IV, and VI to make payments to prime sponsors in the amount that their allocations under title II, IV and VI are adversely affected by the discontinuance of the use of the CPS surveys for calculating annual unemployment rates in Standard Metropolitan Statistical Areas and central cities. Such payments shall continue until the Secretary determines that current population survey data is available on a satisfactory basis for such areas and the remaining areas of each State but not later than fiscal 1981.

The House amendment provides for similar old harmless payments but only under titles II and VI and in a maximum amount equal to 15% of the discretionary funds available to the Secretary under those titles, and only until the National Commission for Employment and Unemployment Statistics submits its report to Congress.

The conference agreement provides that for 2 years funds to hold harmless Title II will be from Title II discretionary funds; Title VI from Title VI discretionary funds; and Title IV from Titles II and VI discretionary funds.

The House amendment limits the use of a prime sponsor's administrative funds for making payments on contracts for legal or associated services to situations where comparable services are not available from the Department of Labor and where the payments are not unreasonable and could not be provided by employees of the prime sponsor or other available governmental employees. The allowability of legal costs incurred in litigation with the Department shall be determined in the Office of the Assistant Secretary for Employment and Training. The Senate bill has no comparable provision.

The Senate recedes with an amendment deleting the provisions relating to the Labor Department and adds specific reference to excessive or unnecessary legal fees in subsection (h).

Both bills establish the responsibilities of recipients to take action against subcontractors to prevent misuse of funds. The House amendment authorizes prime sponsors to delegate responsibility for eligibility determination under reasonable safeguards if approved by the Secretary. The Senate bill has no comparable provision.

The Senate recedes.

The Senate bill prohibits the use of assistance under the Act to pay a fee for placement into a program under the Act and prohibits the charging a fee. The House amendment has no comparable provision.

The House recedes.

The Senate bill requires prior notification to the Governor and prime sponsor before the Secretary may fund an activity within the State or prime sponsor area. The House amendment has no comparable provision.

The House recedes with an amendment to make clear that the notification requirement is not a condition of funding any grant or contract.

The Senate bill requires the Secretary and recipients to give special consideration in carrying out programs authorized under the Act to community based organizations which have demonstrated effectiveness in the delivery of employment and training services. The House amendment has similar provisions applicable to prime sponsors and the Secretary with respect to programs under subpart 3 of Title IV–A.

The House recedes.

In determining whether a community-based organization has demonstrated effectiveness in the delivery of employment and training services, the prime sponsor may consider the organization's proven effectiveness in programs not directly related to the particular CETA program involved, but which provide a clear and convincing demonstration that the CETA program involved would be effectively carried out.

The House amendment authorizes the Secretary to assist Native American entities in applying for financial assistance for which they may be eligible under the act. The Senate bill has no comparable provision.

The Senate recedes with an amendment to include those qualified under section 302.

The House amendment requires each recipient to make satisfactory provisions for determining and verifying the eligibility of participants in programs under the act.

The House recedes.

The Senate bill provides that allowances shall be no lower than the State or local minimum wage applicable to most employees in the State. The House amendment provides that allowances shall be no lower than the applicable State or local minimum wage law.

The House recedes.

The Senate bill provides for dependents allowances for trainees with more than 2 dependants. The House amendment has no such provision.

The House recedes.

The Senate bill provides that participants may be given allowances for transportation, subsistence, and other expenses incurred in training or employment. The House amendment contains no such provisions applicable to all programs but has provisions applicable to title II.

The House recedes.

In defining artificial barriers to employment the Senate bill refers to limitations in the terms and conditions of employment. The House amendment refers to limitations in the hiring, firing, promotion, licensing and other terms and conditions of employment.

The Senate recedes.

In defining community based organizations the Senate bill has as examples neighborhood groups, vocational rehabilitation organizations, and agencies serving youth. The House amendment lists: United Way of America, National Puerto Rico Forum, neighborhood organizations and rehabilitation facilities as defined in section 7(10) of the Rehabilitation Act of 1973.

The conference agreement combines the definitions of both bills.

The listing of several community-based organizations and categories of community-based organizations does not imply a preference for those organizations over other community-based organizations not listed in the text.

The Senate bill defines offenders as those who have been confined, assigned, or subject to pretrial, probationary, parole or other stages of the criminal justice system. The House amendment defines offenders as those who have been subject to any stage of the criminal justice process.

The Senate recedes.

The House amendment includes in the definition sheltered workshop, prison, hospital or similar institution, or in community care. The Senate bill has this definition under unemployed.

The House recedes.

The Senate bill provides that an area of substantial unemployment will be determined over the most recent 12-month period, except for fiscal year 1979 when it will be determined over the high consecutive three months. The House amendment provides that for purposes of title II, an area of substantial unemployment will be determined for any three consecutive months and for the purposes of ttile VI for the most recent four quarters.

The Conference agreement provides that the term "area of substantial unemployment" means any area of sufficient size and scope to sustain a public service employment program and which has an average rate of unemployment of at least 6.5 percent for the most recent 12 months as determined by the Secretary.

Except that with respect to determinations made for fiscal year 1979, and for parts A, B, and C of title II for any fiscal year, such term means any area of sufficient size and scope to sustain such a program and which has an average rate of unemployment of at least 6.5 percent for any 3 consecutive months within the most recent 12-month period as determined by the Secretary.

Further, determinations of areas of substantial unemployment shall be made once each fiscal year.

In defining veterans outreach the House amendment includes services described in section 305. The Senate bill has no similar provision.

The Senate recedes with a technical amendment.

Under the House amendment, economically disadvantaged includes persons who, on the basis of their past 6-months family income would have been eligible for cash welfare payments and, regardless of income, handicapped individual persons institutionalized in a prison, hospital or similar institution or receiving community care. The Senate bill has no similar provision.

The Senate recedes.

The Senate bill provides a rebuttable presumption that persons claimed as dependents on another's tax return, other than handicapped persons or persons eligible for a community service job under the Older Americans Act, are part of that person's family in the following year. The House amendment "considers" them part of that family, but does not specify that the applicant may have the opportunity to "otherwise demonstrate."

The House recedes.

The Senate bill defines local education agencies in accordance with the definition in the Elementary and Secondary Education Act; the House amendment uses the definition in the Vocational Education Act.

The Senate recedes with an amendment providing that this definition will not apply to the section Part A of title IV program where local education agency will mean those defined in section of the Elementary and Secondary Education Act of 1965.

The Senate bill includes a definition for designated educational agencies and institutions. The House amendment has no similar provision.

The Senate recedes.

The Senate bill defines entry level as the lowest position in any promotional line. The House amendment adds, as defined locally by collective-bargaining agreements, past practice, or applicable personnel rules.

The Senate recedes.

The House amendments limits the definition of handicapped individual to one who can be reasonably expected to benefit in terms of employability from services provided pursuant to this act. The Senate bill has no similar limitation.

The House recedes.

The Senate bill provides a definition of Vietnam-era veterans as those veterans defined in section 2011 (2)(A) of title 38 U.S.C. who are under 35 years of age. The House has no similar provision.

The House recedes.

The Senate bill contains a definition of supportive services.

The House amendment has no similar provision.

The House recedes.

The Senate amendment includes a definition for project. The House amendment does not.

The House recedes.

The Senate bill includes in the definition of displaced homemaker a person who is receiving public assistance on account of dependent children in the home but is within six months of no longer being eligible for such assistance. The House amendment includes any person receiving public assistance on account of dependent children in the home and any person receiving spousal support.

The House recedes with an amendment to provide that the definition of displaced homemaker includes an individual who is or has been dependent upon public assistance as a result of having dependent children.

The Senate bill provides that the Secretary may prescribe performance standards. The House amendment does not.

The House recedes.

Under the Senate bill, the Secretary assesses the adequacy of a prime sponsor's proposed performance and placement goals in accordance with his performance standards which shall give account to variations based on local conditions. Under the House amendment, the Secretary reviews the prime sponsors proposed performances standards under criteria which shall reflect similar factors.

The House recedes with an amendment to require that performance standards take into account appropriate recognition of differences associated with the degree of disadvantage or handicap of the eligible population.

The Senate bill provides that the Secretary may delegate within the Department of Labor authority over the office of management assistance in order to effectively carry out the purposes of that section. The House amendment has no similar provision.

The House recedes. The conferees expect that this office shall not be merged with the on-going activities of the Employment and Training Administration.

The Senate bill provides that the Secretary shall, to the extent feasible, reduce the cost of compliance imposed on prime sponsors proposed performance standards under the act. The House amendment has no similar provision.

The House recedes.

The House amendment provides that notwithstanding any other provision of the act no authority to enter into contracts shall be effective, except to such an extent or in such an amount as provided in advance in appropriation acts. The Senate has no similar provision.

The Senate recedes.

The House amendment provides that in the first report submitted by the President after the effective date of this act there shall be recommendations with respect to necessary legislative or administrative changes required to simplify on-the-job training contracting procedures under title II. The Senate has no similar provision.

The Senate recedes with an amendment to require the report to make recommendations with respect to necessary legislative or administrative changes required to simplify on-the-job training contracting procedures under this Act.

The Senate bill requires a detailed report which evaluates all programs; the House amendment requires a detailed report on public service employment activities.

The House recedes.

The House amendment provides that not later than March 31, 1980 the Secretary shall report to Congress proposals for the integration and consolidation of programs established by part A of title IV and title VII with the program established by title II. The Senate bill does not.

The Senate recedes.

The Senate bill provides that the Secretary in preparing a report shall require as a condition of financial assistance that annual reports and evaluations be submitted in accordance with regulations and provides that the data derived from such reports shall be compiled on a State, regional, and national basis and shall be included in the annual report to Congress. Further, the bill details the information which shall be provided in the report, including action taken by the Secretary to reduce the cost of compliance with the regulations issued under this Act. The House amendment provides that the Secretary may require each prime sponsor to prepare and make available to the public periodic reports on its activities under the act and that such reports shall contain such information as the Secretary may require.

The House recedes.

The conferees intend the Secretary to include in the reports mandated in section 128(d) the following data: (a) participant characteristics shall be cross tabulated, including age, race, sex, national origin, handicap, education level, previous wage, termination wage, and public assistance status; (b) average cost per participant shall include breakdowns by wages or salaries, allowances, training, supportive services, fringe benefits, administrative costs, and by program activity; and (c) the types of outcomes that participants experience after the program, including but not limited to placement in the public and private sector, enter school or the military, transferred to another program under this Act, and received public assistance (cross tabulated by program activity).

The Senate bill requires that the Secretary in the annual report shall report on the monitoring and auditing activities of the department, on administrative changes made or proposed to improve such activities and on actions taken under section 106. Complaints and Sanctions, and shall make any necessary proposals for legislative action. The House amendment has no similar provision.

The House recedes with conforming amendments.

The House amendment provides that the Secretary shall transmit to Congress as part of his annual report a detailed report on evaluations and pilot and demonstration projects conducted with funds under the act including employment service prime sponsor demonstration projects. The Senate bill has no similar provision.

The Senate recedes with conforming amendments.

The House amendment provides that the Secretary shall submit a report once each quarter on the efforts being taken to reduce the paperwork in reporting requirements under the act. The Senate bill has no similar provision.

The Senate recedes with conforming amendments and (1) an amendment to require the report on paperwork to be submitted on an annual basis and (2) to permit the Secretary to consolidate reports to the maximum extent feasible, in the Employment and Training Report of the President without reducing the information required by those reports.

The House amendment sets aside $5 million for the establishment of a program for the continuous and comprehensive study and evaluation under contract of recurrent and developing problems in achieving purposes and goals of such programs. The Senate bill has no similar provision.

The House recedes.

The House amendment requires the Secretary to make a determination no later than 120 days after receiving a discrimination complaint. The Senate bill has no similar provision.

The Senate recedes with a conforming amendment.

The House amendment requires the Secretary to provide a focus for the employment and training of handicapped individuals under the Act and review on a periodic basis the adequacy of outreach training, placement and advancement practices with respect to handicapped individuals and to insure that the special needs of such individuals are being met. The Senate bill has no similar provision.

The Senate recedes with a technical amendment.

The Senate bill provides that the Secretary shall complete all audits of recipients of funds which he deems necessary in a timely fashion following the end of the fiscal year for which the audits are made, and that the Secretary shall report on the audits made and actions taken thereon. The House amendment has no similar provision.

The House recedes.

TITLE II—COMPREHENSIVE EMPLOYMENT AND TRAINING SERVICES

The Senate bill provides that the purpose of the program is to ease barriers to labor force participation encountered by economically disadvantaged persons. The House Amendment provides that programs shall include the development and creation of training, upgrading, retraining, education, and other services.

The Conference agreement combines both purposes.

The House amendment provides that no prime sponsor shall be allocated under the paragraph 2 formula (current title I) an amount in excess of 150 percent of the amount received in the immediately preceding fiscal year, except if the amount were less than 50 percent of what the prime sponsor was entitled, then the allocation would be increased to 50 percent of the amount to which the prime sponsor is entitled. The Senate bill has no similar provision.

The House recedes.

The Senate bill provides for suballocation from the States to prime sponsors. The House amendment allocates directly to prime sponsors.

The Senate recedes.

The Senate bill provides that 5 percent of the funds available for parts A, B, and C of title II shall be available for grants under the supplemental vocational education assistance program (sec. 204). The House amendment provides that 3 percent of all the funds for the title shall be available for this purpose.

The conference agreement provides that 6 percent of the funds available under parts A, B, and C, shall be available for such grants.

The Senate bill provides 1 percent of the funds allocated under parts A, B, and C for the costs of the State council. The House amendment provides for one-half of 1 percent of all funds allocated under the title.

The House recedes.

The Senate bill provides that 1 percent of the amounts available for title II shall be available to the Governors for encouraging coordination and establishing linkages between prime sponsors and designated educational agencies and institutions, and institutions providing training programs which are approved by the Secretary. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that 4 percent of the funds available for parts A, B, and C of title II shall be available for the Governor's coordination and special services. The House amendment provides that 2 percent of the funds available for title II will be available for the same purpose.

The House recedes.

The Senate bill provides for the utilization of the remainder of the Secretary's discretionary funds. The House amendment specifies the same uses for 85 percent of the remainder of the Secretary's discretionary funds.

The House recedes.

The Senate bill provides that not more

than 5 percent of each prime sponsors allocation under parts A, B, and C may be used for programs and activities under Part C: Upgrading and Retraining. The House amendment provides that not more than 4 percent of the prime sponsors allocation under the title may be used for the same purpose.

The conference agreement provides that an amount equal to not more than 4.5% of the amounts available for parts A, B, and C.

The Senate bill provides that public service employment and work experience shall be combined with training and supportive services, taking into consideration individual's skills, interests, prior experience, employability needs, career objectives, and the need for such training and supportive services. The House amendment, in section 212(b)(1)(C) provides that public service employment shall be combined with training and supportive services if they are reasonably available in the area and in section 212(b)(2)(A) that work experience be designed to lead to unsubsidized employment.

The House recedes with an amendment to delete the phrase "work experience."

The House amendment requires prime sponsors to provide assurances that they will make arrangements with State or local education agencies or post-secondary educational institutions for the conduct of employment and training programs. The Senate bill has no similar provision.

The Senate recedes with an amendment to limit this provision to title II programs.

The House amendment requires prime sponsors to give preference to subgrantees whose plans provide for the greatest percentage of positive placements and prohibits the award of further grants to subgrantees who have substantially failed to meet their plan. The Senate bill has no comparable provision.

The House recedes.

The Senate bill provides that funds shall pursuant to agreements between the prime sponsor and State vocational education boards be used to (1) coordinate programs under this act with existing vocational education programs and provide needed vocational educational programs; (2) coordinate the utilization of funds under this Act and the Vocational Educational Act of 1963 to enhance economic growth and development in the State; (3) develop linkages between, vocational education, and training programs under this act and private sector employers; (4) provide technical assistance to vocational education institutions and local education agencies to aid them in making cooperative arrangements with appropriate prime sponsors; and (5) provide information, curriculum materials, and technical assistance in curriculum development and staff developments to prime sponsors. The House amendment provides that funds are to be used only for providing vocational education and services to participants in programs under this title in accordance with an agreement between the State vocational education board and the prime sponsor, and that the State board, prior to making any agreement, shall consult with and obtain the advice and comments from the designated representatives of the State agencies and councils required to be involved in the formulation of the 5-year State plan for vocational education.

The House recedes with an amendment that not more than 15% of the funds available for this section may be used for other than participant services.

The Senate bill provides that the prime sponsor shall assist each individual receiving assistance under this title in developing personalized employability plan and that an assessment of each individual's needs shall be made periodically. The House amendment provides for an assessment of the individual's needs, interests, and potential in the labor market.

The House recedes.

The Senate bill includes supported work programs or activities as an eligible service. The House amendment has no similar provision.

The House recedes.

Both bills include on-the-job training as an eligible activity. The House amendment also provides for small business self-employment training.

The Senate recedes with an amendment providing for training leading to self-employment in small businesses. The conferees intend that this is merely to allow for training which will lead to self-employment in small businesses, and is not intended to subsidize small businesses.

Both bills include work experience as an eligible activity. The Senate bill provides that such activity shall provide employment opportunities for eligible individuals unable to attain employment, which shall be designed to increase the employability of the participants through development of work habits, occupational skills and linkages with other training programs or to provide temporary employment to individuals who are seeking suitable placement in classroom training, on-the-job training, public service employment or other such employment and training opportunities. The House amendment includes transitional entry-level public service employment opportunities, and provides that work experience be designed to lead to unsubsidized employment and be subject to the duration limitations, unless the prime sponsor's approved plan states that the lack of alternative job opportunities in the area makes such progress and duration impractical.

The House recedes generally to the Senate's provisions relating to work experience. The Senate recedes with an amendment to the House provisions relating to extensions for participation in work experience programs, and provides that the limitations and conditions do not apply if the prime sponsors plan, as approved by the Secretary, establishes that the lack of alternative job opportunities in the area make such limitations and conditions impractical.

The Senate bill includes transportation as a supportive service. The House bill has no similar provision.

The House recedes.

The Senate bill includes part-time, flexitime, and other alternative workings, arrangements for individuals who are unable because of age, handicap or other factors to work full time. The House amendment has no similar provision.

The House recedes.

The House amendment authorizes such activities as payment of allowances to persons in training for which they received no remuneration and payment for such allowances of transportation, and subsistence or other expenses incurred in training or employment. The Senate bill has no similar specific provision.

The Senate recedes with an amendment to delete paragraph (13) displaced homemaker employment assistance programs as described in Section 307.

The Senate bill prohibits the use of funds under parts A, B, and C for public service employment but has a part D authorizing a public service employment program. The House amendment provides a 50 percent limit on the percentage of funds received under title II that may be used by a prime sponsor for public service employment wages in fiscal year 1979 and a 50 percent limit in 1980 declining to 40 percent in 1982 for the amount that may be spent for wages and benefits. A waiver of the requirement in later years is provided for areas of substantial unemployment.

The House recedes.

The Senate bill specifies that services for youth shall be designed to assist eligible youth in overcoming the particular barriers to employment experienced by youth and provides that the Secretary shall insure that each prime sponsor's plan for services for eligible youth include specified provisions. The House amendment has no similar provision.

The House recedes with an amendment to delete the provision requiring assurances that maximum feasible efforts will be made to develop and provide referral to appropriate jobs for which youth are qualified.

The Senate bill specifies that services for older workers shall be designed to assist eligible participants in overcoming the particular barriers to employment experienced by older workers and provides that the Secretary shall insure that each prime sponsor's plan include specific provisions relating to services for older workers. The House amendment has no similar provision.

The House recedes with an amendment to provide that each prime sponsor's plan includes specific provisions relating to services for older workers, such as, but not limited to, those enumerated in section 308.

The Senate bill specifies that services for public assistance recipients shall be designed to assist eligible participants in overcoming the particular barriers to employment experienced by such recipients and provides that the Secretary shall insure that each prime sponsor's plan for services for public assistance recipient include specific provisions.

The Houe recedes with an amendment to delete specific references to the types of activities and services authorized.

The Senate bill states that services for displaced workers shall be designed to assist eligible participants in overcoming the particular barriers to employment created by technological change or the decline in local economies and provides that the Secretary shall insure that each prime sponsor's plan for services for displaced workers include specified provisions. The House amendment has no similar provision.

The Senate recedes.

Both bills provide that employees will be compensated at rates including periodic increases as the Secretary deems reasonable. The Senate bill includes in the factors determining those rates skill requirements and geographical region. The House amendment has no similar provisions.

The House recedes.

The Senate bill provides a public service employment program for the structurally unemployed as a separate Part D of Title II with its own authorization and formula for allocating funds. The House bill provides that public service employment is an authorized activity under Part B of Title II (Services for the Economically Disadvantaged) with limitations on the amount of funds that may be used for PSE wages and benefits.

The House recedes.

The Senate bill requires that transitional public service employment programs shall include appropriate training and supportive services and be designed to lead to unsubsidized employment. The House amendment is different in the following respects: It requires that positions be entry level; that training and services must be provided only if reasonably available in the area; and shall, subject to the availability provision, provide for 8 hours of skill training for every 40 hours of participation unless the Secretary determines that less is required.

The Senate recedes with an amendment to delete the House provision requiring 8 hours of skill training for every 40 hours of participation.

The Senate bill requires that no less than 90% of the funds for public service employment programs received under this Part by a prime sponsor be expended for wages, employment benefits, training and supportive services. The House has no similar provision.

The conference agreement provides that in FY '79, not more than 90% shall be used for

wages and benefits and not less than 10% for training; FY '80 not more than 85% for wages and benefits and not less than 15% for training; FY '81 not more than 80% for wages and benefits and not less than 20% for training; and FY '82 not more than 78% for wage and benefits and not less than 22% for training.

TITLE III—SPECIAL FEDERAL RESPONSIBILITIES

The Senate bill provides that the Secretary is authorized to use funds to provide for employment and training programs for those persons who face particular disadvantages in the labor market. The House amendment provides that the Secretary shall use funds to provide programs for the same persons.

The House recedes with an amendment providing that the Secretary shall use funds under this title to provide services.

In addition to those listed in both bills, the Senate bill lists displaced homemakers, individuals who lack educational credentials and public assistance recipients among those facing disadvantage in the labor market. The House amendment lists women.

The House recedes with an amendment to include women in the list of those who face a particular disadvantage in specific and general labor markets.

The Senate bill provides that Displaced Homemaker programs may be operated through multipurpose projects or otherwise. The House amendment provides that employment and training and supportive services for displaced homemakers will be provided through private nonprofit organizations and public agencies, including prime sponsors.

The House recedes.

The Senate bill provides that the Secretary shall prescribe priorities for participation in the displaced homemaker program based on age, education, training, household support obligations and employability. The House amendment has no similar provision.

The House recedes.

The House amendment provides that no funds under the Displaced Homemaker program shall be used for the purchase, construction, or major rehabilitation of facilities. The Senate bill has no similar provision.

The Senate recedes.

The House amendment would reserve not more than 2 percent of the funds available for title III for the Displaced Homemaker program. The Senate bill has no similar provision.

The Senate recedes.

Both bills provide for offender programs. The Senate bill provides that the Secretary shall support activities designed to enable offenders to secure meaningful training and employment including those services which would provide highly structured and supervised employment opportunities such as that provided under section 311(c). The House amendment has no similar provision.

The House recedes.

The House amendment provides that the Secretary in developing information concerning the special needs of offenders shall include special studies regarding the incidence of unemployment among offenders and the means of increasing employment opportunities and that the Secretary shall conduct an annual survey of primes and States for the purpose of assessing the scope and implementation of offender programs. The Senate bill has no similar provision.

The Senate recedes.

The House amendment provides that the Secretary in programs for persons with limited English-speaking ability shall provide services, where feasible, at times designed to meet the needs of individuals unable to attend during normal working hours and to develop new employment opportunities for limited English-speaking persons and opportunities for promotion within existing employment situations for such persons. The Senate has no similar provision.

The Senate recedes.

The Senate bill requires a report on programs under this section by April 1 of each year. The House amendment has no comparable provision.

The House recedes with an amendment requiring the report by March 1.

The Senate bill requires that the Secretary offer the prime sponsors planning council an opportunity for comment before funding a program in the area. The House amendment has no similar provision.

The Senate recedes.

The House amendment provides that the eligibility requirements for programs for workers age 55 and older established under title X of the Public Works and Economic Development Act and funded under section 304 of CETA shall be those which were established under title X. The Senate bill has no similar provision.

The Senate recedes.

The House amendment provides for funding local workshops for training of youths and others as self-employed owners and managers of small businesses. The Senate bill has no comparable provision.

The Senate recedes.

The Senate bill provides that the Secretary shall utilize wherever possible Indian tribes, bands, or groups, on Federal or State reservations and Oklahoma Indians for the provision of employment and training services under this section. The House amendment has no limitation to those on Federal or State reservations.

The House recedes.

The Senate bill provides that the Secretary shall reserve from title III funds no less than 4.5 percent of the amount allocated under section 202(a)(1) for the Native American programs. The House amendment provides for an amount equal to not less than 3 percent of the amount allocated pursuant to section 202(a).

The House recedes.

Both bills authorize the Secretary to meet the employment and training needs of migrants and seasonal farmworkers. The Senate bill requires the program operator to have: (1) an understanding of migrant problems; (2) a familiarity of the area to be served; and (3) the capability to administer such a program. The House amendment provides that the Secretary will not provide any preferential weighting factor to an application by virtue of the fact that the applicant holds a prior grant, nor any negative factor because the applicant is an instrument of a State.

The conference agreement combined both provisions.

The House amendment provides for a statutory basis for the continuation of the high school equivalency program (HEP) and the college assistance migrant program (CAMP). The Senate had no similar provision.

The Senate recedes.

The Senate bill provides for a set-aside of title III funds an amount equal to 5 percent of the amount allocated under parts A, B, and C for migrant and seasonal farmworker programs of title II. The House amendment provides for 2.6 percent of the amount allocated under title II.

The House recedes.

The House amendment requires the Secretary to consult with State and local officials and he may enter into agreements with such officials to assist in the operation of these programs. The Senate bill has no comparable provision.

The Senate recedes.

The Senate bill provides that the Secretary is authorized to carry out a job search assistance program to economically disadvantaged unemployed and underemployed persons. The House amendment has no similar provision.

The House recedes.

The House amendment provides that the Secretary shall establish programs which will train personnel to work with and assist handicapped individuals. The Senate bill has no similar provision.

The Senate recedes.

The House amendment provides that the Secretary is authorized to promote the development of partnership arrangements between prime sponsors and State employment security agencies, and the Secretary is authorized to reimburse primes for costs associated with the implementation of a partnership and to provide incentives to insure that employment security agencies may participate on an equitable basis. The Senate bill has no similar provision.

The Senate recedes.

The House amendment requires a middle-aged and older worker program using not more than 10 percent of the amount allocated under title II. The Senate bill has no comparable provision.

The Senate recedes with an amendment to conform to the eligibility requirements in title V of the Older American Act and to reduce the percentage of funds, not more than 5% of the amounts available under title III.

The Senate bill requires the Secretary to establish programs designed to increase knowledge about labor market processes including programs designed to eliminate artificial barriers to employment. The House has no similar provision.

The House recedes.

Both bills authorize the Secretary to conduct supportive employment and training projects. The House amendment requires these projects to be a part of, or coordinated with, existing projects. The Senate bill has no such limitation.

The House amendment includes ex-offenders in the target group for these projects and requires that necessary skill training be provided. The Senate bill has no similar provision.

The Senate recedes.

Both bills provide for a variety of welfare demonstration projects. The Senate bill specifies that such projects shall, to the extent practicable, be conducted in rural and urban areas, in sparsely and densely populated areas, and in areas with inadequate means of transportation. The House amendment has no similar provision.

The House recedes.

The House amendment authorizes the Secretary to conduct programs through community vocational resource centers in economically depressed communities. The Senate bill has no similar provision.

The Senate recedes.

The House amendment provides that the Secretary shall conduct educational and assistance programs designed to eliminate artificial barriers to employment based upon race, sex, national origin, age, records of arrest or conviction, handicaps, marital status, or other criteria. The Senate bill has no similar provisions.

The Senate recedes.

The Senate bill provides that in order to reduce the costs for carrying out the labor market information and job bank program the Secretary shall consult with the National Commission on Employment and Unemployment Statistics. The House amendment has no similar provision.

The Senate recedes.

The Senate bill provides that the Secretary shall, to the maximum extent possible, use statistical sampling techniques in order to reduce the paperwork and cost burden on prime sponsors. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that the Secretary shall prepare and submit to Congress an annual evaluation plan dealing with the areas

of research, statistics, evaluation, experimentation and demonstrations to be undertaken in the succeeding fiscal year. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that the Secretary shall submit to Congress at the same time as the President submits his budget, an annual evaluation report for employment and training programs. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that the Secretary shall notify prime sponsors of experiments and demonstrations to be conducted in their States and shall provide to each prime sponsor and Governor the results of all such research demonstrations, evaluations, and experiments. The House amendment has no similar provision:

The House recedes.

The Senate bill provides that funds available under this section may be transferred to any other Federal agency pursuant to agreement with the Secretary. The House amendment has no similar provision.

The Senate recedes.

The House amendment provides that the Secretary shall develop certain standards definitions and establish certain procedures for the uniform reporting by prime sponsors. The Senate bill has no similar provision.

The Senate recedes.

The Senate bill requires the National Occupational Information Coordinating Committee to give special attention to the labor market information needs of youth. The House amendment requires special attention to the problems of unemployed youths.

The House recedes.

The House amendment provides that the National Occupational Information Coordinating Committee will encourage programs to make available employment and career counseling to post-secondary youths and provide technical assistance for programs designed to encourage the listing of all available opportunities for youths with various appropriate offices. The Senate bill has no similar provision.

The Senate recedes.

The Senate bill includes funds available to NOICC under section 12 of the Career Education Act. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that a prime sponsor may volunteer for an evaluation of its title II program and authorizes the Secretary to make awards to those prime sponsors who do well. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that the Secretary shall establish a special voucher project to demonstrate the efficacy of providing vouchers to economically disadvantaged persons who are unemployed or underemployed. The House Amendment provides that the Secretary is authorized to carry out such a program. The Senate bill mandates a report by October 1, 1980. The House amendment does not.

The House recedes with an amendment to include this report in the President's Employment and Training Report.

The Senate bill provides that the Secretary is authorized to carry out a special experimental program to link the employment and training activities of prime sponsors to a workable strategy for stimulating local private economic development and replacement of declining industries. The House amendment has no similar provision.

The House recedes.

TITLE IV—YOUTH PROGRAMS

The House amendment has an overall statement of intent for the title IV youth programs. The Senate bill has no similar provision.

The Senate recedes.

The House amendment provides that any earnings or allowances received by any eligible youth under title IV shall be disregarded in determining the eligibility of the youth's family for any benefits based on need under any Federal or federally assisted program. The Senate bill has a similar provision but limited to programs under part A of this title. (See Secs. 436(a)(5) and 446 of the Senate bill.)

The Senate recedes with an amendment to limit the disregard of earnings provision to part A of this title and to place the provision in the general conditions section.

The House amendment includes projects operated by institutions of higher education in the list of eligible employment programs. The Senate bill does not.

The Senate recedes.

The Senate bill requires prime sponsors to consult with State and local public assistance agencies. The House amendment has no similar provision.

The House recedes.

The Senate bill requires assurances that special efforts will be made to recruit youths from families receiving public assistance including parents of dependent children who meet the age requirement of this subpart. The House amendment has no similar provision.

The House recedes.

The Senate bill requires reports to Congress by December 31, 1978 and March 15, 1979 concerning youth incentive entitlement projects. The House amendment provides for reports by March 15, 1979, and by December 31, 1979, concerning these projects.

The Senate recedes.

The Senate bill includes the removal of architectural barriers to access by handicapped persons to public facilities as an eligible activity under community improvement projects. The House amendment has no similar provision.

The House recedes.

The Senate bill requires that agreements include a description of arrangements with public assistance agencies on the employment of youth from families receiving public assistance including parents of dependent children. The House amendment provides that the agreement include a description of the arrangements with courts of jurisdictions for status and youthful offenders.

The Senate recedes with an amendment to merge both provisions.

The Senate bill includes removal of architectural barriers to access by handicapped persons to public facilities as eligible activities under subpart 3. The House amendment has no similar provision.

The House recedes.

The House amendment includes assistance to employers in developing job ladders. The Senate bill has no similar provision.

The Senate recedes.

The Senate bill includes coordination of statewide activities carried out under the Career Education Incentive Act as an eligible activity for the special statewide youth services program. The House has no similar provision.

The House recedes.

The Senate bill provides that prime sponsors describe the relationship and coordination of services provided by the courts of jurisdictions for status and youthful offenders to eligible participants. The House amendment has no similar provision.

The House recedes.

The Senate bill requires that assurances be given that, to the extent appropriate, there will be coordination with public assistance agencies and the courts of jurisdiction for status and youthful offenders system. The House amendment has no similar provision.

The House recedes.

The Senate bill requires that assurances be given that in the implementation of programs under this subpart there will be coordination with activities conducted under the Career Education Incentive Act. The House amendment has no similar provision.

The House recedes.

The House amendment provides that when the Secretary uses discretionary funds for the development or implementation of statewide career information systems the occupational data contained within shall be subject to the approval of the appropriate State Occupational Information Coordinating Committee. The Senate bill has no similar provision.

The House recedes.

The Senate bill provides that the Secretary shall carry out in no more than 10 areas of high youth unemployment a program to provide bonuses of up to $2,500 per youth to employees who employ at least five youths for 1 year who prior to employment are economically disadvantaged, unemployed and have no significant previous employment. The House amendment has no similar provision.

The House recedes.

The Senate bill requires a person to be at least 14 but not 22 years. The House amendment requires a person to be either 16 to 21, inclusive, or if authorized under regulations of the Secretary, age 14 to 15, inclusive, see section 401 of the House amendment.

The House recedes.

Both bills provide that enrollees be free of any serious medical or behavioral problems and the House amendment specifies that such problems not be so serious that the individual could not adjust to the standards of conduct, discipline, work and training which the Job Corps involves.

The Senate recedes.

The Senate bill provides that in the case of any handicapped individual the Secretary may waive the maximum age requirement specified. The House amendment has no similar provision.

The House recedes.

The Senate bill provides that before selecting an individual who has a history of serious and violent behavior against persons or property, repetitive delinquent acts, narcotics addiction and other behavioral aberrations, the Secretary shall obtain a finding from a professionally qualified person who knows such induvidual's situation, that there is a reasonable expectation that the individual's conduct will not be inimicable to the Job Corps and that the Job Corps will help to overcome the individual's problem. The House amendment has no similar provision.

The Senate recedes.

The Senate bill provides that an individual on probation or parole be selected only if release from supervision is satisfactory to the probation or parole officials and does not violate applicable laws or regulations, and the Secretary has arranged to supervise the individual and provide all required reports to State and other authorities. The House amendment provides that no individual shall be denied a position in the Job Corps solely on the basis of that individual's contact with the criminal justice system.

The conference agreement is to combine both provisions and deletes the requirement that the Secretary supervise individuals on parole or probation.

The House amendment provides that a State board or agency designated pursuant to section 104(A)(1) of the Vocational Education Act which operates, or wishes to develop, area vocational education school facilities, or residential vocational schools, or both, is eligible to establish and operate a Job Corps center. The Senate has no similar provision.

The Senate recedes.

The Senate bill provides that allowances for enrollees shall be determined by the Secretary. The House amendment provides that allowances shall be established at a rate not to exceed $60 per month during the first 6 months of an enrollee's participation, and

not to exceed $100 per month thereafter, except that allowances in excess of $60 a month but not exceeding $100 a month may be provided from the beginning of an enrollee's participation if it is expected to be of less than 6 months duration. The House amendment further authorizes the Secretary to pay personal allowances in excess of the rate specified in unusual circumstances.

The conference agreement is to use the House provision for fiscal year 1979 and allow the Secretary the discretion to increase the level of allowances thereafter.

The Senate bill provides that the Secretary shall prescribe rules governing the accrual of leave by enrollees. The House amendment provides the same except that in the case of an emergency the Secretary shall not assume transportation costs connected with leave of any enrollee who has not completed at least 6 months service in Job Corps.

The House recedes with an amendment to include transportation costs.

The Senate bill provides that the Secretary will determine the readjustment allowances for enrollees. The House amendment provides the readjustment allowance not to exceed $100 for each month of satisfactory participation in the Job Corps.

The conference agreement is to use the House provision for fiscal year 1979 and allow the Secretary the discretion to increase the level for the readjustment allowance thereafter.

The Senate bill provides that the Secretary may prescribe that portion of the readjustment allowance which may be paid monthly during the period of service of an enrollee directly to a spouse or child of an enrollee. The House amendment provides that that portion may not exceed $50 for each month of satisfactory service.

The House recedes.

The House amendment provides that standards of conduct shall be stringently enforced. The Senate bill provides that they will be enforced.

The Senate recedes.

The Senate bill provides that youth shall be represented on the advisory council. The House amendment provides that youth participation in advisory council affairs shall be encouraged.

The House recedes.

The Senate bill provides that the Secretary shall submit to Congress no later than March 1 of each year, a report concerning the Job Corps. The House amendment has no similar provision.

The Senate recedes.

The Senate bill provides that 95 percent of the funds shall be allocated and that the remainder shall be used in the Secretary's discretion, including allocations to Native American entities. The House amendment provides that in order to receive assistance, primes must submit a plan, and that the Secretary may reserve up to 5 percent of the funds for his discretion.

The Senate recedes with an amendment to include allocations to Native American entities under section 482(b).

TITLE V—NATIONAL COMMISSION FOR EMPLOYMENT POLICY

The Senate bill provides that the Commission shall advise the President and the Congress. The House amendment provides that it shall advise the Secretary.

The House recedes.

The Senate bill names the commission the National Commission for Employment Policy. The House amendment names it the National Commission for Employment and Training Policy.

The House recedes. The Conferees intend that this commission be independent of any administration control.

The Senate bill includes the Secretaries of Labor, and Health, Education and Welfare, the Administrator of Veterans' Affairs, the Chairman of the Equal Employment Opportunity Commission, and the Director of the Community Services Administration, as members of the National Commission. The House amendment would not include any administration members.

The House recedes. The House recedes with the intention that the Commission be totally independent in formulating employment policy.

Both bills provide that the membership should be broadly representative. The Senate bill would have nine such members. The House amendment would have 14 (including 2 Governors, two county officials, and 2 city officials who are currently serving in a prime sponsor area); the Senate bill has no similar requirement.

The House recedes with an amendment to require the State local officials who are appointed to the Commission to be currently serving in office.

The Senate bill provides that each member would serve on the Commission for 3 years (except (1) for an initial staggering—four for 2 years and five for 3 years, and (2) when a person is appointed to fill an unexpired term, in which case the person would serve the remainder of the term). The House amendment provides that each person would serve for terms of 1 year beginning at the beginning of a fiscal year.

The House recedes with an amendment to provide for a staggering of the terms of the Commission members: Three would be appointed for 1 year (they may be appointed from those who are currently serving on the National Commission for Manpower Policy); three would be appointed for 2 years; and three would be appointed for three years.

The Senate bill provides that a majority of the Commission shall constitute a quorum and any recommendatons must be approved by a majority of the Members. The House amendment has no similar provision.

The House recedes with the understanding that votes shall be made public, and identified by member.

Both bills provide for the appointment of an Executive Director of the Commission. The Senate bill provides that the Director shall be appointed by the President. The House amendment provides that the Director shall be appointed by the Chairperson.

The Senate recedes with an amendment to provide that the Chairman of the Commission, with the concurrence of the Commission, would appoint a Director, who shall perform such duties as the Chairman prescribes.

Both bills detail the functions of the Commission. The Senate bill includes in the functions (1) develop and make appropriate recommendations and develop innovative approaches, designed to meet the Nation's employment needs and goals; (2) study and make recommendations on how the Nation can attain and maintain full employment; (3) identify and assess the goals and needs of the Nation with respect to economic growth and work improvements; (4) examine and evaluate the programs under this act with those under Parts A and C of the Social Security Act; and (5) examine and evaluate the eligibility standards in titles II and VI to determine their impact on single heads of households and submit a report on such standards no later than July 1, 1979. The House amendment does not contain such specific provisions.

The House recedes.

Both bills authorize the Commission to accept and employ or dispose of gifts or bequests in order to carry out its functions. The Senate bill provides that the gifts or bequests will be accepted in the name of the United States; the House amendment states the Department of Labor.

The Senate bill also lists a variety of administrative provisions for the Commission, including the prescribing of rules, appointing and fixing the compensation of staff, procuring the services of experts and consultants, entering into contracts, use of services from other executive branch agencies, and make advance payments. The House amendment does not.

The House recedes.

The House amendment requires the Commission to include in all reports made under this section any minority or dissenting views submitted by any member of the Commission. The Senate bill does not.

The Senate recedes.

The Senate bill provides a $3 million authorization for fiscal year 1979 and an open end authorization for the following 3 years. The House amendment has an open end authorization for fiscal year 1979 through fiscal year 1982.

The Senate recedes with the intent that there will be sufficient funds to insure their independence and to carry out the activities under this title.

TITLE VI—COUNTERCYLICAL PUBLIC SERVICE EMPLOYMENT PROGRAM

The Senate bill states the purpose of the title as providing eligible unemployed persons with transitional jobs and related training to move them into unsubsidized employment. The House amendment states the purpose as providing temporary employment in periods of high unemployment and further states an intent to fund jobs in a number equal to 20 percent of the unemployed in excess of 4 percent of the labor force.

The Senate recedes with an amendment to provide that the number of jobs to be funded when the unemployment rate is at least 7%, will be sufficient to provide jobs for 25% of the unemployed in excess of 4% of the labor force.

The Senate bill has a 4-year such sums as may be necessary authorization. The authorization in the House bill is equal to the amount needed to fund the number of jobs in the statement of purpose. The House amendment also provides that the President shall before March 1 of each year report to the Congress his estimate of the funds that would need to be appropriated to fund the number of jobs specified in the statement of purpose, his estimate of unemployment for the following fiscal year and the average man-year cost of each public service employment opportunity. This report is to be updated, if necessary, every 3 months thereafter.

The House amendment also provides that the Secretary shall inform each prime sponsor of its estimated allocation based on the appropriation proposed in the report and each prime sponsor's plan shall contain provisions for a transition to the number of jobs that would be funded under that allocation.

The Senate recedes.

The Senate bill provides that not less than 80 percent of the funds received for public service employment programs shall be expended for wages and employment benefits and not less than 10 percent for training and employability counseling for persons employed under the title. The remainder may be used for administrative and other costs. The House amendment permits no more than 15 percent of the funds received to be used for administrative and other allowable costs.

The House recedes with an amendment to require that not less than 10% of the funds shall be for training during the first fiscal year and not less than 5% thereafter.

The House amendment provides that teaching positions in elementary and secondary schools with local educational agencies shall be filled by subcontracting with such agencies. The Senate bill has no comparable provisions.

The Senate recedes.

Both bills reserve 2 percent of the title VI funds for Native American entities. The House amendment specifies that funds be allocated among such entities in accordance with the allocation formula. The Senate bill does not so specify.

The House recedes.

The Senate bill requires 85 percent of the available funds to be distributed by formula. The House amendment provides for 90 percent to be so distributed.

The House recedes.

The Senate bill provides that "excess number" of unemployed in the case of any prime sponsor means the greater of the number of unemployed in excess of 4.5 percent of the labor force either in the jurisdiction of the prime sponsor or in areas of substantial unemployment within the jurisdiction of the prime sponsor.

The House amendment provides that such term means the number of unemployed in excess of 4.5 percent in the jurisdiction of the prime sponsor, except in the case of a prime sponsor who is a State, for which the provisions are the same as in the Senate bill.

The Senate recedes.

Under the Senate bill, all funds must be expended for projects planned to extend for not more than 12 months, though such project may be extended after an annual review by the prime sponsor and in accordance with regulations of the Secretary.

Under the House amendment at least 50 percent of the funds must be expended for projects of no more than 2 years duration. The remainder of the funds must be used to fund entry level positions.

The Senate recedes with an amendment to limit projects to 18 months with a renewal provision for the projects.

The Senate amendment requires the prime sponsor to assess the employability of Title VI participants and to use the 10 percent set-aside of funds for training and employability services only for those participants determined to need them. The House amendment has no comparable provision.

The House recedes.

The House amendment includes Hawaiian Native organizations among the eligible applicants for Title VI funds. The Senate bill provides for Hawaiian Natives to be employed in public service through existing prime sponsors serving them.

The House recedes.

The Senate bill provides that a person is eligible for employment if currently unemployed, unemployed for 10 out of the last 12 weeks and either has family income at or below 85 percent of the BLS lower living standard budget or is receiving AFDC or SSI. Under the House amendment, an individual is eligible if unemployed for at least eight weeks and has family income at or below 100 percent of the BLS lower living standard budget.

The Senate recedes with amendments to: first, establish unemployment eligibility at 10 of the last 12 weeks; and second, to include AFDC and SSI recipients as eligible.

The Senate bill provides that no person may be employed, under this Title, after Sept. 30, 1978 for more than 1 year in any 5 year period unless the Secretary grants a waiver. The House amendment has no comparable provision applicable only to title VI.

The Senate recedes.

The Senate amendment authorizes wages supplementation for employees up to a maximum of 20 percent of the permissible maximum wage for the area. The House amendment permits supplementation above the maximum wages only to the extent that average wages in the area exceed the national average wage, but not more than 20 percent.

The conference agreement limits supplementation to 10% above the Federal maximum wage. In any area where the average wage is between 125% and 150% of the national average, the wages may be supplemented up to 20%.

The House amendment limits the percentage of employees whose wages can be supplemented to 25 percent of the total in fiscal year 1979, 20 percent in fiscal year 1980 and 15 percent in fiscal years 1981 and 1982. The Senate bill has no comparable provision.

The House recedes.

The Senate bill prohibits the use of Title VI funds for upgrading and retraining programs under Part C of Title II. The House amendment does not.

The Senate recedes.

TITLE VII—PRIVATE SECTOR OPPORTUNITIES FOR THE ECONOMICALLY DISADVANTAGED

The Senate bill states its purpose to be to increase employment opportunities for unemployed or underemployed persons who are economically disadvantaged. The House amendment is for the economically disadvantaged.

The House recedes.

The Senate's bill statement of purpose provides that employment and training opportunities shall be made available on an equitable basis among the significant segments of the eligible population.

The House amendment has no similar provision.

The House recedes.

The Senate bill provides that 95 percent of the funds shall be allocated on an equitable basis taking into account the factors in the formula in section 202(a)(1) and that the remainder of the funds shall be used to provide financial assistance to prime sponsors who join together to establish a single private industry council and to native American entities. The House amendment provides that funds shall be allocated by the Secretary on an equitable basis taking into account the factors used in allocating the funds under title II.

The Senate recedes with an amendment to provide that 95% shall be allocated by formula and that the remainder shall be used to provide financial assistance to prime sponsors who join together to establish a single private industry council and to Native American entities.

The House amendment limits financial assistance under title VII to prime sponsors who include satisfactory provision in their title II plans. The Senate bill has no such limitation.

The Senate recedes.

The Senate bill provides that financial assistance will only be provided to a prime sponsor if (1) the proposed activities are consistent with the provisions of the Act and regulations, (2) that the assistance will be used to supplement and not supplant OJT and related activities carried out under titles of the act, (3) that the PIC will make an analysis of private sector job opportunities, (4) the PIC provided a copy of its proposed plan to the prime sponsor planning council and that the recommendations of said council were satisfactorily considered prior to submission to the plan to the Secretary, (5) the plan was made available to appropriate labor organizations, community based organizations, and educational agencies for their comments, and (6) the prime sponsor and PIC have both agreed to the plan submitted to the Secretary and have provided assurances that no activities will be funded which do not have the approval of both prime sponsors and the PIC.

The House amendment provides that the prime sponsor as part of its title II plan shall describe its proposed private sector initiatives and the integration of such initiatives with other training and placement activities under the act, and included an analysis of private sector job opportunities utilizing information provided by the private industry council.

The conference agreement merges the provisions.

The Senate bill provides that a specific waiver by the Secretary shall be required in order to make payments to private for profit employers that are not covered by regulations under other titles of the act. The House amendment has no such waiver provision.

The House recedes with an amendment to provide that the Secretary shall establish procedures to review any proposals for any activities which are not covered by regulations issued under, the Act.

The Senate bill provides that representatives of community based organizations shall be appointed to serve on private industry councils, and that representatives of educational agencies may be appointed to the private industry council.

The House amendment provides that representatives from educational institutions shall be appointed to the council and that representatives of community based organizations which have demonstrated their effectiveness in working with the private sector may be included on the council. The House amendment further provides that at least half of the industry and business representatives on the council shall be representatives of small business (any private for profit enterprise employing 500 or fewer employees).

The conference agreement mandates representation on the PIC of both groups and provides that wherever possible at least half of the industry representatives shall be representatives of small business.

The Senate bill provides that the council shall consult with the prime sponsor with respect to other programs under this act. The House amendment provides that the prime sponsor in its plan shall describe its proposed private sector initiatives and the integration of such initiatives with other training and placement activities under this act.

The House recedes.

The House amendment provides that the council shall utilize labor organizations to the extent appropriate.

The Senate bill has no similar provision.

The Senate recedes.

The Senate bill includes in its list of eligible activities conducting innovative cooperative education programs for youths in secondary and post-secondary schools designed to coordinate educational programs with work in the private sector and conducting vocational exploration programs in the public and private sector. The House amendment has no similar provisions.

The House recedes on the Senate language providing for conducting innovative cooperative education programs for youths, and the Senate receded on its language providing for conducting vocational exploration programs. The conferees note that [To be supplied VII 9.]

The House amendment authorizes the following activities: (1) developing a small business intern program; (2) providing on the job training subsidies on a declining ratio to wages over a period of training; (3) providing follow-up services with employees placed in private employment and employers who hire recipients of services under this act; (4) encouraging employers to develop job skill requirement forecasts and to coordinate such forecasts with prime sponsors; (5) using direct contracts for training and employment programs with private for profit and private nonprofit organizations; (6) developing apprenticeship work comparable high skill training programs for workers regardless of age, in occupations where such programs do not exist presently in the area; and (7) increasing opportunities for upgrading from entry level jobs by providing counciling and other services to employees and employers beyond initial training periods. The Senate bill has no similar provisions.

The Senate recedes.

The Senate bill provides that not less than 90 percent of the funds allocated shall be expended only for wages, employment benefits, training and supportive services. The remainder may be used for administrative and other allowable costs. The House amendment has no similar provisions.

The conferees agree that 10 percent is the proper amount, but, since this is a new program, the conferees agree that some administrative leeway may be necessary during the initial start-up; however, it is expected that every effort will be made to keep this at 10 percent.

The Senate bill provides for the authorization of $400 million for fiscal year 1979 and such sums as may be necessary for fiscal year 1980. Section 112 of the House amendment provides that $500 million are authorized for fiscal year 1979 and $525 million for fiscal year 1980.

The Senate recedes.

TITLE VIII—YOUNG ADULT CONSERVATION CORPS

The Senate bill places the Young Adult Conservation Corps in title IV. The House amendment places the program in title VIII.

The Senate recedes.

The Senate bill provides that the Secretary shall make arrangements for obtaining referral of candidates for the Corps from public assistance agencies. The House amendment has no such provision.

The House recedes.

The Senate amendment includes a reference to the Fish and Wildlife Conservation Act. The House amendment does not.

The House recedes.

The Senate amendment authorizes the Young Adult Conservation Corps through fiscal year 1980. Section 112 of the House Amendment authorizes the program through fiscal year 1982.

The Senate recedes.

OTHER PROVISIONS

The Senate bill makes it a criminal offense to knowingly hire an ineligible individual or to willfully obstruct an investigation under CETA. The House amendment has no such provision.

The House recedes.

The Senate bill provides that a Secretary may provide financial assistance in the same manner and on the same conditions as provided prior to the amendment made by this act until April 1, 1979. The House amendment provides the Secretary may waive those provisions of sections 103 and 104 which are inconsistent with the comparable provisions of this act prior to the enactment of these amendments and allow prime sponsors to submit plans and applications for assistance consistent with the new amendments beginning on the effective date of the amendments and ending December 31, 1978.

The Conference agreement provides that the Secretary of Labor may provide financial assistance under either the CETA provisions in effect before the enactment of this legislation or the provisions of the new amendments until March 31, 1979. However, fraud and abuse provisions shall take effect as soon as possible. The new legislation's eligibility, supplementation limitations, and maximum Federally-supported wages shall take effect 90 days after the enactment of the new legislation.

The Senate bill requires the Secretary to submit to Congress not later than February 1, 1979 a report containing recommendations and suggested legislation with respect to any necessary improvements in the Wagner-Peyser Act including anything necessary to assure coordination between such act and the Comprehensive Employment and Training Act. The House amendment has no similar provision.

The House recedes.

The Senate bill requires the Joint Economic Committee to report to Congress on or before March 1, 1979 on the ability of targeted structural employment training programs to achieve and sustain (1) a decrease in unemployment rates among those segments of the labor force having special difficulty in obtaining employment, and (2) a decrease in the national unemployment rate without exacerbating inflation. Reports shall make such recommendations as the committee deems appropriate. The House amendment has no similar provisions.

The House recedes.

The Senate bill requires the Secretary to develop information relating to the number of individuals who are at least 16 years of age and members of families with incomes which is equal to or less than 70 percent, 85 percent and 100 percent of the lower living standard income level for the jurisdiction of each prime sponsor. The Secretary shall submit a report not later than 1 year after the enactment of this act to the President and to the Congress on the information required by the subsection. The House amendment has no similar provision.

The House recedes.

The Senate bill includes a separate statute to provide for the establishment of a program to encourage the formation of joint labor management committees on plant, area, and industry-wide basis to improve communication between labor and management, and enhance job security and organizational effectiveness. The program would be administered by the Federal Mediation and Conciliation Services. The House amendment has no similar provision.

The House recedes.

The Senate bill increases the number of Assistant Secretaries in the Department of Labor from 5 to 6. The House amendment has no similar provision.

The Senate recedes.

The House amendment provides that this act shall take effect on October 1, 1978. The Senate bill becomes effective on enactment.

The House recedes.

CARL D. PERKINS,
AUGUSTUS F. HAWKINS,
JOHN H. DENT,
EDWARD P. BEARD,
MICHAEL O. MYERS,
JOSEPH A. LE FANTE,
TED WEISS,
W. L. CLAY,
BALTASAR CORRADA,
ALBERT H. QUIE,
RONALD A. SARASIN,
JAMES M. JEFFORDS,
CARL PURSELL,
Managers on the Part of the House.

GAYLORD NELSON,
HARRISON WILLIAMS,
EDWARD M. KENNEDY,
ALAN CRANSTON,
WILLIAM D. HATHAWAY,
DON RIEGLE,
J. K. JAVITS,
RICHARD S. SCHWEIKER,
ORRIN G. HATCH,
JOHN CHAFEE,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 7577

Mr. PERKINS submitted the following conference report and statement on the bill (H.R. 7577) to amend the Economic Opportunity Act of 1964, and for other purposes.

CONFERENCE REPORT (H. REPT. NO. 95-1766)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7577) to amend the Economic Opportunity Act of 1964, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Economic Opportunity Amendments of 1978".

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act to extend and revise programs under title I through title IX of the Economic Opportunity Act of 1964 (hereinafter in this Act referred to as the "Act").

RESEARCH AND DEMONSTRATIONS

SEC. 3. (a) Section 103 of the Act (42 U.S.C. 2713) is amended by striking out ", whenever feasible,".

(b) Title I of the Act (42 U.S.C. 2711 et seq.) is amended by adding at the end thereof the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 106. There is authorized to be appropriated for the purpose of carrying out the provisons of this title $5,000,000 for fiscal year 1979, $6,000,000 for fiscal year 1980, and $8,000,000 for fiscal year 1981.".

URBAN AND RURAL COMMUNITY ACTION PROGRAMS

SEC. 4. (a) Section 210(c) of the Act (42 U.S.C. 2790(c)) is amended by inserting after the first sentence thereof the following new sentences: "The Director, in determining whether a county or multicounty unit is eligible to be served by a community action agency under this title, shall not apply, as the sole criterion for eligibility, any requirement or restriction relating to the number of individuals residing in the county or multicounty unit if at least 20 per centum of the families and unrelated individuals residing in such unit have incomes below the poverty line as determined by the Bureau of Census from the most recent census or survey. No new community action agency may be designated under subsection (a) within a county or multicounty unit if—

"(1) such county or multicounty unit has a population of less than 50,000;

"(2) such county or multicounty unit was served by an existing community action agency on June 1, 1978; and

"(3) the new community action agency would serve a smaller geographical area than that served by an existing community action agency on June 1, 1978.".

(b) Section 210(d) of the Act (42 U.S.C. 2790(d)) is amended by inserting ", in accordance with regulations promulgated by the Director" after "determines".

(c) The first sentence of section 211(b) of the Act (42 U.S.C. 2791(b)) is amended—

(1) by inserting ", and not less than fifteen," after "fifty-one"; and

(2) by inserting "currently holding office" after "officials" the first place it appears in clause (1).

(d) Section 213 of the Act (2 U.S.C. 2796) is amended by adding at the end thereof the following new subsection:

"(c) The Director shall annually review, and consult with State economic opportunity offices authorized under section 231(a), for the purposes of updating and simplifying, all relevant regulations and guidelines applicable to programs funded under this Act, except with respect to programs funded under title V and or title X.".

FINANCIAL ASSISTANCE TO COMMUNITY ACTION PROGRAMS

SEC. 5. (a)(1) Section 222(a) of the Act (42 U.S.C. 2800(a)) is amended by inserting after the fourth sentence thereof the following new sentence: "In no event shall the

Director provide financial assistance under this title to a public or private nonprofit agency other than a community action agency in an area in which a community action agency exists without prior notification of such financial assistance to the board of such community action agency and to any State economic opportunity office in the State in which financial assistance is provided.".

(2) Section 222(a) of the Act is amended—

(A) by redesignating paragraph (5) thereof as paragraph (1);

(B) by redesignating paragraph (7) thereof as paragraph (2);

(C) by redesignating paragraph (10) thereof as paragraph (3);

(D) by redesignating paragraph (11) thereof as paragraph (4);

(E) by redesignating paragraph (12) thereof as paragraph (5); and

(F) by redesignating paragraph (13) thereof as paragraph (6).

(b)(1) The last sentence of section 222 (a)(1) of the Act, as so redesignated by subsection (a)(2), is amended by inserting before the period at the end thereof a comma and the following: "or through a local public or private nonprofit organization or agency providing services to migrant or seasonal farmworkers or Native Americans".

(2) The last sentence of section 222(a)(2) of the Act, as so redesignated by subsection (a)(2), is amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "and other Federal agencies providing services to the elderly poor. The Director shall seek, to the maximum extent feasible, the utilization of agencies funded under section 221 for the provision of such services available under titles III, V, and VII of the Older Americans Act of 1965, or such other Federal programs serving the elderly poor.".

(c)(1) The second sentence of section 222 (a)(4) of the Act, as so redesignated by subsection (a)(2), is amended by striking out "serving" and inserting in lieu thereof "or to local public or private nonprofit organizations or agencies providing services to migrant or seasonal farmworkers or Native Americans which serve".

(2) The third sentence of section 222(a)(4) of the Act, as so redesignated by subsection (a)(2), is amended by inserting "and programs under the Comprehensive Employment and Training Act of 1973" after "Mainstream programs".

(d) Section 222(a)(5) of the Act, as so redesignated by subsection (a)(2), is amended by adding the following new sentence at the end thereof: "In carrying out programs to lessen the impact of the high cost of energy to migrants, other seasonally employed farmworkers, and Native Americans, the Director shall utilize local public or private nonprofit organizations or agencies where feasible. Eligibility for any of the programs authorized under this section shall not be based solely on delinquency in payment of fuel bills.".

(e) Section 222(a)(6) of the Act, as so redesignated by subsection (a)(2), is amended to read as follows:

"(6) A program to be known as 'Summer Youth Recreation' designed to provide recreational opportunities for low-income children during the summer months. Funds made available for this paragraph shall be allocated by the Director among community action agencies where feasible, or other public or private nonprofit agencies where no such community action agency exists or is able to administer a program, to provide recreational opportunities for low-income children during the summer months.".

(f) Section 222(a) of the Act is amended by adding the following new paragraph at the end thereof:

"(7) A program to be known as 'Demonstration Employment and Training Opportunities' designed to establish experimental employment and training programs and projects for low-income persons who are unemployed or underemployed, with special emphasis on youth, the structurally unemployed (especially those dependent on public assistance), single heads of households with dependent children, older workers, and veterans. The Director may make grants to community action agencies, community economic development corporations (as designated under title VII), and public or private nonprofit organizations and agencies for experimental programs and activities including, but not limited to, providing innovative approaches to employment and training programs, which shall, if necessary, make available to participants comprehensive supportive services; developing programs and linkages for low-income persons to achieve satisfactory transition from either unemployment or federally subsidized jobs to employment that is not federally subsidized; and developing training programs, with special consideration for community development corporations, designed to place disadvantaged youth in the private sector. The Director and the Secretary of Labor shall assure a full exchange of information concerning the employment and training programs subject to their respective jurisdictions in order to assure the most effective and responsive demonstration programs and activities. Any employment and training activities assisted in whole or part with funds made available under this paragraph shall be subject to the applicable conditions, labor standards, and benefits set forth in the Comprehensive Employment and Training Act of 1973 and other related laws.".

(g) The first sentence of section 225(c) of the Act (42 U.S.C. 2812(c)) is amended to read as follows: "Unless otherwise provided in this part, financial assistance extended to a community action agency or other agency pursuant to section 221 and section 222(a) shall not exceed 80 per centum of the approved cost of the assisted programs or activities.".

SUPPLEMENTAL PROGRAMS AND ACTIVITIES

SEC. 6. (a) Section 230 of the Act (42 U.S.C. 2824) is amended —

(1) by striking out "may" in the first sentence and inserting in lieu thereof "shall"; and

(2) by striking out "may" in the last sentence and inserting in lieu thereof "shall, to the extent feasible,".

(b)(1) Section 231(a)(1) of the Act (42 U.S.C. 2824(a)(1)) is amended by inserting before the semicolon at the end thereof a comma and the following: "with priority to programs funded under section 221 and section 222".

(2) Section 231(a) of the Act (42 U.S.C. 2824(a)) is amended —

(A) in paragraph (3) thereof, by striking out "and" at the end thereof;

(B) in paragraph (4) thereof, by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(C) by adding at the end thereof the following new paragraphs:

"(5) to advise the Director and the chief elected official of the State on the status and impact of State and Federal programs and services affecting low-income individuals in the State; and

"(6) to assist programs funded under section 221 and section 222 in coordinating and utilizing services available through other State agencies.".

(c) The third sentence of section 232(b) of the Act (42 U.S.C. 2825(b)) is amended by striking out "minimizing" and inserting in lieu thereof "preventing".

(d) Part C of title II of the Act (42 U.S.C. 2824 et seq.) is amended by striking out section 236 and by redesignating section 237 as section 236.

(e) Section 236 of the Act, as so redesignated by subsection (d), is amended by striking out "two" and inserting in lieu thereof "six".

GENERAL AND TECHNICAL PROVISIONS

SEC. 7. (a) Part D of title II of the Act (42 U.S.C. 2832 et seq.) is amended by striking out section 240.

(b) Section 244(2) of the Act (42 U.S.C. 2836(2)) is amended by striking out "$15,000" each place it appears therein and inserting in lieu thereof "$18,000", and by striking out "(particularly in large metropolitan areas)".

(c) Section 245 of the Act 42 U.S.C. 2837) is amended by striking out "eleven" and inserting in lieu thereof "fourteen".

SPECIAL PROGRAMS TO COMBAT POVERTY IN RURAL AREAS

SEC. 8. (a) Title III of the Act (42 U.S.C. 2855 et seq.) is amended—

(1) by striking out the title "PART A—RURAL LOAN PROGRAMS";

(2) by striking out part B and part C thereof; and

(3) by adding at the end thereof the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 307. There is authorized to be appropriated for the purpose of carrying out the provisions of this title $3,000,000 for fiscal year 1979, $5,000,000 for fiscal year 1980, and $7,000,000 for fiscal year 1981.".

(b)(1) Section 301 of Act (42 U.S.C. 2841) is amended by striking out "part" and inserting in lieu thereof "title".

(2) Section 306(d) of the Act (42 U.S.C. 2855(d)) is amended by striking out "part" each place it appears therein and inserting in lieu thereof "title".

ASSISTANCE FOR MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS AND THEIR FAMILIES

SEC. 9. Title IV of the Act (42 U.S.C. 2701 et seq.) is amended to read as follows:

"TITLE IV—ASSISTANCE FOR MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS AND THEIR FAMILIES

"STATEMENT OF PURPOSE

"SEC. 401. The purpose of this title is to assist migrant and seasonal farmworkers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life in an increasingly complex and technological society.

"FINANCIAL ASSISTANCE

"SEC. 402. (a) The Director may provide financial assistance to assist State and local agencies, private nonprofit institutions, and cooperatives in developing and carrying out programs to fulfill the purpose of this title.

"(b) Programs assisted under this title may include projects or activities—

"(1) to meet the immediate needs of migrant and seasonal farmworkers and their families, such as day care for children, education, health services, improved housing and sanitation (including the provision and maintenance of emergency and temporary housing and sanitation facilities), legal advice and representation, and consumer training and counseling;

"(2) to promote increased community acceptance of migrant and seasonal farmworkers and their families; and

"(3) to equip unskilled migrant and seasonal farmworkers and members of their families, as appropriate, through education and developmental programs to meet the changing demands in agricultural employment brought about by technological advancement and to take advantage of opportunities available to improve their well-being and self-sufficiency by gaining regular or permanent employment or by participating in available federally assisted employment or training programs.

"LIMITATIONS ON ASSISTANCE

"SEC. 403. (a) Assistance may not be extended under this title unless the Director determines that the applicant will maintain its prior level of effort in similar activities.

"(b) The Director shall establish necessary procedures or requirements to assure that programs under this title are carried out in coordination with other programs or activities providing assistance to the persons and groups served.

"TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION

"SEC. 404. The Director may provide directly or through grants, contracts, or other arrangements, such technical assistance or training of personnel as may be required to implement effectively the purpose of this title.

"SPECIAL RESPONSIBILITIES

"SEC. 405. The Director shall be responsible for coordinating programs under this title with other Federal programs designed to assist or serve migrant and seasonal farmworkers, for reviewing and monitoring such programs, and for insuring that programs assisted under this title cooperate with and receive the cooperation of programs assisted under section 221 in communities which such programs mutually serve. Programs under this title shall be administered at the national level.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 406. There are authorized to be appropriated for carrying out the purposes of this title $3,000,000 for fiscal year 1979, $5,000,000 for fiscal year 1980, $8,000,000 for fiscal year 1981.".

HEADSTART AND FOLLOW THROUGH

SEC. 10. (a) Section 512 of the Act (42 U.S.C. 2928a) is amended by striking out "1975 through 1977" and inserting in lieu thereof "1979 through 1981".

(b)(1) Section 513(a) of the Act (42 U.S.C. 2928b(a)) is amended to read as follows:

"(a)(1) Of the sums appropriated pursuant to section 512 for any fiscal year beginning after September 30, 1978, the Secretary shall allot such sums in accordance with paragraphs (2) through (4).

"(2) The Secretary shall allot at least 78 percent among the States, in accordance with the latest satisfactory data available, so that equal proportions are distributed on the basis of—

"(A) the relative number of recipients receiving payments under the program of aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act in each State as compared to all States; and

"(B) the relative number of related children from birth through 5 years of age living with families with incomes below the poverty line in each State as compared to all States.

"(3)(A) Subject to the provisions of subsection (b), the Secretary shall reserve 20 percent of the sums so appropriated for each fiscal year for use in accordance with the following order of priorities:

"(i) funding shall be given with equal consideration to Indian and migrant Headstart programs and to services for handicapped children, except that—

"(I) there shall be made available, for use by Indian and migrant Headstart programs, nationally, no less funds for fiscal year 1979 and thereafter than were obligated for use by Indian and migrant Headstart programs in fiscal year 1978, and

"(II) cost-of-living adjustments (which shall, at a minimum reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor) shall be made with respect to such Indian and migrant Headstart programs in fiscal year 1979 and thereafter;

"(ii) payments shall be made available to each State or territory, if necessary, to maintain such State or territory at a level of funding equal to its level of funding for fiscal year 1978;

"(iii) training and technical assistance activities which, at a minimum, are sufficient to meet the needs associated with program expansion and to foster program and management improvement activities; and

"(iv) subject to the provisions of subparagraph (B), the remainder in accordance with such criteria and procedures as the Secretary shall prescribe by regulation.

"(B) Additional financial assistance for a fiscal year may be provided to a State if funds are available after meeting the requirements of clauses (i) through (iii) of subparagraph (A), for purposes other than assistance to Indian and migrant programs, services for handicapped children, payments under subparagraph (A)(ii), and training and technical assistance activities, only if such State's allotment for such fiscal year under paragraph (2) and subparagraph (A)(ii) is not greater than 175 percent of the amount such State is eligible to receive in such fiscal year under paragraph (2).

"(4)(A) Subject to the provisions of subparagraph (E), the Secretary shall reserve 2 percent of the sums appropriated for—

"(i) allotment among Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, according to their respective needs, and

"(ii) the provision of assistance to States in accordance with the provisions of subparagraph (C).

"(B) A State shall receive the total amount of assistance calculated under subparagraph (C) for any fiscal year if—

"(i) such State receives an allotment under paragraph (2) and paragraph (3)(A)(ii) which is greater than 100 percent and less than 140 percent of the amount such State is eligible to receive under paragraph (2); or

"(ii) such State receives an allotment under paragraph (2) only and such allotment, as compared to the total amount of assistance received by such State in the previous fiscal year, represents an increase which is less than 50 percent of the percentage increase in the appropriation for such fiscal year for which the determination is made as compared to the appropriation for the fiscal year preceding the fiscal year for which the determination is made.

"(C) Except as provided in subparagraph (D), each State specified in subparagraph (B) shall receive a total amount of assistance for any fiscal year which is equal to the sum of—

"(i) the amount of the allotment received by such State under paragraph (2);

"(ii) the amount of any payments received by such State under paragraph (3)(A)(ii); and "(iii) an amount equal to the difference between—

"(I) an amount equal to the sum of the total amount of assistance received by such State for the fiscal year preceding the fiscal year for which the determination is made; and the amount derived by multiplying the total amount of assistance received by such State for the most recent fiscal year by a percentage equal to one-half of the percentage increase in the appropriation for that fiscal year for which the determination is made as compared to the appropriation for the fiscal year preceding the fiscal year for which the determination is made; and

"(II) the total of the payments received by such State under paragraph (2) and paragraph (3)(A)(ii) for the fiscal year for which the determination is made.

In the case of any fiscal year for which there is no increase in the appropriation as compared to the appropriation for the preceding fiscal year, each State specified in subparagraph (B) shall receive a total amount of assistance for such fiscal year which is equal to the total amount of assistance such State received for such preceding fiscal year. In the case of any fiscal year for which there is a reduction in the appropriation as compared to the appropriation for the preceding fiscal year, the Secretary shall make such adjustments in the total amount of assistance which each State otherwise would receive under this subparagraph as may be necessary to assure an equitable distribution of such assistance under this subparagraph.

"(D) For fiscal year 1979, each State described in subparagraph (B) shall receive payments in an amount equal to 69 percent of the percentage increase, up to 9 percent, in the appropriation for fiscal year 1979 over the appropriation for fiscal year 1978, or 50 percent of the percentage increase in the appropriation for fiscal year 1979 over the appropriation for fiscal year 1978, whichever is greater.

"(E)(i) Any funds not allotted according to the provisions of this paragraph for any fiscal year shall be allotted according to the provisions of paragraph (2) to those States which, for such fiscal year, receive an allotment under paragraph (2) only.

"(ii) If sums reserved under subparagraph (A) of this paragraph are insufficient in any fiscal year to carry out the provisions of subparagraphs (A), (B), (C), and (D) of this paragraph, the Secretary shall transfer from sums reserved under paragraph (3) an amount necessary to carry out such provisions.".

(2) Section 513 of the Act is amended by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively and by inserting the following new subsection after subsection (a):

"(b) Whenever funds appropriated pursuant to section 512 for any fiscal year beginning after September 30, 1978, are equivalent to, or exceed $800,000,000, the Secretary, pursuant to the provisions of subsection (a)(3), shall reserve not more than 20 percent of $800,000,000 or 15 percent of the funds so appropriated, whichever is greater.".

(c) Section 514 of the Act (42 U.S.C. 2928c) is amended by adding at the end thereof the following new subsection:

"(d) The Secretary shall require that the practice of significantly involving parents and area residents affected by the program in selection of Headstart agencies be continued.".

(d) Section 515(b)(1) of the Act (42 U.S.C. 2928d(b)(1)) is amended by inserting "directly participate in decisions that" before "influence".

(e) Section 517(b) of the Act (42 U.S.C. 2928f(b)) is amended by striking out "six" and inserting in lieu thereof "twelve".

(f) Section 518(a) of the Act (42 U.S.C. 2928g(a)) is amended—

(1) by inserting "(1)" after "(a)";

(2) by striking out "Such" in the second sentence and inserting in lieu thereof "Except as provided in paragraph (2) of this subsection, such";

(3) by redesignating clause (1) and clause (2) as clause (A) and clause (B), respectively;

(4) by striking out "(1)" after "clause" and inserting in lieu thereof "(A)"; and

(5) by adding at the end thereof the following new paragraph:

"(2) Whenever a Headstart program is operated in a community with a population of 1,000 or less individuals and (A) there is no other preschool program in the community, (B) the community is located in a medically underserved area as designated by the Secretary pursuant to section 330(b)(3) of the Public Health Service Act and is located in a health manpower short area as designated by the Secretary pursuant to section 332(a)(1) of such Act, (C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the type of serv-

ices described in clauses (A) and (B), and (D) not less than 50 per centum of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1) of this subsection, the Headstart program in each such locality shall establish the criteria for eligibility, except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project's eligibility criteria, be denied an opportunity to participate in such program.".

(g) Section 523(b) of the Act (42 U.S.C. 2928(b)) is amended—

(1) by inserting "(1)" after "subsection (a)";

(2) by striking out "subsection (b)" and inserting in lieu thereof "subsection (a)(2)"; and

(3) by striking out "thirty" the second place it appears therein and inserting in lieu thereof "ninety".

(h) Subsections (c) and (d) of section 523 of the Act (42 U.S.C. 2928(c), (d)) are amended by striking out "Director" each place it appears therein and inserting in lieu thereof "Secretary".

(i) Section 524(b) of the Act (42 U.S.C. 2928m(b)) is amended to read as follows:

"(b) The Secretary shall operate the programs and projects covered by this part in accordance with Headstart performance standards. Any revisions in such standards shall result in standards which are no less comprehensive than those in effect on the date of the enactment of the Economic Opportunity Amendments of 1978. The extent to which such standards have been met shall be considered in deciding whether to renew or supplement financial assistance authorized under this part.".

FOLLOW THROUGH PROGRAM

SEC. 11. (a) Section 551(a)(1) of the Act (42 U.S.C. 2929(a)(1)) is amended by adding at the end thereof the following new sentence: "Other children in kindergarten and primary grades, including such other children enrolled in private nonprofit elementary schools, who were previously enrolled in preschool programs of a compensatory nature which received Federal financial assistance may participate in such Follow Through programs.".

(b) Section 551(a)(3) of the Act is amended by striking out "the Secretary determines", and by inserting "educational, health, nutritional, social, and other" after "comprehensive".

(c) The first sentence of section 552(a) of the Act (42 U.S.C. 2929a(a)) is amended to read as follows:

"(a) There is authorized to be appropriated for carrying out the purposes of this part $70,000,000 for fiscal year 1979, $85,000,000 for fiscal year 1980, and $100,000,000 for fiscal year 1981.".

(d) Part B of title V of the Act (42 U.S.C. 2929 et seq.) is amended—

(1) by striking out section 553;

(2) by redesignating section 554 as section 557; and

(3) by inserting after section 552 the following new sections:

"RESEARCH, DEMONSTRATION, AND PILOT PROJECTS

"SEC. 553. (a) The Secretary may provide financial assistance through grants or contracts for research, demonstration, or pilot projects conducted by public or private agencies which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems or in otherwise furthering the purposes of this part.

"(b) The Secretary shall establish an overall plan to govern the approval of research, demonstration, or pilot projects and the use of all research authority under this part. Such plan shall set forth specific objectives to be achieved and priorities among such objectives.

"ANNOUNCEMENT OF RESEARCH, DEMONSTRATION, AND PILOT PROJECT CONTRACTS

"SEC. 554. (a) The Secretary shall make a public announcement concerning—

"(1) the title, purpose, intended completion date, identity of the grantee or contractor, and proposed cost of any grant, or contract with a private or non-Federal public agency or organization for any research, demonstration, or pilot project under this part; and

"(2) the results, findings, data, or recommendations made or reported as a result of such activities.

"(b) The public announcements required by subsection (a)(1) shall be made not later than 30 days of making such grants or contracts, and the public announcements required by subsection (a)(2) shall be made not later than 90 days of the receipt of such results.

"(c) The Secretary shall take necessary action to assure that all studies, proposals, and data produced or developed with Federal funds employed under this part shall become the property of the United States.

"(d) The Secretary shall publish summaries of the results of activities carried out pursuant to this part not later than 90 days after the completition thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such summaries.

"EVALUATION

"SEC. 555. (a) The Secretary shall provide, directly or through grants or contracts, for the continuing evaluation of programs under this part, including evaluations that measure and evaluate the impact of programs authorized by this part, in order to determine their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanism for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such programs. Evaluations should be conducted by persons not directly involved in the administration of the program or project evaluation.

"(b) The Secretary shall develop and publish general standards for evaluation of program and project effectiveness in achieving the objectives of this part. The extent to which such standards have been met shall be considered in deciding whether to renew or supplement financial assistance authorized under this part.

"(c) In carrying out evaluations under this part, the Secretary shall, whenever feasible, arrange to obtain the specific views of persons participating in and served by programs and projects assisted under this part about such programs and projects.

"(d) The Secretary shall publish the results of evaluative research and summaries of evaluations of program and project impact and effectiveness not later than 90 days after the completion thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such research studies and evaluation summaries.

"(e) The Secretary shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed wtih assistance under this section become the property of the United States.

"TECHNICAL ASSISTANCE AND TRAINING

"SEC. 556. The Secretary may provide, directly or through grants or other appropriate arrangements (1) technical assistance to Follow Through programs in developing, conducting, and administering programs under this part, and (2) training for specialized or other personnel which is needed in connection with Follow Through programs.".

DAY CARE PROJECTS

SEC. 12. Section 583 of the Act (42 U.S.C. 2933) is amended by striking out "ten" and inserting in lieu thereof "thirteen".

ADMINISTRATION AND COORDINATION

SEC. 13. (a)(1) The first sentence of section 601(c) of the Act (42 U.S.C. 2941(c)) is amended by striking out "Subject to the provisions of subsection (e) of this section, the" and inserting in lieu thereof "The".

(2) The last sentence of section 601(c) of the Act (42 U.S.C. 2941(c)) is amended to read as follows: "The Director shall promulgate rules and regulations regarding the final approval of grants and contracts.".

(3) Section 601 of the Act (42 U.S.C. 2941) is amended by striking out subsections (e), (f), (g), and (h).

(b) Section 602(d) of the Act (42 U.S.C. 2942(d)) is amended by striking out "with the approval of the President.".

(c)(1) The first sentence of section 605(a) of the Act (42 U.S.C. 2945(a)) is amended by striking out "twenty-one" and inserting in lieu thereof "fifteen".

(2) The second sentence of section 605(a) of the Act (42 U.S.C. 2945(a)) is amended to read as follows: "Of such members, five shall be appointed from among poor persons, five shall be appointed from among individuals who represent poor persons, and five shall be appointed from among members of the general public.".

(3) Section 605 of the Act (42 U.S.C. 2945) is amended by the adding at the end thereof the following new subsection:

"(d) The Advisory Council may not make expenditures or incur obligations, from sums available to carryout this section, which exceed $225,000 for fiscal year 1979, $250,000 for fiscal year 1980, and $275,000 for fiscal year 1981.".

(d) Section 608 of the Act (42 U.S.C. 2948) is amended by inserting before the period at the end thereof a comma and the following: "and shall include the types of services delivered by community action agencies and other programs funded under this Act".

(e) Part A of title VI of the Act (42 U.S.C. 2941 et seq.) is amended by redesignating section 610 as section 609 and section 610–1 as section 610.

(f) Section 610(b) of the Act, as so redesignated by subsection (e), is amended by striking out "$6,000" and inserting in lieu thereof "$8,000".

(g) Section 615 of the Act (42 U.S.C. 2965) is amended by striking out "eleven" and inserting in lieu thereof "fourteen".

(h) Section 620 of the Act (42 U.S.C. 2970) is amended by striking out the last sentence thereof.

(i) Part A of title VI of the Act (42 U.S.C. 2940 et seq.) is amended by striking out section 621, and by redesignating section 622 through section 628 as section 621 through section 627, respectively.

(j) Section 632(3) of the Act (42 U.S.C. 2974(3)) is amended by inserting after "time." the following new sentence: "The Director shall consult with community action agencies and State offices of economic opportunity in the development of such plan.".

(k) Part B of title VI of the Act (42 U.S.C. 2972 et seq.) is amended by redesignating section 638 as section 639 and by inserting after section 637 the following new section:

"REGIONAL OFFICES

"SEC. 638. (a) The Director may utilize regional Community Services Administration offices for the purpose of—

"(1) carrying out the national responsibilities and directives delegated to them;

"(2) processing and finalizing grants and contracts authorized under this Act;

"(3) monitoring and evaluating programs funded under this Act within that designated region;

"(4) monitoring and evaluating on an an-

nual basis all relevant regulations and guidelines applicable to programs funded under this Act within that designated region; and

"(5) providing technical assistance to local community action agencies and other programs funded under this Act.

"(b) The Director shall monitor and evaluate at least annually the activities of regional offices as described in subsection (a).".

COMMUNITY ECONOMIC DEVELOPMENT

SEC. 14. (a) Section 703 of the Act (42 U.S.C. 2981(b)) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 703. For the purpose of carrying out this title, there is authorized to be appropriated $70,000,000 for fiscal year 1979, $85,000,000 for fiscal year 1980, and $105,000,000 for fiscal year 1981. Any sums appropriated under this section shall remain available until expended.".

(b) Title VII of the Act (42 U.S.C. 2981 et seq.) is amended by inserting after section 703 the following new section:

"ADVISORY COMMUNITY INVESTMENT BOARDS

"SEC. 704. (a) The President is authorized to establish a National Advisory Community Investment Board (hereinafter in this section referred to as the 'Investment Board'). Such Investment Board shall be composed of fifteen members appointed, for staggered terms and without regard to the civil service laws, by the President, in consultation with the Director. Such members shall be representatives of the investment and business communities and appropriate fields of endeavor related to this title. The Investment Board shall meet at the call of the chairperson, but not less often than three times each year. The Director and the administrator of community economic development programs shall be ex officio members of the Investment Board.

"(b) The Investment Board shall promote cooperation between private investors and businesses and community development corporation projects through—

"(1) advising the Director and the community development corporations on ways to facilitate private investment;

"(2) advising businesses and other investors of opportunities in community development corporation projects; and

"(3) advising the Director, community development corporations, and private investors and businesses of ways in which they might engage in mutually beneficial efforts.

"(c) The governing body of each Community Development Corporation may establish an advisory community investment board composed of not to exceed 15 members who shall be appointed by the governing body after consultation with appropriate local officials. Each such board shall promote cooperation between private investors and businesses and the governing body of the Community Development Corporation through—

"(1) advising the governing body on ways to facilitate private investors;

"(2) advising businesses and other investors of opportunities in Community Development Corporation projects; and

"(3) advising the governing body, private investors, and businesses of ways in which they might engage in mutually beneficial efforts.".

(c) Section 712(a) of the Act (42 U.S.C. 2982(a)) is amended—

(1) by striking out "economic and" in paragraph (1), and by inserting "and commercial" after "business";

(2) by inserting "physical" after "community" in paragraph (2);

(3) by inserting before the semicolon in paragraph (3) a comma and the following: "and in section 222(a)(7) of this Act";

(4) by striking out "economic" in paragraph (4) and inserting in lieu thereof "business and commercial"; and

(5) by inserting "recreation services," after "energy conservation," in paragraph (4).

(d) Section 713(b) of the Act (42 U.S.C. 2982b(b)) is amended by striking out "an" and inserting in lieu thereof "a substantial".

(e) Section 713 of the Act (42 U.S.C. 2982b) is amended by adding at the end thereof the following new subsection:

"(d) Financial assistance for commercial development under this part shall not be extended until the community economic development program that has applied for assistance under this title has specified in some detail its development goals and its development timetable. The Director, in providing continued financial assistance to a community economic development program, shall give serious consideration to the experience that program has had in meeting development goals or in adhering to development timetables.".

(f) Section 714 of the Act (42 U.S.C. 2982c) is amended to read as follows:

"FEDERAL SHARE

"SEC. 714. (a)(1) Assistance provided under this title to any program described in section 712(a) shall not exceed 90 per centum of the cost of such program including costs of administration unless the Director determines that the assistance in excess of such percentage is required in furtherance of the purposes of this title. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

"(2) The assistance referred to in paragraph (1) shall be made available (A) for deposit to the order of grantees which have demonstrated successful program performance, under conditions which the Director deems appropriate, within thirty days following approval of the grant agreement by the Director and such grantee, or (B) whenever the Director deems appropriate, in accordance with applicable rules and regulations prescribed by the Secretary of the Treasury, and including any other conditions which the Director deems appropriate, within 30 days following approval of the grant agreement by the Director and such grantee.

"(b) Property acquired as a result of capital investments made by any community development corporation with funds granted as its Federal share of the cost of programs carried out under this title, and the proceeds from such property, shall become the property of the community development corporation and shall not be considered to be Federal property. The Federal Government retains the right to direct that on severance of the grant relationship the assets purchased with grant funds shall continue to be used for the original purpose for which they were granted.".

(g) Section 722(b) of the Act (42 U.S.C. 2983) is amended by inserting "or local public and private nonprofit organizations or agencies" after "local cooperative associations".

(h) The first sentence of section 731(a) of the Act (42 U.S.C. 2984(a)), is amended to read as follows: "The Director is authorized to make or guarantee loans (either directly or in cooperation with banks or other organizations through agreements to participate on an immediate or deferred basis) to community development corporations, to families and local cooperatives and the designated supportive organizations of cooperatives eligible for financial assistance under this title, to community action agencies and other community-based organizations eligible for financial assistance under title II of this Act, or to public and private nonprofit organizations or agencies, for business facilities and community development projects, including community development credit unions, which the Director determines will carry out the purposes of this part.".

(i) Section 732(b) of the Act (42 U.S.C. 2984(b)) is amended by striking out "1975" and inserting in lieu thereof "1979".

(j) Section 742(a)(2) of the Act (42 U.S.C. 2985a(a)(2)) is amended—

(1) by striking out "prescribe such" and inserting in lieu thereof "promulgate";

(2) by striking out "as may be necessary and appropriate"; and

(3) by inserting ", including, but not limited to, programs under section 8(a) of the Small Business Act" before the period.

(k) Title VII of the Act (42 U.S.C. 2981 et seq.) is amended by striking out section 745 and by redesignating sections 746, 747, 748, and 749 as sections 745, 746, 747, and 748, respectively.

(l) Section 746(b) of the Act, as so redesignated by subsection (k), is amended by inserting "and demonstration projects" after "research".

NATIVE AMERICAN PROGRAMS

SEC. 15. Section 814 of the Act (42 U.S.C. 2992d) is amended by striking out "1975 through 1977" and inserting in lieu thereof "1979 through 1981".

EVALUATION

SEC. 16. Title IX of the Act (42 U.S.C. 2995 et seq.) is amended by adding at the end thereof the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 904. There is authorized to be appropriated for the purpose of carrying out the provisions of this title $4,000,000 for fiscal year 1979, $7,000,000 for fiscal year 1980, and $10,000,000 for fiscal year 1981.".

TECHNICAL AMENDMENT

SEC. 17. (a)(1) Section 2 of the Act (42 U.S.C. 2701) is amended by striking out "his capabilities" and inserting in lieu thereof "the capabilities of such individual".

(2) Section 102(c) of the Act is amended by striking out "him" the first place it appears therein and inserting in lieu thereof "such chief executive officer", and by striking out "him" the last place it appears therein and inserting in lieu thereof "the Director".

(3)(A) Section 210(d) of the Act (42 U.S.C. 2790(d)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(B) Section 210(f) of the Act is amended—

(i) by striking out "In carrying out his responsibilities under this part the Director" and inserting in lieu thereof "The Director, in carrying out the responsibilities of the Director under this part,"; and

(ii) by striking out "him, as he" and inserting in lieu thereof "the Director, as the Director".

(4) Section 211(d)(1) of the Act (42 U.S.C. 2791(d)(1)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(5) Section 213(b) of the Act (42 U.S.C. 2796(b)) is amended by striking out "He" and inserting in lieu thereof "The Director".

(6)(A) Section 221(a) of the Act (42 U.S.C. 2808(a)) is amended by striking out "He" and inserting in lieu thereof "The Director".

(B) Section 221(b) of the Act (42 U.S.C. 2808(b)) is amended by striking out "he" each place it appears therein and inserting in lieu thereof "the Director".

(C) Section 221(d) of the Act (42 U.S.C. 2808(d)) is amended by striking out "He" and inserting in lieu thereof "The Director".

(D) Section 221(e) of the Act (42 U.S.C. 2808(e)) is amended by striking out "he" each place it appears therein and inserting in lieu thereof "the Director".

(7)(A) The second sentence of section 222(a) of the Act (42 U.S.C. 2809(a)) is amended by striking out "him" and inserting in lieu thereof "the Director".

(B) The fourth sentence of section 222(a) of the Act (42 U.S.C. 2809(a)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(C) Section 222(a)(4) of the Act as

so redesignated by section 6(a)(2), is amended—

(i) by striking out "he" each place it appears therein and inserting in lieu thereof "the Director"; and

(ii) by striking out "his adjusted family income" and inserting in lieu thereof "the adjusted family income of such applicant".

(8)(A) Section 225(a) of the Act (42 U.S.C. 2812(a)) is amended by striking out "He" and inserting in lieu thereof "The Director", and by striking out "he" and inserting in lieu thereof "the Director".

(B) Section 225(b) of the Act (42 U.S.C. 2812(b)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(C) Section 225(c) of the Act (42 U.S.C. 2812(c)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(D) Section 225(d) of the Act (42 U.S.C. 2812(d)) is amended by striking out "satisfies himself" and inserting in lieu thereof "is satisfied".

(9) Section 227(c) of the Act (42 U.S.C. 2814(c)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(10) Section 231(d) of the Act (42 U.S.C. 2824(d)) is amended—

(A) by striking out "he" each place it appears therein and inserting in lieu thereof "the Director";

(B) by striking out "his findings" and inserting in lieu thereof "the findings of the Director"; and

(C) by striking out "him" and inserting in lieu thereof "the Director".

(11)(A) Section 232(a) of the Act (42 U.S.C. 2825(a)) is amended by striking out "He" and inserting in lieu thereof "The Director".

(B) Section 232(d) of the Act (42 U.S.C. 2825(d)) is amended by striking out "him" and inserting in lieu thereof "the Director"

(12) Section 235(b) of the Act (42 U.S.C. 2828(b)) is amended by striking out "satisfies himself" and inserting in lieu thereof "is satisfied".

(13)(A) Section 241(b) of the Act (42 U.S.C. 2833(b)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(B) Section 241(c) of the Act (42 U.S.C. 2833(c)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(14) Section 242 of the Act (42 U.S.C. 2834) is amended by striking out "him" and inserting in lieu thereof "the Director".

(15)(A) Section 243(c) of the Act (42 U.S.C. 2835(c)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(B) Section 243(d) of the Act (42 U.S.C. 2835(d)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(16)(A) Section 244(4) of the Act (42 U.S.C. 2836(4)) is amended—

(i) in subparagraph (A) thereof, by striking out "his or her" and inserting in lieu thereof "the";

(ii) in subparagraph (A) thereof, by inserting "of such individual" after "religious beliefs"; and

(iii) in subparagraph (B) thereof, by striking out "he or she" and inserting in lieu thereof "such individual".

(B) Section 244(7) of the Act (42 U.S.C. 2836(7)) is amended—

(i) by striking out "he" each place it appears therein and inserting in lieu thereof "the Director";

(ii) by striking out "him" and inserting in lieu thereof "the Director"; and

(iii) by striking out "his judgment" and inserting in lieu thereof "the judgment of the Director".

(17) Section 513(b) of the Act (42 U.S.C. 2928b(b)) is amended by striking out "he" and inserting in lieu thereof "the Secretary".

(18) Section 516 of the Act (42 U.S.C. 2928e) is amended by striking out "him" and inserting in lieu thereof "the Secretary".

(19)(A) Section 517(b) of the Act (42 U.S.C. 2928f(b)) is amended—

(i) by striking out "he" each place it appears therein and inserting in lieu thereof "the Secretary";

(ii) by striking out "him" and inserting in lieu thereof "the Secretary"; and

(iii) by striking out "his judgment" and inserting in lieu thereof "the judgment of the Secretary".

(B) Section 517(c) of the Act (42 U.S.C. 2928f(c)) is amended by striking out "He" and inserting in lieu thereof "The Secretary".

(20) Section 519(1) of the Act (42 U.S.C. 2928h(1)) is amended by striking out "he" and inserting in lieu thereof "the Secretary".

(21) Section 525(a) of the Act (42 U.S.C. 2928n(a)) is amended by striking out "he" and inserting in lieu thereof "the Secretary".

(22) Section 551(a) of the Act (42 U.S.C. 2929(a)(2)) is amended by striking out "he" each place it appears therein and inserting in lieu thereof "the Secretary".

(23) Section 552(b) of the Act (42 U.S.C. 2929a(b)) is amended by striking out "he" and inserting in lieu thereof "the Secretary".

(24) Section 582(e) of the Act (42 U.S.C. 2932(e)) is amended by striking out "he" and inserting in lieu thereof "the Secretary".

(25)(A) Section 601(d)(1) of the Act (42 U.S.C. 2941(d)(1)) is amended by striking out "his designee" and inserting in lieu thereof "the designee of the Director".

(B) Section 601(d)(3) of the Act (42 U.S.C. 2941(d)(3)) is amended by striking out "his official capacity" and inserting in lieu thereof "the official capacity of such officer".

(26)(A) That portion of section 602 of the Act (42 U.S.C. 2942) which precedes paragraph (a) of such section is amended—

(i) by striking out "him" and inserting in lieu thereof "the Director"; and

(ii) by striking out "his functions" and inserting in lieu thereof "the functions of the Director".

(B) Section 602(c) of the Act (42 U.S.C. 2942(c)) is amended—

(i) by striking out "he" and inserting in lieu thereof "the Director";

(ii) by striking out "him" and inserting in lieu thereof "the Director"; and

(iii) by striking out "his functions" and inserting in lieu thereof "the functions of the Director".

(C) Section 602(d) of the Act (42 U.S.C. 2942(d)) is amended—

(i) by striking out "his functions" and inserting in lieu thereof "the functions of the Director"; and

(ii) by striking out "his powers" and inserting in lieu thereof "the powers of the Director".

(D) Section 602(h) of the Act (42 U.S.C. 2942(h)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(E) Section 602(i) of the Act (42 U.S.C. 2942(i)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(F) Section 602(k) of the Act (42 U.S.C. 2942(k)) is amended by striking out "him" each place it appears therein and inserting in lieu thereof "the Director".

(G) Section 602(l) of the Act (42 U.S.C. 2942(l)) is amended by striking out "him" each place it appears therein and inserting in lieu thereof "the Director".

(H)(i) Section 602(m)(2) of the Act (42 U.S.C. 2942(m)(2)) is amended by striking out "him" and inserting in lieu thereof "the Director".

(ii) Section 602(m)(2)(B) of the Act (42 U.S.C. 2942(m)(2)(B)) is amended by striking out "his intention" and inserting in lieu thereof "the intention of the Director".

(I) Section 602(n) of the Act (42 U.S.C. 2942(n)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(27) Section 603(c) of the Act (42 U.S.C. 2943(c)) is amended by striking out "in his" and inserting in lieu thereof "while acting in an".

(28) Section 606(c) of the Act (42 U.S.C. 2946(c)) is amended by striking out "he" and inserting in lieu thereof "the Comptroller General".

(29) Section 609 of the Act, as so redesignated in section 13(e), is amended by striking out "his responsibilities" and inserting in lieu thereof "the responsibilities of the Director".

(30) Section 610(b) of the Act, as so redesignated in section 13(e), is amended—

(A) by striking out "he" and inserting in lieu thereof "such person"; and

(B) by striking out "his immediately preceding employment" and inserting in lieu thereof "the immediately preceding employment of such person".

(31) Section 611 of the Act (42 U.S.C. 2961) is amended—

(A) by striking out "his poverty" and inserting in lieu thereof "the poverty of such person";

(B) by striking out "his lack of income" and inserting in lieu thereof "the lack of income of such person";

(C) by striking out "his refusal" and inserting in lieu thereof "the refusal of such person"; and

(D) by striking out "his health, age, education, and ability" and inserting in lieu thereof "the health, age, education, and ability of such person".

(32) Section 627 of the Act, as so redesignated in section 13(i), is amended—

(A) by striking out "or his delegate" each place it appears therein; and

(B) by striking out "him" and inserting in lieu thereof "the Director".

(33)(A) Section 631(a) of the Act (42 U.S.C. 2973(a)) is amended by striking out "his stead in the event of his unavoidable absence" and inserting in lieu thereof "place of such member in the event of the unavoidable absence of such member".

(B) Section 631(c) of the Act (42 U.S.C. 2793(c)) is amended—

(i) by striking out "him" and inserting in lieu thereof "the Executive Secretary"; and

(ii) by striking out "his duties" and inserting in lieu thereof "the duties of the Executive Secretary".

(34)(A) That portion of section 632 of the Act (42 U.S.C. 2974) which precedes paragraph (1) is amended by striking out "his other powers" and inserting in lieu thereof "the other powers of the Director".

(B) Section 632(1) of the Act (42 U.S.C. 2974(1)) is amended by striking out "his own initiative" and inserting in lieu thereof "the initiative of the Director".

(35) Section 635(b) of the Act (42 U.S.C. 2977(b)) is amended by striking out "He" and inserting in lieu thereof "The Director".

(36) That portion of section 713(a) of the Act (42 U.S.C. 2982b(a)) which precedes paragraph (1) is amended by striking out "he" each place it appears therein and inserting in lieu thereof "the Director".

(37)(A) Section 731(b) of the Act (42 U.S.C. 2984(b)) is amended by striking out "him" and inserting in lieu thereof "the Director", and by striking out "he" and inserting in lieu thereof "the Director".

(B) Section 731(c)(3) of the Act (42 U.S.C. 2984(c)(3)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(39)(A) Section 803(b) of the Act (42 U.S.C. 2991b(b)) is amended by striking out "he" and inserting in lieu thereof "the Secretary".

(B) Section 803(c) of the Act (42 U.S.C. 2991b(c)) is amended by striking out "he" and inserting in lieu thereof "the Secretary".

(40)(A) Section 807(b) of the Act (42 U.S.C. 2991f(b)) is amended by striking out "his decision" and inserting in lieu thereof "the decision of the Secretary".

(B) Section 807(c) of this Act (42 U.S.C. 2991f(c)) is amended by striking out "his decision" and inserting in lieu thereof "the decision of the Secretary".

(41) Section 812(a) of the Act (42 U.S.C. 2992b(a)) is amended—

(A) by striking out "his functions, powers, and duties" and inserting in lieu thereof "the functions, powers, and duties of the Secretary"; and

(B) by striking out "he" and inserting in lieu thereof "the Secretary".

(42)(A) Section 901(a)(2) of the Act (42 U.S.C. 2995(a)(2)) is amended by striking out "his responsibilities" and inserting in lieu thereof "the responsibilities of the Director".

(B) Section 901(a)(3) of the Act (42 U.S.C. 2995(a)(3)) is amended by striking out "he" and inserting in lieu thereof "the Director".

(43) Section 902(a) of the Act (42 U.S.C. 2995a(a)) is amended by striking out "him" and inserting in lieu thereof "the Director".

(b) The second sentence of section 225(c) of the Act (42 U.S.C. 2812(c)) is amended by striking out "title, nonFederal" and inserting in lieu thereof "title. Non-Federal".

And the Senate agree to the same.

CARL D. PERKINS,
IKE F. ANDREWS,
AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
BALTASAR CORRADA,
ALBERT H. QUIE,
Managers on the Part of the House.

HARRISON A. WILLIAMS, Jr.,
ALAN CRANSTON,
WILLIAM D. HATHAWAY,
DONALD W. RIEGLE, Jr.,
JACOB K. JAVITS,
ORRIN G. HATCH,
JOHN CHAFEE,
Managers on the Part of the Senate.

JOINT EXPLANATION STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7577) to amend the Economic Opportunity Act of 1964, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SHORT TITLE

House Bill

The House bill entitled the Act the "Economic Opportunity and Community Services Amendments of 1978".

Senate Amendment

The Senate amendment entitled the Act the "Economic Opportunity Amendments of 1978".

Conference Agreement

The House recedes.

STATEMENT OF PURPOSE

House Bill

No provision.

Senate Amendment

The Senate amendment contains a statement of purpose which provides that the purpose of the Act is to extend and revise the programs under titles I, II, III, IV, V, VI, VII, VIII, and IX of the Economic Opportunity Act of 1964, as amended.

Conference Agreement

The House recedes.

RESEARCH AND DEMONSTRATIONS

(1) Consultation

House Bill

The House bill strikes the words "whenever feasible" with respect to the Director's obligation to consult with program participants.

Senate Amendment

No provision.

Conference Agreement

The Senate recedes. The conference agreement strengthens the Director's obligation to consult with program participants regarding the operation of research and demonstration programs.

(2) Authorization of appropriations for title I

House Bill

The House bill authorizes such sums as may be necessary for the next 3 fiscal years for research and demonstration programs.

Senate Amendment

The Senate amendment authorizes $5 million in fiscal year 1979, $6 million in fiscal year 1980, and $8 million in fiscal year 1981 for research and demonstration programs.

Conference Agreement

The House recedes.

COMMUNITY ACTION PROGRAMS

(1) Community action boards

House Bill

No provision.

Senate Amendment

The Senate amendment provides that members of community action boards who are public officials must currently be holding office.

Conference Agreement

The House recedes.

(2) Review of regulations and guidelines

House Bill

The House bill provides that the Director shall consult with State economic opportunity offices in order to annually review, update, and simplify relevant regulations and guidelines applicable to programs funded under title II.

Senate Amendment

The Senate amendment provides that the Director shall annually review, update, and simplify relevant regulations and guidelines applicable to programs under the Act.

Conference Agreement

The conference agreement provides that the Director shall annually review, and consult with State economic opportunity offices, for the purposes of updating and simplifying all relevant regulations and guidelines applicable to programs funded under the Act except for those programs funded under title V and or title X.

(3) Notification

House Bill

The House bill provides that when the Director provides financial assistance to a public or private nonprofit agency other than a community action agency in an area where a community action agency exists, the Director must provide notification of such funding to the community action agency, appropriate local public officials and agencies, and the State economic opportunity office in that area.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that such notification must be provided only to the appropriate community action agency and the State economic opportunity office in area where financial assistance is provided. The Director should provide such notification to the appropriate community action agency and the State economic opportunity office as soon as the decision to provide the financial assistance in question is made. If such financial assistance is provided to a public or private nonprofit agency in a geographical area which encompasses two or more community action agencies, the Director shall provide notification to all community action agencies involved.

(4) Community food and nutrition

House Bill

No provision.

Senate Amendment

The Senate amendment provides that funding under the Community Food and Nutrition program may be available to community action agencies or to local public or private nonprofit organizations or agencies.

Conference Agreement

The conference agreement provides that funding under the Community Food and Nutrition program shall be through a community action agency where feasible or to other agencies or organizations if no such agency exists, or through a local public or private nonprofit organization or agency providing services to migrant or seasonal farmworkers or Native Americans. The current practice of funding nutrition access organizations and agencies, including a Food Research and Action Center, would be permitted under the conference agreement and is encouraged.

(5) Senior Opportunities and Services

House Bill

The House bill provides that the Director shall utilize, in addition to the Administration on Aging, other Federal agencies providing services to the elderly poor, and shall seek the utilization of agencies funded under section 221 of the Act for the provision of services under the Senior Opportunities and Services program.

Senate Amendment

No provision.

Conference Agreement

The Senate recedes.

(6) Rural Housing Development and Rehabilitation

House Bill

No provision.

Senate Amendment

The Senate amendment provides that funding for rural housing development and rehabilitation programs be available to nonprofit rural housing development corporations and cooperatives or to local public or private nonprofit organizations or agencies.

Conference Agreement

The conference agreement provides that funding for rural housing development and rehabilitation programs shall be provided to nonprofit rural housing development corporations and cooperatives or to local, public or private nonprofit organizations or agencies providing services to migrant or seasonal farmworkers or Native Americans which serve areas defined by the Farmers Home Administration as rural areas.

(7) Emergency Energy Conservation Services

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the Director shall utilize local public or private nonprofit organizations where feasible in the operation of programs to lessen the impact of the high cost of energy to migrants, farmworkers, and Native Americans. In addition, the Senate amendment provides that eligibility for this program shall not be based

solely on delinquency in payment of fuel bills.

Conference Agreement

The House recedes.

(8) *Demonstration Employment and Training Opportunities*

House Bill

No provision.

Senate Amendment

The Senate amendment adds a new paragraph entitled "Demonstration Employment and Training Opportunities", to establish experimental employment and training programs and projects for low-income persons who are unemployed or underemployed, with special emphasis on youth, the structurally unemployed—especially those dependent on public assistance, single heads of households with dependent children, older workers and veterans. Grants are to be available to community action agencies, community development corporations and other public or private nonprofit organizations and agencies for experimental programs and activities including, but not limited to: providing innovative approaches to employment and training programs, which may include supportive services; developing linkages for low-income persons to achieve transition from unemployment or federally subsidized employment to nonsubsidized employment; and developing training programs to place disadvantaged youth in the private sector, with special consideration for community development corporations.

Conference Agreement

The House recedes.

(9) *Design and Planning Assistance Program*

House Bill

The House bill deletes the authority for programs conducted by community-based design and planning organizations.

Senate Amendment

No provision.

Conference Agreement

The House recedes.

(10) *Consumer action and cooperative programs*

House Bill

The House bill deletes the authority for consumer action and advocacy and cooperative programs.

Senate Amendment

No provision.

Conference Agreement

The House recedes.

(11) *Technical assistance and training*

House Bill

The House bill provides that State agencies shall give priority to programs under sections 221 and 222 of title II with respect to the provision of funds for technical assistance.

Senate Amendment

The Senate amendment provides that the Director provide technical assistance and training to agencies receiving financial assistance under title II and that, to the extent feasible, the Director make special assignments of personnel to such agencies.

Conference Agreement

The conference agreement provides that the provisions of both the House bill and the Senate amendment are adopted. Thus, the Director shall provide technical assistance and training to agencies funded under title II, and, to the extent feasible, make special assignments of personnel to such agencies receiving assistance.

Furthermore, State agencies providing funds for technical assistance shall give priority to programs under sections 221 and 222 of title II. This conference agreement reflects the views of the conferees that one of the most important services provided by the Director to programs funded under title II is technical assistance and training.

(12) *Research and pilot programs*

House Bill

The House bill prohibits the use of funds appropriated or allocated for title II for research under section 232 beyond fiscal year 1979, and prohibits the Director, except with respect to existing contracts or agreements, from delegating his or her functions to any other Federal agency.

Senate amendment

No provision.

Conference Agreement

The House recedes. The conferees wish to emphasize that the conference agreement should not be read as an indication of a lack of concern on the part of the conferees over the circumstances which led to the provisions in the House bill. The conferees believe that the Director should exercise great caution in the delegation of research authority from CSA to other federal agencies, and that such funds should be used exclusively for poverty-related research. The conference agreement reflects the opinion that there may be circumstances where the delegation of section 232 research authority is in the best interest of all concerned.

(13) *Limitation on employee compensation*

House Bill

The House bill deletes the monetary limitation on employee compensation and provides that the Director shall issue necessary rules and regulations relating to such compensation.

Senate Amendment

The Senate amendment provides that employee compensation may not exceed $18,000 per annum.

Conference Agreement

The conference agreement provides that the limitation for employee compensation may not exceed $18,000 per annum and strikes the phrase "(particularly in large metropolitan areas)". It is the intention of the conferees to clarify the authority of the Director to provide for exceptions to the maximum employee compensation with respect to any areas where, because of the need for specialized or professional skills or prevailing local salary levels, exceptions may be necessary.

SPECIAL PROGRAMS TO COMBAT POVERTY IN RURAL AREAS

House Bill

The House bill extends programs under title III for the next 3 fiscal years with an authorization of such sums as may be necessary.

Senate Amendment

The Senate amendment strikes Part B "Assistance for Migrant and Other Seasonally Employed Farmworkers and Their Families" and Part C "Duration of Programs" from title III. Part B is subsequently reauthorized as a new title IV. Furthermore, the Senate amendment authorizes appropriations of $3 million for fiscal year 1979, $5 million for fiscal year 1980, and $7 million for fiscal year 1981 for special rural programs.

Conference Agreement

The House recedes.

ASSISTANCE FOR MIGRANT, AND OTHER SEASONALLY EMPLOYED, FARMWORKERS AND THEIR FAMILIES

(1) *Assistance for migrants and farmworkers*

House Bill

The House bill strikes title IV, "Comprehensive Health Services."

Senate Amendment

The Senate amendment strikes title IV and substitutes a new title IV, "Assistance for Migrant, and Other Seasonally Employed, Farmworkers and Their Families." The Senate amendment also requires the Director to insure that programs assisted under the new title operate with and receive the cooperation of programs assisted under section 221 in communities they mutually serve, and that programs under the new title be administered at the national level.

Conference Agreement

The House recedes.

(2) *Authorization of appropriations for new title IV*

House Bill

No provision.

Senate Amendment

The Senate amendment authorizes appropriations of $3 million for fiscal year 1979, $5 million for fiscal year 1980, and $8 million for fiscal year 1981 for new title IV, "Assistance to Migrant, and Other Seasonally Employed, Farmworkers and Their Families."

Conference Agreement

The House recedes.

HEADSTART AND FOLLOW THROUGH PROGRAMS

(1) *Allotment of Headstart funds*

House Bill

The House bill provides that of the funds appropriated for Headstart: (1) up to 13 percent shall be reserved by the Secretary for use at the discretion of the Secretary and for the outlying territories; (2) from the remaining funds, each State would receive an amount equal to that received in the previous fiscal year plus an amount equal to 6 percent of the amount received by each State in the previous fiscal year, except that no State shall receive the additional 6 percent in any fiscal year if such State would receive in that fiscal year under the hold harmless clause more than 200 percent of the amount to which such State would be entitled if the funds available for allocation to the States were distributed solely on the basis of the formula; (3) the remainder shall be allotted among the States so that equal proportions are distributed on the basis of the relative number of AFDC families in each State as compared to all States and the relative number of children age 0–5 living with families below the poverty line in each State as compared to all States; and (4) finally, for the purposes of this section, the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census.

Senate Amendment

The Senate amendment provides that of the funds appropriated for Headstart: (1) the Secretary may set aside up to 2 percent for the outlying territories; (2) the Secretary may reserve up to 20 percent for a Secretarial reserve and use it in accordance with the following order of priorities—

A. equal consideration for funding is to be given to Indian and Migrant Headstart programs and to services for handicapped children, with the additional provision that Indian and migrant programs shall receive (i) no less for any subsequent fiscal year than were obligated for use by such programs in fiscal year 1978, and (ii) cost-of-living adjustments for fiscal year 1979 and thereafter, which at a minimum, reflect changes in the Consumer Price Index;

B. training and technical assistance activities, which at a minimum, are sufficient to meet the needs associated with program expansion and to foster program and management improvement activities;

C. hold harmless payments to be available, if necessary, to maintain each State in fiscal year 1979 at a level of funding equivalent to

its fiscal year 1978 funding level; in each fiscal year subsequent to fiscal year 1989, hold harmless payments are to be made available according to the following percentages of the fiscal year 1978 base allocation: 90 per centum for fiscal year 1980, 80 per centum for fiscal year 1981, 70 per centum for fiscal year 1982, 60 per centum for fiscal year 1983, 50 per centum for fiscal year 1984, 40 per centum for fiscal year 1985, 30 per centum for fiscal year 1986, 20 per centum for fiscal year 1987, 10 per centum for fiscal year 1988, and no hold harmless payment for fiscal year 1989, except that hold harmless payments shall not be less than a State's allocation in fiscal year 1975; and

D. the remainder in accordance with the criteria and procedures as the Secretary shall prescribe by regulation. Additional financial assistance may be provided by the Secretary of Health, Education, and Welfare to a State for purposes other than assistance to Indian and Migrant programs, services for handicapped children, and training and technical assistance activities, only if a State's allotment under the AFDC and poverty child factors formula payments and hold harmless payments does not exceed 175 percent of the amount the State is eligible to receive under the AFDC and poverty child factors formula; and

(3) the remainder shall be allotted among the States so that equal proportions are distributed on the basis of the relative number of AFDC families in each State as compared to all States and the relative number of children age 0-5 living with families below the poverty line in each State as compared to all States.

The Senate amendment also provides that when appropriations for Headstart are equal to or exceed $800 million, the Secretary shall not reserve more than 20 percent of $800 million or 15 percent of the funds appropriated, whichever is greater.

Conference Agreement

The conference agreement provides that of the funds appropriated for Headstart:

(1) at least 78 percent shall be allotted among the States so that equal proportions are distributed on the basis of the relative number of AFDC recipients in each State as compared to all States and the relative number of children age 0 through 5 living with families below the poverty line in each State as compared to all States;

(2) the Secretary shall reserve 20 percent for use in accordance with the following order of priorities—

A. funding shall be given with equal consideration to Indian and migrant Headstart programs and to services for handicapped children, with the additional provision that Indian and migrant programs shall receive (i) no less for any subsequent fiscal year than was obligated for use by such programs in fiscal year 1978, and (ii) cost-of-living adjustments for fiscal year 1979 and thereafter, which, at a minimum, reflect changes in the Consumer Price Index;

B. hold harmless payments shall be made available, if necessary, to maintain each State at a level of funding equivalent to its fiscal year 1978 funding level;

C. training and technical assistance activities, which at a minimum, are sufficient to meet the needs associated with program expansion and to foster program and management improvement activities;

D. the remainder in accordance with such criteria and procedures as the Secretary shall prescribe by regulation. Additional financial assistance may be provided by the Secretary to a State for purposes other than assistance to Indian and migrant programs, services for handicapped children, hold harmless payments, and training and technical assistance activities, only if a State's poverty allocation and hold harmless payment is less than 175 percent of what such State is eligible to receive as a poverty allocation; and

(3) reserve 2 percent for allotment to the Trust Territories and for supplemental payments. From this reserve, supplemental payments shall be made available to—

A. any State receiving allotments from the poverty formula and hold harmless payments which are greater than 100 percent but eligible to receive from the less than 140 percent of what such State is eligible to receive from the poverty formula; and

B. any State which is making the transition from receiving hold harmless payments and/or receiving supplementary assistance to receiving only poverty funds.

Supplemental payments shall be equal to 50 percent of the percentage increase in the total appropriation over the total appropriation in the previous year and shall be made to eligible State in addition to the total amount of assistance received by such State in the previous year. In fiscal year 1979, supplemental payments shall be equal to 69 percent of the percentage increase in total appropriations—up to 9 percent—or 50 percent of the percentage increase in total appropriations, whichever is greater. If in any fiscal year there is no increase in appropriations, States eligible for supplemental payments shall receive the same total allotment as they did in the preceding fiscal year.

Any funds not allocated to the Trust Territories shall be allotted under the poverty formula to those States which receive allotments under the poverty formula only. If in any fiscal year there are not enough funds available in the 2 percent reserve (subsection (a)(4)), the Secretary shall transfer funds from the 20 percent reserve (subsection (a)(3)) to make supplemental payments according to the provisions of subsection (a)(4).

When appropriations are equal to or exceed $800,000,000, not more than 20 percent of $800,000,000, or 15 percent of the funds appropriated, whichever is greater, shall be reserved.

The conference agreement will equalize the distribution of available Headstart funds and target these funds to poverty populations. The Headstart allocation formula adopted by the Conference Committee will narrow and ultimately eliminate the range in the level of Headstart funding, taken as a proportion of the poverty population, among the various States. Completion of the objective to equalize the distribution of Headstart funds and target these funds to poverty populations is dependent upon the level of appropriations—the higher the level of appropriations, the more rapid the range will be reduced and eliminated.

The compromise allocation formula is based on the premise that all States should receive 100 percent of what they are eligible for according to the States' relative share of the poverty population. The situation where a State is actually reduced below the 100 percent level of its funding eligibility in order to hold another State harmless at a specific level will not occur in the future because a hold harmless provision is not attached to the allocation formula. Instead, hold harmless payments will be made from the 20 percent reserve (Sec. 513(a)(3)). A State will, therefore, always be assured that it will receive its relative total share of Headstart funds available for distribution according to the poverty formula.

This allocation formula also reflects the intent that over time, as appropriations increase, all States should eventually receive only poverty formula funds (under Sec. 513(a)(2)); the need for hold harmless payments and supplemental payments will end as the distribution of allocations among the various States is equalized by application of the poverty formula.

As appropriations increase, each State will be eligible for increases from the funds available for distribution under the poverty formula (Sec. 513(a)(2)). This will reduce dependency on hold harmless payments, and, in fact, all States will gradually receive their complete allocation from the poverty formula. Until States reach the point where their total allocation is from the poverty formula, the Conference agreement provides for hold harmless payments, to provide States with a funding level equivalent to their fiscal year 1978 funding level. In addition, supplemental assistance will be available to two categories of States: (1) any State receiving an allocation from the poverty formula and a hold harmless payment which, in total, is greater than 100 percent and less than 140 percent of what such State is eligible to receive from the poverty formula only; and (2) any State receiving an allotment from the poverty formula only, and such allotment as compared to the total amount of assistance received by such state in the previous fiscal year, represents an increase which is less than 50 percent of the percentage increase in the appropriation for such fiscal year for which the determination is made as compared to the appropriation for the fiscal year preceding the fiscal year for which the determination is made.

Any State which falls into one of these two categories shall receive a supplemental payment sufficient to provide a total amount of assistance to such State which is equal to the total amount of assistance such State received in the previous fiscal year and an amount derived by multiplying the total amount of assistance received in the previous fiscal year by 50 percent of the percentage increase in the total appropriation for that fiscal year over the total appropriation in the preceding fiscal year. In fiscal year 1979, supplemental payments shall be equal to 69 percent of the percentage increase up to 9 percent, in the appropriation for fiscal year 1979 over the appropriation for fiscal year 1978 or 50 percent of the percentage increase in the appropriation for fiscal year 1979 over the appropriation for fiscal year 1978, whichever is greater, and shall be added to the amount such State received in fiscal year 1978.

The intent of this supplemental assistance is to provide hold harmless States on the margin with increases which are equal to 50 percent of the percentage increase in the total appropriations over the total appropriation in the preceding fiscal year. This will permit the equalization of distribution of funds to occur, without adversely affecting those States in the marginal category. It also enables these marginal States to actually receive expansion funding if appropriations increase at a rate which is sufficient to foster expansion in the marginal States.

With the allocation formula adopted by the conference agreement, a cost-of-living provision is not necessary because as appropriations are increased to reflect, in part, cost-of-living increases, the cost-of-living increases would be passed on automatically to the States through the poverty formula. Any appropriation increase beyond a cost-of-living increase is distributed through the poverty formula for expansion purposes to the States based on relative need. Cost-of-living increases and expansion funding are distributed to the marginal States through the supplemental payments.

Any State with an allocation from the poverty formula and hold harmless payments which, in total, are 175 percent or greater than what such State is eligible to receive from the poverty formula only, is not eligible for any additional assistance, including any assistance from the Secretary's discretionary funds.

The conference agreement also specifies

how 2 percent reserve and the 20 percent reserve are to be spent. This is done to insure that programs and activities which have been funded from the reserve are accorded appropriate priority for funding.

It is the intent of the conferees that as many funds as possible be distributed to the States under the poverty formula.

(2) Participation in Headstart programs

House Bill

The House bill strikes the provision that participation in Headstart programs may include low-income families who, in the absence of child care, would potentially be eligible for public assistance.

Senate Amendment

No provision.

Conference Agreement

The House recedes.

(3) Eligibility for Headstart programs

House Bill

No provision.

Senate Amendment

The Senate amendment provides that the Headstart program in a locality shall establish the criteria for eligibility whenever a Headstart program is operated in a community of 1,000 persons or less and (a) there is no other pre-school program in the community; (b) the community is located in a medically underserved area and is located in a health manpower shortage area, as designated by the Secretary of HEW pursuant to the Public Health Services Act; (c) the community is in an area which by reason of remoteness does not permit reasonable access to a pre-school program or medical services; and (d) at least 50 percent or more of the families to be served in the community are eligible under income guidelines established by the Secretary.

Conference Agreement

The House recedes.

(4) Headstart performance standards

House Bill

The House bill provides that the Secretary shall operate Headstart programs in accordance with Headstart performance standards. Furthermore, any revisions in such standards shall result in standards which are no less comprehensive than those in effect on the date of the enactment of these Amendments. Finally, the extent to which such standards have been met shall be considered in deciding whether to renew or supplement Headstart funding.

Senate Amendment

No provision.

Conference Agreement

The Senate recedes. The conferees wish to note that Headstart performance standards have contributed to making Headstart a unique program providing quality child development services to young children and their families. Headstart should be governed by nationally applicable quality standards uniquely designed for the special needs of local Headstart grantees and not by rules applicable to other programs. Any changes in the standards governing Headstart shall maintain these characteristics in order to insure that the unique national high quality nature of the Headstart program be continued.

(5) Eligibility for Follow Through programs

House Bill

The House bill adds a new section 551 (a)(1) regarding eligibility for Follow Through assistance to include other children in kindergarten and primary grades, including children enrolled in private nonprofit elementary schools, who were previously enrolled in pre-school programs of a compensatory nature which received Federal financial assistance.

Senate Amendment

No provision.

Conference Agreement

The conference agreement would add a new sentence to section 551(a)(1) providing that children, other than currently eligible children, who are in kindergarten and primary grades or private nonprofit elementary schools who were previously enrolled in preschool programs of a compensatory nature which received Federal financial assistance, may participate in Follow Through programs. It is the intention of the conferees that the focus of Follow Through continue to be placed primarily on low-income children who meet eligibility requirements.

(6) Follow Through program services

House Bill

No provision.

Senate Amendment

The Senate amendment specifies the types of services that Follow Through programs are to provide, including educational, health, nutritional, social and other comprehensive services.

Conference Agreement

The House recedes.

(7) Authorization of appropriations for Follow Through

House Bill

The House bill authorizes appropriations for Follow Through of $70,000,000 for fiscal year 1979, $80,000,000 for fiscal year 1980, $90,000,000 for fiscal year 1981, $100,000,000 for fiscal year 1982, and $110,000,000 for fiscal year 1983.

Senate Amendment

The Senate amendment authorizes appropriations for Follow Through of $70,000,000 for fiscal year 1979, $85,000,000 for fiscal year 1980, and $100,000,000 for fiscal year 1981.

Conference Agreement

The House recedes.

(8) Research, demonstration, pilot projects and evaluation

House Bill

No provision.

Senate Amendment

The Senate amendment strikes out the current section 553 "Research, Demonstration, and Pilot Projects; Evaluation; and Technical Assistance Activities" and substitutes three new sections. These new sections—Research, Demonstration and Pilot Projects; Announcement of Research, Demonstration, and Pilot Project Contracts; Evaluation; and Technical Assistance and Training—closely parallel similar sections in the Headstart programs. The new sections require further reporting to Congress regarding activities carried out under these sections, public announcement of contracts and the publication of results, findings and data reported as a result of research, demonstration, pilot projects, and evaluation.

Conference Agreement

The House recedes. In adopting this comprehensive language relating to evaluation, research, demonstration, and pilot projects, it is the intention of the conferees that the proportion of Follow Through Program funds which are expended on the provision of comprehensive services to eligible children not be decreased.

CSA ADMINISTRATION AND COORDINATION

(1) Delegation of policymaking functions

House Bill

The House bill strikes the prohibition regarding the delegation of the policymaking functions of the Director to any regional office or official, and adds a new sentence providing that the Director shall promulgate rules and regulations regarding the policymaking functions of the Community Services Administration.

(3) Annual Report and Termination of Council

House Bill

The House bill provides that the requirement of the submission by the National Advisory Council on Economic Opportunity of an annual report to the President shall no longer exist after December 31, 1979, and that the Council itself shall cease to exist 60 days after the submission of its final report under section 605(c). Furthermore, the Council may not make expenditures or incur obligations which exceed $175,000 for any fiscal year.

Senate Amendment

No provision.

Conference Agreement

The conference agreement extends the Council for the next three fiscal years. The Council may not make expenditures or incur obligations which exceed $225,000 for fiscal year 1979, $250,000 for fiscal year 1980, and $275,000 for fiscal year 1981. These expenditure limitations are in response to the current excessive budget level for the Council in light of the responsibilities and past performance of the Council. The conferees believe that the limitation in budget authority, commensurate with the reduction in the membership size and new membership composition requirement of the Council, will enable the Council to adequately perform its responsibilities.

(4) CSA Annual Report

House Bill

The House bill adds a new phrase to section 608 requiring the Director to include in the annual report to the President the types of services delivered by community action agencies and other programs funded under the Act.

Senate amendment

No provision.

Conference Agreement

The Senate recedes. The conferees wish to emphasize that they are disturbed over the fact that CSA has not complied with the requirement of submitting an annual report to the President. It is expected that the Agency will file an annual report no later than January 29, 1979, and every year thereafter pursuant to the Act.

(5) Joint Funding of Programs Under the Act

House Bill

The House bill provides that CSA shall be the designated agency to act for all Federal agencies in administering funds advanced to a community action agency by one or more Federal agencies when one of the agencies is CSA.

Senate Amendment

No provision.

Conference Agreement

The House recedes.

(6) Delegation of Follow Through Program

House Bill

No provision.

Senate Amendment

The Senate amendment strikes section 621 of the Act which requires the Director of CSA to delegate authority for the Follow Through Program to the Secretary of Health, Education, and Welfare.

Conference Agreement

The House recedes.

(7) Consultation Regarding Poverty Plan

House Bill

The House bill provides that the Director shall consult with community action agencies and State economic opportunity offices in the development of the five-year national poverty action plan.

Senate Amendment

No provision.

Conference Agreement

The Senate recedes.

(8) Regional Offices

House Bill

The House bill adds a new section providing for the utilization by the Director of regional offices for the purpose of (1) carrying out national responsibilities; (2) processing and finalizing grants and contracts; (3) monitoring and evaluating programs and regulations; and (4) providing technical assistance to local community action agencies. This section also requires the Director to monitor and evaluate at least annually the above described activities of the regional offices.

Senate Amendment

No provision.

Conference Agreement

The Senate recedes.

COMMUNITY ECONOMIC DEVELOPMENT

(1) Authorization of Appropriations for Title VII

House Bill

The House bill authorizes appropriations for title VII of $50 million for fiscal year 1979 and such sums as may be necessary for each of the two succeeding fiscal years.

Senate Amendment

The Senate amendment authorizes appropriations for title VII of $70 million for fiscal year 1979, $85 million for fiscal year 1980, and $105 million for fiscal year 1981.

Conference Agreement

The House recedes.

(2) Advisory Community Investment Boards

House Bill

No provision.

Senate Amendment

The Senate amendment adds a new section 704 entitled "Advisory Community Investment Boards." This new section authorizes the President to establish national, regional, State, and local advisory community investment boards, as the President deems appropriate. These boards are to be composed of fifteen members appointed by the President, in consultation with the Director, for staggered terms, without regard to the Civil Service laws. Members of the boards are to be representative of the business and investment communities and other appropriate fields. The boards are to meet not less than three times per year at the call of the chairperson. The Director of the Community Services Administration and the administrator of community economic development programs are to be ex-officio members of the investment boards.

The investment boards are to promote cooperation between private investors and business and community development corporations. This is to be done through (1) advising the Director and the community development corporations on ways to facilitate private investment; (2) advising business and other investors of opportunities in community development corporation projects; and (3) advising ways in which the Director, community development corporations and business might engage in mutually beneficial efforts.

Conference Agreement

The conference agreement provides that the President is authorized to establish a National Advisory Community Investment Board, which shall be composed of fifteen members appointed, for staggered terms and without regard to the civil service laws, by the President, in consultation with the Director. Members of the Investment Board are to be representative of the investment and business communities and appropriate fields related to community economic development. The director and the administrator of community economic development programs shall be ex officio members of the Investment Board.

The Investment Board is to promote cooperation between private investors and businesses and community development corporation projects through (1) advising the Director and community development corporations on ways to facilitate private investment; (2) advising businesses and other investors of opportunities in community development corporation projects; (3) advising the Director, community development corporations, and private investors and businesses of ways in which they might engage in mutually beneficial efforts.

The governing body of each Community Development Corporation may also establish an advisory community investment board composed of not to exceed 15 members appointed by the governing body after consultation with appropriate local officials. Each such board shall promote cooperation between private investors and businesses and the governing body of the community development corporation through (1) advising the governing body on ways to facilitate private investors; (2) advising businesses and other investors of opportunities in community development corporation projects; and (3) advising the governing body, private investors, and businesses of ways in which they might engage in mutually beneficial efforts.

Authority for the President to establish a national advisory Community Investment Board is provided because of the need for the Office of Economic Development within CSA to receive the expert guidance and advice that can be offered by a board composed of reputable representatives of the investment and business communities regarding the development and implementation of a comprehensive national policy toward community economic development pursuant to title VII. Each CDC is authorized to establish individual investment boards so that CDC's may receive the guidance and support of representatives of the investment and business communities in the area where the CDC is operational. These local investment boards are authorized in recognition of the fact that investment practices and commercial standards may vary from region to region.

In the case of the national board, any necessary expenses should be covered by the operating budget of the Community Services Administration.

The conference agreement also provides that the Director of CSA and the administrator of community economic development programs are to be ex-officio members of the national and local investment boards.

(3) Scope of community development corporations

House Bill

No provision.

Senate Amendment

The Senate amendment amends section 712 (a) of the Act by further defining the types of programs which may be conducted including community business and commercial development programs, community physical development programs, training and public service employment programs, and social service programs which support and complement community business and commercial development programs, and by specifying that social service programs may include recreation services. The Senate amendment also amends section 712 (a) by adding specific reference to the "Demonstration Employment and Training" program as a type of employment and training activity which community development corporations may undertake.

Conference Agreement

The House recedes.

(4) Financial assistance requirements

House Bill

No provision.

Senate Amendment

The Senate amendment amends section 713 of the Act by adding a new subsection (d) which requires that, in order to receive funding, a program must specify in detail its development goals and development timetable. Continued funding in future years will depend upon the extent to which such goals and such timetable have been met.

Conference Agreement

The House recedes.

(5) Federal share for community development corporations

House Bill

The House bill provides that financial assistance to community development corporations shall be made available in accordance with applicable rules and regulations prescribed by the Secretary of the Treasury within 30 days of the approval of a grant. Furthermore, the House bill provides that the Federal Government shall retain the right for a period of not more than 25 years to direct grantees regarding the use of such properties and proceeds thereof.

Senate Amendment

The Senate amendment provides that financial assistance to community development corporations be made available (a) for deposit to the order of a grantee having demonstrated successful program performance, under conditions which the Director deems appropriate, within 30 days following approval of a grant, or (b) whenever the Director deems appropriate, in accordance with applicable rules and regulations prescribed by the Secretary of the Treasury within 30 days of the approval of a grant.

Conference Agreement

The House recedes. It is expected that when financial assistance is made available for deposit to the order of the grantee, the grantee shall secure approval from CSA with respect to the utilization of the grantee's deposit. CSA must notify the grantee of the agency's approval or disapproval within 15 days of the grantee's request for approval.

(6) Assistance to cooperative programs

House Bill

No provision.

Senate Amendment

The Senate amendment provides that local public or private nonprofit organizations or agencies may receive financial assistance for operating cooperative programs in rural areas.

Conference Agreement

The House recedes.

(7) Development Loan Fund

House Bill

No provision.

Senate Amendment

The Senate amendment amends section 731(a) by adding designated supportive organizations of cooperatives to the list of agencies which may receive grants under community economic development programs. Community development credit unions are added to the projects which may be conducted with development loans.

Conference Agreement

The House recedes.

(8) Applications of other Federal resources

House Bill

The House bill extends from 90 to 120 days the period by which the Secretary of Commerce shall prescribe regulations regarding financial assistance to community development corporations under programs under the Economic Development Administration.

Furthermore, the House bill provides that business ventures supported by a community development corporation shall not be considered ineligible for SBA financial assistance because the venture is owned in whole or in part by a community development corporation.

Senate Amendment

The Senate amendment requires the Administrator of the Small Business Administration, after consultation with the Director of CSA, to promulgate regulations to insure the availability to community development corporations of programs that further the purposes of this title, including but not limited to the minority set-aside program.

Conference Agreement

The House recedes.

(9) *Evaluation and research*

House Bill

No provision.

Senate Amendment

The Senate amendment requires that the Director also conduct demonstration projects along with research activities designed to suggest new programs and policies to achieve the purposes of this title.

Conference Agreement

The House recedes.

EVALUATION

Authorization of Appropriations for Title IX

House Bill

The House bill authorizes appropriations for title IX for the next 3 fiscal years of such sums as may be necessary.

Senate Amendment

The Senate amendment authorizes appropriations for title IX of $4 million for fiscal year 1979, $7 million for fiscal year 1980, and $10 million for fiscal year 1981.

Conference Agreement

The House recedes.

TECHNICAL CONFORMING AMENDMENTS

House Bill

No provision.

Senate Amendment

The Senate amendment amends title I, II, III, IV, VI, VII, and IX by striking out the pronouns "he", "his", or "him" and substituting either "the Director" or "the Director's", whichever is appropriate. The Senate amendment amends titles V and VIII by striking out the pronouns "he", "his", or "him" and substituting either "the Secretary" or "the Secretary's", whichever is appropriate.

Conference Agreement

The House recedes.

CARL D. PERKINS,
IKE F. ANDREWS,
AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
BALTASAR CORRADA,
ALBERT H. QUIE,
Managers on the Part of the House.

HARRISON A. WILLIAMS, Jr.,
ALAN CRANSTON,
WILLIAM D. HATHAWAY,
DONALD W. RIEGLE, Jr.,
JACOB K. JAVITS,
ORRIN G. HATCH,
JOHN CHAFEE,
Managers on the Part of the Senate.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LIVINGSTON) and to revise and extend their remarks and include extraneous matter:)

Mr. MCKINNEY, for 10 minutes, today.

Mr. ANDERSON of Illinois, for 10 minutes, today.

Mr. WAMPLER, for 10 minutes, today.

Mr. GOLDWATER, for 5 minutes, today.

(The following Members (at the request of Mr. LIVINGSTON) to revise and extend their remarks and include extraneous material:)

Mr. WHALEN, for 10 minutes, today.

Mr. COLLINS of Texas, for 10 minutes, today.

Mr. GRASSLEY, for 5 minutes, today.

(The following Members (at the request of Mrs. COLLINS of Illinois), to revise and extend their remarks, and to include extraneous matter to:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. GONZALEZ, for 5 minutes, today.

Mr. FLOOD, for 5 minutes, today.

Mr. DIGGS, for 5 minutes, today.

Mr. MONTGOMERY, for 5 minutes, today.

Mr. BURKE of Massachusetts, for 5 minutes, today.

Mr. ZABLOCKI, for 15 minutes, today.

Mr. BINGHAM, for 10 minutes, today.

Mr. DINGEL, for 60 minutes, on October 12.

Mr. HARRINGTON, for 20 minutes, on October 13.

Mr. MCDONALD, for 60 minutes, on October 14.

Mr. DRINAN, for 5 minutes, today.

Mr. SIKES, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. SIKES, and to revise and extend his remarks and include extraneous matter.

Mr. BURGENER, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the CONGRESSIONAL RECORD and is estimated by the Public Printer to cost $1,068.

Mr. COUGHLIN, and to include extraneous matter notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $903.38.

Mr. COLLINS of Texas, to include extraneous matter at the end of consideration of H.R. 12442 in the Committee of the Whole today.

(The following Members (at the request of Mr. LIVINGSTON) and to include extraneous matter:)

Mr. COLLINS of Texas in four instances.

Mr. ANDERSON of Illinois in two instances.

Mr. STEIGER.

Mr. RUDD.

Mr. GOODLING.

Mr. COUGHLIN in two instances.

Mr. CRANE.

Mr. MICHEL.

Mr. ASHBROOK.

Mr. DERWINSKI in three instances.

(The following Members (at the request of Mrs. COLLINS of Illinois), and to include extraneous matter:)

Mr. STOKES in four instances.

Mr. ANDERSON of California in three instances.

Mr. GONZALEZ in three instances.

Mr. FARY.

Mr. RYAN.

Mr. DE LA GARZA in 10 instances.

Mr. ROGERS in five instances.

Mr. DOWNEY.

Mr. APPLEGATE.

Mr. HAMILTON.

Mr. MCDONALD in three instances.

Mr. LUKEN.

Mr. ROE in two instances.

Mr. PEPPER.

Mr. SIKES.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Mr. THOMPSON, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and a joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 7843. An act to provide for the appointment of additional district and circuit judges, and for other purposes;

H.R. 12255. An act to amend the Older Americans Act of 1965 to provide for improved programs for older persons, and for other persons;

H.R. 12556. An act for the relief of Batavia Turf Farms, Inc.;

H.R. 12932. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1979, and for other purposes;

H.R. 13803. An act to terminate the authorization of the navigation project on the Columbia Slough, Oreg.; and

H.J. Res. 638. Joint resolution extending the deadline for the ratification of the equal rights amendment.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 2640. An act to reform the civil service laws.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMPSON, from the Committee on House Administration, reported that that committee did on the following days present to the President, for his approval, bills of the House of the following titles:

On October 6, 1978:

H.R. 6503. To amend the Intercoastal Shipping Act, 1933, and for other purposes;

H.R. 8394. To provide for payments to local governments based upon the acreage of the National Wildlife Refuge System which is within their boundaries, and for other purposes;

H.R. 8811. To amend section 7447 of the Internal Revenue Code of 1954 with respect to the revocation of an election to receive retired pay as a judge of the Tax Court;

H.R. 9370. To provide for the development of aquaculture in the United States, and for other purposes;

H.R. 9998. To provide for the regulation of rates or charges by certain state-owned carriers in the foreign commerce of the United States, and for other purposes;

H.R. 10965. To revise, codify, and enact without substantive change the Interstate Commerce Act and related laws as subtitle IV of title 49, United States Code, "Transportation";

H.R. 11302. To authorize appropriations for environmental research, development, and demonstrations for the fiscal year 1979, and for other purposes;

H.R. 11886. To amend title 38, United States Code, to provide increases in the rates of disability and dependency and indemnity compensation for disabled veterans and their survivors, to provide for the payment of benefits to surviving spouses and children of certain totally disabled service-connected disabled veterans, to increase the amounts paid for funeral and burial expenses of deceased veterans, and for other purposes;

H.R. 12028. To amend title 38, United States Code, to improve the housing benefits programs of the Veterans' Administration, to authorize the Administrator of Veterans' Affairs to pay an allowance to a State for expenses incurred in the burial of eligible veterans in cemeteries owned and operated by or for such State solely for the interment of veterans, to authorize a program of grant assistance to States for the establishment, expansion, and improvement of State veterans' cemeteries, and for other purposes;

H.R. 12930. Making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1979, and for other purposes;

H.R. 13692. Granting the consent of Congress to the Historic Chattahoochee Compact between the States of Alabama and Georgia;

On October 10, 1978:

H.R. 10600. For the relief of Thomas Joseph Hunter and Rose Hunter;

H.R. 13797. To authorize establishment of the Fort Scott National Historic Site, Kansas, and for other purposes;

H.R. 13991. To provide for the United States to hold in trust for the Susanville Indian Rancheria of Lassen County, Calif., approximately one hundred and twenty acres of land; and

H.R. 14026. To provide means for the acquisition and retention of title to certain lands by the village corporation organized pursuant to the Alaska Native Claims Settlement Act for the Natives of the village of Kake, Alaska, and for other purposes.

ADJOURNMENT

Mrs. COLLINS of Illinois. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 15 minutes p.m.), the House adjourned until tomorrow, Thursday, October 12, 1978, at 10 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5113. A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting a cumulative report on rescissions and deferrals of budget authority for fiscal year 1979 as of October 2, 1978, pursuant to section 1014(e) of Public Law 93-344 (H. Doc. No. 95-398); to the Committee on Appropriations and ordered to be printed.

5114. A letter from the Administrator of General Services, transmitting a followup report on the recommendations contained in the report of the Advisory Committee on Federal Pay on the fiscal year 1978 pay increase under the Federal Statutory Pay Systems, pursuant to section 6(b) of the Federal Advisory Committee Act; to the Committee on Government Operations.

5115. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting reports concerning visa petitions approved according certain beneficiaries third and sixth preference classification, pursuant to section 204 (d) of the Immigration and Nationality Act, as amended; to the Committee on the Judiciary.

5116. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting copies of orders entered in cases in which the authority contained in section 212(d)(3) of the Immigration and Nationality Act was exercised in behalf of certain aliens, pursuant to section 212(d)(6) of the act; to the Committee on the Judiciary.

5117. A letter from the Deputy General Counsel, Department of the Treasury, transmitting the Department's comments on H.R. 13719, a bill authorizing the Secretary of the Treasury to make payments to the governments of Guam and the Virgin Islands for the loss in tax revenue due to certain Federal tax reductions; to the Committee on Ways and Means.

5118. A letter from the Comptroller General of the United States, transmitting a report on the General Accounting Office's study of 16 air and water pollution issues (CED-78-148A, October 11, 1978); jointly, to the Committees on Government Operations, Interstate and Foreign Commerce, and Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. FOLEY: Committee of conference. Conference report on S. 3447 (Rept. No. 95-1755). Ordered to be printed.

Mr. DANIELSON: Committee of conference. Conference report on S. 555 (Rept. No. 95-1756). Ordered to be printed.

Mr. SISK: Committee on Rules. House Resolution 1423. Resolution providing for the consideration of H.R. 14104. A bill to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes (Rept. No. 95-1757). Referred to the House Calendar.

Mr. MEEDS: Committee on Rules. House Resolution 1424. Resolution providing for the consideration of H.R. 11153. A bill to authorize the Secretary of the Interior to construct, restore, operate, and maintain new or modified features at existing Federal reclamation dams for safety of dams purposes (Rept. No. 95-1758). Referred to the House Calendar.

Mr. DODD: Committee on Rules. House Resolution 1425. Resolution providing for the consideration of H.R. 11274. A bill to amend title IV of the Higher Education Act of 1965 to increase the availability of assistance to middle-income students and to amend section 1208 of such act (Rept. No. 95-1759). Referred to the House Calendar.

Mr. MURPHY of New York: Committee on Merchant Marine and Fisheries. Report on allocation of budget totals to subcommittees (Rept. No. 95-1760). Referred to the Committee of the Whole House on the State of the Union.

Mr. ULLMAN: Committee on Ways and Means. H.R. 12846. A bill to amend the Internal Revenue Code of 1954 to clarify the application of the investment tax credit to certain enclosures or structures used for the housing, raising, or feeding of poultry or their produce; with amendment (Rept. No. 95-1761). Referred to the Committee of the Whole House on the State of the Union.

Mr. MANN: Committee of conference. Conference report on H.R. 7010 (Rept. No. 95-1762). Ordered to be printed.

Mr. KASTENMEIER: Committee on the Judiciary. H.R. 14145. A bill to amend title 28 of the United States Code to make certain changes in the divisions within judicial districts and in the places of holding court, and to require the Director of the Administrative Office of the U.S. Courts to conduct a study of the judicial business of the Central District of California and the Eastern District of New York; with amendment (Rept. No. 95-1763). Referred to the Committee of the Whole House on the State of the Union.

Mr. MAHON: Committee of conference. Conference report on H.R. 13635 (Rept. No. 95-1764). Ordered to be printed.

Mr. PERKINS: Committee of conference. Conference report on S. 2570 (Rept. No. 95-1765). Ordered to be printed.

Mr. PERKINS: Committee of conference. Conference report on H.R. 7577 (Rept. No. 95-1766). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FORD of Michigan (for himself and Mr. SAWYER):

H.R. 14282. A bill to amend the Toxic Substances Control Act to establish a program of assistance to the States for the protection and indemnification of individuals injured in their business or person by chemical substances, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. HAMMERSCHMIDT:

H.R. 14283. A bill to amend title XVIII of the Social Security Act with respect to reimbursement of physicians' services in teaching hospitals; jointly, to the Committees on Ways and Means, and Interstate and Foreign Commerce.

By Mr. ROGERS (for himself, Mr. STAGGERS, and Mr. CARTER):

H.R. 14284. A bill to amend the National Housing Act to provide mortgage insurance for officers in the Public Health Service; to the Committee on Banking, Finance and Urban Affairs.

H.R. 14285. A bill to amend the Public Health Service Act and title 37, United States Code, to modify the administration of the Public Health Service, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. STEIGER (for himself, Mr. GEPHARDT, Mr. HORTON, Mr. FUQUA, and Mr. COUGHLIN):

H.R. 14286. A bill to require biennial reports to Congress on the effectiveness of Government programs, and for other purposes; to the Committee on Government Operations.

By Mr. WAMPLER (for himself, Mr. JONES of North Carolina, Mr. QUILLEN, Mr. NEAL, and Mr. DUNCAN of Tennessee):

H.R. 14287. A bill to amend the act of September 3, 1974, to waive the assessment of marketing quota penalties on certain 1975 crop Maryland Type 32 tobacco; to the Committee on Agriculture.

By Mr. WHALEN (for himself and Mr. GREEN):

H.R. 14288. A bill to guarantee freedom from unreasonable search and seizure, to protect the rights of persons under the 4th and 14th amendments to the Constitution, and to safeguard freedom of the press under the first amendment to the Constitution; to the Committee on the Judiciary.

By Mr. FINDLEY (for himself, Mr. DICKINSON, and Mr. TSONGAS):

H.J. Res. 1166. Joint resolution authorizing the President to proclaim the month of November 1978 as National REACT Month; to the Committee on Post Office and Civil Service.

By Mr. HAMMERSCHMIDT:

H. Con. Res. 743. Concurrent resolution to oppose the implementation and enforcement by the President of a program of wage and price controls not specifically authorized by statute; to the Committee on Banking, Finance and Urban Affairs.

H.R. 14104

By Mr. BEARD of Tennessee:

—Page 32, after line 21, insert the following:

"SEC. 12, Section 1533(a) is amended by adding at the end of the following new subsection:

"(3) The Secretary shall remove the (insert here the particular endangered species as listed below) from the protective status of this Act".

—Pink fairy armadillo.
—African wild ass.
—Avahis.
—Aye-aye.
—Barred bandicoot.
—Desert bandicoot.
—Rabbit bandicoot.
—Lesser rabbit bandicoot.
—Pig-footed bandicoot.
—Banteng.
—Hawaiian hoary bat.
—Indiana bat.
—Grizzly bear.
—Mexican grizzly bear.
—Wood bison.
—Tiger cat.
—Cheetah.
—Red colobus.
—Zanzibar red colobus.
—Eastern cougar.
—Slender-horned gazelle.
—Rio de Oro dama gazelle.
—Moroccan gazelle.
—Mhorr gazelle.
—Cuviers gazelle.
—Clark's gazelle.
—San Joaquin kit fox.
—Northern kit fox.
—Mountain tapir.
—Brinded nail-tail wallaby.
—Thylacine.
—Tiger.
—Uakari.
—Vicuna.
—Banded hare wallaby.
—Brazilian three-toed sloth.
—Leopard snow.
—Cuban solendon.
—Hatian solenodon.
—Delmarva Peninsula fox squirrel.
—Barbary stag.
—Kashmir stag.
—Tamaraw.
—Golden-rumped tamarin.
—Brazilian tapir.
—Central American tapir.
—Gila trout.
—Snail darter.
—Arizona (Apache) trout.
—Gila topminnow.
—Western tragopan pheasant.
—White-eared pheasant.
—Azores wood pigeon.
—Chatham Island pigeon.
—Puerto Rican plain pigeon.
—Wattlebird piopio.
—Attwater's greater prairie chicken.
—New Zealand shore plover.
—Ulo Po'o.
—Aukland Island rail.
—California clapper rail.
—Light-footed clapper rail.
—Yuma clapper rail.
—Darwin's rhea.
—Long-tailed ground roller.
—Columbia whitetailed deer.
—Cedros Island mule deer.
—Brow-antlered eld's deer.
—Santa Barbara sparrow.
—Ponape mountain starling.
—Rothschild's (Myna) starling.
—Hawaiian stilt.
—White oriental stork.
—California least tern.
—White-breasted thrasher.
—Large kaual thrush.
—Molokai (olomau) thrush.
—Small kauai (puaiohi) thrush.
—Tragopans.
—Martinique brown trembler.
—Plain wanderer.
—Bachman's warbler (wood).
—Barabados yellow warbler (wood).
—Kirtland's warbler (wood).
—Reed warbler.
—Rodrigues warbler.
—Gorill.
—Pileated gibbon.
—Kloss gibbon.
—Swamp deer.
—Persian fallow deer.
—McNeill's deer.
—Marsh deer.
—Key deer.
—Southern, planigale.
—Thin-spinned, porcupine.
—Mountain pygmy possum.
—Scaly-tailed possum.
—Menian prairie dog.
—Peninsular pronghorn.
—Sonoran pronghorn.
—Quokka.
—Volcano rabbit.
—Morro Bay kangaroo rat.
—Stick-nest rat.
—False water rat.
—Brushtailed rat-kangaroo.
—Gaimard's rat-kangaroo.
—Utah prairie dog.
—Tecopa pupfish.
—Owens River pupfish.
—Devil's Holo pupfish.
—Comanche Spring pupfish.
—Blue pike.
—Nekogigi.
—Noisy scrub-bird.
—Cebu black (thrush) shama.
—Newell's manx shearwater.
—Cape sable sparrow.
—Dusky seaside sparrow.
—Chinese giant salamander.
—Japanese giant salamander.
—Houston toad.
—Texas blind salamander.
—Santa Cruz long-tailed salamander.
—Desert slender salamander.
—Stephen island frog.
—Israel painted frog.
—Mountain anos.
—Pudu.
—Pampas deer.
—North Andean huemal.
—South Andean huemal.
—Long-tailed otter.
—Brown bear.
—Spatted sinsang.
—Chinchilla.
—Australian native mouse.
—Beaver.
—Hispid hare.
—Scaly anteater.
—Giant armadillo.
—Siamang.
—Gibbons.
—Goeldi's marmoset.
—Golden marmoset.
—Eastern Jerba marsupial.
—Large desert marsupial-mouse.
—Atlantic ridley turtle.
—Aquatic box turtle.
—Tuatara.
—Short-necked or swamp tortoise.
—Madagascar radiated tortoise.
—Galapagos tortoise.
—River (Tuntong) terrapin.
—San Francisco garter snake.
—Blunt-nosed leopard lizard.
—Anegada ground iguana.
—Barrington land iguana.
—Round Island day gecko.
—Day gecko.
—Gharial gavial.
—Orinoco crocodile.
—White-footed tamarin.
—Asian tapir.
—Brazilian tapir.
—Central American tapir.
—Mountain tapir.
—Philippine Tarsier.
—Tiger.
—Tasmanian tiger.
—Southern sea otter.
—Jaguar.
—Black lemur.
—Ring-tailed lemur.
—Leopard.
—Tiger.
—Shiny pigtoe pearly mussel.
—Higgin's eye pearly mussel.
—Pink mucket pearly mussel.
—Alabama lamb pearly mussel.
—White warty-back pearly mussel.
—Miyako Tango.
—Japanese crested ibis.
—Helmeted honeyeater.
—Crested (Akohekohe) honeycreeper.
—Hawaiian (Io) hawk.
—Galapagos hawk.
—Anjouan Island sparrow hawk.
—Audouin's gull.
—Horned guan.
—Atitlan Grebe.
—Eyrean (flycatcher) grass-wren.
—Slender-billed grackle.
—Christmas Island goshawk.
—Hawaiian (Nene) goose.
—Alcutian Canada goose.
—Hawaiian gallinule.
—Seychelles (weaver-finch) fody.
—Whitenecked rock-fowl flycatcher.
—Tahiti flycatcher.
—Seychelles black flycatcher.
—Scarletbreasted robin flycatcher.
—Palau fantail flycatcher.
—Greynecked rock-fowl flycatcher.
—Pabrump killfish.
—Ikan temolek.
—Hawaii akepa.
—Maui akepa.
—Kauai akialoa.
—El Segundo blue butterfly.
—Lotus blue butterfly.
—Smith's blue butterfly.
—Mission blue butterfly.
—San Bruno elfin butterfly.
—Lange's metalmark butterfly.
—Euler's (tyrant) flycatcher.
—Chatham Island robin flycatcher.
—Laysan and Nihoa (honeycreepers) finches.
—Arctic-peregrine falcon.
—American peregrine falcon.
—Chinese egret.
—Spanish imperial eagle.
—Southern bald eagle.
—Monkeyeating eagle.
—Broad-snouted caiman.
—Apaporis River caiman.
—Black caiman.
—Chinese alligator.
—(Caiman) yacare.
—South American turtle.

—Leatherback turtle.
—Hawksbill turtle.
—Kauai and Maui nukupuus.
—Formosan yellow-throated marten.
—Monk Seal.
—Spider monkey.
—Red-backed squirrel monkey.
—Woolly spider monkey.
—Field's mouse.
—Gould's mouse.
—New Holland mouse.
—Salt marsh harvest mouse.
—Shark Bay mouse.
—Shortridge's mouse.
—Smoky mouse.
—Eastern mouse.
—Western mouse.
—Eastern native-cat.
—Numbat.
—Ocelot.
—Orangutan.
—Arabian oryx.
—Cameroon clawless otter.
—Giant otter.
—La Plata otter.
—Florida panther.
—Little planigale.
—Orange-footed pimpleback pearly mussel.
—Rough pigtoe pearly mussel.
—Fat pocketbook pearly mussel.
—Cumberland monkeyface pearly mussel.
—Appalachian monkeyface pearly mussel.
—Pale lilliput pearly mussel.
—Nicklin's pearly mussel.
—Tampico pearly mussel.
—Cumberland bean pearly mussel.
—Bahama swallowtail butterfly.
—Schaus swallowtail butterfly.
—Maleo magapode.
—Nihoa (warbler) millerbad.
—Tinian (tyrant flycatcher) monarch.
—Akjapoiaau (honeycreeper).
—Shortailed albatross.
—Masked bobwhite (quail).
—Western bristlebird (flycatcher).
—Mauritius olivaceous bulbul.
—Sao Miguel bullfinch (finch).
—Great Indian bustard.
—Cahow (Bermuda petrel).
—Andean condor.
—California condor.
—Hawaiian coot.
—Hooded crane.
—Japanese crane.
—Mississippi sandhill crane.
—Siberian white crane.
—Whooping crane.
—Hawaii creeper.
—Molokai Creeper (Kakawahfe) (Honeycreeper).
—Oahu creeper (Alauwahlo) (Honeycreeper).
—Hawaiian crow (alala).
—Mauritius cuckoo-shrike.
—Reunion cuckoo-shrike.
—Red-billed curassow.
—Trinidad white-headed curassow.
—Eskimo curiew.
—Cloven-feathered dove.
—Grenada dove.
—Palau ground dove.
—Hawaiian duck (koloa).
—Laysan duck.
—Mexican duck.
—White-winged wood duck.
—Swinhoe's pheasan.
—Sciater's monal pheasant.
—Palawan peacock pheasant.
—Mikado pheasant.
—Imperial pheasant.
—Edward's pheasant.
—Chinese monal pheasant.
—Cabot's tragopan pheasant.
—Brown-eared pheasant.
—Blyth's tragopan pheasant.
—Bar-tailed pheasant.
—Hawaiian dark-rumped petrel.
—Galopagos penguin.
—Brown pelican.
—Maui (honeycreeper) parrotbill.
—Long-tailed marsupial.
—Kauai Oo.
—Arabian ostrich.
—West African ostrich.
—Ou.
—Anjouan scops owl.
—Palau Owl.
—Seychelles owl.
—Mrs. Morden's owlet.
—Palila.
—Forbes' parakeet.
—Golden-shouldered parakeet.
—Mauritius ringnecked parakeet.
—La Perouse's megapode.
—Redfaced malkoha.
—Seychelles (thrush) magpie-robin.
—Kokako (wattlebird).
—Florida Everglade (snail kite) kite.
—Grenada hookbilled kite.
—Cuba hookbilled kite.
—Seychelles kestrel.
—Mauritius kestrel.
—Kakapo (owl parrot).
—Kagu (rail).
—Hog deer.
—Musk deer.
—Bactrian camel.
—Babiroussa.
—Asian tapir.
—Mountain zebra.
—Przewalski's horse.
—Ochre-marked parakeet.
—Orange-bellied parakeet.
—Paradise parakeet.
—Scarlet-chested parakeet.
—Turquoise parakeet.
—Bahamas parrot.
—Ground parrot.
—Imperial parrot.
—Night parrot.
—Puerto Rican parrot.
—Red-browed parrot.
—St. Lucia parrot.
—St. Vincent parrot.
—Thick-billed parrot.
—Philippine deer.
—Asian Elephant.
—Chimpanzee.
—Pigmy Chimpanzee.
—Tonkin-snub-nosed monkey.
—Purple-faced langur.
—Long-tailed langur.
—Toque macaque.
—Japanese macaque.
—Formosan rock macaque.
—Gelada.
—Stumptail macaque.
—Black howler monkey.
—White-footed tamarin.
—Philippine tarsier.
—lesser slow lovis.
—Francois' leaf monkey.
—Drill.
—Mandrill.
—Black colobus.
—White-collared mangabey.
—L'hoest's monkey.
—Red-bellied monkey.
—Red-earned-nose-spotted monkey.
—Diana monkey.
—Yellow-tailed woolly monkey.
—Pied tamarin.
—Cotton-top marmoset.
—Shapo.
—Argali.
—Urial.
—Chiltan markhor.
—Kabal markhor.
—Straight-horned markhor.
—Chamois.
—Sumatran serow.
—Goral.
—Saiga antelope.
—Dorcas gazelle.
—Giant sable antelope.
—Lechwe.
—Indian python.
—Desert monitor.
—Bengal monitor.
—Yedow monitor.
—Komodo island monitor.
—Peacock soft-shell turtle.
—Black soft-shell turtle.
—Cuatro Cienegas soft-shell turtle.
—Indian flap-shell tortoise.
—Angulated tortoise.
—Geometric turtle.
—Burmese peacock turtle.
—Indian sawback turtle.
—Three-keeled Asian turtle.
—Spotted pond turtle.
—Philippine crocodile.
—Ceylon mugger crocodile.
—Mugger crocodile.
—Siamese crocodile.
—African slender-snouted crocodile.
—Congo dwarf crocodile.
—African dwarf crocodile.
—Tomistoma.
—Dibatag.
—Anoa.
—Bawean deer.
—Shon.
—Barbary serval.
—Seleding.
—Mediterranean monk seal.
—White-nosed saki.
—Sifikas.
—Sumatran rhinoceros.
—Northern white rhinoceros.
—Javan rhinoceros.
—Great Indian rhinoceros.
—Rhim.
—Queensland rat-kangaroo.
—Plain rat-kangaroo.
—Hesucur's rat-kangaroo.
—Dibbler.
—Asiatic wild dog.
—Dugong.
—Black-footed ferret.
—Tasmanian forester.
—Ivory-billed woodpecker.
—Imperial woodpecker.
—Seychelles white-eye.
—Ponape great white-eye.
—Puerto Rican whip-poor-will.
—Western (thrush) whipbird.
—Seychelles warbler.
—Semper's warbler.
—Pahranagat bonytail.
—Cameroon toad.
—Monteverde toad.
—African viviparous toads.
—Panamanian golden frog.
—Red hills salamander.
—Pine barrens treefrog.
—Golden coquil.
—St. Croix ground lizard.
—Giant Anole.
—Ala Balik.
—Ayumodoki.
—Mexican blindcat.
—Warm Springs Pupfish.
—Colorado River squafish.
—Unarmored threespine stickleback.
—Sborinose sturgeon.
—Catfish.
—Giant catfish.
—Humpback Chub.
—Mohave Chub.
—Cleek.
—Longjaw Cisco.
—Cui-ui.
—Kendall Warm Springs Dace.
—Moapa Dace.
—Bayou Darter.
—Fountain Darter.
—Maryland Darter.
—Okaloosa Darter.
—Watercress Darter.
—Big Bend Gambusia.
—Clear Creek Gambusia.
—Pecos Gambusia.
—Scioto madtom.
—Asian bonytongue.
—Stick-nest rat.
—False water rat.
—Brush-tailed kangaroo rat.
—Gaimard's rat-kangaroo.
—Lesuer's rat-kangaroo.
—Plain rat-kangaroo.
—Queenlands rat-kangaroo.
—Great Indian-rhinoceros.
—Vinaceous breasted parrot.
—Red-spectacied parrot.
—Bahaman or Cuban parrot.
—Mindoro zone-tailed pigeon.

—Khar turuut tsakhiai.
—Nordmann's greensbank.
—Lord Howe wood rail.
—White-naped crane.
—Black-necked crane.
—Cuba sandhill crane.
—Montezuma quail.
—Elliot's pheasant.
—Mitu.
—Black-fronted piping-guan.
—Peregrine falcon.
—Greenland white-tailed eagle.
—Harpy eagle.
—Pink-headed duck.
—Campbell Island flightless teal.
—Frigate Bird.
—Abbott's booby.
—Solitary tinamou.
—Laysan (Laysan duck) Teal.
—Masked Bobwhite Quail.
—White-eared Pheasant.
—Swinhoe Pheasant.
—Palawan peacock Pheasant.
—Mikado Pheasant.
—Humes (Bar-tailed) Pheasant.
—Edward's Pheasant
—Brown-eared Pheasant.
—Nene (Hawaiian) Goose.
—Hawaiian (Koloa) Duck.
—St. Lucia wren.
—New Zealand bush wren.
—Guadeloupe house wren.
—Tristram's woodpecker.
—Red-cockaded woodpecker.
—Swayne's hartebeast.
—Pying hog.
—Barbary hyaena.
—Brown hyaena.
—Pyreanean ibex.
—Walia ibex.
—Black-faced impala.
—Indris.
—Juguar.
—Eastern gray kangaroo.
—Red kangaroo.
—Western gray kangaroo.
—Leopard.
—Ring-tailed lemur.
—Jaguar.
—Right whale.
—Black lemur.
—Mexican wolf.
—Gray bat.
—Queensland hairy-nosed wombat.
—Wild yak.
—Barnard's wombat.
—Red wolf.
—Northern Rocky Mountain wolf.
—Maned wolf.
—Eastern timber wolf.
—Sperm whale.
—Sei whale.
—Humpback whale.
—Gray whale.
—Finback whale.
—Bowhead whale.
—Blue whale.
—Yellow footed rock wallaby.
—Western hare wallaby.
—Parma wallaby.
—Crescent nila-tail wallaby.
—Wouldfin.
—Greenback cutthroat trout.
—Lahontan cutthroat trout.
—Paiute cutthroat trout.
—Manus Island tree snail.
—Lemur.
—Do.
—Langur.
—Howler monkey.
—Goldan langur.
—Javan rhinoceros.
—Northern white rhinoceros.
—Sumatran rhinoceros.
—White-nosed saki.
—Mediterranean monk seal.
—Hawaiian monk seal.
—Seledang (guar).
—Sumatran serow.
—Barbary serval.
—Shapo.
—Shou.
—Siamang.
—Sifakas.
—Brazilian three-toed sloth.
—Cuban solenondon.
—Haitan solenondon.
—Delmarva peninsula fox squirrel.
—Barbary stag.
—Kashmir stag.
—Tamaraw.
—Golden-rumped tamarin (golden-headed taramin; golden-lion marmoset).
—Pied tamarin.
—Birdwing pearly mussel.
—Dromedary pearly mussel.
—Yellow-blossom pearly mussel.
—Curtis' pearly mussel.
—Sampson's pearly mussel.
—White cat's paw pearly mussel.
—Green-blossom pearly mussel.
—Tuberculed-blossom pearly mussel.
—Turgid-blossom nearly mussel.
—Fine-rayed pigtoe pearly mussel.
—Nile crocodile.
—Morelet's crocodile.
—Cuban crocodile.
—American crocodile.
—Jamaican boa.
—Puerto-Rican boa.
—American alligator.
—Mariannas mallard.
—Swinhoe's pheasant.
—Palawan peacock pheasant.
—Mikado pheasant.
—Bar-tailed pheasant.
—Edward's pheasant.
—Brown-eared pheasant.
—Yellow-shouldered blackbird.
—Red siskin.
—White-breasted silvereye.
—Western rufous bristlebird.
—Koch's pitta.
—White-winged cotinga.
—Banded cotinga.
—Helmeted hornbill.
—Giant scops owl.
—Resplendent quetzel.
—Hook-billed hermit.
—Golden parakeet.
—Red-capped parrot.
—Little blue macaw.
—Indigo macaw.
—Glaucous macaw.
—Kouprey.
—Doue langur.
—Pagi Island langur.
—Black lechwe.
—Lemnrs.
—Leopard.
—Formosan clouded leopard.
—Snow leopard.
—Asiatic lion.
—Spanish lynx.
—Lion-tailed maeaque.
—Amazonian manatee.
—West Indian manatee.
—Tana River mangabey.
—Margay.
—Proboscis monkey.
—Clouded leopard.
—Bobcat.
—Andean cat.
—Marbled cat.
—Jaguarundi.
—Leopard cat.
—Temminchk's cat.
—Costa Rican puma.
—Black-footed cat.
—Flat-headed cat.
—Southern river otter.
—Marine otter.

H.R. 14104

By Mr. DUNCAN of Tennessee:

—Page 31, line 20, strike out "subsection" and insert in lieu thereof "subsections".

Page 32, line 21, strike out the closing quotation marks and the final period.

Page 32, after line 21, insert the following: "(i) TELLICO DAM AND RESERVOIR PROJECT.—The provisions of this Act shall not apply with respect to the construction and operation of the Tellico Dam and Reservoir project in Tennessee. The harassment, harm, killing, or wounding, if any, of any endangered species or threatened species attributable to the construction or operation of such project shall not be deemed to be a taking of any endangered species within the meaning of section 9(a)(1) of this Act or the taking of any threatened species if a prohibition against the taking thereof is imposed by regulations pursuant to section 4(d) of this Act.".

H.R. 14104

By Mrs. MEYNER:

—Page 30, strike out line 20 and all that follows through page 31, line 17.

EXTENSIONS OF REMARKS

A PREVENTIVE HEALTH PROGRAM FOR CHILDREN

HON. ANDREW MAGUIRE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. MAGUIRE. Mr. Speaker, this week the Congress has the opportunity to support a concept which has come of age in American health care. This concept—prevention of disease and promotion of health—is a recent phenomenon in our Nation's health policy, although it is as old as man's instinct for self-preservation. Congress, the administration, and the American health care consumer have all recognized the value of prevention, especially in the past few years when the amount of funds for health care has increased so dramatically.

The Child Health Assurance Act (CHAP) which we are now considering is one way we can show the American health care consumer that we are truly interested in preventing disease and promoting health. The CHAP program, a preventive health program for medicaid children, would replace the existing early and periodic screening, diagnosis, and treatment program, which has been unsuccessful in reaching the children it was designed to reach. It would bring them into an ongoing source of health care. CHAP would assure that 13 million medicaid-eligible children receive preventive health care and that 110,000 additional pregnant women receive prenatal care.

What kind of health assessment would be provided to the CHAP child? HEW guidelines presently include the following assessment procedures: Health and developmental history, physical examination, developmental assessment, immunizations, vision screening, hearing test, appropriate laboratory procedures, and dental assessment. Under CHAP the child who has been assessed would be treated, or at least referred for any health condition found. Services provided would include, in addition to the basic medicaid services, all ambulatory medical and mental health services which medicaid will reimburse, and routine dental care for all medicaid children.

Prenatal care will be provided to women who do not already have a child, but who would receive AFDC after the child is born. Sound medical management can limit the possibility of harm to mother and infant due to the pressure of chronic or acute illness in the pregnant woman. Prenatal care can effectively reduce the incidence of premature births, neonatal deaths, and other conditions associated with high risk pregnancies.

States have, in the past, been reluctant to implement the EPSDT program because there were no incentives for the States to find these children and provide them with preventive health care. The new CHAP program will give States an incentive to increase outreach efforts to bring children into an ongoing source of health care and to follow the child to make sure he is treated for conditions discovered. The program will provide a higher Federal match for the services, reducing costs of implementation for many States.

The positive cost/benefit ratio of preventive health care has been well documented before the Congress in recent years. Preventing disease and disability by providing early diagnosis and treatment of medical conditions has the potential to drastically reduce our health care budget. Moreover, by focusing this preventive effort on children greatly increases the potential long-term benefits. One State has reported that the total expenditures for children who had been screened under the present program—early periodic screening, diagnosis, and treatment—were 47 to 48 percent lower than those who had not been screened. This effect is greatest when a full range of services is provided to the children, including outreach, physical examinations, and counseling.

There are those in the Congress who object to the CHAP bill because of its cost. However, a businessman would not hesitate to invest in a piece of equipment or a service which could reduce his future operating expenses by almost half. Should we invest in our children less that we would in our businesses? In passing the CHAP bill, we are making a sound investment to protect the health of the children and future adults of this country, and a sound financial investment toward reducing long-term expenditures for chronic health problems.●

A TRIBUTE TO GENERAL PULASKI; AMERICAN REVOLUTIONARY WAR HERO

HON. JOHN G. FARY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. FARY. Mr. Speaker, October 11, will mark the 199th anniversary of the death of an outstanding Polish patriot who, during the Revolutionary War, sacrificed his life for our country. Gen. Casimir Pulaski, a hero of two continents, will always be remembered as a proud and courageous soldier, the founder of the American cavalry, and a man who gave his life for the cause of American liberty.

Born in 1748 in Podolia, Poland, of an aristocratic and distinguished family, Count Pulaski turned his interest to military affairs. At the age of 20 he joined his father and brother in forming the Confederation of Bar and, by so doing, pledged his time, fortune, and life to the independence of his country. Pulaski led the Polish insurrection against the domination of Poland by Russia, Austria, and Prussia. His heroic feats against overwhelming odds, and his fame as a cavalry leader spread throughout Europe.

General Pulaski first heard of the American rebellion against the British in Paris, and in the summer of 1777 volunteered his services to Washington's army. Impressed with Pulaski's credentials, Washington recommended that Congress commission him as a brigadier general so that he could command the cavalry.

Rather than waiting for his commission to be approved by Congress, Pulaski enlisted in the American Army as a volunteer and was given the rank of captain.

Pulaski fought with Washington at Brandywine and was credited with saving Washington's army by means of a bold cavalry charge. He also fought in the battle at Germantown. His commission as a brigadier general finally came through and he took command of the cavalry at Trenton, N.J. During the winter of 1777–78, General Pulaski joined forces with Gen. Anthony Wayne and helped defeat a British division at Haddonfield, N.J. Generals Pulaski and Wayne again fought side by side in skirmishes at Cooper's Ferry.

During the winter of 1779, Pulaski was ordered south to join forces with Gen. Benjamin Lincoln. Pulaski's Legion arrived in Charleston, S.C., while the city was under heavy seige and on the verge of surrender. He was successful in lifting the morale and the resolve of the defenders until reinforcements under General Lincoln could lift the seige itself.

General Lincoln, General Pulaski, and French Admiral D'Estaing then combined forces against the British who were occupying Savannah. Pulaski was severely wounded in this charge and died aboard the brig *Wasp* on the way to Charleston. Although he was buried at sea, funeral services were held afterward in the city of Charleston and the citizens of Savannah, Ga., erected a monument to the memory of Gen. Casimir Pulaski.

Pulaski's untimely death at the head of this famous cavalry charge served his noble dedication to the ideals for which the colonists fought. His example of sacrifice and devotion to our Nation's cause is a model of patriotism for all time.

I am sincerely proud to join Americans of Polish descent in the Fifth District in Chicago, and all over this great Nation in commemorating the 199th anniversary of General Pulaski's supreme and inspiring sacrifice during our American War of Independence.●

TRIBUTE TO CROSS SICLARE, A MAN WHO LIVED AND SHARED THE AMERICAN DREAM

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BIAGGI. Mr. Speaker, America has welcomed millions of immigrants to its shores and has grown strong and remained free as a result of their productivity, loyalty, and service. Few of these new citizens personify the true spirit of American as fully as Cross Siclare, who passed away on July 24 in Brooklyn, N.Y., at the age of 88. In a very distinctive manner, he embodied the American way of treating neighbor as brother, of investing time, brain, and energy in the pursuit of happiness for himself, his family, and community, and of sharing the fruits of his labor with every friend and many strangers throughout our country and Italy, the country from which he came as a young man in search of the American dream.

Mr. Siclare came to America with his father at the age of 12. Unable to afford a formal education, he worked on farms, in construction, and as a water boy during the laying of the railroad tracks in Pennsylvania. His ultimate goal to set up his own paper converting operation became a reality in 1912.

As founder of Cross Siclare/New York, Inc., one of the country's largest and most sophisticated printing, paper converting and merchant operations, and its guiding hand until his semi-retirement in 1965, Mr. Siclare occupies a distinguished place in the annals of New York's graphic arts industry.

Concurrent with his heading the rapidly growing paper operation, he took over the helm of the U.S. Cinder Corp. and guided it through the depression years. As his paper converting business continued to grow, he divided his executive attention between it and new ventures into real estate, home building, and construction materials.

Mr. Siclare was widely and well-respected for his business acumen and integrity, his civic and community activities, and his philanthropic responses to myriad causes here and abroad. For many, many years, I was privileged to be his friend.

Throughout his life in America, he eminently championed the democratic ideals set forth in our Constitution. His good works influenced the lives of count-

less Americans outside his immediate circle of family, friends, employees, and business colleagues. He cofounded and generously supported over many decades, a community hospital in his birthplace, Scilla, Italy, where thousands of Italians have received help and solace. On the 50th anniversary of his company's founding, the mayor of Scilla, Italy, came to Rye, N.Y. to award Mr. Siclare a Gold Medal of Merit.

Through his ongoing involvement since the inception of the American Committee On Italian Migration, he has been a vital force in its effectiveness and its cumulative success in opening up the immigration quotas so that today more Italians like himself are being welcomed than previously under the McCarran Act.

Through his humanity, expansiveness, and compassion, Mr. Siclare inspired all, like myself, who knew him. Proudly American, he had a pioneering spirit, indomitable drive, and inventive imagination, which he put to work in everything he did as a private person, citizen, executive, and friend. At the birth of his company, his horse and buggy were both working capital and headquarters as he plied the New York streets carrying paper from the source to the printer. Today, the corporation he founded operates from a 25-acre complex in Staten Island, N.Y. with over 100 employees.

Among the many honors bestowed upon him during his long career, the most recent was on September 25, 1977, when he was elected a charter member of the Hall of Fame of the Italian Historic Society of America.

In 1970, he received a meritorious achievement award from the Italian-American Professional and Businessmen's Association for his 50 years of dedicated service. He was similarly honored for 25 years of loval service by the Newton Falls Paper Mill. For many decades, he was an active member of the Knights of Columbus.

Included in his legacy of good works and business achievements, is the ongoing integrity which Mr. Siclare, throughout his life, encouraged among his family, friends, employees, and all whose lives he touched.

In today's graphic arts industry, the corporation which Mr. Siclare founded remains the sole family-owned paper distribution operation which has withstood the economic pressures of depression, war, recession, paper shortage, and industry upheavals without resorting to a merger or going public to survive and grow.

In the top executive position is Mr. Siclare's son, Clemente, who took over the duties of president when his father entered semi-retirement in 1965. Assisting Clemente in top management roles are his brothers, Rocco and Joseph.

Other children of the late Mr. Siclare who have over the years played key roles in the corporation's growth are Victoria, Eugenia, Josephine, and Theresa.

The remaining members of Mr. Siclare's immediate family include 15 grandchildren and 7 great grandchildren.

To his loving family, dear friends, employees, and colleagues, and the many more whose lives he deeply touched, we extend our warmest wishes that they will enjoy happiness and prosperity as Cross Siclare would have wanted.

May he truly be blessed and rest in peace. His work is done.●

WE DO NOT NEED A DEPARTMENT OF EDUCATION

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. MICHEL. Mr. Speaker, I recently read two editorials and one column arguing against the creation of a Department of Education. The Chicago Tribune, the Washington Post, and Post columnist, William Raspberry offer persuasive arguments, based on educational and financial data, that should convince anyone interested in the facts.

When the Tribune and the Post agree and when such a distinguished and thoughtful columnist as Raspberry agrees with both of them, the arguments they make must be listened to with respect.

At this point, I wish to insert in the RECORD "Education and the Feds," Chicago Tribune, October 9, 1978; "Concerning the E in HEW," Washington Post, October 9, 1978; and "Schools in the Cabinet," by William Raspberry, October 6, 1978.

[From the Washington Post, Oct. 6, 1978]

SCHOOLS IN THE CABINET

(By William Raspberry)

The House leadership has delayed until this week—and quite possibly until the next session of Congress—a vote on President Carter's proposed new Department of Education.

If it turns out that consideration of the measure is delayed until after the scheduled Oct. 14 adjournment, you can chalk up one more entry on the list of good things that happen for bad reasons.

The ostensible reason for the delay is that congressional opponents of the proposed department are dragging their feet on other items of the president's "must" legislative list, including energy, taxes and public works. By taking the education bill off the congressional calendar, Speaker Tip O'Neill hopes to speed action on these other measures.

That may be a bad reason, but the result could be very good indeed—if it gives us time to consider whether a Department of Education is really the splendid idea its backers claim.

For what is involved is far more than the organizational efficiency of which the president is so fond. What is at issue—or would be, if the public were aware of it—is the extent to which the federal government has a legitimate role in making education policy.

David W. Breneman and Noel Epstein, writing in The Washington Post last August, put their finger on the real issue: "Contrary to widespread belief, the proposed department is not chiefly an issue of reorganizing or consolidating federal education efforts, of increasing the time or money spent on education or of deciding which existing agency should or should not be absorbed by a new department.

"Establishing a Cabinet-level department is a back-door way of *creating* a national education policy, of breaking with the long tradition of a limited federal involvement in education and of virtually no federal responsibility for schools and colleges themselves."

The reorganization-for-efficiency argument has undeniable appeal. A host of federal agencies now share in the government's education involvement. Wouldn't it make sense to bring under one roof, under one Cabinet secretary, the educational aspect of the GI Bill, of Head Start, of student loan programs, of Title I and the rest?

Yes, if the basic purpose of these programs is education.

It isn't. Their basic purposes, depending on how they came into existence, on who their constituencies are and on who administers them, are veterans' welfare, nutrition, income redistribution, civil rights and child welfare.

As Head Start supporters made clear when they lobbied successfully for Head Start's exclusion from the proposed department, education is only the means by which other things are made to happen. To lump all these programs together because of their one common thread—education—would virtually dictate that they would all become primarily educational programs, administered, no doubt, by a department secretary whose background was education.

It would also do something else: It would bring the federal government, willy-nilly, headlong into national education policy.

Whether that is what is intended is beside the point. How, for instance, could a secretary of education resist the urge to install a single, standardized test of educational achievement, if only to be able to judge the efficacy of various federally funded programs?

Once such a national standard exists, local school officials will almost certainly use it to determine what they teach and how they teach it.

This is not to argue that such national standards should not exist. It is simply to say that they should not be introduced without careful consideration of the question—a national debate, if you will. Because the proposed Department of Education is being presented as a reorganization, rather than a shift in policy, that vital debate is not taking place.

Perhaps the most appealing arguments for the department are 1) the efficiency resulting from the elimination of duplicative reports and paperwork and 2) the higher visibility of education that would result from the attention of a full-time secretary of education.

As a matter of fact, if a competent and sensitive generalist like HEW Secretary Joseph Califano, or his assistant secretary for education, Mary Berry, were named to head the new department, many of the more optimistic projects for the proposal might be achieved.

But what we are likely to get is a secretary from the education establishment, which means that the basic rationale for the now-scattered programs would become secondary to education. We could wind up evaluating school lunch programs on whether or not they increased test scores.

I, for one, see no particular advantages to the proposed consolidation, other than to provide a political victory for President Carter, who promised it.

That's not enough. Delaying consideration of the measure until the next term would give us time to argue the proposal on its true merits—not just on the nebulous promises of its supporters.

[From the Chicago Tribune, Oct. 9, 1978]

EDUCATION AND THE FEDS

The Senate has approved a cabinet-level Department of Education, an action sponsored by Sen. Abraham Ribicoff [D., Conn.] ever since 1965. The support of President Carter and the National Education Association finally enabled him to get the measure past his fellow senators. But the House has not

yet acted; Sen. Ribicoff may have to wait a while longer and try again.

Those for a separate department contend that education is a little step-daughter, a Cinderella bullied by her favored sisters in the Department of Health, Education, and Welfare. Historically, education has not been a major concern of the federal government, and federal education appropriations lack both the size and the inevitability of appropriations for health and welfare. Proponents of a separate department hope to get more money for themselves and their constituents if education can have its own house. Also, a secretary of education would have more prestige and perhaps more clout than either the present assistant secretary for education or the commissioner of education.

Among the opponents of a separate department are the American Federation of Teachers and its president, Albert Shanker. They want more money, too, but place less confidence in the effects of a formal reorganization than does the NEA. "If education has clout and the confidence of the American people," Mr. Shanker says, "it will get the dollars it needs. If it doesn't, it won't." Brave words—if not necessarily true. As American public schools have become increasingly unionized, their employes have relied more on clout and less on confidence. In a number of cities, they have done well for themselves financially with a lot of clout and very little public confidence.

Other opponents of a separate Department of Education dread the growth of the federal role in education. The more the costs of schooling shift to the federal government, the more they shift to that level of government that can print money. The inflationary implication is sinister. And the more control of schooling shifts to the federal government, the more control becomes centralized and indifferent to local needs and wishes. Already, the relatively small proportion of school budgets that comes from Washington has given HEW bureaucrats a coercive power over the public schools that is frequently exercised in an arbitrary way.

The heavy hand of Washington is felt also by higher education. Some universities have compromised their proper power to appoint their own faculties without bureaucratic interference, and others have had to spend too much time and energy in educating HEW functionaries in the criteria of faculty recruitment.

For many decades the federal Office of Education did not do much besides compiling statistics on what others did in education. It was in those decades that American education, from kindergarten through graduate and professional schools, evolved into the institutions we know today. They have been characterized by diversity and independence, and most of the time have enjoyed public confidence and often affection.

The best reasons for opposing a cabinet-level Department of Education are that it would almost inevitably boost inflation and diminish diversity and independence. Those are good reasons indeed. If members of the House of Representatives understand them, they will not follow the Senate's bad example. Any good results from consolidating the many school-related programs scattered through various executive departments can be achieved without turning HEW into twins, each with an insatiable appetite for money and power.

[From the Washington Post, Oct. 9, 1978]

CONCERNING THE E IN HEW

As time grows short and the end of the session approaches, Congress faces painful choices among bills to be passed and bills to be abandoned. To ease the pain, we offer a suggestion. There is one prominent bill that Congress can dump overboard with a clear conscience, and that is the defective and divisive attempt to establish a new Department of Education.

The bill is the inspiration of the National Education Association, an organization that has much the same relation to the public schools that the plumbers union has to the plumbing business. A couple of years ago, before the last presidential election, the NEA pressed Mr. Carter for a position. He promised to support a new department. The NEA cheered, and endorsed him. That may be a reason for Mr. Carter to push this bill—but it's not much of a reason for anybody else to go along.

The case for the bill is usually couched in large and cloudy terms of prestige and recognition. Education is important and therefore it follows, according to the argument, that education deserves a seat in the Cabinet, a seal, and a large building of its own on the Mall. Perhaps the reader will suspect that there must be a bit more to it than that vague and vacuous rationale. We share the suspicion.

The NEA, in fact, has good reason to suppose that it would have far more influence in a small department devoted to one subject than it can ever hope to enjoy in the labyrinths of the present Department of Health, Education and Welfare. In that trinity of subjects, education ranks third in terms both of federal money and federal responsibility. But there is a real danger that the new department would become the special possession of the NEA. The bill is firmly opposed, incidentally, by the NEA's rival union, the American Federation of Teachers, and by the National Catholic Education Association.

The decision to establish a new federal department usually constitutes a statement of new federal purpose. The most recent department, Energy, was a response to the oil crisis of 1973–74 and to the realization that the country was going to need stronger and better-calculated policy. The Transportation Department was set up in 1966 to bring order among the dozens of bureaus and boards that, with steadily rising federal outlays, were working not only at cross purposes with each other but frequently in competition with each other.

You could make a case for a Department of Education if you saw a great and urgent necessity for broad new federal authority over the schools. But the present pattern of decentralized control is working very well. You could make a case for a department if you believed that state and local school systems were in deep financial need from which only huge new federal appropriations could rescue them. But at the moment the state and local governments are, collectively, running a surplus of $10 billion a year while the federal budget is $38 billion in the red.

Over the summer the bill has become increasingly entangled in the bureaucratic warfare over which programs to bring into a new department and which to leave out. The House leadership has now postponed the final vote for at least another week, and suggests that it may never come up. That would be fine. After long debate, the legislation's sponsors are still unable to demonstrate any plausible public benefit in it. On the contrary, by inviting greater federal intervention and distorting the present satisfactory balance of responsibilities, it is a good deal more likely to bring real harm.●

ST. CATHARINE'S CHURCH CELEBRATES 75TH ANNIVERSARY

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LUKEN. Mr. Speaker, during the week of October 15–22, St. Catharine Parish, located in the Westwood area of Hamilton County, will celebrate its diamond jubilee with a week-long schedule of special events. It will be my pleasure to take part in a 75th Anniversary dinner on Sunday, October 15, after a special 3:00 Mass, presided over by Archbishop Joseph L. Bernadin.

The history of this church is as interesting as it is long. In fact, an elaborate church history book is being prepared and printed for this occasion through the combined efforts of parishioners Mrs. Bertha Trefzger and Robert Brodbeck, and Pastor Ralph Bange, and Associate Pastor Carl Bach. The parish has grown from under 70 families in 1903 to its present membership of 1,739 families, and the church has held services in various locations throughout that time. Originating as an offshoot of St. Aloysius Church in Bridgetown, St. Catharine's congregation celebrated its first Sunday mass on September 20, 1903, in Donnelly Hall on Montana Avenue, under the pastorship of Monsignor Joseph A. Tieken. Subsequent locations for St. Catharine's Church activities included a 1-year stint in the YMCA meeting rooms on the 2d floor of the Westwood Town Hall.

The first permanent church was built at Fischer Place and Wunder Avenue; it was dedicated on September 13, 1904. The old church building presently serves as part of the church school, which is attended by some 630 children. The present church structure was dedicated in 1923, and Monsignor Tieken served as pastor there until his death in 1948.

I hope my colleagues will join with me in congratulating the members and leadership, past and present, of St. Catharine's Church, for 75 years of spiritual service to the community.●

DOMESTIC VIOLENCE ASSISTANCE ACT SUPPORTED

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. DOWNEY. Mr. Speaker, this week I will support H.R. 12299, the Domestic Violence Assistance Act.

One of the unique features of this bill, sponsored by my distinguished colleague, Representative LINDY BOGGS, is that it will not enlarge the Federal bureaucracy. This act will channel Federal funds, in the form of grants, to community service groups who have demonstrated their ability to administer programs aiding victims of domestic violence. To insure substantial local support for the program, a grantee may only receive aid for a maximum of 3 years. And, these funds may not constitute more than 25 percent of their annual budget or $50,000. This money could be used to provide temporary shelters for victims, counseling and referral services, training for professionals and paraprofessionals in the field, and other related functions.

The need for these programs is undeniable. It is estimated that 10 to 20 percent of all American families are victims of violence in the home. These victims, including battered children and elderly

grandparents, as well as battered spouses do not come from a particular socioeconomic, ethnic, or geographic category. Rather, this serious problem cuts across all segments of society.

I would like to take a moment to commend two community programs in my district that are addressing this problem. The Victim's Information Service of of Suffolk and the Long Island Women's Coalition have been struggling to meet the needs of the area's residents with the limited funding they receive. With the additional Federal funds this bill would provide to eligible community centers across the Nation, these two organizations would be able to do an even better job of assisting the victims of family violence. I urge my colleagues to support H.R. 12299, a much needed piece of legislation which addresses a most serious problem.●

MILTON KRONHEIM—"A LIVING LEGEND"

HON. FRANK ANNUNZIO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ANNUNZIO. Mr. Speaker, a compassionate and humane man, Milton S. Kronheim, Sr., is celebrating his 90th birthday, and the Washington Post has called him "a living legend," and a man "with a genuine, exuberant interest in people of all races and creeds."

I could not agree more, because Milton has been my friend for many years and I know personally of his philanthropic and civic endeavors which have helped so many people, and have inspired the people of our Nation's Capital City for so many decades.

I extend to Milton my congratulations on his 90th birthday, and send him my best wishes for many more years of good health, success, and happiness as he continues his life of service.

A copy of the Washington Post's October 7, 1978, editorial saluting Milton Kronheim follows:

[From the Washington Post, Oct. 7, 1978]

ANOTHER JERSEY FOR MR. KRONHEIM

Each year at this time—in what has become sort of a community rite—some of the countless devoted friends of Milton S. Kronheim Sr. present him with a numbered jersey or shirt to mark his age. And for his birthday last Monday, hundreds of well-wishers from all walks of Washington life gathered at a weekend party to watch him don a "90." They came not merely out of respect for the man's age, but out of respect for the man—a living legend in this town who has always spent his long life helping people.

By trade, Mr. Kronheim was a wholesale liquor dealer, but by his deeds he is far better known today as a humanitarian. One can win that title, of course, by being a big contributor to worthy causes; and that Mr. Kronheim certainly is. But his financial and personal assistance in civic, philanthropic, social welfare and patriotic interests over the decades has been accompanied with a genuine, exuberant interest in people of all races and creeds. As his grandson Richard noted at the birthday party, Milton Kronheim's success is attributable to "his policy toward human beings * * * doing the right thing for the big guy and the small guy."

The "big guys" who have known him by his first name include the presidents since Roosevelt, justices of the Supreme Court and government and business leaders. But many others are proud to count him as a friend for his vigorous opposition to racial and religious bigotry when it meant a lot in this his native city. "I'm feeling pretty good," the honoree said after two solid hours of greeting people at his party. "This is exhilarating." We're glad to hear it, and to join in wishing him many more exhilarating times—and new shirts.●

ROC TO CELEBRATE 67TH ANNIVERSARY

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. GOODLING. Mr. Speaker, on October 10 the Republic of China (ROC) celebrated the 67th anniversary of its founding. It is appropriate that individual Members of this body should mark that occasion, and should use it to pay tribute to the accomplishments of our ally, the Republic of China on Taiwan.

At the same time we mark this auspicious occasion, Mr. Speaker, candor compels us to admit that Taiwan has undergone some anxious moments in recent years. There are those in this country who propose, and even urge, that for the sake of the supposed benefits of diplomatic relations with the People's Republic of China (PRC), we should be prepared to scuttle our longstanding relationship with the ROC. I would consider such an action reprehensible in the extreme. The derecognition of the ROC would be a disgraceful act, which would bring shame and deserved condemnation upon the head of the United States. And yet there are those who press for such a resolution of the China question.

On July 25 of this year, the Senate of the United States unanimously accepted an amendment bearing the names of Senator ROBERT DOLE, of Kansas, and RICHARD STONE, of Florida. The amendment spoke well of the Republic of China, and ended by enjoining the President not to take any actions which would materially alter our relations with the ROC without prior consultation with the Senate. In the course of the debate, Senator KENNEDY and others objected to a reference in the amendment to an integral linkage of the Mutual Defense Treaty between the United States and the ROC and other American security commitments in the Pacific area.

Toward the end of the debate, Senator KENNEDY printed in the RECORD a letter from Secretary of State Vance to Senator SPARKMAN. Mr. Vance said he was troubled by the amendment's suggestion of linkages between the United States-Republic of China Mutual Defense Treaty and other U.S. security commitments in Asia which were not contemplated at the time these agreements were signed and which have not been agreed to by our allies. As a result of such objections, the offending section was excised from the amendment, which was then adopted by 94 to 0.

Now, Mr. Speaker, Mr. Vance may be correct in the sense that there is no formal linkage between the Mutual Defense Treaty and our other defense commitments in the Pacific. But I submit that there certainly are informal connections between them. Indeed, in today's fast-moving and interconnected world, it could not be otherwise: What we do in one part of the globe has immediate impact upon all the rest of the world. And what bothers me about the Vance argument is this: If our commitment to the Republic of China is not linked to anything else, then it simply stands alone, and may be discarded with minimal difficulty and no more than minor damage to the security interests of the United States. In short, Taiwan is not vital to our security interests.

That is an argument we have heard before. In fact we have heard it a number of times before, and somehow just when one of our allies is under attack. Then the sophisticated analysts of foreign affairs begin to assure us that country X, which we would like to abandon, really is of little significance to our security interests. Those of us who are not quite so sophisticated in discussing foreign affairs become more than a little worried when we see how many of our former allies have fallen under Communist domination in this decade alone. And we are correct.

Mr. Speaker, the United States-ROC Mutual Defense Treaty is important to our national security interests. The world is taking very good note of how we have behaved with our allies. And if we abandon one of our most faithful allies without a shred of justification, our allies will understand very well what sort of ally we are. We must, therefore, reject out of hand the arguments advanced by Secretary Vance and others, however subtly they may be worded. For we are linked by historical, legal, and moral bonds to the people of Taiwan. If we violate them, we shall do immense, and perhaps even irreparable, damage to our own global security interests, to say nothing of our moral stance in the world.

Let us then pay tribute in these difficult times to the Republic of China on Taiwan. I hope only that we shall meet our obligations to them as well as they have met theirs to us.●

MIDDLE-INCOME STUDENT ASSISTANCE ACT

HON. BALTASAR CORRADA

OF PUERTO RICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. CORRADA. Mr. Speaker, I would like to express my full endorsement and support for H.R. 11274, the Middle-Income Student Assistance Act. Many times I have replied to a student who inquires about Federal student assistance pro-

grams, that they are unavailable because even though the family income was modest, it was too large for purposes of receiving a Federal grant or loan. I think that this bill is a giant step in bringing these programs closer to the needs of our hard pressed middle class.

The bill expands the eligibility criteria for the BEOG program, making approximately 1.5 million students eligible, it insures that lower income students are fully funded, establishes a $1,800 maximum BEOG grant, and eliminates current discriminations against self-supporting students.

The bill also increases the threshold levels for the college work study program and the supplemental educational opportunity grants (SEOG). By increasing the minimum funding level of CWS we will be creating an estimated 145,000 jobs, and by similarly increasing the threshold funding for SEOG, we will be providing close to 135,000 new grants.

With respect to the guaranteed student loan program, we lift the income ceiling, so that any student attending an institution of post-secondary education is eligible for subsidized interest payments on guaranteed student loans.

As a cosponsor of H.R. 11274, I urge my colleagues to approve this initiative, so we don't end up making a college education a scarce commodity, or the factor that forces a family into financial problems or insolvency.●

HON. ROBERT L. F. SIKES

HON. MELVIN PRICE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. PRICE. Mr. Speaker, I rise to pay tribute to my good friend from the State of Florida, Congressman ROBERT SIKES.

As we all know, BOB SIKES is retiring this year after 38 years in the House of Representatives. He has the distinction of having served the people of his State for longer than any other Florida Representative, a record which in itself stands as a tribute to the gentleman. I know that if BOB had not voluntarily left his seat, he would remain there forever. That says a lot for BOB and for the confidence the people of Florida have in him.

BOB was first elected to the 77th Congress in 1940. He resigned from the 78th Congress to serve our country in World War II, but so strong was the impression left on the people of Florida that he was returned to the 79th Congress. Florida and the Nation have had the benefit of BOB'S experience for more than three decades since that election, and I can say in all sincerity that few Members have represented their constituencies as well as he has done.

Few Members in this House can have failed to benefit from the experience of BOB'S nearly four decades in Congress. I have often worked closely with BOB on defense matters and have come away from our discussions with admiration for his legislative ability. No doubt many of my colleagues can tell similar stories.

Now BOB and his wife are leaving us for a well-deserved retirement. I join my colleagues in wishing them much happiness, and I know I speak for all of us when I thank BOB for 38 years of service and dedication to the Nation.●

TRANSAFRICA CRITICIZES RHODESIAN PRIME MINISTER'S VISIT

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. STOKES. Mr. Speaker, I would like to bring to your attention and to the attention of my colleagues in the House an article which appeared in the October 5 edition of the Washington Post on the visit of Rhodesian Prime Minister Ian Smith. Randall Robinson, the executive director of TransAfrica, a Washington based African-American lobbying organization, gives an incisive and intuitive account of Smith's bogus attempt to sway American policy and sentiments in favor of the illegal white minority regime. It is clear, Mr. Speaker, that I am unalterably opposed to Smith's visit. Our recognition of Smith in this manner is a slap in the face to the legitimate quest of the Zimbabwe liberation forces who are struggling valiantly to regain control of a nation which is rightfully theirs.

Mr. Speaker, so that my colleagues in the House can gain additional insight into Smith's visit, I respectfully submit the editorial "A Visa for Tyranny," which I feel places the issue in its proper international perspective.

A VISA FOR "TYRANNY"

(By Randall Robinson)

Over the past two weeks, virtually the entire national black leadership has urged the administration to remain steadfast in its compliance with United Nations Security Council mandatory sanctions against Rhodesia by rejecting the visa applications of Prime Minister Ian Smith and members of his executive council.

Conceding that granting a visa would be disastrous for our foreign policy in Africa, the State Department has meekly caved in to the wishes of the 27 conservative senators who had threatened to confirm no administion appointments and to stall all legislation until Smith was granted entry. Unless opposing court action succeeds, Smith will get his visa. Why?

The applicable law is clear enough.

Security Council Resolution 253 provides that all member states of the United Nations shall "prevent the entry into their territories, save on exceptional humanitarian grounds, of any person traveling on a Southern Rhodesian passport" and shall "take all possible measures to prevent the entry into their territories of persons whom they have reason to believe to be ordinarily resident in Southern Rhodesia."

Nor can it be persuasively argued that there is any basis for waiver here "on exceptional humanitarian grounds." The State Department's visa guidelines drawn to implement Resolution 253 provide that such "grounds" exist only for students, visitors of close relatives, applicants for special medical treatment and others of that general variety. Smith meets none of those waiver requirements. Moreover, the binding international obligations of Resolution 253 have been further invested with the force of American domestic law by at least two executive orders.

Any visa to Smith and his party, then, could only be unlawfully granted.

Yet, lamentably, and with vast American foreign-policy consequences, nearly a third of the Senate stands prepared to see America flagrantly violate a treaty-force Security Council resolution that we not only voted for but solemnly co-sponsored.

Perhaps many of us have forgotten why the Smith regime was made subject to U.N. sanctions in 1968 and why it remains subject to them today.

Unlike the African colonies preceding Rhodesia to independence and majority rule, Smith's regime in November 1965 defied British orders to surrender power to the African majority and announced for Rhodesia a "unilateral declaration of independence" from the United Kingdom. After several unsuccessful attempts to turn Smith from his cause of white minority rule, the British government requested the Security Council to impose limited sanctions in 1966 and total sanctions in 1968 against Rhodesia.

Earlier, Smith had banned the Zimbabwe National Union and the Zimbabwe African Peoples Union for peacefully advocating the African right to vote and majority rule. Smith also jailed much of the African leadership, including Joshua Nkomo and Robert Mugabe. Others were executed. The white Rhodesian resolve was unwavering. Under no circumstances were Africans to be given the right to govern themselves. Thus the war began.

Today with white emigration soaring, the economy a shambles and his army losing the war, Smith rejects the British-American diplomacy, which is supported by the Patriotic Front, Organization of African Unity, Western countries and the United Nations. He is taking one last desperate stab at maintaining de facto white minority rule through "internal settlement."

It is inconceivable that any American of democratic inclination could find Smith's proposal for an "internal settlement" acceptable. Under its terms, less than 4 percent of the population—the whites—would control 28 percent of the elected parliament. The Africans, who make up 96 percent of the population, would be without the capacity to amend their own constitution. In a land where the white minority controls 54 percent of the land, the black majority would be consitutionally disabled from redressing the most egregious property wrongs. The police, the army, the public service and the judiciary would remain under white control for at least 10 years, perhaps indefinitely.

White minority rule in blackface. Thus, the Security Council sanctions remain in force against Ian Smith, who for 13 years has obdurately opposed genuine majority rule, but not against those who have sought and still seek to win freedom for all Zimbabweans.

In what assuredly are the final months of the Smith regime, it is sad indeed that the United States has lost its resolve to honor sanctions and thus is giving Mr. Smith hope for a new lease on tyranny.●

REPORT CARDS FOR FEDERAL PROGRAMS

HON. WILLIAM A. STEIGER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. STEIGER. Mr. Speaker, Senator CHARLES PERCY and I have introduced legislation which would require the President and the Director of the Office

of Management and Budget to file a report card at the beginning of each Congress rating Federal programs by department or agency. Our bill, which has 36 cosponsors in the House, has been very favorably received both in and out of Congress since we first proposed it 2 months ago.

George Will, in an October 8 Washington Post column, discussed our legislation and the idea of former Ambassador Larry Silberman which is embodied in our bill. Will suggests that the bill's "strength is its shrewdness about the Nation's psychology."

He says:

The "report card" might captivate a nation that is fond of lists and rankings, such as college football polls. The "report card" also would please journalists who are happiest when regarding public affairs as sport. Even in Washington there is more interest in elections than in government, because elections lend themselves to sports language—who is ahead, who has "momentum." Ranking of programs as "winners" and "losers" would generate public attention. That would serve the public interest, which is the object of the exercise.

If we are to cut taxes, we have to cut Federal spending. I'm confident that the Percy-Steiger proposal, if enacted, would help accomplish that goal. It would draw greater attention to the effectiveness of Federal programs, and it would encourage public participation in the evaluation process. I hope it will be approved by the 96th Congress.

The George Will article follows:

REPORT CARDS FOR FEDERAL PROGRAMS

(By George F. Will)

Laurence H. Silberman has a curry-seasoned temperament and a sandpapery turn of mind. He has been under secretary of labor and deputy attorney general. He was ambassador to Yugoslavia where, because of the attention he called to political persecutions, the regime considered him, to his credit, obnoxious.

Today he exemplifies one benefit the Republican Party has derived from losing the White House. He now has time to think and write about his experiences in the executive branch. And when, as is frequently the case, he has a good idea, it is his habit to share it evenhandedly with people who do, and even some who do not, express an interest in it.

His latest idea is to require presidents to submit to Congress periodic reports rating federal programs as "excellent," "adequate" or "unsatisfactory," and ranking the programs within each department. "The hard, miserable, squirmy but incontestable truth," he says, "is that . . . we Americans cannot seem to eliminate any government programs no matter how wasteful they may be. This should be of equal concern to those who wish to maintain or even expand the present level of government as well as those who believe . . . that government's share of GNP must be reduced. . . . Indeed, our reluctance to initiate new programs is surely in part attributable to the wide-spread realization that a program, once initiated, achieves instant immortality."

Bills embodying Silberman's idea have been introduced by Sen. Charles Percy (R-Ill.) and Rep. William Steiger (R-Wis.). These bills, designed to cause government to exercise what Silberman calls "constructive powers of self-destruction," will not pass this year, and if passed next year they will not cause the instant death of much, if anything.

The problem is the "iron triangle": the collaborative relationship among congressional committees that pass, bureaucracies that administer and constituencies that benefit from particular programs. Silberman believes that the way to weaken this "tightknit triple alliance" is to strengthen the large but diffuse part of the public that favors reform. This part believes government should be pruned, but cannot agree on where to begin. The Percy-Steiger bills would facilitate agreement by supplying what Silberman calls "a common evaluative language."

Eventually Congress may pass something like Sen. Edmund Muskie's "sunset" bill to require most programs to be reauthorized—or liquidated—over a 10-year cycle. The Percy-Steiger bill would require the executive branch to help give shape to that system of legislative oversight. Clearly, Congress must force the issue by compelling the executive branch to act.

Already the phrase "zero-based budgeting" has joined "free coinage of silver" and other slogans in the graveyard of panaceas. The Carter administration's capacity for pruning was revealed in its "new" urban policy which, as David Broder reported, "included 160 suggestions for improving old programs left scattered in five agencies," but not one suggestion that "called for eliminating any single existing federal program—despite the almost universal acknowledgement that some of them are real losers."

To the president who once asked, "Why not the best?," Silberman says, "If not the best, at least not the worst." Unfortunately, the hard, miserable, squirmy but incontestable truth is this: A "sunset" law might merely involve reflexive reauthorization of almost everything, and a government "report card" of the sort Silberman proposes might break all records for grade inflation.

Silberman remembers the professor who confessed, tongue-in-cheek, that he had failed to devise a way to produce a class without a bottom half. But egalitarians opposed to the allocation of rewards on the basis of merit have weakened academic grading, and they have counterparts in government. However, the Percy-Steiger bill's strength is its shrewdness about the nation's psychology.

The "report card" might captivate a nation that is fond of lists and rankings, such as college football polls. The "report card" also would please journalists who are happiest when regarding public affairs as sport. Even in Washington there is more interest in elections than in government, because elections lend themselves to sports language—who is ahead, who has "momentum." Ranking of programs as "winners" and "losers" would generate public attention. That would serve the public interest, which is the object of the exercise.●

TRIBUTE TO CONGRESSMAN ROBERT L. F. SIKES

HON. JAMES R. MANN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. MANN. Mr. Speaker, I join my colleagues in tribute to the senior member of the Florida delegation, Congressman ROBERT SIKES.

During the 38 years that he has been in Congress, BOB SIKES has had a distinguished career as a worthy champion of a strong national defense—a career which has been recognized by many patriotic groups all across the country. This role came naturally to BOB as a major general (retired), in the U.S. Army Reserve, and as chairman of the Military Construction Subcommittee and vice chairman of the Defense Subcommittee of the House Appropriations Committee.

In addition to his contributions to our national defense posture, BOB SIKES has been instrumental in the enactment of several forest and wildlife preservation bills. Among the products of his labors are the forestry incentive program, and a bill—bearing his name—that provides for wildlife conservation on military reservations and other public lands.

BOB SIKES has been a faithful public servant for many years. I wish him all the best in whatever endeavor he chooses to undertake. I am confident that he will bring to it the same dedication which he has brought to his congressional career.●

WILSON ATTACKS YOUNG OVER AFRICA DEATHS

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. McDONALD. Mr. Speaker, it has long been the contention of many Americans, myself included, that if the United States stopped interferring in the Rhodesian problem, that situation would improve. Support and statements in favor of the so-called "Patriotic Front" by U.S. spokesmen only serve to encourage more atrocities and killing, in my view. Therefore, I was pleased to see that England's former Prime Minister Harold Wilson agrees with this point of view and expressed it to the press relative to the unhelpful statements of our U.N. Ambassador Andrew Young. The news item from the London Daily Telegraph of October 2, 1978, follows:

WILSON ATTACKS YOUNG OVER AFRICA DEATHS

(By Eric Dowd, in Toronto)

Sir Harold Wilson implied to Canadian reporters at the weekend that Mr. Andrew Young, American Ambassador to the United Nations, inflamed the atmosphere on Rhodesia so that killings continued.

Sir Harold said Mr. Young had claimed that "Britain was trying to get shut of the Rhodesian responsibility, which was totally untrue.

Mr. Young, according to the former Prime Minister, "was attempting to create a situation where no Rhodesian settlement would count and would be acceptable even if it had the support of the Rhodesian people as a whole unless there were killings, unless there was aggression from the outside."

At a press conference before speaking to students at Hamilton, Ontario, Sir Harold was asked about the Bingham report and allegations that his Government knew that British Petroleum was involved in breaks of sanctions.●

TAX REFORM

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. CRANE. Mr. Speaker, few would disagree with the proposition that our tax code needs a major overhaul. The disagreement would come over the form that overhaul should take. Thus, dialog about comprehensive tax reform can only be beneficial.

To stimulate a healthy exchange on the topic of comprehensive income tax reform, I have prepared a discussion draft of a bill which would establish a flatrate income tax. This discussion draft, together with some arguments in its favor, is put forth to promote a climate of exchange and debate in the hope that it will generate constructive recommendations for changes in our system of taxation:

[Discussion draft]

H.R. —

A bill to amend the Internal Revenue Code of 1954 to increase the amount of the personal exemptions to $1,500, and to provide a simplified individual income tax

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Individual Income Tax Simplification Act of 1978".

(b) TECHNICAL AND CONFORMING CHANGES.—The Secretary of the Treasury or his delegate shall, as soon as practicable, but in any event not later than 90 days after the date of the enactment of this Act, submit to the Committee on Ways and Means of the House of Representatives a draft of any technical and conforming changes in the Internal Revenue Code of 1954 which are necessary to reflect throughout such Code the changes in the substantive provisions of law made by this Act.

SEC. 2. INCREASE IN AMOUNT OF PERSONAL EXEMPTIONS.

Section 151 of the Internal Revenue Code of 1954 (relating to allowances of deductions for personal exemptions) is amended by striking out "$750" each place it appears and inserting in lieu thereof "$1,500".

SEC. 3. SIMPLIFIED INDIVIDUAL INCOME TAX.

(a) GENERAL RULE.—Section 1 of the Internal Revenue Code of 1954 (relating to tax imposed on individuals) is amended to read as follows:

"SECTION 1. TAX IMPOSED.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the taxable income of—

"(1) every individual, and

"(2) every estate and trust taxable under this section

a tax equal to the applicable percentage of the taxable income for the taxable year.

"(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the term 'applicable percentage' means, with respect to taxable years beginning in any calendar year, the lesser of—

"(1) 10.4 percent, or

"(2) the percentage (as determined by the Secretary of the Treasury) which would result in aggregate Federal individual income taxes for such calendar year which would approximately equal the aggregate Federal individual income taxes for calendar year 1977.

Any percentage determined by the Secretary of the Treasury under paragraph (2) shall be a multiple of one-tenth of one percent.

"(c) AGGREGATE FEDERAL INDIVIDUAL INCOME TAX.—For purposes of subsection (b), the aggregate Federal individual income taxes for any calendar year is the aggregate amount (as estimated by the Secretary of the Treasury) of the taxes imposed by this section for taxable years beginning in such calendar year.".

(b) REVISION OF DEFINITION OF ADJUSTED GROSS INCOME.—Section 62 of such Code (defining adjusted gross income) is amended by striking out paragraphs (3), (7), (8), (9), (10), (11), and (12).

(c) REVISION OF DEFINITION OF TAXABLE INCOME.—Section 63 of such Code is amended to read as follows:

"SEC. 63. TAXABLE INCOME DEFINED.

"(a) CORPORATIONS.—For purposes of this subtitle, in the case of the corporation, the term 'taxable income' means gross income minus the deductions allowable by this chapter.

"(b) INDIVIDUALS.—For purposes of this subtitle, in the case of an individual, the term 'taxable income' means adjusted gross income reduced by the sum of the deductions for personal exemptions provided by section 151."

(d) ELIMINATION OF CERTAIN DEDUCTIONS.—(1) Sections 212, 213, 216, 217, 218, 219, 220, and 1202 of such Code are hereby repealed.

(2) Sections 161 of such Code (relating to allowance of deductions) is amended by adding at the end thereof the following new sentence: "In the case of an individual, the items specified in this part shall be allowable as deductions only to the extent that such items are allowable in computing adjusted gross income under section 62."

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years beginning after December 31, 1978.

FLAT-RATE COMPREHENSIVE INCOME TAX

DESCRIPTION OF THE DISCUSSION DRAFT

The Discussion Draft would wipe the slate clean of tax preference, special deductions and credits, exclusions from income, and the like, imposing instead a single proportional tax on all individuals. After doubling the current personal exemption to $1,500, it would produce tax revenues equal to those raised in 1977 at a tax rate of only 10.4 percent (See Questions and Answers). Corporate taxes would remain untouched.

This tax simplification recommendation would work this way: Income now untaxed, such as municipal bond interest, half of capital gains, some dividends, and even Social Security benefits and welfare, would become taxable. Deductions for items such as state and local taxes, medical expenses, interest, and charitable contributions would swell, so the same revenue could be raised by applying rates that are lower by 30 percent or 40 percent or more. At the same time, the working poor would find a greater portion of their income shielded by the doubled personal exemption.

ADVANTAGES OF PROPORTIONAL TAX

Simplicity.—The present tax code is a complicated, progressive maze. For the principle of progressivity, however, we pay the high price of extraordinary complexity. High rates require Congress continually to adjust provisions of the code to avoid undue tax hardship. Then, of course, adjustments must be later readjusted to close "loopholes." The result is a labryinthine tax system that has significantly contributed to the American public's general disillusionment with government. If this tinkering from session to session continues, eventually the citizen will no longer bother or be able to compute his own tax liability. Witness the spreading tax revolt. Moreover, the present tax code is so cumbersome that a massive, costly bureaucracy is necessary to administer it.

Under this flat-rate tax, all taxpayers would benefit in terms of less time diverted from more productive activities to compute taxes, fewer recordkeeping chores, and less of an impact on economic decisions from complicated tax laws.

Equity.—A fundamental principle of taxation is that individuals with equal income should pay equal taxes. Existing tax preferences violates this principle. The present tax code does not treat taxpayers with equal income equally. For example, other things being equal, a taxpayer who invests part of his income in municipal bonds pay less in taxes than one who does not. Or the taxpayer who gets part of his income in welfare would pay less in taxes than a taxpayer who earns the same amount by working. The U.S. government simply should not favor some of its citizens over others simply because they invest in municipal bonds or work to stay off welfare.

God set a pattern in Malachi 3 when He commanded all His children, regardless of their worldly status, to donate a tithe, or 10 percent. If God asks for only 10 percent, Caesar should ask for no more!

Neutrality.—Individuals should be free to decide how to use their earnings instead of having those decisions made by a tax-writing government. Tax neutrality is the goal of structuring the tax code to eliminate distortions in the economic decision-making of the private sector. To the extent the tax law gives preference to certain activities, it is declaring economic rewards for those who pursue the chosen activity and penalties for those who don't. Thus, the government dictates more or less how our hard-earned resources are to be spent. This presumes that the government is more adept than the individual at deciding the most efficient use for earnings. All too often this artificial tampering with the economic decision-making process shifts resources from ore productive activities to less productive. On the other hand, if the tax code is absolutely neutral—having no effect on economic choices—the free market system of individual choices will automatically cause resources to gravitate to their most efficient use.

Consider some examples: An entire tax shelter industry has sprung up to provide taxpayers with tax avoidance. Buying on credit is encouraged by the interest deduction. For the same reason, homeownership is preferred over renting. Due to dividend deductions, stock and bond investments are preferable to investing in livestock. In addition, proposed energy taxes are designed to decide for us how to save energy.

A flat-rate tax would abolish all favoritism and discrimination. No tax shelters. No loopholes. No special interest tax credits. No prefered deductions. No artificial tax penalties for spending your earnings differently than some tax expert seems to think is best. Instead every citizen contributes his fair share and no more. Every citizen is free to decide how to spend everything above his fair "tithing".

Incentive.—The high tax rates necessary to raise sufficient revenues under our current progressive system discourage productivity. Broad tax exclusions and deductions shrink the income tax base and require high tax rates. The higher the tax rates, the less a taxpayer keeps of his own income, and the

less his incentive to be productive and save, and the greater the incentive to exert himself to avoid taxes. Virtually every itemized tax return, for example, claims a deduction for state sales taxes, the amount of which is closely related to income. Eliminating this deduction alone would reduce tax rates and leave average taxes proportionally unchanged. But incentives for work and savings would be increased. This principle is not isolated, but applies across-the-board to other tax preferences as well.

Openness.—Tax preferences are hidden government subsidies. For example, the tax revenue that goes uncollected this fiscal year because of the municipal bond interest exclusion will be the equivalent of more than a $3 billion grant to the cities. This, and every other tax deduction, is a decision of the government to spend money, without collecting it, on specific ideas. If an idea is worthwhile and warrants government involvement at all, the government should support it through direct appropriations. Appropriations could be reexamined each year. Government subsidies would be open to strict scrutiny, instead of buried under layers of confusing tax language. Many of these subsidies could probably be eliminated altogether if the citizenry recognized it as a government subsidy. This openness is in reality just another benefit of tax neutrality. The government would no longer be favoring one set of business or citizens over others with hidden tax subsidies. The free market system would be free to operate.

QUESTIONS AND ANSWERS

Question. Wouldn't abolishing a progressive income tax also destroy taxation based on ability to pay, or proportionate sacrifice?

Answer. Who is to say that a dollar which a member of an upper income group spends for investment or consumption is worth more or less than the dollar spent by a lower-income group member for the same purpose? By what criteria are those value judgments to be made? Who is to say what the curve of progressivity should be? Look at our current system: A wage-earner making $20,000 annually pays $2,180 in taxes, while one who earns $10,000 more ($30,000) pays twice as much in taxes—$4,232. Can we really say that the second taxpayer has that much more ability to pay than the first?

Question. Doesn't the tithing argument overlook the fact that we pay other taxes? State and local income taxes, excise taxes, property taxes, and social security taxes are already regressive; progressivity in the federal income tax is necessary to achieve some overall proportionality?

Answer. The notion of offsetting one inequity with another becomes weaker as state systems of taxation have abandoned their regressivity in favor of a copy of our federal system.

Question. Wouldn't it be cruel to eliminate the medical expenses deduction?

Answer. The deduction for medical expenses was originally intended to allow a tax offset for extraordinary health care costs. Over the years, because of the effects of inflation and legislative changes, it has become a deduction for rather ordinary medical expenses used by the majority of those who itemize deductions. Because the deduction operates as a Federal subsidy to the consumption of health care, it has been accused of leading to excessive health care consumption and being at least partially responsible for the very high inflation in medical care costs.

Most truly catastrophic medical care expenditures are covered by insurance (or welfare) in the United States. Under a comprehensive income tax, insurance premiums would not be deductible expenses but benefit payments from health care plans would not be included in income, thus achieving a more symmetric tax treatment. If the present deductibility of health care costs is viewed as a form of Government medical insurance, it has some rather peculiar characteristics, such as providing the largest benefits to those with the highest incomes (an observation equally applicable to other deductions eliminated by the Discussion Draft).

Question. Is it fair to eliminate the deduction for taxes paid to State and local governments?

Answer. The deductibility of State and local taxes is asymmetrical. The receipt of services provided by State and local governments is not counted as income (impossible to measure), but payment of taxes is allowed as a deduction. The deductions serve as indirect federal subsidies to State and local governments and encourage State and local taxes to be higher than otherwise. Ending this deduction would not substantially alter the distribution of the tax burden across income classes, but would enable a general reduction of tax rates.

Question. Could the charity organizations survive without a charitable contribution deduction?

Answer. These and all other economic decisions should be made independent of tax considerations. The tax code is simply not an efficient way to achieve socially desirable goals. In many instances, tax incentives reduce the liabilities of those who would have performed the desired economic activity anyway. For example, many who now take the charitable deduction would give as much to charity regardless of the reduction.

With reduced rates overall, individuals would be freer to choose voluntarily to contribute to charity.

Question. What is the origin of the 10.4 percent flat rate that is necessary to generate the same revenues raised in 1977?

Answer. Secretary of the Treasury Michael Blumenthal, in response to an inquiry from me dated July 26, 1978, provided this figure as the percentage under this formula necessary to produce current revenues under the existing code. Since I began public discussion of the question, Secretary Blumenthal has provided me with revised figures suggesting he miscalculated the first time and has now determined the rate would have to be 14 percent. At the time of my initial inquiry, Secretary Blumenthal's office indicated that the percentage would continue to decline with inflation. Back in 1975, I put this same question to then Secretary William Simon. He provided the figure 13 percent to equal the revenues of that time. If Secretary Blumenthal's statement that inflation is reducing the percentage necessary to equal current revenues, it would appear (based on the Simon figures) that Mr. Blumenthal's earlier figure of 10.4 percent is more accurate than his revised figure of 14 percent. With all the inflation we have suffered over the past three years, it is obvious that the percentage would have decreased from the 13 percent level, not increased.

JULY 26, 1978.

DEAR MR. CRANE: This is in response to your letter of July 18, 1978, concerning the proportional income tax rates necessary to produce tax revenues equal to those raised in 1977, under three sets of conditions.

In each case the current personal exemption is $1,500, and all personal tax deductions including the zero bracket amount are eliminated. Other provisions in the law which were not specified in your letter such as the general tax credit and the earned income credit, are retained. In case one, corporations are taxed as under current law; in case two, corporations are taxed as individuals; and in case three, corporations are not taxed at all. At 1979 levels of income, the proportional individual income tax rate needed to raise revenues equal to those raised by individual and corporate income taxes in 1977 is 10.4 percent in case one, 14.5 percent in case two and 17.1 percent in case three. In succeeding years, these rates will decrease as income increases both in nominal and real terms.

Sincerely,

W. MICHAEL BLUMENTHAL.

The discourse spawned by this discussion draft, Mr. Speaker, may be the initial step toward a simpler and more equitable tax code. I am pleased to open this dialog and hope that others will offer their thoughts, pro and con, on this discussion draft and any other proposal to improve our tax system.●

U.S.S.R. POLITICAL PRISONER MALKIN

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. PEPPER. Mr. Speaker, and honorable colleagues, may I direct your attention to the continuing project, dedicated to the freedom and remembrance of imprisoned or persecuted Soviet citizens, the Vigil for Freedom, of which this insertion is a very small segment, only the tip of the iceberg.

As you all know, the Helsinki agreement of 1975, to which the Soviet Union is a signatory nation, explicitly upheld the standard of governmental respect for the basic human rights of its citizens, such as freedom of speech, emigration, fair trial rights, and so forth. Let me touch briefly, then, today, upon the story of Anatoly Malkin, Soviet prisoner of conscience, as it was related to me by the project Vigil for Freedom, through the good offices of the honorable Congressman BRODHEAD, here in the capital of our country, where emigration is easily done, but not a problem at all. I know stories like this one appear often and that they deal with people and sad kernels of bitter substance, which continues to make them arresting food for thought and daily effort on our parts.

Following you will find a short description of Anatoly Malkin's fate leading up to and into Siberian exile, and I would encourage each of us to remain people as described in Mr. Malkin's sentence about some of the friends of his youth: "people who are not indifferent to (his) fate."

ANATOLY MALKIN

Anatoly Malkin is a determined young man—so determined to stand by his beliefs that he is now serving a three year sentence in exile. In June 1974, Anatoly was a third year student at the Moscow Institute of Steel and Alloys. It was then that he requested the Director of the Institute to supply his "characteristika"—the references necessary for application to leave the country for Israel. He was immediately expelled from the Institute. On August 7th, Anatoly wrote to the Supreme Soviet to relinquish his Soviet citizenship. Later that month, he presented his

affidavit for an emigration visa to OVIR, the visa office. As he had meanwhile acquired Israeli nationality, he wrote to the Soviet Army recruiting office that he did not consider himself able to take the oath of allegiance to the Soviet Army nor to serve in its ranks.

Soviet authorities prosecuted him and on August 27, 1975, he was sentenced to three years of deprivation of freedom for draft evasion. After serving part of his sentence in a prison camp, Anatoly was transferred to a small town in the steppe, where he was put to work "at the building of the transformatory station for the gas main." He writes a friend:

My grandfather was born in Byelorussia. When the revolution came he became a real commissar—you see, my family has a long and sound revolutionary tradition. My parents are also communists. My father is a doctor of physics, my mother is a lawyer. They are loyal Soviet citizens—it means they regard any person willing to leave either a fool or a villain. When I decided to leave they refused to sign the paper—that's how I ended up in prison. They still wish to convince me to remain here. But they are fond of me—they will probably change their minds.

On January 24, 1977, Anatoly married his fiance from Moscow, Liuba Gurfel. He wrote another friend of the wedding:

The wedding took place here, in Alexandrov-Gai. Just on that day there was no heating at the registration office, so we all wore coats. Three of our friends came from Moscow to celebrate with us. Besides, at the "feast" was present my wagon-mate. (The exiles are living in converted box-cars). It took place in a room of a local inn. It is a fantastic thing with no convenience at all. Liuba stayed here for about a fortnight and left as the institute term began. . . . It never occurred to me when I was a student that there were such devoted people in the world—people who are not indifferent to my fate.●

REPRESENTATIVE BOB SIKES

Hon. G. V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 10, 1978

● Mr. MONTGOMERY. Mr. Speaker, with the retirement of BOB SIKES we will be losing one of our strongest voices for a sensible and sane national defense policy. He has always been a staunch advocate of military preparedness—a point of view with which I agree.

In his position on the House Appropriations Committee, BOB SIKES has been able to use his 38 years of experience and knowledge to push for realistic spending levels for the Department of Defense. At the same time, he has always tried to eliminate the so-called fat in our defense budget in order to give the American people the best buy possible for their defense dollar. I am pleased that to a large measure he has been successful in his efforts.

While my colleague from Florida has not always won every fight on the House floor, he has always waged a tough battle with the facts to back up his arguments. Unfortunately, facts and reason have not always prevailed to the detriment of our Nation. But as BOB would say, "We will be back to fight another day."

Mr. Speaker, I particularly appreciate the personal friendship I was privileged to have with BOB SIKES. I always valued his wise advice and shall miss the opportunity to counsel with him on important legislative decisions. We all wish BOB SIKES the best in the years ahead and much peace and happiness back in his native land of Florida.●

COMMENTS ON THE COMMUNICATIONS ACT OF 1978

HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. APPLEGATE. Mr. Speaker, Mr. William Coffey, a constituent of mine and executive vice president and general manager of radio station WILE, Cambridge, Ohio, recently had the opportunity to present testimony before a congressional subcommittee during field hearings on H.R. 13015, the Communications Act of 1978. These hearings were held in Cincinnati, Ohio, on September 15, 1978, by the Subcommittee on Communications of the House Interstate and Foreign Commerce Committee and chaired by our distinguished colleague, Hon. THOMAS LUKEN of Ohio.

Mr. Coffey testified on behalf of the Ohio Association of Broadcasters in favor of permitting daytime radio stations to broadcast more hours during the day. Unfortunately, current regulations restrict many of our radio stations to certain sign-on and sign-off times during the most critical winter months.

Representing a rural district as I do, I see a need to expand this service to provide to those people in outlying areas the weather and news information they depend on and need. This is a necessity for thousands of people.

Mr. Speaker, I would like to submit for the RECORD, the text of Mr. Coffey's testimony and ask that my colleagues on the Interstate and Foreign Commerce Committee take heed to it.

COMMENTS OF WILLIAM COFFEY, WILE, CAMBRIDGE, OHIO, ON H.R. 13015—THE COMMUNICATIONS ACT OF 1978

Mr. Chairman, Mr. Brown, Mr. Waxman, I am William Coffey, Executive Vice President and General Manager of WILE, Cambridge, Ohio. My comments today reflect viewpoints of the smaller market radio stations in Ohio, particularly those which are licensed for daytime only operation.

Generally, I agree with the comments of my fellow Ohio broadcasters on H.R. 13015. Rather than elaborate on points others have or will mention, I want to address one specific problem of government regulation. It is one that results directly in diminished service or no service at all for many Ohio communities. The problem is that current regulations forces many stations to operate during daytime only hours. The social and engineering premises underlying this restrictive regulation have changed and so should the regulation.

Such change can come now at the Commission: radical restructuring of the Communications Act may not be necessary for the solution. No upheaval of our system is needed.

The role of radio has been expanded over the years. Years ago, we hurried from the supper table to join our friends in the living room. Some of these friends came to us nightly, others weekly. There was no reason why the dishes couldn't wait until after Lowell Thomas. Conversation certainly couldn't be permitted while Amos and Andy were "on". Our attention was rigidly fixed to our radio as Jack Benny made us laugh, a King put a lump in our throats choosing the woman he loved over a kingdom and Raymond with his squeaky door scared the daylights out of us. Radio, then, was mostly our entertainer, but with network news, it kept us informed as to the state of the world. It was ready to tell us if war was declared, the Hindenburg was crashing . . . yes, even when the Martians were invading.

The role of radio in our daily lives then was in many ways different from today. Its functions then were important, but they didn't come close to the involvement that radio stations have developed in their communities today. We cared little then about the local outlet. Our interest was with the network. By today's standards, there were few radio stations: as late as 1945, under 1000 serving the whole country.

The rationale for restrictive allocation was more valid at that time. Even as new stations began to go "on the air", the need for protection from interference was great.

But ours is a dynamic society. Along came television. Replaced in the living room, radio took over the rest of the house. It became a companion, a source for local personal information!

Today, there are over 8000 AM/FM radio stations in the United States. Some have a network affiliation. Practically all use a national wire service and all have music libraries. But, one of radio's most important contributions is its local service.

Weather forecasting used to be based on a whole state. We now have six weather zones in the state of Ohio alone. Agriculture has become more sophisticated. Farmers have many thousands of dollars invested in livestock and equipment. They need local and regional information. Decisions involving millions of dollars are made before 8 AM on some mornings. A letter is attached which reinforces our view.

For better or for worse, a community seems as interested in the activities of their city council, school board, county commission, chamber of commerce, etc., as they are the United Nations, the Congress, and various parliaments throughout the world. For example, it may seem hard to believe, but Guernsey County, Ohio residents are more interested about water rising to cover the road between Pleasant City and Opperman than about a hurricane raging in the Caribbean. Informing 40 children on a rainy day that their school bus is going to be an hour late may not be glamorous news, but it is important to their mothers. Mothers generally have a "thing" about wet shoes, wet clothing, and the health of their children.

The following are examples of the type of announcements used on a local station. Not the heady stuff of which Pulitzer prizes are made of, but important to ordinary people:

Bus No. 6 for the Noble local school driven by Frank Thomas will be an hour late (tomorrow) Friday morning.

The Cambridge City Water Department reports a leak in the water main between Oakland and Edgeworth Avenues. Water will be

"shut off" tomorrow (Friday) from 8 a.m. until 4 p.m. to make the necessary repairs. Residents affected are asked to "draw" sufficient water for use during this period before 7 a.m. tomorrow (Friday).

The county engineer reports that blacktopping of county road 615 will continue during working hours tomorrow (Friday). The road will be closed from the amphitheater entrance to Perry's Orchard. Travelers are asked to use the Skyline Drive entrance from 8 a.m. until 4:30 p.m.

Al Muser of the Cambridge City Pool reports that the pool will be closed all day tomorrow (Friday) but will be open for a moonlight swim from 8 p.m. until 10 p.m.

Local No. 1604, United Mine Workers, are asked to attend a special meeting tomorrow morning (Friday) at 8 a.m. at the Opera House in McConnelsville.

The senior citizens blood pressure check scheduled for tomorrow (Friday) at the National Guard Armory has been postponed for one week. Those needing transportation for next Friday are asked to call the Senior Citizens Center.

The jury trial for the Cambridge Municipal Court for tomorrow (Friday) has been canceled. Jurors called for the 9 a.m. trial need not report.

Mr. Morehead has reported that the presses at the Daily Jeffersonian are experiencing difficulty and delivery of tonight's paper will be approximately two hours late.

Services at the North Salem United Presbyterian Church for Sunday have been canceled due to the death of the minister.

The Red Cross Bloodmobile will visit Guernsey County tomorrow (Friday) from 10 until 4 at the Westminister Church. Urgently needed for open heart surgery in Columbus are A-positive and B-negative donors. Call Marge Tribbil at 432-4409 this evening or before 9 tomorrow morning for an appointment.

The Cambridge singers practice for this evening (Thursday) has been canceled.

The Wills Township trustee meeting scheduled for tonight has been postponed until next Thursday night at the home of the clerk, Ralph Jones.

Guernsey Muskingum Electric Cooperative will be installing new equipment at the Pike substation Wednesday. This will necessitate having the power turned off from 10 until 1 in the western part of Guernsey County, the eastern part of Muskingum in Highland Township and the southern tip of Tuscarawas County.

Season tickets for Cambridge High School football will be sold at the school office tomorrow (Friday) from 10 a.m. until 2 p.m.

All Junior Fair board members are asked to attend a work day Saturday beginning at 9 a.m. at the fairgrounds in Old Washington.

Biddy football practice for the Rolling Hills School District will be held Saturday morning at the Meadowbrook High School. All players are asked to bring their own equipment and a sack lunch.

Every radio licensee is charged with the responsibility of providing service to a particular area. And as more stations have been licensed, their ability to remain "on the air" has been directly related to their ability to weave themselves into the community and become an integral part of its family life.

It would be easy to make a list of the outstanding services performed by local radio during the past two extreme winters. Though this performance was crucial, the significant services that radio provides in scores of communities are those everyday things that spell a better life for the community and its families.

Unfortunately, some current regulations treat many as second-class citizens. They cannot depend on their AM radio station to provide the services they need because their AM radio station must sign-off at sundown and cannot sign-on until sunrise. Even though a 1974 Arbitron listening survey established that, given a choice, most people will choose their nearby local station; many of these local stations must sign-off prematurely and sign-on late to protect stations that are often hundreds of miles away.

The result is that some citizens have full radio service and many, many do not. Citizens in communities with daytime only service not only have no locally oriented information services; many receive no really useful service at all—at crucial times of each day.

This overly restrictive regulation is apparently due to antique engineering standards, for example needed separation, propagation projections—and unrealistic policy. Many daytimes in Ohio have to sign-on and off to "protect" stations in Ontario, New York City, Iowa, Mexico City. Is such excessive protection for a few stations in foreign countries and in the United States worth the loss of service in so many communities? Can we allow AM broadcasting to disappear because it cannot provide the quantity of service needed in a community? AM receivers are the most inexpensive and most economy model automobiles are AM-only equipped.

I am not at odds with clear channels. We need to be unified to have a strong industry. Strength also lies in our ability to serve the country with first class service.

A part of our salvation rests with upcoming WARC treaty negotiations. However, much could be done by taking a realistic approach to protection—the guarantee that every station can serve a reasonable area in and around their city of license.

Another avenue is immediate action by the Commission. Let's call on the FCC to retest a few of their engineering assumptions. Why not run some experiments with longer hours for various kinds of daytimers and see the results—instead of just speculating? Perhaps we will find that today's needs can be better served with a new look at the real interference potential.

And, my point is this can be done now within the current law, the current mandate to serve in the public interest. Re-analysis of this regulation needs no massive restructuring, no change in the good parts of our industry.

In fact, some broadcasters have commented that a rewrite could stall needed action. Instead of acting specifically where it needs to, the Commission can use the old refrain . . . "but there might be a rewrite . . . better wait". Let's act now on the specific, real problems broadcasters and the public face. If the need for Congressional action is proven, then let this action address real problems, and fall within the scope of the targeted needs.

Finally, I can't close without saying something about the new proposed fees for licensees. Though some could argue that air waves are a limited resource, so is most everything! And, their allocation is no guarantee of economic success or of essential return on investment. Both are necessary to run a radio station in Cambridge or anywhere else!

The schedules I've seen could prohibit and discourage the needed investment in our industry. The loser will be the public.

Let me close by thanking you for listening. I look forward to working with you in the future.

THE OHIO STATE UNIVERSITY,
Columbus, Ohio, April 3, 1978.

Mr. JOSEPH D. BRADSHAW,
WRFD Radio,
Columbus, Ohio.

DEAR JOE: May I commend you for the superb job WRFD Radio has done over the past 30 years providing farmers throughout Ohio the many kinds of information they need during the noon hour. No other station does it like WRFD.

As agriculture becomes more dependent on technology, more capital intensive, and more sophisticated, it is increasingly important that farmers be able to get, during the early morning hours, the many kinds of information which you currently broadcast at noon. Most farmers make important decisions on marketing grain and livestock, planting and harvesting, applications of pesticides and herbicides, hay making, etc. before 8:00 in the morning. To make sound decisions they must have up-to-the-minute technical information that is not available from city stations.

It is a waste of the broadcast spectrum when stations like WRFD are not allowed to sign-on at least as early as 6:00 a.m. year 'round. The best time for farmers to listen to information programs is between 6:00–7:30 a.m. Occasionally I listen to 880 before WRFD comes on the air and I have yet to hear anything useful to Ohio farmers on the station with whom you now share frequency. They program solely for the New York metro area. Even though WRFD might cause them a little interference in Western Pennsylvania little if anything would be lost because it is doubtful that they program for that area.

Ohio farmers need WRFD during the early morning hours. We sincerely hope that you will be provided a much earlier sign-on time and soon!

Sincerely yours,

ROY M. KOTTMAN,
Dean and Director.

BIOMEDICAL RESEARCH AND TRAINING ACT OF 1978

HON. ANDREW MAGUIRE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. MAGUIRE. Mr. Speaker, I wish to speak in favor of H.R. 12347, the Biomedical Research and Training Act of 1978, upon which we will vote tomorrow. This bill contains several amendments which I offered which are critical to focusing more attention by the National Cancer Institute on the occupational and environmental causes of cancer and thereby developing a more effective overall anticancer strategy.

We know that one in four Americans alive today will develop some form of cancer during their lifetime and that one in five Americans will die of the disease.

Cancer takes a severe toll on our economy. It is estimated that $1.8 billion each year goes toward hospital care for cancer patients; an additional $3 to $5 billion is spent each year on cancer treatment; and it is estimated that lost productivity and earnings cost the economy an added $12 billion a year. But cancer is not only an economic drain;

it is an emotional and spiritual drain on its victims and their families as well.

The bill before us tomorrow is a response to the growing recognition within the scientific and medical community that to a large degree cancer is an environmental disease and is, therefore, often preventable. Having participated in hearings both in the Health and the Oversight and Investigations Subcommittees, I know that if we can lower exposures to substances such as asbestos, vinyl chloride, nitrosamines, and several other chemicals that we are only now beginning to control, we can have a significant impact on decreasing our cancer rate. This bill adds the critical element of prevention to our approach to cancer.

With these concerns in mind, I offered a series of amendments to the biomedical research bill. One change adds language to the mandate of the National Cancer Institute to require that it "implement an expanded and intensified research program for the prevention of cancer caused by occupational and environmental exposure to carcinogens."

The biomedical research bill further requires that the Director of the National Cancer Institute publish an annual report to the American people. This report will list all known or suspected carcinogens to which a significant number of people are exposed. It will provide information concerning the nature of the exposure and an estimate of the number of people exposed. And it will require the Institute to look at existing regulations promulgated by the regulatory agencies and comment on their efficacy.

I do not believe we can have an effective preventive cancer strategy unless the National Cancer Institute is aware of just what is out there and whether we are adequately protected from dangerous substances.

Reflecting this new awareness of the environmental element associated with cancer, I offered another amendment which provides that at least 5 members of the 18-member National Cancer Advisory Board—a body which makes policy and reviews grant proposals—be "individuals knowledgeable in environmental carcinogenesis (including occupational and dietary factors)." I believe this amendment will be useful in helping the Institute to reorient its policies toward reducing or eliminating environmental and occupational exposures.

Finally, I offered an amendment which directs the Institute's cancer control programs in hospitals throughout the country to pay more attention to populations at high risk due to occupational or environmental exposures as they conduct research into better methods of detection, diagnosis, prevention, and treatment.

Faced with a rising cancer rate, this increased emphasis on prevention of occupational and environmental cancer may seem modest, but it has the potential for leading to a significant long-term decline in our cancer rate.●

CONGRESSIONAL SALUTE TO THE CLERGY AND PARISHIONERS OF ST. STEPHEN'S R. C. CHURCH, PASSAIC, N.J., UPON ITS 75TH DIAMOND JUBILEE ANNIVERSARY CELEBRATION

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROE. Mr. Speaker, on Sunday, October 15, residents of my congressional district, State of New Jersey will join the Most Reverend Frank J. Rodimer, Bishop of Paterson, the esteemed Pastor, Rev. Bela Turok, other distinguished members of the clergy, associate priests, sisters and parishioners in celebrating the 75th diamond jubilee anniversary of the founding of St. Stephen's R. C. Church located in the city of Passaic, N.J. I am honored and privileged to call this historic event to your attention and request that you join with me in saluting our citizens of Hungarian heritage who over this past three-quarters of a century have, by their example, engendered the esteem and respect of our people through their steadfast faith, hope and charity in promulgating the richness of their religious culture through the establishment of St. Stephen's R. C. Church.

Mr. Speaker, I know you and our colleagues here in the Congress will want to join with me in extending our heartiest congratulations and best wishes to the pastor of St. Stephen's, Father Torok and all of the members of St. Stephen's congregation on this historic occasion.

In recognition of the fact that our Nation was founded on the cornerstone of our people's faith in God, which is truly the spirit, conscience, and very being of our society, with your permission, I would like to insert at this point in our historic journal of Congress the diamond jubilee celebration program that is planned to commemorate this milestone in the history of St. Stephen's R. C. Church as follows:

PROGRAMME

HUNGARIAN HIGH MASS, FOUR O'CLOCK IN THE AFTERNOON, AT ST. STEPHEN'S R. C. MAGYAR CHURCH

The Most Reverend Frank J. Rodimer, J.C.D., D.D., Bishop of Paterson, presiding.

The Reverend Fathers: Béla Török, John Ádám, Ph.D., S.J., Thomas Fehér, O.Cist., Julián Füzér, Ph.D., O.F.M., and Serenus Szabó, S.T.D., O.F.M., concelebrating.

Sermons given by: Bishop Frank J. Rodimer in English; Father Julián Füzér in Hungarian.

Master of Ceremonies: Pál Jámbor.

Lector: Imre Karaszegi, Jr.

Saint Stephen's Choir: Mrs. Júlia Bartko, director.

Soloist: Zoltán Zorándy, organ.

JUBILEE BANQUET, SIX O'CLOCK IN THE EVENING, SS. PETER AND PAUL RUSSIAN ORTHODOX HALL

(Corner of Monroe and Third Streets)

Invocation: Rev. Joseph Cassidy.

Dinner:

Benediction: Rev. Roger Hebert.

Unveiling of St. Stephen's Painting: The Most Reverend Frank J. Rodimer, J.C.D., D.D.

Guest Speaker: The Rev. John Adám, Ph.D., S.J.

Hungarian Folk Songs: St. Stephen's Choir.

Hungarian Dance: Kálmán and Judit Magyar.

Hungarian Dances: Hungarian Scouts of New Brunswick.

Hungarian Songs: Eva Beniczky, opera singer.

Hat-Dance: Hungarian School Children.

Closing Remarks: The Rev. Béla Török.

Banquet Chairman: Paul Bacsardi.

Toastmaster: Imre Lendvai.

Mr. Speaker, the quality of the leadership of members of the most revered clergy and our citizens of Hungarian heritage who settled in the city of Passaic, N.J., and founded St. Stephen's Church is intertwined in the history of the church. A brief chronology of events that relate some of the highlights of its history is as follows:

ST. STEPHEN'S ROMAN CATHOLIC MAGYAR CHURCH, PASSAIC, N.J.

St. Stephen's Parish is one of the younger parishes in the spiritual family of Passaic. Because of the opportunities offered by America, many Hungarians were attracted to the point where they left their native country to enter this land of promise in the New World. Passaic and other surrounding areas, with their textile mills and many other thriving businesses offering an opportunity to all, proved to be so inviting that men and women came from all parts of the old country and established residence in the Passaic area.

Many Hungarian Catholics already in America had been attending services at St. Mary's Church in Passaic. Soon, these same faithful wished to build a parish community where they could worship God in prayer and song in their own language. Shortly thereafter, they made their first real step in this direction when they purchased four lots, and in 1902, the Most Reverend John O'Connor, Bishop of Newark, sent them their first Pastor, Reverend Geza Messerschmiedt, who had been ordained in Kasca, Hungary.

Although the many functions of the parish had begun, services were being held in the basement auditorium of St. Joseph's R.C. Church in Passaic. To the amazement of all and after much sacrifice, the Gothic-Roman style church was formally blessed and dedicated on August 21, 1904. With the ever increasing number of faithful, both young and old, St. Stephen's Roman Catholic Magyar Church had now become a reality, and the spark of the flame carried in many hearts had been ignited.

With the arrival of Father James Raile in 1932, a new era began. The growing parish was in need of a place where young and old could carry on the work which had been begun. The Bishop granted permission to purchase a site for a building; a wooden foundry on Market Street. With the transferral of Father Raile and the arrival of Rev. John Gaspar of Woodbridge, the plans for the school building would continue from 1933 to September 19, 1937, when the blessing of this new school building would take place. Soon, Archbishop Walsh of Newark, designated the Daughters of Divine Charity as the teaching sisters of the parish, and regular classes would soon begin.

The period from 1937 to the present would be marked with both joy and sorrow. Rev. Anthony S. Dunay would soon be installed as pastor after the death of Father Gaspar. Soon a modern school building would be built as an extension to the old school. It was also the period when Cardinal Jozsef Mindezenty, Primate of Hungary, visited and blessed the church in May of 1974, and spoke fervently to all parishioners regarding their

support and prayers for the universal church. After Father Dunay's death in 1977, the parish was administered by Reverend John J. Cusack, until the arrival of Reverend Bela Torok from Harbor Beach, Michigan.

Mr. Speaker, we do indeed extend our congressional salute to the pastor, Father Turok, and to all of his associate priests, the sisters, and parishioners of St. Stephen's R. C. Church of Passaic, N.J., in national tribute to the elegance of their faith and outstanding good works on behalf of our fellowman which have truly enriched our comunity, State, and Nation.

Since its founding in 1903, the ever growing St. Stephen Roman Catholic Magyar Church has been ministering to the spiritual, physical, and educational needs of the parishioners as well as the surrounding communities of northern New Jersey.●

THE AMERICAN MESSAGE

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington report for October 11, 1978 into the CONGRESSIONAL RECORD:

THE AMERICAN MESSAGE

Americans everywhere are sending a message to those of us in politics today. It is coming through loud and clear to Congressmen and Senators as they fan out across the nation to visit their home districts and states. The impact of the message will be felt for some time to come.

The message is easy enough to understand. People do not want more government, more taxes, more programs, more bureaucrats and more regulations. They do not want a government which spends more and more while it delivers less and less. They are weary of quick-fix solutions that do not work and endless promises that are not fulfilled. They have had it with government meddling and interference in their lives. Above all, people are distressed by the apparent inability of government to come to grips with the pressing economic and social problems of the day. As one Hoosier recently said to me, "How can an outfit with so many experts get it wrong so many times?"

The message is really not a negative one. People want simple competency, efficiency and honesty from their government. They are not asking us to dismantle every program and they would not allow us to turn our backs on those who need help, but they believe that we can make the government more effective. They are just as concerned about how little they get in return for taxes as they are about how much they have to pay in taxes. They want to put an end to the waste, fraud and corruption that spoil even the best of programs. They are looking for government to do well those things it is supposed to do. In effect, people are saying, "Give us our money's worth."

We should not respond to such a call to action as we would have a decade or more ago. People are not demanding new social strategies or a redistribution of wealth. On the contrary, they expect government to get a handle on the things that threaten their way of life. The chief threat, of course, is inflation. Many Hoosiers have told me that they could put up with almost anything if the government could just find an adequate solution to the problem of soaring prices.

Although the message from the country is a strong one, I do not think that most people are fundamentally unhappy with their lives. They are only saying—and are right to say—that neither the government nor the economy is working as well as it should. As he takes stock of this apprehensive mood, the politician must ask himself what should be done. I believe that our basic focus must be to make both the government and the economy work better. These two goals must guide everything we do.

To make the government work better we must take many steps. We pare down the bloated bureaucracy by clamping on hiring freezes, imposing personnel ceilings and restricting the use of outside consultants. We simplify the structure of government by pushing for executive reorganization, consolidating offices by function and enacting "sunset laws" to terminate unnecessary agencies. We strive for openness in government by limiting the use of secret sessions, requiring officials to disclose their finances and forcing policymakers to answer directly to the public. We reform the runaway regulatory process by shaving down agency budgets, letting Congress veto regulations and initiating full-scale deregulation wherever possible. We slice through bureaucratic red tape and gobbledygook by reviewing reporting requirements, using paperwork impact statements and writing government documents in plain English. Finally, we rework the federal-state relationship by expanding the revenue sharing program, streamlining the grant application application procedure and cutting "strings" on aid.

Making the economy work better will call for at least as much effort. We hold down inflation by phasing out the federal deficit, boosting productivity and keeping a firm hand on the money supply. We cut taxes by lowering individual rates, trimming corporate rates and giving a break to people who sell their homes. We cut federal spending by curbing growth in existing programs, avoiding commitment to new programs and adhering to zero-based budgeting throughout the government. We eliminate the trade deficit by stimulating export industries, reducing protectionist barriers abroad and taking immediate action against foreign nations that trade unfairly. Finally, we move to solve our energy problem by enacting a national energy plan, instituting strict conservation measures and increasing domestic production of oil and natural gas.

It is no small task to make both the government and the economy work better. The obstacles to success are many, the temptation to delay is great, and even if we were to take a large number of the steps I have indicated there would be no overnight miracle. However, the price we pay for an ineffective government and a sluggish economy is much too high. We cannot ignore the message of the American people.●

HELICOPTER PILOT TRAINING CONSOLIDATION SHOULD NOT DELAY PASSAGE OF THE DEFENSE APPROPRIATIONS BILL

HON. ROBERT L. F. SIKES

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SIKES. Mr. Speaker, when the conference report on defense appropriations is brought to the floor, we will be confronted again with the proposal to consolidate undergraduate helicopter pilot training in Fort Rucker, Ala. This proposal originated with professional planners in the Pentagon who make a career of developing plans which can keep them employed for years. This one began about 10 years ago. If the planners ever are successful, they will then undertake to bring about the consolidation of all pilot training. Each program of this type can insure many years of employment for the individuals concerned.

My good friend, the gentleman from Alabama (Mr. DICKINSON), is a strong proponent of the proposal to consolidate helicopter pilot training. He is a direct beneficiary. A consolidation would take the program from a Florida base in my district and transfer it to his district in Alabama. It will be noted that in the most recent vote in the House, nearly all of the members of the Republican Party supported Mr. DICKINSON. I do not say they were supporting a member of that party only to move a base from a Democratic district to a Republican one. I am confident many were swayed by the claimed savings set forth by the professional planners in the Pentagon, particularly since these claims are supported by the General Accounting Office. The claims for savings have been disproved and there is evidence of close alliance between the Pentagon planners and some GAO personnel who formerly were associated with these activities in the Pentagon. There is strong evidence of prior understanding on the amount of savings to be claimed. This situation has provoked a congressional inquiry—not by my committee.

Whatever the motive, the result was the same. The House conferees were instructed to support consolidation. I have a personal interest. My district would lose a base. My constituents would suffer financially from the loss of jobs and of economic benefits from a military base.

On the matter of savings, let me emphasize the fact that these claims have been refuted time and again by the Navy, but the Navy's rebuttal is ignored or glossed over. In the most recent instance, the motion to instruct the conferees by the gentleman from Alabama (Mr. DICKINSON) provided a hopeless problem for the conferees. The motion did not take into consideration the split decision resulting from a confused situation in the appropriation bill on this subject. The floor action on the issue of consolidation at the time of the passage of the bill in the House leaves military personnel and funding in the Navy. It provides instructor and safety personnel at the Navy facility at Whiting Field. However, the House action provides operations and maintenance money for the Army to conduct the training at Fort Rucker. This is an impossible situation—the personnel being retained in the Navy at Whiting and O. & M. money for the Army at Fort Rucker.

The House position deletes the general provision which in past years has not permitted the Defense Department to realine the Navy's flight training squadrons. This effectively gives DOD the ability to reduce Corpus Christi to a naval air facility, and will have a del-

eterious effect on the other flight training bases in Texas, Mississippi, and Florida.

Obviously in the conference we could not maintain a position in which there is not room for compromise, even at the expense of this vital training program. The managers on the part of the House could not maintain a position in which the people are given to the Navy and the operating dollars are given to the Army. It is untenable. Consequently, the confereees now have placed all funding for the program in the Department of the Navy.

Before he was bound by instructions, the distinguished chairman of the Appropriations Committee, Mr. MAHON, opposed the consolidation. Now he feels that his hands are tied. In a speech on the floor on August 7th in the opposition to consolidation, he stated, "It is time to stop this controversy, time to put this issue behind us and let the Services proceed with helicopter training for the following year as they are now proceeding."

Mr. Speaker, it is time to clear the air, to accept amendment No. 84 (section 85) which was a part of the House bill when it was reported from the House Appropriations Committee. All that can be gained from pursuing the matter further is a delay in providing funds for military payrolls, both military and civilian.

A letter from Secretary Brown to the members of the Defense Subcommittee and to the Chairman of the House Armed Services and Appropriations Committees spells out a serious situation which now exists. They have no money to meet payrolls for military and civilian personnel. Even if passage of this bill is completed this week, lead time is needed to be sure that checks will be in the hands of personnel. Further delay clarifying the helicopter training question is totally unrealistic. Even if the language is not approved, if we go back to conference, we have no assurance the Senate will yield.

They have been very strong in their position against consolidation. The last Senate vote on this question was 75 against and 21 for consolidation. This is a much stronger position than the House position in favor of consolidation.

Even if a future conference were to agree to eliminate the language, it would not advance consolidation. In that situation, consolidation could come only after a reprograming action had been approved by the Subcommittees on Defense Appropriations in the House and Senate There is no indication whatever that such a reprograming would be approved. While the useless manuevering for a further resolution is in progress, the DOD personnel will go payless.

Now I want to spell out clearly the true situation on claimed savings the Navy submitted a reclama to the Secretary of Defense on the fiscal year 1979 budget submission setting forth the official Navy view that the assumed consolidation savings are virtually nonexistent.

The facts set forth in the memorandum from the Assistant Secretary of the Navy (Financial Management) to the Secretary of Defense are as follows:

[In millions]

Navy estimate of their 5-year cost for UHPT	$193.1
Less Army's estimate of their 5-year costs for UHPT	−136.8
Net difference in Navy and Army (OSD) estimates	56.3
Additional 5-year Army costs to conduct Navy UHPT (not previously identified by (OSD)	−50.0
Actual 5-year Navy cost avoidance (as estimated by Navy reclama)	6.3

Thus, Navy's position was that, at best only $6.3 million in costs could be avoided in the 5-year period.

However, as identified by DOD DPS's on the subject, Navy claims that DOD has deducted manpower required for Navy fixed-wing UPT in their efforts to demonstrate that such consolidation savings do, in fact, exist. Actually, if Navy undergraduate helicopter pilot training were consolidated under the Army, $6.3 million would have to be restored to Navy to support fixed-wing training in fiscal year 1979. Thus, the best OSD cost avoidance estimate could be wiped out in 1 year.

OSD replied to Navy's reclama by: First, revising their decision program Set and, second, conducting an audit of Navy UHPT costs by the Defense Audit Service.

In the first case (DPS 490R), despite Navy's reclama and billet-by-billet scrub of manpower requirements to conduct UHPT (which showed a reduction of 331 billets, including support, equal to a 5-year total of $22.5 million under OSD's estimate of Navy's cost), the Navy estimate was rejected by OSD analysts simply because it would destroy their predetermined $100 million 5-year savings. (It is precisely for this reason that should UHPT be consolidated at least this amount of so-called savings would have to be restored to Navy to permit Navy to conduct fixed-wing pilot training.)

In the second case, the Defense Audit Service, in conducting their audit, ignored the additional costs to be incurred by the Army to conduct Navy UHPT. These costs were identified in part by an internal Navy memo (March 8, 1978) which pointed out that the Army had made no provisions for support facilities, fuel contracts, refueler requirements, crash and fire equipment, and the like. Also, since Navy pilots are officers, the Army planned to house Navy, Marine and Coast Guard officers in their BOQ, while turning their own students out to the economy until more facilities could be constructed. There is no indication that OSD analysts ever computed the additional BAQ and increased housing costs arising from UHPT consolidation.

As a matter of record, the Defense Subcommittee Report of the House Appropriations Committee on the fiscal year 1979 budget identified 261 excess helicopters in the Army inventory, and recommended a reduction of $3.4 million in annual operating funds. OSD has never correctly applied this $3.4 million per year against the Army in their calculations of the costs in Army's program that could be saved by not moving Navy UHPT to Fort Rucker.

Finally, the Chief of Naval Operations, Adm. James Holloway, personally called on Chairman MAHON this spring to voice his opposition to this helicopter consolidation proposal in the light of the most recent information available. Reasons for the CNO's strong opposition may be found in the following:

First. The Army training would not meet Navy standards;

Second. Both the civilian and professional leadership of the Navy now feel that OSD's claim of substantial savings through consolidation is suspect, and have concluded that the cost avoidance for Navy may be more than offset by additional Army costs resulting in no significant net savings to the Defense budget;

Third. With the projected growth of the Anti-Submarine Warfare LAMPS system, Navy helo pilot requirements would increase substantially in the decade to come; and

Fourth. With variations in pilot retention rates and changes in helo pilot and fixed-wing pilot requirements it would be necessary to have greater flexibility to transition pilots from rotary to fixed-wing skills. (This is a major issue with the Marine Corps.)●

STATES' RIGHTS VERSUS FEDERAL POWER IN COASTAL WATERS

HON. LEO J. RYAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. RYAN. Mr. Speaker, I commend to the attention of my colleagues an October 1, 1978, Washington Post "Outlook" section article by Joanne Omang entitled "States' Rights versus Federal Power in Coastal Waters." This article raises an issue that I am sure has troubled many of us who represent coastal areas, this is, who should control the development and exploitation of the many resources of the coastal zone? Who determines the need for certain kinds of development, which most people oppose who live in areas adjacent to such development? Should the States exercise responsibility and effective control? Should an agency of the Federal Government have such control by working closely with State agencies? These are some of the interesting issues and questions the Omang article raises.

I certainly wish that Omang would have asked me for some input when she was writing her article. I have an excellent case in point, which would have been a superb example for her to use. Let me describe my example for you.

The Department of Interior (DOI) feels that as part of its responsibilities it should sell leases to land in California's coastal zone, which may then be purchased by oil corporations as sites for offshore oil wells. Without really questioning this policy, the DOI bureaucracy keeps pushing ahead. Sale No. 48 is more advanced than sale No. 53 and the draft environmental impact statement for sale

No. 48 has been released for comment. In the case of sale 53, the DOI has been going through the process of obtaining positive and negative nominations to blocks of OCS land, the leases to which would be sold to oil corporations at some later date.

I find it interesting that negative nominations have been given by most of the local governments, the State of California, the California Coastal Commission, and a multitude of environmental groups, all of which are against lease sale No. 53. This sale would place oil platforms off some of the most spectacularly beautiful coastlines in the world. We can only guess what the attendant blowouts, ships, petroleum vapors, water pollution, and the like would do to these coasts and the view. Yet, DOI plods ahead assuring everyone that the negative nominations will be taken into account in its decisionmaking processes and no sale will take place until the environmental impact statement processes had been completed.

On the face of it, such an assurance by the Department should mean something, but, as we all know, the EIS process has become rote, and the EIS report was of little use in the decisionmaking process. The EIS has become an expensive, unread, useless joke. Since this is the case, we can only expect that DOI will recommend sale of tract leases.

But why are leases being sold in the first place? There is no evidence that DOI is working in conjunction with the Department of Energy. Why do we need the gross exploitation of the coastal zone? Is it because of the lack of oil on the west coast? On the contrary, there is a glut of Alaskan oil. On land, oil wells are being shut down. Even wells off the once beautiful Santa Barbara coast are being reclaimed by DOI for lack of diligence. There are large amounts of oil being imported from Indonesia and, most suspicious of all, the so-called Elk Hills Strategic Naval Reserve is being pumped by commercial interests.

This kind of situation does not indicate a lack of petroleum; on the contrary, it indicates an excess. Who is in control here? Can we find strong, good defined national policy being served here? There is no coherent policy and there is no need to develop the small amounts of petroleum to be found in the coastal zone. First, the potential for environmental outrage is not worth such a small amount of petroleum. Second, the oil basin in the coastal zone has been identified by geologists as extensions of land deposits. Thus, the same high-sulfur and residual oil found on land will be pumped off the coast. Since there is no market for it now and land wells are being shut down, what will happen to the oil?

If the oil is not to be pumped because of its residual content and lack of demand, there is no sense in allowing the tracts to be leased and wells pumped unless the oil is intended to be sold to the Japanese. I suspect the reasons for the sales 48 and 53 going forward, and the recent Commerce Department decision to allow crude oil—except Alaskan—to be sold to Japan are one and the same. The OCS oil wells would be developed and our coasts, marine life, fisheries, et cetera, would be jeopardized to allow the oil corporations to make money by selling the oil to Japan. I protest that this is not worth the price. I am in favor of leaving the OCS oil in the ground as strategic reserves, which can be developed at a time when this Nation needs the petroleum to fill its own needs. The article follows:

STATES' RIGHTS VERSUS FEDERAL POWER IN COASTAL WATERS

(By Joanne Omang)

In 1976, when large numbers of shellfish and plants began to die off the coast of New Jersey, no one seemed to be in charge of finding out what had happened.

Marine biologists ran tests and learned that there was virtually no oxygen in the water near the ocean bottom from just south of Long Island nearly all the way to Delaware. When asked, various authorities blamed offshore dumping of sewage sludge near New York in an area known as the New York Bight.

They also blamed chemical slurries, or the bilge from some passing chemical cargo vessel, or underground seepage or a red tide. The fact was that not only did no one know then or knows now what caused the situation, or whether it would recur, but no one was responsible for knowing.

Murk in the nation's coastal waters is often surpassed only by the murk around jurisdiction for them. With 80 per cent of the population expected to live within 50 miles of the coasts by the year 2000, state governments have burgeoning problems in that area and little research capability even to understand them. Federal activity, meanwhile, seems to continue with little or no regard for the changing situation.

Thousands of small pleasure boats zoom in and out of major shipping lanes, colliding by the hundreds every year in a national tragedy that is barely even documented. The seagoing traffic is particularly heavy in some areas, like the Santa Barbara channel in California, where Washington is preparing to offer leases for offshore rigs involved in the still-growing national thirst for oil.

In Santa Barbara, the facilities would unload Alaskan crude from giant tankers while other vessels maneuver in and out of the harbor. "It'll be almost like running a slalom course through the docks," said Dail Brown, assistant director for critical area planning at the National Oceanographic and Atmospheric Administration (NOAA).

The question of states' rights versus federal laws has not previously meant arguments over sewage sludge, offshore oilwells, king crabs or supertanker routes, but it does now. It also means genteel struggle over damage claims, royalties, revenue sharing and manganese nodules, which are just the latest of the riches in and under the restless sea.

"More and more players keep coming into the ball game and the rules are constantly changing," observed Phillip Clark, coastal zone management coordinator for the American Petroleum Institute, the oil industry trade association. "There's no real way to resolve conflict . . . it's a real limbo-land of regulations."

CONFLICTS IN THE COURTS

The Senate this week considers final passage of a measure to license U.S. private exploration and mining of those manganese nodules, multimillion-dollar lumps of ore just waiting to be scooped up off the sea floor as much as 5 miles down. Since the ore occurs under the open sea, 200 miles or more from U.S. coasts, one would think there wouldn't be much interest at the state level. Not so.

"There could be environmental disruption with currents we don't know about yet. The ore has to be processed somewhere on shore; it has to be transported somehow. Does that mean pipelines or what? There will be new job markets and new taxes to pay; who gets them? And what about dividing up the profits?"

The speaker is Dean Rusk, former secretary of state and now a self-described lone voice warning from his post at the University of Georgia law school that federal-state relations are going to be a major problem in agreeing on the laws of the sea.

"There's a point at which a lack of uniformity among the states could impose a very heavy burden on anyone trying to work out there," he said.

At the moment, most disputes are settled in lengthy court battles that hinge on defining federal powers granted by the Constitution. Washington, for example, has just banned the dumping of sludge from treated sewage anywhere offshore after 1981.

Coping with the change could cost the states millions of dollars in new sewage treatment plants. "That's a tremendous problem for them," said Robert Knecht, assistant administrator for NOAA's Office of Coastal Zone Management. "What are they going to do?" Several states are contemplating lawsuits.

Recognizing that the 3-mile limit to coastal waters no longer means much, NOAA this week merges its office of Coastal Zone Management and its Oceans Management office to bring them both under Knecht. He and others say that the problems in this area are still being defined and little has been done to solve them.

"The states are being drawn into a rising number of coastal ocean issues [and] the forcing element is outside the states," Knecht said. "Often the argument isn't even over the policy itself but over jurisdiction in deciding."

An example of that occurred in Washington State, where federal action almost by accident has all but settled years of painful state legislation and legal wrangling that went all the way to the U.S. Supreme Court. The high court last year overturned former Gov. Daniel Evans' ban on oversized tankers in Puget Sound, but only on grounds that a state cannot regulate interstate commerce. Sen. Warren G. Magnuson (D-Wash.) has hopes of virtually reinstating the ban through new Coast Guard regulations, which may control such commerce.

Magnuson is against any new oil transshipment port in the Sound, but the Department of Energy is considering a proposal from the Northern Tier Pipeline Co. to build one near Port Angeles and run a pipeline for Alaskan and foreign oil from there east to Clear Brook, Minn.

"One could imagine a situation where the feds say we need the pipeline and the state says, oh no we don't, and there's nothing the state can do," said a Washington resident watching the situation.

In another case, the state did lose. New Jersey's 1976 challenge to federal offshore oil drilling licenses was at first upheld in U.S. District Court on grounds that state interests in the inevitable pipelines and other possible disruptions had been ignored. But the 2nd Circuit Court of Appeals reversed the verdict in August 1977, saying a possible state veto later could not stop the drilling now. "There comes a point where the chain of 'ifs' gets too long and too tenuous to be of any practical use," said Judge Walter Mansfield.

THE "CONSISTENCY" DOCTRINE

What leverage the states have in the future will probably depend on court interpretation of the concept known as "consistency" that was established in the Coastal Zone Management Act of 1972. The measure provides funding for states to come up with

a coherent plan, following federal guidelines, for their coastal lands and waters out to 3 miles, and then decrees that any federal action afterward must show "consistency" with the state plan "to the maximum extent practicable."

Since anything done anywhere in the ocean is likely to wash ashore sooner or later—in the form of pipelines through areas the state wants as beaches, for example, or in the form of jobs or refineries or even oil spills—the states are newly able to speak up. In one such case, Alaska's Supreme Court upheld the primacy of the state's restrictions on the taking of king crabs over Washington's looser standards for areas outside the 3-mile territorial sea.

"The 'consistency' doctrine gives the states a brand new grant of power on the outer continental shelf, and we are the ox that gets gored," said the oil industry's Clark. Only 13 states and territories of the 34 with coastlines have so far come up with approved coastal zone management plans, and the oilmen are unhappy with most of them.

The petroleum institute took Massachusetts, Wisconsin and California to court on grounds their plans paid inadequate attention to "the national interest" as required in federal guidelines. The oilmen, of course, meant that the states were excessively restrictive on future oil development.

The industry lost in all three cases, only the California case being tried on the merits. However, the judge complained that the ambiguous law had obviously "befuddled" bureaucrats and recommended that the oilmen seek remedial legislation. "That's no remedy at all," Clark said.

The recent Outer Continental Shelf Act amendments require more state consideration and information as federal agencies draw up their plans, and also create multimillion-dollar damage and impact compensation funds.

States are also involved in regional councils set up to coordinate fishing in the newly declared 200-mile economic zone, but all of these measures are too new to have had any impact yet.

"What we really have is only the blunt instrument of yes or no so far," said William S. Gaither, dean of the College of Marine Sciences at the University of Delaware. He wants to set up regional coastal councils that would take over federal decision-making functions, a controversial notion at best.

As the states grope for a new relationship with Washington, the seaward traffic continues to increase and the problems get more complex.

"Clearly we're moving toward a time when there's going to be some kind of mandatory shared use of marine resources," said Knecht, "zoned like Cape Hatteras is for beaches, water skiing, boats and fishing . . . but that's a long way off." ●

RED CHINA'S AMERICAN LOBBY: THE U.S. CHINA PEOPLE'S FRIENDSHIP ASSOCIATION (PART II)

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. McDONALD. Mr. Speaker, the United States-China People's Friendship Association (USCPFA) with its 10,000-member lobby in this country has developed in recent years as a major force on behalf of the Communist regime in the People's Republic of China.

In an earlier report on the USPCFA, I have outlined its background and organization; for the information of my colleagues I now continue with information on this organization, first published in a recent edition of the Information Digest, a newsletter on political and social movements.

The article follows:

USCPFA ACTIVITIES

The USCPFA works through a number of committees which include:

National Convention Planning and Rules Committee.

National Outreach Committee—which concentrates its activities (speakers bureau, film library, library, etc.) toward the "minority and working class people [who] make up a majority of the American people."

Normalization of Relations Committee—which calls for the withdrawal of U.S. recognition of the Republic of China (ROC) [Taiwan] and severance of all U.S. economic and military ties to the ROC, including abrogation of the 1954 U.S.-ROC Mutual Defense Treaty.

Membership and Educational Committee—which includes health topics since "Health is a Big Unity subject"—deals with all aspects of events in the PRC and the servicing of USCPFA members.

Publications Committee—which is setting up a National Publications Center in New York City with paid full-time staff.

China Friendship Tours Committee.

USCPFA FUNDING

During the San Francisco convention, the USCPFA announced that its projected budget for 1979 would be $1.4 million, a sum that can in no way be accounted for by their general membership dues of $5 a year or "sponsor" or "patron" contributions of $15 or $25. Nor can it be accounted for by normal fundraising, sales of subscriptions or foundation support.

However, as the USCPFA has the U.S. "franchise" for tours of the PRC (a "franchise" previously held by The Guardian newspaper until its political dispute with Peking, which provided, along with large numbers of paid subscriptions taken by agencies of the PRC, a vital subsidy for the publication), it is probable that the majority of its funds are controlled by the PRC.

According to a USCPFA organizer, the PRC will issue 5,000 visas for U.S. travel to Red China through the USCPFA during next year. This same organizer reported that a "mark-up" of $500 is imposed on each "special interest" tour. By this source alone it is estimated that an income of $250,000 could be generated.

At the San Francisco convention, the USCPFA announced increases in staff. A press and public relations officer will join the Washington Center; a new staff position is being created to organize the campaign to admit the PRC to the 1980 Olympic Games; and still another staff member will be in charge of the outreach to "working class and minority people." Finally, a full-time executive director will be added to the national office staff in Los Angeles.

The staff of New China magazine will be increased to four persons and the new National Publications Center in New York will also require at least one full-time paid staff member to coordinate the dissemination of USCPFA materials.

Sources report that the ASCPFA national office and field staff receive an average minimum wage of $6,000 each, which in turn indicates a projected payroll of at least $150,000. This sum, taken together with estimated property rental, telephone, postage, printing, travel expenses and similar expenses, while fully compatible with the USCPFA projected income, leaves undetermined the extent of the PRC's subsidy.

USCPFA LEADERSHIP

In 1977, the National Steering Committee of the U.S.-China People's Friendship Association consisted of:

Eastern Region.—John Dove, Boston; Jan Ting, Philadelphia; Roy Johnson, Washington.

Southern Region.—Bill Funk, Atlanta; Robert McFarland, New Orleans; Elaine Budd, Miami.

Midwest Region.—Sylvia Fischer, Chicago; Inuka Mwanguzi, St. Louis; Joseleyne Tien, Greater Lansing.

Westren Region.—Don Porteous, East Bay; Sue Becker, Seattle; Junella Haynes, Albuquerque; Tien-ni Fang, Hawaii.

At-large Members.— Frank Pestana, Los Angeles; Fred Engst, Philadelphia (son of Erwin "Sidney" Engst and Joan Hinton Engst, sister of William Hinton, who moved to China in the late 1940s at the instigation of a top Comintern agent and headed the PRC's atomic program during the 1950s and 1960s. Joan Hinton Engst returned to the U.S. in 1977 after 30 years in the PRC for a national speaking tour and appearance at the USCPFA convention); Esther Gollobin, New York; and Unita Blackwell, Mayor of Fayette, MS.

The 1977 officers elected by the National Steering Committee (NSC) meeting on 9/5/77 following the close of the USCPFA convention were Co-chairpersons Frank Pestana and Unita Blackwell; vice-chairperson Esther Gollobin; Secretary-treasurer Don Porteous; and Inuka Mwanguzi.

Honorary NSC members selected at various conventions include Maude Russell (1974); Shirley Graham DuBois (now deceased), Ida Pruitt, John Service and Edgar Snow (posthumously) (1975); Detroit Judge George Crockett, Max Granich, William Hinton, Helen and Samuel Rosen, and Randolph Sailer (1976); and James Veneris (1977).

At this year's convention, the RWH and the CPML introduced factional "slates" for the at-large members of the NSC. Two CPML approved candidates and one RWH candidate was elected, as was one person backed jointly by both. The four are Frank Pestana; Mark Sheldon, an employee of the United Methodist Church active in what was termed "progressive activities" retiring to the PRC; Margaret Whitman of New York City; and Unita Blackwell.

USCPFA 1978 NATIONAL CONVENTION

The 1978 national convention of the USCPFA was organized by a Planning Committee that included Don Porteous, June Farver, Roy Johnson, Lynn Jones, Inuka Mwanguzi, Nancy Owens and Trev Sue-A-Quan. The National Convention Coordinator was Jan Masaoka.

The main conference workshops and panels included:

Trade union outreach—Jack Hirschfeld.

China Study Tour Program—Joseleyn Tien, Junella Haynes, Margaret Whitman.

U.S.-China Trade Panel—Bob Gomperts, Jerry Levine, Ted Thau, Frank Sebastian.

Education in China—Pat and Roger Howard.

Recent Trip to Tibet—John Service.

Current Farm and Factory Developments—Fred Engst, Joan Hinton, Lou Goldblatt.

Historical overview of China friendship—Alison Stilwell Cameron and Nancy Stilwell Easterbrook, daughters of General Joseph Stilwell.

PRC involvement in Africa—Sadu Sadanand, Susan Warren, Mzonke Xusa, Monroe Sharp.

Outreach to churches—Jean Craig, Richard Lapchick, Anna Singletary.

PRC economic system—Sylvia Wineland, Michael Zweig.

PRC and 1980 Olympics—Richard Lapchick, Nancy Freehofer.

Trade Union Panel—M. Beaugarie, B. Nuchow, G. Gutierrez, P. Schrade, C. Ellis, C. Fischer, B. Berry.

Other workshop leaders and panel members included Ellen Brotsky Williams, James Horton, Elaine Budd, Patrick Peritore, Sylvia Yee, Paula Chidichimo, Milroy Levitt, Melea Johnson, Ralph Dale, Mickey Green, Barbara Bernie, Lorenzo Canizares, Greg Tsang, Kathy Chamberlain, Peter Schmidt, Victor Li, Alan Feigenberg, and A.H. and M.E. Ensminger.

According to those who attended the San Francisco convention, the most significant events were the keynote address by Frank Pestana and Unita Blackwell which emphasized the increased need of the PRC for normalized relations with the U.S.; a speech by John Service on his recent trip to Tibet that justified the PRC's conquest of Tibet in 1950; and a presentation on the "Role of the Elderly in Social Change in China" by Maggie Kuhn, founder and president of the Grey Panthers, an adviser to Senator George McGovern [D–SD] during his 1972 presidential campaign, and a member of the USCPFA who recently led a USCPFA "Special Interest Tour" of the PRC.

Also present at the conference was Dr. George Hatem, who had lived in China from 1933 until his return to the U.S. this summer. Hatem, of Lebanese ancestry, whose Chinese name is Ma Hai-teh, was a close adviser of Mao Tse-tung and served the government of the PRC as deputy director and chief of staff of the Institute of Venereology and Skin Diseases. Hatem is widely credited with the near elimination of syphilis in the PRC.

NOTE.—Dr. Hatem does not claim this as a medical victory, but as one of "New China's" political and social achievements. He is quoted in Edgar Snow's Red China Today, speaking on current conditions in the PRC, as saying that promiscuity and premarital sex are very rare and that everybody gets married. Said Hatem, "*** very few men or women are still unmarried at twenty five. Before that, they do without—they're kept busy, no time to fool around, minds and bodies occupied."

Many attempts were made to disrupt the USCPFA convention by non-delegates from the RCP, whose role is outlined in the section of this report that follows.

THE RCP SPLIT

The Revolutionary Communist Party (RCP), formerly the Revolutionary Union (RU), has been active in the USCPFA since its embrionic period and had constantly vied with the October League (OL), now the Communist Party, Marxist-Leninist (CPML) for both favors and recognition from the PRC.

Following the death of Mao in 1976, the RCP supported the losing side, the "Gang of Four," during the internal power struggle in Red China. Moreover, while the CPML quickly rectified its initial mistake in backing the Gang, the RCP, under the leadership of Robert Avakian, has persisted in verbal attacks on Communist Party of China (CPC) Chairman Hua Kuo-feng.

According to a Denver, USCPFA source aligned with the CPML:

"In recent months, RCP has evidently taken the view that the Chinese Communist Party and the government of the PRC have abandoned the principles upon which the PRC was founded, and have betrayed the interests of the Chinese people.

They have attempted to transform the USCPFA into a platform for propagating these views. This not only runs counter to the aims and interests of our members, but is essentially hostile to the Chinese people and to the friendship movement. By presuming to understand Chinese events and policies better than the Chinese people themselves, the RCP has exposed its arrogant, chauvinist character and its deep-seated antagonism to the rest of us in USCPFA."

Using tactics reminiscent of the Trotskyist-Stalinist feuds that have persisted over several generations, and indeed with the active support of the Trotskyist Workers World Party (WWP), about 80 RCP members attended the San Francisco convention. In small groups and individually, the RCP cadre lobbied for their position with USCPFA delegates, pushed their support for the Gang of Four in the workshops whenever the official Peking-line attack was made, and disrupted proceedings with chants when the Peking-line majority rejected their arguments.

The USCPFA leadership responded by expelling those who supported the RCP line, including one member of the USCPFA NSC who had attended an RCP press conference.

USCPFA co-chairman Frank Pestana led the hardline attack on the RCP, stating:

"Anyone who identifies with the position of the RCP with regard to the USCPFA as expounded in their own publications should be expelled from the association. They are enemies of China and enemies of the USCPFA. The USCPFA should not be used as a platform for criticizing China."

The USCPFA delegates overwhelmingly rejected the RCP's resolution in support of the Gang of Four. A second resolution offered by the USCPFA leadership was almost unanimously passed. This said that while USCPFA members do not have to actively agree with every policy of the PRC leaders, claiming that the role of the USCPFA was not to advocate PRC policies but to promote "friendship," "Members who by their persistent actions disrupt the ongoing program of building friendship * * * should be asked to resign or, if necessary, be expelled by their local."

Thus the USCPFA national convention confirmed a process that had started some months earlier with the demoting of RCP-dominated chapters to organizing committees or the closing of them, and with the removal of RCP sympathizers from positions of influence.

As the official publication of the CPML, The Call reported, "The USCPFA has shown its determination to 'remove all barriers to friendship between the two peoples—whether they come from the U.S. State Department or the RCP.'"

USCPFA PLANS

Reiterating resolutions first prepared and passed at regional preparatory conferences, the USCPFA San Francisco convention placed near total emphasis on "normalization" work, particularly ending U.S. ties to the ROC. Analysis of conference materials indicates that the leadership has decided to make the USCPFA an influential force in the U.S. to press for the U.S. government to make diplomatic and economic concessions to the PRC.

Various tactics will be used. An attempt will be made to exploit, to the advantage of the PRC, such issues as Soviet-Cuban agression in Africa; Soviet military threats to the PRC; and the Soviet "hard line" on detente. Additionally, the "benefits" of selling high technology equipment to the PRC. U.S. government extension of trade credits to the PRC, and providing military equipment to the PRC will be detailed to the U.S. business and organized labor communities. A supporting campaign in the media and in the churches has been outlined.

Information developed at the conference indicates that the main thrust of these campaigns will be run from the Washington Center for U.S.-China Relations which will serve as an "educational" resource to lobbying groups while at the same time working closely with the PRC Information Office.

Regional conferences have been planned which are designed to promote the benefits of "normalization" for the U.S. The conferences are to concentrate on special interest groups such as health care professionals, sections of the academic community and labor unions. In the latter area, full use will be made of members of trade union delegations that visited the PRC in 1976 and 1978, and of trade union members who belong to the USCPFA.

NOTE.—An advertisement in the 1978 USCPFA San Francisco Convention Program, headed, "We Pledge our efforts to fulfill this mutual goal of the working people of the United States and the People's Republic of China," namely "Full diplomatic relations now," was signed:

William H. Nuchow, Sec.-Treas., Local 840, I.B.T.

William O. Robertson, Pres., Local 840, I.B.T.

Harold Sugarman, Trustee, Local 840, I.B.T.

Lenwood Terry, Trustee, Local 840, I.B.T.

Harold Melman, Chief Steward, Local 840, I.B.T.

John Hudson, Intern. Rep., U.H.C.M.U., AFL–CIO.

Carmen Sanchez, Communications Worker.

Mildred Dweck, Communications Worker.

Ray Schaeffer, Local 10, I.B.T.

Phyllis Schmidt, A.F.T.

Karl M. Manheim.

Additionally, as part of the "normalization" campaign, appeals will be made to sports enthusiasts to aid in pressing for admittance of the PRC to the 1980 Olympic Games in Moscow and exclusion of the ROC. This activity, which includes Richard Lapshick in the leadership cadre, is being coordinated by the Ad Hoc Committee for China in the '80 Olympics, % Chicago USCPFA, 407 Dearborn St., Suite 1030, Chicago, IL 60605.

The USCPFA has survived the disruption of the RCP split and is starting a new year of propaganda activity, well funded, and with a program that is designed to promote and protect the PRC. Obviously intimately involved with the PRC, an important question to be investigated is the extent and mechanisms of control exercised by the Peking government over this extensive U.S. apparatus.●

LOUIS MARTIN: "THE GODFATHER OF BLACK POLITICS"

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. STOKES. Mr. Speaker, as you well know, last month the President appointed the venerable Louis Martin as his special assistant for minority affairs. I, for one, am particularly gratified that the President chose Louis Martin for this sensitive and challenging position. He will bring with him not only solid experience and sterling credentials but also a keen insight into the political process and its impact on the vast social and economic problems of black citizens in this Nation.

Last evening, Mr. Speaker, Louis Martin was honored by his friends and colleagues at a reception at the Federal City Club. Today's Washington Post carries an account of that affair and an extensive article on Louis' long and impressive political and journalistic career. So that my colleagues in the House can familiarize themselves with Louis Martin's outstanding record, I commend to your attention the October 10, 1978 article by Washington Post reporter Jackie Trescott:

"THE GODFATHER OF BLACK POLITICS"—NOW LOUIS MARTIN'S 'PINCH-HITTING' AT THE WHITE HOUSE

(By Jacqueline Trescott)

Lyndon Johnson was pacing in his inner offices, ready to call the key senators to in-

form them of his appointment of Solicitor General Thurgood Marshall to the U.S. Supreme Court.

But the president couldn't find Louis Martin, the adviser who had nurtured the appointment of the first black justice, and he would not start the historic formalities without him. While Johnson barked, the White House switchboard searched, and finally Martin was found—on the golf course.

Martin says it isn't so, the golf course part, claiming residence at his Democratic National Committee office. Yet the story circulates among his good friends as proof of Martin's influence, friendship and self-assurance with the powers of Washington.

And Martin himself chortles at that fragment of his legend, a laugh that pumps heartily from his hefty frame. He just misses slapping his knee.

"The godfather of black politics" is what think-tank president Eddie Williams calls Martin, a phrase echoed by other Martin proteges. In the 1960s, Martin, by trade a newspaper publisher, was the vice chairman of the Democratic National Committee, a confidant of presidents John F. Kennedy and Johnson and the behind-the-scenes kingpin of black politics.

He had a large hand in bringing to Washington Patricia Roberts Harris, now secretary of HUD; Robert Weaver, the first HUD secretary; Clifford Alexander, now secretary of the Army; Andrew Brimmer, the first black on the Federal Reserve Board; then assistant Secretary of Labor George L. P. Weaver; then ambassador Carl Rowan, and others now in the leadership structure, such as University of the District of Columbia President Lisle Carter and National Urban Coalition head M. Carl Holman.

Now he's back. Last month, after much public discussion of the need for a senior black adviser on his staff, President Jimmy Carter appointed Martin, 65, as the special assistant for minority affairs. "Yes, I'm a pinch hitter," says Martin, handily, answering a constantly ringing telephone.

Martin returns to the inner circle at a time when the president's stock is sagging among his minority constituencies—and when the White House staff has lost several blacks in the last few months. The highest-ranking black had been Martha (Bunny) Mitchell, who had emerged as the minority liaison but had been criticized by the black leadership for her political inexperience and inability to deliver.

The White House infighting, and Gary, Ind., Mayor Richard Hatcher's refusal to take the job are discussed quickly by Martin. On to business: Why did he take the job, what can he do?

"President Carter asked me about those years with Kennedy and Johnson, asked me how they worked and I said it was a personal relationship. He said, 'We'll do the same.' But I'm not making a career of this," says Martin, a chuckle again casting doubt on his words. "The times are different and," he pauses—his Savannah-tinged speech slowing for the first time—"the people are so different."

"YOU HANDLE IT, LOUIE"

The kingpin, in gray glen plaid, his black-rimmed bifocals planted on a fleshy face, elongated by a sweep of slick, graying black hair, sits on the edge of the chair. It's apparent the political operator doesn't share secrets.

"Often my problem, my challenge were all those cats around the president who were trying to get in the way," says Martin. "Kennedy and Johnson were their own men, believed in fairness. But often the guys around were afraid. That's who you fought."

Well how about the people around this president?

"I haven't run into anybody uncooperative yet. But, at first they all look at you sort of crossways, but I am getting responses," says Martin.

From the dozens of people who worked with him, the most frequent description of Martin is "a pro," the second, savvy.

"He's wise. He knows the jungle of politics better than most," says Jack Valenti, one of Lyndon Johnson's men and now president of the Motion Picture Association. "Johnson would be fussing and Louis would get a half-grin on his face, would say, 'Okay, here's the situation,' and the president would settle down. Then he would say, 'Okay, you handle it, Louie.' That was a phrase we heard frequently."

Clifford Alexander remembers the same rapport and expectations. "After the 1964 election, the president, Louie and I were alone. He asked us what percentage of the black vote did he get. We said 96 percent. He turned to Louie and said, "What happened to the other 4 percent?'"

Similar expectations abound this time, even more because Martin has built his reputation. He is financially secure—"Louie's never been hungry," says one—and isn't awed by titles, just finds the folks behind them interesting.

Says Eddie Williams, another protege who is now president of the Joint Center for Political Studies, "In many ways Louie's career is behind him, so he has nothing to lose, no one to fear. Money and power are not his goals and his ego doesn't need to be fulfilled. He has walked those corridors before."

WELCOME BACK

As he scanned the shoulder-to-shoulder crowd at the Federal City Club last night, Louis Martin kept saying, "There are some people here I haven't seen in 10 years." Packed into the room to welcome Martin back to Washington's inner circles were many of the 1960s black appointees Martin brought together for regular breakfast meetings, and other trenchmen of the New Frontier, Great Society and Carter White House.

"Everyone was fascinated by watching Louie work because he was witty, nonpedantic and usually right," observed attorney Berl Bernhard.

Among the guests were Mayor Walter Washington, Marion Berry, United Nations Ambassador Andrew Young, U.S. Treasurer Azie Morton, HUD Secretary Harris, Solicitor General Wade McCree and Stu Eizenstadt, White House domestic policy adviser.

'WHAT'S COOKING, HORSE?'

Here's how Martin works. As publisher of The Michigan Chronical, one of the most respected black newspapers, Martin was an ally of civil rights and labor. Gloster Current, once head of the NAACP's Detroit branch, remembers, "Louie would call on a Monday and say, 'What's cooking, horse?' I would say, 'Things are a little dull.' And he would answer, 'Let's cook up something.' Then I would fire off a telegram about the housing projects, hiring in the auto plants and he would publish it."

When Holman, of the Urban Coalition, first came to Washington to work with the Civil Rights Commission, Martin's was a constant voice on the phone. "He would say, 'I don't mean to meddle in your business but let's see your travel schedule. You're going to Kansas City. Here are a few names. Call this guy and say, "I don't have time to see you but just wanted to know how you are doing." Then the guy feels someone back in Washington cares.'" describes Holman.

The Martin sign-off: "Thanks. You're a great American."

NEWSPAPER WORK

Martin was born in Shelbyville, Tenn., but grew up in Savannah, Ga., living in the house his Cuban-born father, a physician, had built. As a youngster, a mild skin rash confined him indoors, gave him a lasting shyness and turned his attention to newspapers.

The financial pages mesmerized him. Then he heard a sage around Savannah say, "Some white folks are crazy but they all can count," and Martin translated that dictum into dollars and votes.

During his college summers of 1930 to 1934, Martin did some newspaper work for The Atlanta Journal, which was owned by his future father-in-law, and one summer he worked as a bodyguard for a cruise ship's silver room. After finishing the University of Michigan, he went to Cuba for a year's study but the universities were closed. On Feb. 18, 1936, he started as a cub reporter for The Chicago Defender.

Within six months he had been appointed editor of The Michigan Chronicle. With a respectable job, but a slim salary, he went back to Savannah and married the other publisher's daughter. He and Gertrude Martin, a Phi Beta Kappa graduate of Ohio State University, now have five daughters, the youngest being 21 years old.

Like many black newspapers, The Chronicle was a shoestring operation partial to sensationalism but covering black events at a time when the other media ignored them. Martin's wife did the bookkeeping and some editing and remembers as an exceptional extravagance his trip to Canada to cover nationalist Marcus Garvey.

In 1936, when Martin was 23 years old, Franklin D. Roosevelt was running for president and Charles Diggs Sr. for the Michigan state senate. He supported them both editorially and their philosophies shaped his own political views. "FDR had a vision of America. I became a New Dealer for life," says Martin. "What I learned from Diggs was that although he was a comfortable businessman, he also helped the little people. Good services make good politicians, that was what I learned."

In time, Martin took those lessons to the national arena, stepping into presidential politics as a publicist in the 1944 campaign. But he kept coming back to newspapers.

"The thrill of change, that was the most important part of those years," says Martin, punching a right fist into the open left palm. "You saw the blacks upgraded from the foundry into the plants, to iron polisher, then into the offices in the union. I made some misstakes. Once a real racist guy, a baseball player, was running for office and we fought him tooth and nail. He won, and I met an old lady on the street who said, 'I voted for that man you kept talking about.' I learned then never to call the name of the opponent, just name the one you are for."

A CRITICAL MOVE

In October 1960, John Kennedy was running a tight race with Richard Nixon; and Martin Luther King Jr. was in a Georgia state prison on a traffic violation.

Sargent Shriver suggested a sympathy call to King's wife. "Everyone was against that. But we believed that a call would be an indication of Kennedy's soul," recalls Shriver, now an attorney in Washington. Shriver worked on the candidate and dispatched Louis Martin, whom Shriver had recruited for the campaign, to convert Robert Kennedy to the plan.

"What was important was that Louie had King's home phone number. When Jack decided, we made the call right there," said Shriver. "The staff shellacked us, but when we got off the plane in New York that was The Daily News headline," and, history proved, one of the critical moves of the campaign.

Just as important as his little black book, Martin had printed 1½ million leaflets describing the call and distributed them to black churches the Sunday before the election.

In the Kennedy years, Martin was in and out of the White House, though he accepted

a post at the DNC. One of his "great disappointments" was inaction on civil rights legislation in the early 1960s, but he turned his energy to black visibility in the federal structure and at official social events. On the 100th anniversary of the Emancipation Proclamation, he planned a reception for 800 black politicians, entertainers and civic leaders, the largest number of blacks ever to gather at the White House.

"SOMEONE TO COMPLAIN TO"

He operated, too, during those years, as a liaison for those far away from the pulse of power. "When we needed someone to complain to about the lack of Justice Department observers at a trial," remembers John Lewis, then an outsider in the ranks of the Student Nonviolent Coordinating Committee, "the next day someone would be there."

"IT WAS INGENIOUS"

The summer of 1966, the year after Watts, the memories of looting and a city burning lingered everywhere. Especially at the White House, where the staff debated if President Johnson should go to the White House Conference on Civil Rights.

No one had an answer. Johnson had suggested the meeting himself but now picketing and serious trouble was anticipated. A few days before the conference, Martin called the deans of two black women's colleges and enlisted the most attractive coeds as ushers.

"They wore long dresses and white gloves. It was ingenious. Louis said now those guys wouldn't make a fuss," remembers Harry McPherson, a legal counsel to Johnson. "That was the last thing I would have thought of, having pretty girls to give a high-class tone. But that was the kind of finesse Louie had, plus an understanding of how people behave."

In 1967 when King announced his opposition to the Vietnam war, Johnson was furious. Martin acted as a go-between. Yet his loyalty to the president didn't stop him from suggesting King, whom he called "a pillar of strength," for an award from a black group that same year. At the ceremony, Martin sat on the dais.

After the 1968 election, when his role was minimized by infighting in the Democratic leadership, Martin returned to Chicago, where he became president and editorial director of Sengstacke Publications. Earlier this year, he retired, sold his stocks, and returned to Washington to work for Sen. Adlai Stevenson (D-Ill.). "As great as my need was for a mature staff member, the White House need was greater," says Sen. Stevenson. "All I can say is what took them so long to get Louie?"

"A RESTLESS ENERGY"

Martin is restless. You notice the quick, bounding steps of his walk. The brevity of the hard handshake. His posture as he sits, perched, ready to spring.

For years golf and long walks at the family home in Eau Clair, Wis., have been his favorite relaxations. "He has a restless energy. When we are in the country, he likes to walk around the lake," says his wife.

Nothing is better, Martin says, than sitting in his yellow-fabric wing chair and reading a political biography. Recently it's been Churchill and Kenyatta.

"The two books I reread are DuBois' 'Souls of Black Folk,' and Frederick Douglass' autobiography," says Martin. "Douglass sustains me. His rationale for speaking out, his philosophy of economics. The theory that any man who can tell another man what to do, then one is the master, the other a slave. When he was criticized by the abolitionists for starting a black newspaper, he said, 'The guy who is being tortured is the one who should cry out.'" Martin sounds smug.

"I LINE MY BATTING AVERAGE"

The then and now. The game plan has turned 180 degrees. In the 1960s, tearing down the legal barriers of segregation and building the framework of an integrated society was the priority.

"The Civil Rights Bill, the Voting Rights Act. Those were enormous hurdles," says Martin, the weariness of those battles surfacing momentarily. "Now we have to see how the civil rights engine functions. One of the concerns of this job is civil rights implementation, monitoring what we have done."

On the manpower front, Martin also started from scratch. In 1961 only two blacks held supergrade positions in the government. "Just a handful," says Martin. But now we have a body of experts we didn't have before. We really have some superbrothers in the government, with fewer inhibitions, more refined expertise, like energy. That's exciting."

So far, "I like my batting average." Only one loss, but a symbolic one, the visa for Rhodesian Prime Minister Ian Smith. "I told Brzezinski that I didn't want the fallout of violence of blacks and whites in Southern Africa to effect any trouble here."

But he doesn't dwell on the losses, and when prompted, quickly switches to an account of good rapport.

"I really like Hamilton Jordan. He's sort of unorthodox, but if I start cussing, and he starts cussing, we seem to understand one another."●

CONGRESSIONAL SALUTE TO PARTICIPANTS IN WAYNE, N.J., CROP WALK FOR HUNGER

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROE. Mr. Speaker, on Sunday, October 15, residents of my hometown of Wayne will host a CROP Walk for Hunger to raise funds to help hungry people; participate, by experience, in the daily existence of millions of poverty-stricken people throughout the world; and register, by their deep concern, the need for food and self-help aid to CROP to help hungry people help themselves.

Mr. Speaker, this year's Wayne CROP Walk is sponsored by the Wayne Interfaith Clergy Fellowship, a prestigious organization comprised of 14 religious congregations of Wayne. At the outset let me commend to you the diligence, foresight, and hard work that has been extended by our people with special plaudits to the coordinators of the 1978 Wayne CROP Walk, Marcia B. Siegel of the Jewish Federation of North Jersey and Rev. Lloyd Kenyon of the Wayne Clergy Fellowship, and other members of the program committee, Robert Menkow, Sandra Mesuk and Sara Lee Caliri.

The Wayne CROP Walk for Hunger Committee has been working with many of the leading citizens in our community in devising an outstanding program with full citizens participation in a 6-week round of activities commencing with opening ceremonies at Our Lady of the Valley Church, Wayne, on Sunday followed by the 10-mile walk in Wayne to bring awareness to all Americans of the overwhelming problems of global hunger. This community-wide CROP program service on Wednesday, November 22 at Preakness Baptist Church, Wayne, and Reverend Kenyon will lead the services.

Mr. Speaker, I am proud and honored to have been selected to share the honorary chairmanship of this most noteworthy event with the distinguished Mayor of Wayne, the Honorable Walter Jasinski, who joins with me in the highest personal commendation of the residents of our community who are participating in Wayne's annual CROP Walk for Hunger. We strongly support their efforts and seek national recognition of the outstanding public service that CROP—the Community Hunger Appeal of Church World Services—is making to the world's hungry. To better understand this distinguished organization's purpose, goals and objectives, with your permission, I would like to insert at this point in our historic journal of Congress the following information:

CROP works to do two things: to make people in the United States aware of the extent and nature of world hunger, and to raise funds for Church World Service—CWS—and other agencies to use in combating it. For hundreds of thousands of Americans, CROP is the way they can extend a helping hand to fellow humans they could not otherwise reach. For hundreds of thousands in other lands, CWS and CROP are indeed the hand of friendship and God's love—not a handout, but a hand up.

Church World Service is the cooperative agency through which some 30 denominations bring relief and development aid to people in great need. Through offerings taken in their congregations, these denominations provide the basic financial support for the work of CWS. CROP, the Community Hunger Appeals of CWS, works outside the regular church channels to raise public awareness of hunger issues and to seek additional funds.

The way CWS applies CROP resource outlines its approach to world need:

Food—for nutirtion centers and food-for-work—to help people who are hungry now build a future with food—and more.

Appropriate Technology—equipment and other materials that may seem primitive to us, but are "just the thing" in other societies.

Technical consultants—augmenting appropriate technology with the experience, knowledge, and ideas of experts.

Seeds—for small farms, homes, and school gardens—perhaps the most welcome aid CWS gives.

Emergency aid—people in a Guatemala earthquake or a Colorado flood, both are the concern for CWS/CROP. Aid to refugees, family planning, and development education round out a comprehensive program of assistance now, self-development for the future and learning together to understand hunger's causes.

Across the United States of America volunteers form the backbone of CROP. They speak at community gatherings, schools, service clubs, and churches. They write articles or appear on radio and TV. They tell their friends and neighbors, and they organize fund raising events that educate about world hunger while raising much-needed resources.

Some the the more popular CROP events are:

Hunger walks. Walkers secure sponsors who give on the basis of miles walked. Many local committees now use this method to stimulate both giving and community interest.

Fasts for the hungry. Participants identify personally with hungry people while raising funds through sponsors who give according to how many hours the fasters go without eating.

Home-to-home canvasses. For years the chief method of carrying out CROP appeals, volunteers raise funds and commodities by

calling on their neighbors and organizing others to do the same.

Friendship farmer program. Whether cooperatively farming a large tract, donating the proceeds from an acre of grain or selling an animal for CROP, many rural Americans have found this to be an ideal way to share.

Individual and group projects. Vacation church school projects, coin cards, special offerings, work days and other marathons such as bowl-a-thons and hymn-a-thons are just some of the ways people are showing their concern.

Educational programs. Schools, clubs, churches, ecumenical meetings, wherever people want to learn more about world hunger, CROP has supportive materials—films and filmstrips, program and study resources—as well as speakers and leaders, ready to help them out. Last year CROP provided assistance to educational gatherings in nearly every State.

Mr. Speaker, may I also take this opportunity to express my personal deep concern which I know is shared by all of us in the Congress for the worldwide hunger and malnutrition that exists and yet should not be with the vast wealth of natural and human resources, knowledge, technical expertise, and know-how available today.

Mr. Speaker, I believe the concurrent resolution I have sponsored with some of our colleagues in the current 95th Congress will provide a greater commitment by the people of the United States of America in this critical area of need. This resolution reads, as follows:

HOUSE CONCURRENT RESOLUTION 44

Whereas an estimated four hundred and sixty million persons, almost half of them young children, suffer from acute malnutrition because they lack even the calories to sustain normal human life; and

Whereas those who get enough calories but are seriously deficient of proteins or other essential nutrients may include half of the human race; and

Whereas the President, through his Secretary of State, proclaimed at the World Food Conference a bold objective for this Nation in collaboration with other nations: "that within a decade no child will go to bed hungry, that no family will fear for its next day's bread, and that no human being's future and capacities will be stunted by malnutrition"; and

Whereas all the governments at the World Food Conference adopted this objective; and

Whereas in our interdependent world, hunger anywhere represents a threat to peace everywhere, now and in the future;

Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress that—

(1) every person in this country and throughout the world has the right to food—the right to a nutritionally adequate diet—and that this right is henceforth to be recognized as a cornerstone of United States policy; and

(2) this policy become a fundamental point of reference in the formation of legislation and administrative decisions in areas such as trade, assistance, monetary reform, military spending, and all other matters that bear on hunger; and

(3) concerning hunger in the United States we seek to enroll on food assistance programs all who are in need, to improve those programs to insure that recipients receive an adequate diet, and to attain full employment and a floor of economic decency for everyone; and

(4) concerning global hunger this country increase its assistance for self-help development among the world's poorest people, especially in countries most seriously affected by hunger, with particular emphasis on increasing food production among the rural poor; and that development assistance and food assistance, including assistance given through private, voluntary agencies, increase over a period of years until such assistance has reached the target of 1 per centum of our total national production (GNP).

Mr. Speaker, I appreciate the opportunity to call your attention to our Wayne CROP Walk for Hunger and know you will want to join with me in extending our best wishes and deep appreciation for their noble action program to help eliminate human misery and the enormous waste of mind and body that hunger and poverty feed upon.

In closing, let me share with you for thoughtful consideration the CROP appeal for the future which reads as follows:

A FUTURE WITH FOOD . . . AND MORE

The future is bleak for the 1.85 billion people of the developing world. More than half of them are malnourished. Some are starving. Almost all are impoverished.

CROP is committed to change this. Through food for today's hunger. Through self-help programs for tomorrow. Through changing life-styles. By providing the resources. By helping people develop their full potential . . . with dignity . . . justice . . . and food for all.

It's not going to be easy. It won't happen overnight. But it must happen. In our interdependent world, their hunger is our hunger. Their future our future.

Will it be a future free from hunger and poverty? It can be, but more is needed.

More than food. More than relief. More than a handout. A helping hand. The means to grow. To develop.

That's what CROP is giving. Won't you help.●

LEGAL PROBLEMS FOR THE RATIFICATION EXTENSION OF THE EQUAL RIGHTS AMENDMENT

HON. ELDON RUDD

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. RUDD. Mr. Speaker, those of us who opposed the extension of time for ratification of the so-called Equal Rights Amendment raised the question of unfairness in preventing an opportunity for States that have already done so to reconsider and possibly rescind their ratification.

This and other legal questions over extension of the ERA's ratification period are sure to add to the controversy over this proposed addition to the Constitution.

A good article summarizing the major questions over the recent action by Congress in adding 3 more years to the life of this proposal was published last weekend in the Washington Star.

I personally believe that the action by Congress was unwise, and without valid basis. These questions will have to be answered by the State legislatures, the courts, and maybe the Congress itself at a later date.

I would like to include the Star article at this point in the RECORD.

[From the Washington Star, Sunday, Oct. 8, 1978]

EXTENSION OF ERA NOW FACES TESTS IN COURT: FOES PLAN NEW ATTACK

(By Lyle Denniston)

The political life of the proposed Equal Rights Amendment has been lengthened to 1982, and now it begins a new and separate life as a judicial issue, too.

Shortly, the "Stop ERA" movement will go to federal court to test Congress' decision to give state legislatures more time to approve the amendment that would guarantee legal equality of the sexes.

A dozen or more questions, all turning on the meaning of the Constitution itself, will be at stake in the test case or cases. It could take the courts years to give answers.

Already a law professor at Washington University in St. Louis, Jules B. Gerard, has worked up a long list of such issues and Stop EAR's leaders are eager to press them.

Even if ERA does win the 38 states' approval that it needs to be written into the Constitution, its fate probably would not be certain until at least some of the legal disputes are settled.

It is not even clear at this point, however, that the courts will agree to provide answers. They must first decide that the Constitution gives judges some role in monitoring what Congress has done in extending the ratification deadline to mid-1982.

The Justice Department says there is "serious question" whether the courts will agree to be drawn into the dispute.

The department's tentative conclusion is that the courts probably will deal with some of the more basic issues.

In doing so, however, the courts will have to start fresh, because, as the department has said, there is a "lack of authoritative judicial precedent, or guidance from the language of the Constitution itself."

Congress has never before done anything like the ERA extension, and the record of its debates this summer and fall is filled with questions by lawmakers about just what was being done.

At one point Rep. Charles Wiggins, R-Calif., said the bill to add three years and three months to ERA's deadline could only be defined as "None of the above."

"It is not a law," he said. "What is it?"

Whatever it means constitutionally, the bill is now formally ineffective as a law. The Senate's vote Friday, following House action Aug. 15, made that happen.

In its language, it is a simple act: it wipes out the March 22, 1979, deadline for state legislatures to ratify ERA, and it substitutes a new date: June 30, 1982.

If and when the courts review that language, they will compare it with equally simple wording in the Constitution's Article V. The only clause in that article that will count says that "the Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution. . . ."

Congress first sent ERA to the legislatures on March 22, 1972, with each house giving it far more than two-thirds' support.

Up to now 35 states' legislatures have voted to ratify, and four of those states have voted later to withdraw their approval. To become a part of the Constitution, ERA would need ratification by 38 states.

The meaning of the amendemnt itself—what sex equality means in the law—is not an issue now, and won't be until after ERA had been ratified.

The coming test cases will deal with the deadline: Is there a valid new deadline and, if there is, what may the legislatures do between now and that date?

While the dispute goes on in court, the

political contest to win more ratifications in state legislatures presumably will go on. It is possible, though, that the courts will be asked to block any further action in legislatures beyond next March 22, the old deadline.

The judicial issues that will arise generally fall into about six categories. Here are the categories, and some of the specific questions almost sure to arise:

POWERS OF THE COURTS

The initial issue in any court case will be whether the Constitution meant to leave all disputes over the amending process to Congress, or to let some of them go to court.

The Supreme Court has issued a handful of decisions that deal with the amending process—in 1798, 1871, 1921 and 1939—but none of those settles finally what the courts' role is.

It is possible that Congress will be allowed to do what it has done on ERA without any judicial review, on the theory that this was purely a "political" task, the view that the courts could be of no help, or the finding that no one has any legal right even to sue.

Some members of Congress and some state legislators almost surely will claim that they have a right to sue, and some voters are likely to claim that, too. It is not clear that any of them can prove to a court that they have enough at stake to be allowed in court.

CONGRESS' BASIC POWERS

The validity of a new ERA deadline may turn on the fundamental issue of whether Congress had the power to do that.

It will be challenged on the ground that the old deadline was final and binding and could not be changed unless Congress started all over again with a new ERA.

The original seven-year ratification period will be used in court as a "contract" between Congress and the states, not to be altered except by mutual consent.

Congress, of course, did not start over with ERA and it did not ask the states to approve a new deadline. Acting on its own, it changed the deadline before it was up.

The old deadline was not a part of the actual wording of ERA, but rather was included in the resolution sending the amendment to the state legislatures. Thus, Congress' majority concluded that it was only a matter of "detail" left to Congress' discretion. That, of course, will be at issue, too.

CONGRESS' PROCEDURES

In adopting a new deadline, Congress did so by passing a "joint resolution"—the kind usually used for dealing with "housekeeping" matters of concern only inside Congress.

That approach means that only a majority of each house must approve, and the president has no duty to sign the bill into law, as he does with regular legislation.

The courts will be asked to rule that, since the new dealine was part of the amending process, Congress could act only through a two-thirds majority in each house.

On ERA extensions, each house voted to let a majority prevail and, in fact, each house's final vote did fall short of a two-thirds margin: 49 short in the House, five in the Senate.

It also will be argued that, if Congress was in fact passing a new law, it could become law only with the president's signature. Both houses rejected that argument and will not ask President Carter to sign.

THE NEW RATIFICATION PERIOD

One of the few issues likely to arise now, on which the Supreme Court has already had something to say, is whether the time allowed to ratify ERA is "reasonable."

The court has never said just how long an amendment may be allowed to remain before the legislatures without becoming a stale issue. It has said, however, that the period should be no longer than necessary to get a "contemporaneous" expression of the nation's reaction.

The court has not said, finally, whether only Congress may decide whether such an expression has been given on a particular amendment.

For the nation's first 128 years, no proposed constitutional amendment sent to the states had any deadline on it. Congress began doing that only in 1917, after growing worried because several unratified amendments were simply lying around in "nubibus"—in the clouds. Every amendment but one since then has had a deadline, but never longer than seven years.

With the new deadline on ERA, that amendment will have been allowed before the states for 10 years, three months and one week. It has never taken longer than four years for any other amendment to be ratified. It thus will be argued that seven years is clearly enough.

STATE LEGISLATURES' POWERS

The most hotly debated issue over ERA extension in Congress probably would also be one of the most difficult issues in court. That is whether a legislature that once approved ERA may later change its mind and reject it, especially during the extended ratification period.

Four legislatures (Idaho, Kentucky, Nebraska and Tennessee) have already tried to "rescind" their approval, but no federal government authority has agreed to that. In the future anti-ERA forces will press hard to get other legislatures to rescind.

Both houses of Congress rejected proposals to let the legislatures rescind during the new ERA period, but the final bill says nothing directly on the point. The usual argument by ERA supporters was that this will be a matter for a future Congress to decide, once ERA has the votes of 38 states.

Several times, on earlier constitutional amendments, states have attempted to change their minds, and Congress has refused to go along, but not in very clear-cut fashion. The Supreme Court hasn't settled that, either.

FINAL RATIFICATION

If 38 states do cast votes in favor of ERA, the courts then will have even further questions to answer. It is not clear whether they would reach out and decide those even before a 38th state had acted favorably on ERA.

Basically, the dispute at that point would be whether ERA has been ratified, as a fact and as a matter of law.

That dispute will bring up questions that again involve the role of the courts, Congress and the state legislatures, including issues about the majorities needed in Congress to settle disputes, counting—or refusing to count—the favorable votes of state legislatures that ratified and then rescinded, and the after-the-fact role, if any, for the courts.

Some of those questions could be pressed in court even before Congress sits down to count. But, whenever they are raised, they, too, could take years to work out.●

COMMISSIONED CORPS—U.S. PUBLIC HEALTH SERVICE

HON. PAUL G. ROGERS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROGERS. Mr. Speaker, today, along with my distinguished colleagues, the Hon. TIM LEE CARTER, ranking minority member of the Subcommittee on Health and the Environment, and the Hon. HARLEY O. STAGGERS, chairman of the Committee on Interstate and Foreign Commerce, I have introduced two bills designed to provide for maximum efficiency of administration in the Public Health Service, and to extend eligibility for mortgage insurance under the National Housing Act to officers of the Public Health Service.

On February 21, 1978, during hearings of the Subcommittee on Health and the Environment, I asked the Surgeon General, Dr. Richmond, to submit to the subcommittee his recommendations for needed legislative change to provide the best possible management for the Commissioned Corps of the Public Health Service. After a delay of several months, these recommendations were submitted to us; they form the basis of the legislative proposals introduced today.

Most of the changes addressed in these measures deal with technical requirements of the corps authorizing legislation. The first bill proposes changes in such areas as the pay grades of officers serving as Deputy Surgeon General or Public Health Service Agency heads; the number of Assistant Surgeon General positions: penalties for violation of training agreements; severance pay for reserve corps officers upon involuntary release from active duty; statutory Assistant Surgeon General positions; constructive pay credits for reserve corps officers and for graduate degrees in health other than medicine and dentistry; correction of records; leave for officers prior to separation or retirement; and uniform allowances, among others. In addition, both a clarifying amendment of original Congressional intent concerning the detailing of Commissioned officers, and specific authorization for the establishment of a warrant officer corps are included. The second legislative proposal would correct an earlier oversight by including officers of the Public Health Service in the home mortgage program for servicemen administered by the Department of Housing and Urban Development.

Mr. Speaker, the U.S. Public Health Service, which recently celebrated its 180th anniversary, has long been a recognized leader among the world's professional health organizations, and has been in the vanguard of protection of this Nation's public health. Since the late 1700's, in all areas of health endeavor—disease control, research, manpower development and utilization, protection of our environment, assurances of the safety of our food and drugs, and the direct provision of health services—the Public Health Service has provided this Nation's leadership and has continually distinguished itself. As the responsibilities of the Service increase, it is essential that we supply the best possible legislative support to afford responsible and efficient management practices for the men and women who serve their country in the Public Health Service. This is the intent of the proposals introduced today.

Mr. Speaker, I hope that all Members will review these programs with care, and that action will be taken on these needed administrative amendments early in the 96th Congress.●

WHY WE HAVE A TRADE DEFICIT: A CASE STUDY

HON. JONATHAN B. BINGHAM

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 4, 1978

● Mr. BINGHAM. Mr. Speaker, one of the few sectors of our economy which has a positive balance of trade with the rest of the world is our advanced technology industry. In this area we maintain a competitive advantage over the rest of the world, which we can exploit to improve our trade balance, provide jobs, and generally strengthen our economy and, consequently, our national security.

Despite the administration's national export policy, which was announced with much fanfare by the President on September 26, the policies of this Government sometimes actually impede the ability of our advanced technology industries to penetrate and maintain foreign markets, and make it easy for our competitors in the other industrial democracies to do so.

I would like to bring to the attention of my colleagues a particularly egregious case in point. It concerns the Cyril Bath Co., a manufacturer of machine tools in Cleveland.

In May 1977 it came to the attention of the Subcommittee on International Economic Policy and Trade, which I have the honor to chair, that this company had been denied a licence to export a metal-forming press to the Soviet Union. Since this press would presumably have been used by the Soviets to form aircraft bodies, at first glance the denial decision seemed to make sense. However, the company was able to provide evidence to the subcommittee that a French company, ACB-Loire, was filling a Soviet order for nine other presses which were more sophisticated than the Cyril Bath machine.

Here is what happened. In May 1976, Cyril Bath received an invitation from Avtopromiport, a Soviet import agency, to bid on 10 metal forming presses. Cyril Bath did so, but was awarded a contract to supply only one of the machines. When the president of the company went to Moscow to sign the contract, in January 1977, the Russians told him something very interesting: They were ordering the other nine machines from the French company, ACB-Loire, because they already had ACB presses in operation and were satisfied with the performance of the machines. Cyril Bath was, in effect, being given the opportunity, through the sale of this one machine, to prove the quality of its equipment. Cyril Bath's clear understanding was that, if the Soviets were satisfied with the machine, more orders would be forthcoming. Meanwhile, the business would go to the French.

In February 1977, Cyril Bath submitted an application for an export license for the machine to the Department of Commerce. In April 1977, the application was rejected on the grounds that, by agreement of COCOM, such presses are on the list of commodities having significant strategic applications, and the Department did not feel that this case warranted submission for COCOM approval in view of the potential military significance of the export.

What is COCOM? On paper, COCOM is an informal group through which 15 countries—including all the NATO countries, minus Iceland, plus Japan—coordinate their policies on the export of advanced technology to Communist countries. By agreement of the 15 members, a list is maintained of strategically significant commodities which can only be exported to a Communist country by one of the members if none of the other members objects to the sale.

However, many exporters feel that COCOM is really one of the main devices by which the United States denies itself access to markets which other countries are perfectly willing to exploit. Unfortunately, the Cyril Bath case lends credence to this charge. It is difficult to escape the conclusion that COCOM represents a failed attempt by the United States to impose its East-West trade policies on our allies. Subcommittee inquiries raise serious doubts as to whether the other members are willing to accept the sweeping controls which the United States seeks to impose on transfers of technology to the East. To a greater or lesser extent, they appear to violate or selectively interpret the COCOM agreement, or to acquiesce in such behavior by others. The Cyril Bath case calls into question both the commitment of our COCOM partners to the principles of that organization, and the commitment of our Government to take concrete steps to improve this country's export performance.

To continue the story, in June 1977, the Cyril Bath Co. appealed the Commerce Department's rejection of its application. In November 1977, the Subcommittee on International Economic Policy and Trade held a hearing on the case with a view to determining whether the executive branch had made its determination in accordance with the requirements of the Export Administration Act.

The Export Administration Act states:

> The President shall not impose export controls for national security purposes on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, unless the President determines that the absence of such controls would prove detrimental to the national security of the United States.

The subcommittee determined that, incredibly, the Department had not sufficiently investigated the evidence provided by Cyril Bath to the effect that a French company was providing nine machines to Cyril Bath's one and was perfectly capable of providing the tenth. This evidence included not only oral statements by the Russians, but also written verification from the French company itself. Foreign availability was simply not taken into account in the Department's decision to the extent required by the law.

The Export Administration Act also states:

> It is the policy of the United States . . . to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or group of nations which would prove detrimental to the national security of the United States.

At the subcommittee's hearing, the Cyril Bath Co. testified that the technology embodied in this machine has been in existence since 1939, that stretch forming is the only method used to form airplane bodies, and that this technology is obviously well known to the Soviet Union since the Soviets obviously possess the capability to manufacture airplanes of high quality and in great quantities. If this be true, it is difficult to believe that this one sale—or any combination of such sales—would significantly increase Soviet military capabilities and prove detrimental to the national security in any way which could be avoided by prohibiting the sale. Nevertheless, the Department reached the conclusion, on the basis of a very cursory analysis, that the sale would contribute to Soviet military capabilities to the detriment of U.S. security.

Based on the company's appeal and the record developed by the subcommittee, the Commerce Department reopened the case. Although the Defense Department was still unwilling to conclude that the equipment in question was of marginal strategic significance at most, the Government was able to conclude that, because of foreign availability from France, under the law the license should be granted subject to COCOM approval. In February 1978, the United States submitted the case to COCOM and requested the approval of that organization for the export of the machine on the grounds of foreign availability. COCOM approval, however, has not been forthcoming, some member countries (reportedly including Britain and West Germany) having refused to approve the sale in the absence of French confirmation of the French company's sale.

In the 9 months that this case has been languishing in COCOM, the Government of France has simply refused to admit that a French company is providing—indeed, by now probably has provided—comparable machines to the Soviets. COCOM approval of the U.S. request on the basis of foreign availability would carry the undiplomatic implication that the French are lying about the availability of the machines. Moreover, other member countries are probably reluctant to take action on the basis that one member is fibbing, for fear that at some future time their own statements of fact about sales might not be accepted.

All this gives rise to a Catch-22 situation for the would-be U.S. exporter, and

to a degree for the U.S. Government itself. I do not believe that any other member of COCOM would put up with such a tangle. If faced with a comparable dilemma, I am convinced other members would simply ignore COCOM and ship anyway. Yet a high administration official involved with this case has written to me as follows:

Lacking (COCOM approval), I do not believe that we should approve the Cyril Bath case. Such action by the United States government—the conscience of COCOM—independently of that organization's established policies and procedures would raise grave doubts in the minds of our COCOM partners as to our credibility and our fidelity to COCOM principles. In my judgment a serious erosion of the COCOM strategic control program could result.

Mr. Speaker, it is time we started seeing the world as it is. There are, indeed, few countries which display "credibility and fidelity to COCOM principles" except the United States. A "serious erosion of the COCOM strategic control program" has long since occurred. As the Cyril Bath case indicates, some other members exercise their own judgment as to whether or not an export should be allowed. If the controls seem unreasonable, some of the other members simply ignore them. Only the United States, holding itself up as the "conscience of COCOM," adheres unilaterally to export controls that the other members are unwilling to enforce. We wink at the other members' evasions of the controls for the sake of holding COCOM together, fearing that COCOM would collapse if we tried to hold the other members to the COCOM agreement. The only result of this policy of self-abnegation is to sacrifice the Soviet and Eastern European market to our foreign competitors.

Ultimately, the only way for the United States to get itself out of this box of its own making is to take the initiative to remove obsolete technology such as this from the COCOM list. The COCOM list should include only that technology which all the members agree is strategic, and which all the members are prepared to control. Instead of resisting the effort of the other COCOM members to remove obsolete technology from the list, thus maintaining a category of COCOM-list commodities which are in effect unilaterally controlled by the United States and exported by everyone else, the United States should do itself a favor and embrace efforts to upgrade the list to accord with current realities.

More immediately, the United States should insist that metal forming presses of the type represented by the Cyril Bath machine be immediately removed from the COCOM list, in view of the fact that comparable equipment is being exported to the Soviet Union by another COCOM member. If cooperation in this matter is not forthcoming, the United States should unilaterally license the sale.

Mr. Speaker, why do we have a trade deficit? There are obviously many reasons, some of them more important than the one which concerns me here. But one reason, clearly, is this country's policy of self-denial on technology exports to the East. Here is an American company which has been waiting for an export license for almost 2 years. One of our foreign competitors is selling nine comparable machines to the same customer. That very competitor's government is trying to block our own sale, and some other COCOM countries are in effect supporting that effort. And we just sit there and take it.

I am currently drafting legislation reforming the Export Administration Act, to be introduced early in the next Congress. This legislation will call for a realistic policy on multilateral export controls. If there is to continue to be a COCOM—and I am not at all sure there should be—it must be based on an agreed policy, with everyone sharing the burdens. Otherwise the United States should be free to act unilaterally, in its own best interests, when other Western countries export strategic advanced technology to the East.●

IDA NUDEL

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SCHEUER. Mr. Speaker, I am pleased to join in the "Vigil for Freedom" sponsored by the Union of Councils for Soviet Jewry on behalf of Soviet Jewish families and individuals who are being detained in the U.S.S.R. as a result of the Soviet Government's repressive emigration policies.

In 1975, 35 nations signed the Helsinki Final Act, which committed the 35 signatory nations to pursue policies consistent with basic principles of human rights. Included among these rights are the reunification of divided families whose members live in different countries, religious freedom, minority rights, and free travel between countries.

Unfortunately, the Soviet Government has disregarded the human rights provisions of the Final Act.

Today, I bring to my colleagues' attention the case of Ida Nudel, a 45-year-old economist from Moscow. In spite of her own harassment, which has included numerous interrogations, imprisonment, and even beatings, she has remained the tireless "guardian angel" of Soviet Jewish prisoners. Ida corresponds with their families and carries on a relentless battle with the Soviet authorities on their behalf.

Ida has struggled to no avail for 5 years to secure a visa that would enable her to join her only relatives, her husband and her sister, who live in Israel.

Ida has now been sentenced to 4 years of exile for "malicious hooliganism." Ida's health is poor and her sister fears that she will not survive prison. It is my hope that this vigil for freedom will result in Ida Nudel's release from prison and her immediate emigration to Israel.●

AMENDMENT TO ENDANGERED SPECIES REAUTHORIZATION

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. JEFFORDS. Mr. Speaker, I had originally intended to offer an amendment today which I believed would have really addressed the critical question in this debate: that is, who makes the final determination on going ahead with an action that will result in the elimination of a species? My proposal, had I offered it and had it been adopted, would have given the Congress the opportunity to approve or disapprove the recommendations of the Endangered Species Committee established by this legislation.

However, due to the previous action the House took on the Tellico Dam question, and the probability that my amendment would have been easily amended and used as a mechanism to require Congress to vote on individual projects as well as a decision to eliminate a species, I felt it would be wise not to offer my amendment. I made this decision only after conferring with my colleagues on the committee, and it was a difficult one to arrive at.

I would like to take a few minutes, however, to discuss why I felt there was a need for improvement in this bill.

In passing the Endangered Species Act Congress established an expressly stated national policy of preventing the extinction of species. In my view, the act has worked reasonably well in providing appropriate protection. Yet even since the passage of the 1973 amendments to the act, a number of major species have moved closer to the final abyss of biological extinction. Now, even before the Endangered Species Act has achieved proper funding and begun to function smoothly, we are going to substantially alter our national policy from one of preventing the extinction of species, to one of preventing extinction only as long as they do not interfere with development.

I know that the committee has worked extremely hard to arrive at a compromise between competing interests on this issue. I know that many members of the committee agonized over the decisions and concessions that had to be made to bring this legislation to the floor today. This legislation does make some refinements that will allow more effective implementation of the endangered species program. It provides for biological assessments before action begins on projects where endangered species are present. It provides improved notice procedures for proposed listings and habitat designations, as well as other good features. On the other side of the coin there are features which disturb me. I have reservations about the necessity of a Review Board in addition to the Endangered Species Committee, about the exclusion of invertebrate populations from possible protection under the act, and about the

requirement that the Secretary of the Interior consider the economic and "other relevent impacts" of specifying an area as a critical habitat for endangered invertebrates.

However, what disturbed me most about this bill, and this is something I discussed at length when I testified before the subcommittee, is that we give the final determination to an administrative body not directly accountable to the public. The establishment of this exemption process could result in political considerations taking precedence over legitimate criteria. The life or death of a species could depend upon the political situation during the decision period, and upon the character of committee members and the committee staff. As my colleagues who signed the additional views in the committee report noted, the decision to condemn a form of life to extinction should not be made by some temporary employees of the Federal Government.

There is no question in my mind of the value to society of endangered species. This planet's support system for man rests squarely on its ecosystems and their ability to convert solar energy into forms consumable as food or otherwise. As just one example of the value of various species to man I would like to touch on the medicinal uses of rare plant and animal derivatives. Over 40 percent of modern drugs used today originated in nature rather than synthetically, with about 25 percent coming from plants, 12 percent from microbes, and 6 percent from animals. Here are just a handful of examples:

Had plants of the genus cinchona been permitted to go extinct we would not have discovered quinine or been able to develop its synthetic derivative for the treatment of malaria. Also, the synthetic derivative proved inadequate against certain strains of malaria that our troops contracted in Vietnam, so we had to turn to the natural product.

The horseshoe crab has once been thought to be worthless, but its blood is now known to be a detector of toxins in the intravenous fluids used in medicine.

The "pokeweed"—in it was found a chemical used to fight a parasitic disease (schistosomias) that affects some 200 million people worldwide.

The armadillo, because it is the only species other than man that contracts leprosy, it may furnish the vehicle for the development of a vaccine for that disease.

A chemical involved in the manufacture of birth control pills was first discovered in a plant and it could never have been made synthetically if the plant had first been driven out of existence.

Alkaloids are plant-derived compounds of particular medical value. A host of medicines have been developed from alkaloids such as painkillers, antimalarials, cardiac and respiratory stimulants, blood-pressure boosters, muscle relaxants, local anesthetics, tumor inhibitants, and antileukemic drugs.

Tens of thousands of plants have been screened by cancer researchers hoping to find tumor-inhibiting agents. Researchers believe the plant kingdom provides one of the best hopes for finding a clue to a cancer cure.

The extinction of rare plants is particularly significant, as a disappearing plant can take with it 10 to 30 dependent species. There are numerous other examples I could cite demonstrating the unique interdependence of plant and animal species on this planet.

However, if this body is determined to revise the act, as it seems to be, then I believe it is only right that we here in Congress live up to our responsibility to address that ultimate question; do we eliminate a species from the face of the Earth? The bottom line is that if Congress is going to establish a mechanism which allows the total elimination of a species, then Congress ought to have the courage to cast the final "yea" or "nay".

That is why I had developed an amendment which paralleled the procedure we have established in the Executive Reorganization Act in order to offer the Congress the opportunity to approve or disapprove any recommendation of the Endangered Species Committee which will result in the elimination of a species. It would have provided for a resolution of disapproval to go to the floor of each Chamber, and if either Chamber disapproved the recommendation by a majority the decision to proceed with a project and eliminate a species is defeated. Congress would have only become involved when a decision had been made which would have resulted in the definite elimination of a species. It did not deal with the question of "critical habitat," nor did it revise any other provisions of this legislation.

This approach to congressional approval or disapproval is one which is utilized under at least 18 different public laws that I have been able to identify. There are provisions for this type of process under the Fishery Conservation and Management Act, the Federal Election Campaign Act, the Energy Conservation and Production Act, the International Security Assistance Act, and others. We even have responsibility for disapproval of proposed amendments to the International Regulations for Preventing Collisions at Sea, and over Presidential recommendations to allow active duty Armed Forces personnel to enroll in educational assistance programs. Surely if we can take the time to pass judgment on matters such as these, we can make the final decision on the ultimate fate of a living creature.

I believe this amendment would have put the responsibility for a very, very serious decision where it belongs, and I regret that circumstances did not allow its consideration today. I am hopeful that the end product of the conference committee on this bill will present us with a sound and responsible method for dealing with this critical question. I am hopeful that when the bill is revised again this principle will be adopted.●

PUBLIC AWARENESS TO HOME ACCIDENTS

HON. JOHN J. FLYNT, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. FLYNT. Mr. Speaker, I should like to address your attention to an outstanding public service project that may well save many lives in the United States in the years ahead. At its own cost, Gallery of Homes, Inc., the oldest residential real estate franchising organization in the Nation, produced in cooperation with the Red Cross a 30-minute home safety awareness film that the Red Cross and Gallery members are showing across the country.

Accidents in the home are ranked as the fourth leading cause of accidental deaths in the Nation, according to the National Safety Council. This program is designed to create public awareness as to the dangers of home accidents and to encourage people to take a Red Cross first-aid course.

The film serves as a first-aid primer in dealing with such emergencies in the home as choking, drug overdose, burns, falls, and heart attacks. George Elsey, president of the American Red Cross, has termed the public service film "a tremendous help to the Red Cross in helping people to save their own lives and lives of members of their families."

The film, Mr. Elsey said, "has as its objective getting citizens to attend Red Cross courses on life-saving techniques." The film is unique in that its format invites viewer participation through a quiz which asks the viewer what he would do in emergency situations and then later the film expounds on the correct procedures.

Copies of the film through American Red Cross Chapters and Gallery of Homes offices. Gallery of Homes offices are located throughout the United States and Canada. Screenings are scheduled free of charge by either the Red Cross or Gallery members. The film is available both in video cassettes and 15 millimeter prints.

It was Gallery's deep concern for public safety in the home that motivated the project. Henry F. Carter, president of the real estate franchise organization, felt that his company should offer a significant contribution toward making living in homes safe as well as comfortable. The idea was presented to the American Red Cross, the Nation's foremost authority on safety training. This service organization responded favorably, and has participated wholeheartedly in the effort to promote greater participation in Red Cross safety training courses. It is this type of public spirit and public service commitment that should be acknowledged and lauded.

The production of the film is an outstanding example of cooperation between the private sector of our society and a major public service organization. It shows what can be accomplished if

people really care about each other's welfare and safety.

There is no definitive way to state how many lives might be saved in the future as a result of the showing of this film. Certainly, though, it can be safely assumed that many citizens will benefit from it.●

LEGISLATIVE PROGRESS FOR THE ELDERLY IN THE 95TH CONGRESS

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

Mr. PEPPER. Mr. Speaker, as chairman of the House Select Committee on Aging, I join with all those who have been involved in advocating meaningful changes to improve conditions for the elderly. I commend the Members of the 95th Congress for the foresight to enact a number of important bills that will be of great assistance to older persons. One of the most significant was the enactment of legislation recommended by our House Aging Committee to abolish the mandatory retirement age for Federal workers and raise it from 65 to 70 in private industry. As I noted in the Rose Garden after the signing of this bill by President Carter, this change means that for millions of elderly Americans, the blessings of a 65th birthday will not become a death sentence against their working lives.

There have been many other significant accomplishments for the elderly in the 95th Congress. Legislation has been enacted to reduce fraud in medicare and medicaid, refinance social security, and reduce air fares for the elderly. Other key bills passed will reauthorize the Older Americans Act, provide congregate services in public and section 202 housing for the elderly, expand efforts to help older workers in the CETA program, and provide compensation to elderly victims of crime.

Tragically, this Congress has not seen fit to enact hospital cost containment, national health insurance, legislation expanding benefits for mental health care, or home health amendments to medicare. The failure to expand medicare home health care as an alternative to institutionalization in nursing homes is particularly disappointing since both the House and Senate passed such a bill.

We are far from the point where we can say the job is completed, but we will not cease our efforts. In the next Congress, we will continue to fight for the rights of America's aging.

Major legislation acted on in this Congress included:

The Comprehensive Older Americans Act Amendments of 1978 (H.R. 12255): The Older Americans Act is the chief vehicle for research, community services, employment, and nutrition programs for the elderly. In August, the Senate approved its version of the Older Americans Act (S. 2850) which the House approved last May. Some of the major improvements in the Older Americans Act contained in this new legislation as reported out of conference are as follows: A 3-year extension of the act, with authorizations totaling almost $4 billion; a major new initiative to vastly increase home-delivered meals to the homebound elderly; a significant streamlining in the local and State administration of the act, to cut down on redtape and paperwork; a major new program to demonstrate better ways to match older people with the long-term care services they need—a complete continuum from senior centers to nursing homes; a strengthened program of legal services and nursing home ombudsman for the elderly; changes in the Age Discrimination Act that will make it easier for individuals discriminated against because of their age in Federal programs to get relief; and extension of older volunteer programs in ACTION for 3 years. The bill has been signed into law by the President.

The Age Discrimination in Employment Act Amendments of 1978 (Public Law 95–256): The Age Discrimination in Employment Act Amendments of 1978 was signed into law by the President on April 6, 1978. This new law abolished the mandatory retirement age for Federal employees and raises it from 65 to 70 in private industry. The bill takes effect on January 1, 1979 for employees in private business and on September 30, 1978 for Federal workers. Special provisions apply for tenured college professors, top ranking business executives, Federal law enforcement and firefighting personnel, air traffic controllers, foreign service personnel, and some other high-risk job categories.

The Medicare Amendments of 1978 (H.R. 13097): Among its other provisions, the Medicare Amendments of 1978 would make important improvements in the home health benefit. The bill which passed the House on September 18 would liberalize the medicare home health benefit in the following manner: Unlimited visits would be available under both parts A and B; the present 3-day prior hospitalization requirement under part A would be eliminated; home health benefits under part B would no longer be subject to the $60 deductible; and presumed coverage provisions and provisions that limit reimbursement to the customary charges of a provider of services where these charges are lower than reasonable would be repealed. In addition, the HEW Secretary would be provided the authority to establish additional standards and reimbursement guidelines for the effective administration of home health benefits, and to designate regional intermediaries for home health agencies. Some of the provisions of H.R. 13097 are included in S. 5285 which was approved by the Senate on October 10, 1978, but conference agreement was not obtained prior to adjournment.

Medicare and medicaid antifraud and abuse amendments (Public Law 95–142): The medicare and medicaid antifraud and abuse amendments, now signed into law by the President, include mechanisms to curtail opportunities for fraud and abuse in Federal health care programs. Included in this new law is a provision defining as felonies those instances where contributions are required as a condition of entry or continued stay at a hospital, skilled nursing facility, or intermediate care facility, for medicaid services.

Social security refinancing amendments (Public Law 95–216): The social security refinancing amendments, signed into law by the President, were designed to strengthen the financial integrity of the system through increases in the wage base and the tax rate for both employers and employees. In addition, the earnings limitation was raised to $4,000 for 1978, and will increase by increments of $500 until 1982; the age for which there is no earnings limitation was lowered from 72 to 70. Other provisions remove references to the sex of applicants, permit older persons to remarry without losing benefits, and make homemakers who are divorced after 10 years of marriage eligible for benefits through the earnings record of their former spouse.

Supplemental Appropriations Act of 1978 (Public Law 85–240): The Supplemental Appropriations Act of 1978 provided an additional $4 million in grants for low-income elderly persons to weatherize and repair their homes under the FmHA section 504 program. In addition this legislation provided $200 million for the emergency fuel assistance programs under the Community Services Administration. This program provided assistance to low income persons living in energy emergency areas, including the elderly, to pay fuel bills incurred during the winter of 1977–78.

Legal Services Corporation Act (Public Law 95–222): The Legal Services Corporation Act was extended through fiscal year 1980 and amended to require that priority be given to groups with special difficulties of access to legal services with special legal problems, including elderly and handicapped persons.

Reduced airline fares for the elderly (Public Law 95–163): A provision of Public Law 95–163 permits reduced airline fares for the elderly and handicapped. Numerous airlines are now offering special discount airfares for those persons 65 and over. Most discount fares offered allow senior citizens to make reservations within 24 hours of scheduled departure rather than flying on a standby basis. Most tickets will reflect a one-third discouunt on air travel, and will not require a special identification card prior to use of the fare. Proof of age is required at time of purchase.

World Assembly on Aging and World Year on Aging (H. Res. 736): House Resolution 736, a resolution calling upon the President to instruct the U.S. delegation to the United Nations to work with other U.N. delegations in calling for a World Assembly and a World Year on Aging no later than 1982 was passed by the House by unanimous consent. An identical resolution was approved by the Senate. In addition, an amendment to H.R. 12222, the International Development and Food Assistance Act of 1978, authorizing the United States to contribute 25 percent or $1 million (whichever is lower) of the cost of a World Assembly and World Year on Aging, was also approved. Language to this same effect was included in the Senate-passed version of H.R. 12222. The United Nations is expected to consider the question of convening a World

Assembly and a World Year on Aging this fall.

The omnibus farm bill of 1977 (Public Law 95-113): The omnibus farm bill of 1977, signed into law by the President, made a significant change in the food stamp program. It eliminated the purchase requirement. This will increase participation of the most needy in the food stamp program. The purchase requirement created problems for many who were eligible to participate but unable to pay for the stamps. For example, less than 20 percent of all elderly persons live below the poverty level, yet only 40 percent of all households below the poverty level are able to participate in the program when the purchase of food stamps is required.

Senior intern program (S. Res. 219): Senate Resolution 219, the senior intern program, approved by the Senate in May, gives the senior citizen intern program formal status in the Senate. Each Senator is authorized to employ one senior intern to serve in his/her Washington office for 2 weeks each year during the month of May. Hearings were held on similar House legislation, but final action is not expected until next Congress.

Health Maintenance Organization Amendments of 1978 (H.R. 13655): The Health Maintenance Organization Amendments of 1978 provides for the establishment of a loan program to help support the acquisition or construction of ambulatory fare facilities. In addition, it authorizes the Secretary of HEW to make loans to public and nonprofit private HMO's and to guarantee loans by non-Federal lenders and the Federal Financing Bank to private and nonprofit private HMO's for the projects which serve medically underserved populations. H.R. 13655 passed the House under suspension on September 25. S. 2534, the Senate version of H.R. 13655, passed July 21. The conference report passed both the House and Senate prior to adjournment.

Health Services Amendments of 1978 (H.R. 12370): The Health Services Amendments of 1978, among other things, includes increased support in two areas of special concern. The program of demonstration grants for the establishment or expansion of home health agencies and for the training of personnel to work in these agencies, and the program which is aimed at the detention, diagnosis, and prevention of hypertension. The conference report passed both the House and Senate prior to adjournment.

The Victims of Crime Act of 1978 (H.R. 7010): The Senate amended and passed H.R. 7010, the Victims of Crime Act of 1978 on September 11, 1978. The bill encourages elderly victims to come forward, report crimes, and seek assistance by prohibiting any means test or requiring claimants to seek welfare. In addition, this legislation would waive the $100 deductible provision for persons 62 or older, recognizing that the financial impact of personal injury can be devastating for older persons on limited incomes. The conference report was passed by the Senate but defeated in the House.

The Housing and Community Development Amendments Act (H.R. 12433): The Housing and Community Development Amendments Act has been approved by both the House and the Senate. Among other things, this legislation by the House would provide $80 million over the next 3 years for: the development of congregate facilities in public housing and section 202 housing for the elderly; section 232 would be expanded to include facilities which provide day care services for the elderly and others; funding for the rural housing section 504 loan and grant program would be increased; and anticrime programs in public housing for the elderly would be provided. The conference report has been passed by both the House and Senate.

Surface Transportation Assistance Act (H.R. 11733): A 4-year, $51 billion measure to fund mass transit and highway projects has been approved by Congress. An earlier version of the House bill would have delayed and perhaps killed conversion of the standard mass transit bus to meet full accessibility, or "Transbus" standards. As a result, after September 1979, all transit buses bought with Federal assistance—which means almost all buses—must be equipped with wide doors, lower floors, a ramp or lift to aid in boarding and other "barrier-free" features.

Comprehensive Employment and Training Act (CETA) (S. 2570): The CETA program is extended for 4 years under this legislation approved by Congress. About 660,000 public service jobs would be funded in 1979, depending on the national unemployment rate. Conferees retained House provisions requiring local prime sponsors to specify in their plans how they will serve those "most in need," including older workers, and Senate provisions detailing what services prime sponsors should furnish to older workers. In addition, as the House bill provided, the Secretary will be required to develop, from his discretionary funds in title III of the act, programs meeting the unique needs of middle-aged and older workers. Assistance to displaced homemakers will also be funded from title III, with up to 2 percent of the title III funds reserved for that purpose.

Continuing appropriations, for fiscal year 1979 (H.J. Res. 1139): Those programs not funded in H.R. 12929 are funded under a continuing resolution, which allows spending at the rate of last year's appropriation. Among these programs are the Older Americans Act, ACTION older volunteer programs, and CETA. The resolution, which will expire on March 31, 1979, was cleared by Congress on October 14, 1978.

Provisions affecting the elderly from the Revenue Act of 1978 (H.R. 13511): Capital gains on sale of residence.—A taxpayer aged 55 or over will be able to sell his or her personal residence after July 27, 1978, and avoid paying any tax on up to $100,000 in profits from the sale. This privilege will be available only once in a taxpayer's lifetime, and supplements the current $35,000 profit disregard for taxpayers aged 65 or over.

Tax counseling for the elderly.—The Internal Revenue Service is authorized to fund training and technical assistance, through nonprofit organizations, for volunteers who would counsel older people on their tax questions.

Social services funding.—The national ceiling on expenditures under title XX of the Social Security Act, which funds social services to all aged groups, will be increased from its current level of $2.5 billion (unchanged since 1972) to $2.9 billion in 1979. Further increases for fiscal years 1980 and 1981 were deleted.

Labor-HEW appropriations (H.R. 12929): Since authorizing legislation was not completed on time, most of the major items concerning older people are not included in the regular Labor-HEW appropriations bill for fiscal year 1979. However, several items are included: National Institute on Aging, $54.5 million, an increase of almost $20 million over fiscal year 1978; Office of Inspector General, $40.3 million, an increase of $7.6 million to fund antifraud and abuse efforts; and community mental health programs, $257.7 million, up $44.6 million from last year. The bill was cleared by Congress on October 14, 1978.

Civil Rights Commission Act (Public Law 95-444): In extending the life of the U.S. Civil Rights Commission for 5 years through 1983, this legislation for the first time broadens the Commission's jurisdiction to include discrimination on the basis of age or handicap status. The Commission had previously been able to investigate complaints of discrimination based on race, color, religion, national origin, and sex. Signed into law on October 10, 1978.

Rehabilitation Act Amendments of 1978 (H.R. 12467): H.R. 12467 extends for 4 years programs funded under the Vocational Rehabilitation Act of 1973. Included in a new title VII ("Comprehensive Services for Independent Living") is an authorization for up to 10 percent of the funds to be used for services to older blind persons. Also, a new program of research is authorized, directed at the rehabilitation of handicapped children and of handicapped adults age 60 and over. Conference report cleared by Congress on Saturday, October 14.●

AN EXPRESSION OF GRATITUDE REGARDING TWO ILLINOIS PROJECTS

HON. TOM RAILSBACK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. RAILSBACK. Mr. Speaker, on behalf of the residents of the 19th District of Illinois I would like to express my appreciation for the tremendous assistance and counsel which made possible the inclusion of two important Illinois projects in the Surface Transportation Assistance legislation passed by the House and Senate at the close of this Congress. Congressmen PAUL FINDLEY, BOB MICHEL, and JIM LEACH are to be commended for their efforts in working toward inclusion of the Hennepin to Quincy Expressway and the Keokuk-Hamilton Bridge in the report accompanying this legislation. I am sure that they share with me gratitude for the work of Chairman JIM HOWARD, ranking

minority BUD SHUSTER, the other members of the Surface Transportation Subcommittee, and members of the full Committee on Public Works and Transportation. My thanks go as well to their staffs.

After spending several years looking for an avenue of funding for an important proposed road in my district, I was especially appreciative of the advice given me as to available alternatives. As it turned out, the priority primary alternative proved to be a successful one. The bottom line is that the Hennepin to Quincy Expressway is one of eight roads recommended for a share of the $125 million in discretionary funds allocated to the U.S. Secretary of Transportation. Residents of West Central Illinois have long awaited a safe and direct route to cut diagonally across this portion of the State.

The State of Illinois Department of Transportation also provided me with a great deal of support and I appreciate that aid as well.

Illinois was also very fortunate to have the Mississippi River Bridge extending from Hamilton, Ill. to Keokuk, Iowa named in the report. It is recommended for a share of the $200 million set aside in discretionary bridge funds. There is no question about the need to replace this obsolete and hazardous bridge.

Of course, I am aware that this legislation was not solely the product of House efforts. I know personally of the efforts made by Senator CHARLES PERCY on behalf of these Illinois projects. The work of the Senate committee and staff is also to be noted.

I sincerely hope that the result of these combined efforts is Federal funding for these two worthy projects. All that remains is one final step: that the Secretary of the U.S. Department of Transportation keep with past practice and commit his discretionary funds on those projects recommended in the report for funding.●

A TRIBUTE TO REVEREND HELEN D. RUSSELL

HON. TENNYSON GUYER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. GUYER. Mr. Speaker, service is perhaps the noblest activity known to mankind.

Most of us during our lifetime, deeply seek "commitment" to worthy objectives. In our own way, we truly try to help others.

Now and then we discover a person who goes "the second mile." Such a person is the Rev. Helen D. Russell, minister of the Baltimore Street Church of God in Baltimore, Md.

Helen knows what commitment is all about. With very little of this world's goods but with great endowment of desire, dedication, and direction, this exceptional woman has been cited by the "Baltimore is Best" program for her outstanding achievement in the work she has done through her little mission. Chiefly, she has lifted the lives of scores of young people who were friendless and often seemingly hopeless.

She really is one of our own. Her husband, George Russell, is an assistant clerk to the Official Reporters of Debate in the House of Representatives.

We are proud of the Russells and take this means of passing along a special verbal orchid to these special people.●

THE EDUCATION AMENDMENTS OF 1978

SPEECH OF

HON. RONALD M. MOTTL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. MOTTL. Mr. Speaker, on Wednesday, September 27, the House and Senate conferees completed their work on H.R. 15, the Education Amendments of 1978. I would like to call attention to two provisions of this bill which I introduced as amendments in subcommittee and on the House floor, and which I am pleased were accepted by the conferees.

The first provision would authorize grants to States to develop their own minimum competency standards. Although this new program is modest in size and involves no Federal control of curricula or tests, I believe it goes to the heart of a major problem in education today.

I think we are all aware of recent statistics which point out that some of our Nation's students are not grasping the basic skills they will need to function well in later life. For example, the national assessment of educational progress found that 13 percent of our 17-year-olds are functionally illiterate, and that the writing skills of this same age group declined overall between 1971 and 1974. Similarly, we have all heard the reports of how SAT's and other standardized test scores have been falling for over a decade.

I find these trends to be quite alarming. And it is no surprise to me that parents, university officials, employers, and the general public have begun to question the value of a high school diploma—or even the effectiveness of the whole educational system.

As a response to these concerns, several States have turned to minimum competency, or educational proficiency, testing. Students are tested at various points in their educational careers to determine whether they have mastered some basic competencies appropriate to their grade level. In some cases, granting of a high school diploma is contingent upon passing such a test, and in most cases, remediation is provided those students who do not attain the required minimum levels.

At last count, 5 States had operational competency-based testing programs, and 29 more were involved in planning or implementing some form of competency-based education in the basic skills.

To my mind, these State programs are a step in the right direction. And I see a role for the Federal Government—a limited one—in encouraging States to continue with these activities. It simply does not make sense to me that the Federal Government would spend billions of dollars for education without doing something to help States move toward a sound program in the basic skills.

Toward this end, the amendments which I introduced and which were retained in the final bill would authorize Federal funds to carry out State plans for educational proficiency standards in the basic skills. These grants could be used by States to refine programs already in existence or to develop and implement new programs.

However, I do want to note that the program is not mandatory and that in no way will the Federal Government be involved in specifying which minimum standards or which tests ought to be used. In addition, the bill authorizes the Secretary of HEW to conduct research and evaluation on the uses of tests to measure the basic skills. But again, the Federal Government will in no way impose the results of this research and evaluation on any State or local district.

I believe this new program will offer an incentive to the many States which have considered or planned similar activities, but have not been able to carry them out for lack of funds.

In my own State of Ohio, I am confident that this new program will initiate movement toward the use of competency based testing. At present, only the Berea school system tests students on their ability to master the basic skills. With the implementation of this new program, I hope the Ohio education community will take full advantage of it, because this new program will have implications for our schoolchildren and our educational system far beyond the modest amount provided.

The second provision mentioned deals with one of the most difficult issues the conferees had to take up—the direction which the Bilingual Education Act ought to take.

Certainly everyone in this Chamber is aware that this has been a controversial program. While none of us would want to deny equal educational opportunity for limited English-speaking children, the question remains as to how to best help these children reach the point where they can learn in regular English language classrooms.

This question was recently complicated with the release of a national evaluation of Federal Spanish-English bilingual programs containing some critical findings. This study, which was conducted by the American Institute for Research, found that less than one-third of the students enrolled in bilingual programs were actually of limited English speaking ability. In addition, 85 percent of the project directors surveyed as part of the evaluation said that students remain in the program after they are able to function in school in English.

Although the validity of this study has been questioned, to my way of thinking these findings nevertheless indicate that the goal of the program—to help chil-

dren gain sufficient knowledge in English to succeed in an English speaking classroom—needs to be clarified. I also believe that part of the problem lies with the lack in some programs of evaluation.

In order to rectify this problem, I introduced an amendment on the House floor to require that every child in a bilingual program be evaluated after 2 years in the program to establish the need for continued bilingual services. My amendment also specified that if this evaluation showed the child was no longer in need of bilingual education, the student would be moved out of the program.

I do not believe it is too much to ask of local people that they make a serious assessment of each and every child's progress after 2 years. I am sure that most good bilingual programs already have this type of individual evaluations as an ongoing component. But by spelling this out in the legislation, we can avert occurrences of students being kept in the program long after they can function in English.

In the long run, I feel that this amendment and other amendments in the bill which emphasize the need for careful planning at the local level will strengthen the bilingual education program considerably. And in the future years, I believe these amendments will diffuse some of the controversy surrounding the program by making sure that the students in the program will be able to function in American society.●

MORAL CAPITALISM

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. DORNAN. Mr. Speaker, Prof. Wilhelm Roepke, the intellectual godfather of the German miracle of the postwar era once observed: "We can breathe the air of liberty only to the extent that we are ready to bear the burden of moral responsibility associated with it." If there is one central truth that should guide our public policy it is this: Political freedom cannot long survive without economic freedom. Neither can liberty survive without a firm and enduring moral foundation guiding our public and private deliberations.

It gives me great pleasure to insert into the RECORD a piece that was first printed 20½ years ago. It remains as true now as it was then. The author of this little piece, Mr. Lloyd F. Hunt, is an exceptional engineer, a great inventor, and a great man—a true star in the California firmament. I am proud to represent him in this great House. I ask that my colleagues read his exhortation:

MORAL CAPITALISM

MORAL CAPITALISM IS THE BEST FORM OF CHRISTIAN LIVING

The United States of America became the great nation of the world because its government was formed under the basis of Christian Living. Religious Freedom and a government acting as the servant of the people are the two very important factors that have contributed the most to establish this greatness. What other country has coins that are engraved with: "In God We Trust"? What other country allows another flag hoisted above its flag as the United States of America does when the Blue Cross Flag is flying above the Stars and Stripes indicating a Christan Service.

If anyone reads the New Testament with the viewpoint of verifying Moral Capitalism is The Best Form of Christian Living he will not only succeed but will find no trace of socialism or communism.

Why have we been so successful in winning the wars in the past? It has been because we were nearer right than the other side. God helped us many times. In World War II why did not the Japanese take over the Hawaiian Islands after Pearl Harbor? Why did not the Germans continue after Dunkirk and take over the British Isles? Why did not the Japanese take over the Solomon Islands after the guns of their battleships neutralized the U.S.A. Forces? The only answer is that Providence was on our side.

Every action, war, government and business in the history of the United States of America has proved Moral Capitalism is The Best Form of Christian Living. At the present time we are spending a great part of our living fighting communism, a very defensive procedure. We will never get very close to a solution by being defensive and negative. We must change to the offensive and constructive attitude of Moral Capitalism. To do this we ourselves at home must get back to the system that has made us great. *Moral Capitalism.*

LLOYD F. HUNT.●

TRIBUTE TO BARBARA JORDAN

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROYBAL. Mr. Speaker, I would like to join with my colleagues in paying a well-deserved tribute to BARBARA JORDAN who will be leaving the Halls of Congress at the close of the 95th Congress. It is a pleasure and a privilege to add my words of praise for a woman who has achieved so much during her tenure in Congress.

First elected to represent Texas' 18th Congressional District in 1972, Barbara has made a mark on our Nation's politics which is rarely achieved by any, and particularly in such a short time. Her exceptional dedication and expertise, combined with remarkable oratory skills has brought her to the attention of the American people. And her dynamic keynote speech at the 1976 Democratic Convention is just one examle of how we will remember this powerful woman who has been so effective here in Congress.

It has, indeed, been a privilege to know and work with BARBARA and I am pleased to have this opportunity to add my words of praise for our friend and colleague. While her presence will be greatly missed, I know she will continue to use her many talents to benefit the American people.●

TEXTILE IMPORTS

HON. JAMES T. BROYHILL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BROYHILL. Mr. Speaker, my state of North Carolina relies heavily on the textile industry to provide jobs for our people. During the past 3 years, there have been several plant closings in North Carolina due to the tremendous increase in textile imports. This is jeopardizing thousands of jobs not only in North Carolina but all over America.

Representative KEN HOLLAND of South Carolina and I have sponsored a bill that would delete textiles and apparel from consideration of tariff cuts in the current trade talks taking place in Geneva. This legislation and the reasons behind its need have been the subject of much debate. In order to help clarify the deep need for corrective legislation, I want to share with my colleagues an excellent article expressing the views of Robert S. Small, president of the American Textile Manufacturers Institute, on the need for "fair competition" in the textile field.

TEXTILE OFFICIAL PLEADS FOR "FAIR COMPETITION"

(By Thomas Love)

Robert S. Small's position on the need for protection of the American textile industry from foreign competition reflects the views expressed by other executives seeking government help—his industry is somehow different.

And, like steel and copper executives, Small is adamant that he's not against free trade. He just wants what he calls "fair" competition in trade—a situation now lacking in the international textile market, he claims.

Small is not only chairman of Dan River Inc., a major textile producer, but president of the American Textile Manufacturers Institute, the industry's trade association.

Underscoring the industry's push for governmental help, the association recently closed its offices in New York and Charlotte and consolidated its operations here in Washington.

Small doesn't see the problems of his industry as basically different from those facing other industries under what he sees as as a generally anti-business climate in this country.

And, he claims, the Carter administration has backed off from promises to do something about the import situation.

"Our problems are not any different really from the problems generally throughout United States industry," he said. "I think all of the industry problems in the last 10 years have magnified through the governmental process."

He called the textile industry—both cloth manufacturing and clothing production—"the invisible industry. Our industry employs some 2.3 million to 2.4 million. That's one out of every eight industrial jobs in the United States," he said.

Moreover, some 380,000 workers are unemployed or on short time—largely due to growing imports, he charged.

Among the industry's employees are 65 percent women and 24 percent minorities, he added. "We are a tremendous employer of people who are not mobile in the sense they

cannot be picked up and moved from one section of the country to another.

"We operate in 50 states. We operate in the urban problem areas of 7th Avenue in New York, yet we are the only industry in small towns throughout the South, Southeast, Maine, New Hampshire and Massachusetts—even places like Oregon, Chicago, Atlanta, Philadelphia and New York still have a big textile industry that employs the would-be hard-core unemployed."

But "well over 60 percent—65 percent or more—of the industry is in the South," he said. "I'm talking about the Sunbelt states," he explained.

"We have a tremendous import problem. I want to say that a lot of people call us a protective industry, which we are not. We don't claim to be. The fact remains you can't be a protectionist industry when you're running a deficit in balance of trade of $5 billion a year. And one of our greatest problems in the United States today is inflation and one of the greatest contributors to inflation and the cheap dollar is this terrible balance-of-trade deficit which has been running about three years and getting worse every year," Small said.

"At first, it was largely due to oil, but today, next to oil, the largest single deficit is in textile," he continued. "We understand we must accept the import of a certain amount of textile goods and products. But what we can't accept is unrestrained, uncontrolled, disorderly imports. If we knew we were going to have a 5 percent or a 3 percent or a 6 percent increase each year, we could live with it. But during the first seven months of this year, imports increased on a dollar basis by 40 percent and on a pound basis by 27 percent," he said.

"We cannot live that way. No industry can live that way," he added.

There are international agreements to control imports—both a general agreement and individual bilateral agreements with major trading partners—but they are not working, Small said.

Although foreign products are cheaper, that savings is not passed on to consumers, he charged. Rather, the savings goes to increased profits for distributors.

The major problem of the United States textile industry comes from what he calls "the Far Eastern Cartel" of Japan, Korea, Hong Kong and Taiwan. "This year," he said, "approximately $7 billion worth of textiles will be imported, while we will export approximately $2 billion worth. Those four countries bring in about 60 percent of our imports while they take next to nothing from us. They have many means, which we call non-tariff barriers, which prevent American goods from being shipped in, although we could do it competitively."

He explained, "Japanese wages are almost as high as ours and the yen has gone up in relationship to the dollar. It's perfectly obvious the Japanese government is subsidizing the industry and we have a dumping problem (the illegal sale of goods in this country below the cost of manufacturing and transportation,)" he said.

To solve the problem, there must be governmental action, according to Small. Either other countries must open up for American imports, or this country should block imports from those nations, he explained.

Not only has the Carter administration failed to show any interest, but the president has failed to do what he promised during his election campaign, Small charged.

For one thing, Small said, even with the existing trade imbalance, the government is proposing to reduce tariffs on imported textile goods.

"The present administration promised the textile industry they would renew the (general) Multi-Fiber Agreement which includes a 6 percent growth factor in imports for four years, which we said was unsatisfactory because it exceeded the growth rate of our industry.

"But they went on to say they would renew that—and they did renew that—but they would take care of the American industry through bilateral agreements. But the bilateral agreements which have been negotiated so far have varied from 4.5 percent to 7.5 percent, so we can't see where there has been any improvement. They have not taken care of us in the bilateral agreements.

"More proof of that has been this tremendous surge of imports during the past seven or eight months," Small charged.●

ADMINISTRATION'S NUCLEAR POLICY—AN OPPORTUNITY FOR REASSESSMENT

HON. MARILYN LLOYD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mrs. LLOYD of Tennessee. Mr. Speaker, as we come to the close of the 95th Congress, I think it is important for my colleagues to reflect on some of the progress we have made in preserving future energy options. This Congress has been called on several times to review its commitment to the nuclear breeder option and has overwhelmingly rejected the recommendation of this administration to cancel the only demonstration project we have, the Clinch River breeder reactor. Unfortunately we will not have an opportunity to complete our work on the DOE authorization prior to adjournment. This is particularly disappointing to me because a successful conclusion of the process initiated some 10 months ago would be a fitting tribute to the untiring efforts of the distinguished chairman of the Science and Technology Committee, OLIN "TIGER" TEAGUE.

When we return for the 96th Congress, an important agenda item will be enactment into law of a DOE authorization for fiscal year 1979. Between now and then, the administration will have an opportunity to thoroughly assess its posture relative to the breeder option. Perhaps the recent series of articles that appeared in both the Washington Star and the Washington Post, regarding the Soviet commitment to breeder technology will have some impact on our policymakers. Perhaps recent State Department analysis of the West German attitude, indicative of the views strongly held by our allies in Western Europe, regarding the importance of reprocessing and breeder technology will be taken to heart. Mr. Speaker, with such a pronounced stream of events pointing to an early misreading of the crucial elements for an acceptable international nuclear policy, I sincerely hope that this administration takes steps to adequately reflect the need for an aggressive breeder demonstration program in its preparation of the fiscal year 1980 budget. The administration should also recognize the need to work more closely with Congress in shaping the final form of the fiscal year 1979 authorization.

Mr. Speaker, for the benefit of my colleagues I am inserting one of the several fine articles written by John Fialka of the Washington Star covering his recent tour of U.S.S.R. nuclear installations. I am also inserting an article which appeared in the September issue of Nuclear News characterizing the West German view of the administration's foray into international nuclear policy.

The articles follow:

[From the Nuclear News, September 1978]

ONE U.S. VIEW THAT FITS WITH EUROPE'S

(By Simon Rippon)

"Things likely have already gone too far to convince the West German Government that it should alter its plans to make them more congruent with Washington's current views on reprocessing, the breeder, and the retrievable storage of unprocessed irradiated spent-fuel," according to a report prepared by Peter Sebastian for a U.S. State Department Executive Seminar in National and International Affairs.

While German government and industry officials, and many others in Europe, will agree wholeheartedly with this conclusion, the detailed report (dated April 1978) on the status of German proposals for permanent disposal of radioactive nuclear wastes has caused some mild surprise because it appears to have been prepared without the knowledge of those directly concerned. But more disturbing than the slightly covert nature of the study is the fact that all the basic information on the German nuclear program has been freely available for several years, and Washington could, and should, have been able to reach the same conclusion before formulating its current views on reprocessing, breeders, and spent-fuel storage.

The report, in fact, gets several digs in at the U.S. Administration for dragging its feet in the formulation of its own waste management strategies. Sebastian concludes: "Unilateral American decisions to forswear reprocessing will not prevent the spread of this technology to states impelled for their own reasons to seek it for themselves. Persistence in our current efforts, particularly while our own homework remains to be done, will earn us suspicion rather than cooperation." He even dares to suggest that U.S. policy on reprocessing might be changed to fall in line with European thinking: "If the balance of advantages and disadvantages of reprocessing spent fuels tilts in favor of reprocessing, we should not be deterred from going that route." On the other hand, he asserts: "If we can demonstrate the contrary by getting on with the job of waste disposal in the U.S., our own experience and actions will give our assertion a weight they now lack.

The European doubts about the apparent U.S. preference for long-term retrievable storage of spent fuel are also repeated in the Sebastion report. He notes wide support for the view that retrievable storage of spent fuel constitutes a considerable physical danger while still hot but, since retrievability implies renewed access, there is also a significant proliferation risk when elements are once more cool enough to permit "direct maintenance."

Joseph Nye, at the Uranium Institute meeting challenged the economics of reprocessing. Sebastian, on the other hand, claimed that the economic argument in favor of reprocessing is not easily countered in West Germany, which remains crucially dependent on imported fissile fuels, lacks domestic uranium, and foresees steep uranium prices increases as world demand rises to meet supply—particularly if breeders and reprocessing were indeed to be widely forsworn as politically unacceptable.

A more constructive approach of international cooperation rather than confrontation is suggested by the future opportunities to encourage the regional-international use of

the Gorleben reprocessing and nuclear waste management center proposed in Germany. Sebastian expressed the view that there is currently an official deemphasis of the international use of the Gorleben facilities for tactical and political reasons, but this is only likely to persist until opposition to the construction of the center has been dealt with. He also suggests that eventual internationalization of Gorleben could ease relations with the East—the close proximity of the site to the East German border could become another arena for cooperation rather than a new bone of contention.

One statement in the report that is ready-made for a newspaper headline is that West Germany is "in the first stages of direct access to the full range of nuclear explosives technology." But far from refuting this statement, West Germany—and, for that matter, several other European countries—would claim that they have had access to this technology for many years, but they have declined to develop nuclear explosives because it is not politically expedient to do so. Washington would be met with less hostility in Europe if it would openly acknowledge this responsible restraint rather than implying, by restrictive export policies, that these countries are not to be trusted.

[From the Washington Star, Oct. 3, 1978]

SOVIET CONFIDENT THEY'VE MASTERED BREEDER REACTOR TECHNOLOGY

(By John Fialka)

OBNINSK, U.S.S.R.—The goal of the nuclear scientists and engineers working here is to introduce a "plutonium economy" into the Soviet energy system by the 1990s.

The device for accomplishing this is called the liquid metal fast breeder reactor (LMFBR), a piece of technology that has caused a major controversy in the United States because it will generate or "breed" large quantities of plutonium for use as nuclear reactor fuel. Plutonium is also the main material used in the manufacture of nuclear weapons.

The feeling here is that handling plutonium along with other materials involved in breeder technology is an art that has been completely mastered.

"I don't see any basic difficulties in transferring from uranium fuel to plutonium," explained Mikhail Troyanov, deputy director of Russia's Institute of Physics and Power Engineering, to a group of visiting U.S. journalists.

The difference between the U.S. breeder program and the Soviet Union's is obvious to a lay visitor to Obninsk, the main breeder research facility, located 80 miles southwest of Moscow.

While the Carter administration and Congress are locked in a protracted dispute over whether to build the first U.S. breeder reactor that will produce electrical power on a commercial scale, the Soviets have already built two and are finishing plans for a third.

The third Russian breeder, to be completed in the late 1980s, is called BN–1600. It will produce 1,600 megawatts of electric power, more than five times that of the proposed Clinch River breeder reactor. Carter stopped the Clinch River project last year because it conflicted with his nuclear nonproliferation policies. The reactor, which still has strong support in Congress, was to have been built near Oak Ridge, Tenn.

Until recently, the LMFBR was the U.S. government's main energy research program. It was considered to be the next generation of nuclear power plants, one that would begin to dominate power production in the United States by the 1990s.

One difference between the breeder and conventional reactors is that breeders operate at much higher temperatures, requiring a molten metal, sodium, as a coolant rather than the water that is used to cool and to carry the heat out of conventional nuclear reactors.

The breeder reactor is also designed to operate in a way that physicists call "fast." In a breeder the flow of fast-moving subatomic particles, called neutrons, is encouraged. In the conventional reactor the flow is inhibited.

The neutrons have the capacity to change the atomic structure in the metals surrounding the reactor and so breeders are designed with a blanket of natural uranium around the reactor's core. Under bombardment by neutrons, the uranium turns into plutonium suitable for re-use as reactor fuel.

According to Troyanov, the Soviets hope to use LMFBRs "very intensively" in the 1990s. The reactors will be designed to create about 1.3 times the amount of plutonium fuel they burn up, and to eventually shift the basis of their energy economy to plutonium fuel, rather than coal, oil, uranium or natural gas.

While U.S. scientists maintain that the U.S. breeder program is still ahead of the Soviets' in terms of basic research, they admit the Soviets are now well ahead of the United States in terms of testing equipment under actual operating conditions.

Obninsk is the home of the world's first commercial nuclear power plant, which began sending small quantities of electrical power into the Moscow area electrical power grid in 1954, at a time when the United States was concerned with smaller experimental devices.

Almost immediately, according to Troyanov, the basic thrust of the Soviet research program was shifted into the breeder area because of the promise of virtually limitless supplies of plutonium fuel.

Unlike U.S. nuclear engineers, who dress up visitors in white gowns, shoe covers and special radiation monitors, the Soviets have a much more relaxed attitude about displays of nuclear hardware.

They don't use shoe covers, which protect the reactor area against dirt, and they believe that radiation monitors are unnecessary. They like their machinery and they want people to see it up close, even touch it.

For a lecture on the main Soviet breeder research reactor, BN–5, reporters were assembled on the operating reactor's metal cover, just a few yards away from the machine's radioactive fuel.

Next year BN–5 will celebrate it's 20th birthday and the engineers here are looking for a way to celebrate what they say has been 20 years of trouble-free breeder operation.

"We could fill it up with cognac," joked one engineer, "but that would slow down the reaction."

The Soviet equivalent to the proposed Clinch River breeder is called BN–350. It began operating at Shevchenko, on the shore of the Caspian Sea, in 1972.

It now produces electricity and also steam for use in water desalination although, as Troyanov admitted it has had "certain difficulties."

Sodium is a very trick chemical to handle in large quantities. It burns on contact with air and can explode upon contact with water.

An explosion occurred in 1974 after some 100 gallons of water leaked into the sodium in one of the steam generators at Shevchenko. Some reports say the explosion was rather large, but Troyanov dismissed these reports as "rumors," saying that the plant remained in operation and that the damage it sustained would not have been noticeable from the outside.

A somewhat larger facility, BN–600, is being completed near Byeloyarsk in the Urals and is expected to begin operations sometime next year.

Recently there has been some discussion among Russian and U.S. scientists that American equipment, such as steam generators, should be tried out in the Russian breeders.●

STATEMENT CONCERNING CONFERENCE AGREEMENT ON HIGHWAY TRUST FUND PROVISIONS OF H.R. 11733

HON. AL ULLMAN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ULLMAN. Mr. Speaker, the House-Senate conference agreement concerning the highway trust fund provisions of H.R. 11733 follows the House bill, except for a modification of the fuels tax exemption for taxicabs.

FUEL TAX EXEMPTION FOR TAXICABS

Under the provision agreed to by the conferees, eligible taxicabs are to be exempt from the 4-cents-per-gallon tax on motor fuels for a period of 2 years, 1979–1980, instead of permanently as under the House bill. As under the House bill, eligible taxicabs are those first, which are not prohibited by law or Government regulation or company policy from furnishing shared ride services, and second, for 1978 model years or later acquired after 1978 which meet the auto fleet average fuel economy standard under the Energy Policy and Conservation Act—EPCA. However, the conference agreement specifically includes the exception to the EPCA standards that is provided for small manufacturers, that is, those that produce less than 10,000 vehicles per year.

The House bill provided for tax-free sales as well as a refund or credit procedure. The conference agreement modified this somewhat to provide only a refund or credit procedure for the tax paid in order to make the provision easier to administer by the Internal Revenue Service. An operator may file for a refund quarterly if the refund of tax due is $50 or more. Otherwise, a credit could be claimed on the operator's income tax return for the year. Only one claim for refund per quarter could be made under this provision.

The 2-year limitation on the fuels tax exemption for taxicabs was adopted in order to determine the effectiveness of the exemption in removing barriers to ride sharing and in encouraging more energy-efficient taxicabs. Congress would then review the exemption and decide whether it should be extended or not. The conferees expect that the Treasury Department and the taxicab industry will determine, and report to the tax-writing committees before the end of the 2-year exemption period, the extent to which barriers to ride sharing have been removed and more energy-efficient vehicles have been purchased. It is further expected that the taxicab industry will make such information available to the Treasury Department and the Congress in time to evaluate the findings.

The conference agreement with respect to the fuels tax exemption for qualified taxicabs is expected to reduce budget receipts by $15 million in fiscal year 1979, $35 million in fiscal year 1980, and $20 million in fiscal year 1981.

OTHER HIGHWAY TRUST FUND PROVISIONS

The other highway trust fund provisions of the House and Senate versions

of H.R. 11733 were identical, and were included in the conference agreement. These provisions include the 5-year extension of the highway trust fund and the highway excise taxes at present tax rates, a modification of the trust fund "Byrd amendment," a highway cost allocation study by the Department of Transportation, and a Treasury Department study of the highway excise tax structure. I am submitting a summary explanation of these other provisions for inclusion in the RECORD at this point.

SUMMARY OF OTHER HIGHWAY TRUST FUND PROVISIONS OF H.R. 11733

5-YEAR EXTENSION OF HIGHWAY TRUST FUND AND HIGHWAY EXCISE TAXES

The Highway Trust Fund is extended for 5 years, or from September 30, 1979, through September 30, 1984. It also postpones the scheduled rate reductions of the highway excise taxes allocated to the trust fund for 5 years, from October 1, 1979, to October 1, 1984.

MODIFICATION OF THE TRUST FUND BYRD AMENDMENT

The operation of the trust fund "Byrd Amendment," which currently provides for reductions in apportionments only for the Interstate System when anticipated trust fund revenues will be inadequate to cover existing expenditures, is modified so that any reductions will be made on a pro rata basis from all apportioned Highway Trust Fund programs.

HIGHWAY COST ALLOCATION STUDY

A highway cost allocation study is to be made by the Secretary of Transportation, with assistance of the Congressional Budget Office in designing the study, which is to determine the costs of Federal-aid highways occasioned by the use of different types of vehicles and the proportionate share of such highway costs attributable to each category of users and vehicles. A final report is due to the Congress on or before January 15, 1982.

The term "Federal-aid highways" used in the context of the cost allocation study provision is intended to include all programs and projects financed by the Highway Trust Fund. The highway authorization portion of the bill approved by the conference committee expands the use of the Highway Trust Fund to include certain projects off the Federal-aid system of roads, for example, as part of the bridge replacement program. The allocation of Federal costs called for in this bill include such off-system expenditures.

STUDY OF HIGHWAY EXCISE TAX STRUCTURE

The Secretary of the Treasury is directed, in consultation with the Secretary of Transportation and the staff of the Joint Committee on Taxation, to review and analyze each excise tax now dedicated to the Highway Trust Fund with respect to such factors as the ease or difficulty of administration and compliance burdens. This study is to be conducted in conjunction with the cost allocation study. A final report—to the House Ways and Means and Senate Finance Committees—is due on or before April 15, 1982.●

TRIBUTE TO OMAR BURLESON

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 13, 1978

● Mr. ROYBAL. Mr. Speaker, it is a pleasure to join with my colleagues in paying a well-deserved tribute to OMAR BURLESON who is leaving Congress after 32 years of dedicated and distinguished service.

I consider myself fortunate to have had the opportunity to know, work with and become friends with OMAR. Over the years my respect and admiration for this man have only grown. He has represented his constituents with outstanding ability and unfailing dedication, and will certainly be missed in the House of Representatives.

It has been a pleasure to know and work with OMAR as a colleague in the House and I want to take this opportunity to extend my best wishes for his continued success.●

PERSONAL EXPLANATION

HON. EDWIN B. FORSYTHE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. FORSYTHE. Mr. Speaker, during September I missed several votes as a result of speaking engagements in New Jersey, illness and meetings with constitutents and my colleagues. I would like to take this opportunity to make public how I would have voted if I had been present for the votes:

Rollcall No. 738: H.R. 11711, Trade Adjustment Assistance, September 8, 1978. Passage of the bill to broaden coverage and liberalize certain benefits to workers and firms that were adversely affected by foreign imports under the adjustment assistance programs of the Trade Act of 1974. I would have voted "yes."

Rollcall No. 750: H.R. 11280, Civil Service Reform, September 11, 1978. Collins amendment to guarantee the FBI at least 140 positions at the senior executive service levels equivalent to GS–16, GS–17, GS–18. I would have voted "no."

Rollcall No. 751: H.R. 11280, Civil Service Reform, September 11, 1978. Erlenborn amendment to delete the labor-management relations provisions from the bill. I would have voted "yes."

Rollcall No. 752: H.R. 11280, Civil Service Reform, September 11, 1978. Wilson motion that the Committee of the Whole rise and report the bill back to the House with the recommendation that the enacting clause be stricken. I would have voted "no."

Rollcall No. 781: H.R. 12611, Airline Deregulation, September 14, 1978. Anderson motion that the House resolve itself into the Committee of the Whole for consideration of the bill to partially deregulate the commercial passenger airline industry. I would have voted "yes."

Rollcall No. 805: H.R. 1, Ethics in Government, September 20, 1978. Danielson motion that the House resolve itself into the Committee of the Whole for consideration of the bill to require financial disclosure by high-level Federal officials, including Members of Congress and Federal judges. I would have voted "yes."

Rollcall No. 813: H.R. 12611, Airline Deregulation, September 21, 1978. Oberstar amendment to declare unlawful the pooling of revenues by air carriers in order to provide financial aid to carriers shut down by strikes. I would have voted "no."

Rollcall No. 814: H.R. 12611, Airline Deregulation, September 21, 1978. Passage of the bill to encourage airline industry competition by increasing airlines' flexibility to set fares and enter additional routes. I would have voted "yes."

Rollcall No. 815: H.R. 11733, Surface Transportation Assistance Act, September 31, 1978. Giaimo amendment to declare it to be national policy that expenditures from the Highway Trust Fund be "closely related" to the fund's anticipated annual revenues. I would have voted "no."

Rollcall No. 858: H.R. 10909, Clinical Laboratory Improvements, September 29, 1978. Adoption of the rule providing for House floor consideration of the bill to revise national standards and licensing for clinical laboratories and to revise medicare and medicaid reimbursement for clinical laboratory services. I would have voted "yes."

Rollcall No. 859: H.R. 14042, Defense Procurement Authorization, September 29, 1978. Downey amendment to eliminate from the authorization $209 million earmarked for the payment of naval shipbuilding contract claims. I would have voted "no."●

HELP NEEDED IN CAMBODIA

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SOLARZ. Mr. Speaker, Senator GEORGE MCGOVERN and 80 other Senators recently sent a letter to the Secretary of State requesting that there be a U.S. initiative at the United Nations to place Cambodia's behavior on the agenda of the U.N. Security Council as a possible threat to peace.

I applaud the efforts of our colleagues to bring this matter before the U.N. But even more I applaud the recent actions of this Congress to assist the survivors of the Asian Auschwitz by requesting the Attorney General to grant a special parole for the 15,000 Cambodian refugees now in camps in Thailand and by providing some funds to the U.N. High Commissioner on Refugees to aid the almost 100,000 Cambodian refugees in Vietnam.

It would indeed be appropriate for the United Nations to address the very serious human rights violations which have occurred in Cambodia and which have shocked and horrified the civilized world. Many Americans watched with genuine anguish the recent television portrayal of the European holocaust of 40 years ago without realizing that history was repeating itself. Only this time it was happening in Asia and the victims of this new holocaust were Cambodians and not Jews.

On this last night of the 95th Congress I would like to submit for the RECORD another statement about Cambodia, a subject which my colleagues and I have devoted considerable time and energy to during this session. I am submitting this statement for the benefit

of my colleagues and for others who might look through this Journal and who would welcome the opportunity to read what at least one refugee from Cambodia, now living in the United States, feels is the sad fate of his homeland.

The author of this very personal statement is Chahng Song, former minister of information of Cambodia, but now a refugee who has lost family, friends, possessions, position, homeland—almost everything. But he has escaped the holocaust which engulfed his small country, and now works tirelessly on behalf of other refugees and to do what he can for those who remain in Cambodia.

Mr. Speaker, I ask permission to enter the following in the RECORD.

THE MASS KILLING OF A FORGOTTEN PEOPLE

(By Chahng Song)

The continuing slaughter of Cambodians by that country's present regime has so far aroused little concern among U.S. government officials.

The U.S. government that is ostensibly devoted to the preservation of human rights—a campaign initiated by President Carter—has largely ignored the wholesale killing going on in my country. Though the President has branded Cambodia "the worst violator of human rights in the world today," Washington has yet to approve the speedy admission of nearly 15,000 Cambodian refugees now in camps in Thailand. And the U.S. ambassador to the United Nations has yet to make a single statement on recent events in Cambodia.

It is a source of great personal pain that, despite occasional congressional resolutions and the remarks of a number of outspoken senators, the crimes being carried out by the Khmer Rouge regime in Cambodia have stirred the U.S. press far less than the trials of several Soviet dissidents.

The bloody border war between Cambodia and Vietnam continues to escalate, claiming lives on both sides, and may explode into an even larger regional conflict, yet international opinion is curiously muted. Indeed, this new Southeast Asian war has not even been the subject of debate in the U.N. Security Council.

Nevertheless, it is essential that an international consensus be reached if Cambodia is to be saved. For, unless international sanctions are applied, the present bloodletting seems likely to continue. Pressure must also be brought to bear on Cambodia's chief backer—China—sufficient to convince Peking's leaders that it is in their own self-interest to withdraw their support from the Khmer Rouge.

Every diplomatic avenue should be quickly and carefully pursued by the U.S. government in this regard. Even the extreme solution of direct international military intervention, as Sen. George McGovern (D-S.D.) recently proposed, should not be ruled out.

At a recent hearing held by a Senate foreign relations subcommittee, one U.S. Southeast Asia expert opposed such intervention on the grounds that the decentralized structure of the present Cambodian administration precludes direct foreign intervention. This assessment is basically correct but vastly oversimplified, for it ignores the fundamental nature and history of the five-year Cambodian war. With massive foreign intervention, the Khmer Rouge leadership might flee into exile and have to revert to guerrilla resistance, forcing the momentary collapse of the present regime and preventing more killings.

But perhaps the most practical and affirmative action immediately open to the U.S. government is to ease the immigration restrictions for thousands of Cambodian refugees now in limbo in other countries.

Such action would relieve, if only a little, the terrible burden now borne by Thailand in caring for some 100,000 Indochinese refugees and in coping with the daily influx of those who continue to flee the harsh governments of Cambodia and Laos. Their acceptance into the United States would also reaffirm the American commitment to its traditional humanitarian principles, and do much to bolster Carter's sagging human-rights policy.

The United States has already demonstrated its moral and political responsibilities by admitting tens of thousands of Indochinese refugees. However, many Cambodians continue to be excluded by the government's criteria for admission, which stress pre-existing family ties with relatives in the United States and/or affiliation with the government.

If Washington were to act to rectify this situation, it would help relieve the present intolerable condition of the Cambodian people.

It is my prayer and hope that the execution of hundreds of thousands of Cambodian citizens by their present rulers will touch the hearts of the representatives of the American people, and will inspire them to examine with compassion and courage the plight of our forgotten people. I urge that present immigration standards be relaxed in favor of those who have managed to escape the worst hell of today's world—the Cambodian people.●

NATIONAL ENERGY ACT?

HON. EDWIN B. FORSYTHE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. FORSYTHE. Mr. Speaker, it is clear that this Nation continues to face an energy shortage caused by the increasing demand for a decreasing supply of energy resources. Although the National Energy Act is in some respects a useful beginning to solving that problem, it falls short of solving the energy problems currently facing the United States. Although the act offers some pluses in that there is an emphasis on conservation, the act is neither tough enough nor farsighted enough to cope with the crisis.

My primary reason for opposing the National Energy Act is the natural gas provisions which emerged from the House-Senate conference as a result of political arm-twisting and trade-offs by the administration. For consumers and industrial users, the so-called compromise on natural gas represents higher energy costs without the prospect of much needed additional natural gas supplies. By extending controls to the intrastate market, Federal price controls are imposed on the other one-half of the total U.S. natural gas production for the first time. Virtually all interstate and intrastate natural gas production will remain under control until at least January 1, 1985—and possibly until 1989. The so-called compromise on natural gas policy fails to provide a meaningful framework for termination of Federal controls. Only a small amount of gas is ever deregulated and large volumes of interstate and intrastate gas will remain under Federal controls forever. The passage of this act requires the hiring of an additional 300 regulators—in addition to the 500 new staff positions authorized by the Department of Energy authorization bill—at a first year cost of approximately $20 million. This is a costly extension of Federal bureaucracy.

Instead of trying to fool the public into believing that this natural gas policy will contribute positively to an effective U.S. energy policy which will save the dollar, the administration should be working with the Congress in order to fashion equitable and workable gas legislation to encourage domestic production of natural gas at reasonable prices.

Another area of concern with the National Energy Act was the tax provisions which the House-Senate conferees agreed to. I have long supported the enactment of tax credits for the installation of solar and energy conservation equipment. The conferees, however, selected to give the homeowner only 15 percent of the first $2,000 spent on qualifying equipment for energy saving materials and did not allow tax credits on such equipment as wood and peat stoves, heat pumps, and new and efficient boilers and furnaces to replace old leaky ones.

I would have supported an alternate proposal which would have allowed a tax credit of 20 percent on the first $2,000 spent on installing energy conservation measures. The tax credit for installing solar equipment is 30 percent of the first $2,000 spent and 20 percent of the next $8,000. This provision, however, does not include photovoltaics, which produce electricity directly from sunshine using semiconducting materials. The administration and the Congress promised the American public tax credits for installation of solar and energy conservation equipment. I want to see that promise fulfilled, but fulfilled in a manner that would be most beneficial to the public.

The National Energy Act provides the American people with an unworkable and costly extension of Federal bureaucracy while not insuring a reliable and reasonably priced energy supply. The act omits a realistic approach to oil and gas development and provides the consumer-homeowner with only the barest of tax incentives to conserve energy.●

HON. OLIN TEAGUE

HON. LAWRENCE COUGHLIN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. COUGHLIN. Mr. Speaker, for the past 32 years, the House has benefited from the enthusiasm and personal courage of the Honorable OLIN EARL TEAGUE, of Texas. Now that he is about to retire, I do not want the moment to pass without saluting my dear friend and colleague who so justly bears the name, "TIGER."

Congressman TEAGUE was already a decorated and celebrated veteran when he arrived in Congress in 1946. He went on to build national and international reputations in the fields of veterans' affairs and space science. As chairman of of the Veterans' Affairs Committee,

"TIGER" always fought to protect those men and women who had fought to protect their country. He is well known as the author and sponsor of the Korean war veterans bill (Public Law 550), a landmark piece of legislation. During the 93d Congress, Congressman TEAGUE became chairman of the Science and Astronautics Committee. While remaining a guiding force on the Veterans Committee, he championed the cause of space exploration and scientific research. I had the opportunity to serve with him on what is now the Science and Technology Committee and always found Congressman TEAGUE well-prepared, a tireless worker, and a true gentleman.

Although it will be sad to see him leave this House, I want to wish "TIGER" the very best in retirement. We are certainly much better off for all of his work.●

WE ARE WORKING TOGETHER: THE PROMISE OF THE NEIGHBORHOOD/CITIZENS MOVEMENT

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. CONYERS. Mr. Speaker, a month ago I had the privilege of participating in the third annual convention of the Philadelphia Council of Neighborhood Organizations. One of the oldest neighborhood coalitions in the Nation, the Philadelphia council has developed into a citywide organization of 135 neighborhood groups that has led in the drive to put an end to redlining, rehabilitate the inner city, foster neighborhood commerce, and establish effective crime-prevention programs.

The convention that met on Saturday, September 23, drew nearly 1,000 citizens activists. The morning was devoted to a series of workshops in the areas of economic development, crime prevention, housing, and citizen participation. The plenary session in the afternoon included, among other things, the election of new officers and discussion of a series of resolutions before the body. Among the constituent groups within the Philadelphia council, which played a major role at the convention, is the House of Umoja, and its founders, David and Falaka Fattah.

The House of Umoja deserves special attention. Four years ago in west Philadelphia citizens were virtually hostages to the street gangs that overran the neighborhoods. The Fattahs became convinced there was a way to reach gang members. They created a half-way home for a small number. They won the trust and respect of gang members. At a later stage they developed the concept of an extended family who used their home as both a shelter and meeting place. Each morning the group gathered to discuss and allocate work assignments, and deal with problems as they arose. There were also classes in African history, black American history, and on cultural life. Some participants lived at the home, while others visited for group activities.

The House of Umoja is continually evolving. Now there are a dozen shelters for youth, as well as institutionalized programs such as a "youth black olympics" and conferences that bring troubled youth from several cities together. The Fattahs have accomplished in west Philadelphia what few urban experts thought possible: They have given gang youth alternatives to crime and violence and have brought a greater measure of peace to Philadelphia's streets. When I suggested at the convention that the House of Umoja should be awarded a Nobel Peace Prize for its extraordinary work in urban peace and justice, the delegates responded with thunderous applause.

The Philadelphia council, and its constituent organizations such as the House of Umoja, have made possible a tremendous movement toward revitalizing our cities. The neighborhood/citizen participation movement across the country, I believe, is far more significant over the long run as a political movement than the so-called tax revolt movement. I believe this because of what the neighborhood movement stands for, in contrast to the tax resistance drive: It stands for faith and hope, rather than frustration and despair; for activism rather than political withdrawal; for citizen responsibility rather than cynicism.

The keynote speech at the convention was given by Father Joseph M. Kakalec, one of the Philadelphia council's founders. Known as "Mr. Neighborhood," Father Kakalec gave an extraordinary address on the role of neighborhood action in the Nation, and I strongly recommend his remarks that follow to my colleagues:

WE'RE WORKING TOGETHER

About five years ago a very significant event occurred in Philadelphia. The event was the birth of the neighborhood movement.

Prior to this event neighborhoods existed but few people spoke about neighborhoods. Very few people in power cared about neighborhoods. Very few resources were allocated to the neighborhoods. Very few private institutional policies reflected the importance of the neighborhoods to our city. And only a very few realized and perceived that if our neighborhoods died our cities would surely die!

Within the past five years, the Philadelphia Council of Neighborhood Organizations, the main force in neighborhood development in the city, took definite shape. Many present at today's convention and many of the founding members of PCNO clearly remember our first meetings. We started a search. We went up many blind alleys but managed to struggle back to our starting point to try other avenues. And we found them. Many people told us—and they still tell us—what we know to be false, namely, that people from different races, religions, and geographic areas will not work together. Those "nay-sayers," those pessimists were and are wrong. Neighborhoods are working together. Success in working together is present but it demands a purposeful will, consistent hard work, granite determination as well as love and respect for one another.

People in the neighborhoods seem to have a great instinct for self-preservation, an instinct that adds to their ability to work together. Over the years neighborhood residents realized that centralized government and big government were not handling their problems, and in fact, were creating many of them. In the name of progress, neighborhoods saw and still see many homes destroyed for highways that benefit the few, and too many vacant lots assembled for redevelopment that never seems to take place. Even worse, we are now witnessing in the city reductions in library, health and senior citizens services—reductions aimed at protecting the jobs of the drones who serve the politicians rather than the people. Neighborhood people also saw neighborhoods redlined, the quality of public transportation deteriorate, neighbors displaced by so called, "revitalizations" and security and safety problems on the rise. In response, people have begun to demand more political and economic power, more accoutnability from government, greater citizen participation in government, and a voice in the decisions of private institutions.

Neighborhood people are often accused of not caring about their neighborhoods. How narrow and false this statement is! A recent Gallup Poll of the country's neighborhoods found that neighborhod residents are proud of their neighborhoods. The majority of people do not want to move from their neighborhoods. Most neighborhood residents have lived in their neighborhoods for long periods of their lives. Most importantly, people are participating more in their neighborhoods than ever before. They are participating because they care. When one person is threatened in the neighborhoods today more people are wiling to get involved. Now we must learn that: When one neighborhood is threatened in Philadelphia all other neighborhoods have to get involved to help the suffering neighborhod. No neighborhood is an island. No neighborhood can exist in isolation. If one neighborhood hurts, all neighborhoods hurt. We have to help each other, understand each other, be tolerant of each other, respect each other and grow with each other.

There are people in Philadelphia today who are attempting to divide the neighborhoods. They want one neighborhood to fight with another. There are rabble-rousers who would be happy to see one ethnic group or race fight another. There are demagogues, unprincipled men, who speak words of distrust and disrespect. Such words, such actions, can never find a home in our hearts, in our neighborhoods, and in PCNO. Why? Because we demonstrate positive action and positive thinking, harmony, peace and security. God help us if these do not exist in our hearts!

Only neighborhoods, then, will help the neighborhoods. Few people in positions of power ever helped the neighborhoods to work together. Neighborhood people did it themselves. All that we have was won by pounding and plodding day after day. It was no easy task. If the cities are ever to be saved it will be the neighborhoods that save them. Only in the neighborhoods and neighborhood organizations, such as PCNO, will a healing occur on the grass roots level. Only in the neighborhoods will a harmony of voices, singing the same tune, bring out peace and security.

PCNO is persistently trying to do the job of bringing a sense of neighborhood and community back to the city. As our Board members work in committees and our staff of organizers works with groups throughout the city, we continually share problems and possible solutions. We learn that the problems that ruin our neighborhoods are similar throughout the city. We also learn that the resources needed to alleviate these problems are not beyond our reach. We need only overcome our fears, cast off our hopelessness, and be brave enough to ask for help. Neighborhood people are learning to work together in this way and are learning to respect one another.

One of the loudest cries of neighborhoods today is for justice. Justice means giving each person his due, what he deserves. It means fair treatment. Neighborhoods deserve this justice from all institutions—they demand fair treatment. In these days, beginning with the scandals of Watergate up to the most recent revelations of scandal and corruption in the Pennsylvania state government, we desperately need a return to the civic ideals upon which our country was founded: equality, dedication, fairness, moderation in government, checks and balances, and above all justice.

In the past five years PCNO has fought for justice and equity for all neighborhoods and neighborhood people. We do not oppose for the sake of opposing. When PCNO joined the Clergy United to Save Our Schools (CUSS) in their efforts to settle the school strike, it was because, like CUSS, we were demanding justice for our children. Until then, no one was speaking for the school children. We joined our voices with the clergy to cry out for justice for the helpless children.

When we sponsored the national conference on urban displacement, we were doing so to call attention to the injustice suffered by old time residents in our neighborhoods who are losing their homes as neighborhoods are "revitalized." This treatment still demands a balanced and equitable solution.

When we encouraged groups to lobby for jobs for the unemployed in the spring, we did so because neighborhood people needed jobs. We cannot say justice prevails in our nation when the government allows thousands of willing residents to remain unemployed and justifies unemployment among the poor as a means of fighting inflation.

When we sponsored youth workshops last year we did so because youth are being treated unjustly when they cannot get quality public education, a good job, or equality of treatment in the adult world.

We opposed the center city tunnel, fought fare increases, demanded cleaner busses and bus stop signs with maps and bus schedules because fairness to neighborhoods and transit riders demanded these. Simple justice demands clean, safe, speedy and efficient transportation for a fair price.

PCNO held and will hold more crime and safety hearings in the neighborhoods because our neighborhoods still suffer from insecurity and crime. No amount of satistical mumbo-jumbo from officials will convince residents that they are getting fair treatment when women are still harassed at night, children are molested, drugs permeate a neighborhood and neighborhood residents are treated like criminals in the courts or police response to crimes is poor. Neighborhoods demand and deserve safe, secure streets—this is only fairness of treatment.

When we demanded from the Office of Housing and Community Development more money for housing rehabilitation, a representative citizen participation process, rehabilitation of abandoned houses, a return of money to neighborhood organizations after it was removed for political reasons by city council, we did so because neighborhoods were being treated shoddily and unfairly.

The tasks of PCNO are not finished. There are many things to be done in the city of Philadelphia. We ask all of the neighborhoods to join us in our struggle for better housing, for fair utility rates, for secure, civil and humane neighborhoods, for better and improved opportunities for youth and for economic development to provide jobs and services for the neighborhoods.

We must press for improved performance from our city government. There are no unified and coherent policies in the city for youth, for transportation, for jobs or for economic development. For several years, PCNO demanded the creation of a single office for housing. This now exists but only because PCNO fought for such an office. We must now make sure it works. We must demand the same type of unity and response in other areas of government.

Moreover, there is no coherent, unified policy for neighborhoods on any level of government. We must demand from every aspirant to political office a statement of his policy towards neighborhoods. We must only support those candidates and elected officials who support neighborhoods.

Whatever PCNO does, whatever it encourages neighborhoods to do is based upon the values of justice, equality and the need for a sense of community. Let there be no mistake or misunderstanding of our motives. We do not seek personal gain through political power or office nor do we harbor any of the ulterior motives attributed to neighborhood people. We will always fight for and will eventually acquire justice for our neighborhoods.

Above all we must work together for peace and harmony. We must not allow the voices of division and confusion to polarize the neighborhoods. We must opopse all double-talk, racial antogonisms and ill-will. Only by fairness, justice and mutual respect can we grow.

How do we fight for what is just? We start by educating ourselves. The workshops and action panels in which we participated this morning covered a broad array of issues and topics vital to the livelihood of our neighborhoods. Through these presentations and exchanges we hope to have taken the first step in educating ourselves. The hundreds of people here today will go back to their neighborhoods where information and ideas will be shared. Where do we go from there? We begin to act!

Where information was the theme that was pursued this morning, action is the theme for this afternoon's proceedings. This morning we learned how to reduce housing abandonment, how to start community credit unions, how to prepare our youth to enter the job market, how to register voters and build political awareness, how to acquire health services and the how to's of several other areas. Through our action panels we looked at actions we have taken and began to set goals for future action. Now we msut collectively fight to attain these goals.

The Philadelphia Council of Neighborhood Organizations is the vehicle for this fight. This organization alone has successfully facilitated cooperation and joint action between the diversity of neighborhoods. Now is the time for the neighborhoods of Philadelphia to focus on the issues that touch us all and shape our lives. We should continue to work in our own neighborhoods, but, to effect substantive changes, neighborhoods must work together through PCNO to fight for decent housing, secure neighborhoods, jobs, adequate education, fair utility rates and responsive and responsible government.●

TRIBUTE TO JAMES R. MANN

HON. THOMAS P. O'NEILL, JR.

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. O'NEILL. Mr. Speaker, I am pleased to join my colleagues in pausing on this occasion to pay tribute to the dean of the South Carolina delegation in the House, the Honorable JAMES MANN, who is retiring at the end of the 95th Congress.

JAMES MANN has had an impressive record of 24 years of service to the people of South Carolina, first in the State House of Representatives, later, as a judicial circuit solicitor, and finally, as a Member of the U.S. House of Representatives. In each succeeding task of public service, JIM MANN has served his constituency and the Nation with distinction and honor. South Carolina has good reatives. In each succeeding task of pubson to be proud of its dean and native son.

JIM MANN can point to his record as chairman of the Subcommittee on Criminal Justice with a sense of great accomplishment, and to a number of remarkable legislative achievements in his service on the Judiciary Committee and as chairman of the informal House Textile Committee, and the House Select Committee on Narcotics Abuse and Control.

It is for his courageous and difficult political stand during the trying 1974 impeachment proceedings that JIM MANN earned the greatest respect and admiration among his colleagues and the leadership in the House. For his uncompromising stand on the principle that our Nation is governed by rule of law and not of men, JIM MANN gained national recognition.

Quiet and reserved, not a headline seeker, trusted by his constituents and colleagues in the House to get the job done—these are the qualities that have made JIM MANN a highly reliable and competent Member of the House of Representatives.

I am proud to have served with JIM MANN. I want to thank him for a job well done and wish him well in the years ahead.●

LAW AND PSYCHIATRY

HON. THOMAS S. FOLEY

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. FOLEY. Mr. Speaker, Dr. Sol Levy of Spokane, Wash., recently delivered a major address to the Washington State Bar Association concerning the law and psychiatry. Dr. Levy is a distinguished member of the medical profession and has a high reputation in the field of psychiatry. He is held in great respect by his colleagues in the Pacific Northwest, and his contribution to the medical profession and the community at large have been numerous and widely admired. He is a man of independent views, and I think his remarks on the role of the psychiatrist in the area of law will be of interest to many who are concerned about this field:

LAW AND PSYCHIATRY

Horace, one of the old Greek philosophers, recommended that the truth be told laughingly. I will try to do just that. Humor, I have learned, relaxes tension, steers midway between gravity and levity and paradoxical though this sounds, is the most serious form of seeking and maintaining perspective.

Before talking about Mental Capacity Defenses and the Role of an Expert Witness in a Criminal Trial, we naturally have to realize

that psychiatry and the law speak entirely different languages and in order to understand this and especially realize the gaps between the language of the law and the language of psychiatry, I wish to point out that crime is not the name of an illness, nor is there any specific psychological or psychiatric category for all criminals and for them alone. To the jurists and lawyers, criminals form a well defined group, while to the psychiatrist, criminal behavior is but one of the many aspects of the concept of social maladjustment. This is due to the fact that the doctor of medicine, and in this particular case, the psychiatrist, is trained to deal not so much with the symptoms of the disease, but with the personality of the individual as a whole, whereas a student of law studies crime as crime. The psychiatrist concerns himself with the welfare of the individual, while the student of law concerns himself with the safety of society. But this however, goes even deeper. The legal concept is one of mind dominated by reason and free will. The medical concept is one of function actuated by emotions and determined by intrinsic factors. In the legal mind, everything is consciously known. In the medical mind, much is unconscious and unknown. We know now that within a society or even within a group, there are some individuals who can obey and follow those rules most commonly accepted in that group or society, while for others that is almost impossible. These latter do not form a psychiatrically or psychologically homogeneous group, but psychiatry and psychology can help explain their behavior to a certain degree. We therefore have to consider the biological, psychological, social and cultural factors and we definitely have to distinguish between them. We therefore speak of a bio-psycho-social and cultural phenomenon as far as the classification of criminality is concerned and therefore must study and attack this problem definitely from all these angles and it is for this reason why it is so important to take all we have at our disposal and to take a complete and detailed longitudinal life history of this particular individual.

Just to be a little bit confusing, I wish to give you an example about the language we psychiatrists sometimes speak and also the language which lawyers sometimes speak and you can actually see how far away we actually are in understanding each other and interpreting what we actually mean by what we are saying.

When it comes to the language of the law, we expect and assume that this is very precise, definite, conclusive, concise and in no way as ambivalent and full of gobbledygook as that of psychiatry and we do not expect ambivalent or contrary answers or more questions asked, without definite answers given. This unfortunately, is usually not the case as we have seen so many times.

Prior to going into the subject of my talk, I should mention that approximately ten to fifteen years ago, new legislation regarding commitment laws for the mentally ill to the state institutions of the mentally ill was introduced and passed in most of the States of the Union, dealing not so much any more with the term Mental Illness, but rather with the concept of being dangerous to himself or to others and these laws are now applied religiously and did get away from the fact, that there are still mentally ill people who are in need of treatment, not because they are dangerous to themselves or to others, but because, to say it bluntly, they are just mentally ill and in need of treatment just as a physically ill person is in need of treatment and not because he is dangerous or will become dangerous. It almost became a crime to talk about mental illness or disease from the legal point of view, in contrast to physical disease; i.e., mentally ill persons don't exist any longer, only people dangerous to others or themselves and only those apparently need and are given help. The others, the real sick, just leave it up to their destiny and forget them. Even if one occasional patient with mental illness and without being dangerous should get to a mental hospital for treatment—what is done? Two weeks later, if he would not prove dangerous to himself or to others, he is right on the street again. So forget Mental Illness—some call it a myth—and concentrate only on the point of being dangerous and what has illness to do with being dangerous?

No one including psychiatrists, social scientists, computer experts, lawyers or even judges, can predict with 100% certainty who will become dangerous, but waiting for a person to commit an overt act because of a mental illness simply won't work. If we just wait until someone has committed a crime, we will just collapse the civil commitment procedures into the criminal justice system. Mentally ill persons then will have to be treated as criminals. The key to helping someone recover from mental illness is to treat him as early as possible, not after he has killed or hurt himself or someone else. Mentally ill persons should not have to deteriorate to the point of dangerousness when it is obvious that they are in need of treatment and would predictably respond to treatment. Psychiatry, just as the other fields of medicine of which naturally psychiatry is a part, during the past twenty or thirty years has made tremendous progress as far as our knowledge to the causes, the symptoms, the classification and the treatment of mental illness are concerned and this does not only include the introduction and utilization of the newer psychotropic drugs, the utilization and also the introduction of various other modes of treatment, such as convulsive therapy. Unfortunately however, because of social and political considerations, psychiatry, and this was naturally followed by the law, became more and more involved when the so-called "Action for Mental Health" embraced the philosophy of social and political psychiatry and psychiatrists set themselves up to solve almost any problem and the law followed by its regulations to enforce this. Almost everybody and especially non medically trained people, such as volunteers, social workers, psychologists and just plain "do gooders" became psychiatric experts and the law gave them the opportunity to do just that. At that time, for instance, state hospital superintendents all over the United States joined the race as to who could release patients the fastest and which hospital could reduce their in-patient population the most. They jumped on the social psychiatric bandwagon to impress the public and the legislatures with their startling statistics and successes, which however, did not prove what they set out to do. We were not so much concerned treating the mentally ill and trying to restore them to their previously good emotional and mental health, but we became much more involved in political and social issues, which is still true up to this day. For instance, prior to one previous presidential election psychiatry became concerned about which candidate, from the emotional and psychiatric point of view would make a good President of the United States and to solve this problem, no one took the time and effort to examine this particular person, which is a must in a psychiatric evaluation, but we just sent out questionnaires and counted the answers and without any scientific basis reached certain conclusions.

Regarding concerning competency or the mental capacity to stand trial there is another example where we have numerous questions when we are not so much concerned with the mental health or mental illness of a particular individual but where we are more concerned with the legal implications as well as the preservation of this particular individual's constitutional rights. Generally speaking, in order to be competent to stand trial, the alleged offender has to understand the peril in which he finds himself and should be able to assist his attorney rationally in his own defense. If one is competent, understands the peril in which he finds himself, and the consequences which can follow and if he is able to assist an attorney in his defense, that should mean that he is able to enter a plea whether the plea is guilty, not guilty, or not guilty by reason of insanity. This particular question has come up recently in great details. There just has been a case locally in the U.S. District Court for Eastern Washington where a particular offender plead Guilty to a First Degree Murder Charge after he has had several examination as to his competency to stand trial, which were all in agreement that this particular offender was competent to stand trial, but it was appealed. Also a similar case was appealed to the Ninth Circuit Court of Appeals in 1973 and the Ninth Circuit Court, at that time, held that there definitely was a higher standard of competency required to plead guilty to a First Degree Murder Charge than the degree required to be competent to stand trial. However, the answer what this higher degree required was not given and about the same time, this same question as to two different degrees, namely the competency to stand trial and the competency to plead guilty in the First Degree Murder Charge was answered to the contrary in the Fifth and Tenth Circuit Courts of Appeal where it was stated, without leaving any doubt, that there is no higher degree of competency to stand trial than to enter a plea of Guilty of Murder in the First Degree. By the way, there just has been another case in the Court of Appeals for the State of Michigan where the same question was answered, as it was in the Fifth and Tenth U.S. Circuit Court of Appeals. Now where do we look? What is the answer? What do we apply? Where is the higher standard which the law, at least one Circuit Court of Appeals tells us to do? It conveniently or inconveniently does not give us the answers where to look for, what to ask and what this higher standard of competency entails. If a person is competent, this means that he realizes when he pleads and whatever he pleads, has thought out all the advantages or disadvantages, with all the positions this particular person gives up (for instance, Jury Trial, right to cross-examination, etc.) and this also means that he knows what will happen to him, if he does plead guilty.

Psychiatry, at least despite some of the gobbledygook, can give us some answers as to the competency, but while the law, in this particular case, and especially the different interpretations by the different Circuit Courts of Appeals, has not been able to give us any answer, but only to tell us that something more is required but what? The psychiatrist, during the examination, can ask only so many questions, can tell and test only the veracity and reliability and seriousness of answers and also can evaluate the person, but cannot find out the different motivations to enter a plea for this alleged offense if it is not spelled out by the law what the higher standard means. The psychiatrist can state that, in his opinion although one realizes that he is not always right, this particular Defendant understands his peril and can enter a plea, having weighed his decision very carefully from every angle and thus can assist in his defense, but unless we have something definite to go by which the law has laid down, it is just impossible for a psychiatrist and psychiatry to state that the man is competent but needs more to enter a plea of guilty to a First Degree Murder Charge. This is where the law has to be much more specific before

giving this responsibility to psychiatry and/or the examining psychiatrist.

The plight of the mentally ill has naturally become more popular since according to various Court Decisions regarding the requirements of dangerousness and the main thrust that you cannot imprison a non-dangerous person in the presumption of treatment.

The idea of constitutionally guaranteed right for treatment for involuntarily committed mentally ill has been developing in the Courts for at least ten years—the famous case being O'Connor vs. Donaldson.

What our esteemed brothers forget is naturally that Mental Illness (which is illness and characterized by thinking, mood and behavior disturbances) really does exist, can be diagnosed, treated and even cured in some instances and has nothing to do with being dangerous to himself or others, does not indicate mental illness, neither does mental illness indicate dangerousness, as already pointed out.

This is the greatest tragedy that Law has imposed on Psychiatry. Naturally, constitutional rights have to be preserved, under any circumstances and we also have an informed consent—but sick people have to be treated and not to let them die with their rights on. And because of the so-called dangerousness theory and despite all treatment progresses, no attention is paid to proper and adequate treatment and thus, because of fear of violating constitutional rights, treatment of seriously disturbed mentally ill patients is grossly neglected in a large proportion of our mental hospitals. It almost appears, at least to this observer, that the main thrust as far as the role of Law with Psychiatry is concerned, is that there is no further Homo Sapiens, a thinking creature, a person who really thinks, wants to make up for his admitted mistakes and pays the consequences as distinguished from other organisms, but we have only one concern—preserve by all means his constitutional rights—no matter what, even if it does prevent to help to restore good health again and functioning and coping properly.

The right to the competency to stand trial should also be mentioned. It says that not only does the alleged offender need to understand the peril in which he finds himself with the subsequent consequences, but it also says that he has to be able to assist his attorney rationally in his defense. In order to assist someone, it needs two to make a bargain. It has come up many times and this not only happens in the practice of law, but also in the practice of medicine that two persons just do not cooperate with each other and while a particular Defendant can assist very rationally one particular attorney in his defense, he does not cooperate with another attorney no matter how skillful, intelligent and hard working this attorney is. Does this mean, because the Defendant cannot assist one attorney, he is not competent to stand trial or would it not be possible that he could cooperate and assist very rationally in his defense with another attorney? What does the law do about that?

For many of us, who have participated in some of these competency hearings, it became quite obvious that the Defendant, for one reason or another, did not like (in most cases usually his Court-appointed attorney) and would not cooperate with him by any means, even to the point where he tried to pull "this attorney's legs." The attorney complained because the Defendant would not cooperate and assist the way the attorney wanted the Defendant to do so that the Defendant is not competent to stand trial. We all have non cooperative clients or patients and it is then up to us before coming to such a conclusion to consider discharging ourself from the case and to try to get some other attorney to take over in whom the Defendant has more confidence and with whom he will cooperate and assist. Naturally, I realize that this cannot go on for ever and ever and the line has to be drawn somewhere, however, in a subject as important as this, this naturally would have to be considered very seriously. I have had recently the experience where a Public Defender complained bitterly that he had worked hard with this particular Defendant for thirty-eight hours and was unable to get his cooperation and the assistance he needed to proceed with the trial while on the other hand the same Defendant after fifteen minutes in the Court Room showed an entirely different picture and cooperated not only with the Judge but with the whole proceedings of the competency trial and there was no doubt in anybody's mind that this was just a clash of personalities and certainly this particular attorney should have seen that long before and should have turned the case over to someone else who would have gotten the cooperation and assistance from the Defendant which was required.

As to the role of the psychiatrist as an expert witness in a criminal trial it should be understood that the role of the expert may be to reconstruct the past, to analyze the present or to predict the future. In doing this, he may offer testimony of the general kind, testimony as to facts and opinion testimony. The admissibility of each rests upon different theories. Expert testimony as to fact is admissible because specific skill and expereince are needed for the understanding of certain matters. For example, any person of ordinary understanding can testify as to whether a man had a cut or to the color or stains that may have appeared on his clothes. It requires specific experience and knowledge however, to say what arteries, nerves or bones were injured.

Because the ordinary witness is not capable of understanding the particular matter, the expert is needed, but his specific knowledge must be shown before he is permitted to testify as an expert. As a general rule of evidence, opinion testimony is inadmissible. The ordinary witness presents the facts and the Judge or Jury is to draw the inferences or conclusions from such facts. A parallel may be seen in the doctor-patient relationship as when a doctor may say to the patient I will do the diagnosing, if you don't mind. Just tell me what ails you. In many instances, however, it is not possible for the Court to form an intelligent judgment because of the difficulty of the question involved and the opinion of those skilled in this particular subject may be obtained for assistance.

For example, the Jury would be incapable of determining whether or not this resulted from a particular cut, even though it had before it a description of the wound; hence the opinion of a medical person is of assistance to the Jury. Here the function of opinion testing is advising the Jury rather than proving a fact.

The problem of expert testimony, particularly that of a psychiatric character, whether as to facts or opinion, is somewhat different in criminal than in civil cases because of certain constitutional privileges of the accused. On account of the Defendant's privilege against self-incrimination, the expert witness for the State in a criminal prosecution is much more restricted, when the Defendant's mental, rather than physical condition is an issue. The accused may be compelled to submit to a physical examination by the medical witness for the prosecution since this does not involve testimonial compulsion. The accused cannot be compelled to answer any questions asked by the expert in a mental examination, however, because this would violate his privilege against self-incrimination. If the Defendant wishes to plead insanity, he must submit to a psychiatric examination but the psychiatrist may testify only on the issue of mental status and may not reveal any statement made to him as to the commission of the offense.

He naturally has to warn and inform the Defendant before the examination takes place that he (the psychiatrist) is there to examine, but not to treat him, that he (the psychiatrist) was sent by either the Court, the Prosecutor, the Defense Attorney and that he naturally has to give a report of his findings as a result of the examination to this particular party and that he (the Defendant) does not have to answer any questions, some questions and that he can refuse the examination at all, but that whatever he says will have to be reported and might even be used against him in Court and finally that naturally he can have his attorney present during the examination.

In this connection, it is very interesting to note that despite the so called legal logic that in the Statutes of at least one state I know of, the state of Montana, but there might be others too, it is mentioned that as far as the competency of an accused is concerned that if the examination cannot be conducted by reason of the unwillingness of the Defendant to participate therein, the report of the psychiatrist shall so state and include, if possible, an opinion as to whether the unwillingness of the Defendant was the result of mental disease or defect. Now where is the logic? If the Defendant does not participate in the examination or is unwilling to do so, how can one state in not talking to the Defendant whether this was the result of mental disease or defect, or assuming the opposite, just out of protecting himself, or his own interests. This, I think, is an example where we go from the sublime to the ridiculous despite the law's cold logic. What is a psychiatrist to do? Wait and see? Wait for his intuition or, even wait until the psychiatrist hears voices which tell him what the motivation of the non-cooperation of the Defendant represents?

The second part of the paper is supposed to deal with the role of the psychiatrist as an expert witness in a criminal trial. Does the psychiatrist, who in criminal proceedings, is the principal expert witness who is summoned, actually belong in the Court Room? There have been numerous suggestions that for instance a criminal trial should be bifurcated, meaning that the trial should be split up and first that the Jury should decide guilt or innocence and then the psychiatrist comes into the picture to determine whether or not the Defendant was mentally ill at the time of the offense and what disposition should be made of him; for instance whether he was or is mentally ill and should be treated in a hospital or whether or not he is and was not mentally ill and should take the consequences and punishment of the law, such as confinement in a penal institution.

Does the psychiatrist have to be identified in the mind of the public as someone hired to cheat us by testifying that the Defendant is not Guilty by Reason of Insanity? This is one of the reasons why the psychiatrist is reluctant to appear in the courtroom in a criminal proceeding. However, which is more important, there is also the fear of humiliation at the hand of the opposing lawyers and there is a certainty and the uncertainty about the psychological nature of the crime or the relevance of actual evidence and past crime. Thus, there naturally has to be a great deal of criticism of the role of the psychiatrist in the courtroom which not only comes from within but from without the psychiatric profession. I wish to make a small comment first about the so-called fear of humiliation at the hand of the lawyers, especially during cross-examination. This naturally happens very often, especially since the witness, in this case, the psychiatrist,

is sworn in to tell the truth and nothing but the truth, but while, on the other hand, the attorney who cross-examines him just can get up, can make insinuations which absolutely have nothing to do with the facts, can later retract them, or "strike them" or be sorry that he made them, but they still stand as fact in the mind of the Jury and the Judge. I do not think this is fair and if I had my way, I also would, before the lawyer can cross-examine a prospective witness, especially an expert, have the lawyer take an oath to ask questions containing the truth and nothing but the truth, but I think this is an impossible dream and never will come to realization. For instance how I personally feel as far as the humiliation is concerned, this doesn't bother me at all because I am thinking of the old saying.

When the lion wandered through the art gallery and saw a beautiful picture of a lion being killed by a hunter, the lion just sighed and said, "Oh, if lions could only paint" and then we would have the picture from the different side and sometimes I feel the same way when I sit in the witness chair thinking. If the prospective witness, in this case myself, could only ask these questions or could make insinuations to be later retracted, there would be a different turn of events. However, the next weapon of the attorney and even the Judge is to command to answer the questions with "Yes" or "No" and without being able to further elaborate on it.

Like in every profession, the field of psychiatry also has its own Gods and other important people who, for one reason or another, are admired and their words be final. I certainly do not know how Gods are created and despite contradictions at times, remain Gods. Maybe they write too many articles or publish too much, maybe they speak too loudly, maybe they have good public relations, but nevertheless, Gods have followers and we have some of them in the psychiatric profession. But, by the way, I have learned that this also is true in the legal profession. Some of our Gods are very out-spoken and quite opinionated. Some of them believe that psychiatry should be excluded entirely from the courtroom, not just because they do not like to be disputed by colleagues which then leads to the famous battle of experts, they should not be badgered and discredited or cross-examined by attorneys or suspected of being purchaseable, but also because questions relating to guilt, competence and responsibility are moral or legal questions and not medical or psychiatric ones and Gods are very sensitive, as you very well know and they express it in no uncertain terms. One of our more famous Gods stated that we psychiatrists don't belong in the courtroom. We cannot function effectively there. It is not our professional sphere of action. We do not understand the language addressed to us nor convey what we intend to and think we do, using the language we employ. Our performance in the courtroom ritual is a continuation of what is really a fraudulent, discriminatory, undemocratic procedure, that of trying to manipulate psychiatric categories and legal sanctions for the specific benefit of selected individuals. It goes even further stating that even if we doctors cannot agree, let us disagree in private and submit majority and minority reports. This probably will not be necessary. Our differences are usually going to be on minority points. We are not going to raise legal issues like "Sanity" and "Responsibility" because we are not going to talk legal jargon nor should we talk psychiatric jargon. We should try to say in simple English why we think this man has acted in this way so different from the rest of us and what we think can be done to change his pattern. The Court will then decide if we have been persuasive and make possible, by order, what it thinks is the most promising recommendation.

I, for one, disagree with these Gods completely. It is understandable why many psychiatrists have built up undue anxieties regarding the participation in legal matters. No one relishes the provocative kind of a type of an attack upon one's ability and creditability that sometimes occurs. This is one reason why some psychiatrists prefer to avoid any contact with legal matters seeking the security of their own offices in preferences to the uncertainties, anxieties and occasional inconveniences of courtroom experiences.

While such anxiety is understandable, psychiatrists, who are unwilling to provide the legal system with their expertise, do a disservice, not only to the individual, who might be directly affected by their absence from the witness stand, but to our legal system as well as to society as a whole. The psychiatrist, who shirks testifying, may be failing an individual just at the moment that he is needed most. Moreover, whether in or out of Court, working with the Court offers an unparalleled opportunity to study human behavior as litigation of any kind represents a breakdown in social function that needs to be understood. Avoiding the courtroom is to close a door, a very important one, on the study of disturbed behavior and on the application of current knowledge to the legal and social institutions. In addition, the courtroom provides an arena to inform the public to initiate legal reforms and to influence public attitudes.

There is no doubt that several attacks that were made on psychiatric testimony are certainly justifiable. One attack concerns psychiatrists who testify for publicity sake, having the public in mind, for testimony may be so askewed as not to be trusted. However as one of the pioneers of American Psychiatry used to say "When it comes to Criminal Law, psychiatrists have an urge to become a Mr. Know-it-all and a Mr. Fix-it-all." It is in this field that we psychiatrists have listened and written so much and so positively about the dynamics of human behavior and criminality that the public has finally taken us at our word and it looks, I'm sorry to say, that we psychiatrists have talked ourselves into the privilege of holding the bull by the tail. Some of this could not be prevented because psychiatry is a rather new field within the field of medicine and much progress has been made and it is therefore not surprising that the enthusiasm of some of the psychiatrists has run rampant.

However, in spite of the somewhat extreme attitudes, it definitely can be said that psychiatry has made some very important contributions within its field and there is no reason why this cannot be taken advantage of and help to solve some of the mysteries going on in the human mind. However, naturally in this connection the psychiatrist has to remember certain guidelines and has to follow them. First of all, let me say that the competent psychiatrist outside the courtroom will be a competent psychiatrist inside the courtroom. The basic fact to remember is that whenever a psychiatrist participates in Court, he participates as a psychiatrist and not as a lawyer. He is an expert witness because of his expertise in psychiatry. As an expert witness, he is permitted to express opinions. This means, in addition to reporting facts, he may know, he may draw inferences and conclusions such as for instance that, the person he is testifying about, is mentally ill. Very often, a psychiatrist will want to help in the case once he reached an opinion. This is a great mistake because the thing a psychiatrist must do at all costs, is to avoid partisanship. Basically, the psychiatrist's role is to impart medical knowledge, not to win legal victory; so when testifying, the psychiatrist should not pattern his conduct after that of the lawyer's, intent on winning the case. Rather he should present his opinion to the best of his ability, making clear to the Judge and the Jury the degree of certainty or uncertainty he has. The psychiatrist's impression when he is testifving, is based on the totality of his knowledge, realizing that he is only expected to present information based on his particular knowledge in the field in which he feels competent and then he certainly will not have to be concerned with a cross-examination. In viewing the interface between psychiatry and law, questions concerning the association between psychiatric illness, langerousness, criminal responsibility, are the most frequently asked. What psychiatry can offer is the best information concerning the influences of various mental illnesses and behavior, the expected results of treatment and an advocacy of the patient's needs consistent with a responsible view of society's demands and requirements. Although the role of psychiatrist in the courtroom, especially in criminal cases, has been fairly well discussed up to now and contains most of the important points to be considered, there has been within the past ten or twenty years put, in my opinion, an undue and unfair burden on the psychiatrist in his role as an expert.

Up to that time, we were speaking of, especially in civil commitments, mentally ill persons whose thinking processes and moods were so disturbed and who experienced hallucinations and delusions and for this reason were unable to cope with the simple frustrations and requirements in life and with reality of life. This burden has now shifted, not from a mentally ill person any more, but to the concept of a person who is either dangerous to himself or dangerous to others. Dangerousness is the main requirement now for committing a person to a mental hospital, whether this danger arises out of criminal acts or of just the possibility of dangerousness. This is extremely illogical and unfair since being dangerous to himself or being dangerous to others has absolutely nothing to do with being mentally ill, because dangerousness does not imply mental illness, neither does mental illness imply dangerousness. But, unfortunately the law took over and these are the standards we have to go by, which I should mention again are extremely unfair to the psychiatrist and yet the great part of information sought by the Court involves prediction of being dangerous to himself or to others. The more I consider this problem, the more it disturbs me. Are mentally ill likely to be any more dangerous than angry, bitter, disillusioned or disappointed persons? In fact we have good evidence to suggest that the mentally ill persons are perhaps less dangerous than the so called normal people. When one reflects on the rate of violence in this and many other countries during the past decades, it becomes apparent that the majority of capital crimes, serious assaults and crime against property are committed by persons who are not thought to be mentally ill. It certainly would be helpful, as the law assumes it could be, if some member of society including the members of our esteemed legal profession could identify who will kill, rape or burn, but at present this is not possible. In many areas, particularly those involving the psychiatrist, the legal process seeks the prediction of future events, rather than a determination of who did what at some time in the past. In child custody cases, for instance, a judgment is based on the best interests of the child which looks to the future. In divorce cases, based on the breakdown of the marriage, a prediction is made as to the reconciliability of the partners. In criminal law administration, the prediction is sought of the likelihood that the offender will commit another crime and a judgment as to the seriousness of the potential crime.

Any person can become dangerous at some time, either positively or negatively. That is, either what he does do or what he does not

do, may result in harm to others. There are no absolutes in the prediction of human behavior. The psychiatrist or other social scientist is not a computer than can calculate the behavior or trends as they relate to each other, projecting them into the future. Even statistical results tell us nothing about the single instance and it is a single case with which the trial deals. The human situation is open. All the perimeters are neither fixed nor known. Hence, there is a fallibility in prediction. There is little truth for the belief that there are iron laws of history or that we know them well enough to project them with any great reliability. Most turning points of history, great and small, were a surprise both to the participants and the analysts of the day.

Predictions regarding dangerousness in mentally ill persons are notoriously unreliable and most observers who have done work on this subject to test predictions of dangerousness came out quite inaccurate. Persons not mentally ill may be dangerous, but this prediction in them, is no more accurate or reliable than it is in the mentally ill. Mental illness simply adds another factor. Thus again, I have to mention that this is a very unfair charge given to the psychiatrist to make a determination at this time. What is even more unfair, is the fact that very often lawyers questioning a psychiatrist during Court procedures are saying "You know what is wrong, you know what the patient is thinking about or what he will do under various circumstances." This implied assumption is that if the psychiatrist does not give definite answers, he is just plain ignorant and when the questioner is belligerent and the psychiatrist witness is cautious, the stage is set for strong feelings that will impede rather than enhance communication between the two professions. Just to mention the fact that collaboration between law and psychiatry is not always easy, particularly when dangerousness is an issue, the price of the failure to collaborate is quite dreadful. Several years ago, for instance, there was a very famous case when pressure began to build for non-hospitalization of mentally ill patients, unless they had actually committed an illegal act. At this particular time, a very famous alumni of one of our noted colleges became psychotic while visiting another city and was taken to a public hospital for treatment. However, she was refused admittance on the grounds that she looked all right and had done no harm to anyone. Having no place to go, she just wandered around the down town area near the railroad station. What happened could almost have been expected. She was found in a garage within a few hundred yards of the station, cut to pieces by an unknown assailant. It certainly was dangerous for her to be around even though she would not have been dangerous to herself.

Another point are the newer laws regarding the right to treatment and the right to refuse treatment. Now we know that psychiatry has made great progress in the last twenty or thirty years and the best place for a person who is mentally ill is to be in a hospital and to be treated, so that his original health can be restored. But unfortunately, again one has to be dangerous to himself or to others, which is only part of the total personality, before proper treatment can be given and instituted and who is in a better way to judge who needs treatment than the treating physician and certainly not the patient, the lawyers, the guardians, the do-gooders or the sensationalists. Treatment is adequate and effective if it only helps a certain percent of patients and if we can treat only five out of one hundred people with certain illness, we have done a good job, as for instance in cancer. In some cases, it goes even as far as eighty to ninety percent. And naturally, the right to refuse treatment is one of the greatest ironies. What is the reason for somebody to go to the hospital for treatment and then all of a sudden, decides, especially in his disturbed mind, to refuse to accept the treatment? What does it do good and what practical purpose has it, to commit a patient, who is mentally ill to the hospital for treatment and then if we can't treat the patient sent to the hospital, why bother? Why not just have the Courts return to the old practice of throwing patients back into jail as it was done two hundred years ago? The fuss that has been made regarding medication, electric shock treatment, lobotomies and mind-altering drugs is just humbug. It was invented by sensationalists who do not even know what the treatment is or about and who, in all probability, even when offered, have not carried it through according to directions and those are the people who tell us what is needed, what is adequate, what is effective and what is humane. The purpose of treatment in psychiatry is to remove the illness and to restore the patient to his previous, pre-morbid personality and health. The psychiatrist cannot alter the mind of the patient, just as the eye doctor, who treats an eye infection can remove the infection from the eye, but cannot change the color of the eyes and to be facetious about the refusal of treatment, how would the Honorable Judge feel if, after a fair trial, a Defendant is found guilty through "Justice" and naturally time in prison is also considered a treatment or "rehabilitation," but the Defendant gets up and tells the Judge that "You have been fair to me, that I had a fair trial, that I did what I did, but I refuse to accept the treatment, since this is 'Justice' and I have the 'Constitutional right' to refuse it." Can this ever happen and how would the Honorable legal profession feel about it?

There are many more points which could be considered under the charges given to me in the paper, but unfortunately time does not allow this. However, law and psychiatry can cooperate well together and should and years ago, we tried to do this, but unfortunately social psychiatry and social reform in law became more promising and what we tried to do which, in my opinion, would have been extremely helpful, was just thrown by the wayside.●

FEDERAL EXECUTIVE INSTITUTE 10TH ANNIVERSARY ASSEMBLY ADDRESS BY JOE BARTLETT

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. GILMAN. Mr. Speaker, I take this time to congratulate the Federal Executive Institute on the occasion of its 10th anniversary, and to commend Director Tom Murphy and his associates on their splendid contribution to promoting good Government through the development of better Government executives.

The Federal Executive Institute marked this milestone with a reunion of alumni and faculty at the Charlottesville campus, featuring a series of seminars updating subjects of professional concern.

When I learned that my good friend, our clerk to the minority, Joe Bartlett, had been invited to make the keynote address to this distinguished assembly, I asked him if I might submit his remarks for the RECORD so that our colleagues could share his thought. With his permission, his excellent address appears below.

You will note some personal references to several of the popular personalities at FEI, but I believe you will be duly impressed by the message he brought to this occasion, his expressions of appreciation for the values of the Federal Executive Institute, his appeal for the noblest performance in public service, the inspiring example of his own ideals with respect to the public trust.

Joe is now the "dean" of legislative attachés here in the House, having begun his unusual service as a page in 1941. Except for two brief tours with his beloved Marine Corps (in which he has attained the rank of general), Joe has worked right here in this Chamber ever since. He has served some 2,000 Members of Congress in this time, and has watched five of them become President of the United States.

One marvels how, after all these years, Joe could still be so enthusiastic about this business. But that is Joe Bartlett. And here, for your interest, is his message:

ADDRESS BY JOE BARTLETT

Thank you, Madam President Anita (Alpern).

Distinguished Directors. Eminent faculty. Honored guests. My dear friends and valued associates of the Alumni.

It is indeed an honor to be asked to be your spokesman on this auspicious occasion of the Tenth Anniversary of our beloved "Alma Mater", the Federal Executive Institute.

As the assignment approached, I became increasingly aware that it was more of a challenge and a responsibility than I had reckoned. That is why I sought out many of you to inquire what you expected; what you wanted of me on this occasion. And you have been very helpful. So, while the words may be mine, the message may be yours. And I hope they are both adequate to the occasion.

At the time I accepted your very kind invitation, I had no idea that it would be my final official act as a member of your Board of Directors, but so it is.

This does give me an opportunity that I welcome to pay my respects to your Alumni President, Anita Alpern, and to the other outstanding members of your elected governing Board. I can tell you they do a great and unselfish service in your behalf, of which most of us are hardly aware. In praise of Anita Alpern, I cannot say enough.

What a beautiful person! What a magnificent human being she is! She is a real credit to the Federal Executive Corps, and to your judgment in selecting a leader of the association. I do hope you will take the occasion of this reunion to extend a warm hand clasp of gratitude to each member of the Board, and especially to Anita, to say "thank you; thank you for the hours you devote to our common interests." That is the only reward they will ever get, and it will be worth it just to watch their faces light up, or blush, with unaccustomed attention.

My toughest assignment, I believe, is to try to express your appreciation to the three men who are most responsible for the course of events that brings us to this tenth anniversary celebration. I refer, of course, to the three distinguished gentlemen who have directed the affairs of this institution during the past decade. Renown educators, preeminent public administrators, inspiring leaders, and cherished friends all: I salute. on behalf of all alumni, our founding Director, Frank Sherwood; followed for some

five years by the inimitable former Director, Chet Newland; and our present, great Director, Tom Murphy. We thank you from the bottom of our hearts, for making all this possible.

They would be the first to want to share this gratitude and admiration and affection with the members of the faculty, and so I turn my salute to you, the members of the faculty, knowing that there is no way I could possibly express the moving sentiments within the hearts of some 3,000 alumni, who will be forever indebted to you for enriching their lives through your facilitations and friendship. God bless you everyone!

For those who have not had an FEI experience, it is almost impossible for them to comprehend why we cherish it so much. They cannot understand how men and women who have already been through 16 to 20 or more years of formal education, could find a few weeks of informal seminars down here at Charlottesville so gratifying. Like a story that is hard to translate: "You just had to be there!"

But each of us can attest that this is a marvelous vehicle for executive development. It makes us wonder how they ever got along without it. Surely the Federal Executive Institute will stand as one of the most valuable and enduring legacies of the President Lyndon Johnson administration. Its direct contribution to better government will have redoubling benefits into the infinite reaches of time and circumstance. For every person who comes here as a student, goes back a teacher and a believer, and the endless rippling effect of that is incalculable.

We know that one of the keys to the success of FEI is the "non-threatening" environment cultivated and carefully preserved here. Where else, but at FEI, could a group of top government executives get together in a pleasant and casual setting, away from their official responsibilities—and away from those who daily compete with them—where they can really feel free to test bold new ideas—or tired old ideas—against a brain-bank of contemporaries of similar high accomplishment? All of this, in the presence of eminent faculty who stimulate the exchange with the latest techniques from the academic community, and who skillfully "facilitate" the discourse so there will be no inhibition of expression. And they are so good at it! You would never have guessed that Jai Johnson did not agree with everything I said!

One of the great benefits of FEI (and I am sure it is not unplanned) is that you get to know yourself better. As your ideas and reasonings are contrasted with others, it has got to be self-revealing. And if that is not enough, a session with Doctor Tom Gates makes you feel psychologically denuded! That is not a bad place to start a project of self-improvement, is it?

Another great benefit is that you get to know others in contemporary roles throughout government. There were always those areas of government you regarded as fearsome or contemptuous, that after getting to know a real, live person involved in that activity, and finding that his problems and interests were not at all unlike your own, it made all of government seem a little closer, a little more familiar, and a little more human.

But one of the greatest things about FEI, is that you can always come home. The latch string is always out to an alumnus. What a satisfaction it is to know that you can repair to this comfortable campus, and know that you will receive a cordial welcome. And that if you have ideas you need to share, or problems you need to resolve, you will find old friends here who will give you their patient and sincere consideration, and their knowledgeable and constructive counsel. That is really what "Alma Mater" means! What a priceless resource this is for all of us!

The Federal Executive Institute is a veritable well-spring of new and imaginative ideas for better public administration. It is an invaluable touchstone for sharpening the best professional concepts of government. This creates thinking, innovative executives. Now that could never be tolerated in an authoritarian government. And, as a matter of fact, there may be authoritarian minds not too far from here who do not find it too comfortable. But we happen to think it is great, don't we?

But these are not the best of times. Even those in government service who know there is something valuable to be gained here at Charlottesville, are reluctant to leave the security of their desks in Washington for the seven week term. There has been an understandable paranoia among Federal executives during this time of transitions.

Regrettably, it has been necessary to redefine the qualifications for FEI in order to fill the classes. And we all know that the longer you stretch the band, the less give and take there is. That "non-threatening" environment may be threatened.

Nationally, the recent past has been a period when it has been popular among politicians to run against the Washington establishment; to exploit the unpopularity of government; to denigrate and ridicule every hapless civil servant.

This scorn has taken a heavy toll on moral, and on production, and on dedication in government service, as you know better than anyone.

And this scorn has fostered the very conditions that spawn corruption, because people—even government workers—are inclined to live up to—or down to—whatever is expected of them.

Some time ago I heard a story about a particularly contrary missile down at Cape Canaveral. It had frustrated every effort to get it off the pad. A visiting congressman was told the missile had been nicknamed "Civil Servant", because "it wouldn't work, and it couldn't be fired."

Three years ago, before my FEI experience, I would not only have enjoyed that joke, I would have believed it!

But I got to know some mighty fine folks here, and I know that there is integrity and devotion and competence among Federal executives, just as there is in the Legislative Branch. And in just about the same measure!

And these are not the best of times for either. Both are institutions representative of the society of our time. And society as a whole should pause to reflect on that truth, if they but would.

In that vein, I have been asked to comment on the subject of the "whistle blowers": those who go public with reports of alleged improprieties within their official activities. I am not an authority, nor do I claim any particular wisdom on this subject. However, it does seem to me that a situation that comes to this, stands as an indictment of the methods of management that did not provide for the expressions of dissatisfactions before they took the proportions of scandal. It seems most unlikely that such a debacle would ever befall anyone who learned his lessons well here at FEI, because so much of our doctrine is based upon maintaining open communication. Nonetheless, a point not to be forgotten, by the whistler, or the "whistlee", is the old riverboat truism: "that the steam that blows the whistle, never turns the wheel!"

I do not mean to make light of malfeasance in office. Verily, I detest and abhor it. But I resent the massive class guilt-by-association we have witnessed of late.

We have heard so much about "white collar crime" the public is starting to look askance at anyone caught wearing a white shirt.

Between that, and the TV commercial that taunts" "ring around the collar!", our whole life style is being warped!

Look around and see how few are wearing white shirts here today. And aren't they the ones with the beady eyes!

Speaking of "ring around the collar" reminds me of an incident that might serve very well as a parable at this point.

Back in my home town (as in many other home towns) some fifty years ago, there was a group that appointed itself to be the conscience of the community regarding certain "disapproved" conduct with which the established law could not, or would not, deal.

Now in this town (as in most towns) there was one notorious rake whose intemperate and immoral conduct could not long escape the attention of this self-righteous band.

So, one afternoon they drove up to where he was standing on the curb in front of the Court House, and two burly vigilantes silently sandwiched him between them, and into the back seat of this big, old touring sedan, and they took off down Main Street.

They did not speak and they did not stop until a few miles out of town they arrived at a wide bend in the river, which in the summer season was a favorite swimming hole known as Willow Beach.

They marched their terrified prisoner to the shade of a majestic sycamore tree, and they pointed to a huge limb that hung over the bank. A limb the swimmers found perfect for swinging (no pun intended).

"See that limb?" they pointed. "Well, if you don't quit neglecting your children . . . And quit cheating on your good wife . . . And quit drinking up all your pay . . . And quit running around with evil women . . . If you don't mend your ways from this day forth . . . You are going to choke your last breath hanging by a rope from that very limb . . . And that is a promise you can count on, brother!"

With that they put the trembling reprobate back in the car and returned him to the Court House plaza.

And do you know what that man did the very first thing next morning? He took his saw . . . and he went out to Willow Beach . . . and he cut off that limb!

Now, the moral of that immoral story is that for the person intent upon doing mischief, there is no accounting for his imagination and resourcefulness in attempting to evade the consequences!

But let us not turn the vigilantes loose on everyone wearing a white collar. Let us save our specific scorn for those rotten-hearted scoundrels who would corrupt their public trust.

For a public office is still a public trust. And I agree that there should be special statutes, and the severest penalties, dealing with any perfidy in public office.

Indeed, in a democratic society such as ours, a public office is more. It is a sacred trust. And I hope there is an especially hot place in hades for those who would willfully betray the precious trust of their fellowman.

But how long are we going to suffer the slings and arrows of outrageous fortune upon those good men and women, without number, who continue to perform faithfully and well in the public service?

A while longer, I am afraid. For those to whom faithful public service is not its own reward, I hope they will be content to wait to get their reward in heaven.

For here on earth, they dare not expect too much gratitude. Let me read to you from an interesting congressional document. From the Committee on Reform in the Civil Service, a report on H.R. 1884, which reads:

"The bill provides for the voluntary retirement upon three-fourths pay for life of all persons who have been employed in the civil service forty-five years continuously, and upon two-thirds pay of all who have served thirty-eight years; also, that in the discretion of the head of any Department under which any person has served thirty years, such person, if incompetent to efficiently perform the duties of his position by reason

of sickness, injury, or old age, may be retired for life upon half-pay."

Those were the provisions of the bill. And this is what the Committee had to say about those provisions:

"The passage of this bill would probably lead ultimately to the building up of a burdensome civil pension list unnecessary to the good of the service and unjust to those who bear the burdens of government. The established pay of the employees is supposed to be adequate compensation for the labor exacted of them. It should be so. It seems to be sufficient to secure efficiency and faithfulness in the service as far as compensation can do this.

"The Committee recommends that the bill do not pass and that the same lie on the table."

Before you get too upset, let me point out that was a report dated February 7, 1888. Unfortunately, there is some of that thinking still around!

That document was one I found rummaging through the underground catacombs of the Capitol many years ago. I came across it recently and thought it might amuse you on this occasion. Following this program I plan to present it to Director Tom Murphy to keep here at FEI to remind us that things aren't as bad as they once were!

Indeed, these aren't the worst of times at all.

No matter what you may think of the recent reform legislation—and I am sorry I could not possibly include all your suggestions in addressing myself to that!—one thing it certainly does: it gives the Civil Service a new start—a new beginning!

The country has been led to believe this new law is the answer to all the faults of government service. Perhaps that creates dangerous expectations. But it is a challenge to each of us to try to live up to those expectations.

This is a new opportunity before us, to try to restore some public confidence in the public service.

If by so doing, we can remove some of the unjust stigma attached to all civil servants by reckless castigations; if we can use these reforms as a vehicle to regain some of the prestige and respect for those in government service; then I am sure we will all rejoice in this new day.

Those of us who have been privileged to attain some degree of status in government service must never forget that if we want to be respected, we must not fail to give respect; If we expect cooperation from others, we must gladly extend our cooperation; If we covet loyalty, we must earn it by tendering our loyalty.

These invaluable characteristics of ideal interrelations, cannot be exacted. They can only be exchanged. And we will most assuredly reap . . as we have sown. (Thus endeth the reading of the text from the third chapter of the book of St. Patrick Conklin!)

At this tenth anniversary of this great institution, we have a particularly propitious opportunity for rededication. And I hope we will take this opportunity to rededicate ourselves to all the worthy principles we have come to appreciate here at FEI; to all that is good and noble in the public service; and to a determination to keep alive all the good influences of FEI, that they may be as meaningful and as enriching in the lives and careers of those to follow, as they have been to us. As an alumni legacy, we could not devote ourselves to a more worthy purpose.

Grateful as we are, proud as we might be, I have cautioned about any elitist tendencies on the part of FEI grads. We have enough problems with insecure folks who, out of envy or ignorance, hold every alumnus somewhat suspect.

But the companion of every opportunity is obligation.

And ours is an obligation to use this priceless experience to better serve our Country.

Remembering always, that our "Country" is, in reality, her people. And that modern technology is rapidly, regrettably, de-personalizing our democratic interactions. In too many instances, a computer is replacing the heart of government.

In this situation, it behooves us to cling to a realization that we are servants of a very personal government, and that devoid of that personal relationship, our republic will have lost its very validity!

Our republic calls for the best in all men and women. My Session No. 33 classmates will understand, if I close with Josiah Gilbert Holland's familiar prayer:

"God, give us men a time like this demands,
Strong minds, great hearts, true faith, and ready hands.
Men whom the lust for office does not kill.
Men whom the spoils of office cannot buy.
Men who possess opinions, and a will.
Men who have honor. Men who will not lie.
Men who can stand before a demagogue, and damn his treacherous flatteries, without winking!
Tall men, sun-crowned, who live above the fog,
In public duty . . . and in private thinking."

Do you know what Chong Pak said to that?

He said "Sounds to me like a perfect description of an FEI grad!"●

OPPOSITION TO A PROVISION IN H.R. 7577

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. GOODLING. Mr. Speaker, I did not sign the conference report on H.R. 7577, the Economic Opportunity and Community Services Amendments of 1978, because of a decision made by the conferees on one provision. In the House-passed bill we terminated the National Advisory Council on Economic Opportunity effective 60 days after the end of the next fiscal year. We also limited the amount of funding for this council to $175,000 per year. The House conferees not only did not stick by the House position, but accepted a figure considerably higher than this amount.

My reason for opposing the council was that it had done little to justify its existance. I felt that their budget of $300,000 per year did not justify what the council did. I was also concerned that this council, whose primary responsibility is to turn out a 60-page annual report spends $300.000 per year. To put in perspective what $300,000 per year is—75 percent of the CSA grantees receive less than $300,000 each year. There are approximately 940 CSA grantees and 700 receive less than $300,000 per year. I think that this type of expenditure is ridiculous.

The think what upset me more than anything was the number of staff that they have to turn out this report. Last September when I first objected they had 5 full-time employees and their salaries were: GS–15, step 7, $43.407; GS–14, step 4, $33,825; GS–11, step 4, $20,085; GS–11 step 4, $20,085; and GS–8, step 3, $14,572.

Taking the salaries and the office budget, the report that the council puts out came to $5,000 per page. In the Minority Views I pointed out how outrageous the staff salaries are. Let me point out here the comparison of their salaries and responsibilities to personnel working in the Office of Education in programs authorized by our committee. The OE grade levels are comparable but the OE personnel responsibililties are far in excess of the council staff.

First. In the Office of Education a GS–15 had day-to-day responsibility for the ESEA title I program which has an appropriation of $1,721,000,000;

Second. The division director in charge of the vocational education program which has a yearly appropriation of $535 million is a GS–15;

Third. Programs for migratory children under title I of ESEA which has a budget of $131 million has a GS–15 responsible for day to day operations;

Fourth. A GS–15 is the division director who heads the impact aid program in the Office of Education with an annual appropriation of $768 million.

When you compare these budgets and the responsibilities to those of the staff director of the Advisory Council, it is difficult, if not impossible to understand let alone justify the need for such a position or the high grade level. The No. 2 person on the staff of the council is a GS–14. Again to compare with OE, there are many GS–14's with day to day responsibilities for programs in the Office of Education which have budgets of millions of dollars. GS–14's and GS–15's are usually considered management positions and it is certainly questionable as to why such grade levels are remotely needed to serve this council.

Every Member of Congress complains about not having enough staff. You all know that each office receives $250,000 for salaries with which Members can hire a maximum of 18 people. That money covers staff for both the Washington and district offices. That includes administrative assistants, legislative assistants, caseworkers, secretaries and press personnel. Our staff works on thousands and thousands of constituent problems and produce thousands and thousands of letters per year. They get involved in every conceivable matter from poverty and education to agriculture and defense, including such issues as abortion, gun control and unemployment.

You know what the Advisory Council pays the people on their staff for the work they do and the amount of work they produce. When you compare your office staff, the work it does and the number of people working at the council and and what it does and the money they get and the work they do, you can understand why I felt that the budget was excessive.

I tried to point all of the problems out to the conferees but the Senate apparently could not care less for substantive information and turned a deaf ear. I think this is a poor way to legislate. I think that the facts and figures that I produced clearly showed that the council was not needed, that their budget was

excessive and although there are many fine people serving on the Council, they and their talents could be utilized by the administration and the Congress in other ways without this current expense.

I was certainly disappointed by my House colleagues with whom I and my staff had worked so cooperatively to reconcile other matters in this bill.

Finally, Mr. Speaker, I think that the Democrat Members clearly let their President down on this issue. President Carter claims to want to remove waste from Government and now many people seem to be jumping on the bandwagon. Here was a perfect opportunity to do so, but when push came to shove, they voted to continue the waste. Mr. Speaker, now that the conferees have decided to keep this council which they feel is so important, I will continue to watch it carefully to see if there are any meaningful changes in its operation. Most important, I will watch very carefully to see how they reduce their budget and operating expenses.●

REDUCING GOVERNMENT OVERREGULATION

HON. CLARENCE J. BROWN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BROWN of Ohio. Mr. Speaker, on September 25, 1978, I introduced legislation designed to lift the heavy burden of Federal regulation, which reduces productivity, increases costs of doing business, fuels the fires of inflation, and generally exasperates businesses and individuals alike. H.R. 14165, "the Regulatory Cost Reduction Act of 1978," deals with the broad scope of regulatory costs. Specifically, it requires the President to submit recommendations to Congress for reducing by 5 percent per year, for 5 years, the compliance costs imposed on society by Federal regulations. H.R. 14166, "The Regulatory Conflicts Elimination Act of 1978," is aimed at eliminating or resolving duplicating or conflicting Federal regulations. These contradictory regulations put businessmen between the rock and the hard place, where complying with one regulation requires violating another regulation. Yes, it does happen.

Mr. Speaker, today I am introducing two more bills to round out this regulatory reduction package.

The first, "The Regulatory Budget Act of 1978," would amend the Congressional Budget Act of 1974 to require the Congress to establish a regulatory budget, along with an administrative budget, which sets for each agency or department the maximum costs of compliance with rules and regulations promulgated by that agency or department. The bill, each year, forces the President and Congress to put a cap on the costs each agency could impose on the private sector, similar to ceilings imposed on the costs of administering the agencies. If nothing else, it would force agencies to choose the least costly way to achieve regulatory goals.

The second bill, "The Independent Agencies Regulatory Improvements Act of 1978," would bring the independent agencies under the provisions of Executive order 12044, issued March 23, 1978. That order directs executive agencies to improve existing and future regulations. It calls for an analysis of new major regulations, including a study of economic consequences for the general economy, for individual industries, for geographical regions or for levels of Government. Regulations requiring analysis are those which result in: First, an annual effect on the economy of $100 million or more; or second, a major increase in costs or prices for individual industries or geographic regions. In general, the Executive order calls for greater clarity of language, increased oversight, early warning announcements to the public, and opportunities for public involvement and comment.

However, when Executive Order 12044 was issued, 16 independent agencies were exempted from its provisions for constitutional reasons. My bill would bring them into line in their regulatory procedures without relinquishing any congressional authority to the President.

The above four bills comprise a comprehensive package for lightening the heavy hand of Federal regulation, which is a literal drag on our economy. Simply put, Government regulation is a major cause of our current inflation and is a stifling influence on economic growth.

Congress and OMB do quite a good job of assessing the direct Federal cost of administering the regulatory agencies, but when it comes to assessing the costs imposed on society to comply with those Federal regulations, that is another matter. We are groping in the dark, and hurting the economy in the process. It is time we corrected this problem. The bills I am introducing today and the bills I introduced on September 25, will go a long way toward doing just that.

Senator LLOYD BENTSEN of Texas is introducing identical legislation in the Senate.●

TRIBUTE TO ROBERT KRUEGER

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROYBAL. Mr. Speaker, it is with great pleasure that I rise today to pay tribute to BOB KRUEGER who is retiring at the end of the 95th Congress. We have been fortunate to have BOB as a colleague and to benefit from his exceptional legislative skills. During his tenure in Congress, BOB has served his constituents of Texas' 21st district with dedication and distinction. While he will be missed by all of us who had the pleasure to know and work with him, he will be remembered for his outstanding work here in the House.

I want to take this opportunity to extend my personal best wishes to BOB for every success in the future.●

"FUNNY BUSINESS" WITH PUBLIC MONEY

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. DORNAN. Mr. Speaker, one of the amendments I offered to H.R. 12370 would have limited funding for 1 year at last year's level. I offered this because of a number of title X abuses. As anyone can see by the Pittsburgh Press article, there is some "funny business" going on with this public money. Especially interesting is the use of tax money to settle a private power squabble. It is for this and other reasons that I will ask my colleagues to join my call for a Government Accounting Office investigation of title X funding practices.

The article follows:

[From the Pittsburgh Press, Oct. 8, 1978]

WELFARE AGENCY FEUDING COSTS $200,000

(By Kathy Kiely)

Those who care for the poor can sometimes afford a few luxuries.

In the budget of the Western Pennsylvania Family Planning Council, alleviating "personality conflicts" among top administrators has a high priority. Over the past few months, the government-subsidized agency, which is designed to provide medical services to the needy, has spent nearly $200,000 to quell bureaucratic feuding.

Once considered a model agency in a nationwide program to make birth control counseling and gynecological care available to those who could not afford a private physician, the local council recently has been torn by staff dissention and threatened with cutoffs of more than $2 million in federal funds.

Resolving the problems has been expensive.

There have been luncheons at Downtown restaurants for the council's board of directors and there was a weekend "retreat" at a local motel for staff members and their families.

And, to appease officials at the U.S. Department of Health, Education and Welfare, the council recently bought out the lucrative contract of the man who served as its executive director since 1971.

Employees of the agency say they have been pressured to remain silent and their superiors are reluctant to comment to reporters about the council's troubles—especially about the cost of the measures they have taken to eliminate them.

But documents obtained by The Press indicate they could add up to a quarter-million dollars.

The crisis at the family planning council revolves around LuGene Bray Jr., who headed the agency from its inception in 1971 until two weeks ago.

That was when Bray resigned, ostensibly to "go into health management consultation."

The announcement was made amidst a flurry of praise from fellow administrators, who hailed Bray for developing "one of the most effective family planning units in the nation."

But the parting of the ways was not as amicable as it was made out to be. Council administrators and directors confirmed late last week that Bray was forced out of his job. And they admit the maneuver will cost the health care agency more than $180,000.

That's the highest figure the officials will quote when asked about the value of the settlement they made with Bray, who had four years of a five-year contract left to run with the council.

The settlement, which precludes either side from suing the other and provides that Bray's personnel file will be sealed, includes a $100,000 cash award and $80,000 worth of insurance, according to HEW administrator Louis Belmonte.

There are additional benefits included in the package, Belmonte conceded, but neither he nor local council officials would give it an exact dollar figure.

But sources who were present at an Aug. 28 board of directors meeting where Bray's resignation was accepted and the terms of the settlement outlined, say it could cost the council as much as $250,000 to buy out the contract they made with Bray little more than a year before.

Under the terms of the five-year agreement that went into effect in June 1977, Bray was to receive $46,500 a year, reported Belmonte, who said HEW voiced strong objections to the salary level at the time.

In addition, the council paid an $11,000 premium on a life insurance policy for Bray and provided a number of other benefits, including Blue Cross-Blue Shield coverage.

Though the terms of that contract became a bone of contention between HEW and the council, they were not the primary reason for Bray's ouster, Belmonte told The Press.

A number of sources identified Belmonte as a prime engineer of Bray's dismissal and the HEW administrator, who described himself as "holding the pursestrings" of the council, confirmed he made it clear that "had he (Bray) not been removed, the council was in danger of losing its funds."

A correspondence file also reveals that Belmonte reiterated that threat a number of times during the summer in letters to council officials.

While Belmonte denied charges he was carrying out a vendetta against Bray, he told The Press: "Gene and I had a sort of Dr. Jekyll-Mr. Hyde relationship."

That relationship had gone steadily downhill over the past year and a half, added Belmonte, who indicated that Bray and he haggled frequently over how various funds should be allocated.

Other sources at the council said Bray had been accused of favoritism in his management of the 37 clinics operated by the 23-county agency. They said he seemed to spend more money on facilities that were operated by staffers with whom he was particularly friendly.

While declining to give details or names, Belmonte insisted he had received numerous complaints about Bray's "autocratic" attitude from council staff members and medical personnel who worked at family planning clinics.

Complaints also reached the council's board of directors and early last June they asked Bray to take an extended "vacation" while an investigation was launched into his stewardship of the program.

The probe was two-pronged—and it was costly.

In a proposal that the council executive committee eventually accepted, the accounting firm of Coopers and Lybrand estimated it would cost between $13,000 and $14,500 for them to perform an audit of the program.

At the same time, the executive committee retained a Washington, Pa., legal firm to investigate Bray's management of the agency at $75 per hour. Figures for the final billing were not available, but a staff member who claims to have seen the firm's August bill said one month's charges totaled $12,997.

When the investigations were completed in late August, the lawyers told the council directors it would be more legally advisable to ease Bray out of office with a financial settlement rather than to fire him outright, said Belmonte, who nevertheless insisted the council had amassed enough evidence to win a court case if Bray sued for breach of contract.

Reached at his South Negley Avenue home, Bray refused to talk about the settlement, which even his allies at the council privately term "a sellout."

They say that in their support of him they resisted intensive—and expensive—lobbying efforts by other officials of the council.

The council hosted an overnight seminar for staff members at the Marriott Inn in Green Tree the weekend of June 23 and one staff member who attended described it as a "brainwash meeting."

The source said the council paid for meals and accommodations for "50–60" staff members and their families.

Belmonte defended the expenses the agency has incurred during the crisis that led to Bray's dismissal. He maintained no taxpayer's money was used, but later admitted the government might "indirectly" have underwritten the settlement, or the investigations leading up to it.

The Western Pennsylvania Family Planning Council's $45 million budget for this year is largely made up of state and federal subsidies. Even the $600,000 collected from patients on a sliding fee schedule is largely from Medicaid funds, Belmonte said.

The settlement money and related expenses would be covered by a $500,000 surplus carried over from previous years' budgets, said Belmonte, who admitted under questioning that the fund might include government subsidy money that hadn't been spent.

But the money spent helping the health agency's administrators to settle their differences was well worth it because the clinics were able to continue operating without disruption of services, maintained Belmonte.

"It's the patient we really care most about," he said.●

AMERICA'S OBLIGATION—IT IS TIME FOR ACTION IN LEBANON

HON. HAROLD C. HOLLENBECK

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. HOLLENBECK. Mr. Speaker, there are many members of the Syrian Orthodox Church in my district—members of the same church as the Christians in Beirut. Mr. and Mrs. Peter Dartley and Mr. and Mrs. Eli Shabo, of my district, were here yesterday representing them. Their request was simple. They want us to allow their fellow church members in Lebanon to enter the United States to escape the death and destruction in Lebanon. I think we have an obligation to help these people. They are being killed and wounded, their houses are being destroyed and their lives are being shattered. There have already been more people killed in the Lebanese Civil War than in all the Arab-Israeli wars combined. It is time we did something to prevent some of that killing. Americans have always been proud of our reputation for helping those who need help. Now we have to show the world that we still deserve that reputation. For my part, I am working to extend the temporary visas for 120 Lebanese Christians already in my district. I intend to introduce this legislation in the House in the next Congress. There are other options open to us, but we must make a decision and take action soon. Every second we delay results in more deaths and destruction for the people of Lebanon's Christian community. We must not allow that death and destruction to continue. If we do, the shame is ours.●

ON PROFANING CHRISTIANITY

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. DORNAN. Mr. Speaker, the fundamental principle of Christianity is the love of God. The Divine Commandment is simple: Do unto others as you would have them do unto you. We are further reminded: That which you do to the least of My brethren, that you do unto Me. The message of Christ transcended the earthly trappings of the civil power. He simply said: Render to Caesar those things which properly belong to Caesar and to God those things which are His. That is a simple command. It is clear and straightforward. It is Caesar, however, who contests the rights of men, rights that would not even exist if God did not give them. And it is Caesar who has created a totalitarian hell on Earth for millions whose only crime is their simple attempt to exercise the primal right of human existence: Free will.

The sad truth is that there are those who employ the Christian name for purposes which are quite the opposite authorized by the Founder of Christianity. Anger and outrage are reasonably expected when coming upon such a profane misrepresentation. But, I confess, Mr. Speaker, I can only express sadness.

I am saddened by the fact that a man who professes to be a follower of the Gospel could justify one of the most ruthless totalitarian regimes in the history of the world. What of love? The least of our brethren? I have no more to say on the subject. But I ask that my colleagues pause from their busy schedules and examine the following piece by Mr. John Lofton in the October 9, 1978 edition of Monday magazine.

The material follows:

PROFESSOR OF CHRISTIANITY DEFENDS MAO'S MASS MURDERS

(By John D. Lofton, Jr.)

WASHINGTON.—Looking over his background, you wouldn't think that Creighton Lacy would see eye-to-eye with Mao Tse-tung on anything. Mao was a bloodthirsty, atheistic tyrant who believed that "a revolution is not a dinner party" but "an insurrection, an act of violence by which one class overthrows another." Under the brutally oppressive regime of the late Communist Chinese dictator, millions of so-called "enemies of the people" were put to death. One estimate of these killings ranges as high as 62 million people.

On the other hand, since 1953, Creighton Lacy has taught at Duke University's Divinity School, where today he is a professor of world Christianity. Born in central China, he is a Christian, and from 1946 to 1951 was a missionary to China. Lacy is a Phi Beta Kappa, an ordained elder in the United Methodist Church, a former Fulbright grantee, and was a Danforth visiting professor of philosophy at the International Christian University in Tokyo. He is also a member of the Society of Values in Higher Education and the American Society of Missiology.

But Creighton Lacy and Mao Tse-tung have quite a bit in common. In fact, Lacy believes that mass-murderer Mao "has left a legacy

that the world as well as China will continue to honor." In a new book reporting on his 18-day trip to Red China in 1977, titled "Coming Home to China," he addresses himself to some "popular misconceptions" about Mainland China, specifically the idea that the communists murdered millions of people. In this small paperback volume—printed, incredibly, by Westminster Press, the official publishing agency of the United Presbyterian Church—Lacy writes:

"How many people died as a result of the Communist Revolution in China? Nobody knows or will ever know . . . I would guess, from extensive reading and weighing of authorities, that five million would be a top figure, probably far fewer than that . . .

"The real issue is not 'how many?' but 'what price for the Revolution?' I happen to be a semi-pacifist (which may be like being 'partly pregnant;' I wouldn't know). I find it difficult to justify the use of deliberate, destructive, deadly violence for any cause . . .

"Nevertheless, after 'going home to China' and seeing the overall advancement of the country and its people over the past 30 years, I can only conclude that it was worth the cost. That is not to justify or excuse the cost; it is simply to acknowledge that no progress is achieved without its price. And that quality of life for the many is more important than quantity of life for the few."

In an interview, admittedly outraged, I asked Lacy how he could, as a Christian, rationalize the murder of millions in the name of "progress?" He replied:

"My own Christian ethic comes out of a general concern for the humanity of people. To use an old cliche—the greatest good for the greatest number. If more justice, food, education, and medical care and so on are available now, then more lives have been saved than have been lost. It's not that I justify killing (sic), but that I think life and death and war are part of our human experience which may, at least, be related to the results thereof."

And where in the Scriptures or in the teachings of Christ do you find support for such an ends-justifies-the-means moral calculus, I ask? Lacy answers: "I am not a biblical scholar and I wasn't writing a biblical book."

When I ask if it is his view that whatever "progress" has been achieved under the communists on Mainland China could have been achieved only by murdering millions of innocent people, Lacy responds, after a long pause:

"I don't know. The nationalist situation was absolutely hopeless and something drastic had to be done. Whether this required a certain number of killings, and I question how many were deliberate and systematic, I just don't know." He compares the mass murder of millions on the mainland to our own Revolutionary and Civil wars.

When I ask him if it is too early to say whether the mass murder of millions in Cambodia has, in his judgment, also been "worth it," Lacy says he has "no opinion" about this. He accuses me of having "a very strong bias" and trying "to make a case." Observing that our conversation "is not very profitable," he hangs up.

Footnote: When I ask Dr. Paul Meacham, editor of religious books at Westminster press, why his publishing house would print an apologia for Mao Tse-tung, including the mass slaughter committed by his supporters, he says he doubts that Lacy has put it "in those terms." When I read him relevant portions from the Lacy book, he says Westminster Press tries to "present a variety of points of view on significant issues" and doesn't necessarily agree with everything in all the books it publishes. Meacham characterizes Lacy as a "well-known, respected professor regarded by many people as a man knowledgeable in his field." He says that "taken as a whole, we thought the Lacy book served a useful purpose." Like what? He doesn't answer.

Edward Trefz, the Westminister Press associate editor who actually edited the Lacy manuscript, defends the publication of the book by denying that the defense of Mao and his mass murders was the "thesis" of the book. He charges that I am "picking up on a little point" in an otherwise "fair and generous" book written by a man who is not "vindictive."●

ENDORSEMENT OF CAMP DAVID SUMMIT

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. CONTE. Mr. Speaker, this week 41 of my colleagues and fellow members of the organization Members of Congress for Peace Through Law sent a letter of acclaim to the Israeli Knesset for their recent endorsement of the Camp David summit agreements.

At this time, I would like to share that letter with my colleagues and ask that it be inserted in the RECORD at this point:

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 10, 1978.

Hon. YITZHAK SHAMIR,
The Knesset,
Jerusalem, Israel.

DEAR MR. SPEAKER: As Members of the Congress of the United States, we salute the action of the Knesset on September 28th to approve the Camp David agreements and to authorize the withdrawal of settlers from the Sinai in the framework of a peace treaty with Egypt. This courageous vote was a crucial step forward in the implementation of the framework agreements. It makes the conclusion of a peace treaty between Israel and Egypt attainable.

We realize that many difficult issues remain to be resolved. But we are confident that the people of Israel, as the vigorous Knesset debates proves, will be able to make these vital decisions in the months ahead through their democratic institutions. This will strengthen the cause of peace and democracy in the Middle East.

Sincerely,

William Lehman, Frederick W. Richmond, Abner J. Mikva, Claiborne Pell, Silvio O. Conte, Benjamin S. Rosenthal, Stephen J. Solarz, Birch Bayh, Donald W. Riegle, Jr., James C. Corman, Philip E. Ruppe, Joseph P. Addabbo, Don Edwards, Edward P. Boland, Thomas J. Downey, John Brademas, Max Baucus, Richard A. Gephardt, Donald M. Fraser, Donald J. Pease, James M. Hanley, Charles W. Whalen, Jr., Paul N. McCloskey, Jr., Robert W. Edgar, William D. Ford, Helen S. Meyner, Edward W. Pattison, Cecil Heftel, Robert F. Drinan, Michael Harrington, Jonathan B. Bingham, Leon E. Panetta, William J. Hughes, Matthew F. McHugh, Lionel Van Deerlin, John B. Anderson, Margaret M. Heckler, John F. Seiberling, Newton I. Steers, Jr., William S. Moorhead, Clarence D. Long, and Anthony Toby Moffett.●

TAX BREAK IS NO JOKE TO FARMERS

HON. CHARLES E. GRASSLEY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. GRASSLEY. Mr. Speaker, two Sundays ago, the Washington Post showed us how ignorant it can be on agricultural issues when, in its lead editorial that day, it took issue with the Senate tax bill. The fact that it took issue with that bill is not particularly bothersome; Lord knows that a number of provisions in it will continue to be debated extensively in this Chamber. But in labeling it "The oink-oink tax bill," and reserving for especially derrogative comment what it apparently considers some kind of special interest tax break for pig farmers, the Post did its readers an injustice and showed us all how far off the mark it can be.

Des Moines Register editorial writer William Symonds, in a signed piece for the October 7 edition of that paper, showed once again why the Register has won Pulitzers for its treatment of agricultural issues while the Washington Post has been left to wonder why. I commend to you Mr. Symond's article. It puts into clear perspective the legislation to clarify who may take advantage of the investment tax credit. The text of the article follows:

"PIG PEN TAX BREAK IS RIDICULED, BUT IT'S NO JOKE TO IOWA FARMERS

(By William Symonds)

Should farmers be given a tax break for building "pig pens"?

The Senate Finance Committee thinks they should, and included such a break in the $23 billion tax-cut bill it approved last week. Since then, the "pig pen" provision has become a target of ridicule. A recent Washington Post editorial on the measure was entitled, "The Oink-Oink Tax Bill."

Representative Charles Grassley (Rep., Ia.), Senator Dick Clark (Dem., Ia.), and the leaders of the nation's pork producers aren't amused. They argue that hog producers need tax assistance to help them construct modern hog confinement facilities and that Congress intended to give them this relief in 1971. They believe the Internal Revenue Service has chosen to ignore the will of Congress.

According to the Treasury Department, the provision in the Senate Finance bill that would extend additional tax relief to farmers erecting hog confinement facilities (and certain other agricultural buildings) would cost $54 million in lost tax revenues in fiscal 1979. Much of this would benefit Iowa farmers, who produce a quarter of the nation's pork.

Businesses buying equipment that qualifies for the credit may subtract 10 percent of the cost directly from their tax bill (with certain limitations). The purpose of the credit is to stimulate economic growth.

A key question raised by the investment tax credit is what kinds of equipment qualify. The 1971 law provides the credit for equipment and machinery, but not for buildings. There are exceptions, including buildings that can be used only for a single purpose, such as grain elevators.

Pork producers argue that modern hog confinement facilities are essential to im-

proving productivity in the pork industry, and that the shell of these facilities is an integral part of the structure that cannot be used for any other purpose. Thus, the full cost of a hog confinement facility should be eligible for the investment tax credit.

The IRS routinely allows pork producers to claim credit for the machinery and equipment inside the confinement structure. This credit usually covers anywhere from 50 percent to 75 percent of the cost of the confinement facility, depending on how elaborate the facility is.

The debate centers on the roof, the walls and the floor. Pork producers insist that Congress meant to make the building itself eligible for the investment tax credit. They make a good case.

They argue that the confinement building meets the test of being a single-purpose building. They point out that a report issued by the Senate Finance Committee in 1971 on the investment tax credit agreed with this viewpoint: "One example of a type of structure closely related to the product it houses . . . is a unitary system for raising hogs, which includes automatic feed systems, special air-flow units, slatted flooring, pens and partitions. . . . Such a structure would be eligible for an investment credit."

Many pork producers routinely filed for the tax credit when they erected hog confinement structures, only to have the IRS challenge and deny the portion of the credit applied to the shell of the facility. But some producers took the IRS to court, and in at least one case the court decided in favor of the producer.

The IRS has not been consistent in its interpretation of the law. Some IRS officials have allowed hog producers to claim the full credit, while others have limited it to just the equipment inside the confinement building.

The Washington Post was right in objecting to the outrageous fashion in which the Senate Finance Committee approved scores of special-interest tax amendments. The amendment concerning hog confinement facilities, however, has merit. How many other special-interest amendments in the tax bill are as meritorious?●

CHAOS AT THE CONCLUSION

HON. JAMES C. CLEVELAND

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. CLEVELAND. Mr. Speaker, the Washington Post, with which I do not always find myself in agreement, has called editorial attention to a situation in the House which ought to concern us all very deeply: That is, the glut of legislation which comes before the House during the final days of a Congress under conditions which make it impossible for most of us to know what we are doing.

Whether one calls it legislating in the dark, or legislating with a blindfold, or legislating by the numbers—and all of these terms would be appropriate—what we are doing is irresponsible and dangerous. The ideal of an informed body of legislators deliberating and deciding on matters of public policy bears no relationship to the reality of the confusion and chaos which reigns on the House floor.

This is not a new phenomenon. It has characterized, to an extent, every end-of-Congress period in my experience as a Member. But as the Post points out in its editorial of October 12, we are breaking all records this year. The situation has gotten out of hand and we deserve the criticism of the Post for outdoing ourselves in—to use their expression—"Most Yeas and Nays Cast Without Any Clear Idea What the Vote Is About."

The Post's distinguished editorial cartoonist, Herbert Block, made the same point even more graphically on today's—October 13—editorial page. His cartoon showed Members preparing to return home, stuffing their bags with bills and reports, and telling each other that maybe there will be time later to read the things they have just voted on.

The Post, too, has zeroed in on some of the factors that account for this legislative logjam:

The volume of business has gotten too great. Past Congresses have created too many programs and agencies for the current Congress to review or at least reauthorize. Moreover, the House's vaunted "democracy"—the advent of lively new members, the spreading-out of subcommittee power, the increases in junior members' staff—has generated a constant flood of new projects and proposals, each with energetic sponsors who can tell you in a trice why their measure is vital to the republic.

The answer, as the Post wisely suggests, is restraint: fewer committees, less "entrepreneurial staff, and fewer bills. More is not necessarily better when it comes to legislation. Indeed, quantity is often the enemy of quality when busy and harried people cannot stay on top of their jobs.

As we pack our bags with Herblock's unread bills, perhaps we should enclose a memo to ourselves, a reminder that our first order of business in the 96th Congress should be the tough decision to impose some limits and stop the proliferation of paper and people which threaten to turn this place into a factory.

Under leave to extend my remarks, I include the editorial from the October 12 Post:

BAD HOUSE-KEEPING

By the time Congress leaves town on Saturday, the House will have set two dubious records. One will be for Most Roll Calls in a Year; the previous high (864 in 1976) was exceeded last week. The House is also likely to outdo itself in Most Yeas and Nays Cast Without Any Clear Idea What the Vote Is About. It could hardly be otherwise when members have to vote in quick succession on at least six conference reports, three supposedly minor or noncontroversial bills and perhaps a half-dozen measures requiring fuller debate. That's today's agenda; tomorrow and Saturday could be worse.

Granted, some end-of-session turmoil is unavoidable. Big tax bills always come late. The energy package remains to be passed. House action is also needed to continue ACTION's programs and keep the Endangered Species Act alive.

Still, one may wonder why so much work remains at the end of the year. The answer is not that Congress has been loafing, or that various factions have held back some dubious bills—such as the proposed Department of Education—in hopes of sliding them through in the last-minute crush. Beyond all the maneuvering, what's noteworthy is that the House has been going at a frantic pace for months. Committees have kept churning out bills. Major measures have piled up on the calendar, with the leadership calling up one, then jumping to another, then going back to the first in mid-fight.

Meanwhile, over 400 bills—another record—have come up under "suspension of the rules." That streamlined procedure is supposedly for minor and noncontroversial matters, but many congressmen complain that they can't be sure what's going through when 15 or 20 bills rush by in one day.

How can the House break the general lawjam? The Democratic Study Group and others want to curb the number of roll calls. That could save some time. Rep. George E. Danielson (D-Cal.) has calculated that in the first half of this year, 517 roll calls ate up about a third of the House's time—and the outcome was overwhelmingly one-sided in 40 per cent of those votes.

Still, some roll calls are useful. If members aren't made to think about a bill, even for a few seconds, they may not look at it at all—and Lord knows what might slip through then. And that points to the heart of the problem: The volume of business has gotten too great. Past Congresses have created too many programs and agencies for the current Congress to review or at least reauthorize. Moreover, the House's vaunted "democracy"—the advent of lively new members, the spreading-out of subcommittee power, the increases in junior members' staff—has generated a constant flood of new projects and proposals, each with energetic sponsors who can tell you in a trice why their measure is vital to the republic.

Streamlining procedures may only increase the glut. House members don't need more time to dream up and promote more projects. What they need is fewer subcommittees, less entrepreneurial staffs and, above all, more self-restraint. If they did fewer things, they just might do them better—or at least less frenetically. It's something to think about while waiting for the umpteenth roll call late tonight.●

FREE WORLD SEEMS TO BE LACKING IN VITAL ELEMENT—WILLPOWER

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BOB WILSON. Mr. Speaker, it is no secret that I have always been an ardent supporter of a strong America and a strong national defense. But the continuing massive buildup of the Soviet military machine, especially their inordinate emphasis on warship construction, and our own concomitant slow decline with respect to our contributions to our own national defense, have led me inevitably to the conclusion that at some time in the future, we will no longer be able to face a challenge from abroad, and face it down as we did in the Cuban missile crisis.

But far more eloquently than I can, Vice Adm. U. S. G. Sharp, in his remarks to the California Reserve Officers Association, pointed out the dangers of our present course, and especially the apparent lack of willpower we demonstrate. I commend Admiral Sharp's thoughtful comments to the attention of each and every Member of this body:

[From the San Diego Union, Oct. 6, 1978]

FREE WORLD SEEMS TO BE LACKING IN VITAL ELEMENT—WILLPOWER

(By Vice Adm. U. S. G. Sharp)

National security is determined by the relative balance of power between the competing nations on the world scene.

National power consists of four broad elements: economic power, military power, political power and will power.

The strength of the economy of a nation is obviously an important element of its total power, some would say its most important element. The strength of the armed forces is a fundamental element of national power. Political power—the nature of a nation's security alliances, the strength of its leadership, and the effectiveness of the conduct of its foreign policy—contributes to national power. Will power, the strength of national will, the determination with which a country exercises the other elements of power, is the cohesive forces which brings the total equation together.

Today the security of the United States is threatened by a Soviet drive for world dominance, based on an unparalleled military buildup.

The Soviets have made their intentions quite clear. In 1973 Leonid Brezhnev said: "By 1985, as a consequence of detente, we will have achieved most of our objectives in Western Europe . . . a decisive shift in the correlation (or balance) of forces is such that, come 1985, we will be able to extend our will wherever we need to."

In the early 1960s the United States decided to stop the buildup of strategic forces and let the Russians catch up. It was reasoned that equality of strategic forces would promote stability and peace. By 1969 it was apparent that the Soviets were building their strategic forces very rapidly and would soon be superior to the United States. The United States and the Soviets agreed that an attempt would be made to negotiate a treaty limiting strategic arms.

The United States had two basic objectives in these talks, first to ensure that the strategic forces of the two super powers would remain in balance . . . that we would have stability. Then neither power would see an advantage in striking first. The second objective was to hold down the arms competition.

It is now apparent that the Soviet objective in those talks was to lull the United States into a sense of security and discourage an interest in our strategic forces so that the Soviets could gain superiority.

Gen. George C. Marshall, key military leader in World War II and postwar secretary of state, made a comment on our national policy many years ago which is just as pertinent now as it was then. He said: "We have tried since the birth of our nation to promote our love of peace by a display of weakness. This course has failed us utterly."

The first Strategic Arms Limitation Treaty, commonly called SALT I, was signed in 1972. Since that time the United States has not completed and deployed a single new strategic weapon system. President Carter has canceled the B–1 bomber. Production of Minuteman III missiles has been terminated. The Mobile ICBM has been further delayed. Meanwhile, the Soviets have continued their rapid arms buildup—indeed the pace has increased. They have stretched the terms of the SALT I treaty to the limit and violated some of its provisions.

Now the strategic forces of the two nations compare this way:

	Soviet Union	United States
Intercontinental ballistic missiles	1,450	1,054
Ballistic missile submarines	82	41
Sub launched ballistic missiles	1,006	656
Long range bombers	200	373
Sub launched long range cruise missiles	324	0

Defensive	Soviet Union	United States
Surface to air missile launchers	12,000	0
Interceptors	2,600	324
Anti-ballistic missiles	64	0

Although we have more bombers than the Soviets, their air defenses are so good that it is unlikely that many of our bombers will get through to their targets. On the other hand, we have disestablished all of our surface-to-air missile batteries and have a very weak air defense consisting of interceptors built in the 1950s and an inadequate radar detection system.

The Soviets have the capacity to build ballistic missile subs at a rate of eight per year. They are building improved ballistic missile submarines and replacing older, less capable boats. The United States won't complete the first Trident sub until about 1982 and then will produce them at the rate of one or two a year.

The Soviets are developing and producing many new ballistic missile systems with improved accuracy and MIRV warheads. The Carter Administration has made cuts in the improvement program for our Minuteman missiles, has delayed development of the MX mobile missile, and is said to be considering cutting the Trident program.

The Soviets are building the Backfire supersonic bomber at a rate of about three per month. This excellent aircraft has a 3,500-mile range without refueling, and it can be air-refueled. The Russians claim that this is a tactical aircraft—and our SALT negotiators have agreed to leave this highly capable bomber out of the SALT limiting formula. This bomber could easily penetrate our air defenses, bomb any place in the United States and refuel in Cuba. With air refueling it could strike any place in the United States and return to Russia.

Meanwhile, President Carter has stopped our B–1 Bomber program and we are dependent upon aging, subsonic B–52s which are included in the SALT-limiting formula.

We are putting great faith in the cruise missile, to be launched from converted B–52s or from refitted civilian aircraft. The cruise missile is an excellent weapon, if it can be launched to cross the coast line at the correct position, and if it has enough range to reach the vital targets in Russia. But our SALT negotiators have agreed to limit the missile's range to 1,500 miles.

This will mean that the launching aircraft will have to come very close to the hostile coast if the missile is to reach targets in the heart of Russia. The aircraft would then be very vulnerable to Soviet air defenses. The cruise missile is an excellent weapon, but it is not the complete panacea that we have been led to believe.

Trends in civil defense are also startling. The Soviet Union spends about $1 billion a year on civil defense. In comparison, we spend considerable less than $100 million. They have massive underground facilities, heavily hardened command and control stations for many echelons of command, and major industrial and foodstuff stockpiling. They have a large shelter building program and thorough training in population evacuation.

I come to the conclusion that the Soviets have probably attained strategic superiority and that their posture is not one of deterrence, but rather the capability to survive and win a strategic nuclear exchange.

Now let us look at conventional forces, those forces that would be used in a non-nuclear or limited war. When we consider conventional forces we need to focus on Western Europe for control of that area must be considered a primary Soviet goal. Their control of Western Europe would essentially isolate the United States.

For brevity I will limit my opposing force analysis to the Northern and Central European front. The force structure there is currently about as follows:

	Warsaw Pact	NATO
Divisions	70	27
Tanks	20,500	7,000
Tactical aircraft	4,075	2,350

The Soviets believe in surprise attacks with massed force. In such an attack they could probably over-run Central and Northern Europe in 30–45 days. If NATO resorted to tactical nuclear weapons the Soviets could devastate Europe with their intermediate-range ballistic missiles and other nuclear weapons.

Control of Western Europe might be effected by military conquest, but it also could be accomplished by forcing those countries to take the Finland route. If they became discouraged by the preponderant Soviet military posture and United States inaction, they might decide to pursue a neutral, pro-Soviet course.

Western Europe could also be forced to comply with Soviet desires if the Russians cut off their oil supply from the Middle East. Thus, another Soviet goal is to have sufficient naval forces to seriously threaten U.S. control of sea lanes throughout the world, with the oil routes being a particular target.

The Soviets have built a large and capable submarine force armed with torpedoes and cruise missiles. They will use their submarines in cooperation with the excellent backfire bomber, armed with cruise missiles. A backfire bomber force could be moved rapidly to the many potential bases in Africa, Asia and the Middle East.

The effectiveness of this air-submarine team is enhanced by a well developed satellite reconnaissance capability. This combination is now a serious threat to the Western World's sealines of communication.

We need to look at detente, or peaceful coexistence, as the Soviets like to call it, from their point of view. To them detente is an opportunity to forge ahead in the power struggle with the West. They do not believe in a stable power relationship. The power struggle must go on until the forces of capitalism have been defeated.

Soviet military doctrine emphasizes superiority, not parity; offense, not defense. In March, 1978, Russia's deputy defense minister, Nilolai Ogarkov, told visiting U.S. Congressman John Breckinridge: "You once had military superiority and felt secure. You no longer have that superiority and you will never have it again. And now you will know what it means to feel threatened."

Soviet strategic programs are clearly designed to surpass and dominate ours. Soviet conventional land and air forces are planned, developed and deployed to have the capability to overwhelm Western Europe if necessary. Her naval forces have the obvious mission of disrupting sealines of communication that are essential to Western survival.

Thus, while we Americans talk of detente, and mutual deterrence, and arms control, and relax, fat, dumb and happy, the other side takes a different course. Soviet dedication to the permanent struggle between communism and capitalism is proclaimed openly

and often for those who care to listen. And their actions speak just as loudly as their words.

Our intelligence organizations have been warning us for years of the progressive, adverse shift in the Soviet-American military balance. But our leadership has chosen to acquiesce or simply not to address the issue. But by ignoring the critical situation, the leadership is guilty of not keeping the American people properly informed.

Earlier, I mentioned economic power and political power as two elements of national strength. Today the Soviet Union is one of the two superpowers, yet her gross national product is about one half that of the United States. Politically, the Warsaw Pact is held together mainly by the threat of force.

The Soviet Union has many economic and political weaknesses, but it has demonstrated that it can compete successfully with the Western World in one critically important element of the overall power equation—military power. Perhaps more importantly, the Soviets have shown superiority in that other critical element of the overall power equation—willpower. They know what they want and they have the will to go after it.

Can the Free World, with its vastly superior economic power, mobilize its potential and take on the Communist challenge? Or are we to continue on our present course, refusing to face reality, satisfied with the good life, oblivious to the threat until it is too late? Time is short, we need to get moving. And if we can't convince our NATO and other allies, we had better saddle up and go it alone, for our national survival is at stake.

The Free World seems to be lacking in that fourth vital element—willpower. We would do well to heed Churchill's words of the 1930s when he warned an appeasement-minded England:

"Virtuous motives, trammelled by inertia and timidity, are no match for armed and resolute wickedness. A sincere love of peace is no excuse for muddling hundreds of millions of humble folk into total war."

(NOTE.—Sharp made the above comments in an address to the California Reserve Officers' Association. The facts he has cited were taken from "Soviet Threat," published by America's Future, Inc. of New Rochelle, N.Y., and from a military treatise by Philip Clark, a specialist in military affairs for Mutual Broadcasting. Sharp's figures are also confirmed by the U.S. Department of Defense Annual Report, Fiscal year 1979.)●

CONGRESSIONAL CASEWORK OFFICE ACT OF 1978

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, I am privileged to rise today to offer for the consideration and attention of the Members of Congress and the American people a bill entitled, "The Congressional Casework Office Act of 1978."

Mr. Speaker, casework has been defined at various times as the aggregate efforts by Members of Congress and their staffs to deal with the administrative establishment, that is, the executive branch and the independent agencies, on behalf of their constituents. It is also referred to as "departmental business" or "constitutent service." A case may be presented to the Member by mail, by the constituent in person, by telephone, or telegraph. You and I know that, by any other name, we serve as an ombudsman—the man between the private citizenry and the bureaucracy.

Some have suggested that the definition include constituent requests for assistance of any kind in which a personal problem is involved, but most restrict the term to the dealings of the Member as middleman or liaison between his constituency and the Federal Government and its agencies.

The recent White House conference on balanced national growth and economic development produced a pervasive theme of need to redress the deficiencies in the Nation's unique governmental partnerships; and, although there was little support for fundamental changes in the authority or power structure of our Federal system, there was—and is—a well-documented, deep-seated national frustration with Government's unresponsiveness to individuals, cities, and States, and a general mistrust of governmental operations.

Many of us on Capitol Hill have long been aware of this growing frustration, through our mushrooming correspondence and case load. The latter, according to my own district office records, shows a 100-percent increase over the past 6 years, while mail from all constituents has increased sharply by 400 percent. As we all know, the staff available to us has not increased during that time.

The Obey Commission Report of the House Commission on Administrative Review stated in December of last year, that the Members' casework load has doubled in the last 10 years. Some offices handle only 5 or 10 cases a week; others, as many as 300. The Commission also asked Members to estimate the number of cases handled by their offices. These data show that the average load is slightly over 10,000 cases a year. Again, variations were noted. Members with longer tenure (six terms or more) appear to have slightly larger casework loads (an average of over 11,000 per year) than do the more junior Members serving their first or second terms (an average of under 9,000).

The volume of congressional mail has increased in recent years to: 43 million pieces of mail delivered to the House in 1975, more than triple the number delivered just 6 years earlier. An average of 3 million pieces of constituent mail comes to the House each month. Members estimate they receive, on the average, about 31,600 letters annually. According to an excellent article in the May 1978 issue of Nation's Business, constituent mail accounts for as much as 50 percent of staff time in Capitol Hill offices, and many lawmakers have hired people to do nothing but answer mail.

Senator S. I. HAYAKAWA, Republican, of California, according to a spokesman, has six aides on his staff to answer mail, and another seven who spend half their time doing that. In addition, he has 12 who either type responses or operate computers to produce responses.

The aide said that if the Senator himself put in only 10 minutes answering each letter, he would spend every 8-hour working day for the next 40 years answering the letters he received last year. In 1 recent week, the Senator received 17,000 pieces of mail. On the Panama Canal treaties alone, he received more than 100,000.

Most Senators and Representatives, however, do see a sampling of mail. As one congressional aide says, they see enough so they get a good feel for what the constituents are writing about.

The size of a Senator's staff is determined by a formula based on the population of the State the lawmaker serves. The Senator can also get additional staff people to assist in Senate committee work. Some Senators, especially those from States with large populations, have more than 30 employees on their Capitol Hill staffs plus others in their home States.

House rules limit the number of employees on Members' staffs to 18, who must cover both Washington and the home district; this is clearly not enough to adequately handle normal legislative duties plus the load of mail to a Representative, whose district generally has a population in the 550,000 range.

Consequently, the work pace in a Representative's office becomes particularly onerous. Again, it should be noted that the amount of mail reaching Members varies through the year, adding to the problem of efficiently managing office workload—employees cannot be hired on the basis of peakloads and valleys within the permitted number of 18.

Mr. Speaker, to meet the needs of our ever-growing population with its myriad problems, various proposals have been presented to the Congress for the centralization of services for Members. The General Accounting Office, House Information Systems, and Legislative Counsel are striking examples of workable, centralized authorities serving the Congress and the American people. I have, earlier, submitted legislation to provide an Office of Legal Council to the Congress which, in my opinion would do much to redress the imbalance between the executive and legislative branches, while accommodating the growing legal problems besetting our Federal-State system of checks and balances.

My casework proposal would initiate a central casework office which would handle the mail processing, the referral to agencies, and the correspondence with constituents through a mass-transit-communication vehicle of adequate proportions to process the case and mail load which envelops Capitol Hill.

This vehicle should be located in a central congressional case work office, adequately staffed and wholly responsible to the individual Members and committees for the necessary research, investigation, resolution, and response in depth to constituent problems coming to the Member's and committees' attention.

Constituent correspondence will, through data processing channels, be returned to the individual Member for approval and signature, thus relieving his limited staff of the casework load, and freeing them up for the ever-increasing legislative workload.

This central system, properly designed, will act as ombudsman for the Congress, establish documentation, statistics, and indicia of executive, legislative, regulatory, agency, and personnel oversight;

produce agency accountability and credibility reportings for all levels of Government; and, additionally serve to provide foresight and planning data and a management tool for the casework office itself.

This is a large order—and only a properly designed automated system can carry the total load which will call upon all levels of government for inputs into a network of reporting information systems involving local, county, State, and Federal governmental entities.

The current method of dealing with this "retail casework" individually in 535 different offices, with separate automatic typing operations, could be more efficiently done with such a central system, as proposed by my legislation, based on a 6-year experiential project conducted by my Lexington, Ky., district office in conjunction with the processing of my constituent case workload, which includes the grants, loans, and projects for the district. This information-reporting system—as described by the bill—was devised and implemented manually beginning in 1973; and modified appropriately for computer banking beginning with the 95th Congress, last year.

Such a system can provide the Congress with a time, paper, and money staff-saver for expediting its constituent liaison work while simultaneously collecting data for congressional and executive research in oversight and foresight work.

My district office as a setting for resolution of the congressional casework load in the Sixth District of Kentucky has proven to be an invaluable vantage point for my staff work, and a study of intergovernmental relationships involved with our countrywide delivery systems network—and I would like to take this opportunity, Mr. Speaker, to call your attention to a description to be found elsewhere in today's RECORD of a unique portion of the Kentucky network known as "Ask Us, Inc.," a Lexington, Ky., information and referral center designed to help people make the best use of human services as well as community and consumer information. The levels of service include: Information; information and referral; referral; followup; advocacy; and, basic outreach. I understand that the program has already received wide acclaim and support both in Kentucky and nationally—and I can envision just such information and referral centers throughout the country as supportive of the Federal casework office information system network proposed by my legislation.

These centers, adequately staffed and functional, can, I believe, reduce substantially the constituent demands on Federal Government and the Congress for intervention in what oftentimes is a local, county, or State matter.

Mr. Speaker, specifically, my draft legislation is designed to assist the Congress in the performance of its casework duties, and to work in coordinated, computerized cooperation with all such agencies the subject of these remarks. The bill establishes a congressional casework office, under the supervision of a director appointed jointly by the House Speaker and President pro tempore of the Senate. The purpose of the office is stated in section 2 of the bill which reads in part that:

It is to provide assistance to Members and committees of the Congress in connection with requests and inquiries to executive agencies, including public and private, profit and nonprofit agencies, as well as organizations which provide services under programs funded entirely or in part with Federal funds (with respect to any action taken by such entity with regard to the case in question), which such Members or Committees desire to make in carrying out their official duties.

I envision the Office soliciting and compiling statistical information relating to the casework functions of Members and committees, developing and maintaining complete computer capabilities sufficient to assist the Members of Congress, all based in large part on my continuing Kentucky experience.

The Office would be empowered to request from Federal, State, and local governments information necessary to assist the Member or committee in casework matters. The reporting requirements of the congressional casework office is of critical importance to servicing constituents, weekly reports to Members and committees on actions taken and programs, is outlined in section 6 of the bill; every 6 months the office would transmit a report to each House of Congress which would cover various items of the activities, assistance, actions taken, and information requested as covered in section 5(c) of the bill. As an oversight-foresight management tool and system will prove invaluable to both the legislative and executive branches of Government.

Mr. Speaker, I consider the Congressional Casework Office Act as merely a first draft piece of legislation designed to start the debate process in the Congress on the need for such an approach. I present this legislation as a first step to assist the Members in their growing casework responsibilities. I urge the Members to consider its provisions and recommend appropriate action.

The provisions of the bill follow:

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Congressional Casework Act".

PURPOSE

SEC. 2. It is the purpose of this Act to develop and establish a wholly responsive and responsible, central computerized casework management, information and correspondence service and retrieval system for the Members and Committees of both Houses of the Congress; to expedite the processing and improve the quality and delivery of federal domestic assistance to state and local communities and elected officials, and to those private citizens requesting such assistance; to minimize the paper work of the Congress and maximize the quality of staff work in the discharge of Congressional duties and responsibilities; to utilize all federal domestic assistance indices, as amended from time to time, and all automated information systems, through integration in the network of this central system; to devise such forms and procedures as will provide for the development of an appropriate and viable data base; to assure the proper, expeditious handling, processing and servicing of any and all such casework needs for the Congress; to facilitate, and to document, both Legislative and Executive oversight in the administration of the delivery system network of domestic assistance throughout the nation; and, to gather, collate, analyze and report in detail on a continuing and periodic basis, to the appropriate inquiring Member or Committee, such information as may be confidential or of a private nature; to provide periodically to both Houses of Congress and the Executive branch of government compilations in statistical form, of all documented data gathered during the period, for the purpose of ensuring the accountability and credibility of the records of governmental performance; and, to provide as an information source and management tool, for the discharge of the oversight and foresight duties of the Congress, and the resolution of individual Members' and Committees' casework as provided for under this Act.

ESTABLISHMENT OF THE OFFICE

SEC. 3. (a) There is hereby established an office of the Congress to be known as the Congressional Casework Office (hereafter in this Act referred to as the "Office").

(b)(1) The Office shall be under the supervision of a Director. There shall be a Deputy Director of the Office who shall perform such duties as may be assigned to the Deputy Director by the Director. During the absence or incapacity of the Director, or during a vacancy in the office of Director, the Deputy Director shall act as Director.

(2) The Director shall be appointed jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, without regard to political affiliation and solely on the basis of the fitness to perform the duties of the Director. The Deputy Director shall be appointed by the Director.

(3) The Director may be removed from office by either House of the Congress by resolution.

(4) The Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as in effect from time to time, for level III of the Executive Schedule in section 5314 of title 5, United States Code. The Deputy Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as in effect from time to time, for level IV of the Executive Schedule in section 5315 of title 5, United States Code.

(c)(1) The Director shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may prescribe the duties and responsibilities of the personnel of the Office, and delegate to them authority to perform any of the duties, powers, and functions of the Office or of the Director.

(2) For purposes of pay (other than the pay of the Director and Deputy Director) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they are employees of the Houses of Congress.

POWERS, DUTIES AND RESPONSIBILITIES OF THE OFFICE

SEC. 4. (a) It is the responsibility of the Office to provide assistance to Members and Committees of the Congress in connection with their requests and inquiries to the various executive agencies, including public and private, profit and nonprofit agencies and organizations which provide services under programs funded entirely or in part by Federal funds (with respect to any action taken by such entity with regard to the case in question, which such Member or Committee desires to make in the discharge of

their official duties), to gather, collate, analyze and report such activities and statistical and other information to all Members and Committees of both Houses of the Congress; and, to the appropriate Executive branches of the government, with the exception of such private and confidential information as relates to section 552 of title 5 of the United States Code relative to the public disclosure of information; and such other information pertinent only to the affairs of the respective Member's office and constituency, which shall be reported to that Member exclusively.

(b) The Office shall under no circumstances, other than with the written permission of the respective requesting Member or Committee, communicate with the constituent the subject of the request, and in all such instances where authorized only on the requesting Member's or Committee's letterhead and through the respective office.

(c)(1) Upon the request of any Member or Committee of the Congress, the Office shall:

(A) Request that an executive agency or agencies, on behalf of such requesting Member or Committee, provide assistance to such Member or Committee in connection with those matters relating to the constituent(s) of such Member or Committee, in connection with such other matters relating to the official duties of such Member or Committee as may be presented for action.

(B) Request that an executive agency or agencies, on behalf of such Member or Committee, provide the necessary and appropriate information, or other data or materials relating to either legislative proposals under consideration by such Member or Committee, or other matters, relating to the official duties of such Member or Committee, including a proposed reply on such Member's or Committee's letterhead.

(C) Make inquiries of the responsible executive agency or agencies on behalf of such Member or Committee with respect to any action, taken or not taken, by such agency(s) in connection with a request made to such agency by or on behalf of such Member or Committee; and

(D) Provide advice and assistance to such Member or Committee relating to the means by which such Member or Committee may obtain assistance or information from an executive agency based on currently maintained computerized information and referral data as collected and stored by the central Casework Office and affiliated delivery network information and referral centers maintained and located in federal Congressional districts or as collected by each of the fifty States and territories.

(E) The Office shall furnish periodic reports to those Members and Committees of the Congress making requests hereunder, which shall indicate the action and time taken, status and anticipated date of response by the respective agency(s) and the Office in provision of the assistance requested by such Member or Committee.

(F) The Office shall also furnish such periodic reports to those Committees and Subcommittees of both Houses of the Congress having jurisdictional responsibility for the subject matter thereof, to facilitate the discharge of their oversight and foresight responsibilities.

GATHERING, COLLATING, ANALYZING AND REPORTING INFORMATION

SEC. 5. (a) The Office shall be responsible for the coordination of existing information systems, the acquisition and compilation of statistical information relating to the interrelationships of Members and Committees of the Congress and the respective executive agencies in connection with the discharge of legislative and other official duties by such Members and Committees as provided for herein.

(b) The Director shall be responsible for the development of such forms, materials, and procedures as may be necessary to carry out the responsibilities of the Office.

(c) The Director shall develop and maintain filing, coding, indexing and retrieval systems which identify the information acquired by the Office; and, shall equip the Office with the necessary computer and software capabilities to carry out the responsibilities of the Office. The Director may obtain the necessary services of experts and consultants in computer and data storage technology.

(d) The Director shall make available to Members and the Committees of the Congress, upon request, information solicited and compiled by the Office subject to the exclusions under Section 4. (a).

THE COMPILIATION AND REPORTING OF STATISTICAL DATA

SEC. 6. (a) The Director shall transmit a report to each Member, and the respective Committees and Subcommittees of both Houses of the Congress, the appropriate executive agencies and the Office of Management and Budget, as provided in Section 5. (a) above, at least once every six months which shall cover the period since the last such report. Each report shall contain a detailed numerical reporting of:

(a) agency;
(b) staff member of the office, or
(c) constituent.
(4) The date of each action;
(5) The case functional category (service type);
(6) The entity eligibility;
(7) The suspense level;
(8) The anticipated completion time;
(9) The delay factors;
(10) The Identification of Problem Sources;
(11) Any recommendation on the part of the requesting Member or Committee.

THE UTILIZATION OF SERVICES, FACILITIES, AND PERSONNEL

SEC. 7. The Director, upon agreement with the head of any executive agency, may utilize the services, facilities, and personnel of such executive agency with or without reimbursement. The head of each executive agency shall have authority to provide such services, facilities, and personnel in support of the Office in the discharge of its duties hereunder.

OBTAINING INFORMATION, SERVICES, FACILITIES AND PERSONNEL

SEC. 8. (a) The Office may request from any executive agency any information on constituent matters determined by the Director to be necessary to enable the Office to discharge its duties.

(b) The head of any executive agency shall furnish to the Office on a timely basis any information concerning constituent matters as requested by the Director, except that the head of an executive agency is not required to furnish information which is exempted by the application of section 552 of title 5 of the United States Code (relating to public disclosure of information) by subsection (b) of that section.

(c) Any disclosure of information to the Office by the head of any executive agency shall be deemed to be a disclosure to a House of the Congress for purposes of section 552a of title 5 of the United States Code (relating to records maintained on individuals).

(d) Upon the request of the Director, the head of any executive agency may provide to the Office any services, facilities, or personnel of such executive agency, as agreed between the parties.

AUTHORIZATION OF APPROPRIATIONS

SEC. 9. Effective October 1, 1979, for each fiscal year through the fiscal year ending September 30, 1982, there are authorized to be appropriated such sums as may be necessary to carry out this Act.

DEFINITIONS

SEC. 10. For purposes of this Act, the term:

(1) "Director" means the Director of the Office;

(2) "Deputy Director" means the Deputy Director of the Office;

(3) "Executive agency" means any department, board, commission, agency, or establishment of the Federal Government, of an individual State, of a county, or of local governments, or political subdivisions thereof; any regulatory agency or commission of the Federal Government, and any public or private, profit or nonprofit agency or organization, which provides services under programs funded entirely or in part by the Federal funds (with respect to any action taken by such entity with regard to the case in question);

(4) "Member of the Congress" or "Member" means any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress; and

(5) "Office" means the Congressional Casework Office established in section 3(a) of this Act.●

TRIBUTE TO HON. JOHN J. FLYNT, JR.

HON. LAWRENCE COUGHLIN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. COUGHLIN. Mr. Speaker, today I join my colleagues in paying tribute to one of the most highly esteemed Members of the House of Representatives, JACK FLYNT. As you know, JACK is retiring after 24 years of service to Georgia and the Nation.

I have had the pleasure of working with JACK on the Appropriations Committee and well respect his intense dedication to the House and the Sixth District of Georgia. I believe that this sense of service will be sorely missed, both here and in Georgia.

In addition to the demands of the Appropriations Committee, JACK served as chairman of the Committee on Standards of Official Conduct and as a member of the Select Committee on Ethics. His outstanding integrity while serving on these committees was admired and appreciated by both Democrats and Republicans. He never shirked the oftentimes onerous responsibility of these assignments. Placed in a position of having to judge his colleagues, he never exhibited a self-righteous or vindictive manner. JACK was a leader and his commonsense and steady temperament enabled him to place issues in their proper perspective. I doubt if any other Member of Congress could have handled the tough decisions which he was called on to make as fairly and rationally as JACK. The House and the Nation owe him a giant debt of gratitude for the way he conducted the "Koreagate" hearings, which can never fully be repaid.

JACK FLYNT's intelligence, perception, and view of justice will be difficult to match. I believe it will be some time before the House encounters another Member with his dedication to service. I extend to JACK and his family my gratitude and my sincere best wishes for the future.●

FOR SURVEY RESULTS

HON. JAMES J. BLANCHARD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BLANCHARD. Mr. Speaker, recently I joined with a number of other Congressmen in surveying our districts on the subject of Government regulations.

We did so as part of a "Citizen Audit" conducted by the Forum on Regulation, a bipartisan group of 120 Members of Congress which hopes to improve and streamline the regulatory process. The questionnaire was prepared by a professional research organization, Mathematica Policy Research, Inc., and reviewed by the Congressional Research Service of the Library of Congress.

The results from my district, the 18th Congressional District of Michigan, are now in. I believe they will be of interest to other Members of the House of Representatives. The people of the 18th district do not blindly follow a pro- or anti-Government line. They recognize instead that although in some cases regulations may have been harmful, in others Government agencies have protected the public interest.

The highlight of the citizen's audit part of the Forum on Regulation program came in mid-September, when toll-free lines were held open for 3 days for people to call direct to Washington and state their feelings about Government rules and regulations.

It is my hope that these outreach efforts—the questionnaires and the telethon—will provide our regulatory reform program with the type of grassroots input that is so often sadly lacking in Government programs. The people we represent are going to be the one who have to put up with the rules Government agencies write. The least we can do is to ask their opinion before we try changing the way in which those rules are written. In addition, I believe that Congress should shoulder its responsibility as the people's representatives and I have supported legislation to provide for congressional review and veto of agency regulations.

Over 3,000 responses were received, along with numerous comments. One comment which summarizes very well what we are aiming for in regulatory reform came from Dorothy A. Kosovac, a community leader of Ferndale, Mich.:

Keep them short and simple, quit changing them every other week and work hard to educate people as to why they are necessary.

The results of the survey follow:

1. In general do you think you are better off, or worse off, as a result of federal regulations now in effect regarding:

a. Food and drugs:
Better off, 61 percent.
No difference, 13 percent.
Worse off, 20 percent.
Can't say, 4 percent.

b. Schools and education:
Better off, 14 percent.
No difference, 13 percent.
Worse off, 64 percent.
Can't say, 6 percent.

c. Working conditions;
Better off, 38 percent.
No difference, 27 percent.
Worse off, 24 percent.
Can't say, 8 percent.

d. Water and air pollution:
Better off, 67 percent.
No difference, 11 percent.
Worse off, 14 percent.
Can't say, 5 percent.

e. Hiring and employment:
Better off, 18 percent.
No difference, 18 percent.
Worse off, 52 percent.
Can't say, 8 percent.

f. Advertising, packaging and labelling:
Better off, 57 percent.
No difference, 18 percent.
Worse off, 16 percent.
Can't say, 7 percent.

g. How businesses are run and operated:
Better off, 12 percent.
No difference, 15 percent.
Worse off, 56 percent.
Can't say, 14 percent.

2. Do you think the federal government is/is not doing enough to inform people like yourself about regulations that affect them?
Doing enough, 29 percent.
Not doing enough, 59 percent.
Can't say, 7 percent.

3. In your opinion are most federal regulations:

a. Needed:
Really needed, 37 percent.
Not really needed, 52 percent.
Can't say, 6 percent.

b. Working:
Working the way they're supposed to, 9 percent.
Not working the way they're supposed to, 77 percent.
Can't say, 11 percent.

c. Practical:
Practical and well thought out, 11 percent.
Not practical and badly thought out, 71 percent.
Can't say, 14 percent.

d. Simple.
Simple and easy to understand, 6 percent.
Complicated and confusing, 86 percent.
Can't say, 7 percent.

e. Up-to-date:
Based on up-to-date information, 16 percent.
Based on out-of-date information, 47 percent.
Can't say, 32 percent.

f. Fair.
Fair to the people affected by them, 16 percent.
Not fair to the people affected by them, 56 percent.
Can't say, 22 percent.

4. How confident are you that when new federal regulations are issued they are based on proven facts?
Very confident, 3 percent.
Somewhat confident, 36 percent.
Not confident, 58 percent.
Can't say, 2 percent.

5. How confident are you that new federal regulations are issued without unnecessary delay if a need has been proven?
Very confident, 5 percent.
Somewhat confident, 25 percent.
Not confident, 62 percent.
Can't say, 5 percent.

6. In general, do you think federal regulations are enforced too strictly, or not strictly enough?
Too strictly, 17 percent.
About right, 21 percent.
Not strictly enought, 41 percent.
Can't say, 16 percent.

7. In general, do you think federal regulations have too much or too little detail?
Too much detail, 60 percent.
About right, 14 percent.
Too little detail, 11 percent.
Can't say, 13 percent.

8. In your opinion, how often is the cost of developing and enforcing federal regulations justified by their benefits?
Most of the time, 7 percent.
About half the time, 32 percent.
Seldom, 49 percent.
Can't say, 8 percent.

9. In your opinion, how much of the paper work required by most federal regulations is necessary?
Almost all, 3 percent.
More than half, 6 percent.
About half, 22 percent.
Less than half, 43 percent.
Almost none, 18 percent.
Can't say, 8 percent.

10. What is your opinion regarding the effect of government regulations today compared with 20 years ago:

a. Product safety:
Safer, 61 percent.
Not as safe, 7 percent.
No effect on safety, 22 percent.
Can't say, 9 percent.

b. Product cost:
Cost more, 86 percent.
Cost less, 2 percent.
No effect on cost, 7 percent.
Can't say, 5 percent.

c. Working conditions—safety and health:
Safer and healthier, 64 percent.
Not as safe and healthy, 4 percent.
No effect on safety and health, 20 percent.
Can't say, 11 percent.

d. Business losing money or failing due to these regulations:
A great extent, 25 percent.
Some extent, 47 percent.
A little, 13 percent.
Not at all, 7 percent.
Can't say, 6 percent.

11. Which do you think should be more important when deciding whether the costs of a regulation are worth it?
Effect on prices, wages and employment, 33 percent.
Effect on environment, safety and health, 48 percent.
Can't say, 7 percent.●

TRIBUTE TO BOB SIKES

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague BOB SIKES.

The first sentence of article I, section 8, of the Constitution, setting forth the powers of Congress says "provide for the common defense." This primary duty imposed on Congress by our Founding Fathers, our strong military posture for the maintenance of peace, was never taken more seriously than by our great third ranking Member of the House—dean of the Florida delegation—BOB SIKES.

Arriving in the House in 1941, he resigned for Army service after Pearl Harbor, but President Roosevelt insisted that he leave the military and return to Congress to help lead legislative efforts during the dark war years. BOB has specialized in defense matters during his entire

38 years, rising to the No. 2 spot on the Defense Appropriations Subcommittee. His advice on defense matters is unparalleled.

With the completion of his term BOB will have served in Congress longer than any previous Floridian, and the people of his west Florida district hold him primarily responsible for that part of the Nation's transformation from sleepy backwoods to an economically and socially advanced area.

Reta and I extend to BOB and Inez our warmest wishes for an enjoyable and fruitful retirement.●

CIVIL DEFENSE

HON. JACK BRINKLEY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BRINKLEY. Mr. Speaker, as a firm believer and long-time advocate of a strong national civil defense program, I have been privileged to work with many fine State and local officials toward strengthening our present civil defense capabilities.

None of these officials has surpassed the dedication, determination, and tenacity of Col. William E. "Bill" Smith in the fight to insure the best possible protection of our Nation's citizens during natural or nuclear disasters. None has worked harder to encourage the recent congressional approval of Executive Reorganization Plan No. 3, establishing one central Federal agency, designed to facilitate improved administration of our national civil defense network. In recognition of his untiring efforts, Colonel Smith was recently elected president of the prestigious U.S. Civil Defense Council. I submit for the RECORD and commend to the attention of my colleagues the following tribute to this outstanding man, published in the October 1978 issue of the Journal of Civil Defense:

LETTERS TO THE EDITOR

Editor, *Journal of Civil Defense:*

When I joined Atlanta-Fulton County Civil Defense, Atlanta, Georgia, over three years ago, I noticed Elbert Hubbard's writing on "LOYALTY" prominently posted on the bulletin board. In essence, it states that if you work for a man, in heaven's name work for him and stand by the institution he represents. If you must growl, condemn and eternally find fault, resign and damn to your heart's content . . . etc. Well, I resigned on 15 August 1978 and can now tell the world what William E. "Bill" Smith is really like.

I have worked very closely with Bill Smith from the days of his candidacy to the USCDC Presidency and have personal knowledge of his countless undertakings on behalf of our nation's civil defense program. Though I cannot make a judgment in the years prior to my joining Civil Defense, I have observed, read, conversed and met many individuals throughout the country whose interest is emergency preparedness. Bill Smith, in my opinion, is "Mr. Civil Defense." His sights are continuously set towards enhancing our nation's civil preparedness program at every level of government.

I know that many of your readers will judge this letter as a mutual admiration gimhe leave the military and return to Congress to help lead legislative efforts durmick, but I cannot help that. My intent is to single out a man who has done more for civil defense nationally than anyone I know. Keep up the good work, Bill. Perhaps other "Bills" throughout the country can take a lesson from you.

Sincerely,

ANTHONY J. LUBRANT.

ATLANTA, GA.●

FISH AND WILDLIFE MITIGATION—A SYMPOSIUM TO BE HELD IN 1979

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. OBERSTAR. Mr. Speaker, in July and August the Subcommittee on Fisheries, Wildlife Conservation and the Environment held 3 days of oversight hearings into the administration of the Fish and Wildlife Cooordination Act. That act calls for the equal consideration and coordination of wildlife conservation with other features of water resource development programs.

Unfortunately, in the two decades since this significant piece of conservation legislation was last amended, there have been needless losses of our fish and wildlife resources. Our hearings documented the repeated failures of this act to insure its goal of fish and wildlife conservation.

The blame cannot be placed entirely upon one group. Reasons for the act's failures include lax administration by the involved agencies, insufficient staffing and funding which precluded wildlife agencies from fulfilling their responsibilities, incomplete consultations and notifications by the development agencies, inconsistent interpretations of terms, and Congressional failures to adequately fund or authorize needed mitigation.

The hearings documented the substantial losses of our fish and wildlife resources caused by these breakdowns. For example, of the nearly 2 million acres of land which have been inundated by Bureau of Reclamation and Corps of Engineers projects, less than 56,000 acres have been acquired outside of project boundaries as mitigation of those habitat losses.

Two complementary approaches to improving this situation were examined during the hearings. The first issuance of regulations to fully implement the Coordination Act, has been undertaken by the Departments of Interior and Commerce in response to the President's recent water policy directives. The administration is to be commended for its initiatives in this area. The other approach is amendment of the FWCA itself.

Amendment is necessary to insure that the provisions of the regulations consistently apply to all agencies; can clarify and expand the act's coverage; and can better provide for implementing mitigative features on authorized projects which are already completed, under construction, or partially planned. My own amendment, H.R. 8161, makes these improvements.

Using the testimony presented at the hearings as a reference, I am currently in the process of redrafting that bill in anticipation of coordinating it with the soon-to-be-released regulations. I plan to introduce this bill early in the next Congress and look forward to introduction of a similar bill in the Senate. Issuance of strong implementing regulations, in conjunction with strengthening amendments can insure wise development of our water resources in coordination with protection of our fish and wildlife resources. These activities can also do much to rectify past mistakes, make up for past losses.

Another matter which reaffirms the timeliness of this subject is the National Workshop on Mitigating Losses of Fish and Wildlife Habitats. Participants in this mitigation symposium and members of the program committee itself represent all involved interests—from Federal construction and wildlife agencies, to State agencies, private conservation organizations, and local interests.

I would like to share with my colleagues the following information on that symposium. I hope this information will reach a broad audience, many of whom may have something to contribute and others who may have something to gain from knowledge of this worthwhile event:

THE MITIGATION SYMPOSIUM

A National Workshop on Mitigating Losses of Fish and Wildlife Habitats (The Mitigation Symposium), is to be held at Fort Collins, Colorado, July 16–20, 1979. The event is sponsored by The American Fisheries Society, The American Society of Civil Engineers, the Wildlife Management Institute, and The Wildlife Society. Several federal conservation agencies and private sources are supporting the Symposium financially. Proceedings will be published promptly after the meeting. They should become an important influence on public policy, and a permanent technical reference.

The losses of fish and wildlife habitat which occur as a result of development projects of many kinds, and land use changes, constitute a major national environmental problem. Of particular concern are the development projects of several agencies, including the Bureau of Reclamation, the Corps of Army Engineers, the Soil Conservation Service, the TVA, and some others. In the private sector also there are many developments which affect or eliminate fish and wildlife habitat, and some of them require federal permits before they can proceed.

These habitat losses, sometimes necessary but sometimes preventable, are widely recognized as needing greater public attention to achieve better mitigation. President Carter's recent water policy referred to the problem. An amendment to the Fish and Wildlife Coordination Act (H.R. 8161) has been introduced.

The purposes of the Symposium are to assess the magnitude of the problem, and develop strategies and recommendations for achieving better mitigation, in the public interest. Sessions will deal with the problem in coastal as well as terrestrial and fresh water environments, and with all regions of the country.

For more information write Dr. Gustav A. Swanson, Program Director, The Mitigation Symposium, Fishery and Wildlife Biology, Colorado State University, Fort Collins, Colorado, 80523.●

TRIBUTE TO WALTER FLOWERS

HON. THOMAS P. O'NEILL, JR.

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. O'NEILL. Mr. Speaker, I welcome this opportunity to join my colleagues in paying tribute to the Honorable WALTER FLOWERS, of Alabama, on the occasion of his retirement from the House of Representatives.

Elected to the 91st Congress in 1968, WALTER FLOWERS has given 10 years of outstanding and exemplary service to the people of Alabama's Seventh Congressional District and to the Nation as well. He has been diligent conscientious, and resourceful in his duties as a member of the Judiciary and Science and Technology Committees, the Select Committee on Aging, and particularly, the Committee on Standards of Official Conduct.

I want to extend my sincere appreciation to WALTER for his significant contribution to the Democratic Steering and Policy Committee, and for his eager assistance in advising the other Members of the leadership in the House of the impact of the decisions of the Steering Committee on the members from the Deep South. In so many ways, he was the spokesman for the Southern Democrats and I am deeply grateful for his support and for his efforts to garnish votes and to work out compromises among his colleagues to get legislation affecting the national interest adopted in the House of Representatives.

WALTER has been a national Democrat in his position as a member of the Democratic Steering Committee and as a member of the prestigious Impeachment Committee of 1974, where he gained national recognition for his courageous political stand on the principle of the rule of law. While WALTER has graphically demonstrated that no Member needs to be totally provincial, he has nevertheless consistently placed the interests of Alabama first and has done as much to contribute to the well-being of that State as any other Member from Alabama who has served in the House of Representatives.

WALTER has brought reasonableness and prudence to the deliberations of the Democratic Steering and Policy Committee. Possessing an affable and witty personality, WALTER always knew when to make a spontaneous remark that would ease tense arguments. These witty, yet pointed remarks made him tremendously appreciated and respected for an ability to address the heart of the matter in any legislative or political discussion. Politics is the art of compromise, and WALTER knew when and where to compromise without sacrificing the principles of his convictions.

I also want to thank WALTER for his superb work on the Committee on Standards of Official Conduct where he was a leading advocate of the conduct by which he lived—that a Member of Congress must adhere to the highest moral standards of behavior, and that we need the strongest code of ethics possible to guide the Members of our National Legislature.

I am proud to have served with WALTER FLOWERS. I want to thank him for a job well done and wish him well in the years ahead.●

TRIBUTE TO ERNEST MAURETTI

HON. MARGARET M. HECKLER

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mrs. HECKLER. Mr. Speaker, last weekend, Columbus Day activities took place throughout the Nation, and indeed it is an important day for all Americans. In Fall River, Mass., the entire community was involved in 4 days of activities in recognition of Columbus Day. The city was filled with a contagious spirit of good will, and I was privileged to participate in this great event. The highlight of the festivities was the Columbus Day parade—dedicated to the late Alexandre Sbardella for his influential and inspiring leadership in the community—a great honor for the family of this respected gentleman.

The success of the celebration resulted from the dedication and hard work of the members of the Columbus Day Committee in Fall River. I take this moment to give special recognition to the Honorary Chairman of the Committee, Mr. Ernest J. Mauretti. Mr. Mauretti, a former police commissioner in Fall River, has been an active and dedicated member of his community. Through his initiative, the Italian-American War Veterans post was revitalized. His devoted work in behalf of the Holy Rosary Church and the Italo-American Society, and his selfless efforts in behalf of others have earned him our deepest admiration and appreciation. At the Columbus Day banquet he received a very special citation from Massachusetts State Senator Mary Fonseca who noted not only his outstanding community work but also his many personal kindnesses to her.

The other members of the Columbus Day Committee whose important contributions made this national day very meaningful to their community are:

1978 COLUMBUS DAY COMMITTEE

Santi DiRuzza, General Chairman.
Ernest J. D'Ambrosio, Secretary.
Frederick A. D'Adamo, Treasurer and Chief of Staff.
John J. D'Adamo, Program Chairman and Publicity.
James Wilcox, Sports Chairman.
Albert D'Ambrosio, Banquet Chairman and Parade Marshall.
Sadie Tigano, Memorial Dedication Chairlady.
David Silvia, Assistant Coordinator.
Daniel Morris, Parade, Coordinator.
Major Anthony S. D'Ambrosio, USAR (Ret), Honorary Marshall.
Police Chief Henry Ramos, Honorary Chief of Staff.
Raymond J. Onorato, Reception Chairman and Float Chairman.
Roccina Marsden, Co-Chairman.
Henry Maddaleno, Ball Chairman.
Caroline Dolan, Co-Chairlady.
Angelo Ferraro, Decoration Chairman.
William J. Angelini, Historian.
Aurora Perry, Chairlady Miss Columbus "78".

GENERAL COMMITTEE MEMBERS

Al Rainone.
John Tigano.
Henry Seneca.
Roland Pare.
Angelo Fusaro.
Gus Gagliari.
Gus Gagliari, Jr.
Michael J. Sicilia.

ORGANIZATIONS SPONSORING CELEBRATION

Italian American War Veterans—Fall River Post 10 and Auxiliary.
Italian Progressive Club, Incorporated—Fall River.
Lodge Giovenezza—Sons of Italy.●

THE HONORABLE GEORGE H. MAHON

HON. JOE D. WAGGONNER, JR.

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. WAGGONNER. Mr. Speaker, the people of Texas showed much wisdom when they sent GEORGE MAHON to Washington in 1934. They could not have picked a better, more conscientious Congressman than GEORGE MAHON. It is apparent that they think so too—they have sent him back to represent them for 44 years.

To list the accomplishments made by the House Appropriations Committee in the 14 years that GEORGE has served as chairman would be nearly impossible. Suffice it to say, that in the 39 years GEORGE has served on the committee and the past 14 he has served as chairman he has worked diligently for those principles in which he believed so firmly and has dedicated himself to translating those principles into legislative action.

When I first came to this Congress, GEORGE MAHON was warning both Congress and the American people that we must start balancing the Federal budget and holding down Government spending to an acceptable level. History proves that not only was he right, but he became a prophet in his own time. There were many factors at work after the passage of so many social programs in the 1960's that made his job virtually impossible, but he continued to fight for the beleaguered taxpayer and continued to warn all of us that the day of reckoning with inflation was just around the corner. A lot of people should have listened to him and I consider it an incredible loss for this country that he will no longer be in the House to sound the clarion call for fiscal sanity.

I would like to thank you personally, GEORGE, for your wisdom, guidance, and receptiveness toward each of your colleagues. You will be greatly missed as you take this well-deserved rest.●

RHODESIA'S DEMOCRATIC FUTURE?

HON. ROBERT L. F. SIKES

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SIKES. Mr. Speaker, one of the most reasonable discussions of the Rhodesian problem appeared as an editorial in the Washington Star on Tuesday, September 5, 1978, which was entitled "Rhodesia's Democratic Future?" It spells out the weaknesses and inconsistencies of America's policy toward Rhodesia. It is to be hoped that the editorial has had the careful scrutiny of the White House where blame or credit for what happens in Rhodesia must eventually lie. I submit the editorial for printing in the CONGRESSIONAL RECORD.

The editorial follows:

[From the Washington Star, Sept. 5, 1978]

RHODESIA'S DEMOCRATIC FUTURE?

In a recent fund-raising letter from the Democratic National Committee, controversial for other reasons, we were surprised to read that the Carter administration bases African policy "on the traditional American values of independence and self-determination."

That claim is probably valid in principle; and the administration has conducted a feeble rhetorical offensive against Russian and Cuban intervention in the Horn of Africa.

But those values take a curious form vis-a-vis Rhodesia; for the U.S. continues, with Britain, to insist that a biracial internal settlement that suits a substantial majority of both whites and blacks in that country is invalid and must, to meet our standards, embrace the so-called Patriotic Front of Robert Mugabe and Joshua Nkomo.

If the test is "traditional American values of independence and self-determination," as it should be, our policy fails it.

Consider the background. In negotiation with three black nationalist leaders and their parties, Prime Minister Ian Smith arrived last spring at a plan for free elections (now scheduled for early December); for a new constitution providing a four-to-one black parliamentary majority; for the end of racial discrimination; for a political amnesty and extensive land reform. These features of the internal settlement are now in train. Their object is to make it possible for black and European communities to co-exist harmoniously in a prosperous, democratic Rhodesia.

Despite these major concessions, heralding a definite end to white power, the U.S. and Britain have denounced the internal settlement and sided with the two self-exiled black leaders, Messrs. Mugabe and Nkomo, who with Russian arms and military training are conducting a savage guerrilla war for exclusive power.

The leaders of the Patriotic Front do not conceal their aim. It is total power. They refuse even to talk with the leaders of the internal settlement unless they first agree to disband the Rhodesian army and hand all military power to them. And Mr. Mugabe, for his part, has also made clear his preference for a Marxist one-party state, not a multiparty democracy.

The focus of Anglo-American diplomacy is an "all-party" conference on Rhodesia in which all contenders for political power join. The interim government has agreed to participate; but the Patriotic Front has refused to do so unless its extravagant conditions are met beforehand. At the same time, its two leaders have rebuffed an open invitation from the Salisbury group to participate as equals in the executive council of the interim government. All or nothing is their demand.

If "independence" and "self-determination" are the guiding values, what is "independent" about claimants to power who are dependents of the Soviet Union and Cuba? And what is self-determinative, for Rhodesians who differ from them, about the Nkomo-Mugabe demand that they be given full political and military control over Rhodesia, at the expense of other black leaders, parties and tribal interests? One suspects the real but unstated answer is the belief that power flows from a gun barrel.

But the question is not ours exclusively. It is a question that is being asked insistently by backbenchers in the British House of Commons and by U.S. congressmen and senators, who recently called for a lifting of economic sanctions against Rhodesia by year's end on two conditions. One is that the Rhodesian government "negotiate in good faith at an all-parties conference . . . under international auspices," the other that it hold "free elections . . . with observation by impartial observers."

The interim government is puzzled that Congress imposes tests of its good faith but establishes no standard for testing the good faith of external rivals. Nonetheless, it is willing to meet the conditions. It is willing to confer at an all-parties conference without preconditions; and it has invited the U.N. and the Organization for African Unity to observe the December elections.

Even the OAU, it might be noted, is growing impatient with the all-or-nothing obduracy of the Patriotic Front. It is cool to the internal settlement and barred its representatives from its Khartoum meeting last month; but the OAU did resolve that Rhodesians have "the right to choose their own leaders" and rebuffed the Patriotic Front's specious claim to be "sole representative of the people of Zimbabwe." The concession is slight but important. It would appear that even the OAU is more open-minded about Rhodesia's democratic future, and who should decide it, than official American policy.●

TRIBUTE TO GEORGE MAHON

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROYBAL. Mr. Speaker, as the 95th Congress comes to a close, so do the careers of many of our colleagues in the House. Among the most notable of those Members retiring this year is the dean of the House of Representatives, GEORGE MAHON.

It is a pleasure and a privilege to add my words of praise today for a man who, during his 44 years in Congress, has represented the people of Texas and the Nation with steadfast and dedicated service. He has upheld the faith and trust of his constituents and worked unceasingly for the betterment of all Americans.

As chairman of the House Appropriations Committee, GEORGE can take pride in the outstanding leadership he has brought to this all-important post. It has been a particular honor for me to serve with GEORGE on the committee these past 8 years.

Without a doubt, GEORGE MAHON has been a key force in the shaping of legislative history. He may, indeed, take pride in the outstanding work he has done and the widespread recognition he has received. His retirement should come with the knowledge that his efforts, talents, and devoted service have most certainly been appreciated.

I would like to congratulate GEORGE on this distinguished career and wish him a long and enjoyable retirement—filled with good health and happiness.●

FORD'S 75TH ANNIVERSARY

HON. LUCIEN N. NEDZI

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. NEDZI. Mr. Speaker, this year the Ford Motor Co. is celebrating its 75th anniversary. To commemorate the occasion, Detroit historian, Steve Spilos, has written a brief history of this outstanding automotive enterprise which should be of interest to my colleagues.

Upon leave to extend my remarks, I submit the following article:

A WORLD OF CARS PLUS THE MODEL T

(By Steve Spilos)

The 75th year of the Ford Motor Company, now being commemorated with pomp and ceremony, brings back many memories of how the company was organized, progressed, and in many instances digressed from the norm while establishing itself as a world leader in automobile production.

Founded in Detroit on June 16, 1903 by Henry Ford and 11 associates, the company is publicly owned and does business in more than 185 countries and territories throughout the world.

Among its first supplies or vendors were the Dodge brothers, John F. and Horace E., who owned a machine shop. They agreed to supply Henry Ford with 650 chassis—engines, transmissions and axles—at a price of $250 each. The two brothers were also among the initial investors in the Ford Motor Company.

C. R. Wilson, a wagon maker, supplied wooden bodies at $52 apiece and cushions for $16. George Holley of Bradford, Pa., provided carburetors; W. K. Prudden, wheels, and the Hartford Rubber Company, tires.

By 1919, when Henry Ford brought out all outside stockholders—at a cost of more than $105 million—the automobile had become a sophisticated piece of machinery. Its increasing complexity gave rise to a number of suppliers specializing in such components as magnetos, paint, ball bearings, springs, lamps, speedometers, piston rings and fabric tops.

Wood was used extensively in the production of the world famous Model T. By 1919 Ford had 73 suppliers, 33 of which are current ones, including Firestone Tire and Rubber, Sun Oil, General Motors, Chrysler, Fruehauf, Goodyear Tire and Rubber, Stewart Warner, Studebaker-Worthington and U.S. Steel.

During the early development of the giant Rouge complex in Dearborn, Michigan, Henry Ford purchased huge tracts of timberland, iron and coal mines and the Detroit, Toledo and Ironton Railroad. He also purchased a

rubber plantation which he eventually sold to Brazil. In the late '20s he launched twin freighters on the Great Lakes, the Henry Ford II and Benson Ford; then, almost prophetically, added the William Clay Ford.

Ford also decided to produce his own glass. Until then ingredients for its manufacture were heated in large clay pots, lifted with cranes and poured onto tables to be rolled, trimmed, cleaned and polished.

By pouring the glass directly from the furnace onto a moving table, Ford people did away with the pots. The table carried it under rollers and finishing processes, a method that proved so successful it was adopted by other glass makers.

Despite the company's apparent self-sufficiency, Henry Ford could never hope to operate his huge business without goods supplied by outside firms. Today, some 40,000 suppliers worldwide contribute to the growth and success of the Ford Motor Company.

Originally, Ford dealers operate as a sideline out of livery stables and general stores. In its 75th year, the company has more than 8,000 franchised Ford, Lincoln-Mercury, truck and tractor dealers in the United States.

When the Ford Motor Company first came into existence more than 80 new automobile companies were started. Many of them disappeared, but Ford thrived. At first there were 10 employes in Ford's small, converted wagon factory on Detroit's Mack Avenue. Its assets consisted mainly of tools, blueprints, plans, patents and $28,000 in cash scraped together by 12 investors.

Hardly had Ford opened his doors, than attorney George B. Selden, who had a patent on "road locomotives" powered by an internal combustion engine, filed suit. To protect his patent, Seiden had formed a powerful syndicate to license select manufacturers and to obtain royalties for every "horseless carriage" built or sold in the United States.

Henry Ford was convinced that Selden's patent was not valid. He refused to pay royalties, and fought the suit. In 1911, after eight years of costly and incredibly complicated proceedings, Ford Motor Company won the battle which freed it—and the entire automobile industry—from this major threat to further development.

In addition to Ford and Alexander Y. Malcomson, the principal investor, the original stockholders of the Ford Motor Company were John S. Gray, John F. and Horace E. Dodge, Albert Strelow, Vernon C. Fry, Charles H. Bennett, Horace H. Rackham, John W. Anderson, James Couzens and Charles J. Woodall.

This group included a banker, carpenter, two lawyers, a clerk, the owner of a notions store and a man whose company made air rifles. A doctor also offered to invest, but Mr. Ford declined, fearing that 13 investors might bring bad luck.

Henry Ford gave the company its name and designed its first product, the 1903 Model A Ford. It was advertised as "the most perfect machine on the market" and "so simple that a boy of 15 can run it."

But selling cars at first was not so easy. It was like pulling teeth. In a month the company had all but run out of cash. Then, on July 15, a check for $850 arrived from Dr. Ernest Pfenning, a dentist, who was the first person to buy a car from Ford, and the stockholders breathed a sigh of relief.

Late in 1904 Henry Ford moved to a new, much larger factory on Piquette and Beaubien. Malcomson insisted on producing expensive cars, but Ford held out for "one the average man could buy."

When the Model N, the forerunner of the fabulous Model T, came out in 1906, Ford was overjoyed. He drove it down Piquette and Woodward—and right by Malcomson's main offices at 149 Griswol Avenue, in the heart of Detroit's financial district.

The Model T revolutionized the automobile industry. It was introduced in 1908, before Henry Ford moved to Highland Park and River Rouge, and in the next 20 years a record number of Model T's—more than 15,000,000 of them—had been produced.

To keep up with the demand, Ford and his staff devised a moving assembly line system for mass production of the Model T. A year later, in 1914, he startled the world by announcing he would pay his employees $5 for an eight-hour day. The next morning more than 10,000 men lined up at the employment gate of the Highland Park plant.

Ford theorized: "If you cut wages, you cut the number of your customers."

The Model T was affectionately called "The Henry Ford's dream of building a simple but Tin Lizzie" and "The Flivver." It fulfilled durable, low-priced car acceptable by the working man—at an average price, including extras, of about $400.

An only child until that time, the Model T got a big brother in 1922 with the appearance of the first Lincoln produced under the Ford aegis. In 1929, Ford brought "Woody," the first mass produced station wagon, into the automotive world.

A new Model A, not to be confused with the company's first car, went into production in 1927 meeting the "demand for appearance" in the marketplace. The public snapped it up.

From then on Ford introduced the Ford V8, Lincoln Zephyr, Mercury, a name devised by Edsel Ford, who was the president then; the Lincoln Continental—a car that has since become a legend, the Thunderbird, Mustang, Fairlane, and on top of the small car scale, the Falcon, Maverick, Pinto, Mercury Comet, Granada and Monarch.

When his son, Edsel, died in 1943 at the age of 49, Henry Ford resumed the presidency of the company until the end of World War II when his grandson, Henry Ford II, now chairman of the board, became the president.

Henry Ford, himself, died at 11:40 p.m. on Monday, April 7, 1947, following a cerebral hemorrhage. He was 83. His wife, Clara Bryant, was at his bedside. When she died three years later, for the first time in the history of Detroit, flags were lowered to half-mast for a woman.

Soon after Ford's death, two other grandsons Benson and William Clay, assumed greater responsibility with the company. Both are vice presidents.

Henry Ford II's post war reorganization plan rapidly restored the company's health. Profits began to soar, and in four years through a rebuilding program that has been called the most phenomenal comeback in U.S. industrial history, reached a net of $265 million.

Today, Ford is one of the largest industrial corporations in the world. In 1977, it had record worldwide car, truck and tractor sales of 6.5 million units. With assets at nearly $11 billion and more than 300,000 stockholders, the Ford Motor Company employs 479,000 men and women in 300 manufacturing, assembly, engineering and research facilities around the globe.●

H.R. 11922, DOMESTIC VOLUNTEER SERVICE AMENDMENTS

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mrs. COLLINS of Illinois. Mr. Speaker, I wish to express my support for H.R. 11922, Domestic Volunteer Service Amendments, which would extend the authorization of appropriations for the domestic volunteer programs of the ACTION agency through September 30, 1980, and generally provide for improvements in the authorizing legislation.

Both as chairwoman of the House Government Operations Subcommittee on Manpower and Housing which has oversight jurisdiction for ACTION and as the representative of an urban district that includes many disadvantaged residents, I have had the opportunity to observe the tremendous contribution made by VISTA volunteers to the revitalization of our poverty-stricken areas and to the morale of the people who live there.

A major purpose of this much-needed legislation is the continuation of the important impact of VISTA upon the quality of life and the level of self-reliance among poor people in the United States. Since it was established by Congress in 1964, over 50,000 volunteers have served to meet the basic human needs of the disadvantaged in such areas as health and nutrition, housing, community economic development, energy conservation and community services.

In addition, title V of H.R. 11922 will authorize a new $40 million urban volunteer program. Unlike VISTA, the urban volunteer program will rely primarily on part-time volunteers. Title V is designed to assist citizen efforts by providing crucial and often unattainable resources—volunteer technical assistance and small seed grants. Such volunteer efforts can play a vital role in putting a human face on national urban policy. Further, the urban volunteer program is a cost-effective approach which responds to people's concern about big and unresponsive government by relying on volunteers to supplement Federal dollars.

A WARNING OF EAST GERMAN MILITARY INTERVENTION IN AFRICA

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. KEMP. Mr. Speaker, much attention is understandably focused on the political transition in Rhodesia and the stated positions of the government of Prime Minister Ian Smith and rebel leader Joshua Nkomo. Indeed, this is but a part of the mounting concern in the free world over the future of much of the continent of Africa where Communist forces are brazenly fomenting discord and terror in an attempt to implant Marxist ideology on newly emerging nations.

How deep are both covert and overt Communist penetrations in this troubled continent has been sharply delineated in an article written recently by Michael Kilian in the Chicago Tribune.

Of special concern is his report of the role of East German military personnel and advisers and East German arms now being injected in addition to Cuban, Polish, and Soviet assistance to guerrilla elements.

Mr. Speaker, I think we in the Con-

gress and the American people owe a debt of gratitude to Mr. Kilian for his thoughtful, albeit disturbing, editorial alert.

At this time, I wish to add his article which appeared in the Chicago Tribune, to my remarks.

The article follows:

LOOK WHO'S IN AFRICA NOW: EAST GERMANS!

(By Michael Kilian)

America faces a new danger in Africa more troublesome even than Ambassador Andrew Young's mouth:

Germans.

More specifically, the not-so friendly East Germans, whose embrace of brotherly Communism has not made them any less adept at military nastiness than they were in World Wars I and II.

It has become convenient in this country to view the present troubles in Africa neatly and simply as a struggle between heroic black freedom fighters and their white racist oppressors.

The whites can do no right. When black guerrillas raped and slaughtered 13 missionaries and their children in June, it was somehow blamed on Rhodesia Prime Minister Ian Smith.

The black guerrillas can do no wrong. Whether raping and butchering missionaries and the survivors of plane crashes, or killing hundreds of their own people, their blackness assures them a sympathetic if not approving look from many Americans.

In this neat black-white view of things, the many black people opposed to the Communist guerrillas are dismissed as irrelevant. Completely ignored are the other white people involved in this conflict—Russians, Cubans, and now Germans.

They are about as sincerely interested in the freedom and independence of black Africans as the crime syndicate is in the welfare of its juice loan victims. They seek what Europeans have always sought in Africa: raw materials, harbors, military bases, and strategic control of land and sea routes.

And the defeat and retreat of their enemy, which, in this unfortunate circumstance, is us.

According to intelligence reports, East Germany is now supplying arms to 23 African and Arabian countries. It has 1,500 military personnel stationed in South Yemen, just across the Gulf of Aden from the Horn of Africa, and 4,500 on the continent of Africa itself.

Some of these are in an as yet undisclosed location, training members of the Palestine Liberation Organization to fly jet fighters. Others are assigned to increasingly mischievous Libya and newly triumphant Ethiopia. Most are assigned to Angola, where they reportedly organized this summer's bloody raid on Katanga and where they assist the local Communist generalissimo in trying to put down Angola's pro-western U.N.I.T.A. rebels.

According to the Sunday Times of London, East German paratroops are now in Angola in preparation for an assault against South African troops in Southwest Africa [Namibia]. With the East Germans are Polish and Soviet instructors, including a planning staff of five generals, and thousands of Cuban soldiers.

The Cubans have shown they can die very well for their Fidel, having suffered horrendous casualties in these African adventures. But if the Communists prevail in Africa, it will be because of the Germans. This sort of warfare has been their national genius since Clausewitz organized Prussian guerrilla units to fight Napoleon.

And the Germans have been uniquely successful in Africa.

World War I—the war to make the world safe for British and French imperialism—was waged in large part to turn German colonies into British and French ones.

When the war broke out, British and French troops were quickly able to capture such isolated German colonies as Togo and the Cameroons.

In German East Africa [Tanzania], Lt. Col. Paul von Lettow-Vorbeck had only 17,000 troops and was entirely cut off from Germany and any other source of supply. Yet he fought off more than 300,000 British, Belgians, Portuguese, and South Africans for four years. Hours before the German surrender in Europe, he was able to invade Rhodesia and capture a major stronghold there, Kasama. He didn't surrender until two weeks after the war ended.

Lettow-Vorbeck succeeded because the Germans were exceedingly popular with black Africans. Of his 17,000 troops, only a handful were German. The rest were all black Askaris—fiercely loyal black Askaris.

World War I may not be over.●

BURTON OUT TO SAVE PARKS BILL

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. MILLER of California. Mr. Speaker, commitment, unflagging energy and followthrough are qualities that aptly describe the chairman of the House Interior Subcommittee on National Parks and Insular Affairs, no matter what time of year it may be. But when it is a few days before the adjournment of a Congress and a landmark conservation bill's fate is at stake, these adjectives pale when witnessing the whirlwind activity of PHILLIP BURTON, the author of the omnibus parks bill that cleared the Congress October 13.

Not once did this House Member accept the possibility of the 95th Congress ending without enacting this major conservation bill. And as a consequence of his persistence, the bill will become a reality once it is signed by the President. As Senator ALAN CRANSTON said of BURTON the night the bill passed the Senate, "This bill is a monument to his ability and perseverance."

On October 12, prior to final congressional action on the parks bill, a piece appeared in the Washington Star that described in some detail the back-breaking efforts of PHIL BURTON to bring about its enactment. I believe it accurately reflects the commitment and labors of PHIL in these final hours of the 95th Congress, and I would like to share it with my colleagues. The article follows:

REP. BURTON OUT TO SAVE PARKS BILL

(By Roberta Hornig)

Rep. Phillip Burton, chairman of the House parks subcommittee, is conducting a one-man mission to rescue his $1.2 billion omnibus parks bill from death by congressional adjournment.

During the past 10 days alone, the California Democrat has succeeded in getting the House to approve two different versions of the parks bill, the largest conservation measure to be voted on in congressional history.

The bill originally passed the House by an overwhelming majority last July.

The second version, voted last week, deleted about $150 million of Burton's request to meet White House inflation objections and avoid a veto by President Carter.

Yesterday's version, the third, was to delete funds for a Wyoming park extension and was requested by Burton to meet the objections of a senator. It still awaits Senate action.

Burton may call on the House to vote even more versions to meet other Senate objections. With only a few days left in this congressional session, there is no time for a Senate-House conference so Burton is trying to placate senators and negotiate with them individually.

"It is my effort in working around the Senate to pick up, like a postal worker, amendments by the day," Burton explained. "Then I call later, at night, and get changes in their position, and then I call in the morning and I get still further changes, and I try to accommodate them."

In his zeal for the bill, Burton's third version of the park bill inadvertently killed off the Pennsylvania Avenue Development Corp., the planning organization for Pennsylvania Avenue. Burton said he will work to "straighten it out" and revive the corporation.

A new wrinkle has developed that Burton is trying to cope with. Sen. Ted Stevens, R-Alaska, wants to attach a weakened Alaska lands bill to the measure. If Stevens' effort were to prevail, the parks bill probably would die when it goes back to the House.

A nervous Burton, continuing his House-Senate shuttle in hopes of getting the bill out before Congress goes out this weekend, said yesterday on the run, "I'm very optimistic."

Burton's touchy task is to produce legislation that pleases the White House and the Senate without angering his House colleagues.

The bill is personally important to Burton, who reportedly expects to be a contender again next year for House majority leader, a job now held by Rep. Jim Wright, D-Texas.

The legislation has been nicknamed the "park barrel" bill because it contains projects in many congressional districts. The bill is also widely applauded by conservationists.

The omnibus parks bill contains more than 100 park, conservation and recreation projects.

It amounts to a legislative cleanup of a long list of conservation measures that had languished for years in the House Interior Committee.

Besides consolidating the more than 100 bills into one package, in the process Burton helped a number of his colleagues by adding projects dear to their hearts. Generally the bill adds acreage to much of the country's national park system; designates 2 million acres in 12 parks as wilderness areas; creates new historic sites and recreational areas; designates several "frontier paths" as part of the National Trails System, and adds or funds studies of two dozen rivers for the protective designation as "wild and scenic."

The bill also gives more than $600 million to cities to improve urban parks with projects ranging from community centers to basketball courts.

Finally, it ends a decade-long controversy over the New Jersey pine barrens, the Tocks Island Dam in Pennsylvania and California's Mineral King Valley.

Some $25 million is set aside to purchase the extensive pine and marshland in New Jersey, which conservationists have sought to preserve for years.

It kills the dam project on the Delaware River, one of the last free-flowing rivers in the East.

And it adds Mineral King Valley to the adjoining Sequoia National Park. The valley has been sought by Walt Disney Productions for development of a ski resort.●

NAMIBIAN INDEPENDENCE AND THE DESTRUCTION OF CROSSROADS: BOTH DESERVE THE ATTENTION OF THE HOUSE

HON. NEWTON I. STEERS, JR.

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. STEERS. Mr. Speaker, it appears that the House will adjourn soon, and that means we will not have time to consider what I feel are extemely important resolutions on matters of the utmost urgency in southern Africa Namibian independence and the crisis at Crossroads, South Africa.

House Concurrent Resolution 720 expresses the sense of the Congress that the settlement plan for Namibia, proposed by the five Western members of the United Nations Security Council and adopted by the Security Council, has the greatest potential for a peaceful, internationally acceptable settlement in Namibia. The resolution calls upon the Government of the Republic of South Africa to reassess its decision not to support this settlement. I strongly believe that the passage of this resolution can only help move us all in the direction of achieving a peaceful settlement in Namibia.

Less than a month ago we were on the verge of achieving a goal which we, together with our allies, have been working tirelessly towards over a period of some 18 months. But then, on September 20, the Government of South Africa announced its rejection of the Secretary General's report on Namibia. South Africa had agreed to the proposals of the Western contact group many months ago. In rejecting the Secretary General's report which has since been accepted unanimously by the U.N. Security Council, the South African Government has placed a hurdle in the path of an internationally acceptable transition to majority rule in the territory of Namibia.

I, among others in the Congress believe strongly that this hurdle can be surmounted, that the U.N. Security Council plan is still the most equitable plan for Namibian independence, and that remaining differences can be resolved. None of us wishes to see further bloodshed in Namibia. None of us wishes to lose this opportunity for peace in Southern Africa. All of us wish Secretary of State Cyrus Vance and the foreign ministers of the other Western powers success in their mission this week in Pretoria. All of use believe that South Africans, too, want an end to the fighting in Namibia and will cooperate in implementing a plan based on proposals which their government accepted.

South Africans, for all their faults, have always prided themselves on being men of their word. We do not want to believe that they cannot be trusted, that they never really wanted the Western group's proposals implemented, or that they always intended to go forward with their own plan for Namibian independence. It is for these reasons that we are hopeful that the South African Government will cooperate with the United Nations and with the Western foreign ministers in seeking ways to implement the U.N. plan.

House Concurrent Resolution 720 deals with the destruction of the squatter community of Crossroads, and I will insert it into the CONGRESSIONAL RECORD at this point for the perusal of my colleagues. This resolution speaks for itself.

H. CON. RES. 720

Whereas the community of squatters known as Crossroads was established in 1975 near Cape Town, Republic of South Africa, so that black workers could live with their families;

Whereas Crossroads is the only remaining community in the Cape Town area where black workers are able to live with their families;

Whereas the twenty thousand residents of Crossroads have built their own homes; have provided their own educational, recreational, and sanitary facilities; and have contributed to the economic success of the area through the legally recognized employment of 73 per centum of the men and 25 per centum of the women and the informal employment of an additional 11 per centum of the men and 20 per centum of the women;

Whereas on September 5, 1978, armed riot police forces of the Republic of South Africa broke into homes in Crossroads and arrested between four hundred and five hundred individuals for illegal residency and for the illegal harboring of family members;

Whereas on September 14, 1978, in a massive show of force using tear gas and police dogs, members of the armed riot police forces of the Republic of South Africa charged into Crossroads beating many residents of the community, arresting over one hundred and fifty individuals including community leaders and persons of all races who supported the continued existence of the community, and causing the death of three individuals and the injury to many others including women, children, and religious leaders;

Whereas, to enforce the racist policies of apartheid and separate development, the Government of the Republic of South Africa has repeatedly stated that it will demolish Crossroads by the end of 1978, an action which would cause families to be divided and individuals to be separated from their homes and jobs; and

Whereas political and religious leaders from many nations have condemned the callous actions of the Government of the Republic of South Africa regarding Crossroads: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress is deeply concerned for the safety of the residents of the South African black community known as "Crossroads" and strongly urges the Government of the Republic of South Africa to reconsider its plan to destroy Crossroads and to recognize the right of the residents of Crossroads to continue to live in the community which they built.●

A TRIBUTE TO A CHICAGO RESTAURANTEUR "PAR EXCELLENCE"

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mrs. COLLINS of Illinois. Mr. Speaker, I wish to pay tribute to one of Chicago's biggest boosters, Mr. Gene Sage, proprietor of Sage's East, 181 East Lake Shore Drive, and three other Chicago area restaurants on the occasion on Gene's 30th anniversary in business. Gene's philanthropic activities for the city of Chicago are too numerous to mention, including the provision of food and beverage for Chicago Fest, and the unforgettable Turnabout Days, whereby prominent Chicagoans served as waiters and bartenders with proceeds going to Northwestern Memorial Hospital and the Rehabilitation Institute. However, his greatest gift to the city has been the inimitable spirit which Gene has brought to his labor of live, as is evident in the following summary of his recollections:

MUSINGS OF A SALOONKEEPER OR "MY 30 YEARS IN THE LIFE

(By Gene Sage)

In September of 1948, Truman was a "sure loser," the Russians were between the Iron Curtain and the Cold War, the hit song was "Everybody Loves Somebody," and the Cubs finished last.

This fat, curly-headed kid stopped off in Chicago to visit the old man and his mother on his way east to graduate school and, incidentally, to view the new "Alex's Restaurant" on Adams Street which they had just opened.

My father was the ultimate saloonkeeper. A craftsman. My buddy—even my drinking companion—whence all blessings emanated. He supported us all. His knowledge, lore, worldliness gave me background. He was the original standup guy. His word wasn't just his bond—it was FACT.

My mother was the heart and soul of the family. Gentle. Bright. Sensitive. She raised us all and not just my sister and me, but her brother, and even my father as well as numerous strangers who sought and got succor. Everyone turned to her for love and understanding. I broke her heart by going into the restaurant business instead of becoming the Professor she hoped for.

The restaurant was going badly and the kid stopped for a year; thus, the Professor became a saloonkeeper—and thirty years later, he's still that. (Talk about "The Man Who Came to Dinner"—how about the man who came to serve dinner?) That's me, Gene Sage.

It's been a rewarding career emotionally, socially, and financially. Pain and pleasure, fun and frolic, profit and loss, anxiety and anticipation, creativity and the hum-drum. But what other career could offer an opportunity to hang around a saloon for thirty years for the fun of it and do it all for profit?

We've served millions of meals and trillions of drinks (most of them great) to millions of people and that's the crux of it—People! To misquote Mel Brooks who's been a customer of ours, "The great and the near great and the not so very."

The people are you—our customers—those who preceded you to those who hopefully will follow you, too numerous to mention singly by name (and I might forget a few), but you know who you are. You're our Friend—you've made it all possible. From the first man who extended his hand and said, "I'd like to be your customer, to the last prom kid—to the third generation of customers (and that's a point of pride), the neighborhood resident who hangs out, the regular, the steady and the out-of-towner, and the next person in the door: our heartfelt gratitude for your friendship, confidence, patience, loyalty, understanding, patronage, and cash and all major credit cards.

Our customers have sent my three children to college, bought my houses, clad my body and determined my life style, and I appreciate all of that deeply. But when you work in a place 14 to 18 hours a day, your life is there. You're my friends, my milieu, my peers. You provided the environment for my personal development (for good or bad). You turned me from a shy, introverted person lacking in confidence into (whatever it is, you did it, so fill in the blanks yourself).

I've said that out of my restaurants, I'm a diminutive 5'5''—but *in* them, I'm 6' tall—thank you!

We've served all stripes of people. The Mayors Daley and Bilandic, five Governors of the State, numerous U.S. Senators and Representatives, Supreme Court Judges, and almost the entire bench in Chicago and Cook County, Presidents of the County Board, prominent bankers, industrialists, men of commerce, leaders in all segments of the local and national community, the clergy. We've served Robert Kennedy, Frank Sinatra, Barbara Rush, Bette Davis, Patricia Neal, Ginger Rogers, Robert Vaughn, Tony Randall Jack Klugman, George Hamilton, Hugh O'Brian, Eva and Zsa Zsa Gabor, Werner Klemperer, The Joffrey Ballet, George Halas, Sid Luckman, the Cubs, Blackhawks, Bears, Bulls—not to mention their opponents.

Occasionally, it was a pain, but mostly a thrill. We've also served grand ladies of the evening and grand ladies, drifters, ne'er-do wells, ——— and bums, deadbeats, a flash in the pan or two, a felon now and then, fighters and lovers, gamblers and gambolers—and you. We've been baby sitters, psychiatrists, referees, financial advisors; it has been a ball.

So thank you—you've kept me off the streets—and in a bar. You've given me a stature which I don't merit, you've given me food for my body and comfort for my soul. My heartfelt gratitude to you and my pledge to keep the faith, and honestly provide you with the best available food and drink, good times, and companionship.

The people are also YOU, my fellow workers and compatriots, the loyal alumni and the present crew of people who are the best always, all ways. It hasn't been easy for you—I'm a ——— to work for (though it's been said I've mellowed lately). You've been loyal friends, talented, long-suffering, honest, capable, efficient, unstinting in effort as well as, on occasion, difficult, temperamental and impossible. But without you, we'd be ZIP!

Names, names, names—from Dad's place on Adams Street and my first place on LaSalle Street—to Sage's East, Arley's, Sinner's and Eugene's. I'm afraid to list you all—I might miss someone.

Sufficient to say that restaurant career people are unique. Yes, some of the jokes are true. I've even had a waiter say, "It's not my station," but overall they are highly skilled, work best under pressure, put in long and hard hours, and still manage to keep a smile on their faces.

You're diplomats, psychiatrists, independent merchants, doctors, referees, entertainers, stevedores and more rolled into one. You're fun, flaky and frolicsome. Mostly, restaurant workers are unappreciated.

Here and now, I'd like to tell them all, past and present, good and bad, how much I appreciate and love them. We've had more than our share of great people, highly skilled and par excellence—we've been lucky, we're at our luckiest right now!

So to all of you from porter to manager, from office to kitchen, to bar to dining room—a huge thank you, blessings upon you and a pledge that I know it's a two-way street and will try to make our places even better (not easier) to work in and I'll try to be a better person.

To our purveyors—while it seems at times we're in an adversary relationship—it's not true. You've taught us the business, educated us and bailed us out—most of all, you've provided us with great service and the top quality product we require.

We've grown together and sometimes I regret that it's become impossible for all of us, because of size, to have close personal contact (except when we're yelling). It seemed to work better that way. And yet, during thirty years in business, only two sources have come off the approved list of suppliers. That's either a tribute to our patience or your skill—once again, thank you! And my wishes that thirty years hence, we'll be ordering, complaining, and paying you as we are today.

I don't hope to be around in thirty years, but I believe our companies—yours and mine—will be, and the precedents and patterns we have established have a solid foundation to continue into infinity.

Thank you!

Yes, all of you are my friends. Yet there is a more intimate group of people—wife, children, family, dear friends, accountants, lawyer, public relations people, partners—to whom I need to genuflect and express my undying gratitude for your loyalty, support, advice, understanding, sense of humor, love and patience. I hope I give as much as I receive—I try to.

If my hours, attitudes and priorities have seemed selfish and out of line, I apologize. . . . it was misguided, but not out of a lack of love or caring.

I love you all for what you are as well as for what you helped to make me (blame you, too!).

"STEVE"

Throughout this meandering, I've avoided mentioning names—even names of my dear friends—but not to thank and give honor to one man would be an act of gracelessness.

I'm talking about my partner, my friend, my confidante, my crutch, my brother (though there is actually no filial relationship)—Steve Felsenberg.

He is a very special human being who is more responsible for our success than I—more talented than I—and as hard working as I. Bright, sensitive, tough, fair, honest, kind, gentle, trustworthy—(fat) with a great sense of proportion. Steve possesses an ethical standard that is unparalleled—an understanding of people that is unsurpassed and a knowledge of the restaurant business that makes him the outstanding restaurant man I know, and that covers a lot of ground. Innovative, charming and quick—there just aren't enough adjectives to go around, so just think of how our places really should be: Sage & Fel's East; Arley's & Steve Fel's Restaurant; Steve & Eugene's; and Fel's Sage's Sinners Club.

Steve, I love you.●

HON. OMAR BURLESON

HON. JOE D. WAGGONNER, JR.

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. WAGGONNER. Mr. Speaker, there is no adequate way that I can pay tribute to our dear friend and esteemed colleague, OMAR BURLESON. His great wisdom, leadership ability, and personal warmth simply defies description.

I have worked as closely with OMAR—day in and day out, on big legislative decisions and small—as I have with any Member in this Chamber. I have grown to respect and admire his forceful and persuasive actions on the floor during debate. I have also witnessed firsthand his wise counsel with those who have sought his invaluable advice.

His reasonable, thoughtful, and deliberate approach to legislation commands wide respect on both sides of the aisle and from all political persuasions. His personable manner and keen sense of humor have enabled OMAR to make friends of Members who are miles from his conservative positions. Whether you agree with him or not, there is no way that you can help but respect and like OMAR BURLESON.

Well, I happen to agree with him, as well as to like him. I have seen him close up in Ways and Means, working to translate his firm convictions into legislation. His influence is not that of a headline hunter or glory seeker; rather, his mission is to quietly accomplish the goals he establishes, not to gain publicity.

The qualities that made OMAR a great legislator—courage, dedication, and genuine concern for the well-being of the country—are qualities this Congress can ill afford to lose. We need more men like OMAR BURLESON, not less.

I cannot say enough about this outstanding Congressman and wonderful human being. You cannot replace this kind of person. He is without question, in my mind, an unequalled and exceptional individual. It is my firm conviction that if the Congress were made up of a majority of OMAR BURLESONS, we would not have the problems that we are faced with today.

Personally, I want to thank you, OMAR for your untiring efforts in behalf of our beloved country. You certainly will be missed.●

FOOD PRICES

HON. CHARLES E. GRASSLEY

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. GRASSLEY. Mr. Speaker, in recent weeks the subject of food prices has received a lot of attention in the news media. Just this past Thursday, October 12, the lead editorial in the Washington Post was entitled "Farm Prices and Food Prices." In addition, on Friday, October 6, a front page article appearing in the Washington Post stated that increases in food prices were the main cause of the rise of wholesale prices last month.

Two questions frequently asked are, why do food prices rise and who is to blame? Too often people associate increases in food with the farmer and think he is receiving a large share. By looking at some hard facts, however, it is possible to show that this is not true. It will also help us to better understand just which factors do contribute to high food prices, and how the food price situation in this country is reflective of or connected to the general state of the economy.

There has not been a single year since 1965 during which consumer prices increased less than 3 percent. Consumer prices are expected to be up about 8 to 10 percent over 1977. Today you can expect food prices to go up about 1 percent for every 1.5 percent increase in the rate of general inflation. The dollar that paid for 100 cents worth of goods at the end of the Depression is now worth only 21.2 cents in 1939 buying power. Retail food prices for all of 1978 now appear likely to average around 8 to 9 percent above what they were in 1977. The Department of Agriculture estimates that the average family of four will spend $71.31 to $72.46 weekly on food by the end of 1979, up from $68.31 in 1978. Not

too long ago $50 was considered a lot to spend on the weekly grocery budget.

It is important, however, that we not ignore some facts that point to another side of the food price picture. Recent figures indicate that of the 15 major countries surveyed by USDA's Foreign Agriculture Service, food prices in the United States have risen the least since the beginning of this decade, except for West Germany, the Netherlands, and Belgium. Consumers spend only about 16.8 percent of their disposable income for food; and, based on 1974 spending, it can be shown that the consumers in the United States and Canada allocated the lowest proportion of private consumption expenditures for food, beverages and tobacco.

A recent exhaustive General Accounting Office (GAO) study on what causes food prices to rise and what can be done about it, shows that while food prices increased substantially and at a much higher rate than nonfood prices in 1973 and 1974, they have, in most instances, increased at a lesser rate than nonfood prices since then. Put another way, figures indicate that relative to the prices consumers must pay for other items in the economy, the cost of food is a "good buy."

When talking about food prices, it is important to realize that conditions which prevail in three areas are the main determinants of final costs to the consumer: The farm production sector, the marketing sector, and consumer purchasing conditions. Of the three, the farm production sector is the most precarious. Production at the farm level is heavily influenced by rather unpredictable natural forces such as weather, pest infestations, plant and animal diseases. These occurrences are almost impossible to forecast; and, when adverse conditions result in a reduction of the available food supply, there are consequences for the consumer's budget, and the State of the economy as a whole. According to the GAO recent report, for instance, the primary causes of rising food prices in 1972 and 1973 were worldwide agricultural shortages produced primarily by adverse weather and by the delay of Government officials in calling for increased agricultural production. Since then, however, higher marketing costs, and not a reduced food supply have contributed heavily to higher food prices.

It seems that many people perceive that farmers are somehow "striking it rich." I would like to show how this is not the case. In 1973, when food prices were at record levels because of reduced supplies, the farmer's share of the total value of the foods in the USDA market basket was 46 percent. Since 1973, however, the farmer's share has declined each year and is now at its more usual level of about 39 percent. For the year 1977, for example, the retail value of foods in the market basket was $1,937 and the farm value was $751 or 39 percent. Farmers in 1976 and 1977 appeared to be about as well off economically in relation to the rest of the food industry as they were in 1967, although they were not as well off as they were from 1972 to 1975 when farmers received a larger share of the value of the market basket. This figure, however, is based on gross income and does not take into account the impact of increased production costs.

It is important to recognize just how large a wedge is cut into the farmers' budget by increased production costs. Farm production expenses depend on the type of farming enterprise, include the costs of feed, livestock, seed, fertilizer, repair and operation, depreciation, and labor. The GAO report shows that between the beginning of 1959 and the end of 1976, a period of 18 years, total farm production expenses tripled, rising from $27.2 billion to $81.1 billion. During the same period, realized net farm income only doubled. The GAO study further shows that—

> In current dollars, farmers' net income in 1977 was about 45 percent above that in 1970. In 1967 dollars, however, it was actually 7 percent less in 1977 than it was in 1970.

Based on these facts, I can assure you that farmers are not striking it rich. In fact, they are having a difficult time in making a living solely from farm income. They cannot be legitimately blamed for the current or anticipated rise in food prices.

I briefly mentioned earlier that higher marketing costs have contributed heavily to higher prices. Few are aware of just how large a contribution marketing costs make in the final cost of food. Today the costs for assembling, processing, transporting, wholesaling, and retailing food products account for about 60 cents of each dollar spent for domestically produced farm goods. The data in table 1 reveals that higher marketing charges accounted for almost three quarters of the $76 billion increase in consumer expenditures for food from 1970 to 1977. More than half of the $22 billion increase in farm value occurred in a single year—1973. Since then, a staggering 87 percent of the increase in consumer expenditures for U.S. farm produced food has been caused by higher food marketing charges.

The GAO report states:

> In the past ten years, the USDA farm food marketing bill doubled from 61.4 billion dollars to 123.5 billion dollars.

While profits both before and after taxes rose between 1970 and 1977 as much as or more than any other marketing cost, in amount they are relatively insignificant compared with labor costs which account for about fifty percent of the food marketing bill. In 1978, wages are expected to increase 7 to 8 percent because of prior settlements, cost of living adjustments, renegotiated agreements, increases in the minimum wage and higher social security taxes. Needless to say, wage settlements in 1978 will be strongly influenced by attempts to protect workers from further inflation and the possible loss of purchasing power. Keeping in mind that food marketing costs are inputs purchased and bid for in the general economy, food prices, therefore, generally respond to economic pressure outside the direct influence of the food marketing system. Clearly, unless the lid is put on inflation, the food price situation nor the general state of the economy will improve.

Although consumers are getting a relatively "good buy" of farm produced foods, every trip they make to the supermarket reminds them that food prices have steadily climbed. Why is it, many wonder, that farm price increases are passed on to the consumer more readily than farm price decreases? One thing to remember is that when farm prices decline because of increased product availability, marketing costs are not directly affected because they are related to the physical product rather than to the dollar paid to farmers, and to the price trends in the economy as a whole. The GAO study lists some of the reasons why good retail price does not always decline when the farmer gets less for the raw agricultural commodity. Among them are, first, farm value represents a small percentage of retail price; second, decrease of a product's farm value may be partially, completely, or more than offset by increases in marketing costs; third, various retail price methods such as following competitors or letting retail margins increase somewhat when wholesale or farm prices fall and absorbing some of the cost when prices rise; and fourth, there is less price competition in a highly concentrated market and profits therefore are likely to increase.

These are some of the reasons for a widening farm-retail spread, but they alone do not sufficiently explain it. Congressional sources and an ERS official have stated that the farm and food price data the Government currently collects is not timely or specific enough to determine if undue lags occur in adjusting food prices following changes, particularly decreases, in farm prices. Two primary obstacles stand in the way of a more accurate estimate and analysis of the farm value-retail price spread: The marketing industry's unwillingness to supply needed information and the estimated high cost which would be incurred by the food industry in supplying the needed information on a timely basis and by Government agencies in collecting and analyzing such information. The recent GAO report states:

> Monthly data on food industry cost and profit would have to be available to determine if rising food market costs or increased profits were responsible for any lack of retail price responsiveness.

Probably the most predictable factor in determining food prices is consumer purchasing conditions. Generally, the total demand of food can be estimated on the basis of population growth and income level changes. However, there have been recent changes. Families are smaller and the number of working mothers has increased. As a result, family income is higher, and the demand to eat away from home has grown. In 1977, the amount spent on food eaten away from home increased about eight percent.

Another way consumers purchasing conditions affect the cost of food is by the mix of food demanded which can change because of price and price relations of various food available in the marketplace, or because public trends increase the demand of certain food items over others. Finally, overall demand for various foods can shift as a result of reports

that a certain food may be injurious to health or as a result of a tendency toward diet programs or better nutrition.

This last factor is integrally linked to the effects that Government regulation has on the determination of food prices. Consumers, farmers, and the food industry alike have seen the Federal Government become continually more involved in their lives. Certain actions now being discussed or formulated by the Congress would, if implemented, supposedly benefit society in a number of ways by educating the consumer on better diets and the nutritional foods, upgrading the environment, and improving levels of worker health and safety. Some of these can be seen in table 2. On the other hand, these actions would increase food costs and consequently raise retail prices. The following chart shows these actions, their anticipated effects on the industry, their intended benefits to society, and where available, their estimated costs if implemented nationwide. We in Congress must carefully weigh the benefits of such actions to society against their costs. Of course, we must work to improve the quality of American life, but this must be at a price that Americans can afford.

I would like to close by saying that even though Americans are getting a better buy at the grocery store than people from most other countries, they must contend with food prices that have steadily increased for several reasons. I think it is apparent that farmers cannot be legitimately blamed for rising food prices. In fact, farmers are not well off; in just 18 years, farmers' expenses tripled. We have also seen that 87 percent of the increase over the past 5 years in consumer expenditures for U.S. farm food has been caused by higher food marketing charges, and that 50 percent of the food marketing bill is attributable to increased labor costs and the need to protect workers from further inflation and a loss in purchasing power. Finally, we have seen how consumers need to better understand where their food dollars are going.

Again and again it has been clearly established on the basis of hard facts that current conditions in the general economy aggravate the food price situation. A continual inability or unwillingness to control inflation, a stubborn insistence to pursue policies of deficit spending has had negative effects on the overall state of food prices in a number of ways—from the costs of farm production, to the expense of labor in the marketing industry, to the cost to consumers for Government regulation. Polls show that inflation has become the No. 1 worry for most people. We know through the experience of 1971 to 1974 that mandatory wage and price controls do not work and serve only to distort the market. But we also know that the deficit in the year that began October 1 is expected to be about $40 billion, and that something must be done to reduce this rate. If Americans are to get a better buy at the grocery store than they are now getting then I feel it is these issues—putting a lid on inflation, drastically curtailing the level of deficit spending—that must be addressed first.

TABLE 1

[In billions of dollars]

	Consumer expenditures	Marketing bill	Farm value	Annual change in: Consumer expenditures	Annual change in: Marketing bill	Annual change in: Farm value
Year:						
1970	106	71	35			
1971	111	76	35	5	5	0
1972	118	79	39	7	3	4
1973	135	84	51	17	5	12
1974	149	93	56	14	9	5
1975	161	106	55	12	13	−1
1976	172	116	56	11	10	1
1977 [1]	182	125	57	10	9	1
Total increase				76	54	22

[1] 1977 data is preliminary.

TABLE 2.—PROPOSED GOVERNMENT ACTIONS THAT AFFECT FOOD COSTS

Action	Effect on food industry	Benefits to society	Estimated cost [1]	Status at end of 1977
Mandatory nutritional labeling	Initial increase in labeling costs and more frequent label changes for processors of packaged food products.	Provide consumers with information to prepare nutritionally well-balanced meals.	Initial cost—0.4 percent of sales; annual cost—0.2 percent of sales.	Food and Drug Administration already requires nutritional labeling on those products which contain added nutrients or for which nutritional claims are made in labeling or advertising.
Drained weight labeling:				
Plan A [2]	Increase in costs to processors due to additional production steps.	Consumers would be advised of product weight minus liquid in the can.	$100,000,000 annually	Under consideration by FDA.
Plan B [3]	Increase in costs to processors due to additional production steps.	Consumers would be advised of product weight minus liquid in the can.	$10,000,000 annually	Under consideration by FDA.
Percentage characterizing ingredient labeling.	Purchase of additional machinery by processors.	Provide consumers with a method of comparison shopping.	Not yet estimated	FDA now requires some foods to be so labeled; bills now before the Congress would increase the number of foods to be so labeled.
Mandatory unit pricing	Increase in retailers' costs for labor, equipment, and supplies.	Provide consumers with a method of comparison shopping.	0.17 percent of grocery sales	Currently voluntary but a mandatory program is being considered by the Congress.
Mandatory open dating	Increase processors' costs by more frequent return of products superseded by fresher products.	Provide consumers with a method to determine product freshness.	Not yet estimated	Voluntary program frequently used on processed meats, poultry, dairy, and bakery products.
More stringent noise pollution standards	Increase in food processing industry's capital costs needed to decrease noise levels.	Less damage to food industry workers' hearing.	$1,700,000,000 to decrease allowable noise level from 90 decibels to 85 decibels.	Under consideration by the Occupational Safety and Health Administration.
More stringent water pollution standards	Increasing in food processing industry's costs needed to meet and maintain compliance with these standards.	Cleaner water	$100,000,000 for all U.S. industries for a 10-yr period ending 1985; no separate estimate for food industry available.	Standards to be fully implemented by 1983.

[1] The sources of the estimates are identified on the following pages.

[2] Plan A would require the processor to determine the product weight after can had rested for 30 days and liquid had been drained.

[3] Plan B would require canning industry to weigh the products before they are canned. ●

S. 2493—AIR TRANSPORTATION REGULATORY ACT

HON. JOHN G. FARY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. FARY. Mr. Speaker, the passage of the Air Transportation Regulatory Reform Act of 1978 before the adjournment of the 95th Congress promises a new era for Chicago's Midway Airport and greater competition among commercial air carriers throughout the United States.

This legislation which I cosponsored mandates the first substantial change in the Federal Government aviation control structure since the creation of a Civil Aeronautics Board in 1938 despite sweeping changes in aviation technology and in public traveling preferences.

A kep provision of the new act permits any certificated interstate carrier or large intrastate airline to enter one new market a year until the close of 1981 without having to seek CAB approval as is now needed.

Another competition fostering provision of the act provides that any unused or dormant route may be taken over by any carrier that demonstrates its readiness and ability to do so. The dormant route would be granted automat-

ically to the first airline that applies within 30 days after the market is officially declared dormant.

A third, and in my opinion a most liberalizing provision of the new act, is to permit airlines to cut fares and shipping rates by as much as 50 percent without seeking the approval of CAB.

The passage of this legislation is a great victory for me personally. Upon being elected to the U.S. House of Representatives, as a Representative from the Fifth Congressional District of Illinois, I made a promise to my lifelong friend, the late Richard J. Daley, mayor of Chisago, that—

My legislative efforts would be directed first and foremost toward the reactivation of Midway Airport and the economic revitalization of the Southside of Chicago.

With the culmination of many hours of hearings, the passage of the Airline Deregulation Act makes the reactivation of Midway Airport at long last a reality.

Once the world's busiest airport, Midway will shortly begin full scale operations. Currently, Delta Airlines provides regularly scheduled daily air service from Midway to St. Louis, Memphis, Kansas City, and Detroit, with a 44-percent reduction from regular coach fares.

With CAB granting operating authority for new low-fare air service from Chicago's Midway to Minneapolis/St. Paul, St. Louis, Detroit, Cleveland, Kansas City, and Pittsburgh, the revival of Midway is expected to occur gradually in three stages in a period of 10 years. The first stage involving the six cities already mentioned, to begin at once.

The second stage would add nine additional cities: Buffalo, Cincinnati, Dayton, Columbus, Louisville, Memphis, Omaha, Des Moines, and Indianapolis, with approval expected without any difficulty.

The third, and possibly the final stage in the Midway revitalization program to bring Midway back to full capacity air service would be to service 17 additional cities, among which would be predominately Boston, New York, Philadelphia/Baltimore, and Washington, D.C.

Crain's Chicago Business Weekly reports that by 1980 there will be more than 400 flights daily out of Midway.

According to CAB's final environmental impact statement:

The plan to reopen Midway will create 1800 new jobs at the airport, and 800 more off the airport. It will also bring a direct income contribution of $28.7 million. By the mid-1980s, activity at Midway would generate 10,308 new jobs, a $79.1 million increase in personal income, 3,963 new residents, $27.7 million increase in residential property valuation, and $42.1 million increase in residential property valuation, and $42.1 million increase in commercial and industrial land values.

Mr. Speaker, I was pleased with the final passage of the Air Transportation Regulatory Reform Act of 1978 which is now the law, and would like to express my gratitude to the conferees for retaining my amendment intact requiring the Civil Aeronautics Board to encourage carriers to provide air service to satellite or secondary airports.

The purpose of my amendment was to prevent in the future what happened to Midway, the world's busiest airport, with the introduction of the larger jet aircraft which transferred all air traffic to O'Hare Airport, thus leaving Midway a ghost airport, and requires the Civil Aeronautics Board to provide new air service at major urban areas through satellite or secondary airports.

As used in the amendment, the term "secondary or satellite" airports include not only airports serving suburban areas surrounding an urban center, but also secondary airports within urban centers. Examples of such satellites are the Burbank and Ontario Airports in the Los Angeles area, the Oakland and San Jose Airports in the San Francisco area, Midway Airport in the Chicago area, Baltimore-Washington Airport, and the Newark and White Plains Airports in the New York area.

This amendment would foster a policy of creating satellite specialists; namely, air carriers who would gain access to a market serving a major urban area such as presently occurring at Midway with the CAB granting operation authority for new low-fare air service to six cities. This is the first stage in the development and revitalization of Midway which give encouragement to other cities whose airport operations have suffered financially because larger carriers bypass the secondary airports rendering exclusive service to primary or urban airports.

To all those who have played a great part in Midway's revitalization, I would be remiss to myself and all those concerned if I did not take a moment to express my sincere gratitude to the Honorable HAROLD T. ("BUZZ") JOHNSON, chairman of the Public Works Committee, Hon. GLENN M. ANDERSON, chairman of House Subcommittee on Aviation, and my colleagues on the Aviation Subcommittee for their consistent enthusiasm and diligence during the past several years in pursuing legislation to deregulate the commercial airline industry.

To the Honorable Alfred E. Kahn, Chairman of CAB, my special thanks for his dynamic leadership in calling for the overhaul of the 40-year-old law governing commercial air lines.

My thanks to the administration, and especially to the Honorable Brock Adams, Secretary of Transportation, without whose consistent and enthusiastic support this legislation would not become a reality, nor would Midway now be on the threshold to a magnet of economic growth.

Last, but not least, my deep appreciation and personal thanks to the members of the Chicago congressional delegation, the Honorable Michael A. Bilandic, mayor of the city of Chicago, members of the city of Chicago and State of Illinois Departments of Transportation, representatives of airlines serving Chicago, businessmen, and civic leaders for their every assistance.

In conclusion, I should like to take a moment to thank my colleagues for their foresight in passing this important legislation which will not only revolutionize air travel but render the public a greater service.

This will be a memorable period for the revitalization of Midway and the southside of the great city of Chicago. My promise to Mayor Daley has been fulfilled.●

HEALTH CARE FOR OLDER VETERANS—ADDITIONAL ISSUES

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. PEPPER. Mr. Speaker, I have shared with my colleagues a paper which was prepared by Ms. Dena Belinkoff, who served this summer with the Subcommittee on Health and Long-Term Care of the Select Committee on Aging, both of which it is my privilege to chair.

The final portion of this paper deals with a number of issues which warrant our consideration: standards and evaluation procedures; regionalization and sharing; national health insurance; and research. In addition, Ms. Belinkoff offers recommendations for improving the VA system of care for elderly veterans. I commend this final portion to the attention of my colleagues and include it to be printed at this point in the RECORD:

STANDARDS AND EVALUATIONS

As a health care system autonomous from both the private sector and other federal providers, the Veterans Administration conducts its own evaluations of facilities and prescribes its own standards. A complex system of review, both internal and external to individual facilities, keeps the overall quality of care in VA hospitals and nursing homes at a high level.

All VA hospitals, long-term care facilities and Hospital Based Home Care programs maintain accreditation from the Joint Commission on the Accreditation of Hospitals (JCAH), which reviews accreditation every two years. In addition, the VA requires appropriate licensing from city, state and county boards for all community care facilities used in VA programs. Community nursing homes, Intermediate Care facilities, Personal Care Homes and State Homes are evaluated by the VA; no formal standards are currently applied to Domiciliaries.

Two systems monitor the on-going operations and quality of care in VA facilities. Systematic Internal Review (SIR) is carried out by a facility's own staff and the Systematic External Review Program (SERP) is administered by VA staff from facilities other than the one under evaluation.

Comparable to the national PSRO program, the VA instituted an HSRO (Health Services Review Organization) program to assess the suitability of the level of care received by each patient. Audits of facilities are regularly conducted by VA Central Office teams.

The VA, with its thorough set of review and inspection systems, undoubtedly maintains an adequate quality of care in its facilities. Nevertheless, the NAS study questioned some VA prices.

The JCAH sets minimal performance standards for the number of certain surgical operations to be carried out annually. In the case of kidney transplants, the majority of VA hospitals with the proper equipment and staff performed a significantly lower number of operations than dictated by the JCAH. The NAS, therefore, recommended the cessation of kidney transplants in these hospitals.

A second NASA criticism referred to the absence of standards for staffing and quality of care for Intermediate Care facilities and Domiciliaries. At present the VA is develop-

ing the necessary criteria for these two programs.

Comment

In perspective, the evaluation and review procedures of the VA appear to duplicate many of the programs currently administered by the government to other federal and private providers. Recognition of this occurrence has already led the VA to negotiate with HEW to avoid duplication of inspections of nursing homes that accept both Medicare and Medicaid patients and VA contracts. Implicit in this coordination of efforts is the desire to reduce administrative costs. A logical step for the VA would now be to investigate the further application of this cost-efficient sharing procedure. Since HEW and the VA standards are virtually identical, common sense and economics dictate that one universal system of review is preferable.

Another beneficial by-product of the implementation of such a program might be the elimination of the budgetary incentive to overhospitalization that currently exists in VA facilities. A utilization review team, completely external to the VA, would have nothing to gain by extending lengths of stay beyond the optimal period for the veteran.

REGIONALIZATION AND SHARING

Access to medical facilities is a crucial prerequisite to a comprehensive and effective health care system. For elderly persons, the transportation problem is magnified, as they must frequently rely on relatives and friends or on public transportation, which might be costly or injurious to a frail person. Although VA health facilities are distributed geographically across the country, it would be impossible to provide all veterans with equal access to all types of services.

At cross purposes with the need to make services readily available stands the equally important desire to avoid costly duplication of facilities and machinery. In response, the VA recently initiated the Regionalization program, which divides the country into 28 medical districts, each one responsible for coordinating services among the local VA facilities. Regionalization proposes to encourage complementary development of medical specialties among the VA hospitals within each district, in addition to facilitating cooperative arrangements for support services.

Comment

Regionalization has not been in effect long enough to gauge its impact on efficiency and utilization patterns, but in theory, the program promises to coordinate planning within the entire VA medical system. In order to arrive at a truly efficient and effective health system in our society, however, the VA should realize that planning must encompass the entire range of health providers in a geographic region. Even with complete VA regionalization, expensive facilities might be duplicated in a single community because of the autonomy of the VA. Hospital beds are already overabundant in many areas—a factor which contributes to inflationary health care costs.

Most other health providers are subject to local Health Systems Agency (HSA) approval for construction and major capital purchases, while the VA remains independent, with Congress and the annual appropriations process serving as a regulator. Veterans serve as voting members of HSA boards and on state health coordinating councils and the VA is required to submit application to the HSA for construction and expensive investments, but the VA Central Office receives the application and may approve or disapprove; the HSA has no actual jurisdiction.

The consequence of this arrangement between the VA and HSAs is to emphasize the separation between veterans health facilities and other federal and private providers, when a more economical and efficient strategy would urge the cooperation of all health systems within a particular region.

One effort toward cooperation was authorized in 1966 in the Sharing program, under Public Law 89-785. Expensive CAT scanners and kidney dialysis machines currently are being shared in many locations. A GAO report titled, "Legislation Needed To Encourage Better Use of Federal Medical Resources and Remove Obstacles to Interagency Sharing," found that though the laws permit sharing, none require it. In the case of the VA, only "specialized medical resources," a narrowly interpreted category, may be shared. The GAO reported that several bureaucratic obstacles and a defective reimbursement mechanism prevented extensive sharing between the VA, the Department of Defense (DOD) and HEW medical facilities. For these reasons, the VA showed a decided preference for sharing with the private sector: $16 million worth of services were shared, as opposed to $26,000 with federal agencies. (It should be noted that the DOD and HEW both approved of the GAO recommendations for enforced sharing among federal providers, while only the VA objected.[17]

Comment

Increased sharing and a regionalization program that extends beyond the VA stand to benefit veteran and non-veteran alike from a financial and a medical viewpoint. The VA should welcome these programs as methods of improving care for their own patients and implementing a cost-efficiency policy.

NATIONAL HEALTH INSURANCE

It appears that some form of National Health Insurance (NHI) will gain Congressional approval and begin functioning within the next decade. Although questions as to the extent and terms of coverage remain to be debated, it seems likely that many of the services currently provided by the VA will be offered under the national policy.

The NAS has recommended that the VA system serve as the core to a national health network by way of a four stage phase-in. VA opposition to such a plan clearly recalls the Congressional and Executive commitment to an independent health system to compensate veterans for their service to the United States in time of war.

Comment

The VA should continue to fulfill this charge alongside the development of a national health network. Z. Erik Farag, current Special Assistant for Health Affairs, Office of the Governor of Virginia, has observed,

"While they (VA facilities) are separate from other health care facilities and should remain so, they are also vitally interdependent with the rest of our health care facilities. It is in this context that VA health services should be assessed as care delivery planning is done at all levels. We have the ability to do that planning and we would like very much for the VA to be a part of it."

The relationship between the two systems should be complementary—not antagonistic and exclusive—with an underlying philosophy of economic rationality. Duplication of medical, administrative and supportive services is a wasteful policy which the nation cannot afford. Therefore, the VA should look toward cooperation with a national health scheme, which does not necessitate a compromise in the quality of care for veterans.

Most importantly, the VA must carefully assess the implications of NHI in planning for the future. Since the impact of NHI on VA utilization patterns is undetermined, the VA should proceed cautiously with construction plans and expansion of services. One indication of a potential decrease in VA clientele with the advent of NHI comes from a Congressional Research Service report on the impact of Medicare on the VA medical system. Although Medicare required a deductible and co-insurance, a significant number of elderly patients switched from the VA to Medicare providers.[18]

RESEARCH

In an effort to develop the field of geriatric medicine, the VA initiated the Geriatric Research Education and Clinical Centers (GRECC) program in 1975. The aim of the GRECCs now in existence is to improve practice, education and research in geriatrics—a grossly underdeveloped medical specialty. As part of the GRECC program, the VA is sponsoring fellowships in Geriatrics through its Office of Academic Affairs.

RECOMMENDATIONS

The VA should continue its overall excellent record of health care and work to implement its proposed expansion of services for the elderly. Most obviously lacking in the VA program is an emphasis on preventive medicine, which serves to reduce costs and heighten patient awareness of health. The Senate has passed legislation to authorize a model health maintenance organization program within the VA, but the House of Representatives has not yet considered the proposal. Congress should approve such a program as part of an effort to turn the VA into a comprehensive health system, rather than one focused on acute medicine. Health maintenance organizations, Hospital Based Home Care and Personal Care Homes are all programs which particularly benefit the elderly because they use health care dollars more efficiently.

As outlined in previous sections of this report, it is recommended that the VA and Congress:

Consider the demography of the VA clientele and utilization patterns in assessing future plans for expansion;

Analyze thoroughy the impact of any changes in eligibility provisions before their implementation;

Eliminate the budgetary incentive to overhospitalization, possibly through the use of an impartial PSRO program;

Continuously assess the suitability of hospitalization for psychiatric patients, in light of the availability of non-institutional alternatives;

Reassess the level of care known as Intermediate Care as to its effectiveness, goals and standards;

Consider raising the authorized per diem for contract nursing homes, rather than building costly new facilities;

Remove the prior hospitalization requirement on community nursing home care;

Elevate the HBHC program to a position of prominence among long-term care treatments in light of the beneficial medical and economic effects of such treatment;

Expand the Personal Care Home program, after defining goals and standards; explore the possibility of financial support for those placed in the community;

Continue the domiciliary replacement program with caution, keeping in mind the long-term decrease in domiciliary utilization;

Increase support for senior centers;

Combine review and evaluation procedures with programs already administered by the government in an effort to avoid costly duplication;

Increase the sharing of medical and supportive services between VA, private and federal providers within communities through the enactment of legislation to require sharing and HSA jurisdiction over VA planning; and

[17] "Legislation Needed To Encourage Better Use of Federal Medical Resources and Remove Obstacles to Interagency Sharing," Comptroller General of the U.S., June 14, 1978.

[18] "The Impact of Medicare on the Veterans Administration Medical System," Congressional Research Service, Sept. 25, 1975.

Investigate the possibility of accepting third party payments for treatment in VA hospitals as a means of utilizing hospital beds to the greatest capacity in every community.

BIBLIOGRAPHY

1. Congressional Research Service, Library of Congress, "The Impact of Medicare on The Veterans Administration Medical System," September 25, 1975

2. *New England Journal of Medicine*, Vol. 298, No. 11, March 16, 1978. "The Future of the Veterans Administration Hospital System: Two Points of View."

3. *Public Policy*, Vol. 25, No. 3, Summer, 1977. "America's Socialized Medicine: The Allocation of Resources Within The Veterans Health Care System," Harvey M. Capolsky.

4. *Medical Care*, Vol. XVI, No. 6, June 1978. "Patient Outcomes in Alternative Long-Term Care Settings," Janet B. Mitchell, Ph.D.

5. *Veterans Administration Summary of Medical Programs*, April 1978, Reports and Statistics Service, Office of Comptroller, VA, Washington, D.C.

6. *The Aging Veteran: Present and Future Medical Needs*, Veterans Administration, October 1977.

7. *Study of Health Care For American Veterans*, National Academy of Sciences, National Research Council, June 7, 1977.

8. *Veterans Administration Response To The Study Of Health Care for American Veterans*, Veterans Administration, Sept. 22, 1977.

9. Hearings Before a Subcommittee of the Committee on Appropriations, Part 2, Veterans Administration, House of Representatives.

10. *Home Health—The Need For A National Policy To Better Provide For the Elderly*, Comptroller General of the U.S., Dec. 30, 1977.

11. *Legislation Needed To Encourage Better Use of Federal Medical Resources and Remove Obstacles To Interagency Sharing*, Comptroller General of the U.S., June 17, 1978.

12. *Better Services At Reduced Costs Through An Improved "Personal Care" Program Recommended for Veterans*, Comptroller General of the U.S., June 6, 1978.●

NATIONAL FUELS POLICY

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. YOUNG of Alaska. Mr. Speaker, I support the Powerplant and Industrial Fuel Use Act of 1978, because it makes sense for the Nation and for the State of Alaska. By passing this bill we will bring some certainty and uniformity to our national fuels policy, which has lacked cohesiveness and direction for many years.

I would prefer that large energy users could have the luxury of choosing to use any fuel that they preferred. But we can no longer afford that luxury—not when we import millions of barrels of fuel oil from abroad to run east coast powerplants and not when Southwestern powerplants consume huge amounts of our inadequate supplies of domestic natural gas. Instead of continuing these shortsided policies, we should utilize our most abundant domestic energy source and the most logical fuel for our large energy consumers: Coal. The Powerplant and Industial Fuel Use Act of 1978 will do just that: Make us use coal like the Saudi Arabia of coal should use it.

The bill does not set unreasonable goals or deadlines—just the opposite. This bill establishes guidelines and limits that recognize the fact that coal is not for everyone, and should not be.

Let me give you some examples of what I mean, which have special meaning for the citizens of the State of Alaska. Currently, the Alaska Petrochemical Co. (Alpetco) is planning a refinery-petrochemical project to be built in Alaska. This project is unique in many respects.

The refinery will process Alaska's royalty oil, which the State chose to take in "kind" rather than in "value." By adopting this procedure, the people of Alaska will share in many benefits. We will, of course, receive the fair market value for our oil. But in addition, the State will benefit from the hundreds of jobs this project will create. Moreover, the refinery complex will generate millions of dollars in property and income taxes for the State.

One special benefit of the project is that Alpetco will set up a charitable trust, to be administered independently, with 5 percent of the project's after-tax projects, beginning the 11th year after the plan begins operations. The purpose of this trust will be to further social, educational, cultural, and environmental conditions in Alaska.

But the benefits of this project will not be limited to Alaska. This new, large-scale refinery will give us a secure source of refined products on the west coast, and full processing of high-sulfur residual fuel oil. This in turn will reduce our need for imported finished products, and curb our balance-of-payments deficit, and could help to ease the glut of high-sulfur residual fuel oil on the west coast.

Yet, as we all know, building a refinery is a complex process. To a large extent the success of this project will depend upon the cooperation of the Federal Government. Government officials will need to work closely with the people from Alpetco on sensible approaches to problems in the area of the entitlements program, export policy, environmental restrictions—and coal utilization.

But it appears that the Powerplant and Industrial Fuel Use Act of 1978 creates few, if any, problems for this project. The manager of this bill in the Senate (Mr. HASKELL) discussed this issue at length during the consideration of this legislation on the Senate floor.

It would be useful to briefly review what was said then. First, it was stated that, under section 103(a)(3)(B), the Alpetco project could possibly use natural gas as a primary or secondary fuel, due to the lack of a commercial market for the gas in Alaska and due to the prohibitive cost of transporting it.

Second, it was stated that temporary and permanent exemptions from the use of coal would be available to allow the refinery to use residual fuel oil as a primary fuel if coal is not otherwise available.

Third, it was stated that, under section 212(a), evidence pertaining to the cost of coal must be based upon other than projections and estimates. In other words, the cost of coal cannot simply be projected by DOE upon a speculation that a coal mine might be opened at some future date and at some future cost.

Thus, the legislative history clearly indicates that Congress is aware of the unique characteristics of the Alpetco project. The Powerplant and Industrial Fuel Use Act of 1978 is flexible enough to accommodate these unique characteristics.

Consequently, the Nation—and Alaska—will be served by the passage of this legislation.●

THE ITALIAN AMERICAN HERITAGE

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LAFALCE. Mr. Speaker, like all the other ethnic groups in this country, Italian Americans have made their own unique and invaluable contribution to the traditions, history, and culture of this country. Indeed, I believe their contribution has been unique. Involved in every field of endeavor from nuclear physics to diplomacy, Italian Americans have played an integral role in American society, which has, unfortunately, not always been recognized.

In the fall 1978 edition of the Washington Newsletter of the National Italian American Foundation, Judge Ruggero J. Aldisert made a penetrating analysis of these past and present contributions. He has the distinction of being only the second Italian American to have been appointed to a U.S. Court of Appeals in the history of the United States—none has ever been appointed to the U.S. Supreme Court. In addition to his incisive analysis of the contemporary problems which confront Italian Americans, Judge Aldisert counseled Italian American organizations and individual Italian Americans to hold true to their proud heritage, in order to help solve some of the problems which currently plague our society. I applaud and second his comments.

The article follows:

Italian Americans have, as part of their great heritage, the ennobling experience of a number of rich traditions.

One I call the Roman-Italian tradition of 2,700 years. This great tradition celebrated its bicentennial 2,500 years ago.

It's a superb and bountiful heritage of religion, art, music, government. A millenium of one glorious accomplishment after another—from Roman law, to modern high-fashion, from the Coliseum to the Via Veneto, from Virgil and Ovid to Puccini and Giuseppe Verdi.

The other is what I call the Italian American tradition that has reached fruition after only some 100 years in this land. This tradition is the sum total of contributions to the American way of life of 6 million Italian immigrants, and millions of their offspring now down to third, fourth, and fifth generations.

In addressing the Italian American tradition, there is no question of the importance, of the early accomplishments of the age of discovery, led by the Great Admiral Christopher Columbus, and those who followed: Giovanni and Sebastian Cabato, Giovanni da Verrazzano, Amerigo Vespucci; the Venetian

silk artisans who settled at Jamestown, Virginia, in the 1620's; the director of the first band concert in America, Palma; the founder of the Metropolitan Museum of Art, Count Cesnola.

It is also important to honor Francesco Vigo of the Lewis and Clark expedition, or Filippo Mazzei, friend and confidant of Thomas Jefferson.

Nevertheless, it is vital to emphasize the contributions from gigantic migration to these shores mainly from Southern Italy and Sicily. This is the very real source of the Italian American tradition.

This tradition was first established by our immigrant forebears, our fathers and mothers, our grandfathers and grandmothers. It has been enhanced by those representing generally the second generation, American born and bred, and crowned by our children and grandchildren.

As I am proud of my Roman-Italian heritage, this rich and profound bequest of world wide splendor, I am equally proud of this second tradition of a common heritage and of the very real contributions bestowed on this land by the Americans of Italian lineage.

I am fiercely proud of the first generation of Americans of Italian origin, the brave immigrants who sailed a lonely sea and landed on an alien shore. Like the American pioneers who sailed west in prairie schooners to meet the scourge of desert, barrier, and Indian raid, our immigrants crossed the desert of poverty, mounted a monstrous language barrier, and withstood the barbs and arrows of discrimination.

Many of them are still with us today. Others are at home, their once tremendous vitalities sapped by the ravages of age.

They are the witnesses to the passing of the eras.

If there is a lesson that we must learn from this history, it is the lesson of pride.

But with pride must be a recognition of reality.

There must be a recognition that although the general American community respects our Roman-Italian heritage, they do not have a corresponding respect for the bountiful and profound accomplishments of the Italians in this land, past or present.

I am obviously not one of those ethnic ostriches who will say that all is right with this world. Although I have reached the highest peak in the American judiciary ever achieved by an American of Italian descent, I do not say that this is proof that all is well in this land. Discrimination against the American of Italian origin has not disappeared. An Italian lawyer cannot succeed as easily as others in admission to or in promotion in the great law offices in Washington, Philadelphia, Cleveland, or New York City.

I am not satisfied that the applicant with an Italian name is given fair treatment by the admissions committees of prestigious universities and graduate schools. I am not satisfied that the ladder of corporate promotion is open to most of our deserving men and women.

The brute fact is that a quantum of social degredation exists. And this is evidenced by middle class America's unbashed easiness to indulge in defamatory "Italian jokes," although unwilling to join in jokes ridiculing religious or racial minorities that were customary a generation ago.

Although large scale community discrimination is not as overt as it was in my late father's day, or when I was a young lawyer hanging out my shingle, circumstances do abide which may and do leave psychological scars and sociological wounds as vicious and traumatic as those inflicted in the immigrant era.

Today, middle class Italian Americans are exposed to subtle nuances of confict; a conflict that exists within or without our social constellation possessing sociological, economic, civic, educational, and political ramifications.

This conflict exists because of fixed ideas of the greater American community toward you and me and our people; fixed notions, twisted concepts; stereotyping.

You and I together with the National Italian American Foundation must first identify these and then mount a positive program of counteraction. This we must do if there is to be vigor and vitality and real meaning to the work of the Foundation.

What are these concepts held by the community:

Some of them are that Americans of Italian origin have no desire to depart from their original culture, that they are clannish, overly assertive, offensively aggressive, loud and boisterous, impatient, argumentative, and uncooperative.

Much of this must be classified in the category of fault-finding and generalizing, or simply not true. "Sterotyping" is too common a device that has been used to dishonor and suppress any given group.

Yet another allegation is that Italian Americans tend to be individualistic. It seems to me that the "rugged individualism" of the colonial settlers, the western pioneers, the midwestern farmers, and the American soldier has been considered a trait identified with the genius of American progress.

Thank God for the rugged individualism of an Enrico Fermi, A. P. Giannini, a John Volpe, or a Jeno Paulucci.

The sterotype image that causes the most serious problem to Italian Americans, especially to public officials of Italian descent, is that our people are by nature law breakers; that we have no respect for the law, and that our ethnic traits are incompatible with law and order.

We start out with the first impression that it is true that a good deal of organized crime in the northeastern seaboard shows a contemporaneous history of Italian domination.

This is what grabs the headlines, and blots the escutcheon of our good name.

But the reality is that these publicized *few* represent a minuscule portion of the 25 million God-fearing, law-abiding Americans of Italian descent.

One of the most heinous sociological crimes ever visited upon any ethnic group is to tar the name of all of us for the sins of an infinitesimal few.

This is where the Italian American Foundation must take an active role in dispelling widely held, stereotyped notions of Italian American characteristics. And this can't be done by breast-beating and shrill screams and exclamations of unfairness.

Indeed, this image must be offset by laudatory, positive, affirmative programs that truly reflect what we are contributing to this nation, that truly recite the litany of positive accomplishments of our people.

Whether that criminal element is political or economic, organized or unorganized, regular or spasmodic, ethnic or not, it must be avoided like the plague by each and every one of us.

The members of this Italian American society must be like Caesar's wife—above suspicion.

Each of us has an interest here. Because of the stereotyped image, the transgressions of the few are visited upon the many.

Traits of family unity and family loyalty are projected in the media as something evil. The doctrine of "Honor Thy Father" has been wrenched out of the Ten Commandments and has been given a diabolical connotation when applied to Americans of Italian origin.

As a judge of wide experience, of 18 years on the bench and 37 years in the law, I know that the greatest single cause of juvenile or adult delinquency today is the deterioration of family discipline, family loyalty, family pride and family respect.

Deterioration of the family unit is a home grown American characteristic. It is not an Italian import. Dishonor to one's mother and father relates closely to crime in America today.

It is with greatest disservice and grossest illegitimacy that the media and modern literature continue to warp, pervert and torture into a sacrilege two of the finest contributions our people have made to the American culture—family unity and family loyalty.

It is in the context of the preservation of these cultural values that we see the very real purpose of the National Italian American Foundation, the Order Italian Sons and Daughters of America, the Sons of Italy, UNICO, and the other great organizations of Americans of Italian origin.

That purpose must be in 1978 a reaffirmation of principle, a ratification of purpose, and a determination that a nationally-directed force shall be present to enhance the efforts of all Italian Americans and Italian American organizations.

The National Italian American Foundation does not seek to replace the great fraternal orders: the Sons of Italy, the ISDA UNICO, the independent orders, the fraternities, the fraternal societies.

For each of these dynamic groups has lodge programs, newspapers, insurance, financial benefits, and strong local, regional, and national constituencies.

The Foundation seeks to act as a clearing house, to assist the existing great programs of existing organizations.

But the Foundation must do even more. As a source for research, it can amass data, compile information for the common good, and as a national organization based in the nation's Capital, it can provide a strong voice for Italian Americans.

As a nationally-based center, it can use the power of national public relations to broadcast a forceful, affirmative message to the entire nation.

As a foundation based in Washington, supported by the Italian American Congressional delegation—Congressmen and Senators, Democrats and Republicans—the Foundation can exert a political leadership more powerful than any other existing organization.

In sum, to the great Italian American organizations, the Foundation can serve as a clearing house and central agency to assist in a united front to offset forces of discrimination and the hatreds of bias and prejudice. To the Italian American who belongs to no fraternal organization, or cultural society, the Foundation can serve as a source of inspiration, and a fountainhead of positive ancestral pride.

As the bountiful recipients of both the Roman-Italian and the Italian-American traditions, we can proudly boast the special values of an honorable heritage.

Unless we Italian Americans adhere to these special values, we will be no different than faceless numbers in a census computer print out.

Our forebears sought a land where liberty was not the possession of a few. They gave me a faith and a spirit that I express in the awesome decisions I must make.

I share this spirit with Judge Learned Hand: "The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interest alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to the earth unheeded; the spirit of liberty of Him who, nearly two thousand years ago, taught

mankind that lesson it has never learned, but has never quite forgotten."

I believe that despite the tensions of this restless era, a true discovery of America is yet before us.

As it beckoned the great admiral 486 years ago, and your father and my father 75 years ago, America still beckons all of us.

It beckons us to cross the frontiers of tomorrow, armed and superbly equipped with the heritage of three thousand years of western civilization.●

TIME TO CLARIFY THE RIGHTS OF PUBLIC OFFICIALS

HON. ROBERT L. F. SIKES

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SIKES. Mr. Speaker, there is an area in public law which leaves much to be desired. Following rulings by the Supreme Court that the media could lie about public officials if it were done without provable malice, the media has had a field day in criticism of public officials, warranted or not. Sensationalism sells papers. The truth can always be skirted and lies can be hedged so that the media has few restraints on what they print or say and what the consequences may be. There should be legislation which provides at least a measure of protection against defamation of character of public officials.

Having been a member of what is known as the "fourth estate" before my election to Congress. I would be the last to advocate any abridgment of the right of the media to disagree with the point of view of any public official or to expose those in public office who do wrong. But the media has no right to abuse the public trust given them by the first amendment. There should be a balance between the right of the public to know and to comment on various activities of public officials, and the desire to encourage competent persons to enter the public arena, to offer themselves for elective office and to be permitted to perform their official duties without being subjected to slander or libel. It may be that many well-qualified people are not now seeking public office because of constant or unjust criticism. Much of the dignity and prestige associated with the holding of public office in the past is not present today. Undoubtedly there are many reasons for this; certainly Watergate and Koreagate and the like have contributed to the present situation.

Nevertheless, it appears that oftentimes unjust criticism is levied against public officials and that there is little or no recourse under present law for one unjustly accused. Therefore, I believe the question of defamation of character is a matter that should be faced by the Congress. When one is falsely accused of wrongdoing, whether it be trivial or major, it is bound to cause mental anguish, distress and at least to some extent, handicap him in the performance of his official duties. While none of us would want to infringe upon a citizen's right to freedom of expression, either orally or in writing, I believe the Congress should examine existing laws to determine whether or not a public official can be unduly maligned and his reputation destroyed by falsehoods, without any effective recourse.

It is in the public interest to have meaningful political debate, the publication of factual information and fair comment thereon; but no one has the constitutional right with impunity to make false and defamatory statements against another person whether such person be a private citizen or a public official.

The citizens of our country are entitled to have effective representation in the Congress and diligent administration in the executive and judicial branches of the Government by the most competent persons obtainable. Moreover, all citizens, regardless of their station in life or official position, are entitled to both due process of law and equal protection of the law.

I believe there is a responsibility on the part of the Congress to see that Federal officials are afforded reasonable protection against defamatory attacks and an effort should be made by the Congress to establish a definite policy without infringing upon the constitutional right to freedom of expression. We all know that newspapers, magazines, and the reporters and editors who prepare them work against deadlines and I am sure that the Congress would not desire to prevent the publication of newsworthy items. Nevertheless, it does not appear to be an imposition on the freedom of the press to require it to make a reasonable effort to determine the truth or falsity of a statement against a public official prior to publication and to hold it responsible in an action for defamation of character if the item is false and no reasonable effort was made to determine its truth or falsity.

As we know, Mr. Speaker, at the present time the media is under no compulsion to print a retraction or correction for any defamatory statement. If it elects to do so, corrections can be buried in a much less prominent position than the defamatory statements, and the reading public, if they notice of the retraction or correction at all, are unlikely to fully relate it in their minds with the earlier defamatory statement. They would more likely remember that an individual was accused or associated with an unsavory activity than they would remember that he was later exonerated.

Of course, the vast majority of elected or appointed public officials voluntarily enter public life. They do so with the knowledge that they are giving up some of their privacy and that their actions will be open to examination and fair comment by their constituency and by the media. But, I believe there is a responsibility to be fair and a responsibility to make a reasonable effort to determine whether or not a specific allegation is true or false with no right to knowingly print a false and malicious statement against a public official.

In the landmark decision in this area, New York Times against Sullivan, 1964 the Supreme Court found that in order for a public official to recover damages for libel, he must prove that the publication in question was made with "actual malice." It is conceivable that legislation is in order which would guide the courts in defining such malice as a failure, under the circumstances, to undertake reasonable effort to ascertain whether or not the communication is false.●

ILL-ADVISED AMENDMENT TO EDUCATION ACT

HON. GUNN McKAY

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

Mr. McKAY. Mr. Speaker, I received in the mail today this letter of concern from constituents deeply concerned about some ill-advised amendments to the Elementary and Secondary Education Act. I would like to share their fears with my colleagues.

DEAR ——— ———: We have just recently been made aware of the text and import of UP Amendment No. 3511 to the Senate version of E.S.E.A. (See Congressional Record, August 23, 1978, pp. 2, 14155–57) and wish to register our concern regarding the possible implications and consequences of this amendment. We feel this is an ill-advised and inadequately researched amendment to an important and necessary education bill.

We do not oppose the requirement of parental involvement in school psychological services which are mandated by this bill. However, the requirement of parental involvement is redundant because of other rights of privacy acts which require parental consent to psychological testing.

This amendment could effectively destroy most of the guidance and counseling programs now being developed in the schools of our nation. It could also impede current efforts to infuse back into public education instruction relative to ethics and values which the public has demanded in the last several years. This amendment will severely limit the effectiveness of responsible educators in all aspects of psychological education.

The proponents of this amendment have declared that most of the abuse which they are trying to combat is "in the East". Not one of the sponsors represents an eastern state. An aide in Senator Hatch's office told us on the telephone that his purpose was to stop the "mind changing, values bending programs which have led to the moral degeneration of American youth." Unfortunately, instead of allowing concerned states and local school districts to determine their own policies, Senator Hatch's amendment puts into the hands of federal government one more tool for controlling the curriculum of the local school.

Finally, this amendment totally ignores two basic humanistic principles of traditional education—in loco parentis, and the responsible school counselor, teacher, or administrator as a source of help to a child. These school personnel deal regularly with children who are in trouble at home or who live in homes where trouble exists. It hardly seems practical or sensible to be required by law to obtain parental permission to talk with a child who is the victim of abusive parents. In many states, including Utah, suspected child abuse cases must be reported to the proper authorities. If school personnel obey the state law in such circumstances,

they may well be in violation of this federal regulation. Often the reason children and adolescents are in trouble is the breakdown of the family structure and the deterioration of the parent-child relationship. To restrain the school teacher or counselor by requiring parental consent in such cases is to destroy one more source of help for an already helpless and discouraged child.

We understand that our awareness of this amendment and its implications has come too late for any chance of responsible redress. However, we want to register our protest with you and others who can help some way to modify the tragic possible effects of this amendment. We will continue our efforts to communicate with the proper governmental agencies and legislators to see that the regulations which are written pertinent to this bill will alleviate some of the negative consequences we anticipate.

We would appreciate the courtesy of consultation before any other legislation is proposed in the future. The American Personnel and Guidance Association and the National Education Association both have headquarters in Washington, D.C. which stand ready to advise on these matters. As professional counselors and educators in Utah, we are also available to extend support and input pertaining to regulations which directly affect our schools and our students.

Sincerely,

Nancy Hardy, President, Utah Personnel and Guidance Association Executive Board. Carol Sessions, President, Sidney Baskin, President-elect, Utah School Counselor Association; Barry Richards, President, Ted Greaves, President-elect, Granite District Counselor Association.

THE TEXAS DELEGATION

HON. SAM B. HALL, JR.

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. HALL. Mr. Speaker, as we bid farewell to the 95th Congress, we are marking the end of an era for our Texas delegation since eight of our Members—one-third of our membership of 24—will not be returning to the House of Representatives next Congress and their long experience and effective leadership will be missed. The combined service of these retiring Members represents almost 200 years, which is practically the length of time our country has been in existence.

History will certainly record their noble efforts and we are indebted to them for their tireless energy and devoted service. It would be an impossible task to mention all of their achievements or their mighty influence on the course our Nation has taken during this time. My life has surely been enriched by knowing and working with them here in the House of Representatives.

There are, of course, mixed emotions about their leaving us for although we wish them well in their future undertakings, we shall miss their guidance and wise counsel. Certainly their memories will linger, their influence pervade, and their goodness encompass this House as surely as justice, integrity and duty are its cornerstones.

Today we pay special tribute to these retiring members of the Texas delegation, who leave us a rich legacy of faith and pride in our Nation's future: Honorable GEORGE MAHON, dean of the House, Honorable W. R. POAGE, Honorable OLIN TEAGUE, Honorable OMAR BURLESON, Honorable JOHN YOUNG, Honorable BARBARA JORDAN, Honorable DALE MILFORD, and Honorable ROBERT KRUEGER.

Their devotion to duty will serve as a constant inspiration as we intensify our efforts in the next Congress to carry out the legislative duties in the tradition they have established for us. This way we can show our admiration and respect for these outstanding Members of Congress and their many years of diligent and meaningful service.

This House is truly a better place for their having served here, and we shall long remember their warm friendship. their desire to help their colleagues, and their fine comradeship. They leave a noble heritage to our Texas delegation, to the Members of Congress who will follow, and to the American people.●

TRIBUTE TO PAUL G. ROGERS

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ANDERSON of California. Mr. Speaker, it is a rarity—a wonderful rarity—when one man is gifted not only with intelligence, integrity, diligence, sincerity, and dedication, but with a large dose of human kindness as well. For the past 24 years, PAUL ROGERS has exhibited each of these virtues in his service as a Member of Congress from Florida's 11th District. At the close of the 95th Congress, PAUL returns to the life of a private citizen after almost a quarter of a century of making invaluable contributions to his district and, indeed, to the entire Nation.

PAUL and I have worked together for many years on the Merchant Marine and Fisheries Committee, where his tremendous capability, dedication, and willingness to give of himself was so clearly and continuously evident, and characterized his entire period of membership on that committee. This characterization is also true of his membership on other committees, and particularly his service as chairman of the House Subcommittee on Health and the Environment. In this position PAUL is responsible for the greatest legislative advances in the field of health and health care since Lister Hill. I do not need to reiterate to you his numerous and well-known achievements.

PAUL is a warm, kind, quiet man who is not known to boast or flaunt his achievements; he does not need to. He is admired and respected by his staff, his colleagues, and his constituents. He is deeply loved by his family, and he makes no secret of returning that feeling. When these aspects of his character are combined with his magnificent legislative knowledge and political ability, the result is truly unique: a man who teaches and learns, who formulates and compromises, who loves and is loved.

It has been an honor and a pleasure to work with this man. My wife, Lee, and I wish PAUL and his lovely wife Becky and daughter Laing all the best in the future. There can be no doubt that all of us here in Washington will miss him when the 96th Congress convenes.●

SPENDING CUTS AND TAX CUTS

HON. JOSEPH L. FISHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. FISHER. Mr. Speaker, this week the House voted by a substantial margin to instruct its conferees on the tax bill to adopt a Senate approved provision that would link future tax cuts to prospective restraint in the growth of Government spending. I voted with the majority on this motion as I believe that it reflects a growing sentiment in this country—Government spending should be reduced and such cuts should be tied directly to reductions in the overall tax burden.

Realistically this amendment should be regarded as a pledge of intention to hold down taxes and expenditures in such a way that the deficit can be eliminated over a period of several years. Clearly, any future Congress can enact tax and appropriation measures which will not be consistent with these intentions. Also unfavorable economic developments may necessitate changes. But the major objective is clear: If at all possible, get the budget in balance.

This measure calls for taxes to be reduced from current policy levels in each of the next 4 years if certain conditions are met: First, Government spending can grow by no more than 1 percent above the rate of inflation; second, the ratio of Government spending to the gross national product must be reduced each year. from the present 22 percent to 19 percent in fiscal year 1983; and third, the Federal budget must be balanced by 1982 for that year's tax cut to go into effect.

This interrelated tax and expenditure reduction program would begin in 1980; it would not affect the 1979 budget. It is not entirely clear exactly how this provision would go into effect. But as a general proposition, the concept strikes me as reasonable. Government spending should be restrained, this spending restraint should be linked to further tax cuts, and the combination of tax and spending policies should be aimed at moving as expeditiously as possible toward a balanced budget.

During this past year I have advocated policies consistent with this general concept. I proposed a $10 billion cut in overall Federal spending below what was recommended by the Budget Committee for the first budget resolution, and an addi-

tional reduction of $5 billion in the second budget resolution. In each case amendments I offered to achieve these reductions were defeated by vote of the House. I also voted for a number of significant cuts in specific programs.

I continue to urge the administration to seek further cuts below the $490 billion ceiling established in the second budget resolution for fiscal year 1979. At the same time tax reduction is needed—the Government should not be the prime beneficiary of inflation in the form of higher revenues. I have advocated somewhat larger tax reductions than the House has been willing to approve. The great difference between the Kemp-Roth proposal and this recent House vote is that this proposal links tax and expenditure cuts whereas Kemp-Roth specifies tax cuts only. In addition, the annual rate of tax reduction is considerably less in this amendment than in the Kemp-Roth proposal.●

SUMMARY THE BALANCE(S) OF POWER SERIES: BOOK II–IV

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, over the past months of this session of Congress, I have been privileged to insert into the CONGRESSIONAL RECORD a series of articles on important and substantive topics which fall under the heading "Balance(s) of Power." Today I conclude the series which has become known by that title over the past 3 years. I would like to take this opportunity to briefly summarize what I have learned and what I hope many others may also have gained from the series this session.

At the least, the very array of issues and the sheer number of measures in terms of which the United States-Soviet competition presents itself has provoked new thinking and debate about the trends which characterize that relationship today. At the most, the sobering realization about the adverse direction of those trends may have resulted in a new determination and dedication among still others to reverse that trend in our favor.

On December 15 of last year, I summarized book I of the series, "The Military Balance," which began on March 17, 1976 and ended on November 4, 1977, with the "straightforward fact" that the balance of military strength was shifting in the Soviet Union's favor.

Although this margin of increased Soviet strength is a major concern for military planners with profound consequences for our ability to uphold U.S. commitments in the face of increasingly possible Soviet challenges, the implications, extend far beyond the conventional, theater-nuclear, or even global nuclear battleground. As I explained last December, the greatest danger posed by the Soviet military gains is probably not in the possibility of nuclear devastation, but in the gradual but growing loss of U.S. flexibility in safeguarding its interests and of freedom of action in conducting its affairs.

The effects of the shifting military balance on the United States-Soviet balance of power overall will be understood most clearly, therefore, as one element in the strategic equation between our two nations. Accordingly, book I has been followed with three consecutively presented books in the series to describe that strategic equation more fully and to show the inter-relationships of other important factors in the United States-Soviet balance.

First is a book to examine Soviet doctrine and intentions as a whole, to make the point I have just brought out: that military advances are indeed cause for concern, especially if they are wedded to a strategy designed to outmaneuver and ultimately isolate the United States. This has been designated in book IV.

Next is a book to tabulate the regional strengths and weaknesses of national military forces worldwide, onto whose matrix we find the strategic balance between the United States and the Soviet Union superimposed. Although the forces of the superpowers confront each other directly in varying parts of the world, as was shown in book I, the reduced utility of those forces for all but the most cataclysmic conflicts has given added importance to the role of smaller forces which might engage in regional conflicts. Such conflicts not only pose the danger of spreading into global war, but they provide openings at various times and places for the military might of the United States and the Soviet Union to be felt, short of all-out war. As we have examined the regional balances in "The Global Compass," a primary concern has been the ability of forces friendly to the United States to maintain the conditions for peaceful change in troubled areas of the world, so as to deny the Soviets the opportunity to exploit regional turmoil for their own gain.

At the conclusion of book I, I alluded to the Soviets' post-World War II role as spoiler in such areas. In the perspective of book IV, however, we have seen much more method and purpose in that Soviet exploitation, so that we can now speak not simply of Soviet opportunism, but of activities worldwide, directed at limiting U.S. strategic options and maximizing their own.

Finally, book II, "The Strategic Balance," inquiries into the relative strengths and weaknesses of the two countries with respect to several key components of national power, on whose foundation each country's position of strategic competitiveness is built. These selections have provided an opportunity to show not only where the United States can most beneficially compensate for its relative decline in military strength, but also those areas where sheer U.S. complacency and inattention to the Soviet challenge may result in the loss of vital assets which have afforded us some measure of strategic advantage in the past.

A list of the selections which have comprised each of these books in the series will be presented at the conclusion of my remarks in a subsequent CONGRESSIONAL RECORD issue. I would like to take this opportunity to review some of their highlights.

In accounting for differences in the military postures of the United States and the Soviet Union, it is often pointed out that asymmetries in the uses and strengths of military forces may be due largely to the different geopolitical characteristics of the countries. Despite this possible reassurance, Colin Gray has reminded us that, regardless of whether the motivation for Soviet expansion be insecurity or quest for power, her geopolitical position is one which inherently seeks fulfillment by embracing the entire Eurasian-African land mass. It is incumbent upon the United States and other "Rimland" powers to maintain the politico-military conditions which will keep the Soviets' geographic position as "Heartland" more a source of weakness than strength. This demands a favorable regional balance worldwide, but especially in Europe and to the South, in the Indian Ocean and Persian Gulf regions, as discussed in book III of the series.

In analyzing the policies which have guided NATO over recent years, Justen Galen has shown that the relative decline in allied capabilities has been the result largely of "self-inflicted wounds." Today, however, the Warsaw Pact's advantage in terms of armor, artillery, air defense and chemical-biological weapons is overshadowed by their development of an impressive theater nuclear capability matched with a doctrine directed at nuclear preemption. Corrective policies alone will not alleviate the real danger which now exists of a surprise attack into Europe, bringing the devastation of chemical and nuclear weapons: Galen and others have suggested improved air defenses as one measure, and deployment of cruise missiles as another. Europeans in particular are anxious to have the benefits of cruise missile technology; the United States must not let arms control goals override their need.

Recent developments in Iran, raising the possibility of political change, have brought deserved attention to the strategic importance of this area which separates the Soviet Union from the oil-rich Persian Gulf states and from the Indian Ocean, across whose waters extend sea lanes increasingly important to the economic survival of Japan, the United States, and other Western nations. Although Soviet naval activities have not increased noticeably in the Indian Ocean since 1968, as shown by Richard Haas, the marked involvement of the Soviets in the African littoral states, pointing directly into the Indian Ocean, reflects their intent to project their developing naval strength into this area in the future.

At the same time, this Soviet intrusion into the Horn of Africa, as shown by Peter Vanneman and Martin James, represents a strategic salient into Africa with the potential not only for denying the United States access to ports in East Africa, but ultimately, for cutting off supplies of strate-

gic materials from sub-Saharan Africa to Europe and the United States. If unchecked, this strategy will permit the Soviet Union to exploit western dependency on imports for oil and other natural resources, contrasted with their own wealth of raw materials. A related point, in view of this high degree of Soviet economic self-sufficiency, is that the present growth in Soviet seapower—both merchant and naval capabilities—must be for the purpose of supporting global activities which are not just commercial in nature.

Another region where this expansion is generating particular concern is in the Pacific, among the Japanese and other East Asian allies. As Admiral Weisner states, the actual change in relative strengths of naval forces in the Pacific is probably not so great as the change in Asian perceptions about them. It is these perceptions which may be most important for the immediate future, not only in Asia, but among people in all regions in the world. Perceptions of Soviet power are fed by propaganda whose tripartite threat has been labeled by Kenneth Adelman as "Fear, Seduction, and Growing Soviet Strength." He shows how the Soviet Union has used its new global reach to extend its influence beyond its actual ability to intervene, creating for the United States the problem of countering concrete Soviet advances without adding credibility to their inflated image.

Ultimately, our ability to succeed in this long-term resistence to Soviet expansion rests on the more intangible aspects of national power, such as national will. These are elements of the strategic equation which have been included in the series as national character, morale, and political culture.

Colin Gray at the outset expressed some skepticism about the suitability of the American political culture for the task of confining the Soviet Russians to their heartland posture. Russian national character, on the other hand, is shown by Richard Pipes to encourage combativeness and a predisposition to exploit targets of opportunity. And more significant, perhaps, than the slow increase in political participation in the Soviet Union, attested to by Jerry Hough, is the persisting militarization of Soviet society, shown by Harriet Scott and William Odom. In sum, the Soviet population seems clearly more ready for hardships which may not be far down the road in this historic strategic contest.

There are many reasons for concern, but there are factors mitigating against undue pessimism as well. There is a consensus and political stability in this Nation whose semblance the Soviet Union can only impose from above. The problems of leadership succession discussed by Walter Connor present risks to the Soviets' ability to pursue their strategic objectives with the consistency and effectiveness evident under Brezhnev. A growth of regional-consciousness as well as nationalism among Third World nations will impose limits on the Soviets' ability to influence affairs outside their borders, including even Eastern Europe.

The selection from Population Bulletin showed trends in the Soviet Union which foretell a labor shortage in the near term with serious economic consequences, exacerbating the "Soviet leadership dilemma described in still another selection as being presented by an economy too long subordinated to the needs of defense industries. The depletion of Soviet oil and other resources, combined with the increased cost for energy sources worldwide, will soon place strategic limitations on the Soviet Union similar to ours.

These are problems which may operate to our benefit, but only if we are alert to them. As shown, Soviet technology is gaining ground, but the United States retains its edge; in combination with our superior industrial base, it provides the United States the means to carry out whatever measures are decided upon to maintain our freedom.

What this series, and these books in particular, have shown, however, is that the Soviet Union foresees its problems—perhaps better than we—and, more importantly, is taking steps now to overcome them. As Vanneman and James indicated, Soviet expansion may finally achieve not only strategic denial to the West, but strategic access as well for herself, in recognition of the critical shortages which may occur in the future. The continuation of U.S. access to needed markets and materials, of U.S. freedom of action in pursuit of its legitimate goals, and flexibility in maintaining its security and supporting the security of its allies all demand that the strategic imbalance, like the military imbalance, not be allowed to deteriorate beyond its present state. It is ultimately a matter of our national survival.●

TRIBUTE TO GEORGE SHIPLEY

HON. THOMAS P. O'NEILL, JR.

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. O'NEILL. Mr. Speaker, I am pleased to join my colleagues in honoring GEORGE SHIPLEY of Illinois and recognizing his talented contributions, over the last 20 years, to the House of Representatives.

Warm, friendly and conscientiously dedicated to the integrity of the Congress as an institution, and to the legislative process, GEORGE SHIPLEY quickly mastered the complexities of House rules and parliamentary procedure. He knew how and when to use them to carefully guide the annual legislative appropriations bill through the House and subsequent conferences with the Senate. To accomplish this important task which often contained difficult and internal political controversies, GEORGE became one of the most knowledgeable Members in the House concerning parliamentary procedures that spelled the difference between success or failure on countless funding proposals for the legislative branch.

Intelligent, competent and well informed on national issues that confront every American, GEORGE SHIPLEY has been a sensitive, hard working and dedicated Member of the House. He has earned the respect and admiration of his colleagues for his competence and ability. His generally easy going manner has helped him win many friends among his colleagues.

I am grateful for GEORGE'S support over the years, and for his contribution to democratic legislative initiatives. It has been a pleasure for me to serve with GEORGE SHIPLEY and I wish him great success and happiness in the years ahead.●

THE LIQUEFIED GAS FACILITY SAFETY ACT

HON. JOHN M. MURPHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. MURPHY of New York. Mr. Speaker, I am introducing today H.R. 14399, a bill to amend the Ports and Waterways Safety Act providing for the siting and safe operations of liquefied gas facilities.

Liquefied gas, which includes liquefied natural gas, liquefied petroleum gas, naphtha, ethylene, and other energy gas, may be a short-term source of energy for the future. But it is a type of highly flammable and explosive fuel which poses unique threats to our lives and environment.

Natural gas in its pure state is a clean, safe, and economic source of energy. Unfortunately, we have very low reserves of natural gas and, despite our phasing out of regulatory controls, gas will remain in this country a precious fuel to Americans. In other parts of the world it is regarded as of little value. In the Middle East, gas is burned off at the wellhead in the drilling for oil. Not only is that gas wasted but, in its natural form, it is impractical to ship as cargo to American consumers.

The solution to capturing and importing the gas of other countries is liquefication. This process involves freezing the natural gas into a liquid state at a temperature of about −260 degrees fahrenheit. In this supercooled state, the gas is 1/600th of its original volume, making it a practical shipping commodity. However, it is just this supercooled state which makes LG highly volatile and potentially explosive.

Today specially built tankers are carrying liquefied gas from Algeria and other countries to ports along our eastern seaboard. Once these supertankers reach our ports, we must have specially built receiving facilities to handle the liquefied gas. Then the supercooled gas can either be stored for future use or regasified into its natural state for delivery by pipeline or truck.

Presently, there are 10 LG import facilities which have either been approved

by the Federal Power Commission (FPC) or are pending before its successor, the Federal Energy Regulatory Commission (FERC). The proposed sites are located in Massachusetts, Rhode Island, New York, New Jersey, Maryland, Georgia, Louisiana, and California.

It is estimated that by 1985, LG could be some 15 percent of total U.S. gas consumption. Within the next 10 to 15 years, we could be importing as much as 3.5 trillion cubic feet of LG per year from foreign sources.

We have already seen the potential tragedies which can result from liquefied gas accidents. The 1944 East Ohio Gas Co. explosion in Cleveland left 133 people dead, 300 injured, and 10 industrial plants, 80 homes, and 200 automobiles destroyed.

The 1973 explosion of a TETCO LNG storage facility in Staten Island resulted in the death of 40 of my constituents and touched the families and friends of countless more.

My involvement in the Staten Island case has convinced me that we lack any sound, cohesive, and comprehensive program for the siting, design, construction, or operation of LG facilities.

Existing laws with respect to vessel construction standards and movement appear to be adequate. However, there is considerable uncertainty with respect to authority for the promulgation of standards and enforcement of safety regulations with respect to import terminals, storage facilities, and regasification plants.

Therefore, in H.R. 14399, I have introduced a bill designed to address the important issue of protecting the public health, safety, property, and the environment in the siting, construction, and operation of LG facilities. It establishes a proper balance between the national responsibility of the Federal Government to promulgate standards and the rights of States to make the definitive decisions about the advisability and location of LG facilities.

The Liquefied Gas Facility Safety Act amends the Ports and Waterways Safety Act of 1972 by adding title III to authorize the Secretary of Transportation to establish minimum standards for the design, construction, and safe operations of liquefied gas facilities, both onshore and offshore.

In determining these standards, the Secretary will take into consideration alternative site locations in more remote areas, the minimum distances between the proposed facility and residences, workplaces, other powerplants, and adjacent recreational areas. The meteorological, topographical, and other natural characteristics of the location must be a part of the siting regulations.

The Secretary will require that medical, law, and fire protection personnel are adequately trained to cope with the attendant risks.

The design factors for the facility will include its thermal resistance, and the construction materials to be used, such as multiple diking, insulated concrete, and vapor containment barriers. The most important feature of the design factors must be the ability of the facility to prevent and contain a discharge of liquefied gas.

The Secretary shall require that all personnel be properly trained in operating the facility, handling LG, and all necessary aspects of liquefied gas operations. He will issue standards pertaining to the handling, loading, discharge, storage and movement, including emergency situations, that involve liquefied gas. It is imperative that these standards and operational procedures be periodically inspected and maintained or the license is to be revoked.

No facility can operate without a license which can only be issued after the applicant obtains a "certificate of necessity" from the Federal Energy Commission.

To be granted a license to operate a facility, the applicant also must have evidence of financial and technical capabilities. An environmental impact statement is also required.

The bill states that licenses are issued for a 20-year period, at which time the license can be renewed for another 10 years. However, provisions are made for suspension and revocation, along with strict civil and criminal penalties for violating these standards.

In the licensing procedure, the bill provides for an antitrust review as well as a public disclosure of information regarding the LG facility. The coordination and consolidation of all federal licenses for liquefied gas facilities is encouraged within the Department of Transportation. After DOT issues the minimum Federal standards for siting and licensing, any States which have established an approved coastal management program, pursuant to the Coastal Zone Management Act of 1972, will have the primary role in determining the location of an LG facility in their affected area. Such States may also supercede Federal standards.

The Liquefied Gas Facility Safety Act can ameliorate the dangers of a major industrial catastrophe or maritime holocaust. We can reduce the risk to human life and the environment, by implementing the requirements I have established in this bill.

Despite the skill and dedication of the U.S. Coast Guard in managing LG transport, they cannot effectively carry out their existing jurisdictional authority without clear and precise standards for the siting and operation of LG facilities. Therefore, proper administration is handicapped without the requirements of this bill.

If a marine accident occurred, existing insurance provisions would not be sufficient to protect the general public from a serious financial loss. The normal doctrines of maritime law effectively reduce the extent of liability imposed upon a ship by limiting liability to the value of the ship. Present law is not designed to cover such an ultrahazardous activity as the handling and transport of liquefied gas.

Therefore, I address the problem of liability and compensation in title IV of my bill entitled the "Liquefied Gas Compensation Fund."

Title IV requires evidence of financial responsibility by all vessels, regardless of flag, entering our ports. There is strict liability for vessel and facility operators up to $200 million. However, if the accident results from a violation of the proposed standards, the liability for damages would be unlimited.

The fund is created from a fee of 2 cents per 1 million Btu of imported liquefied gas until the fund reaches $200 million. It will compensate for any property or ecological damage that is not covered by the responsible party should that party reach its limits of liability.

In the event the responsible party cannot be located (an unlikely occurrence) the fund will pay all compensation and clean-up expenses to those affected by the incident. This includes real and personal property and its replacement cost; the loss of income and impairment of earning capabilities; damage to our natural resources; and losses incurred by the Federal or State governments.

Even if the afflicted party is not the propertyowner but derives 50 percent of his income from the damaged area, such as a fisherman; he is entitled to compensation.

One uniform system for liability with the establishment of a fund for backup protection provides a solution to a complex problem. It will protect such diverse groups as the Government, transportation interests, the gas industry, insurance companies, environmentalists, and the, to date, unprotected citizen.

I have introduced H.R. 14399 at the end of this session to encourage my colleagues, executive agencies, the gas industry, and other interested groups and individuals to comment on its content. I will schedule hearings early in the 96th Congress designed to hear all viewpoints on the merits, or lack thereof, of the proposed legislation.

It is clear, however, that some type of legislation is absolutely necessary to protect our citizens from the risks of an LG holocaust. With this in mind, I have introduced the Liquefied Gas Facility Safety Act for consideration by the Congress.●

LET'S REDUCE SPENDING

HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. COLLINS of Texas. Mr. Speaker, I would like to bring your attention to data supplied to me by the Internal Revenue Service which indicate that between 1960 and 1976, the most current year for which figures are available, the average income tax per return has increased from $821 to $2,202. At the same time, though the average income per individual return increased, it did not keep pace with the tax burden, which increased by 21 percent per return. The actual figures provided to me by the Internal Revenue Service are shown in the chart below:

FEDERAL INDIVIDUAL INCOME TAX RETURNS WITH ADJUSTED GROSS INCOME-SUMMARY: 1960-76

Item	1960	1965	1970	1975	1976 (preliminary)	Percent increase (base 1960)
Total individual returns (thousands)	60,593	67,199	73,863	82,177	84,500	+39.4
Total income tax (billions)	$39.5	$49.5	$83.9	$124.8	$141.9	+$259.2
Average income per return	$6,183	$7,623	$10,288	$14,570	$15,318	+$147.0
Average income tax per return	$821	$922	$1,415	$2,025	$2,202	+$168.0

Source: U.S. Internal Revenue Service.

The chart illustrates the significant increase in income tax per return, and shows that average income has increased, though it has not kept pace with the increase in taxation. Furthermore, the increases in average income must be reduced for inflation to compute the real increase in buying power, if any.

The case for a new tax cut or proposed new tax policy must be examined in relation to the last major tax cut in 1963. Information supplied to me by the Library of Congress, the IRS, and the Department of the Treasury indicates that the Treasury in 1963 estimated that significant revenue losses would be incurred due to the tax cut between the years 1963 and 1968. In fact, actual revenue gains were realized through a "feedback" of funds into the economy that would otherwise have been removed by taxation. The Treasury estimated a tax revenue loss of $89 billion over a 5-year period from 1963 to 1968. In actuality, due to the salutory effect of the infusion of these new untaxed funds into investment and employment, the tax revenues substantially increased by $54 billion over the 5-year period where losses had previously been projected. The chart below illustrates the actual progression, and the approximately 3- to 4-year time lag from 1963 to 1966-67 where the primary revenue gains were realized.

THE CASE FOR A TAX CUT—TAX REVENUE LOSSES VERSUS REAL NET GAINS

[In billions of dollars]

	1963	1964	1965	1966	1967	1968	Total
Treasury-estimated revenue losses	−2.5	−5.2	−13.3	−20.0	−23.7	−24.4	−89
Actual revenue gains	+7.0	+6.0	+4.0	+14.0	+19.0	+4.0	+54

Source: Library of Congress.

If we may reflect on the first chart of Federal individual income tax returns, we notice that from 1960 to 1976 the total income tax in billions of dollars has increased from $39.5 to $141.9 billion. Critics would argue that this enormous increase is due to the increase in the number of total individual returns over the same period. But when I examined that figure, I found that the number of total individual returns between 1960 and 1976 increased from approximately 60.6 to 84.5 million returns for an increase of only 39 percent, versus the 259.2 percent increase in total individual income tax paid. After carefully analyzing the data provided, I was astounded by the various increases in total individual income tax, particularly the one showing the large increase in the dollar amounts of tax paid (259.2 percent), versus the much less significant increase in the total number of returns (39.4 percent) and average income (147 percent). In fact, the smaller increase in average income and the number of total individual returns serve to highlight the excessive increase in total individual income tax paid making the $102.4 billion increase even more burdensome to the American people.

The data which illustrate the significant increase in individual income taxes should be enough, in itself, to indicate that a tax cut is necessary.

The 1963 tax cut was a 20-percent total reduction for 2 years which in current dollars would equal $35-40 billion. The current so-called Kemp-Roth tax-cut bill, H.R. 8333, by comparison is a 33-percent reduction over 3 years with an estimated value of $62 billion in tax savings. In addition, our Government economists think that by 1983 the current tax cut would cost the Government a total of $154.2 billion. For a tax cut to be truly meaningful the loss in revenue to the Government has to be equally accompanied by a decrease in Government spending. If spending is not curbed the Government has to go out and borrow like everyone else, and this would fan the fires of our number one problem—inflation.

It is time for these bureaucrats in Washington to realize that they must exercise restraint with the American people's money and not mortgage away our future. As every American knows you can only borrow so much, for so long, without getting into trouble.●

THE CLEVELAND INTERCHURCH COUNCIL

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. STOKES. Mr. Speaker, as we consider H.R. 12511, the Child Nutrition Amendments of 1978, I thought it would be appropriate and timely to share with my colleagues the following editorial from the Monitor, a publication of the greater Cleveland Interchurch Council:

The hunger task force of the Interchurch Council is an organization with a concrete approach to combat the problems of hunger in Cleveland. The task force involves over 200 greater Cleveland churches, 140 businesses, and 2,000 individuals concerned about hunger. Through 12 self-governing hunger centers, individuals and families are given 3- to 5-day food supplies to meet emergency food needs, and are educated to become self-reliant.

These statistics should remind all of us that hunger is rampant, not only in the Cleveland area but throughout the United States. I hope that this front page editorial from the Monitor serves as an incentive to undecided Members to support H.R. 12511. Additionally, I trust that the information will inspire us, individually, to applaud the efforts of the Interchurch Council and similar organizations which work diligently to eliminate hunger from this society. The question that all of us must ask ourselves is one from the 25th chapter of the Book of Matthew. It is: "When you saw me hungry, did you feed me?"

Are there really hungry people in Cleveland?

Ask the poor: One-sixth of Cleveland families have incomes under $2,000 a year; 32 percent live in substandard housing. A third of all families do not have access to a car. (Cleveland Planning Commission.)

Ask the unemployed: A door-to-door survey by the Cleveland Department of Human Resources and Economic Development in 1977 documented a citywide unemployment rate of 16.2 percent. Unemployment among blacks equalled 23.1 percent; among black youths, 59.9 percent.

Ask the children: Over 82,000 children in Cuyahoga County are members of families whose sole support derives from aid to dependent children. One in every five Cleveland families depend upon the $267 per month for one adult and three children.

Ask the hunger task force: Which provides emergency food to 10,000 persons every month—the crime victim, the elderly, seeking food, friendship, hope. Ask the nursing mother and the schoolchild who depend on child nutrition programs for infant formula, school breakfasts and lunch. Ask the teacher who cannot teach when children are hungry.

Ask—"Did we feed them?"●

MINIMUM WAGE HIKES BOOST INFLATION

HON. JOHN H. ROUSSELOT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROUSSELOT. Mr. Speaker, while we are considering heavy legislation during these last few hours of the 95th Congress—and we have stayed in much

longer than some of us had been lead to believe would be necessary—it has not escaped the attention of my colleagues, the media and the public in general that this is an election year. Some of the Members of the House, and the Senate too I would suppose, have had to cancel plans to be in their districts for campaign activities because of the lateness of adjournment sine die.

We are all given cause to wonder what our constituencies think of us and how enthusiastically they might return us to Congress, or for that matter throw us out, so I was much gratified to pick up a copy of my hometown paper and read an editorial which reflected perfectly my position on the increase in the minimum wage. I have opposed legislation to increase the minimum wage, and so voted when legislation was presented before the House, because I believe that it is inflationary.

The increase in the minimum wage will cause many Americans to be denied employment because employers simply cannot meet the arbitrary wage standards set by law. But, the editorial from the San Marino Tribune, dated Thursday, October 12, says it and I hereby submit the copy to the review of my colleagues:

MINIMUM WAGE HIKES BOOST INFLATION

Next January 1, thanks to a bill passed in Congress earlier this year, the nation's inflation rate will jump by an additional one-half of one percent. While it might not seem like a great deal at first glance, this "one-half of one percent" increment actually represents a 6% inflation projection for 1979.

Just as the nation begins to recover from double digit inflation and 6% unemployment rates of the mid 1970s, another series of federally mandated minimum wage hikes threatens to boost inflation and throw unemployment gains into a tailspin.

Congress amended the Fair Labor Standards Act in 1977 to increase hourly minimum wages from $2.30 to $2.65 (California's was already $2.50) for all workers covered on January 1, 1978. The new law calls for increases to $2.90 in January 1979, to $3 in January 1980, and to $3.35 in January 1981. These four increases will cause a 45.6% rise in minimum wage levels between 1976 and 1981. By contrast, minimum wage levels increased only 43.4% during the previous 20 years.

Regardless of whether or not soaring inflation of the past can be linked to minimum wage hikes, the wage increases of the next three years will assuredly augment the inflation rate. Federal Reserve Board Chairman G. William Miller has said that the Council on Wage and Price Stability's estimated .5% inflation increment for 1979 will continue with each wage hike.

Proponents of the minimum wage concept argue that it is necessary to promote equity in wage distribution and guarantee low wage earners an acceptable standard of living. Ironically, inflation-fanning minimum wage increases totally undermine the intended purposes of minimum wage laws.

First, they reduce new employment and force many workers into underemployment status. All too often, employers faced with unmanageable cost increases either hire fewer employees, increase overtime for experienced workers or convert fulltime employees to part-timers.

Secondly, the minimum wage doesn't counteract poverty. The breadwinner in a family of four, earning the 1979 minimum wage, would gross an annual income below the federally proscribed poverty level. However, increasing the minimum wage enlarges this dilemma in two significant ways: 1) Cost-driven price increases severely blunt the potential for any real increased buying power, and 2) the opportunities for secondary breadwinners (namely wives and teenagers) to find sufficient employment are severely reduced—if not curtailed.

The impact of these developments on the economy demand a systematic, effective move in Congress to secure the postponement of additional minimum wage increases—at least until inflation has been reduced to less than 3% a year. Only when Congress begins to perceive substantial grassroots support for a move to halt these increases will it show a willingness to introduce and pass the necessary legislation to do so.●

THE NEED FOR BWCA PRODUCTION

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. VENTO. Mr. Speaker, charges have been made that this legislation is unnecessary, potentially destructive to the environment, excessively costly, and unfair, but these charges simply have no basis in fact.

First, the claim that new legislation is unnecessary, and that more study is needed ignores reality. No wilderness area in the country has been studied more than the BWCA. Five independent studies have all demonstrated the seriousness of the motorboat/canoeist conflict. The virgin forests, lakes, and wildlife of the area have been the focus of countless scientific and educational studies. The U.S. Forest Service has devoted years to preparing management alternatives and coping with legal challenges arising from the ambiguity of the special BWCA exception in the Wilderness Act. The administration is urging the Congress to settle these disputes and give the Forest Service clear management direction.

Second, the idea that a stronger wilderness policy is "potentially destructive to the environment of the BWCA" is incredible. The U.S. Forest Service has had decades of experience in managing wilderness areas with natural environments posing similar ecological challenges. New protection for the natural environment of the BWCA is desperately needed. Logging in the virgin forests is an immediate threat; mining is a serious potential danger. Several critical areas within the wilderness additions have no potential at all under present policies.

Third, most of the possible cost of this bill is an investment in good forestry on Minnesota's better forest lands outside the wilderness. It is a cooperative program on Federal, State, county, and private lands. Such a program is long overdue. It is supported by both the forest industry and the conservation groups.

Fourth, the idea that this new BWCA Wilderness program is somehow unfair, and denies legitimate access to local people, just does not square with reality. Nobody is "locked-out" of the area. This bill simply increases the area where travel will be by traditional wilderness means canoes, snowshoes, skis, or on foot. But unlike other wilderness areas, motorboat use is continued on some 23 peripheral lakes, including virtually all of the lakes where local resorts, cabin owners and fishermen are concentrated. And snowmobile users are actually allowed to use three routes for another 5 years, when such use is now banned. This compromise legislation actually reopens the area to such use for 5 years. In truth, it is the wilderness-seeking visitors who have limited opportunities. Local motorboat users have access to 2½ times as much lake area outside the BWCA as inside—just within the 3 counties that contain the BWCA,—to say nothing of Minnesota's other 10,000 lakes, or the 30,000 lakes in Minnesota, Wisconsin and Michigan—virtually all open to motors. America has only one canoe country wilderness. The time to protect it is now. Delay will only increase its problems.●

DEAN NORVAL MORRIS—NOMINEE

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. McDONALD. Mr. Speaker, there has been a good deal of criticism of the current nominee for the position of Administrator of the Law Enforcement Assistance Administration, Dean Norval Morris. Criticism has centered heavily upon his strong emphasis on Federal gun-control as a top-priority law-enforcement need. However, even those deeply concerned on this score are shocked by certain of Dean Morris' other published opinions. As an example, I cite the following letter to President Carter from Mr. John Snyder of the Citizens Committee for the Right to Keep and Bear Arms.

CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS

SEPTEMBER 27, 1978.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Your nomination of Norval R. Morris to be Administrator of the Law Enforcement Assistance Administration is both a political and moral outrage which can not be tolerated.

Not only has this man from New Zealand and Australia advocated the disarming of our American citizenry, he has also stated on page 3 of his book, *The Honest Politician's Guide To Crime Control,* that "sexual activities between consenting adults in private will not be subject to the criminal law. Adultery, fornication, illicit cohabitation, statutory rape and carnal knowledge, bigamy, incest, sodomy, bestiality, homosexuality, prostitution, pornography and obscenity: in all of these the role of the criminal law is excessive."

Frankly, it belabors the imagination to behold you close your address to the recent joint session of Congress and, through the electronic media, to the Nation and the world, with a quotation from Jesus Christ, and then turn right around and nominate an individual with these views for any public office, let alone such a high public office.

To avoid general contempt for utter hypocrisy, we honestly believe that you ought to withdraw this nomination and, in fact, we demand that you do so.

Cordially and sincerely,

JOHN M. SNYDER.●

TRIBUTE TO JOHN C. HOWELL

HON. RICHARD L. OTTINGER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. OTTINGER. Mr. Speaker, December 1 of this year will be a day of transition for the people of White Plains, for on that date, Jack Howell will retire as executive director of that city's YMCA.

When Jack arrived at this White Plains post in 1958, he brought with him 26 years of "Y" experience gained in Connecticut, Illinois, and upstate New York. Since that time, he has been responsible for a number of innovative programs as well as the successful building drive that brought the "Y" a new look and new facilities.

I join with the residents of White Plains in expressing warmest thanks to Jack for his tireless dedication and concern. We will miss him but look forward to having him remain a vital part of the community through his work with the Rotary, University Club and the church in the highlands.

At this time, I would like to share with my colleagues an article which appeared in the Reporter Dispatch about Jack and his work.

HE'LL SAY GOODBYE TO PART OF HIS LIFE

(By Paul J. Bass)

The conversation had turned to the ex-convicts who have left jail early as part of the White Plains YMCA's Parolee Early Release Program.

"Don't use that word ex-con," insisted Jack Howell. "That attaches a stigma to the man. He's served his time."

"Somebody has to give the guy a helping hand," he said of the program he started at the YMCA four years ago, using the same explanation for most of the other 100 programs he has overseen each of his 20 years as executive director.

Howell, 65, let himself become a little nostalgic as he spoke of the job from which he will retire in December. The board of directors will announce his replacement this week.

Accepting the state department's offer to run the ex-convict program was a lot easier than selling the idea to the board. But Howell felt strongly about giving the 150 parolees each year a good opportunity to start over, pursuing the idea with the same fervor with which he runs all of the Y's programs.

With the many services he has established in 20 years, he doesn't like to single out single experiences. Instead, he chooses to talk in big numbers, like increased membership from 2,172 to 14,102, and of overall budget from $176,900 to $1,272,000 during his tenure.

Or he'll glance behind his desk through the large window at the $4 million wing for which he spearheaded a fund-raising drive from 1969-1972, geting the Y the extra floor space, gymnasiums and pool it needed.

On a pad on top of his desk, he computes in longhand the impressive number of committee meetings he has had to attend, how many rooms (205) he's added to make the Y the second largest hotel in White Plains, or the number of community members who have shared in fund-raising efforts. With little prodding, he'll draw the file on the Y day camp in Greenwich, where the number of campers has grown from 100 to 500 since he assumed his post.

The YMCA has been Howell's life for 53 years. Born on June 25, 1913, in Geneva, New York, he joined the Y at 12 years old. He even went to a Y college, George Williams College in Chicago, to learn how to become a Y secretary.

Since starting on the payroll in 1930, he has worked in seven programs in three states. He used to keep a saying by former national secretary John R. Mott, which in modified form serves as his motto, on his desk in White Plains.

" 'No greater privilege can come to any man than to stand at a threshold of a person's life with character, kindling and power.' That's what the YMCA's all about," he said.

Mott's original statement dealt with only "young men," but Howell emphasizes the Y's dealing with all ages and both sexes. The program's next fund-raising drive will work toward expanding presently inadequate female sports facilities.

Howell's last day will be Dec. 1 and he plans to maintain his residence in White Plains with his wife, Ruth. His son, Dr. Loren Howell, lives in Amherst, Mass., and his daughter Susan resides in Evergreen, Colo.

In early December, said former Y president and current board member Alan Stevens, Howell will receive a grand honorary dinner.

Remarked Stevens, "Without Jack Howell, the YMCA would not be where it is today. He was a very top administrative leader."

Stevens said he may have to rent out a hall for the occasion. After a career of community involvement which included military, church, Rotary Club, and public committee work, Howell is bound to attract a lot of well-wishers.

Among them should be Howell's successor. Asked if his replacement could equal his own record, Howell said he was certain about everything but the mark of remaining director for twenty years.

"They normally don't stay there unless there's a new challenge," he said. "After all, twenty years in a Y position is a long time."●

CONDITIONING COSTS OF GAS FOR SALES

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. YOUNG of Alaska. Mr. Speaker, in the course of action on the energy legislaiton over the last 18 months, there has often been confusion over the role of the Federal Energy Regulatory Commission (FERC) with regard to conditioning costs of gas for sales.

I would like to refer to the Members a clarification of this matter by Senators STEVENS, GRAVEL, and JACKSON in the CONGRESSIONAL RECORD of September 27, 1978, pages 31839–31840. It was agreed that section 110 of the Natural Gas Policy Act of 1978 gives the FERC the authority to increase the maximum lawful price of any natural gas to compensate the seller for costs that it may incur in the gathering and processing of such natural gas. Also, it is my understanding that an interstate purchaser may acquire natural gas at the wellhead, paying the maximum lawful price at that point. and that pursuant to section 601 the FERC could not deny recovery of such amounts. It is my further understanding that in such situations, the FERC would also permit recovery of prudently incurred costs of any necessary gathering and gas treating operations performed by the interstate buyer.●

CONGRESS SPENDING DEVALUES U.S. DOLLARS

HON. JAMES M. COLLINS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. COLLINS of Texas. Mr. Speaker, have you all realized how rapidly we are increasing the amount of U.S. money in circulation? In 1960 there was $177 per capita and in the middle of 1977 there was $1,545 per capita of money in circulation. Back in 1897 there was $16 per capita, 1940—$59 per capita, and 1950—$179 per capita.

Note the decade of the 1950's which were the Eisenhower years and 10 of the soundest years in American history. They began with $179 per capita and ended with $177.47 per capita. Here were 10 years of stability where the amount of money stayed constant on a per capita basis.

But let us look at the 1970's. The United States began with $54 billion in circulation and on June 30 of 1977 there was $335 billion worth of money in circulation.

Back in the early days of our Republic the Continental Government spent more than it had so it printed more money. As it continued to print money the value of the dollar dropped, until finally it was worth only 2 cents. This is when the expression, "It isn't worth a Continental" was first heard. Harry Truman said, "The Buck Stops Here." Our money problem is only partially the problem of President Carter. He recommends many of the big spending programs. But the Members of Congress show weakness by voting for all these excessive Government spending bills.

America is now seeing the results created by a liberal Congress dedicated to redistribution of the wealth. America was made great by dedicated advocates of the Calvinist work ethic who had deep religious convictions and who were concerned with producing more and more goods for the benefit of society. America has changed from a country concentrating on productivity to a country concerned primarily with consumerism. Producing and serving is the only successful way to build a prosperous society.

What is disturbing in addition to the tremendous amount of money in circulation is the overhanging Eurodollar. Frankly, I do not understand Eurodollars but today there are between 500 billion and 650 billion Eurodollars outstanding. If the people who hold these Eurodollars ask for payment, what will happen?

The U.S. citizens were startled to see strong currencies in the world rising as the dollar suffered a severe slide during 1978. Objective foreign investors turned to the German mark, the Swiss franc, and the Japanese yen. These Governments have had politicians with courage who have not squandered their nations' resources.

As I listen to the debates on the floor of the Hall of Congress, I am cognizant of the sincerity of my colleagues in

their generous desire to have the Government provide all goods and services for every American. Why does Congress blindly refuse to face economic realities? It is Congress that spends and spends, taxes and taxes, and authorizes the printing of more and more money.

The Federal Reserve occasionally raises the discount loan rate which is the interest charged to Federal banks to borrow money. And these moves slow down the growth of the money supply. But the more common action is to increase the amount of money in circulation.

Remember, the Congress was spending $100 billion in 1961, $200 billion in 1970, and $500 billion today. Remember, it was the 1970's when the Congress so excessively overspent that the dollars in circulation have gone berserk. Compare 1970 when we had $264 per capita in circulation, to 1977 when there was $1,545 per capita in circulation.

Where will this policy of today's inefficient, liberal Congress lead America? Create initiative amendments which would permit the American people at the grassroots to introduce constitutional amendments to place ceilings on Government spending. Through the initiative the American people could also put ceilings on taxation.

Will Congress continue to spend, spend, spend? Will Congress spend the dollar to a level where it will not be worth the paper it is printed on? In 1970, there was $54 billion of money in circulation which raised to $335 billion in 1977.●

TRIBUTE TO JIMMY BURKE

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROYBAL. Mr. Speaker, it is with pleasure that I rise now to add my words of tribute to those already spoken about JIMMY BURKE, Representative of Massachusetts' 11th Congressional District. During his 20 years in Congress, JIMMY has established himself as a hard-working Congressman deeply concerned about the average American.

As chairman of the Subcommittee on Social Security of the House Ways and Means Committee, JIMMY tackled the financial difficulties of our social security system head on. His expertise in this critical area proved to be the key force in bringing about a resolution to the problem without jeopardizing benefits to our Nation's elderly.

JIMMY has repeatedly distinguished himself as a dedicated public servant and as a true friend of the American people. He may certainly take pride in his many contributions to our Nation's legislative history and the well-being of our country.

It has, indeed, been a privilege to know and work with JIMMY BURKE and I am pleased to have this opportunity to add my words of praise for a friend and colleague, whose presence in Congress will be greatly missed.●

CONGRESSIONAL CASEWORK ACT OF 1978

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, I wish to insert this summary article on the activities of "Ask Us, Inc.," a Kentucky-based information and referral center, as a concluding part to my draft legislation on the congressional casework office appearing elsewhere in today's RECORD. The article follows:

ASK US

May we help you? Is the greeting over 14,000 residents of Lexington and Fayette County, Kentucky, heard during 1976.

The help was requested of Ask Us, Inc., an award-winning Information and Referral Service in this Central Kentucky county of 203,420 (Greater Lexington Chamber of Commerce estimate). Primarily a telephone service, Ask Us helps residents find answers to such questions as: Where do I go for a cancer check-up? Can a private citizen dump trash at the city landfill? How can I get an oil painting cleaned? What city department will fill the chuckholes on my street? Where can I get my birth certificate? I need a business loan. We want to adopt a baby. My daughter is an epileptic and needs constant medication. Can we get it at a discount somewhere? I'm black and they won't rent me an apartment.

The service is free to the caller and to the service provider.

Information and Referral is a relative newcomer to the social service area, built on the tenet that people in need often require help in locating the appropriate agency or service designed to eliminate or alleviate the problem. Or, as the Ask Us slogan proclaims, Information and Referal "links people to the service."

The story of Ask Us is one of citizen initiative and participation in their community. Citizens recognized a need, researched the project, designed, funded and implemented it and finally marshalled troops of volunteers to staff the office and deliver the service.

The idea was conceived in 1973 during a search by the Suburban Woman's Club for a community improvement project that would yield long term benefits to the city of Lexington. Joining forces with the Regional Mental Health/Mental Retardation Board in 1973, the then 19-member club conducted a feasibility study on the need for an Information and Referral Service in Fayette County.

The months of investigation revealed a local network of over 400 agencies and organizations whose common denominator was the delivery of a social service program. The network developed as Lexington's population grew by 27,000 during the 1960's and was expected to swell dramatically by another 40,000 by 1980. Services were added and altered to meet the expanding needs of the growing population, but as agencies grew in number, in complexity, and in specialization, this very growth often created a barrier between the agency and the people they hoped to serve.

The organizers of Ask Us discovered that people who look for help, whether it is for a good counselor, to locate a runaway child, to find a place to live, to get food to eat, or to figure out how to join the Boy Scouts, often do so in a hit-or-miss fashion. They may ask a friend, or a neighbor or go to their minister or doctor. But people do not always know where to find the most appropriate solution or the someone who could suggest alternatives.

An individual may become lost in a bewildering maze of incidental referrals, going from agency to agency only to find they do not deal with that particular kind of problem or he does not qualify for the program. And so he stumbles on.

Ask Us sponsors observed that this needless, senseless wandering around for help further sapped much of an already troubled person's physical and mental energies.

Work progressed on setting up an Information and Referral Service. Interviews were conducted with key community and civic leaders and government officials. Different model programs around the country were studied. Data collection and classification systems were scrutinized and a library of documents on Information and Referral accumulated.

Finally, in August, 1973 after seven months of work, by-laws were adopted, the name selected, a Board of Directors chosen with widespread community representation, and other administrative details attended to. Telephone lines were installed in office space donated by the county and Ask Us officially opened in January, 1974, to begin providing residents with information about resources available in their community.

Mrs. Ann Ross, Ask Us Director and one of the organizers of the program, said recently she thought it was "significant that we have demonstrated what can be accomplished outside of government bureaucracy with a mixture of citizen volunteers, professional staff, agencies, and a mixture of public, private and voluntary resources."

"With all the resources of government agencies, they had not acted to set up this needed program."

She observed, "people don't look at Ask Us as 'just another government agency' set up to meet a crisis. The need was first documented and then a program built to respond to that need. The result has been overwhelming acceptance by the public."

The number of individuals who seek help from Ask Us continues to grow from 4,800 in 1974 to 8,600 in 1975 and over 14,000 in 1976. The staff projects close to 20,000 calls in 1977 for a 40 percent increase over 1976.

"This program can be implemented anywhere, in a rural or urban area and it can be set up in many ways," Mrs. Ross said. "But the way we have set it up and the success of Ask Us, I feel, demonstrates beyond a shadow of a doubt that this is the way an Information and Referral Center functions best."

Ask Us is organized as a free standing or independent center as opposed to being part of a multi-service organization. It is generic in nature, dispensing information about all social service resources in the community as opposed to centers that deal with specialized problems or with specific target populations. This not only makes it useful to all segments of the community but also contributes to its cost effectiveness.

Objectives of a generic consumer Information and Referral Service are several: to provide a primary telephone number for access into the human service system; decrease the amount of time an individual spends searching for a service; help identify the individual's needs; to optimize the match of human needs to services; document the magnitude of human need in the community; and finally, maintain an accurate and up-to-date inventory of human service resources available in the community.

Who uses Information and Referral? Individuals seeking help for themselves; individuals seeking help for a friend or family member; agency workers; groups seeking information, and individuals or groups needing statistical data.

Ask Us is promoted in several ways which combine to make up an active public relations campaign that is continuously in mo-

tion. Public service announcements on radio and television are used heavily and constantly updated as Ask Us strives to present its message to the public in crisp, imaginative ways. Staff members make guest appearances on local radio and television talk shows and work closely with local newspapers to keep the public informed about the service. Also, last fall a series of public forums was conducted to inform people about Ask Us and its services. These were carefully directed at several different targeted populations in Central Kentucky.

It has been the experience at Ask Us that there is a direct cause and effect relationship between an aggressive publicity campaign and the frequency of calls. Or to state it another way, the public tends to forget. Recognizing this factor of human nature, the Ask Us staff feels the program must constantly be placed before the public through various communications channels.

A significant factor from the conception of the idea for Ask Us and contributing to its success has been neutrality, neutrality of the Woman's Club and similarly, neutrality of the program they established. Members believed that for Ask Us to successfully cut across the network of agencies to meet an individual's needs as effectively as possible, it must not be considered competitive with other human service-type organizations.

To further insure an independent status within the community, Ask Us was set up to operate from a diverse funding base, drawing funds from the State's Department for Human Resources, the local Urban County Government and donations from the private sector such as from business, industry, churches and individual supporters. A federal grant from the American Revolution Bicentennial Administration in September, 1976, provided funds for a series of public forums about Information and Referral, a training manual to train volunteers and staff to work in the program and the compilation of a community resource handbook for use by consumers.

Still Mrs. Ross says "support has been a tough thing to generate from government because of sometimes imagined turf problems. And an unwillingness to admit that government agencies need citizens' help."

Important in helping to hold down staff costs has been the broad use of volunteers throughout all aspects of the program, though Mrs. Ross commented, "a well organized volunteer program must have a firm foundation which means some degree of financial support is necessary." The original proposal setting up Ask Us was based on the premise that a program of this nature could be carried out largely by volunteers, through some paid staff was recommended for continuity.

Community volunteers and student interns from nearby University of Kentucky, Transylvania College and Asbury Theological Seminary are trained as telephone interviewers, to perform on-site surveys for the purpose of collecting information on community agencies, and to assist the resource file manager in updating.

Statistics show that volunteers contributed almost 5,800 hours in 1975 or the equivalent of two and one-half paid staff members. Since the beginning of the program, it is estimated that over 28,000 volunteers hours have been given to this community project.

A recent cost analysis of Ask Us based on the first six months of 1976 revealed that the cost per call or service request was $2.49. This was determined by dividing the number of service requests (6,847 for the first six months of 1976) into the annual budget ($17,051.57 for the same period).

How does this cost compare with that of other Information and Referral Services? The Department of Health, Education and Welfare (HEW) conducted a study of 19 services throughout the country with these results: lowest cost was $2.70; median cost, $7.86; highest cost, $34.30. One third of the 19 fell in the $5.01 to $7.50 cost range. At $2.49 per request, Ask Us has a very low per request cost.

When it comes to giving callers accurate, helpful information, Information and Referral is typically thought of as a one-step or two-step process. Either information is offered in response to a question, or that information is accompanied with some additional effort aimed at actually connecting the individual with the needed service or resource.

However, Anthony Salvatore, in an article appearing in the Social and Rehabilitation Record, defines it as a sequential process made up of a number of separate activities which may all be pursued depending upon the caller's request.

Basic is the act of answering questions about services, programs and eligibility. However, the telephone interviewer may go further and provide an individual interpretation of how a particular program may be used by the caller. Another step is directing the caller to a specific agency but stopping short of making the contact on behalf of the caller. Referral is actually making an appointment for a person at an agency on a specific day. Or, as a minimum, referral involves making the client and potential service agency aware of each other and thereby laying the groundwork for their connecting with each other on a particular date.

At Ask Us, whether an individual needs simply information or referral help, telephone interviewers complete a log sheet on each call permitting Ask Us to collect several types of client information. The number of calls is tallied and the individual's problem is recorded along with the service requested and the agency or agencies cited to the caller. As each community agency in the Ask Us file has it own code or site number and each service has an individual service code number, these are also listed on the log sheet so the information can be stored in a computer. Certain demographic information on the consumer is also recorded—sex, approximate age and marital status.

This log sheet data is valuable for several purposes. For Ask Us it reveals who most uses the service and helps when publicity campaigns for reaching certain target populations are developed. For community planners it not only documents the magnitude of human need in the community but also uncovers gaps and overlaps in the social service delivery system.

When more than just basic information is given at Ask Us, telephone interviewers then do follow-up on the call at a later date. Follow-up is simply calling an individual back who received information or was referred to a community service to determine if the information given him was accurate and whether he received the help required. It provides an opportunity to help the person again if the first effort was unsuccessful or if new needs have arisen.

By using follow-up, Ask Us can monitor its own resources file: Is the information on agencies and services accurate and up-to-date? Was the referral an appropriate one? Follow-up also works to make agencies more accountable for their service.

The heart of Ask Us is a comprehensive resource inventory of over 750 public, private and voluntary organizations and the service and programs they offer. This body of information is classified by problem areas according to the Human Service Information System (HSIS) developed by the Kentucky Department for Human Resources and on which Ask Us made certain adaptations.

The file is currently on 5 x 8 index cards in a mobile card file and is computer-capable if a decision should be made in the future to switch from a manual to a computerized method of retrieval.

To collect information on new agencies and organizations, trained volunteers visit each agency and, using a standardized on-site survey booklet, gather extensive information about the agency and its services, its eligibility requirements, source of funding, etc.

This information is later processed by the resource file manager who compiles an agency card giving the correct name of the agency, pertinent information about its hours, services, eligibility requirements, location, director and fees charged, if any. This card is filed alphabetically according to agency name.

The subject file, cross-indexed with the alphabetical file, contains a card on each separate category of services provided in the community with a listing of each agency that delivers the service. If the problem is emergency food, the interviewer looks under that particular subject card and is referred to the various sites where emergency food may be obtained. After pulling each of those site cards (or alphabetical agency cards) and checking the eligibility requirements, the interviewer will suggest the agency or agencies best suited to fill the client's needs.

Using this extensive file, the telephone interviewer can provide accurate information and make appropriate referrals.

For any community wanting to establish an Information and Referral Service, a proposed model of the Ask Us Program has been drawn up which could be used by any sponsoring agency and tailored to fit a rural or urban situation. The model program includes the necessary components of an Information and Referral Service: (1) for gathering, storing, and retrieving community resource data and client data; (2) for giving information to clients as quickly and accurately as possible; (3) for operating an effective public information campaign; (4) for training professional and volunteer personnel; and (5) for developing and sustaining a coordinated funding base.

In summary, Ask Us provides general information concerning all community resources. Referral to the proper resource is provided and definite appointments are made on the consumer's request. Follow-up is carried out to determine if the information given was accurate and helpful and if the consumer received the service they required. The resource file is the key to Ask Us and is kept updated at all times.

The ultimate goal at Ask Us is to link the individual to the service and either eliminate or alleviate the problem and help improve their quality of life. (August 17, 1977.)●

TRIBUTE TO ARKANSAS CONGRESSMEN RAY THORNTON AND JIM GUY TUCKER

HON. BILL ALEXANDER

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ALEXANDER. Mr. Speaker, when the 95th Congress adjourns, Arkansas will lose half of its congressional delegation in the House. Our colleagues, RAY THORNTON and JIM GUY TUCKER, waged vigorous battles for the Democratic nomination for the U.S. Senate in our State this year. Of course, to seek another office, they had to make a diffi-

cult decision. They realized the gamble, took it, and, though they were unsuccessful, have maintained the high level of integrity and dedication that has characterized both their careers of public service to the people of Arkansas. RAY and JIM GUY, even in losing, have continued to earn the admiration and respect of Arkansans.

I think we owe them a great debt of gratitude for the manner in which they have conducted themselves while Members of this body. And so, our other colleague from Arkansas, JOHN PAUL HAMMERSCHMIDT, and I stand before you this morning to say thanks to RAY THORNTON and JIM GUY TUCKER for a job well done.

RAY THORNTON'S service to the people of Arkansas began with his election as a delegate to the Arkansas Constitutional Convention in 1969–70, whereupon he served as chairman of the Executive Branch Committee. He was elected as Arkansas' attorney general in 1970 and from that post came to the House as the Fourth Congressional District's Representative in 1973.

RAY THORNTON has been a most effective Member in the three terms he has served in the House. RAY distinguished himself during the tense Watergate hearings as a member of the Judiciary Committee and made, if I may say, one of the most eloquent statements of any we witnessed on the case to be made for the impeachment of former President Richard M. Nixon. RAY'S service on the Science and Technology Committee has been marked by his expertise in energy research issues, an expertise that has contributed to increased public awareness and congressional acceptance of expanded energy research programs.

When I was elected to the Appropriations Committee, RAY sought and obtained a seat on the Agriculture Committee. RAY has never been one to seek the headlines or to garner praise, but I can assure you that every Arkansan knows that his mark is on many pieces of legislation that have benefited the people of Arkansas.

RAY THORNTON'S presence will be missed in the House. I hope that when he returns home he will continue to serve the people of our State in other capacities. We need public servants on his caliber.

Though he is only 35 years old, JIM GUY TUCKER has already given 8 years to the public service of Arkansas' people. His first elective office was that of prosecuting attorney for the Sixth Judicial District in 1971–72. The year RAY THORNTON left the Arkansas' attorney general's office, JIM GUY convinced the people of Arkansas he should be elevated to that law enforcement post.

As attorney general, JIM GUY compiled a record of support of consumer interests. He was elected to the post office first in 1972 and again in 1974.

When Congressman Wilbur Mills elected to retire from his long and distinguished career of service to Arkansas' Second Congressional District, JIM GUY sought and won that job and a seat on the coveted House Ways and Means Committee.

Though a freshman, JIM GUY quickly established a record as an authority on social security issues. He was instrumental in guiding through the House legislation that revamped the social security system. His service on the Ways and Means Committee assured Arkansas of a continuing influence on the complex and important issues with which this committee deals. Arkansans who have developed a respect and admiration for this young public servant will join in hoping that as he returns to the State he will find ways of continuing his service to our people.

Mr. Speaker, I know my colleagues join me in paying tribute to these two outstanding Members.●

EMPLOYMENT TRAINING FOR VIETNAM VETERANS

HON. JOHN P. HAMMERSCHMIDT

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. HAMMERSCHMIDT. Mr. Speaker, I would like to express my belief that we may finally have a Government employment program with the potential to succeed in doing what every Government employment program should have as a goal: Helping people obtain meaningful jobs in the private sector.

I refer to the possibilities inherent in the marriage between CETA's HIRE II program and the Veterans' Administration on-the-job training program. The HIRE II program provides a financial incentive to private employers to bring veterans into meaningful work. The lack of just such a financial incentive has been the major reason why the Veterans' Administration on-the-job training programs have been less than successful over recent years. Following World War II, employers had this incentive built into the VA program, in addition to the stipened accorded veterans, but the incentive was later eliminated.

So what we now have, Mr. Speaker, is a CETA program that has the potential of breathing new life into a VA program that badly needs it. We have debated the need for Vietnam veterans readjustment assistance for years now, but we have continued to focus in on GI bill education needs. The college programs, in my opinion, now meet the needs of our veterans in school. A single veteran could receive as much as $14,000, tax free, in educational stipends if he used all of his GI bill, and could receive low-interest loans on top of that. What we have failed to perceive is that the veterans with readjustment problems often come from environments where college is irrelevant, and where the greatest need is for immediate, meaningful employment. This need can be aided through the on-the-job training program, and I perceive it as the duty of the Congress to strengthen that program.

Consequently, Mr. Speaker, I must express my gratification regarding the possibilities of the marriage of HIRE II and the VA on-the-job training program. I hope that in future sessions we will explore these possibilities further.●

TRIBUTE TO ARKANSAS CONGRESSMEN RAY THORNTON AND JIM GUY TUCKER

● Mr. HAMMERSCHMIDT. Mr. Speaker, during the final hours of the 95th Congress, I would like to bid a formal farewell to my good friends and colleagues RAY THORNTON and JIM GUY TUCKER who will soon conclude their congressional service. Also, I would like to thank Mr. ALEXANDER for taking this special order and giving us the opportunity to share our feelings on their departure.

RAY THORNTON, the serious, Yale-educated, attorney, and science oriented Congressman who is best known for his level headedness, hard work, and articulate speech will be sorely missed by his dear friends throughout the Halls of Congress.

In my view, his greatest accomplishments during his many years of public service emanated from his position on the House Science and Technology Committee where he earned the respect and admiration of all those who had the pleasure of working with him. It was through his work on this panel that he mastered the scientific and energy related programs, such as gasohol, that became his special interest. Moreover, it was here where he became widely known within the scientific community as an expert in the complex field of DNA research, the chemical compound that no doubt holds the key to all living organisms.

In addition, he was able to uniquely tie his keen scientific skills with his service on the House Agriculture Committee when assignments covered agricultural research and advanced technologies. In fact, he made a very difficult decision for a lawyer to leave the prestigious House Judiciary Committee to enable him to better serve his constituents more completely on the House Agriculture Committee and during his years of service on that body he proved to be quite instrumental and sympathetic to the farmers' plight.

On a personal note, I became particularly familiar with RAY THORNTON'S dedicated service and his most gentlemanly manner during our many meetings on projects of mutual interest which would benefit the State of Arkansas.

His multifaceted background will no doubt allow him to continue to contribute to the betterment of life in Arkansas. I know my colleagues and I will truly miss this man and I hope he will come back often to reminisce with old friends. I know I will miss him.

Lately, I would like to wish him much happiness upon his return to the beautiful State of Arkansas.

The Honorable JIM GUY TUCKER has also earned a distinguished and ambitious record of service. At the early age of 35 he has been in political office for nearly 8 years. His success was predicted at a very early age since at one time JIM GUY was the youngest Eagle Scout in America (age 12) and in 1972 he was named Arkansas' Jaycee "Outstanding Young Man of the Year".

He attended public school in Little Rock and went on to receive his B.A. in

government and history from Harvard and a law degree from the University of Arkansas at Fayetteville. Furthermore, JIM GUY polished his literary skills as the author of a book, entitled "Arkansas Men at War."

Based on his renowned reputation as a special prosecuting attorney, JIM GUY served two terms as Arkansas' attorney general, followed by his service as a Representative to the U.S. Congress.

As a member of the freshman class in the House in 1977, he acquired a position on the coveted House Ways and Means Committee, which was chaired by his predecessor, Wilbur Mills, and which offered him many opportunities to participate in crucial committee level votes affecting the welfare of the State of Arkansas and the Nation.

During his one term of service in Washington, JIM GUY has merited the friendship and respect of his colleagues. I hope the rest of his life with his lovely wife, Betty, will be filled with much joy and future accomplishments.●

SENIOR CITIZENS—A HELP TO THE HANDICAPPED

HON. GLADYS NOON SPELLMAN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mrs. SPELLMAN. Mr. Speaker, I wish to take this opportunity to recognize in the Congress of the United States 65 very special people, the Foster Grandparents of Prince Georges County, who give tirelessly and selflessly of their time, energy, and most importantly, their love, to area children with handicaps and special needs. It has been my exceptional privilege to share some time with these outstanding individuals over the last few years, and I can assure each and every one of you that they are well deserving of recognition. They clearly demonstrate the vital contribution which senior citizens can make in meeting critical community social service needs.

When we meet daily with interest groups vying to protect their narrow causes, it can only warm the heart to see these wonderful people giving 20 hours of their time each week to provide children with something that even the most costly programs could not give—the assurance that there is someone who loves and cares about each of them.

Mr. Speaker, I know my colleagues join in offering our warmest and most sincere congratulations to all the Foster Grandparents of Prince Georges County on being recognized for their service. The residents of my area are fortunate to have the privilege of their presence in the community. Through their commitment to this essential program, they have inspired us by their example—showing us what we can and should strive to be.

I would like to close by asking the Foster Grandparents of Prince Georges County to accept my best wishes for a future I am sure will be bright.●

QUESTIONNAIRE AND OPINION POLL

HON. MATTHEW J. RINALDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. RINALDO. Mr. Speaker, each year since I was first elected to Congress in 1972, I have conducted a questionnaire and opinion poll in the 12th Congressional District of New Jersey, which I represent.

This survey has been phenomenally successful, and each year has witnessed a greater interest on the part of constituents from all parties, economic levels, and backgrounds. This is one reason why I pay such close attention to the results of this poll; it is an effective means of gaging the opinions of constituents in all walks of life who care enough about their Government to respond to their Representative.

I have recently concluded the tabulation of the 1978 survey and would like to insert these results in the RECORD so that my colleagues may have the benefit of this questionnaire.

The survey results follow:

[In percent]

	Yes	No	Undecided
CRIME			
1. Do you believe that crime is a more serious problem now than 5 years ago?	86.4	8.8	4.6
2. Do you favor a mandatory 5-year prison sentence for anyone convicted of committing a crime with a gun?	85.8	6.8	7.3
DEFENSE			
3. Do you agree with President Carter's decision to halt production of the neutron bomb?	26.8	56.5	16.6
ECONOMY			
4. Would you favor some form of Proposition 13 in New Jersey to reduce Government spending and State taxes?	83.8	9.5	6.5
5. Would you favor reducing Federal spending even if it means a reduction in some Federal aid programs that you may use, such as mass transit, education, health and welfare	71.3	19.9	8.6
EDUCATION			
6. Do you favor establishment of a separate Cabinet-level Department of Education?	26.3	55.8	17.7
ENERGY			
7. Would you favor further development of nuclear energy to meet increased needs for electric power?	76.6	15.1	8.1
8. Do you favor gasoline rationing in order to cut the Nation's bill for oil imports?	33.6	56.5	9.7
ENVIRONMENT			
9. Antipollution controls will cost an estimated $250,000,000,000 in the next 7 years. Would you favor stretching out the timetable for cleaning up the air and water in order to fight inflation?	65.2	28.2	6.5
FOREIGN AFFAIRS			
10. Do you approve of the United States resuming trade and diplomatic relations with Cuba?	31.7	56.7	11.5
HEALTH			
11. Do you favor a national health insurance program, including protection against catastrophic illness, if it means an increase in taxes?	43.1	46.2	10.5
THE PRESIDENCY			
12. Do you think President Carter is doing a good job?	12.4	67.9	19.6
SOCIAL SECURITY			
13. Should general revenues be used to make up the shortage between social security taxes and the real cost of social security benefits?	51.7	34.7	13.5
TRANSPORTATION			
14. Should the State of New Jersey approve the completion of the 5-mile stretch of I-78 through the Watchung Reservation?	65.0	23.7	11.2
TAXATION			
15. The Kemp-Roth bill would make permanent, substantial reductions in the Federal income tax for businesses (about 6 percent) and individuals (about 30 percent). Opponents of the bill say it will mean larger deficits, a reduction in popular Government programs, and allow businesses and the wealthy to escape paying taxes. Supporters of the bill say taxes are already too high and that reducing them will help the economy and actually result in an increase in government revenues. Do you support the Kemp-Roth bill?	58.0	17.8	24.0
WELFARE			
16. Should the Federal Government retain the food stamp program?	36.9	49.0	14.0
17. Should Federal tax dollars be used to pay for abortions	27.9	62.4	9.5
18. President Carter proposed abolishing our present welfare system and replacing it with a guaranteed income approach. Most experts estimate that his proposal will cost $10 to $15,000,000,000 a year more than the current system. Which of the following do you favor?			
	(a)	(b)	(c)
(a). Retain the present system	5.7	------	------
(b). Adopt the President's proposal	------	5.8	------
(c). Reorganize the present system, but do not increase costs	------	------	88.4

UNSPENT GOVERNMENT APPROPRIATIONS

HON. ELIZABETH HOLTZMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Ms. HOLTZMAN. Mr. Speaker, as a member of the House Budget Committee, I have become extremely concerned about the growing size of the appropriations which are not spent by Federal departments and agencies. These unspent or "unobligated" balances will total almost $47 billion by the end of fiscal year 1979, an amount greater than the estimated deficit in the Federal budget.

Today I am introducing a bill with 30 cosponsors that will enable Congress to reduce these unspent balances. My bill requires the President in his budget to describe his efforts to reduce unobligated balances. Congressional committees must provide the Budget Committees with an accounting of the unobligated balances resulting from their budgetary recommendations and what they have done to reduce these balances. In connection with the first concurrent budget resolution, the House and Senate Budget Committees must also report on the unobligated balances and what steps have been taken to cut them.

These procedures should help reduce unobligated balances. The President and the congressional committees are required for the first time to focus on the problem; in addition they must propose solutions.

Unobligated balances occur throughout the Government. The Department of Defense, for example, is expected to have at least $21 billion in unobligated funds by the end of fiscal year 1979 (almost half the Federal total of unobligated balances).

These balances have been increasing each year. In 1972 they were $12 billion; in 1979 they are expected to soar to $21 billion, an increase of 75 percent.

Other Federal agencies are also guilty. By the end of fiscal year 1979, the Department of Energy is expected to have unobligated balances of more than $13 billion and the Department of Transportation more than $7 billion.

If the integrity of the budget process is not to be undermined, agencies' annual requests must be based on realistic assessments of what they can obligate in that year and they must be required to spend their appropriations in a timely manner. In addition, we must insist that these agencies and departments spend what they have previously requested before coming to the Congress for additional funds.

During the recent debate on the second concurrent resolution for fiscal year 1979, I offered an amendment that would have reduced unobligated balances by 10 percent. Although I subsequently withdrew my amendment because it would have imposed serious practical difficulties on the appropriations process, it received strong bipartisan support and represented an attractive and sensible approach to reducing waste in Federal spending.

This bill represents a further effort to cut down the massive size of unobligated balances and make our appropriations and budgetary process more responsible.●

GASHOHOL—THE WAY TO GO

HON. LEO J. RYAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. RYAN. Mr. Speaker, this Nation over the past few years has become increasingly dependent on foreign imports of petroleum for its necessary gasoline and other fuel needs.

One way to lessen this dependency and at the same time be less vulnerable to external pressures, like the 1973 Arab oil embargo, is to develop alternative sources of energy for our machines. This is a strategy that has been given some policy attention by the administration, but not with the same fervor, budget and national priority as in the case in some countries, for example, Brazil.

Apparently even a 10-percent mixture of alcohol and gasoline as is now being used on a full scale in Brazil can save millions of barrels of petroleum. In the United States, a 5-year "gasohol" program in Nebraska has received little attention, even though it has been deemed very successful by people in and out of Nebraska. There is a need for the United States to broaden its national energy policy strategy and give higher priorities to the development and use of such fuels.

I call to the attention of my colleagues an article by Harry Anderson on the subject of "gasohol," which recently appeared in the Los Angeles Times.

The article follows:

[From the Los Angeles Times, Oct. 7, 1978]

"GASOHOL"—NEW SPARK FOR OLD IDEA

(By Harry Anderson)

Henry Ford built his first Model T with an adjustable carburetor that could accept any fuel from straight gasoline to pure alcohol. Very soon, however, the adjustment was eliminated; gasoline was much cheaper and alcohol corroded the engine parts.

In 1935, at the bottom of the Depression, a plant opened in Atchison, Kans., to produce alcohol fuel for automobiles from surplus grain of hard-pressed farmers.

It went broke two years later—despite an abundant supply of cheap raw materials—because its "Agrol" blend of gasoline and alcohol found little public acceptance. The plant was then converted to produce beverage-grade alcohol for vodka, gin and other spirits.

Despite those early, unsuccessful attempts to make alcohol a viable automobile fuel, the idea has come back strongly in the energy-short 1970s. Blended alcohol-gasoline fuel—"gasohol," as it has been dubbed—is being simultaneously touted, pooh-poohed, experimented with and argued about from Nebraska to Brazil.

Its proponents claim gasohol can help reduce U.S. imports of foreign oil. Along the way, it may even solve a lot of other problems, they say, including sewage disposal in major cities and the glut of cane and beets which has depressed the sugar industry.

Others aren't so smitten. Gasohol, they contend, requires more energy to manufacture than it generates. To produce enough alcohol to run the nation's cars, industry would have to invest billions in new distilleries, they say, and today's cars would probably need at least a major carburetor adjustment to operate properly on gasohol.

Despite the attractiveness of the idea that almost anything—from cornstalks to garbage—can be converted into alcohol, the simple reality is that the cost is too high, critics claim.

Not surprisingly, much of the enthusiasm for gasohol in Congress is coming from farm-state representatives, whose constituents stand to gain from a switch to alcohol fuels "This is not just any automobile fuel," enthuses Sen. Carl T. Curtis (R-Neb.). "It is a highly efficient premium fuel which if marketed nationally, could reduce oil imports 20 percent while providing a steady market for farm surpluses."

Curtis, the American Automobile Assn. (which has endorsed gasohol experiments) and several other congressmen even sponsored a gasohol giveaway in Washington last June. About 250 government officials were given a free tank of gasohol for their cars in an attempt to drum up interest in the fuel.

The Department of Energy is spending more than $18 million this year on research and demonstration projects involving gasohol, and the Department of Agriculture has budgeted $24 million to investigate alcohol fuels—specifically the economics of converting agricultural products and wastes.

More than a dozen pieces of legislation are in the congressional hopper which would boost gasohol in one fashion or another. The most radical, offered by Sen. Frank Church (D-Idaho), would require the secretary of energy to set up a timetable for the mandatory replacement of gasoline with gasohol—from 1% in 1981 to as much as 10% of the total U.S. automobile fuel supply by 1990. None of the proposals has yet passed both houses of Congress, however.

Nebraska, which has already run a two-million-mile test of gasohol with a fleet of 45 state-owned vehicles, is pushing ahead with its own plans to boost the alternative fuel. A tax-financed committee is promoting gasohol throughout the nation, and the Nebraska Legislature has reduced the fuel tax on gasohol.

Outside the United States, Brazil has established a massive program to reduce that nation's dependence on imported oil. Between now and the mid 1980s, Brazil expects to build up to 320 new distilleries—at a cost of nearly $1.6 billion—to convert sugar cane, manioc root (tapioca) and other plants into alcohol fuel.

The advantage for Brazil would be in making use of its abundant, renewable tropical plant life to cut down on its $4 billion annual expenditure for foreign oil. Brazil has few known oil reserves.

Ever since the Otto internal combustion engine (the type still used in most cars today) was developed more than a century ago, it has been known that alcohol can be burned satisfactorily as an automobile fuel.

In fact, alcohol has been used extensively as a fuel in high-powered race cars because it has a higher octane rating (which means it burns more efficiently and hence provide more power) than gasoline. A typical 100 percent alcohol fuel has an octane rating of 120 or more, while normal unleaded fuel in the United States has a rating of around 91.

Basically, there are two types of alcohol which can be used as fuels—ethanol, which is the alcohol in beverages, and methanol or wood alcohol, which is normally used as a solvent and for other industrial purposes. Both types can be made from a wide variety of raw materials.

Methanol is frequently manufactured today from either natural gas or wood fiber. It can also be made from coal, the source

most often cited by gasohol boosters since the United States has an abundance of coal.

Ethanol, on the other hand, is most frequently made from grain, although its supporters note that it can also be made from sewage, garbage and agricultural wastes such as cornstalks and leaves.

Typically, alcohol is produced by allowing an organic raw material—sugar cane, for instance—to ferment. The substance travels through heating towers at a distiller in which excess water is removed. The clear liquid that remains is often 95% pure alcohol. The residue can be used for animal feed, fertilizer or in other products.

A key question in the debate over alcohol fuels has been whether the amount of energy needed to make alcohol grow effectively eliminates the advantage of alcohol fuel.

A lot of research is now focusing on the issue. Several oil companies have already said that until the price of gasoline rises substantially, the conversion of coal to methanol won't be economically feasible.

Conversion of grains and other agricultural products to alcohol is also the subject of much debate.

Cloud L. Cray Jr., president of Midwest Solvents Co., Inc.—the firm which took over the bankrupt Kansas "Agrol" distillery in the late 1930s—claims flatly that production of alcohol for fuel use isn't presently justifiable.

Cray says that although his company has been able to reduce its energy losses in the production of alcohol for beverages, the distilling process is still a net energy loser.

He figures that a bushel of grain contains about 448,000 British Thermal Units (BTUs) of energy. At Midwest Solvents, he says, it takes about 7 percent of that amount to process the grain and recover the by-products. (A bushel, according to Cray's figures, produces about 2.6 gallons of alcohol.)

When the energy expended in producing and harvesting the grain is figured in, at least 139,000 BTUs must be expended, to produce a gallon of grain-derived alcohol containing 90,000 BTUs, Cray says.

"Our present conclusion is that alcohol from any normal grain source and perhaps from any agriculture source is not a viable base to power automobiles as long as oil and gasoline is readily available," Cray told a gasohol seminar last year.

Cray's statistics have become the most effective ammunition used by gasohol critics, who claim all the research now going on is delaying the development of other, more promising energy sources.

Even the strongest supporters of agriculture interests concede that methanol from coal is much cheaper today than is ethanol from sugar cane or grain. The most generally accepted figures are that methanol from coal costs about 50 cents a gallon while ethanol from grain or other agricultural sources costs up to $1.30. That compares with gasoline costs of about 38 to 40 cents a gallon at the refinery.

But farm interests note that grain distilleries are much cheaper to build than are coal gasification or liquefaction plants. They also say that part of the high cost of alcohol produced from agricultural products would be offset by sale of the residue for animal feed or other purposes.

And, say the farm supporters, the main reason coal-derived alcohol is currently cheaper to produce is that the government has spent much more money on coal conversion research than on agricultural alcohol research.

"We're in a shouting match for research funds right now between the farm interests and oil-company interests," confides one congressional source. "The farm people claim the oil folks have no interest in alcohol fuel except from coal."

For its part, the oil industry—through its trade association, the American Petroleum Institute—set up an alcohol fuels task force. Although the group has been far from enthusiastic in its assessment, the task force claims that alcohol fuels may help solve the energy crunch, if the high cost of alcohol production can be reduced.

In testimony to a House subcommittee last July, task force chairman Jack Freeman concluded that alcohol-gasoline blends for automobile fuel "constitute the least desirable fuel use, poorly exploiting alcohol's inherent combustion advantages, displacing otherwise useful gasoline components, having generally negative environmental impacts and creating new problems of product safety, customer acceptance and cost."

Oil executives have argued that pure alcohol might be better suited as a fuel for turbine generators and other industrial uses.

The focus on alcohol-gasoline blends, in fact, was a compromise made early in the current debate over alcohol fuels. Most researchers agree that although pure alcohol is a more powerful fuel, major changes in today's automobiles would be needed in order to burn it.

According to researchers for General Motors Corp. the carburetors used on current cars can't vaporize alcohol fast enough to permit starting at temperatures below 45 degrees. Also, alcohol—especially methanol—is very corrosive. Used in an existing car, the fuel would quickly attack fuel system materials such as plastic, rubber and metal linings.

The lead alloy coating that lines all metal gasoline tanks would be easily corroded by alcohol, GM said.

GM, Ford Motor Co. and the other auto companies generally agree that a blend of 10 percent alcohol and 90 percent gasoline would have minimal effects on current cars, however.

"In essence," says one automotive engineer, "we're looking at an 'extender' for gasoline rather than a switch to a whole new fuel; alcohol by itself requires a complete change in car engines and fuel systems. An 'extended' gasoline doesn't."

In Nebraska's two-million-mile experiment with state vehicles last year, consumption of gasohol was about 5% less than for unleaded gasoline, state officials say, and exhaust emissions were about one-third lower for carbon monoxide.

The officials also claim that the vehicles involved suffered no unusual engine wear or carbon build-up from use of the gasohol—which was 90% gasoline-10% alcohol blend recommended by the auto industry.

Automotive executives, however, are less optimistic about the extended use of alcohol-blend fuel in existing cars.

Most drivers will notice a decrease in "driveability," according to GM engineers. Alcohol causes the car to run leaner, which may cause hesitation, stalling and hard-starting, they say.

What's more, automotive engineers claim that because alcohol is more volatile—that is, is becomes a vapor faster than gasoline—vapor locks or bubbles in a car's fuel line could be a serious problem with gasohol. To reduce the volatility, blenders of alcohol-gasoline fuels might have to remove certain elements of gasoline—and in the process all but eliminate the energy-saving advantage.

GM has said that in order to improve the driveability of cars using gasohol, drivers may have to spend $35 to $75 for a major carburetor adjustment. Basically, the fuel jets inside the carburetor would have to be enlarged to allow a larger flow of fuel and air, since it takes more alcohol (because of its lower energy content in BTUs than gasoline) to move the car the same distance.

Expert opinion is split on whether alcohol fuels will reduce tailpipe emissions which cause smog. Burning pure alcohol generally would mean a sizeable reduction in hydrocarbons, nitrogen oxides and carbon monoxide—the three components of smog.

In a blend with gasoline, those reductions are all but eliminated, however, according to most researchers.

But although alcohol produces fewer emissions of smog-producing elements, it also causes an increase in two other tailpipe pollutants which are less understood—aldehydes and unburned methanol.

In terms of fuel economy, Nebraska officials have bragged that its gasohol-powered vehicles achieved better fuel economy than similar cars powered by unleaded gasoline. Gasohol proponents frequently claim that the blended fuel should get 5 percent or better economy in a typical vehicle. However, if the vehicle's carburetor is adjusted to overcome driveability problems, the fuel economy benefit is virtually eliminated, they acknowledge.

All the criticism uncertainty and worries expressed by the doubters, however, hasn't dampened the optimism of gasohol's proponents.

More than two dozen service stations in Indiana, Illinois and Iowa began selling gasohol in small quantities this summer. Most of the fuel being sold is made from ethanol derived from coal, natural gas or wood fiber.

The Department of Agriculture hopes to begin work next year on several prototype ethanol distilleries which will use grain and other agricultural products.

Whether gasohol every really makes it as an automobile fuel in the United States depends in large measure on how high the price of gasoline goes.

As the oil industry argues with agribusiness over whose methods of producing alcohol is superior, the feasibility of large-scale use of gasohol rests on whether either industry can make a profit with the blended fuel.●

STATEMENT OF CURRENT ASSETS AND LIABILITIES WITH RECORD OF INCOME AND EXPENSES FOR THE CALENDAR YEARS ENDING DECEMBER 31, 1976, AD 1977

HON. JOHN H. ROUSSELOT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROUSSELOT. Mr. Speaker, at the close of each Congress I like to submit to the House of Representatives for the public record my personal income and expenses. The following statements for the calendar years ending December 31, 1976, and December 31, 1977, have been prepared by my accountant:

INCOME AND EXPENSE SUMMARY FOR JOHN H. ROUSSELOT

Item	December 31, 1976	December 31, 1977
Congressional salary	$44,600	$54,275
Honoraria	3,950	11,300
Interest income	1,551	1,733
Net income from commerical real estate	7,446	7,594
Adjustments to income (official travel expense, etc.)	1,304	(12,648)
State tax refunds	0	909
Adjusted gross income	58,851	63,163
Itemized deductions claimed	(26,931)	(13,281)
Less exemptions claimed	(2,250)	(2,250)
Taxable income	29,670	47,632
Federal tax paid	13,009	22,227
California tax paid	3,570	4,966

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FTC BECOMING TYRANNY

HON. JOHN M. ASHBROOK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ASHBROOK. Mr. Speaker, in these closing minutes of this 95th Congress, I believe it is appropriate to turn once more to the overriding question of the proper role of Government in the lives of 230 million Americans.

Despite clear signals from the grassroots during recent years that the American people are overwhelmingly opposed to the increasing intrusion of the Federal Government into virtually every aspect of their daily lives, there are those in Washington who have not yet received the message.

Chief among those falling into this category are the unelected bureaucrats of the executive branch, and the worst offenders among that self-anointed elite are the would-be national nannies of the Federal Trade Commission.

Mr. Speaker, though the excesses of big government are many and varied, no department or agency better epitomizes the elitist arrogance and inanity of our power-swollen Federal bureaucracy than the FTC. As George F. Will so aptly summed up in a recent column:

> The serenity of the Federal Trade Commission is hardly more secure than that of 15th century Florence, so fearful is the FTC lest some activity eligible for regulation escape regulation.

Yet, come citizen protest or grassroots revolt against over-regulated society, the unelected elitists secure in their bureaucratic sinecures at the FTC neither respond nor seem interested in any message that daunts their passion to fill the role of National Nanny.

It was precisely to put the reins of responsive representative Government on these elitists that the House this year voted to amend the Federal Trade Commission Act in order to provide a legislative veto and control over the rules and regulations issued by the FTC.

Mr. Speaker, I hardly need remind the Members of this body that we adjourn today to return to our respective States and districts to stand answerable to the people for our decisions and actions over the past 2 years. That is the essence of free, representative government. It is what distinguishes our system from totalitarian systems. Those of us in Government who owe our positions to the will of the people are going home to take the ultimate political test in a free society. The vote is the people's veto power over the decisions and policies made by those on whom they confer power.

The legislative veto amendment was conceived and supported because it applied the same principle to those in Government who, though unelected, nevertheless wield power. Just as we in Congress are subject to the veto of those who sent us here, so would the legislative veto amendment make the FTC bureaucrats subject to the veto of the legislative body from which it receives its powers.

No principle of representative government could be more logical in an age when people from both ends of the political and ideological spectrum, left and right alike, agree that excessive Government regulation constitutes the most pernicious threat to the American body politic.

Needless to say, the powers-that-be at the FTC, like insulated Government elites through the ages, vigorously object to any check by the people's representatives on their power.

The FTC elitists have taken congressional mandates to serve specific ends and stretched them to encompass all manner of human enterprise. They consider it nothing less than an affront to their bureaucratic rights when the people's representatives seek to call them to account for their decisions and policies.

But Mr. Speaker, I believe I express the sentiments and convictions of Members of the House from both sides of the aisle, regardless of political or ideological differences, when I say that in our effort to reassert the supremacy of the elected branch of Government over the unelected, Congress has just begun to fight.

What has been done in the 95th Congress to put an end to the FTC's pretensions to become America's National Nanny will be continued, with even greater intensity, during the 96th Congress, beginning next January. Of that we—and the arrogant unelected elite at the FTC—can be certain. For what legislative veto reflects is not simply congressional whim. It reflects the people's will to put curbs on the excesses of the bureaucratic over-regulators.

Consider the excesses of recent times which led to this grassroots reaction:

We have had the great nanny of the FTC presume, by regulative fiat, to move into a parental role through censorship of TV advertisements seen by children. The target of the FTC staff in this instance has been TV commercials for sugared products, which incredibly, the great nanny views as a threat to the parent-child relationship.

How can this be? Let me quote columnist James J. Kilpatrick's colorful rendition of the FTC position on TV children's advertising.

> Thus mesmerized, children become fat little monsters. Denied their morning Gooey-Wooey bar, they throw temper tantrums. They hold their breath, pop their eyes and turn purple: they scream bloody murder. They nag their mamas to the edge of insanity.

And what are we to do about this woeful state of family affairs in America? Why, rely on the Great Nanny, of course. Let the Federal bureaucracy, in the form of FTC censors move in to do the regulatory job on home TV watching which properly belongs to the parents themselves.

But is this merely a minor bureaucratic foible, a matter too easily exaggerated? I, for one, agree with columnist Kilpatrick that far from being minor, the FTC's continuing effort to assert control over TV advertising is central to the whole issue of how far government should be permitted to go in regulating the lives of the people it was created to serve.

Writes Mr. Kilpatrick, and I again quote:

> Once government becomes the one great Nanny of us all—protecting us, guiding us, loving us, scolding us, holding our hands and wiping our runny noses—once we surrender to the idiot notion that Big Brother knows best, we have abandoned the basis of a free society. The fabric rots.

But as we know, venturing into the area of parent-child relationship is only one aspect of the Great FTC Nanny's overweening compulsion to regulate our lives. The Commission seeks, literally, to extend its power to reach Americans from the cradle of TV watching, to the grave, having asked for some $219,000 to conduct rulemaking proceedings into the operation of the undertaking industry.

Yes, Mr. Speaker, regulatory power from the cradle to the grave—this is the mandate which the unelected elite of the FTC perceive themselves as having been granted by the Congress. But that is a misperception, and it remains the unfinished business of Congress, as we adjourn to deliver the message that grassroots America is at the end of its patience with the Great Nanny of overregulation.

That message was, and remains, legislative veto over the actions of the unelected bureaucracy. It is time to send the Great Nanny packing, and that should and must be among the priority orders on the agenda when the 96th Congress convenes in January 1979.●

REPORT ON THE ADMINSTRATION'S URBAN PROPOSALS

HON. S. WILLIAM GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. GREEN. Mr. Speaker, as chairman of the House Republican Research Committee's Task Force on Urban Affairs, I am pleased to share with my colleagues a report this committee recently issued on the President's urban policy. This report expresses our deep concern over the lack of a real commitment by the administration to solving our urban problems. Although the Carter urban program has been highly publicized, its actual level of implementation by the administration has not matched the rhetoric surrounding its announcement.

I hope that my colleagues will carefully consider the issues raised in this urban policy task force report and that it may be a useful guide to steps which the 96th Congress must take to meet the real and urgent needs of our urban areas.

The report follows:

CARTER'S FLOUNDERING URBAN POLICY: AN URBAN POLICY TASK FORCE REPORT—BILL GREEN, CHAIRMAN

As Congress rushes toward adjournment, the needs of the nation's urban areas and their 160 million residents continue to be a low-priority item for President Carter and his Administration. Although it has been given lip service by White House spokesmen, the urban policy legislation package continues to flounder on Capitol Hill for lack of direction and support. The long delays in sending urban legislation to the Hill have

guaranteed that no more than a handful of Carter's fifteen legislative proposals have any chance of enactment in the remaining weeks of this session. One of the most important pieces, the National Development Bank bill, has been sent back to be re-drafted because of serious flaws; most of the remainder will receive nothing more than a superficial review at best.

From the earliest stages this new "urban policy" has been victimized by those responsible for its development. In an obvious unwillingness to confront the myriad problems of our cities, the President, his Cabinet and other Presidential advisors have dragged their feet for more than a year. One need only compare the Administration's lack of progress to their initial lofty promises to judge the true priority the urban policy has received.

Although this Task Force has previously compared the fate of the national urban policy to that of the national energy policy, there is one major difference to consider. It is not the fault of Congress that more than a year was spent working on this package, that several additional months were required to draft the legislative proposals (most of which needed to be re-written), and that Executive Orders implementing policies proposed in March were not issued until August. The wheels of Congress are criticized for moving slowly, but when compared to the Administration's inaction on urban issues, Congress appears to be moving at breakneck speed.

Of the most important elements of the package, the only ones with any prospect of enactment are contained in programs previously created by Congress and scheduled for renewal. Some minor new programs have been passed by the House or Senate, but these are not expected to have any major impact on the urban situation.

The fate of the legislative proposals are no surprise. There has been no clearly defined goal set by the Administration. In fact, the whole urban package has been a "band-aid" approach. In an Op Ed piece in the New York Times, Harvard Law School professor Lance Liebman described the package as a "low-budget, something-for-everyone agglomeration of program suggestions. (It is) . . . a sad document for those who hope this Administration will be a success."

While the President's plan recommended more than 160 changes in 38 federal programs, none of the 160 changes call for eliminating any single existing federal program—a disappointment to those of us concerned with red tape and the ever growing federal bureaucracy. Further, President Carter has failed to indicate whether he intends to seek an increased center city population, stabilization of current population levels, or simply reduction of dislocations from decreases in population. It is impossible to evaluate if the President's program is adequate for the ends it seeks to achieve when those needs are not clear.

In attemping to develop a comprehensive national urban policy, it seems that the Administration has surrendered to the temptation to include more than urban areas. The degree of effectiveness of the proposals is directly related to the amount of diffusion. As this "New Partnership" has been broadened, the potential impact has been lessened. Rather than work together toward a common goal the partners are engaged in protecting their particular interests. The urban revitalization we once viewed as possible through mutual effort is now more remote. The President's approach lacks cohesiveness. The scope of his program has become so broad that it lacks the focus needed to be an effective policy.

While we realize there is a great divergence of opinion regarding the solution to our nation's urban ills, certain points are becoming painfully clear. Recent studies have shown that jobs follow people, not the opposite. Businesses locate where there is a suitable labor market. As people flee the inner cities, so do businesses, thus ensuring the total deterioration of the social and economic base. If the inner city is made attractive and livable; people will remain, new families will settle, and jobs will follow. Consequently this Task Force feels that the Federal government in partnership with local and state governments and with the private sector should concentrate its efforts on the issues of housing, employment and economic problems, education, and health services as the basic elements of an urban policy.

It is difficult for us to understand how anything as fundamental as the housing needs of our urban population could be practically ignored in this program. A year before the urban policy was announced Congress acted to expand the community Development Block Grant Program as well as several other HUD programs. But these urban-oriented actions by Congress should not be claimed after the fact as urban achievements by the Administration. To demonstrate a strong commitment to urban revitalization there should have been proposals to build on our foundation. The national urban policy announced in March continues to be noticably deficient in its attention to urban housing problems.

An attempt was made to address the difficulties of providing employment for the millions of people who are currently idle in the inner cities. Chronic unemployment is recognized as a major problem, but the effort to meet this challenge is still weakened by jurisdictional disputes in the Federal agencies and departments. Bureaucratic red tape continues to be a disincentive to greater participation from the private sector—neighborhood groups or local financial institutions. The anti-urban bias which exists in some Federal programs and the contradictory actions which result from regulation or legislation should be resolved by the recent Executive Orders, but strong support for urban impact analysis and the Interagency Coordinating Council need to be demonstrated by the President to reverse long-standing practices.

The infrastructure is in place for cities to be economically viable. With the right mix of economic incentives, job training programs and tax incentives, and with cooperation from the private and public sector, rehabilitation and recycling efforts like those in Boston, Baltimore, Cincinnati, and New York can be duplicated across the country. Obviously, much more can be done; for example, throughout the country there are many places where clusters of utility, railroad, and water facilities are lying dormant that could be modernized to create whole new economic centers.

Another issue that the urban policy fails to address is the crisis in city schools. We understand that there is a decline in the American educational system from elementary through post-secondary levels and we do not feel required to document that problem. The Carnegie Foundation for the Advancement of Teaching has said, "General education is now a disaster area." In urban areas the impact is most critical. The shock waves reach out to all areas of the community. On the personal level, the student is deceived into thinking he or she has the skills to enter the job market, but too often the education has been inadequate. Faced with an unskilled labor pool, businesses are forced to retrain personnel or relocate the business. Current incentives favor relocation. Also, competent professionals with children are hesitant to settle in areas with poor school systems. An urban package that does not recognize the inadequacies of inner city schools is not a comprehensive urban policy.

In addition to the points mentioned above there are several other issues that we feel should have been given greater emphasis, such as health and social services. But our purpose in issuing this statement is to offer constructive criticism of the Administration's proposal. Our hope is that the President will focus his efforts more directly on the "urban" nature of these problems. There is no shame in being committed to the preservation of our cities. It is something of which we are proud, a feeling we share with the people we represent. The success of the "New Partnership" depends on more than a statement of high ideals. We have seen the effort on the local level and we have pledged our continued support. We urge the President to give evidence of his commitment through additional actions aimed specifically at resolving the problems of our urban areas.●

OUR YOUTH SHOULD SERVE

HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. HARRINGTON. Mr. Speaker, the high level of unemployment we have been experiencing in recent years has had a deep social and psychological impact on the youth of our Nation. The scarcity of jobs—combined with an ever increasing specialization of job function and dependence on computer and machine—has created a situation where employment that is both meaningful and gainful seems to be a thing of the past to many now entering the job market. For those who do not go on to college, and for many who do choose profession careers, competency in a narrow area has become more of an asset than intelligence, ambition, and a desire to learn. Variability and on-the-job training are no longer financially practical for employers; it is easier to hire an already trained "specialist" to fill any vacant position.

At the same time, there is a tremendous amount of useful and meaningful work to be done in this country—work that remains undone. Services are sorely needed by the elderly, the poor children with special educational needs, mentally and physically handicapped people. The foundations of our cities need rebuilding, as do our highways, bridges, rail systems, and dams.

In an article in a recent issue of Newsweek, Johns Hopkins president, Steven Muller, proposes the creation of a voluntary youth labor force to tackle this kind of social and physical decay our country suffers from, at an affordable cost. Provided with low-cost housing and low wages, young people would be given the opportunity to be taught their choice of skills and earn financial credit toward future education; to develop a positive attitude toward their value to society through the performance of useful work; and above all, to acquire insight and strategies with which to tackle our major structural problems in the years ahead.

I insert Mr. Muller's article for my colleagues' consideration:

OUR YOUTH SHOULD SERVE

(By Steven Muller)

Too many young men and women now leave school without a well-developed sense of purpose. If they go right to work after high school, many are not properly prepared for careers. But if they enter college instead, many do not really know what to study or what to do afterward. Our society does not seem to be doing much to encourage and use the best instincts and talents of our young.

On the one hand, I see the growing problems of each year's new generation of high-school graduates. After twelve years of schooling—and television—many of them want to participate actively in society; but they face either a job with a limited future or more years in educational institutions. Many are wonderfully idealistic: they have talent and energy to offer, and they seek the meaning in their lives that comes from giving of oneself to the common good. But they feel almost rejected by a society that has too few jobs to offer them and that asks nothing of them except to avoid trouble. They want to be part of a new solution; instead society perceives them as a problem. They seek a cause; but their elders preach only self-advancement. They need experience on which to base choices; yet society seems to put a premium on the earliest possible choice, based inescapably on the least experience.

NECESSARY TASKS

On the other hand, I see an American society sadly in need of social services that we can afford less and less at prevailing costs of labor. Some tasks are necessary but constitute no career; they should be carried out, but not as anyone's lifetime occupation. Our democracy profoundly needs public spirit, but the economy of our labor system primarily encourages self-interest. The Federal government spends billions on opportunity grants for post-secondary education, but some of us wonder about money given on the basis only of need. We ask the young to volunteer for national defense, but not for the improvement of our society. As public spirit and public services decline, so does the quality of life. So I ask myself why cannot we put it all together and ask our young people to volunteer in peacetime to serve America?

I recognize that at first mention, universal national youth service may sound too much like compulsory military service or the Hitler Youth or the Komsomol. I do not believe it has to be like that at all. It need not require uniforms or camps, nor a vast new Federal bureaucracy, nor vast new public expenditures. And it should certainly not be compulsory.

A voluntary program of universal national youth service does of course require compelling incentives. Two could be provided. Guaranteed job training would be one. Substantial Federal assistance toward post-secondary education would be the other. This would mean that today's complex measures of Federal aid to students would be ended, and that there would also be no need for tuition tax credits for post-secondary education. Instead, prospective students would earn their assistance for post-secondary education by volunteering for national service, and only those who earned assistance would receive it. Present Federal expenditures for the assistance of students in post-secondary education would be converted into a simple grant program, modeled on the post-World War GI Bill of Rights.

VOLUNTEERS

But what, you say, would huge numbers of high-school graduates do as volunteers in national service? They could be interns in public agencies, local, state and national. They could staff day-care programs, neighborhood health centers, centers to counsel and work with children; help to maintain public facilities, including highways, rail beds, waterways and airports; engage in neighborhood-renewal projects, both physical and social. Some would elect military service, others the Peace Corps. Except for the latter two alternatives and others like them, they could live anywhere they pleased. They would not wear uniforms. They would be employed and supervised by people already employed locally in public-agency careers.

Volunteers would be paid only a subsistence wage, because they would receive the benefits of job training (not necessarily confined to one task) as well as assistance toward post-secondary education if they were so motivated and qualified. If cheap mass housing for some groups of volunteers were needed, supervised participants in the program could rebuild decayed dwellings in metropolitan areas.

All that might work. But perhaps an even more attractive version of universal national youth service might include private industrial and commercial enterprise as well. A private employer would volunteer to select a stated number of volunteers. He would have their labor at the universally applied subsistence wage; in return he would offer guaranteed job training as well as the exact equivalent of what the Federal government would have to pay for assistance toward post-secondary education. The inclusion of volunteer private employers would greatly amplify job-training opportunities for the youth volunteers, and would greatly lessen the costs of the program in public funds.

DIRECT BENEFITS

The direct benefits of such a universal national-youth-service program would be significant. Every young man and woman would face a meaningful role in society after high school. Everyone would receive job training, and the right to earn assistance toward post-secondary education. Those going on to post-secondary education would have their education interrupted by a constructive work experience. There is evidence that they would thereby become more highly motivated and successful students, particularly if their work experience related closely to subsequent vocational interests. Many participants might locate careers by means of their national-service assignments.

No union jobs need be lost, because skilled workers would be needed to give job training. Many public services would be performed by cheap labor, but there would be no youth army. And the intangible, indirect benefits would be the greatest of all. Young people could regard themselves as more useful and needed. They could serve this country for a two-year period as volunteers, and earn job training and/or assistance toward post-secondary education. There is more self-esteem and motivation in earned than in unearned benefits. Universal national youth service may be no panacea. But in my opinion the idea merits serious and imaginative consideration.●

A TRIBUTE TO CLAUDE AND MILDRED PEPPER BY THE DADE COUNTY SUPERINTENDENT OF SCHOOLS

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. FASCELL. Mr. Speaker, I would like to call attention, at this point, to a very moving and lovely testimony extended to CLAUDE and Mildred PEPPER by or good friend, Dr. Johnny Jones, serving as superintendent of public schools for Dade County. This beautiful, moving tribute was given as a speech on the great and gala occasion of a beautiful testimonial dinner attended by Rosalynn Carter for CLAUDE PEPPER and his lovely wife, Mildred, on September 28.

I would like to share our deep admiration for Dr. Jones, as well as our feelings of pride and thanks at his thoughtful lines, with the membership of the House of Representatives, my distinguished colleagues:

CLAUDE AND MILDRED PEPPER TESTIMONIAL

When Athens fell before the onslaught of the Spartans, some of its greatest thinkers walked amidst her ruins and dreamed and talked of a perfect government. In the peaceful groves of Academus, Plato told of the qualifications of those who should rule an ideal state. He said that among the youth of the nation, those with the greatest sense of justice, of loyalty to their country, and the greatest promise of intellect and character should be chosen to serve the high function of human-kind, that of governing one's fellows.

Twenty-three centuries later, a boy was born in a distinguished family in Dudleyville, Alabama. Congressman Claude Pepper was steeped in the atmosphere of training and learning that Plato discussed twenty-three centuries before.

The Pepper tradition is one of amazing service to our country, our state, and the Dade County community.

There is something very interesting about Mildred and Claude Pepper. Despite his eminence and his unquestioned leadership in Congress, and amidst the storms of recent years, his calm voice has sounded from the bridge, pointing out the shoals ahead and charting the path to escape them. In an age of seeming confusion, ill-considered utterances, and hasty decisions, Congressman Pepper has met great issues with Olympian calm, unawed by opposition, uninfluenced by political expedience—and alongside of him has stood Mildred Pepper steadfast in calm and storm.

So I have the distinct honor this evening to extol one of the nation's leading statesmen and his wife, Mildred—people of reasoned judgment, fearless action and unwavering devotion to their country and community's cause—Mildred and Claude Pepper—to speak more specifically of Congressman Pepper whose public service career on behalf of the people of Dade County spans several decades.

After 30 years in the United States Senate and the House of Representatives, and a record of accomplishments matched by few in Congressional history, it seems that one could talk about Claude Denson Pepper forever.

A lot also could be said about Mildred Pepper, the Congressman's indefatigable companion since their marriage in 1936. Mrs. Pepper also has given generously to both the community and the state through her involvement in programs whose sole aim has been to benefit people, and to improve the human condition.

Tonight, however, we wish to talk NOT about what Claude Pepper has done for the nation, but instead about his accomplishments on behalf of Dade County—his community.

First and foremost we must mention that, during the 1977–78 fiscal year, Congressman Pepper played a major role in channeling a substantial amount of federal dollars—over $2.2 billion, to be precise—into the South Florida economy for a variety of programs and projects in Dade County.

Were it not for these Federal dollars, local tax monies would have been needed to underwrite the projects and programs, bringing about an increase in property taxes in South Florida.

Federal monies coming into Dade County are personal and corporate income tax dollars—paid by all of us gathered here tonight. We all can be certain that the government would perhaps have spent these billions of dollars elsewhere had Congressman Pepper not been in Washington to get them back into Dade County.

Some of the vital services and projects funded by the Federal Government in Dade County include such diverse items as the school breakfast and lunch programs at our Dade County School System—the fifth largest in the Nation—low-income housing, Social Security, urban mass transportation, public works, and various programs and benefits for veterans.

It's no secret that Federal dollars help ease the cost of local government. And it is no secret, either, that Claude Pepper has proven that he can be quite successful in securing these funds for Dade County.

On the subject of minorities, the record proves overwhelmingly that Congressman Pepper always has been a stalwart for equal opportunity for all Americans. He has continuously fought to stamp out the continuing problem of "man's inhumanity to man." His own district is 41 percent Hispanic, but this presents no handicap to Congressman Pepper, even though his Spanish is restricted to just a few key phrases.

Our own junior and senior high schools in Dade County soon will start selecting students from economically disadvantaged families to take part in a unique educational program made possible by a bill introduced by Congressman Pepper and signed into law by President Carter last August. The program will increase the number of minorities who are recruited and trained for careers in medicine.

The legislation, part of the Education Amendments of 1978, will make grants to medical schools and other institutions to identify minority students with potential in medicine and the biomedical sciences.

Selected minority students will be motivated to prepare themselves in high school. They'll be provided with academic assistance in mathematics, the sciences, and English through an intensive program that gives youngsters from disadvantaged groups concrete incentives to seek medical careers in underserved areas.

Bilingual education, a survival skill in Dade County today, also ranks high on Claude Pepper's list of priorities. So important is this subject to him, that we wish to state here tonight—quite clearly and unequivocally—that it was Congressman Pepper who salvaged the bilingual education program for Dade County's public schools. He did it by blocking a recent, unfortunate effort in the House to reduce this immensely important program.

Congressman Pepper brought to the attention of his colleagues the tremendous benefits that are derived when we teach our young people to speak Spanish and the Hispanic children to learn English. We couldn't agree more with Claude Pepper when he says that the bilingual education program brings about better unity and understanding between the people of different cultural and ethnic backgrounds here in the United States and broad, with Dade County no exception.

As a result of his successful appeal, the House approved $200 million for continuation of the bilingual program, with an increase of $50 million the following year, meaning that more of Dade County's elementary school-age children will have the opportunity to study two languages in the years to come.

Crime against the elderly, with its increasing sequel of murders, beatings, and robberies of aged persons living in public housing facilities, is another major concern of Congressman Pepper as Chairman of the House Select Committee on Aging.

Still vivid in our memory is the image of Claude Pepper, flashed in all of Dade County's television screens helping police officers at the murder scene of an 81 year old Hispanic blind resident of the Claude Pepper Towers here in Dade last May. The victim's hands were tied behind his back and he was beaten to death.

Crimes like this have prompted Claude Pepper to launch a war on crime against the elderly by obtaining $12 million in Federal dollars to guarantee aged residents of public housing facilities protection and security. The funds, which will not cost one additional dollar in expenditures, will allow stepped-up security and safety measures that will impede the growing victimization of the elderly in public housing.

Our world-famous beaches are of great importance to our economy—and to Claude Pepper as well. Protecting our beaches and the valuable properties along the oceanfront is critical to the enhancement of the economy of our entire Gold Coast.

In line with this, Congressman Pepper has obtained House approval of $3.9 million for the Dade County beach erosion and hurricane protection project in fiscal 1979—that's $2.3 million more than the $1.6 million recommended by President Carter in his budget proposal.

The Dade County beach erosion and hurricane protection barrier project began to move forward in 1975 when Congressman Pepper obtained congressional approval for Bal Harbour to begin the restoration of its beach, with the Federal government reimbursing the city the $2.3 million federal share of the cost.

After this beginning, the Congress appropriated $5.5 million in fiscal 1977 and $4.5 million in fiscal 1978, the maximum amount the Army Corps of Engineers could use. Each year the Federal appropriation has enabled the work to move forward to another segment of the 10-mile restoration project from Baker's Haulover to Government Cut, south of Miami Beach.

South Florida's tremendous potential as an international banking and trade center is still alive and looking as promising as ever, thanks to Claude Pepper. If it had not been for his successful floor fight, the strong proponents of a controversial section of the International Banking Act of 1978 would have succeeded in nullifying Florida's law permitting foreign banks to establish agencies in our Sunshine State.

Just when our Florida legislature was authorizing this kind of international branch banking, the Federal government was about to come along and prohibit it, except through banks in Chicago and New York. Here again, Claude Pepper's strong stand assured Florida of the kinds of international financial connections that will promote the development of our state, and especially Dade County, as a center for international trade and investment.

As if all this were not enough, Claude Pepper also was responsible for securing two-thirds of the land where the Miami International Airport sits today and that, for the Opa-Locka airport—from the Federal government for the amount of $1. He also played a major role in the acquisition of a new Jetport that will meet all ecological criteria, as well as in the purchase of the Dodge Island Seaport.

One of the original supporters of the GI Bill of Rights, Congressman Pepper was a prime mover for the Rapid Transit System and is credited with having obtained the Hialeah extension of the system. A former high school teacher during his late teens, he has been a long-time advocate of federal funding to combat the school drop-out rate.

To us Dade Countians, Congressman Pepper always has been just a phone call away. His private number is listed in the telephone pages for everyone to see.

So much for some of the accomplishments of this most amazing man and their effect on Dade County. Unfortunately, since our mind can only go back so far, we're certain to have omitted a myriad of achievements in such a long and distinguished career.

In closing, we wish to bring back a comment once attributed to Congressman Pepper. He is reported to have told an audience that if he had listened to all of his wife's advice, he would be President of the United States today. Well, we're sure glad he didn't listen to Mrs. Pepper, because Dade County would not be what it is today without a Congressman named Claude Denton Pepper.

Claude and Mildred have lived a full life and an abundant life. Somehow or other, I think that Claude and Mildred are best described by this old Quaker proverb—some of you may know it. This old Quaker who loved human beings the way Claude and Mildred do, used to say, "I expect to pass this way but once. If there is any kindness I may show, any good thing I may do for my fellow men, let me not defer, or neglect it, for I shall not pass this way again."

In these times that try men's souls, Mildred and Claude are no summer soldiers nor sunshine patriots who shirk public duty; here are two people with the courage to stand up for that which is right, for that which is just—two people who have the intestinal fortitude to stand up and be counted on the contentious issues of the day; two people who have a genius—and this I stress—for espousing with powerful force and clarity the aims, the ideals, and the needs of all of America's citizens.

As stated by Buliver, it is not by the gray of the hair that one knows the age of the heart, nor do we count a man's years until he has nothing else to count.

To me, Claude and Mildred have always been great people. They have known almost everybody in the United States and they all know them. Both Mildred and Claude have been too busy to grow old, doing fine things for their fellow human beings to improve the human condition.●

PERSONAL EXPLANATION

HON. JOSEPH D. EARLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. EARLY. Mr. Speaker, last evening a motion to recommit H.R. 12370, health service amendments, with instructions failed by a margin of nearly two to one. This motion would have instructed the House Committee on Interstate and Foreign Commerce to report the bill back with the necessary language prohibiting the use of title X moneys to support any family planning program which directly or indirectly provides abortion, abortion counseling or abortion referral services.

Congress never intended that title X funds be used for abortions or any related services. Yet, the intent of Congress has been breached by the Health Services Administration's erroneous interpretation of the Public Health Service Act.

For the record, it is my intention to state clearly and emphatically that I have opposed and continue to oppose the

use of title X moneys for abortions or related services. Family planning and abortion services are two distinct issues and should remain so. This important distinction, however, has been blurred by a bureaucratic misconception. It was my intention to vote yea last evening on the motion to recommit with instructions to achieve the necessary distinction between the issues of family planning and abortion counseling.●

A TRIBUTE TO DEPARTING INTERNATIONAL RELATIONS COMMITTEE MEMBERS

HON. CLEMENT J. ZABLOCKI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ZABLOCKI. Mr. Speaker, on October 4 the Committee on International Relations held a special reception for five distinguished Members who are leaving congressional service and will not be with us next year. They are Hon. ROBERT N. C. NIX of Pennsylvania, Hon. DONALD M. FRASER, of Minnesota, Hon. MICHAEL HARRINGTON, of Massachusetts, Hon. CHARLES W. WHALEN, JR., of Ohio, and Hon. SHIRLEY N. PETTIS, of California.

The Speaker of the House of Representatives, Hon. THOMAS P. O'NEILL, JR., led the tributes to our departing Members on this memorable occasion. His gracious and generous remarks will long be remembered and appreciated.

The committee unanimously adopted resolutions of esteem, commendation, and good wishes for our colleagues which reflect the heartfelt sentiments of us all. It is my pleasure to present the texts of the resolutions which follow:

Whereas the Honorable Robert N. C. Nix has served on the Committee on International Relations with honor and distinction for seventeen years;

Whereas he has ably and conscientiously chaired the Subcommittee on International Economic Policy for four years, and the Subcommittee on Asia and Pacific Affairs for two years;

Whereas he has served for fifteen years as a member of the House of Representatives Delegation to the Mexico-United States Interparliamentary Group—and for thirteen years as Chairman of that delegation;

Whereas he has faithfully and honorably represented the people of the second district of Pennsylvania since May 20, 1958; and

Whereas he is recognized and respected by his colleagues as a man of integrity, responsibility, loyalty, and quiet dignity, whose long and impressive record of public service, covering more than three decades, is by no means limited to his distinguished career on the Committee on International Relations; Now, therefore, be it

Resolved by the Committee on International Relations, That the Honorable Robert N. C. Nix be commended and congratulated for his service on the Committee, in the Congress as a whole, and to the American people; and be it further Resolved, That his colleagues on the Committee wish him and his family all the best in their future endeavors.

HON. DONALD M. FRASER

Whereas the Honorable Donald M. Fraser has served on the Committee on International Relations with honor and distinction for fifteen years;

Whereas he has ably and conscientiously chaired the Subcommittee on International Organizations for eight years;

Whereas he has been and continues to be in the forefront of the effort to promote the observance of basic human rights around the world;

Whereas he has tirelessly championed the goals and the ideals of the United Nations Charter during his years in the Congress and on the Committee; and

Whereas he is recognized and respected by his colleagues as a man of conscience, principle, and idealism; Now, therefore be it

Resolved by the Committee on International Relations, That the Honorable Donald M. Fraser be commended and congratulated for his service on the Committee, in the Congress as a whole, and to the American people; and be it further *Resolved*, That his colleagues on the Committee wish him, his wife Arvonne, and his family all the best in their future endeavors.

HON. MICHAEL J. HARRINGTON

Whereas the Honorable Michael J. Harrington has served on the Committee on International Relations with distinction for six years;

Whereas he has conscientiously served as the first chairman of the Subcommittee on International Development;

Whereas he made foreign policy the focal point in his campaign for Congress and has consistently endeavored to bring the high American ideals to the conduct of American foreign policy;

Whereas he has been a leader in reasserting the right of Congress to take an active role in directing our Nation's foreign policy; and

Whereas he is recognized by his colleagues as a man of conscience, principle, and idealism; Now, therefore be it

Resolved by the Committee on International Relations, That the Honorable Michael J. Harrington be commended and congratulated for his service on the Committee, in the Congress as a whole, and to the American people; and be it further

Resolved, That his colleagues on the Committee wish him, his wife Dorothy, and his family all the best in their future endeavors.

HON. CHARLES W. WHALEN

Whereas the Honorable Charles W. Whalen, Jr. has served on the Committee on International Relations with honor and distinction for seven years;

Whereas he has ably and conscientiously served as the ranking minority member of the Subcommittees on Africa and on International Economic Policy and Trade;

Whereas he is recognized and respected by his colleagues for his expertise in the field of international economics and in the complex problems on the Continent of Africa; and

Whereas his voluntary retirement from the House of Representatives is deeply regretted by his Colleagues on the Committee, who appreciate his outstanding service in working for a bipartisan foreign policy; Now, therefore be it

Resolved by the Committee on International Relations, That the Honorable Charles W. Whalen, Jr., be commended and congratulated for his service on the Committee and in the Congress as a whole, and to the American people; and be it further

Resolved, That his colleagues on the Committee wish him, his wife Barbara, and his family all the best in their future endeavors.

HON. SHIRLEY N. PETTIS

Whereas the Honorable Shirley N. Pettis has performed with ability and distinction on the Committee on International Relations during her service in the Congress of the United States;

Whereas during her service on the Committee, she has contributed particularly as a Member of the Subcommittee on Europe and the Middle East to the furtherance of United States policy in those areas;

Whereas she has richly earned the respect of her colleagues on the Committee and of the entire Congress for her conscientiousness and courage in dealing with the many difficult issues which face us, and has been commended by the President of the United States; Now therefore be it

Resolved, That her colleagues on the Committee wish her and her family all the best in the future.●

THE NEED FOR FOREIGN LANGUAGE AND AREA STUDIES

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. PANETTA. Mr. Speaker, as a newly appointed member of the President's Commission on Foreign Language and International Studies—scheduled to begin its work later this month—I would like to call to my colleagues' attention a column which appeared in the Los Angeles Times and an editorial published in Change magazine. The former is entitled, "Foreign Language Studies Basic for World Communication," and the latter is called, "The Future Forsaken."

Both these pieces deal with the disturbing decline in foreign language and international studies' programs in America's schools. Both articles decry this trend and urge a heightened appreciation in this country for the need to learn more about the languages and peoples of the world. With only one high school graduate in 20 having studied a foreign language for 2 years or more, it is no wonder American efforts to boost exports and to reduce its balance-of-payments deficits have to date met with only limited success. Our business representatives abroad simply are no match for their more aggressive and linguistically competent counterparts, especially those from Germany and Japan.

Without resorting to limp phrases about global interdependence, I would simply admonish my colleagues to pay close attention to the message of these two articles: That America must learn about the cultures and tongues of other nations if we hope to retain a position of prominence in world affairs.

I look forward to working on the Commission and hope that the fruits of our labors will be truly beneficial. I further hope that the Congress, in its turn, will recognize the need for renewed efforts at the Federal level to turn the tide away from cultural isolationism based on ignorance and toward a cultural sensitivity based on a greater awareness of the world in which we live.

The articles follow:

FOREIGN LANGUAGE STUDIES BASIC FOR WORLDWIDE COMMUNICATIONS

(By S. F. Starr)

After a decade of well-funded faddism, America's schools are rediscovering the basics. Thirty-four states have introduced "competency tests" in the three R's. Universities are reintroducing core curricula. At last, we

are told, the schools are responding to America's real educational needs. But are they?

America is in hock to the OPEC states. Our balance-of-payments deficit has reached a staggering level. Productivity and innovation are declining, even as Germany and Japan forge ahead in those areas. No longer can Americans assume that their products—or even their currency—will be welcomed abroad.

How has American education addressed such pressing national concerns? By adopting a Fortress America attitude. As our competitive advantage shrinks on practically every front, schools have abandoned the teaching of foreign languages. As our national well-being becomes increasingly linked with that of other nations, schools neglect international studies.

The three Rs are basic. But the three Rs are not enough. Without serious study of foreign languages and of the peoples who speak them, the three Rs will only reinforce our provincialism as the autarky of fools.

Other nations understand this better than we. Much is written about the Soviet Union's growing military budget. We would do well to pay attention also to the Soviet's impressive effort to study the world's major languages and cultures. There are more teachers of English in the USSR than there are students of Russian here. Soviet schools offer rigorous courses in dozens of other languages as well. The Soviet Union's interpreters are famous for their accuracy and professionalism. Ours are not. Its businessmen and negotiators are increasingly competent in whatever languages are necessary to get the job done. Too often, ours are not.

The United States is the only major industrialized country that does not require its children to study at least one foreign language from an early age. Fewer than one in 20 of last June's high school graduates have studied any foreign language for more than two years.

Can anything be done about this in America? President Carter hopes so. Encouraged by a group of farsighted congressmen and by Ernest Boyer, U.S. commissioner of education, he is establishing a Presidential Commission on Foreign Language and International Studies. Members include businessmen, union officials and members of Congress, as well as educators. The commission is charged with recommending programs to improve America's woefully deficient knowledge of the other four billion people on earth.

Will the President's new commission be able to move beyond high-minded principles to action? It won't be easy. For one thing, too few of our teachers are competent to provide high-quality training in foreign languages and international studies. Those who can are concentrated not in the high schools, where they are most needed, but on college and university campuses. Studies have repeatedly shown that by far the best time for a student to learn a foreign language is in the years before college. Americans fail at languages because their schools start teaching them too late.

Before we can teach the students, we must teach the teachers. But who will do this? Curricula at most teachers' colleges read like manuals for isolationism. They ignore the science and art of language teaching. So does the National Institute of Education, which spends 90 million tax dollars each year on more fashionable and politically rewarding issues.

Fortunately, all is not gloom. Several communities are already exploring the possibility of establishing "International High Schools," magnet schools that will concentrate on languages and international studies just as special schools now concentrate on science or the arts. Other efforts are directed toward introducing an international dimension into American education at all levels and in all disciplines.

Meanwhile, what is happening at more advanced levels? A few brave university professors have suggested that language requirements may not be evil after all—and they are working to create programs that will generate real mastery rather than frustration. Others are carrying out the advanced research on international affairs that the country so desperately needs. True, funding for such studies is still woefully inadequate. Happily, though, the costs are low, especially when compared to the price tag on a single new jet fighter or any Corps of Engineers boondoggle.

Foreign languages and international studies are not easy. Unlike most fad courses, they demand hard, sustained work. And they require dedicated teachers. But the rewards are great. For the individual, they open up vast new horizons. They provide skills that are applicable in hundreds of professions. For the country as a whole, they create that reservoir of expertise without which the United States can neither protect its interests nor discharge its responsibilities abroad.

One thing is certain, foreign languages and international studies are no longer a luxury. To understand the world in which we live and to be able to communicate with other peoples, they are as basic as ABC.

EDITORIAL—THE FUTURE FORSAKEN

The future shape of the human race is not likely to be one which the current school and college generation will be able to recognize when its time comes at the helm. One of the tragedies for American schooling—and thus for the nation—is the abominable lack of student preparation for a world in which an adequate global understanding by all citizens may be the only road toward saving the world as we now know it.

While no hard evidence has yet been assembled on this point, we have sufficient glimpses into the appalling world ignorance of college students, which in less urgent circumstances could be considered quaint though not tragic. But it is tragic now. Even college seniors have generally no idea that the world has fought over 100 civil and international wars since The War ended in 1945, or that world expenditures for arms now exceed $400 billion annually. Comparatively few college graduates know that over half of the world's population has a per capita income of $150 a year, or that the poverty-ridden Third World is multiplying in population at a far greater rate than the better-off nations.

America's young thus face a set of new national and international circumstances about which they have only the faintest of notions. They are, globally speaking, blind, deaf, and dumb; and thus handicapped, they will soon determine the future directions of this nation.

This country has developed mass communications, and universal education to a point unprecedented in human affairs. We are, in many ways, the most informed nation of citizens, and yet we continue to live in a fool's paradise in believing that this is still the American Century, and that it is here to stay.

A Gallup poll taken last year showed that 50 percent of all Americans did not know that the United States must import any petroleum at all. Less than 10 percent knew that we were importing one half of our energy needs. In another survey, Gallup found that only one third of all Americans could name a single member agency or institution of the United Nations. Sixty-six percent of Americans admitted to having little or no knowledge about the Panama Canal negotiations. A national assessment of the world knowledge of high school seniors showed that 40 percent thought that Israel was an Arab nation, and only somewhat fewer thought that Golda Meier was president of Egypt.

Our national tribute to the New Parochialism can be confirmed everywhere. In New York, one of the country's most advanced states educationally, less than 15 percent of all history and social science courses in the secondary schools are devoted to covering three fourths of the world's population and two thirds of the area that constitutes the non-West. And no wonder: Only a bare 5 percent of all of the nation's teachers have had any exposure whatever to international studies and training.

Our colleges hardly do better. According to the American Council on Education, only 3 percent of all undergraduate college students—that is, less than 1 percent of the entire college-age group in this country—are enrolled in any studies dealing with international affairs or foreign peoples and cultures. College enrollments in foreign languages continue to drop to the point of national embarrassment. Ten years ago, the percentage of undergraduates enrolled in degree-credit courses of modern languages stood at 15.5 percent. Today, it stands at 8.9 percent. Language requirements for college admissions have been abandoned by all but 10 percent of our 3,200 academic institutions. In a recent UNESCO education study of 30,000 ten- and fourteen-year-olds in nine countries, American students ranked next to the bottom in their comprehension of foreign cultures.

Such a gross lack of preparedness for this interdependent world is not only to be blamed on educators but on the inattention to these issues of citizens generally. At a time when our relations with China are likely to become more demanding and require greater ability and understanding, our major China study centers have declined in support and quality. The 1966 International Education Act remains unfunded 12 years after its enactment, and National Defense Education Act Title VI Fellowships have dropped to an all-time low from 2,557 in 1967 to 800 last year. Certain provisions of this same law, in fact, received no funding from Congress in the 1978 federal budget. Federal funding for foreign area research has declined 58 percent in constant dollars in the past decade.

In the private and voluntary sectors, matters are hardly better: The Ford Foundation, which invested $242 million in international programs in the sixties, projects less than $4 million for that purpose this year. Total international giving by all private foundations last year came to $94.6 million, or 4.5 percent of all foundation grants. Corporate philanthropy devotes less than 2 percent of its educational grants to this purpose. It all confirms a new era of Babbittry.

Our widespread indifference to the essentiality of global understanding is quite removed from the new realities. Even the most ardent isolationist would agree that there remain few domestic political decisions which do not portend important international consequences. The opposite holds true as well. Whatever one's ideologies about global issues, the facts remain: One out of every three acres of American farmland produces for sales abroad, and $1 out of every $3 of American profits derives from our international activities, exports, and foreign investments.

Many years ago, UN Secretary General U Thant put the urgent necessity for global comprehension this way: "The inevitability of the development of the first global civilization," he said, "and the necessity for its conscious, directed growth, have not yet been grasped or sufficiently appreciated to

provide the motive power for the great advances which mankind must take in the very near future or perish—if not with the 'bang' of a nuclear holocaust then with the 'whimper' of a species and civilization which ran out of air, water, resources and food."

Since U Thant issued that warning, the world has vastly accelerated its rate of change. The chances for global economic, environmental, and military disasters have multiplied exponentially. But American education, and Americans generally, have turned increasingly inward, understanding less and less the new circumstances of their world.

How to reverse this awesome incongruence between educational shortsightedness and accelerating world change should receive the study and action of the very best people in and out of the academy. The current concern over "back-to-basics" carries its own twists of irony, of course, since not even its most prominent advocates consider a minimal understanding of our nation-world more than a luxury, to be tended to once the three R's are mastered. Both, of course, require our urgent attention, and both now form a basic requisite to citizen survival.

Academic initiatives, however, are not likely to be brought to bear on this matter with a resolve sufficient to go against the national grain. Nor can the colleges and universities look to federal leadership with much optimism. If the Carter administration's 15-month dalliance in launching a modest short-term commission on foreign languages is any indication, that wait is likely to be a long one. It is difficult to see how Mr. Carter can have his imposing triumph at Camp David on the Israeli-Egyptian peace treaty and not connect it with the understanding that this nation is no longer an island unto itself. Whatever one might hope for from Washington, there have been other times in recent history when our leading academic institutions have given farsighted national service, especially in the sphere of science and technology. Do we need the shock of yet another Sputnik to jolt us out of our provincialism and produce that brilliant leadership again?

One cannot be too optimistic. No single world-minded academic institution, no matter how affluent or prestigious, is likely to successfully change the character of its educational experience without also risking a large exodus of its students. Boldness should not be confused with institutional suicide. But with a sufficient critical mass of prestigious institutions committed to a more realistic rendering of our global circumstances, some significant breakthroughs are in fact possible. It will take the bold resolve of many institutions to overcome the country's present myopia. It will take uncommon effort to prepare this generation of young Americans for a world which they cannot in fact now discern in their classrooms. The need for such collective and imaginative leadership stems not out of some one-world idealism, but out of the clear necessity of surviving in a risk-ridden world. To do anything less is to gamble with the very lifeblood and soul of a great nation that cannot in the long run prosper except as it successfully lives side by side with 150 other nations of vastly differing circumstances.

In this and other of mankind's great struggles, talk has too often substituted for action. We shall continue to dismiss such urgencies at our national peril, and to the unforgivable disgrace of the academy. With the help of a number of prominent Americans in and out of the academy, the Council on learning will soon take a major initiative to encourage the further globalizing of undergraduate education. It will be a public effort involving research, policy recommendations, and planning, which we can only hope will ultimately help advance us to a higher level of international consciousness.●

A TRIBUTE TO BEN KIDNER

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ANDERSON of California. Mr. Speaker, later this year, the friends and associates of Ben Kidner will gather to salute him and his contributions to the city of Torrance as he concludes 26 years of faithful and successful service in the city's department of water. This is a welcome opportunity to present a few words which tell why this man is so deserving of this recognition.

It is especially fitting that Ben be so honored since he has been a constant and active force in community affairs on behalf of his fellow workers. His deep concern and devotion to civic affairs makes him especially deserving of the community-wide respect which he has earned over the years.

A native of West Virginia, Ben joined the Marine Corps at the early age of 17. While stationed at Camp Lejeune in North Carolina he met Gertrude Wilson, a resident of Raleigh. Thirteen days later they were wed and started a marriage that has endured to this day.

He served during World War II and was involved in the major Pacific campaigns fought by this Nation. On three separate occasions he received Purple Heart awards. Military service appealed to Ben, but an unfortunate injury caused during an ammunition destruction assignment forced him to abandon his hopes of making the military life a career.

Following his medical discharge from the service, he moved to California in 1950. In 1952 he started his long tenure with the city of Torrance, first as a temporary worker and in a short time he was given a permanent position as water serviceman. Proving his abilities, he moved up over the years to the positions of senior water serviceman and water service leadman. In 1977 he was selected to serve as active water service supervisor, the position he will be retiring from this year.

Ben Kidner served a valuable dual role with the city of Torrance. He has served as an excellent technician in the water department and also as a leader and representative for city employees. He served for 4 years as president of the Torrance Municipal Employees Association, pulling together loose ends to firm up this organization so that it would both adequately represent the interests of city workers and add stability to employee-employer relations. With this he has done a great service to his fellow workers by improving conditions and pay, and to the citizens of Torrance by insuring smooth-running city operations.

One of Ben's utmost skills is getting things done. He has been an excellent organizer in each of his endeavors, whether it be at the water department or in negotiations with city management. He is known as a man of ability and dedication.

The city government in Torrance will truly miss Ben Kidner, but he is certain to remain in the forefront of community efforts to make Torrance a better place to live. The many who benefit from his leadership owe him many thanks. My wife, Lee, joins me in congratulating Ben on his achievement-filled career with the city of Torrance. We extend to him and his lovely wife, Gertrude, our sincere wishes for success and happiness in whatever new endeavors they may undertake.●

MANDATORY WAGE PRICE CONTROLS REVISITED

HON. ROBERT L. LEGGETT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LEGGETT. Mr. Speaker, as this Congress comes to a close, I have taken time to reflect on where we have come to during my tenure in Congress and where we are headed in the immediate years to come. I have reached the conclusion, Mr. Speaker, one that is increasingly shared by others that the United States must seize its financial problems right now and deal with them effectively if we are to continue as a strong and independent nation.

Mr. Speaker, the most urgent crisis we face as a nation today is spiraling inflation. The President has properly labeled this our No. 1 national problem, and I commend his efforts to develop ways to hold the line. Inflation hurts everyone; but it is especially hard on the old, the poor, and people on fixed incomes.

How bad has the inflation rate been? The facts do not lie as the annual inflation rates of over the past 5 years have shown.

Consumer Price Index

	All Items	Food
1974	12.2	12.2
1975	7.0	6.5
1976	4.8	0.6
1977	6.8	8.0
1978 (est.)	7.5	9.9

Interest rates also have been rising rapidly with the prime rate, the interest rate that banks charge their best customers, recently rising to 10 percent compared to 6.8 percent prevailing in 1976 and 1977. Further increases are likely, as housing and auto sales continue at a high rate because fear of inflation far outweighs the impact of rising interest rates.

As a result, we are beginning to hear and see evidence of serious consideration of some type of wage and price restraint. The President has repeatedly said, however, that he opposes wage and price controls and would favor, as an alternative, some system of guidelines.

As much as I would hope that such guidelines will work—I will lend my full support to the President in his efforts—my true belief that such a program falls short of holding down effectively the already dangerous path of wage and

price escalation we have trodden over the past few years.

To what do we turn if these guidelines fail? I must recommend, Mr. Speaker, that we begin to consider a period of full wage and price controls.

Such controls are indeed a tough bullet to bite, and it has been the habit of Congress and Presidents to go to great lengths to avoid doing so. Plans and programs are quickly drawn up and packaged as alternatives to controls under the deeply seeded belief that such firm action would be political suicide.

It should be noted, Mr. Speaker, that recent polls have shown just the opposite. The American people are willing to support a tough and determined effort to get our economy under control and reduce our devastating inflation rate. In addition, it was reported just this week that AFL–CIO President George Meany believes simple wage-price guidelines are doomed to failure, and is suggesting that a full, mandatory controls program would be preferable.

Nonetheless, the scramble is on for less dramatic and effective efforts. Let me review the current alternatives to full wage and price controls that are being promoted.

The President is expected to announce, in the next few days, a program of voluntary wage-price standards or guidelines calling generally for average wage increases that are not larger than 7 percent a year and average price increases that do not exceed 5¾ percent. The standards are expected to be backed by a set of limited sanctions involving Federal procurement policy and regulatory steps.

Let me reemphasize that I wish the President well in his efforts. He should be aware, however, that voluntary programs have come and gone over recent years and it is doubtful, at best, that his action will change this pattern.

I am of the strong opinion that once a voluntary program fails, as it has in the past, it cannot be resurrected.

Another alternative that is receiving increasing attention is a tax-based income policy, commonly referred to as TIP. The Joint Economic Committee recently suggested that such a TIP policy be given serious consideration, and it is my understanding that TIP legislation is now being drafted in the Senate Committee on Banking, Housing and Urban Affairs.

In essence, a TIP program calls for guideposts for wage increases. Any firm settling for a wage increase greater than the guidepost would be penalized by a higher rate of tax on its profits.

Proponents of the TIP program say it will restrain inflation because business would settle lower wage increases, and thus the markup would result in proportionable lower price raises, causing inflation to steadily decline.

Let me submit, Mr. Speaker, that such a program holds little promise of succeeding and great promise for becoming an administrative nightmare for all involved.

What we are left with, then, is a crucial decision. Either we face the cold, hard facts and take tough action now by implementing full wage-price controls, or we step back, again, and allow double digit inflation to continue and our economy falter.

The time has come, Mr. Speaker, when we can no longer duck or hide or scramble for seemingly easier alternatives. Double digit inflation is staring us dead in the face again. This time we must act.

Bart Rowen's analysis of George Meany position follows:

[From the Washington Post, Oct. 11, 1978]

MEANY URGES MANDATORY WAGE-PRICE PLAN

(By Hobart Rowen)

"AFL–CIO President George Meany believes that President Carter's expected voluntary wage-price guidelines program is doomed to failure, and is suggesting that a full, mandatory controls program would be preferable.

"The 84-year-old labor leader, basically opposed to any interference with the collective bargaining process, believes that the forthcoming wage guidelines will be enforced on wages by employers, but that there will be no meaningful control on prices.

"Carter's plan reportedly sets a national 7 percent wage standard, plus 1 percent for other labor costs in 1979, with a price standard of 5¾ percent.

"In conferences with administration officials drawing up the Carter program Meany has asserted that the guideline program will depress wages, reduce purchasing power and lead the country into a serious recession.

"For that reason, Meany has told Carter's team that if the president is willing to go to guidelines—which he had previously rejected—he might as well 'go all the way' to full controls.

"His reasoning is that if the controls system is supported by legislation, the AFL–CIO would have a role in influencing the system. Specifically, he is understood to feel that labor would have a better chance of avoiding 'inequities,' and that Congress would set up certain standards—and a Wage Board—that would help protect labor.

"The AFL–CIO preference for controls as a 'least worse' alternative was hinted by AFL–CIO Secretary-Treasurer Lane Kirkland in dealings with Carter's people a few weeks ago, but never until now made public or explicit.

"A high-ranking Carter administration official told The Washington Post that the White House response to Meany will be negative. 'The position here is no controls—period,' he said.

"But he acknowledged that the inflation-limiting process is 'a gradually evolving one, and while the president's [voluntary] program is right for now, there can be legislative suggestions in January.' "●

THE LOVE CANAL AND THE NIAGARA GAZETTE

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LaFALCE. Mr. Speaker, the Love Canal emergency in Niagara Falls, N.Y., has made headline news across the country, on the networks, in newspapers such as the New York Times, and in national magazines such as Newsweek and Time. However, the national press gave this matter attention only after August 2 when the New York State Commissioner of Health declared the Love Canal Site a "Health Emergency."

On August 10, 1978 the local newspaper, the Niagara Gazette, could proudly announce—"We didn't discover the Love Canal yesterday * * * We won't forget it tomorrow." For the Gazette on October 3, 1976—2 years ago—first advised its readers of the terrible situation which we have now all come to know. On its front page that day the Niagara Gazette told its readers:

A chemical landfill between 97th and 99th Streets used by Hooker Chemicals and Plastics Corporation in the 1940's and 50's has been seeping into the basements of homes along both streets. Neighbors also tell of children playing on the filled-in dump suffering burned feet.

The Niagara Gazette, since its first story in 1976, has been telling the terrible tale to the public as more and more facts became evident. On November 2, 1976, the Gazette advised that:

Chemical analyses of ground residues near the Old Love Canal dump site indicates the presence of heavy concentrations of about 15 organic chemicals, including three toxic chlorinated hydrocarbons.

On May 21, 1978 the Gazette reported that a "medical detective" from the State Department of Health will soon initiate an investigation to try to determine if chemicals buried at the old Love Canal site are connected to cancer or other possible long term illnesses among the residents in the area.

On July 15, 1978 the Gazette reported "hints" that we would soon learn were facts: that Love Canal research showed the exposure of pregnant women to the dangerous chemicals may have caused birth defects and deformed children.

The Niagara Gazette has been a driving force ensuring that the public at large has become fully informed of the details of the Love Canal tragedy. The newspaper has performed a public service and is to be congratulated.

A recent article, which was written by Mike Brown of the Gazette, paints an accurate picture of what is and what is not being done to rectify the mistakes which society has made in regard to toxic wastes. This article is just one of many excellent articles Mike Brown has written for the Niagara Gazette on the Love Canal and the toxic waste issue and its national implications.

Mike is to be commended for his investigative reporting, resulting in the Love Canal story making headlines across the country. He is tenacious, thorough, unbiased, honest, balanced, and objective. His investigative reporting has also led Mike to write analytical pieces on the problems of hazardous wastes. He has reviewed the complete gamut of problems connected with hazardous wastes—from their creation to their burial. His articles have shown a depth of understanding of the complex issues and the need to address these issues before they become gargantuan and destroy the health and welfare of our citizenry.

I understand that the Niagara Gazette and particularly Mike Brown, is being considered for a Pulitzer Prize based on its reporting of the Love Canal and related issues. The newspaper deserves to win, for it has brought the issue of toxic wastes and the monsters they create "ticking timebombs" to the headlines of all the national media and to

the attention of our colleagues here in Congress. When the national media became aware of the Love Canal, and wanted background material, they went to the Niagara Gazette, and particularly Mike Brown.

The Niagara Gazette, and Mike Brown in particular, can take great pride in knowing that long hours and relentless pounding of the pavements brought national attention to their hideous dilemma, ultimately resulting in the declaration of a Federal "emergency" by the President of the United States. Now funding has been appropriated by Congress and the State of New York to help clean up the toxic wastes buried in the canal and for the relocation of the area residents.

I am proud to be able to have such a fine newspaper in my congressional district. I know that the residents of the Love Canal area are also proud and thankful. We will be prouder still when they get the Pulitzer they so richly deserve.

The article mentioned earlier follows:

OFFICIALS BUYING TIME IN TOXIC WASTE DILEMMA

(By Mike Brown)

Nowhere in America, despite the country's technological prowess, has there been found a feasible final answer to the question of toxic waste disposal. State and federal officials aware of potential Love canals across the country, can only buy time.

A growing number of environmental experts, in fact, are beginning to believe that the dilemma of what to do with dangerous chemicals—especially those suspected of causing cancer—is as or more serious than problems encountered with nuclear wastes.

The reason is that, while chemicals do not possess the potency of radioactive matter, they are produced in far greater quantity and are not as well regulated. For years, industries have dumped wherever was most convenient, including in populated areas such as Niagara County.

By 1978, there will be 3,800 metric tons of commercial nuclear wastes stored in the country. In one year alone, according to the U.S. Environmental Protection Agency, industries generate 344 metric tons of wastes, 30 million tons of it toxic.

For years factories have hauled their wastes to existing ditches or isolated sites near aquifers or in highly permeable soils. While at the time the danger of those materials was not known, recent exeprimentation has revealed that many of those disposed wastes can cause cancer. And it is becoming obvious that some of the estimated 100,000 waste landfills in the nation will one day unleash their wrath.

About 1,000 new compounds are introduced to the U.S. market each year, adding to the 70,000 already in circulation. Already, 26 compounds have been proven to cause cancer in humans, and hundreds of others are suspected of causing animal tumors. More than 800,000 tons of highly carcinogenic asbestos alone are produced in the country. No one knows, exactly, where all the wastes have gone.

Besides several severe landfill problems in Western New York, there have also been major problems in the chemically-riddled Northeast. The Paskamansett River Basin area in eastern Massachusetts is under the siege of leaching PCBs and in Grey, Me. the suspect carcinogen trichlorethylene has contaminated 20 drinking wells. Both problems are the result of poorly-placed landfills.

Much of past dumping has been illegal. In New Jersey, one of the most industrialized states in the union, midnight haulers have for years tossed chemical drums in unprotected swamps. In Coventry, R.I., the state found an illegal highly lethal dump on a pig farm, the alleged result of a New Jersey waste disposal firm that preferred an unofficial site to a more expensive approved one.

There are dozens of other examples, in Idaho, in California, and in New York State.

While many of the problems known to date have occurred in New York and New Jersey, it is not because those states produce the highest quantities but rather because they have been in the business the longest. The two states rank 11th and 12th, respectively, in chemical waste generation.

EPA officials in Washington told the Niagara Gazette that the two biggest producers, because of the petrochemical industries, are Texas and Louisiana. Both of those states have shown little interest in the problem of toxic landfills.

Doris Ebner, environmental manager of the Houston-Galveston Common Council, said Texans are only beginning to become concerned about solid waste disposals.

"What will happen is that there'll be some disaster to make a flash," said Ms. Ebner. "There are rumors of outbreaks of illness (near chemical facilities) but it's kept quiet."

There has been "no work" in the area of chemical landfill control, she said, adding that the City of Houston is now having problems finding a place for its regular garbage.

In Bayport, Texas, it has been claimed that the Velsicol Chemical Corp.'s plant production of Phosvel, a pesticide, caused serious health problems among workers at its plant. Tennessee's Public Health Department says there is "strong circumstantial evidence" that Velsicol chemicals have leached from a company landfill in Hardeman County and contaminated three water wells.

William Colbert, an official for the Texas Department of Water Resources' said industrial wastes are "well regulated" in the state, despite Ms Ebner's apparently contrary opinions. "If companies dispose on their sites, they have to have a permit," he said. "They must register. The landfills have liners, but there are no broad regulations."

Colbert said there have been isolated cases of landfills leaching, but never in a residential area, as was the case with the Love Canal. Most wastes are disposed in coastal areas. "It becomes a vehement emotional issue among the people when an industry tries to dump nearby," he said.

In Louisiana, where the geology is considered excellent for waste disposal, out-of-state companies truck in their garbage for disposal in the five state-approved waste sites. State companies, however, provide the bulk of toxic wastes. Chlorinated hydrocarbons, hexachlorobenzenes, and tyrene tar from plastic production are disposed of in heavy volumes.

Not surprisingly, Louisiana has had its problems, A while back, according to one environmental official, a workman died while unloading dangerous wastes into a landfill. And in another instance, six million gallons of liquid wastes began seeping through a lagoon.

According to a report submitted to Congress by the U.S. Comptroller General, the average waste disposal site is 17 acres in size. Figuring in those dimensions, the EPA has estimated that an average infiltration of 10 inches of water could produce 4.6 million gallons of leachate at such a site each year. Because groundwater is the major source of drinking water in 32 states, that presents a major problem.

"Leachate" is grossly polluted water that results from the penetration of rain into a landfill, where it picks up soluble substances and begins migrating underground. The leachate process at any one dump can last for as much as 100 years, according to figures presented to Congress. Leachate masses can move up to two feet a day are especially troublesome in humid areas.

Federal officials have mapped out a stretch running from Maine southwest through New York, Pennsylvania, Ohio and down to Texas and Louisiana as the areas with the greatest potential for leachate contamination. Parts of Oregon, Washington, and California are also in danger.

"To date, federal and state agencies have not assessed the extent of damage to groundwater supplies or determined the number of disposal sites which may be leaching," said the comptroller's report. "The limited information that is available generally resulted from studies made after specific water wells were contaminated."

State programs to control waste disposal activities have been ineffective, according to the Congressional report, because government agencies lack the resources to manage their own laws.

While the EPA has yet to implement the Resource Conservation and Recovery Act (RCRA), which was passed in 1976 to regulate solid waste disposal, landfills across the country are existing virtually uncontrolled. Precise estimates on how many existing troublespots there are can't be garnered. Guesses range from 100 to 500 dumpsites that may be leaching dangerous materials.

As long ago as 1972, there was a severe problem in New Castle County, Delaware, where it was discovered that 170,000 gallons of leachate a day were entering an aquifer from a nearby landfill. Thousands of people drew their drinking water from that source.

The county, in emergency reaction to the problem, installed 11 counterpumping wells at a cost of $710,000. Including maintenance, between 1972 and 1976 the county spent more than $1.4 million.

But that was cheap compared to the available alternatives. The cost of removing the chemicals and incinerating them would have been about $38.3 million.

At Aurora, Ill., a 22-acre site began leaching into seven domestic drinking wells just four years after it was built. Water in the community carried inordinate amounts of chlorides, organic acids, sulfate, sodium, and biological particles.

An especially monstrous leachate problem occurred in Islip, Long Island several years ago. A U.S. Geological Survey showed that a 39-year-old, 17-acre landfill has created a leachate plume a mile long, 170 feet in depth and 1,300 feet in width. The plume contained about a billion gallons of groundwater.

If one were to include all the small industrial dumping grounds, there would be between 2,000 and 4,000 private industrial dumping sites in Pennsylvania alone, most of them completely uncontrolled, poorly monitored, and in many instances unknown to health authorities.

While RCRA will take care of presently operating dumps, forcing their upgrading and closing those that do not meet new standards, it would be impossible for any law to force the clean up of every hazardous landfill ever excavated. The cost of doing that is prohibitive, and so the EPA is aiming mainly at cutting the future potentials for pollution instead of going to the root of the problem.

EPA officials now say that it won't be before 1980 when the RCRA standards come into effect, along with ancillary programs aimed at "cradle to death" management of toxic wastes. But even when it becomes fully implemented, the law won't stop old landfills, in some cases built by firms that are now out of business, from leaking into the environment.

And, as the Congressional report points out, most cities in the country have inadequate funds and equipment with which to check drinking water for landfill contaminants.

"Effectively implementing the RCRA will significantly minimize groundwater contamination from new or upgraded existing sites," says the report. "However, the act does not adequately address the potential threat to public health that exists as a result of groundwater that is already contaminated or that may become contaminated as a result of older closed disposal sites."

John Hall, water resources planner for the Great Lakes Commission, fears that even in controlling currently operated landfills the RCRA guidelines may mean little or nothing in terms of tangible results. "The problem is that lack of adequate funding and manpower make implementation of these laws slow and ineffective," he said recently.

Add to that the problem of laboratory costs. Taxpayers would have to shell out an estimated $2 billion to test all chemicals known to be in the environment and determine the hazard levels.

Most experts agree that the permanent solution to toxic waste disposal will involve requirements on industry to be able to chemically disband everything they create. But that is expensive—far more costly than throwing wastes in ground pits—and may not even be economically feasible 20 years from now.

In the interim industries will have to use more secure landfills. But how secure is "secure," environmentalists ask? Do modern landfills, built with leachate standpipes to extract liquids, liners and compact clay to better contain migratory substances, and sloped tops to protect compounds against rain, insure against future erosion and leachate?

Niagara County has two of the most sophisticated landfill and waste treatment facilities in the country—SCA Chemical Waste Services Inc. in Porter and Newco Chemical Waste Systems Inc. in the Town of Niagara. They are generally acknowledged as an acceptable, temporary answer to waste disposal, but permanent solutions are not in the foreseeable future.

The report to Congress stressed that those liners and leachate control systems are unproven. "Controlling the migration of leachate using only the site's natural soil conditions needs further study before it can be relied on with any degree of certainty," the report says.●

PRODUCTION, NOT RESTRICTION: A RESPONSE TO PRESIDENT CARTER'S NATIONAL ENERGY PLAN

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. McDONALD. Mr. Speaker, in a time rife with sloganeering, propaganda expertise, statistical sleight-of-hand and every sort of sophisticated confusion, a sound and reasonable discussion of the energy situation in the United States today ought to begin with some solid commonsense—hard and simple.

If you are running short of something you must have, your top priority should go to getting more of it. If you are told that getting more will be risky, you must evaluate the risk in light of the consequences of not getting more. If the facts conflict with your wishes, you had better respect the facts. Wishful thinking is a luxury of those dwelling in security. In a critical situation, it is a short cut to a quick death.

If we lack energy, we must get more. Obviously this is not to say that we should waste it. But no one can turn back the clock to the days of preindustrial society, however much some in romantic moments might like to do so. We are going to need more energy for as far ahead into the future as we can see. And we will only get it by producing it, not by restricting its use, or the activities of the producers.

If there are environmental dangers, they must be studied and overcome. But they cannot simply be banished by cutting back all types of energy production. In today's society, a sufficient loss of available energy will kill—as dead as those, fortunately few, who froze in unheated houses in past record cold winters. Severe, even if not deadly energy losses will throw thousands or millions out of work—as also happened in past winters—and undermine our whole society and way of life. Alleged environmental dangers must be measured against these hard realities of the loss of available energy. Any government failing to do so becomes a destroyer of its own people.

Any Government program for dealing with an energy crisis which does not place primary emphasis on production of energy is certain to make the problem worse. It is ignoring the obvious need for the sake of political expediency, economic ideology, romantic longings and bureaucratic aggrandizement. We can probably learn to get by with somewhat less energy than we otherwise would have, in future years. But we are still going to have to produce more—a great deal more—if we are to survive at all.

I. WHY AN ENERGY CRISIS?

Energy is the lifeblood of an industrialized nation. Without it, most other resources and useless, and the nation will quickly die.

The United States is the most industrialized of nations. Our economy—our way of life—is built on inexpensive energy. The oil industry was primarily responsible for that condition. For 50 years, oil was so cheap and abundant that we spent less than 5 percent of our national income on fuel to produce the energy that gave life to everything else. At the same time, the United States was the world's foremost exporter of oil.

Then, in the late 1960's, the public abruptly became aware that our Nation was already critically dependent on potentially hostile foreign sources for a substantial portion of the energy fuels we were using; and our dependence was growing every month, because domestic consumption of oil exceeded domestic production.

Why did the oil industry, which had done so much for us for 50 years, suddenly fail us? It did not fail us, and the condition which became widely apparent in the late 1960's was not a sudden development.

The present high prices and shortages of energy fuels do not reflect failure on the part of the energy-producing industries, a failure of technology, or a deficiency of the free enterprise system. The fuel shortage does not even reflect a shortage of available supplies of energy fuels. In fact, we do not have an energy crisis, in the sense that we have run out of conventional fuels which industry is capable of producing and delivering, or are about to run out. If coal is included along with oil and natural gas, we still have enough known or highly probable reserves of fossil fuels in our own national territory to last a century and more. Private industry has the resources necessary—organization, technology, capital, trained manpower, experience—to produce and deliver these fuels, while at the same time developing the technology of nuclear energy to replace them by that time, still far in the future, when they may actually begin to run out.

Then what is the problem? The problem is government.

The so-called energy crisis is actually a crisis of too much government. Get the government out of the way, and private enterprise would solve the energy problem. The solution would not be instantaneous, because the leadtime between finding energy fuels and delivering them to consumers runs into years; but if the free market were permitted to operate, we would soon have all the energy required to meet our needs. On the other hand, if government is permitted to "solve" the energy problem by amplifying the governmental restrictions and controls which caused the problem, our condition will continue to deteriorate until our great industrial strength and widespread prosperity are gone forever.

In our own history, we can find thousands of instances of government, under the pretext of protecting the people from sharp business practices or of solving their economic problems, creating problems much worse than those which provided the pretext—and then compounding the difficulty by attacking the government-caused problems with enlarged versions of the measures that caused those problems in the first place.

We can find a few instances of government staying out of a problem, with the result that human ingenuity, left with freedom to move and with profit-motivated incentive to dare, produced something better than what existed before the problem arose. One such instance involved, interestingly enough, an energy crisis—the shortage of whale oil in the mid-19th century.

From colonial days to the 1860's, whale oil was our principal fuel for artificial lighting and lubrication. Beginning in 1820, however, reserves—that is, the number of oil-producing whales in the world—declined rapidly while consumption of whale oil increased. The consequences was an increase in whale oil prices—about 400 percent from 1820 to 1860.

There was much doomsday predicting about the lights of America going out and machinery stopping for want for proper lubrication when all the whales were gone. And there were demands for governmental action to avert the impending disaster.

Fortunately, however, the Government was not "activist" in those days. It did not attempt to solve every problem by aggressive and unconstitutional meddling in the market place. The Government stayed out of the whale oil prob-

lem. Consequently, it was solved by ingenious, profit-motivated free men who invented kerosene and the kerosene lamp—in 1854—and drilled the first oil well near Titusville, Pa., in 1859. By mid-1860's, the whale oil crisis was past. Whale oil, though still a valuable commodity, was no longer a necessity on the American market.

In 1866 the U.S. Revenue Commission predicted that the U.S. crude oil supply would be exhausted by 1890, and suggested that the U.S. Government finance a program to develope synthetic fuels to substitute for crude oil. Fortunately, that suggestion was rejected. When 1890 arrived and the supply of oil still seemed limitless, the Federal bureaucracy warned the public against optimism. In explaining how limited the natural supply of petroleum was, the U.S. Geological Survey, for example, said there was little or no oil in the State of Texas.

In 1914, the U.S. Bureau of Mines estimated that another 6 billion barrels of oil was all the United States could ever produce. Since that prediction was made, we have produced more than 100 billion barrels and have billions of barrels still in the ground.

Throughout the 1920's various authorities in the Federal bureaucracy predicted the imminent demise of the petroleum era, specifically naming years when all our oil would be gone: 1926, 1928, 1931, 1933.

Has Washington officialdom been honestly, if mistakenly, obsessed with fear at the spectre of our oil-fueled economy running out of oil, or has it dishonestly conjured up that spectre as an excuse for meddling in the marketplace? Perhaps no one knows. Everyone should know, however, that the Federal bureaucracy and Congress have felt a compulsion to manipulate and control the oil industry ever since the first producing well was drilled.

Their task in making a case in favor of this manipulation and control has been made much easier by the history of Standard Oil Co. under the Rockefeller family, which aimed from the beginning at monopoly and early in this century established an influence in Government which endures to this day. But what few people realize is that, while oil marketing has long been in the hands of a few giant companies, the majority of all oil exploration and development has been by independent producers far less able than the big oil companies to protect themselves against the worst consequences of Government interference and harassment.

For years, natural gas was worthless to oil producers except, in a limited way, as an aid to getting oil out of the ground. When found—usually by accident—in wells drilled for oil, natural gas—or most of it—was flared—burned off at the wellhead—to keep it from polluting the air, because there was nothing else to do with it.

In time private enterprise developed the technology for profitably producing, refining, transporting, storing and using natural gas. By the mid-1930's it was apparent that gas would become the glamor fuel of the future, because it was cheap, efficient, easy to use, and clean. Private industry started building pipelines that probably would have become a gas transporation network reaching every village in the United States.

But Congress prevented that development, by passing the Natural Gas Act of 1938 giving the Federal Power Commission (FPC) authority to regulate the interstate transportation and distribution of natural gas.

After World War II, gas pipelines from the Southwest began servicing a significant number of communities in Northern and Northeastern States where no oil or gas is produced, bringing those communities the best and cheapest fuel they had ever had. Nevertheless, politicians in those areas, with no constituents who were oil producers or were directly employed in oil production, curried favor with their voters by accusing rich Southwestern oil men of overcharging for natural gas. This resulted in many demands upon the FPC to protect consumers by regulating the price of natural gas at the wellhead.

In 10 different cases brought before it by 1950, the FPC ruled that while it had authority to regulate interstate transportation of natural gas, it had no authority to regulate wellhead sales of natural gas by independent producers.

In 1951 an agency of the State of Wisconsin asked the FPC to determine whether Phillips Petroleum Co., a firm which produced natural gas in Oklahoma, was charging reasonable prices for gas ultimately delivered to consumers in Wisconsin. At that time, only 6 cents of every dollar paid by natural gas consumers in Madison, Wis., went to the unregulated producer; the remaining 94 percent went to the regulated transporter and distributor. The FPC ruled, for the 11th time, that it had no jurisdiction for such price regulation.

Wisconsin appealed to the Federal courts. On June 7, 1954, the Supreme Court, in a 5 to 3 decision, ruled that the Natural Gas Act of 1938 gave the FPC regulatory authority over the production and sale of natural gas at the wellhead, and ordered the agency to exercise that authority.

As predicted at the time by free market economists, Government imposition of rigid, unreasonably low prices for natural gas, unrelated to the law of supply and demand in a competitive market and not reflecting the rising prices of all other goods and services, discouraged domestic exploration for new sources of gas and oil. At the same time Government was encouraging American firms to develop foreign sources of oil, not to preserve our own resources but to help emerging nations, particularly those in the Middle East and North Africa. In the decade of the 1960's alone, the U.S. petroleum industry spent almost six times as much on exploration and development abroad as it spent at home.

Domestic production of oil and gas held up well for a few years after Government price fixing began—and consumer prices actually declined, in relationship to the costs of all other goods and services—because the industry was producing from pools discovered, proven, and developed years before.

By 1969, however, old pools were being depleted, and the Nation faced a perilous shortage of domestically produced oil. It was just at this time that Congress and the President embarked on legislative programs which seemed designed to curtail the domestic production of oil and gas, while increasing consumption.

The Tax Reform Act of 1969 reduced by 5.5 percent the oil depletion allowance to which the entire petroleum industry—and the millions of outside investors who supplied risk capital for the industry—had been geared to for more than 40 years. That cost the oil industry an estimated $700 million a year. This cost was immediately reflected by drastic reduction in domestic exploration—until 1973 when high oil prices again made exploration economically feasible.

The National Environmental Policy Act of 1969 hit all energy-fuel producing industries an even harder blow than the reduction of the depletion allowance hit oil. This act was immediately seized upon by militant environmentalist groups as a legal weapon to hold up, for 6 years, the beginning of construction of the Alaska oil pipeline; to stop the building of nuclear powerplants; to prevent oil exploration and drilling on the Outer Continental Shelf; to curtail oil production in offshore fields already explored and tapped; to prohibit the leasing of oil shale lands; and to reduce the production of coal.

Perhaps the most amazing of all the near-incredible tales of this mad drive to shut down all areas of new energy source development is the tale of the Alaska pipeline. It is the one major policy decision against energy of the years of the environmental craze that has finally been reversed; but the 6 years lost can never be regained. No one ever came up with an even moderately plausible reason why the Alaska oil pipeline should not be built. The newly discovered oilfields on the North Slope of Alaska were among the richest in the world. They were located in an area that was absolutely uninhabited; not even Eskimos lived there. The pipeline to bring the oil to the ice-free Port of Valdez ran mostly through uninhabited country. There was no pollution problem of any kind. There was no more danger of leakage and spills than in any area where oil was already being produced. When pressed for reasons for their unrelenting opposition to the pipeline, the best the environmentalists could think of was worries about the trails of migrating caribou. The oil companies developing the north shore fields thereupon offered to build special bridges for the caribou over the pipeline; but even this was not enough. History shows few comparable examples of a nation denying itself for 6 long years a resource of which it stood in the most vital need, for so utterly groundless an objection to its development.

In that same year of 1969 when the National Environmental Policy Act was passed, the Federal Coal Mine Health and Safety Act was also passed, imposing upon mine operators compliance costs of more than a billion dollars, and drastically reducing the already low worker

productivity in the mines; but it did not make coal mining safer or more healthful.

These two major Federal "protection" laws of 1969 bred others, at all levels of government.

The Occupational Safety and Health Act (OSHA) of 1970 was a direct outgrowth of the Federal Coal Mine Health and Safety Act of 1969. As the coal mine act was "protecting" coal miners, so OSHA would "protect" workers in all other occupations—except in government employment which was exempt. The stated purpose of OSHA was to relieve interstate commerce of the economic burden resulting from loss of productivity occasioned by job-caused illnesses and injuries.

Before OSHA was invented, the health and safety record of American industry was the best in the world, and had been steadily improving since the turn of the century. Businessmen know, better than Members of Congress or bureaucrats, that job-caused illness and injury are costly; and businessmen have at least as much human compassion for their own employees as can be found in the breast of anyone on the banks of the Potomac. It follows, as night the day, that OSHA has not, to any degree, reduced industrial hazards or relieved interstate commerce of one penny of the cost occasioned by industrial injury and illness.

On the contrary, OSHA has added greatly to the cost of doing business in the United States, by imposing on businesses expensive paperwork; by saddling them with compliance costs; and by causing many of them to multiply expenditures for legal assistance. The most recent outrage is the face mask required to be worn by textile workers which is uncomfortable, unsightly, and potentially dangerous. This relates to supposed protection against cotton dust. (43 F.R. No. 122, Part III.)

The National Environmental Policy Act of 1969 provided the major impetus for enactment of the Clean Air Amendments Act of 1970 and the Clean Water Act of 1972. These two laws have added many billions of dollars to the cost of doing business. They have required increased consumption of scarce energy fuels, while critically restricting industrial capacity to produce those fuels. Moreover, these two laws, by giving environmentalist groups standing to bring Federal lawsuits against business alleged to be environmental polluters, have—like the National Environmental Policy Act of 1969 which inspired them—become legal weapons which socialist revolutionaries can use against American business.

The National Environmental Policy Act of 1969 also inspired the Environmental Protection Agency, created by Presidential Executive order in 1970. This Agency, guided by the whims and prejudices of its own personnel and largely without specific congressional authorization, is "protecting" the pubic by impeding production and inflating costs of operating all kinds of business and industries in all parts of the Nation, thus driving up the cost of all goods and services.

Government has victimized the American people with the most gargantuan protection racket in history. This racket was initiated by the Interstate Commerce Act of 1887; by the 1930's the people were "protected" with Federal programs which taxed them so that they would not grow food or destroy food they had already grown while they paid higher prices for imported foods; by the 1970's, this governmental protection racket had become the No. 1 threat to that great productive achievement often called the American way of life.

The endless parade of sordid trivialities known as Watergate might have done some good if the people had learned from it the obvious lesson that the power of Government is not to be trusted and can very easily be abused. Government is, as George Washington said, like fire, absolutely necessary in a civilized society, but terribly destructive if permitted to operate outside the bounds originally imposed by our Constitution before that document became "whatever the Supreme Court says it is."

For historical interest, today in October 1978, thinking Americans can appreciate George Washington's insight when he correctly observed:

Government is not reason; it is not eloquence; it is force! Like fire, it is a dangerous servant and a fearful master!

The Nation's effort to develop nuclear energy for peaceful purposes—the only ultimate solution to the energy problem since fossil fuels will eventually run out, even if not nearly so soon as the Government "experts" claim—provides a sobering illustration of the inescapable ineptitude of political management in econonmic fields.

The Atomic Energy Act of 1946 gave the Federal Government a monopoly on all nuclear research, development, and production, and mandated Government control over the use of all nuclear materials. The Atomic Energy Commission was created to administer this act, empowered to encourage private scientific and industrial activity in the nuclear field.

Immediately after World War II, scientists all over the world began seeking means to utilize nuclear power for energy production and other peaceful purposes.

Nuclear energy research deals essentially with two different phenomena: fission and fusion. Fission is the breaking down of a heavy radioactive element into lighter elements. Fusion, an opposite process, is the fusing together of light elements to get a heaveir element. When either fission or fusion occurs, enormous energy is released. Fission was the process used in the atomic bomb, first exploded in 1952. Nuclear energy research seeks to produce and harness this power for peaceful purposes.

Fusion—the H-bomb process—is cleaner and safer than fission because it does not produce dangerous radioactive wastes, cannot get out of control, and uses a fuel which is cheap and abundant—deuterium, a form of hydrogen, which occurs naturally in water. In 1 cubic mile of seawater there is enough deuterium to provide, through the fusion process, all electricity which would be consumed in the United States at the present rate of consumption for more than 10,000 years.

In theory, production of usable energy by fusion is simple. One needs only heat the fuel above a minimum temperature and hold the reactants together long enough for the atoms to collide and implode—the opposite of explode, as in fission.

In practice, however, there are problems. It took an atomic bomb, using fission, to trigger the hydrogen bomb fusion process. The minimum temperature required to produce fusion is 100 million degrees centigrade; there are no materials on Earth which can resist such heat and retain the reactants long enough for implosion to occur.

The Atomic Energy Commission concluded that we could not realistically hope to develop energy from fusion befor the next century. (But a private research effort was later to prove that they had given up too soon.) Therefore they focused primary attention on fission, which presented less baffling problems. The Commission subsidized some private research by industry and universities; it licensed and monitored, without subsidizing, a great deal of private research; and it spent much tax money on research in three huge Government laboratories at Los Alamos, Livermore, and Sandia.

Nevertheless, progress has been slow, because of Government controls. For security reasons, the Atomic Energy Commission refused to permit a great deal of private research in certain areas. Their secrecy has inhibited free exchange of ideas and information. The Atomic Energy Commission has been slow to make available to private industry important information already available to foreign governments; it has been bureaucratically slow to issue permits; and it has imposed burdensome reporting requirements and operational procedures.

Furthermore, the fact of Government monopoly in this vital area complicated the problem of raising private capital for nuclear research, because investors could never know what proprietary rights they might have if the research they invested in did produce something of economic value.

Today, we have 72 nuclear powerplants in operation, all of them using the fission process, producing about 10 percent of the electrical energy used in the United States. This is a disappointing net result of 30 years of expensive effort. We would have more nuclear powerplants today if Congress had not given the militant environmentalists the legal tools to block or delay construction of many of them, through the National Environmental Policy Act of 1969 and subsequent legislation. No better recent example can be found than the Clamshell Alliance protest by radical and militant environmentalists in efforts to block the construction of the nuclear powerplant at Seabrook in New Hampshire.

II. OUR PRESENT ENERGY SITUATION

Exciting speculation about exotic new sources of energy often leads to a lack

of sufficient attention to where energy is coming from right now. Nowhere in President Carter's 103-page energy plan is there so simple a thing as a clear statement of exactly how much of America's current energy use comes from which sources of energy. These facts must be the starting point for any rational consideration of the energy problem.

During 1976, virtually all energy used in America came from just five sources, and three-quarters of it came from oil and natural gas. Expressed in terms of the common unit of a million barrels of oil per day or its equivalent in energy, these sources and the approximate amounts used in 1976 were as follows:

Petroleum	17.4
Natural gas	9.5
Coal	6.7
Hydroelectric power	1.5
Nuclear power	1.0
Total	36.1

Of the energy sources in the above list, only petroleum and coal can be imported in quantity from overseas. Coal imports were not significant in the U.S. energy situation for 1976. Approximately 45 percent of the oil consumed in the United States today was imported. For the first half of 1977 the oil imports were distributed as follows by country of origin:

	Percent
Saudi Arabia	18.3
Nigeria	15.0
Venezuela	10.3
Libya	9.3
Iran	9.1
Indonesia	7.2
Algeria	5.8
Canada	5.0
United Arab Emirates	4.9
Others	9.4

Middle East oil therefore comprised slightly less than half—47.7 percent—of the total imports—disturbing enough, but not quite the picture of utter helplessness before the sheikhs which is often portrayed. But by far the most significant statistics on oil production are the following, for crude oil produced in the United States from 1965 through 1975:

	Barrels
1965	2,848,514,000
1970	3,517,450,000
1971	3,453,914,000
1972	3,455,368,000
1973	3,360,903,000
1974	3,202,585,000
1975	3,056,779,000

In the 6 years from 1970 through 1975, therefore, crude oil production in the United States declined by 460,671,000 barrels—about 13 percent leaving it scarcely more than 5 percent above the level of a decade ago. The years of decline include the period of the Arab oil boycott in the winter of 1973–74 and the subsequent steep jump in the price of oil. The President's "National Energy Plan" notes the decline in U.S. crude oil production, but seems to accept it as an unchangeable fact of nature. Is this production decline due to exhaustion of our oil supplies? This is certainly what a quick reader of the President's plan would assume. It may be what the President assumes. But the true answer to that question is an emphatic no.

This shocking decline in our own national production of our most important, presently indispensable energy source does not reflect exhaustion of supplies or technical incapacity, but essentially two conditions for which Government is solely responsible: First, the delay in construction of the Alaska oil pipeline for the entire 6 years of the period of the production decline, and second the restrictions on producing oil from the Continental Shelf off our coasts. The new Alaskan oilfield are capable of producing 700 million barrels of oil per year, more than enough to have wiped out the entire production decline; and the oil reserves on our Continental Shelf are estimated by the U.S. Geological Survey at between 50 and 127 billion barrels. Yet so tight are present governmental restrictions on offshore oil drilling that only one-third of the 13 million acres of offshore oil lands offered for lease in December 1975 even found one bidder.

Undoubtedly a contributing cause of the crude oil production decline has been the new Government restrictions imposed during the past 6 years upon new oil well drilling in the continental United States, and the removal of some $5 billion annually by Government action from the funds available to oil companies for new exploration and drilling. This $5 billion removal has resulted from the following actions by Government in the past 3 years alone: First, repeal of the percentage depletion allowance for about 85 percent of domestic gas and oil by the Tax Reduction Act of 1975; second, rollback of approximately $1.50 per barrel in prices for new crude oil on February 1, 1976; third, retroactive imposition of a heavy tax on expenditures—not income—of independent oil and gas producers by the Tax Reform Act of 1976; fourth, price freeze on all domestic crude oil imposed July 1, 1976; fifth, rollback of 20 cents per barrel in the price for new domestic crude oil on December 31, 1976; sixth, retroactive doubling of rental fees on most oil and gas leases on Federal offshore lands on February 1, 1977; and seventh, rollback of 45 cents per barrel on the price of new U.S. crude oil on March 1, 1977.

Continued growth in our domestic oil production at pre-1970 rates, using known reserves in Alaska and the Continental Shelf, along with developing new reserves, could have cut our present dependence on imported oil very substantially over the past 6 years. But instead of that, Government restriction actually decreased production, thereby helping to create the present problem.

PROJECTED DEMAND AND CONSERVATION

No one really knows just how much energy we will use or need in the future. What we do know is that the total amount will keep on growing. No conservation program can do more than slow down this inevitable growth to some extent; no responsible economist or planner even pretends otherwise.

Projections of energy use by 1985 range from a low figure of 48 million barrels of oil per day equivalent—the Federal Energy Administration estimate—to 62—the National Petroleum Council estimate. The President's national energy plan visualizes a 12-percent cut in oil consumption, reducing the overall energy demand by about 3 million barrels per day in 1985. By no possible stretch of the imagination can so small a saving, even if possible, "solve" the energy crisis or even make a truly significant contribution to solving it. It should be obvious that the real issue is not whether we are going to save 3 million barrels of oil per day by 1985 but where and how we are going to get the additional 10 million barrels of oil per day energy equivalent that even the national energy plan expects us to be using by then. An associated, and very important question is whether the conservation program would throw the economy into a new recession which, if combined with continuing governmental restrictions on energy production and development, would more than cancel out the effects of any saving due to conservation by reducing production still more.

It is a sufficient commentary on the utility of conservation in dealing with the energy crisis to note that two-thirds of the entire amount of energy the President's most stringent conservation measures hope to save annually would be flowing into the United States right now if the Alaska pipeline had been built on schedule. For the Alaskan oilfields can produce 2 million barrels of oil per day. The rest of the amount projected to be saved, and much more, could have been brought in from the oil lands on the Continental Shelf whose offered leases found no takers because of Government restrictions.

So there is no possible way that conservation can reduce energy demand sufficiently to have a really major impact on the energy situation. At best it is a fringe benefit; at worst it is counterproductive, a drag on the economy and hence on production which is the only ultimate answer to the energy shortage.

D. PESSIMISTIC PRODUCTION PROJECTIONS

President Carter's national energy plan and the April 1977 CIA estimate of the international energy situation between now and 1985 combine to present an extremely pessimistic view of future oil production. Both documents begin with the assumption that the United States simply cannot produce significantly more oil than it is now producing. They project U.S. oil production, even with Alaskan and continental shelf development, on essentially a flat line over the next 10 years—increasing at most by a million barrels a day in 10 years and perhaps decreasing by that amount, relative to the 10 million barrels a day now being produced. In other words, these two estimates rule out any U.S. oil production increase of more than 10 percent, and the President's plan regards a 10-percent decrease as equally likely.

This conclusion, surely the most important of all for Americans in these two documents, is presented with astonishingly little evidence; it seems scarcely more than a bland assumption. The CIA estimate in this area is simply based on the U.S. oil production figures since 1970—given above—without any consideration of whether or how the

1970–76 trend might be changed. The national energy plan states correctly that domestic oil production cannot possibly be expected to meet the entire U.S. demand for oil by 1985; it then goes on to predict a maximum 10 percent domestic oil production increase by that year, even including 3 million barrels per day expected from Alaskan and Continental Shelf production. "For more than 17 years," the Plan states:

Domestic oil discoveries have been outpaced by consumption, *except for the discovery of oil on the North Slope of Alaska"* (italic added).

What kind of reasoning is this? The exception totally destroys the thesis. Presumably the implication is that the Alaskan oil discovery is a one-time bonanza, never to be duplicated. The whole history of the oil industry shows that such an implication is nonsense. Several finds of the magnitude of the Alaskan oil discovery could easily be, and in fact probably will be made under the Continental Shelf, where oil reserves are estimated from 50 to 125 billion barrels. For example, the new Mexican President recently let it be known, what had been whispered about for some time, that Mexico has proven reserves of 20 billion barrels, plus an additional 37 billion, and possibly as much as 200 billion barrels, putting it in the same league as Saudi Arabia.

By contrast to the Carter administration, the National Petroleum Council predicts that with a maximum effort to increase domestic oil production, removal of government price and other controls, rapid offshore leasing and reduction of environmentalist obstacles to offshore oil development, and more drilling of new wells, as much as 15 million barrels of oil—a 50-percent increase—could be produced on American territory by 1985.

Nevertheless, even with this much domestic production, some oil imports would be needed—though not nearly as much as without it. This is obvious from the fact that present oil use is already over the 15 million barrel per day figure and certain to continue to rise, though at a slower rate if nuclear power becomes more widely available. Oil imports will probably have to be continued at least at the present rate for a long time to come, and even under ideal circumstances these imports would probably increase somewhat.

The dangers of even a partial dependence on imported oil can obviously be greatly reduced by importing from many different countries in different parts of the world, avoiding as much as possible a primary reliance on the Middle East.

This policy is already being followed to a considerable extent by drawing a substantial portion—nearly one-fifth—of all U.S. imported oil from Nigeria. Great confusion is created by lumping together the Organization of Petroleum Exporting Countries (OPEC), which has now formed a very effective cartel, and the Arabs of the Middle East. It is in the OPEC's interest to raise prices where it can, but not to boycott production. A boycott can have only a political purpose, and there is no common political purpose among all, or even a majority of the members of the OPEC. It is widely forgotten now that even Iran, a Muslim but non-Arab nation, did not participate in the 1973–74 boycott.

The CIA estimate, suspect because of historic use of the agency for political purposes, asserts that by 1983 it will no longer be possible for oil production in all nations to meet the free world's demand for oil, unless Saudi Arabia increases its production capability to a greater extent than the CIA expects. President Carter relied heavily on this pessimistic estimate in his energy speech to the nation, coupling it with his projection of no significant increase in U.S. production.

The CIA prediction contains one obvious and glaring flaw: it takes no account whatever of new oil discoveries which may be made anywhere in the free world between now and 1985. As President Carter's own national energy plan admits, had it not been for new discoveries it could have been solidly and correctly predicted in 1940 that the United States would run out of oil in 1954. In fact, new discoveries have continued to be made regularly ever since oil fuel development began at Titusville, Pa., over a century ago. "Known reserves" constantly grow as demand presses on supply of any scarce and much-needed product, thereby encouraging search for new reserves.

According to a special report of the Council on International Economic Policy of the Executive Office of the President, known world reserves of oil increased sixfold, from 75 billion to 455 billion metric tons, in the 20-year period 1950–70 when world demand for oil greatly increased. During the period 1948–72, known oil reserves in the United States and Canada more than doubled, from 21.4 billion to 47 billion metric tons.

Furthermore, the rate of growth in newly discovered reserves during that period substantially exceeded even the record increases in consumption. Available world oil reserves in 1948 would have lasted for about 20 years at the then current rate of consumption; available world reserves in 1972 would have lasted about 35 years at the 1972 consumption rate.

The CIA estimate does not cover the new discoveries of oil and gas in Mexico. Failure to do so again points to the "Agency" being more political than factual.

These facts alone make the conclusions of the CIA report absurd. They can be so characterised even without proceeding to ask the awkward question of why the CIA is—with considerable justification—everybody's whipping boy these days when it comes to politics, but suddenly an oracle of unchallengeable economic wisdom when it comes to energy. It should hardly be unreasonable to suggest that the architects of the Bay of Pigs disaster and of countless "openings to the left," the subsidizers of the National Student Association, the hamhanded spinners of Rube Goldberg assassination plots, whose political and ideological estimates have been wrong so often as to become almost a Washington joke, are not to be depended on when it comes to estimating how much oil the free world will produce over the next 10 years.

E. THE NATURAL GAS SHORTAGE

Just as it took the Arab oil boycott and the great gasoline shortage of the winter of 1973–74 to awaken millions of Americans to the energy crisis as it relates to oil, so it took the record cold winter of 1977 to awaken them to the energy crisis as it relates to natural gas. Unfortunately, in neither case was the cause of the crisis clearly understood.

What makes the factory, school, and store closings of the winter of 1977—causing widespread unemployment, immense inconvenience and a substantial national economic slowdown—so ironic is that such events were specifically predicted over and over again the preceding year not only by the natural gas industry, but by many distinguished newspapers and Members of Congress. These predictions were made during the public discussion of a critical bill defeated in the House of Representatives in February 1976—just a year before the cold weather crisis—which would have eliminated Government price control on interstate shipment of natural gas, by a margin of a bare four votes.

Since the Supreme Court decision of 1954 ordering Federal price control of natural gas shipped interstate, overwhelming evidence has accumulated showing that these controls have been a disastrous mistake. With most of the incentive for finding and producing new natural gas removed by the Federal price controls, exploratory gas well completions plummeted from a high of over 900 in 1959 to little more than 400 per year in 1971, to almost none today. Proved reserves of natural gas peaked in 1967 and then began to decline; production of natural gas peaked in 1973 and then began to decline. To assume that this is simply because new fields do not exist is nonsense. How can we know that if we are not looking for them?

Natural gas price decontrol in 1976 was supported by substantial popular majorities, as indicated by various polls, and by a large number of newspapers including many, such as the Washington Post, generally known for their ideological support of Government intervention in the market. During the 1975–76 public debate on decontrol—which culminated in the defeat of decontrol in the House, after it had passed the Senate, by a vote of 205 to 201—the following explicit predictions of a major, destructive natural gas shortage were made, which were borne out just 1 year later:

A severe winter now can mean factories and schools shut down again. Acute problems in home heating could develop. Hundreds of thousands more people could be thrown out of work . . . Ohio, West Virginia, and New Jersey may face 60 percent curtailments, at a cost of thousands of jobs and a drastic relocation of population and industry. . . . Our population is still growing, demand for natural gas is still increasing, and supplies of it are still dropping, so the shortage will worsen and sooner of later we will get a savagely cold winter.—Mobil Oil Company, January 1976

An unusually cold winter could bring a shutdown of some plants and layoffs of

thousands of workers.—former Secretary of Commerce Rogers Morton, September 15, 1975

Since production has declined significantly during the past several years and consumption is predicted to increase with economic recovery, the prospect for economically-caused shortages in future years is self-evident. Gradual deregulation of natural gas prices, such as the Krueger proposal permits, is the logical solution to this part of the energy problem. . . . It would seem unlikely that the United States will be as fortunate in future years as it has been during the past four heating seasons—years which have been extraordinarily warm, thereby reducing fuel demands considerably below estimates.—Congressman Clarence J. Brown, January 1976

"The current shortfall in natural gas supplies will continue to grow worse . . . Industrial consumers in several states have already experienced significant curtailments, and these curtailments are likely to be much larger in the future. Although I have not estimated the number of jobs that would be lost as a result of industrial gas curtailments, I would expect the number to be significant, particularly in some states. The effects of a growing shortage would be much like those of an Arab oil embargo—increased unemployment and a reduced level of gross national product. The natural gas shortage differs from an oil embargo in that we are imposing it upon ourselves."—Robert S. Pindyck, Professor of Economics at the Massachusetts Institute of Technology, January 1976

"It seems indisputable that the nation's natural gas supply is shrinking at a rate which justifies alarm for the longer term, if not for the weeks just ahead. And the only logical approach, as the Senate finally realized in passing its version of the emergency bill, is graduated relaxation of price controls to stimulate drilling for new supplies. . . . So Congress should address itself to this broader, permanent remedy without delay, striving to cushion the blow on price as best it can, but realizing (as does the public, we suspect) that the price simply has to go up to some degree. Otherwise, the country probably will have a stunning gas shortage some cold winter month when, typically enough, no one is predicting it."—Washington Star, December 27, 1975

"The Senate has passed an excellent bill, permitting short-term emergency sales at higher prices this winter and, next spring, beginning the deregulation of prices. . . . The bill has now gone to the House Commerce Committee, whose chairman, Rep. John D. Dingell, is evidently determined not to report the half of the bill that provides permanent deregulation. That makes a hard choice for the administration and the Senate majority: Should they settle only for a jerry-rigged emergency sales procedure, or use the shortage as a lever to try to get the whole Senate bill? Probably, on balance, it's better to get whatever can be passed quickly. There are jobs at stake, and a legislative stalemate here would be very bad for public morale. But not much gas is going to be sold under short-term emergency procedures, and Mr. Dingell's tactics are already contributing to a further gas shortage in the winter of 1976–77."—Washington Post, November 6, 1975

Rarely have "I told you so's" been more quickly and decisively verified.

The American Gas Association predicts that between now and 1985, price decontrol of natural gas would bring about an increase in production of 4 trillion cubic feet of natural gas per year, roughly equivalent to 2 million barrels of oil per day. Once again, this figure should be compared with the maximum expected fruits of the President's energy conservation program, 3 million barrels of oil per day energy equivalent by 1985—a further demonstration that encouragement of more energy production by removal of governmental restrictions is not only the best but the only way to solve the energy crisis.

III. THE ABSOLUTE NECESSITY OF INCREASING ENERGY PRODUCTION

A. NO POSSIBLE SUBSTITUTE FOR MORE OIL NOW

In any realistic energy scenario for the next 10 years, the United States is going to have to use a substantially larger amount of oil. Since natural gas production is often—though not always—closely associated with oil production and oil well development, what is said in this respect about oil applies to natural gas as well. The two fuels together now account for three-fourths of all energy consumed in the United States.

Even with the maximum savings from conservation expected by the President, and using the lowest estimate for energy demand in 1985, we will need between 9 and 10 more million barrels of oil per day energy equivalent then than now. The most optimistic estimates of the development of energy production from coal and nuclear power—the only realistic large-scale alternatives to oil and gas as energy sources between now and 1985—predict no more than a 7-million-barrel-per-day equivalent increase from these sources by 1985. Such an increase presumes major changes in governmental policy particularly toward nuclear power, giving it a full green light instead of the administration's cautious amber. The other 2 to 3 million barrels per day has to come from expanded oil and gas production in the United States—or from increased oil imports. Hydroelectric power, now contributing 1.5 million barrels of oil per day energy equivalent, is not included in these estimates because most of its readily available sources have already been used and new dam construction on a large scale is very slow and costly.

No one wants increased oil imports, except as a last resort. In fact, the oil and gas industry maintains that it is fully capable of increasing oil and gas production by as much as 7 million barrels a day, from American sources, by 1985, if governmental price and other restrictions hampering development and production are removed. This, combined with the maximum expansion of coal and nuclear energy production, could actually reduce our present dependence on imported oil by 1985.

But the essential fact is that even with maximum conservation and maximum increase in coal and nuclear energy production by 1985, at least 2 to 3 million barrels per day of additional oil and gas will be required by then. Consequently we must produce more of them. To the extent that we fail to do so, we will have to import more. And if energy demand increases above the minimum estimate, or the President's energy conservation program proves unfeasible or counterproductive in its economic effects, the increased oil production becomes all the more clearly necessary.

B. NO POSSIBLE SUBSTITUTE FOR MORE NUCLEAR POWER

While it is certainly true that prophets of doom have repeatedly and greatly exaggerated the rate of depletion of oil and natural gas reserves, it is equally true that these fuels are of finite supply and must ultimately be exhausted. While no one should now pretend to be able to predict when that exhaustion will occur—though many, from the CIA on down, do so pretend—it is a fact to be reckoned with in very long-range energy planning.

In speaking of the exhaustion of fossil fuels, it should be clearly understood that the oversimplified popular picture of a steady flow of oil and gas up to the point of exhaustion, followed by a sudden and complete cutoff, is economically absurd. Once it is apparent to the producers—as distinct from the products of governmental think-tanks—that most reserves are depleted and few more are likely to be found, production will be cut back and the price will rise. A fairly long period of adjustment may be anticipated.

So eventually we must develop an alternative to fossil fuels which is virtually inexhaustible and renewable. The only practicable alternative is nuclear power. The only other possible choice, solar power, is so diffuse that the equipment needed to concentrate it for really large-scale energy production is beyond all present technological horizons. Therefore, even though we have much more time than President Carter and the CIA think before our fossil fuels are used up, we need to advance in every practicable way the development of nuclear power which will be our only recourse when the fossil fuels truly do run low.

Nor is this only a necessity for the distant future. We need nuclear power right now—all we have, and as much more as we can get. Not only can it help significantly over the next 10 years to fill the gap between expected demand and limited supply; it can and does act as a reserve for times of crisis. This role of nuclear power is almost unknown, yet it was of enormous importance in the cold weather crisis last February, as Dr. Peter Beckmann graphically describes in the March 1977 issue of his outstanding newsletter, access to energy:

As the icy grip of winter tightened, U.S. electric output went up, until for the week ended January 8 [1977], it reached a value never attained before by any nation on earth—43.927 billion kilowatt-hours.

The awesome record stood for a whole week. The following week it was surpassed with 45.459 billion kWh. And it was broken again for the week ended January 22 (the latest figures we have), with an unheard of 45.639 billion kWh.

The week included the morning of Monday, January 17. That morning, the U.S. faced a crisis beyond the grasp of the ozone-layer warriors and the cocktail-party Cassandras.

The power was running out. A black-out from Michigan to Virginia threatened—not a little fun like November 1965, but a deadly blackout in the deep freeze, with massive loss of life.

11,000 MW of capacity was down on scheduled maintenance; and another 9000 MW stood helpless, because coal piles had frozen, or because the desperately awaited coal or oil

was on barges immobilized in the ice of the Ohio River. Appeals went out to industrial consumers to cut back demand. Dayton Power & Light was down to 50% capacity. Parts of Virginia, Georgia and Florida went black for periods of an hour or more. Like a horse that slows down before it collapses under the load, the 60-cycle frequency of the power net began to sag from Indiana to Virginia.

What saved the 90% coal-fired East Central States from disaster that icy morning?

Nuclear power did. From Illinois, from New York and from New England, the life-giving juice flowed in. Chicago's Commonwealth Edison, with 40% of capacity the nation's most nuclear utility, increased its nuclear output to 48% and came through. All of New England's nuclear plants, 'unsafe, uneconomic, unreliable and unnecessary,' were on line providing 30% of the region's output and came through. Beleaguered Con Edison of New York reduced its voltage by 5% so it could export; Indian Point, the thorn in the Penthouse Proletariat's flesh, came through, as did the nuclear plants of Niagara Mohawk and Rochester G & E.

Nuclear power, what little had survived the vicious onslaught by an intellectualized elite, had bailed out the eastern half of the country.

C. THE EFFECT OF GOVERNMENT RESTRICTIONS AND CONTROLS ON PRODUCTION

If a cynic about human nature were to undertake to prove that men are by nature irrational and incapable of learning from experience in serious matters of public policy, he could probably make his best case with reference to the stubborn refusal of so many men over so many years to recognize the restrictive effect on production of Government controls, notably price control.

Of course, men are rational and can learn from experience. But many find it peculiarly difficult especially in this area. When full allowances are made for every man's desire to be able to buy what he needs very cheaply, and for Government's conviction that its powers enable it to do almost anything it wants in society, it remains difficult to understand why the simple lesson of the effects of governmental restrictions and price controls on production should be so hard to learn.

All history bears witness to it. The first attempt to impose price controls in recorded history was by the Emperor Wang Mang of China in the year 9 A.D. A famous attempt was made by the Emperor Diocletian, absolute ruler of the Roman Empire, in 301 A.D. As governments have grown more powerful and the technical means of exerting power at their disposal have grown greater, such attempts have been made with increasing frequency.

The result is always exactly the same. The proponents of price controls have convinced themselves and others that the producers are making so much extra money that they do not need any more and cannot even use any more except on personal luxuries. But the fact turns out to be that once the price controls are imposed, it becomes uneconomical for most producers to produce the controlled products at all. They simply stop producing them, and go into other lines of work. The result is a shortage. Shortages follow price controls as night follows day. The controlled product becomes increasingly unavailable at the controlled price.

Where the nature of the product is such that it can be sold without government's knowing about it, a "black market" immediately springs up. Black markets have been a central feature of life in Communist countries ever since the first Bolshevik government took over in Russia, and will continue to be so long as communism remains in power. Without the "black market," in fact, the peoples in those countries probably could not live at all. Where the product, like oil or natural gas, cannot be concealed in quantities sufficient to meet any significant portion of the demand, the result of price controls is that less of it becomes available and more consumers have to turn to substitutes. This is what happened to automobile gasoline following the Arab oil boycott of 1973–74—which remained effective only so long as gasoline prices were artificially held down by our Government. This is what happened to natural gas in the cold winter of 1977.

It is also what happened to meat in 1973, and has been happening to apartments in New York City since World War II when rent controls were first imposed and have never since been lifted. Over and over again the economic truth has been proven that Government restrictions and controls create shortages. Yet the dream of getting value without paying for it is so perpetually beguiling that this lesson never seems to be learned.

When a product is in short supply, its price must be allowed to rise. Otherwise it will become less and less available, and even those who truly need it and are fully able to pay for it will be denied it.

But a price rise is helpful only if the increased price provides substantially more money from production. If it is the result of a direct or indirect tax, it is worse than useless except, to some extent, as a conservation measure—presuming it really works for this purpose. Certainly no tax can encourage production. But the ordinary consumer does not know, and is most unlikely to take the trouble to find out, how much of the price he pays for an essential product goes to the Government in taxes and how much goes to the producer. Every survey on the subject has shown that the public almost universally assumes that a much larger share of the retail price it pays goes to the original producer or manufacturer than is in fact the case. So deeply ingrained in this attitude that many people simply will not believe the truth, no matter from how high an authority it comes. Therefore, taxes on essential products in short supply make the situation worse by convincing people that they are paying more and getting less, while the producers are getting more and providing less. In fact, only Government is the gainer.

What this can lead to was vividly demonstrated by a mass protest against paying the bills charged for electric service by the Georgia Power Co. in February 1975. This protest was organized by a group known as the Georgia Power Project, which in December 1972 described its objectives, in a widely distributed flyer, as follows:

We are socialists, working toward a time when the Company will be run and managed by its workers and consumers. We believe this is necessary not only for the Georgia Power Company but also for many other economic and political institutions which so dominate our lives.

Most of those supporting this protest had no idea of the background and objectives of the organization which promoted it. When I pointed out the facts in a public meeting, the protest quickly ended. But this avowedly socialistic group got its initial support from the anger of consumers over soaring electric bills and their unawareness of the fact that these increases were mostly due to Government action, not the greed of the company.

Direct restrictions on energy production in the name of protecting the environment have a crippling effect which is evident to anyone. Here, clearly, one danger must be weighed against another: The danger of real injury to the environment, and consequently to people, versus the danger of decreased energy production—which can be a very real danger both to livelihood and to health. In making this evaluation, the primary criterion should always be people, not the misplaced esthetics of those whom Dr. Beckman devastatingly calls "the Penthouse Proletariat."

When a coal miner dies of black lung disease or an elderly man with emphysema dies ahead of his time because of air pollution from a coal-fired powerplant, these are genuine injuries effected through the environment by energy production and strong arguments for using cleaner sources of energy, such as natural gas, hydroelectric or nuclear power. But to deny people the energy they need because an oil or gas pipeline might cross an animal trail, a new dam for hydroelectric power might imperil an obscure species of inedible fish, or a nuclear powerplant might remind certain activists of those bombs they want so much to ban, is not protecting the environment but injuring ordinary people for the sake of the romantic dreams and ideological prejudices of a relative handful of influential intellectuals.

Finally, in addition to the clear-cut effects of environmental restrictions and price controls in discouraging production, there is the constant and increasing burden of the immense paperwork Government now requires from energy producers. Many people still seem to have trouble grasping the fact that this paperwork is not something a few big businessmen can and will do in their spare time as a civic duty, but imposes a huge additional cost of doing business by requiring thousands of additional accountants, bookkeepers and report writers to be hired, who are for all practical purposes working for the Government while being paid out of the money Americans pay for energy and assume is going into the coffers of the big oil companies. The Government reporting requirements are, in economic effect, nothing more nor less than a hidden tax. The cost of this work, like the cost of all money paid by the consumer in taxes on

energy products, is not available for investment in increased energy production.

It is absolutely necessary to increase our energy production. Yet Government's price controls and environmental restrictions are directly preventing it, and present and proposed taxes and new reporting requirements will deceive people into believing more money is available for increasing production than is actually the case.

IV. A CRITIQUE OF PRESIDENT CARTER'S NATIONAL ENERGY PLAN

A. IDEOLOGICAL STARTING POINTS

President Carter's national energy plan clearly starts from socialist, big-government premises. These premises, assumed without argument or discussion to be true, shape the entire plan and turn it in a direction that is not only wrong according to the thinking of advocates of free enterprise, but also will prevent the plan from achieving its own stated objective: enough energy for the United States. In short, it won't work.

The President's national energy plan lays down 10 basic principles. Not one of them so much as mentions the word "production." Nor do they have anything significant to say about the subject of production, even without the word. The first principle alone establishes the plan's ideological premises beyond the shadow of a doubt: "The first principle is that the energy problem can be effectively addressed only by a Government that accepts responsibility for dealing with it comprehensively."

In other words, the solution to the energy crisis must be found first of all in Government—and not through the withdrawal of Government from its interference which has done so much to create this crisis, but through even more "comprehensive" programs of Government of action.

If that is not a Socialist premise, what is?

Of the other nine principles, one particularly is singled out as "the cornerstone of national energy policy." It "is that the growth of energy demand must be restrained through conservation and improved energy efficiency." The primary emphasis—the "cornerstone"—of the President's energy program is therefore conservation; yet the plan itself later admits—page 95—that the maximum savings possible with conservation are the equivalent of 3 million barrels of oil per day in energy by 1985 and that we will still need the equivalent of 45 million barrels by then, 25 percent more than we now have. Being sure that at least we get that much, rather than struggling to save the 3 million barrels, should be the cornerstone of our energy program—and if it were, we might soon find that we could produce even more, and avoid the threat to employment and national economic growth which any severe restrictions on energy use obviously pose.

Why is conservation nevertheless designated the "cornerstone"? It would seem that it is because this is something Government can do. Government cannot produce one barrel of oil, but it can restrict the use of the oil that is produced. If the very first principle of our national energy policy is comprehensive action by Government, then we have no choice but to concentrate on conservation since it is only in this area that Government can comprehensively act.

Of course, there could be another kind of Government action: decontrol. This is action in the opposite direction. It is anathema to "liberals." The 3-year, $4 million Ford Foundation study on national energy policy, "A Time To Choose," managed in its hundreds of pages to avoid completely the question of natural gas price decontrol. Yet, as we have seen, a bill for that purpose almost passed Congress last year and even had the support of some "liberals." Decontrol is possible. At the very least, it is an option that ought to be considered. The seventh principle of the national energy plan does recognize that the price of energy sold should reflect its replacement cost. Natural gas is specifically mentioned as an instance where this principle has not been followed. Perhaps we should be grateful that the Government has finally recognized that it should not expect private companies to produce energy below cost. But that is a long way from decontrol—a long way from recognizing that there has to be a substantial return over cost to encourage and finance development of new energy sources.

The other seven principles are a combination of truisms and hopes—that economic growth must continue, that environmental protection should not be given up, that we should try to reduce our dependence on oil imports, that our national energy policy should take into account the needs of all citizens in all parts of the country and treat them all fairly, that Federal energy policy should not keep changing fundamentally, that we should make more use of energy resources in plentiful supply and less use of those in short supply, and that we should expand research and development into exotic new sources and potential sources of energy. It would be difficult to argue with any of these as stated. But they hardly get at the root of the problem.

Though the President's national energy plan is a little more rational than the Ford Foundation study, "A Time To Choose," it reflects many of the same crippling biases. Indeed, in the nuclear power area it appears to have adopted the Ford Foundation analysis almost without change—see below. All the emphasis is on what Government is doing and could do; little or nothing is said about what it might and should stop doing.

Severe energy scarcity is assumed to be inevitable, because no increase in domestic oil and gas production is expected or encouraged. The whole accent, on every page, is on restriction, not production—the exact opposite of what is needed to fulfill even the plan's own goals for national energy availability. Without greater freedom and incentive to producers, there is no way that the energy which even the plan recognizes that we must have can be produced, at least in this country. A continuation of the present price controls, bureaucratic delays, and blockage of the development of new energy sources in the name of protecting the environment will make inevitable a greater and greater dependence on imported oil—exactly what it is one of the primary purposes of the plan to avoid.

B. THE TAX PROGRAM

Two major new taxes are proposed by the national energy plan. One is a gasoline tax, which could rise as high as 50 cents a gallon. The other is a tax on fuel-inefficient new cars, the so-called gas guzzler tax.

Clearly the most vulnerable element in the entire program is the gasoline tax. It has been so widely condemned already that further criticism may seem to be "beating a dead horse." Yet this proposal is not an isolated aberration in the plan, but a logical consequence of its ideology and its entire approach to the energy problem.

Prices of scarce products rise. This is fundamental, obvious economic law. The rising price simultaneously discourages unnecessary consumption while encouraging greater efforts to find, develop and produce more of the scarce commodity.

When Government steps into the picture, it can essentially do just one of two things: either hold the price down artificially through price control, thereby making the shortage worse—as has happened with natural gas—or raise the price through taxes and keep the extra money for itself or those it favors, thereby helping somewhat in conservation while doing nothing about production. Of the two policies, price control is worse because it encourages consumption while discouraging production; taxation such as the President proposes for gasoline discourages both consumption and production.

The plan recognizes that the money collected through the gasoline tax cannot simply be retained by Government to increase its spending, but must be returned to the taxpayer in some way. But as everyone except the most fanatical big-Government ideologues now recognize, such money sticks to many, many bureaucratic fingers along the way. Wherever it is ultimately cycled to, much less comes out at the end of the cycle than went in at the beginning.

This is not to accuse anyone of actual dishonesty. It is simply that the process of cycling money through Government is immensely costly, and always will be. The studies that have been made of the operations of the Social Security Administration and how its efficiency compares with that of private insurance companies have certainly made this clear.

And whatever finally happens to the tax money collected, not one penny of it goes into the development of more energy production. Even the most rabid critics of big business have to admit that at least some of the money paid for energy, over and above costs, goes into development. None of the money collected by the proposed gasoline tax would go to that. For development purposes—for increasing production—it would be a dead loss.

Furthermore, a gasoline tax would be fundamentally unfair. The large-scale use of gasoline is absolutely essential to American life today. The vast majority of Americans drive every day to and

from work. Many drive 100 miles a day, or even more. It may be possible to extend car pooling, but whether this is practicable for a particular individual living in a particular home and holding a particular job is purely a matter of chance. Rapid transit development cannot begin to keep pace with the growth of the suburbs. It is incredibly slow and enormously costly. Many people simply have no choice about using large quantities of gasoline every day. They must or lose their job or their home. To tax their gasoline for reasons that have nothing to do with its production and availability, simply to help attain a nationwide conservation goal to which their individual contribution, no matter what they do, is far too small to measure, is an act of tyranny.

Fortunately, it appears that Congress sees this, and will not pass the legislation to implement this part of the national energy plan. But it should never have been suggested in the first place. That it was, demonstrates once again the pro-restriction, antiproduction orientation of the entire plan.

The other proposed tax, on large gas-guzzling automobiles, is perhaps somewhat more defensible. Some (not all) large cars are energy wasters and some people do buy them as status symbols or because it gives them a feeling of power or security. But the kind of people who feel this way and are able in today's high-priced car market to buy such automobiles are very unlikely to be deterred by a few hundred dollars tax penalty. And there are other people who very much need larger cars—usually station wagons—to transport large families. Nothing in the President's plan suggests that he or his advisers gave them a thought, and yet any Sunday spent on the road anywhere in the United States during the warm months of the year should have forcibly reminded them of the importance of the family station wagon.

Another factor, often overlooked, deserves to be mentioned here. A substantial number of low and lower middle income Americans today can only afford to drive an old gas guzzler. They cannot pay the high prices of new cars or even fairly recent compacts; only the old gas guzzler is within their means. So they waste gasoline because Ralph Nader and his allies have, by imposing one costly construction requirement after another on new cars, driven the price of the more fuel-efficient automobiles out of the range of these drivers.

C. CONTINUATION OF GOVERNMENT ENERGY PRICE CONTROLS

While on the one hand the national energy plan proposes to tax gasoline to promote conservation, on the other hand it clings stubbornly to Government price controls on crude oil and natural gas, though allowing some increases in present price levels. Retention of these controls discourages both conservation and production. In view of the price increases that are proposed, the consumer will pay more in any case; the difference between what he would pay under the President's program and what he would pay under full decontrol is slight. Who gains from a continuation of these price controls? What possible advantage do they offer?

The plan never comes to grips with these questions. It makes repeated references to a need to prevent windfall profits. It is time to face this foolish bugaboo squarely, because it always comes up in any discussion of energy pricing. What is so enormously evil about windfall profits? Does not every man on whose land oil is unexpectedly found enjoy a windfall profit—whatever is left after taxes, that is? Does it make any sense at all to deny American producers of "old oil"—oil developed before the Arab embargo—the present world price of oil while paying it to Arab sheiks who are enjoying the biggest windfall in history? Should we not give a few more windfalls to our own people rather than to Abu Dhabi and Kuwait, for example?

The plan also tries to make the absurd point that the oil companies physically cannot spend more money for development. While physical limitations may prevent production increases within limited periods of time, it is certainly nonsense to say that they make increased income useless for development. Money for development can always, eventually, be used. In addition, it should be remembered that over 80 percent of new oil wells are drilled not by the large international oil companies but by small independent producers for whom maximum incentive is needed since the majority of all the wells they drill are dry.

While the plan makes some price concessions allegedly to promote the discovery and development of new sources of oil and gas, the result of its retention of existing price controls right along with the concessions would be to plunge producers of both oil and natural gas into an incredibly complex multitiered pricing system whose Alice-in-Wonderland character becomes more apparent the more closely it is studied.

Take crude oil first. Crude oil is crude oil. It is all the same. But under the National energy plan, there are no less than three kinds of crude oil: First; "old oil," drilled before the Arab embargo of 1973–74 and the great worldwide increase in the price of oil, still held at the pre-embargo price of $5.25 per barrel; second, a category which the plan does not name, but which we might call "less old oil" drilled between 1974 and 1977, still held at its present price of $11.28 per barrel; and, "new oil," hopefully to be drilled as present price of $11.28 per barrel; and third, "new oil," hopefully to be drilled as a result of the plan's generosity, for which the price would be allowed to rise until by 1980 it had reached the 1977 world price of $13.50 per barrel.

So right now, while the Arab oil producers we are trying to import less from make $13.50 per barrel from all their oil regardless of whether it is very old, less old, or new, American producers are restricted to the three different price levels all of which are less than the Arabs get. The greatest concession the national energy plan makes to our American producers is that by 1980 they will finally be allowed to collect what the Arab producers are getting this year—then maybe, out of the goodness of the Government's heart, they will be allowed in 1983 to get the Arab oil price of 1980. So a plan which has as one of its primary objectives reducing our dependence on imported oil perpetuates a 3-year price advantage for imported oil over American oil.

Exactly the same approach, with if possible even less justification, is taken with natural gas. Here too a multitiered price system would be created. Natural gas now sells in the unregulated intrastate market at approximately $2 per thousand cubic feet. Until 2 years ago, interstate natural gas prices were held down to the fantastically low level of 52 cents per thousand cubic feet. Is it any wonder we had a shortage last winter? Last year, while refusing to decontrol natural gas, Congress did allow its price to rise to $1.42 per thousand cubic feet—still more than 50 cents below its actual market value. The national energy plan holds to that artificially depressed price for "old" natural gas—except for an allowance for general inflation—while permitting "new" natural gas to qualify for a $1.75 per thousand cubic foot price—only half as much below the market price as the "old" natural gas. Worse still, this $1.75 price ceiling is now to be applied to "new" natural gas sold intrastate, thus removing the present incentive of the $2 price for intrastate natural gas development. Whatever is gained by raising the price for "new" interstate natural gas is taken away by lowering the price for "new" intrastate gas.

So the first tier in the natural gas pricing system is the $1.42 per thousand cubic foot price for "old" gas sold interstate; the second tier is the $1.75 price for "new" gas wherever sold; and the third tier is the $2.00 price for "old" gas sold intrastate. Natural gas can be imported in quantity, but it is a much more expensive process and not nearly as efficient. We must produce most of what we need ourselves. In this area there are no sheiks to bail us out even if we wanted to let them.

Thus, rejecting natural gas price decontrol which came within just four votes of passing the House of Representatives in 1976, President Carter's plan actually extends the price control system for this vital energy source. This could well make shortages next winter even more severe. And this is done without even attempting to justify the wildly varying and complex pricing system, one of the most striking imaginable illustrations of how Government's efforts to correct its own past errors involving intrusion into the market place, by still more intrusion into the market place, simply compound the problem.

D. UNJUSTIFIED FEAR OF NUCLEAR POWER DEVELOPMENT

One of the very worst features of the national energy plan is its absolute ban on the development of the plutonium breeder reactor.

In the other specific areas covered in this critique, at least the plan was attempting to respond to a real problem or a real need, however wrongheadedly. Some effort to conserve energy should

be made. A major effort to limit our dependence on oil imports should be made. Grudging as is its admission that gas and oil prices must rise, confused and inadequate as is the weird pricing system the plan would impose, it does represent to some degree a concession to economic reality. But with regard to the plutonium breeder reactor the plan, in startlingly harsh and uncompromising language, simply closes the door on the most promising new source of energy now available to us.

Here is how the door is closed:

The United States will defer indefinitely commercial reprocessing and recycling of plutonium, as well as the commercial introduction of the plutonium breeder. The President is proposing to reduce the funding for the existing breeder program and to redirect it toward evaluation of alternative breeders, advanced converter reactors, and other fuel cycles, with emphasis on nonproliferation and safety concerns. He also is proposing to cancel construction of the Clinch River Breeder Reactor Demonstration Project and all component construction, licensing, and commercialization efforts.

It is surely not coincidental that the Ford Foundation's energy policy project which produced the pro-Government, antiprivate enterprise report "A Time To Choose" 3 years ago, made this identical recommendation under the directorship of S. David Freeman, who has now become an energy policy adviser to President Carter. The recommendation of Freeman's committee, presented at the conclusion of "A Time To Choose," reads as follows:

The breeder reactor program, to which we have committed a major portion of the federal research and development funds, is an outstanding example of the neglect of public participation as well as independent assessment, and of failure to protect the public treasury. We recommend that the present open-ended government funding commitment to the liquid metal fast breeder reactor demonstration project be terminated immediately.

Subsequently the Ford Foundation issued another study, report, and recommendation confined solely to the nuclear breeder reactor program, recommending its abandonment. This is the position the President—no doubt with much nudging from Mr. Freeman—has adopted. What is its rationale, and what will be its consequences?

The rationale, such as it is, is almost entirely psychological and political rather than technically realistic. The decades-long debate about atomic weapons has made it almost impossible to discuss objectively in public any question relating to nuclear energy. The reaction of many people to any mention of the subject is simply one of blind fear, and refusal to listen to the facts. The reference in the national energy plan to safety as one of the primary reasons for killing the breeder reactor reflects a surrender to this attitude.

As Dr. Petr Beckmann, professor of electrical engineering at the University of Colorado, establishes by overwhelming evidence in his very important book, "The Health Hazards of Not Going Nuclear" (Boulder, Colo., 1976), nuclear energy production is by far the safest of all forms of energy production—approximately 100 times safer than the others. Nuclear energy production has not yet led to a single fatality, while oil fires and the black lung disease of coal miners take many lives each year. The waste products of nuclear energy production, contrary to popular belief, are far less dangerous than those from coal production, are small in volume, and can easily and with complete safety be buried in stable salt formations underground. The danger of a nuclear explosion, which is what most people really think about when they hear the words "nuclear safety," is virtually nonexistent.

So far as plutonium goes, widely circulated and terrifying statements about its toxicity are enormously exaggerated. Its only real danger is when inhaled in dust form. All radiation from plutonium is stopped by any intervening solid, even if it is as thin as a sheet of paper or of plastic. The use of plutonium in reactors can be controlled, as in any nuclear reactor, more safely and reliably than any other energy source because it is so small and easily confined. Many tons of plutonium have been handled and successfully guarded in our nuclear weapons establishments for more than 30 years, along with the production, refining, manufacture, and storage required, with no significant problems. So safety is simply not a real issue.

Nuclear proliferation, the other reason mentioned in the national energy plan for killing the breeder reactor program, is a serious political problem but one that can hardly be solved simply by our denying ourselves the benefits of this advanced form of nuclear power. Great Britain, France, West Germany, and Japan all have breeder reactors. Far from stopping their breeder reactor programs because we do, they are all the more likely to step them up. Apparently the Ford Foundation report on plutonium actually expects people to believe that if the United States decides not to develop plutonium breeder reactors, everyone else will be shamed into making the same decision so that there will be less nuclear proliferation.

It did not happen with the supersonic airliner, as the world knows from the Concorde—we stopped building it, but other nations went ahead—and it certainly is not going to happen with the plutonium breeder reactor. All we can do by halting its development is to put ourselves behind other countries in energy production and make our energy crisis still worse.

Why is the plutonium breeder reactor so important? Dr. Beckmann gives the answer in four hard-hitting sentences:

The beauty of breeding nuclear fuel is that it does not, like uranium enrichment, use energy; on the contrary, it produces it. A breeder not only converts fertile material into fissionable fuel; it produces energy at the same time. * * * The possibilities of the breeder boggle the mind. Consider just this single aspect: if no more than the uranium tailings (U 238) now going to waste in storage vessels around the country were used as breeder fuel, they could provide the energy now imported from the Organization of Petroleum Exporting Countries for 700 years.

That is what the President's national energy plan gives up by killing the plutonium breeder reactor.

V. A CONSTRUCTIVE PROGRAM TO STIMULATE ENERGY PRODUCTION

A. OIL AND NATURAL GAS DECONTROL

The most fruitful single action Government could now take to solve the energy crisis through increased production would be to remove all price controls on crude oil and natural gas.

This should be accompanied by a drastic reduction in the bureaucratic procedures that must now be followed, and clearances that must now be obtained, before new oil wells are drilled, whether on dry land or under the oceans on the continental shelf.

All reasonable safety measures to prevent environmentally damaging oil leaks and spills should be kept in effect.

By contrast to the expectation of no increases, and possibly even decreases, in domestic oil and natural gas production in President Carter's national energy plan, these actions, by industry estimates, would increase domestic production of crude oil by 5 percent and of natural gas by 20 percent during the next 8 years.

If outcries, however ill founded, about unconscionable oil company profits proved an insurmountable obstacle to full decontrol, an acceptable compromise position would be to remove the price controls but impose sufficient income reporting requirements to be able to enforce a law requiring that a specified percentage of the return to oil companies from increased prices for crude oil and natural gas would have to go directly into production development, rather than being distributed to stockholders.

What ever else can or cannot be done in this area, the whole "Mad Hatter" distinction among very old, less old, and new oil ought to be scrapped without worrying about windfalls. This has led to situations where independent oil producers beg the Federal Energy Administration to tell them whether oil struck by a new well they are thinking of drilling would be classified as "new" or "old"—and the FEA refusing to tell them in advance, probably because they do not know themselves. Since the price differential is more than double, this is, to put it mildly, a rather significant economic consideration in well drilling.

Contrary to many charges, the oil industry is not a monopoly. There is active competition among oil producers. This competition, with decontrol, would encourage the development of more oil supplies and would prevent excessive price increases. After a thorough study, the energy policy research project of George Washington University concluded, in its report entitled "Competition in the Oil Industry"—Washington, D.C., 1975, 1976—that:

The oil industry is one of the least concentrated in the United States. There is no evidence that the major oil companies have expanded their share of the marketplace at the expense of independents. Indeed, the evidence, if anything, suggests the opposite. Nor, as a rule, does it seem that the majors have used vertical and horizontal integration, joint ventures, exchange and processing agreements, or interlocking directorates to engage in anticompetitive practices. Finally, oil industry profits, when viewed in their historical perspective, have not been excessive; nor

were recent short-lived increases in profits "unconscionable."

Decontrol should not mean a complete removal of all regulation designed to protect the environment, but it should mean a much more commonsense approach to this matter than has prevailed in recent years, and the regulations that are retained should be applied by State and local governments rather than by the Federal Government, except in the case of offshore oil, which is under direct Federal jurisdiction. Much more than the remote possibility of damage should be demonstrable before an oil or gas producing plant or well is shut down, or development of new plants and wells prohibited or long delayed. Remote possibilities of damage are always with us; and we know from past winters that the damage from energy shortages is no longer remote and can be very great indeed. Irresponsible and baseless incitement of environmental panic should be harshly criticized whenever it appears, and should never be allowed to influence governmental decisions. The "disaster lobby" should be made to prove its case, not simply assert it. One is tempted to suggest that each of its major leaders, as a condition of being taken seriously by intelligent men, should be required to debate his conclusions publicly with Dr. Petr Beckmann.

The only real problems of pollution relate to air and water. Even the Ford Foundation study, "A Time To Choose," admits that—

Recent cleanup efforts appear to have improved air quality, with measurable reductions in the concentration of particles and sulfur dioxide in urban air in recent years.

It further states that dangerous air pollution is only likely to return if there is widespread reconversion from oil-fired to coal-fired plants without adequate scrubbing of the ash and smoke emissions. Thus increased production of oil—and more nuclear power—will help keep air pollution low—though this conclusion, obvious as it is, does not appear in the Ford Foundation report.

It is with regard to water pollution that the great current panics pertaining to the production and transportation of oil are spread. Periodically it seems that there is another major scare story in the newspapers about oil spills in the ocean, from a series of wrecked or leaking tankers. Not too long ago there was the blowout of a well in Norway's Ekofish field in the North Sea. Certainly oil spills and blowouts are destructive and dangerous and should be prevented by any feasible means. But they are not the kind of doomsday threat often portrayed. Readers of this year's scare stories on oil spills should stop and think: Did any one of the highly publicized spills actually do any measurable damage at all, to nearby coasts or to ocean life? The answer is "No." Each of them, from the sunken tanker spill near Nantucket Island last winter to the Ekofish blowout, was broken up by wind and wave action and did no harm at all.

It is true that we cannot always expect to be so fortunate with major spills. But the recent record suggests that most of the time they do no harm.

The objection to oil producing equipment, particularly offshore, as unsightly will not bear a moment's serious consideration. When it comes to the lifeblood of our economy, to cut it off because some people do not like the looks of it is surely the height of folly.

Government decontrol—except for the basic regulations genuinely needed to protect the environment—is the answer and the corrective to our declining domestic production of oil and natural gas, and our increasing and precarious dependence on imported oil. We may not be able to attain complete self-sufficiency in energy, or in oil and gas, within 10 years, but we can move much closer to it than we are today. In the national energy plan, Government admits that it can do nothing—evidently it does not want to do anything—to increase oil and natural gas production. Our oil and natural gas producers want to do much more, but they are held back by Government controls, redtape, absurd distinctions, and endless delays. If they are freed of these restraints, they can and will do for us what they did in the 1930's and 1940's and 1950's before the restraints were put on, and give us abundant energy from fossil fuels—at somewhat higher prices than today's, but still readily available—until nuclear energy is ready to take over once our reserves actually begin to run out.

A new development points up all the more clearly the potential for increased production in this area. Studies by Dr. William M. Brown of the Hudson Institute and Professor Jones of Louisiana State University show that the highly pressurized water often struck during drilling for oil along our gulf coast is saturated with methane, the main ingredient (95 percent) of natural gas. The potential energy in this methane is enormous; the lowest estimate is that it would be equal to the entire energy consumption of the United States at present rates for 62 years. And there is substantial evidence that the actual amount of methane recoverable from this pressurized water, continuing to flow into the wells as it is extracted, could come to six times that figure.

As Dr. Beckmann says:

If the Gulf Coast does indeed hold such a vast treasure, then there is only one human institution willing and able to keep it underground—government. It will, no doubt, be assisted by the inevitable environmentalists who will point to the land subsidence and the possibility of triggering earthquakes (prove that they can be ruled out!)

But ultimately, success—or even verification—will depend on whether the government, all three branches of it, will make their only effective contribution, which is to get out of the way. With price controls on natural gas at artificially low prices, this energy source, like so many others, will be kept uncompetitive.—"Access to Energy," May 1977.

B. COAL PRODUCTION

The United States has one-third of all the coal reserves in the world. This is an enormous potential source of energy, but it is not as efficient per unit weight as other major energy sources, and its use does pose genuine environmental hazards.

Typically, the President's national energy plan proposes to solve these problems and increase the use of coal by industry through taxes on industrial use of oil and natural gas to drive up the price so as to make coal competitive, by investment tax credits to encourage conversion to coal, and by appointing various committees to study coal pollution problems. But any intelligent observer of Washington should now know that all such committees do is perpetuate themselves and spawn more committees. The differential taxes would simply hamper oil and gas development without helping coal production, since the cost of coal presumably would remain at or near its present level.

Increasing coal production is not quick or easy. The Bureau of Mines estimates that an additional 200 million tons per year (equivalent to 2 million barrels of oil per day) can be produced by 1985. We will probably need that much more in any case; it cannot be regarded as a substitute for oil and natural gas.

The best way to encourage coal production now would be to remove crippling environmentalist restrictions—not on the burning of coal, which must be closely watched because it can seriously pollute the air, but on the mining of coal in ways which environmentalists consider unsightly: surface or strip mining. While it is possible that some restrictions on strip mining are needed to prevent severe erosion and land subsidence, the usual objections to it are simply based on esthetic considerations and the desire to preserve land as unspoiled wilderness even though we already have millions of acres in national parks and wilderness areas legally set aside for that purpose, and protected from strip mining.

There are enormous reserves of low-sulfur coal in our Western States, ideal for generating electricity with a minimum of air pollution. But most of this coal lies too close to the surface to be mined by underground methods. It has to be strip mined. Actually, this technique has many advantages over underground mining. It is much safer for the workers. It can be done faster, more efficiently, and with less capital investment. It does not look pretty. But what is the price of not permitting it?

No coal mining should be prohibited by law unless there is clear evidence that major, tangible environmental damage would result from it.

The development of unconventional energy sources should be encouraged in every economically practicable way, but they should not be expected to pick up any really significant portion of the load being carried by oil, gas, coal, and nuclear power much before the end of the century, if then. Solar power is the darling of the environmentalists, who do not appear to have troubled to make any serious study of it. Because solar energy is so diffuse, it takes vast and expensive collecting areas to convert it into usable forms of energy. As Dr. Beckmann points out in "The Health Hazards of Not Going Nuclear," an electrical generating plant using fossil fuels or nuclear power to pro-

duce 1,000 megawatts occupies only a few acres, while to get that much output from solar energy would require 50 square miles of collecting equipment. The most optimistic forecasts for solar power are that it could produce the energy equivalent of 1 million barrels of oil per day by 1985 and 2 million by the year 2000.

If this can be done it should be done, and the tax credit and tax forgiveness proposals for solar power development in the national energy plan might actually help. But there is no way that any feasible expansion of solar energy production even by the end of this century could make a really large contribution to solving our energy crisis.

The same is even more true for other unconventional energy sources such as wind power and geothermal power (except for the methane-bearing aquifers discussed above, which can soon become a major byproduct of natural gas production if natural gas is decontrolled).

Second only to decontrol of oil and gas, the full-scale development of nuclear energy at all levels of present or near future technical feasibility would be the best way to increase energy production in the United States. Here, as in the case of oil and gas, the President's program makes a few tentative gestures in the right direction—such as his different suggestion that 10 years is rather too long a time for Government to take to license a nuclear plant—but then comes down solidly on the wrong side in ruling out the plutonium breeder reactor.

Half measures and wrong measures in the nuclear field are particularly damaging because, even without bureaucratic interference, the leadtime to develop nuclear energy production is the longest of any of the present major sources of energy. Government foot-dragging and environmentalist hysteria have already vastly delayed the development of nuclear power, thus helping to create the present energy crisis. Utilities have actually canceled 70 percent of the nuclear plant construction originally scheduled for 1985. The power industry had expected that by 1980 no less than 22 percent of the Nation's electricity would be generated by nuclear power plants. Now the best that can be hoped for, if all 175 nuclear power plants now licensed or under construction are completed on schedule (for it takes 10 years to build one—on top of the 10 years which President Carter admitted are often required to get a permit to build) is that 10 percent of our electrical energy will be nuclear-generated by 1985. This is an appalling slippage in the midst of an energy crisis. We are going to do less than half as well in this area as we had expected and should have been able to do—5 years later.

Even so, it is estimated that nuclear power will supply between 4 and 6 million barrels of oil per day in energy equivalent by 1985, up from just under 1 today. This spectacular prospective increase, even after this industry has been so badly hobbled, clearly demonstrates the enormous potential of nuclear energy.

The safety, reliability, and enormous potential of nuclear power has been convincingly demonstrated. Opposition is based almost entirely on irrational fears and fuzzy politics. The rejection of anti-nuclear-power referendums by voters in seven States in 1976, by margins ranging from 58 to 71 percent, shows that despite the well-crafted propaganda of the anti-nuclear crusaders, the majority of the public has not been fooled. The national energy plan support for light water reactors combined with opposition to plutonium breeder reactors is simply playing politics with the Nation's whole economic future. This pathetic compromise ought to be flatly rejected. Government should reduce licensing procedures for new nuclear plants to a simple check to make sure that necessary safety regulations can and will be effectively enforced, continue to support research and development of the plutonium breeder reactor, and take the same steps to encourage its commercial use that the national energy plan recommends for the much less promising solar power. The wrath of Ralph Nader & Co. would be great. But every single American—even including them—would benefit.

There is one real problem with nuclear energy as it is now used. So long as we are employing the fission process, the basic raw material must continue to be uranium (though the extraction of nuclear energy from uranium can be made much more efficient through the plutonium breeder reactor and the recycling of used fuel rods, both of which would be banned by the Carter energy program). Uranium, like oil and gas, is in relatively short supply. In fact, there is some evidence that it may run very low even before oil and gas do.

The ultimate answer, as pointed out earlier, is nuclear fusion, the energy used in the hydrogen bomb. Instead of scarce uranium, it would use heavy water, the isotope of hydrogen called deuterium, readily obtainable from sea water. The brief comments on fusion in the national energy plan indicate that it shares the Atomic Energy Commission's long-established view that energy production by fusion will not be practicable for decades. It is true that even a crash program to develop energy production through fusion would almost certainly be unable to produce significant amounts of energy from this source by 1985. But the time to begin is now, because only this road can take us to the energy production we will ultimately need.

An energetic and dedicated private company, KMS Industries, headquartered in Ann Arbor, Mich., has perhaps shown the way. Where Government gave up, they went to work. In 1969, scientists at KMS began exploring the possibility of laser fusion, a method for releasing fusion energy that relies on laser beams not only to furnish the energy to implode fusion fuel, but also to bring about the condition for the release of energy. Keeve M. Siegel, founder of KMS Industries, formed KMS Fusion, Inc., a subsidiary, to work exclusively on laser fusion. Money to support its work came largely from the sale of other divisions of KMS Industries during the following years.

But when Siegel applied to the Atomic Energy Commission for patents, he was ordered to stop his research. The scientist in charge of it was ordered not to discuss the subject with his coworkers, and to refrain from making any more calculations with regard to laser fusion, except in his head. (The Government just could not figure out a way of stopping him from doing that.)

Siegel hired lawyers to challenge the ruling, and in February 1971 the Atomic Energy Commission granted a contract permitting KMS to work in laser fusion without Government funds or access to Government information, but under Government contract. The contract asserted the Government's right to contest any patents issued to KMS, and it prohibited KMS from hiring any scientist, technician, or engineer who had ever worked in Federal laser or nuclear weapons programs. Later KMS was allowed to hire people who had been out of such Government work for 2 years or more.

Thus, after 2 years of delay, KMS Fusion was able to hire experienced personnel and begin large-scale work. At that time, an Atomic Energy Commission spokesman said:

> We do not believe it will be possible for such a firm to compete with the vast experience and resources of our laboratories.

Nevertheless, in May 1974, KMS Fusion announced that it had "obtained unambiguously high energy neutrons from a process of laser fusion." That is, the little private company had achieved laser fusion in its laboratory—something that teams of Government-financed scientists in university laboratories and in huge Government laboratories all over the world had not yet accomplished.

Siegel acclaimed the KMS accomplishment as "the beginning of the fusion age." He predicted that, if politics did not intervene, powerplants using the limitless energy locked up in sea water could be operating in the United States by 1985. Since the KMS Fusion work, other breakthroughs in fusion technology have occurred.

The history of KMS vividly demonstrates what we ought to be doing—but have not been doing—in the development of nuclear fusion power. Private initiatives such as that of KMS should be encouraged and helped in every possible way, not blocked and hampered. The kind of assistance through tax credits and tax forgiveness that the President's national energy plan proposes for solar energy development should be given instead, and on a much higher priority, to companies like KMS developing nuclear fusion. Where Government subsidies are necessary to continue work already in progress, they should be provided, so long as they never become the total or primary source of funding. But the long-term objective should be to phase Government out of the whole energy production field and clear the way for full private funding of such vital energy research and development projects as that undertaken by KMS Fusion.

VI. SUMMARY AND CONCLUSIONS

Our energy crisis is real. Its fundamental cause is not some inevitable consequence of dwindling supplies and increasing demand, but the large-scale Government intervention in the energy market and energy production, and Government's general hampering and harassment of private enterprise, during the past quarter century in particular. The only cure is to remove the controls, interventions, and harassments by Government which have caused the crisis.

Energy conservation measures, the principal emphasis of President Carter's energy program, are at best a partial stopgap measure, and at worst counterproductive. No amount of energy which we could ever reasonably expect to save through conservation can make up for failure to increase production. We must either greatly increase our energy production, greatly increase our oil imports, or fall victim to an economic disaster due to energy deprivation which would make the Great Depression of the 1930's look like the proverbial picnic.

Government price controls on energy must be removed. Like all price controls, they inevitably produce shortages. Environmental restrictions on energy production must be brought down to a reasonable level and imposed only when there is real danger to life and health locally, which is definitely not the standard employed today. The best agencies to determine the existence of such dangers are State and local government, closest to the people. Any reasonable reading of the Constitution should make clear that it is State and local, not Federal Government which should be charged with this responsibility.

The irrational fear of nuclear power must be overcome and nuclear energy development given top national priority. President Carter's proposal to kill the plutonium breeder reactor program is a grievous error which should be condemned by every American who wants to see a continuing flow of needed energy for himself and for his children.

The ultimate answer to the energy crisis can only be the development of nuclear fusion power using seawater as fuel. The laser fusion process appears now to be the only practicable means of developing commercial use of nuclear fusion for energy production before the end of this century. It should be encouraged in every possible way, with Government subsidies for research and development where necessary to support ongoing programs—but not with strangling Government controls—until we reach the stage, hopefully soon, when such research and development can and will be financed by private power companies.

SYNOPSIS

Sound and reasonable discussion of the energy situation in the United States today ought to begin with some solid commonsense—hard and simple.

If you are running short of something you must have, your top priority should go to getting more of it. If you are told that getting more will be risky, you must evaluate the risk in light of the consequences of not getting more. If the facts conflict with your wishes, you had better respect the facts. Wishful thinking is a luxury of those dwelling in security. In a critical situation, it is a short cut to a quick death.

If we lack energy—and we do—we must get more. Obviously, this is not to say that we should waste it. But no one can turn back the clock to the days of preindustrial society, however much some in romantic moments might like to do that. We are going to need more energy for as far ahead into the future as we can realistically see. And we will get the energy we need only by producing it, not by restricting its use, or restricting the work of the producers.

If there are environmental dangers, they must be studied and overcome. But they cannot simply be banished by cutting back all types of energy production. In today's society, a sufficient loss of available energy will kill—as dead as those (fortunately few) who froze in unheated houses in the past record cold winter. Severe, even if not deadly energy losses will throw thousands or millions out of work (as also happened last winter) and undermine our whole society and way of life. Alleged environmental dangers must be measured against these hard realities of the loss of available energy. Any government which will not measure them in this way could become a destroyer of its own people.

Any Government program for dealing with an energy crisis which does not put primary emphasis on production of energy is certain to make the problem worse. Any such program ignores the obvious need for the sake of political expediency, radical ideology, romantic longings for unspoiled wilderness (how many would really like to live in one, year-round?), and bureaucratic power-grabbing. We can probably learn to get by with somewhat less energy than we otherwise would have used, in future years. But we are still going to have to produce more—a great deal more—if we are to survive at all.

Our present energy crisis is real. Its fundamental cause is not locked away in some unfathomable mystery of dwindling supplies and soaring demand; rather, it is the large-scale Government intervention in the energy market and in energy production, and Government's general hampering and harassment of private enterprise, during the past quarter-century in particular. Government produces no energy; all it can do is restrict production, or the use of the energy that is produced.

The only solution to the energy crisis, therefore, is to remove the controls, interventions and harassments by government which have caused it.

President Carter's national energy plan does not take this road. Not one of its 10 basic principles so much as mentions the word "production," to say nothing of decontrol. Instead, the very first principle establishes the plan's socialistic orientation beyond the shadow of a doubt:

The first principle is that the energy problem can be effectively addressed only by a Government that accepts responsibility for dealing with it comprehensively.

Of the other nine principles, one particularly is singled out as "the cornerstone of national energy policy." It "is that the growth of energy demand must be restrained through conservation and improved energy efficiency."

Energy conservation measures are at best a partial stopgap measure, and at worst counterproductive. No amount of energy which we could ever reasonably expect to save through conservation could make up for failure to increase production. If all the goals of the President's conservation program should be realized, we would be saving the equivalent of 3 million barrels of oil per day by 1985—while our overall demand for energy has still risen by 9 million barrels of oil per day over its present level. And severe mandatory cutbacks in energy use could plunge us into a recession which would still further hamper energy production and thus make the problem worse.

Essentially, we have three choices: First, greatly increase our energy production, primarily from oil and nuclear power; second, greatly increase our oil imports; third, prepare for an economic disaster due to energy deprivation which would make the Great Depression of the 1930's look like a picnic.

Obviously, the first choice is the best. Reliable estimates show that oil, gas, and nuclear power production could be increased sufficiently to meet all our anticipated needs by 1985, with moderate and reasonable conservation (not going as far as the President's plan), and even reduce our dependence on oil imports. But to accomplish this requires courage and vision in changing our present Government policies on energy—including those set forth in the President's national energy plan.

Government price controls on energy must be removed. Like all price controls, they inevitably produce shortages. Environmental restrictions on energy production must be brought down to a reasonable level and imposed only when there is real danger to life and health locally, which is definitely not the standard employed today. The best agencies to determine the existence of such dangers are State and local government, closest to the people. Any reasonable reading of the Constitution should make clear that it is State and local, not Federal Government which should be charged with this responsibility.

The irrational fear of nuclear power must be overcome and nuclear energy development given top national priority. President Carter's proposal to kill the plutonium breeder reactor program is a grievous error which should be condemned by every American who wants to see a continuing flow of needed energy for himself and for his children.

The ultimate answer to the energy crisis can only be the development of nuclear fusion power using seawater as fuel. The laser fusion process appears now to be the only practicable means of developing commercial use of nuclear fusion for energy production before the end of this century. It should be encouraged in every possible and constitutional way.●

ACTION ON TRUCK-UNLOADING RACKET

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. CONTE. Mr. Speaker, the House Small Business Committee, on which I serve as ranking minority member, this year completed an in-depth investigation into various impediments in the marketing and pricing of meat. One major problem that the committee unearthed involves the payment of exorbitant and in some cases extortionate fees paid to dock workers—known as lumpers—for unloading meat from incoming trucks. My colleague and chairman of the House Small Business Committee, Honorable NEAL SMITH of Iowa, recently wrote an article on the committee investigation and recommendations which appeared on the editorial page of the Des Moines Register, Saturday, October 14, 1978. I would like to insert the article in the RECORD at this time:

ACTION ON TRUCK-UNLOADING RACKET

(By Neal Smith)

Hundreds of truckers pull into grocery chain warehouse docks across the nation each morning. In too many cases they are threatened, abused and ripped off—forced into making illegal or unnecessary payments to have their shipments unloaded. Many pay without question because they know that failure to do so will result in costly delays, or worse.

The money, in most cases, comes directly from their pockets. It is always cash. It is rarely repaid to the trucker by the shipper. It is seldom reported for tax purposes.

The recipient will not even provide a sufficient receipt to enable the trucker to prove to the Internal Revenue Service that a deductible expense was incurred.

Depending upon the city, the unloading charge ranges from $30 to $120. In some cases, the unloaders, or "lumpers," may be tied in with a local racket or with organized crime.

For the past year, the House Committee on Small Business has been investigating impedients in the marketing and pricing of meat. During the course of this probe, one central aspect has been the transportation of meat products into the marketplace. The committee has found that a serious consequence of these conditions is a trend toward the abandonment of refrigerated truck transport service on an ever-increasing scale by independent owner-operators who do most of this hauling.

Witnesses called before the committee have vividly documented the problem.

Nate Magid, a partner in the now-defunct Raskin Packing Co., of Sioux City, described the difficulty in having his product unloaded in East Coast markets. He said that it cost him roughly 10 cents per 100 pounds for unloading, and estimated that these charges amounted to about $1,400 per week.

Murlin John Burch Sr., a trucker from Waterloo, testified that he was forced to wait for two days at a Maryland grocery chain warehouse because he didn't have enough cash to pay lumpers to unload his truck. It did not matter that he could have unloaded the truck himself; he was not allowed to.

Joe David Martin, former independent owner-operator from Fresno, Calif., told the committee: "I was badly beaten at the Safeway compound in Richmond, Calif., nearly two years ago when I refused to hire lumpers to unload my cargo." He said the unloading charges in the San Francisco area are $65 to $120 per load.

Interstate Commerce Commission Special Agent Edward Bill, who has investigated the lumper problem in the San Francisco Bay area, told the committee he believes that organized crime receives a piece of the extortionate unloading fees being paid by truckers.

Committee investigators and news reporters have ridden with truckers and have witnessed these payments. Although in some cases a service is rendered that the trucker wants, many times it is unwanted. Furthermore, while the trucker, in some cases, would not mind paying a reasonable fee to have his truck unloaded, frequently the amount he is told to pay far exceeds the value of the service.

Interviews with lumpers reveal that large sums of money can be earned working the grocery loading docks, and that it is neither reported for income tax purposes nor included in the Social Security benefit system.

In addition, the IRS has added to the confusion by claiming that a somewhat ambiguous 1947 Supreme Court decision supports its ruling that lumpers are employees of the truckers and, therefore, truckers are responsible for withholding taxes and Social Security payments even though the work is performed on someone else's premises. Independent owner-operators and selected trucking firms are now being levied upon for these payments by the IRS.

The Committee on Small Business has made these recommendations:

The Interstate Commerce Commission is advised (1) to work closely with law-enforcement agencies to put an end to abuses of truckers by lumpers; (2) not to permit a warehouse to participate in any scheme that forces a trucker to violate the tariff under which he operates by paying for unloading when the receiver is supposed to do so; (3) to assign an adequate number of enforcement personnel; and (4) to work closely with the IRS on tax liabilities being assigned to truckers and trucking firms forced to pay lumper fees.

The committee advises the IRS to update its policies regarding the relationships of truckers and lumpers so that the unloaders be considered either employees of the receiver or independent contractors. It also urges the IRS to pursue a more vigorous approach toward identifying unloaders and collecting the appropriate amount of federal tax on their wages.

The committee recommends legislation that would remove from carriers any responsibility for the task of loading and unloading; would make the issuance of false receipts for loading or unloading fees a crime, and would subject to criminal penalties the operator of a warehouse, port, terminal or distribution center who knowingly permits robbery, extortion or extortionate practices.

For years, independent owner-operators and trucking firms have been abused by lumpers at grocery warehouse docks. It is time to end these abuses.●

TRIBUTE TO CONGRESSMAN DELANEY

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague JIM DELANEY.

JIM DELANEY is the last of the four outstanding chairmen I have had the honor to serve under during my 18 years on the House Rules Committee. His imprint remains on all the major legislation which, of necessity, has passed through the Rules Committee all these years.

This dean of the New York delegation will also always be remembered for his famous Delaney amendment, affecting the purity of all foods and drugs consumed by the citizens of this Nation.

Reta and I extend to JIM our warmest wishes for an enjoyable fruitful retirement.●

JAMES J. DELANEY

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LENT. Mr. Speaker, I am honored to join with my colleagues in paying tribute today to one of the outstanding leaders of the House of Representatives, the Honorable JAMES J. DELANEY. I know that my colleagues appreciate the loss this body will suffer with the retirement of JIM DELANEY.

His record of quiet effectiveness has seldom been equalled. JIM'S thorough understanding of the legislative process, his wisdom and above all, his good humor, have marked JIM as one of the most able legislators in our time.

As chairman of the House Rules Committee, JIM DELANEY was noted for the fairness of his rulings, the firmness of his decisions and his ability to resolve differences. These are indeed, notable qualities of a leader, and in those qualities JIM DELANEY has few peers.

Nor has his service as chairman of perhaps the most powerful committee in the House of Representatives interfered with his efforts to attend to the needs of his constituents. The high regard in which he is held in the Ninth District of New York is shown by the fact that JIM has received the nomination and support of the Democratic, Republican and Conservative Parties of his district. That accomplishment is almost unparalleled in New York State's political annals. It is a striking tribute to JIM DELANEY'S ability as a public servant. There is little doubt that had he decided to continue his service, his constituents would have continued to honor him with reelection, as they have done every 2 years since 1948.

I would like to add a special tribute to JIM DELANEY'S efforts on behalf of that unique area of New York known as Long Island. We who represent Long Island know and admire the effort JIM DELANEY has invested in helping achieve the bipartisan cooperation needed to attend to the varied needs of our island community. Without JIM DELANEY'S invaluable assistance, I am certain that our successes would have been fewer.

Now that JIM has chosen to put aside the heavy duties of public office which he has carried so ably and effectively for the past three decades, I know that every one of my colleagues will join me in extending warmest best wishes to a man whose friendship we greatly value. We hope that he will favor us with a visit from time to time. And that he may find his retirement years filled with the warmth of memories, the richness of friendships, and the best of health. No one is more deserving.●

THE BREEDER—SOLUTION TO MORE THAN A SECURE ENERGY FUTURE

HON. MARILYN LLOYD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mrs. LLOYD of Tennessee. Mr. Speaker, the Science and Technology Committee has continued to closely monitor the progress of the Department of Energy's waste management program as part of our overall jurisdiction over energy research and development. In this regard, I would like to bring to the attention of my colleagues a recent article which appeared in the Energy Daily which indicates at least foreign interest in using the breeder reactor to assist in solving the long-term nuclear waste management problem. The objective of the experiment, which unfortunately must be conducted in the British version of our Clinch River Breeder Reactor, is to speed up the natural process of radioactive waste decay to stable and benign elements by using the neutrons from the reactor. Scientists call this process transmutation, but to a layman this process burns up or incinerates the radioactive waste.

This program will hopefuly be pursued vigorously by the Department of Energy as yet another value to be extracted by an aggressive breeder demonstration program. It is my intent to include an extensive discussion of this matter when DOE representatives next appear before the committee. A machine like the Clinch River plant could be used to fully demonstrate our own technology for either making fuel or destroying waste while producing electricity.

The text of the brief article follows:

USING A BREEDER

The UK is awaiting formal approval from the U.S. government for an Anglo-U.S. experiment in destroying radioactive waste. Fuel tins of radwaste made by Oak Ridge National Laboratory are to be neutron-irradiated in Britain's first Prototype Fast Reactor at Dounreay, Scotland, in a joint experiment on the use of fast breeders as "incinerators" of nuclear waste.

The first radwaste capsules—simulated fuel elements—will contain pure actinides such as americium and cesium, separated chemically from high-level liquid waste. If initial runs are successful, the next step will be a mixture of plutonium with the radwaste. All information is to be shared.●

PROTECTION FOR BOUNDARY WATERS CANOE AREA

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. VENTO. Mr. Speaker, today's action brings to fruition years of struggling to offer further protecting of the Pristine Boundary Waters Canoe Area. The preservation of this de facto wilderness resource that was set aside almost 100 years ago, and more recently designated as an agriculture wilderness in 1964, has been redefined. The uncertainty associated with the 1964 law, an imperfect legislative management policy, coupled with court challenges and contested administrative rulings, are addressed in this measure.

Among the many individuals who have worked for the passage of H.R. 12250, I would like to thank the following:

SUBCOMMITTEE OF NATIONAL PARKS AND INSULAR AFFAIRS

Cleve Pinnix, Nancy Drake, Judy Lemons Dale Crane, Clay Peters.

INTERIOR AND INSULAR AFFAIRS COMMITTEE

Fran Sheehan.

CONGRESSMAN NOLAN

Stan Mahon.

CONGRESSMAN FRASER

Richard Rapson.
Mark Carlson.

CONGRESSMAN VENTO

Larry Joe Romans, James Pirius, Brenda Nelson, Shirley Geer, Jon Fellows.

SENATOR ANDERSON

Peter Grove.
Susan Martell.

SENATOR HUMPHREY

Gene Graves.

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Tom Williams.

NEGOTIATORS

Chuck Dayton.
Ron Walls.

FRIENDS OF THE BOUNDARY WATERS WILDERNESS

Nancy Adams, Fern Arpi, Steve Apfelbaum, Barbara Bader, J. Arnold Bolz, Marvin Borell-Audubon, Gerry Brimacombe, Lucy Bruntjen, George Collier, Robert Conklin, Janice Conklin, and Calvin Dahm.

Wallace Dayton, Harry Drabik, Daniel Engstrom, Lance Field, International Backpackers Assn., Richard Flint, Ed Fisher, Nelson French, Bernard Friel, Rick Glanz, Janet Green, Bud Heinselman, Fran Heinselman, Herbert Johnson, and Kathy Johnson.

Roger Johnson, Vince Kershaw, Reed Larson, Carol Lee, Wes Libbey, Mike Link, Naomi Loper, Rodney Loper, Candice Luecke, Richard Luecke, Harriet Lykken, and Jack Maloney, and the U.S. Ski Association.

Jack Mauritz, Eva McGinnis, John McLaughlin, Libby Muir, William Muir, Paul Nachman, Darby Nelson, Gerry Nelson, Mary Olson, Sigurd F. Olson, Steven Payne, the Wilderness Society, and Dave Pearsall.

John Peck, Mattie Peterson, Kevin Proescholdt, Molly Redmond, Steve Ring, Becky Rom, Roger Rom, William Rom, Jr., and Clayton Rudd.

Mickie Scholtus, Jerry Seck, Erika Sitz, Paul Sitz, Carol Slothower, Steve Snyder, Edward Solstad, Charles Stoddard, the Wilderness Society, and John Syverud.

Fred Thompson, William Thompson, Paul Toren, Jon Waters, Al Watson, Melissa Watson, Bill Weller, El Winston, Fred Winston, and Quetico Superior Foundation.

Herbert Wright, Friends of the Earth, Eric Zaetsch, Dave Zentner, IWLA, Brock Evans, the Sierra Club, and Pat Goggin, National Wildlife Federation.

Destry Jarvis, National Parks and Conservation, Maitland Sharpe-Izaak, Walton League of America, Steve Young, Audubon, Mary Poppleton, League of Women Voters, Martha Gerhardstein, and Patricia Record—Sierra Club.

The bill's supporters are many and the omissions of some names are inevitable, so I would like to thank all supporters for their invaluable assistance.

Mr. Chairman, two individuals must be recognized for their invaluable contribution to today's success. Dr. Miron Heinselman has spent over 15 years in tireless efforts trying to achieve protection of this valuable resource. His efforts are appreciated by all Americans and we thank him for his tenacious efforts to educate this Congress on the values of the BWCA. One of our colleagues has demonstrated exemplary courage and dedication to the preservation of the BWCA. At a time when others might cave in to one-issue voters, DON FRASER has remained firm in his support for the adequate protection to preserve this natural resource. He did this not because it was politically expedient but because he felt his support was right. DON's dedication and leadership in this issue has served as inspiration to us all.

Mr. Chairman, H.R. 12250 is the result of a grassroot effort.

Today's passage was not caused by a single individual or interest group. It was the result of the concerns and support of so many thousands of Americans.

BOB POAGE

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague BOB POAGE.

Until prevented by House rules from continuance I had the honor of serving for several years on the House Agriculture Committee under able former chairman BOB POAGE. Since agriculture is the lifeblood of the 15th California District which I represent, this association with one so knowledgeable and capable in that field was particularly gratifying to me.

The second ranking Member of the House in point of service, his long and valuable tenure in office will be sorely missed by the people of Texas and the Nation.

Reta and I extend to BOB our warmest wishes for an enjoyable and fruitful retirement.●

THANKS FOR A JOB WELL DONE

HON. JOE D. WAGGONNER, JR.

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. WAGGONNER. Mr. Speaker, during my 18 years in Congress I have worked about as closely with TIGER TEAGUE as I have with any other man here. It is with a deep sense of personal pride that I can say he is a personal friend.

He has been a source of inspiration as I have watched him in action on the floor and in the way he has handled his position as chairman of the Committee on Science and Technology. He tackles each new job vigorously and makes the hard decisions that have to be made. At times, the positions TIGER has taken were unpopular; but he has remained true to his conscience and principles, and let the chips fall where they may.

Together we have fought many battles, and I have always been proud to have been on the side of TIGER TEAGUE. Always, that is, except early fall of each year when LSU plays the Texas Aggies! Anyone who knows me, knows of my love—or sympathy—for those who have chosen to further their education at Texas A. & M. As far as I am concerned, there is just nothing better than a good old Aggie joke! Well, TIGER has been the blunt of many an Aggie story and his good-natured acceptance of them just goes to prove that what they say about Aggies is true.

We are all aware of the growing complexities and demands of our Government; however, few have risen to the challenges and met the needs with the courage and strength that TIGER displays. Despite odds against him or criticism of his positions, he has met each challenge head on. This service and dedication is deeply appreciated and respected by me and all of us. He is a gallant legislative warrior who always places personal honor above merely winning.

As TIGER leaves the Halls of Congress at the close of a brilliant and illustrious career, I want him to know that this is one Member who will long remember and cherish the warm friendship and close association we have had over the years. This House and this Nation and the veterans of this country owe TIGER TEAGUE more than can ever be repaid.

Looking forward to retirement myself, one of the retirement gifts Mary Ruth and I have received is a set of rocking chairs, which I am looking forward to putting to use come January. Somehow, though, I have a feeling that TIGER will not be one to sit and rock! You have earned a well-deserved rest, TIGER, from the demands of public office. I will be greatly surprised, however, if this dampens your devotion to public service. For the guidance, friendship, and understanding in providing leadership to me and a generation of Congressmen, I thank you. For once I am not going to jump on the Aggies—especially a fellow Aggie.●

THE SCOURGE OF INFLATION AND SLOW GROWTH IN NEW YORK STATE AND THE NATION

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. KEMP. Mr. Speaker, a Government-created scourge upon the people and their commerce is pervading every corner of the economy. It is inflation.

Since 1976 the rate of inflation for all items has doubled, from a 4.8-percent annual rate to the present 9.8 percent. There are economic indicators which suggest it could go even higher. And the overall rate does not reflect how bad it is for some specific types of commodities. For example, prices for food are going up more than 28 times faster than they were in 1976, from a 0.6-percent rate to a 17-percent annual rate.

At present rates, all prices will double again in a little over 7 years—by 1985.

This situation has created great hardship for the people of this country, including especially New York. It has reduced the purchasing power of their money and reduced the real value of their incomes. The median income in New York in 1977 was lower than it was in 1972 or 1973 in terms of what that income will purchase and, of course, job opportunities and economic growth have diminished steadily.

INFLATION: A NATIONAL PROBLEM

As every working person in New York and throughout the country knows painfully well, inflation is accelerating. It is eating into their income, raising the cost of living—especially for necessities—and striking hardest at those who are most in need: the poor, the elderly, and those on fixed incomes.

Inflation is not caused by workers or by businessmen seeking to stay ahead of the price spiral caused by the Federal Government's irresponsible behavior. Consequently, wage and price controls can never be of any use in controlling inflation. What is that Government's irresponsible behavior?

The real cause of inflation is the Federal Government's monetary and fiscal policies. When the Government runs massive budget deficits year after year the difference between revenues and expenditures must be made up by borrowing, which raises interest rates, or through monetization, which means that the Government simply creates money out of thin air via the Federal Reserve System.

The Government's indices indicate clearly that the rate of inflation increased dramatically in 1977, following the election of President Carter. This accelerating upward trend is most pronounced in the area of food prices. As I just summarized, in 1976 food prices went up a mere 0.6 percent for the entire year. By 1977, however, the rate of inflation in food prices had increased more than 13 times, to an annual rate of 8 percent; the year 1978 has seen even this high rate doubled. As of June food prices were rising at an annual rate of 17 percent.

CONSUMER PRICE INDEX

[In percent]

Period	All items	Food
1976	4.8	0.6
1977	6.8	8.0
1978:		
January	.8	1.3
February	.6	1.2
March	.8	1.3
April	.9	1.9
May	.9	1.5
June	.9	1.3
Total	4.9	8.5
Annual rate	9.8	17.0

Source: U.S. Bureau of Labor Statistics.

THE CONSEQUENCES OF INFLATION

With the inflation rate for all items rising at the rate of almost 10 percent per year, this means that all prices will double in a little over 7 years. It means that a person who earned $10,000 last year will have to earn $11,000 this year just to stay even. And he or she would have to earn $20,000 by 1985 if present trends continue.

But as we all know, not everyone is able to keep up with inflation. If inflation goes up 10 percent and your money income is unchanged you are just 10 percent worse off than you were before, through no fault of your own. Since this is exactly what has happened for many people in the United States, it is not surprising that the median family income, in real terms, is lower today than it was in 1972 or 1973. Measured in 1977 dollars the median family income in 1977 was $16,009. In 1972 it was $16,102 and in 1973 it was $16,433. In fact, because of inflation, the real median family income in the United States is barely twice what it was in 1947 even though it is more than five times higher in dollar terms.

MEDIAN FAMILY INCOME

Year	Current dollars	Percent change	1977 dollars	Percent change
1977	16,009	7.0	16,009	0.5
1976	14,958	9.0	15,923	3.1
1975	13,719	6.3	15,447	−2.6
1974	12,902	6.5	15,855	−4.0
1973	12,051	8.4	16,433	2.1
1972	11,116	8.1	16,102	4.6
1971	10,285	4.2	15,389	−.1
1970	9,867	----------	15,399	----------

Source: U.S. Department of Commerce, Bureau of the Census, "Money Income and Poverty Status of Families and Persons in the United States: 1977."

Workers in New York share this national problem of rising nominal income and stagnating or dropping real income. According to the State's labor department, gross weekly earnings for factory workers in New York have almost doubled since 1965. Weekly take-home pay has increased more than 85 percent. But when you factor out all the inflation that has taken place since 1965, it turns out that real gross weekly earnings have increased only 6.5 percent, and real take-home pay has increased a mere 0.6 percent. In other words, in terms of what his real disposable income will purchase, a factory worker in New York has not had a pay increase since 1963.

GROSS AND SPENDABLE WEEKLY EARNINGS, IN CURRENT AND 1967 DOLLARS, FOR FACTORY WORKERS IN NEW YORK

Year	Gross earnings		Take-home	
	Current dollars	1967 dollars	Current dollars	1967 dollars
1965	$106 40	113.71	95.02	100.66
1966	111.35	114.32	97.72	100.33
1967	114.44	114.44	99.85	99.85
1968	121.48	116.47	104.65	100.34
1969	128.30	116.11	108.99	98.63
1970	134.96	113.94	114.94	97.32
1971	145.84	117.23	125.05	100.52
1972	157.61	121.80	135.41	104.64
1973	167.58	121.79	141.58	102.98
1974	178.48	117.04	149.62	98.11
1975	191.00	115.83	162.49	98.54
1976	209.35	120.04	176.58	101.25

Source: New York State Labor Department.

TAXES AND INFLATION

In addition to inflation, rising taxes have also been an important factor in reducing real disposable income. According to the U.S. Bureau of Labor Statistics, a family living in New York City in the fall of 1975 would need an income of $17,498 to maintain an intermediate standard of living. By the fall of 1977 this family would have to earn $19,972 to maintain the same standard of living. Over 27 percent of the increased cost of living was due to higher personal income taxes. Taxes were less of a factor for a family living in Buffalo, but personal income taxes were still significantly higher for a family there than in the rest of the United States.

A family with a higher level budget living in New York City would have found that more than 45 percent of the increased cost of living between 1975 and 1977 was due to higher taxes. In Buffalo 33 percent of the increased cost of living was due to higher personal income taxes. Both figures are considerably higher than those for the Nation as a whole.

Families with lower level budgets, on the other hand, have generally had their taxes reduced over this period. This is due largely to Federal income tax reductions, which have been heavily weighted toward those with lower incomes. Yet higher personal income taxes still accounted for more than 12 percent of the increased cost of living for a family with a lower level budget living in New York City between 1975 and 1977.

City	Autumn, 1975	Autumn, 1977	Increase in total budget		Increase in personal income taxes		Taxes as percent increase in budget
			Amount	Percent	Amount	Percent	
Higher budget for a family of 4:							
New York	$27,071	$31,655	$4,584	16.9	$2,076	32.5	45.3
Buffalo	23,617	26,818	3,201	13.5	1,056	21.1	33.0
United States	22,294	25,202	2,908	13.0	850	20.6	29.2
Intermediate budget for a family of 4:							
New York	17,498	19,972	2,474	14.1	683	24.6	27.6
Buffalo	16,283	18,298	2,015	12.4	404	16.5	20.0
United States	15,318	17,106	1,788	11.7	285	13.8	15.9
Lower budget for a family of 4:							
New York	10,266	11,155	889	8.6	111	11.4	12.5
Buffalo	9,733	10,681	948	9.7	−37	−4.4	
United States	9,588	10,481	893	9.3	−61	−7.8	

Source: U.S. Bureau of Labor Statistics.

The Speaker, the BLS budget figures, of course, take into account only personal income taxes and exclude all other types of taxation. Yet these other taxes, such as sales and property taxes, are among the fastest growing taxes, especially at the local level. To get a better idea, therefore, of the rise in taxes that has taken place and its effect on inflation we need to examine other data.

According to figures compiled by the Census Bureau, between fiscal years 1975 and 1976 per capita personal income in New York State increased by $405, from $6,159 to $6,564. However, over the same period, per capita State and local taxes in New York increased by $115, from $1,025 to $1,140. Thus 28.3 percent of the increase in per capita personal income in New York was completely eaten up by State and local taxes. This means that disposable per capita income increased a mere 4.7 percent—less than the rate of inflation. By contrast, for the Nation as a whole, the rate of increase in State and local taxes as a percentage of the increase in personal income was half the New York rate: 14.5 percent.

State	Increase in personal income, 1974–5 to 1975–6	Increase in State and local taxes, 1974–5 to 1975–6	Increase in State and local taxes as a percentage of increase in personal income
Maine	$196	$100	51.0
Alaska	2,386	1,054	44.2
North Dakota	154	54	35.1
Arizona	228	73	32.0
New York	405	115	28.4
Idaho	241	62	25.7
Massachusetts	357	89	24.9
Michigan	290	67	23.1
South Dakota	239	53	22.2
Montana	466	97	20.8
Colorado	470	97	20.6
Wyoming	727	150	20.6
Florida	222	45	20.3
Utah	450	87	19.3
Minnesota	365	69	18.9
Ohio	293	52	17.7
Wisconsin	422	72	17.1
California	561	95	16.9
Maryland	531	86	16.2
Mississippi	249	40	16.1
Connecticut	518	81	15.6
North Carolina	287	42	14.6
New Jersey	475	68	14.3
South Carolina	307	43	14.0
Oregon	485	68	14.0
Hawaii	616	83	13.5
Rhode Island	498	66	13.2
New Hampshire	371	46	12.4
Georgia	335	41	12.2
Tennessee	344	42	12.2
Kentucky	429	52	12.1
Arkansas	420	49	11.7
Illinois	555	58	10.4
Virginia	446	46	10.3
Kansas	523	53	10.1
Nebraska	809	81	10.0
Washington	537	52	9.7
Texas	679	66	9.7
Pennsylvania	496	48	9.7
Delaware	442	41	9.3
Alabama	428	40	9.3
West Virginia	546	51	9.3
Louisiana	513	44	8.6
Iowa	798	64	8.0
Nevada	631	50	7.9
New Mexico	638	50	7.8
Oklahoma	669	48	7.2
Vermont	733	43	5.9
Indiana	469	8	1.7

If one looks at total taxes as a percentage of personal income—including Federal taxes per capita—it becomes even clearer that rising taxes have an inflationary impact. Increased Federal taxes per capita between fiscal years 1975 and 1976 ate up 24.7 percent of the increase in personal income nationally. In New York, rising Federal taxes ate up 33.1 percent of the increase in personal income. Thus the combination of increased Federal, State, and local taxes consumed 39.2 of the increase in personal income nationally and 61.5 percent of the increase in New York. This reduces the increase in personal income nationally to $276, and a mere $156 in New York.

Economists, therefore, now believe that taxes are an important inflationary factor in themselves. If taxes reduce a worker's real disposable income or a businessman's profit margin, then they will each attempt to make up for this loss by demanding higher wages and charging higher prices. This is known as cost-push inflation. Consequently, if taxes were reduced this could aid in the fight against inflation.

INFLATION AND TAXES

Unfortunately, taxes not only operate to fuel inflation but inflation acts to fuel increases in taxes. This results from the fact that as inflation increases nominal—money—income people are pushed up into higher tax brackets. Thus your income goes up, say, 10 percent, your incomes taxes will go up more than 10 percent. And because tax brackets become more steeply graduated as they go up, the higher your income rises the more your taxes will go up. As a result the Federal Government's income tax revenues go up more than 1.6 percent for every 1 percent increase in the Consumer Price Index.

For example, if you take a family of

four earning $17,000 per year and assume that family income and prices both rise at the rate of 6 percent for the next 4 years, the family's adjusted gross income will rise by 19.1 percent but its combined Federal, social security, New York State, and New York City income taxes will rise 39.4 percent. Consequently, although its gross income in real terms—1978 dollars—will be unchanged its real disposable income—after taxes—will be reduced by almost 5 percent. In other words, just by keeping up with inflation you lose ground because taxes go up faster than prices.

CHANGES IN TAXES AND INCOME USING CURRENT DOLLARS

Year	1978	1979	1980	1981
Adjusted gross income	$17,000	$81,020	$19,101	$20,248
Federal income tax	1,822	2,042	2,311	2,586
Social security tax	1,028	1,105	1,171	1,346
New York State income tax	632	718	815	925
New York City income tax	247	275	307	341
Total tax	3,729	4,140	4,604	5,199
After-tax income	13,271	13,880	14,497	15,049
Effective tax rate (percent)	21.9	23.0	24.1	25.7
Marginal tax rate (percent)	32.7	33.9	36.9	38.9
Cumulated increase in adjusted gross income (percent)		6.0	12.4	19.1
Cumulative increase in taxes (percent)		11.0	23.5	39.4
Cumulative increase in after-tax income (percent)		4.6	9.2	13.4

Note: Totals may not add due to rounding.

CHANGES IN TAXES AND INCOME USING REAL DOLLARS

Year	1978	1979	1980	1981
Adjusted gross income	$17,000	$17,000	$17,000	$17,000
Federal income tax	1,822	1,926	2,057	2,171
Social security tax	1,028	1,042	1,042	1,130
New York State income tax	632	677	725	777
New York City income tax	247	259	273	286
Total tax	3,729	3,906	4,098	4,364
Excess burden of taxation		177	369	635
Real after-tax income	13,271	13,094	12,902	12,636
Cumulative increase in adjusted gross income (percent)		0	0	0
Cumulative increase in taxes (percent)		4.7	9.9	17.0
Cumulative increase in after-tax income (percent)		−1.3	−2.8	−4.8

Note: Totals may not add due to rounding.

The same thing happens in a different way with property taxes, as all homeowners know. It works like this: Inflation increases the potential sale value of a home in nominal terms, thereby leading to an increase in assessed value, leading to higher property taxes. Thus if a house were purchased for $20,000 in 1968 and property values have increased 10 percent per year, then this house would be assessed at $51,874 today. If there were a 5-percent effective tax rate then this increase in assessment would result in a $1,594 increase in property taxes.

THE EFFECT OF INFLATION ON PROPERTY TAXES

Year	Property value assuming 10 percent increase per year	Property tax assuming 5 percent effective rate	Increase taxes over previous year	Cumulative tax increase
1968	$20,000	$1,000		
1969	22,000	1,100	$100	$100
1970	24,200	1,210	110	210
1971	26,620	1,331	121	331
1972	29,282	1,464	133	464
1973	32,210	1,610	146	610
1974	35,431	1,772	162	772
1975	38,974	1,949	177	949
1976	42,872	2,144	199	1,144
1977	47,159	2,358	215	1,358
1978	51,874	2,594	236	1,594

The problem is that the homeowner's income would have to increase 2½ times over the same period for property taxes to take up the same percentage of his income. But personal incomes are not rising as fast as property taxes in New York, both because of the rise in home values and because of property tax increases. Since fiscal year 1971–72, for example, property taxes in New York have risen from 5.8 percent of personal income to 6.3 percent in 1975–76. By contrast, throughout the United States as a whole, property taxes have gone down as a percentage of personal income, from 4.9 to 4.5 percent over the same period.

THE ADMINISTRATION'S MISDIRECTED RESPONSE TO INFLATION

As we have seen, inflation is a serious problem which is growing worse, especially in the area of necessities such as food. What, then, has been the response of the Federal Government? And, in that I have used New York State as my example, of that State government?

President Carter has announced a so-called anti-inflation program, but it seems to consist of little more than having Robert Strauss and Barry Bosworth go around telling workers to hold down their wages and businessmen to hold down their prices—as though this could possibly do any good. No where do we see any recognition of the fact that Government is solely responsible for inflation.

The first step that needs to be taken in this direction if we are to control inflation is to get the Federal Government to reduce its excessive spending. For as long as the Government continues to spend more than it takes in its deficits will fuel inflation. The following table shows the magnitude of the Federal Government's profligacy:

[Dollar amounts in billions]

	Federal outlays	Deficit	Deficit as percent of outlays
Fiscal year:			
1977	$401.9	−$45.0	11.2
1978	[1] 453.5	[1] −53.0	11.7
1979	[1] 499.4	[1] −59.6	11.9
Total	1,354.8	−157.6	11.6

[1] Estimated.

Source: Department of the Treasury and Office of Management and Budget.

In other words, the Federal debt run up by President Carter in only 3 years is more than twice the total Federal debt in 1942; a debt which took more than 150 years to accumulate. Furthermore, the currently projected deficit for fiscal year 1979 of $60 billion is more than the entire Federal budget as recently as 1949.

The Governor of New York has made absolutely no effort to urge President Carter to do something about the accumulating deficit or the rapidly rising inflation rate. Nor has he made any effort at the State level to mitigate some of the unnecessary hardship caused by inflation.

For example, it has been pointed out that as inflation increases nominal—money—incomes this causes both individuals and businesses to pay more than a proportional increase in taxes. This is true not only of the Federal income tax by the New York State income tax as well. This is because both Federal and New York State income tax rate are steeply graduated; meaning that you pay a higher percentage of your income in tax as your nominal income rises. But if the nominal increase in your income is due solely to inflation then there is no change in your real income. Nevertheless, your income taxes will increase anyway.

Inflation also causes businesses to pay additional taxes as well. This is because inflation tends to overstate inventory profits while understating depreciation costs. The latter is especially important to New York because it is especially harmful to older manufacturing industries, like those located in the Northeast. The result is that such firms end up paying more taxes than newer industries, like the aerospace industry, which are predominantly located in the sunbelt States.

Inflation is also aggravated by regulations which force up business costs unnecessarily. Such regulations for environmental protection and worker safety have proliferated at all levels of government in recent years with no concern whatsoever for their economic impact. For example, the typical new automobile now costs hundreds of dollars more than it would in the absence of all the Federal regulations imposed since 1968. Then we could afford the cost. Today, perhaps we cannot.

And of course, taxes of all kinds can act in a cost-push manner to push prices and wages up. If a worker is getting less take-home pay because of higher taxes he will just demand more from his employer. Employers, meanwhile, must try to pass the higher wages and taxes on to their customers in the form of higher prices. President Carter's $227 billion increase in social security taxes is particularly significant in this respect.●

PRODUCTIVITY: THE FIGHT WILL CONTINUE

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LaFALCE. Mr. Speaker, during my two terms in Congress, I have de-

voted a great deal of effort and attention to the problem created by the decline in the productivity growth rate in this country. I felt it was imperative to deal with the productivity problem because of the serious economic ramifications an unchecked decline can have. In fact, our present economic situation reveals some of the negative impact that a reduction in productivity has, not only on the particular industry, but on the economic conditions of a community and the standard of living of an entire nation.

Because of unusually large productivity growth in the years immediately following World War II, we in the United States have come to expect, almost as a right, a continuous increase in the standard of living which we enjoy. Probably over half of our population grew up in a generation in which the guiding philosophy for parents was "I want to give my children the things I didn't have." If the generation that is now beginning to bear and raise children is to be able to continue this philosophy, we need to pay serious attention to our declining rate of productivity and make concerted efforts to turn that decline around. Even if we seek no more than middle class affluence for all residents of this Nation, we still need to make significant improvements in our productivity.

My involvement with productivity began within the first 6 months I was in Congress, during which time the Subcommittee on Economic Stabilization, of which I am a member, held hearings on a bill to create a National Center on Productivity and Quality of Working Life, of which I was a cosponsor. At that time, top level representatives from both labor and management testified as to the benefits that were possible through improved productivity and their willingness to work together to achieve the necessary improvement. It was also apparent, through their testimony and that of key Government witnesses, that it was imperative there be an impartial element in the process, preferably a Government agency which could disseminate information and focus Government assistance when available. Government support for the effort was absolutely necessary if it was to succeed in altering the usual adversary relationship between labor and management and the general mistrust that accompanied it.

But anticipation knew no bounds. In the spirit which formed this country, we were sure that great things could be accomplished, and we gave the national center the authority and the responsibility for accomplishing an unbelievably large number of goals.

Any one of these functions could have used up all the time and resources given to the center, and no agency, acting on its own could expect to fulfill all of them with only a $3 million budget.

And here is where the problems began. Any agency which is to set national policy must have support from other arms of the Government, particularly the White House. The national center never had that support. It was always underfunded for the tasks with which it was charged; it operated without a board of directors for most of its 3-year life due to the disregard of two administrations; and it never had the active support of the President for setting what amounts to a national economic policy. Little wonder, then, that its battles were all uphill, and that its limited successes were viewed from the outside as failure to accomplish all that it had set out to do. The center itself, though, and its personnel are partly to blame for the lack of attention it received, because they did not adequately enough enlist the support of the rest of the Government into a recognition of their failure to encourage productivity increases both in the private sector and in the public sector. Nonetheless some very important things were accomplished in plants, industries, and communities throughout the Nation, and the programs established by the center in these areas will continue to look to the Government for leadership and assistance in continuing their efforts.

One specific example of this is the Western New York area, including the 36th Congressional District, which I represent. During the past 3 years, I have held two seminars in the district for business and labor leaders on the subject of productivity and labor-management relations.

In each of these I had a great deal of assistance from the center in presenting the problem, the potential benefits to all parties if the problem is solved, and ways of improving productivity and quality of working life in individual work situations. Not only was the center involved in the presentation of information at the seminars, they also were available to follow-up and answer questions from those who chose to pursue the suggestions offered at the seminars. And there have been some marked success stories, including the establishment of a labor-management relations committee in a plant which was notorious for its poor labor relations. On an area-wide basis, the Buffalo-Erie County Labor-Management Council has been established with the support of the key business and labor leaders from throughout western New York. This council has been particularly active in trying to minimize the adverse consequences of the massive layoffs at the Bethlehem Steel Plant in Buffalo, and the cooperative approach has been far more successful than either labor or management working alone could ever have been. Throughout all of this, the national center has provided support through expertise and information.

In the later half of 1976, the board of the center, with Vice President Rockefeller as its chairman, was finally approved by the Senate, and met to set out its goals and projects. Unfortunately, this was the only meeting of that board, since the authorizing legislation provided that the board would serve during the tenure of the President. Thus, the recently approved board left office on January 20, 1977, when President Carter was sworn into office. Knowing of this fact, I wrote to President-elect Carter right after the election, urging him to be prompt in his appointment of a new board and pointing out that many of the individuals already on the board would be the most logical candidates and would welcome the opportunity to continue to serve in this capacity. At that time, I received a noncommittal response that my suggestions for the makeup of the board would be considered.

At the beginning of the 95th Congress, in March of 1977, I introduced legislation H.R. 5283, to more specifically target the energies of the center to work with State and local governments, public and private nonprofit agencies, educational institutions and labor-management committees to do the following:

First, to organize and conduct workshops, conferences, seminars, meetings, or other forums on new methods of improving productivity and quality of working life;

Second, to provide training and educational development programs to supervisors, managers, employees, and union officials in methods and techniques to improve productivity and quality of working life;

Third, to collect, prepare, and disseminate information on practices to improve productivity and the quality of working life; and

Fourth, to assist and advise small businesses, State and local governments, and labor organizations in the application of improved practices.

Unfortunately, this proposal never received the direct attention of the Economic Stabilization Subcommittee. However, its general thrust was incorporated into the Human Resources Development Act, H.R. 2596, as it was eventually reported by the Banking Committee. This bill, which I had cosponsored, would set up a series of programs within the Federal Government to encourage labor-management cooperation and foster increased productivity, much more expansive than the concept behind H.R. 5283, and also much more expensive. The committee eventually pared this proposal down to dimensions more like those of H.R. 5283, but still with some specifically funded demonstration projects. Since the Departments of Labor and Commerce were also included in the authorities granted under H.R. 2596, it was also referred to the Education and Labor Committee, and although the Banking Committee completed consideration of the bill, the Education and Labor Committee never held hearings on it, and it has died in committee.

On April 29, 1977, I wrote to Labor Secretary Marshall and Charles Schultze, Chairman of the Council of Economic Advisers, following their testimony to the Economic Stabilization Subcommittee on the President's anti-inflation policy and program, pointing out that there was at their disposal a very potent weapon in the double war against inflation and unemployment, namely the national center. The impacts of improved productivity are such that it not only keeps inflation down by holding down costs of production, but also tends to increase job security and can even stimulate job creation, since it is a well accepted fact that prosperous companies

tend to expand, and companies that can control production costs tend to be prosperous. During the anti-inflation testimony, it was revealed that the President hoped to establish a group to meet with him periodically to discuss the response of business and labor to inflationary pressures. In my letters to Secretary Marshall and Chairman Schultze, I indicated:

The make-up of the Board, which is mandated by the legislation creating the Center, insures that there is a full cross-section of business, labor, federal, state and local governments, and consumer interests. This would seem to be an ideal group to work with the President in the periodic meetings for discussion which he has indicated he hopes to hold. Many of the people on the Board have worked together before, and therefore will not have as much difficulty overcoming the mistrust which is usually present in the initial formation of labor-management committees. The Board of the Center has the added assurance of public support since its membership is approved by the Senate, and not drawn from a group to which the public has no input. Finally, the work of the Center is already well underway, and the costs of starting up a new group and staffing it would be eliminated. This conservation of tax dollars is fiscally responsible and fits in well with the President's goal to minimize the number of councils and other advisory groups. In a realm where such an outstanding board already exists, the need for another group should be clearly demonstrated before it is created.

The staff of the Center has had an excellent track record in aiding labor, management, and government, working together and separately, to improve productivity and communication. They have been instrumental in the establishment of local labor-management committees throughout the country. They have set up test cases on an industry-wide basis to improve methods of productivity. They have conducted an extensive education campaign to familiarize potential participants of the benefits that can be reached through cooperation and communication. They have served as a conduit to put interested parties in contact with other groups across the country who have had similar experiences and who may be able to give valuable advice. In essence, they have done all of the things which the President has indicated he hopes his labor-management committee can do. Experience then, makes the Center the natural agency to carry out the Administration's program against inflation.

There was no administration response to my suggestions.

In April of this year, I introduced legislation to extend the life of the national center 1 year beyond its original expiration date of September 30, 1978. This was done because it was evident that no other productivity improvement efforts were being initiated by the administration, and I felt it essential to at the very least continue the work which the center had begun. The bill even acknowledged the lower funding levels which the center had been receiving, and only authorized an expenditure of $2.9 million, in contrast with the $5 million authorized in the earlier bill, which was never appropriated. My sentiments at that time are my sentiments today, with only one adjustment: my conviction is now even stronger.

Productivity is a key to fighting inflation, helping to keep prices at levels that insure constant consumer demand and profits at levels that permit us to maintain a strong and economically strong industry. Productivity is also a key element in keeping American industry competitive throughout world markets. We must not abandon efforts to improve productivity when faced with economic conditions such as the ones we are now experiencing—growing inflation and continuing high rates of unemployment.

Over the long term, American productivity has been the major factor underlying the growth of real earnings and our standard of living. If we are to continue to experience that growth, we must pay serious attention to improving our rate of productivity.

The introduction of this bill was met with opposition from the administration, saying that it had other plans for addressing the productivity problem. I was more than willing to listen to any alternatives they might have come up with. The national center was not the only way to encourage productivity increases, and I was not wedded to it as the only way. However, I did want to make absolutely sure that this issue was dealt with in a comprehensive and effective manner. Thus, I invited those individuals in the administration who were supposed to be developing the plan for the future of productivity emphasis to a meeting in my office on May 22 to discuss those plans in detail.

I wanted to confront them with their collective inaction and get from them an ironclad commitment to support productivity efforts in a coordinated fashion. What I heard from them was not really surprising, but nonetheless very disturbing. Without so much as a wriggle of discomfort, the administration was going to let the center go out of existence, and had absolutely no concrete plans for continuing the work that the center was doing, either through a new office or through existing departments and agencies. True, there were some nebulous plans to have OMB coordinate a Government productivity effort, but the planning that had been done simply amounted to naming OMB as the coordinator.

No plans had been made about what functions could or should be transferred to which departments, and no thought apparently had been given to who, within each department, should be responsible for promoting productivity improvement. In fact, there is not even a national policy on productivity established yet by this group.

Productivity lag is a relatively difficult concept to grasp, and there are no plain and simple solutions to the problem. Because of the far-reaching consequences of the slump, though, it is crucial that we have a concerted, comprehensive effort to reverse the downturn in productivity. This cannot be done through small programs here and there throughout the Government headed by individuals who have other primary responsibilities which will continually preempt their work on productivity improvement.

Productivity needs to become a national concern, and this cannot occur unless and until the issue is presented to the public over and over again, so that its seriousness is grasped and the potential benefits to all are clearly stated—so that productivity becomes the concern of every worker, manager, and government head. Without a high degree of visibility, productivity will continue to decline, and a rebound from these years of laxity and neglect will become virtually impossible.

I originally introduced legislation to extend the life of the center for just 1 year. Following the meeting and recognizing the irreversible decision of the administration to let the center die, I introduced another bill which would have extended the center for 1 year, but would also have given the President the authority to transfer the functions of the Center to other government agencies when a plan had been devised.

This would have given the administration plenty of time to "get its act together" while maintaining the continuity necessary in previously established productivity improvement programs. It also would have given the administration the flexibility it sought in reassigning the productivity initiative to the several departments. I had hoped that this approach would receive the support of OMB and the administration, since it contained all that they needed to accomplish what they sought to do. However, that support was not forthcoming.

Both in June and in July I urged the Economic Stabilization Subcommittee to hold hearings on the productivity issue and the future plans of the Administration for productivity improvement, sharing with the members of the subcommittee the comments I had received from the administration and my concern that the issue was not being given sufficient attention. Both times, the administration claimed that it was not yet prepared to present is plans to Congress and hearings that were originally scheduled for July were postponed.

I felt it was imperative that the administration be forced to state its position and its plans sufficiently far ahead of the demise of the national center to allow smooth transitions. Therefore, I called hearings in my own Subcommittee on Capital, Investment, and Business Opportunities in the Small Business Committee. I requested the attendance of representatives of the Office of Management and Budget, the General Accounting Office (which had just completed a study on the national center, its effectiveness, and the most appropriate Government involvement in productivity improvement efforts), the Council of Economic Advisors, the Council on Wage and Price Stability, and the national center itself.

What I heard at those hearings was disturbing in many respects. The testimony of the Council on Wage and Price Stability indicated that "Preliminary data for the first half of 1978 suggest a productivity disaster."

When asked to expound further on this, it was explained that the figures for this time period not only showed no increase in productivity, but in fact showed an absolute decline in our rate of productivity.

Clearly, this is a turn of events which this Nation cannot afford. The Council concluded that if inflation could be brought under control, productivity rates

would improve. This, to me, is putting the cart before the horse, for one of the main benefits of increased productivity is that inflation will be controlled, because we cannot hope to control inflation without improving our productivity.

The General Accounting Office in its report on productivity and the national center made the following recommendation:

GAO believes that a properly funded and supported national center would be the best way to foster improvement in private sector productivity.

However, the GAO also recognized that this administration was not funding and supporting the center in the necessary fashion, and so concluded that the functions should be transferred. This May 23d report contained rather specific recommendations to OMB, the agency which administration had selected to head up future productivity initiatives. It also recommended that a National Productivity Council be established to focus national attention on productivity and to develop the Federal response to private sector productivity declines.

From May until August, virtually no steps had been taken by OMB to implement the recommendations of the GAO report. OMB's testimony before the subcommittee was a vague restatement of the GAO recommendations, with no evidence of any specific actions taken. All plans were still being stated in the future tense. OMB stated "Assignment of responsibilities to the agencies will be timely," but even to this date, no assignments of responsibilities have been made to my knowledge. Certainly none had been made by mid-September when OMB again testified on the subject of productivity, this time before the Economic Stabilization Subcommittee. OMB also stated that "Our intention is to issue executive guidance early this fall." This too has not yet been accomplished. This is particularly important since the agencies take on new responsibilities with the fiscal year and new responsibilities assigned later generally take a back seat to those which were assigned from the start.

It is little wonder that no executive guidance has been issued though, since OMB testified at the September hearing that they still had not made their recommendations to the President. Their entire testimony at that time was filled with the phrase "We will be recommending to the President . . ." That this has been the fate of the productivity issue at the hands of OMB proves convincingly my point that "Something will always come in its way, whether it is the civil service reform bill, or whether it is the Health, Education, and Welfare appropriations bill, or whether it is the foreign aid authorization bill. You name it. Something is always going to be moving that thing called "productivity" which doesn't have any immediate consequences, but has tremendous long-range consequences, to the back burner."

The September hearings were troubling in another way. OMB's testimony was again extremely brief, with no concrete plans outlined and the testimony of the Council on Wage and Price Stability was virtually identical to the testimony that it had given a month earlier, despite the fact that a month had passed, and there were only 2 weeks left in which the administration could act to insure the continuity of our productivity programs. Such a blase attitude toward a serious problem does not suggest that this administration has any real conviction toward improving productivity.

The National Center on Productivity and Quality of Working Life went out of existence 2 weeks ago. The damage is already being done, and the continuity is being lost. However, it can be minimized, and I hope that the House will bring pressure to bear on the administration to come up with a definite plan for productivity improvement in this country, and to implement that plan. It is the responsibility of the Congress to continue to call the executive branch into account if it fails in this serious responsibility. I shall continue to do all I can in this important endeavor.●

COMMENDING THE STANDARDS OF OFFICIAL CONDUCT COMMITTEE

HON. JAMES R. MANN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. MANN. Mr. Speaker, I rise today to express deep admiration for my colleagues on the Standards of Official Conduct Committee, and to praise the integrity, fairness, skill, dignity, and courage with which they carried out their duties in connection with the so-called Koreagate matter. There is a desperate need for the House to demonstrate to the American people its willingness to undertake investigations into its own internal problems and its ability to carry out discipline of this sort.

That, I submit, is what the Standards Committee did. There was no personal vendetta; there was no effort to cover up more widespread abuses; there were only 12 honorable men and women striving to perform a difficult an distasteful duty in the most fair and equitable way possible. There was only a committee attempting to honorably discharge the responsibilities delegated to it by the full House in rule X—a most solemn responsibility, Mr. Speaker.

To those who questioned the motivations of the committee; to those who made disparaging allegations about the manner in which the committee handled the Korea investigation; and particularly to those who unfairly and without factual basis raised the ugly specter of ethnic considerations in the committee's recommendations—I say to those Members, you are wrong. I challenge them to undertake the onerous burden carried by those who serve on the Standards Committee, and only then presume to speak of coverups, bias, mockeries. I suspect the tone would be very different then, Mr. Speaker.

For myself, I take this opportunity to commend the distinguished chairman of the committee, my esteemed colleague from Georgia (Mr. FLYNT); the ranking minority member, a fellow South Carolinian who has brought pride to our State (Mr. SPENCE); all the other able committee members; and an obviously dedicated staff. You did not have an easy job, but you discharged your responsibilities with honor.●

BALANCE(S) OF POWER SERIES—SALT II BOOK I ADDITION

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, evidence is beginning to mount that the administration intends to sign a SALT II Treaty/Agreement with the Soviet Union before the year is out and to present it to the Congress for its consideration early next year.

In view of the serious implications which SALT II could have for United States and Free World security, I would like to draw the attention of my colleagues to an article by William T. Lee, which appeared in Air Force magazine, September 1978, entitled "Soviet Targeting Strategy and SALT."

Mr. Lee argues that the Soviet Union's negotiating positions at SALT clearly have been, and will continue to be, based on the Soviet concept of how they would use nuclear weapons in war. Understanding that concept, which is drastically different from U.S. nuclear strategy, is one key to assessing Soviet SALT II objectives and the merits of any SALT II agreement with the Soviet Union.

Mr. Lee's article is as follows:

SOVIET TARGETING STRATEGY AND SALT

(By William T. Lee)

SALT is a political dialogue not about how many and what kinds of weapons each superpower will have on hand to deter the other, but also about the forces each would have left after an initial exchange if deterrence fails. Both the US and the USSR reject initiation of nuclear war by an "out-of-the-blue" surprise attack as an instrument of national policy. Both expect nuclear war, if it occurs, to arise out of a crisis. At the same time, each superpower suspects the other of harboring dark designs for a surprise attack should the circumstances appear propitious, or if some desperate and reckless leader comes to power. In all cases, the "bottom line" is how each superpower proposes to use its weapons: What targets are to be attacked? What degree of damage is to be inflicted? What are the politico-military objectives, if any, of strategic nuclear strikes once deterrence has failed?

Public discussions of such matters in the US are dominated by two perceptions of how the Soviets would use their nuclear weapons. The most prevalent perception is a "mirror image" of the US "assured destruction" concept: attack US cities with large weapons to inflict as many millions of casualties and as much damage to production facilities as possible. The second, less prevalent, perception stresses the danger of a Soviet attack on US strategic nuclear delivery systems—ICBMs, heavy bombers, and submarine-launched ballistic missiles (SLBMs) in port—while withholding strikes on our cities to see if the

US would capitulate after losing most of its land-based strategic nuclear forces.

In SALT, the U.S. has sought to constrain or reduce Soviet forces so that they would be effective only against U.S. population and urban infrastructures. Thus, we have tried to limit the number of "heavy" Soviet missiles that threaten our land-based missiles while granting the Soviets numerical advantages in missiles that are effective against U.S. cities and other soft targets. The Soviets, on the other hand, have held out, very successfully, for high limits on both "heavy" ICBMs and total "strategic" launchers while avoiding specific constraints on missile characteristics.

There are two essentials to understanding Soviet performance at SALT. First, Soviet targeting strategy differs from popular U.S. perceptions, more so from the purely countervalue perception than from the mixed counterforce/countervalue version. Second, Soviet strategic targeting strategy applies to both Eurasia and the United States. While we equate "strategic" to "intercontinental," the Soviets do so only in the context of SALT, where accepting our definition of "strategic" is in Soviet interests. To the Soviets, Europe and adjacent areas in Asia are of equal, if not greater, strategic importance than the "transoceanic" dimension. Both Soviet targeting strategy and the Soviet concept of strategic dimensions have had, and probably will continue to have, much influence on SALT negotiations.

Many factors, of course, have been involved in SALT, not least of them Soviet fear of the consequences of the ten-to-fifteen-year lead the U.S. had in antiballistic missile (ABM) technology when SALT began. Understanding the implications of Soviet nuclear targeting thus is not the single necessary condition for understanding what has happened in the SALT process, but it is one necessary condition.

Specifically, Soviet nuclear targeting strategy appears to have played an essential role in negotiating the Interim Agreement on Offensive Forces signed by the two superpowers in May 1972 and in the negotiations leading to that agreement. Consider:

The Soviets attempted to include in the U.S. strategic aggregate those U.S. tactical aircraft and missiles deployed in Europe that conceivably could deliver nuclear weapons in Soviet territory—the so-called "forward-based" systems.

The relatively high ceilings—far more than required to destroy U.S. cities under the most adverse second-strike conditions—of about 1,600 ICBM launchers and 740 to 950 SLBM launchers.

The Soviet refusal to join in the U.S. unilateral declaration designed to limit the payload (throw-weight) of all but the largest of the four Soviet ICBMs now being deployed, the SS–18.

The absence of any constraints on development of the current generation of ICBMs and SLBMs, early prototypes of which were already at or en route to the flight-test range when the Interim Agreement was signed, or of the generation now under development.

Similarly, both the limits agreed at Vladivostok and Soviet insistence that that agreement serve as the basis for limits on offensive systems after October 1977 are intimately bound up in the requirements of Soviet targeting strategy. The Vladivostok accords gave both sides high ceilings of 2,400 total strategic delivery systems, including 1,320 MIRVed missiles, provided freedom to mix delivery systems, and permitted the Soviets to retain 308 "heavy" ICBMs.

In order to understand the relationship between the provisions of these agreements and Soviet targeting strategy, it is necessary to examine the content and origin of that strategy, how it is applied, and trends in the capabilities of Soviet forces.

SOVIET TARGETING STRATEGY

Since World War II, the Soviets have consistently argued that defeat of an adversary's armed forces is the first and primary objective of military operations in a nuclear war. To defeat a nuclear-armed enemy, it is necessary first to destroy his nuclear weapons and means of delivering them.

One of the most authoritative public statements of Soviet targeting strategy was made by the Commander of the Strategic Rocket Forces (SRF), Marshal Krylov, in September 1967. (Krylov was SRF Commander from 1963 until his death in 1972.) Consistent with the view that even a nuclear war should be conducted for positive ends, Marshal Krylov stated that the objective of such a war would be "victory" for the USSR. According to Marshal Krylov, the principal targets of the SRF would be the enemy's delivery systems and weapons storage and fabrication sites; military installations; military industries; centers of politico-military administration, command, and control.

This listing of targets, presumably in approximate order of priority, is designed to fight a war rather than to retaliate against cities. It has nothing in common with "maximum-fatality" targeting, and is not consistent with any simple "assured-destruction" objective. The list is, however, consistent with the damage-limiting missions of Soviet forces, and is consistent with the "victory" objective interpreted to mean survival as a national entity, and postattack recovery.

TARGETING ORIGINS

Despite his public statements denigrating nuclear weapons and evident internal restrictions on discussions on their military significance, Stalin probably understood their political and military potential quite well. He spared no effort to develop nuclear weapons as rapidly as possible and gave equal priority to strategic nuclear delivery systems. Shortly before or just after the end of World War II, Stalin created two supraministerial organizations: one to develop nuclear weapons; the other to develop missiles to deliver them. Meanwhile, much effort was devoted to developing and producing long-range bombers until missiles became available.

Recent articles by General V. F. Tolubko, Commander of Soviet Strategic Rocket Forces since 1972, throws fresh light on Stalin's appreciation of both nuclear weapons and strategic missile delivery systems. The first operational unit for future ballistic missile delivery systems was formed in 1946 on the basis of a tactical rocket regiment. Research organizations and design bureaus for ballistic missiles were formed around a scientific-engineering cadre. Among those who served on the supraministerial organization charged with missile development were such prominent Marshals of the Soviet Union as G. K. Zhukov and R. Ia. Malinovsky. Two nominal civilians who served as missile czars are still prominent: L. I. Brezhnev, First Secretary of the Communist Party since 1964 and Marshal of the Soviet Union since 1976; and D. F. Ustinov, Central Committee member of the Military Industrial Commission for more than a decade, and Marshal of the Soviet Union and Minister of Defense since 1976.

As a result of the organizational efforts begun under Stalin, the Soviets were able to arm some of their missile units with nuclear weapons in the mid-1950's. These units apparently included not only tactical missiles but also the first Soviet "strategic" missile, the medium-range ballistic missile (MRBM) designated as the SS–3 by the US and NATO. Operationally, all the strategic missiles—SS–3 and later SS–4—may have been under the Soviet Air Forces' Long Range Aviation (LRA) before the Strategic Rocket Forces (SRF) were formed as a new branch of service in 1960. Alternatively, the early strategic missile units may have been directly controlled by the Council of Defense.

The nuclear targeting doctrine stated by Marshal Krylov in 1967 was worked out by LRA not long after World War II, probably before the USSR began to stockpile nuclear weapons. The early strategic missile units evidently shared LRA's nuclear-targeting strategy and carried it over to the SRF.

It is essential to understand that the SRF consisted entirely of MRBM units when it was formed in 1960, with the possible exception of a handful of SS–6 ICBMs, and that the SRF had more IR/MRBMs than ICBMs until 1968–69. The early history of Soviet strategic-missile targeting, therefore, focused primarily on the European and Asian theaters of military operations (TVDs).

THEATERS OF MILITARY OPERATIONS

The general principles of Soviet nuclear targeting strategy must be applied to specific geographic areas of strategic military operations. The targets located in each geographic area differ, and Soviet politico-military objectives are not identical in all potential areas of conflict. Each area must be analyzed for differences in the targets, and the most vulnerable points of each target, in order to maximize the military effectiveness of an attack with the least collateral damage commensurate with Soviet politico-military objectives in that area.

Whereas the prevalent US concept of "strategic" nuclear operations is limited to intercontinental exchanges, to the Soviets "strategic" operations begin at their borders. While this geographic definition of "strategic" may be a very natural result of Soviet history, geography, and physical juxtaposition of those states the Soviets regard as their probable enemies in the event of nuclear war, it is a fact of far-reaching consequences for the size and characteristics of Soviet strategic nuclear forces.

In the Soviet view, "the theater of military operations (TVD) is defined as the land or sea area within the limits of which armed forces during war execute a single strategic mission. The boundaries of probable theaters of war, along the front and in depth, are established in consideration of their political-economic and military-geographic conditions, and also the possibilities of deploying the forces and material on one or more fronts (fleets)." Politically, a TVD may include Soviet/Warsaw Pact territory and "that of the enemy as well," and "its boundaries may change in the course of the war."

For the conduct of strategic nuclear operations, NATO probably represents at least three, probably four, TVDs—one or two in Central Europe and one each on the north and south flanks. China, Japan, Korea, and Okinawa probably constitute one or two more TVDs. Finally, there is the "transoceanic" TVD: the US and its military bases in the Atlantic and Pacific basins. To the Soviets, each of these TVDs is equally "strategic" although the Central European TVDs may be first among equals in Soviet strategic force planning and resource planning.

The Soviets have deployed, and continue to deploy, four basic types of strategic weapon systems for strategic nuclear operations in all of the prospective TVDs: IR/MRBMs, SLBMs, medium and heavy bombers, and ICBMs. In the Soviet scheme of things, all of these weapons are equally strategic, and Soviet forces must be able to destroy or neutralize all targets located in each TVD.

TARGETING STRATEGIES FOR THE TVD'S

Certain general factors affecting the conduct of strategic nuclear operations in the TVDs are stated in Soviet writings. Although these factors apply to all TVDs, variations probably exist because the Soviets recognize the differences in the target arrays found in each TVD, and Soviet politico-military objectives vary with the TVDs. The principal fac-

tors governing targeting strategy for each TVD appears to be:

The political objectives set by the Soviet political leaders.

The nature and objectives of planned Soviet military operations in each theater.

The requirement to limit collateral damage to population, industry, and urban infrastructure commensurate with achieving military objectives.

The most vulnerable components of the targets to be attacked.

Although these factors either have been explicitly stated or have been inferred from Soviet unclassified military and political literature for nearly two decades, they have not been widely accepted in the West. Recently declassified issues of the Soviet general staff journal, *Military Thought*, contain discussions of Soviet targeting that, while quite consistent with the open literature, are more explicit and detailed in most cases. The following summarize pertinent points from articles in this journal:

Political factors will dominate the course and conduct of a nuclear war between the USSR/Pact and US/NATO because in such a war both sides "will pursue their own decisive political ends."

The theses and application of Soviet military strategy are derived from the political strategy of the Communist Party of the Soviet Union (CPSU). Soviet strategic nuclear forces will be under the direct command of the top political leaders.

Two basic options exist: (a) use large weapons that can inflict heavy damage on "individual states" and "would retard the social progress of their peoples for a long time," and (b) use smaller weapons that can defeat the enemy "without doing essential injury to the economy or populace of states whose aggressive rulers unleashed the war." Only the Soviet political leaders can make the decision as to which option would be exercised.

First-priority targets are the enemy's nuclear delivery systems, nuclear weapons stocks, and associated command control and communications, followed by other components of the enemy's military forces.

In attacking the enemy economy it is essential to select the most vulnerable points where destruction would disorganize economic support of the war effort. While collateral destruction cannot be avoided, "the objective is not to turn the large economic and industrial regions into a heap of ruins."

This general principle of destroying only what is necessary to achieve Soviet political and military objectives is further expressed in discussions of what are the most vulnerable (*i.e.*, vital) components of any given target array. Some of this discussion is related to contemporary economies; some of it appears in Soviet critiques of Allied strategic bombing operations in World War II.

In planning attacks on industrial targets, the Soviets stress analysis of the regional distribution of industry, interindustry relationships, plants and facilities that produce modern weapons, and "the quantity of forces and means required for the destruction of the target and the capabilities of the enemy to rebuild." Destroying one or two key branches of transportation may be sufficient to sap or "significantly weaken" a country's military potential. Similarly, it may not be necessary to attack all of the plants and facilities engaged in missile production, since it is "sufficient to destroy a few enterprises producing transistors in order to extremely restrict the production of missiles for all branches of the armed forces."

In general, the following economic activities appear to be the most lucrative first-priority targets for prohibiting the replacement of nuclear delivery systems, nuclear weapons, and other military assets and for limiting capabilities to use surviving military forces effectively: transportation, power stations, facilities producing liquid fuels, chemical industries, selected bottleneck facilities in other industries.

The Soviets do not consider general attack on all types of industrial targets to be either necessary or militarily effective. They are particularly critical of the political and military futility of attacking population and cities.

Most of the latter arguments appear in Soviet critiques of Allied strategic air operations in World War II, for which the Soviets display considerable practical and moral disdain. Their analyses of the military effect of Allied bombing of German and Japanese industry and cities are not much different from the findings of the U.S. Strategic Bombing Survey or the observations of Germany's wartime production czar, Albert Speer. The Soviets also note that until nearly the end of World War II, when the Allies systematically concentrated on German liquid fuel production and selected components of the rail and barge transport systems, German war production showed steady growth. At the same time, the Soviets give the Allied strategic bombing campaign no credit for tying down large German military assets for air defense.

US incendiary bomb attacks on Japanese cities are said to have been ineffective, and destruction of Hiroshima and Nagasaki pointless. In general, the Soviets charge that both the bombing of Japanese cities and the militarily pointless destruction of Dresden at the close of the European war were designed to intimidate the USSR rather than to break Japanese or German morale. The Soviets do not consider population and cities to be valid targets on political, military, or moral grounds, but rather another manifestation of the evils of "imperialism" as expressed in such strategic concepts as "mutual assured destruction." On the other hand, this does not mean that the Soviets would not target some selected population groups such as business and government elites—the "ruling groups" who are the "class enemy"—and possibly selected concentrations of scientific-technical personnel.

While these targeting principles apply to all TVDs, there may be some variations in applying them to different TVDs in order to achieve differing Soviet politico-military objectives. In the European TVDs, Soviet objectives are clear: defeat and disarm NATO forces and occupy Western Europe as intact as possible. Politically, they want to bring their version of "social progress" to Western Europe in the wake of the next war, just as Eastern Europe was "liberated" after the end of World War II. Two practical considerations also guide Soviet nuclear targeting in the European TVDs. First, the prevailing winds are from the west, so it is very much in the Soviet interest to target selectively and avoid "overkill" with large weapons in order to limit fallout on Eastern Europe and the USSR and on the Soviet/Pact occupation forces. Second, the Soviets could make good use of Europe's economic resources during the course of protracted military operations and to help rebuild their own in the aftermath of a nuclear war. They have said so quite explicitly.

In the Far East, Soviet objectives probably would be more complex. They might wish to occupy sparsely populated regions outside China's Great Wall, and possibly Manchuria, but probably consider it quite infeasible to occupy China proper, where the population density would support a "people's war." In China proper, the Soviets probably would use strategic nuclear force to disarm China and to destroy sufficient industrial and transportation facilities to ensure that China could not become a nuclear or conventional military threat to the USSR for some time. Against Japan, on the other hand, Soviet targeting might be much more selective because Japan, like Europe, could contribute to Soviet postattack recovery.

All the evidence known to the author explicitly or implicitly indicates that Soviet nuclear targeting strategy against the US is generally the same as for other TVDs. On the other hand, since the Soviets have no ambition to occupy the US they not only must seek to destroy our military forces in being at the beginning of the war but also must prevent the US from reconstituting its military forces. Hence, Soviet targeting of US industry might be more extensive than in Europe and Japan, and targeting selected US cities might be more comprehensive than in Europe. Soviet literature indicates that nuclear targeting in all TVDs would be selective both with regard to the targets attacked and the degree of damage inflicted.

SOVIET MISSILE TRENDS

In order to understand the relationship between SALT agreements and Soviet targeting, it is also necessary to examine trends in the capabilities of Soviet strategic missile forces against each TVD. In the European TVDs generally, and in NATO in particular, most of the targets are relatively "soft," which is to say that nuclear weapons with submegation rather than multimegation yields are adequate, event with relatively inaccurate missiles. As missile accuracy improves, even lower-yield weapons will suffice, unless something is done to make the targets less vulnerable.

In the period 1958–64, the USSR deployed a force of more than 700 SS–4 and SS–5 IR/MRBMs, backed up by about 100 SLBMs, to deal with all classes of targets, mostly soft, Eurasian TVDs. As further insurance, the Soviets maintained most of their medium and heavy bombers. Given the state of missile technology at the time, the SS–4 and SS–5 were not particularly accurate. But since most targets in the Eurasian TVDs were, and still are, "soft," *i.e.*, capable of resisting blasts of fifteen pounds per square inch (psi) or less, these relatively inaccurate missiles were effective with warheads yielding kilotons (KT) rather than megatons (MT).

Most targets in the Eurasian TVDs could be destroyed with weapons in the fifty to 500 KT range, if missile Circular Error Probable (CEP) were in the 0.5 to 1.0 nautical mile (NM) range, which probably is the best the Soviets could have achieved with the IR/MRBMs designed in the 1950s.

In the transoceanic TVDs, however, target vulnerabilities are much more varied. SAC airfields in the US are soft, and many military and virtually all US industrial targets are as soft as their Eurasian counterparts. Megaton weapons are as superfluous against many targets in the US as they are against most targets in Eurasia. But the US contains a large number of really "hard" targets—more than 1,100 ICBM silos and launch control centers, nuclear weapons storage facilities, command and control facilities—that have few, if any, counterparts in the NATO area. To destroy these targets requires overpressures of several hundred thousand psi. Given the CEPs of Soviet ICBMs, the hard targets located in the US have required multimegaton weapons.

For first- and second-generation Soviet ICBMs—the SS–6, SS–7, SS–8, SS–9, and SS–11—very large yields, on the order of five to twenty-five megatons, were required to destroy US ICBM launchers and nuclear-weapon storage sites because first- and second-generation Soviet ICBMs hardly could have had CEPs of less than 0.5 to 1.0 nm. The same reasoning applied to the SS–N–6 and SS–N–8 SLBMs on Yankee- and Delta-class submarines.

When attacking soft targets, wider variations in CEP factors are tolerable since the probability of damage is not very sensitive to small differences in planned vs. actual CEPs. But against hard targets, particularly

ICBMs that can reach the USSR in thirty minutes if not destroyed, Soviet planners probably want very high confidence factors. And because of the danger of fractricide and other characteristics of a nuclear-attack environment, multiple attacks on each ICBM silo provide a low confidence of success. For high confidence, one-to-one attacks must be effective, and this means megaton weapons until CEPs drop to 0.1 nm or less.

These requirements for large yields to compensate for the modest accuracy of Soviet strategic missile systems when attacking hard targets in all TVDs led the Soviets, very naturally, to develop large warheads in the 1950s and 1960s. This, in turn, led to the very questionable perception that, since all Soviet strategic missiles could deliver multimegaton weapons, every missile in the Soviet inventory was armed with as much megatonnage as the missile could carry. Given also the popular "mirror image" that the Soviets target population masses (which is the foundation of our concept of assured destruction but which we do not in fact follow), one of the popularly perceived functions of the SALT process is to restrain "overkill" of cities.

Recently released data on Soviet strategic missile accuracies and yields provide the basis for a more realistic assessment of what the Soviets have been doing and why. There has been a sharp decrease in CEPs from the initial systems deployed two decades ago to current and projected systems. The most plausible explanation is that accuracy must be improved for effective counterforce capabilities against hard targets, and in order to use smaller warheads effectively against soft targets while limiting collateral damage. Concurrently, there has been a declining trend in the yields of Soviet strategic warheads. As accuracy increases and yields decline, effectiveness against most industrial and military targets—except missile silos, hardened command control installations, and the like—holds constant or improves with each generation. Multimegaton single-warhead options have been retained in some SS–17, -18, and -19 missiles for attacks on some classes of hard targets. The high side (1.0 MT) of the yields reported for the MIRVed SS–17s and SS–19s may be the maximum these missiles can carry. But 0.2 to 0.5 may well be more representative yields because such yields are quite adequate against most industrial and military targets, which are relatively soft—five to fifteen psi.

These trends in Soviet strategic-missile characteristics also illustrate Soviet requirements for future generations of strategic-missile systems. Even the SS–18 is marginal for its primary mission of destroying hard targets. The SS–17 and SS–18 MIRV versions are effective against targets up to about 100 psi but are not likely to be very effective against US missile silos. For flexibility and greater effectiveness, the Soviets probably want at least two of their ICBMs to be effective against hard targets. Meanwhile, the SLBMs still are relatively inaccurate as the yields required are much larger than for the current ICBMs. Deployment of the SS–NX–18 SLBM will improve force characteristics considerably. Deployment of the Typhoon system should make Soviet SLBM capabilities at least comparable to the current SS–17 and SS–19 ICBMs.

IMPLICATIONS FOR SALT

Against this background it is not difficult to understand why the Soviets have held out in SALT negotiations for high ceilings on total delivery vehicles, on "heavy" ICBMs, and on MIRVed missiles. When the SALT negotiations started in 1969, the Soviets were far short of the forces they needed to satisfy their targeting requirements in the transoceanic TVD. By the middle of 1969, the Soviets had about 1,000 ICBMs, some operational Yankee-class SLBMs and many more such missiles in production. But the force was still much too small and inaccurate to be effective. Originally designed to immobilize the US ICBMs by destroying the 100 Launch Control Centers that control the 1,000 Minuteman ICBM launchers, the SS-9 deployments were frustrated by the US airborne launch control system, which can launch missiles from each silo even if the Control Centers are destroyed.

Building enough SS–9s to attack every Minuteman silo was not a feasible course of action. The Soviets experimented with a three-RV version of the SS–9 that probably was an attempt to acquire a limited MIRV capability against the silos, which are relatively closely spaced. But this approach either did not work or, more likely was dropped in anticipation of achieving full MIRV technology. However, the first generation of true Soviet MIRVed ICBMs, probably approved for development in 1966 and part of the eighth Five-Year Plan military programs, were still three years from flight-testing when SALT began. Even with accuracy improvements, the current generation of new systems (SS–16 through SS–18) required much larger payloads (throw-weight) to carry MIRVs with megaton yields.

In 1969, Soviet requirements for hitting soft targets in the transoceanic TVD also were far from being satisfied. The new SS–11 ICBM and the SS–N–6 SLBM were effective against such targets, with warheads in the KT range in most cases. But there were a lot of targets. U.S. and allied military bases and facilities located in Asia (beyond IRBM range), the Atlantic and Pacific basins, and in the U.S. and Alaska must number at least 600 and possibly more than 1,000. Some of these are large complex installations requiring several warheads to destroy all of the facilities. And then there are all the industrial, transportation, communications, and administrative targets specified by Soviet targeting strategy.

It is no wonder, therefore, that the Soviets stretched out SALT until they had some 1,600 ICBMs, agreed only very reluctantly to a limit of just over 300 launchers for SS–9–type ICBMs (so-called "heavy missiles" in SALT jargon), and insisted on an upper limit of 710 to 950 SLBMs. Equally unsurprising, the SALT agreements were not concluded until the Soviets were nearly ready to start flight-testing their four new ICBMs in 1972, all of which have the MIRV system required to cover all the targets.

As has been noted, the U.S. tried to limit the throw-weight of all new missiles, except the successor to the SS–9 "heavy" missile, to roughly the throw-weight of the SS–11. But this was futile since the new liquid fuel successors to the SS–11—the SS–17 and SS–19—were designed in 1965–66 as "heavy" missile, having throw-weights approximately two to three times that of the SS–11 in order to carry enough MIRVed warheads to cover the entire target array in the transoceanic TVD and other areas outside the range of the IR/MRBMs.

This is not to argue that the Soviets made no concessions at all in SALT. They may have intended to replace many, even all, of their IR/MRBMs with ICBMs, which they began to deploy with IR/MRBM units some time after the SALT negotiations began. On the other hand, they have intended to replace most of the SS–4 and SS–5 missiles with the SS–20 IRBM from the beginning, since the latter missile is the first two stages of the SS–16 ICBM.

The SALT agreements permitted the Soviets to go ahead with their new ICBMs and placed no restrictions on the SS–20. This missile will be much more effective than the SS–4s and SS–5s for strategic operations in the Eurasian TVDs. It reduces collateral damage as well. To satisfy requirements of Soviet targeting strategy in the transoceanic TVD, yet another generation of ICBMs will be required. The next generation of Soviet strategic missiles, now being developed, will provide a large MIRVed force to cover all of the military and industrial targets.

The Vladivostok agreement limiting Soviet peripheral *i.e.*, transoceanic, strategic delivery systems to 2,400, without placing any limits on central Soviet strategic systems for the Eurasian TVDs, was made to order for the Soviets. Development of the next generation of Soviet ICBMs probably had been approved in 1970–71 as part of the ninth Five-Year Plan's military programs, and flight-testing probably will begin in 1978–79.

Most important, at the start of SALT I negotiations, the Soviets probably intended to build many more SS–9 type silos than the 308-odd launchers of this type they finally agreed to. Because they desperately wanted agreements to prohibit large-scale US anti-ballistic missile (ABM) deployment, which would have frustrated all of their nuclear targeting ambitions and, in their view, would have given the US a great military advantage the Soviets had to make some concessions. But the limit on SS–9-type silos is about the only concession that mattered since the unconstrained SS–20 will more than make up for ICBMs the Soviets may have planned as replacements for their SS–4 and SS–5 MR/IRBMs.

Anticipating the Vladivostok limits, the Soviet approved completing development and initial deployment of the new systems in 1975–76 as part of the tenth Five-Year Plan's military programs. Sometime in the early to mid-1980s, the combination of the current ICBMs plus the four to six next-generation ICBM and three SLBM systems now under development finally should provide sufficient accuracy and enough warheads to satisfy the transoceanic TVD requirements that Soviet military planners have been struggling to meet since the late 1950s.

STRIDES IN COUNTERFORCE WEAPONS

The Soviets also are continuing to improve the performance of one or more of their current-generation ICBMs. One report stated that an improved version of the SS–18 has a CEP of only 0.10 nm. The first flight test of the SS–18 occurred nearly six years ago, which may have been enough time to have developed a new guidance system to retrofit into the basic airframe. With this reported accuracy and a one to two MT warhead, the SS–18 would be a very effective counterforce weapon. Given the uncertainties concerning test-range CEPs applied under operational conditions, a prudent Soviet planner might well count on only 0.2 nm CEP. Even so, the SS–18 is well on its way to becoming a very effective counterforce system, and the SS–17 and SS–19 may not be far behind. And whatever capabilities these systems lack, almost certainly will be included in the four or more new ICBMs under development. There are also indications that the Soviets are pressing for the right to test only one new ICBM during a three- to four-year Protocol period that may accompany a treaty on offensive system limitations. This appears to be a substantial Soviet concession even if it is tied to Soviet efforts to block development of a new US Air Force ICBM.

On the other hand, if the accuracy of the current generation of Soviet liquid-fueled ICBMs has been improved to the extent reported, some delay in testing the next generation could be tolerated. The single new ICBM the Soviets reportedly are holding out for may represent an effort to get some return on the Soviet investment in solid fuel missile development which, except for the SS–20 (and some sixty SS–13s), has not paid off very well thus far.

SUMMING UP

To recapitulate, Soviet nuclear targeting strategy is reflected in most aspects of Soviet performance in SALT, from the Interim Agreement through the Vladivostok Accord to what appears to be emerging from the current negotiations.

The Soviets have insisted on high ceilings for total delivery vehicles (2,200 or more), MIRVed missiles (1,200–1,300), and "heavy" ICBMs (more than 300).

The Soviets summarily rejected the US proposals of March 1977 that would have made it impossible to meet their targeting requirements—granted that the timing of those proposals also was not propitous for other reasons.

The agreements have permitted replacing the S–11 with the SS–17 and SS–19, which have three times or more throw-weight than the SS–11, in order to accommodate large MIRV payloads and a high-yield single RV version of these missiles. The MIRVed versions are needed to complete coverage of all soft military targets and selected industries, and perhaps to cross-target Minuteman silos as well. The single warhead versions of the SS–17 and SS–19 will be useful against certain classes of hard targets, particularly command control and communications facilities.

Thus far, limits on new missile-system R&D have been avoided while the Soviets are free to modify, modernize, and improve all performance parameters of the current generation of ICBMs.

Understandably, the Soviets have been reluctant to delay testing of the new ICBMs and the large SLBM they have under development, but they may make some concessions in this area in order to get an agreement. Meanwhile, they are continuing to test and improve current ICBMs and SLBMs.

They have built to the limit of their sixty-two boat-950 launcher SLBM ceiling under the Interim Agreement, giving them a secure reserve force to conduct war after the initial exchange, and probably also as a hedge against future US counterforce capabilities.

For the purposes of SALT, the Soviets created a definition of "strategic," (*i.e.*, systems that can reach each superpower's homeland from existing bases) in order to exclude much of their strategic forces from SALT limits while trying to include US tactical assets in SALT ceilings.

No wonder the Soviets do not want to give up their policy of "peaceful coexistence," which we call "détente." It has served them well in acquiring grain, technology, credits, and SALT agreements compatible with their strategic targeting requirements.●

TRIBUTE TO "TIGER" TEAGUE

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague OLIN TEAGUE.

Every veteran in America owes a debt of gratitude to "TIGER" TEAGUE. This most highly decorated combat veteran of World War II was destined by fate and experience to be the voice of the military veteran in Congress and has fulfilled his role to perfection. Also, in recent years when the "space race" opened new frontiers for American exploration, his determination, perseverance and legislative skills were natural for him to chair the House Science and Astronautics Committee. The Nation will be poorer for his departure from Congress.

Reta and I extend to TIGER and Freddie our warmest wishes for an enjoyable and fruitful retirement.●

WATERWAYS USERS FEES

HON. AUSTIN J. MURPHY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. MURPHY of Pennsylvania. Mr. Speaker, I take this opportunity to explain my reasons for opposing the establishing of waterways users fees. At a time when this Congress has expressed such grave concern over creating a comprehensive energy policy and faces the most serious questions raised by our ever increasing inflation, at a time when we find our domestic industries jeopardized by cheap foreign imports, this measure is most counter productive.

Water transportation is our most energy efficient means of moving massive quantities of bulk goods. We seek to reduce serious drains on our petroleum resources, we seek to reduce the importation of foreign petroleum and the impact of foreign prices, and yet there are those who introduce measures that would penalize a mode of transportation that carries large cargoes with less fuel drain than any other. We should instead seek to encourage water transportation to stimulate the movement of coal supplies to supplant the use of petroleum and reduce our dependency on an uncertain supply of foreign oil. The great rivers of the Northeast, especially those flowing through Ohio, West Virginia, and my own home State of Pennsylvania are the arteries of the coal industry that we will depend on through the coming years to light our homes, fire the boilers of our generators, and give us a whole new technology leading to greater energy independence. To establish a tax that will rise to 10 cents a gallon by 1985 will place an additional and onerous burden on the towboats that ply these waters and on the coal industry, and the steel mills that built this Nation.

Let us not forget those steel mills. They are now struggling under the burden of predatory pricing practices by foreign producers, extensive and expensive nonproductive investments in pollution control equipment, and now some of my colleagues seek to add to that burden a tax on their most efficient means of transportation. These two major industries, coal and steel are not the only industries along our river system that will suffer. And if they all suffer so will the economy of our country. If this waterways users fee is passed they will have no choice but to pass their increased costs on to their consumers and ultimately on to you and me and the constituents that we are here to serve.

I can see the day when the river boats become fewer in number as they fall one by one to this tax and our great multimillion dollar locks and dams see only pleasure craft bobbing within their channels and then where will be our efficiency.

In closing, I do not seek to argue points of law older than this room in which we debate, but I must remind you of the intent and spirit of article 4 of the Northwest Ordinance of 1787 and I quote:

> The navigable waters leading into the Mississippi and St. Lawrence and the carrying places between the same, shall be common highways, and forever free. As well as to the inhabitants of the said territories, as to the citizens of the United States, and those of any states that may be admitted into the confederacy.

This ordinance was continued in effect after the adoption of the Constitution by an act of this very body on August 7, 1789, and should well remain the law of the land today.

I cannot, in good conscience, support a measure whose primary effect will be to raise the cost of goods transported over our waterways.●

TRIBUTE TO CONGRESSMAN OTIS PIKE

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LENT. Mr. Speaker, it is a privilege to join with my colleagues in paying tribute today to the Honorable OTIS PIKE who is retiring from this body. I am certain that all of my colleagues share a real sense of regret that OTIS has decided to leave public service.

We will all miss OTIS PIKE's sparkling wit, and his articulate and pertinent contributions to the work of his committees, and in debate and action on legislation on the floor of the House. His candor, his knowledge, and his demonstrated mastery of the intricacies of the legislative process have been most impressive. OTIS PIKE has established an enviable record as a lawmaker.

Those of us who are members of the Long Island delegation have especially appreciated the efforts of OTIS PIKE in furthering the interests of our unique part of New York State. We on Long Island owe a debt of gratitude to OTIS for his dedicated and determined efforts on behalf of Long Island needs which have deserved congressional attention.

Few have done more for our Nation than has OTIS PIKE. His service to our country began during World War II in which he flew 120 combat missions as a Marine Corps dive-bomber pilot. Always interested in community service, OTIS served for a number of years as Justice of the Peace for his home town of Riverhead, before being elected to the 87th Congress on November 8, 1960. In the nearly two decades since that election, OTIS has been reelected to every succeeding Congress, certainly demonstrating his effectiveness as a public servant. And

had OTIS PIKE chosen to continue his service in the House of Representatives, I am sure that his constituents would have continued to honor him with reelection.

Although OTIS and I served on opposite sides of the aisle, his good humor and understanding never permitted whatever differences we had on issues to interfere with our friendship. I value that friendship most highly.

As OTIS PIKE leaves the House of Representatives, I am sure that my colleagues join me in extending our very best wishes to OTIS. May he enjoy the best of luck, and the best of health in the years to come.●

VIGIL FOR FREEDOM

HON. GLADYS NOON SPELLMAN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mrs. SPELLMAN. Mr. Speaker, I am pleased to join in the "Vigil for Freedom" sponsored by the Union of Councils for Soviet Jewry on behalf of Soviet Jewish families and individuals who are being detained in the U.S.S.R. as a result of the Soviet Government's repressive emigration policies.

In 1975, 35 nations signed the Helsinki Final Act, which committed the 35 signatory nations to pursue policies consistent with basic principles of human rights, including the reunification of divided families whose members live in different countries, religious freedom, minority rights, and free travel between countries.

Unfortunately, the Soviet Government has disregarded the human rights provisions of the Final Act.

Today, I bring to the attention of my colleagues the case of Lydia Nisanova, a 33-year-old woman from Derbent who applied to emigrate to Israel in 1975. Immediately subjected to harassment, she was called several times to the procurator's office where a case was begun against her for "speculation." She went to Moscow and delivered a declaration of protest. Although semiliterate, she was forced to sign a statement she had not even been given the opportunity to read.

On returning to Derbent, she was told that the case had been dropped. But, "Because she had gone up to Moscow and had complained there, a new case was being opened against her, also on a charge of 'speculation' but with a different investigator and with generally new facts."

Her trial took place December 17, 1975, at which time she was given an 18-month prison sentence. In April 1976, her appeal against this sentence was rejected by the Derbent Court of Appeal. She was further informed that the examination of her application for emigration had been indefinitely suspended.

It is my hope that this vigil for freedom will result in the termination of Lydia Nisanova's 3-year ordeal, and her speedy emigration to Israel.●

THE ASIA FOUNDATION CONGRESSIONAL FELLOWSHIP PROGRAM

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. PEPPER. Mr. Speaker, many of my colleagues in both the House and Senate are acquainted with the Asia Foundation congressional fellowship program. In fact, many of them have acted as hosts to the dozens of Asian professionals who have interned in their offices in an effort to acquire an indepth knowledge and appreciation of the American national legislative process. I personally have had the pleasure of having five of these Asia Foundation congressinal fellows work with me since the program's inception. Only last month I said goodby to a senior judge from Pakistan who has been with us for the past year. The distinguished Representative from Hawaii (Mr. AKAKA), also participated in the program this year, hosting a journalist from Malaysia. It has been, I believe, a mutually rewarding experience.

This program is maintained by the Asia Foundation, a publicly supported nonprofit organization headquartered in San Francisco, Calif. The three basic purposes of the Asia Foundation are: First, to support Asian individuals and organizations striving to strengthen their own societies; second, to facilitate regional and interregional cooperation among Asian, American, and international private and public organizations concerned with progress in Asia; and third, to promote in the United States a better understanding of the peoples, cultures, values, and histories of Asian countries. In furthering those objectives each year the Asia Foundation fully or partially supports the travel of dozens of Asians to the United States to study for advanced degrees, to meet with their colleagues at conferences and seminars, to observe American practices during short-term observation trips, to participate in professional programs at educational institutions, such as the Nieman Fellowships for Journalists at Harvard, and to serve as interns in some of this country's major public and private institutions, such as the Congress of the United States through the congressional fellowships.

Working in cooperation with the American Political Science Association, which sponsors the Congressional Fellows program, the Asia Foundation helps to select Asian participants in the program through its network of field offices. The Foundation provides necessary financial support of these Asian Fellows and with APSA, monitors their progress during their year in Washington.

Since Asia Foundation involvement in this program began in 1958, some 70 Asians from 14 countries have taken part in this program. The countries represented are Korea, Japan, Taiwan, the Philippines, Singapore, Malaysia, Indonesia, Thailand, Vietnam, Bangladesh, India, Sri Lanka, Pakistan, and Afghanistan. Through a series of interviews, each Asian Fellow obtains a place in a congressional office, and spends almost a full year working learning the complexities of how our laws are made and policies formed. Many of these Fellows bring unusual skills to their assignments, and have been valued by me and many of my colleagues for their contributions to an perspective on issues of mutual interest.

The Asian Fellows, like the other Congressional Fellows, have represented a wide range of occupations, including government officials and academicians, journalists, jurists, legislators, and others. The Asian Fellows selected have been of high quality, witness their professional advancement since their participation in this program. The Asian Congressional Fellows alumni now list among their number at least two ambassadors, two vice ministers, the chief of a national news agency, several editors of major Asian newspapers, college deans, and several senior parliamentary officials.

All of these Asian Congressional Fellows have returned to work and live in their home countries with a much more mature grasp of the U.S. legislative process, and a warm affection for their year in Washington. As influential policymakers and opinion-molders, their enhanced ability to interpret U.S. policies and political developments accurately for their countrymen is of no small significance.

As the Asia Foundation Congressional Fellowship program completes its 20th year, I would like to take this occasion to commend it and wish it continued success. I would also like to express my deep thanks to the Asia Foundation for its valuable services in making this program possible, and for its extensive contributions to Asian-American understanding and cooperation.●

OTIS PIKE

SPEECH OF

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague OTIS PIKE.

After truly outstanding World War II service as a Marine combat aviator and civilian community service in his native Riverhead, N.Y., OTIS came to Congress in 1961 and has rendered effective service since as a potent member of the Ways and Means Committee. Also, his chairmanship of the Select Committee on Intelligence led the way for correction of some unfortunate abuses in our Nation's intelligence gathering apparatus.

Reta and I extend to OTIS and Doris our warmest wishes for an enjoyable, fruitful retirement.●

VOLUNTEER SPIRIT IN CALIFORNIA SUSTAINS SUPPORT OF PROPOSITION 13

HON. JOHN H. ROUSSELOT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROUSSELOT. Mr. Speaker, in June, when the people in the State of California accepted proposition 13 on their primary ballot, they began a taxpayers revolt that has swept across the country and which has certainly been felt and heard in the Halls of Congress. Now, proposals for tax cuts and spending limitations are not new, when the voters returned me to Congress in 1970, one of the early resolutions I cosponsored was House Joint Resolution 23 making the Federal personal income tax unconstitutional. I have reintroduced this resolution (originally introduced by another Californian now deceased, James Utt) each succeeding Congress where it has been referred to the House Judiciary Committee and placed in the "inactive" file along with other proposals introduced by my spending and tax conscious colleagues. For the past three Congresses I have introduced and reintroduced a balanced budget amendment calling for restraints in Federal spending and an across-the-board cut in tax rates, but the Congress has not acted favorably on spending-limit measures and has, instead, voted year after year to increase spending—the revenue for which comes from the hard working taxpayers of our Nation. Citizens groups have been active, there is the National Taxpayers' Union and the National Tax Limitation Committee, several States have enacted a constitutional limit on Government spending, but it took the cussed tenacity of Howard Jarvis to bring about the tax revolt that has visibly shaken legislators at every level of government. When the Jarvis-Gann property tax relief measure got on the California ballot, there was a thundering protest from the establishment that its passage would cause financial chaos, but proposition 13 was approved, overwhelmingly approved. This was a signal from the people of California that they were ready to restrain programs and diet on a smaller piece of the tax pie. Mr. Speaker, I want my colleagues in the U.S. House of Representatives to know that I am proud of the people of California for making this sober judgment and I know that they are willing to practice the disciplines that will be necessary to "live within their means." This was a hard choice, but the people of California are resetting their priorities and working to cut "frills" and find ways to locally fund those programs and services which best serve their own community needs. The citizens of my own hometown, San Marino, Calif., have given me special reason for pride, because of their vigorous and spirited volunteer effort to raise private funds to carry on city services that were discontinued or reduced by the enactment of proposition 13. I submit to the attention of my colleagues an article which appeared in the October 12 issue of the San Marino Tribune entitled, "Volunteer Spirit Propels Blue Ribbon Committee," and ask the Members of the House whether they do not believe that this firm, determined spirit is exemplary of an attitude that will prevail throughout the country if the American taxpayers are given the chance to prove their willingness to establish fiscal sanity:

VOLUNTEER SPIRIT PROPELS BLUE RIBBON COMMITTEE

(By Jeff Weir)

The spirit of 1776, symbolizing independence and commitment, reared its head last Friday when 60 residents gathered at City Hall to celebrate the fact that they'd completed the first in a long list of tasks for the Blue Ribbon Committee.

On the surface, the volunteers who took time off from work to congratulate one another and pose for pictures, were simply reveling in the knowledge that they'd hand-addressed more than 9000 envelopes for the BRC's two mailings, the first of which goes to the post office next week.

Underneath, their presence physically illustrated a significant though unspoken point—that they, and the Blue Ribbon Committee for which they've worked, aren't going to quit on San Marino—come hell, high, water or budget cuts.

If the spirit of selfless volunteerism demonstrated last week is any harbinger of future success, then the BRC should be well on the way toward accomplishing its lofty goal, which is to restore city services to their pre-Proposition 13 levels by raising more than $800,000 from San Marino property owners—most of whom voted for Proposition 13 and stand to pocket substantial tax savings from its passage.

The message of the first BRC mailing will be primarily educational, according to Deborah Noble, the organizer of Friday's "demonstration" and BRC envelope addressing. "Our first mailing will include a cover letter and informational brochure, which will tell people where San Marino stands fiscally. We'll just give people the facts—no gimmicks or threats."

The letter will also describe how the BRC intends to recoup 80% of the city's 1977 budget—through voluntary citizen donations.

The point of it all, she added, "is to show San Marino people working to solve San Marino problems. And we'll solve them."

Mrs. Noble is also coordinating a citywide phone bank operation on October 24, 25 and 26, during which she and 30 BRC volunteers (including the 10 committee members) will try to reach 2500 residents between 6 and 9 p.m.

"The phone bank will give people a chance to go one-on-one with a committee member, to ask questions about the brochure, the fundraising campaign or the committee," she said. "We won't be asking for money."

The second BRC mailing, tentatively set for the second week in November, will be more personalized—and more to the point, she said. That mailer should include a computation of every homeowner's 1977 tax, their 1978 tax, their Jarvis savings, and the BRC's solicitation request—15% of the Jarvis windfall.

"We'll be as accurate as the assessor's roles, if not more accurate, in our computations," Mrs. Noble promised.

In addition to stamping and addressing envelopes for the BRC, Mrs. Noble and BRC colleague Paul Kral have recruited more than 90 volunteers to help with the phone bank. Each number has had to be checked and rechecked, she said.

Miles Turpin of Grey Advertising and James Cross collaborated on designing the BRC mailers. The materials, in addition, were donated or funded separately by individual BRC members.

The volunteers who showed up at Friday's demonstration included Susan Norton, Dorothy Pichel, Dr. John P. Dobbins, Jackie Armstrong, Mary Ann Strakosch, Maryadele Clougherty, Selma Sax, Judy Hoy, Anni Szanto, Tita Johnson, Linda Hulting, Jeanne Cornwell, Elinor Miller and Charlene Seley.

Also, Cathy Shanahan, Jeanne Schmid, Pamela Simpson, Barbara Ann Kral, Helen Foreman, Diane Lucas, Jan George, Mary Fran Warnock, Sally Adams, Dorothy Brown, Jean Dampier, Marilyn Henriksen, Allen Laws, Maybelle Poole, Lin Hildeburn, Joan Garrett, Luz de la Madrid, Betty Lou Warren, Dottie Stevens and Lorna Reed.

Also, Winnie Reitnouer, Joan Blocker, Ellen Meudell, Becky Archer, Betsy Buchanan, Sue Garrison, Carol Bigger, Barbara Steele, Angela Scott, Maurene Bell, Ted Burnett, Janine O'Connell, Dorothy Ohlson, Patricia Salvaty, Betty Foster, Pat Hutter, Valerie Woosley, Maria Johnston, Jane Bell, Nancy Selley and Barbara Strong.

"And that's just some of the volunteers," Mrs. Noble laughed. "The rest were still addressing envelopes."●

TRIBUTE TO BOB NIX

HON. RAYMOND F. LEDERER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LEDERER. Mr. Speaker, I would like to pause in the business of the House to salute a great American for 20 years of outstanding leadership in the House of Representatives and a lifetime of service to his fellow man.

Born in an era when nothing came easy BOB NIX left his hometown of Orangeburg, S.C., as literally a youngster traveling alone to New York City in search of educational opportunities not available to blacks at that time in the South. He came to Philadelphia to attend the University of Pennsylvania School of Law, graduating from that institution with highest honors. Following a brilliant career as a defense attorney in Philadelphia, Mr. NIX was elected to the 85th Congress in a special election on May 20, 1954.

During his years of service to the House of Representatives, Mr. NIX served on the International Relations Committee and was an outstanding chairman of the Post Office and Civil Service Committee. His experienced guidance was vital to the passage of the civil service reform bill in the House of Representatives during the 95th Congress as it was for the passage of the vital civil rights legislation during his earlier years in the House.

BOB NIX's son, Pennsylvania Supreme Court Justice Robert N. C. Nix, Jr., will continue to follow in the Nix tradition of service to Philadelphia, Pa., and the Nation. And I am sure, waiting in the wings, will be BOB's pride and joy, his four grandchildren, Robert Nix III, Michael, Anthony, and Stephen.

Mr. NIX, on behalf of my colleagues in the House, myself and a grateful citizenry of your district, I salute you for your years of public service during which you have helped so many.●

REVENUE BONDS

HON. GLADYS NOON SPELLMAN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mrs. SPELLMAN. Mr. Speaker, I have introduced H.R. 7485 to permit commercial banks to underwrite and deal in revenue bonds issued by State and local governments.

This is the last of seven identical bills I have introduced during this 95th Congress on this subject on which 53 other Members have joined me. In addition, three other Members have also introduced identical bills, for a total of 56 sponsors.

When Chairman REUSS of the Banking Committee joined me in introducing H.R. 7485 in May of 1977, we hoped that this type of broad support for expanding competition and the market for municipal revenue bonds would have lead to hearings, committee approval, and passage. This hope was nurtured when practically all major organizations representing the public officials, who are responsible for assuring that the bonds issued by their governments carry the lowest possible interest rate, expressed their support for the legislation. These organizations include the National Governors Association, the National Association of Counties, the U.S. Conference of Mayors, the National League of Cities, the Municipal Finance Officers Association, the American Public Power Association, the National Association of State Auditors, Comptrollers, and Treasurers, and the Airport Operators Council International.

It was further nurtured when support came from such diverse areas as the Federal Reserve Board, the FDIC, the American Federation of State, County, and Municipal Employees, and the National Association of Home Builders. In fact, in connection with an earlier floor statement, on June 5, 1978, I inserted in the RECORD a copy of the report of the Division of Research and Statistics to the Board of Governors of the Federal Reserve System recommending that the Board support the legislation. That report very ably pointed out that the many benefits that would flow from enactment of H.R. 7485, including substantial savings to the thousands of State and local governments that issue revenue bonds each year.

This broad range of support, both in and out of the Congress, led in July to a gracious promise from the chairman of the Financial Institutions Subcommittee, Mr. ST GERMAIN, to schedule hearings on H.R. 7485 as soon as other business pending before the subcommittee had been dealt with. These would be the first hearings on this issue held in the House since 1965. Unfortunately, as my colleagues are aware, despite very kind cooperation on the part of the subcommittee chairman, it was difficult to find a date convenient to all parties, and there was mutual agreement to postpone hearings until the start of the 96th Congress.

I am pleased to report, therefore, that the chairman of the Financial Institutions Subcommittee has promised that he will hold hearings on revenue bond legislation early next year—in fact, by 2 weeks after the organization of the House in the next Congress.

I should like to express my gratitude and appreciation to the chairman for that commitment. It means that this important legislation will get the type of full consideration it deserves and, hopefully, will be ready to be moved on to quick passage.

I should also like to thank the many other Members of the House who have supported our effort. It is their support which has made it possible for us to get to the point where we will be able to get off to a running start next year.●

THE 75TH ANNIVERSARY OF ST. WENDELIN PARISH

HON. MARY ROSE OAKAR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Ms. OAKAR. Mr. Speaker, it is a great pleasure for me to be able to congratulate those in St. Wendelin Roman Catholic Parish on the occasion of their 75th anniversary—their diamond jubilee.

St. Wendelin's is located in my district on the near West Side of Cleveland. This is one of the oldest sections of the city, and one of the most historical areas. George Condon writes in his wonderful book on Cleveland—

> It was into this area that the new flood of immigrants which gave Cleveland the forward impetus that in the late 19th and early 20th century made it one of the great cities of this nation.

St. Wendelin's was founded to serve one of these groups of immigrants—the Slovak people who left their native land. It served as a haven for them—helped them to cope with the bewildering ways of the New World, and educated their children so that they might be able to make their way in this new, exciting country. The Slovak people have contributed a great deal culturally and intellectually to our city.

Like so many parishes in our inner cities, St. Wendelin's has experienced a loss in population over the last 20 years. However, it is a tribute to the parish, and the pastors who have been there that there is still a strong loyalty to the church. And it is also a tribute to the pastor and the parishioners that the school which was known for its academic excellence has become one of the most innovative in the city. On a personal note, I consider it to be almost my own parish having been born and raised in the same community. I sincerely congratulate the people of St. Wendelin Parish and its fine pastor, Father Jerome Lahack, and I wish them continued success in the years to come.●

BROOKLYN BUREAU OF COMMUNITY SERVICE

HON. ELIZABETH HOLTZMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Ms. HOLTZMAN. Mr. Speaker, this year, the Brooklyn Bureau of Community Service is observing its 113th anniversary. When the work of the Brooklyn Bureau began in 1866, the burden of relieving poverty rested almost entirely on the shoulders of private charity. The Brooklyn Bureau came into existence because something had to be done about the intolerable misery of Brooklyn's poor. In the early years, the Brooklyn Bureau carried on this work virtually alone. Today, it is part of a larger network of voluntary and public agencies working together. The Brooklyn Bureau of Community Service can take pride in the part it has played in helping bring this about.

In the history of its work with children, the handicapped, and families is found an inspiring record of social progress. In helping people overcome adversity and enter the mainstream of life, the Brooklyn Bureau participated in, and often led, important social movements.

The Brooklyn Bureau is a nonsectarian, nonprofit, voluntary social services agency. Today, as throughout the years, its programs and services reflect the changing community needs and problems of an increasingly complex society.

Under one roof is a whole spectrum of vital services to help the poor and distressed. In its sheltered workshops, the Brooklyn Bureau trains people with a wide variety of handicaps to perform jobs for which they receive wages. It is the only business in the world that "fires" its most efficient workers. As soon as they are skilled enough to enter the labor market, they are helped to find jobs where they can become part of the normal life of the community and take their place as useful and self-supporting neighbors and citizens.

In all of its services to the handicapped, the bureau is concerned with the total person, not just his handicap. The specialists in the sheltered workshops help him develop skills leading toward independence. Rehabilitation counselors, psychologists, and caseworkers who are concerned about his emotional strengths, his family life, his opportunities for social and cultural experiences are also part of the treatment team.

The Bureau's home living and working center is a model apartment in which the severely handicapped learn to take care of their personal needs. The blind, heart disease victims, men and women suffering from cerebral palsy, muscular dystrophy and many other kinds of disabling afflictions, learn to cook, clean, iron, sew, budget their funds and do all the other things necessary to

maintain themselves independently. This training enables many to remain in their own homes and out of institutions.

Those in our community who are isolated from others because of severity of handicap are of special concern to the Bureau. The agency's work-at-home program permits the bedridden the blind, the crippled and others too incapacitated to leave their homes, to perform work where they live. Materials are brought to them, and the handicapped person can work at his own speed. For many of these persons, it is the first time in their lives they have known the dignity of paid employment.

The indigent aged and the handicapped are helped by still another Bureau service. The agency's free summer vacation camp at Shelter Island on eastern Long Island is a place where their loneliness is relieved by 2 weeks in the fresh air and sunshine. The happy memories, the friendships formed, the interests developed and the affectionate and concerned care received may make a whole year happier and more hopeful.

The Bureau's services to children include placement in foster homes, psychiatric and social work counseling, and remedial services. A special foster care unit operates from an office in Kings County Hospital. Handicapped, abused and neglected children living in pediatrics wards with no parents to care for them are placed in foster homes where they have a chance to grow normally. While children are being helped to find security and a feeling of being loved in their substitute homes, every effort is made to rehabilitate the families that had to give them up. Where this is not possible, long-term foster care or adoption becomes a viable alternative.

Families too are the focus of the Bureau's work. A Preventive Service Project offers intensive counseling and other services to help troubled families stay together where there is the danger that children may have to be placed in foster care. The service was begun in 1974 and has kept scores of families intact at a cost of the community that is far less than the placement of children in foster homes.

Some measure of the achievements of the Bureau in its 113 years can be seen in the highlights of its history—

HIGHLIGHTS

1866—opened a lodging house for homeless boys. Established foster children service.

1867—established industrial schools to train young people. Opened kindergarten for children of working mothers.

1890—started program to distribute pasteurized milk to infants.

1898—legal aid for needy started with 25 volunteer lawyers.

1908—Jewish branch recognized as independent Jewish Aid Societies, forerunner of Jewish Family Service.

1910—organized housing committee to improve housing conditions.

1912—established school lunch program for undernourished children .

1912—started free employment service for the needy.

1913—established home teaching for the blind and disabled, and sheltered workshops for the handicapped.

1916—provided nursing, ambulance and other medical services to 3,600 victims of Brooklyn's worst infantile paralysis epidemic.

1919—nursing affiliate reorganized as independent Visiting Nurse Association of Brooklyn.

1920—established Shelter Island summer camp, now used for the aged and handicapped.

1930-33—distributed $1,770,000 in relief to victims of the depression.

1946—tuberculosis committee reorganized as independent Brooklyn Tuberculosis & Health Association.

1954—established homemaker service to help families disrupted by illness stay together.

1964—printed first braille cookbook of convenience foods.

1966—major building program increases capacity of sheltered workshops by 50 percent-grant from New York State Division of Vocational Rehabilitation.

1969—established a homemaking teaching center for the severely handicapped in a specially-constructed model apartment.

1974—organized its Preventive Service Project for troubled families to keep children at home and out of foster care.

Mr. Speaker, as we look back over the history of our country, we see that many of the conditions of life that we take for granted today came about after long uphill struggles that, at time, must have seemed hopeless. I believe that the Brooklyn Bureau of Community Service is an organization that has helped in a substantial way to create a society in which the poor, the helpless and the despairing are not merely objects of charity, but the focus of genuine concern. Certainly there is much that is undone. But the Brooklyn Bureau of Community Service has played its part in helping prepare the way to a better future for all.

CONGRESSMAN WAGGONNER RETIRES

HON. RAYMOND F. LEDERER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LEDERER. Mr. Speaker, I would like to pause in the business of the House to salute my colleague and good friend, Congressman JOE D. WAGGONNER of Louisiana, who will be retiring after 18 years of outstanding service in the House of Representatives.

For the past 2 years, I have had the privilege of his tutelage and friendship as we served together on the Ways and Means Committee. Needless to say, this has been a very enlightening and instructive experience. I have also had the benefit and honor to serve under his chairmanship of the Subcommittee on Miscellaneous Revenue Measures. His knowledge of the legislative process and of the intricacies of tax legislation has helped me immeasurably during my freshman term in Congress.

Mr. Speaker, you will be leaving a void in the 96th Congress which will be sorely missed. On behalf of our colleagues in the House, the people of Louisiana's Fourth District and the rest of the Nation, I salute you for a lifetime of public service which will continue to benefit the people of this country after your retirement.●

YVONNE B. BURKE

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague YVONNE B. BURKE.

YVONNE BURKE is retiring from Congress, but, for the good of the people of California, not from public life. It is my hope that her quest for the attorney generalship of California will be a successful one and that the people will continue to have the benefit of the vibrant, forward-looking ideal of this outstanding woman.

I extend to her my warmest wishes for a continued fruitful career.●

TRIBUTE TO LLOYD MEEDS

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ANDERSON of California. Mr. Speaker, after 14 years of dedicated public service, LLOYD MEEDS is shedding the hectic lifestyle of a U.S. Representative to return to the somewhat more normal pace of a private citizen. There can be no doubt that his fellow Members and the citizens of Washington's Second District will feel the absence of such an honest, effective legislator.

LLOYD represents one of the most beautiful areas in our country, the far northwest corner of the United States. The clean air and breathtaking scenery complements quite well the character of the people of the second district, who are healthy, hard-working, and straight-forward. LLOYD very aptly represents this group, for his character is much like that of his constituency. He is not a man who casually spouts rhetoric or staunchly refuses to compromise on any issue. LLOYD has been recognized in Congress as a man who, whether he agrees or disagrees, will listen to his fellows and his constituents—and in turn will talk to them, rather than at them. Needless to say, such attributes are most welcomed and highly valuable on Capitol Hill, as well as in everyday life.

LLOYD's work on the Rules Committee and on Interior and Insular Affairs has been marked by his tenacity, diligence, and sincere desire to produce legislation which is both workable and acceptable to those involved. Although LLOYD and I may not always agree on every issue, he is living proof of the old maxim that "honorable men can disagree honora-

bly." LLOYD is truly a man of reason, and I will miss him, as will the rest of his colleagues. My wife, Lee, joins me in wishing him, his lovely wife Mary, and their four children, Marsha, Debbie, Michelle and Michael all the best in their future endeavors.●

CONCENTRATION OF ECONOMIC POWER

HON. JOHN B. BRECKINRIDGE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BRECKINRIDGE. Mr. Speaker, during this second and last session of the 95th Congress, the House Small Business Subcommittee on Antitrust, Consumers, and Employment, which I am privileged to chair, has been conducting a series of hearings on a variety of issues that relate to the future of small business in America.

In the course of these hearings—in which we have investigated small business's undeniably important contributions to such matters as scientific and technological innovation and to the solution to our unemployment problems—we have heard witness after witness say that small business is rapidly declining, that small business is an "endangered species."

Despite this decline, our witnesses have uniformly and unequivocally established the fact that in the areas of job creation, invention, innovation, and technological development, small business is the keystone. Small business is, indeed, the key to those problems that continue to plague our paradoxical, frustrated economy—the problems of inflation and unemployment with which we have yet to cope. Mr. Speaker, it is time that we coped.

Furthermore, according to our witnesses, which included professional economists at work in the business community, government, and academia, one of the major causes of the decline of small business is the growing concentration of economic power in the hands of the few. Small businesses are, have been and will continue to be the primary victims of these generally uncontrolled trends toward corporate "bigness" underway in our economy today—unless and until remedial action is taken, the antitrust laws not withstanding.

These observations and conclusions are not new. We witnessed one of their more incisive and eloquent expressions some 40 years ago, when, on April 29, 1938, then President Franklin Delano Roosevelt sent to Congress his proposal for the creation of the Temporary National Economic Committee to investigate the concentration of economic power and the growing influence of monopoly over the American economy and the life of its people. The title of President Roosevelt's proposal was "Recommendations to the Congress to Curb Monopolies and the Concentration of Economic Power," which, interestingly enough, followed the 40-year cycle inaugurated by the Sherman and Clayton Antitrust Acts; I would like to share this message with my colleagues with a simple observation to the effect that the cycle has run its course and the time is overripe for a new, in-depth and in-depth study of these continuing phenomena which point more to an emerging corporate state than to the extension of the American dream of an open, competitive, and expanding economy in a society of free men.

The first part of President Roosevelt's proposal follows:

Recommendations to the Congress to Curb Monopolies and the Concentration of Economic Power. April 29, 1938.

To the Congress:

Unhappy events abroad have retaught us two simple truths about the liberty of a democratic people.

The first truth is that the liberty of a democracy is not safe if the people tolerate the growth of private power to a point where is becomes stronger than their democratic state itself. That, in its essence, is Fascism—ownership of Government by an individual, by a group, or by any other controlling private power.

The second truth is that the liberty of a democracy is not safe if its business system does not provide employment and wide public distribution of their securities. The mere number of security-holders gives little clue to the size of their individual holdings or to their actual ability to have a voice in the management. In fact the concentration of stock ownership of corporations in the hands of a tiny minority of the population matches the concentration of corporate assets.

1929 was a banner year for distribution of stock ownership.

But in that year three-tenths of 1 per cent of our population received 78 per cent of the dividends reported by individuals. This has roughly the same effect as if, out of every 300 persons in our population, one person received 78 cents out of every dollar of corporate dividends while the other 299 persons divided up the other 22 cents between them.

The effect of this concentration is reflected in the distribution of national income.

A recent study by the National Resources Committee shows that in 1935–36: 47 per cent of all American families and single individuals living alone had incomes of less than $1,000 for the year; and at the other end of the ladder a little less than 1½ per cent of the nation's families received incomes which in dollars and cents reached the same total as the incomes of the 47 per cent at the bottom;

Furthermore, to drive the point home, the Bureau of Internal Revenue reports that estate tax returns in 1936 show that: 33 percent of the property which was passed by inheritance was found in only 4 per cent of all the reporting estates. (And the figures of concentration would be far more impressive, if we included all the smaller estate which, under the law, do not have to report.)

We believe in a way of living in which political democracy and free private enterprise for profit should serve and protect each other—to ensure a maximum of human liberty not for a few but for all.

It has been well said that "the freest government, if it could produce and distribute goods in such a way as to sustain an acceptable standard of living.

Both lessons hit home.

Among us today a concentration of private power without equal in history is growing.

This concentration is seriously impairing the economic effectiveness of private enterprise as a way of providing employment for labor and capital and as a way of assuring a more equitable distribution of income and earnings among the people of the nation as a whole.

THE GROWING CONCENTRATION OF ECONOMIC POWER

Statistics of the Bureau of Internal Revenue reveal the following amazing figures for 1935:

Ownership of corporate assets: Of all corporations reporting from every part of the nation, one-tenth of 1 per cent of them owned 52 per cent of the assets of all of them;

And to clinch the point: Of all corporations reporting, less than 5 per cent of them owned 87 per cent of all the assets of all of them.

Income and profits of corporations: Of all the corporations reporting from every part of the country, one-tenth of 1 per cent of them earned 50 per cent of the net income of all of them;

And to clinch the point: Of all the manufacturing corporations reporting, less than 4 per cent of them earned 84 per cent of all the net profits of all of them.

The statistical history of modern times proves that in times of depression concentration of business speeds up. Bigger business then has larger opportunity to grow still bigger at the expense of smaller competitors who are weakened by financial adversity.

The danger of this centralization in a handful of huge corporations is not reduced or eliminated, as is sometimes urged, by the

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exist, would not be long acceptable, if the tendency of the laws were to create a rapid accumulation of property in few hands, and to render the great mass of the population dependent and penniless."

Today many Americans ask the uneasy question: Is the vociferation that our liberties are in danger justified by the facts,

Today's answer on the part of average men and women in every section of the country is far more accurate than it would have been in 1929—for the very simple reason that during the past nine years we have been doing a lot of common sense thinking. Their answer is that if there is that danger it comes from that concentrated private economic power which is struggling so hard to master our democratic government. It will not come as some (by no means all) of the possessors of that private power would make the people believe—from our democratic government itself.

FINANCIAL CONTROL OVER INDUSTRY

Even these statistics I have cited do not measure the actual degree of concentration of control over American industry.

Close financial control, through interlocking spheres of influence over channels of investment, and through the use of financial devices like holding companies and strategic minority interests, creates close control of the business policies of enterprises which masquerade as independent units.

That heavy hand of integrated financial and management control lies upon large and strategic areas of American industry. The small business man is unfortunately being driven into a less and less independent position in American life. You and I must admit that.

Private enterprise is ceasing to be free enterprise and is becoming a cluster of private collectivism: masking itself as a system of free enterprise after the American model, it is in fact becoming a concealed cartel system after the European model.

We all want efficient industrial growth and the advantages of mass production. No one suggests that we return to the hand loom or hand forge. A series of processes involved in turning out a given manufactured product may well require one or more huge mass production plants. Modern

efficiency may call for this. But modern efficient mass production is not furthered by a central control which destroys competition among industrial plans each capable of efficient mass production while operating as separate units. Industrial efficiency does not have to mean industrial empire building.

And industrial empire building, unfortunately, has evolved into banker control of industry. We oppose that.

Such control does not offer safety for the investing public. Investment judgment requires the disinterested appraisal of other people's management. It becomes blurred and distorted if it is combined with the conflicting duty of controlling the management it is supposed to judge.

Interlocking financial controls have taken from American business much of its traditional virility, independence, adaptability and daring—without compensating advantages. They have not given the stability they promised.

Business enterprise needs new vitality and the flexibility that comes from the diversified efforts, independent judgments and vibrant energies of thousands upon thousands of independent business men.

The individual must be encouraged to exercise his own judgment and to venture his own small savings, not in stock gambling but in new enterprise investment. Men will dare to compete against men but not against giants.

THE DECLINE OF COMPETITION AND ITS EFFECTS ON EMPLOYMENT

In output per man or machine, we are the most efficient industrial nation on earth.

In the matter of complete mutual employment of capital and labor we are among the least efficient.

Our difficulties of employing labor and capital are not new. We have had them since good free land gave out in the West at the turn of the century. They were old before we undertook changes in our tax policy or in our labor and social legislation. They were caused not by this legislation but by the same forces which caused the legislation. The problem of bringing idle men and idle money together will not be solved by abandoning the forward steps we have taken to adjust the burdens of taxation more fairly and to attain social justice and security.

If you believe with me in private initiative, you must acknowldge the right of well-managed small business to expect to make reasonable profits. You must admit that the destruction of this opportunity follows concentration of control of any given industry into a small number of dominating corporations.

One of the primary causes of our present difficulties lies in the disappearance of price competition in many industrial fields, particularly in basic manufacture where concentrated economic power is most evident—and where rigid prices and fluctuating payrolls are general.

Managed industrial prices mean fewer jobs. It is no accident that in industries, like cement and steel, where prices have remained firm in the face of a falling demand, payrolls have shrunk as much as 40 and 50 per cent in recent months. Nor is it mere chance that in most competitive industries where prices adjust themselves quickly to falling demand, payrolls and employment have been far better maintained. By prices we mean, of course, the prices of the finished articles and not the wages paid to workers.

When prices are privately managed at levels above those which would be determined by free competition, everybody pays.

The contractor pays more for materials; the homebuilder pays more for his house; the tenant pays more rent; and the worker pays in lost work.

Even the Government itself is unable, in a large range of materials, to obtain competitive bids. It is repeatedly confronted with bids identical to the last cent.

Our housing shortage is a perfect example of how ability to control prices interferes with the ability of private enterprise to fill the needs of the community and provide employment for capital and labor.

On the other hand we have some lines of business, large and small, which are genuinely competitive. Often these competitive industries must buy their basic products from monopolistic industry, thus losing, and causing the public to lose, a large part of the benefit of their own competitive policy. Furthermore, in times of recession, the practices of monopolistic industries make it difficult for business or agriculture which is competitive and which does not curtail production below normal needs, to find a market for its goods even at reduced prices. For at such times a large number of customers of agriculture and competitive industry are being thrown out of work by those non-competitive industries which choose to hold their prices rather than to move their goods and to employ their workers.

If private enterprise left to its own devices becomes half-regimented and half-competitive, half-slave and half-free, as it is today, it obviously cannot adjust itself to meet the needs and the demands of the country.

Most complaints for violations of the anti-trust laws are made by businessmen against other business men. Even the most monopolistic businessman disapproves of all monopolies but his own. We may smile at this as being just an example of human nature, but we cannot laugh away the fact that the combined effect of the monopolistic controls which each business group imposes for its own benefit, inevitably destroys the buying power of the nation as a whole.

COMPETITION DOES NOT MEAN EXPLOITATION

Competition, of course, like all other good things, can be carried to excess. Competition should not extend to fields where it has demonstrably bad social and economic consequences. The exploitation of child labor, the chiseling of workers' wages, the stretching of workers' hours, are not necessary, fair or proper methods of competition. I have consistently urged a federal wages and hours bill to take the minimum decencies of life for the working man and woman out of the field of competition.

It is of course necessary to operate the competitive system of free enterprise intelligently. In gauging the market for their wares, businessmen, like the farmers, should be given all possible information by government and by their own associations so that they may act with knowledge and not on impulse. Serious problems of temporary overproduction can and should be avoided by disseminating information that will discourage the production of more goods than the current markets can possibly absorb or the accumulation of dangerously large inventories for which there is no obvious need.

It is, of course, necessary to encourage rises in the level of those competitive prices, such as agricultural prices, which must rise to put our price structure into more workable balance and make the debt burden more tolerable. Many such competitive prices are now too low.

It may at times be necessary to give special treatment to chronically sick industries which have deteriorated too far for natural revival, especially those which have a public or quasi-public character.

But generally over the field of industry and finance we must revive and strengthen competition if we wish to preserve and make workable our traditional system of free private enterprise.

The justification of private profit is private risk. We cannot safely make America safe for the businessman who does not want to take the burdens and risks of being a businessman.

THE CHOICE BEFORE US

Examination of methods of conducting and controlling private enterprise which keep it from furnishing jobs or income or opportunity for one-third of the population is long overdue on the part of those who sincerely want to preserve the system of private enterprise for profit.

No people, least of all a democratic people, will be content to go without work or to accept some standard of living which obviously and woefully falls short of their capacity to produce. No people, least of all a people with our traditions of personal liberty, will endure the slow erosion of opportunity for the common man, the oppressive sense of helplessness under the domination of a few, which are overshadowing our whole economic life.

A discerning magazine of business has editorially pointed out that big business collectivism in industry compels an ultimate collectivism in government.

The power of a few to manage the economic life of the nation must be diffused among the many or be transfered to the public and its democratically responsible government. If prices are to be managed and administered, if the nation's business is to be allotted by plan and not by competition, that power should not be vested in any private group or cartel, however benevolent its professions profess to be.

Those people, in and out of the halls of government, who encourage the growing restriction of competition either by active efforts or by passive resistance to sincere attempts to change the trend, are shouldering a terrific responsibility. Consciously, or unconsciously, they are working for centralized business and financial control. Consciously or unconsciously, they are therefore either working for control of the government itself by business and finance or the other alternative—a growing concentration of public power in the government to cope with such concentration of private power.

The enforcement of free competition is the least regulation business can expect.●

HON. GEORGE SHIPLEY

HON. JOE D. WAGGONNER, JR.

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. WAGGONNER. Mr. Speaker, after 20 years of service to the United States as a Member of Congress, GEORGE SHIPLEY has decided to retire.

Having known GEORGE since I came to Congress in 1961, I can truthfully say that he has given unselfishly of his time to help not only his district but also his colleagues. He has served his country well since 1958 and I am proud to have been able to work closely with him on many occasions. I have always found GEORGE to be a man of integrity and honor, whose word is his bond.

GEORGE has his own personal reasons for leaving Congress. I wish that he could be persuaded to stay, because we need him and the country needs him. He brings to Congress the qualities of leadership that are in short supply today.

Looking forward to retirement myself, I know the mixed emotions that you are now feeling, GEORGE, and I wish for you the best in all your future endeavors.●

FINAL ACTION ON DEFENSE APPROPRIATION BILL

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. BOB WILSON. Mr. Speaker, because of the urgent need to get final action on the defense appropriations bill, so that our Nation's servicemen and women around the world received their pay checks on time, we did not take issue with the conferees' agreement to the Senate language on CHAMPUS reimbursement.

I want to associate myself with the remarks of the gentleman from Indiana (Mr. HILLIS), the ranking minority member of the Military Personnel Subcommittee, and to commend him for his tireless efforts on behalf of improved military health care. I am deeply concerned that the conferees did agree to accept a CHAMPUS reimbursement rate at the 80th percentile, rather than the 90th percentile as contained in the Defense authorization bill.

In 1966 Congress established the CHAMPUS program in order to assure medical care to eligible beneficiaries who were unable to receive health care at uniformed services medical facilities. As doctor and other shortages at military facilities have accelerated in the succeeding years, an increasing number of dependents and retirees have found that they must seek treatment from civilian sources under CHAMPUS.

By contrast, the thrust of recent defense appropriations bills has been to restrict CHAMPUS access, limit the rate of reimbursement, and send beneficiaries to uniformed services facilities. While I fully share the concern of the distinguished members of that committee with respect to the need to tighten our belts on all Government-funded programs, I feel that the course on which they have set CHAMPUS afloat over the past few years is ill-advised.

At the behest of the Appropriations Committee, the Defense Department several years ago reduced the level of reimbursement from the 90th percentile of the customary charges made for similar services in the same locality to the 75th percentile. What this means in dollars and cents is a substantial increase in the out-of-pocket expenses for CHAMPUS beneficiaries. In these days of rapidly escalating medical costs, the dependents of low-grade enlisted personnel and older retirees are particularly hard hit. By the time that CHAMPUS pays, after the deductible, either 80 or 75 percent—depending on whether the beneficiary is an active duty dependent or retiree—of the reasonable or customary charge, based on the 75th percentile reimbursement rate and fee schedules several years out-of-date, the CHAMPUS beneficiary is lucky to be reimbursed for even half the bill. This is a cruel hoax at best.

While the 80th percentile contained in this conference report is a slight improvement, it does not resolve the situation. I feel very strongly that we need to go back to the 90th percentile figure, in addition to using more current fee schedules and providing for greater responsiveness on the part of the fiscal intermediaries who handle CHAMPUS claims.

I do not consider this subject closed and we will continue to pursue a more realistic level next year.●

TRIBUTE TO LETHA ANN PLAISANCE

HON. GILLIS W. LONG

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LONG of Louisiana. Mr. Speaker, I would like to take this opportunity to call to the attention of my fellow colleagues, a most significant honor bestowed on one of my constituents, Ms. Letha Ann Plaisance. Through her quick thinking and responsible behavior, this young lady saved the lives of three small children, and has been awarded a C–19 Presidential commendation card from the White House.

I request permission from the Speaker to reprint a newspaper article that appeared on August 10, 1978, in the Donaldsonville Chief, describing this act of bravery by Ms. Plaisance. It is inspiring to know that our Nation can produce a young citizen of this caliber, and her parents can be extremely proud to have raised a daughter with such a rare sense of responsibility.

I am certain my colleagues will join me in commending this outstanding teenager. The article follows:

FIRE DESTROYS MOBILE HOME

Three children and their baby-sitter escaped injury Sunday as flames engulfed a mobile home in Brusly, McCall around 1 a.m.

The fire destroyed the trailer shortly after Letha Plaisance was able to evacuate three children from the home where she was baby-sitting. Mr. and Mrs. Richard Bouchereau were out at the time of the incident.

According to Jennifer, 10, Letha awakened her and said she had been dreaming of a bonfire. Shortly after that converstation, they smelled smoke and heard some crackling sounds within the mobile home.

Upon realizing that the house was on fire, Letha rescued four-year-old Jody and Jennifer from the residence.

Trapped in another portion of the trailer, however, was eight-year-old Ricky who Letha guided out of the trailer although she was unable to reach him physically.

Ricky brought the telephone from the smoke-filled room as Letha requested in order that they could call for help.

"She (Letha) handled the situation beautifully," Mrs. Bouchereau said, noting that many persons would have panicked.

The children nor Letha suffered any smoke inhalation or injury.

Donaldsville Fire Department responded to the call, put the fire under control, but the trailer was totally destroyed by that time. No cause for the fire has been determined.●

THE EEOC AND QUOTAS—MS. NORTON'S COMMITMENT

HON. ELLIOTT H. LEVITAS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LEVITAS. Mr. Speaker, for many years, Americans have been working to make this Nation truly free, to make equality for every man and woman a living reality. We have not always succeeded, but we have tried.

It has been a concern of mine that in striving to achieve equality for all, certain practices have been used that are not themselves free of discrimination. I refer to those practices which result in what is known as "reverse discrimination." Such practices are hiring quotas or ratios for employment or acceptance in educational institutions, and they can be the result of a number of things.

While we strive for equality and nondiscrimination, we in the Congress have left it to the bureaucrats to find ways of carrying out the high-sounding purposes of nondiscriminatory legislation. For someone with no imagination and no foresight as to the possible backlash it could cause, using numbers is the easy way out. It is a bureaucratic way of complying. Numerical quotas present a clearly defined goal and they are an easy way of proving compliance with the intent of the law. But, by definition, they also discriminate. A quota excludes as surely as it includes.

The House Government Operations Committee has made clear that such methods are not the intent of the law.

Such methods cause ill feeling, because they prohibit people not in the target group from gaining employment or from being admitted to institutions of higher education. Oftentimes, in the zeal to meet the numerical requirements, people are hired or admitted who are not qualified but who do meet the racial or sexual criteria. An even worse problem occurs if the person admitted or hired under these quotas cannot keep up or perform as the job or school requires. It is self-defeating in that coworkers or fellow students perceive that person as inferior, thus introducing or reinforcing notions of innate inferiority.

For these reasons, I have become concerned that the Equal Employment Opportunity Commission, that agency of the U.S. Government entrusted with the duty of enforcing nondiscrimination, may be guilty of such practices. During hearings of the House Government Operations Committee on the reorganization of the civil rights sections of our Government and consolidating many of them within the EEOC, both I and Mr. WALKER of Pennsylvania, asked Mrs. Eleanor Holmes Norton, the Chairman of the EEOC, if she intended using quotas or numerical requirements. We were assured that EEOC under her direction would not not do so.

Later, I read a speech by Mrs. Norton in which she seemed to be saying something quite different than her testimony before the committee. She has since re-

affirmed her testimony and again denied the intent to use quotas. All of this was done in a series of letters among Mrs. Holmes, Chairman BROOKS, and myself. I include this correspondence for the RECORD. I truly hope that Mrs. Norton means what she says about her dislike of quotas and that she will display these feelings in the day-to-day workings of the EEOC:

JULY 17, 1978.

Hon. ELEANOR HOLMES NORTON,
Chairman, Equal Employment Opportunity Commission, Washington, D.C.

DEAR MS. NORTON: I recently had occasion to read a copy of your speech delivered on July 5, 1978 at Portland, Oregon to the NAACP Annual Convention. I have compared it with your testimony before the House Government Operations Subcommittee on Legislation and National Security on March 7, 1978. There are certain portions which appear to me to be irreconcilably contradictory. I call the following items to your attention:

Testimony before Legislation and National Security Subcommittee, March 7, 1978:

"I can assure you, Congressman Walker, . . . that this agency will not endorse quotas. . . . Goals and timetables are used by enforcement agencies and have been sanctioned over and over again by the courts. They are targets. They are not firm and inflexible numbers. . . . It is the case that the courts of the United States, in some cases and under some circumstances, have, in fact, ordered quotas. The EEOC has never done so and will not do so under my tenure."

Speech, Portland, Oregon, July 5, 1978:

"Many of you will be concerned that agencies such as EEOC, which have used numerical remedies, will no longer be able to use them in employment. But after a careful reading of *Bakke*, we at EEOC have concluded that we can continue to use them . . . we believe numerical remedies, including quotas under certain circumstances, are still permissible, and we will not stop using them unless the courts tell us we must."

I would appreciate your advising me which of the two positions is the current policy of your agency.

Very truly yours,

——— ———.

WASHINGTON, D.C.,
August 1, 1978.

Hon. ELLIOTT LEVITAS,
Congress of the United States, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR CONGRESSMAN LEVITAS: Thank you for your letter of July 17, which was received at the Commission on July 21st. I appreciate your bringing your concern directly to my attention to allow me to clarify my position and that of the agency on the use of goals and timetables as opposed to quotas. In the NAACP speech to which you referred, the sentence which contains the words "including quotas" was carelessly drawn, but judged in its full context and read alongside similar and almost simultaneous statements from me on the subject, I think you will agree that there is no inconsistency.

Let me reiterate at the outset that my position and the practices of this Commission remain what they were when I testified before the Government Operations Committee on March 7th. Moreover, mine is not a position recently arrived at, but was my policy during seven years at the New York City Commission on Human Rights, and, moreover, has always been the position of this Commission.

Upon receiving your letter, I looked closely at the NAACP speech to which you referred. I can see that the sentences that concern you may imply that the EEOC would use quotas. However, reference to the total context, to a virtually contemporaneous speech to the NAACP on this same issue, and to the transcript from my recent Meet the Press appearance should clarify the issue.

Earlier (at page 7) in the July 5th NAACP speech to which you referred (enclosed), I noted that:

"With all the debate about Baake, it has seldom been noted that there is a long line of existing court decisions providing for the use of very strong remedies, including quotas, in employment." (Emphasis added.)

I wanted to make clear to the NAACP what you of course know, that in appropriate instances the courts, not the EEOC, would order quotas. The sentence you quote was a summarizing sentence concerning the entire discussion of numerical remedies that had preceded, and I regret that it inartfully included reference to the prior discussion on quotas as applied by courts, in a sentence concerning EEOC action.

I drew this same distinction—between court imposed quotas and EEOC imposed goals—before the Subcommittee on March 7, as noted in the quotation from my testimony that appeared in your recent letter:

"It is the case that the courts of the United States, in some cases and under some circuits, have, in fact, ordered quotas."

Even in the *Bakke* decision disapproving the use of set-asides in that situation, the Court specifically referred to court decisions approving quotas in employment cases. Justice Powell said:

"The employment discrimination cases also do not advance petitioner's cause. For example, in *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747 (1975), we approved a retroactive award of seniority to a class of Negro truck drivers who had been the victims of discrimination—not just by society at large, but by the respondent in that case. While this relief imposed some burdens on other employees, it was held necessary "to make [the victims] whole for injuries suffered on account of unlawful employment discrimination.' " *Id.*, at 771, quoting *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 418 (1975). The courts of appeals have fashioned various types of racial preferences as remedies for constitutional or statutory violations resulting in identified, race-based injuries to individuals held entitled to the preference. *E.G., Bridgeport Guardians, Inc.* v. *Civil Service Commission*. 482 F. 2d 1333 (CA2 1973); *Carter* v. *Gallagher*, 452 F. 2d 315, modified on rehearing en banc, 452 F. 2d 327 (CA8 1972);. Such preferences also have been upheld where a legislative or administrative body charged with the responsibility made determinations of past discrimination by the industries affected, and fashioned remedies deemed appropriate to rectify the discrimination. *E.G., Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor*, 442 F. 2d 159 (CA3), cert, denied, 404 U.S. 954 (1971);[40] *Associated General Contractors of Massachusetts, Inc.* v. *Altschuler*, 490 F. 2d 9 (CA1 1973), cert. denied. 416 U.S. 957 (1974); cf. *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966)." (pages 32–3)

In light of the careless use of language in the sentence referred to earlier, you were apparently left with the impression that I would speak differently to the NAACP than to Congress on this issue. Thus I include another speech again to the NAACP, at their National Summit Conference in May, where I had the opportunity to lay out my position on goals and quotas at some length, and I might add, for someone in my position, at some risk, since there are many within the civil rights community, who believe that quotas should be used in all civil rights enforcement. In my NAACP summit speech, I said:

"There is some considerable evidence that the nation does not even understand affirmative action. For a debate goes on in the land not about affirmative action or Title VII of the 1964 Act but about one or two techniques on the fringes of affirmative action. In my more irreverent moments I think of it as the *Bakke* bungle and the quota quagmire.

"We all know it is vitally important to win the *Bakke* case. And quotas have indeed been ordered in a fair number of court cases. But neither the set-aside places of the *Bakke* case nor the occasional quotas courts order are central to affirmative action.

"Affirmative action is far more complicated, more subtle, and ultimately more effective than an occasional quota case. For correctly done, affirmative action brings permanent institutionalized change to the total personnel system of a company. It erases the white male preference that currently exists for most jobs except those at the bottom. It opens the all-important recruitment process, forcing business to recruit from black sources as well, so that the pool from which workers are chosen does not have the pronounced white male bias that still infects the best jobs in America. It gets rid of tests which are not related to the job to be performed. It readjusts credentials so that they too are job-related. It uses goals and timetables. And it involves dozens of other techniques that free personnel systems of bias and introduce blacks into jobs from which they have been historically barred. By allowing the concept of affirmative action to be debated exclusively around *Bakke* set-asides and quotas, we are playing into the hands of the enemies of affirmative action.

"Do not misunderstand me. The *Bakke* set-aside places in the University of California are legal and constitutional in my view. It is vitally important that we win this case. It is critically important to win it. Moreover, quotas when they have been used, have been ordered by courts, assuming that they must be legal. Along with others, I worked very hard to make certain that the federal government took a position in favor of the minority program at the University of California. The most important lever we have going for us in the *Bakke* case is that the government finally submitted a strong affirmative action brief. I recognize and accept the simbolic importance of the *Bakke* case and believe we will win it. But it is gross error to believe that set-asides places or quotas are central to affirmative action and that if we lose *Bakke*, we shall have lost affirmative action.

"For while quotas are used only in narrow circumstances as ordered by courts, goals and timetables are routinely and effectively used. During my tenure as New York City Commissioner of Human Rights we got almost 60 million in jobs and promotions for minorities and women through pattern and practice cases using goals and timetables. With effective monitoring, companies regularly met goals. Moreover we established this record without opposition. The groups who oppose quotas generally do not oppose goals. To them, quotas imply hard and fast numbers of jobs to be filled without regard to qualification and recall a period in American life when quotas were used to keep many people out of jobs and schools. Goals monitor hiring quite effectively but without the rigidity and historic connotations of exclusion that attach to quotas. 'Quota' has become a buzz word. It has obscured, detracted and distorted the

national debate about the most important tool for rectifying discrimination in America, affirmative action."

Finally, let me quote from the transcript of my appearance on Meet the Press on July 2, 1978 shortly after the decision was handed down:

"Mr. MONROE: . . . Mrs. Norton, the Supreme Court said in the *Bakke* case that a college can consider race as one factor in admitting students, but cannot use rigid quotas. How is that going to affect your program, using affirmative action designed to get industry and business to hire more minorities and women?

"Mrs. NORTON: The Equal Employment Opportunity Commission has never used rigid quotas in its work. As a law enforcement official, therefore, looking at the *Bakke* decision for whatever guidance may come forward, I do not see an impact on our work in that regard. . . ."

I can appreciate your concern, given that the language you brought to my attention did not sufficiently distinguish the courts from the EEOC. Let me reassure you that my position remains unchanged.

Sincerely yours,

ELEANOR HOLMES NORTON.

AUGUST 4, 1978.

Hon. JACK BROOKS,
Chairman, Committee on Government Operations, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: With further reference to recent statement by Mrs. Norton of the Equal Employment Opportunity Commission and particularly in light of her statements to the Committee during the hearings on the Administration's civil rights reorganization plan, I am enclosing the response to my letter to Mrs. Norton.

I find her answer totally unsatisfactory and I believe that we should hold another hearing at which time she can testify under oath and clarify the matter.

With best personals regards, I am,

Very truly yours,

ELLIOTT H. LEVITAS,
Member of Congress.

WASHINGTON, D.C.
September 5, 1978.

Hon. ELLIOTT H. LEVITAS,
House of Representatives, Washington, D.C.

DEAR ELLIOTT: I can understand your concern about the apparent discrepancy between Mrs. Norton's remarks on the use of quotas before the Committee and before the NAACP convention. After it was called to my attention by you and Congressman Walker, I, too, wrote to Mrs. Norton seeking an explanation. I received a reply similar to the one she sent to both of you, although a bit more detailed, and copies of the speech and an earlier one to another NAACP group. Having read those speeches carefully, I am satisfied with her explanation that in the passage you cited, she was referring to court-ordered quotas.

The July 5 speech is devoted to the impact of the *Bakke* decision on EEOC's affirmative action programs. And, here, it is necessary to understand the meaning of affirmative action as used by Mrs. Norton and as understood by her listeners. She defined it clearly in the May 5 speech as the use of goals and timetables, monitoring, and "dozens of other techniques" besides quotas. And, invariably, except for the one paragraph you question, whenever she mentioned quotas, she related them to court action. Here are examples from the two speeches:

"We all know it is vitally important to win the *Bakke* case. And quotas have indeed been ordered in a fair number of court cases. But neither the set-asides of the *Bakke* case nor the occasional quotas courts order are central to affirmative action."

"Moreover, quotas, when they have been used, have been ordered by the courts, assuring that they must be legal."

"For while quotas are used only in narrow circumstances as ordered by the courts, goals and timetables are routinely and effectively used."

Finally, in the July 5 speech leading up to the offending statement, she said:

"Fortunately, the *Bakke* decision did not intrude upon the procedures regularly used in affirmative action in employment. With all the debate about *Bakke*, it has seldom been noted that there is a long line of existing court decisions providing for the use of very strong remedies, including quotas, in employment."

Citing Justice Powell's decision in *Bakke* and a subsequent Supreme Court ruling upholding a court order requiring A. T. & T. to hire more blacks and women, Mrs. Norton concluded that the court "has left intact the basic affirmative action framework. . . ."

It was in summing up and reaching this conclusion that Mrs. Norton, in an admittedly "carelessly drawn" sentence, used the words "including quotas" to describe the remedies she felt were still available to EEOC.

I don't see any purpose to be served by bringing her before the Committee to make this explanation again. I think all of us have been guilty of a careless use of words at some time or other. The important thing is that Mrs. Norton has reaffirmed in her letters to all of us that "my position and the practices of this Commission remain what they were when I testified before the Government Operations Committee on March 7th." I hope, upon reviewing this matter, you will agree with me that we can let it rest here.

Sincerely,

JACK BROOKS,
Chairman.

SEPTEMBER 18, 1978.

Hon. JACK BROOKS,
Chairman, Committee on Government Operations, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I have received your letter of September 5th, and have given careful consideration to the further explanation of Mrs. Norton. I accept her reaffirmation that her position on the use of quotas is that of her testimony to the Government Operations Committee on March 7, 1978. Therefore, at this time, it would be best, as you suggest, not to pursue the matter with further hearings.

I am pleased that Mrs. Norton has reiterated her statement not to use quotas, and, in the last analysis, her actions will speak much louder than her words. We will just have to wait and see.

If you have no objections, I would like to put our correspondence and Mrs. Norton's in the *Congressional Record*.

With best personal regards, I am,

Very truly yours,

ELLIOTT H. LEVITAS,
Member of Congress.●

PERSONAL EXPLANATION

HON. RONALD A. SARASIN

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SARASIN. Mr. Speaker, on October 4, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 860: H.R. 12930—Treasury-Postal Service appropriations.—The House agreed to the conference report on the measure making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1979, "no";

Rollcall No. 861: H.R. 12930—Treasury-Postal Service appropriations.—The House receded from its disagreement and concurred, with amendment, in Senate amendments Nos. 30 and 31, "yes";

Rollcall No. 862: H.R. 12930—Treasury-Postal Service appropriations—The House agreed to table a motion to reconsider the previous vote wherein the House receded and concurred in Senate amendment No. 31, "yes";

Rollcall No. 863: H.R. 12255—Older Americans—The House agreed to the conference report on the measure to amend the Older Americans Act of 1965 to provide for improved programs for older persons, "yes";

Rollcall No. 864: H.R. 11302—EPA Research authorization—The House agreed to the conference report on the measure to authorize appropriations for environmental research, development, and demonstration for fiscal year 1979, "yes";

Rollcall No. 865: H.R. 11445—SBA Programs—The House agreed to the conference report on the measure to amend the Small Business Act and the Small Business Investment Act of 1958, "yes";

Rollcall No. 866: H.R. 7843—Additional Federal Judgeships—The House agreed to order the previous question on the preceding motion, "yes";

Rollcall No. 867: H.R. 7843—Additional Federal Judgeships—The House agreed to a motion to recede from its disagreement and concur, with amendment, to the Senate amendment to the measure, to provide for the appointment of additional district and circuit judges, "yes";

Rollcall No. 868: H.R. 13845—Perishable Agricultural Commodities—The House passed the measure, amended, to amend the Perishable Agricultural Commodities Act, "yes";

Rollcall No. 869: H.R. 12917—Rural Transportation—The House passed the measure, amended, directing the Secretary of Agriculture to compile and publish certain information relating to the adequacy of a transportation system to meet the needs of agriculture and rural development in the United States, "no";

Rollcall No. 871: 14042—DOD authorization—The House rejected an amendment that sought to provide for congressional approval of contract claims in excess of $25 million proposed to be made by the Department of Defense by requiring both Houses of Congress to adopt a concurrent resolution approving such actions, "no";

Rollcall No. 872: H.R. 14042—DOD authorization—The House passed the measure, Department of Defense Appropriation Authorization Act for fiscal year, 1979, "yes";

Rollcall No. 873: S. 1613—Magistrates—The House passed the measure

to improve access to the Federal courts by enlarging the civil and criminal jurisdiction of United States magistrates, "yes"; and

Rollcall No. 874: H.R. 13059—Water Research and Development—The House passed the measure authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation and flood control, "yes."

Mr. Speaker, On October 5, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 875: H.R. 12932—Interior appropriations—The House agreed to the conference report on the measure making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1979. "yes";

Rollcall No. 877: H.R. 12928—Presidential Veto—Public Works appropriations—The House sustained the President's veto of the Public Works Appropriations measure, "yes";

Rollcall No. 878: H.R. 13635—DOD appropriations—The House agreed to a motion to instruct the managers on the part of the House to insist on the House language concerning the consolidation of helicopter training by the Department of Defense, "yes";

Rollcall No. 879: H.R. 13635—DOD appropriations—The House agreed to a motion that the conference committee meetings on the measure be closed to the public at such times as classified national security information is under consideration, provided that any sitting Member of Congress shall have the right to attend any closed or open meeting, "yes";

Rollcall No. 880: H.R. 12932—Interior appropriations—The House agreed to a motion to recede from its disagreement and concur in Senate amendments Nos. 4, 17, 39, 48, 49, 72, 78, 90, 102, and 104, "no";

Rollcall No. 881: H.R. 13471—Financial institutions—The House rejected an amendment that sought to authorize payment of attorney's fees and court costs to persons who prevail in an appeal, "no";

Rollcall No. 882: H.R. 13471—Financial institutions—The House agreed to an amendment that strikes language exempting the Securities and Exchange Commission from financial privacy provisions, "yes"; and

Rollcall No. 883: H.R. 13471—Financial institutions—The House agreed to an amendment that deletes the grandfathering of bank holding company insurance affiliates which had applied for authority to engage in insurance activities prior to June 6, 1978, "yes."

Mr. Speaker, on October 6, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 885: House Resolution 1404—Conference reports—Recesses-suspension—The House agreed to the resolution providing for the consideration of conference reports, authority to declare recesses, and motions to suspend the rules, "yes";

Rollcall No. 886: H.R. 12442—Consumer product safety authorization—The House agreed to the rule (H. Res. 1410) providing for the consideration of the measure to amend the Consumer Product Safety Act to extend the authorization of appropriations contained in such act, "yes";

Rollcall No. 887: S. 2640—Civil Service reform—The House agreed to the conference report on the measure to reform the civil service laws, "yes";

Rollcall No. 888: H.R. 13750—Sugar stabilization—The House agreed to an amendment that adds a cost of production escalator to the price objective provisions, "no";

Rollcall No. 889: H.R. 13750—Sugar stabilization—The House passed the measure to implement the International Sugar Agreement between the United States and foreign countries; to protect the welfare of consumers of sugar and those engaged in the domestic sugar-producing industry; and to promote the export trade of the United States, "no"; and

Rollcall No. 890: H.R. 11545—Meat imports—The House rejected an amendment that sought to set the minimum level of meat imports at 739 million pounds per year rather than 1.2 billion, "no";

Mr. Speaker, on October 12, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 892: H.R. 12929—Labor-HEW appropriations—The House rejected a motion to recommit the conference report to the committee of conference with instructions to the managers on the part of the House that the House recede from its disagreement and concur in Senate amendment No. 110 (prohibition on use of funds to implement quotas in admission policies of institutions of higher education), "no";

Rollcall No. 893: H.R. 12929—Labor-HEW appropriations—The House agreed to recede from its disagreement and concur with amendment, in Senate amendments, Nos. 9, 15, and 16, "yes";

Rollcall No. 894: H.R. 12929—Labor-HEW appropriations—The House agreed to recede from its disagreement and concur in Senate amendments Nos. 23, 24, 25, 29, 31, 32, 33, 38, 39, 42, 44, 57, 72, 80, and 92, "yes";

Rollcall No. 895: H.R. 12929—Labor-HEW appropriations—The House rejected a motion that the House recede from its disagreement to Senate amendment No. 103 (language concerning abortions), "yes";

Rollcall No. 896: H.R. 13511—Revenue Act—The House agreed to a motion to instruct the managers on the part of the House to concur in the Senate amendment that would provide income tax rate reductions for each of the 4 calendar years beginning with calendar year 1980, conditioned on the ratio of outlays to the gross national product, the rate of growth of Federal outlays, and balancing the Federal budget for fiscal year 1982, "yes";

Rollcall No. 897: S. 1566—Foreign intelligence surveillance—The House agreed to the conference report on the measure to authorize electronic surveillance to obtain foreign intelligence information, "yes";

Rollcall No. 898: S. 555—Ethics in Government—The House rejected a motion to reject title VI of the conference report (Special Prosecutor Provisions); "yes";

Rollcall No. 899: S. 555—Ethics in Government—The House agreed to the conference report on the measure to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, "yes";

Rollcall No. 900: H.R. 9893—Tax credit for the elderly—The House passed the measure, amended, to amend the Internal Revenue Code of 1954 to increase the adjusted gross income limitation on the credit for the elderly, and to increase the amount of such credit, "yes";

Rollcall No. 901: S. 957: Consumer Controversies Resolution Act—The House failed to pass the measure, amended, to promote commerce by establishing a national goal for the development and maintenance of effective, fair, inexpensive, and expeditious mechanisms for the resolutions of consumer controversies, "yes";

Rollcall No. 902: S. 1503—Payment of losses from TRIS ban—The House passed the measure, amended, to provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, "yes";

Rollcall No. 903: H.R. 12050—Tuition tax credit—The House agreed to a motion to recommit to the committee of conference the conference report on the measure to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition; with instructions that the managers on the part of the House insist on the House provisions which provide that tuition paid to elementary or secondary schools is eligible for the tax credit and on the provisions that set forth the maximum amount of the credit for tuition paid to elementary and secondary schools, "yes";

Rollcall No. 904: H.R. 12931—Foreign assistance appropriations—The House rejected a motion to recommit the conference report to the committee of conference, "no";

Rollcall No. 905: H.R. 12931—Foreign assistance appropriations—The House agreed to the conference report on the measure making appropriations for foreign assistance and related programs for the fiscal year ending September 30, 1979, "yes";

Rollcall No. 906: H.R. 12931—Foreign assistance appropriations—The House rejected a motion that the House recede from its disagreement to the Senate amendment No. 63, "yes"; and

Rollcall No. 907: H.R. 11545—Meat imports—The House passed the measure to modify the method of determining quantitative limitations on the importation of certain articles of meat and meat products, to apply quantitative limitations on the importation of certain additional articles of meat, meat products, and livestock, "yes."

Mr. Speaker, on October 13, 1978, I was absent from the legislative session of the House of Representatives. Had I been present, I would have voted in the following fashion:

Rollcall No. 909: House Resolution 1426—Rules Committee reports—The House agreed to the rule providing for consideration of reports from the Committee on Rules, "no"; and

Rollcall No. 910: H.R. 8533—Replacement of lock and dam 26—The House agreed to order a second, "yes." ●

WON SEAT IN HOUSE BY SPECIAL ELECTION

HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, October 14, 1978

● Mr. HARRINGTON. Mr. Speaker, it was just about 9 years ago that a young State Representative from Massachusetts won a seat in this House by special election, following a campaign that captured the imagination of the Massachusetts Sixth District like few had before, and none has since. It was a political matchup dreamed up by a sportswriter: the scion of one of the State's first families and the son of a former U.S. Senator, against the scion of one of the North Shore's oldest Irish political families. The Democrat ran hard to force withdrawal from a war his own party had backed itself into, the Republican defending the adventure and our continued determination to withstand the expense and the pain. The national media saw the contest as a test of the Nixon first year, and inordinate amounts of time, money, and advice from the outside were added to the considerable local enthusiasm. I was the winner of that contest over a good legislator and a good man named Bill Saltonstall, and that day will always be for me the high point of a public career that had not before, nor has since, captured the same excitement, optimism, and pride as that victory night.

I did not just replace a Congressman in the House, I replaced a family, George, and then Bill Bates had served the Sixth District in Congress for 33 years running, always tending to the needs of people who sought out their help, protecting our local interests in Washington, and playing well the role of loyal backbencher for the minority—twice briefly the majority—party. They were both extremely popular and unbeatable.

Neither by temperament nor preference did I choose to carry on that tradition of playing out the quiet, inside game. I had made a campaign issue of it. And so when I arrived in Washington, it was no surprise to those back home that I would so quickly take to the floor of this House for a maiden speech jabbing a finger at those who preceded me here, and who were in control. The subject was seniority, and how it had removed the House—let me quote now—"from the mainstream of American life and blighted our chances of focusing on those national issues most relevant to Americans today." I blamed the seniority system primarily for our institutional irrelevance.

Having now reached my 42d year, and my ninth in Congress, and attained the requisite senility to have chosen an office in Rayburn, and enough seniority to qualify for chairman of a subcommittee, I have decided to take a sabbatical from public life. And while I now am not so sure as I once was that seniority is our biggest problem, I am even more certain than ever that our institutional irrelevance has become the most fundamental issue of all.

Between my maiden speech and today, there are but 43 percent of the Members who were Members then. Of the 21 committee chairmen who I accused of having lost touch with the American people, only 7 are still chairmen. As the public has been so often reminded, our salaries have jumped from $42,500 to $57,500, our staff allotments from $132,000 to $287,000. Instead of a hostile President and a tight-lipped bureaucracy, we now have the active cooperation of a friendly President grappling with a bureaucracy that is increasingly open, if not always creative. And as a result of some good legislation and some unfortunate history in the mid-1970s, we in Congress have either won or been handed more responsibility for shaping public policies for a democracy of 215 million people—more responsibility and power than we could have imagined in 1969.

But my purpose today, Mr. Speaker, is to suggest that we have so far fumbled that opportunity, and are now collectively in danger of so turning off the public to Government generally that we offer fertile grounds for radicals, knownothings and nincompoops of all stripes peddling political snake oil concocted to soothe the public frustration. Absent war or national catastrophe—moral equivalents notwithstanding—I doubt we have any prospects of extricating ourselves from this downward spiral short of major overhaul in the constitutional framework in which we operate, and in the institutional priorities of the House itself.

The public today identifies as the crucial problems, in some rough order of importance, inflation, unemployment, tax reform, energy, Government inefficiency and corruption, and crime. I would ask the House to think back over this session, to each day and week and month, and compare that list of priorities from the people who pay the bills, to the way we, collectively and individually, have expended our energies. I would suggest that there has been no relation between the two at all.

Our time and energies are misplaced. We have become experts at managing mail systems not to cater to the few people who sit down and write us a thoughtful letter, but to the thousands who pump out canned messages at the call of a lobbyist or interest group. We know how to swoop down into a city or town, according to a tightly drawn schedule, touch the right people, say the right things, pay attention to the right local projects, all to assure that it will always be Congressman, not just Mr. HARRINGTON. We have a tolerance for irrelevant, arcane, protracted, uninspired debate on the floor, and for recorded tallies on the most inconsequential of matters that belie our sophisticated demeanor and overtaxed schedules. Rarely do we pass up the opportunity to announce the award of a Federal grant or contract which we had nothing to do with, even some of us at the same time that we are posturing on the size of the Federal budget. The list of hearings each day is as staggering as the disappointment and boredom served up to anyone who regularly sits through them—can there be anything so vapid as the administration witness? Some seasons, we see the Democratic and Republican photographers more often than we see our children at home. When was the last time you were over to the Library of Congress to read, think, or write?

I have no illusion that the Congress will ever—or should ever be peopled by ciceronian heroes. Nor do I share the puritanical instincts of our latter-day mugwumps who would draw a mythical line between politics and government, who take satisfaction in cleansing the process and reducing it to the sterility of a civil service exercise and the probity of a church deaconate. I look for a legislative recipe that is a balanced mix of things mundane and lofty, routine and stimulating, peripheral and fundamental, personal and intellectual, partisan and philosophical. Right now, it is the mundane, the routine, the personnel, the peripheral, and the partisan which predominate.

I have, in my way, tried to add a dimension to this job which begins to address the fundamental issues, even at the expense of other worthwhile activity. There was first, the Vietnam war, and the larger question it posed about the enormous commitment to a deceitful and ineffective bureaucracy across the river. There were the deceits and conceits of the Nixon administration which took a Judiciary Committee 11 months and 13,000 pages to chronicle. There was our still unfinished campaign to expose the illegal, unethical, underhanded operations of the Central Intelligence Agency. And more recently, there have been our collective efforts to view economic development from a regional standpoint, and ask narrowly if we must

continue to have the pendulum always swing so that one region's boom is another's decay, and more broadly, ask what ought to be the role of the Federal Government in planning a postindustrial economy.

In addressing each of these issues, I have been painfully impressed with how members jump through hoops to avoid facing the key questions and making the tough choices. In the House, we never exercised our constitutional prerogative to set the purposes and parameters of a war we even refused to officially call a war. With the House's silent concurrence, Speaker Albert had us avoid the Nixon issues until the flood of indignation was about to wash over us, too. The House Intelligence Committee work was begun too late, kept needlessly in check, abandoned by the House at the first counterattack, and it avoided the fundamental issues about the role of an intelligence agency in a free and open democracy. On the regional issue, we still have yet to carry on a credible debate which goes beyond the questions of Federal allocations and asks how a 20th century industrial power is prepared to shore up a crumbling capitalist system with public intervention.

It hardly seems an accident that our constituents no longer have faith in the capacity of Congress to solve, let alone address, the complex problems of modern America.

After 9 years of wrestling with all this, Mr. Speaker, it seems apparent to me that we need a major overhaul of the constitutional setup in which we operate, to focus our attention, force a degree of cooperation with the executive branch, and provide the voters with a clear idea of what the issues are, and who has authority and responsibility for formulating solutions.

The model I prefer would be a distinctly American parliamentary setup, in which the President and Cabinet would be drawn from the Congress, for a term concurrent with the Congress, and would serve both as legislative leadership and policy coordinators for the independent bureaucracy that exists even today without constitutional mandate. At the same time, we ought to shift to the Cabinet many of the secondary powers and responsibilities of the Congress that seem to take up so much of our time—the private bills, the land claims, the declaration of ceremonial days, many of the routine authorizations, and even appropriations once overall budget categories are set—and concentrate every year on a few key issues. The function of Congress ought to be to set broad public policy outlines, exercise systematic oversight, and force major restructuring for delivering Government services.

We need a new constitutional framework, and a new Constitutional Convention to fashion it. Unlike many of my liberal colleagues, I am not afraid that an informed electorate can select Representatives to do a job with equal cunning and foresight as performed in the 18th century. And I do not share the religious reverence for a 200-year-old parchment, a work of genius in its time, which many argue foolishly is so sacrosanct that mere mortals dare not tinker with it. The Founding Fathers were men like us, and we should not deny our own generation the chance to shape our collective futures in the same manner that they did for theirs, and long after. There is no way to match the brilliance of the Philadelphia convention unless we try.

Mr. Speaker, I do not want to convey any sense of bitterness at leaving the House, or a sense that these have not been fruitful, educative, challenging, and generally enjoyable years for me, both personally and professionally. I would not have missed the opportunity, and will always cherish memories of the associations made and the battle fought. I am sure I will never forget the excitement of opposition during the Nixon-Agnew period, or the inventive strategy sessions among our rump minority at Armed Services to put the war up for a vote. I doubt if I will ever meet a man I admire as much as Jerry Waldie, nor will I ever run into as effective an opponent as JOE WAGGONNER. Never have I enjoyed a speech so much as watching Ed Koch dissect the Lockheed loan, nor been so disappointed as with the House decision to insure my noninvolvement in the intelligence investigation. I doubt I will ever feel quite as lonely as when I suggested to an unfriendly Judiciary Committee that my colleague, Jerry Ford, had served too many years in the House to make a good President. These have been rich years for me.

But I would be less than candid if I were not also to admit I leave with an ambivalence about the relevance of our collective exercise during the past 9 years, and the value of my role in it.

It is folly for anyone running for the House to think that either the constituents back home, or the colleagues in the House, or even the seers up in the press gallery will appreciate those who go beyond the obvious and the politically necessary, to those matters requiring foresight, creativity, and courage. The system of rewards and punishment working officially and unofficially in the House put a premium on followship, not leadership; on moderation rather than strategic stridency; on deference to experience and the way things were done last year, rather than on fresh thinking. Parochial rather than national perspectives dominate, personal rather than policy factors weigh in most heavily in legislative success. In the press gallery and in newsrooms—and consequently back home—there has developed a laziness in approaching the issues, and a viewpoint so jaundiced that many of us stoop to creating stunts and resort to extremist posturing in order to stir up some interest in what we are doing. If we could get the same sort of attention paid to our legislative successes, and failures, as we do to our haircuts, our parking spaces and our salaries, I am not sure we would know what to do with all the mail.

If I were a constituent, I would find it hard to believe that the 95th Congress did not have enough time this year to handle tax reform, welfare overhaul, executive branch reorganization, an anti-inflation program, criminal code reform, a full-employment bill and national health insurance in a period in which we met for a record number of days and hours, with a record number of staff assistants, having filed a record number of bills and passed and sent to the President a record number of new statutes. If they can solve a centuries old conflict in the Middle East with 12 days of seclusion at Camp David, we ought to be able to tackle a few of the big ones here on Capitol Hill. We can learn something about galvanizing our own and the public's attention by the success model that Messrs. Carter, Begin, and Sadat have left us.

Like any human being, I will miss the prestige that comes of serving here, but I will hardly miss the tediousness of much of it, and the restraint it puts on one's natural self, one's candor, and one's own sense of priorities. I have been blessed over the years with the hardest working, brightest, most loyal staff, and I will miss those associations but not necessarily the constant demands they placed on me as I undoubtedly put on them. Nothing has meant more to me than going to a city and seeing the results of some work we had done, or having a stranger or old friend walk up and say how proud she was to have me representing her in Congress. Nor has there been a more painful feeling than receiving not merely word of opposition and disagreement, but expressions of derision or distrust, or disrespect for me personally and to the calling of a politician.

It is this last development, Mr. Speaker, which I think is somewhat unique to our time, at least in its intensity, and which is the most fundamental of problems. As a liberal, an activist, one who thinks Government has a positive role to play in improving the lives of each individual and in shaping positively the American experience, the public disenchantment with Government and politics is debilitating. We cannot paper over the problem by better packaging, by still further increasing the appearance of frenetic activity, without coming to grips with the crucial and fundamental concerns of the country. Nor do we do this process any service by joining with the nay sayers and pandering to sentiments that Government is best which governs least. We need a major constitutional and institutional overhaul—anything short of it its simply shoveling sand against a tide of revulsion and rejection.

For those of you who will be here next year, I hope that you find your way clear to setting an example for those back home: An example of putting aside the personal and parochial, of taking risks, of looking whollistically at Government rather than simply policy by policy, of having the courage to make big changes, and with that running the risk of making big mistakes. The periods of greatest progress have not come when America's leaders here in the House have been timid, afraid of the electorate, fearful of their own and the country's future, nor when the House has been so reverent about what already exists that it dares not ponder the world without it. Our American genius has been a unique balance between the adventurous and Cavalier robber baron and the Puritan moralist. We have recently lost that balance, and the self-confidence that comes with it. We take ourselves here in the House too seriously, our job in its most basic sense not seriously enough.●

METRO'S NEW HOURS

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. DELLUMS. Mr. Speaker, as a member of the District of Columbia Committee and one who has always been concerned with this city and its environs, I was pleased to note the following letter to the editor on the October 4 issue of the Washington Post.

I would like to concur with the remarks of Ms. Weiner, and express my optimism about the future of Metro's expanded hours and expanded services. This growing system is working proof of the worth and necessity of mass transit, an integral part of urban life today.

The remarks follow:

METRO'S NEW HOURS

A couple of years ago, The Post published a letter I wrote about the frustrations of being a car-less cab-taker in Washington. Well, aside from affording me an opportunity for a little public ventilation, the effect, as those in a similar position will agree, was minimal. Cab service in this town is still abysmal. However, I am delighted to report that real help has finally arrived—in the form of the new Metro hours.

As a transplanted New Yorker, I feel that a certain degree of normalcy has been restored to the subterranean aspects of my existence (even if the cleanliness and attractiveness still throw me a little), and I would like to recommend evening Metro travel to one and all as a new way of life.

I send this letter as both an advisory and a plea Advisory: Try it—you'll like it! It's terrifically convenient, a pleasant adventure and, so far, it's safe. Plea: Do it early and often. I have visions of seeing the service eliminated after a series of stories with eight-column headlines screeming, "New Metro Hours Cause New Millions' Loss Due to Lack of Ridership." I need Metro in the evening, and once you've tried it, you will, too.

ROBERTA WEINER, *Washington.*●

CONGRESSMAN JOSEPH LE FANTE

HON. RAYMOND F. LEDERER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LEDERER. Mr. Speaker, I would like to pause in the business of the House to honor Congressman JOSEPH LE FANTE, who will be retiring from the House of Representatives after this session. In some cases, it may be difficult to pay tribute to a fellow colleague who has been with us for so short a time. This is not the case with JOE LE FANTE.

In his brief 2-year tenure in the House of Representatives, JOE has impressed his colleagues and fellow members of the Education and Labor Committee with the skill and dedication with which he represented his constituents of the 14th District of New Jersey. His courage and zeal to serve this constituency was self-evident in the courage which he demonstrated in his remarkably swift recovery from open heart surgery this year.

Mr. Speaker, I am sure I speak for all my colleagues in the House in saluting a fellow Member whose stay with us has been all too short. I am sure that JOE'S selfless dedication to the people of New Jersey will continue for a long time to come.●

ST. MICHAEL'S SCHOOL 125TH ANNIVERSARY

HON. RAYMOND F. LEDERER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LEDERER. Mr. Speaker, Philadelphia has long been known as the City of Brotherly Love, and I can think of no better occasion which exemplifies this spirit than the October 1978, 125th anniversary of the founding of St. Michael School. The long and glorious history of St. Michael's has been marked by accomplishment, happiness, tragedy, but always a continuous spiritual and civic dedication to the Fishtown, Kensington, Northern Liberty neighborhoods for which it serves.

St. Michael's Parish was founded in October 1833, helping countless Catholic immigrants adjust to life in the New World. In 1844, St. Michael's was burned down during the "No-Nothing Riots," an anti-immigrant period in the city and the country which will long darken the annals of history in Philadelphia and the Nation. However, the unquenchable spirit of the people of St. Michael's insured that the reconstruction of the church would take place as soon as it was burned down.

In 1856, further tragedy struck—58 school children from St. Michael's parish were killed, in one of the worst railroad accidents in this Nation's history. Nearby Ambler, Pa., was named after Mary Ambler, for her heroic efforts in trying to save the lives of these children, who died during this catastrophic collision while on a school picnic outing.

St. Michael's has survived these tragedies to go on to great accomplishments. The church was the original home of La-Salle College, now one of Philadelphia's most outstanding institutions of higher education. The Sisters of Charity, now a major order of nuns numbering over 2,000 was founded in St. Michael's Parish.

St. Michael's enjoys a reputation, second to none, both for scholastic achievement and athletic excellence. The history of its football teams, as well as its boys and girls basketball teams has reached legendary proportions. Most of all, however, St. Michael's is known, and will continue to be known, for its people. Out of this parish have come doctors, lawyers, judges, religious leaders, civic and community leaders in the city of Philadelphia and beyond. We shall always remember those brave sons and daughters who served our country in times of war, particularly those who never returned. But most important are the deeply religious, hard working, decent men and women which St. Michael's has helped form. It is these people which have been and will continue to be the bedrock of their neighborhood and their Nation.

Mr. Speaker, I would like to pause in the business of the House to salute St. Michael's Elementary School for 125 years of a job well done.●

PERSONAL EXPLANATION

HON. CARL D. PURSELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

Mr. PURSELL. Mr. Speaker, on October 6, 1978, the House of Representatives debated and voted on the Sugar Stabilization Act. During the debate, an amendment was offered by the Honorable WILLIAM A. STEIGER, which added the cost-of-production adjuster provision to the bill. I supported this amendment and intended to support the bill. However, due to the rush of legislative business, and the conference meetings I was attending on that day, I made an error in voting against the bill.

Therefore, I would like to state that I do support the Sugar Stabilization Act, H.R. 13750, and that my vote on final passage was in error.

TRIBUTE TO REPRESENTATIVE YOUNG

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague JOHN YOUNG.

Member of one of the oldest pioneer families in Texas, lawyer, prosecutor, and judge of great ability, JOHN YOUNG and I have served together for many years on the House Rules Committee. His wise counsel and valuable insights were helpful to me through the years. His presence will be missed by all.

Reta and I extend to JOHN our warmest wishes for his return to private life.●

PAUL ROGERS

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague PAUL ROGERS.

There are only 10 remaining Members of the class of January 1955, left in the House. My friend PAUL ROGERS and I will deplete this number of two this year.

This outstanding legislator—known as "Mr. Health" for his preeminence in this field—succeeded his equally outstanding father to this seat in the House, and has compiled an enviable record of legislative competence since.

Reta and I extend to PAUL and Becky our warmest wishes for the future which

I know will include more public service for this still young man.●

TRIBUTE TO TENO RONCALIO

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ANDERSON of California. Mr. Speaker, Wyoming's only Congressman, TENO RONCALIO, leaves us at the close of this 95th Congress. TENO has been not only an outstanding servant and guardian of the public weal, but a close personal friend as well. I am sure that I do not stand alone in saying that this body will not be the same without him.

TENO and I have worked closely together for the past 8 years on the Public Works and Transportation Committee, where we have shared the full gamut of legislative victories and defeats. In that time I have grown to deeply respect and admire TENO for his unending diligence and dedication in carrying out the equally unending duties of Congress.

TENO has the unique privilege and very difficult task of acting as the sole representative of the entire State of Wyoming. Unlike most of the rest of us, he does not work within a limited district, but must go all over the State in order to keep in touch with those who elected him. Whereas I am able to maintain close relations with my constituents fairly easily for my district is only 53 miles in circumference, TENO must travel many times that distance to do the same job. And he has done it very, very well. In the 10 years that he has been on Capitol Hill, he has not forgotten the people of Wyoming, whether they are from Cheyenne or Medicine Bow.

All of us, colleagues and constituents alike, regret that we must say goodby to TENO, for we will miss him. He has been an honorable public servant who deserves only the best in his impending private career. My wife, Lee, joins me in sending our wishes for a wonderful future to TENO, his lovely wife Cecilia, and their two sons.●

TRIBUTE TO OMAR BURLESON

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague OMAR BURLESON.

This quiet but effective Texan has been a key Member of the House for 30 years, finishing his career as one of the top members of the Ways and Means Committee after having once served as chairman of the House Administration Committee. As one of the true "behind the scene" giants of the House, his wise counsel on all legislative matters will be sorely missed.

Reta and I extend to OMAR and Ruth our warmest wishes for an enjoyable and fruitful retirement.●

SALUTE TO CONGRESSMAN BURKE ON HIS RETIREMENT

HON. RAYMOND F. LEDERER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LEDERER. Mr. Speaker, I would like to pause in the business of the House to salute a dear friend and colleague, Congressman JAMES BURKE, who will be retiring after 20 years of outstanding service in the House of Representatives.

I had the benefit and honor of his tutelage and friendship while serving under his chairmanship of the Social Security Subcommittee. His monumental efforts in guiding President Carter's social security legislation through the committee and the House of Representatives will be remembered long after his retirement by the millions of citizens who depend on this system which he helped preserve through the enactment of this bill.

Mr. Chairman, you will be leaving a void in the 96th Congress which will be sorely missed. On behalf of a grateful citizenry of your district and the Nation I salute you for a lifetime of public service which will continue to benefit the people of this country long after your retirement.●

TRIBUTE TO BOB LEGGETT

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague BOB LEGGETT.

BOB LEGGETT has faithfully and well represented his constituents of California's Fourth District during his 16 years of service and has been a most effective member of our delegation. His contributions to national defense as a member of the Armed Services Committee will not soon be forgotten.

My best wishes are extended to BOB for an enjoyable, fruitful retirement.●

TRIBUTE TO ROBERT L. LEGGETT

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ANDERSON of California. Mr. Speaker, at the close of the 95th Congress we must bid farewell to BOB LEGGETT, a Member who has been not only a very able legislator but who, in his 16 years here has managed to maintain the jovial, friendly, personable character which has been his trademark since he arrived. We, his colleagues, will lose both a friend and a supremely competent Member of Congress when BOB retires.

BOB and I have similar political backgrounds, both of us working our way through the ranks in California's State Assembly and eventually moving from one coast to the other upon our elections to Congress. When I arrived in 1968, I joined BOB on the Merchant Marine and Fisheries Committee, where we have worked very closely together, sharing the trials and the joys which we have all experienced in our time on the Hill. BOB's service on this and the other committees of which he is a member has been nothing short of outstanding. As chairman of the Fisheries and Wildlife Conservation and the Environment Subcommittee, he has very effectively fulfilled the monumentally difficult task of bridging the gap between the sometimes idealistic plans of environmentalists and conservationists and the practical realities of the demands of the real world. His efforts have resulted in compromises leading to all parties.

All of us will miss this highly effective legislator. My wife, Lee, joins me in wishing him, his lovely wife Barbara and their children, Jeanne, Rob, and Diana all the best in the future.●

CHARLES WIGGINS

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague CHARLES WIGGINS.

It has often been remarked that Congress has too many lawyers, but I am grateful and the Nation should be for the legal skills of CHUCK WIGGINS. Often regarded as one of the finest lawyers in Congress, CHUCK's legal acumen and juridical skills have marked his highly successful terms as a most effective Member of the people's lawmaking body.

Reta and I extend to CHUCK and Betty our warmest wishes for his return to private life.●

PULASKI BENEFICIAL ASSOCIATION 75TH ANNIVERSARY

HON. RAYMOND F. LEDERER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LEDERER. Mr. Speaker, I rise today to request my colleagues to join with me in saluting the Pulaski Beneficial Association on their 75th anniversary.

This association was formed in 1903 by 10 Polish immigrants who wished to aid their fellow immigrants as they ad-

justed to life in a new land. Their efforts have helped many new Americans to overcome the problems and barriers which they encountered. Their duties have covered many areas, from helping with hospital and doctor bills, to burying indigent family members, to caring for the bedridden. This kind of service has become a tradition of the Pulaski Beneficial Association in serving the Polish community in Philadelphia, and it is a tradition that is stronger today than ever before.

Reflecting upon their 75 years of selfless service to those in need, I am proud and honored to serve as their representative in Congress. On behalf of my colleagues in the House and the people of Philadelphia, I congratulate the Pulaski Beneficial Association for their many years of dedication during which its members have helped so many.●

GEORGE MAHON

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague GEORGE MAHON.

GEORGE MAHON will go down in history as one of the true congressional giants of the 20th century. Never has a man worn the mantle of power with more humility, piety, strength of character, and integrity.

As dean of the House in point of service and chairman of the Appropriations Committee, this legislative titan has made a mark that some might equal but none will ever surpass.

I have called him "my leader" in my 24 years here and take special pride in that he represents the Texas congressional district in which I was reared.

Reta and I extend to GEORGE and Helen our fondest wishes for an enjoyable and fruitful retirement.●

TRIBUTE TO W. R. POAGE

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. ROYBAL. Mr. Speaker, we are certainly going to miss our good friend and distinguished colleague BOB POAGE who has chosen to retire at the end of the 95th Congress. BOB has distinguished himself as a dedicated and able leader during his 42 years in Congress.

He may reflect with pride and satisfaction on his considerable contributions to our Nation's legislative development. His outstanding work as chairman of the House Agriculture Committee has been particularly important in shaping our Nation's agriculture policy.

I would only like to add my personal best wishes to BOB for a long and very enjoyable retirement.●

A TRIBUTE TO DEL CLAWSON

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague DEL CLAWSON.

DEL CLAWSON has personified to me the "loyal opposition." While a member of the minority party and often at odds with me on the issues. DEL's gentlemanly demeanor and persuasively reasoned arguments were effective in our legislative work together on the House Rules Committee. His service as chairman of the Republican Policy Committee testifies to the high esteem in which he was held by his colleagues. And, finally, as the greatest musician ever to serve in the House I hope he will be tooting that horn for many years to come.

Reta and I extend to DEL and Marjorie our warmest wishes for an enjoyable, fruitful retirement.●

TRIBUTE TO CONGRESSMAN MOSS

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close, I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague JOHN MOSS.

As dean of the California congressional delegation, JOHN MOSS has provided solid leadership for Congress largest delegation. In addition, from his key posts on the Government Operations and Interstate and Foreign Commerce Committees, JOHN has led the fight on governmental inefficiency. American consumers will be ever in his debt, and his milestone Freedom of Information Act will always be his monument against oppressive governmental secrecy.

Reta and I extend to JOHN and Jean our warmest wishes for an enjoyable, fruitful retirement.●

TRIBUTE TO REPRESENTATIVE SHIRLEY PETTIS

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague SHIRLEY PETTIS.

Death took from us our beloved colleague and Shirley's husband, Jerry Pettis, but as his replacement and on her own, SHIRLEY PETTIS has left her mark as an effective Member of Congress. Her service here was much too short.

Reta and I extend to SHIRLEY our warmest wishes in her return to private life.●

HONORS REPRESENTATIVE JOHN DENT

HON. RAYMOND F. LEDERER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. LEDERER. Mr. Speaker, I would like to pause in the business of the House to honor Representative JOHN H. DENT, for a lifetime of public service to Pennsylvania and the Nation.

As a young man I was fortunate to have seen Congressman DENT sworn into this body 20 years ago in 1958. He was a legend even then, for his years of dedicated and outstanding leadership in the Pennsylvania State Senate. His brilliant service in the Pennsylvania State Senate has been more than equaled by his 20 years in the House of Representatives. As a member of the Education and Labor Committee, the working person of this country always had a friend. His membership in the blue-collar caucus is more than just symbolic—JOHN DENT never forgets his roots.

On behalf of a grateful citizenry of Pennsylvania and the Nation, I salute you for a lifetime of public service which will continue to benefit the people of this land for many years to come.●

TRIBUTE TO JOHN DENT

HON. B. F. SISK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. SISK. Mr. Speaker, as the 95th Congress draws to a close I should like to take this opportunity to pay tribute to the outstanding service in Congress of our distinguished colleague, JOHN DENT.

The wage earning, working men and women of America are losing perhaps their greatest friend in Congress with the departure of JOHN DENT. With a solid dual background of labor union experience and legislative skills honed as Democratic leader of the Pennsylvania Senate, JOHN came to Congress in 1958, and since has distinguished himself in the field of labor legislation. Every major piece of legislation affecting the working people of America in the last 20 years bears his imprint and his wise counsel in such matters will be sorely missed.

Reta and I extend to JOHN and Margaret our warmest wishes for an enjoyable and fruitful retirement.●

CONGRESSMAN ROBERT N. C. NIX

HON. ROBERT S. WALKER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. WALKER. Mr. Speaker, I want to express my sincere best wishes to my

distinguished colleague, Congressman ROBERT N. C. NIX, as he retires from the House of Representatives. Since he was first elected to the 85th Congress, Congressman NIX has worked diligently for the people he represents.

In his two decades of service, Congressman NIX has risen to positions of considerable influence as chairman of the House Committee on Post Office and Civil Service and as a senior member of the House International Relations Committee. He will long be remembered by his House colleagues, particularly by those of us in the Pennsylvania delegation.

ROBERT NIX has been a faithful servant of the people for many years. As his career in the House draws to a close, I know he is looking forward to different endeavors and new challenges. I am confident that he will bring to his new activities the same dedication which he has brought to his congressional career.●

THE STATE OF AFFAIRS IN LEBANON

HON. LESTER L. WOLFF

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 11, 1978

● Mr. WOLFF. Mr. Speaker, I want to again bring to the attention of my colleagues the grave state of affairs in Lebanon. The situation in Lebanon is very complex, but it comes down to some very simple facts: people are dying, combatants and noncombatants alike, and the chances for peace in the Middle East are in jeopardy.

The tragedy of Lebanon is that, before 1975, when internal strife began, it was a modern, cosmopolitan nation, the model of religious and cultural toleration. Moslems, Christians and Jews lived together with little trouble. Lebanon was the intellectual center of the Arab world, where the elites of Arab countries sent their children to get the best education. Beirut was one of the major capitals of international business of the world, and a beautiful city. Now Beirut is in shambles and the various religious groups at war with each other.

The Lebanese were so tolerant that they accepted Palestinian refugees that no other state would take. Radical PLO members have aggravated the divisions in Lebanon by joining with extremist, leftist-Moslems in fighting the Christian groups.

When Syria intervened in mid-1976, it was ostensibly to save the Christians who were being attacked by leftist Moslems and the PLO. Now, however, the Syrians have been shelling the Christians. Their original aim is becoming very clear: having never accepted Lebanon as an independent nation, they want to annex it and make it part of "Greater Syria." The "peacekeepers" are showing their true colors as an invading and occupying force.

For this reason, I have joined with my colleagues, Mr. GILMAN, Mr. KAZEN and Mr. ABDNOR and 228 cosigners on a sense of the Congress resolution. This resolution calls upon the President and the Secretary of State to seek total withdrawal of all foreign troops from Lebanon, and replace them with a UN-mandated peacekeeping force; and to support the Central Lebanese Government's efforts to disarm all nongovernment groups, including the PLO.

Mr. GILMAN, Mr. KAZEN and Mr. ABDNOR have worked hard to alert the other Members to this resolution, and ask their signatures. Today, on the floor of the House they gathered the signatures of Members of Congress. I am certain that many more Members would have signed this resolution had we been able to contact them in this short period of time. As we know, due to the press of business, that this resolution will not pass the House, we have sent it to the President so that he may know how concerned we are. Here is the text of the resolution and the list of signers:

RESOLUTION

Whereas, it is in the interest of all nations of the region that there exists a secure, independent, and stable Lebanon; and

Whereas, the presence of a dispassionate peacekeeping force in Lebanon would serve the interests of peace; and

Whereas, the continued presence of Syrian Troops in Lebanon no longer serve to further the attainment of peace in that country; and

Whereas, the continuing crisis in Lebanon threatens not only the peace and stability of that nation, but that of the entire region; and

Whereas, the recent tragic clashes between the predominantly Syrian "peacekeeping" forces and the Lebanese Front Forces (Christian forces) in Beirut have resulted in the needless deaths of thousands of innocent civilians in Lebanon:

Now, therefore, be it resolved that we the undersigned Members of the House of Representatives urge the President to direct the Secretary of State to:

(1) Seek the withdrawal of all foreign troops from Lebanon with the exception of those specifically mandated by the U.N. peacekeeping effort;

(2) Support the Central Lebanese Government effort to disarm Palestinians and all other armed non-government groups presently operating within Lebanon;

(3) Seek an expanded role for the U.N. peacekeeping mandate to develop a credible, trustworthy, and effective deterrence to violence;

(4) Seek the formation of a United Nations Commission to investigate and report upon conditions and developments in Lebanon with the objective of adopting specific steps for the economic and political rehabilitation of Lebanon.

LIST OF SIGNERS

Listed below are the Members of the House of Representatives who co-signed the enclosed resolution on Lebanon:

Hon. James Abdnor
Hon. Benjamin A. Gilman
Hon. Abraham Kazen, Jr.
Hon. Lester L. Wolff
Hon. Thomas P. O'Neill, Jr.
Hon. John J. Rhodes
Hon. Jim Wright
Hon. John Brademas
Hon. Robert H. Michel
Hon. Joseph P. Addabbo
Hon. Daniel K. Akaka
Hon. Jerome A. Ambro
Hon. Glenn M. Anderson
Hon. John B. Anderson
Hon. Mark Andrews
Hon. Frank Annunzio
Hon. John M. Ashbrook
Hon. L. A. Bafalis
Hon. Robert E. Bauman
Hon. Robin L. Beard
Hon. Berkley Bedell
Hon. Anthony C. Beilenson
Hon. Adam Benjamin, Jr.
Hon. Charles E. Bennett
Hon. Mario Biaggi
Hon. Jonathan B. Bingham
Hon. Michael T. Blouin
Hon. Lindy Boggs
Hon. John B. Breaux
Hon. William M. Brodhead
Hon. William S. Broomfield
Hon. Clarence J. Brown
Hon. James T. Broyhill
Hon. Clair W. Burgener
Hon. J. Herbert Burke
Hon. James A. Burke
Hon. Omar Burleson
Hon. Bruce F. Caputo
Hon. Bob Carr
Hon. Tim Lee Carter
Hon. John J. Cavanaugh
Hon. Elford A. Cederberg
Hon. Bill Chappell, Jr.
Hon. Don H. Clausen
Hon. James C. Cleveland
Hon. E. Thomas Coleman
Hon. Cardiss Collins
Hon. James M. Collins
Hon. Barber B. Conable, Jr.
Hon. Silvio O. Conte
Hon. Tom Corcoran
Hon. James C. Corman
Hon. Robert J. Cornell
Hon. William R. Cotter
Hon. Lawrence Coughlin
Hon. Dan Daniel
Hon. George E. Danielson
Hon. Mendel J. Davis
Hon. Ronald V. Dellums
Hon. Edward J. Derwinski
Hon. Samuel L. Devine
Hon. John D. Dingell
Hon. Christopher J. Dodd
Hon. Robert K. Dornan
Hon. Thomas J. Downey
Hon. Robert F. Drinan
Hon. John J. Duncan
Hon. Robert W. Edgar
Hon. Jack Edwards
Hon. Mickey Edwards
Hon. David F. Emery
Hon. Glenn English
Hon. John N. Erlenborn
Hon. Billy Lee Evans
Hon. Frank E. Evans
Hon. Thomas B. Evans, Jr.
Hon. Dante B. Fascell
Hon. Millicent Fenwick
Hon. Hamilton Fish, Jr.
Hon. Joseph L. Fisher
Hon. Walter Flowers
Hon. John J. Flynt, Jr.
Hon. Thomas S. Foley
Hon. William D. Ford
Hon. Edwin B. Forsythe
Hon. L. H. Fountain
Hon. Wyche Fowler, Jr.
Hon. Donald M. Fraser
Hon. Bill Frenzel
Hon. Bob Gammage
Hon. Robert Garcia
Hon. Dan Glickman
Hon. Barry M. Goldwater, Jr.
Hon. Henry B. Gonzalez
Hon. William F. Goodling
Hon. Willis D. Gradison, Jr.
Hon. Charles E. Grassley
Hon. S. William Green
Hon. Tennyson Guyer
Hon. Sam B. Hall, Jr.
Hon. George Hansen
Hon. Tom Harkin
Hon. Augustus F. Hawkins
Hon. Margaret M. Heckler
Hon. Jack Hightower
Hon. Elwood Hillis
Hon. Marjorie S. Holt
Hon. Elizabeth Holtzman
Hon. Carroll Hubbard, Jr.
Hon. William J. Hughes
Hon. Andrew Jacobs, Jr.

Hon. James M. Jeffords
Hon. John W. Jenrette, Jr.
Hon. Harold T. Johnson
Hon. Ed Jones
Hon. James R. Jones
Hon. Barbara Jordan
Hon. Robert W. Kasten, Jr.
Hon. Jack F. Kemp
Hon. Martha Keys.
Hon. John Krebs
Hon. Robert Krueger
Hon. Robert J. Lagomarsino
Hon. Debert L. Latta
Hon. Robert L. Leggett
Hon. William Lehman
Hon. Norman F. Lent
Hon. Elliott H. Levitas
Hon. Bob Livingston
Hon. Jim Lloyd
Hon. Marilyn Lloyd
Hon. Clarence D. Long
Hon. Trent Lott
Hon. Robert McClory
Hon. Paul N. McCloskey, Jr.
Hon. Joseph M. McDade
Hon. Robert C. McEwen
Hon. Gunn McKay
Hon. Stewart B. McKinney
Hon. Andrew Maguire
Hon. James R. Mann
Hon. Marc L. Marks
Hon. James G. Martin
Hon. Jim Mattox
Hon. Helen S. Meyner
Hon. Barbara A. Mikulski
Hon. Abner J. Mikva
Hon. Clarence E. Miller
Hon. Norman Y. Mineta
Hon. Donald J. Mitchell
Hon. Parren J. Mitchell
Hon. Anthony Toby Moffett
Hon. G.V. (Sonny) Montgomery
Hon. W. Henson Moore
Hon. Carlos J. Moorhead
Hon. Ronald M. Mottl
Hon. John M. Murphy
Hon. John P. Murtha
Hon. Gary A. Myers
Hon. John T. Myers
Hon. Stephen L. Neal
Hon. Lucien N. Nedzi
Hon. Robert N. C. Nix
Hon. Mary Rose Oakar
Hon. George M. O'Brien
Hon. Donald J. Pease
Hon. J. J. Pickle
Hon. W. R. Poage
Hon. Larry Pressler
Hon. Richardson Preyer
Hon. Melvin Price
Hon. Joel Pritchard
Hon. Dan Quayle
Hon. Nick Joe Rahall II
Hon. Tom Railsback
Hon. Charles B. Rangel
Hon. Ralph Regula
Hon. Frederick W Richmond
Hon. Matthew J. Rinaldo
Hon. Ted Risenhoover
Hon. Ray Roberts
Hon. Peter W. Rodino, Jr.
Hon. Teno Roncalio
Hon. Fred B. Rooney
Hon. Benjamin S. Rosenthal
Hon. Dan Rostenkowski
Hon. John H. Rousselot
Hon. Edward R. Roybal
Hon. Harold Runnels
Hon. Leo J. Ryan
Hon. David E. Satterfield III
Hon. Harold S. Sawyer
Hon. James H. Scheuer
Hon. Patricia Schroeder
Hon. Keith G. Sebelius
Hon. John F. Seiberling
Hon. B. F. Sisk
Hon. Gene Snyder
Hon. Gladys Noon Spellman
Hon. J. William Stanton
Hon. Newton I. Steers, Jr.
Hon. William A. Steiger
Hon. Louis Stokes
Hon. Samuel S. Stratton
Hon. Gene Taylor
Hon. Charles Thone
Hon. Bob Traxler
Hon. David C. Treen
Hon. Paul S. Trible, Jr.
Hon. Morris K. Udall
Hon. Lionel Van Deerlin
Hon. Joe D. Waggonner, Jr.
Hon. Robert S. Walker
Hon. William F. Walsh
Hon. William C. Wampler
Hon. Wes Watkins
Hon. Henry A. Waxman
Hon. Ted Weiss
Hon. Charles W. Whalen, Jr.
Hon. Charles Whitley
Hon. Jamie L. Whitten
Hon. Charles E. Wiggins
Hon. Bob Wilson
Hon. Larry Winn, Jr.
Hon. John W. Wydler
Hon. Chalmers P. Wylie
Hon. Sidney R. Yates
Hon. Don Young
Hon. Robert A. Young
Hon. Clement J. Zablocki
Hon. Leo C. Zeferetti

Mr. Speaker, when the foreign aid authorization bill came before this body we voted overwhelmingly to delete the earmarking of $90 million of assistance to Syria because of her action in Lebanon. The Senate, in the appropriations measure, voted to keep $90 million. Because of Parliamentary procedure, the House is not able to have a separate vote on this money for Syria in the conference report. I want to let the administration know that I do not think that this money should be spent to aid Syria until she gets out of Lebanon, and joins in the Middle East peace process. Cosponsoring this resolution would tell the administration the depth of the concern in Congress about this situation. I urge my colleagues to cosponsor the resolution if they want to send the same message to the White House.

Throughout the crisis in Lebanon, the press has presented the situation in black and white terms, of "right versus left" and "Christian against Moslem." Admittedly, the many groups and sects involved make a complicated story. However, the press presentation has done very little to Americans a real understanding of what is taking place in Lebanon. One notable exception to this pattern is an editorial from the Wall Street Journal of October 11th. I feel that it is a cogent discussion of the situation in Lebanon, and the issues that this country must face in dealing with it. I would like to insert this editorial into the RECORD:

TURNING POINT IN LEBANON

Addressing Congress after the Camp David accords, President Carter added some words about ending another Middle Eastern tragedy, the civil war in Lebanon. What President Carter does to redeem that promise will demonstrate whether he truly has revitalized the American will for decisive action in the Middle East.

In one sense, it was definite progress that the President spoke at all about ending the Lebanese conflict. At least it was a change from the dormant U.S. policy of the last two years, which has been completely bypassed by events. In 1976, the U.S. gave tacit endorsement to the thinly disguised Syrian army of occupation which ended the Lebanese war of all against all. This policy briefly made sense. After all, the Syrians were offering a reasonable internal political settlement, and they rescued the pro-Western Christians from losing to a Palestinian-Muslim-Druse coalition. But now the Syrians are playing the other side of the balance, trying to crush the organized Christian resistance so that they can completely dominate the country.

The Syrian shelling of east Beirut is only Lebanon will be that much further on the serious offensive in late August, the Syrians actually moved ground troops into Christian villages in the northern mountains. They arrested relatives of militia fighters and even murdered families of some political opponents. The foray was brief, but showed the Syrian determination to choke off Christian independence at its source.

If this type of occupation isn't checked, Lebanon will be made much further on the way toward absorption into "greater Syria." A real turning point in the occupation is at hand. The 30,000 to 35,000 Syrian troops in Lebanon are formally part of an "Arab Deterrent Force," which also includes Sudanese and Saudi units and is heavily financed by the Saudis. The mandate for the force expires on October 26. A change in the composition and deployment of this force could conceivably end the bloodshed. Militant Christians, for instance, still praise the Sudanese and Saudi troops for their "exemplary" conduct. Lebanese President Elias Sarkis, a noncombatant Christian, is now roaming the Arab world arranging a continuation. But it will take heavy diplomatic pressure to revise the force, the sort of pressure that won't be generated while the U.S. remains passive.

And make no mistake, the U.S. is now the key player. The French had a fling last week, lobbying at the UN with an impractical idea of interposing reconstructed Lebanese army units between the Syrians and the Christians. When that initiative fizzled, senior diplomats left the field to the State Department.

The question is whether, in spite of the President's words, the State Department is up to the task. Our diplomats are so used to feeling powerless in the Levant that they seem uncomfortable in a situation which requires them to throw around some weight. The mood seems to be to drift with the Syrians some more, to write off the Christian militias as a violent, unrepresentative minority, to tread softly where the Russians might get involved and in the meantime to hope that providing uniforms and equipment to the Lebanese army remnants will help restore central authority.

Too much is at stake for this passivity. Lebanon threatens the flanks of the Camp David peace talks, and that alone is sufficient reason for U.S. action. An accidental explosion in the north would have an imponderable effect on Egyptian-Israeli negotiations. Syrians and Israelis could easily get swept away in their current game of threat and deterrence. We suspect neither side wants to go to such extremes. But it will take active diplomacy to find the way out of the crisis.

The point is that diplomacy will have to make haste while the timing is right. Reports of Syrian troop movements yesterday underlined the tenuous nature of the latest cease-fire, but it has at least given some pause. The future of the "deterrent force" is up in the air, and President Sarkis still has formal leverage over the Syrian presence. A compromise to save the situation might still be possible, but it will require the orchestrated backing of Western powers and their Arab friends. American interests are clear and President Carter has recognized them. It remains to be seen whether he can prod his government to seize the initiative.●